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Attorney for Valley Advocates for Responsible Development,

IN THE MAGISTRATE DIVISION 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, ELIZABETH VANCE
TURNER, a VARD member, Driggs resident,
and nearby city property owner,

Plaintiffs,

vs.

DRIGGS CITY COUNCIL, a political
subdivision of the State of Idaho, and
HYRUM JOHNSON, Mayor of Driggs, and
HYRUM JOHNSON in his personal capacity

Defendant.

Case No.: _____

**I.C. § 74-208 COMPLAINT TO DECLARE
ORDINANCE NO. 405-20 VOID FOR FAILURE
TO COMPLY WITH OPEN MEETING AND
DUE PROCESS REQUIREMENTS.**

**CATEGORY FEE: A
FEE AMOUNT: \$166.00**

Valley Advocates for Responsible Development (“VARD”), an Idaho non-profit corporation, acting by and through counsel, respectfully submits this I.C. § 74-208 Complaint to Declare Ordinance No. 405-20 Void for Failure to Comply with Open Meeting and Due Process Requirements (“COMPLAINT”). This Complaint is submitted pursuant to Idaho Code section 74-208 of the Idaho Open Meetings Act, Idaho Code section 10-201 of the Uniform Declaratory

Judgment Act, Driggs Annexation Ordinances 14.10.01-14.10.07, Driggs Public Notice Requirements 14.3.4, Idaho Constitution Article 1 Section 9, and also Idaho Code sections 67-6509, 67-6525, and 67-6525 of the Idaho Local Land Use Planning Act.

This Complaint seeks a declaration that actions taken during the ongoing COVID-19 pandemic by the Driggs City Council (“**Council**”) and Driggs Mayor Hyrum Johnson (“**Mayor**”) are null and void for failure to provide adequate notice and due process opportunities in a public hearing to annex and rezone 11.2 acres of rural wooded lands from Area of Impact Multi-Family (R3) to higher intensity Commercial Mixed-Use (CX) (hereafter referred to as “**The Subject Property**”). This annexation and rezone was known to the City as Application Number AX19-4. The City Council hearing took place virtually via Zoom.com on the evening of April 7, 2020. The City published Annexation Ordinance No. 405-20 in the Teton Valley News on April 29, 2020.

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 of Driggs, Victor, and Teton. VARD staff and members regularly attend and testify in 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 whom declaration is sought is the City Council for the City of Driggs, Idaho, and the Mayor of Driggs Idaho in his professional and personal capacity.

3. The District Court before which this Complaint is taken is the Seventh Judicial District of the State of Idaho, in and for the County of Teton. 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 34 VARD members reside within the City of Driggs (population 1,660 according to the 2010 US Census). Since 2001, VARD has maintained its physical offices within the City of Driggs.

5. Co- plaintiff Elizabeth Vance Turner is a VARD member, Driggs resident, and neighboring property owner within 1,400 feet of The Subject Property. Turner currently lives on her 0.75 acre property at 235 South Main street in Driggs, just up the road from The Subject Property. VARD will submit a declaration stating that Turner was injured when she was denied an opportunity to participate in the April 7, 2020 virtual hearings on Zoom.com because she lacked the technology to participate. Turner timely raised this issue in a letter she submitted to the City in advance of the hearing; she was given no accommodation by the City. The City's publication of the Ordinance 405-20 on April 29, 2020 effectuated this annexation and rezone. Turner is a person whose legal due process rights to present and rebut evidence at hearing were affected by the passage of this municipal annexation ordinance which was first approved at the April 7th hearing.

6. VARD will submit a declaration from Executive Director Shawn Hill, who has been actively tracking this fast-paced annexation and commercial rezone with concern. Hill submitted an email to the City Council and Mayor on March 31, 2020, imploring them to refrain from holding major public hearings during a pandemic when shelter-in-place orders were in effect. Hill also notified the City that just hours before the hearing, there was no information

anywhere on the City's website stating how the public could participate virtually. Hill was injured when he was repeatedly and incorrectly admonished by the Mayor, stating that he was forbidden from contacting the City Council to discuss his concerns. In his emails, the Mayor incorrectly identified the AX19-4 annexation proceeding as quasi-judicial; this was his faulty basis for silencing Hill. However, the City's own Ordinance 10.14.4. identifies the annexation process as legislative. This determination is congruent with well-established Idaho case law. (See, *Black Labrador Investing, LLC v. Kuna City Council*, 147 Idaho 92, 96 (2009) annexations by cities are legislative; *Crane Creek Country Club v. City of Boise*, 121 Idaho 485, 487,(1990) annexation is a legislative act of city government; see also, *Burt v. City of Idaho Falls*, 105 Idaho 65, 68 (1983)). Because annexations are legislative, Hill (and any other member of the public) should not have been silenced; they had the right to contact elected decision makers to discuss their concerns. Hill was also injured when he attempted to participate in the April 7th virtual hearing. The Mayor would not allow Hill to speak on behalf of his organization VARD, until Hill first publicly disclosed his own personal home address in Teton County. Hill provided the physical and mailing address for VARD, but was admonished by the Mayor for not divulging his personal physical address.

7. VARD will also submit declarations from VARD members Bruce Simon and Ciara Thomas who are direct abutters to The Subject Property, owning property right across the street. Simon and Thomas submitted a comment letter in their capacity as developers of the abutting Creekside Meadows development in opposition to this annexation and rezone. As concerned abutters, they fully intended to participate in the public hearings on the annexation and rezone. However, Simon and Thomas were both denied that opportunity to participate in the

April 7, 2020 hearing because they were unaware that it was even happening. They never received notice of the City's serial continuance of the hearings. No information regarding the digital hearing was available to them on the City's website, either.

8. John and Jane Does 1-3 are property owners abutting The Subject Property to the west and north. On information and belief, they had no knowledge of the April 7, 2020 annexation hearing conducted virtually during the COVID-19 pandemic.

9. Even more VARD members live and own real property in the interstices of Driggs's irregular boundaries and in the immediate vicinity less than approximately one-quarter mile of The Subject Property. 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.

10. This Court has jurisdiction over this matter pursuant to Idaho Code section 74-208(6) of the Idaho Open Meetings Act which provides that: "Any person affected by a violation of the provisions of this chapter may commence a civil action in the magistrate division of the district court of the county in which the public agency ordinarily meets, for the purpose of requiring compliance with provisions of this act. . . . Any suit brought for the purpose of having an action declared or determined to be null and void pursuant to subsection (1) of this section shall be commenced within thirty (30) days of the time of the decision or action that results, in whole or in part, from a meeting that failed to comply with the provisions of this act."

11. This court also has jurisdiction pursuant to the Driggs Annexation Ordinance 14.10.01-14.10.07, the due process requirements in the Driggs Public Notice Ordinance 14.3.4,

and also by virtue of Idaho Code section 67-6525 in the Local Land Use Planning Act which requires that all rezone hearings accompanying an annexation must follow the due process requirements in sections 67-6509 and 67-6534 of the Act.

12. Furthermore, this court has jurisdiction under Idaho Rule of Civ. Pro. 57 Declaratory Actions, Idaho Code section 10-1201 of the Uniform Declaratory Judgment Act, and also Idaho Constitution Article 1 Section 9 Freedom of Speech.

13. VARD and its membership are aggrieved by the final decision rendered as a 3:2 majority vote by the Mayor and City Council on April 7, 2020 to approve the annexation. This was done without satisfying the due process requirements that are expressly enumerated in the statutes and ordinances cited above in paragraphs 10-12.

14. Because of the strict 30-day requirement in Idaho Code section 74-208(6) of the Open Meetings Act, VARD submitted this timely Complaint to the appropriate court. Concurrent with this Complaint, VARD is submitting an Appeals Form as required in Driggs Ordinance 14.3.7. The City can take up to 60 days to process an appeal, which is why the Open Meetings Act Complaint Has been filed first.

15. Venue in Teton County is proper before this court pursuant to Idaho Code section 74-208 because all of the Driggs City Council hearings that occurred in this matter were held in Teton County. Moreover, the final decision issued by the Council was issued in Teton County and affects actions, people, and property in Teton County, within the City of Driggs.

16. The heading or case caption from the Board for which this declaration is sought is Application Number AX19-4, with a Notice of Annexation Ordinance 405-20 published in the April 29, 2020 edition of the Teton Valley News.

17. A brief procedural synopsis of the events which occurred in this matter is set forth for the convenience of the Court.

- a. On December 17, 2019 the City of Driggs received an application from Gavin Matthews for an annexation of his 11.2 acres of rural wooded land into the City of Driggs with the request to be zoned for commercial development. It was identified by the city as AX19-4.
- b. On December 25, 2019, and January 1, 2020, the City published a notice in the Teton Valley News, stating that Driggs Planning & Zoning Commission would hold a hearing on AX19-4 on January 8, 2020. VARD timely alerted the City that the notice failed to comply with the fifteen (15) day publication requirement. The city acknowledged the error and re-noticed the hearing on January 22, 2020 and January 29, 2020 to be held on February 12, 2020.
- c. An initial hearing before the Driggs Planning & Zoning Commission was held on February 12, 2020. The outcome of this hearing was a recommendation of approval with conditions.
- d. On February 19, 2020 the City published a notice in the Teton Valley News, stating that City Council would hold a public hearing on AX19-4 at 6PM on March 17, 2020 inside Driggs City Hall.
- e. The only mailed notice stated the hearing on AX19-4 would be held at 6PM on March 17, 2020 at City Hall.

- f. Due to the fast-growing COVID-19 pandemic, Teton County, Idaho issued social distancing guidelines on March 14, 2020 prohibiting gatherings. (see www.coronavirus-response-tetonidaho.hub.arcgis.com).
- g. Two days before the hearing on March 15, 2020, the Mayor issued a decree on the City website stating that he was officially continuing the hearing from March 17, 2020 to March 24, 2020. No quorum of the Council had been called to open this hearing or continue it.
- h. Thereafter, the Mayor issued another decree on the city website, stating he was again continuing the hearing to March 31, 2020. Again, no quorum of the Council had been called to open or continue the hearing.
- i. Idaho Governor Brad Little issued a statewide shelter-in-place order on March 25, 2020 prohibiting gatherings and only allowing "essential government business" to remain open. Numerous city, state, and federal health authorities soon followed suit.
- j. On March 30, 2020 Hill emailed the City Council and Mayor urging them to refrain from conducting major public hearings during a global pandemic. Hill requested postponement of the AX19-4 annexation and rezone hearing citing insufficient public notice and the inability of the public to participate digitally. Hill was rebuffed by the Mayor, who warned him not to contact City Council decision makers: “Please remember that this matter is Quasi-Judicial, and as such there should be absolutely no outside contact with the decision makers.

Failure to abide by this restriction could result in them having to recuse themselves from the decision process.” (Emphasis included in the original.)

- k. On March 31, 2020 Hill sent out an email to the entire VARD membership imploring them to contact the City Council and Mayor, asking them to refrain from conducting hearings during a pandemic. The Mayor contacted Hill individually stating that he was personally removing the City Council from the correspondence but blind-copying them: “City Council was included on my reply via BCC, as that is the policy of the city any time we utilize that address. (Likewise with this reply.) Again, I urge you to refrain from any further contact with the city council, lest they need to be disqualified from the decision.” On information and belief, all members of the public who contacted the City Council and Mayor received the same response as Hill.
- l. A quorum of the City Council convened on March 31, 2020 via Zoom.com. Even just hours before this March 31, 2020 hearing, not one single piece of information on how to digitally participate in the “virtual hearing” was made available to the public, or available on the city’s own website. There was no link made available to the public in order to participate or attend. At this Council meeting, the hearing on AX19-4 was never opened. Rather, the council continued the hearing to April 7, 2020. No information was provided on how people without internet access or sufficient tech capability were to participate.

- m. On information and belief, in the weeks leading up to this hearing, the City repeatedly directed the public not to contact their elected representatives regarding AX19-4, incorrectly citing their mistaken belief that it was a quasi-judicial application.
- n. On April 6, 2020, Turner submitted a letter to both the City Council and the Teton Valley News stating, "I am technologically incapable of participation under the means available to us now for conducting city business the way you are trying to keep this 'ball' rolling." Turner was given no accommodation by the City.
- o. At the April 7, 2020 public hearing, Hill was the only member of the public to participate at the virtual hearing. When Hill attempted to offer public comment on behalf of his organization VARD, the Mayor required Hill to first publicly disclose his own personal home address in Teton County. Hill provided the physical and mailing address for VARD within the City of Driggs, but was admonished by the Mayor for not providing his personal physical address.
- p. During the hearing, the City Council and developer often referred to "the plan," which was ostensibly a site plan provided by the developer to the city council, but was not provided to the public.
- q. The City Council ultimately voted 2:2 on the annexation. The Mayor then broke the tie and cast his vote in favor of annexation.

- r. On April 14, 2020 Simon and Thomas submitted a letter to the City stating their objection to AX19-4, and to complain that as abutters, they had no knowledge of the April 7, 2020 hearing. Their letter was rejected as untimely.
- s. Driggs Annexation Ordinance 405-20 was published in the Teton Valley News on April 29, 2020.
- t. Upon viewing the publication of Ordinance 405-20 in the newspaper, VARD submitted a public records request to the City of Driggs on April 29, 2020 pursuant to Idaho Code sections 74-101 to 74-126 of the Public Records Act. This request included: “All documents, applications, reports and materials pertaining to the recent Matthews annexation and rezone. All forms of communications between the Matthews applicant, his representatives, and all city staff and officials. All intra-city communications between any member of city staff and city elected officials. All public comment and public inquiries submitted to the city, and any communications from city staff and officials to any members of the public. All hearing minutes, hearing recordings, staff reports, Findings & Conclusions, draft ordinances, and final ordinances.” To date the City is still processing this records request, and VARD has received no documents.

18. VARD reserves the right to augment and supplement the foregoing issues, and may file an amended complaint pursuant to Idaho Rule of Civ. Pro. 15 to assert other issues as discovered via their ongoing public records request.

19. The City Council and Mayor received multiple requests from the public and VARD to refrain from conducting major hearings during a global pandemic. They were informed that the City's notice was inadequate notice. More importantly, the City was informed that the public was unaware and unable to participate in this controversial annexation hearing. Yet, the Mayor and City Council made no accommodations or corrections. As such, VARD now asks this court for a declaratory judgment declaring that:

- a. The April 7, 2020 City Council and Mayoral vote to annex AX19-4 is null, void, and without effect.
- b. The adoption of Annexation Ordinance 405-20 on April 29, 2020 is null, void, and without effect.

20. VARD further requests that this court enjoin the City of Driggs from conducting further hearings on this matter until the pandemic subsides and restrictions on gatherings and travel are lifted. Similar "pauses" on public hearings have already been implemented throughout the state including Eagle, Pocatello, Hailey, Boise, Ketchum, Bonner County, Blaine County, and Teton County, Idaho.

21. The undersigned attorney for VARD hereby certifies that service of this Complaint has been made upon the Driggs City Council, Driggs Mayor Johnson in his personal and professional capacity, and the City's legal representative Stephen Zollinger via iCourt.

22. For services rendered, VARD is 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 6th day of May, 2020.

Valley Advocates for Responsible Development

A handwritten signature in blue ink that reads "Anna Trentadue". The signature is written in a cursive style.

Anna R. Trentadue
Counsel for Valley Advocates for Responsible
Development

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of May 2020, 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 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:

| | | |
|--|-------------------------------------|----------------|
| Driggs City Council and Mayor | <input type="checkbox"/> | U. S. Mail |
| % Driggs City Attorney Steve Zollinger | <input type="checkbox"/> | Hand Delivered |
| PO Box 48, 60 South Main Street | <input type="checkbox"/> | Overnight Mail |
| Driggs, ID 83422 | <input type="checkbox"/> | Facsimile |
| Fax: (208) 354-8522 | <input checked="" type="checkbox"/> | iCourt service |
| Email:stephenz@rexburg.org | | |

| | | |
|------------------------------------|-------------------------------------|----------------|
| Hyrum Johnson | <input type="checkbox"/> | U. S. Mail |
| PO Box 48, 60 South Main Street | <input type="checkbox"/> | Hand Delivered |
| Driggs, ID 83422 | <input type="checkbox"/> | Overnight Mail |
| Fax: (208) 354-8522 | <input type="checkbox"/> | Facsimile |
| Email:mayorjohnson@driggsidaho.org | <input checked="" type="checkbox"/> | iCourt service |

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