

APPEAL OF DEVELOPMENT REVIEW AND PLANNING COMMISSION APPROVAL

OF

CASE NUMBER PZ23-00004 (DEV) OAK CREEK HERITAGE LODGE

RESORT HOTEL DEVELOPMENT

ON APRIL 16, 2024

Submitted by Appellants

Residential Home Owner Representatives

Bear Wallow Lane, Sedona, Arizona

To the Sedona City Council

April 30, 2024

Table of Contents

INTRODUCTION	3
BACKGROUND	4
APPELLANT STANDING	5
ARGUMENTS	5
I. THE PLANNING COMMISSION ABUSED ITS DISCRETION IN APPROVING THE PROPOSED DEVELOPMENT, BASED UPON ITS ADOPTION OF THE DEVELOPMENT DEPARTMENT STAFF REPORT FINDINGS, AS THESE FINDINGS FAILED TO ADDRESS AND APPLY THE NECESSARY REVIEW CRITERIA SET FORTH IN LAND DEVELOPMENT CODE SECTION 8.3E(5).....	6
<i>LDC Section 8.3E(5)(c) - Inconsistency and Non-Conformance with the Sedona Community Plan ...</i>	<i>6</i>
<i>The Sedona Community Plan</i>	<i>7</i>
<i>The Sedona Community Plan Emphasis on Water Resource Conservation and Protection Does Not Support High-Intensity Water Uses of Unknown Quantities at this Proposed Resort Hotel Development</i>	<i>9</i>
<i>The Sedona Community Plan Emphasizes Protection of the Natural Environment as a Priority Concern, Which Conflicts With Resort Hotel High-Impact, Resource Consumptive Land Uses</i>	<i>10</i>
<i>The Sedona Community Plan Calls For the Vigilant Protection and Conservation of Oak Creek</i>	<i>11</i>
<i>The Proposed Development is Contrary to the Sedona Community Plan’s Recognition of the Importance of Community ‘Sense of Place’, Economic Diversity and Support for Locally Owned Businesses</i>	<i>12</i>
<i>The Sedona Community Plan’s Continued Concerns Regarding Traffic Congestion and Circulation are Not Alleviated by Approval of the Proposed Resort Hotel Development</i>	<i>12</i>
<i>No Showing of Public Benefit</i>	<i>13</i>
<i>LDC Section 8.3E(5)(d) - Non-Compliance with Other Applicable Codes and Regulations</i>	<i>14</i>
<i>LDC Section 8.3E(5)(e) - Significant Adverse Impacts on Surrounding Property Owners</i>	<i>14</i>
<i>LDC Section 8.3E(5)(g) - Significant Adverse Environmental Impacts</i>	<i>14</i>
<i>LDC Section 8.3E(5)(i) - Non-Compliance with Utility Service and Improvement Standards</i>	<i>14</i>
<i>LDC Section 8.3E(5)(j) - Inadequate Road Systems and No Traffic Mitigation</i>	<i>14</i>
<i>LDC Section 8.3E(5)(k) - Inadequate Public Services and Facilities</i>	<i>15</i>
II. FAILURES TO ACCURATELY AND COMPLETELY DISCLOSE AND TO PROPERLY EVALUATE ESTIMATED POTABLE WATER USAGE, AVAILABILITY AND RELIABLE DELIVERY, ON THIS BASIS ALONE, WARRANT REVERSAL AND DENIAL OF THE DEVELOPMENT PERMIT	15
<i>The Development Review Application Fails to Completely, Clearly and Accurately Identify and Provide Potable Water Demand Estimates and Availability</i>	<i>16</i>
<i>Estimated Water Demand Letter</i>	<i>16</i>
<i>A3 Engineers Sustainability and Water Conservation Study</i>	<i>17</i>
<i>Will Serve Letter</i>	<i>17</i>
<i>Water Demands for Accessory and Public Service Uses Have Not Been Identified or Evaluated</i>	<i>18</i>
<i>Contrast with Sample Water Usage Analysis Provided by Other Development Review Applications</i>	<i>18</i>

<i>Development Department and Planning Commission Failures to Address Potable Water Usage and Availability</i>	18
III. THE DEVELOPMENT DEPARTMENT’S APRIL 16, 2024 STAFF REPORT AND SUPPORTING DOCUMENTATION, UPON WHICH THE PLANNING COMMISSION RELIED AND ADOPTED AS THE BASIS FOR MAKING ITS DETERMINATION TO APPROVE THE PROPOSED DEVELOPMENT, IS FALSE, MISLEADING, UNSUBSTANTIATED AND/OR INCOMPLETE	19
<i>Specious Development Department Staff Report</i>	20
Project Summary.....	20
Background Summary	20
Public Input Summary.....	21
Review Agency Comments and Concerns Summary	21
LDC Section 2.20	21
LDC Section 5.4	21
LDC Section 5.5	21
LDC Section 8.3E(5)(c)	22
LDC Section 8.3E(5)(d)	23
LDC Section 8.3E(5)(e)	24
LDC Section 8.3E(5)(g)	27
LDC Section 8.3E(5)(i)	27
LDC Section 8.3E(5)(j)	28
LDC Section 8.3E(5)(k)	29
<i>Schnebly Hill CFA Checklist</i>	30
<i>Land Development Code Checklist</i>	30
IV. PUBLIC NOTICING AND POSTING REQUIREMENTS WERE NOT CONSISTENTLY FOLLOWED, DEPRIVING THE CITIZENRY OF OPPORTUNITIES FOR MEANINGFUL PARTICIPATION AND DUE PROCESS	30
V. APPEARANCE OF BIAS, UNDUE INFLUENCE AND INAPPROPRIATE ENGAGEMENT WITH CITY STAFF AND DECISION-MAKERS	31
CONCLUSION	31

INTRODUCTION

This appeal of Case Number PZ23-00004 (DEV) is made to the Sedona City Council pursuant to Sedona Land Development Code (LDC) Section 8.8E.

This appeal challenges the April 16, 2024, Planning Commission's approval of the Development Review Application for the proposed Oak Creek Heritage Lodge Resort Hotel Development, based upon its adoption of Development Department (DD) Staff Report Findings and Recommendations, because many of the findings and evaluations in the DD Staff Report are unsubstantiated, false, misleading and/or incomplete.

This appeal challenges the April 16, 2024, Planning Commission adoption of Development Department findings as set forth in the Staff Report, and its approval of the proposed development based on those findings, because the Planning Commission failed to properly exercise its discretionary review of the proposed project under the review criteria set forth in LDC Section 8.3E(5). This includes but is not limited to its failure to evaluate the proposed development for consistency and conformance with the Sedona Community Plan, failure to properly evaluate significant adverse impacts to surrounding property owners and the natural environment, failure to evaluate the proposed development for compliance with utility and service standards, failure to properly evaluate the adequacy of road systems and traffic mitigation, and failure to properly evaluate the adequacy of public service and public facility capacities for the proposed development such that adequate levels of service to existing development is maintained.

This appeal challenges the April 16, 2024 Planning Commission adoption of the Development Department findings as set forth in the Staff Report, and its approval of the proposed development based on those findings, because there has been no showing of the actual estimated potable water demands for the development, nor a showing that the proposed

development is able to secure the amount of potable water necessary to meets the demands of its intended commercial and accessory uses.

BACKGROUND

The proposed development is currently made up of eight separate parcels that are zoned for single family residential use. The parcels are located In the quiet and pastoral Oak Creek riparian corridor and Bear Wallow Canyon dell, nestled between the busy SR179 “Y”, Uptown and the Coconino National Forest, in what is now referred to as the Schnebly Hill Community Focus Area (Schnebly Hill CFA).

The parcels are bordered by Oak Creek, Schnebly Hill Road and Bear Wallow Lane. The only access road to these parcels is from Schnebly Hill Road, which is also the only access road for the Rancho Sedona RV Park and an enclave of residential homes on a private road at the end of Bear Wallow Lane. It is also the only access road for other no-through-way streets to properties located further up the hill before reaching the National Forest trailhead.

Prior to the insidious Schnebly Hill CFA creation and its subsequent zoning manipulation for ‘optional’ OC Heritage District designation, the area had been largely zoned RS-10 and RS-18, with some limited zoning designated uses for the Rancho Sedona RV Park and the former Creative Arts Center. As such, the area has remained relatively quiet, allowing for the natural environment and its flora and fauna to flourish, and for residents and guests to exercise their constitutional right to the quiet enjoyment of their homes in harmony with the environment. Indeed, it has been the vested interests of residential land users that have preserved and protected this unique area, as opposed to the nefarious interests of those now seeking commercial development of the area for profit.

Inherently contradicting the Schnebly Hill CFA intentions for conservation, preservation and protection of this environmentally sensitive and historically significant Oak Creek riparian

corridor, the OC Heritage District zoning within this CFA now allows for piecemeal development and all types of high-intensity, resource-consumptive commercial and accessory uses, land uses that are grossly incompatible with former and current low-intensity residential zoned land uses that are now under threat.

It is understood that the Development Review of this proposed resort hotel development is the first of its kind to undergo review under the CFA and OC Heritage District criteria. It is at this critical juncture that the overarching review criteria of the Sedona Community Plan, as well as other review criteria set forth in LDC Section 8.3E(5), is to be thoughtfully applied by this City Council as the final decision-making body. Indeed, the future conservation, preservation and protection of this unique, sensitive and treasured location in the Community of Sedona depends on it.

APPELLANT STANDING

Appellants are multi-generational families who have owned and maintained residential properties on Bear Wallow Lane for decades. Appellants are persons whose vested interests are directly impacted by any future development on the subject parcels. Many of the Appellants' concerns presented herein were previously provided to the Developer Applicant, the Development Department and to the Planning Commission, most recently through the submittal of written and oral public comments that were provided on or before the Planning Commission's Development Review Hearing on April 16, 2024, only to fall on deaf ears. As such, this appeal has been submitted for review by the Sedona City Council for its thoughtful consideration.

ARGUMENTS

The following arguments warrant reversal of the Planning Commission's Approval of the Proposed Resort Hotel Development and support City Council Denial of a Development Permit at this time.

I. THE PLANNING COMMISSION ABUSED ITS DISCRETION IN APPROVING THE PROPOSED DEVELOPMENT, BASED UPON ITS ADOPTION OF THE DEVELOPMENT DEPARTMENT STAFF REPORT FINDINGS, AS THESE FINDINGS FAILED TO ADDRESS AND APPLY THE NECESSARY REVIEW CRITERIA SET FORTH IN LAND DEVELOPMENT CODE SECTION 8.3E(5)

The discretionary review criteria that was to be used by the Planning Commission in making its determination on the proposed resort hotel development project is set forth in the LDC Section 8.3E(5).

The Planning Commission abused its discretion in failing to adequately address and apply these criteria to the proposed project.

As discussed below, the proposed project does not comply with the criteria set forth in LDC Section 8.3E(5)(c) - (k).

On this basis, the Planning Commission's approval of the proposed project must be reversed and Development Permit denied.

LDC Section 8.3E(5)(c) - Inconsistency and Non-Conformance with the Sedona Community Plan

The DD Staff Report does not address the proposed development's conformance and consistence with the Sedona Community Plan, as required by LDC Section 8.3E(5)(c)¹.

Instead, the DD Staff Report makes two unsubstantiated and conclusory statements that "*Staff evaluated the proposal for compliance with the Community Plan and it was found to be*

¹ The Sedona Climate Action Plan was also not taken into consideration by either the Development Department or the Planning Commission.

consistent:” and “The proposal does not contradict any of the policies within the Community Plan.” See Staff Report under Review Guidelines, Part C.

This is the only mention of the Sedona Community Plan in the DD Staff Report, and these statements are inaccurate.

Appellants have found numerous inconsistencies and non-conformities with the goals, policies and intentions of the Sedona Community Plan, as discussed below. Had the Development Department Staff done its due diligence in applying the Sedona Community Plan criteria to the proposed project, it should have reached a different conclusion.

The Planning Commission relied solely up the findings in the DD Staff Report as the basis for approving the proposed project. Because the DD Staff Report failed to substantiate how the proposed project complied with and conformed to the Sedona Community Plan, the Planning Commission failed to perform its discretionary review of the proposed project in light of the overarching goals and policies contained in this guiding document for City planning.

The Sedona Community Plan

“The goal of planning is to maximize the health, safety and economic well-being of RESIDENTS in ways that reflect the unique needs, desires, and culture of THOSE WHO LIVE AND WORK IN THE COMMUNITY”. (SCP 2024 p. 3, italics and capitalization emphasis added)

The Sedona Community Plan is a document that is intended to reflect the community’s values and vision for change, growth and development in years to come. It is a guidance tool to identify and address key issues and priorities for the community, for people who live and work in Sedona. It sets forth goals, policies and implementation strategies for actualizing these visions that support community values.

The Sedona Community Plan is to be used as a decision-making guide for the Planning Commission and the City Council to effect the wants and needs of the community. The Sedona Community Plan is the guiding document to be referenced in determining whether or not the proposed development conforms to and is consistent with the community wants and needs as stated therein. LDC Section 8.3E(5)(c).

The 2013 Sedona Community Plan set forth the goals, policies and strategies that were in effect throughout the design process for this proposed project. It is to be referenced in determining whether or not the proposed project conforms to and is consistent with the community wants and needs stated therein.

The recently adopted 2024 Sedona Community Plan, while not in practical effect when the design process for the proposed project was going through prior concept and administrative reviews, is also to be referenced in determining whether or not the proposed project conforms to and is consistent with the community wants and needs stated therein.

A reading of the Sedona Community Plan² makes clear the obvious incompatibility of locating the proposed resort hotel development on this unique and environmentally sensitive location in the Oak Creek riparian corridor, especially in these times of need to protect vital public resources and to provide housing for people living and working in the community, as economic and climate change uncertainties persist.

It is precisely the City Council's discretionary review in weighing these competing interests that is required at this time, to decide whether or not the types of land uses proposed by the project are appropriate for and beneficial to the community, at this time and in this location, despite that fact that the current OC Zoning designation allows for such incompatible and competing land uses in the area.

² Appellants assume the City Council is intimately familiar with the Sedona Community Plan.

LDC Section 8.3E(5)(c) provides that:

“c. the proposed development shall be consistent with and conform to the Sedona Community Plan, Community Focus Area plans, and any other applicable plans. The decision-making authority:

“1. Shall weigh competing plan goals, policies, and strategies; and

“2. May approve an application that provides a public benefit even if the development is contrary to some of the goals, policies, or strategies in the Sedona Community Plan or other applicable plans.”

The Sedona Community Plan Emphasis on Water Resource Conservation and Protection Does Not Support High-Intensity Water Uses of Unknown Quantities at this Proposed Resort Hotel Development

Resort hotels and their accessory uses necessarily utilize disproportionate amounts of potable water, and this proposed development is no exception. Resort hotel visitors, here today and gone tomorrow, have no vested interest in conservation of this vital community resource.

In this case, the Development Review Application and DD Staff Report findings egregiously omit and/or misrepresent the potable water usage demands and availability, failing to completely and accurately identify and/or calculate actual estimated potable water usage and availability for the proposed project and its numerous accessory uses. See *Water Argument at Argument Section II below*.

Because the Planning Commission failed to inquire about the proposed project’s estimated water usage demands and availability, despite public pleas to do so³, we are confronted with the pending approval of a resort hotel development and numerous accessory uses that will draw an untold amount of water from our shared potable water supplies. This is a failure of duty, an abuse of discretion, and is simply not acceptable.

³ See Christine Wagner written public comments dated and submitted on April 15, 2024 and April 16, 2024, and transcript of April 16, 2024 Planning Commission hearing minutes.

Even if the proposed project did present actual water demand estimates, the balance of water-intensive resort hotel indulgences against the conservation of this life sustaining resource for residents and existing businesses clearly tilts in favor of denying the proposed project at this location, and perhaps any location in the City, at this time.

The Sedona Community Plan Emphasizes Protection of the Natural Environment as a Priority Concern, Which Conflicts With Resort Hotel High-Impact, Resource Consumptive Land Uses

The proposed resort hotel development will not protect and preserve the natural environment. To the contrary, this high-impact, overly consumptive commercial land use, with all of its accessory uses and strains on vital public resources, is incompatible with the environment in this sensitive location and, if allowed to go forward, will significantly and adversely impact and irreparably destroy the sensitive ecosystem of this Oak Creek riparian corridor upon which the aquatic life, biotic life and wildlife depend for survival.

One need look no further than the banks of Oak Creek at the base of L'Auberge Hotel Resort to see the damage done by transient visitor overuse - a section of the riparian corridor that is barren and devoid of plant matter and wildlife and, as a result, is prone to further erosion caused by continued overuse and future flooding events. The noise, the lights, the high intensity impacts, the constant commotion - this is not compatible with the relative serenity of the natural environment of the Oak Creek riparian corridor, an area already stressed from the existing, surrounding commercial development along SR179 and Uptown.

As discussed in the housing element section below, it is low-impact residential uses that are more appropriate and compatible when it comes to protection and preservation of the surrounding natural environment.

The Sedona Community Plan Calls For the Vigilant Protection and Conservation of Oak Creek

In addition to the foregoing reasoning that calls for protection of the natural environment and Oak Creek, the proposed project's anticipated draw of surface water from Oak Creek is cause for concern. The proposed project has failed to specify how much surface water it intends to draw from Oak Creek. Regardless, any amount of surface water draw for the proposed project will be significant in comparison to current and historic water draw demands for the parcels that abut Oak Creek. This unknown quantity could have unintended and significant adverse impacts on the natural environment in this sensitive Oak Creek riparian corridor, and for all down creek water users who rely upon this federally recognized, perennial surface water source.

Also contrary to the Community Plan's Oak Creek preservation protection mandate is the proposed project's intention to provide a trail easement along the creek. This 'amenity' idea invites overuse and would only serve to irreparably damage and destroy this relatively undisturbed riparian corridor on this section of Oak Creek, going the way of Slide Rock.

The Sedona Community Plan Does Not Identify a Need for Additional Visitor Lodging, But Rather a Need for Residential Housing

Neither the 2013 Community Plan nor the recently adopted 2024 Community Plan identify a need for additional visitor lodging. By contrast, the Sedona Community Plan identifies a need for residential housing. There is no resort hotel lodging shortage in Sedona. Rather, there is a real housing shortage in the community that is impacting the City's long term economic stability.

The specious justification for the allowance of 'alternative lodging experiences' that 'may be more suitable to the area's unique features than residential zoning', as suggested by the Schnebly CFA, is false. In fact, it has been the low-intensity single family residential zoning, and the vested interests of residents in conserving and preserving the natural environment that is their backyard, that has preserved the historic character of the Schnebly Hill area and maintained

the area in the desirable conditions currently found there. As RS-10 residential zoning allows only one dwelling unit per lot (LDC 3.3A(5)), Appellants fail to see how eight (8) residential dwellings build on the eight proposed parcels would be less suitable for the location than the twenty-six (26) commercial and accessory use buildings being called for by the proposed resort hotel development. Furthermore, Lodging Area Zones in the City were created to physically separate these high-impact land use types from other land use zones, precisely because they are inherently incompatible with residential zone land uses.

The Proposed Development is Contrary to the Sedona Community Plan's Recognition of the Importance of Community 'Sense of Place', Economic Diversity and Support for Locally Owned Businesses

The proposed resort hotel development is just that, another resort hotel development, and conflicts with the Sedona Community Plan's calls for a more diverse economy to support the community.

In contrast to transient visitor accommodations, residential housing supports Community 'Sense of Place', and lends itself to compliment other community goals for livable, walkable residential areas and community connectivity. Indeed, a modest eco-village of small scale housing and community gardens would be more in line with the Sedona Community Plan, as well as any good-faith intentions that might be gleaned from the Schnebly Hill CFA.

In contrast to the Sedona Community Plan intention to encourage support of locally owned businesses, this proposed project is submitted by an out-of-state developer who is publicly known for collaborating on resort developments with multinational conglomerates like Marriott Corporation.

The Sedona Community Plan's Continued Concerns Regarding Traffic Congestion and Circulation are Not Alleviated by Approval of the Proposed Resort Hotel Development

The proposed project would be located off Schnebly Hill Road, the only access road to the Schnebly Hill area and the only access road to residential dead-end feeder streets that branch off from it, including Bear Wallow Lane. With 24/7 resort hotel guests, curiosity seekers, employees, delivery services, and non-resort hotel guests who will come to utilize the proposed development's accessory uses (restaurant, spa and meeting/event spaces), all utilizing this single access road in their vehicles, it defies logic to think that the traffic and circulation on Schnebly Hill Road and its entry point at the SR179 "Y" will not be significantly and adversely impacted.

No Showing of Public Benefit

Given that the proposed project's ambitions are largely contrary to the goals and policies of the Sedona Community Plan, it would be incumbent upon the project proponent to demonstrate a public benefit so compelling to the community that it might override these inconsistencies and warrant project approval.

The suggestion that four employee housing units might satisfy this public benefit exception is disingenuous, as on-site employee housing would only serve the private interests of the resort and would not accommodate the projected number of resort staff.

The suggestion that a dedicated creek side easement would be a public benefit is disingenuous, as any public access to this already sensitive and threatened environmental treasure that is Oak Creek would only serve to adversely and irreparably damage this riparian corridor, a protective greenbelt and wildlife habitat.

Any suggestion that the Developer has set aside open space for public benefit is disingenuous, as the open space referred to is land in the Oak Creek floodway/floodplain that is unable to be developed.

Clearly, there has been no showing of any public benefit that warrants approval of this proposed Project.

LDC Section 8.3E(5)(d) - Non-Compliance with Other Applicable Codes and Regulations

The 2018 International Wildland-Urban Interface Code has not been complied with, as discussed more fully in Argument Section III, below.

City Code Section 14.10 Traffic Impact Study certification criteria has not been complied with, as discussed more fully in Argument Section III, below.

Appellants further address this code criteria, and the proposed project's failure to satisfy it, more fully in Argument Section III below.

LDC Section 8.3E(5)(e) - Significant Adverse Impacts on Surrounding Property Owners

Appellants address this code criteria, and the proposed project's failure to satisfy it, in Argument Section III below.

LDC Section 8.3E(5)(g) - Significant Adverse Environmental Impacts

Appellants address this code criteria, and the proposed project's failure to satisfy it, in the Natural Environment and Oak Creek discussion sections above, as well as in Argument Sections II and III below.

LDC Section 8.3E(5)(i) - Non-Compliance with Utility Service and Improvement Standards

Appellants address this code criteria, and the proposed project's failure to satisfy it, in Argument Sections II and III below.

LDC Section 8.3E(5)(j) - Inadequate Road Systems and No Traffic Mitigation

Appellants address this code criteria, and the proposed project's failure to satisfy it, in Argument Sections III below.

LDC Section 8.3E(5)(k) - Inadequate Public Services and Facilities

The ‘Will Serve’ letters that are included in the P&Z Packet do not support the finding of adequacy of public services and facilities. The outdated ‘Will Serve’ letters do not reflect the still unknown service demands of the proposed project and, as such, cannot be relied upon to evidence the utility providers’ abilities to provide adequate and necessary levels of service.

Appelants further address this code criteria, and the proposed project’s failure to satisfy it, in greater detail in Argument Sections II and III below.

II. FAILURES TO ACCURATELY AND COMPLETELY DISCLOSE AND TO PROPERLY EVALUATE ESTIMATED POTABLE WATER USAGE, AVAILABILITY AND RELIABLE DELIVERY, ON THIS BASIS ALONE, WARRANT REVERSAL AND DENIAL OF THE DEVELOPMENT PERMIT

The State of Arizona is an arid state, a desert state, and in a state of drought. Water conservation and protection are continuing and growing concerns for everyone, given the uncertainties of climate change impacts, stressed aquifer capacities and increasing demands upon potable water supplies. There are numerous policies, rules and regulations governing water resources on regional, State and Federal levels.

The Community of Sedona relies on underground wells owned by private water companies to serve its potable water needs and delivery. The conservation and protection of potable water resources, and its availability and reliable delivery to Sedona residents and existing businesses, should be paramount when considering any development proposals in the City, as reflected in the Sedona Community Plan and elsewhere.

It is recognized that resort hotel developments, by their very nature, are grossly disproportionate water consumers.

The Development Review Application fails to completely, clearly and accurately present the estimated potable water usage, availability and delivery mechanisms for the proposed resort hotel development and all its accessory water uses.

In fact, **the Development Review Application failed to provide estimated potable water usage and availability for its proposed restaurant, cafe, meeting buildings, laundering facilities, maintenance and MEP facilities, restrooms in common areas, fire suppression systems and landscaping.**

As a result, the proposed project's overall potable water usage estimates are unknown. The only thing that is known is that the proposed project's potable water usage will be substantially greater than what has been suggested and presented.

The Development Review Application Fails to Completely, Clearly and Accurately Identify and Provide Potable Water Demand Estimates and Availability

The Development Review Application contains three sparse and questionable documents concerning potable water usage and availability. These documents are contained in the P&Z Packet presented to the Planning Commission for its April 16, 2024 meeting, and discussed here below. See [Document Central](#) » [Current Projects](#) » [Planning & Zoning](#) » [PZ23-00004 \(DEV\) Oak Creek Heritage Lodge](#) » [Submittal #3 - February 2024](#) » [Engineering Reports](#)

Estimated Water Demand Letter

The first document is a one-page letter from Luke Sefton, principal engineer of Sefton Engineering, sent to the Public Works Department regarding estimated water demand for the proposed resort hotel development. This letter references an attachment, but the attachment was not provided in the P&Z packet. This letter reads:

"May 25, 2023

City of Sedona Public Works Attn: Hanako Ueda

102 Roadrunner Drive Sedona, Arizona 86336

RE: Oak Creek Resort

Estimated Water Demand

The estimated water demand for Oak Creek Resort was approximately 21,600 gallons per day. The estimated water demand was calculated using an average water usage of 300 gallons per day per room and a total of 70 rooms. The usage is based on Table 8 of the City of Phoenix Design Standards Manual for Water and Wastewater Systems, using the Resort Land Use category. The 21,600 gallons per day is considered the ultimate water usage, but additional water-saving measures will be considered as the design of Oak Creek Resort progresses.

*If you have any questions, please contact me at (928) 202-3999 or email me at ls@sefengco.com. Sincerely,
Luke A. Sefton, P.E., CFM Principle Engineer*

Attachment:"

This outdated letter suggests that the estimated potable water demand “for Oak Creek Resort was approximately 21,600 gallons per day” and that this would be the resort’s “ultimate water usage”. These statements are false and misleading, as the letter also states that this estimate only reflects water usage for 70 hotel rooms. The math just doesn’t add up. See *Sefton Estimated Water Demand Letter dated May 25, 2023, Exhibit 1.*

A3 Engineers Sustainability and Water Conservation Study

The second document is the A3 Study included in the Development Review Application materials. This ‘study’ provides sample estimates of potable water usage for pools and spas only. These estimates were not based on specific designs particular to this proposed development, nor was the methodology for various assumptions and calculations clearly explained. See *A3 Engineers Sustainability and Water Conservation Study.*

Will Serve Letter

The third document(s) provided with the Development Review Application includes questionable and outdated Water Serviceability Request and Will Serve Letters, exchanged between Sefton Engineering and the Arizona Water Company, on January 29, 2021 and March 15, 2021 respectively. This correspondence suggests that water service was being requested for and would be available for *domestic use on eight residential zoned parcels.* The letter from

the Arizona Water Company also states that the developer is responsible for obtaining a Certificate of Assured Water Supply pursuant to AZ State law, a certificate that has not yet been provided. See *Letter of Serviceability Request and AZ Water Company Will Serve Letter, Exhibit 2*.

Water Demands for Accessory and Public Service Uses Have Not Been Identified or Evaluated

As stated above, no estimated potable water usage data for the proposed restaurant, cafe, meeting buildings, laundering facilities, maintenance and MEP facilities, restrooms in common areas, fire suppression systems and/or landscaping have been provided with the Development Review Application.

Contrast with Sample Water Usage Analysis Provided by Other Development Review Applications

In contrast to the inaccurate and incomplete potable water usage demands presented by the Developer Applicant in this case, a review of relatively recent design documentation provided by the developer applicant of the Arabella Spa demonstrates its estimated potable water usage, availability and delivery through a comprehensive and transparent water analysis. See *Archived Projects, Arabella Spa, PZ21-00009 (DEV), Water Design Report*.

Development Department and Planning Commission Failures to Address Potable Water Usage and Availability

The Development Department Staff Report did not address the proposed project's estimated potable water usage and availability at all. Coupled with its failure to apply the Sedona Community Plan's criteria for water resource protection/conservation and public service/facility availability to the proposed project, the Development Department failed to perform its ministerial duties in this regard.

These failures by both the Developer Applicant and the Development Department to present complete and accurate estimated potable water usage and availability were brought to the attention of the Planning Commission, both prior to and during its Development Review Hearing on the proposed project on April 16, 2024. Shockingly, the Planning Commission did not inquire into nor address the proposed project's estimated potable water use demands or water availability. (See *Christine Wagner written public comments submitted April 15, 2024 and April 16, 2024, respectively, as well as transcript of April 16, 2024 proceedings*).

In failing to address this critical public inquiry concerning this vital, life-sustaining resource, in failing to address the proposed project's estimated potable water usage demands and availability at all, the Planning Commission failed to perform its duties and to properly exercise its discretionary review.

For these reasons alone, approval of the proposed project must be reversed and the Development Permit Denied.

III. THE DEVELOPMENT DEPARTMENT'S APRIL 16, 2024 STAFF REPORT AND SUPPORTING DOCUMENTATION, UPON WHICH THE PLANNING COMMISSION RELIED AND ADOPTED AS THE BASIS FOR MAKING ITS DETERMINATION TO APPROVE THE PROPOSED DEVELOPMENT, IS FALSE, MISLEADING, UNSUBSTANTIATED AND/OR INCOMPLETE

The Development Department's Staff Report and supporting documentation is contained in the online P&Z Packet dated April 16, 2024. The Development Review Application materials submitted by the Developer were also provided in this packet and presented for review. See https://sedonaaz.sharepoint.com/sites/CD/Documents/CUR_PLNG/DCD_2023/Projects/PZ23-

00004 (DEV) Oak Creek Heritage Lodge/Staff Report & Attachments/Staff Report - Public Hearing.docx.

Appellants have found numerous omissions, misstatements of Code language, conclusory and unsubstantiated statements, as well as false and misleading statements, throughout the DD Staff Report and supporting documentation, identified below. Because the Planning Commission relied upon these faulty findings in the DD Staff Report to support its decision, it abused its discretion in failing to perform its own independent review of the proposed development's compliance with Code criteria.

For these reasons, approval of the proposed project must be reversed and the Development Permit for the proposed project be denied⁴.

Specious Development Department Staff Report

The DD Staff Report Project Summary does not identify the proposed project's plans for a swimming pool, nor does it identify many of the other twenty-six (26) buildings to be located on the site.

The DD Staff Report Background Summary, which suggests that the residents of the now Schnebly Hill CFA asked for this area to be included in the 2013 Community Plan as a CFA, is misleading and incorrect. Let us be clear that Appellant families with residential homes on Bear Wallow Lane did not seek these changes, actively opposed these changes, and were otherwise not kept properly apprised or included in the process. Let us be clear that the only residents who asked for the insidious CFA Plan and resulting OC Heritage District Zoning are those

⁴ Many of these Appellant findings were previously presented to the Development Department and the Planning Commission through public comment, both oral and written, throughout this development review process. See written public comments submitted by Christine Wagner on April 15, 2024 and April 16, 2024, as well as other public comments and, to a limited extent, the questionable Citizen Participation Plan.

property owners who have been seeking allowances for commercial development of their properties in this previously residential zoned RS-10 area.

The DD Staff Report Public Input Summary is misleading and otherwise points to the Development Director's failures to properly inform and engage affected residential property owners in the surrounding area regarding this major development proposal. See Argument Section IV below and the discussion of LDC Section 8.3E(5)(e) herein.

The DD Staff Report Review Agency Comments and Concerns Summary is conclusory and unsubstantiated by documentary evidence. It is apparent that the Sedona Fire Department has not provided updated comments on this major development with regards to fire protection, preparedness, safety and emergency services, as evidenced by the absence of an updated review, pointed out in the discussion of LDC Section 8.3E(5)(d) herein.

The DD Staff Report discussion of LDC Section 2.20 regarding lodging density allowance and calculations is questionable, as more than 4 acres of the proposed 11.58 acre project site are within the floodplain, not able to be developed, and should not have been included in these calculations. Further, the statement that 4 units per acre for single-family residential zoning is allowable does not jive with the Zoning Use-Specific Standards for single-family RS-10 residential zoning, which allows for only 1 dwelling unit per lot. See *LDC 3.3A(5)* and Argument Section I (re: housing) above.

The DD Staff Report discussion of LDC Section 5.4 and its statement that a traffic impact analysis (TIA) has been submitted and approved by the Public Works Department is not substantiated. There has been no showing the TIA has satisfied the requirements of City Code 14.10, including the requirement of certification by the City Engineer or other authorizing agency or body having jurisdiction over roadways. See *City Code Section 14.10*.

The DD Staff Report discussion of LDC Section 5.5 regarding adequacy of parking is questionable. According to the parking analysis that was included in the Engineering Reports,

“The City’s Development Code Sec. 5.5.C(5) and LDC Table 5.2 specifies parking requirements based on two metrics: (1) total guest rooms and (2) square footage for other land use types”. Based on this analysis, by code standards the resort would need 204 parking spots. The City’s acceptance of this parking analysis proposes a peak of 87 parking spots, with 90 provided. This allowance and approval by the Development Department is less than half what the Code suggests.

Additionally, the meeting room captive/non-captive⁵ percentages have changed substantially over time and, given the uncertainties of hotel guest and non-hotel guest movements, cannot be relied upon. See *Exhibit 3* for data locations that serve as the basis for the visual representation provided here below.

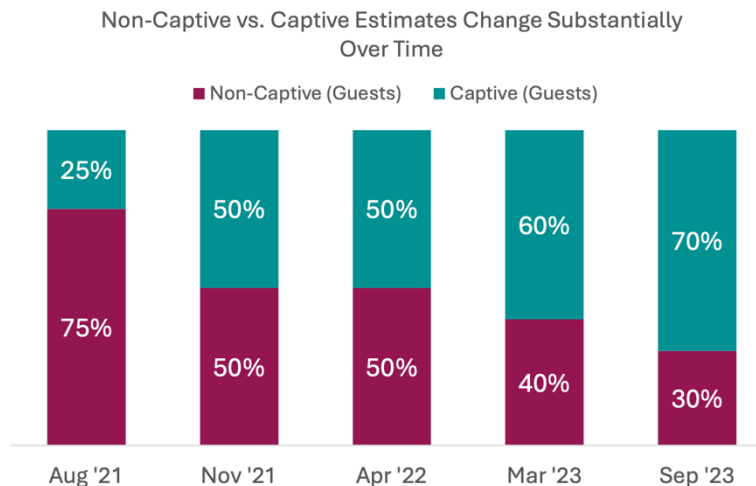


Exhibit 3

The DD Staff Report discussion of LDC Section 8.3E(5)(c) - Development Review Criteria for Consistency with Sedona Community Plan and Other Applicable Plans

The DD Staff Report, summarily and without substantiation, states that “*Staff evaluated the proposal for compliance with the Community Plan and it was found to be consistent;*” and that “*[t]he proposal does not contradict any of the policies within the Community Plan.*”

⁵ Captive referring to hotel guests, non-captive referring to non-hotel guests.

These findings are false and misleading, and evidence a failure of the Development Department to properly evaluate the proposed project in light of the Sedona Community Plan, as discussed in Argument Section I above.

Indeed, if the proposed development was in conformance and compliance with the Sedona Community Plan, the DD Staff Report would have described it in detail. It is precisely because the proposed development does not comply with and nor conform to the Sedona Community Plan that the review criteria within that Plan was not addressed in the DD Staff Report. See Argument Section I (re: Sedona Community Plan) above.

The DD Staff Report discussion of LDC Section 8.3E(5)(d) - Compliance with This Code and Other Applicable Regulations

The Staff Report Evaluation statement that all applicable codes and regulations have been complied with is inaccurate and unsubstantiated.

In regards to public safety and emergency preparedness, the proposed project has not been reviewed under the current 2018 International Wildland-Urban Interface (WUI) Code by the Sedona Fire Department.

The proposed project was reviewed against the criteria set forth in the 2012 International Fire Code. See *Exhibit 4*. Comments from the Sedona Fire District were provided for the December 7th 2021 meeting, and in those comments it was stated: “It should be noted that Sedona Fire District is in the process of adopting the 2018 International Wildland-Urban Interface (WUI) Code. This is likely to happen within the next 30 to 45 days.”

For new developments such as this proposed project, the 2018 International Wildland-Urban Interface Code requires the use of the flow chart “Appendix H International Wildland-Urban interface Code Flowchart” to determine adequate water supply capacity for a new development. Based on this flow chart, the proposed project must comply with the criteria set forth in Section 404 of the WUI code, which states the water flow needs for fire protection

purposes is 1500 gallons per minute. At this time, there is no documentation in the P&Z Packet showing that the proposed project is able to satisfy this water supply criteria.

By contrast, in review of other comparable development proposals submitted to the City, the Arabella Spa development presented a FIRE FLOW DEMAND test showing that its project met these requirements. See *Exhibit 5*.

Based on lack of review against the current 2018 International Wildland-Urban Interface Code, the Staff Report indication that all other codes and regulations have been satisfied is incorrect.

The DD Staff Report discussion of LDC Section 8.3E(5)(e) - Minimize Impacts on [Surrounding] Property Owners

In discussing this section, the Staff Report misstates the code language itself, substituting the word “surrounding” with the word “adjoining”. This deliberate modification made by DD Staff is particularly troublesome, a clear ethical violation and dereliction of duty, as the wording of this code language has significant legal implication. The code language has been modified in the section caption, in the recitation of the LDC Section 8.3E(5)(e), and in the paragraph discussing citizen participation.

It is no wonder then as to why other residential property owners in the **surrounding area** were not properly apprised of and included in various interactions and discussions with the Developer and the City Staff, despite the significant impacts of the proposed project on their residential properties, especially those located on Bear Wallow Lane.

With regards to citizen and resident comments and feedback, the Staff Report states:

“The comments received in opposition to this application were primarily from residents of other areas of Sedona. The Schnebly CFA plan was developed with extensive input from the property owners in the Schnebly Hill area and the applicant has worked closely with the neighbors on this plan. Staff believes that the project meets the criterion of not causing significant adverse impacts on surrounding properties and the applicant has made a good-faith effort to address concerns of the adjoining property owners in the immediate neighborhood as defined in the Citizen Participation Plan (property owners within 300 feet of the project site).”

Here again, the Development Department Staff misstates the text language of LDC Section 8.3E(5)(e), by changing the word “surrounding” to “adjoining”, thereby insinuating that “comments received in opposition to the application were primarily from residents of other areas of Sedona”. This is a gross misrepresentation, given the fact that the surrounding residential property owners on Bear Wallow Lane, persons with vested interests whose residential properties will be significantly and adversely impacted by the proposed project, and persons who voiced opposition to the proposed project, reside within the Schnebly Hill CFA.

Let us be clear that public comments have been submitted throughout the life of this project by residential property owners and owner representatives of properties located on Bear Wallow Lane, expressing legitimate concerns about the proposed project and its potential adverse impacts on surrounding area residential properties and property values.

Surrounding area residential property owners expressed a number of concerns, including impacts of shared roads and restrictions on access to residential properties, incompatible land uses and adverse impacts from light and noise, excessive water draw from Oak Creek, significant adverse impacts on the environment, adverse impacts caused by any construction delays, public service and emergency service access, increases in traffic, and trespassing concerns, among other interruptions to their use and intrusions upon their quiet enjoyment of their homes.

It is apparent that, given the dismissive and inaccurate statements contained in the Staff Report, these residential concerns have gone unaddressed. Perhaps most concerning, in these times of changing climates and increased risks from fire and flood, is that emergency evacuations plans for surrounding residential property occupants has not been taken into account. The P&Z Packet details how an evacuation plan will be put together for the hotel, but makes no mention of how that will be coordinated with surrounding residential property

evacuations. If residents are unable to leave their homes on Bear Wallow Lane due to back up from resort traffic, the probability of significant harm and loss of life is greatly increased.

With regards to notice and opportunity for public participation, Bear Wallow Lane residential property owners and owner representatives requested in writing to be timely notified and informed of the proposed project's progress and pending administrative actions by the Development Department. However, these notification requests were not honored, most recently evidenced by the Development Department's failure to timely notify interested persons about the Development Review Application hearing on April 16, 2024.

While outside of the 300 feet criteria for Code noticing purposes, it was an abuse of discretion by the Development Director in failing to engage the surrounding area residents of Bear Wallow Lane in critical discussions and decision-making sessions that directly impact access to their homes and to their quiet enjoyment of them, as it was within his authority to do so.

These misstatements of the code language, false characterizations of sentiment among surrounding residential property owners towards the project, and failures of the proposed project to adequately and fairly address these concerns of significant impact, do not support the Staff Report claims of "good-faith" efforts to inform and engage the surrounding neighborhood.

Furthermore, the DD Staff Report misstates the review criteria for the proposed project in this discussion section, wherein it is stated that:

"[t]he evaluation for this project is not whether a hotel should be located here, but rather, whether the proposed site and building design conforms with the requirements of the Land Development Code and the recommendations of the CFA Plan."

This is misleading, as the discretionary review to be applied under LDC Section 8.3E(5)(c) also required the Planning Commission to **evaluate whether or not the proposed resort hotel, and its numerous accessory uses, is appropriate for the location and the community** in light of the Sedona Community Plan.

The DD Staff Report discussion of LDC Section 8.3E(5)(g) - Minimize Adverse

Environmental Impacts

The Staff Report and Evaluation states that:

“No negative environmental impacts are anticipated because of the proposed development. The project leaves the floodway and associated drainages in their natural states and will follow City requirements for development within a floodplain. The site is served by existing streets and utilities. The drainage for the site has been designed in accordance with the City’s requirements. While the site contains a City-designated floodplain, floodplain requirements have been taken into consideration in the design of the project.”

The Staff Report Evaluation is conclusory, as no environmental impact study has been conducted.

The Staff Report fails to address the proposed project’s potential significant adverse impacts on the natural environment, including impacts on the surface waters of Oak Creek, impacts on native vegetation and wildlife in the riparian corridor, and light and noise impacts on local wildlife habitat. See also Argument Section I above.

The Staff Report fails to address potential impacts of surface water withdrawal from Oak Creek on the surrounding riparian corridor and water availability for down-creek users. The Project Developer has not disclosed how much surface water the proposed project intends to draw from Oak Creek. However, the project Developer has submitted claims for surface water rights from the State of Arizona. See <https://infoshare.azwater.gov/docushare/dsweb/HomePage/application/36-106322>. This website indicates a water rights claim for withdrawal of 28.2 acre feet a year, which equates 9,188,997 gallons of water a year.

The DD Staff Report discussion of LDC Section 8.3E(5)(i) - Compliance with Utility,

Service, and Improvement Standards

The Staff Report and Evaluation is conclusory and unsubstantiated, in stating that:

“[t]he application materials were provided to review agencies for an opportunity to review. As conditioned, the proposed development complies with all applicable regulatory authority standards included within this criterion.”

The Staff Report does not mention the reviewing agencies contacted, nor does it mention other applicable regulatory standards to which the proposed project must conform. In effect, instead of requiring the Developer Applicant to demonstrate its ability to satisfy conditions and requirements imposed by various outside regulatory agencies and bodies as a basis for development permit issuance, the Staff Recommendation makes way for the proposed project to be approved subject to conditions. This sets the stage for the proverbial ‘cart before the horse’ scenario.

The DD Staff Report discussion of LDC Section 8.3E(5)(j) - Provide Adequate Road Systems [and Traffic Mitigation]

Here, the Staff Report misstates the code caption by omitting language regarding *Traffic Mitigation*, as that caption is written in LDC Section 8.3(5)(j). This omission reflects the fact the proposed development documentation is void of traffic mitigation measures, both during construction phase and for any final roadway improvements that will be necessary.

The Staff Report Evaluation for compliance with LDC Section 8.3E(5)(j) states:

“Staff Evaluation: No new roads are required to serve the site. The Sedona Fire District and Police Department have reviewed the plans and have raised no concerns from an emergency access perspective. The City’s Public Works Department has reviewed the traffic analysis and will ensure compliance with the recommendations in the analysis through the building permit process. The proposal is in compliance with this criterion.”

Contrary to this evaluation statement, as addressed in discussion section LDC Section 8.3E(5)(d) above, the Sedona Fire District review that was prepared in 2021 was done pursuant to the 2012 International Fire Code (Exhibit 4), and is now outdated, and a comprehensive review under the updated 2018 international Wildland-Urban Interface Code has not been prepared. An updated review by the Sedona Fire Department is critical for an accurate understanding of the proposed project’s impacts on emergency services access, potable water availability and emergency evacuation needs.

The DD Staff Report discussion of LDC Section 8.3E(5)(k) - Provide Adequate Public

Services and Facilities

The Staff Report and Evaluation states:

‘Staff Evaluation: Staff believes that adequate public service and facility capacity exists to accommodate the proposed development. All applicable review agencies have reviewed the plans and have not stated any concerns from a serviceability standpoint. The proposal is in compliance with this criterion.’

This ‘belief’ of the Development Department Staff is unsubstantiated and does not satisfy the criteria of LDC Section 8.3E(5)(k). Development Department Staff has no authority to make such assertions, and has failed to perform its duties and due diligence in assuring that the Developer Applicant has presented credible documentation to prove that adequate public service and facility capacity exists to serve the project’s proposed land use needs. As discussed below, this criteria has not been satisfied.

Further, the DD Staff Report Evaluation fails to show that adequate levels of public services will be maintained for existing development, i.e. surrounding properties, as expressly required by LDC Section 8.3E(5)(k).

The DD Staff Report Evaluation is inaccurate and misleading, as public service and facility capacities for water, fire safety, sewer and gas demands have not been determined.

The ‘will serve’ letters presented by the Developer Applicant are outdated and misleading, and do not satisfy the criteria set forth in LDC Section 8.3E(5)(k).

As discussed in Argument Section II above, the true estimated potable water usage demands and potable water availability have not been provided.

It has been acknowledged by the Developer Applicant that currently available water delivery systems are not able to accommodate the proposed project, and will require an upgraded water main to be installed along a majority of Schnebly Hill Road to conform with water pressure and capacity regulations. See *Exhibit 6*.

As discussed in the foregoing section regarding compliance with LDC Section 8.3E(5)(d), potable water service availability to support emergency preparedness and fire response needs has not been determined.

The outdated 'will serve' letter provided an employee from the City Finance Department to the Sefton Engineer David Nicolella, which references sewer serviceability to eight residential parcels, is misleading and insufficient to support the City's ability to accommodate the sewer demands of the proposed resort hotel development and all of its accessory uses.

The outdated 'will serve' letter from gas provider UniSource, dated February 11, 2021, is contradicted and voided by email correspondence from UniSource to Development Department Planner Meyer, dated August 23, 2021, in which it is stated that UniSource was unable to present a Will Serve Letter without knowing more precisely the amount of gas the proposed project would require. See and compare *Exhibit 7* and *Exhibit 8*.

Based upon the foregoing, the criteria of LDC Section 8.3E(5)(k) has not been satisfied.

Schnebly Hill CFA Checklist

Given the foregoing arguments, the Schnebly Hill CFA Checklist is of no consequence and, as such, will not be addressed at this time.

Land Development Code Checklist

Given the foregoing arguments, the Land Development Code - OC Heritage District Checklist is of no consequence and, as such, will not be addressed at this time.

IV. PUBLIC NOTICING AND POSTING REQUIREMENTS WERE NOT CONSISTENTLY FOLLOWED, DEPRIVING THE CITIZENRY OF OPPORTUNITIES FOR MEANINGFUL PARTICIPATION AND DUE PROCESS

It is incumbent upon the Developer Applicant and the Development Department to present credible evidence of compliance with all noticing, posting and citizen participation requirements as required by the City and Land Development Codes. This might include email confirmations, certified mail receipts, declarations, etc. However, no such substantiation has been provided to support the good faith claims in the DD Staff Report that these due process protections were satisfied.

Given the narrow focus of the Development Department, in only recognizing 'adjoining' property owners in the area, these failures of due process are no surprise, serving as another example of its dereliction of duties towards persons with vested interests in the outcome of this major development proposal.

V. APPEARANCE OF BIAS, UNDUE INFLUENCE AND INAPPROPRIATE ENGAGEMENT WITH CITY STAFF AND DECISION-MAKERS

The appearance of bias and undue influence surrounding this proposed project is glaring and is not lost on the Appellants. The seating of Development Department Staff at the same table as the Developer Representatives at the Planning Commission Hearing on April 16, 2024 is a crowning example in the long history of getting this proposed project to this current Development Review stage.

CONCLUSION

For the reasons presented in this Appeal, the April 16, 2024 Planning Commission approval of the proposed Oak Creek Heritage Resort Hotel Development should be reversed, and the Development Review Application denied.

Appellants respectfully request that the City Council thoughtfully exercise its discretionary review and, in so doing, reverse and deny the approval of this proposed development project.