

LUBING, GREGORY & RECTANUS, LLC
Attorneys at Law

James K. Lubing
Admitted in WY, ID & MT
Nathan D. Rectanus
Admitted in WY
Kevin P. Gregory
Admitted in WY & MD

Madison J. Worst
Admitted in WY, ID & MT

April 26, 2022

VIA Email Only

Teton County Board of County Commissioners
-and-
Office of the Teton County Attorney

All above c/o Keith Gingery, Chief Deputy County Attorney
kgingery@tetoncountywy.gov

Re: Lot 333, Rafter J Ranch Subdivision;
PUD Amendment / CUP Request

My Client: Rafter J Ranch Homeowners Association

Dear Keith,

As you know, I represent the Rafter J Ranch Homeowners Association (the “HOA”). This letter is sent in follow-up to our previous written communications concerning Stage Stop, Inc.’s (“Stage Stop”) ongoing efforts to amend the Rafter J Ranch Planned Unit Development (“PUD”) approval applicable to Lot 333 and to obtain a conditional use permit (“CUP”) to permit Stage Stop to convert the Legacy Lodge, located on Lot 333, into residential apartments and in order to rent the same as “workforce housing.” We have copied various Teton County Boards and agencies on our communications with Stage Stop in order to keep them apprised of the ongoing conversation between the HOA and Stage Stop and to ensure that the HOA’s position with respect to the applications is well-known.

At the April 12, 2022 Board of County Commissioners’ meeting, the Board expressed a desire to understand the historic treatment of similar applications by the County Commissioners. For example, Commissioner Epstein specifically stated that before he lodges his vote, he “want[s] to understand more of what we’ve done in the past.” My understanding is that this desire for historic precedent was shared by the other members of the Board and will be a focus of the May 3, 2022 meeting. Therefore, in advance of the May 3, 2022 meeting, the HOA submits the following to the Board of County Commissioners to provide information concerning recent decisions of similar applications, so as to offer historic context for the Board’s substantive analysis of the current applications as well as the policy that has been embedded in recent BOCC decisions.

Two recent and heavily publicized BOCC decisions that are analogous to Stage Stop's applications in terms of substance, policy concern and potential for community impact are the 2019 Hog Island/Huhn request for Amendment to the Teton County Comprehensive Plan and the 2020 Gill North South Park Up-zone Request. In reviewing the BOCC's decisions in both of these instances, as well as the Commissioners' public comments concerning the same, it is clear that the BOCC's approach to similar applications in very recent years has been strict and scrutinizing in terms of applying the Teton County Land Development Regulations and voicing concerns about potential community impacts.

The BOCC's analysis and commentary on both applications is summarized below:

Hog Island Amendment to Comprehensive Plan

In 2019, the Teton County Board of County Commissioners denied Developer Larry Huhn's application to the BOCC for an amendment to the Comprehensive Plan to allow development of single-family deed-restricted workforce housing on 84 acres next to Munger Mountain Elementary School on Hog Island.

Both at the public meeting and in follow-up op-eds, the BOCC justified the denial of the application on various concerns, many of which have applicability to Stage Stop's PUD and CUP amendment applications:

1. Several officials were concerned that even if the units in Hog Island were deed-restricted for the workforce, affordability of the units remained an open question. Commissioners expressed that they were "uncomfortable" with the proposal's lack of clarity on deed restrictions and felt officials should learn from the mistakes of past "workforce" neighborhoods. Long-term affordability, according to Commissioner Jorgensen, should be "bulletproof" when housing is proposed in a "less than ideal location." PZC Commissioner Jonathan Schechter and BOCC members Greg Epstein, Luther Propst and Mark Newcomb all shared Jorgensen's concern. "The application offered vague housing restrictions in exchange for more than doubling the density in a far-flung suburban area of the county; however, the project offered little, if any, binding commitments that would ensure that the housing would be and would remain affordable," Propst said.

This concern is applicable to the Stage Stop application. Its applicability is enhanced by Stage Stop's apparent resistance to deed-restrictions in its applications to the PZC and BOCC.

2. The suburban location was a basis denial for several officials, who worried that the development would exacerbate problems like traffic and sprawl. Concern was voiced that the application was violative of the Comprehensive Plan's policy to concentrate density in the town of Jackson. Commissioner Propst said an "ad-hoc, rushed, parcel by parcel" approach isn't the best strategy. Commissioner Epstein agreed. Commissioner Epstein even went as far as to ask the BOCC to consider the impacts on the community before rushing to a housing decision. "If we're going to build a development of that magnitude, let's build it adjacent to where most people already work and where the services of our community are already provided," he said. Commissioner Epstein stated granting

the requested “up zone” would be “a substantial increase in private property rights” and could pose an unfair detrimental impact to neighbors or landowners in other parts of the county.

This concern is applicable to the Stage Stop application. The application proposes housing density where the same was not contemplated and would have significant and deleterious impacts of increasing traffic and sprawl in an already compromised location. The Comprehensive Plan likewise does not favor increasing housing density in suburban Rafter J as opposed to the Town of Jackson.

3. The expense of public financial impacts, even with a privately funded development was a concern. Commissioner Newcomb suggested the community might end up paying for the development through public program support, such as additional START bus service. Then-Mayor Muldoon said other costs include “the cost of directing a lot of our development and construction capacity to a development that doesn’t meet our highest housing needs, which are smaller, more affordable homes closer to employment.”

This concern is applicable to the Stage Stop application. The applicant is actually basing its argument for approval and support on proposed (but not guaranteed) future START bus service, WYDOT additions in infrastructure and other publicly funded efforts to accommodate the impact of the proposed development and use.

4. Concern was expressed for the precedential impacts of an approval. PZC Commissioner Schechter emphasized the value of the Comprehensive Plan. He expressed concern that the Munger housing plan would set a “precedent,” and could pose a long-term threat to the overarching policy and effectiveness of the Comprehensive Plan. “If we said yes to that proposal, then anybody else seeking a change in the Comprehensive Plan would come in and say, ‘Look what you did with the Munger Mountain proposal,’” Schechter said. “What happens is incrementally, over time, a project happens, and a project happens, and pretty soon it’s death by a thousand cuts.” Commissioners Epstein and Morton Levinson worried about continuous development along the stretch between Town and Hog Island. “I felt if we’re going to increase it there, we kind of have to look at everything in between as well,” Morton Levinson said.

This concern is persuasive, given that the development application currently before the BOCC is exactly the outcome that the BOCC was concerned that the Munger application would bring about.

2020 Gill Up-zone Request

In 2020, the Teton County Board of County Commissioners denied the Gill family's request for a 74-acre up-zone which would have allowed for a 300-plus unit housing development on the Jackson Hole Hereford Ranch. The Gills sought approval of the rezone request, citing the housing crisis as the primary policy reason justifying approval. The Gill’s application entailed deed restricting 65% of the lots in the development for the local workforce.

1. The BOCC questioned whether approval of the request would constitute unlawful spot zoning. Commissioner Epstein expressed concern that a potential lawsuit could result if the BOCC granted concessions for the application: “My concern is ultimately time. It may seem like this is the fastest way to get housing in the ground but I have grave concerns we are going to get litigated. And this will end up being a much longer process.”

The amendment to the PUD and Conditional Use addition of apartment housing to the “commercial” designation could also be argued to be unlawful spot zoning in the same manner that the Gill application could have.

2. Commissioner Epstein said he was also concerned about water/sewer issues and water quality in general. It was his view that these issues that were not reasonably fleshed out in the application.

The BOCC has not taken up concern relative to the impact on Rafter J ISD infrastructure implicated by Stage Stop’s application and proposed development.

3. Similar to the Munger application, the BOCC expressed concerns about precedent of an approval. Commissioner Newcomb specifically worried about a precedent-setting nature of a one-off concession to a large landowner in South Park and “the Pandora’s Box it could open for other property owners in the future should they too look to develop.”

This concern is persuasive, given that the development application currently before the BOCC is exactly the outcome that the Commissioner Newcomb was concerned the Gill application would bring about.

4. Commissioner Newcomb also desired a completed transportation plan before approving residential development in South Park.

The present application proposes housing density where the same was not contemplated and would have significant and deleterious impacts of increasing traffic and sprawl in an already compromised location. The Comprehensive Plan likewise does not favor increasing housing density in suburban Rafter J as opposed to the Town of Jackson.

The foregoing BOCC denials were based largely upon concerns from the BOCC that rationally seem to be generated by the current Stage Stop applications. Despite premising previous denials on the foregoing issues, the BOCC appears now to be looking past these policy and community impact problems with respect to the Stage Stop application, at the expense of the Rafter J community.

It is the hope of the Board of the HOA, representing a community of 498 residences, that the BOCC will carefully consider the community impacts of these applications and will review the same in the context of its historic effort to safeguard the communities of Teton County against unduly impactful development. The strict scrutiny with which the BOCC has historically viewed applications for relief from the LDRs when it comes to

impactful development, should likewise be employed in the BOCC's review of Stage Stop's applications.

Thank you for your time and attention to these matters. I am available to speak should you wish to discuss further and would be happy to address any questions or calls for information that the Board of County Commissioners has in response to this information.

Very truly yours,

/s/ Kevin P. Gregory

Kevin P. Gregory