

MEMORANDUM

TO: Mayor Tauer and City Council

FROM: Bob Rogers, Deputy City Attorney

SUBJECT: Heather Ridge

DATE: July 18, 2005

The purpose of this memorandum is to address a question raised by a possible application for residential development of the Heather Ridge golf course. Although no application has been filed, the City Council has requested an opinion of what the golf course is zoned and by what process, if any, could the golf course be developed for residential uses.

Heather Ridge was approved by the City Council in 1969 as a Residential Planned Building Group. According to City records the property is zoned R-2 Multiple Family Residential. Heather Ridge was developed according to site plans approved by the City. In order to add residential density, the question is whether a rezoning is needed or could a change be made by a site plan amendment. Zoning establishes the uses of property including residential density, while a site plan lays out those uses "on the ground".

In 2002, a site plan was approved for the demolition of Heather Ridge tennis facility and the construction of multi-family units on approximately 5.9 acres. A rezoning was not required for that application; however, development of an area as large as the golf course as residential would have such significant impacts on the surrounding community, reduction of open space, and change in the character of Heather Ridge that the City Council could decide that a rezoning is needed.

Generally, this question of whether a rezoning is necessary is important because a city council is said to have greater discretion in reviewing a rezoning compared to review of a site plan. Two factors, however, lead me to conclude that regardless of whether a rezoning or site plan is needed, City Council discretion is basically the same:

1. The City Council can review the compatibility of uses in a site plan. Aurora's zoning code grants the City Council the power to deny a development plan even for a permitted use, if it is not consistent with the Comprehensive Plan. City Code Section 146-405 (f); *See City of Colorado Springs v. Securcare Self Storage, Inc.*, 10 P.3d 1244, 1247 (Colo., 2000); and
2. Heather Ridge is a fully developed community. A development with vacant land could apply for a site plan amendment to layout the uses permitted by the underlying zoning because the land has not yet been used for a use permitted by the zoning. Where that use has already been developed, the City Council is not compelled to approve new uses for developed property. Council has the discretion to find that the existing use, a golf course in this case, adequately fulfills the requirements of the zoning and the policies of the City's Comprehensive Plan. A person who has developed property pursuant to zoning and site plan has no entitlement to additional uses or densities. Until an application is filed, it is difficult to predict exactly what the impact of a development proposal would be.

Background¹

Council could find that in order to develop the golf course as residential dwellings, a rezoning of the golf course would be necessary. Although the golf course has R-2 zoning (medium density residential), the original applicants for that zoning in 1969 requested Council approval of a “R-2 Planned Building Group” in order to develop their specific proposal. *See applicant’s letter* (attached).

A golf course was not a permitted use in an R-2 zone in 1969. The City Council authorized the golf course use by approval of the residential Planned Building Group. According to the city code at that time, golf courses and country clubs were only permitted uses in an R-2 zone with the approval of a Residential PBG. Former City Code § 8-13-3(a). By Council’s approval of the Planned Building Group for the project, “all requirements of the zoning regulations relating to uses permitted are suspended” and the requirements in the PBG ordinance became applicable for design of the project. City Code Section 8-13-2. The R-2 Planned Building Group approval by Council established a golf course use on the property, as requested by the applicants. It did not necessarily zone the golf course for development of residential density.

The Heather Ridge community was approved by the City Council on December 29, 1969 after public hearings and meetings by the Planning Commission on November 19, 1969 and by the Council on November 24 and December 22, 1969. The Council’s actions included approval of an annexation ordinance annexing approximately 270 acres, along with initial zonings to R-2 and rezonings of certain parcels from N to R-2, B-1, and B-3.

The applicant was Environmental Developers, Inc. represented by Howard Farkas and Werner Livingston. The project was described in the application letter to Mr. Wally Paske, Aurora Planning Director, dated November 17, 1969, as a “Master Development Plan” and an “R-2 Planning Building Group.” (Copy attached)

The letter also stated:

“Phase I of this project requires our construction of an 18-hole golf course, pedestrian underpasses, country club, model apartments, etc.”

* * *

“We are most anxious to proceed on this most needed development. Our most recent estimated cost of construction to erect the condominiums, town houses, garden and high rise apartments, motor hotel, roads, utilities, shopping facilities, two golf courses, and other amenities exceeds \$100 million.”

Mr. David Clinger was the project director for the developer. At the special meeting of the Aurora Planning Commission on November 19, 1969, Mr. Clinger introduced the project to Planning Commission. The minutes of that meeting state: “He went into detail explaining the drawings of the preliminary master development plan and further described the residential units, golf course, the

¹ Because Heather Ridge is a completed development that was approved more than 30 years ago, many of the records relating to it have not been retained. Enough information is contained in correspondence and meeting minutes to understand what Council approved for the project.

pathway system, the country club. He pointed out that the golf course will be started immediately. The Planning Commission recommended unanimous approval of the Planned Building Group.”

At the November 24, 1969 public hearing, the City Council considered an ordinance annexing 270 acres of land known as Heather Ridge with simultaneous zoning to R-2. The City Clerk read the November 17, 1969 application letter into the record. There was discussion involving the City Attorney regarding a waiver of annexation fees. Mr. Farkas explained that the project would have recreational facilities that would obviate the requirement for annexation fees or dedication of parks. “Although they do not plan to dedicate the parks, there will be 16,000 people who will not need facilities which the City would ordinarily provide. These facilities will be far more elaborate than most and will include stables and a golf course.” The City Council voted 7 to 1 to accept the petition for annexation.

On December 22, 1969, the City Council held a public hearing for the zoning of two parcels of land to R-2 for the Heather Ridge community. At that meeting, Mr. Lee Coulter, City Attorney and Acting City Manager (the City Manager resigned at the meeting of November 24, 1969), is represented the nature of the application. “Mr. Coulter stated that the applicant has authorized him to advise that he has obligated the R-2 zones to be developed under a Planned Building Group.” After the public hearing, the City Council voted unanimously to approve the rezonings from N to R-2, from N to B-1, from N to B-3, and an annexation ordinance.

Subsequent to the approval of the Heather Ridge development proposal, the Planning Department file contains a letter to Mr. Wallace Paske from Fishkin/Brin Architects regarding “master development site plans pursuant to the zoning approval and annexation by Aurora.” Mr. Brin states: “You will recall the preliminary master development plan from which we are now detailing our construction drawings was reviewed by all the appropriate department people of Aurora and your suggestions were incorporated into the approved preliminary documents. This includes roadways, fire department access, overall drainage, water, sewer, etc. In addition to our nearing completion of the country club building working drawings, we are about to start design of the golf course.” The Planning files include a tabulation of the areas for the Heather Ridge community, including the golf course, and refer to it as an “overall development plan.” Also included in the file is a booklet from Environmental Developers and David Clinger with architectural elevations for the Heather Ridge community. A golf course figures prominently in the booklet/illustrations.

In a *Denver Post* article dated November 1, 1970, under the headline “Summer Opening Planned for Heather Ridge Complex,” Mr. Howard Farkas and Mr. Werner Livingston are quoted as saying that Heather Ridge will contain rental apartments, swimming pools, shopping center, a hotel, service stations, a country club and an 18-hole golf course. “Heather Ridge will cater to the needs of people,” Farkas and Livingston said in their announcement. “The country club and golf course and other recreational facilities are being built first. Memberships are open now. The apartment and condominium complexes will follow.” Accompanying the article is a picture of Messrs. Farkas and Livingston along with Governor John Love with the description, “The gold golf club putter signifies that Governor John Love is No. 1 member of Heather Ridge Country Club, planned as centerpiece of \$100 million apartment and residential development.”

Conclusion

Heather Ridge was approved as a master plan development in the form of an R-2 Planned Building Group. The golf course was an integral part of that plan and of Council's approval of the development. The developers received R-2 zoning not for a general multi-family residential project but for a specific Planned Building Group for a country club community. The development of property was completed consistent with that approval. After completion of the project, there was no mechanism to reserve or retain any density that may not have been developed on the project. The project was developed pursuant to a residential Planned Building Group with no reservation of unused density. The golf course was approved under the PBG as a golf course, not as a repository or "land bank" for unused density.

BR/eb