



PUBLIC HEARING

Zoning Board of Appeals

Tuesday, September 13th, 2016 - 6:00 p.m.

Evans Community Complex – 1100 37th Street, City Council Chambers

Zoning Board Packets are prepared several days prior to the meetings. This information is reviewed and studied by the Board members eliminating lengthy discussions to gain basic understanding. Timely action and/or short discussion on agenda items do not reflect lack of thought or analysis. An informational packet is available for public inspection on the website at www.evanscolorado.gov

AGENDA

1) CALL TO ORDER

2) ROLL CALL:

Chairman: Marty Schanwolf
Vice-Chairman: Steve Bernardo
Board Members: John Clark
Dan Usery

3) APPROVAL OF THE AGENDA

4) NEW BUSINESS:

A. PUBLIC HEARING - Consideration of a request by the Evans Fire Protection District regarding above ground fuel storage tanks. Presented by Ron Pristera, Fire Chief

B. PUBLIC HEARING - Eastwood Village Appeal. Consideration of an appeal by the owner of the Eastwood Village Manufactured Home Park to a determination by City Staff that an application for approval of variance requests is incomplete. Presented by City Staff.

6) AUDIENCE PARTICIPATION: This portion of the Agenda is provided to allow members of the audience to provide comments to the Zoning Board of Appeals on items that were not considered on the current Agenda.

7) STAFF UPDATE

A. Community Development Project List

8) GENERAL DISCUSSION

9) ADJOURNMENT



Evans Fire Protection District

EST. 2011

Staff Report: Hillside Rental Fire Code Variance

Background & History

The Evans Fire Protection District (EFPD) provides fire protection for the City of Evans through a service plan (approved by the voters) and various intergovernmental agreements (IGA's). City Council has adopted the 2012 edition of the International Fire Code (IFC) with certain local modifications and has empowered the District to enforce the code.

One of the local modifications was to designate the City of Evans Zoning Board of Appeals (ZBA) and ZBA process as the appeals process for questions arising from the IFC.

Current Situation

During a routine fire inspection of the Hillside Rental business (1310 40th Street) several routine fire code issues were discovered. While researching various solutions to the code issues, EFPD discovered a local modification to the IFC that prohibits above ground storage tanks, and Hillside Rental has two of them.

1. IFC Sec. 5704.2.9.5.a is amended to read: "5704.2.9.5.a Location of aboveground tanks.
 - "1. General. Storage of Class I and Class II liquids in aboveground tanks outside of buildings is prohibited.
"Exceptions:
 - "1. Prohibited and legal nonconforming. Any such aboveground tanks legally installed and in use as of April 19, 1983, may be continued in use, provided that such tanks are located and installed in accordance with the latest edition of the National Fire Protection Association Pamphlet Nos. 30 & 58 and provided further, that other applicable provisions of latest adopted edition of the International Fire Code and the City of Evans Code of Ordinances are complied with.
 - "2. Variance for storage of flammable or combustible liquids in C, I, and P.U.D. zones. Upon payment of variance fee, review and recommendation of the Board of Appeals, the Evans City Council may grant a variance to the prohibitions in Section 5704 of the International Fire Code above for permits granted under Chapter 16.28, Oil and Gas Exploration and Development, and/or for aboveground storage in C, I, and P.U.D. zoning districts as defined by the City of Evans, if the Evans City Council finds that:
 - (a) such variance will not create an undue safety hazard and will not adversely affect surrounding property; and (b) good cause exists. All aboveground storage authorized by Evans City Council variance is subject to the construction, location and other applicable standards set forth in the latest adopted edition of the International Fire Code."

1100 37th Street, Evans, Colorado 80620 970-475-1118

This was an unexpected discovery since Hillside Rental's existing above ground tanks have been in place since the building was built in 2006 and they have never been directed to remove them.



2016 Weld County Assessor Aerial View- arrow showing approximate location of both tanks.

Staff Analysis

Explanations and rationale for the local amendments/modifications to the IFC are difficult to find. We have been able to determine the prohibition against above ground storage tanks has been in effect for three code revisions (back to 2006- when the building was built) and the amendment is more restrictive than IFC was written.

This is the first time the Fire District has inspected this business, nor do records from the Municipal Fire Department era show any inspections.

Though above ground storage tanks can be a fire hazard, the authors of the IFC did not believe they are a significant enough hazard to banⁱ. In fact, in situations where tanks are properly constructed, installed and maintained, they should be safer than the routine transfer of liquids, since repeated transfer (filling, moving and using smaller containers) involves numerous steps, all of which present the possibility of failure.ⁱⁱ

EFPD has verified with the City Planning Department that Hillside Rental falls within one of the zoning classifications (Commercial) that is eligible to receive a variance for this code requirement.

Recommendation

EFPD recommends the Board approve the variance for the following reasons;

1. The tanks have been in place without incident since the inception of this business, to date the owners have received no indication their use is prohibited and to do so now constitutes an undue burden on the operators.
2. The surrounding areas are commercial, with a variety of equipment and material stored in yards. This presents a different aesthetic expectation than a residential neighborhood.
3. If the tanks are ordered removed and the business continues to operate, the need to fuel equipment remains, forcing the operators to transfer fuel in smaller containers that present more of a fire risk.
4. The property qualifies for a variance based on its current zoning.

ⁱ International Fire Code Section 5704.2.9.5.

ⁱⁱ Storage of Flammable and Combustible Liquids, Section 7, Chapter Two, Fire Protection Handbook, National Fire Protection Association, Battery Park MA.



ZONING BOARD OF APPEALS
Public Hearing - September 13, 2016

AGENDA ITEM: Eastwood Village MHP Appeal
PREPARED BY: Sean Wheeler, City Planner
ACTION: Review for recommendation to City Council
REVIEWED BY: Fred Starr, Public Works Director
CITY COUNCIL DATE: October 2nd, 2016 (Tentative)

SITE INFORMATION		
Location:	200 37th Street in east Evans on the south side. It is approximately 19.9-acres in size and has one point of access. (See attached Vicinity Map)	
Applicant:	Eastwood Village LLC. (Keith Cowan)	
Existing Land Use:	Unoccupied Residential Manufactured Home Park, having sustained significant damage in the 2013 Flood.	
Proposed Land Use:	Renewed operation of a residential manufactured home park in it's previous configuration.	
Surrounding Land Uses & Zoning:	North	Single Family Residential (R-1) uses & Bella Vista Manufactured Home Park PUD.
	South	Undeveloped Planned Unit Development (PUD)
	East	Undeveloped PUD / I-2 Industrial Area
	West	Single Family Residential (R-1)
Existing Zoning:	RMH (Residential Manufactured Home)	
Proposed Zoning / Use:	RMH (Residential Manufactured Home)	
Current Request:	Appeal to a determination by Staff that the application for variances is incomplete, and cannot be processed without additional information.	

PROJECT DESCRIPTION: The applicant seeks approval to reopen the Eastwood Village Manufactured Home Park as it operated prior to the 2013 flood. He has submitted an application for several variance requests related to a number of standards in the Municipal Code. Staff determined the application is incomplete, and therefore the variance requests cannot be processed without additional information. The applicant is appealing the decision by staff that there is insufficient information to review the variance requests. Consideration of the *merits* of the variance applications is not under review. This hearing is to determine if the applicant provided sufficient documentation and information for a review of the variance requests.

ANALYSIS & ISSUES

1. Variance Requests Requirements: The below Chapters of the Municipal Code provide direction and outline the process required for the City to consider a variance application.

- A. Title 16 (Environment) Sub-Chapter 16.04.170 - Variance Procedures
- B. Title 19 (Zoning) Sub-Chapter 19.58 - Variances

2. Title 16.04.170 Variance Procedures: This section of the Municipal Code specifically states that requests for variances shall be heard using the process set forth in Chapter 19.58 of the Evans Municipal Code, except as modified by Title 16.04.170.

3. Title 19.58 - Variances:

A. The Municipal Code describes the review process for variance requests. Sub-Chapter 19.58.040 (A) states that a petition in the form prescribed by the City shall be filed with the City Clerk, and shall be accompanied by a letter explaining why the variance should be granted. Additional supporting evidence such as letters of support from surrounding property owners, photographs and maps may be submitted and may be required by the City.

B. In addition, the Weld County District Court ordered the applicant to pursue two actions. First, submit a request for a variance, and second that the variance request also include a *“proposal for rebuilding the mobile home park that will satisfy Evans’ safety concerns.”*

4. Eastwood Village Variance Submittal. As part of the variance submittal the application included the following:

- Project Description, Signed Application Form, Adjoining Property Owner's List
- Exhibit A Subject Properties (Aerial Map)
- Attachment B, being the specific variances required.
- Attachment C, as further engineering basis by which to approve the variances required to allow the EWB mobile home park to re-open.

5. Completeness Determination: On review of the above items, and based on the provisions found in Title 19.58 stating the City can require additional supporting evidence, Staff determined the application to be incomplete for the following reasons:

- The applicant did not provide any evidence they have contacted neighboring property owners.
- The applicant did not provide site plan information other than a single aerial photograph.
- The applicant did not specifically address the District Court's determination that a *“proposal for rebuilding the mobile home park that will satisfy Evans’ safety concerns.”*

SUMMARY:

Based on the standards in the Municipal Code and those required by action of the District Court, Staff's assessment is the variance application is incomplete, and that it cannot move forward without additional information. The applicant believes the documentation provided is sufficient and should allow consideration of their variance requests by the Zoning Board and the City Council.

DRAFT MOTIONS:

"I recommend the City Council deny the request by the owner of the Eastwood Village Manufactured Home Park, that they be allowed to apply for variances for public hearing review, without having to provide any additional information."

"I recommend the City Council approve the request by the owner of the Eastwood Village Manufactured of Home Park, to proceed to the public hearing review for consideration of their variance requests, without the provision of additional information as determined by City Staff."

Attachments:

1. Staff Report
2. Vicinity Map
3. Staff Correspondence dated July 21st and August 11th, 2016
4. Application Materials
 - Project Description (Applicant letters dated May 19th and July 28th, 2016)
 - Exhibit A Subject Properties (Aerial Map)
 - Attachment B, being the specific variances required.
 - Attachment C, as further engineering basis by which to approve the variances required to allow the EWB mobile home park to re-open.
5. Municipal Code Titles:
 - Title 16 (Environment) Sub-Chapter 16.04.170 - Variance Procedures
 - Title 19 (Zoning) Sub-Chapter 19.58 - Variances

**EASTWOOD VILLAGE MH PARK
VICINITY MAP
(200 37th Street in Evans.)**





COMMUNITY DEVELOPMENT

1100 37th Street
Evans, CO 80620-2036
Planning Department: 970-475-1167

July 21st, 2016

Mr. Rob Singer
Carden Engineering
PO Box 903, Niwot, CO 80544

Dear Mr. Singer,

This letter provides follow-up clarification to my previous communications regarding the EWV Variance application.

1. As you know EWV's variance application has been submitted as a result of the court's order in litigation between EW and the City. Therefore, as I indicated in my previous email, I consulted with the City's attorneys regarding this matter.
2. I am advised by the City attorney that the Court's order noted, among other things, *"It is clear that the restrictions in the ordinance do not permit EWV to [rebuild the mobile home park in the manner EWV proposes]. But what is not clear is whether EWV can find some other cost-effective way to rebuild that will also satisfy the safety concerns Evans has, such that Evans can be convinced to grant EWV a variance."*
3. The Court's order was that EWV pursue two actions. First, submit a request for a variance, and second that the variance request also include a "proposal for rebuilding the mobile home park [that] will satisfy Evans' safety concerns."
4. The minimum standards for manufactured housing installed in the 100-year flood plain are found in Chapter 16.04 of the Evans Municipal Code. The variance procedure is intended to allow the applicant to propose alternative measures which will provide the same level of protection as the standards in Chapter 16.04.
5. The variance application you submitted is essentially a request to rebuild the mobile home park as it was before the flood in 2013. Your application does not contain any measures to address the City's safety concerns. Please supplement your application to include the safety measures EWV is proposing.
6. With regard to our Code on the variance process, Sub-Chapter 19.58.040 Procedure for Variance Requests reads as follows:

19.58.040 - Procedure for variance requests.

- A. Petition. A petition in the form prescribed by the City shall be filed with the City Clerk and shall be accompanied by a letter explaining why the variance should be granted. **Additional supporting evidence** such as letters of support from surrounding property owners, photographs and maps may be submitted and **may be required by the City**. Your application did not include the following, all of which the City requires for a proper consideration of this matter:
 - Letters of support from surrounding or affected neighbors.
 - A site plan or master plan drawing of the location and use.

- Current photos of the site.
- Specific safety measures EWV is proposing. The safety measures are discussed above. The application needs to state how the owner intends to provide protection equivalent to the standards found in Chapter 16.04.

With regard to the other items required on the application check list you listed several objections and conclusions in your email response. I will try to address the specific concerns as I understand them:

- You indicate that letters from surrounding or affected property owners are "not appropriate" to this request, because this is not an issue of installing a fence or similar concern. Your application is of significantly greater impact to neighbors and the neighborhood than a fence. This is a plan to redevelop an entire site, which will substantially impact surrounding properties. Neighboring property owners are entitled to be informed of the proposed development so that they can determine what impact the proposed development will have on their property. Thus communication with surrounding property owners is appropriate and applicable to this request.
- You noted the City is in possession of photographs and other documents such as previous plans, etc. so you have not included these. Current photography of the property is important to the consideration of the variance application.
- You decline to provide a site plan stating that the aerial photograph should suffice. Plans and other documentation are important to allow comparison of the current proposal with standards that are now in effect. The requirement to address safety measures would reasonably mandate some changes to the site, if the property to function as a neighborhood, and in compliance with City regulations. Also please detail what improvements you anticipate are likely to be necessary to protect against a future 100-year flood event.

7. Regarding the notice requirements, mailing for this can be provided on receipt of a check for the costs of both a regular letter (47 cents per letter) and a certified letter (\$3.30 per letter), as required by Chapter 19.64 of the Municipal Code. The \$25.00 fee applies to gathering property owner lists and you can deduct it from the total cost of postage. Provide a check to cover the balance of the remaining mailing costs based on the list of names you submitted. Also please note, in the case of one owner with several properties, we will only send one notice so you do not need to make multiple payments in those situations. I will advise you of the cost of the newspaper notice when I have that information.

8. Please note that it is not the role of city staff to supplement your application to make it complete, nor does the Municipal Code state that applicants shall determine what is (or is not) appropriate or applicable to any request. Also, so that it is clear which City Code provisions the applicant seeks a variance to, I have drafted the following list based on your communications. Please advise if this summary is not correct or is incomplete. Our understanding is you seek the following on behalf of your client:

- A variance from the application of Chapter 16.04 (Flood Damage Prevention) that require a Floodplain Development Permit (Sub-Chapter 16.04.080), and all related permit requirements.
- A variance from application of all standards in Chapter 16.04.070 (Basis for Establishing the Special Flood Hazard Area).
- A variance from all Site Plan requirements in Chapter 18.25 of the Evans Municipal Code, including all other standards related to a site plan approval.

- An undefined variance from all current Municipal Code requirements, requesting that all code requirements in effect in 2013 be applied to this application and none others, to include related standards such as the updated building code.

If the above list is not correct, please provide a concise clarification. Also please note, any specific requests for variances and the related code section will not be considered with the review if they are not included with the application. So be certain that any specific variance you desire is clearly noted by code section. Should the variance requests be granted, any code sections not specifically appealed will not be considered waived by the approval.

The City has determined that the mobile home park use has been abandoned for more than 3 consecutive months and that a PUD for the site, as required by Chapter 19.22.070, must be approved in addition to the variances noted above. The Municipal Code states the following:

19.58.050 - Regulations not eligible for variances. The Board shall not consider applications for variances from Chapter 19.08, Annexation, or Chapter 19.40, PUD planned unit development. Under no circumstances shall the Board consider a variance to allow a use not expressly permissible under the terms of this Title. (Ord. 332-05)

Therefore, the requirement of a PUD is not subject to a variance.

8. Finally on any discussion of the application of law and other legal points, our City Attorney will speak to those concerns as appropriate, during the review process and at the public hearings. Please address the concerns outlined above, and I shall initiate the review of the variance requests along with formal scheduling of the public hearings. Further consideration of the specific concerns you outlined will not be addressed until the remaining elements requested in this communication are either provided, or you specifically request the application be considered as is. In the latter case our recommendation would be for denial because the standards for a variance approval cannot be met without adequate information.

Sincerely,



Sean Wheeler
City Planner, Evans





August 11, 2016

Dear Mr. Singer,

The City is in receipt of your letter of July 28, 2016. Your letter states, "...the applicant formally requests to proceed to public hearing, even if it is with a recommendation for denial from staff." The City's letter of July 21, 2016, indicated that EWV's variance application was not complete and identified the information necessary for it to be considered to be complete. Your letter of July 28, 2016, does not indicate an intention to supply any additional information. I must conclude from your letter that EWV disagrees with the decision that the variance application is not complete.

Section 19.58.020. B. of the Evans Municipal Code provides that the Zoning Board of Appeals may hear appeals from staff decisions and make recommendations for final action to the City Council. I am prepared to schedule a hearing with the Zoning Board of Appeals on my decision that your variance application is not complete. Please confirm in writing that this is the course you wish to pursue.

If the City Council ultimately concludes that the variance application is complete, I will schedule a hearing on the variance application with the Zoning Board of Appeals. If the City Council concludes that the variance application is not complete, I will schedule a hearing with the Zoning Board of Appeals once the additional information outlined in the July 21, 2016, letter has been provided.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Fred Starr". The signature is fluid and cursive.

Fred Starr
Public Works and Community Development Director



May 19, 2016

City of Evans, Community Development
200 W. 37th Street
Evans, Colorado

Regarding: Re-Opening of Eastwood Village Mobile Home Park
Administrative Remedies/Variations

Dear Sir/Madam:

This document is submitted on behalf of EWV, LLC (the applicant) and intended to submit the required documentation for variance requests and/or regulatory permits to allow the Eastwood Village (EWV) Mobile Home Park to re-open for business (if variances are deemed applicable). This document is submitted according to the requirements of Chapter 19.58 of the Municipal Code and the requirements of 44 CFR Section 60.6.

The applicant is requesting variances to the City of Evans Municipal Code:

- **19.22.020 B-** A variance to the clause that states that “an existing manufactured home park that is redeveloped as defined herein or discontinues its manufactured home park use as defined herein for three (3) or more consecutive months shall no longer be considered an existing manufactured home park under this Chapter”.
- **16.04.070 A and B-** A variance to the basis for establishing the special flood hazard area (SFHA) as being defined by the “study of May 31, 2013, with accompanying flood insurance rate maps and/or flood boundary as adopted by ordinance”. This variance request shall be interpreted in such a manner such that the site is not interpreted as being part of the SFHA and a floodplain development permit will not be required.
- **General-** A general variance request such that the code provisions in effect at the time EWV requested to re-open in September 2013, is the code that will be followed to re-open the site and that the code will be interpreted in a manner that would allow the park to re-open and have tenants. This general variance request is intended to address general regulatory criteria that the city of Evans might implement to restrict the ability of EWV from re-opening when it should have been allowed to do so immediately following the 1000+ year flood events in September 2013. For example, the applicant would not want to be in the situation where the City “allowed” EWV Manufactured Home Park to re-open and then the restrict the installation of a mobile home within the park by refusing to issue a building permit in accordance with 19.22.060.

This request meets the requirements of section 19.58.030 -Criteria for Variances in that:



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1. Approval would not jeopardize the health, safety or welfare of any person to any extent further than the sites existing authorized use. The applicant is not proposing any use for the site different than the use of the prior 44 years.
2. Denial of the variances results in practical difficulty and unnecessary hardship to the applicant;
3. The practical difficulty and unnecessary hardship are due to a physical situation (and in this case regulatory situation);
4. The practical difficulty and unnecessary hardship were not self-imposed by the applicant.

The applicant further understands that approval of the variance will result in a notification to FEMA that replacing structures below the base flood level is likely to temporarily result in increased premium rates for flood insurance in accordance with 44 CFR60.6 (a)(5). In accordance with 44CFR 60.6 (a)(7), the structures will be protected by methods that minimize flood damage during the base flood (appropriate tie-downs), and no additional threats to public safety are created.

Basis of the Request to Approve the Variance (if a variance is deemed required by the City of Evans):

As you are aware, this site has been the subject of a lawsuit between the property owner, EWV LLC, and the City of Evans. The information herein has been prepared in order to obtain a variance and/or meet the requirements of the Weld County District Judge to exhaust all administrative remedies with the city of Evans.

The applicant's request for approval to re-open the EWV mobile home park and approve the regulatory permits/variances (if required) is based on the following:

1. The subject property has been used as a mobile home park since 1972, is currently zoned in a Residential Mobile Home District (RMH Zoning), and meets the criteria of an "Existing Manufactured Home Park or Subdivision" with the exception of 19.22.020 B regarding the 3-month time limited on discontinuous use (for which a variance is being requested with this application). The discontinuous use was caused by the City of Evans refusing to allow re-opening and not by the applicant.
2. The Eastwood village Mobile home park owner attempted to re-open the park soon after the historic floods of September 2013 but was prevented from doing so by the City of Evans officially on October 10, 2013 citing.
 - a. concerns about the floodplain; and
 - b. potential acquisition of the property by the City of Evans for the beneficial use of the city.
3. On January 7, 2014, while preventing EWV from re-opening, the City of Evans passed a new ordinance (579-13) that burdened the site with additional restrictions, including adopting a floodplain boundary that was based upon an "in-progress" study (the May 31 Flood Insurance Study). This ordinance adopted boundary was not the approved official Regulatory Floodplain shown on FEMA Community Panels 080182 0001 (April 2, 1979) and was not recognized at that time by the Colorado Water Conservation Board (CWCB) which had jurisdictional authority. **The City of Evans did not have the jurisdictional authority to change the floodplain boundary and/or the Special Flood Hazard Area (SFHA) by local ordinance.** Per the CWCB Rules and Regulations for Regulatory Floodplains in Colorado (Rule 5), the jurisdictional authority to

designate approved regulatory floodplains rests with the CWCB, not the local community. The local jurisdiction only has the authority to use designated and approved regulatory floodplains from the CWCB for land management purposes; not to create boundaries. Further, Rule 13 defines the process by which CWCB designates and approves of regulatory floodplains, and there is no indication that the City of Evans followed any CWCB variance requirements. Further, there is no evidence that the City of Evans followed any of the FEMA procedural requirements necessary to modify a floodplain boundary. Further, there is no indication of a variance request from the City of Evans to the CWCB or to FEMA authorizing deviations from these rules. This is further supported by 44CFR60.2 part (h) which states "The Community shall adopt and enforce flood plain management regulations based on data provided by the Federal Insurance Administrator". Part 60.3 further states that "when special flood hazard area designations and water surface elevations have been furnished by the Federal Insurance Administrator (which they were in the existing regulatory FIRM), they shall apply". As a result, the City of Evans did not have the jurisdictional authority to adopt an SFHA different than the regulatory floodplain that was in effect from FEMA and CWCB.

4. As a direct result of the City of Evans refusing to allow the EWV manufactured home park to re-open at the time requested, the EWV site has become subject to FEMA floodplain regulations that went into effect as of January 20, 2016 and additional City of Evans regulations that were not in effect when the EWV owner attempted to re-open (beginning January 7, 2014). Because these regulations were not applicable at the time EWV attempted to re-open, this should provide sufficient basis for granting necessary variance to re-open.
5. The applicant does not believe that variance should be required now since they were not required at the time when EWV requested to re-open and was prevented from doing so by the city. It is not appropriate that the City of Evans should prevent the site from re-opening, implement restrictive regulations after that request, and then subsequently require that EWV submit variances to the new regulations that it would not have been subject to in the first place. If the City deems that a variances are required to re-open, then there is good and sufficient cause to issue those variances because the site cannot be returned to its existing use of a mobile home park through any other reasonable means (per City of Evans criteria). Further cause for granting the variance requests is based on the Municipal Code including:
 - a. Not granting permits/variances and authorization to re-open has and will continue to result in exceptional hardship on the applicant. The cost and the hardship to the applicant has been discussed in prior meetings, was provided in writing as part of the applicant's prior variance submittal, and has been the subject of the ongoing litigation.
 - b. Re-opening the site does not present any greater risk to public safety now than prior to the historic flood of September 2013. In fact, for a number of reasons, it is reasonable to state that the EWV site is now safer than it was prior to September 2013 (see Attachment C). Further, pursuant to the requirements of section 16.040.170 (J) (ii), granting variances to re-open will not result in increased flood heights, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances (beyond those that the applicant is requesting variances to).

Additional Discussion

The City has prevented EWW from re-opening since October 2013 and continues to prevent EWW from re-opening citing code that the city adopted after October 2013 (when the applicant would have re-opened) or has gone into effect as a result of delaying the re-opening. In one attempt to get the site re-opened, the applicant submitted a variance request (June 4, 2014) to the City of Evans. The City of Evans has acknowledged receipt of this variance application on June 23, 2014 by letter, but cited that additional information would be required including:

1. A formal application of what the applicant is proposing.
2. A floodplain development permit in accordance with 16.040.160 of the city code.
3. A pre-application conference with the Evans development review staff.
4. Modular placement permits accompanied by floodplain development permits.

Again, none of this information would have been required if the site had been allowed to re-open when it was requested by the applicant and while legally entitled to do so. The applicant has studied whether it would be possible to meet some of the new requirement caused by the new regulatory changes and has determined that it is not feasible and/or reasonable to do so.

The primary basis by which the city is currently preventing the EWW mobile home park from re-opening has primarily been the city's requirement of a floodplain development permit and the criteria associated therewith. It is a critical consideration that:

1. At the time the applicant tried and was prevented from re-opening by the city, the site was not within a 100-year floodplain. The City of Evans did not have the authority to change the floodplain boundary, and thus EWW, LLC was not required to submit a floodplain development permit.
2. The ordinance that the City of Evans adopted immediately following the applicants request to reopen (Ordinance 579-13) included revising section 16.040 of the City Code to change the floodplain boundary to one that was different than the approved regulatory boundary by FEMA or the CWCB. As a result of this incorrect boundary change, the City of Evans then imposed strict regulations based on these actions. As stated previously, the City of Evans did not have the authority to do this, they did not follow CWCB rules, and they did not follow CFR 44 procedures to change floodplain boundaries.
3. In addition to changing the floodplain boundary, on January 7, 2014, the City of Evans further imposed additional local requirements (above-and-beyond the FEMA and CWCB minimum requirements) on sites within the SFHA and took specific action to make it more difficult to obtain variances to those requirements. This has the appearance that the City of Evans took these actions with the specific intent of preventing the EWW mobile home park from re-opening.
4. Over the past two years, the applicant has had many interactions with the city that have resulted in procedural roadblocks that appear to be intended to prevent the site from re-opening. Even prior to the floods of 2013 a city employee commented that they were trying to get rid of mobile home parks.

5. In multiple documents, the City has stated its intent to acquire the EWV property for the beneficial use of the City of Evans.

In the event that the city of Evans continues to refuse to grant the requested variances requested to allow the site to re-open as a mobile home park, the applicant formally requests that the City of Evans identify what constitutes the "minimum necessary" to afford the applicant relief.

Second application for variances required to re-open EWV mobile home park:

As noted previously, the applicant does not believe variances should be required as it appears that the code was intentionally misapplied; however, to accomplish the courts requirement to exhaust all administrative remedies, this document represents a second formal variance request. In doing so, it is necessary to address the comments from the City of Evans Community Development Floodplain Administrator's June 23rd, 2014 letter. Our responses are presented below the City's comments (in italics)

1. *"The Zoning Board of Appeals (ZBA) will only be able to hear an appeal to a staff decision"...*
Please schedule an appeal if you still believe it is required after reviewing this document. It is nonsensical that the City of Evans acknowledged a variance request by the applicant to sections 19.22 and Section 16.04 of the municipal code and then in the first paragraph state that the applicant is required to submit a floodplain development permit in accordance with 16.04.160 of the Code.
2. *"The City will need to receive a formal application for what you are proposing in connection with EWV; through a site plan or modular home placement permit in addition to a floodplain development permit..."*
The applicant is proposing to re-open the site as a mobile home park as it is currently zoned, in the same configuration, and in the same manner it has been operated for the past 44 years. This has been stated on multiple occasions and the documentation supporting this was provided in the first variance submittal. A formal Land Use Application Variance has been included with this document as requested, although one had already been submitted previously and acknowledge as received. The city has been aware that the applicant only wishes to re-open under the same configuration. Further in this paragraph and similar to Item 1 (above), the city is stating a need for a floodplain development permit which is the variance the applicant has been requesting.
3. *"... A floodplain development Permit is required to be submitted in accordance with 16.040.160 of this code" ...*
As noted previously, this document represents a second formal variance request to section 16.040.160 of the code and is a request that the site be removed from the requirement to submit a floodplain development permit and all requirements associated therewith.

The applicant is aware that FEMA and the city formally and recently changed the floodplain which became effective on January 20, 2016 (per FEMA). However, there is a reasonable engineering basis to show that the site should not be inundated during a 100-year event and the

change was based on regulatory considerations rather than hydraulic considerations. The event which caused the flooding in September 2013 was a 1000+ year historic event that should not be used as any basis for where flooding would occur during a 100-year event. The applicant has spoken with FEMA and considered going through extensive engineering documentation with FEMA and the City of Evans to show why the site should not be part of the floodplain fringe. However, doing so is unnecessary because the city intends to remove the EWV site from the floodplain anyway without the applicant's involvement by rebuilding Riverside Park per the Riverside Park master plan. It is worth noting that the grant money that the City of Evans will be receiving to rebuild Riverside park came in part based on promises to the Grantors to reduce the risk of flooding in the EWV mobile home park and other residential areas.

It is also worth noting that the site being within the floodplain boundary is a direct result of the city's decision not to re-certify the berm on the city's property. To our knowledge, this was not a decision on which the applicant, or any other impacted property owner had any input. Engineering consultants for the City of Evans made recommendations to re-certify the berm (HDR preliminary report), and doing so would have been at a cost that is far less than the decrease in property value that has occurred on the applicants site as a result of the City's decision. This City decision not only negatively impacted EWV, but other property owners as well.

4. Formal submittals for applications such as rezoning, subdivision, or site plan require a pre-application conference...."

There have been numerous meetings and conferences between the applicant and the City of Evans. The applicant is not re-zoning, subdividing, or changing the site plan. However, if the city wants to have another meeting the applicant is willing to attend.

5. "Modular placement permits accompanied by floodplain development permits are..."

As noted previously, this variance request is primarily for a variance to the floodplain development permit process and regulations. The applicant will need to be assured that the city will not allow the site to re-open and then use administrative mechanisms to prevent tenants from occupying the site.

In addition to the response to comments above, the applicant has included the following attachments to this document to support the variance application.

- Attachment A- Variance Application Form
- Attachment B- Additional information regarding the specific variances requested
- Attachment C- Further Engineering basis by which to approve the variances required to allow the EWV mobile home park to re-open



July 28, 2016

City of Evans, Community Development
200 W. 37th Street
Evans, Colorado

Regarding: Re-Opening of Eastwood Village Mobile Home Park
Administrative Remedies/Variations

Dear Sir/Madam:

We are in receipt of your letter dated July 21, 2016 regarding clarification on the EWW variance application. While we appreciate receiving this response, it is our opinion that the response

- a. does not address most of the of the information that the applicant has already presented in the submittal
- b. does not attempt to address several of the most significant questions for which the applicant requested specific information
- c. continues to require that the applicant submit information that has no bearing on the review process and/or, in some cases, is not even required by city code
- d. continues to require the applicant to meet nebulous requirements about safety without giving the applicant any specific direction regarding what those safety concerns are or any consideration to how they have already been addressed
- e. continues to delay the processing of our request in the manner that we noted in our correspondence of June 20, 2016.

In order to address each of the city comments, the applicant has provided the following responses in the order they were presented (by line number) in your letter.

1. As you know EWW's variance application... I consulted with the City attorney.

No response is required. However, because the planning department has already been speaking with the city attorney for several months (per other emails) and the city response letter states that the City Attorney will "speak to those concerns as appropriate" ..., the applicant can only assume that the city does not feel that addressing the most significant items in our submittal is "appropriate". Most of the applicant's substantial concerns in the application (identified throughout this document) are the very BASIS for the request for variance. If the applicant cannot get the city to address those issues, and the city instead focuses on such topics as to whether the application included enough pictures of the site (when the city already has such pictures), it will continue to be impossible to provide a submittal that will meet any of the city's requirements.

2. ...it is clear that the restrictions in the ordinance do not permit EWV to rebuild the mobile home park in the manner EWV proposes. But what is not clear is whether EWV can find some other cost-effective way to rebuild that will satisfy safety concerns Evans has, such that Evans can be convinced to grant EWV

No response is required. However, the applicant has been trying to find out what manner of rebuilding the mobile home park WOULD be acceptable to the city and has specifically requested an answer to this question in prior documents. The city has so far refused to provide an answer to this question.

While the judge in the case found it “clear” that the restrictions in the **NEW** ordinance (adopted after EWV attempted to re-open) currently prevents EWV from re-opening, the regulations in the prior ordinance (in effect at the time EWV attempted to reopen) were not in effect when the city prevented the applicant from re-opening. The applicant has not been able to get an answer to the question of what basis the city had to prevent the applicant from re-opening when he requested to do so. Additionally, our prior correspondence has shown that the city did not have the jurisdictional authority to change the floodplain, especially when they did so inconsistently and to applicant’s detriment to accomplish their own objectives (which occurred AFTER the applicant requested to re-open.

Regarding the second half of the comment, it appears that the city will not accept anything other than complying with the NEW ordinance, which appears to have been imposed with the specific goal of preventing the applicant from re-opening. If the standard is “convincing Evans to grant EWV a variance”, it is reasonably certain that it will be impossible to convince the City of Evans, a defendant to a lawsuit on this issue, to grant much of anything. The most recent submittal has been with the city for over two months and the answers that the applicant has received refuse to address the most relevant parts of the submittal information.

3. The Court’s order was that EWV pursue two actions. First submit a request for variance and second that the variance request also include a “proposal for rebuilding the mobile home park [that] will satisfy Evans’ safety concerns.”

The applicant has submitted a comprehensive variance request (twice) and the City refuses to address any of the substantive items within the submittal. As a result, the applicant has accomplished the first of the two actions.

Regarding satisfying “City of Evans safety concerns”, the City has not yet identified any specific safety concerns. The closest thing the city has identified regarding a “safety concern” is that the applicant is required to meet the criteria of the floodplain development permit. These NEW permit requirements were instituted by the city **AFTER** the applicant attempted to re-open; but again, the city will not address this point. In a single ordinance, the city took action to redefine the floodplain boundary and place EWV within the floodplain (in a manner that was not applied consistently with adjacent properties), took action to **add atypical restrictions** to the floodplain development permit (designed to make it nearly impossible for a manufactured home park to comply), and took even further action to change the variance criteria to required supermajorities, etc., so that the applicant wouldn’t be able to get a variance. It is ironic that the city’s Riverside Park project, which is

currently in the final design phase, will remove all potential safety concerns associated with the floodplain since the site won't be in the floodplain. **This should effectively satisfy the second criteria that the applicant is to address Evan's "safety concerns".**

If this doesn't address Evan's "safety concerns", the applicant requests that Evans identify their specific safety concerns. The applicant can only assume that any potential safety concerns are related to the floodwater elevation (and its impacts) and/or floodwater velocity (and its impacts). What is most ironic is that the primary potential risk to public safety at the applicant site and the greatest cause of both additional velocity and elevation was caused by the berm that is owned and maintained by the City of Evans itself (on city property) and NOT THE APPLICANT. The city's consultant identified that the city berm caused the high flow velocities (due to the breach) and then subsequently prevented the water from re-entering the river resulting in additional water to downgradient properties. It is the high-flow velocities that led to the extensive damage to the EWW mobile home park during the flood of September 2013. It should be the applicant that should be asking what the city intends to do about any potential threat to public safety caused by the city, not the other way around. It makes no sense for the city to ask the applicant to address City of Evans safety concerns when:

- a. the city refuses to identify specific concerns.
- b. if the assumed "safety concern" is the location of the floodplain, the applicant has demonstrated that there is a reasonable basis to show that the site may not even be inundated during a 100-year flood event.
- c. even if there was a reasonable basis to put the site within the floodplain boundary, the city did not have jurisdictional authority to do so by local ordinance (not by any change in physical condition or requirement of the state jurisdiction). In fact, the city changed the boundary without regard to the due process procedure required by the state agency that has jurisdictional authority, and the city chose to ignore both state and federal requirements.
- d. even if one were to assume that the site is inundated by the floodplain, it is the actions (and lack thereof) by the city that put the site in this condition by failing to re-certify the berm and/or reconstructing the berm which prevented floodwaters from re-entering the river. Re-certifying the berm was the recommended course of action by the city's engineer (not the applicant) and the city chose to ignore this recommendation, which eventually resulted in significant damage to the applicant's property. Taking this action would have benefited not just the applicant but the entire community.
- e. even if the city demonstrates that there was a reasonable basis not to re-certify the berm because the city wants to construct Riverside Park, the Riverside Park project removes the applicant's site from the floodplain, which again eliminates any "perceived safety concerns" associated with the floodplain.
- f. if the City is using the effects of the 1000-year storm event from September 2013 as the basis for their "assumed safety concerns", then the city is taking action against the applicant based on a non-recognized design event and all properties in the city, including non-critical facilities such as the applicants, should be designed to accommodate a similar design event.

The applicant DID specifically address safety concerns in the submittal, and the best way to mitigate any issues associated with the floodplain is to make sure that the applicant isn't within the floodplain. The applicant will provide appropriate safety tie downs as we noted in the submittal which is an approved safety measure and is consistent with the requirements of all mobile home parks. The entire application covers information showing why the applicant shouldn't be and won't be in the floodplain, and yet the city refuses to address these items in their responses.

When considering all of the items above, a reasonable person cannot come to the conclusion that denial of this application has anything to do with the applicant's failure to address safety concerns. Prior city staff have already stated that "the city wants to get rid of the mobile home park" and directed staff to take actions that will accomplish this within the city meeting minutes (by eminent domain if necessary). The applicant fully understands that cities often don't like having mobile home parks within their boundaries; however, claiming denial is about safety, delaying public hearings, and taking actions that devalue the applicant's property without due process is inappropriate. It brings into question whether the city is acting in good faith during the review process.

4. The minimum standards for manufactured housing in the 100-year flood plain are found in Chapter 16.04... The variance procedure is intended to allow the applicant to propose alternative measures which provide the same level of protection...

As noted earlier, the city itself is proposing the best possible alternative measure, which is that the site will not be within the floodplain once Riverside Park is completed. The financial grants for the construction of Riverside Park are based to a large degree on protecting down-gradient properties from flood events and specifically the 100-year event. If the city fails to construct Riverside Park, then it should re-certify the berm to protect down-gradient properties, which is what the city's engineering company suggested in the first place and can only be accomplished by the city, not the applicant. It makes absolutely no sense for the applicant to propose something different, when the best possible solution is currently in process by the city itself. For the city to ignore this fact and then to cite code requirements that the applicant should follow for a floodplain development permit makes no sense. Because the applicant fully anticipated this course of action by the city, the applicant DID address each of the four criteria for variances on the very first page of the submitted application. This information was the very basis of the submittal, was discussed throughout the submittal, and the very information that the city has chosen to either ignore or not address with their responses.

5. The variance application you submitted is essentially a request to rebuild... and does not contain any measures to address the City's safety concerns. Please supplement your application to include safety measures EWV is proposing.

As stated earlier, the application DOES address safety even though the city has not cited any specific safety concerns. The city has so far refused to discuss the fact that all of the perceived safety concerns associated with the floodplain go away when the city constructs Riverside Park, and also refuses to discuss that the safety issues created during the September 2013 event were caused by the city berm, not the applicant. It is the city that needs to correct safety deficiencies (if they exist), not the applicant.

6. With regard to our Code on the variance process, Sub Chapter 19.58.040

The city highlighted “**additional supporting evidence ... may be required by the City**”. The applicant has provided extensive details of “additional supporting evidence”, which the city refuses to address. Instead, the bulk of the city’s response is focused on procedural aspects of the submittal, many of which aren’t even required. Your summary of our “concerns” only barely touches on the extensive information that we provided in our application and appears to only focus on the items that the city of Evans is attempting to utilize as the basis for preventing the application from proceeding. Further, each of the summaries that you identified in your letter by bullet points appear to slightly modify the actual “concern” identified by the applicant.

- The applicant does not NEED support from surrounding or affected property owners. The applicant CAN provide letters of support if we have them (which under normal variance application circumstances would help), but they are not needed. The site is already zoned for manufactured housing and the applicant is not trying to change anything. You state that “the application is to re-develop an entire site, which will substantially impact surrounding properties”. This is incorrect as the applicant is not attempting to “re-develop” anything. The applicant has been attempting to **re-open** in the same configuration that has been in use for the prior 44 years. Because the site is EXISTING (and not proposed), and it has been used this way for 44 years, the neighbors are fully aware of the impacts. To state otherwise, as you do in your letter, is disingenuous. The mobile home park has been at this location long before many of the surrounding houses. If this were a new development or the applicant was attempting to substantially change the existing development, then neighborhood input would be appropriate. Unless we are mistaken, the applicant didn’t ever receive a certified letter providing the applicant with the opportunity to provide input on whether the residential homes to the west (which were also destroyed) were re-built after the flood.
- You state that current photography is “important to the consideration of a variance”, yet you don’t dispute that you already have a lot of photographs. Rather than continue to argue about a non-relevant point, we have included 5 photos of the site with his email (to speed things along) and you will be receiving a flash drive with approximately 50 more pictures. I would be interested in what information you don’t already have that the city hopes to glean from these photographs, but they have been provided nonetheless.
- The applicant is not just declining to provide a site plan “based on the fact that an aerial photograph should suffice [as a site plan]” [sic]. We are declining to provide a new site plan because:
 - a. there is no need for a site plan since the applicant is not re-developing or changing anything. The applicant only intends to **repair what is necessary and reopen** which is exactly what should have been permitted in September 2013. That work is expected to be minimal since the mobile homes themselves are owned by individual owners and not the applicant.
 - b. something other than what we have already provided is not a “requirement”. It is a checkbox of one of many items that an applicant can choose to provide to support their application. If the applicant was proposing something different than what is already

there, or we anticipated any dimensional changes that should be reviewed by the city, we would have provided this information.

- c. providing a new site plan could lead someone to believe that we are proposing to do something different than the existing use or existing plan.
- d. we have an aerial photo of the site (which is in fact the best possible site plan) since it shows exactly what we are proposing without any misunderstandings.
- e. providing a new site plan takes us down a rabbit hole of whether it is an “appropriate” site plan that will meet new city criteria, and opens up a whole new process associated with a site plan review, which, again, isn’t necessary and would more than likely result in the city using this as a basis to further delay this application.
- f. it is an unnecessary and unproductive additional cost to the applicant.
- g. we don’t want to open up the possibility of erroneously showing something (such as a dimensional item of something that already exists) other than what is already there, which could result in future rounds of comments that unnecessarily delay things further. The applicant is fully aware that doing something different than the historic use could trigger the requirement for a review process.

The city has stated that “the requirement to address safety measures would reasonably mandate some changes to the site”. **Please provide the basis of this statement considering that the site won’t be in the floodplain once Riverside Park is completed** and the city won’t identify what safety items are “concerning”. Please make sure to identify those concerns that WILL NOT be solved by removing the site from the floodplain (where the city innappropriately placed the site by ordinance and not by changed physical site conditions) since the site won’t be in the floodplain in the future (and shouldn’t be now). **You are asking the applicant to “detail what improvements we anticipate to be necessary to protect against a future 100-year flood event” while the city is completing final design plans for Riverside Park which removes the site from the 100-year floodplain anyway.** This truly exemplifies the disingenuous nature of the city’s actions and requests.

7. Regarding the notice requirements, mailing for this can be provided on receipt of a check for the costs of both a regular letter... and a certified letter...

The municipal code states that the city will bill the applicant for costs (which usually requires that the city provide a bill before the applicant send a payment). Although it is rather unclear why the city would send both a certified letter AND a regular letter to each property owner, the applicant will pay this cost upfront to expedite things. The applicant identified 63 mailings that are likely to occur based on the “list”. At the proposed cost of 47 cents per letter (regular) + \$3.30 (certified) this would result in \$237.00 dollars. The applicant did not deduct the \$25.00 just in case the city wants to update the list and/or there are minor deviations.

8. Please note that it is not the role of the city staff to supplement your application to make it complete...

It is very unlikely that the city will ever deem this application “complete”. After two formal submittals, many months, several letters, many responses that don’t address the actual issues, and an ongoing lawsuit, we would be surprised to receive a recommendation for approval.

Based on the fact that the city has underlined that “any specific requests for variance will not be considered for review if they have not been included with the application”, it is reasonable to conclude that the city is preparing for a future scenario where the city will identify another code provision that we did not explicitly include in the text of our request to use as a basis for a future denial. The city is fully aware of the applicant’s intended use of the site (as the applicant has been using it the same way for 44 years). The applicant requests that the city identify any other code provisions that the city believes have not been appropriately addressed already if the city intends to identify other things in the future that would prevent the applicant from re-opening.

It is unbelievable that the city would actively prevent the applicant from reopening as a mobile home park and then make a determination “that the mobile home park use has been abandoned for more than 3 consecutive months” [sic] and as a result now requires a new PUD. Given these types of actions, there is no possible way that anyone could believe that the city is taking these actions in the interest of “safety”.

Because staff has already met with city leadership on this application and it is exceptionally unlikely that additional information will change the staff recommendation for denial, the applicant formally requests to proceed to public hearing, even if it is with a recommendation for denial from staff. The applicant looks forward to having this discussion in a public hearing and would like to have it scheduled for as soon as possible.

Regards,

A handwritten signature in blue ink, appearing to read "Robert C. Singer".

Robert C. Singer PE

Principal/ Sr. Engineer

**EXHIBIT A
SUBJECT PROPERTIES**



EVS PT NE4 29-5-65 ALL BLKS 41-50-51 & PT BLKS 40-42-46-49 AND VACATED STREETS
 DESC AS BEG NE COR NE4 N89D52'W 1434.43'
 S00D07'W 40' S89D52'E 125' TO TPOB S89D52'E 692.23' S32D27'E 20.82' S01D52'E 466.91'
 N89D52'E 78.72' S00D14'W 535.71' S89D38'W
 378.55' S04D20'W 35.93' N86D14'W 231.83' N88D15'W 309.74' N00D07'E 860.21' S89D52'E 125'
 N00D07'E 175' TO POB (EASTWOOD VILLAGE MH PARK)

Attachment B:
Specific Variances Required

The following variances/regulatory provisions are requested:

- **19.22.020 B-** A variance to the clause that states that “an existing manufactured home park that is redeveloped as defined herein or discontinues its manufactured home park use as defined herein for three (3) or more consecutive months shall no longer be considered an existing manufactured home park under this Chapter”.
- **16.04.070 A and B-** A variance to the basis for establishing the special flood hazard area (SFHA) as being defined by the “study of May 31, 2013, with accompanying flood insurance rate maps and/or flood boundary as adopted by ordinance”. This variance request shall be interpreted in such a manner such that the site is not interpreted as being part of the SFHA and a floodplain development permit will not be required.
- **General-** A general variance request such that the code provisions in effect at the time EWV requested to re-open in September 2013, is the code that will be followed to re-open the site and that the code will be interpreted in a manner that would allow the park to re-open and have tenants. This general variance request is intended to address general regulatory criteria that the city of Evans might implement to restrict the ability of EWV from re-opening when it should have been allowed to do so immediately following the 1000+ year flood events in September 2013. For example, the applicant would not want to be in the situation where the City “allowed” EWV Manufactured Home Park to re-open and then restrict the installation of a mobile home within the park by refusing to issue a building permit in accordance with 19.22.060.

Attachment C:

Further engineering basis by which to approve the
variances required to allow the EWV mobile home park to re-open

To further support the applicant's assertion that the site should be permitted to re-open, the applicant would request that the City of Evans consider the following other relevant factors:

1. The infrastructure for the mobile home park was relatively intact and the site would have been relatively easy to re-open after cleanup. Much of the debris that was washed onto the site was from property owned by the City of Evans (beyond the debris from the homes themselves which are owned by individual tenants).
2. Soon after denying EWV's request to re-open, the City of Evans adopted an ordinance to re-define the boundary of the 100-year floodplain so that EWV site was now within a city defined SFHA, thus making it subject to additional regulations. The City of Evans appears to have implemented these regulations without regard to federal or state regulations, which are very clear on procedural aspects of what must occur to modify a floodplain boundary. After discussing the issue with FEMA, we do not believe it was within the jurisdictional authority of the City to change or adopt a floodplain boundary that is different than the federal or state regulatory boundary without following the required federal and/or state procedures.
3. Adopting and enforcing this local ordinance has had dramatic negative impacts on this specific applicant (and only this applicant), giving the appearance that the ordinance was written specifically to prevent the applicant from re-opening EWV mobile home park.
4. The site is currently zone RMH by the City of Evans. Unless it is allowed to reopen as a mobile home park there are currently no other permissible uses of the site by the applicant or the City of Evans without variances or re-zoning.
5. The city has stated on multiple occasions their desire to obtain the EWV property for their own beneficial use. On March 18, 2014, the City Council approved resolution 12-2014 authorizing condemnation procedures to acquire the property for the benefit of the City of Evans and authorized the City Attorney to acquire the property by eminent domain if voluntary negotiations are unsuccessful. This indicates a specific motivation by the City of Evans to attempt to prevent the property owner from re-opening the site to its legal, historic, and beneficial use as a mobile home park.
6. Also on January 7, 2014, the City changed their flood damage prevention code to require a number of items that would be nearly impossible for EWV and/or tenants to accomplish. Specific sections of the adopted ordinance are atypical of local regulations and are further evidence that the City of Evans may have adopted them specifically to prevent EWV from reopening (e.g. increases in the construction elevation to 36" above the BFE). Further, within the same ordinance, the city took actions to make getting variances to this regulation much more difficult by requiring a supermajority of the council to do so.
7. On December 14, 2013, Zapata performed an electromagnetic survey of the property to support a report being prepared by Weston Solutions to the EPA regarding a landfill that was uncovered on Riverside Park (city property). The report concluded that the debris was non-hazardous and environmental conditions are not a factor.
8. At this time, the applicant is not pursuing a course of action to attempt to change the FIRM since this will occur anyway as part of the Riverside Park work. However, there appear to be multiple inconsistencies between the FIS that the City of Evans used as the basis for defining the SFHA (and thus enforce regulations for which they didn't have jurisdictional authority) and the boundary shown on the City of Evans adopted FIRM. For example, the FIS specifies that the topography was based on quad maps rather than detailed survey information and it does not

appear than any hydrologic information was updated within the FIS. Also, it appears that there are discrepancies at Highway 85 in the way that Latham Ditch was analyzed, which resulted in smaller effective flow areas. These items are significant in that the FIS itself acknowledges that this is a policy issue rather than an actual hydraulics issue causing the potential future change to the floodplain boundary.

9. There is field evidence indicating that there are some properties that are physically lower than adjacent properties which are not part of the SFHA while adjacent properties at higher elevations are included within the SFHA. Much of the data that was identified by PBS&J hydraulic study does not appear to have been applied consistently within the FIS. While not conclusive, it appears on the FIRM that the boundary was drawn in such a manner that it just misses adjacent residential housing while nearly completely inundating the applicant's property. Another example is WCR 37, which is shown as completely out of the 100-year floodplain, and yet it's elevation in the field is lower than specific areas within the EWV Mobile home park that are shown within the 100-year floodplain boundary. Additional examples are available if necessary.
10. There is evidence that the breach in the city-owned and maintained berm was a primary contributor to the damage caused at the Eastwood Village site (per master plan from THK). When the berm failed, it resulted in high flow velocity toward the EWV site. Had the berm not been present, it appears from the topography that the water level at EWV during the 1000+ year storm event would have increased much slower and with slower overland flow velocities, making it much easier to evacuate the site and for residents to reach higher ground. Further, City of Evans consultants identified that it was the city-owned berm that prevented the floodwater from re-entering the natural channel. Without the berm (or with the berm breached) there would have been (or will be) ample opportunity for residents to reach higher ground as flood elevations increase (should a flood event similar to September 2013 ever occur again).
11. If the berm is currently breached, which should be the case if the city is not using the berm as a flood control device, the site is safer now than it was before the flood event due to slower flow velocities. If the berm is not breached the City of Evans has (and had) the responsibility to maintain the levee according to CWCB Rule 10, and the site should be safer because it is being maintained appropriately.
12. The EWV site will not be in the FEMA defined SFHA as soon as the City of Evans completes the Riverside Park work on its own property. The City's master plan shows the floodplain modifications such that EWV will no longer be within the SFHA. This work is proposed to occur over the next two years.
13. Financial grants that the City of Evans will use to pay for Riverside Park improvements specifically state that the grant money will, in part, be used to reduce the flooding risk at the EWV site also further reducing the risk to the tenants. Should the City intentionally not take reasonable action to remove the Eastwood village site from the floodplain fringe, some of these grants would have been obtained under false pretenses.

CHAPTER 19.58 - Variances

19.58.010 - Intent. The intent of this Chapter is to provide standards for variances and to detail the responsibilities and authority of the Zoning Board of Appeals. (Ord. 332-05; Ord. 015-00)

19.58.020 - Duties of the Zoning Board of Appeals.

- A. The Zoning Board of Appeals (hereinafter "the Board") shall make recommendations to City Council on applications for variances from the dimensional or numerical requirements or limitations of Titles 12, 15, 19 and other regulations of this Code, as specified in such sections of this Code.
- B. The Board shall also make recommendations to City Council on applications for appeals of staff decisions, which shall be processed the same as variance requests.
- C. Such recommendations and applications shall be in accordance with this Chapter. (Ord. 332-05)

19.58.030 - Criteria for variances.

The City Council must find all of the following circumstances to be true in order to approve a variance:

- 1. Approval of the variance would not jeopardize the health, safety or welfare of any person;
- 2. Denial of the variance would result in a practical difficulty and unnecessary hardship to the applicant;
- 3. Such practical difficulty and unnecessary hardship are due to an irregular, narrow or steep lot or other physical situation or condition of the building or land;
- 4. Such practical difficulty and unnecessary hardship have not been unreasonably self-imposed by the applicant. (Ord. 332-05)

19.58.040 - Procedure for variance requests.

- A. **Petition.** A petition in the form prescribed by the City shall be filed with the City Clerk and shall be accompanied by a letter explaining why the variance should be granted. Additional supporting evidence such as letters of support from surrounding property owners, photographs and maps may be submitted and may be required by the City.
- B. The Board shall hold a public hearing and make a recommendation to the City Council.
- C. The Board may recommend approval or denial of a variance as requested, or may recommend approval of a variance differing from the request. The Board may recommend conditions be placed on the approval of a variance.
- D. After the Board makes a recommendation on the request, the City Council shall hold a public hearing and make the final decision to grant the requested variance, grant a variance differing from the request or deny the variance. The City Council may place conditions on such approval. Approval shall be made by resolution.
- E. Notification of the public hearings shall be given in accordance with Chapter 19.64 of this Title. (Ord. 332-05)

19.58.050 - Regulations not eligible for variances. The Board shall not consider applications for variances from Chapter 19.08, Annexation, or Chapter 19.40, PUD planned unit development. Under no circumstances shall the Board consider a variance to allow a use not expressly permissible under the terms of this Title. (Ord. 332-05)

19.58.060 - Minor variances. The Director of Public Works/Planning shall have the authority to approve minor variances, subject to the following limitations:

- A. Such authority shall only be to allow up to a ten percent (10%) reduction of required yard setbacks, required number of parking spaces, or a ten percent (10%) increase in the maximum height of structures including principal structures, accessory structures and fences, and to the maximum size of accessory structures.
- B. The applicant, in addition to the other items required by this Chapter, shall provide letters from the owners of property adjacent to the property for which the request is made, stating they have no objection to the minor variance being granted, or other evidence to that effect satisfactory to the Director of Public Works/Planning. For the purpose of this Section, property directly across the street from the subject property shall be considered adjacent. If the applicant is unable to provide such letters, staff shall notify such owners of the request and allow them ten (10) days to object to its approval.
- C. If the Director of Public Works decides not to approve the minor variance, the request shall be processed according to Section 19.58.040 if requested by the applicant. (Ord. 332-05)

19.58.070 - Expiration. Unless otherwise stated in the approving resolution, all variance approvals not exercised within six (6) months from the date of the approving resolution shall become null and void. (Ord. 332-05)

19.58.080 - Fees. Each application for a variance shall be accompanied at the time of filing by a fee as established by City Council by resolution. The applicant shall also pay the cost of publication and notification of the public hearings in accordance with Chapter 19.64 of the Municipal Code. (Ord. 332-05)

16.04.170 - Variance procedures.

- A. Requests for variances from the requirements of this ordinance shall be heard and determined using the process set forth in Chapter 19.58 of the Evans Municipal Code, except as modified in this Section.
- B. The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to FEMA upon request.
- C. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in Chapter 19.58 or the procedures set forth in the remainder of this ordinance.
- D. Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half (½) acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in this ordinance have been fully considered.
- E. Upon consideration of the factors noted in this Section and the intent of this ordinance, the City Council may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this ordinance as stated in Section 16.04.030.
- F. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- G. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- H. Prerequisites for granting variances:
 - i. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - ii. Variances shall only be issued upon:
 - a. Showing a good and sufficient cause, and
 - b. A determination that failure to grant the variance would result in exceptional hardship to the applicant, and
 - c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
 - iii. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
- I. Variances may be issued for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:
 - i. The criteria outlined herein are met, and
 - ii. The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety. (Ord. No. 631-15, 2015)