



TETON COUNTY, IDAHO | Planning & Zoning Commission

Written Decision for the Hidden Oaks Subdivision

Concept Plan Review Findings and Conclusions

This is a written decision for a PUD application under Teton County Code (“TCC”) Title 9, Chapter 3 Teton County Subdivision Ordinance (revised 5/16/2013) for the following application:

APPLICATION DATE:	July 31, 2022
APPLICANT:	William Wirthlin and Cleve Booker (authorized representative)
PROPERTY OWNER:	5W Investments LLC
PROJECT NAME:	Hidden Oaks Subdivision
PURPOSE OF APPLICATION:	Concept plan for a 64-lot subdivision near W 6000 N and 4850 N
EXISTING ZONING:	A/RR-2.5 and Area of Impact-2.5
SURROUNDING ZONING:	A/20 & A/RR-2.5
SURROUNDING USE:	Rural residential single family and larger sections of agricultural land
PARCEL SIZE:	4 parcels of approximately 369.74 acres (RP06N45E310010, RP06N45E323000, RP06N45E322500, RP06N45E322451)

Applicable Standards and Criteria for Application Evaluation:

- Title 8 Teton County Idaho Zoning Ordinance (revised 9/9/2013)
- Title 9, Chapter 3 Teton County Subdivision Ordinance (revised 5/16/2013), including TCC § 9-3-2 (B-4) Concept Review Consideration for Approval.
- Teton County Comprehensive Plan (A Vision & Framework 2012-2030)
- Title 7 Area of Impact (AOI) agreement with the City of Teton (Title 7-2-1)

Procedural Background

SUBMISSION AND SCHEDULING: This application was scheduled for a Concept Review hearing before the Teton County Planning & Zoning Commission (“PZC”) in August of 2023.





NOTICE: A subsequent hearing for this application was scheduled to occur on August 8, 2023 as required by Idaho Code, Title 67; Section 67-6509, 67-6511, 67-6512, and Title 9 of the Teton County Code. In anticipation of this hearing, public notice of this hearing timely was published on July 19 and July 26, 2023 in the Teton Valley News. Furthermore, individual notices were mailed to those affected landowners within 300 feet of the boundary of the proposed project. A sign was posted on site July 28, 2023.

HEARING: On August 8, 2023, the PZC held a public hearing for the proposed development.

The following PZC commissioners were present: Tim Waters, Wade Kaufman, Rebeca Nolan, Lindsey Love, James Weber, and Tyler Wertenbruch.

The following applicant's representative were present: Cleve Booker, Brent Crowther, and William Wirthlin (via Zoom).

Signup sheets were provided to the public who attended the meeting and time for testimony of those in favor, neutral, and opposed to the proposed development were allowed. The PZC also considered written statements and evidence submitted prior to the conclusion of the hearing.

Factual Background

County staff presented its staff report making the following preliminary determinations and recommendations for consideration by the PZC. In the staff report, staff recommended the following:

1. The application is proposing a second access for this subdivision from W 4850 S. This proposal is a Private Road (as is W 5000 S). Applicant needs to submit proof of use for this access. Application cannot be approved until legal access is confirmed.
2. A subdivision map layout with floodplain boundaries should be submitted for concept review (per City of Teton's review comments).

None of these required submissions or activities have occurred or been made in the initial application. Therefore, the staff recommended continuation of the application to confirm the proposal could meet the criteria for approval.

At the hearing, the Applicant presented their subdivision plan but would not further elaborate on legal access nor on reviewing the parcel within the regulatory floodplain. Their presentation failed to address the issues, and the representative from Civilize PLLC stated they wouldn't comment on legal access and the public comment from the adjacent landowner that access on the southern portion of the property was not allowed for a subdivision. Applicant requested a continuation to amend their concept plan with a redesign of density or fewer lots.

During the PZC's deliberation, the PZC considered that the applicant had over a year to make any amendments to the application between the submittal date of July, 2022 and the concept hearing on August 8, 2023. During this time the applicant submitted several documents including ownership documentation of the LLC owning the property.

The PZC Chair took public comment from the audience as well as through Zoom. Ten people spoke on the application, all opposed. Additionally, PZC reviewed four written public comments submitted prior to the hearing. All written comments were opposed to the application. General concerns raised in the public comments related to the amount of wetlands and floodplain on the property with the density proposed, lack of legal access and lack of access provided to each lot, non-compliance with the comprehensive plan, and amount of density and proposed septic





systems. Verbal public comment from Mr. Moradian also indicated the applicant did not have legal access through the southern easement for a subdivision.

ANALYSIS

Except as may otherwise be set forth in this decision, the Staff report is adopted and incorporated by reference into this decision.

After the evidentiary portion of the hearing was closed, the PZC considered the application and evidence presented at hearing. The PZC found that of the five criteria for approval of a subdivision/PUD Concept Plan under TCC 9-3-2 (B-4), the applicant in the application as presented has failed to show the Subdivision Concept would meet the following three criteria for approval for the following reasons:

1. Conformance of the Proposed Subdivision/PUD with the Comprehensive Plan. (TCC 9-3-2(B-4-a))

- a. The applicant did not adequately address how the subdivision proposal would comply with the Comprehensive Plan given the amount of property covered in regulatory floodplain and NWI wetlands.
- b. The 2012-2030 Comprehensive Plan places these parcels within the Mixed Agriculture / Wetland zoning district and Waterway Corridor (Chapter 5). The Mixed agriculture wetland areas are located east of the Teton River on the valley floor and include lands that are classified as wetlands and floodplains as show on the US Fish & Wildlife Service National Wetlands Inventory and Federal Emergency Management Agency Flood Insurance Rate Map. These areas have seasonally important wildlife resources, are predominantly rangeland and agriculture land and have high scenic qualities. Desired land uses include agriculture, ranching, low density residential development with provisions for clustering/conservation, and development regulated by overlays and development guidelines to protect natural resources. The Waterway Corridors area includes land adjacent to the Teton River and its major tributaries that include riparian areas, wildlife habitat, wetlands and floodplains. Desired future character and land uses include agriculture, low to lowest residential density in the County, conservation and wildlife habitat enhancement, overlays and development guidelines to protect natural resources.

The application could not comply with the Comprehensive Plan.

The Applicant failed to identify information related to regulatory floodplain to determine if the density proposed is feasible on the property. The regulatory floodplain and wetlands present on the parcels should be mapped to identify if it's feasible to provide a physical, legal access to them and if (TCC 9-1-3 D) "Adequate water supply, drainage and sanitary facilities to serve the proposed development and with the construction of such facilities in accordance with County approved engineering standards and without expense to the public" could be met.

2. **Availability of Public Services to Accommodate the Proposed Development. (TCC 9-3-2(B-4-b))** The applicant could not confirm the access points proposed on the concept master plat. TCC requires there be





two legal access points for a subdivision greater than two access (TCC 9-4-1-J-2_). A public comment made by the adjacent land owner, Glen Moradian, indicated that this subdivision did not have legal access on the easement on this property (W 4850 S). The applicant did not provide proof of access through easement documentation. The claim of Mr. Moradian was not verified at the public meeting. Further, the concept plan identifies 3 lots that did not have access from the road proposed. The PZC finds that without confirmed access to the lots, there is not an availability of public services or emergency services to accommodate the proposed development.

- 3. **Other Health, Safety or General Welfare Concerns that May be Brought to the County’s Attention. (TCC 9-3-2 (B-4-e))** The amount of proposed density and individual septic systems for 64 lots or 128 units raise public health and environmental concerns. Separation of leach fields and wells are required with an additional distance for wetlands and bodies of water. Proposal fails to show this can be met and further that TCC 9-1-3 E), *Design of development to avoid those Overlay Areas defined in Title 8 and Title 9, and where avoidance is not feasible to mitigate impacts to such areas* is met.

The application was rendered by the PZC to not show feasibility because of regulatory floodplain and NWI wetlands. Further, that information was not supplied by the applicant in their presentation.

Having given due consideration to the application and materials presented, the Teton County Planning & Zoning Commission makes the following conclusions:

- 1. The concept application for Hidden Oaks Subdivision fails to meet the criteria for approval under TCC § 9-3-2 (B-4), because the application fails to prove conformance with the Comprehensive Plan, fails to ensure there are availabilities of public services to accommodate the development, and as presented indicates health, safety, and general welfare concerns because of proposed densities and regulatory floodplain and wetlands.

For those reasons set forth above, including those deficiencies identified by county staff above, and in consideration of the evidence and law, the application for the Hidden Oaks Subdivision is hereby DENIED.

Tim Watters
Teton County Planning & Zoning Commission, Chairman

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 _____ day of October 2023, I served a true and correct copy of the foregoing document upon the following:

William Wirthlin & Cleve Booker	<input type="checkbox"/> Mailing
mariel@associatedgroupllc.com ;	<input type="checkbox"/> Hand Delivery
bookergrey@earthlink.net	<input type="checkbox"/> Fax
	<input checked="" type="checkbox"/> E-Mail
	<input type="checkbox"/> Overnight Mail
	<input type="checkbox"/> Courthouse Box

Clerk

