



V A R D

October 13, 2008

Teton County BoCC  
89 North Main Street  
Driggs, Idaho 83422

**RE: VARD's opposition to having a final plat hearing for Warm Creek Manor.**

Dear Commissioners:

There is no shortage of work that is on your plates right now. So why are we having a final plat hearing for Warm Creek Manor when the outstanding issues addressed at the concept and preliminary plat hearings over twenty (20) months ago are still at large? Valley Advocates for Responsible Development (VARD) respectfully raises the following issues which must be addressed before a final plat hearing is held:

**Fencing Issues**

At the February 13, 2007 concept hearing, several neighbors voiced concern that that the fence promised by the developer had not been built. The county planning staff was to research the Warm Creek Estates development agreement. The minutes reveal that developer stipulated:

*They didn't fence Warm Creek Estates on certain boundaries to help farming practices, but with two houses in Warm Creek Estates subdivision, they will go ahead and build it this year. They will pay to have the fences installed.*

Then, at the September 11, 2007 preliminary plat hearing, the public *again* commented that the fencing which was supposed to be done by the summer, was *still* not done. The minutes reveal that the developer then stipulated:

*They have met with the Allen's; they will fix the fence on the east/south sides of the property.*

This response did not satisfy the commissioners' concerns as revealed in the minutes:

*The development agreement stated that the homeowners would be responsible for the perimeter fencing, the commissioners feel that is the developer's responsibility. At concept hearing, Mr. Allen testified that he had an agreement with Travis Thompson to buy the materials and he would install it. It was requested that staff research if that*

*has been done. Also, the commissioners requested staff to research two other subdivisions by this developer to see if they had fencing issues also.*

The commission then recommended approval on the condition that signed statements from adjacent property owners that the fences have been installed or upgraded.

Here we are, thirteen (13) months later. There is now a Fence Agreement on file; it is stamp-received by Teton County as July 8, 2008. This agreement stipulates that the developer will pay the sole expense of installing a fence around the entire perimeter of both Warm Creek Manor and Warm Creek Estates Subdivisions. The Fence Agreement also stipulates that the developer will provide a letter from the Bank of Commerce verifying a letter of credit with sufficient funds to pay for the fencing and the fencing improvements will be completed no later than October 15, 2008. Only three (3) abutting property owners have signed this Fence Agreement.

There are so many problems with this scenario, it is tough to know where to begin. First off, the fence was clearly supposed to be built a long time ago, and the developer has been making assurances that it would be built since at least the concept hearing held twenty (20) months ago.

Secondly, the September 11, 2007 P&Z minutes reveal that the developer was specifically directed to get letters from all of the surrounding land owners confirming that the fence and/or improvements have been upgraded or installed. The Fence Agreement that is on file is not what the P&Z commission asked for. The Fence Agreement speculates that a fence *will be built* by October 15, 2008. It is also only signed by three (3) abutting landowners. Signatures are still needed from all the other landowners whose property abuts Warm Creek Manor and Warm Creek Estates Subdivisions.

Finally, not only is the Fence Agreement nonconforming to the P&Z's September 11<sup>th</sup> directive, but it will also soon be void. As of October 10, 2008 the file contains no bonding letter from the Bank of Commerce to pay for the fencing. Moreover, as of October 13, 2008 there is no fence (or even beginnings of a fence) constructed around the properties. It is highly unlikely that a fence is going to be built within the next 2 days.

### **Bonding and Cost Estimate Issues**

There are continual changes with the cost estimates for this project which raises the concern that the amount of money bonded for this project will not sufficiently cover the true costs of the project. Even though petroleum-based products such as fire pond liners, pvc pipes, and other plastics are becoming dramatically more expensive, the February 14<sup>th</sup>, 2008 and the August 4<sup>th</sup>, 2008 cost estimates show marked decreases in petroleum based-items. For example, the cost of the fire protection system dropped from \$25,000 in February down to \$14,100 in August. The irrigation system dropped from \$43,000 in February down to \$38,000 in August. There is also no detail in the engineering estimates explaining the cost-breakdown for items like the fire protection system. Thus, when the estimates fluxuate from \$25,000 down to \$14,100, it is impossible to reconcile this math with the rising costs of oil. It is also unclear whether the cost of burying the power and telephone lines is included in the estimates.

### **Items Missing from the Development Agreement**

There have been changes in Section 2 of the Development Agreement for Warm Creek Manor which the county may want to note because it affects what infrastructure will be installed by the developer and whether or not it will be bonded for. In the May 22, 2007 and September 4, 2007 development agreements, the developer agreed to:

*complete the road construction, underground electric power trunk lines, underground telephone trunk lines, fire pond with hydrants, and landscaping in accordance with the Landscape Plan submitted and approved . . . .*

Now, Section 2 of the August 18, 2008 development agreement only states that the developer agrees to:

*complete the road improvements, the telephone, the power (sic) and fire protection . . . .*

These changes are significant considering that the engineering estimates lack the detail to explain whether the power and telephone lines will be buried. The irrigation system has been bonded for, but it is also not included in the latest development agreement.

Lastly, the August 18, 2008 development agreement does not require the developer to bond and install landscaping in the park/common area. This was a requirement in the earlier development agreements. There is no cost estimate to cover landscaping and parks in the engineering estimates either. Teton County has historically struggled to ensure that open space and common areas are adequately maintained. It is crucial that the developer bond for the creation of the common area park.

### **Conclusion**

The present situation illustrates the pitfalls of the P&Z recommending approval of an application when outstanding issues remain at large. It is often difficult to retain the oversight needed to ensure that these conditions are fulfilled. Here, the fencing and bonding issues clearly need to be resolved before Warm Creek Manor can be scheduled for a final plat hearing.

Sincerely,

Anna Trentadue  
WARD Program / Staff Attorney