TRENTADUE LAW OFFICE PLLC | PO BOX 1443 DRIGGS ID 83422 | 208-557-4846

July 3, 2025

Teton County Board of County Commissioners
150 Courthouse Drive
Driggs, Idaho 83422
commissioners@tetoncountyidaho.gov
pz@tetoncountyidaho.gov

Re: Fox Creek LLC (Huntsman Family) Petition to Strike *Narrative for Fraiz Variance Reconsideration Request* and Uphold the Unanimous Denial of the Fraiz Variance.

Dear Commissioners:

The vast majority of the *Narrative for Fraiz Variance Reconsideration Request* ("Fraiz Narrative") attempts to introduce new information into the record on a ***LLUPA-based request for reconsideration***, and must therefore be disallowed. The lynchpin of the Fraiz Narrative revolves around two attached exhibits, one purporting to be an email from former Teton County Planner Jade Kruger once month prior to the Fraiz variance application, and the other is a new-presented site plan. Both were never a part of the record below. The Fraiz Narrative then attempts to also insert hearsay evidence of an alleged site visit and conservation with Kathleen Price at Eastern Idaho Public Health that was also never introduced into the record below.

Per *Veteran's Park*, This Board Is Constrained to Review This Appeal Based Only On The Record Below.

In light of the recent Idaho Supreme Court decision in *Veterans Park Neighborhood Association v. City of Boise* (Jan. 22, 2025), new exhibits, drawings, never-before-seen email communications simply cannot be introduced on appeal without a code or statute authorizing a *de novo* appeal. Teton County's code does NOT expressly authorize *de novo* review of variance appeals. In fact, the ordinance says this is what may be contained in the appeal:

> "The application must include a narrative description of the basis for the appeal or request for reconsideration, including the *specific deficiencies of the decision* alleged by the applicant or affected person." (L.D.C. 4-15-B-2 Emphasis Added)

There is clearly no mention or basis for introducing new evidence. The thrust of *Veteran's Park* turns on which board has final decision making authority, **and *from that board*, the record is set.** And here in Teton County, just like in the *Veteran's Park* case, the final authority for a

variance is vested with the Teton County Planning & Zoning Commission.[1] ("P&Z") The Board of County Commissioners only has appellate authority, and is thus constrained to exercising review on the record.[2]

There is a second critically important component at play here: this Board is reviewing a ***request for reconsideration***, which is the first step in an appeal per the Idaho Local Land Use Planning Act. ("LLUPA)" The process is specifically enumerated in Idaho Code § 67-6535B. From there the next step is judicial review pursuant to Idaho Code § 67-6521, which is without question ALWAYS based on the record below.[3] **By the time an appeal has reached a request for reconsideration like the situation here, it is simply *too late to augment the record* because the first step in the LLUPA appeal process has already begun.**

For this very reason, the overwhelmingly consistent county practice is that variance appeals **must be based on the record below.** No new information may be introduced to this Board. And, over the course of **five variance hearings totalling over 5 1/2 hours** of testimony and deliberation,P&Z and this Board worked very hard to stick to the proper process and maintain an appropriate record.[4] Using that proper process, this Board ***already reviewed the record below*** and adopted a stunningly impressive, ***9-page written decision with exhibits*** which explained this Board's factual basis for the ***unanimous denial*** of Fraiz's appeal. The Fraiz Narrative now attempts to sully that process by once again attempting to insert new information into the record on appeal. Please maintain consistent practice and policy here.

There Is NO Legal Basis For Fraiz's Arguments Against Kruger And Whitfield.

The Fraiz Narrative also takes direct aim at both the former Teton County Planner Jade Kruger and former County Commissioner Michael Whitfield, as they are no longer here to defend their misconstrued words. First, Fraiz alleges this board is bound by a 4-sentence email written by Kruger one month before a variance application was ever filed, or any maps and other

[1] L.D.C. 4-1 and 4-9-F, See also Idaho Code § 67-6516 and 67-6511.

[2] The common theme through LLUPA caselaw is that final decision-making authority sets the record, and from there appeal must be based on the record unless there is an ordinance or statute authorizing augmentation of the record. *See*, *Crown Point Dev., Inc. v. City of Sun Valley*, 144 Idaho 72 (2007), LLUPA review is constrained to the record and cannot be amended without a statute expressly authorizing such amendment. *See also*, *Chambers v. Kootenai Cnty. Bd. of Comm'rs,* 125 Idaho 115, 118, (1994) "The commissioners, in reaching their decision, must confine themselves to the record as established at the public hearing." and *Eacret v. Bonner Cnty.*, 139 Idaho 780, 786-87 (2004). "A quasi-judicial officer must confine his or her decision to the record produced at the public hearing."

[3] *Id.*

[4] After more than 3.5 hours of testimony and deliberation from two separate hearings, (November 12, 2024 and January 14, 2025) the P&Z denied the Fraiz variance. This Board **unanimously upheld** this denial after 2 hours of testimony and deliberation over three hearings (April 14, April 29 and May 1, 2025).

studies and materials were submitted to Teton County.

There is absolutely NO legal basis to support this argument for two big reasons: First, it's **black letter law** in Idaho that this Board is NOT bound by staff representations, or interpretations of ordinances. Indeed, the Idaho Supreme Court has repeatedly held that if one email remark could bind this board as alleged by Fraiz, **"then all future boards of commissioners in similar circumstances would be estopped from disagreeing with the opinions of staff members simply because a landowner expended money in reliance on those opinions."**[5] A staff email simply cannot bind this Board's authority.

Moreover, the interpretation of the "undue hardship" criteria for a variance is **solely vested** within the Planning & Zoning Commission, and this Board only has authority when there is an appeal.[6] Per county ordinance, staff has NO legal authority to interpret the "undue hardship" standard, which brings us to the second failure in Fraiz's argument: it is **also black letter law** in Idaho that a statutorily mandated responsibility that is vested with a governing board CANNOT be delegated to staff .[7] By ordinance, staff are NOT empowered to make determinations of " undue hardship" and they cannot be assigned that authority either.

As to the remaining merits of the Fraiz Narrative, it chastises Commissioner Whitfield's extensive historical knowledge and decades of professional expertise which he applied to the facts in the record. That is exactly how a County Commissioner is supposed to conduct themselves, and moreover, ⅔ of the present day Board of County Commissioners already agreed with Whitfield's conclusions.

Conclusion, Please Uphold the Denial of the Fraiz Variance, *Again*.

Anna R. Trentadue Esq.
Counsel for Fox Creek LLC / Huntsman Family

CC: D. Andrew Rawlings
Bailey Smith

[5] *Terrazas v. Blaine Cnty.,* 147 Idaho 193, 207 P.3d 169 (2009) County Commission Boards are not bound by interpretations and representations by staff; they are free to disagree with staff determinations and reach different conclusions from staff.

[6] L.D.C.4-1 and 4-9-F, *See also* Idaho Code § 67-6516 and 67-6511.

[7] *See also, Whitted v. Canyon Cnty. Bd. of Comm'rs*, 137 Idaho 118, 121, 44 P.3d 1173, 1176 (2002), *Fischer v. City of Ketchum*, 141 Idaho 349, 109 P.3D 1091 (2005). (L.D.C. 4-9-F, See also Idaho Code § 67-6516 and 67-6511)