

CASTLE PINES

Club is “distracted” by trademark fight before PGA tournament, VP says

By Justin Wingerter
BusinessDen

As it prepares to host a PGA tournament in two weeks, Castle Pines Golf Club is asking a judge to stop an under-construction cocktail lounge from calling itself Bar Hummingbird.

“At a time when we should be focused on the tournament that will raise millions for the tournament’s charity and the local economy, we are instead distracted by this case,” Mike MacAdams, vice president of the exclusive country club, said in a statement.

The club’s request for a federal injunction, filed on Friday, is the latest maneuver in a dispute that has played out since April between Castle Pines, and Mark and Jo Brinkerhoff. The latter have spent \$7.5 million constructing a 9,000-square-foot cocktail lounge and event space, and a 2,600-square-foot steakhouse in the Promenade at Castle Rock shopping center.

The restaurant will be named The Brinkerhoff, an homage to Mark’s family and its 40-year legacy of popular restaurants in the Denver area, including La Loma. The lounge will be called Bar Hummingbird at the Brinkerhoff — unless Castle Pines gets its way.

Hummingbird logos are everywhere at Castle Pines. They’re at the entrance gate, on the wine glasses, on the decanters, on the water bottles, in the ice cubes and on the golf pencils. The hamburger buns there are branded with a silhouette of two hummingbirds in flight.

For that reason, Castle Pines believes people — including an estimated 120,000 spectators at the BMW Championship on Aug. 20 to 25 — will be confused into thinking that Bar Hummingbird is affiliated with Castle Pines, the club told Judge Kato Crews in a motion last week.

“The point is not necessarily that the quality will be inferior; rather, the issue is that the qual-

ity will be different,” Castle Pines claimed, “and Castle Pines has no control over it.”

After receiving cease-and-desist letters from the club, the Brinkerhoffs sued Castle Pines on July 15 in a proactive attempt to resolve their dispute before Bar Hummingbird opens. The Brinkerhoffs are adamant that their logo is unlike the club’s, that their businesses will appeal to a vastly different customer base (the general public rather than private members), and that the club’s hummingbird trademark pertains only to golf products, not a bar.

“Our family was instrumental in the founding of Castle Pines Golf Club, we have the deepest respect and admiration for the club and its members, and would do nothing to diminish or infringe upon the club or its legacy,” the couple said in a statement July 18.

Those connections to the club — Mark Brinkerhoff’s grandfather and great uncle were early members, he lives in one of its Hummingbird Cottages on Hummingbird Drive, he has played seven rounds of golf there since 2022 — lead Castle Pines to believe he chose the name Bar Hummingbird to intentionally infringe on the club’s hummingbird trademarks.

“It simply strains credulity to believe that Mr. Brinkerhoff did not intend to derive benefit from Castle Pines’ reputation for superior hospitality,” the club said in Friday’s motion.

The Brinkerhoffs, who declined an offer to discuss the injunction request Monday, say that Bar Hummingbird’s name is derived from Jo’s Mexican heritage and Castle Rock’s location within hummingbird flight paths. They plan to hang hummingbird feeders outside.

“Could we have just changed our name? Yes. But that would have had ramifications too,” Jo Brinkerhoff told BusinessDen last month, referring to marketing costs.

TWIN LAKES

Pond to remain dry — for now

State water officials find ditch that fed Barn Pond is illegal

By Elise Schmelzer
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A beloved and scenic pond in a popular Colorado mountain town will remain dry after state water officials found that the channel feeding it is an illegal, human-made ditch with no water rights.

The pond on the outskirts of Twin Lakes became the center of a contentious fight between some town residents and a luxury real estate developer hoping to build a complex of mansions east of the tiny town in central Colorado. Photos of the pond, known locally as the “Barn Pond,” adorned postcards and tourism websites. When filled, the pond reflected an old barn and the snowcapped peaks of the Sawatch Range.

Some town residents were outraged when the pond went dry earlier this year after construction by the developer.

The development company, AngelView at Twin Lakes, this spring deepened the streambed where the two channels split, sending all the water to the channel that flows southeast and drying the channel flowing southwest to the pond. The developer, Alan Elias, said the deepening was necessary to comply with a legal obligation to measure water flow farther downstream.

Elias, his water engineer and water lawyer said the company had no obligation to send water down the channel to the Barn Pond because that channel was an illegal ditch.

The Colorado Division of Water Resources’ engineers agreed. The state’s top water allocation officials on Monday issued a memo finding the channel and pond were human-made and that there is no obligation to send water down the stream to the pond.

The basin surrounding Twin Lakes is over-appropriated, which means that every drop of water belongs to a water rights holder. The opportunity to divert



Barn Pond is drying up after a developer in the area diverted the stream feeding the pond near Twin Lakes on July 1.

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water without a water right occurs only when there is a surplus of water, which happens in the basin on average less than once every 30 years, according to the memo.

State water officials investigated issues along Bartlett Gulch between July 9 and 11, including the issues surrounding the water supply to Barn Pond.

Rachel Zancanella, division engineer, determined the channel that brought the water to the Barn Pond was a human-made ditch because of how it flowed across the landscape and its shape. Natural streams flow downhill along the path of least existence, but the channel to the Barn Pond in some sections flows across slopes instead of down them, the engineers found. The channel bed is also U-shaped, indicating it was created by a tool — not nature.

State officials also inspected an 1891 map of the town, which showed a water channel labeled “Water Supply Ditch” that generally follows the path of the channel that fed the Barn Pond, the memo states. Investigators found evidence that the pond was made by creating a dam of tires and scrap metal between 1990 and 1995. Beavers then built on top of and around the artificial dam.

Because the ditch does not have any water rights, the water flowing down Bartlett Gulch must remain in the natural channel until and unless a water right is obtained for the ditch and a plan is created to make up for water lost to evaporation, Zancanella wrote.

That’s exactly what Twin Lakes residents hope to do, said Rick Akin, one of the people pushing for the restoration of the pond. The stream that fed the Barn Pond ran along Akin’s property before it dried.

He and others filed paperwork to create a nonprofit to manage the pond’s water supply and bought a headgate to control flow down the creek, should flow be allowed to return.

By the end of the year, residents hope to lease water to cover the evaporative losses from the pond and, in the coming years, hope to obtain a permanent water right for the creek and the pond. The nonprofit will fundraise to pay for the leased water, which should cost about \$4,000 a year, Akin said.

Akin and other residents hope the state engineer’s office will work with them to allow water to the pond before a water right is obtained, since water rights can take years to wind through court.

“The question is do we have to go this process with the pond dry, or with water in the pond,” he said.

While Elias, the developer, previously talked of wanting to help restore the pond, he rolled back the commitment Thursday. He didn’t know until reading Zancanella’s memo that the pond was human-made in the 1990s.

“Even though we’ve already spent more than a year and considerable efforts in identifying ways to save Barn Pond, we cannot commit to undertaking any restoration efforts on land that we don’t own,” he said.

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