IVINS CITY STAFF REPORT
City Council Meeting August 1, 2024

Agenda Item: Hidden Springs RV Park Compliance with Conditional Use Permit

Submitted by: Ivins City Staff

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FACTUAL BACKGROUND

1. On August 19, 2021, the city council approved a conditional use permit ("CUP") for the construction and operation of an RV Resort located at 91 W. Highway 91, known as the Hidden Springs RV Resort. A copy of the list of conditions required by the city council is attached hereto as Exhibit A. Among other things, the CUP authorized the following improvements:

- 109 RV sites, 26 future cottage sites and 10 tent sites;[1]
- a 5,040 square foot clubhouse;[2]
- two 1144 square foot bathhouses;
- recreation amenities consisting of a clubhouse, pool, hot tub, playground, and 8.98 acres of open space.

2. The CUP further required that the project be built in accordance with the materials presented at the planning commission meeting held on August 3, 2021, and the city council meeting held on August 19, 2021. The site plan presented at both meetings is attached hereto as Exhibit B.[3]

3. The CUP also required compliance with Ivins City code, including but not limited to Title 16, Chapter 17, Part 2 governing RV Resorts (the "RV Resort Regulations"). Among other things, the RV Resort Regulations require the following:

- "all pads on RV sites shall be concrete";[4]
- "[a]ll exterior boundaries shall be screened … by a solid six foot (6') … privacy wall";[5]
- landscaping consisting of "a minimum of one tree for each RV site, tent site

[1] It was understood that the 26 future cottage sites would be used as RV sites until they were developed in the future. Thus, the total number of approved sites for RV use was 135.
[2] The CUP was later amended to allow a larger clubhouse.
[3] The other materials presented at those meetings can be found here: Planning Commission August 3, 2021 Agenda, Item 3C; City Council August 19, 2021 Agenda, Item 5C
[4] ICC 16.17.204(5).
[5] ICC 16.17.205(8). There are some exceptions to this requirement, not relevant to this analysis, for areas not used for sites due to topography or are not visible from surrounding streets or abutting uses.

and cabin site" and "a minimum of three (3) trees clustered every thirty (30) linear feet along all property boundaries";[6]

- recreational amenities consisting of a clubhouse, pool, and playground; and[7]
- accessory facilities consisting of an office, laundry room, and restroom facilities including a minimum of 8 toilets and 4 showers for women and 5 toilets, 3 urinals and 4 showers for men.[8]

4. Finally, the CUP required completion of the project within 2 years of commencement.

5. On February 1, 2023, the grading permit was issued. Grading and construction started thereafter and has progressed based on later-approved construction and building permits.[9]

6. To date, city staff has not given final approval on the construction or buildings as required by law, nor has City staff authorized the project to commence operations in any manner.

7. In the week or so prior to July 19, 2024, city staff noted signage displayed at the project indicating that the project was open for business. As city staff had not approved the construction as required by law, city staff requested that the RV Park cease operations until final approvals had been given.

8. Thereafter, on July 19, 2024, city staff met with Jon and Nicole Graf. At that meeting, the Grafs requested the ability to start operations. City staff explained that the project was not complete and therefore operations could not commence. City staff provided a preliminary list of items that needed to be completed and approved prior to commencing operations. City staff further reviewed the CUP and noted that if the project opened before receiving construction approvals and certificates of occupancy on the buildings, the project would be in breach of the CUP. Based on language in the CUP, city staff suggested the Grafs submit a plan for consideration by the city council of how to bring the project into compliance.

9. On July 23, 2024, Jon Graf emailed the mayor and city council requesting permission to commence operations as of August 1, 2024. Included with the request was a plan to complete the following material items over the coming months and years:

- trail along Highway 91 completion by September 30, 2024;[10]

[6] ICC 16.17.209(1)(a) and (b).
[7] ICC 16.17.209(2).
[8] ICC 16.17.211.
[9] A copy of the site plan included with the approved construction plans is attached hereto as Exhibit C. It materially matches the plan presented to the planning commission and city council. In addition, building permits have been issued for the clubhouse and the pool. The permit for the clubhouse includes the structure housing the pool equipment. Building permits have not been issued for the two other bathhouses called for in the plans and construction has not even started on those buildings.
[10] The request actually identified September 31, 2024 for completion. However, as there are only 30 days in September, it is assumed it was intended to be September 30, 2024.

- landscaping on Highway 91 completion by March 23, 2025;
- lighting on Highway 91 completion by March 23, 2025;
- landscaping within the resort completion by August 1, 2025; and
- concrete pads completion by August 1, 2029, compacted gravel until then.

10. On July 25, 2024, city staff inspected the project and, in addition to those items referenced in Jon Graf's July 23 email, noted several additional issues that were not yet ready for final approval. The report from Mike Haycock is attached as Exhibit D. The report from Jared Taylor is attached as Exhibit E.

11. At the inspection, staff noted two additional buildings on which construction has started but for which no building permits have even been issued – a cabin along the road below and east of the pool, and 4 connex boxes turned into a single structure on the maintenance and storage site also on the road below and east of the pool. This structure is not screened as called for by the approved construction drawings.

12. In addition, it is the City's understanding that water impact fees have not yet been paid to the Washington County Water Conservancy District. City staff understands that the owner is working on a deal with WCWCD to waive all or a portion of impact fees in exchange for the transfer of water shares owned by the owner. However, until the City receives written confirmation from WCWCD that no impact fees are due, the City cannot deem this issue resolved.

ANALYSIS[11]

This project is subject to the requirement of a class V conditional use permit.[12] Without such a permit, an RV resort use would not be allowed in Ivins City. On a class V conditional use permit, the city council is charged with "determining reasonable conditions that could be imposed to mitigate reasonably anticipated detrimental effects of the proposed use at the proposed location …."[13] However, the city council cannot approve a project that otherwise violates building codes or other applicable law. Such laws, including the RV Resort Regulations, cannot be waived by the city council.[14]

While the city council does have the authority to alter conditions listed in the CUP that are not otherwise required by law, such alteration would require an amendment to the

[11] This statement is not intended to be comprehensive. Ivins City reserves the right to apply any additional authority and/or procedures allowed by law.
[12] ICC 16.17.204(1).
[13] ICC 16.16.107.
[14] City Code does allow a variance in certain circumstances, including but not limited to an application from the owner and a determination that "literal enforcement of [the zoning ordinance] would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purposes of this title." ICC 16.27.105(2)(a). However, "unreasonable hardship" is very specifically defined and specifically excludes a hardship that is "self-imposed" or "economic." ICC 16.27.105(4). As the owner has not sought a variance, this staff report does not address whether a variance would be appropriate. Additional analysis would be required.

CUP which amendment requires, among other things, an application and planning commission review.[15] The owner has not sought to amend the CUP, nor has the planning commission been consulted, so the city council does not have authority to amend any of those conditions at this time.

At this time, the city council's authority is limited to "accepting a detailed plan to remedy the breach of the condition[s]" of the CUP.[16] In so doing, the city council cannot waive or alter any of the conditions. In addition, as this is a CUP, any decisions should consider the same issues considered when the original CUP was authorized – i.e, whether the plan for compliance continues to provide for reasonable conditions that mitigate reasonably anticipated detrimental effects of the project.

As mentioned above, the report from Mike Haycock is attached as Exhibit D. The report from Jared Taylor is attached as Exhibit E. These are all items that the City would ordinarily require to be fully and finally completed prior to final approvals being granted, including certificates of occupancy. Some are close to being completed and some are relatively immaterial. However, some are material and some are not close to being completed. Staff will be prepared to give a more thorough report on which items are of most concern at the city council meeting scheduled for August 1, 2024.

One option the city council could consider is a phasing plan allowing operations in parts of the resort that are more (or even fully) completed while construction activities continue in other portions of the resort. Also, with regard to those improvements that will be turned over to the City, an improvement bond could be required giving the City a resource to access if the improvements are not completed as required.

Finally, to the extent the city council determines that a plan can be accepted to allow the operation of the project while items are brought into compliance, staff recommends that a detailed agreement be created and signed by all parties. The material terms of such an agreement should include the following:

- specific list of material items that are not complete;
- firm deadlines on completion and a designation of the actions that must be completed to be deemed complete;
- confirmation of the requirement that the project comply with all laws and conditional use permit conditions;
- confirmation of the City's authority to require operations to cease if timelines are not met or if other conditions or laws are violated; and
- any other terms accepted by the city council, such as an improvement bond or other assurances that can be provided by the owners.

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[15] ICC 16.16.111.
[16] Exhibit A, page 2, "Breach of Conditions" section of the CUP.