



COAN, PAYTON & PAYNE, LLC

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August 25, 2018

Nansi Crom, Mayor
Town of Pierce
P.O. Box 57
Pierce, CO 80650
**sent by email only to tqb@frie.com

Re: Letter of Opposition dated August 20, 2018

Dear Honorable Mayor Crom and Pierce Board of Trustees:

This letter is written on behalf of REP Processing, LLC (“Rimrock”) and NWC Development, LLC in response to Mr. James R. Silvestro’s letter dated August 20, 2018. Please consider this as part of the record in this matter.

The aforementioned letter essentially poses five questions to the Town Board of Trustees. In consideration of these questions, please reflect upon the following additional information that provides a fuller understanding of each issue.

Are the actions of rezoning a newly annexed property or the amendment of Town Codes illegal?

Per Colorado law, at the time that a municipality annexes a property into municipal limits, the newly annexed property may be zoned C.R.S. §31-12-115(1). This is the usual and customary activity of a municipality and not unusual. Rather, the zoning of newly annexed property is required by State law within 90 days of annexation. C.R.S. §31-12-115(2). The Town of Pierce’s consideration of determining a zoning classification for the property once annexed is both proper and necessary under State law. Furthermore, by processing the zoning determination in conjunction with the annexation is not only more efficient for the Town, it allows citizens a more complete picture of the project. Bifurcating the process could lead to confusion for residents.

Pierce is considering amendments to its Town Code. These code changes will bring the Pierce Town Code into greater conformity with the Weld County Code with respect to planning for oil and gas development. Until recently, Pierce has not participated in the full extent of oil and gas development that has been experienced in greater Weld County. For Pierce to be able to incorporate new oil and gas activity in the region in a planned and orderly manner, it is necessary to update its code and definitions. Pierce and surrounding property owners who are mineral rights owners benefit from this activity and the development of their resource. A failure to plan for mineral development would result in a disservice to the residents of the Town of Pierce.

It is important to note that, if this property were to be developed in Weld County, as opposed to with the Town limits of Pierce, the proposed use would be considered accessory in the (A) Agricultural Zone and permissible without a change of zone, but only a Use by Special Review. By rezoning the property as I-3, the Town will be able to control the development of the property through appropriate zoning, as opposed to development as an accessory use under the Weld County Code.

It has been presented that there are no grounds for approving rezoning. The Pierce Town Code Section 16-19-70 provide the procedures for rezoning property and these have been applied. The Planning Commission found that changing conditions and land uses, particularly oil and gas development, in the region as well as the need for the Town to add additional Industrial zone locations for the benefit of the Town's tax base and future growth were grounds for approving the requested zoning. The Town Board of Trustees is requested to consider these grounds for the present zoning request.

Does a flagship [flagpole] annexation violate state law?

C.R.S. §31-12-107 sets the requirements for petitions for annexation and in the present request the annexation petition has been found to be complete. Contiguity is a necessary requirement of annexation and the series of three annexations each meet the statutory contiguity requirements to establish contiguous borders for the municipality. State law does not prohibit "flagpole" annexation, but disconnected satellite annexation in C.R.S. §31-12-104(2)(b). The present annexation petition before the Town, should each be approved, would not result in a disconnected satellite, but a contiguous annexation and expansion of Town limits. Furthermore, C.R.S. §31-12-104(2)(a) limits annexations, flagpole or otherwise, to not more than three miles from the nearest boundary of the annexing municipality. In the present petition, the properties to be annexed are less than two miles from the existing town limits. Generally, a flagpole annexation is not in violation with Colorado law and in this instance, the petitioned annexations meet Town Code and state statutes.

Has Rimrock demonstrated that it has met the Pierce Town Code in order to obtain a Special Use Permit?

Rimrock has provided a complete application, as reviewed by Town staff and accepted at completeness review by the Town Planning Commission and Town Board of Trustees. The Pierce Town Code at 16-14-30 provides the procedure and criteria for considering a permit for Special Review. Such uses are to meet the following requirements:

- a. Stormwater detention facilities shall be provided on site, which shall contain stormwater as may be determined by the Town Engineer. The drainage facility shall be designed to release all detained water at a quantity and rate not to exceed the quantity and rate of a five-year storm falling on the undeveloped site.
- b. All parking and storage areas shall be provided on site, and parking shall not be permitted in the public right of way.

- c. Adequate fire protection measures shall be available to the site.
- d. Access to the site shall be provided in a safe manner which requires acceleration or deceleration lanes or other modifications to the street system at applicant's expense.
- e. Buffering or screening of the proposed uses from adjacent properties shall be provided to improve compatibility, either by fencing, berming, landscaping or other procedures as may be appropriate.
- f. Such other requirements as the Board of Trustees may deem appropriate to make the use compatible with the existing uses in the neighborhood.

Rimrock has met and exceeded the aforementioned requirements through the following mitigation steps, which include:

- A Drainage plan professionally engineered to ensure maintenance of historic flows and compliance with Town Code.
- All parking and storage areas will be on site. The entrance is designed so that neither parking nor entry and exit from the facility will block public roads or right of ways.
- In the event of a need for fire protection measures, Nunn Fire Protection District is able to respond to this site in ten to fifteen minutes. The Ault Pierce Fire Department, which has a mutual aid agreement with Nunn Fire Protection District, is able to respond to this site in six to seven minutes.
- The applicant will enter into a proportionate share agreement for road maintenance to ensure that development pays its fair share. Access to this site is managed by Weld County, which has jurisdiction of County Road 29 and there is an Access Control Plan in place for CR 29.
- The application of residential noise standards, which is lower than industrial standards. Sound mitigation such as compressor engine exhaust silencers, acoustical compressor buildings, topography and berming, the size of the property and placement on the site which optimizes distance from residences.
- A Lighting plan designed to International Dark Skies standards to limit light pollution off property.
- Landscaping plan to provide a more visually appealing development as well as using natural topography and native plants which would be most conducive to survival onsite. Natural view corridors were also considered and respected in the siting of the facility.

- Placement of Tri-State switching station off of CR 29 and closer to the development in the USR to cluster activity.
- Rimrock is held to high standards from Federal, State and County regulatory agencies with regard to air quality. These regulatory bodies provide regular inspection and protections for health, safety and welfare for the community.
- To ensure safety, applicant has contacted the RE-9 School District to ensure that traffic patterns will not disrupt school busing and activities. Furthermore, OSHA provides inspections to ensure compliance with a myriad of workplace safety factors. Best management practices will be installed to ensure safety in this new facility.
- The haul route is as designated in Town Code. Currently there are 133 trips a day on CR 29 north of 90 and 352 trips on CR 90 east of CR 29. During the peak construction period of approximately 3 months, 6-8 trucks and 125 passenger vehicles are estimated. Upon operation, 2-3 trucks and 12-15 passenger vehicles are anticipated every day.

Moreover, these mitigation efforts have evolved during the planning process, with deliberation of the Planning Commission and questions raised by the public incorporated in plans throughout the process. Rimrock has demonstrated that it has met the Town's standards to receive a Special Review Permit.

Does the Town Board of Trustees have the authority to consider the merits of the application for a subdivision?

C.R.S. §31-12-115(5) provides that any annexing municipality may institute the procedure outlined in its subdivision regulations to subdivide land in the area proposed to be annexed at any time after a petition for annexation has been found to be valid. This is the basis for the Town of Pierce's consideration of the subdivision request. The purpose of this subdivision is to provide an approximate five acre site for Tri-State Generation and Transmission Association, Inc. electric switching station. This would be located in the NW/4 of Section 21. The remainder of the northwestern quarter of Section 21 would remain in NWC Development, LLC's possession for the purpose of the proposed natural gas processing facility. The Town Board has the authority to consider the merits of the application of a subdivision. It is nonsensical to indicate that it may not, under Town Code and Colorado statute, consider the merits of the application for subdivision.

Is the Town Board of Trustees precluded from changing its comprehensive plan enacted in 1976 to meet the changing circumstances of the region?

The Town Board of Trustees enacted a comprehensive plan in 1976. Since that time, numerous changes have occurred in the Town as well as in the unincorporated areas near the Town limits. These changes include increased oil and gas development in the region that was

not considered, as well as new technology in oil and gas development that could not be imagined at the time of the 1976 comprehensive plan. These changes have made oil and gas exploration and production viable in the surrounding area. The purpose of revision of comprehensive plans is to recognize such changes and support the diversity of the local economy.

A comprehensive plan is not intended to be a static item, but rather a living document. As land use patterns change, it is healthy for communities to amend their comprehensive plans. An argument that the Comprehensive Plan should not be allowed to change since it has not been amended since 1976 is a declaration of stagnation with an outcome of preventing any diversification of economic opportunities in the Town. Rather than turning a blind eye to growth opportunities that are becoming available in the local area, Pierce should embrace change and prepare to manage growth in an orderly way. To preclude growth would be an invitation to other jurisdictions to control growth on their terms in the Town's vicinity.

For these reasons, the Town Board of Trustees is well within their rights to consider the amendment to the Comprehensive Plan, code changes, annexation petition, change of zone, minor subdivision and Special Use Permit as presented. Rimrock respectfully requests your approval of the aforementioned processes.

Sincerely,
Coan, Payton & Payne, LLC

A handwritten signature in blue ink, appearing to read 'WFG', followed by a horizontal line.

William F. Garcia

cc: Don Hoff, Town Attorney
dhoff@nocoattorneys.com