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**OFFICIAL PROCEEDINGS OF THE BOARD OF
COUNTY COMMISSIONERS, TETON COUNTY, WYOMING**

The Teton County, Wyoming Board of County Commissioners met in regular session at 9:00 a.m. on **February 2, 2010** in the Commissioners Chambers at 200 S Willow, Jackson, Wyoming.

Roll Call:

Hank Phibbs-Chairman, Ben Ellis-Vice Chair, Andy Schwartz, Leland Christensen, and Paul Vogelheim
Sherry Daigle - Clerk, Keith Gingery - Civil Attorney, Jim Radda - Deputy Attorney, Nicole Krieger - Deputy Attorney, Steve Foster - Commissioners' Administrator, Sean O'Malley - Interim Engineer Director, and Jeff Daugherty - Planning Department and Sandy Birdyshaw - Deputy Clerk

Chairman Phibbs called the meeting to order at 9:02 a.m. and the Pledge of Allegiance was recited.

MINUTES

Mr. Ellis moved to approve the minutes for the Regular Meetings dated 1/19/10 and 1/25/10 and a special meeting on 1/20/10, Mr. Christensen seconded. The Motion passed unanimously.

DIRECT CORRESPONDENCE

1. Jorge Navarro 1/14/2010 email to BCC regarding wood grinding contract at the Transfer Station
2. Mike Barton, Barton Law Office 1/19/2010 letter to BCC regarding Fred and Martha Weiss Appeal Scheduling Order
3. Ruckelshaus Institute 1/19/2010 letter to BCC regarding Assessing the Future of Wyoming's Water Resources: Adding Climate Change to the Equation
4. State of Wyoming Emergency Response Commission 1/19/2010 letter to BCC regarding Emergency Response Commission meeting agenda for January 20-21, 2010
5. Ken Koster 1/19/2010 letter to BCC regarding request to acknowledge receipt of his August 9, 2009 letter (BCC file had no record of receiving this letter)
6. Ken Koster 1/22/2010 email to BCC regarding State Line Road letter dated August 9, 2009
7. Laurie Andrews, Jackson Hole Land Trust 1/20/2010 letter to BCC regarding supports the SPET application for protecting open space and sensitive lands
8. Clint Guthrie 1/20/2010 letter to BCC regarding county snow plow contract
9. Greg Prugh 1/18/2010 email to BCC regarding Daisy Bush Affordable/Employee Housing
10. Scott Fitzgerald 1/18/2010 email to BCC regarding opposed to increasing the Sales Tax
11. Andy Salter, Salter Joyce Ziker 1/20/2010 email to BCC regarding Jackson Hole Golf & Tennis Affordable Housing application
12. Lokey Lytjen 1/20/2010 email to BCC regarding appreciation for the county sponsoring the Jackson Hole Historical Society SPET application
13. Gail Jensen 1/21/2010 email to BCC regarding Jackson Hole Golf & Tennis Affordable Housing application
14. Dave Coon 1/21/2010 email to BCC regarding Jackson Hole Golf & Tennis Affordable Housing application
15. Alan Berney 1/21/2010 email to BCC regarding Jackson Hole Golf & Tennis Affordable Housing application
16. Thomas & Linda Markovits 1/22/2010 email to BCC regarding Jackson Hole Golf & Tennis Affordable Housing application
17. Barb Chancellor, Department of Transportation 1/22/2010 letter to BCC regarding Recorded Relinquishment Documents for Henry's Road
18. David DeFazio, DeFazio Law Office 1/25/2010 to BCC regarding Elk View's application for Private Road
19. William SaintArmour, Cobalt Community Research 1/26/2010 letter to BCC regarding Consultants who perform community citizen satisfaction survey
20. Energy Sustainability Project Team 1/26/2010 email to BCC regarding Governance Steering Committee meeting on January 27, 2010
21. John Mortensen 1/27/2010 fax to BCC regarding SPET application from the Jackson Hole Historical Society and Museum
22. Mark Daniels 1/27/2010 email to Mayor Mark Barron regarding dispute related to RV rentals and annual vacation plans
23. Robert Stepan, Office of the State Public Defender 1/27/2010 fax to BCC regarding Teton County rent stipend for the public defender's office

PUBLIC COMMENT ON CORRESPONDENCE

Allen Monroe of Alta commented on Ken Koster's letter to the Commission. He stated the concerns expressed in Mr. Koster's letter were shared by many of the homeowners regarding the crossing South Leigh Creek and completion of State Line Road. A copy of an excerpt from the 1981 Forest Edge Final Subdivision Plat Review was provided to the Clerk.

There was discussion amongst the Board on the history of the road issue, easements needed, willingness of the neighbors to grant easements, overall public opinion of Alta on making the connection and the County's current finances.

Mr. Monroe spoke again to the concern that the problem has not gone away and due to the number of school age children in the area and emergency response time, he asked that the issue continue to be addressed.

There was no further public comment.

Mr. Schwartz moved to alter the meeting agenda by postponing Matters From Staff item #10-Award of Proposal/Approval of Contract for Design Services for Phil Baux Park Teton Boulder Project to February 16, 2010, withdraw Matters From Staff item #11-Approval of Grant Resolution for Community Forest Tree Grant with Wyoming Department of Urban Forestry and add Matter From Staff #14-Approval of a Grant Application to the Wyoming Department of Transportation/Aeronautics Division to Support the Construction of the Search and Rescue Facility and Matter From Staff #15-Approval of an Extension of Rendezvous Engineering Contract for County Engineering Services. Mr. Christensen seconded and the Motion passed unanimously.

MATTERS FROM COMMISSION AND STAFF

1. Approval of Fiscal Year 2010 Six Month Budget Amendment

Sherry Daigle, County Clerk presented the six month budget amendment proposed for the current fiscal year's budget. The fiscal impact is an additional \$754,889.84 to the General Fund, additional \$705,935.43 to the Special Fire Fund, additional \$2,666,875.30 to the Grant Fund, \$57,750.00 to the Fire/EMS Fund and an additional \$71,628.00 to the Parks & Rec Fund.

The detailed expenditure line items were published on January 27, 2010. One minor adjustment was requested to the amendment. In the contingency fund – the Sheriff's Office IT data storage project was originally \$84,741.00 and actual cost will be \$16,890.00, which changed the bottom line contingency fund from negative \$50,696.87 to positive \$17,154.13. This left the difference of \$67,000 in Contingency and not in the Sheriff's department.

There was no public comment on this item.

Mr. Vogelheim moved to adopt the proposed Six Month Budget Amendment for Fiscal Year 2010 as noticed in the Jackson Hole News and Guide on January 27, 2010 and as presented today. Mr. Christensen seconded and the Motion passed unanimously.

2. Award of Proposal / Approval of Contract for Teton County Sheriff's Office Storage Area Network (SAN) and Virtualization Software

Sheriff Jim Whalen presented this matter of the Sheriff's Office purchase of additional data storage for the Board's consideration. The Sheriff's Office found two Homeland Security grants that would help fund this project which reduced the amount needed from contingency, as referred to by Clerk Daigle in the previous agenda item.

There was discussion between Mr. Vogelheim and Sheriff Whalen on the length of time that surveillance videos were kept. There is not a court determination on how long evidence is kept; Sheriff Whalen stated sometimes it may be 30 days or 60 days depending on the case. Currently evidence is written over in about seven days.

Mr. Ellis thanked the Sheriff for tracking down grants to help fund the project and asked how the award of bid was chosen.

John Mittman, Sheriff's Office IT Manager spoke to Mr. Ellis's question. He stated the proposal specifications were reviewed for each bid which included costs, consolidation of equipment, licensing requirements on software and hardware, and key elements needed for the viable solution. ISC was chosen because it matched the bid proposal.

Mr. Vogelheim asked Keith Gingery what the appropriate length of time to keep video would be.

Mr. Gingery stated this system was mostly used for DUI arrests and defense attorneys were given an opportunity to view the video of when the arrested person was booked. The length of time videos were kept was still being reviewed and may differ based upon the need or type of case. Video will not be kept past the need for evidence.

Allen Monroe made public comment regarding the Request for Proposal advertisement. He was concerned about the cost, type and amount of this technology.

John Mittman responded to Mr. Monroe's comments. He discussed technology specifications, bid proposal contents and why ISC was chosen.

Mr. Vogelheim and Mr. Mittman discussed the current capacity of the system, cost savings and reduced energy needs.

Mr. Ellis and Mr. Mittman discussed staff time needed for this system and soft costs that would be associated. Once the new technology was learned by staff, the management time would be reduced. Mr. Ellis stated using \$16,000 of public money to obtain a first year \$20,000 realized energy savings was not a difficult decision. He asked if the energy savings would hold up year after year. Mr. Mittman stated they would.

Mr. Vogelheim asked if this system was in the same strategy line that the county IT department is working on. Mr. Mittman affirmed it was.

Mr. Christensen moved to approve the Award of Bid / Approval of Statement of Work for Teton County Sheriff's Office Storage Area Network and Virtualization Software project in the amount of \$84,633.69 less the LETPP grant funds for a total of \$16,889.92, Mr. Vogelheim seconded. The Motion passed unanimously.

3. Approval of Lease Agreement with John Eastman for the Driskell Cabin

Keith Gingery, County Civil Attorney presented this lease for the Driskell Cabin. Mr. Gingery discussed the history and location of the cabin. About four years ago, Saddle Butte people wanted to expand the roadway where the cabin was located and wanted to know if the County wanted to move it. John Eastman approached the County and wanted to preserve the building, to stabilize it and move it to his property on the Elk Refuge. After four years the building has not been moved and Mr. Eastman would like to continue in a lease agreement with the option to still move the cabin. If Mr. Eastman does move the cabin the cabin would become his property in consideration of the expense of moving the cabin. The rent was \$200 per month, the reason for the low rent was that the cabin was not heated, had poor plumbing and Mr. Eastman only used it seasonally for an office. It was not safe enough to have bedrooms in it and live in it per the Building Official.

Mr. Ellis asked about the four year length of the lease and the County's possible future use of the Mercill property. Mr. Gingery stated that after two years the agreement may be terminated by either party.

There was discussion about making the lease term for one year or a four year lease that renewed every year. Mr. Phibbs suggested adding to paragraph II A. That either party shall have the right to terminate at the end of the first term and list conditions. Mr. Gingery suggested making the term for four years with an opportunity to terminate after each year.

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There was no public comment on this item.

Mr. Christensen moved to approve the Lease Agreement with John Eastman for the Driskell Cabin located on Merrell Street with the additions as discussed today, Mr. Vogelheim seconded. Mr. Phibbs clarified that the additions discussed today were for a four year term terminable by either party. The Motion passed unanimously.

4. Approval of Teton County Idaho Ambulance Services Contract

Keith Gingery, County Civil Attorney presented this agreement for ambulance service with Teton County, Idaho.

Mr. Christensen asked if it was limited to two years. Mr. Gingery stated since because it was a new process, it was drawn up as a one year, renew one year to see if it worked well for both parties.

Willy Watsabaugh, interim Fire Chief, spoke to the newness of the contract is more of a test than a long term agreement.

There was no public comment on this item.

Mr. Christensen moved to approve the ambulance service contract with the Teton County Ambulance Service District, a duly organized ambulance district in the State of Idaho, Mr. Vogelheim seconded.

There was discussion amongst the Board that this was a reasonable and mutual agreement for both sides and it should continue to be reviewed to make sure it was working for both sides.

The Motion passed unanimously.

5. Approval of HIPAA Business Associate Agreement with Teton Valley Hospital and Sugicenter

Keith Gingery, County Civil Attorney stated this item was related to the ambulance contract just approved. Since the Ambulance Service District works out of the Teton Valley Hospital they require this Quality of Business Associate Agreement for HIPAA compliance. It sets standards for patient information conveyed to us for billing purposes be used in compliance with HIPAA standards.

There was no public comment on this item.

Mr. Christensen moved to approve the Business Associate Agreement with Teton Valley Hospital and Surgicenter for HIPAA purposes, Mr. Vogelheim seconded. The Motion passed unanimously.

6. Approval of a Grant Application to the State of Wyoming EMS Office for the Annual Regional Trauma Conference

Mike Moyer, Fire/EMS presented this matter as an acceptance of grant funds from the State of Wyoming. The \$7,500 would be used for training at the annual regional trauma conference.

There was no public comment on this item.

Mr. Christensen moved to approve and direct the Chair to sign a Resolution supporting acceptance of the grant in the amount \$7,500.00 for Conference Support from the State of Wyoming EMS office, Mr. Vogelheim seconded and the Motion passed unanimously.

7. Award of Bid/Approval of Contract Powderhorn Park Renovation

Steve Ashworth, interim Parks & Recreation Director presented this recommendation for renovations to Powderhorn Park. Renovations include improvements to the softball field, sidewalks, the plaza, fencing and dugouts. This project was approved and funded through the 2006 SPET ballot. The project was advertised and five bids were received. Capstone was the lowest bidder on the project.

There was no public comment on this item.

Mr. Ellis moved to approve Award of Bid/Approval of Contract for the Powderhorn Park Renovations with Capstone Construction in the amount of \$167,033.00 as presented by staff, Mr. Christensen seconded and the Motion passed unanimously.

8. Award of Bid/Approval of Contract Powderhorn Park Field Lighting Replacement

Steve Ashworth, interim Parks & Recreation Director presented the project for the Board's review. This project was identified through the recent energy audit the county performed as a project for energy savings. The new lighting technology will reduce energy costs by about 60%. The formal bidding process produced three bids. Mountain West Electric was the lowest bidder.

There was no public comment on this item.

Mr. Schwartz moved to approve Award of Bid/Approval of Contract Powderhorn Park Field Lights Replacement Project with Mountain West Electric in the amount of \$98,250.00, pending grant project contract approval by the Town of Jackson, Mr. Christensen seconded.

There was discussion amongst the Board regarding obtaining grant funding and the reduction of light pollution in the community.

The Motion passed unanimously.

9. Award of Bid/Approval of Contract Owen Bircher Park Playground and Sidewalk Renovation

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Steve Ashworth, interim Parks & Recreation Director presented this recommendation for Owen Bircher Park renovation. The project was approved and funded by the 2006 SPET. The renovations will provide handicap accessible routes from the parking lot to the restroom to the playground and to the shelter, and provide a safer playground and access for children with disabilities. Request for bids was published and six vendors were notified which produced five bids. JD Construction was the lowest bidder.

There was no public comment on this item.

Mr. Schwartz moved to approve Award of Bid/Approval of Contract for Owen Bircher Park Playground and Sidewalk Project with JD Construction in the amount of \$52,358.50, Mr. Vogelheim seconded.

Mr. Schwartz commented that projects using SPET funds have been coming in below the proposals and it was good that local contractors are getting work in the current economy as well as citizens getting a value for their SPET money.

The Motion passed unanimously.

10. Award of Proposal/Approval of Design Contract Baux Park/Teton Boulder Project

This item was postponed to February 16, 2010.

11. Approval of Grant Resolution for Community Forest Tree Grant with Wyoming Department of Urban Forestry

This item was withdrawn.

12. Approval and Signature of Revised Office of Juvenile Justice and Delinquency Prevention Subaward Agreement with Volunteers of America

Nicole Krieger, Deputy County Attorney presented this request to approve the 2010 revised agreement that extends the time available to use these funds. Teton County funding is on track for the past year and will continue to do so. Some other counties struggle to use funds in the appropriate time frame which prompted this statewide extension. There were a few additional requirements on reporting listed in the contract; however Teton County was already meeting those requirements.

There was no public comment on this item.

Mr. Schwartz moved to approve the subaward contract between Volunteers of America, Wyoming and Montana and Teton County as presented, Mr. Christensen seconded and the Motion passed unanimously.

13. Appeal filed December 22, 2010 by Volunteer Associates, LLC from the decision of the County Engineer denying Grading and Erosion Control Application No. 2008-0002: schedule hearing and consider appointment of hearing officer

Chairman Phibbs recused himself from this item and Vice-Chair Ellis took the lead.

Jim Radda, Deputy County Attorney presented this item. In November the Board denied two variances in respect to the Volunteer Associates application. Based on those denials the county engineer denied the request for a grading and erosion control permit. Volunteer Associates has appealed the county engineer's denial of the permit. The Board was requested to appoint a hearing officer to handle the appeal. Mr. Radda stated there were not many genuine issues of material facts, but did believe this appeal may be amenable to some pre-trial motions based on undisputed facts in the application of the Land Development Regulations and the law. Mike Barton was willing to serve and Mr. DeFazio had no objection to Mr. Barton serving.

Mr. Vogelheim asked what the time line may be for this appeal. Mr. Radda stated the appeal was filed December 22, 2009 and the hearing should occur within 120 days. He suggested that the Board not set a hearing date today, but that legal counsel confer with Mr. Barton and that both parties prepare and file Motions of Summary Judgments and then proceed from there.

There was discussion amongst the Board regarding the need for having legal representation. Mr. Radda would be representing the county engineer and a concern was voiced as to the Board not having representation. Mr. Radda stated the hearing officer should be able to provide legal advice and answer the Board's questions and if needed, separate legal representation could be obtained later.

David DeFazio spoke for Volunteer Associates and had no objection to Mike Barton being the hearing officer and asked the Board to stay involved on this issue as it is a piece of a larger picture and he does not expect it to go away.

There was no further public comment.

Mr. Christensen moved to appoint Hearing Officer Mike Barton regarding the Appeal from Volunteer Associates and request the attorneys and hearing officer to get together and set a date for the hearing, Mr. Schwartz seconded. The Motion passed unanimously with Commissioner Phibbs abstaining.

Chairman Phibbs returned and took the lead.

14. Approval of a Grant Application to the Wyoming Department of Transportation / Aeronautics Division to Support the Construction of the Search and Rescue Facility

Charlotte Reynolds, County Grant Writer presented on behalf of Search and Rescue. This grant application would help support the construction of the helipad at the new Search and Rescue facility. The grant request was for \$74,697.31 and the required county match was \$18,674.33. The county match required would come from funds already secured for the Search and Rescue project. Staff was awaiting WYDOT's response to see if

administrative fees were eligible in the grant program.

There was no public comment on this item.

Mr. Schwartz moved to table the item later in the agenda to provide time to obtain clarification on the funding available for the county match, Mr. Vogelheim seconded. The Motion passed unanimously to table this item.

After the 10:45 a.m. break, Mr. Schwartz moved to bring back item #14 to the table, Mr. Vogelheim seconded and the Motion passed unanimously.

Doug Meyer, Search and Rescue was present to address the board.

Mr. Schwartz asked about the change in amount of funds for the grant and match. Mr. Meyer stated the match will come from funds already secured.

Mr. Vogelheim stated the helicopter hanger could be used for other uses and asked if the hangar and pad could be used for other uses if the helicopter was pulled. Mr. Meyer stated it would be beneficial to have when the helicopter comes in to pick-up and drop-off equipment.

There was no public comment on this item.

Mr. Schwartz moved to approve and request and require the Chair to sign a Resolution authorizing a grant application to the Wyoming Department of Aeronautics Division in the amount of \$74,697.31 to support the construction of a heliport at the new Search and Rescue facility, Mr. Christensen seconded and the Motion passed unanimously.

15. Approval of an Extension of Rendezvous Engineering Contract for County Engineering Services

Steve Foster, County Commissioners Administrator presented this extension for Board approval. The current contract expired January 31, 2010 and resolution for the permanent replacement for engineering services had not been resolved.

Mr. Christensen stated resolution was needed by the end of February.

There was no public comment on this item.

Mr. Christensen moved to approve the extension of the existing contract with Rendezvous Engineering on a month-to-month basis to resolve a permanent replacement choice and to support a transition when a decision is determined with the understanding that the resolution will be determined by the end of February, Mr. Vogelheim seconded and the Motion passed unanimously.

The meeting was recessed at 10:35 a.m. and reconvened at 10:45 a.m.

OLD BUSINESS/NEW BUSINESS

- 1. Applicant:** TETON COUNTY PLANNING & DEVELOPMENT
- Agent:** None
- Presenter:** Maggie Schilling
- Permit No.:** AMD2009-0024
- Request:** Amend the Text of the Land Development Regulations, pursuant to Section 5150, Amendments to the Text of These Land Development Regulations or the Official Zoning District Map, to amend the Scenic Resources Resolution, in order to establish a stewardship fee, which will be collected with new open space easements accepted by the Teton County Scenic Preserve Trust.
- Location:** Amendment would apply countywide.

Maggie Schilling, County Scenic Preserve Trust Coordinator presented. The purpose of the proposed amendment is to authorize the Teton County Scenic Preserve Trust (TCSPT) to collect stewardship fees with each conservation easement it accepts. When the TCSPT accepts an easement it agrees to monitor and enforce its terms in perpetuity this involves annual costs, such as costs in terms of site visits, reviews and legal actions. These costs are born by the taxpayers through the general fund so this amendment would shift some of that burden to the developer. The TCSPT is working to transfer some of the easements to the Jackson Hole Land Trust and they have requested transfer fees with each of the easements that are accepted and that fee has been about \$13,250 per easement, so this amendment would help cover that fee if new easements were to get transferred.

Ms. Schilling addressed some of the key issues. How is the fee calculated? It is based on a model that a number of land trusts use around the country including the Jackson Hole Land Trust. The theory is a quasi-endowment model where the annual interest that is earned covers the annual expenses. The principal could be used to defend the easement in a legal action. The recommended fee for 2009 was \$13,200 per easement and that recommendation would carry to 2010. The second key issue is what to do if making this sizable payment up front is an issue with a landowner. The amendment does propose an alternative agreement for that situation that would allow the TCSPT to collect the funds in the future by recording a transfer fee agreement so that each time the property was sold a percentage of the purchase price would go to the TCSPT to the stewardship fund. A third key issue is what effect the amendment might have on projects that are in the works. All PRD applications we have now are headed for the Jackson Hole Land Trust except for one – the Donaghmore application. They are aware this amendment is in the works and they were assessed a similar fee on a recent 29 acre easement. There are four PRD pre-applications and they are not likely to be aware of this fee. One is the Science School, who are looking at a PRD on the Mad Dog Campus or institutional residential, that application is not in yet. Jackson Land & Cattle may do a PRD or ag-employee housing on property on Spring Gulch Road, that application is not in yet. Two pre-applications for amendments to existing TCPST easements on the Dorros and Schatz properties, those are both compliance issues. The only other PRD in the works that Ms. Schilling was aware of was the 7-C PRD that an exemption from the moratorium was recently approved for. Their pre-application is not in yet.

Staff's recommendation was that any easement that is accepted after the date of this amendment be assessed the fee.

No neighbor notices were sent since it is a county-wide amendment; however it was advertised in the paper and on the website and sent to email lists.

Mr. Schwartz talked about amendments to easements and this would be a good opportunity to get them to consider transferring the easement from TCSPT to the Land Trust. On the alternative agreement option, he questioned choosing category three and the possibility of changing it to category five for an incentive for people to create easements.

Mr. Ellis thanked staff for working on this amendment and bringing it before the Board. He would like to see a second transfer fee associated with this, irrespective of the up-front fee. The up-front fee seems to be more administrative fee that goes for the first window of time for management and it may be sufficient to transfer that on to the Land Trust or another appropriate holder. This second fee would be collected if the land was sold in order to carry on the perpetuity management of the easement.

There was further discussion amongst the Board regarding the additional fee and associated language in the amendment.

Jeff Daugherty addressed the Board regarding current language in Section B, which addresses that when transfers are made the fee would transfer as well. It may add clarity if we add the language "any unspent portion of the fee" because there are instances where we would have to touch the principal for the purposes of legally defending the easement. He requested the Board exhibit flexibility in imposing fees based on the circumstances in the four pre-applications.

Mr. Schwartz suggested continuing this item to the first meeting in March to give staff an opportunity to incorporate concerns of the Board in the amendment.

There was no public comment.

The Board restated their concerns for staff to consider in revising the amendment. Mr. Ellis would like to see a transfer fee explored by staff and some language written for that alternative and agrees with that language adding an amendment as it relates to amending existing contracts where there has been no fee paid. Mr. Phibbs broadened Mr. Ellis' statement to include any amendment to a parcel in the TCSPT. Mr. Schwartz added the alternative agreement option to see how we can broaden it to make it more effective. Mr. Vogelheim added we want to encourage conservation easements but to also encourage them to go through the Land Trust.

There was further discussion amongst the Board and Staff on the amendment.

Mr. Schwartz moved to continue this item to the March 2, 2010 regular meeting, Mr. Christensen seconded and the Motion passed unanimously.

- 2. Applicant:** TETON COUNTY PLANNING & DEVELOPMENT
- Agent:** None
- Presenter:** Maggie Schilling
- Permit No.:** AMD2009-0025
- Request:** Amend the Text of the Land Development Regulations, pursuant to Section 5150, Amendments to the Text of These Land Development Regulations or the Official Zoning District Map, to amend Section 2220.D and 231300, Temporary Uses, to add Temporary Helicopter Tree Removal for fuels reduction, forest health improvement, and public safety purposes to the list of permitted temporary uses. Other sections may be amended for consistency.
- Location:** Amendment would apply countywide.

Maggie Schilling, County Planning Department presented the proposed amendment to provide standards for the review and approval of temporary helicopter tree removal operations. Basically it would make the policy that the Board adopted last fall during the Crescent H discussion permanent. That policy had a six month sunset clause which expires in April 2010. The changes this would include, in the past, if a neighborhood wanted to do helicopter tree removal and they wanted to refuel on site, they would have to permit the project as a heliport and a heliport in the Land Development Regulations requires a Conditional Use Permit which takes months to obtain for a potentially one day or one week project. A temporary use permit may be a simpler way to permit these types of projects and would allow them to be approved more administratively if they provide significant public benefit in terms of fuels reduction and public safety and if they are temporary projects, defined as less than four weeks. Since these types of projects have impacts on surrounding properties and there should be a forum for neighborhood concerns to be addressed the amendment does require the project be reviewed at a public hearing before the Board. The amendment also recognizes there are impacts on the environment so it requires a habitat impact statement and allows for mitigation measures to be required.

Key issues include the relationship to our noise regulations. The Land Development Regulations limit noise in the rural and NC zones to 55 decibels at the property line. Conversational speech registers at 60 decibels so it makes it pretty impossible for these types of projects to meet these requirements. So the amendment acknowledges that and simply provides an exemption to the noise standards. The second key issue is the relationship to our Environmental Analysis requirements. The amendment would exempt these temporary projects from a full EA. The third key issue is the effective on existing projects. We have not required permits for ground based fuel reduction projects since tree removal is not considered development. However if a helicopter is added to the project it would require a permit and this would be a change. In the past, projects that did not refuel on the property did not have to get a permit since they never touched-down, and the FAA regulates air space, not the County. This amendment would change that by adding tree removal by helicopter to the definition of

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development. The point would be to try and provide some assurance to the community through the permitting process that the impacts of these projects will be offset by some public benefit and impacts in terms of wildlife and noise will be addressed.

No neighbor notices were sent since it would apply county-wide. It was advertised in the newspaper, posted on the website and notices sent to the email list.

Kristy Bruner of the Conservation Alliance provided Ms. Schilling with written concerns on the amendment regarding more definition as to what is required in the environmental statement.

Mr. Ellis asked where the four-week period came from. Ms. Schilling stated it was carried forward from the temporary policy adopted in the fall.

There was discussion between the Board and Ms. Schilling on the standards listed in the amendment. Perhaps different language addressing the temporary uses statement #5 as to the impact of the project on existing wildlife on the property could be expanded to include broader areas of impact.

Mr. Ellis asked what discretion the Board may have in imposing conditions on temporary use permits or if those uses comply with the specifics in this amendment, are they entitled? Ms. Schilling responded that temporary use permits have been administrative and not brought before the Board, although this amendment calls for these temporary use permits to go before the Board and the Board may include conditions. Mr. Ellis felt the plan should be broader so the Board could condition the use. Ms. Schilling suggested broadening #6 to say the proposed projects shall receive approval and may be conditioned by the Board of County Commissioners. Mr. Ellis agreed and stated #7 could start – The Board may impose limitations... to put people on notice that the Board has that ability. In #1, Mr. Ellis understood that to mean helicopter operation so you would have four weeks, you could fly every day within that four weeks but what you meant was the whole forestry operation would be complete in four weeks or less. Another condition may be needed that constrains the helicopter operation to maybe ten days within that four weeks and must be completed within that four weeks.

There was discussion between the Board and Mr. Radda on non-helicopter logging, helicopter use and the concern of imposing different standards. Mr. Radda stated different standards can be imposed when a helicopter is involved.

Mr. Schwartz stated another amendment may need to be added to the Land Development Regulations that is more general. Ms. Schilling stated all that was added in this amendment is helicopter tree removal, the definition of development includes clearing and grading and clearing has not been treated as including tree removal.

Public comment was opened at 11:33 a.m.

Robbie Fuller spoke to Conditional Use Permits, the Crescent H project and his experience during that project including noise regulations and questioned if helicopter logging is even necessary.

Mr. Phibbs asked Mr. Fuller if he thought forestry should be regulated in terms of environmental impact. Mr. Fuller stated he thought clear-cutting on private land had regulations on it.

Public comment was closed at 11:44 a.m.

There was discussion between Mr. Christensen and Mr. Radda whether helicopter use should fall under Land Use Regulations. Mr. Radda stated since there are sufficient land impacts even with helicopter use without landing it would fall under the Land Use Regulations.

Mr. Ellis stated he would like to continue this item to allow time for further consideration and to see it kept as a temporary use and create more discretion for the Board to condition it so that it becomes like a short term conditional use permit. He recommended another condition that says applicant has demonstrated that helicopter logging is necessary and that other less impactful and less disruptive forestry practices are impractical.

There was further discussion amongst the Board on the amendment.

Mr. Schwartz moved to continue this item to a workshop setting with a later meeting date before April, Mr. Ellis seconded. The Motion passed unanimously.

The meeting was recessed at 11:52 a.m.

The meeting reconvened at 1:33 p.m. with Ben Ellis absent.

- 3. Applicant:** JACKSON HOLE GOLF & TENNIS CLUB, INC.
Agent: Jorgensen Associates, PC
Presenter: Paula Stevens
Permit No.: S/D2009-0015
Request: Final Plat approval, Pursuant to Division 6100, Final Plat, of the Teton County Land Development Regulations, to subdivide a 2.71-acre lot into 22 condominium units.
Location: Lot 40, The Resort at Jackson Hole Golf & Tennis Club. Located approximately five miles north of the Town of Jackson (S27 and S34, T42N, R116W). The property is zoned Planned Unit Development - Planned Resort and has no overlays.

Paula Stevens, County Planning Department presented this Final Plat approval, pursuant to Section 6100, Final Plat, of the Teton County Land Development Regulations, to subdivide Lot 40 of the Resort at Jackson Hole Golf and Tennis Club into 22 affordable housing condominium units. The housing is being provided on site by the applicant as required pursuant to the approval of 41 single family residential units as well as approximately three dozen cabin units at Golf & Tennis. The Final Development Plan was approved in 2003. When the cabins were approved in 2004 there was a requirement that affordable housing be built concurrently. However, also in 2004 the applicant was asked by the County to postpone the construction of those affordable units to give the County an opportunity to work with Grand Teton National Park to possibly co-locate the affordable housing at Golf & Tennis with some employee housing for Grand Teton National Park. The vision was shared access to the two

developments which would necessitate the redesign of the affordable housing element of Golf & Tennis. In late 2005, it became apparent that the park's efforts were not going to come to fruition so the completion date for the affordable housing units was reset to May 2007.

Ben Ellis joined the meeting at 1:36 p.m.

Subsequent to that, three extensions were granted, two in 2007 and another in May 2008. The May 2008 extension required that construction of the units begin by May 15, 2009 which it did and the units be ready for occupancy March 1, 2010. The developer is on track with this occupancy date.

In December 2008 as required by the third extension, the applicant submitted six building permit applications. Upon review of these applications it was discovered that changes to the building code had occurred which required changes to the design of the units due to the Americans with Disabilities Act building code revisions. The applicant submitted a couple of different architectural design options for consideration. The new designs were considerably different from the original plans so the applicant was given options to go with new plan and amend the final development plan and delay the completion schedule or maintain the architecture that was approved in the final development plan and seek a minor deviation. Minor deviations are administratively approved in the planning department and are only authorized in very limited circumstances.

On discovery of the changes related to ADA building code, staff's direction was to maintain the integrity of the approved architecture of the units. The units had to be redesigned and plated as condominiums rather than townhomes.

Neighbor notices regarding this application were mailed on January 12, 2010. Written comment from 14 people was received. All comment received is consistent in theme and content. Primary points of concern are as follows, with responses from Deputy County Attorney, Jim Radda. Response to comment #1 is from Planning Staff:

1. The Jackson Hole Golf & Tennis Club Master Plan should be recorded with the Clerk's office, which is required by the Land Development Regulations and as has occurred with other resort Master Plans.
Recordation of the 2002 Master Plan amendment documents is in process. Upon recordation, staff will also post the Master Plan on the County Web site.
2. The dog prohibition should be noted on the plat, specifically sheets 1 and 2.
*I recommend AGAINST placing the dog prohibition on the plat. According to Wyo. Stat. § 34-12-102, the purpose of the plat is to accurately lay out the location and measurements of the buildings, condominium units, driveways, parking areas, etc., "giving the dimensions, and length and breadth" of the subdivision and "the breadth and courses of all the streets and alleys" established in the subdivision. The dog prohibition does not appear to fit into any of these categories. Besides, the dog prohibition is recited in the Declaration of Condominium and the Certificate of Owner states that the "subdivision shall be made SUBJECT to the following to be recorded contemporaneously in said [County Clerk's] Office: the Declaration of Condominium for Jackson Hole Golf and Tennis Condominiums * * *."*
3. The Special Restrictions for Affordable Housing document should include a reference to the dog prohibition.
The dog prohibition should not be referenced in the "Special Restrictions" section of the Declaration of Condominium for Jackson Hole Golf and Tennis Condominiums document (Section 2.38). The "Special Restrictions" referred to in Section 2.38 are the "Special Restrictions for Affordable Housing." As per my January 21 email, the dog prohibition should not be included in this document.
4. The reference to amendment of the "Teton County Approval Documents" should be removed from the Declaration of Condominium for Jackson Hole Golf and Tennis Condominiums document (Section 3.6).
I disagree with this. The reference to amendment of the "Teton County Approval Documents" should NOT be removed from the Declaration of Condominium. The reason is that the dog prohibition is a COUNTY-imposed prohibition, not a privately imposed prohibition. The proposed language in Section 3.6 recognizes the prohibition originated with Teton County, and simply states that, in the event the County amends the master plan to remove the prohibition, no amendment to the Declaration is necessary. There is no legitimate reason to impose upon the future homeowners the duty to amend their private covenants with respect to the dog prohibition, if the prohibition originated with the County, as it did in this case.
5. A separate deed restriction prohibiting dogs should be recorded against each unit.
I disagree with this. The reason is that the County-imposed dog prohibition is adequately addressed in Section 3.6 of the Declaration of Condominium.

Staff recommendation is for approval of the final plat with no conditions.

Mr. Ellis questioned what gets included on plats and what doesn't, such as the request to include the dog prohibition. Ms. Stevens said there is a variety of information that is typically listed on the plat as a matter of policy. She referred to Mr. Radda for a more detailed answer. Mr. Radda reviewed what the statute requires, giving the dimensions, length and breadth of subdivisions, breadth and courses of all streets and houses established in the subdivision. It appears the purpose of the plat is to set out the dimensions and the length and width of various buildings, parking areas, play grounds, common areas, etc. as opposed to determining or restricting use or how the property is to be used. So there was no reason to include dog prohibition on the plat. Sometimes we include things on the plat that don't belong there, such as building envelopes and it becomes a costly process to get replated.

Mr. Ellis asked what the relationship the covenants and declaration of condominium and the plat. Mr. Radda stated the declaration of condominium is noted on the plat. The declaration of condominium has restrictions listed which are covenants that are enforced by the homeowners association. Mr. Radda stated this particular restriction is oddly worded. It appears to be a county imposed dog restriction, but instead of simply stating dogs are prohibited, it is a restriction that requires an inclusion of that prohibition within the covenants. It would be cleaner to have it listed just as 'dogs are prohibited'. Then it is a condition on the master plan. But because of the wording there is controversy on how that restriction should be worded in the covenants. The way the restriction reads in the covenants is that if the master plan is amended to remove the prohibition then no further action is needed and the covenants shall automatically allow dogs.

C.R. Russell spoke representing the applicant and presented for questions from the Board.

Mr. Phibbs referred to the declaration of condominium that includes certain use restrictions and rather than having the ability to amend itself, if the County Commissioners were to amend the master plan to remove the dog

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prohibition, it has an automatic amending device which takes away the right of the property owners to consider such an amendment themselves and vote on it - why was this done?

Robbin Levy spoke as legal counsel for the applicant. She responded that the automatic amendment was put in to strengthen the covenant document and not meant to take away property owner's rights. The intent was not to burden homeowners with the cost of hiring an attorney to amend covenants if the Board goes through the public process to amend the master plan.

Mr. Ellis questioned Ms. Levy about the condition not applying to the master plan. Ms. Levy responded that the restriction was not a condition but was added to their application as a restriction.

Mr. Christensen asked Mr. Radda if the covenants could be changed if it was a county imposed declaration. Mr. Radda responded that what Ms. Levy was saying, that in response to the Chair's assertion, is that these covenants can still be amended. It is a County imposed requirement; although the wording suggests that this is a private covenant, it is only included in the covenants because the county required it.

Mr. Ellis asked if it was a condition of approval on a master plan is approved by the County and is clear what is County-imposed and what is provided by the applicant. Is this a condition of approval by the County? Mr. Radda stated yes. Ms. Stevens clarified that it was not a condition imposed by the County, the condition that was imposed by the County dates to 1998 and it is a restriction on pets within the resort. The master plan language includes separate reference to a prohibition within the affordable housing on dogs. It was not a condition, it was language included in the master plan.

Public comment was open at 2:10 p.m.

Gail Jensen spoke related to her email responding to Andy Salter's letter and stated the applicant added dog prohibition to the master plan only to get it passed since it was in the NRO. Who will enforce this county imposed regulation? There is a huge amount of large game that goes through the area and this restriction is very important.

Karen Keckley, a dog owner and winner of an affordable housing draw spoke that she raised her dog at Jackson Lake Lodge for six years without incident concerning wildlife. She is opposed to the dog prohibition.

Armond Acri spoke that it should be clear as to what the intent of all the conditions are. He supports the dog prohibition. He also provided written comment from Kristy Bruner who could not be in attendance.

Patty Ewing spoke in support of enforcing the dog prohibition in a highly sensitive area and it should be communicated clearly to potential homeowners.

Michael Faraday spoke that the issue today is approval of rules already in place, not to determine dog prohibition.

Dave Coon stated he disagrees that the dog prohibition should not be recorded on the plat; there are already eight comments listed. It should be the Board's decision to remove the dog prohibition not an automatic removal if the declaration of condominium is amended.

Public comment was closed at 2:29 p.m.

Ms. Stevens stated the master plan will still govern what goes on at Golf & Tennis. If the dog regulation was to be removed it would have to come back before the planning commission and Board for review and approval.

Ms. Levy added that she agrees with Ms. Jensen's comment that the master plan approval does become land development regulations. She agreed that the restriction does not belong on the plat. She reminded the Board they were here today to consider a final plat approval.

The public hearing was closed and the matter was brought back to the Board for discussion.

Mr. Phibbs asked Mr. Radda for clarification on the statement made that master plan approval by this Board maintains the status of a land development regulation under our law. Mr. Radda agreed and stated there are land development regulations that are applicable in each district. This PUD-PR is its own district so it would be subject to the standards and conditions in effect and serve as land development regulations for that resort. Mr. Phibbs asked if the attorney's office has been enforcing land development restrictions in the resorts of Teton Village and 3 Creeks. Mr. Radda stated to the extent that something is a condition of the resort then it is enforceable by the County and thereby the County Attorney's office. To the extent that it is a private covenant, like this one, then he doubted whether the County could enforce a private covenant.

There was further discussion amongst the Board about the declaration of condominium; the automatic language in it; if the Board could approve the final plat with conditions on the declaration since the declaration is part of the final plat; persons with disabilities who need a dog assistant; revisiting restrictions with the Housing Authority; enforcement of the master plan by the Commission or Planning Director; enforcement of the Covenants by the homeowners association; and amendments to the master plan by a homeowner.

Mr. Schwartz moved to approve Final Plat S/D 2009-0015 based upon finding that the application meets all applicable standards in the Teton County Land Development Regulations with the following condition: that the Declaration of Condominium be amended so that it does not automatically change if there is an amendment to the master plan, and be subject to a vote from the homeowners association. Mr. Ellis seconded.

There was discussion amongst the Board on the motion. Mr. Christensen stated he would not support the motion, part of it ties back to the respect for the public conversation on removing this piece of property from the Natural Resources Overlay and that that the dog restriction was offered up and then with the burden of enforcement being on homeowners association opposed to the County being able to support that, it feels like we have created a disconnect.

Mr. Schwartz agreed to Mr. Phibbs friendly amendment to the Motion to include the language "on 13.3 add an

additional sentence to read - any amendment to 3.6 of this document requires the approval of the Board of County Commissioners". Mr. Ellis seconded.
The meeting recessed at 3:13 p.m.
The meeting reconvened at 3:25 p.m.

Ms. Stevens read from page 29 of the resort master plan, "In order to mitigate impacts on wildlife on the lands adjoining the site, at the time of platting of the affordable housing lot a declaration of restrictions will be recorded which will include language prohibiting dogs."

Mr. Christensen stated his challenge on this was this transition from a public value and recognized part of our comprehensive plan being the natural resources overlays. When this portion of the national resources overlay was changed and there was consideration with that change on this prohibition and to take a public value and change it and enforcement falls upon a private homeowners association - is the part I struggle with.

Mr. Schwartz restated his motion including the friendly amendment - move to approve Final Plat S/D 2009-015 as presented and based upon finding that the application meets all applicable standards in the Land Development Regulations with the deletion of the sentence in Section 3. of the Declaration of Condominium stating "In the event the Teton County Approval Documents are amended to remove the stated prohibition on dogs on the Property, dogs shall be automatically considered "Household Pets" and shall be permitted on the Property in the same manner as any other Household Pets as provided herein and no amendment of this Declaration or other consent or approval shall be required." and the addition of a sentence in paragraph 13.3 of the Declaration of Condominium stating "If an amendment is made to paragraph 3.6 of this document which removes the prohibition of dogs, it will require the approval of the Board of County Commissioners."

The question was called and the Motion passed 4-1, with Mr. Christensen opposed.

CONSIDERATION OF UNFINISHED BUSINESS

ADJOURNMENT

Mr. Ellis moved for adjournment, seconded by Mr. Christensen and the Motion passed unanimously. The meeting adjourned at 3:31 p.m.

TETON COUNTY BOARD OF COMMISSIONERS

Hank Phibbs, Chair

Ben Ellis, Vice-Chair

Andy Schwartz, Commissioner

Paul Vogelheim, Commissioner

ATTEST:

Sherry L. Daigle, Clerk

Leland Christensen, Commissioner