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May 3, 2023

Via email to: *timc@cityofnampa.us*
Mayor Debbie Kling and Nampa City Council
c/o City Clerk Char Tim
411 3rd Street South
Nampa, Idaho 83651

**Subject: Request for Reconsideration – Greenhurst Square Rezone
ZMA-00171-2022**

Dear Mayor Kling and City Council Members:

Givens Pursley LLP represents Vapor Loft Idaho LLC (the “**Applicant**”) and we respectfully request the City Council reconsider its decision denying the Greenhurst Square Rezone. This request is made under Nampa City Code § 10-2-10 and Idaho Code § 67-6535. The specific decision for which the Applicant seeks reconsideration is the City’s written decision issued on April 20, 2023 regarding the above-listed application (the “**Decision**”).¹

Project Facts.

The Applicant is proposing to rezone the property located at 2310 12th Avenue Road, Nampa, Idaho, Canyon County Assessor No. R0931950200 (the “**Property**”) from BN (Neighborhood Business) to BC (Community Business). The Property is located at the southeast corner of 12th and Greenhurst and consists of a one-story retail building. Current tenants include

¹ The Decision is attached as Exhibit A.

Superb Sushi, Sport Clips, a T-Mobile cellular store, and a vacant space that Vapor Loft proposes to occupy.

The Property is part of a larger area that is zoned BN. This larger BN area includes five parcels in total. The uses on these 5 parcels include 1) the Property (a strip mall), 2) a Big Smoke tobacco shop, 3) a Sinclair service station, 4) a second strip mall, and 5) an Albertsons. Notably, two of the five properties contain uses that are not allowed within the BN zone; neither tobacco shops nor service stations are permitted.

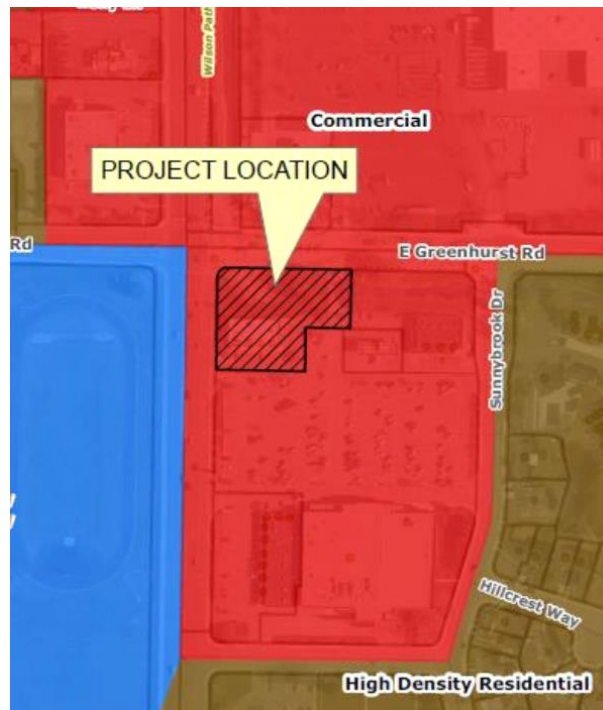
As designed, the Project complies with all City standards in the BC zone. Planning staff and the Planning and Zoning Commission both supported the Project and the Applicant accepted all conditions of approval recommended by planning staff and all commenting agencies. Applicant remains willing to enter into a Development Agreement to limit certain uses or dimensional standards on the Property upon request.

The Rezone Complies with Nampa's Rezone Standards.

Reconsideration of the Decision is warranted in this case because the evidence in the record demonstrates that the rezone request satisfies each of Nampa's rezone criteria listed in Nampa City Code § 10-2-3(C).

1. The proposed rezone is in harmony with Nampa's Comprehensive Plan and Future Land Use Map ("FLUM").

The Property is designated Commercial on the FLUM.



Pursuant to the City's FLUM designation/zoning matrix, below, BC zoning is appropriate in the Commercial designation. In fact, the current zoning, BN, is not allowed within the Commercial designation.

Version 1.5 - January 2023

Future Land Use Map - Land Use Designations

		Future Land Use Map - Land Use Designations									
		Agricultural	Education, Public Administration, Healthcare and Other Institutional	Downtown	Community Mixed Use	Commercial	Industrial	Residential Mixed Use	Low Density Residential	Medium Density Residential	High Density Residential
Zoning Districts	U	University	X	X	X	X		X		X	X
	AG	Agricultural	X								
	RA	Suburban Residential	X								
	RS22	Single Family Residential (22,000 sq. ft.)							X		
	RS18	Single Family Residential (18,000 sq. ft.)							X		
	RS15	Single Family Residential (15,000 sq. ft.)							X		
	RS12	Single Family Residential (12,000 sq. ft.)							X		
	RS8.5	Single Family Residential (8,500 sq. ft.)						X		X	
	RS7	Single Family Residential (7,000 sq. ft.)						X		X	
	RS6	Single Family Residential (6,000 sq. ft.)						X		X	
	RS4	Single Family Residential (4,000 sq. ft.)						X		X	
	RD	SF Detached and Duplex						X		X	
	RD	Triplex and Quadraplex				X					X
	RML	Limited Multiple-Family Residential				X					X
	RMH	Multiple-Family Residential				X					X
	RP	Residential Professional				X		X			
	BN	Neighborhood Business						X		X*	X*
	DB	Downtown Business			X						
	DV	Downtown Village			X						
	DH	Downtown Historic			X						
	BC	Community Business			X	X		X			
	GB1	Gateway Business 1			X	X					
	GB2	Gateway Business 2			X	X					
	GBE	Gateway Business Entertainment		X		X					
	IP	Industrial Park			X		X	X			
	IL	Light Industrial			X		X	X			
	IH	Heavy Industrial					X				
	HC	Health Care		X	X			X			

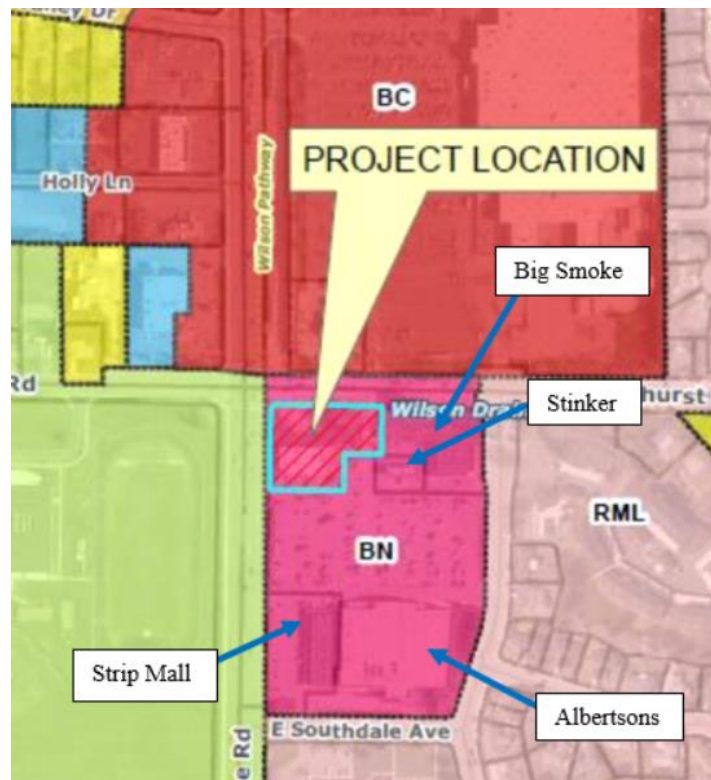
* These uses are limited (See 2040 Nampa Comprehensive Plan 5.4)

A rezone is also consistent with the Comprehensive Plan, which provides for two types of Commercial uses: Neighborhood Commercial and Regional Commercial. Neighborhood Commercial is typically adjacent to local and collector roadways while Regional Commercial is located adjacent to collector and arterial streets. Due to the Property's location at the intersection of two arterial streets, it is most appropriately considered Regional Commercial, which allows for a higher intensity and greater diversity of use.

2. *The proposed rezone provides for a proposed set of uses that would be at least reasonably compatible with existing, adjoining property uses.*

Second, BC zoning is compatible with existing and adjoining uses and zoning. This area of Nampa is already developed and includes more high intensity commercial uses. Importantly, **no residential uses abut the Property.**

- North: The property to the north (across Greenhurst Road) is zoned BC and includes a US Bank.
- East: The properties directly to the east are zoned BN. These properties include a Sinclair service station and Big Smoke tobacco shop. **Neither a tobacco shop nor a service station is a permitted use within the BN zone.** Adjacent to the Smoke Shop property is an apartment complex.
- Northwest: The property across the intersection is zoned BC and includes a Walgreens.
- South: The property to the south is zoned BN and includes a large Albertsons.
- West: Across 12th Avenue is South Middle School. This property is zoned RA (Suburban-Residential).



The Decision provides, “There is a clear intent in the established zoning in the vicinity to maintain the integrity of these separate zoning districts. Allowing more intense and broader BC commercial zoning to creep into the existing BN zoning are would not be compatible with the established BN zoning and uses.”² We request you to reconsider this finding because, although there may have initially been intent to separate these zoning uses, 40% (2 out of 5) parcels in the BN zone contain a use that is not allowed within the BN zone. It is arbitrary to deny this rezone, but to allow other unpermitted uses to illegally exist.

The Decision further provides that a vape shop in this location is incompatible with surrounding uses.³ However, as mentioned above, a tobacco shop already exists within this zoning designation. Additional, tobacco products are sold at the Albertsons, Big Smoke shop, and Sinclair service station, located in the same BN zoning district, and at Walgreens, located across the intersection in the BC zone and directly across from the entrance to the Middle School. The retail sale of tobacco products, including vapes, is entirely consistent with other current uses in the BN zone and general vicinity.

3. The Proposed rezone would establish an area of zoning the same as or compatible with immediately adjoining districts.

The proposed BC zoning will be compatible with adjoining zoning districts. As noted above, the City has made the legislative/policy decision that BC zoning is appropriate in the Commercial FLUM designation, and that BN zoning is inappropriate. In this case, much of the land surrounding the Property is zoned BC. Further, BC zoning better matches the actual uses of several of the surrounding properties, which include a tobacco shop and service station, neither of which is allowed in the current BN zone. The rezone at issue here does not intensify the use of the Property but, rather, allows it to match the surrounding uses.

In its discussion of this criteria, the Decision reiterates that the BC zoning designation is not compatible with the surrounding zoning and diminishes the buffer between the uses.⁴ For the reasons stated above, we request you reconsider this finding.

4. The rezone is not inconsistent with the adopted comprehensive land use map so as to only serve to benefit the applicant.

The requested BC zoning of the Property will not constitute spot zoning because the BC rezone is supported by the City’s Comprehensive Plan and FLUM, and BC zoning is in harmony with the adjacent zoning and uses.⁵

5. The proposed rezone is in the interest of the public and reasonably necessary.

The rezone to BC will be in the best interest of the City and the public because it will allow for development in conformity with surrounding uses, the City’s Comprehensive Plan and

² Decision, page 2.

³ *Id.*

⁴ Decision, page 3.

⁵ See *Neighbors for Preservation of Big and Little Creek Community v. Board of County Com’rs of Payette County*, 159 Idaho 182 (2015).

FLUM while adding to and diversifying the City's economic base. The rezone will allow a wider variety of commercial uses to serve the region on this busy intersection, which is in the interest of the public.

The Decision again focuses on the buffer and surrounding uses in its finding discussing this criteria.⁶ We restate the arguments made herein as to why this finding should be reconsidered.

Failure to rezone the Property is arbitrary, capricious and an abuse of discretion.

Although the BN zoning designation may have been valid at the time of its enactment, "it may become unreasonable and confiscatory in operation by reason of later events."⁷ Here, the BN zoning designation is no longer reasonable. Failure to rezone the Property to a more appropriate zoning designation is arbitrary, capricious and an abuse of discretion because substantial and competent evidence has been presented that (i) the current zoning is not supported by the Comprehensive Plan or FLUM, (ii) the proposed zoning is supported by the Comprehensive Plan and the FLUM, (iii) the Property is located at the intersection of two major arterial roadways in the City; (iv) although the properties adjacent to and in close proximity of the Property are zoned BN, they in fact are used for purposes not allowed in the BN zone; and (v) the rezone does not constitute "spot" zoning.⁸ Given the changes to the area and how the surrounding properties have developed, including two of five parcels being developed with a non-conforming use, it is unreasonable to deny the application for rezone in this instance.

Conclusion.

We look forward to continuing to work with the City on this rezone application, and the Applicant remains willing to enter into a Development Agreement concerning the future use of the Property. This rezone request will allow the Property to be developed similar to other adjacent properties in the direct vicinity, and is in the public interest. We respectfully request that the reconsideration be granted for the reasons stated above.

Sincerely,



Elizabeth A. Koeckeritz

cc: Todd Lakey (via email: todd@borton-lakey.com)

⁶ Decision, pages 3-4.

⁷ *Cole-Collister Fire Protection Dist. v. City of Boise*, 92 Idaho 558, 565 (1970).

⁸ *Id.*

Exhibit A Decision



April 20, 2023

Angie Cuellar
Mason & Associates
924 3rd St S STE B
Nampa, ID 83651
acuellar@masonandassociates.us

Subject: **Zoning Map Amendment from BN (Neighborhood Business) to BC (Community Business) zoning district; and potential development agreement; for the Greenhurst Square project** at 2310 12th Ave Rd (Parcel # R0931950200); totaling approximately 1.03 acres (located in the Nw 1/4 of Section 3, T2N, R2W, BM) for Mason & Associates representing Mikes Place LLC (ZMA-00171-2022).

Dear Applicant:

The following is the decision of the Nampa City Council on the above matter heard before them on April 3, 2023. This letter will stand as the Findings of Fact, Conclusions of Law and Decision required by Idaho Code Section 67-6535. The City Council found that the following conclusions of law apply to your request:

- A. The proposed map amendment(s) is, are or would be in harmony with the city's currently adopted comprehensive plan and comprehensive plan land use map.
 - The land use map designates the property as commercial, so the proposed zoning map amendment is in harmony with the land use map.
- B. The proposed map amendment(s) does not, or would not provide for a proposed use or set of uses that would be at least reasonably compatible with existing, adjoining property uses.
 - The subject property is part of a larger section of property south of Greenhurst Road that is zoned BN (Neighborhood Business). The larger section of BC (Community Business) zoning which allows for a broader and more intense spectrum of commercial uses is north of Greenhurst Road. There is RA (Suburban Residential) zoning and a middle school located across 12th Avenue to the West. The property is bordered by RML (Limited Multiple Family Residential) zoning to the East and South and there are existing commercial uses in the RML zone to the South. There is a clear intent in the established zoning in the vicinity to maintain the integrity of these separate zoning districts. Allowing more intense and broader BC commercial zoning to creep into the existing BN zoning area would not be compatible with the established BN zoning and uses, future and existing high density residential uses in the area and adjacent to this section of BN zoning. The applicant desires to locate a vape

store on the property which is a use not allowed in the BN zone. This use is incompatible with the other appropriate existing and allowed uses on the property and in the area to the residential zoning and middle school to the west and the higher density residential to the south and east on the BN zoning. Furthermore, rezoning the property from BN to BC allows the full spectrum of BC zone uses and not just the vape shop.

- The Nampa 2040 Comprehensive Plan describes neighborhood commercial as small-scale commercial uses which could be directly connected to or within proximity of residential development. Access to these types of commercial developments from residential neighborhoods should be by internal access from a residential dwelling unit, walking, biking or short vehicular trips. Commercial building and environmental footprints will be small in comparison to a larger commercial building complex.
 - The proximity of the property to residential uses supports the Comprehensive Plan description of neighborhood business commercial zoning for this property. The comprehensive plan designation for the property to the south and east is high density residential. The BN zoning creates a buffer between more intense non-residential uses to the north and high-density residential uses which exist and that may exist in the future pursuant to the corresponding comprehensive plan designation.
- C. The proposed map amendment(s) is, are or would make a change on the land use map of the city which would establish an area of zoning that is not the same as or would not be compatible with immediately adjoining districts.
- The Meadowbrook Park Subdivision was approved by City Council as a PUD containing a mix of neighborhood commercial, multi-family and single-family uses. The transition of uses from commercial to residential was designed uniquely and thoughtfully through the PUD process and was approved as such to diminish impacts on neighboring uses. The designation of the subject property and the other property in the BN zone in this location provide separation and transition from the adjacent high density residential uses and zoning. Allowing the broader and more intense BC commercial uses in this BN zoned area is not compatible with the existing BN zoning and diminishes the buffer between the more intense BC zoning to the North and the high density residential uses and zoning to the south and east.
- D. The proposed map amendment(s) is not, are not or would not create a "spot" zone (having a section of one kind of zoning surrounded by another) having no supportive basis per the adopted comprehensive land use map so as to only serve(s) to benefit the applicant(s).
- The subject property is designated as commercial on the land use map.
- E. The proposed amendment is not in the interest of the public and reasonably necessary.
- The proposed additional zoning is not reasonably necessary in the area. There is a large section of BC zoning to the north of Greenhurst Rd. with opportunities for BC commercial uses in those locations as such commercial space is available or becomes available in the future in the existing commercial buildings and BC zoned lands in that area. The interest of the public was well served in

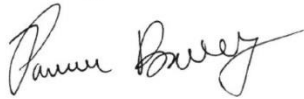
establishing this BN zoned area south of Greenhurst and east of 12th Ave. because it provides a buffer and transition from the more intense and broader spectrum of uses provided in the BC zone to the north and the high density residential uses and comprehensive plan designation to the east and south. It is in the public interest to maintain the existing BN commercial zoning in conjunction with the other zoning in the area as planned when the PUD establishing the zoning was approved. It is in the public interest to not allow BC zoning to gain a foothold in this BN zoned area south of Greenhurst Rd. and diminish the integrity of the buffer that the BN zoning provides for other non-commercial uses and high density residential uses in the area.

Consequently, the City Council voted to deny your zoning map amendment request from BN to BC.

Please note that this decision may be requested to be reconsidered within 14 calendar days from the date of this letter. Either the Applicant or an aggrieved party may file a reconsideration request with the Nampa City Clerk. At the next Council meeting, the Council will determine if they are willing to reconsider the decision, based only on the written communication received as a part of the reconsideration request. If Council determines to reconsider the decision, the ruling would be considered suspended, and the requesting party has 10 days to apply and pay for a new public hearing that will be scheduled for a future date. The 14-day reconsideration request period for this matter will terminate at 5:00pm on Tuesday, May 2, 2023. If a reconsideration request is not filed, the decision will be effective.

If you should have any questions concerning this matter, please contact me during normal business hours, Monday through Friday at 208-468-5446.

Sincerely,



Parker Bodily, AICP
Senior Planner
CITY OF NAMPA
bodilyp@cityofnampa.us

Attachments:
Adopted findings of fact

**BEFORE THE NAMPA CITY COUNCIL
CITY OF NAMPA, CANYON COUNTY, IDAHO**

In the matter of denial of a request for)
Zoning Map Amendment from BN)
(Neighborhood Business) to BC)
(Community Business) at 2310 12th Ave Rd.)
For:)
Mason & Associates)

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND DECISION**

Case No. ZMA-00171-2022

This matter came before the Nampa City Council ("Council") for hearing and consideration on the 3rd day of April, 2023, upon a request filed by applicant Mason & Associates ("Applicant"), pursuant to Idaho State Code Title 50-222(3), Nampa City Code Title 10 Chapter 2(4.C.1), Nampa City Code Title 10, Chapter 2(3.c). Council hereby makes the following findings, conclusions of law and decision on this matter.

I.

RECORD

Council's decision is made from evidence and testimony presented at the hearing on Monday, April 3, 2023.

II.

FINDINGS OF FACT, CONCLUSIONS OF LAW

Regarding the request for the Zoning Map Amendment from BN (Neighborhood Business) to BC (Community Business) zoning district for the Greenhurst Square project at 2310 12th Ave Rd, for Mason & Associates, representing Mikes Place LLC (ZMA-00171-2022) the Nampa City Council denies the zoning map amendment request. In denying the request, the Council finds the following:

- A. The Proposed map amendment is harmony with the City's currently adopted comprehensive plan and is in harmony with the land use map.

- The land use map designates the property as commercial, so the proposed zoning map amendment is in harmony with the land use map.

B. The proposed map amendment(s) does not or would not provide for a proposed use or set of uses that would be at least reasonably compatible with existing, adjoining property uses.

- The subject property is part of a larger section of property south of Greenhurst Road that is zoned BN (Neighborhood Business). The larger section of BC (Community Business) zoning which allows for a broader and more intense spectrum of commercial uses is north of Greenhurst Road. There is RA (Suburban Residential) zoning and a middle school located across 12th Avenue to the West. The property is bordered by RML (Limited Multiple Family Residential) zoning to the East and South and there are existing commercial uses in the RML zone to the South. There is a clear intent in the established zoning in the vicinity to maintain the integrity of these separate zoning districts. Allowing more intense and broader BC commercial zoning to creep into the existing BN zoning area would not be compatible with the established BN zoning and uses, future and existing high density residential uses in the area and adjacent to this section of BN zoning. The applicant desires to locate a vape store on the property which is a use not allowed in the BN zone. This use is incompatible with the other appropriate existing and allowed uses on the property and in the area to the residential zoning and middle school to the west and the higher density residential to the south and east on the BN zoning. Furthermore, rezoning the property from BN to BC allows the full spectrum of BC zone uses and not just the vape shop.
- The Nampa 2040 Comprehensive Plan describes neighborhood commercial as small-scale commercial uses which could be directly connected to or within proximity of residential development. Access to these types of commercial developments from residential neighborhoods should be by internal access from a residential dwelling unit, walking, biking or short vehicular trips. Commercial building and environmental footprints will be small in comparison to a larger commercial building complex.

The proximity of the property to residential uses supports the Comprehensive Plan description of neighborhood business commercial zoning for this property. The comprehensive plan designation for the property to the south and east is high density residential. The BN zoning creates a buffer between more intense non-residential uses to the north and high-density residential uses which exist and that may exist in the future pursuant to the corresponding comprehensive plan designation.

C. The proposed map amendment(s) is, are or would make a change on the land use map of the city which would establish an area of zoning that is not the same as or would not be compatible with immediately adjoining districts.

- The Meadowbrook Park Subdivision was approved by City Council as a PUD containing a mix of neighborhood commercial, multi-family and single-family uses. The transition of uses from commercial to residential was designed uniquely and thoughtfully through the PUD process and was approved as such to diminish impacts on neighboring uses. The designation of the subject property and the other property in the BN zone in this location provide separation and transition from the adjacent high density residential uses and zoning. Allowing the broader and more intense BC commercial uses in this BN zoned area is not compatible with the existing BN zoning and diminishes the buffer between the more intense BC zoning to the North and the high density residential uses and zoning to the south and east.

D. The proposed map amendment(s) is not, are not or would not create a “spot” zone (having a section of one kind of zoning surrounded by another) having no supportive basis per the adopted comprehensive land use map so as to only serve(s) to benefit the applicant(s).

- The subject property is designated as commercial on the land use map.

E. The proposed amendment is not in the interest of the public and reasonably necessary.

- The proposed additional zoning is not reasonably necessary in the area. There is a large section of BC zoning to the north of Greenhurst Rd. with opportunities for BC commercial uses in those locations as such commercial space is available or

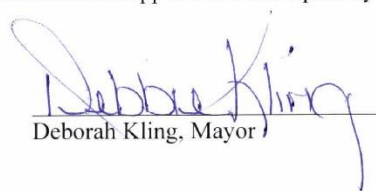
becomes available in the future in the existing commercial buildings and BC zoned lands in that area. The interest of the public was well served in establishing this BN zoned area south of Greenhurst and east of 12th Ave. because it provides a buffer and transition from the more intense and broader spectrum of uses provided in the BC zone to the north and the high density residential uses and comprehensive plan designation to the east and south. It is in the public interest to maintain the existing BN commercial zoning in conjunction with the other zoning in the area as planned when the PUD establishing the zoning was approved. It is in the public interest to not allow BC zoning to gain a foothold in this BN zoned area south of Greenhurst Rd. and diminish the integrity of the buffer that the BN zoning provides for other non-commercial uses and high density residential uses in the area.

III.

DECISION

The Council, based upon the testimony and evidence in record in this matter and upon findings of fact and conclusions of law set forth herein DOES HEREBY DETERMINE AND DECIDE AS FOLLOWS: the request for Zoning Map Amendment from BN (Neighborhood Business) to BC (Community Business) zoning district; for the Greenhurst Square project at 2310 12th Ave Rd (Parcel # R0931950200); totaling approximately 1.03 acres (located in the NW 1/4 of Section 3, T2N, R2W, BM), is DENIED.

These Findings of Fact, Conclusions of Law and Decision are approved and adopted by the Nampa City Council on this 17th day of April, 2023.


Deborah Kling, Mayor

Attest:


City Clerk

NOTICE TO THE APPLICANT

You are hereby notified of the following:

Pursuant to Idaho Code §67-6519(4) you are entitled to request that the City of Nampa conduct a regulatory takings analysis pursuant to the Idaho Regulatory Takings Act (Idaho Code §67-8001 et seq.)

Pursuant to Idaho Code §67-6535, your conditional use permit request was evaluated under, Nampa City Code Title 10 Chapter 3, Nampa City Code Title 10 Chapter 1, Nampa City Code Title 10 Chapter 13, Nampa City Code Title 10 Chapter 14, the City of Nampa 2040 Comprehensive Plan, the Local Land Use Planning Act (Idaho Code §67-6501 et seq.) and other applicable law.