

March 3, 2008

Ms. Pamela Wu
County Planning Department
70 West Hedding, East Wing
San Jose, CA 95110

Subject: Boulder Ridge Event Tent

Dear Ms. Wu,

Per your request at the Public Hearing, we have enclosed documents that support our position that the Proposed Event Tent at Boulder Ridge conflicts with legal restrictions on that property and therefore should not be allowed.

While we have been working diligently to review documents, we note that the County has thirteen different large files of documents in this case and we have not had the opportunity to review them all. In addition, there are several different Environmental Impact Reports (EIRs) in this case, and again, we have not had an opportunity to review them all.

However, based on our review of the documents to date, we have found the following documents that we believe clearly are relevant and must be considered:

- (1) "Introduction" in Second Supplement to EIR (Exhibit A)
- (2) Letter dated January 24, 1995 from Kay Kazmierczak, Deputy Clerk. (Exhibit B)
- (3) November 1, 1994 Resolution of the Board of Supervisors of the County of Santa Clara Certifying Environmental Impact Report Supplements and Addendum, Adopting Related Monitoring Program and Conditionally Granting Use Permit for the Golf Club at Boulder Ridge (File No. 2195-42-53-92EIR-92B) (Exhibit C)
- (4) Exhibit "A", Summary of Impacts (referenced in Board of Supervisor's Resolution) (Exhibit D)
- (5) Settlement Agreement ("AHEHA Agreement), effective May 20, 1997 (Exhibit E)
- (6) Settlement Agreement ("Agreement") effective May 20, 1997 (Exhibit F)

SUMMARY

The restrictions placed on Boulder Ridge property clearly prohibit *any* further development on that property beyond the original clubhouse. At the time the final use permit was granted, it clearly was contemplated that the clubhouse would be maximum development on the property to ensure that the neighboring community did not suffer any further impact. The documents state very clearly that there will be no new development, no new uses, no incremental expansion, and no increase in use or intensity on the

property. Roche Garcia and Garcia Development's application to build an Event Tent with canvas walls to hold weddings and receptions with amplified music twelve (12) times a MONTH clearly violates these restrictions and must not be allowed.

TIMELINE

The timeline in the case can be summarized by as follows: Roche Garcia and Garcia Development first applied to the *County* for a use permit to build an 18-hole semi-private golf course in 1992 (Note: there had been a previous application to the City of San Jose for development that was rejected). A draft EIR was prepared, reviewed by the Planning Commission on October 1, 1992 and January 7, 1993, found to be complete and certified, and a Conditional Use Permit was granted.

On February 23, 1993, that decision was appealed to the Board of Supervisors. On March 29, 1993, property owners filed a lawsuit challenging the certification of the EIR and granting of the Use Permit. On January 31, 1994, the *Court ordered* additional information to be added to the Final EIR Supplement "to address, discuss, and analyze all proposed mitigation measures to the impact on the loss of open space." As a result, a draft EIR Second Supplement was prepared, circulated for public review, and reviewed at public hearings before the Board of Supervisors on August 2, 1994 and September 20, 1994. ("Introduction," Attached as Exhibit A)

On October 25, 1994, the Board of Supervisors passed a Resolution certifying the Environmental Impact Report, and Supplements and Addendum, adopting the related Monitoring Program and conditionally granting a Use Permit for the Golf Club at Boulder Ridge *based on designated findings and conditions*. Contained within that Resolution are very specific restrictions about the development on the property.

Litigation between the parties continued, including a dispute over whether the County could mandate as a condition of approval that Roche Garcia and Garcia Development shall provide an open space easement to the County for 97 acres of natural open space and a Right of First Refusal Agreement. On May 20, 1997, a settlement agreement was entered, providing that the County would eliminate the 97-acre open space easement as a condition of approval to the golf course and in exchange, Garcia would offer to donate to the County a 50-acre open space preserve. However, it also specified that nothing in the settlement agreement was intended to or shall be interpreted as limiting the County's ability to enforce the conditions to Garcia's use permit governing construction and operation of the golf course and related facilities.

Based on the documents and the timeline, it seems clear that the governing restrictions placed on Boulder Ridge are those contained within the Board of Supervisors' 1994 Resolution and all documents incorporated by reference into that Resolution (with the exception of the 97-acre open space easement and right of first refusal which were eliminated pursuant to the Settlement Agreement).

RELEVANT DOCUMENTS WERE NOT CONSIDERED BY PLANNING

The Santa Clara County Staff Report dated February 14, 2008 by Pamela Wu recommends "Approval" for the installation of a 3,200 square-foot Event Tent and ancillary structures. The report recommends that ASA accept staff's determination that the environmental impacts have been adequately addressed, referring to the EIR dated January 7, 1993. The Staff report attaches as the January 7, 1993 EIR (made prior to subsequent appeals, litigation, and the Board of Supervisors' Resolution) and the Use Permit Conditions dated January 11, 1993 (made prior to subsequent appeals, litigation, and the Board of Supervisors' Resolution). The Staff Report also attaches an Architectural & Site Approval Committee Preliminary Conditions of Approval dated September 15, 1995 with handwritten notes on it. However, there is no indication of who made those notes, of who was at the meeting where those notes were made, of whether any of the notes were verified, or of why any of those handwritten notes would be controlling. Finally, the staff report attaches a November 27, 1995 document from Michael Lopez referring to the Board of Supervisors' Resolution (suggesting that the Resolution and the documents incorporated by reference into that Resolution are the controlling documents relating to the property).

More telling than the documents the staff report includes are those it fails to include. The Board of Supervisor's 1994 Resolution is *not attached* to the Planning Department's Staff Report, nor is any the documents that Resolution incorporates by reference. Nor is there any document attached suggesting that it supersedes the 1994 Board of Supervisors' Resolution or that the Resolution would no longer be controlling. At the public hearing, I pointedly asked whether the County was aware of, had reviewed, or had considered the Board of Supervisors' 1994 Resolution, but could not get a clear answer from either the Planning Secretary or County Counsel. After the hearing, Mr. Garcia's attorney suggested he was unaware of the Resolution to which we were referring. We believe that a thorough review of the relevant documents would show that Rocke Garcia and Garcia Development are seeking permission for a new development on the property that simply is not permitted.

At the hearing, the Planning Commissioner encouraged us (Graystone of Almaden) to discuss the issue of the Event Tent application with Rocke Garcia and his attorney. Immediately following the meeting, we approached Mr. Garcia and his attorney, offered to meet, and requested that they send us those documents that they believe are controlling. While Mr. Garcia and his attorney agreed to schedule a meeting with us, they never did so. However, Mr. Garcia's attorney did send us the documents they believe are controlling. He sent us six (6) pages (specifically pages 12, 20, 21, 22 and 115) from a **Draft** EIR Supplement dated September 18, 1992 (again, made prior to subsequent appeals, litigation, and the Board of Supervisors' Resolution). He indicated that these were the documents that he had submitted to the ASA Committee at the December 13, 2007 meeting (where we were not present because we had not been noticed). He also sent us copies of the Settlement Agreements from 1997 and a copy of the Resolution of the Board of Supervisors wherein the Board of Supervisors approved

the settlement agreement on May 20, 1997. Nowhere did he include the 1994 Board of Supervisors' Resolution or attached documents.

KEY RESTRICTIONS PLACED ON THE PROPERTY BY THE CONTROLLING DOCUMENTS

The letter dated January 24, 1995 from Kay Kazmierczak to Garcia Development states: "The Board of Supervisors of Santa Clara County, on October 25, 1995* [*sic – the date is crossed off and accurately changed to 1994] (Item No. 41) voted to adopt *an Ordinance* certifying the Environmental Impact Report *and Supplements and Addendum*, adopting the related *Monitoring Program* and *conditionally* granting a Use Permit for the Golf Club at Boulder Ridge." (Attached as Exhibit B) (It should be noted that during the hearing, when we raised the issue of post-application monitoring and whether the restrictions placed on the property were adequately monitored, Ms. Wu suggested that there were no monitoring programs in place at that time. While we have not yet located the document describing the Monitoring Program, clearly there was something in place at the time of the granting of the permit).

The Resolution of the Board of Supervisors (which was sent to Garcia Development with the above letter) was "Passed and Adopted" on November 1, 1994. (Attached as Exhibit C). At no time has the County referenced this Resolution or indicated why the restrictions placed on the property delineated in this Resolution would no longer be in effect.

The Resolution lays out the history on the property (up to that date), which I have summarized in the above "Timeline" section. Thereafter, the Resolution makes specific findings. Those of particular relevance are the following (emphasis added):

- The Golf Club at Boulder Ridge, as proposed, *represents the maximum development allowable under the Hillside Zoning District, and any incremental expansion, or increase in use or intensity, would be inconsistent with the Hillside General Plan designation of the project, as well as the County Zoning Ordinance, and therefore could not be permitted, absent a General Plan Amendment and zoning amendment. Any such proposal would require the written approval of the City of San Jose, or waiver of its rights thereto.* (p.3, #2)
- Accordingly, the Board of Supervisors finds it necessary to take lawful measures *to ensure that the project does not expand or increase in intensity by exerting development restrictions, in one form or another, over the entire site.* (p. 3, #3)
- Restrictions placed on the project must not only adequately mitigate the loss of open space, but must also be comprehensive and, at a minimum, meet the following 5 objectives: (p. 3, #4)
 - c) Development restrictions over portions of the site that shall prevent intensification of uses within the existing boundaries of the golf course;

- d) Disincentives to abandon the golf course use and develop the site for more intensive uses
- Site specific project impacts to be addressed by mitigation measures include: (p.3-4, #6)
 - b) The development of a property listed among the top priorities for preservation in the Preservation 2020 Plan, prepared by the County of Santa Clara.
 - d) Impacts associated with the siting and construction of a 22,000 square foot clubhouse and other ancillary structures.
 - e) *The close proximity of the neighboring community, and the need to create a physical buffer between commercial and residential uses.*
 - f) Potential impacts associated with the loss of habitat for special status species.
 - i) All other impacts evaluated in the Final Environmental Impact Report Supplements and Addendum, and in staff reports to the Board of Supervisors.
- Appropriate mitigation measures, as summarized in the Summary of Impacts, attached hereto as Exhibit A, *and fully incorporated herein by reference, together with such further mitigation measures as set forth in the following motion*, have been proposed for each category of potential impact noted below. *These mitigation measures, and those specified in the following motion, when incorporated as conditions of the use permit, minimize such categories of potential impact to the extent feasible.* (p. 6, #9)
- The loss of open space is mitigated . . . because the nature and design of the proposed golf course development, *as conditioned*, including the siting and environmental sensitivity of the golf course design, and the siting of the club house and ancillary facilities, effectively minimize the *predominant aesthetic and visual components* of the loss of open space.(p. 6, #10)
- . . . [T]he completed project will rehabilitate areas . . including the replacement of native trees at a 3:1 ratio. Further, the steepest, *most visible* portions of the site *shall remain undisturbed.* (p. 7, #13)
- Based upon the mitigations set forth in the Final Environmental Report, each of its Supplements and Addendum, as summarized in the Summary of Impacts (Exhibit A), and further provisions of the following motion, all of which are subject to the Monitoring Program, and *shall be incorporated as conditions of the new use permit*, the Board of Supervisors makes each of the general findings set forth in Section 47-5 of the Zoning Ordinance. . . .

The Resolution then makes specific resolutions, including the following of specific importance:

- [T]he Monitoring Program, attached hereto as Exhibit C, incorporated herein by reference . . . is adopted. (p. 7)
- [A] use permit for the Golf Club at Boulder Ridge, *subject to the Conditions of Approval set forth in Exhibit D*, attached hereto and incorporated by reference, and as *modified by the following additional conditions* . . . is granted. (pp. 7-8)
 2. As and for a further condition of the use permit, **no further development of the remaining portion of the property shall be permitted**, with the exception of minor adjustment of the greens, tees, and fairways, and the repair and maintenance of utilities and improvements.
 3. As and for a further condition of the permit, consistent with the finding of the Board of Supervisors that this project **maximizes the development potential of the site under the existing General Plan and zoning designation**, the construction of homes, overnight accommodations, **the expansion of the clubhouse or other facilities, or the introduction of new uses on the property**, such as pools, tennis courts, or **any other uses** permitted with the Hillside zoning district, **shall be prohibited**.

The Summary of Impacts, referred to as Exhibit A, and incorporated by reference in the Board of Supervisors' Resolution, further identifies one hundred and twenty-three (123) specific mitigation measures, including the following: (Attached as Exhibit D)

4. Approximately 97-acres of the project site shall be natural open space (p. ii)
- 4B. The applicant shall sign a Right of First Refusal Agreement with the County. (p.ii)
5. An open space easement shall be provided to the County or a future open space district over the rock outcrop area and the remaining 97-acres of natural open space.
59. The windows and doors of the clubhouse shall remain closed when the *interior* maximum noise level reaches 110 dBA or 90dBA for 30 minutes of any hour. (p. xi)
73. Landscaping and trees shall be planted along the perimeter and interior of the clubhouse parking area, including the perimeter of the clubhouse parking lot on the northerly ridgeline *to completely screen the view of the clubhouse from the valley floor to the north*. (p. xiii)
74. The clubhouse shall be constructed with a sand finish stucco exterior and a spruce green, low pitched metal roof. (p. xiii)

76. All native trees removed shall be replaced with the addition of new trees at a 3:1 ratio. (p. xiii)

As mentioned above, a Settlement Agreement was entered, effective May 20, 1997 between the Board of Supervisors of the County of Santa Clara and the County of Santa Clara, Garcia Development and Rocke Garcia, and The Coalition to Save Open Space, and Charles Smith, individually and on behalf of all similarly situation property owners. That agreement provides that the County would eliminate the 97-acre open space easement as a condition of approval to the golf course and in exchange, Garcia would offer to donate to the County a 50-acre open space preserve. (Attached as Exhibits E and F)

It also provides the following:

“9. Enforcement of Use Permit. Nothing in this Agreement is intended, or shall be interpreted, as limiting the County’s ability to enforce the conditions to Garcia’s use permit governing construction and operation of the golf course and related facilities.” (p. 7)

“16. Future Development of the Property. Nothing in this Agreement is intended to, nor shall it be interpreted to imply that the Coalition is agreeable to any development of the Property other than the golf course project as currently described and approved through the use permit and this Agreement.” (p. 11)

NEW DEVELOPMENT OF AN EVENT TENT ALLOWING NEW AND MORE INTENSIVE USES ON THE PROPERTY IS NOT ALLOWED

Based on the plain language of the above documents, it is clear that the granting of a the use permit to allow Rocke Garcia and Garcia Development to build a clubhouse at his golf course was intended to be the **maximum development** of that property. The plain language states that there will be “***no further development of the remaining portion of the property***” and that the clubhouse “***maximizes the development potential of the site.***” The documents are even so specific as to clarify that “***the expansion of the clubhouse or other facility or the introduction of new uses on the property shall be prohibited.***”

In this case, the Planning Department cannot simply consider what might normally be approved on a property, when this property has been the subject of years of appeals and litigation, resulting in very specific restrictions. The documents even go so far as to specify that even those uses “such as pools, tennis course, or **any other uses** [that are generally] permitted with the Hillside zoning district, **shall be prohibited.**”

This language is clear, and the proposed “conditions of approval placed on the property” simply do not satisfy those restrictions. For example, clearly, the development of an Event Tent for weddings, receptions, etc. up to twelve (12) times A MONTH is an “incremental expansion or increase in use or intensity” which is not permissible.

Condition number 14, stating “All windows, doors and *fabric walls* of the tent structure shall remain closed when the interior maximum noise level reaches 110 dBA or 90 dBA for 30 minutes of any hour” does NOT satisfy the original restriction that all windows and doors of the *clubhouse* must remain closed during those time. It cannot be the case that Planning truly believes that the noise level emitting from an enclosed permanent structure with double-paned windows would be the same as that coming out of fabric walls of an Event Tent. Our neighborhood’s concern over the noise that will result from the addition of this Event Tent is a very real concern.

The Staff Report attaches an Acoustical Report that was submitted by the applicant, Rocke Garcia, which we do not believe is satisfactory. In addition, given the hilltop location of the proposed Event Tent and its close proximity to residential homes, we believe that any acoustical report must also account for the effect of an inversion layer on noise levels.

Finally, the Staff Report identifies a Post-Approval Monitoring Plan purportedly to satisfy the requirement that restrictions will be met. We believe that the original Monitoring program on the property was insufficient and that in fact, not all requirements placed *originally* on the property have been satisfied. If, in fact, the applicant has not complied with his original restrictions, we believe the Planning Department must also take that into consideration.

Given the extremely short period of time that we have even known about the proposed new construction of an Event Tent at Boulder Ridge, we have worked very diligently to review documents and present evidence to the Planning Department that Approval of this proposed project would be contrary to legal documents and restrictions already placed on the property. We hope that the County will equally be diligent in making sure it has reviewed all relevant documents prior to making its decision.

Thank you for your attention to this matter.

Sincerely,

Julia Alloggiamento
(on Behalf of Graystone of Almaden residents)

cc: Barton G. Hechtman
Alex G. Fraser
Councilmember Nancy Pyle
Supervisor Don Gage