

Posted on June 11, 2024 at: _____



TOWN OF WIGGINS

BOARD of TRUSTEES SPECIAL MEETING

June 12, 2024 at 8:30 P.M.
(Following Work Session – Approximate Time)

**304 CENTRAL AVENUE
WIGGINS, CO 80654**

**THE PUBLIC IS INVITED & ENCOURAGED TO ATTEND THE MEETING VIA ZOOM
OR WATCH ON YOUTUBE IF THEY ARE UNABLE TO ATTEND MEETING IN PERSON**

GO TO THE FOLLOWING SITE <https://us06web.zoom.us/j/82016603203> FOR THE MEETING LINK

SPECIAL MEETING AGENDA

I. INTRODUCTIONS

1. Call the Meeting to Order
2. Pledge of Allegiance
3. Roll Call
4. Approval of Agenda

II. PUBLIC HEARING *(Public Input will be taken during the public hearing)*

Special Review Use for a Home Occupation: Gun Smithing and Gun Brokerage

1. Consideration of Resolution No. 22-2024- A Resolution Approving a Special Review Use for a Home Occupation: Gun Brokerage and Gun Smithing at 200 Wildcat Parkway, Wiggins
2. Resolution No. 22-2024

III. CONSIDERATION OF ORDINANCE NO. 05-2024

An Emergency Ordinance Approving a Water Lease Agreement Between the Town of Castle Rock and the Town of Wiggins for the Purpose of Leasing Augmentation Water A Resolution Approving the Final Plat for the North Ridge Minor Subdivision.

1. Ordinance No. 05-2024

IV. EXECUTIVE SESSION

An executive session pursuant to C.R.S. Section 24-6-402(4)(c) for discussion of a matter required to be kept confidential under the Colorado Open Records Act – Review of application materials submitted by non-finalists for the Town Manager position

V. REPORT FROM EXECUTIVE SESSION

VI. ADJOURNMENT

1. Closing Remarks by Mayor and Trustees, and Meeting Adjournment



STAFF SUMMARY

Board of Trustees Special Meeting June 12, 2024

DATE: June 11, 2024

AGEND ITEM NUMBER: 2

TOPIC: Public Hearing and Consideration of a Special Review Use for a Home Occupation: Gun Smithing and Gun Brokerage

STAFF MEMBER RESPONSIBLE: Hope Becker, Planning & Zoning Administrator

BACKGROUND:

Applicant, Patrick Crumbaugh, of 200 Wildcat Parkway is applying for a Special Review Use for a Home Occupation of gun smithing and gun brokerage. The home is located on the south end of the Kiowa Park Subdivision which is currently zoned Planned Development.

Mr. Crumbaugh submitted a complete application and public hearing with the Planning and Zoning Commission on May 21, 2024. The Planning and Zoning Commission reviewed the application and Land Development Code, deliberated over the information, and approved a recommendation to the Board of Trustees to approve the special review use. The Planning and Zoning Staff Report, meeting minutes, and approved resolution recommending the use have been attached to this board packet.

SUMMARY:

The Land Development Code provides Town staff, the Planning and Zoning Commission, and the Board of Trustees guidance to evaluate that all items required for a Special Review Use application have been met. The Board of Trustees will review the proposed Special Review Use application, the Planning and Zoning Commission's recommendation and make a final decision. During the Board of Trustees' deliberation, the Land Development Code states the Trustees must consider the following when approving the special review use application.

- a. The proposed use is in harmony and compatible with the character of the surrounding neighborhood;
- b. The proposed use is consistent with the Town's comprehensive plan;
- c. The proposed use will not have a material adverse effect on Town capital improvement programs;

- d. The proposed use will not result in an over-intensive use of the land;
- e. The proposed use will not result in undue traffic congestion or hazards;
- f. The proposed use will not cause significant air, water or noise pollution;
- g. The proposed use will not require a level of community facilities and services greater than that available; and

The proposed use shall not be detrimental to the health, safety or welfare of current or future inhabitants of the Town.

FISCAL IMPACT:

Approving this Resolution has no negative impact on the Town's adopted budget.

APPLICABILITY TO TOWN OBJECTIVES AND GOALS TO PROVIDE SERVICES:

Approving this special review use application may provide save alternative services for community members to access their firearms in shipping and/or to repair/refurbish their firearms.

OPTIONS AVAILABLE TO THE BOARD OF TRUSTEES:

- The Board of Trustees may approve the Resolution staff has provided for their consideration.
- The Board of Trustees may approve the Resolution with additional conditions.
- The Board of Trustees may continue the public hearing to the next Board of Trustee meeting and request that staff or the applicant provide additional information to be brought forth.

MOTION FOR APPROVAL:

I make the motion to adopt Resolution22-2024 – A Resolution Approving a Special Review Use for a Home Occupation: Gun Brokerage and Gun Smithing at 200 Wildcat Parkway, Wiggins.

ACTION REQUIRED:

Motion, Second, Roll-Call, Vote.

(Resolutions require affirmative votes from the majority of Trustees present.)



Town of Wiggins
Planning & Zoning Department
 304 E Central Avenue * Wiggins, CO 80654
 Phone: (970) 483-6161 * Fax: (970) 483-7364
<http://townofwiggins.colorado.gov>

LAND USE APPLICATION

Please fill form out completely. Incomplete applications will not be processed.

STAFF USE ONLY		
FILE NAME: 200 Wildcat Pkwy. Spec. Rev. Home Occupation		
FILE NO: N/A	DATE SUBMITTED: 3/28/2024	FEES PAID: \$250.00

Project Name: _____

Project Physical Address (if applicable): 200 Wildcat Pkwy. Wiggins, CO 80654

Project Description: Gun Smithing and gun brokerage. This will be out of my home. 200 Wildcat Pkwy.

Legal Description: (Attach legal description if Metes & Bounds)

Subdivision Name: (If applicable) Kiowa Park

Filing No. _____ **Lot No.** _____ **Block No.** _____ **Section** _____ **Township** _____ **Range** _____

PROPERTY OWNER (Attach separate sheets if multiple)	AUTHORIZED REPRESENTATIVE
Name/Company: Patrick W. Crumbaugh	Company/Firm: N/A
Contact Person: Same	Contact Person:
Address: 200 Wildcat Pkwy	Address:
City/State/Zip: Wiggins, CO 80654	City/State/Zip:
Phone: 720-436-7070	Phone:
Email: pcrumbaugh@gmail.com	Email:
MINERAL RIGHTS OWNER (Attach separate sheets if multiple)	MINERAL LEASE OWNER (Attach separate sheets if multiple)
Name/Company: N/A	Name/Company: N/A
Address:	Address:
City/State/Zip:	City/State/Zip:
LAND-USE & SUMMARY INFORMATION	
Present Zoning: N/A	Gross Site Density (du/ac): N/A
Proposed Zoning:	# Lots/Units Proposed:
Gross Acreage:	

SERVICE PROVIDERS	
Electric: <u>Morgan REA</u>	Gas: <u>Xcel</u>
Special District: <u>N/A</u>	Fire District: <u>Wiggins</u>
Water: (If other than Town)	Sewer: (If other than Town)

DEVELOPMENT REVIEW FEES


ANNEXATION		VARIANCE		VACATION	
<input type="checkbox"/> Annexation	\$3,500.00	<input type="checkbox"/> Residential	\$250.00	<input type="checkbox"/> Vacation of	\$ 1,000.00
<input type="checkbox"/> Disconnection	\$500.00	<input type="checkbox"/> Commercial	\$350.00		

REZONING / SPECIAL REVIEW		SITE SPECIFIC (COMMERCIAL)	
<input type="checkbox"/> Rezoning	\$3,500.00	<input type="checkbox"/> Commercial Infill Final Dev Plan	\$3,500.00
<input checked="" type="checkbox"/> Special Use Review	\$250.00		
<input type="checkbox"/> Conditional Use Review	\$250.00		

BOUNDARY LINE / LOT MERGERS	
<input type="checkbox"/> Boundary Line Adj / Lot Merger	\$350.00

MINOR SUBDIVISION		MAJOR SUBDIVISION	
<input type="checkbox"/> Minor Subdivision	\$ 2,500.00	<input type="checkbox"/> Preliminary Development Plan	\$3,500.00
<input type="checkbox"/> Sketch Plan Review	\$ 1,000.00	<input type="checkbox"/> Final Development Plan (Res)	\$3,000.00
<input type="checkbox"/> Final Plat Review (Residential)	\$ 3,000.00	<input type="checkbox"/> Final Development Plan (Comm)	\$4,000.00
<input type="checkbox"/> Final Plat Review (Commercial)	\$ 4,000.00		

The undersigned is fully aware of the request/proposal being made and the actions being initiated on the referenced property. The undersigned understands that the application must be found to be complete by the Town of Wiggins before the request can officially be accepted and the development review process initiated. The undersigned is aware that the applicant is fully responsible for all reasonable costs associated with the review of the application/request being made to the Town of Wiggins. By this acknowledgement, the undersigned hereby certify that the above information is true and correct.

Property Owner Signature: 

Date: 3-28-2024

Property Owner Signature: _____

Date: _____

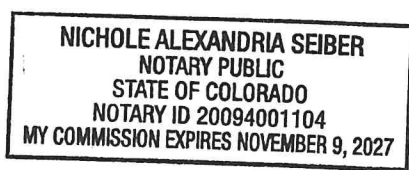
STATE OF COLORADO)
) ss.
 County of Morgan)

The foregoing instrument was acknowledged before me this 28th day of March, 2024.

By Nichole A. Seiber

My commission expires: November 9, 2027

Witness my hand and official seal.



Notary Public

PLEASE PROVIDE ANSWERS TO ALL QUESTIONS. Questions may also be answered on a separate sheet of paper.

- A) Give a description of the Special Review Use being requested. Please include type of work and working hours that will be conducted. *Gunsmithing and gun brokerage. Working hours of 5pm-9pm - M-F and 9am-1pm Saturdays.*
- B) Will the special use be conducted in an existing structure? What part of the structure will the special use be in? *Basement and garage.*
- C) Does the structure / property require changes to the outside appearance? This includes outdoor advertising signs/displays that may solicit or direct persons to this address. If yes, please provide a diagram and specs for the sign plan. This may be done on a separate sheet of paper. *No.*
- D) Will there be employees? How many employees will you have? (Please include yourself as an employee.) Please explain if your employee(s) will be working from another location, or if your employee(s) will be working from where the special use is located. *1 employee. That will be myself.*
- E) Does the special use require storage of any equipment, materials, and/or chemicals? If so, where will these items be stored at? Will additional storage/buildings be needed/added to the premises? (i.e. storage sheds, new additions, trailers, port-a-pots) *Yes. They will be stored in the garage.*
- F) Will there be commercial vehicles used for the special use? If so, how many commercial vehicles will be used, and where will these vehicles be parked and/or stored? *No.*
- G) Will clients be coming to the property? How often? Where will clients park? *Yes. They will park in the driveway. 2-3 clients a month.*

OWNER STATEMENT

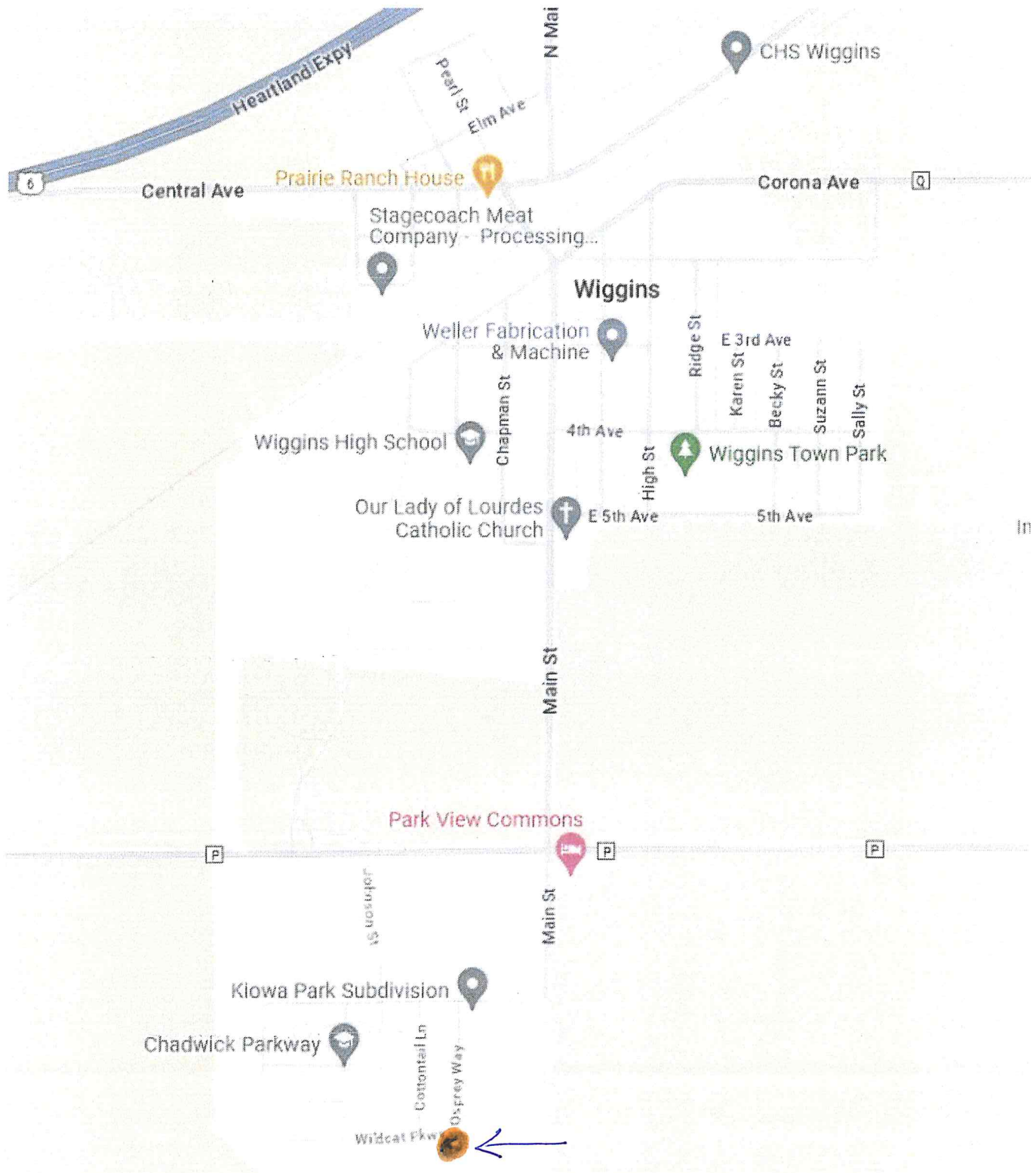
Hello, my name is Patrick Crumbaugh and I have entered a request to do gun smithing out of my home. I live on 200 Wildcat Pkwy in Wiggins, Co. I understand there is a little bit more detail that is needed about what my intention will be, doing this out of my home. I will be cleaning, repairing, and refurbishing firearms. I will have the opportunity to do background checks for private sales and possibly purchase firearms for people, as needed. I do not intend to have a large quantity of firearms but only a couple at a time that I would be working on. I do have a large metal safe in my garage that these items will be stored safely in, while I am not working on them. I do not intend to have any signs in my home or yard so nothing would change when it comes to the property.

LEGAL DESCRIPTION

200 WILDCAT PARKWAY

Subd: KIOWA PARK BOUNDARY LINE ADJUSTMENT PT OF FILINGS NO 2 & 3, WI Block: 06 Lot: 03

200 Wildcat Pkwy



**TOWN OF WIGGINS, COLORADO
RESOLUTION NO. 22-2024**

**A RESOLUTION APPROVING A SPECIAL REVIEW FOR PATRICK CRUMBOUGH FOR A HOME
OCCUPATION: GUN BROKERAGE AND GUN SMITHING AT 200 WIDLCAT PARKWAY, WIGGINS**

WHEREAS, there has been submitted to the Board of Trustees of the Town of Wiggins a request for approval of a special review use for a Home Occupation: Gun Brokerage and Gun Smithing at 200 Wildcat Parkway, Wiggins; and

WHEREAS, all materials related to the proposed special review use have been reviewed by Town Staff and the Planning and Zoning Commission and found with conditions to be in compliance with the Town of Wiggins Land Development Code, and related Town ordinances, regulations, and policies; and

WHEREAS, the Planning and Zoning Commission has reviewed the criteria for special review uses set forth in the Town's Land Development Code, and finds that with conditions; and

- a. The proposed use is in harmony and compatible with the character of the surrounding neighborhood;
- b. The proposed use is consistent with the Town's comprehensive plan;
- c. The proposed use will not have a material adverse effect on Town capital improvement programs;
- d. The proposed use will not result in an over-intensive use of the land;
- e. The proposed use will not result in undue traffic congestion or hazards;
- f. The proposed use will not cause significant air, water or noise pollution;
- g. The proposed use will not require a level of community facilities and services greater than that available; and
- h. The proposed use shall not be detrimental to the health, safety or welfare of current or future inhabitants of the Town; and

WHEREAS, the Board of Trustees has duly considered the proposed special review use and has held a properly noticed public hearing on the application; and

WHEREAS, the Board of Trustees finds that the proposed special review use should be

approved, subject to certain conditions.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF WIGGINS, COLORADO, AS FOLLOWS:

Section 1. The Board of Trustees hereby approves a special review use for a Home Occupation: Gun Brokerage and Gun Smithing at 200 Wildcat Parkway, Wiggins, subject to the following conditions:

1. This special review use is personal to Patrick Crumbough and may not be transferred without the consent of the Board of Trustees. If a transfer is granted, the Board of Trustees may impose such additional terms and conditions as may be required to meet the criteria for special review uses set forth by the Wiggins Land Development Code.
2. Patrick Crumbough shall not be allowed to engage in business of stocking firearms for the purpose of retail sales from his residence unless a new special review use application is submitted and approved by the Town Board of Trustees.
3. The approved special review use will be recorded with the Morgan County Clerk and Recorder's office by the Town.
4. The applicant will be required to apply for a Town of Wiggins Business License.

INTRODUCED, READ, AND ADOPTED THIS 12TH DAY OF JUNE, 2024.

TOWN OF WIGGINS, COLORADO

Christopher Franzen, Mayor

ATTEST:

Nichole Seiber, Town Clerk



STAFF REPORT

Planning and Zoning Commission Meeting May 21, 2024

DATE: May 18, 2024

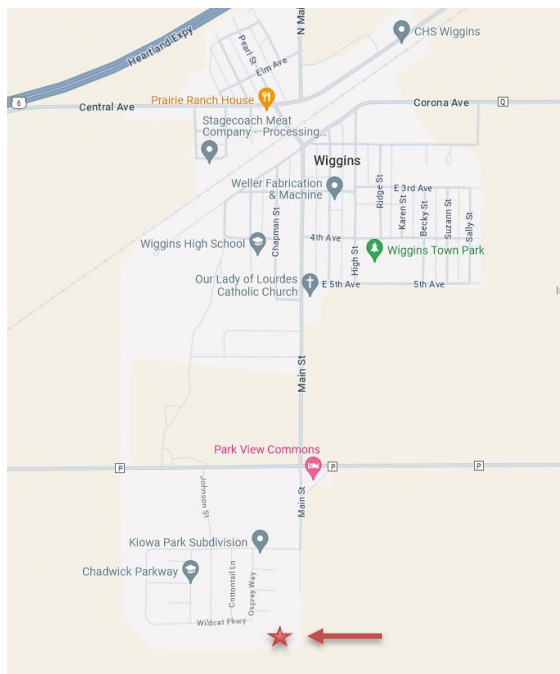
AGENDA ITEM NUMBER: 3

TOPIC: Public Hearing and Consideration of a Special Review Use for a Home Occupation: Gun Smithing and Gun Brokerage

STAFF MEMBER RESPONSIBLE: Hope Becker, Planning & Zoning Administrator

BACKGROUND:

Applicant, Patrick Crumbaugh, of 200 Wildcat Parkway is applying for a Special Review Use for a Home Occupation of gun smithing and gun brokerage. The home is located on the south end of the Kiowa Park Subdivision which is currently zone Planned Development.



Gunsmithing is the trade of firearm repairs, design, and building of firearms. Mr. Crumbaugh does intend to do gunsmithing out of his garage and basement. Equipment that may be found on the premises would be items such as a lathe, a vice, or other small pieces that similarly found in other residential garages for other hobbies.

Mr. Crumbaugh is working with Bureau of Alcohol, Tobacco, and Firearms to obtain his Type 1 Federal Firearms License (FFL). The FFL will allow the applicant to assist residents with the transport of their firearm from one location to the next for moving purposes or for purchases made through online third party firearm dealers. Mr. Crumbaugh would be considered the middle man who would assist with background checks and delivery. He may have some retail in the form of customers requesting his assistance in ordering a firearm in, but he will not be keeping a stock of firearms on the premises.

The home occupation is expected to have working hours Monday to Friday from 5pm-9pm and Saturdays from 9am-1pm. Only 2-3 customers are expected per month. Customers would use the applicant's personal driveway for parking purposes. The applicant will be the only employee. Outdoor signage and advertising will not be displayed. All chemicals, equipment, and machinery will be stored in the garage. The applicant states that the only chemicals that he may use would be gun oil to lubricate the guns, penetrating oil to remove rust, blueing liquid for coatings and various wood stains. Chemicals would not be stored in large quantities. Some work may occur in the basement of the home.

STAFF ANALYSIS:

COMPREHENSIVE PLAN:

The Comprehensive Plan is silent on matters of Home Occupations in a Planned Development Zone District.

LAND DEVELOPMENT CODE (LDC):

Zoning – Kiowa Park Planned Development Second Amendment approved by Resolution 03-2020 on September 23, 2020 by the Board of Trustees. The Planned Development allows Home Occupations as a Special Review Use. Special Review Uses are reviewed in public hearings and recommendations made to the Board of Trustees by the Planning and Zoning Commission. Final reviews and approvals are decided on in public hearings by the Board of Trustees.

Section 1.14 - Basic Definitions

Home Occupation – “Any use conducted entirely within a dwelling unit or accessory building and carried on by the occupants thereof, which use is clearly incidental and secondary to the use of the dwelling for residence purposes and does not change the character thereof or adversely affect the uses permitted in the residential district of which it is a part, which creates no additional traffic, requires no additional parking space, where no persons are employed other than residents in connection with the home occupation. Provided further that no mechanical equipment is installed or used except such that is used for domestic purposes; and that there is no outdoor storage of materials, equipment and/or supplies other than that necessary for domestic purposes. For the purposes of this code, child care homes and child care centers are not considered home occupations.”

Section 3.02 Commercial and Industrial Use Performance Standards

The applicant's residence is located in the Kiowa Park Planned Development; therefore, the Planning and Zoning Commission must take into consideration if the proposed development will cause an increase in glare and heat, vibration, lights, smoke, odors, noise, and fugitive dust.

Section 3.03 – Home Occupation Supplemental

- *Employees:* The use must be conducted entirely within dwelling and may employ a maximum of one (1) person other than those members of the immediate family residing on premises. For the purpose of this Section, a dwelling unit may include attached garages and attached accessory buildings.
- *Use:* Use must be clearly incidental AND secondary to the use of the dwelling & must not change the residential character thereof. The home occupation use shall not exceed 25% of the total floor area within the dwelling. The area used for the home occupation shall be considered to include all storage areas and work space clearly utilized or essential in the operation of the home occupation.
- *Off street parking Requirements-* No traffic shall be generated by such home occupation in greater volumes than that generated by a single-family use in a residential neighborhood, and any need for parking generated by the conduct of the home occupation shall be met off the street and not in a required yard adjacent to a street.
- *Storage Requirement-*There must be no exterior storage on the premises of material or equipment used as a part of the home occupation, unless it is enclosed and lot coverage requirements for accessory uses are met.
- *Sign Requirements-* There shall be no change in the outside appearance of the building or premises or other visible evidence of the conduct of such home occupation, including advertising signs or displays or advertising that solicits or directs persons to the address.
- *Business License-*Home Occupations are required to annually register with the Town Clerk for a Business License. The Business License allows for the Town to reasonably access the home occupation location to verify that the home occupation remains in compliance with the Land Development Code requirements.
- *Strictly Prohibited-*Under no circumstances shall any of the following be considered a home occupation: medical clinic, mortuary, nursing home, restaurant, veterinarian's clinic.

SUMMARY:

The Land Development Code provides Town staff and the Planning and Zoning Commission guidance to evaluate that all items required for a Special Review Use application have been met. The Planning and Zoning Commission will review the proposed Special Review Use application and make recommendations to the Board of Trustees. They may identify potential problems which must be resolved with a continuation of the Planning and Zoning Commission hearing, they may approve the resolution as written, or they may approve the resolution with additional amendments or conditions of approval. During the Planning & Zoning Commission's deliberation, the Land Development Code states the Members must keep the following in mind when proposing their recommendation to the Board of Trustees.

- a. The proposed use is in harmony and compatible with the character of the surrounding neighborhood;
- b. The proposed use is consistent with the Town's comprehensive plan;
- c. The proposed use will not have a material adverse effect on Town capital improvement programs;
- d. The proposed use will not result in an over-intensive use of the land;
- e. The proposed use will not result in undue traffic congestion or hazards;
- f. The proposed use will not cause significant air, water or noise pollution;
- g. The proposed use will not require a level of community facilities and services greater than that available; and
- h. The proposed use shall not be detrimental to the health, safety or welfare of current or future inhabitants of the Town.

OPTIONS AVAILABLE TO THE PLANNING & ZONING COMMISSION:

The Planning and Zoning Commission can approve the resolution as presented, modify the resolution, or elect not to adopt the resolution.

MOTION TO RECOMMEND APPROVAL:

I make the motion to adopt P&Z Resolution No. 03-2024 - A Resolution Recommending Approval of a Special Review Use for Patrick Crumbough for a Home Occupation: Gun Brokerage and Gun Smithing at 200 Wildcat Parkway, Wiggins.

1. This special review use is personal to Patrick Crumbough and may not be transferred without the consent of the Board of Trustees. If a transfer is granted, the Town Board may impose such additional terms and conditions as may be required to meet the criteria for special review uses set forth by the Wiggins Land Development Code.
2. Patrick Crumbough shall not be allowed to engage in the business of stocking firearms for the purpose of retail sales from his residence unless a new special review use application is submitted and approved by the Town Board.
3. The approved special review use will be recorded with the Morgan County Clerk and Recorder's office by the Town.
4. The applicant will be required to apply for a Town of Wiggins Business License.

ACTION REQUESTED:

Motion, Second, Roll-Call Vote.

(Resolutions require affirmative votes from the majority of Commission Members present.)

**TOWN OF WIGGINS
P&Z RESOLUTION NO. 03-2024**

A RESOLUTION RECOMMENDING APPROVAL OF A SPECIAL REVIEW USE FOR PATRICK CRUMBOUGH FOR A HOME OCCUPATION: GUN BROKERAGE AND GUN SMITHING AT 200 WILDCAT PARKWAY, WIGGINS

WHEREAS, there has been submitted to the Planning and Zoning Commission of the Town of Wiggins an application for a Special Review Use for a Home Occupation for a Gun Brokerage and Gunsmithing located at 200 Wildcat Parkway, Wiggins; and

WHEREAS, the Planning Commission has reviewed the criteria for special review uses set forth in the Kiowa Park Planned Development Second Amendment and the Town's Land Development Code, and finds that with conditions:

- a. The proposed use is in harmony and compatible with the character of the surrounding neighborhood;
- b. The proposed use is consistent with the Town's comprehensive plan;
- c. The proposed will not have a material adverse effect on Town capital improvement programs;
- d. The proposed use will not result in an over-intensive use of the land;
- e. The proposed use will not result in undue traffic congestion or hazards;
- f. The proposed use will not cause significant air, water or noise pollution;
- g. The proposed use will not require a level of community facilities and services greater than that available; and
- h. The proposed use shall not be detrimental to the health, safety or welfare of current or future inhabitants of the Town; and

WHEREAS, all materials related to this application have been reviewed by Town Staff and found to be in compliance with the Kiowa Park Planned Development Second Amendment and the Town's Land Development Code, and related Town ordinances, regulations, and policies; and

WHEREAS, after a duly-noticed public hearing, at which evidence and testimony were entered into the record, the Wiggins Planning and Zoning Commission finds that the proposed special review use should be approved subject to certain conditions.

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING AND ZONING COMMISSION OF

THE TOWN OF WIGGINS, COLORADO, AS FOLLOWS:

Section 1. The Planning and Zoning Commission hereby recommends approval for a special review use for Patrick Crumbough for a home occupation: Gun Brokerage and Gun Smithing located at 200 Wildcat Parkway, Wiggins, subject to the following conditions:

1. This special review use is personal to Patrick Crumbough and may not be transferred without the consent of the Board of Trustees. If a transfer is granted, the Board of Trustees may impose such additional terms and conditions as may be required to meet the criteria for special review uses set forth by the Wiggins Land Development Code.
2. Patrick Crumbough shall not be allowed to engage in business of stocking firearms for the purpose for retail sales from his residence unless a new special review use application is submitted and approved by the Town Board.
3. The approved special review use will be recorded with the Morgan County Clerk and Recorder's office by the Town.
4. The applicant will be required to apply for a Town of Wiggins Business License.

INTRODUCED, RECOMMENDED, AND RESOLVED THIS 21ST DAY OF MAY, 2024.

TOWN OF WIGGINS, COLORADO

Jeffrey Palmer, Chairman

ATTEST:

Nichole Seiber, Town Clerk



STAFF SUMMARY

Board of Trustees Special Meeting

June 12, 2024

DATE: June 10, 2024

AGENDA ITEM NUMBER: 3

TOPIC: Approving a Water Lease Agreement Between the Town of Castle Rock and the Town of Wiggins for the Purpose of Leasing Augmentation Water

STAFF MEMBER RESPONSIBLE: Tom Acre, Town Manager

BACKGROUND:

The Town of Wiggins has been leasing excess recharge credits from the Town of Castle Rock for augmentation of our pumping depletions since we first entered into a lease agreement on January 5, 2016. The initial lease term was for three years and allowed for the use of 180 acre-feet in 2016, increasing to 300 acre-feet in the second and third years.

On March 8, 2017, the Town of Wiggins and the Town of Castle Rock amended the lease to extend the term of the lease to June 30, 2022 and increased the amount recharge credits to 600 acre-feet per year. The lease was further amended in June 2022 extending the lease for two years (June 30, 2024) to lease 325.4 acre-feet the first year and 600 acre-feet in the second year.

SUMMARY:

The lease agreement being considered allows for the Town of Wiggins to lease 584 acre-feet for an additional year. The cost of leased water is \$135 per acre-foot and will provide recharge credits for our well pumping depletions in the South Platte River Aquifer alluvium as a part of our augmentation plan in addition the recharge credits accounted for through the Kammerer Recharge ponds.

FISCAL IMPACT:

The impact to the Water Enterprise budget is \$78,840.

APPLICABILITY TO TOWN OBJECTIVES AND GOALS TO PROVIDE SERVICES:

The Town of Wiggins strives to provide adequate and quality water for its citizens. Having adequate recharge credits to meet its pumping demands is part of providing this water.

OPTIONS AVAILABLE TO THE BOARD OF TRUSTEES:

The Board of Trustees could adopt this Ordinance as presented, request a modification, or not adopt the Ordinance.

MOTION FOR APPROVAL:

I make a motion to adopt Ordinance 05-2024 – An Ordinance Approving a Water Lease Agreement Between the Town of Castle Rock and the Town of Wiggins for the Purpose of Leasing Augmentation Water

ACTION REQUESTED:

MOTION, SECOND, ROLL-CALL VOTE

(Emergency Ordinances require affirmative votes from a minimum of six (6) Trustees.)

**TOWN OF WIGGINS, COLORADO
ORDINANCE NO. 05-2024**

**AN EMERGENCY ORDINANCE APPROVING A WATER LEASE AGREEMENT BETWEEN THE TOWN OF
CASTLE ROCK AND THE TOWN OF WIGGINS FOR THE PURPOSE OF LEASING AUGMENTATION
WATER**

WHEREAS, the Town, acting by and through its Water Enterprise, is authorized by applicable law, including but not limited to C.R.S. § 31-15-801 et seq., to enter into long-term lease agreements for governmental or proprietary purposes; and

WHEREAS, the Town previously entered into a Water Lease Agreement with the Town of Castle Rock dated January 5, 2016; and

WHEREAS, the Town entered into a First Amendment to the Water Lease Agreement dated March 8, 2017, which extended the term of the lease and increased the amount of leased water as it becomes available; and

WHEREAS, the Town entered into a Water Lease Agreement on June 17, 2022, which extended the term of the lease for an additional two years to June 30, 2024; and

WHEREAS, the Board of Trustees deems it necessary and desirable for the efficient and proper functioning of the Town and for the health and safety of the Town's inhabitants to continue to lease from the Town of Castle Rock certain recharge credits for augmentation of the Town's tributary well pumping; and

WHEREAS, the Board of Trustees has determined it is in the best interest of the Town and its inhabitants to enter into the lease contemplated herein.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF WIGGINS, COLORADO:

Section 1. The proposed Water Lease Agreement Between the Town of Castle Rock and the Town of Wiggins, acting by and through the Town of Wiggins Water Enterprise, and the Town of Castle Rock, acting by and through the Town of Castle Rock Water Enterprise (the "Lease") is hereby approved in essentially the same form as the copy of such Lease accompanying this Ordinance. This Ordinance and the parties' obligations under the Lease are subject to the provisions and contingencies set forth in the Lease.

Section 2. The Mayor and Town Clerk are authorized to execute the Lease in substantially the same form as the copy attached hereto; further, the Mayor and Town Manager are hereby granted the authority to negotiate and approve such revisions to the Lease as the Mayor, Town Manager and

legal counsel for the Town determine are necessary or desirable for the protection of the Town, so long as the material terms and conditions of the Lease are not altered.

Section 3. The Mayor, Town Manager, Town Clerk and Town Staff are further authorized to do all things necessary on behalf of the Town to perform the obligations of the Town under the Lease.

Section 4. The Board of Trustees herewith finds, determines and declares that this Ordinance is necessary to the immediate preservation of the public health, safety, and welfare to ensure the availability and sustainability of the Town’s water sources. Therefore, the Board of Trustees herewith further finds, determines and declares that it is necessary for this Ordinance to take effect immediately, provided the same has been adopted and signed by the Mayor and approved by three-fourths of the entire Board of Trustees.

INTRODUCED, READ, ADOPTED, APPROVED, AND ORDERED PUBLISHED BY TITLE ONLY, BY THE BOARD OF TRUSTEES OF THE TOWN OF WIGGINS, COLORADO THIS 12th DAY OF JUNE, 2024.

TOWN OF WIGGINS, COLORADO

Christopher Franzen, Mayor

ATTEST:

Nichole Seiber, Town Clerk

I, Nichole Seiber, Town Clerk of the Town of Wiggins, Colorado, hereby certify and attest that the foregoing Ordinance No. 05-2024 was introduced, read, adopted and ordered published by title only, at a regular meeting of the Board of Trustees of the Town of Wiggins, Colorado on the 12th day of June, 2024. This Ordinance was published in The Fort Morgan Times on June ____, 2024.

Dated _____

**WATER LEASE AGREEMENT
BETWEEN THE TOWN OF CASTLE ROCK AND THE TOWN OF WIGGINS**

THIS WATER LEASE AGREEMENT (“Agreement”) is entered into this ____ day of _____, 2024, by and between the Town of Castle Rock, a home rule municipal corporation by and through the Town of Castle Rock Water Enterprise (“Castle Rock”), as lessor, and the Town of Wiggins, by and through the Wiggins Water Enterprise (“Wiggins”), as lessee. Castle Rock and Wiggins are collectively referred to as “the Parties.”

RECITALS

WHEREAS, Castle Rock owns 60.4 percent of the first 1,275 acre-feet (a.f.), up to 770 a.f. annually, of recharge credits decreed in Case No. 89CW27, District Court, Water Division No. 1, (“Rothe Recharge Credits”); and

WHEREAS, pursuant to Case No. 89CW27, Castle Rock and other owners operate the Sublette Recharge Project (“Project”), which diverts water from the South Platte River at the Riverside Canal into recharge ponds that accrete water to the South Platte River to generate recharge credits; and

WHEREAS, recharge credits from the Project are used by Castle Rock and the other owners to augment depletions from alluvial wells pursuant to Case No. 89CW27; and

WHEREAS, Case No. 89CW27 authorizes the lease of excess recharge credits to third parties for use in judicially approved plans for augmentation; and

WHEREAS, Wiggins desires to lease excess Rothe Recharge Credits for augmentation of Wiggins’ tributary well pumping pursuant to Case No. 11CW131 and Castle Rock desires to lease such excess Rothe Recharge Credits to Wiggins.

AGREEMENT

NOW THEREFORE, in consideration of the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Castle Rock and Wiggins agree as follows:

1. **Lease of Water.** Castle Rock hereby leases to Wiggins five hundred eighty-four (584) acre-feet (a.f.) of the excess Rothe Recharge Credits (“Leased Water”).
2. **Lease Price.** Wiggins shall pay to Castle Rock one hundred thirty-five dollars (\$135.00) per a.f., totaling seventy-eight thousand eight hundred forty dollars (\$78,840) for the Leased Water. Wiggins shall submit payment in full for the Leased Water to Castle Rock on or before July 30, 2024.
3. **Term.** This Agreement shall commence on July 1, 2024 and terminate on June 30, 2025, provided that the parties may renew this Agreement upon written agreement by both parties.

4. **No Warranties or Guarantees.** Subject to sub-paragraphs 4.a. through 4.c. below, Castle Rock shall make available to Wiggins the Leased Water.

a. The Town shall deliver the Leased Spot Water to Wiggins on the following monthly schedule: 41.7 AF in July 2024, 62 AF in August 2024, 41.3 AF in September 2024, 63.3 AF in October 2024, 46.7 AF in November 2024, 43.8 AF in December 2024, 42.5 AF in January 2025, 37.7 in February 2025, 43.6 in March 2025, 52.6 AF in April 2025, 55.3 AF in May 2025, and 53.5 AF in June 2025. Actual day-to-day deliveries of Leased Spot Water to Wiggins will vary and are in the Town's sole discretion, provided that the Town guarantees a minimum of 0.01 AF will be available daily.

b. Castle Rock will make the Leased Water available to Wiggins on an "as is" basis. The decreed uses of the Leased Water include augmentation as set forth in Case No. 89CW27. It shall be the responsibility of Wiggins to obtain any additional approvals necessary to use the Leased Water for Wiggins' intended purposes, including but not limited to the approvals by the Colorado Division of Water Resources and the District Court, Water Division No. 1. Castle Rock shall cooperate with Wiggins in obtaining any required additional approvals from any entity. Castle Rock makes no warranties or guarantees that such approvals can be obtained.

c. Because of the possibility of drought, mechanical failures, or other extraordinary circumstances, Castle Rock cannot guarantee delivery of water. If Castle Rock cannot deliver to Wiggins the full 584 a.f., Castle Rock shall refund to Wiggins the lease price for any water requested but not delivered at a rate of \$135.00 per a.f. Such a refund shall be Wiggins' sole and exclusive remedy against Castle Rock for any breach or non-performance of any obligation under this Agreement.

5. **Remedy for Non-Payment.** If Wiggins fails to make any payment when due, Castle Rock may, after sixty (60) days written notice to Wiggins, declare this Agreement terminated and notify the Water Commissioner that the Leased Water is no longer available for augmentation.

6. **Accounting and Measurement.** Wiggins shall provide Castle Rock with accounting showing the monthly volume of the Leased Water actually used to augment well pumping before the tenth (10th) day of each month following such well pumping. Wiggins shall install and maintain flow measurement devices on any wells augmented using the Leased Water. Castle Rock may verify at any time the accuracy of the flow measurement devices used by Wiggins.

7. **No Carryover and No Credit Toward Payments.** Leased Water not used by Wiggins for augmentation in any year shall not carry over for the benefit of Wiggins into the next year. In addition, Wiggins shall not be entitled to a credit or a refund for payments made for Leased Water Wiggins did not actually use on an annual basis.

8. **Termination.** This Agreement may be terminated by either party, for any reason, with one-hundred and eighty (180) days advance written notice. Because pumping Wiggins's wells creates ongoing augmentation obligations that continue after pumping stops, if Castle Rock terminates under this provision, then notwithstanding termination, the lease shall continue only to the extent necessary for Wiggins to continue to augment ongoing depletions resulting from pumping prior to termination, but in no event shall Castle Rock have an obligation to provide Leased Water after the Termination Date.

9. **Notice.** All notices required to be given by either Party to the other shall be made in writing and: hand delivered; sent by first class United States mail, postage prepaid, addressed as follows; or via electronic mail as follows:

If to Castle Rock: Town of Castle Rock
Attn: Town Attorney
100 N. Wilcox Street
Castle Rock, CO 80104
Phone: (303) 660-1028
Legal@crgov.com

With a copy to: Town of Castle Rock
Attn: Mark Marlowe, Utilities Director
175 Kellogg Court
Castle Rock, CO 80109
Phone: (303) 733-6001
mmarlowe@crgov.com

If to Wiggins: Town of Wiggins
Attn: Tom Acre, Town Manager
304 Central Avenue
Wiggins, Colorado 80654

With a copy to: Hayes Poznanovic Korver LLC
Attn: Matthew S. Poznanovic, Water Counsel
700 17th Street, Suite 1800
Denver, CO 80202

10. **Entire Agreement.** This Agreement represents the entire agreement between the Parties on the matters set forth herein and supersedes all prior negotiations, representations or agreements respecting said matters whether written or verbal.

11. **Binding Agreement.** The execution of the agreement by Castle Rock, as lessor, and Wiggins, as lessee, constitutes the execution of a binding lease agreement by those Parties on the terms and conditions contained herein.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the day and year first above written.

(Remainder of page intentionally left blank; signature page to follow)

