

March 2, 2009

PUD AMENDMENT NARRATIVE

Planning Department
Summit County

Robert Swenson (Applicant), in behalf of Spring Creek Ranch Subdivision Property Owners: Robert Swenson, SCR Blue River, Dave Dardano, Spring Creek Ranchers Association/Victor Boog, Maggie Sergent, and Bruce E. Anderson Trust and Judy A. Anderson Trust request an Amendment to the PUD of Spring Creek Ranch. Previously a work session was held with the Summit County Planning commission on July 2, 2009. Prior to the worksession a site visitation was set up that was attended by Jim Curnutte, Kristin Dean and Lindsey Hirsh from Summit County Planning Department, Dan Hendershott from Summit County Environmental Health Dept, Ric Pocius from Summit County Engineering Dept. The group toured the proposed building envelopes, existing roads, and water system.

On July 2, 2009 the Planning Commission was brought up to speed on a number of issues submitted by staff and issues raised during the public comment hearing, including but not limited to:

- Need for improving the roads to meet Low Volume criteria
- Need to submit a beetle kill/fire mitigation plan
- Finish water augmentation technical corrections to Green Mountain Water contract
- Need to inquire if community well is subject to State of Colorado Water Quality oversight
- Need to have approval of fire protection depts. Having jurisdiction over subdivision
- Engineering Report/Plans for meeting requirements of a 14 home subdivision
- Legal tie in to existing boundaries for building envelopes
- Staking proposed Building Envelopes
- A proposed PUD “Development Agreement” and Development Plan

Included in the submittal are documents and reports by various consultants or governmental agencies that satisfy those issues that were raised during the work session and documents required pursuant to a Class 5 Major PUD Amendment.

Summit County Planning Department, Health Department, Planning Commission and District Court are aware that the subdivision has struggled for years to develop a vision

of the future and harmony in the present. **This struggle led to a court ruling that has decreed among other things the desirability of the rezoning the subdivision to meet the future needs of the residents, help promote harmony through ownership diversification and help provide for an enjoyable place to live.** The first step in this process was to request a planning commission work session with the objective to rezone the properties.

The applicants seek to amend the current PUD and establish 7 additional home sites. The properties will still be subject to the Covenants, water system, and retain membership in the Spring Creek Ranchers Association. The remaining Tract/Lot owner (Maggie Sergent) will join the application pursuant to the District Court, Summit County, Colorado Order entitled **Findings of Fact, Conclusions of Law, and Judgment** dated Jan 28, 2002. She has not been available for this application.

MAIN GOALS

The main goals are:

1. To confirm that Spring Creek Ranch Subdivision Phase I Filing I is vested for 14 single family residential units, allowing 7 additional density units in the subdivision. Each of the 14 units to allow for caretaker units with specific limitations pursuant to the PUD agreement and conditioned upon amending the Water Decree. Seek approval for the additional 7 parcels of the land to allow the building of one SFU and accessory buildings.
2. Second, to adjust lot lines on certain existing 5 acre home sites, expanding the amount of acreage on specific lots (See proposed Development Plan), thereby, creating a more balanced subdivision between existing home sites and future home sites.
3. Third to amend the existing PUD that will affect the proposed total of 14 single family homes to provide any buyer with one document that is deemed to be the controlling document that references design standards, uses and any terms affecting the whole subdivision.
4. Fourth, to request that Spring Creek Rd and Blue Spruce Rd be re-conveyed back to the SCRA and to remain private. A few years ago, these roads were dedicated to the County, however since the SCRA maintains the roads in their entirety, and the fact that there are no full time residents- the SCRA, for security reasons and maintenance reasons request that the roads be re-conveyed up to CR 10.
5. Fifth to clean up the original plat which has many obsolete notations including but not limited to, the removal of grazing lands, common Range Lands (which do not exist, vacation of Conifer Rd. and the incorporation of new easements.
6. Sixth to secure a Development Plan who's financial requirements are not so overbearing for the remnant homeowner's who have undergone an uncontrollable financial burden for a failed developer's past mistakes.

The key components of the Project are much the same as the original PUD. The following are brief descriptions of various components:

Water system: The subdivision has a community well on deeded property on the adjoining ranch Shadow Creek (which was part of the original PUD). The water provides domestic water for up to 14 homes. A water decree and augmentation plan has been approved in District Court, Water Division NO. 5, State of Colorado. The SCRA owns and operates the well and maintains the distribution system and water treatment through easements on Shadow Creek Ranch and in public ROW of Spring Creek Ranch. See a detailed description in Section 10 of the application. The well is metered pursuant to the water decree and monthly and annual flows are recorded by the SCRA. See Section 10. The SCRA owns and maintains an “Emergency Water Tank” on a deeded parcel of land on Shadow Creek that is gravity fed into the system. Currently the SCRA is planning to reserve another parcel on Tract B for a future tank. This new tank site is not required to meet the peak needs of a 14 home subdivision but is being reserved in case the membership desires upgraded system in the future with more add on features to the current system.

Roads: All roads were constructed for the original development. Two additional roads were constructed that now will become driveways. (Conifer Rd. and Aspen Rd.) The main spine road Spring Creek Road (dedicated) intersects CR 10 and provides a secondary access to Shadow Creek. Off of Spring Creek Rd were three additional roads ending in cul-de-sacs. Currently Blue Spruce Road is a dedicated road, utilized by 4 homeowners and potentially two tract owners. The other road (Aspen Rd), was vacated and Conifer Road is proposed to be vacated pursuant to this application. The Spring Creek Road from CR 10 through the subdivision has been upgraded by restoring the drainage ditches, crowning the center and placing 3 inches of gravel with a width of approximately 40 feet. All culverts were still operational and functioning during spring run off. Additional gravel is budgeted to be placed on the shoulders in the spring, after the spring runoff/drainage can be evaluated. The county engineer has made a second site visit to inspect the roads. In addition Blue Spruce Rd was upgraded by restoring the drainage ditches, crowning the road with 3 inches of road base and placing another additional 3 inches of gravel on top.

Sewer: The proposed method of sewage disposal for the seven additional homes is for septic and leach fields. Soils tests were performed on the Tracts of land at the time of the original plat and noted on the original plat and currently 2 existing houses use septic and leach field with no apparent problems. The other existing 5 houses use a septic tank and a central grey water sewer pond system. This sewer system is located on 2.97 acres and has three lagoons, one for evaporation and two for any overflow. The containment ponds are owned and maintained by the SCRA and are significantly below maximum capacity. There has been very little negative impact with the current lagoons either with any odor or problems. The existing homes currently use about 250 gallons a day, with no full time residents. The well has a meter and the SCRA well management company maintain a log for reporting monthly and annual use. Although only 5 homes use the sewer ponds the use of the ponds can be extrapolated from the well use. No other land exists to expand the ponds.

BACKGROUND

On March 17, 1980, Spring Creek Development Company, Ltd. A Colorado limited partnership (the Developer) and the Board of County Commissioners of Summit County, Colorado entered into the Spring Creek Condominium Ranch Planned Unit Development Agreement dated December 17, 1979 (the Development Agreement). The overall development plan was limited to 303 Dwelling units on 6,125 acres with single family dwellings on not less than 5 acres. This agreement provided for the rezoning of the ranch from A-1 to a P.U.D. designation. (Resolution 80-34, Rec # 204557).

Among other things the resolution found that gross density was one unit per 20 acres.

The Development agreement provided for a phasing plan that began with the approval of Phase 1 and Phase II. Only the Plat for Phase 1, First Filing was recorded providing for 32 ranch home sites of 5 acres each, 155 acres of rangeland and 20 acres of roadway for a total of 335 acres. (Rec # 207217). The concept provided for open space, or an undivided interest in the working ranch and a clustering of the development to preserve the ranch resources.

Subsequently, a Water decree and augmentation plan was approved by the Water Court to provide for the entire development- Water Case #80CW504.

In Phase 1, only 7 homes were built on seven 5 acres lots. The entire road system was constructed for the 32 homes sites (approximately 6,000 linear feet of road; 60 ft ROW), 6" water line along Spring Creek Road, community well and tank, and a gray water system sewage pond.

Declarations and Covenants and the Spring Creek Ranchers Association were created and recorded on April 2, 1980. Rec # 208078. They were amended in March 1981 Rec #220783 and again in March 1982 Rec #229068, and again October 28, 2002 Rec #259898. In addition the Subdivision was made subject to the Colorado Common Community Interest Act. See Section 19 (Declarations enclosed)

The original developer financed its acquisition and development by a loan from Metropolitan Life Insurance Company secured by a deed of trust encumbering all the property. In 1988 the developer defaulted on its obligations to Metropolitan Life Insurance Company. Metropolitan foreclosed and became the recorded owner of all portions of the Property except 7 Lots in Phase 1, First Filing which include:

Lot 2 Block 3
Lot 4 Block 3
Lot 1 Block 4
Lot 5 Block 5
Lot 2 Block 2
Lot 6 Block 2
Lot 3 Block 2

Subsequent to the foreclosure Nelson and Catherine Lane purchased the remaining portions of the ranch (5,700 acres) except Phase 1, First Filing subject to an agreement with the Spring Creek Ranch Lot Owners, Metropolitan Life that required the following.

1. That the Lanes rezone the remaining ranch from PUD to A-1 designation. This rezoning was completed by Resolution of the Board of County Commissioners on September 15, 1989 Resolution 89-60 Rec 375463.
2. That the remaining 25 lot lines in Phase 1, First Filing be vacated which was completed by the Board of County Commissioners Resolution 89-59, Rec # 375462, leaving seven 5 acre lots and approximately 284 acres of common area with a portion of rangeland that was not vacated or addressed in the Resolution. This downzoning left 296 density units of the 303.
3. That the Spring Creek Lot owners rezone the common property to an appropriate zoning and file any other documents that would clean up any unresolved issues with regard to the County, and water augmentation plan.
4. That the remaining home owners release and terminate any undivided interest and open space rights on the ranch at large.
5. Note. In January 28, 2002, the remaining open space land (285 acres) was partitioned by Order of the Court, creating seven parcels of land ranging in size from 35.20 acres to 44.03 and any individual homeowner rights to an undivided interest in this common land or open space of the Spring Creek HOA was terminated. Case 99CV277 dated January 28, 2002 **Findings of Fact, Conclusions of Law, and Judgement.** (See Section 3 enclosed Order)

At the conclusion of the rezoning of the ranch from PUD to A-1 the 289 density units that were associated with the ranch and the PUD's approved density were dissolved back into the Agricultural zoning designation of the ranch. The original 303 approved units of the original PUD were now down to 14 remaining density units which are associated with Phase I First Filing which totaled over 330 acres including 7 lots of 5 acres each (35.24), 7 parcels (284.36), and roads of approximately 12 acres.

Subsequent to the downzoning of the Ranch, Nelson Lane and Catherine Lane sold the Ranch to Elk Dance Colorado and established a conservation easement on the ranch , built an equestrian center, lodge, and created 22 seventy acre lots. Most of these lots were sold. In 2003 the development was put into receivership for the assets of Elk Dance for the default on their obligations to a lender. On May 2, 2003 the property was sold again.

In 1989 the Spring Creek Ranchers Association and three individual lot owners filed suit against the 4 remaining lots owners asking the court for authority to 1. Operate the Spring Creek Ranchers Association 2. Partition the common land 3. Seek rezoning and

4. Complete or amend the water decree. Only 1 defendant who entered into a settlement agreement and terminated the rest of the litigation, still lives at Spring Creek Ranch, Maggie Sergent.

In January 28, 2002, Case #99CV277, **Finding of Fact, Conclusions of Law, and Judgement, the Summit County District Court** found:

1. That the Plaintiffs were duly elected and are vested with the powers and duties necessary to manage the affairs and business of the Association. Ordered the defendants to sign an addendum to the 1989 Settlement Agreement relating to a water decree.
2. Ordered the defendants to sign any and all materials in connection with a Colorado Land Survey plat and any materials connected with rezoning of the property. Page 17-18 last paragraph of the aforementioned Court Order.
3. Ordered the common land to be partitioned and for deeds to be delivered to each lot owner.
4. Denied any partition of water rights to individual lot owners but ordered the Association to deliver water as contemplated by the 1989 Settlement Agreement.

Since the Court Order, the Spring Creek Ranchers Association has sought to execute the Order of the Court and to establish the necessary mechanism for governance that will provide for a functioning and operational HOA, water system, water decree, sewage system, including:

1. A Colorado Land survey was recorded with the Clerk and Recorder of Summit County, Rec # 695428.
2. Deeds were recorded for the 7 parcels of land and distributed to the individual lot owners per the Court Order.
3. Reservations were placed on all tracts of land providing for blanket easements for utilities prior to deeding the tracts of lands to individual lot owners.
4. Covenants were created and since amended, signed by Order of the Court and recorded (Rec # 709853) as a covenant running with all property in Spring Creek Ranch Subdivision.
5. The Colorado Common Interest Community Act was properly elected and has been established by notice in the recordation of the Covenants, Colorado Land Survey, and partitioned deeds.

6. A water decree has been approved by the District Court, Water Division 5, Colorado; Case 93CW213 providing for the supply of water to Spring Creek Ranch Subdivision for 14 homes. See enclosed proposed Water Decree. All objections have been dropped by all opposing entities including the State of Colorado.

OBJECTIVE

Our objective is to have the Planning Department/ Planning Commission/ and Board of County Commissioners approve an amended PUD and to clean up past Resolutions that omitted some overlooked issues that related to the downzoning of the original ranch from PUD to A-1 including:

1. The vacation of the Rangelands designation in Phase 1 First Filing
2. The vacation of Conifer Road.
3. The creation of 7 parcels of various acreage in conjunction with the existing PUD
4. And lastly to modify the existing PUD to contain terms that are both relevant and controlling to the entire subdivision.
5. Adjust the lot lines on specific 5 acre tracts to make the past platted lots more harmonious with future homes with respect to acreage by creating a subdivision with 14 homes on an average of 20 acres.
6. Secure an Amended PUD which contains financial obligations that can be phased in over time and not to be overwhelming to “non-developer” remnant homeowners.

DISCUSSION

The remnant homeowners have been the recipients of a failed bankrupt development that for years produced massive costs not only to the homeowners but to the county court system and agencies that have jurisdiction over the subdivision. The current homeowners are so very close to fixing a 20 year old problem by Amending the PUD and proposing 14 homes on an average of 20 acres. This is not a proposal by a “Developer” in search of significant profit margin and economic gain but a handful of homeowners that seek a pathway and assistance to straighten a 20 year problem. The current homeowners over the last 12 years have straightened out almost every component of the development, from covenants to water adjudication, from roads to water system, and have created a functional operational home owners association and above all else a harmonious community.

The approval of the above request would clean up the rangelands designation which was established as an open space plan that was entirely connected to the original PUD and the clustering of 303 density units on the original ranch of 6,125 acres. In addition the

proposal would be consistent with the Lower Blue Master Plan with the Spring Creek Ranch Subdivision having density that is not less than one unit per 20 acres.

In addition the proposal is consistent with the Lower Blue Master Plans overall vision and philosophy of maintaining the rural character of the subject location; providing diversified mix of housing by establishing seven- parcels in the subdivision which (real estate product) is rarely available in the lower blue basin; helping improve the infrastructure and service in this area; improving the economic vitality in northern most region of the county. In addition, some homeowners have requested more acreage on their existing five acre lots in order to preserve their capital investment in their existing homes and to be more harmonious with future homes. This acreage, as proposed would be carved out of the larger tracts by agreement of owners in title and would produce a more evenly spread home values from past and future and some diversity with respect to potential desired uses of new buyers.

Such approval will improve the subdivisions water system and water quality from the existing system to a much improved water system. Most importantly the addition of potentially seven new homes and homeowners will increase the core base of individuals to fund and maintain an HOA, and create a harmonious community.

The applicants feel that they have expended significant capital upon the reliance that a PUD existed, and the PUD was not completely built out in Phase 1, First Filing and by all legal zoning statutes Filing 1 was never rezoned. A significant amount of the infrastructure was completed for the Phase 1 First Filing including the water decree (100%), roads (100%), sewer line (50%), water lines (75%), well (100%), and sewer ponds. These issues seem to be the basis for the creation of certain rights that relate to the type of use (residential) and intensity of use (1 home per 20 acres) that were approved in the original P.U.D., and that are consistent with Colorado's Vested Rights statutes. It is not the intention to circumvent any new policies or rules that Summit County has implemented since the initiation of the original development but to establish the right to certain density that will provide protection from unreasonable risks (costs) to complete the rezoning or a financial loss of hundreds of thousands of dollars that the applicants have invested upon the reliance that a density unit should be allocated to their parcel in a fair manner . Amending the current PUD and a simplified "Development Agreement" seems to be the most efficient pathway to correcting many unresolved issues and provides for a very simple "Development Plan" that can be governed by the Spring Creek Ranchers Association (HOA), and all governmental agencies that have jurisdiction over this subdivision. Any and all future buyers will have a simplified title commitment: with simplified rights spelled out in a few documents. All other extraneous documents that have been filed over the years as a result of litigation, past county resolutions, will become moot.

Above all else, we look forward to working with the Summit County Planning Department with their suggestions, insight, and wisdom to provide a pathway to making

the Spring Creek Ranch Subdivision a harmonious and desirable place to live, enjoy and contribute to the overall vision established for the Lower Blue Master Plan.