

Indian Springs Community Meeting

September 21, 2021

aloft Hotel and Jaggers Rezoning
Informational Meeting

Why We Are Here

- No one wants to be at this meeting
- No one expected that the aloft Hotel Developer would blatantly take action that is directly in conflict with the contract they signed in 2014
- If forced to accept a restaurant, no one wants a Jaggers
 - It is both fast food and has a drive through (more on this later)
 - The fast food it offers adds nothing to the greater Indian Springs neighborhood: Better salads at Panera, chicken sandwiches at Chick-fil-A and Roosters, burgers at a plethora of burger places
 - It will present yet another burden on traffic at the front of our neighborhood
- The HOA Board's role is to do our best to preserve home value and act as the best steward possible of the HOA's Funds. We are exploring options on how to respond to the Hotel Developer's request to rezone a portion of its property to C-1 so they can develop the Jaggers

WE REMAIN OPPOSED TO ANY REZONING IN CONFLICT WITH OUR 2014
PURCHASE AND SALE CONTRACT

History of aloft Hotel Land and Zoning

- 2013: The community entered a settlement agreement with the former Indian Springs Golf Course Owner

Allowed	Community Received
<ul style="list-style-type: none">• Development of Aldi• Development of what become the Panda Express and the Sleep Number• Development of the aloft	<ul style="list-style-type: none">• The remainder of the golf course (120 acres)• The club house (now rented to Martin's)• A new maintenance shed (now rented to community landscaper HLL)• The golf course equipment (mowers, etc.)• ~\$35K used for property maintenance and the sign just past Martin's

- 2014: The HOA entered an agreement with the Hotel Developer to purchase approximately 2.4 acres of the former golf course for \$300k
 - The land sale contract contained language in favor of the HOA that restricted the use of the land that was sold by the HOA as well as restricted the use of the land that was sold to the hotel by the former Golf Course Owner
 - There is nuance, but the basic restriction is to only allow parking, a conference center, a restaurant (without a drive through and not fast food), or elderly housing/assisted living

Hotel Land Property

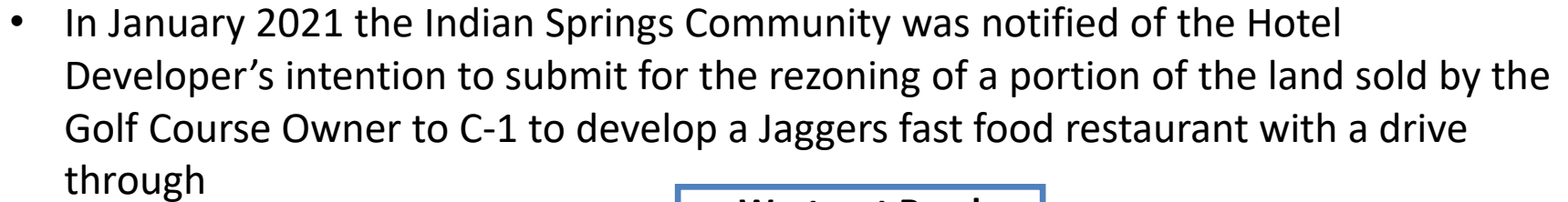
Below picture describes the land owned by the Hotel Developer:

aloft Hotel with
land sold by Golf
Course Owner

Land sold by Indian
Springs to the
Hotel ~2.4 acres



- In January 2021 the Indian Springs Community was notified of the Hotel Developer's intention to submit for the rezoning of a portion of the land sold by the Golf Course Owner to C-1 to develop a Jaggers fast food restaurant with a drive through



Jaggers Elevations

- Pictures provided by the Hotel Developer



RIGHT SIDE (NORTH EAST) ELEVATION



BACK SIDE (SOUTH EAST) ELEVATION

**Ordering Side Faces
Indian Lake Drive**



LEFT SIDE (SOUTH WEST) ELEVATION

**Façade toward
Westport Road**



FRONT SIDE (NORTH WEST) ELEVATION

Current Situation (continued)

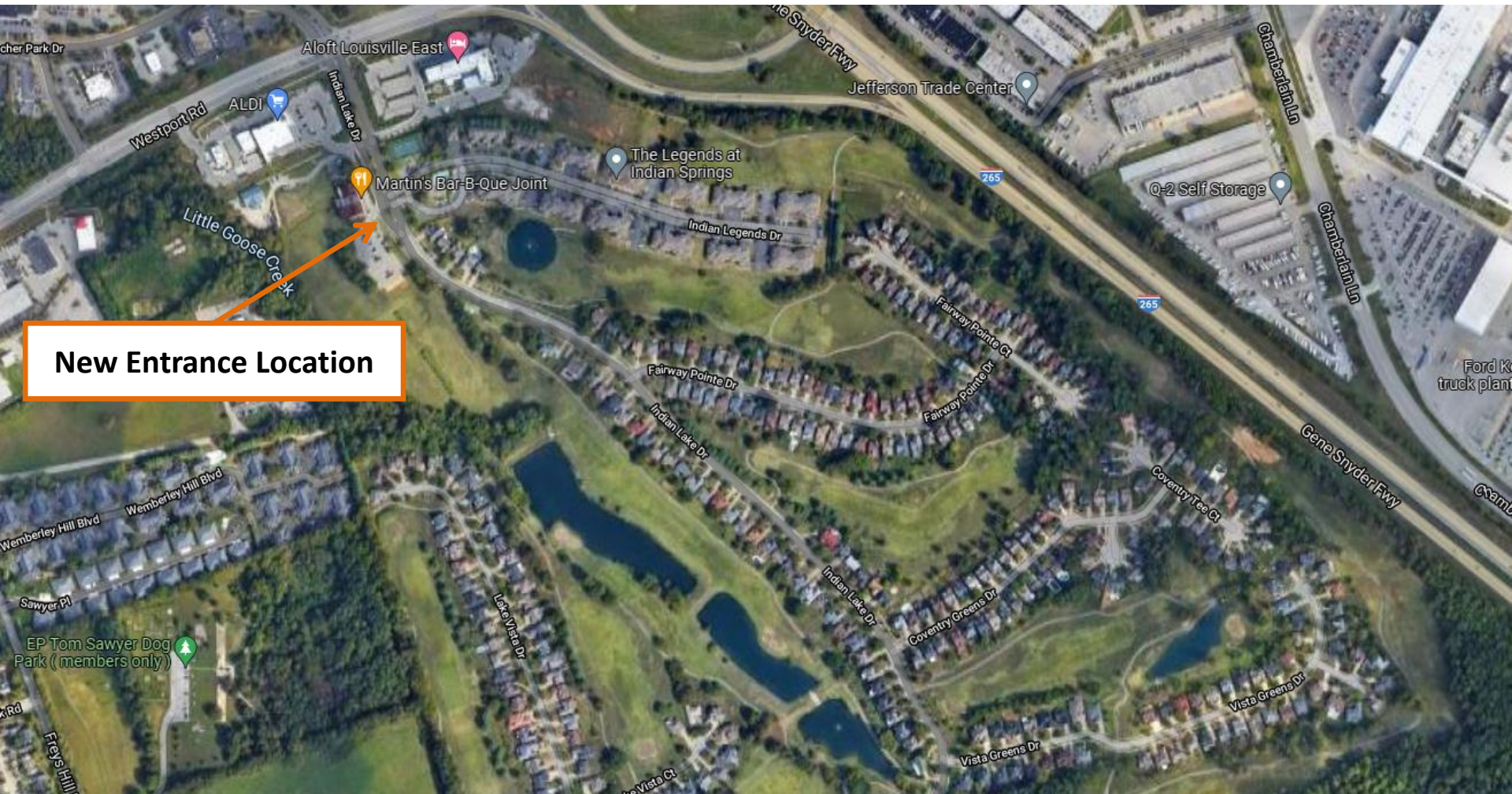
- The ISCA sent the Hotel Developer legal notice that his intention to rezone conflicts with the Land Purchase and Sale Contract from 2014
- Subsequently members of the ISCA board have held two meetings with the Hotel Developer, participated in multiple phone conversations and exchanged many emails
 - At the first meeting the Hotel Developer stated
 - 1) He would like to reach an agreed-upon settlement
 - 2) If the agreed-upon settlement did not include the community supporting the Jagers he would proceed with the C-1 zoning process without the ISCA's support
 - 3) He would vigorously defend against any legal action the community brings to halt the rezoning process
- With those parameters in mind, the Board began discussing potential settlement terms

Terms of Potential Settlement

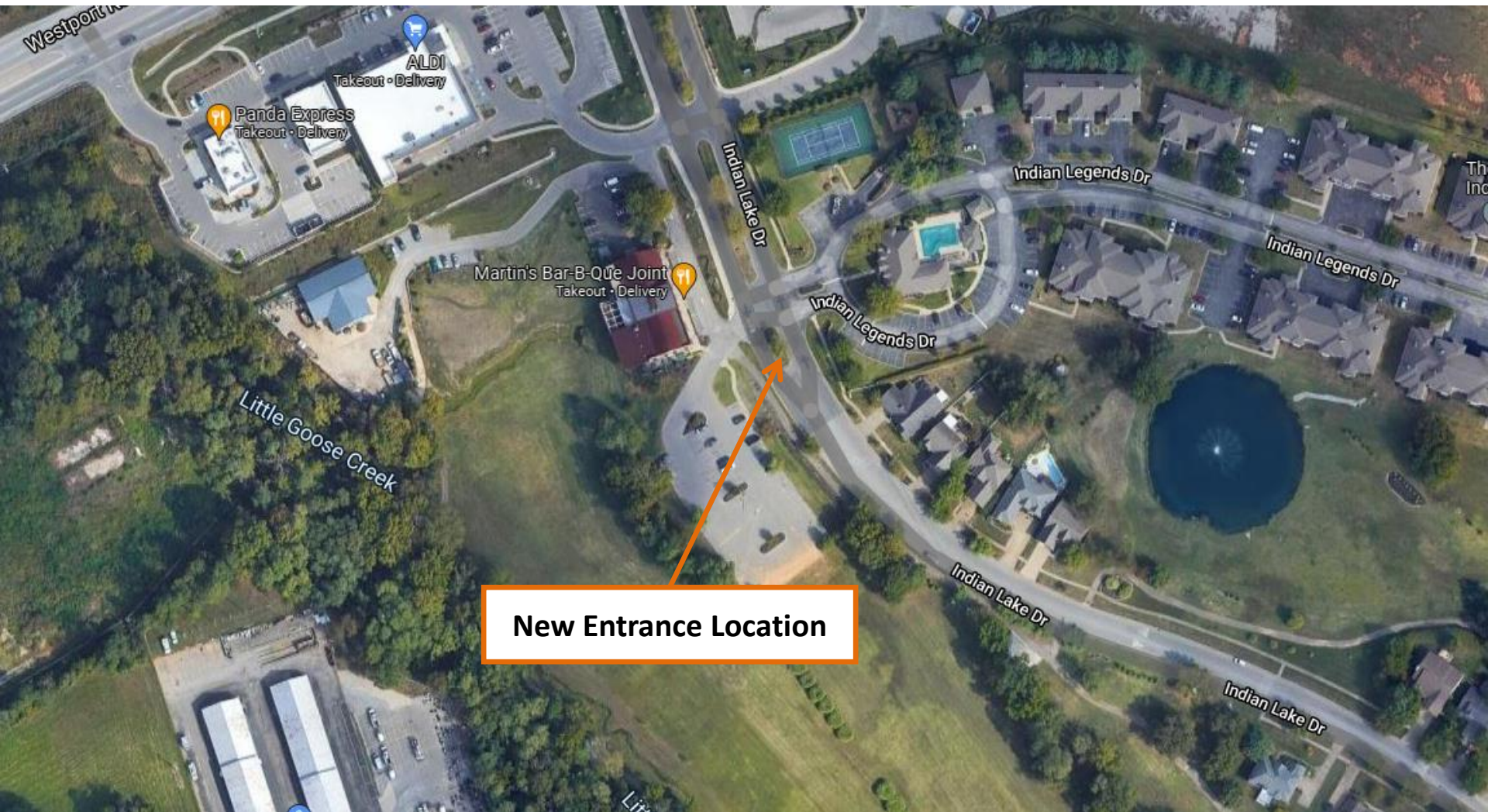
- Below terms represent the items that Hotel Developer has agreed to if the ISCA allows him to proceed with, and supports the C-1 zoning for the Jagers
- If this is the path that the Board ultimately determines to be our best option, there is still significant work to be done to negotiate the details/final legal agreements related to the settlement terms
- **Settlement Items**
 - Jagers to pay annual dues of \$2,000 escalating at 5% every 5 years
 - Future use of the Jagers plot zoned as C-1 restricted in favor of the ISCA**
 - Provide for appropriate striping of Indian Lake Drive front entrance lanes as recommended by Hotel Developer's traffic study
 - Completion of a new "signature" entrance to the south of the entrance to Martin's and the Legends Apartments

***This portion of the agreement will be the most difficult to document. The ISCA has asked for a blanket approval right for future uses, which is unacceptable to the Hotel Developer, so we are working with outside counsel to define acceptable future uses/restaurants*

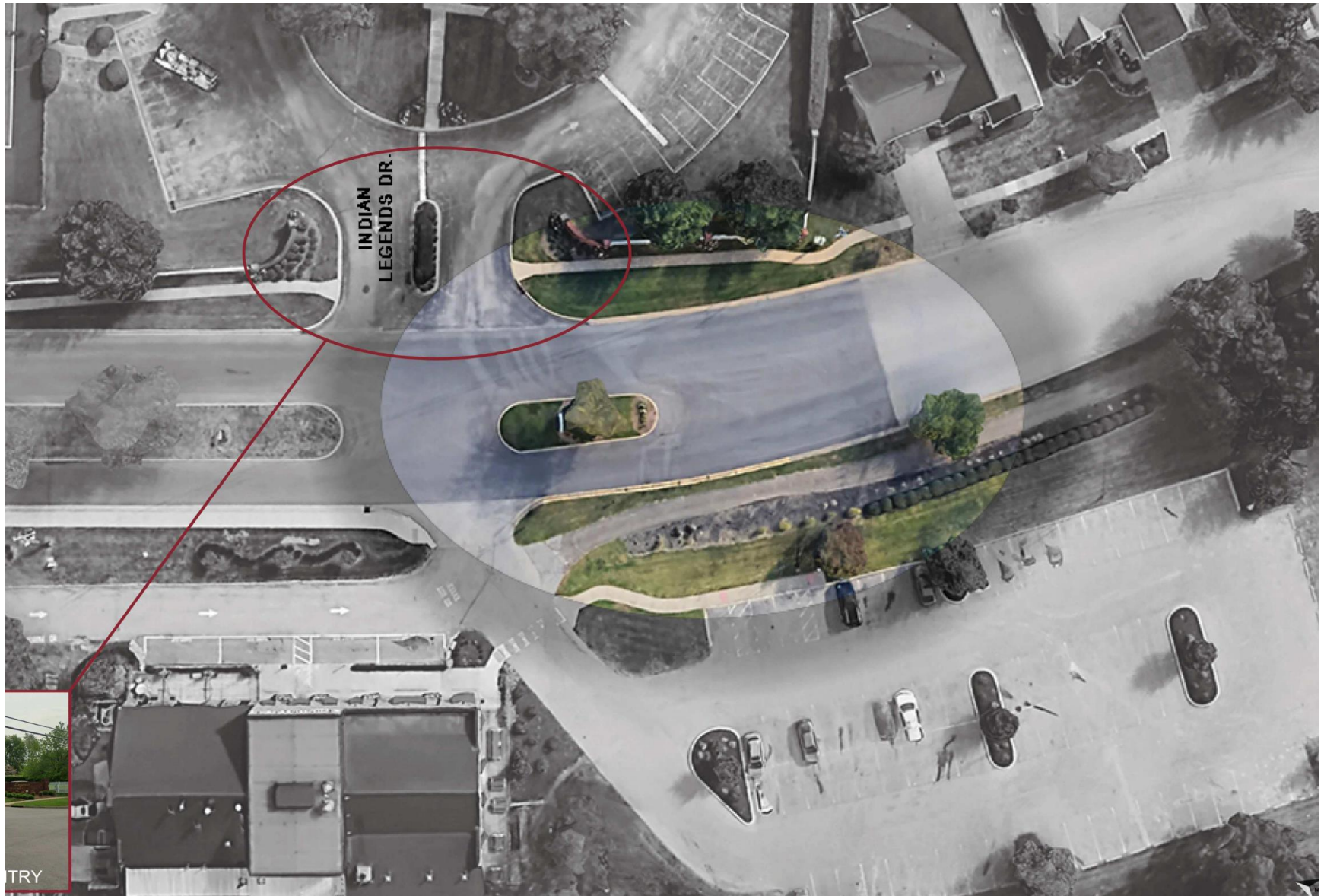
New Entrance Details



New Entrance Details (con't)



New Entrance Details (con't)



Current Entrance



New Entrance Details (con't)



New Entrance Details (con't)



New Entrance

Questions for EOP Architects?

Further Notes on the New Entrance

- Hotel Developer has committed to:
 - Install irrigation as needed
 - Install appropriate lighting
- *As stated earlier, details of the agreement with the Hotel Developer are still to be completely negotiated in a contract*

What concerns this helps to address:

- Helps to maintain home value by clearly separating the “residential” portion of our neighborhood from the “commercial” area
- Entrance will provide some visible cues to reduce through traffic

What concerns this does not address:

- Increased traffic related to Jagers
- The original desires as negotiated in our contract to not open a fast food restaurant with a drive through
- Hours of operation (Like Martin’s BBQ- closing by 9pm)

Transition

The Alternate Path: Litigation

- Assuming doing nothing is not an option...
 - *(That's a joke!)*
- The community has the option of attempting to stop the development of the Jagers
- This path would include the ISCA suing to enforce the 2014 land sale contract



2014 Land Sale Contract

- Restriction on the land sold by the Golf Course and the first portion of the property sold by the ISCA. Section 7(d)(v)

(v) Notwithstanding anything to the contrary, the exclusive use of the Adjacent Hotel Property and the Property shall be for a hotel substantially similar in quality, style, and design as that set forth on the photographs attached hereto as Exhibit E, such definition of same not to be unreasonably objected to by Seller, and related conference center, restaurant, (which shall not include any restaurant or food facility with a drive through or any “fast food” restaurant), and/or related parking or an elderly housing/assisted living facility which **Binding Element** restriction shall run with the land and be binding on the successors and assigns of the Buyer.

- Restriction on the second portion of land sold by the ISCA. Section 7(d)(vi)

(vi) Notwithstanding anything to the contrary, the exclusive use of the Option Property shall be for a hotel substantially similar in quality, style, and design as that set forth on the photographs attached hereto as Exhibit E, such definition of same not to be unreasonably objected to by Seller, and related conference center, restaurant, (which shall not include any restaurant or food facility with a drive through or any “fast food” restaurant), and/or related parking or an elderly housing/assisted living facility to be evidenced by **a deed restriction** which shall run with the land and be binding on the successors and assigns of the Buyer.

2014 Land Sale Contract

- Survivability of the Restriction Clauses. Section 9(g)

(g) **Survival after Closing.** Notwithstanding anything herein to the contrary, all covenants, conditions and representations contained in this Contract shall survive the date of Closing for a period of 180 days except for the Post-Closing and Option to Purchase Agreement, Indemnity and Hold Harmless Agreement and the loan documents entered into under Section 8(c) and the terms and conditions contained in **Section 7(d) herein**, each of which shall survive indefinitely

- Prevailing Party Language. Section 9(b)

(b) **Attorney Fees.** Each party shall bear its own attorney fees and other fees and expenses in connection with this transaction not specifically addressed herein. However, the prevailing party in any action commenced due to the breach of this Contract shall be entitled to recover its costs, expenses and attorney fees incurred in the enforcement of this Contract.

2014 Land Sale Contract

- We are continuing to explore our options and solicit legal advice related to the lawsuit approach
- We are hesitant to shop around for a lawyer knowing that eventually we'll find an attorney who is willing to work for a fee
- What we have learned
 - The contract appears "valid"
 - Despite validity of the contract, we should not expect to receive a summary judgement (e.g., ruling in our favor without a trial)
 - Reaching summary judgement alone could cost \$50,000 (\$130/house)
 - If we end up in court, the costs could increase exponentially
 - Not clear cost, but would expect assessments in excess of \$250/house (~\$100,000+ total)

Winning a lawsuit is NOT certain. Recall prevailing party language-- to add insult to injury, a loss could also include another assessment to compensate the Hotel Developer for his legal costs

Summary of the Litigation Route

Risks of Loss:

- No restrictions on the future use of the land under C-1
- Soured relationship with Hotel Developer
 - Still owns the 2.4 acres we sold them – 1.4 acres are deed-restricted
- Forgone opportunity to secure a negotiated settlement with enhancements to the community
- Spending thousands – including multiple anticipated special assessments to fund the legal expenses
- A lawsuit has no certain outcome, and in a loss we would also pay the Hotel Developer's legal expenses

Potential Upside

- Blocks the rezoning and the Jaggers
- Sets the legal precedent that the Hotel Developer must abide by 2014 contract

Can we win but lose?

- Unclear how the Planning and Zoning commission and the contact would interpret a restaurant that fits OTF zoning (e.g., attached to the hotel), but is fast food and has a drive through
 - The Hotel Developer subverts the intent of our contract
- A tainted relationship with the Hotel Developer could sour future interactions

Options Summary

Settlement Certainty	Lawsuit
Jaggers Restaurant	Multiple Special Assessments to fund
Annual Dues Paid to HOA	Potential blocking of Jaggers
New Signature Entrance	Soured relationship with Hotel Developer

Discussion and Questions