

MISCHELLE R. FULGHAM
Attorney at Law
Fulgham Law PLLC
Telephone: (208) 699-6339
Email: Mischelle@fulghamlawpllc.com
ISB# 4623
Attorney for Petitioner/Applicant – Hayden Homes

BEFORE THE CITY COUNCIL – CITY OF RATHDRUM, IDAHO

HAYDEN HOMES,
Petitioner, Applicant

v.

THE CITY OF RATHDRUM, a municipal
corporation, political subdivision of the
State of Idaho, COUNCILMEMBER
JOHN HODGKINS, COUNCILMEMBER
KEN OWENS, COUNCILMEMBER
JOHN HATCHER, COUNCILMEMBER
LARRY SANDERS, and MAYOR HILL,
in their official capacities as elected
officials,
Respondents.

Case No:

HAYDEN HOMES/ARESTAD ZONING
MAP AMENDMENT

MOTION FOR RECONSIDERATION

INTRODUCTION

COMES NOW HAYDEN HOMES, the Applicant and Petitioner in this matter
(hereinafter “Hayden Homes”), by and through its counsel of record, Attorney Mischelle R.
Fulgham, and timely seeks reconsideration of the Respondents’ decision. This MOTION FOR
RECONSIDERATION is based upon Idaho Code 67-6535, Idaho Code 67-5279(3), Idaho Code

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12-117, Idaho Code 12-121, Rathdrum City Code 15-5-10, and Rathdrum City Code 15-4-1-A-7.

The purpose of this Motion is for the governmental agency to reconsider and correct the deficiencies in its decision on the Hayden Homes/Arestad Zoning Map Amendment. Numerous factual, legal, and procedural errors and mistakes exist. As a result of these factual, legal, and procedural errors and mistakes, reconsideration and reversal is warranted.

PROCEDURAL POSTURE OF THE CASE

November 20, 2024 – Applicant Hayden Homes submits its rezone request, to (MR) Mixed Density Residential, in full accordance with, and in full compliance with, Rathdrum City Code 15-4-1-A-7. See attached **Exhibit A**, entitled “City of Rathdrum Public Works/Planning Department, Zone Change Application,” dated November 13, 2024. The Hayden Homes’ (MR) Mixed Density Rezone Application is deemed complete and is accepted by Respondent. No traffic study (“TIS”) is requested by Respondent and no TIS is required for a MR zone change application under Rathdrum City Code, Section 15-4-1-A-7.

It is important to note that City of Rathdrum’s Application form expressly and specifically and expressly states that zone changes are governed by Rathdrum City Code (RCC) Title 15. No other City Code or regulatory authority applies to the Hayden Homes’ zone change, nor is any other City Code or regulatory authority cited or referenced by the City as governing the Hayden Homes’ zone change. On page 2 of **Exhibit A**, the City cites to and describes the governing and controlling City Code for this zone change, stating as follows:

GENERAL INFORMATION

Zone Changes are subject to the requirements of Rathdrum City Code (RCC) Title 15.

In processing the zone change, the City reviews information related to the compatibility of the proposal with other permitted uses in the same vicinity and zone and assure against imposing excessive demands on public utilities and facilities. Conformance with development standards as found within RCC Title 15.

See attached **Exhibit A**, page 2.

December 18, 2024 – The Rathdrum Planning and Zoning Commission (“PZC”)

conducts a public hearing on the Applicant’s rezone request. Although no TIS was requested in order for the Application to be deemed complete, and although no TIS is required for a MR rezone under RCC 15-4-1-A-7, the PZC indicated it was unable to make a determination if the Application met the criteria for a MR rezone without a TIS. The PZC expressly stated as follows:

1. That without a traffic study, the Commission is unable to determine if the application meets criteria No 1 of the required criteria for approval of MR (Mixed Residential Zoning District), that the MR mixed density residential areas should be located “in areas where traffic would not have a detrimental effect on the carrying capacity of collector and arterial streets.”

See attached **Exhibit B**, Recommendation for Denial, dated December 23, 2024. Aside from the TIS request, no other basis exists, or was cited, by the PZC for its recommendation of denial. Aside from the Criteria #1 traffic concern, no other issue or concern is stated or referenced. See attached **Exhibit B**.

March 18, 2025 – The Applicant provides a Traffic Impact Study. See attached **Exhibit C**, including excerpts from Hayden Homes Arestad Property Development Traffic Impact Study. Although not required under the City Code, the Applicant voluntarily complied with the PZC’s request for more information in the form of a TIS. The “Hayden Homes Arestad Property Development Traffic Impact Study” was voluntarily submitted to, and accepted by, the Respondent City of Rathdrum on March 18, 2025. See **Exhibit C** excerpts attached hereto, and see Exhibit 1A in the Respondent City of Rathdrum City Council Record, April 4, 2025.

Several areas of mitigation were identified by the Applicant's TIS, including 1. Lancaster – Meyer Intersection; 2. Meyer – Nagel Intersection; 3. Lancaster -Railway Intersection; 4. Frontage Improvements – Boekel Road and Meyer Road and 5. Site Access. Therein, the TIS states and concludes that with the recommended mitigation contained in the City's planned improvements and with the Developer's agreed mitigation improvements, Criteria No. #1 of the City Code, RCC 15-4-1-A-7 for the (MR) Mixed Residential zone, is fulfilled and that the Applicant's requested MR rezone would not have a detrimental effect on the carrying capacity of collector and arterial streets. See attached **Exhibit C**, TIS excerpts, attached hereto.

March 25, 2025 – The Respondents' City Engineer provided a review and comments to the Applicant's TIS. See attached **Exhibit D**, Rathdrum Public Works Department, City Engineer Memorandum entitled, "Hayden Homes Arestad Development – Traffic Study Review," dated March 25, 2025. In attached **Exhibit D**, the City Engineer specifically and expressly set out the requested traffic mitigation requirements for the Hayden Homes/Arestad rezone and development. In addition to the Applicant's five (5) areas for mitigation as described in the Applicant's TIS, the City Engineer required three (3) additional traffic mitigation requirements, i.e., extension of Hiawatha Lane, Extension of Nagel Road, and Extension of Railway Avenue, for a total of eight (8) traffic mitigation conditions of approval for the development Application. *Id.* Regarding each of the eight (8) areas for traffic mitigation, the City Engineer stated as follows:

I've had an opportunity to review the submitted "Rathdrum Hayden Homes Arestad Property Development Traffic Impact Study," dated 3.18.25. I herein offer the following comments:

- **Lancaster-Meyer Intersection:** the TIS recommends mitigation for the Lancaster-Meyer intersection.

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It should be noted that this intersection is a city-programmed project, currently at 75%-engineering design stage with utility relocation coordination to begin soon. The advancement of this project to construction is dependent upon funding (currently slated to be locally-funded). The City's programmed improvements are to replace the existing 4-way stop-controlled intersection with a single-lane roundabout.

→ The City of Rathdrum has this intersection programmed for improvements.

- **Meyer-Nagel Intersection:** the TIS recommends the creation of a left-turn lane for both NB and SB Meyer Road. The SB Meyer Road approach requires a right-turn lane.

Rathdrum's Transportation Master Plan neither identifies a LOS deficiency nor offers recommended mitigation for this intersection. However, the Rathdrum Transportation Master Plan does identify that Meyer Road should be upgraded to provide for 2 travel lanes in each direction (NB & SB).

→ At a City-defined development phase(s), the applicant shall construct a left turn lane for both NB and SB directions, along with a SB right-turn lane at the Nagel-Meyer intersection.

- **Lancaster-Railway Intersection:** the TIS recommends the creation of a multi lane left-turn lane for both EB and WB Lancaster Road. The EB Lancaster Road approach requires a right-turn lane.

Rathdrum's Transportation Master Plan neither identifies a LOS deficiency nor offers recommended mitigation for this intersection. However, the Rathdrum Transportation Master Plan does identify that Lancaster Road should be upgraded to provide for 2 travel lanes in each direction (WB & EB) and include a center, 2-way left-turn lane.

→ With Lancaster Road improvements, between Meyer Road and Huetter Road, being a major capital improvement project in the future, it is my recommendation that such improvements be completed by a city-sponsored project.

- **Frontage Improvements – Boekel Road and Meyer Road:** the TIS identifies that frontage improvements will be required per a future development agreement.

It is customary practice, for frontage improvements to be completed as the development encroaches upon said roadway frontage(s). Frontage improvements are generally defined as: roadway widening to meet the Rathdrum's Transportation Master Plan ultimate roadway x-section (adjoining half width

only); adjoining roadway drainage swales/facilities; street lighting; landscaping (street trees); adjoining pedestrian facilities (sidewalks/pathways) and adjoining roadside curbing.

→ The above-mentioned Boekel Road frontage improvements and Meyer Road frontage improvements will be required and stated accordingly in the future Development Agreement.

- **Site Access:** In Figure 3 of the TIS, site access locations are generally identified.

The configuration of the site access points is not known at this time.

→ City staff will review each point of site access to Boekel Road and Meyer Road. City staff will stipulate any turning movement restrictions at each access point and identify if any improvements/modifications are needed for either Boekel Road or Meyer Road.

- **Extension of Hiawatha Lane:** The TIS does not discuss the extension of Hiawatha Lane.

Hiawatha Lane is a collector roadway which is to be located along the east property line of this development.

→ A functional 2-way Hiawatha Lane, with the complete west half roadway x section, will be required to be constructed as a condition of the development approval – and will be included as such in the future Development Agreement.

- **Extension of Nagel Road:** The TIS does not discuss the extension of Nagel Road.

Nagel Road is a collector roadway which bisects the development, providing west-to-east connectivity.

→ The complete roadway x-section for Nagel Road will be required to be constructed as a condition of the development approval – and will be included as such in the future Development Agreement.

- **Extension of Railway Avenue:** The TIS does not discuss the extension of Railway Avenue.

Railway Avenue is a collector roadway which bisects the development, providing north-to-south connectivity.

→ The complete roadway x-section for Railway Avenue will be required to be constructed as a condition of the development approval – and will be included as such in the future Development Agreement.

See attached **Exhibit D**, Rathdrum Public Works Department, City Engineer Memo, “Hayden Homes Arestad Development – Traffic Study Review, dated March 25, 2025 (emphasis added).

April 1, 2025 – Hayden Homes submits its written response and consents to all traffic mitigation requirements set forth by the City of Rathdrum, Public Works Department. See attached **Exhibit E**, dated April 1, 2025, Hayden Homes’ letter of consent and agreement to all traffic mitigation conditions and requirements described by the City Engineer. In this letter consenting and agreeing to all traffic mitigation conditions and requirements put forth by the City, Hayden Homes’ Land Development Director, Eric Scheck, wrote as follows:

Hayden Homes has reviewed your memo and agrees with your conclusions and recommendations, specifically:

- **Lancaster-Meyer Intersection:** Improvements are currently needed. The city has programmed this project to replace the existing 4-way stop-controlled intersection with a single lane roundabout.
- **Meyer-Nagel Intersection-** A left-turn lane for both NB and SB Meyer Road is needed, as well as the addition of a right-turn lane at the SB Meyer Road approach. Hayden Homes will construct these improvements at a city defined phase of our development.
- **Lancaster-Railway Intersection:** A multi lane left-turn lane is needed for both EB and WB Lancaster Road, as well as a right turn lane at the EB Lancaster Road approach. Hayden Homes agrees with your recommendation that the improvements be completed through a city sponsored project as part of the Lancaster Road upgrade identified in the Rathdrum Transportation Master Plan.
- **Frontage Improvements:** Hayden Homes agrees frontage improvements, consistent with the Rathdrum Transportation Master Plan, will be constructed by Hayden Homes along Boekel Road and Meyer Road and detailed in a development agreement.
- **Site Access:** Hayden Homes agrees that the appropriate time for reviewing points of site access, potential restriction of turning movements, and any required

improvements or modifications is appropriate at the future preliminary plat stage of the development.

- **Extension of Hiawatha Lane, Nagel Road, and Railway Avenue:** Hayden Homes understands specific roadway cross sections located along the property lines or bisecting the development will be determined by the city at the time of preliminary plat, and improvements will be required to be constructed as a condition of the future development agreement.

See attached **Exhibit E**, Hayden Homes' letter of consent and agreement to all traffic mitigation conditions and requirements, dated April 1, 2025.

April 4, 2025 – The City of Rathdrum Planning and Zoning Administrator submits a Memorandum entitled “Hayden Homes/Arestad Rezone (Zoning Map Amendment) to the City Council for consideration at its upcoming public hearing. See attached **Exhibit F**, dated April 4, 2025. In his Memorandum to the City Council, the Rathdrum Planning and Zoning Administrator described and provided the Applicant's TIS submittal, the City Engineer's Memorandum response, and the Applicant's letter response, (wherein the Applicant consented and agreed to all of the City's traffic mitigation requirements), stating as follows:

Response from applicant

The applicant performed the requested traffic study (Exhibit 1A) that the Planning and Zoning Commission requested at the time of denial. A response to the traffic study (Exhibit 1B) was provided by the city from the City Engineer. The applicant then provided a response (Exhibit 1C) to the city engineers' comments. See attached **Exhibit F**, page 1, dated April 4, 2025.

Additionally, the Planning and Zoning Administrator set out the City's binding legal code requirements for granting the requested MR Mixed Density Residential rezone, as follows:

Criteria for Granting a Zone Change (RCC 15-5-10-6)

Criteria for granting a zone change shall be the same as listed in chapter four of Title 15. Criteria: MR mixed density residential areas should be located according to these criteria:

- (1) In areas where traffic would not have a detrimental effect on the carrying capacity of collector and arterial streets.

(2) In locations where municipal and sewer facilities are provided.

(3) In any location where R-1, R-2S, R-2D, or R-3S zoning districts are appropriate.

See attached **Exhibit F**, page 1, dated April 4, 2025.

April 9, 2025 – The Applicant’s public hearing before the Rathdrum City Council is held. See attached **Exhibit G**,¹ Rathdrum City Council Minutes, dated April 9, 2025. During this Public Hearing, the Applicant Hayden Homes presented and discussed the Traffic Impact Study it had prepared and voluntarily submitted in support of its requested zone change. The City Engineer explained to the City Council each of the traffic mitigation requirements being imposed upon the Applicant. City Engineer Jump further explained details of the Applicant’s TIS and the traffic mitigation requirements, indicating that **the Applicant has stated they will comply with all recommended traffic improvements.** See attached **Exhibit G**, page 3.

The TIS and the details thereof were debated and discussed by the Council and with the Applicant’s Representative Eric Scheck. The Respondent City Council’s Minutes from the April 9, 2025 Public Hearing state as follows:

The Council discussed the concerns of the rezone and how it relates to the city’s comprehensive plan. They also discussed concerns raised by the citizens in detail.
The developer would be required to conduct traffic improvements and would

¹ Agenda Item 4, entitled, “AMENDMENTS TO THE AGENDA AND DECLARATION OF CONFLICT, EX-PARTE CONTACTS, AND SITE VISITS”, states the Mayor disclosed he had ex-parte contacts and has forwarded all contacts and e-mails received to city staff, planners and legal counsel. None of the other City Councilmembers disclosed having any ex-parte communications – although it is clear that another City Councilmember did in fact have ex-parte contacts and obtained information outside of the Public Hearing context, in the form of a private Facebook group, entitled “Rathdrum Community News.” This private Facebook group has a page containing posts, comments, information, and responses regarding this Application for zone change. This private Facebook group and page is controlled, moderated, and administered by City Councilmember John Hodgkins. As Administrator of this Facebook page, Councilor Hodgkins receives, shares, and reviews information obtained outside Record in the Public Hearing context. His Facebook group and page contain improper ex-parte contacts and information. Yet none of the ex-parte contact or information from his Facebook group and page was disclosed by Councilmember Hodgkins.

also be required to pay impact fees for parks, police and streets, as well as capitalization fees to pay for increases in the water system.

See attached **Exhibit G**, page 4 (Emphasis added).

The Council and Staff discussed the necessary approval criteria under City Code Subsections (1)-(3) regarding traffic, municipal water and sewer facilities, and density. The City Engineer reiterated the traffic mitigation being imposed on the Developer and the mitigation planned by the City for various transportation issues, including extending roads, ensuring continuity of transportation, adding turn lanes, roundabouts, and access restrictions. Because all of the expressly stated City Code Title 15 rezone approval requirements, including traffic Criteria #1, were fully met and complied with, the Council voted to APPROVE the Hayden Homes' (MR) Mixed Density rezone.

Specifically, in stating his Motion to APPROVE the Rezone, Councilor Sanders expressly spelled out and included the exact and precise requirement that the Developer provide and perform **"all self-imposed traffic improvements as per the traffic study."** See attached **Exhibit G**, page 5 (Emphasis added). Councilor Sander's Motion to Approve the Rezone was seconded by Councilor Hatcher. Both Councilors Sanders and Hatcher voted to approve. Only Councilor Hodgkins² voted to deny. *Id.* The Motion passed and the Hayden Homes (MR) Mixed Density Rezone Application was APPROVED.

² Councilmember Hodgkins was the lone vote to deny the Hayden Homes' zone change. His vote and his participation in the entirety of the Hayden Homes/Arestad Property Rezone Application should be excluded and discarded due to Hodgkins' undisclosed and uncured ex-parte contacts and communications outside the Record at the Public Hearing. Councilmember Hodgkins is the registered Administrator of the private Facebook page, entitled "Rathdrum Community News," wherein Councilmember Hodgkins posts, shares information, receives, reviews, and deletes some community members' posts, comments, and information about this pending Quasi-Judicial Proceeding. Such ex-parte contact is a violation of the Applicant's due process rights and a violation of the fundamental fairness required in a Quasi-Judicial Proceeding. This violation of due process requires the necessary disqualification, recusal, and exclusion of Councilmember Hodgkins from all discussions, voting, and decision making regarding the Hayden Homes' Application.

UNKNOWN DATE, TIME, AND PLACE – At some unknown date, time, and place, an unknown and unidentified person, indicated to an unknown and unidentified person at the City of Rathdrum, that this unknown person did not receive notice of the public hearing. It is believed, but unconfirmed, that this information was shared with someone at the City prior to April 12, 2025. Apparently, the unknown person indicated he or she was entitled to notice of the public hearing because they purportedly resided within 300 feet of the property in the Application.³ The Applicant has not been provided a copy of this ex-parte contact or communication. It occurred outside the public hearing and is not contained in the official Record. The Applicant is unaware of who sent it, when they sent it, where they sent it, and who received it.

May 14, 2025 – The Applicant's Second Public Hearing occurs before the Respondent City Council. Due to the admitted error committed by the City of Rathdrum in failing to mail notice to all property owners located within 300 feet, a Second Public Hearing had to be re-noticed and repeated. See attached **Exhibit H**, Rathdrum City Council Minutes, dated May 14, 2025.⁴

³ It is unknown whether the information about the lack of mailing was posted and shared in the private Facebook page, "Rathdrum Community News," which page is moderated and administered by Councilmember Hodgkins. Hodgkins may have received the information via his private Facebook page and he may have then alerted the City to the lack of notice to the neighbors located within 300 feet of the Application property. It is completely unknown to the Applicant who, what, where, when and how the City first became aware of the notice problem.

⁴ Under Item 4, entitled, "AMENDMENTS TO THE AGENDA AND DECLARATION OF CONFLICT, EX-PARTE CONTACTS AND SITE VISITS", Mayor Hill and Councilmember Hatcher declared that they had ex-parte contacts about a Land Use Action Item on the agenda and they have forwarded all contacts and email received to city staff, planners, and legal counsel. Here again, Councilmember Hodgkins did not disclose any ex-parte contact. He again failed to disclose the information he receives and reviews as Administrator of the private Facebook page he moderates and controls. Councilmember Hodgkins is the registered Administrator of an outside, private Facebook page, entitled "Rathdrum Community News," wherein Councilmember Hodgkins regularly posts, shares information, receives, reviews, deletes, and responds to community members' posts, opinions, comments, and information about this pending Quasi-Judicial Proceeding. Such ex-parte contact is a violation of the Applicant's

At the Second Public Hearing on the same Hayden Homes (MR) Mixed Density Rezone Application, no new staff report, engineering report, traffic study, or new traffic data was presented. Nothing was submitted or existed in the official Record to contradict or counter the previous traffic study and traffic mitigation data submitted and agreed to by the City Engineer and the Developer back on April 9, 2025. Because the Applicant had already agreed to all traffic mitigation conditions set out in the TIS and because the Applicant had already agreed to all traffic mitigation conditions previously requested by the City Engineer, at the time of the Second Public Hearing on May 14, 2025, the rezone Application still met and fulfilled all of the same requirements under City Code 15-4-1-A-7, Subsections (1) – (3). Based on this same exact traffic mitigation evidence in the Record before the Council on April 9, 2025, the City Council previously voted to APPROVE the rezone - as it fully complied with RCC 15-4-1-A-7, Criteria # (1) – (3). Because the TIS and traffic mitigation evidence had not changed since the City's decision to APPROVE on April 9, 2025, the City's decision on May 14, 2025 should not have changed either – after all, it was based upon the same exact traffic mitigation evidence in the Record, as previously agreed to by the City Engineer and the Developer. As the traffic mitigation evidence did not change between the APPROVAL decision on April 9, 2025 and the Second Public Hearing on May 14, 2025, the City should have relied upon the same exact traffic mitigation evidence and issued another APPROVAL.

During the Applicant's Presentation and Rebuttal on May 14, 2025, Hayden Homes' Land Development Director, Eric Scheck, again repeated the Developer's ongoing commitment and

due process rights and a violation of the fundamental fairness required in a Quasi-Judicial Proceeding, resulting in the necessary recusal and exclusion of Councilmember Hodgkins from all discussions, voting, and decision making regarding this Application. Councilmember Hodgkins moved and voted to deny the zone change. His vote and his participation should be excluded and discarded due to Hodgkins' undisclosed and uncured ex-parte communications.

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previous agreement to comply with all traffic mitigation requests of the City. Mr. Scheck stated and provided supporting evidence in the Record that *“Criteria 1 is met in that Traffic will not have a detrimental effect on collector and arterial streets because Hayden Homes is upgrading and developing those collector and arterial streets.”* See attached **Exhibit I**, pages 11 and 14.

Transportation

Planning Commission recommended denial based on potential traffic impacts. Therefore, a Transportation Impact Study (TIS) was completed in this rezoning step prior to preliminary plat application.

- Lancaster-Meyer Intersection
- Lancaster-Railway Intersection
- Meyer-Nagle Intersection
- Frontage Improvements
- Site access
- Extension of roadways along property lines or bisecting the development

We are in agreement with the mitigation measures outlined in the City Engineer’s Response to the TIS Report.

By addressing these mitigation measures, the zone change would not have a detrimental effect on the carrying capacity of collector and arterial streets.

See attached **Exhibit I**, page 11 (Emphasis added).

During his testimony on the Record Mr. Scheck again repeated his explanation of how all the traffic mitigation requirements set out in the TIS and in the City Engineer’s Memorandum were fully addressed and are supported by substantial, competent evidence in the Record. No new or contradictory TIS was presented by City Staff or the City Engineer. No new or contradictory traffic analysis or data was presented by City Staff or the City Engineer. As a result, at the Second Public Hearing on May 14, 2205, the Applicant again demonstrated that traffic Criteria #1 was fulfilled, just as it had been fulfilled during the previous Public Hearing back on April 9, 2025. Another vote to APPROVE should have followed.

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Without any contradictory TIS data and without any change of opinion or new evidence from the City Engineer, the City Council's vote regarding Subsection 1 traffic should have been the same. The TIS and traffic data that supported approval on April 9, 2025 were still unrebutted in the Record at the hearing on May 14, 2025. In short, nothing about the traffic study or the traffic mitigation items required by the City Engineer had changed, so the traffic study data and the legal criteria supporting approval under City Code Subsection (1), remained exactly the same as it had during the previous Public Hearing – fully satisfied. However, notwithstanding the same supportive TIS data, the same unrebutted City Engineer traffic mitigation requirements, and the same Developer consent to all traffic mitigation requirements from the City Engineer, the Respondent City Council reversed its decision and this time voted to DENY the same rezone it had previously APPROVED, allegedly due to “the impact on traffic due to the Lancaster Railway intersection and deficiencies.” See **Exhibit H**, Rathdrum City Council Minutes, May 14, 2025 Public Hearing, Item A, ACTION ITEM, (Land Use), page 5.

A) ACTION ITEM (Land Use): Consideration of the Hayden Homes/Arestad Zoning Map Amendment (Rezone) Request

Councilor Hodgkins made a motion to decline the application to rezone the Hayden Homes/Arestad Zoning Map Amendment (Rezone) Request on the basis of failure to meet condition #1: - the impact on traffic due to the Lancaster Railway intersection and deficiencies.

See **Exhibit H**, Rathdrum City Council Minutes, May 14, 2025 Public Hearing, Item A, ACTION ITEM, (Land Use), page 5.

Because no new TIS information and no new traffic mitigation data was submitted on the Record during the Public Record, it is unclear what TIS data or traffic mitigation expert opinion Councilmember Hodgkins reviewed and relied on in moving to deny. He did not request any

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additional improvements or mitigation from the Applicant during the Applicant's Presentation in the Public Hearing or in the Applicant's Rebuttal. In fact, the pre-existing deficiencies with the Lancaster and Railway intersection, have nothing to do with, and are not caused by, this rezone Application. Contrarily, the pre-existing deficiencies at Lancaster and Railway will be corrected and traffic flow will be improved with the mitigation agreed to by the City Engineer and this Developer as agreed and as set out in the attached Development Agreement. See **Exhibit K** attached hereto. The City Engineer previously recommended, and Hayden Homes previously agreed to, "a multi-lane left turn-lane for both EB and WB Lancaster Road. The EB Lancaster Road approach requires a right-turn lane." On reconsideration and approval of the zone change, these traffic mitigation items will be implemented by the Developer as described and set out in the attached Development Agreement. See **Exhibits D, E, and K**.

Thus, no evidence exists in the Record at the Public Hearing supporting denial based on traffic impact Criteria #1. In fact, the City Engineer was not even present to submit any contrary testimony or traffic opinion at the May 14, 2025 Public Hearing. City Engineer Jump submitted no evidence, testimony, or traffic data to contradict his previously documented traffic mitigation opinion and recommendations. No expert testimony, no engineering evidence, and/or no traffic data existed in the Record at the Public Hearing to contradict the City's previous decision to APPROVE the zone change. Instead, the TIS and the traffic data in the Record at the Public Hearing still fully supported the APPROVAL of the rezone, as decided on April 9, 2025. Given the TIS data and the traffic mitigation imposed by the City Engineer (specifically including improvements to the Lancaster Railway intersection) and as expressly agreed to by the Developer, *under City Code Criteria #1, no evidence of any detrimental effect on the carrying*

capacity of collector and arterial streets exists. The DENIAL initiated by Councilmember Hodgkins⁵ and approved by Councilmembers Owens and Hatcher was improper. It was a violation of due process; it was not supported by substantial evidence in the Record at the Public Hearing as a whole; it was contradictory, arbitrary, and capricious; and it was in violation of Idaho law. The denial should be reversed.⁶

May 28, 2025 – Rathdrum City Council Meeting – Written Denial Decision Issued.

The Respondents conducted a City Council Meeting on May 28, 2025 and adopted Staff's written denial decision. During this Public Meeting, no conflicts of interest or ex-parte contacts regarding the Agenda items were disclosed by the Mayor or by any Councilmember.⁷ During this Public Meeting, the Council voted to approve several items on its Consent Calendar, including to "Accept Findings of Fact and Notice of Decision denying the Hayden Homes/Arestad Zoning Map Amendment." See attached **Exhibit J**. No discussion of the zone

⁵ Only Councilmember Hodgkins spoke in opposition to the zone change. Neither Councilmember Owens nor Hatcher spoke in regard to the motion to deny. They gave no indication as to why they were voting to deny. Aside from Hodgkins, none of the Respondents provided any evidence, analysis, insight, or explanation as to the reason for voting to contradict the City Council's prior APPROVAL and to reverse themselves with this new and contradictory decision.

⁶ After the Applicant's Presentation, Rebuttal, and after Public Testimony was closed, Councilmember Hodgkins requested additional mitigation from the Applicant as a condition of obtaining an APPROVAL of the Zone Change. Hodgkins did not request this additional traffic mitigation item during the Applicant's Presentation, nor during the Applicant's Rebuttal. Thus, there was no notice or opportunity for the Applicant to agree to the new and addition traffic mitigation condition during its Presentation or Rebuttal, because Hodgkins did not request the additional item until the end of the hearing – after the Applicant was no longer allowed to speak to the Council. However, on Reconsideration the Applicant hereby **AGREES AND CONSENTS** to the additional traffic mitigation condition requested by the City and identified in the TIS, **specifically including performance and implementation of the Lancaster – Railway traffic mitigation turn lanes** cited in the TIS and relied upon by Councilor Hodgkins as grounds for his denial motion and vote. See attached Development Agreement, **Exhibit K**.

⁷ Although Commissioner Hodgkins again did not disclose any ex-parte contact or information, he continued to receive contacts and information via the Facebook page he administers. Hodgkins continued to receive, review, respond, and share information specifically regarding the Hayden Homes/Arestad Zone Change Quasi-Judicial Proceeding outside the Record at the Public Hearing. See attached **Appendix A**, pages 1-14.

change decision occurred on the Record during this Public Meeting. It is unknown if the Respondents had ex-parte contact or communications outside the Record and outside the Public Meeting regarding their vote to accept the Findings of Fact and Notice of Decision for Hayden Homes/Arestad Zoning Map Amendment. No conflicts or ex-parte contacts were disclosed or stated on the Record during the Public Meeting.

Interestingly, Item 10(A) on the May 28, 2025 Rathdrum City Council Agenda was a Report by Councilor Hodgkins regarding information he received in his role and capacity as a Board Member of the traffic planning organization, KMPO – the Kootenai Metropolitan Planning Organization. See attached **Exhibit J**, page 2, Item 10(A). Based upon his report describing information from his outside Board meetings with KMPO, it became evident that Councilor Hodgkins was in fact receiving and relying upon ex-parte information obtained outside the Record at the Public Hearing regarding traffic mitigation measures and implementation on the roads at issue in the Hayden Homes Rezone Application – specifically regarding Lancaster Road and Meyer Road.⁸

⁸ Councilmember Hodgkins never disclosed any ex-parte contact or information received outside the Hayden Homes' Public Hearing. However, Hodgkins is a Board Member for the traffic planning organization, KMPO – Kootenai Metropolitan Planning Organization. See attached **Appendix B**, page 1. In his role as a Board Member of the transportation planning authority, Hodgkins has in fact received outside, ex-parte information about traffic impacts and traffic mitigation in the areas related to the Hayden Homes' Application, specifically on Lancaster Road and Meyer Road, which are located near the Lancaster-Railway intersection relied upon by Hodgkins for his denial motion and vote. KMPO has discussed and has listed Lancaster Road and Meyer Road as a future traffic construction project. See attached **Appendix B**, pages 4-5. Under the heading "2025-2031 Construction Projects", KMPO describes as follows, "Lancaster Road & Meyer Road – intersection (dual-lane roundabout, pedestrian facility accommodations, including pathway extension." See attached **Appendix B**, pages 4-5. Due to his position as a KMPO Board Member, Councilmember Hodgkins was required to disclose the ex-parte information he received outside the Hayden Homes zone change Public Hearing regarding traffic impacts and mitigation to be constructed on Lancaster Road, including the KMPO information he received about traffic impacts and mitigation on Lancaster Road, and Lancaster's intersection with Meyer Road and Railway Road. Hodgkins failed to disclose this ex-parte information received in his role at KMPO, and yet he moved and voted to deny the Hayden Homes zone change allegedly due to traffic mitigation on roads, specifically including Lancaster Road and Railway Road. Such a failure to disclose the ex-parte traffic information and the resulting conflict of interest as a Board Member of KMPO, disqualifies Hodgkins from any role or participation in the Hayden Homes zone change proceeding.

Along with the Hayden Homes/Arestad Zoning Map Amendment, the Respondents had five (5) other Consent Calendar items to consider at the May 28, 2025 Public Meeting, including two subdivision final plat decisions, another rezone decision, Staff Reports, and Councilor Hodgkins' KMPO report. The Council's packet for this vote contained 91 pages of material. And yet, the entire Public Meeting to issue this Final Decision took less than eight (8) minutes to cover all 91 pages and all Agenda items.⁹ During this extremely brief Public Meeting and prior to the Respondent's vote, there was absolutely no discussion of any substantive evidence, any traffic engineering data, or the mandatory legal criteria for the Council's decision to contradict itself and reverse its previous APPROVAL of the Hayden Homes zone change, based upon the very same (identical) traffic study and engineering data in the Record. None of the data, documentation, evidence, or reports attached in the 91 pages was discussed or even mentioned prior to the Council's vote on this Final Decision. Nowhere did the Council discuss or explain why it was contradicting its prior APPROVAL of the zone change as issued on April 9, 2025, when the traffic data, the engineer's statements, and the Developer's consent to all items requested, has never changed. Because the same exact traffic data and evidence was relied upon by the Respondents to vote to APPROVE on April 9, 2025, and to vote to DENY on May 14, 2025, the Council's denial is contradictory, arbitrary, capricious, lacks foundation, fails to comply with its statutory authority, and is not substantially supported by evidence on the Record at the Public Hearing. Because of these defects and deficiencies, the Respondents' denial decision should be reconsidered and reversed, with an APPROVAL of the rezone issued on reconsideration.

⁹ The meeting was called to order at 5:30 p.m. and concluded at 5:37:55 p.m.

ACTIONS THE APPLICANT COULD TAKE TO OBTAIN ZONING APPROVAL

Pursuant to Idaho Code 67-6519(5)(c), the Applicant is entitled to approval by meeting the necessary requirements for the zone change. Subsection (c) of Idaho Code requires as follows:

Whenever a governing board or zoning or planning and zoning commission grants or denies an application, it shall specify:

- (a) The ordinance and standards used in evaluating the application;
- (b) The reasons for approval or denial; and
- (c) **The actions, if any, that the applicant could take to obtain approval.**

Idaho Code 67-6519(5)(c).

Respondents have set forth only one (1) item necessary for the Applicant to obtain approval of the Hayden Homes/Arestad Property Rezone Application. See **Exhibit J**, Notice of Decision, page 2, para. IV. Therein, the City Council set forth the one (1) and only approval requirement, stating as follows:

IV. Actions the Applicant Could Take to Obtain Zoning

Should the applicant wish to pursue reconsideration or a revised application, the Council identifies the following potential actions needed to obtain approval of the rezone:

1. Voluntarily commit to performing additional traffic improvements (including taking action to “fix all of the items identified in the Traffic Impact Study” as stated in the motion for denial) in which case the Council may consider those commitments as conditions of approval.

o Any future application or reconsideration should clarify the applicant’s intent regarding traffic mitigation measures and should explicitly state which improvements, if any, the applicant is voluntarily agreeing to implement.

See attached **Exhibit J**, Notice of Decision, page 2, para. IV.

In response to “Item IV. Actions the Applicant Could Take to Obtain Zoning,” the Applicant hereby agrees. **The Applicant hereby formally and legally consents to**

implementing the traffic mitigation measures and improvements set out and described in the TIS, specifically including implementing the Lancaster – Railway traffic mitigation improvements as described in the attached Development Agreement.¹⁰ See attached Exhibit K, Development Agreement, incorporating and contractually obligating the Applicant to implement additional TIS mitigation and traffic improvements. As a result of this additional traffic mitigation as agreed by the Applicant in the attached Development Agreement, under Criteria #1, no detrimental effect on the carrying capacity of collector and arterial streets exists. There exists no lawful basis to deny reconsideration and approval of the requested zone change. Because traffic mitigation Criteria #1 is fully met and complied with, and because Hayden Homes formally accepts and consents to the stated “Actions the Applicant Could Take to Obtain Zoning”, this Application for rezone should be reconsidered and APPROVED, including conditions set out in the TIS and in the Development Agreement. See attached **Exhibit K**.

GOVERNING LAW AND APPLICABLE LEGAL CRITERIA

The Idaho Local Land Use Planning Act – LLUPA – Reconsideration IC 67-6535

The Local Land Use Planning Act (“LLUPA”), Idaho Code sections 67-6501 to 67-6539, provides for judicial review of the approval or denial of a land use application by an affected

¹⁰ During the May 14, 2205 Public Hearing, Councilmember Hodgkins refused the Applicant’s request to table the vote to allow the Applicant to submit its consent and approval of traffic mitigation conditions in the TIS. In fact, Councilmember Hodgkins intentionally waited until after Rebuttal was closed and after public testimony was closed, so the Applicant could not speak or address the Council, before Hodgkins raised his new requirements/conditions for the first time. The Applicant and the undersigned legal representative nodded affirmatively, indicating the Applicant was agreeable to the new traffic mitigation condition for obtaining Approval at the May 14, 2025 public hearing, but Councilmember Hodgkins would not agree to table his Motion to Deny in order to allow the Applicant to submit its Voluntary Consent to implement additional traffic mitigation terms and conditions as described in the TIS. Instead, Councilmember Hodgkins waited until the Rebuttal was closed and the Applicant could no longer respond to the Council, before moving and voting to deny based upon new traffic mitigation requirements/conditions that the Applicant was ready, willing, and able to agree to – but for the closed testimony at that point in the hearing.

person aggrieved by a final decision. IC 67-6521(1)(d). Motions for Reconsideration are governed by Idaho Code 67-6535(2)(b) of LLUPA. Under IC 67-6535(1) of LLUPA, the denial of any land use application may be invalidated where the government agency failed to adhere to the “express approval standards” of the agency’s governing land use code, or failure to comply with “the relevant decision criteria” of the agency’s governing code. IC 67-6535(1)(Empasis added). This statute mandates as follows:

Idaho Code 67-6535. APPROVAL OR DENIAL OF ANY APPLICATION TO BE BASED UPON EXPRESS STANDARDS AND TO BE IN WRITING.

1) The approval or denial of any application required or authorized pursuant to this chapter shall be based upon standards and criteria which shall be set forth in the comprehensive plan, zoning ordinance or other appropriate ordinance or regulation of the city or county. Such approval standards and criteria shall be set forth in express terms in land use ordinances in order that permit applicants, interested residents and decision makers alike may know the express standards that must be met in order to obtain a requested permit or approval. Whenever the nature of any decision standard or criterion allows, the decision shall identify aspects of compliance or noncompliance with relevant approval standards and criteria in the written decision.

(2) The approval or denial of any application required or authorized pursuant to this chapter shall be in writing and accompanied by a reasoned statement that explains the criteria and standards considered relevant, states the relevant contested facts relied upon, and explains the rationale for the decision based on the applicable provisions of the comprehensive plan, relevant ordinance and statutory provisions, pertinent constitutional principles and factual information contained in the record.

(a) Failure to identify the nature of compliance or noncompliance with express approval standards or failure to explain compliance or noncompliance with relevant decision criteria shall be grounds for invalidation of an approved permit or site-specific authorization, or denial of same, on appeal.

(b) Any applicant or affected person seeking judicial review of compliance with the provisions of this section must first seek reconsideration of the final decision within fourteen (14) days. Such written request must identify specific deficiencies in the decision for which reconsideration is sought. Upon reconsideration, the decision may be affirmed, reversed or modified after compliance with applicable procedural standards. A written decision shall be provided to the applicant or affected person within sixty (60) days of receipt of the request for reconsideration or the request is deemed denied. A decision shall not be deemed final for purposes of judicial review unless the process required in this subsection has been followed. The twenty-eight (28) day time frame for seeking judicial review is tolled until the date of the written decision

regarding reconsideration or the expiration of the sixty (60) day reconsideration period, whichever occurs first.

(3) **It is the intent of the legislature that decisions made pursuant to this chapter should be founded upon sound reason and practical application of recognized principles of law. In reviewing such decisions, the courts of the state are directed to consider the proceedings as a whole and to evaluate the adequacy of procedures and resultant decisions in light of practical considerations with an emphasis on fundamental fairness and the essentials of reasoned decision making.** Only those whose challenge to a decision demonstrates actual harm or violation of fundamental rights, not the mere possibility thereof, shall be entitled to a remedy or reversal of a decision. Every final decision rendered concerning a site-specific land use request shall provide or be accompanied by notice to the applicant regarding the applicant's right to request a regulatory taking analysis pursuant to section 67-8003, Idaho Code. An applicant denied an application or aggrieved by a final decision concerning matters identified in section 67-6521(1)(a), Idaho Code, may, within twenty-eight (28) days after all remedies have been exhausted under local ordinance, seek judicial review under the procedures provided by chapter 52, title 67, Idaho Code. An appeal shall be from the final decision and not limited to issues raised in the request for reconsideration.

I.C. 67-6535(emphasis added).

Rathdrum City Code Section 15-5-10-5 and Section 15-4-1-A-7 set out the “express approval standards” and specific criteria for approval of the Hayden Homes’ MR Mixed Density Rezone Application. These three (3) criteria are the governing City Code and the only “express approval standards” for the rezone to MR Mixed Density Residential. IC 67-6535(1). The City’s Comprehensive Plan is not a zoning code. Idaho law has long held, and is fully supported by a large body of case law which states that comprehensive plans do not themselves operate as legally controlling zoning law. *Bone v. City of Lewiston*, 107 Idaho 844, 850, 693 P.2d 1046, 1052 (1984). Unlike a legally controlling and binding zoning code, a Comprehensive Plan does not contain any express standards or rezone criteria. Because a Comprehensive Plan is not zoning code, it is not a legally sufficient basis to deny a zone change application under LLUPA. The Rathdrum Comp. Plan is merely a goal, or a vision statement. Denials of zone change

requests must be based upon “expressed terms in land use ordinances.” Idaho Code 67-6535(1) and *Bone v. City of Lewiston*, 107 Idaho 844, 850, 693 P.2d 1046, 1052 (1984).

Under LLUPA, the governing and binding zoning code language is set out in RCC, Section 15-4-1-A-7. There are only three (3) criteria for approval of a MR rezone “expressed in the City’s land use ordinance”. The three (3) “expressed” standards are as follows:

Section 15-4-1-A-7: (MR) MIXED RESIDENTIAL ZONING DISTRICT CRITERIA

a. Criteria: MR mixed density residential areas should be located according to these criteria:

- (1) In areas where traffic would not have a detrimental effect on the carrying capacity of collector and arterial streets.
- (2) In areas where municipal water facilities and sewage disposal facilities are provided.
- (3) In any location where R-1, R-2S, R-2D, or R-3 zoning districts are appropriate.

Ord. 611, 9-28-2022; amd. Ord 614, 1-11-2023; amd. Ord. 647 2-12-205. Note: The (MR) Mixed Density Residential Zone, previously RCC 15-4-1-A-7 was amended and renumbered to RCC 15-4-1-A-10 following the submittal and vesting of the Hayden Homes’ rezone Application.

The governing criteria, now renumbered at Section 10, remained the same as follows:

10. MR Residential District: the purpose of the MR district is to provide for mixed density residential environments in order to allow a broader range of lot sizes within developments in order to encourage greater diversity of housing, lot sizes and economic diversity.

a. Criteria: MR mixed density residential areas should be located according to these criteria:

- (1) In areas where traffic would not have a detrimental effect on the carrying capacity of collector and arterial streets.
- (2) In areas where municipal water facilities and sewage disposal facilities are provided.
- (3) In any location where R-1, R-2S, R-2D, or R-3 zoning districts are appropriate.

Section 15-5-10-5: Criteria For Granting A Zone Change

Criteria for granting a zone change shall be the same as those listed in chapter 4 of this title. (Ord. 611, 9-28-2022).

Each of the three (3) necessary “expressed terms in the land use ordinance” for a rezone to (MR) Mixed Residential, RCC 15-4-1-A-7 are fulfilled. As previously held by the Respondent in voting to APPROVE the rezone on April 9, 2025, Hayden Homes has fully met, and entered evidence into the official Record, satisfying the required three (3) expressed terms set out in the City’s Code for the (MR) Mixed Residential zone. As required and as shown by substantial evidence in the Record: 1) Traffic will not have a detrimental effect on the carrying capacity of collector and arterial streets; 2) municipal water facilities and sewage disposal facilities are provided; and 3) R-1, R-2S, R-2D, or R-3 zoning districts are appropriate. Each of these three (3) “expressed terms” was met for APPROVAL on April 9, 2025, and the same result should follow for the decision on May 14, 2024. It was error for the City Council to contradict itself, to go outside the “expressed terms” stated as Criteria 1-3 of its own City Code, and to create new arbitrary and capricious standards not expressly stated or contained in the Rathdrum City Code, when voting to deny the same exact rezone Application on May 14, 2025.

Without citing to any “expressed terms” in the City Code and without citing to any governing legal authority, in moving to deny the Hayden Homes/Arestad MR Rezone Application, Councilmember Hodgkins merely stated his personal preference to deny was because, “I want them to improve Lancaster Road and Railway Road. I want them to make all of the improvements.” *See Hearing Recording, 5/14/2025, quote from Councilmember John Hodgkins.* This is merely his personal opinion or personal preference. No such “expressed term” or criteria exists in the Rathdrum City Code, nor is any such requirement supported by substantial evidence in the Record as a whole. Instead, the Record before the City Council unequivocally and without any evidentiary contradiction established that approval of the MR

rezone with the Applicant's voluntary traffic mitigation conditions as described in the TIS, would **NOT have a "a detrimental effect on the carrying capacity of collector and arterial streets"** as stated in RCC 15-4-1-A-7 (a) Criteria #(1). See **Exhibit I**, pages 11 and 14.

As noted in the Record and without contradiction, in reviewing the TIS traffic mitigation items for the Lancaster – Railway intersection, the Rathdrum City Engineer 'recommended that such improvements be completed by a city sponsored project', or stated in other terms, such improvements be completed as a part of a larger city sponsored project which is already identified in Rathdrum's Transportation Master Plan, which identifies Lancaster Road to be upgraded to provide for 2 travel lanes in each direction and include a 2-way left turn lane. See **Exhibit D**, page 2.

Nowhere in the Record does the City Engineer indicate any detrimental effect on the carrying capacity of collector and arterial streets would occur based upon the agreed mitigation measures set out in 1) the Applicant's Traffic Impact Study dated March 2025; 2) the City Engineer's Memo dated March 25, 2025; and 3) the Applicant's response dated April 1, 2025. As indicated in these three documents, all traffic mitigation measures were addressed and agreed to by the City Engineer and Hayden Homes.

Based upon the mitigation measures described in the TIS, the City Engineer's Memo, and Hayden Homes letter of consent, there was no disagreement and no detrimental effect of the rezone on the carrying capacity of collector and arterial streets. In responding and **agreeing** with the City Engineer on all traffic mitigation measures, Hayden Homes Land Development Director, Eric Scheck, wrote as follows:

Dear Kevin,

Hayden Homes appreciates your March 25, 2025, review of the Arestad development Traffic Impact Study (TIS). Hayden Homes is committed to being a partner in the community and mitigating impacts from our developments. At the December 2024 Planning and Zoning Commission hearing, we clearly heard concerns regarding potential traffic impacts from both citizens and Commissioners. While a TIS traditionally is conducted at the preliminary plat application stage, we understood the need to pause our application and invest now in the analysis to help us together understand the current level of service, potential impacts, and how they need to be addressed.

Hayden Homes has reviewed your memo and agrees with your conclusions and recommendations, specifically:

- Lancaster-Meyer Intersection: Improvements are currently needed. The city has programmed this project to replace the existing 4-way stop-controlled intersection with a single lane roundabout.
- Meyer-Nagel Intersection- A left-turn lane for both NB and SB Meyer Road is needed, as well as the addition of a right-turn lane at the SB Meyer Road approach. Hayden Homes will construct these improvements at a city defined phase of our development.
- Lancaster-Railway Intersection: A multi lane left-turn lane is needed for both EB and WB Lancaster Road, as well as a right turn lane at the EB Lancaster Road approach. Hayden Homes agrees with your recommendation that the improvements be completed through a city sponsored project as part of the Lancaster Road upgrade identified in the Rathdrum Transportation Master Plan.
- Frontage Improvements: Hayden Homes agrees frontage improvements, consistent with the Rathdrum Transportation Master Plan, will be constructed by Hayden Homes along Boekel Road and Meyer Road and detailed in a development agreement.
- Site Access: Hayden Homes agrees the appropriate time for reviewing points of site access, potential restriction of turning movements, and any required improvements or modifications is appropriate at the future preliminary plat stage of the development.
- Extension of Hiawatha Lane, Nagel Road, and Railway Avenue: Hayden Homes understands specific roadway cross sections located along the property lines or bisecting the development will be determined by the city at the time of preliminary plat, and improvements will be required to be constructed as a condition of the future development agreement.
-

See attached **Exhibit E**, pages 1-2.

Because the traffic mitigation concerns had been adequately addressed and resolved, the traffic criteria #1, specifically expressed in RCC 15-4-1-A-7 (a)(1) was fully met and complied

with. No legal or factual basis existed under criteria #1 under RCC 15-4-1-A-7(a)(1) for a denial based upon traffic. The Record before the Council contained no substantive or competent evidence of a “*detrimental effect on the carrying capacity of collector and arterial streets*” as stated in RCC 15-4-1-A-7 (a)(1). The City’s decision to deny in this regard, allegedly based upon Criteria #1, was factually, legally, and procedurally improper. Grounds for invalidation and APPROVAL of the rezone Application exist pursuant to the Applicant’s compliance with the express traffic Criteria #1 of RCC 15-4-1-A-7 (a)(1), and pursuant to Idaho Code 67-6535(2)(a).

Upon reconsideration, the Applicant hereby **CONSENTS AND AGREES** to the “Actions the Applicant Could Take to Obtain Approval,” and to voluntarily agree to implement additional traffic mitigation measures identified in the TIS, specifically including implementing the Lancaster-Railway intersection EB and WB 2 lane, turn lanes. See attached **Exhibit K**, Development Agreement.

The Respondent City Council should review the governing and binding legal standards set out in this Request for Reconsideration under Idaho Code 67-6535(2)(b), Idaho Code 67-5279(3), and RCC 15-4-1-A-7 Criteria 1-3, and should vote to APPROVE the (MR) Mixed Residential Zone change pursuant to, and including, the conditions set out in the Development Agreement. See attached **Exhibit K**.

The Idaho Administrative Procedures Act – IAPA – IC 67-5279

Upon judicial review, a Court shall overturn the City Council’s decision if the decision was issued in violation of the Idaho Administrative Procedures Act, (“IAPA”) as set out in Idaho Code 67-5279(3)(a) – (e). The governing Idaho Code provisions mandate as follows:

(3) When the agency was required by the provisions of this chapter or by other provisions of law to issue an order, the court shall affirm the agency action unless the court finds that the agency's findings, inferences, conclusions, or decisions are:

- (a) In violation of constitutional or statutory provisions;
- (b) In excess of the statutory authority of the agency;
- (c) Made upon unlawful procedure;
- (d) Not supported by substantial evidence on the record as a whole; or
- (e) Arbitrary, capricious, or an abuse of discretion.

If the agency action is not affirmed, it shall be set aside, in whole or in part, and remanded for further proceedings, as necessary.

(4) Notwithstanding the provisions of subsections (2) and (3) of this section, agency action shall be affirmed unless substantial rights of the appellant have been prejudiced.

(5) When interpreting the provisions of any state law, this chapter, or any rule, as defined in section 67-5201, Idaho Code, the court shall not defer to an agency's interpretation of the law or rule and shall interpret its meaning and effect de novo. In an action brought by or against an agency, after applying all customary tools of interpretation, the court shall exercise any remaining doubt in favor of a reasonable interpretation that limits agency power and maximizes individual liberty.

Idaho Code 67-5279(3) (Emphasis added).

When changing its decision and voting to deny Hayden Homes' rezone, allegedly based on unmitigated traffic concern, the Respondent City of Rathdrum violated each of the above prohibited Subsections (a) – (e) of the IAPA.

Violations of Idaho Code 67-5279(3) Subsection (a) - Violation of constitutional or statutory provisions and Subsection (c) - Made upon unlawful procedure.

Idaho law is longstanding and well established in holding that a governmental agency or a political subdivision, in reaching their decision in a Quasi-Judicial matter, must confine themselves to the official Record as established at the Public Hearing." *Chambers v. Kootenai Cnty. Bd. of Comm'rs*, 125 Idaho 115, 118, 867 P.2d 989, 992 (1994) (citing *Cooper v. Ada Cnty. Comm'rs*, 101 Idaho 407, 411, 614 P.2d 947, 951 (1980)). The Idaho Supreme Court has repeatedly held that "[W]hen a governing body sits in a quasi-judicial capacity, it must confine its decision to the Record produced at the public

hearing, and ... failing to do so violates procedural due process of law." *Idaho Historic Pres. Council, Inc. v. City Council of City of Boise*, 134 Idaho 651, 654, 8 P.3d 646, 649 (2000) (citation omitted).

There is no dispute in this case that Respondent Rathdrum City Council was sitting in a Quasi-Judicial capacity as it reviewed and decided the Hayden Homes' MR Mixed Density Residential rezone request. As a governing body, acting in a Quasi-Judicial capacity, the Respondents were required to confine their information and decision to information contained in the Record produced at the Public Hearing. *Id.* Ex-parte contact and information obtained outside the Record produced at the Public Hearing, are both prohibited and violate the procedural due process rights of the Applicant. *Id.* If ex-parte contact occurs, such as a phone call from a constituent, as was the situation in the case of *Idaho Historic Pres. Council, Inc. v. City Council of City of Boise*, then in order to cure the ex-parte violation and satisfy procedural due process, the governing board must disclose "the identity of the callers ... as well as a general description of what each caller said." *Id.*, 510 P.3d 635.

Due process and procedural fairness did not occur in this Quasi-Judicial case. In violation of the Applicant's due process rights, the Respondent City Councilmembers did not confine themselves to the Record at the Public Hearing. Instead, the Respondent City Councilmembers received and relied upon ex-parte communications, including external and improper evidence, to vote to deny the Applicant's rezone. It is clear that multiple episodes of ex-parte violations occurred in this case. Numerous people provided ex-parte communications to the Rathdrum City Councilmembers, including but not limited to ex-parte contact on the "Rathdrum Community News" Facebook page controlled, moderated, and administered by Councilmember John Hodgkins. See attached **Appendix A**. No curative disclosure of the ex-parte Facebook contacts occurred. No description of the information

Hodgkins received on the Facebook page was provided to the Applicant on the Record in the Public Hearing. No notice or opportunity was provided for the Applicant to review and rebut the Facebook page contents of Councilmember Hodgkins on the Record in the Public Hearing. As a result of such undisclosed and uncured ex-parte violations, the Applicant's due process rights and fundamental fairness rights were violated. As a matter of law, the Respondent's denial decision must be invalidated.

Additionally, as a Board Member of KMPO, John Hodgkins received outside information and had ex-parte communications regarding traffic impacts and traffic mitigation regarding Lancaster Road, Meyer Road, and Railway Road. See attached **Appendix B**. These are the same roads which are at issue in the Hayden Homes rezone Application. In fact, it was solely due to alleged (but factually unsupported) unmitigated traffic deficiencies at the Lancaster Road and Railway Intersection that Councilor Hodgkins moved and voted to deny Hayden Homes' rezone. However, no curative disclosure of the ex-parte KMPO contacts occurred. Nor was there any curative disclosure of the ex-parte information regarding the KMPO Board's traffic impact and/or mitigation information. No description of the outside traffic information received at Hodgkins' KMPO Board Meetings was provided to the Applicant on the Record in the rezone Public Hearing. No notice or opportunity was provided for the Applicant to review and rebut the traffic information that Councilmember Hodgkins received in his KMPO meetings on the Record in the Public Hearing. As a Board Member of KMPO, Hodgkins may have a conflict of interest in seeking denial against Hayden Homes, or alternatively in extracting unwarranted traffic mitigation measures paid for solely by the Developer. As a result of such undisclosed and uncured ex-parte violations, and the apparent conflict of interest, the Applicant's due process

rights and fundamental fairness rights were violated. It follows as a matter of law, the Respondent's denial decision must be invalidated and reversed.

Violations of Idaho Code 67-5279(3) Subsection (b) - In excess of the statutory authority of the agency, and Subsection (d) - Not supported by substantial evidence on the record as a whole.

Pursuant to Idaho Code 67-6535 and pursuant to Rathdrum City Code 15-4-1-A-7, Criteria 1-3, the Hayden Homes' Application meets the specific and expressed legal requirements for approval of the requested zone change to MR Mixed Density Residential. Aside from the three (3) expressed terms, no other specifically expressed City Code criteria exist for the requested rezone.

On April 9, 2025, the Respondent City of Rathdrum correctly applied governing Idaho law and correctly applied the "expressed terms" of Rathdrum City Code as required by IC 67-6535 and IC 67-5279(3)(b), in correctly voting to **APPROVE** the requested zone change. Such a result was the legally correct and procedurally proper result based upon the substantial evidence on the Record as a whole, including the undisputed and uncontradicted traffic data, the TIS, the City Engineer's Memorandum, and Hayden Homes' consent/agreement to all traffic mitigation conditions requested. IC 67-5279(3)(d).

Yet, without a reasonable basis in law or fact, and based upon the same exact TIS, Engineer's Memorandum, and Developer's consent, the Council contradicted itself on May 14, 2025 and voted to deny. In doing so, the Respondent City Council acted outside the scope of its statutory authority in Idaho Code 67-6535(1) and 67-5279(3)(b), in violation of its legal authority under Rathdrum City Code 15-4-1-A-7, and in violation of Idaho case law. Similarly, the Council's decision to deny is not factually supported by substantial traffic mitigation

evidence (i.e., the TIS, the City Engineer's Memorandum, and the Applicant's traffic mitigation consent) as stated in the Record as a whole. This lack of substantial evidence in the Record as a whole warrants reversal under IC 67-5279(3)(d).

Violations of Idaho Code 67-5279(3) Subsection (e) - Arbitrary, capricious, or an abuse of discretion.

The City's decision to deny, as applied to the subject real property and the Application in question, was arbitrary, capricious, unreasonable, and an abuse of discretion. Idaho Code § 67-5279(3)(e); *Sprenger, Grubb & Associates v. City of Hailey* ("*Sprenger Grubb I*"), 127 Idaho 576, 586, 903 P.2d 741, 751 (1995). In moving and voting to deny the zone change, Councilmember Hodgkins stated it was because he personally wanted the Applicant to "fix all of the items identified in the Traffic Impact Study." Aside from his personal goal, Councilmember Hodgkins does not cite or rely upon any objective standard or objective criteria put forth in the Rathdrum City Code. Because he did not disclose the ex-parte contacts made to him via his private "Rathdrum Community News" Facebook page or via his role as a KMPO Board Member, it is unknown what factors, what traffic data, what traffic calculations, or what evidence Councilmember Hodgkins personally observed or received prior to making his personal, arbitrary, and capricious determinations that are not set out in City Code. Nowhere on the Record or in the evidence does the TIS, the City Engineer, or any traffic expert state that the Application for MR mixed residential zoning will have a detrimental effect on the carrying capacity of collector and arterial streets. See RCC 15-4-1-A-7(a), Criteria #1, (MR) RESIDENTIAL DISTRICT. To the contrary, the Developer has AGREED AND CONSENTED to implementing all traffic mitigation measures identified in the TIS as a condition of approval for this rezone.

In moving to deny and in voting to deny, the Respondent Hodgkins cited and relied upon arbitrary, capricious, and unreasonable standards, and not upon “expressed standards and terms” contained in the City Code, RCC 15-4-1-A-7(a)(1) as governing the MR Zone. The City’s denial decision, as applied to the property and the Application in question constitutes an unlawful regulatory taking, thereby depriving the property owners of their legal and constitutional rights. The City’s decision, as applied to the property and Application in question, will result in actual harm and a violation of a fundamental right of the Applicant. As a result of the Respondents’ violation of Idaho Code 67-5279(3), the zone change denial must be invalidated and reversed.

The Respondents’ decision to deny the rezone, as applied to the property in question, will have a materially adverse impact on the use and enjoyment of the property. As stated throughout the Record and without any contradictory evidence, the subject property is not legally zoned for its current ongoing Agricultural use. The unrebutted evidence in the record, conclusively established there is no Agricultural zoning on this property, notwithstanding the fact that it is being used as Agricultural property. The subject property should be rezoned to MR Mixed Density Residential zoning in compliance with City Code.

Based on the foregoing facts and law, reconsideration and reversal are warranted as the Council’s decision to deny was:

- (a) in violation of constitutional and statutory provisions;
- (b) in excess of the statutory authority of the board;
- (c) made upon unlawful procedure;
- (d) not supported by substantial evidence on the record as a whole; or
- (e) arbitrary, capricious, or an abuse of discretion.

Idaho Code § 67-5279(3).

CLAIM FOR ATTORNEY FEES

The Applicant/Petitioner Hayden Homes' attorney fees are recoverable against the Respondent City of Rathdrum pursuant to Idaho Code 12-117 and pursuant to Idaho Code 12-121; see also *City of Blackfoot v. Spackman* (In re Application for Permit No. 27-12261), 162 Idaho 302, 311, 396 P.3d 1184, 1193 (2017)(attorney fees awarded against the City of Blackfoot under IC 12-117). The Applicant/Petitioner seeks and is entitled to reimbursement for attorney fees under both Idaho statutes because the Respondents named herein, denied the rezone without a reasonable basis in fact or law, in violation of Idaho Code 12-117 and because the Respondents named herein, denied the rezone Application arbitrarily, frivolously, unreasonably, or without factual or legal foundation, in violation of Idaho Code 12-121. The Applicant/Petitioner's legal fees incurred to date, to which reimbursement is owed from the Respondent City of Rathdrum, are significant. Any additional delay and/or ongoing legal violations by Respondents will cause the amount of attorney fees owed to the Applicant/Petitioner by the Respondent City of Rathdrum, to substantially increase.

PRAYER FOR RELIEF

WHEREFORE, having filed this Motion for Reconsideration, the Applicant requests and Idaho law requires:

1. An Order and Decision granting the rezone request, changing the zoning from Industrial to Mixed Residential.
2. For an Order and Decision approving a Development Agreement between the Applicant and the Respondent City of Rathdrum.

3. For an Order and Decision awarding the Applicant its reasonable attorney fees.
4. For such other and further relief as deemed equitable and just.

DATED this 6th day of June 2025.

FULGHAM LAW, PLLC

/s/ Michelle R. Fulgham

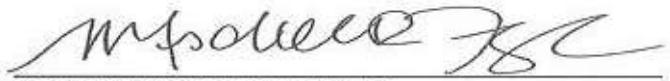
MISCHELLE R. FULGHAM, ISB 4623
Attorney for Hayden Homes, Applicant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of June, 2025, I caused to be served a true and correct copy of the foregoing by iCourt and addressed to all counsel of record as follows:

Emily Smith, Legal Counsel
Office of the City Attorney
City of Rathdrum
8047 W. Main Street
Rathdrum, ID 83858

☐ Statehouse Mail
☐ Hand Delivery
☒ Email:
esmith@rathdrum.gov



MISCHELLE R. FULGHAM