



## **Housing Affordability Code Task Force — Meeting Summary April 23, 2026**

### **Roaring Fork Case Law Discussion**

Chris McAnany was invited by Mike Foster to provide a presentation on legal framework of the Roaring Fork Supreme Court Case Law. Attached is a handout provided by Mr. McAnany that was discussed in the meeting.

Mr. McAnany discussed the three pathways for working through issues as it relates to the Roaring Fork case. The first is to obtain written consent from easement holders, which is often difficult to do. The second is to seek court approval, which can be expensive and time consuming. The last option is to proceed without consent, also considered “self-help” which involves a high legal risk if this is the path chosen.

Due diligence phase is extremely important for property owners to ensure there is good title work and understand irrigation rights.

### **Major constraints:**

- Easement holders retain rights to:
  - Water quantity, quality, and timing
- Developers risk:
  - Lawsuits (trespass, damages)
  - Project delays (lis pendens (suite pending)/title issues)
  - Long-term maintenance obligations
- Many easements are:
  - Prescriptive (not recorded) but carries full effect of easement
  - Shared among multiple, hard-to-identify users
- Common (but risky) practice:
  - Developers relocate/pipeline ditches without formal consent

### **Role of the City**

Strong consensus that the City should not adjudicate easement disputes as the authority lies with the courts. If the City requires consent in the code, it could create effective veto power by neighbors. The preferred approach is to keep disputes between developers and easement holders and the city’s role would be to ensure adequate engineering/design.

### **Risk & Design Considerations**

Proper engineering can mitigate conflicts through pipe sizing, flow capacity, and maintenance considerations. Early coordination with irrigation users and engineers is critical.

### **Code Amendment Updates**

**CID** (Certified Irrigation Designer Requirement)



The recommendation is to delay implementation for 3 years due to lack of certified professionals locally, practical implementation challenges, and sensitivity around water policy. Suggestions were made for the city to provide training and education on this matter.

### **Bicycle Parking**

The direction of this code amendment is to remove long-term parking requirements and simplify standards to avoid overregulation and reduce unnecessary design/spec requirements. Tamra Allen captured TF thoughts on the proposed code amendment language, and this will be sent out to TF members for agreement/disagreement/comments.

### **Survey Issues**

Ron Abeloe reported they are looking at what is required in state statutes and have scheduled a meeting with Trent Prall to discuss further.

### **Revocable Permits**

Moving forward with Master permit approach (administrative, not code change). Initial problem we were originally solving for was the concept of a “master revocable permit” with an example from Redlands 360 development, who were filing multiple individual permit applications for irrigation crossings, and the ability to file a single permit to allow for multiple irrigation crossings is an efficiency and cost savings.

Currently in our code, the Community Development Director has the authority to grant revocable permits for irrigation, landscaping, and certain fencing. Interim City Attorney Boies believes without changing the code, we currently have the ability to allow for “master revocable permits” for each filing of a development when the permit can be issued with sufficient drawings identifying the specific property that is being permitted. These master revocable permits can be handled administratively.

For the remaining revocable permits that come before council, Legal’s analysis is that those can also be bundled together as a master revocable permit when individual items can be properly drawn and described within the single permit application. Granting a revocable permit should provide due process with a clear impartial decision with no appearance of impropriety without fear of unequal treatment. A record based on evidence to support the decision made is needed. These steps are best available with the City Council consideration of the request.

### **Other Updates in Progress**

- Shared driveways, draft language is being reviewed by TF.
- Detention ponds (staff coordination needed)
- Significant trees (pending staff input)
- Minor code clarifications (lighting, plats, signage, etc.)

### **Discussion about shifting toward policy-level work**

Keith Ehlers discussed the need for the Task force to transition from code cleanup to broader affordability policy discussion and discussed using one of the TF meetings each month to discuss policy topics. Future topics could include; cost of impacts of regulations; timing of stakeholder



involvement; housing supply strategies; infrastructure and land use coordination. The TF will discuss further at the April 30, 2026, HACTF meeting.

Kevin Bray suggested the group discuss the proposed Impact Fee information at the April 30, 2026, meeting.

TEDS meeting scheduled for April 24<sup>th</sup> will be cancelled due to several participants being out of town. The next regular scheduled TEDS meeting is May 8, 2026, from 10:00 a.m. to 11:30 a.m. *(All future TEDS Sub-Committee meetings have been cancelled until further notice as requested by HACTF members) Updated 4.27.26.*

## **Action Items**

### **Immediate**

- Finalize bicycle parking revisions
- Finalize shared driveway revisions
- Finalize CID delay amendment

### **Staff / Coordination**

- Consolidate code revisions into clear documents
- Continue internal review of amendment list

### **Upcoming**

- Dedicate next meeting to policy brainstorming session

## ***Roaring Fork Club v. St. Judes Co.***

36 P.3d 1229 (Colorado Supreme Court, 2001)

**A. Key Takeaway:** A party desiring to move or alter an irrigation easement in connection with development activity must either i) obtain the consent of the owner of the easement; or ii) bring a declaratory action in court to have the court authorize any changes to the easement.

### **B. Additional Points:**

1. Owner of the burdened estate has a right to cross irrigation ditches; the owner of the easement must properly maintain the easement and all components of the ditch.
2. Changes to an irrigation easement must not significantly lessen the utility of the easement or increase the burdens on the easement holder.
3. Alterations must not harm the quantity, quality, or timing of delivered water.
4. Easement holder has a right to inspect, operate, repair, etc.
5. Self-help, i.e. altering a ditch without consent, is disfavored.
6. Courts have authority to fashion equitable remedies, which may include accommodating the rights of both parties, and/or shifting the burdens and costs of maintenance onto the party who alters the ditch easement.

### **C. Considerations for Developers:**

1. You break it, you bought it. But, accidental harm to a ditch does not give rise to liability if the person causing the damage repairs it promptly.
2. Non-exclusive easement authorizes co-use that does not harm the ditch owner.
3. Look at the governing documents: easement deed, plat, or other instrument, to determine the extent of the easement. If there is no granting document, the easement will be defined by extent of historic use and reasonable needs of the ditch owner.
4. Local governments do not have jurisdiction to determine legal disputes between landowners.

5. Local government's first objective is that development function and not make matters worse for owners.
6. C.R.S. 37-84-103 authorizes bridges across ditches for purposes of public roads or alleys; developer pays cost of construction and dedicates to local government.
7. Requiring consent prior to alteration gives a "veto" to the ditch owner.
8. Litigation can tie up land with a lis pendens and result in costly delays.

#### **D. Land Use Code Considerations**

1. Do not mandate consent of the ditch owner as a requirement for land use approval.
2. Encourage consultation and reasonable accommodation of existing uses and interests.
3. Submittals should clearly show existing ditch infrastructure.
4. Require that changes to irrigation infrastructure be properly designed by an engineer; changes may include pipelines for open ditches.
5. Authorize conditional approvals, i.e. approval subject to judicial resolution of any dispute as to modification of subject ditch.

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