

# MEMORANDUM

**To: Teton County Board of Commissioners**

**From: Clarion Associates**

**Date: August 23, 2007**

**RE: PUD Discussion Scheduled for August 27, 2007**

During our meeting with you on Friday, August 10, you indicated that several issues were pending for discussion at the Board of County Commissioners meeting on August 27. You asked whether Clarion could make recommendations regarding those issues. We indicated that Clarion would only comment if we thought we could do so without compromising our credibility or effectiveness in the remainder of the Audit project. We also indicated that we would like to review additional information from the county GIS system regarding the number and location of platted and pending subdivisions and PUDs and the number of lots that have been developed with structures. We have now had a chance to review preliminary GIS data provided by the county, and this memorandum sets forth our limited recommendations on two of the issues that we understand are scheduled for discussion on August 27: The proposed repeal of the current density-based PUD ordinance and the proposed adoption of a draft Gateway PUD ordinance.

## **Proposed Gateway PUD Ordinance**

As we indicated on August 10, the vast majority of concerns and complaints about development in Teton County surround the PUD subdivision process, and we anticipate that a significant portion of Clarion's effort will be spent with refining the PUD tool with balanced stakeholder input. In light of that fact, we believe it would be premature to adopt the draft Gateway PUD ordinance at this time. While the draft Gateway PUD addresses some of the shortcomings of the density-based PUD ordinance, it does not address several issues or include objective standards found in many modern PUD ordinances. In some areas the draft highlights specific areas to be addressed in natural resource analysis, but does not identify standards or criteria for review, and in other cases key standards are written as non-binding guidelines. While the draft ordinance addresses some of the problems in the current density-based PUD ordinance, it could benefit from additional work, and some of that work may also be applicable to PUD regulations for non-Gateway areas of the county. If you decide to adopt the draft ordinance on August 27, we ask that the county be open to suggested revisions to that ordinance as a result of the Clarion Audit process.

## **Proposed Repeal of the Density-Based PUD Ordinance**

Our review of GIS data provided by Teton County shows a dramatic increase in PUD filings over the past two years. It appears that the number of acres proposed for inclusion in PUD subdivisions (and still pending review and action) may exceed the number of acres subdivided prior to 2005. However, there is still a lot of undeveloped and unsubdivided land remaining in the county. It is very difficult to tell whether additional large PUDs and standard subdivisions are still awaiting filing, or whether the bulk of those who are ready to divide their land during this economic cycle have already filed. In light of these facts, Teton County could take one of two actions.

In order to delay any future filings, the County could repeal the PUD ordinance. However, we anticipate that may have two adverse consequences. First, if the PUD option is shut off, some of the property owners may decide to proceed with standard 2.5 acre subdivisions. Despite the shortcomings of the current density-based PUD ordinance, standard 2.5 acre lots designed without common open space would generally produce a worse pattern of growth, and it would be unfortunate if repeal of the PUD resulted in more of that pattern on large parcels. In addition, we believe that repeal of the PUD would aggravate an already overheated discussion on the future of development in general and PUDs in particular and would make it more difficult to have a considered discussion about redesigning PUDs over the next several months.

Second, the County could leave the density based PUD ordinance in place and instead focus on (a) redesigning the PUD tool through the Clarion Audit process, and (b) improving review and approval of the pending PUDs starting immediately. While our review of the county's GIS data made us somewhat apprehensive about the possible future filing of additional large PUD applications, it made us very apprehensive about the review of those PUDs that are already filed and pending review. Regardless of whether or not the existing density-based PUD ordinance is repealed, the county's review of pending PUDs needs to be significantly strengthened.

To do so, we recommend that you instruct the Planning and Zoning Commission to take a very hard look at each pending subdivision and PUD to ensure that they address each significant element of the comprehensive plan. At present, the PUD ordinance has relatively few objective standards to guide decision-making by either the Planning and Zoning Commission or the Board of County Commissioners. Nevertheless, Clarion believes that both bodies clearly have authority to request additional data to confirm that application reflects the comprehensive plan goals in many areas – including impacts on the scenic corridor (Land Use Policy 2), concentration of higher densities near the cities (Land Use Policy 3 and 4), guiding placement of PUD open space to protect natural, scenic and other significant features (Land Use Implementation 3), protecting surface and groundwaters (Natural Resource Policy 2), and conserving and protecting important habitat (Natural Resource Policy 5).

Chapter 6 of the subdivision regulations (Special Development Subdivisions) identify numerous studies and evaluations that need to be provided with PUD filings (including an analysis of impacts on public facilities, such as roads) and the Planning and Zoning Commission and Board of County Commissioners should ensure that those studies are adequate and accurate, and that PUDs have been designed to reduce or avoid adverse impacts identified in those studies. As we mentioned on August 10, high growth rates often create very significant financial impacts on county governments, so it is very important that subdivisions and PUDs provide a detailed analysis of impacts on public facilities and propose realistic and effective steps to mitigate them. The deteriorated condition of some roads in Teton County suggest that this step in the process needs to be strengthened.

In addition, the purpose statement in section 9.7.2 of the subdivision ordinance clearly reflects several key objectives of the comprehensive plan, and the criteria in section 9.3.4 permit the Planning and Zoning Commission to recommend approval with conditions or rejection or subdivisions and PUDs that do not promote the public health, safety, and welfare of the county. Likewise, we believe the Board of Commissioners has authority to approve with conditions or to reject applications that are inconsistent with the comprehensive plan, even if the Planning and Zoning Commission has recommended approval, though the Board may have to make separate findings to support its disagreement with the Planning and Zoning recommendation. Many counties take the position that applications that are inconsistent with an adopted comprehensive

plan do not promote public health, safety, and welfare, and recommend modification or denial on that basis.

The pending PUD applications have the potential to change the character of parts of the county (especially the northwest) in significant ways, but we do not believe the current PUD ordinance requires that they be approved if they do not conform to the key elements of the comprehensive plan. In some cases, proposed densities or the location or organization of open space may be inconsistent with protection of the environmental and visual objectives of the comprehensive plan, or proposed densities may create impacts on public roads that are difficult to mitigate, and if so those densities and patterns of open space should not be approved.

Regardless of whether the Commissioners decide to repeal the current PUD ordinance, keep it in place, or postpone that decision, Clarion believes that the Planning and Zoning Commission should be a key stakeholder in the future redesign of the PUD option. We indicated on August 10 that we would be proposing a process to involve the public in addressing the shortcomings of the comprehensive plan, zoning, and subdivision ordinances, and we hope that the Planning and Zoning Commission (as well as other key stakeholders) can play a key role in that process.