



STAFF REPORT –UPDATE
A PRELIMINARY PLAT FOR THE WILLOWS

Prepared December 5, 2012 for the
Board of County Commissioner
CONTINUED PUBLIC HEARING of December 13, 2012

STAFF NOTE: This updated staff report supplements the report for the October 11, 2012 Public Hearing. The items relevant to the outstanding issues are provided here.

OWNER: Dream Catcher Estates, LLC **AGENT:** Nelson Engineering

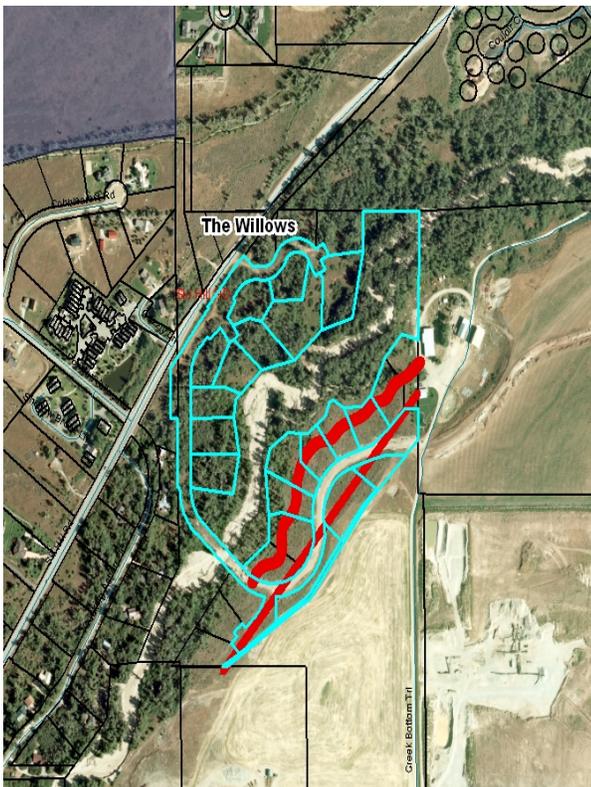
REQUEST: The Application proposes 10 lots to be built on the north side of Teton Creek. The 10 lots would be developed in three phases. This new plan for The Willows Subdivision would replace the recorded plat that has 22 lots distributed on both sides of the creek, which has now been vacated.

CODES: Teton County – Code Title 7 City Impact ordinance- Driggs; Ordinance 242 as amended October, 2005. The Driggs Subdivision Ordinance was amended after this Preliminary Plat was submitted.

LEGAL DESCRIPTION: SW ¼, NW ¼, and NW ¼, SW ¼ of Section 30, Township 5N, Range 46E and NE ¼, SE ¼ of Section 25, Township 5N, Range 45E

LOCATION: Approximately one mile east of Cottonwood Corner on Ski Hill Road

VICINITY MAP



ZONING DISTRICT: This project is in the Driggs Area of City Impact and has two city zoning designations: ADR 1.0 (21.2 acres) and ADR 2.5 (26.3 acres)

OVERLAYS: Driggs Design review Overlay. Also mapped as Floodplain- Special Flood Hazard Area, Songbird/Raptor Breeding and Wintering Habitat, Big Game Migration Corridors and Seasonal Range.

NUMBER OF LOTS: 10 Residential Lots and vacant lot reserved for future development

LAND USE: 10 residential lots- Area = 8.17 acres; Open space- Area = 17.92 acres; Street Right of way- Area = 6.67 acres

TOTAL ACREAGE: 47.53 ACRES, including “Vacant Lot + aprox. 14.7 acres

The dozen lots shown above on the SE side of Teton Creek has been eliminated from the application.

DRIGGS CITY RECOMMENDATIONS

The Driggs City Council recommended **approval** of The Willows Preliminary Plat, subject to the five conditions of approval listed on page 2 of the four-page City of Driggs report dated April 17, 2012. Condition # 3 stipulates the vacation of The Willows recorded plat.

COUNTY STAFF RECOMMENDATIONS

Teton County Planning Department recommends **approval with conditions** of The Willows Preliminary Plat; as of modified by the December 6th withdrawal of any Phasing Plan.

At the October Public Hearing, the County Planning Staff agreed with the City of Driggs' recommended conditions of approval, except Staff disagreed with the 2020 completion timeline. The County Staff added more conditions to the City's Preliminary plat approval and made modifications to some of the City's conditions. The conditions are enumerated in this staff report.

UPDATED INFORMATION SINCE OCTOBER PUBLIC HEARING:

The City and County Planning Staffs met, as requested by the Board, and further analyzed the proposed timelines for approval and recording of the final plat and installation of all infrastructure. County Staff believed that the 2020 timeline was not consistent with the time frame policies that had been developed for relatively simple subdivisions in the unincorporated county.

County and City Planning Staffs came to agreement that the year 2020 was too much time for a project of this relatively small size. In examining a more constricted timeline (2017), the City and County Staffs found that the Driggs Code applicable to this application already has some years allowed before complete infrastructure installation is required. Without discretionary extensions being granted, the timeframe for completion extends to June, 2016.

According to the City's Planning Administrator, the application was submitted under an older version of the Driggs Subdivision Ordinance. That code would provide the following timelines to this Preliminary Plat.

If the Preliminary Plat were approved December 13, 2012, then a Final Plat must be submitted, deemed complete and approved by December 13, 2013.

A final plat would have to be recorded within six months, placing it at June 2014.

The infrastructure should be done within two years of recording the Plat (June 2016).

An extension of time for construction of infrastructure to be finalized is possible and permitted by the Driggs Code.

On December 6th, the applicant no longer proposes to phase the development of The Willows. The Phasing Plan document no longer applies and the notations about Phasing and the plan sheets no longer apply. The application is subject to the provisions of the Driggs Subdivision Ordinance, with the date of submission of the application being applicable.

On October 11th, the BOCC requested that eight additional items be addressed for the December public Hearing. The applicant provided a letter addressing the items relevant to them and other items were to be answered by County Planning Staff or the County Attorney. The following is the County Planning Staff's comments on those items, as addressed by the Nelson Engineering letter of December 4, 2012.

Condition 1- The riparian vegetation protection note appears on the plat and Master Plan as requested. This condition is met.

Condition 2- IDFG letter. In addition to the applicant's response, Paul Faulkner of IDFG made a site visit to the Willows and came to the Planning Office. The wildlife mitigation measures from previous 2006 and 2007 IDFG comment letters were reviewed with Staff. The primary concern was the question about the left bank of Teton Creek and what future development might take place there in the future. The IDFG letter is attached to this report. The condition to provide the letter has been met.

Condition 3- Teton Creek's left bank area is now labeled as Vacant Lot and states that future ordinances would govern any development there. The applicant noted that this language was developed along with the County Attorney. Staff assumes this issue is now resolved and the condition met.

Condition 4- The Planning Administrator/ Floodplain Administrator is aware of the technical floodplain information upon which the revised plat was based upon. That data is the latest available for this reach of the stream. A memo will substantiate the details about the floodplain development. The fulfillment of this condition is expected after a more detailed floodplain review.

Condition 5- Ownership. The applicant points to the authorization by the Cutlers and Dreamcatcher to proceed with the vacation of the approved final plat and this application.

Condition 6- AS of December 6th the applicant has withdrawn its request to phase the project into three separate time periods of completion. Previously, the City was willing to allow a 2020 date for submittal of the last Phase's final plat and recordation and construction would add a few more years before completion on the ground.

Condition 7- County Staff and City Staff held a meeting and consulted the applicant's representative regarding the Phasing proposals. The applicant withdrew the project's phasing plan. The applicant is not asking for any more time than the timeframes willing to complete infrastructure by 2017.

Condition 8- The two disclaimers about 1) the economic conditions and 2) expense of a CLOMR are now in the draft Development Agreement. This condition has been met.

FINDINGS OF FACT:

1. The Driggs City Council found this application to be in compliance with the City of Driggs Zoning and Subdivision Ordinances.
2. The reconfiguration of The Willows provides an increase in public benefits because:
 - a) Building envelopes have been redrawn outside of the FEMA floodway
 - b) A public pathway will be dedicated on the property
 - c) Increased open space along the creek will create more buffer between human activities and wildlife and will preserve more hiding cover and browse.
 - d) The removal of lots platted on the left bank of Teton Creek will delay encroachment of human activities to a critical wildlife habitat.
3. By being in compliance with the Driggs Subdivision and Zoning Ordinances, and being in the Driggs Area of City Impact, the proposed Preliminary Plat is also in compliance to the Zoning and Subdivision Ordinances of Teton County.



Close up view of The Willows “right bank” area on north/west side of Teton Creek. Note scoured and braided stream channel.

RECOMMENDED CONDITIONS OF APPROVAL (from previous public hearing)

Berm

1. Portions of the earthen berm that have been placed within the floodplain or otherwise deemed by a P.E. to negatively augment storm water or stream flows to properties off site shall be removed from the one-hundred year floodplain prior to any Final Plat approval. The plat may be recorded only after a Professional Engineer licensed in Idaho documents that the berm is satisfactorily removed. *(City Council condition modified by County Staff)*

Vegetation

2. Re-vegetation of the sewer easement be completed by November 1, 2013. The reseeding materials and labor shall be presented to Teton County with a cost estimate. During or immediately following the reseeding, an inspection shall be requested by the applicant. Teton County must sign off on completion of the re-vegetation prior to any further processing of applications. *(City Council condition modified by County Planning)*

-
3. Any scenic corridor permit violations be remedied. (*City Council condition-* the area in question is in the Driggs Design Review Overlay, which regulates commercial and industrial projects- not residential. However, Landscaping and re-vegetation conditions do apply to subdivisions)

Annexation

4. The applicants (owners) provide consent for future annexation of the property. (*City Council condition*)

Fire

5. The four conditions called out in the Teton Fire Protection District's letter of March 7, 2012 shall be met. In particular, "the timing of installation of firefighting access roads and water supply shall be installed and made serviceable prior to and during the time of construction in accordance with Section 501.4 of the International Fire Code". (*added by County Planning*)

Final Plat

6. The Final Plat is subject to technical review of the County's contract plat reviewer- All revisions identified shall be made prior to the recordation of the Final Plat. The plat reviewer or the Planning Staff may determine whether any required revisions are acceptable. The Final Plat shall not be released for recording until all invoices for plat review are paid and all infrastructure is deemed complete. (*added by County Planning*)

Development Agreement

7. The Development Agreement and The Willows Master Plan sheet shall be recorded no later than six (6) months after the Board of County Commissioner's approval of the Final Plat. The record plat shall not be recorded, and no lots sold, until all infrastructure and public improvements are installed, deemed complete, and approved. The record Final Plat shall contain signed approvals of the Fire Marshal, and all City of Driggs and Teton County officials, including the Board of County Commission Chairman before recording. The release of surety for any remaining re-vegetation or landscaping shall not take place until the designated plantings can be determined to be successful. (*added by County Planning*)
8. Completion of the project shall be in accordance with the City Of Driggs Subdivision Ordinance of October, 2005, the ordinance in effect at the time of this application.

~~*The Phasing Agreement be amended to call out infrastructure completion dates (vs. final plat submittal dates) and requiring the first phase to have all infrastructure completed on or before 12/31/2015, the second phase to be completed by 12/31/2016, and the final phase be completed by 2017. (*added by County Planning*).~~ * **Because the Phasing Plan is withdrawn, the strike out condition not needed.** .

9. In accordance with Section 17 of the Development Agreement, the applicant shall provide a letter of credit to the County covering construction, operation and maintenance of all the specified public improvements listed in the engineering cost estimate. The amount for the Letter of Credit shall be 125% of the total. (*added by County Planning*)
10. The following statement: "In the event that the Developer breaches this Agreement, fails to perform any of the terms, conditions or obligations in this Agreement, or has not resolved a defect or deficiency under this Agreement, the Developer agrees to either cooperate with the County in revoking the Developer's entitlements by vacating the plat for The Willows

Subdivision (2012) or to be the applicant for such a vacation. In either case, the Developer agrees not to contest a vacation of The Willows Subdivision- (2012).” (*added by County Planning*).

BOARD OF COUNTY COMMISSIONERS ACTION:

- A. APPROVE the Preliminary Plat application as presented and attach no conditions of approval.
- B. APPROVE WITH the CONDITIONS listed above as amended from the October 11, 2012 Public Hearing. The Board might further add or modify the recommended conditions as deemed necessary based on items put forth on the public record.
- C. DENY the 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 B: A motion that references the required findings in the code that this application, with the enumerated conditions can comply with all applicable sections of the Teton County Code and the Driggs Area of City Impact ordinance. Here is a suggested motion that could be used to approve the vacation.

I move to APPROVE the Willows Subdivision Preliminary Plat application as described and depicted in the application materials contained in the review packet, subject to the conditions recommended by the City Council and with the conditions added by the County Planning staff.

Project Planner- Curt Moore

Attachments (new information since October 11 Public Hearing)

- The Willows revised application materials:
 - Revised Preliminary Plat dated Dec. 4, 2012
 - Nelson Engineering letter from Erik Wachob, December 4, 2012
 - Email December 6 from Nelson Engineering-(Phasing Plan withdrawn)
- Agency Comments
 - Idaho Department of Fish & Game letter of dated December 3, 2012, (received Dec. 4)
 - Email from Doug Self, City of Driggs, December 4, 2012
 - Email from City of Driggs about timeline December 6, 2012

Public Comments:

None since October



FROM: Planning Staff, Angie Rutherford
TO: Board of County Commissioners
RE: The Willows Floodplain
DATE: December 6, 2012
MEETING: December 13, 2012

The floodplain information that is on the Willows Preliminary Plat Master Plan (April 3, 2012) is a proposed 100-year floodplain and floodway. The proposal is the information produced during the Conditional Letter of Map Revision (CLOMR) process as engineered by Harmony Design & Engineering and approved by FEMA. The CLOMR produces the anticipated floodplain extents given the work that will be accomplished in the Teton Creek Restoration Project that the County is working on. I have enclosed the 1988 FIMR for comparison.

Using the proposed data, all building envelopes will be out of the floodway, but many are still in the floodplain. As a reminder, no building can occur in the floodway without a “no-rise certificate” from an engineer certifying that the water levels during a flood will not increase. Per our code and FEMA minimum regulations, one can build a home in the floodplain, but higher standards are set by local regulations including building all habitable area two feet above the predicted level of floodwaters. This burden falls on the homebuilder. A homeowner must also carry flood insurance for any Federally-backed loan on property in the floodplain.

The landscaping berm, apparently, is causing water to back up into a neighbor’s property. The applicant has stated that they are willing to move the berm to alleviate this problem. However, any “development” in a floodplain requires a floodplain permit from the County and we will need to be assured that moving the berm does not displace the water onto another property with unwanted effects. It will be the applicant’s responsibility, before any development occurs in the floodplain, to obtain all permits which will require an analysis of the effects that moving the berm will have in the immediate area. This may require an applicant-paid CLOMR with FEMA and a LOMR after work is complete.

Angie Rutherford
Teton County Floodplain Administrator