THE ROCKY MOUNTAIN LAND USE INSTITUTE

CONCURRENT SESSION

Greenfield of Brownfield?
The Daunting Challenge of Huge Projects

11:20 a.m.—12:30 p.m.
Friday, April 22, 2005
Sturm College of Law

Moderator: **Peter Kirsch, Esq.**
Partner
Kaplan Kirsch & Rockwell
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Panelists: **Thomas T. Grimshaw, Esq.**
Partner
Grimshaw & Harring P.C.
Denver, Colorado

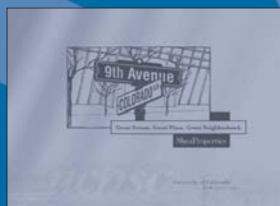
Jeff Willis
Vice President, Land Acquisition and Land Sales
Shea Homes
Highlands Ranch, Colorado

Steven H. Kaplan, Esq.
Kaplan Kirsch & Rockwell
Denver, Colorado

The Green, the Brown and the Ugly

Jeff Willis

Vice President, Shea Homes



Who is Shea?

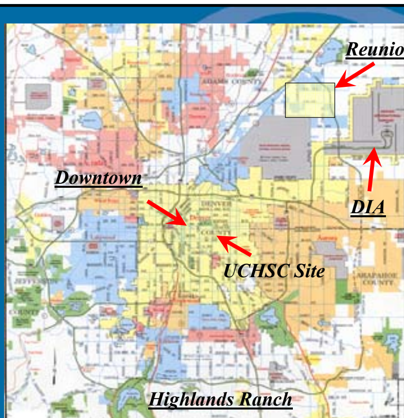
- J.F. Shea Company
  - Parent to Shea Homes and Shea Properties
  - Founded in 1881
  - Involved in construction of Golden Gate Bridge, Hoover Dam, BART System and Reverse Curve Tunnel through Glenwood Canyon
  - Still managed by third and fourth generations of the Shea family

Who is Shea?

- Shea Homes
  - Largest privately held homebuilder in the country
  - 7 Divisions across the West
  - Approximately 6,000 closings in 2004
- Shea Properties
  - Buys, develops and manages office parks, office buildings, retail centers, industrial buildings and apartments in California, Arizona and Colorado
  - Approximately $1.8 billion portfolio

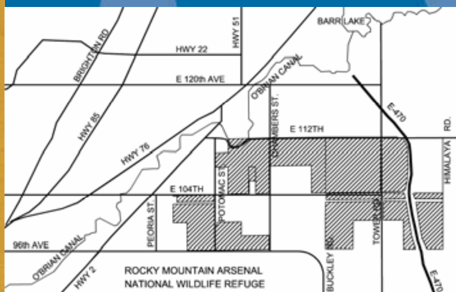
Why Shea Develops Green and Brownfields

- Community developer
- Same uses, just different configurations, densities and sizes
- Limited availability of greenfields in certain locations
- Ability to tackle complex projects gives us competitive advantage
- Leverages all aspects of our experience



The Green

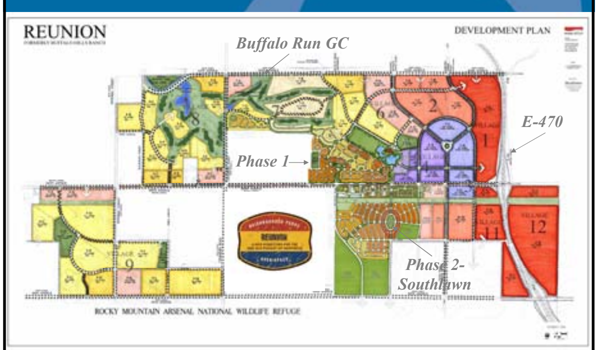
Vicinity Map



Community Info

- 3,143 Acres Total
  - 2,750 acres under option with Fulenwider family
  - Purchased additional 393 acres along E-470 freeway
  - Approx. 2,500 acres marketed as "Reunion"
- Annexed into Commerce City 1998-2000
- PUD approved July 2000
  - 10,000+/- Single Family lots
  - 5,000+/- Multi-Family Lots
  - 950 Acres of Commercial/Retail Property
- Existing Back Nine of Buffalo Run GC on site. Additional 9 holes planned.

REUNION MASTERPLAN



The Brown

UCHSC Property Boundaries

What Shea is purchasing and what the University Hospital is keeping

Conceptual Development Plan

Shea Plan statistics…

	Shea Plan
Gross Land	27.9
Residential Units	1,101
Retail SF	110,500
Office/Lab SF	534,700
Hotel Rooms	200

UCHSC Timeframe to Date

- Letter of interest 6/03
- RFQ response submitted 10/03
- Selected as finalist 11/03
- RFP response submitted 1/04
- Selected by Regents 4/04
- Submitted master plan to the State 6/04

The Ugly

Development Differences Between Brownfield and Greenfield

ISSUE	***BROWNFIELD***	***GREENFIELD***
Entitlement Challenges	Neighbors, special interests, historic preservation, affordable housing	Impact fees, water availability, school capacity
Development Issues	Environmental clean-up, demolition, staging	Offsite costs, grading, amenities

Development Differences Between Brownfield and Greenfield (cont.)

ISSUE	***BROWNFIELD***	***GREENFIELD***
Financing	TIF, complex due to multiple real estate types in same building (eg residential over retail)	Metro districts
Density	High	Low
Uses	Mixed, but stacked	Mixed, but separated

Conclusions

- Real estate fundamentals are the same for both brownfield and greenfield sites
- Entitlement and development issues are very different in scope and complexity
- Neither one is easy!

KAPLAN KIRSCH ROCKWELL

STRUCTURING MULTI-PHASED DEVELOPMENT PROJECTS

Rocky Mountain Land Use Institute

Presented by:

Stephen H. Kaplan, Esq.
Kaplan Kirsch & Rockwell LLP

KAPLAN KIRSCH ROCKWELL

Introduction

- Developments that involve multiple phases and a long time horizon have many characteristics that are different from shorter term developments or one-building projects. This presentation will describe many of those different characteristics and discuss the issues that developers, public entities and surrounding communities should address when developing, supervising or monitoring a long-term development project.

KAPLAN KIRSCH ROCKWELL

- What are some of the distinctions between multi-phased developments and those with shorter time horizons?
  - Planning for the Project
  - Structuring the Purchase Agreement
  - Managing Development
  - Financing Infrastructure
  - Addressing Environmental Issues
  - Insuring Adequate Transportation Facilities
  - Obtaining the Entitlements
  - Providing for Public Amenities
  - Involving Elected Officials, Staff and the Public

Planning for the Project

A. Because of its long-term, multi-phased nature, the project is likely to involve significant up-front master planning. Developers and public entities likely will be involved in some sort of master planning process that will involve the developer, a variety of consultants, public entities and the public.

B. Master planning should be conducted thoughtfully and provided adequate time. If done properly, it can provide a blueprint for development and can enhance support for the project by the public and the governing jurisdiction

C. Lowry, Stapleton, RidgeGate, Belmar, and Reunion provide good examples of projects that involved significant up front planning which has saved time in the long run, and which has resulted in better projects.

- The Stapleton Green Book was created by a very large advisory committee and many consultants and took almost five years to complete. (1990 – 1995)
- Lowry is governed by a Reuse Plan that establishes the framework for development. Both have served as the blueprints for development of those communities.
- RTD, Denver, CDOT and DRCOG have created a Master Plan to guide development of Union Station.

Structuring the Purchase Agreement

A. The process of acquiring the property is likely to differ in a multi-phased project. Several issues will need to be addressed when structuring the purchase agreement:

1. Is all the property under contract or control?
   - Who owns the property and how will it be conveyed?
2. Will the property be purchased all at once or in parts over a longer period of time?
   - Stapleton – the Purchase Agreement requires FC to purchase property over a 15 year period; acquire 1,000 acres every five years, with a minimum purchase of 200 acres in the first year

3. If the purchase is phased, what are the conditions precedent to each purchase?
   - Stapleton – Clear title; clean from an environmental perspective

4. Other agreements may require entitlements, construction of certain infrastructure, other items
   - Will the developer be required to conform to particular development standards related to development? (e.g. timing of construction, sustainable development, interaction with community, affordable housing)
   - Stapleton – conformance with certain development standards

5. How will title issues be addressed?
   - Stapleton – reviewed title on a preliminary basis and came up with permitted exceptions – now it is reviewed at every takedown
   - Have to be patient on title – can't always work it out from beginning

6. How will the purchase price be structured?
   - Stapleton purchase price based on an FAA approved appraisal – calculate per acre with CPI – then add system development fees payable to Metropolitan District to fund trunk open space

7. How will changes in market conditions be addressed?

8. How will entitlements be addressed?
   - Stapleton – Mixed use zoning in place
   - Development Agreement vests density and uses
   - Plats done before each takedown
   - General development plan and site plans
   - With FasTracks, transit-mixed use zoning important

Managing the Development

A. The project will involve significant development planning because it is likely to involve multiple developers in many phases, even if there is one master developer/owner. At the beginning of the process, the developer will need to address many issues related to the long term development, as well as to manage the quality and type of construction that takes place.

   i. Developer RFP and Selection

   ii. Contracts with developers and homebuilders

   iii. Master Declaration

   iv. Design Review

   v. Environmental Liabilities

Financing Infrastructure

A. A long-term, multi-phased project is likely to require construction of significant amounts of infrastructure, including roadways, utilities and parks and open space, and often both regional and in-tract infrastructure will be needed. Attention must be paid to the methodology for financing such infrastructure.

B. Basic Infrastructure Financing Options

   1. Special improvement districts, such as Metro Districts and General Improvement Districts

   2. Tax increment financing (TIF) if the project is in an urban renewal district (Stapleton) or similar structure such as sales tax sharing if the project is not in an urban renewal district (RidgeGate)

   3. Developer advances/reimbursement

   4. Special fees imposed on purchase or subsequent purchases (development fees) (Lowry, Stapleton)

   5. Public Improvement Fees (PIF) (Belmar)

❖ Note that TABOR issues drive the current infrastructure financing mechanisms. For example, TIF by an urban renewal district does not require a vote. In a Metropolitan District, the developer-oriented board can submit a debt issue to carry the entire project forward, with only a few voters being entitled to vote early on. TABOR issues have settled down sufficiently that debt can be issued more directly now, but this is a key consideration for any project.

Addressing Environmental Issues

A. In large-scale, multi-phased developments projects, environmental issues may be handled over a period of time rather than all at the beginning. The purchase agreement needs to provide a mechanism for handling the remediation of environmental problems over a longer time period, the responsibilities of the parties for such clean up, and the ultimate liabilities of such parties related to such clean up.

B. Special attention should be paid to the role of the regulatory agencies. The developer will want to have as much assurance as possible up front that the remediation standards and other regulatory requirements will not change during the course of the development.

C. Environmental insurance should be considered early. There are several components to a complete package, including Pollution Legal Liability Coverage and Cost-Gap coverage. Issues such as exclusions, standards, Intended uses, and costs are critical. Environmental insurance takes a great deal of time to negotiate and there are only a few firms today that are writing this

Assuring Adequate Transportation Facilities

A. Adequate transportation facilities are paramount to almost any multi-phased development project. The project will probably require construction of an interchange, extension of light rail or bus facilities or other regional infrastructure improvements.

B. Insuring adequate transportation facilities will require negotiations and agreements with the appropriate transportation entities to insure that transportation improvements are constructed on time and in the appropriate location and that those improvements can be adequately financed.

C. Interchange and 1601 Process. If an interchange is needed, the developer should review the Colorado Department of Transportation 1601 process, the funding required for the interchange and the environmental review requirements related to the interchange.

D. With regard to light rail, the passage of FasTracks continues to generate interest in transit-oriented development in all parts of the region. As a result, developers should consider how light rail constructed as a result of FasTracks will impact the development. It is also possible to work with RTD to fashion extensions of light rail, such as in Lone Tree. Entitlements, investment sharing, and parking are all of interest to developers at or near stations.

Obtaining the Entitlements

A. In long-term, multi-phased development projects, the entitlements are likely to be obtained throughout the life of the project, rather than all at the beginning of the project. Attention must be paid to the types of entitlements that may be necessary, and how to gain the greatest assurance of obtaining those entitlements at the beginning of the project.

- Union Station – changing zoning with the master plan to TMU-30. Development is thoroughly directed but much design review at later stages.
- Stapleton – Basic mixed use zoning
- Lowry – Many zone changes along the way

B. Because of the long-term nature of the project, it is likely that public decisionmakers will change over the project's life as well as the willingness of the public entity to allow for the particular development. The developer should consider whether to seek a development agreement from the public entity at the beginning of the project to vest certain entitlements over a period of time or provide some assurances with regard to obtaining those entitlements in the future. Each community has its own provisions and policies on vesting. Vesting is important for long-term projects beyond the three-year statutory provision, and overcoming the site-specific issue usually requires a development agreement and consideration.

C. The precedent-setting nature of the entitlement process will also be important. The developer, interested community groups and the public entity will need to recognize that granting concessions or imposing conditions on one set of entitlements may set a precedent for those same concessions or conditions to be imposed on future entitlements related to the same project.

Providing for Public Amenities

- A. In long-term projects, it is highly likely that the primary public entity will require provision of public amenities such as schools, parks, libraries, recreation facilities and affordable housing. Attention must be paid to when and how these facilities will be built and how they will be financed. Sharing TIF revenue with a school district for capital construction, or with a city for providing additional police and fire, land dedications, special district structures and impact fees are all a part of the mix.

Involving Elected Officials, Staff and the Public

A. Elected officials and government staff will change over the life of a long-term project. It will be necessary to regularly brief both existing and newly elected officials and existing and new staff on the project and its history. This may help the developer avoid efforts to change the project that result from a misunderstanding of the original agreements related to the project.

B. Establishing and maintaining a good working relationship with elected officials and staff of the governmental entity that is supervising the project is key. The developer cannot afford to "burn bridges" along the way, since it will continue to need approvals and cooperation from the governing entity. Sometimes this means making concessions in order to maintain the relationship.

C. The public is likely to be significantly involved in long-term, multi-phased projects. In some circumstances, it may be appropriate to set up a formal public involvement process, such as the Citizens Advisory Board at Stapleton, or the advisory board at Belmar, to formalize citizen input. It will also be important to establish a mechanism to inform the public on the progress of and changes in the project, such as a community newsletter.

D. The developer will also be expected take on a greater role in the community at large and be asked to support community wide programs and causes.

E. In developments that include a substantial residential component, it is important to understand that more and more residents will be living in the project as it develops. These residents will want to have a greater and greater say in how the project develops. The developer will need to put in place mechanisms both to allow for input from new residents and to retain the developer's control as appropriate.

HIGHLANDS RANCH

HOW IT STARTED

Mission Viejo Company (Mission) was the purchaser, but, as usual, the story doesn't begin with the closing.

Mission was not a stranger to the Denver market, in the mid 70's having purchased and zoned a section of land in Aurora which it was developing.

Jess Kortz was one of the sellers of the Aurora parcel. He was also one of the owners of an option to purchase Highlands Ranch, all 22,000 ± acres.

Jess was well acquainted with Phil Reilley, the President and CEO of Mission, and each persuaded the other the sale and purchase of Highlands Ranch was a match made in heaven (which it was).

A contract was negotiated by which the option was "sold" to Mission, which had about two years to complete its "due diligence," obtain entitlements and close on the property.

How does one go about planning, zoning and developing 22,000 acres?

If anyone knew - Mission did, as it was then well along in developing Mission Viejo, California, a planned community of several thousand living units and related commercial development in Orange County.

Jim Toepfer, a Mission Vice President, was assigned responsibility to lead the team. He moved to Denver and rented office space.

We quickly determined that the two fundamental "fatal flaw" issues were:

1. Long term integrity of entitlements
2. Long term integrity of water supply

ENTITLEMENTS:

1. What we needed - long term viability! You can't plan and construct infrastructure if the plan you end with is substantially different from that with which you start.

2. Political Entity - Douglas County

   Annexation rejected because of:

   A. Risk of initiative and referendum
   B. Loss of control of infrastructure development

3. We controlled "the documents," including:

   A. The Douglas County Planned Unit Development (PUD) Ordinance

B. The Douglas County "New Community" Ordinance

C. Our PUD application

D. Our "New Community" application

E. All resolutions required from the county

4. Vesting - no state enabling legislation at that time. We relied on the PUD enabling statute which basically precluded plan modifications.

5. Major concern - State Land Use Commission intervention. It didn't happen!

WATER:

1. What we needed - long term viability. Same issues as for entitlements - staying power!

2. Institutional framework - a "captive district" owning and operating major supply and infrastructure assets.

3. Water - wells and surface supplies.

THE PLANNING-IMPLEMENTATION PROCESS - A TEAM

1. We had a little less than two years to exercise the purchase option - not very long by today's standards.

2. True team approach - Jim Toepfer as captain - four or five additional team players each with assignments, all collected in a notebook.

3. The team assembled weekly to "go through the book." About 40 assignments to start - about 70 towards the end.

4. A good approach - too many "big" projects bog down for lack of communication.

WERE THERE ANY GLITCHES?

One major problem, and on my watch - mineral rights.

Resolved by trading so that mineral rights were under open space - not houses.

Steve Ormiston was there almost from the start - and is still there. He's here for my reality check and to bring the story to the present.

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D. Financing Infrastructure

E. Addressing Environmental Issues

F. Assuring Adequate Transportation Facilities

G. Obtaining the Entitlements

H. Providing for Public Amenities

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