

I. STATEMENT OF THE CASE

A. Nature of the Land Use Decision and Relief Sought by Petitioners.

Petitioners appealed the land use decision of Respondent, Deschutes County, in Ordinance No. 2008-013, wherein Deschutes County amended the Deschutes County Code and Comprehensive Plan to create a new Town Center designation in the Sunriver Urban Unincorporated Community, and Ordinance No. 2008-015 which amended the Deschutes County Code Zoning Ordinance to create a new Town Center District within the Sunriver Urban Unincorporated Community. A “Town Center District” did not previously exist within the Sunriver Urban Unincorporated Community (“Sunriver UUC”).

Petitioners seek a remand of the Respondent’s decision.

B. Summary of the Arguments.

The first assignment of error concerns whether or not these land use applications should have been considered as a legislative land use action. The Respondent treated the application to amend the Comprehensive Plan text and to amend the Zoning Ordinance to create a new Town Center District as a legislative land use action. Petitioners contend that these applications should have been considered as quasi-judicial land use actions. The change being requested was directed at a single piece of property known as the Sunriver Village Mall and owned by only one entity, namely the Intervenor-Respondent. The Deschutes County Code requires a finding for a judicial zone change that there had been a “mistake or change in circumstances since the property was last zoned.” No such findings were made.

The second assignment of error concerns whether the decision to create a new Town Center District within the Sunriver Urban Unincorporated Community complies with the Unincorporated Community Rules adopted by the Land Conservation and Development Commission (“LCDC”). The proposal submitted by the Intervenor-Respondent was described as a “vacation destination and resort community”. Petitioners contend this does not meet the criteria for the allowable commercial uses within an urban unincorporated community.

The third assignment of error concerns one of the criteria required for the application for a zone change to create the Town Center District. The applicant is required to include a copy of a “signed development agreement between the property owner, the applicant, and the homeowner’s association.” There are no findings of fact or other references that provide any guidance as to what was intended to be included within the “development agreement.”

The fourth assignment of error concerns the process the Respondent used in reviewing the amended text language for both the Comprehensive Plan and the Zoning Ordinance. A continuing series of refinements were made by the applicant; sometimes in conjunction with the planning staff; and sometimes in conjunction with the Sunriver Owner’s Association. These refinements were made right up to the time of the final hearing before the Board of County Commissioners. This process made it extremely difficult for any interested person to meaningfully comment on the series of refinements to the text that were being continually submitted.

The fifth assignment of error is Respondent’s failure to adequately address Statewide Planning Goal 7. Respondent references a 2005 “Community Fire Plan”, but

this was completed without consideration of 500 new residential and/or hotel units in a new Town Center District. The Sunriver Service Fire District has said the evacuation of Sunriver in the event of a fire cannot be mitigated.

The sixth assignment of error alleges that the County did not recognize its own criteria in its own Comprehensive Plan addressing whether this situation was due to the unique character of the question at issue, allowing the County to ignore existing land use policies for the Sunriver Unincorporated Community.

C. Summary of Material Facts.

First, there is a succinct historical background of Sunriver set forth in Deschutes County Code 23.40.025(A)(1)(a), which is part of the Urban Unincorporated Community – Sunriver Zone. This is included as Exhibit “A” to Ordinance No. 2008-013.

Second, the summary of material facts are set out again in the Findings re: Text Amendment to Create Town Center District in the Sunriver Urban Unincorporated Community attached as Exhibit “B” to Ordinance No. 2008-013. Although the Petitioners may not agree with every characterization set out in the procedural history, for purposes of this summary, those differences would be insignificant. Petitioners will therefore set out the procedural history of the application as contained within the Findings referenced above, as follows:

“On or about May 17, 2007, SilverStar Destinations, LLC by John Goodman, Managing Director, filed an application for approval of a legislative text amendment of the Deschutes County Code Titles 18 and 23 and a request for a plan map amendment and zone map amendment. SilverStar asked the County to consider legislative map amendments for an area about 26 acres in size that includes properties owned by a number of different owners, including SilverStar Destinations, LLC.

Deschutes County Planning Division staff decided that the text amendment application must be reviewed and approved before consideration of the map amendments. On June 8, 2007, Deschutes County sent notice to the Department of Land Conservation and Development that it was considering the comprehensive plan text amendment and land use regulation amendment to create the Town Center District. On June 21, 2007, notice of the application was sent to affected public agencies and service providers.

Deschutes County Planning Division staff reviewed the proposed text amendments and requested that the Applicant make changes to the ordinance. The Applicant filed revised text on July 31, 2007 and worked to obtain approval of the changes from the Sunriver Owners Association. It filed changes to the July 31, 2007 proposal on August 14, 2007. Deschutes County Planning Division staff provided notice of these changes to the Department of Land Conservation. The County staff provided a second notice of changes to the text amendment to the Department but did not provide further notices as it was advised that notice of changes was not needed until after adoption of the ordinance.

On September 13, 2007, the Deschutes County Planning Commission held a work session to consider the proposed text amendments. On September 27, 2007, the Planning Commission held a public hearing on the matter. Notice of this hearing was published in newspapers of general circulation in Deschutes County, including The Bulletin and Sunriver Scene. The hearing was continued twice. On or about October 2, 2007, amended text amendment language was filed with the County by the Applicant. The new text included changes negotiated with the Sunriver Owners Association.

The first continued hearing was held on November 8, 2007. The second continued hearing was held on December 13, 2007. Both continued hearings were held in Sunriver, Oregon to make it convenient for area residents to participate. The written record remained open until January 3, 2008. The Planning Commission deliberated on this matter on January 10, 2008 and made a recommendation to the Board of county Commissioners that it approve the text amendments with five conditions.

On February 7, 2008, revised application materials were filed with the County to address issues raised through the public hearing process. On February 27, 2008, the Board of County Commissioners held a hearing on the text amendments. Notice of

this hearing was published in newspapers of general circulation in Deschutes County, including The Bulletin and Sunriver Scene. On April 9, 2008, April 30, 2008, June 4, 2008 and on June 25, 2008, the Board of County Commissioners held hearings on the proposed text amendments. The Planning Commission was invited, by the Board of County Commissioners, to participate in the Board hearing on June 25, 2008, to consider the changes made to the ordinance since it was reviewed by the Planning Commission. Notice of his June 25, 2008 hearing of the Planning Commission and County Commission was published in newspapers of general circulation in Deschutes County, including The Bulletin and Sunriver Scene.

On May 2, 2008 and May 16, 2008 amended text language was filed with the County. Additional refinements to the text of the ordinances were made by County staff and were made available for public review a week prior to the June 25, 2008 hearing. At the close of the June 25, 2008 hearing, the Board of Commissioners voted to approve the amendments with the addition of language that would require an Applicant who wishes to rezone land Town Center to first enter into a development agreement with the Sunriver Owners Association.”

D. Jurisdiction of the Board.

The adoption of an ordinance amending the Deschutes County Code Comprehensive Plan and the Deschutes County Code Zoning Ordinance are statutory land use decisions under ORS 197.015(11).

E. Petitioners’ Standing.

Petitioners Carver, Hutchinson and Holland appeared either verbally or in writing, R. at 3100, 3483 and 3245.

II. ASSIGNMENTS OF ERROR

A. First Assignment of Error.

The application to amend the Deschutes County Comprehensive Plan to create a new Town Center District designation in the Sunriver Urban Unincorporated Community and the application to amend the Deschutes County Zoning Ordinance to create a new Town Center District should have

been considered as a quasi-judicial land use action, rather than a legislative land use action.

The first issue is whether the applications submitted by Intervenor-Respondent for approval of a text amendment to the Deschutes County Comprehensive Plan and Zoning Ordinance should be considered a legislative land use action, or a quasi-judicial legislative action.

The Respondent has treated this as a legislative action as per the original request of the Intervenor-Respondent.

However, generally speaking, a legislative land use decision involves the adoption of new policies that apply to a large area or group of people, rather than the application of existing general standards to a single tract, *Sunnyside Neighborhood vs. Clackamas County Commission*, 280 Or. 3, 569 P.2d 1063 (1977). The Supreme Court later set out several factors which would be used in the process of distinguishing between a legislative and quasi-judicial land use decision, *Strawberry Hill Four-Wheelers vs. Benton County Board of Commissioners*, 287 Or. 591, 601 P.2d 769 (1979). Among those factors are:

1. Is the process bound to result in a decision; and,
2. Is the action directed at a closely circumscribed factual situation or a relatively small number of persons?

The Intervenor-Respondent, Silverstar Destinations, LLC, acquired three commercial retail properties commonly known as the Sunriver Mall, the Marcello Building and the Chrome Pony, comprising approximately 17.53 gross acres, all located in Sunriver, Oregon. These properties are commonly referred to as the Sunriver Country Mall.

When the original application was submitted for the text change, the application included adjacent common area property owned by the Sunriver Owner's Association ("SROA"). The Consolidated Plan of Sunriver required an affirmative vote of 60% of the owners within Sunriver to approve any sale of common areas within Sunriver. Following a vote of the owners, the SROA failed to get the required 60% affirmative vote to allow the conveyance of the common area property to Silverstar Destinations, LLC. The application was subsequently amended. These amendments occurred almost one year after the original applications were filed.

Petitioners contend that the applications submitted by Intervenor-Respondent are very site specific. The new Town Center District would apply only to what is common known as the Sunriver Country Mall owned by the Intervenor. In other words, the applications are directed to a single parcel of property and to benefit only one entity, namely Silverstar.

The characterization of these applications as a quasi-judicial action is significant. If the zone change and text amendment applications were to be considered as a quasi-judicial land use decision, then the applications would be subject to DCC 18.136.020. The Deschutes County Code provides that a quasi-judicial zone change can be approved only if there has been a "mistake or change in circumstances since the property was last zoned". There has been no attempt to show either a mistake or change in circumstances since the property was last zoned.

One of the significant text amendments in creating the town center designation is to allow residential development within the Sunriver Country Mall. If the text amendments are approved, this could amount to approving the placement of in excess of

500 hotel and residential units within the Sunriver Country Mall. The issue is what change of circumstances have occurred since the original adoption of the Sunriver UUC Zone? DCC 18.108.05(C) did allow for multi-family housing to be located on three of the nine vacant acres within the Sunriver Country Mall. The proposed text amendments create a significant change. This issue was raised by Mr. Harvey Barrager at the very beginning of the process, but was ignored by the County, R. at 3507.

The entire issue of change of circumstances also arises because of the Consolidated Plan of Sunriver. Property in Sunriver is subject to the Consolidated Plan, which is the “comprehensive plan” for all of Sunriver and “supersedes” the previous plan. This plan creates various easements, restrictions, and covenants. The Consolidated Plan classifies Silverstar’s real property as commercial areas. Section 3.06 of the Consolidated Plan defines commercial areas and provides:

“Commercial Areas are areas designed for commercial, office, retail, privately owned recreational or **other non-residential** uses consistent with the Sunriver Master Plan. Restrictions on and rules and regulations governing the use of commercial areas shall be set forth in the Sunriver Declaration used to submit the area to the Consolidated Plan of Sunriver. By accepting a deed or lease to a commercial area within Sunriver, the grantee shall be deemed to have covenanted that he will use and permit use of the property only in accordance with, and that he will abide by and cause all those who come upon his premises to abide by the restrictions, covenants and conditions contained in the Consolidated Plan of Sunriver, in the applicable Sunriver Declaration and in the rules and regulations promulgated thereunder. . . (emphasis added)

Petitioners have asserted that residential units are not allowed in commercial areas according to the plain language of the Consolidated Plan and that the Consolidated Plan must be amended before residential construction can be approved or begun in a commercial area in the Mall. The Sunriver Owners Association has taken the position

that residential uses are allowed in commercial areas under 3.06 of the Consolidated Plan. It is Petitioners' position that the terms of the Consolidated Plan and the Declaration Establishing the Sunriver Country Mall with respect to residential uses in commercial areas are unambiguous and must be specifically enforced to preclude residential construction in commercial areas absent an appropriate amendment to the Consolidated Plan.

The property in Sunriver was originally zoned in accordance with the Consolidated Plan of Sunriver. The County should not be allowed to simply ignore the existence of the Consolidated Plan of Sunriver in reviewing any proposed Comprehensive Plan amendment or zone change, R. at 1210.

The whole issue of change of circumstances was also raised by letters submitted by the original architects for Sunriver, Ted Smith and Sal Zake. They have indicated, in essence, that the Silverstar proposal was clearly not what was originally intended by the developers of Sunriver. This goes back to the question of what change of circumstances has occurred since the idea of Sunriver was originally conceived? R. at 2455 and 2476.

If these applications are construed to be quasi-judicial land use decisions, it also raises the issue of ex parte contacts. It is unclear, even in reviewing the Record, what ex parte contacts may have occurred.

Petitioners request that the Ordinances be remanded to Deschutes County and that they be characterized as quasi-judicial land use actions. This will require a showing that either a mistake or a change of circumstances has occurred since the property was last zoned. It would also require disclosure of any ex parte contacts that may have occurred.

B. Second Assignment of Error.

The Ordinances were adopted to amend the Comprehensive Plan text, goals and policies, and to amend the Zoning Ordinance to create a new town center in the Sunriver UUC did not comply with the UUC rules adopted by LCDC.

The UUC/Sunriver Zone (DCC 23.40.025) recognizes that under Oregon Administrative Rule 660, Division 22, Unincorporated Communities, Sunriver met the definition for both “urban unincorporated community” and a “resort community”. With the help of a state advisory committee, and key members of the community who represented a multitude of property owners and development interests, the decision was made to proceed with the planning process for Sunriver as an urban unincorporated community.

The application to amend the text of the Sunriver UUC Zone must be done in compliance with OAR Chapter 660, Division 22, unincorporated communities. The requirements of Division 22 are located at 660-022-0030, Planning and Zoning of Unincorporated Communities.

The rules are vague as to residential use and density in unincorporated communities. The rule provides as follows:

“(2) County plans and land use regulations may authorize any residential use in density in unincorporated communities, subject to the requirements of this division.”

However, new commercial uses have more restrictive requirements. The rules provide as follows:

“(4) County plans and land use regulations may authorize only the following new commercial uses in unincorporated communities:

- (a) Uses authorized under Goals 3 and 4;
- (b) Small scale, low impact uses;

(c) Uses intended to serve the community and surrounding rural area or the travel needs of people passing through the area.”

The findings adopted by the County for the text amendment to care the Town Center District, contains only three paragraphs attempting to address this Rule. The findings of fact are as follows:

“The comprehensive plan text amendment expressly provides that the commercial uses that can be permitted in the Town Center District are limited to small scale, low impact uses or large scale uses that will serve the community and surrounding rural area or the travel needs of people passing through the area. The text incorporates these requirements in the list of uses allowed in the Town Center District. Before a use other than a small scale, low impact use can be allowed, the County Planning Director or Hearings Officer must find that the use will serve the community and surrounding rural area or the travel needs of people passing through the area. This is the same basic approach used by the County to assure that other commercial uses in the Commercial District and the Sunriver Business Park District comply with the State administrative rule. This approach was acknowledged by the State when the County adopted its UUC zoning districts.

Most of the commercial uses allowed in the Town Center District are already allowed in the Commercial District. Many of the allowed uses have been established in the Sunriver Mall area. The existing uses are not subject to review for compliance with this rule as they are not “new uses”.

The plan and zoning text amendment is written to require that all new commercial uses fit into one of the three categories listed in the administrative rule above. No Goal 3 or Goal 4 uses are planned for the Town Center District. The Town Center District allows commercial uses but limits uses to small scale, low impact uses unless it is demonstrated that the use proposed is intended to serve the community and surrounding rural area or the travel needs of people passing through the area. This is similar to the approach used in the existing Commercial District. The Town Center District, 18.108.055 imposes the following requirement on commercial and commercial recreational uses to assure compliance with this part of the administrative rule:

C. Special Requirements for Large Scale Uses. Any of the uses listed in DCC 18.108.055(A)(5) or (A)(7) may be allowed in a building or buildings each exceeding 8,000 square feet of floor space if the Planning Director or Hearings Body finds:

- 1. That the intended customers for the proposed use will come from the Sunriver community and surrounding rural area. The surrounding rural area is the area identified as all property within five miles of the boundary of the Sunriver Urban Unincorporated Community; and/or*
- 2. The use will meet the needs of the people passing through the area.” R. at 51*

Applicant made an extensive effort to explain what its proposal would include. For instance, the proposal called for a “destination club” which would be a fractional ownership property, R. at 3257. This would not be a residential use of the property. This should be considered a commercial venture for the sole purpose of providing additional rental units.

The project which the Intervenor-Respondent calls the “Village at Sunriver” has been identified as a “vacation destination and resort community.”

It was clear in the presentations made by the Intervenor-Respondent that they were attempting to substantially enlarge the commercial use and the number of rental units to be able to create a viable commercial center. However, there are no findings to indicate how those would be construed as “small scale” or “low impact” uses. There has been no attempt to describe how those uses were intended to serve the existing community or surrounding rural area or in particular, the travel needs of people passing through the area.

What the County is dealing with is only a text amendment to create the new District. The findings are certainly inadequate to describe how the new District can comply with the above-referenced rule. The plans clearly show that the Intervenor does not intend a small scale, low impact use, or a use intended to serve the needs of people passing through the area.

C. Third Assignment of Error.

The new requirement that any application for a zone change to the Town Center District shall include a copy of a signed development agreement with the homeowner's association was not supported by any finding of fact; there is no reference or other guidance as to what is intended by a "development agreement". The County may have abrogated its authority to make the land use decision.

The Respondent has adopted a text change to the Deschutes County Zoning Ordinance. This change is to Title 18, at DCC 18.18.055, and creates a new Town Center District within the Sunriver UUC. The new Town Center District Zone includes the following:

"m. Any application for a zone change to the Town Center District shall include a copy of a signed development agreement between the property owner, the applicant, if different than the property owner, and the homeowner's association."

There is no definition of "development agreement" contained within the UUC Zone – Sunriver at DCC 18.108. There is no reference to "development agreement" in the findings of fact adopted by the Respondent amending its Comprehensive Plan to create a new town center designation. In fact, there is no definition of "homeowner's association". Presumably, that refers to the SROA. However, there are actually other homeowner's associations within Sunriver. Nothing contained in either Ordinance provides any guidance as to what is meant by a "development agreement". At a minimum, the Ordinance should be remanded back to Deschutes County to provide additional guidance as to what is meant by the term "development agreement".

A homeowner's association could construe this requirement as giving it authority over the plans being submitted for the town center, abrogating the authority of Deschutes County to be the final decision maker.

The County obviously considers this an important element of any application for a zone change to the Town Center District. However, the County has not given anyone any guidance as to what is intended by inclusion of that approval criteria.

D. Fourth Assignment of Error.

The County erred in continuing to accept amendments and refinements to the text language right up to the date of the decision, thus denying interested persons any meaningful ability to comment.

Respondent used a process in reviewing the amended text language for both the Comprehensive Plan and the Zoning Ordinance that made it difficult for the public to have any meaningful input. A continuing series of refinements were made by the applicant; sometimes in conjunction with the planning staff and sometimes in conjunction with the Sunriver Owner's Association. These refinements were made right up to the time of the final hearing before the Board of County Commissioners. This process made it extremely difficult for any interested person to meaningfully comment on the series of refinements to the text that were being continually submitted.

There are a number of examples where this has manifested itself. When the original application was filed, the Applicant included the Sunriver Owners Association (SROA), because common areas were proposed to be sold to Silverstar for purposes of the overall development. Following a vote of the owners, less than 60% of the owners approved the sale of the common area to Silverstar. After several months, there was another modification made to the application. This did not include the common areas that were owned by the Sunriver Owners Association. There were a series of continuing modifications to the application right up to the date of final approval.

One example that the Petitioners would cite would be the adoption of a floor area ratio as a measuring device for density. The floor area ratio (FAR) is set forth in a Memorandum dated May 20, 2008 from Mark Schmulin to Terri Hanson-Payne, Will Groves and Peter Russell of the Deschutes County Community Development Department. This was barely a month before the ordinances were finally adopted by the Deschutes County Commission. It is very difficult to understand the impact of a ratio when you are not sure exactly what the overall development will look like when it is finally submitted, R. at 414.

It is also instructive to review the introduction to the above-referenced Memorandum. The introduction states as follows:

“Over the past 18 months, Silverstar Destinations, Sunriver Owners Association and Deschutes County have worked together to create the language for the Sunriver Town Center District Zone within the Deschutes County Code. The Code is envisioned to ultimately be applied to the Sunriver commercial core, to allow its redevelopment into a mixed use town center that will serve as the commercial and social center of the Sunriver community and south Deschutes County.

In creating the new code, all parties have worked together to make the code as simple as possible by using as many of the concepts currently used in the Deschutes County Code as possible * * *

In the past few weeks, the risks and limitations of regulating residential density by a fixed number of residential density units (22 units per acre) has been fully realized by the various parties, and identified as a significant risk to the ultimate viability of the redevelopment. The fundamental flaw of the current density measuring system is that it does not account for the variable size of a residence. Residential density is limited, and the Code uses a 500 square foot studio as equivalent to a 2,500 square foot four-bedroom residence.”

The significance of this introduction is that FAR has not been used by Deschutes County in any other zone. This is a completely new concept. It is a concept taken from urban developments. The concept also reflects that it seems to have been a creation of

Silverstar Destinations, the Sunriver Owners Association and Deschutes County Planning. This does not imply that there has been any other public input into this concept.

This process allowed very little public input into a fundamental change in density. Density is now, as they indicate, “best left up to market forces and not be dictated by private individuals or entities.” This leaves little comfort for the residents and owners of Sunriver, in not knowing what this project may or may not eventually look like.

This is not consistent with Statewide Planning Goal 2, which requires public input. It is also not consistent with the Deschutes County Comprehensive Plan, which talks about public involvement in the event of any modifications or changes in the Comp. Plan, DCC 23.52.010.

Although the proposed changes were approved by the Sunriver Owners Association Board of Directors, that does not mean that Deschutes County can abrogate its planning authority to the SROA.

E. Fifth Assignment of Error.

The County erred in not adequately addressing Statewide Planning Goal 7 because of new residential and/or hotel units adding to fire evacuation concerns.

The fifth assignment of error is Respondent’s failure to adequately address Statewide Planning Goal 7. Respondent references a 2005 “Community Fire Plan”, but this was completed without consideration of 500 new residential and/or hotel units in a new Town Center District. The Sunriver Service Fire District has said the evacuation of Sunriver in the event of a fire cannot be mitigated.

F. Sixth Assignment of Error.

The County erred in not recognizing the criteria in its own Comprehensive Plan under DCC 23.52.010.

In the Deschutes County Comprehensive Plan, Chapter 23.52, discusses “plan flexibility and updating”. More particularly at DCC 23.52.010, it states as follows:

“However, considerable study is conducted during the preparation of the plan in order to assure that the needs and desires of the public are accommodated, natural resources and the requirements of individual property owners. In addition, the application of the plan is intended to achieve certain desired results. To accomplish these goals it will be the job of the County’s elected and appointed officials, as well as professional staff, to make interpretations of the plan with the primary emphasis on the achievement of the goals rather than technicalities. However, that does not mean the policies or criteria may be ignored. They are to be followed unless it can be shown they are inconsistent in this particular instance due to the unique character of the question at issue. Given this unique situation then new regulations may be adopted or exceptions not otherwise granted may be given.”

In this particular instance, there are two general land use policies that have been adopted regarding the Sunriver Unincorporated Community. Those policies are set forth in DCC 23.36.054(E)(1)(c)(1), which reads as follows:

“Small-scale, low-impact commercial uses shall be developed in conformance with the requirements of OAR Chapter 660, Division 22. Larger, more intense commercial uses shall be permitted if they are intended to serve the community, the surrounding rural area and the travel needs of people passing through the area.”

DCC 23.36.054(E)(1)(c)(4) further states as follows:

“Multiple-family residences and residential units in commercial buildings shall be permitted in the commercial area for the purpose of providing housing which is adjacent to places of employment. Stand-alone multiple family residential housing units shall be permitted on a maximum of three acres of nine acres vacant as of December, 1997 in the Village Mall commercial area. Single family residences shall not be permitted in commercial areas.”

The Comprehensive Plan requires that any amendment of the goals and policies for the Sunriver Unincorporated Community may be permitted only if they are “inconsistent in this particular instance due to the unique character of the question at issue”, DCC 23.52.010.

The Comprehensive Plan makes it very clear that stand alone multi-family housing units were only to be permitted on a maximum of three acres in the Sunriver Village Mall commercial area. This particular application clearly calls for multi-family residences on property that has already been developed within the Sunriver Mall commercial area. None of the proposed multi-family residences are designed to be housing “which is adjacent to places of employment.”

The land use policies also require that larger more intense commercial uses would be permitted only if they are intended to serve the community, the surrounding rural area and the travel needs of people passing through the area.

The County has made no effort to set forth findings of fact that would justify a larger and more intense commercial use to serve the travel needs of people passing through the area. The entire proposal talks about a residential and hotel component necessary to support the existing commercial uses within the Sunriver Village Mall.

The County has also failed to make any findings that in this particular instance, that due to the “unique character of the question at issue,” these existing land use policies should be ignored.

III. CONCLUSION

The Silverstar proposal has the potential to create a significant impact on Sunriver. The creation of the Sunriver Unincorporated Community Zone was based upon

a mature, nearly fully developed rural, recreation/residential community. The potential addition of 500 new residential and/or hotel units could significantly alter the community, whether it be traffic, access to recreational facilities, aesthetics, or strain on existing public services and facilities. It is all being proposed as a way to somehow rejuvenate the commercial businesses in Sunriver. The Sunriver Country Mall has been in existence for over 35 years. Many of the residents and owners in Sunriver feel they should be able to rely on what has been in existence all these years and not have to be subjected to the new impacts proposed by Silverstar. The owners and residents feel several issues have not been addressed, and would be like the County to address these issues as outlined above.

For all of the above-stated reasons, Petitioners request that the decision of Deschutes County be remanded.

DATED this ____ day of _____, 2008.

BRYANT, LOVLIE & JARVIS, P.C.

By: _____
ROBERT S. LOVLIE, OSB #74197
Of Attorneys for Petitioners