

April 13, 2022



Delivered via email

**RE: Lot 16, Maroon Creek Club Zoning Summary**

Mr. 

As requested, BendonAdams has prepared the following land use and zoning analysis for Lot 16 of the Maroon Creek Club Subdivision. This summary is based on our knowledge of the City of Aspen land use code, previous work on several other Maroon Creek Club properties, a review of the property survey and various plans you have sent, and your questions about development potential. Where possible, we have commented on next steps and made recommendations.

Aside from some unknown results of the current development moratorium in the City of Aspen, we believe this property can be successfully developed with a 14,750 square foot single-family home. The home can be developed with up to 10,000 square feet of above-grade floor area, up to 4,000 square feet of subgrade space, and up to 750 square feet of garage area. Parcels in the Maroon Creek Club subdivision have fewer regulatory hurdles than most parcels in the Aspen area. The land use approvals are well-documented, the city has a track record of administering the approvals, and the marketplace has rewarded developers of residential properties in this subdivision.

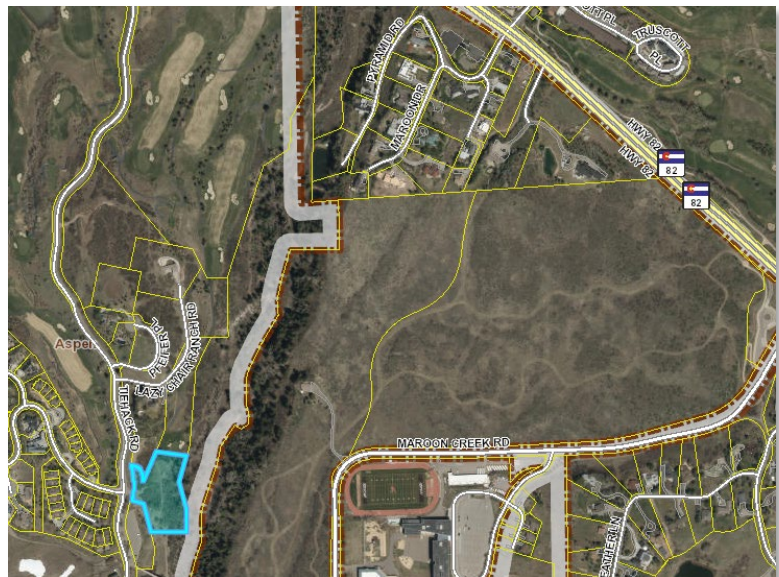
**Parcel Legal Description**

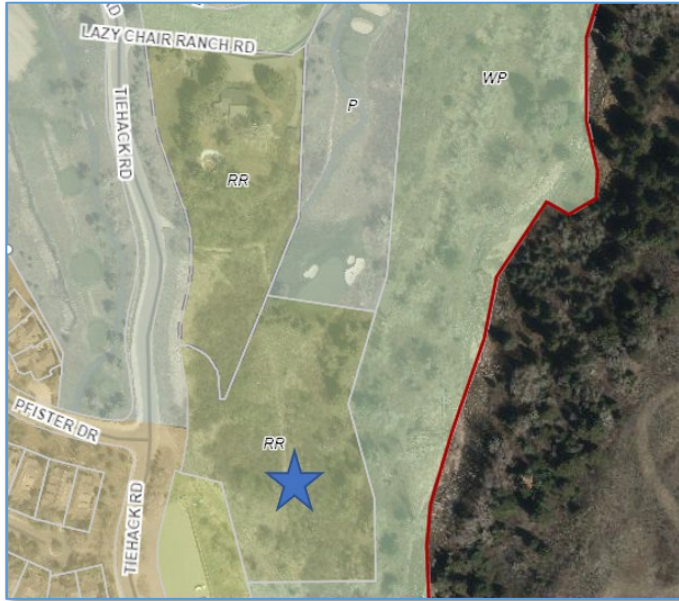
Lot 16, Maroon Creek Club Subdivision, Pitkin County.

Parcel ID No. 2735-113-09-016

**Zone District**

Rural Residential (RR) with a planned development overlay. Rural residential is a two-acre single-family zone. The property is regulated by a planned development which specifies uses and dimensions. The purpose of the RR district reads as follows:





**“26.710.130 Rural Residential**

*“Purpose. The purpose of the Rural Residential (RR) zone district is to allow utilization of land for low density, long-term residential and short-term vacation rental purposes with the recreational, institutional, public and other compatible uses customarily found in proximity to those uses allowed as permitted uses or conditional uses.*

*Permitted uses. The following uses are permitted as of right in the Rural Residential (RR) zone district:(1) ...”<sup>1</sup>*

1. Detached residential dwelling.

**Land Use Approvals**

After a lengthy review in Pitkin County, the Maroon Creek Club subdivision was approved by Pitkin County pursuant to Resolution No. 93-104. The approval incorporated a water service agreement from the City of Aspen that anticipated annexation. This was standard procedure at the time and this process (annexation after county approvals) was also used for the Highlands Village subdivision and the Moore (5 Trees) subdivision.

The Maroon Creek Club subdivision was annexed into the City of Aspen in 1996 and 1997. City zoning was applied to the subdivision through City of Aspen Ordinance 40, series of 1996. This ordinance restated the approvals and clarified how the city would administer the property rights. Ordinance 40 describes Lot 16 as having 10,000 square feet of floor area, consistent with county approvals. A majority of the MCC parcels have been developed under city jurisdiction.

*Exhibit A of Ordinance 40 also contains an Exhibit A describing floor area allowances per parcel, shown at right.*

LOT #	AREA (ACRES)	APPROVED DEVELOPMENT	SETBACKS	OTHER	CURBITY ZONING	CITY ZONING
1-4	74.14	10,000 sq. ft. residence each	approved envelope	interconnect trail alignment	R-30	RR
4-11	9.7-2.5	6,000 sq. ft. residence each	approved envelope		R-11	R-11A (City of Aspen Ordinance 40, series of 1996)
13	2,022 sq. ft.	1,310 sq. ft. residence (4 beds, 2 1/2 baths)	approved envelope		PHH	PHH
14	0.58	parking lot			AF-503	City of Aspen Ordinance 40, series of 1996
16	1,016	parking lot			AF-502	City of Aspen Ordinance 40, series of 1996
16	2.381	10,000 sq. ft. residence	approved envelope		R-30	RR
17	1.388	78,847 sq. ft. development area (174)	development area (174)	148,000 sq. ft. max. for all 17 units; no R-15C development project	AR-3	R-15A
18	1.118	11,347 sq. ft. development area (174)	development area (174)	148,000 sq. ft. max. for all 17 units; no R-15C development project	AR-3	R-15A
19-31	varies	6,000 sq. ft. residence each	building envelope above		R-15	R-15A
32-39	varies	5,000 sq. ft. residence each	building envelope above		R-15	R-15A
40	4,027	6,000 sq. ft. residence	building envelope above		R-15	R-15A
41-43	1.0-3.0	10,000 sq. ft. residence	building envelope above	public source assessment on parcel	R-10	RR
44-48	varies	6,000 sq. ft. residence each	building envelope above		R-15	R-15A

Exhibit A

16	2.381	10,000 sq. ft. residence
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<sup>1</sup> City of Aspen Land Use Code Section 26.710.130

Lot 16 is 2.381 acres and was platted with a **building envelope** within which the new home must be located. Grading within other portions of the property is limited to 30 inches above or below grade. The city has modified several envelopes in consideration of design, access, and topographic realities. For an administrative approval, the envelope size cannot be increased. Swapping equal areas of envelope is acceptable.

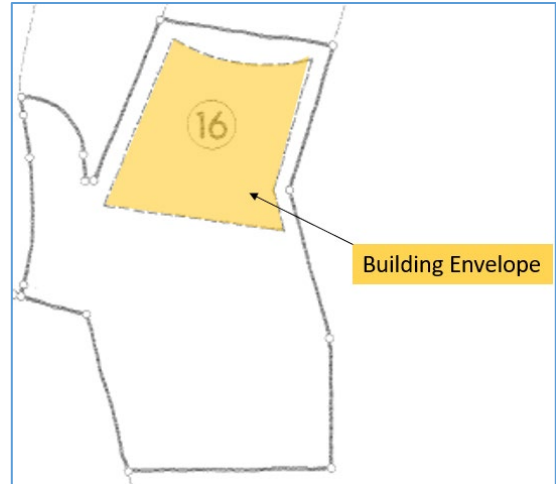
Lot 16 has some development challenges. The lot is a “fall-away” lot with slopes dropping from the edge of Tiehack Road down to the platted development envelope. Accessing the parcel with a new driveway will be a civil engineering challenge. We strongly recommend using a civil engineering firm with local experience, ideally within the Maroon Creek Club subdivision. There are several highly qualified civil engineering firms with this experience.

*The map to the right shows 2-foot contours from Pitkin County ariel photogrammetry.*

The ability to use soil nailing to stabilize retained slopes will be important. This method is less expensive than using vertical stabilization. Using soil nails beyond the building envelope is an approval that requires consent of the city and the Maroon Creek Club homeowners. This consent has been obtained by other parcels in the same circumstance and you should expect the same result on this parcel.

Extending soil nails into Tiehack Road will not be allowed. Extending nails into the water line easement will not be allowed.

The parcel appears to have significant vegetation. Much of this is scrub oak and is not an impediment to development. The survey shows Aspen and conifer trees but does not report tree sizes. Measurement of the tree calipers will be needed for permitting and there will be required replacement or cash-in-lieu mitigation for trees removed. Scrub oak with a DBH measurement of 4 inches or more will trigger the replacement requirement as well, although the replacement can be another species. Tree removals on this parcel will require homeowner association approval and city permits.



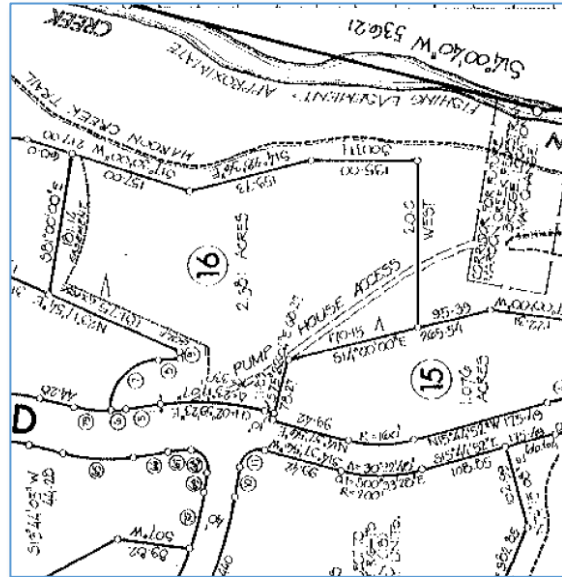
## Survey

We reviewed the April 11, 2022, property survey prepared by Jason Neil of Peak Surveying. Mr. Neil is a respected local surveyor and is very familiar with Aspen properties. Overall, the survey is sufficient for this transfer. There are a couple of items we wanted highlight.

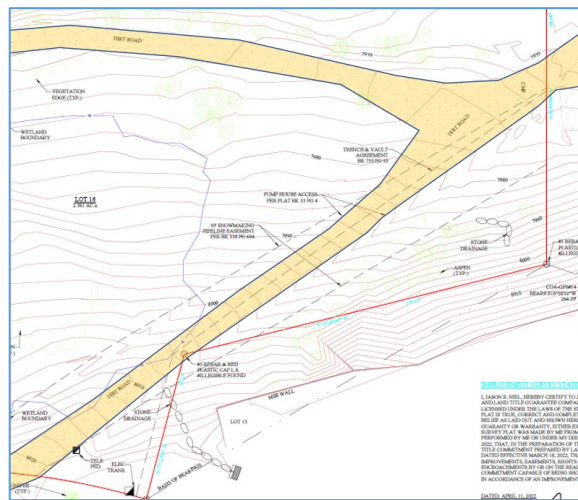
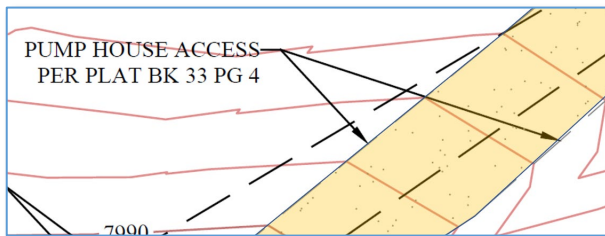
The 1993 plat established an easement for a pump house to the south of the property. The 1993 plat is blurry and the surveyor has shown the extent of the easement as the width of the dirt road. We are concerned about two aspects of this easement.

*The image to the right is taken from the 1993 subdivision plat and shows the pump access road.*

The dirt road widens substantially towards the south end of the property, where the existing switchback exists and connects to the road headed to the building envelope. The actual easement width is unclear and could be a point of confusion or contention in the future.



*The image to the right shows the dirt road accessing the pump house and building envelope. The pump house road access is depicted as the width of the road, which widens at the south end of the property.*



Second is that the pump house road may currently serve as a quasi-public trail. The physical connection and lack of anyone on the property enforcing trespass has possibly enabled people to use the pump house road as access to a popular public trail along Maroon Creek.

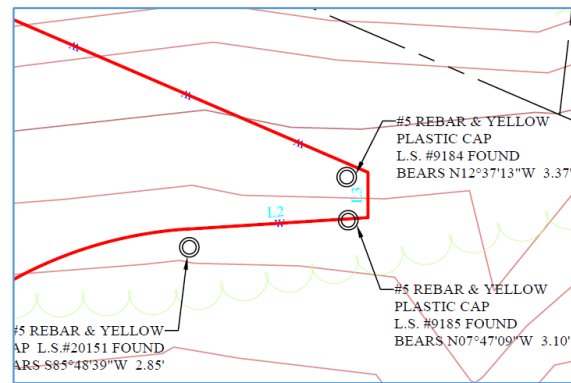
*The Google Earth image to the right shows the pump house road connection with Tiehack Road.*



While it may be a low risk, a person who has routinely used this road as a public trail could assert a prescriptive right. We suggest reviewing this with attorney Curt Sanders.

We suggest obtaining a new easement for this pump house access road. This could avoid any confusion in the future, recognize the impending development of the parcel, a new driveway alignment, any joint use of the easement for access to the building envelope, address maintenance and repair matters, and address public trail usage.

The surveyor has shown a few corner pins offset slightly from the property boundary. These pins are either misplaced, or represent witness pins, or the boundary is shown incorrectly. We suggest getting clarity on this point. The adjacent property may have little interest in this portion of their property and this area has little benefit to the eventual development on Lot 16. Clarity on this point is suggested, but it is not a crucial item.



For permitting purposes, you will need to add tree size measurements to the survey. We also suggest removing the wetland delineation from the survey. If the survey is recorded and the delineation changes there could be confusion with the recorded document. It is also not a required element of a City of Aspen compliant survey.

## Wetlands

The survey shows a wetland area and there is a wetland report prepared by SGM Engineering from 2018. It appears that a portion of the property is subject to seasonal seeps and potentially a spring and these features support wetland-type vegetation. Total wetland area is approximately .53 acres. The 2018 report implies 404 permitting will be required and there could be some replacement or enhancement requirements if the wetland area is affected. The Maroon Creek Club covenants were amended in 1994 clarifying that wetland issues are the responsibility of the lot owner.

*The text to the right is from the amended Maroon Creek Club covenants.*

**2.2 Amendment to Article 8.** Article 8 of the Declaration entitle "General Restrictions" is hereby amended by the addition of the following new Section 8.25:  
  
**8.25 Wetlands Abatement.** Owners of Single Family Lots in Maroon Creek Club shall be responsible for any wetlands abatements or wetland's compliance required for the construction of any improvements to be constructed on such Owner's lots.

The larger concern for us is the civil engineering challenges to accommodate site drainage along with seasonal seep, a potential subsurface flow, or a perched water table. These conditions are not super exotic, however will require enhanced civil engineering and foundation design expertise.

### Wildlife, Fencing, and Dog Allowance

There is not a dog prohibition on this property. A few of the common area parcels of the subdivision are zoned "wildlife protection." But these are along Maroon Creek and the large knoll east of Tiehack Road north of Pfeifer Place – areas that were always intended to be common open space parcels.

The Maroon Creek Club HOA covenants mention dogs. Dogs are allowed but must be leashed or otherwise controlled. The HOA does have the ability to amend the covenants from time to time.

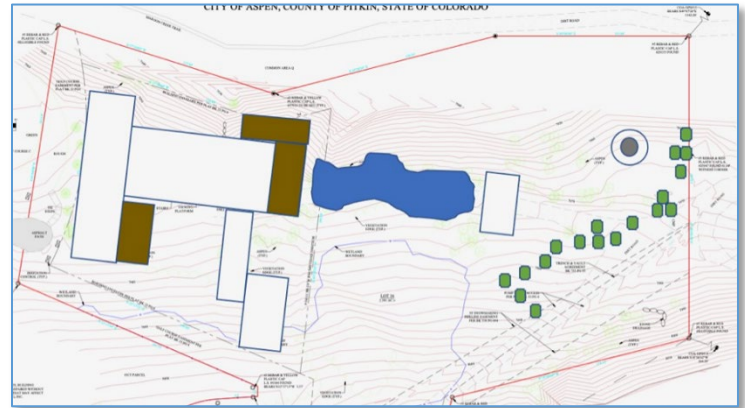
*The text to the right is from the Maroon Creek Club covenants.*

**8.3 Dogs.** Except for Lot 51, dogs are permitted as pets on Single Family Lots and Multi-Family Lots, provided that any dog shall be kenneled or leashed in accordance with County or other applicable governmental agency's leashing laws and any Maroon Creek Club Master Association Rules which may restrict dogs on Common Area Parcels, trails or other areas within Maroon Creek Club. Dogs are prohibited on Lot 51 and no variance from this prohibition shall be available.  
  
**8.4 Other Pets.** Pets, other than dogs, shall be permitted subject to obtaining the prior approval of the Association, which approval may include conditions or rules as to maintaining such pets. The Association may prohibit altogether the maintenance of certain pets on Maroon Creek Club lands.

Fencing must be approved by the Maroon Creek Club site and architectural review committee as well as the City of Aspen. The covenants require fencing "in harmony with the nature, setting, and surroundings of Maroon Creek Club." We suggest any fencing be "wildlife friendly." Lots 16 sits between the open areas of Buttermilk Ski Area and Maroon Creek and we expect you will see abundant wildlife moving through this corridor.

## Site Plan

We quickly reviewed your intended site plan, shown to the right. Most of your proposed development is within the building envelope. A structure is shown outside of the building envelope and will not be approved by the city. Some manipulation of the envelope is possible, although the envelope cannot be increased in size without city council approval. Allowed improvements outside of the building envelope include landscaping, driveways & parking, terraces up to 30" above finished grade, in-ground spas and pools with a finished deck height up to 30" above finished grade, and an outdoor grill with enclosure not exceeding 60" above finished grade. These allowances are reflected in an administrative amendment to the approvals recorded in 2012 (reception no. 587075) and enable your site plan, minus the structure shown outside of the envelope.



## Floor Area

The eleven "estate lots" of the Maroon Creek Club subdivision are allowed 10,000 square feet of floor area, an additional 4,000 square feet of basement area, and a 750 square foot garage for a total build-out of 14,750 square feet. Lot 16 is an estate lot.

The Maroon Creek Club was reviewed and approved in Pitkin County and resulted in the adoption of Pitkin County Resolution No. 93-104. A water service agreement was subsequently approved by the City of Aspen in 1993. The developer then sought annexation to the City of Aspen and the lands were annexed pursuant to City of Aspen Ordinances No. 33 and 34, Series 1996. The lands were provided City of Aspen zoning and certain development allowances were clarified and explained pursuant to City of Aspen Ordinance No. 40, Series 1996.

10,000sf Floor Area. Ordinance 40 recognized the previous Pitkin County approvals and did not "divest or diminish the land use approvals or development rights awarded by Pitkin County..."<sup>2</sup> The approval granted by BOCC Resolution no 93-104 described the development allowances for each single-family parcel. Lots 1, 2, 3, 5, 12, **16**, and 41 through 45 were granted 10,000 square feet each.<sup>3</sup> (These lots are often described as the "estate lots," although the approval documents do not use this name.) This development allowance has been routinely observed by the City of Aspen and we have no concern about it applying to Lot 16.

4,000sf Basement Exemption. Ordinance 40 included an exhibit that defined the manner in which floor area and other development parameters were to be measured. The exhibit includes a

<sup>2</sup> CoA Ord 40, 1996, whereas recitals

<sup>3</sup> BOCC Reso 93-104 and Exhibit A of Exhibit A of CoA Ord 40, 1996

provision for up to 4,000 square feet of below grade space to be exempt from the calculation of floor area.<sup>4</sup> This space may be only a single level with a maximum 20-foot depth. This development allowance has been routinely observed by the City of Aspen and we have no concern about it applying to Lot 16. An administrative clarification to the basement measurement was adopted in 2014. This clarifies that the spaces must be fully subgrade for the exemption to apply (no walk-outs) and does not apply to stacked or double basements. The city no longer allows double basements.

**750sf Garage Exemption.** The county approval did not provide a garage exemption for the eleven “estate” lots (Reso 93, page 4, item 4). The water service agreement did not amend the county approval and the annexation ordinances are silent on the entitlements. Ordinance 40 rezoned the properties but also adopted several definitions for determining height, bulk, and setbacks. An exhibit attached to Ordinance 40 recited methods for calculating various dimensional terms, including floor area. The exhibit clearly stated a 750sf garage exemption for the eleven lots of this type in the MCC.<sup>5</sup> Ordinance 40 seemed to contradict previous decisions but was also the most recent and arguably the controlling document. The city had not been applying a garage exemption.

The discrepancy regarding this garage exemption was subject of a lawsuit. The owner of Lot 43 (and at the time, owner of lots 41 and 42) requested a formal determination from the City of Aspen. This determination found the garage exemption did not apply, consistent with the city’s historic administration of the approvals. An appeal of this decision to the city’s hearing officer reinforced the staff determination. This position was reversed by the district court. The city appealed the district court decision, and the appellate court upheld the decision.<sup>6</sup>

The garage decision applies to eleven lots of the Maroon Creek Club subdivision – Lots 1, 2, 3, 5, 12, **16**, and 41 through 45. The City of Aspen is very aware of the garage exemption decision and we have no concern about the city observing the 750sf exemption.

## **Dimensions & Measurements**

Dimensional allowances for the Maroon Creek Club are all set-out in the approvals. The exhibit to the ordinance is the source document.

**Floor Area.** Floor area for the Maroon Creek Club is defined as the sum of the gross horizontal surfaces of each floor of a building or structure. In measuring floor area, all dimensions are taken from the outside face of framing or other primary wall members or from the center line of walls separating adjoining units of a building or portion thereof. This is a citywide provision and should not be a source of confusion for reviewers.

Veneer up to eight inches in thickness are excluded from the calculation of floor area; that portion of a facade which exceeds eight inches shall be included. Fireplaces, elevators, stairs and similar features are included in the floor area on each floor as if the element was a floor. This provision is unique to the Maroon Creek Club.

<sup>4</sup> Ord 40, 1996, Exhibit A, section d of Floor Area

<sup>5</sup> Ord 40, 1996, Exhibit A, section e of Floor Area

<sup>6</sup> Colo. 9<sup>th</sup> Judicial District Court Case No. 2016-CV-30094



Roof Overhangs and Decks. The floor area of a building, or portion thereof, not provided with surrounding exterior walls includes the area under the horizontal projection of roofs or floors, when the roof or floor exceeds five (5) feet. These architectural projections are exempt for five (5) feet of the perimeter of each story of the structure. Architectural projections may project up to ten (10) feet and still be exempt, so long as the total perimeter space for a floor is less than or equal to the total area allowed for the five (5) foot exemption. This exemption cannot be used to transfer space between floors.

Decks, Balconies, Stairways and Similar Features. Structures that exceed thirty (30) inches above natural or finished grade, and that are not covered by a roof or architectural projection from a building, are exempt from floor area for up to fifteen percent (15%) of the maximum floor area allowed. Areas in excess of fifteen percent (15%) are counted toward floor area.

Below Grade Space. Spaces below natural grade, up to a maximum of twenty (20) feet in depth and which include no more than a single story, are exempt from floor area calculation up to a maximum of 4,000 square feet of floor area. Floor area below natural grade which exceeds the 4,000 square foot exemption counts toward the calculation of allowable floor area. If any part of the below grade space is exposed above natural grade (such as walk-out basements) the entire below grade area is included in the floor area calculation; except that window wells and one egress area as required by the uniform building code (*now the IBC: international building code*) may be provided without affecting this exemption. The foundation wall or footing may be exposed to the minimum degree required to comply with the uniform building code pertaining to foundation design without affecting this exemption. Up to ten (10) percent of any particular below grade wall surface may extend above natural grade and still be exempt from the calculation of floor area so long as the finished grade covers the surface that would otherwise be exposed. Garages up to seven hundred fifty (750) square feet may be incorporated into below grade space and shall not affect this exemption so long as the only sections of building exposed are directly related to the garage structure.

Garages and Carports. For the purpose of calculating floor area ratio and allowable floor area for a lot where the principal use is a single-family residence, garage and carport floor area is exempted up to a maximum of seven hundred fifty (750) square feet. On a lot which contains a duplex, garage and carport floor area shall be exempted up to a maximum of five hundred (500) square feet per side. All garage or carport space in excess of the exempted areas shall be included as part of the residential floor area calculation. When a single family or duplex dwelling exceeds the allowed floor area, the exempt garage space shall be reduced by subtracting the excess floor area from the exempt garage space.

Crawl Space. Crawl spaces are exempt from the calculation of floor area, even if exposed above natural grade, so long as the height of the crawl space does not exceed five feet six inches (5'6").

Attic Space. That portion of attic space where the distance between the floor and ceiling exceeds five feet six inches (5'6") in height shall count as floor area.

**Height.** Height of the principal structure is limited at 28 feet. Accessory structures are limited to 12 feet. Height is measured using the regulations stated the exhibit to Ordinance 40. The selected architect will need this document during the design process.

Height is measured to the mid-point of a pitched roof from the lower of existing or finished grade. The measurement is made vertically – each point of a roof shall be measured to the point of grade directly below it, vertical and plumb. Roof points which are not at the exterior of the building are measured against existing grade only. Ridgelines are limited to 5' feet above the allowed height – 33' for the main structure and 17' for accessory structures.

Antennae, chimneys, flues, vents, and similar items are allowed an additional 10 feet of height. Mechanical equipment is limited to an additional 3 feet above the height limit. These allowances are stated as being above the height limit, not as a measurement from the point where the device is attached as is the case in other locations in the City of Aspen.

## Fees / Mitigations

**Parks Impact fees** were satisfied for the residential lots of the MCC through the provision of funds for the pedestrian bridge connecting the Aspen Recreation Center to the base of the Tiehack lift. This was included in an amendment to the subdivision improvement agreement recorded at reception number 442179 and later reflected in a community development director administrative determination dated January 23, 2014.

**School Land Dedication** fees are calculated under City of Aspen's land use code at the time of building permit. The calculation of school land dedication fees uses a very tricky, non-linear calculation. There can be significant benefit to using either the property transaction value or an average land value that the city applies where a land value must be assumed. Guidance on this calculation is advised at the time of permit submission.

**Transportation Demand Management (TDM) / Air Quality** impact fees are required at the time of building permit. These impact fees are newly adopted since the original approvals and the project vesting does not exempt the parcels from these fees. These are \$0.61 per square foot of floor area. The basement and garage areas are exempt.

**Affordable Housing** mitigation was satisfied by the development of 42 affordable housing units on Lot 52 of the subdivision (near the clubhouse).<sup>7</sup>

## Required Reviews

**8040 Greenline Exemption.** Properties in the City of Aspen above an elevation 8,040 feet or within 150 (horizontal) feet of this elevation are subject to an "8040 Greenline Review." This is a review by the Planning and Zoning Commission of site planning, grading, massing, and exterior lighting and materials of the project. The Maroon Creek Club properties are exempt from this review. The exemption is only cited in the water service agreement (section 33) and city staff occasionally state that an 8040 Review is required. It is not.

**Residential Design Standards.** The city has a set of residential design standards (RDS) applicable to all residential development. The Maroon Creek Club design guidelines, enforced by the homeowners association, to not override the city's regulations. An RDS review is

<sup>7</sup> This is inferred in the Subdivision Improvement Agreement and clarified through the Community Development Director Administrative Determination dated January 23, 2014.

administrative and typically takes 2-4 weeks. The city's RDS are style-neutral focusing instead on garage placement, front door placement, and general massing and fenestration. Due to the property being outside the traditional townsite, several of the standards do not apply. We recommend an architect review the city's RDS prior to fully engaging in design development.

**Building Permit.** The city's building permit process can be 9-12 months. Initial comments are currently running 16-20 weeks from acceptance of a complete permit application. If the permit application stretches beyond two rounds of review, the permit loses its que status, and the review timeframe can become very lengthy.

The city's permit review is comprehensive, covering all design disciplines - civil, architectural, structural, mechanical, electrical, plumbing, landscape, lighting, and construction management. We suggest an architect review the "Z-Sheets" document provided by the city. This details the city's preferred manner for designers to detail zoning compliance. Using this format can reduce review time. We also suggest engaging a local contractor at least for "pre-con" services, including drafting a construction management plan.

The city provides a useful pre-application service with a permit coordinator. This is to review document formats, submission contents, timeframes, etc. Utilizing this service can reduce review times and having a good relationship with the permit coordinator can overcome permitting miscues.

## Moratorium & Anticipated Outcomes

The City of Aspen recently enacted a moratorium on residential development. It is too early to fully anticipate the legislation that will be considered, but we anticipate a few themes based on discussions to date. We expect a higher requirement for affordable housing mitigation. The lack of affordable housing is causing the city to examine its development policies and we expect new legislation will base the affordable housing fee system on the gross area of a home, not the (net) floor area. We also expect the credit for existing square footage to not carry through demolition. This will encourage remodeling verses the complete redevelopment of homes.

We anticipate some type of development pacing system to be enacted. We don't know if permits will be issued on a first-come, first-served basis or issued in a "beauty contest" type system. But we do anticipate a limited number of projects that can occur in the community at any one time, or on a neighborhood-by-neighborhood basis. Recently, the city has indicated that any pacing system will manage the number of demolition permits each year. This will limit the number of "scrape and replace" projects that have been the focus of community ire. Lot 16, not having an existing building to demolish, would not be affected by the type of demo permit pacing.

Building permit fees may also be affected, although they are already very high. We believe there is a low likelihood of changes to the dimensional allowances of zoning. Implementation of a "volumetric" measurement or some other means of regulating mass and scale of residential development has been discussed. Prior attempts to regulate the three-dimensional aspects of residential development have been unsuccessful – they are too difficult to define and administer. Spaces that are currently exempt from floor area calculations may no longer be exempted from the calculation.

Lastly, we anticipate changes related to the processing of dimensional variances – essentially to make variances tougher to obtain. We do not anticipate a design for Lot 16 needing a variance to zoning parameters and this additional rigor to the variance process may not affect the property.

The effect of these pending changes on Maroon Creek Club properties may be limited. The subdivision approvals provide detail on allowed floor area and height, the manner in which these provisions are to be measured, and the affordable housing requirements have been provided long ago. The Maroon Creek Club Subdivision and Planned Development is no longer protected through statutory vested rights. However, the detailed specifics in the approval documents combined with a very clear common law vested rights argument likely shields the Maroon Creek Club properties from newly adopted provisions for dimensional items that are already stated in the approvals. Newly adopted development parameters that are not otherwise covered in the Maroon Creek Club approvals will likely apply. This is the case with the city's residential design standards – adopted after the MCC approval was granted and now apply to properties in the MCC subdivision. However, the focus of the moratorium is largely on development provisions that are already covered in the Maroon Creek Club approvals.

## Summary

The Maroon Creek Club single-family home parcels are a rock-solid real estate commodity. The Maroon Creek Club approvals are reliable and well-understood by city departments. The development rights are clear, and the market has accepted these parcels and rewarded those who have built. Pending the outcomes of the moratorium, we have no hesitation regarding the parcel enjoying the full 14,750 square feet of development comprised of 10,000 square feet of floor area (above grade space), plus up to a 4,000 square foot basement and up to a 750 square foot garage. Keep in mind that the subgrade area cannot have exposure beyond the minimum code egress requirements. The garage exemption issue is a settled matter.

We strongly recommend retaining a local civil engineering firm, ideally with experience in the Maroon Creek Club. The water table issue will add some complexity to the development and you'll want a capable civil engineer. Designing a driveway into the parcel is also complex and you'll be best served with a competent civil engineer. We can advise on local expertise in civil engineering and other disciplines if you need. We do recommend addressing the pump house road easement item. It does not seem controversial now. But there is enough ambiguity that we could foresee an issue in the future. The other survey items are not fatal.

You should be aware of the following two risks:

- Moratorium. We will not know the outcome of the development moratorium until it concludes and new legislation is in place. This is currently set for June 8<sup>th</sup> although it could be extended. Some of the moratorium outcomes may not apply to the Maroon Creek Club. For example, a limitation on annual demolition permits would not affect Lot 16. But it is unclear what the outcomes will be. This is more than the standard level of risk inherent in any real estate transaction. If anything, buying a property in the Maroon Creek Club is less risky than practically anywhere else in the city.
- An awareness of timeframes. The development moratorium could run for another 2-8 months, for a total of 12 months start to finish. Moratoriums we have experienced in

the past have all run about this long, regardless of the “get it done” rhetoric of elected officials. A design process is a timeframe in your control – it could be as quick as a few months or as long as you can imagine. Land use reviews for residential design, and possibly other reviews that come about from the moratorium could take 6-10 months to obtain. Normal processing of projects requiring a hearing has been 4-5 months. The field of applications coming out of the moratorium could be wide and deep, resulting in longer review times. Building permit timeframes can be 9-12 months for a new home. If a permit pacing system is adopted, this could add an unknown amount of time. Along with the construction timeframe, we want to make sure you consider the total time possible between now and your first dinner party.

Overall, we believe Lot 16 can be developed successfully. The “baked-in” nature of the approvals may represent some protection from moratorium outcomes. Developments in the Maroon Creek Club subdivision have been rewarded in the marketplace and we expect this property would achieve similar success. Please do not hesitate to contact me about any of the above.

Sincerely,



Chris Bendon, AICP  
**BendonAdams LLC**

**Attachments:**

1. City of Aspen Ordinance 40, Series 1996
2. Pitkin BOCC Reso 93-104
3. Soil Nail Amendment
4. CoA Admin decision re: Subgrade Area
5. District Court Decision re: Garage Area
6. Appeal Court Decision re: Garage Area
7. 2012 Admin Amendment

*The foregoing analysis is based on a review of the available facts and regulations pertinent to Lot 16 of the Maroon Creek Club. The city's land use regulations are highly subjective, and interpretations of relevant provisions of the land use code may vary over time or with changes in staff or elected and appointed officials. Consequently, no warranty of facts, opinions, or interpretations contained herein is either expressed or implied by BendonAdams LLC. This report has been prepared for the exclusive use and benefit of Brian Sharples and is not to be transferred to or used by any third parties without the prior written consent of BendonAdams LLC.*