

Valley County Planning & Zoning Commission

PO Box 1350
219 North Main Street
Cascade, ID 83611-1350



Phone: 208-382-7115
Fax: 208-382-7119
Email: cherrick@co.valley.id.us
Website: www.co.valley.id.us

Johanna Defoort, Chairman
Scott Freeman, Vice-Chair

Brian Benton, Commissioner
Ray Cooper, Commissioner
Neal Thompson, Commissioner

MINUTES

Valley County Planning and Zoning Commission
February 11, 2021
Valley County Court House - Cascade, Idaho
PUBLIC HEARING - 6:00 p.m.

A. OPEN: Meeting called to order at 6:00 p.m. Quorum exists.

P&Z Administrator – Cynda Herrick:	Present
P&Z Commissioner – Brian Benton:	Present
P&Z Commissioner – Ray Cooper:	Excused
P&Z Commissioner – Johanna Defoort:	Present
P&Z Commissioner – Scott Freeman:	Present
P&Z Commissioner – Neal Thompson:	Present
P&Z Technician – Lori Hunter:	Present

Chairman Defoort explained tonight's public hearing procedures which are based on the Governor's current requirements for Covid-19. The public can livestream the meeting and may testify either in person or telephonically.

B. MINUTES: Commissioner Freeman moved to approve the minutes of January 14, 2021.
Commissioner Benton seconded the motion. Motion carried unanimously.

D. NEW BUSINESS:

- 1. C.U.P. 20-28 Eis RV Site** Dale and Joyce Eis are requesting approval of a conditional use permit for a Recreational Vehicle campground to allow four RVs to be used for recreational purposes for more than 30 days in duration. The campsite will be for personal use and will not have any commercial use. There is an individual well, individual septic, RV holding tanks, and electrical power. The 1.3-acre site is addressed at 3 Hemlock Trail, located in CR-4 Subdivision Lot 32, in the NE ¼ Sec. 15, T.13N R.3E, Boise Meridian, Valley County, Idaho. Action Item. **Postponed from Jan. 14, 2021.**

Chairman Defoort introduced the item and opened the public hearing. Chairman Defoort asked if there was any *ex parte* contact or conflict of interest. There was none.

Chairman Defoort asked for the Staff Report. Staff presented the staff report. Staff and Commissioners discussed the definition of a “dwelling unit”. The Planning and Zoning previously determined one (1) RV does not equal one dwelling unit. Other Planning and Zoning staff in Idaho and a Boise State University business writing professor reviewed the language and punctuation in the Valley County Code and agreed with the Commission’s previous determination. The code should be rewritten to be clear. At issue is the placement of the comma and whether a RV needs to be on a foundation to be considered a dwelling unit. Staff read the definition of “dwelling unit” from Valley County Code.

Chairman Defoort asked for the applicant’s presentation.

CoraAnn Nihart, 1127 Hall Drive, Nampa, is the daughter of the applicant and testified telephonically. The property has been family-owned since 1975. The property is used by family members for camping. They do not run generators. They have applied for this permit to be in compliance. She referred to setbacks from property line.

Staff clarified that the setbacks from property lines adjacent to a road are 20 feet. In response, Ms. Nihart said that one RV location will be moved so all RVs will then meet setbacks.

There was no one in the audience who wished to speak on this matter. Chairman Defoort asked for anyone who wished to speak telephonically. There was no response.

Staff responded to Commissioner Defoort’s question regarding the pumphouse location. The pumphouse has likely been there longer than building setbacks have been required by Valley County.

Chairman Defoort closed the public hearing.

The Commission deliberated. Setback requirements were discussed. The setback requirements for residential versus commercial uses were discussed. There is a good site plan; the site appears to be a well maintained, fire-wise lot. This site has been used in this manner for many years. Grandfathered use must predate 1982; this applicant is voluntarily complying with the ordinance. Prior to May 2020, a conditional use permit was required for any property that had more than one RV on the property for greater than 30 days; the new ordinance allows two or three RVs with an administrative RVC permit. Conditional use permits are site specific.

Per Valley County Code, all buildings exceeding three feet in height shall meet setbacks. RVs are not structures. Under the RVC ordinance, RVs must comply with setbacks.

Commissioner Benton moved to approve C.U.P. 20-28 EIS RV Site with the stated conditions. Commissioner Freeman seconded the motion. Motion carried unanimously.

Chairman Defoort explained the ten-day appeal period to the Valley County Board of Commissioners.

6:27 p.m.

- 2. C.U.P. 20-31 Tall Timber Machining & Lumber:** William Smith is requesting a conditional use permit for continued use of C.U.P. 15-10, an existing covered sawmill and log storage yard that was approved for five years. A machine shop will also be constructed. The approval will also be for a variance from 9-5F-2.A (75' frontage requirement) and 9-5F-2.B.2 (setbacks). The site is 4.8 acres addressed as 228 Maki Lane. It is in Long Valley Subdivision # 1, Tax # 94 in Lot 4 and Tax # 86 in Lot 5, in the SE ¼ Section 8, T.17N, R.3E, Boise Meridian, Valley County, Idaho. Action Item. **Postponed from Jan. 14, 2021.**

Chairman Defoort introduced the item and opened the public hearing. Chairman Defoort asked if there was any *exparte* contact or conflict of interest. There was none.

Chairman Defoort asked for the Staff Report. Staff presented the staff report. Staff and Commissioners discussed the classification of the sawmill in Valley County Code Table 9-3-1.b.5 Heavy Industrial.

Chairman Defoort asked for the applicant's presentation.

William Smith, Maki Lane, has been at this site for 27 years. He originally used the sawmill to build his shop and home. There is a machine shop. He harvests hazard trees. He has a "sort yard" at the site. He is scaling back the sawmill use and increasing the use of the machine shop. He does want to continue hazard tree harvesting and milling. He gets approximately 50,000 to 100,000 board feet out of Ponderosa State Park annually.

His hours of operation are 8 a.m. to 7 p.m.; typically limited to 9 a.m. to 5 p.m., Monday through Saturday. There are solar-powered lights in the mill shed.

Staff said that Mr. Smith originally thought he would move the mill to a site on Highway 55. The time-limit in the original C.U.P. allowed him to continue to build house, etc.

Mr. Smith said he does have heavy equipment at the site. He also purchased additional property to the south. The proposed shed would house equipment. He wants to switch to building saws, etc., in the machine shop and do less sawmill work. Excess wood is given away for firewood. There is a burn pile on the property which will also diminish in size due to reduced sawmill use.

There was no one in the audience who wished to speak on this matter. Chairman Defoort asked for anyone who wished to speak telephonically. There was no response.

Chairman Defoort closed the public hearing.

The Commission deliberated. The use has been occurring for many years. Neighbors are in favor of the use.

Commissioner Benton moved to approve C.U.P. 20-31 Tall Timber Machining & Lumber with the stated conditions. Commissioner Thompson seconded the motion. Motion carried unanimously.

Hours of operation were clarified.

COA # 13 Hours of operation are limited to 8:00 a.m. to 7:00 p.m., Monday through Saturday.

Chairman Defoort explained the ten-day appeal period to the Valley County Board of Commissioners.

6:53 p.m.

3. C.U.P. 20-34 RHP RV Site: RHP LLC is requesting approval of a conditional use permit for a Recreational Vehicle campground to allow four RVs to be used for recreational purposes for more than 30 days in duration. The campsite will be for personal use and will not have any commercial use. There is an individual well, central sewer, and electrical service. The 0.8-acre site is addressed at 12750 Skain Road, located in McLeod & Edwards Wagon Wheel #8 Lot 14, Block 2, in the NW ¼ Sec. 34, T.16N R.3E, Boise Meridian, Valley County, Idaho. Action Item

Chairman Defoort introduced the item and opened the public hearing. Chairman Defoort asked if there was any *ex parte* contact or conflict of interest. There was none.

Chairman Defoort asked for the Staff Report. Staff presented the staff report. The Planning and Zoning Commission, when reviewing previous applications, determined that RVs must be placed on a foundation to be considered a complete dwelling unit. Patios which are not three-feet high do not require building permits.

Chairman Defoort asked for the applicant's presentation.

Chris Haven, 7757 Ferrish Avenue, Boise, represented the applicant. RHP is family-owned LLC. The family has spent many years recreating in Valley County and wanted to purchase property to continue doing so. They have removed many dead trees and underbrush and garbage from the property.

The site plan is "future" plan; part has been completed. Family members will decide type of patio: dirt, gravel, concrete, or wood. The lot is connected to Northlake Sewer. All four RVs are connected to sewer. Water is obtained from a well on the lot. The pumphouse is in the pictures from staff report. RVs will be likely be on site throughout summer and be removed in the winter. The number of people likely to be using the RVs was discussed.

There was no one in the audience who wished to speak on this matter. Chairman Defoort asked for anyone who wished to speak telephonically. There was no response.

Chairman Defoort closed the public hearing.

The Commission deliberated. Well and sewer are at the site. Over-flow parking available on the lot. Setbacks are met. Many lots in the area have RV use. Site plan is well drawn.

Commissioner Benton moved to approve C.U.P. 20-34 RHP RV Site with the stated conditions. Commissioner Thompson seconded the motion. Motion carried unanimously.

Applicant acknowledged he is aware that buildings over 3-feet high will require building permit. Chairman Defoort explained the ten-day appeal period to the Valley County Board of Commissioners.

7:10 p.m.

4. C.U.P. 20-36 Highway 55 Storage Amendment to C.U.P. 20-03: Steel National is requesting approval to amend C.U.P. 20-03 which was approved March 2020. The amendment would modify the site plan to seven storage buildings, four covered RV parking areas, and a smaller office building. The previous approval included nine storage buildings and three covered-RV parking areas. Individual well, an individual septic system, and electricity will be established. Access is via Coho Lane. The applicant has purchased 20 acres of the 62-acre parcel (RP16N03E036650) located in the S ½ SW ¼ Section 3 T.16N R.3E, Boise Meridian, Valley County, Idaho. Action Item

Chairman Defoort introduced the item and opened the public hearing. Chairman Defoort asked if there was any *ex parte* contact or conflict of interest. There was none.

Chairman Defoort asked for the Staff Report. Staff presented the staff report. The applicant submitted building plans that are rearranged from the previously approved site plan. Due to the opposition to the original applicant, Staff believed that amendments should be heard in a public hearing to allow for public comment.

Chairman Defoort asked for the applicant's presentation.

Lucas Hansen, 4114 Nelson Lane, representing Steel National, wants to reduce the office size and change the office location. It will be a kiosk instead of a larger office.

The buildings will be earth-toned colors. Landscaping and lighting were discussed. Motion-lights were required due to prior public comments. North side and east side of the site will be bordered by buildings and chain-link fencing will surround the rest. Construction will begin in 2021.

There was no one in the audience who wished to speak on this matter. Chairman Defoort asked for anyone who wished to speak telephonically. There was no response.

Chairman Defoort closed the public hearing.

The Commission deliberated.

Commissioner Freeman moved to approve C.U.P. 20-36 Highway 55 Storage Amendment to C.U.P. 20-03 with the stated conditions. Commissioner Benton seconded the motion. Motion carried unanimously.

Chairman Defoort explained the ten-day appeal period to the Valley County Board of Commissioners.

7:25 p.m.

5. VAC 20-04 Workman Vacation of Utility Easement: Robert Workman is requesting a vacation of a 10-foot-wide utility easement that is centered on the lot line between Lot 74 and Lot 75 Block C of Wagon Wheel Ranch #4. The site is addressed at 12868 Syringa Road and 152 Camas Lane and is in the SW ¼ Section 27, T.16N, R.3E, Boise Meridian, Valley County, Idaho. Action Item.

Chairman Defoort introduced the item and opened the public hearing. Chairman Defoort asked if there was any *ex parte* contact or conflict of interest. There was none.

Chairman Defoort asked for the Staff Report. Administrator Herrick presented the staff report.

Utility easements exist on all lot lines within this subdivision. There was discussion on lot combinations, splits, easements, and building over lot lines. Vacation of easement requests require public hearings with both Planning and Zoning and Board of County Commissioners.

Chairman Defoort asked for the applicant's presentation.

Robert Workman wants to add onto house and build over the lot line and utility easement.

There was no one in the audience. Chairman Defoort asked for anyone who wished to speak telephonically. There was no response.

Chairman Defoort closed the public hearing.

The Commission deliberated. The Commissioners have no issues with this request.

Commissioner Benton moved to recommend approval of VAC 20-04 Vacation of the Utility Easement to the Board of County Commissioners. Commissioner Thompson seconded the motion. Motion carried unanimously.

The Board of County Commission will also hold a public hearing for VAC 20-04.

Short recess.

7:40 p.m.

E. OTHER ITEMS:

Appeal of Administrative Decision: Grandfathered Signs at Clear Creek Station – Lance and Marissa Heindel are appealing the administrative decision that the open flags are grandfathered and permitted since there have been some variation of open flags flown for years. **(Not a public hearing)**

Administrator Herrick presented the staff report. Staff had determined that the flags and open banners are not pre-existing non-conforming uses, also called "grandfathered uses". The staff report includes pictures of site taken last week and signs previously approved for the site. The staff report was also sent to the appellant and posted on the "public hearing" portion of the website.

The question at issue is: were the flags and banners at the site in 1994 when the sign ordinance was adopted? The Sign Ordinance states: “no moving parts”. U.S. flags and political signs are exempt from the sign requirements. Staff had stopped at Clear Creek Station to speak with the new owner. At this time, the uses of this site are “grandfathered”. This discussion is for the flags and banners, not the use of the site. The reader board and Pepsi® signs are grandfathered signs. The ordinance would have to be changed to allow the short-term use of “open signs”, banners, and feathers. The business has been closed in the winter in the past.

Lance Heindel, 10694 Highway 55, purchased the property and has been there since Oct. 1, 2020. He is only appealing the administrative decision regarding the “open” flags. He is not appealing the administrative decision relating to the banners.

He has two appeals arguments:

1. Void for Vagueness
2. Legal precedence

He referred to a Constitution right that laws that are too vague for the average person to understand are void (Void for Vagueness).

He believes this is an arbitrary prosecution and against his Constitutional rights under the Freedom of Speech, Assembly, and Religion.

Law must state explicitly what it mandates and what is allowed or not allowed. The sign ordinance is not enforceable due to the Void for Vagueness determination. The ordinance is too vague for the average citizen to understand what persons are regulated; what conducted is prohibited; or what punishment may be imposed. A statute is also Void for Vagueness if a legislature’s designation of authority to the judges and/or administrators is so extensive that it would lead to arbitrary prosecution. Potentially vague terms must be defined.

Mr. Heindel made the following arguments.

1. Valley County Code 9-7-10 does not clearly define what punishment can be imposed; only refers to fees to be set by resolution.
2. He believes he is being unfairly and arbitrarily prosecuted. Valley County does not have a code enforcement officer. Therefore, enforcement is arbitrary. He believes the Staff decision is related to retaliation.

Exhibit A – Cougar Mountain Lodge picture with a banner advertising new management, dated June 11, 2020.

Variations of the flags have been allowed for years, as shown in Exhibits B & C.

Exhibit B - Picture of open flags at the site, April 13, 2018.

Exhibit C - Picture of open flags at the site, October 2018; same as current flags at Clear Creek Station.

3. Vague terms must be defined. He read from the sign ordinance. Mr. Heindel disagrees that

a flag is a “sign” as defined in Valley County Code.

Exhibit D – example of a code defining terms relating to flags and signs.

He believes that Valley County Code 9-7 does not prohibit “open” flags. The Administrative decision was subjective; there is not specific language prohibiting flags.

Exhibit E – Valley County Code sections regarding signs with portions highlighted.

9-7-1.B – subjective, not specific language.

9-7-6 – the OPEN flags are temporary, not permanent, and are not listed under number 8.Message. The key word is “may”

9-7-6.C – “Signs shall not have pennants, balloons, or portable signs or wheeled trailers.”
There is no reference to flags.

9-7-1 – does not prohibit the flying of “OPEN” flags.

The burden of proof showing that flags are not allowed has not been met. The Administrator’s decision should be reversed.

Administrator Herrick responded to questions from Chairman Defoort. She stated that she told Mr. Heindel that the two large signs were “grandfathered” and that pennants and flags were not allowed. The pennants and flags are not allowed along the Scenic Byway except for the Cabarton Shuttle Conditional Use Permit in Smith’s Ferry.

Mr. Heindel’s second appeal is based on legal precedent. He referenced Valley County Code 9-7-9 Enforcement. There were previous discussions between the prior owners of Clear Creek Station and Administrator Herrick.

Exhibit F – Denise “Dee” Hall’s letter.

Dee Hall also spoke telephonically. She owned and operated Clear Creek Station between 2007-2020. Flags and banners were used to attract customers both prior and during her ownership. No one complained about the flags. The flags let people know the business was open and are important to attract clientele. They flew flags for 14 years and never had an issue until the summer of 2020 when another person put up two tall flags [feathers]. After the complaint, those two flags were removed. Banners advertising snowmobile parking, events, etc., have been used at the site even prior to their ownership of the property.

Mr. Heindel said this issue has caused undue financial hardship, stress, and anxiety to brand=new business owners during a pandemic. The OPEN sign seems to meet intent and scope of the sign statute.

Commissioner Thompson referred to Idaho Transportation Department and Valley County regulations on signs. New owners do need to be in compliance.

Mr. Heindel asked that a decision be fair and believes a precedent exists as flags have been on site for many years. The Administrative decision was authoritative, retaliative, and discriminatory.

He was told by the previous owner and realtor that the signs were grandfathered in and were told that by the Administrator. Customers are willing to state that the flags have been there for fifteen years. Valley County's Sign statute has not changed. Staff's enforcement has changed.

Administrative Herrick stated that the sign ordinance was approved June 27, 1994. Flags were not shown in the previous pictures taken at Clear Creek Station.

Commissioner Defoort mentioned possible options. Staff has understood Valley County Code to say that flags are not allowed in Valley County.

Administrator Herrick referenced the following portions of code that specifically concern flags; therefore, flags are not exempt:

- 9-7-6.C.1,
- 9-7-6-C.8, and
- 9-7-6.C.17 Signs Not Regulated

Mr. Heindel says that the code does not specify that flags are not allowed. Administrator Herrick replied that ordinances are broadly written to include current and unknown future possibilities and uses.

Chairman Defoort does not have a problem with an "OPEN" flag. Are feather flags allowed? She stated that additional language is needed to clearly define what is and is not allowed. Chairman Defoort stated that Commissioners need to consider the precedent for other businesses that would be set if flags were allowed at this site. She wants more time to review the information submitted tonight.

Mr. Heindel responded that Chairman Defoort agrees with his first appeal under Void for Vagueness.

Administrator Herrick apologized that Mr. Heindel took her explanation and clarification of what is "grandfathered" as bullying; it was only meant to inform him of the allowed uses.

Commissioners and Staff discussed the ordinance. Grandfathered uses have to predate June 27, 1994. Ordinances are written as best as possible; feather flags were unknown in 1994 but are covered under "no moving parts" and "rural character". The Clear Creek Station sign permit says nothing about flags. Staff has been very lenient in allowing the owners of Clear Creek to change the wording and look of their signs. Previously a sign posted on the Clear Creek Station building advertising the sale of salmon had to be removed. Staff does recall working with Ms. Hall regarding the most recent sign permit. None of the previous pictures include signs of OPEN flags. None of the previous pictures in the sign permit info include flags.

Staff will reach out to Cougar Mountain Lodge to make sure they are also in compliance with the sign ordinance.

Mr. Heindel referred to the Void for Vagueness argument. Punishment is not defined in the statute.

Valley County Code 9-7-9 Enforcement and 9-2-8.B Civil Penalties were read and discussed.

Mr. Heindel referenced other business and arbitrary enforcement decisions. Ordinances can be and should be updated. Mr. Heindel said there has not been a fine. He was asked to remove the flags. He was not asked to apply for a permit. Previous business owner was allowed to fly the exact same flags.

Commissioners Thompson and Benton would like more time to review the additional information. Commissioner Freeman wants clarification in statute with specific verbiage so the average person can read it and understand what is allowed and what is not.

Mr. Heindel does not like authoritative statements telling him what he cannot do; it was not a “let’s figure out a solution” discussion. Administrator Herrick replied that her intention was to let Mr. Heindel know that permits may be needed if changes are made to the current use.

Commissioner Thompson moved to table the appeal to April 8, 2021, at 6:00 p.m. Commissioner Benton seconded the motion. Commissioners Thompson, Benton, and Defoort voted in favor. Commissioner Freeman abstained. The motion passed.

Staff will send a copy of Title 9 Chapter 2 to Mr. Heindel.

F. FACTS AND CONCLUSIONS - Action Items:

- C.U.P. 20-26 Hayes Short-Term Rental
- V-4-20 Spade Setback Variance
- VAC 20-03 Vacation of Access and Utility Easements

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

Chairman Defoort adjourned the meeting at 8:55 p.m.