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Appeal to Valley County Commissioners

Cynda Herrick
Valley County Planning and Zoning Administrator
219 N. Main Street Cascade, ID 83611

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JUN 23 2022
BY: 3:45 p.m.~~

RE: Notice of appeal of C.U.P. 22-21

Dear Ms. Herrick

PLEASE TAKE NOTICE that according to Valley County Code section 9-5H-12, aggrieved individuals James D. Rush, Marylou Rush, Shannon Rush-Call, Amy Rush, Art Troutner, Carol Troutner, Ben Florence, Ashley Brown, Judy Anderson, Galen Shaver, Carol Coyle, Dennis Coyle, Dennis Stewart, Kevin Miner, Carl Brown, Jayne Brown, Glenda Berryhill, Glen Berryhill, Leda Clouser, each an adjacent landowner or other neighbor of proposed Stag's Run Estates subdivision (collectively, "Appellants") hereby appeal the Valley County Planning and Zoning Commission's June 23, 2022 approval of Conditional Use Permit application C.U.P. 22-2 for Stag's Run Estates Preliminary Plat (the "Application"). Appellants' interests were expressed in letters to the commission included in the staff report and in live testimony to the P&Z Commission at the June 23 hearing. Appellants' interests are further elaborated below, and Appellants intend to provide additional information at the hearing to review the commission's decision..

The appeal fee of \$500 is submitted to the County Clerk concurrently.

Prior Proceedings

On July 23, 2022, the Valley County P&Z held a public hearing on the Application. The commission received seven letters and heard testimony from fourteen individuals opposing the Application. The commission received no letters supporting the Application, and nobody testified in favor.

Opponents raised many concerns with the Application, including, but not limited to: the incomplete and inaccurate application submitted by the developer; the accelerating loss of farmland and deleterious effect on the farming community; the effect on the water table and neighboring wells from the proposed 50 wells and septic systems; the potential pollution of the many wetlands on the property and the impact on downstream water quality; the increased traffic on rural roads; and the misuse of resources in building more second homes in the midst of a county-wide affordable housing crisis.

Despite the lack of public support, and its own misgivings about the Application, the commission approved the application (3 in favor, 2 absent) with some conditions.

Basis of Appeal

For the reasons discussed below, Appellants submit that the approval of the Application was arbitrary and capricious, based on incomplete and inaccurate information, contrary to Valley County's 2018 comprehensive plan. Appellants urge the Board of County Commissioners to sustain the appeal and invalidate the commission's approval of Stag's Run Estates.

Material Inaccuracies & Application Omissions

1. The Application was incomplete, failed to address numerous application requirements, and was materially misleading and inaccurate. Moreover, the commission relied in part on a flawed compatibility evaluation .
 - 1.1. **The Application does not address the required impact on water usage and discharge.** Valley County Code 9-5-3-D #6 expressly requires an applicant for a conditional use permit to address: "Water demand, discharge, supply source and disposal method for potable uses, domestic uses and fire protection calls for identifying existing surface water drainage, wetlands, flood prone area and potential changes, identify existing groundwater and surface water quality and potential changes due to this proposal." The Application fails to adequately address this requirement because it does not describe impacts on groundwater and potential changes resulting from the proposed subdivision or effects on groundwater quality and quantity and potential contamination due to well and septic development. In particular, although the description of lots # 26-39 and #53-56 reveals that they each could contaminate runoff, the Application makes no mention of any plan to mitigate those effects.
 - 1.2. **The Application does not address the required impact on water conservation and management:** The Application is contrary to Chapter 4, Goal 1, of the Valley County Comprehensive Plan, which directs that development should "Conserve and manage groundwater and surface water in all its forms to prevent depletion or pollution." First, the required drainage plan information is missing from the application, even though it is apparent that the proposed subdivision's drainage will be limited by the large numbers of impermeable surfaces, which will increase urban run-off and contribute substantial pollutants, including nutrients, suspended solids, litter, oil and grease, pesticide, herbicides, and fertilizers, among others. Second, building a dense subdivision at the headwaters of Mud Creek, which drains into Lake Cascade, is counterproductive to the many efforts to improve water quality and prevent toxic algae blooms. Third, the proposed subdivision threatens current property owners' access to clear, dependable well water, particularly given ever-increasing well water demands in the immediate area and the effects of warmer summers and expanding drought conditions on ground and surface water.

The Application does not even attempt to assess the impact of the proposed 50 wells on the water table and the resulting effects on the wells of neighboring property owners. This, of course, is a critical issue, with the potential for serious negative effects on the habitability of neighbors' property—not to mention their property values. What will neighbors do if their wells run dry and they do not have thousands of dollars for a new well or even the capability of getting more water? Appellants maintain that depriving current residents of that critical access to water violates the protection of property rights enshrined in the Valley County comprehensive plan Chapter 1.

1.3. The Application was materially inaccurate regarding water rights. The first question asks whether the property has water rights available; if it does, the applicant is required to fill out an extensive irrigation report. Although the subject property is within the boundaries of the Lake irrigation district and has rights to lake irrigation shares, the applicant inexplicably answered "no" and left the document blank.

1.4. The Application was also materially inaccurate regarding irrigation easements. Question 9 asks if there are any irrigation easements. It does: the Lake Irrigation District has an easement on the subject property for the operation and maintenance of the pipeline delivering water to the subject property and lands to the south. But the applicant did not answer the question.

The Application indicates that the proposed subdivision will include a berm apparently located over the L.I.D pipeline in violation of Idaho Code Chapter 12 section 42-1209. Page 1 paragraph 4 of the Application's cover letter describes berm construction between West Lake Fork Road and lots on the north side of the development, which appears to include property within the boundaries of the Lake Irrigation District easement. Yet the applicant has never contacted the Lake Irrigation District with any inquiries regarding rights and obligations.

This is part of a larger problematic pattern in Valley County: Poor planning by developers and a lack of oversight by Planning and Zoning has created numerous problems for the irrigation district to address. Irresponsible development has created conflicts between shareholders in the district every irrigation season along with poor planning, a failure to understand and value the importance of the irrigation district and the failure to build the infrastructure for water delivery in a timely fashion. Irrigation water is crucial to preserving ground water, which can be depleted by using wells to water when irrigation could have been a better choice. The Valley County code supports this.

2. Misrepresentation of Facts

2.1. The applicant mischaracterizes the property. Question 6 asks about uses of the land. The applicant answers that the land is devoted to "bare land grazing." The answer is incomplete and misleading as the property

has a history of producing good crops of irrigated alfalfa hay, oats, potatoes, as well as irrigated grazing for cows- all important products for our community.

- 2.2. **The applicant mischaracterizes adjacent property.** Question 8 on the application asks for a description of the uses of adjacent properties. Some of the descriptions provided by the applicant are misleading.
 - a. To the South is described as bare agricultural land, actually it is irrigated pasture.
 - b. To the East is described as bare land. It is alfalfa hay/pasture.
 - c. To the West is described as agriculture. It is irrigated agriculture.
 - d. Also, they consistently referred to Mud Creek as Beaver Creek, a name no one has ever heard of.

These are important details. This property and the properties surrounding it on 3 sides are actively farmed and productive farmland. Only to the North has the land use changed from agriculture to housing; 81% of surrounding properties are productive agricultural land. The majority of the land surrounding the proposed subdivision is still predominantly an irrigated agricultural part of Valley County where several families rely on agriculture for their primary income.

A proper description of the land uses is crucial to demonstrate that the requested change of the use will have real and very likely negative impacts on neighboring farm producers. A proper description of the land and adjoining parcels is crucial to a fair compatibility evaluation. What is being requested by the Applicant is to take irrigated productive farmland forever out of production. Every piece of productive land changed into a non-agricultural use weakens the local agricultural economy.

When the P and Z commissioners commented at the end of the presentation, Commissioner Caldwell politely mentioned, "I do think the application looked a little rushed..." and she added that the applicant needed to do more homework (3:10 on video tape). We maintain the "homework" should have been done before the application was turned in. The casual, inaccurate and shabby way the applicant approached the application shows a disdain for the county's procedures and for the impacts that the project could have on the surrounding landowners and on agriculture in this Valley. The applicant showed no understanding or respect for the current or historical livelihoods and land management of this area.

3. **Compatibility Evaluation**

The appellants question the Compatibility Evaluation in the Staff Report. As previously pointed out, a mischaracterization of the land and the properties adjacent can cause a skewed evaluation for the compatibility score. All but one of the questions/scores were viewed from the perspective of Brookdale Meadows, therefore missing the perspective of the majority of the land bordering and surrounding the proposed subdivision. If the Compatibility Evaluation were viewed through the lens of those of us who own agricultural land adjoining, the score would be markedly different.

4. **Impacts to Wetlands and FloodPlain**

- 4.1. **Wetland:** A large share of the 160 acres is natural wetland; meaning it is not a wetland because of irrigation. It naturally subs water. The land also has sections of steep slopes. The parcels in the subdivision on the northeast side are steep slopes with a wetland swamp at the bottom. Of course disturbing wetlands is illegal. How can this subdivision be built without disturbing the wetlands? Clay drains were put in many, many years ago (before it was illegal) to absorb water and to increase the farmability of the land. When construction happens in these areas, and those tiles are disturbed, there will be more wetlands.
- 4.2. **Pollution:** Most of the proposed lots are connected to the creeks or swamps that run through this property, these waters are tributaries to Mud Creek which then runs into the Payette River down to Cascade Reservoir. Mud Creek is a high concern and a priority in cleaning up the reservoir. A subdivision of this density will put more pollutants in Mud Creek than if it was left as agricultural land. Homeowners are notorious for over fertilizing, using copious amounts of herbicides and pesticides, plus the run-off from driveways, patios, and roads carrying debris, gas and oil, detergents, etc. The US Fish and Wildlife states: "Homeowners use up to 10 times more chemicals and pesticides per acre on their lawns than farmers use on crops."
- 4.3. **Adjacent Property Impacts & Existing Wells:** One adjacent owner says, "The wetland drains into our wetland area and the wetland area of the neighbor on the SE corner of the proposed subdivision. The water runs year round. We are concerned about the destruction of these wetlands due to drainage from road run-off as the drainage for the roads is in borrow pits running downslope to the wetlands. We are also concerned about the effect of 50 domestic wells and 50 separate septic systems will have on the groundwater and the wetlands which are downslope from this parcel. How will this affect the water table and those who already have established wells? Who will monitor for contamination? These issues were not addressed in the P&Z hearing."
- 4.4. **Flood Risk:** The Flood Plain Map in the Staff Report shows 100 year flood levels with 1% annual chance and 500 year Floodplain with 0.2% annual chance. Given the unpredictability of climate change and precipitation, these projections could be wildly inaccurate. Over and over insurance representatives are saying that the 100 year events are now 10 year or 5 year events. Valley County needs to update its projections to reflect the realities of the 21st century and climate change or risk courting disaster in its "planning." In Chapter 13 Goal 1, objective 6, the comprehensive plan says " Relate future county development to natural site advantages and limitations such as soil, slope, water table, view,

flood hazards, and wind direction. Recognition of such factors will produce optimum development and prevent hazardous and costly conditions from developing."Because of water table and flood hazards, as well as the very superficial way this application was presented, the Commissioners need to make sure that they won't be faced with legal action in the future when nearby properties are negatively impacted by the developer's lack of a thorough assessment of the property and its suitability for residential housing.

5. Traffic

The impact statement regarding traffic is incomplete. It does not address impacts of increased traffic along Norwood, West Lake Fork Road and Highway 55. It does not address the dangers caused by lack of striping. It does not address the traffic problem of the 2 entrances along West Lake Fork Road, especially the entrance which is closely offset with an entrance to Brookdale Meadows. It does not promise pathways for pedestrians, bicyclists, or horseback riders. Astonishingly, the developer's only plan for a small portion of pathway is to use the irrigation district easement, which would be problematic on several levels. There is no mitigation for the majority of road frontage.

New homes means more vehicles traveling on average at least 2 times a day on our narrow neighborhood roads. Since this is a rural agricultural area, there is daily activity by the area's farmers and ranchers. Tractors, cattle trucks, and farm ATVs use the public roads. There is anxiety about the danger of accidents happening involving slow-moving agricultural equipment and autos with impatient people in a hurry. Farmers feel a palpable danger of being run over or forced off the road. And although West Lake Fork road has been repaved, it is still a dangerously narrow road with 9-12 in shoulders of loose gravel and 5-20 foot steep drops into the borrow pit.

6. Cost of development to taxpayers

Ms. Herrick in her compatibility report claimed that there would be no cost to the taxpayers from this development because it is "upscale homes" built for 2nd homeowners. The developer claimed in his rebuttal that "They won't live here", meaning they will need no services and will not impose a burden on taxpayers. So it will just be a gain to the county of some tax revenues. This is a short sighted view. Even the comp plan in Chapter 8 says that in the early stages of recreational homes there is tax benefit to the county but as the developments become more settled and especially as retirees spend more time in their 2nd homes demands for services, especially police protection, fire protection, emergency services, medical services, demands for more access, pressure on parks and rec, library, post office and especially internet services go way up and cause the costs of government to increase as well as a decrease in the quality of those services for locals. Chapter 3, Goal 1 of the Comprehensive Plan directs us to accommodate growth and development while protecting quality of life within Valley County, maintaining or improving existing levels of service in order to protect both private property rights and the community's right to services, economic well being, and quality of life.

7. Loss of Farmland

Despite the expressed concern of commissioners and stated objectives of the Comprehensive Plan to protect farmland, this proposed subdivision would destroy 160 acres of productive farmland.

7.1. **Preserving Agricultural Land & Open Space:** CUP 22-21 is situated on some of the best agricultural land, yet we seem unable to protect it in agricultural land use. Under land use in the Comprehensive Plan, agricultural land is valued as open space as well as production area. The first goal in Chapter 13 is to "retain the rural atmosphere of Valley County by protecting its natural beauty and open characteristics..." The first objective is encouraging those land use practices that protect and reserve the best agricultural land for agricultural use. The appellants realize that agricultural land does not generate the property tax revenue that residential land does. But the intrinsic value of agricultural land and those who work the land cannot be underestimated. A local farmer or rancher contributes more to the local community than any part-time second home owner who comes up to their property once in a while.

7.2. **Further Development Undermines Rural Land Uses** The Comprehensive Plan warns of the need to thoughtfully consider tradeoffs between development and damages to the community and the environment. Chapter 13 No. 12 "Land use patterns in Valley County have radically altered during the past decades away from the traditional agricultural use pattern to one of recreation home and subdivision development. This rapidly evolving pattern which places more demands on the environment and community than the former one, creates the need for a thoughtful response from the community to prevent future damages to the environment and community which attracted development here in the beginning" (p.69).

The above passage clearly reflects the paradox—the contradiction that the subdivision exemplifies. The subdivision is fashioned as "upscale" (Ms. Herrick's words), "second homes" (developer's words) designed around recreation and using our "rural atmosphere" as an amenity to jack up the prices. At the same time the subdivision will be undermining the "rural atmosphere" and rural livelihoods, driving wildlife away, endangering neighbor's wells, setting a domino precedent to lose more farmlands and "ruralness."

8. **Commissioner Misgivings Indicate Reconsideration & Lack of Alignment to Comprehensive Plan**

8.1. **Commissioners Expressed Misgivings:** The county P&Z commissioners were unable to say no- even though they articulated their misgivings with their decision making and disconnects between the decision to approve the subdivision and the guidance of the Comprehensive Plan. As Commissioner Scott Freeman said in his comments, " I have been struggling lately with the farm ground going

away. That's a huge problem. You go down to Boise and all that was irrigated and made productive and now it's just homes. In case you're not watching, farms and food and all that—it's a big deal. I hate to see it go away, just for the fact that it produced something - now we have houses and more people (video of P&Z hearing, June 23, 3:06)." Commissioner Caldwell said, "Protecting water and wetlands as well as keeping agricultural ground is in the Comprehensive Plan, but that's just a guide...Again, it is in a rural area (video of P&Z hearing, June 23, 3:05)." Commissioner Neal Thompson said that he was kinda with Scott..."not sure I have a good answer (video of P&Z hearing, June 23, 3:07)." Then staff stepped in and said that the application complied with all the ordinances- something that the appellants question- and the commissioners voted to approve it. There is a terrible disassociation here. We seem to be unable to protect farmland, despite it being an expressed objective in the Comprehensive Plan and a concern for our commissioners.

- 8.2. **The Comprehensive Plan is a Guide for Decision Making:** Idaho Statutes 67-65 35 states: "decisions must be based upon criteria set forth in the comprehensive plan, zoning ordinance or other appropriate ordinance." Ken Roberts was quoted in the minutes of the P&Z meeting on May 12, 2022 saying "The Valley County Code and the Comprehensive Plan must be the foundation for the Commissioner's decision." In Chapter 14 of the Comprehensive Plan, titled Implementation it says "The goals and objectives outlined in the plan will only be realized if the necessary tools for implementation are fully utilized" What are the necessary tools? And why are they not being fully utilized? Is there a contradiction between the comprehensive plan and the ordinances? Why are there goals if they cannot be realized? Can the compatibility evaluation ever show a score that would protect farmland?

9. Loss of Farmland Destroys Rural Economies and Heritage

Since the Valley County Comprehensive Plan was updated in 2018, acre after acre of farmland has been lost to residential and commercial development. Obviously what we have been doing is not working to preserve farmland and open space. There is a deep pathology operating here that does not allow us to acknowledge that this is really about a rural economy, families supporting themselves, food security for the community, preservation of topsoil, and our ability to feed and take care of ourselves. Ben Florence, a 3rd generation farmer who farms with his family on some of the land adjacent to this proposed subdivision says it best..

"Why would anyone want to put homes that are not needed on quality farmland? Land that has produced a variety of crops over the past century it has been farmed—crops that actually benefit the local community?.

This land has produced food while providing invaluable educational opportunities for the local community. We should be preserving the precious land we have and not literally destroy it with a subdivision that only serves to line the pockets of the developers.

He goes on to say, " How does this impact me personally? Well first, my wife and I live here. In fact, my family has been here for generations. My family used to lease this particular piece of land to grow potatoes. I have distinct memories of driving back and forth between our cellars and the potato fields. I remember driving the tractor pulling the potato digger across this land alongside my father and grandfather. While we were out there working, my parents invited the kids from local Head Start to learn about Idaho's Famous Potatoes, from the history, to the process. This land has been used to nourish this community through education and nutrition. Now these developers have purchased it and want to destroy it by building a bunch of houses. We are strongly against this subdivision and frankly we are appalled that P&Z would approve it so hastily. What research has been done about the impact to the area?"

The most critical issue is what is irreparably at stake; the integrity of our agricultural community, including the people who have cared for the land and supported each other for generations. The integrity of our community must be maintained.

As discussed above, the approval of CUP 22-21 is arbitrary and capricious; the developer's application was incomplete and inaccurate and mischaracterized the 160 acres of productive farmland, as well as the surrounding land thus skewing the information used by the commissioners in their decision and the staff in their report. The approval runs contrary to the County's Land Use goals in the Comprehensive Plan of 2018 and the crucial need to protect not only farmland but the water table, wetlands and Mud Creek. The proposed subdivision is incompatible with most of the land use surrounding it and the rural landscape of West Lake Fork.

We ask the commissioners to sustain the appeal and invalidate the P&Z's approval of CUP 22-21.

Respectfully submitted this 5th day of July, 2022.



Carolyn Troutner

Adjacent Landowner to the West for the Lake Fork Neighbors:

Art Troutner
193 Lake Fork Road
McCall
208 634-8328

Marylou Rush and James D. Rush
176 Maki Lane McCall
208-630-4164

Adjacent Landowners to the South

Amy Rush
127 Ken's Place
McCall
310-804-7494
Heir

Shannon Rush-Call
9845 N.Lariat St.
Boise 83714
208-908-2780
Heir

Ben Florence
Ashley Brown
96 W. Lake Fork Rd.
McCall
208-849-1442
Farms adjacent property to the West

Carol Coyle
Dennis Coyle
113 Brookdale Dr.
McCall
208-315-3004

Dennis Stewart
13784 Nisula Road
Lake Fork

Judy Anderson
Galen Shaver
13775 Nisula Road
McCall
208-634-5594
Leda Clouser
13873 Norwood road
McCall
208-630-3358

Carl and Jayne Brown
13676 Norwood Road
Lake Fork

404-378-5911

Adjacent landowner to the south east

Kevin Miner

13853 Nisula Road

McCall

208-473-8412

Runs cattle on adjacent land to the south

Glen and Glenda Berryhill

13785 Nisula road

McCall

208-469-0738