

BLAINE COUNTY PLANNING & ZONING COMMISSION
PUBLIC HEARING on May 26 & June 9, 2022

REGARDING:

An application by TVIV Quigley, LLC, to rezone a portion of the Mountain Overlay District.

FINDINGS OF FACT & CONCLUSIONS OF LAW

REQUESTED ACTION: Public hearing and consideration of an application by TVIV Quigley, LLC, to remove a portion of mapped Mountain Overlay District (MOD) lying northwest of Quigley Road that is less than 25% slope. The property is located adjacent to the City of Hailey and within the Hailey Area of City Impact (ACI) within Sections 2, 3, 10 & 11, T2N, R18E, BM, Blaine County.

APPLICABLE REGULATIONS:

- Idaho Code, Title 67, Chapter 65, Local Land Use Planning Act
- Title 8, Chapter 1, Comprehensive Plan & Comprehensive Plan Land Use Map
- Title 9, Zoning Regulations, including Chapter 21 Mountain Overlay District (M), Chapter 26, Reclassification of a Zoning District (Rezone), and Chapter 31, Amendments.

I. GENERAL BACKGROUND, NOTICE AND EXHIBITS

1. The application was received on February 24, 2022
2. **NOTICE** of the May 26, 2022, hearing before the Planning & Zoning Commission was provided pursuant to § 9-26-3 and § 9-31-4(D), Blaine County Code, and Idaho Code §67-6509 and § 67-6511, as follows:
 - i. published in the Idaho Mountain Express on May 11, 2022;
 - ii. sent by first class mail on May 10, 2022 to all property owners within 300 feet of the external boundaries of these lots;
 - iii. sent to all political subdivisions on May 10, 2022 & April 26, 2022;
 - iv. sent to public water system owners on May 10, 2022;
 - v. sent to City of Hailey pursuant to ACI Agreement on March 9 & April 27, 2022; and,
 - vi. posted on subject property on May 15, 2022 as evidenced by affidavits in file, which is seven days prior to the hearing.

Pursuant to I.C. 67-6512 and Zoning Ordinance regulations, the Commission shall review the above notice procedure and make a finding regarding adequacy of notice.

► **Finding: Upon a motion by Commissioner O’Farrell, a second by Commissioner Stout, and a vote of 4 to 0 (Giannettino & Fallowfield absent & 1 vacancy), the Commission determines notice is compliant with State and County code.**

Continued on the record to June 9, 2022.

3. Any disclosures (i.e. conflicts of interest, site visits or *ex parte* communications)?
P & Z site visit dates: May 16 (M. O’Farrell), May 17(S. Eisenbarth & T. Stout), May 20, 2022 (D. Wolfley) & June 1, 2022 (S. Giannettino & R. Fallowfield)

4. EXHIBITS incorporated by reference include:

A Exhibits —Application Materials

- A-1:** Application
- A-2:** MOD Rezone Map Exhibit
- A-3:** Vicinity Map
- A-4:** Responses to Criteria

B Exhibits – Agency Comment

- B-1:** None requested

C Exhibits —Additional Information

- C-1:** Existing MOD from GIS

D Exhibits —Public Comments

- D-1:** Keri York, Received 05-23-22
- D-2:** Erik Schultz, Received 05-24-22
- D-3:** Debbie Town, Received 05-24-22
- D-4:** Chris Keirn, Received 05-24-22
- D-5:** Lorraine and Ron Wilcox, Received 05-24-22
- D-6:** Wendy Pabich, Received 05-24-22
- D-7:** Ginna and Ken Lagergren, Received 05-25-22
- D-8:** Paul Ries, Received 05-25-22
- D-9:** Cathy Schiers, Received 05-25-22
- D-10:** Elizabeth Massey, Received 05-25-22
- D-11:** Ronile Robinson, Received 05-25-22
- D-12:** Schiers, Received 05-25-22
- D-13:** Rosemary Cody, Received 05-25-22
- D-14:** Linda Ries, Received 05-25-22
- D-15:** Janet and Charlie Meyer, Received 05-25-22
- D-16:** David Harris, Received 5-26-22
- D-17:** Richard Fassino, Received 5-26-2022
- D-18:** Carol Comtaruk, Received 5-26-2022
- D-19:** Ned Wheeler, Received 5-26-2022
- D-20:** Elizabeth Lili Simpson. Received 05-26-22
 - Mule Deer Wintering Range. Part of Exhibit D-21. Simpson
 - Idaho Department of Fish and Game. Part of Exhibit D-21. Simpson
 - IDFG, part of Exhibit D-21. Simpson.

- D-21: Dawn Cieslik, Received 05-26-22
- D-22: Vicky Ownbey Received 05-26-22
- D-23: Christine Keirn, Received 5-30-22
- D-24: Megan Tanous. Received 06-06-22
- D-25: James Westfall. Received 06-06-22
- D-26: Kastner Received 6-7-2022
- D-27: Petersen Received 6-8-2022
- D-28: Barr Received 6-7-2022
- D-29: Bibb Received 6-7-2022
- D-30: Thompson Received 6-8-2022
- D-31: Alec Barfield. Received 06-09-22
- D-32: Riley Received 6-9-2022
- D-33: Sawyer Received 6-9-2022
- D-34: Stopel Received 6-9-2022
- D-35: O Leary Received 6-9-2022
- D-36: Kirby Received 6-9-2022
- D-37: Seitz Received 6-9-2022
- D-38: Schroeder Received 6-9-2022
- D-39: Jeffrey Received 6-9-2022
- D-40: Goldberg Received 6-9-2022
- D-41: Archibald Received 6-9-2022
- D-42: Spangenberg Received 6-9-2022
- D-43: Andrew Harding Received 06-09-22
- D-44: J. Trent Jones Received 06-09-22

Background: The applicant was asked by Land Use staff to apply for a rezone to the Mountain Overlay District to better reflect the 25% slope line and associated buffer to the northwest and along Quigley Road where proposed Lots 1-6 of Quigley Ranch Subdivision are located within their subdivision application. The existing Mountain Overlay District line would require each new owner of these lots to apply for a Site Alteration Permit to build below the actual MOD line. By re-zoning this specific portion of the mapped Mountain Overlay District it makes for a cleaner process for new owners and the Land Use Department to locate where structures may be located below the 25% slope area. The applicant has identified the MOD Buffer to begin close to below the 15% slope line to make for a more conservative district line in regards to this re-mapped zone. (See Exhibit A-2)

II. GENERAL AMENDMENT CRITERIA

Idaho Code §67-6511 and Blaine County Code §9.31.4

A. Idaho Code §67-6511(a) and Blaine County Code §9.31.4 (A):
Commission shall evaluate the facts and circumstances of the proposed to determine:

- *The nature and extent of the amendment;*
- *The reasons therefor;*

- *Whether it is in accordance with the Comprehensive Plan;*
- *The effects on potable water sources; and,*
- *The impacts of the proposal upon the delivery of services by any political subdivision providing services, including school districts, within the County.*

► FINDING:

Extent: The nature and extent of the MOD rezone is to accurately reflect the 15% & 25% slope lines to allow landowners and Blaine County to understand where disturbance may occur.

The existing MOD boundary does not currently follow the 25% slope line as was intended in its creation; therefore, there was a mistake in the original delineation of the MOD boundary. The approved boundary roughly follows the 15% slope line.

Reasons: The reasons for the rezone application are to clean up all six proposed lots at one time to accurately reflect the actual 15% & 25% slope lines as it differs from the existing County GIS MOD line.

Accordance with Comp Plan: See criteria (A) under the rezone criteria of §9-26-4, below. The application to amend the MOD boundary is in accordance with the current Comprehensive Plan and Land Use Map.

Effects on potable water sources: See also criteria §9-26-4 (B)-9 below.

Delivery of services: Delivery of services shall remain the same with this modest shift of the MOD line.

B. Idaho Code §67-6511(b) and Blaine County Code §9.31.4 (B):

If the proposal is in conformance with the Plan and it is found that the proposal will not result in demonstrable adverse impacts upon the delivery of services, the Commission may recommend adoption of the amendment.

► FINDING: The proposal to rezone this portion of the MOD is in accordance with the Comprehensive Plan, Chapter 5- Natural Environment: Resources, Hazard areas, and Conservation. Specifically, the core values of uninterrupted scenic vistas and natural hillsides.

C. Idaho Code §67-6511(c) and Blaine County Code §9.31.4 (C):

If the proposal is not in conformance with the Plan, or will result in demonstrable adverse impacts upon the delivery of services, the Commission may consider whether it is appropriate to amend the Comprehensive Plan.

Notice procedures provided in Idaho Code Section 67-6509 must be adhered to in recommending an amendment to the Comprehensive Plan.

► FINDING: The Commission found conformance with the Plan so no amendment is necessary. No demonstrable adverse impacts are foreseen with the proposed rezone.

III. REZONE CRITERIA

Zoning Ordinance §9-26-4

- (A) *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.*

► **FINDING:** The application is in accordance with the Comprehensive Plan. Following is the relevant text portion of Chapter 8, Land Use (Hailey & Bellevue Canyons Subarea): Desired Outcomes Policy Statement; H/BC-1 (Area of City Impact): *c. no hillside development.*

Chapter 5, Natural Environment, includes the following policy statements:

Desired Outcome: Strong local regulations and policies continue to protect our natural environment.

Policy Statements:

C-1: *Continue analysis of environmental assets in the land use planning and decision-making process. Enlist assistance from agencies and local experts to clarify, refine and improve the County's regulations.*

C-2: *Base land use decisions on good science, including inventory and monitoring.*

The reclassification will help determine an accurate depiction of hillside as defined in the Mountain Overlay Mapping Ordinance 2007-02 Chapter 21 Mountain Overlay District which states: *WHEREAS, Blaine County's Comprehensive Plan states that Blaine County's mountains and hillsides have the highest degree of visibility, and the scars created from the roads or buildings distract from the scenic quality. Due to these limitations, present county zoning regulations prohibit development on lands in excess of twenty five percent (25%) slope.*

Cut, fills, and access roads or slope areas create a visual blight that deteriorates the natural quality of the scenic view.

The proposal is in accordance with the Comprehensive Plan as written.

- (B) *If the application is determined to be in accordance with the Comprehensive Plan Text and Map, the Commission shall then consider, at least, the following criteria:*

► **FINDING:** The criteria below were considered as the proposal was found to be in accordance with the Comp Plan. (Not all of these criteria have to be satisfied for the rezone request to be granted. The ordinance says that the Commission shall *consider* them.)

1. *Whether there was a mistake in the original zoning.*

► **FINDING:** There is a mistake in the GIS mapped MOD and Buffer line in this area, based on topographic data and identified 25% and 15% slope areas.

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

► **FINDING: N/A No change to date. Proposed future change with subdivision application.**

3. *Whether this or any adjoining property has been designated a "special planning area" on the Blaine County Zoning Map.*

► **FINDING: N/A**

4. *To what extent the public health, safety, or general welfare may be adversely affected by the Reclassification.*

► **FINDING: No adverse impact anticipated.**

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

► **FINDING: The present zoning is MOD, R-5, R-10 and Avalanche. The existing uses of adjacent property include: Quigley Road and open space. The adjacent property is utilized as R-5 active agriculture. This rezone application coincides with a change of use from agricultural to residential. Quigley Rd. is proposed to be moved outside of the existing and new MOD line.**

6. *Whether central water and sewer services are available.*

► **FINDING: N/A not relevant to the MOD rezone.**

7. *Whether the relevant sections of Chapter 31 regarding a map amendment have been satisfied.*

► **FINDING: Amendment criteria of Chapter 31 are reviewed above. Other relevant sections of Chapter 31 include the following related to additional notice requirements:**

9-31-4 (D)(2) Additional Notice Requirements For Zoning District Amendments: Where a proposed amendment to this title includes a proposal to rezone property or change a zoning district boundary, the following additional notice of public hearing shall be provided:

a. Posting Of Notice: A notice sign, as provided by the administrator, shall be posted on the premises not less than one week prior to the hearing. Where possible, the posting location should be on or near the property line closest to a public thoroughfare or, if no such thoroughfare exists, on or near the property line of the nearest adjoining property not owned by the applicant, of which neither the applicant nor the government has a proprietary interest.

b. *Mailing Of Notice: Notice of the time, date and place of the public hearing and a summary of the proposal shall be provided by mail to all property owners and purchasers of record within the land being considered; within three hundred feet (300') of the external boundaries of the land being considered; and within any additional area including a wellhead protection area that may be impacted by the proposed change as determined by the commission. When the land being considered is located in a wellhead protection area, notice shall be provided to all affected potable water source owners.*

These additional notice requirements are met as follows: See above notice dates under I. General Background, Notice, and Exhibits.

8. *Whether a development agreement that includes more strict regulations than those applicable to the proposed zoning district generally should be required as a condition of rezoning the subject parcel. See §9-26-8 for the additional requirements that apply to a Reclassification with a Development Agreement.*

► **FINDING: A development agreement was not proposed.**

9. *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.*

► **FINDING: N/A The subject property is not within a wellhead protection area.**

10. *Additional criteria for proposed light industrial rezones...*

► **FINDING: N/A. Not in light industrial.**

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 SC1), 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*

► **FINDING: The purpose section states: “The mapping of the mountain overlay district provides landowners with a more certain basis for determining the location of lands within the district and affords more certainty than the definitional approach used previously within this code. Any future proposals to rezone the mapped boundary of the mountain overlay district should not create a patchwork that excludes saddles, ridges, knolls, summits, or pockets or islands of flatter land between and including the applicable lowest slopes within the mapped district and the summit of the hillside. “**

The application meets and exceeds this standard; however the proposed MOD line within Lot 1 of the Quigley Ranch Subdivision has been modified with a condition to follow the 5,445' contour east to west within Lot 1 (Condition 1). The purpose is to omit the creation of patchwork and the pocket between the deep 15% line, creating a more linear line within the most western portion of Lot 1.

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.

► **FINDING:** All lands below 25 & 15% slope to be included within a rezoned MOD and MOD Buffer. The rezone is adjacent to the existing Quigley Rd., a County road.

12. If the applicant or landowner with respect to an application for a rezone under this chapter is the state of Idaho, or any agency, board, department, institution, or district thereof. . .

► **FINDING:** N/A. The landowners are private.

IV. RECOMMENDATION TO THE BOARD OF COUNTY COMMISSIONERS

► **Recommendation:** Having considered the information presented and the above standards, upon a motion by Commissioner Fallowfield and seconded by Commissioner Wolfley, and a 5-0 vote, (Commissioner Eisenbarth absent & 1 vacancy) the commission recommends the proposed rezone application by TVIV Quigley, LLC, is in accordance with the Comprehensive Plan, and will not negatively impact potable water or the delivery of services, and recommends approval with modifications of the proposed rezone, subject to the following conditions.

Condition of approval:

1. The modified MOD line (Exhibit A-2) within Lot 1 of the Quigley Ranch Subdivision shall follow the *5,445' east-west contour with the purpose* to omit the creation of patchwork and the pocket between the deep 15% line. This more contiguous MOD line coincides with 9-21-2 Statement of Intent and Purpose A: *Any future proposals to rezone the mapped boundary of the mountain overlay district should not create a patchwork that excludes saddles, ridges, knolls, summits, or pockets or islands of flatter land between and including the applicable lowest slopes within the mapped district and the summit of the hillside.*

Idaho Code §67-6535(c) Notice: The owner of the property subject to this application and decision may request a regulatory taking analysis pursuant to I.C. 67-8003.

IT IS SO ORDERED.

DATED this _____ day of _____, 2022

BLAINE COUNTY PLANNING AND ZONING COMMISSION

By: _____
Stephanie Eisenbarth, Vice Chair

CERTIFICATE OF MAILING

The undersigned person hereby certifies that on the _____ day of _____, 2022, she served a true and correct copy of the foregoing document by depositing the same in the U.S. Mail addressed as follows or by service otherwise as noted:

Hennessy Company
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