

RESOLUTION # 2006-53

TITLE: CLARIFICATION OF RESOLUTION 2005-40 APPROVING SPECIAL USE PERMIT, NORTHFORK COMMUNITIES, INC., COPPERLEAF SUBDIVISION, LOCATED IN SECTIONS 15, 22 AND 23 OF T52N, R105W, PARK COUNTY, WYOMING.

WHEREAS, on June 21, 2005, the Board of County Commissioners for Park County, Wyoming (Board) approved a special use permit for the Copperleaf Subdivision upon the application of Northfork Communities, Inc., to allow a major subdivision dividing 553 +/- acres into 131 residential lots on land described as portions of sections 15, 22 and 23 of T52N, R105W, Park County, Wyoming, said proposed subdivision being known as the Copperleaf Subdivision; and

WHEREAS, said resolution stated on page 4 that prior to approval of a final plat the applicant must have septic systems "approved" by the Wyoming Department of Environmental Quality (DEQ). The intent of this paragraph is that, prior to approval of a final subdivision plat, the Board would need to receive a letter of "no adverse recommendation" from DEQ regarding the subdivision's septic system, rather than final approval of the septic system. Final "approval" of a septic system comes from DEQ after the Board approves a final plat and the developer applies to DEQ for a permit to construct a septic system. A developer cannot construct a septic system for a subdivision before the Board approves a final plat for the subdivision. It is not reasonable for a developer to apply for a permit to construct a septic system before the Board approves a final plat. Thus, in approving a final plat, the board relies on the DEQ letter of no adverse recommendation regarding the septic system rather than final approval of the system;

WHEREAS, said resolution stated on page 4 that prior to approval of a final plat the applicant must have a water supply system "approved" by DEQ. The intent of this paragraph is that, prior to approval of a final subdivision plat, the Board would need to receive a letter of "no adverse recommendation" from DEQ regarding the subdivision's water supply system, rather than final approval of the water supply system. Final "approval" of a water supply system comes from DEQ after the Board approves a final plat and the developer applies to DEQ for a permit to construct a water supply system. A developer cannot construct a water supply system for a subdivision before the Board approves a final plat for the subdivision. It is not reasonable for a developer to apply for a permit to construct a water supply system before the Board approves a final plat. Thus, in approving a final plat, the board relies on the DEQ letter of no adverse recommendation regarding the water supply system rather than final approval of the system;


NOW, THEREFORE, BE IT RESOLVED that based on the foregoing, the Board of County Commissioners hereby clarifies special use permit No. 2005-40 as stated herein.

ADOPTED by the Board of County Commissioners this 6th day of July 2006.

RESOLUTION # 2006-53

TITLE: CLARIFICATION OF RESOLUTION 2005-40 APPROVING
SPECIAL USE PERMIT, NORTHFORK COMMUNITIES, INC.,
COPPERLEAF SUBDIVISION, LOCATED IN SECTIONS 15, 22 AND 23
OF T52N, R105W, PARK COUNTY, WYOMING.

BOARD OF COUNTY COMMISSIONERS
PARK COUNTY, WYOMING


Marie Fontaine, Chairman


Bucky Hall, Vice-Chair


Tim A. French, Commissioner

SEAL:

ATTEST:


Karen Carter, Park County Clerk



COPY

BEFORE THE STATE BOARD OF CONTROL

STATE OF WYOMING

Docket Numbers III-2005-4-16 and III-2005-4-17

IN THE MATTER OF THE PETITIONS OF THE WORTHINGTON GROUP OF WYOMING, LLC, BEFORE THE STATE BOARD OF CONTROL FOR CHANGE IN PLACE OF USE OF A PORTION OF THE FOLLOWING WATER RIGHT: THE W. H. GRINDER APPROPRIATION, PERMIT 5618 DIVERTING FROM THE NORTH FORK SHOSHONE RIVER, TRIBUTARY SHOSHONE RIVER, TRIBUTARY BIG HORN RIVER, WITH A PRIORITY OF 10/18/1903, THROUGH THE NORTH FORK VALLEY DITCH; AND FOR CHANGE IN PLACE OF USE AND CHANGE IN TYPE OF SUPPLY OF PORTIONS OF THE FOLLOWING WATER RIGHT: THE J. F. KELLY APPROPRIATION, PERMIT NO. 5301ENL., DIVERTING FROM THE NORTH FORK SHOSHONE RIVER, TRIBUTARY SHOSHONE RIVER, TRIBUTARY BIG HORN RIVER, WITH PRIORITY OF 4/29/1941 THROUGH THE NORTH FORK VALLEY DITCH

EXCERPT OF HEARING PROCEEDINGS

TESTIMONY OF JEREMY EASUM

Excerpt of Hearing Proceedings in the above-entitled matter held on the 19th day of April, 2006, at the hour of 9:04 a.m., 1701 Stampede Avenue, Cody, Wyoming, Loren Smith, Superintendent Water Division 3, presiding. Also in attendance were S. Jane Caton, Senior Assistant Attorney General, and Landis Weber, Lead Hydrographer.

A P P E A R A N C E S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

For the Contestee: MR. LAURENCE W. STINSON
Attorney at Law
Bonner Stinson
128 East 2nd Street
P.O. Box 799
Powell, Wyoming 82435

For the Contestants: MR. ANTHONY T. WENDTLAND
Attorney at Law
Wendtland & Wendtland
2161 Coffeen Avenue, Suite 301
Sheridan, Wyoming 82801

P R O C E E D I N G S

1
2 MR. STINSON: Thank you, Mr. Hearing
3 Examiner. We would call Jeremy Easum to the stand.

4 MR. SMITH: Mr. Easum, for the record,
5 would you state your name, please?

6 MR. EASUM: My name is Jeremy Easum.
7 I'm a consultant civil engineer, license number 9031 in
8 Wyoming.

9 MR. SMITH: Thank you.

10 JEREMY EASUM,
11 called as a witness by the Contestee, being first duly
12 sworn, on his oath testified as follows:

13 DIRECT EXAMINATION

14 BY MR. STINSON:

15 Q. Mr. Easum, would you tell the Board something
16 of your involvement with the Copperleaf Subdivision?

17 A. My involvement has been since the onset, the
18 project manager and design engineer, one of the design
19 engineers for the development.

20 Q. In that regard -- let's talk specifically with
21 regard to the water issues. Do you know Mr. Rhodes?

22 A. I do.

23 Q. How do you know Mr. Rhodes?

24 A. When the water rights issues first arose, the
25 developer requested us to find a consultant to work

1 specifically on water rights, and we subconsultant with
2 Mr. Rhodes and his company, Wyoming Water Rights
3 Consulting.

4 Q. So you're saying that your company, Sage Civil
5 Engineering, brought in Mr. Rhodes to address the water
6 issues for Copperleaf.

7 A. That is correct.

8 Q. And in regard to the petitions before the
9 Board today, were you asked to undertake any research or
10 study with regard to water consumption?

11 A. I was.

12 Q. And would you tell the Board what study or
13 research you were asked to undertake?

14 A. Specifically to address the consumptive use
15 requirements for alfalfa and that for Kentucky
16 bluegrass.

17 Q. Why did you choose those two species, alfalfa
18 and Kentucky bluegrass?

19 A. Because the historic crop grown for -- on
20 Rocking M lands, which are Copperleaf lands, was
21 alfalfa, and we used Kentucky bluegrass because that
22 would be the worst-case scenario for what would be there
23 after the subdivision is complete.

24 Q. What were you trying to learn in a comparison
25 of water consumption between alfalfa and Kentucky

1 bluegrass?

2 A. We were trying to establish that less water
3 would be consumed no matter -- if the grass was use --
4 was grown, what amount of water would be consumed for
5 that versus what water was consumed historically on the
6 land.

7 Q. Did you ultimately reach a conclusion as to
8 what would happen with water consumption alfalfa versus
9 Kentucky bluegrass?

10 A. We did. We found that historic -- excuse
11 me -- alfalfa hay used 2.2 -- I'm sorry -- 2.31
12 acre-foot per acre per year and Kentucky bluegrass used
13 2.07 acre-foot per year per acre.

14 Q. So, we can deduce, can we not, that there
15 is --

16 MR. WENDTLAND: Object to form. Don't
17 lead.

18 MR. SMITH: Restate it, please.

19 Q. (BY MR. STINSON) Can you tell the Board
20 whether that means that Kentucky bluegrass would use
21 less water than alfalfa?

22 A. Yes, that would use less water.

23 Q. I'm sorry. Would you tell me the numbers
24 again, Mr. Easum?

25 A. 2.31 and 2.07.

1 Q. So the alfalfa is 2.31.

2 A. Yes.

3 Q. Okay. Now, you're the design engineer for
4 Copperleaf? Is that what you said?

5 A. That is correct.

6 Q. Can you tell the Board whether all -- whether
7 the entirety -- whether it's your expectation as the
8 design engineer that the entirety of a Copperleaf lot
9 would be covered in grass or Kentucky bluegrass?

10 A. At this time, no. We could estimate that half
11 of the lot could be covered by Kentucky bluegrass and
12 the other half could be native grasses.

13 Q. Could you tell the Board whether a building
14 envelope style construction will be utilized for the
15 Copperleaf Subdivision?

16 A. Yes, it will.

17 Q. And will you tell the Board what that envelope
18 style construction means?

19 A. For example, if a lot is two acres, the
20 building envelope may be .8 acres and that -- the
21 building envelope is that area that could be fenced. It
22 could be a home built on it, those types of things. The
23 area outside the building envelope would be native
24 grasses.

25 Q. Or planted grasses.

1 A. Planted grass, yes.

2 MR. STINSON: All right. May I have a
3 moment, Mr. Hearing Examiner?

4 MR. SMITH: Sure.

5 MR. STINSON: Thank you, Mr. Hearing
6 Examiner.

7 Q. (BY MR. STINSON) Mr. Easum, are you able --
8 have you calculated and are you able to tell the Board
9 what the acre-feet of savings per year will be
10 between -- under your study between alfalfa and grass
11 use?

12 MR. WENDTLAND: Foundation. Which land
13 is being compared?

14 MR. SMITH: Can we clarify?

15 Q. (BY MR. STINSON) For the Copperleaf lands.

16 MR. WENDTLAND: Same objection. All
17 lots, all lands, roads, what?

18 MR. STINSON: I will reask the question,
19 if I may.

20 MR. SMITH: Please.

21 Q. (BY MR. STINSON) You've previously testified
22 that you studied the entirety of the Copperleaf land in
23 your research? Is that correct?

24 A. That's correct.

25 Q. And were the figures you provided to this

1 board of 2.31 for alfalfa and 2.07 for grass intended to
2 use -- were they derived from a study of the entire
3 Copperleaf land?

4 A. You could apply them to the entire Copperleaf
5 land, yes.

6 Q. Okay. And applying them to the entire
7 Copperleaf land, are you able to tell the Board what the
8 acre-feet per savings a year would be?

9 A. It's approximately 150 acre-feet of year.

10 Q. Of water.

11 A. Of water.

12 Q. If the entirety of the Copperleaf land was
13 planted in Kentucky bluegrass.

14 A. That is correct.

15 MR. STINSON: No further questions.

16 Thank you, Mr. Easum.

17 MR. SMITH: You're not done yet.

18 Mr. Wendtland, your witness.

19 MR. WENDTLAND: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. WENDTLAND:

22 Q. Mr. Easum, what source did you use to get
23 these numbers you have testified about? Where were they
24 growing bluegrass and what was the actual authoritative
25 source you rely on?

1 A. We use the consumptive use and consumptive
2 irrigation use requirements in Wyoming, which is a study
3 produced by the Wyoming Water Research Center.

4 Q. And for the bluegrass, was that for
5 subdivision style, like gated community style
6 development or was it something else, or could you tell?

7 A. I could not tell.

8 Q. So looking at that information, you couldn't
9 tell if the bluegrass they were studying was being
10 irrigated by wealthy people who like to water their
11 grass more or just at some minimum level, or you
12 couldn't tell what that was, could you? It's just an
13 average. Right?

14 MR. STINSON: I feel compelled to object
15 to relevance and argumentative, I suppose, since there
16 is no basis in the record or anywhere else I know of
17 that wealthy people water their grass more.

18 MR. SMITH: We'll allow this one
19 question. Go ahead.

20 A. My understanding of the study is it is the
21 optimum growing for the two different crops.

22 Q. (BY MR. WENDTLAND) So if somebody decided to
23 water their grass more, they would use more water than
24 that, even if it wasn't appropriated.

25 A. The plant --

1 Q. Right?

2 A. I'm sorry. The consumptive use is what the
3 plant needs to grow.

4 Q. Right.

5 A. If they put more water on, it would either run
6 back into the river or evaporate or --

7 Q. Right.

8 A. So the study itself is consumptive use for
9 that plant.

10 Q. So the numbers you have to calculate the
11 saving are based on the assumption that somebody is
12 going to use the optimum water use for bluegrass if they
13 don't assume they'll water too much. Right?

14 A. The numbers that I am speaking of are what the
15 plant uses. If the plant needs a gallon of water -- I'm
16 just breaking this down simple. If it uses a gallon of
17 water and somebody dumps two gallons on, it's still only
18 going to use a gallon of water. The other gallon will
19 run back to the river or evaporate.

20 Q. Right.

21 A. So these numbers that I have spoken of are the
22 consumptive of that plant.

23 Q. Just for the plant.

24 A. It doesn't matter what amount is dumped on
25 them. That's what they're going to use.

1 Q. They don't necessarily reflect what the actual
2 use of water for bluegrass lawns will be, do they?

3 A. There is no way that anybody could know that.

4 Q. So you would have to speculate to say that any
5 water would really be saved if you turned this all into
6 bluegrass, because you don't know how it would actually
7 be irrigated as bluegrass. Right?

8 A. I'm sorry. I don't follow you.

9 Q. You don't know how people on all of these lots
10 or otherwise will really use water on this land even
11 with a sprinkler, do you?

12 A. There is no way anyone would know that, no,
13 sir.

14 Q. They could use a lot of water and that could
15 be just how it turned out. Right?

16 A. I guess my understanding of the water,
17 whatever they use, the plant that is produced there will
18 use a certain amount of that water. Where that water
19 goes beyond that is likely back into the ground and
20 available for somewhere else to use.

21 Q. (BY MR. WENDTLAND) So your opinion about a
22 water savings is based totally on the assumption that
23 the perfect amount of water is applied the plant, not
24 based on what actually may happen on the ground to any
25 irrigation. Right?

1 MR. STINSON: Object to asked and
2 answered for the third time and argumentative.

3 MR. WENDTLAND: Please. You have never
4 answered it.

5 MR. SMITH: I think we're just asking
6 for an opinion here, and that's all it is. So we'll go
7 ahead.

8 A. If I have not answered your question, could
9 you state it so that someone could -- so I could
10 understand what you're wanting to get from me?

11 Q. (BY MR. WENDTLAND) I thought you testified
12 that there would be a 150 acre-foot per year savings if
13 you changed all the land in the subdivision layout from
14 alfalfa to bluegrass. Isn't that what you said?

15 A. If you want my opinion, based on earlier
16 testimony, there will be quite a bit more savings than
17 that, because earlier testimony said that they ran six
18 headgates of water wide open. That would probably be
19 more than the consumptive use for alfalfa.

20 Q. I'm just trying to --

21 A. And I'm saying that --

22 MR. STINSON: I would ask he be allowed
23 to finish.

24 MR. SMITH: Yeah. Mr. Wendtland --

25 MR. WENDTLAND: I'm sorry.

1 MR. SMITH: -- rephrase this in a better
2 way.

3 Q. (BY MR. WENDTLAND) You gave the opinion a
4 little while ago under oath in response to Mr. Stinson's
5 question that there would be a 150 acre-foot per year
6 savings of water because -- if you assumed you change
7 from alfalfa to bluegrass. Isn't that what your opinion
8 was under oath?

9 A. My -- that is my opinion under oath. For the
10 alfalfa versus Kentucky bluegrass under ideal conditions
11 consumptive use, that would be the savings.

12 Q. Okay. Stop there. My point is this: That
13 opinion -- wouldn't you agree that opinion does not take
14 into account underwatering, overwatering, actual on-the-
15 ground water use? It's based solely on an assumption
16 you would use the perfect amount of water that the plant
17 needs exactly. Right?

18 A. Yes.

19 Q. So that opinion would not go at all to what
20 might really happen with growing bluegrass on this land
21 when people start turning spigots on the way they want
22 to, would it, necessarily?

23 A. That's correct. My opinion on that is that it
24 will be less because of historical use of alfalfa and
25 historical practices of irrigation on the site from

1 earlier testimony.

2 Q. You were heavily involved in putting together
3 the final plat application with Park County of the
4 subdivision, weren't you?

5 A. I was.

6 Q. Let me show you a couple of exhibits I would
7 like to see if you recognize that I'll represent to you
8 I copied out of that application. The first one is -- I
9 have marked it as Williams/Jamison Exhibit 1, and it's a
10 photocopy of the covenants and bylaws for the
11 subdivision that was in that notebook that was submitted
12 to Park County when the final plat was presented for
13 approval.

14 MR. STINSON: May I have a copy of
15 that?

16 MR. WENDTLAND: Yeah.

17 Q. (BY MR. WENDTLAND) Can you look at that and
18 see if that looks like an accurate, complete copy of
19 that document?

20 A. To my knowledge, it does, yes.

21 Q. And that's both the covenants and the bylaws.
22 Right?

23 A. That's what it says.

24 Q. And that looks to you, doesn't it, to be the
25 set that was offered to the county to say this is the

1 covenants we're proposing if you approve our final plat?

2 A. Yes.

3 Q. Okay. Then I would like you to look at
4 another exhibit.

5 MR. WENDTLAND: Well, I would move the
6 admission of Williams/Jamison Exhibit 1, first of all.

7 MR. SMITH: Mr. Stinson.

8 MR. STINSON: Well, we would object on
9 relevance at this point. I'm not sure where he's going
10 with this. So perhaps if there was more foundation as
11 to the relevance of our issue, I would withdraw that.

12 MR. WENDTLAND: Well, it contains terms
13 governing water use by lot owners. It's integral to
14 their ability to use their property in the subdivision.
15 That's how they applied to use it. So it explains
16 that.

17 MR. SMITH: I'll await accepting this
18 until we have a little more opportunity for foundation.

19 Q. (BY MR. WENDTLAND) Let me ask you a question
20 or two about that.

21 Can you turn to page 40 of the subdivision
22 covenants that you have identified as the final plat
23 covenants? And this is under the section 10.18,
24 Drainage and Grading. Do you see that towards the top
25 of the page?

1 A. Yes, sir.

2 Q. Down at 10.19, Irrigation, that's the next
3 major section, do you see that?

4 A. Yes, sir.

5 Q. Can you just read that paragraph -- it's only
6 a couple of sentences -- into the record?

7 A. Owners shall not install irrigation systems or
8 draw water from any existing irrigation systems which
9 draw upon ground or surface waters nor from any pond or
10 other body of water within the properties. However, the
11 declarant and the association shall have the right to
12 draw water from such sources for the purpose of
13 irrigating the area of common responsibility.

14 Q. And then it says "Optimal Provision" next to
15 that. Right?

16 A. Yes. I'm sorry.

17 Q. And wouldn't you agree, then, that's a
18 covenant paragraph describing what lot owners according
19 to the covenants that the county approved for the
20 subdivision can do with water in their lots? That's
21 what was submitted. Right?

22 MR. STINSON: Hold on. Wait a second.
23 May I voir dire this witness for a second?

24 MR. SMITH: Yeah.

25

1 VOIR DIRE EXAMINATION

2 BY MR. STINSON:

3 Q. Mr. Easum, has the -- do you know whether the
4 county has approved covenants for the subdivision or
5 whether these are a draft?

6 A. They're a draft.

7 Q. Can you tell the Board whether the county has
8 actually approved covenants for the subdivision?9 A. The county does not approve covenants. They
10 approve the final plat. Covenants are documents that
11 can be changed. The county has no jurisdiction over
12 enforcement for covenants. So, covenants -- they're a
13 draft copy of going in and they could be changed today
14 by the developers, and the county knows that.15 Q. Okay. Can you tell the Board whether there
16 have actually been any covenants adopted for the
17 Copperleaf Subdivision at this time, if you know?

18 A. To my knowledge, no.

19 MR. STINSON: All right. Thank you, Mr.
20 Hearing Examiner. I appreciate the opportunity to do
21 that. I think that the discussion over this is
22 irrelevant in that regard, and that would be my
23 objection on the record, because we don't yet have
24 covenants and we don't know what effect, if any, the
25 covenants will have on the subdivision. I guess if we

1 want to have a hypothetical discussion if that is the
2 covenant, but as phrased, I object to relevance.

3 MR. SMITH: Thank you. Mr. Wendtland --

4 MR. WENDTLAND: I would like to ask a
5 couple more questions, too, that I think will help you,
6 if you'll allow me.

7 CROSS-EXAMINATION RESUMED

8 BY MR. WENDTLAND:

9 Q. Mr. Easum, as we sit here today, up through
10 the whole subdivision process for this subdivision
11 today, including the county's recent approval of the
12 final plat, which has even been appealed as of this time
13 because it's final, those are the last covenants that
14 were presented to the county as an example of covenants
15 that would govern the subdivision. Isn't that right?

16 A. They were -- that is correct, what you said,
17 an example of --

18 Q. So if someone like I went to the county,
19 looked in their records, those are the last, most
20 current covenants I would be able to find that the
21 developer submitted to the county to get final plat
22 approval for these lot developments. Correct?

23 A. To my knowledge, that's correct.

24 Q. And those are the accurate -- what you read
25 out of there was the last thing the subdivision

1 developer represented to the county would happen with
2 water on the lots to get the final plat approved, even
3 if you can change them later.

4 A. Yes.

5 MR. SMITH: Okay. We'll go ahead with
6 this line.

7 MR. WENDTLAND: I would again move the
8 admission of Exhibit 1, those covenants, with all of
9 that explanation from all of us.

10 MR. STINSON: I have the same concern,
11 Mr. Hearing Examiner, which is the relevancy of that
12 document with regard to the issue here in front of the
13 Board today, which is this document doesn't establish or
14 fail -- or show a lack of use of the North Fork Valley
15 Ditch or the water rights we're here to discuss.
16 Moreover, I believe the testimony has shown that this
17 document is simply a draft subject to any sort of change
18 without any county governance. So I would continue my
19 objection.

20 MR. SMITH: Very well. Does anybody
21 else have anything?

22 MR. WENDTLAND: I would like to say
23 these are the only covenants we have been able to see.
24 These were represented to the county to be
25 representative of what would govern the lots. As you

1 heard, these covenants prohibit lot owners from
2 irrigating.

3 MR. SMITH: I understand. I'll allow
4 this exhibit for what it's worth. I'll just leave it at
5 that.

6 MR. STINSON: And these would be 1 and
7 2?

8 MR. WENDTLAND: Just 1.

9 MR. SMITH: 1. We haven't had 2 yet, I
10 don't believe. Getting close, I believe.

11 Q. (BY MR. WENDTLAND) Mr. Easum, I would like to
12 hand you another -- it's actually two sheets that were
13 copied out of the final plat application that was
14 submitted to Park County. They're one of the
15 attachments for that application. Are you familiar with
16 those? Go ahead and look at them both. They are marked
17 as Williams and Jamison Exhibit 2.

18 A. Yes.

19 Q. What are they?

20 A. 2 and -- just 2.

21 Q. Both sheets are part of 2. And those 2 sheets
22 go together. Correct?

23 A. Yes. Sheet 1 of 2 and 2 of 2 are the final
24 plat showing Copperleaf Subdivision.

25 Q. And what do those sheets show? Why were those

1 not be the actual document approved by the county. It
2 would be what the developer submitted for approval.

3 MR. SMITH: Okay. We'll go ahead and
4 accept Exhibit 2.

5 MR. WENDTLAND: And I'm offering it. I
6 felt it was important you see the subdivision plat
7 layout as well as maps attached to an amended petition.
8 I think sometimes you might see other things there that
9 are also important.

10 MR. SMITH: Very good.

11 MR. WENDTLAND: Mr. Easum, I'm done with
12 that one, if you get to the point where you want to not
13 have to hold on to it.

14 Q. (BY MR. WENDTLAND) Mr. Easum, I would like to
15 have you explain a little bit more to me, what is
16 building envelope style development?

17 A. Building envelope preclude -- basically will
18 not allow a lot owner to utilize certain portions of his
19 lot for buildings.

20 Q. Okay. And in the draft covenants we saw, does
21 it describe building envelope style development or is
22 that something that you have talked about since then or
23 different from the draft covenants that were submitted
24 to the county?

25 A. I don't recall.

1 Q. Can you look at those covenants again and see
2 if you can find anything in there about building
3 envelope style development?

4 A. It might take a while. They are pretty
5 thick.

6 MR. SMITH: Would you like a minute or
7 two to look through that?

8 THE WITNESS: I would need them, because
9 I'm not --

10 MR. SMITH: Okay. We'll take a break
11 for about three, four, five minutes here.

12 (Hearing proceedings recessed 11:10
13 a.m. to 11:19 a.m.)

14 MR. SMITH: We'll go back on the
15 record.

16 MR. WENDTLAND: Let me go ahead and
17 start.

18 MR. SMITH: Mr. Wendtland.

19 Q. (BY MR. WENDTLAND) Mr. Easum, we have had a
20 break. You looked over the draft covenants that we
21 talked about earlier. Can you point me to anywhere in
22 there that talks about a building envelope --

23 A. No, sir.

24 Q. -- concept?

25 A. I cannot.

1 Q. So as that draft covenant set was submitted to
2 the county for final plat approval, it didn't describe
3 building envelopes?

4 A. Not that I could find in here, no, sir.

5 Q. Can you identify just as you sit here today
6 any other official document submitted to the county in
7 the final plat application that described a building
8 envelope restriction or concept for these lots?

9 A. Not within the final plat application, no.

10 Q. So that's something new you have described
11 today that wasn't explained to the county in the final
12 plat application.

13 A. It was explained to the county during the
14 special use permit phase of the project, so it has been
15 explained to them.

16 Q. But it didn't make its way into the covenants
17 since then.

18 A. It's not a platted -- as you'll notice, the
19 final plat does not contain water lines, it does not
20 contain sewer lines, things like that. The final plat
21 is a representation of the lots that are created and the
22 acreage and the bearings and distances and things like
23 that, not the building envelopes. They are not a final
24 plat item.

25 Q. How big will building envelopes be for these

1 lots? Is there a formula or minimum or do you know?

2 A. You know, that I don't think has even been
3 determined as of right now, to my knowledge. I'm not
4 the best one to answer that question.

5 Q. When will that be determined? Will it be
6 determined before lots are sold?

7 A. Yes.

8 Q. Do you have any sense? Has there been any
9 discussions that you're aware of considering proposed or
10 projected sizes for building envelopes or minimum
11 building lot usage?

12 A. The numbers I have heard would be between one-
13 third and one-half of the lot.

14 Q. So no building could be bigger than somewhere
15 between one-third and one-half of the lot?

16 A. That's not -- a building envelope, as I stated
17 earlier, is the building. It could be fenced. So it's
18 not -- not to say that the building envelope is only a
19 home or a garage or a shop. It is an area that can be
20 developed by the lot owner.

21 Q. Wouldn't you agree with me that at least as
22 they exist right now, these covenants don't set up a
23 minimum dwelling size or any kind of minimum size for a
24 building and a driveway and things like that per lot?

25 A. I would agree with that.

1 see associated with these two petitions and convert them
2 to municipal supply at a later time?

3 A. I am not aware of any plans for that.

4 Q. As far as you know, are there any discussions
5 at all out there at this point about taking some of the
6 North Fork Valley Ditch irrigation water that is
7 discussed in these petitions and converting it to
8 municipal supply for the subdivision at a later time?

9 A. There is not.

10 Q. Okay. Do you think there will be? Do you
11 have any reason to believe that will change?

12 A. I have no reason to believe that would change.

13 Q. Why?

14 A. Because the -- the subdivision has a separate
15 domestic supply for their water.

16 Q. What is that domestic supply?

17 A. A permit from the North Fork of the Shoshone
18 River. They also have permits for groundwater.

19 Q. What groundwater?

20 MR. STINSON: I need to object to this
21 line of questioning for relevancy and time constraints.
22 It doesn't address at all -- objection is based on it
23 just has no bearing on the North Fork Valley Ditch or
24 the historical use.

25 MR. SMITH: I think it may. I am going

1 to allow this, because I think it could have some
2 relevance.

3 Q. (BY MR. WENDTLAND) What groundwater are you
4 aware of that would be a part of a municipal supply of
5 domestic water for this subdivision?

6 A. What groundwater?

7 Q. Yes.

8 A. The groundwater underneath the Copperleaf
9 Subdivision lands.

10 Q. Are there wells permitted that are identified
11 for that source at this time?

12 A. There are, three well permits.

13 Q. What are they?

14 A. I can't say the permit numbers off the top of
15 my head.

16 Q. Where are they?

17 A. Where are the well permits?

18 Q. Yeah, roughly.

19 A. There is a permit within -- don't see the
20 section. I can point to them. There would be one on
21 the western third and one near the center of the
22 property and one near the highway, the North Fork
23 Highway, Highway 14-16-20, between pond number 2 and the
24 water treatment plant.

25 Q. And is that -- the use of those wells as

1 domestic water supply, was that submitted, presented to
2 the county that those wells might be domestic water
3 supply when you sought the final plat?

4 A. No. As of right now, the water supply is from
5 the permit from the North Fork of the Shoshone River.
6 However, you asked what other water sources and I just
7 told you.

8 Q. Did you ever tell the county those wells would
9 not be used for domestic water supply?

10 A. The wells were never brought up.

11 Q. Okay.

12 A. Let me take that back. Can I re-answer that?

13 Q. Do you want to change your answer?

14 A. I want to clarify the answer.

15 We -- during the final plat to the county, the
16 water supply was from the permit from the North Fork of
17 the Shoshone River. The wells there -- someone asked
18 about wells on the property, and we told them that that
19 was not the method that the developers were proposing to
20 use for a domestic supply of water.

21 Q. Actually, you stated the two wells on the site
22 would not be used as a part of a water system. Right?

23 A. That's what I just said.

24 Q. So that's changed somehow since the final plat
25 has been approved?

1 A. No. What has changed is there are other
2 options. You asked -- your question was what is the
3 domestic source of water, and I told you the permit from
4 the river. You asked if there was any -- you asked if
5 this North Fork Valley Ditch water would ever be used
6 for domestic supply, and I said no, and you said why.
7 And so I told you that they had a separate domestic
8 source of water and I spoke of all of the sources that
9 they have applied for and obtained permits from the
10 state engineer for.

11 Q. Since the final plat was approved, has the
12 developer applied to the DEQ to use groundwater, well
13 water as part of the domestic supply?

14 MR. STINSON: Mr. Hearing Examiner, I
15 would renew my objection. I mean, at this point we're
16 wasting time.

17 MR. SMITH: Mr. Wendtland, get to the
18 basis here, show where we're going.

19 MR. WENDTLAND: I want to be as sure as
20 I can that we aren't going to be back here in six months
21 with a petition to change this ditch water to municipal
22 supply and this maneuver was just to get the water out
23 onto the lots to save it for that purpose and avoid a
24 historic consumptive use restriction now.

25 MR. STINSON: We'll so stipulate.

1 MR. SMITH: We may be back then. We
2 don't know that at this point. And the petition before
3 us is what we're here --

4 MR. WENDTLAND: I guess my point is it
5 goes to the credibility of the request for relief in the
6 petition, what's it's really for. That's what I'm
7 trying to get at.

8 MR. SMITH: Let's see if we can refocus
9 this a little bit and stay with the issues on the
10 petition.

11 MR. WENDTLAND: Okay.

12 Q. (BY MR. WENDTLAND) You would agree, wouldn't
13 you, Mr. Easum, that as lots are built on and houses and
14 driveways are added, that the land taken up by the
15 houses and driveways and such things will no longer be
16 land that can be irrigated?

17 A. Yes.

18 MR. WENDTLAND: That's all I have.

19 REDIRECT EXAMINATION

20 BY MR. STINSON:

21 Q. Mr. Easum, I just want to make sure that we
22 didn't -- or you didn't say something that may be
23 confusing to the Board.

24 Would you tell the Board whether it's possible
25 that portions of land within the building envelope as

1 you understand it could also be irrigated?

2 A. Yes, it is possible.

3 Q. Okay. So you weren't intending to represent
4 the building envelope itself would be completely
5 occupied by a structure. Is that correct?

6 A. That's correct.

7 MR. STINSON: I don't have any further
8 questions.

9 MR. SMITH: Mr. Wendtland?

10 RECROSS-EXAMINATION

11 BY MR. WENDTLAND:

12 Q. Mr. Easum, do you have a general sense of the
13 kind of housing that you're expecting people to build on
14 these lots? Isn't this kind of intended to be -- it
15 will be marketed as an upscale, larger home
16 development? Isn't that right?

17 A. I can't speak to that, but to my understanding
18 from what I read in the paper, that's correct.

19 MR. WENDTLAND: That's all I have.

20 MR. SMITH: I have nothing for you, Mr.
21 Easum. You may be excused.

22 END OF EXCERPT

23

24

25

C E R T I F I C A T E

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

I, JOHN E. WALZ, CM, do hereby certify that I reported by machine shorthand the proceedings contained herein and that the foregoing 33 pages constitute a true and correct transcript of the testimony of Jeremy Easum.

Dated this 17th day of May 2006.

JOHN E. WALZ
Certificate of Merit