The battle between homeowners and developers

When a golf course owner decides to redevelop his course, he could face implied restrictions. BY MATTHEW KORNHAUSER

It would seem logical that golf course developers and those who live in a golf course community would live in harmony. Sunny skies, manicured yards, and beautiful golf course greens — what could go wrong? Well, plenty.

As the golfing industry struggles and golf course communities become dated with declining memberships, the chance for conflict increases — especially when a course owner starts to consider other uses for the land.

Can the owner of a golf course in a subdivision really redevelop an amenity that has been the prime selling feature of the community?

What does that mean for those who paid a premium to purchase golf course lots? What if the homeowners who live on the golf course lots were never aware that the golf course was not restricted solely for golf course use? Such questions can create more worry than a 30-foot, double breaking downhill putt.

These matters involve situations where the developer/owner files plats, restricts lots within the platted sections of the subdivision for use compatible with a golf course (low fences, wrought iron fences, minimal setbacks requirements), but does not specifically restrict the golf course property that abuts the neighboring residential sections. In other words, the golf course property is not expressly restricted to golf course use.

The developer's purpose is to create options regarding future uses of his or her land. Most homeowners of course have no knowledge that the golf course property is not restricted and assume that their golf course views will be intact forever. Often times, the homeowners do not learn of the situation until they hear that the golf course is up for sale and that the new owner seeks to make other use for the land.

This conflict between developers and the residential community has played itself out in the courtroom in many jurisdictions. Specifically, as an owner seeks to develop an unrestricted subdivision golf course, homeowners associations have filed lawsuits to challenge the intended development. Their legal arguments are based on the fact that their land values will decrease as a result of the redevelopment and they will lose the serenity of the beautiful green space in their backyard. Homeowners also argue they agreed to be bound by deed restrictions that restrict their land to use that is compatible with a golf course and that the owner of the golf course should oblige the longstanding relationship between the golf course and the residential community. The developers on the other hand argue they have the right to use their land as they see fit and that the homeowners were notified of the absence of a written use restriction when they bought their lot.

But what about the fact that the golf course property was not restricted by a written document? Will courts really impose unwritten restrictions on such property?

Arizona, the golfing mecca of the southwest, was one of the first states to address this issue. In the case, the owners of a struggling golf course attempted to develop the property for other purposes. No specific restrictions as to the use of the land were ever recorded. The surrounding homeowners living in the community brought suit to have the court enforce an implied restriction limiting the use of the property to a golf course. The court ruled for the homeowners, finding that the property was restricted to a golf course operation and that an implied covenant restricting the use of the property to a golf course arose from the sale of adjacent lots to the homeowners.

Approximately two years ago in Houston, I represented a homeowners association in a case, which successfully imposed an implied "golf-use only" restriction on an unrestricted subdivision golf course and prevented the owner from gutting the golf course and developing it for commercial use. In this case, I was able to show that the golf course was part of a "common scheme and plan of development," and that the owner of the golf course purchased the golf course property with knowledge of the deed restrictions, addressing the golf course use. This case resulted in the passage of a Texas statute, which put restrictions on developers who want to replat subdivision golf courses for development purposes.

Despite these cases, not all courts have decided to enforce implied restrictions to protect subdivision golf courses. Just this summer, I represented an owner of a golf course property in a suit filed by a homeowners association to impose implied "golf-use only" restrictions on the unrestricted subdivision golf course. The purpose of this suit was to prevent the commercial development of the property. The court refused to enforce any

implied restrictions in this case because there were prior written "golf-use only" restrictions that had expired. Thus, the owner of the golf course was free to use the property for any lawful use.

So, what have we learned from all this? As a developer, understand that homeowners may have rights regarding the use of subdivision golf course property despite the fact that there are no written documents of record that say so.

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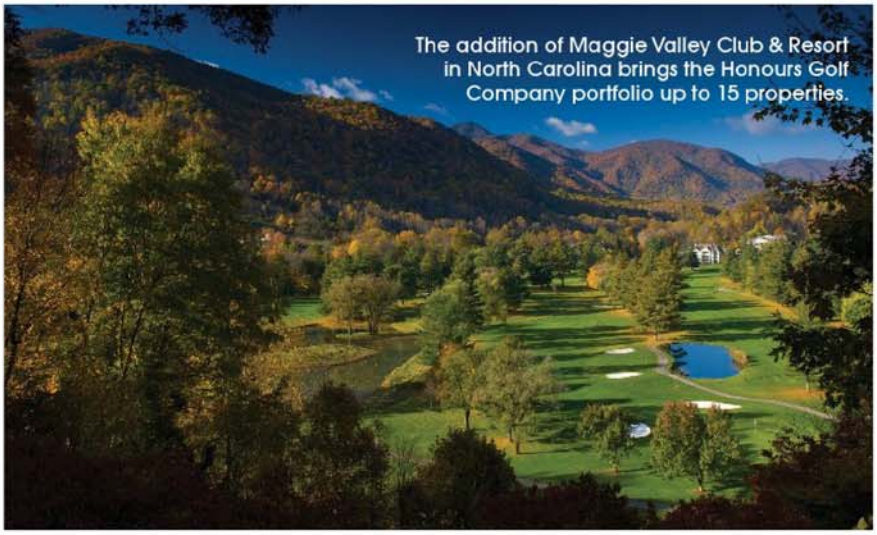
MANAGEMENT NOTES



The addition of Maggie Valley Club & Resort in North Carolina brings the Honours Golf Company portfolio up to 15 properties.

■ **Hampton Golf** expanded its portfolio with the 36-hole golf course and club at Verandah, a master-planned golf club community in Ft. Myers, Fla. The 1,456-acre neighborhood is home to two championship golf courses — the Bob Cupp-designed Old Orange and Whispering Oak, designed by Jack Nicklaus and Jack Nicklaus II. Hampton Golf assumed management of both courses, as well as other amenities, including fitness facilities, water sports and on-site dining.

Hampton Golf also partnered with Randy Frankel, a former Wall Street executive and partner of the Tampa Bay Rays, to acquire The Palencia Club in St. Augustine, Fla. The sale was finalized last week with the community's original developer Hines, a privately owned international real estate firm based in Atlanta. Palencia is the third partnership between Frankel and Hampton Golf, along with The Golf Club at North Hampton in Fernandina Beach, Fla., and Southern Hills Plantation Club in Brooksville, Fla. The acquisition brings Hampton's portfolio up to 17 courses with 13 in Florida.

■ **Honours Golf Company** added its first course in the Carolinas with the addition of Maggie Valley Club & Resort, an upscale golf community in Maggie Valley, N.C. The Colonial Company selected Honours Golf to provide management services for the 18-hole golf facility. The new management contract marks the 15th course for Honours Golf, a company based in Birmingham, Ala. Its portfolio primarily includes courses in Florida and Alabama, as well as one in Mississippi. In addition to overseeing golf operations, Honours Golf will also manage the numerous other amenities and services offered at Maggie Valley Club.

■ **Kitson & Partners Clubs** entered into a full-service club management agreement with the new owners of Venetian Bay Golf & Country Club in New Smyrna Beach, Fla. The Venetian Bay agreement is the third in a string of new Florida contracts that K&P Clubs has completed in 2012. Earlier this year, the company began management services for Indianwood Country Club in Indiantown, Fla. K&P also entered into a new consulting relationship with a Florida golf resort, as well as one with First Midwest Bank of Chicago in connection with a Midwestern private golf club — both names of the facilities have not been disclosed. Additionally, the company expanded its relationship with Prince Resorts Hawaii to include a third course, the Hawaii Prince Course on Oahu. The new owner of Venetian Bay is Geosam Capital Inc., a Canadian-based international investment firm. With the Venetian Bay assignment, K&P Clubs' Florida portfolio now includes 16 golf facilities.

■ **The City of Alameda** in California selected Greenway Golf Associates to operate the city's 45-hole golf complex. The Alameda City Council unanimously approved a 25-year lease agreement with Greenway to operate and manage the golf operations of the Chuck Corica Golf Complex, which consists of two 18-hole courses, a 9-hole par-three course and a practice range. Greenway will operate and manage all golf-related operations. Greenway's agreement with the City marks the 11th facility in its portfolio, seven of which are in California.