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October 27, 2023

VIA E-MAIL -
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Teton County Board of County Commissioners
and Planning Administrator
150 Courthouse Drive - Room 107
Driggs, ID 83422

RE: Northern Lights Subdivision; Alpenglow Development, LLC/Tony and Anne Campbell - - REQUEST FOR RECONSIDERATION

Dear Commissioners and Administrator:

As you know, this law firm has been retained by Alpenglow Development, LLC, and Tony and Anne Campbell in relation to Teton County's denial of a Preliminary Plat Application for the Northern Lights Subdivision. The subject Application was submitted by Tony and Anne Campbell named as owner and applicant. A Written Decision for the Northern Lights Subdivision was entered by the Board of County Commissioners ("BoCC") on October 10, 2023, and was provided to my client via e-mail on October 11, 2023. The BoCC's public meeting/hearing on the subject Application was held on August 28, 2023. The subject Decision must now be reconsidered.

I am in receipt of e-mail correspondence sent to me on the afternoon of October 26, 2023, from Teton County Deputy Prosecuting Attorney Tina Shang, which included an unconditional refusal to mediate from the County. A written request for mediation was timely submitted to the County on October 23, 2023, along with a written request for a takings analysis. We respectfully disagree with the County's position, based on both plain language and case law. See, *e.g.*, *Davisco Foods Int'l, Inc. v. Gooding Cnty.*, 141 Idaho 784, 786 (2005); *Dry Creek Partners, LLC, v. Ada Cnty. Comm'rs, ex rel. State*, 148 Idaho 11, 17–18 (2009). Without waiver, the County's position and refusal to mediate also contradicts the language of its *own* LDC at 4-2-I – which lists the applicant and the BoCC in the list of parties able to "request *to* mediate." Unfortunately, we can add the County's refusal to mediate to the mounting issues in dispute,

rather than achieving the opposite which is what my client was trying to do through mediation. I hope the County will reconsider its position. This scenario, now forcing my clients to request reconsideration, further exposes the fact that the County's refusal to participate in mediation runs contrary to the policy behind I.C. § 67-6510.

Please see my correspondence to you of October 23, 2023, and the enclosures therewith.

Reconsideration

Respectfully, reconsideration is unfortunately necessary here. The denial of the subject Application is in violation of the Local Land Use Planning Act ("LLUPA"), I.C. § 67-6501 *et seq*. The denial, in its entirety and across the BoCC's analysis for 9-3-2(c-8) at "a.," "g.," "i.," and "h." – and "j." (it is unknown if "j." is or was even at issue), was not based on properly set forth express standards, thus my client's rights have been violated, to include and without limitation their right to due process. The subject denial, and its included analysis and conclusions, was also not properly based on, and failed to explain, lawful and applicable criteria and standards the BoCC considered relevant. It failed to properly explain the rationale for the decision based on *relevant* ordinance, statutory provisions, pertinent constitutional principles and *competent* factual information contained in the record. It also failed to properly and sufficiently state the relevant contested facts relied upon. The BoCC violated Title 9 of the Code, and to include 9-3-2(c-8). Without limitation, the *Analysis* and *Conclusions* of the BoCC's Written Decision are in violation of LLUPA.

9-3-2(c-8), a.

More specifically, the Application is consistent with the Comprehensive Plan, and is actually more consistent with the Comprehensive Plan than other similar projects recently approved by the BoCC (see, *e.g.*, "Harlan Ranch" and "Mule Acres") – and is not contradictory to the Comprehensive Plan. The subject project is near Tetonia and Highway 33, and is not remote. The subject project is consistent with the Rural Neighborhoods and Mixed Agriculture described in the Comprehensive Plan. The inexplicable contradictory positions taken by the BoCC relating to the Comprehensive Plan and other similar applications exposes the unlawful nature of the denial of the subject Application. Contrary to the BoCC's finding that the Application does not meet the criteria of 9-3-2(c-8) at "a.," the subject Application does not contravene the Comprehensive Plan. The subject Application did have clustering and open space. It is also not true that the Application is not susceptible to any conditions that would further satisfy any stated, lawful criteria, or that continuance, at minimum, would have been an available and reasonable result. A denial based on 9-3-2(c-8), "a." violated LLUPA.

The County's 9-3-2(c-8), "a.," and it as "criteria," is also not enforceable as it is void for vagueness or otherwise unconstitutionally vague, and thus the BoCC's decision violates my clients' due process rights for that reason, also. See *Cowan v. Bd. of Comm'rs of Fremont Cnty.*, 143 Idaho 501, 513–14 (2006).

9-3-2(c-8), g.

Moreover, the BoCC also improperly relies on 9-3-2(c-8) at "g." to deny the subject Application. The Application is consistent with the Traffic Impact Study (TIS). It is not a lawful or merited basis for denial under "g." to state the irrelevant conclusion that the TIS "failed to include the analysis for the route of N 1750 W to W 6500 N to N 500 W as one of the main travel options to the parcels." This conclusion, if even relevant, actually contradicts the BoCC's stated basis for denial, and supports approval.

The TIS did not fail to "provide analysis of level of service and project traffic counts as well as structure and current conditions." The TIS and engineering component also demonstrated how existing County Roads and existing, and to be built, conditions were addressed, and capacity to serve was also addressed. The TIS and engineering component did all of this, for example and to include, at Pages 18-21, 22-32, 33-65 of the TIS. There will be no decrease, unmitigated or otherwise, in the level of service, and the Application complies with "g."

The BoCC's commentary about and dispute with the TIS, and the application generally, was outside the scope of the Code, and the record presented at the meeting/hearing.

9-3-2(c-8), i.

Further, regarding natural resources, any *applicable* Overlay Areas will be avoided, and any impacts are avoided or mitigated. The applicable Overlay Areas, as opposed to any post-application changes or amendments to any overlay, are not impacted in any way that warranted denial. The overlays outlined by the BoCC do not apply to warrant or support the denial. The Code section relied upon by the BoCC does not support denial for the reason stated in the decision. The wildlife habitat assessment does not reveal evidence of an indicator species or the presence of indicator habitat. Notably, the BoCC also went beyond the bounds of the Code and the evidence to include considerations beyond the scope of the record and the subject Application. Based on the Application and relevant record, no mitigation measures were or are required, or warranted. At minimum, based on the expressed concerns of the BoCC and the Staff Report, a continuance would have been a reasonable result – not denial.

The standards and findings of the BoCC relating the NRA, relating to wildlife and natural resources, were irrelevant, *ultra vires* and violated my clients' due process rights. The County and the BoCC violated my clients due process rights, and acted contrary to the applicable Code, by neglecting the County's duty to "send all applicable documents to the Idaho Fish and Game Department (IDFG) for their comments[,]" or "request other technical assistance to review and comment on the submitted materials." Inexplicably, the BoCC blamed and chastised my clients for an alleged failure that was actually *the County's failure* (see meeting video at 4:15:32+). The Code at 9-3-2(C-2-c-WH) at "ii." actually requires "[a]ll communication with the IDFG" to be through the Planning Department, and "not directly between the applicant and IDFG." Contrary to this, the BoCC actually belittled my clients and their Application at the meeting/hearing for, among other things (*e.g.*, inaccurately referring to the complete and thorough Application as "rushed" at 4:21:35+ of the meeting video, and laughing at my client's engineer at 3:29:52+ and disparaging professional, competent engineering work-product), not directly communicating

with the IDFG – something the Code does not contemplate and actually forbids. The BoCC accepted an NRA and approved an application with only one site-visit for "Harlan Ranch," but inexplicably, arbitrarily and unlawfully rejected the NRA for the subject Application because there was only one physical site-visit.

The BoCC improperly imposed a novel standard, or novel standards, not found in the Code, and considered information not in the record or otherwise irrelevant. There is no substantial, competent evidence presented at meeting/hearing supporting the BoCC's conclusion that the project implicates a (meeting video at 4:20:17) "sensitive area for wildlife," or supporting the subject denial. No mitigation was suggested by the NRA because no mitigation is required or warranted for the subject Application.

9-3-2(c-8), h.

The BoCC misapplies and misconstrues 9-3-2(c-8) at "h." The Application and related project has shown the adequate connection to a maintained county road. The only competent evidence, directly from the County's Public Works Director (Darryl Johnson, PE, PLS), stated the pertinent road has "*no* need to improve" in relation to the subject project. The finding of "inadequate road conditions" relating to the Application, and what will be done as part of the project, is not supported by competent or substantial evidence.

The reference to fiscal impact is irrelevant and misplaced – it has nothing to do with "h." or the subject Application under review. Road improvements to W 7000 N were already part of the Application and resolved any pertinent issue. The statement that the "applicant must show how public services have adequate capacity to serve it or how it will be financed or mitigated" is misplaced and not relevant. The Application, and supporting material, establish that the subject project meets the standard set forth in "h." Confusingly, the BoCC stated during the meeting/hearing, at 4:31:44 of the video recording, that "h." is "dealt with, actually" – and a "yep" or "yeah" on that issue. The BoCC then improperly introduces the "then let's connect [the desired denial] to an insufficient road," and this is not proper under the Code or LLUPA. The BoCC asked staff at the meeting/hearing if the Application as presented complies with "h." and staff said "yes." The BoCC said at 4:34:46 of the meeting video that "I don't think 'h.' is an issue," and an "okay" to that issue. Despite this, the BoCC inexplicably and unlawfully denied the Application under "h."

The BoCC disregarded competent engineering evidence it admittedly does not understand (meeting video at 4:13:15), and made its decision "regardless" what the traffic study says ("regardless of the traffic study" at 4:11:52). The BoCC improperly disregarded unrebutted competent evidence, and made an arbitrary and capricious decision to deny the Application under "h."

The written decision is also not compliant with LLUPA as it relates an apparent reference to 9-3-2(c-8) at "j." The written decision is confusing and ambiguous on this issue, and is not congruent with the BoCC's commentary, discussion and motion at the subject meeting/hearing.

My clients are left with no way of knowing if, how and/or why "j." might have even been applied by the BoCC to the subject denial.

I.C. § 65-6506

It appears the BoCC may have also violated I.C. § 65-6506, and the decision appears to have otherwise been the result of an unfair meeting/hearing that did not give my clients a meaningful opportunity to be heard by an impartial, quasi-judicial decision-maker. Based on information and belief, at least one Member of the BoCC had, and has, an impermissible conflict of interest (see, *e.g.*, meeting video at 3:27:30+). At least one Member has some level of relationship and affiliation with Valley Advocates for Responsible Development (VARD), and VARD voiced total opposition to the subject Application, including at the subject meeting/hearing. Further discovery will most likely be necessary in relation to these issues, including the property interests and other personal and/or pecuniary interests of the BoCC. The BoCC inexplicably contradicted the conclusion, analysis and recommendation of the Staff Report. The BoCC intentionally mischaracterizes the detail of the project on several elements to achieve what appears to have been a pre-determined result that was not based on a fair hearing and proper record – in violation of my clients' due process rights and LLUPA. See, *e.g.*, *Eacret v. Bonner Cnty.*, 139 Idaho 780, 784 (2004). Statements by BoCC Members establish that the subject denial was influenced by impermissible bias, and information outside the record, and/or was the result of an abuse of discretion.

Based on the foregoing, the *Conclusions* and the decision to deny the subject Application and the BoCC's application of 9-3-2(c-8) at "a.," "g.," "i.," "j.," and/or "h." are unlawful under LLUPA, the applicable Code, are arbitrary and capricious, and violate my clients' constitutional rights – to include due process. It was also error, to include it being arbitrary and capricious and unsupported by substantial evidence, to not, at minimum, continue the Application.

If you do not consider this to be a sufficient and timely written request to trigger reconsideration, including under and in satisfaction of I.C. § 67-6535(2)(b), then please immediately notify me of any asserted deficiency in this notice and request. Out of an abundance of caution, I have made use of the County's form (enclosed) and it has a reference to "[f]ees," but I am not aware of any such fee necessary for reconsideration. If there is any such fee, please advise and it will be immediately paid – my clients are ready, willing and able to pay any such fee, as applicable.

Sincerely,

SMITH KNOWLES, P.C.

Ryan D. Poole, Esq.
Attorney at Law

Enclosure
Cc: Client

Planning & Zoning Department

APPEALS AND RECONSIDERATION w/o Waiver

Appeals and reconsideration provide the remedy of appeal from and requests for reconsideration of final decisions made by the Administrator, PZC, BoCC, or other County official. An applicant or affected person may avail themselves of these administrative remedies in accordance with section 4-16 of the LDC. An appeal of a decision will be reviewed by the PZC or BoCC (specified in table in section 4-1-1-). Appeals and requests for reconsideration must be filed with the Administrator within 14 calendar days of the date of a written decision. Any applicant of affected person seeking judicial review of a written decision must first request reconsideration of the final decision.

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☐ Check # _____ ☐ Credit Card ☐ Cash _____

Fees are non-refundable.

Requirement for Submittal: Ensure all requirements are included. *Incomplete applications will not be put on hold*. Incomplete and partial applications will be returned to applicant.

SECTION I: PERSONAL AND PROPERTY RELATED DATA

Applicant Info:

Applicant Name: Alpenglow Development, LLC / Tony and Anne Campbell c/o Smith Knowles, PC - Ryan Poole

Email: rpoole@smithknowles.com Phone: (208) 513-1256

Primary Contact (if not applicant): Ryan Poole

Appeal/Request Info:

Topic of Final Decision: Preliminary Plat Application for Northern Lights Subdivision

Decision made by: ☐ PZC ☑ BoCC ☐ Planning Administrator ☐ Other County official

Short Summary of Appeal/Request: Request for reconsideration of denial of Preliminary Plat Application - see attached letter requesting reconsideration.

150 Courthouse Drive | Driggs, Idaho 83422 | T: 208-354-2593 | tetoncountyidaho.gov

I, the undersigned, have reviewed the attached information and found it to be correct. I also understand that the items listed below are required for my application to be considered complete and reviewed by the Planning Administrator and scheduled for public hearing. On behalf of Alpenglow Development, LLC and Tony and Anne Campbell

Applicant Signature: _____ Date: Oct. 27, 2023

of Smith Krowles, PC

I, the undersigned, am the owner of the referenced property and do hereby give my permission to _____ to be my agent and represent me in the matters of this application. I have read the attached information regarding the application and property to find it to be correct.

Owner Signature: * See representation letter of October 23, 2023 Date: _____

Checklist

All items need digital copies as well as paper copies.

- ☐ A notice of appeal or request for reconsideration must be filed on a complete application form provided by the Department.
- ☐ 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.

SECTION III: PLANNING ADMINISTRATOR/DESIGNEE REVIEW/ACTION

Application is submitted on the _____ day of _____ , 20___.

Application is deemed complete and accepted on the _____ day of _____ , 20___.