



# Valley County Planning & Zoning Commission

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Rob Garrison, Chairman  
Bryan Cooley, Vice-Chair

Ed Allen, Commissioner  
Johanna Defoort, Commissioner  
Scott Freeman, Commissioner

## MINUTES

Valley County Planning and Zoning Commission

August 10, 2017

Valley County Court House - Cascade, Idaho

PUBLIC HEARING - 6:00 p.m.

**A. OPEN:** Meeting called to order at 6:02 p.m.

P&Z Administrator - Cynda Herrick:	Present
P&Z Chairman - Rob Garrison:	Present
P&Z Commissioner - Ed Allen:	Absent - Excused
P&Z Commissioner - Bryan Cooley:	Present
P&Z Commissioner - Scott Freeman:	Present
P&Z Commissioner- Johanna Defoort:	Present
P&Z Assistant - Lori Hunter:	Present

**B. MINUTES:** Commissioner Defoort moved to approve the minutes of July 13, 2017. Commissioner Freeman seconded the motion. Motion carried unanimously.

**C. OLD BUSINESS:**

**1. C.U.P. 02-14 Eagle Nest Subdivision No. 2 – Amended Plat:** A final plat has been submitted by property owners to amend elements of Eagle Nest Subdivision No. 2. This plat consists of 17 single-family residential lots currently platted as Lot 11, Blk 2, Lots 1-6 Blk 3, and Lots 1-10, Blk 4, Eagles Nest Subdivision No. 2. No new roads are proposed. The site is accessed via Joshua Drive, a private road. It is approximately 64 acres located in Section 20, T.14N, R.3E, Boise Meridian, Valley County, Idaho. [*Not a public hearing – POSTPONED until September 14, 2017*]

**2. C.U.P. 17-04 Blackhawk on the River Event Venue:** McCall Associates LLC is requesting approval to establish an event venue at the Blackhawk River Lodge. The site would be available to rent by the public between 8 a.m. and 10 p.m. The existing buildings, parking lot, and lawns would be used. The 2-acre site is Blackhawk on the River Phase 2, Lot 99, Block 3 located in the SE ¼ Section 25, T.18N, R.2E, Boise Meridian, Valley County, Idaho. [*Tabled from May 11, 2017.*]

[06:04:13 PM \(00:01:37\)](#)

Chairman Garrison removed C.U.P. 17-04 from the table as noticed. Chairman Garrison asked if there was any *ex parte* contact or conflict of interest. There was none.

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

Exhibit 1: Page 12 from original application for Blackhawk on the River Subdivision – “This development will include a Recreation Center that will be for the use of the Blackhawk On The River residents and their guests. The facility will be a gathering place for social events, such as weddings, family parties, homeowner association meetings and general development activities.” A contradiction exists in the original application. On this same page it states that there are no commercial uses proposed for this development.

Administrator Herrick added that the security gates came after the subdivision was approved.

Exhibit 2: Page 15 from original application for Blackhawk on the River Subdivision – “Rights to Common Area – 6.1.6 The right of the Association to permit use of any recreational facilities situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of use fees established by the Association. The Association may lease any Common Area to a private club composed of such Owners who use the facility, or to a commercial operator, or to Grantor, or to a city or county parks department, or to any other appropriate body on such terms and conditions as may be agreed to by the Association.”

Exhibit 3: John Curtis Hucks’ letter dated August 9, 2017, with attachments:

- SEC summary of judgment against developer
- 2006 marketing materials representing Lodge as an amenity for residents
- Excerpt of 2006 CCRs prohibiting transfer of common elements without approval of 2/3 of property owners
- Excerpt from 2010 amendment to CCRs stating use of River Lodge shall be exclusive to homeowners
- Excerpt from 2011 warranty deed wherein original developer transferred title of the Lodge to a separate entity without consent of non-developer homeowners.
- Current website describing the Lodge.
- May 2017 HOA newsletter describing the pending C.U.P. application as “merely a formality”.

Exhibit 4: Brian Dickens, CEO, Blackhawk Gold – Received August 9, 2017, applicant’s response to Mr. Hucks’ letter

- New leadership; the activities of the previous owners are of no consequence to Lodge operation.
- Mr. Hucks “cherry-picked selective tidbits” from marketing materials.
- CCRs state that the Lodge is not a common area and shall not be a common area until such times as the HOA has sufficient resources to operate and maintain it.

- Previous developer's offers to turn Lodge over to HOA were declined by HOA.
- We agreed to conditions for Lodge operation.
  - The Lodge is a private amenity and is not a common area.
  - Mr. Huck's # 6 is the only correct one – the proper permits were not received for the commercial use.
  - In response to # 7, "Even a County Official would acknowledge that a C.U.P. proceeding is merely a formality."

Exhibit 5: Received from by Dianna Velder, a list of suggested C.U.P. conditions.

Exhibit 6: Applicant's list of current contracted events and rules sent by Dianna Velder

Exhibit 7: Response letters received since Staff Report was compiled.

- 1 uncommitted
- 7 in favor of approval
- 15 in opposition

Staff did research the Assessor's records which show that the Lodge is owned by McCall Associates. The site was platted as a lot and not as "open space".

Chairman Garrison asked if there was a map. Administrator Herrick replied that the recorded plat is on the table.

Chairman Garrison asked for the applicant's presentation.

Dianna Velder, employment address of 11 Shooting Star, McCall, ID, stated that the original 2005 application may have been vague and not clear on whether the lodge would be used for commercial, residential, or common area purpose. Along with original submittal were CCRs that define the Lodge's potential and future use. The CUP contemplated that the lodge would be used for all types of recreational and commercial activities, including weddings and mountain biking. CCRs define it as a privately-owned amenity. Common areas are specifically defined on the plat. Lot 99 was reserved for the Lodge, not a common area. 2010 amendment to CCRs specifically state restrictions on curfew and amplified music. The Lodge was constructed for commercial use with ADA, fire equipment, kitchen, rooms for corporate retreats, etc. Developer and current owners have been paying commercial property taxes on the Lodge and property. They request that the P&Z approve the C.U.P. and match the intended use per the CCRs, the commercial property tax designation, and the current use. "We will be more diligent in enforcing the curfew and noise restrictions for families using the Lodge for weddings." There was a World Cup Masters Event in 2008; since then they have continued to have commercial events and pay commercial taxes. They are here to clarify how they are using the Lodge.

At the May 2017 meeting, the biggest complaint was noise. As per P&Z request, she has met with owners several times. The conditions listed in Exhibit 5 were agreed upon. She read the list of proposed conditions.

Homeowners have been allowed to use the Lodge, even those who are not in good standing. The HOA has not paid for any operating expenses of the Lodge. A future HOA meeting is expected to vote on outstanding invoices owed to the developer as well as to adopt more stringent noise guidelines. The few who will voice opposition tonight are focused on past experience and deep hatred and have made threatening comments. They don't want you to hear from the owners that support the C.U.P. with the restrictions noted. This is best option to accomplish keeping the Lodge open.

Exhibit 8: Dianna Velder handed out copies of Exhibit 5 & 6. She also submitted various emails that she read portions from.

Owners use the Lodge but do not contribute to the cost of the Lodge. The Lodge is solely funded by the developer. Events offset the costs. Without the events, the Lodge will close. This would affect lot values, businesses of Valley County, and taxpayers of Valley County.

Ms. Velder asks for two things:

- Allow the currently scheduled events to continue. They are planned one to two years in advance. Cancelling them will be devastating to the wedding parties.
- Allow future events to be scheduled with the conditions previously mentioned.

The primary complaint has been the loud noise. By moving the dance floor inside the Lodge, the noise will be contained. This and other conditions will allow events to continue with minimal impact to the Blackhawk community while positively impacting Valley County.

Administrator Herrick asked the applicant to clarify the list of conditions where it states that in 2018, weddings that include the use of the lawn will be limited to two per month. What about after 2018? Ms. Velder replied that the intent to keep this restriction after 2018.

Chairman Garrison asked for proponents.

James Williams, 15 Larkspur, believes the owner has the right to use the Lodge. If the Lodge is not available, property values will decrease. Lodge is a beautiful place.

Chairman Garrison asked for undecided. There were no comments.

Chairman Garrison asked for opponents.

A reminder that a three minute limit per individual exists, five minutes if representing a group. Time cannot be donated.

John Hucks, P.O. Box 737, New Meadows, is an attorney representing a number of opponents. There are three reasons why the C.U.P should be denied.

1. The problems with the Blackhawk Community are complex and go beyond the issue of the C.U.P.

2. Fraudulent conduct and misappropriation of funds by the original developer.
3. The SEC Judgement requires developer to pay back \$8 million in fines and disgorgement of illegal profits within one year. The Lodge is being used as a profit center to raise funds to pay the judgement. Funds will not be used to help development.

The same entity who owns the unsold lots owns the Lodge, not Blackhawk Gold. Relationship is broken and it is probable that legal action will be taken by homeowners. An issuance of a C.U.P. will eliminate bargaining chip of homeowners. It would interject the P&Z into a private legal dispute. The burden is solely on applicant. The Comp Plan protects rural atmosphere, C.U.P.s should have no undue impact, and commercial uses should be contained into hubs. Let legal process play out. If an agreement is reached, the parties would have the option to present a joint application to the P&Z. In the meantime, Lodge would be open to use by property owners.

Paul DeSchryver, 22 Arrowgrass Way, said the biggest contention is noise issue. Construction workers are prohibited from playing loud music. However, they want to allow music from events. No resolution was reached at the June 6 meeting with property owners and Ms. Velder. On June 16<sup>th</sup>, Ms. Velder sent an email. July 30<sup>th</sup> was the annual HOA meeting, Ms. Velder's list of conditions have not previously been seen let alone agreed to. Security after the parties is mentioned but not during. Closing the lodge would not depreciate the lot values any further. All marketing lots removed from the MLS by developer. Mr. DeSchryver's lot has been for sale for five years. Events have kept realtors from trying to sell the lots in Blackhawk – realtors will not list these properties. The developer did not have proper permits to begin with.

Jim Pfeifer, 25 Moonflower CT, distributed copies of topographic map which includes the locations of subdivisions in the area, the number of built homes in each subdivision, and orange circles of 1- and 2-mile circumference surrounding the lodge (Exhibit 9). Noise travels miles away. Points labeled #1 & #2 indicate home locations of Jay Masterson and Dean Cromwell who live two miles away from Lodge and hear noise. There are 160 homes within 2 miles. Point #3 is the location of the owner in White Cloud Subdivision who got so mad during the party on July 1, that he fired 800 shots from a long-range rifle in 45 minutes. The map also shows the four 90-degree corners on West Mountain Road; He is concerned about impaired drivers leaving parties at the Lodge and driving this road.

Andrew Chai, 14 Owleclover Lane, if this is approved, Ms. Velder said there would be an annual review. However, the developer has five votes per lot unlike other lot owners, so nothing would be changed.

Donald Storer, 47 Moonflower Place in Blackhawk on the River, also submitted a letter in opposition. He bought property in 2006. Original brochures promised lodge, fishing ponds, a ten-mile trail, and equestrian center. He doesn't believe a thing the developer says. Commercial use of the Lodge is not for the benefit of property owners. The schedules has 28 events, 2.3 per month, and 23 weddings from mid-June to October. There are DJ's , bands, drinkers, and rural roads. He lives 1000' downriver from the Lodge and is annoyed by noise. This public hearing is only voice we get to be heard at since the developer has more votes than

homeowners. By granting a C.U.P. , the P&Z Commission would take away our ability to negotiate. He bought at this location as he wanted a quality piece of land.

Tom O'Connor, is a 40-year resident of Buckcamp subdivision. The common ground is immediately across river. The topography acts a natural amplifier. The events are not just on weekends; this past Tuesday night an event went to 10 p.m.

Curt Mack's, 230 Buckcamp, house is about a mile from the Lodge where he can hear every word spoken as well as music. He wants to enjoy a high quality of life – peace and quiet is why he doesn't live in town. The events create permanent negative costs to both him and other neighbors. A commercial operation is not compatible with residents.

Gordon Heath has a house and three lots approximately ¼-mile from the lodge. The Lodge shouldn't be allowed to have any more events. That is not why he moved and invested in this property. This is just a way for the developer to get cash.

Tracy Steiger, 268 Buckcamp Lane, said the best part of living where he does is the quiet. The Comprehensive Plan prevents uses of land harmful to community in general and protects property rights. The Lodge is an unpermitted venue. He doesn't know how this use has continued for years without a permit.

Diane Evans Mack, 230 Buckcamp Lane, stated that quality of life is important. Adding to the economy of the County doesn't mean every business and location is appropriate; there are other venues. There are places left in the County with less impact than this location.

Mr. Hucks would like to submit his written comments that he was not able to read due to the five-minute time constraint. The P&Z Commission Chairman Garrison and Administrator Herrick discussed this issue. Administrator Herrick warned that all information submitted to the record should be reviewed by the Commission – if the Commission planned to make a decision this evening then Mr. Hucks should not submit information without additional copies for each Commission member and without ample time to review. The ordinance requires submittals to be less than one page if submitted less than seven days prior to the hearing. Chairman Garrison allowed Mr. Hucks more time to finish his statement so the letter would be part of the record.

John Hucks read from his letter (Exhibit # 10).

- The problems with the community are the result of fraudulent conduct and misappropriation of funds by the original developer.
- It is probable that legal action will be taken by homeowners to recover financial losses resulting from misdeeds of the developer.
- Issuance of the C.U.P. will condone the improper conduct that has already taken place and removes incentive for the applicant to act in the interest of the homeowners.
- The burden is on the applicant to prove that by imposing conditions on the requested use, it can be made a compatible and acceptable use. This application does not meet that burden.

- C.U.P.s must protect the rural atmosphere, cause no undue adverse impacts on adjoining properties, and commercial uses should be concentrated in commercial hubs.
- Lodge's current purpose is to generate funds from outside events rather than be an amenity for owners at Blackhawk on the River.
- Public testimony is largely in opposition with complaints regarding crowds, noise, and stress on common areas.
- This C.U.P. would conflict with the Comprehensive plan.
- Let the legal process play out. If an agreement is reached the parties would have option of submitting a joint application.
- Lodge use by homeowners does not require C.U.P.
- The applicant says that it is unfair to cancel currently planned events. However, this is not the homeowners' fault. The applicant should have not entered into future contracts when aware a permit was required.
- The newsletter statement saying the C.U.P. is a mere formality might have been an attempt to suppress turnout at the May P&Z meeting.

Steve Andersson, 18 Fawnlilly Drive, is opposed based on what has already been said. He asked if conditions as proposed by Ms. Velder are typical and who polices them. Chairman Garrison replied that conditions are typical and part of mitigation. Administrator Herrick monitors conditions and replies to concerns by the public. Mr. Andersson asked who is responsible for calling the Sheriff in response to a drunken party; does P&Z Staff physically respond to issues? Chairman Garrison replied that if people feel that conditions of approval are not being complied with, they can make a complaint to P&Z Administrator. C.U.P.s can be revoked for noncompliance. For immediate concerns, such as drunk driving, call the Sheriff. Administrator Herrick replied she does make on-site visits and has the authority to do inspections of the site.

Paul DeSchryver referred to Valley County Code Title 9 -2-5 Enforcement. It says that once you are aware of it, you are supposed to initiate the investigation. Therefore an investigation is needed. Staff responded this application process and hearing is part of a previous investigation.

Cheryl Johansen, 196 W Sheraton Drive, Eagle, just purchased lot on Fawnlilly which they are building on. She is concerned about what she has been hearing. She asked if inside parties will be limited monthly. The inside events still have negative impacts. The conditions do not include security for days other than Friday or Saturday.

Cathy Them, 268 Buckcamp Lane, asked if the events are allowed with the new conditions, will windows be closed to block noise from inside the Lodge. Would the P&Z Commissioners want this in their neighborhoods?

Amy Heleniak, 22 Meadowbright Drive, lives across the pond from the Lodge. She is a proponent with qualifying conditions. However, the list of conditions provided by Ms. Velder differs from her expectations. At the meeting, it was discussed to limit all events, not just outside events.

Kurt Mack said the prior discussion has mentioned restrictions only for weddings; what about other type of events?

Boyd Barker, owns Lot 32 across from the Lodge, and lives in McCall. There is no knowledge of who actually is the owner of the Lodge. All members were supposed to be able to use the lodge but that has now been restricted due to these public events. Agreed upon guidelines have not been followed. There are more events than scheduled in past. Management does not stick to what they say they would do. He does not plan to build on lot due to these issues.

Chairman Garrison asked for rebuttal.

Dianna Velder said that Mr. Hucks made several false comments. Please see Brian Dickens' letter (Exhibit 4). The SEC is involved and monitors accounts on a monthly basis. No foul play is involved. McCall Associates is owned by Blackhawk on the River which is owned by Blackhawk Gold. We have been paying commercial taxes and are zoned commercial [for tax purposes]. This application process is a formality to specify conditions. The Lodge is an amenity owned by the developer company. Ms. Velder did not write the newsletter; staff added to the newsletter to let owners know what is going on. The original application for Blackhawk on the River says that the facility will be a gathering place for social events. Moving the band and dance floor inside will barricade the noise. She has listened to all the owners and has tried to compromise. The alternative is to have HOA fees increased to pay for the Lodge. Staff is on-site during events providing security both inside and outside Lodge. Once events end, private groups often move to private homes which is why security has been added from 10 p.m. to 2 a.m. Security will be added for all events not just Friday and Saturday nights. Lots were taken off the market and will be put back on sale for a higher amount. The developer has been paying commercial taxes and having events since 2015. The newsletter will show moose that are located at the river so the events haven't moved animals away. Security did call the Sheriff the night of the target shooting and sheriff responded. A police report exists. The target shooting did not have anything to do with the event. Promises may have been broken in the past but these are amenities owned by the developer. We are here to limit events and come to a compromise. Thirteen events are left; two are inside dinner functions. The microphone will be eliminated at all future events and music will be moved inside the Lodge. Weddings will be limited to two per month. The suggested conditions do not limit inside functions as dinners inside the Lodge don't affect the community. Security is present the day before and day of events. She wants to move forward from past and come to a compromise. She talked to neighbors to come up with conditions so the Lodge owner can be held responsible. She requests that the P&Z Commission as least allow the currently scheduled events to be held. The HOA does not participate in cost of common areas or Lodge. Bills have been provided to the HOA but no money received. The HOA wants to control these areas but not pay for them. The noise and traffic issues have been addressed.

Chairman Garrison asked if there were questions for the applicant.

Commissioner Defoort said that this process is not a formality to formalize the fact you have been conducting commercial business. Just because you have been paying commercial tax rate doesn't mean you have permission to have a commercial business. The process of obtaining a

conditional use permit is to mitigate and avoid conflicts. Zoning is multiple use, not commercial.

Chairman Garrison asked if Blackhawk Gold is currently in litigation with homeowners? Ms. Velder replied that it is not. Chairman Garrison asked about the discrepancies in the calendar of events and list of conditions. Ms. Velder replied that the list shows the current schedule of signed contracts. They would like to carry out contracts as written which allow a dance floor outside. No contracts have been signed since the list was created in May. The conditions are ones we would include in future contracts. Events have been ongoing on site since 2005 or 2006, prior to Lodge being built.

Chairman Garrison closed the public hearing.

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The Commission deliberated.

Commissioner Freeman has hard time with Exhibit 1 saying Lodge for use of owners and no commercial uses proposed for development. The Commissioners discussed that the original C.U.P. application for Blackhawk on the River contradicted itself on whether commercial use was allowed. The Lodge was approved for events with NO profit. Exhibit 2 has language allowing the lease of common area; however, the Lodge is not “common area”. The Commission doesn’t enforce CCRs. However, the CCRs that are part of the original application show what use is going to be and become part of the application.

Commissioner Defoort said there is a lot of public disapproval. A C.U.P would require severe conditions of approval. Commissioner Cooley stated there is room for improvement. Current application includes both weddings and other events. The decision is on land use and is not a vote by residents. Do people have a right to run a commercial business on their private property within a subdivision?

There was discussion of the person shooting gun within nearby White Cloud Subdivision. Administrator Herrick called the Sheriff’s Office; it was not a Blackhawk issue. Police did not go to his residence. They took a police report from the wedding party – the people that originally called the police.

Chairman Garrison would like to have more time to review late information (Exhibits 1 – 7) received after the staff report prior to making a decision.

There was discussion on deadline requirements for submittals (seven days prior to public hearing) so there is time to review. Commissioner Defoort is ready to make a decision tonight. She asked if the P&Z Commission denied the C.U.P. tonight, would previously scheduled events be allowed to continue. Administrator Herrick replied in the affirmative, as long as it was included in the motion.

Chairman Garrison and Commissioner Cooley are not prepared to make a decision tonight. Administrator Herrick stated that, regardless of decision, it will need to be a well-formatted decision with “Conditions of Approval” or “Reasons for Approval or Denial”. Commissioner Freeman is ready to deny. Chairman Garrison is in favor of postponing decision to a later date, possibly a special meeting. Public hearing is closed. No additional information will be accepted into the record.

Commissioner Cooley moved to postpone a decision on C.U.P. 17-04 Blackhawk on the River Event Venue to August 24, 2017, at 6 p.m. Commissioner Defoort seconded the motion. Motion carried unanimously. No new information will be accepted or any additional testimony taken.

[08:08:11 PM \(02:05:35\)](#)

#### **D. FACTS AND CONCLUSIONS:**

- C.U.P. 17-11 Highmark Subdivision
- V-1-17 Walcom Setback Variance

Commissioner Freeman moved to approve the Facts and Conclusions for the C.U.P. 17-11 and V-1-17 and authorized the Chairman to sign. Commissioner Cooley seconded the motion. Motion carried unanimously.

#### **E. COMMISSION DISCUSSION**

- Appeal of Administrative Decision that a Conditional Use Permit is Required for Redline Recreational Toys

A business called Redline Recreational Toys recently applied for a sign permit for a building known as the Baum Shelter in Lake Fork. The business rents equipment with a membership. Cynda learned about the business because of the sign application. Does the business need a C.U.P. or is it “grandfathered” for rental of equipment?

Commissioner Cooley says use at the site has changed a number of times. Chairman Garrison said that if use has varied over the years, it needs a C.U.P.

C.U.P.s have been issued for this location; previous uses include: Baum shelter, RK Motorworks -- Beau Value’s shop, GTS, Midas Gold and Robertson supply have all used this business prior to the change in the ordinance require a new CUP for change in type of business versus just a change in the category as listed in Table 1-A.

Grandfathering refers to use, not owner.

Commissioner Cooley stated that since use has changed over time, for various things, a C.U.P. is needed. There was discussion of the definition of grandfathered use. Grandfathered use predates the adoption of the ordinance in 1982. When the use changes the previous use is no longer grandfathered (or nonconforming).

A C.U.P. application is \$50 for commercial use.

Commissioner Freeman moved to uphold Administrator decision and require Redline Recreation Toys to apply for a conditional use permit. Commissioner Defoort seconded the motion. Motion carried unanimously.

Chairman Garrison adjourned the meeting at 8:20 p.m.