

The Board of County Commissioners met in special session on July 31, 2007. Those present for the session were Don Batchelder, Chair; Heidi Albritton, Vice-Chair; K. Keith Meinert, Member; Mary Deganhart, County Attorney; Connie I. Hunt, County Administrator; and Linda Munson-Haley, Deputy Clerk of the Board.

- **Note – This meeting was recorded for reference purposes.**

A. 4:00 Continuation of a Public Hearing: (continued from July 23, 2007)

1. **Applicant: Heritage Inn and Suites of Kansas City, Inc. and HT Heritage Inn of Erie, LLC**
Location: Fairway Pines Subdivision 1A, Lot CV 103
Request: Consideration of Special Use Permit for the construction of a golf shop facility and a member's club described as Phase I and for construction of spa and restaurant facilities described as Phase II.

Doug Canright, Planner/Project Manager, and Mark Castrodale, Associate Planner, were present representing the Land Use staff. Scott Chomiak, Paul Stashick, Dave Burnham, and John Neely, Attorney, were present on behalf of the Applicants.

Commissioner Batchelder reconvened the public hearing and explained that the hearing had been continued when discussions broke down over the interpretation of the definition of "clubhouse."

Doug Canright, Planner/Project Manager, explained that he had conversations with the Applicants but that no formal change had been made to the application as submitted. He gave the Applicant direction on the definition of "clubhouse," referring to the September 5, 2002 clubhouse agreement between Jim Willey and the property owners signed by Richard Zimmerman and Pam Fugazzi "Fairway Pines Clubhouse Extension Resolution and Agreement" (*County Exhibit A-1*). The Board of County Commissioners took action on September 3, 2002 amending a previous resolution (Resolution 98-070) to include provisions specific to no consideration of approvals if the developers were in default of the noted extension agreement with the homeowners. He indicated to the Applicants that since the key was the previous agreement with the homeowners, they should take advantage of the continuation to meet with the homeowners. The Applicants indicated to him that they had done so.

Scott Chomiak with Strategic Real Estate Group (SRG) explained that because of the confusion at the last meeting as to the definition of "clubhouse," the Applicants met with County Staff to get a technical definition, and then met with representatives of the Loughill Village Home and Property Owners Association (POA) going back through their thoughts and impressions as to what was obligated in the previous document and what the Applicants intended to provide. At a meeting with the POA just prior to the hearing, an agreement was reached that would satisfy the obligation for building a clubhouse. Phase I would be a building that would house a clubhouse, golf shop, and a members' club. The Applicants heard from the members that they would like a food component and they agreed to provide a commercial kitchen to allow for serving of hot foods and to also allow flexibility in the floor plan for meeting spaces for members to accommodate several different functions.

When Commissioner Batchelder asked for the square footage of the meeting space Mr. Chomiak indicated that it had not yet been determined. Commissioner Batchelder asked if he could provide a minimum. Mr. Chomiak said that he could not be sure but that there was 600-700 sq. ft. now for the members' facility use and that it would be close to that number. Commissioner Batchelder asked about the kitchen size. Mr. Chomiak explained that the grill would be a commercial stove with an oven, and there would be a refrigerator component large enough to serve a big golf course and members' meetings as well. Doug Canright pointed out that the homeowners would still have to approve the drawings before issuing a permit. Dick Caldwell added that the Architectural Review Committee (ARC) would be the technical review committee for the clubhouse.

Commissioner Batchelder asked the Applicants if, fully understanding that construction of the other amenities shown in the core area would be dependent on creating lots and marketing lots and being successful in that endeavor, they would be comfortable with a condition on Phase II requiring a building permit and proceeding with Phase II as expressed in the special use permit prior to final platting the remaining 50% of the area to be final platted. Mr. Chomiak replied in the negative explaining that it would take much of the platting and selling of the lots to fulfill the overall concept. He noted that he would not be comfortable with committing to that but added that it was the Applicants' intent to continue with the resort complex.

A discussion followed on bonding. Ms. Deganhart explained that the PUD agreement allowed for bonding as part of the final plat process if the County felt that it was necessary.

Paul Stashick explained that the PUD agreement had no governance on the current developer because it was never filed. However, the landscaping, the parking lot, and the existing building represented substantially more investment and, along with the investment made today, should be enough to prove that the Applicants were committed to and invested in the property. Lastly, he pointed out that the facilities were expanded not only for the Fairway Pines homeowners association but for all club members who are off-site members and who will be involved in financial dues. Their input needs to be considered, too. He noted that the club membership dues needed to be amended and added that the investment in the first parking lot was more than called for in the agreement.

Commissioner Batchelder opened the hearing to public comment.

Rene Tegtmeyer, Fairway Pines, discussed the timing of the construction of the clubhouse.

Dick Caldwell, President of the POA for 2007 and a property owner, advised the Commissioners that at the meeting with the Applicants hours earlier the group of property owners present chose to express confidence in the current

developer enough to accept the Phase I design as proposed with the flexibility and reconfigurations accommodated. Therefore, that majority would like to express support for Board of County Commissioners' approval of the special use permit and urged the Commissioners to grant a foundation-only permit to expedite the construction process. To further questions by Commissioner Batchelder, Mr. Caldwell elucidated that the majority of the property owners had accepted Phase I as defined in the application as being the fulfillment of the clubhouse as defined in the 2002 agreement. To a question from Commissioner Meinert, Mr. Caldwell further clarified that the acceptance of Phase I was based on the additional accommodations that included the kitchen amenities, members' area, etc. The main hang-up was that the members felt the need for a community center for activities, and the flexibility that Scott Chomiak mentioned would provide those additional amenities. Mr. Caldwell clarified further that the two member-only areas would be rather small, totaling about 650 sq ft., but that the developer had offered to make the 800-plus sq. ft. pro shop available to the members in the off-season. Another 1,000 square feet could be added based on the existing or slightly modified footprint of the building and spaces as defined in the drawings by revamping the definition of use of some spaces in the short term to be converted at a later date.

Commissioner Meinert stated that if the County was to take action today and approve the special use permit, he would have to have the conditions detailing the specifics as far as the space being allocated. Ms. Deganhart agreed, adding that because this would be the trigger mentioned in the PUD agreement, it would be imperative to define the space. She added that she would be uncomfortable delegating authority to the homeowners association. The Board of County Commissioners needed to make up its mind if this was the clubhouse facility.

Commissioner Batchelder restated that the definition of the clubhouse in the current proposal for Phase I for a special use permit would be a building consistent with the building as shown in the submittals that would have amenities within it as shown plus it would have a kitchen to consist of a stove, oven, refrigerator, and a commercial grade grill. It would allow for a meeting space for the club members of Fairway Pines or Divide Ranch, and would have a minimum of 700 sq. ft. for meeting space. A further condition expressed in the Staff Report would be that the building permit apply with all of the conditions of the Land Use Code. Doug Canright interjected that another condition of approval should be State Health Department approval for the kitchen area. Mr. Caldwell agreed with the assessment. A discussion followed as to identifying the square footage specifics. Mary Deganhart asked for plans to attach to the resolution describing exactly what was discussed today. Commissioner Albritton felt the need for more documentation of what would be expected. Mr. Caldwell indicated that he understood what Commissioner Albritton was asking for but that the group of property owners who met today did not want to stall the process any longer.

John Neely, attorney for the Applicants, advised that under the current PUD agreement the Applicants needed to get both permits, the special use permit and the building permit, to proceed. If the special use permit were to be approved today they would only be halfway there.

Mary Deganhart explained that after today, if approved, the Board of County Commissioners would no longer be involved. Commissioners Albritton and Meinert wanted something on paper.

Commissioner Batchelder suggested taking a 10-minute recess to allow the Applicants to label and reconfigure the plans. Otherwise, the Board would continue the hearing to Monday.

4:57 Commissioner Batchelder recessed and reconvened at 5:15:

Commissioner Batchelder reconvened Scott Chomiak discussed with the Board the Applicants' concept of a grill and meeting space adding an additional 800 sq. ft., bringing the total square footage from 4,800 sq. ft. to 5,600 sq. ft.

Commissioner Batchelder took more public comment.

Dan Kirst related that the Board of County Commissioners granted approval in 1998 for zoning of density. Since then, the clubhouse was the biggest issue. As proposed now, Phase I would release the developer from any responsibility for building anything else for the current owners. He noted that there are 200 existing platted lots. By phasing, the developer would be creating different classes of citizens who get different things in each phase. He suggested going to a vote of the 200 property owners adding that there had been no communication from the POA at all and that this would only be fair to the people not advised or informed of this hearing.

Bob Bond, an absentee landlord, related that he would not have known about the proceedings if he had not been traveling through town and stopped to play golf. He agreed that it should go to a vote of all of the property owners.

Larry Ferguson agreed with Dick Caldwell's comments and the support of the majority of the group.

Rene Tegtmeyer agreed with the comments made about taking it to a vote. The homeowners association cannot speak for all of the homeowners: those who do not agree, are not present or express different views. All of the homeowners have a right to speak up and present their views. He expressed his views that while he has a reasonable degree of faith in the new developer, having the Commissioners specify all of the conditions to ensure that by a certain time the clubhouse would be completed as a condition of final platting should be the subject of a resolution.

Susan Christensen noted that the time for objections, criticisms and comments had passed.

Dick Caldwell, responded to Mr. Tegtmeyer explaining that the board of the POA had never attempted to subvert any attempt by a homeowner to offer an opinion. The board attempted to reflect a majority. He added that there was a faction that chose not to work through the POA.

Bob Luttrell explained that he was asked to come to a meeting that was not posted and with no advance notice; there were phone calls only. The committee did less than what they should have done regarding communications.

Bud Calveck advised that he attended the meeting but that it was strictly a committee meeting and the homeowners invited themselves for information.

Commissioner Batchelder reminded the public that the Board was considering approval of a special use permit and asked to keep the comments pertinent to the issue on the table.

Shelley Stevens, homeowner in Fairway Pines, was concerned about giving up control and input once the clubhouse is completed. He wondered if the developer would allow comments for Phases II and III. He was uncomfortable and asked about a tiered membership.

C.J. Julin with SRG advised the group that the other two buildings would be brought up as market conditions allowed and members would have input. He discussed an increase in dues to support the new businesses and advised that currently the developer had two drafts to the POA Board of Directors and their CC&R committee to look at ways to amend the fee structure.

Tom Wisevich, homeowner in the Divide Ranch and Club, related that this developer had done more to prove goodwill than the previous developer and he urged the Commissioners to approve the application, adding that it is a matter of trust and he, personally, trusts them at this point.

Robert Savath, property owner in Fairway Pines, said that he would like to see the project move forward but cautioned the Commissioners in trying to define the obligations to produce a clubhouse. This new facility does not provide all of the amenities of the old one. The Board was instrumental in making the clubhouse a requirement of moving forward with the PUD and a new clubhouse was always part of the plan. From conception, the old facility was always to be abandoned when the new facility was built.

Mary Deganhart spoke to the comment regarding insufficient notice. For the record, this is a hearing in front of the Board of County Commissioners not a property owners' association meeting. The Commissioners welcomed public comment. The application was set for public hearing last week and proper notices were sent out regarding the action today.

John Neely explained that the Commissioners had instructed the Applicants at the hearing on July 23, 2007 to come to an agreement with the POA as to the definition of the clubhouse. Under the 2002 agreement, the Phase II amenities were not defined as part of the clubhouse. He noted that the Applicants were making a good faith effort to meet that.

Commissioner Batchelder clarified that the Commissioners had not specifically instructed the Applicant to go back to the POA but had given a strong suggestion.

Bob Luttrell agreed with Mr. Neely and urged the Commissioners to approve the application.

Larry Ferguson, board member of the POA, advised the Commissioners that two signers of the 2002 agreement were fully supportive of the modified proposal.

Betty Thomas, Fairway Pines, said that she would like to see the revised plan for the "clubhouse" to include the square footage.

Paul Stashick informed the Commissioners that when the Applicants met at the site previously they were trying to convert the locker rooms to meeting space. What they agreed to was adding a bar and grill, leaving the locker rooms intact, and adding 800 sq. ft. onto the building.

Greg Mulligan, owner of a lot in Fairway Pines and resident of Montrose, said that this was a move in the right direction adding that his property values have increased tremendously.

John Weaver of Fisher Creek Estates and a club member of Fairway Pines said that he was in favor of approval.

Barbara Piper explained that as a club member paying dues to this development for quite awhile she felt that what SRG was doing was phenomenal. The communication had been good. She encouraged the Commissioners to take action today.

Mr. Tegtmeyer noted that everyone wanted a clubhouse but that some would like to have it put on paper and made a condition as to precisely what would be in this stage, and in later stages, etc. It was not a matter of trust.

Caroline Peck related that she was 74 years old and did not have enough time to wait for it to be perfect.

Bill McFarland agreed.

Commissioner Albritton said that she would like to see the plans, adding that the Commissioners require it of other special use permits. She felt the need to look out for the homeowners and the county.

Commissioner Batchelder explained that the Commissioners were going beyond what is technically required by the Land Use Code.

Commissioner Albritton countered that she would like for it to be unambiguous.

Commissioner Meinert was inclined to agree with Commissioner Albritton but noted that the Applicants had defined with the drawing and modifications those conditions that would satisfy the Board's requirements. After the Board approved the special use permit there would be a requirement for a site plan, a building permit, and approval by the ARC, and that should be where the real debate should take place, not with the Commissioners. He added that he was comfortable approving the Phase I special use permit on the basis of what he stated.

Commissioner Batchelder suggested a compromise. The Commissioners should take action but since the action would be in the form of a resolution to be ratified on Monday they could ask the Applicants to submit an amended Exhibit C that would reflect the changes to include with the resolution.

Scott Chomiak argued that the architectural plans would take more than a week to put together. Commissioner Albritton replied that the Board would require conceptual drawings only and Commissioner Batchelder added a simple floor plan would be sufficient, not architectural renderings. Commissioner Batchelder explained that from the Board of County Commissioners' level, the approval of Phase I would constitute a trigger to move ahead and that Commissioner Albritton's point that the Commissioners needed to know what they were approving was well taken.

At this point, Scott Chomiak and Paul Stashick produced a hand-edited drawing of Exhibit C (*Applicant Exhibit A-1*).

There was further discussion about deadlines.

Commissioner Batchelder summarized that the conditions for approval of Phase I would be that it would be in substantial conformity to the Exhibit C (*Applicant Exhibit A-1*) showing an additional 800 sq. ft. of meeting space; a bar and grill with a minimum of 360 sq. ft. that would contain a commercial grade stove, oven, grill and refrigerator subject to State Health Department approval; and flex space would be made available at the pro shop during the off-season as indicated by the Applicant. Other conditions listed in the Staff Report required that the Applicant obtain all necessary building permits prior to construction and comply with all other provisions of the Land Use Code including but not limited to visual impact, sign regulations and outdoor lighting; and payment of the required Road Maintenance Impact Fee prior to obtaining a building permit.

M/S/P—Motion was made by Commissioner Meinert and seconded by Commissioner Albritton to approve a special use permit for Phase I with the conditions that Phase I be in substantial conformity to the Exhibit C (*Applicant Exhibit A-1*) showing an additional 800 sq. ft. of meeting space; a bar and grill with a minimum of 360 sq. ft. that would contain a commercial grade stove, oven, grill and refrigerator subject to State Health Department approval; and flex space would be made available at the pro shop during the off-season as indicated by the Applicant. Other conditions listed in the Staff Report required that the Applicant obtain all necessary building permits prior to construction and comply with all other provisions of the Land Use Code including but not limited to visual impact, sign regulations and outdoor lighting; and payment of the required Road Maintenance Impact Fee prior to obtaining a building permit. Discussion. The Commissioners acknowledged that the application met the requirements as stated in the amended PUD to meet the clubhouse requirements and the intent of interpreting this as a clubhouse and there is no other intent. Mr. Tegtmeier discussed the other contemplated amenities. Commissioner Batchelder noted previous testimony regarding the 2002 agreement that this plan as amended does meet all of the requirements, fully understanding contemplation of future pieces, a spa and restaurant, as expressed in Phase II. A roll call vote was taken of the Board on the motion.

Commissioner Batchelder - yes
Commissioner Meinert - yes
Commissioner Albritton – yes

With no further discussion, the motion passed unanimously.

Commissioner Batchelder suggested a motion approving Phase II as presented with the condition that it be built in substantial conformity as presented, and any changes would require amendment to the special use permit.

M/S/P—Motion was made by Commissioner Albritton and seconded by Commissioner Meinert to approve Phase II as presented with the condition that it be built in substantial conformity as presented and that any changes would require an amendment to the special use permit; that the Applicant shall obtain all necessary building permits prior to construction and comply with all other provisions of the Land Use Code including but not limited to visual impact, sign regulations and outdoor lighting; and Applicant shall pay the required Road Maintenance Impact Fee prior to obtaining a building permit. A roll call vote was taken of the Board on the motion.

Commissioner Batchelder - yes
Commissioner Meinert - yes
Commissioner Albritton – yes

With no further discussion, the motion passed unanimously.

Commissioner Batchelder closed the public hearing.

6:17 Commissioner Batchelder adjourned the special session:

OURAY COUNTY BOARD OF COUNTY COMMISSIONERS
OURAY, COLORADO

ATTEST:

Don Batchelder, Chair

Heidi M. Albritton, Vice Chair

Michelle Nauer, County Clerk and Recorder
By: Linda Munson-Haley, Clerk of the Board

K. Keith Meinert, Member