



OFFICE OF THE CITY ATTORNEY

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TO: Mayor and Council
FROM: Charles I. Wadams, City Attorney
DATE: 8/14/2023
SUBJECT: Request to Reconsider SAPFY2023-0001

ACTION REQUIRED: Within the City Council's discretion.
RECOMMENDATION: Considering the request for reconsideration.
FISCAL IMPACT/BUDGET IMPLICATIONS: Unknown.

BACKGROUND: At the June 26, 2023, City Council Meeting, the City Council (CC) orally approved with conditions SAPFY2023-0001 (The Residences at River Club Specific Area Plan (SAP)). On July 10, 2023 Mayor Evans signed the Findings of Fact, Conclusions of Law and Decision, which grants the SAP with conditions. On July 20, 2023, David H. Leroy, on behalf of the adjoining property owners, the Livingstons, Schmellicks, and Pattersons, submitted a request for reconsideration, alleging deficiencies in the final written decision compared to the oral approval. I am now providing a legal analysis to the City Council to assist in the review of this requests for reconsideration.

ANALYSIS: The conditional SAP is likely subject to judicial review under the Local Land Use Planning Act (LLUPA). LLUPA states:

[a]ny applicant or affected person seeking judicial review ... 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.

Idaho Code § 67-6535(2)(b) (emphasis added).

The statute states an applicant or affected person seeking judicial review "must" seek reconsideration. It does not state that the CC must grant reconsideration. If a written decision is not provided on the request for reconsideration, "the request is deemed

**MEMORANDUM ON REQUEST TO RECONSIDER AND/OR FOR CLARIFICATION
OF SAPFY2023-0001, P.1**

denied.” LLUPA requires an applicant to go back to the CC and specifically state what the alleged deficiencies are in the decision to potentially give the CC an opportunity to correct any errors. It does not require the CC to make a decision on the motion. Based on the plain wording of the statute, it is within the CC’s discretion on whether to consider the merits of a motion for reconsideration on an application that is within the scope of LLUPA.

Idaho Code § 67-6535(2) applies only to an “application required or authorized pursuant to this chapter.” *Id.* The following are subject to LLUPA review: (1) initial zoning following annexation; (2) rezoning of specific parcels or sites pursuant to Idaho Code § 67-6511; (3) conditional rezoning pursuant to Idaho Code § 67-6511A; (4) application for subdivision; (5) application for variance; (6) application for conditional use permit; and (7) “other similar applications” which presumably includes specific area plans. The current application is subject to LLUPA review because a specific area plan is one of the base zoning provisions listed in Garden City Code 8-2B-1(E).

Additionally, there is nothing in the Garden City Code that provides for requests for reconsideration, nor provisions for an appeal body for SAPs; however, this does not absolve petitioners of the responsibility to submit a request for reconsideration under LLUPA. See *Richardson v. Blaine Cnty.*, 171 Idaho 806, 812, 526 P.3d 976, 982 (2023) (rejecting petitioners’ claim that a lack of a local reconsideration requirement satisfied the statutory requirement). Accordingly, there is nothing that requires the CC to consider the instant reconsideration requests, although legislative intent encourages resolution of land use conflicts at the local level. *Id.* Arguably, the applicant has specifically stated what the alleged decision deficiencies are in the July 20, 2023 Request for Reconsideration.

A few recent cases have addressed the requirements of Idaho Code § 67-6535(2)(b). In *Richardson v. Blaine County*, a case from earlier this year, the Idaho Supreme Court upheld a dismissal as untimely of a request for reconsideration that was submitted 15 days after a CUP was granted. *Richardson v. Blaine Cnty.*, 171 Idaho 806, 526 P.3d 976 (2023). The Court also affirmed that the statute unambiguously requires filing a motion to reconsider prior to seeking judicial review. *Id.* The Court further clarified the interplay of LLUPA’s reconsideration request requirement and the Idaho Rules of Civil Procedure, holding the former superseded the latter. *Id.* at 815, 526 P.3d at 985.

A request for reconsideration must be timely. Under § 67-6535(2)(b), a request for reconsideration needs to be submitted within fourteen (14) days. While undefined in statute, the Idaho Supreme Court has discussed the moment when such a ruling is effective and, thus, the moment when the clock would begin to tick on a fourteen (14) day timeframe. *S Bar Ranch v. Elmore Cnty.*, 170 Idaho 282, 510 P.3d 635, 651 (2022). The Court ultimately held that it was within the discretion of the governing board to decide the date by which the ruling on the request for reconsideration was final, reasoning that a governing board “has authority to determine when a decision is final and appealable. The Court went on to say that the governing board must do so, however, in conformity with LLUPA.” *Id.* While LLUPA prescribes the timeframe for when an appeal may be taken, the exact moment of when a governing board has a final ruling is entirely within the

discretion of said governing board. *Id.* (citing *In re Quesnell Dairy*, 143 Idaho at 694, 152 P.3d at 565). However, the governing board must “notify the public of the date of that decision so an aggrieved party can file a timely appeal.” *Id.* Here, the request for consideration was filed timely. At previous council meetings it was stipulated that the signing of the decision document would be the date of the final decision, starting the 14-day period. As the decision document was approved and signed on July 10, the July 20 Request for Reconsideration falls within this timeline.

CONCLUSION: The applicant likely has the right to submit a request for reconsideration. By granting the reconsideration request, it would give the CC an opportunity to correct any errors before the matter may otherwise proceed to court. Notice was formally provided on the date written next to Mayor Evans’ signature on the written decision, giving until July 24, 2023, to submit a request for reconsideration, and thus making Mr. Leroy’s request for reconsideration timely. If granted, CC would need to provide notice to the interested parties of the date of that decision so that an aggrieved party would have time to file judicial review.

If the CC decides to reconsider the SAP approval, because it thinks there is an argument that it somehow erred in its decision, the matter should be set for a future council meeting. However, the rule does not indicate that the CC has to agree that there are specific deficiencies in the decision for it to grant reconsideration. Accordingly, if the CC does not find it somehow erred in its decision, but wants to add wording to the written decision that was agreed upon during deliberations, CC could clarify the written decision on August 14, 2023 without having to set for a future council meeting. The difference is considering substantive changes or considering clarifying grammatical issues that are not substantive changes.

If the CC decides to reconsider the written decision, two motions should be made:

- (1) The first motion would be to move that CC reconsider the merits of the decision (motion to hear the request for reconsideration); and
- (2) The second motion would be to move that CC consider the merits of the request for reconsideration at a date certain (either at a future date or on August 14, 2023) (motion to consider the request for reconsideration at a date certain).

If the merits of the request for reconsideration are considered at a date certain, the CC has the discretion to modify the written decision at that time.

After my review of the record and the Findings of Fact, Conclusions of Law and Decision, I believe the CC could add some clarifying statements that were part of the CC deliberations. Therefore, attached to this memo as “Exhibit A” is an example of what my recommended changes could look like should CC decide to reconsider. I would recommend the CC not go beyond statements that are intended to clarify what the decision is, as a completely new decision, with substantive and significant changes, likely would require a remand and/or a new public hearing.

Exhibit A is only for illustrative purposes. I do not intend to suggest whether the reconsideration should be granted. However, if reconsideration is granted, the scope of the review should be limited. My purview is to give legal advice of what a reasoned reconsideration should and could look like in this context, which is what I am doing here. Idaho Code § 67-6511 gives municipalities the authority to create zones and allows requests to amend the zoning ordinance (i.e., make an application to rezone). Garden City Code establishes several base zones including SAP. See G.C.C. § 8-2B-1E. Idaho Code § 67-6535(2) and LLUPA review applies to, among other things: rezoning of specific parcels or sites pursuant to Idaho Code § 67-6511; conditional rezoning pursuant to Idaho Code § 67-6511A; and (7) “other similar applications” which presumably includes SAPs. The current application is likely subject to LLUPA review because a specific area plan is one of the base zoning provisions listed in Garden City Code 8-2B-1(E).

LLUPA unambiguously requires filing a motion to reconsider prior to seeking judicial review but it is within the CC’s discretion whether to consider the merits of a motion for reconsideration on an application that is within the scope of LLUPA. A request for reconsideration must be submitted timely, and this July 20 Request for Reconsideration falls within the timeline.

On July 10, 2023 Mayor Evans signed the Findings of Fact, Conclusions of Law and Decision. The SAP conditional approval is likely subject to judicial review LLUPA. On reconsideration request, 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.

Attorney David H. Leroy, on behalf of the adjoining property owners, the Livingstons, Schmellicks, and Pattersons, submitted a request for reconsideration on July 20, 2023. Therefore, if the CC wishes to reconsider the written decision, it has until September 20, 2023 to provide the new written decision. There are three council meetings before September 20, 2023:

- (1) August 14, 2023;
- (2) August 28, 2023; and
- (3) September 9, 2023.

Accordingly, time is of the essence on reconsideration matters. A decision is not deemed final for purposes of judicial review until after this process 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. Accordingly, I recommend that the CC decide what to do with the request for reconsideration on August 14, 2023. The reconsideration could be granted, without finding there are deficiencies in the current written decision, to clarify the decision.