

REGARDING THE APPLICATION OF:

Harry Rinker for a Mountain Overlay District (MOD) Site Alteration on Lot 1, Block 1, Timber Gulch Subdivision, 234 Timber Lane, Blaine Co., Idaho.	Findings of Fact, Conclusions of Law and Decision
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**Requested Action:** A Public Hearing on and consideration of a Mountain Overlay District (MOD) Site Alteration permit application by property owner Harry Rinker Living Trust to landscape, regrade, install one berm, and relocate a public easement path on Lot 1, Block 1, of Timber Gulch Subdivision. The 5.78 acre lot, also known as 234 Timber Lane, is zoned both Planned Residential Development (R-2) and Rural Residential (R-10) with areas of Avalanche Overlay (A) and Mountain Overlay (MOD) Districts.

**Applicable Regulations:** Title 9-Zoning Ordinance; chapters 6, 10, 21 and 22. Title 8- Comprehensive Plan.

**Property Owner:** Harry Rinker

**Representative:** Brian Yeager, P.E., P.L.S., of Galena Engineering

**Section I. General Facts and Background**

**P&Z Disclosures:** No disclosures were made.

**Staff site visit:** Kristine Hilt and Kathy Grotto, staff, and Jeff Loomis, County Engineer, visited the site on Monday, June 27, 2016. Representative Brian Yeager, Galena Engineering, met them on site. Applicant and representatives were notified at that time that a Site Alteration Permit must be submitted to the Land Use office and that all site improvements must cease until approval from the Planning & Zoning Commission has been granted. The applicant has requested that additional removal of dead Aspen trees along the southern slope of Lot 1 and Parcel A be granted.

► **FINDING:** The Planning and Zoning Commission has, as part of this application, approved the removal of dead Aspen trees along the southern slope of Lot 1 and Parcel A.

1. Land Use and Building Services received the Mountain Overlay District Site Alteration Permit application on August 16, 2016. The application was certified as being generally complete on August 16, 2016.
2. **Public notice** for the September 22, 2016 public hearing for this application was provided as follows:
  - a) Legal notice was sent to the Idaho Mountain Express for publication on September 1, 2016;
  - b) Notification was sent to surrounding property owners within three hundred (300) feet of the subject property on September 7, 2016;
  - c) to all county political subdivisions on September 6, 2016;
  - d) An on-site notice was posted by September 14, 2016, at least 7 days prior to hearing as evidenced by the affidavit in file;
  - e) The application materials were posted on the website.

► **Motion:** Upon motion by Commissioner Murphy, second by Commissioner Pynn, and by a vote of 6 to 0 (Commissioner Fosbury is absent), the Commission finds notice to be adequate for the September 22, 2016 hearing and in compliance with state and county codes.

3. The following information and exhibits make up the public record and were received at Land Use and Building Services on August 16, 2016 unless otherwise indicated:

**A EXHIBITS - APPLICATION EXHIBITS**

- A-1: MOD Site Alt Application
  - Vicinity Map
  - Surrounding land owners (300 ft)
- A-2: MOD responses to Standards of Evaluation
- A-3: 24"x36" and 11"x17" plans: Site Alteration Permit Drawing
- A-4: Brian Yeager, P.E., P.L.S., Galena Engineers, letter addressing drainage, dated August 31, 2016

**B EXHIBITS - AGENCY COMMENTS**

- B-1: Jeff Loomis, Blaine County Engineer; rec'd September 2, 2016
- B-2: Bob Erickson, So. Central Public Health District; rec'd September 1, 2016

**C EXHIBITS - BLAINE COUNTY SUPPLEMENTS:**

- C-1: Signed Findings for Timber Gulch Subdivision dated March 3, 2015
- C-2: Governing Timber Gulch Subdivision Plat dated November 2015

**D EXHIBITS - PUBIC COMMENT:**

None

<b>Section II. Evaluation of Site Alteration Permit Design Review Standards of Evaluation</b>
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*Italicized text indicates code citations. Findings are shown in bold font.*

*Pursuant to §9-21-5 (D) of the Zoning Regulations, the applicant has the burden of demonstrating compliance with this Chapter, including each of the following design review standards of evaluation. Before approving or conditionally approving a site alteration permit, the Commission shall review and find adequate evidence that the proposed development or site alteration meets the following standards:*

1. *No sufficient available area for the site alteration exists on the lot outside of the Mountain Overlay District. "Available area" may be found to exclude land located within the 100-year floodplain, floodway, wetlands, and avalanche hazard created by off-site conditions where such environmental concerns outweigh the hillside concerns for the particular project. Existing structures that are nonconforming to this Chapter may be improved, moved, or replaced within the Mountain Overlay District, provided the Commission finds that the proposal is less nonconforming than what is existing and is in substantial compliance with subsections D2 through D11 of this Section.*

- ▶ **FINDING: Compliance.** The proposal is entirely located within the MOD and MOD Buffer. No area outside of the MOD or MOD Buffer exists for development. A portion of the lot within the buffer has slopes of less than 25%, however, the governing Timber Gulch Subdivision Plat Note #3 (stated below) requires a Site Alteration Permit for any development.

Plat Note 3: "This property falls within Blaine County's Mountain Overlay District, Title 9, Ch. 21 of the county's code and thus is governed by that chapter. Although a portion of Lot 1 lies within the mapped MOD buffer and has less than 25% slope, structures and uses may not be categorically excluded due to location within the MOD buffer. A Site Alteration Permit must include a thorough analysis and design for drainage (including where it leaves the property), potential natural disaster debris flows, avalanches, and any other data required during the permit process."

2. *Visibility of the site alteration as viewed from reference roads shall be minimized through design, landscaping and siting. Except where extraordinary circumstances exist that are peculiar to the physical characteristics of the site, site alterations, particularly buildings, other structures, and hillside roads, are less visible the lower in elevation they are as determined by topographic contour lines. New development shall be compatible with the general scale (height, dimensions, overall mass) of development in the vicinity. The maximum bulk of structures shall be hidden or minimized by design, landscaping and siting. Landscaping shall blend harmoniously with the surrounding area, and shall not create excessive contrast with the surrounding area.*

► **FINDING: Compliance.** The surrounding area is typical of the high desert hillsides in this area of Blaine County and consists largely of sage brush slopes and evergreens. The applicant has planted spruce throughout the lot and along the exterior boundaries of the building envelope. Based on photos submitted of surrounding landscape, conifers are compatible to the area. The berm is compatible to adjacent existing development in Timberview Terrace, the adjacent subdivision.

3. *The site alteration, and any grading and excavation relating thereto, shall include measures or designs to mitigate the risk of soil erosion, silting of lower slopes, slide damage, flooding, severe scarring and any other geologic instability. All excavation, grading and fill shall be revegetated as provided herein (except for roadway surfaces) and otherwise stabilized to control erosion.*

► **FINDING: Compliance.** The County Engineer commented that the proposed work association with this application will not significantly increase any impacts from drainage, potential natural disaster debris flows, or avalanches. Refer to Exhibit B-1, Jeff Loomis, County Engineer, comments.

4. *The site alteration shall comply with the requirements of the Avalanche Overlay District.*

► **FINDING: Not applicable.** The proposed site alteration is not within the District.

5. *Any proposed building or other structure shall remain below the skyline and shall be sited in such a manner so as not to create a silhouette against the sky as viewed from any reference road.*

► **FINDING: Compliance.** There are no buildings proposed. The berm, as a "structure" is not skylined.

6. *Manmade slopes, road alignments, driveways, improvements, grading, excavation, berming, and fill activities shall conform as closely as possible to the natural terrain. Alteration of the natural drainage of the site shall be minimized and mitigated. Hillside roads shall also meet all other applicable road or driveway standards under County ordinances and adopted codes, including, but not limited to, those for grades and emergency vehicles. Existing roads/driveways to existing nonconforming structures located within the Mountain Overlay District may be moved or improved to reduce the degree of noncompliance with requirements for grades and emergency vehicles.*

► **FINDING: Compliance with a condition.** The berm located at the western boundary of the lot is not consistent with any natural features on the property, but based on testimony by Brian Yeager, the commission finds this standard to be in conditional compliance. According to Exhibit A-4, Brian Yeager Letter, the drainage on the lot has not been negatively impacted. According to Yeager, "It is my opinion the berm helps to reduce offsite drainage by deflecting flow away from the toe of the northern hillside..."

It appears that the planted spruce tree (which appears likely to eventually impede access and nullify the purpose of the easement) and the berm encroach into the required 12' public access easement at that location. According to Plat Note #2 of Exhibit C-2, Timber Gulch Subdivision Plat, "the property owner shall maintain unrestricted passage by the public along this easement..."

During the applicants presentation they volunteered to remove the aforementioned spruce tree. The berm encroachment is found to be insignificant to the commission.

The commission finds that the easement, where relocated, is close enough to the platted easement to remain. The applicant, likewise, wishes to keep the easement in the relocated path.

- **Required condition of approval:** The spruce tree encroaching into the non-motorized public access easement shall be removed within 30 days of the signing of this document.

7. *Native or native-compatible vegetation shall be preserved to the greatest extent possible, and revegetation adjacent to residences shall be with low-combustible plant species. See firewise check list. Revegetation of disturbed areas shall utilize plant materials harmonious and/or native to the area. The method for control and prevention of noxious weeds shall be demonstrated. Disturbed areas shall be landscaped or revegetated immediately after completion of the site alteration activities. Components of the revegetation plan shall include the techniques that will be used to ensure the establishment of the proposed vegetation for a period of not less than five (5) years.*
- ▶ **FINDING:** Compliance with a condition. Native vegetation has been removed to relocate the required public access easement to the toe of the southern hillside. Thistles, a noxious weed, have taken over the disturbed area, the applicant has indicated that weed control will commence with approval. Financial security is required.
- **Required condition of approval:** A financial security for natural grasses to be planted and weed control in the relocated easement shall be retained by Blaine County in an amount of 150% of the estimated landscaping cost for a period of five years or until it has been demonstrated to the planning director that the natural grasses and weed control have been adequately addressed.
8. *Exterior building materials shall be of non-reflective materials. The visibility of hillside development shall be lessened by limited glazing and exterior lighting, and by use of materials and colors compatible with the natural surrounding setting. Roofs shall be designed to minimize the visibility of the structure. Reflective metal roofs are prohibited; non-reflective metal roofs may be approved.*
- ▶ **FINDING:** Not applicable at this time. A separate Site Alteration Permit application will be required for any development not included in this application.
9. All outdoor lighting shall comply with the outdoor lighting requirements of chapter 29A of this title.
- ▶ **FINDING:** Not applicable at this time. No lighting is proposed.
10. *Construction proposed as part of a site alteration permit application shall comply with other applicable codes and ordinances, including, but not limited to, the International Fire Code; Title 7, Chapter 3 of this Code; and the International Building Code, as amended, in effect at the time.*
- ▶ **FINDING:** Not applicable. No construction requiring Fire or Building construction compliance is proposed at this time. The entry gate will be reviewed with a residential structure when proposed on the lot.
11. *Any proposed new road or driveway is necessary to access a building site or building that was lawfully approved under this Title.*
- ▶ **FINDING:** The driveway has been regraded but lies within the approved driveway/utility easement per Exhibit C-2, Timber Gulch Subdivision Plat. The driveway will be reviewed with a residential structure when proposed on the lot.
12. *(this criterion is not applicable, as the Applicant is not the State of Idaho, or any board or agency board, department, institution or district thereof.)*
13. *When the proposed use involves a potential contaminant source or potential contaminant as set forth in appendix A of this title, on file in the county, and is located within a wellhead protection area the applicant has adequately demonstrated that the project has been designed to mitigate any adverse impact to a potable water source.*
- ▶ **FINDING:** Not applicable. The property is not within a well head protection area.

### Section III. Decision and Required Conditions

► **DECISION:** Upon a motion by Commissioner Murphy, second by Commissioner Martin and a 6 – 0 vote (Commissioner Fosbury is absent), the Planning and Zoning Commission approves with conditions the Mountain Overlay District Site Alteration permit application by Harry S. Rinker for Lot 1, Block 1 of the Timber Gulch Subdivision which lies within the Mountain Overlay District and Mountain Overlay District Buffer as presented and discussed at this public hearing as they find it does conditionally comply with the applicable standards of evaluation. The applicant shall comply with the following conditions:

Required conditions of approval:

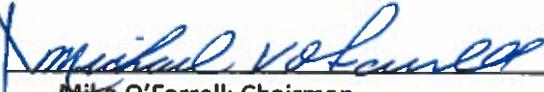
1. The conditional approval granted herein is based on the application as proposed and heard at the public hearing. Any changes and deviations in design from the approved plan shall be subject to further zoning review and may result in further review at the applicant's expense by either the County Engineer or the Planning and Zoning Commission.
2. The applicants shall comply with all applicable plat notes from the governing subdivision plat, zoning, building, fire and health district regulations.
3. Expiration of Permit: This site alteration permit shall expire one year following the date of its approval if the site alteration has not been substantially commenced. If good cause for delay is shown, the Administrator may once extend the period not to exceed one year, provided application is made for an extension before expiration of the permit.
4. A financial security for natural grasses to be planted and weed control in the relocated easement shall be retained by Blaine County in an amount of 150% of the estimated landscaping cost for a period of five years or until it has been demonstrated to the planning director that the natural grasses and weed control have been adequately addressed.
5. Required condition of approval: The spruce tree encroaching into the non-motorized public access easement shall be removed within 30 days of the signing of this document.

Applicant or any aggrieved person has the right to appeal this decision to the Blaine County Board of County Commissioners pursuant to Blaine County Code 9-32-4 by filing a notice of appeal in accordance with that section within 20 days of the date of this order and decision.

IT IS SO ORDERED.

DATED this 18 day of Oct, 2016

BLAINE COUNTY PLANNING AND ZONING COMMISSION

By:   
Mike O'Farrell; Chairman

#### CERTIFICATE OF MAILING

The undersigned, being over eighteen years of age, a resident of Blaine County, Idaho, and not a party to the above-entitled action, certifies that on the 18<sup>th</sup> day of Oct, 2014, he/she served a true and correct copy of the foregoing document by depositing the same in the United States mail with postage prepaid addressed as follows or by service otherwise as noted:

Brian Yeager  
Via email: [byeager@galena-engineering.com](mailto:byeager@galena-engineering.com)

Harry and Bart Rinker  
c/o Bart Rinker email: [bartrinker@me.com](mailto:bartrinker@me.com)

