



# Valley County Planning & Zoning Commission

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Bryan Cooley, Chairman  
Scott Freeman, Vice-Chair

Ed Allen, Commissioner  
Ray Cooper, Commissioner  
Johanna Defoort, Commissioner

## MINUTES

Valley County Planning and Zoning Commission  
**September 13, 2018**  
Valley County Court House - Cascade, Idaho  
**PUBLIC HEARING - 6:00 p.m.**

**A. OPEN:** Meeting called to order at 6:00 p.m.

P&Z Administrator – Cynda Herrick:	Present
P&Z Commissioner – Ed Allen:	Present
P&Z Commissioner – Bryan Cooley:	Present
P&Z Commissioner – Ray Cooper:	Present
P&Z Commissioner – Johanna Defoort :	Present
P&Z Commissioner – Scott Freeman:	Present
P&Z Assistant – Lori Hunter:	Present

**B. MINUTES:** Commissioner Allen moved to approve the minutes of August 9, 2018. Commissioner Cooper seconded the motion. Motion carried unanimously.

**C. OLD BUSINESS:**

- V-1-18 TerTelgte Setback Variance:** Coleen TerTelgete is requesting a variance to relax the side yard setback from the required 7.5 feet to zero feet for a previously constructed storage shed that she is unable to move. The site is Yellow Pine Townsite, Lot 8, Block D and is addressed at 355 Behne Ave. The 0.14-acre lot is located in SW ¼ Section 21, T.19N, R.8E, Boise Meridian, Valley County, Idaho. [Postponed from August 9, 2018.]

Chairman Cooley introduced the item. Chairman Cooley asked if there was any *exparte* contact or conflict of interest. There was none.

Chairman Cooley asked for the Staff Report. Staff presented the staff report.

Commissioner Allen asked for clarification of the portion of the ordinance dealing with variance. Administrator Herrick read from the ordinance and clarified requirements. This shed did not receive a building permit. Building has been present for a few years; no one

has complained. The violation was observed by the Building Inspector during an inspection of another site.

Chairman Cooley asked for the applicant's presentation.

Coleen TerTelgete said the building is on concrete piers. The snow falls off the building and does not impact the fence. The shed is used for personal use only. Molly, the owner of the adjacent property, stated she does not plan to sell the property nor does she care about the location of the shed. An easement would be possible. The shed was built in 2017; fence already was in existence. She requests a waiver to the setbacks due to health issues and financial difficulties.

Chairman Cooley asked for proponents. There were none.

Chairman Cooley asked for undecided. There were none.

Chairman Cooley asked for opponents. There were none.

Chairman Cooley closed the public hearing.

The Commission deliberated. They discussed previous reasons for granting variances and possible solutions to this particular issue. Commissioner Allen stated that the adjacent neighbor is favorable; perhaps there could be a condition of approval until either property changes ownership. Commissioner Defoort agreed. Written acceptance by adjacent owner would be preferred. Other options are to move structure or change lot line. A building permit should be applied for if required. There were concerns of how future owners would be aware of this condition and what could be recorded to make future owners aware of the violation. This request does not meet the requirement of variance in the ordinance. Administrator Herrick recommends tabling the discussion for time to seek legal counsel.

Commissioner Freeman moved to table to October 18, 2018, to give Administrator Herrick time to seek legal counsel. Commissioner Defoort seconded the motion. Motion carried unanimously.

Chairman Cooley explained the ten day appeal period.

#### **D. NEW BUSINESS:**

[06:20:46 PM \(00:20:16\)](#)

- 1. VAC 18-03 Cotner Drainage Easement Vacation:** David and Connie Cotner are requesting a vacation of the 6-foot wide drainage easement that is centered on the lot line between Lots 3 and 4, Block 4, in Westwoods Subdivision No. 2. They own both lots and wish to build over the original lot line as platted. Access is via Westwood Drive and is in the NESW Section 18, T.16N R.3E, Boise Meridian, Valley County, Idaho.

Chairman Cooley introduced the item. Chairman Cooley asked if there was any *ex parte* contact or conflict of interest. There was none.

Chairman Cooley asked for the Staff Report. Staff presented the staff report. Staff did visit the

site; it is not a natural drainage area. This drainage easement exists on all lots in the subdivision. Approval of a vacation would allow the applicants to combine the two lots and build over the lot line.

Chairman Cooley asked for the applicant's presentation.

David Cotner, 10687 W Dason Court, Boise, wants to build over the lot line. He spoke to Wendell Platt [subdivision developer] who told him the drainage easement locations were arbitrary.

Chairman Cooley asked for proponents. There were none.

Chairman Cooley asked for undecided. There were none.

Chairman Cooley asked for opponents. There were none.

Chairman Cooley closed the public hearing.

The Commission deliberated. This vacation would allow them to combine lots. Most subdivisions don't have a similar easement along lot lines.

Commissioner Allen moved to recommend approval of VAC 18-03 Cotner Drainage Easement Vacation with the stated conditions to the Valley County Board of Commissioners.

Commissioner Cooper seconded the motion. Motion carried unanimously.

Chairman Cooley explained the ten day appeal period.

[06:27:18 PM \(00:26:47\)](#)

**2. P.U.D. 04-01 Meadows at West Mountain, Phases 4-6 – Extension Request:** Larry Mangum, representing Timberline Investment LLC, is requesting a two-year extension of the conditional use permit for phases 4-6. Phases 1, 2, and 3 have been platted and recorded. Phase 4 is 39 single-family home lots on 19 acres; phase 5 is 39 single-family home lots and 7 townhome lots on 21.8 acres; and phase 6 is 20 single-family home lots on 9.2 acres and 11.2 acres of commercial area. The site is located in the W ½ NE ¼ Section 17, T.16N, R.3E, Boise Meridian, Valley County, Idaho.

Chairman Cooley introduced the item. Chairman Cooley asked if there was any *ex parte* contact or conflict of interest. There was none.

Chairman Cooley asked for the Staff Report. Staff presented the staff report and summarized the following exhibits:

- **Exhibit 1** – email response from Trent Gerber, September 10, 2018, who is opposed to the extension. His concerns include high water table consistently causing flooding to existing houses, control of the HOA, and expansion is not required by growth projections.
- **Exhibit 2** – email response from Christian Tuttle, September 13, 2018, a neighbor to the south, who is concerned that the planned development no longer is the best idea for the community.

Administrator Herrick asked the Commissioners to consider if this P.U.D. currently fits the standards in our ordinance. This P.U.D. was approved with a conditional use permit; therefore, Commissioners are not obligated to approve the extension. Commissioner Allen said that the water issue is a red flag. Administrator Herrick asked the Commissioners to determine if the original vision stands or is a new permit needed with different conditions of approval.

Chairman Cooley asked for the applicant's presentation. No one is present to represent the applicant.

The conditional use expires this month; tabling it to October would extend the C.U.P. and allow the applicant to be available.

Commissioner Defoort asked about the phasing plan, previous lawsuit and extensions mentioned in the 2016 P&Z meeting minutes. Administrator Herrick responded that the developer sued the county to get his road development agreement credits back; she believes he did not prevail.

Chairman Cooley asked for proponents. There were none.

Chairman Cooley asked for undecided.

Linda Norell, 21 Mangum Circle #5, confirmed that she would be able to send a letter for the October meeting. She is concerned about impact on school district and traffic.

Chairman Cooley asked for opponents. There were none.

Commissioner Allen moved to table P.U.D. 04-01 Meadows at West Mountain, Phases 4-6 until the meeting on October 18, 2018, and extend the C.U.P. expiration date until October 18, 2018. Commissioner Defoort seconded the motion. Motion carried unanimously.

Chairman Cooley explained the ten day appeal period.

**3. C.U.P. 17-11 Highmark Subdivision Amended – Preliminary & Final Plat:** Highmark Properties LLC is requesting approval of an amendment for the previously approved three-lot residential subdivision on 20 acres in order to eliminate the private road and allow a shared driveway. One residence currently exists and is addressed at 13801 Raptor Loop. Lot sizes vary from 5.9 to 7.8 acres and will have individual wells and septic systems. Access to each lot will be from Raptor Loop, a public road. The site is located in the SWNW of Sec. 11, T.17N, R.3E, Boise Meridian, Valley County, Idaho

Chairman Cooley introduced the item. Chairman Cooley asked if there was any *ex parte* contact or conflict of interest. There was none.

Chairman Cooley asked for the Staff Report. Staff presented the staff report and summarized the following exhibits:

- **Exhibit 1** – Response from George Bowers, Valley County Surveyor, dated September 7,

2018. He recommends minor changes and corrections and finds the plat complies with State and County regulations.

All lots will have adequate frontage. There will be a shared driveway instead of a private road.

Chairman Cooley asked for the applicant's presentation.

Kristi Kesler, applicant, did not have anything to add.

Chairman Cooley asked for proponents. There were none.

Chairman Cooley asked for undecided. There were none.

Chairman Cooley asked for opponents. There were none.

Chairman Cooley closed the public hearing.

The Commission deliberated. Commissioner Allen said this seems to be a good resolution. A shared driveway maintenance agreement will need to be recorded.

The two additional conditions of approval as stated in the staff report are to be added to the conditions of approval.

COA: A shared driveway agreement should be required.

COA: There should be provisions for proper easements to all properties that will use this shared driveway, including the properties to the south.

Commissioner Defoort moved to approve the preliminary and final plat of C.U.P. 17-11 Highmark Subdivision Amended with the stated conditions of approval and authorize the Chairman to sign the plat. Commissioner Freeman seconded. Motion carried unanimously

Chairman Cooley explained the ten day appeal period.

[06:46:40 PM \(00:46:10\)](#)

**E. OTHER:**

• **Appeal of P&Z Administrator Decision for 658 Bings Road**

Administrator Herrick read the portion of the ordinance dealing with an appeal of administrator decision. Her decision on this case was described in the letter. This action began when a neighbor complained about boundary lines, camping, and septic issues. She sent the Bound's a letter. They responded with letters and testimony. Administrator Herrick did a site visit. She read her letter stating that a conditional use permit was not required and that the use was a grandfathered, non-conforming use. RVs and tents are not required to meet setbacks. The neighbor who has complained is also in violation of setbacks but the site also appears to be grandfathered. Administrator Herrick sent the letter to the Bound's and to Roy McMurtry who made the original complaint. Mr. McMurtry appealed the decision within the required ten days. He disagrees with the decision that the porta-potty is grandfathered use and stated that

the shed is being used as sleeping quarters. The P&Z Commissioner packets included letters, pictures, and copies of deeds back to 1958. The porta-potty issue is a Central District Health Department (CDHD) issue; CDHD states that porta-potties are allowed. In response to the letter the Bound's received from CDHD, they will remove the handmade porta-potty and will obtain a rental. The original complaint concerned general congestion, too many tents, and no building permits. The Commissioners and Staff discussed lot coverage, pictures, setbacks, and the appearance of nearby lots. The use was there prior to the neighbor's purchase of adjoining lot. Commissioners need to determine if this is a grandfathered use; has it been a consistent use since 1962. Tents are allowed on property. If the use is grandfathered in, then the ordinance limit of one RV per lot is not enforceable. There was discussion of what constitutes a non-conforming use *aka* grandfathering. Nonconforming land use applies to the land, not the owner. The use is grandfathered regardless if the ownership changes. The first Valley County land use ordinance was adopted in 1982; therefore, land use predating 1982 is "grandfathered". The appearance of the lots in this area is improving; however, there are many RVs in the area. There was discussion on the lot sizes, road widths, and issues leading to the current problems located in the area west of Cascade Reservoir.

Commissioner Defoort moved to uphold the Administrator's decision for 658 Bings Road as a grandfathered use. Commissioner Cooper seconded. Motion carried unanimously

Chairman Cooley explained the ten day appeal period.

#### **F. CORRESPONDENCE:**

- **C.U.P. 18-06 Rocky Mountain Crane**

Administrator Herrick had a discussion with Dusty Bitton and other Rocky Mountain Crane personnel regarding the erected cranes. On September 11<sup>th</sup>, Mr. Bitton agreed that he can have erect cranes up to five (5) business days in a row, 4 to 5 days per year. This is the amount of time Mr. Bitton suggested he would need for crane maintenance and repair. Administrator Herrick said that if the Commissioners are not happy with this agreement, then he will need to amend his conditional use permit. The Commissioner discussed this issue and the difficulty in monitoring compliance. Chairman Cooley recalled that the applicant stated the cranes would be up for a short time due to cost to rise and lower than when being worked on; it appears that they are erected longer than the Commissioners expected. Commissioner Defoort agreed and added that specific parameters were not set; she listened to the meeting recording. There was discussion on how to determine how long cranes are erected and what is a reasonable time period. Administrator Herrick suggested a trial period of cranes erected a maximum of 25 days per year, not per unit. Commissioner Allen wants a review in one year. Commissioners agreed that it appeared that the erected cranes were being used for advertisement purposes. Administrator Herrick will write Mr. Bitton a letter stating the cranes cannot be used for advertising or for adornment. Flags cannot be flown from an erected crane. This will be reviewed in September 2019. It is a safety issue for drivers.

**G. FACTS AND CONCLUSIONS:**

- C.U.P. 18-11 Lakeport Storage II

Commissioner Allen moved to approve the facts and conclusions as presented and authorize chairman to sign. Commissioner Cooper seconded the motion. Motion carried unanimously.

Commissioner Allen asked about the nuisance ordinance. The current status is that it was tabled for prosecutor attorney review. It can be left on the table indefinitely.

Mr. Mangum did appear. He apologized for his lateness. He was informed that the P.U.D. 04-01 extension request was tabled until the meeting on October 18, 2018. He will be sent the exhibit letters.

Chairman Cooley adjourned the meeting at 7:31 p.m.