

- I. CALL TO ORDER

- II. ROLL CALL

- III. REVIEW AGENDA

- IV. CONSENT OF JUNE 14, 2016 MINUTES

- V. NEW BUSINESS
 - a. Krueger Property - Tiny Home Request - Update

- VI. OLD BUSINESS
 - a. Rio Grande Lane Subdivision Update

 - b. Discuss/Recommend Development Code Topics
 - i. Rental Property Definitions
 - ii. Outdoor Storage Definitions

- VII. ADJOURN

POSTED 8/5/16

OPEN TO THE PUBLIC

PLANNING & ZONING COMMISSION
CITY OF CREEDE, COLORADO - A TOWN
June 14, 2016

REGULAR MEETING

The Planning and Zoning Commission of the City of Creede - a Town, County of Mineral, State of Colorado, met in the Creede Town Hall at the hour of 5:34 p.m. There being present at the call of the roll the following persons:

COMMISSIONERS PRESENT: Ed Vita [by phone], Frank Freer, Jeffrey Larson, Lauri Jordan

Commission Chair Jordan, presiding, declared a quorum present:

Those members of staff also present were as follows: Clyde Dooley, Town Manager
Randi Snead, Town Clerk

AGENDA

Commissioner Freer moved and Commissioner Larson seconded to approve the agenda as presented. The vote was unanimous. Commission Chair Jordan declared the motion carried.

CONSENT OF MAY 10, 2016 MINUTES

Commissioner Freer moved and Commissioner Larson seconded to approve the May 10, 2016 minutes as presented. The vote was unanimous. Commission Chair Jordan declared the motion carried.

OLD BUSINESS

DISCUSS/RECOMMEND DEVELOPMENT CODE TOPICS - RENTAL PROPERTY DEFINITIONS

The Commission discussed Rental Property Definitions at length and requested information from staff to be discussed at last month's meeting.

DISCUSS/RECOMMEND DEVELOPMENT CODE TOPICS - OUTDOOR STORAGE DEFINITIONS

The Commission discussed Outdoor Storage Definitions at length and requested information from staff to be discussed at last month's meeting.

DISCUSS/RECOMMEND DEVELOPMENT CODE TOPICS - STREET LIGHTING

The Commission discussed Street Lighting at length and determined that they were satisfied with the current regulations in the Development Code.

DISCUSS/RECOMMEND DEVELOPMENT CODE TOPICS - DISCUSS OPEN SPACE DEFINITIONS AND PERCENTAGES

The Commission discussed Street Lighting at length and determined that they were satisfied with the current regulations in the Development Code.

NEW BUSINESS

RECCOMEND 3RD STREET VACATION

Dooley presented information on the request to vacate Third Street (formerly the elementary school playground). The Commission requested additional plans or drawings of all surrounding properties to consider before making a recommendation.

RIO GRANDE LANE PRESENTATION

Dooley reported that a preliminary survey had been completed but it needed quite a bit of clarification. The final draft should be prepared sometime this summer.

ADJOURN

There being no further business to come before the Planning and Zoning Commission at this time, Commissioner Freer moved and Commissioner Larson seconded that the meeting be adjourned at 6:49 p.m. The vote was unanimous. Commission Chair Jordan declared the motion carried.

Respectfully submitted:

 /Randi Snead/
Randi Snead, City Clerk/Treasurer

DRAFT

From: [Eric Heil](#)
To: [Clyde Dooley](#); [Randi Snead](#)
Subject: Re: PZC Qs for Attorney
Date: Thursday, July 07, 2016 3:06:39 PM

Clyde and Randi, I'm not sure what the PZC's goals are with regard to Short Term Rentals. There are two aspects - zoning and sales tax/accommodation tax collection. It is a good idea to define it in the Development Code and then state whether it is (1) a Use by Right, (2) subject to the Special Use Review process, or (3) prohibited in residential (1 and/or 2) zone districts. Presumably you are allowing it in the commercial zone districts. I do like defining short term rentals as "less than 30 days" to avoid month to month leases somehow meeting the definition. The state does define short term rental as 30 days or less for the purpose of applying the 2.9% State sales tax. There is some benefit in using the same definition as the state for consistency with sales tax - Creede probably should as a statutory town.

If allowed then there are lots of examples of minimum standards (parking, trash, CO detector, name of local manager, minimum rules and info for users, business license, sales tax license, etc.)

There has been a lot of attention on short term rentals lately. Renting an entire house (e.g. VRBO) is relatively simple, renting individual bedrooms to different, unrelated persons (e.g. Air BnB) is more complicated because it is like a self-check in hotel with no on-site management. Some communities allow short-term rentals very generously with some standards, others believe they push-out all the "locals rental housing" (which is the current debate in Crested Butte and Durango).

For most places (I think this includes Creede) it makes sense to define short-term rentals for both sales tax and zoning purposes, decide where it is allowed, and regulate it at least for sales tax revenue.

Avon allows in most areas, but absolutely prohibits in one residential subdivision. I am actively involved with compliance and enforcement issues. I also have a house I rent short-term on VRBO, so I am active on the property owner compliance side.

Overall, I believe permitting short-term rentals is OK and not negative to a community. Our family almost always uses VRBO for vacations and it is very common in Europe. Nationally, some states are passing regulations to prohibit restrictions on short-term rentals - meaning, state laws to stop local governments from prohibiting short-term rental use of residential property.

With regard to Outdoor Storage, there are plenty of examples of definitions; however, it is right up there with dogs and ATVs for small towns. There is no answer or magic regulation that makes everyone happy, so you'll just need to let the Town Board know that if you adopt a definition with intent to enforce it you can all expect some resistance and complaints.

Eric

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From: Clyde Dooley <manager@creedetownhall.com>
Date: Thursday, July 7, 2016 at 1:29 PM
To: Eric Heil <ericeillaw@gmail.com>
Subject: FW: PZC Qs for Attorney

Eric,

Thank goodness Randi remembered all this and I think her memory is accurate. I know there's a lot of stuff going on nationwide with Short Term Rentals, but don't see any correlation in using the DOR's definition in our Development Code! Am I missing something here?

I'm open on your thoughts for a definition for Outdoor Storage - - but see enforcing it a nightmare absent more staff and a municipal court.

I'll try calling tomorrow morning.

Clyde

From: Randi Snead [<mailto:clerk@creedetownhall.com>]
Sent: Thursday, July 07, 2016 10:58 AM
To: 'Clyde Dooley' <manager@creedetownhall.com>
Subject: PZC Qs for Attorney

Clyde:

I think what the PZC was requesting from Eric is the following:

-They would like the "official definition" of short-term rentals from the Department of Revenue as its used for tax purposes. I've given it my best shot in the attached memo, so I think that can just be confirmed.

-They would like to define it in the CDC without regulating it in the CDC, and I think the assertion was "If we don't define it than its automatically illegal." They cited a lawsuit in Utah that I was unable to find information on in which the lack of definition was the issue. Is there a reason to define it in the code without regulating it elsewhere?

Forward this along to Eric if that's what you remember from last month's meeting...

Randi Snead, CMC
City of Creede Clerk/Treasurer
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719.658.2276 ext 2, clerk@creedetownhall.com
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Please consider the environment - only print if necessary

CLERK'S MEMO

City of Creede

DATE: July 7, 2016
TO: Planning & Zoning Commission
FROM: Randi Snead, Clerk/Treasurer
SUBJECT: Research Requests, Development Code

SHORT TERM RENTALS (STRs)

At our last meeting we discussed including STRs in the Development Code. Currently, we do not legislate anything specifying how residential property may be used unless it is being used in a way that escalates to a home occupation, industrial or commercial use, or some other use that may change the property's classification from residential to something else. There aren't restrictions on whether a property owner can rent out their property versus residing in it themselves, or how long they may rent out the property.

It was suggested that we use a definition from the Department of Revenue's taxation regulations in our Development Code.

Colorado Revised Statute §39-26-102(11), makes the following distinction for tax purposes:

"Sale" or "sale and purchase", in addition to the items included in subsection (10) of this section, includes the transaction of furnishing rooms or accommodations by any person, partnership, limited liability company, association, corporation, estate, receiver, trustee, assignee, lessee, or person acting in a representative capacity or any other combination of individuals by whatever name known to a person who for a consideration uses, possesses, or has the right to use or possess any room in a hotel, apartment hotel, lodging house, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp, or trailer court and park, under any concession, permit, right of access, license to use, or other agreement, or otherwise.

§39-26-104(1) stipulates that the entire amount charged for these accommodations be taxed and §39-26-704 (3) exempts stays of over 30 days. I've passed this to Clyde and requested that our attorney confirm this definition.

*Update, attorney's opinion attached.

More information on the taxation of STRs can be found here:

<https://www.colorado.gov/pacific/sites/default/files/Sales11.pdf>. That being said, taxation is not the purview of the PZC and any further exploration of our taxation and audit practices will need to be brought before the Board of Trustees.

I was not able to find development codes which utilize taxation definitions rather than standard zoning definitions. Most development codes define STRs as fewer than 30 day rentals. Some communities heavily regulate STRs and some choose to consider it the owner's prerogative and do not regulate at all. I was also unable to find information on the advantage or disadvantage of defining STRs in the Development Code (in the definitions section towards the back) if no regulation is planned in the code itself. Please see Eric H's email for more info. Someone had mentioned that there was current litigation in Utah that suggested we should define it

without regulating it, but I wasn't able to find more information about that. If you have that information, please bring it along.

OUTDOOR STORAGE

Clarification was requested last month regarding what we had in place for outdoor storage regulation in the new Development Code. We removed the entire definition before adoption due to its restrictive nature. It was:

Outdoor Storage means the keeping, in an unroofed area, of any equipment, goods, junk, material, merchandise or vehicles in the same place for more than twenty-four (24) hours. Containers and semi-trailers may not be used for residential or storage uses except on construction sites.

Now, it isn't defined in the new code, but it shows up periodically, most significantly here, in the zoning regulations, 9-04-190 (e)(3):

(1) Outdoor Storage. Outdoor storage is a permitted accessory use in the I zone district with approval of an SRU pursuant to §9-16-080, *Special Review Use*. In other zone districts, outdoor storage is permitted through the site plan review process and subject to compliance with the following requirements:

(i) Except for outdoor storage associated with industrial or agricultural uses, each outdoor storage area shall be incorporated into the overall design of the primary structure on the site and shall be located at the rear of the primary structure.

(ii) Each outdoor storage area shall be screened from view from all property lines and adjacent rights-of-way by an opaque fence or wall between six (6) and eight (8) feet in height. The fence shall incorporate at least one of the predominant materials and one of the predominant colors used in the primary structure. The fence may exceed eight (8) feet in height where the difference in grade between the right-of-way and the outdoor storage area makes a taller fence necessary to effectively screen the area. Materials may not be stored higher than the height of the primary structure. The perimeter of the fence or wall must be landscaped.

(iii) A landscaped earthen berm may be used instead of or in combination with a required fence or wall.

(iv) If the outdoor storage area is covered, then the covering shall include at least one of the predominant exposed roofing colors on the primary structure.

(v) No materials may be stored in areas intended for vehicular or pedestrian circulation.

(vi) No storage of any items may occur within the front setback area or within one-half (1/2) of each side setback nearest the street.

(vii) Rooftop outdoor storage is prohibited.

The usage tables for zoning also refer to outdoor storage quite a bit. An easy way to find all occurrences is to search the online version of the CDC [here](#). I believe we meant to work on a new definition, but I wasn't able to find that direction for sure one way or another in the minutes.

Per your direction in June, I've removed street lighting and open space definitions from the agenda since our current regulation seemed satisfactory.

RIO GRANDE LANE SUBDIVISION

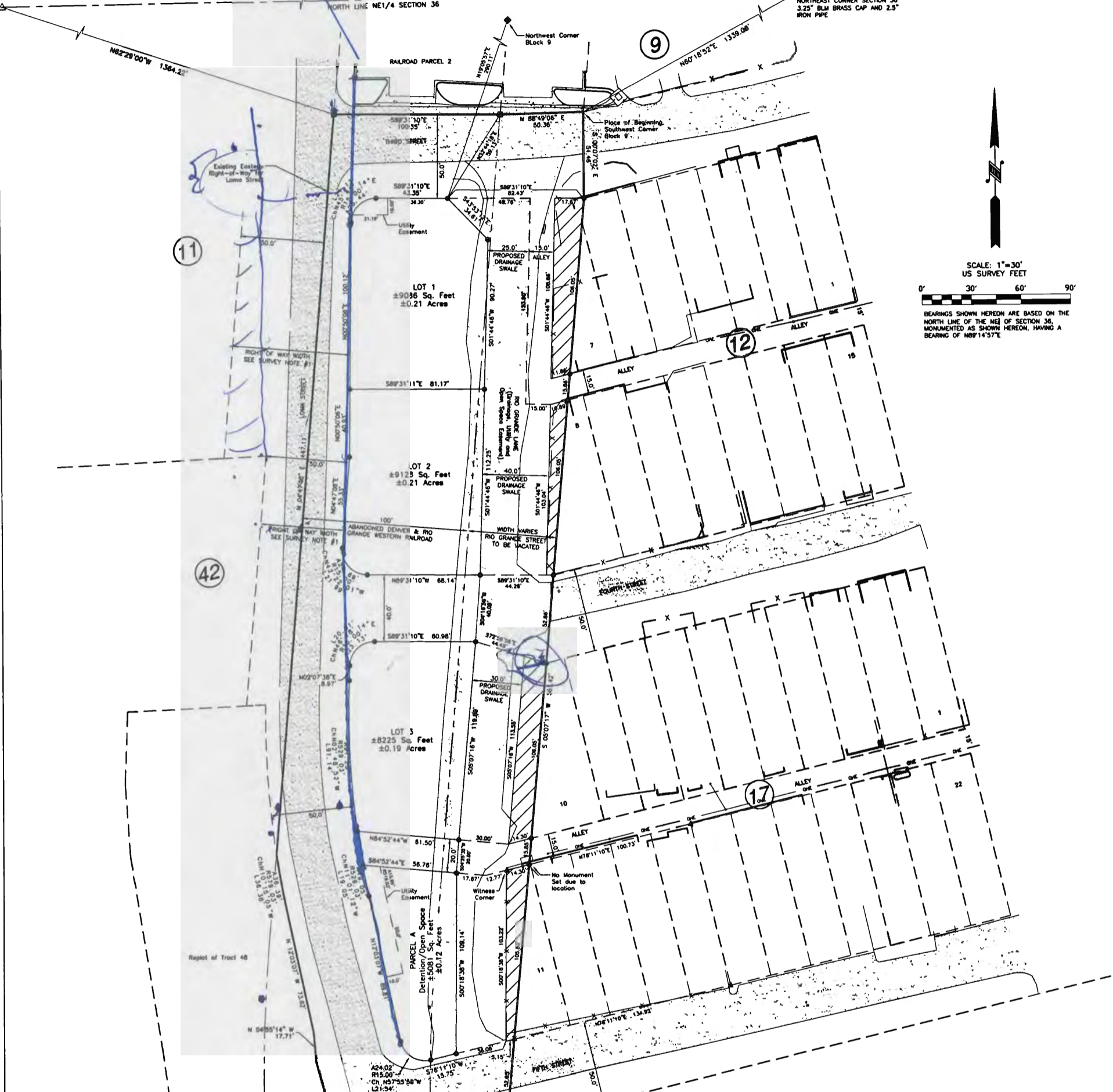
A Resubdivision of a portion of the Denver & Rio Grande Western Railroad and Rio Grande Street, South Creede Located in the Northeast 1/4 S. 36, T. 42 N., R. 1 W., N.M.P.M., Mineral County, Colorado

NORTH 1/4 CORNER SECTION 36
3.25" BLM BRASS CAP AND 2.5" IRON PIPE

"BASIS OF BEARINGS"
N69°14'57"E 2524.11'

NORTHEAST CORNER SECTION 36
3.25" BLM BRASS CAP AND 2.5" IRON PIPE

This is the eastern side of LOMA.



SCALE: 1"=30'
US SURVEY FEET

BEARINGS SHOWN HEREON ARE BASED ON THE NORTH LINE OF THE NE1/4 SECTION 36, MONUMENTED AS SHOWN HEREON, HAVING A BEARING OF N69°14'57"E

SURVEYOR'S NOTES:

- THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A CURRENT TITLE REPORT AND IN NO WAY SHALL IT BE CONSTRUED AS A TITLE OPINION BY THIS SURVEYOR OR DAVIS ENGINEERING SERVICE, INC. EXCEPT AS SHOWN, CLIENT DID NOT WISH TO HAVE DAVIS ENGINEERING SERVICE, INC. RESEARCH AND SHOW RECORD OR APPARENT EASEMENTS THAT MAY AFFECT THIS PROPERTY.
- CERTIFICATION DEFINED: THE USE OF THE WORDS "CERTIFY" OR "CERTIFICATION" BY A LICENSED PROFESSIONAL LAND SURVEYOR CONSTITUTES AN EXPRESSION OF PROFESSIONAL OPINION REGARDING THE FACTS AND FINDINGS WHICH ARE THE SUBJECT OF THE CERTIFICATION, AND DOES NOT CONSTITUTE A WARRANTY OR GUARANTY, EITHER EXPRESSED OR IMPLIED. (PER COLORADO STATE BOARD RULE NO. 6.2.2).

SURVEYORS CERTIFICATE

I, DEAN P. SCHULTZ, A DULY LICENSED LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT THIS PLAT OR MAP WAS PREPARED FROM NOTES OF AN ACTUAL FIELD SURVEY PERFORMED BY ME OR UNDER MY DIRECT SUPERVISION AND IS BASED UPON MY KNOWLEDGE, INFORMATION AND BELIEF, AND IT IS IN ACCORDANCE WITH APPLICABLE STANDARDS OF PRACTICE.

FOR AND ON BEHALF OF
DAVIS ENGINEERING SERVICE, INC.

PRELIMINARY

LEGEND:

- ▲ Section Corner as described
- ◆ Found No.4 Rebor w/1" Red Plastic Cap (LS 5444)
- Found No.5 Rebor with 2.0" Aluminum Cap (LS 36063)
- ▲ Found No.4 Rebor w/1" Red Plastic Cap (LS 23891)
- Set No.5 Rebor with 1.5" Aluminum Cap (LS 26973)
- Lot or Parcel Boundary
- Subdivision Extents
- Adjacent Lot Lines
- Easement
- Railroad Right of Way - Abandoned
- X Fence Line
- Overhead Electric
- Waterline w/ Fire Hydrant
- Underground Telephone w/ Pedestal
- Sanitary Sewer w/ Manhole
- Building Outline
- Area to be vacated to property owners by separate action at later date
- Gravel/Dirt
- Asphalt

CLERK AND RECORDERS CERTIFICATE

I hereby certify that this instrument was filed in my office at _____ clock, _____ m. under Reception No. _____ (Book No. _____ Page No. _____) Fees Paid _____

Signed _____ Title _____

NOTICE: According to Colorado law you MUST commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.

NOT VALID WITHOUT ORIGINAL SIGNATURE AND SEAL (SHEET 2 OF 3)

REVISIONS	RIO GRANDE LANE SUBDIVISION		SURVEYED BY
	A Resubdivision of a portion of the Denver & Rio Grande Western Railroad and Rio Grande Street, South Creede Located in the Northeast 1/4 S. 36, T. 42 N., R. 1 W., N.M.P.M., Mineral County, Colorado		DS/TC
	SCALE	1"=30'	DRAWN BY
	DATE	7/7/16	TC
	CLIENT	CITY OF CREEDE	FILED
		DAVIS ENGINEERING SERVICE, INC. P.O. BOX 1840 ALAMOSA, COLORADO 81101 PHONE: (719) 589-3004 FAX: (719) 589-3712	AP0859