

**A REQUEST FOR A CONDITIONAL USE PERMIT FOR
A NEW VICTOR LDS MEETINGHOUSE ON 7000 SOUTH
VICTOR AREA OF CITY IMPACT**

A REQUEST TO GRANT A VARIANCE FOR A 70—FOOT STEEPLE

Prepared for the Planning & Zoning Commission
Public Hearing of February 14, 2012



APPLICANT: Blackfoot Farms, Inc. **ARCHITECT:** NBW Architect P.A.

LANDOWNER: Blackfoot Farms, Inc. **ENGINEER:** AW Engineering

PROJECT REQUEST: 1) Approve a Conditional Use Permit for the proposed Victor LDS Meetinghouse and
2) Approve a variance to allow the steeple to be 70-feet tall where the height limit is 30-feet

APPLICABLE Teton County Zoning Ordinance, Section 8-6-1 Conditional Use Permit;

COUNTY CODES: Title 7, Chapter 3, Victor Area of City Impact; Section 8-8-1(B) Variance

VICINITY MAP

LEGAL DESCRIPTION:

Section 35, Township 4 North,
Range 45 East, East ½ SW ¼

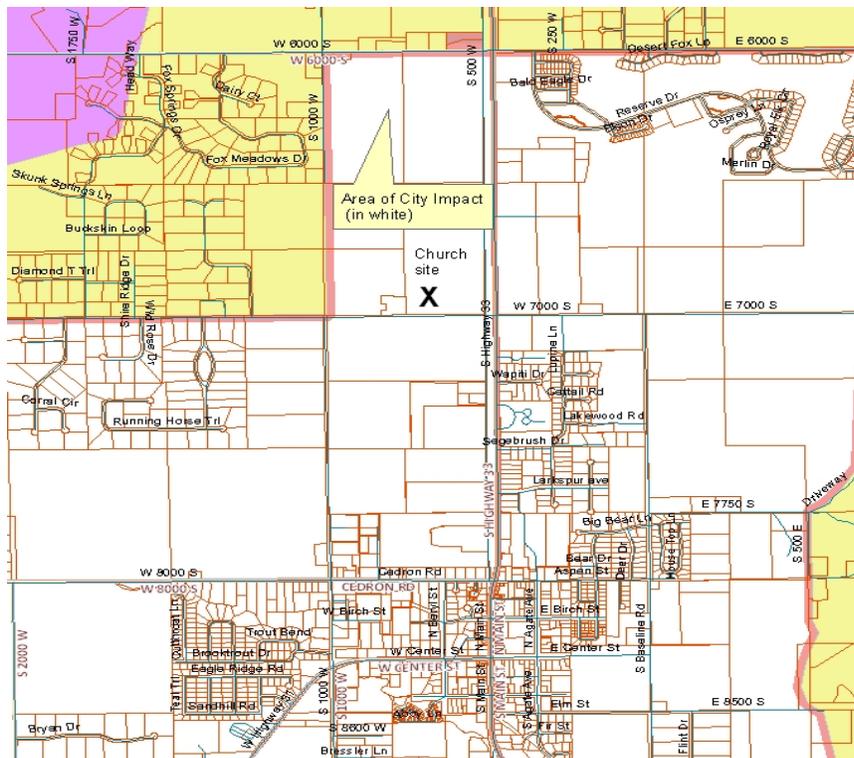
ADDRESS: unassigned on W
7000 South

LOCATION: generally located
on north side of W 7000 South
about 330 feet west of frontage
road (500 W); approximately 1.5
miles NW from Victor traffic
signal

ZONING DISTRICT: Victor
Area of City Impact; AR 2.5

OVERLAYS: none of the
property is in Scenic Corridor

PROPERTY SIZE: 5.59 acres



PLANNING STAFF RECOMMENDATIONS ON CUP: Having determined that all the Criteria for Approval of a Conditional Use found in Title 8-6-1-B (7) can be satisfied with the inclusion of the recommended conditions of approval, the Planning Staff recommends APPROVAL of the Victor LDS Meeting House Conditional Use Permit application as described and depicted in the application materials, as revised and supplemented. Conditions of approval are found at the end of this staff report; these conditions are oriented towards insuring full compliance to county regulations and the impacts from the use. The conditions address outdoor lighting, road and highway improvements, landscape screening, storm water management, and connections to the Highway 33 bike path.

PROJECT PROPOSAL:

The application and supplemental materials propose the following:

- Construct a “meeting house” building that is characterized as having:
 - Approximately 18,825 square feet.
 - A 2,380 square foot Stake Suite addition planned for later construction
 - Total square footage with the addition: 21,205 square feet.
 - A steeple measuring 70-feet from ground to pinnacle
 - Ridgeline of the church building to be designed at 30-feet tall (revised plan)
- An outdoor open air pavilion of approximately 2000 square feet
- 249 Parking spaces, associated drive aisles, and handicap parking stalls
- Equipment shed and screened dumpster area
- Landscaping consisting of 66 trees, lawn plantings and an underground irrigation system
- Connection to City of Victor domestic water supply
- Connection to City of Victor sewage treatment infrastructure
- Outdoor Lighting Plan proposing fixtures, lamppost and wall mounted lights according to a revised photometrics plan designed to comply with dark skies regulations
- Create 3.15 acres of impervious surface
- Construct storm water detention system that includes grass swales, detention ponds and other BMP’s
- Upgrade the County Road 7000 South turn lanes to the driveway turnoffs into the property, as outlined in the AW Engineering Traffic Study and subsequent revisions
- Contribute to State Highway 33 turn lane improvements as recommended in the AW Engineering Traffic Study and as ultimately required by the Idaho Transportation Department

KEY ISSUES AND CONSIDERATIONS:

Traffic to and from the church, particularly during the peak use hours will generate the need for road improvements to Highway 33 and 7000 South. Many comment letters mentioned this element of the project. In general, there is agreement as to the type of road improvements that are warranted. How much the applicant will have to finance the state highway improvements is the primary substantive issue that remains unresolved. Cost for road improvements to 7000 South will be borne by the applicant.

RLUIPA and Idaho’s FERPA are special state & federal protections for religious institutions. The Teton County Attorney will provide a commentary about how these laws may pertain to the present land use requests.

Compliance to Dark Skies Lighting Ordinance. The information received indicates that the parking lot and building will have lighting that entirely complies with the new Teton County Ordinance. Similar lighting plans that are built for LDS meetinghouses in Idaho Falls are seen to not present off site or night sky-related light-trespass issues.

Location of the church away from the existing built environment of Victor. Some public comments stated that the church site should be closer to downtown Victor. Nevertheless, the site is within the Area of City Impact (AOCI), which some respondents may not have realized. They may not understand that the area is statutorily designated for future city growth and eventual annexation. While some feel this a poor location, very many respondents’ feel it is a good location for the use. This area of the AOCI is not currently densely developed, and it is also not zoned for viable agriculture because it is AR 2.5 with 2.5 acre lots. It is where the city would expect to locate automobile-oriented developments. Small town downtowns thrive with a mix of business, institutional, retail, and food establishments. Multi-acre parking lots and buildings that are not used but a few hours a week are not ideal for downtown commercial areas. Church sites are exempt from property taxation, whereas private businesses do contribute taxes. The LDS church project would fund the extension of the

community's water and sewer infrastructure to the site. The City of Victor has written a letter of support for the chosen location and has provided will-serve letters for city water and sewer service.



LDS Church Steeple similar to one proposed in Victor Area of City Impact

FINDINGS OF FACT REGARDING SOLICITATIONS FOR COMMENT FROM APPLICABLE REVIEWING AGENCIES AND DEPARTMENTS

Teton County Engineer:

- **Traffic.** The County Engineer has had a series of correspondences with AW Engineering on its Traffic Study and the later revisions to it; see attached letters. The AWE Traffic Study was contract-reviewed by Kittleson & Associates of Boise, see that attached letter. The Boise firm is comprised of professional engineers who specialize in traffic engineering. Below, are the general recommendations from the applicant's engineer for improvements recommended in the report.
- **County Road Improvements:**
The expectation by all parties is that the applicant will completely fund and construct the county road improvements, along with some details, such as culverts, that have been stipulated by the County Engineer.

This report shows the need to have the following turn lanes as Shown on Sheet in Appendix.

- 1- Turn lanes into the church parking areas.
- 2- Onto and off County road 7000 South at State Highway 333.
- 3- Right turn lane of from State Highway 33 onto County Road 7000 South.
- 4- Left turn lane of from State Highway 33 onto County Road 7000 South and this would necessitate having a Left turn lane for traffic from North.
- 5- Acceleration merging lane for South bound traffic.

- **Highway Improvements:** There will be continued dialogue between the applicant, the County, and the Idaho Transportation Department regarding the timing of installation of these improvements. The applicant will need to design or obtain engineered construction drawings for the preliminary turn lane diagrams that have already been generated. In addition to the design and timing of the county road improvements, the costs for Highway 33 improvements will need to be largely assigned to the prime generator of traffic at the Hwy 33- County Road 7000 South intersection. The Church may not have to fund 100% of the highway improvement costs because it does not generate 100% of the vehicle trips at the intersection. The County, ITD, and the applicant have discussed that there will be a need to allocate the costs of improvements after the basic questions about allowing a C.U.P. are answered. See the related Conditions of Approval listed at the end of this report.
- **Storm Water Management.** The County Engineer also examined the LDS Church Storm Water Management Plan for the site (revision date Feb. 6, 2012). The report listed typical Best Management Practices (BMP) and the finer details of the runoff detention and conveyance are being technically reviewed by the County Engineer. Final engineering and construction drawings for the storm water system will be required prior to the commencement of earth-disturbing activities anywhere on the property; see related Condition of Approval.
- **Bike Path:** The County Engineer requested that the applicant investigate the possibility of providing direct pedestrian and bicycle access from the Rails to Trails path parallel to Highway 33. The need for a bike path connector could be justified on the grounds that the church will hold scouting events and the children/teens may ride their bikes or walk from nearby housing developments. Given this, there is a “rational nexus” for requiring the dedication of a bike path because there will be a significant number of weekday events for youth and some will involve children and teens that live close enough to go on their own power. There may be a few bikers to church, but the primary reason for the trail relates to youth who travel to events under their own power. A separated trail would be ideal. The staff and County Engineer believe that a path with base course and surface gravel would be sufficient if it went from the church site to the existing bike trail.
- **Path Easement:** There is an associated application for a “one-time-only split” on the eastern Blackfoot Farms property. The parent parcel to this 5.5 acre parcel is owned by Blackfoot Farms and there is approximately 400 feet to the path from the church property. While the County Road 7000 South right-of-way would be the logical place to locate a bike path, it may not fit there. The new road design must have a turn lane added to it and there is insufficient space to accommodate two travel lanes, a turn lane, and a bike path in the county right-of-way (measured from centerline). The land split is for the purpose of creating the church site. Given this, Planning Staff believes that it is appropriate to add a condition that some bike/pedestrian accommodations are made between the Highway 33 bike path and the church. In particular, the County Engineer suggested a ten-foot easement should traverse across the entire southern boundary of the property parallel to 7000 South. There could be future connections to the west end of the easement when other homes are built on the vacant properties to the west.

City of Victor: The City agreed to provide water service from the community’s potable water supply and to provide treatment of waste water at the city facility. The City provided a letter indicating it had no problem with the proposed LDS church location at 7000 South.

Idaho Department of Transportation: The state highway department analyzed the traffic study and made the warrants for highway improvements on Highway 33 near the intersection with County Road 7000 South. If the

conditional use permit is granted, then further engineering design work will be submitted and the construction work details will be fully developed in accordance with state requirements.

Teton County Fire Protection District

A comment letter was received and Marc Anderson outlined the requirements that will need to be met in order for the Fire District to authorize commencement of construction. The Fire District will examine these plans again when a building permit application is submitted. This LDS church site plan is used in many locations in eastern Idaho and usually in conjunction with interior sprinkler systems and fire hydrants near the building. The site plan need not be altered to comply with the District's stipulations.

FINDINGS OF FACT REGARDING NOTIFICATIONS REQUIREMENTS FOR PUBLIC HEARINGS:

Idaho Code, Title 67; Section 67-6509, 67-6511, 67-6512, and Title 8, Section 8-6-1 of the Teton County Zoning Ordinance.

1. The public hearing of February 14, 2012 for the Planning & Zoning Commission was duly noticed in the Teton Valley News for a conditional use permit and the height variance.
2. A notification was sent via mail to surrounding property owners within a 300-foot buffer area and the mailing also went to anyone within a subdivision that has a lot within 300 feet of a project also gets a notification.
3. The property was posted in accordance with Idaho Code 67-6511 and 67-6509.



A general overview of the subject property- 2009

FINDINGS OF FACT REGARDING PROJECT'S CONSISTENCY WITH THE APPLICABLE GOALS & OBJECTIVES OF THE TETON COUNTY COMPREHENSIVE PLAN 2004-2010

The 2004 Comprehensive Plan proposed a vision and set of policies for the Valley. The policies and goals that are most clearly related to the project are discussed below. The Commission should examine these statements and consider how the proposal relates to them.

Chapter 2 Purpose of the Plan- Applicable goals and policies

- *To encourage the protection of prime agricultural, forestry, and mining lands for production of food, fiber, and minerals.*
- *To encourage urban and urban-type development within incorporated cities.*
- *To protect life and property in areas subject to natural hazards and disasters.*

Staff Analysis:

The introductory chapter's Purpose statement contains somewhat nebulous statements that can be interpreted and emphasized differently and are sometimes at odds with other policy statements. The "urban areas" of Teton County have community water and sewer treatment systems infrastructure. This is one key reason why higher intensity uses are directed to these locations. There is a more efficient delivery of services in an urbanizing area. The church is being proposed in the Area of City Impact for Victor and centralized water and sewer treatment is required and available for this type of proposed use. The Area of Impact is the area that a city expects to annex within the next 10 years. The city's letter stated, "The City of Victor supports the Black Foot Farms/ LDS Stake Center Conditional Use Permit application contingent upon successful compliance with all County and State performance standards." The letter goes on to state that it considers "the location compatible with that of a sub-regional religious center and feels its extensive use of land and automobile dependency affirms the proposed church site". More than half of a church property is typically used to park automobiles. The majority of spaces in the parking lot would only be used one day a week, with smaller attendance evening gatherings. Church parking lots must accommodate high parking use once a week and then are used dramatically less at other times. The City of Victor apparently does not view three acres of parking, in addition to the existing LDS church parking, as the best use of land in a small town. Given the dependence on automobile transportation to church-related activities (which includes many non-drivers such as children and the elderly), it is not surprising that the city does not consider it desirable to use 5.5 acres for a second LDS Church within city limits. Much of the ward for this LDS congregation already lives outside Victor to the north and west; the proposed site will require less driving.

Chapter 5 Property Rights

Policy 1: *The Teton County Comprehensive Plan acknowledges private property rights are protected under the 5th and 14th amendments of the United States Constitution and sections 13 & 14 of article 1 of the Constitution of the State of Idaho.*

Policy 2: *The Teton County Comprehensive Plan acknowledges the right and responsibility of Teton County to reasonably regulate land use.*

Policy 3: *The land use ordinances and actions of Teton County, including the policies, restrictions, conditions and fees, shall not violate private property rights, shall minimize adverse impact on property values and minimize technical limitation on the use of property consistent with state and federal constitution and statutory law. Implementation is implicit in and mandated by state and federal law.*

Staff Analysis:

Policies 1 and 2 relate to the U.S. Constitutional sections and statements regarding private property and the balance of the police powers of states. This issue has been the subject of dozens of Supreme Court cases. In fact, the Supreme Court has been handling land use takings and police power claims for at least 90 years and has interpreted how the Constitution and local land use laws apply or where they have become overextended in some complex situations.

Policy #3 states “shall minimize adverse impact on property values”. There are some studies that have focused on the effect of LDS churches on adjoining land and the findings indicate that the facilities enhance rather than diminish property values. The policy also directs us to “minimize technical limitation on use of property”. Policy 3 also supports the community value that land use regulation should be consistent with Federal and State constitutional laws. There are state and federal laws that somewhat restrict land use and zoning regulations where there would be a “substantial burden” placed on the exercise of religion, which is called out in the first amendment.

Chapter 7 School Facilities & Transportation:

Policy 1: *Planning decisions and efforts must emphasize providing infrastructure and services to the growing population and provide means for growth to pay its way.*

Staff Analysis:

The LDS Church facility will pay hookup fees for water and sewer to Victor. The traffic that will be redistributed to 7000 South will cause the need to have turn lanes and widening to the highway and county road. Blackfoot Farms is expected to bare these road improvement costs, especially the entire costs for the county road improvements.

Chapter 8 Economic Development

The policies and goals are among the less applicable ones to this particular land use proposal.

Chapter 9 Land Use:

Policy 1: *Protect open space throughout the county. Enhance the mechanisms available to incorporate the same in developments.*

Policy 3: *Accommodate new residential growth in the county using methods that preserve Teton Valley’s pristine qualities and foster efficient provision of services. Concentrate higher-density development in the cities or in their areas of impact. (See Implementation 10)*

Policy 4: *Higher density developments should be located within or near the cities or within or near their areas of impact. Developments in the unincorporated county may be based on the density based zoning concept which will provide significant open space.*

Staff Analysis:

An Area of City Impact in Idaho is called out as an area appropriate for future city annexation and as an area considered for the extension of city water and sewer service. Centralized sewer and water systems allow for the jump of density from “acres per house” to “houses per acre”. The City of Victor has already extended this infrastructure north of city limits and it provides sewer service to Teton Reserve, which is further north than the proposed church site.. The development of the 5.5 acres of land has obviously been selected because it can connect to the city infrastructure. The church location in the AOCI is closer to where many of the homes and un-built lots are in the so-called “Drictor” area between the two towns.

Chapter 10 Natural Resources:

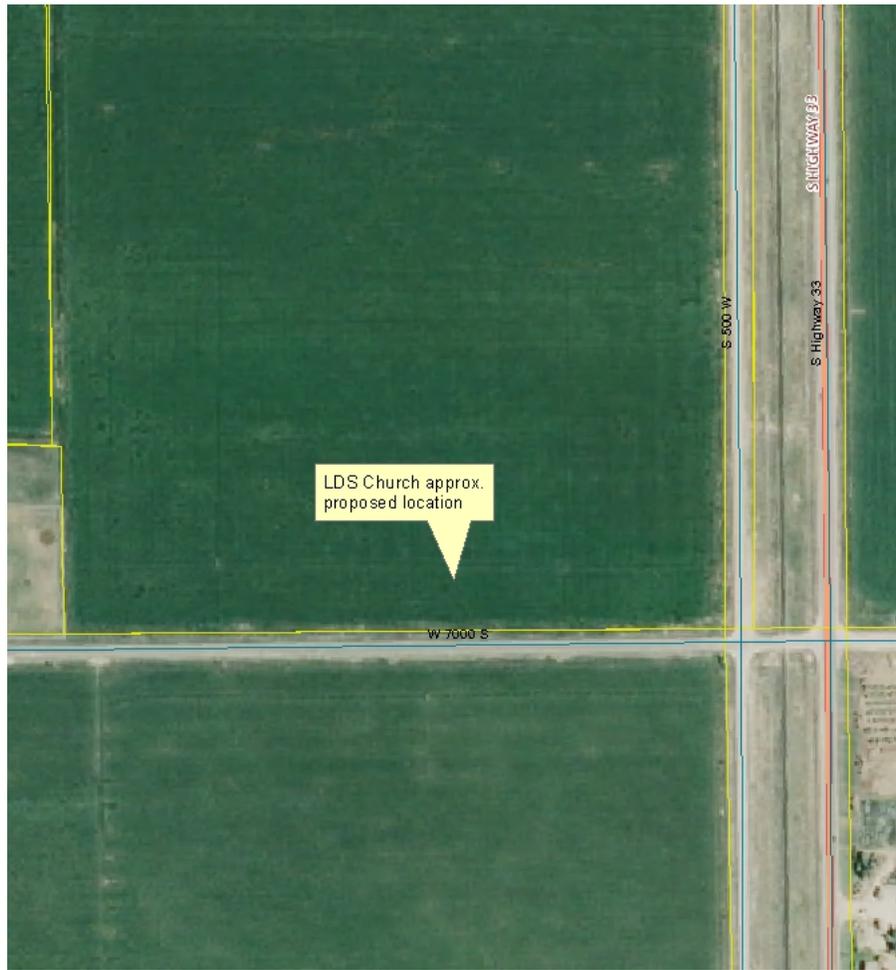
Policy 4: *Conserve and protect esthetic values including scenic open spaces, quiet neighborhoods, dark night skies, clean air, safe communities, and accessible public lands.*

Staff Analysis:

The project is the first large non-residential project that has been proposed since passage of the county’s Outdoor Lighting ordinance. Lighting experts have reviewed the photometric plan and believe that the lighting plan will

comply and that it will not produce nuisance lighting to adjoining properties and will not add to loss of seeing star-filled skies due to urban light effects.

Although the project is not in the Scenic Corridor, there will be a considerable amount of screening vegetation installed and the night lighting will be the same as several LDS facilities that coexist adjacent to residences.



Chapter 11 Hazardous Areas:

The policies and goals are among the less applicable ones to this particular land use proposal.

Chapter 12 Public Services & Utilities:

Policy 5: Encourage continued study of the county domestic water systems in conjunction with the state departments and agencies that monitor them.

Staff Analysis:

The Church will hook up to the Victor water system and pay for the costs to extend the system to the site. Any large proposal beyond a water and sewer provider's infrastructure would be extremely difficult.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING SECTION 8-6-1-B-7,
CRITERIA FOR APPROVAL OF A CONDITIONAL USE**

1. Location is compatible to other uses in the general neighborhood.

The Victor LDS has not been shown to create negative neighborhood impacts that cannot be largely mitigated by applying conditions to address those potential offsite impacts. The adjoining property is vacant and in limited agricultural production. This land is not prime farmland capable of growing high value commodities. However,

the area has been an urbanizing area and it is feasible to connect to an urban sewer and water infrastructure system. The site will not violate the county lighting restrictions, nor will there be significant off site impacts to air or water courses, wildlife, or wetlands. The proposed church is not within a protected Scenic Corridor, but there were extra coniferous trees and landscaping planned for the east side that is toward the highway. With outdoor lighting, storm water provisions, and roadway mitigation measures put in place, the location can found to be compatible to other uses in the general neighborhood.

2. Use will not place undue burden on existing public services and facilities in the vicinity.

The City of Victor would not allow connection to the water and sewer system if the use would overload and “burden” that infrastructure. The traffic effects of the Ward’s congregation driving to 7000 South rather than to the older Victor LDS facility will redistribute the traffic patterns, but it is not expected to over burden the public road facilities. The Highway 33 intersection will have turn lanes added and 7000 South will be widened and improved. Given these required improvements, the use will not place undue burdens on existing public services or facilities.

3. Site is large enough to accommodate the proposed use and other features of this ordinance.

This LDS facility is almost identical to many similarly sized sites in eastern Idaho. This same site plan is used often and with apparent success on parcels of the same approximate size. The applicant has applied to have the 5.5 acre parcel split off from the 80 acre parent parcel in order to accommodate the church use and it is large enough for the proposed use.

4. Proposed use is in compliance with and supports the goals, policies and objectives of the Comprehensive Plan.

This staff report supplied an analysis on how the application compared to the applicable goals, policies and objectives enumerated in the existing comprehensive plan. In general, this project is proposed within the Area of City Impact for Victor and the city officials offered support for the location and will provide city water and sewer service. The building of this LDS meetinghouse in accordance with the depicted NBW architectural plans and AW Engineering plans, along with installation of the required off-site improvements, is found to be in compliance to the goals, policies, and objectives of the existing Comprehensive Plan.

SECTION 8-6-1-B-8-D ADDITIONAL CONDITIONS (For Conditional Uses)

The following conditions are recommended:

Outdoor Lighting

OL-1. In order to demonstrate compliance with the standards in Section 9-4-1(K) Outdoor Lighting, the applicant shall supply, at the time of building permit application, the actual brand, model and illuminance specifications for all the parking lot lights and all other exterior lights on or associated with the building.

OL-2. The steeple shall not be directly lighted.

OL-3. A timer system shall be installed for the parking lot lights on the perimeter of the property and the lights shall be shut-off in accordance with the times specified by the Planning and Zoning Commission during the February 14 public hearing.

County Road- State Highway Improvements

R-1. In order to comply with the County Road Standards for Teton County, as amended though AMD 06-05, the applicant or applicant’s contractor shall construct the road improvements as stipulated in the final traffic Study report, accepted by the County Engineer. Said work and surety includes all improvements done within the County and State Highway rights-of-way.

R-2. Financial surety shall be established for all road and utility work designed for improvements that lie within the county and State highway rights-of-way. The County Engineer shall review and approve the surety amount (and contingency, which add to 125%) based on a cost estimate created by a Professional Engineer licensed by Idaho.

R-3. Said road improvements are expected to be completed before a Certificate of Occupancy is issued. However a Conditional Certificate of Occupancy may be issued if said road improvements cannot be completed due to weather.

Fire

F-1. In order to comply with all Teton County Fire Protection District Fire Code requirements, the applicant shall install and have inspected all fire hydrants, sprinkler systems, and meet all building accessibility requirements prior to obtaining a Certificate of Occupancy. The Fire District's general requirements are outlined in the District's comment letter of February 7, 2012.

Storm Water Management

SW-1. Prior to earth-disturbing activities, the applicant shall supply the County with the same Storm Water Pollution Prevention Plan (SWPPP) that is registered with EPA. The SWPP shall be considered an element of the Building Permit, subject to inspection by the County.

Landscaping

L-1. In order to comply with Section 8-12-1-B, the applicant shall submit to the Planning Department a recorded landscape easement that depicts the required screening and stipulates how it shall be maintained.

L-2. The applicant shall provide a basic schematic plan for all underground irrigation and utility lines. The plans shall also show the proposed planting plan and demonstrate that there are no spatial conflicts between trees, roots, and buried utilities.

Bike/Pedestrian Connections

BP-1. In order to increase the safety and transportation options for the congregation, and particularly for youth attending various functions at the meetinghouse, the applicant shall designate a non-motorized easement from the right-of-way for County Road 500 West and traverse west to the church's west side of boundary, along the southern end of the property.

BP-2. A pathway shall be built within the easement at a minimum of a gravel surface pathway.

PLANNING COMMISSION CONSIDERATIONS AND ACTIONS:

1. Make a recommendation to approve the CUP as presented and with the findings and conditions recommended by staff.
2. Make a recommendation to deny the CUP application and state the justifications for the denial.
3. Continue the review of the CUP to a future Public Hearing and provide the applicant with the questions and informational needs that the Commission needs in order to make a recommendation.

PLANNING STAFF RECOMMENDATION: ACTION #1 Approve the Blackfoot Farms Conditional Use Permit with conditions.

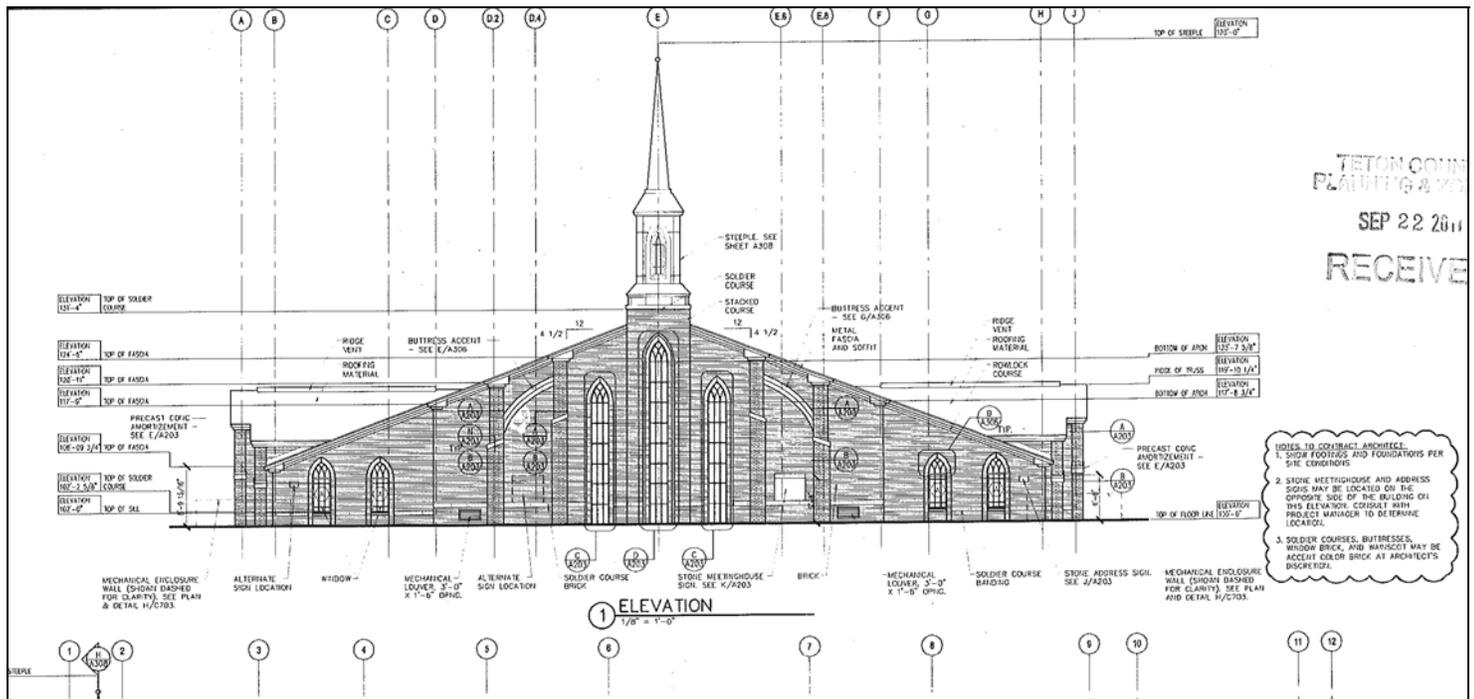
Suggested Motion to Approve:

Having made findings of fact that all the Criteria for Approval of a Conditional Use found in Title 8-6-1-B (7) can be satisfied with the inclusion of the recommended conditions of approval, I recommend APPROVAL of the Victor LDS Meetinghouse Conditional Use Permit application as described and depicted in the application materials, and as revised and supplemented.

A HEIGHT VARIANCE REQUEST TO THE TETON COUNTY BOARD OF ADJUSTMENT

The variance application request is pursuant to Section 8-4-4 Height, Setback, and Lot Size Schedule.

The variance would allow the Victor LDS Meetinghouse steeple to be built to 70 feet in height where a height limit of 30-feet is specified by the County ordinance. The distance from the finished grade of ground adjacent to the building, to the pinnacle of the steeple would be 70-feet. The top of the steeple would be 40-feet higher than the 30-foot building.



The entryway elevation, which faces south and towards County Road 7000 South

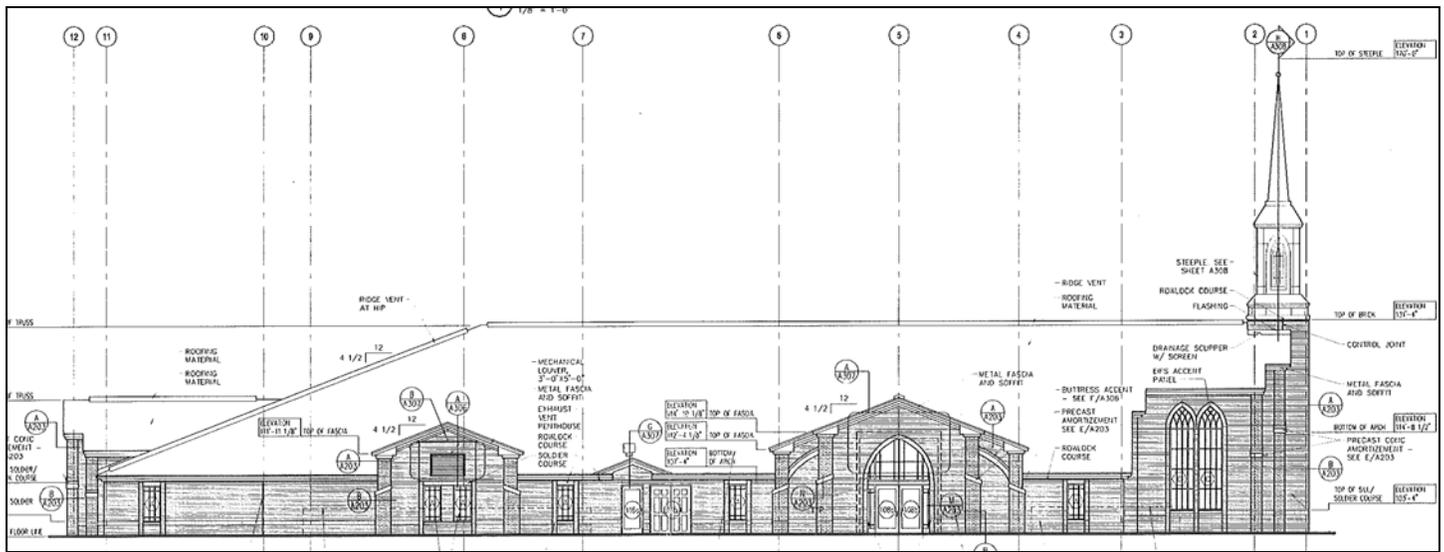
VARIANCE APPLICATION REQUIREMENTS:

1. **Section 8-8-1-C Application Form:** A site plan and all relevant application materials were supplied – (see attached site plan and the variance application and narrative of responses to the variance standards).
2. **Section 8-8-1-D Filing Fee:** The variance application fee was paid and the property taxes are up to date.
3. **Section 8-8-1-E Public Hearing:** A Public Notice of this variance application’s Public Hearing was published in the Teton Valley News.
4. **Section 8-8-1-G Written Notice:** A written notice of this application and the associated Public Hearing was mailed to property owners within 300 feet of the property boundary of the subject property.

5. The site was posted with the variance notification of the Public Hearing to be held on February 14, 2012.

PLANNING STAFF COMMENTS REGARDING THE VARIANCE REQUEST:

The Staff has discovered that there are many complex legal issues and some recent court cases involving religious institutions, steeples, and land use regulations. Religious institutions, and possibly their steeples included, fall into a special protected class of land uses that are subject to potential exemptions from local land use and zoning regulation. It is not yet clear how the (Federal) Religious Land Use and Institutionalized Person Act (RLUIPA) and Idaho’s version- Free Exercise of Religion Protected Act (FERPA) would view the questions that this application brings up to the County. A more detailed analysis of the applicability of these laws is being researched by the Teton County Prosecuting Attorney.



UNDUE HARDSHIP FINDINGS Section 8-8-1-B:

Variance - Standards for Granting a Variance

A. “A variance shall not be considered a right or special privilege, but may be granted to an applicant only upon showing of undue hardship because of characteristics of the site.”

Staff Analysis on Variance: Staff believes this finding has some language within it that must be read extremely carefully. The phrase “because of characteristics of the site” is the key factor to consider. According to that parameter, some topographical or hydrologic, biological or physical “thing” must be present on the parcel in order for it to qualify for receiving the granting of an exception to the general dimensional restrictions set for setbacks, or height.

In most cases this “characteristic of the site” would involve the presence of a wetland, cliff, rocky outcrops, grove of special trees, river, stream, irrigation ditch, trail, buried utility lines, strange easement, grave, artifact site, nonconforming structure, soil condition, wildlife habitat, spawning habitat or nest, noise characteristic, or some other physical “thing” that can be seen or heard.

If the criteria for granting the Victor LDS meetinghouse steeple height variance must identify one of these unique “physical things”, then this finding cannot be made using a reasonable person’s assessment of this property. The site is flat, free of hydrologic or topographic constraints. The 5.5 acre parcel is free of any of the aforementioned constraints or characteristics. Given the exact and very constraining language of the Idaho state statute and the Teton County variance criteria, it is not logical that the granting of variances could be justified based on a unique characteristics of this particular property and site. Variance findings are different in different communities in Idaho, see attachment about Idaho Variance findings. **Staff concludes that the present wording for granting a variance, as written in the Teton County code, is a finding that can’t be met for this height variance request.**

B. *“The variance is not in conflict with the public interest nor the general land or conditions in the vicinity of the application.”*

Staff Analysis on Variance: The public interest of having a new church that is identified in the classic way, by its traditional steeple, is not at issue here. Permitting a variance for a 70-foot steeple allows the congregation to have the same type of steeple as thousands of other churches, mosques, temples, and other religious institutions. If it were in the public interest to not have steeples, why would they be so prevalent in almost every community in the USA? It is not in conflict with the public interest to grant the height variance. **This finding is made.**

C. *“The variance will not be a material detriment to public health, safety or welfare nor to neighboring property owners.”*

Staff Analysis on Variance: It is not clear why Teton County would deem that it is materially detrimental to have 70-foot steeples, almost all communities in the USA have not found this to be the case. It cannot be concluded that tall steeples pose material detriments to the public health, safety, or welfare of the public. **This finding is made.**

THE BOARD OF ADJUSTMENT ACTIONS:

- A. Approve the variance application as requested in the application, having provided the reasons and justifications for the approval.
- B. Approve the variance application with modifications to the application request, or adding conditions of approval, having provided the reasons and justifications for the approval and for any modifications or conditions.
- C. Continue the Public Hearing and request more information from the Planning Staff or applicant.
- D. Deny the variance application request and provide the reasons and justifications for the denial.

STAFF RECOMMENDATIONS:

The Planning Staff recommends Action D. for the following reason:

Planning staff cannot presently recommend that the board of adjustment approve the variance request for the LDS Church steeple. Staff cannot make a finding of fact that all the variance criteria in 8-8-1 (b) can be met.

Attachments:

Application Materials:

- CUP Application with narratives
- Plan View Site plans
- NBW Architects building elevations
- Landscape Plan
- Outdoor lighting photometric plan
- AW Engineering Traffic Study, revised
- Kittleson & Associates Traffic Study comment report
- AW Engineering Storm Water Management Plan report
- AW Engineering correspondences
 - Aw Engineering Culvert Analysis
 - Variance application with narratives, response to findings
- Public Comment letters and emails

- Teton County Attorney commentary regarding RLUIPA
- TVTAP letter of Feb. 8, 2012

End of report- Planner- Curt Moore

Agency Reviews

- Teton County Fire Protection District letter- M Anderson
- County Engineer letters
- Idaho Department of Transportation correspondence
- City of Victor Will-Serve letter
- City of Victor attorney letter on Variance/ RLUIPA
- City of Victor letter of support for location
- Independent lighting expert review email



Teton County Engineer

October 17, 2011 *Revised: January 4, 2012*

Tom Muir
Blackfoot Farms, LLC
500 Huntsman Way
Salt Lake City, UT 84108

RE: for Blackfoot Farms (Driggs Stake)-Conditional Use Permit/Work within County Right of Way Permit

Note: 1/3/12 comments are in italics and are in response to the additional information formally submitted on 12/02/11. Additional Traffic Study comments are included with the attached review from Kittelson & Associates, Inc. All comments should automatically be carried through to final approval, including building permits.

Dear Mr. Muir,

The following comments pertain to the permits submitted for the project referenced above. I have combined my preliminary review comments for both permits in this letter in an effort to streamline the review process. Additionally, I have sent copies of this letter to the Teton County Planning Department, City of Victor, your engineer (AW Engineering) and your architect (NBW Architects). These comments should be automatically carried over for the final review.

Permit to Work within the County Right of Way:

Please address the following comments:

1. The approach type is marked incorrectly as Agriculture.
Corrected
2. A culvert will be required for the access; it is the applicant's responsibility to size the culvert.
Noted, an 18" culvert under each access is proposed.
3. Is a mailbox going to be installed as part of this permit? Please mark the appropriate box on the permit.
Addressed, no mailbox is proposed
4. Approaches should be spaced at a minimum of 330 feet from center to center of approach. Currently the approaches are spaced at 250 feet.
Please submit a full size site plan to scale. The submitted site plan is not to scale and therefore not acceptable as the spacing between approaches cannot be verified.
5. The project appears to generate over 100 vehicle trips per hour during the peak hour, therefore a traffic study is required for this project. The traffic study should address at a

minimum the items outlined in Section III-E of the *LTHAC Manual for Use of Public Right of Way Standard Approach Policy*. Additionally, this study should include input from the Idaho Department of Transportation regarding the effect of the project upon State Highway 33.

See the attached comments from Kittelson & Associates and revise the traffic study accordingly. Additionally, this study should include input from the Idaho Department of Transportation regarding the effect of the project upon State Highway 33.

Conditional Use Permit:

Please address the following comments:

General

1. A full set of stamped construction plans, including site, layout, grading, and utility plans must be included with the building permit submission for review.

Noted in the applicant's response.

2. Please provide a schematic layout of the proposed water and sewer mains servicing the site. A permit to work within the county right of way will be required prior to construction of these mains within the right of way.

Water Layout Plan:

- *Drawing scale is mislabeled*
- *Layout is misspelled*
- *Please include all linetypes and symbols in the legend*
- *The waterline and property lines are the same. Please use different line types for different features as the current drawing is confusing.*
- *The interior water/hydrant layout is unreadable. Please show the connection to the water main and schematic interior layout on the site or utility plans.*
- *City of Victor approval of the final construction plans will be required prior to commencing work or issuance of a building permit by Teton County.*

Sewer Plan – Topo:

- *No legend is provided*
- *A recorded sewer easement is needed across the adjacent property.*
- *City of Victor approval of the final construction plans will be required prior to commencing work or issuance of a building permit by Teton County.*

3. Please provide the parking space calculations for the building, including the future addition.

196 parking stalls are required per the applicant. 249 stalls are provided per the application. Please explain why an additional 53 spaces are needed.

4. Please investigate the construction of a pathway connecting the project to the Rails to Trails bike path adjacent to State Highway 33.

The applicant provided a justification of why a pathway is not proposed. The following are clarifications of the statements made by the applicant (see attached map).

1. *There appear to be at least 15 residences with 0.5 miles of the project.*
2. *There are 41 subdivisions west within 1.5 miles of the project.*

5. Please provide a preliminary storm water management plan and report. The report should include at a minimum;

- a) Written narrative discussing the existing and proposed site, runoff calculation methodologies used, stormwater quality measures proposed, summary, and a post construction operation and maintenance plan.
 - *Please provide a brief description of the methodology used calculating the rates of runoff.*
 - *No post construction operation & maintenance plan was provided.*
 - *P-2 is not needed if the historical record for the 100yr event provided by Williams Engineering is used.*
 - *P-3, Zone F, IDF curve: Please clarify why this is included. It appears the hydrograph method (TR-55) is being used to calculate the rates of runoff. The IDF curves are used in the Rational Method for calculating runoff.*
 - *The graph and calculations on the last page of the report do not appear to relate to this project. Please explain or remove this page from the report.*
- b) Existing and proposed drainage plans for the proposed site drawn to a scale not less than 1"=100' showing water flow directions and 1' contour intervals;
 - *An existing topographic map was provided which shows the existing drainage patterns.*
 - *A proposed drainage plan was provided, however none of the proposed site improvements were shown (parking lot, building, etc). Please provide a proposed drainage plan showing all proposed improvements and proposed flow directions.*
- c) Existing and proposed stormwater runoff calculations for the 2-year and 100-yr 24hr design storm. Post development rates of runoff may not exceed pre-development rates of runoff.
 - *An existing runoff rate of 0.5cfs was given for the 100-yr storm event. Please provide the existing runoff rate for the 2-yr storm event. Back up calculations for both calculations should be included in the report.*
 - *A-5: The Manning's roughness coefficient for sheet flow should be 0.011 (not 0.11) and the Manning's roughness coefficient for Channel flow on concrete should be 0.013 (not 0.11). Please revise the calculations as this will affect the time of concentration.*
 - *A Type II rainfall distribution should be used for these calculations.*
- d) Proposed stormwater quality measures.
 - *No stormwater quality measures were provided. Please provide a brief explanation of proposed stormwater quality measures.*
- e) Soil tests verifying percolation rates (if used).
 - *Please clarify the percolation rate. The Culvert Analysis states a 3"/hr rate while the Stormwater Report states a 6"/hr rate.*

Site Plan

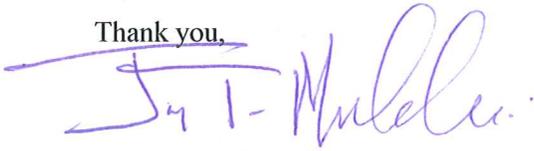
A full sized, to scale, site plan must be submitted with the following items shown.

1. Please provide a legend.
Not provided
2. Please identify snow storage locations.
Shown on multiple plans, please show on the site plan.
3. Please identify curb locations and types.
Appear to be shown on the small site plan but is unreadable.

4. Please identify the surface types (concrete, asphalt, etc)
Appear to be shown on the small site plan but is unreadable.
5. Please show proposed utilities, including connections to the City of Victor systems.
Not provided
6. Is any signage proposed; if so please show on the site plan and landscaping plan.
No signage is proposed per the applicant. Please note the Teton County Sign Ordinance also applies to wall signs.

If you have any questions or comments, please call.

Thank you,



Jay T. Mazalewski, PE
Teton County Engineer

Cc:
Teton County Planning Department
City of Victor
NBW Architects
AW Engineering



KITTELSON & ASSOCIATES, INC.

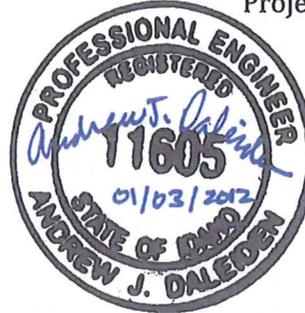
TRANSPORTATION ENGINEERING / PLANNING

101 S Capitol Boulevard, Suite 301, Boise, ID 83702 ☎ 208.338.2683 ✉ 208.338.2685

MEMORANDUM

Date: January 3, 2012
To: Jay Mazalewski, PE; Teton County
From: Andy Daleiden, PE and Nick Foster
Project: Teton County LDS Church Traffic Study Review
Subject: Findings from Review

Project #: 12241.0



This memorandum summarizes the findings of our review of a traffic study prepared by A-W Engineering for a new LDS church site in Teton County, Idaho, north of the city of Victor. The original study, titled *Traffic Study Report, LDS Church Site – Driggs, Idaho Stake*, has been submitted to Teton County on November 22, 2011. This review is being prepared at the request of Teton County. For organizational purposes, our findings are grouped into three areas:

- Data used in the study;
- Data analysis procedures; and
- Findings of the study.

Study Data

We raise the following concerns with the traffic count and trip generation data used in the study.

1. The average daily traffic (ADT) volume for State Highway (SH) 33 shown is a count from 1999. The Idaho Transportation Department (ITD) has more current count data, from 2010, on its website (Reference 1).
 - a. It is also not clear from the report if the ADT volume shown is from a weekday or a Sunday count. If it is from a weekday, then at an ADT volume of 3500 vehicles, it is lower than the more recent 2010 count that shows an ADT volume of approximately 6000 vehicles.

- b. Typically, traffic counts are collected within the last 1 to 2 years for a traffic impact study. ITD's *Requirements for Transportation Impact Studies* identifies that traffic volumes can be obtained by setting out traffic recorders or by using existing traffic counts that are not more than one year old (Reference 2).
2. Increasing the peak hour trip generation estimate by 30% due to the expected larger meeting size is appropriate.
3. The study notes that the trip generation estimates are based on the Institute of Transportation Engineers (ITE) published reference *Trip Generation, 5th Edition*; however the trip generation appears to be based on the Hefron study included in the appendix. The reference to ITE should be removed.
 - a. Use of the Hefron study in lieu of the ITE manual is appropriate since it is use-specific data. However, if the ITE manual were used, the trip generation should be estimated based on the most recent manual edition, 8th Edition.
4. The tables on Page 6 are not clear. They appear to be related to trip generation; however, they should be titled to make it clear to the reader.
 - a. In the first table - The second column heading appears to be mislabeled. The data in this column does not appear to be daily trip data. This should be corrected.
 - b. In the first table - It is confusing how the design totals are arrived at and what purpose they serve as they are not referenced again in the report. This should be clarified.
 - c. In the second table - It is not clear what the information in this table represents or how it has been arrived at. It follows a discussion of how little traffic will be generated during the weekday commuter peak hour leading the reader to believe it is a breakdown of daily trip generation from the site to prove this point. However, the numbers in this table do not appear to be consistent with the data in the Hefron study.
 - i. An estimate of weekday p.m. peak hour trip generation for the site should be provided in the study in order to show whether a study of this time period is warranted.

Study Analysis Procedures

The following are our findings related to the analysis procedures in the report, or that should be in the report:

1. The study does not analyze traffic operations at the study intersections. The Local Highway Technical Assistance Council (LHTAC) guidelines provided by the County to the applicant indicate that such an analysis should be performed.
 - a. The SH 33/7000 South intersection should be analyzed for a Sunday morning peak hour when the site's trip generation is expected to be the highest. This analysis should be conducted using the current version of the *Highway Capacity Manual* adopted by ITD.
 - b. This analysis should also examine whether or not turn lanes on SH 33 will be warranted with the build-out of the site according to the turn lane warrants contained in Section 450 of the *ITD Traffic Manual*, which can be found here: [http://itd.idaho.gov/manuals/Online Manuals/Traffic/index.htm](http://itd.idaho.gov/manuals/Online%20Manuals/Traffic/index.htm).
 - i. A similar analysis should also be conducted to determine if turn lanes are warranted on 7000 South at the site access driveways.
 - c. These analyses will require that a peak hour traffic volume count be conducted at the SH 33/7000 South intersection.
2. A figure showing the distribution of site-generated traffic onto 7000 South and SH 33 is not provided. The text indicates that all site-generated traffic is expected to use SH 33 to reach the site. However, it should also provide a directional distribution (i.e. the percentage of traffic coming from/going to the north and the percentage coming from/going to the south).

Study Findings

The following are our comments related to the findings of the study:

1. The study recommends that improvements be made to 7000 South from SH 33 to the site's western access to bring the road up to County standards. This is appropriate.
 - a. However, the report should be revised to indicate whether or not turn lanes are warranted on 7000 South at the site access driveways.

- b. If turn lanes are warranted, the report should indicate the amount of storage space that will be required for queues of turning vehicles.
2. The study indicates that turn lanes will be needed at the intersection of SH 33 and 7000 South (the *SH 33 Corridor Plan* [Reference 3] also indicates that future development will trigger the need for turn lanes at the intersection). It does not, however, indicate whether the project is causing these needs or if they are preexisting conditions. Similarly it does not indicate if the project will be expected to contribute to the construction of these and to what extent it should contribute.
 - a. The report should be revised to clearly estimate the impacts of the project on this intersection, through operational and turn-lane warrant analyses, and from these estimates, provide recommendations for the project's contributions, if any, to these improvements.
 - b. If turn lanes are warranted, the report should indicate the amount of storage space that will be required for queues of turning vehicles.

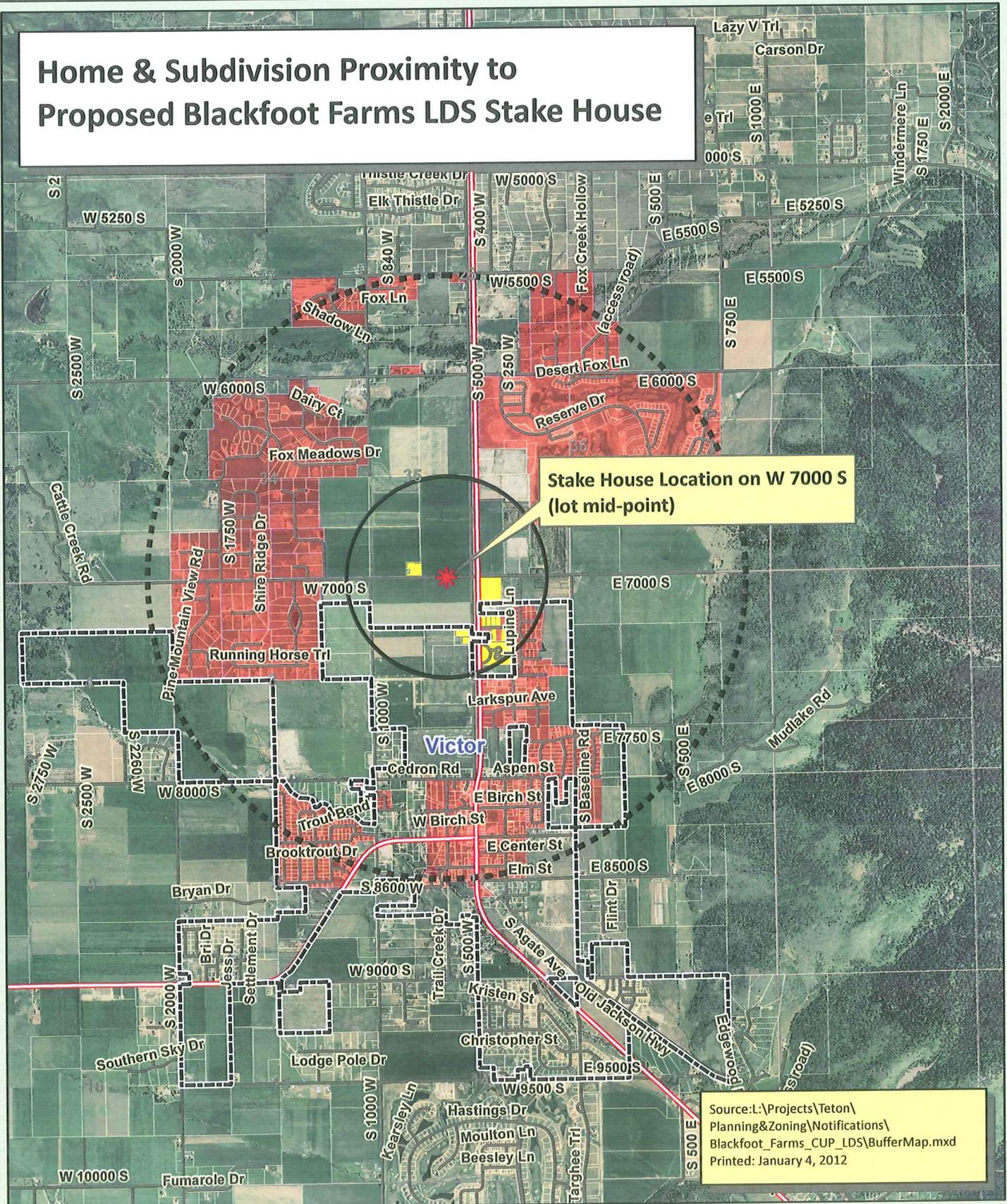
Conclusion

We recommend the applicant revise the traffic study as noted above. Please do not hesitate to contact us with any questions or comments.

References

1. Idaho Transportation Department. *Highway Data Quest* application.
<http://www3.idaho.gov/cgi-bin/webster.cgi>. Accessed December 21, 2011.
2. Idaho Transportation Department. *Requirements for Transportation Impact Studies*.
<http://itd.idaho.gov/highways/ops/Traffic/PUBLIC%20FOLDER/Traffic%20Impact%20Study/Traffic%20Impact%20Study%20Requirements.pdf>. 2011.
3. W&H Pacific and KMP Planning. *SH 33 Corridor Plan – US 20 to Wyoming Border*. 2002.

Home & Subdivision Proximity to Proposed Blackfoot Farms LDS Stake House



Source: L:\Projects\Teton\Planning&Zoning\Notifications\Blackfoot_Farms_CUP_LDS\BufferMap.mxd
 Printed: January 4, 2012



-  LDS Stake House Location
-  0.5-mile Radius
-  1.5-mile radius

-  Improved Parcels within 0.5-mi radius (16 total)
-  Subdivisions within 1.5-mile Radius (41 total)
-  Victor City Boundary





TETON COUNTY FIRE PROTECTION DISTRICT

P.O. Box 474

911 North Hwy. 33

Driggs, ID 83422

Marc Anderson, Fire Marshal

Phone: 208-354-2760

Fax: 208-354-2764

06 February 2012

Teton County Planning and Zoning

Attn: Kurt Moore

150 Courthouse Drive

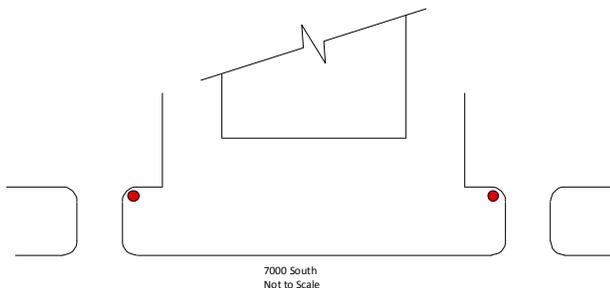
Driggs, ID 83422

Re: Project Located at 7000 South, Victor – Victor Meetinghouse Driggs Idaho Stake

Mr. Moore,

An initial site plan review of the Victor Meetinghouse Driggs Idaho Stake project has been conducted and following are stipulations that need to be followed at this point. Further detailed requirements will be forthcoming during the plan review stage.

- » Premises Identification: Where applicable, streets shall be clearly identified and address numbers shall be plainly legible and visible from the street or road. Address numbers shall be a minimum of four inches high and the stroke width shall not be less than 0.5 inches.¹
- » Fire Flow Requirements: The required fire flow for this building shall be no less than 4,250 GPM for a duration of 4 hours.² This flow will require two hydrants.
- » Fire Hydrant Locations: Two hydrants are required and shall be located at the two entrances to the parking lot. These hydrants should be located as indicated below and shall be subject to the approval of the Fire Marshal.³



¹ 2009 International Fire Code Sections 505.1 & 505.2.

² 2009 International Fire Code Appendix B, Table B105.1

³ 2009 International Fire Code Appendix B, Section B105.2

- » Fire Apparatus Access Roads: Provided the height of the structure not including the steeple is less than 30' from the lowest level of fire department vehicle access, dedicated fire apparatus roads are not required.⁴
- » Automatic Fire Sprinkler System: In conjunction with the Teton County Fire Protection District, the automatic fire sprinkler system is subject to review and approval from the State Fire Marshal's Office and shall follow the sprinkler standards set forth in NFPA 13. The Teton County Fire Protection District shall require the Fire Department Connection to be located on the east side of the building with direct access from the parking lot. Final location of the Fire Department Connection shall be approved by the local Fire Marshal. Additionally, a wall mounted post indicating valve is required and shall be located on the building, beside the Fire Department Connection.⁵
- » Fire Alarm System: The automatic sprinkler system shall be monitored by an alarm system and shall follow the provisions of NFPA 72. The Fire Alarm System shall be subject to review and approval from the Fire Marshal.⁶
- » Fire Extinguishers: Portable fire extinguishers rated at a minimum of 4-A: 20-B: C shall be installed at each exit and in special hazard areas as approved by the Fire Marshal. A K-class extinguisher shall be installed in the kitchen (if applicable).⁷
- » Automatic Fire Extinguishing System (if applicable): If a kitchen is planned for this building, plans for a Class I Kitchen Hood Suppression system shall be submitted to the Fire Marshal for review and approval.⁸
- » Key Box: The Fire District shall require the installation of an approved key box system. The box shall contain keys to gain necessary access in the event of an emergency. The appropriate key box information is available from the Fire District.⁹

If you have any further questions, please feel free to contact me at your convenience.

Sincerely,



Marc Anderson
Fire Marshal

⁴ 2009 International Fire Code Appendix D105

⁵ 2009 International Fire Code Section 903.2.1.3

⁶ 2009 International Fire Code Section 907.2.1

⁷ 2009 International Fire Code Section 906.3

⁸ 2009 International Fire Code Section 904

⁹ 2009 International Fire Code Section 506.1

City of Victor
P.O. Box 122
32 Elm Street
Victor, Idaho 83455



(208) 787-2940
FAX (208) 787-2357
craigs@victorcityidaho.com

August 12, 2011

Scott Neilson
NBW Architects
990 John Adams Pkwy
Idaho Falls, ID 83401

Dear Scott:

Enclosed is the signed copy of the will server letter. If you have any questions, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Craig Sherman".

Craig Sherman
City Administrator

MEMORANDUM OF UNDERSTANDING

The parties to this Memorandum of Understanding are the City of Victor (the "City") and Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter Day Saints, a Utah Corporation Sole (the "Church").

The Church has asked the City to provide water and sewer services to a proposed development on the north side of 7000 South, west of 50 West Street. The proposed development is that of a church and according to Church engineers the peak domestic water usage would be based on 116 fixture units and would be approximately 45 GPM (the "Project"). As per a memo from Church engineers this would only happen on Sundays and would amount to approximately 1800 gallons per day.

The Church agrees to abide by the following conditions in order for the City to make water and sewer service available at the Project.

The City agrees to provide water and sewer service with the following conditions.

1) The Church shall construct at its sole cost and expense approximately 4,300 linear feet of 8 inch diameter ductile iron class 50 Water Line, connecting the City's existing 12 inch Water Line west of the north well site to the Project. This line shall be built to City specifications and shall become the property of the City upon completion of the Water Line and acceptance by the City as to conformity with City specifications (the "Water Line"). The Water Line shall be run north on the west side of 1000 West to avoid the power lines on the east side of the road until it reaches 7000 South where it should be placed on the north side of 7000 South heading east until it reaches the Project. Fire hydrants will be required every 400 feet according to the City's Specifications. The County's Engineer shall be contacted to coordinate all of the necessary permits and reviews from the County's perspective.

2) Prior to construction of the Water Line the Church shall have a pre-construction meeting with the City engineer and the Church's engineer and contractor. Representatives of the City shall have the right to enter upon the Project at any reasonable time to inspect and to determine whether the Water Line is being built to City specifications. The Church agrees to pay the inspection fees as required by the City. The Church shall notify the City when it believes that the Water Line has been fully and properly completed and shall request final inspection and approval and acceptance of the Water Line by the City. The Church must provide a signed and sealed letter from an engineer stating the Water Line has been built in accordance with City specifications.

3) The City reserves the right to limit the amount of irrigation water to be drawn from the City water system for use at the Project. This reservation may be removed in the event that the City completes the proposed north well project, however, in the event the north well project is not completed prior to commencement of construction of the Project an analysis shall be conducted to verify that the demands during the irrigation season can be met by the City's current water system.

4) The Church shall have a limited right to reimbursement for 10 years following acceptance of the Water Line by the City. In the event other buildings are subsequently connected to the Water Line, the Church shall have the right to obtain from the owners of such other buildings a proportional reimbursement of the Church's original cost of installing the Water Line. The

reimbursement shall be based on the Church's equivalent residential users verses the new buildings equivalent residential users. As the owner of the Water Line the City shall make final determinations as to whether a particular parcel or building may be served by this Water Line. The City shall have the sole discretion to refuse any request by a developer to connect to the Water Line regardless of whether the Water Line may have the apparent capacity to carry or serve the additional connections.

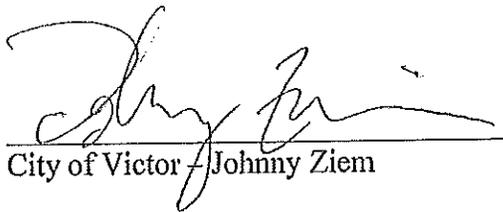
5) Upon completion of the current Victor/Driggs sewer upgrade there will be sufficient capacity for the Project to be hooked in to the Victor sewer system and the Church may connect the Project to the City's 12 inch sewer interceptor on the East side of 500 West. In the event the sewer upgrade is not complete prior to the hookup the City will need to perform an analysis as to whether or not the City sewer system has sufficient capacity for the Project to be hooked up to it.

6) The hookup fees charged to the Church shall be 1.5 times the standard rate because the Project is located outside the City. The number of ERU's that will be assigned to the Project per City ordinance is 1 ERU per congregation (or ward in this case). The water hookup fee is 1.5 x \$2,500, which equals \$3,750 per ERU. The sewer hookup fee is 1.5 x \$5,000, which equals \$7,500 per ERU. The total hookup fees for a 3 ward building would be 3 x (\$7,500+\$3,750), which equals \$33,750.

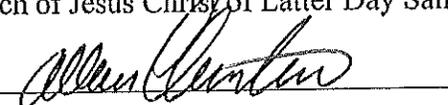
7) The Church shall pay all City costs associated with the Project including but not limited to engineering and legal fees.

If any portion of this MOU is held to be unenforceable or unlawful by a court of law, the parties hereto intend that the remainder of this MOU shall not be affected thereby and shall remain in force and effect.

Signed this 10 day of AUG, 2011.


City of Victor / Johnny Ziem

Corporation of the Presiding Bishop of the
Church of Jesus Christ of Latter Day Saints

By: 

Name: Project Manager

Title: Allan Christean

Curt Moore

From: Herb Heimerl [herb@tetonlawfirm.com]
Sent: Monday, January 30, 2012 4:08 PM
To: 'Bill K'; Curt Moore; Angie Rutherford
Cc: 'Zach Smith'; Kathy Spitzer
Subject: LDS height issue

I have been asked to give my legal opinion as it relates to the application for a variance on the County's height limit for the new LDS building. I understand that the church is claiming that this issue has jurisdiction under RLUIPA, however, I tend to disagree. The general RLUIPA standard is whether or not a zoning ordinance would have a material impact on one's ability to worship. Typically RLUIPA has been used to get around parking requirements, building configuration requirements, and certain location requirements, when they can be shown to interfere with a group's ability to worship. The quote below from the APA (article circulated by Curt) seems to sum it up best. I don't see any good reason not to simply change the zoning ordinance in a prudent fashion to allow for this height application if the BOCC believes that it is in the best interests of the public. The problem with granting a variance is that it simply does not qualify under Idaho or Teton County Codes. My fear with acting in contravention of these codes is that the next applicant, whether it be a church, a gas station, or an industrial use is that you give the next applicant the ability to claim that your previous decision was arbitrary if you deny them. It is much safer to simply change the zoning ordinance to accommodate the church structure if in fact the BOCC believes that is what is best for the community at large.

"In very general terms, local governments have tended to prevail against RLUIPA challenges when they could demonstrate that the restrictions placed on a church do not target religious uses for discriminatory treatment, are necessary to achieve valid land use regulatory goals, and do not force the church to cease religious worship."

*American Planning Association
Planning & Environmental Law
March 2008 Vol. 60, No. 3 | p.3*

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P.O. Box 122
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Victor, Idaho 83455



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craigs@victorcityidaho.com

2 February 2012

Curt Moore
County Planner
Teton County, Idaho

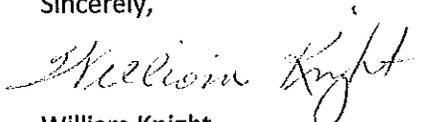
RE: Black Foot Farms/LDS Stake Center CUP Application

Dear Curt;

The City of Victor supports the Black Foot Farms/LDS Stake Center Conditional Use Permit application contingent upon successful compliance with all County and State performance standards. The City of Victor considers the location compatible with that of a sub-regional religious center and feels that its extensive use of land and automobile dependency affirms the proposed church site.

The City Attorney has commented on the church steeple variance application and has forwarded his comments to the county.

Sincerely,


William Knight
Planning & Zoning Administrator



P.O. Box 373
Driggs, ID 83422
(208) 201-1622
www.tvtap.org

February 1, 2012

To: Teton County Planning and Zoning Department
Teton County Commissioners

From: Teton Valley Trails And Pathways
Board of Directors

Re: CUP Application for Proposed Building Located at Highway 33 and 7000 South
Blackfoot Farms LLC Applicant

Please accept this comment regarding the "Statement on Pathway" letter submitted by Arnold Woolstenhulme regarding a connection from the proposed building to the Victor-Driggs Pathway.

Teton Valley Trails and Pathways (TVTAP) has been promoting a trails and pathways connected community in Teton Valley for over 11 years. In that time we have grown our membership base to over 600 families. Accounting for spouses and children, our membership base is well over 1,000 members which is over 10% of the population of Teton Valley. We believe this gives us valuable insight to the pedestrian and bicycle needs and use patterns in this community.

The following is a line item response to the statements made in the above referenced letter.

1. There is only one residence within ½ mile of the pathway system at this time.

This statement may be true, however a proposed pathway connection will serve not only the current adjacent residents but also future residents and developments. Under current zoning, the area surrounding this development could see a significant number of residences in the future.

2. There are no active or proposed subdivisions within 1.5 miles East or South of this pathway system.

A proposed pathway from and through this site will serve to connect a significant number of existing residents residing in the multiple subdivisions located to the west of the existing Victor-Driggs Pathway.

3. Placing a pathway adjacent to the improved county road is dangerous.

Pathways are located next to county roads, local streets, highways and major thoroughfares throughout the country. A properly designed pathway will be significantly safer for pedestrians and bicyclists than forcing them to walk or ride in the travel lanes or shoulder. We are unaware of any studies or research that contradict this.



- 4. The present proposed land purchases by the LDS Church does not include land on which on which a pathway could be built across from the North side of the project.**

It is common for developments to be required to construct "off site" improvements in order to mitigate the impacts of the proposed development. In this case, the increased traffic from the proposed development along 7000 South between the site and State Highway 33 warrants pathway improvements to provide save travel for pedestrians and bicyclists along this length. There will be no need to purchase additional land for this improvement however an agreement for an easement or right of way across the adjacent property to the east of the site would need to be negotiated with the owner. Given that the adjacent property owner is also the seller of the development parcel, this seems like a reasonable request and a feasible solution.

- 5. Because of the nature of LDS Church meetings, which almost always include small children, walking any distance is not an option for most families.**

In Teton Valley people do walk and bicycle with young children. They often use strollers or backpacks and many travel significant distances. This site is located approximately 1.5 miles from Victor which is well within a reasonable biking distance. Even if many of the users of the proposed Church chose to drive, it would be unfortunate if families did not have the option to walk or bike if they choose.

- 6. We live in a non densely populated agricultural community where most LDS members either do not or cannot walk to church meetings.**

Although this site lends itself less to walking than if it were located within town, walking could still be viable for some.

- 7. The letter additionally states that the applicant "does not feel that a pathway would be justified and or sufficiently utilized to support constructing any significant pathway system to the proposed Church site from the Rails to Trails pathway system".**

TVTAP continuously receives feedback from our membership and throughout the community about how valuable the Victor-Driggs Pathway is to them. The pathway is heavily used and is a vital alternative transportation link that connects neighborhoods and our community to both Driggs and Victor. There are a significant number of homes located to the west of the project site that utilize 7000 South to access this pathway. The proposed Church will increase vehicular traffic in this area which will pose safety concerns for bicyclists and pedestrians. We feel that pathway improvements along 7000 South from the proposed Church



P.O. Box 373
Driggs, ID 83422
(208) 201-1622
www.tvtap.org

site to the existing Victor-Driggs Pathway are not only justified but are necessary to mitigate the impact of the proposed development.

In order to reflect the needs of pedestrians and bicyclists and mitigate the impacts of the proposed development we feel that a separated multi-use pathway from the through the project site and to the existing Victor-Driggs Pathway be incorporated as part of the proposed development. This pathway will serve not only the users of the proposed development but all the existing residents to the west as well.

Thank you for considering our request.

On Behalf of the Teton Valley Trails And Pathways Board of Directors

Mark Hanson, President



9 Feb 2012

The proposed LDS church on 7000 S can meet the requirements of the 2009 International Building Code for building area and steeple height as shown on the preliminary building plans that were presented to Teton County. This proposed structure is not a violation of the building codes.

Tom Davis
Teton County Building Official

tdavis@co.teton.id.us

Teton County Planning & Building
150 Courthouse Dr. Room 107, Driggs, ID 83422
208-354-2593 ph. 208-354-8778 fax
www.tetoncountyidaho.gov



TETON COUNTY FIRE PROTECTION DISTRICT

P.O. Box 474

911 North Hwy. 33

Driggs, ID 83422

Marc Anderson, Fire Marshal

Phone: 208-354-2760

Fax: 208-354-2764

06 February 2012

Teton County Planning and Zoning

Attn: Kurt Moore

150 Courthouse Drive

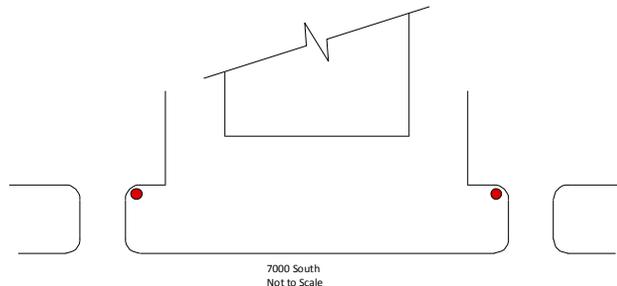
Driggs, ID 83422

Re: Project Located at 7000 South, Victor – Victor Meetinghouse Driggs Idaho Stake

Mr. Moore,

An initial site plan review of the Victor Meetinghouse Driggs Idaho Stake project has been conducted and following are stipulations that need to be followed at this point. Further detailed requirements will be forthcoming during the plan review stage.

- » Premises Identification: Where applicable, streets shall be clearly identified and address numbers shall be plainly legible and visible from the street or road. Address numbers shall be a minimum of four inches high and the stroke width shall not be less than 0.5 inches.¹
- » Fire Flow Requirements: The required fire flow for this building shall be no less than 4,250 GPM for a duration of 4 hours.² This flow will require two hydrants.
- » Fire Hydrant Locations: Two hydrants are required and shall be located at the two entrances to the parking lot. These hydrants should be located as indicated below and shall be subject to the approval of the Fire Marshal.³



¹ 2009 International Fire Code Sections 505.1 & 505.2.

² 2009 International Fire Code Appendix B, Table B105.1

³ 2009 International Fire Code Appendix B, Section B105.2

- » Fire Apparatus Access Roads: Provided the height of the structure not including the steeple is less than 30' from the lowest level of fire department vehicle access, dedicated fire apparatus roads are not required.⁴
- » Automatic Fire Sprinkler System: In conjunction with the Teton County Fire Protection District, the automatic fire sprinkler system is subject to review and approval from the State Fire Marshal's Office and shall follow the sprinkler standards set forth in NFPA 13. The Teton County Fire Protection District shall require the Fire Department Connection to be located on the east side of the building with direct access from the parking lot. Final location of the Fire Department Connection shall be approved by the local Fire Marshal. Additionally, a wall mounted post indicating valve is required and shall be located on the building, beside the Fire Department Connection.⁵
- » Fire Alarm System: The automatic sprinkler system shall be monitored by an alarm system and shall follow the provisions of NFPA 72. The Fire Alarm System shall be subject to review and approval from the Fire Marshal.⁶
- » Fire Extinguishers: Portable fire extinguishers rated at a minimum of 4-A: 20-B: C shall be installed at each exit and in special hazard areas as approved by the Fire Marshal. A K-class extinguisher shall be installed in the kitchen (if applicable).⁷
- » Automatic Fire Extinguishing System (if applicable): If a kitchen is planned for this building, plans for a Class I Kitchen Hood Suppression system shall be submitted to the Fire Marshal for review and approval.⁸
- » Key Box: The Fire District shall require the installation of an approved key box system. The box shall contain keys to gain necessary access in the event of an emergency. The appropriate key box information is available from the Fire District.⁹

If you have any further questions, please feel free to contact me at your convenience.

Sincerely,



Marc Anderson
Fire Marshal

⁴ 2009 International Fire Code Appendix D105

⁵ 2009 International Fire Code Section 903.2.1.3

⁶ 2009 International Fire Code Section 907.2.1

⁷ 2009 International Fire Code Section 906.3

⁸ 2009 International Fire Code Section 904

⁹ 2009 International Fire Code Section 506.1

City of Victor
P.O. Box 122
32 Elm Street
Victor, Idaho 83455



(208) 787-2940
FAX (208) 787-2357
craigs@victorcityidaho.com

August 12, 2011

Scott Neilson
NBW Architects
990 John Adams Pkwy
Idaho Falls, ID 83401

Dear Scott:

Enclosed is the signed copy of the will server letter. If you have any questions, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Craig Sherman".

Craig Sherman
City Administrator

MEMORANDUM OF UNDERSTANDING

The parties to this Memorandum of Understanding are the City of Victor (the "City") and Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter Day Saints, a Utah Corporation Sole (the "Church").

The Church has asked the City to provide water and sewer services to a proposed development on the north side of 7000 South, west of 50 West Street. The proposed development is that of a church and according to Church engineers the peak domestic water usage would be based on 116 fixture units and would be approximately 45 GPM (the "Project"). As per a memo from Church engineers this would only happen on Sundays and would amount to approximately 1800 gallons per day.

The Church agrees to abide by the following conditions in order for the City to make water and sewer service available at the Project.

The City agrees to provide water and sewer service with the following conditions.

1) The Church shall construct at its sole cost and expense approximately 4,300 linear feet of 8 inch diameter ductile iron class 50 Water Line, connecting the City's existing 12 inch Water Line west of the north well site to the Project. This line shall be built to City specifications and shall become the property of the City upon completion of the Water Line and acceptance by the City as to conformity with City specifications (the "Water Line"). The Water Line shall be run north on the west side of 1000 West to avoid the power lines on the east side of the road until it reaches 7000 South where it should be placed on the north side of 7000 South heading east until it reaches the Project. Fire hydrants will be required every 400 feet according to the City's Specifications. The County's Engineer shall be contacted to coordinate all of the necessary permits and reviews from the County's perspective.

2) Prior to construction of the Water Line the Church shall have a pre-construction meeting with the City engineer and the Church's engineer and contractor. Representatives of the City shall have the right to enter upon the Project at any reasonable time to inspect and to determine whether the Water Line is being built to City specifications. The Church agrees to pay the inspection fees as required by the City. The Church shall notify the City when it believes that the Water Line has been fully and properly completed and shall request final inspection and approval and acceptance of the Water Line by the City. The Church must provide a signed and sealed letter from an engineer stating the Water Line has been built in accordance with City specifications.

3) The City reserves the right to limit the amount of irrigation water to be drawn from the City water system for use at the Project. This reservation may be removed in the event that the City completes the proposed north well project, however, in the event the north well project is not completed prior to commencement of construction of the Project an analysis shall be conducted to verify that the demands during the irrigation season can be met by the City's current water system.

4) The Church shall have a limited right to reimbursement for 10 years following acceptance of the Water Line by the City. In the event other buildings are subsequently connected to the Water Line, the Church shall have the right to obtain from the owners of such other buildings a proportional reimbursement of the Church's original cost of installing the Water Line. The

reimbursement shall be based on the Church's equivalent residential users verses the new buildings equivalent residential users. As the owner of the Water Line the City shall make final determinations as to whether a particular parcel or building may be served by this Water Line. The City shall have the sole discretion to refuse any request by a developer to connect to the Water Line regardless of whether the Water Line may have the apparent capacity to carry or serve the additional connections.

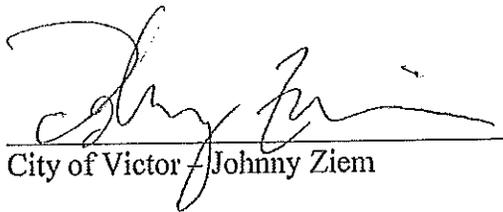
5) Upon completion of the current Victor/Driggs sewer upgrade there will be sufficient capacity for the Project to be hooked in to the Victor sewer system and the Church may connect the Project to the City's 12 inch sewer interceptor on the East side of 500 West. In the event the sewer upgrade is not complete prior to the hookup the City will need to perform an analysis as to whether or not the City sewer system has sufficient capacity for the Project to be hooked up to it.

6) The hookup fees charged to the Church shall be 1.5 times the standard rate because the Project is located outside the City. The number of ERU's that will be assigned to the Project per City ordinance is 1 ERU per congregation (or ward in this case). The water hookup fee is 1.5 x \$2,500, which equals \$3,750 per ERU. The sewer hookup fee is 1.5 x \$5,000, which equals \$7,500 per ERU. The total hookup fees for a 3 ward building would be 3 x (\$7,500+\$3,750), which equals \$33,750.

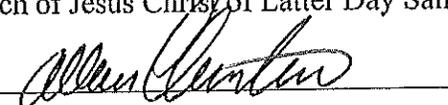
7) The Church shall pay all City costs associated with the Project including but not limited to engineering and legal fees.

If any portion of this MOU is held to be unenforceable or unlawful by a court of law, the parties hereto intend that the remainder of this MOU shall not be affected thereby and shall remain in force and effect.

Signed this 10 day of AUG, 2011.


City of Victor / Johnny Ziem

Corporation of the Presiding Bishop of the
Church of Jesus Christ of Latter Day Saints

By: 

Name: Project Manager

Title: Allan Christean

Curt Moore

From: Herb Heimerl [herb@tetonlawfirm.com]
Sent: Monday, January 30, 2012 4:08 PM
To: 'Bill K'; Curt Moore; Angie Rutherford
Cc: 'Zach Smith'; Kathy Spitzer
Subject: LDS height issue

I have been asked to give my legal opinion as it relates to the application for a variance on the County's height limit for the new LDS building. I understand that the church is claiming that this issue has jurisdiction under RLUIPA, however, I tend to disagree. The general RLUIPA standard is whether or not a zoning ordinance would have a material impact on one's ability to worship. Typically RLUIPA has been used to get around parking requirements, building configuration requirements, and certain location requirements, when they can be shown to interfere with a group's ability to worship. The quote below from the APA (article circulated by Curt) seems to sum it up best. I don't see any good reason not to simply change the zoning ordinance in a prudent fashion to allow for this height application if the BOCC believes that it is in the best interests of the public. The problem with granting a variance is that it simply does not qualify under Idaho or Teton County Codes. My fear with acting in contravention of these codes is that the next applicant, whether it be a church, a gas station, or an industrial use is that you give the next applicant the ability to claim that your previous decision was arbitrary if you deny them. It is much safer to simply change the zoning ordinance to accommodate the church structure if in fact the BOCC believes that is what is best for the community at large.

"In very general terms, local governments have tended to prevail against RLUIPA challenges when they could demonstrate that the restrictions placed on a church do not target religious uses for discriminatory treatment, are necessary to achieve valid land use regulatory goals, and do not force the church to cease religious worship."

*American Planning Association
Planning & Environmental Law
March 2008 Vol. 60, No. 3 | p.3*

Herbert Heimerl | Heimerl Law Firm, PC
217 S. Main St. • PO Box 499 • Victor, ID 83455
Phone: 208.787.0337
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City of Victor
P.O. Box 122
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Victor, Idaho 83455



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craigs@victorcityidaho.com

2 February 2012

Curt Moore
County Planner
Teton County, Idaho

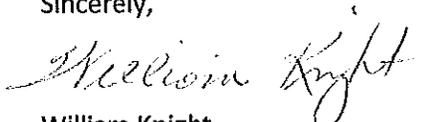
RE: Black Foot Farms/LDS Stake Center CUP Application

Dear Curt;

The City of Victor supports the Black Foot Farms/LDS Stake Center Conditional Use Permit application contingent upon successful compliance with all County and State performance standards. The City of Victor considers the location compatible with that of a sub-regional religious center and feels that its extensive use of land and automobile dependency affirms the proposed church site.

The City Attorney has commented on the church steeple variance application and has forwarded his comments to the county.

Sincerely,


William Knight
Planning & Zoning Administrator



P.O. Box 373
Driggs, ID 83422
(208) 201-1622
www.tvtap.org

February 1, 2012

To: Teton County Planning and Zoning Department
Teton County Commissioners

From: Teton Valley Trails And Pathways
Board of Directors

Re: CUP Application for Proposed Building Located at Highway 33 and 7000 South
Blackfoot Farms LLC Applicant

Please accept this comment regarding the "Statement on Pathway" letter submitted by Arnold Woolstenhulme regarding a connection from the proposed building to the Victor-Driggs Pathway.

Teton Valley Trails and Pathways (TVTAP) has been promoting a trails and pathways connected community in Teton Valley for over 11 years. In that time we have grown our membership base to over 600 families. Accounting for spouses and children, our membership base is well over 1,000 members which is over 10% of the population of Teton Valley. We believe this gives us valuable insight to the pedestrian and bicycle needs and use patterns in this community.

The following is a line item response to the statements made in the above referenced letter.

1. There is only one residence within ½ mile of the pathway system at this time.

This statement may be true, however a proposed pathway connection will serve not only the current adjacent residents but also future residents and developments. Under current zoning, the area surrounding this development could see a significant number of residences in the future.

2. There are no active or proposed subdivisions within 1.5 miles East or South of this pathway system.

A proposed pathway from and through this site will serve to connect a significant number of existing residents residing in the multiple subdivisions located to the west of the existing Victor-Driggs Pathway.

3. Placing a pathway adjacent to the improved county road is dangerous.

Pathways are located next to county roads, local streets, highways and major thoroughfares throughout the country. A properly designed pathway will be significantly safer for pedestrians and bicyclists than forcing them to walk or ride in the travel lanes or shoulder. We are unaware of any studies or research that contradict this.



- 4. The present proposed land purchases by the LDS Church does not include land on which on which a pathway could be built across from the North side of the project.**

It is common for developments to be required to construct "off site" improvements in order to mitigate the impacts of the proposed development. In this case, the increased traffic from the proposed development along 7000 South between the site and State Highway 33 warrants pathway improvements to provide save travel for pedestrians and bicyclists along this length. There will be no need to purchase additional land for this improvement however an agreement for an easement or right of way across the adjacent property to the east of the site would need to be negotiated with the owner. Given that the adjacent property owner is also the seller of the development parcel, this seems like a reasonable request and a feasible solution.

- 5. Because of the nature of LDS Church meetings, which almost always include small children, walking any distance is not an option for most families.**

In Teton Valley people do walk and bicycle with young children. They often use strollers or backpacks and many travel significant distances. This site is located approximately 1.5 miles from Victor which is well within a reasonable biking distance. Even if many of the users of the proposed Church chose to drive, it would be unfortunate if families did not have the option to walk or bike if they choose.

- 6. We live in a non densely populated agricultural community where most LDS members either do not or cannot walk to church meetings.**

Although this site lends itself less to walking than if it were located within town, walking could still be viable for some.

- 7. The letter additionally states that the applicant "does not feel that a pathway would be justified and or sufficiently utilized to support constructing any significant pathway system to the proposed Church site from the Rails to Trails pathway system".**

TVTAP continuously receives feedback from our membership and throughout the community about how valuable the Victor-Driggs Pathway is to them. The pathway is heavily used and is a vital alternative transportation link that connects neighborhoods and our community to both Driggs and Victor. There are a significant number of homes located to the west of the project site that utilize 7000 South to access this pathway. The proposed Church will increase vehicular traffic in this area which will pose safety concerns for bicyclists and pedestrians. We feel that pathway improvements along 7000 South from the proposed Church



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site to the existing Victor-Driggs Pathway are not only justified but are necessary to mitigate the impact of the proposed development.

In order to reflect the needs of pedestrians and bicyclists and mitigate the impacts of the proposed development we feel that a separated multi-use pathway from the through the project site and to the existing Victor-Driggs Pathway be incorporated as part of the proposed development. This pathway will serve not only the users of the proposed development but all the existing residents to the west as well.

Thank you for considering our request.

On Behalf of the Teton Valley Trails And Pathways Board of Directors

Mark Hanson, President



9 Feb 2012

The proposed LDS church on 7000 S can meet the requirements of the 2009 International Building Code for building area and steeple height as shown on the preliminary building plans that were presented to Teton County. This proposed structure is not a violation of the building codes.

Tom Davis
Teton County Building Official

tdavis@co.teton.id.us

Teton County Planning & Building
150 Courthouse Dr. Room 107, Driggs, ID 83422
208-354-2593 ph. 208-354-8778 fax
www.tetoncountyyidaho.gov

From: Zachary Smith
Sent: Tuesday, February 14, 2012 1:38 PM
To: Angie Rutherford
Subject: Letter to Teton County Planning and Zoning

To whom it may concern:

After discussions that I have had with Victor City Council members the City of Victor would be open to the LDS Stake locating within Victor City Limits and would work with the applicant, should the applicant want to locate within the City of Victor. We as a city would welcome the stake and at least one council member has expressed that the process might be easier for the applicant if they chose to locate within the Victor City Limits. This choice is obviously up to the applicant and until there is another site proposed within the City of Victor we cannot react or make suggestions as to how we would like to see the applicant proceed within the City.

As a former Boy Scout that rode my bike to meetings, I personally would like to see connectivity from and through the proposed location to the Rails to Trails bike path.

Adherence to the dark skies ordinance would of course be considered by the county and need not be commented on from my perspective. It is my opinion that the drastic contrast and visual impact could be lessened by requiring more landscaping on the proposed site, if the county sees fit. Thank you for your time.

--

Zachary K. Smith
Mayor- Victor, Idaho
Phone [\(307\) 690-3674](tel:3076903674)