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VIA EMAIL

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Jonathan Shipman
Reno City Assistant Attorney
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Re: Mater Academy MUP24-00010 Tied Vote of Appeal by Reno City Council

Dear Messrs. Hall and Shipman:

As you are aware, this Firm represents XL Charter Development (“Applicant”) with respect to the Minor Conditional Use Permit (“MCUP”) for MANN-Mater Academy Lemmon Valley Campus (MUP24-00010) (the “Application”). This letter outlines the effect of the Reno City Council’s (“Council”) tied 3-3 vote on July 24, 2024, concerning the Washoe County School District’s appeal of the Administrator’s grant of the MCUP.

During the July 24th Council meeting, it was noted a tied vote causes the public hearing to be placed on the next regular agenda of the Council for rehearing, pursuant to Rule 8.12 of the Rules of the Reno City Council. However, this procedure is inequitable and creates an unfair advantage to an appellant. A tied vote should be deemed a denial of an appellant’s appeal because the appellant bears the burden of proof when appealing a decision of the Administrator.

If an appellant cannot garner a majority vote, but only a tie vote, Rule 8.12 is tantamount to granting an appeal, or perhaps more accurately, granting an injunction against the applicant who has obtained an entitlement through the Administrator’s approval. Injunctive relief is an extraordinary remedy under the law. *See, e.g., Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22, 129 S. Ct. 365, 376, 172 L. Ed. 2d 249 (2008). Furthermore, injunctive relief requires a showing of a likelihood of success on the merits. An appellant who can only muster a tie vote is not indicative of a likelihood of success, particularly where the City Council’s appellate review of the Administrator’s decision is “to determine whether the Administrator committed an abuse of discretion” as provided for by Reno Municipal Code Section 18.08.307(j)(1)(d)(1).

Specifically, it appears that the appellant benefits from an indefinite delay tactic, which could encourage attempts to continuously secure tie votes to frustrate an applicant’s development plans. Such a design could inadvertently incentivize nefarious conduct, undermining the principle that the appellant must meet the burden of proof and secure four votes to overturn an administrative

decision. Further, this pseudo injunction also creates a delay that conceivably could last into perpetuity if City Council members are absent or invoke an abstention, thereby depriving both an applicant and appellant from obtaining a final decision from the City Council for purposes of judicial review.

Although distinct and different from the City Council's Rules, Article V, Section 11 of the Revised By-Laws of the City of Reno Planning Commission states "[a] tie vote will result in a denial of the motion. If a motion is denied, another motion may be made." Although this matter was before the Council, the Planning Commission's Bylaws provide a clear and equitable rule whereby a tie maintains the status quo of the administrator's approval, effectively denying the appeal without a majority vote, and allowing a party to promptly proceed with an appeal to the City Council, and then ultimately for judicial review.

Rule 8.12 should, even if deemed unambiguous on its face, must be interpreted to avoid an absurd result that does not advance the legislative purpose. There are myriad reasons why a seven-member Council might not have enough members who could be present at a meeting to vote on an appeal so as to result in a final decision subject to judicial review. Rule 8.12 creates an open ended window. It should be interpreted similar to the Planning Commission's bylaws to avoid such absurdity—i.e., reading the ordinance so it makes sense—is what the "avoid absurdity" doctrine requires. *Platte River Ins. Co. v. Jackson*, 137 Nev. 773, 778, 500 P.3d 1257, 1262 (2021).

We urge the City Attorney's Office to reconsider its interpretation so as to prevent against a pseudo injunction against the Applicant who obtained a valid approval from the Administrator based upon the presentation of substantial evidence in support of its MCUP Application. Appellants' failure to garner a majority vote is tantamount to having its appeal denied.

Sincerely,

KAEMPFER CROWELL



Severin A. Carlson

SAC/krl

cc: Mayor Hillary Schieve (schieveh@reno.gov)
Client