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APR 15 2009

DEPARTMENT OF
WATER RESOURCES

Jai Nelson, Protestant
15192 Gate 7 Ridge Road
Coeur d' Alene ID 83814

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR	)	REQUEST FOR SUBMISSION
AMENDMENT FOR PERMIT NO	)	OF RECENT FINDINGS,
95-9045 BLACK ROCK UTILITIES INC.	)	REOPENING OF HEARING OR
	)	DENIAL OF APPLICATION

Pursuant to the above protest, Jai Nelson "Protestant" respectfully submits a **REQUEST FOR SUBMISSION OF RECENT FINDINGS, REOPENING OF HEARING OR DENIAL OF APPLICATION** based on the following recent new information and facts relative to Black Rock Utilities and Black Rock North Development which is served by Black Rock Utilities, the president of Black Rock Utilities being Marshall Chesrown.

- 1.) Lenders have filed foreclosure action on Black Rock North and Marshal Chesrown for 14.6 million plus interest, late charges and legal fees. Additionally, contractor liens have been filed against Black Rock North by various North Idaho contractors totally nearly 3.6 million. In an April 9, 2009 article in the Coeur d' Alene Press Marshall Chesrown describes his cash flow as; "Zero." When referring to market sales Chesrown is quoted stating; "Nothing's selling." Furthermore, Marshall Chesrown has additional pending liens and lawsuits involving numerous other developments and projects in which he holds controlling interest in North Idaho and Eastern Washington.
- 2.) Black Rock North has not received final plat from Kootenai County Building and Planning. At present the project cannot proceed in any capacity.
- 3.) The vast majority of the aesthetic water features and storage areas have not been constructed and the applicant is deficient in the financial resources required to complete, manage, maintain and support any new features or manage, maintain and support the existing aspects of the development.

4.) The applicant has been in financial distress for an extensive time period leading up to the foreclosure filing. This information was deliberately suppressed by the applicant. During the hearing process, the Protestant requested financial information and this information was not provided. Specifically, in the Protestants Interrogatories filed October 17, 2008 financial information was requested as follows:

INTERROGATORY No. 7:

Provide financial data relative to the ability for full project completion and build-out of the Club at Black Rock, Black Rock North, infrastructure and water features. Include copies of required bonds and posted bonds.

5.) The applicant's pretense of repeatedly requesting an accelerated process and schedule, noting specifically in the MOTION IN LIMINE dated November 3, 2008 "Black Rock's fervent desire not to lose the hearing date..." was fraudulent. With the recent financial information finally disclosed, here again, the Department was been denied a complete representation of the relevant facts and full extent of applicant data in order to make an appropriate decision.

6.) The applicant, by not disclosing the financial state of Marshall Chesrown and the development, has cost the taxpayers of the State of Idaho untold dollars. This is not in the Public Interest.

7.) In the Protestants closing statement the speculation aspects of this application were specifically addressed as well as requesting the Department to evaluate the application based upon whether the application was filed in good faith or for delay or speculative purposes and if the applicant had sufficient financial resources in order to complete the project, specifically testifying:

*The applicant is requesting an additional 32,859,267 gallons and **100.84** acre feet aesthetic storage (again this amount does not include seepage and evaporation quantities) at Black Rock North—a **335% increase**—over 4 times the amount at the original Club Black Rock.*

I am asking the Department to fully evaluate this application per the Hardy v. Higginson ruling. In 1993 the Idaho Supreme Court ruled on Hardy v. Higginson ruling that there is no practical difference in the public interest evaluation of 1) application of new permits 2) amendment of pending permit applications 3)

applications for transfers of licensed, decreed and beneficial use rights, and 4) applications for amendment of permits.

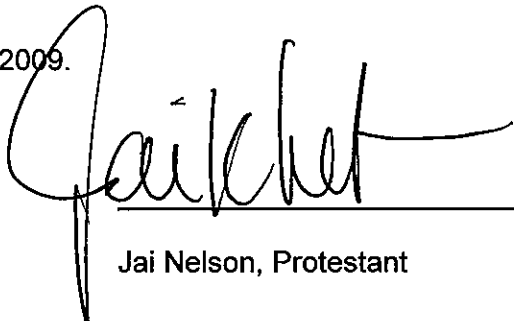
Therefore, this application should be evaluated in terms of the seven (7) criteria required for approving or denying an application found in Section 42-203A. Specifically, in terms of # 1) Will the use reduce the quantity of water under existing water rights #3) Is the application made in good faith or for delay or speculative purposes? #4) Has the applicant sufficient financial resources with which to complete the project? #6) Will the proposed use be contrary to the conservation of water resources within the State of Idaho?

In the application document on page 9, Black Rock suggests modifying condition 8, revised to item 7--this is the key to this issue. The applicant has not fully utilized their 1,215 acre-feet and now wants to change this aspect from irrigation under municipal to municipal for all uses including storage. This is speculation.

Due to this new and alarming financial information which the Protestant did not have a reasonable opportunity to address in the hearing and thus inhibited the Protestants ability to depose further potential witness's and produce applicable exhibits, the Protestant's case was severely compromised and limited due the deceitful actions of the applicant. The Applicant failed to comply with the Discovery request, which delayed, prejudiced and fractured the ability of the Protestant to address specific financial information thereby significantly diluting and encumbering the Protestant's ability to adequately prepare for and present at the hearings.

Therefore, due to the above factors the Protestant respectfully requests the Department to allow the submission of these relevant findings, reopen the hearing process or deny the application in full at this time.

Dated this 10th day of April, 2009.



Jai Nelson, Protestant

Attachments:

Spokesman-Review Article, April 3, 2009 Black Rock North Faces Foreclosure
Coeur d' Alene Press Article, April 4, 2009 Black Rock North Faces Foreclosure
Coeur d' Alene Press Article, April 9, 2009 Chesrown: Black Rock Tightening Belt

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing STATE OF IDAHO DEPARTMENT OF WATER RESOURCES REQUEST FOR SUBMISSION OF RECENT FINDINGS, REOPENING OF HEARING OR DENIAL OF APPLICATION relating to Black Rock Utilities Inc. 95-9045 Water Permit Amendment addressed to the person(s) as shown below on the date set forth below by the following method or methods:

☒ By mailing full, true and correct copies thereof, in sealed, first-class postage-prepaid envelopes, addressed to the person(s) as shown below with the United States Post Office at Coeur d' Alene, Idaho on the date set forth below as listed.

Department of Water Resources of the State of Idaho

Gary Spackman, Hearing Examiner

P.O. Box 83720

Boise, Idaho 83720-0098

Department of Water Resources of the State of Idaho

Robert Haynes, Regional Manager

7600 Mineral Drive, Suite 100

Coeur d' Alene ID 83814

Kootenai Environmental Alliance

Barry Rosenberg, Executive Director

PO 1598

Coeur d' Alene 83816

Givens Pursley

Christopher Meyer

PO Box 2720

Boise ID 83701

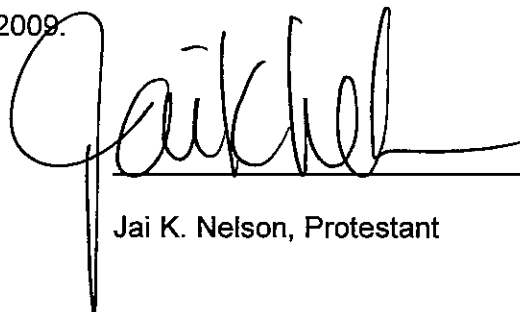
Black Rock Utilities

Kyle Capps

PO Box 3070

Coeur d' Alene 83816

Dated this 10th day of April, 2009.

A handwritten signature in black ink, appearing to read "Jai K. Nelson", is written over a horizontal line.

Jai K. Nelson, Protestant

THE SPOKESMAN-REVIEW

FRIDAY, APRIL 3, 2009

BREAKING NEWS: SPOKESMAN.COM

Black Rock North faces foreclos

Bank files action for \$14.6 million against luxury home project on Lake Coeur d'Alene

BY JOHN STUCKE

Staff writer

Bankers have filed a \$14.6 million foreclosure action against one of developer Marshall Chestrow's ambitious and upscale projects overlooking Lake Coeur d'Alene.

The complaint filed by American Bank, based in Bozeman, Mont., centers on Black Rock North, a 1,100-acre tract that Chestrow and his investment companies envisioned as an extension of the original Black Rock luxury

ry golf club at Rockford Bay.

Though construction crews built the second golf course, the demand for luxury homes to pay for the project has collapsed. No homes or lots have been sold and the Black Rock North Development group has defaulted. The plans included 206 homes and 325 condo units overlooking the lake.

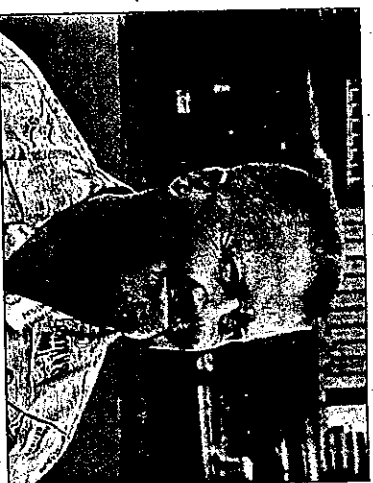
The development company hasn't made a payment this year and efforts to reach a loan restructuring agreement with American Bank have so far failed, said Chestrow's law-

yer, Barry Davidson, a Spokane attorney specializing in bankruptcy, receiverships and business restructurings.

Davidson emphasized that Black Rock North is separate from the adjoining Club at Black Rock, the area's first exclusive waterfront golf retreat.

Davidson declined to answer whether he was representing Chestrow in other matters. He said, however, that Chestrow is not con-

See FORECLOSURE, A14



FILE The Spokesman-Review

FROM THE FRONT PAGE / BUSINESS

FORECLOSURE

Continued from A1

templating filing for bankruptcy protection from lenders and a collection of 11 construction and property development companies that have placed liens totaling about \$3.57 million against Black Rock North Development.

Messages left seeking comment from Chestrow were returned by Davidson.

Besides Chestrow, other Black Rock North business partners include Lake View AG, a company from the tiny European country of Liechtenstein. Two other investors made \$5 million loans to the development, including Chicago resident Robert

Levin, acting as trustee for the Roland M. Casati Trust, and Ryker Young, of Fort Gibson, Okla.

The foreclosure action is the latest sign of trouble with North Idaho's high-end real estate market.

"The sale of secondary properties and homes is very, very slow," Davidson said. "Black Rock North was a project that is well-conceived, but like many other high-end projects, the national recession has severely affected it."

Chestrow also controls the company developing Kendall Yards, a housing and retail project near downtown Spokane. That plan calls for transforming 78 acres along the north bank of the Spokane River into a

residential and commercial neighborhood. American Bank's foreclosure action, filed April 1 in Kootenai County 1st District Court, asked that the Black Rock North property be sold at a sheriff's auction to repay the \$14.6 million loan, along with about \$400,000 in accrued interest, late charges and legal fees.

The bank's foreclosure action stated that Chestrow agreed to a guaranty for the mortgage, a promise made in February 2007 that he would be responsible for debts or defaults.

The foreclosure also asserts the bank's position that it must be repaid first, leaving construction and services companies, along with the Casati Trust and Young, in a

diminished position to collect money owed.

The bank has hired local attorneys Nancy Isserlis and Elizabeth Telleson to press its foreclosure.

The liens include Idaho Roofing Specialists, \$15,059; Thorco Inc., \$116,765; Consolidated Supply Co., \$6,335; Interstate Concrete and Asphalt Co., \$133,776, and \$79,063; Concrete Finishing Inc., \$219,190; The Turf Corp., \$6,553, and \$95,584; Wadsworth Golf Construction Co. of the Southwest, \$2.34 million; Polin & Young Construction Inc., \$224,417; Taylor Engineering Inc., \$148,433; Precision Irrigation Inc., \$187,844; and Spokane Wilbert Precast, \$3,837.

Black Rock North faces foreclosure

Bank files to have property put on auction block to repay \$14M

By RICK THOMAS
Staff writer

COEUR d'ALENE — A Montana bank that provided financing for a second private golf community south of town is foreclosing on the project.

American Bank, based in Bozeman, Mont., filed the action Wednesday in Idaho's 1st District Court seeking to have Black Rock North sold at a sheriff's auction to repay a \$14.6 million loan, plus \$400,000 in interest, late charges and legal fees.

"This is by no means the demise of Black Rock North," said Barry Davidson, attorney for developer Marshall Chesrown.

see BLACK ROCK, A2

BLACK ROCK

from A1

The plat for the 1,100-acre luxury development — adjacent to but separate from The Club at Black Rock, a waterfront retreat with a James Engh-designed 18-hole golf course — has not been recorded, and no home sites have been sold.

A second course, designed by Tom Weiskopf, is 99 percent complete, Davidson said. Black Rock North is not being offered for sale, he said.

"The goal is to preserve the

development and go forward, Davidson said.

Chesrown is also developer of the Kendall Yards project in Spokane, which was reported during February's Real Estate Market Forum in Coeur d'Alene as being for sale.

Chesrown recently acknowledged that prospect to The Press. Also for sale is his 2,168-acre Black Ranch on the south side of the Coeur d'Alene River near Harrison. It is listed at nearly \$19 million by Fay Ranches, Inc.

Numerous contractor liens have been filed against Black

Rock North, totaling nearly \$3.6 million. Davidson said legal wrangling will determine the status of the lender and lienholders.

He said he is unsure how the current value of the property compares to the amount owed on it.

"It is difficult to appraise now," he said. "The marketplace will speak to that."

Selling luxury homes has become increasingly difficult in the recession, he said.

"The problem we face is a collapse of the capital market," he said.

CdA Press 4/4/09

Thursday

April 9, 2009



Chesrown: Black Rock tightening belt

Developer talks about weathering economic storm

By RICK THOMAS
Staff writer

COEUR d'ALENE — The developer of some of the most exclusive real estate properties in Kootenai County and Spokane is optimistic but realistic in what the future holds for him and others in the business.

Marshall Chesrown is the principal player in projects as diverse as condominiums and commercial space

on the Spokane River in Riverstone to private golf courses. At age 51, he has seen plenty of success, and is staring down the recession with a new level of determination following a foreclosure action last week.

"Anybody today in the development business who tells you things are a bowl of cherries is a liar," Chesrown said.



Chesrown

see CHESROWN, A2

CHESROWN from A1

Creditors of Black Rock North — the 1,100-acre development with the nearly complete 18-hole golf course designed by Tom Weiskopf — filed for foreclosure on April 1, seeking to recover a \$14.6 million loan plus \$400,000 in interest, late charges and legal fees.

Chesrown is a 62 percent partner in that project, which sits next to The Club at Black Rock, which he owns entirely, along with the Black Rock luxury home development. He holds controlling interest in all his projects, ranging from 50 percent at Legacy Ridge above Liberty Lake, Wash., to 80 percent in ventures on the Spokane River in Coeur d'Alene and Kendall Yards in Spokane, a multi-use residential and commercial project.

"Each one stands on its own two feet," he said. "Whether they're all going to survive this downturn has yet to be seen. I don't think from my perspective we have found the bottom yet."

"We are in total reorganization. Not any type of bankruptcy. We saw this coming quite some time ago and started downsizing. It started rolling pretty fast. It's not Black Rock, it's not Coeur d'Alene, it is a national economic issue."

What it is for the company, he said, is a "workout of renegotiation, living to fight another day."

"No one anticipated the slowdown to be as deep and wide as it's been. When we

budgeted for 2006-2007 or 2007-2008 we were looking at a slowdown estimated at 20 percent, not 75 to 100 percent."

Black Rock cut about 70 percent of its administrative personnel to a staff of about 25 and closed its downtown sales office. Chesrown has taken on the position of sales director.

He started putting his personal property on the market early last year. He sold one home in California, while Black Rock Ranch near Harrison and another ranch in Texas are for sale, with plans to keep the one that does not sell.

"Obviously the ranch is a passion, but to have those kind of things, you can't put those kind of assets ahead of your business," he said. "The other thing, when you're asking lenders and different entities to work with you on restructuring, you have to be willing to make the tough decisions. The tough decision sometimes is on a personal note."

Chesrown believes a turnaround will come. "We just don't know when it comes back and what it looks like," he said. "The other thing I don't think anybody has their arm around: What have values actually depreciated to? People say the market is off — prices off 22 percent. What are you basing that on? Nothing's selling."

His own properties he estimates at worth several hundred million dollars, but the problem is cash flow, which he describes in one word: "Zero."

Several new homes broke ground at Black Rock in recent weeks, and a half dozen are under construction at Legacy

■ The Club at Black Rock is featured in the May issue of *Golf Digest*, which hit newsstands this week, as one of "America's 100 Greatest Golf Courses for 2009-2010." The Club ranked 27 after 900 panelists judged in on criteria that included shot values, resistance to scoring, design variety, memorability, aesthetics, conditioning and ambiance.

The 18-hole course, designed by James Engh, is part of Black Rock Development's waterfront community at Rockford Bay.

Ridge. There have been three foreclosures, one on a bare lot. On Monday, Chesrown took offers on two properties, and he said there are bargains in an overbuilt market.

"There is a lot of bottom fishing," he said.

He believes North Idaho is still better off than most areas.

"I think the area has definitely been discovered, and the basic fundamentals that our company was founded on ... will survive the test of time," said Chesrown, who returned to his home area after making a fortune with car dealerships.

He said he has never failed in a business, filed a bankruptcy or even made a late payment.

"This economy we're in is new territory for anybody that is alive today," he said.

"Things could be worse. I could be in the car business."