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August 4, 2020

VIA EMAIL: sallen@meridiancity.org

Mayor Simison and Meridian City Council
c/o Sonya Allen, Associate Planner
33 East Broadway Avenue
Meridian, ID 83642

Re: Request for Reconsideration in Case No. H-2020-0012

Dear Mayor Simison and City Council Members:

Givens Pursley LLP represents Toll Southwest, LLC (“Toll”) who requested to annex, zone, and plat 325 lots on 118.58 acres in Meridian’s Area of Impact (collectively, the “Application” or “Project”). The Planning & Zoning Commission heard the Application on May 7 and recommended approval. On July 7, the Application came before the City Council who voted to deny the Application. On July 21, the City Council adopted its Findings of Fact, Conclusions of Law, and Decision & Order (the “Decision”) denying the Application.

The Decision denies the Application for the reasons set forth in the Findings that are attached to this letter as Exhibit A.¹ Per the Findings, the Council denied the Application for two main reasons: (1) lack of compliance with the Comprehensive Plan’s goals and objectives for lot size/density transition; and (2) adverse impact on area schools. This request asks the Council to reconsider its Decision.²

1. The evidence in the record shows that the Project complies with the Comprehensive Plan’s goals and objectives for compatibility between neighboring uses.

The Findings conclude that the Project’s zoning is compatible with the FLUM but that the Project is not consistent with the Comprehensive Plan’s goals and objectives for transition in lot size/density to existing residential uses.³ The Findings do not cite any specific provision

¹ Decision at p. 2 (“The [Application] is hereby denied per the Findings ...”).

² This request for reconsideration is made pursuant to U.D.C. § 1-7-10 and I.C. § 67-6535.

³ Decision, Ex. A, at p. 48.

of the Comprehensive Plan that the Project does not comply with, as required by I.C. § 67-6535.⁴ In any event, the Project is consistent with the Comprehensive Plan's transitioning goals set forth in Section 3.07.01A, which provides that new development should utilize "buffering, screening, and transitional densities" to design projects that are compatible with surrounding uses. The goal of Section 3.07.01 is to encourage compatibility of neighboring uses and maximize the use of land,⁵ not to mandate a specific lot size adjacent to Ada County rural estate properties. The evidence in the record shows that the Project incorporates all three recommended design elements—buffering, screening, and transitional densities—to make the Project compatible with existing residential uses to the west. In addition to the existing grade changes and building setbacks on adjacent Ada County properties, the Project proposes the following to encourage compatibility:

- Construction of a 3-4 foot raised berm with wood-styled fencing and trees all along the Project's western border as an additional buffer and screen;⁶
- Increased rear setbacks in the R-2 zone from 15 feet to 30 feet as an additional buffer;⁷
- Zoning the property adjacent to the Ada County property R-2—the lowest density designation available in the City's zoning ordinance—and transitioning to higher densities moving west to east;⁸
- Requiring that all lots in the R-2 zone adjacent to the Ada County property be a minimum 1/2 acre in size; and
- Limiting lots in the R-2 zone to 60% single level.⁹

These site design features provide buffering, screening, and transitional densities and were specifically proposed to fulfill the City's compatibility goals outlined in Section 3.07.01 of the Comprehensive Plan. The result is a site design that is compatible with the surrounding residential uses while still fulfilling the property's FLUM designation of medium density residential and fulfilling the Plan's goal to maximize the use of the land for needed housing. Toll remains open to further discussion about additional buffering, screening, and transitional density measures to further comply with the Comprehensive Plan.

In reviewing the recorded audio from the Council's July 7 hearing, we learned that the audio from the portion of Toll's opening presentation describing the Project's design features for compatibility is nearly inaudible and indiscernible.¹⁰ Idaho law extends due process protections to applicants in land use hearings, which requires that applicants be given an

⁴ Idaho law requires that the Decision explain the Council's rationale "based on the applicable provisions of the comprehensive plan." *See* I.C. § 67-6535(2).

⁵ City of Meridian Comprehensive Plan § 3.07.00.

⁶ July 7 Public Hearing Video at 1:46:40.

⁷ July 7 Public Hearing Video at 1:46:30.

⁸ U.D.C. § 11-2-1.

⁹ July 7 Public Hearing Video at 1:47:50.

¹⁰ July 7 Public Hearing Video at 1:44:18–1:48:20.

opportunity to present evidence.¹¹ The malfunctioning audio equipment deprived Toll of its due process rights. For this reason and the reasons outlined above we request that the Council reconsider its Decision related to the Project's compatibility with the Comprehensive Plan.

2. The evidence in the record shows that the Project will not have an adverse impact on schools.

The Council's Findings state that the Project will result in adverse impacts on area schools.¹² However, the West Ada School District provided a comment letter on the Application demonstrating that each school serving the Project has current capacity.¹³ Specifically, West Ada's letter provides: (i) the elementary school serving the Project will have a capacity of 625 students and only 556 students are enrolled; (ii) the middle school serving the Project has a capacity of 1,000 students with 969 enrolled; and (iii) the high school serving the Project has a capacity of 2,400 with only 1,965 students enrolled.¹⁴ Evidence was also provided to the Council that the West Ada School District as a whole has current capacity and has programmed improvements to expand capacity to meet projected growth.¹⁵ Evidence in the record further shows that West Ada School District, through its School Facility Plan, owns property and plans to build an additional elementary school to serve the Project area.¹⁶ Overall, evidence in the record does not support a finding that the Project will have an adverse impact on area schools.

The Council's Decision denying the Project for adverse impact on schools is inconsistent with other City decisions approving residential developments in areas with similar or worse school capacities. It is also inconsistent with the City's standard practice of approving projects where the school district's comment letter and the applicant show available capacity. The school capacities available to the Project stand in sharp contrast to other parts of the City where schools are already overcrowded and development continues to be approved.

As submitted into evidence, West Ada School District plans for new schools and expansions based on modeling and demand through its School Facility Plan. The modeling takes actual growth into account, and the school district did not raise any concerns with the Project. We believe the Decision creates an impossible standard for residential developers by requiring them to rebut perceived concerns with West Ada School District's long-term growth plan even when evidence shows area schools have existing and planned capacity that takes approved growth into consideration. The equal protection clause requires the City to treat all applicants the same. Applying the school capacity standard used to deny this Project to all pending and future applications, as required by the equal protection clause, will result in the denial of many, if not all, residential developments due to perceived future school capacity concerns.

¹¹ *Neighbors for a Healthy Gold Fork v. Valley Cty.*, 145 Idaho 121, 127, 176 P.3d 126, 132 (2007).

¹² Decision, Ex. A, at p. 48.

¹³ Decision, Ex. A, at p. 3.

¹⁴ Decision, Ex. A, at p. 3.

¹⁵ July 7 Public Hearing Video at 1:53:04–2:00:02.

¹⁶ July 7 Public Hearing Video at 2:05:50.

3. Reconsideration request.

This Council may reconsider a decision where a party identifies deficiencies in the decision.¹⁷ As described above, substantial evidence in the record does not support the Findings, the Decision is arbitrary, and the Decision does not meet the standards of I.C. § 67-6535 because it does not provide a rationale for the Decision with citations to applicable standards. Further, audio problems during the hearing compromised Toll's due process right to present evidence.

Thank you for your consideration of this request for reconsideration. We recognize and appreciate the substantial time and effort the City Staff and City Council have invested in this Project. We believe that another hearing on reconsideration will provide Toll with an opportunity to present evidence as allowed by due process and will also allow the Council to take a fresh look at the standards and evidence that warrant approval of this Project. At a reconsideration hearing Toll would look forward to a continued dialogue with the Council regarding issues surrounding compatibility with our neighbors.

Sincerely,



Deborah E. Nelson

cc: Bill Nary

¹⁷ U.D.C. § 1-7-10(4).

EXHIBIT A

X. FINDINGS

A. Annexation and/or Rezone (UDC 11-5B-3E)

Required Findings: Upon recommendation from the commission, the council shall make a full investigation and shall, at the public hearing, review the application. In order to grant an annexation and/or rezone, the council shall make the following findings:

1. The map amendment complies with the applicable provisions of the comprehensive plan;

The City Council finds the proposed zoning map amendment to R-2, R-4 and R-8 is consistent with the associated FLUM designation; however, the proposed development is not consistent with the goals and objectives of the Plan pertaining to transition in lot sizes/density to existing residential properties and orderly growth.

2. The map amendment complies with the regulations outlined for the proposed district, specifically the purpose statement;

The City Council finds the mix of lot sizes proposed is consistent with the purpose statement of the residential districts in that a range of housing opportunities are proposed consistent with the Comprehensive Plan.

3. The map amendment shall not be materially detrimental to the public health, safety, and welfare;

The City Council finds the proposed zoning map amendment should not be detrimental to the public health, safety and welfare.

4. 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; and

The City Council finds the proposed zoning map amendment and subsequent development would result

B. Preliminary Plat Findings:

In consideration of a preliminary plat, combined preliminary and final plat, or short plat, the decision-making body shall make the following findings:

- 1. The plat is in conformance with the Comprehensive Plan;**

The City Council finds that the proposed plat is not in substantial compliance with the adopted Comprehensive Plan in regard to transition in lot sizes/density to adjacent rural residential properties, transportation (rural roadways/intersections adjacent to the site), and overburdening of area schools.

- 2. Public services are available or can be made available and are adequate to accommodate the proposed development;**

The City Council finds that public services could be provided to the subject property. (See Exhibit B of the Staff Report for more details from public service providers.)

- 3. The plat is in conformance with scheduled public improvements in accord with the City's capital improvement program;**

Because City water and sewer and any other utilities would be provided by the development at their own cost, the City Council finds that the subdivision will not require the expenditure of capital improvement funds.

- 4. There is public financial capability of supporting services for the proposed development;**

The City Council finds there is public financial capability of supporting services for the proposed development based upon comments from the public service providers (i.e., Police, Fire, ACHD, etc.). (See Section IX for more information.)

- 5. The development will not be detrimental to the public health, safety or general welfare; and,**

The City Council is not aware of any health, safety, or environmental problems associated with the platting of this property. ACHD considers road safety issues in their analysis.

- 6. The development preserves significant natural, scenic or historic features.**

The City Council is unaware of any significant natural, scenic or historic features that exist on this site that require preserving.