



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

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 has not received any written comments from the public at the time of this report.

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 Teton.
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

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.

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**
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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