

Board of County Commissioners

Meeting Action item #

Meeting Date: December 20, 2016

Presenter: Sherry Daigle

Submitting Dept: Clerk

Subject: Designate a Hearing Officer

Statement / Purpose:

To designate a presiding hearing officer or appointment of the Chair as Hearing Officer, pursuant to Section 8.8.3.G.3 of the LDRs, Contested Case Docket No. 2016-0012, Moose Hollow Holdings, LLC etal v. Teton County, Wyoming Engineer.

Pending Deadlines:

December 25 appoint hearing officer
March 10, 2017 contested case hearing should take place before March 10, 2017
+ 60 days BCC decision is due within 60 days of hearing date and decision filed with County Clerk

Attachments:

Appeal

Fiscal Impact:

Mike Barton Available - \$150/hr. (½ time for travel), hotel and meals.
Sharon Rose Available - \$250/hr. plus expenses

Recommendation:

Consideration of Designation of a Hearing Officer, or to have the Chair preside, over the hearing pursuant to Section 8.8.3.G.3 of the LDRs, Docket 2016-0012, Moose Hollow Holdings, LLC etal v. Teton County, Wyoming Engineer.

Suggested Motion:

Move to designate ___ as Hearing Officer for the Moose Hollow Holdings, LLC etal v. Teton County, Wyoming Engineer contested case Docket 2016-0012

BEFORE THE BOARD OF COUNTY COMMISSIONERS
STATE OF WYOMING, COUNTY OF TETON

Moose Hollow Holdings, LLC, and Blue Skies West, LLC,

Contestants,

v.

Teton County, Wyoming Engineer,

Contestee.

Docket No. 16-0012 ~~2007~~ ^{sed}

Petition for Appeal of ADJ2016-0007

Received:

Number: 001

Teton County Clerk B. 

11-10-16 P03-28 RC

COME NOW, Contestants Moose Hollow Holdings, LLC, and Blue Skies West, LLC, by and through their undersigned attorney, and pursuant to Section 8.8.3 of the Teton County, Wyoming Land Development Regulations (hereafter “LDR’s”), and the Wyoming Administrative Procedures Act, submit the following petition appealing the decision made by the Teton County, Wyoming Engineer in ADJ2016-0007, a copy of which is attached hereto as Exhibit 1.

In support thereof, Contestants submit the following information and allegations:

Parties

1. Contestant Moose Hollow Holdings, LLC (“Moose Hollow”), is a Wyoming limited liability company and the owner of Lot 1 of S & S Subdivision; Plat 657, Teton County, Wyoming. Moose Hollow owns a principle residence and guest house on its parcel, and the owner of Moose Hollow and his family members and guests use the residence and guest house frequently.

2. Contestant Blue Skies West, LLC (“Blue Skies”), is a Wyoming limited liability company the owner of Lot 2 of S & S Subdivision; Plat 657, Teton County, Wyoming. Blue Skies owns a principle residence and guest house on its parcel, and the owner of Blue Skies and his family members and guests use the residence and guest house frequently.

3. Contestee is the Engineer of Teton County, Wyoming, who issued the ADJ2016-

0007 decision attached hereto as Exhibit 1.

Jurisdiction and Standing

4. This Teton County Board of County Commissioners (“Board”) has jurisdiction to consider and determine this Petition pursuant to Section 8.8.3 of the Teton County, Wyoming Land Development Regulations, the Rules for Contested Case Practice and Procedure before the Teton County Board of County Commissioners, and the Wyoming Administrative Procedures Act.

5. Contestants have standing because they are aggrieved parties as defined in Section 8.8.3 of the Teton County LDR’s. Specifically,

- a. Smoky Hollow Road crosses land owned by the ADJ2016-0007 applicant - JCFT Wyoming Real Estate LLC (“JCFT”).
- b. Smoky Hollow Road is a steep and narrow road that provides the sole access to Contestants’ parcels, as well as to land owned by JCFT, and to three parcels of land zoned for residential use owned by the Fuller Family, LLC.
- c. The Contestants’ two parcels benefit from certain roadway and utility easements encumbering Smoky Hollow Road, and by virtue thereof each Contestant owns a legally recognizable property interest that is subject to and affected by the County Engineer’s decision in ADJ2016-0007.
- d. The Contestants’ legally recognizable property interest is adversely affected by the County Engineer’s decision ADJ2016-0007, because:
 - i. The County Engineer’s approval decision is a condition precedent to approval of JCFT’s Development Option Plan DEV2016-0003, under which JCFT will be the sole beneficiary, entitling JCFT to construct additional residential housing that will result in increased traffic on the road, which traffic will result in a greater likelihood for accidents on the road, and in increased costs to maintain the road.
 - ii. The County Engineer’s decision in ADJ2016-0007 fails to produce as safe a road as is possible under Teton County, Wyoming Road Standards, thereby

putting at risk the safety of the owners of the Contestants and their family members, friends and their other invitees who use the road.

- iii. County LDR 8.8.3 requires Contestants to file an appeal of ADJ2016-0007 within 30 days of the County Engineer's decision, even though ADJ2016-0007 admittedly does not result in any entitlement to develop land or improve the road (because it is tied to approval of DOP2016-0003, the decision of which has not occurred).

Background Facts and Basis for Appeal

Location of Relevant Properties

6. Contestants' two parcels of land are adjacent to 59.2 acres of land owned by JCFT.
7. The subject properties are accessed via South Fall Creek Road (a public road under the jurisdiction of Teton County); Mosquito Creek Road (a public road under the jurisdiction of the United States Forest Service); and Smoky Hollow Road (a private road).
8. No agreement exists between the owners of properties accessed by Smoky Hollow Road for management of the private road.
9. No Special Services and Improvement District exists with authority to manage the Smoky Hollow Road.

Discussion of Related Development Applications and Appeals

10. Contestants previously appealed a decision by the Board dismissing two appeals by Contestants of decisions made by the Teton County, Wyoming Planning Director in 2015. Both of those appeals relate to and have legal significance to this appeal.
11. One of those appeals concerned whether a 2-unit non-subdivision PRD granted in 2006 to JCFT's predecessor in title (Tom and Eliza Chrystie, or "the Chrysties") continues to exist or terminated by its own terms in 2007. For a time, the 2006 PRD entitled the construction of an additional 10,000 square feet of residential housing on JCFT's 59.s acres, which could be divided into a second principle residence a second guest house in addition to the Chrystie's principal residence and original guest house. Contestants claimed in their 2015 appeal to the Board that the

PRD expired in 2007 by its own terms. JCFT and the County Planning Department claimed otherwise, and they continue to maintain that position relative to ADJ2016-0007. The Board dismissed Contestants' appeal in October, 2015 for lack of standing. Contestants appealed the Board's dismissal decision to the Ninth Judicial District Court. In August, 2016, the District Court upheld the Board's dismissal. Contestants have appealed the District Court's decision to the Wyoming Supreme Court.

12. The other decision referred to in paragraph 10 above was a Zoning Compliance Verification decision issued by the Teton County Planning Director and Teton County Deputy County Attorney in April, 2015, stating that a 6-acre parcel of land purportedly created by the Chrysties in 2007 within the 59.2-acre parcel was legally created and entitled to the base Rural zoning entitlement of 10,000 square feet of residential housing, which could be divided into a principle residence a separate guest house. Contestants claimed in their 2015 appeal to the Board that the process by which the Chrysties purportedly created the 6-acre parcel was illegal and thus the parcel does not legally exist. The County Planning Director continues to maintain that the 6-acre parcel legally exists relative to the analysis made in ADJ2016-0007. The Board dismissed Contestants' appeal in October, 2015 for lack of standing and failure to timely file the appeal. Contestants appealed that decision to the Ninth Judicial District Court. In August, 2016, the District Court upheld the Board's dismissal. Contestants have appealed the District Court's decision to the Wyoming Supreme Court.

13. The legal existence of the 2006 PRD and the 2007 6-acre parcel remain unresolved. Yet the County Engineer's decision incorrectly assumes that both continue to exist.

Background and Basis for this Appeal

14. In March, 2016, JCFT filed an application with the County Planning Director for a 2-unit non-subdivision PRD on 53.2 of its 59.2-acres of land. That application, which has not been decided by the County Planning Director, is designated DOP2016-0003, and would entitle JCFT to construct 10,000 square feet of residential housing, which could be divided into a principle residence a separate guest house.

15. One condition precedent for approval of DOP2016-0003 is that JCFT must address the fact that Smoky Hollow Road fails to meet County Road Standards for width, grade and curve

turning radius. There were three possible ways for JCFT to address the Road Standards deficiency. One would be to agree to construct the road to County Road Standards. Another would be to seek a formal variance from the Board. The third would be to seek an exception to road standards from the County Engineer.

16. JCFT chose the third option and in March, 2016, filed an application with the Teton County Engineer seeking exception to all three County Road Standards for which the road is deficient. The application was designated ADJ2016-0007.

17. On September 30, 2016, Contestants' counsel submitted a formal comment letter to the County Engineer opposing JCFT's request for the road exceptions in ADJ2016-0007. Among other bases for opposing JCFT's road exceptions request, Contestants' submitted a November 30, 2015 report by Jorgensen Engineering ("the Jorgensen Report"), which had been prepared at Contestants' request in response to two other road exception requests that JCFT had proposed to the County Engineer in 2015.¹ The Jorgensen Report pointed out, among other things, that no detailed analysis of the economic costs and the impacts to natural resources from bringing the road to County standards had ever been completed. That continues to be a fact, and as discussed later is a primary reason that ADJ2016-0007 should be reversed by the Board.

18. On October 10, 2016, the County Engineer issued the decision in ADJ2016-0007, which is attached as Exhibit 1.

Legal Basis for the Appeal

19. The County Engineer's decision in ADJ2016-0007 is arbitrary, capricious and not otherwise in compliance with the law because it violates the standards set forth in County LDR § 8.8.1 and County LDR §7.6.5.C.2.

20. Specifically, LDR §7.6.5.C.2 requires the County Engineer to consider ten minimum criteria when making a road standards exception decision. The criteria are presented in order below, together with discussion about deficiencies in the County Engineer's decision

¹ Those two road exception requests (ADJ2015-0008 and 2015-0009) were conditions precedent to approval of two development applications that JCFT submitted to the Board in 2015 (i.e. DEV2015-0003 and DEV2015-0006). Those development applications and the related road exception requests were denied and/or withdrawn by JCFT in June, 2016.

document:

- a. Potential Land Uses and traffic volumes to be served by the road at build-out (LDR §7.6.5.C.2.a). The County Engineer's decision relied on erroneous land use information provided by the County Planning Department, in violation of LDR §7.6.5.C.2.a. Specifically, the Planning Department characterized the 6-acre parcel as being a legal parcel with full development potential, and characterized the 53-acres proposed for DOP2016-0003 as already being subject to a 2-unit non-subdivision PRD. Neither characterization is correct. Both these issues are disputed by Contestants and on appeal to the Wyoming Supreme Court.
- b. Compatibility with adjacent roadway sections (LDR §7.6.5.C.2.b). The County Engineer's decision document erroneously states that Smoky Hollow Road "is compatible with adjacent roadways." Smoky Hollow Road is not compatible with the adjacent U.S. Forest Service's Mosquito Creek Road. The two roads intersect at a very high skew angle (~75 degrees from perpendicular) creating a situation where a downhill motorist must turn their head significantly over their right shoulder to see eastbound vehicles on Mosquito Creek Road. The ASHTO standard for when such an intersection exists is to require signage alerting a motorist of the skewed intersection and requiring them to either yield or stop. The County Engineer's decision fails to identify this defect in the road or propose an enforceable solution.
- c. Effect on non-motorized facility users (LDR §7.6.5.C.2.c). The County Engineer's decision document fails to address the effects of the road exceptions on the safety of persons who walk on Smoky Hollow Road. The decision simply assumes that this is not an issue stating "Not a significant discussion item on this application." No basis for ignoring foot traffic on Smoky Hollow Road is given. There is no indication whether the County Engineer polled the residents of properties served by Smoky Hollow Road to determine the frequency of foot use of the road and whether pedestrians have had unsafe experiences interacting with vehicles while using the road on foot.

- d. Cumulative effect if an exception to more than one standard is requested (LDR §7.6.5.C.2.d). This portion of the County Engineer's decision document states "With the combination of reductions to standards, there is a safety concern. However, existing and proposed mitigating measures can ease the concerns." One overriding requirement for the County Engineer to be able to grant an exception request (even with mitigation measures) is that the resulting condition "Will not pose a danger to the public health or safety." LDR §8.8.1.C.4 ("Findings"). The County Engineer's admission that the combined deficiency in County Road Standards is a "safety concern" that can be eased by mitigation measures is an admission that the County Engineer's decision results in a danger to public safety, contrary to the requirements of LDR §8.8.1.C.4.
- e. Effect of the exception on the safety of residents, motorists and non-motorists (LDR §7.6.5.C.2.e). This portion of the County Engineer's decision document fails to address all aspects of the exceptions request on the safety of residents, motorists and non-motorists. Instead, two brief paragraphs discussing guardrail are presented, along with an unsupported and vague, unsupported, conclusory statement that the mitigation measures required by the decision will "improve safety of the road." Again, the requirement of LDR §8.8.1.C.4 that grant of an exception will not pose a danger to the public health or safety is not met.
- f. Effect on level of service (LDR §7.6.5.C.2.f). The County Engineer's decision document states that this criterion is not applicable to rural roads of this nature, without explaining why.
- g. Accident data (LDR §7.6.5.C.2.g). The County Engineer's decision document states that "No data is available." There is no indication whether the County Engineer polled the residents of properties served by Smoky Hollow Road to determine if accident data is available, and if it were available, what the data indicate and whether same would have any bearing on a decision to approve the requested exceptions or employ further mitigation measures.
- h. Protection of resources regulated pursuant to Article III (LDR §7.6.5.C.2.h). In this

portion of the County Engineer's decision document, the County Engineer states - without any objective basis of support - that "significant impacts to resources is unavoidable if the road is required to meet all standards." No objective data is presented to support this statement.² A September 27, 2016 "MEMO" from County Planner Roby Hurley concerning JCFT's ADJ2016-0007 application is attached to the County Engineer's decision memo and relied on by the County Engineer to support the ADJ2016-0007 decision. That MEMO states that bringing the road to County Road Standards would "result in impacts to vegetation and wildlife habitat, but those impacts would likely occur within the immediate vicinity of the existing roadway." No objective data is presented by the Planner to support this conclusory statement. The Planner's MEMO goes on to *admit* (again without any objective data cited) that "it is unlikely that improving the road would result in any additional negative impacts on moose beyond those that result from the road bisecting the property in its current state." The Planner's MEMO continues "The sections of the road requiring widening and a decrease in grade are located in areas of slopes greater than 25% which are vegetated primarily with sagebrush and lodgepole pine. Disturbance of the hillside to make the improvements to the roadway may require approval of a Variance to steep slopes as well as an EA to identify and quantify impacts within the NRO and establish mitigation requirements." No objective data is presented to support these conclusions. There is no data or discussion regarding (i) the amount or location of slopes exceeding 25% that would be impacted; (ii) the amount of acreage along the road's reach that would be disturbed by cut and fill to bring the road to County Road Standards; (iii) the amount and type of vegetation that would be altered, and (iv) the likely effects on wildlife or other protected resources that would result if the road were brought to County standards. The Planner's reference to a Variance is erroneous, as Smoky Hollow Road is deemed "essential access" under County LDR § 5.4.1.A. In summary, this section presents nothing but arbitrary, capricious and conclusory statements in search of a

² Note - this section of the County Engineer's decision document refers to comments submitted on ADJ2016-0007 by the Teton County Conservation District. Yet no such comments are attached to the County Engineer's decision document

predetermined result. Neither County Engineer not the County Planners have done an adequate analysis of matters required to be analyzed to support the ADJ2016-0007 decision.

- i. Potential mitigation measures to address excepted standards or regulations (LDR §7.6.5.C.2.i). This section of the County Engineer's decision document identifies - but does not discuss the merits of - a few new token mitigation measures purported to "ease" (but not eliminate) safety concerns on Smoky Hollow Road. Of the 5 mitigation measures proposed by JCFT, only one (addition of a turnout at the top of the road at the switchback) has any meaningful merit in reducing safety concerns. The others are all fluff and one - - compliance with an automatic sprinkling requirement imposed by the County Fire Marshall for all certificates of occupancy - - will result in costs to the Contestants when they apply to remodel their residential structures in the future. Of the three *new* mitigation measures proposed by the County Engineer, (1) erection of the "No Parking" sign on Mosquito Creek Road west of the intersection with Smoky Hollow Road is not within the power of either JCFT or Teton County to implement or enforce, and so it should be deemed a nullity in terms of increasing safety; (2) placement of guardrail "on the downhill portion of the steep hillside" is too vague to be meaningful and as a result is arbitrary;³ and (3) the requirement to maintain the road's surface to provide all-weather driving capabilities simply continues what has been the historical road surface maintenance for Smoky Hollow Road. The paltry, non-binding mitigation measures in the County Engineer's decision mean that Smoky Hollow Road will continue to present a danger to public safety, contrary to the requirements of LDR § 8.8.1.C.4.
- j. Comparative cost of the required standards or regulations versus the exception requested (LDR §7.6.5.C.2.j). Under this criterion, the County Engineer's decision

³ When asked in an October 17, 2016 email where guardrail would be required, the County Engineer's office replied "anywhere on the side slope area from Mosquito Creek to the top that is determined to need it with the design to be approved by the County Engineer." It is clear that no concrete, binding decision has been made about a very important safety mitigation measure – installation of guardrail. And yet JCFT is being approved for exceptions to three important County Road standards.

document simply states “The construction required to bring the road into compliance would be relatively costly. Significant retaining walls would be required.” No objective data or analysis is provided to support these useless, conclusory statements. The decision document fails to identify, describe and discuss the costs of bringing the road to County Road Standards, and fails to identify, describe and discuss the costs of implementing the proposed mitigation measures. And due to the lack those datum, there is no *comparison* of the costs of either alternative. This clearly violates County LDR §7.6.5.C.2.j. The County Engineer’s conclusions under this criterion are clearly arbitrary and capricious given the fact that JCFT has provided the County Planning Department detailed engineering information showing that the Road can in fact be brought entirely into compliance with County Road Standards. That detailed engineering information is present in Grading and Excavation Permit GEC2016-0126, which JCFT submitted to the County Planning Department on August 19, 2016.⁴ And though the County Planner and County Engineer are entirely aware that this information exists, the information was not used (or its existence even acknowledged) in the County Engineer’s decision document, or in the September 27, 2016 “MEMO” from County Planner Roby Hurley concerning JCFT’s ADJ2016-0007 application, upon which the County Engineer’s decision relies. In short, the County has in its possession detailed engineering information showing how Smoky Hollow Road can be brought to County Road Standards, and yet he did not use this information to evaluate the “comparative cost of the required standards or regulations versus the exception requested” as required by LDR §7.6.5.C.2.j.

21. Another independent and fundamental condition precedent to the County Engineer approving an administrative adjustment (which this ADJ2016-0007 decision is) is that the road exceptions “will not pose a danger to the public health or safety.” LDR § 8.8.1.C.4. For the reasons discussed above, the County Engineer’s decision does result in danger to the public’s safety. The dangers are further illuminated in comments of the County Fire Marshall, Kathy Clay, on JCFT’s application, which are attached to the County Engineer’s decision document. In regard to the narrowness of the road, Ms. Clay states:

⁴ Contestants incorporate the content of JCFT’s GEC2016-0126 application into this Petition for purposes of this appeal, and request that the Board take formal administrative notice of same pursuant to Section 1.E of the Board’s Rules for Contested Case Practice and Procedure.

“ . . . the 14 foot road is unacceptable in the event of emergency operations, given a wildland or structure fire. Two fire apparatus meeting each other on a road of this width offers significant hazards, especially in a winter setting in response to a structure fire. The nearest water source would be the Mosquito Creek dry hydrant. Given the event of a winter time structure fire scenario, 3000 gallon water tenders would be travelling to and from the property for water deliver with a very good chance of meeting somewhere down this road in a tender shuttle effort.

In regard to the 75 foot turning radius of the switchback curve at the top of Smokey Hollow Road, Ms. Clay states:

“ . . . especially in a winter time, snow-covered road scenario, this radii would require stopping and backing for engines and tenders in the event of response to structure fire. In the wildland scenario, engines would be tasked to prepare and protect each structure. Given time and a managed traffic ingress/egress system for the road, this radius could most likely be maneuvered.

And concerning the road's steep grade, Ms. Clay states:

“Steep grades offer further challenges on narrow roadways. Fire engines, tenders, and wildland brush trucks are heavy and wide. Managing traffic for a wildland fire scenario would be paramount for this road. Given the current grade status, emergency response in the winter may be delayed in response if sand trucks are needed to prepare a safe surface for travel.”

All the dangers Ms. Clay speaks of will be present if JCFT's road exception is approved. For all the foregoing reasons, the County Engineer's decision poses a danger to public safety in contravention of LDR § 8.8.1.C.4.

22. Another independent and fundamental condition precedent to the County Engineer approving an administrative adjustment is that “the site is not subject to a series of incremental administrative adjustments that circumvent the purpose of this Section.” LDR § 8.8.1.C.5. The County Engineer's decision document does not address this requirement, but the September 27, 2016 “MEMO” from County Planner Roby Hurley, which is attached to the County Engineer's decision and relied on by the County Engineer in the ADJ2016-0007 approval decision, does address this criterion. However, the County Planner's analysis of this criterion completely misses the mark. The Planner states that LDR § 8.8.1.C.5 is met because JCFT's three prior requests for road exceptions were withdrawn or denied by the Board. The Planner completely fails to note that Smoky Hollow Road and the properties it serves (“the site”) were subject to three variances in the 1980's (for road width and grade) when the S & S Subdivision was platted, and that County

Planning Staff recommended then that no further residential development be allowed on the plateau accessed by Smoky Hollow Road “because the access is truly substandard” and “because of safety.” VAR1988-0020, VAR1988-0021 and VAR1989-0002. JCFT’s failed attempts in the past year to procure exceptions to the same three deficient County Road Standards in the context of denied development applications is not the correct metric for measurement under this LDR section. The correct metric is the three variances granted in the late 1980’s. This “site” has in fact been subject to a series of incremental administrative adjustments, and this road exception request is simply another in that series which - if approved - will result in continued danger to public safety, contrary to the requirements of LDR § 8.8.1.C.4, and in circumvention of the purpose of Section 8.8.1.

23. For the foregoing reasons, the County Engineer has failed to comply with his mandate under County LDRs §7.6.5.C.2 and LDRs §§ 8.8.1.C.4 and 8.8.1.C.5. His decision is arbitrary, capricious and not otherwise in accord with the law.

24. Contestants reserve the right to raise factual and/or legal issues not set forth herein should such new facts and/or legal issues become apparent after this Petition.

WHEREFORE, for the foregoing reasons, Contestant’s respectfully request that the Board reverse the County Engineer’s decision in ADJ2016-0007.

Dated this 10th day of November, 2016.



R. Scott Garland (Attorney No. 5-2348)
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(307) 733-0661
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Attorney for Contestants

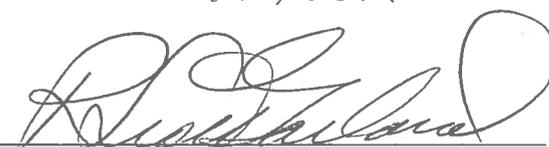
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served upon the following person(s) by the method(s) indicated below.

Erin Weisman
Deputy County Attorney
Teton County, Wyoming
P.O. Box 4068
Jackson, WY 83001
307-733-2867 (fax)
eweisman@wyoming.com
Attorney for Contestee

- First Class U.S. Mail
- Telefax Only
- Hand Delivery
- Overnight Courier
- Email
- Other

Date: November 10, 2016

By: 

PLANNING & DEVELOPMENT



MEMO

Planning Division
ph 307.733.3959
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Building Division
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200 South Willow
P.O. Box 1727
Jackson, WY 83001

To: Amy Ramage, Engineering Manager
CC: Sean O'Malley, County Engineer
From: Roby Hurley, Principal Planner
Date: September 27, 2016
Subject: Recommendations for Administrative Adjustment Requesting a Roadway Exception for a 2-Unit Non-Subdivision Planned Residential Development for JCFT Wyoming Real Estate, LLC (ADJ2016-0007)

Planning has reviewed the above roadway standards exception request, pursuant to *Section 7.6.4, Street and Road Standards* of the Teton County Land Development Regulations, and pursuant to the procedure outlined in *Section 8.8.1, Administrative Adjustment*. Planning's review is limited to consideration of criterion #a, #c, and #h of *Subsection 7.6.4.C.2* and to the findings in *Subsection 8.8.1.C*.

The applicant is seeking approval of a roadway exception request in conjunction with an existing 2-unit non-subdivision Planned Residential Development (PRD) on 53.2 acres owned by JCFT Wyoming Real Estate, LLC. The subject property is located at 5425 W Smoky Hollow Road. The applicant has applied for a Development Option Plan (DOP2016-0003) to confirm the existing PRD, being reviewed separately. A Development Option Plan is an administrative review subject to a decision by the Planning Director.

The subject development is located on Smoky Hollow Road, which in its existing condition, fails to comply with several of the street and road standards required by Section 7.6.4 of the Teton County Land Development Regulations (LDRs). According to the exception request under consideration at this time, the applicant is seeking a reduction in the required roadway width from 20 feet to 14 feet for a minor local road, for approximately 1,625 linear feet of road. The application also requests an exception to the minimum turning radius to allow for an existing switchback with a turning radius of 75 feet where a minimum turning radius of 100 feet is required. Finally, the application seeks an exception to the maximum grade of a minor local road in mountainous terrain with a design speed of 15 miles per hour (mph). Two stretches of Smoky Hollow Road exceed the maximum 10% grade—a 610-foot stretch of roadway with an existing grade of 12.6% and a 605-foot stretch of roadway with an existing grade of 11.0%.

Criteria #a: Potential land uses and traffic volumes to be served by the road at build-out

Staff identified seven properties that either already have access, or could potentially take access, from Smoky Hollow Road. Those properties include the following:

Ref #	PIDN	Lot or Parcel Size	Zoning as of sufficiency (March 24, 2016)	Zoning as of (4/1/2016)	Current Land Use
1	22-40-17-10-2-00-002	53.2 acres	Rural	R-2	2-unit nonsubdivision PRD w/ 2 SFDs and 1 ARU (Active DOP review)
2	22-40-17-10-2-00-003	6 acres	Rural	R-2	Detached single-family residential Vacant
3	22-40-17-10-2-02-001	7.5 acres	NC-SF	R-2	Detached single-family residential w/ 1 SFD and 1 ARU
4	22-40-17-10-2-02-002	7.5 acres	NC-SF	R-2	Detached single-family residential w/ 1 SFD and 1 ARU
5	22-40-17-03-3-00-020	35.27 acres	Rural	R-1	Detached single-family residential w/ 1 SFD
6	22-40-17-03-3-00-019	35.1 acres	Rural	R-1	Vacant; conservation easement
7	22-40-17-03-3-00-021	39.33 acres	Rural	R-1	Vacant

Identification of properties served by Smoky Hollow Road was made using information available in the Teton County GIS, and this analysis may not reflect easements or agreements not depicted on the GIS that could only be identified through a full title search on each property. These seven properties exclude a 1-acre property owned by the Jackson Hole Land Trust, which is associated with a conservation easement on PIDN 22-40-17-03-3-00-19. These 1-acre parcels are commonly known as "trust parcels" and are not generally developable. Each property has been assigned a number for reference in this analysis and discussion.

As identified in the table above new zoning regulations became effective April 1, 2016. The Development Option Plan that is associated with this application was submitted March 24, 2016 and found sufficient on March 24, 2016 making the applications eligible to use either the LDRs current at the time (1/1/2015) or the pending LDRs, effective April 1, 2016. The applicant requested review under the 1/1/2015 LDRs. Authority to use the 1/1/2015 LDRs, even after settlement of appeal was verified in a letter from the Planning Director dated July 7, 2016.

Determination of potential land uses and traffic volumes served by the road at build-out requires an evaluation of the additional physical development, use, subdivision or development option potential available to each lot or parcel under the current LDRs and based on the applicable zoning designation. The table below was prepared based on the Teton County LDRs effective January 1, 2015, which are the LDRs in effect at the time of sufficiency of this Administrative Adjustment Request.

Ref #	Potential Land Uses and Build-Out Discussion Based on Current LDRs
1	1 ARU could be permitted under current approval, provided it is not built on Property 2. Potential uses include a variety of primary or accessory nonresidential uses detailed in Section 3.2.3.C of the LDRs. No by-right subdivision potential. Max units at build-out: 2 SFDs and 2 ARUs

2	<p>One single family dwelling unit and 1 ARU could be permitted under current approval, provided it is not built on Property 1. Due to minimum site area requirements, potential uses are limited to home uses accessory to residential use. No subdivision or development option potential.</p> <p>Max units at build-out: 1 SFD and 1 ARU</p>
3	<p>No additional dwelling units could be permitted. Home uses such as home occupations, business or daycare could be allowed accessory to residential use.</p> <p>Max units at build-out: 1 SFD and 1 ARU</p>
4	<p>No additional dwelling units could be permitted. Home uses such as home occupations, business or daycare could be allowed accessory to residential use.</p> <p>Max units at build-out: 1 SFD and 1 ARU</p>
5	<p>3 ARUs could be permitted. Potential uses include a variety of primary or accessory nonresidential uses detailed in Section 3.2.2.C of the LDRs. No by-right subdivision potential. May be eligible for a Floor Area Option to increase allowed density to 4units.</p> <p>Max units at build-out: 1 SFDs and 3 ARUs</p>
6	<p>1 SFD and 3 ARUs could be permitted. Potential uses include a variety of primary or accessory nonresidential uses detailed in Section 3.2.2.C of the LDRs. No by-right subdivision potential. May be eligible for a Floor Area Option to increase allowed density to 4 units</p> <p>Max units at build-out: 1 SFDs and 3 ARUs</p>
7	<p>1 SFD and 3 ARUs could be permitted. Potential uses include a variety of primary or accessory nonresidential uses detailed in Section 3.2.2.C of the LDRs. No by-right subdivision potential. May be eligible for a Floor Area Option to increase allowed density to 4 units</p> <p>Max units at build-out: 1 SFDs and 3 ARUs</p>

The LDRs assign main homes an ADT of 9.5. ARUs are evaluated as apartments and are assigned an ADT of 6.7. The current DOP proposal, if approved, would effectively confirm the existing 2-unit non-subdivision PRD which includes only Property 1. Based on the projections and caveats outlined by staff above, a total of 9 single-family dwellings, and 14 ARUs, could eventually be served by Smoky Hollow Road for a total ADT of 179.3 at build-out.

The applicant notes that the current proposal is for a new DOP that would replicate existing conditions. The land uses and density permitted under the current LDRs would not change.

If the requested exception is granted, a condition of approval should require a new roadway exception application if additional density, use or subdivision beyond that reflected in the current PRD application (DOP2016-0003) is proposed in the future.

Planning Staff also noted the application does not address Road Location within Easement, Section 7.6.4.N.11, requiring an area of 8 feet from the roadway to edge of easement, presumable to allow for snow storage. As this is an Engineering Standard, the Planning Department has no comment on exempting this standard.

Criteria #c: Effect on non-motorized facility users

There are no specific pedestrian or non-motorized user facilities such as sidewalks or pathways associated with this road. The requested exception proposes no changes to the existing conditions, other than additional signage and a turnout to facilitate vehicles passing, which might improve conditions for all users.

Criteria #h: Protection of resources regulated pursuant to Article III*(Natural and Scenic Resources)

*LDR reference to Article III is a reference to a previous version of the LDRs and is an error. The standards formerly contained in Article III are now located in Divisions 5.1 and 5.2.

The subject roadway falls within the Natural Resources Overlay (NRO). An Environmental Analysis (EA) of the PRD parcels was prepared as part of the application for the PRD in 2004. The EA was updated in 2015 in conjunction with a separate application for a 3-unit subdivision PRD on the same subject property. Finally, a Zoning Compliance Verification (ZCV2016-0005) for Environmental Standards review was conducted and a review memo dated March 14, 2016 concurred with the conclusions drawn in the ZCV, that standards for exemption were met. The 2015 EA Update determined that the parcel serves as crucial winter range for moose and non-crucial spring-summer-fall habitat for elk. Crucial moose winter range is identified as essential to protect in Section 5.2.1 of the LDRs. In order to bring the road up to standards, the grade of the existing road would need to be decreased and the width and turning radius of the road would need to be increased. These improvements would result in impacts to vegetation and wildlife habitat, but those impacts would likely occur within the immediate vicinity of the existing roadway. It is unlikely that improving the road would result in any additional negative impacts on moose beyond those that result from the road bisecting the property in its current state. The sections of the road requiring widening and a decrease in grade are located in areas of slopes greater than 25% which are vegetated primarily with sagebrush and lodgepole pine. Disturbance of the hillside to make improvements to the roadway may require approval of a Variance to steep slopes as well as an EA to identify and quantify impacts within the NRO and establish mitigation requirements.

Findings

Subsection 8.8.1.C outlines the findings necessary for approval of an Administrative Adjustment by the County Engineer. Planning staff's recommendations regarding the required findings are as follows:

1. *Complies with the applicability standards of this Section.*

The standard is met. Pursuant to Section 8.8.1.A., street and road standards may be adjusted.

2. *Either:*

- a. *Compensates for some unusual constraint of the site or proposal that is not shared by landowners generally; or*
- b. *Better protects natural or scenic resources; or*
- c. *Better supports the purpose of the zone.*

The standard is met. Granting the full exception request, or granting a partial exception, helps protect natural resources and supports the purpose of the zone by minimizing roadway disturbance and development in a rural area on NRO lands.

3. *Is consistent with the purpose of the zone and the desired future character for the area described in the Comprehensive Plan.*

The standard is met. The properties served by Smoky Hollow Road are zoned R-1 and R-2 and are located in Character District 15: County Periphery. The desired future character is for the area to remain rural in character with a focus on preservation of wildlife habitat and movement corridors, while respecting private property rights. Granting of the requested exceptions would minimize the need for additional impacts to NRO lands and wildlife habitat and is consistent with the purpose of the zone and the future character.

4. *Will not pose a danger to the public health or safety.*

To be determined by the County Engineer.

5. *The site is not subject to a series of incremental administrative adjustments that would circumvent the purpose of this Section.*

The standard is met. There have been three prior requests for administrative adjustments for relief from roadway standards on this road. All three Administrative Adjustments, ADJ2015-0002, ADJ2015-0008 and ADJ2015-0009, were rendered moot by withdrawal or denial of the Development Plan application with which they were associated.

Should the County Engineer elect to recommend approval of the Administrative Adjustment (ADJ2016-0007), as presented by the applicant, Planning Staff recommends the following condition:

1. The Administrative Adjustment exception request is approved only for the proposal in the current Development Option Plan application, DOP2016-0003. Should additional density, use or subdivision beyond that reflected in the current application be proposed, re-evaluation of compliance of the roadway shall be required, and a new application for an Administrative Adjustment or Variance may be necessary.



MEMO

TO: Sean O'Malley, Teton County Engineer
FROM: Kathy Clay, Fire Marshal
DATE: February 25, 2015
SUBJECT: Smoky Hollow Road Exception Request
ADJ2015-0002

In review of the road exception request for the Smoky Hollow Road located just off Mosquito Creek Road off of Fall Creek Road, I offer the following comments.

Roads provide access for emergency vehicles in the event of a medical or fire emergency. A fire in this area might be a structure fire or it might be a wildland fire.

In Teton County, developments such as the Smoky Hollow development pose significant challenges to fire department response. The adopted 2012 version of the International Fire Code with local ordinance language requires a road serving more than two dwellings to be a fire department access road (see 2012 Fire Code Resolution, Chapter 4. 403.2.3 and Teton County Fire Protection Resolution for New Subdivisions, Section 1.5). Whether the development is a legal subdivision or whether it is not, clearly the Smoky Hollow Road serves more than two lots. For the safety of the residents this road serves and for the safety of the emergency responders asked to navigate this road, a fire department access road with proper width, grade, turnouts, and fire department turnarounds would be called out by code and by local ordinance.

The intent of the code is to protect life and property. With WUI defensible space mitigation and the installation of fire sprinklers inside of residential structures, the ability to slow fires down – be they external wildland fires or internal structure fires – enhances the

safe fire response by slowing response down. Fire officials will often “trade” fire sprinklers in structures for compromised fire department access. The possibility that interior fire sprinklers might slow down or suppress an internal structure fire which could help prevent a wildland fire is a consideration as well.

In response to the applicant’s request, the current 14 foot road is unacceptable in the event of emergency operations, given a wildland or structure fire. Two fire apparatus meeting each other on a road of this width offers significant hazards, especially in a winter setting in response to a structure fire. The nearest water source would be the Mosquito Creek dry hydrant. Given the event of a winter time structure fire scenario, 3000 gallon water tenders would be traveling to and from the property for water delivery with a very good chance of meeting somewhere down this road in a tender shuttle effort.

In the effort to protect life and property, one would assume cars and smaller vehicles could successfully negotiate the current switchback turning radius of 75 feet. However, and especially in a winter time, snow-covered road scenario, this radii would require stopping and backing for engines and tenders in the event of response to structure fire. In the wildland scenario, engines would be tasked to prepare and protect each structure. Given time and a managed traffic ingress/egress system for the road, this radius could most likely be maneuvered.

Steep grades offer further challenges on narrow roadways. Fire engines, tenders, and wildland brush trucks are heavy and wide. Managing traffic for a wildland fire scenario would be paramount for this road. Given the current grade status, emergency response in the winter may be delayed in response if sand trucks are needed to prepare a safe surface for travel.

In conclusion, there is arguable reason for the exception request. Cost verses environmental impact verses risk of structure or wildland fires must be weighed. The following are my recommendations should the exception be granted:

1. Area served by Smoky Hollow shall be preincident planned for possible medical, structure fire or wildland fire response. Plan is provided to all properties served by the road and included within the Jackson Hole Fire/EMS preincident planning records.
2. All structures shall be built following IWUC using minimum Ignition Resistant Construction 2 or higher and shall have interior fire sprinklers should there be occupancy within the structure, no matter square footage footprint.

3. Roads shall be surfaced, and treated when necessary, to provide all-weather driving capabilities.
4. Encourage all property owners off the Smoky Hollow Road to provide safe, defensible spaces around homes and structures for safe operations in the event of a wildland fire.

Please feel free to contact me if you have any further questions at 307-733-4732 or kclay@tetonwyo.org .