

# SCOTT L. POORMAN, PC

*A Professional Legal Service Corporation*

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Scott L. Poorman, Attorney

October 26, 2015

Janet Poorman, Office Manager  
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**By Certified Mail, Return Receipt No. 7015 0640 0000 6424 1909**

Jeremy R. Morris  
Kristy L. Morris  
13111 N. Ferndale Drive  
Hayden, ID 83835

**Re: West Hayden Estates First Addition Homeowners Association, Inc.**

Dear Mr. and Mrs. Morris:

This office has been retained by the West Hayden Estates First Addition Homeowners Association in response to the “2<sup>nd</sup> Annual Hayden Christmas Light Show” event that you are planning to conduct at your home this December. Based on the similar event that you sponsored last year in the Grouse Meadows subdivision and your declared intent to present a bigger event this year, the Association Board has asked me to express the following concerns.

First, it is our determination that your planned event is not permitted within West Hayden Estates First Addition. Your parcel is located within the Ag-Suburban zone under the jurisdiction of Kootenai County. The event you plan to conduct falls within the definition of a “Special Event” under the County Zoning Ordinance (#401). Special Events require a conditional use permit and are only allowed within the Agricultural, Commercial, Light Industrial, Industrial, Mining and Rural zones. Because your property is not within one of these zones, your Special Event will not qualify for a conditional use permit and is not allowed under the County Zoning Ordinance.

Second, your planned event will violate several provisions in the Declaration of Covenants, Conditions and Restrictions (the Declaration) for West Hayden Estates First Addition as recorded on December 28, 1999 under Kootenai County Instrument No. 1618487. When you purchased your home at 13111 N. Ferndale Drive, you took title subject to the terms, conditions and restrictions in the Declaration. The purpose of the Declaration is to establish basic restrictions designed to preserve the value, desirability and attractiveness of all property within the subdivision, and to ensure a well-integrated, high-quality development. The Association, acting through its Board of Directors, has the power and authority to enforce the terms, conditions and restrictions set forth in the Declaration, including, if necessary, filing a legal action to restrain and enjoin any threatened breach of the Declaration.

The Board has determined that your planned event will violate the following provisions of the Declaration:

**§5.1.17 - Responsibility for Compliance with Law:** "All owners shall be solely responsible for assuring that all activities undertaken on any portion of the property is in compliance with all laws, rules and regulations of applicable governmental authorities and that all actions taken by or on behalf of owners comply with all legal requirements and permits in connection with any such work to be performed."

As noted above, you have not obtained (and cannot obtain) the conditional use permit required by Kootenai County to conduct the planned event on your property.

**§5.4.2 - Nuisances:** "No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to the Property or to its occupants or to other property in the vicinity or to its occupants. This includes a prohibition against any activity which would in any way interfere with the quiet enjoyment of any Owner, or increase any insurance policy to be canceled or non-renewed, or impair the structural integrity of any properly placed structure. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes which have been approved by the Committee), flashing lights or search lights, shall be located, used or placed on the Property without the prior written approval of the Committee."

Your planned event will be a nuisance to the entire neighborhood and will significantly interfere with the quiet enjoyment of other property owners within West Hayden Estates First Addition. In addition you have not requested or received approval from the Association for the lights, music, exotic animals and other "live acts" that you plan to present.

**§5.4.15 - Lighting:** "Exterior lighting, including flood lighting, shall be part of the architectural concept of the improvements on a Lot. Fixtures, standards and all exposed accessories shall be harmonious with building design, and shall be as approved by the Architectural Committee prior to installation. Lighting shall be restrained in design, and excessive brightness shall be avoided."

The exterior lighting that you have already installed on your home is in violation of this provision and has not been approved by the Association. Needless to say, your planned light show will be excessively bright and anything but "restrained."

**§5.5.2 - Animals:** "No reptiles, livestock, poultry, or birds of any kind shall be raised, bred or kept on any lot, or any portion of this property; except that no more than two (2) usual and ordinary household pets such as dogs, cats, or birds may be kept, provided that they are not kept, bred, or maintained for commercial purposes, and that they are caged or leashed and attended when not on the lot or property where they belong."

Dolly the Camel is not an ordinary household pet and is not allowed to be kept on your property for any period of time.

**§11.5.2 – Violations and Nuisances:** “The failure of any Owner of a Lot to comply with any provision hereof, or with any provision of the Design Guidelines, is hereby declared a nuisance and will give rise to a cause of action in the Declarant or any Owner of a Lot(s) within the Property for recovery of damages or negative or affirmative injunctive relief or both.”

Unless you request and receive written approval from the Association Board to conduct your planned event, the Board has authorized this office to file an action seeking an injunction to prevent your event from occurring and seeking an award of all legal fees and costs incurred in that litigation.

Finally, your planned event will constitute a public “nuisance” as defined under Idaho Code.

§52-101. NUISANCE DEFINED. Anything which is injurious to health or morals, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance.

§52-102. PUBLIC NUISANCE. A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

As an owner of property within West Hayden Estates First Addition, you must realize that the streets within your neighborhood cannot accommodate the amount of traffic and congestion that your event will generate. According to your own words, the event that you sponsored last year had 2,000 visitors; and you want this year’s event to be even bigger. Although you *plan* to run a “shuttle” to your event from the parking lots at Candlelight Church and Anthem Friends Church, you have no way to prevent people from simply driving to the neighborhood and parking on the streets. Your plans are not viable or realistic. Anthem Friends Church has not approved the use of its parking lot as a staging area for your event, and it is fair to assume that most people visiting your event will forego the shuttle and use their own vehicles. Your planned event will unlawfully obstruct the free passage and use of the streets and driveways within West Hayden Estates First Addition.

In addition, your event will be offensive to the senses and will interfere with the comfortable enjoyment of your neighbors’ private property rights. You intend to attract large crowds to your 5-night event with bright lights, loud music, choirs, zoo animals, a living nativity scene and “Santa Claus.” Simply put, the quiet residential neighborhood of West Hayden Estates First Addition is not an appropriate location for such activities, and I am confident that, if necessary, a court will prohibit your event from occurring in that neighborhood.

For all of these reasons, and to avoid the potential liability of litigation, the Association Board urges you, on behalf of your neighbors, to find a suitable and legal location for your event. The Association does not want to stop your event from occurring anywhere, but will take whatever action is necessary to enforce the restrictions in the Declaration and to protect the owners of the

other 48 Lots within the neighborhood. Perhaps Candlelight Christian Fellowship will allow you to conduct your event on their property.

Please provide your written reply to this office within the next ten (10) days stating whether you intend to proceed with your event as planned. If you do not respond within the next ten days, the Board will assume that you are unwilling to modify your plans and legal action will follow.

I look forward to your reply.

Sincerely,

Scott L. Poorman

Cc: client