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Re: **Stagecoach Mountain Ranch – Applicability of 1041 Regulations**

Dear Ms. Ament and Mr. Barshov:

This letter responds to your letter of August 8, 2024, and subsequent letter and memorandum dated December 11, 2024. In both letters and memo, you take the position that no aspect of the Stagecoach Mountain Resort development is subject to Routt County's regulations for areas and activities of state interest (hereinafter the "County 1041 Regulations"). You have received a response to your August 8 letter from County Attorney Erick Knaus dated August 21, 2024. This response addresses both your August 8, 2024 letter and your December 11, 2024 letter and memorandum.

The County disagrees with your client's position and provides this response as a way of articulating why your client should reevaluate its decision not to submit a 1041 application.

Four Preliminary Matters

- All of the related Stagecoach Mountain Ranch (SMR) applications, as outlined on the overall project checklist, must be submitted for the County's review as to submission sufficiency, including the 1041 application. All applications must be "deemed complete" by the Planning Director before the applications will be reviewed by the County and referral agencies. Refusing or delaying application for a 1041 permit will halt the process of submission requirement review and ultimately hurt SMR's interests in having its project promptly reviewed and decided upon by the County.
- The County 1041 Regulations require application for a 1041 permit for a major extension of an existing water and sewage treatment system. This major extension will be for the approximate 3,480 acres of SMR's proposed project which lie outside of the current boundaries of the Morrison Creek Water and Sanitation District.
- Your December 11 memorandum unnecessarily addresses development of those portions of the property within the 11,500-acre current Morrison Creek District boundaries. However, it is not true that this represents the "vast majority" of the project as the memorandum alleges. Instead, significant portions of the proposed SMR project lie outside of the Morrison District's current boundaries. The extension of the District's service to this area is the action which is subject to the County's 1041 Regulations, and which you acknowledge and dismiss in a single paragraph on page 40 of the December 11 memorandum.

- The main thrust of your letters and memorandum are to the effect that one or more of the statutory exemptions at CRS 24- 65.1-107 apply to the SMR project. While you have acknowledged the origin of the "grandfather clause" phraseology and then adopted as a proper term for use, the County declines to do so, not only because of its origin, but because it is inaccurate and unhelpful in a dialogue between professionals. The County uses the term "1974 exemption date" with respect to your specific claims of exemption under Section 107 of the Areas and Activities of State Interest Act.

With respect to the exemption arguments which form the bulk of your December 2024 memorandum, the County can respond as follows, bearing in mind those arguments are themselves almost entirely devoted to the 11,500 acres of project lands within the District's current service area and thus not at issue for 1041 purposes only. Nevertheless, to the extent they may pertain to the 3480 acres of project property outside the District:

Planned Unit Development (PUD)

You claim that the project is on land which has been approved for planned unit development or a use substantially the same as PUD.

As an initial matter, the project SMR is currently proposing is not anything like the "project" which you have attempted to assemble in your description of the history of the approval of individual plats and other development features in the Stagecoach area prior to the 1974 exemption date. If today's proposed project were indeed the same or substantially the same, SMR would not need any of the approvals it now seeks from the County. The current SMR narrative is to propose a completely different project concept: that of a private club encompassing commercial development at the ski mountain and golf course properties with a clubhouse community center for the golf course and lake activity, all only available to the contemplated private residences within the project. This proposal is nothing like, and never will be, anything like the assemblage of past zoning actions and approvals which you have claimed are an approved PUD. This is true, among other reasons because:

- As admitted by your client, only a portion of the property was ever zoned PUD. See, Stagecoach Mountain Ventures LLC ("SMV" narrative, Pg 2). In fact, even that portion is not an integral part of the new development proposal, or part of the ski mountain.
- Your client has itself stated that it would seek to rezone and redistribute zoning in a comprehensive master plan for the project. SMV narrative Pg 2.

Zoned for the Use Contemplated by Such Activity

You have taken the position at page 12 of your December 11 memorandum, that this particular exemption *"does not require that the zoning must specifically authorize the contemplated activity itself. Rather, the statute requires the land on which the activity is to occur is zoned for the use contemplated by such activity."* You then allege that if the zoning is for residential development, any "activity" necessary to support the development must similarly be exempt, allowing you to conclude that an entirely different activity: expanding the service area of a water and sewer utility, benefits from the exemption. This turns zoning designations into unlimited permission for ancillary uses without the trouble of the County actually amending its code to permit them. Uses are defined in a land use code by the local government, not by a landowner's imagination. The County categorically disagrees with this creative but inappropriate expansion of the clear intention of the statutory "zoned for use" exemption.

Approved Development Plan

Your argument here is a duplication of your PUD argument: that an assemblage of separate subdivision approvals are, to use your phrase, "possibly" an approved development plan which the new SMR project proposal may rely upon to escape the 1041 Regulations. The County rejects this approach. The development plan for the project SMR is now proposing is not in fact that assembly of subdivision plats, but instead a completely different project. Further, to the extent you rely on arguments that community plans or other land use or master plans somehow equal an approved development plan, this reliance is misplaced. As you are aware, adoption of any planning document is not zoning, and therefore is not a development approval. *Theobald v Summit County*, 644 P2d 942 (Colo1982).

None of the pre-1974 exemption date approvals represent approval by the County "for the use contemplated by such development or activity" now being pursued by your client. If this were the case, SMR would not need to obtain all of the approvals for which it has already submitted applications: an amendment to construct a gondola instead of lifts, preliminary subdivision, ski mountain facility special use permit, zone change, Stetson land preservation subdivision, Cat Creek land preservation subdivision, indoor recreational facility conditional use permit, and outdoor recreational facility special use permit, among others.

I want to make mention of your multiple references to the "intentions" of Woodmoor over the years, as well as the private restrictions and declarations which have been recorded against portions of the property your client owns. None of these self-serving and unilateral statements by a property owner, whether in the form of narratives, restrictive covenants or declarations, whether or not recorded, are approved development plans which the 1041 exemptions legitimately recognize. Those exemptions simply do not extend to unilateral statements by property owners. County approval of the development plan is required to rise to the level of that specific 1041 exemption.

Approval by the Electorate

You place great reliance on the July 1972 approval of the Morrison Creek District's service plan. That service plan included a map of district boundaries, which certainly includes 11,500 acres, some of which is owned by your client. However, it is simply not true that those boundaries are "largely coincident" with the new proposed SMR development. SMR's current project proposal includes some 3,400 acres of property outside of the Morrison Creek District's service plan and boundary, and which must be included into that District and into which service lines and additional infrastructure must be constructed to serve the new project. This significant expansion of the Morrison Creek District's service area and accompanying physical facilities is a major extension of an existing municipal water and sewage treatment system, taking place long after the 1974 exemption date. It is this activity which is designated by the statute and by the County 1041 Regulations and which applies to your client's proposal.

The Morrison Creek District Service Plan specifically states that at the time of plan adoption, it was intended to serve 4000 acres that were intended for development out of the total 11,500 acres within the district area. The expansion of its boundaries by 3,480 acres is a near doubling of the area that it was intended to serve. The District provides service to a mere fraction of that 4000 acres with approximately 428 households served by central water and 436 homes served by central sewer services. With the suggested 697 households in the SMR plan, this more than doubles the number of households served. Increasing the Districts service plan area by 3840 acres is a major extension of an existing domestic water and sewer service of an existing domestic water and sewage treatment system.

Alleging that the project is a "long planned extension of districts service" as you have in your August 2024 letter, even if true, does not thereby benefit from the "electorate approval" exemption – those 3,480 acres were never a part of the 1972 election.

Intentions in the Adoption and Enforcement of the County 1041 Regulations

In Section IX of your memorandum, you summarize the case law involving HB1041 Regulations and transbasin diversions. The conclusion you draw is that the County's 1041 Regulations must be limited to transbasin water diversion and cannot, even by their own express terms, apply to the expansion of the Morrison District's service area. Of course, you would agree that statutes and the County 1041 Regulations must be interpreted as written, not as you would like them to be written. Nothing in CRS 24-65.5-101, et seq, or the County's 1041 Regulations restricts the scope of those Regulations to transbasin diversions, and you cannot allege otherwise. Instead, both the statute and the County's 1041 Regulations expressly extend to designated activities of state interest, and specifically include major extension of existing water and sewage treatment systems. The basic principles of statutory interpretation require regulations be construed as written and not as you would like them to be.

I draw your attention to CRS 2-4-201 (intentions in the enactment of statutes). Among other things, this section teaches us that "the entire statute is intended to be effective" and, importantly, public interest is favored over any private interest. The rules of statutory construction for statutes are applicable to local government ordinances and regulations. Kulmann v. Salazar, 521 P.3d 649 (Colo. 2022), Huber v. Colo Mining Assoc., 264 P.3d 884 (Colo. 2011). I recognize SMR would like to ignore the plain application of the County's 1041 Regulations to major extensions of water and sewer treatment systems, and instead claim that the scope of the Regulations doesn't include that despite the fact that they expressly say so. The statute is certainly not ambiguous, nor are the 1041 Regulations in describing what is within their scope. You allege that somehow legislative history, including statements by County Planner Mitch Harvey, narrow the scope of the County's 1041 Regulations. Legislative history is irrelevant unless the Regulations themselves are ambiguous. See, CRS 2-4-203. Certainly, the Regulations are not ambiguous, reliant as they are upon specific categories which are detailed in the statute itself. Legislative history is irrelevant here.

Finally, you have claimed the County's past history of application of its Regulations somehow means that a 3480 acre expansion of an existing water and sewage treatment system is not within the scope of the Regulations. In both of the examples you cite it is significant that the project proponent applied for a 1041 permit, acknowledging the County's jurisdiction. The fact that each project, for reasons specific to that project, received a FONSI, simply means the elements of the project, after review, were deemed eligible for that level of permitting. Unless and until SMR makes its own 1041 application as it is required to do, it has not exhausted its administrative remedies and we will not know whether a FONSI is available for your project.

Rather than demonstrating a reason for the 1041 Regulation should not apply to SMR's proposed project, the County's permitting history demonstrates the reverse: that 1041 Regulations apply and each project is considered on its own terms with respect to its own characteristics, scope, and size. The County looks forward to receiving your client's 1041 application in order to determine this.

Conclusion

The SMR project is by your client's admission a new concept for the use of this property, which concept was not even thought of at the time of the pre-1974 Woodmoor applications. It does not benefit from any of the statutory exemptions in CRS 24-65.1-101, et seq.

Under the UDC, in addition to the 1041 permit, a host of other approvals will be required for the project as proposed. You have been informed and know that the UDC generally, and the 1041 Regulations specifically, allow for a coordinated development review of new projects. It would be a much better use of your client's resources to accept the 1041 permit will be required for the expansion of the water and sewer system outside the current Morrison Creek District service area, and instead to pursue that permit along with the many other approvals which will be required for this ambitious project.

Sincerely,

Gerald Dahl

cc: Erik Knaus, Lynaia South