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Board of County Commissioners  
150 Courthouse Drive  
Driggs, Idaho 83422

Re: Teton Springs Helipad

Dear Commissioners;

I am writing to you on behalf of my client, the Teton Springs Home Owners Association, Inc. (the "HOA"). The HOA is the master association with jurisdiction over the entire development, except the golf course. I have been asked to write you a letter outlining what I believe to be the state of facts and the HOA's position regarding the operation of a heli-ski operation inside the Teton Springs Community. Please understand that I do not represent all the lot owners, but rather the interests of the HOA. I understand that you asked for the voice of the "community" and therefore a survey was performed by the HOA, which I might point out went above and beyond any protocol contained in the HOA's governing documents.

I believe there are three primary documents that need to be considered when analyzing the situation at hand, the Development Agreement (the "DA"), the Master Declaration of Protective Covenants (the "Declaration"), and all of the Teton Springs Golf and Casting Club Plats (the "Plats") (all as most recently amended). The Declaration has a number of restrictions that when read on their own would prohibit the operation of a helipad, much less a heli-ski operation. Most of these provisions are contained in Article III regarding General Restrictions. However, Section 13.11 entitled "Conflicts with Plats" states that when the Declaration conflicts with any of the Plats that the Plats shall govern. Clearly the Plats anticipate the operation of a helipad and therefore I do not believe that any of these prohibitions can be used to stop such an operation in a general sense. Regardless, I do believe that the Declaration should be applied to the helipad in any aspects that do not conflict with the Plats, which is I believe any parameters that are not an outright prohibition. Without going into detail, as the Design Review

Committee is better equipped to do so, screening of any above ground gas tanks and other such treatments required by the Declaration need to be adhered to.

The question then becomes whether or not the Plats contemplate the use of a commercial helipad, more specifically a heli-ski operation. This is where things get a bit convoluted. While the first set of Plats call the helipad a miscellaneous use lot, a later amendment calls it a commercial use. The change to a commercial designation on the Plat appears to have been made on a plat amendment that was recorded for a purpose unrelated to the helipad, which questions the legitimacy of the change to a commercial use of the helipad on the Plat. Dawn Felchle and I performed an electronic search of the BOCC minutes to see if we could find any resolution relating to this Plat amendment. Not only could we not find any resolution relating to this Plat amendment, but we also could not find any resolutions relating to any Plat amendments. I point this out only because I find it a bit odd, and it could be that our search methodology was flawed, I simply do not know. In addition, it is a requirement of the Declaration under Section 13.3 that any change to the Declaration or the Plat relating to the use of a lot requires approval of two thirds of the membership of the HOA. As far as I know, such a vote never took place and although this amendment may have been recorded during the period of Declarant control, I do not believe that the Declaration gave the Declarant the ability to make unilateral changes to the use of a lot.

The DA then becomes the next logical place to look for guidance on the issue. Unfortunately the DA leaves us with a vague understanding of the intended use of the helipad. It states that it is to be used for "alternative transportation and emergencies". I am not inclined to make a determination as to what such a non-descript and vague phrase means. I will point out that the minutes of the BOCC for the meeting wherein the Teton Springs master plan and PUD was first approved state that the developer stated that the helipad would not be used for commercial purposes. That statement never made its way to the resolution of approval or the DA so its legal import beyond extrinsic evidence is limited.

We are left with a suspect Plat amendment that calls the helipad a commercial use, and a vague description of that use in the DA. I am not certain as to what it means to be a "miscellaneous" use as that term is used on the Plat. However, it is worth pointing out that certain other tracts listed as miscellaneous on the Plat have uses spelled out in the DA that are commercial in nature such as the equestrian tract and the maintenance and operations tract, which calls for office space among its uses.

The BOCC has asked the HOA Board for its opinion on the issues relating to the use of the helipad, and at this point these are my beliefs and understanding and I believe they are in line with the HOA's beliefs and understanding. The HOA has not been asked by the applicant to exercise any of its powers or to make any determination within its scope of authority. Regardless, I do not believe that the Declaration gives the HOA Board the authority to make any determination that

would help the applicant's cause. The applicant has made application to the BOCC for an amendment to the DA as it is unclear what the current language means. The DA is between the applicant and the BOCC and therefore you need to make a determination as to whether or not you want to allow for such an amendment. In the event that the applicant wishes to amend the Plat to make this issue more clear they can call for a vote of the HOA membership.

Very truly yours,

Herbert Heimerl