

MEMORANDUM

TO: Board of County Commissioners
Regular Meeting – February 27, 2019

THRU: Cindy Houben, Community Development Director

FROM: Leslie Lamont, Senior Planner

RE: Helvetica Endeavours, LLC

- Resolution Granting Approval to Helvetica Endeavours, LLC to Amend BOCC Resolution No. 122-2006, Which Approved a GMQS Exemption for Replacement Units, 1041 Hazard Review and Special Review for a CDU
- Ordinance Authorizing Acceptance of an Amended Protective Covenant for Helvetica Endeavours, LLC, First Reading

REQUEST: The Applicant requests approval to amend the previous approval and eliminate the prohibition on condominiumization of the property from the recorded Protective Covenant, see Application Attachment A.

APPLICANTS: Helvetica Endeavours, LLC – owner of Lot 2 of the MAA, Inc. Subdivision

REPRESENTATIVE: Marshall C Hall

LOCATION: The property is located at 1654 and 1656 Castle Creek Road and more specifically described as Lot 2 of the Aspen Music School Subdivision (MAA Inc. Subdivision), Filing 1. The property is not within the Urban Growth Boundary.

ZONING/ LOT SIZE: The property is zoned AR-10, is a legal non-conforming lot and is approximately 13.87 acres. There are two legal single-family dwelling units, one deed restricted caretaker dwelling unit, and two garages on the property.

BACKGROUND: The property was subdivided in 1974. The MAA created Lot 2 for purchase by the Hall family. In 1984, building permits recorded the fact that there were two dwelling units on the property. In 2001, the property received a GMQS Exemption for the replacement of one of the units, expansion of a Non-Conforming Structure, and the addition of a caretaker dwelling unit and vested rights pursuant to BOCC Resolution No. 216-2001. At the time of approval, the applicant agreed to record a Protective Covenant against any further subdivision of the property. The vested rights expired and the applicant requested a re-establishment of vested rights in 2006, see Resolution No. 122-2006. Both are found in the Application, Attachment A.

When Resolution No. 122-2006 was approved a condition of approval was included that prohibited further subdivision *and* condominiumization of the property and required an amended Protective Covenant to be recorded, Attachment B.

REFERRAL COMMENTS: The application was referred to the Pitkin County Attorney and the Castle Creek Caucus. Comments were received from the Caucus, Attachment C.

The County Attorney advised that the minor amendment to the previous approval was documented via Resolution; therefore, the Resolution is to be revised by Resolution. The Protective Covenant shall be amended via an Ordinance; therefore, this is First Reading of the Ordinance to amend the recorded Protective Covenant.

STAFF COMMENTS:

MINOR AMENDMENT TO DEVELOPMENT APPLICATIONS (SECTION 2-20-150.b)

The Applicant requests to amend Resolution No. 122-2006 to remove “condominiumization” from the condition of approval and the Protective Covenant that was recorded subsequent to the 2006 approval. The applicant contends that to prohibit condominiumization is not legal per State Statute. The applicant is contemplating using condominiumization to sell a portion of the improvements on the property in order to maintain the property within the family. The Hall family has lived on the property since 1969 and purchased the property in 1974.

Pursuant to Section 2-20-150(b) of the Land Use Code, a minor amendment to any development application or permit is one that meets the following criteria:

1. Is consistent with action(s) taken during previous development approvals for the property; and

Response: *The 2001 approval included a condition of approval that required the applicant to “covenant the property against any further subdivision”. The 2006 approval included the same condition of approval and added the term “condominiumization”. The Applicant requests the same language that was part of the 2001 approval: The Applicant shall covenant the property against any further subdivision.*

2. Does not change the use of the proposed development between residential, commercial, and tourist accommodation uses; and

Response: *The property has been improved per previous approvals: a new single family residence and garage replaced the former A-frame residence, the second residence was renovated, and a caretaker dwelling unit and a garage were added to the property. The deed restriction for the CDU has been recorded. The proposal does not change the use of the property which is residential.*

3. Does not change the basic character of the approved use of land on which the activity occurs, included basic visual appearance and method of operation, and

Response: *The proposal does not change the basic character of the approved use of the land nor does it change the visual appearance. The property has been approved based upon the 2006 approvals. Removing condominiumization allows for a change in ownership, but subdivision is still prohibited. No additional development will be allowed on the property without further land use review.*

4. Does not constitute a new land development activity; and

Response: *The proposal does not approve additional development activity without further land use review.*

5. Does not increase off-site impacts in the surrounding neighborhood; and

Response: *There is no development activity proposed with this amendment. Therefore, no off-site impacts are anticipated.*

6. Does not endanger the public health, safety or welfare; and

Response: *The proposed amendment may affect the ownership of either of the two non-deed restricted residences, however that is not anticipated to impact the public's health, safety, and welfare.*

7. Does not violate any Land Use Code standard; and

Response: *The proposal does not violate any Land Use Code standards. The proposal removes language in the Protective Covenant that is not consistent with Section 2-40-50 which states that subdivision review procedures do not apply to the creation of common interest communities.*

8. Does not substantially increase the need for on-site parking or utilities, or affect affordable housing generation; and

Response: *The current property includes a deed restricted caretaker dwelling unit. There is a garage for each free market residential unit and additional on-site parking for approximately 5-6 cars. All utility improvements required to support the improvements to the property have been made. Further development improvements to the property would require additional land use review.*

9. Does not increase the floor area of the use by more than five (5) percent or decrease the open space on the site by more than five (5) percent.

Response: *Allowing condominiumization of a portion of the property does not increase the floor area or decrease open space. Any further development improvements to the property would require additional land use review.*

RECOMMENDATION: Staff recommends that the BOCC approve:

1. Resolution Granting Approval to Helvetica Endeavours, LLC to Amend BOCC Resolution No. 122-2006, which approved GMQS Exemption for Replacement of Units, 1041 Hazard Review and Special Review for a CDU; and
2. Ordinance Authorizing Acceptance of an Amended Protective Covenant for Helvetica Endeavours, LLC on first reading and set for second reading on March 13, 2019.

ATTACHMENTS:

- A. Application
- B. Recorded Protective Covenant
- C. Castle Creek Caucus Referral Letter

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS (“BOCC”) OF PITKIN COUNTY, COLORADO GRANTING APPROVAL TO HELVETICA ENDEAVOURS, LLC TO AMEND BOCC RESOLUTION NO. 122-2006, WHICH APPROVED A GMQS EXEMPTION FOR REPLACEMENT UNITS, 1041 HAZARD REVIEW AND SPECIAL REVIEW FOR A CDU FOR LOT 2, MAA INC. SUBDIVISION, FILING 1

Resolution No. ____-2019

RECITALS

1. Pursuant to Section 2.8.4 (Actions) of the Pitkin County Home Rule Charter (“HRC”), all matters not required to be acted upon by ordinance or formal resolution may be acted upon by informal resolution.
2. Helvetica Endeavours, LLC ("Applicant") has applied to the Pitkin County Board of County Commissioners ("BOCC") for Minor Amendment to Resolution No. 122-2006 to remove the condition of approval that prohibits condominiumization of the property.
3. The property is located at 1654 and 1656 Castle Creek Road and is more specifically described as Lot 2 of the Aspen Music School Subdivision (MAA Inc. Subdivision).
4. The property is zoned AR-10 and contains approximately 13.87 acres.
5. The property received the Hall GMQS Exemption for Replacement Units, Special Review for a CDU and Expansion of a Non-Conforming Structure pursuant to BOCC Resolution No. 216-2001.
6. Vested rights for the GMQS Exemption, Special Review for a CDU and Expansion of a Non-Conforming Structure were re-instated pursuant to BOCC Resolution No. 122-2006.
7. Both Resolutions included a condition of approval that prohibited further subdivision of the property, but Resolution No. 122-2006 included a prohibition against condominiumization as well.
8. An Amendment to the Protective Covenants was recorded, Reception No. 550334, which precluded further subdivision and condominiumization.
9. The BOCC heard this application at their regular meeting on February 27, 2019 at which time evidence and testimony were presented with respect to this application.
10. The BOCC finds that the Minor Amendment to Resolution No. 122-2006 does not affect compliance with the standards of the Land Use Code.
11. The BOCC further finds the Minor Amendment to remove the language in the Amendment to the Protective Covenants Reception No. 550334 as required by the Resolution No. 122-2006 is consistent with actions taken during previous development approvals; does not change the use or the basic character of the subdivision; does not constitute a new land development activity; will not increase off-site impacts; does not endanger the public health, safety or welfare or violate any

standard of the Land Use Code; will not increase the need for parking, utilities or affordable housing; and will not increase the total floor area or decrease the open space.

12. The BOCC further finds that it is in the best interests of the citizens of Pitkin County to approve this Resolution.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Pitkin County, Colorado that it does hereby approve a Resolution Granting Approval to Helvetica Endeavours, LLC to Amend BOCC Resolution No. 122-2006, which approved GMQS Exemption for replacement units, 1041 Hazard Review and Special Review for a CDU; and authorizes the Chair to sign on behalf of the County.

BE IT FURTHER RESOLVED by the BOCC that this approval is subject to the following conditions, which shall run with the land and be binding on all successors in interest.

1. The Applicant shall adhere to all material representations made in the current or prior applications or in public meetings or hearings and shall consider those representations to be conditions of approval, unless amended by other conditions.
2. The Applicant shall record an Amended Protective Covenant that removes the language prohibiting Condominiumization of the property. The amended Protective Covenant shall continue to include the prohibition against further subdivision. The BOCC shall accept the Amended Covenant by Ordinance.
3. Failure to comply with the conditions of this approval may result in revocation of this approval, or any subsequent permit(s) or approval(s) related to this property, or vested rights associated with this property.

APPROVED this ____ day of _____, 2019.

BOARD OF COUNTY COMMISSISONERS
OF PITKIN COUNTY, COLORADO

ATTEST:

By _____
Greg Poschman, Chair

Date _____

Jeanette Jones, Clerk to the BOCC

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

John Ely,
County Attorney

Cindy Houben,
Community Development Director

ATTACHMENT B

**PROTECTIVE COVENANT
HELVETIC ENDEAVOURS, LLC**

THESE PROTECTIVE COVENANTS are made and entered into this ^{17th} ~~3rd~~ day of June, 2008, by HELVETICA ENDEAVOURS, LLC (hereinafter referred to as "Owner"), whose address is 365 Hall Road in Aspen, Colorado, located in the County of Pitkin, State Parcel Identification Number 2735-144-01-003, and the BOARD OF COUNTY COMMISSIONERS OF PITKIN COUNTY, COLORADO.

WITNESSETH:

WHEREAS, Helvetica Endeavours, LLC is the owner of the real property situated in Pitkin County, Colorado, described as Lot 2 of the M.A.A. Inc. Filing No. 1 as described on the amended plat of record in Plat Book 4 at Page 466 of the real property records of Pitkin County, Colorado (referred to herein as "the Property").

WHEREAS, as a condition of the approval granted by the Board of County Commissioners of Pitkin County, Colorado for approval of a GMQS Exemption for Replacement Units, 1041 Hazard Review and Special Review for a CDU, in resolution 122-2006, the Owner is required to enter into these Covenants; and

NOW THEREFORE, the Owner does hereby publish and declare that the following terms, covenants, conditions, easements, restrictions, uses, limitations and obligations shall be deemed to run with the land, shall be a burden and a benefit to the Owner, its successors or assigns, and any person or entity acquiring or owning an interest in the Property or any portion thereof.

1. **No Further Subdivision and/or Condominiumization.** The Property is hereby restricted against any further subdivision into smaller lots and / or condominiumization at any time, notwithstanding the underlying zoning. No owner of the Property shall be allowed to condominiumize and/or subdivide the Property into smaller lots.
2. **Covenant Runs With the Land.** The covenants set forth in this document shall run with the land and shall be binding upon and inure to the benefit of the owners and their respective heirs, successors and assigns.
3. **Enforcement.** The covenants, restrictions and conditions contained in these Protective Covenants may be enforced at any time by the Owner, as the owner of the Property, its successors or assigns, or by the Board of County Commissioners of Pitkin County, Colorado. These covenants shall be enforceable by proceeding for prohibitive or mandatory injunction or action for damages or expenses of maintenance. Actual damages may not be deemed an adequate remedy for breach or violation and, in an appropriate case, the Court may award punitive damages. In any action to enforce any covenant,

restriction or condition contained in these protective covenants, the prevailing party or parties shall be entitled to an award of reasonable attorneys' fees and costs incurred by the prevailing party in such enforcement action. No violation or breach of these protective covenants and no action to enforce the same shall defeat, render invalid or impair the lien of any mortgage or deed of trust taken in good faith and for value, or the title or interest of the holder thereof, or the title acquired by any purchaser upon foreclosure of any such mortgage or deed of trust.

4. Breach of Covenant.

a) This Covenant shall constitute a covenant running with the Property as a burden thereon for the benefit thereof, and shall be specifically enforceable by the County and its successor, by any appropriate action, legal or equitable. In the event the Declarant fails to cure any breach, the County may resort to any and all available legal action, including but not limited to judicial relief in the form of any injunction regarding conveyances. In the event the parties resort to litigation with respect to any or all provisions of this Agreement, the prevailing party shall be awarded damages and costs, including but not limited to reasonable attorney's fee, plus an administrative fee of 5% of all sums.

b) There is hereby reserved to the parties hereto, any and all remedies provided by law for breach of this Agreement or any of its terms.

c) In the event the Property or portion of the Property is sold and /or conveyed without compliance herewith, such sale and/or conveyance shall be wholly null and void and shall confer no title whatsoever upon the purported buyer. Each and every conveyance of the Property, for all purposes, shall be deemed to include and incorporate by this reference, the covenants herein contained, even without referenced therein to this Covenant.

5. Modifications. The parties to this Covenant agree that any modifications of this Covenant shall be effective only when made by writings signed by both parties and recorded with the Clerk and Recorder of Pitkin County, Colorado.

6. Severability/Waiver. Invalidity or unenforceability of any provisions of these Protective Covenants, in whole or in part, shall not affect the validity or enforceability of any other provision or any valid and enforceable part of a provision of these Protective Covenants. Failure by any party with the authority to enforce any of the terms, conditions, covenants or provisions contained herein shall in no event be deemed to be a waiver of the right to enforce the same or any other term, condition, covenant or provision in the future.

7. Section Headings. The section headings in this instrument are for convenience only and shall not be considered in construing any provisions of these Protective Covenants.

IN WITNESS WHEREOF, these Protective Covenants are executed this 4th day of June, 2008.

Jamie Musgrave Hall 6/04/08 Jamie Hall
Jamie Musgrave Hall, Date
for Helvetica Endeavours, LLC

STATE OF COLORADO)
)ss.
COUNTY OF PITKIN)

The foregoing instrument was acknowledged before me this 4 day of June, 2008, by
Jamie Musgrave Hall

WITNESS my hand and official seal,

My commission expires 09/20/2011

DIANE R MARSHALL
NOTARY PUBLIC
STATE OF COLORADO

My Commission Expires 09/20/2011

Diane R Marshall
Notary Public

ACCEPTANCE BY PITKIN COUNTY, COLORADO

The foregoing Agreement and its terms are accepted by the PITKIN COUNTY BOARD OF COUNTY COMMISSIONERS.

Jack Hatfield 6/17/08
Jack Hatfield, Chairman Date
JC

Case P105-06
2735-144-01-003

Joseph Wells

P O Box 4259
Aspen, CO 81612
joewells@me.com

16 January 2019

Leslie Lamont
Pitkin County Community Development Department
130 South Galena
Aspen, CO 81611

Dear Leslie:

Thanks for referring to the Castle Creek Caucus (the "CCC") the application filed by Helvetica Endeavours, LLC which requests an amendment to their prior approval for their 13.68-acre parcel in the Castle Creek Valley to allow condominiumization. If it is not too late, I would like to comment on the request.

At the risk of stating the obvious, condominiumization is a procedure that is typically employed for multi-family projects so that attached units can be sold to separate parties. The procedure typically used in the case of detached single-family residences to create separate lots for sale to separate parties is subdivision review.

I don't really see any reason to object to allowing single-family residences to be condominiumized, with the land held in common for the use of all of the owners (provided that this is permitted under the County Code). However, it seems to me that the threshold issue with regard to the Helvetica Endeavours property is the fact that the current underlying zoning for the property does not permit separate ownership of the residences. Eventually, won't it be necessary to re-zone the property to allow for either condominiumization or subdivision? I previously suggested that some variation of the AH zone might be the most acceptable way to re-zone the property so that a portion could be subdivided and sold to a separate owner. This is not without its own set of complications, of course, since I do not believe AH zoning is currently permitted outside of the UGB.

I pointed out in an earlier letter regarding Helvetica Endeavours' prior land-use application, the property and surrounding areas have been zoned AFR-10 (now AR-10) since the mid-1970's, a period of well over 40 years. With few exceptions, the pattern of development in the Castle Creek valley respects the requirements of the AFR-10 zone. If I'm not mistaken, the properties that do not meet the standards of the AR-10 zone were approved prior to the application of ten-acre zoning to the area.

As I offered previously, I would be happy to participate in discussions to try to establish new Code language that might create an opportunity for the Halls to remain on their property,

Sincerely,
Joe Wells

A handwritten signature in black ink, appearing to read "Joe Wells", written over the typed name.