



Idaho State Statute and Teton County Code References as they pertain to specific issues with Legacy Lakes PUD.

PART 1 Water related issues:

- I. The failure to obtain the legal water rights to service the ponds as required by state statute and included in the P&Z conditions imposed over 22 months ago.
- II. Without the appropriate approvals from Grand Teton Canal Company or IDWR, there is no firewater provided to this PUD.
- III. The lack of a clear and enforceable maintenance and funding mechanism for the water system.
- IV. Flooding, bugs, and blight concerns with the water system.
- V. There is no guarantee that Driggs sewer system can accommodate all the later phases of this project, and an onsite system may then be necessary.

Pertinent Code Sections:

- **I.C. § 42-222** requires an IDWR-approved transfer of the seasonal irrigation shares appurtenant to this property and a certification that year-round use of these seasonal irrigation rights for artificial lakes and streams would not constitute an enlargement. Even if IDWR were to approve the transfer, because the rights are shares of Grand Teton Canal Company, there must be permission from Grand Teton Canal to use the shares for ponds and streams. **See Attachment A.**
- **I.C. § 42-1207** requires written permission from Grand Teton Canal Company before the ditch may be relocated, altered, or incorporated into the construction of Legacy Lakes PUD. **See Attachment B.**
- **9-3-4-A-1:** *The public hearing with the Board shall not be scheduled until the conditions and required documents are complete.*
- **9-1-3:** *The purpose of these regulations is to promote the public health, safety, and general welfare and to provide for:*

- **D:** *Adequate transportation, water drainage, and sanitary facilities*
- **E:** *The avoidance of scattered subdivision of land that would result in either of the following:*
 - **1:** *The lack of water supply, sewer services, drainage, transportation, or other public services.*
- **F:** *The requirements as to the extent in the manner in which:*
 - **2:** *Water and sewer and other utility main, piping connections, or other facilities shall be installed.*
- **9-5-2-F:** *An adequate drainage system shall be required in all subdivisions.*
- **9-7-2-H:** *To permit developments that protect and comply with generally accepted standards of public health, public safety and the general welfare of the county.*
- **9-3-4-D:** *Both the Planning Commission and the Board of County Commissioners shall make, where necessary, written findings with respect to the items required with the submission of the application as listed below.*
 - **1:** *Each exception to otherwise applicable restrictions shall be identified and the reasons supporting the exceptions stated.*
 - **2:** *The subdivision or PUD is consistent with the public health, safety, and welfare of the county.*
 - **3:** *The information required in the application has been verified and is correct.*
 - **4:** *The PUD contains the minimum of open space required by this title or amount of open space agreed to in the plans and plat.*
- **9-3-5-E**
 - **1:** *Each phase must be freestanding, that is fully capable of functioning with all the required improvements in place in the event the future phases are not completed or completed at a much later time.*
 - **2:** *A phasing plan must be submitted including:*
 - **a:** *A plat delineating each phase and a general time from for each phase.*
 - **b:** *A public improvement phasing plan showing which improvements will be completed at each phase.*
- **9-5-2: REQUIRED PUBLIC IMPROVEMENTS:**

- **F:** Drainage
- **H:** Maintenance and Operations of Public Water Supply and Sewage Systems
- **I:** Fire Protection

PART 2 Incidental use, impact analysis, and phasing plan issues:

- I. The projected tax revenues and public services are without any basis.
- II. There is no impact analysis done for this PUD.
- III. There are no proposed mitigations of impacts.
- IV. There is no assurance or finding by the commission that the tennis center is functionally and financially viable.
- V. There is no description of at what phase the tennis center will be built, or if there will be an adequate percentage of developed acreage at the time it is built to support the incidental use.
- VI. The phasing plan does not indicate if each phase is capable of functioning with all the required improvements in place.
- VII. Is it possible for the tennis center to comply with the night skies ordinances, or would the tennis center be better located in town?
- VIII. It is unclear when the trail system will be built.

Pertinent Code Sections:

- **9-6-2:** *Due to the impact that a large development (six (6) lots or more) would have on public utilities and services, the developer shall submit the following information along with the preliminary plat and check list:*
 - **B:** *Estimate the tax revenue that will be generated from the development.*
 - **D:** *An analysis of the impact the subdivision will have on public facilities, and proposed actions designed to mitigate those impacts.*
- **9-3-2-C:** *In determining the acceptance of a proposed subdivision or PUD, the County shall consider*
 - **3:** *The conformance of the subdivision/PUD with the comprehensive plan.*
 - **2:** *The availability of public services to accommodate the proposed development.*

- **4:** *The public financial capability of supporting services for the proposed development.*
- **9-7-5-A:** *The uses permitted are incidental, necessary or desirable and appropriate with respect to the primary purpose of the PUD.*
- **9-7-5-B:** *No more than two percent (2%) of the developed acreage within the PUD (not including land set aside as open space) is devoted to uses permitted by the exception.*
- **9-7-6-G:** *If the open space is a recreation facility, satisfactory assurances of financial and functional viability must be described and provided for in the plan.*
- **9-4-12-B:** *Exterior lighting brighter than a 60 watt incandescent light shall be shielded so that no light is projected above the horizontal, and the light source shall be diffused or shielded so that it cannot be seen from public areas or roadways or any other property.*
- **9-3-5-E**
 - **1:** *Each phase must be freestanding, that is fully capable of functioning with all the required improvements in place in the event the future phases are not completed or completed at a much later time.*
 - **2:** *A phasing plan must be submitted including:*
 - **a:** *A plat delineating each phase and a general time from for each phase.*
 - **b:** *A public improvement phasing plan showing which improvements will be completed at each phase.*
- **9-5-2: REQUIRED PUBLIC IMPROVEMENTS:**
 - **D:** *Bicycle Pathways*

PART 3 Open space issues:

- The clusters of houses with closely interspersed lakes and waterways can be a health and safety issue.
- This development is not harmonious with development in the area.
- The development's open space does not join protected open space on adjacent parcels.
- This development's open space is not contiguous and the P&Z commission has failed to make a finding that:

- o The open space is exceptionally well-suited to the use
 - o OR that the development is adequately buffered to protect surrounding property uses.
- This development's open space configuration of 14 north-south rows of houses (which can range from 8,000 to 12,000 square feet) does not protect view sheds from the highway or adjacent properties.
- The outstanding fence line dispute affects the % of open space, and can tip current 42% open space below the required 40% minimum.

Pertinent Code Sections:

- **8-2-1:** *OPEN SPACE: Significant tracts of land not under residential, commercial, or industrial use . . . The commission shall review open space uses based on design benefit and access to the general public.*
- **9-7-6-C-2:** *The Planning Commission may determine and the Board of County Commissioners may approve or disapprove a particular type of open space. In exercising their discretion in determining what open space to allow, they will be guided by the generally accepted standards of public health, safety, and general welfare of the community as contained in the comprehensive plan.*
- **9-7-9:** *It is expected that in a well-planned PUD, the housing units will not be scattered across the entire parcel of land in the PUD unless it is determined that the topography or geology is more suited to other types of housing units.*
- **9-7-7:** *Ordinarily, all projected land within the PUD must be contiguous and sensibly related as a single unit. Thus, the PUD applicant ordinarily may not set aside land as open space from the area to be developed, nor may the applicant gerrymander that project with thin strip of land connected geographically remote areas.*
 - o *However, an exception to this requirement may be made if the Planning Commission determined and the Board of County Commissioners approves the adequate evidence and a finding that the land committed to the open space is exceptionally well suited to the use and the proposed development is adequately buffered so as to protect surrounding property uses. Further, open space is encouraged to adjoin protected open space on adjacent parcels.*
- **9-1-3:** *The purpose of these regulations is to promote the public health, safety, and general welfare, and to provide for:*
 - o **A:** *The harmonious development of the area.*

- **C:** *Adequate open space for travel, light, air, and recreation*
- **9-7-2:** *The purposes of the PUD process are:*
 - **A:** *To encourage careful consideration and coordinated planning of commercial, industrial and residential developments consistent with the policies and objectives of the comprehensive plan.*
 - **C:** *To preserve quality open space in meaningful amounts and in desirable locations.*
 - **D:** *To permit clustering and similar design solutions which encourage protection of scenic, areas, wildlife habitats and migration routes, skylines, and riparian areas.*
 - **E:** *To permit developments to be planned so as to cause the least possible disruption of farming, ranching, or other established and ongoing land use activities.*
 - **F:** *To encourage compact rather than scattered developments.*
 - **H:** *To permit developments that protect and comply with generally accepted standards of public health, public safety and the general welfare of the county.*
 - **I:** *To encourage open space development along the scenic corridors or in the most aesthetically pleasing areas of the land where development is most shielded from the view of the scenic corridors.*

PART 4 The purpose of PUDs and Title IV:

- I. This development does not meet several of the purposes of PUDs and the purpose of Title IV.

Pertinent Code Sections:

- **9-1-3:** *The purpose of these regulations is to promote the public health, safety, and general welfare, and to provide for:*
 - **A:** *The harmonious development of the area.*
 - **C:** *Adequate open space for travel, light, air, and recreation*
 - **D:** *Adequate transportation, water drainage and sanitary facilities*
 - **E:** *The avoidance of scattered subdivision of land that would result in either of the following:*

- **1:** *The lack of water supply, sewer services, drainage, transportation, or other public services; and*
 - **2:** *The unnecessary imposition of an excessive expenditure of public funds for the supply of such services.*
 - **F:** *The requirements as to the extent and the manner in which:*
 - **2:** *Water and sewer and other utility mains, piping connections, or other facilities shall be installed.*
- **9-7-2:** *The purposes of the PUD process are:*
 - **A:** *To encourage careful consideration and coordinated planning of commercial, industrial and residential developments consistent with the policies and objectives of the comprehensive plan.*
 - **C:** *To preserve quality open space in meaningful amounts and in desirable locations.*
 - **D:** *To permit clustering and similar design solutions which encourage protection of scenic, areas, wildlife habitats and migration routes, skylines, and riparian areas.*
 - **E:** *To permit developments to be planned so as to cause the least possible disruption of farming, ranching, or other established and ongoing land use activities.*
 - **F:** *To encourage compact rather than scattered developments.*
 - **H:** *To permit developments that protect and comply with generally accepted standards of public health, public safety and the general welfare of the county.*
 - **I:** *To encourage open space development along the scenic corridors or in the most aesthetically pleasing areas of the land where development is most shielded from the view of the scenic corridors.*

ATTACHMENT A

42-222 CHANGE IN POINT OF DIVERSION, PLACE OF USE, PERIOD OF USE, OR NATURE OF USE OF WATER UNDER ESTABLISHED RIGHTS – FORFEITURE AND EXTENSION – APPEALS.

(1) **Any person**, entitled to the use of water whether represented by license issued by the department of water resources, by claims to water rights by reason of diversion and application to a beneficial use as filed under the provisions of this chapter, or by decree of the court, **who shall desire to change the point of diversion, place of use, period of use or nature of use of all or part of the water, under the right shall first make application to the department of water resources for approval of such change. Such application shall be upon forms furnished by the department and shall describe the right licensed, claimed or decreed which is to be changed and the changes which are proposed, and shall be accompanied by the statutory filing fee as in this chapter provided.** Upon receipt of such application it shall be the duty of the director of the department of water resources to examine same, obtain any consent required in section 42-108, Idaho Code, and if otherwise proper to provide notice of the proposed change in a similar manner as applications under section 42-203A, Idaho Code. Such notice shall advise that anyone who desires to protest the proposed change shall file notice of protests with the department within ten (10) days of the last date of publication. Upon the receipt of any protest, accompanied by the statutory filing fee as provided in section 42-221, Idaho Code, it shall be the duty of the director of the department of water resources to investigate the same and to conduct a hearing thereon. He shall also advise the watermaster of the district in which such water is used of the proposed change and the watermaster shall notify the director of the department of water resources of his recommendation on the application, and the director of the department of water resources shall not finally determine the action on the application for change until he has received from such watermaster his recommendation thereof, which action of the watermaster shall be received and considered as other evidence. For applications proposing to change only the point of diversion or place of use of a water right in a manner that will not change the effect on the source for the right and any other hydraulically-connected sources from the effect resulting under the right as previously approved, and that will not affect the rights of other water users, the director of the department of water resources shall give only such notice to other users as he deems appropriate.

When the nature of use of the water right is to be changed to municipal purposes and some or all of the right will be held by a municipal provider to serve reasonably anticipated future needs, the municipal provider shall provide to the department sufficient information and documentation to establish that the applicant qualifies as a municipal provider and that the reasonably anticipated future needs, the service area and the planning horizon are consistent with the definitions and requirements specified in this chapter. The service area need not be described by legal description nor by description of every intended use in detail, but the area must be described with sufficient information to identify the general location where the water under the water right is to be used and the types and quantity of uses that generally will be made.

When a water right or a portion thereof to be changed is held by a municipal provider for municipal purposes, as defined in section 42-202B, Idaho Code, that portion of the right held for reasonably anticipated future needs at the time of the change shall not be changed to a place of use outside the service area, as defined in section 42-202B, Idaho Code, or to a new nature of use.

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-202B, Idaho Code, the change will not adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates, and the new use is a beneficial use, which in the case of a municipal provider shall be satisfied if the water right is necessary to serve reasonably anticipated future needs as provided in this chapter. The director may consider consumptive use, as defined in section 42-202B, Idaho Code, as a factor in determining whether a proposed change would constitute an enlargement in use of the original water right. The director shall not approve a change in the nature of use from agricultural use where such change would significantly affect the agricultural base of the local area. The transfer of the right to the use of stored water for irrigation purposes shall not constitute an enlargement in use of the original right even though more acres may be irrigated, if no other water rights are injured thereby. A copy of the approved application for change shall be returned to the applicant and he shall be authorized upon receipt thereof to make the change and the original water right shall be presumed to have been amended by reason of such authorized change. In the event the director of the department of water resources determines that a proposed change shall not be approved as provided in this section, he shall deny the same and forward notice of such action to the applicant by certified mail, which decision shall be subject to judicial review as hereafter set forth. Provided however, minimum stream flow water rights may not be established under the local public interest criterion, and may only be established pursuant to chapter 15, title 42, Idaho Code.

Attachment B

42-1207 CHANGE OF DITCH, CANAL, LATERAL, DRAIN OR BURIED IRRIGATION CONDUIT.

Where any ditch, canal, lateral or drain or buried irrigation conduit has heretofore been, or may hereafter be, constructed across or beneath the lands of another, the person or persons owning or controlling said land shall have the right at their own expense to change said ditch, canal, lateral or drain or buried irrigation conduit to any other part of said land, but such change must be made in such a manner as not to impede the flow of the water therein, or to otherwise injure any person or persons using or interested in such ditch, canal, lateral or drain or buried irrigation conduit. Any increased operation and maintenance shall be the responsibility of the landowner who makes the change.

A landowner shall also have the right to bury the ditch, canal, lateral or drain of another in pipe on the landowner's property, provided that the pipe, installation and backfill reasonably meet standard specifications for such materials and construction, as set forth in the Idaho standards for public works construction or other standards recognized by the city or county in which the burying is to be done. The right and responsibility for operation and maintenance shall remain with the owner of the ditch, canal, lateral or drain, but the landowner shall be responsible for any increased operation and maintenance costs, including rehabilitation and replacement, unless otherwise agreed in writing with the owner.

The written permission of the owner of a ditch, canal, lateral, drain or buried irrigation conduit must first be obtained before it is changed or placed in buried pipe by the landowner.

While the owner of a ditch, canal, lateral, drain or buried irrigation conduit shall have no right to relocate it on the property of another without permission, a ditch, canal, lateral or drain owner shall have the right to place it in a buried conduit within the easement or right-of-way on the property of another in accordance with standard specifications for pipe, materials, installation and backfill, as set forth in the Idaho standards for public works construction or other standards recognized by the city or county in which the burying is to be done, and so long as the pipe and the construction is accomplished in a manner that the surface of the owner's property and the owner's use thereof is not disrupted and is restored to the condition of adjacent property as expeditiously as possible, but no longer than thirty (30) days after the completion of construction. A landowner shall have the right to direct that the conduit be relocated to a different route than the route of the ditch, canal, lateral or drain, provided that the landowner shall agree in writing to be responsible for any increased construction or future maintenance costs necessitated by said relocation. Maintenance of the buried conduit shall be the responsibility of the conduit owner.