

DRAFT TETON COUNTY PLANNING AND ZONING COMMISSION
Meeting Minutes from April 12, 2016
County Commissioners Meeting Room, Driggs, ID

COMMISSIONERS PRESENT: Mr. Dave Hensel, Mr. Cleve Booker, Mr. Bruce Arnold, Mr. Chris Larson, Ms. Marlene Robson, Mr. Jack Haddox, Mr. Pete Moyer, Ms. Sarah Johnston, and Mr. David Breckenridge.

COUNTY STAFF PRESENT: Mr. Jason Boal, Planning Administrator, Ms. Kristin Rader, Planner, Ms. Amanda Williams, Weed Superintendent/Natural Resources Specialist

The meeting was called to order at 5:03 PM.

Approval of Minutes:

Mr. Booker commented that he was not present at the March meeting, so he did not make a motion. It was determined that Mr. Breckenridge moved to adjourn the meeting and Mr. Larson seconded the motion.

MOTION: Mr. Arnold moved to approve the Minutes of March 8, 2016, as amended. Ms. Robson seconded the motion.

VOTE: The motion was unanimously approved with Mr. Moyer and Mr. Booker abstaining, as they were not present for the meeting.

Chairman Business: There was no Chairman business.

Administrative Business: Mr. Boal talked about the process of moving forward in May after the combined meeting with the BOCC. He stated that the BOCC wanted to have the public outreach done by the BOCC after the Commission held a public meeting to make a recommendation on the draft code they have completed. He commented it will be discussed further at the joint meeting in May.

PUBLIC HEARING: Amendment to Title 9, Teton County Subdivision Ordinance. Proposing amendments to Title 9 to add Chapter 11 – GRANTING BUILDING PERMIT ELIGIBILITY OF PREVIOUSLY CREATED PARCELS. This process is intended to rectify parcels that are currently out of compliance with our ordinance and need an official process to solidify their building rights.

Ms. Robson commented that she has issues with some of her property being involved in the lot split process, but she did not feel she had a conflict of interest on the subject. The Commission was in agreement it was not a problem.

Mr. Hensel commented that he has had a conversation with someone previously about the subject of lot splits and did not feel that it was a conflict. The Commission again was in agreement it was not a conflict.

Staff Presentation: Mr. Boal commented that the proposal is to amend Title 9 of the Subdivision Ordinance to add Chapter 11 as a remedy for parcels previously created that were created without

meeting the laws and criteria in place at the time to create building rights. The proposed ordinance identifies the application, processing and approval requirements that are needed to utilize this new process. The process will be used to “rectify” parcels that were created and may have had an expectation of a building permit, but cannot be considered “legally designated lots” because they did not meet the legal requirements at the time of their creation. The purpose is to provide an official process for land owners where these lots can be reviewed and approved, and the building rights guaranteed. In order for building permits to be issued it has to be a legally designated lot. Mr. Boal commented at the end of 2014 his office initiated lot inquiries to review legality and property rights on lots that have been split and found problems on how some lots were created. He commented approximately 20% of the lots reviewed had issues on how they were created. During the inquiry the staff would identify the possible options to create the building rights. A retroactive one time only lot split is often a viable option if the lot is eligible.

Mr. Boal commented the subdivision process is always an option to create building rights and the proposed ordinance is to fill the gap on those lots that have issues on how they were created, although a more costly option remedy. Mr. Boal reviewed a flow chart that showed the process for rectifying lots without building rights. He reviewed the property requirements like meeting underlying zoning rights and approved access, and the lot had to be created through a survey prior to 2010. He also reviewed the steps that can be taken to establish the building rights. It requires a lot inquiry to determine building rights, then an application, staff review, and BOCC review. The plat then can be recorded with legal building rights. If a property cannot meet the criteria there is always the option of going through the subdivision process. Mr. Boal also suggested some additional language in the proposed ordinance for clarification purposes based on comments received.

Ms. Robson asked how the date of 2010 was determined. Mr. Boal responded that research showed there was a tapering off of lot splits and issues after 2010.

Mr. Booker asked about the 20% figure and if that referred to 20% of all lots platted or 20% of lots that had inquiries requested. He wondered how many unbuildable lots are out there. Mr. Boal commented the 20% refers to the lot inquiries, and the only way to determine an actual number is to review every lot platted during that time.

Mr. Hensel asked if it was a minority of the platted county lots. Mr. Boal believed it would be.

Mr. Moyer asked if there was a way of knowing what percentage of the 20% would have been determined as not buildable. Mr. Boal commented there is a small amount, roughly 1% or 2%, maybe less, and the new proposed code may resolve some of those problems. Lot size was an issue on the most of the lots that were identified as unbuildable.

Mr. Hensel explained the format for public comment and then opened Public Comment.

Public Comment:

In Favor:

Mr. Shawn Hill, representing Tom Stanton, a Jackson based attorney who owns property at 250 E. 4500 S. in Victor. His comment was he supports the ordinance but suggest extending the period for action by the owner past the deadline of January 1st, 2018 due to financial means necessary to

address the issue. He suggested a 15 year time frame would be more reasonable falling in line with an Idaho statute of limitations for property matters that runs from the time that a cause of action is discovered before an owner's right for due process is terminated, especially when the issue was caused by county departmental actions.

Neutral:

Mr. Shawn Hill, representing VARD, commented that they believe the proposed ordinance is a good start but more study is needed because it is not known how many of these parcels are affected by high nutrient pathogen concentrations and an evaluation should be done before a lot is rectified. He would also like to know how many lots are in natural resource overlays so to better understand how the proposed ordinance will be applied in overlay areas. He stated he believes the county has access to GIS data for parcels and they can pinpoint if the lot is in an overlay area. He also wanted to see under 9-11-1 Applicability: #1 and #3 criteria limited. He felt the criteria is too sweeping. He did not want right-of-way vacations considered as buildable lots and was also concerned about agriculture lot splits which were designed for lots that would remain as agricultural lots, not residential lots. Mr. Hill commented regarding criteria #2 he believed it was reasonable. If a property owner has an official signed letter of approval for their lot they should be able to build and not be subjected to another process and fee. He also recommended using the "lot of record" definition in the draft county code and in use in the Driggs and Victor codes to describe a buildable lot.

Mr. Mark Ricks, landowner on the northwest end of the county, commented he agrees with Mr. Hill that the people who created these unbuildable lots need a longer period to rectify the situation because it will be a process that cost money and people should have a longer time to resubmit when they can afford to do it. He also questioned the tax rate for residential lots that owners have been paying higher rates on, wondering if the county would be liable for over taxation. He commented on 9-11-3 C. regarding use of the Comprehensive Plan in the decision making process as to whether these lots are buildable or not. Mr. Boal commented that state code designates that the deciding body can't find that the approval is in opposition to the Comprehensive Plan. He suggested that the Comprehensive plan that was in affect when the lot was created should be considered.

Opposed:

Mr. Harley Wilcox who lives in Victor commented he has worked with the staff and appreciates the effort to resolve the problem. He felt it was important to determine the extent of the property involved so as not to impede commerce since the valley is coming out of its recession. He also commented on the effect on the buyers and sellers, realtors, engineers, surveyors, title companies, etc. They do not want to represent property rights that may not be accurate. He asked about the intent of the ag splits when the split occurred, which may not be in line with current ag split criteria. He felt if the amount of lots that are unbuildable is a small amount (20 or 30) they should just be allowed to build as is. He was concerned with new county officials reviewing laws and approvals from the past and changing what past county officials have approved. Mr. Wilcox then presented a couple of specific situations he has encountered regarding this subject. One example of a lot that doesn't need to be fixed would be one where someone deeded a 20-acre parcel of their land to someone who got a building permit to build on, but can no longer get any type of building permit for even a shed or garage addition. He spoke to an example of a lot split that had been surveyed, approved and recoded in the county. He felt there are a limited number of lots that are in this

situation. He was concerned with revoking something previously granted. In summary, he felt that all lots should be identified that have gone through the process and recorded properly, and not try and reopen those to new regulations. He did not feel that they should be put through another process with new conditions.

Ms. Bonnie Dreher, who lives at 2805 N. 2000 W. in Tetonia, did not agree that you can retroactively revoke someone's rights on a parcel. She created a subdivision in Victor which was approved and lots have been sold, and she was concerned with her liability. She did not feel it was right to tell people that they have paid money for land that does not have the rights they believed they did when they purchased the lot.

Ms. Joanne LaBelle, who resides in Victor, commented she did understand that the staff is trying to solve a problem, but did not agree with revoking rights from people that have previously approved property. People relied on the county officials to do the parcel splits and they were told they were done legally. She also stated that we should not be using today's Comp Plan to look at lots approved in 2000. She suggested grandfathered rights before 2010 or 2015. She believed the county will be sued if they try and revoke building rights.

Mr. Forrest Fischer, an attorney from Idaho Falls, came to comment because of his love of the valley. He stated he has been working in Seattle protecting property rights and was surprised to find out Teton valley has similar problems. He stated he believed the proposed ordinance was fundamentally flawed and illegal as proposed. He commenting that adopting the ordinance will result in law suits for Teton county. He talked about the 28-day timeframe for reviewing or changing previous approvals. He also felt the county has no authority to create this procedure. Mr. Fischer also stated the county does not have the power to go back and review previous approvals. If the ordinance is passed as written it will open itself up to lawsuits. He felt it was a "taking case" and the county will be liable. He believed any lot that is illegally designated should deal with the courts not the county. He suggested the Commission ask staff to point out the law that allows them to review previously approved lots.

Mr. Roger Brink, a local realtor living in Tetonia, commented he did not want to repeat the same things previously stated, but commented there are people who had expectations when they purchased property and who investigated their rights in the county at that time. They have reached out to him as their realtor saying they don't know what to do to protect their previously approved rights. He felt there are people who do not want to have to spend money to rectify the county's mistake so they can use their property for the original intent when they purchased it. He suggested the county find a different way to resolve the problem.

Ms. Billie Siddoway, living in Victor, commented that she was concerned with the people who bought lots and now find out they cannot build a residence on those lots. She was concerned with the property owners going after the realtors for compensation or the county for denying them their rights. She commented she is not opposed to the proposed ordinance, but felt that there should be some way to give those people the rights they thought they bought without spending more money and time. She proposed criteria for splits that occurred prior to 2015 or even 2010, and that the current owner make a statement that they did purchase the parcel at fair market value. Ms. Siddoway commented she understood lot splits that do not meet the underlying density requirements, but the majority of people that have contacted her on this subject do not fall into that category. She did not want to see litigation against the county or realtors because of this problem. She also wanted to support the commerce of the construction sector of the community by allowing

people to build the home they have planned on. She was concerned with the cost and time frame in the proposed ordinance for forcing people to go through the planning process in order to obtain a building permit.

Ms. Kristi Clarke who lives on 4500 S. bought property to retire on and now cannot build. She stated she is the face of the issue, and now her retirement options are gone. She wanted the Commission to understand the impact of their actions.

Mr. Geoff Traub, a resident of Tetonia, commented his family had 20 acres and did a legal ag split of 4 acres and was considering building this summer but was told they cannot build. His objection was that adopting the ordinance makes what was done in the past illegal, and felt that it sets a bad precedence. He did not agree that whether or not you paid for the lot on the open market should be a consideration.

Applicant Rebuttal:

Mr. Boal clarified that if a lot split met the criteria at the time, it is deemed a legal lot split. They ones that did not meet the criteria or code at the time are the ones being looked at. He stated there is Idaho case law explains that surveys are a legal instrument for dividing property or selling property, but does not create building rights. Mr. Boal commented on a legal case in the county, Dunn vs Teton County. He stated the county attorney has reviewed the ordinance and does not feel they are violating any case law with the proposed ordinance. The intent of the ordinance is to find a way to legally allow building rights on illegal parcels. The county cannot go back and judge the intent when it was created or purchased, they can only go back and look at the laws in place at the time and if they were followed.

Regarding the tax questions of paying residential rates on ag land, Mr. Boal stated that would be something that would go through the Assessor's office for review of their tax valuations. He also commented that Idaho is a "buyer beware" state and it is the responsibility of the buyer to find out what their rights are prior to purchasing a parcel of land.

Mr. Arnold asked if lots that didn't follow the criteria were signed off and approved by the county staff. Mr. Boal commented it appears that some of them were, but very few fall into that category.

Mr. Breckenridge asked if the ag splits had criteria written on the plat that they were legal. Mr. Boal commented in some cases it was, and if they met the criteria at the time it would be considered a valid lot split. It would not be compared to today's ordinances.

Mr. Larson asked if we are dealing with people who misused the one time only land split or ag split to create lots that didn't meet building criteria at that time and then sold them with the assumption that there were building rights. Mr. Boal commented that in most cases there were assumptions made that building rights would accompany the land.

Mr. Arnold commented he felt that the county should stand by what they did in the past if it was signed off on and felt it should be exempt.

Mr. Moyer questioned the plat Harley Wilcox referred to regarding a 5 acre split off and wanted to know what criteria was used to determine it was illegal to build on if the large parcel it was split from was given a building permit. Mr. Boal commented that the 26-acre parcel that got a building

permit might not have been eligible but still received a building permit. He had no knowledge of this specific transaction.

Mr. Hensel clarified that the discussion is strictly about the proposed ordinance and not specific cases of land owners. Since he neglected to close the public comment portion of the meeting he allowed further public comment.

Mr. Forrest Fischer commented as a point of order the Commission has to look at what was noticed to the public. Changes have been made without notice so he believed it is not legal to consider those changes. He also commented staff cannot go back and review a previously approved permit.

Mr. Harley Wilcox commented that he was not talking about people who just assumed they had building rights. He is talking about people who have a reasonable understanding that they have building rights. He did not want all parcels put through the process based on today's administrative decisions.

Mr. Shawn Hill from VARD commented that he felt there is some confusion about the 3 things the ordinance is trying to address. If a parcel has an official county approval granted, then that is worth legitimizing one way or another. Another type of parcel being considered is a parcel not complying with Title 9 after it was approved. He did not think amnesty should be granted to people that did not comply with Title 9 after it was adopted. The 3rd issue is the ag-split lots, which were supposed to be split for ag purposes, not residential use. Therefore, they had no building rights. If it was a formal county approval that granted building rights, they should stand by it. The other two items should not be given amnesty and should go through a process to rectify the situation.

Mr. Hensel closed Public Comment.

COMMISSION DELIBERATION:

Mr. Booker commented that there were some things added that were not advertised and he thought the Commission should not be continuing the discussion until the ordinance is properly and completely noticed, especially since the county attorney was not present for clarification.

Mr. Larson agreed with Mr. Booker regarding noticing, but he felt they could continue at this point. Mr. Hensel felt that the clarifications proposed by Mr. Boal could be considered, but felt that there should be legal counsel present for this hearing and suggest that it be tabled. Mr. Booker commented he would be alright with going forward but wanted it on the record that he was concerned about noticing the additional language proposed.

Ms. Johnston agreed legal council should be present for this discussion but suggested giving guidance to staff for the next hearing to move the issue forward. She also suggested there be more recommended motions or options in the staff packet. Mr. Arnold pointed out that they have usually taken the recommended motion written in the staff report and made any changes that came up in the discussion.

Mr. Larson commented about the ag split or the one time only land split's that met the criteria at the time, and felt they should be rectified. He felt there should be more information on how the ag split process was intended to be used at the time of approval because it was his understanding that it did not include entitlements to build residential units. He believed that those lots that don't meet

the minimum lot size should go through the proposed process, and would like more information on how the ag split was intended at the time. If a lot doesn't meet the Title 9 minimum lot size for the time when it was split, then it should have a process for obtaining building rights.

Mr. Moyer commented he was having a hard time trying to figure out the intent of the previous county officials. The plat he was looking at doesn't say on it how it was split, so he understood why the buyer would think he had a buildable lot.

Ms. Robson commented she agreed with Mr. Larson about allowing a hardship consideration. She stated she would like more time to review the information and had some issues with the 2010 date proposed.

Mr. Booker commented he agreed that there should be some kind of hardship approval for people who put their life savings into a land purchase and are then told they cannot build on it. He felt the proposed ordinance should have some language that provides for that. He wanted to have the county legal counsel present before a decision is made. He also wanted to know what happens to lots that are determined to have no building rights and felt that it should part of the ordinance as well.

Mr. Arnold commented that he agreed with Mr. Hill regarding those who went through the Title 9 process and have a signed document, believing they should get their building rights. Those who ignored the Title 9 process should have to go by the proposed ordinance. Mr. Arnold believed the ag split lots should be OK as well since they went through the Title 9 process.

Mr. Haddox commented he was uncomfortable because of the new information the public hasn't seen and felt the ordinance should be tabled so it can be done right. He commented on a record of survey versus an approved plat, and also wanted to see legal counsel present to assist in making the appropriate decision.

Mr. Moyer stated he agreed with previous comments made by the Commission.

Mr. Breckenridge commented he liked the chart presented by Mr. Boal and the proposed process, but he did not like the stance the county is taking on previously signed and approved parcels. He believes that the county should be bound by that approval. Regarding the ag splits, he felt that it was not fully understood at the time what the rights were that go with the split. He felt the definitions should be more specific for what is acceptable or not acceptable.

Ms. Johnston agreed with the comments that those who went through the Title 9 process to divide parcels should be OK. Those who ignored or didn't use the Title 9 process should be rectified differently. She wanted to know more about the ag split lots and what process they went through, and possibly a map showing where these lots are located. She also commented that she was not comfortable with the proposed ordinance as written because it was not clear on the situation of some of the lots splits.

Mr. Larson commented he would prefer instead of a map, examples with generalized locations and what the case issues are.

Mr. Hensel commented that mistakes have been made in the past and there were some very busy times in the past. He felt that the staff is trying to deal with that situation using the proposed

ordinance. His sympathy was with the lot owner paying residential taxes since the ag lot split. He thought we should start all over because mistakes were made in the past. He recommended the public hearing be continued and reopened at a later date with legal counsel present.

The Commission discussed what date to postpone the hearing to. Ms. Johnston suggested May 17th since the May 10th hearing already has two applications. The Commission agreed to hold a special meeting on the 17th to continue the hearing.

MOTION: Mr. Larson moved to continue the Public Hearing to May 17th. Mr. Breckenridge seconded the motion.

VOTE: The motion was unanimously approved.

MOTION: Mr. Arnold moved to adjourn the meeting. Mr. Haddox seconded the motion.

VOTE: The motion was unanimously approved.

MOTION: Mr. Arnold moved to adjourn the public hearing. Mr. Larson seconded the motion.

VOTE: The motion was unanimously approved.

The public hearing was adjourned at 7:30 pm.

WORK SESSION: Draft Code Discussion, Article 13: Property Development Plan

Mr. Larson had to leave the meeting as the Work Session was beginning.

Article 13 – Property Development Plan

- 13.2.2 Additional Required Sections: Applicability Chart
 - Change Site Disturbance and Building Permit from “R” to “P” for Vegetative Management Plan
 - Change Building Permit from “R” to “P” for Parking Plan
- 13.3.1 Riparian Buffer Plan
 - Make sure list of riparian features all match in B, E, and F.
- 13.3.2 Skyline View Protection Plan
 - Jason will contact Rob about the map to verify if it is showing areas where buildings will skyline or if it is only areas visible from the highways.
- 13.3.3 Steep Slopes Plan
 - No changes
- 13.3.4 Grading Plan
 - Mr. Booker asked if the SWPPP was required now. This is a federal rule, with a permit required by the US EPA if one acre or more will be disturbed. The language could be clarified in this section.
- 13.3.5 Vegetative Management Plan
 - Update table to match 13.2.2
 - PZC discussed removing language from 13.3.5.D.4 about plant varieties being selected based on the natural conditions. It was decided to keep this language.

- A new section under 13.3.5.D will be added for ornamental areas and lawns around a home – plants may not be native, but they may not be invasive.
- A typo was identified in 13.3.5.F, which will be corrected.
- 13.3.19 Parking Plan
 - Update table to match 13.2.2
 - Add an exemption for residential building permits if requirements are shown on the site plan.

Moving Forward:

- Staff gave a brief overview of the new Wildlife Habitat sections of Article 13. PZC should be prepared with comments to complete Article 13 (13.3.6-13.3.20) at the April 19th meeting.
- PZC should be prepared with comments on the 19th for all Redlined Versions of the Draft Code.
 - Staff will provide PZC with the Redlined Version of Article 15 by April 15th.
- Any changes to the Draft Code need to be made at the April 19th meeting, so a “clean” version can be prepared and provided to the BoCC and PZC by April 23rd.
- The joint meeting with the BoCC is scheduled for May 10th. Mr. Hensel asked if the joint meeting could be scheduled as the first item on the May 10th agenda.

MOTION: Mr. Booker moved to adjourn the meeting. Ms. Johnston seconded the motion.

VOTE: The motion was unanimously approved.

The meeting was adjourned at 8:43 pm.

Respectfully submitted,
Sharon Fox, Scribe

Dave Hensel, Chairman

Sharon Fox, Scribe

Attachments:

1. April 12, 2016 Public Comment
2. PZC April 12, 2016 Meeting Packet