

Joshua J. Leonard
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July 5, 2022

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CITY OF MERIDIAN
CITY CLERKS OFFICE

ORIGINAL

Sent via personal service to:

Mayor and City Council
c/o City Clerk
33 E. Broadway Ave., Suite 104
Meridian, Idaho 83642

With copies sent via hand-delivery to:

City Attorney's Office *and* Community Development Department
33 E. Broadway Ave., Suite 306 33 E. Broadway Ave., Suite 102
Meridian, Idaho 83642 Meridian, Idaho 83642

Re: Request for Reconsideration -- H-2021-0070.

Dear Mayor and Council,

Our firm represents Linder Holdings, LLC ("Applicant"), which, through its engineers, Kimley-Horn & Associates, is the applicant in File No. H-2021-0070. On behalf of the Applicant and Kimley-Horn, we are grateful for the time and attention of the Mayor and Council in reviewing the Applicant's annexation and preliminary plat applications (together, "Applications") for the proposed Jackson (Burnside) Ridge Estates Subdivision ("Project"). We also are grateful for City staff's efforts and the strong working relationship the Applicant and its representatives have enjoyed with City staff in the course of developing the Applications. We strongly believe the high quality of the Project is attributable to the dedication, knowledge, experience, care, and communication of City staff.

We agree with all of the positive feedback about the Project from the Mayor and Council during the City Council's deliberations on June 7, 2022, as well as from the Planning and Zoning Commission following its public hearing on April 28, 2022. As you know, following its deliberations, the City Council, by a narrow 3-2 vote, denied the Applications, despite the unanimous recommendation of approval received from the Planning and Zoning Commission, which never mentioned adverse impact on services. The Findings of Fact, Conclusions of Law,

Final Decision, and Order (“Final Decision”) denying the Applications was approved and signed on June 21, 2022.

Although the Council narrowly voted to deny the Applications, Council Members unanimously agreed the Project was “beautiful,” “really well thought out,” “outstanding,” “thoughtful,” a great example for future projects, and that it “create[d] a sense of place that reflects the unique character of South Meridian.” All of the Council Members praised and thanked the Applicant for the time and effort it expended to bring forward the Applications and the Project. Nonetheless, the Applications were denied.

Pursuant to Section 1-7-10 of the City’s Unified Development Code (“UDC”), **we now write to request reconsideration** of the Council’s denial of the Project’s Applications. This reconsideration is based upon the following specific deficiencies:

- **First**, the public hearing was closed without the Applicant being given the opportunity to address questions raised by Council Members for the first time during the Council’s deliberations.
- **Second**, the denial appears to have been based upon an impossible standard. Rather than evaluating whether there is an *adverse* impact on public services, as required by the UDC (*see* UDC § 11-5B-3E.4), the Applications were denied because they would create *additional* burdens on public services. **Any annexation will create an additional burden**, making the standard applied to these Applications unfair and unworkable. If applied to all annexation applications, this standard will stop the City from ever annexing property, regardless of its circumstances. Not only does the information in the record show there is no adverse impact, but this “additional burden” standard would leave the City in a position where no new annexations would *ever* be allowed.
- **Third**, comments during deliberations also indicated that denial of the Applications was based on a “Priority Growth Map,” which, to our knowledge, has not been formally adopted by the City or incorporated by reference into the City’s Comprehensive Plan. No copies had been made available to the Applicant at any time during the application process, and the Applicant did not have an opportunity to comment on this map. More troubling, comments made during the Council’s deliberations indicated that the Priority Growth Map is outdated and does not reflect the current availability of public services in the area, including the existence of water and sewer infrastructure **at the property**¹ and a fire station within 1.4 miles of the project, as depicted in the photographs and aerials contained in the

¹ Water service is available along two frontages of the Subject Property, and Sewer service is available along its East frontage.

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following pages, which contain additional information supporting our request for reconsideration.² (*Also see: Exhibit A - Utility Infrastructure.*) ACHD's street network adequately serves and operates at acceptable levels of service (LOS), pursuant to the approved TIS and subsequent ACHD Staff Report, with its conclusions. (*Also see: Exhibit B - Traffic and Road Improvement Plan.*) The West Ada School District also did not indicate any adverse impact, as noted in the Staff Report. The Applications must be considered based on actual comments from agency service providers and standards that have been expressly adopted by the Council.

- **Fourth**, comments during the hearing seem to indicate that this project was not judged simply on its own merits, but instead was considered in light of *future* applications that might be made in the vicinity. Each application –including this one– must be considered on its own merit and not based on speculation as to what other property owners may decide to request annexation by the City.

We believe denial of the Applications requires reconsideration for all of the reasons identified above and further discussed in in the following pages, which hereby are incorporated into our Request for Reconsideration by this reference. By giving the Applicant an opportunity to respond to the issues raised by the Council in its deliberations, reconsideration will ensure the Applicant's due process rights are protected. Equally important, though, the City should revisit the "additional burdens" standard imposed on the Applications, and should, on reconsideration, review these Applications on their own merits, as opposed to concerns about potential future annexation applications. Reconsideration is appropriate in this case and we respectfully request that the Council grant our request.

Again, we're grateful for the time and effort expended by City staff, the Council, and the Mayor in reviewing our Applications.

Very truly yours,



Joshua J. Leonard

Enclosures:

- Memorandum in Support of Request for Reconsideration
- Exhibit A - Utilities
- Exhibit B - Roads

² Although Fire Station No. 6 is depicted on the Priority Growth Map, its existence does not appear to have been factored into response times to the property.

TO: Mayor Simison, Council President Hoaglun, Council Vice President Borton, and Council Members Bernt, Perreault, and Strader

FROM: Clark Wardle LLP *clw*

DATE: July 5, 2022

RE: Memorandum in Support of Request for Reconsideration (H-2021-0070)

CW FILE #: 24000.2

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In support of the request for reconsideration submitted herewith on behalf of our client, Linder Holdings, LLC, and its engineers, Kimley-Horn & Associates, (together, "Applicant"), we identify the following specific deficiencies in the City Council's decision to deny the applications in matter number H-2021-0070 (the "Applications") for the proposed Jackson (Burnside) Ridge Estates Subdivision ("Project"):

1. Due Process Violations.

After the public comments ended at the public hearing on June 7, 2022, Council Members raised concerns about the availability of services and the ability of the City and other service providers to serve the Project. These concerns were raised during the Council's deliberations on the Applications, so there was no opportunity for the Applicant to address or respond to them. This is extremely important, as the concerns about the availability of services were based on incomplete understandings of the facts, which the Applicant was prepared to address, if given the opportunity to respond. Additionally, the denial set an impossible annexation standard, which will be problematic for future annexations, as described below.

2. Denial not Based on Objective Standards and Required Findings.

Council Members who voted to deny the application did so, in large part, due to (a) the perceived impacts the Project may have on various public services, and (b) a belief that approving this Project would open a wide path to further annexations in southwest Meridian. These beliefs are not reflective of the current conditions in this area or the standards applicable to annexation requests.

- (a) The information in the record (including the Staff Report and the comments and reports received from commenting departments and agencies) unequivocally indicated that all services (roads, fire, police, schools, sewer, water, etc.) can be provided to this Project without an adverse impact. Nevertheless, the Council denied the Applications, finding:

*The proposed annexation and residential subdivision would place **additional burdens** on City services, including, but not limited to, public safety services.*

(Final Decision, Section A.6.) (emphasis added). To be clear, "additional burden" is not the actual standard for annexation identified in the UDC. It goes without saying that there is an "additional burden" every time property is annexed; as a result, the UDC standard requires analysis of whether there is an *adverse* impact on these services. Quoting from the UDC:

*The map amendment shall not result in an **adverse impact** upon the delivery of services by any political subdivision providing public services within the city including, but not limited to, school districts;*

(UDC § 11-5B-3.E.4, emphasis added.)

In denying the Applications, the Council’s June 21, 2022 Findings of Fact, Conclusions of Law, Final Decision, and Order (“Final Decision”) did not specifically identify what “additional burdens” some Council Members felt the Project would place on the City’s public safety services. Again, though, the absence of “additional burdens” is not the required finding for approving annexation. The issue is whether there is an *adverse impact*, and the City’s record includes no evidence to support a finding that **annexation** would result on “an adverse impact on the delivery of services by any political subdivision providing public services within the city... .” (*Id.*)

Comments in the record from the Meridian Police Department and the Meridian Fire Department, respectively, show no adverse impact. After reviewing the Project, the Meridian Fire Department determined that, “This project can be serviced by the Meridian Fire Department.” (Meridian Fire Department Staff Report, dated February 16, 2022.) The Meridian Police Department’s comments on the Project included, “The Meridian Police Department has no outstanding issues concerning this development application.” (Letter from Meridian Police Department to Joseph Dodson, dated February 17, 2022.) The response times of the Meridian Police Department (3 minutes, 13 seconds) and the Meridian Fire Department (less than 5 minutes) both are within the expected level of service goals. In fact, the Meridian Police Department’s expected response time to the Project is nearly ½-minute quicker than the average response time in the City of Meridian (3 minutes, 43 seconds, pursuant to the Letter from Meridian Police Department to Joseph Dodson, dated February 17, 2022), and the Meridian Fire Department’s Fire Station 6 is only 1.4 miles from the Project, pursuant to the Meridian Fire Department Staff Report, dated February 16, 2022).

The record shows that the Project will have no adverse impact on utility providers. In fact, the City already opted to bring sewer and water infrastructure to the property - both are immediately available adjacent to the property, as noted in the Staff Report:

Water	
• Distance to Services	Directly adjacent
• Pressure Zone	5
• Water Quality Concerns	None
• Project Consistent with Water Master Plan	Yes

and

Wastewater	
• Distance to Sewer Services	Directly adjacent
• Project Consistent with WW Master Plan/Facility Plan	Yes

(Staff Report, dated June 7, 2022, Section II, entitled “Summary of Report” (p. 3), highlights added.) The existence of water infrastructure adjacent to the property also is shown in the following nine photographs, each of which includes an aerial that shows the location in which the photograph was taken:

Image 1



Image 2

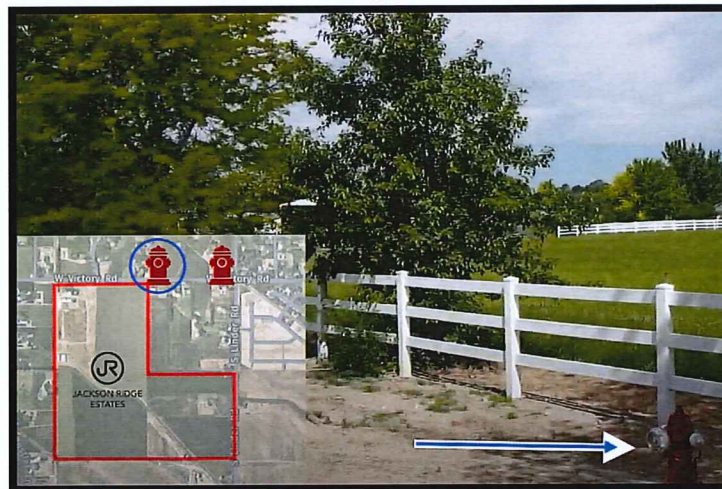


Image 3

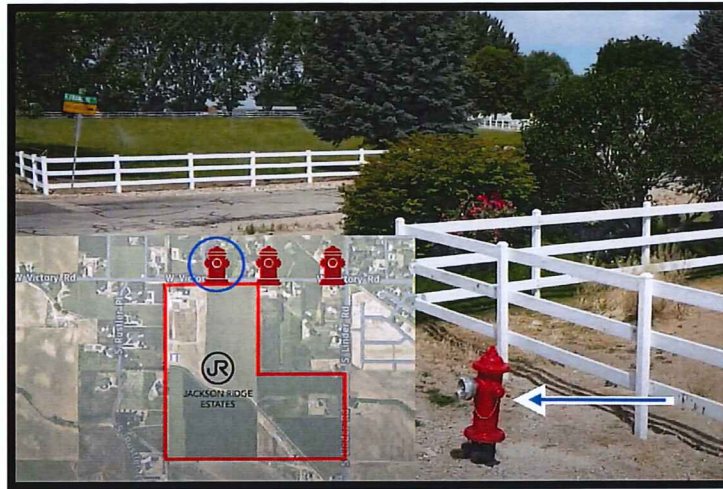


Image 4

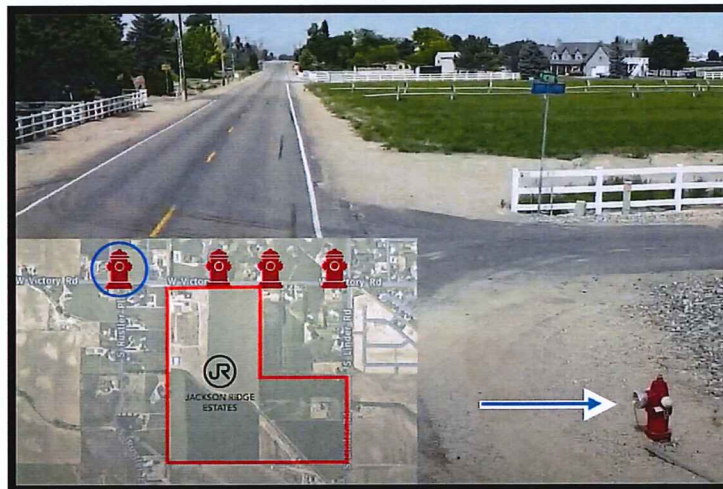


Image 5

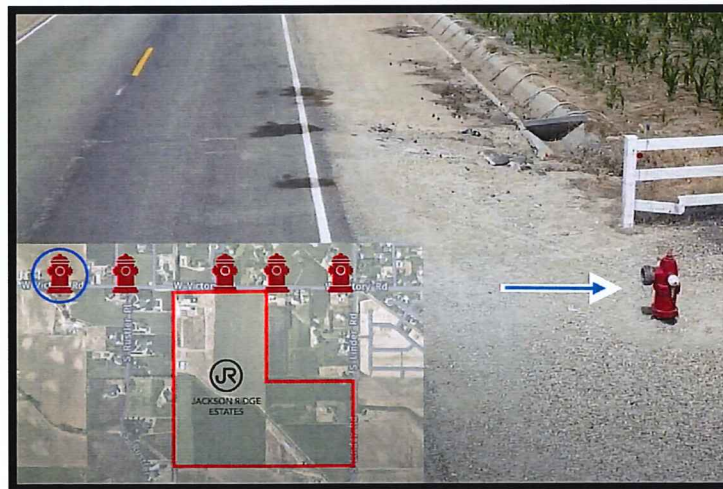


Image 6



Image 7

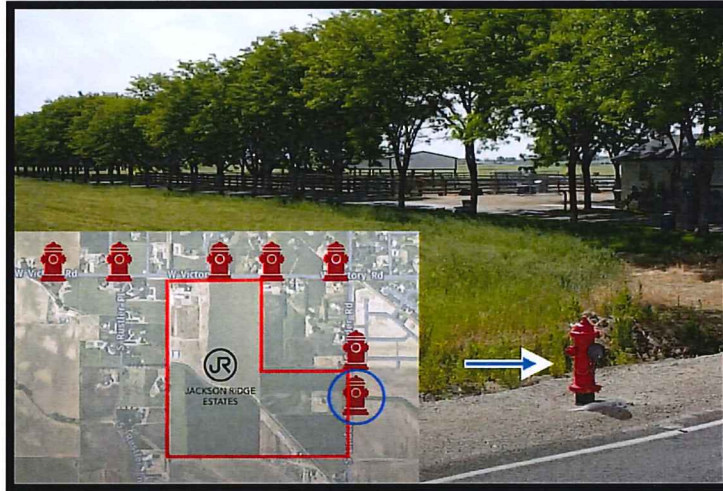


Image 8

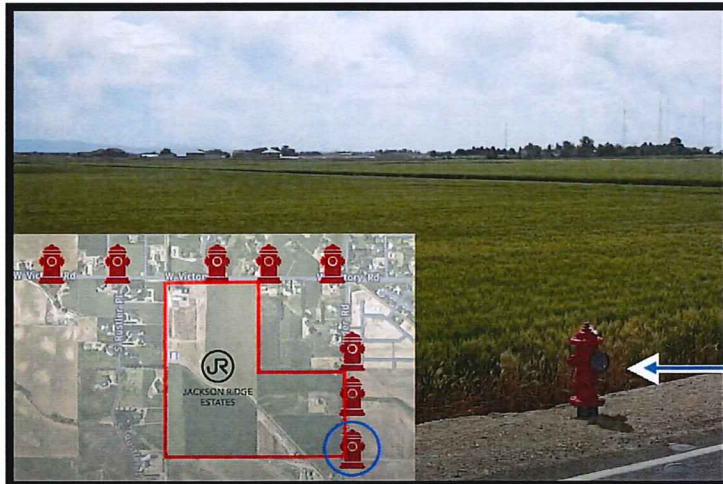
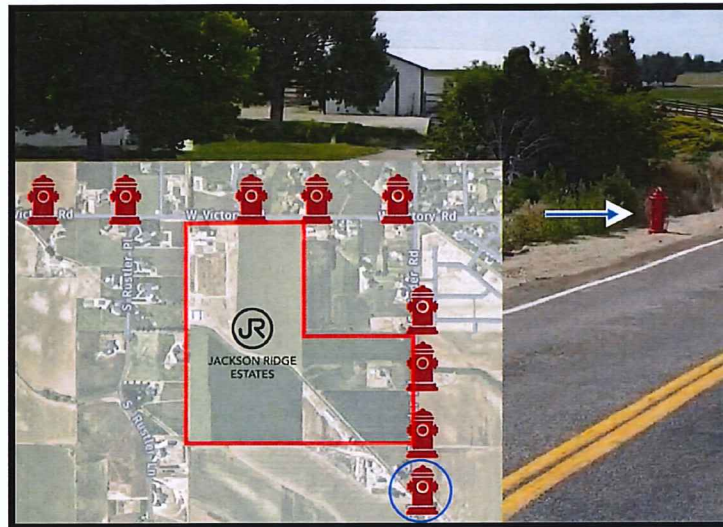


Image 9



The existence of sewer infrastructure along Linder Road, immediately adjacent to the property, also is shown in the following five photographs, each with an aerial showing the location of the sewer infrastructure in the picture:

Image 10



Image 11

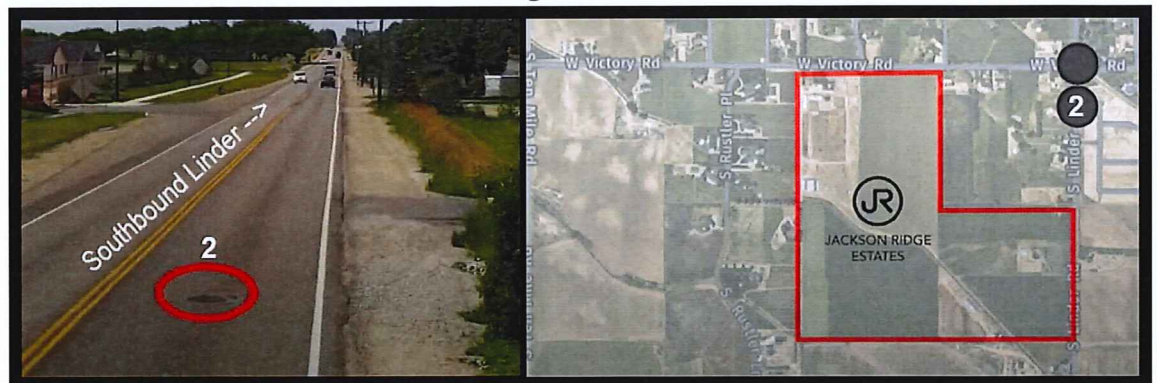


Image 12



Image 13



Image 14



“Political subdivisions providing public services” also include the West Ada School District (“School District”) and the Ada County Highway District (“ACHD”). Neither agency has indicated that there is an adverse impact. The Staff Report noted the following information received from the School District:

West Ada School District	
Estimated Additional School Aged Children	157 estimated children at full build out (specific to the area)
<ul style="list-style-type: none"> Capacity of Schools 	Mary McPherson Elementary – 675 students Victory Middle School – 1,000 students Meridian High School – 2,075 students
<ul style="list-style-type: none"> # of Students Enrolled 	Mary McPherson Elementary – 442 students Victory Middle School – 996 students Meridian High School – 1,698 students
School of Choice Options	<ul style="list-style-type: none"> Christine Donnell Elementary (Arts) – 480 enrolled w/capacity of 500) Spalding Elementary (STEM) – 651 enrolled w/capacity of 750)

(Selections from the Staff Report, dated June 7, 2022, Section II, entitled “Summary of Report” (p. 3), highlights added.) The Project also received a favorable report from ACHD -- based on the Traffic Impact Study (a copy of which is in the record), ACHD staff commented:

The TIS indicates that all roadway segments in the study area are expected to operate at an acceptable level of service planning threshold during the existing AM and PM peak hours under existing traffic, 2025 background traffic, and 2025 total traffic conditions.

ACHD Report, dated June 1, 2022, Section B.2.b.

This question, “What standards are applicable to annexations?” is critical. If the City takes the position that *any* additional burden is a basis to deny annexation, not only would the City be applying a standard that does not exist in its code, but it would be setting up a situation where all annexations must be denied. This is obviously not the case, nor do we believe it was the Council’s intent. But it is the logical outcome of fairly applying the standards under which this annexation was decided.

- (b) Based on the Council’s deliberations, the Council Members who voted to deny the application appear to have been less concerned about this Project than about *future* annexation applications and *future* projects. The question to be decided by Council should have been whether this Project complies with the standards and findings required in the UDC. Instead, the standard was framed during deliberations as follows:

I think that the gentleman who got up to testify that **the next property is ready to go after this one goes. This is really a key decision, I think, for this Council, is, if you’re ready to see more development in this area, well this is a great project to start that. If you’re not, well then, unfortunately you’ve got to make a decision tonight, in a lot of ways.** I’m not saying the next one has to be approved, but if it comes in looking just like this one, as good, it would be hard to prevent future annexations and growth in this area.

(June 7, 2022, Meridian City Council Meeting - <https://tinyurl.com/QuestionFramed>, emphasis added.) In another comment during deliberations, a Council Member admitted that the vote was less about this Project and more about future projects:

For me it's timing, for me **it's the impact of future development that will come in this area if we approve this.**

(June 7, 2022, Meridian City Council Meeting - <https://tinyurl.com/FutureDevInArea>, emphasis added.) And in yet another Council Member comment during deliberation:

As much as I like all that's been done [on this Application], I am very concerned that **we will invite some additional applications and potentially not be able to provide the services to those properties** because we are intentionally not investing infrastructure in that southwest area.

(June 7, 2022, Meridian City Council Meeting - <https://tinyurl.com/FutureDevelopments>, emphasis added.)

The standard applied by the Council in denying this Application simply does not exist in the UDC. **Each and every application that comes before the City must be judged on its own merits.** Projects cannot be denied (or approved) based on speculation on what applications may or may not follow. Instead, the City must rely on its UDC and other governing documents and judge each application individually, in light of the UDC requirements and the comprehensive plan provisions applicable at the time of application submittal.

As noted above, the record establishes that services are available adjacent to the property. The record also establishes that all levels of service, response times, and other indicators remain within acceptable ranges at full build-out of the Project.

3. **Misplaced Deference Given to Priority Growth Map.**

- (a) The City of Meridian's Comprehensive Plan ("Comp. Plan") challenges the City to "guide growth to priority areas" (Comp. Plan, § 3-2), "[p]rovide utilities in high priority growth areas" (Comp. Plan. Table 3.1, 3.02.01A), "[p]rioritize growth and development where it furthers the City's vision and allows for the efficient provision of services" (Comp. Plan. Table 3.1, 3.03.02), and "[e]ngage with service providers, City leadership, and community members to identify priority growth areas" (Comp. Plan. Table 3.1, 3.03.02A).

These are laudable goals; however, they must be undertaken in a way that allows an applicant to know and understand the standards to which they will be subject when they make applications in the City of Meridian.

To our knowledge, the "Priority Growth Map" referenced at hearing has not been adopted or incorporated by reference into any of the City's governing land use documents or the UDC. And again, to our knowledge, it does not contain established standards for reviewing annexation applications. What we do have is a series of decisions by the City that organically identify priority growth areas. These include:

- extending utility infrastructure to areas of prioritized growth;

- engaging with other service providers to ensure they do not extend their infrastructure to serve areas not prioritized for growth; and
- negotiating with Ada County to identify and agree upon the City’s area of city impact.

The City’s prior decisions and actions have unambiguously identified the Subject Property for “priority growth”:

- The City included the area of the Subject Property in its Area of City Impact, which was recently¹ renegotiated with Ada County;
- The City’s sewer and water infrastructure has been extended², so that it currently is immediately adjacent to the Subject Property; and
- The City built Fire Station 6 only 1.4 miles from the Project.

These prior actions show that the City *has* prioritized the Subject Property for growth. Utilities are there. Services are there—in fact, we understand this project will help provide a sewer connection for the future school site. The fire station is there to serve the project. Collectively, these actions show that the City has, in fact, prioritized this area for growth.

- (c) The so-called “Priority Growth Map” is not in the City’s Record in this Application, File No. H-2021-0070. Instead of consulting it directly, Council Members relied on their memories of it. The actual map was not identified or provided to the Applicant either during the hearing or at any time leading up to it. The Priority Growth Map was not mentioned to the Applicant during the Pre-Application Conference sessions on November 26, 2019, May 12, 2020, or March 2, 2021 (*see* “Pre-App Notes V1” in the record), it was not included in the June 7, 2022 Staff Report³, and we even heard during the hearing that City Planner Joe Dodson hasn’t seen it⁴. This of course prevented the Applicant from being able to review, reference, or address the actual map.

The concept of the Priority Growth Map obviously is important and beneficial. Even if it had been adopted or incorporated by reference into the City’s comprehensive plan, though, it must be regularly updated to be an effective planning tool. After the Council’s denial of the Applications, City staff provided a copy of the May 2020 Priority Growth Map to the Applicant. Based on Council Members’ comments during Council’s June 7th meeting, and also based on the face of the Priority Growth Map itself (“Printed 5/6/2020 9:19 am”), we believe the May 2020 Priority Growth Map is out of date. For example, although Fire Station 6 is depicted on the Priority Growth Map, it doesn’t appear that the “5 min Fire Response” area was updated to include the entire property, which clearly is within the Meridian Fire Department’s 5-minute response area (*see* Meridian Fire Department Staff Report, dated February 16, 2022). Additionally, water infrastructure has been expanded and extended along W. Victory Road. But given that the Applicant did not have a copy of

¹ Effective July of 2021.

² *See* Images 1 through 14, attached.

⁴ <https://tinyurl.com/OldPGAMap> (Council Member: “...if we zoom out, and we’ve brought up and dusted off our old priority growth areas map, where would this fit?” Joe Dodson: “I cannot answer that. I don’t think I’ve ever seen that map.”)

this map and was not given an opportunity to respond to the Council's understanding of it, the Applicant had no meaningful opportunity to ensure the Council's understanding reflects the actual facts on the ground.

4. Denial Based on Conversations Outside the Record.

It was clear from several comments during the Council's deliberations that confusion existed about fundamental elements of the Application. Several Council Members referenced prior conversations and discussions "about this specific square mile and this lot in particular,"⁵ which influenced their votes to deny this Application. Absent additional information about the nature, context, content, and participants in those prior conversations and discussions, the Applicant is unable to adequately or sufficiently address them.

5. Deficient Final Decision.

The City's Final Decision failed to analyze the facts in the Record and provide a reasoned basis for the Council's denial of the Application; instead, the Final Decision consisted of bare, conclusory statements, unsupported by facts in the City's record.

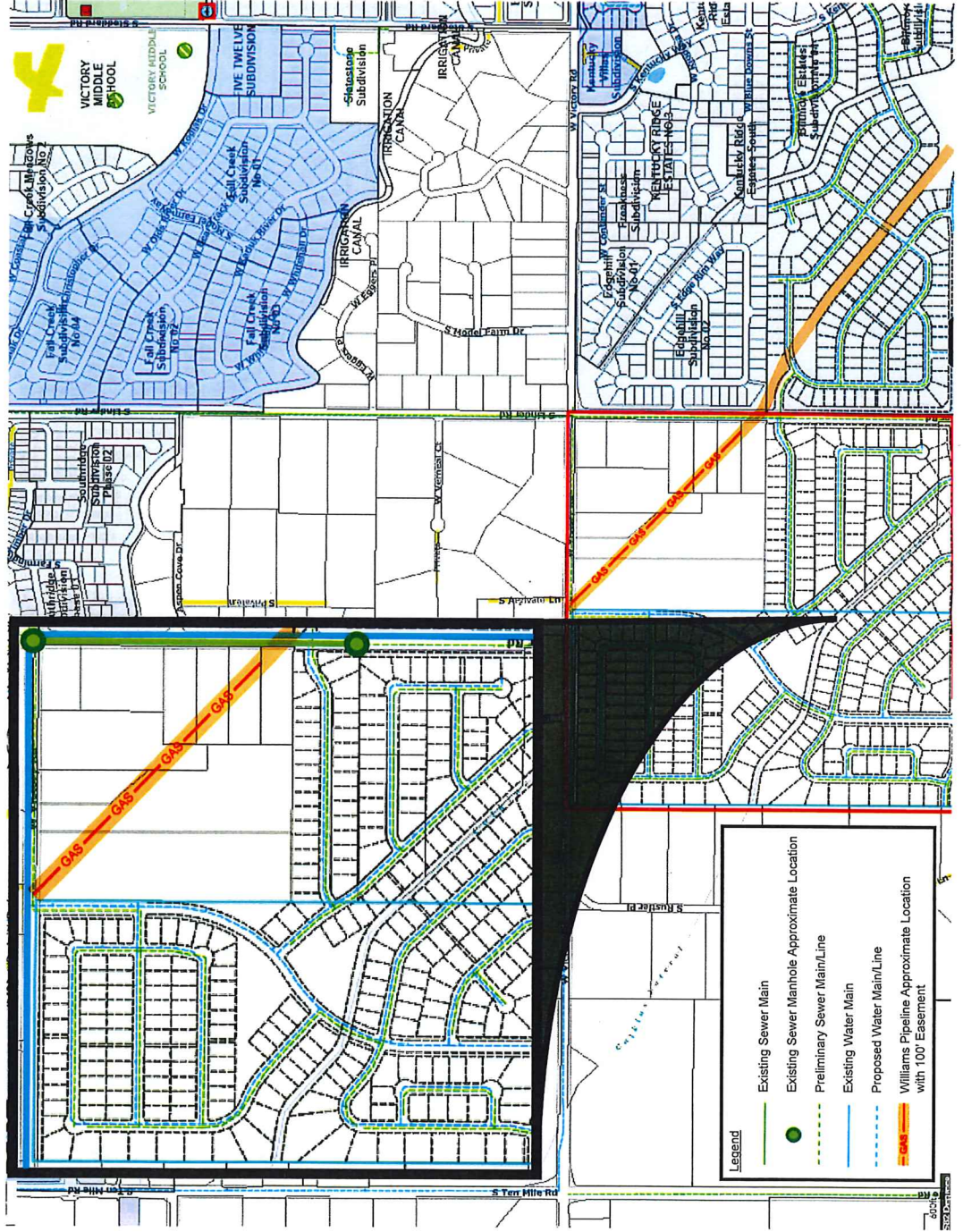
As noted above, these statements are troubling, not only because they lack detail and factual analysis, but because they effectively paint the City into a corner. If subsequent annexation applications are decided under the same standards as this Application, then the City will not approve any annexation that creates any additional burden on City services. In other words, the City cannot approve any future annexations if it applies this standard. This not only violates this Applicant's rights, but it also sets an impossible standard that will stop any City growth going forward. This decision requires reconsideration.

On these bases, we respectfully request reconsideration by the Council of its denial of the Application, and we welcome an opportunity to address the concerns raised by the Council in its deliberations on June 7, 2022. As noted above, the Applicant possesses information relevant to the Council's concerns, and would greatly appreciate the ability to present such information to the Council following its vote to reconsider its denial.

⁵ This comment seemed to infer that the current Applications are not the first significant development proposal for the property, which is incorrect. Prior to the Applications, the Jackson Family used this property in the operation of their dairy farm, and this is the first significant development proposal for this property.

Exhibit A - Utilities

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ORIGINAL Exhibit B - Roads

