

## **Future of River Rim to be determined in 2016.....**

After months of mediation negotiations with Glacier Bank (this bank now owns River Rim Ranch), the Board of County Commissioners held a public hearing to take comments on the proposed changes to the Development Agreement for Division II of this very large and incomplete golf resort development. Teton County entered closed mediation with Glacier Bank after discussions broke down over the Glacier's refusal to complete the unfinished phases of the development. The original developer installed millions of dollars of infrastructure into River Rim. However, since Glacier foreclosed on River Rim two years ago, there has been very little additional progress on infrastructure and the project has arguably expired. Although 189 lots have already been sold, Glacier is trying to sell the property, and has already sold off Phase 5 of Division II. The goal of this hearing was to take comment on the terms of this hard-fought renegotiation, which has been going on in executive session for the past several months.

### ***What's the big deal with the development agreement?***

During the boom times, Teton County signed many development agreements that were hastily written. Previous administrations simply did not require clear and comprehensive development agreements, and arguably failed to do their due diligence to ensure that they county's interests were protected. With a tidal wave of development applications, there was simply no time for government scrutiny over what was actually contained in each contract; thus the agreements were almost always written by the developer or his attorney. Naturally, this process resulted in contracts that were so one-sided in favor of the developer that some did not even have a final deadline for when the project must be finished. Many were less than one page long. Others stipulated that Teton County would finish off the project if the developer became insolvent! In recent years, many of these lingering agreements have taken on a life of their own, causing headaches for newer administrations. One example is River Rim. The original development agreement River Rim signed by the 2006 Board of County Commissioners was not clearly written and included somewhat vague dates for when River Rim needed to be completed.

### ***What did the planning staff say?***

As to the question of whether or not River Rim was in breach of their development agreement, the original development agreement stated that all of Phase 1 of Division II was to be finished by 2010 (with no specific date, the County's assumption is that the deadline was December 31, 2010). The County recently adopted a resolution, which stated that if deadlines in a development agreement are vague, 12 additional months are given to the developer to complete their project. Here, under the most favorable assumptions for River Rim, the development agreement expires on December 31, 2011.

The staff also recommended that Glacier Bank come into compliance with the County's ordinance requiring a 125% bond for all re-plats. Bonding ensures that the

developer has the funds to actually build the project and not just sell lots in a subdivision that may never be built. The County used to require bonds at only 110%, but upped the requirement to 125% because with the fluctuation in the price of materials, a 110% bond was sometimes insufficient to cover costs. Glacier has objected to bonding at 125% for Phase 1 arguing that it is an unreasonable financial burden when their engineer estimates the infrastructure can be installed with a 110% bond.

***What did VARD say?***

This hearing was the first and only opportunity the public has had to provide comments on this renegotiation. When a development this large gets derailed halfway through construction, the impacts on the landscape can be tremendous. The role of the County Commissioners in this process has been to negotiate on behalf of the public's interest. The basic rules and boundaries governing this renegotiation are the County's own ordinances, state laws, and federal laws. With this in mind, VARD offered the following comments to the Board:

- 1. Timelines.** County ordinances simply do not allow a 4-year extension of time until December 31, 2016. This violates the County's ordinances, and is also poor policy. By pushing the next deadline so far off into the future, it is foisting the question of an ultimate breach on future administrations. The current administration has already struggled to decipher what exactly was approved when River Rim was permitted so many years ago by prior administrations. The County is essentially giving River Rim 10 years just to complete Phase 1 of this project, which was originally approved in 2006. The can is being kicked further down the road.
- 2. Selling off open space.** Division II of River Rim was platted to have a minimum of at least 2,700 acres of deeded open space. However, only about 900 acres are currently protected, and right now many of these acres are razed lands covered with weeds. While the golf village was supposed to be the high density/commercial core of River Rim, Phases 2-6 were supposed to be the extremely low-density, conservation oriented portions of the development. Put another way, Phases 2-6 "sweetened the deal" for Teton County to approve this large semi-commercial development. With Phase 5 already sold, and the remaining Phases listed for sale, this begs the question: Can River Rim sell off all their open space, but yet retain their 200+ percent density bonus for the incomplete golf village that is in Phase 1?

The entire property is currently controlled by a master plan, but a master plan is not the same as a plat. It provides no open space protections. In addition, future landowners may appeal to later political administrations and request to be removed from the master plan. If this happens, it might not be until after 2016, at a time when there may be no institutional memory in the County to protect the 2,700 acres of open space bargained in exchange for

granting such large density bonuses.

- 3. Lack of clarity on commercial acreages.** The River Rim master plan and plats say there will be 36 acres of commercial uses. The development agreement states there will be 30 acres. By ordinance an absolute maximum of 33 acres would be allowed. This should be clarified, especially since the commercial lots are currently listed for sale.
- 4. Violation of the County's 2% rule.** River Rim was originally zoned with the county's most rural designation of Ag 20, where commercial uses are prohibited. However, under old county ordinances, certain limited commercial uses could be permitted in Ag 20 so long as they are no more than 2% of the entire developed acreage of the property. Open space, such as golf courses were specifically not to be included as a part of the developed acreage. River Rim was originally platted to include 36 acres of commercial uses along Highway 33 and within the golf village including a gas station, car wash, storage units, restaurant/cafes, pro shop, conference center, spa, bed & breakfast, etc. River Rim focused all of their 36-acres of commercial uses in Phase 1 of Division II, but now they are selling off their later undeveloped phases. Looking at what is "developed" in River Rim, they are only entitled to an absolute maximum of 9.35 acres of incidental uses. The county's new counter proposal to allow all 36 acres of incidental uses only once the golf course is finished still has no congruence to the 2% rule.
- 5. Maintenance of open space.** The original development agreement states that the River Rim HOA will maintain the open spaces and control for weeds. As no homes are even built and infrastructure is still incomplete, it may be years, if ever, before an HOA controls these lands. What is the plan in the mean time for who will control and maintain these lands?
- 6. Waiver of all claims.** The new development agreement expressly waives all claims for breach of the development agreement. This is not in the county's best interest.

### ***What did the public say?***

A few members of the public offered concerns that this development agreement renegotiation seemed to happen behind closed doors and in violation of open meeting laws. They opined that the development agreement was already breached by the failure to timely complete the infrastructure improvements for River Rim, and the county should omit the section in the new development agreement that waived all prior claims for past violations of the development agreement.

Several realtors, building contractors, and River Rim homeowners spoke in support of granting the longest possible extension of time. Interestingly, those who spoke in support of River Rim seemed to misunderstand two aspects of the issues at hand at

this particular hearing. First, they seemed to think that vacating River Rim was actually an issue on the agenda. This hearing was held to discuss changes to the River Rim development agreement, including establishing a more finite schedule for when infrastructure improvements must be complete. Secondly, they placed blame on the county commissioners for why River Rim remains incomplete today. This position was sadly incongruent with the history of River Rim. For the past two years, River Rim has been owned by Glacier Bank, a publicly traded corporation with 6.7 billion dollars in assets (according to Standard and Poor's 2010 standardized data).

In May of 2010, the bank extended the letter of credit to finish River Rim and provided written assurances that infrastructure would be completed by June 1, 2011. These improvements simply did not happen. Why? The admitted goal of Glacier Bank has been to sell the property as quickly as possible, either in smaller parcels or as a whole (they have already sold phase 5). Most of the comments in support of granting an extension seemed to focus on these two misunderstandings, and did not touch on any kind of specifics pertaining to the development agreement.

### ***How did the deliberations go?***

Deliberations lasted less than an hour. The Commissioners did not address most of the comments raised by the public. The only substantive issue that was deliberated on was whether to require Glacier Bank to bond at 125% of the cost of infrastructure as required by ordinance and as recommended by the planning administrator. In the end, the Board decided to waive this requirement, and allow for a reduced bond of 110% as requested by Glacier Bank. This requirement has never been waived for any other development.

The Board had no discussion of the new 2016 deadline for Phase 1, and 2026 deadline for phases 2-6. There was no discussion of waiver of claims or incidental uses except to say that if River Rim completes the golf course, they can have their 36 acres of commercial incidental uses.

### ***Why did the Board make these decisions?***

Without being a mind reader or privy to the discussions in executive session, it's hard to say precisely what motivated the Commissioners. That said, one factor that was made expressly clear by both Commissioner Benedict and the County Attorney Kathy Spitzer: the county was worried about being sued by Glacier and loosing.

Glacier Bank had made it clear that if they were displeased with the terms of the development agreement renegotiations, they would simply pursue their interests in court. Benedict pointed out that Teton County has no insurance for land use related lawsuits, so if they were ever to loose a fight with Glacier Bank, the tax payers would have to cover the losses. In addition, the 2006 development agreement heavily favored the developer's interests – leaving the Board of County Commissioners with very little to rely on in the event of a lawsuit. The County did not think this was in

the public's interest, and sought to compromise through a new development agreement instead.

You could call this dilemma an example of "the way things can work out in the real world." The big concern here was not the merits behind Glacier's threats of litigation, but instead, the time, cost, and potential risks of Glacier's expressed willingness to fight a long battle and bury Teton County in litigation.

### ***Did anything good come out of this renegotiation?***

Setting aside the fact that the terms of this development agreement were already established prior to this hearing, and many violated the county's own ordinances, the question remains: *Did anything good come out of this renegotiation?*

These negotiations did shore up the old development agreement, and leave the taxpayers in arguably a better position than before. The county received \$30,000 for weed control and roughly \$300,000 in a bond for reclaiming the golf course area in the event that it is not finished by 2016. Perhaps even more importantly, a firm deadline of December 31, 2016 was established as the absolute final deadline for finishing Phase 1 of Division 2 (since the plat was approved back in 2006, this is a total of 10 years to complete Phase 1). Assuming Phase 1 is ever built out on time, there would be a deadline of 2026 for the remaining Phases 2-6 for Division 2. The Commissioners did state that this new contract would give the county recourse should Phase 1 not be completed by 2016 – the catch is, none of the current administration will be in office when the county has to enforce this clause.

### ***So what happens next?***

Glacier is currently trying to sell the properties. Phase 5 is already sold. Phases 2,3,4 and 6 are really just agricultural lands at the moment, so presumably they have value to be sold as agricultural land. Phase 1, (the 550-acre bulldozed area) may prove more challenging to sell as it razed land that comes with divided ownership and several outstanding liabilities. It is conceivable that Phases 2, 3, 4, and 6 will be sold, and perhaps some day the new owner will ask later administrations to be released from the master plan of River Rim. However, these issues will not come to pass until at least December 31, 2016, the new deadline for Phase 1. Because the County has allowed River Rim to keep all of the commercial incidental uses in violation of its 2% rule, it is quite possible that some day, all that will exist in River Rim is the dense core of River Rim's residential development with 36 acres of commercial. That is a 200% bonus over the zoning, and the 300% bonus over the limitations on commercial development.

### ***What can I do?***

Seeing as how there has been very little infrastructure progress on River Rim since Glacier Bank acquired ownership two years ago, this is probably not the last word on River Rim. As the properties are sold off, and the new deadlines loom ahead, there will need to be future decisions made by Teton County. In the event of a

breach by Glacier Bank in 2016, the current administration at that time will have to grapple with ensuring that promised public benefits are delivered. It often hard for ever-changing political administrations and the public to retain institutional memory of prior agreements and promises. Thus, VARD is committed to steadfast and enduring advocacy for the integrity of open space and development assurances originally promised to our community.

In the mean time, our community *must remain committed* to supporting non-profit organizations and county officials that hold true to protecting taxpayers from speculative development and unfulfilled agreements.

***Is there some kind of take-home message here?***

The story of River Rim serves as a valuable reminder of how unwise land use decisions (and poorly worded development agreements) made years ago by prior administrations can take on a life of their own and continue to hamstring future administrations and leave tremendous lingering impacts on our landscape.