



## DEPARTMENT OF PLANNING AND ZONING

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# CERTIFICATE OF RECOMMENDATION

**TO:** Grand County Board of County Commissioners

**FROM:** Department of Planning and Zoning

**DATE:** May 3, 2011

**RE:** Graber - Hinds Outright Exemption and Variance

**APPLICANT:** Robert J. Hinds and Ann M. Hinds and Lesa M. Graber

**LOCATION:** Government Lots 1, 2, 3 & 4, Section 5, Township 1 North, Range 76 West

**ZONING:** Forestry and Open

**APPLICABLE SECTION OF CODE:** Grand County Zoning Regulations, Master Plan and Subdivision Exemption Regulations.

**EXHIBITS:** Letter of application with supporting documents; GIS vicinity map; email from Ann Hinds; Planning Commission Resolution No. 2011-4-1

**STAFF CONTACT:** Kristen Manguso

**REQUEST:** The applicants are requesting approval of two (2) outright exemptions; the first would split approximately 0.70 acres of land (which requires the variance) from 3.79 acres and join it to an adjacent 1.23 acre parcel. The second is to join an existing 0.12 acre parcel with the adjacent residual 3.09 acre property.

## **DISCUSSION**

Lesa M. Graber is the owner of a 1.23 acre parcel of land by Beneficiary Deed recorded at Reception No. 2005-002106 of the Grand County Records. Robert J. and Ann M. Hinds own the adjacent parcel of land, which consists of approximately 3.79 acres. This request is to divide 0.70 acres of land from the Hinds ownership and join it with the adjacent Graber ownership. The purpose of this outright request is to eliminate the encroachment of the Graber cabin over the Hinds property line.

The Hinds also own a 0.12 acre legally created parcel that is adjacent to their existing ownership. During this process, they wish to combine this parcel with the residual 3.09 acre parcel. The .12 acre tract is surrounded on 3 sides by St. Louis Creek, and is unbuildable. If approved, this will create a 3.10 acre parcel to be known as Tract 2, Graber-Hinds Outright Exemption.

## **COMPLIANCE/NONCOMPLIANCE WITH GRAND COUNTY ZONING REGULATIONS**

This property is zoned Forestry and Open and is not located within a growth boundary as designated by the Grand County Master Plan. The minimum lot size outside of a growth boundary is five (5) acres. However, these parcels are both pre-existing non-conforming and currently do not meet the minimum lots size in this district. This outright exemption would not allow additional density, and would eliminate an encroachment issue. ✓ Since this proposal will temporarily create an outright exemption parcel of 0.70 acres in size, this request requires a variance be granted by the Board of County Commissioners to create a parcel smaller than the minimum lot size in this zone district. The second request is simply to join two existing parcels into a single tract - the 0.12 acre parcel with the residual 3.09 acre property. No variance is required for this combination.

## **COMPLIANCE /NONCOMPLIANCE WITH THE GRAND COUNTY MASTER PLAN**

This request will not result in any new land uses or impacts, therefore, this application is in compliance with the Grand County Master Plan

## **COMPLIANCE WITH THE GRAND COUNTY OUTRIGHT EXEMPTION REGULATIONS**

### **1.4 JURISDICTION**

- (3) Division of a parcel of land when the Board of County Commissioners determines that such division may be permitted without complying with either Grand County Subdivision Regulations or Grand County Subdivision Exemption Regulations under the following circumstances.
- (a) Which involves adjustment of a tract boundary to resolve a boundary dispute, when substantial evidence indicating the existence of a bona fide dispute is presented.
  - (b) Which involves adjustment of a tract boundary to eliminate an existing encroachment of a substantial structure upon property of another.

- (c) Which involves acquisition of access from one parcel of property through another.
- (d) Which involves other unusual circumstances which are deemed by the Board of County Commissioners to justify such a grant.

It is Staff's opinion that both Outright Exemptions are justified under (b) of this section. The unusual circumstance is that the Graber cabin is constructed over the Hinds property line, and this outright exemption will eliminate the encroachment. By creating the first Outright Exemption parcel and immediately combining it with the existing Graber ownership, this request will create no additional density or impacts.

✓Approval of this request is contingent upon the Board of County Commissioners granting approval of a variance to the minimum lot size in order to temporarily create the outright exemption parcel of 0.70 acres in size.

Proper public notification regarding the variance to the minimum lot size for the outright exemption parcel has been made in the April 14, 2011 issue of the Middle Park Times. All adjacent property owners have been notified by certified mailing as required.

Regarding the second request to join the 0.12 acre metes and bounds parcel of land with the adjacent property, this eliminates an existing unbuildable parcel of land, and creates no additional impacts.

## **COMPLIANCE WITH THE GRAND COUNTY SUBDIVISION REGULATIONS**

### **4.3 FINAL PLAT**

- (2) The final plat shall contain or be accompanied by the following information:
  - (a) A scale, north arrow, and date have been provided. The title of this outright exemption is shown correctly as follows:

Graber-Hinds Outright Exemptions
  - (b) A correct legal description of the property has been provided.
  - (c) Primary control points have been referred.
  - (d) Tract boundary lines and right-of-way lines of streets and easements, with accurate dimensions have been provided.
  - (e) N/A
  - (f) The outright exemption plat shows a 14 foot access easement to be dedicated

by this plat across the Hinds property. ✓This access easement shall also be shown across the Graber property. ✓Correctly executed access easements from both the Hinds and Lesa Graber for the benefit of each other shall be provided prior to recording.

The title commitments exempt legal access from both properties to CR 73. Staff is not certain that legal access exists to these properties, although all property contained within this request was created in 1959, 1956 and 1969. Even if no formal legal access easements exist, it is clear that the parcels have been using this access for more than 50 years. It is always the intent of staff to legalize access during any review, however, in this case, it does not seem to be possible to get this accomplished, although staff is requiring the two property owners involved in this request to grant legal access.

✓All legal documentation is subject to the review and approval of the Grand County Attorneys office.

- (g) If this request is approved, the Hinds parcel (Tract 2) will be 3.10 acres and the Graber property (Tract 1) will consist of 1.93 acres.
- (h) N/A
- (i) The location and description of monuments is shown.
- (j) Current title insurance for the Hinds property dated 9-9-2010 has been provided. The title commitment issued by Land Title (#J6003862) for the Graber property is dated September 15, 2010. No lien holder is shown on either commitment. ✓Current title commitments (dated within 6 months) shall be provided prior to recording.
- (k) ✓The Dedication Statement shall be revised to refer to Tract 1 and Tract 2, as shown on the plat.
- (l) A correct Surveyors Certificate is shown.
- (m) Correct Planning Commission and Commissioners Certificates are shown.
- (n) N/A
- (o) A two and one-half by three inch (2 1/2" x 3") vertical box has been provided.
- (p) N/A
- (q) A correct vicinity map is shown.
- (r) N/A

- (s) N/A
- (t) N/A
- (u) N/A
- (v) N/A
- (w) ✓A correct final plat Mylar, with support documents and recording fees shall be provided.
- (x) ✓Proof that property taxes have been paid in full for all properties contained within this request shall be provided prior to recording.
- (y) ✓An electronic copy of the outright exemption in AutoCAD.dwg or AutoCAD.dxf format shall be provided. The drawing shall be based or transformed to a known coordinate system, not an assumed local coordinate system. If GPS Lat/Long is not used for this reference, the Geographic Coordinate Data Base should be used to obtain relative coordinates available from the BLM at [www.blm.gov/gcdb](http://www.blm.gov/gcdb). The drawing shall include either a data dictionary to explain the layers, or a self-explanatory layering system.

#### **PLANNING COMMISSION RECOMMENDATION**

The initial Graber Outright Exemption request was heard during the October 13, 2010, Planning Commission meeting, receiving a recommendation of approval by unanimous vote. This request was to split the 0.70 acre parcel from the Hinds property and did not include the combination of the 0.12 acre parcel with the residual Hinds parcel.

Prior to the Board of County Commissioners meeting, the Hinds contacted staff and expressed their intent to combine the 0.12 acre parcel with their existing ownership. The plat has been correctly revised to reflect this amendment to the original submittal.

This amended request was then presented to the Planning Commission during their April meeting, and received a unanimous recommendation of approval by Resolution No. 2011-4-1.

#### **STAFF COMMENTS**

Applicant shall provide the following correctly executed documents prior to recording.

- ≡ Robert J. and Ann M. Hinds (grantor) to Lesa M. Graber (grantee) conveying the Graber Outright Exemption parcel.
- ≡ Robert J. and Ann M. Hinds (grantor) to Robert J. and Ann M. Hinds (grantee) re-conveying the new metes and bounds parcel.
- Lesa M. Graber (grantor) to Lesa M. Graber (grantee) conveying the new

legal description which must include the Outright Exemption parcel. The language shall include that that these parcels are forever combined, never to be sold, mortgaged or transferred separately and these covenants shall run with the land and shall be binding upon all heirs, successors and assigns.

**STAFF RECOMMENDATION:**

Staff recommends approval of the Graber-Hinds Variance request to temporarily create an outright exemption parcel of .70 acres in size with no conditions.

If the above variance request is approved, then the following are conditions to be satisfied prior to recording any Outright Exemption plat:

1. The plat shall show an access easement across the Graber property. Correctly executed access easements between the Hinds and Lesa M. Graber shall be provided.
2. The Dedication Statement shall be revised to refer to Tract 1 and Tract 2, as shown on the plat.
3. Correctly executed deeds conveying the newly defined parcels shall be provided.
4. Current title commitments (dated within 6 months) shall be provided for all property contained within this request.
5. A correct final plat Mylar, with support documents and recording fees shall be provided.
6. Proof that property taxes have been paid in full for all properties contained within this request shall be provided prior to recording.
7. An electronic copy of the outright exemption in AutoCAD.dwg or AutoCAD.dxf format shall be provided. The drawing shall be based or transformed to a known coordinate system, not an assumed local coordinate system. If GPS Lat/Long is not used for this reference, the Geographic Coordinate Data Base should be used to obtain relative coordinates available from the BLM at [www.blm.gov/gcdb](http://www.blm.gov/gcdb). The drawing shall include either a data dictionary to explain the layers, or a self-explanatory layering system.
8. All items marked with a ✓ shall be complied with.

**All legal documents are subject to the review and approval of the County Attorney.**