



Via Email

September 23, 2021

Mr. Mark Schroetel
General Manager
Summit Mountain Holding Group
3923 N Wolf Creek Drive
Eden, UT 84310

Re: Summit Retention Pond and Park and Ride Proposal

Dear Mark:

Thank you for participating in the Zoom call on August 30, 2021 with the Design Review Board of the Wolf Creek Resort Master Home Owners Association ("Master HOA") to present Summit Mountain Holding Group's ("Summit") plans regarding the Wolf Creek 0 property (parcel #220210142) (the "Property").

The draft plan you shared presents two major projects, namely a water retention pond and a "park and ride" lot for Powder Mountain customers and employees to board UTA busses to the ski area. The plan we reviewed is not final and lacks landscaping and other design details. We asked to be supplied with the final plan for review prior to submission to the County.

I. The Property Is Subject to the Master HOA and CCRs

As a threshold issue, we asked whether Summit contends that the Property is *not* subject to the Master HOA and CCRs. Summit's chief development officer, who also serves as general counsel, has advised you that the Property is not because it was purchased in bankruptcy proceedings, which she contends somehow eliminated these requirements. We do not know whether this is her legal opinion or springs from her role as the executive in charge of Summit's development efforts.

We respectfully disagree. These obligations "run with the land" and are therefore not voided by federal bankruptcy proceedings. See generally <https://www.bankruptcylitigation.com/wp-content/uploads/sites/427/2018/07/THE-LIMITATIONS-OF-SECTIONS-363F-AND-365A-IN-SEVERING-RESTRICTIVE-COVENANTS.pdf> (discussion of general rule that covenants are property rights not voided in bankruptcy).

The 2002 Zoning Development Agreement, pursuant to which Wolf Creek Resort was developed and which includes the Property, expressly provides that the parties' commitments "shall constitute a covenant and restriction running with the land and shall be recorded in the Office of the Weber County Recorder." (Agreement, Para. 5). That agreement was duly recorded on October 22, 2002, and Summit had record notice of these requirements prior to purchase. We are aware of no evidence that any of the covenants on the Property were voided by the debtor in bankruptcy proceedings prior to related property auctions. If Summit has such

evidence, we would appreciate you or counsel sharing that with us. Failing that, we will assume that Summit is so bound.

II. Design Review Board Response to Draft Plan

We have been advised that HOA members may be contemplating litigation to enforce the Development Agreement commitments and other obligations with respect to the parking lot. Also, we have not been presented with a final plan or engaged in further consultation. Consequently, we are not in a position to approve the preliminary plan presented to us.

Notwithstanding these circumstances, we have identified some of the conditions we believe necessary to mitigate use of the Property if the projects proceed:

Water Retention Pond

1. Create berming and landscaping around the pond.
2. Consider alternatives to a chain link fence around the pond. You stated that a fence is required to prevent animals and humans from falling in and being unable to get out due to the pond lining. A chain link fence would be an eyesore at the entrance to the Wolf Creek Resort area. Regardless of its nature, the fence should be surrounded by plantings that will obscure it, such as vines, tall grasses, trees, or other tall plants.
3. Design such landscaping with a longer-term view of incorporating other ponds that may be placed on the land (a Wolf Creek Irrigation Company pond is especially likely on an adjacent easement and another Summit pond is possible, though remote).
4. Complete restoration of any wetland areas that already have been affected and stop disturbance of any other wetlands, as directed by the applicable state/federal entities. You advised me on our call of September 9 that Summit is cooperating with the Army Corp of Engineers to preserve and remediate any wetlands affected, after a concerned valley resident had contacted them regarding the projects.
5. Consult with the state Dam Safety Office to address public safety concerns if applicable to the pond plans.

Park and Drive Lot

1. Revisit using the former lot near the Eden crossroads. Summit represented that it was forced to pursue the proposed parking lot because the landowner refused to lease the former lot. In our communications with the owner, he has indicated that he was indeed willing to lease the lot to Summit again, but his call to counsel to discuss that had not been returned. Even if this lot is not available for a longer term, leasing the lot for this coming year can provide more time in which to develop other options, whether on the Property or elsewhere, instead of the hasty current effort that suffers from a "ready, fire, aim" approach (e.g., late discovery of wetlands issues, wetland remediation, construction before plan approval and public hearings, bypassing the option to lease the current lot, no current consultation with UDOT).
2. Consult with UDOT and UTA on current/future traffic considerations and service to the Valley. On your call you mentioned UDOT had addressed prior plans but has not been consulted recently. Since it was proposed some years ago, the traffic has vastly increased and is likely to get heavier. The traffic in and out of the site is a safety and traffic flow concern given the volume, timing, and concentration of traffic leaving Powder at the end of the day. Consultation with UDOT and UTA about current conditions could also open the

door to the larger issue public transportation throughout the Valley, not just to Powder Mountain.

3. Present planning documents reflecting Summit's final plans, with changes, to the Weber County Planning Department and seek a conditional use permit prior to construction and use of the lot, as represented on our call.
4. Commit to making the balance of the Property Zone O-1 (Open Space), as also represented on our call.
5. Install appropriate landscaping at the entrance and surrounding the parking area to mitigate the appearance of a parking lot. This should include screening and berming along with appropriate plantings. This is particularly important during the winter when most parking will occur.
6. Install prominent and multiple signs advising users that there should be "no idling" of engines while waiting for the bus.
7. To avoid idling cars in the lot, slight modifications should be made to the bower to provide some heating devices and places to hold ski equipment while waiting for the bus. The bower ideally could be the pick-up spot for riders. This suggestion is based on the approach used at long-term parking waiting areas at the Salt Lake International Airport (covered areas, warmed by overhead heating lamps)
8. Install an "Purple Air" monitoring devices similar to those installed through the Valley. These could provide a useful monitor of air quality impact of the lot as well as complement other Valley monitors.
9. Include in the plan amenities you discussed on the call: linkage to other trails, expanded track, public art, and other recreational options. Since Summit is justifying the plan, in part, as providing increased recreational features as well as a park and ride, those should be on the plan and a commitment made to create them. This would be a tremendous opportunity for Summit to confer with its neighbors and the Ogden Valley Parks organization. Also, your desire for public art could be served by consulting with Mountain Arts and Music, a Valley non-profit.
10. Assess and secure the Wolf Barn structure, which appears unstable. Increased traffic and parking would invite youth and others to explore the barn. It could be an "attractive nuisance" that might injure those visiting the lot as well as create liability for Summit.

Conclusion

We appreciate your personal courtesy during our Zoom discussion and my calls with you. Regrettably, our Zoom call occurred only after we saw bulldozers and work crews on the Property and wrote to you and the County questioning this activity. In other words, we had to pursue Summit *after* construction had commenced, rather than Summit contacting us *in advance*.

Summit's conduct continues to fuel our concern. On September 9, the same day I called to ask why work had stopped when the wetland issue surfaced, Summit's development officer and counsel was simultaneously filing a proposed zoning code amendment seeking to rewrite the AV3 classification to allow parking lots. Again, this is a new proposal from Summit, without notice. Summit had repeatedly advised us it would pursue a Conditional Use Permit. Instead, it now seeks a wholesale amendment to the code which side-steps the property covenants and has broader effect beyond just this Property.

This lack of advance notice and change in course undermines trust. We can only speculate such miscues are due to either an internal failure of communication and coordination, or

intentional disregard of legal obligations and local stakeholder concerns. Whatever the cause, we respectfully ask that it stop.

Only a few months ago, by both letter and email to Summit dated December 15, 2020, I emphasized the importance of prior consultation:

I want to underscore the importance of maintaining an open channel of communications regarding properties within the Wolf Creek community. The Covenants, Conditions and Restrictions for Wolf Creek Resort (CCRs) contain comprehensive information regarding development and use of properties within the Wolf Creek area. These provisions apply to individual homes, multi-unit developments, open space, and other areas. It is particularly important that if you anticipate any building or other changes to your property, you consult the CCRs and the MHOA. If you contemplate construction, you should also confer with the MHOA Design Review Board as early in the process as possible.

This could not have been more clear. The requirements are simple: advance communications, consistency between word and deed, and no surprises. In that spirit, we look forward to continuing our conversations with our Summit neighbors.

Very truly yours,

Kay A. Hoogland

Kay A. Hoogland
President
Master Home Owners Association

cc: Weber County Commission
Weber Counting Planning Dept.