



Valley Advocates for Responsible Development

June 2, 2009

Teton County P&Z
89 North Main Street
Driggs, Idaho 83422

RE: Opposition to the Eva application for an up-zone and expanded CUP.

Dear Commission:

Valley Advocates for Responsible Development (VARD) cannot support this application for an up-zone from Agriculture Rural Residential 2.5 (Ag2.5) to Commercial 3 Wholesale/Light Manufacturing (C3). VARD also cannot support this conditional use permit (CUP) application for an appliance repair shop, cabinet shop, plumbing shop, kennel/animal boarding, and welding machine shop. The following are our reasons:

1. This up-zone would allow for expanded commercial uses in the rural county and scenic corridor.

This application requires an up-zone from (Ag2.5) to (C3), while the surrounding area is still rural with residential homes abutting the property. There is currently a CUP for a sawmill, which is the extent of the permitted manufacturing / industrial uses onsite.¹ A zone change to C3 would dramatically expand these permitted uses, and allow manufacturing / industrial over the entire 3.67 acres of land.

2. This up-zone would constitute an invalid spot zone.

Spot zoning is defined as changing the zoning designation for a particular piece of property to a use that is inconsistent with the original zoning ordinance.² Spot zoning is invalid when the changed zoning designation is (1) inconsistent with the use permitted in the rest of the zoning district, (2) such use is not in accordance with the Comprehensive Plan, and (3) the permitted variance is merely for private gain.³

First off, a zone change to C3 is certainly inconsistent with the County's Ag2.5 zoning designation that "small increment agriculture or rural residential activities are the primary uses of the land" for this zone.⁴ Secondly, the C3 uses would be inconsistent with the following provisions in the Teton County 2004-2010 Comprehensive Plan:

¹ I use the term "permitted" uses loosely, as T.C.C. 8-6-1-B-15 requires that all CUP's be reviewed for compliance at least once every five (5) years, and T.C.C. 8-6-1-B-12 allows this commission to review the CUP any time the conditions or use change.

² *Dawson Enterprises, Inc. v. Blaine County*, 98 Idaho 506, 514 (1977).

³ *Ready-to-Pour v. McCoy*, 95 Idaho 510, 515 (1973); *see also, Price v. Payette County Board of County Commissioners*, 131 Idaho 426 (1998). While the Idaho Supreme Court has been reticent to declare spot zoning actions invalid, the criteria for what would constitute an invalid spot zone has been made clear.

⁴ T.C.C. 8-3-5-A.

- Policy 1: It is the intent of the Comprehensive Plan to encourage orderly growth. (Page 27)
- Policy 3: One of the county’s prime economic values is the attraction of a rural, small town lifestyle, magnificent views, clean air and water, and abundances of outdoors recreational opportunities. (Page 27)
- Implementation 2: City impact areas and municipalities and industrial zoned areas are the desirable locations for industries and retail commercial activities. (Page 28)
- Policy 2: The scenic corridor is valued and view corridors should be maintained and protected. (Page 30)
- Policy 3: Concentrate higher-density development in the cities or in their areas of impact. (Page 31)
- Policy 4: Higher density developments should be located within or near the cities or within or near their areas of impact. (Page 31)
- Policy 6: Encourage industrial use in existing industrial zones and accommodate desirable industrial developments and uses in appropriate areas within the county. (Page 31)
- Policy 7: Foster the economic viability of the cities by encouraging development of most types of commercial enterprises in or near the cities or their impact areas. (Page 31)
- Implementation 11: The grand fathered zoned and the Ag PUD (sic) retain all existing rights, characteristics, and obligations and shall never be expanded. (Page 33)
- Policy 2: Encourage the preservation of the county’s rural character. (Page 53)

And finally, the proposed zone change would be merely for the applicant’s private gain, allowing him to expand his commercial uses to make his property more profitable. There is only a personal benefit conveyed by this zone change.

3. The requested CUP uses can be expanded almost indefinitely.

A CUP for a “an appliance repair shop, cabinet shop, plumbing shop, kennel/animal boarding, and welding machine shop” is broad and can be expanded almost indefinitely. We have seen how expanded uses often morph incrementally into something very different from the original permitted use. That is why it is so critical that the applicant clearly spell out what the requested uses will be. These kind of broad CUP’s have consistently resulted in administrative headaches and enforcement nightmares for the County – and as you well know, the County is not compensated for this kind of follow-up enforcement work.

4. This CUP will place an undue burden on existing public services as prohibited by State and County law.

Both the Local Land Use Planning Act (LLUPA) and the Teton County Code (T.C.C.) require all CUP applications to not create an undue burden on existing public services.⁵ As you can see by the site plan, a small industrial plaza is being proposed here. This brings two concerns to mind:

⁵ I.C. §67-6512(a) and T.C.C. 8-6-1-B-7.

- (1) The feasibility of a sewer hookup or onsite sewage treatment. Fifteen (15) industrial lots are proposed on this property, which raises the question of processing industrial waste water and the increased need for sewage treatment. These questions simply must be addressed immediately for a development of this size and nature. Victor's sewage system is already at max capacity, and the Driggs system is still in the process of being expanded. The environmental risks of industrial waste and the off-site hazards it poses to neighboring properties is another big issue. We believe it is vital to address these issues up front in order to determine whether a project of this nature is even feasible.
- (2) Road safety concerns along Highway 33. An industrial subdivision means increased truck and delivery traffic along Highway 33. All ingress and egress would be along Highway 33. The traffic and other impacts created by those vehicles merging onto the highway must be discussed with the Idaho Transportation Department.

5. This CUP is in conflict with the goals and objectives of the comprehensive plan as prohibited by state and county law.

Both LLUPA and the T.C.C. state that the granting of a CUP is discretionary upon a finding that the proposed uses comply with the goals and objectives of the comprehensive plan.⁶ As stated above in Section 2, these proposed uses conflict with the fundamental goals and policies of the Teton County Comprehensive Plan.

Conclusion

This commission has worked very hard to control Director sprawl and preserve the scenic corridor. While you all have strived to uphold our County zoning and density entitlements, there is simply no entitlement to these kinds of zone changes. Moreover, history has shown that a broad CUP like the one requested here will be nearly impossible to control, and as a result, there will be future land use conflicts with the neighboring properties which will require extensive administrative oversight and enforcement on the part of the County. Please consider all of these issues when making your decision on this application.

Thank you for all of your good work in the service of our community,

Sincerely,

Anna Trentadue
WARD Program / Staff Attorney

⁶ I.C. §67-6512(a) and T.C.C. 8-6-1-B-7.