



# Valley Advocates for Responsible Development

June 8, 2011

Driggs P&Z Commission  
60 Main Street  
Driggs, Idaho 83422

RE: Willows proposed plat amendments

Dear Commissioners:

As you know, the Willows PUD is located in the Driggs Area of Impact, which is under the county's jurisdiction, but is controlled by Driggs ordinances. At this time, it is not clear what city regulations exist which enable this project to be replatted. Teton County recently adopted a replatting ordinance with a redesign process and incentives for defunct subdivisions to significantly reduce their number of lots, significantly decrease environmental impacts, and significantly reduce governmental costs. Driggs has not yet adopted such an ordinance, so it is currently unclear how this application will be processed. According to the City's planning staff, there are approximately 1,000 vacant platted lots within the city limits of Driggs. In addition, there are an unknown number of vacant platted lots in the city's impact area, such as The Willows and Red Tail.

The timeline for this project is long and complicated, dating back to 2006(see attached timeline). This application proposes to reduce the number of lots from 25 to 22, increase the setbacks from Teton Creek, and remove the bridge over Teton Creek. In exchange, the applicant requests a 12-year extension of time until 2023 to complete the improvements. **VARD respectfully submits the following questions to be considered by the City of Driggs:**

## **Ordinance questions:**

- Can this PUD be replatted under the current provisions in the Driggs code?
- City ordinances allow for a discretionary 1-year extension of a development agreement.<sup>1</sup> Do the city's ordinances allow extensions beyond a year? Is there any time limit for extending development agreements?

## **Policy questions:**

- Should Driggs adopt ordinances that set forth a replatting process?
  - If so, what should the overall goals of the ordinance be? Significant reduction of density? Incentivizing higher density closer to the city center and discouraging higher density in the impact area? Significant reduction of environmental impacts? Blanket extensions of time?
  - Will expired projects be eligible for replatting?

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<sup>1</sup> Driggs Code § 10-5-4-A



## Valley Advocates for Responsible Development

- Should committed financing be required in order to replat?
- The application for this PUD was first filed in 2006 under the 2005 city ordinances. It was approved in 2008. The requested extension is until 2023.
  - Should the city grant extensions of time for projects, and if so, what is the largest extension the city will grant?
  - What types of plat changes will warrant the great possible extension of time?

### **Contractual questions:**

- Section 12 of the Willows development agreement requires bonding of 125% prior to plat recordation. Section 25(d) requires that any and all changes to the agreement must be in writing signed by the city, county, and developer. On November 10, 2008, the Board of County Commissioners granted by motion a conditional recording extension until June 12, 2009 contingent upon a 125% letter of credit being submitted within 120 days of recordation. However, the plat was not recorded until June 15, 2009 and this 125% letter of credit was never submitted within the required 120 days, or at all to date. On November 9, 2009 (147 days after recordation) the Board conditionally amended the development agreement by motion to allow the 125% letter of credit to be submitted within 90 days of construction. None of these changes have been approved in writing by the city, county, and developer as required in Section 25(d).
  - Is the June 15, 2009 recordation valid in light of the county's express conditions being unfulfilled by the June 12, 2009 deadline, and no 125% letter of credit submitted within 120 days?
  - Is the June 15, 2009 recordation valid in light of the Section 12 financing requirements in the development agreement being unfulfilled?
  - Are the county's unilateral subsequent changes to the financing requirements and development agreement valid in light of Section 25(d) in the development agreement?
- What is the ownership status of the Willows property, particularly with regards to lot #3, which was conveyed 31 months prior to the plat recordation?<sup>2</sup> Who are the property owners of the Willows for purpose of signing off on all plat changes?

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<sup>2</sup> Teton County Inst. # 182926. Both Idaho Code § 50-1316 and Driggs Code §§ 10-2-1 and 10-2-10 prohibit the conveyance of lots prior to plat recordation. Such conveyance is a misdemeanor accruing for every day of the ongoing violation.



# Valley Advocates for Responsible Development

## **Logistical questions and infrastructure questions:**

- The Willows obtained final approval three years ago. What percentage of the infrastructure has been completed? What percentage is unfinished?
  - What infrastructure improvements (particularly those pertaining to sewer, water, and flood protection) are likely to become obsolete between now and 2023?
- How will the east side of the property be accessed and who will maintain this road? When will this road be upgraded? Are the costs of improving this access across the old county landfill property included in the engineer's estimate?
- What is the legality of berm and entrance sign built in the public right of way and scenic corridor along Ski Hill Road?
- Ten of the proposed lots are located in the newly-revised floodplain delineation, as are the access roads. It would be a good idea to pay attention to this spring's runoff and its impacts on the property, particularly in light of the berm build along Ski Hill road which may act as retainer for the floodwaters.
- To whom will the open space be deeded?

These are all important questions that must be carefully weighed by both the City and the County. Thank you once again for all of your hard work in the service of our community.

Anna Trentadue  
VARD Program Director / Staff Attorney



# Valley Advocates for Responsible Development

## TIMELINE

- **January 2006:** This project was originally submitted to the Driggs P&Z where it was recommended for denial based on flooding and environmental concerns.
- **November 27, 2006:** Lot 3 of the proposed Willows subdivision was conveyed to David and Michelle Cutler.
- **June 12, 2008:** After several revisions and hearings, this PUD was finally approved by the Board of County Commissioners.
- **November 10, 2008:** Driggs ordinances require plats to be recorded within 6 months of final plat approval (ie: Dec 12, 2008). The developer requested that Teton County another six-month recording extension in addition to the six months allowed by Driggs' ordinance. On November 10, 2008, the BOCC granted a conditional extension until June 12, 2009 provided that a letter of credit of 125% of the engineer's estimate was submitted within 120 of recordation.
- **June 15, 2009:** Three days after the county's deadline, the Willows plat was recorded. The 125% letter of credit was not submitted within 120 days.
- **November 9, 2009:** The prior Board of County Commissioners conditionally amended the Willow's development agreement by motion to require a 125% letter of credit to be submitted within 90 days of construction.
- **June 8, 2011:** Driggs planning & zoning holds a hearing to consider a 12-year extension of time to complete the Willows until 2023 in exchange for reducing lots from 25 to 22, increasing the setbacks from Teton Creek, and eliminating the bridge over Teton Creek.
- **June 9, 2011:** The Willows development agreement expires.
- **June 15, 2011:** Deadline by which Driggs Code § 10-5-4-A requires all improvements to be complete.
- **December 31, 2012:** Original 115% letter of credit will expire.