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### STAFF REPORT

Appeal of P&Z Commission Approval of  
Conditional Use Permit Application No. 21-03  
Tamarack Resort PUD - Aspen Ridge  
Preliminary Plat

**HEARING DATE:** April 26, 2021

**TO:** Board of County Commissioners

**STAFF:** Cynda Herrick, AICP, CFM

**APPELLANT:** Idaho Pacific Investments LLC  
c/o Angstman Johnson  
199 N Capitol BLVD, STE 200  
Boise, ID 83702

**APPLICANT/OWNER:** Angel Mendez  
Tamarack Real Estate Holdings LLC  
8211 West Broward BLVD, Suite 230  
Plantation, FL 33324

**REPRESENTATIVE:** Christopher Kirk  
Tamarack Resort Two LLC  
311 Village Drive, PMB 3161  
Tamarack, ID 83615

**SURVEYOR:** Dan Dunn  
25 Coyote Trail  
McCall, ID 83638

**LOCATION/SIZE:** 16 acres of Tamarack Resort Planned Unit Development Phase 1  
Village Block 19 located in the NE ¼ Section 5, T.15N, R.3E,  
Valley County, Idaho

**REQUEST:** Amend Tamarack Resort P.U.D. Phase 1 Village Block 19

**EXISTING LAND USE:** PUD 98-01 Tamarack Resort

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### BACKGROUND:

On March 11, 2021, the Planning and Zoning Commission approved a conditional use permit to amend and preliminarily plat a portion of Tamarack Resort Planned Unit Development Phase 1 Village, Block 19. The plat would include 18 single-family "Estate" lots, a new private road, a shared driveway, and open space lots.

The site was originally designated as depicted on attached exhibits and listed below:

- WT-1 Water Treatment in the Pre-development Phase,
- B-61 a Rope Challenge Course in Phase 2, and
- B-62 Horse Corrals in Phase 3.

The WT-1 water treatment facilities are no longer needed as they are now west of this site within the golf course boundaries. The rope challenge course and horse corrals plans are withdrawn; they have been replaced by the zip-line course and mountain biking prominence.

The lots will be accessed from Village Drive through the trees to the east of the golf maintenance building. The 18 lots would be a minimum of 0.40 acres in size, be buffered with open space, and integrated with the existing hiking and biking trail network.

Lots 14, 15, and 16 will be accessed from a shared driveway.

The site is served by Northlake Recreational Sewer and Water District and Tamarack Municipal Water System.

#### **FINDINGS:**

1. Planning & Zoning Commission approved C.U.P. 21-03 with conditions at a properly noticed public hearing on March 11, 2021.
2. **Appeal:** An appeal was received in a timely manner on March 22, 2021, with the appropriate fee. The appeal is attached. Issues being appealed are summarized as follows:
  - 1) Tamarack Resort Two should not be allowed to rely on the Idaho Pacific Investments LLC (IPI) property being open space to meet the 50% requirement of LUDO 9-9-7(I).
  - 2) The Commission should not have approved the C.U.P. because it conflicts with an existing easement of IPI and the easement was not included on the CUP application or preliminary plat as required by Valley County Code.

#### **STAFF RESPONSE TO APPEAL ISSUES:**

- **Issue 1:** Tamarack Resort Two should not be allowed to rely on the Idaho Pacific Investments LLC (IPI) property being open space to meet the 50% requirement of LUDO 9-9-7(I).

- **Staff's Response:**

The applicant has confirmed that there is still 50% open space within this development. Even if the golf course is removed there should continue to be dedicated open space, especially if you include the entire ski hill. The P&Z Commission found that Tamarack Resort continues to meet open space requirements.

Valley County Code 9-9-7-1 Common Open Space: At least fifty percent (50%) of the total area within the boundary of any residential PUD and twenty percent (20%) of any commercial or industrial PUD shall be devoted to common open space; provided, however, that the commission may reduce this requirement if they find that such a decrease is warranted by the design of, and the amenities and features incorporated into, the plan and that the needs of the occupants of the PUD for open space can be met in the proposed development. Each residential unit shall have ready access to common areas and facilities.

- **Issue 2:** The Commission should not have approved the C.U.P. because it conflicts with an existing easement of IPI and the easement was not included on the CUP application or preliminary plat as required by Valley County Code.

- **Response:**

The “easement” the appellant is claiming is an existing easement is a path where vegetation has been denuded that was created due to different ATVs, UTVs, or golf courts going over the hill during the camping activities at this site for the Huckleberry Festival. There is no written or recorded easement. The written and recorded easement to the Idaho Pacific Investments, LLC property is shown on the preliminary plat running from the Golf Maintenance facilities to the IPI property.

The P&Z Commission concluded that Valley County cannot perfect an easement. Easements must be perfected with a quiet title in the courts unless they are written easements. Only easements that have been recorded must be shown on the subdivision plat.

3. Legal notice was posted in the *Star News* on April 1, 2021 and April 8, 2021. Potentially affected agencies were notified on March 25, 2021. Neighbors within 300 feet of the property lines were notified by fact sheet sent March 25, 2021. The site was posted on March 30, 2021. The application and notice were posted on the Valley County website “Public Hearing Information” on March 25, 2021.

4. **Additional Information:**

- **Facts and Conclusions:**
  - Attached are the Facts and Conclusions that were approved by the Planning and Zoning Commission.
  - Part of the Valley County Board of Commissioners deliberation and decision should be a “reasoned statement that explains the criteria and standards considered relevant; state the relevant facts relied upon, and explain the rationale for the decision based on applicable provisions of the comprehensive plan, relevant ordinance and statutory provisions, pertinent constitutional principles and factual information contained in the record, ‘all of which’ should be part of the motion to approve or deny, or should be developed with staff assistance for action at a subsequent meeting.” (VCC 9-5H-11.8)

- **The following are the Conclusions of the Planning and Zoning Commission:**
  - That the proposed use is in harmony with the general purpose of Valley County ordinances and policies and will not be otherwise detrimental to the public health, safety, and welfare.
  - That the proposed use is consistent with the Valley County Comprehensive Plan.
  - Valley County has one mixed use zone that promotes mitigation of potential impacts.
  - The proposed use is compatible with surrounding land uses.
  - That the proposed subdivision is within the approved WestRock Resort Planned Unit Development, now known as Tamarack Resort.
  - The original WestRock PUD provided for flexibility in Section 1 – Application Overview; the current application aligns with that provision.
  - That the subdivision complies with the original WestRock CUP Components Grading, Drainage, Road, Utilities and Related Facilities drawings with this amendment as allowed.
  - That the subdivision complies with the original WestRock Facilities Program Summary.
  - Tamarack Resort continues to meet open space requirements.
  - Tamarack Resort continues to meet employee housing requirements.
  - Tamarack Resort has not met its maximum number of approved dwelling units.
  - Valley County cannot perfect an easement. Easements must be perfected with a quiet title in the courts unless they are written easements. Only easements that have been recorded must be shown on the subdivision plat.
  - Land use applications and approvals go with the lands, not with the owners.
  - Planning and Zoning Commission decision is on this site specific application.
  - There are no substantial changes to the approved Planned Unit Development.
  - Tamarack Resort continues to work with Valley County Board of Commissioners on off-site impacts as required in the Capital Contribution Agreement.
- **Minutes with Exhibits:** The minutes for the Planning and Zoning Commission meeting held on March 11, 2021, are attached.

- **Planning and Zoning Commission Staff Report** is attached for review. It includes prior comments.

### **3. Agency comment received:**

Central District Health said that an application and engineering report will need to be submitted to them (Feb. 19, 2021 and March 29, 2021)

Idaho Department of Environmental Quality (DEQ) provided general comments on air quality, wastewater, drinking water, surface water, hazardous waste, and ground water contamination. (Feb. 19, 2021)

Donnelly Rural Fire Protection District will accept Tamarack P.U.D. standards for road construction. The district requires a complete engineered plan of the water system, including fire hydrant placement, and an approved water supply capable of supplying the required fire flow for fire protection. (March 11, 2021 and February 22, 2021).

### **4. Public comments received:**

Email and letter from attorneys for Angstman Johnson representing Idaho Pacific Investments LLC. IPI owns property adjacent to the proposed Aspen Ridge Subdivision, including property on which a golf course had previously been constructed. (March 4, 2021)

## **SUMMARY:**

### **Staff Questions/Comments/Recommendation:**

The Commission should be aware that the original Planned Unit Development approved documents included a provision for flexibility in Section I – Application Overview. It reserved the right to modify the Facilities Plan in a number of ways; provided for preliminary and final platting in future phases; and stated the modifications do not materially change any component of the prior approvals, as listed. (attached) In the future if there is a material change the Planned Unit Development would need to be formally amended and process through the Planning and Zoning Commission along with the Board of County Commission as per 9-5H-8.5.

## **ATTACHMENTS:**

- Conditions of Approval
- P&Z Facts and Conclusions
- P&Z Minutes with Exhibits
- Appeal Letter

- Applicant Narrative with Application
- Drawings for Findings No. 8
- Vicinity Map
- Preliminary Plat
- Approved PUD 98-01 Preliminary Plat Page 1
- Approved PUD 98-01 Preliminary Plat Page 2
- PUD Flexibility - Amendments
- Wildfire Prevention and Protection Plan
- PZ Staff Report
- All Responses

### **Conditions of Approval**

1. The application, the staff report, and the provisions of the Land Use and Development Ordinance are all made a part of this permit as if written in full herein.
2. Any change in the nature or scope of land use activities shall require an additional Conditional Use Permit.
3. The final plat shall be recorded within two years or this permit will be null and void.
4. The issuance of this permit and these conditions will not relieve the applicant from complying with applicable County, State, or Federal laws or regulations or be construed as permission to operate in violation of any statute or regulations. Violation of these laws, regulations or rules may be grounds for revocation of the Conditional Use Permit or grounds for suspension of the Conditional Use Permit.
5. Must comply with all requirements previously approved as P.U.D 98-01 Tamarack Resort and any subsequent amendments.
6. Must have an approved storm water management plan and site grading plan approved by the Valley County Engineer prior to any work being done on-site.
7. Applicant's engineer shall confirm all utilities were placed according to the approved plans.
8. Prior to recordation of the plat, the Developer's engineer shall certify that the road is constructed in accordance with the plans approved by the Valley County Engineer.
9. A Private Road Declaration is required to confirm that the road will be maintained by the Tamarack Municipal Association.
10. CCR's should address lighting and limit each lot to one wood burning device.
11. All lighting must comply with the Valley County Lighting Ordinance.

12. Shall place addressing numbers at each building and at the shared driveway entrance.
13. Shall work with Southern Idaho Timber Protection Association along with the Donnelly Rural Fire Protection Association to implement the Wildfire Prevention and Protection Plan and amend as agreed.
14. If there is a legal easement through this property, it must be shown on the plat.

**END OF STAFF REPORT**