



## **STAFF REPORT**

### **VACATION APPLICATION: EVERGREEN GROVE SUBDIVISION**

Prepared April 17 for the May 17, 2012  
Board of County Commissioners Public Hearing

**OWNER:** Andrew Snow

**APPLICANT:** Teton County, ID

#### **REQUESTS:**

Teton County, ID is applying to vacate the entitlements for the Evergreen Grove Subdivision approved 10/15/2002. The development agreement states that the improvements shall be completed within two years of the recording date (05/19/2005). Ergo, improvements should have been completed by 5/19/2007. To date, improvements have not been started, putting the developer in breach of contract. Because of this lack of performance, the County is applying to vacate the entitlements to this subdivision. The BOCC heard a vacation application last August at which time there were some road issues that needed to be resolved around the Smith Canyon Forest Service access. The vacation of this subdivision will not affect the resolution of the road issues and therefore it is recommended to proceed with the vacation of the entitlements of Evergreen Grove Subdivision.

#### **CODES:**

Teton County Subdivision Ordinance Section 9-3-2 (D-2-n-i) Revocation by Board of County Commissioners. *The Board of County Commissioners may revoke a subdivision or Planned Unit Development upon failure to comply with the conditions of approval of a final plat or subdivision extension, upon the violation of any of the provisions of this Title, or for misrepresentations or material omissions made to the Planning Commission or to the Board of County Commissioners. (amd. 9-17-09)*

Teton County Subdivision Ordinance Section 9-7-1 Application Procedure and 9-7-2 Vacation of Plats Procedure.

#### **LEGAL DESCRIPTION:**

A portion of the SW ¼ of the NW ¼ of Section 22  
Township 3 North, Range 45 East

**LOCATION:** 1750 W 10250 S – South and West of the City of Victor

**PROPERTY SIZE:** 23 acres, 5 lots

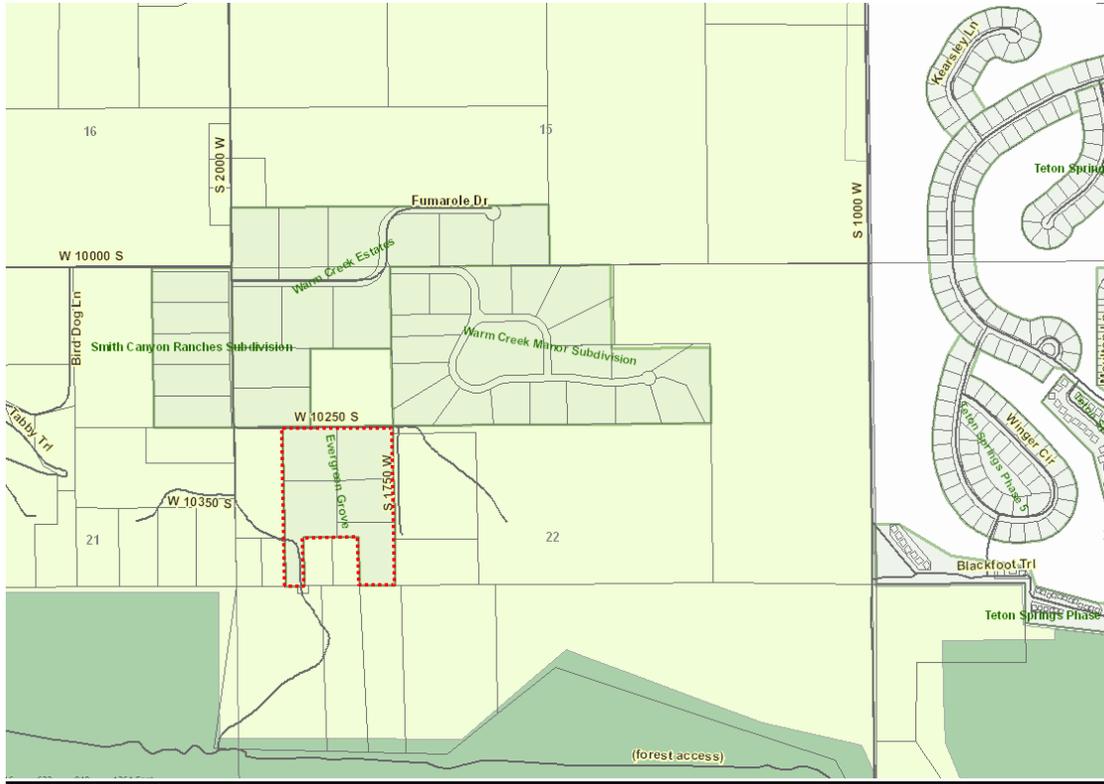
**ZONING:** Underlying zoning is A-2.5.

**OVERLAYS:** None

#### **PLANNING STAFF RECOMMENDATION:**

Staff recommends that the Board of County Commissioners vacate the subdivision entitlements of the Evergreen Grove subdivision based on the fact that the developer is in breach of contract and the idea that the elimination of 5 lots is a public benefit.

**VICINITY MAP**



**Figure 1: Evergreen Grove Vicinity Map**

**BACKGROUND INFORMATION**

On May 9, 2011, the Board of County Commissioners sent, via certified mail, a letter to the owners of Evergreen Grove Subdivision informing them that because of the lack of performance of subdivision improvements, the County would be applying to vacate the subdivision entitlements on this property. The County, therefore, is applying to vacate the subdivision entitlements based on a lack of performance of the development agreement contract on the part of the developer, i.e. they have not started or completed the infrastructure improvements outlined in the development agreement. In August of 2011, the Board of County Commissioners held a public hearing for the vacation of this subdivision. At the hearing, some road access issues were raised. The vacation of this subdivision will not affect those issues.

**STAFF ANALYSIS**

It is the planning staff’s opinion that vacating the current subdivision entitlements is in the public’s best interest because it reduces the number of lots available in Teton County that are decreasing market values County-wide. The owner is free to come back to the County at any time to re-apply for subdivision entitlements under the then-current ordinance. This vacation application stems from the lack of performance on the developer’s part in not upholding his end of the development agreement and cannot be considered a taking.

**COMPLIANCE WITH 2004 – 2010 TETON COUNTY COMPREHENSIVE PLAN**

**Chapter 5 Property Rights:**

*Policy 3: The land use ordinances and actions of Teton County, including the policies, restrictions, conditions and fees, shall not violate private property rights, shall minimize adverse impact on property values and minimize technical limitation on the use of property consistent with state and*

*federal constitution and statutory law. Implementation is implicit in and mandated by state and federal law.*

Staff response: The glut of platted, vacant subdivision lots in Teton County is a detriment to property values. Reducing the number of lots County-wide will work towards relieving this glut.

### **Chapter 7 School Facilities and Transportation:**

Policy 1: *Planning decisions and efforts must emphasize providing infrastructure and services to the growing population and provide means for growth to pay its way. Growth trends over the past decade and growth projections for the coming decade indicate that providing infrastructure and services will be a bigger challenge than attracting new residents and business.*

Staff response: The scattered growth pattern in Teton County will become increasingly more difficult and expensive to provide services to as build-out occurs. Even the five lots, if valued at \$375,235 each, may cost the County \$1,688 annually and \$13,486 in one-time capital improvement costs as calculated by the fiscal impact calculator. Valued at \$150,000 each, the calculator predicts a \$3,236 and \$15,065 shortfall in annual maintenance costs and one-time capital improvement costs, respectively.

### **Chapter 8 Economic Development**

Policy 3: *One of the county's prime economic values is the attraction of a rural, small town lifestyle, magnificent views, clean air and water, and abundances of outdoor recreational opportunities. Development and land use proposals that support and balance these values with desirable growth should be encouraged.*

Staff response: As more lots become developed in the rural areas of the County, the small-town feel of the area becomes more compromised.

### **Chapter 9 Land Use**

Policy 1: *Protect open space throughout the County. Enhance the mechanisms available to incorporate the same in developments.*

Staff response: Evergreen Grove is a standard subdivision without any dedicated open space, which was not required for approval of this subdivision. Returning the development to acreage would put it back into open space until a future development application is received in the planning department.

Policy 4: *Higher density developments should be located within or near the cities or within or near their areas of impact. Developments in the unincorporated county may be based on the density based zoning concept which will provide significant open space.*

Staff response: This project consists of 5 lots from 3.9 to 4.6 acres in size. This density is not high enough to be considered high density near a city and does not provide any dedicated open space in the unincorporated county.

### **Chapter 10 Natural Resources:**

Policy 6: *Ensure that noxious weeds are consistently and effectively controlled in compliance with state regulations and guidelines.*

Staff response: Approximately 4-acre lots are very difficult to maintain and keep weed-free, especially in the absence of lot owners. Returning this development to acreage would allow the property to continue in agricultural production which would diminish weed problems on the land.

### **Chapter 17 Community Design**

Policy 1: *Encourage the preservation of the scenic vistas, open space, mountains, forests, night skies and wetlands.*

Policy 2: *Encourage the preservation of the county's rural character.*

Staff response: Returning this subdivision to acreage will preserve open space and contribute to the rural character of the County.

**CONSISTENCY WITH THE APPLICABLE TETON COUNTY SUBDIVISION CODE**

Teton County Title 9, the Subdivision Ordinance, does not outline criteria for approval for a plat vacation. It does, however, state that “the Board of County Commissioners may revoke a subdivision or Planned Unit Development upon failure to comply with the conditions of approval...” This provision has been in the Teton County Subdivision Code since 1994. Clearly, the developer has failed to comply with the conditions of the approval, as outlined in the development agreement that was recorded on May 19, 2005.

**TECHNICAL COMMENTS**

A 12’ irrigation and utility easement runs across the subdivision to provide water from the east side of the property to the west side. The 16.5’ utility easement along the north portion of the property could be used for irrigation.

There are two lots in the southern notch of the property that were landlocked before the subdivision was created and will go back to being landlocked. There is no language on the plat that designates the road, Evergreen Trail, as an easement to those lots, in fact, the plat states that, “all roads are for the use of the lot owners to access their individual lots and are to be privately owned.” The owners of those lots would need to get an easement across the property to have access to their lots.

Taxes are paid in full (see attached email from the treasurer’s office).

**PUBLIC NOTICE:**

1. Legal ads were made to the Teton Valley News in accordance with local and state requirements.
2. A development notification was mailed to the property owner, the landowners within 300 feet and to those who own land within subdivisions within 300 feet of the subject property.
3. The site was posted in accordance with state statute.

**COMMENTS FROM NOTIFIED NEIGHBORS AND GENERAL PUBLIC**

The current owner wrote a “no contest” letter for this vacation application.  
City of Victor planner, Bill Knight, wrote a letter of support.

**FINDINGS OF FACT:**

1. The Teton County Title 9 Subdivision Ordinance allows for the “revocation” of entitlements upon failure to comply with the conditions of approval of a subdivision.
2. The developer is in breach of the development agreement by not having complied with the conditions of approval of the subdivision.
3. The developer has been given ample notice and provided due process of the proceedings.
4. The elimination of these subdivision entitlements would not cause harm to the residents of Teton County.

**BOARD OF COUNTY COMMISSIONERS ACTION:**

- A. APPROVE the vacation as presented.
- B. APPROVE WITH CONDITIONS the Board might add.
- C. DENY the vacation application and provide the reasons and justifications for the denial.
- D. CONTINUE consideration of the application to a future public hearing with reasons given as to the continuation or need for additional information.

**RECOMMENDATION:**

**Action A:** A motion that references the required findings in the code that this vacation application is appropriate. Here is a suggested motion that could be used to approve the vacation.

*I move to APPROVE the Evergreen Grove vacation application as described and depicted in the application materials contained in the review packet. We have determined that the procedural requirements for the vacation have been satisfactorily met and that the findings of fact support this vacation application.*

Report prepared by Planner Angie Rutherford

---

**Attachments:**

Application Materials: application, plat, development agreement, approval minutes  
May 9, 2011 letter to developer  
Letters from Andrew Snow and City of Victor Planner, Bill Knight  
Email from Maureen Green, Treasurer's Office  
Fiscal Impact Calculator Output