

June 22, 2022

Blaine County Planning and Zoning Commission
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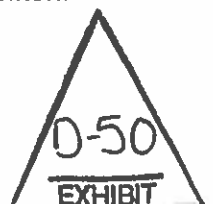
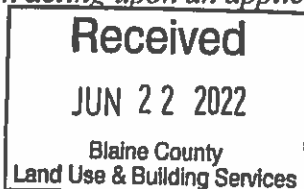
Subject: TVIV Quigley, LLC application to rezone a portion of the Mountain Overlay District

Dear Members of the Blaine County Planning and Zoning Commission,

The purpose of the following is to provide comments on the current application by TVIV Quigley, LLC, requesting that a certain portion of the mapped Mountain Overlay District (MOD) be rezoned to allow for the development of six residential properties (Lots 1-6 of the proposed Quigley Ranch Subdivision) on what is currently sagebrush steppe and hillside on the northwest side of Quigley Road. Many residents of Blaine County and representatives of governmental entities have already submitted comments raising concerns about and stating objections to the rezone application and the TVIV Quigley application concerning the proposed Quigley Ranch Subdivision. I share many of those concerns. However, in the interests of efficiency, these comments focus on the fundamental problem with the rezone application that requires its denial.

In short, the proposed rezoning directly conflicts with the overarching vision and specific directives of the Blaine County Comprehensive Plan with respect to the protection and preservation of hillsides and sagebrush steppes. The proposed rezoning also runs counter to the intentions and policy underlying Chapter 21 of the County's zoning ordinance establishing the MOD.

Under the applicable statutes and ordinances, the first step in considering whether to approve or deny a proposed amendment to a zoning classification is to determine whether the proposed rezone is consistent with or in conflict with the underlying land use plan. If the proposed amendment is consistent with the plan, it may be further considered as to its compliance or noncompliance with the applicable substantive standards. However, if a proposed amendment is not consistent with the underlying land use plan, that is the end of the inquiry and the proposal must be denied. Or, the land use plan itself may be first amended to allow for the possibility of the activity that would follow and/or is contemplated by the proposed rezone. Section 19-26-4.A of the Blaine County Code reflects this threshold requirement by stating: "*In acting upon an application for a reclassification or a reclassification with a development*



agreement, the commission shall first determine whether the proposal is in accordance with the comprehensive plan text and map.” (All quotations of language from the Blaine County Code and/or the Blaine County Comprehensive Plan in this letter are italicized). As discussed below, the County’s Comprehensive Plan is clear that undeveloped, hillsides and sagebrush steppes, among other environmental values, are critical components of the “heart and soul of the community” and, thus, their protection is to be maintained. For example, the Plan’s Key Guiding Principles include the following:

Natural environmental attributes, including scenic vistas, public open space, healthy forests and sagebrush steppe, clean water and air, and abundant fish and wildlife are the heart and soul of our community. [Bold in Plan]

The County’s natural environmental assets contribute to our high quality of life, help to drive our economy and are seen as valuable assets for their own sake. Reliable scientific study and analysis help leaders to understand the County’s natural environment, enabling sound decision-making.

...

The hills and mountains of our community are to be preserved in their natural state and land uses on them shall be strictly regulated. [Bold in Plan]

(Chapter 5, Key Guiding Principles, pages 3-4). Very similar vision statements and directives are found throughout the Plan. For example: *“Stewardship of the natural environment, economic development and planning for recreation are all important goals. Growth is desired, but impacts on healthy wildlife habitat, clean air and water, hillsides, or any of our natural environmental assets shall be minimized.”* (Chapter 5, Desired Outcomes, page 35); *“Ensure that public agencies understand the County’s goal of protecting MOD lands from development and of retaining the scenic integrity of MOD lands, including roads and other impacts that may scar hillsides.”* (Chapter 5, Local Regulations, Policy Statements, Mountain Overlay District, C-10.b, page 38). The following language from the Plan also underscores that such language has application to all hillside areas in the County and that it is supported by many residents:

In 2014, the County conducted an online survey called “How Should We Use Our Land?” The question, ‘How important are natural environmental attributes (scenic vistas, forests, clean water and air, wildlife, etc.) to our community?’ received an average rank of 9.3 on a scale of one to ten, with ten being “The Most Important”. Related questions about limiting development on hillsides and regulating land use in hazardous and sensitive areas received average rankings of 8.9 and 8.7 respectively.

(Chapter 5, Natural Environment: Resources, Hazard Areas, and Conservation, page 2).

The May 17, 2022 Staff Report on the rezone application indicates that the relevant personnel have determined that the application is in accordance with the Comprehensive Plan. However, a close reading of the report demonstrates that although the Applicant is clear that the purpose of its application is to facilitate the development of its six proposed hillside lots, the staff is viewing the proposed rezone as a paper exercise without any immediate on-the-ground consequences. For example, the staff indicates: “By re-zoning this specific portion of the mapped Mountain Overlay District[,] it will make for a cleaner process for new owners and the Planning Commission to locate where structures may be located below the 25% area.” (Staff Report, page 2). If the purpose of the rezone application at issue was only to reclassify a portion of the MOD boundary to facilitate more efficient administrative processing of future land use applications, that would be one thing. However, that is not the situation with the present application. It is clear that its purpose is to allow for the consideration and development of the Applicant’s six proposed hillside lots that are part of its 24 lot Quigley Ranch Subdivision application. Moreover, there is nothing in the report to suggest that staff considered the following language from the County’s Comprehensive Plan:

The County's Mountain Overlay District is intended to preserve the beauty and integrity of our mountains and foothills. Primary purposes of the County's strict hillside regulations include preserving the natural character and aesthetic values of our hillsides, protecting wildlife habitat, maintaining soil stability and permeability and ensuring public safety. Any weakening of these regulations would be in direct conflict with this principle. [Bold in Plan]

(Chapter 8, Land Use, Key Guiding Principles, page 3) (Underline added). The development of the six hillside lots would certainly not preserve the beauty and integrity of that hillside, or its natural character and aesthetic values. For these reasons, the analysis underlying the staff report is incomplete and the Planning and Zoning Commission should not feel bound to follow the staff’s findings and recommendation.

It cannot be understated that the purpose of the rezone application is to allow for the construction of six homes on what is currently open, undeveloped sagebrush steppe and hillside on the northwest side of the Quigley Road. Leaving aside the fact of the unique character of the Quigley Canyon area and its relative open space, recreation, and other environmental and wildlife values that are enjoyed by large and small and young and old Blaine County residents, the simple fact is that any development of that

sagebrush steppe and hillside area would be in direct conflict with the County's Comprehensive Plan. Thus, the rezone application must be denied.

As the Commission is aware, in the event it determines that a proposed rezoning is in accordance with the County's Comprehensive Plan, it then must assess the underlying application under the following criteria set forth in Section 19-26-4.B of the Blaine County Code as part of providing its recommendation on the application to the Board of County Commissioners (Board):

B. If the application is determined to be in accordance with the comprehensive plan text and map, the board shall then consider, at least, the following criteria:

1. Accuracy: Whether there was a mistake in the original zoning, or a map amendment to the MOD is warranted under subsection B11 of this section.

2. Change: Whether there has been a change in the surrounding neighborhood since the existing zoning was adopted.

3. Special Planning Area: Whether this or any adjoining property has been designated a special planning area on the county zoning map.

4. Effect On Public: To what extent the public health, safety, or general welfare may be adversely affected by the reclassification.

5. Conformity: Whether present zoning classifications are in conformity with existing uses of adjacent property.

6. Availability Of Services: Whether central water and sewer services are available.

7. Map Amendment Satisfied: Whether the relevant sections of chapter 31 of this title regarding a map amendment have been satisfied.

8. Development Agreement: Whether a development agreement that includes stricter regulations than those applicable to the proposed zoning district generally should be required as a condition of rezoning the subject parcel. See section 9-26-8 of this chapter for the additional requirements that apply to a reclassification with a development agreement.

9. Location Of Rezone: When the rezone is located within a wellhead protection area, it may only be granted if best management practices will be taken to mitigate the risk of contamination of public water systems and potable water sources.

10. Light Industrial District Rezones: [Since this criterion is not relevant to the application it has not been provided here]

11. Mountain Overlay District (MOD) Rezones: Boundary modifications are of a topographic nature and therefore may impact more than one parcel or an area greater than identified in the current application. In addition to considering the general rezone standards set forth above in this section, before approving any rezone application for the mountain overlay district (including any land in the SCI), with or without a development agreement and after a site visit and a review of all pertinent materials, the board shall find that each of the following required standards are met:

a. The rezone is in accordance with the intent and purposes of the MOD regulations described in chapter 21 of this title; and

b. The rezone consists of one of the following:

(1) All land of less than twenty five percent (25%) slope contiguous to land outside of MOD where the MOD boundary was created by slopes falling within the

floodplain overlay or riparian setback district, or the bank of a river or stream named in the national hydrography data set attached as exhibit AA, dated July 8, 2010, to the ordinance codified herein, or

(2) All land of less than twenty five percent (25%) slope contiguous to land outside of MOD where the MOD boundary was exclusively created by the isolated artificial slopes falling within the right of way or thirty feet (30') from the centerline of a manmade road cut; or

(3) All land of less than twenty five percent (25%) slope contiguous to land outside of MOD, within a discrete drainage, traversed by a dedicated, paved and accepted county road or a road designated as eligible for improvement under a county approved master plan.

12. *Standards And Criteria:* [Since this criterion is not relevant to the application it is not provided here].

Based on the materials that are provided on the Planning and Zoning Commission's online link to the rezone application, it appears that the application does not provide any information that would support concluding that the proposed rezone and subsequent hillside development might be in accordance with the Plan. Instead, the Applicant, through the one-page Opal Engineering February 24, 2022 document entitled "Quigley Ranch Subdivision MOD Rezone Criteria for Review," very briefly addresses nine of the twelve criteria set forth in Section 19-24-6.B. The first of the twelve criteria is "*Accuracy: Whether there was a mistake in the original zoning, or a map amendment to the MOD is warranted under subsection B11 of this section.*" (B11 is "Mountain Overlay District (MOD) Rezones"). The basic theme of the rezone application is that the County's initial GIS mapping used to designate the portion of the MOD in question was not as accurate as it could have been and, thus, there was a mistake in the designation of the MOD that requires correction at this time. However, because approval of the rezone application would result in hillside development that conflicts with the County's Comprehensive Plan, the accuracy of the County's initial GIS mapping, or whether the current boundary of the portion of the MOD in question is precise enough is beside the point.

One of the twelve criteria that is arguably the most important in the current situation, given the significant changes to the 17.44 acres on the northwest side of the Quigley Road that approval of the rezone application would likely facilitate, is the fourth – "*Effect On Public: To what extent the public health, safety, or general welfare may be adversely affected by the reclassification.*" With respect to this important question, the Opal Engineering document merely states: "No adverse impacts to public health, safety, or general welfare are anticipated as a result of the proposed rezone." This mere conclusion, without any analysis or explanation, is wholly inadequate and underscores that the rezone application does not merit approval.

A few of the comments already submitted to the Commission implore it to not allow here in Blaine County the type of ugly and pervasive hillside development found in other formerly quaint and historic western towns such as Park City, Utah, and many other hillside locations in Summit County, Utah, in which Park City is located. I am very familiar with those types of developments, which regrettably now appear on just about every hillside that can be seen in that area. Those hillsides were at one time undeveloped like those currently in Blaine County. They were not covered by creeping residential development with its deleterious effects on open space, scenic vistas, wildlife corridors, and other recreational and environmental values. Given the current development pressures in Blaine County, which will likely only increase, it appears highly likely that if the rezone application is approved, it will be the first of many similar applications leading to development of what currently are now pristine hillsides in Blaine County. Facilitating that situation would be an unfortunate legacy for the current Commission to have. In closing, the following language on page 35 in Chapter 8 (Land Use) of the County's Comprehensive Plan seems especially appropriate:

Natural resource protection. Detailed discussion is found in Chapter 5 - Natural Environment: Resources, Hazard Areas, and Conservation. Continuing to protect our natural resources is an ongoing challenge, particularly as more development occurs and the land that is "easy" to build on becomes built out. Pressure increases to build on protected, sensitive, and hazardous areas, including floodplains and riparian areas, wetlands, avalanche-prone areas, and hillsides. As the County experiences more "push back" against its regulations, maintaining the political will to continue to protect these areas is required. [Underline in Plan]

Thank you for your careful consideration of these comments.



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