

1994 Annexation Act.

ENC 0928 PG 869

of 685 units of which 255 shall be multi-family units and 400 shall be single-family units. (The balance of units shall be caretaker units located on a single family lot.) Of the single family houses, 100 shall be on lots of less than 10,000 square feet and the balance shall be on lots of 10,000 square feet or more.

6. Development.

The Landowners and Developer acknowledge and agree that the Town has the authority to approve or deny any zoning, development or subdivision proposals for the Subject Property and to impose any conditions in connection therewith. The Landowners and Developer irrevocably waive any rights, objections, and claims that they may have now or in the future against the Town arising out of the procedure utilized or decisions made by the Town with respect to any zoning, development or subdivision applications that have now or may be filed by the Landowners or the Developer, provided that such procedures and decisions are made in accordance with applicable Carbondale ordinances. Further, the Landowners and Developer acknowledge and agree that in the event that approval of any zoning, development or subdivision application is denied or such application is approved with conditions not acceptable to the Landowners or Developer, the Landowners or the Town may thereafter take action on the Landowners' Petition to Disconnect as provided for in Section 8 hereof. The Landowners and Developer specifically acknowledge and approve the following conditions of development, and agree that said conditions may be amended in the future by the Town, and other conditions of zoning, development or subdivision may be imposed by the Town in addition to those listed below:

a. Subdivision Improvements. In the subdivision or development of the Subject Property, the Developer hereby agrees to develop, and pay for construction of an eighteen (18) hole championship caliber golf course, driving range, club house and related facilities and at least two tennis courts, all of which will at all times be open to the public. The Developer will also dedicate, develop and pay for construction of all public improvements and the extension of all required utilities services in accordance with any applicable subdivision improvements agreement and Town ordinances and regulations then in effect. Such improvements may include bridges, paving, grading, landscaping, curbs, streets, gutters, sidewalks, road lighting, road signs, flood protection devices, water and sewer lines, sewer line interceptor, water lines, water storage facilities, parks, athletic fields, irrigation ditches, bike paths, irrigation systems, drainage structures, landscaping, installation of utilities, payment of impact fees, payment of tap fees, providing security for such undertakings, and any other items set forth in the subdivision improvements agreement. Such obligation will include payment to the Town of the sum of \$400,000 as a park improvement fee to be paid at the rate of \$611.00 per dwelling unit for each phase to be paid at the time of final plat approval. Unless otherwise provided

road to the south-most part of the property. The purpose of this extension would be to provide for a future bike path connection if additional portions of the Sopris Ranch are developed.

WILDLIFE/RIVER CORRIDOR

17. The PUD Plan shall describe any necessary seasonal closing times to river access, riparian areas, golf areas, etc. as may be necessary due to eagle or other wildlife habitat. Seasonal closings shall be December 1st through March 15th.
18. The Applicant shall install fencing as may be required by the Town. Any fencing shall be as approved by the Colorado Division of Wildlife. Fencing along the western perimeter of the property shall be 42 inches high, four strand or less with a 12 inch kick space between the top two strands or be 48 inches high, three rails or less, with 18 inches between two of the rails. The fencing should be designed to inhibit domestic dogs, keep cows out and allow wildlife to pass.

HOUSING AFFORDABILITY

19. The Applicant has provided a "housing affordability" plan which has been approved by the Town. It shall be included in the PUD text.

GOLF ACCESS PLAN

20. The golf course, driving range, club house, and related facilities shall be privately owned but open to public at all times.

SOILS/GEOLOGY

21. The preliminary plan shall include a building envelope designated for every lot within the PUD. All building envelopes shall avoid sink holes.
22. The Applicant shall submit for approval a detailed debris flow and engineering study for development on the alluvial fans. Construction upon the fans with debris flow potential shall be avoided unless properly mitigated. Additional soils investigations by a geotechnical engineer may be required by the Town. Areas where there may be required an engineered foundation shall be determined at time of preliminary plat.

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- b. That the Developer shall pay the Carbondale and Rural Fire Protection District a development impact fee of \$235.00 per residential lot or unit and the fees for commercial lots/buildings on or before the date of recording the final plat for Phase I pursuant to an agreement between the Developer and the Fire District. Satisfactory proof of payment shall be provided to the Town.
- c. That all development fees and professional fees which are the obligation of the Developer pursuant to Chapter 1.30 of the Carbondale Municipal Code or other agreement between the parties and which have been billed are paid on or before execution hereof by the Town.
- d. That the Developer shall reimburse the Town all recording and publication fees incurred on behalf of the Developer.
- e. That the Developer shall comply with all of the terms and conditions of Ordinance No. 20, Series of 1994, Town of Carbondale, Colorado, Planning & Zoning Commission Resolution No. 1, Series of 1996, (hereinafter referred to as "Resolution No. 1") the Annexation Agreement referred to in Paragraph 1(b) above, the terms and conditions of Ordinance No. 25, Series of 1996, approving the subdivision plat for Phase I, River Valley Ranch, and all other agreements between the Developer and the Town except to the extent that the requirements of the Developer are modified herein.

f.

The Developer shall construct an 18 hole championship golf course and related facilities which shall be open to the public at all times in perpetuity during those periods of time the golf course is in operation, subject to closure for special events. The golf course shall include those facilities normally associated with a golf course operation, including a driving range, practice green, pro shop, restrooms, and snack bar/restaurant located on the golf course property. The golf course and driving range shall be installed, maintained and operated in accordance with Paragraphs 8 and 9 of Resolution No. 1 and this paragraph shall be deemed to be the agreement called for in said Paragraph 8. There shall be no preferential treatment to homeowners in the development as compared to other Carbondale residents. There shall be no differential fee structure for River Valley Ranch Homeowners compared to other Carbondale residents, nor

shall tee times be restricted for Carbondale residents with the exception of special events. Nothing contained herein shall be construed to prevent or discourage the golf course operator from providing special rates, incentives, or events to Carbondale residents. Golf course parking shall be available for use by those persons using Triangle Park and the tennis courts.



- g. The Developer has submitted to the Town a Water Quality Management Plan for River Valley Ranch, (final draft dated January 18, 1996 which includes revisions dated June 4, July 23, and August 27, 1996). A copy of the Water Quality Management Plan is available for public inspection at the office of the Town Clerk, Carbondale Town Hall, 76 South Second Street, Carbondale, Colorado. Said Water Quality Management Plan is incorporated herein by this reference as if set forth herein verbatim. The Developer and its successors in interest shall comply with said Water Quality Management Plan as revised or any amendments made thereto by agreement between the Developer and the Town or as may be unilaterally made by the Town from time to time as may be necessary to maintain water quality within the development if the Town and the Developer are not in agreement. In addition to the requirements set forth therein, the Developer shall require the golf course operator to submit quarterly reports to the Town Manager or his designee listing the types and quantities of pesticides, herbicides, and other chemicals or fertilizers applied to the golf course stating the date and manner of application. The Developer shall at all times comply with applicable rules and regulations of the Colorado Department of Public Health and Environment, Environmental Protection Agency, or any similar regulatory agency.

The Water Quality Master Plan is considered an integral part of the approval of this subdivision and the Developer and its successors in interest shall comply with the Plan and its provisions in their entirety. In the event the Developer or its successors in interest fail to follow the plan in its present form or as it may be amended as provided above, the Town may perform monitoring and remediation or otherwise act to make the plan operational, cause it to be operated by a third party or take any legal or administrative action available to it by virtue of this agreement or as a matter of law or equity. In said event, the Developer shall pay the cost of all remedies plus an

contain provisions incorporating the water quality management plan and golf course management plan to assure that in the event water quality problems in the Crystal River occur, a mechanism is in place to attempt to identify the source of the problems and to implement corrective measures.

c. The water quality and golf management plans shall include a requirement that all contractors who are constructing buildings in the development agree to adhere to the terms and conditions of said plans, and the Developer shall provide the Town with satisfactory written evidence of compliance.

8. Golf Course Operations.

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. The secondary water system shall be designed and operated according to a plan to be approved by the Board of Trustees at the time of the final plat for Phase I to assure that adequate provision is made for delivery of irrigation water to both the golf course and to all lots within the development. The golf course shall be included in the Phase I final plat and the specific legal description of the golf course parcel shall be included on the final plat.

9. Driving Range.

The driving range for River Valley Ranch as shown on the preliminary plat application is acceptable, provided that the Developer shall not install a screen (other than vegetation) on the berm to be constructed parallel to Colorado State Highway 133 without the Town's specific consent. The Developer shall leave the ditch crossing the driving range open in the areas where the existing trees shall remain in place. In the areas where the ditch need not be left open to maintain trees, it may be piped or covered for a distance not to exceed two hundred sixty (260) feet. The berm height shall not exceed fourteen and two-tenths (14.2) feet from existing natural grade as shown on the memo dated February 7, 1996, from Scott Writer.

10. Utilities. The Developer shall assure that utilities are provided to all lots in the development according to the provisions of paragraph 6(i) of the Annexation Agreement.

11. Drainage.

The Developer shall design and construct the drainage facilities and structures according to the preliminary plat application which comply with the provisions of paragraphs 3, 22 and 37 of the PUD Ordinance. Final drainage design and details for

6. Maximum impervious lot coverage shall be as determined by Section 18.50.020 of the Code.
7. Minimum floor area: 400 square feet; provided, however, that the minimum floor area for accessory dwelling units as allowed within this Zone District shall be 350 square feet.
8. Maximum building height, measured pursuant to Section 18.50.020 of the Code:
 - a. Principal building: 27 feet;
 - b. Accessory Dwelling Unit structures: 27 feet;
 - c. Accessory structures: 15 feet

205
25

C. Supplementary Requirements:

1. Fences shall be allowed in accordance with the provisions of Section 18.20.025 of the Code.
2. Parking:
 - a. Minimum off-street parking: two spaces
 - b. Guest parking requirements: per Code, stacked parking is allowed. IF INTERFERED
3. Satellite dish siting shall be subject to the provisions of Section 18.50.010D of the Code.
4. Accessory dwelling units on designated lots as authorized within the R/MD Zone District shall meet the following standards:
 - a. Accessory unit cannot be more than one-third size of the main dwelling;
 - b. Accessory dwelling units shall be allowed on up to forty (40) lots within the Zone District as designated at time of building permit and only one accessory dwelling unit will be allowed on each lot designated therefor;
 - c. No separate water or sewer utility services between principal dwelling unit and accessory dwelling unit are allowed. Other utilities may be separately metered;
 - d. No separate ownership of the accessory dwelling unit is allowed, via condominiumization, subdivision, townhouse procedures or otherwise;
 - e. The accessory dwelling unit must meet all other zoning requirements of the Zone District, such as lot coverage, set-backs and height restrictions.

at time of SUBMIT

2.4 GOLF COURSE ZONE DISTRICTS. The PUD includes two (2) Golf Course Zone Districts, designated as Golf Recreation District (GRD) and Golf Facilities District (GFD).

The purpose of the GRD Zone District is to authorize the development and operation of an eighteen (18) hole championship caliber golf course and driving range which will be open to the public on a daily fee, membership, or other for profit basis.

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The purpose of the GFD Zone District is to allow for the development of a golf club house, golf maintenance facilities, homeowners facilities and community facilities, including the limited commercial needs which arise therefrom.

2.4.1 GOLF RECREATION DISTRICT (G/RD). The permitted uses, density schedule and supplemental requirements applicable to the G/RD District shall be as follows:

A. Permitted Uses.

1. Golf course;
2. Driving range;
3. Golf practice areas;
4. Irrigation facilities;
5. Water impoundment structures;
6. Restroom facilities.

B. Permitted Density.

1. Maximum building height measured pursuant to Section 18.50.020 of the Code:
 - a. Principal Building: 12 feet
 - b. Accessory Uses: 12 feet.

2.4.2 GOLF COURSE FACILITIES DISTRICT (G/FD). The permitted uses, density schedule and supplemental requirements applicable to the GFD District are as follows:

A. Permitted Uses

1. Golf Club House
2. Restaurant with lounge;
3. Pro shop\sporting goods\general merchandise;
4. Swimming pools and tennis courts;
5. Athletic\health club facilities;
6. Parks, playgrounds and open space;
7. Homeowners Facilities;
8. Community Facilities including theater and meeting rooms;
9. Arts and crafts studio;
10. Athletic instructional schools;
11. Post office;
12. Maintenance facilities, storage buildings and all other structures and uses ancillary to the use, operation and maintenance of the facilities authorized within the Zone District;
13. Administrative offices and real estate sales center related to the development, use, operation and maintenance of the PUD;
14. Irrigation facilities.
15. Water impoundment structures;

B. Permitted Density.

1. Minimum lot size: 6,000 square feet
2. Minimum lot width: 50 feet
3. Minimum lot depth: 80 feet
4. Minimum set backs:

- a. From Highway 133: 50 feet
- b. Front yard: 10 feet
- c. Side or rear yard: 5 feet
- 5. Maximum impervious lot coverage, including parking: 80%
- 6. Maximum building height, measured pursuant to Section 18.50.020 of the Code:
 - a. Principal building: 42 feet for all structures except those historic structures adaptively reused.
 - b. Cupolas and non-habitable features such as bell towers and observation decks may exceed this height limit.

C. Supplementary Requirements.

- 1. Fences shall be allowed subject to the requirement set for in Section 18.25.025 of the Code.
- 2. Parking requirements shall be as set forth by a traffic engineering study to be supplied upon application for building permit.

2.5 Open Space/Parks (OS/P) Zone District. The purpose of the OS/P Zone District is to provide adequate lands which are open to the public for recreational use and to protect these lands from being used for purposes other than open space. The permitted uses, density schedule and supplemental requirements applicable to the OS/P Zone District are as follows:

A. Permitted Uses.

- 1. Passive and active recreation, including pedestrian trails, fishing, picnic areas, playground areas and parks.
- 2. Structures associated with passive and/or active recreational activities as approved by the Homeowners Association.
- 3. Drainage retention earthwork.

B. Supplementary Requirements.

- 1. Maximum structure height: 15 feet
- 2. Maximum non-impervious lot coverage shall be as determined at the time of approval of preliminary plat and shall be set forth on the applicable final plat.
- 3. Improvements shall not be made to the OS/P area located at the southeast corner of the PUD (known locally as the Turnbull Bull Pasture) except for a parking area not to exceed 6,000 square feet, an access road to the parking area, and a primitive trail providing pedestrian access to the Crystal River from such parking lot. Provided, however, active recreational facilities be approved by special use procedure.

2.6 Conservation Overlay Districts. The PUD includes two (2) Conservation Overlay Zone Districts, designated as Conservation Overlay District/Riparian (COD/R) and Conservation Overlay District/Uplands (COD/U).

The purpose of the COD/R Zone District is to protect, restore or enhance environmentally sensitive areas along the Crystal River riparian corridor. River

(g) **Construction Indemnity.** Each Party covenants and agrees to Indemnify the other in connection with all Claims as shall occur through Construction Completion by reason of the performance of any Work to be constructed or caused to be constructed by such Party. Developer and Golf Owner shall include in all construction contracts an indemnity agreement whereby the contractor shall Indemnify the Parties from and against all Claims arising out of, resulting from, or in any manner connected with the performance or nonperformance of the Work required to be done under such construction contract, or alleged to have arisen out of, or resulted from, or to have been in some manner connected with, anything done or omitted to be done by the contractor under such construction contract.

ARTICLE 4

GOLF FACILITIES OPERATION

Section 4.1. **Operations.** Golf Owner shall operate the Golf Facilities or cause the Golf Facilities to be operated, under a name mutually approved and agreed upon by Golf Owner and Developer, as a public golf course and related facilities as required by the Annexation Agreements for a period of at least ten (10) years from the Opening Date or such longer period as required by the SIA and in a manner consistent with any agreements between Golf Owner and Developer now or hereafter agreed upon in writing.

*- Enforceable
require
perpetual*

Section 4.2. **Management and Operating Standards.** For a period of ten (10) years from the Opening Date, the Golf Facilities will be operated by Golf Owner as top quality facilities in keeping with the investment in the Project by each Party and the high quality of the golf course designed by the Course Architect and developed by Golf Owner, at least comparable to the following current golf operations: Breckenridge, Keystone Ranch, Broadmoor in Colorado Springs, Black Wolf Run in Kohler, Wisconsin, Wildfire in Phoenix, Arizona, Pelican Hills in Newport Beach, California, Singletree in Vail, Colorado and Pebble Beach in Carmel, California. In the event of a dispute between Developer and Golf Owner regarding compliance with this operating obligation, the question shall be mediated by the parties with Charles H. Goodman serving as the mediator. The mediation under this Section shall be final and binding on the parties and each party shall bear its own costs of such mediation. If Charles H. Goodman is not available to serve as mediator due to death, disability or refusal to serve, the parties shall attempt to mutually agree on a substitute mediator; however, if they cannot so agree, this dispute resolution procedure shall no longer be applicable and instead shall be resolved as provided in Article 8.

Section 4.3. **Water and Irrigation.** The water rights that have historically been used upon and are appurtenant to the Project were identified in the Annexation Agreements ("Town Water Rights"). The Town Water Rights have been conveyed to the Town pursuant to the terms and conditions of the Annexation Agreements and the additional agreements, if any, listed or referred to on Schedule 4.3 and are subject to the additional agreements referred to on Schedule 4.3 (the "Water Agreements"). The water usage rights applicable to Golf Owner in operating the Golf Facilities is provided for and set forth in the Town Annexation Water Agreements, and Golf Owner covenants and agrees to comply therewith.

Developer has filed an application for several water storage rights and junior water rights in the District Court, Water Division No. 5, Colorado, in connection with obtaining the legal

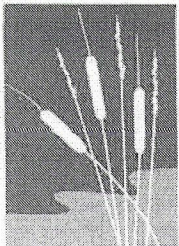
In addition, any First Mortgagee shall be entitled to pay any taxes or other charges which are in default and which may or have become a lien against the Master Common Areas and may pay any overdue premiums on hazard or general liability insurance policies covering the Master Common Areas, and shall be entitled to immediate reimbursement therefor from the Master Association, unless the Master Association is contesting any unpaid taxes or other charges and has set aside sufficient funds to pay the contested amounts if necessary.

13.6 Golf Land and Facilities. In no event and for no purpose shall the Golf Land or any golf course improvements or facilities constructed thereon or related thereto be deemed to be a part of the Common Interest Community, or be burdened by this Master Declaration or any Supplemental Declaration. No Owner of a Lot or Unit in the Common Interest Community shall have any greater or different rights or privileges than a resident of the Town has in or with respect to the golf course and other improvements and facilities constructed upon the Golf Land or the activities occurring thereon. Without limiting the generality of the foregoing, no Lot or Unit shall have any right (i) to have the golf course and/or facilities constructed in any particular location on the Golf Land, (ii) to have or preserve a visual or sight easement over and across any portion of the Golf Land, and/or (iii) to have access to or across the Golf Land along any particular alignments.

13.7 Damage Caused by Use of Golf Land. The Golf Land will be used and operated as a public golf course and related facilities. By acceptance of a deed thereto, each Lot and Unit Owner acknowledges and agrees that the golf course use enhances the value of the Lot or Unit by providing pleasant surroundings and open space for the Common Interest Community. Each Lot and Unit Owner further acknowledges (i) that the use and operation of the Golf Land as a golf course involves risk, including but not limited to damage to property and improvements and personal injury and death caused by errant golf balls that may be hit into the Common Interest Community, and (ii) that while the Common Interest Community has been designed to minimize these risks to the extent reasonably possible, it would be impossible to render the Common Interest Community free of golf course-related risks of any kind or nature.

In consideration for this increase in value, and with full knowledge of these and other risks, by its acceptance of a deed thereto each Lot and Unit Owner hereby agrees to the following paragraph:

EACH LOT AND UNIT OWNER HEREBY ASSUMES AND ACCEPTS THE RISK OF DAMAGE TO PROPERTY, DAMAGE TO IMPROVEMENTS, PERSONAL INJURY, AND DEATH, FROM GOLF COURSE ACTIVITIES ON THE GOLF LAND. EACH LOT AND UNIT OWNER HEREBY WAIVES ITS RIGHT TO SUE THE DECLARANT, THE MASTER ASSOCIATION, OR THE GOLF OWNER ON ANY POTENTIAL CAUSES OF ACTION ARISING THEREFROM. EACH LOT AND UNIT OWNER AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS DECLARANT, THE MASTER ASSOCIATION AND THE GOLF OWNER AND THEIR RESPECTIVE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, CONTRACTORS, AGENTS, SUCCESSORS AND ASSIGNS, FROM ANY AND ALL LIABILITY OR CLAIMS THEREFOR, AND FROM ANY ATTORNEYS' FEES AND OTHER COSTS INCURRED BY ANY OF SUCH



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July 16, 2012

Mr. Dale Rands
c/o David Myler, Esq.
201 Midland Avenue
Basalt, CO 81621

Re: River Valley Ranch Water Rights Analysis

Dear Mr. Rands:

The attached report is the result of a brief but careful review of the water rights associated with, and used upon, the River Valley Ranch Golf Course. In undertaking this analysis, I have reviewed more than twenty documents and agreements that address the surface water rights, ditch structure rights and easements, right-of-use, operating agreements, and more.

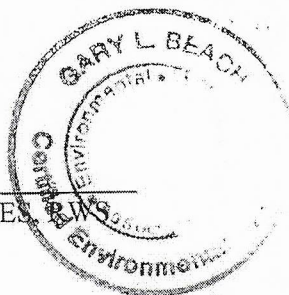
In summary, I did not find, or review, any document that would allow me to conclude that the Golf Course operation owns any of the water rights that are currently used upon the Golf Course Property. Rather, the Golf Course has a reserve right to use certain irrigation water rights and water that is owned by the Town of Carbondale. While the use of the water comes with conditions that could reduce or curtail such use, there is no evidence that the senior water rights have been curtailed by the State Engineer, the Division Engineer, or the Town in either 2002 (the driest year of record in Western Colorado), or in 2012 (with annual precipitation at less than 20% of normal to date), nor any other year since they began to be used upon the River Valley Ranch Golf Course.

Once you have had a chance to review the attached report, please feel free to call me with any questions.

Sincerely,

By


Gary L. Beach, MSEE, CES, PWS
Principal Consultant



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Providing Consulting Services to Colorado Since 1985.