

Commissioner R-70 moved
adoption of the following Resolution:

**BOARD OF COUNTY COMMISSIONERS
COUNTY OF EAGLE, STATE OF COLORADO**

RESOLUTION NO. 2016 - 079

**A RESOLUTION AFFIRMING THE COMMUNITY DEVELOPMENT DIRECTOR'S
INTERPRETATION WITH MODIFICATION REGARDING THE LODGE AND SPA
AT CORDILLERA**

WHEREAS, this matter comes before the Board of County Commissioners of Eagle County ("Board") through the Cordillera Metropolitan District's and the Cordillera Property Owner's Association, Inc's. ("Cordillera") appeal of Bob Narracci's Letter of Interpretation dated July 11, 2016 ("Director's Interpretation"). The appeal was timely brought under Section 5-2400 of the Eagle County Land Use Regulations ("LURs").

WHEREAS, the Director's Interpretation determined that the proposed use of the Lodge Parcel and Village Center Parcel (the "Property") for a clinic with multi-family residential uses for addiction treatment would be a use-by-right under the Cordillera PUD Guide. The use proposed was for a clinic including inpatient, non-critical care, for treatment of a variety of conditions including, but not limited to, eating disorders, alcoholism, chemical dependency, and behavioral health conditions with a focus on health and fitness, including fitness facilities, yoga, nutrition and recreation. The Director's Interpretation determined that such clinics are clearly an allowable use for non-critical care; which may provide both inpatient and outpatient facilities as a use-by-right.

WHEREAS, the Cordillera appeal generally claims the following errors: 1) The Director's Interpretation is inconsistent with the purposes of the Cordillera PUD which is for a resort residential community and must, therefore, serve the community of Cordillera; 2) The Director's Interpretation failed to give effect to the legislative intent governing the use of the Property requiring it to be used as a focal point and social gathering place for the residents and guests of Cordillera; 3) The Director's Interpretation failed to apply the actual language of the PUD which would preclude inpatient treatment and the proposed uses are something other than a clinic; and 4) The Director's Interpretation represents a wrongful Major Modification of the PUD requiring the approval of the Cordillera HOA and formal amendment to the PUD.

WHEREAS, the proposed buyer of the Property, Concerted Care Group, and the current Property owner, Behringer Harvard Cordillera LLC, (collectively "CCG") generally claim the Director's Interpretation is correct based on the following: 1) Clinics are allowed as a matter of interpretation as the word clinic must mean something different than outpatient facilities or its use in the PUD Guide would be redundant and superfluous; 2) The clinic will provide only non-critical care; 3) The Director's Interpretation is consistent with other private, permitted uses in the PUD such as residential multi-family housing, lodging accommodations, retail and service commercial uses, and food services facilities in addition to a clinic; 4) The use of the Property

for a clinic is consistent with the legislative intent of a resort residential community as the proposed use is a residential use as a matter of law and is being located in Cordillera to provide a relaxing resort environment for persons recovering from addictions; 5) The focal point and social gathering language applies to the Village Parcel and not the Lodge Parcel; 6) Cordillera approved the adoption of the clinic use when the PUD was amended in 2009 (2009 PUD Amendment"); 7) The Director's Interpretation is not a Major Modification to the PUD Guide as exercising a use-by-right cannot be deemed a major modification; and 8) A reversal of the Director's Interpretation would violate the FHA and ADA as the County has a duty through its zoning decisions to treat the prospective residents of the clinic on an equal basis with other multi-family residential uses.

WHEREAS, the Director originally issued a determination letter on June 1, 2016, but reissued the same interpretation on July 11, 2016 to correct a potential procedural error. Cordillera brought a timely appeal of this renewed Director's Interpretation under Section 5-2400 of the Eagle County LURs. This matter was initially scheduled for hearing on August 30, 2016, and continued to September 20, 2016 at the request of Cordillera.

WHEREAS, the Board determined it necessary to receive and review the Director's Interpretation letters dated June 1, 2016 and July 11, 2016, the Director's PowerPoint presentation and oral presentation; Cordillera's Original Appeal and Exhibits, Cordillera's Renewed Appeal, Cordillera's Position Statement, Cordillera's PowerPoint presentation and oral presentation; CCG's Response to Original Appeal, CCG's Position Statement, CCG's PowerPoint presentation and oral presentation; and various email correspondence and public comment. The Board did not give weight to any correspondence or public comment that is either a pretext for or is facially discriminatory towards recovering addicts. The Board also did not give weight to any correspondence or public comment that is unrelated to matters raised in the submissions of the Director, Cordillera, and CCG.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF EAGLE, STATE OF COLORADO:

THAT, the Director's Interpretation should be **AFFIRMED WITH MODIFICATION** for the reasons set forth in the Director's and CCG's submissions, such reasons incorporated herein by this reference. Specifically, the Board finds as follows:

THAT, the Director's Interpretation followed proper procedure pursuant to Section 5-220 of the LURs and there was no inappropriate influence by CCG on the decision.

THAT, the proposed use is for addiction patients to stay in lodging rooms and receive outpatient clinical treatment in addition to other therapeutic amenities such as yoga, classes, spa treatments, etc. Critical care is not allowed under the applicable zoning. CCG presented testimony and state license applications that satisfy this Board that critical care will not be an offering at the proposed clinic. The Board does not find the proposed use to be a hospital, group home, or Acute Treatment Unit as argued by Cordillera. The proposed use clearly meets the various uses-by-right allowed on the Property, including but not limited to, medical offices and facilities, lodging and accommodations, meetings rooms, conference facilities, service

commercial, processional offices, residential single-family, townhome, multi-family, condominiums and/or fractional interest ownership, and educational facilities.

THAT, medical offices/facilities are not limited to medi-spa treatments as argued by Cordillera. If such limiting language was desired by Cordillera it should have been included in the PUD Guide during the 2009 PUD Amendment. Instead, medical offices/facilities were made a stand-alone, use-by-right qualified only by the language "limited to clinic and outpatient facilities for non-critical care, including, without limitation, for outpatient plastic surgery and other cosmetic procedures." Such language is illustrative of the types of treatment that may occur in the clinic, but does not preclude other types of clinical treatment. Absent further limiting language, this Board cannot dictate the types of patients to be treated in the allowed clinic.

THAT, some level of community access is not a requirement of the Lodge Parcel or the PUD Guide. Cordillera points to the general purpose statement of the entire Cordillera PUD Guide that states Cordillera is to be developed as a resort residential community. This general language does not trump the clear uses-by-right for the Lodge Parcel nor does it provide any guidance or standards that could be used by this Board in enforcing such an amorphous community access requirement. Here, the PUD Guide contains 34 specific uses-by-right for the Lodge Parcel, many of which would preclude general community access. The Lodge can be used for such privatized things as offices, commercial space, residential uses, employee housing, educational facilities, day care facilities, and clinics. The PUD Guide further allows privatization by stating that Lodge units may be used for residential purposes, including, without limitation, as condominiums or fractional interest ownerships. The Board finds no requirement in the PUD Guide or elsewhere mandating community access at the exclusion of the other allowed, private uses on the Lodge Parcel. Absent such requirement, this Board cannot dictate the types of users who must be given access to the Lodge and its related amenities.

THAT, the intent of the 2009 PUD Amendment was not to limit the stand-alone, uses-by-right of the Lodge Parcel to those uses ancillary and complimentary to the Lodge. Cordillera claims the intent of the 2009 PUD Amendment was to add ancillary amenities to the Lodge Parcel to enhance its operation, but the Lodge Parcel must still be run as a community amenity. The materials submitted belie such claim. Prior to the 2009 PUD Amendment, the allowed uses for the Lodge Parcel listed the "[c]lubhouse and Lodge building with related facilities, including but not limited to (nine other allowed uses):" Arguably, identifying these additional uses in an illustrative list of related facilities made them ancillary to Lodge purposes. Cordillera asserts that the 2009 PUD Amendment did not add additional uses so any clinic currently allowed must, therefore, still be ancillary to Lodge purposes. This Board disagrees.

THAT, there were, in fact, 24 additional uses added to the Lodge Parcel in the 2009 PUD Amendment. Although no new densities or uses were added to the entire Cordillera PUD, several were moved to the Lodge Parcel, including many privatized uses that would not be appurtenant to a community amenity. Additionally, the qualifying phrase "including but not limited to the following:" was purposefully deleted in the 2009 PUD Amendment. Cordillera concurred with these proposed changes in 2009. Accordingly, the 34 current uses-by-right are now stand-alone uses not dependent on continuation of the current Lodge operations. As such, the Board cannot dictate which of the allowed uses must be performed at the exclusion of others. The role of zoning is to determine allowed uses, not mandate preferred ones.

THAT, in addition to being at odds with the language of the PUD Guide, a community access component is inconsistent with the clear language of the applicable Cordillera covenants. Cordillera argues that the covenants are not relevant to the issues before this Board. This Board disagrees. Cordillera made the covenants relevant when they raised the intent behind the 2009 PUD Amendment as a factor for our consideration. The Board finds the language of the PUD Guide and the applicable covenants more persuasive of intent than the various recollections of parties to meetings in 2009. The covenants clearly make the Lodge a private amenity. No person gains any right to use that private amenity by virtue of owning a lot or home in Cordillera. Additionally, owners of private amenities may, in their sole and absolute discretion and without notice, amend or waive the terms and conditions of use and terminate use rights altogether. Accordingly, this Board finds there was no clear intent to mandate a community-accessed Lodge in the PUD Guide. This finding is further evidenced by the applicable covenants directly contrary to Cordillera's position.

THAT, the Lodge is not required to be operated as a social gathering place or focal point for the Cordillera community. Cordillera further argues that the intent of community access is evidenced by Section 3.01.1 of the PUD Guide which states the intent of the Village Center Parcel is "to provide a focal point to the community both within a physical design context and as a social gathering place." As the Lodge Parcel and Village Center Parcel were intended to be treated as a single planning parcel following the 2009 PUD Amendment, Cordillera argues this language mandates some level of community access to the Lodge. This Board disagrees for the reasons already stated and for the following: The social gathering language applies to the Village Center Parcel and not the Lodge Parcel. Treating these adjacent areas as a single planning parcel allowed approved densities to be transferred between the two parcels and permitted the same uses on both. However, the parcels were not merged into one single parcel in the PUD Guide. They are treated as separate parcels with separate applicable sections. There are provisions that remain different between the two parcels including allowable square footage, density, development standards, and allowed employee units. Noticeably different is that the PUD Guide only references the Village Center Parcel as the "focal point" and "social gathering place" in the intent language. If Cordillera desired this language to apply to both parcels it could have easily added the same to the Lodge Parcel section. Further, even if a "focal point" and "social gathering place" requirement existed on a combined Lodge Parcel and Village Center Parcel, such requirement could be met by allowing community access to amenities other than the Lodge.

THAT, the proposed use does not alter the character or land use of a portion of the PUD and therefore does not constitute a "Major Modification" of the Cordillera PUD. Examples in the PUD Guide of items requiring major modification are: any changes from residential to commercial, changes in designation of open space or wildlife areas to a non-recreational or non-conservation related use, and additions of land to be governed by the PUD Guide other than recreational, open space or access land. Here, there is no such change. Rather, a previously approved use-by-right is being exercised. These uses-by-right are not conditional. Both clinic and residential uses have previously been approved on the Lodge Parcel. Accordingly, operating as such cannot alter the character or land use of Cordillera. To hold otherwise would essentially be saying that exercising any previously approved use-by-right, but for the current use, triggers a process where the HOA has veto power. Such a finding would render the listed uses-by-right meaningless.

THAT, the Board hereby **AFFIRMS** the Director's Interpretation based on the evidence presented at the hearing and finds the proposed uses are allowed as uses-by-right in the Cordillera PUD Guide with the **MODIFICATION** that the clinic component be operated as an outpatient facility.

THAT, this Board thanks the parties for their professionalism and encourages the parties to work cooperatively to ensure the continued success of the Cordillera community.

THAT, this Resolution shall serve as the final agency action with regard to this appeal for purposes of review pursuant to C.R.C.P 106(a)(4).

MOVED, READ AND ADOPTED by the Board of County Commissioners of the County of Eagle, State of Colorado, at its regular meeting held the 30th day of August, 2016.

11TH DAY, OCTOBER, 2016

COUNTY OF EAGLE, STATE OF
COLORADO, by and Through Its
BOARD OF COUNTY COMMISSIONERS

ATTEST:



TRACY J. SIMONCITO
Clerk to the Board of
County Commissioners

By:

J. McQueeney
Jeanne McQueeney
Chair

Jillian H. Ryan
Jillian H. Ryan
Commissioner

Kathy Chandler-Henry
Kathy Chandler-Henry
Commissioner

Commissioner McQueeney seconded adoption of the foregoing resolution. The roll having been called, the vote was as follows:

Commissioner McQueeney
Commissioner Ryan
Commissioner Chandler-Henry

Aye
Aye
Absent

This Resolution passed by 2/0 vote of the Board of County Commissioners of the County of Eagle, State of Colorado