

Located in SEC09 TWN14N R05E G&SRB&M

Kristy Dargue, Planner made the staff presentation noting that additional signatures for the support petition had been received March 18th, that there were twenty-five (25) letters of support and five (5) letters of opposition as of March 18th, and that the applicants were requesting a ten (10)-year timeframe.

Ms. Dargue concluded her presentation by stating that there were six (6) stipulations being offered should the Commission choose to recommend approval.

Chairman Garner opened the discussion to the Commission.

Commissioner Kerkman requested clarification regarding the waiver of the access plan. Ms. Dargue explained Section 502 of the Ordinance as well as the various reviewing agencies' differing determinations of commercial/residential use and stated that the requirement had been waived by Public Works. Commissioner Kerkman asked if the requirement was aimed at public safety. Ms. Dargue said she believed Public Works had waived the requirement since the current request was not as intense as previously requested and there would be no public functions. Commissioner Kerkman asked if Public Works would still have some jurisdiction as these were private roads. Ms. Dargue replied negatively.

Commissioner Province requested confirmation that the Beaver Creek Regional Council and the Lake Montezuma Property Owners Association were in favor of this item. Ms. Dargue replied affirmatively.

There being no further questions of staff, Chairman Garner asked the applicant/agent to address the Commission.

Kala Pearson, applicant addressed the issues of rural character (main attraction for guests), traffic/traffic report (insignificant in relation to future growth patterns, neighborhood opposition to road improvement/road improvement district, planned destination Bed and Breakfast) and the area economy (would attract more affluent customers, would support area businesses with tourism, monies would be spent locally/regionally). She said that they had 241 petition signatures for support (130 Beaver Creek area, 30+ immediate area) and twenty-seven (27) letters of support (including area organizations). Ms. Pearson requested a unanimous vote of support by the Commission. She noted that there were only four (4) available suites one (1) of which was a two (2)-room family suite.

Commissioner McClelland referenced the revocation of the previous Bed and Breakfast Homestay administrative approval and asked if the use/operation had been discontinued. Ms. Pearson replied affirmatively. Commissioner McClelland asked if it had been revoked in 2004. Ms. Pearson said no, it had been revoked in 2007.

Commissioner McClelland referenced the Luna Country Weddings website and requested clarification regarding commercial use of the property. Ms. Pearson responded that the functions (weddings/receptions) were not held on site.

There being no further questions of the applicant/agent, Chairman Garner opened the floor to public participation.

Support:

Faustina Rios (4050 N. Running Deer Drive) expressed her support noting that she saw no reason why the Bed and Breakfast should not go on as proposed. She said she was a neighbor and had no issues with the previous or proposed operation.

Edward Sass (Lake Montezuma resident) expressed his support noting that he had known the applicants for several years, that he was a neighbor/friend and had no issues with the previous or proposed operation.

Robert McClarin, Beaver Creek Regional Council and Lake Montezuma Property Owners Association Planning and Zoning Committee Chair expressed their appreciation for the opportunity to respond to the Commission in writing. He noted that the Beaver Creek Regional Council represented eight (8) organizations and that there had been almost unanimous support of the proposal by both the Council and the Association. Mr. McClarin described both the Lake Montezuma Property Owners Association Planning and Zoning Committee and Beaver Creek Regional Council Planning and Zoning Committee meetings noting that the issues brought forward at the meetings were largely a matter of trust. He stated that the properties within the 300' radius were in support and that they believed this operation would be an asset to the area communities.

Bernadette Dionisio (1015 E. Reay Road) said she was a neighbor and expressed her support. She expressed the opinion that a small business in the community was a good thing as it supported other area businesses. Ms. Dionisio concluded by stating that the applicants were good neighbors and requested approval of the application.

Ray Harvey (Camp Verde resident) said he was not a member of the Beaver Creek community. He expressed his support noting that the applicants' Bed and Breakfast was a class operation.

James Butler (1320 E. Boardwalk) said he was a neighbor, was in favor of the proposal, and expressed the opinion that there would be more traffic from developing properties than from the Bed and Breakfast. Mr. Butler requested that the Commission vote for approval.

Public Participation forms from members of the public not wishing to speak:

Kent Everhart (Rimrock resident) – “We fully support Luna Vista B&B”

Doug Hudson (Rimrock resident) – “Please give the good people of Luna Vista a chance to operate”

Frank Greene (1062 E. Reay Road) – “Full & ultimate support, allowing us to bring peace & relaxation to our guest and be an active & supportive community member”

Steven Sprinz (Lake Montezuma resident) – “Very much in favor of this fine B&B Inn”

Paul Bishop (Lake Montezuma resident) – in support

James Beard (Camp Verde resident) – “Have penultimate respect for Kala and Frank and am amazed at their integrity to their high standards of business operation. They deserve the opportunity to operate this bed and breakfast.”

Opposition:

Caroline Parsons-Korn (1435 E. Reay Road) stated that she was the owner of a portion of the access road. She read a section of a Letter to the Editor from the newspaper (posted by Frank Greene). She said that she had attended the Beaver Creek Regional Council meeting [stated she was a member of the Water Committee] and had shown the Council information on the applicants' new website regarding country weddings/Luna Vista Spiritual Center [provided website information to the Commission]. Ms. Parsons-

Korn stated that she was against the road improvement district and felt she had been harangued as a result of that opposition.

Commissioner Province asked if most of her issues/concerns regarded use of the property as a retreat. Ms. Parsons-Korn said she was not against the operation as just a Bed and Breakfast but that the events were an issue. Commissioner Province asked if there was no spill-over of off-site events onto the property, would the proposed operation be OK. Ms. Parsons-Korn said that the spiritual retreat center was described as being located on the applicants' property.

Roger Korn (1435 E. Reay Road) said that the properties located on the west side of Wet Beaver Creek had been sold as non-landlocked properties with their access easement off Stage Coach Road. He stated that he had no objection to the Bed and Breakfast so long as they stayed within their operating parameters and he had no objection to their doing a road improvement district over there (west side). Mr. Korn expressed his concerns regarding the Beaver Creek Regional Council operations. He referenced a petition sent to the Board of Supervisors signed by the road owners (Culpepper Ranch Road and Reay Road) regarding the road improvement district [provided petition copy to the Commission]. Mr. Korn also expressed his concerns regarding the cost of the road improvement district and increased traffic.

Jean Seamon (1340 E. Reay Road) stated that she was opposed to any permits for the Bed and Breakfast, that she objected to having a use retroactively approved (established use first then asked for permission), and said that she wanted to preserve the rural residential environment of the area.

Wayne Young (4420 Culpepper Ranch Road) stated that he had been at the Beaver Creek Regional Council meeting and that they had refused to consider the access roads, which were private roads with no easements granted. He expressed his opposition to the road improvement district, mentioned the Letter to the Editor, expressed his concerns regarding traffic and stated that he objected to the Bed and Breakfast.

John Heerkens (1035 E. Reay Road) expressed the opinion that the applicants' had a history of their actions/words being directly opposed. He expressed his concerns regarding traffic/access and public safety issues noting that the access issue needed to be resolved prior to approving the use. Mr. Heerkens expressed his concerns with future uses, noting that he was not against a Homestay but was against any increase in the operation at all.

Donna Gilman (4420 Culpepper Ranch Road) expressed her concerns regarding the community being fractured, residents' health, event traffic, private roads, and the website (as of 8 p.m. March 18th advertising the same as previously). She said that the services being advertised exceeded the uses allowed for a Bed and Breakfast.

Maggi Senger-Perkins (3770 E. Running Deer Drive) expressed her opposition to the five (5)-bedroom proposal noting that she had initially not been opposed to the Homestay. She refuted the petition signatures, mentioned that she was the complainant regarding the fourth suite rental, and referenced an e-mail from Frank Greene representing the Bed and Breakfast as having six (6) bedrooms/four (4) bathrooms. Ms. Senger-Perkins said that she had attended the Beaver Creek Regional Council meeting but had not been allowed to speak.

Public Participation forms from members of the public not wishing to speak:

Kathy Wilson (1450 E. Reay Road) – opposed
Michael Seamon (1340 E. Reay Road) – “I agree with everything all of opposition has said.”

There being no further public comment, the floor was closed to public participation and returned to the Commission for further discussion and/or a motion.

Chairman Garner commented that he was hesitant to recommend approval if the property was not on a dedicated easement and asked if that was an issue. Jack Fields, Deputy County Attorney said it was his understanding that the property was accessed by private easements, he had not considered the terms of those easements, but that generally if it was for a use that was approved by the County (including a Use Permit) that the easement, even though it was private, should stand. He said he believed there would be no Prop 207 issues as the County’s actions dealt specifically with the subject property not the properties the easement passed through and if the terms of the easement did not allow the use that would be a civil matter. Chairman Garner mentioned rights of prescription. Mr. Fields said that might apply if they were changing the zoning or if the Use Permit was for a non-residential use (this particular use was technically residential) and in that case he would recommend deferral.

Commissioner Kerkman asked to hear rebuttal comments by the applicants regarding the websites, etc.

Ms. Pearson addressed the advertising issues and the retreat services (massage - import massage therapist). Chairman Garner noted that was a commercial operation (retail sales). Ms. Pearson said they were unaware of that [Mr. Greene said it would cease]. Ms. Pearson said in reference to the opposition that it was comprised of six (6) parties out of seventy-seven (77) parcels and described their efforts towards establishing a road improvement district (\$10,000 pledged).

Commissioner Kerkman asked if they were OK with the stipulations. Ms. Pearson replied affirmatively.

Commissioner Barnert asked in reference to the massage services, if a private guest engaged someone from off-premise would that be described as a commercial activity and what the definition of commercial was as related to a Bed and Breakfast. Mr. Fields responded that a Bed and Breakfast Country Inn was a residential use, owner-occupied, with limitations by the Ordinance and that anything beyond that would be commercial. He noted that additional meals beyond serving breakfast or conducting other activities on the premises (such as arranging for a masseuse to come to the site) would be a commercial use; however if a service was arranged for solely by a guest that would not be a commercial use. Commissioner Barnert requested confirmation that if the arrangements were made by a guest that would not be commercial. Mr. Fields expressed the opinion that if a guest used solely their own resources or if the owners simply provided a brochure listing available area services to the guest for their use that would not be commercial but if the arrangements were made by the Bed and Breakfast that would be commercial. He said he thought these items would need to be looked at on an individual basis, but that the more ancillary services that were offered or arranged by the owners the further they moved beyond the definition of a Bed and Breakfast.

Commissioner McClelland referenced the website that mentioned the Luna Vista Spiritual Center and asked if the applicant was disavowing it and that it should not have been there. Ms. Pearson said that was a part of Luna Country Weddings and was the portion

that did the wedding services. Commissioner McClelland requested clarification regarding the statement “products and services provided by local operators under contract”. Ms. Pearson said that Luna Country Weddings was a group of wedding planners/ministers that contracted with M Diamond Ranch, Crescent Moon Ranch and other area ranches to hold the services/receptions on their properties.

Elise Link, Planning Manager asked in reference to the Luna Country Weddings if that was a business run out of the applicants’ home. Chairman Garner said he believed that was correct.

Chairman Garner referenced the petition to the Board of Supervisors noting that it affected approximately fifteen (15) parcels encompassing portions of Culpepper Ranch Road/Reay Road who did not wish to participate in a road improvement district and expressed his concerns regarding the road/access issues. He said he had a difficult time recommending approval for something that was not wanted by the neighborhood and expressed the opinion that if they were facilitating people to come on-site to perform services for their guests that was a commercial operation. Chairman Garner referenced the other businesses being run out of the same dwelling and stated that he was unable to support the application.

Commissioner Reilly expressed the opinion that the issue before the Commission was not the use of the road or if the applicants were running other businesses out of their house, the issue before the Commission was allowing a five (5)-bedroom Bed and Breakfast Inn in that particular area.

Commissioner Reilly made a motion to recommend approval of hearing applications H#8002 & H#8003, Use Permit and Minor Community Plan Amendment subject to the stipulations shown on the overhead as follows:

1. Approval of the requested Use Permit and Minor Community Plan Amendment to allow for the Bed & Breakfast Inn as described in Section 507 B of the Planning & Zoning Ordinance and to be in accordance with the floor plan dated February 19, 2008, and the Area site plan dated December 17, 2007, submitted with the Use Permit application and in accordance with all applicable codes, regulations and ordinance requirements, for a period of five (5) years.
2. Parcel shall remain a minimum of eight (8) acres in size, or larger, while the Use Permit is in effect or the Use Permit will become null and void.
3. No commercial “special events” to be held on location.
4. Any future expansion of use or structures will require an amendment to this Use Permit.
5. Certificate of Compliance to be issued within one year of Board of Supervisors approval or Use Permit to be revoked.
6. In the event the owner of the subject property files a claim under ARS §12-1134 regarding this Use Permit, this Use Permit shall be null and void.

Commissioner Kerkman seconded the motion.

Commissioner McClelland stated that she would vote against the motion and had intended to make a motion to send a negative recommendation to the Board of Supervisors.

Commissioner Kerkman commented in reference to the issues with the road, traffic, etc. specifically in relation to the number of trips possible if the property was split that it would

be no different than that generated by the Bed and Breakfast customers and that the road improvement district was not an issue for the Commission to determine and as such he was in favor of the application.

Commissioner Province commented that he had trouble with approval of the application for two (2) reasons – one, the “trust” issue specific to the website and two, the “trust” issue with regards to non-compliance with enforcement and as such he would probably vote against the application.

Voting ensued. The motion failed by a vote of three (3) to five (5) with Commissioners Reilly, Stewart and Kerkman voting in favor of the motion and Commissioners McClelland, Jackson, Barnert, Province and Chairman Garner voting in opposition to the motion.

Action #2: Commissioner McClelland made a motion to recommend denial of hearing applications H#8002 & H#8003, Use Permit and Minor Community Plan Amendment.

Commissioner Barnert seconded the motion.

Chairman Garner commented that although the applicants had a lot of support, a large part of that support was from areas outside of the immediate neighborhood, and there was a substantial amount of opposition from the immediate area.

Commissioner Stewart commented that most of issues/concerns were regarding the road and the website but that those would be taken care of in the stipulations and as such he was in support of the application.

Commissioner Jackson commented that he believed the primary opposition was to the commercial operation, that if this were a straight-forward Bed and Breakfast operation there would be no controversy and that the association with other businesses gave the appearance of a commercial operation.

Commissioner Kerkman commented that the stipulations and the requirements of the Ordinance were very specific and expressed the opinion that the Commission’s decision should not be based on things that happened previously and if the applicants complied with the stipulations as stated and within the confines of the Ordinance it should be OK.

Voting ensued. The motion carried by a vote of five (5) to three (3) with Commissioners McClelland, Jackson, Barnert, Province and Chairman Garner voting in favor of the motion and Commissioners Reilly, Stewart and Kerkman voting in opposition to the motion. This item will be heard by the Board of Supervisors on April 21, 2008.

Commissioner Barnert commented that his reasons for voting to recommend denial were (1) the Commission members had been directed by their District Supervisors to defer in some part to the area neighbors and (2) he felt that if the applicants would establish an office outside of their premises for the weddings so that their operation was clearly a Bed and Breakfast Homestay prior to going before the Board of Supervisors it would greatly reduce the opposition.

Prior to proceeding to the next regularly scheduled Agenda item, the Commission took a ten (10) minute recess.