

MEMORANDUM

TO: Meridian City Clerk; City Attorney; Mayor and City Council

FROM: Deborah Nelson, Givens Pursley LLP

RE: Response to City Attorney Memorandum re: Cedarbrook Request for Reconsideration

DATE: August 17, 2020

In his August 11, 2020 memorandum, City Attorney Bill Nary raised a concern as to whether the Request for Reconsideration for Cedarbrook Subdivision (“Request”) was properly filed because it was not emailed directly from the applicant to the City Clerk. This memorandum responds to that concern, to show that the Request was properly filed based on the facts, applicable Code provisions, and the prior decision of this Council on the same facts and Code.

UDC 1-7-10 requires a request for reconsideration to “be in writing and filed with the City Clerk within fourteen (14) days of the final approval.” The Request was in writing and filed with the City Clerk before 5 P.M. on August 4, 2020, within 14 days of the Cedarbrook final approval. Based on these facts, the Request was properly filed in accordance with Code.

There is no dispute the Request was timely delivered to the City Clerk. On August 4, 2020, this law office transmitted the Request via email to Sonya Allen, the planner assigned to the Cedarbrook matter. *See Attachment A.* Ms. Allen confirmed to this office that she received the Request and would send it to the City Clerk. *See Attachment A.* Prior to 5 P.M. on August 4, 2020, Ms. Allen forwarded the Request to the City Clerk. *See Attachment B.* The City Clerk timely received the Request and made it available for public viewing on the City’s website by 7:15 AM the next morning. *See Attachment C.*

The question raised by Mr. Nary is whether the Code requires a request for reconsideration to be delivered by the applicant *directly* to the City Clerk without an intervening party. UDC 1-7-10 does not require *direct* delivery from an applicant to the City Clerk. UDC 1-7-10 does not specify how a request for reconsideration must be filed with the City Clerk—whether by U.S. mail, in person, or electronic mail—or whether it may be forwarded by another party. The Code does not prohibit delivery by the forwarding of an email, just as it does not prohibit a City employee from receiving and delivering to the City Clerk a request hand delivered to the City in person.

UDC 1-7-10 also does not require a request for reconsideration to be addressed to the City Clerk by name or title. Instead, it is common practice for a request for reconsideration to be addressed to the City Council, the decision makers on the request. The City Clerk's role is to "be the custodian of all public records, ordinances, resolutions and orders of the city council, and such other papers and documents as may be delivered into his or her custody" (UDC 1-8A-2.A.2 (emphasis added)), and to furnish those records to the Mayor and Council, and to the public upon request (UDC 1-8A-2.C and D). The City's planning department also plays a role in maintaining and transmitting to the Commission and Council "all materials and correspondence related to land use applications." UDC 11-5A-2 ("The Director with the City Clerk shall receive and examine applications including, but not limited to the following: ... b. Maintain records of all materials and correspondence related to land use applications; ... e. Transmit to the commission or Council all applications related to this title.")

This Council recently received and considered a request for reconsideration filed with the same facts as this Request and with the same applicable Code, which has not been amended since April 2016. In November 2018, Spink Butler LLP on behalf of Boise Hunter Homes filed a request for reconsideration of the Council's decision to approve the Owyhee High School (H-2018-0075). The written request was addressed to the City Council, care of Planning Division Manager, Caleb Hood, with a copy to Mr. Nary and to opposing counsel. *See Attachment D*. The request was delivered via U.S. mail and electronic mail to Mr. Hood with no apparent direct copy to the City Clerk. *See Attachment E*. The Council considered the request and ultimately declined to reconsider the decision approving the Owyhee High School; in its Order denying the request, the Council made the following finding: "A Request for Reconsideration dated November 26, 2018 of the above-captioned matter by the appellant Boise Hunter Homes was properly filed." *See Attachment F* (emphasis added). There is no reasonable basis to find that this Request, filed in the same manner as the Owyhee High School Request and under the same Code, was not properly filed.

While we disagree with Mr. Nary's assessment of the facts and Code in this instance, we certainly respect his stated policy desire to avoid reliance on city staff for delivery to the City Clerk, and this office will be sure to deliver future requests to the City Clerk directly. Mr. Nary's memorandum recognizes "It is also within the purview of the City Council to rule that since this Request was ultimately delivered to the Clerk by the deadline date because of the fortunate circumstance of Ms. Allen's diligence then service can be accepted." We ask the Council to find that the Request was properly filed based on the specific facts presented—in particular that the Request was timely delivered to the City Clerk in conformance with UDC 1-7-10.

Once that determination is made, we trust the Council will fairly and openly consider the substance of the Request for the legal and policy reasons therein described. We appreciate the Council's consideration of this memorandum and of the Request itself.

Attachment A

Deborah E. Nelson

From: Sonya Allen <sallen@meridiancity.org>
Sent: Tuesday, August 4, 2020 4:53 PM
To: Stacy Wardein
Cc: Bill Nary; Deborah E. Nelson; Jeffrey W. Bower
Subject: RE: Case No. H-2020-0012 [IWOV-GPDMS.FID990895]

Thank you Stacy. I'll send this to the Clerk.

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Subject: Case No. H-2020-0012 [IWOV-GPDMS.FID990895]

External Sender - Please use caution with links or attachments.

Attached is a Request for Reconsideration regarding the above.

Thank you,
Stacy

Stacy Wardein, Legal Assistant
GIVENS PURSLEY LLP
601 W Bannock St, Boise, ID 83702
direct 208-388-1249
fax 208-388-1300
stacywardein@givenspursley.com
www.givenspursley.com

COVID-19 UPDATE

Givens Pursley remains open and continues to provide high-quality representation to our clients.

We understand the challenges COVID-19 presents to our clients and this community. We have taken precautions to protect our staff and visitors, and to inhibit the spread of COVID-19. For example:

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3. We understand the confidential nature of our work *and* the impedance of face-to-face interactions. We will schedule personal meetings when necessary.

Attachment B

Chris Johnson

From: Sonya Allen
Sent: Tuesday, August 4, 2020 4:54 PM
To: Adrienne Weatherly; Charlene Way; Chris Johnson
Cc: Bill Nary; Andrea Pogue; Bill Parsons; Caleb Hood
Subject: Cedarbrook - H-2020-0012 Request for Reconsideration
Attachments: 2020-08-04 Request for Reconsideration.PDF

From: Stacy Wardein <stacywardein@givenspursley.com>
Sent: Tuesday, August 4, 2020 4:34 PM
To: Sonya Allen <sallen@meridiancity.org>
Cc: Bill Nary <bnary@meridiancity.org>; Deborah E. Nelson <den@givenspursley.com>; Jeffrey W. Bower <jeffbower@givenspursley.com>
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If you have any questions, comments, or concerns, please do not hesitate to contact us.

Attachment C



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Attachment D

SPINK  BUTLER 
ATTORNEYS AT LAW

T. HETHE CLARK
(208) 388-3327
HCLARK@SPINKBUTLER.COM

Via U.S. Mail and electronic mail (chood@meridiacity.org)

November 26, 2018

Meridian City Council
c/o Caleb Hood, Planning Division Manager
City of Meridian
33 E. Broadway Ave.
Meridian, Idaho 83642

Re: **REQUEST FOR RECONSIDERATION**
Findings of Fact, Conclusions of Law for Owyhee High School (H-2018-0075)
SB File No. 23133.0

Dear Mr. Hood:

Please consider this letter a request for reconsideration pursuant to Meridian City Code 1-7-10 and Idaho Code Section 67-6535.

[content of letter omitted]

Very truly yours,



T. Hethe Clark

hc/bdb

c: Client
Mark Freeman (mfreeman@foleyfreeman.com)
Gary Allen (garyallen@givenspursley.com)
Bill Nary, City Attorney (bnary@meridiacity.org)

Attachment E

Mon 11/26/2018 4:12 PM

Barbara Beaushaw <BBeaushaw@spinkbutler.com>

Request for Reconsideration (H-2018-0075)

To 'chood@meridiancity.org'

Cc 'tucker@boisehunterhomes.com'; Geoffrey M. Wardle; Hethe Clark; 'mfreeman@foleyfreeman.com'; Gary G Allen; 'bnary@meridiancity.org'



Please see the attached letter from Hethe. Please let me know if you have any questions.

Thank you,
Barb

Barbara Beaushaw, Legal Assistant

251 E Front Street, Suite 200 | PO Box 639 | Boise, Idaho 83701
bbeaushaw@spinkbutler.com | T 208.388.1000 | F 208.388.1001

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Attachment F

BEFORE THE MERIDIAN CITY COUNCIL

C/C 12-11-2018

IN THE MATTER OF THE REQUEST)	Case No. H-2018-0075
FOR RECONSIDERATION OF OWYHEE)	
HIGH SCHOOL)	
)	
)	WRITTEN MEMORANDUM OF
)	CITY COUNCIL ACTION TO
)	DENY REQUEST FOR
BY BOISE HUNTER HOMES)	RECONSIDERATION AND AFFIRM
)	ITS DECISION IN THE MATTER
APPELLANT.)	
)	

A Request for Reconsideration dated November 26, 2018 of the above-captioned matter by the appellant Boise Hunter Homes was properly filed.

The City Council scheduled the request to be considered at its regularly scheduled meeting on December 11, 2018 and provided Notice of such to the appellant.

The City Council considered the written request and AFFIRMED its decision as set forth in the Findings of Fact, Conclusions of Law, and Decision and Order dated November 7, 2018.

An affected person aggrieved by the final decision in this matter may seek judicial review as provided by chapter 52, title 67, Idaho Code.

By action of the City Council at its regular meeting held on the 11th day of December, 2018

ROLL CALL ON MOTION TO AFFIRM its decision as set forth in the Findings of Fact, Conclusions of Law, and Decision and Order dated November 7, 2018:

COUNCILMAN TREG BERNT	VOTED	__ YEA __
COUNCILMAN JOE BORTON	VOTED	__ YEA __
COUNCILMAN LUKE CAVENER	VOTED	_____
COUNCILWOMAN GENESIS MILAM	VOTED	__ YEA __
COUNCILMAN TY PALMER	VOTED	__ YEA __
COUNCILWOMAN ANN LITTLE ROBERTS	VOTED	__ YEA __
MAYOR TAMMY de WEERD (TIE BREAKER)	VOTED	__ N/A __

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c/o Caleb Hood, Planning Division Manager
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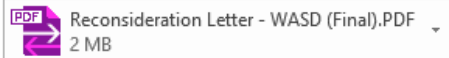
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MAYOR TAMMY de WEERD (TIE BREAKER)	VOTED __ N/A __