



Board of County Commissioners - Staff Report

Meeting Date: June 5, 2018
Submitting Dept: Attorney

Presenter: Keith Gingery
Subject: Spalding Settlement

Statement / Purpose:

*Approval of Settlement Agreement in the case of **Spalding v. BCC of Teton County, Docket No. 17580**, allowing for a division of a 3 acre parcel located at 3850 Zach Lane into two parcels, neither of which will be less than 1 acre.*

Background / Description (Pros & Cons):

Summary Judgment proceedings were held before the Ninth Judicial District Court on April 12, 2018. At the conclusion of the hearing, the Judge urged the parties to find an amicable settlement. The Judge has given the parties until June 27 to attempt to resolve the case. If the parties are unable to resolve the case, the Judge will be asking for supplemental briefing on some specific issues and then issuing a decision, that would likely be appealed by whichever party was the non-prevailing side. The Board of County Commissioners of Teton County and James P. Spalding, through his attorney, have negotiated in good faith throughout the month of May and both parties believe they have reached an amicable settlement. The settlement allows for Mr. Spalding to divide his current 3 acre parcel into two parcels, neither of which may be less than one (1) acre. The new lots being created will reflect the current parcel size of the neighbors of Mr. Spalding.

Stakeholder Analysis & Involvement:

Mr. Spalding first filed a Beneficial Use Determination, then he filed for a zoning amendment, and then lastly filed the present lawsuit. Throughout those processes, in particularly the zoning amendment application, the neighbors have been made aware of ongoing issues with this property.

Fiscal Impact:

none

Staff Impact:

none

Legal Review:

Gingery

Staff Input / Recommendation:

The Teton County Attorney's Office is fully prepared to proceed through the legal process with this case. No recommendation is given, other than to point out that the District Court Judge requested that the parties attempt to reach a settlement and both parties have negotiated in good faith.

Attachments:

*Settlement/Development Agreement
Affidavit Affecting Title*

Suggested Motion:

I move to approve the settlement/development agreement along with the Affidavit Affecting Title in regards to the property located at 3850 Zach Lane in settlement of Spalding v. Board of County Commissioners of Teton County, Docket No. 17580.

Development Agreement

This Development Agreement is effective on the date first written below by and between the Board of Commissioners of Teton County, Wyoming (the “Board”) and James P. Spalding.

Recitals:

1. James P. Spalding resides at 3850 Zach Lane, Teton County, Wyoming.
2. The Board of County Commissioners for Teton County, Wyoming is comprised of the duly elected commissioners for Teton County, a duly organized county of the State of Wyoming.
3. James P. Spalding is the owner of a three (3) acre parcel of land located at 3850 Zach Lane, Teton County, Wyoming that includes a residence and one (1) accessory residential unit (ARU). Plaintiff’s property is located in the NC-TC (Neighborhood Conservation – Teton County) Zoning District, pursuant to the Teton County Land Development Regulations.
4. Teton County Land Development Regulation §3.3.3 Neighborhood Conservation – County (NC-TC) Zone requires in Subsection D that a parcel zoned NC-TC within the RA-3 zone must have a minimum lot size of 3 acres.
5. The Teton County Board of County Commissioners adopted new Land Development Regulations in 2015 that replaced the 1994 Teton County Land Development Regulations. Within the new 2015 Teton County Land Development Regulations, the Teton County Board of County Commissioners decided to no longer allow variances for certain fundamental pillars or premises of the Teton County Land Development Regulations, specifically in the case at hand, variances for lot size are not permitted. James P. Spalding would like to subdivide his 3-acre parcel into two parcels of 1.5 acres each. This is not permissible within the NC-TC zone and a variance to the lot size requirement is no longer available under the changes enacted to the 2015 Teton County Land Development Regulations in that variances for lot sizes are not permitted.
6. James P. Spalding, filed a Beneficial Use Determination action with the Teton County Board of County Commissioners on August 16, 2016. A Beneficial Use Determination pursuant to Teton County Land Development Regulation §8.8.4 permits landowners who believe they have been deprived of economically beneficial use of their land to apply to the County for relief from the application of the Teton County Land Development Regulations sufficient to provide an economically beneficial use of the land. Teton County Land Development Regulation §8.8.4.A. A hearing officer was appointed and an initial scheduling conference was held with the hearing officer. On January 3, 2017, the Plaintiff filed a Joint Stipulation of Dismissal of Petition for Beneficial Use Determination.
7. On August 1, 2017, the Teton County Board of County Commissioners denied James P. Spalding’s application to rezone the property located at 3850 Zach Lane from the Neighborhood Conservation (NC) zone to the Auto-Urban Residential (AR) zone. The Plaintiff then initiated an action in the Ninth Judicial District, Teton County, Wyoming with a Complaint Requesting Declaratory Judgment on September 1, 2017.

8. Prior to 1978 there was no zoning in Teton County. In 1978 the property was zoned RA-3, which allowed a single-family home and required a minimum lot size of 3 acres in the case of future subdivision. The Plaintiff's property located at 3850 Zach Lane has effectively been zoned NC-TC since 1978. The minimum lot size of 3 acres was established based on groundwater and slope characteristics. All residential and agricultural purposes in Teton County were zoned based on their groundwater and slope characteristics.
9. In 1994 residential and agricultural properties, including the property located at 3850 Zach Lane, Teton County, Wyoming, which were in existing subdivisions or areas without significant subdivision potential were zoned NC-SF (Neighborhood Conservation – Single Family) to conserve their existing character in implementation of the Jackson/Teton County Comprehensive Plan adopted in 1994. The allowed use, development, and minimum lot size remained essentially the same for residential and agricultural properties zoned NC-SF despite the change in the name of the zoning district.
10. In 2015 the NC-SF zone was renamed the NC-TC (Neighborhood Conservation – Teton County) zone as part of a reorganization of the zoning and regulations, but no amendments were made to the zoning map. Properties zoned NC-TC retained essentially the same allowed use, development, and minimum lot size they were assigned in 1978
11. In 2016 the vast majority of NC-TC properties were rezoned into one of three rural zoning districts in implementation of the Jackson/Teton County Comprehensive Plan adopted in 2012. The Plaintiff's property was not rezoned in 2016 because it is not in an area the Jackson/Teton Comprehensive Plan identifies as rural. The Teton County Board of County Commissioners intends to amend the zoning in the Plaintiff's neighborhood in 2019.
12. The Ninth Judicial District Court, Teton County, Wyoming has urged the parties to try to find a settlement. The Board of County Commissioners of Teton County have agreed to allow the landowner, James P. Spalding to subdivide his 3 acre parcel into two parcels with certain conditions in order to reach an amicable settlement.

Agreement:

Wherefore, in consideration of the above and the mutual promises set forth in the Settlement Agreement and below, RMB and the Board agree as follows:

1. *Allowance of Subdivision.* The County agrees that James P. Spalding shall be permitted to subdivide the property located at 3850 Zach Lane into two parcels, neither of which will be less than 1 acre.
2. *Structures.* Each of the two (2) lots shall be permitted only one (1) main residence and one (1) accessory residential unit.
3. *Setbacks and other Land Development Regulation Compliance.* The two (2) lots shall be used, developed, and sold in accordance with this Agreement and the Teton County Land Development Regulations, as they may be amended from time to time. No variances shall be needed from Teton County to occupy the existing residence located on the property or to place one (1) main residence and one (1) accessory residential unit on the newly created parcel. The creation of the two new parcels out of one parcel, is non-conforming to the present Teton County Land Development

Regulations, but the non-conformity is allowed, specifically as to the creation of two lots that are less than 3 acres in the NC-TC Zone.

4. *Access.* Each of the two (2) lots shall take access off of the existing Zach Lane and no access shall be permitted directly onto Wyoming State Highway 390. James P. Spalding or his successor in interest shall not be required to improve Zach Lane or Wyoming State Highway 390.

5. *Sewer.* All structures on each of the two (2) lots shall connect to the existing sewer system and discontinue use of any septic/leech field systems.

6. *Implementation.* To implement the subdivision, James P. Spalding or his successor in interest shall record in the Teton County Clerk's office a map of survey documenting the division of the land with legal descriptions of each of the two (2) lots. And Warranty Deeds shall be recorded with the Teton County Clerk for each of the two (2) lots conveyed to either James P. Spalding or his successor in interest, or to a new owner, so long as to record the chain of title to the two new lots in separate recorded instruments.

7. *Time Limitation.* James P. Spalding or his successor in interest, shall complete the subdividing of the property as delineated in Paragraph 6 above for the property located at 3850 Zach Lane within 6 months of the signing of this Development Agreement, and if not completed within the 6 month time frame, James P. Spalding or his successor in interest forfeit the ability to subdivide the property located at 3850 Zach Lane and this Development Agreement is null and void.

8. *Mutual Release of Claims.* Effective upon recordation of the Development Agreement with the Affidavit Affecting Title, James P. Spalding, his successor and assigns, and the Teton County Board of County Commissioners release each other and their respective agents, successors, and assigns from and against any claims, causes of action, liability, damages, or expenses arising from the facts alleged in the Complaint for Declaratory Judgment filed by Mr. Spalding and/or the Answer filed by Teton County. Both parties agree to file a Motion to Dismiss with the Ninth Judicial Court in regards to Docket No. 17580 to dismiss the ongoing litigation between James P. Spalding and Teton County.

9. *Enforcement.* The Board, acting through its designated agents or employees, shall have the right to enforce the terms of this Development Agreement through any remedy available under the laws of the State of Wyoming, including injunction.

10. *Successors & Assigns.* This Agreement is intended by the parties to run with the land and to perpetually bind and inure to the benefit of the successors and assigns of James P. Spalding. The Board finds that the terms of this Agreement are reasonably necessary and of definable advantage to Teton County for a variety of reasons, including but not limited to, the Agreement will avoid the costs and risks of future litigation between James P. Spalding and the Board. Accordingly, the Board finds that this Agreement shall extend beyond the term of the Board and shall bind successor boards.

11. *No Third Party Beneficiaries.* There are no third party beneficiaries to this Agreement.

AFFIDAVIT AFFECTING TITLE

STATE OF WYOMING)
)ss.
COUNTY OF TETON)

I, Mark Newcomb, Chairman of the Teton County Board of County Commissioners, being first duly sworn on his oath, deposes and states as follows:

1. This affidavit is made and recorded pursuant to the provisions of Wyoming Statute §34-11-101.
2. This affidavit affects land located at 3850 Zach Lane and legally described in the attached Exhibit A.
3. At the time of filing of this affidavit, the property located at 3860 Zach Lane is owned by James P. Spalding.
4. The Teton County Board of County Commissioners have agreed and entered into a Development Agreement with James P. Spalding in regards to allowance of subdividing of the property located at 3850 Spalding Lane with conditions as outlined in the Development Agreement attached hereto as Exhibit B.
5. This Affidavit Affecting Title was approved by the Teton County Board of County Commissioners at a regularly scheduled and properly noticed meeting held on June 5, 2018.

FURTHER YOUR AFFIANT SAYETH NAUGHT

DATED this ____ day of _____, 2018

Mark Newcomb, Chairman
Teton County Board of County Commissioners

STATE OF WYOMING)
)ss.
COUNTY OF TETON)

Subscribed and sworn to before me on the ____ day of _____,
2018 by Mark Newcomb, Chairman of the Teton County Board of County
Commissioners.

Witness my hand and seal.

Notarial Officer

(Seal)

My Commission Expires on: