

TO: RANCH AT ROARING FORK BOARD OF DIRECTORS

FROM: FISHING ADVISORY COMMITTEE (Dan Bishop, Chair; Stephanie McConaughy, Secretary; Ed Anderson, JP Pfaust, Chuck Rudolph, and Richard Sierzant)

RE: RECOMMENDED POLICIES REGARDING FISHING PERMITS

DATE: 01-17-11 and 02-01-11

Background

On January 10, 2011, the Ranch Board of Directors received a legal opinion from the law firm of HindmanSanchez stating that the “the Association’s governing documents do not grant the Board of Directors sufficient authority to charge a Use Fee to the members within the community for their individual use of the Common Recreation Reserve.” The Board of Directors interpreted this opinion to require an “everyone pays for everything” policy in place of previous and recommended user fees to Owners for use of certain Ranch amenities (fishing, horse boarding, RV lot, and a proposed golf user fee).

Subsequently, on January 15, 2011, the Board of Directors sent a notice to all Ranch Owners of a special meeting to be held on January 25, 2011 to consider “whether to impose a special assessment on all Owners to fund, for calendar year 2011, those common expenses that the Association had planned to fund through fishing badge fees, fees paid by horse owners, fees paid by the storage area and a golf fee.”

Fishing Badges. The HindmanSanchez opinion included an exception to the recommended “everyone pays for everything” policy for fees imposed for construction of improvements to the fishing amenities and the financing package to make those improvements (the “2006 Debt”). Fees to pay for the 2006 Debt include a special assessment of \$10 per month to all Owners and the sale of fishing badges for the right to fish on Ranch waters, as approved by a majority of Owners in 2006. Regarding sale of fishing badges, HindmanSanchez offered the legal opinion that the “Association should continue to charge for [fishing] badges until such time as either the debt is retired through badge sales or retired through some other form of financing which is approved by the Owners pursuant to the Declaration.”

The Board’s January 15, 2011 communication indicates that the Board believes it will be necessary to reduce badge charges for 2011 by approximately \$8,000, in order to align projected badge receipts with projected 2011 debt service on the 2006 Debt, and to make up the \$8,000 shortfall through an increase in the general assessments on all Owners.

Discussion

The FAC encourages the Board to consider whether guest badge receipts are subject to the same limitations that HindmanSanchez says apply to charges to Owners, and to seek clarification on this point from HindmanSanchez. The FAC also notes that if the Board and HindmanSanchez conclude that the principles apply to guest badges as well, then the amount of the reduction in fishing charges for 2011 (and the corresponding increase in general assessment on all Owners) presumably is not simply \$8,000 but, rather that amount plus the approximately \$18,000 in income from the \$10 per month waterways assessment. Otherwise, the Association would receive approximately \$80,000 in fishing-related assessments and badge revenues (approximately \$62,000 in badge revenues plus approximately \$18,000 from the \$10 per month assessment), while debt service would be only approximately \$54,000 for the year.

Neither the HindmanSanchez opinion nor the January 15, 2011 communication from the Board makes any distinction between fishing badge charges to owners and fishing badge charges imposed to allow non-residents to fish at the Ranch. The FAC believes that such a distinction is important and justified.

Article VI Section 6.7 (c) of the Declaration states that the Association has the right “to charge non-members reasonable admission and other fees for the use of any recreational facility situated upon the Common elements.” In fact, HindmanSanchez points to this explicit provision, and the absence of a corresponding explicit provision for charges for uses by Owners, as part of the basis for its conclusions.

Since 2006, the sale of fishing badges has included fees for Primary Permits for Owners and fees for Guest Permits for use by guests of Owners. The FAC submits that the sale of Guest Permits seems to fall under Article VI Section 6.7 (c).

Recommendation

The FAC recommends the following for adoption by the Ranch Board of Directors regarding sale of fishing permits and use of revenues from badge sales and the 2006 special waterways assessment, subject to review by Ranch counsel.

FAC Proposed Policy Regarding Fishing Badge Sales and 2006 Special Assessment

1. Primary Permits shall continue to be sold as specified under the 2010 Ranch at Roaring Fork Fishing Regulations. Revenue from Primary Permits, plus the 2006 approved \$10 per month waterways special assessment of all Owners, shall be used only for debt service on the 2006 Debt.

Analysis

According to projections by the Board of Directors, the current principal owed on the 2006 Debt is approximately \$278,000 and projected debt service for 2011 is approximately \$54,000. A debt service of \$54,000 is projected annually through 2016. (At this rate of repayment, the 2006 Debt should be retired in 2017.)

From 2010 badge sales, approximately \$35,000 in revenue was derived from sales of Primary Permits #1 and #2 (actual receipts were affected by prepayments; see attached Summary of Badge Sales). The annual waterways special assessment (\$10/month) in 2010 produced income of \$18,772. Using the same revenue projections for 2011, the combined income from the waterways special assessment plus Primary Permit sales is projected to be \$53,772. All actual income from these two sources shall be applied to debt service on the 2006 Debt. For 2011, this would leave a shortfall of less than \$1,000 for debt service.

Proposed Amendment to the Ranch at Roaring Fork Fishing Regulations (proposed revisions shown in italics)

Primary Permits

Each residence at the Ranch, if current in assessments, shall be entitled to two Primary Permits at the cost of \$250 each. Owners and family members of the household may use a Primary Permit. Family members are defined as owners, spouses and their children. All other persons, including tenants are considered guests of the owners. Guests of the owner may use a Primary Permit only when fishing with and accompanied by the owner.

The replacement cost for lost Primary permits will be \$100 each. All primary permits will be issued only to the registered owner of the residence. Owners of undeveloped, unoccupied lots will be entitled to purchase only the allocation of permits for one residence unit on the Ranch, regardless of category.

Revenue from the sale of Primary Permits shall be used only for debt service on the debt incurred to finance the construction of improvements to the fishing amenities approved by the Ranch Owners in 2006 (the "2006 Debt").

2. Guest Permits shall continue to be sold as specified under the 2010 Ranch at Roaring Fork Fishing Regulations. All Guest Permit revenues will be collected and received pursuant to Article VI Section 6.7 (c) of the Declaration. Revenue from Guest Permits shall be used for debt service on the 2006 Debt to the extent revenue from the \$10 per month waterways special assessment plus revenue from Primary Permit sales is insufficient to cover the full amount of such debt service. The balance shall be used for repair, maintenance, upkeep and improvements of the waterways and fishery, and for the establishment of reserves to be used only for such purposes.

Analysis

The FAC hopes that the Board and legal counsel will conclude that revenues obtained to allow non-residents to fish at the Ranch through the use of Guest Permits (which is the exclusive basis under which non-residents may fish at the Ranch when not accompanied by an Owner) should be considered receipts under Article VI Section 6.7 (c) of the Declaration, and not subject to the "everyone pays for everything" rule or the requirement that fishing fees collected for owners' fishing must be applied only to debt service on the

2006 Debt. Instead, the FAC proposes that revenue from the sale of Guest Permits shall be used for maintenance and improvements of the waterways and fishery (including reserves), and for servicing the 2006 Debt only to the extent necessary to make up debt service shortfalls in any year after application of revenues from sales of Primary Permits and the special assessment imposed in connection with the 2006 improvements.

In 2010, income from sales of Guest Permits was approximately \$30,000 (actual receipts were affected by prepayments; see attached Summary of Badge Sales). Therefore, using the same revenue projections for 2011, sales of Guest Badges can be used to cover the \$1,000 shortfall for servicing the 2006 Debt, leaving approximately \$29,000 for use for the fishery. The latter would include costs for stocking and other improvements, as recommended by the Fishing Advisory Committee and consultants to the Ranch and as approved by the Board.

Proposed Amendment to the Ranch at Roaring Fork Fishing Regulations (proposed revisions shown in italics)

Guest Permits

Each year, in addition to Primary Permits, each residence unit on the Ranch shall be entitled *to purchase* two Guest Permits *for use by such Owner's guests*. The first Guest Permit shall cost \$500, and the second permit shall cost \$1,000. A Guest Permit will allow the guest of an owner to fish unaccompanied by the owner.

The replacement cost for a Guest permit will be \$400 each.

The fee or charge for Guest Permits is established in accordance with Article VI Section 6.7 (c) of the Association's Declaration. Revenue from Guest Permits sales shall be used for debt service on the 2006 Debt to the extent revenue from the \$10 per month waterways assessment plus revenue from Primary Permit sales is insufficient in any year to cover the full amount of such debt service. The balance shall be used for repair, maintenance, upkeep and improvements of the waterways and fishery, and for the establishment of reserves to be used only for such purposes.

3. Unused funds assigned to the Fishing Fund in years prior to 2011 should be carried forward. The estimated carry-over to 2011 from prior years is approximately \$20,000. Combining 2011 carry-over funds and projected revenue from sale of Guest Permits (minus payments for 2006 Debt service) gives a balance of approximately \$49,000 available for the fishery in 2011.

4. If the Board and legal counsel concur with the above analyses, the FAC recommends that no additional 2011 assessment be imposed on all Owners to meet the current obligations of the Association for maintenance and improvement of the fishery.

5. The FAC further recommends that it be assigned the task of reviewing the Ranch at Roaring Fork Fishing Regulations for possible revisions in badge structure and

badge fees to take account of requirements of the Declaration after retirement of the 2006 Debt in 2017.