



PLANNING COMMISSION AGENDA ITEM NO. F.1
08/15/2023

SUBJECT: Deer Ridge clubhouse CUP – Future Agenda Item follow-up

DEPARTMENT: Community Development Department

STAFF: Erik Nolthenius, Planning Manager

TITLE/RECOMMENDATION

Staff recommends that the Planning Commission review the information provided with respect to the previously-approved Deer Ridge clubhouse CUP and discuss whether any additional future action may be warranted.

PREVIOUS ACTION(S)

At the Planning Commission's June 6, 2023 meeting, Commissioner Flohr explained a future agenda item request to review Conditional Use Permit (CUP) No. 00-04. The Planning Commission originally approved CUP No. 00-04 for the Deer Ridge clubhouse in 2000. In addition to requesting copies of the CUP and supporting documentation, the Commission's June 6 motion included a request for staff to respond to several questions presented by Commissioner Flohr. This report includes staff's responses to the Commission's questions, beginning with background on the nature and scope of conditional use permits. The CUP and supporting documentation are also included as attachments to this report.

BACKGROUND

The site containing the Deer Ridge clubhouse is located within the Open Space Overlay established by the voters of Brentwood in 2022 in accordance with Measure Q. Measure Q generally restricts the allowable uses of land to "open space, parks, agricultural, and recreational uses." However, Measure Q includes an exception for uses that have previously obtained a "vested right" pursuant to state or federal law. Vested rights provide protection to property owners from changes in land use laws. Generally speaking, when a land use has obtained a vested right, the property owner may continue to use their property for the use that has vested, even if a change in land use regulations would no longer allow that use.

A conditional use permit (or CUP) can confer a vested right if the property owner incurs substantial expenses in reliance on the CUP. CUPs are tied to a specific property



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(i.e., they “run with the land”), protecting both the original permittee and successor owners. A CUP enables a property owner to use their property in ways that are substantially the same or similar to the original permitted use. However, the property owner cannot expand or intensify a nonconforming use [i.e., one that was once allowed, but now is not] beyond what is permitted in the CUP. Moreover, in certain cases, a property owner can abandon rights which have vested under a CUP if the permittee does nothing to develop the property beyond obtaining the permit. Whether a new use is substantially the same or similar to the original land use, or whether a property owner has abandoned a use previously protected by a CUP, is a fact-specific question that must be decided on a case-by-case basis.

When issuing a CUP, cities have broad authority to include reasonable conditions of approval, which the property owner must follow. However, after a CUP has been issued, a city’s authority to modify or revoke the CUP is limited. Generally speaking, a city can make such a modification or revocation only in the following circumstances:

- (1) the property owner requests the modification,
- (2) the operation of the property is dangerous or constitutes a public nuisance,
- (3) the property owner has violated conditions in the CUP or other applicable laws, or
- (4) the permit itself envisions that new conditions will be added in the future.

Constitutional requirements for due process apply before a city can modify or revoke a CUP. Those requirements include notice to the permittee and a hearing on the violation or proposed action.

THE DEER RIDGE CLUBHOUSE CUP (NO. 00-04)

In 2000, the Planning Commission issued CUP No. 00-04 for the Deer Ridge clubhouse property. Among other uses, CUP No. 00-04 allows for the development of a clubhouse of up to 9,000 square feet, consisting of a “pro-shop, dining room/bar, office and bathrooms, a driving range and putting green, a 500 sq. ft. pool cabana with a 260 sq. ft. restroom facility, and a 4,000 sq. ft. maintenance building.” The clubhouse was constructed, but the pool/cabana facility and maintenance building never were. In addition to permitting construction and use of the clubhouse, the CUP contains 19 specific conditions of approval, including requirements to notify the Police Department in advance of special events or activities and to submit a landscaping plan for review by the City.



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On April 16, 2023, the City received a letter from Sean McCauley Investments, Inc., the owner of the Deer Ridge clubhouse property, which included a preliminary conceptual proposal for the reuse and redevelopment of portions of the Deer Ridge clubhouse site. The proposal was titled a "Parameter Plan Overview," and was not a final or complete development application. Mr. McCauley asked for staff's guidance on which of the elements of the "Parameter Plan Overview" could be allowed under the property's existing CUP and applicable land use regulations. Among other elements, the Parameter Plan Overview included a proposal to open a new restaurant in the existing clubhouse building and install new landscaping on the property. Staff responded with a letter that provided guidance regarding which of the proposed uses could be allowed under Measure Q and CUP No. 00-04, based on the information provided in the Parameter Plan Overview. However, staff noted that it could not provide definitive answers, both because the Parameter Plan Overview was not a final or complete development application, and because the property is covered by Measure Q, which is subject to final interpretation by the City Council.

Mr. McCauley subsequently submitted a design review application for new landscaping. Staff reviewed the application for completeness and then forwarded the application to the Planning Commission, which is the subject of Agenda Item 4. The City has also received three separate building permit applications associated with the clubhouse. This includes one that has been issued for dry rot repairs, and two that are currently in the plan check process (one for a patio and ADA ramp on the north side of the building and one for a tenant improvement for the majority of the clubhouse, including a new wine bar in the lower level). Staff has not yet completed its review of the building permit application, and that application is not before the Planning Commission.

STAFF'S RESPONSES TO THE COMMISSION'S QUESTIONS

This section provides staff's responses to the Commission's questions regarding CUPs.

1. Why are Conditional Use Permits important?

Conditional use permits lay out the rights and obligations related to the use of a property. As noted above, a CUP can provide a vested right for a property owner to develop or continue using property in the manner authorized by the CUP. Property owners must also comply with any conditions of approval contained in a CUP. Brentwood Municipal Code ("BMC") § 1.16.040.



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Conditional use permits also provide a critical vehicle for a city to approve of a use without simply deeming it a permitted use, which would carry no additional conditions. Uses that are permitted by right do not need further approval to operate, though their design may still be subject to city review and approval. With a conditional use permit, the City can tailor the conditions to the impacts of a particular use, within the parameters of the law.

2. Why review the CUP for the Deer Ridge clubhouse?

The uses of the Deer Ridge clubhouse must be consistent with the property's CUP. If the property is currently being used in a manner that is inconsistent with the CUP, the City could initiate an investigation and determine whether to issue a notice of violation or take other appropriate action (e.g., BMC §§ 1.16.040-050). Additionally, proposed changes to a site or building contained in a building permit application or design review application must also be consistent with the property's CUP. The City reviews such changes after it receives a complete application for a building permit or design review.

3. What limitations are there on the City's review process that might prevent the Planning Commission from ruling on anything it might find deficient in the CUP? Are there any boundaries around what the Planning Commission may consider?

Property owners are entitled to notice and an opportunity to be heard before the City takes actions that could impair the rights protected by a CUP. In this case, the City cannot modify or revoke the CUP, or determine that the property owner has violated a condition in the CUP, without first notifying the property owner of the potential violation and providing an opportunity for the owner to present facts or evidence that could inform the City's decision. If the Planning Commission believes the property may currently be in violation of the CUP, the Commission could approve a motion requesting that staff investigate the potential violation and prepare a report and recommendation to the Planning Commission in accordance with section 17.890.006 of the Municipal Code.¹

¹ Section 17.890.006 provides: "In the event of a violation of any of the provisions of the zoning regulations, or in the event of a failure to comply with any prescribed conditions of approval, the zoning administrator may submit to the planning commission a report and recommendation for revocation of the permit and the planning commission may revoke any permit or variance, after notice and [a] hearing."



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In addition, the Planning Commission must ensure that it does not prejudge the merits of any applications that are not presently before it.

4. Please provide copies of CUP No. 00-04, all supporting documentation, and all documents referenced in the CUP.

Copies of the resolution approving CUP No. 00-04 and available supporting and referenced documentation are included as attachments to this report.

5. Is the clubhouse severable from the golf course?

Yes. The CUP allows a set of uses for the clubhouse and surrounding property, and does not require that the golf course be in operation in order for the clubhouse to be used.

6. Is a clubhouse the same thing as a restaurant?

A clubhouse is not necessarily the same thing as a restaurant. But in this case, the CUP provides guidance as to what kinds of uses are permitted within the clubhouse. CUP No. 00-04 allows for the operation of a commercial "dining room/bar." In general, the use of a property must be "substantially the same or similar" to the original permitted use, but does not need to be identical. From a land use perspective, operating a restaurant is similar to operating a commercial dining room/bar. Therefore, a restaurant could be an allowable use under the existing CUP, even if there may be some differences in the restaurant's hours of operation or number of patrons relative to previous uses of the dining/bar facility.

7. Does the removal of some uses and using that space for the restaurant change the use enough to require amending the CUP?

This question has two components: (1) whether a new or amended CUP would be required if the property owner were to operate a restaurant without also using the clubhouse for the other uses permitted in the CUP, and (2) whether an amendment to the CUP would be required if the property owner repurposes space that was previously dedicated to a different use in order to provide additional space for the dining/bar use.

For the first question, the CUP authorizes several uses of the property, both inside and outside of the clubhouse, and does not require that all of the uses be maintained in order for the CUP to remain valid. The second question depends on the details of



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how the space in the clubhouse will be used. In general, vested rights do not allow for the expansion of a nonconforming use. However, not all changes in the interior use of a building would constitute an expansion of a nonconforming use. In the absence of a specific proposal, staff cannot provide a definitive answer at this time.

8. Does operating the clubhouse as a restaurant change the use enough to require amending or superseding the CUP?

No – opening a new restaurant in the existing clubhouse building would not, by itself, require a new or amended CUP. As noted above, the use of a property must be “substantially the same or similar” to the original permitted use, but does not need to be identical. Operating a restaurant is similar to operating a commercial dining room/bar, and therefore could be an allowable use under the existing CUP.

9. Does operating a restaurant create a need for more conditions of approval?

CUP No. 00-04 does not contain a detailed list of conditions concerning the operations of the dining/bar facility. As described below, the City could modify the CUP to include additional conditions of approval with the agreement of the property owner. The City may also be able to add or clarify conditions of approval, if the changes do not impair the rights protected by the CUP.

10. Do the findings in the action section (NOW, THEREFORE, BE IT RESOLVED) conflict with the usage as a restaurant?

No – the use of the existing clubhouse building for a restaurant does not conflict with the action section of Planning Commission Resolution No. 00-57. That section includes approval for the “clubhouse, consisting of a pro-shop [and] dining room/bar,” among other uses. The restaurant use is consistent with the dining room/bar authorized by the resolution.

11. Do all of the whereas clauses remain true if the use is a restaurant?

Yes, as noted above, a restaurant is similar to the dining room/bar use discussed in the whereas clauses of Resolution No. 00-57.

12. Have all Conditions of Approval been met?

Yes, staff confirmed compliance with all conditions of approval prior to authorizing occupancy of the clubhouse, with the exception of #5, which relates to the



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construction of Foothill Drive from Balfour Road to Concord Avenue. Foothill Drive currently terminates at Pearson Drive, approximately 600 feet west of Concord Avenue.

13. Were all supporting documents reviewed to make sure the Conditions of Approval were met?

Yes – staff goes through a standard review process to ensure that all conditions of approval have been complied with before approving occupancy.

14. Does the CUP allow the owner to meet all of their goals for the property? If not, are there any options available to the owner to amend the CUP or otherwise enable their unmet goals?

The April 16, 2023 letter from Sean McCauley Investments, Inc., included proposals for a new pool and cabana facility, along with a second clubhouse building that would house a full-service spa, lounge, and wine bar. Staff informed Mr. McCauley that a pool and cabana facility could be allowed under Measure Q as a permissible recreational use, but would likely require a new or amended CUP. Although CUP No. 00-04 authorized a pool and cabana, those facilities were never constructed, and so a new or amended CUP would likely be required, as the right to construct and operate those facilities arguably never vested. Staff also informed Mr. McCauley that a spa and wine bar, located in a newly constructed second clubhouse building, most likely would not qualify as a recreational or open space use under Measure Q. And CUP No. 00-04 does not provide a vested right to build a second clubhouse for the purposes of housing a spa and wine bar. Therefore, under Measure Q, a vote of the people would likely be required to approve construction of the spa and wine bar.

15. What options exist that would be available to remediate or mitigate any potential negative findings, if there are any?

Staff assumes the term “potential negative findings” in the question refers to a finding by the City that a current or proposed use of the property is inconsistent with the CUP. The options for addressing that situation depends on the nature of the finding. As an initial matter, staff is not aware that the property is currently in violation of the CUP. But, if after an appropriate investigation the City determines that the property is being used in a manner that conflicts with the CUP, the City could work with the owner to address the violation in several ways. For example, if one or more conditions of approval have not been satisfied, the City could work with the owner to ensure compliance with the conditions of approval. Alternatively, the



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property owner could request a modification to the CUP, which would be reviewed by the Planning Commission at a future hearing. The modification could be allowed under Measure Q, if it does not expand the nonconforming uses of the property.

If the “negative finding” does not concern a current use of the property, but rather a proposed use described in a building permit application, there are a few options. After learning that the uses proposed in conjunction with the building permit application do not comply with the CUP, the property owner could amend the proposal and file a new application that complies with the CUP. The owner could also request a modification to the CUP, which would proceed to the Planning Commission for review. As stated earlier, the only application currently pending before the Planning Commission is a design review application for landscaping-related improvements, which does not include proposed changes to the use of the clubhouse building.

16. For each option, how can the Planning Commission manage them to minimize days in resolution?

All of the above options could proceed expeditiously, although certain procedural requirements may apply. For example, if the City believes that the property may be in violation of the CUP, it must provide notice and an opportunity for the property owner to be heard before making a final decision. Likewise, proposed modifications to the CUP would require notice and a public hearing prior to approval (see BMC § 17.830.004(B)), and potentially environmental review.

17. If there were some kind of negative finding after the restaurant is already open, would there be any consequences for the restaurant? What steps can the Planning Commission take to minimize any risk to the restaurant operator?

Similar to the question above, staff assumes the term “negative finding” refers to a determination by the City that the use of the property is not consistent with the CUP. In that case, yes, there can be negative consequences if an owner uses property in a manner that is inconsistent with the applicable CUP. To minimize these risks, staff can provide guidance to the owner as plans for the property develop. The property owner should also submit all applications for any required building permits. Those applications provide an opportunity for the owner to receive confirmation from the City that the proposed changes are consistent with the CUP.



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DATE OF NOTICE

This item does not require a notice of public hearing.

ENVIRONMENTAL DETERMINATION

Since the Planning Commission will not be taking any action on this item, no CEQA review is required.

GENERAL PLAN

The General Plan designates the project site as Semi-Public Facility (SPF).

ZONING/SURROUNDING LAND USES

The project site is zoned PD-20 (Planned Development No. 20). Surrounding land uses are as follows:

North – Deer Ridge Golf Club

East – Foothill Drive and single-family homes beyond

South – Deer Ridge Golf Club, Spyglass Drive, and single-family homes beyond

West – Deer Ridge Golf Club

OWNER/APPLICANT

The property owner is Sean McCauley Investments, Inc.

ATTACHMENT(S)

1. PC Staff Report - CUP 00-04 - 08.15.00
2. PC Resolution No. 00-57 - CUP 00-04
3. CUP 00-04 - Approved Project Plans
4. PC Staff Report - CUP 06-12 - 08.01.06
5. PC Resolution No. 06-75 - CUP 06-12
6. CUP 06-12 - Approved Project Plans