

1-7-2011

Weisel v. Beaver Springs Owners Ass'n, Inc. Clerk's Record v. 4 Dckt. 37800

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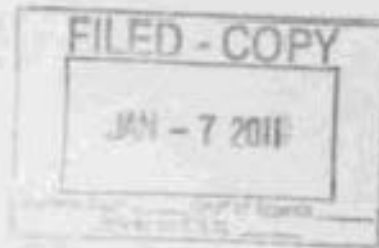
v. 4 of 7

IN THE SUPREME COURT OF THE STATE OF IDAHO

THOMAS WEISEL, a married man,)
Dealing in his sole and separate property)
Plaintiff/ Appellant,)
vs.)
BEAVER SPRINGS OWNERS)
ASSOCIATION, INC., an Idaho)
Corporation,)
Defendants/Respondent.)

Supreme Court No.

37800



RECORD ON APPEAL

Appeal from the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Blaine.

HONORABLE JOHN K. BUTLER, DISTRICT JUDGE

FRITZ HAEMMERLE
PO Box 1800
Hailey, ID 83333

ED LAWSON
P. O. Box 36310
Ketchum, ID 83340

Attorney for Plaintiff/
Appellant

Attorney for Defendants/
Respondent

VOLUME 4 of 6

37800

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VOLUME 4 of 6

TABLE OF CONTENTS
(Volume 4 of 6)

Affidavit of Garth McClure	12/28/2009	712
Affidavit of Tammy Robison	12/28/2009	745
Affidavit of Valdi Pace	12/28/2009	818
Affidavit of Timothy K. Graves	12/28/2009	827
Affidavit of Benjamin W. Worst	12/28/2009	831
Affidavit of Sandy Cady	12/28/2009	836
Second Affidavit of Custodian of Records of Blaine County Planning and Zoning in Support of Defendant's Motion for Summary Judgment	01/13/2010	857
Plaintiff's Response Brief to Defendant's Motion for Summary Judgment	02/01/2010	868

INDEX
(Volume 4 of 6)

Affidavit of Benjamin W. Worst	12/28/2009	831
Affidavit of Garth McClure	12/28/2009	712
Affidavit of Sandy Cady	12/28/2009	836
Affidavit of Tammy Robison	12/28/2009	745
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ORIGINAL

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ISB # 3862

FILED A.M. 3:27
DEC 28 2009
Jolynn Drage, Clerk District
Court Blaine County, Idaho

Attorney for Plaintiff, THOMAS WEISEL

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

THOMAS WEISEL, a married man dealing)
in his sole and separate property,)

Plaintiff,)

vs.)

BEAVER SPRINGS OWNERS)
ASSOCIATION, INC., an Idaho)
corporation,)

Defendant.)

Case No. CV-09-124

AFFIDAVIT OF GARTH MCCLURE

STATE OF BLAINE,)

) ss.

County of Blaine.)

GARTH MCCLURE, being sworn upon oath, deposes and states as follows:

1. I am an individual residing in Blaine County, Idaho. I am over the age of 18 and make the averments contained herein of my own personal knowledge and would testify to the facts as presented herein if called upon to do so.

2. I am currently a principal/partner of Benchmark & Associates, P.A. Ketchum, Idaho (hereinafter "Benchmark").

3. I have 29 years of professional experience in the field of land use planning. That land use planning experience includes a diverse background in subdivision layout and design, land use planning, community planning and environmental planning, a knowledge of land use practices and law, and a practical application in needs assessment, site evaluation, feasibility analysis, environmental review, site planning and site design.

4. During the 29 years I have worked in land use planning, I have performed planning services for clients in both the public and private sector and been responsible for special planning projects involving sensitive land use and environmental issues.

5. My key areas of expertise are:

- a. Community Planning;
- b. Land Use Planning;
- c. Site Planning and Master Planning;
- d. Site Analysis and Feasibility;
- e. Site Selection;
- f. Transportation Planning;
- g. Recreation Planning;
- h. Development Strategies;
- i. Project Coordination Administration;
- j. Project Packaging; and
- k. Zoning and Subdivision ordinances and Comprehensive Plans.

6. I received a Bachelor of Arts Degree in Environmental Planning from the University of Washington, in March 1980. Thereafter, in June 1983, I received a Masters of Science Degree in City and Regional Planning from the Pratt Institute.

7. I hold the following certificates:

- a. American Institute of Certified Planners, AICP # 006336;
- b. Member American Planning Association, APA # 011008;
- c. Planner Training Service, Affordable Housing, Aug. 1989; and
- d. Planner Training Service, Zoning Institute, Nov. 1987.

8. The positions I have held in land use planning are as follows:

- a. 1980-81 - Associate Planner - Washington State Department of Transportation, Advance Planning Section;
- b. 1981-83 - Associate Planner - New York City Planning Department;
- c. September, 1983 - June, 1990 - Principal Planner, Planning Administrator, City of Ketchum;
- d. 1990 to 1992 - Planning Consultant, Planning Administrator, City of Sun Valley; and
- e. June 1990 to present - Principal/ Partner, Benchmark Associates, P.A. Ketchum / Hailey Idaho.

9. Most recently I have been involved in the planning and consulting on the following large scale projects:

- a. Sun Valley Company Resort Planning – River Run Annexation, Zoning, PUD planning, site planning, topography mapping, preliminary infrastructure design. 2007 – Present;
- b. Sun Valley Company White Clouds Subdivision – Subdivision plat, preliminary to final recording. 2005 – 2009;
- c. Warm Springs Ranch Resort, DDRM Great Places – Site planning, subdivision large block plat, design review entitlements. 2005 – 2009;
- d. Spring Canyon Ranch, Democrat Gulch, Haas & Haynie Subdivision planning and design, PUD application, infrastructure design and layout. 2005 – 2009;
- e. Sweetwater Subdivision, Hailey, Idaho. Subdivision planning, design and platting. 2002 – 2005; and
- f. Thunder Spring PUD, Ketchum, Idaho. Subdivision platting, condominium platting. 2002 – 2004.

10. Attached as Exhibit 6 is a true and correct copy of a Report I was asked by the attorney for the Plaintiff to prepare identifying the course of development in the Beaver Springs Subdivision (hereinafter “Subdivision”) from its creation in 1978 to the present. The Report also provides a comparison of the development on Lot 14 to the development on the other Lots within the Subdivision.

11. The Report contains surveys, aerial photographs and data collected from Blaine County Assessor’s Office. The survey that is Exhibit 8 was prepared by Benchmark and is a document that is kept in the course of the regularly conducted

business activity of Benchmark, and it is part of the business of Benchmark to prepare surveys. The aerial photographs depict the state of development as of the date indicated on the particular Exhibit. The aerial photographs are records that are currently kept in the normal course of business of Benchmark. It is also common for engineering firms that perform land use planning to use aerial photographs in the day-to-day functions of the engineering office. Futhermore, based on my experience and knowledge of the entire Wood River Valley, I recognize the aerial photographs as depicting the Beaver Springs Subdivision. As principal and partner of Benchmark, I am familiar with the procedures of Benchmark and what type of documents are kept in the normal course of business of Benchmark.

12. The Report and its Appendices and Exhibits uses information available to the public (Assessor's Records) as well as current and historical aerial photography and surveys, which information is the type reasonably relied upon by experts in my field in forming opinions or inferences upon the subjects contained in the Report and its Appendices and Exhibits. In fact, I relied on the information in preparing the Report. The Exhibits and Appendices were prepared by Benchmark.

13. Appendix A to the Report is a spreadsheet I compiled of data obtained from the Blaine County Assessor regarding the square footage and attributes of the structures on the lots in the Beaver Springs Subdivision. Appendix B to the Report is a breakdown from the spreadsheet with information specifically about Lot 14. Appendix C to the Report is a record update on the main house on Lot 14 that was compiled by the Assessor in early December of this year.

14. Exhibits 1-5 are aerial photos of the Beaver Springs Subdivision taken in the years noted on the photos with the building envelopes and other markings I have imposed on them as indicated in my Report. The aerial photographs are business records kept in the normal course of business of Benchmark.

15. Exhibit 7 includes the Application for the lot line shift between Lot 17 and Lot 18, the City of Ketchum's Findings and Decision approving the lot line shift, and the amended plat that was filed of record for said lot line shift, which is referred to in my Report.

16. Exhibit 8 is a true and correct copy of a survey of Lot 13 and Lot 14 that was prepared by Benchmark and Associates in 2005. Surveys and plats prepared by Benchmark are documents kept in the normal course of business of our Office.

17. Exhibit 9 is my curriculum vitae.

FURTHER YOUR AFFIANT SAYETH NOT.

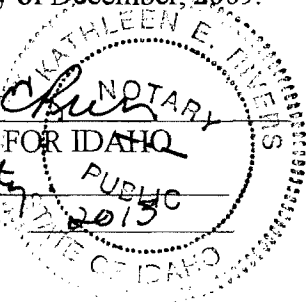
DATED this 21 day of December, 2009.



Garth McClure

SUBSCRIBED AND SWORN to before me this 21 day of December, 2009.

Kathleen Chubb
NOTARY PUBLIC FOR IDAHO
Residing at: B. Ct.
Commission expires: 2013



CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of December, 2009, I served a true and correct copy of the within and foregoing document upon the attorney(s) named below in the manner noted:

Ed Lawson
Erin Clark
LAWSON, LASKI, CLARK & POGUE, P.L.L.C.
P.O. Box 3310
Ketchum, ID 83340

_____ By depositing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.

_____ By hand delivering copies of the same to the office of the attorney(s) at his offices in Hailey, Idaho.

_____ By telescoping copies of same to said attorney(s) at the telecopy number _____, and by then mailing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.

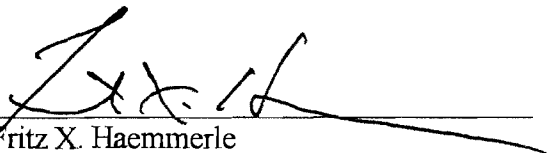

Fritz X. Haemmerle

EXHIBIT-2 1998

RIVERWOOD SUBDIVISION



LEIFRO
 10000 N. 110th St. #200
 NE. WILSON BLVD. #100
 NE. 130th St. #100
 NE. 140th St. #100
 NE. 150th St. #100
 NE. 160th St. #100
 NE. 170th St. #100
 NE. 180th St. #100
 NE. 190th St. #100
 NE. 200th St. #100




PREPARED BY: L. J. ANDERSON, ARCHITECT P.A.
 10000 N. 110th St. #200
 NE. WILSON BLVD. #100
 NE. 130th St. #100
 NE. 140th St. #100
 NE. 150th St. #100
 NE. 160th St. #100
 NE. 170th St. #100
 NE. 180th St. #100
 NE. 190th St. #100
 NE. 200th St. #100

BEAVER SPRINGS BLVD.
 1998
 10000 N. 110th St. #200
 NE. WILSON BLVD. #100
 NE. 130th St. #100
 NE. 140th St. #100
 NE. 150th St. #100
 NE. 160th St. #100
 NE. 170th St. #100
 NE. 180th St. #100
 NE. 190th St. #100
 NE. 200th St. #100

EXHIBIT-3 1992

RIVERWOODS SUBDIVISION

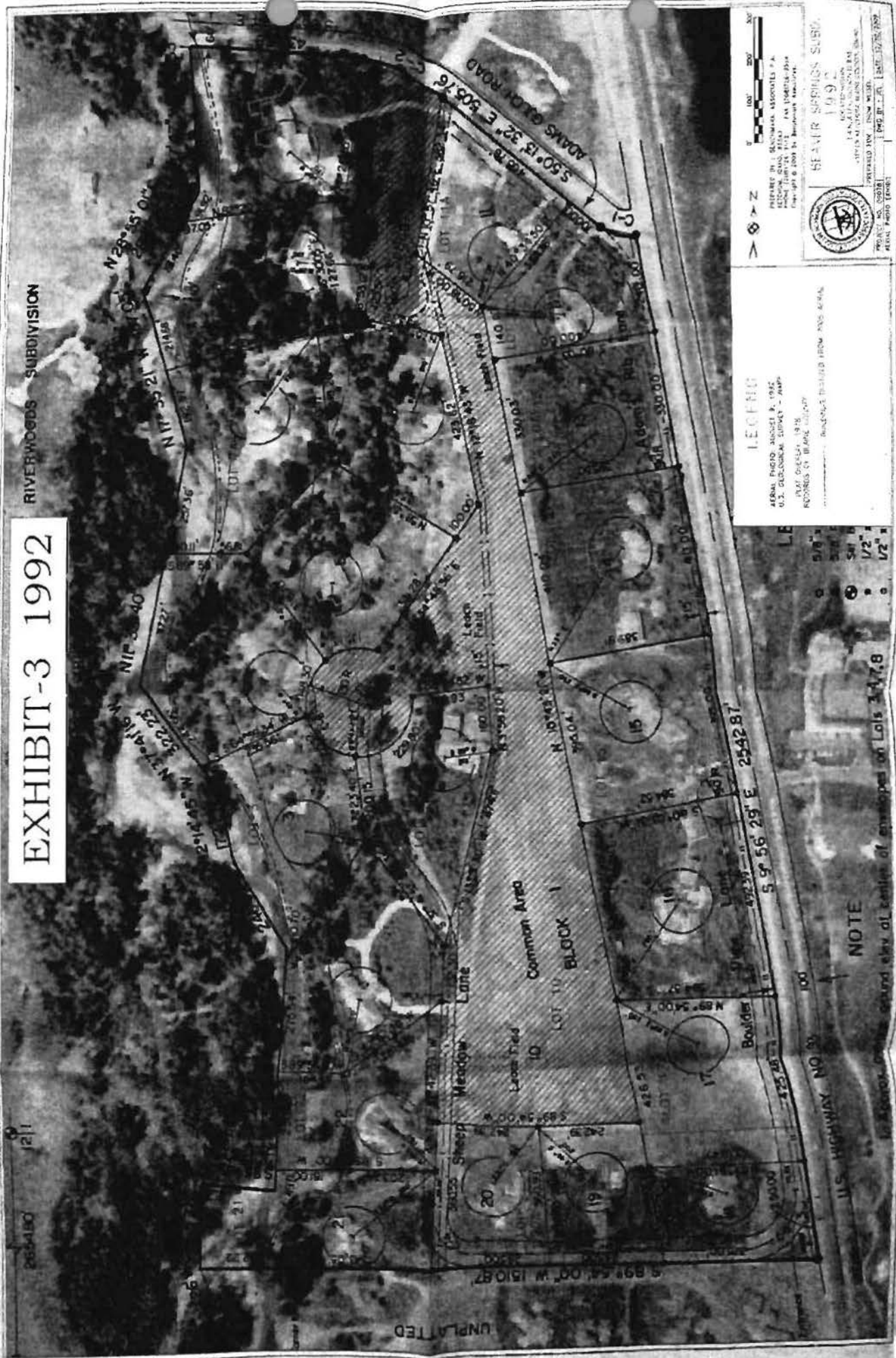


EXHIBIT-4 1983

WOODS SUBDIVISION



LEGEND

PHOTO, AUGUST 24, 1983
 BY: AERIAL MAPPING CO. BOSSIE IDAHO
 FOR: BENCHMARK ASSOCIATES P.A.
 PLAN DATE: MAY 1978
 RECORD: 78 BLMG COUNTY

BENCHMARKS PHOTOGRAPHED FROM 2005 AEPK

PREPARED BY: BENCHMARK ASSOCIATES P.A.
 10000 GOLF COURSE AVENUE
 FARMINGTON, UTAH 84201-9914
 PHONE: (801) 734-1111
 FAX: (801) 734-1112



BEAVER SPRINGS SUBD
 1983

FOR THE CITY OF BEAVER SPRINGS, UTAH
 PREPARED FOR: JOHN W. BEAVER
 BEAVER SPRINGS, UTAH

EXHIBIT-4A 1983

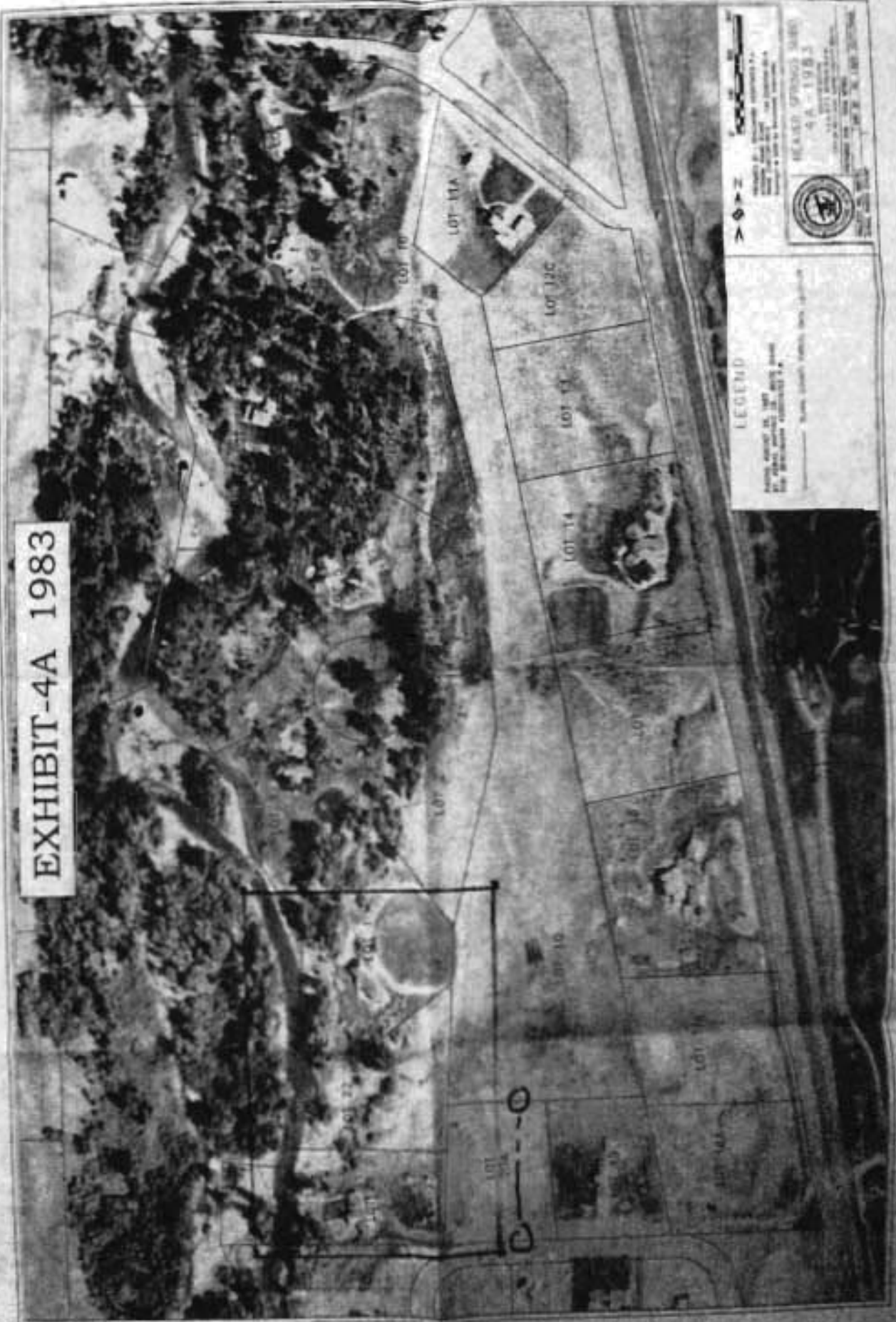


EXHIBIT-5 Lot Coverage



North Arrow

Scale: 1" = 100'

BEAVER SPRINGS, LLC
LOT COVERAGE

DATE: 10/15/2010

BY: [Signature]

LEGEND

Lot Coverage

Lot 10

Lot 11

Lot 12

Lot 13

Lot 14

Lot 15

Lot 16

Lot 17

Lot 18

Lot 19

Lot 20

Lot 21

Lot 22

Lot 23

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Lot 93

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Lot 95

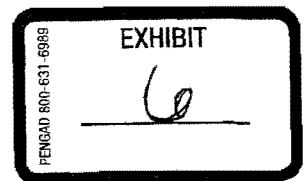
Lot 96

Lot 97

Lot 98

Lot 99

Lot 100



**BEAVER SPRINGS SUBDIVISION
BUILD OUT REPORT**

December 2009

Exhibit 6

PREPARED BY:

Garth L. McClure, A.I.C.P.
Benchmark Associates, P.A.
PO Box 733
Ketchum, ID 83340

EXHIBIT 6
BEAVER SPRINGS SUBDIVISION
BUILD OUT REPORT
December 17, 2009

Introduction

This subdivision report will identify the course of development in the Beaver Springs Subdivision (referred to as the Subdivision hereafter) from its creation in 1978 to the present. It uses information available to the public as well as current and historical aerial photography.

The report will also provide a comparison of the development on Lot 14 to the development on the other Lots within the Subdivision.

History

The Beaver Springs Subdivision was originally platted in 1978 and was recorded as Instrument No. 181497, Records of Blaine County, Idaho. The subdivision is comprised of 22 lots. The total area of the subdivision is 80.58 acres. Lot 10 is common open space, and is 16 acres or 20 percent of the total land area. The lots within the subdivision range in size from 2.18 acres to 4.02 acres. Lots 13 and 17 are the only un-developed lots in the subdivision.

The Subdivision was under the jurisdiction of Blaine County at the time it was approved and, as such, subject to the Blaine County Zoning and Subdivision ordinances. The Subdivision was annexed into the City of Ketchum on September 17th, 1990. The Subdivision is now subject to the City of Ketchum's Zoning and Subdivision regulations.

The Subdivision is also subject to the Declaration of Restrictions of Beaver Springs Subdivision, (referred to as the CC&R's hereafter) recorded as Instrument No. 181805, records of Blaine County, Idaho. The CC&R's have been amended three times by the Beaver Springs Homeowner's Association.

Original CC&R's

Article II of the CC&R's addresses the allowed use of the property. Paragraphs 1-12 address uses, health, safety, activity limits, and storage limits for the Property.

Paragraph 13 establishes limits on the size and number of structures on each Lot and setbacks from lot lines for these structures.

Paragraph 14 establishes the Common Area for scenic trails, agricultural or natural open space. Paragraph 14 does not establish any portion of any lot as open space.

Paragraph 15 provides that the Design Committee may establish portions of a Lot or other property as a Greenbelt Area to be preserved and maintained in a natural state. In the case a Lot or property is designated as a Greenbelt area this paragraph provides an exception for structures. "...If all of any Lot...is designated as a Greenbelt area, such property shall be preserved and maintained...in its natural state *except for the portions thereof actually occupied by such principal structures as may be otherwise permitted and such improvements and structures as are necessary or customarily incident thereto.*" (emphasis added)

Paragraph 17 provides that two lots under the same ownership may be combined and developed as one parcel. The setback lines common to the two parcels can be removed with the approval of the Design Committee.

Article II, Paragraph 13 of the Original CC&R's allowed for a single-family dwelling and no more than four (4) detached outbuildings. Outbuilding area was not restricted. Minimum floor area of the main dwelling was 1500 square feet. These are the only restrictions on the size or number of structures in the Original CC&R's.

The Subdivision's CC&R's have been amended three times since their original recording. This report will only address the amendments to Article II, Paragraphs 1 and 13, as they are the sections of the CC&R's that address the development of Lots and are the sections relevant to this report.

The First Amendment to the CC&R's is dated October 21, 1986 and are recorded as Instrument No. 278727, records of Blaine County, Idaho.

Paragraph 1 of Article II was amended such that certain specific allowed uses were added and eliminated. Specific uses added to this amendment are:

- 1) a guesthouse,
- 2) outbuildings (to be described further in Paragraph 13, Article II) and:
- 3) keeping and maintaining no more than two horses.

The specific use eliminated in this amendment is:

- 1) reasonably related agricultural activities.

This amendment also requires the single family residence be constructed prior to any servants' quarters, guesthouse or outbuilding.

Paragraph 13 of Article II was amended as follows:

- 1) the number of outbuildings is reduced from four (4) to three (3),

- 2) outbuildings are limited to only guesthouses, domestic servant quarters, horse stables, storage sheds for landscaping maintenance equipment, and service sheds for irrigation equipment.
- 3) guesthouses, domestic servant quarters and horse stables are limited to 900 square feet,
- 4) storage sheds are limited to 200 square feet and
- 5) the minimum floor area of the single family dwelling was increased from 1,500 square feet on the ground floor to 2,000 square feet on the ground floor.

The Second Amendment and Restatement of Declarations of Restrictions of Beaver Springs Subdivision were recorded on January 31, 2005 as Instrument No. 515751, records of Blaine County, Idaho. This amendment and restatement includes the following relevant amendments to the First Amendment:

- 1) A definition of “improvements” is added and includes: “play structures, teepees, swimming pools, house number monuments, major outdoor sculptures and outdoor art works and objects of any kind or nature and exterior lights or light fixtures. Major outdoor sculptures and outdoor art works are those that have a material visual effect from surrounding residential lots due to their size, texture, color or configuration.”

- 2) A definition of “single family residence” was added and reads “A structure designed to accommodate no more than a single family, its servants and occasional guests, plus an attached or detached garage with capacity for not less than two (2) or more than six (6) automobiles, *which detached structure may also provide facilities for guests or servants or any combination thereof, and in accordance with governmental regulations in effect at the time.* (emphasis added)

Other than the two definitions added above, this Second Amendment of the CC&R’s is contains the same restrictions as the First Amendment.

The Third Amendment and Restatement of Declarations of Restrictions of Beaver Springs Subdivision were recorded on January 17, 2008 as Instrument No. 554935, records of Blaine County, Idaho. This amendment and restatement includes the following relevant amendments to the Second Amendment:

- 1) The definition of “single family residence” is changed to read “A structure designed to accommodate no more than a single family, its servants and occasional guests, plus an attached or detached garage, which detached structure may also provide facilities for guests or servants or any combination thereof, as described in Paragraph 13 of Article II below, and in accordance with governmental regulations in effect at the time.”
- 2) Paragraph 13, Article II contains several changes to the Second Amendment:
 - a. Detached outbuildings allowed are reduced from three (3) to two (2),
 - b. A maximum total size of the buildings is established at fifteen thousand (15,000) square feet,
 - c. A maximum size of two-thousand five hundred (2,500) square feet is established for detached garages,
 - d. Guesthouses and servant quarters size limits are increased from nine hundred (900) square feet to one thousand two hundred (1,200) square feet,
 - e. Horse facilities are limited to one thousand five hundred (1,500) square feet,
 - f. A size limit is placed on the second floor of the single family residence,
 - g. The front yard setback is increased from twenty five (25) feet to forty (40) feet with Lot 4A excepted.
 - h. Side yard setbacks are increased from fifteen (15) feet to twenty five (25) feet,
 - i. Rear yard setbacks are increased from twenty five (25) feet to fifty (50) feet on certain lots and
 - j. The height of buildings is restricted on the “bench lots.”

Items (i) and (j) above list Lots individually. Lot 13 is not included in either of these sections.

There are no provisions in the CC&R's to address any existing conditions that may be made "non-conforming" by an amendment to the CC&R's. It is expected there have been existing uses within the Subdivision that became non-conforming with the amendments to the CC&R's.

Building Envelopes

The Subdivision was platted with building envelopes. Exhibit 1 shows the Subdivision's development in 2005 in relation to the original building envelopes platted. All lots within the subdivision have at least a portion of their residential structures located outside the original building envelopes. Several lots have a significant portion of the structures outside the building envelopes.

Five (5) lots have been amended and re-platted to shift their building envelopes, presumably to accommodate development. One lot (Lot 12) has amended its building envelope twice. Exhibit 1 shows these amended building envelopes with the development on the lot in 2005. Clearly, the strict adherence to the building envelopes has not been observed, however on several lots the majority of the structure area is within the building envelopes, shown on Exhibit 1.

The property boundary between Lots 17 and 18 was shifted by an amended plat recorded in May 1994. This occurred presumably to accommodate the side yard setback for the existing residence and/or pool house and pool. The County records show both the main residence and pool/pool house on Lot 17 were constructed in 1985. However, the aerial photography on Exhibit 2 and Exhibit 3 indicate the pool/pool house was constructed sometime between 1992 and 1998.

Development Data

Benchmark Associates has obtained public records available through the Blaine County Assessor's office for the Subdivision. These records include the physical characteristics, a dimensioned sketch, special features and a summary of improvements for each detached structure on each Lot. These data are used by the County Assessor to determine a property's assessed value. These records are included as Exhibit A of Tammy Robison's affidavit.

The Assessor did not have data available for Lot 17. Review of aerial photography shows that Lots 13 and 17 are currently undeveloped and lie vacant. The analysis in this section includes the 19 lots in Beaver Springs that are currently developed.

Number and Size of Buildings

All of the 19 developed Lots within the Subdivision have at least one single family dwelling. The Assessor's records show that attached sheds and pools are also part of some of these main dwellings. Two records (Lot 4 & Lot 7) also identify a guest house attached to the main dwelling.

As shown in Appendix A the average finished area in the Subdivision for the main house is 8,213 square feet, the maximum finished area is 13,566 square feet and the minimum finished area is 4,131 square feet. The main dwelling on Lot 14 is 12,770 square feet. The finished area of the main dwelling on Lots 9, 12C, and 16 within the Subdivision are larger than the main dwelling on Lot 14.

Nine (9) of the nineteen (19) lots within the subdivision have at least one building detached from the main house. The Lots with at least one outbuilding represent 47% of the 19 lots within the Subdivision. These outbuildings are shown as Building 2 Improvements in Appendix A. Also shown in Appendix A is the average finished area for Building 2 at 1,345 square feet. The smallest building is 360 square feet while the largest (Lot 5) is 2,711 square feet. The Building 2 on Lot 14 is 1,631 square feet, falling between the minimum and maximum size in the subdivision.

Three (3) of the nineteen (19) lots with development have two buildings detached from the main house. The Lots with two outbuildings represent 16% of the 19 lots within the Subdivision. These outbuildings are shown as Building 3 Improvements in Appendix A. Also shown in Appendix A is the average finished area for Building 3 at 2,384 square feet. The smallest building (Lot 11A) is 1,151 square feet while the largest (Lot 14) is 3,265 square feet.

Two (2) of the nineteen (19) lots with development have three buildings detached from the main house. The Lots with three outbuildings represent 10.5% of the 19 lots within the Subdivision. These outbuildings are shown as Building 4 Improvements in Appendix A. The range in size is 324 square feet on Lot 11 to 1600 square feet on Lot 14.

Outbuildings - Time Line

Benchmark Associates has used the Assessor's data to determine when each outbuilding was constructed. We then looked at the CC&R's that were in effect at the time and our analysis is as follows.

Seven (7) lots had constructed detached outbuildings in 1986 or earlier. At this time the original CC&R's were in effect and up to 4 detached buildings were allowed. There were no limits on the size of outbuildings or guest houses in effect at this time. These outbuildings consist of a guest house and garage (2,711 sq.ft.) on Lot 5, a guest house (612 sq.ft.) on Lot 6, a pool house/ rec. building (3,265 sq.ft), a guest house (1,631 sq.ft) and a pilot house and garage (1,600 sq.ft.) on Lot 14, a guest house (1,568 sq.ft.) and office and garage (2,736 sq.ft.) on Lot 16, a pool house (1,552 sq.ft.) on Lot 18, a stock shelter (360 sq.ft.) on Lot 19 and a guest house (1,423 sq.ft.) on Lot 20.

Two (2) lots constructed detached outbuildings between 1987 and 2005. This is when the First Amendment to the CC&R's was in effect. At this time, the number of detached outbuildings was limited to a total of three (3) and the size of a guest house was limited to

900 square feet. These outbuildings consist of a guest house on Lot 11 (1,250 sq.ft), an apartment on Lot 11 (1,151 sq.ft.), and a spa house (324 sq.ft.) on Lot 11, a guest house (1,280 sq.ft.) on Lot 12.

It appears the Design Committee approved these structures without regard to the size limitations on the guest houses provided in the CC&R's at the time. All of these structures except the spa house on Lot 11 exceed the 900 square foot limitation in the First Amendment to the CC&R's. As of 2005 two Lots had three (3) outbuildings, which is what was allowed at the time.

There have not been any outbuildings constructed since the Second and Third Amendments to the CC&R's have been adopted. The Third Amendment reduced the number of detached outbuildings allowed from three (3) to two (2). This amendment did not address the Lots that already contained three (3) detached outbuildings as allowed under the previous CC&R's.

Guest Houses

As discussed in the CC&R's section of this report the CC&R's for the Subdivision have been amended three times. Under the original CC&R's (1978-1986) there were no limits on the size of a guest house. Under the First and Second Amendments to the CC&R's (1987-2008) guest houses were limited to 900 square feet. The Third Amendment to the CC&R's (2008-present) limit guest houses to 1,200 square feet.

The Assessor's records indicate that nine (9) Lots have guest houses. Two of these guest houses (Lot 4 & Lot 7) are attached to the main dwelling and the Assessor's records do not show the finished area of these guest houses. Table 1 below shows that guest houses on all of the Lots, with one exception (Lot 6), have finished areas in excess of the current 1,200 square foot limit.

TABLE 1 - GUEST HOUSE DATA BEAVER SPRINGS SUBDIVISION						
Lot	Building 1 (sq.ft.)	Year Built	Building 2 (sq.ft.)	Year Built	Building 3 (sq.ft.)	Year Built
Lot 4A						
	940	no data				
Total Area	940					
Lot 5	Guest House					
1st Floor	961	1978				
2nd Floor	725					
Total Area	1686					
Lot 6	Guest House	1984				
	812					
Total Area	812					
Lot 7A	attached (no data)					
Total Area	No data					
Lot 11A	Guest House	1999	Apartment	1999	Spa House	1999
	1250		1151	1999	324	1999
Total Area	1250		1151		324	
Lot 12C	Guest House					
1st Floor	640	2003				
2nd Floor	640					
Total Area	1280					
Lot 14	Guest House 1		Pool House		Guest House 2	
1st Floor	1831	1985	3285	1985	48	1985
2nd Floor					500	
Total Area	1831		3285		548	
Lot 16	Guest/ Caretaker	1982	Office	1982		
1st Floor	784		1320			
2nd Floor	784		1152			
Total Area	1668		2472			
Lot 20A	Guest House	1986				
	1423					
Total Area	1423					

Density Calculations

This report will use two different methods to measure density and make comparisons of the Lot densities of the Subdivision. The **Floor Area Ratios (FAR)** are used to measure development density using total building area on a particular lot or parcel. The FAR is calculated by dividing the total building floor area by the lot size.

Table 2 shows the FAR calculated for each Lot in the Subdivision. The building floor area column is calculated by the summation of the finished areas of Buildings 1 through 4, which were provided by the Blaine County Assessor. The Lot Areas were taken from the Blaine County GIS data that is available on the Blaine County website.

The average FAR for the subdivision is 0.07. The FAR's range from a minimum of 0.03 (Lot 8) to a maximum of 0.14 (Lot 12). The FAR for Lot 14 is in between the minimum and the maximum at 0.12. Four (4) lots in the Subdivision have FAR's that are 0.10 or greater.

Another way to measure density is by looking at the **lot coverage percentage**. Lot coverage percentage calculations are used to measure how much land area of a lot or parcel is developed or conversely, how much of the lot remains open. The lot coverage data shown in Table 2 was derived from Blaine County Assessor records, taking the floor areas for main floor, garages and covered porches. Not included is second floor, basements, pools, decks or patios.

The lot coverage percent is then determined by dividing the ground floor area by the lot size. See Exhibit 5 for lot coverage on each lot within the subdivision.

As shown in Table 2 the average lot coverage percentage for the Subdivision is 5.4%. The lot coverage percentages range from a minimum of 2.7% (Lot 3) to a maximum of 9.4% (Lot 9). The lot coverage percentage for Lot 14 (8.8%) is in between the minimum and the maximum. Five (5) lots in the Subdivision have lot coverage percentages that are 7% or greater. These five lots represent 26% of the 19 lots within the lots in the Subdivision.

TABLE 2 - DENSITY BEAVER SPRINGS SUBDIVISION					
Lot	Building Floor Area (sq.ft.)	Lot Area (acres)	Floor Area Ratio (FAR)	Lot Coverage (sq. ft.)	Lot Coverage Percentage**
Lot 1	8228	3.23	0.06	6504	4.8%
Lot 2	5954	2.84	0.05	5066	4.1%
Lot 3	7480	2.91	0.06	3378	2.7%
Lot 4A, Amended	6718	3.47	0.04	6240	4.1%
Lot 5	7278	3.03	0.06	6673	5.3%
Lot 6	5022	3.28	0.04	4030	2.8%
Lot 7A, Amended	9786	3.46	0.07	5347	3.5%
Lot 8	4624	3.88	0.03	4770	2.8%
Lot 9	13426	3.52	0.09	14416	9.4%
Lot 11A	7407	2.39	0.07	6840	6.6%
Lot 12C	14846	2.36	0.14	8410	8.1%
Lot 14	19266	3.70	0.12	14092	8.8%
Lots 13 & 14 combined	19266	6.71	0.07	14092	4.8%
Lot 15	7996	3.51	0.06	8248	6.4%
Lot 16	17483	4.02	0.10	9443	5.4%
Lot 18A	9241	2.91	0.07	6662	5.3%
Lot 19	4491	2.18	0.05	3216	3.4%
Lot 20A	8257	2.18	0.09	7114	7.5%
Lot 21	8349	3.02	0.06	7741	5.9%
Lot 23	11684	2.62	0.10	7996	7.0%
Average	9343	3.08	0.07	7,183	5.4%
Minimum	4491	2.18	0.03	3,216	2.7%
Maximum	19266	4.02	0.14	14,416	9.4%

Exhibits 1 – 5

Exhibits 1 through 4 display the progression of development within Beaver Springs Subdivision from 1983 to 2005. The lots lines are derived from the original plat of Beaver Springs Subdivision (1978). The existing improvements are outlined on each map. Exhibit 1 also shows the building envelope adjustments and lot line shifts which occurred. Exhibit 5 shows the lot coverage (area of land covered by buildings as a percentage of lot area) which currently exists within each lot.

Summary

The main house on Lot 14 is located substantially within the original platted building envelope, as shown on Exhibit 1. The additional 3 outbuildings are located outside the building envelope. As shown on Exhibit 1 the Beaver Springs Home Owners Association did allow main residences and outbuildings to be built outside the platted building envelopes.

The main residence with garage on Lot 14 is 12,770 square feet. Three other lots within the subdivision have a main residence with garage exceeding this 12,770 square feet.

The three outbuildings on Lot 14 were constructed in 1985 when the CC&R's allowed up to four structures. Lot 14 was in compliance when the CC & R's were amended in 1986 reducing the number of outbuilding from 4 to 3. The floor area of outbuildings was not limited by the CC&R's in 1985 when all three were constructed. Three (3) lots within the subdivision have up to 3 detached outbuildings. The 3 lots represent 16% of the 19 lots within the subdivision.

The FAR on Lot 14 is .12 which is between the minimum and maximum for the subdivision.

The lot coverage on Lot 14 is 8.8 % of the land area which is between the minimum and maximum for the subdivision. When combining Lots 13 and 14 the lot coverage falls to 4.8% which is also well below the average for the subdivision. Five lots (26% of the 19 lots within the subdivision) have a lot coverage above 7%.

According to a survey performed by Benchmark Associates P.A. May 2007, the side yard setback of the outbuilding on the north side of Lot 14 is in compliance with the 15 foot setback required by the CC&R's.

APPENDIX A

Lot	Building 1 improvements	Building 1 Floor Area (sq.ft)	Lot Area (acres)	Floor Area Ratio (FAR)	Lot Coverage (sq.ft.)	Lot Coverage Percentage**
Lot 1	House & Attached Garage	8,228	3.23	0.08	6,504	4.8%
Lot 2	House & Attached Garage	5,954	2.84	0.05	5,068	4.1%
Lot 3	House & Attached Garage	7,480	2.91	0.08	3,378	2.7%
Lot 4A, Amended	House, Attached Garage & Guest House	6,718	3.47	0.04	6,240	4.1%
Lot 5	Main House	4,567	3.03	0.08	6,973	5.3%
Lot 6	House & Attached Garage	4,410	3.28	0.04	4,030	2.8%
Lot 7A, Amended	House, Attached Garage & Guest House	9,768	3.48	0.08	5,347	3.5%
Lot 8	House & Attached Garage	4,624	3.88	0.03	4,770	2.8%
Lot 9	House & Attached Garage	13,428	3.52	0.09	14,416	9.4%
Lot 11A	House & Attached Garage & Utility Shed	4,682	2.39	0.07	6,840	6.6%
Lot 12C	House, Attached Garage & Pool House / Pool	13,568	2.38	0.14	8,410	8.1%
Lot 14	House & Attached Garage	12,770	3.70	0.12	14,092	8.8%
Lots 13 & 14 combined	House & Attached Garage	12,770	6.71	0.07	14,092	4.8%
Lot 15	House & Attached Garage	7,998	3.51	0.05	8,248	5.4%
Lot 16	House & Attached Garage	13,179	4.02	0.10	9,443	5.4%
Lot 18A	House & Attached Garage & Utility Shed	7,689	2.91	0.07	6,682	5.3%
Lot 19	House & Attached Garage	4,131	2.18	0.05	3,216	3.4%
Lot 20A	House & Attached Garage	6,834	2.18	0.09	7,114	7.5%
Lot 21	House & Attached Garage & Utility Shed	8,349	3.02	0.08	7,741	5.9%
Lot 22	House & Attached Garage	11,684	2.82	0.10	7,995	7.0%
Average		8,213	3.08	0.07	7,183	5.4%
Minimum		4,131	2.18	0.03	3,216	2.7%
Maximum		13,568	4.02	0.14	14,416	9.4%
Lot 10	Common Area		16.12			
Lot 13	Vacant		3.01			
Lot 17A	Vacant		2.90			
Lot coverage area data obtained from Blaine County Assessor's n						
Building floor area and year built data obtained from Blaine Count						
Lot area data obtained from Blaine County GIS data and Blaine C						
**The maximum percentage of lot covered allowed by the City of						

APPENDIX B

Lot	Building 1 Improvements	Building 1 Floor Area (sq.ft)	Year Remx	Lot Area (acres)	Floor Area Ratio (FAR)	Lot Coverage (sq.ft.)	Lot Coverage Percentage**
Lot 14	House & Attached Garage	12,118	1985	3.70	0.12	14,092	8.8%
	Ground Floor	8,067					
	Lower Floor	4,390					
	Basement	654					
	Car Storage	997					
	Storage 2	862					
	TOTAL	12,770					
					House & Attached Garage	8096	
					Pilot House & Garage	1100	
					Pool/ Rec.	3265	
					Guest	1631	
						14,092	
Lot coverage area data obtained from Blaine County Assessor's records							
Building floor area and year built data obtained from Blaine County Asses							

APPENDIX C

SKETCH/AREA TABLE ADDENDUM

Parcel No. RPYD422000140

File No. R4220014

Property Address 114 Adams Rd Ln

City Ketchikan

State ID

Zp 82340

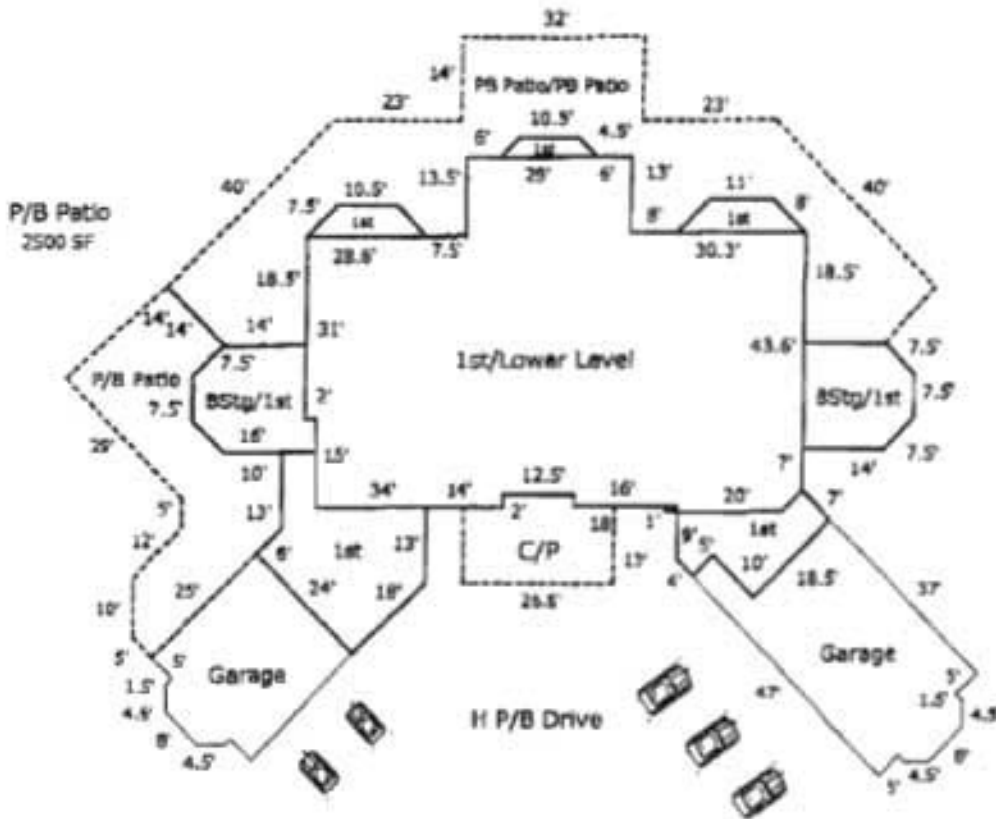
Owner

Client Weisk, Thomas

Client Address Beaver Springs Ln 14

Appraiser Name Tammy Roberts

Inspection Date 12/07/09



Scale: 1" = 20'

AREA CALCULATIONS SUMMARY

Code	Description	Factor	Net Size	Perimeter	Net Totals
GLAL	First Floor	1.00	6067.0	643.7	6067.0
BLWT	Lower Level	1.00	4290.3	399.4	
	Basement Stg	1.00	321.4	69.6	
	Basement Stg	1.00	333.6	72.6	5044.2
GAR	Garage	1.00	956.9	147.5	
	Garage	1.00	642.7	104.0	1628.6
P/P	P/B Patio	1.00	2433.7	403.9	
	P/B Patio	1.00	3433.7	403.9	
	C/P	1.00	363.6	43.0	
	P/B Patio	1.00	966.0	174.9	6203.0

7726

Net LIVABLE Area (rounded w/ factors) 6067

Comment Table 1

Comment Table 2 Comment Table 3

AREA CALCULATIONS

Residential Property Record

Blaine County Assessor's Office

P. 02

FAX NO. 2087865519

DEC-07-2009 MON 12:26 PM BLAINE COUNTY ASSESSOR

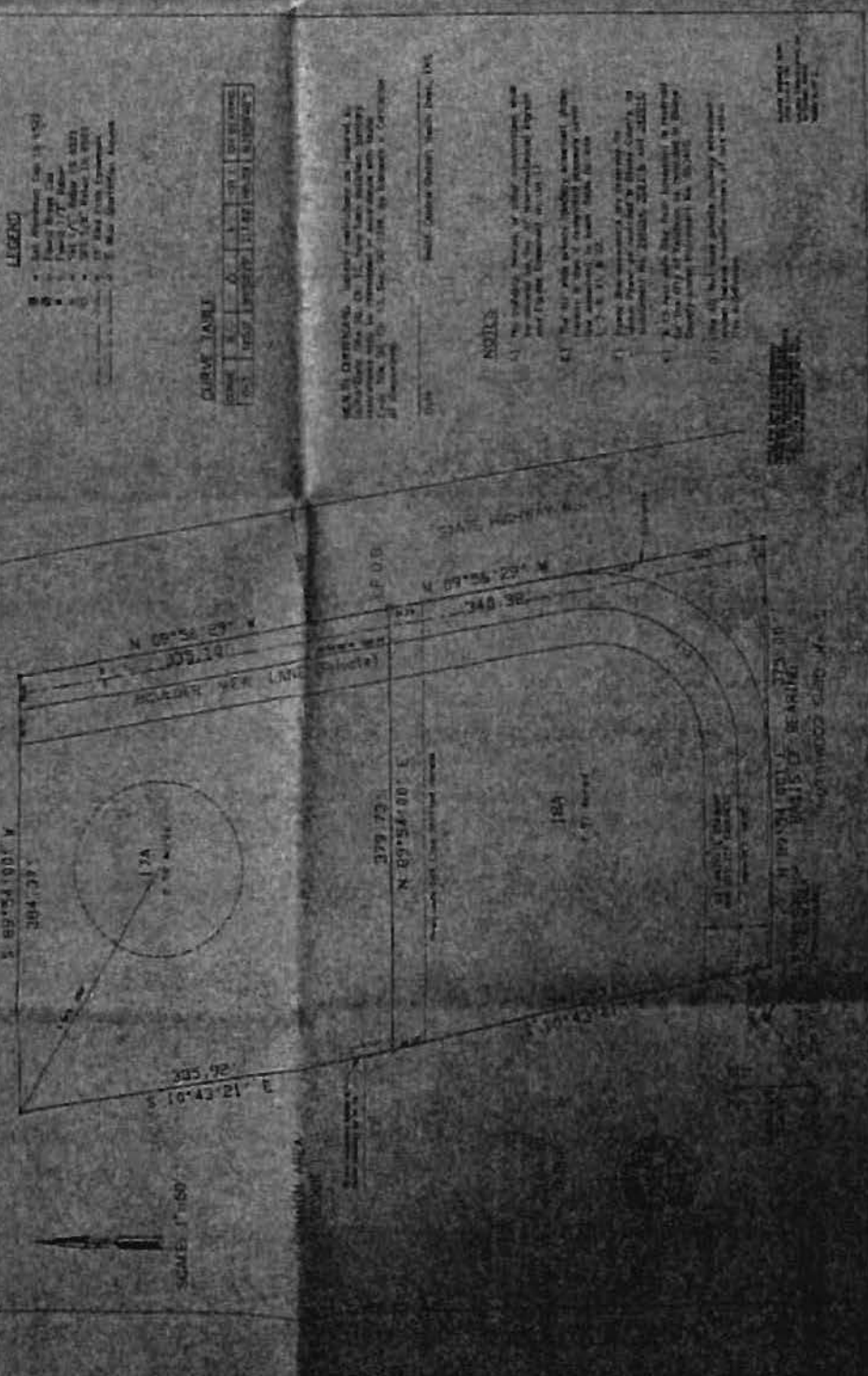
242

RPK04220000140 003010 **Primary** State Category Code 41 Reappraisal Year 8009 Building Permits # \$ _____
 114 ADAMS RIB LN WEISEL THOMAS WILSON Appraiser Initials TRR/LGR Physical Inspection Date 2/26/09 # \$ _____
 ONE MONTGOMERY ST STE 3700 Occupancy Date _____ Inspection Status - Entered Not Entered Other _____
 SAN FRANCISCO, CA 94104 Year Built 1985 Construction Class - 3 4 5 6 7 8 # \$ _____
 BEAVER SPRINGS SUB Year Remodeled 1995 Market Grade - Fair Average Good Very Good Excellent # \$ _____
 LOT 14 BLK 1 Effective Year 1995 Dwellings - SFD Duplex Tri-Flex 4-Flex Other _____
 Design - Condo Single Level Split Entry Townhouse Tri Level Two Story Other _____

Exterior Square Feet <u>6067</u> Type: Brick Hardboard Log Log Siding Siding Stone Shape: None 1-Simple 2-Average 3-Irregular <u>4-Complex</u>	Ground Floor Square Feet _____ Type: Brick Hardboard Log Log Siding Siding Stone Shape: None 1-Simple 2-Average 3-Irregular 4-Complex	Upper Floor Square Feet _____ Type: Brick Hardboard Log Log Siding Siding Stone Shape: None 1-Simple 2-Average 3-Irregular 4-Complex	Roof Type - Fair Average <u>Good</u>
	Attic Square Feet Finished _____ Square Feet Unfinished _____	Basement Square Feet Finished _____ Square Feet Unfinished <u>654 Bst Stg</u>	Lower Floor Square Feet Finished <u>4390</u> Square Feet Unfinished _____ Type: Brick Hardboard Log Log Siding Siding Stone Shape: None 1-Simple 2-Average 3-Irregular <u>4-Complex</u>
Interior/Depreciation Interior Bedrooms <u>5</u> Bathrooms <u>5 1/2</u> Kitchen <u>1</u> Fireplaces <u>1</u> A/C Y N Central Heating <u>Y</u> N	Depreciation Physical Depreciation <u>5</u> % Functional Obsolescence _____ % Economic Obsolescence _____ %	Improvements Car Storage Storage 1 Square Feet <u>997</u> Storage 1 Type: <u>Attached</u> Detached Car Port Storage 1 Class - 3 4 5 <u>6</u> 7 8 Storage 2 Square Feet <u>662</u> Storage 2 Type: <u>Attached</u> Detached Car Port Storage 2 Class - 3 4 5 <u>6</u> 7 8	Patio 1 Sq Ft <u>334</u> Deck 1 Sq Ft _____ Covered- Y N Covered- Y N Patio 2 Sq Ft _____ Deck 2 Sq Ft _____ Covered- Y N Covered- Y N
Sale Price _____ Date _____ Listed Price _____ Date _____ <u>Main House</u>	Other Improvements Description _____ Quantity _____ Unit Value _____ Total Value _____ Description _____ Quantity _____ Unit Value _____ Total Value _____	Improvements Porch 1 <u>370</u> Porch 2 _____ Total Porch Square Feet _____ Landscape Type - 1 2 3 <u>4</u> 5 6 _____ Pool Square Feet _____	Special Influences \$ _____

EXHIBIT-7 Lots 17A & 18A

A BEHET PL. SHOWING
BEAVER SPRINGS SUBDIVISION, LOTS 17A & 18A
 WIDEN THE LOT LINE COMMON TO ADJACENT LOTS 17 & 18 BY SHIFTING EXISTING LOTS 17A & 18A
 SITUATED WITHIN SECTION 33, 4N, 17E, 13M.
 CITY OF KETCHUM, BLAINE COUNTY, IDAHO
 MAY 1982



NEW VALLEY TITLE CO.
 14 S. MAIN ST.
 KETCHUM, IDAHO 83701
 208-344-6600

SCALE: 1" = 50'

LEGEND

—	Lot boundary line
•	Survey station
○	Lot center
○	Point of tangency
○	Point of curvature
○	Point of intersection
○	Point of intersection of adjacent lots
○	Point of intersection of adjacent lots with road
○	Point of intersection of adjacent lots with road
○	Point of intersection of adjacent lots with road

CURVE TABLE

CHORD	ARC	ANGLE	TANGENT	CHORD BEARING	CHORD DISTANCE
340.38	30	30	170.19	N 60° 00' 00" E	170.19

CAST ORIGINAL SURVEY MEASUREMENTS TO BE MADE BY THE SURVEYOR TO THE CENTER OF THE LOT LINE COMMON TO ADJACENT LOTS 17 & 18 BY SHIFTING EXISTING LOTS 17A & 18A 30 DEGREES TO THE NORTH TO BE IN ACCORDANCE WITH THE BEAVER SPRINGS SUBDIVISION RECORDS.

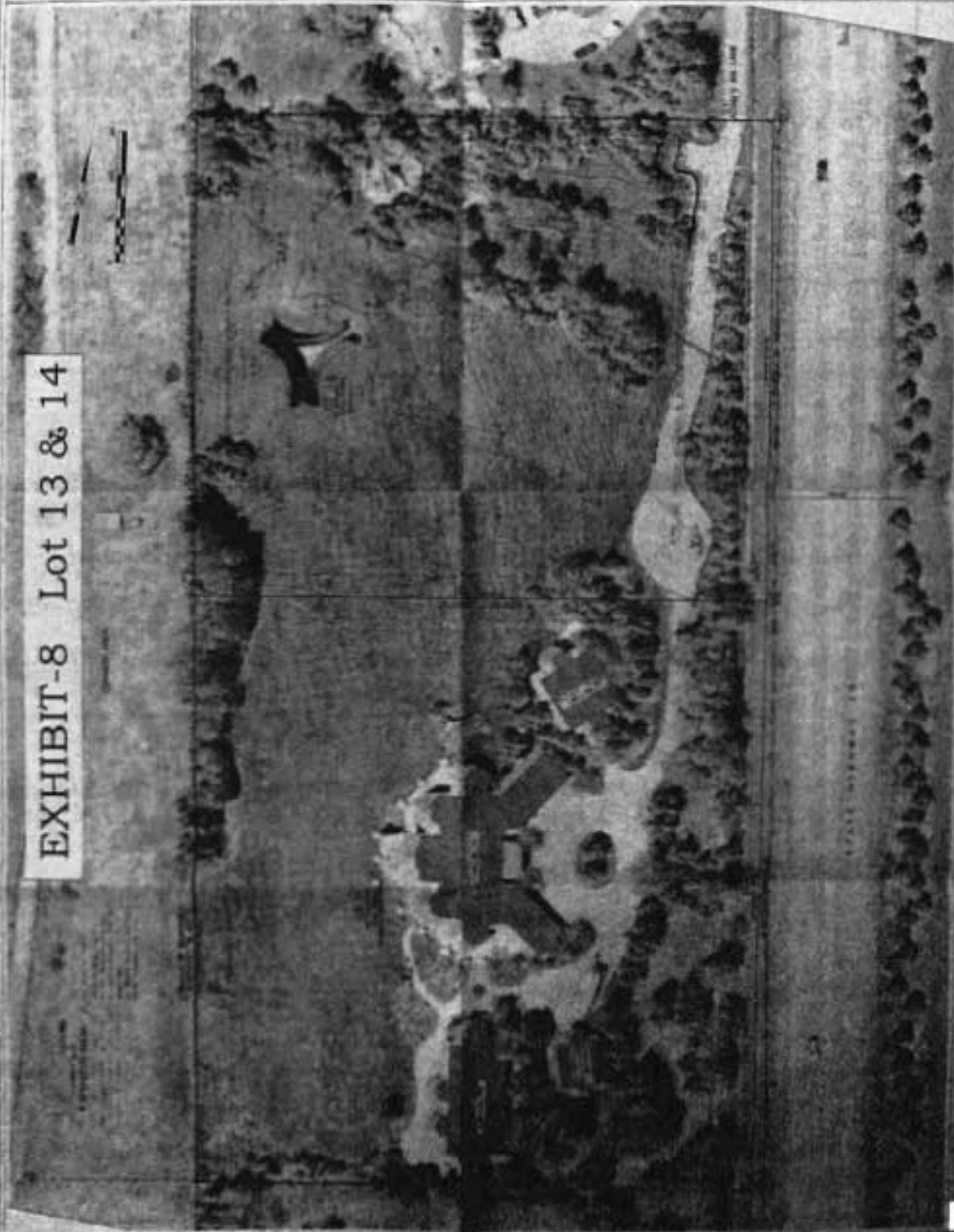
NOTES

- The original survey of this subdivision was made by J. H. B. Clark, Surveyor, and is on file in the Office of the County Surveyor.
- The original survey was made by J. H. B. Clark, Surveyor, and is on file in the Office of the County Surveyor.
- The original survey was made by J. H. B. Clark, Surveyor, and is on file in the Office of the County Surveyor.
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BEAVER SPRINGS SUBDIVISION
 BEARINGS OF BEARINGS OF
 BEARINGS OF BEARINGS OF



EXHIBIT-8 Lot 13 & 14



NOTES

1. THIS PLAN IS A REVISION OF THE PLAN FOR THE SUBDIVISION OF LOT 13 AND LOT 14, BEARING CERTAIN RECORDS IN THE PUBLIC RECORDS OF THE COUNTY OF LOS ANGELES, CALIFORNIA, AND IS SUBJECT TO THE TERMS AND CONDITIONS OF SAID RECORDS.

2. THE AREA SHOWN ON THIS PLAN IS THE SAME AS THE AREA SHOWN ON THE PLAN FOR THE SUBDIVISION OF LOT 13 AND LOT 14, BEARING CERTAIN RECORDS IN THE PUBLIC RECORDS OF THE COUNTY OF LOS ANGELES, CALIFORNIA, AND IS SUBJECT TO THE TERMS AND CONDITIONS OF SAID RECORDS.

3. THE AREA SHOWN ON THIS PLAN IS THE SAME AS THE AREA SHOWN ON THE PLAN FOR THE SUBDIVISION OF LOT 13 AND LOT 14, BEARING CERTAIN RECORDS IN THE PUBLIC RECORDS OF THE COUNTY OF LOS ANGELES, CALIFORNIA, AND IS SUBJECT TO THE TERMS AND CONDITIONS OF SAID RECORDS.

4. THE AREA SHOWN ON THIS PLAN IS THE SAME AS THE AREA SHOWN ON THE PLAN FOR THE SUBDIVISION OF LOT 13 AND LOT 14, BEARING CERTAIN RECORDS IN THE PUBLIC RECORDS OF THE COUNTY OF LOS ANGELES, CALIFORNIA, AND IS SUBJECT TO THE TERMS AND CONDITIONS OF SAID RECORDS.

5. THE AREA SHOWN ON THIS PLAN IS THE SAME AS THE AREA SHOWN ON THE PLAN FOR THE SUBDIVISION OF LOT 13 AND LOT 14, BEARING CERTAIN RECORDS IN THE PUBLIC RECORDS OF THE COUNTY OF LOS ANGELES, CALIFORNIA, AND IS SUBJECT TO THE TERMS AND CONDITIONS OF SAID RECORDS.

6. THE AREA SHOWN ON THIS PLAN IS THE SAME AS THE AREA SHOWN ON THE PLAN FOR THE SUBDIVISION OF LOT 13 AND LOT 14, BEARING CERTAIN RECORDS IN THE PUBLIC RECORDS OF THE COUNTY OF LOS ANGELES, CALIFORNIA, AND IS SUBJECT TO THE TERMS AND CONDITIONS OF SAID RECORDS.

7. THE AREA SHOWN ON THIS PLAN IS THE SAME AS THE AREA SHOWN ON THE PLAN FOR THE SUBDIVISION OF LOT 13 AND LOT 14, BEARING CERTAIN RECORDS IN THE PUBLIC RECORDS OF THE COUNTY OF LOS ANGELES, CALIFORNIA, AND IS SUBJECT TO THE TERMS AND CONDITIONS OF SAID RECORDS.

8. THE AREA SHOWN ON THIS PLAN IS THE SAME AS THE AREA SHOWN ON THE PLAN FOR THE SUBDIVISION OF LOT 13 AND LOT 14, BEARING CERTAIN RECORDS IN THE PUBLIC RECORDS OF THE COUNTY OF LOS ANGELES, CALIFORNIA, AND IS SUBJECT TO THE TERMS AND CONDITIONS OF SAID RECORDS.

9. THE AREA SHOWN ON THIS PLAN IS THE SAME AS THE AREA SHOWN ON THE PLAN FOR THE SUBDIVISION OF LOT 13 AND LOT 14, BEARING CERTAIN RECORDS IN THE PUBLIC RECORDS OF THE COUNTY OF LOS ANGELES, CALIFORNIA, AND IS SUBJECT TO THE TERMS AND CONDITIONS OF SAID RECORDS.

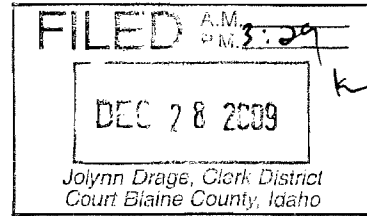
10. THE AREA SHOWN ON THIS PLAN IS THE SAME AS THE AREA SHOWN ON THE PLAN FOR THE SUBDIVISION OF LOT 13 AND LOT 14, BEARING CERTAIN RECORDS IN THE PUBLIC RECORDS OF THE COUNTY OF LOS ANGELES, CALIFORNIA, AND IS SUBJECT TO THE TERMS AND CONDITIONS OF SAID RECORDS.

BEAVER'S PROPERTY
LOT 13
LOT 14



ORIGINAL

FRITZ X. HAEMMERLE
HAEMMERLE & HAEMMERLE, P.L.L.C.
400 South Main St., Suite 102
P.O. Box 1800
Hailey, ID 83333
Tel: (208) 578-0520
FAX: (208) 578-0564
E-mail: fxh@haemlaw.com
ISB # 3862



Attorney for Plaintiff, THOMAS WEISEL

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

THOMAS WEISEL, a married man
dealing in his sole and separate property,

Plaintiff,

) Case No. CV-09-124

) AFFIDAVIT OF TAMMY ROBISON

vs.

BEAVER SPRINGS OWNERS
ASSOCIATION, INC., an Idaho
corporation,

Defendant.

STATE OF BLAINE,)
) ss.
County of Blaine.)

TAMMY ROBISON, being sworn upon oath, deposes and states as follows:

1. I am employed as Deputy Assessor for the Blaine County Assessor's Office.

I am over the age of 18 and make the averments contained herein of my own personal knowledge and would testify to the facts as presented herein if called upon to do so.

2. I have worked for the Assessor's Office since 1988. I have been the person primarily responsible for the valuations of the real properties located in the Beaver Springs Subdivision since 1998.


3. Since I have been working for the Assessor, it is my regular practice to go to the Blaine County and City of Ketchum building departments and obtain the plans and drawings submitted by the owners of the properties to the City of Ketchum or Blaine County building department when applying for building permits. I usually go to a property once the new construction is accomplished to verify the square footage and work done. At or near the time I obtain the plans or drawings from the building department or visit the property, I input the information obtained into our database at the Blaine County Assessor's Office. I also do periodic inspections of property to verify square footage and improvements.

4 Attached as Exhibit A are true and correct copies of data compilations of records relating to properties in the Beaver Springs Subdivision, Ketchum, Idaho. The data compilations are believed to depict the current state of development in the Beaver Springs Subdivision, are documents that are made by the regularly conducted activity of the Assessor's Office, and the documents that are kept in the regular course of business of the Assessor's Office. As a Deputy Assessor, I am familiar with what type of documents are kept and prepared by the Blaine County Assessor's Office.

5. Attached hereto as Exhibit B are true and correct copies of a replat and plat showing the shift of the lot line between Lots 18 and 17, Beaver Spring Subdivision. These plats are kept in the normal course of the business of the Blaine County Assessor's Office.

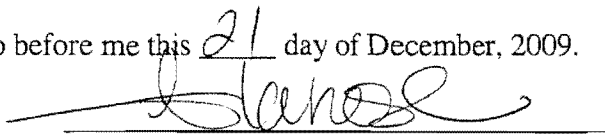
FURTHER YOUR AFFIANT SAYETH NOT.

DATED this 21 day of December, 2009.



Tammy Robison

SUBSCRIBED AND SWORN to before me this 21 day of December, 2009.



NOTARY PUBLIC FOR IDAHO

Residing at: N/A

Commission expires: 5/24/11

AMANDA L. LARESE
Notary Public
State of Idaho

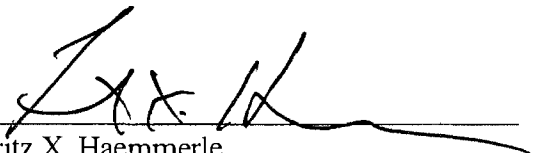
AMANDA L. LARESE
Notary Public
State of Idaho

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of December, 2009, I served a true and correct copy of the within and foregoing document upon the attorney(s) named below in the manner noted:

Ed Lawson
Erin Clark
LAWSON, LASKI, CLARK & POGUE, P.L.L.C.
P.O. Box 3310
Ketchum, ID 83340

- X By depositing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.
- ✓ By hand delivering copies of the same to the office of the attorney(s) at his offices in Hailey, Idaho.
- By telescoping copies of same to said attorney(s) at the telecopy number _____, and by then mailing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.



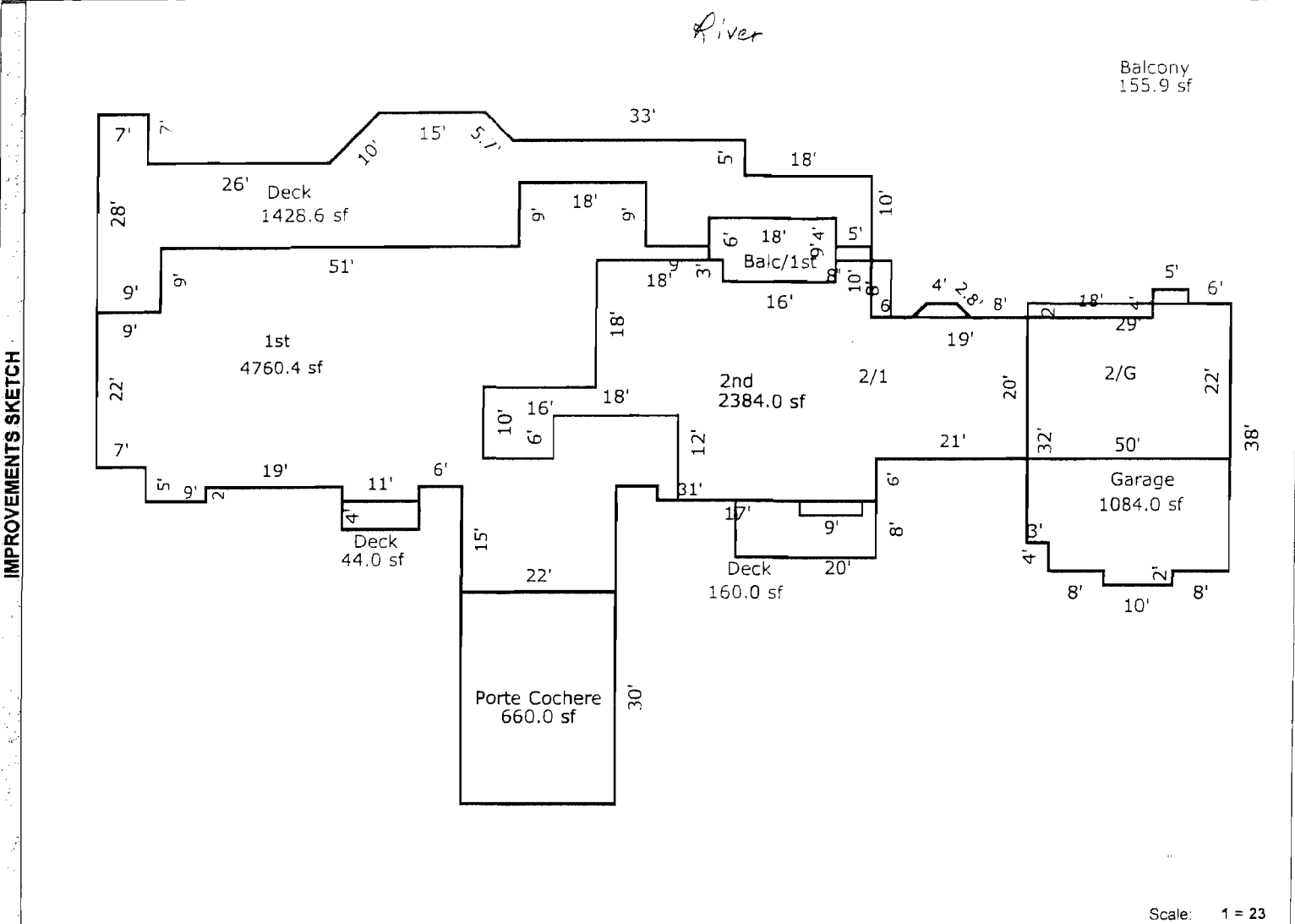
Fritz X. Haemmerle

EXHIBIT A

SKETCH/AREA TABLE ADDENDUM

Parcel No RPK04220000010

SUBJECT	Property Address 109 SHEEP MEADOW LN	County BLAINE	State ID	Zip 83340
	City KETCHUM			
	Owner MC CAW			
	Client 2009 RE APPRAISAL	Client Address BEAVER SPRINGS SUB LOT 1 BLK 1		
	Appraiser Name JR	Inspection Date 3/2/09		



AREA CALCULATIONS	AREA CALCULATIONS SUMMARY						Comment Table 1	
	Code	Description	Factor	Net Size	Perimeter	Net Totals		
	GLA1	1st	1.00	4760.4	401.6	4760.4		
	GLA2	2nd	1.00	2384.0	306.0	2384.0		
	GAR1	Garage	1.00	1084.0	142.0	1084.0		
P/P3	Porte Cochere	1.00	660.0	104.0	660.0			
OTH2	Deck	1.00	44.0	30.0				
	Deck	1.00	160.0	56.0				
	Deck	1.00	1428.6	309.8	1632.6			
OTH6	Balcony	1.00	155.9	54.0	155.9			
Net LIVABLE Area (rounded w/ factors)						7144	Comment Table 2 Comment Table 3	

RESIDENTIAL CHARACTERISTICS

10/14/2009 7:51
3:02 pm

Year 2009	Parcel Number/Suffix RPK04220000010 1	Parcel Status Active	Status Date 4/28/2007	Master Reappr Year 2009
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Property Address 109 SHEEP MEADOW LN KETCHUM	Section/Township/Range 10/4N/17E	Last Changed 03/23/2009	User TROBISON
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State	Appraiser	Physical	Occupancy	Year	Last Year	Dwelling	Inspection	% Owner	Constr.	Market	Design
Cat. Cd.	Initials	Inspection	Date	Built	Remodeled		Status	Occupied	Class	Grade	
41	TLR	02/26/2009		1990	0	SFD	Not Entered	100%	8	Average	Two Story

	Type	Shape	Linear Feet	Sq Feet Finished	Sq Feet Unfinished	Square Feet
Ground Floor:	Stucco	Complex	0.00			4760
Upper Floor:	Stucco	Irregular	0.00			2384
Lower Floor:			0.00	0	0	0
Attic:				0	0	0
Basement:				0	0	0
Roof Type	Average		Total Square Feet			7,144

Interior Features	
Bedroom(s)	7
Bathroom(s)	6.55
Kitchen(s)	1
Fireplace(s)	5
Air Conditioning	Yes
Central Heating	Yes

Sq. Feet	Type	Class
Car Stg. 1:	1,084	Attached 6
Car Stg. 2:	0	
Gen. Purp.:	0	
Landscape Type:	3	

Sq. Feet	Covered
Patio 1	0 No
Patio 2	0 No
Deck 1	156 No
Deck 2	1,632 No
Porch	660
Pool	0

Value Information	
Area Modifier	
LCM	13%
Trend	
Special Influence	0
Improve Value	2,293,887
Appeal Value	0

Depreciation	
Phys. Depr.	15%
Funct. Obs.	0%
Econ. Obs.	0%

Subdivision: BEAVER SPRINGS SUB	Land Size: 3.230	Land Value: 4,000,000.00
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Notes: _____

SKETCH/AREA TABLE ADDENDUM

Parcel No RPK0422000020

Property Address 114 SHEEP MEADOW LN

City KETCHUM

County BLAINE

State ID

Zip 83340

Owner FRUEHLING FAMILY TRUST

Client 2009 RE APPRAISAL

Client Address BEAVER SPRINGS SUB LOT 2 BLK 1

Appraiser Name JR

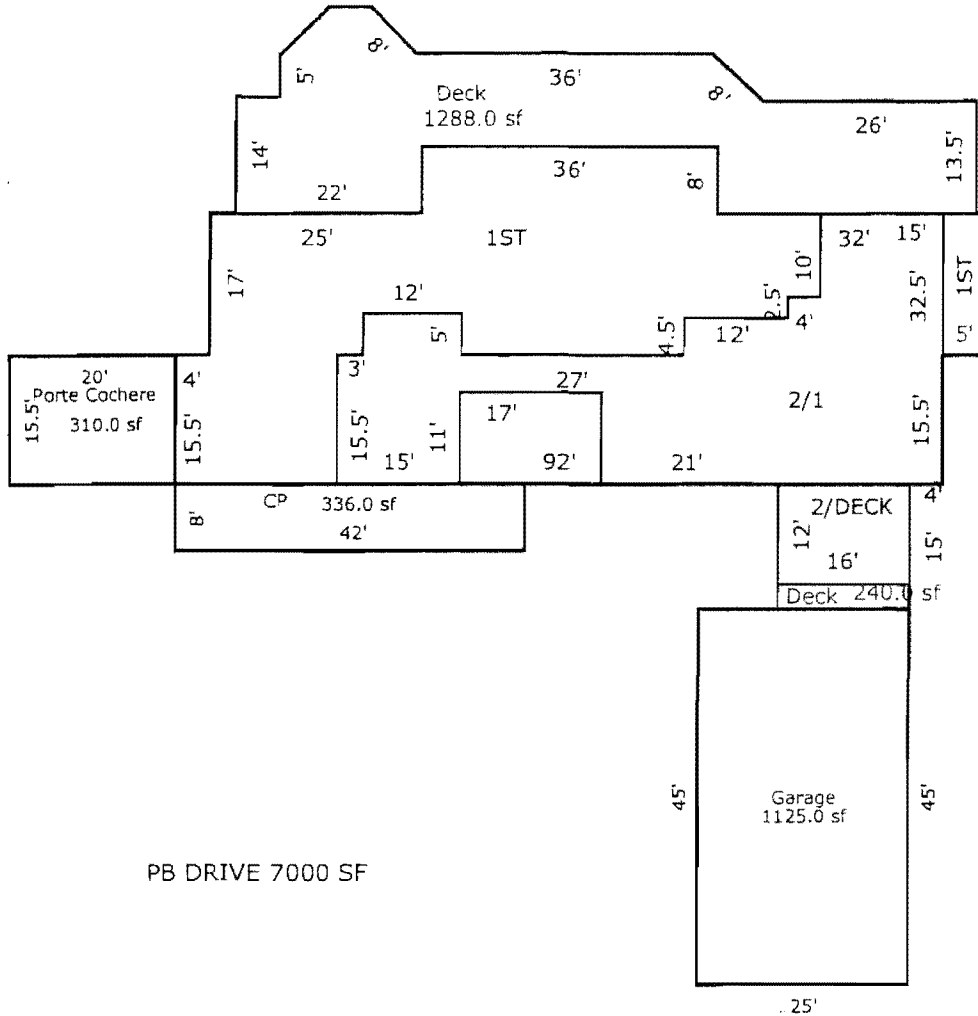
Inspection Date 3/2/09

SUBJECT

IMPROVEMENTS SKETCH

1st
3295.0 sf

2nd
1533.5 sf



PB DRIVE 7000 SF

Scale 1" = 23'

AREA CALCULATIONS

AREA CALCULATIONS SUMMARY

Code	Description	Factor	Net Size	Perimeter	Net Totals
GLA1	1st	1.00	3295.0	275.0	3295.0
GLA2	2nd	1.00	1533.5	267.0	1533.5
GAR1	Garage	1.00	1125.0	140.0	1125.0
P/P1	CP	1.00	336.0	100.0	336.0
P/P3	Porte Cochere	1.00	310.0	71.0	310.0
OTH2	Deck	1.00	240.0	62.0	240.0
	Deck	1.00	1288.0	233.6	1528.0

Comment Table 1

Comment Table 2 Comment Table 3

Net LIVABLE Area (rounded w/ factors) 4829

RESIDENTIAL CHARACTERISTICS

10/14/2009 7:53
2:52 pm

Year
2009

Parcel Number/Suffix
RPK04220000020 1

Parcel Status
Active

Status Date
4/28/2007

Master Reappr Year
2009

Property Address
114 SHEEP MEADOW LN KETCHUM

Section/Township/Range
10/4N/17E

Last Changed
03/23/2009

User
TROBISON

State Cat. Cd.	Appraiser Initials	Physical Inspection	Occupancy Date	Year Built	Last Year Remodeled	Wellness Dwelling	Inspection Status	% Owner Occupied	Constr. Class	Market Grade	Design
41	TLR	02/26/2009		1985	0	SFD	Not Entered	100%	6	Average	Two Story

	Type	Shape	Linear Feet	Sq Feet Finished	Sq Feet Unfinished	Square Feet
Ground Floor:		Irregular	0.00			3295
Upper Floor:		Irregular	0.00			1534
Lower Floor:			0.00	0	0	0
Attic:				0	0	0
Basement:				0	0	0
Roof Type	Average			Total Square Feet		4,829

Interior Features	
Bedroom(s)	4
Bathroom(s)	4.55
Kitchen(s)	1
Fireplace(s)	3
Air Conditioning	No
Central Heating	Yes

	Sq. Feet	Type	Class
Car Stg. 1:	1,125	Attached	6
Car Stg. 2:	0		
Gen. Purp.:	0		
Landscape Type:	5		

	Sq. Feet	Covered
Patio 1	0	No
Patio 2	0	No
Deck 1	1,288	No
Deck 2	240	No
Porch	646	
Pool	0	

Value Information	
Area Modifier	
LCM	70%
Trend	
Special Influence	0
Improve Value	1,036,653
Appeal Value	0

Depreciation	
Phys. Depr.	16%
Funct. Obs.	0%
Econ. Obs.	0%

Subdivision: BEAVER SPRINGS SUB	Land Size: 2.841	Land Value: 2,000,000.00
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Notes: _____

SKETCH/AREA TABLE ADDENDUM

Parcel No RPK04220000030

Property Address 113 SHEEP MEADOW LN

City KETCHUM County BLAINE State ID Zip 83340

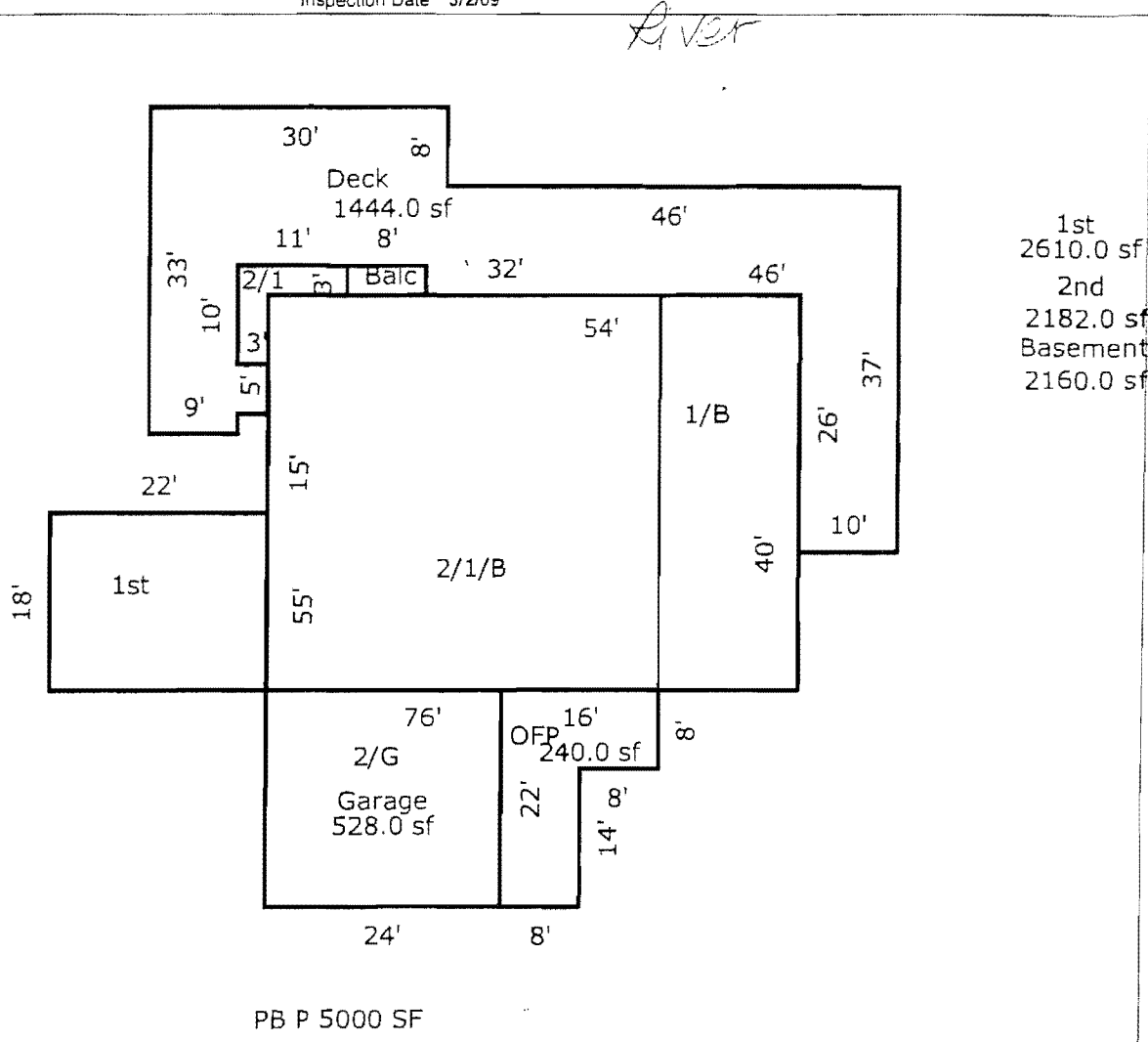
Owner SMITH REVOCABLE TRUST

Client 2009 RE APPRAISAL Client Address BEAVER SPRINGS SUB LOT 3 BLK 1

Appraiser Name JR Inspection Date 3/2/09

SUBJECT

IMPROVEMENTS SKETCH



Scale: 1 = 19

AREA CALCULATIONS

AREA CALCULATIONS SUMMARY

Code	Description	Factor	Net Size	Perimeter	Net Totals
GLA1	1st	1.00	2610.0	244.0	2610.0
GLA2	2nd	1.00	2182.0	216.0	2182.0
BSMT1	Basement	1.00	2160.0	188.0	2160.0
GAR1	Garage	1.00	528.0	92.0	528.0
P/P1	OFP	1.00	240.0	76.0	240.0
OTH2	Deck	1.00	1444.0	282.0	1444.0
OTH6	Balcony	1.00	24.0	22.0	24.0
Net LIVABLE Area (rounded w/ factors)			4792		

Comment Table 1	
Comment Table 2	Comment Table 3

RESIDENTIAL CHARACTERISTICS

10/14/2009
3:03 pm

Year 2009	Parcel Number/Suffix RPK04220000030 1	Parcel Status Active	Status Date 4/28/2007	Master Reappr Year 2009
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Property Address 113 SHEEP MEADOW LN KETCHUM	Section/Township/Range 10/4N/17E	Last Changed 04/21/2009	User TROBISON
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State Cat. Cd.	Appraiser Initials	Physical Inspection	Occupancy Date	Year Built	Last Year Remodeled	Wellness Dwelling	Inspection Status	% Owner Occupied	Constr. Class	Market Grade	Design
41	TLR	02/26/2009		1978	0	SFD	Not Entered	100%	6	Average	Two Story

	Type	Shape	Linear Feet	Sq Feet Finished	Sq Feet Unfinished	Square Feet
Ground Floor:		Irregular	0.00			2610
Upper Floor:		Average	0.00			2182
Lower Floor:			0.00	0	0	0
Attic:				0	0	0
Basement:				1,080	1,080	2,160
Roof Type	Average			Total Square Feet		6,952

Interior Features	
Bedroom(s)	4
Bathroom(s)	4.50
Kitchen(s)	2
Fireplace(s)	3
Air Conditioning	No
Central Heating	Yes

	Sq. Feet	Type	Class
Car Stg. 1:	528	Attached	5
Car Stg. 2:	0		
Gen. Purp.:	0		
Landscape Type:	5		

	Sq. Feet	Covered
Patio 1	0	No
Patio 2	0	No
Deck 1	24	No
Deck 2	1,444	No
Porch	240	
Pool	0	

Value Information	
Area Modifier	
LCM	70%
Trend	
Special Influence	0
Improve Value	1,066,949
Appeal Value	0

Depreciation	
Phys. Depr.	20%
Funct. Obs.	0%
Econ. Obs.	0%

Subdivision: BEAVER SPRINGS SUB	Land Size: 2.913	Land Value: 4,000,000.00
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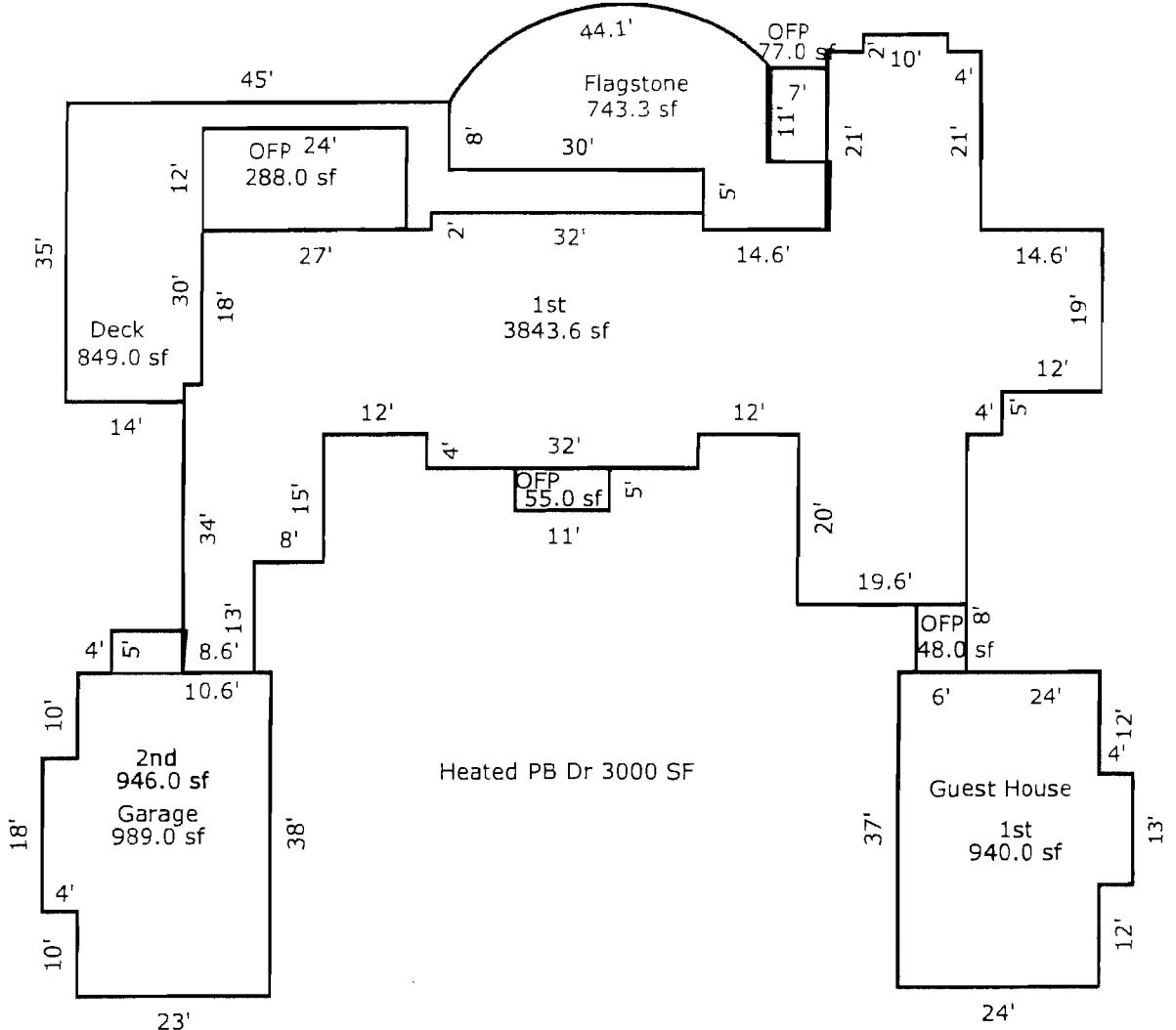
Notes: _____

SKETCH/AREA TABLE ADDENDUM

Parcel No RPK0422000004A

SUBJECT	Property Address 117 SHEEP MEADOW LN	County BLAINE	State ID	Zip 83340
	City KETCHUM			
	Owner GRAY A T JR & LYNN MERRILL GRAY			
	Client 2009 RE APPRAISAL	Client Address BEAVER SPRINGS SUB LOT 4A BLK 1		
	Appraiser Name JR	Inspection Date 3/2/09		

IMPROVEMENTS SKETCH



Scale: 1 = 22

AREA CALCULATIONS

AREA CALCULATIONS SUMMARY

Code	Description	Factor	Net Size	Perimeter	Net Totals
GLA1	1st	1.00	3843.6	418.4	
	1st	1.00	940.0	130.0	4783.6
GLA2	2nd	1.00	946.0	130.0	946.0
GAR1	Garage	1.00	989.0	140.4	989.0
P/P1	OFF	1.00	288.0	72.0	
	OFF	1.00	48.0	28.0	
	OFF	1.00	55.0	32.0	
	OFF	1.00	77.0	36.0	468.0
OTH2	Deck	1.00	849.0	244.0	849.0
OTH7	Flagstone	1.00	743.3	130.1	743.3
Net LIVABLE Area (rounded w/ factors)					5730

Comment Table 1

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Comment Table 2 Comment Table 3

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RESIDENTIAL CHARACTERISTICS

10/14/2009
3:03 pm

Year 2009	Parcel Number/Suffix RPK0422000004A 1	Parcel Status Active	Status Date 4/28/2007	Master Reappr Year 2009
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Property Address 117 SHEEP MEADOW LN KETCHUM	Section/Township/Range 10/4N/17E	Last Changed 03/23/2009	User TROBISON
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State Cat. Cd.	Appraiser Initials	Physical Inspection	Occupancy Date	Year Built	Last Year Remodeled	Dwelling	Inspection Status	% Owner Occupied	Constr. Class	Market Grade	Design
41	TLR	02/26/2009		2000	0	SFD	Not Entered	100%	6	Very Good	Two Story

	Type	Shape	Linear Feet	Sq Feet Finished	Sq Feet Unfinished	Square Feet
Ground Floor:	Stucco	Complex	0.00			4783
Upper Floor:	Stucco	Average	0.00			946
Lower Floor:			0.00	0	0	0
Attic:				0	0	0
Basement:				0	0	0
Roof Type	Good		Total Square Feet			5,729

Interior Features	
Bedroom(s)	4
Bathroom(s)	5.50
Kitchen(s)	1
Fireplace(s)	4
Air Conditioning	No
Central Heating	Yes

	Sq. Feet	Type	Class
Car Stg. 1:	989	Attached	5
Car Stg. 2:	0		
Gen. Purp.:	0		
Landscape Type:	5		

	Sq. Feet	Covered
Patio 1	743	No
Patio 2	0	No
Deck 1	849	No
Deck 2	0	No
Porch	468	
Pool	0	

Value Information	
Area Modifier	
LCM	70%
Trend	
Special Influence	0
Improve Value	1,592,286
Appeal Value	0

Depreciation	
Phys. Depr.	5%
Funct. Obs.	0%
Econ. Obs.	0%

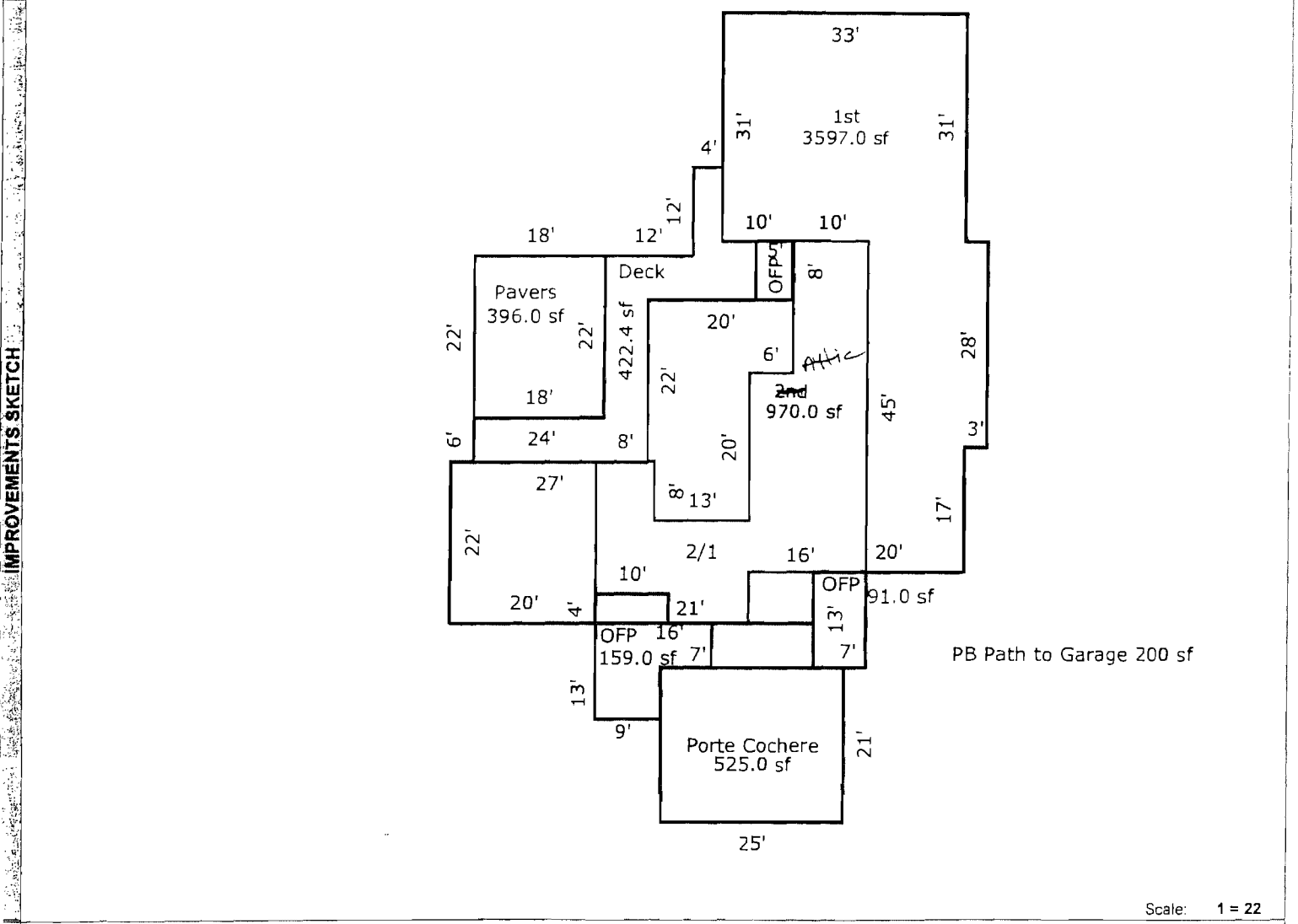
Subdivision: BEAVER SPRINGS SUB	Land Size: 3.473	Land Value: 3,000,000.00
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Notes: _____

SKETCH/AREA TABLE ADDENDUM

Parcel No RPK04220000050

SUBJECT	Property Address	125 SHEEP MEADOW LN						
	City	KETCHUM	County	BLAINE	State	ID	Zip	83340
	Owner	SMITH RESIDENCES TRUST						
	Client	2009 RE APPRAISAL		Client Address	BEAVER SPRINGS SUB LOT 5 BLK 1			
	Appraiser Name	JR		Inspection Date	3/2/09			



AREA CALCULATIONS SUMMARY						Comment Table 1	
Code	Description	Factor	Net Size	Perimeter	Net Totals		
GLA1	1st	1.00	3597.0	340.0	3597.0		
GLA2	2nd <i>Attic</i>	1.00	970.0	194.0	970.0		
P/P1	OFF	1.00	91.0	40.0	290.0		
	OFF	1.00	40.0	26.0			
	OFF	1.00	159.0	58.0			
	OFF	1.00	159.0	58.0			
P/P3	Porte Cochere	1.00	525.0	92.0	525.0		
OTH2	Deck	1.00	422.4	157.6	422.4		
OTH5	Pavers	1.00	396.0	80.0	396.0		
Net LIVABLE Area (rounded w/ factors)					4567	Comment Table 2	Comment Table 3

RESIDENTIAL CHARACTERISTICS

10/14/2009
3:04 pm

759

Year 2009	Parcel Number/Suffix RPK04220000050 M	Parcel Status Active	Status Date 4/28/2007	Master Reappr Year 2009
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Property Address 125 SHEEP MEADOW LN KETCHUM	Section/Township/Range 10/4N/17E	Last Changed 03/23/2009	User TROBISON
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State Cat. Cd.	Appraiser Initials	Physical Inspection	Occupancy Date	Year Built	Last Year Remodeled	Dwelling	Inspection Status	% Owner Occupied	Constr. Class	Market Grade	Design
41	TLR	02/26/2009		1978	1990	SFD	Not Entered	100%	5	Average	Two Story

	Type	Shape	Linear Feet	Sq Feet Finished	Sq Feet Unfinished	Square Feet
Ground Floor:	Siding	Irregular	0.00			3597
Upper Floor:			0.00			0
Lower Floor:			0.00	0	0	0
Attic:				240	730	970
Basement:				0	0	0
Roof Type	Average			Total Square Feet		4,567

Interior Features	
Bedroom(s)	4
Bathroom(s)	3.50
Kitchen(s)	1
Fireplace(s)	2
Air Conditioning	No
Central Heating	Yes

	Sq. Feet	Type	Class
Car Stg. 1:	0		
Car Stg. 2:	0		
Gen. Purp.:	0		
Landscape Type:	0		

	Sq. Feet	Covered
Patio 1	396	No
Patio 2	0	No
Deck 1	422	No
Deck 2	0	No
Porch	815	
Pool	0	

Value Information	
Area Modifier	
LCM	80%
Trend	1%
Special Influence	0
Improve Value	610,602
Appeal Value	0

Depreciation	
Phys. Depr.	20%
Funct. Obs.	0%
Econ. Obs.	0%

Subdivision: BEAVER SPRINGS SUB	Land Size: 3.027	Land Value: 2,100,000.00
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Notes: _____

RESIDENTIAL CHARACTERISTICS

10/14/2009
3:04 pm

760

Year 2009	Parcel Number/Suffix RPK04220000050 D	Parcel Status Active	Status Date 4/28/2007	Master Reappr Year 2009	
Property Address 125 SHEEP MEADOW LN KETCHUM			Section/Township/Range 10/4N/17E	Last Changed 03/23/2009	User TROBISON

State Cat. Cd.	Appraiser Initials	Physical Inspection	Occupancy Date	Year Built	Last Year Remodeled	Dwelling	Inspection Status	% Owner Occupied	Constr. Class	Market Grade	Design
41	TLR	02/26/2009		1978	0	SFD	Not Entered	100%	3	Average	Single Level

	Type	Shape	Linear Feet	Sq Feet Finished	Sq Feet Unfinished	Square Feet
Ground Floor:	Siding	Simple	0.00			961
Upper Floor:			0.00			0
Lower Floor:			0.00	0	0	0
Attic:				0	725	725
Basement:				0	0	0
Roof Type	Average		Total Square Feet			1,686

Interior Features	
Bedroom(s)	1
Bathroom(s)	1.00
Kitchen(s)	1
Fireplace(s)	1
Air Conditioning	No
Central Heating	Yes

	Sq. Feet	Type	Class
Car Stg. 1:	1,025	Attached	4
Car Stg. 2:	0		
Gen. Purp.:	0		
Landscape Type:			

	Sq. Feet	Covered
Patio 1	0	No
Patio 2	0	No
Deck 1	400	No
Deck 2	0	No
Porch	150	
Pool	0	

Value Information	
Area Modifier	
LCM	60%
Trend	
Special Influence	0
Improve Value	128,038
Appeal Value	0

Depreciation	
Phys. Depr.	30%
Funct. Obs.	0%
Econ. Obs.	0%

Subdivision: BEAVER SPRINGS SUB	Land Size: 3.027	Land Value: 2,100,000.00
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Notes: _____

SKETCH/AREA TABLE ADDENDUM

Parcel No. RPK0422000050

Property Address 125 SHEEP MEADOW LN

City KEYCHUM

County BLAINE

State ID

Zip 83340

Owner SMITH RESIDENCES TRUST

Client 2009 RE APPRAISAL

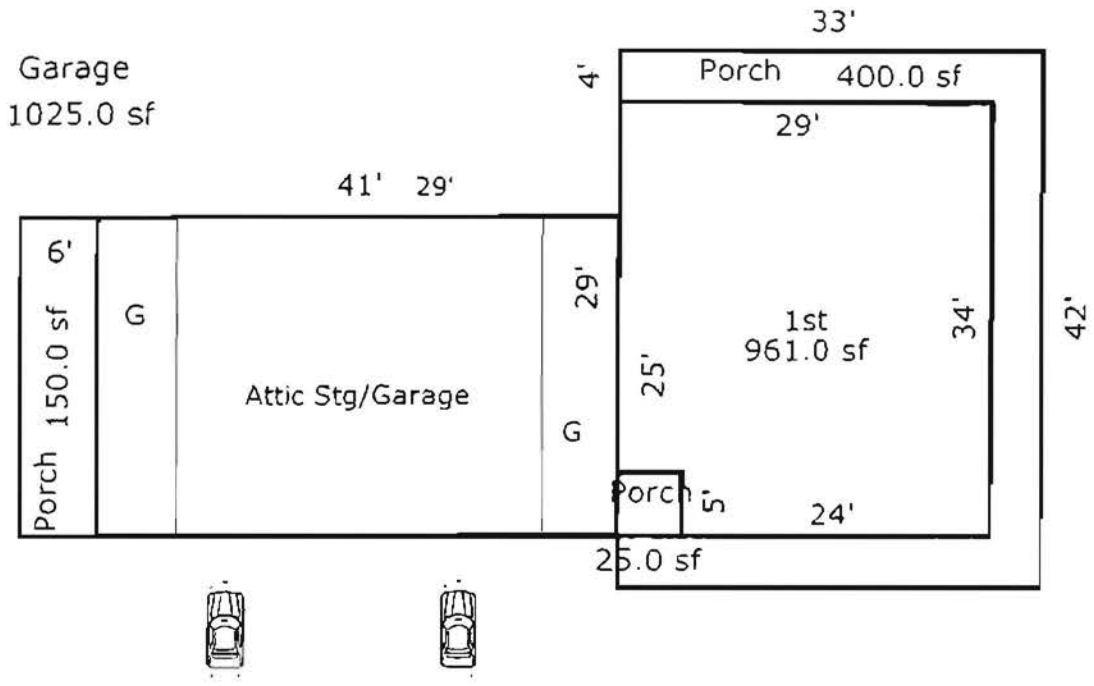
Client Address BEAVER SPRINGS SUB LOT 5 BLK 1

Appraiser Name JR

Inspection Date 3/2/09

SUBJECT

IMPROVEMENTS SKETCH



Scale: 1" = 15'

AREA CALCULATIONS SUMMARY

Code	Description	Factor	Net Size	Perimeter	Net Totals
GLA1	1st	1.00	961.0	126.0	961.0
CAR	Garage	1.00	1025.0	132.0	1025.0
P/P	Porch	1.00	150.0	62.0	
	Porch	1.00	25.0	20.0	
	Porch	1.00	400.0	208.0	575.0
OTH	Attic Stg	1.00	725.0	108.0	725.0
Net LIVABLE Area (rounded w/ factors)					961

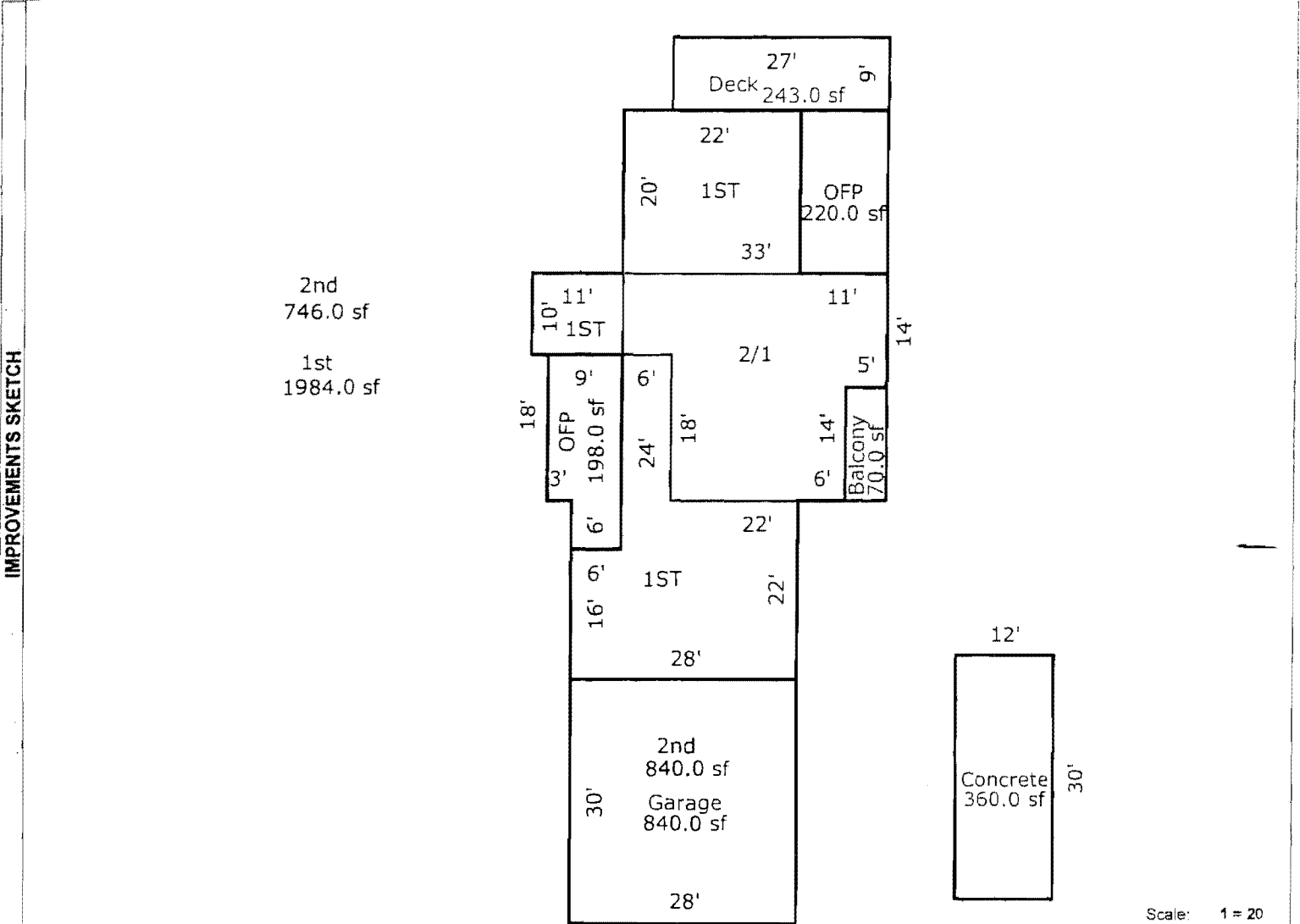
Comment Table 1	
Comment Table 2	Comment Table 3

AREA CALCULATIONS

SKETCH/AREA TABLE ADDENDUM

Parcel No RPK04220000060

SUBJECT	Property Address 118 SPRING LANE			
	City KETCHUM	County BLAINE	State ID	Zip 83340
	Owner DUTCHER JAMES W			
	Client 2009 RE APPRAISAL		Client Address BEAVER SPRINGS SUB LOT 6 BLK 1	
	Appraiser Name JR		Inspection Date 3/2/09	



AREA CALCULATIONS SUMMARY						Comment Table 1	
Code	Description	Factor	Net Size	Perimeter	Net Totals		
GLA1	1st	1.00	1984.0	240.0	1984.0		
GLA2	2nd	1.00	840.0	116.0			
	2nd	1.00	746.0	122.0	1586.0		
GAR1	Garage	1.00	840.0	116.0	840.0		
P/P1	OFF	1.00	198.0	66.0			
	OFF	1.00	220.0	62.0	418.0		
OTH2	Deck	1.00	243.0	72.0	243.0		
OTH3	Concrete	1.00	360.0	84.0	360.0		
OTH6	Balcony	1.00	70.0	38.0	70.0		
Net LIVABLE Area (rounded w/ factors)					3570	Comment Table 2	
						Comment Table 3	

RESIDENTIAL CHARACTERISTICS

10/14/2009
3:05 pm

Year 2009	Parcel Number/Suffix RPK04220000060 1	Parcel Status Active	Status Date 4/28/2007	Master Reappr Year 2009	
Property Address 118 SPRING LN KETCHUM			Section/Township/Range 10/4N/17E	Last Changed 03/26/2009	User TROBISON

State Cat. Cd.	Appraiser Initials	Physical Inspection	Occupancy Date	Year Built	Last Year Remodeled	Dwelling	Inspection Status	% Owner Occupied	Constr. Class	Market Grade	Design
41	TLR	02/26/2009		1987	0	SFD	Not Entered	100%	6	Average	Two Story

	Type	Shape	Linear Feet	Sq Feet Finished	Sq Feet Unfinished	Square Feet
Ground Floor:		Irregular	0.00			1984
Upper Floor:		Average	0.00			1586
Lower Floor:			0.00	0	0	0
Attic:				0	0	0
Basement:				0	0	0
Roof Type	Average			Total Square Feet		3,570

Interior Features	
Bedroom(s)	2
Bathroom(s)	2.00
Kitchen(s)	1
Fireplace(s)	1
Air Conditioning	No
Central Heating	Yes

	Sq. Feet	Type	Class
Car Stg. 1:	840	Attached	5
Car Stg. 2:	0		
Gen. Purp.:	0		
Landscape Type:	4		

	Sq. Feet	Covered
Patio 1	360	No
Patio 2	0	No
Deck 1	70	No
Deck 2	243	No
Porch	418	
Pool	0	

Value Information	
Area Modifier	
LCM	70%
Trend	
Special Influence	0
Improve Value	768,721
Appeal Value	0

Depreciation	
Phys. Depr.	15%
Funct. Obs.	0%
Econ. Obs.	0%

Subdivision: BEAVER SPRINGS SUB	Land Size: 3.281	Land Value: 2,350,000.00
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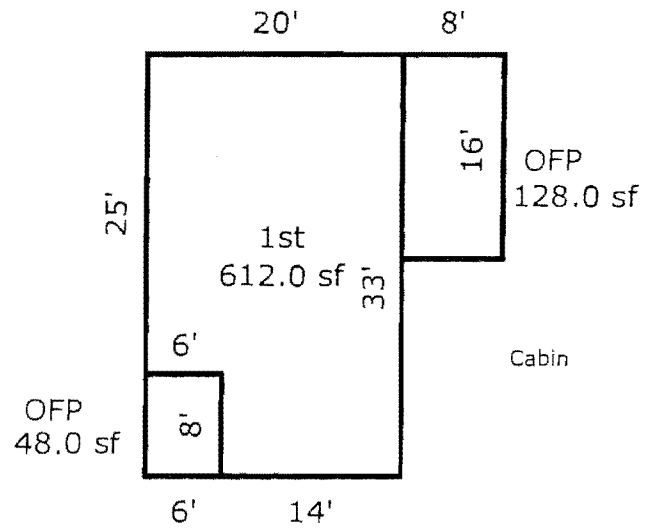
Notes: _____

SKETCH/AREA TABLE ADDENDUM

Parcel No RPK04220000060

SUBJECT	Property Address 118 SPRING LANE			
	City KETCHUM	County BLAINE	State ID	Zip 83340
	Owner DUTCHER JAMES W			
	Client 2009 RE APPRAISAL	Client Address BEAVER SPRINGS SUB LOT 5 BLK 1		
	Appraiser Name JR	Inspection Date 3/2/09		

IMPROVEMENTS SKETCH



Scale: 1 = 15

AREA CALCULATIONS

AREA CALCULATIONS SUMMARY					
Code	Description	Factor	Net Size	Perimeter	Net Totals
GLA1	1st	1.00	612.0	106.0	612.0
P/P1	OFP	1.00	48.0	28.0	
	OFP	1.00	128.0	48.0	176.0
Net LIVABLE Area (rounded w/ factors)					612

Comment Table 1	
Comment Table 2	Comment Table 3

RESIDENTIAL CHARACTERISTICS

10/14/2009

3:05 pm

Year 2009	Parcel Number/Suffix RPK04220000060 X	Parcel Status Active	Status Date 4/28/2007	Master Reappr Year 2009
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Property Address 118 SPRING LN KETCHUM	Section/Township/Range 10/4N/17E	Last Changed 03/26/2009	User TROBISON
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State Cat. Cd.	Appraiser Initials	Physical Inspection	Occupancy Date	Year Built	Last Year Remodeled	Dwelling	Inspection Status	% Owner Occupied	Constr. Class	Market Grade	Design
41	TLR	02/26/2009		1984	0	SFD	Not Entered	100%	4	Average	Single Level

	Type	Shape	Linear Feet	Sq Feet Finished	Sq Feet Unfinished	Square Feet
Ground Floor:		Simple	0.00			612
Upper Floor:			0.00			0
Lower Floor:			0.00	0	0	0
Attic:				0	0	0
Basement:				0	0	0
Roof Type	Average		Total Square Feet			612

Interior Features	
Bedroom(s)	1
Bathroom(s)	1.00
Kitchen(s)	1
Fireplace(s)	1
Air Conditioning	No
Central Heating	Yes

	Sq. Feet	Type	Class
Car Stg. 1:	0		
Car Stg. 2:	0		
Gen. Purp.:	0		
Landscape Type:			

	Sq. Feet	Covered
Patio 1	0	No
Patio 2	0	No
Deck 1	0	No
Deck 2	0	No
Porch	176	
Pool	0	

Value Information	
Area Modifier	
LCM	39%
Trend	32%
Special Influence	0
Improve Value	93,662
Appeal Value	0

Depreciation	
Phys. Depr.	20%
Funct. Obs.	0%
Econ. Obs.	0%

Subdivision: BEAVER SPRINGS SUB	Land Size: 3.281	Land Value: 2,350,000.00
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Notes: _____

SKETCH/AREA TABLE ADDENDUM

Parcel No RPK042200007A

File No K422007A

SUBJECT

Property Address 112 Spring Ln

City Ketchum

State ID

Zip 83340

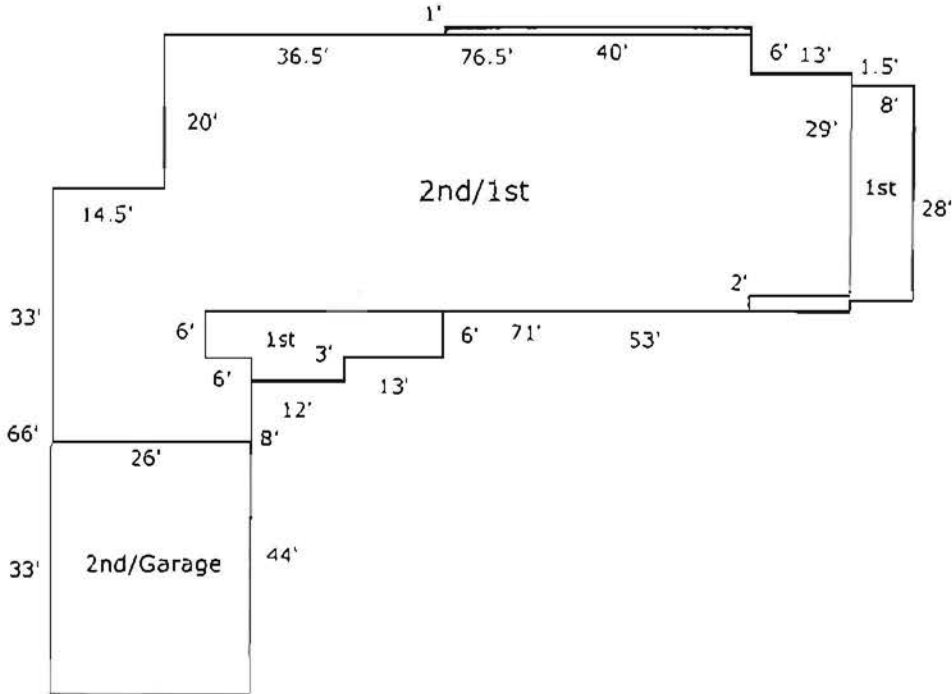
Owner

Client Karr, Robert

Client Address Beaver Springs Sub Lt 7A

Appraiser Name Tammy Robison

Inspection Date 12-30-08



Scale 1 = 25

AREA CALCULATIONS SUMMARY

Code	Description	Factor	Net Size	Perimeter	Net Totals
GLA1	First Floor	1.00	4281.0	332.0	4281.0
GLA2	Second Floor	1.00	4627.0	392.0	4627.0
GAR	Garage	1.00	858.0	118.0	858.0

Comment Table 1

Comment Table 2 | Comment Table 3

Net LIVABLE Area (rounded w/ factors) 8908

AREA CALCULATIONS

RESIDENTIAL CHARACTERISTICS

10/14/2009
3:05 pm

Year 2009	Parcel Number/Suffix RPK0422000007A 1	Parcel Status Active	Status Date 4/28/2007	Master Reappr Year 2009
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Property Address 112 SPRING LN KETCHUM	Section/Township/Range 10/4N/17E	Last Changed 03/24/2009	User TROBISON
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State Cat. Cd.	Appraiser Initials	Physical Inspection	Occupancy Date	Year Built	Last Year Remodeled	Dwelling	Inspection Status	% Owner Occupied	Constr. Class	Market Grade	Design
41	TLR	03/17/2009		1977	2000	SFD	Not Entered	100%	8	Good	Two Story

	Type	Shape	Linear Feet	Sq Feet Finished	Sq Feet Unfinished	Square Feet
Ground Floor:	Siding	Irregular	0.00			4281
Upper Floor:	Siding	Irregular	0.00			4627
Lower Floor:			0.00	0	0	0
Attic:				0	0	0
Basement:				0	0	0
Roof Type	Good			Total Square Feet		8,908

Interior Features	
Bedroom(s)	5
Bathroom(s)	6.55
Kitchen(s)	1
Fireplace(s)	2
Air Conditioning	No
Central Heating	Yes

	Sq. Feet	Type	Class
Car Stg. 1:	858	Attached	6
Car Stg. 2:	0		
Gen. Purp.:	0		
Landscape Type:	2		

	Sq. Feet	Covered
Patio 1	0	No
Patio 2	0	No
Deck 1	0	No
Deck 2	0	No
Porch	0	
Pool	0	

Value Information	
Area Modifier	
LCM	13%
Trend	
Special Influence	0
Improve Value	1,846,924
Appeal Value	0

Depreciation	
Phys. Depr.	0%
Funct. Obs.	38%
Econ. Obs.	0%

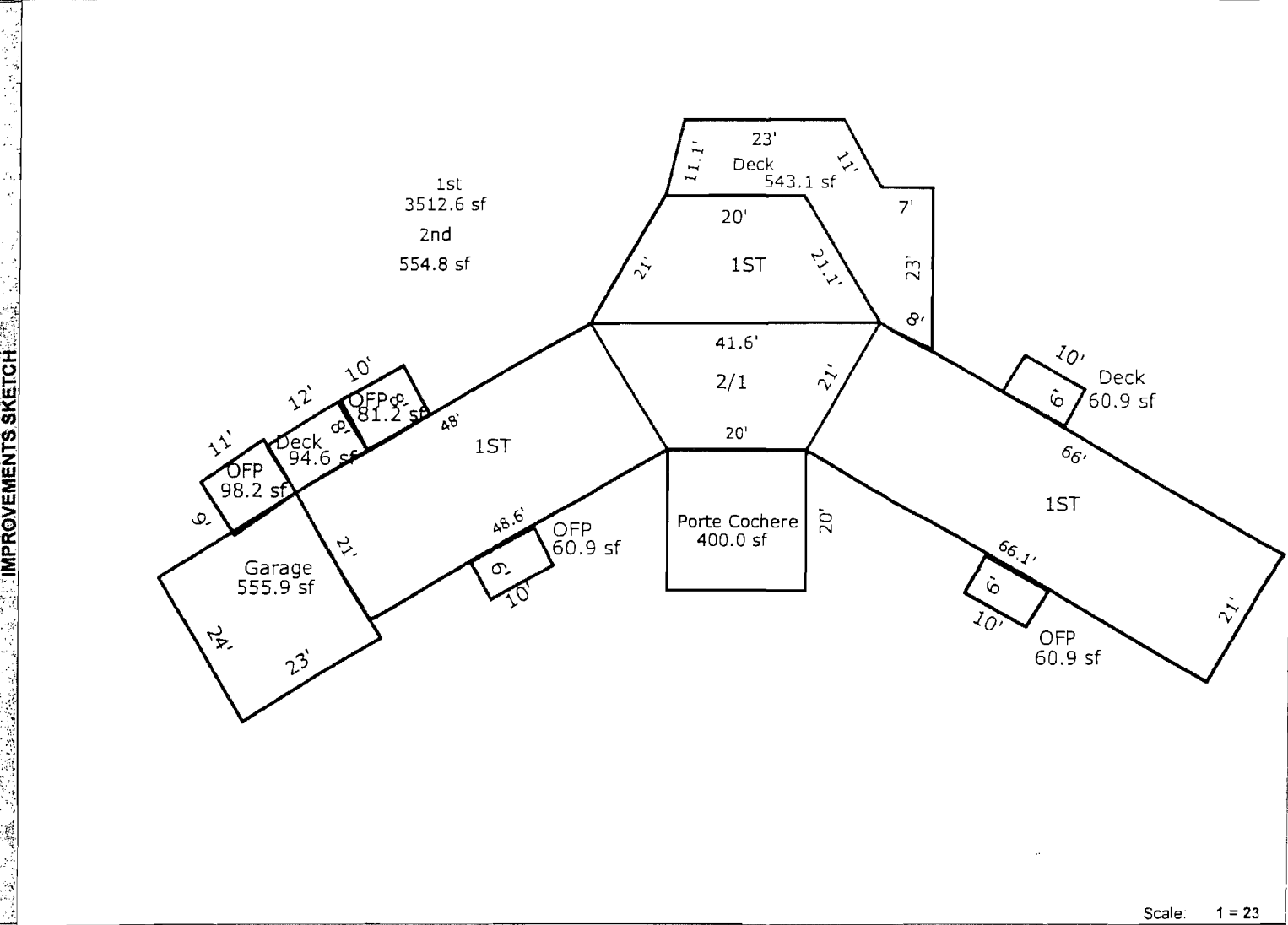
Subdivision: BEAVER SPRINGS SUB	Land Size: 3.481	Land Value: 4,000,000.00
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Notes: _____

SKETCH/AREA TABLE ADDENDUM

Parcel No RPK0422000080

SUBJECT	Property Address	106 SPRING LN						
	City	KETCHUM	County	BLAINE	State	ID	Zip	83340
	Owner	ROSENBERG GORDON LIVING TRUST						
	Client	2009 RE APPRAISAL	Client Address	BEAVER SPRINGS SUB LOT 8 BLK 1				
	Appraiser Name	JR	Inspection Date	3/2/09				



Scale: 1 = 23

AREA CALCULATIONS SUMMARY						Comment Table 1	
Code	Description	Factor	Net Size	Perimeter	Net Totals		
GLA1	1st	1.00	3512.6	352.8	3512.6		
GLA2	2nd	1.00	554.8	103.6	554.8		
GAR1	Garage	1.00	555.9	94.3	555.9		
P/P1	OFF	1.00	98.2	39.8			
	OFF	1.00	81.2	36.3			
	OFF	1.00	60.9	32.3			
	OFF	1.00	60.9	32.3	301.1		
P/P3	Porte Cochere	1.00	400.0	80.0	400.0		
OTH2	Deck	1.00	543.1	124.2			
	Deck	1.00	94.6	39.7			
	Deck	1.00	60.9	32.3	698.6		
Net LIVABLE Area (rounded w/ factors)					4067	Comment Table 2 Comment Table 3	

RESIDENTIAL CHARACTERISTICS

10/14/2009

3:06 pm

Year 2009	Parcel Number/Suffix RPK0422000080 1	Parcel Status Active	Status Date 4/28/2007	Master Reappr Year 2009
Property Address 106 SPRING LN KETCHUM		Section/Township/Range 10/4N/17E		Last Changed 03/24/2009
User TROBISON				

State Cat. Cd.	Appraiser Initials	Physical Inspection	Occupancy Date	Year Built	Last Year Remodeled	Dwelling	Inspection Status	% Owner Occupied	Constr. Class	Market Grade	Design
41	TLR	02/26/2009		1978	1984	SFD	Not Entered	100%	5	Average	Two Story

	Type	Shape	Linear Feet	Sq Feet Finished	Sq Feet Unfinished	Square Feet
Ground Floor:	Siding	Average	0.00			3513
Upper Floor:	Siding	Simple	0.00			555
Lower Floor:			0.00	0	0	0
Attic:				0	0	0
Basement:				0	0	0
Roof Type	Average			Total Square Feet		4,068

Interior Features	
Bedroom(s)	7
Bathroom(s)	3.50
Kitchen(s)	1
Fireplace(s)	1
Air Conditioning	No
Central Heating	Yes

	Sq. Feet	Type	Class
Car Stg. 1:	556	Attached	4
Car Stg. 2:	0		
Gen. Purp.:	0		
Landscape Type:	0		

	Sq. Feet	Covered
Patio 1	0	No
Patio 2	0	No
Deck 1	698	No
Deck 2	0	No
Porch	701	
Pool	0	

Value Information	
Area Modifier	
LCM	80%
Trend	1%
Special Influence	0
Improve Value	533,908
Appeal Value	0

Depreciation	
Phys. Depr.	32%
Funct. Obs.	0%
Econ. Obs.	0%

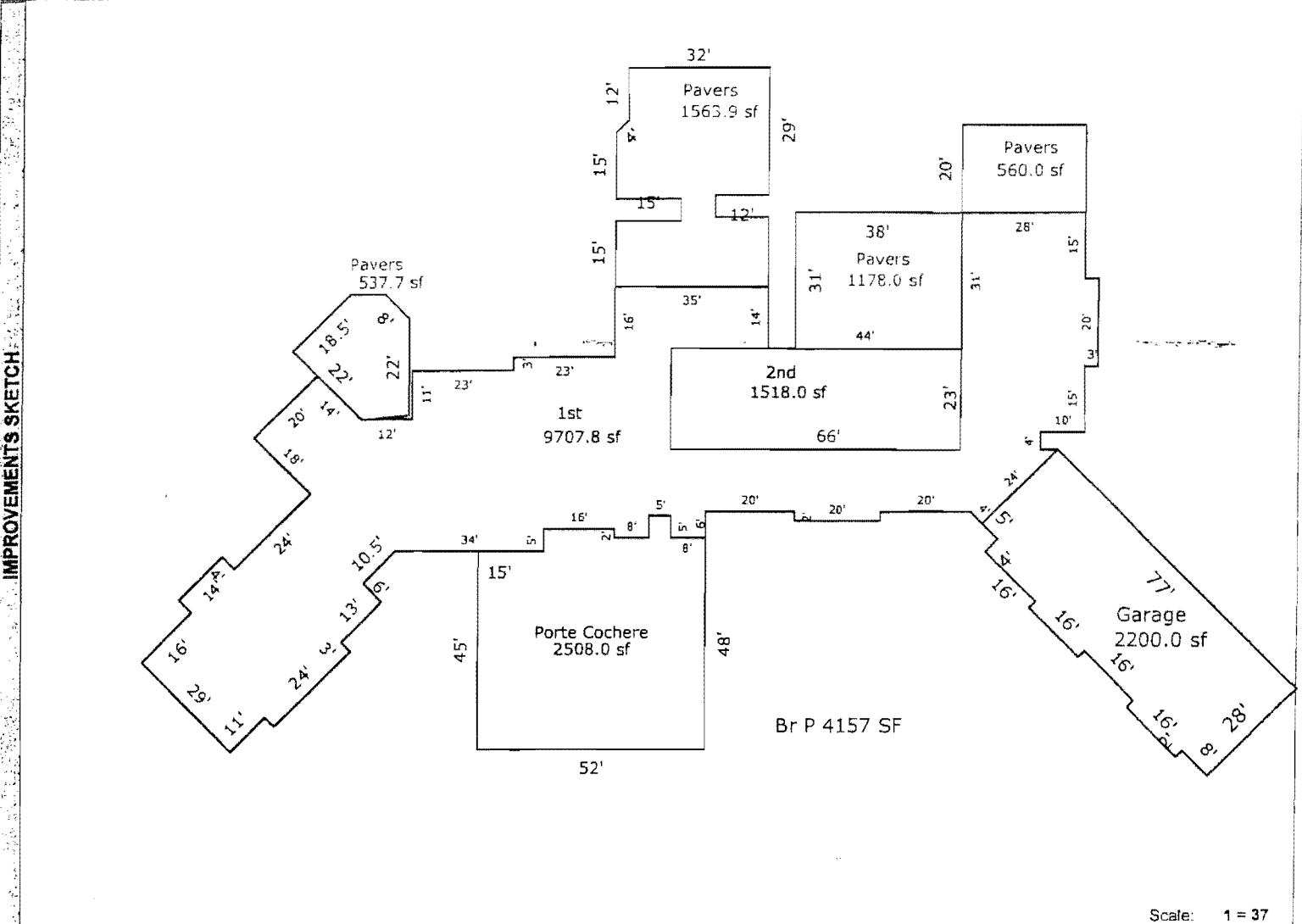
Subdivision: BEAVER SPRINGS SUB	Land Size: 3.884	Land Value: 4,000,000.00
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Notes: _____

SKETCH/AREA TABLE ADDENDUM

Parcel No RPK0422000090

SUBJECT	Property Address	102 SPRING LN							
	City	KETCHUM	County	BLAINE	State	ID	Zip	83340	
	Owner	MC CAW JOHN E JR							
	Client	2009 RE APPRAISAL		Client Address					BEAVER SPRINGS SUB LOT 9 BLK 1
	Appraiser Name	JR	Inspection Date						3/2/09



AREA CALCULATIONS	AREA CALCULATIONS SUMMARY					Comment Table 1		
AREA CALCULATIONS	Code	Description	Factor	Net Size	Perimeter	Net Totals		
AREA CALCULATIONS	GLA1	1st	1.00	9707.8	713.5	9707.8		
AREA CALCULATIONS	GLA2	2nd	1.00	1518.0	178.0	1518.0		
AREA CALCULATIONS	GAR1	Garage	1.00	2200.0	218.0	2200.0		
AREA CALCULATIONS	P/P3	Porte Cochere	1.00	2508.0	214.0	2508.0		
AREA CALCULATIONS	OTH5	Pavers	1.00	560.0	96.0	3839.5		
AREA CALCULATIONS		Pavers	1.00	1178.0	138.0			
AREA CALCULATIONS		Pavers	1.00	537.7	89.7			
AREA CALCULATIONS		Pavers	1.00	1563.9	221.8			
AREA CALCULATIONS	Net LIVABLE Area (rounded w/ factors)						11226	Comment Table 2 Comment Table 3

RESIDENTIAL CHARACTERISTICS

10/14/2009

3:06 pm

Year 2009	Parcel Number/Suffix RPK04220000090 1	Parcel Status Active	Status Date 4/28/2007	Master Reappr Year 2009
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Property Address 102 SPRING LN KETCHUM	Section/Township/Range 10/4N/17E	Last Changed 03/24/2009	User TROBISON
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State Cat. Cd.	Appraiser Initials	Physical Inspection	Occupancy Date	Year Built	Last Year Remodeled	Dwelling	Inspection Status	% Owner Occupied	Constr. Class	Market Grade	Design
41	TLR	02/26/2009		1978	1993	SFD	Not Entered	100%	8	Good	Two Story

	Type	Shape	Linear Feet	Sq Feet Finished	Sq Feet Unfinished	Square Feet
Ground Floor:	Stucco	Complex	0.00			9708
Upper Floor:	Stucco	Simple	0.00			1518
Lower Floor:			0.00	0	0	0
Attic:				0	0	0
Basement:				0	0	0
Roof Type	Good			Total Square Feet		11,226

Interior Features	
Bedroom(s)	9
Bathroom(s)	9.55
Kitchen(s)	1
Fireplace(s)	4
Air Conditioning	Yes
Central Heating	Yes

	Sq. Feet	Type	Class
Car Stg. 1:	2,200	Attached	6
Car Stg. 2:	0		
Gen. Purp.:	0		
Landscape Type:	4		

	Sq. Feet	Covered
Patio 1	3,839	No
Patio 2	0	No
Deck 1	0	No
Deck 2	0	No
Porch	2,508	
Pool	0	

Value Information	
Area Modifier	
LCM	13%
Trend	
Special Influence	0
Improve Value	3,952,928
Appeal Value	0

Depreciation	
Phys. Depr.	10%
Funct. Obs.	0%
Econ. Obs.	0%

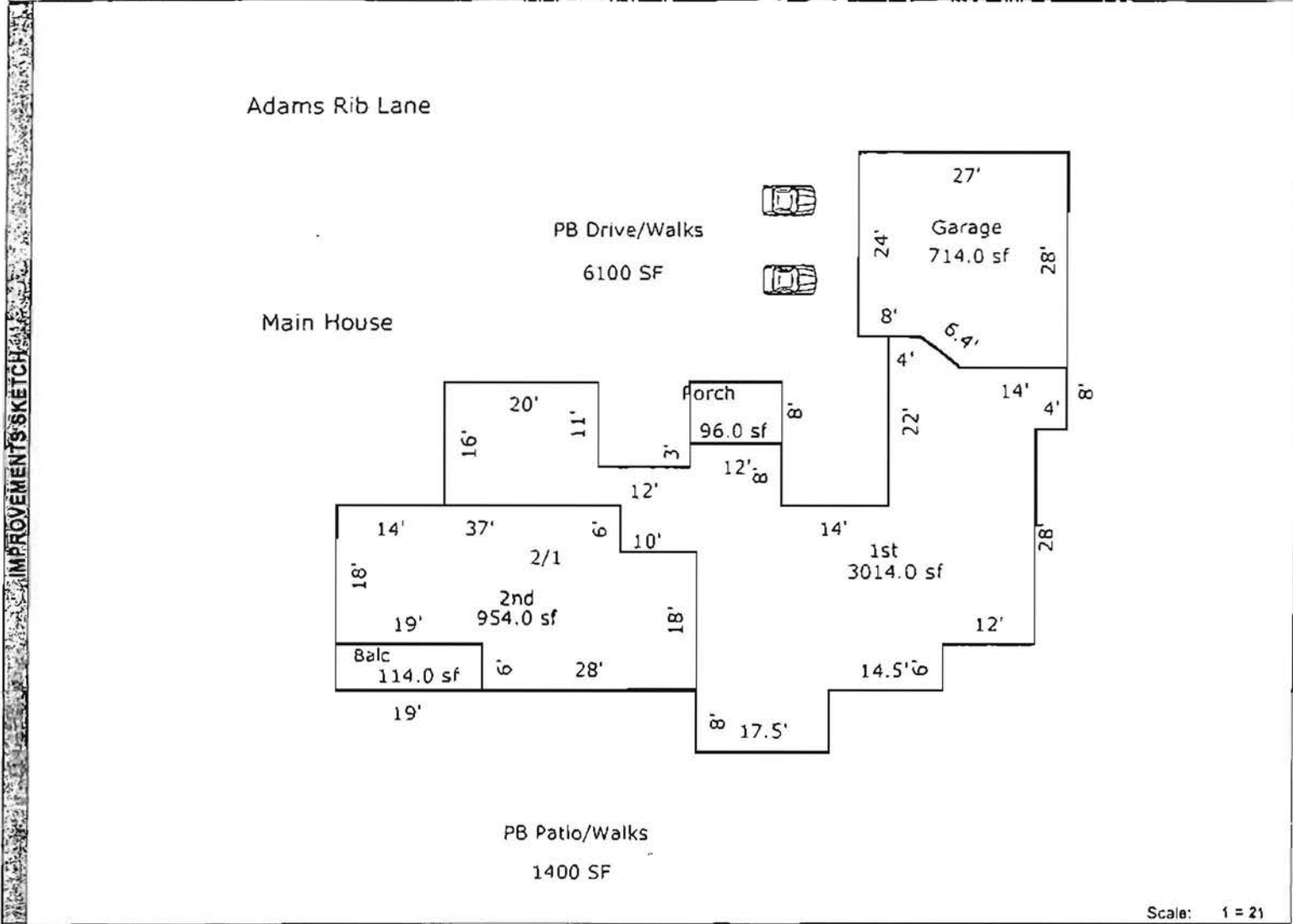
Subdivision: BEAVER SPRINGS SUB	Land Size: 3.516	Land Value: 4,000,000.00
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Notes: _____

SKETCH/AREA TABLE ADDENDUM

Parcel No RPK0422000011A

SUBJECT	Property Address	102 ADAMS RIB LN						
	City	KETCHUM	County	BLAINE	State	ID	Zip	83340
	Owner	GREENSTEIN JEFFERY & JUDITH						
	Client	2009 RE APPRAISAL	Client Address	BEAVER SPRINGS SUB AM LOT 11A BLK 1				
	Appraiser Name	JR	Inspection Date	3/2/09				



AREA CALCULATIONS SUMMARY						Comment Table 1	
Code	Description	Factor	Net Size	Perimeter	Net Totals		
GLA1	1st	1.00	3014.0	333.4	3014.0		
GLA2	2nd	1.00	954.0	142.0	954.0		
GAR	Garage	1.00	714.0	107.4	714.0		
P/P	Porch <i>Balc</i>	1.00	114.0	50.0	114.0		
	Porch	1.00	96.0	40.0	210.0		
Net LIVABLE Area (rounded w/ factors)					3968	Comment Table 2 Comment Table 3	

RESIDENTIAL CHARACTERISTICS

10/14/2007 7:73
3:07 pm

Year 2009	Parcel Number/Suffix RPK0422000011A M	Parcel Status Active	Status Date 4/28/2007	Master Reappr Year 2009
Property Address 102 ADAMS RIB LN KETCHUM			Section/Township/Range 10/4N/17E	Last Changed 03/24/2009
User TROBISON				

State 41	Appraiser Initials TLR	Physical Inspection 02/26/2009	Occupancy Date	Year Built 1980	Last Year Remodeled 2005	Dwelling SFD	Inspection Status Not Entered	% Owner Occupied 100%	Constr. Class 6	Market Grade Very Good	Design Two Story
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	Type	Shape	Linear Feet	Sq Feet Finished	Sq Feet Unfinished	Square Feet
Ground Floor:	Stucco	Irregular	0.00			3014
Upper Floor:	Stucco	Irregular	0.00			954
Lower Floor:			0.00	0	0	0
Attic:				0	0	0
Basement:				0	0	0
Roof Type	Good			Total Square Feet		3,968

Interior Features	
Bedroom(s)	3
Bathroom(s)	3.50
Kitchen(s)	1
Fireplace(s)	2
Air Conditioning	No
Central Heating	Yes

	Sq. Feet	Type	Class
Car Stg. 1:	714	Attached	5
Car Stg. 2:	0		
Gen. Purp.:	0		
Landscape Type:	6		

	Sq. Feet	Covered
Patio 1	1,400	No
Patio 2	0	No
Deck 1	114	No
Deck 2	0	No
Porch	96	
Pool	0	

Value Information	
Area Modifier	
LCM	70%
Trend	
Special Influence	0
Improve Value	1,282,951
Appeal Value	0

Depreciation	
Phys. Depr.	0%
Funct. Obs.	0%
Econ. Obs.	0%

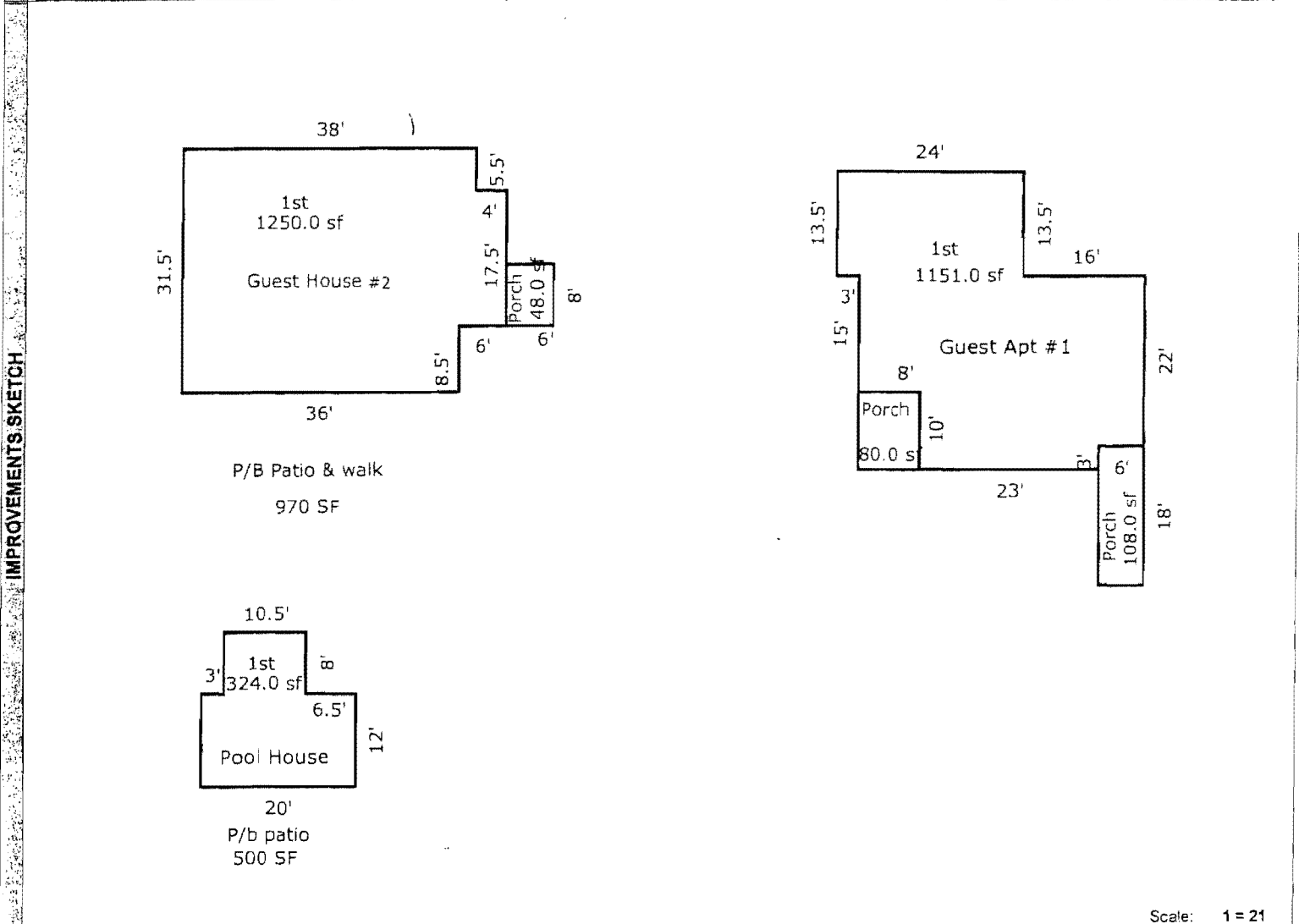
Subdivision: BEAVER SPRINGS SUB	Land Size: 2.393	Land Value: 2,350,000.00
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Notes: _____

SKETCH/AREA TABLE ADDENDUM

Parcel No RPK0422000011A

SUBJECT	Property Address	102 ADAMS RIB LN						
	City	KETCHUM	County	BLAINE	State	ID	Zip	83340
	Owner	GREENSTEIN JEFFERY & JUDITH						
	Client	2009 RE APPRAISAL		Client Address	BEAVER SPRINGS SUB AM LOT 11A BLK 1			
	Appraiser Name	JR		Inspection Date	3/2/09			



Scale: 1 = 21

AREA CALCULATIONS SUMMARY						Comment Table 1	
Code	Description	Factor	Net Size	Perimeter	Net Totals		
GLA1	1st	1.00	1250.0	147.0			
	1st	1.00	1151.0	157.0			
	1st	1.00	324.0	80.0		2725.0	
P/P	Porch	1.00	48.0	28.0			
	Porch	1.00	108.0	48.0			
	Porch	1.00	80.0	36.0		236.0	
Net LIVABLE Area (rounded w/ factors)					2725	Comment Table 2	Comment Table 3

RESIDENTIAL CHARACTERISTICS

10/14/2009 7:75
3:07 pm

Year
2009

Parcel Number/Suffix
RPK0422000011A P

Parcel Status
Active

Status Date
3/24/2009

Master Reappr Year
2009

Property Address
102 ADAMS RIB LN KETCHUM

Section/Township/Range
10/4N/17E

Last Changed
03/24/2009

User
TROBISON

State Cat. Cd.	Appraiser Initials	Physical Inspection	Occupancy Date	Year Built	Last Year Remodeled	Dwelling	Inspection Status	% Owner Occupied	Constr. Class	Market Grade	Design
41	TLR	02/26/2009		1999	0	SFD	Not Entered	100%	4	Good	Single Level

	Type	Shape	Linear Feet	Sq Feet Finished	Sq Feet Unfinished	Square Feet
Ground Floor:	Stucco	Average	0.00			324
Upper Floor:	None	None	0.00			0
Lower Floor:	None	None	0.00	0	0	0
Attic:				0	0	0
Basement:				0	0	0
Roof Type	Good		Total Square Feet			324

Interior Features	
Bedroom(s)	0
Bathroom(s)	1.00
Kitchen(s)	0
Fireplace(s)	0
Air Conditioning	No
Central Heating	Yes

	Sq. Feet	Type	Class
Car Stg. 1:	0		
Car Stg. 2:	0		
Gen. Purp.:	0		N
Landscape Type:	0		

	Sq. Feet	Covered
Patio 1	500	No
Patio 2	0	No
Deck 1	0	No
Deck 2	0	No
Porch	0	
Pool	0	

Value Information	
Area Modifier	
LCM	39%
Trend	36%
Special Influence	0
Improve Value	90,598
Appeal Value	0

Depreciation	
Phys. Depr.	4%
Funct. Obs.	0%
Econ. Obs.	0%

Subdivision: BEAVER SPRINGS SUB	Land Size: 2.393	Land Value: 2,350,000.00
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Notes: _____

RESIDENTIAL CHARACTERISTICS

10/14/2009 776
3:07 PM

Year 2009	Parcel Number/Suffix RPK0422000011A X	Parcel Status Active	Status Date 4/28/2007	Master Reappr Year 2009							
Property Address 102 ADAMS RIB LN KETCHUM			Section/Township/Range 10/4N/17E	Last Changed 03/24/2009	User TROBISON						
State Cat. Cd. 41	Appraiser Initials TLR	Physical Inspection 02/26/2009	Occupancy Date	Year Built 1999	Last Year Remodeled 0	Dwelling SFD	Inspection Status Not Entered	% Owner Occupied 100%	Constr. Class 4	Market Grade Good	Design Single Level

	Type	Shape	Linear Feet	Sq Feet Finished	Sq Feet Unfinished	Square Feet	Interior Features	
Ground Floor:	Stucco	Average	0.00			1151	Bedroom(s)	1
Upper Floor:			0.00			0	Bathroom(s)	1.00
Lower Floor:			0.00	0	0	0	Kitchen(s)	1
Attic:				0	0	0	Fireplace(s)	0
Basement:				0	0	0	Air Conditioning	No
Roof Type	Good		Total Square Feet			1,151	Central Heating	Yes

Sq. Feet	Type	Class	Sq. Feet	Covered	Value Information		Depreciation		
Car Stg. 1:	0		Patio 1	0	No	Area Modifier		Phys. Depr.	4%
Car Stg. 2:	0		Patio 2	0	No	LCM	39%	Funct. Obs.	0%
Gen. Purp.:	0		Deck 1	0	No	Trend	36%	Econ. Obs.	0%
Landscape Type:			Deck 2	0	No	Special Influence	0		
			Porch	188		Improve Value	175,690		
			Pool	0		Appeal Value	0		

Subdivision: BEAVER SPRINGS SUB	Land Size: 2.393	Land Value: 2,350,000.00
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Notes: _____

RESIDENTIAL CHARACTERISTICS

10/14/2009 7:17
3:07 pm

Year
2009

Parcel Number/Suffix
RPK0422000011A Y

Parcel Status
Active

Status Date
3/24/2009

Master Reappr Year
2009

Property Address
102 ADAMS RIB LN KETCHUM

Section/Township/Range
10/4N/17E

Last Changed
03/24/2009

User
TROBISON

State	Appraiser	Physical	Occupancy	Year	Last Year	Inspection	% Owner	Constr.	Market	
Cat. Cd.	Initials	Inspection	Date	Built	Remodeled	Status	Occupied	Class	Grade	Design
41	TLR	02/26/2009		1999	0	SFD	100%	4	Good	Single Level

	Type	Shape	Linear Feet	Sq Feet Finished	Sq Feet Unfinished	Square Feet
Ground Floor:	Stucco	Average	0.00			1250
Upper Floor:	None	None	0.00			0
Lower Floor:	None	None	0.00	0	0	0
Attic:				0	0	0
Basement:				0	0	0
Roof Type	Good			Total Square Feet		1,250

Interior Features	
Bedroom(s)	3
Bathroom(s)	3.00
Kitchen(s)	1
Fireplace(s)	1
Air Conditioning	No
Central Heating	Yes

	Sq. Feet	Type	Class
Car Stg. 1:	0		
Car Stg. 2:	0		
Gen. Purp.:	0		N
Landscape Type:	0		

	Sq. Feet	Covered
Patio 1	970	No
Patio 2	0	No
Deck 1	0	No
Deck 2	0	No
Porch	48	
Pool	0	

Value Information	
Area Modifier	
LCM	39%
Trend	36%
Special Influence	0
Improve Value	198,146
Appeal Value	0

Depreciation	
Phys. Depr.	4%
Funct. Obs.	0%
Econ. Obs.	0%

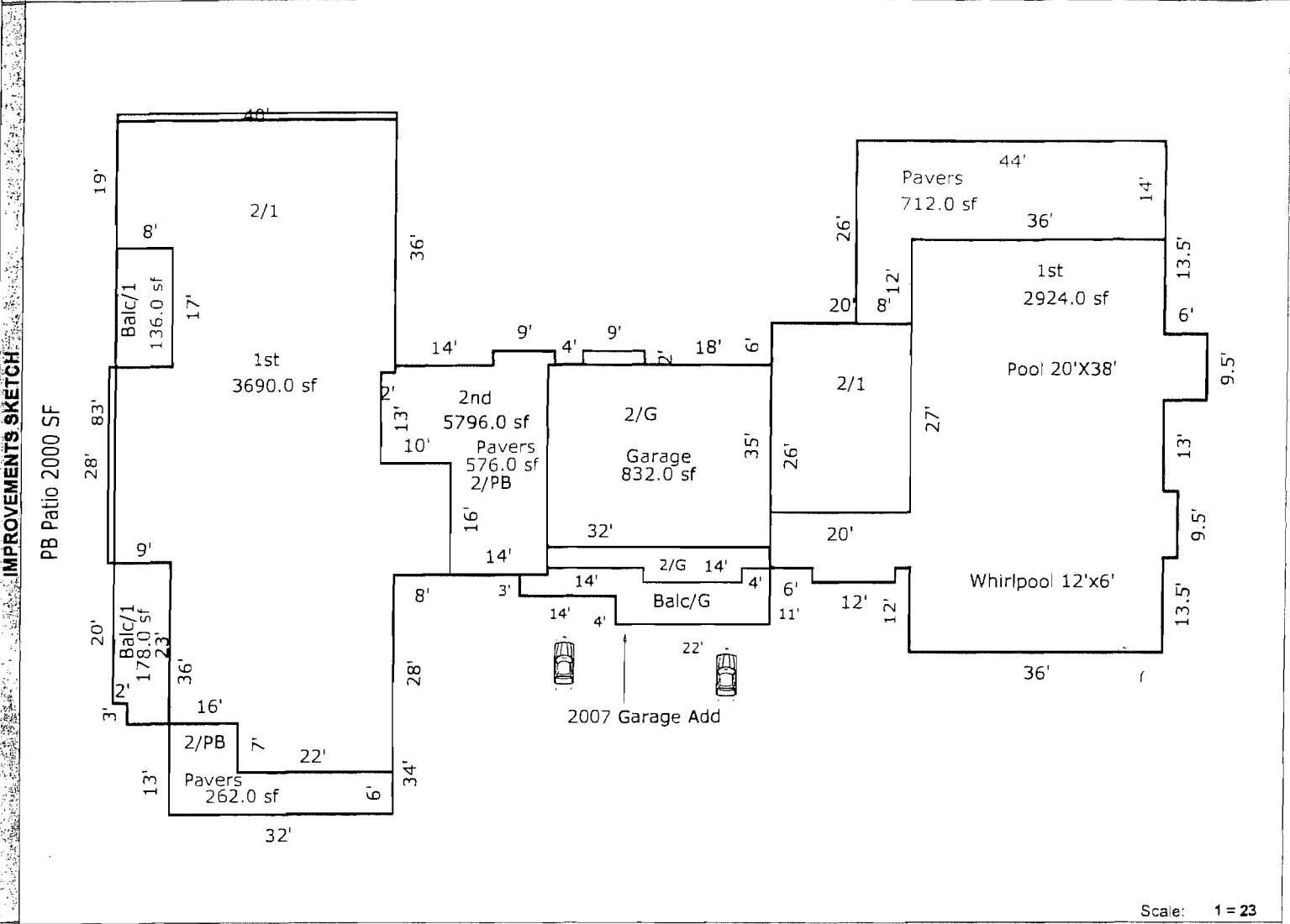
Subdivision: BEAVER SPRINGS SUB	Land Size: 2.393	Land Value: 2,350,000.00
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Notes: _____

SKETCH/AREA TABLE ADDENDUM

Parcel No RPK0422000012C

SUBJECT	Property Address 110 ADAMS RIB LN			
	City KETCHUM	County BLAINE	State ID	Zip 83340
	Owner LACERTE LAWRENCE & JOYCE			
	Client 2009 RE APPRAISAL		Client Address BEAVER SPRINGS SUB AM LOT 12C BLK 1	
	Appraiser Name JR		Inspection Date 3/2/09	



AREA CALCULATIONS SUMMARY						Comment Table 1	
Code	Description	Factor	Net Size	Perimeter	Net Totals		
GLA1	1st	1.00	3690.0	286.0			
	1st	1.00	2924.0	250.0	6614.0		
GLA2	2nd	1.00	5796.0	470.0	5796.0		
GAR	Garage	1.00	832.0	116.0			
	Garage Add	1.00	324.0	94.0	1156.0		
P/P	Balc	1.00	178.0	62.0			
	Balc	1.00	136.0	50.0			
	Pavers	1.00	712.0	140.0			
	Pavers	1.00	576.0	114.0			
	Pavers	1.00	262.0	90.0			
	Balc	1.00	200.0	92.0	2064.0		
Net LIVABLE Area (rounded w/ factors)					12410	Comment Table 2 Comment Table 3	

RESIDENTIAL CHARACTERISTICS

10/14/2009 779
3:08 pm

Year 2009	Parcel Number/Suffix RPK0422000012C M	Parcel Status Active	Status Date 4/28/2007	Master Reappr Year 2009	
Property Address 110 ADAMS RIB LN KETCHUM			Section/Township/Range 10/4N/17E	Last Changed 05/07/2009	User TROBISON

State Cat. Cd.	Appraiser Initials	Physical Inspection	Occupancy Date	Year Built	Last Year Remodeled	Dwelling	Inspection Status	% Owner Occupied	Constr. Class	Market Grade	Design
41	TLR	04/17/2009		1986	2005	SFD	Not Entered	100%	8	Good	Two Story

	Type	Shape	Linear Feet	Sq Feet Finished	Sq Feet Unfinished	Square Feet	Interior Features	
Ground Floor:	Siding	Complex	0.00			6614	Bedroom(s)	6
Upper Floor:	Siding	Complex	0.00			5796	Bathroom(s)	9.50
Lower Floor:			0.00	0	0	0	Kitchen(s)	1
Attic:				0	0	0	Fireplace(s)	4
Basement:				0	0	0	Air Conditioning	Yes
Roof Type	Good		Total Square Feet			12,410	Central Heating	Yes

Sq. Feet		Type	Class	Sq. Feet Covered		Value Information		Depreciation		
Car Stg. 1:	1,156	Attached	6	Patio 1	3,550	No	Area Modifier		Phys. Depr.	0%
Car Stg. 2:	0			Patio 2	0	No	LCM	13%	Funct. Obs.	0%
Gen. Purp.:	0			Deck 1	514	No	Trend		Econ. Obs.	0%
Landscape Type: 1				Deck 2	0	No	Special Influence	0		
				Porch	0		Improve Value	1,254,004		
				Pool	832		Appeal Value	0		

Subdivision: BEAVER SPRINGS SUB	Land Size: 2.381	Land Value: 2,350,000.00
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Notes: _____

RESIDENTIAL CHARACTERISTICS

10/14/2009 7:80
3:08 pm

Year 2009	Parcel Number/Suffix RPK0422000012C X	Parcel Status Active	Status Date 4/28/2007	Master Reappr Year 2009
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Property Address 110 ADAMS RIB LN KETCHUM	Section/Township/Range 10/4N/17E	Last Changed 04/21/2009	User TROBISON
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State Cat. Cd.	Appraiser Initials	Physical Inspection	Occupancy Date	Year Built	Last Year Remodeled	Dwelling	Inspection Status	% Owner Occupied	Constr. Class	Market Grade	Design
41	TLR	04/17/2009		2003	0	SFD	Not Entered	100%	5	Very Good	Two Story

	Type	Shape	Linear Feet	Sq Feet Finished	Sq Feet Unfinished	Square Feet
Ground Floor:	Siding	Simple	0.00			640
Upper Floor:	Siding	Simple	0.00			640
Lower Floor:			0.00	0	0	0
Attic:				0	0	0
Basement:				0	0	0
Roof Type	Good		Total Square Feet			1,280

Interior Features	
Bedroom(s)	2
Bathroom(s)	2.00
Kitchen(s)	2
Fireplace(s)	2
Air Conditioning	No
Central Heating	Yes

	Sq. Feet	Type	Class
Car Stg. 1:	0		
Car Stg. 2:	0		
Gen. Purp.:	0		
Landscape Type:			

	Sq. Feet	Covered
Patio 1	0	No
Patio 2	0	No
Deck 1	0	No
Deck 2	0	No
Porch	0	
Pool	0	

Value Information	
Area Modifier	
LCM	80%
Trend	10%
Special Influence	0
Improve Value	303,311
Appeal Value	0

Depreciation	
Phys. Depr.	0%
Funct. Obs.	0%
Econ. Obs.	0%

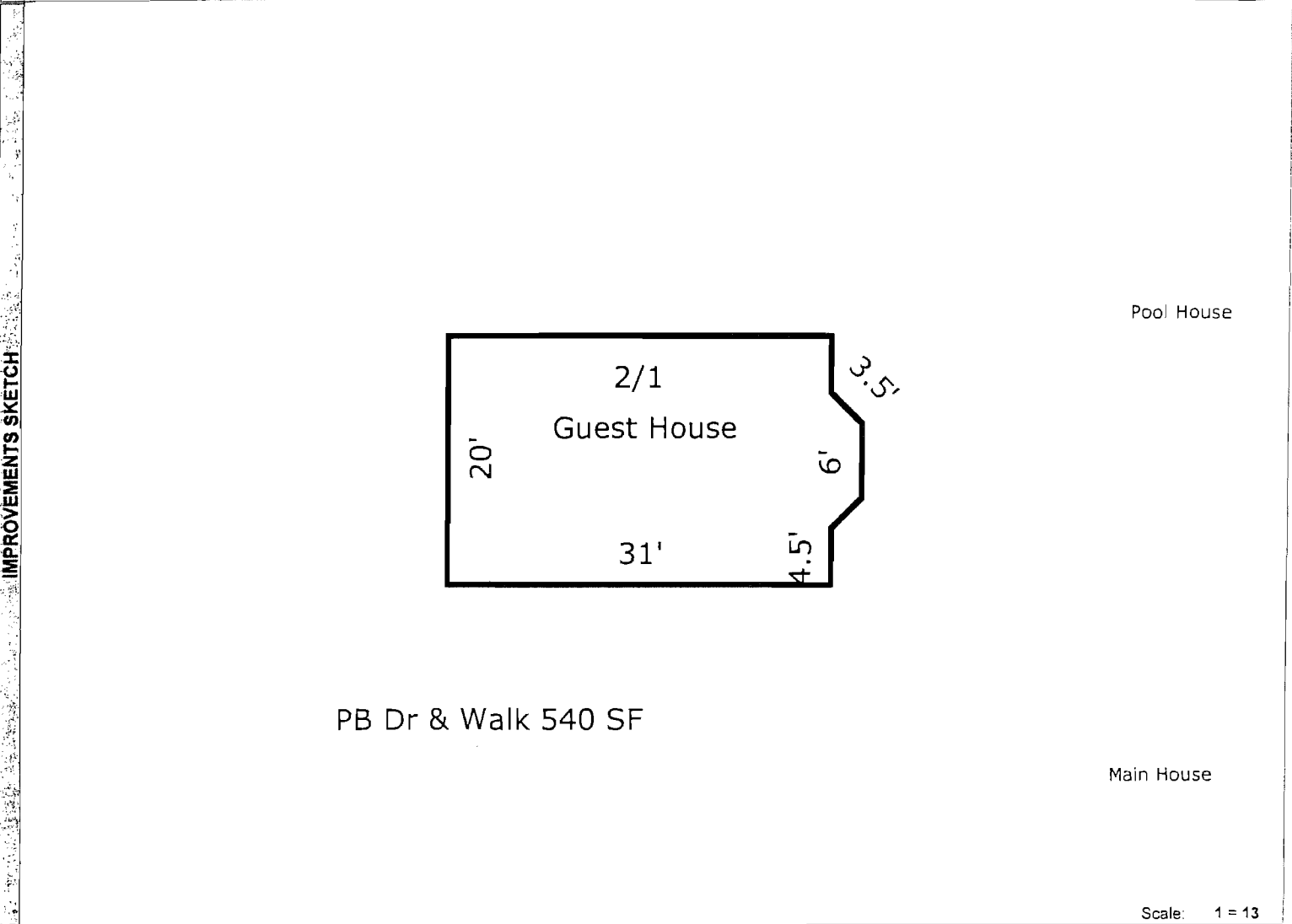
Subdivision: BEAVER SPRINGS SUB	Land Size: 2.381	Land Value: 2,350,000.00
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Notes: _____

SKETCH/AREA TABLE ADDENDUM

Parcel No RPK0422000012C

SUBJECT	Property Address 110 ADAMS RIB LN			
	City KETCHUM	County BLAINE	State ID	Zip 83340
	Owner LACERTE LAWRENCE & JOYCE			
	Client 2009 RE APPRAISAL		Client Address BEAVER SPRINGS SUB AM LOT 12C BLK 1	
	Appraiser Name JR		Inspection Date 3/2/09	



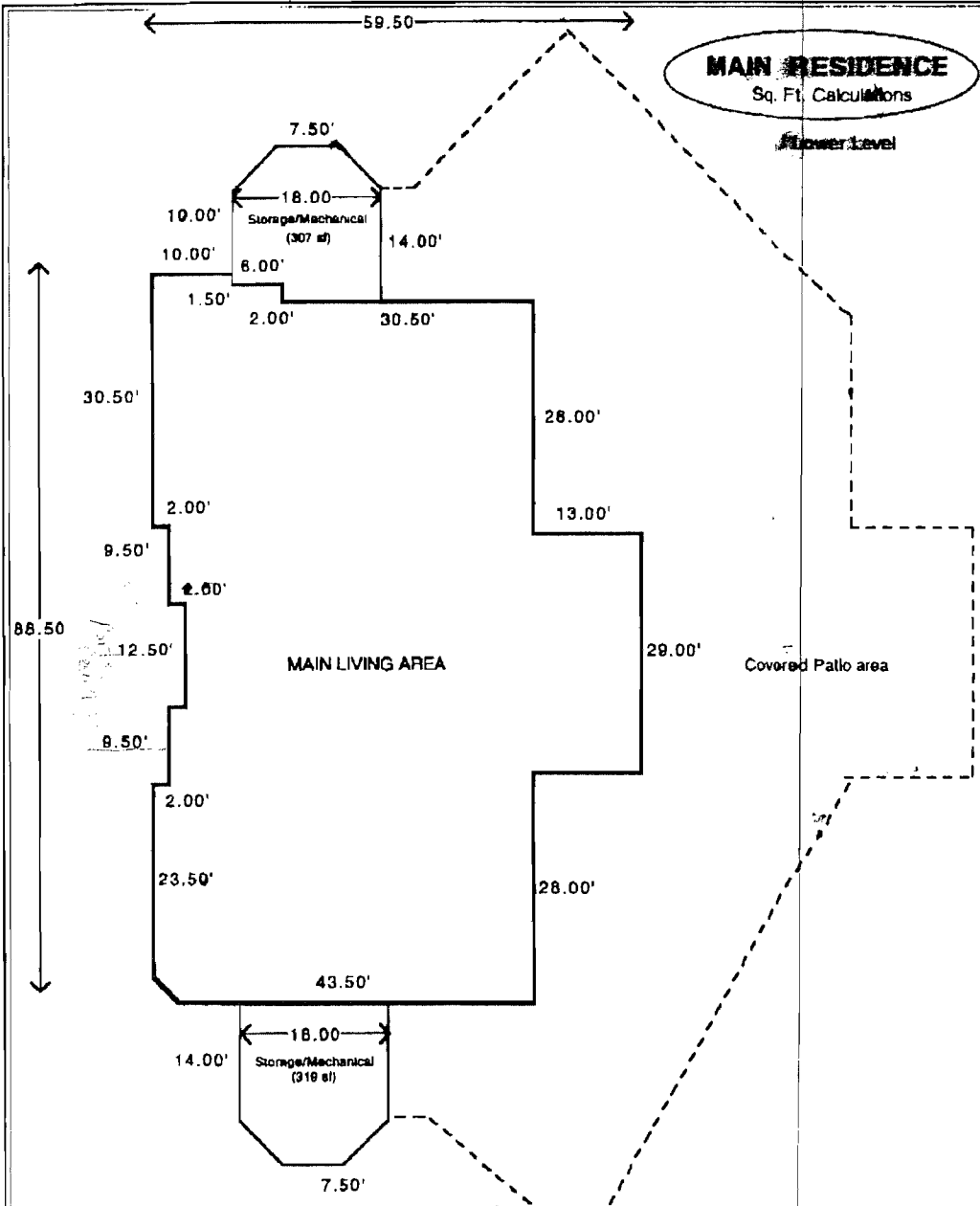
AREA CALCULATIONS	AREA CALCULATIONS SUMMARY					Comment Table 1		
	Code	Description	Factor	Net Size	Perimeter	Net Totals		
	GLA1	1st	1.00	640.2	104.0	640.2		
GLA2	2nd	1.00	639.4	103.9	639.4	Comment Table 2 Comment Table 3		
Net LIVABLE Area (rounded w/ factors)						1280		

SKETCH ADDENDUM

File No.

Borrower Thomas Weise
 Property Address Lots 13 & 14, Beaver Springs Subdivision
 City Ketchum County Blaine State Idaho Zip Code 83340
 Lender/Client First Republic Savings Bank Address 344 Market Street, San Francisco, CA 94111

Market
in
Carpetaker



Drive
 144
 3090
 3360
 940
 430
 304
 224
 325
 9687

Sketch Calculations

Location	Dimensions	Area
A	1/2 x 3.0' x 3.0'	4.5
B	2.0' x 30.5'	61.0
C	2.0' x 40.0'	80.0
D	3.0' x 23.5'	70.5
E	1.0' x 9.5'	9.5
F	6.0' x 1.5'	9.0
G	12.0' x 2.0'	24.0
H	13.0' x 29.0'	377.0
I	36.0' x 1.0'	36.0
J	42.5' x 85.0'	3612.5
Gross Living Area		4284.0

MacAppraiser™ Real Estate Appraisal Software by Breidford and Robbins (800) 622-0727.

Weisel Appraisal

Square Footage Calculations

Main Residence:

First Level:

7.00	x	22.00	=	154.00
6.00	x	6.00	\ 2.00 =	18.00
13.00	x	13.00	\ 2.00 =	84.50
2.00	x	4.50	=	9.00
14.00	x	18.00	=	252.00
7.50	x	5.25	=	39.38
5.25	x	5.25	\ 2.00 =	13.78
5.25	x	5.25	\ 2.00 =	13.78
5.75	x	10.50	=	60.38
5.75	x	4.75	\ 2.00 =	13.66
5.75	x	4.75	\ 2.00 =	13.66
58.00	x	44.00	=	2,552.00
-2.00	x	12.50	=	-25.00
14.00	x	30.00	=	420.00
10.50	x	3.25	=	34.13
3.25	x	3.00	\ 2.00 =	4.88
3.25	x	3.00	\ 2.00 =	4.88
1.00	x	44.00	=	44.00
10.50	x	5.75	=	60.38
5.75	x	4.75	\ 2.00 =	13.66
5.75	x	4.75	\ 2.00 =	13.66
18.50	x	26.50	=	490.25
25.50	x	30.50	=	777.75
10.00	x	18.00	=	180.00
7.50	x	5.25	=	39.38
5.25	x	5.25	\ 2.00 =	13.78
5.25	x	5.25	\ 2.00 =	13.78
2.00	x	4.50	=	9.00
2.00	x	12.50	=	25.00
16.00	x	26.00	\ 2.00 =	208.00
-5.00	x	3.50	\ 2.00 =	-8.75

5,542.88

Total Living Area (rounded)

5,543

Other Improvements

Skid Room:- On slab with concrete floor

15.00	x	24.00	=	360.00
-2.00	x	12.50	=	-25.00
5.50	x	8.00	\ 2.00 =	22.00

357.00

3-car garage:

24.00	x	37.00	=	888.00
14.00	x	1.50	=	21.00
3.25	x	8.00	=	26.00
3.25	x	3.00	\ 2.00 =	4.88

3.25	x	3.00	\	2.00	=	4.88
11.00	x	6.00			=	66.00
2.00	x	6.00			=	12.00
6.00	x	2.50	\	2.00	=	7.50
6.00	x	2.50	\	2.00	=	7.50
						<hr/>
						1,032.75

2-car garage

25.50	x	24.00			=	612.00
14.00	x	1.50			=	21.00
3.25	x	3.00	\	2.00	=	4.88
3.25	x	3.00	\	2.00	=	4.88
8.00	x	3.25			=	26.00
						<hr/>
						668.75

RESIDENTIAL CHARACTERISTICS

10/14/2009

3:08 pm

Year 2009	Parcel Number/Suffix RPK04220000140 M	Parcel Status Active	Status Date 4/28/2007	Master Reappr Year 2009
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Property Address 114 ADAMS RIB LN KETCHUM	Section/Township/Range 10/4N/17E	Last Changed 03/26/2009	User TROBISON
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State Cat. Cd.	Appraiser Initials	Physical Inspection	Occupancy Date	Year Built	Last Year Remodeled	Dwelling	Inspection Status	% Owner Occupied	Constr. Class	Market Grade	Design
41	TLR	02/26/2009		1997	0	SFD	Not Entered	100%	8	Good	Two Story

	Type	Shape	Linear Feet	Sq Feet Finished	Sq Feet Unfinished	Square Feet
Ground Floor:	Stucco	Complex	0.00			5543
Upper Floor:			0.00			0
Lower Floor:	Stucco	Complex	0.00	4,284	0	4284
Attic:				0	0	0
Basement:				0	0	0
Roof Type	Good			Total Square Feet		9,827

Interior Features	
Bedroom(s)	5
Bathroom(s)	5.55
Kitchen(s)	1
Fireplace(s)	1
Air Conditioning	No
Central Heating	Yes

	Sq. Feet	Type	Class
Car Stg. 1:	1,395	Attached	6
Car Stg. 2:	669	Attached	6
Gen. Purp.:	0		
Landscape Type:	4		

	Sq. Feet	Covered
Patio 1	0	No
Patio 2	0	No
Deck 1	8,400	No
Deck 2	0	No
Porch	0	
Pool	0	

Value Information	
Area Modifier	
LCM	13%
Trend	
Special Influence	0
Improve Value	3,413,848
Appeal Value	0

Depreciation	
Phys. Depr.	5%
Funct. Obs.	0%
Econ. Obs.	0%

Subdivision: BEAVER SPRINGS SUB	Land Size: 3.696	Land Value: 2,600,000.00
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Notes: _____

SKETCH/AREA TABLE ADDENDUM

Parcel No RPK0422000140

Property Address 114 ADAMS RIB LN

City KETCHUM

County BLAINE

State IDAHO

Zip 83340

Owner WEISEL THOMAS WILSON

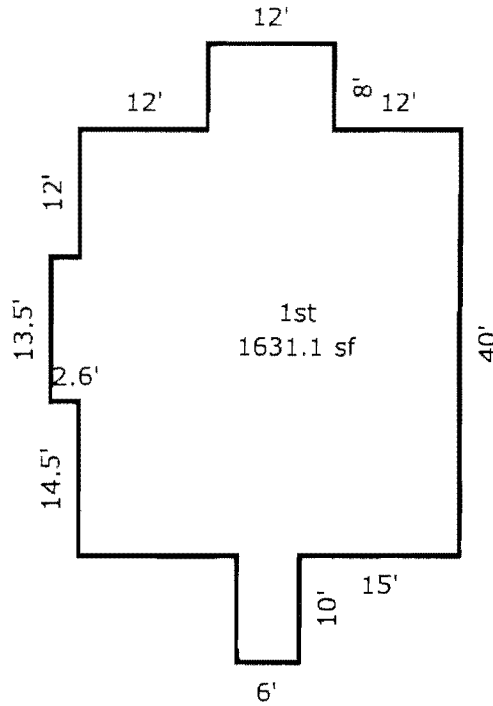
Client 2009 RE APPRAISAL

Client Address BEAVER SPRINGS SUB LOT 14 BLK 1

Appraiser Name JR

Inspection Date 3/2/09

GUEST HOUSE #1



1st
1631.1 sf

Scale: 1 = 18

AREA CALCULATIONS SUMMARY

Code	Description	Factor	Net Size	Perimeter	Net Totals
GLA1	1st	1.00	1631.1	193.2	1631.1

Comment Table 1

Comment Table 2	Comment Table 3
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Net LIVABLE Area	(rounded w/ factors)	1631
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AREA CALCULATIONS

IMPROVEMENTS SKETCH

SUBJECT

RESIDENTIAL CHARACTERISTICS

10/14/2009

3:09 pm

Year 2009	Parcel Number/Suffix RPK04220000140 X	Parcel Status Active	Status Date 4/28/2007	Master Reappr Year 2009
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Property Address 114 ADAMS RIB LN KETCHUM	Section/Township/Range 10/4N/17E	Last Changed 03/26/2009	User TROBISON
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State Cat. Cd.	Appraiser Initials	Physical Inspection	Occupancy Date	Year Built	Last Year Remodeled	Dwelling	Inspection Status	% Owner Occupied	Constr. Class	Market Grade	Design
41	TLR	02/26/2009		1985	1997	SFD	Not Entered	100%	5	Good	Single Level

	Type	Shape	Linear Feet	Sq Feet Finished	Sq Feet Unfinished	Square Feet
Ground Floor:	Stucco	Average	0.00			1631
Upper Floor:			0.00			0
Lower Floor:			0.00	0	0	0
Attic:				0	0	0
Basement:				0	0	0
Roof Type	Good		Total Square Feet			1,631

Interior Features	
Bedroom(s)	2
Bathroom(s)	2.00
Kitchen(s)	1
Fireplace(s)	1
Air Conditioning	No
Central Heating	Yes

	Sq. Feet	Type	Class
Car Stg. 1:	0		
Car Stg. 2:	0		
Gen. Purp.:	0		
Landscape Type:			

	Sq. Feet	Covered
Patio 1	0	No
Patio 2	0	No
Deck 1	0	No
Deck 2	0	No
Porch	0	
Pool	0	

Value Information	
Area Modifier	
LCM	80%
Trend	5%
Special Influence	0
Improve Value	283,412
Appeal Value	0

Depreciation	
Phys. Depr.	11%
Funct. Obs.	0%
Econ. Obs.	0%

Subdivision: BEAVER SPRINGS SUB	Land Size: 3.696	Land Value: 2,600,000.00
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Notes: _____

SKETCH/AREA TABLE ADDENDUM

Parcel No RPK04220000140

SUBJECT

Property Address 114 ADAMS RIB LN

City KETCHUM

County BLAINE

State IDAHO

Zip 83340

Owner WEISEL THOMAS WILSON

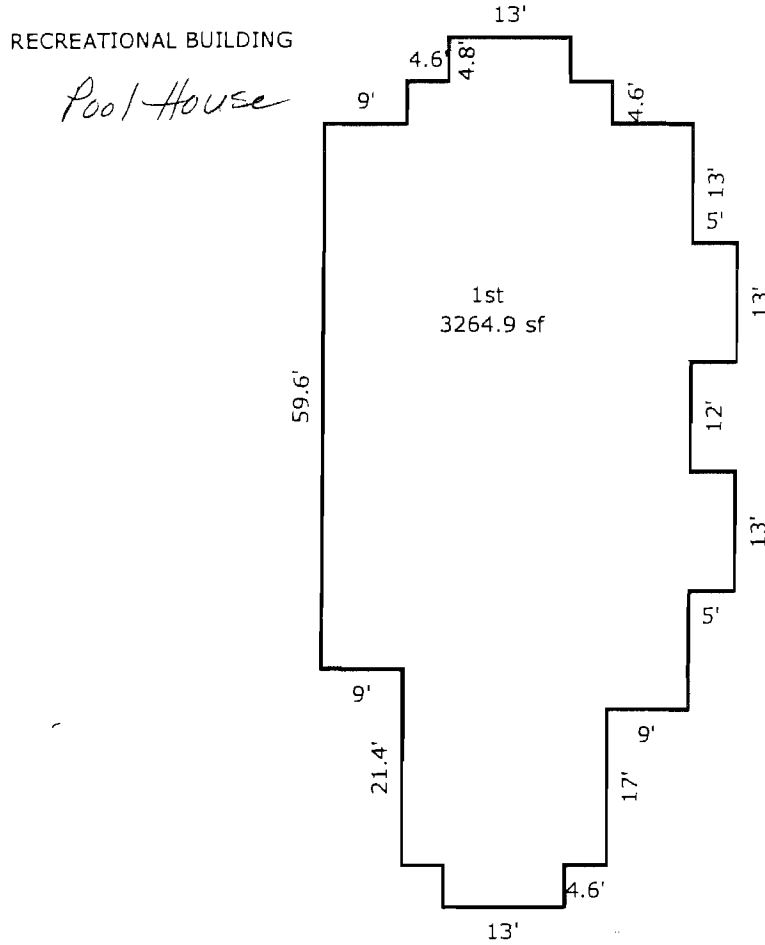
Client 2009 RE APPRAISAL

Client Address BEAVER SPRINGS SUB LOT 14 BLK 1

Appraiser Name JR

Inspection Date 3/2/09

IMPROVEMENTS SKETCH



Scale: 1 = 21

AREA CALCULATIONS

AREA CALCULATIONS SUMMARY

Code	Description	Factor	Net Size	Perimeter	Net Totals
GLA1	1st	1.00	3264.9	290.4	3264.9
Net LIVABLE Area (rounded w/ factors)					3265

Comment Table 1	
Comment Table 2	Comment Table 3

RESIDENTIAL CHARACTERISTICS

10/14/2009
3:09 pm

Year 2009	Parcel Number/Suffix RPK04220000140 P	Parcel Status Active	Status Date 4/28/2007	Master Reappr Year 2009
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Property Address 114 ADAMS RIB LN KETCHUM	Section/Township/Range 10/4N/17E	Last Changed 05/07/2009	User TROBISON
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State	Appraiser	Physical	Occupancy	Year	Last Year	Inspection	% Owner	Constr.	Market	Design
Cat. Cd.	Initials	Inspection	Date	Built	Remodeled	Status	Occupied	Class	Grade	Single Level
30	TLR	02/26/2009		1993	1997	SFD	100%	5	Average	

	Type	Shape	Linear Feet	Sq Feet Finished	Sq Feet Unfinished	Square Feet
Ground Floor:	Stucco	Irregular	0.00			3265
Upper Floor:			0.00			0
Lower Floor:			0.00	0	0	0
Attic:				0	0	0
Basement:				0	0	0
Roof Type	Average			Total Square Feet		3,265

Interior Features	
Bedroom(s)	0
Bathroom(s)	2.00
Kitchen(s)	0
Fireplace(s)	0
Air Conditioning	No
Central Heating	Yes

	Sq. Feet	Type	Class
Car Stg. 1:	0		
Car Stg. 2:	0		
Gen. Purp.:	0		
Landscape Type:			

	Sq. Feet	Covered
Patio 1	0	No
Patio 2	0	No
Deck 1	0	No
Deck 2	0	No
Porch	0	
Pool	450	

Value Information	
Area Modifier	
LCM	80%
Trend	1%
Special Influence	0
Improve Value	506,687
Appeal Value	0

Depreciation	
Phys. Depr.	5%
Funct. Obs.	0%
Econ. Obs.	0%

Subdivision: BEAVER SPRINGS SUB	Land Size: 3.696	Land Value: 2,600,000.00
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Notes: _____

SKETCH/AREA TABLE ADDENDUM

Parcel No RPK04220000140

SUBJECT

Property Address 114 ADAMS RIB LN

City KETCHUM

County BLAINE

State IDAHO

Zip 83340

Owner WEISEL THOMAS WILSON

Client 2009 RE APPRAISAL

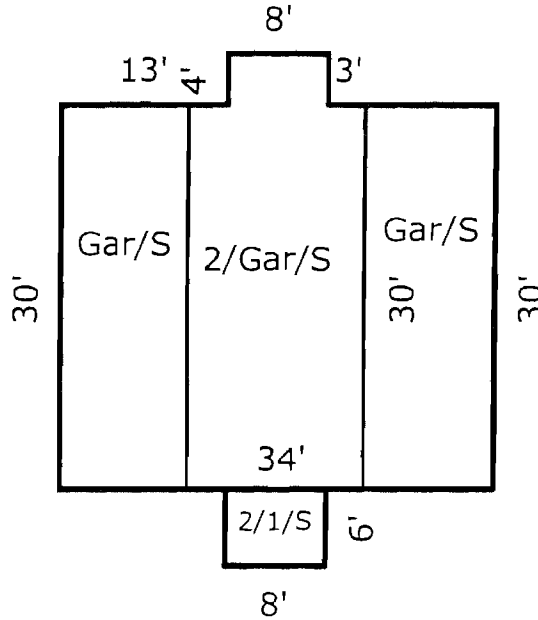
Client Address BEAVER SPRINGS SUB LOT 14 BLK 1

Appraiser Name JR

Inspection Date 3/2/09

PILOT HOUSE & GARAGE

Guest #2



1st
48.0 sf
2nd
500.0 sf
Garage
1052.0 sf

IMPROVEMENTS SKETCH

Scale: 1 = 15

AREA CALCULATIONS SUMMARY

Code	Description	Factor	Net Size	Perimeter	Net Totals
GLA1	1st	1.00	48.0	28.0	48.0
GLA2	2nd	1.00	500.0	108.0	500.0
GAR1	Garage	1.00	1052.0	136.0	1052.0

Comment Table 1

Comment Table 2

Comment Table 3

Net LIVABLE Area

(rounded w/ factors)

548

RESIDENTIAL CHARACTERISTICS

10/14/2009 167
3:09 pm

Year 2009	Parcel Number/Suffix RPK04220000140 Y	Parcel Status Active	Status Date 4/28/2007	Master Reappr Year 2009
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Property Address 114 ADAMS RIB LN KETCHUM	Section/Township/Range 10/4N/17E	Last Changed 03/26/2009	User TROBISON
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State Cat. Cd.	Appraiser Initials	Physical Inspection	Occupancy Date	Year Built	Last Year Remodeled	Dwelling	Inspection Status	% Owner Occupied	Constr. Class	Market Grade	Design
41	TLR	02/26/2009		1985	1997	SFD	Not Entered	100%	4	Average	

	Type	Shape	Linear Feet	Sq Feet Finished	Sq Feet Unfinished	Square Feet
Ground Floor:	Stucco	Simple	0.00			48
Upper Floor:	Stucco	Simple	0.00			500
Lower Floor:			0.00	0	0	0
Attic:				0	0	0
Basement:				0	0	0
Roof Type	Average			Total Square Feet		548

Interior Features	
Bedroom(s)	1
Bathroom(s)	1.00
Kitchen(s)	1
Fireplace(s)	0
Air Conditioning	No
Central Heating	Yes

	Sq. Feet	Type	Class
Car Stg. 1:	1,052	Attached	4
Car Stg. 2:	0		
Gen. Purp.:	0		
Landscape Type:			

	Sq. Feet	Covered
Patio 1	0	No
Patio 2	0	No
Deck 1	0	No
Deck 2	0	No
Porch	0	
Pool	0	

Value Information	
Area Modifier	
LCM	39%
Trend	32%
Special Influence	0
Improve Value	150,175
Appeal Value	0

Depreciation	
Phys. Depr.	11%
Funct. Obs.	0%
Econ. Obs.	0%

Subdivision: BEAVER SPRINGS SUB	Land Size: 3.696	Land Value: 2,600,000.00
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Notes: _____

RESIDENTIAL CHARACTERISTICS

10/14/2009 7:29
3:10 pm

Year 2009	Parcel Number/Suffix RPK04220000150 1	Parcel Status Active	Status Date 4/28/2007	Master Reappr Year 2009							
Property Address 113 BOULDER VIEW LN KETCHUM			Section/Township/Range 10/4N/17E	Last Changed 03/27/2009	User TROBISON						
State Cat. Cd. 41	Appraiser Initials TLR	Physical Inspection 02/26/2009	Occupancy Date	Year Built 1987	Last Year Remodeled 0	Dwelling SFD	Inspection Status Not Entered	% Owner Occupied 100%	Constr. Class 8	Market Grade Good	Design Single Level

	Type	Shape	Linear Feet	Sq Feet Finished	Sq Feet Unfinished	Square Feet	Interior Features	
Ground Floor:	Siding	Complex	0.00			6444	Bedroom(s)	6
Upper Floor:			0.00			0	Bathroom(s)	6.50
Lower Floor:			0.00	0	0	0	Kitchen(s)	2
Attic:				0	0	0	Fireplace(s)	4
Basement:				472	0	472	Air Conditioning	Yes
Roof Type	Good			Total Square Feet		6,916	Central Heating	Yes

Sq. Feet	Type	Class	Sq. Feet	Covered	Value Information		Depreciation	
Car Stg. 1:	1,080	Attached	6		Area Modifier		Phys. Depr.	15%
Car Stg. 2:	0				LCM	13%	Funct. Obs.	0%
Gen. Purp.:	0				Trend		Econ. Obs.	0%
Landscape Type:	4				Special Influence	0		
					Improve Value	2,685,086		
					Appeal Value	0		
Patio 1	0	No						
Patio 2	0	No						
Deck 1	4,430	No						
Deck 2	0	No						
Porch	724							
Pool	0							

Subdivision: BEAVER SPRINGS SUB	Land Size: 3.511	Land Value: 3,000,000.00
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Notes: _____

SKETCH/AREA TABLE ADDENDUM

Parcel No RPK04220000150

Property Address 113 BOULDER VIEW LN

City KETCHUM County BLAINE State IDAHO Zip 83340

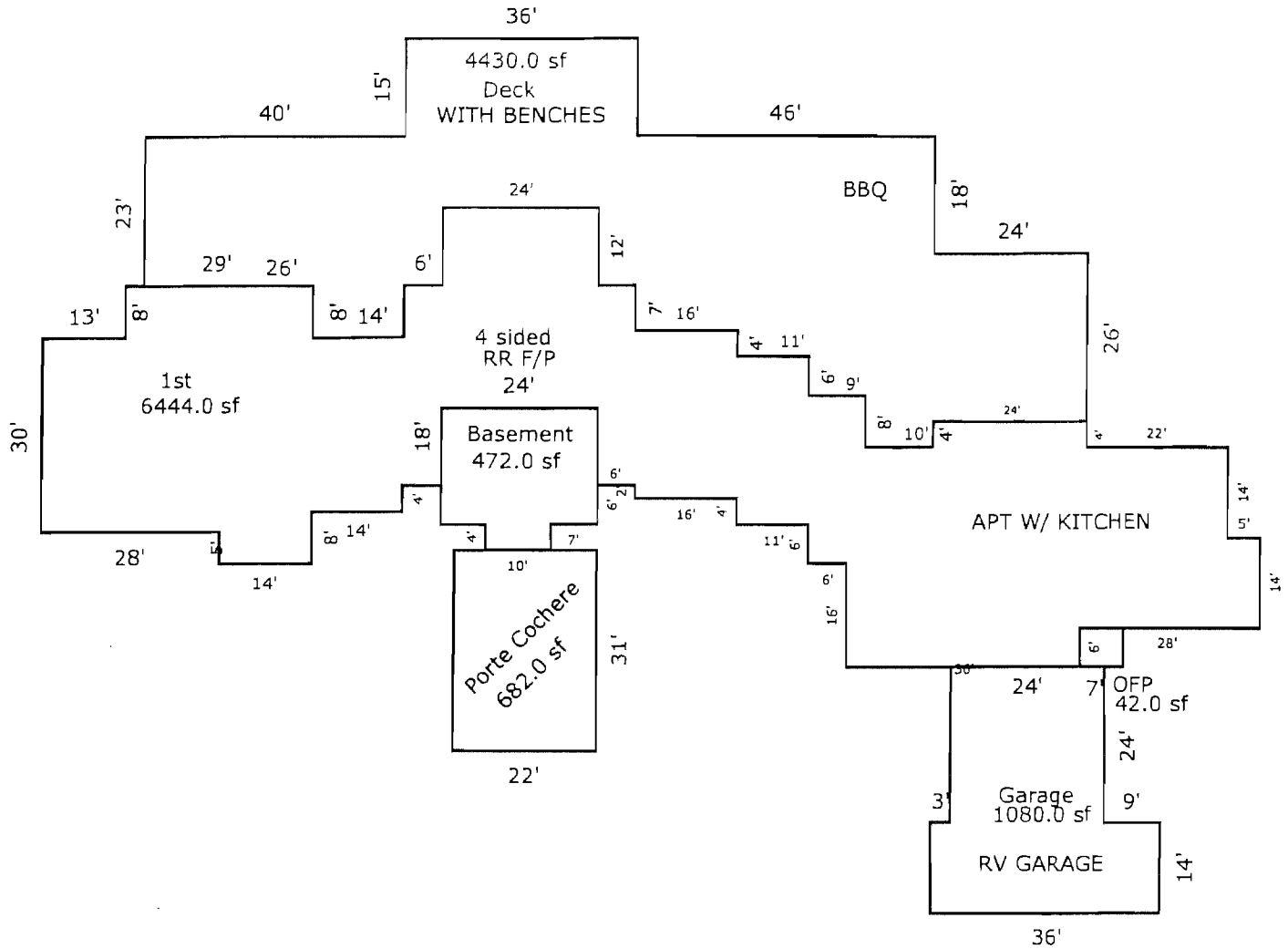
Owner SINEGAL FAMILY LIVING TRUST

Client 2009 RE APPRAISAL Client Address BEAVER SPRINGS SUB LOT 15 BLK 1

Appraiser Name JR Inspection Date 3/2/09

SUBJECT

IMPROVEMENTS SKETCH



Scale: 1 = 27

AREA CALCULATIONS

AREA CALCULATIONS SUMMARY

Code	Description	Factor	Net Size	Perimeter	Net Totals
GLA1	1st	1.00	6444.0	588.0	6444.0
BSMT1	Basement	1.00	472.0	92.0	472.0
GAR1	Garage	1.00	1080.0	148.0	1080.0
P/P1	OFF	1.00	42.0	26.0	42.0
P/P3	Porte Cochere	1.00	682.0	106.0	682.0
OTH2	Deck	1.00	4430.0	458.0	4430.0

Comment Table 1

Comment Table 2 | Comment Table 3

Net LIVABLE Area (rounded w/ factors) 6444

SKETCH/AREA TABLE ADDENDUM

Parcel No RPK04220000160

File No K04220000160

SUBJECT

Property Address 109 BOULDER VIEW LANE

City KETCHUM

County BLAINE

State ID

Zip 83340

Owner SOKOLOFF KIRIL

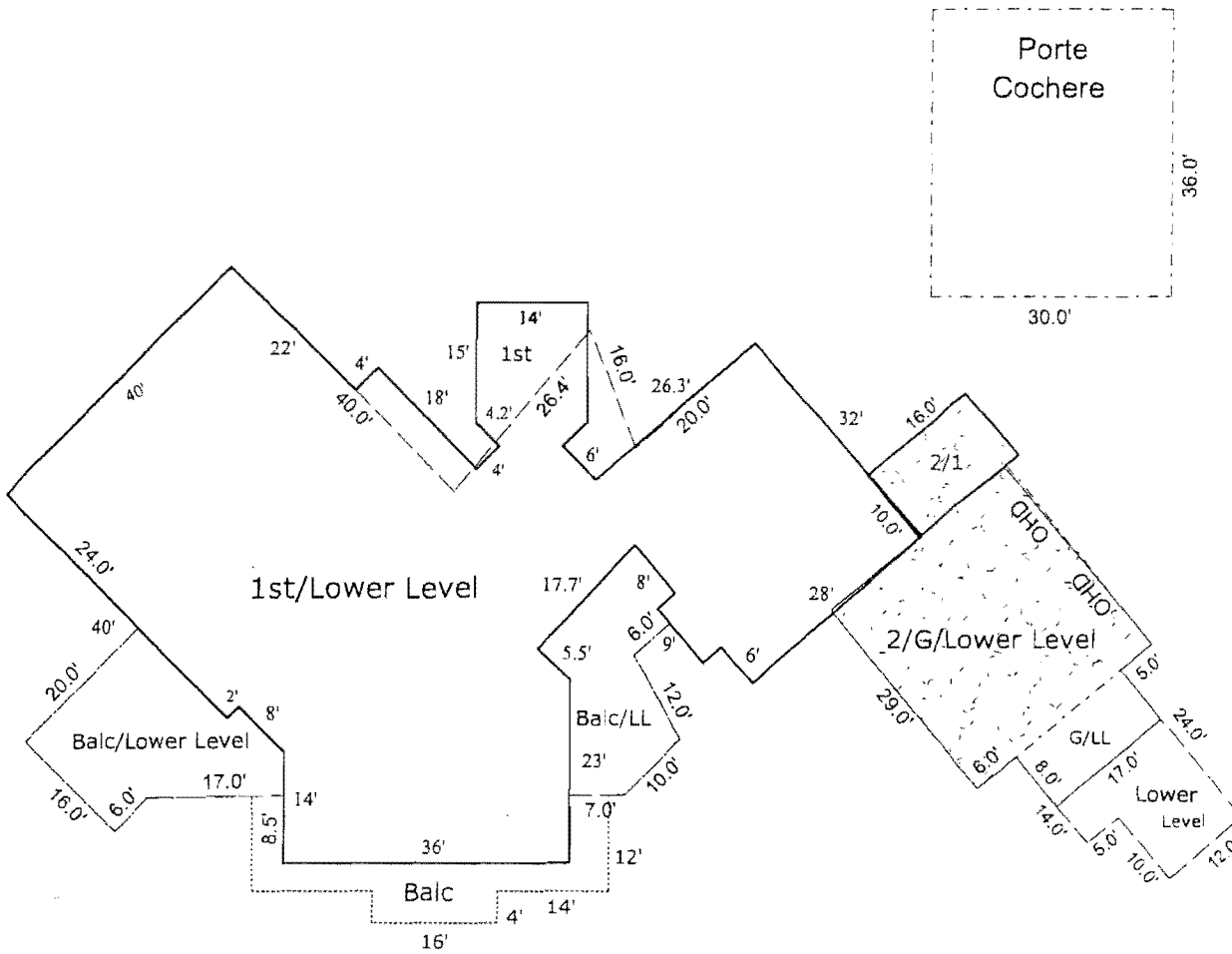
Client 2009 RE APPRAISAL

Client Address Beaver Springs Lt 16

Appraiser Name JR 03/24/09

Inspection Date Built 1982 Rem 1987,1996

IMPROVEMENTS SKETCH



Scale: 1 = 24

AREA CALCULATIONS

AREA CALCULATIONS SUMMARY

Code	Description	Factor	Net Size	Perimeter	Net Totals
GLA1	First Floor	1.00	4452.5	407.9	
	First Floor-1996 Add	1.00	160.0	52.0	4612.5
GLA2	Second Flr-1996 Add	1.00	977.8	138.4	977.8
BSMT	Basement-1996 Add	1.00	1170.0	162.0	
	Basement	1.00	5039.9	389.0	6209.9
GAR	Garage-1996 Add	1.00	948.0	130.0	948.0
P/P	Porte Cochere	1.00	1080.0	132.0	
	Balc	1.00	1049.7	297.5	2129.7
Net LIVABLE Area (rounded w/ factors)					5590

RESIDENTIAL CHARACTERISTICS

10/14/2009
3:11 pm

Year 2009	Parcel Number/Suffix RPK04220000160 M	Parcel Status Active	Status Date 4/28/2007	Master Reappr Year 2009	
Property Address 109 BOULDER VIEW LN KETCHUM			Section/Township/Range 10/4N/17E	Last Changed 03/27/2009	User TROBISON

State Cat. Cd.	Appraiser Initials	Physical Inspection	Occupancy Date	Year Built	Last Year Remodeled	Dwelling	Inspection Status	% Owner Occupied	Constr. Class	Market Grade	Design
41	TLR	02/26/2009		1982	1996	SFD	Not Entered	100%	8	Average	Two Story

	Type	Shape	Linear Feet	Sq Feet Finished	Sq Feet Unfinished	Square Feet
Ground Floor:	Siding	Complex	0.00			4612
Upper Floor:	Siding	Simple	0.00			978
Lower Floor:	Siding	Complex	0.00	6,209	0	6209
Attic:				0	0	0
Basement:				0	0	0
Roof Type	Good			Total Square Feet		11,799

Interior Features	
Bedroom(s)	6
Bathroom(s)	8.50
Kitchen(s)	2
Fireplace(s)	3
Air Conditioning	Yes
Central Heating	Yes

	Sq. Feet	Type	Class
Car Stg. 1:	948	Attached	6
Car Stg. 2:	432	Detached	5
Gen. Purp.:	0		N
Landscape Type:	6		

	Sq. Feet	Covered
Patio 1	0	No
Patio 2	0	No
Deck 1	1,050	No
Deck 2	0	No
Porch	1,080	
Pool	0	

Value Information	
Area Modifier	
LCM	13%
Trend	
Special Influence	0
Improve Value	3,227,449
Appeal Value	0

Depreciation	
Phys. Depr.	10%
Funct. Obs.	0%
Econ. Obs.	0%

Subdivision: BEAVER SPRINGS SUB	Land Size: 4.024	Land Value: 3,000,000.00
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Notes: _____

SKETCH/AREA TABLE ADDENDUM

Parcel No RPK04220000160

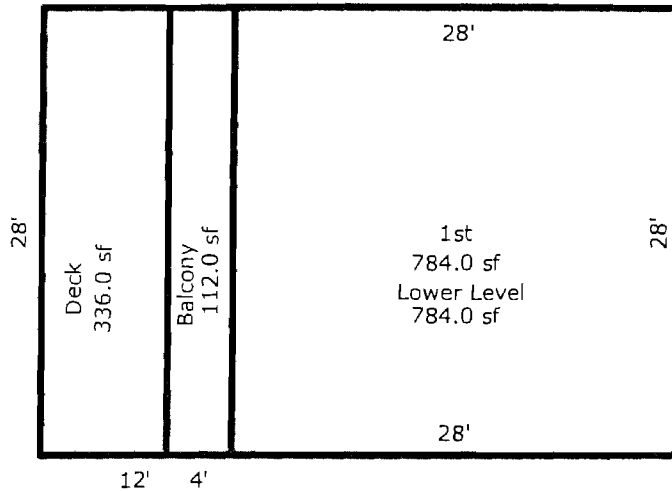
File No K04220000160

SUBJECT

Property Address 109 BOULDER VIEW LANE
City KETCHUM County BLAINE State ID Zip 83340
Owner SOKOLOFF KIRIL
Client 2009 RE APPRAISAL Client Address Beaver Springs Lt 16
Appraiser Name JR 03/24/09 Inspection Date Built 1982 Rem 1987,1996

IMPROVEMENTS SKETCH

GUEST/CARETAKERS



Scale: 1 = 12

AREA CALCULATIONS

AREA CALCULATIONS SUMMARY

Code	Description	Factor	Net Size	Perimeter	Net Totals
GLA1	1st	1.00	784.0	112.0	784.0
BSMT2	Lower Level	1.00	784.0	112.0	784.0
OTH2	Deck	1.00	336.0	80.0	336.0
OTH6	Balcony	1.00	112.0	64.0	112.0

Net LIVABLE Area (rounded w/ factors) 784

RESIDENTIAL CHARACTERISTICS

10/14/2007 7:11 pm

Year 2009	Parcel Number/Suffix RPK04220000160 X	Parcel Status Active	Status Date 4/28/2007	Master Reappr Year 2009
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Property Address 109 BOULDER VIEW LN KETCHUM	Section/Township/Range 10/4N/17E	Last Changed 03/27/2009	User TROBISON
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State Cat. Cd.	Appraiser Initials	Physical Inspection	Occupancy Date	Year Built	Last Year Remodeled	Dwelling	Inspection Status	% Owner Occupied	Constr. Class	Market Grade	Design
41	TLR	02/26/2009		1982	1987	SFD	Not Entered	100%	5	Average	Two Story

	Type	Shape	Linear Feet	Sq Feet Finished	Sq Feet Unfinished	Square Feet
Ground Floor:	Siding	Simple	0.00			784
Upper Floor:			0.00			0
Lower Floor:	Siding	Simple	0.00	784	0	784
Attic:				0	0	0
Basement:				0	0	0
Roof Type	Average		Total Square Feet			1,568

Interior Features	
Bedroom(s)	2
Bathroom(s)	2.00
Kitchen(s)	2
Fireplace(s)	0
Air Conditioning	Yes
Central Heating	Yes

	Sq. Feet	Type	Class
Car Stg. 1:	0		
Car Stg. 2:	0		
Gen. Purp.:	0		
Landscape Type:			

	Sq. Feet	Covered
Patio 1	0	No
Patio 2	0	No
Deck 1	112	No
Deck 2	336	No
Porch	0	
Pool	0	

Value Information	
Area Modifier	
LCM	80%
Trend	1%
Special Influence	0
Improve Value	249,600
Appeal Value	0

Depreciation	
Phys. Depr.	16%
Funct. Obs.	0%
Econ. Obs.	0%

Subdivision: BEAVER SPRINGS SUB	Land Size: 4.024	Land Value: 3,000,000.00
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Notes: _____

SITE/AREA TABLE ADDENDUM

Parcel No RPK04220000160

File No K04220000160

Property Address 109 BOULDER VIEW LANE

City KETCHUM

County BLAINE

State ID

Zip 83340

Owner SOKOLOFF KIRIL

Client 2009 RE APPRAISAL

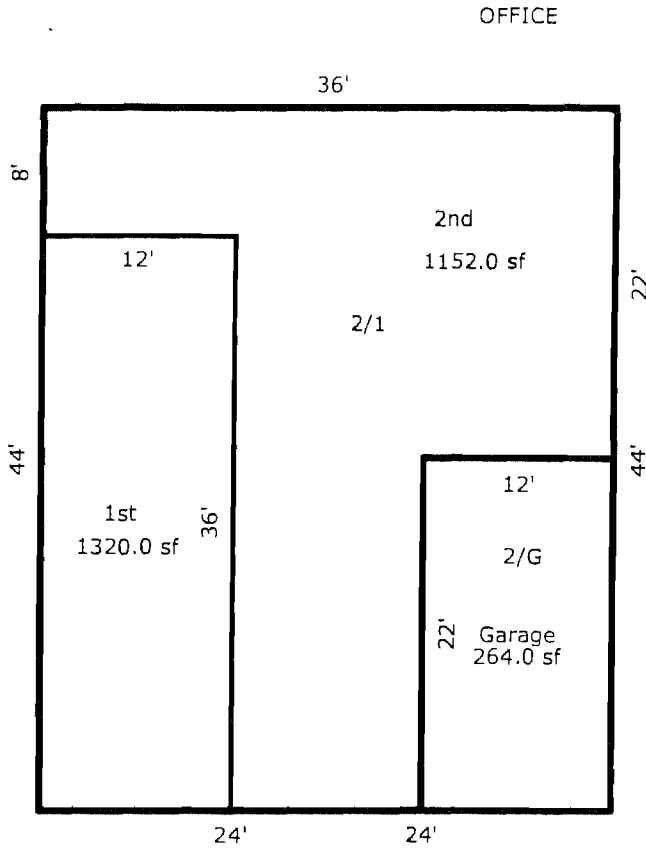
Client Address Beaver Springs Lt 16

Appraiser Name JR 03/24/09

Inspection Date Built 1982 Rem 1987,1996

SUBJECT

IMPROVEMENTS SKETCH



Scale: 1 = 12

AREA CALCULATIONS SUMMARY

Code	Description	Factor	Net Size	Perimeter	Net Totals
GLA1	1st	1.00	1320.0	160.0	1320.0
GLA2	2nd	1.00	1152.0	160.0	1152.0
GAR1	Garage	1.00	264.0	68.0	264.0

Net LIVABLE Area (rounded w/ factors) 2472

AREA CALCULATIONS

RESIDENTIAL CHARACTERISTICS

10/14/2007 7:99
3:11 pm

Year 2009	Parcel Number/Suffix RPK04220000160 O	Parcel Status Active	Status Date 4/28/2007	Master Reappr Year 2009
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Property Address 109 BOULDER VIEW LN KETCHUM	Section/Township/Range 10/4N/17E	Last Changed 03/27/2009	User TROBISON
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State Cat. Cd.	Appraiser Initials	Physical Inspection	Occupancy Date	Year Built	Last Year Remodeled	Dwelling	Inspection Status	% Owner Occupied	Constr. Class	Market Grade	Design
41	TLR	02/26/2009		1982	1987	SFD	Not Entered	100%	4	Average	Two Story

	Type	Shape	Linear Feet	Sq Feet Finished	Sq Feet Unfinished	Square Feet
Ground Floor:	Siding	Simple	0.00			1320
Upper Floor:	Siding	Simple	0.00			1152
Lower Floor:			0.00	0	0	0
Attic:				0	0	0
Basement:				0	0	0
Roof Type	Average		Total Square Feet			2,472

Interior Features	
Bedroom(s)	0
Bathroom(s)	1.00
Kitchen(s)	0
Fireplace(s)	0
Air Conditioning	Yes
Central Heating	Yes

	Sq. Feet	Type	Class
Car Stg. 1:	264	Attached	4
Car Stg. 2:	0		
Gen. Purp.:	0		
Landscape Type:			

	Sq. Feet	Covered
Patio 1	0	No
Patio 2	0	No
Deck 1	0	No
Deck 2	0	No
Porch	0	
Pool	0	

Value Information	
Area Modifier	
LCM	39%
Trend	32%
Special Influence	0
Improve Value	228,567
Appeal Value	0

Depreciation	
Phys. Depr.	16%
Funct. Obs.	0%
Econ. Obs.	0%

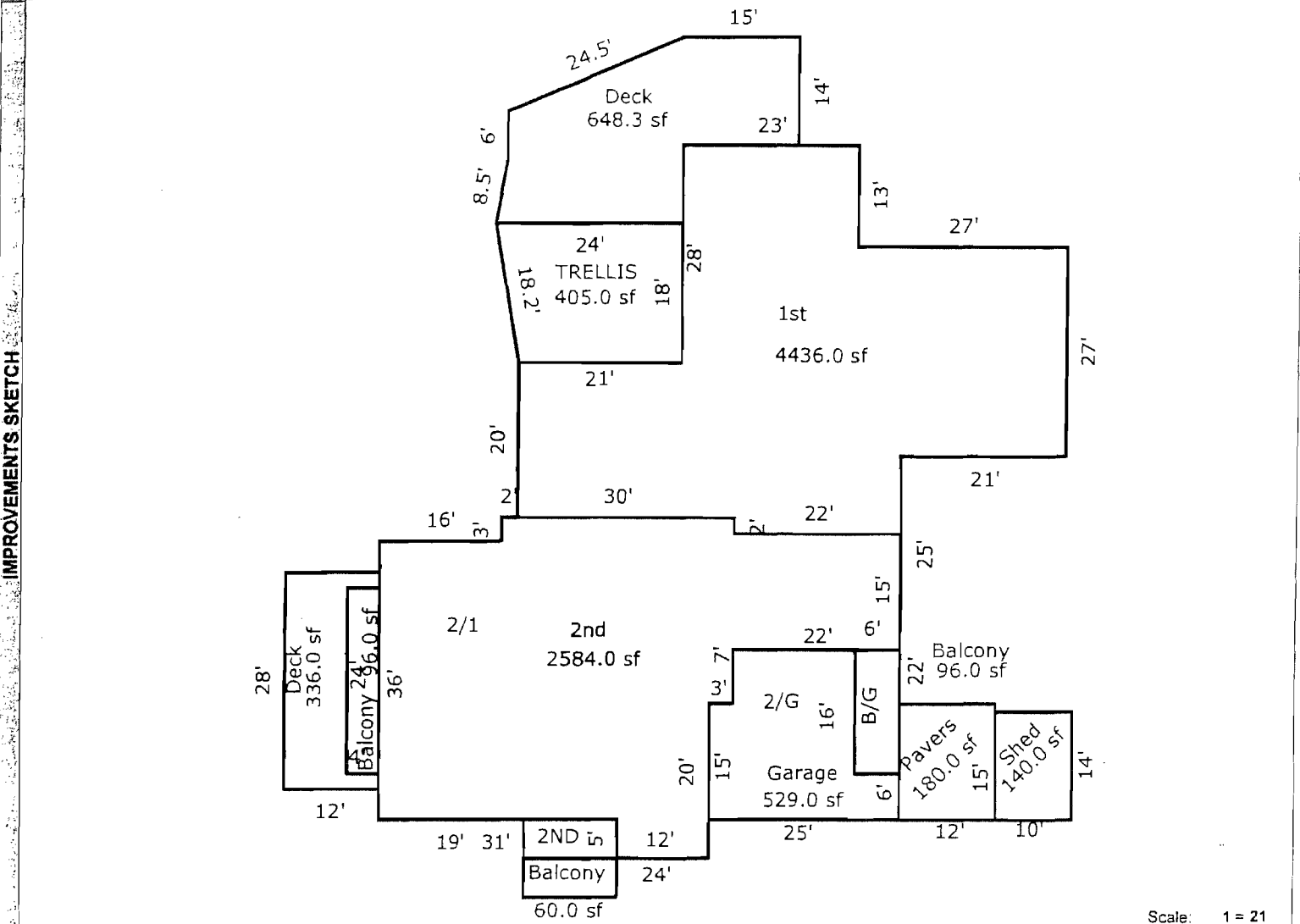
Subdivision: BEAVER SPRINGS SUB	Land Size: 4.024	Land Value: 3,000,000.00
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Notes: _____

SKETCH/AREA TABLE ADDENDUM

Parcel No RPK0422000018A

SUBJECT	Property Address	102 SHEEP MEADOW LN						
	City	KETCHUM	County	BLAINE	State	ID	Zip	83340
	Owner	BRONFMAN EDGAR						
	Client	2009 RE APPRAISAL		Client Address	BEAVER SPRINGS SUB AM LOT 18A BLK 1			
	Appraiser Name	JR		Inspection Date	3/3/09			



AREA CALCULATIONS SUMMARY						Comment Table 1	
Code	Description	Factor	Net Size	Perimeter	Net Totals		
GLA1	1st	1.00	4436.0	362.0	4436.0		
GLA2	2nd	1.00	2584.0	236.0	2584.0		
GAR1	Garage	1.00	529.0	94.0	529.0		
P/P1	TRELLIS	1.00	405.0	81.2	405.0		
OTH2	Deck	1.00	336.0	80.0			
OTH4	Deck	1.00	648.3	117.0	984.3		
OTH5	Shed	1.00	140.0	48.0	140.0		
OTH5	Pavers	1.00	180.0	54.0	180.0		
OTH6	Balcony	1.00	96.0	56.0			
	Balcony	1.00	96.0	44.0			
	Balcony	1.00	60.0	34.0	252.0		
Net LIVABLE Area (rounded w/ factors)					7020	Comment Table 2 Comment Table 3	

RESIDENTIAL CHARACTERISTICS

10/14/2009

3:12 pm

Year 2009	Parcel Number/Suffix RPK0422000018A M	Parcel Status Active	Status Date 4/28/2007	Master Reappr Year 2009
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Property Address 102 SHEEP MEADOW LN KETCHUM	Section/Township/Range 10/4N/17E	Last Changed 03/30/2009	User TROBISON
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State Cat. Cd.	Appraiser Initials	Physical Inspection	Occupancy Date	Year Built	Last Year Remodeled	Dwelling	Inspection Status	% Owner Occupied	Constr. Class	Market Grade	Design
41	TLR	02/27/2009		1985	2002	SFD	Not Entered	100%	6	Good	Two Story

	Type	Shape	Linear Feet	Sq Feet Finished	Sq Feet Unfinished	Square Feet
Ground Floor:	Stucco	Complex	0.00			4436
Upper Floor:	Stucco	Complex	0.00			2584
Lower Floor:			0.00	0	0	0
Attic:				0	0	0
Basement:				0	0	0
Roof Type	Good			Total Square Feet		7,020

Interior Features	
Bedroom(s)	7
Bathroom(s)	7.50
Kitchen(s)	2
Fireplace(s)	4
Air Conditioning	No
Central Heating	Yes

	Sq. Feet	Type	Class
Car Stg. 1:	529	Attached	5
Car Stg. 2:	0		
Gen. Purp.:	140		8
Landscape Type:	6		

	Sq. Feet	Covered
Patio 1	180	No
Patio 2	405	No
Deck 1	984	No
Deck 2	252	No
Porch	405	
Pool	0	

Value Information	
Area Modifier	
LCM	70%
Trend	
Special Influence	0
Improve Value	1,591,416
Appeal Value	0

Depreciation	
Phys. Depr.	10%
Funct. Obs.	0%
Econ. Obs.	0%

Subdivision: BEAVER SPRINGS SUB	Land Size: 3.157	Land Value: 2,350,000.00
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Notes: _____

SKETCH/AREA TABLE ADDENDUM

Parcel No RPK0422000018A

Property Address 102 SHEEP MEADOW LN

City KETCHUM

County BLAINE

State ID

Zip 83340

Owner BRONFMAN EDGAR

Client 2009 RE APPRAISAL

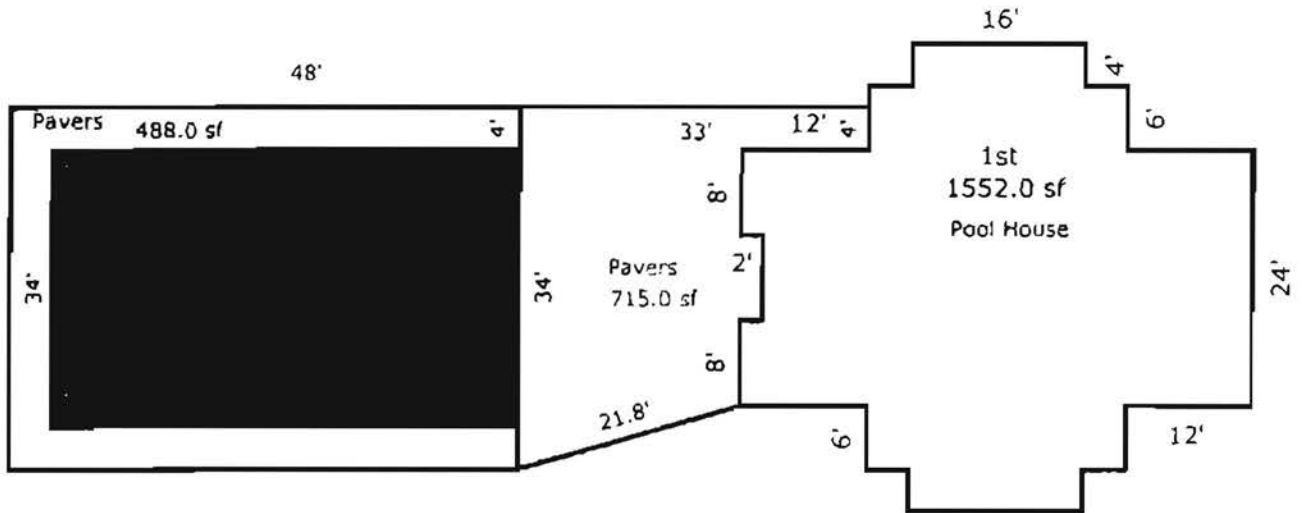
Client Address BEAVER SPRINGS SUB AM LOT 18A BLK 1

Appraiser Name JR

Inspection Date 3/3/09

SUBJECT

IMPROVEMENTS SKETCH



Scale 1 = 18

AREA CALCULATIONS

AREA CALCULATIONS SUMMARY

Code	Description	Factor	Net Size	Perimeter	Net Totals
GLA1	1st	1.00	1552.0	188.0	1552.0
OTH5	Pavers	1.00	715.0	132.8	
	Pavers	1.00	488.0	252.0	1203.0
OTH8	Pool	1.00	1144.0	140.0	1144.0

Comment Table 1	
Comment Table 2	Comment Table 3

Net LIVABLE Area (rounded w/ factors) 1552

RESIDENTIAL CHARACTERISTICS

10/14/2009
3:12 pm

Year 2009	Parcel Number/Suffix RPK0422000018A P	Parcel Status Active	Status Date 4/28/2007	Master Reappr Year 2009
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Property Address 102 SHEEP MEADOW LN KETCHUM	Section/Township/Range 10/4N/17E	Last Changed 05/07/2009	User TROBISON
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State Cat. Cd.	Appraiser Initials	Physical Inspection	Occupancy Date	Year Built	Last Year Remodeled	Dwelling	Inspection Status	% Owner Occupied	Constr. Class	Market Grade	Design
30	TLR	02/27/2009		1985	0	SFD	Not Entered	100%	4	Average	Single Level

	Type	Shape	Linear Feet	Sq Feet Finished	Sq Feet Unfinished	Square Feet
Ground Floor:	Stucco	Average	0.00			1552
Upper Floor:			0.00			0
Lower Floor:			0.00	0	0	0
Attic:				0	0	0
Basement:				0	0	0
Roof Type	Average			Total Square Feet		1,552

Interior Features	
Bedroom(s)	0
Bathroom(s)	1.00
Kitchen(s)	0
Fireplace(s)	0
Air Conditioning	No
Central Heating	Yes

	Sq. Feet	Type	Class
Car Stg. 1:	0		
Car Stg. 2:	0		
Gen. Purp.:	0		
Landscape Type:			

	Sq. Feet	Covered
Patio 1	1,203	No
Patio 2	0	No
Deck 1	0	No
Deck 2	0	No
Porch	0	
Pool	1,144	

Value Information	
Area Modifier	
LCM	39%
Trend	32%
Special Influence	0
Improve Value	230,269
Appeal Value	0

Depreciation	
Phys. Depr.	16%
Funct. Obs.	0%
Econ. Obs.	0%

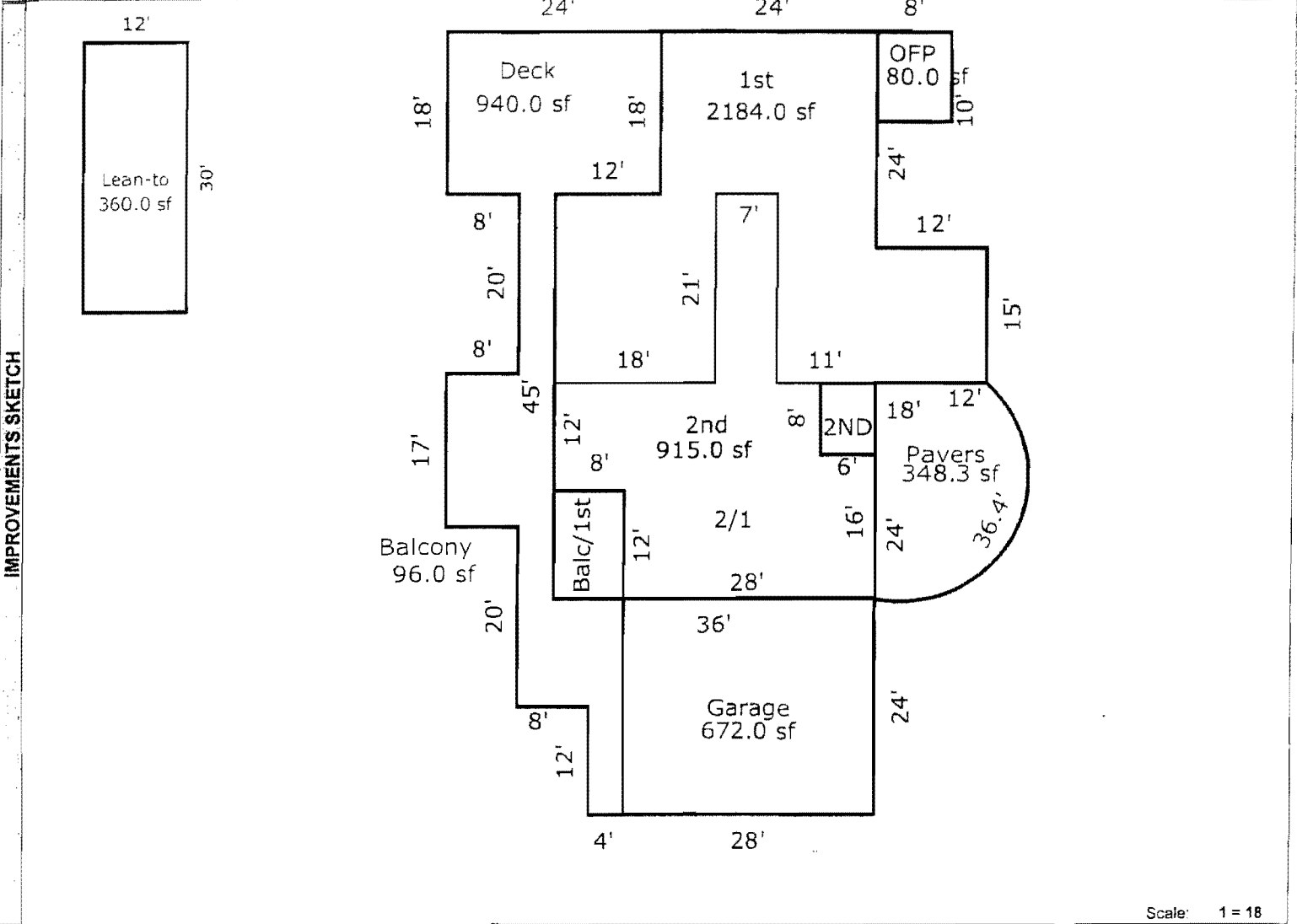
Subdivision: BEAVER SPRINGS SUB	Land Size: 3.157	Land Value: 2,350,000.00
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Notes: _____

SKETCH/AREA TABLE ADDENDUM

Parcel No RPK04220000190

SUBJECT	Property Address 106 SHEEP MEADOW LN			
	City KETCHUM	County BLAINE	State ID	Zip 83340
	Owner SARCHETT ROBERT & LOR			
	Client 2009 RE APPRAISAL		Client Address BEAVER SPRINGS SUB LOT 19 BLK 1	
	Appraiser Name JR		Inspection Date 3/3/09	



AREA CALCULATIONS	AREA CALCULATIONS SUMMARY					Comment Table 1	
	Code	Description	Factor	Net Size	Perimeter	Net Totals	
	GLA1	1st	1.00	2184.0	234.0	2184.0	
	GLA2	2nd	1.00	915.0	162.0	915.0	
	GAR1	Garage	1.00	672.0	104.0	672.0	
	P/P1	OFF	1.00	80.0	36.0	80.0	
	OTH2	Deck	1.00	940.0	254.0	940.0	
	OTH5	Pavers	1.00	348.3	72.4	348.3	
	OTH6	Balcony	1.00	96.0	40.0	96.0	
	OTH14	Lean-to	1.00	360.0	84.0	360.0	
	Net LIVABLE Area (rounded w/ factors)					3099	
	Comment Table 2		Comment Table 3				

RESIDENTIAL CHARACTERISTICS

10/14/2009

3:12 pm

Year 2009	Parcel Number/Suffix RPK04220000190 1	Parcel Status Active	Status Date 4/28/2007	Master Reappr Year 2009
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Property Address 106 SHEEP MEADOW LN KETCHUM	Section/Township/Range 10/4N/17E	Last Changed 03/30/2009	User TROBISON
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State	Appraiser	Physical	Occupancy	Year	Last Year	Inspection	% Owner	Constr.	Market	Design
Cat. Cd.	Initials	Inspection	Date	Built	Remodeled	Status	Occupied	Class	Grade	
41	TLR	02/27/2009		1979	0	Not Entered	100%	4	Average	Two Story

	Type	Shape	Linear Feet	Sq Feet Finished	Sq Feet Unfinished	Square Feet
Ground Floor:	Siding	Average	0.00			2184
Upper Floor:	Siding	Average	0.00			915
Lower Floor:			0.00	0	0	0
Attic:				0	0	0
Basement:				0	0	0
Roof Type	Average			Total Square Feet		3,099

Interior Features	
Bedroom(s)	4
Bathroom(s)	3.00
Kitchen(s)	1
Fireplace(s)	1
Air Conditioning	No
Central Heating	Yes

	Sq. Feet	Type	Class
Car Stg. 1:	672	Attached	4
Car Stg. 2:	0		
Gen. Purp.:	360		3
Landscape Type:	0		

	Sq. Feet	Covered
Patio 1	348	No
Patio 2	0	No
Deck 1	940	No
Deck 2	96	No
Porch	80	
Pool	0	

Value Information	
Area Modifier	
LCM	39%
Trend	32%
Special Influence	0
Improve Value	358,314
Appeal Value	0

Depreciation	
Phys. Depr.	25%
Funct. Obs.	0%
Econ. Obs.	0%

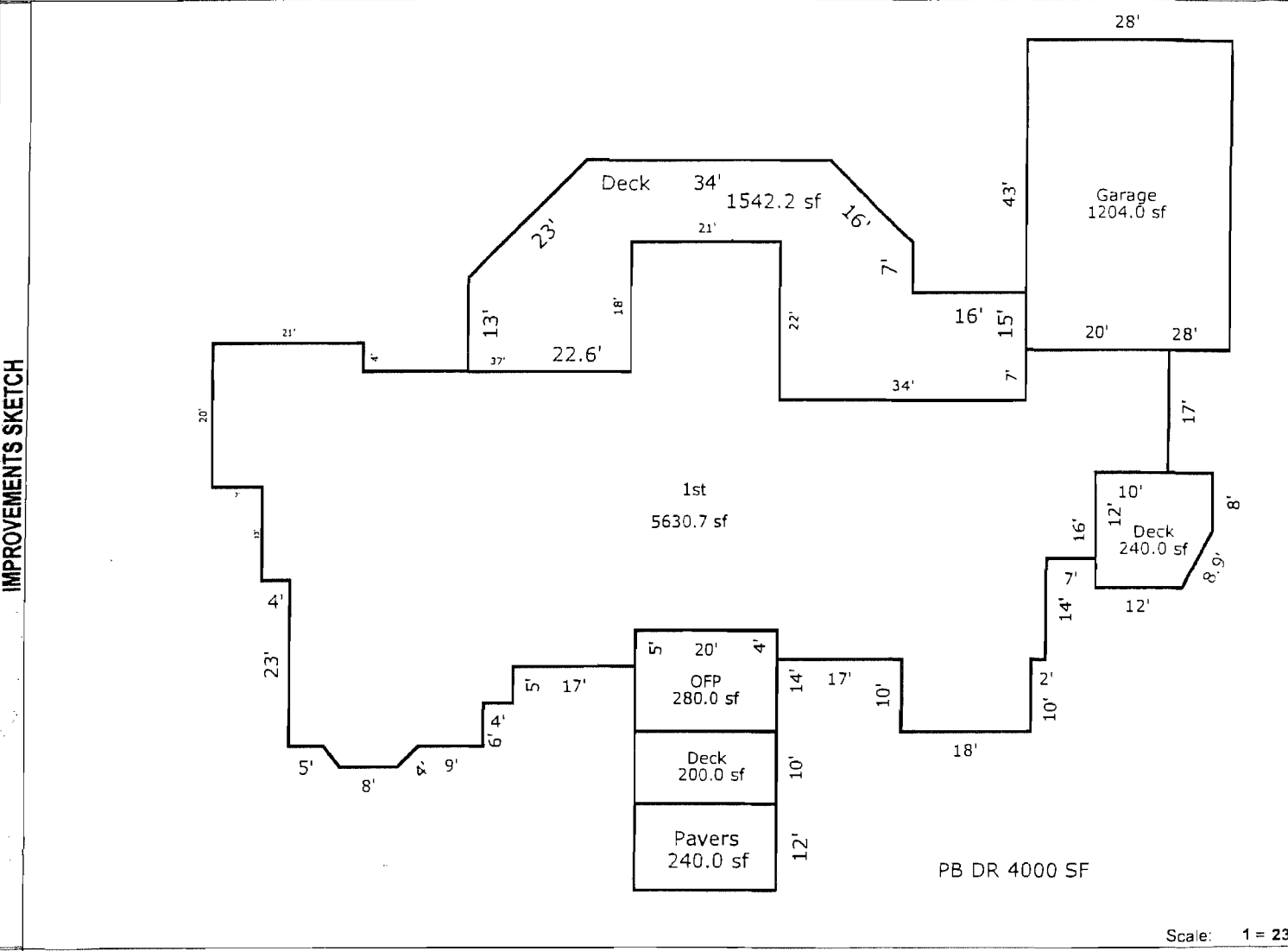
Subdivision: BEAVER SPRINGS SUB	Land Size: 2.180	Land Value: 2,100,000.00
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Notes: _____

SKETCH/AREA TABLE ADDENDUM

Parcel No RPK0422000020A

SUBJECT	Property Address 110 SHEEP MEADOW LN			
	City KETCHUM	County BLAINE	State IDAHO	Zip 83340
	Owner NORMAN HASCOE MARITAL TRUST			
	Client 2009 RE APPRAISAL	Client Address BEAVER SPRINGS SUB AM LOT 20A BLK 1		
	Appraiser Name JR	Inspection Date 3/3/09	GUEST HOUSE	



AREA CALCULATIONS	AREA CALCULATIONS SUMMARY					
	Code	Description	Factor	Net Size	Perimeter	Net Totals
	GLA1	1st	1.00	5630.7	458.6	5630.7
	GAR1	Garage	1.00	1204.0	142.0	1204.0
	P/P1	OFP	1.00	280.0	68.0	280.0
OTH2	Deck	1.00	240.0	60.9		
	Deck	1.00	200.0	60.0		
	Deck	1.00	1542.2	241.6	1982.2	
OTH5	Pavers	1.00	240.0	64.0	240.0	
Net LIVABLE Area (rounded w/ factors) 5631						

Comment Table 1

Comment Table 2

RESIDENTIAL CHARACTERISTICS

10/14/2009
3:13 pm

Year 2009	Parcel Number/Suffix RPK0422000020A M	Parcel Status Active	Status Date 4/28/2007	Master Reappr Year 2009	
Property Address 110 SHEEP MEADOW LN KETCHUM			Section/Township/Range 10/4N/17E	Last Changed 03/30/2009	User TROBISON

State Cat. Cd.	Appraiser Initials	Physical Inspection	Occupancy Date	Year Built	Last Year Remodeled	Dwelling	Inspection Status	% Owner Occupied	Constr. Class	Market Grade	Design
41	TLR	02/27/2009		1986	2001	SFD	Not Entered	100%	7	Average	Single Level

	Type	Shape	Linear Feet	Sq Feet Finished	Sq Feet Unfinished	Square Feet
Ground Floor:		Irregular	0.00			5630
Upper Floor:			0.00			0
Lower Floor:			0.00	0	0	0
Attic:				0	0	0
Basement:				0	0	0
Roof Type	Average			Total Square Feet		5,630

Interior Features	
Bedroom(s)	4
Bathroom(s)	5.50
Kitchen(s)	1
Fireplace(s)	2
Air Conditioning	Yes
Central Heating	Yes

	Sq. Feet	Type	Class
Car Stg. 1:	1,204	Attached	5
Car Stg. 2:	0		
Gen. Purp.:	0		
Landscape Type:	3		

	Sq. Feet	Covered
Patio 1	240	No
Patio 2	0	No
Deck 1	1,982	No
Deck 2	0	No
Porch	280	
Pool	0	

Value Information	
Area Modifier	
LCM	35%
Trend	
Special Influence	0
Improve Value	1,644,017
Appeal Value	0

Depreciation	
Phys. Depr.	9%
Funct. Obs.	0%
Econ. Obs.	0%

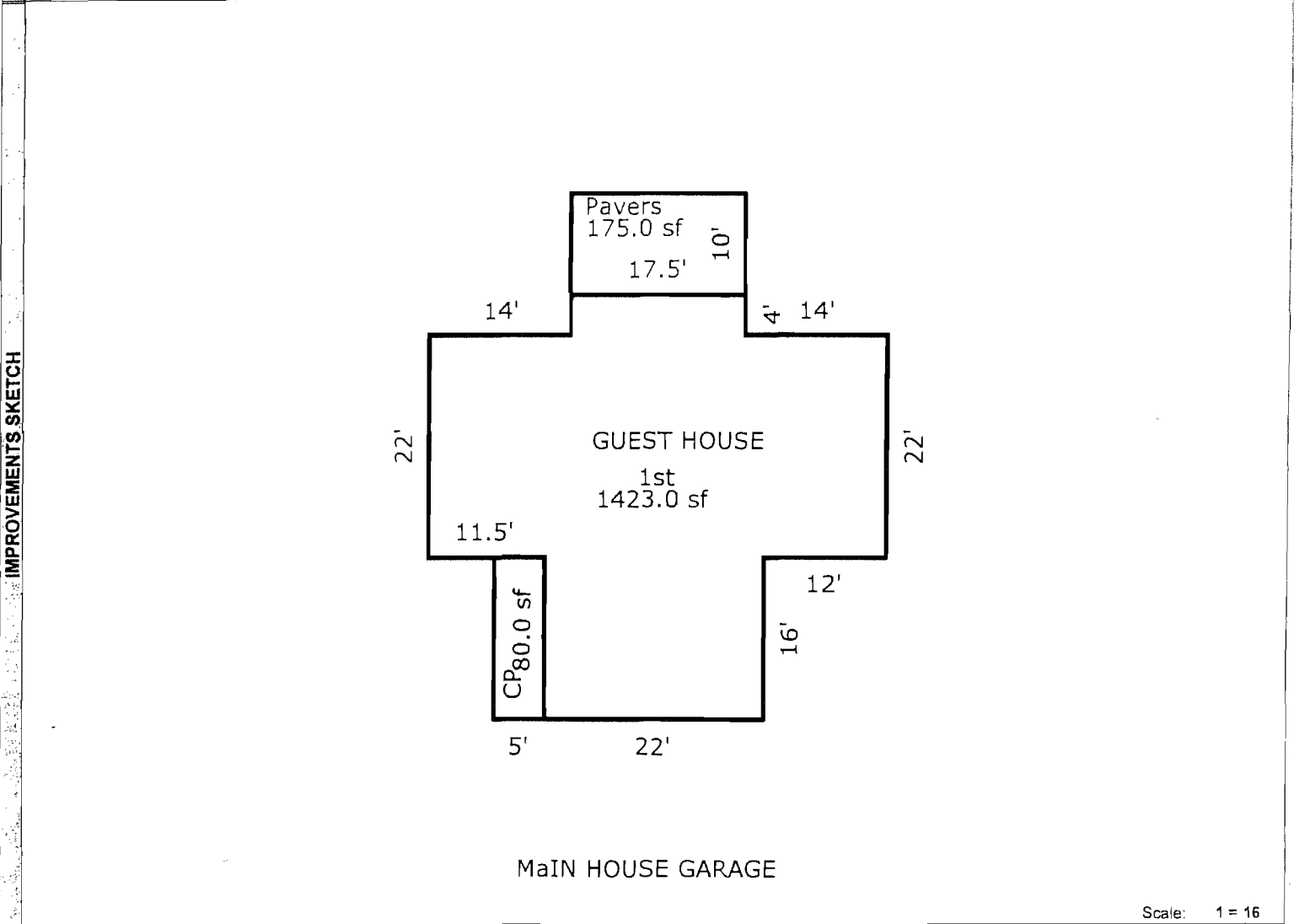
Subdivision: BEAVER SPRINGS SUB	Land Size: 2.180	Land Value: 2,100,000.00
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Notes: _____

SKETCH/AREA TABLE ADDENDUM

Parcel No RPK0422000020A

SUBJECT	Property Address 110 SHEEP MEADOW LN			
	City KETCHUM	County BLAINE	State IDAHO	Zip 83340
	Owner NORMAN HASCOE MARITAL TRUST			
	Client 2009 RE APPRAISAL	Client Address BEAVER SPRINGS SUB AM LOT 20A BLK 1		
	Appraiser Name JR	Inspection Date 3/3/09		



AREA CALCULATIONS

AREA CALCULATIONS SUMMARY					
Code	Description	Factor	Net Size	Perimeter	Net Totals
GLA1	1st	1.00	1423.0	175.0	1423.0
P/P1	CP	1.00	80.0	42.0	80.0
OTH5	Pavers	1.00	175.0	55.0	175.0
Net LIVABLE Area (rounded w/ factors)					1423

Comment Table 1	
Comment Table 2	Comment Table 3

RESIDENTIAL CHARACTERISTICS

10/14/2009

3:13 pm

Year 2009	Parcel Number/Suffix RPK0422000020A X	Parcel Status Active	Status Date 4/28/2007	Master Reappr Year 2009
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Property Address 110 SHEEP MEADOW LN KETCHUM	Section/Township/Range 10/4N/17E	Last Changed 03/30/2009	User TROBISON
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State	Appraiser	Physical	Occupancy	Year	Last Year	Inspection	% Owner	Constr.	Market	Design
Cat. Cd.	Initials	Inspection	Date	Built	Remodeled	Status	Occupied	Class	Grade	Single Level
41	TLR	02/27/2009		1986	2003	SFD	100%	4	Good	

	Type	Shape	Linear Feet	Sq Feet Finished	Sq Feet Unfinished	Square Feet
Ground Floor:	Stone	Average	0.00			1423
Upper Floor:			0.00			0
Lower Floor:			0.00	0	0	0
Attic:				0	0	0
Basement:				0	0	0
Roof Type	Good		Total Square Feet			1,423

Interior Features	
Bedroom(s)	2
Bathroom(s)	2.00
Kitchen(s)	1
Fireplace(s)	0
Air Conditioning	Yes
Central Heating	Yes

	Sq. Feet	Type	Class
Car Stg. 1:	0		
Car Stg. 2:	0		
Gen. Purp.:	0		
Landscape Type:			

	Sq. Feet	Covered
Patio 1	175	No
Patio 2	0	No
Deck 1	0	No
Deck 2	0	No
Porch	80	
Pool	0	

Value Information	
Area Modifier	
LCM	39%
Trend	36%
Special Influence	0
Improve Value	208,458
Appeal Value	0

Depreciation	
Phys. Depr.	0%
Funct. Obs.	0%
Econ. Obs.	0%

Subdivision: BEAVER SPRINGS SUB	Land Size: 2.180	Land Value: 2,100,000.00
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Notes: _____

SKETCH/AREA TABLE ADDENDUM

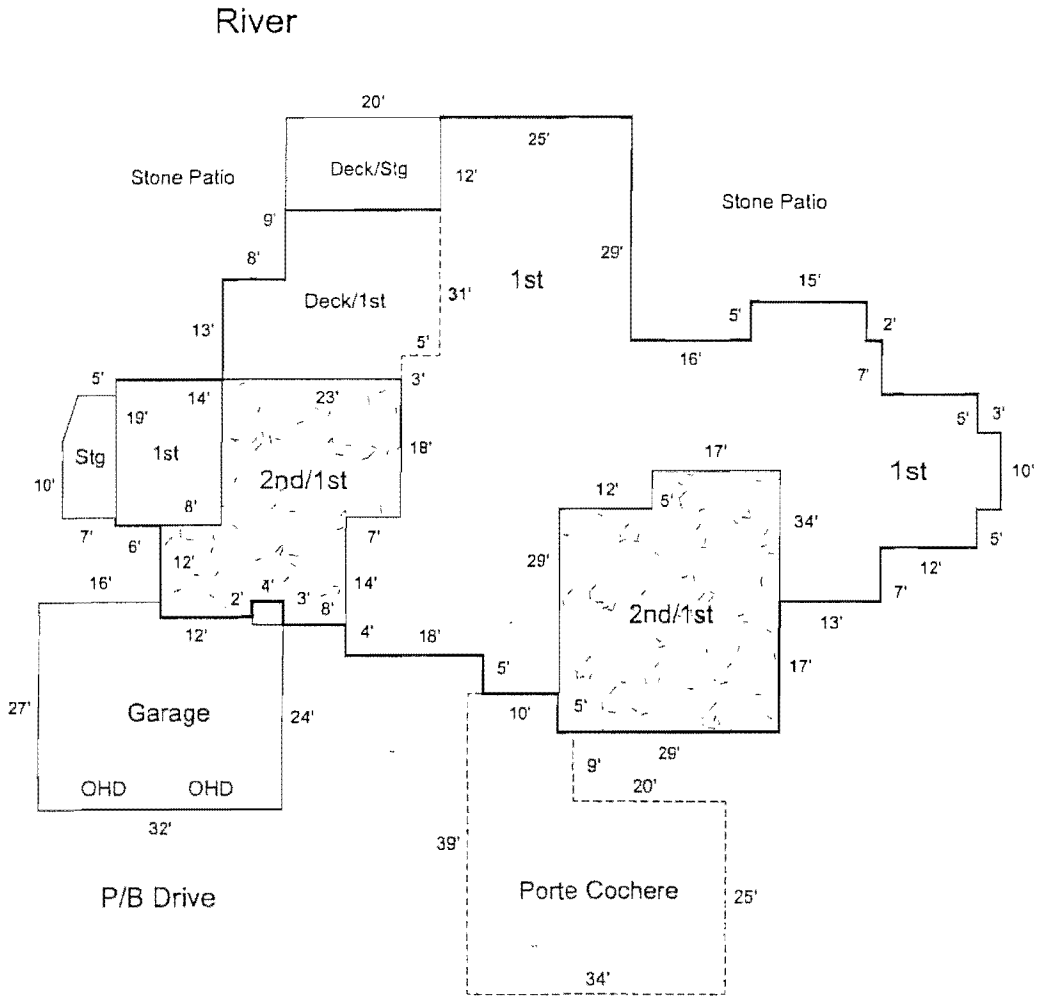
Parcel No RPK04220000210A

File No K4220021

SUBJECT

Property Address 101 Sheep Meadow Ln			
City Ketchum	State ID	Zip 83340	
Owner			
Client Brotman, Jeffrey & Susan		Client Address Beaver Springs Sub Lt 21	
Appraiser Name Tammy Robison		Inspection Date 07-09-08	

IMPROVEMENTS SKETCH



AREA CALCULATIONS

AREA CALCULATIONS SUMMARY

Code	Description	Factor	Net Size	Perimeter	Net Totals
GLA1	First Floor	1.00	5531.0	404.0	5531.0
GLA2	Second Floor	1.00	926.0	126.0	126.0
	Second Floor	1.00	718.0	130.0	1644.0
P/P	Deck	1.00	769.0	124.0	
	Porte Cochere	1.00	1036.0	146.0	1805.0
GAR	Garage	1.00	828.0	118.0	828.0
OTH	Stg	1.00	240.0	64.0	
	Stg	1.00	106.0	44.3	346.0
Net LIVABLE Area (Rounded w/ Factors)					7175

Comment Table 1	
Comment Table 2	Comment Table 3

RESIDENTIAL CHARACTERISTICS

10/14/2009
3:13 pm

Year 2009	Parcel Number/Suffix RPK04220000210 1	Parcel Status Active	Status Date 4/28/2007	Master Reappr Year 2009
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Property Address 101 SHEEP MEADOW LN KETCHUM	Section/Township/Range 10/4N/17E	Last Changed 03/30/2009	User TROBISON
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State Cat. Cd.	Appraiser Initials	Physical Inspection	Occupancy Date	Year Built	Last Year Remodeled	Dwelling	Inspection Status	% Owner Occupied	Constr. Class	Market Grade	Design
41	TLR	07/09/2008		2000	2007	SFD	Not Entered	100%	7	Very Good	Two Story

	Type	Shape	Linear Feet	Sq Feet Finished	Sq Feet Unfinished	Square Feet
Ground Floor:	Stucco	Complex	0.00			5531
Upper Floor:	Stucco	Average	0.00			1644
Lower Floor:			0.00	0	0	0
Attic:				0	0	0
Basement:				0	0	0
Roof Type	Good		Total Square Feet			7,175

Interior Features	
Bedroom(s)	4
Bathroom(s)	6.50
Kitchen(s)	1
Fireplace(s)	2
Air Conditioning	Yes
Central Heating	Yes

	Sq. Feet	Type	Class
Car Stg. 1:	828	Attached	5
Car Stg. 2:	0		
Gen. Purp.:	346		5
Landscape Type:	4		

	Sq. Feet	Covered
Patio 1	0	No
Patio 2	0	No
Deck 1	769	No
Deck 2	0	No
Porch	1,036	
Pool	0	

Value Information	
Area Modifier	
LCM	35%
Trend	9%
Special Influence	0
Improve Value	2,675,507
Appeal Value	0

Depreciation	
Phys. Depr.	0%
Funct. Obs.	0%
Econ. Obs.	0%

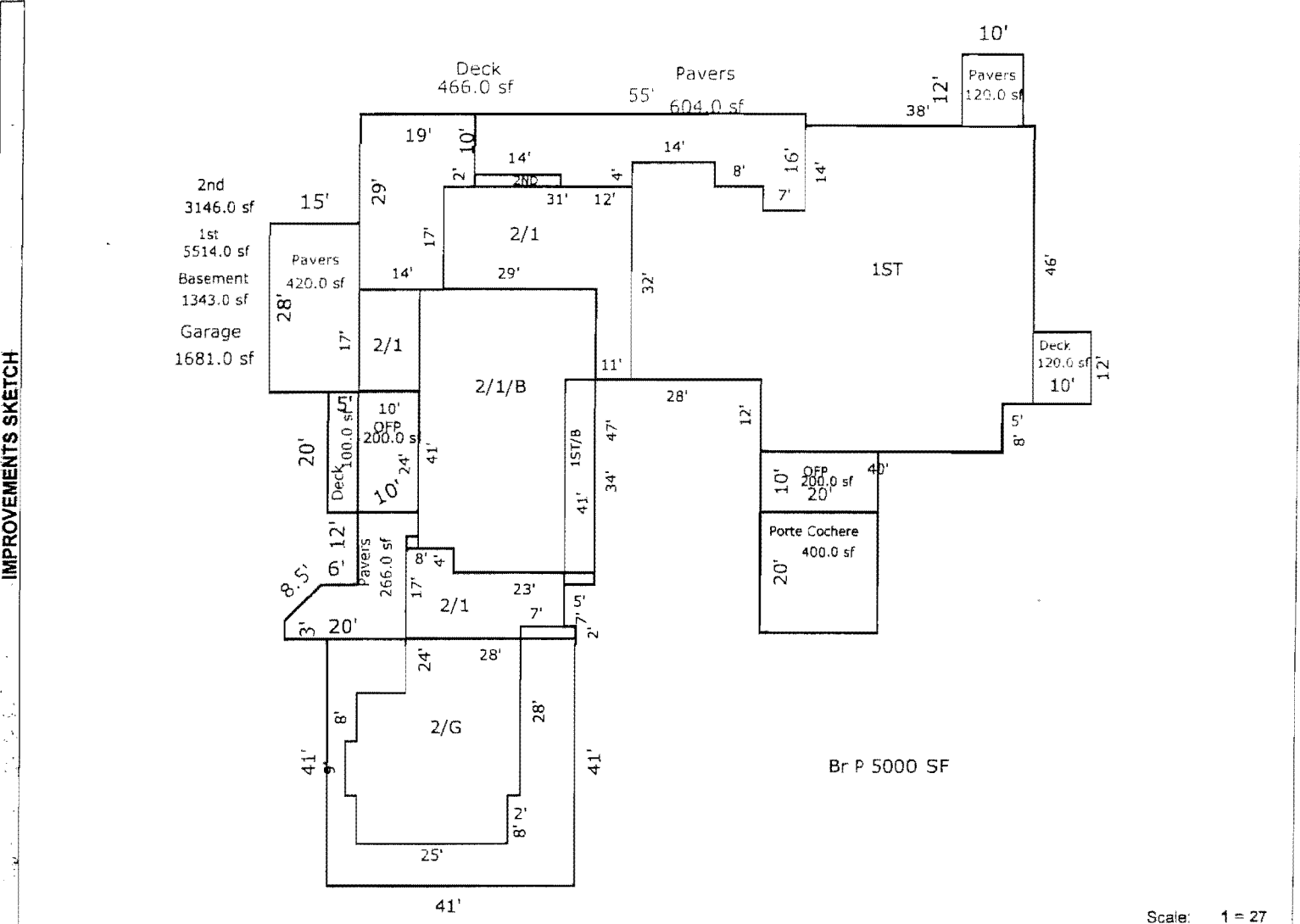
Subdivision: BEAVER SPRINGS SUB	Land Size: 3.022	Land Value: 4,000,000.00
---------------------------------	------------------	--------------------------

Notes: _____

SKETCH/AREA TABLE ADDENDUM

Parcel No RPK04220000220

SUBJECT	Property Address 105 SHEEP MEADOW LN	City KETCHUM	County BLAINE	State ID	Zip 83340
	Owner PIONEER RESID & RECREATION PROP LLC	Client Address BEAVER SPRINGS SUB LOT 22 BLK 1			
	Client 2009 RE APPRAISAL	Inspection Date 3/2/09			
	Appraiser Name JR				



Scale: 1" = 27'

AREA CALCULATIONS	AREA CALCULATIONS SUMMARY						Comment Table 1	
	Code	Description	Factor	Net Size	Perimeter	Net Totals		
	GLA1	1st	1.00	5514.0	442.0	5514.0		
	GLA2	2nd	1.00	3146.0	336.0	3146.0		
	BSMT1	Basement	1.00	1343.0	156.0	1343.0		
	GAR1	Garage	1.00	1681.0	164.0	1681.0		
	P/P1	OFF	1.00	200.0	60.0			
		OFF	1.00	200.0	60.0	400.0		
	P/P3	Porte Cochere	1.00	400.0	80.0	400.0		
	OTH2	Deck	1.00	120.0	44.0			
	Deck	1.00	100.0	50.0				
	Deck	1.00	466.0	96.0	686.0			
OTH5	Pavers	1.00	120.0	44.0				
	Pavers	1.00	266.0	82.5				
	Pavers	1.00	420.0	86.0				
	Pavers	1.00	604.0	150.0	1410.0			
Net LIVABLE Area (rounded w/ factors)						8660	Comment Table 2 Comment Table 3	

RESIDENTIAL CHARACTERISTICS

10/14/2009

3:14 pm

Year 2009	Parcel Number/Suffix RPK04220000220 1	Parcel Status Active	Status Date 4/28/2007	Master Reappr Year 2009	
Property Address 105 SHEEP MEADOW LN KETCHUM			Section/Township/Range 10/4N/17E	Last Changed 03/30/2009	User TROBISON

State Cat. Cd.	Appraiser Initials	Physical Inspection	Occupancy Date	Year Built	Last Year Remodeled	Dwelling	Inspection Status	% Owner Occupied	Constr. Class	Market Grade	Design
41	TLR	02/27/2009		1987	0	SFD	Not Entered	100%	8	Average	Two Story

	Type	Shape	Linear Feet	Sq Feet Finished	Sq Feet Unfinished	Square Feet
Ground Floor:	Stucco	Complex	0.00			5514
Upper Floor:	Stucco	Irregular	0.00			3146
Lower Floor:			0.00	0	0	0
Attic:				0	0	0
Basement:				1,343	0	1,343
Roof Type	Average			Total Square Feet		10,003

Interior Features	
Bedroom(s)	7
Bathroom(s)	7.50
Kitchen(s)	1
Fireplace(s)	6
Air Conditioning	No
Central Heating	Yes

	Sq. Feet	Type	Class
Car Stg. 1:	1,681	Attached	6
Car Stg. 2:	0		
Gen. Purp.:	0		
Landscape Type:	2		

	Sq. Feet	Covered
Patio 1	1,410	No
Patio 2	0	No
Deck 1	686	No
Deck 2	0	No
Porch	800	
Pool	0	

Value Information	
Area Modifier	
LCM	13%
Trend	
Special Influence	0
Improve Value	2,775,880
Appeal Value	0

Depreciation	
Phys. Depr.	16%
Funct. Obs.	0%
Econ. Obs.	0%

Subdivision: BEAVER SPRINGS SUB	Land Size: 2.615	Land Value: 3,700,000.00
---------------------------------	------------------	--------------------------

Notes: _____

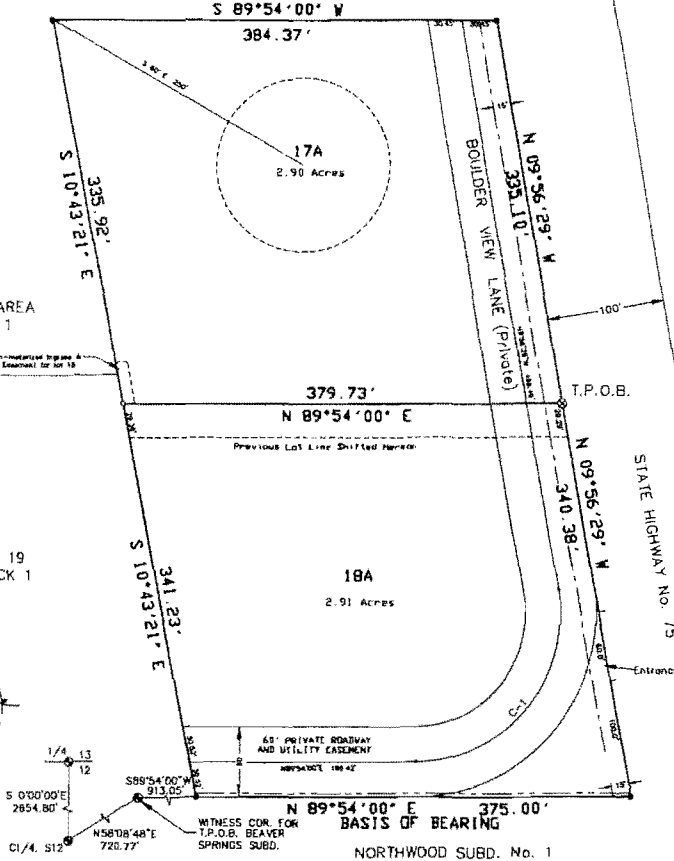
EXHIBIT B

A REPLAT SHOWING
BEAVER SPRINGS SUBDIVISION, LOTS 17A & 18A
 WHEREIN THE LOT LINE COMMON TO AMENDED LOTS 17 & 18 IS SHIFTED CREATING LOTS 17A & 18A
 SITUATED WITHIN SECTION 12, T.4N., R.17E., B.M.
 LOT 16
 BLOCK 1
 CITY OF KETCHUM, BLAINE COUNTY, IDAHO
 MAY 1994

SCALE: 1"=50'

COMMON AREA
 BLOCK 1

LOT 19
 BLOCK 1



LEGEND

- ⊗ = Set Aluminum Cap LS 8522
- ⊙ = Found Brass Cap
- ⊕ = Found 1/2" Rebar
- ⊖ = Set 1/2" Rebar LS 8522
- = Set 5/8" Rebar LS 8522
- = 15' Blue Path Easement
- - - = 3' Wide Sportman Access

CURVE TABLE

CURVE	R	Δ	L	CH L	CH BEARING
C-1	125.0'	99°50'29"	217.62'	191.28'	N30°56'45"E

HEALTH CERTIFICATE: Sanitary restrictions as required by Idaho Code Title 50, Ch. 13, have been satisfied. Sanitary restrictions may be rampaged in accordance with Idaho Code Title 50, Ch. 13, Sec. 50-1326, by issuance of a Certificate of Disapproval.

Date: 5-24-94
 Signature: Robert W. Eubank
 Title: South Central District Health Dept., CHS

NOTES

- 1.) No building, fences, or other construction shall be allowed on the 10' Non-motorized Ingress and Egress Easement on Lot 17.
- 2.) The 60' wide private roadway easement shown hereon is also a designated pressure sewer line easement to teach fields for lots 1, 3-9, 21, & 22.
- 3.) Power line easements are reserved for Idaho Power as recorded in Blaine County, as Instrument No. 201024, 209216, and 242624.
- 4.) A 15 foot wide Blue Path Easement is reserved for the City of Ketchum as recorded in Blaine County under Instrument No. 353410.
- 5.) The 60 feet wide private roadway easement shown hereon benefits owners of lots within this subdivision.

BEAVER SPRINGS SUBD.
 LOT 17A & 18A
 MICHAEL L. PROBST, L.S.
 SHEET 1 OF 2
 JOB No. 3084

CERTIFICATE OF MEMBERSHIP

This is to certify that Mr. the undersigned are the owners in fee simple of the following described parcels of land.

A parcel of land located within Sections 1 & 12 T. 42. N. R. 17E. E. 34. City of ... Boone County, more particularly described as follows:

Lot 17 & 18, of Acreage Lot 17 & 18, Beaver Springs Subdivision

The instruments indicated herein are not dedicated to the public but the right to use said easements is hereby reserved for the public utility and for any other uses indicated herein and no governmental structures are to be erected within the lines of said easements, including components governing the Subdivision are recorded under County Recorder Instrument No. 381800 & 382512 & 380466 & 380467

It is the intent of the owner to hereby include said land in this plat

Frank W. Whanger, Trustee
FRANK W. WHANGER II
Trustee of the BEAVER SPRINGS TRUST

ACKNOWLEDGEMENT

STATE OF NEW YORK
COUNTY OF NEW YORK

On this 9th day of May, 1994, before me a Notary Public in and for said State, personally appeared FRANK W. WHANGER II, Trustee under Trust dated April 2, 1986, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me she executed the same on behalf of said Trust.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written

Thomas L. Hebl
Notary Public in and for the State of New York
By Commission Expires 4/30/96

NOTARY PUBLIC
Thomas L. Hebl
Notary Public in and for the State of New York
By Commission Expires 4/30/96

SURVEYOR'S CERTIFICATION

I, Mark L. Brode, a duly licensed land surveyor in the State of Idaho, do hereby certify that the plat of Beaver Springs Subdivision, Lots 17A & 18A is a true and accurate map of the same surveyed under my direct supervision and that it is in accordance with the Idaho State Code relating to Plat and Survey



ACKNOWLEDGEMENT

STATE OF IDAHO
COUNTY OF BLAINE

On this 19th day of May, 1994 before me a Notary Public in and for said State, personally appeared Mark L. Brode known to me to be the person whose name is subscribed to the above Surveyor's certificate and acknowledged to me that he executed the same. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

William H. Walker
Notary Public in and for the State of Idaho
By Commission Expires 1/15/98



COUNTY ENGINEER'S APPROVAL

I, Jim R. Somers, County Engineer for Boone County, Idaho, have checked the foregoing plat and computations for making the same and hereby certify that they comply with the laws of the State of Idaho relating thereto.



APPROVAL OF CITY ZONING COMMISSION

The foregoing plat was approved by the aforesaid City Zoning Commission on the 22nd day of May, 1994.

APPROVAL OF CITY COUNCIL

The foregoing plat was approved by the City Council of Blaine on the 22nd day of May, 1994.

CITY ENGINEER'S APPROVAL

The foregoing plat was approved by Billy J. Finkbeiner, City Engineer for the City of Blaine on the 22nd day of May, 1994.

COUNTY TREASURER'S APPROVAL

The taxes on the foregoing parcel of land have been paid to this date and this plat of Beaver Springs Subdivision Lots 17A & 18A is hereby approved this 22nd day of May, 1994.

David A. Miller by David A. Miller
Boone County Treasurer

COUNTY RECORDER'S CERTIFICATE

STATE OF IDAHO
COUNTY OF BLAINE

That it is certified that the foregoing plat was filed in the office of the Recorder of Boone County, Idaho on this 24th day of May, 1994 at 1:20 PM, and duly recorded in Plat Book ... of page ...

366269

Beaver Springs Subdivision
Lots 17A & 18A
General Engineering, Inc.
ALCOHAMA, IDAHO
Sheet 1 of 3

Job No. 2504

ORIGINAL

FILED A.M. P.M. 3:27
DEC 28 2009
Jolynn Drage, Clerk District
Court Blaine County Idaho

FRITZ X. HAEMMERLE
HAEMMERLE & HAEMMERLE, P.L.L.C.
400 South Main St., Suite 102
P.O. Box 1800
Hailey, ID 83333
Tel: (208) 578-0520
FAX: (208) 578-0564
E-mail: fxh@haemlaw.com
ISB # 3862

Attorney for Plaintiff, THOMAS WEISEL

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

THOMAS WEISEL, a married man)	Case No. CV-09-124
dealing in his sole and separate property,)	
)	AFFIDAVIT OF VALDI PACE
Plaintiff,)	
)	
vs.)	
)	
BEAVER SPRINGS OWNERS)	
ASSOCIATION, INC., an Idaho)	
corporation,)	
)	
Defendant.)	
)	

STATE OF BLAINE,)
) ss.
County of Blaine.)

VALDI PACE, being sworn upon oath, deposes and states as follows:

1. I am the duly elected Blaine County Assessor. I am over the age of 18 and make the averments contained herein of my own personal knowledge and would testify to the facts as presented herein if called upon to do so.

2. As the Blaine County Assessor, I am familiar with the documents that are regularly generated and kept in the normal course of business of the Blaine County Assessor's Office.

AFFIDAVIT OF VALDI PACE - 1

3. Property Master sheets are documents that are regularly kept and generated by the Blaine County Assessor's Office. The documents reflect the values placed on properties in Blaine County by the Assessor's Office. Attached hereto as Exhibit A are the 2009 Property Master sheets for Lots 13 and 14, Beaver Springs Subdivision. Attached hereto as Exhibit B are the 2009 Property Master sheets for Lots 17A and 18A, Beaver Springs Subdivision.

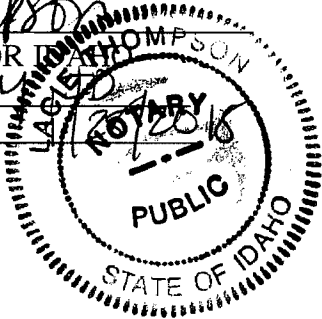
FURTHER YOUR AFFIANT SAYETH NOT.

DATED this 22nd day of December, 2009.

Valdi Pace
VALDI PACE

SUBSCRIBED AND SWORN to before me this _____ day of December, 2009.

Lacey Thompson
NOTARY PUBLIC FOR IDAHO
Residing at: Hailey
Commission expires: 11/30/2016



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of December, 2009, I caused to be served a true copy of the foregoing document by the method indicated below, and addressed to each of the following:

Ed Lawson
Erin Clark
LAWSON, LASKI, CLARK & POGUE, P.L.L.C.
P.O. Box 3310
Ketchum, ID 83340

 By depositing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.

 ✓ By hand delivering copies of the same to the office of the attorney(s) at his offices in Hailey, Idaho.

 By telecopying copies of same to said attorney(s) at the telecopier number _____, and by then mailing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.



FRITZ X. HAEMMERLE

EXHIBIT A



PROPERTY MASTER

12/22/2009

<u>Year</u> 2009	<u>Parcel #</u> RPK04220000130	<u>Parcel Status</u> Active	<u>Property Type</u> Real	<u>Reappraisal Year</u> 2009
<u>Location Code</u> MARKET AREA E - R	<u>Code Area</u> 003010	<u>Parcel Type</u>	<u>Appraiser</u> TLR	<u>Physical Inspection</u> 02/26/2009

Physical Location	
Address	112 ADAMS RIB LN KETCHUM ID 83340-0000
Group Type	SUB
Group #	ERES
Description	BEAVER SPRINGS SUB
Zoning	
Township/Range/Section	4N 17E 10

Primary Owner/Contact Information	
Name	WEISEL THOMAS W TRUSTEE 7 UPPER RD ROSS CA 94957-0000

Legal	BEAVER SPRINGS SUB LOT 13 BLK 1
Deed Reference No:	572437 11/09/2009

Additional Owners/Contacts
THOMAS W WEISEL TRUST

Solid Waste	
Unit	Type

Photo & Map	
Photo:	
Map:	MAP NUMBER BVR 13

Property Values	Status	State Cat. Code	Quantity	Assessed Value	Assessment Roll	Property Occupancy	Valuation Method
		Active	20	3.013	600,000	Primary	Non-Occupancy
	Totals		3.013	600,000 0	Total Values Less Homeowner's Exemption		
				600,000	Taxable Value		



PROPERTY MASTER

12/22/2009

<u>Year</u> 2009	<u>Parcel #</u> RPK04220000140	<u>Parcel Status</u> Active	<u>Property Type</u> Real	<u>Reappraisal Year</u> 2009
<u>Location Code</u> MARKET AREA E - R	<u>Code Area</u> 003010	<u>Parcel Type</u>	<u>Appraiser</u> TLR	<u>Physical Inspection</u> 02/26/2009

Physical Location	
Address	114 ADAMS RIB LN KETCHUM ID 83340-0000
Group Type	SUB
Group #	ERES
Description	BEAVER SPRINGS SUB
Zoning	
Township/Range/Section	4N 17E 10

Primary Owner/Contact Information	
Name	WEISEL THOMAS W TRUSTEE 7 UPPER RD ROSS CA 94957-0000

Legal	BEAVER SPRINGS SUB LOT 14 BLK 1
Deed Reference No:	572437 11/09/2009

Additional Owners/Contacts
THOMAS W WEISEL TRUST

Solid Waste	
Unit	Type

Photo & Map	
Photo:	
Map:	MAP NUMBER BVR 14

Property Values	Status	State Cat. Code	Quantity	Assessed Value	Assessment Roll	Property Occupancy	Valuation Method
	Active	20	3.696	2,600,000	Primary	Non-Occupancy	MARKET
Active	30		506,687	Primary	Non-Occupancy	COST	
Active	41		150,175	Primary	Non-Occupancy	COST	
Active	41		283,412	Primary	Non-Occupancy	COST	
Active	41		3,413,848	Primary	Non-Occupancy	COST	
Totals			3.696	6,954,122	Total Values		
				0	Less Homeowner's Exemption		
				6,954,122	Taxable Value		

EXHIBIT B



PROPERTY MASTER

12/22/2009

<u>Year</u> 2009	<u>Parcel #</u> RPK0422000017A	<u>Parcel Status</u> Active	<u>Property Type</u> Real	<u>Reappraisal Year</u> 2009
<u>Location Code</u> MARKET AREA E - R	<u>Code Area</u> 003010	<u>Parcel Type</u>	<u>Appraiser</u> TLR	<u>Physical Inspection</u> 02/26/2009

Physical Location

Address 105 BOULDER VIEW LN
KETCHUM ID 83340-0000

Group Type SUB

Group # ERES

Description BEAVER SPRINGS SUB

Zoning

Township/Range/Section 4N 17E 10

Primary Owner/Contact Information

Name BRONFMAN SARA ROSNER
C/O CLARE BRONFMAN
10 MAXWELL DR # 201
CLIFTON PARK NY 12065-0000

Legal BEAVER SPRINGS SUB
AM LOT 17A BLK 1

Deed Reference No:

Additional Owners/Contacts

BRONFMAN CLAIRE WEBB

Solid Waste

Unit Type

Photo & Map

Photo:
Map: MAP NUMBER 8VR 17

Property Values

Status	State Cat. Code	Quantity	Assessed Value	Assessment Roll	Property Occupancy	Valuation Method
Active	20	2.644	2,350,000	Primary	Non-Occupancy	MARKET
Totals		2.644	2,350,000	Total Values Less Homeowner's Exemption Taxable Value		
			0			
			2,350,000			



PROPERTY MASTER

12/22/2009

<u>Year</u> 2009	<u>Parcel #</u> RPK0422000018A	<u>Parcel Status</u> Active	<u>Property Type</u> Real	<u>Reappraisal Year</u> 2009
<u>Location Code</u> MARKET AREA E - R	<u>Code Area</u> 003010	<u>Parcel Type</u>	<u>Appraiser</u> TLR	<u>Physical Inspection</u> 02/27/2009

Physical Location	
Address	102 SHEEP MEADOW LN KETCHUM ID 83340-0000
Group Type	SUB
Group #	ERES
Description	BEAVER SPRINGS SUB
Zoning	
Township/Range/Section	4N 17E 10

Primary Owner/Contact Information	
Name	BRONFMAN EDGAR M C/O CLARE BRONFMAN 5 SOUTHSIDE DR STE 11 CLIFTON PARK NY 12065-3870

Legal	BEAVER SPRINGS SUB AM LOT 18A BLK 1
Deed Reference No:	

Additional Owners/Contacts

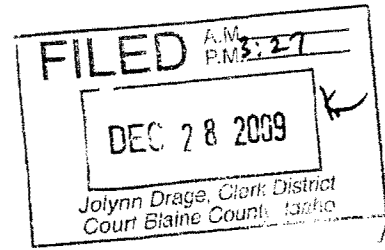
Solid Waste	
Unit	Type

Photo & Map	
Photo:	
Map:	MAP NUMBER BVR 18

Property Values	Status	State Cat Code	Quantity	Assessed Value	Assessment Roll	Property Occupancy	Valuation Method
	Active	20	3.157	2,350,000	Primary	Non-Occupancy	MARKET
Active	30		230,269	Primary	Non-Occupancy	COST	
Active	41		1,591,416	Primary	Non-Occupancy	COST	
Totals			3.157	4,171,685	Total Values		
				0	Less Homeowner's Exemption		
				4,171,685	Taxable Value		

ORIGINAL

FRITZ X. HAEMMERLE
HAEMMERLE & HAEMMERLE, P.L.L.C.
400 South Main St., Suite 102
P.O. Box 1800
Hailey, ID 83333
Tel: (208) 578-0520
FAX: (208) 578-0564
E-mail: fxh@haemlaw.com
ISB # 3862



Attorney for Plaintiff, THOMAS WEISEL

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

THOMAS WEISEL, a married man dealing)	Case No. CV-09-124
in his sole and separate property,)
)
Plaintiff,)
)
vs.)
)
BEAVER SPRINGS OWNERS)
ASSOCIATION, INC., an Idaho)
corporation,)
)
Defendant.)
)

STATE OF BLAINE,)
) ss.
County of Blaine.)

TIMOTHY K. GRAVES, being sworn upon oath, deposes and states as follows:

- I am an attorney licensed to practice law in the State of Idaho. I am over the age of 18 and make the averments contained herein of my own personal knowledge and would testify to the facts as presented herein if called upon to do so.
- On or about January or February, 2005, as the Chief Deputy Prosecuting Attorney for Blaine County, I was contacted by John Seiller, Esq. who inquired into whether

I believed Blaine County had an interest in enforcing a lot restriction on Lot 13, Beaver Springs Subdivision ("Lot 13") that prohibited development on the lot.

3. I opined that the County had no interest in enforcing any lot restriction on Lot 13 because the lot had been annexed into the City of Ketchum. Attached hereto as Exhibit A is a true and correct copy of a February 2, 2005, letter I drafted to John Seiller.

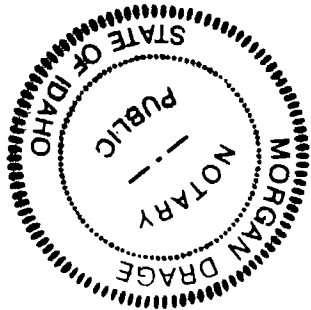
FURTHER YOUR AFFIANT SAYETH NOT.

DATED this 30th day of November, 2009.



Timothy K. Graves

SUBSCRIBED AND SWORN to before me this 30th day of November, 2009.



Morgan Drage

NOTARY PUBLIC FOR IDAHO
Residing at: Carey, ID
Commission expires: 12/17/10

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28 day of Dec., 2009, I caused to be served a true copy of the foregoing document by the method indicated below, and addressed to each of the following:

Ed Lawson
Erin Clark
LAWSON, LASKI, CLARK & POGUE, P.L.L.C.
P.O. Box 3310
Ketchum, ID 83340

 By depositing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.

✓ By hand delivering copies of the same to the office of the attorney(s) at his offices in Hailey, Idaho.

 By telecopying copies of same to said attorney(s) at the telecopier number _____, and by then mailing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.


FRITZ X. HAEMMERLE

JIM J. THOMAS
Prosecuting Attorney
TIMOTHY K. GRAVES
Chief Deputy
JUSTIN D. WHATCOTT
Deputy
WARREN L. CHRISTIANSEN
Deputy

STATE of IDAHO



KRAMER JUDICIAL BUILDING
201 2ND AVENUE SOUTH
SUITE 100
HAILEY, IDAHO 83333

TEL (208) 788-5545
FAX (208) 788-5554
EMAIL jthomas@co.blaine.id.us

BLAINE COUNTY PROSECUTING ATTORNEY

February 2, 2005

John A. Seiller
Attorney at Law
P.O. Box 6090
Ketchum, ID 83340

RE: Beaver Springs Subdivision Lot

Dear John:

I have reviewed the information you provided regarding lots 13 and 14 of Beaver Springs Subdivision. In my view, Blaine County's ability to enforce conditions imposed as part of a variance granted in 1983 terminated once the property was annexed into the City of Ketchum in 1990. Accordingly, Blaine County has no interest in enforcing the condition arising out of the variance that requires Lot 13 to remain undeveloped. I hope this letter has satisfied your request.

Very truly yours,

A handwritten signature in black ink, appearing to read "Timothy K. Graves".

Timothy K. Graves
Chief Deputy Prosecuting Attorney

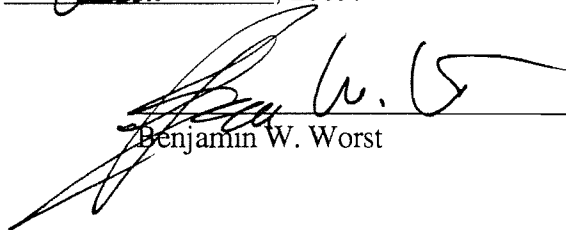
cc: Linda Haavik

had an interest in enforcing a lot restriction on Lot 13, Beaver Springs Subdivision ("Lot 13") that prohibited development on the lot.

3. During the meeting, the Council decided that it had no interest in enforcing the lot restriction on Lot 13. The Council asked me to draft a letter to Mr. Seiller reflecting this decision. Attached hereto as Exhibit A is a true and correct copy of the letter I drafted.


FURTHER YOUR AFFIANT SAYETH NOT.

DATED this 25th day of January, 2009.

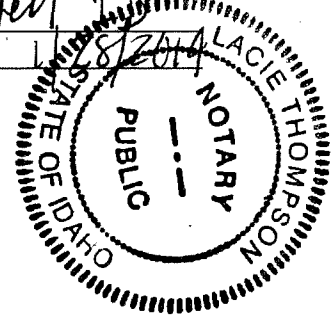


Benjamin W. Worst

SUBSCRIBED AND SWORN to before me this 25th day of November, 2009.



NOTARY PUBLIC FOR IDAHO
Residing at: Hawley, ID
Commission expires: 11/28/2014



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28 day of ^{Dec.}~~November~~, 2009, I caused to be served a true copy of the foregoing document by the method indicated below, and addressed to each of the following:

Ed Lawson
Erin Clark
LAWSON, LASKI, CLARK & POGUE, P.L.L.C.
P.O. Box 3310
Ketchum, ID 83340

 By depositing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.

✓ By hand delivering copies of the same to the office of the attorney(s) at his offices in Hailey, Idaho.

 By telecopying copies of same to said attorney(s) at the telecopier number _____, and by then mailing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.


FRITZ X. HAEMMERLE

EXHIBIT A

BENJAMIN W. WORST
City Attorney



City of Ketchum, Idaho
480 East Avenue North P. O. Box 2315
Ketchum, Idaho 83340

Phone: (208) 726-7801 Fax: (208) 726-7845

bworst@ketchumidaho.org

April 8, 2005

Mr. John A. Seiller, Esq.
Attorney At Law
P.O. Box 6090
Ketchum, Idaho 83340

RE: Beaver Springs Subdivision Lots 13 & 14.

Dear Mr. Seiller:

Thank you for your patience in waiting for the City of Ketchum's response to your letter dated January 28, 2005. In that letter you requested that the City confirm whether or not it would oppose a new agreement between your client and the Beaver Springs Homeowners' Association allowing new development on Lot 13.

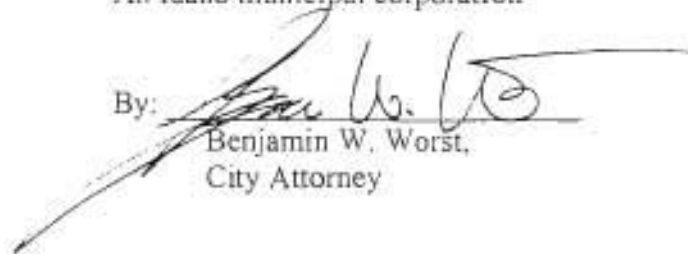
The City will not oppose a new agreement nor will it oppose a rescission of the current agreement. The City is not a party to the agreement and has a policy of processing applications irrespective of private agreements or conflicts. Accordingly, the City's relationship with the Owners is governed by the Annexation Agreement and by the Ketchum Municipal Code. The Annexation Agreement makes no reference to any restrictions on Lot 13. Moreover, the plat map of the Beaver Springs Subdivision indicates that Lot 13 is an independent parcel and makes no reference to any special restrictions on that lot.

Please let me know if I can provide any additional information. Thank you.

Sincerely,

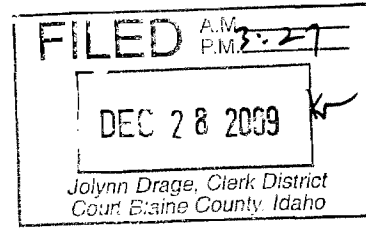
THE CITY OF KETCHUM, IDAHO,
An Idaho municipal corporation

By:


Benjamin W. Worst,
City Attorney

ORIGINAL

FRITZ X. HAEMMERLE
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ISB # 3862



Attorney for Plaintiff, THOMAS WEISEL

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

THOMAS WEISEL, a married man)	Case No. CV-09-124
dealing in his sole and separate property,)	
)	AFFIDAVIT OF SANDY CADY
Plaintiff,)	
)	
vs.)	
)	
BEAVER SPRINGS OWNERS)	
ASSOCIATION, INC., an Idaho)	
corporation,)	
)	
Defendant.)	

STATE OF BLAINE,)
) ss.
County of Blaine.)

SANDY CADY, being sworn upon oath, deposes and states as follows:

- I am the Ketchum City Clerk. I am over the age of 18 and make the averments contained herein of my own personal knowledge and would testify to the facts as presented herein if called upon to do so.
- I am a Custodian of Records at the city of Ketchum and I have authority to certify the records of the City of Ketchum.

3. Attached as Exhibit A is a true and correct copy of the Minutes of the Ketchum City Council meeting on March 21, 2005.

4. The Minutes are kept in the ordinary course of business at or near the time of the act, condition, or event, by a person with knowledge of those matters. It is the regular practice of the City Council to keep Minutes of its meetings.

5. Tape recordings of the City Council meetings are also made at the time of the meeting and kept in the ordinary course of business. It is the regular practice of the City Council to keep the tape recordings of the meetings, and it is the regular practice of the City of Ketchum to keep minutes from public meetings of the City Council. Futhermore, as part of documenting regularly conducted public activities, the minutes kept of public meetings constitute a part of the public records of the City of Ketchum Exhibit B is an exact, and true and correct transcript of the portion of the tape recording of the March 21, 2005 City Council wherein Discussion Item No. 6 in the Minutes (Exhibit A) was discussed.

6. Exhibit C is a letter sent out by City Attorney, Ben Worst. The letters of the City Attorney are kept in the ordinary course of business at or near the time of the act, condition, or event, by a person with knowledge of those matters, and said letters are part of the public records of the City of Ketchum. It is the regular practice of the City Council to keep in its files the letters sent out by the City Attorney.

7. Futhermore, the data compilations attached as Exhibits A, B and C are part of the public records and reports maintained by the City of Ketchum, and said documents document part of the regularly conducted activities of the City of Ketchum. The

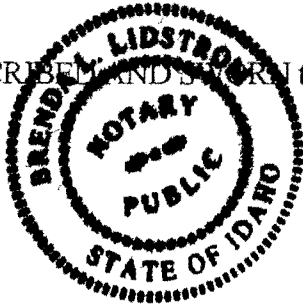
and in fact are filed ~~in the~~ at the City of Ketchum, a municipal corporation of the State of Idaho.

FURTHER YOUR AFFIANT SAYETH NOT.

DATED this 1st day of December, 2009.

Sandy E. Cady
Sandy Cady

SUBSCRIBED AND SWORN to before me this 1st day of December, 2009.



Brenda L. Lidstrom
NOTARY PUBLIC FOR IDAHO
Residing at: Ketchum
Commission expires: Feb 5, 2013

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28 day of Oct., 2009, I caused to be served a true copy of the foregoing document by the method indicated below, and addressed to each of the following:

Ed Lawson
Erin Clark
LAWSON, LASKI, CLARK & POGUE, P.L.L.C.
P.O. Box 3310
Ketchum, ID 83340

 By depositing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.

✓ By hand delivering copies of the same to the office of the attorney(s) at his offices in Hailey, Idaho.

 By telecopying copies of same to said attorney(s) at the telecopier number _____, and by then mailing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.


FRITZ X. HAEMMERLE

EXHIBIT A

Taped

**REGULAR MEETING OF THE CITY COUNCIL
OF THE CITY OF KETCHUM, IDAHO
March 21, 2005**

This meeting was called to order by Mayor Edward Simon at 5:30 p.m. at City Hall, Ketchum, Idaho.

Councilmembers present: Baird Gourlay
Randy Hall, Council President
Christina Potters
Terry Tracy

Councilmembers absent:

Also present: City Administrator Ronald P. LeBlanc
City Attorney Ben Worst
Planning Director Harold Moniz
City Planner Danelle Stern
City Planner Stefanie Webster
Recording Secretary Sunny Grant
Citizens

1. COMMENTS FROM THE PUBLIC

Ketchum resident Mickey Garcia blamed declining room occupancies on limited access to the valley and the two-lane highway, which he said had been obsolete for about 20 years.

2. QUESTIONS FROM THE PRESS

There were none.

PRESENTATIONS

3. Presentation by Devin Rigby, ITD District Engineer

Councilman Hall said that Ketchum had had problems for several years with southbound commuter traffic stacking up for over an hour through downtown Ketchum. He said he and ITD District Engineer Devin Rigby had driven up and down the highway a couple weeks ago trying to find a solution to keeping cars from stacking up inside the City limits. He said they had decided the best way to alleviate the congestion would be to create two lanes going south of town, at least to the hospital signal for now, and then eventually to add a second southbound lane from the hospital light to the passing lane.

Mr. Rigby gave Councilmembers maps and plans for the area. He said the Idaho Legislature was now considering Garvee Bonding to include funding for State Highway 75 from Timmerman Hill to Saddle Road. Mr. Rigby said they should know by the end of the week if Garvee Bonding had passed the Legislature, and, if passed, the funds would become available within the next year. He said there would be enough funding to cover whatever they could design and build.

Mr. Rigby said the two lanes south of town could still be done if Garvee funds were not available, with the cooperation of the local jurisdiction. He said the City of Ketchum could build the additional lane with ITD funding, or the ITD could do the whole job.

Mr. Rigby said there were several obstacles to the three-lane highway. He said there was currently a pedestrian crossing across the Trail Creek bridge, but if it were eliminated from the bridge, that width could be used for an additional lane. Mr. Rigby

said the next problem was a very narrow area south of the bridge, but he felt there was the ability to get an additional lane there.

Mr. Rigby said there was currently a northbound left turn lane on Highway 75 to accommodate extremely heavy traffic turning onto Serenade Lane, so it would require additional right-of-way for four lanes in that area. Mr. Rigby said four lanes was a problem through the Reinheimer Ranch, and even three lanes through the Ranch had elicited complaints about snowplows throwing snow onto and potentially damaging the Reinheimer white barn.

Mr. Rigby said they had to keep the left-turn lanes at Elkhorn Road, and they would have to check to be sure there was enough right-of-way for the additional southbound lane.

Mr. Rigby said there could also be a problem with the pedestrian pathway on the existing bridge across the Big Wood River south of the hospital. He said the bikepath was west of the highway, but people did use the bridge for fishing and other activities. He said there was currently a center turn lane at McHannville that they could convert to a southbound lane if the people chose to do so; and then there was the center turn lane at the East Fork signal that would require extra right-of-way. Mr. Rigby said these problems could all be worked through, with the cooperation of the City and State.

Mr. Rigby said that, if the Garvee bill didn't pass, the State would continue with its EIS and the federal funding process, or work very closely with the City of Ketchum to do the improvements right away with the City's assistance.

Mr. Rigby said if Garvee passes, the State would in fact be working very closely with the City on federal aid projects, and they would do some fast planning. He said he hoped Garvee passed, but that it would be a lot of work in a hurry.

Mr. Rigby explained that Garvee Bonding enabled the ITD to bond for the money they would spend in the next 20-30 years and start building the projects right now.

Councilman Hall said the EIS had already determined the highway footprint would be four lanes, but it was not yet decided if the two extra lanes would be HOV lanes.

Councilwoman Tracy said she was concerned with pedestrian safety; and would not do anything to jeopardize the Reinheimer Ranch or barn. She said improvements just put more cars on the road that would go faster and would get bottlenecked at Trail Creek bridge, which didn't address the problem. Mr. Rigby reiterated that the City would be extensively involved in the project design.

Councilwoman Potters agreed that the Reinheimer Ranch was a precious place at the entrance to town that the City hoped to preserve forever. Mr. Rigby said there was only enough right-of-way through the Ranch for three lanes, or two lanes and a bike or pedestrian lane, and added that there had been a major change in how the ITD dealt with communities and pedestrians. He said a four-lane highway into Ketchum would in fact impact the Reinheimer Ranch, and emphasized that the state would not do anything without the support of the City of Ketchum.

Councilman Hall said the extra southbound lane fit in with the traffic circulation just completed by the City of Ketchum.

Councilman Gourlay said he felt there were ways to deal with pedestrians on the bridges, and he thought a stone wall could be built to protect the Reinheimer Ranch. He said he agreed with Councilman Hall that something had to be done.

Mr. Rigby said Garvee had passed the house by a huge majority, and was currently in the Senate. He said if it passed the Senate, he was sure the Governor would sign it; and the key then would be the EIS, which was awaiting Federal Highway's approval.

4. Bicycle Safety Presentation

Police Sgt. Dave Kassner said he'd been asked to research safety on the bikepaths along Saddle and Warm Springs roads. He said the main problem in his opinion was lack of sight distances and wrong-way riders. Sgt. Kassner said the Bike Safety Matrix confirmed his suspicions about wrong-way riders causing the majority of accidents.

Sgt. Kassner said that most of the streets accessing Warm Springs Road were at an angle, forcing a driver to really crane his neck to look for bike riders. He suggested they add a five-foot bike lane on both sides of Warm Springs Road, and put 10mph speed limits on the mixed-use bikepath.

Sgt. Kassner suggested a five-bar triangle be painted on the bikepath at intersections to slow cyclists down. He said pedestrians and cyclists had right-of-way in crosswalks, which connected bikepaths, so they couldn't put up stop signs on the bikepath. He suggested they erect small CAUTION signs prior to the painted triangles.

Sgt. Kassner said the roadways would also have a five-bar triangle approaching the crosswalk, along with a bicycle painted on the pavement; and there would be a CAUTION sign and then a BIKE XING sign as the road approached the intersection.

Sgt. Kassner said the City would be chip sealing Warm Springs Road this summer, but he suggested the five-foot bike lanes on both sides of the road be seal coated for a smoother surface.

Sgt. Kassner said there were three steps in bike safety: engineering, education and enforcement. He said their next step was education, which they would do through bike rodeos for kids, brown bag lunches for commuting cyclists, and continuous-loop videos in bike stores. For enforcement, he asked the City Council to consider adopting an ordinance enforcing the 10mph speed limit on the mixed-use path. He said the fines would be \$35-50, but the offender could take a bike class or view an effective cycling video, followed by a test, in lieu of paying the fine.

Councilwoman Tracy said she was concerned there was so much signage that people wouldn't see it. She asked if these signs were required to keep the City from being liable.

Ketchum Police Chief Cory Lyman said this was the first step in the process. He said he didn't want to give Council legal advice, but he felt State Code was pretty clear that any traffic ordinances had to be done in compliance with the signing. He said they hoped the pavement and bike lane painting would get the attention of drivers and cyclists. Chief Lyman said they had also discussed striping the driveway intersections on the bikepath and lanes. He added that it might be wise for the Street Department to request a sign machine in the upcoming budget.

Councilman Hall said Warm Springs Road, the bikepath and bike lanes were impacted by the new skatepark, Rotary Park across the street, and now the YMCA. Sgt. Kassner said the golf clubhouse was on Thunder Trail, so there was a lot more traffic in that area, too.

City Engineer Dick Fosbury applauded Chief Lyman and Sgt. Kassner for coming up with innovative ideas to solve the problem. He said the bikepath was very successful and was heavily used, and he thought the width of the bike lanes should be consistent the whole length of Warm Springs. Mr. Fosbury said Thunder Trail was a private road to the golf course, but he thought the City could talk to the owners and get some striping on the road. He said they would continue to study all the curb cuts on Warm Springs Road.

City Administrator LeBlanc said Warm Springs Road widening and bike lane work should be done by mid summer. He said the roadway would be textured, and the bike lanes and bikepath smooth. Councilman Gourlay noted that the bike lane on the north side of Warm Springs road sloped into the roadway, causing a huge ice dam. Mr. Fosbury said

the north side bike lane did slope into the roadway because of all the existing curb cuts, but that the roadway would slope down from its crown.

Chief Lyman said they didn't have a clear idea of cost at this point, and weren't asking for any appropriation. He said signage similar to the County's bikepath signs could cost close to \$15,000 but he thought they would go with less expensive signs; and he thought the painting would cost about \$8,000. City Administrator LeBlanc said the Street Department's budget already included road widening, and there was a Pavement Management item in the Capital Improvement budget to cover the rest of the expenses.

Councilman Gourlay said he was a cyclist, and didn't pay any attention to CAUTION signs, but would notice a STOP sign. Chief Lyman said they couldn't erect STOP signs on the bikepath, because cyclists were considered pedestrians and had right-of-way in crosswalks; but he said cyclists in the bike lanes had to obey rules of the road.

Chief Lyman said the League of American Bicyclists' recommendation was to require cyclists going more than 10mph to get off mixed-use paths. He added that the bike shops had been really supportive of the continuous loop videos and an administrative ordinance enforcing the speed limit and bicycle rules.

Mayor Simon and Councilmembers thanked Sgt. Kassner for a job well done. Councilman Gourlay asked Chief Lyman to see if the signs could be purchased with Police Trust Fund money. Councilwoman Tracy said the painting should be done as soon as possible.

Councilman Hall said he didn't think the Thunder Spring intersection had been approved with such a limited sight distance, and asked if the original approval should be enforced. Mr. Fosbury said perhaps the tree just needed to be trimmed. He said the original approval just covered a fire and pedestrian access from south Bigwood. Councilman Hall suggested they talk to Thunder Spring about some striping and trimming the tree.

City Administrator LeBlanc suggested Sgt. Kassner and RideShare Director Beth Callister look at the sight triangles all along the bikepath; Councilman Hall said Saddle Road needed special emphasis because of the speeds. Councilwoman Tracy said Thunder Trail also accessed the Thunder Spring swimming pool and the condominiums, so there was a lot of traffic on it. Mayor Simon said Thunder Spring would be coming before Council for an extension of their phasing, so this could be discussed with them at that time.

5. Bicycle Amenity Streetscape Standards

RideShare Director Beth Callister asked Council to amend the Streetscape Ordinance Number 697 to include standards for bicycle parking. She said developments were being required to include a bike rack, but were locating them against walls or trees, or in the back of the building and the racks weren't very usable. Ms. Callister gave Councilmembers some proposed amendment language and diagrams defining appropriate types of racks, spacing and locations. Planning Director Moniz said the P&Z would consider the amendment as part of its downtown Master Plan. He said the Streetscape Standards required pedestrian amenities, including bike racks, but there weren't specific standards for the racks.

City Administrator LeBlanc said the inverted U rack seemed to be the most practical design, and asked Council to consider it as the standard so they could include it in their design choices for street lights and benches.

6. Beaver Springs Owners Association Inc. – Restrictions on Lot 13.

John Seiller, attorney representing the owner of Lot 13, said the lot was under a restriction on a private agreement, dated in 1983, between the Owners Association and

the owner. He said the owner now wanted to change the agreement, and the Owners Association may be amenable, provided they didn't get in any legal trouble with the City or County. He said when Beaver Springs had been annexed into the City of Ketchum, all County restrictions were null and void.

Mr. Seiller said he and City Attorney Worst had been discussing the issue, and he requested a letter from the City Attorney that stated the Owners Association wouldn't get in trouble with the City of Ketchum by making a new agreement with the owner of Lot 13. Mayor Simon said the City wasn't a party to the original agreement and had no protected interest; City Attorney Worst agreed, saying the City had no legal interest in this property.

Council directed City Attorney Worst to draft a letter to the Owners Association.

7. Staff Reports

Parking Grant for Park and Ride Lot

City Administrator LeBlanc said he had received notice from the Community Transit Association of Idaho that the total amount of 5309 funds requested by Idaho would not be approved by Congress, and needed to be decreased by \$1 to \$2 million. He said it would make sense for the City to voluntarily cut back their request for a paved area this year, and apply next year for a parking structure.

City Administrator LeBlanc said the Park and Ride lot site plan still had to be approved, and they were now hoping to put community housing on top of the parking structure, so the City's application would be stronger next year. He said they could still apply this year for some pedestrian amenities that didn't affect the parking structure, with a much-reduced grant match and lobbyist fee, that the YMCA had already agreed to pay.

PLANNING AND ZONING BUSINESS

8. Consideration upon the application of Bald Mountain Lodge, LLC for a seventeen-unit condominium subdivision located at Lot 14B, Block 1, Warm Springs Village Subdivision, 2nd Addition Revised (100 Picabo Street) in the Tourist zone – the preliminary plat of Bald Mountain Lodge Condominiums. Councilman Gourlay recused himself since he rents from the applicant.

Brian Barsotti said he had contacted several City officials to see if they wanted to discuss Warm Springs Village with him, or see the site, but he hadn't gotten together with anyone. He said he felt that the current 17 residential units and one commercial unit were better than 10 larger residential; and if they didn't get preliminary plat approval, they might turn the building into long-term apartments or a single family residence, or something combined with the property next door.

Mr. Barsotti said P&Z had voted four to one for the project with 17 smaller units.

Mr. Barsotti questioned whether commercial would work in Warm Springs Village even if Sun Valley Company decided to run the ski lift in the summer. He said he'd be interested to know if Paul Kenny's and Sturtevant's would be open in the summer if the lift ran. Mr. Barsotti said people always complained that there should be a little store at the base of the lifts, but that in fact three little stores had closed due to insufficient business.

Mr. Barsotti suggested Council approve preliminary plat, and then have some work sessions to try to define their concerns for Warm Springs Village, and how to address them.

City Attorney Worst said that "condominium" was a form of ownership, indicating a private interest and an undivided interest in a group parcel. He said P&Z had wrestled with going from an existing conforming use and building to a new form of ownership that

could potentially create a different form of use. City Attorney Worst said there may be some use issues, but ownership was the main problem.

Councilwoman Tracy said she'd had two very informal talks with Sun Valley Company General Manager Wally Huffman, who indicated he was very interested in discussing the Resort's plan for Warm Springs Village. She said she really wanted to hear what he had to say, since there was probably no hope for Warm Springs if the Resort was going to turn all its assets and energy into River Run.

Councilwoman Tracy said she had asked Mr. Barsotti about providing deed-restricted housing at the previous Council meeting, and was told it wasn't required. She said she would like to engage the BKHA in some dialogue with Mr. Barsotti about deed-restricted housing; and would also like to consider more commercial on the first floor.

Mr. Barsotti said the economic reality was that Warm Springs commercial didn't pay, and to also require deed-restricted housing would hit him twice. He said he owned the building next door as well, and they may wait to see if they could combine the two buildings.

Mr. Barsotti said it was a good start that Mr. Huffman was talking about discussing Warm Springs, since the Resort hadn't indicated they were planning anything but residential at Warm Springs. He said the River Run Lodge was rented all the time, but he couldn't remember the Warm Springs Lodge being used for anything. He said Sun Valley Company charged for parking at Warm Springs, but not River Run.

Mr. Barsotti said he'd heard Councilmembers express concern about Warm Springs, but asked them how often they went to Warm Springs for lunch.

Mr. Barsotti said he had been approached by buyers interested in smaller business units, and a mixed use project, and maybe that made sense, but he didn't know what to tell them.

Councilman Hall said he didn't think it was fair to hold up Mr. Barsotti's application while Council tried to figure out how to fix Warm Springs, but he thought they needed to discuss the situation with Sun Valley Company, which was the largest Warm Springs Village landowner, to see what they could do to re-invigorate the area. Councilman Hall said they were currently working on a City Core Master Plan, and he would like to give the Warm Springs component first priority. He agreed that making the units in Mr. Barsotti's project larger was opposed to what they were trying to do in the Tourist zone.

Councilman Hall asked if it would help to consider changing the Tourist Zone from percentage of lot coverage to an FAR of 1.4 and some sort of density bonus for adding deed-restricted housing or commercial space on the first floor.

Councilman Hall said he still had a problem giving Mr. Barsotti preliminary plat approval, which could be construed as approval of the project without knowing its outcome.

Mr. Barsotti said he had told his investors it was best to wait and see what the highest and best use of the property could be, and they really couldn't sell a single condo until they knew where they were going. Mr. Barsotti said Ketchum attorney Barry Luboviski said that Warm Springs originally wanted larger units to control density, but now everyone realized that smaller units would bring more people to the Village.

Mayor Simon said he thought Council should make some decision on Mr. Barsotti's application, and not wait to decide until they had determined the viability of Warm Springs. City Attorney Worst said Council had a responsibility to treat all applications the same.

Planning Director Moniz said he was still in the process of doing an RFP for a consultant to master plan the Community Core, Warm Springs and River Run, and he thought the study might be done by August, or at least that they'd have a good idea.

Mr. Barsotti encouraged Council to move forward, and not to drop the ball, but he thought there was merit in going through the discussion of Warm Springs. He said he would love to see Warm Springs viable again, since he had two buildings there that weren't working.

Councilman Hall moved to approve the preliminary plat of Bald Mountain Lodge Condominiums, predicated on Council's discussion and with the understanding that the City would be doing Master Plan studies and worksessions to see what kind of vision the City and Sun Valley Company had for Warm Springs Village, along with any other stakeholders, and subject to Conditions 1-7 stated in Staff Report dated March 21, 2005. Motion seconded by Councilwoman Potters, and passed with three in favor and Councilwoman Tracy opposed.

- 9. Consideration upon the application of Trail Creek West Homeowners' Association to subdivide one existing lot into two lots at Ptarmigan Condominiums (591 Second Avenue South) located in the Tourist (T) Zone – the preliminary plat of Ptarmigan Condominiums.** City Attorney Worst recused himself from this discussion; Attorney John Seiller filled in as acting City Attorney.

Planning Director Moniz said the applicant had presented two different plans, Plan A and Plan B, with Plan B approved by the Planning and Zoning Commission. Planning Director Moniz said he would prefer Plan A, although it would require a waiver from the Subdivision Ordinance requirement that each lot have a minimum of 20 feet of frontage on a dedicated public street.

Bruce Smith, representing Trail Creek West Homeowners' Association (Ptarmigan Condominiums), said they were requesting permission to split their existing lot into two lots, one side of which had an existing 12-unit condominium building on it, in order to sell the other side of the lot and use the proceeds to repair the existing building.

Mr. Smith said the condominium building had an underground garage, but that their current 20-foot wide access easement was frequently blocked by snow storage and parked cars. He said they had agreed to P&Z's condition to install a sidewalk across their access easement.

Mr. Smith said the ordinance required 20 feet of dedicated frontage on a public street, but he couldn't find a definition of "frontage" in the ordinance. He said the complex had always considered their 20-foot access easement as frontage; but had decided to apply for a waiver to the 20-foot frontage requirement, listing their required hardships as unusual characteristics of the land.

Mr. Smith said they wanted to expand the access to 26 feet wide to meet with Assistant Fire Chief Mike Elle's requirement for a fire lane, and to allow more room for circulation.

Mr. Smith said P&Z had approved the plat, but hesitated to grant the waiver.

Mr. Smith said 10 single Trail Creek West owners and all but one of the interval owners were supportive of the sale and had signed Powers of Attorney, and the one that had not signed was being bought out. He said parking was everyone's biggest concern, and the 26-foot easement and additional parking spaces would alleviate that.

Planning Director Moniz said he thought Plan A was better than Plan B which the P&Z Commission had approved. He said the Plan A subdivision would decrease the allowed lot density from six to four units, due to the size of the newly subdivided lot; and improve the access road.

Planning Director Moniz said the applicant was requesting a waiver, not a variance, and read the definition for a waiver: "Modification of a relevant provision and regulation of this chapter [of the Subdivision Code] not contrary to public interest or public health, safety or welfare and due to physical characteristics of the particular parcel of land and not the result of actions of the subdivision where literal enforcement of this chapter would result in undue hardship. The granting of waivers shall be upon written application and the granting thereof rests with the sound discretion of the Commission and Council on a case by case basis."

Mr. Smith said the Trail Creek West homeowners were basically wanting to subdivide so they didn't have to be the developer of the vacant lot, and to use the revenue from the sale of the lot to do needed condominium building repairs. He said the P&Z had spent five meetings discussing their subdivision and waiver, but he still felt the access road was legitimate frontage.

John Seiller, Acting City Attorney, said he had not attended the P&Z meeting when the Commission made their decision, but he felt everything said at tonight's meeting was accurate. He said he had been retained by the City to render an opinion of whether the applicant was requesting a waiver of the Subdivision Ordinance or a variance of the Zoning Ordinance, and he felt it was a waiver, and that it made a lot of sense on this lot. He said this waiver was actually beneficial to health, safety and welfare, since it would allow fewer units per acre and fix the current contorted pseudo flag lot configuration.

Councilman Gourlay agreed that Plan A improved the emergency access and seemed to be much safer. He said a four-foot wide flag lot made no sense. He said he understood the reticence to grant a waiver, but he thought it was the better answer in this case.

Councilman Hall moved to approve preliminary plat of Resubdivision of Ptarmigan Condominiums, subject to conditions 1-11 in Staff Report dated March 21, 2005, with Condition 11 changed to read Plan "A" instead of Plan "B"; and also the four conditions listed in the Ketchum Fire Department Memo dated November 3, 2004 regarding Preliminary Plat for Ptarmigan Condos: Lots 1A and 3, Block 1. Motion seconded by Councilman Gourlay, and passed unanimously.

10. Ric Lum's Appeal

Adam King, attorney representing Ric Lum (Wing, Inc.) said this was an appeal of the Planning Director's denial of a tent, as a result of an advisory design review by P&Z.

Mr. King said the applicant Ric Lum had approached the City in a very open manner from the beginning, and had received approval as an off-site vendor for his tent in July, 2004, contingent upon fire department approval, which he had received. Mr. King said the "tent" was a high-tech engineered structure

Mr. King said the applicant's tent was subsequently required to go through design review in the Fall of 2004, where P&Z denied his tent request, mostly because it would compete with "bricks and mortar" businesses that had to provide bathrooms and parking, etc.

Mr. King said P&Z denied the application on the grounds that the color and materials were substantially different from the surroundings. Mr. King said 5.16.020 Definitions in the ordinance defined an offsite vendor permit "stand" as a bench, booth, handcart, newsstand, tent, etc., and he thought it was hard to require a tent be the same materials as its surroundings. He said 5.16.100.B.2.a.ii.D stated that the "Exterior Siding Material shall be of natural wood or masonry origin or similar quality (metal siding is prohibited)". Mr. King said an ordinance that defines a "stand" as to include a "tent" shouldn't contemplate natural wood or masonry siding, because by its very definition, a tent was not wood or masonry.

Mr. King distributed color photos of other tents around town, from restaurant decks to a shoe sale tent outside Sturtevant's. He said there were tents all over town that should, according to the ordinance, be presented to P&Z for design review.

Mr. King said the Offsite Vending Ordinance stated that offsite "... means to engage in or conduct business outside of any permanent building (deck or courtyard accessory to such building) ...". He said he didn't think the statute was particularly well written, and that it indicated any deck or patio was actually offsite vending.

Mr. King added that Mr. Lum had lost business income for the whole winter season, and had incurred attorney's fees and additional architectural fees.

Mr. King said this left color as the main objection to the tent. He said 5.16.100.B.2.a.ii.1 said "The stand's materials, colors and signage shall be compatible with the townscape and adjoining structures." He said it didn't make any sense to require a brick tent if the tent was next to a brick building.

Applicant's architect Bill Bridwell submitted colors for a temporary tent structure. He said the clear rubber fabric over a fully-engineered steel structure would temporarily provide shelter for the inhabitants during the winter, and would have sliding doors in the front, allowing people to see into the deck.

Mr. Bridwell said the tent manufacturer built tents for the military that could be erected and disassembled quickly, and was backlogged due to the war. He said the tents cost \$10,000-\$15,000 for a 14'x20' tent.

Planning Director Moniz said Mr. Lum had originally applied for an offsite vendor's permit with the stand itself, and had received the permit and could have been operating throughout the winter.

Planning Director Moniz said he felt the proposed tent was a little more than the ordinance referred to, and so presented it to P&Z for their feedback, but they weren't sure what to do with it either. He said he made a subsequent policy decision to deny the tent, knowing it would be appealed to Council, and he was looking for direction from Council.

Planning Director Moniz said he couldn't see charging an existing "bricks and mortar" business \$750 for an annual offsite vendor's permit to put an outside tent up, and historically the Planning Department had not done so, but that was Council's decision. Mr. King reiterated that the Offsite Vendor ordinance seemed to indicate that these tents were in fact offsite vendors. Everyone agreed that the Code needed some work; City Attorney Worst said the parenthetical was very confusing, but he agreed that Mr. King was technically right.

Councilwoman Tracy said she liked funky touches around town, and would encourage them, but she said the City's laws weren't being applied fairly and equitably. She said one particular restaurant had doubled their space, but had not added one parking spot. Councilwoman Tracy said she wasn't crazy about this particular tent, saying it looked like a car wash, but she felt Mr. Lum should be allowed to erect his tent until the City could clarify its ordinance. Councilwoman Tracy added that such offsite vendors increased business and people walking around town.

Councilman Hall said Council had tried a couple years ago to deal with offsite vendors at Warm Springs and downtown Ketchum, and had visited some of the tents around town. He said they discovered the "temporary" tents and structures were wired and more permanent than temporary, but that the businesses' seating capacity (and parking requirements) increased as a result of their deck, not the temporary tent over the deck. He said Council decided at that time to raise the charge for an annual offsite vendor's permit to \$750 to be more fair to existing businesses.

Councilman Hall added they wanted to allow existing retail to put tables out in the right-of-way to increase the pedestrian synergy and vitality.

Councilman Gourlay said he felt bad about Mr. Lum's situation, but that the tents operated year-round in Trail Creek Village, and he felt the City needed to be stricter with tents coming down and going up. He asked what would happen to the City's existing tents. City Attorney Worst said the tents were by definition temporary structures, and were avoiding design review by nature of being temporary, and probably not "grandfathered". He said they could continue to be handled under the Offsite Vendors Permit, once the language was clarified, but Council needed to give the Planning Department direction.

Mayor Simon said the Offsite Permit was initiated because people would come into town and sell out of the back of trucks with no control and no option tax collection. Councilman Gourlay said he would grant Mr. Lum a permit for his tent for a year, but he felt the location should provide bathrooms, parking, etc., as other businesses had to do.

Councilman Hall said he had previously operated a business in the 511 building, which had to be ADA accessible and provide bathrooms, which added to his price of doing business; whereas offsite vendors without these amenity expenses could sell for less money.

Planning Director Moniz said the language in design review spoke to permanent structures. Councilwoman Tracy said most of the tents were not really temporary. She said they rolled up their sides in the summer, and tied them up, but the decking was the same. Councilman Gourlay added that many of them were fire hazards, with heaters and cooking facilities. Mr. King said they did have to get a permit from the Fire Department.

Councilwoman Tracy said she agreed with the concerns about tents, but she wanted to see something besides big bank buildings in town.

Mayor Simon suggested extending Mr. Lum's permit for a year.

Councilman Hall confirmed that the applicant would take the tent down at the end of 180 days.

Councilman Gourlay moved to overturn the Planning Director's decision to deny the application of Ric Lum, and would extend the Offsite Permit to expire April 1, 2006, and allow the tent walls to be in place from December 1 to May 1. The framework will remain year-round. Motion seconded by Councilwoman Tracy, and passed unanimously.

RESOLUTIONS AND ORDINANCES

- 11. Consideration of Resolution Number 05-027 concerning a utility easement for Lane Ranch.** City Attorney Worst explained that this was a minimal encroachment and the Utilities Manager Steve Hansen had no problem with it.

Councilman Gourlay moved to pass Resolution Number 05-027, a resolution of the City of Ketchum City Council authorizing an irrigation water line easement between the Lane Ranch Association, Sun Valley Water and Sewer District and the City of Ketchum, and authorizing the Mayor to execute the Easement Agreement. Motion seconded by Councilwoman Tracy, and passed with three in favor and Councilman Hall temporarily absent.

Please see Resolution Number 05-027 on next page.

- 12. Consent Calendar**

Councilman Gourlay moved to approve the Consent Calendar, including minutes of the Regular City Council meetings of October 4 and October 18, 2004, and February 22, 2005, and Special City Council meeting of March 2, 2005; current bills; consideration of

the Draft Findings of Fact, Conclusions of Law and Decision regarding Sparto Townhomes – final plat – approval; and West View Terrace Condominiums – preliminary plat - approval; approval of 2005 Liquor, Beer & Wine Licenses; and revocation of delinquent Non-Property Tax Permits. Motion seconded by Councilwoman Potters, and passed with three in favor and Councilman Hall temporarily absent.

13. Executive Session

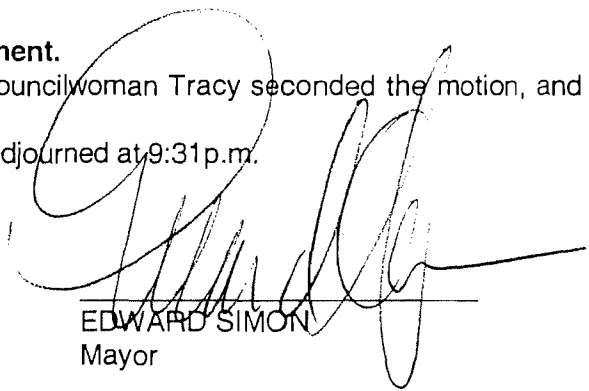
Councilman Gourlay moved to go into Executive Session at 8:55 p.m. to discuss land acquisition and litigation, seconded by Councilwoman Tracy. Roll call: Councilman Gourlay yes, Councilwoman Tracy yes, Councilwoman Potters yes, Councilman Hall temporarily absent. Motion passed

Councilman Gourlay moved to come out of Executive Session at 9:30 p.m., seconded by Councilwoman Tracy, Motion passed unanimously.

14. The next item of business was adjournment.

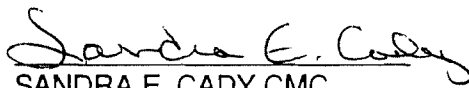
Councilman Gourlay moved to adjourn. Councilwoman Tracy seconded the motion, and it passed unanimously.

There being no further business, the meeting adjourned at 9:31 p.m.



EDWARD SIMON
Mayor

ATTEST:



SANDRA E. CADY CMC
City Clerk

EXHIBIT B

1 Taped

2 **REGULAR MEETING OF THE CITY COUNCIL**
3 **OF THE CITY OF KETCHUM, IDAHO**

4 **March 21, 2005**

5
6 This meeting was called to order by Mayor Edward Simon at 5:30 p.m. at City Hall, Ketchum,
7 Idaho.

8
9 Councilmembers present: Baird Gourlay
10 Randy Hall, Council President
11 Christina Potters
12 Terry Tracy

13 Also present: City Administrator Ronald P. LeBlanc
14 City Attorney Ben Worst
15 Planning Director Harold Moniz
16 City Planner Danelle Stern
17 City Planner Stefanie Webster
18 Recording Secretary Sunny Grant
19 Citizens
20

21 **6. Beaver Springs Owners Association Inc. – Restrictions on Lot 13.**

22
23 **Mayor Ed Simon** – Moving on to item D, Beaver Springs Owners Association – Restrictions on
24 Lot 13. Mr. Seiller.

25 **John Seiller** – Yes, thank you. John Seiller, for the record. And, uh, I represent the owner of
26 this lot. And the issues that Ben ... I have written a letter to Ben some time ago, and I've also
27 written a letter to Tim Graves, who handles the civil deputy prosecuting work for the county.
28 And, at that time, um, this, uh, lot was under a restriction on a private agreement between the
29 owners association and the owner, and that happened in 1983. And so, uh, the homeowners
30 association now wants to change that with the owner, uh, and, and, because it restricts all
31 development, uh, so the owner, of course, would love to have that, also owning the neighboring
32 lot, too, uh, would love to have that restriction removed, and the association, uh, may be
33 amenable to doing that, but they expressed that the, uh ... they just, uh, the owners association
34 has expressed a concern that they don't want to get in trouble with any of the jurisdictions,
35 either Blaine County or the City of Ketchum, if they go ahead and amend this. And so, I had
36 received a letter, uh, which I think is in your packets, from Ben, but um, had written a letter to
37 Ben and, and Tim, and then received a letter from Tim that said, "Hey, as far as we're
38 concerned, when this was annexed into the City of Ketchum ...", and I think that ... Ed probably
39 knows this, too, there's plenty of case law out there ... that says once it's annexed into the City
40 of Ketchum, any county restrictions go away. And so, um, there aren't any county restrictions on
41 the lot, and in fact, if you read the annexation agreement for Beaver Springs, there's nothing in
42 that that would deed restrict this lot, and there's nothing on the original plat or any amended plat
43 or anything else, so what I was simply asking from Ben was just simply something that says,
44 "Hey, the owners association isn't going to run afoul of the City of Ketchum by making a new
45 deal with the owner of Lot 13."

46 **Mayor Ed Simon** – And, Ben, correct me if I'm wrong, but the City has no protected interests
47 and is not a party to the original agreement, so it's really just clarifying for the record that we
48 have no objection to the request.

49 **Ketchum City Attorney Ben Worst** – That's correct. The City has no legal interest in this
50 property, other than as a parcel in the city. We're not a party in any of the agreements. This is a
51 simple housekeeping matter that involves real property, so I put it in front before you I just fire
52 off a letter saying the City has no interest in it. Um, but, you're correct. The City has no legal
53 rights under the agreement.

54 **Mayor Ed Simon** – Nor do we have any legal basis to extort money from the owner.

55 **John Seiller** – Well, that will come when you go for a building permit.

56 **Mayor Ed Simon** – Any question by the Council?

57 **Councilwoman Terry Tracy** – No.

58 **Councilman Randy Hall** – No.

59 **Councilwoman Chris Potters** – No.

60 **Councilman Baird Gourlay** – No. I've been through ...

61 **Mayor Ed Simon** – Okay.

62 **Councilwoman Terry Tracy** – So, do you need a letter from the City of Ketchum? Is that what
63 you need?

64 **John Seiller** – Yes.

65 **City Attorney Ben Worst** – Which I can draft.

66 **Councilwoman Terry Tracy** – Okay.

67

68 November 14, 2009

69 Verbatim transcribed from audio cassette tape by Sunny Grant, recording secretary for the
70 March 21, 2005 Ketchum City Council meeting

EXHIBIT C

BENJAMIN W. WORST

City Attorney



City of Ketchum, Idaho
480 East Avenue North P. O. Box 2315
Ketchum, Idaho 83340

Phone: (208) 726-7801 Fax: (208) 726-7845

bworst@ketchumidaho.org

April 8, 2005

Mr. John A. Seiller, Esq.
Attorney At Law
P.O. Box 6090
Ketchum, Idaho 83340

RE: Beaver Springs Subdivision Lots 13 & 14.

Dear Mr. Seiller:

Thank you for your patience in waiting for the City of Ketchum's response to your letter dated January 28, 2005. In that letter you requested that the City confirm whether or not it would oppose a new agreement between your client and the Beaver Springs Homeowners' Association allowing new development on Lot 13.

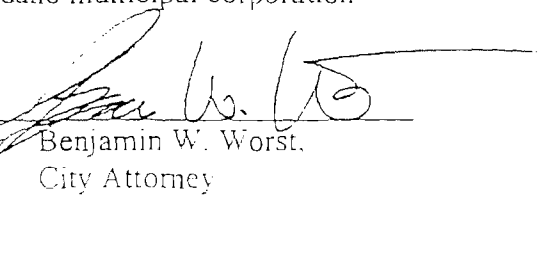
The City will not oppose a new agreement nor will it oppose a rescission of the current agreement. The City is not a party to the agreement and has a policy of processing applications irrespective of private agreements or conflicts. Accordingly, the City's relationship with the Owners is governed by the Annexation Agreement and by the Ketchum Municipal Code. The Annexation Agreement makes no reference to any restrictions on Lot 13. Moreover, the plat map of the Beaver Springs Subdivision indicates that Lot 13 is an independent parcel and makes no reference to any special restrictions on that lot.

Please let me know if I can provide any additional information. Thank you.

Sincerely,

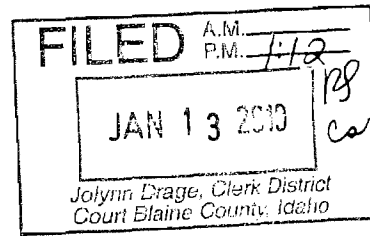
THE CITY OF KETCHUM, IDAHO,
An Idaho municipal corporation

By:


Benjamin W. Worst.
City Attorney

ORIGINAL

Edward A. Lawson, ISB No. 2440
Erin F. Clark, ISB No. 6504
LAWSON LASKI CLARK & POGUE, PLLC
675 Sun Valley Road, Suite A
P.O. Box 3310
Ketchum, ID 83340
Telephone: (208) 725-0055
Facsimile: (208) 725-0076



Attorneys for Defendant Beaver Springs
Owners Association, Inc.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

THOMAS WEISEL, a married man dealing in)
his sole and separate property,)
)
Plaintiff)
)
vs.)
)
BEAVER SPRINGS OWNERS)
ASSOCIATION, INC., an Idaho corporation,)
)
Defendant.)

Case No. CV 09-124

**SECOND AFFIDAVIT OF
CUSTODIAN OF RECORDS OF
BLAINE COUNTY PLANNING AND
ZONING IN SUPPORT OF
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

Michele Johnson, being first duly sworn upon oath, deposes and states:

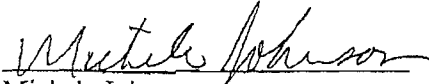
1. I am over eighteen years of age, have personal knowledge of the facts set forth herein, and am competent to testify thereto if called upon to do so.
2. I am a Custodian of Records at Blaine County Planning and Zoning ("P&Z") and I have the authority to certify the P&Z records.
3. The document attached as Exhibit A is a true and correct copy of Mr. Weisel's Application for a Variance Request and a Conditional Use permit For Servants' Quarters dated September 15, 1983. This application summary was prepared by the P&Z staff in the ordinary course of business at or near the time of the act, condition or event, by a person with knowledge

of those matters. It is the regular practice of P&Z to create and save such documents. Application summaries are kept by P&Z in the ordinary and regular course of business activity. I am not aware of any facts or circumstances that would lead me to believe that this document is not trustworthy.

4. Attached hereto as Exhibit B is a true and correct copy of an August 31, 1983 letter that was sent to homeowners in the Beaver Springs Subdivision from Ed Nigbor, the then Administrator of the Planning and Zoning Commission, regarding Mr. Weisel's variance application. Attached as Exhibit C is a true and correct copy of a September 20, 1983 letter from Ed Nigbor to Mr. Weisel. It is the regular practice of P&Z to create and save such documents. Letters written by, or sent to, P&Z regarding development projects are kept by P&Z in the ordinary and regular course of business activity. I am not aware of any facts or circumstances that would lead me to believe that these documents are not trustworthy.

5. Attached hereto as Exhibit D is a true and correct copy of an October 14, 1983 letter from Roger Crist to the Planning and Zoning Commission. This letter is contained in the Planning and Zoning Commission's file on Lot 13/14 of the Beaver Springs Subdivision. It is the regular practice of P&Z to create and save such documents. Letters between P&Z and development applicants, or their representatives, are kept by P&Z in the ordinary and regular course of business activity. I am not aware of any facts or circumstances that would lead me to believe that these documents are not trustworthy.

Further your affiant sayeth naught.


Michele Johnson
Custodian of Records

STATE OF IDAHO)
) ss.
County of BLAINE)

I, Karen Osborne, a notary public, do hereby certify that on this 12 day of January 2010, personally appeared before me MICHELE JOHNSON, who, being by me first duly sworn, declared that she signed the foregoing document, and that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Karen Osborne
Notary Public for Blaine County
Residing at Blaine County
My commission expires 10-9-2013

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of January, 2010, I caused to be served a true copy of the foregoing document by the method indicated below, and addressed to each of the following:

Fritz X. Haemmerle, Esq.
Haemmerle & Haemmerle, PLLC
400 South Main Street, Suite 102
PO Box 1800
Hailey, ID 83333

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Telecopy – (208) 578-0564



Erin F. Clark

APPLICATION FOR A VARIANCE REQUEST

AND A CONDITIONAL USE PERMIT

FOR SERVANTS' QUARTERS

September 15, 1983

APPLICANT: Tom and Vicki Weisel, P. O. Box 621, Ross, Calif. 98497
Agent: Jim McLaughlin, P. O. Box 479, Sun Valley, ID. 83353

LOCATION: Beaver Springs subdivision, Lots 13 and 14, Section 1, T4N, R18E. The subdivision is located just north of Ketchum, west of Highway 75.

ACREAGE: Lot 13 - 3.01 acres
Lot 14 - 3.70 acres

ZONING: R-.4

COMPREHENSIVE PLAN: High Density Residential

PROPOSAL: To construct servants quarters, in addition to an existing residence, which will consist of a detached, 1,570 square foot house having two bedrooms. Residence and servants quarters will both be on Lot 14.

Applicant is asking for a variance to the restrictions in Section 3.11 (maximum of 900 square feet and one bedroom). The Variance request should be reviewed and a decision rendered before the application for a Conditional Use Contract is reviewed.

UNDUE HARDSHIP
IF THE VARIANCE
IS NOT GRANTED:

(From the application). The owners feel that they cannot provide adequate housing for their household domestic help in 900 square foot quarters with only one bedroom.

FACTS:

An employment contract between Thomas Weisel and Bonnie Barclay, employee, is on file.

Lots 13 and 14 are both in excess of 3 acres. Proposed servants' quarters would be build outside of the building envelope (a 150 foot radius) which is where the existing residence is located (see attached plat).

Beaver Springs subdivision CC&R's include:

#14 - Any lot may have only one single family dwelling and no more than four detached out buildings.

#17 - No lot, or other property area created under any Supplemental Declaration, may be divided or subdivided or a fractional portion thereof sold or conveyed so as to be held in divided ownership.

EXHIBIT A

Approval has been given to this proposal by the Beaver Springs subdivision Homeowners Association.

NOTIFICATION: Letters were sent to surrounding landowners within 300 feet on August 31, 1983. No replies have been received as of September 9, 1983.

(Note: part A will cover the Variance Request, part B will cover the Conditional Use Permit)

A. VARIANCE:

APPLICABLE
REGULATIONS:

Applicants are asking for a variance to two sections of the Blaine County Zoning Ordinance 77-5, Section 3.11:

1. Nine hundred (900) square foot maximum;
2. One (1) bedroom maximum.

A Variance may be requested for the size and shape of a structure provided that there is "a showing of undue hardship because of the characteristics of the site, and only when the Variance will not conflict with the public interest." (Section 25.1 and 25.11).

Undue Hardship is defined as:

Section 2.84 Undue Hardship - Special conditions depriving the applicant of rights commonly enjoyed by other property owners in the same district under the terms of this ordinance, but not merely a matter of convenience and profit.

Section 25.4:

- 25.4 Criteria for Review. The Commission has the authority to grant Variances, and shall consider the following factors in ruling on a Variance application:
- A. Whether the granting of the Variance will conflict with the public interest as expressed in the Blaine County Comprehensive Plan.
 - B. Whether there are exceptional conditions, creating an undue hardship, applicable only to the property involved or the intended use thereof, which do not apply generally to the property or class of use in the zone or district.
 - C. Whether the granting of such relief will be detrimental to the public health, safety or welfare.
 - D. Whether the owner can derive a reasonable use of his land without a Variance.
 - E. Whether the Variance will effect a change in zoning.
 - F. Whether the Variance will be injurious to the property or improvements of others.

UNDUE HARDSHIP
IF THE VARIANCE
IS NOT GRANTED:

(From the application). The owners feel that they cannot provide adequate housing for their household domestic help in 900 square foot quarters with only one bedroom.

REVIEW:

Is there an undue hardship? This is necessary to grant a variance.

Would this Variance conflict with the public interest? Does approval by the Homeowners' Association lead to the assumption that they do not consider this anything other than a servants' quarters.

If you wish to approve this variance what are your "findings of fact"? Review the Criteria for Review listed earlier.

NOTE:

There are some real questions among the staff as to possible change in the allowable size of servants quarters. Rather than cloud up this Variance Review, we are adding comments and questions at the end under separate heading. Please read them.

B. CONDITIONAL USE PERMIT

This permit may not be approved unless the restrictions of Section 3.11 are met. A variance for Section 3.11 (1) and (2) is necessary, all other restrictions (3-7) have been met.

If approval is to be given are you going to do anything to restrict/prohibit the building of a residence on Lot 13? Any other conditions or restrictions?

SERVANTS' QUARTERS: Should there be a revision of the restrictions of Section 3.11, Blaine County Zoning Ordinance 77-5? This brings into question several established policies:

1. Size of quarters (Section 3.11)
 2. Only one house may be constructed on each lot (Accessory Uses - Section 3.1 and 3.6).
- * Is a basic consideration to ask ourselves if Blaine County wishes to meet the requirements of housing for domestic servants and caretakers as expressed by they property owners and employers?
 - * What if the property owner/employer wishes to have a staff of two or more servants? Or wishes to employ servants having a family? Or wishes to provide more comfortable quarters than 900 square feet of house can provide?
 - * Does the county wish to allow two houses (one being for servants quarters) on one lot? What if that lot is substantially larger than the zoning district allows? Can they be allowed on contiguous lots under the same ownership?
 - * What has been the problem of renting these servants quarters (and quest houses) in the past? What bearing does this have on this application? What has been the demand for larger servants quarters?
 - * If you wish to approve this variance (Weisel) what changes in Section 3.11 would you wish to consider? Or would you wish to go on a case by case basis and not make any changes in the regulations? Does this approval represent a change in basic policy as stated in Section 3.11? If not, what guidelines can you give to the Planning staff for future requests of this nature?

Blaine County Planning & Zoning Commission

Box 249, Mailley, Idaho 83323
(208) 788-4005

August 31, 1983

Dear Landowner:

On Thursday, September 15, 1983, at 7:30 p.m., the Blaine County Planning and Zoning Commission will commence their regular meeting upstairs in the old Blaine County Courthouse.

One of the items to be considered that day is a concurrent Conditional Use and Variance application submitted by Tom and Vicki Weisel. The Conditional Use is to allow construction of a servant's quarters; and the Variance is to allow the servant's quarters to be 1,570 square feet (maximum by ordinance shall not exceed 900 square feet). The property is located in Beaver Springs Subdivision lots 13 and 14, within Section 1, Township 4 North, Range 18 East. It is 8+ acres in size and is zoned R-1 (Low-Density Residential).

You are invited to attend this meeting and make comment either for or against this application. If you are unable to attend, your written comments will be accepted until the day of the meeting.

Sincerely,

Ed Nigbor

Ed Nigbor
Zoning Administrator

BN/jaf

EXHIBIT B

Blaine County Planning & Zoning Commission

Box 148, Hailey, Idaho 83333
(208) 788-4885

September 20, 1983

Mr. and Mrs. Thomas Weisel
Box 621
Ross, California 98497

Dear Mr. and Mrs. Weisel:

On September 15, 1983, the Planning and Zoning Commission considered your request for a Variance and Conditional Use Permit to construct servants' quarters on lots 13 and 14, Beaver Springs Subdivision, within Section 1, Township 4 North, Range 18 East.

The application was granted subject to the following conditions:

1. That the garage and servants' quarters be combined in one building, and that it be located outside of the 100-foot setback from State Highway 75.
2. That a declaration or deed restriction be written satisfactory to the Zoning Administrator, which will not allow the construction of a residence upon lot 13.

When you have a proposed deed restriction prepared, please forward it to me for approval. I also wish to compliment Jim McLaughlin for getting the necessary application items in on time and for his complete presentation.

Sincerely,

Ed Nigbor

Ed Nigbor
Zoning Administrator

EN/jaf

EXHIBIT C

Weisel Corp file

*Rec'd
10/17*

LAW OFFICES OF
ROGER E. CRIST
HIGHWAY STATION, SUITE 206
DUN VALLEY ROAD
P. O. BOX 2226
KETCHUM, IDAHO 83340
208/726-4242

ROGER E. CRIST
BRIAN J. BARGOTT

ROGER E. CRIST
OF COUNSEL TO:
CRIST, GRIFFITH, BRYANT,
SCHULZ, BROWN & CLOMAN
250 HAMILTON AVENUE
P. O. BOX 80
PALO ALTO, CA 94302
415/321-8000

October 14, 1983

Marideth Sandler
Elaine County P & Z
P.O. Box 149
Hailey, Idaho 83333

Re: Conditional Use Permit, Weisel Residence in
Beaver Springs Subdivision

Dear Marideth:

Jim McLaughlin asked that I forward to you a copy of the Agreement entered into between Thom Weisel and the Beaver Springs Owners Association. Upon execution by a representative of the Association, I will record the document.

As you can see from the Agreement, the further development is restricted in perpetuity and is binding on Mr. Weisel's successors and heirs.

I believe the Agreement will satisfy the requirements of the County in this regard. Please let me know if I can provide you with further information.

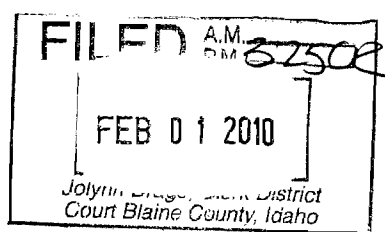
Very truly yours,
R. Crist
Roger E. Crist

REC/lv
Encl.
cc: Thom Weisel
Jean Smith
Jim McLaughlin

EXHIBIT D

ORIGINAL

FRITZ X. HAEMMERLE
HAEMMERLE & HAEMMERLE, P.L.L.C.
400 South Main St., Suite 102
P.O. Box 1800
Hailey, ID 83333
Tel: (208) 578-0520
FAX: (208) 578-0564
E-mail: fxh@haemlaw.com
ISB # 3862



Attorney for Plaintiff, THOMAS WEISEL

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

THOMAS WEISEL, a married man)	Case No. CV-09-124
dealing in his sole and separate property,)	
)	PLAINTIFF'S RESPONSE BRIEF TO
Plaintiff,)	DEFENDANT'S MOTION FOR
)	SUMMARY JUDGMENT
vs.)	
)	
BEAVER SPRINGS OWNERS)	
ASSOCIATION, INC., an Idaho)	
corporation,)	
)	
Defendant.)	

COME NOW the Plaintiff, Thomas (Thom) Weisel ("Weisel"), by and through his attorney of record, Fritz X. Haemmerle of Haemmerle & Haemmerle, P.L.L.C., and hereby files this Response Brief to Defendant, Beaver Springs Owners Association, Inc.'s Motion for Summary Judgment.

I. INTRODUCTION - SUMMARY

The Beaver Springs Owners Association, Inc. ("Association") is the group governing the Beaver Springs Subdivision ("Subdivision"), which subdivision is comprised of multi-million dollar homes on multi-acre lots. The Association has always

been made up of very successful and sophisticated business people. In 1983, the Association and Weisel entered into an Agreement (the "Agreement") based on the fact that improvements were to be constructed in the northern setback of Lot 14. The improvements cited in the Agreement were never constructed in the setback.

Furthermore, since that time, the Association has continuously permitted owners to build larger and larger homes and to build outbuildings in excess of that permitted in the amendments to the Original Declaration. In 2008, the Association adopted another amendment to the Original Declaration ("2008 Amended Declaration") that now permits density well in excess of that in Weisel's 1983 development plan.

In its Brief, the Association vilifies Weisel while attempting to justify its position. In doing so, many statements the Association attempts to use are either Weisel's or his representatives' statements that are taken out of context and subject to I.R.E. 408 as offers of compromise. Weisel served as a dedicated Board member for several years, has at all times abided by and acted consistent with the Declaration, and has always obtained approval for changes to his property that required the Association's approval.

The same cannot be said for the Association. The Association has permitted other owners to construct guest houses and caretaker's units that violated the Declaration; has allowed other owners to construct buildings larger than those in Weisel's development plan; and has allowed one owner to simply adjust his lot line to accommodate a structure in the setback, without requiring any of these owners to give up development rights in return. All of these acts were done post-1983, and after Weisel was required to sacrifice development on Lot 13.

On top of these advantages meted out to other lot owners, the Association has now adopted an Amendment to its Declaration that would forever limit Weisel to his existing density of 4.8% lot coverage, while allowing owners of lots half that size to build to four times that density.

Most objectionable, after asking Weisel to resign from the Board because it believed he had a conflict of interest due to his efforts regarding the Agreement, the Board then turned around and elected Jamie Dutcher to the Board. She is the wife of James Dutcher, the very person who threatened to sue the Association if it rescinded the Agreement, and the very person who has enjoyed the benefit of de facto open space across from his property when he never had any right to it.

Adding insult to injury, the Board does not appear to be requiring Jamie Dutcher to recuse herself from deliberating or voting on matters involving the Weisel issue. In short, if any actions are suspect in this matter, it is the Association's actions.

II. CORRECTION OF THE ASSOCIATION'S STATEMENT OF FACTS

The documents in the Record reflect that the Association has misstated the Record and omitted significant facts in its Brief: ..

1. Weisel incorporates into this Response Brief all of the Facts set forth in Weisel's Brief in Support of Plaintiff's Motion for Summary Judgment.

2. Before the parties were polarized by this litigation, the Association admitted that the consideration for the Agreement was the removal of the setbacks in lieu of a lot line shift to accommodate the development plan. (*Haemmerle Affidavit*, Exhibit.

1, *Response to Second Request for Admissions No. 7*, admitting Exhibit 20).¹ This position is consistent with the language of the Agreement about improvements to be constructed in the northern setback.

3. The Association was, and still is, made up of sophisticated and very successful businesspeople. Bob and Jean Smith were the original developers of the multi-million dollar subdivision and are the founders of Smith Optics, a multi-national corporation. (*Robert Smith Depo.*, p. 12, l. 20-22; *Jean Smith Depo.*, p. 9, l. 11-15). Ottley, also one of the original developers, received his undergraduate and graduate education in business and finance from the Wharton School at the University of Pennsylvania. (*Ottley Depo.*, p. 6, l. 24 – p. 7, l. 19 and p. 22, l. 24 – p. 23, l. 1). Ottley was very successful in business and has been involved in various lines of business, including manufacturing, banking, real estate, and construction. (*Id.*). William Fruehling was in the building business for 25 years, was experienced with homeowners associations in California and Nevada, and was successful enough to split his time for many years between California and Sun Valley. (*Fruehling Depo.*, p. 9, l. 4-17; *Response to Second Request for Admissions No. 18*, admitting Exhibit 105). Dutcher is a nationally renowned nature film producer. (*Dutcher Depo.*, p. 7, l. 11-12; *Kathleen Rivers Aff.*, Exhibit. 2). The names of other owners in the subdivision read like a Who's Who in the business world: Edgar Bronfman, John McCaw, Kiril Sokoloff, Larry Lacerte and Norman Hascoe. (*Robison Aff.*, Exhibit. 1; *Kathleen Rivers Aff.*, Exhibit 1).

¹ The Association's Responses to Weisel's Second and Third Requests for Admissions are attached as Exhibits 1 and 2 to Fritz Haemmerle's Affidavit. These will be cited as "Response to Second or Third Request for Admissions." The original declaration will be cited as "Original Declaration."

4. The documents prepared prior to, near, and after the Agreement show that Attorney, Roger Crist, acted as a scrivener in the drafting of the Agreement and had actually provided legal advice to the Association both before and after the drafting of the 1983 Agreement. (*Response to Second Request for Admissions No. 13*, admitting Exhibit 100, Beaver Springs Home Owners Annual Minutes June 25, 1981, Item 5, p. 2; *Response to Second Request for Admissions No. 15*, admitting Exhibit 102, Beaver Springs Home Owners Annual Minutes, March 21, 1985; *Response to Second Request for Admissions No. 16*, admitting Exhibit.103, Letter to Homeowners dated March 25, 1985).

5. Crist's letter of September 15, 1983, which included a draft of the Agreement, was sent to Weisel and copied to the Association as well. (*Weisel Depo.*, Exhibit 12). The Agreement does not reference legal representation by either party nor does it contain a provision as to which party drafted the Agreement or any rule of construction in that regard. (*Weisel's Opening Brief*, Exhibit. A; *see also Weisel Depo.*, Exhibit 13). Six months after the Agreement was executed, Ottley stated in his letter that the Design Committee drafted the Agreement. (*Ottley Depo.*, Exhibit 4). Weisel recollected in his deposition that he called Roger Crist and asked him to draw up a document that memorialized what the Agreement between himself and the homeowners and that he was not sure who drafted the Agreement but assumed that Crist talked to someone in the homeowners association to find out the details of the parties' agreement. (*Weisel Depo.*, p. 91, l. 15-19; p. 92, l. 1-4).

6. Since the Association has raised the legal representation and drafting of the Agreement as facts supporting its summary judgment motion, the fact that Crist had provided legal advice to the Association both before and after the Agreement, Ottley's

letter written six months after the Agreement stating that the Beaver Springs Design Review Committee (“Design Committee”) drafted the Agreement, the lack of any statement in the Agreement about representation, and Weisel’s statements that Crist did nothing more than memorialize the Agreement between him and the Association all negate the Association’s insinuation that the Agreement was drafted by Weisel’s attorney to meet Weisel’s needs rather than the Association’s needs. Even if this undisputed evidence is not construed against the Association as it should on a summary judgment motion, at best, it shows that Roger Crist acted as a scrivener in the drafting and execution of the Agreement.

7. The Association’s assertion at the bottom of page 2 that no other members have been allowed to build multiple homes that exceeded City of Ketchum (“City”) and Blaine County (“County”) size restrictions and the restrictions in the Original Declaration and subsequent amendments is patently false. Other lot owners have been able to exceed City, County, and the Association’s own size restrictions in the Amended Declaration. (*McClure Aff.*, Exhibit 6).

8. No matter what the Association asserts in its Brief about the original intent for outbuildings, Design Committee members Phillip Ottley and Jean Smith, and Association President, Bill Fruehling, all have admitted that “outbuildings” was interpreted by the Association to include guest houses, caretaker’s units, garages and barns. Ottley had a substantial caretaker’s unit on his property when the Board considered Weisel’s 1983 plans. (*Ottley Depo.*, p. 53, l. 19 –p. 54, l. 2 and p. 76, l. 8 – p. 77, l.4; *Jean Smith Depo.*, p. 16, l. 17-25; and p. 44, l. 9-13); *Response to Second Request for Admissions No. 11*, admitting Exhibit 29 and *Response No. 25*, admitting

Exhibit 112). Ottley's caretaker's unit was in a separate building from his main house and was 1,686 square feet, including an unfinished area of the unit. (*McClure Aff*, Exhibit 6).

9. In its recitation of the facts, the Association purposely blurs what was happening before the Design Committee and what was happening before the County. However, the documents are the best evidence of what occurred in this case and are undisputed. On September 12, 1983, when Jean Smith wrote her letter to the County, the issue being considered by the County related to the size of the caretaker's unit because the barn and garage were permitted uses under the ordinance and caretaker's units of 900 square feet or less were conditional uses. (*McLaughlin Depo.*, Exhibits 5 and 6). In contrast, the Association had only a minimum and no maximum limit on the size of buildings and the Association had been permitting guesthouses and caretaker's units. (Original Declaration, Article II, ¶13; *Ottley Depo.*, p. 53, l. 19 –p. 54, l. 2 and p. 76, l. 8 – p. 77, l.4; *Jean Smith Depo.*, p. 16, l. 17-25; and p. 44, l. 9-13). Smith sent unconditional approval of Weisel's plans to the County. (*Weisel Depo.*, Exhibit 7).

10. The Agreement between the Association and Weisel was already drafted before the County's Planning and Zoning hearing and before the County imposed any requirements on Weisel. Crist's letter with the Agreement enclosed was sent September 15, 1983, and the Planning and Zoning hearing was the very same evening of September 15, 1983. (*Weisel Depo.*, Exhibit. 12; *McLaughlin Depo.*, Exhibit 4). No one from the Association appeared at the hearing nor did any Beaver Springs property owner show up at the hearing. (*McLaughlin Depo.*, Exhibit 6). At the Planning and Zoning hearing,

McLaughlin represented to the County that Weisel and the Association had already made their own agreement restricting the lot. (*McLaughlin Depo.*, Exhibit 6, Item 3, p. 1).

11. The Association blames the continuing acceptance of dues for two lots from Weisel on the “bookkeeper,” implying that had the Association been aware of the double assessments, it would not have made that error. However, the Association’s records show that the Board of Directors and the members of the Association consciously continued to treat Weisel as having two lots and assessed him accordingly. For example, the Minutes for the Annual Meeting of the Association on December 26, 1985, which were prepared by the Secretary for the Association (not by the bookkeeper), Vicki Rosenberg, clearly show Weisel being assessed for two lots. (*Response to Request for Admissions No. 17*, admitting Exhibit 104).

12. Likewise, the agendas and minutes for the Annual Meetings of the Association from 1986 through 2003, prepared by the Secretary of the Association all show Weisel and Bronfman, as having two lots. (*Kathleen Rivers Aff.*, Exhibit 3). Those minutes also show dues revenue received for all 21 residential lots out of 21 and that the budget was discussed in detail at meetings. (*Id.*). The 1991 Annual Minutes show a special assessment made for all 21 lots. That is the total original number of residential lots in the subdivision. (*Id.*). The Trial Balance for 1987, in the Association records shows Weisel being assessed for two lots. (*Id.*, at Exhibit 4). These documents were distributed to owners. (*Id.*, at Exhibit 3).

13. Weisel was a member of the Board of Directors for the Association for several years prior to filing this lawsuit. (*Rivers Aff.*, Exhibit 7). On or about December, 2004 and early 2005, Weisel attempted to reach an amicable compromise with the

Association over the Agreement. His desire, and the Board's at that point, was to reach a "fair" solution for both Weisel and the Association. (*Weisel Depo.*, Exhibits 20 and 21; *Rivers Aff.*, Exhibit 8). Then, in December 2005, James Dutcher, through his attorney, threatened to sue the Association if it rescinded the Agreement. (*Weisel Depo.*, Exhibit 32). A day later, the Board asked Weisel to resign from the Board because it believed Weisel had a conflict of interest and Weisel thereafter resigned. (*Rivers Aff.*, Exhibit 9). A few months after Weisel's resignation, James Dutcher's wife became a Board member and Treasurer of the Association. (*Rivers Aff.*, Exhibits 7 and 10). The Board has not acknowledged Jamie Dutcher's conflict of interest and is not requiring her to recuse herself from voting on matters involving the Weisel issue. (*Rivers Aff.*, Exhibit 11).

III. RESPONSE

Weisel incorporates into this Response Brief all of the arguments set forth in Weisel's *Brief in Support of Plaintiff's Motion for Summary Judgment*. In addition, Weisel makes the additional response to the Association's arguments set forth below.

Issues relevant to mutual mistake, lack of consideration and failure of consideration all involve, to some degree the interpretation of a covenant. The standard of review for considering a restrictive covenant is as follows:

Idaho recognizes the validity of covenants that restrict the use of private property. When interpreting such covenants, the Court generally applies the rules of contract construction. **However, because restrictive covenants are in derogation of the common law right to use land for all lawful purposes, the Court will not extend by implication any restriction not clearly expressed. Further, all doubts are to be resolved in favor of the free use of land.**

In applying the rules of contract construction, the court analyzes the document in two steps. Beginning with the plain language of the covenant, the first step is to determine whether or not there is an ambiguity. Words

or phrases that have established definitions in common use or settled legal meanings are not rendered ambiguous merely because they are not defined in the document where they are used. Rather, a covenant is ambiguous when it is capable of more than one reasonable interpretation on a given issue. Ambiguity is a question of law subject to plenary review. To determine whether or not a covenant is ambiguous, the court must view the agreement as a whole.

The second step in contract or covenant construction depends on whether or not an ambiguity has been found. If the covenants are unambiguous, then the court must apply them as a matter of law. Where there is no ambiguity, there is no room for construction; the plain meaning governs. Conversely, if there is an ambiguity in the covenants, then interpretation is a question of fact, and the Court must determine the intent of the parties at the time the instrument was drafted. To determine the drafters' intent, the Court looks to the language of the covenants, the existing circumstances at the time of the formulation of the covenants, and the conduct of the parties.

Pinehaven Planning Board v. Brooks, 138 Idaho 826, 829, 70 P.3d 664, 667 (2003); *see also, Best Hill Coalition v. Halko, LLC*, 144 Idaho 813, 817, 172 P.3d 1088, 1092 (2007). (Citations omitted). (Emphasis added).

A. MUTUAL MISTAKE – COUNT ONE.

A fundamental, express premise of the Agreement was the location and construction of improvements in the setback along the boundary between Lot 13 and Lot 14. The Agreement clearly recognizes “improvements to be constructed in the setback line along the boundary between Lot 13 and Lot 14.”

The Association argues that Weisel has produced no evidence that the parties were under a belief that the proposed development was located in the setback. Yet, the very “best evidence” of what the parties believed or did not believe is the Agreement itself. It sets forth the expectation of “improvements to be constructed in the setback line.” (*Weisel’s Opening Brief*, Exhibit A). “Where the language of the contract makes

the intentions of the parties clear, the interpretation and legal effect of the contract are questions of law over which this Court exercises free review.” *Panike & Sons Farms, Inc. v. Smith*, 147 Idaho 562, 212 P.3d 992, 996 (2009). *See e.g., O’Connor v. Harger Construction*, 145 Idaho 904, 188 P.3d 846 (2008) (purchase contract was rescinded because easement stated in agreement never came to fruition).

Furthermore, in making its argument, the Association has chosen to simply ignore the testimony of Ottley, who was on the Design Committee in 1983. He recalled that at some point in the process the caretaker’s unit was located in the setback. (*Ottley Depo.*, p. 42, l. 17-25; p. 45, l. 22 – p. 46, l. 1).

The undisputed documentary evidence also shows that the plans were changed many times. The Agreement itself references plans dated July 20, 1983, and then revised August 18, 1983. McLaughlin’s letter to Jean Smith on September 1, 1983, refers to a “garage addition to the house” but the garage was ultimately detached from the house. (*McLaughlin Depo.*, Exhibit 2). Ed Nigbor’s letter of September 20, 1983, refers to the garage and caretaker’s unit being in one building but ultimately they were in separate buildings. (*Weisel Depo.*, Exhibit 9). McLaughlin’s Memo to Jean Smith on September 23, 1983, mentions moving the garage to a new location. (*Rivers Aff.*, Exhibit 6). Jean Smith’s April, 19, 1984, letter acknowledges that changes were made to Weisel’s plans and changes were approved. (*Weisel Depo.*, Exhibit 16).

In fact, the caretaker’s unit, garage and barn were not completed until 1985 at which point it is clear that the caretaker’s unit was not located in the northern setback, the garage was separate from the house, and the caretaker’s unit and garage were in separate buildings. (*Robison Aff.*, Exhibit 1; *McClure Aff.*, Exhibit 6).

The only possible purpose for unifying the parcels under the Agreement would be if there was a violation of the northern setback. The Association admits that it interpreted the Original Declaration as permitting guest houses and caretaker's units; the Original Declaration allowed four outbuildings; and there was no maximum size restriction for such structures. The only authority the Association would have had to deny the development plan would be if there were improvements in the setback.

Despite the express wording of the Agreement, the Association now maintains that it had total authority to deny Weisel's development plan for any reason whatsoever. In fact, though, the Association always had a policy of accommodating property owners' wishes, and of encouraging voluntary compliance with the Original Declaration instead of more heavy-handed action. (*See Rivers Aff.*, Exhibit 5, Letter dated September 27, 1984 from Jean Smith, Chairman, to James Dutcher; *see also, Response to Second Request for Admissions No. 17 and 19*, admitting Exhibits 104 and 106, Letters dated January 22, 1986, from Ottley, President, to the Members of the Association and to Fruehling). This policy resulted in the increasingly dense development allowed by the Association over the ensuing 27 years.

In sum, there are only two plausible reasons for the references in the Agreement to the improvements to be constructed in the setback line along the boundary between Lot 13 and Lot 14 and the removal of the setback lines. First, and most likely, the parties believed the caretaker's unit was going to be located in the setback, and the parties based the Agreement on the anticipated setback violation. Because the anticipated event (i.e. building in the setback) never occurred, the Agreement should be declared null and void.

Second, the only other plausible reason is the attempt by the attorney to set forth some *quid pro quo* on behalf of the Association, since it did not otherwise have the authority to deny the development plan on the basis of the size, number or type of structures and also had a policy of voluntary compliance with the Original Declaration. If that is the case, and the improvement was never planned to be in the setback, then the *quid pro quo* by the Association was completely illusory and the Agreement is void for lack of consideration.

The bottom line is that there is no material issue of fact or law; none of the buildings approved under the 1983 plans were actually constructed in the northern setback between Lots 13 and 14.

B. CONSIDERATION - COUNT TWO.

The Association first argues that the consideration for the Agreement was simply the approval of the development plan by the Association. Yet, this is directly contrary to the explicit language of the Agreement, which addresses the removal of the setbacks and the construction of improvements to be located in the setback.

In making this argument, the Association is asking the Court to ignore the plain language of the Agreement. As an initial matter, this Court must determine the legal effect of the parties' written contract. "The interpretation of a contract begins with the language of the contract itself." *Independence Lead Mines Co. v. Hecla Mining Co.*, 143 Idaho 22, 26, 137 P.3d 409, 413 (2006). If the language of the contract is unambiguous, then it's meaning and legal effect must be determined from its words. *Shawver v. Huckleberry Estates, LLC*, 140 Idaho 354, 361, 93 P.3d 685, 692 (2004).

The Association's argument is also directly contrary to its earlier admission that the consideration for the Agreement was the removal of the setbacks in lieu of a lot line shift to accommodate the development plan. (*Response to Second Request for Admissions No. 7*, admitting Exhibit 20). This admission is consistent with the language of the Agreement regarding improvements to be constructed in the northern setback.

In addition, as pointed out above, the Association's only authority to deny the plan would be if the development plan violated the provisions of the Original Declaration. Weisel's 1983 development plan did not violate the Original Declaration. The Original Declaration allowed "one single family dwelling with no more than four detached outbuildings." (*Response to Second Request for Admissions No. 1*, admitting Exhibit 4, Original Declaration, Article II, Sec. 13). The Design Committee members Phillip Ottley and Jean Smith, and Association President, Bill Fruehling, all have admitted that "outbuildings" was interpreted by the Association to include guest houses, caretaker's units, garages, and barns and Ottley, himself, had a detached guest house and garage on his property at the time, in which his caretaker of seven years resided. (*Ottley Depo.*, p. 53, l. 19 –p. 54, l. 2 and p. 76, l. 8 – p. 77, l.4; *Jean Smith Depo.*, p. 16, l. 17-25; and p. 44, l. 9-13; *Response to Second Request for Admissions No. 11*, admitting Exhibit 29; *Response No. 25*, admitting Exhibit 112).

The only size limit in the Original Declaration was a requirement that houses had to be *at least* 1,500 square feet. There was no other mention of size anywhere in the Original Declaration, a truth acknowledged by Ottley, Smith, and Fruehling. (*Response to Second Request for Admissions No. 1*, admitting Exhibit 4, Original Declaration,

Article II, ¶13; *Ottley Depo.*, p. 40, l. 19-22; *Jean Smith Depo.*, p. 17, l. 6-9 and p. 29, l. 8-15; *William Fruehling Depo.*, p. 40, l. 19-21).

In this case, there is no material issue of fact that Weisel's 1983 development plan was in compliance with the express provisions of the Original Declaration. In response, the Association argues now that the Association had complete authority to deny Weisel's development on whatever grounds it chose, but this argument is not grounded in law. In fact, it is contrary to law. As a matter of law, recorded covenants must be construed in favor of the free use of property so that without an express restriction in the Original Declaration such unlimited authority would not hold. "The Court will not extend by implication any restriction not clearly expressed in the covenants because restrictive covenants are in derogation of the common law right to use land for all lawful purposes. All doubts must be resolved in favor of the free use of land." *Best Hill Coalition v. Halko, LLC*, 144 Idaho at 817. The only possible provision of the Declaration that could have provided the Association the authority to deny the development was violation of setbacks.

The Association's argument that it could have unilaterally denied the development plan for any reason whatsoever is also not grounded in fact. The Association's records reflect a policy of approving owners' development plans, only asking for voluntary compliance with the Original Declaration, and refraining from heavy-handed application of the Original Declaration. (*Response to Second Request for Admissions No. 17 and 19*, admitting Exhibits 104 and 106, Letters dated January 22, 1986, from Ottley, President, to the Members of the Association and to Fruehling; *Rivers Aff.*, Exhibit 5, Letter dated September 27, 1984, from Jean Smith, Chairman, to James

Dutcher). The continual increase in the size of homes and number of buildings in the Subdivision reflects this policy.

The Association's second argument is that the consideration for the Agreement was the Association's approval of a greater density than allowed at the time. However, the Original Declaration is silent as to "density" other than the provision limiting the number of structures, which Weisel's plan did not exceed.

Further, if approval of greater "density" was the Association's consideration, the Association has rendered its approval completely worthless. Since the 1983 Agreement, the Association has approved huge homes, oversized guest houses, and by its recent adoption of the 2008 Amended Declaration to the Original Declaration, density well in excess of Weisel's 1983 development plan. Weisel's 1983 development plan was for approximately 11,533 square feet of buildings on 3.7-acre Lot 14. (*McLaughlin Aff.*, ¶ 3). Neither the number nor size of the buildings violated the Original Declaration. (*Id.*; *Response to Second Request for Admissions, Response No. 30*, admitting Exhibits 4, Third Amendment to Declaration).

The Association now expressly allows up to 15,000 square feet of structures on 2-acre lots. (*Response to Second Request for Admissions No. 1*, admitting Exhibits 117, Third Amendment to Declaration). It cannot be seriously disputed that by allowing such density in the Subdivision, the Association has rendered any consideration regarding approval of increased density for Weisel worthless.

Instead, rather than Weisel continuing to receive the benefit of the 1983 approval of greater density than the other lots, the Association by its own actions has actually turned that benefit into a tremendous detriment to Weisel.

In sum, the express consideration for the Agreement was the Association's approval for Weisel to construct improvements in the northern setback in return for combining the lots. Ottley and Weisel both recollect that at some point during the development process, the caretaker's unit was located in the northern setback on Lot 14. (*Ottley Depo.*, p. 42, l. 17-25; *Weisel Depo.*, p. 39, l. 13 – p. 44, l. 25). The undisputed evidence shows that changes were repeatedly made to Weisel's development plan and the improvements were never constructed in the northern setback. (*Weisel Depo.*, p. 55, l. 12-15, p. 64, l. 21-24, and Exhibit 3; *McClure Aff.*, Exhibit 6; *Jean Smith Depo.*, p. 29, l. 16-18; *Fruehling Depo.*, p. 41, l. 5-9). For several years Lot 13 was assessed as though the caretaker's unit was, in fact, on Lot 13. (*Weisel Depo.*, p. 115, l. 2-5). Ultimately, the improvements were all constructed on Lot 14, outside of the setbacks. (*Id.*)

Therefore, based upon the express language of the Agreement and construing it narrowly and in favor of the free use of Weisel's property as required by law, there was no consideration for the Agreement because the improvements were not constructed in the setbacks.

C. RESCISSION – COUNT THREE.

The Association argues in Section D of its Brief that the Court cannot rescind the Agreement. This position is directly contrary to the advice given by its own attorney to the Association on what options were available regarding Weisel's request to modify or rescind the Agreement. The Association's attorney advised the Association that it may rescind the Agreement "The Board, after careful consideration as to why a modification or recession of the Agreement is in the best interest of the Association, may, by lawful

vote, modify or rescind the Agreement.” (*Response to Second Request for Admissions, Response No. 8*, admitting Exhibits 26, Lawson Letter to Association).

Contrary to that opinion, the Association now argues that the Agreement cannot be rescinded because the parties cannot be restored to the pre-contract status because Weisel’s caretakers unit exceeded the County’s 1983 square footage limits and now exceeds the 2008 Amended Declaration and the City’s limits. This argument is without any merit for several reasons.

First, though the Association tries to “hang its hat” on the County and City requirements, there is nothing expressly stated in the Agreement that the Association’s approval of the plan was conditional on or related to whatever action the County took. (*Response to Second Request for Admissions, Response No. 1*, admitting Exhibits 14, Original Declaration). Instead, the documents show that the Association and Weisel reached their agreement on Weisel’s development plan, which included a very large barn, a garage, and a caretaker’s unit, before the County acted. Also, the proceedings before the County related solely to the size of the caretaker’s unit and did not involve the other two buildings in the development plan. Moreover, the County ordinances are no longer relevant since the property is now in the City. The County has indicated that should the Agreement be rescinded, it would have no authority over the matter. (*Tim Graves Aff.*, Exhibit 1).

As for the City, the property was annexed into the City without any reference to the restriction. Furthermore, the City has considered the Agreement and has stated that it has no interest in enforcing the private Agreement. (*Sandy Cady Aff.*, Exhibits 1-3). Even so, if the City did choose to enforce the County restriction, it could do so at the time

Weisel applied for a building permit for Lot 13. (*Id.*) The City's and County's disinterest in the issue demonstrates that a return to pre-contract status is possible as far as these entities are concerned.

As for the Association, the consideration set forth in the Agreement is the removal of setbacks. However, the improvements were never constructed in the setback so that the pre-contract status may easily be restored. Alternatively, if the consideration was the approval by the Association of a development plan of greater density than what had been previously allowed, then here again the pre-contract status quo can be restored because the development in the Subdivision now exceeds that of Weisel's development plan. Since the Agreement, the Association has approved development on other owners' lots well in excess of Weisel's 1983 development and has approved development on other lots in violation of the Amended Declaration.

The Association also argues the Agreement cannot be rescinded because it would now violate the current 2008 Amended Declaration. This argument lacks merit for several reasons. First, this argument is irrelevant because Weisel has been compliant with the Original Declaration and all amendments. (*Fruehling Depo.*, p. 69, l. 2-25; *McClure Aff.*, Exhibit 6). For this reason, Weisel's uses would be considered approved non-conforming uses, even if those uses were not consistent with the 2008 Amended Declaration.

Second, even for the sake of argument, if Weisel's uses were illegal non-conforming uses that violated the Original Declaration and prior amendments, the 2008 Amended Declaration "grandfathered in" or waived any approved or non-approved use that predated the 2008 Amended Declaration. "All Improvements in existence or in place

on any Lot as of the date of this Declaration are hereby approved and no further approval for such Improvements shall be necessary for their continued existence.” (*Response to Second Request for Admissions No. 30*, admitting Exhibits 117, Third Amendment and Restatement of Declaration of Restrictions of Beaver Springs Subdivision). The result of the “grandfather” or waiver clause is that every approved or non-approved use became legal under the 2008 Amended Declaration.

Third, there are several lots with guesthouses that violate the Original Declaration and all amendments prior to the 2008 Amended Declaration. (*McClure Aff.*, Exhibit 6). Under the “grandfather” or wavier clause, all these illegal uses would be approved. It would be the ultimate inequity if these non-approved uses are waived, while the Association continues to treat Weisel’s approved uses, including the 1983 development plan, as somehow violating the 2008 Amended Declaration. In short, the approval of Weisel’s 1983 development plan now would be completely consistent with how the Association is required to treat all approved and non-approved uses that predated the 2008 Amended Declaration.

The second point the Association makes against rescission is that Weisel does not come into the Court with clean hands. As to the clean hand doctrine, the Court in *Ada County Highway District v. Total Success Investments*, 145 Idaho 360, 179 P.3d 323 (2008), stated: “The clean hands doctrine stands for the proposition that ‘a litigant may be denied relief by a court of equity on the ground that his conduct has been inequitable, unfair and dishonest, or fraudulent and deceitful as to the controversy in issue.’ “ *Citing, Gilbert v. Nampa Sch. Dist. No. 131*, 104 Idaho 137, 145, 657 P.2d 1, 9 (1983) (citing 27 Am.Jur.2d Equity § 136 (1996)).

Under this standard, there is no showing that Weisel's conduct towards the Association has been "inequitable, unfair and dishonest, or fraudulent and deceitful" as to any matter.

- Weisel always abided by whatever Declaration was in effect, while the Association allowed other owners to violate the Amended Declaration. (*McClure Aff.*, Exhibit 6);
- Weisel was required to give up development rights for the Association's approval, yet the Association never required a single other owner to do so. (*Fruehling Depo.*, p. 21, l. 11 – 20);
- Weisel always obtained the necessary approvals for changes to his property from the Association, while others have not. (*Fruehling Depo.*, p. 69, l. 2-25; *McClure Aff.*, Exhibit 6);
- Weisel had to give up his right to develop Lot 13 to be able to build in the setback, while the Association did not require the same of the owner of Lot 18 when he wanted to build in his setback. Instead, the Association let that owner move the lot line north and recently reassured that owner that he can build Lot 17 to the maximum. The Association's treatment of that owner means that he can build to 30,000 square feet on his two lots, the size of which is almost an acre less than Weisel's two lots. (*Response to Second Request for Admission No. 31* admitting Exhibit 118, Letter from Association to Edgar Bronfman dated February 17, 2009);
- Weisel resigned from the Board when the Board believed he had a conflict of interest with the Association, while the Association almost immediately after elected Jamie Dutcher to the Board even though her husband had threatened to sue the Association over the same issue. (*Weisel Depo.*, Exhibit 32; *Rivers Aff.*, Exhibits 7, 9, and 10). The Association has not even requested her recusal from deliberating and voting on Weisel's issue. (*Id.*, Exhibit 11); and
- Weisel attempted to amicably resolve the issue and when unable to do so, filed this action for Declaratory Judgment rather than simply violating the restriction and proceeding to build. All of these actions demonstrate Weisel's respect for the Declaration, the legal process, and the Association.

In return, Weisel has been seriously disadvantaged while other lot owners and the Association have not abided by the Original Declaration and amendments and gained.

Weisel has acted at all times honorably in his dealings with the Association. It is the Association's "hands" that are "sullied."

D. THE STATUTE OF LIMITATIONS DOES NOT BAR COUNTS ONE THROUGH THREE

In Count One and Count Two, Weisel sought Declaratory Judgments that the Agreement was void for mutual mistake and lack of consideration. Count Three sought Rescission based upon mistake and failure of consideration. Beaver Springs argues these three counts are barred by the statute of limitations applicable to written contracts. The Association is wrong for the following reasons.

The Association's argument was rejected by the Idaho Supreme Court in *Thompson v. Ebbert*, 144 Idaho 315, 318, 160 P.3d 754, (2007).² In that case, the property owner sought a declaratory judgment that a lease, which had been entered seven years before and recorded against the property, violated the applicable declaration and was void. The lessor argued that the property owner's request for declaratory judgment was an action on a contract founded upon an instrument in writing and was barred by the five-year statute of limitation on written contracts. The Court held that the property owner was not barred by the statute of limitations because where an agreement is void from the start, the statute of limitations does not apply and it can be challenged at any time. *Id.*; see also, *Vincent v. Safeco Ins. Co. of America*, 136 Idaho 107, 112, 29 P.3d 943, (2001)(where there is no consideration or it is illusory, the agreement is void.) For the same reason, Weisel's claims are not barred.

The Association's argument also fails because the Declaratory Judgment statute allows that "a contract may be construed either before or after there has been a breach

² The Association's counsel is well aware of the *Thompson* case because counsel for Weisel and counsel for the Association litigated that case.

thereof.” I.C. § 10-1202. In contrast, the statute of limitations runs from the date of a breach of a valid contract. Here, Count One and Count Two are requests for Declaratory Judgments requesting the Court to make a determination that the Agreement was void from the start due to the lack of consideration and mutual mistake. Count Three is for rescission because the 1983 Agreement is void. These counts do not involve a breach of contract. Weisel has not developed in violation of the Agreement. Instead, he seeks a declaration as to the invalidity of the Agreement. Therefore, even assuming arguendo that the Agreement is valid, there is no breach of contract from which any applicable statute of limitations would begin to run.

The flaw in the Association’s argument is further shown by the following: If Weisel decided to proceed and build on Lot 13 and the Association attempted to stop him from doing so claiming that he was in breach of contract, there is no question that Weisel could raise the defenses of lack of and failure of consideration and mutual mistake to prevent the Association from prevailing on its action.

In sum, the statute of limitations is never a bar to the claim that a contract is not supported by consideration, or is one based on mutual mistake, or that the consideration fails. 53 CJS, Limitation of Actions, § 104, pp 1088-1089: “The statute of limitations is not available as a bar to a defense of mistake, absence or failure of consideration, in whole or in part of the contract sued on.” *See also, Madison National Bank v. Lipin*, 226 N.W.2d 834 (Mich.App. 1975).

Alternatively, if as the Association claims, density was the consideration for the Agreement, then the continuing approval of larger and larger structures and of buildings in violation of the Amended Declaration culminating in the adoption of the 2008

Amended Declaration, which now expressly permits more density than that which was only conditionally approved for Weisel in 1983, caused that consideration to fail. Weisel's complaint was filed within five years of that time.

E. WEISEL IS ENTITLED TO TWO VOTES – COUNT FOUR.

When Weisel purchased Lot 14 and Lot 13, pursuant to the Original Declaration and Articles of Incorporation, the Association was required to issue him one membership certificate for each lot he purchased. Those memberships ran with and were appurtenant to the land and entitled him two votes on Association matters. (*Response to Second Request for Admissions No. 1*, admitting Exhibit 4, Original Declaration, Preamble and Art. V, ¶ 2; *Rivers Aff.*, Exhibit 12).

However, in 2006, once Weisel began asking the Association to rescind the Agreement, the Association decided to deny Weisel his vote for Lot 13. Count Four of the Complaint is a claim for breach of contract based upon that denial because whether the Agreement is declared to be void or not, it did not strip Weisel of his two memberships or two votes. More importantly, Weisel should be treated the same as the one owner of both Lot 17 and Lot 18, who also has two memberships and two votes. The Association's motion for summary judgment on Count Four should be denied for the following reasons.

First, there is nothing in the Agreement stripping Weisel of his voting rights attributable to Lot 13 or requiring the return of one of his membership certificates. Under Idaho law, the lack of such provisions in the Agreement must be resolved against the Association. "In Idaho, restrictive covenants are recognized but disfavored. For this reason, this Court will not extend by implication any restriction not clearly expressed in

the Covenants themselves and all ambiguities must be resolved in favor of the free use of land.” *Pinehaven Planning Board v. Brooks*, 138 Idaho 826, 831, 70 P.3d 664, (2003). This is true because restrictive covenants are in derogation of the common law right to use land for all lawful purposes. *Id.* at 829. All doubts must be resolved in favor of the free use of land. *Id.* Whether a covenant is deemed unambiguous or ambiguous, the Idaho courts are to construe it strictly and in favor of the free use of property. *Id.*

Lane v. City, 144 Idaho 584, 166 P.3d 374 (2007), addressed a situation exactly like this case. In that case, the original developer of property had entered into a 1986 agreement with the City of Sun Valley (“Sun Valley”), part of which restricted the development of the property to existing zoning. The agreement distinguished between open space and residential land and expressly limited the residential zoned land to 120 units. In 2001, the successor to the developer sought to rezone the property that was zoned open space under the agreement. Sun Valley argued that the agreement prohibited the rezone because the agreement restricted development to the land zoned residential. Sun Valley’s argument was rejected by the Court.

We find not only that the Partnership did not waive its right to seek a rezone of the Northern Property, but further that any proposed rezone did not hinge on modification of the Agreement. While the Agreement clearly refers to the zoning of the different areas of the property-and the purpose of that zoning-the Agreement nowhere states that rezoning is prohibited.

Id. at 589.

After setting forth the rules for construction of restrictive covenants, the Court held that in order to have limited the developer’s ability to seek a rezone of any part of the property, the agreement must have clearly so stated. Since it did not and because of

Idaho's strong policies disfavoring restrictive covenants, the Court would not imply a prohibition against rezoning in the agreement. *Id.*

Here, assuming the Agreement is not void or extinguished under Weisel's other causes of action, there is nothing in the Agreement about eliminating one of Weisel's votes or memberships upon the combining of the lots. Construing the Agreement in favor of the free use of his property, and where the number of votes or memberships is not addressed, the reduction of votes and memberships cannot be implied into the Agreement.

The second reason the Association's motion should be denied is that the Original Declaration contained no provision regarding the elimination of one vote or membership where two lots are combined. The Association essentially argues that upon the execution of the Agreement, the reduction of Weisel's voting rights happened automatically under the Original Declaration. Aside from the fact that the Idaho Courts would never apply a restrictive covenant "automatically" without a clear statement so providing, the argument fails because the Original Declaration does not state that upon the unification of lots, one of the votes and memberships is eliminated.

The Original Declaration states that only "[i]f setback lines are removed or easements changed along the common boundary lines of combined parcels, the combined parcels shall be deemed one parcel and may not thereafter be split and developed as one parcel." (*Response to Second Request for Admissions No. 1*, admitting Exhibits 14, Original Declaration, Art. III, ¶ 17). There is nothing in this provision about stripping the owner of the votes or membership attributable to one of the lots.

The Association also relies on Paragraph 2, of Art. V which provides that “there is and shall be one membership in the Association for each Lot,” (in contrast to “parcel”), and that “each membership is entitled to one vote.” Here again, there is nothing in this provision about stripping a member of his membership or his vote after unification of lots. The Association relies upon the language “or other property area” to mean those lots that have been unified, but the two terms are distinctly used in the definition of “property” in the Declaration. Property is defined to include “Lots, ...and any other property.” (*Id.*, Original Declaration, Art. I. ¶ 2. Consistent with this, the preamble to the Original Declaration expressly relates the terms “lots” to those described in the “attached plat.” Lot 13 and Lot 14 remain distinct and separate platted lots in the subdivision.

The Association also argues that even if the Agreement and the Original Declaration did not eliminate Weisel’s vote, the 1986 Amendment to the Original Declaration (“1986 Amendment”) did. This argument also fails because when the 1986 Amendment is construed in accordance with the rules of construction of restrictive covenants, it only applies prospectively. “Court[s] will not extend by implication any restriction not clearly expressed in the Covenants themselves and all ambiguities must be resolved in favor of the free use of land.” *Pinehaven Planning Board v. Brooks*, 138 Idaho 826, 831, 70 P.3d 664 (2003). Furthermore, the Association’s actions since that time prove it was not intended to apply retroactively to Weisel’s Lots.

The Association adopted the 1986 Amendment on October 21, 1986, to provide for a reduction in votes on the unification of two lots. (*Response to Second Request for Admission No. 5*, admitting Exhibit 18). Two months later, at the December 22, 1986, annual meeting, the Association accorded Weisel two votes. (*Rivers Aff.*, Exhibit 3). The

Association continued to do the same for the following 20 years. (*Id.*; *Weisel Depo.*, p. 263, l. 8-13).

As recently as 2005, the Association filed a Second Amendment to its Articles of Incorporation, which expressly provides that “the number of memberships outstanding in the Association is 21.” (*Rivers Aff.*, Exhibit 14). The only way there could be still be 21 memberships is if Weisel is counted as having two lots, since there have always been, and still are, 21 residential lots in the Subdivision. There is simply no evidence to support the contention that the Association intended to eliminate one of Weisel’s votes under the Agreement or to apply the 1986 Amendment retroactively to Weisel.

Indeed, the Association’s argument boils down to this: that, by adopting the 1986 Amendment eliminating Weisel’s second vote, it had the right to, and did extract a further concession from Weisel, the consequence of which essentially amended the Agreement. If that is true, then the same argument holds true for the Association’s adoption of the 2008 Amended Declaration. By adopting the 2008 Amended Declaration approving density well in excess of Weisel’s 1983 development plan, the Association had the right to, and did destroy the very *quid pro quo* for which Weisel gave up his development rights, the consequence of which essentially terminated the Agreement.

The Association’s arbitrariness in reducing Weisel’s votes is also shown by the Association’s failure to abide by its own Original Declaration, amendments and organizational documents. The Original Declaration and Articles of Incorporation and all amendments, tie membership in the Association to the lots described in the official plat. The Articles provide that there is one membership for “each lot in the Beaver Springs Subdivision as shown on the official plat thereof recorded in the Office of the Blaine

County Recorder.” (*Rivers Aff.*, Exhibit 12, p. 5; Exhibit 13, p. 2; Exhibit 14). The Association’s Bylaws provided the same (*Rivers Aff.*, Exhibit 15, p. 1). Lot 13 and Lot 14 are separately platted lots in the Subdivision. Accordingly, Weisel is entitled to two votes.

The final reason why the Association’s argument fails is because membership and the right to vote run with the land and are appurtenant to each platted lot and such vested rights cannot be taken away from Weisel. *Twin Lakes Village Property v. Crowley*, 124 Idaho 132, 857 P.2d 611 (1993). Courts distinguish between regulations governing the conduct of the internal affairs of the corporation, and those in the nature of a contract, which are evidently designed to vest property rights. *Black v. Glass*, 438 So.2d 1359, 1370 (Ala. 1983). A general reservation of the power to amend will be applied to the former class of regulations but not the latter. *Id.*; *see also, Thompson v. Wyandanch Club*, 70 Misc. 299, 304, 127 N.Y.S. 195, (1911); *Vernon Manor Apts. V. Salatino*, 15 Misc.2d 491, 494, 178 N.Y.S.2d 895, (1958). Voting rights are among the latter. *Vernon*, 15 Misc.2d at 496; *Matter of American Fibre Chair Seat Corp.*, 241 App. Div. 532, 272 N.Y.S. 206 (1934). Thus, even if the Association amends its Original Declaration, amendments or organizational documents, it cannot take away the memberships or voting rights Weisel purchased when he bought Lots 13 and 14.

For all of the above reasons, the Association’s motion for summary judgment on Count Four should be denied. Instead, Weisel is entitled to summary judgment against the Association on Count Four.

F. THE ASSOCIATION IS ESTOPPED FROM TAKING AWAY WEISEL'S MEMBERSHIP AND VOTES – COUNT FIVE.

As shown above, the Association cannot take away the voting rights associated with Weisel's two memberships that run with Lot 13 and Lot 14. Alternatively, Count Five raises the doctrine of quasi-estoppel to prevent the Association from doing so. The Association seeks summary judgment on Count Five on the basis that Weisel cannot show that the Association gained an advantage or that he suffered any damage as a result of the Association taking away his vote attributable to Lot 13.

The Association is wrong because it misapplies the doctrine to these facts.

The doctrine of quasi-estoppel has its basis in acceptance of benefits; it precludes a party from asserting to another's disadvantage a right inconsistent with a position previously taken by him or her. The doctrine applies where it would be unconscionable to allow a person to maintain a position inconsistent with one in which he acquiesced or of which he accepted a benefit.

KTVB, Inc. v. Boise City, 94 Idaho 279, 281, 486 P.2d 992, 994 (1971). Because quasi-estoppel is an equitable doctrine, its application depends upon a case-by-case analysis of the equities involved, rather than upon precise definitional standards or of strained analogies to the facts of prior estoppel decisions. *Id.* at 282.

Here, there is nothing in the Agreement that says anything about eliminating a membership or voting right attributable to either Lot 13 or Lot 14. Additionally, at no time since the execution of the Agreement did the Association ever lead Weisel to believe that the memberships or votes associated with Lot 13 and Lot 14 were reduced by the Agreement or that the membership or vote for Lot 13 was eliminated. Instead the Association led him to believe exactly the opposite. It readily accepted dues and accorded him a vote for Lot 13 for 23 years.

Had Weisel understood that the Association would ultimately take away his two memberships and two votes, he would have immediately sought a declaration of his rights under the Agreement and of the applicability of the 1986 Amendment to him. (*Weisel Depo.*, p. 267, l. 15- p. 268, l. 2). Instead, because it did not take away his voting right until 23 years after the Agreement, the Association very clearly has benefited. It received dues and assessments on Lot 13 for the past 23 years. It is able to raise the statute of limitations as a bar to Weisel's claim for reimbursement of those funds in Count Six and to his claims for lack of consideration and mistake in Counts One through Three.

The Association has also raised the defense of laches to Weisel's equitable claims and uses Weisel's failure to attack the 1986 Amendment to the Declaration as proof that he acquiesced in it. (*Memo in Support of Motion for Summary Judgment*, p. 13, ll. 4-6; p. 28, ll. 18; p. 31, ll. 1-2). If the Association prevails on any of these defenses, it will have benefited to the tune of almost \$25,000.00, not including interest, which represents the dues and assessments Weisel paid for Lot 13 for 23 years. Where a party does not pursue a claim as a result of representations by the other party, the other party is estopped from raising the statute of limitations as a bar to the claim. *PennDPW v. Soffer*, 544 A.2d 1109, 1110 (Pa.Cmwth. 1988).

Finally, lacking a meritorious reason for its discriminatory actions against Weisel, the Association resorts to suggesting that Weisel purposely lulled the "mistaken" Association into collecting his dues and giving him two votes. Not only is there no support in the record for this narrative, it contradicts the undisputed facts.

As already shown above, the record is undisputed that the Association consciously accorded Weisel two votes and two memberships. The Association did so just two months after the 1986 Amendment providing for a reduction in voting rights on unification, and continued to do so for 20 years thereafter. This proves that the parties never intended by the Agreement to reduce the memberships or votes held by Weisel nor intended the 1986 Amendment to apply to Weisel. In fact, this position was, and is consistent with the Association's Original Declaration and organizational documents, all of which tie membership to platted lots.

Even assuming Weisel signed the Agreement thinking that he could get the restriction lifted someday in the future, he was, and is completely within his legal right to think that way. *See e.g. Lane v. City*, 144 Idaho 584, 166 P.3d 374 (2007). Indeed, the law relating to a property owner's ability to extinguish restrictive covenants is well established.

Over the past 25 years, the Association has acquiesced in the development on other lots well in excess of that it would only conditionally approve under Weisel's 1983 development plan. The Association now permits a much greater density than it was concerned about in 1983. The post-1983 development of the Subdivision rendered any consideration under the Agreement worthless. Therefore, the suggestion by the Association, which is made up of business people equally as sophisticated as Weisel, that Weisel was a puppet master in some underhanded strategy is theatrical. The Association, itself, set the stage for Weisel's challenge to the Agreement.

G. IF THE ASSOCIATION CAN TAKE AWAY WEISEL'S MEMBERSHIP AND VOTING RIGHTS FOR LOT 13, THEN HE IS ENTITLED TO REIMBURSEMENT FOR THE ASSESSMENTS AND DUES PAID ON LOT 13.

Under Count Six, Weisel seeks reimbursement of the dues and assessments he paid attributable to Lot 13 in the event that the Agreement is not extinguished, Lot 13 and Lot 14 are determined to be one lot, and that Weisel only has one membership and one vote. The Association has moved for summary judgment on Count Six on the basis that the statutes of limitation have run on any dues and assessments paid prior to 2004. However, as already argued above, the Association is estopped from raising statutes of limitation as a bar to this claim. Cf. *PennDPW v. Soffer*, 544 A.2d 1109 (Pa. Cmwlth. 1988).

Furthermore, there is no dispute that dues and assessments were paid on both Lot 13 and Lot 14. (*Response to Third Request for Admission No. 1*, admitting Exhibit 119; *Weisel Depo.*, Exhibit 34). Therefore, there being no dispute that the dues and assessments were paid, in the event that the Agreement is not extinguished, it is determined that Lot 13 and Lot 14 are one, and Weisel only has one membership and one vote, Weisel is entitled to summary judgment on this issue subject to a determination as to the exact amount due.

H. NO STRUCTURE WAS BUILT IN THE SETBACK AND THE DENSITY ALLOWED IN THE SUBDIVISION DEFEATS THE PURPOSE OF THE RESTRICTION AND RENDERS ITS ENFORCEMENT INEQUITABLE AND BURDENSOME – COUNT SEVEN.

Primarily, there has been a change of circumstances simply because the caretaker's unit was not built in the setback. Even if the Agreement was due to density concerns, since there was no maximum size limit on structures and because Weisel's plan

did not exceed the limit on the number of structures permissible on a lot in the Original Declaration, “density” can only mean overall square footage or lot area coverage.

As already argued in Weisel’s *Brief in Support of Plaintiff’s Motion for Summary Judgment*, the Association’s approval of more dense development on the other lots in the Subdivision without any reciprocal restriction of development on those lots, and the Association’s adoption of the 2008 Amended Declaration which permits density (15,000 square feet) well in excess of that proposed by Weisel’s 1983 development plan, has frustrated the original intent of the Agreement and supports its extinguishment.

Changed conditions that frustrate the purpose of a restriction, or equities that make enforcement unjust or require modification, support the modification or extinguishment of a restrictive covenant. *See generally*, RESTATEMENT (THIRD) OF PROPERTY: SERVITUDES §§ 1.1, 1.3, 1.5, 2.1-2, 2.5, 2.11, 4.1-.5, 5.1-.2, 7.1, 7.10, 8.1 (2000). A party’s conduct, changed circumstances, or the relevant equities will preclude enforcement by that party or will warrant modification of the restrictive covenant. *See*, RESTATEMENT, *supra*, §§ 7.1, 7.10.

The jurisdiction of equity to enforce covenants restricting the use of property is not absolute. The right to enforce the restrictions may be lost by acquiescence in the violation of the provisions of such restrictions. Additionally, where the restriction is made with reference to the continuance of existing general conditions of the property and its surroundings, and there has occurred such a change in the character of the neighborhood as to defeat the purpose of the restrictions and to render their enforcement inequitable and burdensome, a court of equity will refuse to enforce them.

The extent of change in a neighborhood which will justify refusal to enforce restrictive covenants has not given rise to any hard-and-fast rule. Each case must rest on the equities of the situation as it is presented. A basic principle woven as a thread throughout all the decisions is that to

warrant refusal of equitable relief, the change in conditions must be so great or radical as to neutralize the benefits of the restriction and destroy its purpose.

Hecht v. Stephens, 464 P.2d 258 (Kansas 1970).

The Association makes two arguments in its Brief in support of its claim that the greatly increased density allowed in the Subdivision does not warrant extinguishment of the restriction. Neither argument has any support in law or fact.

1. Courts routinely apply the doctrine of changed circumstances to defeat restrictions on land use made by agreement.

Citing no authority, the Association first argues that the “changed circumstances” doctrine only applies to restrictive covenants that cover entire neighborhoods whose character has changed radically and does not apply to individual restrictions found in agreements between two parties. This proposition has no basis in the law.

The doctrine is routinely applied in cases where there is a recorded agreement between two parties restricting land. *See e.g., Cortese v. United States*, 782 F.2d 845, 850 (9th Cir. 1986); *Coury v. Robison*, 976 P.2d 518 (Nev. 1999); *Perelman v. Casiello*, 920 A.2d 782 (N.J. 2007).

The doctrine of changed conditions operates to prevent the perpetuation of inequitable and oppressive restrictions on land use and development that would merely harass or injure one party without benefiting the other. . . . [It] is an equitable doctrine which stays enforcement of unreasonably burdensome restrictions on land use, notwithstanding an agreement between the parties specifying the intended duration of the restrictions.

Cortese v. United States, *supra*, at 782 F.2d 850 (9th Cir. 1986).

Cortese involved an agreement entered in 1974 between the Marine Corps and the owner of property beneath the approach corridor to the main runway of the Marine Corps Air Station that would permanently limit and restrict portions of the property for the

benefit of the United States. In 1986, twelve years later, the Court allowed the property owner to proceed on its claim of changed circumstances and expressly rejected the argument being made in this action by the Association.

Likewise, *Coury v. Robison* was a case very similar to this action. In it, the Henderson City Council granted Coury a limited gaming license and use permit restricting the property to forty gaming machines in return for Coury's agreement never to seek a further increase in this number, the purpose of which was to limit gaming licenses in the Henderson area. Thereafter, from June 1992 through December 1995, the City Council approved at least eighteen applications for limited, or more extensive, gaming licenses for competing establishments in the same geographic area as the restricted property. Coury sought a declaratory judgment that the restrictions were void due to changed circumstances. The district court summarily dismissed Coury's declaratory judgment action. The Nevada Supreme Court reversed the district court and remanded for a determination of whether changed conditions, if any, had thwarted the original purpose of the restriction - limiting gaming in the Henderson area - and if so, ordered that the restriction be removed. *Id.* at 976 P.2d p. 521.

Perelman v. Casiello involved restrictions placed in a deed between two parties in 1917 that were challenged in 1999. In allowing the deed restrictions to be challenged based on changed circumstances, the New Jersey Court held in 2007 that "the question remains whether plaintiff's conduct, changed circumstances or the relevant equities preclude enforcement or warrant modification of the restrictive covenant." *Id.* at 920 A.2d p. 789.

In short, there is no legal basis for the limitation on the changed circumstances doctrine concocted by the Association. Moreover, the language of the Agreement itself negates the Association's proposition. Paragraph 6 of the Agreement expressly calls the Agreement a "covenant," states that it runs with the land, and provides for its recording. This is exactly the type of restriction on land that is subject to the changed circumstances doctrine.

In fact, the only reason the Agreement was made at all was due to the covenants of the Original Declaration that were applicable to the entire Subdivision. According to the Association, the Agreement was necessary because Weisel was being permitted to build to a greater density than otherwise permitted under such restrictive covenants. Indeed, if there had been no such covenants, the Agreement would not have been made. Thus, a change in circumstances in the density of the neighborhood bears directly on the continuing validity of the Agreement.

2. No improvement was built in the setback and the density allowed in the Subdivision defeats the purpose of the restriction and renders its enforcement inequitable and burdensome.

The second argument advanced by the Association is that there has not been a change sufficient enough to warrant extinguishment. However, just the opposite is true. When the other dense developments approved by the Association and the 2008 Amended Declaration are viewed together, there has been a change so "complete as to render the restriction unreasonable, confiscatory, discriminatory, and as practically to destroy the purpose for which the restriction was originally imposed." (*Memo. in Support of Defendant's Motion for Summary Judgment*, p. 33)

It is hard to believe the Association could argue otherwise. From the time of the Agreement forward, the Association has frustrated any intent to limit density in the Subdivision. (*McClure Aff.*, Exhibits 1, 2, 3, 4, and 5). Comparison of the development shown by aerial photos taken in 1983 and 2005 makes the point clear. (*Id.*, Exhibit 4A and 5).

The Association has allowed larger and larger structures to be built on lots and an equal number of structures on lots. (*Id.*; *see also: Brief in Support of Plaintiff's Motion for Summary Judgment*, §E(2), list of development). As early as 1985, the Association acknowledged that lot owners were building bigger and bigger guesthouses, caretaker's units, and other structures on their lots and requesting approval to build outside the building envelopes. (*Id.*) The Annual Minutes for the meeting on December 26, 1985, mention a 1,500 square foot guesthouse on Jim Dutcher's property at the time. (*Response to Second Request No. 17*, admitting Exhibit 104).

Following that annual meeting, the Association sent a letter to homeowners on January 26, 1986, acknowledging that "time and the makeup of the Beaver Springs neighborhood has outdated the original Declaration of Restrictions." (*Id.*) In the Annual Minutes from the December 27, 1990, the Association again acknowledged that owners were building larger and larger homes. (*Response to Second Request for Admissions No. 21*, admitting Exhibit 108). Owners have continued to modify building envelopes. (*Response to Second Request for Admissions No. 22*, admitting Exhibit 109; *see also McClure Aff.*, Exhibit 5). Bill Fruehling has admitted that times have changed and the original intent for the Subdivision was out of date. (*Response to Second Request for Admissions No. 25*, admitting Exhibit 112). Again, the difference between the 1983 and

2005 aerial photos, which are attached as Exhibits 4A and 5 to *McClure's Affidavit* makes the point clear.

In 2008, recognizing the significant changes in the Subdivision, the Association expressly permitted lot owners to build to a density well in excess of Weisel's 1983 development plan. Weisel's 1983 development plan was for approximately 11,533 square feet of buildings on a 3.7-acre lot, the number and size of which did not violate the Original Declaration. (*Id.*). The Association now expressly allows up to 15,000 square feet of structures *on any lot*, including the much smaller 2-acre lots.

The 2008 Amended Declaration does not differentiate as to size of lots so that henceforth, the owner of a 2-acre lot with less than 15,000 square feet of structures can expand to 15,000 square feet, which is greater than 16% lot coverage. In contrast, if the Agreement is not extinguished, the greatest density that Lot 14 and Lot 13 will ever be is what exists now, which is a total coverage of 4.8%, a quarter of that allowed other lot owners. (*McClure Aff.*, Exhibit 6).

Even if the Agreement is extinguished and Weisel develops Lot 13, since Weisel's lots are two of the largest in the Subdivision, the density on his lots will be less than *most* of the other lots because they are smaller than his. (*Id.*). Therefore, the whole purpose of the Agreement has been vitiated by the changes allowed by the Association over the years and by the express terms of the 2008 Amended Declaration.

Further aggravating the unreasonable, confiscatory, and discriminatory application of the restriction on Lot 13, the Association has never demanded that any one of the other lot owners in the Subdivision give up development rights for approval of their dense developments, developments that included guest houses in excess of that

permitted by Original Declaration or amendments in effect at the time and the existing ordinance as well. (*Id.*; *Fruehling Depo.*, p. 21, l. 11 – 20).

For example, the Association allowed the one owner of Lot 17 and Lot 18 to build a very large structure in the northern setback of Lot 18. Instead of requiring the owner to combine the lots and restrict development on Lot 17 as in Weisel's case, the Association let the owner shift the lot line for Lot 18 north, did not require the owner to combine the lots, and imposed no restriction on development of Lot 17. (*McClure Aff.*, Exhibit 6 and 7; *Response to Second Request for Admission No. 31*, admitting Exhibit 118, Letter from Association to Edgar Bronfman dated February 17, 2009).

The Association further reassured the owner of Lot 17 and Lot 18 in 2008 that he could build Lot 18 out to the maximum. "Futhermore, if you are concerned that your two lots are affected by Thom's issue, rest assured that your two lots remain as two lots and you can do with them what you choose." (*Id.*) Under the 2008 Amended Declaration, that owner is now allowed to build up to 30,000 square feet of buildings on his two lots, the total of which is an acre smaller than Weisel's two lots. Meanwhile, Weisel is restricted to 19,000 square feet for his two lots.

If the consideration for restricting development on Lot 13 was greater density, that purpose has been totally frustrated by the extremely dense development that exists today and that is now allowed in the Subdivision. The continued enforcement of the Agreement is unreasonable, confiscatory, and discriminatory given the far greater density to which other owners have been and are allowed to develop. This is especially true since no other lot owner in the Subdivision has ever been required to give up development rights in return for approval of the dense development.

In sum, the undisputed facts show that changed conditions and the Association's actions have frustrated the purpose of the Agreement making enforcement of it now unjust. Weisel should be granted summary judgment on his Complaint for Declaratory Judgment that the Agreement is no longer enforceable.

IV. CONCLUSION

For all these reasons, the Court should grant Weisel's Motion for Summary Judgment, and deny the Association's Motion for Summary judgment.

RESPECTFULLY SUBMITTED this 1st day of February, 2010.

HAEMMERLE & HAEMMERLE, P.L.L.C.


FRITZ X. HAEMMERLE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of February, 2010, I caused to be served a true copy of the foregoing document by the method indicated below, and addressed to each of the following:

Ed Lawson
Erin Clark
LAWSON, LASKI, CLARK & POGUE, P.L.L.C.
P.O. Box 3310
Ketchum, ID 83340

 By depositing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.

✓ By hand delivering copies of the same to the office of the attorney(s) at his offices in Hailey, Idaho.

 By telecopying copies of same to said attorney(s) at the telecopier number _____, and by then mailing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.


FRITZ X. HAEMMERLE