



Planning & Development Services

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Historic Preservation Commission

Hearing Minutes of May 12, 2008

Commission Members Present Jennifer Stevens, Chair, Scott Chandler, Cathy Sewell, Barbara Dawson, Betsy McFadden, Bonnie Burry, Stephen Smith, Katherine Forsythe

Members Present Sarah Schafer, Julie Archambeault, Teresa Sobotka, Nicki Heckenlively

DRH08-00067 / Susan Graham and the North End Neighborhood Association, Inc. (NENA) / 1102 W. Hays Street

Appealing a staff level approval for a temporary parking lot on property located in an R-3HD/CD (Multi-Family Residential with Historic Design Review in a Conservation District) zone.

SARAH SCHAFFER: This application before you is an appeal by Susan Graham and the North End Neighborhood Association on the YMCA's request to place a temporary offsite parking lot on property located at 1102 West Hays Street which is located in an R-3 HD CD District which is a Multi-Family Residential with Historic Design Review and Conservation District overlay which means it has a lot of different regulations. The application property is located between 11th and 12th Streets and between Hays and Fort. The portion of the site that is within the Historic District is this northern portion. They're also proposing to develop this portion of the block as well with temporary offsite parking. I'm going to go through some site photos first so we're all familiar with the area. This is standing on the middle of the site on the paved alley looking towards the north so you can see the homes on the north side of Fort Street and a portion of the vacant lot which will be developed into the temporary parking. These are the other homes across Fort and the remainder of the vacant lot. As you can see there are currently "No Parking" signs up so that we're not getting any parking on this portion of the lot at this time. You can see the development of the multi-family residential on the block adjacent. This is a single-family structure that is south of that multi-family. This would also be west. The church that is looking towards the south of the structure and this is the remainder of the block which would also be developed as temporary offsite which is not a portion of the Historic District. This is the site. It would be all of this that would be developed. Looking at the intersection of 12th and Fort. Looking west along the alley. This is just to show that there's currently (*inaudible*) in place. There are overhead utility lines. There's no site lighting currently at this location. However, there is site lighting on...the portion of the block not being developed is temporary offsite parking. It currently has a paved parking lot on it. It does have vegetation and lighting for the property. This is looking at the

intersection of 11th and Fort. This is looking south on 11th Street. Looking at the proposal of the applicant they are looking at constructing a temporary offsite parking lot. It will be placing parking off of the alley as required by ACHD. Any time we have a gravel lot they do require a 30 ft. apron for driving so that hopefully that gravel is left on that 30 ft. apron and not within the public right-of-way. So at the locations where we're entering the site we have those portions of pavement as would be required by the Ada County Highway District parking. They are looking at saving an evergreen that's not in very good condition, but it's one of the only ones contributing on the site. They also have one here that is completely overgrown and it's not in a healthy condition. Staff is recommending approval to remove so we can get spaces in there. As part of the application they're looking at putting in perimeter landscaping along with the irrigation to maintain that landscaping. They're will be some site lighting that would be involved with the application as well as wheel restraints. This drawing looks a little bit at how the site drainage would work. Because they are putting in gravel there's a lot less concern. If it was paving there would be a lot more information on the sloping of the pavement and how all of that water would be treated. Because this was an appeal of a staff level decision this hearing tonight is open for discussion on everything. The Commission gets to make their own Findings in regards to the application. Staff reviewed the application for you as a change in use application. When looking at a change in use in the Historic District there are two Findings that you need to make. The first Finding is that the request supports the Boise City Comprehensive Plan, goals, objectives and policies that are contained in the Chapter 5 which is the Parks, Recreation and Cultural Resources and the applicable Neighborhood Ordinance. The objectives of Chapter 5 for the Boise City Comprehensive Plan relating to Historic Preservation are:

Objective 1: Identify, study and designate the City's Historic and Culturally significant buildings and sites.

Objective 2: Protect, enhance and preserve Boise's designated Historic landmarks, properties and districts.

Objective 3: Promote public understanding and appreciation for Boise's Historic heritage.

Objective 4: Coordinate with other government entities, private groups and persons to integrate historic preservation and urban conservation into Boise's Comp Planning process.

Staff believes Objectives 1, 3 and 4 are not relevant to the proposed use of the property. However, the use of the property located at 1102 West Hays is not in conflict with the Boise City Comprehensive Plan. The property is proposed for a temporary parking lot and the lot is non-contributing as there are no structures on the property. The property will be enhanced through the addition of perimeter landscaping and irrigation as part of the recommendations to City Council through this Conditional Use Permit which Staff has provided you copies of. To step back a little bit from this application, this application is also going through a special use exception through the Planning and Zoning Commission up to City Council. On a special exception the Planning and Zoning Commission only makes a recommendation to City Council who gives the final approval on a project. That does not come from the Planning and Zoning Commission. As part of that in our Ordinance we require that before any approvals of any other application are given that the Certificate of Appropriateness be issued. Therefore,

we are here tonight to issue the Certificate of Appropriateness prior to this application going to...to issue it or not issue it based on what your recommendation is prior to this application going to City Council. As part of that recommendation the Planning and Zoning Commission has recommended conditions of approval. One of those recommended conditions of approval to City Council is that the perimeter landscaping be maintained once the temporary parking lot use is removed. As part of the removal of that temporary use you will see the removal of the wheel strips as well as the removal of the on-site lighting for the parking area. The second finding that the Historic Preservation Commission needs to make in regards to the change in use application is that the request will be congruous with the historical, architectural, archeological, educational and cultural significance to the District. If the offsite temporary parking lot were to be a permanently improved surface parking facility Staff believes the request would be incongruous with the District as it would provide permanent improvements that would conflict with the adjacent residential properties. Because the property is of temporary nature for the facility the conditions to remove the improvements which would denote the area as parking and the installation of perimeter landscaping that would be required through the Condition Use permit or through the Certificate of Appropriateness, Staff believes that the temporary request for parking would be congruous with the District and that the landscaping would provide some screening of the parcel which is currently not there as well as improvements which would help the neighborhood. Currently the vacant lot is more detrimental to the Historic District than the proposed use which would add some vibrancy to this specific parcel providing additional foot traffic to the neighborhood allowing some additional visibility of the area. Upon final development of the lot the structure will be of new construction which will be required to go through the public hearing process and through approvals with the Historic Preservation Commission. Staff is anticipating that the area will be developed as residential units which would provide additional life and vibrancy to the area. Furthermore there are currently no development application proposals into the City for development of this property. The temporary use would not hinder any future permanent uses that could go on the property. Staff believes that the applicant has met the requirements for the change in use findings as set forth in our Ordinance. Additionally this application is before you because it is an appeal item. The items that the applicant has submitted for appeal is that Staff's determination is clearly in err and is a form of favoritism. There was no memorandum submitted as part of this appeal so Staff had to analyze this ground for appeal fully on the sentence that the applicant has submitted. Staff believes that the determination for the Certificate of Appropriateness for the lot would have been different if the lot was a permanent lot. However, because of its temporary nature and the fact that it would bring some vibrancy to the neighborhood by additional pedestrian circulation in the area Staff does believe it would be beneficial to the neighborhood. In evaluating the change in use, who the applicant is, is irrelevant. We don't look at who the applicant is to make our determination on whether a project is approvable or not. We base that off the findings and the guidelines we have in place. Staff is unsure of how the approval of the temporary parking lot would show any form of favoritism. The second ground for appeal was that the determination is arbitrary, capricious and violates Boise City Codes 11-02-06.4, 11-02-06.5, 11-02-08 and Boise City Code Section 2-18-9 and is unlawful delegation of the legislative authority to the City applied City Council. No additional information was submitted by the appellant on this item. Staff starts her analysis with information from Idaho Code. It gives the City Council the authority to establish Boise City Code 2-18-9 allowing us to establish the Historic Preservation Commission as well as the Ordinance to guide the decisions of the Historic Preservation

Commission. Staff has also submitted additional information which talks about what the governing body is made up of and to recommend ordinances and otherwise provide information for the purpose of historic preservation to the County or the City government bodies. I have also gone through and cited the section which they believe we are in violation of. Staff believes Boise City Code allows for some applications to be given to Staff and to process the decision matrix was adopted by the Historic Preservation Commission and the City Council, but it does not address the longer term temporary uses. It does state that seasonal uses may be processed at the Staff level. Even if the Commission believes that they should have been the decision makers on this application this application is now being brought before you for a determination and because it is a fully new hearing you do have that ability now. Therefore, the appellant will have full due process and the opinion of the entire Commission will be taken into consideration. A third ground for appeal is that the proposed use is illegal and is a form of spot zoning and is prohibited by the Idaho Land Use Planning Act. Though the use is not outlined allowed by the Zoning Ordinance, Boise City Code 11-06-08 does allow for special exceptions. Additionally this zoning issue will be taken up by Boise City Council. The fourth ground for appeal is that the process employed by the City violates due process of law. Staff cited Boise City Code Section 2-18-9 C, which states that some applications can be processed at the Staff level and any changes in zoning classification or change in use shall be issued a Certificate of Appropriateness. Prior to any final decision being made on a special exception as Certificate of Appropriateness will be acted on by this Historic Preservation Commission. Also when Staff issued their decision to issue the Certificate of Appropriateness a radius notice and a notice of decision was sent out per the Boise City Code. I have included a copy of that in your documents. It states that when the appeal period ends...which is how we had actually received the appeal and this document. Staff has complied with all due process requirements of the Boise City Code. In conclusion Staff believes that the application for the temporary offsite parking lot does meet the change in use findings that are set forth in Boise City Code and that the appeal should be denied based on the fact that there were no errors made by Staff and that Staff did follow due process and that the use proposed for the lot is not illegal.

COMMISSIONER DAWSON: Who actually owns this property? We don't have an affidavit of interest in our packet.

SARAH SCHAFER: The property is actually owned by the church and they have signed an affidavit of legal interest to allow the YMCA to process the application on the site.

CHAIRMAN STEVENS: I have a question about your report in regards to whether or not this is a permanent versus a temporary use? Your statement in the report, as well as just now, is that if this had been a permanent request that it would not be congruous. With a permanent use it's still the same use so I'm not sure what your objection is to a permanent use that you don't have the same objection as a temporary use.

SARAH SCHAFER: A permanent use would take away the ability for this parcel to ever be utilized as residential which is what we've always perceived for this area. Because we currently don't have any development applications in the process to provide that residential use in this area, allowing the property which is currently weeds and bare dirt to be utilized as a temporary parking lot with conditions and with improvements being made to the site...Staff

felt that was very appropriate. It wasn't taking away further development that maybe a more permanent parking lot with asphalt, paving and drainage would.

CHAIRMAN STEVENS: So it's not the parking that you're objecting to?

SARAH SCHAFER: It would be the temporary versus permanent nature of the parking that I stated I'd be objecting to. The more permanent asphaltting or concreting would be a concern in taking away that additional development that may come down the line.

CHAIRMAN STEVENS: So it would be the rezone you'd be objecting to...if it was permanent it would be basically rezoning it...correct?

SARAH SCHAFER: I believe with all the ordinances that are in place we would have to rezone it and use the ordinance amendments to allow a permanent parking lot in this area.

MS. SOBOTKA: Rezone is Planning and Zoning and you folks for the change in use.

CHAIRMAN STEVENS: I'm trying to understand how temporary parking is congruous but permanent parking isn't.

MS. SOBOTKA: I'm fine with that, but you jumped over...

COMMISSIONER SEWELL: Sarah, if this temporary lot is approved then would that whole block section become parking?

SARAH SCHAFER: That is correct. This whole block for the temporary term of the parking would all be parking.

COMMISSIONER SEWELL: Does the YMCA have plans in place to provide...it looks like there are 122 stalls that they're adding. Are there plans to construct some kind of parking facility?

SARAH SCHAFER: The reason this application came forward is because the offsite parking lot the YMCA currently has approval to use is owned by the Boise Cascade building. They are in the process of constructing a parking structure. In order for them to build the parking lot they have a surface lot which they have to move their employees from and take back the lease on this property for the duration of the construction of the parking structure. Therefore, displacing the YMCA's offsite parking...and the need for the YMCA to find some temporary use. That's why it's just for the shorter term. Once the parking structure is built the YMCA can have their current offsite parking lot back and the temporary lot can go away. That's how the YMCA came to need to find some offsite parking.

CHAIRMAN STEVENS: In reading through the P&Z hearing and the things that they outlined one of the things that they said was that the YMCA needs this offsite parking to operate or something along those lines. It wasn't too terribly long ago that the YMCA only had the parking lot that's adjacent to the structure that the YMCA operates in. When there was temple across the street and they didn't have that lot and it was only a few years ago that

they started using the Boise Cascade lot. I'm curious from a City standpoint is there...am I hearing you say that if they don't have offsite parking they have to shut down or aren't they because it's grandfathered in or does it have to comply with some sort of parking requirements that I'm not aware of? It didn't before so I'm curious.

SARAH SCHAFER: I am unsure as to how or why they came about using the lot that belongs to Boise Cascade. I don't know if it was a requirement of the City that they find additional parking to be able to actually support the needs of their facility or if it was something they did voluntarily. I don't know how that came about. It is my understanding that the City does have concerns with the fact that if we can not find additional offsite parking that there are going to be problems with the use of that structure. I don't know exactly how that is supposed to be working out at this point.

COMMISSIONER SMITH: Is the lot only going to be used by employees of the YMCA or is it to be used by patrons also?

SARAH SCHAFER: It's supposed to be used by both.

COMMISSIONER SMITH: Is the lot going to be used on Sunday by the First United Methodist Church?

SARAH SCHAFER: It is not supposed to be. It is supposed to be solely used for the members of the YMCA.

COMMISSIONER SMITH: Is there any chance of it being used by students of Boise High School to park?

SARAH SCHAFER: It's not supposed to.

COMMISSIONER SMITH: Is there going to be any enforcement?

SARAH SCHAFER: That's something that the Planning and Zoning Commission debated quite a bit. Staff has actually spoken with the applicant a lot about different ways that they could do reinforcement. I do believe they are going to have a YMCA staff member patrol the area and try to make sure that it isn't students that are parking in the area and that it's not church members that are parking in the area. We tried discussing ideas like tags so that if you didn't have a tag in your window then they'd know it wasn't a YMCA member however, because there were a lot of protocol issues with that as well. Do you require them to walk over to the YMCA, grab a tag, walk back to the parking lot, put the tag in and walk back to the YMCA to workout...walk back and forth? Do you just issue that to certain members because then you have to over issue? There were a lot of problems with how the tag system would actually work and be something that would be productive for the area.

COMMISSIONER DAWSON: The little blank space over there in the lower left hand corner is currently a parking lot and that belongs to the church...does it?

SARAH SCHAFER: That is correct.

COMMISSIONER DAWSON: How do they monitor who goes there and who doesn't go there?

SARAH SCHAFER: I don't know how the church monitors that. All I know is that when I was out today I saw that they had a sign that was for the church parking. I'm not sure that they monitor it would be my guess.

COMMISSIONER BURRY: How long is the temporary use?

SARAH SCHAFER: The Ordinance allows for a possible two-year use with three one-year time extensions. However Condition of Approval number 2. recommended from the Planning and Zoning Commission to the Boise City Council is a term of 15 months from the date of Council's approval or until the time that alternative parking becomes available whichever is shorter.

COMMISSIONER BURRY: If within that 15 month period a project came in line with that could that effectively bump that out...do they have rights to 15 months no matter what?

SARAH SCHAFER: My understanding from this Condition of Approval is something that City Council could always change but the intention is that its 15 months period. There's no time extensions allowed and that's what you get. However, they could always go back to the Planning and Zoning Commission or City Council for the request.

COMMISSIONER BURRY: For the time extension?

SARAH SCHAFER: They could go back to City Council and ask for the extension.

COMMISSIONER BURRY: Could we give a recommendation to City Council?

TERESA SOBOTKA: This is frustrating because there are apples, oranges, pears, apricots and all sorts of things here. You really need to focus on the apple which is the change in use for the Historic District. Now regarding the question and condition though you bring up an excellent question because Staff just said, "Go with what Planning and Zoning said". If you feel this is a change in use and in doing that you have to look at what you mean by temporary use and do you feel what would be congruous if anything. In deciding what's congruous if anything you need to look at what conditions you would put on. Maybe you would say a 3-day approval...I don't know. You're having to look at change in use and what conditions you feel are appropriate. Planning & Zoning Conditions...she's telling you what Planning & Zoning would recommend to City Council. You get to decide yourselves if the change in use is appropriate at all and then deciding it would only be appropriate with the following conditions where put on. You may agree with what she recommended...you may disagree.

COMMISSIONER CHANDLER: Assuming that this moves forward and it's approved for 15 months and in 15 months this, for whatever reason, comes back in to be approved again...an extension...would it go through the exact same process as far as through the various

Commissions? Would we be hearing it again under the same circumstances or is an extension going to be something that just follows into place.

TERESA SOBOTKA: Again, that depends what conditions you put on it. If you just say follow whatever conditions Planning & Zoning does then it probably would just follow in place. If you say we'll only approve this for 15 months and then if they want extensions then they'd have to come back to you. The Code says that you're actually first in line. Any change of use has to come to you first. That's the reason it's critical for you all to decide whether you want to agree with the change in use and what conditions you'd want to put on before it ever went to City Council at all. You can go first it just happens that they held the recommendation first but in actuality you have to be first.

COMMISSIONER CHANDLER: It was stated earlier that the United Methodist Church is not planning on using this on Sundays under any circumstances?

SARAH SCHAFER: They are supposed to be. It's supposed to be a temporary offsite parking lot for the YMCA.

COMMISSIONER CHANDLER: So there would potentially be some sort of physical restraints put in place so it doesn't become a defacto church parking lot on Sundays?

SARAH SCHAFER: I don't know the YMCA's hours, but if the YMCA is open on Sundays then they'd utilize the parking lot.

CHAIRMAN STEVENS: The church has its first service at 9:00 and the YMCA doesn't open until 10:00.

SARAH SCHAFER: We could put a condition in place for that.

CHAIRMAN STEVENS: Since I happen to belong to the YMCA I know their hours. I'm there a lot. I wanted to ask Sarah and I hope you don't take this as argumentative...I understood your argument on it but I didn't know where it came from with regard to the Comp Plan. On Page 10 you talk about the vibrancy and life to the area with pedestrians walking through the neighborhood to get to the YMCA...I'm just wondering if there's any place in our Comp Plan that comes from or if that was something that you think or is it based on something that I don't see in our Comp Plan.

SARAH SCHAFER: Objective number 2 in our Comp Plan under Chapter 5 was to protect, enhance and preserve Boise's designated landmarks, properties and districts. Staff felt that with some kind of use in that area and providing the pedestrian circulation to the area that would come from people walking from their cars to the YMCA and back. People stopping and chatting that it would help enhance that area a little more than just a blank site. That was Staff's determination and thought process for saying that it did meet the Comp Plan.

COMMISSIONER SEWELL: So Boise Cascade currently owns the lot that the YMCA uses and they have plans that are in place going through the process to put in some kind of...

SARAH SCHAFER: They're about to if they haven't already obtained a building permit.

COMMISSIONER SEWELL: Once that project is complete then the YMCA gets to utilize that parking as it does now...the same amount of stalls?

SARAH SCHAFER: That is Staff's understanding.

COMMISSIONER SEWELL: You also mentioned that the temporary lot...the timeline...you indicated something about the applicant can see alternative parking locations?

SARAH SCHAFER: That they can seek alternative locations for the temporary lot?

COMMISSIONER SEWELL: Let me step back for a second. I guess my concern with putting a temporary lot here is that it's primarily a residential neighborhood and that there are a number of surface parking lots south of the YMCA...I'm not sure who owns them or what their hours of operation are but those are more appropriate locations for cars than on Hays and Fort which are already fairly busy. My question was whether or not any other alternative locations had been looked at?

TERESA SOBOTKA: Planning & Zoning did look at other ones and you're welcome to review their minutes if you so desire. Whether there are alternatives out there are not before you. It's just simply where you can get this application. There may or may not be alternatives that work for them or don't work for them. That's their problem. Your job is to see what works in historic preservation.

Commission Disclosures

COMMISSIONER SMITH: I am a member of the YMCA. I know Mr. Erstad from Lacrosse but we have never discussed this issue and yes I can be fair. I have also driven by the lots four times a day for months.

COMMISSIONER BURRY: I was a member of the YMCA. It seems like I joined and then I never go. I have not talked with anyone about this. In fact, I'm embarrassed that I know so little about it. I can absolutely be objective.

COMMISSIONER MCFADDEN: Like Commissioner Burry I am a member of the YMCA and never go. You always go (*referring to Chairman Stevens*). I do know Cliff. We worked together. I helped consult a little bit on a project we did together. That was a couple years ago. I feel like I can be completely impartial as I know very little about the issue. I can be impartial but understanding the issues is another matter. I have not spoken to anybody about this particular application.

CHAIRMAN STEVENS: I'm a member of the YMCA and that's the easy one. I also used to sit on the Board of the North End Neighborhood Association and chaired the Historic Preservation Committee of the North End Neighborhood Association. I want to say I was a member of that board from 2002 until 2005. In addition to that, my husband works with the current President of the North End Neighborhood Association Board which doesn't have any

impact on anything other than I want to disclose it for the record. I have not had any discussions with that President, but so it is. I actually testified in front of Planning & Zoning back in, whatever year it was that this came before Planning & Zoning. I'm not entirely sure if I testified in front of City Council regarding the structure that was proposed for that lot by the Church. All of that said I do believe I can be fair and objective in this situation. I think it's a very different situation than we were facing back in 2003. I feel I can be fair and objective but I look to my fellow Commissioners to make a motion allowing me to participate in tonight's hearing.

TERESA SOBOTKA: What about the fact that you're a regular member of the YMCA...does that affect you in anyway?

CHAIRMAN STEVENS: I would say that my equal participation in both sides makes me about as fair and objective as a person can get. I don't feel that impacts my opinion. In fact I feel very unopinionated about this.

TERESA SOBOTKA: You haven't talked to anybody on either side?

CHAIRMAN STEVENS: I have not.

COMMISSIONER CHANDLER MOVED TO ALLOW CHAIRMAN STEVENS PARTICIPATION IN THE DISCUSSIONS AND VOTE ON THIS ITEM.

COMMISSIONER SEWELL SECONDED THE MOTION.

ALL IN FAVOR. MOTION CARRIES.

COMMISSIONER CHANDLER: My family is members of the YMCA and I wish I used the YMCA a lot but I don't. My wife is an employee of the YMCA as a preschool teacher. She knows absolutely nothing about this. I've not discussed it with anybody at any point. I do feel like I can be impartial as far as the discussion on this. I'm very familiar with the property having driven by it for years and drove by it again just yesterday. I'm familiar with the variety of the people involved and do feel as though I can be impartial.

TERESA SOBOTKA: Your wife receives money from the YMCA?

COMMISSIONER CHANDLER: She is a preschool teacher at the YMCA and she does not know anything about this application. The reason I can state that is not because I've asked her but because I know if there were a parking issue that was to come up she'd tell me about it if she knew anything.

TERESA SOBOTKA: I need to tell you that if her financial interests are tied to the YMCA that probably puts you in a direct conflict of interest.

COMMISSIONER CHANDLER: She hardly gets paid anything.

TERESA SOBOTKA: There are many types of conflict of interest but the most direct one that can catch you is if someone from your family is receiving financial benefit. It does greatly concern me. You can decide if it is de minimis and if you do decide its de minimis you need to really articulate it because I think you're on the line here.

COMMISSIONER CHANDLER: I have no problem recusing myself from it. I would like to participate in the discussion but either way it's not a problem. The last thing I want to do is to have it be an issue as far as the decision that's made here. I would have absolutely no problem recusing myself if that is the recommendation of council.

TERESA SOBOTKA: Unfortunately it is the recommendation.

COMMISSIONER CHANDLER: I'm recused.

COMMISSIONER SEWELL: I am a member of the YMCA and I go. I bike and drive. I knew nothing of this project. I must say I've never had to utilize the adjacent lot across the street so the outcome of tonight's hearing and this application will not have any bearing on my use of the YMCA or anything like that. I have had no contact with anyone in regards to the application.

TERESA SOBOTKA: Does that fact that you are a member of the YMCA and use it regularly influence you in any way.

COMMISSIONER SEWELL: No.

COMMISSIONER DAWSON: I'm not now nor have I ever been a member of the YMCA. I have no acquaintance with anyone who belongs to the YMCA except my fellow Commissioners...who some use and some don't. I don't believe that I've spoken to anybody about this issue. I did go to the site and look at the ground. I did look at the yellow tapes around there. I don't feel that there's any issue as far as my being fair in determination.

MICHAEL JONES (Attorney representing Susan Graham and the North End Neighborhood Association): We come here because the neighborhood has an issue. I've listened to the disclosures that everybody has made and I'm going to ask you to rethink your disclosures because I'm not going to tell you what I'm going to do because I filed suit today against the City of Boise to stop this project. I talked to counsel and we're going to go ahead with this hearing. I'm here mostly for a special appearance to preserve the record on appeal if this administratively goes forward. If you think you have any conflicts and don't want hear this, this is the time to recuse yourself because it may become an issue on court review.

COMMISSIONER SMITH: Why's it going to be an issue?

MICHAEL JONES: Because I might make it an issue.

COMMISSIONER SMITH: That's not my question. My question is tell me why it's an issue.

MICHAEL JONES: I'm just asking you to...

COMMISSIONER SMITH: No. You just said something to the Board. I want an answer as to why it's an issue.

MICHAEL JONES: Because I'm taking you at your word that you can be fair and impartial. That's not been demonstrated to me yet by the City of Boise and that the City of Boise, in this process, can be fair and impartial.

COMMISSIONER SMITH: We are an independent board of citizens last time I checked. If you want to make a statement that we are not impartial I would like specifics please. Otherwise, I think you need to withdraw your statement because it's improper.

CHAIRMAN STEVENS: We're not in court. I know we have two lawyers that want to do that...

MICHAEL JONES: I'm making my record for an appeal and that's my job. It's not here to be argumentative. It's to present my case.

TERESA SOBOTKA: The Chair asked you if you had any objections. Do you have any objections?

MICHAEL JONES: At this point and time with the Commission disclosures I have no objections. I'm just asking if you have any objections and have further disclosures then please do so. Based on what I've had before me I have no objections to the Commission being fair and impartial. Again, I'm here not to be argumentative but here to protect the neighborhoods and the historic districts within the neighborhoods. This is not an issue about the YMCA. This is not an issue about the First United Methodist Church and parking in the Near North End Conservation District. This is about process and due process within the City of Boise. This application is unlawful and it's a special exception. This is in the Near North End Conservation District where parking lots are prohibited. It's a prohibited use. There's no temporal timeframe on it. It is a prohibited use. It's not a special exception. Under Idaho Code special exceptions are only allowed when there is a conditional use approved for that area or allowed. Parking lots in the Near North End Conservation District of any duration are prohibited uses...unlawful use...illegal. Second point is that the YMCA is requesting a variance for the 600 ft. setback continuancy area for the parking lot which is not allowed by Idaho Code as a variance. Not one of the delineated items for a variance so it is again an unlawful use. Unlawful application...we believe that this undue form of favoritism and that this came and pressure or influence was applied from the Mayor's Office to the Planning Director to accept this application after he had originally rejected it. Discovery will determine the true nature of that. The determination that the City has made is arbitrary and capricious. They said it was a special exception. They, in our opinion, purposely went through the special exception process to avoid this coming to the Historic Preservation Commission first. City Code says this application should have been before you first. The Certificate of Appropriateness first did not happen. It only came to you for a hearing based upon the appeal. Planning & Zoning in their determinations which has no jurisdiction over historic appropriateness made a finding of fact and determination that this would be a staff level

determination. That's wrong. So we've got a process that's out of character for what I understand the City's policies, statutes and ordinances to be. It violates due process as outlined in Boise City Code as far as the notice requirements go. The mailing to the North End Neighborhood Association was misaddressed and misdelivered.

COMMISSIONER SMITH: And the harm was what? You keep saying...making very broad statements about violations of due process, arbitrary and capricious...what's the harm? We're here. Make your presentation. I would like to hear something on the merits instead of...

CHAIRMAN STEVENS: Let's let him finish and we can ask him specific questions.

MICHAEL JONES: As I say I'm trying to lay the record out for my administrative review and court action Mr. Smith.

COMMISSIONER SMITH: I understand that, but we're here to make a decision not your record.

MICHAEL JONES: I appreciate that.

CHAIRMAN STEVENS: He has 20 minutes so let's let him have his 20 minutes.

MICHAEL JONES: I do not have to demonstrate harm at the Historic Preservation Commission. All I have to demonstrate is not an allowed use in the Historic Preservation Commission. It doesn't satisfy the Historic Preservation Commissions guidelines, policies, and practices that a Conservation District of the Near North End is encompassed as part of the Comprehensive Plan and prohibits this type of use within the neighborhood. It is detrimental to the surrounding neighborhood. Parking is not an allowed use. We're going to have offsite drive-thru through the neighborhood that it's going to be impacting. The traffic analysis is inadequate at best. I cannot find it in the record. It's cited by ACHD but I've not been able to find it in the record. The harm is that it's going to be detrimental to the Historic District and the process that the City's employed by circumventing Historic Commission review after they've already had it through Planning & Zoning it's going to be detrimental to all the rest of the historic districts. The special exception, particularly when it can allow prohibited uses is detrimental to the neighborhood. This would allow any type of use upon a finding that there's no harm and citizens can't afford that. They can't afford to hire attorneys to review every application that comes before the City. With that in mind on my determination I believe the Findings of Staff are clearly erroneous. It's a prohibited use. The determination is arbitrary and capricious because of how it is being processed. It's a form of spot zoning because it allows a use that otherwise wouldn't be allowed within the zone. It's allowing a parking lot where a parking lot is not allowed by code. It's allowing a use for a special use for a special agency which is, "good for the community" which we don't know what that means because there are no standards in place by City Code. It's clearly illegal. It's not a special exception...it's a prohibited use. It's not an appropriate use for a historic district. The process is flawed and the neighbors and the neighborhood find it as a conflict to their quiet use and enjoyment of their property. With this type of process in place other uses that are now clearly prohibited could be allowed upon the right application or special circumstances

which we have not been able to find because of inadequate standards in City Code. With that I conclude my remarks and will sit for questions.

COMMISSIONER SMITH: You have made a couple statements that the parking lot is detrimental to the neighborhood. That's a very broad statement. Please specify for me exactly how it's going to be detrimental.

MICHAEL JONES: The Near North End Conservation District has made that determination that parking lots in this neighborhood are detrimental. It's not my opinion it is the opinion of the City Council and the adoption of their ordinance. Parking lots are detrimental to residential use and detrimental for public safety.

COMMISSIONER SMITH: So you're saying that all parking lots in the Near North End Conservation District are detrimental. Is that what you're telling me?

MICHAEL JONES: Yes I am.

COMMISSIONER SMITH: So all of them should go away?

MICHAEL JONES: No. The ones that are permitted...we're talking about new unlawful prohibited parking lots that are detrimental.

COMMISSIONER SMITH: So the new parking lots are detrimental, but other parking lots are not detrimental?

MICHAEL JONES: That's by City Code. Yes sir.

COMMISSIONER SMITH: I'm asking if it is your organizations opinion that the other ones are okay. That they are not detrimental?

MICHAEL JONES: That's not part of my argument and that's not part of position with you. I am asking you to enforce the Boise City Code, the Near North End Conservation District that prohibits new parking lots in the Near North End of any type of nature. Parking lots is a use. There's no temporality based upon the definition of land use in the Boise City Code. It is the use that is prohibited. Parking lots in the Near North End Conservation District that are new, nonconforming are not prohibited. That's been a finding by the City that those are detrimental to the neighborhood.

CHAIRMAN STEVENS: I understand your comments about the due process due to the staff level application that was granted. I want to know for the record if you feel you are getting due process now?

MICHAEL JONES: I have not seen the determination yet. I believe you're having a process and it's an after the fact process that has been created to alleviate or allow because there was an objection. We could have had the neighborhood had we had proper notice that an application was pending before the Historic Preservation Commission initially.

CHAIRMAN STEVENS: So you have a problem with the process? But are you getting the time you need now to state your objection?

MICHAEL JONES: I can state my objections but the reason I can state the objections is because I saying there's a denial of due process. To grant due process properly you would have to provide notice to the people within 300 ft. of this area that you're having a Certificate of Appropriateness review, have a proper neighborhood meeting where they can attend and where the neighborhood association has some ability to get them to come here and participate. It's not at the appeal process where you're getting the due process. Now you're putting the finger in the dike...or laying on the track to stop what's already cleaned out of Planning & Zoning. It was scheduled and the public notice was in the newspaper for a public hearing before City Council when we filed the appeal. They had already filed the notice of public hearing before the appeal process had ended. I don't think that's due process. And they rescheduled it. Yeah.

CHAIRMAN STEVENS: If you could address the change in use and your thoughts on the change in use regarding it going from a vacant empty field which is what it is today to a temporary use.

MICHAEL JONES: When we had the objections to the demolition of the historical structures on the house that that would be never be used as parking. It would be a grassy park area that would be irrigated with grass, flowers and landscaping so it would be attractive to the neighborhood. That was the presentation the Methodist Church presented to the neighborhood. That never happened.

CHAIRMAN STEVENS: If you could start out by stating if you have any objections to the disclosures that the Commissioners have put on the record.

DAVID DURO (Representative for the YMCA): I do not. I'm I limited in scope of my testimony or what I say?

CHAIRMAN STEVENS: Absolutely not. It is entirely up to you how you spend your 20 minutes.

DAVID DURO: I'm going to do my best to give you a little background information that I think the Commission might be lacking about the project itself. I realize this is a question about process. I'm not familiar with the process. I'm not an attorney and I'm not a developer so I don't really know the process. I do know the YMCA and I do know how important this temporary parking is to us. One of the questions I heard is why do we need extra parking when there's a significant remodel that took place at the downtown YMCA in about 2000. Since that time we have about tripled our membership. There are 14,000 members at the downtown YMCA and in January we had 63,000 visits in the month to that facility. What that illustrates to me is there's a great need for programs for families and kids in the North End. In fact, we've been serving the North End, the City of Boise and the community of the Treasure Valley since 1891 so we think we are an important part of the fabric of what happens in the community. We don't want to have this application in front of you, in front of Planning & Zoning or in front of City Council because we really don't want to build parking lots.

We're forced into this by a lease that we lost and at this place it is 98 of our total 232 parking spaces. Roughly that's a lot of parking places. For us to not have those spaces we feel like it is going to have a very detrimental if not catastrophic affect on our business and our ability to serve the community. The YMCA is 501 C3 not for profit organization. Nobody but the community benefits from our activities. No one is ever denied access to the YMCA due to inability to pay. We're there for everyone whether they pay or not and we think when people come to the YMCA good things happen. The project Cathedral placed in 2002...it was not our project it was the First United Methodist Church. We didn't have anything to do with it. We did hear that there was going to be underground parking as part of it. We're very interested in that because we recognize that parking in the Downtown area and North End area is going to be tough and we're trying to address that on a long term basis so that we're not back asking for anything but conforming uses for parking in the future. As we have had these discussions we have been told that's it's a 10 month construction project for Rafanelli & Nahas which is the interest who owns the old Boise Cascade building which is now Boise Plaza. They are the ones constructing the garage and they told us it was 10 months. We knew that this process through Planning & Zoning that there was a 24 month limitation that was our original ask so we that we wouldn't have to come back. Planning & Zoning in their hearing said 15 months or until other parking is available. That's great for us because we don't want to park over there. It's not convenient for our members. They will park there. We think we're an important service. We think people will park and walk to get to the YMCA but it's not as easy as where we are now. If there was any other plan we would definitely be pursuing it. I feel like we have turned over every stone, looked behind every tree to find alternative parking. We currently share parking. We share parking with the First United Methodist Church with Boise High, and with the First Presbyterian Church because we think parking lots aren't the greatest thing for the North End either. We want to maximize their use. As long as they are constructive let's have everybody use them and share them. We think that's the way to be a good neighbor. Nobody pays rent to one another in any of those circumstances by the way. Monitoring is important and has proven effective. You can bet since this project has come up we have increased our monitoring of our lot. Both the lot that we lease and the lot immediate adjacent to our building and we've towed a few people. You're thinking...Boise High students...we have towed some Boise High students. We've also towed some adults who have parked there and walked to their business location. They don't park there anymore because it's fairly expensive to get your car out of a towing situation. We think that face to face talking to the violator is a good way to go that's consistent with our business ability relationships with one another. We like to talk to them and let them know their in violation before we tow their car. This whole thing about the North End Neighborhood Association and the First United Methodist Church...I have personally been to two different North End Neighborhood Association meetings. One before anything was heard by any City body and one afterwards trying to really talk about how this lot is very important to us, how it's a temporary use, how we're very committed to that. The YMCA really wants to be a good neighbor. We've been here since 1891. We don't think the need for YMCA's is going away. We think it's increasing. We can read the paper and I think we'd all agree that the need for organizations like the YMCA is increasing. We're going to be working with a lot of different bodies including our neighbors and City for a long time to come. We want to make sure we do things right. The YMCA did commission a meeting between the North End Neighborhood Association or representatives of including Mr. Plum in the back of the room, the President, Kevin McGowan, and Molly Leary, a board member at

large and members of the First Methodist Church, including their head pastor and a member of their Board of Trustees and the person in charge of their future development to try and talk about how we can make this project of benefit to the entire community. We drafted an agreement that started with the church agreeing with some things that they were going to do in case this temporary parking comes to pass. Even some things that they would do in case the temporary parking doesn't come to pass. One of the things we agreed upon or talked about doing and all three organizations were willing to work towards was a community garden in the landscape buffer. I really don't think that has anything to do with this application or this process or lack of process. What I do think it has to do with is when people want to make their community better organizations and people can work together to make that happen. When it takes those people talking together and willing to work together and willing to work to make their community a better place to live...those kind of solutions are out there. I wish everybody thought that way. All we can do is try to bring people together. Someone said they rode their bike to the YMCA. I wanted to mention that we're big fans of alternative transportation. We sponsor our employees to ride the bus and pay for their bus passes. We have a ton of bike parking that gets used by us and Boise High School and others. We love that. In fact, if it wasn't for alternative transportation to our location we'd really be out of luck. The YMCA of the USA recommends that we have 382 parking spaces for a membership or building our size. We have 232 and the only way we get by is encouraging to walk and really asking our staff to work together. Staff does not park in the lots. We have parking that we trade with the Presbyterian Church on 14th and Hays and our staff park there and walk in to the location. This parking lot is costing us \$100,000. That is the first bid we've got on doing the work. We'd much rather spend that \$100,000 somewhere else. If we could get away without the lot we'd be doing it. It's a big expenditure for us. It's very important to us that we're good stewards with that money because it's not our money it's the community's money. We'd much rather sponsor more kids to go to camp or to childcare or families that could come to the YMCA that couldn't afford it. Without losing that percentage of our parking lot and our ability to park patrons it will have a much greater financial effect than \$100,000. Our membership income revenue size is almost 3 million dollars. If we take a third or half of the parking and we start to erode that membership base it will significantly impact the resources we have to serve the community. With that I'd be glad to answer questions if that's next in the process.

CHAIRMAN STEVENS: I don't believe you had any other parking other than the lot adjacent to the structure until three years ago. I'm wondering what's changed other than this raise in membership which you said was kind of a result of the 2000 remodel. What's changed? Has the City put some sort of onerous on you to get more parking spots or what exactly has occurred there that you feel like you need to have 232 spots.

DAVID DURO: The membership has grown and these numbers are going to be a little off so forgive me that, but we've more than doubled the number of members. One of the things that we did is we really listened to the members and listened to the community and in 2004 when we significantly changed our pricing structure so that membership came much more affordable to middle income. We always did a great job serving the low income because we provide all kinds of financial assistance and in fact in the Treasure Valley we'll provide 4 Million dollars worth of financial assistance this year alone. That change in our membership fees really made the YMCA more accessible to more people. We thought that was very

important for a number of different reasons. Not the least of which are our values which we try to champion and model and incorporate to everyone, which are honesty, respect, and responsibility. The other thing the YMCA is a part of a collaborative across the nation working to help people become more fit. As you all know obesity and the health care crisis...the way Americans are living their lives are actually killing them. The YMCA is really trying to step in and make sure that more people have access to preventative health practices.

CHAIRMAN STEVENS: I need to stop this because believe it or not, Commissioner Chandler's disclosure about his wife being an employee nor Mr. Jones' scare of additional disclosures out of us didn't do the trick...it wasn't until Mr. Duro came up and started talking about the YMCA's mission that I recalled that I used to be an employee. Oddly enough. I haven't been for a long time but I don't know if that changes Legal's opinion.

TERESA SOBOTKA: How long is a long time?

CHAIRMAN STEVENS: About 2003 I want to say. I worked there for about a year.

TERESA SOBOTKA: And you have received no financial benefits at all? You don't get reduced membership?

CHAIRMAN STEVENS: No, nothing. I apologize that I didn't remember. I'm surprised you didn't say something (*directed at Mr. Duro*). Maybe you don't remember either.

TERESA SOBOTKA: The fact that you worked there would not influence your decision whatsoever?

CHAIRMAN STEVENS: No more than having been on the North End Neighborhood Association Board and argued against this at P&Z. My history with this is obviously very complex.

TERESA SOBOTKA: I think you need to ask your fellow Commissioners whether they feel that's de minimus or not. You need to ask Mr. Jones how he feels about it. The other thing is I need all of you to focus on whether or not the application...the change in use is congruous or incongruous with the Historic District.

CHAIRMAN STEVENS: I apologize. Your thoughts on my working with the YMCA?

COMMISSIONER BURRY: I don't have a problem with it all. You have an open mind and you've certainly had experiences on both ends of this which would make you very fair.

COMMISSIONER MCFADDEN: I agree with Commissioner Burry. I think that pretty soon we could all be recused. It wouldn't be too hard when I think about...already we've lost Scott who's a wonderful sounding board.

CHAIRMAN STEVENS: It doesn't sound like the Commission has any addition and I'm very sorry to do this during the middle of your testimony.

TERESA SOBOTKA: I need a specific motion.

COMMISSIONER MCFADDED MOVED THAT CHAIRMAN STEVENS PAST EMPLOYMENT WITH THE YMCA IS DE MINIMUS AND SHE SHOULD BE ALLOWED TO VOTE ON THIS APPLICATION.

COMMISSIONER SMITH SECONDED THE MOTION.

ALL IN FAVOR. MOTION CARRIES.

TERESA SOBOTKA: Let these guys finish their testimony and then let's bring Mr. Jones back before you start deliberating.

DAVID DURO: Chairman Stevens, can I ask you for a clarification. I think I've heard you say a couple of times that you were on the North End Neighborhood Board and argued against this.

CHAIRMAN STEVENS: I argued against something on this property. Which was obviously a very different situation than what we have proposed tonight.

DAVID DURO: Thank you for that clarification.

Commissioner Burry: If this land was not available to you what would you do? This could very well not be available because its use is for many different things and if the economy was a little better it wouldn't be so what would you do if it weren't there for a temporary use?

DAVID DURO: That's a great question. I hope we're not going to find the answer to that. We've got a communication piece prepared to go to our members that talks about this process and this availability. We have among the different things we've tried to do is lease additional parking at above market rates. We've got a plan that we would participate in that elevates the football field and track at Boise High School and puts parking underneath it. That's about a 10 million dollar project. Just as a guess...really want I think we would do is we wouldn't just test the patience of our members and see what comes out. We do annually we survey our members. Randomly we hire a research firm and parking is always the number one dissatisfier of our members...lack of parking. As I said, I apologize for being here and keeping everyone so late. If there is a different answer we have not found it. We do have a drawing that's in front of ACHD that vacates the right-of-way at 11th Street and we'd remove sidewalks and landscape in that area and expand across. That nets us 29 spots. We don't really like the plan as well. It removes landscapes and sidewalks and we really don't want to be in that business either. We are as we said trying to turn over every stone.

Chairman Stevens: I'll ask you this and I don't expect that the answer is going to be yes but with regard to parking that far away isn't there ample street parking if you're going to get that far from...I went to Boise High and I know that parking there can be difficult but if you're getting as far away as the block between Fort and Hays on 11th and 12th it seems to me that there's ample street parking there if your members are going to have to go that far.

DAVID DURO: I believe that's regulated parking. I wouldn't be able to say that factually, but I know the whole surrounding area is residential permit parking only. It's Zone 1 and Zone 2 so it's really not an allowable use. One of our concerns frankly is that if we don't go forward with this project and we've eliminated 98 out of 232 spots and we don't have a process for how those are going to be used we're going to have a lot of people out on a lot of different streets in the North End driving around looking for parking. That will attrite we believe as people drop their memberships and quit consuming services and those kind of things we think it will be detrimental to that entire area if we don't have a designated place where people can go and park because we'll have people surfing throughout the whole neighborhood trying to find a place on the street in a lot in a non-conforming use. For a number of years we had a dirt lot that is where the house was removed for some reason and it might have been the lot that Boise High actually that we use which is immediately west of 11th Street. That is a Boise High owned lot and it was dirt parking and it was not controlled and people just parked everywhere. Students, teachers...it was kind of a mad house. We do have some experience with folks looking for a place to park.

CHAIRMAN STEVENS: Do you believe that parking in a residential district and having another parking lot is detrimental to a historic neighborhood?

DAVID DURO: I believe that it's a complex decision. My own belief is the benefit of having it on a temporary basis outweighs any detrimental affect to the neighborhood. When I try to objectively evaluate what the YMCA does for people on an everyday basis and weigh that against 15 months or less of parking there the benefit of the YMCA far outweighs any detrimental affect to the neighborhood. The last North End Neighborhood Association meeting I was at...the first presentation was from the neighborhood officer on graffiti. There was quite a bit of concern from the neighbors on graffiti and other illegal activities in the neighborhood. My thought was, "Boy, if a big part of the YMCA goes away and graffiti will be the least of your worries".

TERESA SOBOTKA: I need to make sure that you're comfortable that you have enough for making a Finding on whether or not this is congruous with the District.

COMMISSIONER MCFADDEN: Staff's recommendation for this says, "Approval with conditions". They're not saying to approve the appeal? The application is for the appeal? It's one of those double-negative things were I'm not quite sure. I'm confused.

TERESA SOBOTKA: They recommended a change in use be made from...

COMMISSIONER MCFADDEN: "They" meaning Staff?

TERESA SOBOTKA: "They" meaning Staff from blank lot with nothing at all in them to a temporary parking lot. That is what has been appealed to you. If you agree with Staff then there will be a change in use and you will find it congruous with the Historic District. If you disagree with Staff...why did you find that congruous with the Historic District? That's what the whole focus is on. Whether or not it's congruous with the Historic District. Is it going to be detrimental to the Historic District or i.e. incongruous or is it going to be congruous? Mr.

Jones made a few reasons why it would be incongruous and Ms. Schafer made a few reasons why it would be congruous and I'm suggesting before you go much further make sure that you have plenty from your applicant on those issues.

PUBLIC TESTIMONY

WESTON SCHWETTE (Erstad Architects): I'll retract my signature.

MICHAEL JONES: I want to apologize if I made the comment that I had scared everybody...that wasn't my intent.

CHAIRMAN STEVENS: I didn't mean it that way.

MICHAEL JONES: I'm disclosing about the law suit. I want to have a disclosure if there's anything else that the Commissioners have forgotten so I'm not surprised later. It didn't work. People took offense. Everybody's on edge. As far as I know from all the disclosures that everybody on the Commission has made I don't have any problem sitting and deliberating in a fair and impartial manner. As long as everything that you've disclosed is true and accurate and there's nothing you're hiding from me I'm fine. I don't have any problem with that.

CHAIRMAN STEVENS: Thank you.

ANDY ERSTAD (Applicant / Erstad Architects): I'm actually identified as the applicant but Mr. Duro is so much more eloquent than I. There are two things I want to make sure everyone is clear on. The overriding umbrella ordinance has a provision in its structure that allows for special exceptions for situations such as this. A special exception is an exception to the ordinance and the provisions in the ordinance...any portion of that ordinance that allows any of the governing bodies to make a determination on a temporary basis that something, while it may not be consistent under a special exception with a time limit is an allowable and acceptable use. I know that's under dispute, but the ordinance has to have a relief valve. Otherwise we would have a totally black and white community. There would be no questions. I want to make sure that everyone is comfortable under the fact that you do need to understand or look at the temporary use on this parcel of property which I believe is actually congruous and know that within the special exception of the ordinance those provisions you are able to make such Findings. As David Duro indicated the YMCA is not in the business of spending hundreds of thousands of dollars...in this case \$100,000 to approve a parking lot unless it is absolutely necessary. We have no other options at this point. The North End Neighborhood Association suggested that we go and negotiate and approach all of the various churches...that was done long before NENA even came out with that suggestion. In fact that was done in order to not even to have to be in this position. Somebody suggested that you should force them into that type of relationship. This is America. You can not force somebody into leasing you parking or letting you use their ground if they do not want to. Each of the churches that we talked to and approached looked at their needs and rightfully so must protect their needs and didn't feel they could give an open ended lease on those parking spaces. The YMCA has bent over backwards in all good faith and stewardship of their funds and their patrons to try and make this thing go away. It's not going away. The First United

Methodist Church was approached and they felt that it was a temporary basis and a reasonable request and agreed to allow the YMCA to do that.

STAFF REBUTTAL

SARAH SCHAFER: There are a couple of additional things I'd like to put on the record for you tonight. First, Staff decided to do a staff level decision versus bringing this application to the Commission. As you know we have the decision matrix that was adopted by the Historic Preservation Commission and was recommended to the City Council and adopted by City Council for inclusion for how we handle applications. Unfortunately the decision matrix does not address temporary uses. Staff had made the determination that we would address a temporary use at a staff level because this application would be going on having a recommendation made by the Planning & Zoning Commission with a final determination visa via made by City Council already. The temporary use would be an appropriate decision to be made at staff level. It wasn't anything permanent that was going change the permanent landscape of the Historic District which is something that we do always forward on to the Historic Preservation Commission. As you know this is a de novo hearing tonight so that you are actually making the change in use Findings tonight on the record. Staff made the initial determination and after we had made the initial determination to approve the application Staff then followed City Code in sending out our Notice of Determination which I have included for you in your packet. It is on Page 23 of your packet and on the last page of your packet shows the map of who we sent that to. We sent it to everyone within 300 ft. as required by our code as well as the registered neighborhood association. Staff's determination is not made final until that appeal period ends. If we do receive an appeal within the appeal period that determination is not a final determination. It then comes before the Historic Preservation Commission for a determination. That determination is not final either until the appeal period ends or the appeal is heard by City Council. No final determinations have been made on this project yet. Like I said, Staff did notification of that initial staff level decision...sent out the notice that you have in your packet to the people on the map. Again, when we scheduled tonight's hearing we also sent out notices within 300 ft. and to the registered neighborhood association so we gave an additional notice in regards to this project. Chairman Stevens initially started asking me why Staff thought a temporary use might be appropriate for the area. Because the temporary use will have a minimal affect on the District and it's not anything that's going to be permanently at this location. It will provide some activity for the area on a temporary basis. No more than two years. Eventually there will hopefully be some kind of residential development here whether it be single-family or whether it be multi-family development but there will be activities in this area on this vacant lot albeit it will be different than the activity that we're proposing for the temporary use. It will be intensification in this area. Additionally in reviewing an application such as this there's actually two separate processes that are taking place. There is the P&Z process which is the special exception process which has different Findings than what you're looking at. The special exception process is taking into consideration that Conservation District overlay.

CHAIRMAN STEVENS: Where is the Conservation District overlay information in our Zoning Ordinance?

SARAH SCHAFER: It's the Near North End Conservation District chapter clear to the end. What the Historic Preservation Commission needs to make their determination is the change in use. It's very important that we concentrate on the change in use language. How it complies with the Comprehensive Plan, Chapter 5 and if it's congruous with the Historic District. Lastly I would also like to mention the landscaping that's for the project. Currently if we maintain the lot in its vacant condition we're going to have the vacant ground with a little bit of weeds growing up which is something that Code Enforcement can take care of. The only landscaping that we have on this parcel are the two evergreen trees that are of questionable health and safety. One of them is leaning very drastically. With this application we would be obtaining perimeter landscaping for the neighborhood as well as various conditions that could be placed on the project...saying this landscape needs to be maintained in a healthy and attractive manner until a permanent application comes forward before this Commission. That's a condition that this Commission could easily place on the application as it moves forward. With that I've covered everything I need to cover as part of my rebuttal and I can stand for any questions.

COMMISSIONER SEWELL: There's no criteria within our Ordinance to make some kind of special exception to a use or anything like that.

SARAH SCHAFER: In the Historic Preservation Commission's decision you are not looking at special exceptions. You are solely looking at change of use under those two Findings.

COMMISSIONER SEWELL: If the project is built as a temporary lot the YMCA eventually gets some more permanent parking back in place. There are no plans from the church to develop this property for who knows how long. That will sit as a lot with the perimeter landscaping and it will not be allowed to be used as a temporary lot?

SARAH SCHAFER: That is Staff's understanding of the recommendation put forth by the Planning & Zoning Commission. Staff actually suggests to you that if that is something that is of great concern to the Historic Preservation Commission you can place your own conditions on the property and that if it is temporarily used as a parking lot the next 15 months or whatever you determine that you require the removal of the wheel restraints and require removal of the lights and that there is no parking on it. If you wanted to suggest some kind of security in the area you could do that...and maintenance. Those are all possible conditions that you could place on the Historic Preservation application for the change in use.

CHAIRMAN STEVENS: Correct me if I'm wrong, but that first set of stuff that you said is in the CUP conditions, number 5, "Upon vacating a temporary parking lot the applicant shall remove all wheel stops and light fixtures from the premises".

SARAH SCHAFER: That is in the CUP. However, if you specifically want to address it as part of your Historic Preservation application in your change in use you can do that.

CHAIRMAN STEVENS: So simply going with Staff's recommendation to support this isn't enough you think that it would be also wise if we were to approve this to add that as a condition regarding a change of use?

TERESA SOBOTKA: You will need to address change in use period. You say if it's congruous or incongruous. You can either say we think it's congruous. We think it's incongruous. What Sarah did is she recommended it is congruous only if you put on those specific conditions of approval that Planning & Zoning put on which she is telling you now that if you want to say it's congruous you can say yes we think it's congruous with these certain conditions. We agree with those conditions that Planning & Zoning recommended and we also would incorporate those into our decision. Or you could come up with any other conditions. These plus 50 others. Forget those and go with 50 others...whatever you want to do. If there's anyway...maybe you only want to do a 3 month appeal. Whatever you want. You get to decide. It would only be congruous, if at all, under the following conditions.

COMMISSIONER SEWELL: I believe it was...I'm not sure who mentioned it but back when this house was removed and the lot became vacant someone mentioned that there were some conditions placed that the church had to maintain...provide additional landscaping and I wonder if you could shed some light on that or if you know anything about that?

SARAH SCHAFER: Staff in reviewing the demolition permits...the demolition permits were given out. Staff did not find any conditions of approval that the City Council had adopted as far as the maintenance of the property.

APPEAL APPLICANT REBUTTAL

MICHAEL JONES: The Near North End Conservation District is in Title 11, Chapter 20 of Boise City Code, Section 11-20-03 states, "The following restrictions and allowances beyond the requirements of the R-3 Zone shall apply within the Near North End Zone". "New off-site parking lots, except on parcels demonstrated to have been vacant on or before the effective date of the ordinance. This prohibition shall not preclude the use of existing on-site parking lots as "for rent" of off-site parking. It's clearly a prohibited use. It's clear that it's not an allowed use. It's incongruous with the Historic District. It was established that way by the Boise City Ordinances and when they adopted the Near North End Conservation District... I can go through the history of the adoption of the Near North End Conservation District and the reasons why that was occurring in the Near North End because of the demolition of the historic houses in the near North End for parking lots for Boise City. Boise High School, the YMCA, the United Methodist Church and the Baptist Church. There's a reason why the neighborhood and the City Council and everybody that got out because they did not want to see the Near North End turn into a parking lot. Then it would be servicing the commercial core for Downtown Boise. They wanted and CCDC wanted the commercial core to be south of State Street and that's where the parking was designated to be by CCDC. It's in the Master Plan for the Commercial District. Parking is an obligation of CCDC and the commercial center. Parking is not part of the Comprehensive Plan for the Near North End or the North End or the East End. What we have here is not an application for...let's see we have a vacant lot let's put in for a very short period of time a Christmas Tree lot for the Christmas season. We're talking about up to a five year period for a temporary parking lot. That's what this Ordinance allows and that would be what they could do and come back in on a special extension and once you have it with the YMCA I don't know how City Council or anybody is going to stop Boise High School, the Methodist Church or anybody else from using that property for a parking lot or any other unallowed prohibited use in the North End or the East

End. It could go for drive-thru's or any number of prohibited uses that are clearly prohibited by statute. I disagree greatly with Mr. Erstad's comments that you would have a black and white world if you didn't have this special exception. Well that's what we have. We have allowed uses, we have conditional uses and we have prohibited uses. Boise City Code says it's not an allowed use, not a conditional use. It's a prohibited use. All uses that are not allowed are prohibited. This is not an allowed use. It's clearly set forth in Code that it's a prohibited use. It's not congruous with the Historic District as the purpose of a Conservation District. We had to expand on the Conservation District by adopting historic preservation areas in the Near North End, North End, Harrison and East Boise because of the wholesale demolition and destruction of housing. I personally have clients come to me wanting to know how they can put in housing on Harrison. Knock down historic structures (houses) and put in parking...they want to put in apartment houses and condos. I have not done that, but they said they can go in with a plan and if they can get a special exception like anybody else can we can put in a half-way house or we can put in low income housing, have it subsidized, we can flip it, have it there for a short period of time and change it. Once you allow this prohibited use you at the beginning of the end of historic preservation areas of town because you start once and...15 months. We're talking about a 900 and some parking lot eight stories high...as high as Boise Cascades' existing building is going to be constructed in 15 months...I don't believe that in a day. It's never going to get completed in 15 months. Building permits are still in the planning process. They're now just putting up the fence and they only have a permit for demolishing the trees that are down there. It's going to be more than 15 months. If the YMCA and Mr. Erstad believe that they can build an 8-story office building in a congested area of downtown Boise I'll just have you look at what happened to Hampton Suites and how long it took them to do that construction in BoDo.

CHAIRMAN STEVENS: If we can keep an eye on when we're deliberating that we're only discussing change in use and that the two Findings that we need to make are:

1. Whether or not this supports Comp Plan, Chapter 5, objective 2 in particular.
2. Whether or not the change of use is congruous with the District.

COMMISSIONER DAWSON: I sometimes wonder if this issue isn't moot. If there is in fact a law suit being filed we all know how slowly the courts crawl and the 15 months time period may have come and gone by the time something works its way through court.

CHAIRMAN STEVENS: That might well be true. We still need to act.

COMMISSIONER SEWELL: In reviewing the criteria that we have to evaluate this...Finding 1, that it supports the Boise City Comp Plan...I cannot find anything within the plan or anything within the proposed application that supports the objectives outlined in the application. In Staff's report they get into the special exceptions which we don't have any special exceptions or any criteria to evaluate just from strictly reading the Comp Plan, 5.4, I can't find where that supports that. In regard to Finding 2, that the request is congruous with the historical, architectural, archeological, educational, or cultural significance of the District...Staff's indicated as a temporary parking lot it could be congruous. If it was permanent it would not be incongruous. Unfortunately, there's nothing in our Ordinance

under temporary...the definition that indicates or includes parking lots. We deal with other types of features. Based on the criteria that we have in our Ordinance I cannot support the temporary parking lot at this location.

COMMISSIONER BURRY: I would have to agree with Commissioner Sewell. Even if it is a temporary use you set a precedence that this could happen in other situations. I hate the thought of the maintenance of it. There are a lot of issues that we aren't dealing with right now but they're there and I personally can't support that in that location.

CHAIRMAN STEVENS: I'm going to read a couple of things. In our Guidelines we have a definition for congruous that I'm going to read into record. It's long so I'm just going to read the first sentence. "The sensitivity of a development proposal and maintaining the character of existing development." I want to put that in everybody's thoughts. I'm going to state the same thing that Commissioner Sewell stated earlier. I don't doubt that the YMCA perceives themselves as facing a hardship right now. I've been going to the YMCA every since I moved back in 2002 and there's probably been three times total that I've had to park in a lot not right adjacent to the building. I have some pretty strong feelings about our parking situation period in Boise. And that is that anybody who's lived in a city even approaching a real size city knows that we do not have a parking problem in Boise. End of discussion. That's the way I view things and if we do want to encourage alternative transportation the last thing in the world we should be doing is encouraging parking lots. That's where I come from with this. If we look at the definition of congruous in our guidelines and you look at Chapter 4 of our Comp Plan...contrary to Staff's Findings I can't support a parking lot. I don't believe that a parking lot supports any of the things in Chapter 5 of the Comp Plan... "Promotes public understanding and appreciation for Boise's Historic areas..." or any of the objections that were read into the record earlier. I have a hard time understanding the logic of a permanent parking lot not being congruous but a temporary parking lot being congruous. That doesn't make sense to me. For me it's about the use and so it's not so much about the paving or landscaping. It's about the use, which is, cars being parking on open space. I can't support Staff's Findings that one is okay and the other isn't. It doesn't make sense to me logically. I think it's very clear that a permanent parking lot is not okay in this spot. Therefore, I can't support a temporary parking lot going in here. I do agree that we do need more people here. Having a vacant lot here is a travesty no matter if there are cars on it or not. I really hope that the YMCA, the high school, the church, the North End Neighborhood Association can get together to encourage something happening on this lot that isn't parking. I've watched it sit there...almost 5 years or however long it's been and I think it's a travesty that it's there. I think the YMCA does wonderful work in this community and I'm a huge supporter of the organization and I appreciate very much your consensus building. The community would be lost without you. Please don't see my lack of support on this as being somehow against what your organization does, but I just don't think it's appropriate and I don't think it's congruous and I don't think it fits with the Comp Plan so I won't be supporting the application. I will be supporting the appeal.

COMMISSIONER SMITH: I take a completely different approach than the three comments so far. This is an appeal that we are considering the "NO" vote when I find a complete failure on the part of the North End Neighborhood Association to present any evidence whatsoever that is contrary to the Findings of Staff. I understand that we as independent Commissioners

must review this de novo but as for the appeal part of a de novo appeal requires the presenting of some contrary evidence in favor of the appeal. There's been none presented in the case. Therefore, all we have before us on this record is the recommendations of Staff and with all due respect we are substituting our own judgments on a complete lack of record for what I view as the only evidence before us. If the North End Neighborhood Association had decided to present some opposing evidence or brief or something besides Mr. Jones' arguments I might have a different opinion. As of right now the only evidence before us on this appeal from a decision of the Staff is this three lines of statement and his argument. From my perspective that is no evidence at all. Therefore with respect I'm going to vote to deny the appeal because when the North End Neighborhood Association is represented by counsel and counsel has elected for whatever reason not to present us any additional evidence I see no basis for upholding the appeal. I will dissent from the other three Commissioners who have expressed their opinion. There has been a huge argument made tonight about our process is wrong and that a suit has been filed and counsel is only doing this to make his record. Well, if that is correct, he had the opportunity, the same opportunity to be part of a process and to take part in the process...he elected not to for whatever reason and you can't have it both ways in my view so I dissent.

CHAIRMAN STEVENS: I'm going to ask Legal a question regarding Commissioner Smith's comment. Obviously any of us can vote however we want to but should we be taking into consideration whether or not a records been made on the appeal or is this a discussion about whether or not the use is congruous in a District.

TERESA SOBOTKA: I'm comfortable with your discussion all together. I agreed with what Commissioner Smith states, but I also agree with what everyone else has stated. You need to analyze your Ordinance and this application and decide what you're deciding.

COMMISSIONER MCFADDEN: It's too bad...like you were saying that we can all get together and get along and give each other some parking for temporary use...common sense says why not. At the same time I have to look to my fellow Commissioners and how they're analyzing the parking lot and I worry about the temporary nature of this becoming a slippery slope which is exactly what we don't want there which is parking. For that reason I'm going to be in support of the appeal even though I do understand all of the issues regarding the need for parking.

COMMISSIONER DAWSON: I will concur with the other four Commissioners. I don't see that there is a whole lot of difference between a parking situation that's temporary and one that's permanent. It almost seems like someday down the road there's going to be an end around trying to get more a permanent parking situation and I think that's a concern that many of us have even though we may not say it. I will be supporting the appeal.

CHAIRMAN STEVENS: It looks like we're moving toward a consensus.

COMMISSIONER DAWSON MOVED TO DENY STAFF'S RECOMMENDATIONS FOR A CHANGE USE FROM A VACANT LOT TO A PARKING LOT AND UPHOLD THE APPEAL OF DRH 08-00067.

COMMISSIONER BURRY SECONDED THE MOTION

ROLL CALL VOTE 5:1. MOTION CARRIES WITH COMMISSIONER SMITH VOTING AGAINST AND COMMISSIONER CHANDLER RECUSED.