



Valley County Planning & Zoning Commission

PO Box 1350
219 North Main Street
Cascade, ID 83611-1350

Phone: 208-382-7115
Fax: 208-382-7119
Email: cherrick@co.valley.id.us
Website: www.co.valley.id.us

Ed Allen, Chairman
Rob Garrison, Vice-Chairman

Tom Olson, Jr, Commissioner
Kathy Deinhardt Hill, Commissioner
Ronda Sandmeyer, Commissioner

VALLEY COUNTY PLANNING AND ZONING MEETING MINUTES

DATE: July 18, 2011

TIME: 6:00 p.m. – 7:22 p.m.

LOCATION: Valley County Courthouse

ATTENDANCE: Commissioners present: Ed Allen, Chairman and Commissioners Rob Garrison, Tom Olson, Jr. and Ronda Sandmeyer. Staff member present: Cynda Herrick, AICP, CFM, Planning and Zoning Administrator. Kathy Deinhardt Hill was excused.

OPEN: Call to Order

OTHER ITEMS:

→ **Appeal of Administrative Decision that a conditional use permit is not needed to remove chairlifts at Tamarack Resort [Not A Public Hearing].**

Chairman Allen announced the item. He stated the item had been tabled from July 14, 2011. Commissioner Garrison moved to remove the item from the table. Commissioner Olson seconded the motion. Motion carried.

Chairman Allen laid out some protocol.

Staff presented some working papers from which to start the deliberation and come to a decision (see attachment 1). Staff stated it is important to state the findings and reasons for any decision. Staff also stated that there were six questions that should be answered. Staff also developed some proposed conditions of approval, depending on how the other decisions are answered.

Commissioner Garrison made the following comments:

- Have never issued a conditional use permit (CUP) to someone that did not own the land – neither the appellant nor the applicant own the land.
- This is a construction process under umbrella of original conditional use permit – this is authorized construction project – therefore, it needs to conform to all previously set conditions (state, federal, local).
- Need to comply with requirements of homeowner’s association as it pertains to construction processes.

- Requires a Demolition Permit.
- Our Land Use and Development Ordinance (LUDO) states we should look out for property and a decrease in their property value – anytime we make a decision it changes the value either up or down (like in a gravel pit). In this case, the court has taken that decision process out of our hands.
- Because bases will remain in place, they will have ability to establish new chairs and will only require a building permit to do so.
- This is still a ski resort, regardless of whether these two lifts are removed.
- Q1 – yes, Q2 -- yes, Q3 – no, Q4 – yes, Q5 – will visit at that time, Q6 – yes there is an appeal process – not specific for building permits but we could do a condition to allow a stop work order.

Commissioner Sandmeyer made the following comments:

- Ownership of property has been established by court.
- Courts decided ownership, not removal or how it is done – that is why we are here.
- Removing the lifts violates the LUDO.
- LUDO states purpose of ordinance is to provide a uniform regulatory process – the intent is to protect property rights and property values (LUDO page 3)
- Section 1.04 states shall apply to real property and fixtures attached thereto
- Section 3.02 allows conditional use permit without undue impact and consistent with the county comp plan.
- Examples: If you live in an airport community, and someone was going to come in and remove the lighting, does this decrease the value if FAA said they could no longer fly in and fly out – this Buttercup community is a ski in and ski out community which provided more value – the homeowners bought their homes with this ability. Home values here would plummet.
- If we give them a demo permit, it has no criteria – no one follows up. When we set the precedent, it will apply to every one of them. Attorneys in future will argue that they only need demo permit.
- Who is going to police compliance with the demo permit?
- This was built with a CUP thus the removal should require a CUP.
- What you do with Buttercup will set standards for the future.
- 1 – there was not an action only a letter of information – appeal process comes after P&Z decision
- 2 – no answer
- 3 -- yes
- 4 -- after issuance of a CUP
- 5 -- after issuance of a CUP
- 6 -- Everyone should have an appeal process.

Commissioner Olson made the following comments:

- Are only removing the tower and chairs – the bases will remain.
- Read through LUDO – cannot find reason for requiring a CUP.
- Would need to own property to apply for new CUP.
- Covered under tamaracks CUP.
- Will lower home values, but have opportunity to put in new lifts – may actually help sell of Tamarack without that value to pay for by new owner.

- Sold as ski-in ski-out was an amenity they bought into – not a permanent loss to resort.
- As long as they have one run they will comply with their CUP – if removed all lifts it would no longer be a ski resort.
- 1 – yes
- 2 – yes – process could have taken place
- 3 – no
- 4 – yes
- 5 – until the last one
- 6 – yes – if it is appealed a stop work can be issued
- A reasonable set of conditions needs to be developed to protect the homeowners, the bank, etc.

Chairman Allen made the following comments:

- Should be a building permit with conditions based upon support previously identified in LUDO.
- 1 -- yes
- 2 -- a letter in itself could be construed as information
- 3 – no, a cup is in place on the mountain
- 4 – yes
- 5 – would depend on the reason for removal – ie if zip lines are put in it would change the nature of the operation
- 6 – yes, but the permit could be issued with the potential for a stop work order – the LUDO does not specifically require the building permit be held.

Discussion ensued. Commissioner Sandmeyer argued that how can you change mid stream and require a CUP for removal of only the last lift. Commissioner Garrison said LUDO allows it because once last lift is gone it is no longer a ski resort. Chairman Allen said when a building permit is required they have to get zoning approval through Planning staff – it doesn't just fly by us. Commissioner Sandmeyer said if they have 5 lifts, now I am removing 3, are we making determination what is considered a ski community – are we saying 2 is sufficient to make a ski community. Chairman Allen said court made the determination that they could be removed – we are deciding how they are taken off – danger of CUP is the potential for denial. Commissioner Olson said as long as the bases are left, the conduit is there, it is still a viable option for someone to come in a put them back – most engineering is 20% of project – that has been done on these lifts, infrastructure is in (power, pad, etc.) it is still very viable – may be seven runs again someday. Commissioner Garrison said have to deal with what is, not what if – this is a construction process and we can put mitigation requirements on the building permit/demo permits – building department will be making sure what we require is done, like IDL and EPA will their permits. Commissioner Sandmeyer said that Anne in Building Department said there was no criteria for a demo permit. Commissioner Sandmeyer said we have to be careful what we allow before use is changed. Commissioner Garrison said we are not there yet – sets precedent for a demo permit to have conditions from P&Z Commission.

Staff read Section 3.03.03.b of the LUDO.

Commissioner Garrison moved that this action does not require a conditional use permit but does require a building/demo permit with conditions of approval. Commissioner Olson seconded the motion. Motion carried. All ayes, Sandmeyer – nay.

The Commission reviewed the proposed conditions of approval:

1. Must comply with all previous mitigation measures as approved in the original Planned Unit Development.
2. Must comply with U.S. Army Corps of Engineer requirements as it pertains to wetlands. All previously issued permits must not be violated.
3. Should comply with requirements in manner similar to other construction permit applications within the Tamarack Resort, LLC, in order to coordinate activities.
4. Need to provide an operating plan to Tamarack Municipal Association, as follows: the map and more detailed descriptions that shows or describe in greater detail the staging areas, access routes to and from the lift towers, and transportation routes to and from the staging areas. This is most critical for the Buttercup lift as vehicular or pedestrian access points that do not cross private property or wetlands are essentially non-existent. If they need to cross private Lots then written permission should be received from the affected Lot Owners.
5. Must observe all laws as it pertains to access and trespass.
6. Flight patterns should be approved by the FAA and should not be allowed to fly over Tamarack Fee-simple private property or over active recreational activity areas (Zip lines, Mt. Bike trails etc.) unless at a previously designated time and properly noticed to recreation users and homeowners.
7. Should not stage activities on Tamarack Fee-simple private property.
8. If an appeal is received within ten days of the Planning and Zoning Commission decision, a Stop Work Order shall be placed on the building permit.
9. Any further removal of any amenity at Tamarack Resort may or may not require a conditional use permit – this does not set precedent since these removals were court ordered.
10. Must comply with all state and federal agency requirements.
11. Must carry enough insurance to cover any damages. Liability insurance in amounts equal to Idaho Department of Lands requirements shall also protect private properties.

Commissioner Sandmeyer moved to apply the conditions of approval stated to the demolition permit. Commissioner Garrison seconded the motion. Motion carried.

ADJOURN at 7:22 p.m.

Attachment 1
Rough Draft Presented to P&Z Commission on July 18, 2011
WORKING PAPERS

PROPOSED FINDINGS:

Kurt Houston , Idaho Department of Lands, by phone on July 18, 2011:

- Authorizing removal on State Endowment Lands.
- Clauses requiring compliance with other state and federal laws.
- Shall follow operations plan submitted with permit – any deviation shall require operations to cease until changes specifically approved by IDL.
- No adverse impact on resources and activities exceeded what was needed for protection of State Endowment Lands.
- Roads have been built to specifications to reduce impacts – use during dry conditions would protect water quality.
- Eagle nests not within 500 meters. No special considerations for Osprey or Red-tail Hawks.
- Flight patterns within runs themselves.
- FAA has requirements on suspended loads – pilots license is at risk if violate FAA rules.
- Requiring insurance as part of their permit.

LUDO Section 3.04.12.a Appeals of Administrative Decisions, which states, “Any action of the Administrator on a specific administrative level application **or** on the general interpretation of the Zoning Ordinance may be appealed.

Ordinance No. 11-02, Section 12 states: No building permit shall be issued or authorized unless the work or project is in compliance with zoning and/or site development ordinances of the County, provided such zoning and/or site development is not in conflict with the codes herein enumerated.

LUDO Section 2.01 General states, “If land use is proposed which is not provided for within Table 1-A, its status as a permitted or conditional use shall be determined by the Planning & Zoning Commission...”

LUDO Section 3.03.03.b Buildings – General states, “.....The Building Department will assist the zoning department by imposing pertinent conditions of approval on the building permit.” Tamarack Resort is an approved conditional use under chapter 3 and 8 of the Valley County Land Use and Development Ordinance.

Supreme Court Decision (Chisholm v. Twin Falls County) was based upon a building permit being issued for a permitted use in compliance with their zoning code without first having a public hearing for a conditional use permit. Tamarack Resort is a conditional use, thus conditions can be placed on any Building Permit associated with construction within the resort site.

LUDO Section 3.03.04(b)1 states, “Any decision of the Commission may be appealed to the Board by the applicant, any aggrieved person or the Administrator. The appeal shall be filed

with the Administrator before 5:00 p.m. of the tenth (10th) calendar day after the determination of the Commission has been made.” LUDO Section 3.04.08.b.4 states, “Conditional Use Permits will not be issued until ten (10) days after the hearing and, in the event an appeal to the Board is filed within the ten (10) days limitation, the permit will not be issued until after a decision by the Board.” Our policy has always been to not issue the permit until after the appeal period. Issuance of the Building Permit would allow work to begin...if there is an appeal of the Commission’s decision, the work could be completed before a hearing can even be set and noticed for a public hearing with the Board. The Commission would need to decide if the permit would be issued prior to the ten days or if a condition of the building permit would be that a Stop Work Order would be issued if an appeal was received and if this would suffice in allowing an appeal to go through the process prior to completion of the work.

DECISION:

Question 1 – Has the appeal process specified in the Valley County Land Use and Development Ordinance been properly implemented?

Question 2 – Could the appeal process have been done after staff’s letter stating a conditional use permit was not required and prior to signing the Building Permit?

Question 3 – Is a Conditional Use Permit required?

Question 4 – Is a Building Permit required for the removal of the chair lifts?

Question 5 – If further lifts are removed do they only need a Building Permit for removal?

Question 6 – Is there a ten day appeal for a yes response to either Question 3 or Question 4? Can any permits be issued within that time?

PROPOSED CONDITIONS OF APPROVAL IF QUESTION 3 IS NO AND QUESTION 4 IS YES:

12. Must comply with all previous mitigation measures as approved in the original Planned Unit Development.
13. Must comply with U.S. Army Corps of Engineer requirements as it pertains to wetlands. All previously issued permits must not be violated.
14. Should comply with requirements of all other construction permit applications with the Tamarack Resort, LLC, homeowner’s associations, and/or Tamarack Municipal Association.
15. Need to provide to Tamarack Municipal Association the map and more detailed descriptions that shows or describe in greater detail the staging areas, access routes to and from the lift towers, and transportation routes to and from the staging areas. This is most critical for the Buttercup lift as vehicular or pedestrian access points that do not cross private property or wetlands are essentially non-existent. If they need to cross private

Lots then written permission should be received from the affected Lot Owners.

16. Must observe all laws as it pertains to access and trespass.
17. Flight patterns should be approved by the FAA and should not be allowed to fly over Tamarack Fee-simple private property or over active recreational activity areas (Zip lines, Mt. Bike trails etc.) unless at a previously designated time and properly noticed to recreation users and homeowners.
18. Should not stage on Tamarack Fee-simple private property.
19. If an appeal is received within ten days of the Planning and Zoning Commission decision, a Stop Work Order shall be placed on the building permit.
20. Any further removal of any amenity at Tamarack Resort may require a conditional use permit – this does not set precedent since these removals were court ordered.