

January 6, 2025

Via email: clerk@tetoncountyidaho.gov
Teton County Board of County Commissioners
c/o Kim Keely, County Clerk
150 Courthouse Dr.
Driggs, ID 83422

RE: Request for Reconsideration – Osprey Landing Subdivision Extension

Dear Board of County Commissioners:

Givens Pursley LLP represents Bidache, Inc. (the “**Applicant**”) and we respectfully request the Board of County Commissioners (the “**Board**”) reconsider its decision denying the Applicant’s plat extension application and grant a one year extension to allow the subdivision project to be completed.¹ Reconsideration to approve the extension is warranted in this case, because the evidence in the record shows that the criteria for granting an extension were met as detailed below. Specifically, seasonal studies were required by the County related to the big game corridor overlay that caused delay. Osprey Landing will also have a public benefit by providing housing to the community and by making a lump sum contribution of the Project’s proportionate share to improve the intersection of SH 33 and W 3000 S with northbound and southbound acceleration lanes.

The specific decision the Applicant seeks reconsideration from is the Written Decision for the Denial of an Extension Request for Osprey Landing Subdivision dated December 23, 2024 (the “**Decision**”).²

PROPERTY BACKGROUND AND OSPREY LANDING PROJECT TIMELINE

Applicant owns approximately 30 acres of land in Teton County on the northeast corner of SH 33 and W 3000 S (the “**Property**”). Applicant desires to develop the Property as a residential community with 12 single-family residential lots known as Osprey Landing (the “**Project**”). In the summer of 2021, the Applicant started the subdivision process. At this time, the Property had a zoning designation of A/RR-2.5, which allowed for residential lots of 2.5 acres or greater.³ When the Project application was submitted, the Project complied with applicable code standards for the A/RR-2.5 zone.

In August of 2022, during the Applicant’s efforts to subdivide the Property, Teton County unilaterally downzoned the Property from A/RR-2.5 to the RN-5 zone, which increased the

¹ This request is made pursuant to Idaho Code Section 67-6535 and Teton County Code Section 4-15.

² The Decision is attached as Appendix A.

³ Teton County Code Title 8, Section 8-3-6(A)(2) (“The minimum lot size shall be two and one half (21/2) acres...”).

minimum lot size to 5 acre lots or greater.⁴ Despite the downzone, the Project continued to be processed as an A/RR-2.5 project in accordance with Idaho law, which provides that a land use application must be processed in accordance with the code and zoning in place at the time the application is made.⁵

The following is a timeline of major application events affecting the Project starting with when the application was deemed complete through the filing of this reconsideration request.

- September 28, 2021: Project application deemed complete and the concept plan for the Project was **approved** by the Planning and Zoning Commission. The Concept Plan approval allowed the Applicant to begin engineering on the Property and developing utility and access plans for the Project.
- January-December of 2022: During this period, the subdivision plat and utility plans for the Project were developed. Agency approvals were also applied for and granted, such as Eastern Idaho Public Health (EIPH) approvals.
- March of 2023: County planning staff informs the Applicant that the Property is included in a new natural resources big game corridor overlay zone and that a natural resources analysis addressing big game migration will be required for the Project.
- April of 2023-February 2024: Work with consultants to prepare natural resources analysis and address other issues with floodplain designation and Fall River utility plans. ***Field work for natural resources analysis needed to be completed in summer months for proper data collection***, which delayed submission of preliminary plat application.
- February 2024: Notified by planning staff that the big game component of the natural resources analysis is not needed because the big game overlay was not properly adopted.
- February 23, 2024: Preliminary plat application submitted for Planning and Zoning Commission review.
- May 14, 2024: Preliminary plat application approved by Planning and Zoning Commission, with conditions and recommended revisions. The Commission requested the Applicant work with public works to calculate the Project's proportionate share cost for NB and SB acceleration lanes on SH33 to be paid as a lump sum.
- August 29, 2024: The Applicant filed an extension request for 4-5 month extension to complete subdivision process.

⁴ Land Development Code (“LDC”) Section 2.5(A) (“The Rural Neighborhood (RN-5) Zone is intended to accommodate primarily residential uses at an average density not exceeding one (1) lot per five (5) acres.”).

⁵ *Bracken v. City of Ketchum*, 172 Idaho 803, 813 (2023) (“Idaho law is well established that an applicant's rights are determined by the ordinance in existence at the time of filing an application for the permit.”).

- October 7, 2024: Public meeting noticed for both preliminary plat and extension request. Extension request denied by Board based on a “lack of sufficient justification.”⁶ and the preliminary plat application was never taken up.
- December 23, 2024: Written Decision issued.
- January 6, 2025: Request for reconsideration made regarding Board’s denial of extension request.

APPLICABLE STANDARDS

Teton County Code provides that a final plat and the related improvements plans must be approved by the Board within three years of the date the subdivision concept plan application is accepted.⁷ Under your Code, an applicant can make a request for an extension for up to 12 months by submitting an extension request that includes the reasons why an extension is requested and addressing the extension “criteria in the subdivision extension application.”⁸ The extension approval criteria listed in the application are:

1. The developer has diligently pursued the completion of final plat approval and the preliminary plat has been approved.
2. The application was continued by the commission for special studies, i.e.: Traffic, NP, Wetland, Wildlife etc.
3. The denial of the extension would cause undue hardship to a neighboring property.
4. It is in the public interest.
5. *Delays have been the result of federal, state or local agency demands, lengthy/unusual review agency timeframes, or required studies that can only occur during a limited time(s) of the year.*
6. Application of Title 9 regulations (as amended November 14, 2008) would not significantly alter the extended subdivision’s design or dedications.
7. County negotiations for non-required public benefit delayed progress in the project.
8. Other extenuating circumstance.⁹

Meeting only one of the extension criteria allows for the extension to be granted.

RECONSIDERATION

Reconsideration of the Decision is warranted in this case for the following reasons:

⁶ October 7, 2024 Hearing Video at 5:10:40 (see <https://pub-tetoncounty.escribemeetings.com/Players/ISISStandAlonePlayer.aspx?Id=06efdbe9-6d8d-4a72-81d4-a381450dda3>).

⁷ Teton County Code Title 9, Section 9-3-2(D)(2)(I)(i).

⁸ Teton County Code Title 9, Section 9-3-2(D)(2)(I)(ii) (emphasis added).

⁹ Teton County, Idaho Subdivision Extension Application 5.5.2011 pp. 1-2 (emphasis added).

1. Evidence presented at the public meeting on the extension request shows that an extension approval criteria was met.

The Applicant's extension request and testimony at the October 7, 2024 meeting provided evidence that Criteria No. 5 for granting an extension was satisfied. This evidence shows that the Applicant was ready to submit a preliminary plat application when the big game corridor overlay was applied to the Property, which caused significant delay for additional studies that had to be completed in the summer season. The delay caused by the additional study resulted from the County's adoption of different standards during the subdivision process. At the October 7, 2024 meeting, when discussing the impact of the big game corridor overlay, Commissioner Whitfield, in deliberations stated: "*There is some merit there.* There was pretty long delays within every case."¹⁰ Because the evidence in the record shows that at least one of the extension request criteria were satisfied, some additional time should be granted to the Applicant for the delay caused by the County's imposition of the big game corridor overlay and related natural resource analysis during the pendency of the Project applications.

2. Evidence in the record shows that the denial of the extension request was not based on the applicable standards.

Idaho law dictates that land use applications must be approved or denied "based upon standards and criteria which shall be set forth in the comprehensive plan, zoning ordinance or other appropriate ordinance or regulation of the city or county."¹¹ Your Code provides that the extension criteria listed in the subdivision extension application form guide the decision on whether to grant or deny an extension.¹² As discussed above, at a minimum criteria no. 5 is met in this case and warrants an extension. However, deliberations by the Commissioners indicate that denial was not based on the applicable criteria, but rather on arbitrary standards or opinions. For example, Commissioner Riegel, who voted to deny the extension, stated: "I have a general aversion to extending applications that came in under the old code."¹³ All requests for extension should be treated the same and evaluated under the same criteria. This statement by Commissioner Riegel indicates a desire to prevent lawful development of the Property under the A/RR-2.5 zoning applicable to the Property when the subdivision application process was started. Similarly, Commissioner Heneage, who voted to deny the extension, gave a personal anecdote about how he was formerly a design professional and that he "does not think [the Board] should be moving deadlines."¹⁴ These statements of the Commissioners during deliberations on the extension application indicate the rationale for the denial was not based strictly in the applicable criteria, but instead on personal beliefs that deadlines should not be extended and based on a desire to prevent development under the RR-2.5 zoning designation. Denial not based on the evidence in the record and not based on the applicable standards is arbitrary.

3. Reconsideration is warranted because the Decision does not comply with Idaho law.

Under Idaho's land Use Planning Act, approval or denial of an application must "be in writing and accompanied by a reasoned statement that explains the criteria and standards

¹⁰ October 7, 2024 Hearing Video at 5:17:02.

¹¹ Idaho Code Section 67-6535(1).

¹² Teton County Code Title 9, Section 9-3-2(D)(2)(l)(ii).

¹³ October 7, 2024 Hearing Video at 4:55:30.

¹⁴ October 7, 2024 Hearing Video at 5:04:30.

considered relevant, *states the relevant contested facts relied upon, and explains the rationale for the decision* based on the applicable provisions of the comprehensive plan, relevant ordinance and statutory provisions, pertinent constitutional principles and factual information contained in the record.”¹⁵ In this case, the Decision is merely conclusory as states, without explanation, “the application does not meet the criteria for subdivision extension request and is therefor denied.” No rationale is provided for the conclusion and no explanation or factual statement as to why the delay caused by the big game corridor overlay did not satisfy the extension approval criteria.

CONCLUSION

In the reconsideration process, the Board can affirm, reverse, or modify the Decision.¹⁶ We are respectfully requesting that the Board reverse the Decision’s denial of the extension request and approve a 12 month extension to complete the subdivision process on or before September 28, 2025.

Sincerely,



Jeff W. Bower

cc:

Bailey Smith (baileysmith@tetoncountyidaho.gov)

Andrew Rawlings (ARawlings@holdenlegal.com)

Jade Krueger (jkrueger@tetoncountyidaho.gov)

¹⁵ Idaho Code § 67-6535(2).

¹⁶ Idaho Code § 67-6535(2)(b).

Appendix A – The Decision



TETON COUNTY, IDAHO | Board of County Commissioners

Written Decision for the Denial of an Extension Request for Osprey Landing Subdivision

This is a written decision on the findings for the denial of the Extension Request for Osprey Landing Subdivision under Teton County Code ("TCC") Title 9, Chapter 3 Teton County Subdivision Ordinance (revised 5/16/2013):

APPLICATION DATE: August 29, 2024

APPLICANT: Sadek Darwiche, Bidache Inc
Represented by Megan Nelms, Y2 Consulting

PROPERTY OWNER: Bidahe, Inc

PROJECT NAME: Osprey Landing Subdivision

PURPOSE OF APPLICATION: To receive an extension request for a subdivision application nearing the expiration date

Applicable Standards and Criteria for Application Evaluation:

- Title 9 Teton County Subdivision Ordinance (revised 5/16/2013)

Procedural Background

SUBMISSION AND SCHEDULING: The application for a subdivision extension request was submitted on August 29, 2024. Extension requests are reviewed by the Board of County Commissioners ("BoCC") at a Public Meeting.

The applicants submitted a concept application for a subdivision on June 30, 2021. However, it was not signed and formally deemed complete by the Planning Administrator. Therefore, the application timeline under Title 9 of Teton County Code began September 28, 2021 when the application was reviewed and approved by the Planning and Zoning Commission (PZC).

The applicants submitted preliminary plat materials on February 23, 2024. The application was reviewed, deemed materially complete and scheduled for the May 14, 2024 PZC agenda. The PZC reviewed and recommended approval of the preliminary plat. August 29, 2024, the applicant requested to be scheduled for preliminary plat review with the BoCC and in addition, submitted the Subdivision Extension Request application. The application was scheduled for the October 7, 2024 BoCC public meeting.





NOTICE: No legal notices are required for an extension request application. The item was posted for the public meeting of October 7, 2024.

HEARING DATE: October 7, 2024

The following commissioners were present: Bob Heneage, Michael Whitfield, and Cindy Riegel

County Staff Jade Krueger was present.

The applicant Sadek Darwiche was present. Their representatives Megan Nelms, Brenda Young and Russel Burton from Y2 Consulting were present.

Factual Background

Teton County Code 9-3-2 (D-L):

I. Time Limitation:

i. **Limitation for Approval:** The Master Plan, Improvement Plans, Development Agreement and Final Plat shall be approved by the Board of County Commissioners within three (3) years of the date of acceptance of the subdivision/PUD concept application by the Planning Administrator or the entire application is deemed null and void (amd. 2011-03-17).

ii. **Subdivision Extension Request:** The applicant may request in writing prior to the expiration date an extension of time for final approval of up to twelve (12) months from the Board of County Commissioners. The narrative must include specific reasons why an extension is requested, address the criteria in the Subdivision Extension Application, and the extension fee. This fee is non-refundable. No further requests for this time extension shall be deemed accepted or granted. An extension request shall be adjudicated under the ordinance in effect at the time of the request for extension.

Per Teton County Code, the application for the Osprey Landing Subdivision would expire on September 28, 2024. The Subdivision Extension Application was submitted before this date, on August 29, 2024.

The Subdivision Extension Request Application states the burden is on the applicant to provide a detailed narrative explaining their reason(s) for consideration. The following are listed as considerations for extension approval:

1. The developer has diligently pursued the completion of final plat approval, and the preliminary plat has been approved.
2. The application was continued by the commission for special studies (traffic, wetlands, wildlife, etc).
3. The denial of the extension would cause undue hardship to a neighboring property.
4. It is in the public interest.
5. Delays have been the result of federal, state or local agency demands, lengthy/unusual review agency timeframes or required studies that can only occur during a limited time(s) of year.
6. Application of Title 9 regulations (as amended November 14, 2008) would not significantly alter the extended subdivision's design or dedication.
7. County negotiations for non-required public benefit delayed progress in the project.





8. Other extenuating circumstance

The applicant's narrative states there was delay after submitting preliminary plat materials on February 23, 2024. They state they also updated materials in between the PZC review and recommendation and going in front of the BoCC. Staff acknowledged in the staff report that the applicant did submit some additional analysis related to the Traffic Impact Study per the recommendation from the PZC on May 14, 2024.

The applicant's narrative also suggests confusion about the floodplain on the property, all of which was given to the applicant during the Concept Review on September 28, 2021.

Staff presented a staff report, outlining the request and application dates and hearing dates. The Applicant and representatives presented their application. The BoCC then entered into deliberation.

The BoCC found that none of the extension request considerations were applicable or met by the applicant's narrative:

1. The preliminary plat had not been approved as of October 7, 2024; the materials were submitted February 23, 2024 and scheduled for PZC May 14, 2024. It was requested August 29, 2024 to be scheduled for the BoCC.
2. The commission did not continue the application – the concept staff report and conditions of approval outlined the necessary studies required for preliminary plat submission.
3. The denial of the extension request would not affect neighboring properties;
4. It is not within the public interest to extend this application;
5. There have not been federal, state or local agency review delays;
6. Application of Title 9 regulations would not alter the design or dedication;
7. There were no county negotiations for non-required public benefits;
8. No other extenuating circumstances were presented.

Motion

I move to deny the Subdivision Extension Request for Osprey Landing as requested in the application submitted on August 29, 2024 for the lack of sufficient justification.

The motion was approved unanimously.

Conclusions

Having given due consideration to the application and materials presented, the Teton County Board of County Commissioners hereby makes the following conclusions:

The application does not meet the criteria for a subdivision extension request and therefore is denied. The application for Osprey Landing Subdivision is therefore expired.





Cynthia T. Riegel
Cindy Riegel
Teton County Board of County Commissioners, Chair

12/23/24
Date

NOTICE OF APPLICABLE RIGHTS

Applicants have a right to request a regulatory taking analysis of this decision pursuant to Idaho Code § 67 8003. Further, per Idaho Code § 67-6535, and in accordance with Idaho Rule of Civil Procedure 84, an applicant or an affected person has the right to seek review of this decision.

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of December 2024, I served a true and correct copy of the foregoing document upon the following:

Sadek Darwich sadekd@gmail.com	<input type="checkbox"/> Mailing
	<input type="checkbox"/> Hand Delivery
	<input type="checkbox"/> Fax
Megan Nelms (Y2 Consulting) megan@y2consultants.com	<input checked="" type="checkbox"/> E-Mail
	<input type="checkbox"/> Overnight Mail
	<input type="checkbox"/> Courthouse Box

Clerk Dan Reyes Deputy clerk



