

RESOLUTION No. 2012-012

**A RESOLUTION OF THE
BOARD OF COUNTY COMMISSIONERS OF OURAY COUNTY, COLORADO
CONCERNING EXTENSION OF THE
PRELIMINARY DEVELOPMENT PLAN AND PUD AGREEMENT FOR THE DIVIDE RANCH AND CLUB**

WHEREAS, on June 25, 2007, the Board of County Commissioners of Ouray County, Colorado (Board) approved an amendment to the preliminary development plan for The Divide Ranch and Club, previously known as Fairway Pines Estates and ratified the approval on July 2, 2007 pursuant to Resolution 2007-033; and

WHEREAS, on July 2, 2007, the Board and Heritage Inn and Suite of Kansas City, Inc. and H.T. Inn of Erie, L.L.C (herein collectively called Developer) executed a Planned Unit Development Agreement (PUD Agreement) with the County as required by Resolution 2007-033; and

WHEREAS, Resolution 2007-033 required the Developer to submit a request for approval of a final development plan for at least one phase of The Divide Ranch and Club within one year of the date of Resolution 2007-033 or Preliminary Development Plan approval may be revoked or modified as the County deemed appropriate; and

WHEREAS, if the Developer submitted a request for approval of a final development plan for at least one phase of The Divide Ranch and Club by July 2, 2008, all rights granted to the Developer under Resolution 2007-033 and the PUD Agreement shall be vested for a period of five years from July 2, 2007; and

WHEREAS, on July 1, 2008, the Developer submitted a request for approval of a final development plan for Filing 6A of The Divide Ranch and Club and as a result, was granted vested rights for a period five years from July 2, 2007; and

WHEREAS, on August 15, 2011, the Developer requested an extension of the preliminary development plan and PUD Agreement for a period of an additional five years; and

WHEREAS, as a result of the vested rights granted pursuant to Resolution 2007-033, the previous version of Section 6 of the Ouray County Land Use Code (LUC) in effect in 2007 applies to the request for extension by the Developer; and

WHEREAS, the previous version of Section 6 of the LUC does not limit the Board's authority to grant an extension to a preliminary development plan or the PUD Agreement; and

WHEREAS, during its meeting on November 1, 2011, the Board took comment from the Developer's representative, the public and staff on the request for extension and decided to table the matter for consideration at the Board meeting on November 15, 2011; and

WHEREAS, prior to the November 15 meeting, the Developer asked that the request for extension be tabled until the Board's meeting on December 6, 2011 and at its meeting on November 15, 2011, the Board tabled the request for extension to its meeting on December 13, 2011; and

WHEREAS, at its meeting on December 13, 2011, the Board, after receiving another request to table the request for extension from the Developer, tabled the matter until staff had recommendations for the Board and had the opportunity to discuss the request with the Developer; and

WHEREAS, pursuant to the Board's direction, the Developer's request for extension was scheduled for the Board meeting on March 13, 2012 and during that meeting the Board took comment from the Developer's representative, the public and staff; and

WHEREAS, on March 13, 2012, the Board continued the determination on the Developer's request for extension to its meeting on April 10, 2012 where the Board took additional public comment; and

WHEREAS, during its meetings on March 13 and April 10, 2012, the Board made the following findings regarding the request for extension:

FINDINGS

1. The Divide Ranch and Club is a unique planned unit development as it is partially completed and lots within completed phases of The Divide Ranch and Club, previously known as Fairway Pines Estates (collectively referred to as "PUD" herein), have been sold at the time of the Developer's request for extension. In addition to the existence of current property owners within the PUD, the development has an operating golf course and clubhouse.
2. A homeowners association and sanitation district also operate in conjunction with the completed phases of the PUD. Both the association and district could fail and dissolve if the development is not completed, at great detriment to the property owners within the PUD. The sanitation district has expressed its support of the Developer's request for an extension. The homeowners association has expressed its support for an extension of at least three years with no limitations on future extensions for completion of the PUD.
3. The public and property owners within the PUD expressed a desire that the County not place any restrictions on the extension of Resolution 2007-033 and the PUD Agreement and supported the County working with the Developer so that the remaining unplatted portion of the PUD would be completed.
4. The decline in the economy and home sales since the adoption of Resolution 2007-033 and the execution of the PUD agreement has substantially affected the ability of the Developer to move forward with the PUD process and granting the extension would provide the Developer with the additional time in which to complete the PUD.
5. There is a compelling public interest of the County and its citizens that the PUD achieve financial viability and sustainability and that the PUD be completely platted.
6. The Developer, property owners within the PUD, and potential purchasers of lots within the PUD require the assurance of existing vested property rights in order to complete the PUD, retain ownership of lots already purchased within the PUD, and continue sales of unsold platted lots within the PUD.
7. An extension of the Resolution 2007-033 and vested property rights would benefit the current landowners within the PUD by maintaining property values.
8. Denying the request for an extension would lead to great uncertainty for the property owners who currently own property within the PUD.
9. The Developer has infused and expended a substantial investment of money and has completed significant improvements within the PUD, including but not limited to parking lots, paved cart paths, clubhouse, and irrigation system. As such, the Board recognizes the positive development within the PUD accomplished by the Developer.
10. The Developer filed an application with the Water Court in Case No. 10CW197 in order to address the County's concerns regarding water supply to the golf course, as detailed in condition 1(a) of Resolution 2007-033. At the time of the request for extension, that case is still pending before the Water Court and the Developer currently has not presented documentation or a request that the Board determine whether condition 1(a) has been satisfied.

11. The Board finds that as a matter of public policy and pursuant to the Board's authority to regulate land use within Ouray County, it is in the best interests of the public, property owners within the PUD, and the County to grant the request for extension for a period of five years from July 2, 2012, as requested by the Developer.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF OURAY COUNTY, COLORADO, AS FOLLOWS:

1. The Board grants the Developer's request for an extension of Resolution 2007-033 and the PUD Agreement until July 2, 2017. As a result, the Developer's vested property rights granted by Resolution 2007-033 and the PUD Agreement will expire on July 2, 2017, if not otherwise extended by the Board of County Commissioners.
2. The terms and conditions contained in Resolution 2007-033 and the PUD Agreement shall remain in full effect until July 2, 2017.
3. As a condition of this extension, the Developer will execute a Modification of the PUD Agreement extending the vested property rights granted to Developer in PUD Agreement to July 2, 2017.

APPROVED AND ADOPTED THIS 10th DAY OF APRIL, 2012.

Voting for: Commissioners Albritton, Fedel and Padgett
Voting against: None



Michelle Nauer
Michelle Nauer, Clerk and Recorder
By: Linda Munson-Haley, Deputy Clerk of the Board

BOARD OF COUNTY COMMISSIONERS OF
OURAY COUNTY, COLORADO

Heidi M. Albritton
Heidi M. Albritton, Chair

F. Mike Fedel
F. Mike Fedel, Vice-Chair

Lynn M. Padgett
Lynn M. Padgett, Commissioner