

Subject: Written comment regarding Proposed Annexation of Kinney Property
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Dear Mayor and Council

We are homeowners in the Magnolia subdivision, the same subdivision that contains the property the Kinneys are requesting to be annexed and rezoned to R3 and MU.

The issue here is any annexation and rezoning is in direct conflict with the Magnolia subdivision CCRS, which are recorded with Ada County. Per these CCRS (attached), the smallest lot size allowable is one (1) acre, and commercial activity is prohibited. We are asking you to deny or table this application indefinitely in order to give the homeowners on Mountain Vista a chance to work with the Kinneys to come up with a reasonable solution that benefits all. We have offered to have such a discussion with the Kinneys, but to date Josh Kinney has not responded.

Our reasons for denying / tabling indefinitely are stated below:

1. Request to rezone from RUT to R3

- a. Approving this application would result in an instantaneous and clear violation of the Magnolia sub CCRS. Per these CCRS, ALL lots within Magnolia are covered, as mentioned on page 1, section 2: *“That all of the real estate, including lots, parcels and tracts thereof...be subject to the following restrictions, covenants and conditions...”*
- b. Per the CCRS, the smallest lot size allowed in Magnolia sub is one acre. This is covered in the CCRS, page 9, section r, as follows: *“RESUBDIVISION: In order to better carry out and preserve the intention of the Grantor to make this subdivision strictly one of suburban acres, it is agreed that no lot is to be subdivided, or shall be sold or offered for sale containing less than the full area described in the plat hereof... In the event that these Covenants and Restrictions are abolished by subsequent act of the owner, as herein provided, no lot shall be subdivided to less than one acre.”*
- c. Therefore, a rezone from RUT to R1 is the lowest density allowable—even if the CCRS are abolished.

2. Request to rezone from RUT to MU.

. Again, this would be a clear violation of the CCRS. Per the CCRS, all lots are residential (with exception noted below) This is covered in the Magnolia sub CCRS, page 2, section a, as follows: *“LAND USE: all of the lots in said subdivision shall be known and described as residential lots, and said lots or any part thereof, or any structures placed thereon, shall not be used for commercial purposes, but the use of said lots shall be limited and restricted to single family dwellings...”*

- a. Commercial use is currently allowed only on lot 1 (near the corner of highway 16 and Floating Feather). In 2017, the Kinneys approached the homeowners on Mountain Vista lane, requesting we grant an allowance for commercial use on Lot 1 (the “Barns”). After some back and forth, we came to an agreement to allow commercial use on Lot 1. Doing so provided no benefit to the homeowners. This agreement was recorded with Ada county as an amendment to the Magnolia sub CCRS (see attached). At that time, the Kinney’s clearly recognized the validity of the CCRS, so why not now?

3. Kinney's total disregard for the Magnolia sub CCRs

. We believe the CCRS are akin to a law; a private contract mutually and implicitly agreed upon by ALL property owners at the time they closed on the purchase of their respective lots. In fact, the CCRS so much as say so on page 1, section 2: "...and that by acceptance of any such conveyance, the grantee and their heirs, executors, administrators, successors and assigns, and with each other as to the property described as follows:..." As such, the CCRS cannot be turned on and off for the sake of any one party's convenience: they are in force, or they are not.

a. The CCRs have been enforced in recent years. The Kinney's are well aware of this—as evidenced by their asking for amended uses for lot 1, which the homeowners allowed. In addition, on 2/3/2020 the Kinneys sent a letter to all homeowners on Mountain Vista, stating their intended use of lots 2 and 3 was to "plant grapes on most of the 23 acres." They also stated, "if several of you feel that what we plan to do is in conflict with the CCR's, as they are written, then we will have to pursue a revision of the CCRS." At that point, they clearly acknowledged the validity of the CCRS. There are other unrelated instances in which the CCRS were tested, and they've held up every time.

4. Partial annexation of subdivision while houses on Mountain Vista would be left in unincorporated ADA.

All lots should be considered for annexation.