



# Memo

To: Mayor and Hayden City Council

From: Lisa Ailport, City Administrator

Date: April 20, 2026

**Agenda Item: Consider Viking Construction Request for Reconsideration Hearing of the Appeal of Staff Determination for Extraordinary Impact assessment.**

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## **Agenda Item Location**

New Business

## **Background and Recommended Action or Motion**

The action to be taken on this agenda item is to consider whether council would consider a reconsideration of its previous decision of February 24, 2026, wherein the Council denied the requested appeal of the City Administrators' decision.

Draft motions include:

**I motion to reconsider, at a future council meeting, the matter of Viking's denial of the administrative appeal.**

**I motion to deny setting a reconsideration request at a future council meeting. *Note: not taking a motion is also deemed to be a denial of the reconsideration request.***

Pursuant to Hayden City Code, §1-1-6:

A. Reconsideration: Every applicant or affected person seeking judicial review of the city council's final decision must, within fourteen (14) days, first file with the city council a written petition for reconsideration of the council's decision, specifying deficiencies in the written decision for which reconsideration is sought.

1. The city council may reconsider its decision only if it finds any of the following:
  - a. There was a clerical error in the decision;
  - b. The decision resulted from fraud or mistake;
  - c. There is new evidence for the record or a change in circumstances;
  - d. There was a procedural error;
  - e. The council previously rejected the application by a tie vote; or
  - f. The decision was made in violation of substantive law.

2. The city council shall review the petition for reconsideration at its next regular meeting and decide whether to reconsider the matter. If the city council grants reconsideration in whole or in part, a hearing before the city council will be scheduled to address the specific deficiencies identified by the applicant or affected person, which shall be conducted pursuant to the public notice procedures set forth in section [11-12-4](#) of this code. The issues examined upon reconsideration shall be limited to issues raised by the petition for reconsideration and the record previously established, as well as the applicable law. The cost of all required notices shall be borne by the party(ies) seeking reconsideration of the decision and paid in advance.

3. Following the hearing on the reconsideration, the city council may affirm, reverse, or modify, in whole or in part, its' prior decision and shall provide a written decision to the applicant and the affected person(s) within sixty (60) days of receipt of the request for reconsideration. If the city council fails to timely decide, the request for reconsideration is deemed denied.

B. Judicial Appeals: After a notice of decision is issued, or after a revised notice of decision is issued under a reconsideration proceeding, any aggrieved party with standing to appeal may appeal the decision to a court of competent jurisdiction.

**Functional Impact of Authorizing or Not Authorizing**

Authorizing this action means staff will place on the next available council agenda the request for reconsideration. Not authorizing this action maintains the February 24, 2026, decision by Council.

**Fiscal Impact**

This action does not have a fiscal impact.

**Budget Funding Source / Transfer Request**

N/A

**Attachment**

April 8, 2026, Petition by Viking Construction

**BEFORE THE CITY COUNCIL OF THE CITY OF HAYDEN  
STATE OF IDAHO**

**IN THE MATTER OF THE WRITTEN DECISION RE: VIKING CONSTRUCTION  
APPEAL EXTRAORDINARY IMPACT DECISION FOR BATTLEGROUND  
SUBDIVISION**

**VIKING CONSTRUCTION, INC.,**  
Petitioner.

**PETITION FOR RECONSIDERATION**

Viking Construction, Inc. (“Viking”), by and through counsel, petitions the Hayden City Council for reconsideration of the City Council’s written decision entitled “Written Decision Re: Viking Construction Appeal Extraordinary Impact Decision for Battleground Subdivision,” approved on February 24, 2026 (the “Decision”). This petition is submitted under Hayden City Code section 1-1-6 and is a required prerequisite to judicial review.

**I. TIMELINESS**

1. Viking received the signed written Decision by email on March 25, 2026.
2. This Petition is timely because it is filed within fourteen (14) days after Viking first received the signed written Decision.
3. To the extent the City contends the fourteen-day period began to run earlier, Viking objects because it did not receive a signed copy of the written Decision before March 25, 2026, and could not reasonably be expected to identify deficiencies in a written decision it had not received.

**II. BACKGROUND**

1. The Decision states that Viking timely appealed the City's extraordinary impact findings dated March 24, 2025, for the Battleground Subdivision.

2. The Decision further states that at the January 27, 2026 hearing, Viking asked that the matter be remanded to the City Administrator based on two legal issues: first, that the transportation impact analysis showed the affected intersections would reach failing levels of service due to overall city growth regardless of the Battleground Subdivision, and second, that Viking is required to pay only its fair share but the decision assigned 100% of the intersection improvement costs to Viking.

3. The Decision quotes Condition 8 from the preliminary plat approval, including that the developer "shall enter into a separate cost share and proportionate reimbursement agreement."

4. The Decision also states that City legal counsel explained that a proportionality analysis would occur only when the City was prepared to fund the improvements because the City has limited impact fee funds and substantial transportation infrastructure deficiencies.

5. The Decision then denies Viking's appeal.

### **III. GROUNDS FOR RECONSIDERATION**

Viking seeks reconsideration on the grounds of procedural error, mistake, and violation of substantive law.

#### **A. The Decision is legally deficient because it upholds the extraordinary impact determination while deferring the required proportionality analysis.**

1. The Decision acknowledges Viking's argument that the City's extraordinary impact decision assigns 100% of the intersection improvement costs to Viking, even though Viking is required to pay only its fair share.

2. The Decision does not reject that legal point on the merits. Instead, it states that a proportionality analysis would occur only later, when the City is prepared to fund the improvements.

3. That is not a lawful basis to deny the appeal.

4. If the City may impose or maintain an extraordinary impact obligation, it must determine the proportionate share attributable to the development. A decision that upholds the extraordinary impact determination while postponing proportionality to an indefinite future date is incomplete and violates substantive law.

5. Timing and funding constraints on the City's side do not eliminate the requirement to determine the development's proportionate share before enforcing or maintaining an extraordinary impact obligation against Viking.

6. Reconsideration is required so the City Council can correct the Decision and either:

(a) determine Viking's proportionate share now based on the existing record and applicable law;  
or

(b) reverse the denial of the appeal and remand the matter for a lawful proportionality determination before any extraordinary impact obligation is imposed or maintained.

**B. The Decision is inconsistent with Condition 8 of the preliminary plat approval.**

1. The Decision quotes Condition 8 of the Battleground written decision of approval.

2. Condition 8 expressly contemplates a "separate cost share and proportionate reimbursement agreement" identifying transportation infrastructure required to be constructed and reimbursement that may be applicable.

3. The Decision nonetheless upholds the extraordinary impact decision without requiring any actual cost-share or proportionate reimbursement determination at this stage.

4. The Decision therefore fails to apply its own stated condition in a legally coherent way.

5. If Condition 8 governs, then the City must determine cost share and proportionality. If the City has not done so, the appeal should not have been denied.

**C. The Decision fails to resolve the central issue raised in Viking's appeal.**

1. Viking appealed on the specific ground that the extraordinary impact decision improperly assigned all intersection improvement costs to Viking rather than limiting Viking's obligation to its fair share.

2. The Decision does not actually decide that issue. It merely postpones it.

3. A final decision must decide the issue presented. It cannot deny the appeal while leaving the dispositive issue for another day.

4. This is procedural error and also renders the Decision arbitrary because it does not square the result with the reasoning stated in the Decision itself.

**D. The Decision fails to address Viking's argument that the project does not create an extraordinary impact within the meaning of the governing law.**

1. The Decision states that Viking argued the affected intersections would reach failing levels of service due to overall city growth regardless of the Battleground Subdivision and therefore the project does not meet the definition of an extraordinary impact.

2. The Decision does not meaningfully analyze or resolve that argument. It states only that the City Council denied the appeal and found the matter to be in accord with the standards of Hayden City Code and the comprehensive plan.

3. That conclusory statement is not an adequate resolution of the legal issue Viking raised.

4. Reconsideration is warranted so the City Council can address whether the record supports a finding that Battleground itself causes an extraordinary impact, as opposed to contributing in some measure to broader systemwide deficiencies caused by overall city growth.

**E. The Decision should be corrected to avoid prejudice to Viking in future proceedings.**

1. As written, the Decision leaves Viking in an untenable position. The appeal is denied, yet the amount of any lawful obligation remains undetermined and deferred to an unknown future date tied to the City's funding readiness.

2. That structure is prejudicial because it purports to resolve the appeal while reserving the key legal and financial determination for later.

3. Reconsideration is necessary so the City Council can enter a decision that clearly states what has been decided, what has not been decided, and what legal standard governs any future action.

**IV. REQUEST FOR RELIEF**

Viking respectfully requests that the City Council:

1. Find this Petition timely;
2. Grant reconsideration of the Decision;
3. Vacate the denial of Viking's appeal;
4. Reverse the extraordinary impact decision, or in the alternative remand the matter for a lawful determination of proportionality and cost share before any extraordinary impact obligation may be imposed or maintained;

5. Clarify that Viking cannot be required to bear 100% of the identified intersection improvement costs absent a lawful determination that such amount reflects Viking's proportionate share; and

6. Grant such other relief as is just and proper.

DATED this 8th day of April, 2026.

**FENNEMORE CRAIG, P.C.**



Peter J. Smith IV, ISB #6997  
Attorneys for Viking Construction, Inc.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 8th day of April, 2026, I caused a true and correct copy of the foregoing **Petition for Reconsideration** to be served by electronic mail upon the following:

**City of Hayden**

Attn: City Clerk

asanchez@haydenid.gov

**Fonda Jovick**

Legal Counsel for the City of Hayden

fjovick@lclattorneys.com



Jody Evans