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Valley Advocates for Responsible Development

COMPLAINT

Teton County BOCC
89 North Main Street
Driggs, Idaho 83422

Valley Advocates for Responsible Development (VARD) hereby requests that Teton County take the appropriate steps to address the skylining and ridgeline problem created by the location of building envelopes recorded for Spring Hollow Ranch Subdivision (Spring Hollow).

The only house currently built in this subdivision (lot 6, phase 1) is visible from almost the entire valley. (*See Attachment A.*) This 8,877 square-foot house is so perfectly placed high up on the ridge that it manages to obstruct the views of the Teton Mountains from almost every angle of the scenic corridor, and is immediately visible as you pass into the northern “gateway” of Teton Valley.

Time is of the essence in dealing with this problem because several other building envelopes in phase 1 are also perfectly placed on the highest ridges of the lots and may soon be built upon, thus exacerbating the skylining and ridgeline problem. For example, the location of the recorded building envelopes of lots 4, 7, 8, 9, and 21 are all located on the highest pinnacles of land on the property, and directly face the scenic corridor. If built upon, these homes will also be visible from every corner of the valley. (*See Attachments B and C.*)

Background Facts.

Spring Hollow (phases 1 and 2) is a 50-unit subdivision located on 800 acres off 300 West. The property includes the hills to the north of Tetonia, and the topography encompasses steep ridges separated by deep draws. In layman's terms, it is the subdivision with the large new house on top of the ridge just north of Tetonia, which you can see from almost every end of this valley.

When Spring Hollow came through the county subdivision approvals process, the slopes and location of building envelopes were of concern to both the Planning & Zoning Commission (P&Z) and the Board of County Commissioners. (BOCC). At the January 10, 2006 concept hearing, project engineer Arnold Woolstenhulme give this representation of Spring Hollow:

I won't say a high-end project, but a very nice project. A very good scale project. **2,500 square foot homes** with garage and storage space We have selected a site for each home and we're looking at putting about **a 200 by 200 square building envelope area** that will be shown on the preliminary plat and will be shown as an exhibit in our covenants and conditions when we file our final plat as a building envelope area.¹

P&Z still expressed concern regarding the potential for this project to have homes on the ridgeline to which Mr. Woolstenhulme responded:

¹ Transcribed from the official Teton County hearing tape from concept hearing for Spring Hollow Ranch Phase 1 before the Planning & Zoning Commission, January 10, 2006. (Emphasis added.)

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The roads I have seen and where I've driven it is (sic) not on the steep slope. It is back behind. Invisible. **The building envelopes I've seen I don't think are going to be an issue.**²

Then, at the April 11, 2006 preliminary plat hearing, Mr. Woolstenhulme gave the following assurances regarding building envelopes:

We did have revised (sic) the roads a little bit from the original plat we submitted at concept after laying them out exactly on the ridge and surveying them in to see how they were viewed from below and how they were accessible to the lots. So this made a much better plan to have in hand, and it was **very thoroughly scrutinized** by the owners as far as what those lots . . . where those building envelopes are **Surveyed two or three times to know the location and to feel comfortable with them.** . . . So I think that we have a good plan here. The owners have are very comfortable with their building envelopes and the plan that we have.³

At the June 12, 2006 final plat hearing for phase 1, Commissioner Jay Calderwood commented on the steep slopes and location of building envelopes. This was Mr. Woolstenhulme's response:

The circles are the building envelopes. Dan spent a lot of time locating them. **And they are not on the steep slopes. And they're not really on the crown of the hills. They're hidden.** They are very nice spots and we spent a great deal of time locating them.⁴

Based on this assurance that the building envelopes were located to protect views and sit into the hillside, the BOCC granted subdivision approvals for phase 1.

² Transcribed from the official Teton County hearing tape from concept hearing for Spring Hollow Ranch Phase 1 before the Planning & Zoning Commission, January 10, 2006. (Emphasis added.)

³ Transcribed from the official Teton County hearing tape from the preliminary plat hearing for Spring Hollow Ranch Phase 1 before the Planning & Zoning Commission, April 11, 2006. (Emphasis added.)

⁴ Transcribed from the official Teton County hearing tape from final plat hearing for Spring Hollow Ranch Phase 1 before the Board of County Commissioners, June 12, 2006. (Emphasis added.)

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The phase 1 development agreement and the CCR's were recorded on August 18, 2006.⁵ Developer Richard Reilly signed the CCR's and the development agreement for Spring Hollow Ranch.

Lots 4, 6, 7, 8, 9, and 13 were subsequently sold, and each new lot owner assumed ownership "SUBJECT TO all easements, right of ways, covenants, restrictions, reservations, *applicable building and zoning ordinances and use regulation and restrictions* of record. . . ."⁶

In 2007, a spec home was built on lot 6 of phase 1, and that is the home we all see today. It has 8,877 feet of living space and the MLS listing advertises: "This home on the hill was built for living, entertaining, and impressing."⁷ (*See Attachment E.*)

The phase 2 development agreement and CCR's were recorded on October 24, 2007 and September 13, 2007 respectively. Richard Reilly signed as the developer for Spring Hollow Ranch.⁸

⁵ See instrument 179572 dated August 18, 2006.

⁶ See instrument 191988 dated September 28, 2007; instrument 187870 dated May 23, 2007; instrument 184359 dated November 16, 2006; instrument 182883 dated November 17, 2006; instrument 181903 dated October 13, 2006; and instrument 180702 dated September 20, 2006 recorded at the Teton County recorders office. (Emphasis added.)

⁷ See Attachment E, the real estate listing for 788 Spirit Horse Trail, which is the house built on lot 6, phase 1 of Spring Hollow Ranch.

⁸ See instruments 192720 dated October 24, 2007 and 191804 dated September 21, 2007.

Enforcement Provisions in the Teton County Code.

There are several pertinent provisions in the Teton County Code (TCC) which vest authority with the Teton County officials to seek redress from the lot owners and developer:

- **Revocation By Board:** The Board may revoke a subdivision upon failure to comply with the conditions of approval of a final plat, *upon violation of any of the provisions of this title, or for misrepresentations or material omissions made to the Commission.* (TCC 9-3-5-B-4, Emphasis added.)
- **Ridgeline Development:** Development on the crest of a hill which has the potential to create a silhouette or other visual impact. (TCC 9-2-2.)
- **Appearance And Preservation:** Special consideration shall be given to the following land features:
 1. Skyline and ridge tops;
 6. Characteristic vistas and scenic panoramas. (TCC 9-6-4-A.)
- **Hillside Development Evaluation and Considerations:**
 5. Building Envelopes: To ensure building sites are identified;
 8. View: Consideration of the view from and of the hillside.
 9. Skyline Construction: Structures shall be constructed below the skyline. (TCC 9-6-4-B.)
- **Approval of Application:** All application (sic) for a building permit under this chapter shall be reviewed for approval by the county building official to ensure compliance with the International Building Code, as amended. Such application shall not be denied *unless it is in noncompliance with the required codes and ordinances of the county.* (TCC 6-7-3, Emphasis added.)
- **Vested Rights:** No person shall acquire any vested right to construct, alter, or maintain any building by virtue of money spent or work done prior to obtaining a building permit required by the terms of this chapter, and *shall not acquire any vested right to any building or land for any purpose whether such use is begun without first obtaining a building permit* required by the terms of this chapter. (TCC 6-7-6, Emphasis added.)

- **Penalty:** Any person violating any provision of this chapter shall upon conviction thereof, by (sic) subject to penalty as provided in section 1-4-1 of this code. (TCC 6-7-7.)
- **Enforcement:** The prosecuting attorney shall, in addition to taking whatever criminal action deemed necessary, take steps to civilly enjoin and violation of this title.” (TCC 9-12-1.)
- **Penalty:** Penalties for failure to comply with the provisions of this title shall be as follows:
 - A. **Misdemeanor:** Violation of any of the provisions of this title of (sic) failure to comply with any of its requirements shall constitute a misdemeanor.
 - B. **Separate Offense:** Each day such violation continues shall be considered a separate offense. The landowner, tenant, subdivider, public official or any other person who commits, participates in, assets (sic) in or maintains such violation may each be found guilty of a separate offense.
 - C. **Additional Remedies:** Nothing herein contained shall prevent the board or any other public official or private citizen from taking such unlawful action as is necessary to restrain or prevent any violation of this title or of the Idaho code.” (TCC 9-12-2.)
- **General Penalty:**
 - A. **Infraction:** Every offense declared to be an infraction is punishable only by a penalty not exceeding one hundred dollars (\$100.00) and no imprisonment.
 - B. **Misdemeanor:** Except in cases where a different punishment is prescribed by the ordinances of the county, every offense declared to be a misdemeanor is punishable by imprisonment in the county jail not to exceed six (6) months or by a fine not exceeding three hundred dollars (\$300.00), or by both such fine and imprisonment , and, in addition thereto, any person so convicted shall pay such costs as the court may assess. (TCC 1-4-1.)

Analysis.

Part 1: Material misrepresentations made to the commission.

The statements made by Mr. Woolstenhulme to both P&Z and the BOCC were materially misleading. Specifically, Mr. Woolstenhulme stated that the building envelopes were not on ridgetops or steep slopes. He also represented that this would be a modest subdivision with 200-foot square building envelopes, and the homes would be 2,500 square feet. (*See* pages 2-3 *supra*.) These statements induced the commission to grant subdivision approvals for Spring Hollow.

Looking at the plat Mr. Woolstenhulme presented to P&Z and the BOCC, (*See* Attachment D) two comments are appropriate: First, the building envelopes are located on some of the highest pinnacles of land on each lot, and are situated to be totally visible from the scenic corridor (i.e. lots 4 and 6.) Secondly, some of the building envelopes are located on very steep hillsides, traversing 40+ feet of elevation over an allegedly 250-foot wide building envelope (i.e. lots 2 and 3.)

Looking at the architectural and design standards in the CCR's and the type of house that was built in Spring Hollow, three comments are appropriate: First, the grandiose 8,877 square-foot house that was built on lot 6 flies in the face of Mr. Woolstenhulme's representations to the commission that this would be a modest development of 2,500 square-foot homes. Secondly, the CCR requirement of a 2,000 square-foot minimum (exclusive of garages, porches, patios, decks, and accessory structures) with no maximum square footage limitation is designed to

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encourage large homes easily in excess of 2,500 square feet.¹¹ Finally, the CCR's require building site location and home design approval from the site committee, which included the developer himself, Richard Reilly.¹² Thus, the CCR's explicitly required Mr. Reilly to authorize the location and the size of this 8,877 square-foot home sitting on the ridgetop of lot 6. As the developer of Spring Hollow, Mr. Reilly is not only bound by the representations and assertions made on his behalf during the approvals process, but should be aware of them, and even assented to them because he attended the hearings before P&Z and BOCC.

Part 2: The recorded building envelopes are vague and materially misleading.

Aside from the promises made by Mr. Woolstenhulme during the hearings and how they contrasted with what he physically presented to the commission, there still remains the issue of what building envelope sites he eventually recorded for Spring Hollow. Looking at the building envelopes recorded with instrument 179571 on August 18, 2006 at the Teton County recorder's office, (*See Attachment C*) three comments are appropriate: First, this is a different plat than what Mr. Woolstenhulme presented to the P&Z and BOCC, and the building envelopes are in different locations (i.e. the notorious lot 6.) Secondly, this plat indicates that each building envelope encompasses approximately 1.12 acres (250' diameter or 49,087.39 square feet) but the actual building envelopes illustrated on

¹¹ *See Covenants, Codes, and Restrictions for Spring Hollow Ranch, phases 1 and 2, page 9.*

¹² *See Covenants, Codes, and Restrictions for Spring Hollow Ranch, phases 1 and 2, pages 6-11.*

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the plat are obviously much larger than 1.12 acres. Finally, this attachment to the CCR's is the only recorded document depicting these much-discussed building envelopes, and yet it is only available as a tiny illegible plat. If you actually tried to read this plat, there are no meaningful details (such as topography lines) that would ever help you identify the true location of the building envelope, and it does not have the engineers' stamp as expressly required by I.C. § 54-1215.

Part 3: The recorded building envelopes violate provisions in Title 9.

The location of the building envelopes attached to the CCR's on instrument 179571 recorded August 18, 2006 at the Teton County recorder's office (*See Attachment C*) violate several provisions in Title 9. The building envelopes are placed on steep slopes and high pinnacles of land facing the highway, thus ensuring that any structure will be built above the skyline and obstruct scenic vistas of the Teton Mountains. This violates TCC 9-6-4-A and 9-6-4-B.

Part 4: There is no vested right to build in the recorded building envelopes.

Every lot owner who purchased a lot in Spring Hollow assumed ownership "SUBJECT TO all easements, right of ways, covenants, restrictions, reservations, *applicable building and zoning ordinances and use regulation and restrictions* of record. . . ." ¹³ The lot owners were given specific notice of this limitation on the face of their warranty deed when they purchased their lots in Spring Hollow.

¹³ See instrument 191988 dated September 28, 2007; instrument 187870 dated May 23, 2007; instrument 184359 dated November 16, 2006; instrument 182883 dated November 17, 2006; CC: Patrick Vaile and Kathy Spitzer

The lot owners cannot now claim a vested right to build in these recorded envelopes. TCC 6-7-6 makes it clear that there is no vested right to build on the lots of Spring Hollow for any purpose without first obtaining a building permit, but TCC 6-7-3 requires that an application for a building permit be in compliance with county ordinances before it is granted. There is no question that the recorded building envelopes of Spring Hollow violate Title 9 ordinances. Thus, there is no possibility of a building permit or a vested right to construct home until these lots are brought into compliance with county ordinances.

Options Available to the County.

According to the plain language of TCC, any of the following six (6) forms of relief are available to Teton County.

1. Revoke the subdivision approvals for Spring Hollow Ranch pursuant to 9-3-5-B-4.
2. Require the house built on lot 6 of phase 1 to be relocated in order to not obstruct skyline views pursuant to 9-12-2-C.
3. Require vegetation screening to soften the appearance of the house built on lot 6 of phase 1, pursuant to 9-12-2-C.
4. *Except* for lot 6 phase 1 which is already built, require that all remaining building envelopes in both phases be relocated in order to not obstruct skyline views pursuant to 9-12-2-C.
5. Until the building envelopes are relocated to less obstructive locations, withhold county building permits pursuant to 6-7-6.
6. Pursue penalties against the lot owners and developers pursuant to 1-4-1, 9-12-1, and 9-12-2.

instrument 181903 dated October 13, 2006; and instrument 180702 dated September 20, 2006 recorded at the Teton County recorders office. (Emphasis added.)

Request for Relief.

It is well within the county's authority to vacate the entire subdivision or even require the house built on lot 6 to be relocated. We recognize, however, that while the county's authority to do so is unquestioned, this may not be the most feasible solution. An easy solution however, would be to relocate the building envelopes for the remaining 49 lots that are not yet built upon. The Spring Hollow lots are very large (5.19 to 32.18 acres) and the building envelopes only need to be moved a short distance to comply with Title 9. For example, if the house on lot 6 were constructed just slightly down slope to the east, the homeowner would still have enjoyed unparalleled Teton views – just not at the expense of the entire community's scenic vistas. By virtue of Spring Hollow's large lots and sweeping views, the building envelopes can easily be relocated to preserve our community's scenic vistas as well as the lot owner's expectation of a scenic vista.

These new building envelope sites should be clearly and legibly depicted on a detailed plat that is stamped by the engineer and recorded independently of the CCR's. Moreover, the Spring Hollow lots should be flagged in the county parcel system to ensure that the lots are never relocated to allow future homes in this subdivision to skyline like the house on lot 6.

We would also like to point out that during the Spring Hollow hearing process, the same argument was made by the engineer that the building envelopes should be only attached to the CCR's. We respectfully disagree. What has

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happened here with lot 6 in Spring Hollow is precisely why all building envelopes should be recorded independently of the CCR's and flagged in the county parcel system so a building permit is not issued for a house that is out of compliance with Title 9.

We understand that Teton County is facing a serious budget deficit right now, but the solution we have proposed is inexpensive and effective. Hard times should not extinguish the county's obligation and the community's right to protect our scenic vistas. Our landscapes are an invaluable asset to this valley, and if protected, they will help us weather this recession.

Sincerely,

Anna Trentadue
WARD Program / Staff Attorney