

March 28, 2017

To: Teton County Board of Commissioners
Teton County Planning Commissioners

From: Mary Gibson, Community Planning Director, Jackson Hole Conservation Alliance

RE: Bar J Application Issues

Dear Commissioners,

Thank you for the opportunity to comment on the Bar J application.

You should deny this application for multiple reasons, summed up as follows:

Property is in the wrong zone and character district:

- **It requires a Comprehensive Plan amendment** for the property to go from Character District 9 County Valley, Rural, to Character District 9.3 Existing County Valley Subdivisions, a Complete Neighborhood. The applicant erroneously states the site is in a Complete Neighborhood, when it is in fact not in a Complete Neighborhood.
- **It requires a Zoning Map Amendment** to go from NC – Neighborhood Conservation, Single Family, to a non-existent rural zone which allows 3.2 units per acre, and the applicant has failed to apply for a Zoning Map Amendment. Rather they have applied for a Master Plan Amendment and Sketch Plan. The site has a rural zone designation which only allows 1 unit per 3 acres, or 7 units total on 21 acres, but the applicant proposes 69 units on 21 acres, a build out which is not allowed in rural zones, nor in the NC zone.

Incorrect Impact Analysis:

- Even if a master plan amendment were the correct process for consideration of this change in permitted development of the site, which it is not, **the application misrepresents the development allowed under the existing master plan.** It misrepresents the impacts of the allowed development under the master plan in place, by greatly exaggerating the development the master plan allows and then comparing the proposed development to that grossly exaggerated misrepresentation.
- Even if a master plan amendment was the correct process for consideration of the proposed change, **the applicant does not measure all the impacts of the proposed development compared to the current master plan's impact analysis,** as recorded on the property in the conditions of approval, which were the findings of fact for that approval.

(Exhibit E) Therefore, in addition to misrepresenting what is allowed, the applicant's impact analysis is incomplete and misleading.

Current master plan is prescriptive and does not allow this change:

- **The current master plan limits the development very specifically to the uses and buildings the Board of County Commissioners approved at the time of approval**, and the proposed master plan changes don't comply with that approval, which would have never been made without those conditions. (Exhibit E)

Issue 1, Character District and Zoning:

Current zoning: Neighborhood Conservation, Single Family, one unit per 3 acres or 7 units total on 21-acre site

Character District per the Comp Plan: County Valley, D9, Rural

Complete Neighborhood: No

The applicant misrepresents the Character District this property is in, which is in fact D9 County Valley. It is not mapped in a border between 9.3, Existing County Valley Subdivisions, as stated on page 4 of the application. The entirety of the site is clearly defined within the Illustration of Our Vision, in the Teton County Comprehensive Plan of 2012 as in D9. It is also not in the Complete Neighborhood area of Aspens/Pines, as the applicant asserts, as the line for that is very clearly drawn to exclude Bar J.

As well, when the 1977 Special Use Permit for Bar J was approved, it was approved at the very meeting of the Board of County Commissioners (Board) at which the Comprehensive Plan of that day was adopted, making it exceedingly apparent that the Board meant for this limited commercial use to be located in a residential zone, not a commercial zone. See letter to Warren W. Dill from John Bradley, Administrator of Planning Services, dated February 1, 1988. Mr. Bradley researched the status of the Chuckwagon, and documented it in the County Bar J file, attached as Exhibit A. This letter states in part:

"The Board of County Commissioners began review of the application on October 18, 1977, and approved the master plan for the development on November 1, 1977, with the condition that an affidavit be filed limiting the scope of the project, and the characteristic of its operation. The affidavit would assure the county that the master plan, as approved, **would be all that was developed on the site.** (Emphasis added.)

To my knowledge, this is a unique situation in the county. The Board of County Commissioners intentionally approved a master plan that would permit commercial development, through time as a grandfathered use in a residential land use district."

The application also misrepresents the site as commercial (page 3) (Exhibit B) when the site is zoned residential.

Quite simply, the current zoning and master plan does not allow the proposed development.

The current zoning does not allow for the proposed development and the applicant has failed to apply for Zoning Map Amendment. Rather:

- The applicant has submitted a PUD application for a master plan amendment. PUDs are no longer allowed in the county. Bar J is in the county. The PUD provisions make no mention of master plan amendments.
- There is no clear master plan amendment process in the LDRs, except for the Resort Master Plan Amendment, which Bar J does not fall under. It is not one of the listed Resort Master Plans, although the applicant wrongly refers to it as a resort at points in the application. All resorts are listed in the LDRs and Bar J is not among them. (Exhibit D)
- Even if there were a non-resort master plan amendment process in the LDRs, which there currently is not, the proposed change of use, scale of use, and associated much larger impacts are much more extensive than an amendment to the existing master plan would anticipate, based on the nature of what was permitted through past amendments to this master plan.
- The wrong application has been submitted.
- For some reason, the applicant then addresses the findings for a Zoning Map Amendment, which he can not meet, because this application does not improve the implementation of the desired future character district, D 9 County Valley Rural, as it proposes Complete Neighborhood densities, such as are found in 9.3 Existing County Valley Subdivisions.

Issue #2, Impact Analysis

- While we contend the wrong application has been made for allowing a change in use at this scale, density and character, for the sake of calling to your attention more reasons you should not approve this application, next we will illuminate the wrongful impact analysis. In submitting a PUD/master plan amendment application, the applicant claims his/her burden of proof for this application is in part to demonstrate the proposed 69-unit residential development of the site has less impacts than the approved commercial/residential development allowed in the current master plan, under a density/intensity workaround in the LDRs. The applicant is using this workaround to make the spurious impact assessment under the guise that he has to show fewer impacts, in various categories, than the current master plan allows, in order for his application to be approved.
- The applicant has misinterpreted the allowed development of the existing master

plan. The applicant states the master plan allows 20 acres of residential and commercial development of the entire site, in these proportions:

- Residential: 5% of 20 acres = 1 acre
- Commercial: 70% of 20 acres = 15 acres
- Open space: 25% of 20 acres = 5 acres

The applicant has misconstrued site area to equal project area. The conditions of approval of the master plan are based on “project area,” not site area. Project area is only the area of the site that is developed per the master plan, and does not include the entire site. The applicant represents the site developed to be limited to 4.97 acres, including the existing Bar J Chuckwagon building, parking disturbance area, pathways, restrooms, storage, corrals, road, houses, RV site and driveways, inclusively. See Exhibit B, the page of the Affidavit that has the heading: “APPLICATION FOR INERIM MASTER PLAN APPROVALS FOR SUBDIVISON PROPOSAL INFORMATION:

1. The percentage of the total project area designated for the following uses:” (Emphasis added.)

The Bar J Master Plan is very clear that the allowed development is:

- Residential at 5% of 5-acre project area = 1 acre
- Commercial at 70% of 5-acre project area = 3.5 acres
- Open Space at 25% of 5-acre project area = .25 acres

This also much more closely aligns with the actual development plan (Exhibit F), aerial photograph of the existing development (Exhibit G), and findings of fact and conditions of approval of the Bar J Master Plan (Exhibit E), than does the applicant’s assertion that what was approved, as to percentages of uses, applies to development of the whole site, all 20 acres.

By the applicant’s own measurements, only 4.97 acres of the 20-acre site contain any improvements, including roads, driveways, parking lots and corrals. The best representation of what is there now is the aerial view, and the most accurate site plan is attached here as Exhibit F, which corresponds to the aerial view (Exhibit G). Attachment 4 of the applicant’s application (Exhibit H) is out of scale, does not include the entire site at scale, and bears no resemblance to what is on the property.

The applicant proposes leaving 25% open space calculated on 20 acres, equaling 5 acres. The existing master plan retains 25% of 5 acres of project area in open space, plus 15 acres of open space outside the project area, totaling 16.25 acres, 3 times more area left in open space than the proposed development.

The area of development in the applicant’s proposed plan is essentially the whole site/property (Exhibit I), by comparison, as the entire site will be broken up, by any

habitat connectivity standards, by multiple roads, 53 driveways or walkways, an impervious parking lot, paved roads (current parking lot and road are pervious), and back yards with patios, decks, fences, Bar-B-Ques and play sets.

The only remaining open space will be the few wetlands they chose to protect, which will be less than are on the site now, as they don't intend to protect them all. The applicant is not calling out in the impact analysis counts of the trees that will be cut down, nor an inventory of the other native plants that will be eliminated and replaced with non-native residential yard landscaping. It is safe to say from viewing the aerial photograph and proposed development (Attachment 6 of the application, attached here as Exhibit I, Applicant's site plan), that there will be a lot more than 6 trees and a few acres of sagebrush impacted.

The Master Plan approval for Bar J also had a number of assurances about impacts to habitat, scenery, wildlife, the County, and costs to the public and public school system, which underscore our read of the "project area" as the 5 acres versus the 20 acres, to be looked at for comparison's sake. See Exhibit E for full conditions of approval and findings of fact, which have been recorded on the property, a few illustrative excerpts which are paraphrased here below, to give you a sense of this:

- Overall lot coverage, 33,000 sq. ft. (only about 1/2 of which was actually built).
- No impacts to wildlife habitat, feeding, or nesting grounds, or migration pattern.
- No significant ecological community of plants and animals will be destroyed. A few trees for the roadway and sage in the parking lot, will be removed.
- Natural terrain will not be scarred, major trees stands will not be cut, and the natural beauty of the County's landscape will not otherwise be adversely affected. (We can't conclude this about the proposed development, which increases the number of structures from 9 to 37 buildings). The lot coverage goes from a third of the lot developed in a clustered manner, to all of the lot being developed in a dispersed manner.
- No public services impacts nor education needs impacts, or so low as to be insignificant on the local taxpayer.
- The developer to install all the improvements at his cost. Septic, water supply, street systems, pond for fire protection, well, all at developer's cost. No cost to taxpayer.
- Financial assurances put into escrow at a local bank, for all of above.
- Impacts to tax base: positive. (New development would require a cost-benefit analysis, which has not been provided.)
- Increase to county population, 10. (New development would be substantially more, 2 per unit = 138, 4 per unit = 276.)
- HOURS OF OPERATION: 5-10 pm total. This does not match the impacts analysis of the applicant, which has ignored this important factor.
- All proposed buildings and Chuckwagon restaurant operation will remain as such. No other type of business will be started. (Emphasis added.) This condition

Protecting the wildlife, wild places, and community character of Jackson Hole.

illustrates that the applicant's assertion, that this property could be redeveloped commercially for some similar use, in a different configuration, with different hours, much less residentially at densities beyond the current zoning, is wrong.

Issue #3 - Impacts of Proposed Development Don't Meet Bar J Master Plan Conditions

The 4.97-acre existing development with 4.97 acres of development impacts of varying levels, from trails to a restaurant type building and two residences, and very limited hours of operation, does not allow a full site development with 69 residences spread out over the entire 20 acres, with driveways and roads for each one, which operate with traffic coming and going at all hours. There is no comparison provided by the applicant on impacts of the correct permitted development. It is highly unlikely the proposed development, if compared accurately to the development actually allowed by the master plan, would have fewer impacts- especially with the proposed development's dispersion over the entire 20 acres, no limitations on hours of operation, and 100-200 people inhabiting the site (versus 10 people inhabiting the site), as some examples.

The traffic impact analysis presented by the applicant is based on their misrepresentation of the development allowed by the master plan, and as such, does not make the correct impact comparison.

The applicants incomplete impact analysis underscores why this process and these criteria are the wrong process and criteria. A master plan amendment process is the wrong one to review and rule on this proposed development, even if it clearly existed. It does not adequately address any of considerations that led to the approval of the Bar J Special Use permit.

This application does not provide certainty for the owner, the neighbors, or the community and it does not implement our Comprehensive Plan. This is because there is a huge disconnect between the findings of fact and conditions of approval that led to the approval of the Bar J Special Use permit, and the process being employed by the applicant to attempt to gain a major up-zone. This application Principle 3.3 of our Comprehensive Plan, which is "Manage growth predictably and cooperatively." It does not serve the community by upholding the intended certainty of zoning and character district designations.

Our community has a right to expect certainty in zoning rules and regulations and, as the zone and character district have not been changed, the use and development density allowed has not been changed.

Conclusion

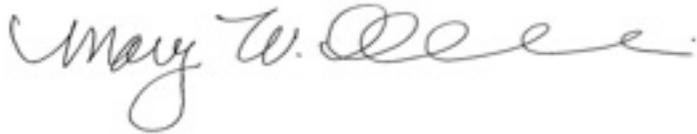
We strongly recommend the Board deny this application.

We trust we have highlighted this improper process well enough for you to see why this

application is flawed and should be denied.

Should you have any questions regarding this matter or would like additional information, we would happily assist as requested.

Thank you again for the opportunity to comment on this application,



Mary Gibson,
Community Planning Director
Jackson Hole Conservation Alliance