Easter Mountain Ranch v. Cochise County, et al., (C2016 4853)

Potential Settlement Terms

Zoning Ordinance 11-13

- Six conditions accepted by Easter Mountain in 2011:

NOW, THEREFORE, IT IS HEREBY RESOLVED that the Cochise County Zoning District classification for Parcel #124-01-013H as described in "Exhibit A," attached, is changed from RU-4 to SR-2, subject to the following Conditions:

1. The Applicant shall provide the County with a signed *Acceptance of Conditions* and a *Waiver of Claims* form arising from ARS Section 12-1134 signed by the property owner of the subject property within thirty (30) days of Board of Supervisors approval of the rezoning or the approval of the rezoning may be deemed void; and

2. It is the Applicants' responsibility to obtain any additional permits, or meet any additional conditions, that may be applicable to the proposed use pursuant to other federal, state, or local laws or regulations; and

3. The Applicant will submit a subdivision plat within one year from the date of approval, with a phasing plan for all future development. All subdivision plats will reflect at least 50% open space and the use of building envelopes. All construction will be completed within 10 years. If these conditions are not met, the Board of Supervisors may revert the zoning of any portions of the parcel that are not subdivided back to the RU-4 District; and

Zoning Ordinance 11-13 (continued)

4. Prior to plat approval, the Applicant must provide either on-site or off-site multi-purpose (vehicular, pedestrian, equestrian, etc) legal access to federal lands. If access to the federal land is provided on-site, it will be reflected on all future subdivision plats; provided, however, if the Developer does provide legal access, but the U.S. Forest Service, Arizona Game and Fish, or some other agency or person, does not improve the access for vehicular use within two years after legal access has been provided, then the condition requiring legal access for vehicular use shall cease; and

5. The Applicant shall adhere to the Declaration of Covenants, Conditions, Restrictions, and Easements for J-6 Ranch, dated June, 2011 and the Sustainability Plan, dated September, 2011, both prepared by the Planning Center and attached as Exhibit B to this Zoning Ordinance; and

6. Any subdivision of the Parcel will not be eligible for a density bonus for a Residential Conservation Subdivision, but in all events any subdivision plat for the Parcel must provide at least 50% open space.

Litigation Background

Easter Mountain LLC filed a lawsuit against Cochise County seeking approximately $10 million in damages, plus attorneys' fees and costs. Easter Mountain alleged that the Board of Supervisors' wrongfully denied its tentative subdivision plat for a proposed development near the Whetstone Mountains. The Board denied Easter Mountain's tentative plat for failure to comply with a condition of rezoning that Easter Mountain had previously accepted; specifically, Condition 4, which required it to provide an easement for vehicular (and other) public access to the Whetstone Mountains.

Parties began discussing settlement in October 2017 when Court set hearings on a variety of motions.

Potential Settlement Terms

- Easter Mountain must dismiss all of its claims against the County with prejudice, thus conceding its claim of nearly $10 million in damages,
- Both sides to bear their own attorneys' fees and costs.
- Easter Mountain will not supply legal access to the Whetstone Mountains. Condition 4 will be removed from the Zoning Ordinance 11-13.
- Condition 3 in Zoning Ordinance 11-13 is modified from 10 years to 15 years—giving additional time for development. All other provisions of Zoning Ordinance 11-13 remain unchanged.
- The Board will approve Easter Mountain's tentative plat as previously submitted in 2015.
- The County retains an independent reviewer, Stantec Consulting Services, which will review Easter Mountain's Final Plat and Improvement Plans related to the first phase of development. Easter Mountain must pay half the costs of the independent reviewer.
- After the independent reviewer determines Easter Mountain has complied with all legal requirements, Easter Mountain will submit its final plat to the Board of Supervisors, which will confirm compliance before issuing any approval,
- Easter Mountain must pay the County $10,000 within 10 days of the Board's consideration of the final plat; this money will be used to offset litigation costs and costs incurred by the County in securing legal access to the Whetstone Mountains
- Easter Mountain's Improvement Plans would be in effect for eight (8) years, with an option for seven (7) year renewal if the Board of Supervisors approves such renewal in its discretion

Stantec Agreement

- Stantec would fulfill the role of County Staff in reviewing all further submissions from Easter Mountain with respect to its Phase I Final Plat and Phase I Improvement Plans (first 42 lots);
- Stantec acknowledges that Easter Mountain must pay 50% of the invoiced costs, and is responsible for securing a separate agreement with Easter Mountain;
- Stantec agrees to indemnify the County for any negligence, gross negligence or intentional conduct by Stantec or its subcontractors related to the services provided as Plan Reviewer.

Settlement Considerations

- Finality and resolution of litigation, which is inherently uncertain.
- Settlement avoids any damages or attorneys' fees award against the County. Instead, the party that was previously seeking approximately $10,000,000 from the County is now paying the County to resolve the case.
- Costs of litigation are avoided, saving taxpayers tens of thousands of dollars in expert witness fees and other litigation expenses.
- Settlement fosters development in the County. Easter Mountain (or an assignee) can move forward with an acceptable Phase I final plat.
- Terms of the settlement, including independent reviewer, insulate the County from risk with respect to on-going dealings with Easter Mountain.

County Attorneys' Office Recommendation

1. Approve and execute 2 originals of the Settlement Agreement;
2. Proceed to consideration and approval of the 2015 Tentative Plat;
3. As implied by Settlement, direct County Administrator to enter agreement with Stantec; and
4. Direct County Staff to send 30 day correspondence and amended Ordinance 11-13 to Easter Mountain for execution.