



Valley Advocates for Responsible Development

April 15, 2021

Victor Planning & Zoning Commission
10 S. Main St.
Victor, ID 83455

Re: Comments on the Teton Valley Resort Annexation & Rezone and Application for Conditional Use Permit For an Onsite Restaurant

Dear Members of the Commission:

Teton Valley Resort (TVR) has laid out a phased plan for a resort development, and has now applied for an annexation and rezone of Phase 3 along with a Conditional Use Permit (CUP) for an onsite restaurant. Meanwhile, Phase 2 of the resort remains incomplete, constitutes an attractive nuisance, is still the subject of significant unresolved housing disputes, and presents imminent public health, safety, and welfare issues. Visible from Highway 31, Phase 2 is blighted with trash, stockpiled materials, and dilapidated trailers - some of which are abandoned. Garage and debris blows in the wind while at least one family still lives there.

The City of Victor approved the rezone of Phase 2 on October 9, 2019. In order to make way for the 2020 expansion into Phase 2, nine Hispanic households in the Rockin' H mobile home community were served 90-day eviction notices by TVR which did not comply with the Idaho Mobile Home Park Act (I.C. §55-2001 *et seq*). These residents were also not served notice of the 2019 rezone process itself. (I.C. § 55-207(3)(F)). These residents have also not received written or posted notice for the April 22, 2021 hearings.

TVR's current Phase 3 annexation narrative states that they are in the process of constructing Phase 2 on the Rockin' H mobile home site and it is scheduled to be completed by the end of this year. The Hidalgo family *still resides and pays rent onsite*, amid all of the garbage and debris. Multiple residents also still claim ownership of their mobile homes, but some are not moveable and will require professional demolition. All of this constitutes

an attractive nuisance that is within the power of the City of Victor to abate. The applicant's failure to develop Phase 2 in an orderly fashion has created health, safety, and welfare issues on-site and to the surrounding neighborhood. As such, **we ask that Victor require mitigation of the existing conditions onsite as concurrent requirements to the issuance of any further development entitlements to TVR.**

Basis of Authority:

Both the Victor City Code and the Idaho Local Land Use Planning Act (LLUPA) call for orderly and safe growth from Idaho communities. LLUPA gives cities wide latitude in requiring certain conditions for rezones through the use of a development agreement. Per the [Givens Pursley Idaho Land Use Law Handbook](#)¹, "*These [requirements] might encompass restrictions on use, design of the development, conservation requirements (such as water reuse), and provision for roads and other infrastructure, open space, workforce housing, and other benefits.*"

Victor's criteria for considering an annexation request includes the mitigation of impacts onsite and offsite. The City must consider the provision of services to the site - including, but not limited to, trash, sewer, and water. (Land Development Code 14.7.14.B)

Victor has authority under Section 4-1 of the City Code to abate all nuisances, which are broadly defined in the city's code and also include all common law and statutory nuisances. Nuisance actions are addressed in Idaho Code §52-101 *et seq* and include public nuisances as "one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal." (I.C. § 52-102)

A Conditional Use Permit (CUP) is one that is not outright allowed within a zone, but is allowed only if certain conditions specified in the ordinance are met. LLUPA grants Victor broad authority to impose conditions and restrictions on the issuance of any CUP. (I.C. 67-6512) Any permit approved must be subject to Victor being able to provide services onsite. *Id.*

¹ *Idaho Land Use Handbook*, Page 346, 2019. Gary G. Allen, Christopher H. Meyer, Deborah E. Nelson, Franklin G. Lee.

Dangerous Ongoing Existing Conditions:

TVR is asking the City of Victor for a gratuitous request: to annex and rezone Phase 3 and also permit an onsite restaurant when there are deleterious, pre-existing conditions within Phase 2.

- As noted in 14.7.14.B.3 of the Annexation Narrative, the road to access the site to be annexed and up-zoned passes through the property with the blighted mobile home park
- At least one family, the Hidalgo Family, *still lives and pays rent* in this park.
- Since last fall, TVR has also been stockpiling its construction materials within the park in anticipation of expanding to this now-proposed annexation site.
- On April 14, 2021 TVR began demolishing large trees immediately next to the occupied Hidalgo home, which caused the family great fear and distress that their home or trucks would be hit. The trees were then dragged nearby and burned.
- Some trailers are abandoned while others are still owned but are not in good enough condition to be safely relocated.
- Rockin' H has become an attractive nuisance, and some trailers have now been vandalized.
- Uncontained trash, garbage, and debris piles up, and spreads to adjacent properties, via the Victor winds.

Conditions of Approval:

We ask that the Planning & Zoning Commission recommend to the City Council, certain conditions of approval to the Annexation and Rezone and CUP request that will address the existing dangerous and inhumane housing conditions onsite as a concurrent condition of approval for new development entitlements:

1. \$15,000 for each displaced resident of Rockin H for moving costs, or labor and all fees for moving each manufactured home (including permitting fees) with the City, the modification of any home to a new residence to comport with City requirements, and costs to any damage to a home that affects habitability.
2. Demolition and removal of homes that cannot be moved without charge to the household.
3. Refund of all households' security deposits.
4. A neutral or positive reference.
5. A waiver of all rents due from the date of the 90 Day Notice.

6. In the event another agreement is reached. That agreement would be signed by the resident, of their own free will, after having access to an attorney or advocate for review, and their, and your, obligations for moving have been met.

Please note that the [Teton County, Idaho Affordable Housing Strategic Plan](#) adopted in 2019 recommends a requirement of affordable housing through Annexation and Rezones as a top priority or “Tier One” strategy. The plan states as follows: *“Require mitigation of impacts on affordable workforce housing by significant new development as part of **annexation agreements**, planned unit development approval and other legally permissible Mechanisms.”* A Development Agreement for Rezone is another “legally permissible mechanism.”

To address this issues as well as other goals of the Strategic Housing Plan, we recommend the following condition of approval:

7. Prior to review by the City Council, the applicant shall fund the hire of an affordable housing professional to complete a housing needs assessment generated by the TVR development, and the assessment shall identify all necessary measures to fully mitigate the impacts from the housing needs generated by the development.
8. The City of Victor Planning & Zoning Administrator shall select the affordable housing professional.
9. The City Council shall review the housing needs assessment and proposed mitigation and, if deemed acceptable by the Council, said mitigation shall be incorporated into an Annexation and/or Development Agreement.

If TVR refuses to accept conditions that address health, safety, and welfare issues through the context of Annexation, Rezone, and Conditional Use Permit approval criteria, that is grounds for denial.

Teton Valley Resort is asking for three separate discretionary approvals and the city has every right to ensure that issues inherent to Annexation and Planning & Zoning authority are addressed. The sewer capacity in the plant that serves the cities of Victor, Driggs, and parts of the unincorporated Teton County [is badly in need of an upgrade.](#)² And indeed,

² Tellman, Julia: *“Sewage plant upgrades are needed to achieve discharge compliance, study says”* Teton Valley News, March 10, 2021.

TVR's narrative notes that "some sanitary sewer facilities may need improvement in order to serve this site. A more detailed assessment of the existing sewer capabilities will be determined through the City's upcoming facility planning study schedule to be completed by early summer." This is the proverbial cart before the horse. The capacity of Victor's sewer facilities is a critical issue which serves as a statutory prerequisite for both annexation, and also a CUP to operate the commercial restaurant. There is strong precedent in Idaho for cities to exercise caution and require all service capacity studies to be done in advance of any binding decision on annexation or issuance of a CUP.³ To do otherwise runs contrary to the statutory duty of local governments to assess service capacity before issuing any permits authorizing development.

To be clear, TVR has no inherent right to a Conditional Use Permit. Just because the space for TVR's restaurant presently exists, that does not bootstrap their ongoing applications into legitimacy. All statutory and city requirements must still be met for a permit to be issued here. Here, the Victor's sewer capacity is in question, and the applicant has asked for the unlimited option to expand their onsite restaurant services over time as the business becomes established and grows.

Likewise, TVR has no inherent right to annexation and rezone. Victor does not need to approve further expansion and claim jurisdiction over what's already become public health risk. If there is an unwillingness on the part of TVR to provide transparent assurances that they will timely address the ongoing blight and safety hazards in Phase 3, Victor has no obligation to expand city water and improve on sewer facilities to service this 12-acre rural field outside of the city limits.

Respectfully submitted,



Shawn Hill
Executive Director

³ Cities cannot waive service studies to be conducted after-the-fact when approving permits authorising development. *Fischer v. City of Ketchum*, 141 Idaho 349, 109 P.3d 1091 (2005); *Daley v. Blaine Cty.*, 108 Idaho 614, 701 P.2d 234 (1985).