

Delaware development: No quick resolution for Pike Creek suit

Golf course case heated, but decision must wait

By ADAM TAYLOR • The News Journal • December 23, 2010

Delaware Chancery Court won't decide on a battle between New Castle County and a developer who wants to build more than 300 housing units on part of the old Pike Creek Golf Course until after the holidays and the Jan. 13 election for County Council president.

The owners, Pike Creek Recreational Services LLC, claim they have the right to build 308 housing units and 62,000 square feet of commercial space on part of the course. They have submitted plans to the county's Land Use Department for review.

The golf course, part of the former Three Little Bakers Country Club, had been struggling for years to operate at a profit and closed in August.

The county has sued the developer, saying that the golf course is part of a decades-old deed restriction that calls for the 18-hole facility to act as open space for the residential developments that abut the course.

The County Council also passed a resolution prohibiting land-use officials from giving the developers building permits if and when building plans are approved.

Each side claims to be baffled by the other's position. And each cites mountains of documents going back to 1964 that they say makes their case ironclad.

"They are ordering a private company to operate a golf course and telling them they can't build on the land they own," said attorney Kim Hoffman, who represents the developer. She said the county's suit is groundless and called the council's resolution "astoundingly illegal."

There are two plans. One is for Hogan Run, which calls for 20 single-family homes on 1.4-acre lots. The

other is Terraces at Pike Creek, which calls for 288 residential units and the commercial space.

The Terraces would develop 36 acres of the 170-acre golf course and leave more than 130 acres as passive open space.

Richard P. Beck, an attorney working with Hoffman, called the county's actions a form of "inverse condemnation." Essentially, Beck said, the property owner would be stuck with a failed golf course and not be allowed to develop the land if the county's efforts are successful.

County Attorney Gregg Wilson said the county's actions to date are "perfectly reasonable."

"The issue in this case is whether the property owner is going to honor the promises made in writing," Wilson said. "They don't want to do that because it's more profitable not to. We're just asking the court what promises they need to honor."

A case for space

One of the key documents is from 1970 that shows that the land in question is meant to be used as a golf course.

County officials -- as well as attorney Rich Abbott, who represents residents who live along the course -- said the document is part of the county's Master Plan, which they said makes the current housing plan illegal.

"The Master Plan is a pact with the community that the golf course is meant to be open space forever," Abbott said. "Now, the developer can try to get the council to change the Master Plan, but if that doesn't

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happen, it's untouchable and unbuildable. If it does happen, the fundamental promise of low density would be pulled right out from under the existing residents."

Hoffman said the 1970 document isn't a part of the county's Master Plan at all. It's actually more of a flier that includes an earlier version of the Master Plan, but has portions of other documents photocopied on top -- including signatures from developers and county officials in 1964.

"It's absolutely not part of the Master Plan," Hoffman said. "It's a sales tool used by Realtors that was given to prospective homeowners."

The county updated its suit against the property owner Tuesday. The developers' response is due to the court on Jan. 14.

Sean Wolf has lived in the Fairway Falls development for 15 years. His is one of hundreds of homes that has enjoyed a golf course as a next-door neighbor. He's all for the county's efforts to keep it that way.

"One of the reasons we bought in Pike Creek was that it's more beautiful than most places in Delaware," he said.

Wolf said the proposal would make the area too dense and the roads too congested.

"It's refreshing to see the county stand up for the citizens and not a special interest," Wolf said.

Wolf said he thinks there could be room for a compromise, if the developer would be willing to build only a fraction of the homes it has planned.

Complicating matters

Hoffman, the developer's attorney, said the county's efforts to block the development could have an ironic unintended consequence -- preventing any talks between the developer and the community.

"Instead of taking us to court and passing resolutions preventing permits, the county should start looking at our plan, holding meetings about it and getting input on it," Hoffman said. "As it is now, nobody in the community even knows what it is that the council voted to oppose."

Because the Land Use Department is only barred from issuing permits, that means county officials are still reviewing the plan's details.

So if the developers win their court case, the time for negotiations with the community could be all but over,

Hoffman said.

The golf course is in Councilman Tim Sheldon's district. Sheldon is the Democratic candidate for County Council president in the Jan. 13 special election. The president's seat was vacated by Paul Clark, who automatically became county executive after Chris Coons left the position in November after winning election to the U.S. Senate.

Sheldon sponsored the resolution blocking the permits for the proposed development on the golf course. He did not return phone calls on Wednesday.

The resolution was passed last week by an 11-0 vote. Republican Councilman Bob Weiner abstained, saying the resolution wasn't properly scrutinized because the council didn't have a staff attorney at the time, because the person who held that position became county solicitor for Clark. Also, Weiner said, the council hadn't allowed the developer the opportunity to explain the plan to the body.

Tom Kovach, Sheldon's Republican opponent in the special election, said he's concerned that the county's efforts could backfire on residents who live closest to the golf course.

"I'm not completely familiar with the complexities of the project," Kovach said. "But if the resolution isn't lawful and it gets in the way of the residents to have an opportunity to negotiate with the developers about the project, I hope that a disservice hasn't been done to those residents."

Previous owners have considered developing the golf course over the years, said Pike Creek Valley Civic League President Jeff Peters.

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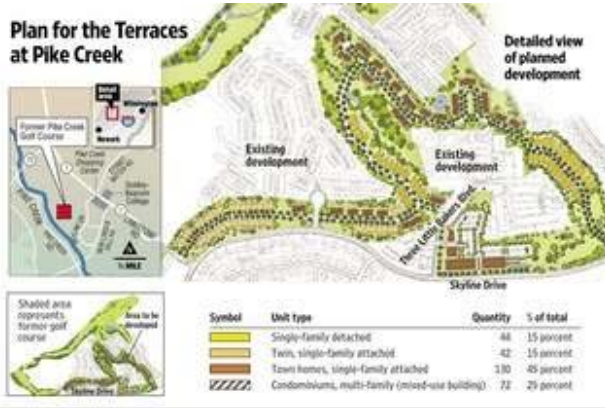
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In fact, Abbott, the group's attorney, is being paid from a legal defense fund started in 1982 after a similar development effort.

"Our position is that the entire property is protected by various Master Plan agreements," Peters said. "Now the issue has raised its head again and it's up to a judge to decide."

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