

MEMORANDUM

TO: New Castle Planning & Zoning Commission

FROM: Haley Carmer, Assistant Town Attorney

RE: Lakota Ridge Senior Apartments, LLC Preliminary PUD Development Plan Application

DATE: April 22, 2016

Lakota Ridge Senior Apartments, LLC (“Applicant”) has submitted a Preliminary PUD Development Plan Application (“Application”), proposing to develop a senior housing project with up to 50 dwelling units. The property that is the subject of the Application is the parcel within the Lakota Canyon Ranch PUD that was donated to the Town by Warrior Acquisitions, LLC (“Warrior”), that is, Lot 2A, Phase 7 (“Property”). Applicant—through an assignment from the original lessee, Community Resources & Housing Development Corporation—is currently leasing the Property from the Town pursuant to a Lease and Option to Purchase Agreement dated November 10, 2014 (“Lease”). Applicant has not yet exercised its option to purchase the Property, so, despite the representation in the Application, the Town remains the Property owner. In any event, due to a deed restriction on the Property, the Town cannot sell the Property to Applicant until after December 4, 2016.

Pursuant to the Master Declaration of Protective Covenants, Conditions and Restrictions for Lakota Canyon Ranch and amendments thereto (“Master Declaration”), the Property is part of what is defined in the Master Declaration as the “Expansion Property.” The same is true of the fire district lot. As part of the Expansion Property, the Property was not automatically incorporated into the area governed by the Lakota Canyon Ranch Master Association (“HOA”) and the Master Declaration does not encumber the Property. Under the Master Declaration, Warrior, as Declarant, has the option to incorporate the Property into the community governed by the HOA or to waive that right. To date, Warrior has not exercised its right to annex the Property into the community governed by the HOA or to record the Master Declaration against the Property. As such, the Property is not currently subject to the covenants, conditions, or restrictions included in the Master Declaration nor is it governed by the HOA.

Applicant recently organized a neighborhood meeting with the HOA, Lakota homeowners, and other interested parties, including Town staff. At that meeting, the HOA expressed some concern that the Property is not subject to the Master Declaration or the HOA. If the Property is not incorporated into the HOA, the HOA will miss out on dues from Applicant, the Property will not be subject to the HOA’s design review process, and the HOA’s architectural guidelines will not be binding on the Property or the Applicant. Also note that, as explained more fully in the staff report, Applicant’s proposed development counts against the density of the PUD as a whole as well as the individual phase in which it was developed (Phase 7, which was allocated a total of 70 dwelling units).

On the other hand, the purpose of the senior housing project is to provide affordable housing to seniors. Applicant has represented to Town staff that Applicant has not included HOA dues in its operating budget because, at present, it is not subject to the Master Declaration or the HOA. Additionally, senior housing residents will likely use few, if any, of the Lakota community amenities that are funded by HOA dues because Applicant's project includes its own community center. Moreover, if architectural consistency is the primary concern, Section 16 of the First Supplement to 1999 Annexation and Development Agreement requires that the Town Building Department receive written proof that construction plans have been approved by the Lakota Canyon Ranch Architectural Control Committee ("ACC") before issuing a building permit.¹ Applicant intends to be a good neighbor and has scheduled an appearance before the ACC on May 4th to that end.

This Commission should consider whether Applicant should be a part of the HOA. Warrior has stated that the Property need not be subject to HOA governance, and Town Council expressed a similar opinion at its April 19th meeting. One option for the Commission to consider is requiring, as a condition of approval of the Application, that Applicant receive approval of its project design from the ACC.

Applicant has also requested a cost recovery agreement regarding the costs of construction of the public street to the extent it may in the future serve the adjacent property owned by Jim Colombo. Any recommendations or insight the Commission can provide on this issue is appreciated.

I look forward to discussing these issues and others with you at the public hearing on the Application scheduled for on March 27, 2016.

¹ Both Town Council and Warrior have the option to waive this requirement for a particular lot.