



AMENDMENT TO TITLE 9, TETON COUNTY SUBDIVISION ORDINANCE

ADDING: Chapter 11 - Building Permit Eligibility of Previously Created Parcels

PREPARED FOR: Board of County Commissioners Public Hearing of July 11, 2016

APPLICANT: Teton County Planning Department

Updated on 7/6 to include public comment

REQUEST: Staff is proposing to add a chapter to Title 9, the Subdivision Ordinance, to clarify (codify) a process to: 1) better define what parcels qualify for building rights, 2) determine the building right eligibility of a parcel, and 3) provide an action for recourse for a property owner who unknowingly purchases a parcel without building rights.

APPLICABLE CODE: Idaho State Code- 67-6513 Subdivision Ordinance & Teton County Subdivision Ordinance, Title 9-10-1 Amendment Procedure

APPLICABILITY: County wide, all zoning districts

AMENDMENT DESCRIPTION:

The proposed ordinance identifies what a “lot of record” is, and it also identifies the application, processing, and approval requirements that are needed to obtain building rights. There are parcels that were not created through a proper process to obtain building rights, but the owner may have had an expectation that a building right was available. However, these parcels cannot be considered “legally designated “lots”” (Teton County Code: 8-3-5) because they did not meet the legal (ordinance) requirements at the time of their creation. The purpose of this ordinance is to provide an official process where parcels can be reviewed and a Certificate of Building Permit Eligibility be issued. Unlike Title 8, this ordinance uses the term “lot of record” instead of “legally designated lot” because it was decided that “lot of record” was less confusing and a better description for the issue.

See Attachment 1 for the Amendment to Title 9, Subdivision Ordinance, Chapter 11 – Building Permit Eligibility of Previously Created Parcels. This amendment was recommended for approval by the Planning and Zoning Commission on June 14, 2016.

This proposed ordinance amendment provides clarity to the existing “Property Inquiry Process” (9-11-4 & 9-11-5) and what property owners can expect from going through the process - “Certificate of Building Permit Eligibility”. In most cases, the only way for a property owner without building rights to obtain them under the existing code is to go through the subdivision process. There have been some instances where two, nonbuildable parcels were not created through a proper process, but the parent parcel would have qualified for a One Time Only. The Planning Department has worked with both property owners to retroactively create the lots through the legal process.

The intent of this proposed ordinance is to provide remedy options to parcels that do not have building rights for any number of reasons. It does this in the following ways:

1. It clarifies that lots created before June 14, 1999 are considered buildable parcels.
2. It accepts all parcels created through the One Time Only process that had a survey recorded with a Teton County authorization signature.
3. It accepts all parcels created through the Agricultural Exemption process that had a survey recorded prior to September 22, 2003.
4. It accepts all parcels that had a survey recorded for a legal process in Teton County Title 9 that met the requirements of the identified process at the date of creation.

5. It accepts parcels that were approved by the Planning & Zoning Commission or Board of County Commissioners that have meeting minutes verifying the final approval.
6. It clearly identifies processes for obtaining building rights.

BACKGROUND:

The Teton County Planning and Building Departments started to be concerned about how parcels were created and if they had building rights in the fall of 2014. To help educate the public and provide a resource for property owners, the “Property Inquiry Process” was started. Since the fall of 2014, over 400 parcels in the county have been researched. The majority of the parcels researched were created through a proper, legal process to obtain building rights. However, there are some parcels that were not created through a proper process to obtain building rights or did not meet the criteria of approval for a process that was followed.

It is important to understand the distinction between a parcel being created and a parcel obtaining building rights. A survey or a deed are used to create a parcel. However, a county adopted process, such as the One Time Only Land Split or Subdivision, that has specific criteria of approval adopted that must be met creates a parcel with building rights.

The reasons some parcels created through a process did not meet the adopted criteria of approval can be narrowed down to two main issues: 1) the lot size did not meet the underlying zoning and 2) the parcel(s) was not eligible to split. Eligibility to be split is determined by the process. For example, a parcel created through an agricultural split is not eligible for the One Time Only Land Split.

Through the “Property Inquiry Process”, it was identified that parcels do not have building rights for a variety of reasons. As well, parcel tax IDs (RP numbers) have caused some confusion in the identification of buildable parcels. The legal description of a property on a recorded deed is used to determine the parcel size and shape, while the creation of that parcel is used to determine if it has building rights. RP numbers are assigned by the Assessor’s Office for taxing purposes, and they do not necessarily match the deeded legal description. In some cases, a deeded parcel may have several RP numbers because the property may cross taxing districts, townships or ranges, or the use of the land may vary, but it would still be considered one buildable or nonbuildable parcel. Likewise, there may be one RP number that has multiple buildable or nonbuildable parcels. A property owner could have several deeded properties that are adjacent and request one RP number to reduce the number of tax bills received, but that would not affect the number of buildable/nonbuildable parcels owned by that property owner unless the legal descriptions were officially combined into fewer parcels.

Of the over 400 parcels researched through the Property Inquiry Process, only 35 were identified as having no building rights. Of those 35, only 4 were identified as having no options under the existing code to obtain building rights due to the lot size and zoning requirements. This ordinance would provide building rights to the 4 parcels that currently have no options, as well as to many of the other 31 parcels identified as not having building rights.

SPECIFIC REQUIREMENTS FOR PUBLIC HEARING NOTICE:

Idaho Code, Title 67; Section 67-6509 and 67-6513.

COMMENTS FROM PUBLIC AT LARGE:

Staff received two public comment letters by the July 4 deadline.

CRITERIA OF APPROVAL & STAFF COMMENTS:

1. Consistent with purposes of the Teton County Subdivision Ordinance.

The proposed amendment and associated text changes are consistent with Section 9-1-3 Purposes and Scope of Title 9 of the Teton County Code. Specifically, in particular 9-1-3-F: "Design of development in accordance with all regulations applicable to the area..." and 9-1-3-I: "Platted lots and existing lots of record are exempt from the scope of the regulations contained in Section 9-3-2 and Chapter 5 of Title 9." This ordinance identifies legal processes to obtain building rights, which have identified regulations for approval. This process also defines what a lot of record is. These lots would be exempt from the Title 9 regulations in terms of obtaining building rights, because they are already considered buildable. Parcels that are not considered buildable, and therefore not a lot of record, are not exempt from the Title 9 regulations.

2. Consistent with Comprehensive Plan.

The proposed amendment is consistent with the Teton County Comprehensive Plan 2012-2030. This proposal provides an approval process to reduce the "incentives" or desire to subdivide into smaller lots to obtain building rights.

3. Consistent with other sections of the Teton County Zoning and Subdivision Ordinances.

The proposed amendment is consistent with other provisions of the Teton County Code. Title 8 states that "no building or structure shall be built, altered, or used unless it is located on a legally designated "lot"." This proposal clearly identifies what a "lot of record" is (used in place of legally designated lot), which will allow for those parcels to comply with Title 8.

4. Consistent with State Statute.

The proposed amendment is consistent with the Idaho State Local Land Use Planning Act 67-65.

67-6502. PURPOSE. The purpose of this act shall be to promote the health, safety, and general welfare of the people of the state of Idaho as follows:

(a) To protect property rights while making accommodations for other necessary types of development such as low-cost housing and mobile home parks.

(b) To ensure that adequate public facilities and services are provided to the people at reasonable cost.

(c) To ensure that the economy of the state and localities is protected.

(d) To ensure that the important environmental features of the state and localities are protected.

(e) To encourage the protection of prime agricultural, forestry and mining lands and land uses for production of food, fiber and minerals, as well as the economic benefits they provide to the community.

(f) To encourage urban and urban-type development within incorporated cities.

(g) To avoid undue concentration of population and overcrowding of land.

(h) To ensure that the development on land is commensurate with the physical characteristics of the land.

(i) To protect life and property in areas subject to natural hazards and disasters.

(j) To protect fish, wildlife and recreation resources.

(k) To avoid undue water and air pollution.

(l) To allow local school districts to participate in the community planning and development process so as to address public school needs and impacts on an ongoing basis.

(m) To protect public airports as essential community facilities that provide safe transportation alternatives and contribute to the economy of the state.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. The proposed amendment supports the goals, purposes, and intent of the Teton County Comprehensive Plan.
 - a. Goal ED 2, Policy 2.1: Encourage development and land use proposals that support prime economic values of rural character and heritage.
 - b. Goal ED 4, Policy 4.9: Maintain rural areas that encourage farming and ranching and support low density residential development.
 - c. Goal ARH 1 Policy 1.6: Encourage higher density development in the cities of Driggs, Victor, and Tetonía.
2. The proposed amendment supports the goals, purposes, and intent of Teton County Title 9, Subdivision Ordinance.
3. The proposed amendment is in compliance with Idaho State Statute, specifically the Purpose found in 67-6502.

POSSIBLE MOTIONS

The following motions could provide a reasoned statement if a Commissioner wanted to approve or deny the application:

APPROVAL

Having found that the proposed amendment to Title 9 is in compliance with state statute and supports the Comprehensive Plan and other Teton County ordinances, for the following reasons _____, I move to approve the amendment as presented in the attachment entitled "CHAPTER 11 - BUILDING PERMIT ELIGIBILITY OF PREVIOUSLY CREATED PARCELS" [with the following changes].

DENIAL

Having found that the proposed amendment to Title 9 is in not in compliance with state statute and does not support the Comprehensive Plan and other Teton County ordinances, for the following reasons _____, I move to deny the amendment as presented in the attachment entitled "CHAPTER 11 - BUILDING PERMIT ELIGIBILITY OF PREVIOUSLY CREATED PARCELS".

RESOLUTION TO ADOPT AMENDMENT

According to Idaho State Statute 67-6509c, no plan (ordinance) shall be effective unless adopted by resolution by the governing board. A resolution enacting or amending a plan or part of a plan may be adopted, amended, or repealed by definitive reference to the specific plan document. If the Board agrees to approve the application, a resolution will also need to be approved to officially adopt this amendment to Title 9. Attachment 2 includes RESOLUTION NO. 2016-0711a to adopt an amendment to Title 9, adding Chapter 11.

Prepared by Kristin Rader

Attachments:

1. PZC Recommended 9-11 Ordinance
2. Resolution No. 2016-0711a to adopt amendment to Title 9
3. Public Comment letters

End of Staff Report

ORDINANCE NO. 2016-9-11

AN ORDINANCE OF THE COUNTY OF TETON, STATE OF IDAHO, ADDING TETON COUNTY CODE TITLE 9, CHAPTER 11 TO ADDRESS THE BUILDING RIGHT ELIGIBILITY OF PREVIOUSLY CREATED PARCELS.

BE IT ORDAINED by the Board of County Commissioners of Teton County, Idaho that Title 9, Chapter 11 of the Teton County Code shall be added as follows:

CHAPTER 11

BUILDING PERMIT ELIGIBILITY OF PREVIOUSLY CREATED PARCELS

SECTION:

9-11-1 PURPOSE AND INTENT OF PROVISIONS.

9-11-2 LOT OF RECORD – REQUIRED FOR GRANTING OF CERTAIN PERMITS – CRITERIA FOR DETERMINATION.

9-11-3 NOTICE OF VIOLATION – REQUIRED WHEN – CONTENTS – EFFECT.

9-11-4 CERTIFICATE OF COMPLIANCE – REQUEST FOR DETERMINATION AUTHORIZED.

9-11-5 CERTIFICATE OF COMPLIANCE – APPLICATION PROCEDURE – DOCUMENTS TO BE SUBMITTED – FEE.

9-11-6 FAILURE TO COMPLY AND ILLEGAL DIVISION OF LAND DEEMED MISDEMEANOR – PENALTY.

9-11-7 NONCOMPLYING PARCELS – PROCESSES FOR OBTAINING BUILDING RIGHTS.

9-11-8 APPEAL OF FINAL DECISIONS.

9-11-1 PURPOSE AND INTENT OF PROVISIONS

In accordance with the provisions of the LLUPA (Idaho State Code 67-65), it is the purpose and intent of the Board of County Commissioners to establish procedures for placing purchasers of illegally split parcels on notice that such parcel split occurred in violation of the LLUPA and the requirements of Teton County Code- Title 9, and to provide for a means of certifying that the real property does comply with the provisions of LLUPA and Teton County Code- Title 9.

9-11-2 LOT OF RECORD – REQUIRED FOR GRANTING OF CERTAIN PERMITS – CRITERIA FOR DETERMINATION

No building permit, grading permit, nor any other permit may be issued, nor any approval granted necessary to develop any property, unless and until said property has been determined to be a lot of

43 record; provided further, such permits may be denied if the applicant was the owner of the real property
 44 at the same time of the violation or currently owns the property with the knowledge of the violation as
 45 provided through a notice of violation pursuant to the procedures set forth herein.

46

47 For a parcel to be considered a lot of record, its specific boundaries must have been established or set
 48 forth by one of the following means:

49

50 A. A signed & recorded subdivision plat;

51 B. If the parcel was created BEFORE June 14, 1999;

52 a. A deed describing the parcel by a metes-and-bounds description recorded prior to June
 53 14, 1999 (contiguous sub- “lots” or sub- “parcels” described on a single deed are
 54 considered a single parcel); or

55 b. A record of survey recorded prior to June 14, 1999 showing the existing boundaries.

56 C. If the parcel was created AFTER June 14, 1999;

57 a. A recorded “One-Time-Only” survey with a Teton County authorization signature
 58 (these may also be labeled as “Lot Split”, “Land Splits”, or something similar); or

59 b. A recorded “Agricultural Exemption” survey recorded prior to September 22, 2003
 60 (these may be labeled as an “Ag. Split”, “Ag. Break-off” or something similar); or

61 c. A recorded survey identifying the legal process in Title 9 and the created parcels met
 62 the requirements of the identified process in Title 9 at the date of creation.

63 D. Any of the above means combined with a County-approved and recorded boundary adjustment
 64 survey or amended plat;

65 E. Any parcel that was approved by the Planning and Zoning Commission or Board of County
 66 Commissioners and there are minutes verifying the final approval;

67

68 **9-11-3 NOTICE OF NO BUILDING RIGHTS – REQUIRED WHEN – CONTENTS –**
 69 **EFFECT**

70

71 If the Planning Administrator becomes aware of any parcel which has not resulted from a legal division
 72 or consolidation of property in compliance with LLUPA and applicable County Codes, he/she will
 73 send to the property owner, or owners, of said property written notice notifying them of the violation.

74 This written notification will advise the property owner(s) that:

75

76 A. The Planning Administrator has determined that subject property together with other
 77 contiguous property has been divided or has resulted from a division in violation of LLUPA
 78 and applicable County codes;

79 B. No building permit, grading permit nor any other permit may be issued, nor any approval
 80 granted necessary to physically develop said property (this does not include subdividing),
 81 unless and until an identified approval process 9-11-8 is completed, approved, and recorded in
 82 full compliance with the LLUPA and provisions of this Chapter, adopted pursuant thereto.

83 C. The Planning Administrator will cause a notice of violation to be recorded in the office of the
 84 county recorder within 15 days of notification to property owner(s) which will describe the

85 violation and the property and name the owner(s) thereof. This notice when recorded will be
 86 constructive notice of the violation to all successors in interest of said property;

87
 88 **9-11-4 CERTIFICATE OF BUILDING PERMIT ELIGIBILITY - REQUEST FOR**
 89 **DETERMINATION AUTHORIZED**

90
 91 Any person owning real property may apply for a Certificate of Building Permit Eligibility, and the
 92 County shall determine whether said property was created in a way that complied with the provisions
 93 of Title 9, and thus constitutes a legal and buildable parcel.

94
 95 **9-11-5 CERTIFICATE OF BUILDING PERMIT ELIGIBILITY – APPLICATION**
 96 **PROCEDURE – DOCUMENTS TO BE SUBMITTED – FEE**

97
 98 A. Application.

99 a. Application for a “Certificate of Building Permit Eligibility” shall be made with the
 100 Planning Department in accordance with the following specifications:

101 i. A completed application form must be filled out

102 B. A notice stating the following shall be signed:

103 a. This certificate relates on to issues of compliance or noncompliance with LLUPA and
 104 local ordinances enacted pursuant thereto. The parcel described herein may be sold,
 105 leased or financed without further compliance with LLUPA or any local ordinance
 106 enacted pursuant hereto. Development of the parcel may require issuance of a permit
 107 or permits, or other grants of approval.

108 C. The required filing fee(s).

109
 110 **9-11-6 FAILURE TO COMPLY AND ILLEGAL DIVISION OF LAND DEEMED A**
 111 **VIOLATION**

112
 113 Those parcels of land which are subdivided contrary to the provisions of this title shall not constitute
 114 legal building sites and no permit shall be issued for the installation of fixtures or equipment or for the
 115 erection, construction, conversion, establishment, alteration, or enlargement of any building, structure
 116 or improvement thereon unless and until an identified approval process (9-11-7) is completed,
 117 approved, and recorded in full compliance with the LLUPA and provisions of this Chapter. Any person
 118 who subdivides or causes to be subdivided land without complying in all respects with the provisions
 119 of this title shall be subject to prosecution as define in Teton County Code Title 1, Chapter 4.

120
 121 **EXCEPTION:** Parcels created for bona-fide agricultural purposes in conformance with Teton County
 122 Code, Title 9-2-2, definition of “Agricultural Exemption“ or parcels created without building rights,
 123 where a “Notice of No Building Rights” has been recorded referencing the property, shall not be found
 124 to be in violation of this title.

125

126 **9-11-7 NONCOMPLYING PARCELS – PROCESSES FOR OBTAINING BUILDING**
127 **RIGHTS**

128
129 The owner, purchaser, or his successor in interest, of a parcel which is the result of a division of land
130 that did not comply with the provisions of Title 9 may utilize the following provisions to bring the
131 parcel/parcels into compliance:

- 132
133 A. Recordation of no building rights: if the illegal split resulted in two (2) parcels, but there was
134 only one (1) building right and the property owners of the two lots agree that one of the lots
135 will remain unbuildable, they may record an official document clarifying which parcel would
136 receive the building right and which one would not.
- 137 B. Retroactive One-Time-Only:
- 138 a. Applicability-The parent parcel of the illegal split would be eligible for a One-Time-
139 Only under the current code.
- 140 b. Process- The process for a One-Time-Only split must be followed, and the required
141 fees for that process shall be submitted as well. The property owners of both parcels
142 must sign the application.
- 143 c. Criteria for Approval- All requirements and submittals for the One-Time-Only shall be
144 followed.
- 145 C. Subdivision Process:
- 146 a. Applicability-The parent parcel of the illegal split would be eligible for a subdivision
147 under the current code.
- 148 b. Process- The process for a subdivision must be followed, and the required fees for that
149 process shall be submitted as well. The property owners of all parcels must sign the
150 application.
- 151 c. Criteria for Approval- All requirements and submittals for the subdivision shall be
152 followed.

153
154 **9-11-8 APPEAL OF FINAL DECISIONS**

155
156 Decisions of the Board of County Commissioners are final. Applicants or affected property owners
157 shall have no more than 14 days after the written decision is delivered to request reconsideration by
158 the BoCC. If still not satisfied with a decision of the Board of County Commissioners, one may pursue
159 appeals to District Court within 28 days of the written decision being delivered.



RESOLUTION NO. 2016-0711a
TETON COUNTY BOARD OF COUNTY COMMISSIONERS
ADOPTION OF AMENDMENT TO THE TETON COUNTY CODE OF
ORDINANCES, TITLE 9 SUBDIVISION ORDINANCE ADDING CHAPTER 11

WHEREAS, the Board of County Commissioners (Board) desires to amend Title 9, “SUBDIVISION ORDINANCE” of the Teton County Code of Ordinances to add CHAPTER 11: BUILDING PERMIT ELIGIBILITY OF PREVIOUSLY CREATED PARCELS; and

WHEREAS, the Planning & Zoning Commission held public hearings on April 12, 2016, May 17, 2016, and June 14, 2016 noticed in accordance with Idaho Code Title 67, Chapter 65, Section 6509, accepted testimony at said hearings, and recommends adoption of the Title 9 amendments; and

WHEREAS, the Board held a public hearing on July 11, 2016 properly noticed in accordance with Idaho Code Title 67, Chapter 65, Section 6509; and

WHEREAS, the Board considered testimony and information presented at this hearing; and

WHEREAS, the proposed changes to Title 9 are in accord with the “Teton County Comprehensive Plan – A Vision and Framework 2012-2030”.

NOW THEREFORE, BE IT RESOLVED by the Teton County, Idaho, Board of County Commissioners as follows:

- Section 1. The Board of County Commissioners hereby approves and adopts the proposed amendments to Title 9, Subdivision Ordinance, of the Teton County Code of Ordinances, said amendments are attached to this resolution and incorporated as Appendix A.
- Section 2. This Resolution shall be in full force effective upon its date of adoption.
- Section 3. If any part of this Resolution is invalid for any reason, such invalidity shall not affect the remainder of this Resolution.

DATED this the _____ day of _____ 2016.

BOARD OF COUNTY COMMISSIONERS

Bill Leake, Chair

Kelly Park

Cindy Riegel

ATTEST:

Mary Lou Hansen, County Clerk

July 1, 2016

Re: Public Comment for Teton County Commissioners July 11, 2016 Meeting
Amendment to Title 9, Teton County Subdivisions Ordinance
Proposed Ordinance 9-11-1 et seq.

Dear Teton County Commission Chairman Leake and Commissioners Riegel and Park:

Thank you for taking my comment. If you have already firmly made up your mind to pass this ordinance, then I am reminded of the saying "If you can't change your mind, are you sure you still have one?" Despite my experience with statutory construction and statutory interpretation rules as a Wyoming and Pennsylvania attorney and former district court judicial law clerk and former part-time magistrate, it has been extremely difficult deciphering the proposed ordinance. Although Ms. Spitzer was quoted as saying "A lot of people have figured out they are going to be ok" under the ordinance, the truth is that a person with one of the lots described in section 9-11-2 cannot figure out if they are hurt or helped by the ordinance given its poor drafting. The ordinance is internally inconsistent, incomplete, paradoxical, vague and poorly conceived by non-legal staff without the concept of the bundle of property rights, leaving it ambiguous and unworkable in most all circumstances. It does not contain definitions or express, plain language sufficient to make clear the outcome for circumstances intended to be covered by the ordinance. Instead we are left with a jumbled salad of these phrases in provisions that do not work in harmony. The ordinance as proposed does not inform or solve anything; rather it confuses. The number of hours and effort put into creating this version are irrelevant if it remains incomplete and unworkable.

The County Commissioners might tread more lightly as to its citizens than this ordinance allows. The record up to this point contains evidence of County employees shifting and changing rationales as to why the County is not at fault and need not honor its previous approvals, of backing away from pinning the matter on Mr. Hibberd who signed documents approving splits, and of an initial hard-line approach that intended deprive persons of property rights without reasonable time being allowed for persons to "fix" their lots. The County's initial "buyer beware" argument is laughable for trying to shift blame to innocent buyers and for the reality it denies: no amount of due diligence would have uncovered anything wrong with a person's residential lot given everyone's true reality was that these were legal, buildable, residential lots. No matter who you asked - the county, the realtors, the bankers, these OTO lots were legal and buildable. As Julie in records stated to me "[t]his was the way we did splits back then."

Here is what I would like you to know:

The Proposed Ordinance Has Glaring Defects in its Construction and Application.

1. Section 9-11-2 is at odds with sections 9-11-3 and 9-11-6. At the last P & Z meeting on June 14th, 2016, the Commissioners made a change that made the then-incomplete ordinance even worse by taking out the phrase "legally created" in section 9-11-2 lines 42-43, and 47 and substituting the phrase "lot of record". Note

that Section 9-11-6 states that lots created contrary to the provisions of Title 9 (which includes the OTO provision) shall not constitute legal building sites. So for example, before the phrase substitution, some of the lots described in 9-11-2 A-E were buildable lots as they were labeled as “legally created” by the ordinance, even if the lot resulted from an imperfect OTO split (such as coming from a parcel smaller than 20 acres). But after the substitution as a “lot of record” these lots are destined to be “illegal” under the ordinance because the term “lot of record” appears nowhere else in the ordinance and has no significance in the rest of the ordinance. The ordinance defines but makes no provision for differential treatment of these “lots of record.” How this fits in with the rest of the ordinance is not addressed. This is a glaring omission. A lot that is a “lot of record” that was an imperfect OTO split must be deemed to be “illegal” and without building rights by section 9-11-6 and potentially section 9-11-3. The previous version is still criticized for not being explicit about whether a “legally created” lot had building rights, but this version gives the lots painstakingly defined in 9-11-2(A-E) no chance at having building rights through the ordinance. Was that the intent here? Were these meant to be exceptions? Accordingly, this version’s application has draconian effects as compared with the most recent version based on this one change of language that strips away any legal protection for those who followed County-directed processes and obtained County approval(s). Are these “lots of record” buildable or not? Were the “legally created” lots of the previous version intended to be buildable or not? This needs to be determined and stated clearly within the ordinance. Send the ordinance back to the Commissioners for clarifications.

2. Section 9-11-8 titled “Appeal of Final Decisions” says that Board of County Commissioners’ decisions are final; however there are no Board of County Commissioners’ decisions contained within the ordinance. Appeals of the Planning Administrator’s decisions are not mentioned at all. This section appears to be superfluous and shows the incomplete thoughts behind the ordinance.
3. Section 9-11-5(B) is terribly incomplete, as it does not make any statement about buildability which is the core of the reason for the Certificate! The subsection is grammatically incorrect. It cannot be exactly determined from the text who will sign the notice.
4. Scriveners and other errors.
 - i. Some section titles on lines 17 through 28 do not match the titles written above the actual sections of text within the ordinance.
 - ii. Phrases “Notice of No Building Rights” and “notice of violation” are used in sections 9-11-3 and 9-11-6 but it is unclear whether they refer to the same notice. The words “Notice of No Building Rights” do not appear anywhere in the section titled “Notice of No Building Rights” despite the rule that titles are not included nor inform content of a provision.

- iii. On line 81, there is an errant section number. On line 116 the reference to section 9-11-7 should be included within the sentence structure more formally rather than in parentheses.
 - iv. "May" or "will" appears throughout the ordinance where "shall" is needed (lines 41, 43, 79). The use of the permissive word "may" causes extreme difficulties in enforcement of an ordinance and may violate the County's own interpretation provisions found in Teton County Ordinance 9-2-1(B) regarding uses of "shall" and "may". Particularly on line 43 the "may" makes the Planning Administrator's action discretionary and subject to inconsistent or potentially arbitrary and capricious application. Similarly Teton County Ordinance 9-2-1(A) stating that tenses are disregarded requires more explicit articulation of language rather than use of tenses to convey meaning about the timing of events covered by the ordinance.
 - v. As it reads now, the Planning Administrator (or Building Department) cannot require an owner to apply for a Certificate of Building Permit Eligibility, since that section 9-11-4 states the owner "may apply" for a Certificate. The word "may" is permissive under Teton County's own Ordinance 9-2-1(B) regarding uses of "shall" and "may."
5. You should be concerned that language explaining the connections between the terms "lot of record", "illegal" and "building permit eligibility" and "building rights" is absent from the proposed ordinance. Instead we are left with a jumbled salad of these words in provisions that do not work in harmony and are not internally consistent. The main issue here is whether a lot has a building right. Yet in the two most recent versions, whether the painstakingly defined "lots of record" or "legally created" lots have building rights is not stated or made clear. In another section lots can be deemed illegal or without building rights at the discretion of the Planning Administrator. Consistent application of the law is a building block of good governance.
 6. As it reads now on line 71, the Planning Administrator determines on her/the County's own dime whether a lot is illegal without being able to require the owner to pay the fee for the analysis.
 7. Section 9-11-7's provisions that require neighbors to work together in order for one party to receive building rights are naïve, unworkable and will sow divisions and lawsuits between neighbors who are not interested in having a home built next door. It gives undue power to a neighbor by making their participation voluntary. Inclusion of alternate action for such a scenario should be included. The policy effects of the County's ordinance will be the sowing of divisiveness between neighbors, of neighbors ganging up on a neighbor in its communities to prevent development, of creating outcasts of innocent persons and families in most cases.

My Facts:

8. I own a 5 acre vacant lot in Teton County, Idaho affected by this matter as it was created by a One Time Only split of 10 acres by a previous owner. The One Time Only Split of Land survey for my lot was signed in 2007 by County Planning and Zoning Administrator Kent Hibberd and the Fire Marshal and duly recorded.
9. Since the split, taxes have been assessed on the lot based upon it being a residential lot. We bought our lot to build our future humble home to raise our family and later use during retirement in the community we love, in which we have many friends and acquaintances gained through living 18 years in the area. We used the majority of our retirement savings to purchase the lot for these purposes.
10. It is therefore nightmarish to learn through unofficial sources (given the County's failure to dutifully analyze and notify those who are affected) that our nest egg is being deemed rotten by the County based on the County whimsically alleging (against the weight of evidence and established legal defenses) that the County itself or its true agent made some long-past decisions that it now wants to second guess by damaging hundreds of innocent Valley residents. This ordinance is arbitrary, capricious and manifestly and grossly unjust, both facially and as applied.

The Problem:

11. A problem well defined is a problem half solved. The problem is that since at least 2013 or thereabouts, some county staff have been intent on revising the history, certainty, and in essence the reality of the past decade for both rich and poor Valley residents by floating the ridiculous fallacy that certain lots created with the approval of the County Planning and Zoning Administrator were stripped of their building rights upon their creation, unbeknownst to all parties for up to fifteen years. That premise is a false legal conclusion without any basis in reality, contrary to the great weight of the evidence, contrary to established property law and other legal principles and plainly self-serving of the County's new agenda of non-development. It shocks the conscience that County staff and the Commissioners are preparing to play so fast and loose with honest, hardworking peoples' lives by cutting good folks' properties' values in half or worse. There may be some big fish the County are trying to fry here but too many smaller fish are being caught in the fryer too.

General Comment:

12. If the intent was to not deem "lots of record" as buildable, then the ordinance is completely worthless as it codifies the County's deception against unsuspecting and innocent property owners who now lose their properties' value, use and enjoyment due to this sordid affair. To the contrary, owners should be protected against County malfeasance where owners followed a County-directed process and received county approval through its representative's signature that waived certain lot split requirements. These imperfect OTO splits were for residential use and ratified for many, many years by so many actions taken by County departments for the County's benefit.

13. Cavalierly reinterpreting the past, attempting to undo platted, surveyed and approved residential lots and devaluing real property in an unprecedented attempt to “take a second bite at the apple” through a “do-over” is highly objectionable to those affected and society. It may have been incompetence by the County so long ago to have approved lots for residential use that did not meet certain criteria of the OTO, but this attempted denial or taking of vested property building rights of innocent, bona fide purchasers borders upon corruption and will cost Teton County taxpayers increased taxes for the legal fees to defend it plus make the County the laughing stock of the other 3,142 counties in the nation. Boal’s original version was so ruthless it contained a cut-off date for rectifying parcels that no person of average means could meet. This choreographed rush to push this fatally flawed ordinance through as some sort of band aid and firewall against development will open a new, even greater self-created wound and usher in more uncertainty for the County should it be codified into law in its current form.

Recommendations:

1. Having reviewed the proposed Ordinance No. 2016-9-11, please table it or find that it needs to be remanded to the Planning and Zoning Commission for revisions that clarify matters of building rights and prevent its arbitrary and capricious application.
2. Resolve that the lots described in section 9-11-2 are “lots of record”, “legally created” and “contain building rights” in so far as may be practically resolved by the Board. Follow some of Boal’s recommendations as to grandfathering splits of a certain minimum size and other suggestions he made within the documentation he submitted to the Planning and Zoning Commissioners this past Spring.
3. Direct the County to perform its own analysis to identify affected lots and expressly notify their owners of their property’s status before and after the ordinance and whether any action would be required of them under the ordinance.

Please do the right thing by having the ordinance fixed before passage so as to not cause financial and emotional injury and catastrophic damage to Valley citizens. This new interpretation of the past will otherwise cause grave life changes and lawsuits for innocent property owners, bona fide purchasers of property for fair-market-value, the County, the State, the banks, the title agencies, the realtors and the past owners.

Sincerely,



Thomas C. Stanton, Esq. MA
25 E. 450 S. Victor, ID
P.O. Box 93 Landenberg, PA
P.O. Box 4698 Jackson, WY
TetonLaw@Gmail.com
(307) 690-6023

July 3, 2016

Attn: Teton County Commissioners
Kristin and Teton County Planning and Zoning,
RE: Building Rights Resolution

Thank you for all your time and efforts that you have put in to fixing the difficulties many Teton County residents have faced in an absence of building rights. There have been many parties involved from landowners to local government to the realtors. This has been a difficult situation for everyone involved requiring patience by all involved.

When I purchased the land just over a year ago, my Realtor ensured me my property had building rights. I started saving and selecting house plans to build my home. In February my realtor called me with the devastating news—without building rights the loan on my property became 5 times greater than the new value of my land. I was then told that through a subdivision process and a few thousand dollars I could have my building rights. It may not sound like much money to some but it would have crippled me financially. I had put everything in to buying the land.

Although I may not be able to build this summer as I was hoping. With this new ordinance I have the potential too as well as the other affected land owners in Teton County. I appreciate that you found a way to do this without putting the financial burden on the land owners, except that my realtor has informed me of hundreds of dollars and maybe more I may owe because of surveying costs incurred by Arnold at AW Engineering in his re-surveying the land which turned out to be unnecessary. Hopefully my realtor's information is incorrect as we were not the ones who created the lots. We were the ones misled.

I approve of the Idaho State Code- 67-6513 Subdivision Ordinance & Teton County Subdivision Ordinance, Title 9-10-1 Amendment Procedure.

Sincerely,

Heather Minor