



Zoning Administrator Interpretation

To: Reese Anderson, Pew & Lake, P.L.C.

Through: John Wesley AICP, Planning Director

From: Gordon Sheffield AICP CNUa, Zoning Administrator

Date: June 29, 2016

Subject: Interpretation regarding converting the Red Mountain Ranch Country Club practice range to a residential use

In response to Divot Partners, LLC (“Divot”) intent to submit a proposal to convert the existing Red Mountain Ranch Country Club practice range to a residential use (the “Proposed Development”), as outlined in the May 3, 2016, letter to the City, we are providing the following interpretation of the City of Mesa Zoning Ordinance (“Ordinance”).

Among the issues considered is the applicability of the previously approved Development Master Plan (“DMP”) for Red Mountain Ranch and whether the proposed conversion is a significant change that requires a modification to a condition of the zoning. As we understand the inquiry, Divot’s position is that the Proposed Development requires only a Site Plan Review before the Planning and Zoning Board, in which the Board may only apply the criteria established under Ordinance Section § 11-69, exclusive of any other considerations and without review by the City Council. After reviewing the facts pertaining to the Proposed Development and the underlying zoning of the property, the conditions imposed during the zoning case, and the previously approved site plan, the City respectfully disagrees with Divot’s position. Although the following analysis is not intended to be exhaustive, we believe it is responsive to the questions Divot has raised to date.

I. Introduction and Summary

On its face, the Proposed Development does not comport with the approved site plan and the stipulation imposed by the City Council when it approved Case No. Z89-36, which required “[c]ompliance with the basic development as shown on the site plan and elevations submitted.”

An interpretation that the Ordinance only requires a Site Plan Review for the Proposed Development would effectively ignore the stipulation attached by the City Council as a condition to zoning of the property, and would defeat the purpose of the zoning limitation. As you are no doubt aware, the City Council imposes conditions / stipulations in almost every zoning case in an effort to protect and promote the public interest. Conditions requiring compliance with an approved site plan are specifically designed to provide predictability to, and protect the interests of, current and future property owners and residents in the area.

Because the Proposed Development is a significant change from the approved site plan, the Ordinance requires Divot to file and process a “new application.” This application process (which requires the City Council to adopt a new ordinance revising or deleting the previously approved conditions) is a critical element of the planning process. Approval of the Proposed Development is a legislative act that will require the opportunity for public review and comment, and the consideration of all relevant factors by both the Planning and Zoning Board and the City Council.

II. History of Zoning of the Property

On May 2, 1983, the City Council established the base zoning classifications for the approximately 820 acres¹ commonly referred to as “Red Mountain Ranch,” with base zones of M-1-PAD and R1-9-PAD in accordance with the Red Mountain Ranch Development Master Plan (“RMR DMP”) (Case Z83-034). As a condition of approval, the City Council placed five (5) stipulations on the zoning, including approval of the overall Development Master Plan and City approval of all individual site plan and subdivision plats for all development tracts. The case was approved with the adoption of Ordinance No. 1704, which approved a DMP as described in the “Specific Plan – Red Mountain Ranch, dated March 21, 1983” (the “Specific Plan”). At the same City Council meeting, Council adopted the Specific Plan (Resolution No. 5198). The Specific Plan describes and depicts a mixture of housing types and densities (for residential uses) oriented around a golf course that included a practice range. Inclusion of the golf course with practice range in the Specific Plan illustrates that this amenity was contemplated as an integral feature of Red Mountain Ranch since the property was annexed into the City, and the City Council considered the compatibility of the various uses, and the boundaries of each use, in relation to the golf course amenity when it approved the zoning case.

When the City Council approved the RMR DMP, it also approved the use of a specific portion of the property for golf course purposes. Thus, the golf course use was linked to the approval of the surrounding property for residential development -- a common development practice.

In 1990 the overall RMR DMP was modified in Case No. Z89-36, which established a DMP overlay district with conceptual zoning classifications of O-S, C-2, R-2-PAD, R-4-PAD, R1-9-PAD, and R1-35-PAD for the property. This rezoning case established the current zoning on the property (see Ordinance No. 2486). The City’s understanding is that Case No. Z89-36 was filed by the property owner -- and approved by the City Council -- in order to rezone and modify the original development concepts with respect to certain undeveloped parcels, and to modify zoning boundaries to account for changed market conditions. Additionally, the property owner requested conversion of certain multi-family and commercial land uses to single-family residential use. During the rezoning, the owner/applicant did not seek to assign any Dwelling Units to the golf course or the practice range. The approved 1983 RMR DMP allowed a total of 2,570 Dwelling Units at an overall density of 3.1 Dwelling Units/Acre (4.7 Dwelling Units/ Net Acre of residential use), and the 1990 rezoning reduced the overall density by 286 units, all based upon specific dwelling unit allocations to specific parcels. The rezoning process was required by the City in order for the property owner to modify the zoning condition requiring compliance with the existing RMR DMP. We have been unable to locate any place where the owner / applicant

¹ The descriptive language for Red Mountain Ranch changed at some point after the 1983 zoning from “820 acres” to “829 acres.”

asserted that the change required only a site plan review, and at no point did the Specific Plan (or RMR DMP) ever assign residential units to the golf course area.

Further, during the 1990 rezoning case, the property owner reiterated in both the project summary and in the site plan that Red Mountain Ranch was an 829-acre mixed use planned community centered on a golf course amenity. A site plan was submitted during the case (the “1989 Site Plan”), which was approved by the City Council with the adoption of Ordinance No. 2486. The City Council conditioned its approval of the rezoning case upon the following stipulation: “[c]ompliance with the basic development as shown on the site plan and elevations submitted.” That Plan reflects the existence, location and footprint of the golf course, which always included a practice range at its current location.

III. Stipulations Imposed in Connection with a Zoning Change

Under its inherent police powers, a municipality may impose reasonable conditions on a rezoning case to serve the public interest.² Such conditions are a tool commonly used when the governing body of the municipality has concerns that the proposed changes may have impacts to the overall development.³ The Ordinance explicitly allows the City Council to impose conditions and stipulations on zoning changes as a condition of approval,⁴ and Mesa has employed such stipulations for more than three decades. These conditions are critical to protecting the community from potentially adverse or unforeseen impacts from a proposed use or development, to ensure the property owner abides by City development requirements/standards, and to avoid an unacceptable change for the neighborhood.⁵

Attached to this correspondence is the 1989 Site Plan that the City Council approved in Case No. Z89-36. The 1989 Site Plan depicts the various areas within Red Mountain Ranch that are to be used for residential, open space, and golf course purposes. The condition which the City Council placed on the zoning (*i.e.*, compliance with the development as shown on the site plan) is a fairly standard condition imposed by the City Council in zoning change cases to protect residents and to ensure the property owner develops the property as contemplated. In this instance, the City Council sought to ensure that the property owner developed the property -- with a mix of commercial and residential uses around a golf course facility -- in compliance with the approved site plan for the community. The golf course use was a central feature of the development. As a result of the legislatively imposed zoning condition, any development on the property that is inconsistent with the 1989 Site Plan must go through the legislative process to amend or eliminate the condition. Indeed, absent that process, the surrounding property owners most directly affected by a proposed change in use would be denied the opportunity to express their views in the manner and forum contemplated before their elected representatives.

The golf course and practice range were built and exist today as generally depicted on the 1989 Site Plan. Divot’s proposal to replace the existing practice range with a single-family residential use was not contemplated in 1990 when the City Council approved the zoning and does not comply with the 1989 Site

² See, e.g., *Transamerica Title Ins. Co. v. City of Tucson*, 23 Ariz. 385, 388, 533 P.2d 693, 696 (App. 1975) citing to *Ayres v. City Council*, 34 Cal.2d 31, 207 P.2d 1 (1949); *Scrutton v. County of Sacramento*, 275 Cal.App.2d 412, 79 Cal.Rptr. 872 (1969).

³ *McQuillin Mun. Corp.* § 25:103 (3d ed. 2009).

⁴ *Mesa City Zoning Ordinance* § 11-76-6(B).

⁵ *Chrismon v. Guilford County*, 322 N.C. 611,618, 370 S.E.2d 579, 583 (1988).

Plan. As a matter of policy and practice, once a use is in place and relied upon for a period of time, it should not be readily upset.⁶ In any event, the determination whether to modify the use rests in the discretion of the City Council, the elected representatives of the people, after opportunity for public comment. It may well be that the public and the City Council will be supportive of Divot's proposal; but that can only be determined through the rezoning process.

IV. Modifying or Removing Stipulations Imposed as a Condition of a Zoning Change under Mesa's Zoning Ordinance.

Careful review of the Proposed Development and the requirements in the Ordinance make it clear that Divot must file an application to modify or remove a condition, to deviate from the 1989 Site Plan and modify the Red Mountain Ranch Specific Plan and DMP. Permitting such a substantial modification through the administrative Site Plan Review process would be a violation of the Ordinance.

Ordinance § 11-3 requires that the City classify property into different districts, overlays or zones. The boundaries of each of these zoning districts, however, are not specified in the Ordinance, but are supplied by the Official Supplementary Zoning Map ("Zoning Map"). The Zoning Map was adopted by the City Council and incorporated into the Ordinance by reference (along with any amendments previously or thereafter adopted).⁷

The City Council amended the Zoning Map (and ultimately the Ordinance) when it adopted Ordinance No. 2486. That is why the ordinance indicated "[t]hat Section 11-2-2⁸ of the Mesa City Code is hereby amended by adopting the Official Supplementary Zoning Map dated January 22, 1990, for Zoning Case Z89-36, signed by the Mayor and City Clerk, which accompanies and is annexed to this ordinance and declared a part hereof." As discussed above, the City Council approved the rezoning case subject to certain stipulations, which are also incorporated into the adopted Zoning Map.⁹ Under Ordinance § 11-67-10 (B), any modification to an approved site plan that does not comply with a condition of approval must be treated as a new application, unless the Zoning Administrator determines the change to be "minor." No such determination has been made, or is appropriate, in this case.

V. Determining if a Change to a Plan is a Major or Minor Modification

The Proposed Development does not comply with the development as depicted in the 1989 Site Plan. The question is whether the proposed change in use and development requires a "minor" or "major" modification to the DMP? The Ordinance authorizes -- indeed requires -- the Zoning Administrator to make this discretionary determination.¹⁰

⁶ McQuillin Mun. Corp. § 25:75 (3d ed. 2009).

⁷ Mesa Zoning Ordinance § 11-3-2.

⁸ Mesa Zoning Ordinance § 11-2-2 is now § 11-3-2 in Mesa's Updated Zoning Ordinance.

⁹ Mesa Zoning Ordinance § 11-3-2 (B).

¹⁰ Mesa Zoning Ordinance § 11-67-10 (B).

Minor Modifications

Mesa distinguishes between minor and major modifications -- as do many other jurisdictions. Minor modifications are typically those changes that are consistent with the original findings and conditions approved by the decision making body, that are fundamentally equivalent to what was approved, and that do not intensify any potentially detrimental effects on the property.¹¹ These changes are often handled administratively or through a Site Plan Modification.

Examples of minor modifications include small changes to setback requirements that still meet the minimum standards, rotating buildings, changes to aesthetic features of an approved elevation, and changes to the development resulting in same use/intensity.

Major Modification

In reviewing the Proposed Development, the City Zoning Administrator considered the findings from the zoning case, the stipulations on the zoning, the 1989 Site Plan, and reviewed the Planning Department's zoning file. The Zoning Administrator finds that a practice range is not fundamentally equivalent to single-family residential homes. Such an alteration would significantly change the use of the property and alter the anticipated density within the parcel.

Additionally, the residents who bought homes in Red Mountain Ranch reasonably anticipated a golf course and practice range (and any other uses ancillary to a golf course) in the area designated for golf course use, likely understood the impact of such areas of restricted use on property values, community amenities, etc., and likely contemplated living near such uses when they purchased their properties. These residents could reasonably expect that the area designated for golf course use on the 1989 Site Plan would remain devoted to such use, unless and until the plan and condition were modified by a rezoning. Whether the requested change is nonetheless appropriate in the circumstances is a legislative determination to be made by the City Council, with public input and a public hearing process.

The Zoning Administrator has determined the Proposed Development requires a major change to the 1989 Site Plan; therefore, Divot can only proceed by requesting that the City Council modify or remove the condition which requires the Proposed Development comply with the 1989 Site Plan.

VI. Effect of the New Zoning Ordinance on Previously Approved Projects

Furthermore, there is express language in the updated Zoning Ordinance, made effective by the City Council in September 2011, which supports the City's position. During the process of updating the Ordinance, the City Council was concerned about the impact of the new ordinance on previously approved projects. The City Council clearly articulated that it wanted to preserve the City's ability to enforce the stipulations the City Council had imposed in prior zoning cases, especially projects located in an existing DMP or Planned Area Development ("PAD") Overlay Zoning District. The following language was added to the zoning ordinance to address these concerns:

¹¹ Mesa Zoning Ordinance § 11-67-10.

“Development of Projects Located within an Existing PC District, or within a PAD, DMP or BIZ Overlay Zoning Districts. A lot or parcel located within the Planned Community (PC) District, or within overlay districts such as Planned Area Development (PAD), Development Master Plan (DMP, under the zoning ordinance in effect prior to September 3, 2011), or Bonus Intensity Zone (BIZ), subject to a preliminary development plan, standards and/or with conditions of approval, and adopted prior to the effective date of the Zoning Code, **shall be developed in accordance with the approved preliminary development plan, standards, and/or conditions of approval**”¹²

(Emphasis added). The Proposed Development is not in accordance with the 1989 Site Plan or the conditions of approval. As outlined above, Divot is required to comply with these requirements or the City Council would at a minimum have to adopt a new ordinance, with explicit language revising or deleting the previously approved condition(s).

VII. Mesa’s Process Compared to Other Cities

Mesa is not unique in how it reviews and processes requests to modify stipulations imposed as a condition of zoning. Other Arizona municipalities consider such modifications to be legislative acts subject to the process outlined in their zoning ordinances for significant modifications.¹³ Similarly, other municipalities evaluate a request to modify a condition of approval to determine if it is major, minor, or administrative,¹⁴ and their zoning ordinances outline assignment of the authority to determine this classification and the appropriate review and approval process for each.¹⁵ For example, we believe that the City of Tempe would require a nearly identical procedure to approve the Proposed Development, because its Zoning and Development Code states that a modification or removal of a condition can only be made by utilizing the same procedure that was used to impose the condition.¹⁶

VIII. Conclusion

The DMP overlay zoning on the property includes the Specific Plan, the plan narrative, the modifications adopted in 1985 and 1990, and the 1989 Site Plan. These documents show a “golf course” use on the property where Divot desires to construct residential housing. Deviation from the designated and approved use constitutes a major change to the 1989 Site Plan and, therefore, requires the City Council to amend, revise or delete the previously approved condition. A contrary conclusion -- *i.e.*, that the Proposed Development merely requires Site Plan Review -- would render the stipulation meaningless.

¹² Mesa Zoning Ordinance § 11-1-6 (E).

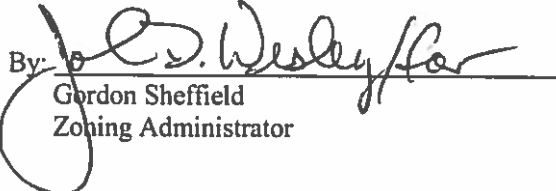
¹³ *See, e.g.*, City of Tempe, Zoning and Development Code, Chapter 6, see also, City of Phoenix Zoning Information Guide *Planning Hearing Officer Public Hearing Process*. Revised May 29, 2015; City of Tucson, Unified Development Code Section 3.5.4.

¹⁴ *See, e.g.*, City of Tempe, Zoning and Development Code, Chapter 6; City of Tucson, Unified Development Code Section 3.5.4.

¹⁵ *See* City of Tempe, Zoning and Development Code, Chapter 6.

¹⁶ City of Tempe, Zoning and Development Code, § 6-605.

Pursuant to the Zoning Ordinance, Ordinance No. 2486 can only be amended by Divot's submittal of a new application in accordance with the procedures outlined in § 11-76.¹⁷ Under Mesa's City Charter, the only way to amend or repeal an ordinance is by the City Council adopting another ordinance.¹⁸ Thus, the new application must state Divot's desire to amend Ordinance No. 2486, and this legislative act will require public hearings by both Planning and Zoning and the City Council.

By: 
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Zoning Administrator

¹⁷ Mesa Zoning Ordinance § 11-76-1.

¹⁸ Mesa City Charter, Article 2, § 210(D).