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Judge denies country club claim

Board to explore other options to increase revenue

By Rusty Bradshaw

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A judge denied Union Hills Country Club officials in their lawsuit against some homeowners fronting the golf course and the decision likely shelve plans to build condominium units on a portion of the country club land.

Club officials planned to sell up to 11 acres on the northeast corner of Lindgren Avenue and Conestoga Drive to a developer that would build up to 72 condo units. The land sale proceeds would have helped rebuild the clubhouse, which was in need of major renovation, according to Nate Oberhofer, former general manager of Union Hills Country Club in June.

However, a deed restriction prohibited any use other than a golf course, so club officials attempted to obtain signed waivers from property owners fronting the course to eliminate the restriction. Some homeowners refused, claiming signing would waive their property rights.++

Club officials filed a lawsuit in Arizona Superior Court May 21, 2010, and named 21 individual homeowners and trusts as defendants. Within days, letters were sent to the defendants offering a final chance to sign the waiver, which would result in removing their name from the lawsuit, according to a letter dated May 25, 2010, sent to homeowners.

In a Feb. 9, 2011, ruling, Superior Court Judge Harriett Chavez denied club officials' request for summary judgment and approved the homeowners' request for summary judgment.

Ms. Chavez ruled the club's contention that conditions had changed, allowing them the opportunity to alter the restriction, was not enough, based on case law.

"Although plaintiff claims changed circumstances justify granting relief from the restriction, the Arizona courts have held mere changes in economic conditions rendering it unprofitable to continue restrictive use is not alone sufficient to justify abrogating restrictive covenant," she stated in the ruling.

Linda Wolf, club board member, said Feb. 11 the judge's decision was disappointing, but the board had yet to discuss what to do now that the court decision has been made. She did not rule out an appeal.

"We are waiting for information from our attorney before making a decision on an appeal," she said.

However, she said the board has other alternatives to pursue.

"We did not put all our eggs in one basket," she said. "We have other alternatives to look into."

She would not elaborate on those options.

"I don't know that I can divulge that without the board's OK," she said.

Peoria resident George Bradner, former Union Hills Country Club board president, but no longer on the board, said he was disappointed with the ruling. However, he does not believe it will mean the club will cease to exist, as had been warned in letters to members by club officials last year.

"The club has other alternatives and we will have to pursue them," Mr Bradner said. A call to Mark Sahl, club officials' attorney, for comment was not returned by press time.

Phillip McKenney, the attorney representing a portion of the homeowners, believes the ruling hinged on two material factors — the deed restriction and its clearly expressed purpose.

"These elderly homeowners had a just cause, and it was heard by a judge who understands the law," Mr. McKenney said. "These property owners did not want to waive their property rights."

Residents who opposed signing the consent forms claim they were concerned it could lead to losing other deed restrictions.

"We don't want to give up our deed restrictions," said Catherine Larson. "They are what make Sun City what it is."

Mr. McKenney, who is Ms. Larson's son, agreed.

"Club officials said they wanted the restriction removed so they could build residences on only a portion of the course property," he explained. "But if it were removed, that would mean there would be no restriction on all course property, opening the possibility homes could be built anywhere on country club property."

Residents were also worried once the land was sold to a developer, anything could have been built on it, including commercial ventures, if it qualified under the zoning, such as gas stations or convenience stores.

Residents argued there were alternatives to the club's cash flow problems and David Shapiro offered such an alternative while still a country club member when the condo project was in the early discussion stages. He, representing Western Golf Properties, which manages courses throughout the world, made a proposal for the company to take over management of the country club in an effort to keep it as a golf course.

"A lot of members were in favor of it, but the board flatly rejected it," Mr. Shapiro said. "Western was ready to put a lot of money into it, they thought they could make a go of it."

Mr. Shapiro submitted an affidavit on behalf of the defendants explaining the Western Golf proposal and how it was rejected by the club board. While Mr. McKenney believes the affidavit, which was objected to by the club's attorney and sustained by the judge, introduced an important bit of information into the case that prior to that was not included.

"The club's attorney introduced affidavits from Recreation Centers of Sun City and Troon North representatives claiming they did not want to manage Union Hills," he said. "They (club officials) were using that as a basis that no one wanted to manage Union Hills."

He said Mr. Shapiro's affidavit provided information to the court that there was indeed interest by at least one group in managing Union Hills Country Club.

While Mr. Bradner did not elaborate on whether the club's options included having a company manage the club, or did he offer any possible alternatives, he did express confidence club members and officials would find a solution.

"The members are behind the club and willing to help in any way," he said. "The club will continue to be here."

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