

RESOLUTION NO. 2023- ____

**A RESOLUTION APPROVING THE AGREEMENT BETWEEN ACM
DAWSON TRAILS VIII JV LLC AND THE TOWN OF CASTLE ROCK
REGARDING THE MARKETABILITY OF TITLE TO CERTAIN WATER
RIGHTS**

WHEREAS, ACM Dawson Trails VIII JV LLC (“Dawson Trails”) is the owner of certain property that has been annexed into the municipal boundaries of the Town of Castle Rock (“Town”); and

WHEREAS, Dawson Trails intends to dedicate certain water rights to the Town for the purpose of satisfying, in whole or in part, the water dedication requirements associated with Dawson Trails’ development of the property as set forth in Section 4.04.060 of the Town Municipal Code; and

WHEREAS, due to the complex nature of prior conveyances of the property and the water rights, Dawson Trails has proposed to file a quiet title action under C.R.C.P. Rule 105 for the purposes of confirming its ownership of the water rights; and

WHEREAS, Dawson Trails and the Town wish to enter into an agreement providing, in part, that if Dawson Trails prevails in the quiet title action, the Town will accept the marketability of Dawson Trails’ title to the water rights.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF CASTLE ROCK AS FOLLOWS:

Section 1. Approval. The Agreement between ACM Dawson Trails VIII JV LLC and the Town of Castle Rock is hereby approved in substantially the same form attached as *Exhibit 1*, with such technical changes, additions, modifications, or deletions as the Town Manager may approve upon consultation with the Town Attorney. The Mayor and other proper Town officials are hereby authorized to execute the Agreement by and on behalf of the Town.

PASSED, APPROVED AND ADOPTED this ____ day of _____, 2023, by the Town Council of the Town of Castle Rock, Colorado, on first and final reading by a vote of ____ for and ____ against.

ATTEST:

TOWN OF CASTLE ROCK

Lisa Anderson, Town Clerk

Jason Gray, Mayor

Approved as to form:

Approved as to content:

Michael J. Hyman, Town Attorney

David L. Corliss, Town Manager



Town of Castle Rock

Agenda Memorandum

Agenda Date: 1/17/2023

Item #: File #: TMP 2022-899

To: Honorable Mayor and Members of Town Council

Through: David L. Corliss, Town Manager

From: Mark Marlowe, P.E., Director of Castle Rock Water
Matt Benak, Water Resources Manager
Heather Justus, P.E., Water Resources Project Manager

Resolution Approving an Agreement between the Town of Castle Rock and AMC Dawson Trails VIII JV LLC accepting the Judicial Decree for Quiet Title to the Water Rights [Dawson Trails]

Executive Summary

The Purpose of this memorandum is to request the Town Council's approval of a Resolution (**Attachment A**) approving an agreement with ACM Dawson Trails VIII JV LLC (Dawson Trails) for the Town to accept the judicial decree in the quiet title action filed in the Douglas County Court for the purpose of establishing Dawson Trails' title to the Water Rights underlying the Dawson Trails property. The agreement is attached as (**Exhibit 1**) to (**Attachment A**). A memo from Lyons Gaddis, outside water rights legal counsel for the Town of Castle Rock, is attached as (**Attachment B**) providing a recommendation to enter into the agreement with Dawson Trails.

Dawson Trails has requested that the Town enter into an agreement to accept the final decree from the quiet title complaint as basis to satisfy the Town Municipal Code requirements for water rights to have good and marketable title. Due to the expense of entering the quiet title complaint into the county court, Dawson Trails wanted an agreement in place that justifies the expense to complete the course of action.

Discussion

At the time, the Dawson Trials' Development Agreement was approved by Town Council, the Water Rights Title Opinion review was not completed per Town Code Chapter 4.04. Town staff along with Lyons Gaddis continued to work with Dawson Trails staff to satisfy the Water Rights Dedication requirements. It was determined that due to the complex nature of the prior conveyances of the property and water rights, we were unable to conclude through traditional methods of title opinion documentation that Dawson Trails had good and marketable title to the water rights.

Colorado property laws allow an owner to file a quiet title action in court for the purpose of

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conclusively establishing title to a specified property, including water rights. Therefore, Dawson Trails filed a quiet title action in Douglas County Court, seeking a judicial decree determining that Dawson Trails has clear title to the Water Right (decree). Due to the cost and resources associated with the quiet title action, Dawson Trails has requested that the Town enter into an agreement. If the Town decides to enter into the agreement, the Town would agree based on the final decree from the quiet title complaint, that Dawson Trails has good and marketable title to the Water Rights for purposes of satisfying Section 4.04.060 of the Water Dedication Code.

Lyons Gaddis provided an additional memo (***Attachment B***) that provides additional details and recommendations for the Town to enter into the agreement with Dawson Trails.

Budget Impact

There is no budget impact for this resolution other than staff time and materials. Outside legal fees will be recovered from the developer.

Staff Recommendation

Staff recommends Town Council's approval of the agreement between the Town of Castle Rock and AMC Dawson Trails VIII JC LLC for the acceptance of the Decree in the quiet title filed in Douglas County Court for the clear title of Water Rights.

Proposed Motion

"I move to approve the Resolution as introduced by title."

Alternative Motions

"I move to approve the resolution as introduced by title, with the following conditions: (list conditions)."

"I move to continue this item to the Town Council meeting on _____ date to allow additional time to (list information needed)."

Attachments

Attachment A: Resolution
Exhibit 1: Agreement
Attachment B: Lyons Gaddis Memo

AGREEMENT

THIS AGREEMENT (Agreement) is entered into this ____ day of _____, 2022 (Effective Date), by and between **ACM Dawson Trails VIII JV LLC**, a Delaware limited liability company, (Dawson Trails) whose address is 4100 E Mississippi Ave, Suite 500, Glendale, CO 80246 and the **Town of Castle Rock**, a Colorado home rule municipal corporation (Castle Rock), whose legal address is 100 N. Wilcox Street, Castle Rock, CO 80108 (Parties).

RECITALS

WHEREAS, Dawson Trails owns certain real property in Douglas County which is more specifically described in **EXHIBIT A** (Property).

WHEREAS, Dawson Trails owns certain water rights which are more specifically described in **EXHIBIT B** (Water Rights).

WHEREAS, the Property has been annexed into the municipal boundaries of the Town of Castle Rock and Dawson Trails intends to dedicate the Water Rights (in whole or in part) to satisfy Castle Rock's water dedication requirements associated with Dawson Trails' development of the Property.

WHEREAS, due to the complex nature of prior conveyances of the Property and the Water Rights, Dawson Trails has proposed to file a quiet title action under C.R.C.P. Rule 105 for the purposes of confirming its ownership of the Water Rights.

WHEREAS, Dawson Trails prepared and provided to Castle Rock a Complaint to Quiet Title to Ownership of Water Rights and Other Relief (Complaint) for the Water Rights Deeds (**EXHIBIT C**) prior to filing said Complaint.

NOW THEREFORE, for and in consideration of the mutual agreements contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Parties, the Parties agree as follows:

AGREEMENT

1. Upon successful litigation of the Complaint as evidenced by the issuance of an unappealed or unappealable Decree quieting title to any portion of the Water Rights (Decree), Castle Rock will accept the marketability of Dawson Trails' title to the Water Rights, as that title is ultimately described in the Decree as of the date of the Decree.
2. Castle Rock may rely upon and enforce any warranties of title to the Water Rights that have been made or may be made in the future by Dawson Trails for the benefit of Castle Rock. Dawson Trails will be required to convey the Water Rights to Castle Rock by Special Warranty Deed and execute such other documents as Castle Rock may require under Chapter 4.04 (the Water Dedication Code) of Castle Rock's Municipal Code, as may be amended, and the Dawson Trails Development Agreement, including any amendments. Castle Rock reserves the right to review Dawson Trails' title to the Water Rights prior to conveyance of those Water

Rights to Castle Rock for the purpose of confirming that Dawson Trails' title has not become unmarketable due to conveyances or encumbrances arising after the date of the Decree.

3. If the Decree confirms Dawson Trails' ownership of all right, title, and interest in and to the Water Agreement, dated July 15, 1983, and recorded with the Douglas County Clerk and Recorder on July 18, 1983, at Rec. No. 1983308035, Book 483, Page 282 (Water Agreement), Dawson Trails shall take all steps necessary to terminate the Water Agreement, including but not limited to executing and recording in Douglas County an instrument sufficient for that purpose, prior to Dawson Trails' dedication of any of the Water Rights that are the subject of the Water Agreement to Castle Rock. If the Decree establishes that Dawson Trails owns only a portion of the Water Rights that are the subject of the Water Agreement, Dawson Trails will take any mutually agreed upon steps as necessary to address any obligations that may be associated with Castle Rock's potential assumption of the Water Agreement.
4. Dawson Trails prepared the Complaint and shall prosecute the Complaint at its sole cost and expense and in its sole discretion and under the exclusive advisement of its own legal counsel. Except to the extent that Castle Rock is a named defendant in the Complaint, Castle Rock has no obligation to participate in the quiet title action but is not prevented from doing so as long as such participation is consistent with this Agreement.
5. Nothing in this Agreement modifies or waives any requirements of the Water Dedication Code, as it exists or as may be amended in the future. Castle Rock will adhere to its Water Dedication Code and the Dawson Trails Development Agreement for purposes of determining Dawson Trails' credit for conveying any portion of the Water Rights as described in the Decree.
6. Dawson Trails, as a prevailing party or otherwise, shall not under any circumstances seek from Castle Rock any award of attorneys' fees and costs; costs under C.R.C.P. Rule 54(b); and/or any other fees, costs, or both arising from or in any way relating to the quiet title action.
7. This Agreement will bind Castle Rock and benefit Dawson Trails and the successors and assigns of Dawson Trails; however, no party may assign this Agreement without the prior consent of the non-assigning party.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date of its complete execution by all parties.

Dated _____, 2023.

ACM Dawson Trails VIII JV LLC

By: _____
Name:
Title:

ATTEST:

TOWN OF CASTLE ROCK,
acting by and through the Town of Castle Rock
Water Enterprise

Lisa Anderson, Town Clerk

Jason Gray, Mayor

Approved as to form:

Approved as to content:

Michael J. Hyman, Town Attorney

Mark Marlowe, Director of Castle Rock Water

MEMORANDUM RE DAWSON TRAILS – WATER RIGHTS AGREEMENT

To: Mark Marlowe, Matt Benak, and Heather Justus
From: Madoline Wallace-Gross and Alison Gorsevski
Re: *Proposed Agreement – Dawson Trails’ Water Rights Quiet Title Action*
Date: January 11, 2023

I. SUMMARY. At the request of the Town of Castle Rock (“Town”), we been working with Town staff and ACM Dawson Trails VIII JV LLC (“Dawson Trails”) to evaluate Dawson Trails’ title to the Denver Basin groundwater rights (“Water Rights”) associated with its approximately 2,000-acre property located within the south-southwest quadrant of the Town (“DT Property”), in anticipation of Dawson Trails’ dedication of the Water Rights to the Town.

The Town’s Water Dedication Code requires Dawson Trails to establish that it has marketable title to the Water Rights before the Town will accept dedication. After reviewing the title documents, we advised the Town that Dawson Trials’ title to the Water Rights is inconclusive. Consequently, Dawson Trails filed a quiet title action in Douglas County court, seeking a judicial decree determining that Dawson Trails has clear title to the Water Rights (“Decree”).

Dawson Trails seeks an agreement with the Town that, once a Decree has entered, the Town will accept the marketability of Dawson Trails’ title to the Water Rights for dedication purposes. We recommend that the Town enter into this Agreement (attached) to accept the marketability of Dawson Trails’ title to the Water Rights as established by the Decree.

II. BACKGROUND. The DT Property has been annexed into the Town, and in 2022, the Town entered into a Development Agreement with Dawson Trails, the Dawson Trails Metropolitan Districts Nos. 1-5, and the Westfield Trade Center Metropolitan Districts Nos. 1 and 2 (“Development Agreement”). Dawson Trails wishes to proceed with its proposed development.

Dawson Trails must first satisfy the water dedication requirements set forth in Chapter 4.04 of the Castle Rock Municipal Code (“Water Dedication Code”) and the Development Agreement. As an initial step, the Water Dedication Code, Section 4.04.060, requires Dawson Trails to provide a title opinion from an attorney to show that Dawson Trails has good and marketable title to the Water Rights. The Town will not accept dedication of the Water Rights until it is satisfied with Dawson Trails’ title.

Dawson Trails provided a title opinion and supporting documents, and we have reviewed those materials. The DT Property and the Water Rights were conveyed to numerous different parties over the last 40+ years, including after several foreclosures and bankruptcies. As a result, title to the Water Rights is convoluted, at best. Our firm is presently unable to conclude that Dawson Trails has good and marketable title.

Colorado law allows a property owner to file a quiet title action in county court for the purpose of conclusively establishing title to specified property, including water rights. Acknowledging the difficulty of determining title to the Water Rights, Dawson Trails filed a quiet title action in Douglas County to establish its title to the Water Rights through a Decree. That case is pending.

Due to the costs and resources associated with a quiet title action, Dawson Trails has requested that the Town enter into an Agreement, under which the Town would agree that Dawson Trails

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has good and marketable title to its Water Rights for purposes of satisfying Section 4.04.060 of the Water Dedication Code.¹

III. RECOMMENDATION AND BASIS. The pending quiet title action is a legally valid way to establish Dawson Trails' title to the Water rights. Legally, Dawson Trails' quiet title action and the resultant Decree will cut off a third party's claims to ownership of the Water Rights. Therefore, because a Decree will establish Dawson Trails' title as a matter of law, the Town can rely upon that Decree to determine that Dawson Trails' title to the Water Rights is good and marketable for purposes of applying the Water Dedication Code.

For the reasons discussed above, we recommend that the Town enter into the attached Agreement with Dawson Trails.

VIII. ATTACHMENT.

- a. ***Agreement between the Town of Castle Rock and ACM Dawson Trails VII JV LLC***

¹ Dawson Trails will still be required to satisfy all other requirements of the Water Dedication Code and the Development Agreement, including but not limited to establishing the amount of water dedication required for Dawson Trails' development.