

INITIAL STRATEGY ANALYSIS GOLF CLUB AT VISTOSO SITE PRESERVATION



Prepared at the Request of
PRESERVE VISTOSO

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SUMMARY

Community & Environmental Defense Services (CEDS) was retained by Preserve Vistoso to research opportunities to safeguard the 208-acre former Golf Club at Vistoso from development. After purchasing the golf course Romspen Mortgage Investment Fund announced the intention to seek the rezoning needed to convert half the golf course (109 acres) to housing units.

The research presented in this *Initial Strategy Analysis*¹ indicates that [Romspen is generally more likely to invest in golf courses to improve profitability rather than developing fairways, greens and tees to other uses](#). Another party previously attempted to negotiate with Romspen to preserve the Golf Club at Vistoso but this effort didn't succeed. While this effort failed, there would be value in seeking to open negotiations given that research indicates the Oro Valley Town Council may very well deny rezoning or condition it in ways unfavorable to Romspen.

From 2017 to September 2019, the Town Council [considered six rezoning requests](#). Five were approved and one was denied. One of the five approvals passed by a very narrow 4-3 vote. Most of the rezonings were approved with a number of conditions designed to address concerns voiced by area residents and staff.

Most rezoning battles are won by demonstrating widespread public opposition and few through litigation alone. The easiest way to mobilize widespread support for Preserving Vistoso may be to link its fate to the other ten golf courses within the Oro Valley General Plan area.

A number of homes adjoin these ten golf courses just as they do the Golf Club at Vistoso. In past similar situations CEDS has been able to mobilize support throughout an area like Oro Valley by saying to those living near other golf courses that if the Vistoso course is rezoned theirs could be next. If successful this approach would greatly expand public support for Preserving Vistoso beyond the 473 homes adjoining the Golf Club.

Consideration should also be given to preemptive action by asking the Town Council to amend the General Plan and/or the Zoning Code to make it more difficult to convert a golf course to other uses. This could be done well in advance of hearings on the Romspen rezoning request. At the very least such an effort may predispose the Council to deny or severely condition the rezoning. It could also prompt Romspen to reconsider negotiations.

We also must begin preparing our case should the rezoning get as far as a Planning & Zoning Commission and Town Council hearing. Given that the Council has a mixed history of following Planning & Zoning recommendations, we should reserve one or more of our strongest issues for the Town Council hearing. We should be prepared to file a protest petition requiring a 3/4ths Town Council vote to approve the rezoning rather than the usual majority. There's also at least one legal issue which should be also researched: [Easement by Plat](#).

¹ The analysis is termed initial because its not uncommon for new strategy options to emerge as research continues and a case evolves.

RECOMMENDATIONS

CEDS recommends taking the following steps:

1. Seek to form an alliance with the associations representing those living next to the other ten Oro Valley golf courses. If a golf course is lacking an association or the association leadership is uncooperative then we should do a test mailing to those owning homes next to the courses to assess the degree of potential support. This effort should include both the seven active courses and the three which appear inactive.
2. Research actions the Town Council could take to make it more difficult to rezone a golf course such as amending the General Plan and/or the Zoning Code.
3. Review the videos of Town Council rezoning hearings to gain a better sense of the issues that may prompt each Council member and the Mayor to oppose rezoning.
4. Identify conditions the Council could add to rezoning which would achieve Preserve Vistoso goals, in part at least.
5. Begin preparing the case we may be forced to present to the Planning & Zoning Commission and Town Council.
6. Seek to convince Oro Valley staff to recommend either preservation or severe restrictions on developing the Golf Club at Vistoso, but without revealing our strongest issues prior to the Town Council hearing.
7. At the Planning & Zoning Commission hearings (2) and the Town Council hearing mobilize a standing-room-only crowd of those living near the Vistoso course and the other ten Oro Valley golf courses to oppose the rezoning. Our supporters must include those living immediately adjacent to the golf courses and we must make this clear during testimony.
8. Line up at least one person who can qualify as an expert witness to testify on our strongest issue(s) at the Town Council hearing. With expert testimony in the record we should reduce the remote possibility that Romspen could reverse rezoning denial on appeal.
9. As we succeed in making progress in expanding public support for golf course preservation, we should revisit the interest of Romspen decision-makers in negotiating an [equitable solution](#).
10. Since I am not an attorney Preserve Vistoso should engage an attorney to:
 - a. Research whether the [Easement by Plat](#) issue would prevent golf course conversion,
 - b. Verify that we would be eligible to file a [protest petition](#) requiring a super majority to approve the rezoning, and
 - c. Possibly represent Preserve Vistoso at the hearings though it looks like an attorney is not essential for winning Town Council support.

ROMSPEN GOLF COURSE REDEVELOPMENT HISTORY

The purpose of this research is to gain insight into how Preserve Vistoso might negotiate a mutually satisfactory solution with Romspen Mortgage Investment Fund. After running an internet search on keywords such as:

- golf course,
- redevelopment, and
- Romspen

a number of news articles and other documents were found.

ARIZONA GOLF COURSES

The search located two Arizona golf courses with a connection to Romspen: Arizona National and the Links at Waterford.

Arizona National Golf Club

A [2015 article](#) noted that Tucson's [Arizona National Golf Club](#) was purchased by Romspen for \$500,000. In 2012, water service to the course was turned off due to a delinquent bill. In 2014, [O.B. Sports](#) began managing the course. Today Arizona National Golf Club is rated as Tucson's #1 Public Golf facility. Arizona National is within the Oro Valley General Plan area.

Links at Waterford

In 2014 the following case was filed in Maricopa County Superior Court: *Romspen Club Holdings Inc Et Al Vs Links at Waterford LLC, Et Al*. A search for the Links at Waterford did not indicate that the golf course exists. No further information could be found.

CAROLINA GOLF COURSES

Of particular interest was a 2014 Golf Inc Magazine article [Lender takes possession of four Silverstein courses in North Carolina](#).

The golf courses were:

- Birkdale Gold Club in Huntersville,
- Divide Club at Matthews,
- Highland Creek Golf Club in Charlotte, and
- Traditional Golf in Charlotte.

The same article noted that Romspen had extended loans to Waterford Golf Club in Rock Hill, South Carolina.

All five courses are still in operation. In 2014, Romspen hired Traditional Golf Properties of Virginia to manage the golf courses. As of July, 2017, management of the courses was in the hands of [Pinnacle Golf Properties](#), which pledged to preserve the four Charlotte area courses.

To learn of any changes to the five golf courses, 2013 and 2018 aerial photos were compared. The photos will be found at the end of this analysis in Attachment A. Of the five courses only Highland Creek Golf Club in Charlotte, NC has changed, which was limited to the addition of about 30 new houses with no difference to the golf course.

Following are the results of further research into the changes resulting from Romspen involvement with the five Carolina golf courses. The research produced articles about two of the courses – Birkdale and Waterford, but not for the other three.

Birkdale Gold Club in Huntersville

In July, 2013 the [Birkdale golf course](#) was [closed for failure to pay taxes](#). According to a May, 2018, article in the [Charlotte Business Journal](#), the Birkdale Gold Club was to benefit from a \$45 million investment in specialty retail, restaurants, a hotel and a new clubhouse. An [April 2019 report](#) indicated a new road will be built through the driving range while the rest of the golf course will be refurbished.

Waterford Golf Club, Rock Hill, SC

A [July, 2014 article](#) noted that the public Waterford Golf Club was to be sold at public auction. No further information could be found. And, as stated above, 2018 aerial imagery shows that the golf course was unchanged.

ROMSPEN GOLF COURSES ELSEWHERE

The Villages at Aina Lea was a 1,011-acre development project proposed for Hawaii. The project included six golf courses. A [2017 article](#) noted that Romspen Investment Corporation filed a lawsuit seeking to foreclose on 38 acres that was a guarantee to a \$12 million 2015 loan Aina Lea, Inc. defaulted on. The loan was to be used to develop, design, construct, furnish, market and sell 40 townhomes. It does not appear that Romspen had an interest in the golf courses.

In 2015 Romspen was [party to a lawsuit](#) involving the Ponderosa Golf and Country Club and residential development in British Columbia. The project was under construction at the time of the suit so it would not have involved redevelopment of a golf course.

ROMSPEN GOLF COURSE RESEARCH & PRESERVE VISTOSO STRATEGY

This research indicates that Romspen tends to be more involved in making failing golf courses more profitable rather than converting fairways, greens and tees to homes. A golf course management company was involved in the golf course revitalization efforts noted above: Traditional Golf Properties and Pinnacle Golf Properties in the case of the Carolina courses and O.B. Sports in the case of Arizona National Golf Club.

Perhaps a key to reconstituting the Golf Club at Vistoso is to interest a company like O.B. Sports in assuming management with funding from Romspen. However, the following from Preserve Vistoso indicates an effort along these lines was unsuccessfully attempted:

In November 2018, Romspen turned down a \$3.5 million offer to buy the golf course from PLP, a Phoenix based company that planned to keep the golf course open but would develop a portion of the golf course.

We may succeed in reopening negotiations if Romspen sees us making progress towards nixing the rezoning needed to develop the Golf Club at Vistoso.

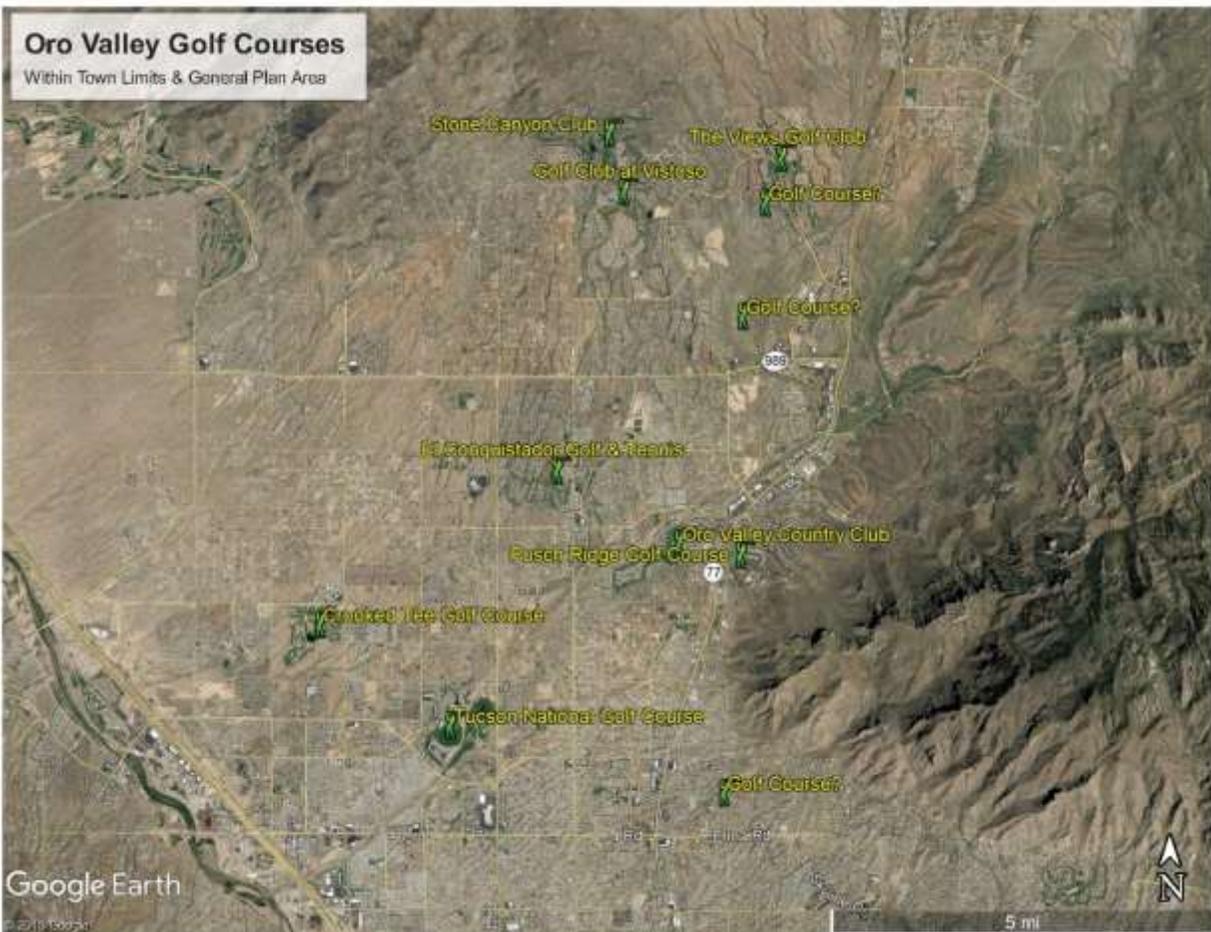
GOLF COURSE PRESERVATION & MOBILIZING SUPPORT

The likelihood of Preserving Vistoso will increase considerably if we can demonstrate that support for this goal is not confined to Rancho Vistoso but exists throughout the Town of Oro Valley. I

believe it may be relatively easy to generate widespread support by reaching out to those who live near other Oro Valley golf courses.

The map below shows eleven current or former Oro Valley golf courses, including the Golf Club at Vistoso. The map is based on the golf courses shown on the Parks and Recreation Map found on page 23 of the [Your Voice, Our Future General Plan](#).

I propose that we reach out to folks who live near these other courses and say that if Vistoso can be redeveloped then the same could happen to the golf course near their homes. By supporting us in Preserving Vistoso we can reduce the possibility that any other Oro Valley course, including theirs, would be turned into houses.



Of the eleven courses three appear to no longer exist based on 2018 aerial imagery. Of course, the same is true for the Golf Club at Vistoso. I believe those living near these abandoned courses – assuming that’s what they are – would be just as anxious as Preserve Vistoso to prevent their inactive course from being developed.

I propose testing this strategy option by contacting the association representing those living near each course. If a course lacks an association or if the association is uncooperative, then I would contact a sampling of those living near the golf course. I suspect this test will show intense, widespread support among those living near each golf course. If this is the case then we could

preempt Romspens Vistoso rezoning request by calling upon the Oro Valley Town Council to amend the General Plan and/or the Zoning Code to make it much more difficult to rezone a golf course.

Would you like me to proceed with the test?

Also, are there any other golf courses not shown on the map above?

PERMITS & OTHER APPROVALS

Preserve Vistoso noted that:

- rezoning will be required to develop the golf course with homes,
- Of the 202-acre golf course Romspen would request rezoning of 109 acres, and
- The 202-acre golf course is presently zoned Recreation/Golf Course.

The rezoning process is set forth in Section 22.3 Amendments and Rezoning, of the [Town Of Oro Valley Zoning Code](#).

The Oro Valley Planning and Zoning Commission will make a recommendation to the Town Council which serves as the final decision-maker with regard to rezoning requests. The Planning and Zoning Commission and the Town Council will hold separate hearings.

WRITTEN (PROTEST) PETITION

Section 22.3.L. of the Zoning Code allows for a written protest (aka protest petition) which would raise the bar for approving the rezoning from a simple majority of Town Council members to three-fourths. Should the rezoning request reach the Town Council then it is vitally important that Preserve Vistoso seek to file the protest petition. The most immediate question is whether Preserve Vistoso and nearby residents could meet the criteria, which follows verbatim from the Zoning Code:

“L. Written Protest by Property Owners

If the owners of twenty percent (20%) or more of the property by area and number of lots, tracts and condominium units within the zoning area of the affected property file a protest in writing against a proposed amendment, the change shall not become effective except by a favorable vote of three fourths (3/4) of all members of the Town Council. If any members of the Town Council are unable to vote on such question because of conflict of interest, then the required number of votes for passage of the question shall be three-fourths (3/4) of the remaining membership of the Town Council; provided, that such required number of votes shall in no event be less than a majority of the full membership of the Town Council. For the purpose of this section, the vote shall be rounded to the nearest whole number. In determining the ratio of twenty percent (20%), the “zoning area” means both of the following:

1. The area within one hundred fifty (150) feet, including all rights-of-way, of the affected property subject to the proposed amendment or change.
2. The area of the proposed amendment or change.

A protest filed pursuant to this subsection shall be signed by the property owners opposing the proposed amendment and filed in the office of the Town Clerk no later than 12:00 noon, five (5) business days before the date on which the Town Council will vote on the proposed amendment or on an earlier time and date established by the Town Council.”

ADDING CONDITIONS TO REZONING

Section 22.3.M, allows the Town Council to add conditions to a rezoning. This is unusual since conditional zoning is not allowed in many states. It also opens the door to confining development to those portions of the golf course where negative effects will be minimal. We should identify conditions that would achieve Preserve Vistoso goals, in part at least. As will be seen in the next section of this analysis, the Town Council has a history of adding conditions to rezonings.

REQUIRED FINDINGS & CASE STRATEGY

Section 22.3.P, Rezoning to Planned Residential Development or Planned Area Development, requires that rezoning within the Rancho Vistoso PAD conform to Section 24.4 of the Zoning Code.

Section 24.4.H, lists the findings the Town Council is required to make to approve a rezoning within a Planned Area Development. The case presented at the two Planning and Zoning Commission hearings and at the Town Council hearing should address these required findings. However, if the Town Council has not religiously followed the Planning and Zoning Commission recommendation in the past then we should hold our best issues back for the Town Council hearing. Otherwise, all we accomplish at the Planning & Zoning Commission hearing is to give the applicant extra time to prepare counter arguments for the Town Council hearing.

EASEMENT BY PLAT ISSUE

I came across an article by a North Carolina attorney which presents a theory that might restrict development of the Vistoso golf course, [*Trouble in Paradise: Redevelopment of Golf Courses in a Changing Market*](#).

My layman’s take on the theory is as follows:

- If the developer of the Vistoso planned community owned both the golf course and the homes, **and**
- the developer sold the homes by referencing plat maps showing the course or with other marketing materials that depicted the golf course as an amenity for the neighborhood, **then**
- this may have indirectly restricted the use of the golf course and the right to redevelop the course.

Courts in other states, such as North Carolina, have ruled that these conditions constitute “*easement by plat*” which could restrict the ability of Romspen to develop the course. If you wish I can see if the North Carolina attorney can research the applicability of the issue in Arizona and to Vistoso.

Would you like me to do this?

There would be value in searching for an Arizona attorney who can determine if there’s case law on this point; preferably the attorney who argued the case establishing the precedent – assuming the decision supports your position. For example, I did a quick search of [Arizona Court records](#) and

came across the 2016 [Refuges at Lake Havasu decision](#) which references easements, plats and golf courses. The attorneys who represented the folks seeking to preserve The Refuge golf course were the same as those listed in my September 13th message: Penny L. Koepke, Nicole A. Miller, and Solomon S. Krotzer of Ekmark & Ekmark, LLC - Scottsdale, AZ.

Would you like me to contact these attorneys and ask if the easement by plat issue or some other easement restriction would apply to the Golf Club at Vistoso?

DECISION-MAKING HISTORY

Oro Valley Town Council meeting minutes were searched for rezoning decisions using the [Meetings, Agendas and Minutes webpage](#).

Between 2017 and September 2019 the Town Council considered six rezoning requests. Of these, one was denied and five were approved. The vote on one of the five approvals was a very narrow 4 to 3. A summary of the six rezoning cases is provided in the table on the next page of this analysis.

The decision-making history clearly shows the Town Council is not a rubber stamp for rezoning requests. And neither is the Oro Valley Planning & Zoning Commission which recommended denial in one of the six cases.

The Council decision was the same as that recommended by the Planning & Zoning Commission in four of the six cases. Given this it is recommended that we hold back one or two of our strongest arguments against Vistoso rezoning for the Town Council hearing. Otherwise we'll give Romspen extra time before the Town Council hearing takes place to develop counter arguments. And there are always counter arguments.

The one case where rezoning was denied involved a 15-acre property located at the northeast corner of Rancho Vistoso Boulevard and Vistoso Commerce Loop. The project was discussed during two Town Council hearings: November 8, 2018 and January 9, 2019.

Council deliberations began at 1 hour and 48 minutes (1:48:00) into the January 9th video which can be viewed at: <https://orovalleyaz.new.swagit.com/videos/27774>. It appears that the primary reason for the Council's denial was incompatibility and substantial opposition from nearby residents.

The incompatibility resulted from the proposal to place tiny lots next to existing homes on larger lots. The Council also wanted to preserve the site for employment uses, not residential.

A number of questions about other issues were raised by Council members during the November 8th hearing. Staff or applicant responses to these questions seemed to satisfy the Council. The questions pertained to the following:

- Traffic congestion volume,
- Single means of vehicular access,
- Public water supply and fire-flow pressure,
- Extending water lines through yards, and
- Recreation area amenities.

Oro Valley Town Council Rezoning Decisions 2017-Present

Case #	Project	Council Hearing Date	Rezoning Request	PAD?	RECOMMENDATIONS & VOTE SPLIT		
					Staff	Planning & Zoning Commission	Town Council Decision & Vote Split
(O)19-04	Oro Valley Town Centre	3/6/2019		Yes	?	Approved 7-0	Approved 4-3
(O)19-01		1/9/2019	Campus Park industrial to Medium High Density Residential	No	Denial	Approved 4-3	Denied 6-1
(O)18-09	The Residences at Miller Ranch	6/6/2018	R1- 144 TO R1- 10	No	?	Approved 5-1	Approved 6-1
(O)18-07		5/16/2018	R1-144 TO PAD	Yes	Approval	Approved 6-0	Approved 7-0
(O)18-06	Saguaros Viejos East	4/4/2018	R1-144 & R1-20 to R1-7	No	?	Denial 5-1	Approved 7-0
(O)17-09	Rancho Vista PAD	12/6/2017	Remove the existing zoning designations of Commercial (C-1), Medium High Density Residential, and Recreation Area/Golf Course and to reconfigure the remaining zoning designations of Open Space and Medium Density Residential	Yes	?	Approval 6-1	Approved 7-0

Clicking on the [blue](#) text above will open the minutes and videos in which the recommendation or decision appears.

The hearing videos for the other five rezoning cases should be reviewed to gain a better understanding of the issues each Council member and the Mayor views as most important and influential. For example, one Council member remarked that he places great weight on the staff report. So, working with staff to take a position favorable to Preserve Vistoso would be a good move. Another Council member said he places far greater weight on the opinion of those living next to a rezoning site vs. those of organizations or those from other areas.

ZONING VS. SITE PLAN ISSUES

Issues that influence rezoning decisions tend to be more global than those addressed during later stages of the process like site plan review. We must take care not to focus on issues that could be viewed as irrelevant to a rezoning decision since they will be addressed at site plan review.

Generally, an issue relevant to a rezoning decision is one that cannot be resolved at site plan. For example, in many places in the U.S. one cannot build more than 100 homes where there will be only one access road. The single access could be blocked by a fallen tree, vehicle accident or wildfire, which would prevent evacuation and emergency services access.

During the hearing on the 15-acre Rancho Vistoso Boulevard-Vistoso Commerce Loop rezoning, the Oro Valley fire chief testified that there's no limit on the number of homes with a single access, provided additional safeguards are taken. Therefore, the single-access issue was dismissed as irrelevant to that rezoning decision.

In contrast, the need to retain land zoned Campus Park Industrial zoning to attract new employers to Oro Valley was a primary factor prompting the Town Council to retain CPI zoning of the site.

We should also resist the temptation to present numerous issues in hopes that at least one will convince the Town Council to deny rezoning. Instead we should focus on our three- to six-most compelling arguments against rezoning. Ideally, these issues should directly affect nearby residents and their quality of life.

Finally, our key issues should directly relate to the findings the Town Council is required to make to approve a rezoning within a Planned Area Development, which appear in Section 24.4.H, of the [Town Of Oro Valley Zoning Code](#). I presume that these same findings apply to PAD rezoning, though this presumption must be confirmed.

To gain a better understanding of the factors considered relevant to a rezoning decision, see the November 8, 2018 Planning & Zoning Commission minutes posted at the following address: <https://orovalleyaz.new.swagit.com/imported/orovalley/minutes-2908.html>. The portion of the minutes pertaining to the 15-acre Rancho Vistoso Boulevard-Vistoso Commerce Loop property begin on pdf page 8 of the minutes. There would be value in reviewing the minutes and Town Council hearing videos for the other five rezoning cases listed in the table on page 9, above.

**ATTACHMENT A: 2013 AND 2018 AERIAL PHOTOS OF FIVE
CAROLINA GOLF COURSES PURCHASED BY ROMSPEN**

