



STAFF REPORT

VACATION APPLICATION: Scenic River Estates PUD

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

OWNER: Jerry & Leroy Parker

APPLICANT: Teton County, ID

REQUESTS:

Teton County, ID is applying to vacate the entitlements for the Scenic River Estates PUD recorded on April 9, 2009. To date, improvements have not been started, putting the developer in breach of contract. Because of the lack of performance, the County is applying to vacate the entitlements to this subdivision.

APPLICABLE 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:

SW 1/4, Section 25, T5N, R44E

LOCATION: Bates Road and 6000W, West of Driggs

PROPERTY SIZE: 160 acres, 51 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 Scenic River Estates based on the fact that the developer is in breach of contract, has been given due process to remedy the problem, and the idea that the elimination of 51 lots is a public benefit.

VICINITY MAP

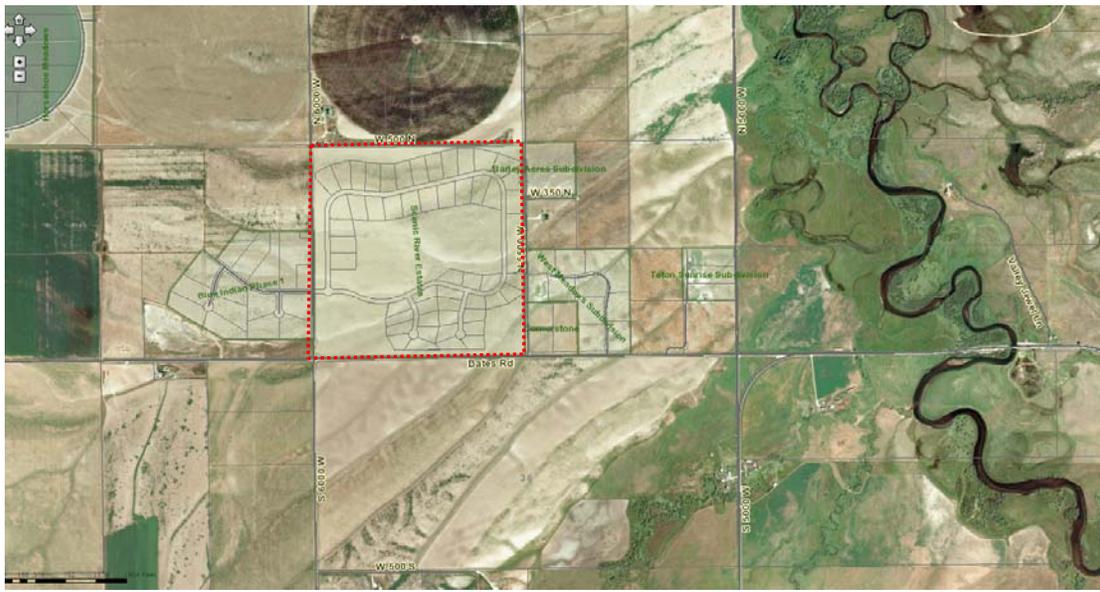


Figure 1: Scenic River Estates PUD Vicinity Map

BACKGROUND INFORMATION

Scenic River Estates PUD was approved on December 11, 2008 and recorded in April of 2009. Since that time, no improvements have been started and no action has been taken to improve the PUD. No lots have been sold. The development agreement states that the “public improvements shall begin as soon as the subdivision receives approval and shall be completed no later than two years from the beginning date.” That would mean that the development should have been completed by December of 2010. The Board of County Commissioners sent the developer a letter in May of 2011 stating that the developer was in breach of contract and that the entitlements would be vacated without further action from the developer. The developer met with staff and submitted an application for a replat of the PUD, but all submissions have not been acceptable to County planning staff as providing significant decrease of impacts and thus, the application has not be heard or approved by the board. On January 23, 2012, the Board met with a representative of the developer to give guidance as to what might be approved in a re-designed project. The planning staff did not receive a revised application after the meeting. On February 24, 2012, based on direction from the Board, staff sent another letter to the developer informing him that the vacation of the subdivision would be on the May 17, 2012 Board of County Commissioners public hearing agenda.

TIMELINE:

- December 11, 2008- Approval of Scenic River Estates PUD (SRE)
- April 9, 2009- Recording of SRE
- December 11, 2010- Date of completion for development infrastructure improvements
- April 12, 2011- Phone call from planning staff to Parkers explain re-plat option
- May 11, 2011- Letter from BOCC explaining breach of contract
- May 26, 2011- Meeting with Parkers, K Spitzer, A Rutherford, C Moore to discuss replat
- June 29, 2011- Phone call follow up about replat application
- July 6, 2011- Some replat application materials received from Parkers
- July, 2011- Follow up phone calls to Parkers informing them of needed application materials
- August 8, 2011- Replat application submitted by Parkers
- October 11, 2011- BOCC establishes allowable time extensions for replats
- November 3, 2011- Follow-up application materials received from Parkers
- November & December, 2011- Follow-up phone calls with Parkers about application
- Jan 23, 2012- Meeting with developer’s representative about replat

February 16, 2012- Board decides to allow Scenic River Estates 90 days before vacation
February 24, 2012- Letter to inform Parkers of vacation hearing in May
February 20, 2012- Call to Mr. Parker to explain agenda for vacation hearing and to urge getting application materials to planning staff.
April 20, 2012- Call to Mr. Parker to explain agenda for vacation hearing and to urge getting application materials to planning staff.

STAFF ANALYSIS

It is the planning staff's opinion that vacating the current PUD 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. Additionally, the developer is in breach of contract. 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

In general, eliminating 51 lots that are located six miles from the Driggs city center complies with the comprehensive plan by saving the County the costs of servicing these potential residences and by adding to the aesthetics of the valley by keeping the 160 in agricultural production. See attachment for specifics.

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 April 9, 2009, and, therefore, the County has the authority to "revoke ... the Planned Unit Development."

TECHNICAL COMMENTS

A condition of approval was to improve 6000W from Bates to the entrance of the subdivision. This was added to the engineer's cost estimate and added to the development agreement, "11. The developer will improve 600[0] West from the entrance of the subdivision south to Bates Road as indicated in the improvement plans." Subsequent subdivisions were approved based on the promise of this improvement. There has been no work on 6000W.

The Development Agreement with Blue Indian (Instrument #208527) states, "Developer shall restore County Road 6000 West to existing condition at the completion of Phase 1, and to County Standards no later than the completion of Phase 2 if not already completed by adjacent neighbor, Scenic River."

It will become the obligation of the Blue Indian subdivision, before the completion Phase II of the project, to upgrade 6000W to County Standards from the entrance of the Blue Indian Subdivision to Bates Road.

While the developer was obligated to contribute \$400/lot "to be used at the county's discretion for improvements and studies," since no lots were sold, no contributions have been made (see attached email).

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 Idaho State Code.

COMMENTS FROM NOTIFIED NEIGHBORS AND GENERAL PUBLIC

No comments have been received yet.

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 has not complied with the conditions of approval of the subdivision by not having put in infrastructure improvements as stated in the recorded development agreement.
3. The developer has been given ample notification and options to remedy the situation.
4. The elimination of these subdivision entitlements would not cause harm to the surrounding neighbors or 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 Scenic River Estates PUD vacation application as described and depicted in the application materials contained in the review packet. The developer has been given due process to remedy a breach of contract and has failed to do so. 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, Comp Plan policies/implementation analysis
BOCC Minutes: 10/11/2011, 1/23/2012, 2/16/2012
Letters to Parkers: 5/9/2011, 2/24/2012
Scenic River Replat application materials
Some documentation of meetings/phone calls
Email from Maureen Green, Treasurer’s Office
Blue Indian Development Agreement, Page 1
Fiscal Impact Calculator output