

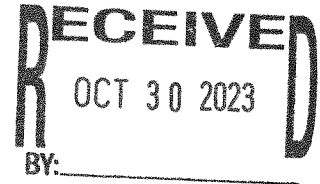


Geoffrey M. Wardle

October 30, 2023

Hand-delivered, with a copy sent via email to: cherrick@co.valley.id.us

Board of Valley County Commissioners
Valley County Planning & Zoning Commission
Attn: Cynda Herrick
Planning & Zoning Director
P.O. Box 1350
Cascade, Idaho 83611



Re: Appeal of Planning & Zoning Commission’s partial denial of C.U.P. 23-40.

Dear Board of Valley County Commissioners and Valley County Planning & Zoning Commission,

Our firm represents Tommy Ahlquist (the “Applicant”) and AB West Mountain Holdings LLC (the “Property Owner”). In September of 2023, the Applicant and the Property Owner submitted a Conditional Use Permit Application to the Valley County Planning and Zoning Department. The Conditional Use Permit Application, which was designated “CUP 23-40” by the Planning and Zoning Department, requested approval of a bunk house, helicopter landing pad (or “helipad”), and helicopter hangar. On October 19, 2023, following a public hearing held by the Valley County Planning & Zoning Commission (“P&Z”) and immediately following deliberations by P&Z Commissioners, P&Z voted to approve CUP 23-40, *expressly excluding the helipad and helicopter hangar.*

Although we obtained a draft of the written minutes of P&Z’s October 19 public hearings, to date we have not received a written decision from P&Z. As noted, the written minutes we obtained are only in *draft* form, presumably until they can be approved by P&Z at its next regular meeting on November 9, 2023.

Nonetheless, on behalf of the Appellant, we hereby notify the Board of Valley County Commissioners (the “Board”) and P&Z that we are appealing the portion of P&Z’s October 19, 2023 determination that excluded the helicopter landing pad and hangar from P&Z’s approval of CUP 23-40. Together, the Applicant and the Property Owner are referred to in this appeal as the “Appellants.”

In compliance with Valley County Code (“VCC”) § 9-5H-12 (entitled “APPEALS”), we provide the following:

- A. “[A]ppeals must be written.” (VCC § 9-5H-12.)

This letter constitutes our written appeal, on behalf of our clients, the Appellants.

B. “[A]ppeals must be... accompanied by the fee ... and submitted to the administrator prior to the deadlines set forth herein.” (Id.)

A check in the amount of \$500.00, pursuant to the Fee Schedule adopted on March 27, 2023, by Resolution 23-08, accompanies our appeal, which is timely submitted.

C. “The Appeal shall be filed with the administrator before five o’clock (5:00) P.M. of the tenth calendar day after the determination of the commission has been made.” (VCC § 9-5H-12.B.1.)

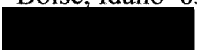
Our appeal is timely filed. Today, October 30, 2023, is the deadline for submittal of this appeal. According to an email from Valley County’s Planning & Zoning Director, P&Z’s determination was made on October 19, 2023, after the public hearing on our client’s application in CUP 23-40 was closed and immediately following deliberations by P&Z Commissioners. Although yesterday, October 29, 2023, was the tenth calendar day after P&Z’s determination, yesterday was a Sunday, so “the appeal period is automatically extended to the next workday” (VCC 9-5H-12), which is today, Monday, October 30, 2023.

D. “Each appeal must clearly state the name, address and phone number of the person or organization appealing...” (VCC §9-5H-12.)

Tommy Ahlquist
C/o Clark Wardle LLP
Attn: Geoffrey M. Wardle
P.O. Box 639
Boise, Idaho 83701-0639

and

AB West Mountain Holdings, LLC
C/o Clark Wardle LLP
Attn: Geoffrey M. Wardle
P.O. Box 639
Boise, Idaho 83701-0639



E. “Each appeal must clearly state... the specific issues, items or conditions that are being appealed...” (VCC §9-5H-12.)

1. FIRST ISSUE FOR APPEAL. P&Z’s “determination” failed to comply with the standards for final decisions prescribed in Idaho’s Local Land Use Planning Act, or “LLUPA,” which is codified at Idaho Code §§ 67-6501 et seq. As mentioned earlier in this appeal:

- We have not yet received a written decision from P&Z;
- Applicable County Code specifies that the 10-day deadline for an appeal of a P&Z decision runs from the date that “the determination of the Commission has been made” (VCC § 9-5H-12.B.1.); and
- We were informed by the County’s Planning and Zoning Director that:

The final decision of the P&Z Commission has been made, but they have not approved and signed the Facts and Conclusions. The determination of the Commission has been made.

Email dated October 30, 2023, at 9:42 am (MDT).

LLUPA's relevant requirements for final decisions include all of the following:

Whenever the nature of any decision standard or criterion allows, the decision shall identify aspects of compliance or noncompliance with relevant approval standards and criteria in the written decision.

–I.C. § 67-6535(1), in pertinent part, emphasis added.

P&Z's voice vote at its October 19, 2023 meeting failed to "identify aspects of compliance or noncompliance with relevant approval standards and criteria," as required by Idaho Code § 67-6535(1). Additionally, P&Z's voice vote obviously was not in writing, and, to the extent the unapproved draft minutes of that meeting may qualify as P&Z's written decision, the unapproved draft minutes also fail to "identify aspects of compliance or noncompliance with relevant approval standards and criteria," as required by Idaho Code § 67-6535(1).

Although P&Z Commissioners deliberated prior to making a motion to approve the bunkhouse element of CUP 23-40—expressly excluding the helipad and hangar—seconding it, and voting on that motion, those deliberations were not adopted by reference in P&Z's motion. In fact, according to the unapproved draft minutes of P&Z's meeting on October 19, 2023, the motion to approve the bunkhouse element of CUP 23-40 and effectively deny the helipad and hangar elements of CUP 23-40 was succinct and concise:

Commissioner Childs moved to approve C.U.P. 23-40 Ahlquist Bunkhouse and Ranch Office excluding the helicopter landing pad and hangar; approval does not include use of the property to the north for emergency fire protection as a conditional use permit is not necessary for that use. Commissioner Swain seconded the motion. Motion carried unanimously.

(Draft Minutes of the Valley County Planning and Zoning Commission's October 19, 2023 Public Hearing, p. 11.) As evidenced by this short notation in P&Z's unapproved draft minutes of its October 19 meeting, the decision we now are appealing lacks *any* aspects of compliance or noncompliance with relevant approval standards and criteria in the written decision. Requiring the Appellants to submit an appeal that "must clearly state... the specific issues, items or conditions that are being appealed..." (VCC § 9-5H-12), without first providing the Appellants a complete written decision that includes all elements required by LLUPA, violates the Appellants' rights to procedural due process.

This exact issue was considered by the Idaho Supreme Court in the case of *White v. Bannock County Commissioners et al.*, 139 Idaho 396, 80 P.3d 332 (Idaho, 2003). Quoting that case at length, due to its applicability here:

Bannock County Ordinance 17.56.590(A) provides that a decision by the Council “may be appealed to the board of county commissioners by the applicant or any other aggrieved person within ten days after the date on which the decision is made.” Although the Council announced its approval of Monroc's CUP at its regular meeting on April 19, 2000, it only issued its findings and conclusions on July 27, 2000. Under LLUPA,

The approval or denial of any application provided for in this chapter shall be in writing and accompanied by a reasoned statement that explains the criteria and standards considered relevant, states the relevant contested facts relied upon, and explains the rationale for the decision based on the applicable provisions of the comprehensive plan, relevant ordinance and statutory provisions, pertinent constitutional principles and factual information contained in the record.

I.C. § 67-6535(b). Therefore, *the date “on which the decision is made” corresponds to the date of the written findings, conclusions and order*, which tolls the time for filing an appeal.

White v. Bannock County Commissioners, 139 Idaho at 399-400, 80 P.3d 335-336, emphasis added. County code requires an appeal to be filed “before five o’clock (5:00) P.M. of the tenth calendar day *after the determination of the commission has been made*” (VCC § 9-5H-12.B.1, emphasis added), which is very similar language to that reviewed by the Idaho Supreme Court in the *White* case. Applying LLUPA’s requirement that all land use decisions must be in writing, and also applying the Idaho Supreme Court’s decision in the *White* case, the date on which “the determination of the commission has been made” must “correspond[] to the date of the written findings, conclusions and order,” not to the date on which the summary oral motion to deny CUP 23-40 and to approve CUP 23-40 was made.

At minimum, the Appellants are entitled to ten days—from the date on which P&Z’s written findings of fact, conclusions of law, and decision is issued—to file a supplemental appeal of P&Z’s denial of the helipad and hangar elements of CUP 23-40.

The approval or denial of any application required or authorized pursuant to this chapter shall be in writing and accompanied by a reasoned statement that explains the criteria and standards considered relevant, states the relevant contested facts relied upon, and explains the rationale for the decision based on the applicable provisions of the comprehensive plan, relevant ordinance and statutory provisions, pertinent constitutional principles and factual information contained in the record.

–I.C. § 67-6535(2), in pertinent part, emphasis added.

Again, as discussed above, LLUPA requires written decisions. The “determination of the commission” is not, as yet, in written form. In fact, even the minutes of P&Z’s October 19 meeting are only available in draft form.

Additionally, the existing “determination of the commission,” such as it is, failed to include “a reasoned statement that explains the criteria and standards considered relevant, states the relevant contested facts relied upon, and explains the rationale for the decision based on the applicable provisions of the comprehensive plan, relevant ordinance and statutory provisions, pertinent constitutional principles and factual information contained in the record” (I.C. § 67-6535(2)).

At minimum, the Appellants are entitled to ten days—from the date on which P&Z’s written findings of fact, conclusions of law, and decision is issued—to file a supplemental appeal of P&Z’s denial of the helipad and hangar elements of CUP 23-40.

Failure to identify the nature of compliance or noncompliance with express approval standards or failure to explain compliance or noncompliance with relevant decision criteria shall be grounds for invalidation of an approved permit or site-specific authorization, or denial of same, on appeal.

—I.C. § 67-6535(2)(a), in pertinent part, emphasis added.

LLUPA expressly provides failure to comply with its requirements governing the contents of decisions “shall be grounds for invalidation of an approved permit..., or denial of same, on appeal” (I.C. § 67-6535(2)(a)). In this matter, the lack of a written decision makes compliance with LLUPA’s requirements impossible, thereby entitling the Appellants to invalidation of P&Z’s denial of the helipad and hangar elements of CUP 23-40.

At minimum, the Appellants are entitled to ten days—from the date on which P&Z’s written findings of fact, conclusions of law, and decision is issued—to file a supplemental appeal of P&Z’s denial of the helipad and hangar elements of CUP 23-40.

- SECOND ISSUE FOR APPEAL.** Assuming comments by those opposed to CUP 23-40 and deliberations by P&Z Commissioners may be transcribed and used to fill P&Z’s written decision, we also appeal based on the lack of substantial evidence in the record to support P&Z’s denial of the helipad and hangar elements of CUP 23-40. Specifically, in their comments during the October 19 public hearing, opponents of CUP 23-40 noted their concerns that “helicopter use would negatively impact property values in the area” (Draft Minutes, p. 9), the “rural character” of the area would not be maintained (*id.*), the “health of residents” would be negatively impacted (*id.*), and the river corridor would be negatively affected (*id.*); however, none of these concerns were supported by actual evidence in the record. *Concerns* are not evidence. By failing to base its denial of the helipad and hangar

elements of CUP 23-40 on substantial evidence in the record, P&Z acted arbitrarily and capriciously, and abused its discretion.

3. **THIRD ISSUE FOR APPEAL.** Again, assuming comments by those opposed to CUP 23-40 and deliberations by P&Z Commissioners may be transcribed and used to fill P&Z's written decision, P&Z, in making its "determination," such as it is, failed to apply correct standards.

Among the incorrect standards applied by P&Z were:

- "No need for helipad on this property." (Draft Minutes of P&Z's October 19, 2023, public hearing, p. 9.) There is no legal requirement for a CUP that it be "needed" on the subject property.
- "[T]he short distance to the McCall Airport." (*Id.*) There is no legal requirement that a helipad or hanger be outside any radius of the McCall Airport.

These standards (among others) imposed by P&Z are beyond those required by County code for approval of a Conditional Use Permit. As a result of P&Z's "determination," which was based on improper and incorrect standards, substantial personal property rights of the Applicants have been abridged or otherwise affected.

4. **FOURTH ISSUE FOR APPEAL.** All of the concerns about the helipad and hangar elements of CUP 23-40 raised by P&Z Commissioners during their deliberations could have been mitigated by imposing conditions of approval of CUP 23-40. Instead, however, P&Z erroneously denied the helipad and hangar elements of CUP 23-40.

As a result of P&Z's failure to approve the helipad and hangar elements of CUP 23-40 with conditions of approval to mitigate those concerns of opponents supported by evidence, , substantial personal property rights of the Applicants have been abridged or otherwise affected.

- F. **"Each appeal must... state the nature of his or their interest and extent of damages."** (VCC §9-5H-12.)

Appellant Tommy Ahlquist is a Member of Ahlquist Development, LLC, which is a Member of landowner AB West Mountain Holdings, LLC, which owns parcel RP17N02E120635 in S. 12, T.17N, R.2E—the parcel that is the subject of CUP23-40.

Appellant AB West Mountain Holdings, LLC, owns parcel RP17N02E120635 in S. 12, T.17N, R.2E—the parcel that is the subject of CUP23-40.

The extent of damages is the inability, absent approval of CUP 23-40, to use the subject property to land and store a helicopter, and all damages related or incident thereto.

Both Appellants qualify as "affected persons," as that term is defined in LLUPA—see Idaho Code § 67-6521(1)(a)—in that they have a "bona fide interest in real property which may be

adversely affected by: (i) The approval, denial or failure to act upon an application for a subdivision, variance, special use permit and such other similar applications required or authorized pursuant to this chapter;" (I.C. § 67-6521(1)(a).

We ask the Board of Valley County Commissioners to review P&Z's denial of the helipad and hangar elements of CUP 23-40, and to reverse such denial, on the several bases stated above. In the interim, we also ask the Board, in compliance with LLUPA, to grant us 10 days to supplement our appeals after P&Z approves and signs its written decision.

We also reserve our right to supplement this appeal with additional claims, supporting evidence, and argument prior to the public hearing on our appeal, as well as to present argument and information during that public hearing.

Very truly yours,

A handwritten signature in black ink, appearing to read 'G. Wardle', with a long horizontal line extending to the right.

Geoffrey M. Wardle, Partner

Enclosure: Check No. [REDACTED], in the amount of \$500.00 (appeal fee).

cc: Valley County Clerk (*sent via email to: valleyclerk@co.valley.id.us*)