

September 6, 2015

Starting Position

This document includes initial content for the DPC agency review response to Teller County on the subject of the Special Use Permit application for the Lodge at Elk Valley. This will be the starting position for the September 8, 2015 public meeting of the DPC. This starting position is what a few people could come up with, we need the input of other Committee members and the public to include all relevant points.

The objective of the Sept 8, 2015 meeting will be add, remove, revise wording and enhance this content to meet the expectations and desires of the DPC members. Public input is welcome. The response submitted to the county will be formatted as a regular letter, at this time all we are interested in is what the letter will say.

This document includes these sections:

Introduction

Background

Initial Opinion

Application Review – comments on the content of the application package

Application Supporting Documents – comments on the documents included in the application

DRP Clauses Pertinent to this Application – DRP content that pertains to this application

DRP Addendum B – comments on criteria to amend the Divide Region map

Suggestions and Conditions – any suggestions and conditions the DPC wants to pass to the county and/or applicant

Closing

Clauses copied from the DRP are in green text.

Introduction

This is the Divide Planning Committee (DPC) agency review for a Special Use Permit (SUP) for the Lodge at Elk Valley located at 602 CR-511. The DPC met in ## public meetings with and average of ## participants to discuss this topic and how this application relates to the current 2006 Divide Regional Plan (DRP). We respectfully submit the following discussion points.

Background

A lot of thought and bartering went into developing the DRP to reach what we believe is a good Regional Action Plan as described in the county Growth Management Plan (Master Plan); it took 2 1/2 years to create the 1998 version. The 2006 review reaffirmed the 1998 Plan's content adding only the two addendum's which address criteria for amending the Divide Region

Maps. The vision reflects a small town community made up of three planning areas wherein growth is managed by a phasing process. The planning areas are Town Center, Rural Residential and Rural Lands. The plan provides a method for responsibly dealing with the impacts of regional growth while remembering that the Divide Region is primarily residential.

One of the purposes of the DPC is to clarify the intent of the Plan (DRP) and its contents

Initial Opinion

First, we would like to point out that it is our opinion this resort SUP application is premature and that a LUR Map Change is necessary to change the land designation to Rural Resort. Once the land is properly designated, an application for a resort SUP can be submitted. We base this belief on the DRP clauses:

- C5-4 New recreational developments should be required to amend the Divide Growth and Conservation Maps using map amendment criteria attached to this Plan, as well as County Regulations.
- J1 A keystone of the implementation of the Divide Regional Plan is the adoption into the Teller County Land Use Regulations of the Divide Growth and Conservation Maps as regulatory. Therefore, since any amendment to these maps may affect implementation of the Divide Regional Plan, Teller County and all concerned parties should consider "criteria for amending Divide Town Growth and conservation map" and "criteria for amending Divide Region Growth and conservation map" for recreational uses (resort CUP). These criteria are attached to this Plan as criteria addendum "A" and criteria addendum "B".

Based on those items and precedence of the 2013 Golden Bell expansion¹ this SUP application is premature and needs to be preceded by submittal and approval of a Land Use Regulations (LUR) Map Change application. This Resort SUP application should be pulled, canceled, terminated, deferred (what ever is the appropriate action) and a new application for a LUR Map Change created and submitted. Then, if the Map Change is approved, the applicant can submit for a resort SUP.

Application Review

Reviewing the SUP application for a resort, we identified the following items as problem areas.

Page 1 – under the heading: Nature of the Proposed Use two paragraphs use the phrase *includes/including; but not limited to*. According to LUR Section 8.2.B.1.a - all uses must be listed, including those by right. This application is incomplete.

Page 5 – under the heading: 1. Consistent with Master Plan: the applicant claims close to \$5,000 in taxable income per group is brought into the county. But there is no substantiation for that number; probably just a wild guess, it is doubtful that anyone could speculate on the how much is spent in Teller county by guests of the Lodge at gas stations or local retail stores.

The operator of the proposed lodge is the Center for SPFM (Center for Single Parent Family

¹ County File No. LUR-00040 (13); TC-PC Regular Meeting Tuesday, May 14, 2013

Ministry) a registered IRS 501(c)C3) tax exempt entity. Therefore, the county does not receive tax revenue from this organization.

Page 5 – under the heading: 2. Compatibility, reference to section C5-3 of the DRP which states: “Existing designated recreational uses within the Divide Region should be encouraged to be successful and encouraged to improve their facilities and operations.” is not appropriate for this SUP and in fact is the one clause in section C5 that is not relevant to this application. The purpose of DRP clause C5-3 is that existing (which this is not) recreational uses maintain their properties (land and structures) so they don't get run down and impact neighbor's property values.

Page 6 – under the heading: 3. Zone District and Use Standards, the statement: "zone district used contemplated in the future include: a group meeting facility and temporary housing. Both of these activities will increase traffic and septic system use. Limits on this usage should be carefully defined and limited. Temporary housing would likely provide the capability of hosting additional Overnight Guests beyond the 25 asked for and presumably can be accommodated in the existing structure.

Page 6 – under the heading: 4. Design Minimizes Adverse Impact, the statement: "We believe that our proposed application for a special use can co-exist peacefully with cooperative neighbors." What kind of cooperation is expected? Giving up peace and quiet?

Page 8 – under the heading: Driveways and Access: the access from CR-511 was improved in 2006. Does the access permit simultaneous two direction traffic, entering and exiting, at the same time? Most residential driveways can accommodate only one vehicle at a time. This topic could be a possible issue for the Fire Dept and safety concerns. Hopefully there will be an agency review that addresses safety and emergency access and egress. The county should demand a proper agency review that addresses person and property safety for commercial use on this property and not accept a no response means approval of this application.

Pages 8 & 9 – under the heading External Effects: the applicant acknowledges, rightly the external effects are noise and smoke. The application then identifies plans to mitigate the causes of those potential impacts on the neighbors.

Noise: If this application is approved the applicant plans to attempt to mitigate one source with speaker placement. Back on page 1 the applicant states that *outdoor music played by live instruments or through electronic devices*. Judicious speaker placement could contribute to mitigation of amplified sound, music and voice. Speakers placed on the north side of the building might mitigate noise to the south, dampened by the building. But what about the neighbors to the north? The building could actually amplify the sound to the north by reflecting the sound off the walls of the building.

What is not addressed, and there little that can be done to mitigate, is noise caused by people while recreating and celebrating during such events as weddings. While some other event types might not create much noise from this source weddings will tend to be noisy.

More on sound propagation and noise

Smoke: use of outdoor grills and a fire pit would be expected from such property even if

this were a single family residence. The DPC assumes there will be an agency review from the Divide Fire Dept to address any fire safety concerns and we defer to them on this topic.

Page 10 – under the heading: Open Space: the applicant correctly identified that about 5 acres out of the total 40 have been developed to date. The Application implies the the SUP is for only the developed five acres (Total Affected Acreage on page 3 of 4 of the application form), but the SUP will apply to the entire 40 acres. We believe the application form was incorrectly filled out or we misinterpret the form. Regardless of the cause, the SUP will apply to the entire 40 acres and future expansion could happen anywhere on the parcel.

Page 11 – under the heading: Wildlife Habitat Impact Area Statement: the applicant indicates the potential impact on wildlife is Low. We believe the applicant misinterpreted the map in the DRP and the potential impact should be Moderate to Low. But the potential impact is still on the Low side and should not be a driver one way or the other for this application.

Application Supporting Documents

In no particular order, these are concerns to the DPC related to the supporting documents included in the application.

Regarding the letter supporting the SUP from the Stauffers: This letter should not be considered by the commissioners because the authors of the letter are the property owners. Obviously, it is in their best interests to keep the subject property leased. They also benefit from the property improvements.

Regarding the July 22nd fire code inspection. It was done under the parameters of the 2003 International Fire Code. Teller has adopted IFC 2014. A re-inspection under 2014 with all necessary compliance should be part of the CUP. Then they can make "another small" donation to the fire department.

Regarding water use. Employee water use was not included in this worksheet. Given that employee parking was considered in the vehicle traffic and parking requirements, water use should be recalculated to include employees. Further, septic capacity was calculated from a 27 year old soil percolation test. The engineering report disclaims any warranty as to "findings or recommendations", but they did state that for commercial use, this property requires the addition of a 1,000 gallon tank. The CUP should be contingent upon the completion of a current perc test, revised calculation of water use, and the installation and agency approval of all required modifications to the septic system and well.

Although the increase in traffic is below the threshold increase for requiring a traffic study, it should be taken into consideration that traffic from local residences is quite low. Adding 45 vehicles (one way) is still a significant increase and should be considered. The DPC requests that Cumulative Impacts be considered when addressing all potential impacts, this should include traffic. CR-5 and CR-51 feed multiple large residential developments (can we get a count of homes in some of these developments?) in addition to two existing resort properties and popular National Forest access used for day use and overnight use by campers with trailers.

The Divide Region Wildlife Habitat map was miss-interpreted by the applicant; probably due to the poor quality of the photocopy of the map used and included in the application and not intentional. The subject property should be designated in the Moderate to Low category. The

map (Map #3 of the DRP) was provided by the Colorado Division of Wildlife (DOW) and was valid in 2006 when the Divide Plan was last updated. It is possible the DOW has change the designation of the property since 2006. The DPC defers to the DOW who hopefully will submit an agency review for this application. The DPC does not see a wildlife impact caused by this application. Whether the designation is Moderate to Low or Low is a mute point.

DRP Clauses Pertinent to this Application

Reviewing the current 2006 DRP document against this application, these are the pertinent clauses identified by this Committee:

C1.01 Rural Lands: Maintain existing uses, density, and open character.

This property, designated Rural Lands is a 40 acre parcel with one residence and few utility outbuildings, consistent with the surrounding parcels. The existing uses should be maintained (continue), that of a single family residence on agricultural land like the surrounding properties. See satellite maps. Should we include graphics in the response to the county?

A resort on the subject property would not be consistent with the density and open character of the surrounding properties.

C1.03 Town Center: Includes business and residential areas, has a specific outer boundary, and additional future development is encouraged to locate within the Town Center.

New commercial uses, such as this resort application, are expected to locate in this Town Center area where resources exist and can be isolated from rural residents. The Divide Town Center is an Urban Service Area, per the Teller County Growth Management Plan and accommodates the three Growth Functional Planning Areas identified in the Growth Management Plan.

The Town Center actually includes a property with the Resort designation awaiting a resort to locate on that parcel. Granted the Town Center Resort parcel is not as rural with natural beauty that the applicant probably desires, but the DRP has accommodation for a resort in the Town Center with services and direct access to US Rte 24.

C1.07 Prevent commercial and industrial development outside the town center.

The requested use is a commercial use. High participation uses are intended to be located in the town center where resources are available. Central services (water & sewer) as well as paved road access is in-place to accommodate higher demand users.

C1.09 Maintain peaceful and desirous place to live, work, recreate in beautiful mountain environment.

Operative relevant phrase being: *Maintain peaceful and desirous place to live.* Residents of Divide, where ever in the Region they live, expect and have the right to peace and quiet on their own property. The addition of a new resort between CR-5 and CR-511 will most likely prevent residents within 1.5 miles of the proposed resort form

obtaining that *peaceful and desirous place to live*.

C1.10 Exterior lighting should be downcast and shielded to prevent glare onto adjacent properties and roadways.

In the past this has been a problem at the subject property. We understand the operator is aware and taking measures to rectify this.

C4.02 Protect existing neighborhoods from the intrusion of higher intensity land use.

Section C4 addresses Rural Residential Areas, not Rural Lands, but the character of this area (neighborhood) is residential single family homes and the distinction between those two land designations in the Growth Management Plan is fairly loose.

Any SUP, including this application, is by definition a *higher intensity land use*. Thus, the neighborhood should be protected from this encroachment.

C5-1 Rural Lands should be encouraged to stay as they are.

Rural Lands are designated as limited growth, per the Growth Management Plan and should remain in the character and use intended for this property and those that surround it which is residential use on agricultural land or residential land.

Inspecting the parcels within a one-mile (approximate) circle of the subject property (Lodge structure), the Assessors database identifies the Account Type as a mix of mostly Agricultural and Residential. [see annotated map?](#) Most parcels have a single family home and some have utility outbuildings and are *operated* as single family residences.

The larger lot size parcels (greater than 35 acres) used as residential serve a dual purpose, intended or not, of provided the owner-resident with separation from neighbors which should provide the peace and serenity but also provide buffer space for near-by smaller residential parcels. Retaining Rural Lands as they are, with existing approved use benefits more than the owners of these adjacent Rural Lands parcels.

C5-2 Restrict new developments that could cause noise, visual blight, or noxious odors.

New uses are not appropriate. *New developments* includes changing the approved use. A resort on this property will cause noise. Visual blight and noxious odors would not be expected from the intended resort use. The resort buildings are visible from CR-5, not from CR-511. Maybe, maybe not visible from adjacent properties to the north and south. Regardless, visual blight probably does not enter into the equation for this application.

C5-3 Existing designated recreational uses within the Divide Region should be encouraged to be successful and encouraged to improve their facilities and operations.

Not appropriate for this application. As previously mentioned, this clause is for existing already approved recreational use and addresses the upkeep of the property so as to not negatively impact property values of the neighbors.

C5-4 New recreational developments should be required to amend the Divide Growth and Conservation Maps using map amendment criteria attached to this Plan, as well as County Regulations.

This is important. The Divide Region is unique within the county and has identified specific lands as able to accommodate resort uses; admittedly because some resorts preceded the DRP document. Refer to TC-LUR Appendix B, Divide Region Growth and Conservation Map and Divide Town Growth and Conservation Map. A new resort use must first change the appropriate regulatory map in Appendix B of the Teller County Land Use Regulations to designate parcel(s) to be appropriate for a resort use.

This process was recently used by the Golden Bell resort in 2013 which successfully added acreage and allows them to submit for a building permit for a new meeting facility.

There are already five resorts within the Divide Region on fifteen parcels (some resorts cover multiple adjacent parcels). We believe the Divide Region has accommodated our fair share of resort uses in the county. The Growth Management Plan says each Region of the county should accommodate their share of growth².

C5-5 Cumulative impacts of recreational uses should be analyzed and considered as outlined in the attached criteria for amending maps for recreational use and all Conditional Use Permits.

Three events at different locations, each contributing 50 day vehicle trips releases each event center from the requirement of a traffic study, but that doesn't mean the county roads don't suffer from the degradation caused by 150 vehicle trips. Traffic is only one example of impacts on neighbors and county infrastructure and services that must be addressed.

Someone living in the Aspen Village subdivision (between Golden Bell and this proposed new resort) will potentially be subjected to the noise and other external effects of both resorts.

C5-6 New development with over a 100-participant capacity should annex into the Town Center subject to the "criteria".

With application stated counts of 25 overnight plus 70 day guests the resort claims that no more than 95 guests will use the resort for any given event. This does not include employees, staff, catering staff possible other supporting persons such as musicians, photographers, etc. The number of participants could reach over 100.

The numbers of participants claimed by the application is obviously derived by backing off from various limiting counts suggested by traffic study, water capacity and possibly this clause of the DRP. Will the seventy-first person showing up at a wedding be turned away by the resort operators? We suspect not.

100 participant facilities should be in the town center where central services are available; but it is doubtful this use can be accommodated in the town center. The users of this facility are after the advantages provided by the Rural Lands, not a town center.

² Growth management plan; Section VI, Page 4. *...using functional planning areas and regions assumes the acceptance of the County's and Communities' fair share of growth.*

DRP Addendum B Applies.

As stated previously, at the beginning of this agency review response. The DPC believes a LUR Map Change must happen before an application for a Special Use Permit should be considered. Such is the topic of the DRP Addendum B. These are the criteria that must be met to change the Divide Region maps in the current TC-LUR Appendix B.

I. EXISTING USES

Existing uses — should be encouraged to succeed and improve facilities and operations. This DOES NOT necessarily mean encouraging expansion.

This clause does not apply to new uses, only existing and approved recreational use properties. It does forewarn those who do obtain approval that it is expected the properties will be maintained and not get run-down to the point of detracting from neighbor's property values.

II. NEW DEVELOPMENT

New development or addition of acreage to existing uses should consider the following criteria for approval.

a. SCALE

Is the magnitude, intensity and size of a proposal appropriate for the Divide community?

b. TRAFFIC

Does a new use have traffic access to Highway 24 or Highway 67 directly? Would existing use expansion to additional land have access roads appropriate for additional traffic, if any?

c. BUFFERS

Does the proposed new development have appropriate land buffer and or landscape buffers to protect residential areas and neighboring property from impacts?

No, and it is doubtful adequate buffers are possible to completely mitigate external impacts due to the size and shape of the subject property.

d. EMERGENCY ACCESS

Are exits from property adequate to deal with emergencies, including fire?

Defer to fire department agency review

e. CUMULATIVE IMPACTS (see definition)

Do other recreational uses add up to more-than—appropriate vehicle trips per day on a particular road? Do other recreational uses create an additional burden to infrastructure

on a particular road or area? Is there significant and adequate distance between recreational uses? Is there another recreational use within a one-mile radius? Should this use annex into the Town Center? Does this recreational use over-develop rural land by significantly changing density of human activity that could occur otherwise on the property?

f. NEW DEVELOPMENT INCLUSION

Should the new development be annexed into the Town Center due to participant capacity as outlined in C5-6?

maybe?

g. COST / BENEFIT ANALYSIS

Would the inclusion of an applicant's land within the Town Center bring specific benefits to the Divide community? Is there a benefit to the Divide Region as defined by the goals of our Plan? Is there a compensatory trade of density or other benefits? Are there dollar costs or detrimental impacts that should be considered? Does the development proposal pay its own way?

This resort will not pay its own way. While the property remains in private ownership the county will receive property taxes on 40 acres of agricultural land, but will receive no sales tax from events held at the resort due to the 501(c)(3) tax exempt status of the operator of the resort.

h. AREA IMPACT

Does the proposal negatively impact Rural Residential areas? Noise, light, odors, trash, etc.?

Yes, we believe Rural Residential areas will be negatively impacted if this resort is allowed to operate at this location.

Probably Redundant Information

Many parcels adjacent and near the subject parcel are recorded with the county assessor as Residential, some as Agricultural. Most surrounding parcels have single family homes regardless of the acreage and zoning; so the neighbors consider this area residential, inappropriate for commercial use such as a resort. These are our homes, where we live.

The character and disposition of the applicants is irrelevant. A Use Permit stays with the land, we must consider if this resort is right for this parcel for years in the future.

Based on the operator being a religious organization, designated as a 501(c)(3) they are tax exempt. As such, the resort will not pay their fair share of impact to the county that the resort will contribute to, or directly cause. At this time the property owners lease the land to the SPFM organization and thus pay Agricultural property taxes. Assuming the property remains in private ownership and not become owned by the SPFM the county and taxing districts impacted will receive some tax benefit.

Suggestions and Conditions

Intent is to offer any suggestions to the county and applicant – if we think appropriate. We can also suggest conditions. Conditions can be added to the recommendation of the Teller County Planning Commission if they elect to Approve with Conditions.

Suggestions

- Is it possible to obtain a better copy of the Well Permit – one that is actually legible?
- Peak summer weekend traffic counts should be conducted to determine if cumulative traffic impacts exist considering the large residential subdivisions, other resorts and National Forest access on roads north of the Divide town center. This data could help the county make decisions concerning future traffic impacts in this area.
- The Divide Town Center actually can accommodate a Resort. There is even a parcel designated for such use. If the applicant wants to establish a new resort in the Divide region why not consider that land. Alternatively, another already designated resort in the Divide region, the Stone Creek Farmstead, with over 270 acres is not operating as a resort at this time and might consider allowing use of some of their land for the intended types of events. The goats probably won't mind.
- The current operators of the Lodge at Elk Valley appear, from the inclusions in the SUP application, to be addressing past issues to minimize impacts on neighbors. Only time will tell how successful the impact mitigations are. If this application is approved, the county should monitor for all impacts and address identified issues. Can a SUP be revoked once approved by the BoCC?
- There are other private properties that host events within the Divide Region; two are believed to be on or just off CR-51. Are those properties running approved use legal businesses in the eyes of the county? They certainly contribute to *Cumulative Impacts* in the area. We suggest the county establish some dataset that inventories approved Special Review Use (per TC-LUR Chapter 8) properties integrated with the Teller County Mapping Tool and Assessors database to permit residents and prospective property owners to know what special uses exist on properties in the area.

Possible Conditions

If the TC-PC even considers Approve with Conditions to the BoCC, the DPC desires the following conditions be considered:

- Water supply quantity and quality – due to the commercial nature of the use, periodic test should be conducted by the operators at their expense and quality reports be available to guests. Who ensures the allotted amount of water is not exceeded per the Commercial Drinking and Sanitation form?

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- As required by the Well Permit, the water use report should be maintained and, if legal, provided to the county planning dept annually as a measure of water use. Not sure this is legal. The state requires the data be submitted when and if requested by the state. We suspect the state will seldom, if ever ask for the data.
- Have the applicant pay for paving CR-511 to provide hardtop road access from the property to US Rte 24.

Closing

The DPC recommends the Teller County Planning Commission <approve/approve with conditions/**not approve**> the said application.