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IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

VALLEY ADVOCATES FOR
RESPONSIBLE DEVELOPMENT, an Idaho
non-profit corporation, JONATHAN
CORMIER, a VARD member, Victor
resident, and abutting property owner

Petitioner,

vs.

VICTOR CITY COUNCIL, a political
subdivision of the State of Idaho

Respondent.

Case No.: 1934077

**PETITION FOR JUDICIAL REVIEW OF AGENCY
ACTION**

**CATEGORY FEE: L.3
FEE AMOUNT: \$221.00**

Valley Advocates for Responsible Development (“**VARD**”), an Idaho non-profit corporation, acting by and through counsel, respectfully submits this Petition for Judicial Review (“**Petition**”) pursuant to Idaho Code sections 65-6501 through 67-6539 and 67-5270 through 67-5279 and Rule 84 of the Idaho Rules of Civil Procedure, seeking judicial review of an agency action by the Victor City Council (“**Council**”).

1. Incorporated in 2001, VARD is an Idaho non-profit membership corporation formed to represent concerned citizens of Teton County, Idaho respecting the land use actions and policies of Teton County and its principal cities (Driggs, Victor and Tetonia). VARD staff and members regularly attend and testify in all city and county land use actions to ensure accountability in local government, public engagement in the civic planning process, preservation of rural communities, and stewardship of their natural resources.

2. The name of the entity for whose action judicial review is sought is the City Council for the City of Victor, Idaho.

3. The District Court before which this Petition is taken is Seventh Judicial District of the State of Idaho, in and for the County of Teton, and VARD has standing to bring this action before this Court which has jurisdiction over this matter and before which venue is proper.

4. VARD has standing to bring this action. VARD has approximately 1,600 contributing members residing full or part-time in Teton County and 197 VARD members reside within the City of Victor (population 1,928 according to the 2010 US Census.) This includes Jonathan Cormier, VARD member, Victor resident, and neighboring Victor property owner within 1,000 feet of the Fenn property who resides at 245 Cedron Road, Victor, Idaho 83455. Mr. Cormier's backyard overlooks the Fenn property, which is the very site of the proposed development in question. Even more VARD members live and own real property in the interstices of Victor's irregular star-shaped boundaries and in the immediate vicinity less than approximately one-quarter mile of the Fenn Property (parcel number RPB3N45E024810) at the heart of Council's challenged zoning amendment.

5. Members of VARD have suffered injury in fact from the challenged actions of the Council authorizing unlawful uses directly attributable to the Council's initiation and approval of a zone change affecting and benefitting only the Fenn Parcel. VARD has diverted significant resources to counter these unlawful actions by the Council. The actions of the Council have also frustrated VARD's mission of participation in open hearings, transparent decision making by political subdivisions, as well as appealing land use actions in accordance with the Idaho Law.

6. This Court has jurisdiction over this matter pursuant to Rule 84 of the Idaho Rules of Civil Procedure and Idaho Code section 67-6521(d) which incorporates the judicial review process set forth in chapter 52, title 67 of the Idaho Code. VARD is an entity aggrieved by a final decision rendered by the Council.

7. VARD has exhausted their administrative remedies with the Council, as they have exercised their rights to request reconsideration of the decision underlying this matter, and there is no statute, rule, or regulation that would allow for further reconsideration of the decision that is the subject of this Petition.

8. Venue in Teton County is proper before this court pursuant to Idaho Code section 67-5272 because all of the Victor City Council hearings that occurred in this matter were held in Teton County, the Final Decision issued by the Council was issued in Teton County and affects actions and property in Teton County, within the City of Victor.

9. The heading or case caption from the Board for which judicial review is sought is Application Number ZX2019-04, with a Notice of Decision issued May 23, 2019.

10. A brief procedural synopsis of the events which occurred in this matter is set forth for the convenience of the Court, including identification of whether and how hearings or oral

presentations were recorded or reported, and the name and address of the person with possession of such recordings.

- a. In 2019, the City of Victor (the “**City**”) acting as the applicant, applied to the City of Victor Planning Department for a Zoning Map Amendment by Application No. ZX2019-04 to rezone approximately 16 acres owned by the Jonathan Fenn Revocable Trust (“**Fenn**”) from RS-7 Single-Family & Two-Family (“**RS-7**”) to RS-3 Single-Family & Two-Family (“**RS-3**”) (herein the “**Rezone**”). By this zone change, the City of Victor seeks to grant Fenn the ability to build “cottage courts,” which is a controversial building type that accommodates “3 to 8 detached dwelling units organized around an internal shared courtyard.” Section 8.4.1 of the LUC.
- b. Only 14 months before the Rezone, the City of Victor amended the RS-7 zone to ban cottage court developments in the outlying areas of the City of Victor, including the Fenn property. Fenn had approached the City with his desire to build over 100 cottage court units on the property in question, but it was not possible to build any cottage courts without a zone change. No other RS-7 Property owner (or any other Victor property owner for that matter) would be granted the benefits of this zone change. Rather, it is a benefit inured entirely to the 16-acre Fenn property and no one else.
- c. At the same time, the City also applied for a variance to grant Fenn 10 additional cottage court units beyond what would ever be permitted in the Victor Land Use Code (“**LUC**”), but this application was soon withdrawn

by the City prior to hearing, in the wake of strong opposition from the public and concerns raised by VARD regarding the precedent set in *City of Burley v. McCaslin Lumber Company*, 693 P. 2d 1108; 107 Idaho 906 (1984) (A variance cannot be used to grant an increase in housing density in order to make a project economically feasible).

- d. An initial hearing before the Victor Planning & Zoning Commission was held on April 16, 2019.
- e. Despite failing to comply with the LUC and with the Idaho Local Land Use Planning Act (“LLUPA”), the Victor City Council held a hearing and approved project Application No. ZX2019-04 on May 22, 2019 following an oral hearing. At this hearing, all public testimony was submitted in opposition to the Rezone, including testimony by VARD Executive Director Shawn Hill, Board Member David Axelrod, Board Member Mike Pfeil, and 44 comment letters in opposition that were submitted to the City by members of the public.
- f. On May 30, 2019 the City of Victor published Ordinance No. 0538 amending articles 1-14 Title 10 of Victor Zoning Code. This was a significant revision of the City zoning code and as such, Ordinance No. 0538 fundamentally changed the rights and process regarding application Application ZX2019-04 and the Fenn Property including but not limited to: attaching conditions of approval to a Zoning Map amendment, design requirements for Cottage Courts, and the process for de-annexation. The

publication of Ordinance No. 0539 includes following note: “The effective date of the Ordinance is the date of its passage, approval *and publication*. Published Teton Valley news May 30, 2019.” (Emphasis added.)

- g. VARD timely requested copies of the Council’s findings and conclusions. On June 5, 2019 City Planner Ryan Kreuger provided VARD a copy of a purported 1-page Notice of Decision that was addressed to Fenn, signed only by Kreuger and not signed by the Council or any members of the Council. This notice was dated May 23, 2019. On multiple occasions VARD has requested the meta-data from this Notice of Decision, to confirm its date of origin, but no data has been provided by the City.
- h. The Rezone is not effective until formal publication by the City and entry into a Development Agreement between Fenn and the City. The Fenn Zoning Map Amendment has not been published by the City. No development agreement has been negotiated, approved after public hearing, or recorded between Fenn and the City.
- i. Pursuant to the LUC and LLUPA, VARD timely requested reconsideration of the City Council Decision to the City Council on June 5, 2019, indicating that the City Council Decision was not supported by substantial evidence, was contrary to state, local, and federal law, was contrary to public policy, and was based upon incomplete and/or inaccurate findings of fact and evidence.

- j. VARD was never given a hearing on the request for reconsideration and the Council has not considered VARD's request. Instead, a staff member, the City Attorney, issued a 1-paragraph letter denial of the request for reconsideration on June 6, 2019.
- k. The April 16 and May 22, 2019 hearings were recorded electronically verbatim and tapes are in the possession of Olivia Goodale, Administrator for the City of Victor. oliviag@victorcityidaho.com; phone 208-787-2940 extension 7.

11. VARD presently intends to assert at least one or more of the following issues in their Petition, provided that VARD may file a separate statement of issues within fourteen (14) days of filing this Petition pursuant to Rule 84(d)(5) and may assert other issues as discovered:

- a. The Final Decision was incorrectly and illegally decided by the Council for at least the following reasons:
 - i. There has been no Findings of Fact or "reasoned statement" issued by the Council, no summarization of facts in the record, nor recitation of applicable standards and legal criteria to support the Rezone.
 - ii. The City's purported Findings of Fact is a 1-page Notice of Decision that was signed only by the City Planner, and which lacks any facts, specificity, or legal criteria supporting the Rezone.

- iii. There has been no formal publication of the Zoning Map Amendment implementing the Rezone. Meanwhile, Ordinance 0538 which amends the Victor zoning code has been adopted and published, which now impacts the Zoning Map Amendment of the Fenn Property.
- b. The Rezone was incorrectly and illegally decided by the Council for the following reasons:
 - i. The Rezone was based upon insufficient fact finding and analysis by the City regarding impacts to services. Furthermore, the Council did not properly weigh the evidence in opposition to the Rezone against facts supporting the rezone because there were insufficient facts offered into the record that supported the rezone.
 - ii. The subject property is not appropriate for development allowed in the proposed district, and does not reinforce the existing or planned character of the area.
 - iii. The Council found no facts that demonstrated a need for the proposed use at the location, or any facts demonstrating why the property could not be used in accordance with the existing zoning.
 - iv. The Zoning Map Amendment will have a significant adverse impact on property in the vicinity of the subject property by

allowing over 100 units of a banned building type to the benefit of one property owner.

- v. The Rezone specifically created a lack uniformity throughout City zoning districts.
 - vi. The Rezone was a spot-zone that singled out one parcel and directly conveyed the benefit of entitling the now-repealed cottage-court building type to this one, single, property owner.
 - vii. The Rezone was a quasi-judicial proceeding in which the City consistently demonstrated outward bias towards Fenn. In the 900+ pages of communications between representatives of the City and Fenn, the City has demonstrated they will be an active advocate for the project.
 - viii. The Rezone was a quasi-judicial proceeding in which private communications between the City Attorney and Fenn reference a formalized legal “settlement” between Fenn and the City, none of which is reflected in the Council’s public record of decision.
- c. The April 16, 2019 Planning & Zoning Commission recommendation was improper for at least the same reasons indicated in Paragraph 9(a), and for the reasons that it was not supported by substantial evidence, was contrary to state, local, and federal law, was contrary to public policy, and was based upon incomplete and/or inaccurate evidence.

- d. Council failed to address or improperly denied VARD's request for reconsideration for the following reasons:
 - i. No hearing or any kind of action on reconsideration was taken by Council. Instead, the City Attorney issued VARD a 1-paragraph out-of-pocket denial. It is signed by only the City Attorney.
 - ii. In this denial, the City Attorney misapplied the affected persons standard to only apply to the owner of the affected property.
- e. VARD reserves the right to augment and supplement the foregoing issues.

12. A transcript is requested, and pursuant to Idaho Code section 67-5275(1), VARD requests that the Council file a certified copy of the entire record of these proceedings as required by law, including, but not limited to, all pleadings, filings, and written decisions before it or any other agency or entity in this matter, all letters and other written correspondence, all exhibits attached to any correspondence or pleading or filing, petitions, memoranda, staff reports, and other documents, together with transcripts of all hearings and meetings of the Council with regard to the issues herein.

13. The undersigned attorney for VARD hereby certifies that:

- a. Service of this Petition has been made upon the Victor City Council and its legal representative via iCourt and via email.

b. Concurrent with this filing, on July 3, 2019, VARD contacted the Victor City Clerk Michelle Smith and the City Administrator Olvia Goodale to request preparation of transcripts and the Council record. In discussions with the Victor City Attorney that accord subsequently, VARD agrees to pay all applicable fees, including any advance estimate provided by the City.

14. For services rendered, Citizens are entitled to their reasonable attorney fees and costs should they prevail in this action pursuant to Idaho Code Section 12-117 and Rule 54 of the Idaho Rules of Civil Procedure.

Respectfully submitted this 3rd day of July, 2019.

Valley Advocates for Responsible Development

/S/ Anna R. Trentadue

Anna R. Trentadue
Counsel for Valley Advocates for Responsible
Development

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of July, 2019, I caused to be filed and served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

DOCUMENT FILED:

Seventh Judicial District Court, Teton County	<input type="checkbox"/>	U. S. Mail
150 Courthouse Drive, Room 306	<input checked="" type="checkbox"/>	Hand Delivered
Driggs, ID 83422	<input type="checkbox"/>	Overnight Mail
Fax: (208) 354-8496	<input type="checkbox"/>	Facsimile
Email: courtdocs@co.teton.id.us	<input checked="" type="checkbox"/>	iCourt service

DOCUMENT SERVED:

Victor City Council	<input checked="" type="checkbox"/>	U. S. Mail
Victor City Attorney Herb Heimerl	<input type="checkbox"/>	Hand Delivered
10 South Main Street, Unit 101	<input type="checkbox"/>	Overnight Mail
Victor, ID 83455	<input type="checkbox"/>	Facsimile
Fax: (208) 787-2357	<input checked="" type="checkbox"/>	iCourt service
Email: hheimerl@beardstclair.com		

/S/ Anna R. Trentadue

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