



**CORNERSTONE WEST MEADOWS
REQUEST FOR A DEVELOPMENT AGREEMENT
EXTENSION**

Planner: Curt Moore
Prepared July 18 for the Board of County Commission
Public Hearing of July 25, 2011

APPLICANT: Randall Foes

APPLICABLE CODES:

- 1) Project was approved September 26, 2005 subject to the provisions of the Teton County Subdivision Ordinance as revised in January, 2005.
- 2) Present request for an extension is pursuant to Section 9-3-2 9D-2-m-iii) Development Agreement Extension Request, which was amended into the Ordinance September 17, 2009.

REQUEST: Extend the timeframe for installation and completion of required public improvements that were agreed to be installed in the Cornerstone West Meadows Development Agreement. The project will become subject to the terms of the County's updated Development Agreement template. Some additional provisions in the new Development Agreement will make specifications for items that were not previously addressed. These include: the sharing of costs for snow plowing/summer road grading, weed abatement, and periodic maintenance of the fire protection system.

LEGAL DESCRIPTION: SW ¼ SW ¼ SE ¼ Section 25 Township 5N, Range 44E, B.M

LOCATION: Intersection of Bates Road and County Road North 5500 West

VICINITY MAP



Zoning: AR 2.5

Overlays: Wildlife Habitat Overlay

Overlay component: Waterbird Breeding, Migration, Foraging

Acreage: 9.34 acres

Area in County Road: .66 ac

Lots: Three

BACKGROUND:

- The Board of County Commissioners approved the Final Plat in September, 2005
- The Final Plat and Development Agreement were recorded in March, 2007.
- The 2007 Development Agreement specified in the Section 3, *Schedule for Completion of Improvements* that all infrastructure would be complete within two (2) years of recording the final plat. That would require the infrastructure's completion in March, 2009.
- The 2007 financial surety for installing the infrastructure was for \$25,000 and was with the First Bank of Idaho. That letter of credit expired October 10, 2007.
- The applicant brought in a revised fire protection system plan in that used a dry hydrant from the Teton River and also was agreed to provide fire-water supply for two other nearby projects. The engineering and approvals for this system involved considerable time. The fire protection system involved approvals by the Idaho Department of Water Resources and The Army Corp of Engineers. The County received a certification of acceptance in January, 2008.
- The original plat had to be revised to have the sign-off on the new fire supply system by the Teton County Fire Marshal. Eastern Idaho Public Health Department also wanted a Health Department Certification annotation placed on the revised plat. This revised plat had many of the required new signatures added to it and the signature dates were in June and July 2009. The revised plat also had reconfigured the lots slightly. There are not good records of how the reconfigured plat was reviewed, either administratively or by the Board. Neither the Chairman of the BoCC or Planning Administrator has signed this revised plat. There is no record of the revised plat being recorded.
- Williams Engineering did review the revised Final plat in June, 2009.
- The applicant would prefer that the 2009 plat become the plat of record. Staff has no basis to object to having the 2009 version of the Cornerstone West Meadows plat and its revised configuration being the plat of record. However, the present application is not to replat, but to extend the time for installing infrastructure.

CONSIDERATIONS FOR DEVELOPMENT AGREEMENT EXTENSION APPROVAL:

The items listed below have been the considerations used by the County to evaluate extension of a development agreement. These items are not specifically contained in the Subdivision Ordinance; they have been printed on the Extension Request application for a few years. The Board may choose to use these considerations in determining whether to grant the extension, but making specific findings of fact drawn from these considerations is not mandated in the ordinance.

1. *Incomplete due to seeding time frames. Non-irrigated seeding and re-seeding in Teton Valley is only viable from May 15 to June 15 and October 1 through snowfall.*
2. *Shortage of key construction material. Substantiation should be presented that shows the shortage is extraordinary; or*
3. *Labor strike, lockout, extraordinary weather event, or act of God; or*
4. *Problem with the contractor, such as leaving the area or going broke. The developer should substantiate his/her good faith efforts to replace the contractor; or*
5. *Conflicts with major unknowns, such as sinkholes, utilities, environmental contamination, or other underground hazards; or*
6. *Inability to renew or secure a new letter of credit (or bond, if applicable). The developer should provide proof of failed attempts to secure financial surety for the project; or*

7. *Infrastructure is re-designed for one reason or another. The developer has submitted the re-designed improvements to the Planning and Engineering Departments for approval; or*
Staff comment: After the initial review, the project's fire protection system was re-engineered. This system utilizes a dry hydrant that drafts water from the Teton River. This system benefits other subdivisions that use this as the fire-fighting water supply. The nearby Driggs Family Subdivision, Cornerstone West Meadows, and West Meadow Subdivision are all tied together in an "Agreement to Share Cost of Fire Protection System". According to the County Engineer, systems that draft from streams require periodic pressure/volume testing and occasional maintenance or repair. These systems are subject to sedimentation and clogged filters from floating debris. Cornerstone's creation of this fire protection system and continued participation in this shared system is in the public interest.

8. *Nothing in the development agreement is changing except:*

- a. *The time to complete the improvements (maximum extension is one year and only one extension allowed except for acts of God);*
- b. *The phasing plan. The developer has submitted an amended development agreement and phasing plan to the Planning and Engineering departments. The addition of phases will require the development agreement to be revised to state:*
 1. *No lots have been sold in the added phases;*
 2. *No lots shall be sold in the added phases until the improvements are 100% completed and approved by the County; or*

Staff comment: This extension request is for an additional year to complete the public infrastructure. The applicant has stated that he has a buyer for a lot and that the revenue from that sale will enable the installation of the remaining infrastructure.

9. *It is in the public interest; or*

Staff comment: Staff believes that it is in the public interest to extend the time frame for infrastructure because 1) one lot is already owned by someone other than the applicant, and another lot is in the process of being conveyed. These lots will not be able to obtain building permits or occupancy permits unless the infrastructure is installed. Also, 2) the fire protection system benefits other lots in the area and it is in the public interest to keep that system tested, and in good repair. By spreading the costs of testing and repair, the system is more likely to stay in service. Lastly 3) the new Development Agreement and HOA agreements will specify the sharing of snow-plowing costs and road maintenance on Cornerstone Lane. The HOA agreement will also specify a funding source spraying noxious weeds on the common areas along the road right-of-way. In the absence of this extension, the public interest will be diminished by not treating weeds at Cornerstone, not having an equitable snow plowing/ road grading, and not maintain and testing the fire protection system as it should be done periodically.

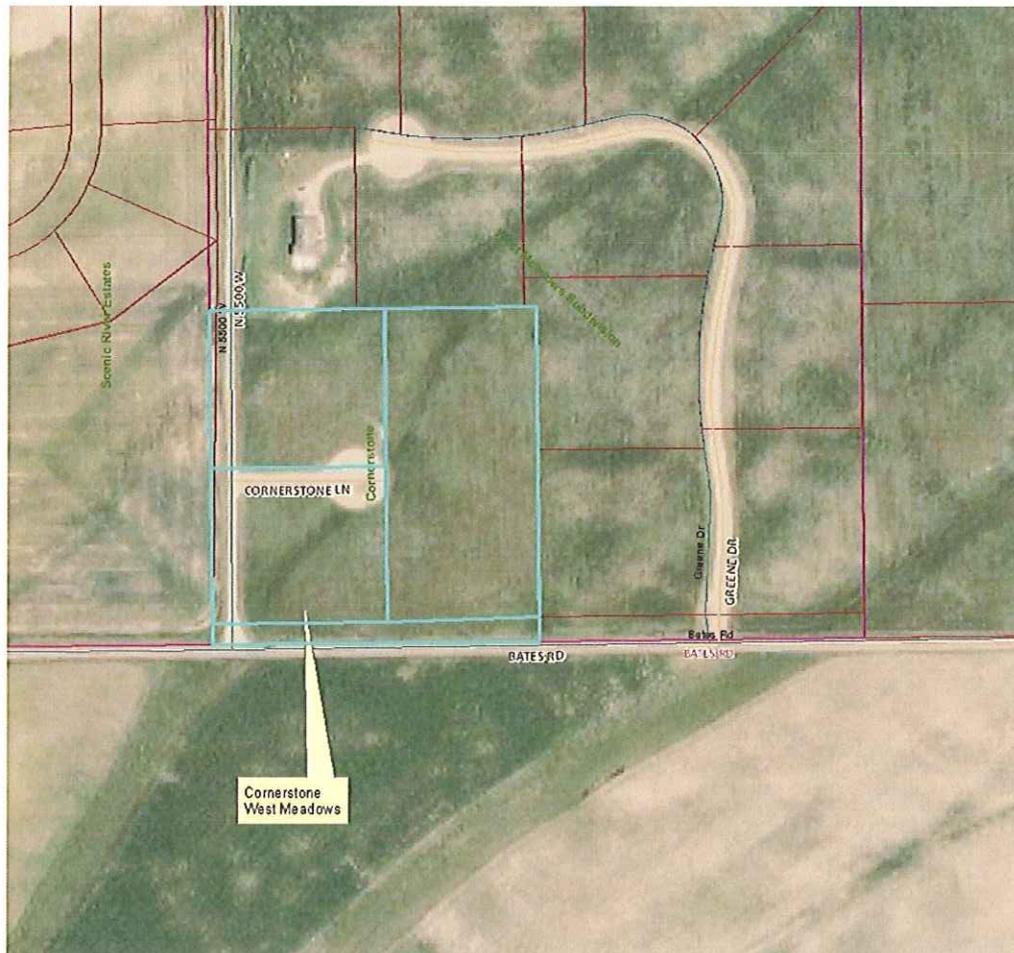
10. *Delays are the result of securing regulatory approvals or lengthy/unusual approval agency timeframes. The developer should provide proof of the delays;*

11. *Other extenuating circumstances, such as other governmental agencies have changed their approval requirements. The developer should substantiate these circumstances.*

12. *County property taxes are current on developer owned lots.*

STAFF ANALYSIS: The applicant has stated that he has a buyer for a lot and that he should close that sale soon. The sale revenue would go towards the completion of the infrastructure, which

involves further improvements Cornerstone Lane and underground utilities. These lots will go vacant, unbuildable and the weeds unmanaged if the infrastructure is not finished. Homeowners in the lots would be able to contribute to maintaining the fire system, treating weeds, and sharing road-snow-plowing costs. Many distressed subdivisions in Teton County would likewise benefit and be able to complete infrastructure if new buyers showed up. However, in this case, the applicant could reasonably complete all infrastructures with just one sale, and that sale is feasible and pending, according to the applicant. Whereas many distressed subdivisions do not have a reasonable chance to complete all infrastructure in the near future, this subdivision already has an owner other than the developer and a new owner would enable this project to be finished and buildable. However, in order to be consistent and equitable to other distressed subdivisions, the staff believes that this extension should not become valid until the financial surety is deposited to the County. Staff believes 90 days is sufficient to close on the lot and then submit the surety.



Close up view –note road and cul-de-sac has been installed

RECOMMENDED CONDITIONS OF APPROVAL

1. An extension of the Development Agreement completion timelines, not to exceed July 25, 2012, will be granted upon receipt of the financial surety in the amount of \$28,750. Surety shall be delivered to Teton County within 90 days (October 25, 2011) for the purpose of installing the required public infrastructure listed in the AW Engineering Final Engineer's Cost Estimate dated July 11, 2011. If surety is not received within 90 days, the extension is null and void.

2. A new Development Agreement, created from the County template, shall be submitted along with the surety (2011 revised engineer's cost estimate).
3. A legal document shall be created and signed outlining the method for sharing the costs between homeowners for 1) plowing snow, 2) periodic and regular grading of Cornerstone Lane, 3) annually treating any noxious weeds and 4) performing any maintenance and testing of the fire protection system drafting from the Teton River.
4. This one-time only extension will expire on July 25, 2012.

BOARD OF COUNTY COMMISSION ACTIONS:

- A. APPROVE the Cornerstone West Meadows Development Agreement Extension Request as presented in the application, with no conditions specified, having provided the reasons and justifications for the approval.
- B. APPROVE the Cornerstone West Meadows Development Agreement Extension Request with the recommended conditions presented in this staff report (*with other modifications as directed*), having provided the reasons and justifications for the approval and for any modifications or conditions.
- C. DENY Cornerstone West Meadows Development Agreement Extension Request and provide the reasons and justifications for the denial.
- D. CONTINUE to a future Public Hearing with reasons given as to the continuation or need for additional information.

PLANNING STAFF RECOMMENDATION:

Action B- Approve the Cornerstone West Meadows Development Agreement Extension Request with the four conditions listed in the staff report.

Attachments:

- AW Engineering Revised Cost Estimate July 2011
- Development Agreement Extension Application
- 2007 Development Agreement- Cornerstone West Meadows

Documents on File in Planning Department and in Board of County Commission file:

- 2007 recorded Plat for Cornerstone West Meadows
- 2009 unrecorded, but signed plat for Cornerstone West Meadows