

FILED

APR 21 2006

**Terri A. Lorenzon, Director
Environmental Quality Council**

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

IN THE MATTER OF THE APPEAL)
OF THE COPPERLEAF CHAPTER 23) Docket No. 05-3805
SUBDIVISION APPLICATION, #05-S-052)

DEQ'S REPLY TO NORTHFORK GROUP'S RESPONSE TO DEQ'S MOTION TO DISMISS

Respondent, Wyoming Department of Environmental Quality (DEQ), Water Quality Division (WQD), pursuant to Chapter II, Section 14 of the DEQ Rules of Practice & Procedure and Rule 6 of the Wyoming Rules of Civil Procedure (W.R.C.P.), submits the following Reply to each of the various contentions in Petitioner Northfork Group's (NFG or Petitioner) Response (Response) to the DEQ's Motion to Dismiss in this matter before the Wyoming Environmental Quality Council (Council or EQC).

Reply to NFG's "Overview" (Response, pp. 1-2)

The Northfork Group's Petition (Petition) (§2, pp.1-2) states that this appeal is from the "final decision" of the WQD Administrator (attached to the Petition as Exhibit [B]), which is a two page letter from the WQD Administrator to the Park County Board of Commissioners (County Board), dated October 28, 2005. By its own terms, ("Conclusion(s)" and "Disclaimer," p. 2) that letter contains the DEQ's "recommendations" to the County Board regarding two portions of the Copperleaf subdivision permit application under WYO. STAT. ANN. § 18-5-306(c). The "Disclaimer" expressly states that nothing in these "recommendations" commits the DEQ or the County to issue the required permits for construction or operation of subdivision water supply or wastewater systems.

The DEQ's Motion (#3, p.2) and Memorandum in Support ("Statement of the Issue", p.2) identify the basis for this motion as the fact that the "Action Upon Which Hearing is Requested" (Petition, p.1-2) is a non-binding "recommendation" by the DEQ to the County Board under WYO. STAT. ANN. §§ 18-5-306(c)(iii) and 308(c), as opposed to a "final decision" which would

be subject to review by the Council under Ch. I, Sec. 16(a) of the Rules of Practice & Procedure.

NFG's Response (pp.1-2) states that the DEQ's "motion is based upon two arguments:"

1) the special use permit (SUP) that "resulted from" the October 28, 2005 DEQ "decision letter" is not a final decision; and

2) only the Park County Board of Commissioners can grant a SUP, therefore the DEQ's role in the matter is not reviewable.

For one thing, the SUP did not "result from" the DEQ's October 28, 2005 "recommendation" letter, because:

a) The County Board's Resolution #2005-40 (Petition Exhibit [A]), titled: "Approval of Special Use Permit," was adopted June 21, 2005, which was 4 months before the DEQ sent those recommendations.

b) The County Board's June 21, 2005 SUP Resolution (p.2) approved a wastewater system (individual "enhanced septic systems") which was different from the central wastewater treatment system serving the whole subdivision that was referenced in the DEQ's October 28, 2005 "recommendation" letter (p.1). In other words, the DEQ *did not make a recommendation* on the particular sewage system that the County Board actually approved in its June 21, 2005 SUP Resolution.

c) The Board's SUP Resolution (pp. 3-4) calls for the proposed central water system and enhanced septic systems to be "permitted" by the DEQ. DEQ permits required under WYO. STAT. ANN. § 35-11-301 are separate and distinct from subdivision permits under WYO. STAT. ANN. §§ 18-5-304 & 308. The DEQ's October 28, 2005 recommendation letter on its face does not constitute a permit for either of those systems, as required under WYO. STAT. ANN. § 35-11-301.

Secondly, the County Board, not the DEQ issues the SUP. The DEQ's statutory "role in the matter" of subdivision permits is to make "recommendations" to the County Board regarding two portions of the subdivision application. WYO. STAT. ANN. § 18-5-306(c). The statute

consistently uses the term “recommendations” (WYO. STAT. ANN. §§ 18-5-306(c)(iii) and 308(a)(ii) & (c)), yet NFG persists in trying to cast the DEQ’s role here as something else in order to manufacture jurisdiction for review by the Council.

Reply to NFG’s “Statement of Facts” (Response, pp. 2-4)

NFG’s “Statement of Facts” #1 states that the subdivision of land in Park County, such as Copperleaf, requires a developer to obtain a Special Use Permit (SUP). According to statute, the subdivision of land requires “a subdivision permit” from the County Board. WYO. STAT. ANN. § 18-5-304. A special use permit is “a step in the process of obtaining a subdivision permit.” Park County Board of Commissioners Resolution # 2005-40 (p.1), dated June 21, 2005 (Petition Exhibit [A]).

The statutory process for subdivision approval is as follows:

- the regulation and control of subdivisions is vested in the local board of county commissioners (WYO. STAT. ANN. § 18-5-301);
- no person shall subdivide land or commence physical layout of a subdivision without first obtaining a “subdivision permit” from the local board of county commissioners (WYO. STAT. ANN. § 18-5-304);
- the local board of county commissioners shall require submittal of an application for a “subdivision permit” (WYO. STAT. ANN. § 18-5-306(a));
- the local conservation district and the DEQ both review parts of the application and make separate “recommendations” to the board (WYO. STAT. ANN. § 18-5-306(b)&(c)(iii));
- the local board of county commissioners shall approve or disapprove the subdivision application and issue a “subdivision permit” or ruling (WYO. STAT. ANN. § 18-5-308(a));
- the local board of county commissioners may approve a subdivision application notwithstanding an adverse recommendation from the DEQ (WYO. STAT. ANN. § 18-5-308(c)).

NFG’s “Statement of Facts” provides the following chronology:

#6 October, 2004, Developer filed the Copperleaf Special Use Permit Application;

- #7 March 28, 2005, Developer submitted its first Subdivision Application;
- #9 May 26, 2005, Developer formally withdrew its subdivision application;
- #11 June 21, 2005, Park County Board approved the Developer's SUP;
- #12 September 1, 2005, Developer submitted its second Subdivision Application;
- #14 October 28, 2005, DEQ sent its recommendation letter to Park County Board.

NFG's "Statement of Facts" #15 states that "[u]pon receipt of this favorable finding" by DEQ (the DEQ's October 28, 2005 recommendation letter to the Park County Board), the Developer "obtained the legal right to subdivide for future sale." NFG's Statement #15 inaccurately implies that the DEQ's October 28, 2005 recommendation letter (the target of NFG's appeal to the Council), was the final agency action that gave the Developer "the legal right to subdivide" and ignores WYO. STAT. ANN. § 18-5-304, which states that no person shall subdivide land or commence the physical layout of a subdivision without first obtaining a subdivision permit *from the county board* (not the DEQ).

The County Board's role is to make the final subdivision permit decision (§§304 & 308(a)), regardless of the DEQ's recommendation (§308(c)). If the County Board decides to accept the DEQ's recommendation, that too is a decision by the County Board and does not switch their respective statutory roles in the subdivision permit process. NFG's own chronology reflects that the Park County Board approved the Special Use Permit 4 months before the DEQ sent its recommendation to the Board.

The Park County Board's June 21, 2005 Resolution #2005-40 (pp. 3-4) also recognized that the subdivision water supply and sewage systems would have to be "permitted" by DEQ separately and in addition to approval of a subdivision permit by the Board. Such DEQ permits are required under WYO. STAT. ANN. § 35-11-301(a)(iii) & (v); a separate subdivision permit from the County Board is required under WYO. STAT. ANN. § 18-5-304. DEQ's October 28, 2005 letter expressly states ("Disclaimer", p. 2) that nothing in the DEQ's recommendations commits DEQ to issuance of permits required for construction or operation of the subdivision

water supply and/or wastewater systems. To date, the DEQ has not issued water supply or wastewater permits for the Copperleaf subdivision, but issuance of those permits by DEQ would be final agency action subject to review on appeal to the Council under Ch. I, Sec. 16 of the Rules of Practice & Procedure.

Reply to NFG's "Argument I: A Special Use Permit is final agency action." (Response pp. 4-8)

A. "A subdivision permit is final agency action." (Response pp. 4-6)

NFG's Response (p. 5) states that "At issue in this case is the grant of a subdivision permit pursuant to W.S. §18-5-304." This statement is not accurate. NFG's own Petition for Review (pp.1-2) identified the "Action Upon Which Hearing Is Requested" as the DEQ's October 28, 2005 letter to the Park County Board (Petition Exhibit [B]). Under WYO. STAT. ANN. § 18-5-304, subdivision permits must be obtained from the County Board, not the DEQ. The DEQ's October 28, 2005 letter, upon which NFG requests a hearing before the Council, is not a subdivision permit, or a permit of any kind, as that letter itself expressly states. Review of the grant of a subdivision permit by the County Board under WYO. STAT. ANN. § 18-5-304 is outside the scope of the Council's jurisdiction.

NFG's Response (p. 5) states that "Contrary to the characterizations of the DEQ, the permit at issue in this case meets both requirements for final agency action. The grant of a subdivision permit 'marks the consummation of the agency's decision-making process.'" The DEQ does not dispute that the grant of a subdivision permit (as opposed to an SUP alone) would be a final agency action. The issue is not whether the grant of a final subdivision permit would mark the consummation of the agency's decision-making process, but rather *which* agency's decision-making process. Under WYO. STAT. ANN. § 18-5-304, that agency is the County Board, not the DEQ.

The DEQ does not dispute the statements in NFG's Response (p.5) regarding the legal effect of a subdivision permit under WYO. STAT. ANN. § 35-11-304. However, NFG's Response (p.6) misses the point, because, according to NFG's own Petition (pp.1-2), the action

being contested here is the DEQ's October 28, 2005 recommendation letter to the Park County Board, which is not the grant of a subdivision permit and not a final, appealable action by DEQ, as discussed in the Council's March 3, 2006 "Order on Intervention" (findings ##1-3).

B. "The Park County Special Use Permit is a Subdivision Permit." (Response, pp. 6-7)

The DEQ has not "expressly agree[d]" that the Park County Special Use Permit is the same as a final subdivision permit, as NFG represents in its Response (p. 6). The Park County Board's June 21, 2005 Resolution #2005-40, titled Approval of Special Use Permit, (p. 1) describes the Special Use Permit "as a step in the process of obtaining a subdivision permit." That Resolution (p. 6), approves the Special Use Permit, and (pp. 3-4) finds that the proposed central water system and source "shall be permitted and approved by the DEQ and the Wyoming State Engineer prior to Board approval of the final plat and subdivision permit," and the proposed enhanced septic system for single family residential lots "shall be permitted and approved by the DEQ prior to Board approval of the final plat and subdivision permit."

The June 21, 2005 SUP, which NFG argues is the final subdivision permit (NFG's Response, pp. 6-7), requires future approval of the final plat and subdivision permit following DEQ permitting of the water supply and wastewater systems. The DEQ sent recommendations to the Board 4 months later (October 28, 2005), but to date has not permitted those systems. In fact, the DEQ's recommendation letter (p.1) addressed "a private wastewater treatment plant serving all lots in the subdivision," not the "enhanced septic systems . . . for the proposed single family residential lots" covered by the Special Use Permit (Resolution #2005-40, p. 4), so the SUP could not be the final subdivision permit for the wastewater system referenced in the DEQ's recommendation letter.

The SUP (p. 3) also called for State Engineer approval of the water supply source prior to Board approval of the final plat and subdivision permit. Consequently, any recommendations by the DEQ alone would not satisfy the SUP requirements for a final subdivision permit.

C. “The Park County SUP is final agency action.” (Response, pp. 7-8)

NFG argues that: a) the SUP “allows for actual division of the property [under] W.S. §18-5-304,” b) the Park County SUP requirements are the same as the statutory requirements for a subdivision permit, and c) the Park County Special Use Permit is “final agency action.” NFG’s Response, p. 7.

On the contrary:

a) & b) WYO. STAT. ANN. § 18-5-304 states that no person shall subdivide land or commence the physical layout of a subdivision without first obtaining a “subdivision permit” from the county board. As noted above, the Park County Board’s Resolution (#2005-40) approving the Copperleaf SUP (p. 1) describes a special use permit as “a step in the process of obtaining a subdivision permit,” (p. 6) “approves the special use permit,” and (pp. 3-4) calls for the proposed central water and enhanced septic systems to be “permitted” by the DEQ (and the water source approved by the State Engineer) “prior to board approval of the final plat and subdivision permit.” The Board’s SUP Resolution does not reflect that the Board considers the SUP to be the same thing as a final subdivision permit, and, to date, the DEQ has not issued permits for the referenced water and sewage systems.

c) The Council can take notice that 5 months after the Board’s June 21, 2005 Resolution approving the SUP, Judge Young’s ORDER DISMISSING PETITIONS FOR REVIEW AND REMANDING JURISDICTION TO THE PARK COUNTY BOARD OF COUNTY COMMISSIONERS (District Court Order), Fifth Judicial District, Civil Nos. 23706 & 23699, dated November 17, 2005, filed November 22, 2005 (**copy attached hereto**)¹ found (p. 3):

¹ *Northfork Communities, Inc. v. Park County Board of County Commissioners AND Northfork Citizens for Responsible Development and David Jamison v. Park County Board of County Commissioners*, Civil Nos. 23706 & 23699 in the Fifth Judicial District Court, Park County Wyoming. Facts or records subject to judicial notice may be considered for purposes of a motion to dismiss. *Texas West Oil and Gas Corp. v. First Interstate Bank of Casper*, 743 P.2d 857, 858-859 (Wyo. 1987).

5. The procedure in Park County by which Petitioner Northfork Communities, Inc. must follow in order to establish the Copperleaf Subdivision is a two step process, the first being an issuance of a special use permit and the second an approval and issuance of a final plat. Only after the issuance of a final plat is there a *final agency decision* for purposes of the Wyoming Administrative Procedure Act; and

6. At this point, a final plat has not been issued to Petitioner Northfork Communities, Inc., and, therefore, there has been *no final agency decision* by the Board. The absence of a final plat renders both Petitioners' *Petitions for Review* *untimely*. (Emphasis added.)

The District Court dismissed both Northfork Communities, Inc.'s and Northfork Citizens for Responsible Development's and David Jamison's Petitions for Review, and remanded the case to the Park County Board of County Commissioners. District Court Order, p.3.

Reply to NFG's "Argument II: DEQ's October 28, 2005 decision letter is reviewable."
(Response, pp. 8-10)

Petitioner NFG (Response, pp. 8-9) and Respondent DEQ draw different conclusions from applying *Ash Creek* to DEQ's October 28, 2005 recommendation letter in this case. Under *Ash Creek*, for an agency action to be final, it must impose an obligation as a "consummation of the administrative process." *Ash Creek Mining Company v. Lujan*, 934 F.2d 240, 243 (10th Cir. 1991). The above-referenced District Court's November 17, 2005 Order (Civil Nos. 23706 & 23699) found (#5 & #6, p. 3) that the Copperleaf Special Use Permit (Petition Exhibit [A]) was *not* the consummation of the administrative process for subdivision permit approval.

Under WYO. STAT. ANN. §§ 18-5-304 & 308, the consummation of the subdivision permit process is the County Board's decision to approve or disapprove a subdivision application and issue a subdivision permit ruling. The DEQ's role is limited to reviewing and making recommendations to the Board regarding two specific portions of the full subdivision application. The DEQ does not review and make recommendations on other portions of the full

subdivision application, and does not make the final decision whether to approve it or not. WYO. STAT. ANN. §§ 306(c) & 308(c). The County Board, in its discretion, may choose to accept or reject the DEQ's recommendations, but is under no obligation to accept them. WYO. STAT. ANN. § 18-5-308(c). Even if the Board chooses to accept the DEQ's recommendations on those two portions of the full subdivision application, that choice does not convert the Board's final decision on the subdivision permit into a decision by DEQ.

NFG (Response, pp. 8-9) overlooks the other cases and Black's Law Dictionary definition cited in Respondent DEQ's Memorandum in Support of Motion to Dismiss (pp. 7-8) that distinguish a "recommendation" from a final decision. A recommendation by one entity may be accepted by another entity in the process of making its final decision, in which event acceptance of the recommendation, not its submittal, is the decisive agency action.

As part of the subdivision application process, the statute also requires the subdivision permit applicant to obtain review and recommendations from the local conservation district regarding soil suitability, erosion control, sedimentation, and flooding problems. WYO. STAT. ANN. § 18-5-306(b). The DEQ does not have a role in making, accepting, or rejecting those §306(b) recommendations, which are a required part of the subdivision application process, and consequently the DEQ's recommendations on water supply and sewage systems under WYO. STAT. ANN. § 306(c) cannot by themselves "consummate" the full subdivision application review process or dictate the County Board's ultimate decision on a subdivision permit.

NFG recognizes that, "unexplainably" or not, the Park County Board "*chose* to grant the [special use] permit on condition of ultimate favorable DEQ review." Response, p. 9 (Emphasis added). That was the Board's decision, not the DEQ's. The DEQ's recommendation has no

force of its own. The DEQ cannot dictate that the Board grant either a special use permit or a final subdivision permit upon the DEQ's recommendation, because the statute leaves it to the Board's discretion whether or not to accept a DEQ recommendation. WYO. STAT. ANN. § 18-5-308(c). As noted earlier: a) the Board's SUP Resolution (pp. 3-4) did not simply call for "favorable DEQ review" (Response, p. 10), but rather for the proposed systems being "permitted" by DEQ, and b) the sewage system covered by the SUP was not the same sewage system referenced in the DEQ's recommendation letter.

If NFG believes that the Board's approval of the SUP relies on a DEQ recommendation that was flawed, then NFG can seek review of the Board's action. In fact, NFG is already engaged in that process by its motion to intervene in a pending contested case hearing before the Park County Board, as reflected in the above-referenced and attached ORDER DISMISSING PETITIONS FOR REVIEW AND REMANDING JURISDICTION TO THE PARK COUNTY BOARD OF COUNTY COMMISSIONERS (Civil Nos. 23706 & 23699), dated November 17, 2005, filed November 22, 2005.²

There is a Wyoming case that sheds some light on this issue from the opposite side. Two sewer districts joined together to establish a general sewage treatment system to serve approximately 400 households in suburban rural Teton County. *Knight v. Environmental Quality Council*, 805 P.2d 268, 269-270 (Wyo. 1991). The sewer districts filed an application for a permit from the DEQ for deep well injection of the system effluent. The DEQ proposed to

² See the attached District Court Order, page 2: "4. Northfork Citizens/Jamison's Motion to Intervene, filed August 4, 2005" and findings "3. The Special Use Permit issued by Respondent Board has provided Petitioner Northfork Communities, Inc. notice and established inhibitions to their proposed development and, therefore, a contested case is now appropriate" and "4. . . . It is left to the discretion of the Board as to if and when the contested case hearing will occur and whether Petitioner Northfork Citizens/Jamison will be a party in the contested case hearing."

issue the requested permit and provided public notice of that decision. Mr. Knight and others filed petitions protesting the permit. A public hearing was held before the Environmental Quality Council. The EQC ultimately ordered that the permit be revised and the revised permit be issued by DEQ. *Id.* at 275. Mr. Knight appealed the Council's decision to State District Court, which affirmed the EQC's decision, and then appealed the District Court's decision to the Wyoming Supreme Court. *Id.* at 269-270.

On appeal, Mr. Knight contended, among other things, that (II) "due to an erroneous interpretation of the authority of the County Commissioners to restrict the EQC and the DEQ," the DEQ/EQC allowed "advice" of the county officials to act as a veto and preempt the ultimate [permit] decision. *Knight*, 805 P.2d at 270-271. The Wyoming Supreme Court found that the DEQ/EQC did not, as Mr. Knight contended, err by allowing the county commissioners to make the decision. Rather, the county commissioners' view was considered, but not deemed preclusive, by the DEQ/EQC. *Id.* at 272. In *Knight*, the DEQ's decision, not the County Board's advice to the DEQ, was reviewable, as will be the case if the DEQ itself issues permits for construction of water supply and sewage systems for the Copperleaf subdivision.

And so it is under WYO. STAT. ANN. § 18-5-308 as well, where the shoe is on the other foot. The County Board can consider and accept the DEQ's recommendations, but the ultimate decision remains vested with the Board, even if they choose to make their approval contingent on a "no adverse recommendation" from the DEQ.

Conclusion

The agency action at issue in this case before the Council is the DEQ's October 28, 2005 recommendation letter to the Park County Board (Petition Exhibit [B]) upon which Petitioner NFG requested a hearing, not the Special Use Permit (SUP) for the Copperleaf subdivision

approved by Park County Board Resolution #2005-40 on June 21, 2005 (Petition Exhibit [A]).

The Special Use Permit is not itself a final subdivision permit for purposes of WYO. STAT. ANN. § 18-5-304. The SUP did not “result from” the contested DEQ recommendation letter. The Special Use Permit (Board Resolution #2005-40, p.3) states that “10. Prior to approval of the final plat and subdivision permit,” enhanced septic systems shall be “recommended” as adequate by the DEQ. The DEQ’s October 28, 2005 letter did not recommend enhanced septic systems as adequate.

The DEQ’s October 28, 2005 recommendation letter is not a final agency action. The Special Use Permit is an agency action by the Park County Board, not the DEQ. Even if the Park County Board accepted the DEQ’s October 28, 2005 recommendations in the process of making the Board’s June 21, 2005 Resolution Approving the Copperleaf Special Use Permit, that would not convert the Board’s decision into a DEQ decision. The Council’s jurisdiction to review final agency actions in contested case hearings does not extend to actions by the Park County Board.

The District Court decided that the Park County Board of County Commissioners’ decision approving the Copperleaf subdivision Special Use Permit (SUP) was not a final agency action for purposes of review under the Wyoming Administrative Procedure Act (WAPA), and remanded jurisdiction to the Park County Board for contested case proceedings as appropriate. District Court Order, p.3. If approval of the SUP was not a reviewable final agency action of the Park County Board, then it certainly was not a reviewable final action of the DEQ, where the DEQ’s role was limited to making recommendations to the Board.

As observed in Respondent DEQ’s Memorandum in Support of Motion to Dismiss (pp. 10-11), not every step in the process leading to a final decision is subject to review. This matter

will be subject to review by the Council if the DEQ issues Chapter 3 permits for the proposed subdivision water supply and sewage systems. NFG is not left without opportunities to contest final agency actions in this matter when they occur.

For the reasons set forth in Respondent DEQ's Motion to Dismiss, Memorandum in Support of Motion to Dismiss, and this Reply, Petitioner Northfork Group's (including David Jamison) Petition for Review in this matter before the Council should be dismissed for lack of subject matter jurisdiction and/or failure to state a claim on which the requested relief can be granted.

DATED this 21st day of April, 2006.



Mike Barrash
Attorney General's Office
123 Capitol Building
Cheyenne, Wyoming 82002
(307) 777-6946

CERTIFICATE OF SERVICE

True and correct copies of the foregoing DEQ'S REPLY TO NORTHFORK GROUP'S RESPONSE TO DEQ'S MOTION TO DISMISS, were served by United States mail, first class postage prepaid, this 21st day of April, 2006, addressed as follows:

Debra J. Wendtland
Wendtland & Wendtland
2161 Coffeen Ave., Suite 301
Sheridan, Wyoming 82801

Laurence W. Stinson
Bonner Stinson, P.C.
128 East Second
P.O. Box 799
Powell, Wyoming 82435

Bryan A. Skoric
Park County Attorney
Park County Courthouse
1002 Sheridan Ave.
Cody, Wyoming 82414



IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF WYOMING IN AND FOR PARK COUNTY, WYOMING

NORTHFORK COMMUNITIES, INC.,

Petitioner,

vs.

PARK COUNTY BOARD OF
COUNTY COMMISSIONERS

Respondent.

AND

NORTHFORK CITIZENS FOR RESPONSIBLE
DEVELOPMENT AND DAVID JAMISON,
AN INDIVIDUAL,

Petitioners,

vs.

PARK COUNTY BOARD OF
COUNTY COMMISSIONERS

Respondent.

Civil No. 23706

JOYCE BOYER
Clerk of District Court

FILED NOV 22 2005


Clerk

Civil No. 23699

**ORDER DISMISSING PETITIONS FOR REVIEW AND REMANDING JURISDICTION
TO PARK COUNTY BOARD OF COUNTY COMMISSIONERS**

THIS MATTER came on before the Court on the Petitioner Northfork Communities, Inc.'s Request for Setting filed August 4, 2005. A hearing was conducted on October 19, 2005. Laurence Stinson of Bonner Stinson, PC, Powell, WY, appeared on behalf of Petitioner Northfork Communities, Inc.; Debra Wendtland of Wendtland & Wendtland, LLP, Sheridan, WY, appeared on behalf of Petitioner Northfork Citizens for Responsible Development and David Jamison; and Park County Attorney, Bryan Skoric, and Deputy County Attorney, Jim Davis, appeared on behalf of Respondent Park County Board of County Commissioners. Pending at the time of the hearing were as follows:

1. Petitioner Northfork Communities Inc.'s Petition for Review, filed June 30, 2005;
2. Petitioner Northfork Communities Inc.'s Motion Requesting Contested Case and Motion for Stay of Petition for Review, filed July 19, 2005;
3. Northfork Citizens/Jamison's Motion for Consolidation of Actions, filed July 28, 2005;

4. Northfork Citizens/Jamison's Motion to Intervene, filed August 4, 2005;
5. Northfork Citizens/Jamison's Response to Petitioner Northfork Communities, Inc.'s Motion Requesting Contested Case and Motion for Stay of Petition for Review, filed August 4, 2005;
6. Park County's Response to Petitioner's Motion Requesting Contested Case and Motion for Stay of Petition for Review, filed August 8, 2005;
7. Park County's Amended Response to Petitioner's Motion Requesting Contested Case and Motion for Stay of Petition for Review, filed August 8, 2005;
8. Park County's Response to Northfork/Jamison's Motion to Intervene, filed August 8, 2005; and
9. Park County Board of County Commissioners' Motion to Dismiss "Northfork Group's" Response to Petitioner Northfork Communities, Inc.'s Motion Requesting Contested Case and Motion for Stay of Petition for Review, filed August 8, 2005.

In consideration of the motions and arguments heard by the Court on October 19, 2005, the Court finds:

1. The law of this case as set forth by Judge Kautz in the Order Granting Defendant's (Park County Board of County Commissioners) Motion to Dismiss Verified Petition for Injunction and Writ of Mandamus is that a contested case Hearing would be appropriate after Petitioner Northfork Communities, Inc. was afforded notice of any controverted issues;
2. Respondent Board has previously conceded on legal grounds that a contested case would be available to Petitioner following a decision by the Board that established inhibitions to Petitioner Northfork Communities, Inc.'s proposed development;
3. The Special Use Permit issued by the Respondent Board has provided Petitioner Northfork Communities, Inc. notice and established inhibitions to their proposed development and, therefore, a contested case is now appropriate;
4. Petitioner Northfork Communities, Inc. has requested a contested case and the Park County Board of County Commissioners is prepared to act on that request pursuant to the regulations set forth by the Board. It is left to the discretion of the Board as to if and when the contested case hearing will occur and whether Petitioner Northfork Citizens/Jamison will be a party in the contested case hearing;

5. The procedure in Park County by which Petitioner Northfork Communities, Inc. must follow in order to establish the Copperleaf Subdivision is a two step process, the first being an issuance of a special use permit and the second an approval and issuance of a final plat. Only after the issuance of a final plat is there a final agency decision for purposes of the Wyoming Administrative Procedure Act; and
6. At this point, a final plat has not been issued to Petitioner Northfork Communities, Inc. and, therefore, there has been no final agency decision by the Board. The absence of a final plat renders both Petitioners' Petitions for Review untimely.

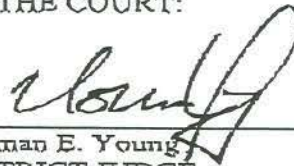
THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that Petitioner Northfork Communities, Inc.'s Petition for Review in Civil No. 23706 be and the same is hereby DISMISSED, in all respects, without prejudice.

IT IS FURTHER ORDERED that Petitioner Northfork Citizens for Responsible Development and David Jamison's Petition for Review in Civil No. 23699 be and the same is hereby DISMISSED, in all respects, without prejudice.

IT IS FURTHER ORDERED that this case remain within the jurisdiction of the Park County Board of County Commissioners and the Board shall address Petitioner Northfork Communities, Inc.'s request for contested case as is appropriate under the procedural rules regarding subdivision development as set forth by Park County.

DATED this 17th day of November 2005.

BY THE COURT:




Norman E. Young
DISTRICT JUDGE

STATE OF WYOMING)
COUNTY OF PARK) 17 85

I certify that the foregoing is a true copy of the original on file in this office.

Dated 11-22-05


JOYCE BOYER
Clerk of District Court