

100 livable places
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Author Tedd Thompson climbs the Black Cliffs below Hammer Flat, from the cover of a 1997 rock climber's guide.

Scaling THE CLIFFS

by Tedd Thompson

From the calm of the place today, one would never know that only a few years ago the expanse of grass known as Hammer Flat was at the center of a spirited debate over Foothills development. The property located on a plateau north of Highway 21 between Diversion and Lucky Peak dams now enjoys quieter times, its tranquility only broken by the coming and going of wildlife. One day, however, the flora and fauna of Hammer Flat will be sharing their habitat when the placid plateau morphs into a planned community called The Cliffs. Approval for the development, named after the black basalt cliffs below the bluff, was granted by the Ada County Commission in December of 2006 amid concerns from Boise

Editor's note: The Boise City Council purchased Hammer Flat from Skyline Development as *Making Livable Places* went to press. While the controversy over The Cliffs is over, issues such as city-county jurisdiction and "sprawl" development remain. Tedd Thompson's case study of Hammer Flat can be instructive as similar projects come before city and county officials in the future.

some of which will be dedicated to parks and sports fields. But most, approximately 270 acres adjacent to the Boise River Wildlife Management Area, will be set aside as natural open space that will feature restored habitat for deer, elk and other animals. Skyline's first step was to seek approval from Ada County, including a zoning change from rural preservation, which allowed one house per 40 acres, to a higher density required by a planned community. As The Cliffs plan began to work its way through the county's approval process, it drew strong reactions from a variety of sources and for a variety of reasons. To those opposed, The Cliffs was a poorly conceived, partially planned development that would consume prime Foothills wildlife habitat, conflict with the city's Foothills Management Plan, increase Boise traffic and burden city taxpayers. To supporters, The Cliffs was a well-planned community that would provide homes and other amenities for people who love nature and want to live in a wildlife-friendly area. And to decision-makers, The Cliffs represented the classic political balancing act, with private property rights on one hand and the city's strong open spaces ethic on the other.

Among the concerns expressed, one seemed to receive the most emphasis: the potential impact on wildlife, including a loss of habitat for the deer and elk herds that winter graze on the plateau. In a cover letter to his "Hammer Flat Development" report, Al Van Vooren, the Idaho Department of Fish and Game's Southwest Regional Supervisor at the time, offered an opinion that spoke to many citizens' concerns about The Cliffs' shortcomings: "Simply not building on part of the land does not mitigate or compensate for building on the rest of the property." Skyline, says Johnson, has addressed the environmental concerns through a mitigation plan that he says will improve the habitat on the plateau to make it even friendlier to wildlife. The natural open space portion will be closed forever to development. Original species of foliage will be planted and the land will be closed to all foot, bike and motorized traffic in the winter months. Johnson said that a portion of all real estate transactions will go into a fund dedicated to restoring the natural habitat. "We will replant bitterbrush, sagebrush and grasses that are native to the area. These are the foods the wildlife originally ate—not cheat grass and cattle feed." Recycled wastewater may be used to water the native plants. Reintroducing some of the original plant species also will reduce fire risk, he added. The mitigation plan, which will guide Skyline's use of the undeveloped portion of the project, was approved when the Ada County Commission gave the green light to the development. "We recognize that there are antelope and deer in this location," says Ada County Commissioner Fred Tilman. "But there are ways we can mitigate the impacts

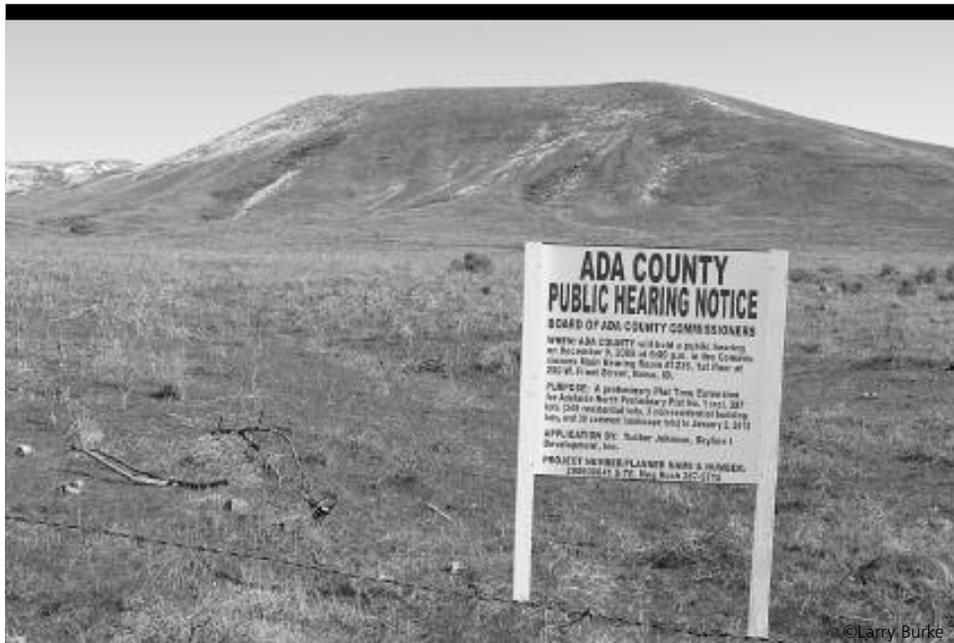
of having another use on the property. At the end of the day, we were convinced that the mitigation plan was adequate to resolve the concerns.”

Prior to Skyline’s application to the county, Boise’s Mayor Dave Bieter went clearly on record as opposing the development. As Bieter expressed in a letter to the Ada County Commissioners on Jan. 13, 2005, “High density residential development of Foothills properties immediately adjacent to the Wildlife Management Area will, on a year round basis, bring people, pets, motor vehicles, noise, light and general activity that will be harmful to the area’s sensitive habitat resources.” Bieter stated other issues that will directly affect Boise: “The Hammer Flat property appears inappropriate for a high density development. This is especially true if it does little more than accommodate residential home sites that create a disproportionate burden on City infrastructure and public lands in the Boise Foothills.” Bieter’s concerns led to a policy question: How much influence does the city have on development outside its boundary? The answer: Not as much as it would like.

Each city in Ada County has an “area of impact,” which is a negotiated boundary around the city where planners feel future development and eventual annexation might occur. A city’s area of impact is still under the jurisdiction of the county, but when a development is proposed, the county often consults with the city over such issues as building codes and zoning laws. The Boise City Council reviews applications for development in the area of impact just like it does for those in the city limits and then forwards its concerns to the county, says Michael Zuzel, assistant to Mayor Bieter. “The county is free to take our advice or not,” he says. Zuzel adds that there is considerable communication between the city and county at the staff level when development is proposed within the area of impact. Commissioner Tilman says the county respects the concerns of the city. “We always ask for comment and try to look at the information that is made available,” he says.

But for land outside the area of impact, such as The Cliffs, decision-making is solely in the hands of the county. Even though the city registered its concerns about The Cliffs, the county had jurisdiction over land contiguous to Boise’s area of impact. “The city’s main concern was wildlife habitat,” says Zuzel. “The development was close enough to the city limits that even though it wasn’t in the current area of impact, eventually it could become a part of the city. So the mayor and council felt an obligation to weight in on that.” Mayor Bieter, quoted in an Aug. 14, 2005, *Idaho Statesman* report, said, “It’s no secret that pressure to urbanize the area east of Boise has grown tremendously. The geography of the area virtually assures that the City of Boise will sooner or later be the one to provide services there and we’ve already done planning in that area as part of the Foothills open space

effort.” Given the city’s concerns over the potential impacts of The Cliffs, the City Council came up with a means to exert more influence on the decision—expand Boise’s area of impact to include the development. “By including it in the area of impact at least that would bring us into the discussion,” explains



Notices for public hearings were frequent sights in the Foothills when the development of Hammer Flat was under consideration by the Ada County Commission.

Zuzel. The City Council approved the concept on Feb. 22, 2006, but before the city and country could negotiate new impact boundaries, Skyline filed an application to build The Cliffs, which meant the project would fall under the existing area of impact. Skyline later filed a petition for judicial review in Fourth District Court to challenge the city’s efforts to expand the area of impact, claiming there were legal, factual and procedural flaws in the city’s proceedings. With Skyline’s application moving forward, the area of impact expansion became a moot point—the decision to approve or reject The Cliffs remained wholly in the county’s hands.

As Skyline's proposal worked its way through the county's approval process, the opposition and developer presented their respective cases to local officials and in the media. Save the Plateau, a group organized by engineer and Hammer Flat resident Anthony Jones, presented more than 3,000 postcards, e-mails, Web comments and petition signatures calling for protection of the area. And 110 of the 130 who testified at hearings were in opposition. Skyline responded with newspaper advertising, guest opinions and testimony rebutting claims and explaining the benefits of the new community. The county's Planning and Zoning Commission approved the project by a 4-3 vote. After another round of testimony two months later, all three county commissioners then approved The Cliffs on Dec. 20, 2006. As with all new development, the county commissioners weighed the opinions of the city and the affected neighbors, evaluated how an additional community could affect air pollution, traffic, fire and police, and then determined if the builder's plan met state law and county ordinances. "It is important to realize what our job is in these types of hearings," says Tilman. "We are a quasi-judicial body ... we are there to listen to the facts, not emotions, and apply the law and our ordinances. We describe what the facts are and apply that to what the law is."

But opposition continued. Save the Plateau leaders turned to the courts a year later, filing a petition in Fourth District Court to determine if the county's action complied with federal, state and county laws. Another year went by before the Judge D. Duff McKee ruled in favor of Ada County, saying allegations against the commissioners were "without merit." "If we had taken our personal views and not evaluated the development based on the facts, then I believe Skyline would have cause for an action that we were denying them the use of their property... the land-use laws focus on private property rights," says Tilman. "We have to consider, what does the law say? What do ordinances say? Did we give all parties due process in implementing the law? Was our decision based on the facts? Did they comply with the laws and ordinances? Those are the real questions," he adds.

The Cliffs was approved with a development agreement that specified 75 conditions of approval that must be met before building permits can be issued. "We both agree that the applicant will fulfill certain conditions. If the developer fails to meet them, they can't develop ... approval is withdrawn. It is a step-by-step process—if you miss a step, the process is done," says Tilman. Many of the conditions won't come into play until construction begins, Johnson says. Then, standards for drainage, roads, soils and lot dimensions must be satisfied. Skyline also has worked out agreements regarding library services and schools, and will build a new fire station and

wastewater plant once construction begins. Skyline is on track to meet those conditions, but one vexing issue remains—access to the property.

The company's original plans included a roundabout main entrance off Highway 21 approximately 1,000 feet north of the Warm Springs and Idaho



Access to Hammer Flat (bluff at center-left of photo) was not resolved prior to the property's sale to the City of Boise.

21 intersection. But the development company doesn't own any land that fronts Highway 21. The piece of property that Skyline originally thought it could use is owned by the Idaho Transportation Department, which plans to keep the land for a future traffic interchange, according to Pam Golden, Development and Access Management Engineer for ITD. "Without question, that is one of the key issues," says Johnson. "If we don't change their mind, the project has a challenge." Johnson adds that there is limited access on the western end of the property that could serve as an alternative road for the first phase of the development. But it doesn't have the capacity to serve the entire community.

One obstacle not on the radar screen in 2005 is another major reason the development hasn't started—the slow economy. That has put The Cliffs in a holding pattern, waiting for the market to turn and lenders to loosen the purse strings. "The magnitude of the market collapse has certainly frozen things," says Johnson. "There is no demand; fortunately, we did not have a lot of infrastructure in. But our application application did have six zeros behind it." Skyline has been in business for more than 40 years and has seen real estate ups and downs like this before. "My father, Ted Johnson, started this business in 1967. We have been developing in the Boise area ever since. We noticed that about every five to seven years there is a slowdown in the market. We are always subject to the forces of the market ... we knew this correction was overdue; we just didn't expect that it would drop in its value so enormously." Johnson says his company bought Hammer Flat in the middle of the building boom, but might have done so no matter what the current economy was. "When the land went up for sale we heard that some buyers from out of town were interested. We saw Hammer Flat as a perfect opportunity to build something that would be good for Boise," says Johnson. "I have 10 brothers and sisters; nine of us live in the valley. It is important to us that we have a great place for our children and grandchildren to live. We hope that The Cliffs will be a model for good development in the future." It may be some time before Johnson's hope can be borne out. First, the market has to turn around. "It is tough to predict the future when the pattern has been interrupted," he says. But even if it takes another year or year and a half before they start, he expects it will be 2020 before the development is "built out."

The saga of The Cliffs' approval may be over, but what about the next development? Will Boise's voice be heard? Zuzel says Ada County and its cities are working on the area of impact issue through the cooperative planning effort called Blueprint for Good Growth. Blueprint "calls for a more dependable process for setting boundaries," Zuzel says. He adds that planners are looking more into the future—a 20-year window instead of the usual 10—which means in many cases area of impact boundaries will be drawn further away from cities than they are now. "One idea of Blueprint is to channel urban development into urban areas. In theory, we wouldn't have many situations where there is an urban style development outside anybody's area of impact," says Zuzel. The city's primary concern is to limit "sprawl" development, he adds. "this mayor and council are resolute in their conviction that if you channel development into urban areas—areas that are already developed or that can be developed more—that is a better deal environmentally and a better deal financially. The capacity is already there. You don't have to spend more dollars to support that development. That's a better deal for the

taxpayers," Zuzel says. Zoning laws, explains Tilman, create a "gray area" in the planning process because a city may zone property one way and the county another, which can cause problems when the properties are contiguous. Says Tilman: "This especially comes into play regarding density. That's why we have some differences with cities over planned communities. Those are an urban density, like a small city. Cities are saying, 'Wait a minute ... you shouldn't be planning that in a rural area and that it should be connected to the city. We want to determine how it should be planned even though it is in the county.'"

A house that sits above a scenic river with views of snow-capped mountains, with elk, deer and antelope nearby, with access to hiking, biking and climbing just outside the front door and downtown only minutes away, may seem like a dream—the type of dream that draws people to Idaho. As developments like The Cliffs turn this dream into reality, many wonder at what price. Although Skyline has been conscious of wildlife concerns and followed all the rules of the county and state, many still oppose the development of Hammer Flat. Opponents to The Cliffs, whose protests did not carry the day with the Ada County Commission, might feel that development will continue and that's that. While change might not take place in the exact way or at the exact time a person wants, the public's opinion does matter. The rules that are in place for the next development to come along will be standards set by builders, planners, commissions and lawmakers who have learned something from the past. Citizens must educate themselves and then speak up if they want change to follow a certain direction. Change is inevitable, but how we change isn't.

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Tedd Thompson, a 1981 Borah High graduate, is a junior majoring in art history. After graduation he plans a trip to Europe to "see what they are doing right and what we might do better."

What are the most important aspects of a "livable" city?

"I grew up climbing on the Black Cliffs and Table Rock. The thing that has kept me around Boise, and hopefully will always keep me around Boise, is the easy access to open spaces. Being able to climb, mountain bike and fish without traveling is essential to livability for me. If we as a community recognize the importance of our open space, Boise will continue to be a great place to call home."