

Valley County Planning and Zoning Commission

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Katlin Caldwell, Chairman
Ken Roberts, Vice-Chairman

Sasha Childs, Commissioner
Scott Freeman, Commissioner
Gary Swain, Commissioner

MINUTES

Valley County Planning and Zoning Commission

January 11, 2024

Valley County Court House - Cascade, Idaho

PUBLIC HEARING - 6:00 p.m.

A. OPEN: Meeting called to order at 6:00 p.m. by Chairman Caldwell. A quorum exists.

PZ Director – Cynda Herrick:	Present
PZ Commissioner – Katlin Caldwell	Present
PZ Commissioner – Scott Freeman:	Present
PZ Commissioner – Carrie Potter:	Present
PZ Commissioner – Ken Roberts:	Present
PZ Commissioner – Gary Swain:	Present
PZ Planner II – Lori Hunter:	Present

B. Election of Officers for Commission

Commissioner Swain moved hold officer elections during the scheduled work session on January 23, 2024. Commissioner Roberts seconded. The motion carried unanimously.

C. MINUTES: Commissioner Roberts moved to approve the minutes of December 14, 2023. Commissioner Swain seconded the motion. Motion passed unanimously.

C. NEW BUSINESS:

1. C.U.P. 22-16 Camp Modern – Annual Review: The Planning and Zoning Commission will assess impacts and compliance with the approved conditional use permit. The 3-acre site is addressed at 12815 Highway 55, parcels RP16N03E269260 and RP16N03E269290, and located in the SESE Sec. 26, T.16N R.3E, Boise Meridian, Valley County, Idaho. Action Item

The applicant has requested to postpone the public hearing due to road conditions.

Commissioner Swain moved to table the review of C.U.P. 22-16 to March 14, 2024. Commissioner Freeman seconded the motion. Motion carried unanimously.

2. Tamarack Resort P.U.D. 98-1 Amendment and C.U.P. 23-50 Phase 3.6 – Buttercup Custom Chalets – Preliminary Plat: Postponed Indefinitely.

This item has been postponed indefinitely. It will be re-noticed for a new date and time prior to a public hearing.

- 3. Tamarack Resort P.U.D. 98-1 Amendment and C.U.P. 23-51 Phase 3.4 – Lower Sugarloaf Custom Chalets – Preliminary Plat:** Tamarack Resort Two is requesting an amendment to the approved planned unit development to allow residential lots in an area that was previously platted as open space in Phase 1. This site would include three residential lots, recreational easements, and open space. The lots would be accessed by Discovery Drive, private. The site is served by Northlake Recreational Sewer and Water District. The 4.3-acre site is parcel RP0049200000C0 in the NW ¼ Section 5, T.15N, R.3E, Boise Meridian, Valley County, Idaho. Action Item.

Chairman Caldwell introduced the item and opened the public hearing. Chairman Caldwell asked if there was any exparte contact or conflict of interest. Chairman Caldwell recused herself due to a family member under contract and left the meeting room. Vice Chairman Roberts asked for the staff report. Director Herrick presented the staff report and displayed the site and GIS map on the projector screen.

Director Herrick asked that the applicant address the exception included in Note 17 of the recorded Tamarack Resort P.U.D. Phase 1 plat, recorded November 24, 2003. Staff and Commissioners referred to staff report attachments. The facilities plan in the original application identified each lot and use. The original application identified this area as TH-8 Townhomes. When the plat was recorded, a place holder of “open space” was used. Planned unit Developments allow flexibility. The applicant reserved the right to modify the Facilities Plan, without further County approval [Section I Application Overview]. Block 19 has since been replatted and became something else. Note 17 states that “There shall be no further division of any lot depicted on this Final Plat with the exception of Blocks 6 and 19, and except as is allowed in the Supplemental Declaration for Tamarack Resort Phase 1”. Buyers are responsible to complete due diligence in real estate purchases.

Vice Chairman Roberts asked for the applicant’s presentation.

Chris Kirk, agent, has represented the applicant as a planning consultant since 2004. He submitted a response to comments in opposition (**Exhibit 1**). Current ownership is looking for opportunities for development with reduced infrastructural costs. Eight townhomes make no sense at this location with the existing residential types in the surrounding area. Thus, three custom chalet lots are proposed; this would result in a smaller footprint than the eight townhomes. The applicant chose not to use estate lots which could fit in this location but would allow larger homes. The custom chalet homes would fit the neighborhood better. Access for all three lots would be from Discovery Drive. Much of the existing open space would remain, including the poma lift and recreational access area. The building setback from the highwater line of Rock Creek will be maintained. Existing trees will remain. The wetlands will not be impacted; they have been delineated (**Exhibit 1**). This proposal does not change the total number of units allowed at Tamarack Resort. The parcel and open space designation was essentially a placeholder on the original plat. The general declaration for Tamarack Resort allows open space to be converted to residential use as long as it is not designated as “Eagle Nest Open Space”.

Commissioner Swain is concerned that maps in the Tamarack Real Estate Office would show this area designated as open space.

Scott Turlington, applicant, stated that none of the property owners who oppose this application reached out to Tamarack Resort management. He always works with the homeowners within Tamarack Resort to explain and alleviate concerns. The parcel was initially designed for townhomes. In the notes of the plan, one can see that it is not reserved solely for open space.

There is not a map hanging in the Tamarack Real Estate Office showing this area as open space. Future development proposals will include reaching out to existing property owners.

Commissioner Swain is concerned about the loss of open space and buyers' assumption that this would remain open space. Mr. Turlington is sympathetic to concerns. Controversial issues have come up in the past and he has had many meetings with property owners. Did not realize that there were concerns regarding this proposal as no concerns were made to him prior to the staff report. Tamarack Resort did everything right in terms of documents. Many property owners do not realize the amount of future development that has already been approved for the entire Tamarack Resort.

Vice Chairman Roberts asked for proponents. There were none.

Vice Chairman Roberts asked for undecided. There were none.

Vice Chairman Roberts asked for opponents. There were none.

Vice Chairman Roberts closed the public hearing. The Commission deliberated. Commissioner Roberts appreciates the documents but would like something that connects the dots to show the allowed flexibility and notes. He suggested a neighborhood meeting. Commissioner Swain stated that Tamarack Resort has given us good proposals; however, he has a problem with this one. He does not like the fact that this was designated as open space on the plat. This should be open space in perpetuity even though he understands the ability to change is in the small print. He is not opposed to tabling the matter to obtain more information. He would also like a meeting between the developer and neighborhood owners. Commissioner Freeman concurs; it does not feel good to change an area designated as open space. Commissioner Potter disagrees with previous comments. Tamarack Resort is well within their rights to request this change. They could build eight townhomes but have changed the use to three lots with open space. Commissioner Roberts stated P.U.D.s are afforded more flexibility; however, Commissioners must do due diligence to show clear reasons for the resulting decision. It would also bode well if the applicant choose to have a meeting with the neighbors.

Commissioner Swain moved to table Tamarack Resort P.U.D. 98-1 Amendment and C.U.P. 23-51 Phase 3.4 – Lower Sugarloaf Custom Chalets to the regular meeting in February 2024 [February 8, 2024] to obtain more information, specifically the Facilities Plan, original approval, plat, and supplemental declaration. Commissioner Freeman seconded the motion. Commissioner Freeman, Commissioner Roberts, and Commissioner Swain voted in favor; Commissioner Potter opposed. The motion carried.

Chairman Caldwell returned to the Commission.

6:48 p.m.

4. P.U.D. 23-02 MacGregor Townsite and C.U.P. 23-52 Phase 1 Preliminary Plat: Groves Family LLC is requesting approval of 335 single-family residential lots, community amenities, and open space. Community amenities would include recreational courts, a commercial plaza, outdoor ice-skating rink, pathways, and approximately 49 acres of open space. The net density is 2.11 units per acre. North Lake Recreational Sewer and Water District would provide water and sewer service. Construction would occur in six phases over a 15-year period.

Access would be from Loomis Lane and Old State Road, both public roads. Internal roads would be private.

Variances from Valley County Code are requested to reduce right-of-way widths, reduce front and rear setbacks, reduce maximum lot coverage, reduce frontage widths along roads, and allow a hybrid approach to open space requirements.

Contained within the application is a combination of permits, as follows:

- 1) **Concept Approval and Planned Unit Development** in accordance with Title 9 Land Use and Development.
- 2) **C.U.P. 23-52 Preliminary Plat** in accordance with Title 10 Subdivision Regulations.

The 159-acre site is parcel RP16N03E270005, located at the intersection of Loomis Lane and Old State Road, in the NE ¼ Section 27, T.16N, R.3E, Boise Meridian, Valley County, Idaho.

Chairman Caldwell introduced the item and opened the public hearing. Chairman Caldwell asked if there was any exparte contact or conflict of interest.

Commissioner Potter declared exparte contact from someone who has provided testimony; the letter was included in the Commissioner packet. Commissioner Roberts stated that he has no interest in the property at this time; however, his uncle owned the property until summer 2023.

Director Herrick presented the staff report and explained the separate attachment sections. The surrounding densities were reviewed. Director Herrick displayed the site plan on the projector screen and summarized the following exhibits:

- **Exhibit 1** – Applicant's response to questions within the Staff Report (Jan. 11, 2024)
- **Exhibit 2** – Shari Johnsen's email with concerns and suggestions. (Jan. 4, 2024)
- **Exhibit 3** – Sarah Swann and family have concerns. (Jan. 4, 2024)

In addition to the staff questions listed in the staff report [Section 6], Director Herrick would like the applicant to answer the following:

1. Will the homeowner association maintain the yards of the single-family residential units in a manner similar to the Meadows at West Mountain?
2. Will fencing be allowed around each single-family residential lot?

Commissioner Swain asked for clarification of a planned unit development (P.U.D). versus a subdivision and what makes this application a P.U.D. instead of a typical subdivision application? Director Herrick stated this application does meet the maximum density limits of 2.5 dwelling units per acre for a subdivision application; this development is 2.1 dwelling units per acre. The P.U.D. application allows for flexibility of standards within Title 5. Requested relaxation of standards include reduced right-of-way widths, reduced front and side setbacks, reduced maximum lot coverage, reduced frontage widths along roads, and allow for a hybrid approach to open space requirements. These would be offset with open space and amenities. A higher density is allowed than the applicant has requested. The point in doing a P.U.D. is to change the character of the neighborhood. It can be mixed-use but does not need to include commercial. Valley County Code Title 9 describes a P.U.D.

Chairman Caldwell asked for the applicant's presentation.

Craig Groves, 154 Shadows Trail, Donnelly, is a full-time resident of Valley County. His family is vested in Valley County and grandkids are avid ice hockey players. The site has an interesting history; it has not always been farmland. The site was a logging camp run by the McGregor-Boise-Payette Lumber Company until the late 1930's. Over 350 loggers and families lived at the site with a water tower in the center of the property. He was told that the first Donnelly high school was at this site. Valley County has a housing crisis. Yesterday, the average listing price of a less than one-acre residential property in the Mountain Central MLS was \$1,597,828. The average selling price yesterday was \$846,333. Professional occupations

such as doctors and teachers need housing in the community. He desires to create a community, not just a subdivision. A community with open space, recreational amenities, and common area amenities. Housing opportunities for all generations with amenities for all generations. Full-time local residents would be given the first option to purchase; selling to investors is at the bottom of Mr. Grove's priority list. The additional submittal tried to address all staff questions and concerns (**Exhibit 1**).

Bonnie Layton, senior planner for NV5, Meridian, described the initial site plan. It is a 159-acre, fairly flat site located approximately one and a half miles south of Donnelly. The proposal includes 335 single-family residential homes with 2.11 dwelling units per acre. Lots range in size from 0.19 to 0.26 acres. The goal is to create a vibrant and accessible community. The P.U.D. process allows for flexibility and trade-offs. The proposed reduction in lot sizes allows an increase in open space available to both residents and the public. Unlike surrounding subdivisions, open space is proposed. Amenities include a community center, sport courts, pathways, and ponds to create a sense of community.

Ms. Layton stated that the application binder includes an analysis of the Valley County Comprehensive Plan. The Comprehensive Plan and zoning code allows for a balance between objectives, growth and private property rights. A Traffic Impact Study has been done. The applicant provided a letter containing the applicant's responses to agencies and public comments (**Exhibit 1**). Much thought has gone into this project and the benefits to the community. A P.U.D. allows the applicant to modify lot sizes. Having a variety of lot and home sizes will help obtain affordable housing in the development. The design includes entry ways and architectural features; the homes will have a modern mountain aesthetic. Mr. Groves designs thoughtful projects due to amenities. Density ranges of the surrounding community were reviewed. The applicant could have chosen to do a subdivision development with 2.5 single-family lots per acre; however, that design would not offer the benefit of the community amenities, including pathways open to the public.

Historical pictures and rendering of community amenities were submitted (**Exhibit 4**). Upon receiving comments from the public, the applicant explored an alternative to the original design (**Exhibit 5**). This alternative site plan includes ponds in the northwest corner and townhome lots in the center area. This exhibit also includes drawings of proposed home styles. A service lot for public services such as the Valley County snowplow could be added in the northwest corner with access from Loomis Lane.

Commissioner Swain had questions regarding the traffic impact report, the hybrid open space, and short-term rentals.

Gregg Tankersley, Crestline Engineers, McCall, explained the hybrid open space concept. It includes the platted open space parcels outside the lots plus open space created by limiting lot coverage on individual lots. These latter areas would be required to be maintained as open space although not used as public open space. CCRs, development guidelines, and building envelopes would restrict building sizes and limit maximum lot coverage.

Mr. Groves reiterated that his objective is housing for residents, not investors. He wants to provide housing for a variety of profiles. Residents would be the majority owners but there would be some second homeowners who might wish to short-term rent their properties. Short-term rentals would be controlled by CCRs.

Commissioner Roberts has many questions from the applicant. He questioned why Wednesday, November 8, 2023, was selected as the day for traffic study. Ms. Layton stated that NV5 creates traffic impact studies throughout Idaho and the country. She stated that a

scoping was done with Idaho Transportation Department (ITD) prior to data collection. She understands that ITD does much of their data collection in November. She recognizes that November is part of the shoulder season. ITD is reviewing the report. Updates and additional data will be done if needed. This is a 15-year project and traffic studies can be updated over time and the original assumptions can be validated or modified. Commissioner Roberts stated he has reviewed the Highway 55 traffic count volumes; other days were 2.5 times greater than November 8, 2023. The application states low impact on County roads and intersections. Commissioner Roberts believes more discussion is needed on traffic impacts.

Commissioner Roberts asked for clarification on density and hybrid use of open space. He calculated that if open space is removed, the density increases to 3.05 units per acre. If both the open space and hybrid open space are removed, the density increases to 4.68 units per acre. He would like the applicant to verify these calculations.

Mr. Tankersley responded to questions. He referred the Commission to the provided traffic study and intersection level of service information. Currently, all the intersections are considered to be operating at a service level of A or B. Level of service D is considered operational. Mr. Tankersley does not believe that the results of additional traffic counts at different times of the year would greatly impact the level of service. Commissioner Roberts agreed based on extrapolation of data; some locations moved into a B or a C level.

Mr. Tankersley referred the Commissioners to the “cheat sheet” to review proposed and nearby average lot size (**Exhibit 1**). If “open space” is not included in the calculations, the average lot size would be 0.39 acre per lot. This compares favorably to the subdivisions in the area. The applicant’s response to staff and agency comments and questions provided has many answers (**Exhibit 1**).

Chairman Caldwell stated that the Commissioners have not had a chance to thoroughly review the applicant’s additional submittal.

Chairman Caldwell asked for proponents. There were none.

Chairman Caldwell asked for undecided.

Kirby Robertson, 12952 Upland Road, located at the west end of Loomis Lane, stated that the Valley County Comprehensive Plan includes a do no harm clause to the people in the area. He has significant issues as a daily driver in the area. He is also a co-chairman for the Valley County Road Advisory Committee. The traffic impact study was conducted on Wednesday, November 8, 2023, during the shoulder season. In addition, the SISCRA Campground was closed, there would have been limited short-term rental changeover, and the boat ramp was closed. Another plat was recently approved that would also affect traffic in this area plus there are many existing undeveloped lots. The roadbed for Loomis Lane was not properly built. There are springs underneath Loomis Lane. The portion of Old State Road south of Loomis Lane also needs rebuilt. A four-way stop is needed at the intersection of Loomis Lane and Old State Road. Based on the “do no harm clause” within Comprehensive Plan, more projects can not be added to a system that is currently not performing.

Commissioner Swain stated that he also sits on the Road Advisory Board with Mr. Robertson. He asked for clarification regarding the increase in cost detailed in Mr. Robertson’s comment letter. Mr. Robertson stated that the North Lake Recreational Sewer and Water District (NLRSWD) is funded by existing lots with associated LIDs plus a monthly fee per lot. Some of these lots are still undeveloped. Multiple plats have been permitted; however, those new people never paid the LID cost for septic and water. About three years ago, there was a monthly

increase from \$40 to \$80 to mitigate the addition of new lots. All plats should be required to have the LID payment per lot or it would be unfair to people who have paid for existing infrastructure. The existing system has problems with low water pressure; twice this past summer he had no water at his home. There is either a leak or inadequate water capacity. Either way, NLRWSD has not responded to this issue. He has known Mr. Groves, the applicant, for thirty years and believes if the project is approved, Mr. Groves will complete the project. However, this should be an economic decision that supports the existing people with necessary development agreement and setback requirements. Then Mr. Groves could determine if the project would be financially viable.

Chairman Caldwell asked for opponents.

Steve Byrne, 12898 Spring Valley RD, is opposed to the proposed density. Who will pay for the negative impacts to schools, roads, etc.? Over 400 residences have been approved in the Donnelly area; therefore, there does not seem to be a need for additional housing in the area.

Theresa Gibboney, Donnelly, believes it is a positive that Craig Groves is the applicant as he is a local developer. However, she has similar concerns to those for other recently proposed developments in the Donnelly area, including the watershed, migrating animals, and the way of life. We are not Boise; there is no reason for every development to have amenities that should be within city limits. Natural resources and recreational opportunities already exist. All exceptions to the County Code should be denied. The proposed amenities should be removed; this would allow more green space around each home. Traffic should be addressed. This should not be approved until the infrastructure needs are addressed. Preliminary plans were submitted to Valley County prior to the required neighborhood meeting; she understands that this is a new requirement.

Jackie Beverage, 32 Lakewind RD, stated that the same concerns keep coming up for proposed developments. These include infrastructure, water, sewer, roads, power, traffic, density, snow removal, snow storage, drainage, mosquito-filled ponds, lighting, common areas, and environmental impact on water and wildlife. There is a notoriously high-water table in the area. The distance is closer to four miles to Donnelly; the site is a more rural area where nearby lots are a half-acre or larger in the area. This proposal is too dense for the rural area.

Dave Wilson, 12898 Spring Valley RD, lives in the Railroad Village Subdivision, which has the highest density in the area, no common areas, and was built adjacent to an existing street. He admires the open space, but the proposal is too dense. The Comprehensive Plan is subjective. The proposed density and lot sizes are not compatible with the neighborhood. Every spring, his house is threatened by flooding every spring from the drainage ditch. Existing culverts are too small, and the ditch is not maintained. He is concerned about where the water will go. Mr. Wilson responded to questions from Commissioner Roberts. Railroad Village Subdivision has 0.28 - 0.31 acres per lot. The past high-water drainage in the area was discussed.

Lawrence Henneman, 12886 Spring Valley RD, is concerned about the proposed ponds and overflow. The ponds will continue to overflow all summer long. Who will control the water? The ponds are not necessary.

Mike Seibert, 12701 Smoky Drive, stated this proposal should be in or adjacent to Donnelly. He is opposed to any short-term rentals being allowed in the development.

Art Troutner, 193 W Lake Fork RD, stated ponds and irrigation rights are separate entities. Permission would be required from Idaho Department of Water Resources to do an exchange of water rights from irrigation to pond use. These ponds would waste water due to evaporation.

loss. Also due to density and traffic impacts, it would be good idea to think about area transportation other than motorized uses. Developers should help defray costs for non-motorized pathways.

Tyler Hlawatschek, 12920 Spring Valley RD, concurs with previous concerns. There is an assumption that the existing neighborhood wants these proposed amenities. He moved here for recreational activities, open space, and views. The proposed pathway would be adjacent to his property and would be disruptive to his home and privacy.

Kathy Klient Whitney, Star, Idaho, represented Needles View Ranch. She is very familiar with the property as the ranch previously used the property. The developer should pay fair share of the roads repair and improvements, intersection improvements, and access to highway 55. The southeast corner where the trees are located is a bog. The site would require a large amount of dirt and gravel. An artesian well is located in the middle of the property. The site is a low piece of ground. The proposal is too dense. There would be impacts to schools with this development plus other developments that have been approved in the Donnelly area. Land is needed for a new elementary school. She replied to Commissioner Swain's question regarding past irrigation practices. Flood irrigation was not a goal. There is high ground water. This property is lower than the adjacent Railroad Village that was built on the elevated railroad bed.

Chairman Caldwell asked for rebuttal from the applicant.

Mr. Tankersley responded to prior comments. This proposed development would help fix some of the existing problems including the roads and poor drainage. They will work with NLRSD for solutions. Commissioner Freeman stated that the percolation rate at the site would be modified due to hardscape. Mr. Tankersley responded that the project would require approval of the Valley County Engineer and must not create any additional impacts to the runoff. The open space areas allow drainage. He referred to ground water monitoring data and the applicant's intent to use materials excavated from ponds to raise the fill level.

Commissioner Swain asked if fencing would be allowed within the hybrid open areas. Ms. Layton stated that they are working on designs that would be addressed in CCRs and would handle some desire for privacy in the yards. The applicant is sensitive to the open natural feel of the community as well as some desire for privacy by homeowners.

Commissioner Roberts referred to the ALLWEST geotechnical evaluation for the site and asked Mr. Tankersley to respond to the conclusions regarding soils. The second bullet point in the executive summary stated soft and loose soils may be prone to settlement and are not suitable to support fill soils, structures, or other improvements. The sixth bullet point states there is an assumption that seasonal high groundwater will not restrict vertical seepage. Commissioner Roberts sees this statement as a disclaimer and a red flag. The seventh bullet point states the on-site native soils do not meet the public works standards and are not suitable to be used as materials for pavement construction or as granular structural fill. Thus, ruling out use of the soil for many activities on the site. Commissioner Roberts also referred to the Valley Soil and Water Conservation District letter which includes information on the two types of soil that dominate in the area. In addition, sump pumps are required in homes built in an area with similar soil profiles west of the proposed site.

Mr. Tankersley responded. The map tells the soil types in the area. However, the question is how big of the area is each soil type.? The poorer soil is typically associated with wet areas and is likely shown on the soil map along the western boundary of the proposed site. A wetland delineation has been completed for this site. More details can be discussed at a later time.

Soil survey must be taken with a grain of salt. The ALLWEST preliminary geotechnical report on the property is current. The report specifically speaks to the use of excavated materials from the ponds to be used for fill. The material does not meet gradations for roadway construction. However, he specifically asked the ALLWEST geotechnical engineer and received an email response about using the excavated materials for fill. The response was "Yes, we did make that comment, but that specifically pertained to the roadways and using it as roadway subbase. It is suitable material for fill for lots."

Commissioner Roberts referred to the GIS map on the large projector screen. Commissioner Roberts farmed the field after the Klient's did. The area is wet enough that he could not always use a tractor on part of property even though there would be no irrigation water at time. The grove of trees was always too wet to farm. The trees fall over due to too much water. Can this be designed around and mitigated?

Mr. Tankersly replied to Commissioner Swain's questions and stated that information regarding building up the lot area, sump pumps, and crawl spaces is included in the applicant's response (**Exhibit 1**).

Commissioners and Director Herrick discussed continuing discussion to a work session or a future meeting. More information is needed prior to a decision. Chairman Caldwell requests more information on traffic, stormwater, and draft CCRs. Commissioner Roberts stated the modified public hearing system allows additional public testimony as the application changes and new information is submitted. Commissioner Roberts would like to meet with NLRSDW to discuss their master plan. Idaho Code 67-6502 lays out a checklist of things that the PZ Commission is to review. He believes a fair amount of information is still needed.

Director Herrick requested that the Commissioners send Staff a list of questions to pass along to the applicant prior to another meeting.

Commissioner Roberts stated this PZ Commission should do a compatibility rating soon.

Commissioner Swain appreciated the applicant's response to the staff report (**Exhibit 1**) but many responses were not firm answers. Traffic study updates and extrapolation were discussed.

Mr. Groves stated he had a preliminary meeting with the manager and engineer of NLRSDW. The NLRSDW Master Plan calls for the extension of a 12-inch waterline going east on Loomis Lane. The line currently ends at Spring Valley Road. He and his son have a vast amount of experience with building homes in areas of high ground water. They have built homes where the ground water is 24-inches below the surface. They know how to use footing drains and remove water. Their intention for this development is to primarily construct slab-on-grade homes with radiant heating. The proposed 40-ft landscape strip would be lower than the surrounding area to allow for drainage. The strip will be landscaped with aspen and pines to create privacy throughout the community.

Commissioner Roberts moved to table P.U.D. 23-02 MacGregor Townsite and C.U.P. 23-52 Phase 1 Preliminary Plat to the regular meeting on February 8, 2024, at 6:00 p.m. Commissioner Swain seconded the motion. Motion carried unanimously.

Short recess until 8:55 p.m.

D. OTHER ITEMS / CORRESPONDENCE:

1. Appeal of Administrative Decision Regarding 13760 Trammel Road, 348 Maki Lane, and Administrative Plat AP 23-01. Determination of whether there are any legal parcels. Action Item.

Chairman Caldwell introduced the item and stated that this is not a public hearing. Director Herrick presented the staff report. The appellants applied for a Central District Health Parcel Approval Form to remodel their existing home and install a new septic system in Long Valley subdivision No. 2 Lot 1A. Director Herrick determined that all three splits of Lot 1 (1A, 1B, and 1C) were not legal parcels due to an illegal split that occurred in 1997. Thus, she did not sign the Parcel Approval Form. Illegal splits and inconsistencies have occurred over 28 years. The Board of County Commissioners directed Staff to use the administrative plat process to fix this long-standing issue. Mr. Rodebaugh has been working on cleaning up the property. The history of the lot was discussed.

Since the staff report was completed, Director Herrick has talked to legal counsel for both Valley County and the appellant. Director Herrick created a timeline for the properties (**Exhibit 1**). Director Herrick has changed her recommendation since talking to legal counsel. The PZ Commission could direct staff to prepare a declaration stating all three parcels are legal, buildable parcels due to the longevity of parcels, taxes paid, previous permits, etc., and authorize the Chairman to sign this declaration. This decision could be appealed to the Board of County Commissioners. If there is no appeal, the document would be recorded after the ten-day appeal period. Then building permits will be able to be issued on all lots. Director Herrick would be able to sign the Parcel Approval Form which would allow Central District Health to permit a septic system for the Yost's. This would not be a precedent setting decision as it is site specific.

Director Herrick stated that per the direction of Valley County's legal counsel, the Commission will not make a decision on the access easement. Commissioner Roberts stated the decision should "remedy an unique circumstance" and be specific on reasons this was allowed. Director Herrick stated the alternative is to record the administrative plat for any of the three parcels. Chairman Caldwell added that Valley County's legal counsel has reviewed this. A timeline should be attached to the declaration.

Amy Holm, McCall, is representing the Yost's who own property at 13760 Trammel Road. The proposed administrative plat has conditions that Mr. Rodebaugh is not meeting. The septic permit for the Yost's is on hold. She presented a slide show (**Exhibit 2**). Lot 1 was split into three lots. There was a record of survey in 1997 that shows the three resulting parcels; Mr. Rodebaugh owns the middle portion shown as "Option Parcel 1". The Yost's own Lot 1A and Emily Des Meules and Caleb Strough own Lot 1B. Both properties were purchased with fully built homes through a realtor. The deeds do not give any indication that the property is an illegal split. The owners of Lot 1A and Lot 1B did not know there were issues with the legality of their lots with existing homes. She reviewed the history of the properties. Their position is that there is no legal access to the middle portion (1C); this is a decision for the court system. The Commissioner's decision should not grant access to Lot 1C.

The Yost's should not be punished for past actions. Valley County Code does make reference to nonconforming uses. A single-family residence that wants to remain a single-family residence is within the law. Remodeling the house does not change the use of the property and the character would remain the same. She asks that parcels 1A and 1B be declared as legal parcels.

Commissioner Swain asked if a claim had been made with the title company. Ms. Holm replied that the title company documents make no determination if legal parcel or not; only the change of ownership is documented. The current property owners have not made any claim with the title

company.

Chairman Caldwell asked if the current recommendation from Staff is acceptable to Ms. Holm. Ms. Holm was unwilling to commit to a document she had not yet seen. Director Herrick stated she will give Ms. Holm a draft declaration to review. This document will not refer to an access easement.

Mr. Rodebaugh asked for confirmation that all three lots would be legal parcels if Director Herrick's recommendation was carried out. Chairman Caldwell replied in the affirmative.

Commissioner Swain thinks this decision is out of the scope of the PZ Commission and should be referred to the Board of County Commissioners. Director Herrick reiterated that she has been working with Valley County Deputy Prosecutor Brian Oakey. If the PZ Commission declares these as legal parcels, then there is a 10-day appeal period. If not, Staff will proceed with the administrative plat.

Director Herrick clarified that the appeal is of her denial of a septic permit approval for the Yost property. The path forward is to determine that all three lots are legal parcels. Ms. Holm stated that the Commission can reverse the administrative decision that the Yost property could not get a septic permit. Staff has recommended a slightly different decision.

Commissioner Caldwell agrees with Staff's original decision that the parcels are illegal. However, the PZ Commission can agree to make these legal parcels. She prefers to uphold the decision of staff, deny the appeal, and move forward with the recommendation of staff and legal counsel that the Commission determine these are legal parcels due to unique circumstances. Commissioner Freeman concurs. There was further discussion. The unique circumstances include the longevity of parcels, taxes paid, and approved building permits. The remedy is to declare these as legal parcels.

Commissioner Roberts, based on input from staff and the desire to grant the three existing lots as separate legal parcels, moved that the appeal of the administrative decision regarding 13760 Trammel Road, 348 Maki Lane, and Administrative Plat AP 23-01 be granted. Commissioner Potter seconded the motion. Commissioner Roberts stated this motion matches up with what Staff now recommends and would make all three parcels legal. Chairman Caldwell disagrees because that implies that the Staff made a wrong decision by declaring them illegal parcels. Commissioners Freeman, Potter, Roberts, and Swain voted in favor. Chairman Caldwell voted in opposition. Motion passed.

2. C.U.P. 21-32 Lake Fork Village Condos and Offices – Would changing the approved residential units to office units require a conditional use permit amendment? Action Item.

This request has been withdrawn by the applicant.

E. FACTS AND CONCLUSIONS – Action Items:

- V-4-23 Concrete Plant Height Variance
- C.U.P. 23-47 Moser Subdivision – Preliminary and Final Plat
- C.U.P. 23-48 Clear Creek Recreation Site and Campground
- C.U.P. 23-49 Lamm Multiple Residences and Short-Term Rentals

Commissioner Freeman moved to approve the Facts and Conclusions as presented and authorize the chairman to sign. Commissioner Roberts seconded the motion. Motion carried unanimously.

Chairman Caldwell adjourned the meeting at 9:41 p.m.