

TOWN OF CARBONDALE
511 COLORADO AVENUE
CARBONDALE, CO 81623

August 9, 2018

David J. Myler
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Via email at dmyler@mylerlawpc.com

Re: Request for Code Interpretation

Dear David:

This is a code interpretation as provided for in UDC Section 1.7.1. in response to your letter as attorney for RVR Golf, LLC (RVR Golf) dated July 19, 2018. RVR Golf is the owner of the Golf Course Parcel 6 (the driving range) at River Valley Ranch (RVR) as well as the remainder of the RVR golf course. The driving range is a part of the RVR Planned Unit Development (PUD). RVR Golf would like to remove the driving range from the PUD and rezone it to Residential/High Density(R/HD).

The letter requests an Interpretation of UDC Section 2.4.3.C.4. This code section states:

"All PUD amendment applications submitted by a property owner shall be signed by at least 50 percent of the owners of the area of real property within the area that is directly subject to the proposed amendment to the PUD, or their designees."

The question is who needs to be a party in signing a land use application for an amendment to the PUD to remove the driving range from the PUD and rezone it for high density development.

The following documents are discussed in this interpretation:

1. River Valley Ranch – *Preliminary Plat Submission* October 30, 1995
2. Agreement Relating to the Annexation of the Gray Ranch Property and Sopris Ranch Property to the Town of Carbondale (Recorded January 15, 1995 at Reception No. 473424)

3. Ordinance No. 20, Series of 1994 (Recorded January 16, 1995 at Reception No. 473426)
4. Resolution No. 1, Series of 1996 (Planning and Zoning Commission Resolution passed and signed April 4, 1996)
5. Final Plat – Phase 1 (Recorded September 27, 1996 at Reception No. 498928)

At the outset, I would note that each PUD in the Town of Carbondale is unique and that any UDC interpretation concerning a PUD amendment needs to be determined on a case-by-case basis in light of the unique set of entitlement documentation and history pertaining to the specific PUD at issue. The RVR PUD is the largest PUD in Carbondale and was the result of lengthy and complex land use review processes, including approval by the registered electorate of the Town of Carbondale after a referendum petition.

MAJOR AMENDMENT TO THE PUD

In my opinion, a rezoning application cannot proceed in this instance absent the prior or contemporaneous approval of a Major Amendment to the PUD (Section 2.4.3.C.4.a.). Table 2.4-2 identifies the thresholds for Major and Minor PUD Amendments. Specifically, the following three items apply to this matter:

1. Any amendment that is deemed by the Director to make such a significant or fundamental change to the PUD that in the Director's judgement is deemed to be a major amendment.
2. Any change that results in a decrease of planned or identified public parks and/or improved open space (i.e. loss of driving range).
3. Any change to the streets and transportation circulation patterns (i.e. due to increased traffic).

Below is a detailed discussion of each of the three items.

Significant Change to the PUD

The Project Statement on page 1 of the River Valley Ranch Preliminary Plat Submission states:

"The strengths of the property are the river, the running irrigation courses, the bluffs, the openness, and the views to Mount Sopris, Red Hill and the eastern valley. The sense of open space linkages to water, the river and on out to the surrounding landforms and mountains will be pervasive. Every view throughout the community – from a window, down a street, along a golf hole – will connect with the dramatic surrounding landscape

and reinforce the "Colorado" feeling. Each feature of the plan – the golf, the architecture, the bridges, all the streets, the neighborhood setting, the landscape, the community design elements – will reinforce the essence of the Crystal River Valley setting.

The plan for River Valley Ranch is for a series of interconnected neighborhoods within a spectacular Colorado landscape that offer a wide range of housing choices. East of the river are high density neighborhoods organized around the principal recreational and community facilities of the Project. Various housing products are combined with the layout, landscape and style of a traditional town, with easy pedestrian and bicycle access throughout. Homes are laid out along traditional streets, landscape with trees and sidewalks with views to Mt. Sopris." (East side description only included.)

The Preliminary Plat Submission also states that, as required in condition #20 of Ordinance 20-1994, the applicant is developing an eighteen (18) hole championship caliber golf course, driving range, pro-shop, and related maintenance facilities. The language goes on to say the golf course, driving range, and pro-shop will be open to the public on a pay-for-play basis.

All of the information above was included in the Preliminary Plat application. Paragraph 1.a. of Resolution 1-1996 states all representations of the Developer made in the application shall be considered conditions of approval (page 2).

Paragraph 20 of Ordinance 20-1994 states the golf course, driving range, club house, and related facilities shall be privately owned but open to the public at all times (page 5).

Paragraph 8 of Resolution 1-1996 states prior to final plat approval, there shall be an agreement between the Town and the Developer setting forth the obligation that the golf course, driving range, clubhouse, and related facilities shall be owned and operated as provided in paragraph 20 of the PUD Ordinance as a public golf course (page 11).

Finding on Significant Change to the PUD

The golf course is an integral part of the RVR community. My position is that the loss of the driving range would be a significant and fundamental change to the PUD. Another point is that it would set a precedent with other portions of the golf course potentially being eliminated in the future. This would even more radically change the character of the PUD.

UDC Section 2.4.3.C.4. states that all PUD amendment applications submitted by a property owner shall be signed by at least 50 percent of the owners of the area of real property within the area that is directly subject to the proposed amendment to the PUD. Staff's position is that all property owners within the RVR PUD will be directly subject to replacement of the driving range with high density housing due to the integrated nature

of the PUD as described in the Project Summary and memorialized in ensuing ordinances and resolutions.

Open Space

The Preliminary Plat Submission (Page 6) includes the following table related to land use:

“Land Use Summary. The Project contemplates 685 units on 595 lots located on roughly 196 acres of the total 520 acres. The following Land Use Summary Table details the Project acreage and associated uses.

Land Use Summary Table

Use	Acres	Totals
Open Space		
Parks		
Triangle Park	6.9	
Community Park	1.1	
Neighborhood Parks	<u>3.3</u>	
Total Parks	11.3	
River Front Parks	26.5	
Open Space/Uplands Conservation Area	30	
Golf Course	<u>186.7</u>	
Total Open Space		254.5
Resident Village Area		7.5
Golf and Preview Centers		3.3
Residential by Zone Districts:		
Residential Low Density/10,000	144.3	
Residential /Low Density/10,000/Duplex	8.5	
Residential/Low Density/6,000	15.5	
Residential/Medium Density	<u>28.3</u>	
Total Residential		196.6
Rights of Ways and "Pocket Parks"		<u>58.7</u>
Total Acres		520.6

The Land Use Summary Table shows that of the Project's total 520 acres approximately 254 acres are dedicated to open space and recreation use.”

The driving range is 13.252 acres. Replacement of this area with high density housing would reduce open space by 5.2%. Table 2.4-2 states that any change that results in a decrease of improved open space by 5% or more is considered a Major Amendment to a PUD. Any change that decreases improved open space by 5% or less is considered a Minor Amendment to the PUD.

According to UDC Section 2.4.3.C.4.b, Minor Amendments to an approved PUD are administrative and may be approved or denied by the Planning Director without a public hearing. However, this section goes on to state Minor Amendments can be approved so long as the amendment does not constitute, as determined by the Director, a substantial alteration of the fundamental nature and character of the PUD proposed to be amended. This section adds that Minor Amendments may not alter the terms of the applicable development agreements or be contrary to any applicable ordinance.

Finding on Open Space

The Land Use Summary Table is included in the Preliminary Plat Submittal application. Paragraph 1.a. of Resolution 1-1996 states all representations of the Developer made in the application shall be considered conditions of approval (page 2). Therefore, the provision of 245.5 acres of open space was made a condition of approval of the RVR PUD.

UDC Section 2.4.3.C.4. states that all PUD amendment applications submitted by a property owner shall be signed by at least 50 percent of the owners of the area of real property within the area that is directly subject to the proposed amendment to the PUD. Staff's position is that all property owners within the RVR PUD will be directly subject to the proposal due to the reduction of the open space within the PUD.

Street and Transportation Circulation Patterns

The rezoning of the driving range to R/HD would result in an increase of vehicle trips. This would affect the street and transportation patterns within the PUD. Table 2.4-2 classifies this as a Major Amendment to the PUD.

Finding on Street and Transportation Circulation Patterns

UDC Section 2.4.3.C.4. states that all PUD amendment applications submitted by a property owner shall be signed by at least 50 percent of the owners of the area of real property within the area that is directly subject to the proposed amendment to the PUD. Staff's position is that all property owners within the RVR PUD will be directly subject to the changed street and transportation circulation patterns which would result from the amendment to the PUD and subsequent rezoning to R/HD.

REZONING APPLICATION

If the Major Amendment to the RVR PUD is approved, a rezoning application would need to be submitted to rezone the driving range from Golf Recreation District (GRD) to Residential/High Density (R/HD).

Landscape Buffer on Driving Range

The Preliminary Plat Submission includes a Landscape Zone Plan (after page 8). This plan depicts the driving range as the "Hwy 133 Landscape Corridor."

Page 10 of this document shows a cross-section of landscape and screening on the driving range. The plan includes a 50 ft. landscape setback along Highway 133 as well as a 16 ft. maintenance area access road.

Paragraph 3.c. of Resolution 1-1996 states the Highway 133 corridor, Block F, the golf maintenance area, and the driving range portions of the development shall be planned to allow a pedestrian access four (4) feet in width to be constructed in Phase I. The final plat for Phase I shall provide a dedicated right-of-way to the Town which will provide for a four (4) foot pedestrian throughway from Block G to the intersection of River Valley Ranch Road and Highway 133 in the same fashion as other sidewalks.

Paragraph 6.e. of Resolution No. 1996 states all landscaping within the Highway 133 set-back area shall be maintained in perpetuity by the homeowners association (page 10).

The Final Plat of Phase I (Sheet F5 of 12 recorded 9-27-1996 Reception #498928) shows the 50 ft. setback area on the driving range parcel along Highway 133 as well as the 4 ft. pedestrian way within the 50 ft. setback area.

Paragraph 2 of Resolution 1-1996 excludes Block G (Thompson Corner) from the definitions of the River Valley Ranch common interest community, the covenants for River Valley Ranch, and from the master homeowners association. A separate homeowners association was created for Block G (page 3).

Findings on Landscape Buffer on Driving Range

The River Valley Ranch Master Association (RVRMA), with the exception of residents in Block G (Thompson Corner), is responsible for the maintenance of the 50 ft. landscape buffer located on the driving range. As a result, the RVRMA will be directly subject to the rezoning of the driving range to R/HD as it is responsible for the costs of maintaining an area on the driving range.

Parks

Paragraph 5.i. of Resolution 1-1996 indicates that while all parks were conveyed to the Town, RVRMA is responsible for maintenance of all parks in perpetuity. The maintenance was provided for in the covenants of the development and includes all items generally associated with park maintenance, including, planting, mowing and watering of lawns, provision of trash receptacles and trash removal, replacement of trees and shrubs, and other such items of maintenance as may be required by the Town.

Paragraph 5.j. of Resolution 1-1996 indicates the park areas within the roadway eyebrows and cul-de-sac islands, and the park areas of Block F, G, A and M shall be owned and maintained by the master homeowners association or the homeowners association for the appropriate block.

Paragraph 6.b. of Resolution 1-1996 states the homeowners association (RVRMA) shall be responsible for maintenance in perpetuity of all trees, shrubs, and other types of plantings as shown on the landscaping plan. Maintenance shall include lawn care, litter and trash removal, and watering, trimming, removal and replacement of plants and trees and such other items of maintenance as may be required by the Town.

Finding on Parks

If the driving range is removed from the PUD and rezoned to R/HD, the high density on the driving range will intensify the use of the parks within the RVR PUD resulting in higher costs to the RVRMA. As a result, the members/owners that constitute the RVRMA, with the exception of residents in Block G (Thompson Corner), will each be directly subject to the proposed rezoning in terms of each facing higher dues to pay for public park maintenance obligations, including the maintenance of Triangle Park which would be located directly across the street from the proposed new high density housing development on the driving range parcel.

Density

On page 31 of the Preliminary Plat Submission, there is a density table showing a density cap of 685 units. This is reinforced by paragraph 2.3 of the River Valley Ranch PUD Zone District which states there will be 685 dwelling units within the PUD.

Table 2.4-2 of the UDC specifically addresses density. Any increase of 5% or less would require a Minor PUD amendment. Any "addition of new principal land use not allowed in PUD," any "shift in density of more than 10%" (unless the Planning Director finds that shift of up to 20% will have no material impact), and any "change in the types of residential dwelling units and/or floor plans within an approved PUD" (unless the Planning Director finds that the change will not reduce housing options) constitutes a major amendment to a PUD.

Finding on Density

UDC Section 2.4.3.C.4. states that all PUD amendment applications submitted by a property owner shall be signed by at least 50 percent of the owners of the area of real property within the area that is directly subject to the proposed amendment to the PUD. Staff's position is that all property owners within RVR PUD will be directly subject to the increased density which would result from the amendment to the PUD and subsequent rezoning to R/HD. Any increase in the density cap for RVR would also require a discretionary amendment of the Annexation Agreement.

Water Rights

The Preliminary Plat Submission states the irrigation system will be a joint system for both golf course irrigation and residential irrigation (page 24).

Exhibit C of the Preliminary Plat Submission includes a table titled "Allocation of Water Rights to Irrigated Areas." This table divides water rights between RVR Golf and the RVRMA.

Paragraph 6c of the Annexation Agreement (page 8) states "the parties agree that the said remaining water rights shall, without charge, be reserved for use by the Landowners, their successors, and assigns to provide a raw water supply for landscaping, lawns, gardens, open space, golf course, golf course water features, and augmentation for golf course ponds associated with the development, to the extent that such use is consistent with the decrees for the said remaining water rights. No priority of use of said remaining water rights will be given to the golf course as compared to individual lot owners, or vice versa, the intent being that all of the users of said remaining water rights have equal priority thereto."

Findings for Water Rights

The Town is unsure how the proposed amendment to the PUD and rezoning will impact the current agreements between RVR Golf and RVRMA, but the water rights dedication commitments and cost-sharing obligations set forth in the RVR entitlement documents are further evidence of the intertwined relationship of the golf course and residential properties within RVR and why the driving range cannot simply be rezoned without re-examining the legal and physical water supplies available to the development.

2013 Comprehensive Plan

The Future Land Use Plan (Figure 4.1) in the 2013 Comprehensive Plan designates RVR as a "Developed Neighborhood." "Developed Neighborhoods" are generally mostly built-out subdivisions or condos, unlikely to change significantly for decades. The intent is to protect existing zoning/approvals and quality of life. The Comprehensive Plan seeks to stabilize and preserve uses and intensities in developed neighborhoods by continuing approved/existing uses.

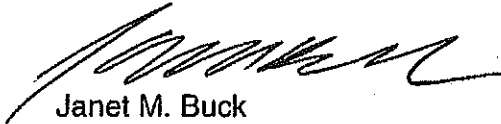
The Comprehensive Plan supports Staff's conclusions in this interpretation that RVR is an established, planned neighborhood.

CONCLUSION

For the foregoing reasons, as Planning Director, I find that all private properties within the RVR PUD will be directly subject to the potential amendment of the PUD to rezone the driving range to allow high-density residential development. This does not include Town owned properties such as parks and roads which are located in the PUD.

Please let me know if you have any questions. Thank you.

Sincerely,



Janet M. Buck
Planning Director
Town of Carbondale

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