

BLAINE COUNTY BOARD OF COMMISSIONERS
PUBLIC HEARINGS on October 2, 2018, October 23, 2108 and February 12, 2019

REGARDING: An application by SDRTR LLC to remove an area of mapped Mountain Overlay District from Lot 1C, Block 1, Warfield Hot Springs Sub.	FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION
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REQUESTED ACTION: Public hearing and consideration of an application by SDRTR LLC to modify the mapped Mountain Overlay District (MOD) based on site specific topography. The property is zoned Rural Remote (RR-40), is within the Seasonal Use (SU) and Floodplain Overlay (FP) Districts and within the Riparian (R) setback district. The 11.89 acre property is Lot 1C, Block 1, Warfield Hot Springs Sub., also known as 1039 W. Warm Springs Rd. The Planning and Zoning Commission recommended approval on September 6, 2018.

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 26, Reclassification of a Zoning District (Rezone), and Chapter 31, Amendments.

I. GENERAL BACKGROUND, NOTICE AND EXHIBITS

1. The application was received on April 30, 2018 and considered generally complete on June 21, 2018.

2. **NOTICE of the October 2, 2018**, public hearing before the Blaine County Board of County Commissioners (BCC) was provided pursuant to state statues and county code.
 - A. Published in the Idaho Mountain Express on September 12, 2018;
 - B. Sent with Rezone Map submittal to all property owners within 300 feet of the external boundaries of the rezone property and expanded notice to additional property owners as shown on Exhibit C-3 on September 11, 2018;
 - C. Sent to all Blaine County political subdivisions on September 10, 2018;
 - D. Posted on the subject property on or before September 25, 2018, as evidenced by affidavit in file;
 - E. Posted in five public places on September 10, 2018;
 - F. Public Service announcement request sent to area media on September 13, 2018;
 - G. Application materials were posted on the Blaine County Website on September 18, 2018

- ▶ **MOTION REGARDING NOTICE:** Upon a motion by Commissioner Schoen, a second by Commissioner Greenberg, and a vote of 3 to 0, the Board determines notice is in compliance with State and County code.

- ▶ **NO NOTICE of the October 23, 2018** public hearing before the Blaine County Board of County Commissioners (BCC) is required because the hearing was continued within the 30 days allotted through State Statues and County Code.

► **NOTICE of the February 12, 2019** public hearing before the Blaine County Board of County Commissioners (BCC) was provided pursuant to state statutes and county code.

- A. Published in the Idaho Mountain Express on January 23, 2019;
- B. Sent with Rezone Map submittal to all property owners within 300 feet of the external boundaries of the rezone property and expanded notice to additional property owners as shown on Exhibit C-3 on January 23, 2019;
- C. Sent to all Blaine County political subdivisions on January 22, 2019;
- D. Posted on the subject property on January 30, 2019, as evidenced by affidavit in file;
- E. Public Service announcement request sent to area media on January 28, 2019;
- F. Updated application materials were posted on the Blaine County Website on February 7, 2019.

► **MOTION REGARDING NOTICE:** Upon a motion by Commissioner McCleary, a second by Commissioner Fosbury and a vote of 3 to 0, the Board determines notice is in compliance with state and county code.

Disclosures: Commissioner Fosbury disclosed that he was on the Planning and Zoning Commission while the subject application was being heard.

3. EXHIBITS that constitute the public record of this application:

- Exhibit 1** Planning and Zoning Commission Findings of Fact and Recommendation with recommended revised Mountain Overlay District line
- Exhibit 2** DRAFT Ordinance

A Exhibits —Application Materials rec'd 4-30-2018 unless noted otherwise:

- A-1: Cover letter
- A-2: Completed application and responses to Criteria for Review
- A-3: Vicinity Map
- A-4: Zoning Map

Submittals for 8-23-2018 rec'd on 8-13-2018 unless noted otherwise:

- A-7: Cover Letter
- A-8 Planning and Zoning recommended line
- A-9: preliminary plat from 2000

Submittals for 10-23-2018:

- A-10: revised 10-18-2018 Rezone Map

Submittals for 2-12-2019; rec'd 2-6-2019

- A-11 Sheet 1 SITE OVERVIEW
- Sheet 2 SITE & CONDITIONS
- Sheet 3 SITE AERIAL & CONDITIONS
- Sheet 4 2000 SITE CONDITIONS
- Sheet 5 2018 TO PRESENT

B Exhibits – Agency Comment

B-1: County Eng. Comments on 8-13-2018 submittals, rec'd 8-15-2018

C Exhibits –County Supplements

C-1 Lot history of applications with Land Use and Building Services, updated 2-7-2019
C-2 Governing plat
C-3 Expanded notice list and map
C-4 Memo from staff regarding 10-17-2018 site visit
C-5 MOD Cat Ex decision; dated December 18, 2018

D Exhibits –Public Comments

D-1 Ann Parry, 993 W Warm Springs; rec'd July 10, 2018
D-2 Arthur I. Dahl, 997 W Warm Springs Rd; rec'd 8-20-2018
D-3 Ann Parry, 993 W Warm Springs Rd; rec'd 8-21-2018

Public Comments received after the P&Z Recommendation

D-4 Susan Michael, 409 Warm Springs Rd; rec'd 8-27-2018
D-5 Arthur I Dahl, 997 W Warm Springs Rd; rec'd 10-15-2018
D-6 Philinda Parry Robinson, 993 W Warm Springs Rd; rec'd 10-17-2018
D-7 Waleen and William Babcock, 997 W Warm Springs Rd; rec'd 10-22-2018
D-8 Ann Parry, 993 W Warm Springs Rd; rec'd 10-2-2018 Public Hearing
D-9 Michael Babcock, 997 W Warm springs; rec'd 10-23-2018
D-10 Michael-Babcock, 997 W Warm Springs Rd, rec'd 2-12-19
D-11 Leigh Josephsen; no address given, rec'd at Public Hearing 2-12-2019

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.*

Note for nature and extent: The Planning and Zoning Commission determined the amendment would remove the mapped MOD of less than 25% slopes from the subject property only, as shown on Exhibit A-8, MOD revised rezone map and the P&Z recommended change.

The BCC, at the October 2, 2018 public hearing, requested staff, applicant and county engineer go on-site to determine the most accurate 25% slope line. This line, not materially changed from the Planning and Zoning recommendation, was the line the BCC approved at the public hearing on February 12, 2019, Exhibit A-11 page 2, the magenta line.

Note for reasons: The P&Z determined that the area within the currently mapped MOD is not as accurate as actual, site specific topography using recent aerial mapping and ground-verified by a licensed surveyor.

The Board additionally initiated a site visit for staff, the county engineer and the applicant team to come to a consensus for the most accurate line on the ground today.

- ▶ **BCC REAFFIRMS THE PZ FINDING FOR ACCORDANCE WITH COMP PLAN:** See criteria (A) under the rezone criteria of §9-26-4, below. The proposal to remove the inaccurately mapped MOD is in accordance with the current Comprehensive Plan and Land Use Map.

- ▶ **BCC REAFFIRMS THE PZ FINDING FOR EFFECTS ON POTABLE WATER SOURCES:** None. See also criteria §9-26-4 (B)-9 below.

- ▶ **BCC REAFFIRMS THE PZ FINDING FOR DELIVERY OF SERVICES:** No change to delivery of services would result from the removal of the mapped MOD of less than 25% slopes from the subject property.

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.

▶ **BCC REAFFIRMS THE PZ FINDING:**

The Board finds that based on §9-26-4 (A), below, the proposal to remove the less precise mapped MOD is in accordance with the current Comprehensive Plan and Land Use Map.

9-31-5: ACTION BY THE BOARD:

- A. *Hearing: The board, prior to adopting, revising or rejecting the amendment as recommended by the commission, shall conduct at least one public hearing using notice and hearing procedures set forth in section 9-31-4 of this chapter. The board shall not hold the public hearing, give notice of a proposed public hearing, or take action upon the proposed amendments until the recommendation has been received from the commission. Following consideration by the board, if the board makes a material change to the recommendation or alternatives contained in the recommendation by the commission concerning the proposed amendments, further notice and hearing shall be provided before the board amends this title.*

- B. *Passage Of Amendment: Upon approval of an amendment as recommended by the commission or as revised by the board, the board shall pass an ordinance making said amendment a part of this title.*

▶ **FINDING:** The P&Z Commission made their recommendation on September 6, 2018. The Board made a minor change to the P&Z recommended new MOD line. It was discussed and not considered a material change. Upon approval, an ordinance amending the zoning map shall be adopted.

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.*

► **Planning & Zoning Commission Findings and Conclusions, reaffirmed by the Board of Commissioners:**
The newly adopted Natural Environment chapter of the Comprehensive Plan includes the following related Desired Outcomes:

C-10: Mountain Overlay District (MOD)

- a. Continue policies and regulations governing hillside development for natural and scenic resource reasons, erosion management and public safety.*

► **Finding:** The proposed removal of inaccurately mapped MOD will not negatively impact any natural or scenic hillside resources.

D-5: Erosion

- a. Continue to protect steep slopes and erosive soils from development. Require adequate on-site mapping of slopes, alluvial fans, and other erosion and debris flow hazard areas in development submittals.*

► **Finding:** The MOD for the subject property shall delineate the areas of 25% slope today.

► **Conclusion:** Based on the above, the proposal is in accordance with the Comprehensive Plan.

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

► **BCC REAFFIRMS THE PZ FINDINGS** for all of §9-26-4 (B) as stated below:

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

► **Finding:** Compliance. The area within the currently mapped MOD is not as accurate as actual site specific topography.

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

► **Finding:** N/A

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

► **Finding:** No.

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

► **Finding:** No adverse effect on public health, safety or welfare is foreseen.

5. *Whether present zoning classifications are in conformity with existing uses of adjacent property.*
 ► **Finding:** N/A – The subject of this application is an overlay district and not a zoning classification.

6. *Whether central water and sewer services are available.*
 ► **Finding:** N/A

7. *Whether the relevant sections of Chapter 31 regarding a map amendment have been satisfied.*
 ► **Finding:** Amendment criteria of Chapter 31 are reviewed in Section II above. Chapter 31 notice requirements have been met.

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 is not proposed or needed.

9. *When the rezone is located within a wellhead protection area...*
 ► **Finding:** This area is not within a wellhead protection area.

10. *Additional criteria for proposed light industrial rezones...* ► **Finding:** N/A

V. DECISION

Upon a motion by Commissioner McCleary and a second by Commissioner Fosbury and a vote of 3 – 0, the Blaine County Board of County Commissioners approve an application by SDRTR LLC for a Mountain Overlay District rezone at 1039 W. Warm Springs Road, for a Mountain Overlay District to remove an area of mapped Mountain Overlay District from Lot 1C Block 1, Warfield Hot Springs Subdivision, as depicted in Exhibit A-11 page 2, as the magenta line.

IT IS SO ORDERED on this 26 day of February, 2019.

BLAINE COUNTY BOARD OF COUNTY COMMISSIONERS



 Jacob Greenberg, Chairman

CERTIFICATE OF MAILING

The undersigned person hereby certifies that on the 27th day of February, 2019, 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:

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