

DRAFT STAFF REPORT

Development Agreement Amendment 09-101

Coyote Springs Planned Unit Development

Prepared by: Clint Wertz, Planning Director
Procedure Type: Quasi-Judicial Action
Hearing Date: December 9th 2009
Past Hearing Dates: None
Applicant: CSI
Current Zoning District: "PVD" Planned Village Development"
Current Master Plan Designations: Planned Village Development "PVD"
Request: Amend Development Agreement dated 12-4-04
Assessor parcels: Various
Recommendation: Continuance

SYNOPSIS

Coyote Springs Investment LLC has requested an amendment to its 2004 development agreement to increase its allowable acreage for industrial uses per Title 15 (electrical generation stations) from 4,500 acres up to 22,000 acres (all fee acreage)

1. Electric Generation Station property use. Section 3.05(a)(ii) of the Original Development Agreement is hereby amended and restated in its entirety as follows: (ii) Four thousand-five hundred (4,500) net acres (or such lesser number as Owner may elect) of the Planned Community may be developed and constructed with non-residential and/or commercial private uses.

Notwithstanding the foregoing sentence, and in addition to the four thousand-five hundred (4,500) net acres described in the foregoing sentence, Owner may elect to develop all of the Planned Community (or any portion thereof as Owner may elect) for Electric Generation, Station (as defined in the CSPUD Code) use.

The purpose of this review is to examine the proposed development agreement amendment for compliance with the Master Plan and any changes to the original land uses, density or configuration of the project as identified in the original Development Agreement.

Since the proposed development agreement amendment is a negotiation of a contract it provides an opportunity for the county to address deficiencies with the original agreement. **The County is not obligated to amend the agreement.**

The proposed Development Agreement request would substantially modify the land use plan for the Coyote Springs Planning Area. The amendment review process is authorized by the county under Title 13 of the Lincoln County Code and as described in the Lincoln County Master Plan of 2007 under the "Large Projects Process". The review authority of the planning commission for development agreements is provided in Lincoln County Code, Title 13, Chapter One effective July 1, 2004 which requires planning commission review of development agreements. Staff contends that the proposed modification is a major amendment to the agreement because as written it could allow the owner to substantially alter its original land use plan which was the foundation for the original agreement, and other related plans such as the GID operations plan.

Therefore as a major change to the agreement the application must be reviewed by the planning commission for consistency with the Master Plan. The applicant contends that the Master Plan of 2001 is the controlling policy document, not the current master plan. This is one example of an issue that needs to be addressed in overall amendments to the development agreement. Staff has not made findings related to the Master Plan due to time limitations.

13-1-2 Planning Commission Review:

Before the board of county commissioners enters into a development agreement pursuant to this chapter, the agreement shall be reviewed by the planning commission for consistency with the county's master plan, prior to submittal to the county commission. (Ord. 2004-02, 7-6-2004, eff. retroactive to 7-1-2004)

13-1-4 Administration and Enforcement:

The county commission, with the advice of affected county departments and the planning commission shall be responsible for applying, administering and enforcing the provisions of this chapter, including the negotiation and enforcement of development agreements. (Ord. 2004-02, 7-6-2004, eff. retroactive to 7-1-2004)

The fee schedule including required deposits, were adopted by the BCC in October of 2008. Based on Title 15 (Coyote Springs PUD Code Chapter 6) all fees are to be established by the Planning Director and approved by the Board of Commissioners.

Staff wants to make clear that the applicant has not followed the policies and procedures for reviewing an amendment to the Development Agreement which were established by the planning commission and adopted by the board of commissioners in 2007. While the applicant paid the base fee of \$3000 it has not paid the required deposit of \$10,000 for outside review by our planning consultant. The lack of the deposit results in inadequate review of the project as was conducted for past development agreements. NRS 278.070 states that "The commission may also contract with city planners, engineers, architects and other consultants for such services as it may require." The planning commission has directed staff to utilize outside

planning and fiscal advice or other consultants when necessary due to the lack of expertise at the County.

Staff was approached by the applicant on November 20th regarding submitting an application for a development Agreement Amendment. On November 23, staff responded in writing outlining the process and fees required for the proposed amendment. Normal timelines allow for at least 3 weeks review by staff prior to the first planning commission meeting. For this meeting staff was provided with just 3 days to prepare.

The planning commission has several options to proceed with the applicants request for a development agreement amendment. It can recommend approval of the request and suggest concerns listed by staff, (conditions cannot be placed) it can continue the request for 30 days for an additional hearing to allow staff adequate time for review or it can recommend denial of the application with findings.

Regardless of the decision by the planning commission, the board of county commissioners has final authority on amendment to the development agreement. The Board of Commissioners has scheduled an introduction to the proposed amendment on January 4th, 2010. It is unclear if the board will vote to introduce the ordinance without a recommendation from the Planning Commission. Regardless the final adoption would not occur until approximately early February and after posting in the paper.

Staff recommends a continuation of the hearing with a request that the \$10,000 deposit be submitted by the applicant by December 15th for outside review by consultants. If this deposit is provided in a timely manner the request will be agendized for the January planning commission meeting when a final recommendation will be provided to the Board.

Staff has conducted a preliminary review of issues and categorized issues into two lists. The first section of comments addresses the applicants request directly and any indirect ramifications it may have to the entire agreement. Secondly, staff will address past concerns voiced by the County and presented to the applicant in meetings in 2007 at the 1st review cycle.

COMMENTS ON CURRENT PROPOSAL

1. INTERIM FUNDING FOR COUNTY PERSONNEL AND COSTS

The existing development agreement provides for additional financial resources for law enforcement but these commitments are tied to residential building permits. Non-residential permits would not trigger these commitments and the County would need to rely on existing tax revenues to provide for increased services such as deputies on duty, costs to prosecute cases and response calls to the area for vandalism etc.

There is an 18-24 month delay in new tax revenues to local government. This time period will likely correspond with the time frame under which construction will occur and additional workers will be in place at the site. Any emergency response to the construction workforce during this time would occur without additional revenues.

Other county departments will be impacted by any proposed development. Both planning and building departments have a combined staff of 4 people. The proposed energy project would severely limit the ability of these staff to conduct daily business and provide reasonable service to current county residents. Additional staffing is necessary to fast track any large development project at a time when extra revenues will not be available.

2. DENSITY ALLOCATIONS AND TRANSFER

The current development agreement allows for up to 122,000 residential units over 22,000 acres. It also allows for no greater than 4,500 acres be utilized for commercial and industrial uses. The proposed changes would allow the developer to transfer its overall density 122K units (residential units per gross acre) to an even smaller area of land. (In theory down to one acre) The fiscal impact report and proposed land use plan indicates an area of 8400 acres for energy development. The proposed development agreement however is asking for the option of using all of the acreage for the energy project.

A trigger should be placed into the agreement to reduce residential densities after the 4500 acres is surpassed. Otherwise, the applicant is essentially keeping the same density and spreading it over a smaller area of land. This leads to higher need for government services and higher impacts on land, roads, drainage and other community services.

3. FISCAL REVIEW OF TAX ABATEMENTS AND PROJECTED REVENUES

The applicant presented a fiscal and economic impact report to the board of commissioners on December 7th, 2009. The county has not had the opportunity to have its own fiscal consultants review the findings of this report or to offer advice to the County on the greater ramifications of the proposed project as compared with other potential uses of the land. (Those that would not receive the 75% abatements) The abatements of both property and sales tax and the status of guaranteed sales tax that need to be examined.

The generation of local construction jobs and long term operation and maintenance employment is not clear. The proximity of the location to Clark County may create employment outside of the County with limited benefits to Lincoln County. The ability of the County's workforce to benefit needs to be examined. For all these fiscal and economic questions the County lacks internal expertise and needs to have an outside review to ensure the development proposed in the amendment will be beneficial to the County.

4. IMPACTS OF CONVERTING A RESIDENTIAL COMMUNITY TO AN INDUSTRIAL SUBDIVISION

The original Development Agreement was negotiated assuming a mixed use community with residential, commercial and limited industrial uses. In fact the agreement and

projections for the development assume only 3400 acres of commercial/industrial. For a residential community most of the acreage would be commercial to support the residential otherwise residents would not invest into the community if all services were 40-50 miles away.

The triggers for public amenities to the county are based on residential building permits. If the owner elects to build only industrial and commercial the County would not get resources for law enforcement, communication facilities, dedicated sites for facilities, staff salaries or interim funding.

COMMENTS ON EXISTING DA

1. LAW ENFORCEMENT/PUBLIC SAFETY

- a. Communications equipment
- b. Private security
- c. Formula for Sherriff dept support
- d. Fire and EMS district vehicles and apparatus

2. GENERAL GOVERNMENT

- a. Interim funding is not provided
- b. No dedicated coordinator provided for project
- c. Lack of contributions for govt. annex facility

3. ADMINISTRATIVE ISSUES

- a. Use of HOA to administer HCP
- b. Analysis needed to demonstrate the ability of GID tax base to fund all functions listed
- c. Franchise issues related to county or GID rights of ways

4. HOUSEKEEPING

- a. Updates and additions to definitions
- b. Applicable rules need expanded

5. WATER ISSUES

6. PLANNING NEEDS

- a. Regional drainage and transportation studies
- b. Public facility needs assessment
- c. Public facility site dedications
- d. Lack of funding for initial school facilities

The purpose of this review is to ensure consistency between the current Lincoln County Master Plan with the proposed amendment. Without adequate time and fees staff has been unable to make findings related to this section. The premise of the planning commission review for development agreement is to ensure the county's master plan and the proposed request is consistent. Until adequate information is provided staff is unable to provide a recommendation against the Master Plan.

Staff Reviewer: Clint Wertz, Planning Director