TETON COUNTY, IDAHO | Board of County Commissioners

Written Decision for the Centennial Estates Subdivision

This is a written decision on the findings for the denial of the Centennial Estates Subdivision Final Plat under Teton County Code ("TCC") Title 9, Chapter 3 Teton County Subdivision Ordinance (revised 5/16/2013):

APPLICATION DATE:	November 14, 2022
APPLICANT:	Aaron Powers
PROPERTY OWNER:	Aaron Powers
PROJECT NAME:	Centennial Estates
PURPOSE OF APPLICATION:	Subdivision final plat application for a 14-lot subdivision on 69.12 acres near S 2000 E and E 5000 S
EXISTING ZONING:	A/RR-2.5
SURROUNDING ZONING:	A/20 & A/RR-2.5
SURROUNDING USE:	Rural residential single family and agricultural land
PARCEL SIZE:	69.12 acres (RP04N46E191200)

Applicable Standards and Criteria for Application Evaluation:

- Title 8 Teton County Idaho Zoning Ordinance (revised 9/9/2013)
- Title 9 Teton County Subdivision Ordinance (revised 5/16/2013)
- Teton County Comprehensive Plan (A Vision & Framework 2012-2030)

Procedural Background

SUBMISSION AND SCHEDULING: This application was originally scheduled for a Final Plat review and public hearing on January 23, 2023. On January 17th, the Teton County Board of County Commissioners ("BoCC") received a letter from Holden Kidwell Hahn & Crapo PLLC, the law firm representing Carl P. Jordan in the case *Carl P. Jordan v. Aaron Powers* (Case No. CV41-22-0167) in the Teton County District Court, informing the BoCC that the issue of legal access to the subdivision was being adjudicated in the courts and setting forth Mr. Jordan's opposition to approval of the proposed Final Plat based on lack of legal access. The Final Plat hearing was continued to March 13, 2023 to provide County legal staff time to review the issues raised. At the March 13, 2023 hearing for the application, the BoCC further continued the Final Plat hearing pending determination of the legal access issue by the courts or other resolution of the dispute over legal access between Mr. Power and Mr. Jordan. The BoCC motioned to continue the public hearing until May 22, 2023. At the third continued public hearing on May 22, 2023, no new information

regarding the pending civil litigation had been submitted, and at the applicant's request the BoCC continued the Final Plat hearing a fourth time to June 26, 2023.

NOTICE: A subsequent hearing for this application was scheduled to occur on January 23, March 13, May 22, and June 26, 2023 as required by Idaho Code, Title 67; Section 67-6509, 67-6511, 67-6512, and Title 9 of the Teton County Code. In anticipation of this hearing, public notice of this hearing timely was published for two weeks before each hearing in the Teton Valley News. Furthermore, individual notices were mailed to those affected landowners within 300 feet of the boundary of the proposed project. A sign was posted on site before each hearing.

HEARING DATES: January 23, 2023; March 13, 2023; May 22, 2023, and June 26, 2023 the BoCC held a public hearing for the proposed development.

The following commissioners were present: Bob Heneage, Michael Whitfield, and Cindy Riegel

Neither the applicant nor their representative attended the June 26, 2023 BoCC Public Hearing.

Signup sheets were provided to the public who attended the meeting and time for testimony of those in favor, neutral, and opposed to the proposed development were allowed. The Board also considered written statements and evidence submitted prior to the conclusion of the hearing.

Factual Background

At the Concept Plan phase, the application proposed to incorporate Lot 1 of the Sorensen Creek Subdivision (Parcel Number RP001050000010)("Sorensen Creek Lot 1") along with an adjacent 68.58-acre parcel to the west (Parcel Number RP04N46E191200), which were both owned by applicant, Mr. Powers.[1] A single subdivision road was proposed to traverse across the southern boundary of Sorensen Creek Lot 1 to provide access to the newly formed Centennial Estates subdivision.

Following the Concept Plan review, Teton County approved an Insignificant Plat Amendment and Boundary Line Adjustment on [date] to [combine a 60' wide strip along the southern boundary of Sorensen Creek Lot 1 (the "Access Parcel") into Parcel Number RP04N46E191200, recorded as Instrument Nos. 275235 and 275363, with the effect of providing a 60 foot wide access and utility easement across Sorensen Creek Lot 1 to the proposed Centennial Estates subdivision.] The application then was re-heard for a Concept review by the Planning & Zoning Commission.

On January 17, 2023, the BoCC was made aware of the lawsuit filed by Mr. Jordan against the applicant. In relevant part, Mr. Jordan's complaint alleged that construction of a road across the Access Parcel would violate the Sorensen Creek Subdivision CC&Rs and asked for declaratory relief from the court that the Sorensen Creek CC&Rs continue to apply to the Access Parcel despite the Insignificant Plat Amendment and Boundary Line Adjustment as well as injunctive relief enjoining applicant from taking any further steps to construct a road across the Access Parcel. Based on legal review of the Mr. Jordan's Amended Complaint, the BoCC determined that the pending court case called into question an essential element of the Final Plat to be approved, whether the subdivision would have legal access to a public road, and continued the Final Plat hearing pending the court's ruling on the access issue.

[1] See Development Summary dated February, 24, 2021 submitted with application.

On June 5, 2023 the Teton County District Court granted summary judgment in CV41-22-0167 in favor of plaintiff, Mr. Jordan, and ruled that the Access Parcel was still subject to Sorensen Creek Subdivision CCRs, and that applicant would need to apply for a waiver or seek permission from the Sorensen Creek Subdivision HOA to build a road across the Access Parcel. The court's judgment imposes a temporary restraining order preventing applicant from continuing any alterations or improvements upon the Access Parcel until HOA processes are exhausted.

Analysis

The criteria for approval of a Final Plat approval are set forth in § 9-3-2-D of the Teton County Code.

To approve a final plat, TCC § 9-3-2 (D-2-h(iii)) requires the BoCC to make a finding that "The Subdivision or PUD is consistent with the public health, safety and welfare of the County and with all applicable provisions of Title 9 and Title 8 of the Teton County Code." The development standards in TCC § 9-4-1 (J) require that "Each lot shall have legal and physical access provided and must abut and/or have access to a public or private street or road."

In light of the Teton County District Court's judgment in CV41-22-0167 finding that applicant does not have the legal right to build the proposed access road to the Centennial Estates Subdivision without the approval of the Sorensen Creek Subdivision HOA, the BoCC finds that the applicant has failed to show that the lots in the proposed subdivision will have legal access to a public or private street or road as required by TCC § 9-4-1 (J). Thus, the subdivision application fails to meet all approval criteria and the application must be denied.

Applicant requested that the Final Plat hearing to be continued once again. However, applicant has not submitted any further information suggesting that the deficiency will be remedied. Thus, the BoCC declines to continue this application. Denial of this application does not bar the applicant from submitting a new application that meets approval criteria once access issues have been resolved.

Motion

Having concluded that the Criteria for Approval of a Final Plat found in Title § 9-3-2-D have not been satisfied, I move to DENY the Final Plat for Centennial Estates Subdivision as described in the application materials submitted November 14, 2022, and additional information attached to the staff report, based on the findings to be documented to include legal access has not been provided and in accordance with § 9-4-1(j) access to all lots must be provided to obtain approval.

Conclusions

Having given due consideration to the applicant's request for continuation, the Teton County Board of County Commissioners THEREFORE makes the following conclusion:

1. The Final Plat for Centennial Estates Subdivision fails to meet the criteria for approval under TCC § 9-3-2-D, because it fails to provide legal access to the proposed new lots as required by TCC § 9-4-1 (J).

For those reasons set forth above, the application for the Final Plat of Centennial Estates Subdivision is denied. Denial of this application does not bar the applicant from submitting a new application that meets approval criteria once access issues have been resolved.

Cindy Riegel
Teton County Board of County Commissioners, Chair

Date

NOTICE OF APPLICABLE RIGHTS

Applicants have a right to request a regulatory taking analysis of this decision pursuant to Idaho Code § 67 8003. Further, per Idaho Code § 67-6535, and in accordance with Idaho Rule of Civil Procedure 84, an applicant or an affected person has the right to seek review of this decision.

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of July, 2023, I served a true and correct copy of the foregoing document upon the following:

Aaron Powers [address redacted] [address redacted] [email redacted]	[ ] Mailing [ ] Hand Delivery [ ] Fax [x] E-Mail [ ] Overnight Mail [ ] Courthouse Box

_____
Clerk