

**CAR13-00007 / C13, LLC**

Location: 5237 East Sawmill Way

ANNEXATION OF 11.97 ACRES WITH A ZONING DESIGNATION OF R-1B/DA (SINGLE FAMILY RESIDENTIAL-4.8 DU/ACRE WITH A DEVELOPMENT AGREEMENT).

**PUD13-00002 & CFH13-00019 / C13, LLC**

Location: 5237 East Sawmill Way

CONDITIONAL USE AND BOISE RIVER SYSTEM PERMITS FOR A 43-UNIT PLANNED RESIDENTIAL DEVELOPMENT IN A PROPOSED R-1B/DA (SINGLE FAMILY RESIDENTIAL WITH A DEVELOPMENT AGREEMENT) ZONE. A USE EXCEPTION FOR ENCLOSED SELF-STORAGE ON A PORTION OF THE SITE IS INCLUDED.

**SUB13-00017 / BARBER MILL ESTATES SUBDIVISION**

Location: 5237 East Sawmill Way

PRELIMINARY SUBDIVISION PLAT FOR 43 SINGLE FAMILY LOTS AND 1 COMMON LOT. THE 11.97 ACRE SITE IS LOCATED ON THE EAST SIDE OF EAST SAWMILL WAY APPROXIMATELY 920 FEET SOUTHWEST OF EAST WARM SPRINGS AVENUE IN A PROPOSED R-1B/DA ZONE.

**Cody Riddle** (Planning Team) – The application before you this evening is a request for Annexation, Conditional Use, Boise River System Permits and a Preliminary Plat. As you can see on the screen the project consists of 43 detached single-family homes and approximately 23,000 square feet of storage space. Ultimately, the Commission will need to take three actions tonight. You'll need to make a recommendation on the Annexation, a recommendation on the Preliminary Plat and a final decision, subject to appeal, on the Conditional Use and Boise River System Permits. As you can see from the aerial photo the property is currently zoned R-P, Rural Preservation in Ada County. The property has supported sewer ponds for a number of years, but due to recent infrastructure improvements that has eliminated the need for these ponds. The property is within the Area of Impact and adjacent to current city limits so the annexation is required. As you can see here the property is designated as large lot rural residential on the Land Use Map and as outlined in your report there are a range of potential implementing zones for the large lot designation which includes single-family residential zones of R-1A and R-1B, as well as the Open Land Zone A-1 and two of the office zones. The applicant is pursuing R-1B zoning which allows residential development up to 4.8 units per acre.

The property is unique in that it is adjacent to a variety of uses and land use designations. To the west, as you can see, is the Mill District at Harris Ranch and also lands at the corner designated for high density residential development. You have the Boise River to the south and both the Riverstone School and East Junior High to the north. To the east is the Idaho Shakespeare Festival separated from the parcels by lands controlled and owned by the Idaho Foundation of Parks and Lands. Based on the layout of the project lot sizes and location adjacent to the Boise River, Conditional Use and Boise River System Permits are required in conjunction with the subdivision. I would note this application package includes no variances from any Ordinance standard this evening. You have a lot of written comments in your packet and I assume you'll hear testimony to that affect this evening. I'd like to focus my presentation on what appears to be the key issues you'll hear about this evening, those being traffic, concerns with the Greenbelt crossing, design, floodplain, wildlife habitat and noise.

Regarding traffic, I'm not going to spend a lot of time here. As noted in the record, the project has been approved by the Ada County Highway District (ACHD) and all of the impacted roadways are operating at a fraction of their intended capacity.

Regarding the Greenbelt, there's a concern with the at-grade crossing located at the entrance of the site. We acknowledge this is not the ideal design solution for a crossing of the Greenbelt; however, the options for north/south connections in this part of town are very limited. Given the low volume of traffic, conflicts should be minimal. We did explore the possibility of relocating the Greenbelt extension to the south and east property lines, but I think there's big tradeoff there in that you introduce increased impact on the Barber Pool to the south and increase activity closer to the Shakespeare Festival, both of which they are clearly concerned with.

You'll probably hear a lot about design compatibility this evening. Things like height and architectural style. The height without restriction for this property would be limited to 35 feet just like the homes across Sawmill to the west. However, the applicant is proposing only single story homes for each of these lots to mitigate some of those concerns. You may hear they are artificially elevating the site. As you can see in the illustration on the screen they are essentially filling the ponds and leveling the site, but not artificially elevating above adjacent grade. You'll likely hear about concerns with the designs of the homes themselves. If you're familiar with the Barber Valley there's actually quite a diversity of homes in the valley from mobile homes to large estate lots. You'll have architectural styles anywhere from modern to more traditional. In any event, we find the homes are compatible and we caution the Commission from dictating the architectural style of detached single-family homes in this situation.

Regarding environmental impacts, you may hear questions regarding the location of the 6,500 CFS (Cubic Feet per Second) line and how that was established. We are confident that was accurately depicted and the project adheres to all setbacks from that line. Public Works City Engineers are here to answer questions regarding that topic this evening and have been involved in making those decisions and determinations for a number of years. He could also provide insight into any concerns raised with the floodplain. I would note if the project is approved, administrative approval of a floodplain development permit will be required prior to any construction activities.

Something you'll likely hear a significant amount of testimony about tonight is noise. This is unique in that we typically have residents who object to the introduction of a noisy business. In this instance it appears to be more the opposite where the Shakespeare Festival and some of their supporters are concerned about introducing homes and the conflicts which may arise there. As outlined in your packet the applicant has provided two sound studies, both indicate minimal or acceptable impacts both on Shakespeare and from Shakespeare on the new residents. In our review of the information we don't believe any of the sound studies have demonstrated residential development is inappropriate in this location. Some of the opposition will provide a third sound study and provide their opinions in that regard. We would mention to the Commission to prohibit a residential use on property designated for that very purpose on the Land Use Map based on concerns on a seasonal use could become problematic. I think this summarizes the key issues. We believe residential zoning is appropriate for the site and have felt that way since the beginning.

However, as indicated in the original report forwarded to the Commission, we felt the application could be refined to better address compatibility and some of the impacts. Thus, as the Commission is aware, the application was deferred August 12<sup>th</sup>. The applicant made a number of changes and another meeting with the neighbors occurred. I'd like to briefly walk you through some of those changes. Most significantly a number of homes were removed along the eastern property line and replaced with storage. That accomplishes several things in our opinion. First, it provides a decrease in density, although minimal that does increase separation between new residents and the Idaho Shakespeare Festival to the east. We have included conditions regarding height, hours, hours of operation for the storage, architecture and lighting. With those we believe the storage could serve as an amenity to new residents to the project, but also others who live in the immediate neighborhoods surrounding the project site. As outlined in your report the introduction of storage in this location is consistent with the Use Allowance Provision in planned developments. I think the most significant change since the project was originally submitted was the inclusion of the development agreement. We had concerns all along with annexing the property with any of the potential implementing zones. Each of the zones would allow units to be distributed evenly across the entire site and nothing would prevent future applicants from ignoring any of the concessions in the current proposal, which could include removal of the berm along the eastern property line, no restriction on building height for homes adjacent to Shakespeare or the homes located along Sawmill to the west. Again, the agreement will ensure the site is developed as currently proposed, limits development to the specific site plan you see on the screen, include restrictions on building height for certain lots, hours of construction, participation in funding in the Harris Ranch Wildlife Mitigation Association, donation of common lots to the Idaho Foundation for Parks and Lands and also preserves access to monitoring wells associated with the Barber Dam. To deviate from any of those plans or restrictions would require approval by City Council. Finally, in addition to those restrictions of the agreement we're recommending further series of conditions to ensure compatibility to surrounding properties. In your report you'll notice that includes requirements for enhanced sound proofing in each of the new structures, enhanced crosswalk features for the at-grade crossing, hours of operation for the storage unit, as well as design standards. With those conditions we find the project is in compliance with the applicable ordinance sections and are recommending approval. I'd remind the Commission you need to take three actions tonight. You need to make a recommendation on the annexation with development agreement, a recommendation on the preliminary plat and then in one motion the decision on the Conditional Use and Boise River System Permits. We're recommending approval of each application and suggest the Commission hear from the applicant for testimony on each of those issues.

**Commissioner Bradbury** – By the way, I do want to clarify one thing I failed to clarify. We're going to hear all 3 of these agenda items; Items 8, 9 and 9a in a single hearing so if someone wishes to testify on any of those 3 items you will have the opportunity to speak on all of them. We're just going to do them all at one time.

**Jim Conger** (Applicant) – We'd like to thank the Planning Team and the neighboring groups as we've worked very hard on this land for this project. As you've heard from Mr. Riddle, the Boise City conditions memo recommends approval and we have no issues with any of the required conditions within that report.

A quick note, as part of our team I've got our acoustical engineer, our environmental and floodplain engineer behind me to the right if we have any technical questions. Mr. Riddle has done a great job of identifying the site surroundings. I want to point out a few additional items associated with this property.

The first item, schools will all be within a walkable distance to Lucky 13, salon and offices just to get an understanding where we are. I think the important item is the Shakespeare Festival you see on the screen. Ada County owns the property and the Barber Dam, which is to the south of us. Adjacent to the dam is the Harris Family property which is between our subject development property and the Boise River. The berm which there will be several discussions on as we go forward is located on our east property boundary and is on the subject development property. The terraces, assisted living is going to be basically our northwest neighbor. It's 12 acres which will be approximately 400,000 square feet of operational space, so that will be going to the big project which is about to break here shortly. Then we have the Harris Ranch and the Mill District, which is currently going to be our west boundary neighbor and has a density of around 6 units per acre. I will quickly point out the vertical grade difference between our properties at Sawmill, which is adjacent to the Mill District. Our north boundary will be 4 feet or so vertically higher than Sawmill. At our south boundary you get closer towards our south edge which will be as much as a 10-foot vertical difference. That's why from a floodplain issue we're up quite a bit higher than the surrounding property to the west. As far as Barber Mill Estates and our property, we are going to be approximately at the 3.9 units per acre.

History and conditions of the property; Cody made a good illustration of the ponds. They were operating sewer ponds up to the end of 2012. Clearly, it's a Brownfield site and will have to be reclaimed, but that's its current condition as we move forward with this project.

Now from the planning process, last week we were in front of you at the East Valley project and we listened to the Commission clear back in August. As Cody indicated we requested deferral on this project to go back to rework with the neighboring groups and as importantly get a development agreement solidified. Through several more meetings with neighboring groups and the City of Boise we worked through several planning items. What I've put on the screen is a quick illustration of the meetings. These meetings started January 3<sup>rd</sup>. This would be meetings and correspondence, none of which with my own team, but either with neighboring groups with the City of Boise. We've gone through additional meetings with Shakespeare, additional meetings with the neighbors and the City Planning Team, which helped us make these last modifications. Mr. Riddle indicated as well to get the development agreement in a format that was able to be submitted and carry these conditions as they will run with the land. Obviously, you've seen the meetings on the previous slide. We've been 10 months into this and have arrived at a third version of a plan. We don't think that's a negative thing, we actually think this will be a move in the progress of the right direction. We resolved as many real issues as possible with all of these meetings.

Basically, along our east boundary single family homes were removed. This allowed the residential homes to be clustered further away from Shakespeare. We continue to preserve the berm which will be on our east boundary and we included the more passive use of the self-storage expanding that east buffer, as you can see right there.

Concessions; I'm going to quickly run through the concessions created by our development team during this planning process. One of the first ones, in meeting with Mill District owners we heard their concerns. Their first concern is our original plan had homes backing up to Sawmill. We actually orientated the sides of the homes to go to Sawmill and reduced any homes looking down on the existing neighbors. At the same time they were worried about homes looming over those existing houses and we put single-story restrictions on five lots inside that development, which is in the development agreement as well. Our goal from the onset was to be as seamless as possible along Sawmill and the adjacent neighbors from the Mill District.

Idaho Foundation for Parks and Lands; which we have been working with very early in the process and obviously to create the safety of the Barber Pool as that's their charter. What we have done is donate just over 3 acres of the development land which increased the current buffer and protection of the Barber Pool. You'll see the south boundary as well and ultimately we'll talk about the east boundary that is protecting their pond and everything on their property right to the east of us. Idaho Foundation for Parks and Land did write a support letter which is in your packet on July 8<sup>th</sup> and that still stands today. The existing berm, which I've identified earlier, is an important item on the development property, as I noted on the east boundary. You can see some photos which exist today. The Triplets, back in the early to mid-2000's, allowed Shakespeare to have a temporary easement to (inaudible) this berm, landscape it and transfer some water rights to water this portion. It was done at that time. Approximately one acre is what will be donated with the berm portion, which is in favor of Shakespeare as well as the Idaho Foundation for Parks and Lands, as far as the benefits go. The berm is a great buffer and it has served Shakespeare with the visual screen which has benefitted them for the last 16 years as they performed adjacent to an operating sewer lagoon.

Greenbelt pathway; I think Mr. Riddle summed it up fairly decently, but the Commission did recommend approval on June 21<sup>st</sup> and we will actually donate that property, which will be a little under a half acre, to the City of Boise.

The storage facility, which was again another concession; we heard storage in two or three meetings ago in working with the City and trying to push and continue to increase the east boundary buffer. It seemed to be a logical idea. The City indicated they wanted a more passive use at this point and storage facility definitely fits that bill.

In the buffer on the east side, we actually increased a quarter of the property which is now in that buffer between the berm and the storage facilities combined. It should also be noted we did delete four homes and most people will testify a little bit later that is a minor amount. It is actually 10 percent of the residential product on the board. A little greater than 10 percent, which is actually a pretty good reduction.

Regarding disclaimer, deeds and documents; early in listening to some of the neighbor's concerns and just us wanting to further ensure any protection of the future, it was identified putting some deed restrictions would be kind of a belt suspender approach, but it would be a good idea to add it to the project. You'll see in the development agreement we are obligated to create deed restrictions on each closing of the home, as well as the Covenants and Restrictions and we will place a note on the plat.

In total we are donating up to approximately three-and-a-half acres of the property which is one third of the development land. We would like to basically thank this process. Any time we go through these we always end up with something a little better and we thank all parties involved. This project has seen many positive changes since our pre-app with the City of Boise on January 3<sup>rd</sup>.

We will address sound at this point. From the planning conception we needed to be confident our project achieved the following; would not affect the Shakespeare Festival, as well as making sure up front our project was compatible for our future homeowners as we are investing millions in this project. From a business perspective we would like to be 100 percent certain there would not be any negative impacts from sound in either direction. To assure this we engaged two separate firms, as Mr. Riddle indicated, to perform the sound studies and spent in excess of over \$10,000 analyzing these conditions. Again, our number one goal was to assure our development team this project is compatible and will enhance the Barber Valley. Shakespeare also did a sound study and they released it August 19<sup>th</sup>. It analyzed a musical which would be one of the loudest events, or the loudest event at Shakespeare. I think for the sake of reviewing reports we're simply going to utilize the Shakespeare sound data created in their report and summarize by their equivalent averages. In basically studying and analyzing for a residential component, one must get into the equivalent averages. As you can see with the Shakespeare's report the musical is the loudest. At the development side of the berm we're going to analyze this in two locations based off their sound figures. Its 49 decibels at the development side of the berm which would basically be our closest point for the storage facility, not even the residential units but we'll still use the 49. We are at 45 decibels for the loudest musical event at Sawmill which would be at the far end of our development, or at the existing neighbors catching a musical for an average of 45 decibels. For spoken work play it is around 39 decibels and 35 decibels per the Shakespeare report and we're fine using that data. I think it's important to summarize on the musical verses spoken words, 24 performances approximately a year, out of 93, of the musical so it is a smaller percentage, 26 percent or so. To be able to make a planning decision it is important to compare the industry standards which regulate the compatibility of noise and the residential housing. The first one I'm going to go into will be HUD (Housing and Urban Development), which is most nationally known for their acceptable ranges for residential development and are not exceeding 65 decibels. I think it's important at our closest point we're at 49 for the average of the decibels. We are well below the thresholds HUD imposes upon single-family detached homes. Attached homes are the next one down which gets above 65 and we're not there, we're detached. I put in the California Land Use Compatibility for Community Noise as they are a little more stringent than HUD. They're normally accepted averages and have the threshold of 60 decibels. Again, that's compared back to the 49 decibels which is at our storage facility on the music nights, on the noisiest nights. I have also put up the information on the Boise City Airport Influence Zone and the City gave Condition 2F which imposed us on the Airport Influence Zone and we are fine with that but decimal rating kicks in between 60 and 65. This is the first threshold the Boise City Ordinance has any teeth in when it comes to noise. Obviously, at our 49 decibels at the loudest event, our averages are much less than the Airport Influence Zone. As we just reviewed there are no issues with the noise created by Shakespeare for the existing neighbors on Sawmill, or the neighbors in our new development.

Traffic; we'll hit it quickly. Cody hit it. We do not take any neighbor's concern of traffic lightly. However, we did go through the ACHD's public training process. They approved the project and identified the following street flows. I'll be quick because you've seen them. Sawmill is at 6 percent and Lysted is at 12 percent. I think the important thing for the neighbors, and I think they'll say it as well, in their approval process ACHD did note they are open for future studies in this area as it becomes built-out. Clearly the percentages on these roadways are going to change after the 400,000 square foot Terraces project facility gets under way.

Wildlife; there are two items on wildlife. We have conditions of approval we are acceptable with from Fish & Game. The corridor exists today on our east boundary in yellow. It will exist in the same spot in the future. Wildlife does not migrate through the chain linked piece in the sewer ponds at the current moment. The second item is we are definitely committing to the Harris Ranch Wildlife Mitigation Fund, just as we did in our previous projects in East Boise.

Next I'm going to discuss floodplain, River System Permit, wetlands and sewer lagoons all in one item. These are all extremely important items but are technical which will go through their own engineering process, must adhere with City Ordinances and Federal requirements. There would simply not be adequate time to get into the engineering makeup of these issues at a public hearing. There are well qualified engineers on our team and City team members who are better equipped to finalize these items.

In our summary we believe the fact Boise City staff report and its recommendations of approval for this infill development is a testament to how long and hard all parties have worked to plan this project. What you see tonight is a culmination of meetings and countless consulting hours to get this plan right. From a planning and development concession standpoint we have bent over backwards and have looked at every possible option to make this development as compatible as possible. Again, we believe by reviewing the positive conditions of approvals and the list of concessions, this planning effort was a huge success. We find it important to remind everyone there's been over a decade of planning of this Barber Valley which has utilized countless hours in the City of Boise, Harris Family and the near Brighton. As important would be the numerous stakeholders and neighbors who have put hundreds, if not thousands, of hours into Specific Plan 01 and Specific Plan 02 which are basically our guidance of the Barber Valley for us to be master planned by.

**Commissioner Danley** – I didn't have a chance to come up and discuss it again, but a quick question I have is at 900 pages of documents to wade through and one note I noted is there seems to be some early discussion about 22 to 26 lots, as opposed to what's in front of us today. I'm wondering if you can talk a bit about that. When did the change happen?

**Jim Conger** – I can talk about it and Mr. Allen may be able to as well. Our original plan came in with 26 larger lots scattered throughout the entire property, including removal of the berm that is in place by a temporary easement. It was going to use larger lots which were going to take advantage of viewing towards the river and also viewing on the pond on Idaho Foundation's property. In our first meeting we had neighborhood concerns over Sawmill. Then we started to get concerns at some point over Shakespeare and people being able to see homes and then the noise ultimately came up.

The City of Boise called a meeting and there was actually discussion of clustering. We're not getting more units as far as our 1B goes; we were in the 1B zone the first time. It's too clustered and we pulled away from that east boundary. Obviously, we clustered and pulled away from the south boundary because of the 200-foot setback and at that point we went with the small lots. I think there are two reasons for that. One is the clustering affect to get away from the east boundary. The second item is after further discussion of large lots, or what we'll call right size these lots, downsize them to no yards, no pools and no big backyard parties. Everything we're hearing from the different neighborhood groups, I mean at 10 o'clock they probably don't want the parties in the backyards, so downsizing these lots and clustering away from the east boundaries (inaudible).

**Commissioner Bradbury** – Cody, would you talk for a minute about the pathway location? The question I really wanted to ask you is has that been approved by Boise Parks & Rec.?

**Cody Riddle** – It has. The Parks and Recreation Board approved that location. The Planning Team talked to Park's staff about an alternative location along the south and east property lines. Again, in our opinion the trade off with impacts to the Barber Pool, with the pedestrian activity, additional pedestrian activity and the impacts on Shakespeare, we felt the minimal volume and traffic with the at-grade crossing things could be done in terms of tabling of the cross walk, texturing and painting signage could mitigate that, which would be a better solution than those added impacts on wildlife and Shakespeare.

**Commissioner Bradbury** – Does the path just end or does it connect anything at this point, or would it when constructed?

**Cody Riddle** – In the southwest corner it would ultimately connect to the Greenbelt extension which was part of the Harris Ranch development.

**Commissioner Bradbury** – I'm just not getting a mental image of what's down there.

## **PUBLIC TESTIMONY**

**Gary Allen** (Representing the Idaho Shakespeare Festival pro bono, and speaking on behalf of the Riverland East Neighborhood Association, of which Shakespeare is a part and Harris Ranch Neighborhood Association) – All three groups have presented written testimony. I will provide some highlights, an overall summary and a number of others will speak to fill in the picture. The record gives you a sense of the level of concern about this development. As of tonight the festival has gathered over 6,500 signatures in opposition to this development and many of the concerned citizens are here tonight. Everyone who is opposed to the current development please stand up. Let me paint a picture of the Barber Valley. This area boasts of more natural amenities than almost anywhere in the Treasure Valley. Where else do you get the Boise Foothills, the Boise River and the Barber Pool Conservation Area in one place? Second, it's home to the Festival, a unique cultural treasure which is a vital part of the fabric of our community. Third, it may be the best planned area in our city, home to Harris Ranch and Barber Valley planned areas forged by 15 years of preparation.



The question is, should you approve a compact residential subdivision and a commercial storage facility in a parcel which has not been part of the Barber Valley Master Planning, apparently by choice, adjacent to some of the most sensitive and valuable uses in our community? We strongly assert the answer is no. I will discuss four primary concerns. First is compatibility and undue impact. Compatibility with surrounding uses is a required finding both for the requested zoning and for the PUD (Planned Unit Development). The PUD further requires a finding of undue impact on surrounding lands. Our concerns focus on sound impacts.

Second is consistency with the Comprehensive Plan. The requested zoning cannot be approved unless it is consistent with the plan. The project is inconsistent with several provisions, most strikingly the low density residential designation of the property. Third, there are too many health and safety concerns for the City to risk annexation at this time. The Annexation Ordinance offers the City the discretion to annex when it serves the public convenience or necessity, or protect the general welfare. With open questions on impact on the festival, lagoon remediation, floodplain and FERK (Federal Energy Regulatory Commission) with the dam, this development does not meet the test. Fourth, the project application does not include a Habitat Enhancement and Mitigation Plan required by the Boise River System Ordinance because the applicant incorrectly asserts the floodplain lands on the project site are reparable Class C industrial lands, instead of restorable Class B lands.

Let me turn first to compatibility and undue impact. As the festival said in its letter, it's an exuberant place and we chose the location we did so we could be loud outside without disturbing too many people. Our neighbors can already hear us and now 42 homes are proposed closer than any of our existing neighbors. As Joann said in her letter, the festival faced substantial concerns from the neighbors about noise when the festival sited this facility in 1995. Sites west of Warm Springs Golf Course and in Veteran's Park were rejected in part because of concerns about noise impacts on existing neighborhoods. As a result, the festival came to this location so it would not be close to residential neighbors. Imagine Barber Mill Estates already existed and the festival is applying to build right next to it. My experience in countless land use applications tells me everyone living in that subdivision would sign a petition saying, they love the festival but it should not be here because of the noise. It should find a place farther from people's homes. At the same time the festival itself is a very noise sensitive use. A barking dog can ruin a Hamlet soliloquy. A motorcycle can drown the tender moments in Romeo and Juliet, and a leave blower or a boom box at a party can spoil the breathtaking finale of Cabaret. The festival already experiences these kinds of impacts which will be multiplied by this development. In an effort to understand the sound impacts related to the project, four sound studies have been prepared. Two by Wilson Ihrig for the festival and two by the developer by Mr. Mullins and Dr. White. Let me boil these studies down. Based on limited data Mr. Mullins says the sound levels are not of concern. In contrast Dr. White says the festival is violating the County Ordinance and needs to change its operations. That's shown on these two excerpts from his report. However, it is not the festival who needs to prove something tonight; rather it's the developer who is required to show his development is compatible with the long standing festival theatre. The Wilson Ihrig studies both show significant concerns. The modeling done in the 2001 study, which was done right when the festival opened, showed high impacts on the Triplett property. You can read this 70 decibel plus under certain conditions which is shown on the map here. Under these conditions noise from the neighborhood also would be very likely to disrupt the festival.

In the 2013 Wilson Ihrig study shows measured impacts not at 45 and 49 decibels as the developer suggested, but 55 to 60 depending on the location, which is high enough to cause complaints from neighbors. Wilson Ihrig measured higher sound levels because of the musical verses the spoken word, as Mr. Conger said. Wilson Ihrig also validates the potential for sound levels consistent with the 2001 modeling. Here are their conclusions: *During inversion conditions, we could see up to 65/70 decibels or more and concludes the proposal is incompatible with the Shakespeare Festival.* Importantly, Wilson Ihrig concludes it is not clear any combination of mitigation measures can resolve the issue. That is this proposal creates a risk of conflict no matter what is done to mitigate. It made all of our hearts skip a beat when we read this conclusion in their study.

Mr. Conger spoke about the sound levels that are acceptable by HUD, by Alameda California and the Boise Airport Influence Area. All of these standards address an urban or highly impacted environment and therefore are irrelevant to the Barber Valley. There are two standards that apply to this application, one for the zoning and PUD applications. The proposed use must be compatible with existing uses. It's a narrative standard. Secondly, the City and County Noise Ordinances prohibit sounds which are plainly audible on adjacent properties. The fact is the people who live in the Barber Valley do not expect and will not expect sound levels like you might experience in a HUD affordable housing project in Chicago or Oakland California, which is in Alameda County, or next to the Boise Airport. In Barber Valley residents expect a quiet, peaceful outdoor feel and quiet is not what you get when you are next to the festival. So what if there's a little noise. Let me offer some examples of the real consequences of encroachment. In our letter we discuss the Oregon Shakespeare Festival which had to enclose its entire theater as the town of Ashland grew up around it. Locally, the Best Bath facility when it was in Kuna received stiff opposition from residential neighbors who lived in a subdivision which forbid them to complain about the preexisting industrial area next to it. Another local company, Sorrento Lactalis which owns the cheese factory in Nampa, had to close its San Jose facility because of residential encroachment. The lesson is once people move into their homes they forget who was there first. They will complain and sooner or later local officials will listen to them. To help you get a better feel for the sound impacts Deborah Jue of Wilson Ihrig will perform a demonstration later of what you might hear if you were sitting on your patio on a summer evening in Barber Mill Estates. Is there a solution to the sound issue? Our expert tells us residential development will not work adjacent to the festival, regardless of density or design. The mitigation developer has proposed it is adequate. The storage units do not provide sufficient separation. Sound proofing is helpful indoors with the windows closed but does nothing for outdoors, which can't be ignored because that's where people are going to want to be on summer evenings. Nothing else is proposed in the development agreement or the conditions of approval except for disclosure of the presence of the festival and that sounds may be audible. This is no protection at all. None-the-less, we recognize some form of development may occur. On September 6<sup>th</sup> the festival submitted a letter outlining an alternative we could support. Harris Ranch Neighborhood and Riverland East also support these options. In short summary, first low density residential development, one unit per acre, useable acre with substantial mitigation for sound, wildlife, flooding and other conditions. If we have homes we reason that fewer are better than more. Secondly, professional offices or other appropriate neighborhood serving daytime commercial use. Finally, purchase for public use. The festival is willing to lead the effort and has secured a substantial amount of pledges toward a purchase.

Now let me turn to the Comprehensive Plan. Per our letter, this is the density issue. Many Comprehensive Plan policies support our position. The requested zoning does not follow the Comprehensive Plan. To name a few, support for the arts economic development, environmental stewardship and protection of businesses from encroachment. I will focus on one of the Comprehensive Plan's provisions: *The designation of the parcel for large lot residential*. Here are those provisions of the Comprehensive Plan. The plan plainly says: *One to two units per acre or less in certain areas*. It contemplates half acre to one acre lots. At the bottom of this after all the discussion it does mention R-1B is a possible zoning designation. However, nothing suggests it trumps the overall guidance about density. Further, this development doesn't even fit R-1B zoning without using the PUD to strip out most of the substantive restrictions in the zone. For example, the developer asked to cut the minimum lot size of 9,000 square feet in half for virtually all of the lots to exchange R-1B setbacks for R-1C in their entirety, and to add a storage use which is not allowed in the R-1B zone. In fact, we wouldn't be surprised if the developer came back to you to change this based on lack of market demand. In summary, this development does not apply R-1B zoning in any meaningful way. It is an R-1C development which the Comprehensive Plan does not allow. The developer relies on the provision in the Comprehensive Plan that development outside the special plan areas in Harris Ranch should use the approved Harris Ranch and Barber Valley Specific Plans as the policy basis for additional development in the Barber Valley. The developer and the Triplett's attorney seem to say these plans give a cart launch to put compact residential development wherever they want. Nothing could be further from the truth. If you look at the Harris Ranch Plan, Harris Ranch and Barber Valley spent hundreds of thousands of dollar on planning to ensure compact residential development would be compatible with the other uses proposed. Looking at the Harris Ranch Plan for example, there's a huge swath through the middle to accommodate the existing power line. Obviously this area was not appropriate for compact residential development or for any development for that matter. Parks and open spaces are located close to the river as indicated here. This was a better use than compact residential development. We have similar considerations here. Next to the festival, the Barber Pool and the pool of the Barber Dam compact residential development does not fit and it's not compatible. At the end of the day this is a standard subdivision trying to cram itself into a very sensitive space where it doesn't belong. It should be denied.

Our next point is this is not the time to annex. This is a complex project which will require remediation of the sewage lagoons, resolution of issues with FERK and Ada County regarding construction requirements to protect Barber Dam and resolution of floodplain issues with FEMA (Federal Emergency Management Agency) and the City. If any of these aspects are not resolved per the developer plans, the project can fail and the City is left with a problem property within its boundaries. These risks all mitigate the City decline to annex this property until these issues are resolved. First remediation; first of all DEQ (Department of Environmental Quality) has rejected the initial clean-up plan and the site contains well over 10,000 cubic yards of hazardous materials which need to be removed. What happens if the City annexes the parcel and the clean-up doesn't get done? The City will inherit the odor, weed, dust and worse, complaints that will follow. I would expect some decry, the City itself needs to do something about the clean-up. These are vulnerabilities the City should not accept. The property should be cleaned up before it is annexed. Second, both Ada County and FERC have raised questions about the dam. Here's the Ada County letter showing this.

About how this development will affect the operation of the dam and what mitigation is required, these questions remain unresolved. Third, at least half of the property lies below the elevation for the hundred year flood. Mr. Gebhart's latest analysis, as I read it, shows an even larger area below the hundred year flood elevation. The developer is not saying much about this but this development will require 65,000 cubic yards of fill to raise the level of the development lots 2 feet above the floodplain. The question is where will the floodwaters go once the lots are out of the floodplain? We're concerned water will flow right onto neighboring properties including the festival. At this point there's been no action by FEMA to relocate the floodplain and no action by the City on how the Flood Ordinances will be enforced to protect the development's neighbors.

Finally, the current version of the project is being rushed without adequate opportunity for agency feedback. The storage use was added only on August 27<sup>th</sup> and has not been reviewed by critical agencies including the Department of Fish & Game and the Foundation for Parks and Lands. You saw a wildlife corridor put through there. I'm quite certain the Department of Fish & Game has not reviewed that or accepted it. The City should simply not move forward with annexation without answers to these basic health and safety issue questions.

Let's turn to the Boise River System Ordinance, the Barber Pool and wildlife. This project is the largest and densest development ever proposed within the Barber Pool Conservation Area. This greatly concerns us and we believe it erodes the purpose of the conservation area. First let me clarify this project is within the bounds of the conservation area. We met with the Idaho Foundation for Parks and Lands regarding their letter of August 12<sup>th</sup> and forwarded the correct information from the BPA (Barber Pool Area) study which you see here. Our understanding is the foundation has accepted this information and submitted a letter today to suggest deferral of this project. The festival, Harris Ranch and Riverland East have worked extremely hard to enhance the conservation area from the creation of the festival's interpretive area, habitat improvements from the river to the Foothills, wildlife corridors, trails, funding for wildlife preservation and protection of sensitive Foothills areas from development. The developer has propose to comply with the 200-foot eagle's perching and loafing setback, most of which is in an undevelopable flood easement conveyed to the county years ago and to preserve the existing berm built by the festival between the development and the festival. While we appreciate these efforts, we do not believe they comply with the River System Ordinance or are sufficient. Your role tonight on the Boise River System Ordinance is to decide whether a portion of the development in the floodplain is properly classified as Class B, rather than Class C for purposes of the River System Ordinance. This is important because Class B lands require a Mitigation and Enhancement Plan which offers more opportunities to improve the habitat in the area. Class C lands require no mitigation. I'm going to briefly outline the Ordinance framework and Rob Tiedemann, our wildlife ecologist assisting the festival, will discuss the ecology of the property a little later in the public portion of the testimony.

The difference between Class B and Class C is Class B lands have potential for enhancement and restoration, whereas Class C lands don't so the Ordinance compares a gravel pond, which is Class B, and an industrial property, which is Class C. We see a number of reasons so I'll let Mr. Tiedemann address as to why this is Class B, not Class C and is consistent with several examples the City has approved in recent years.

I left a few slides behind here which shows how this property is considered natural character in the Barber Pool Conservation Area Plan. In conclusion, we respectfully request you recommend denial of the annexation and zoning applications before you and to deny the requested PUD and Boise River System applications.

**Commissioner Danley** – As you're representing the neighborhood association and others, you may not have a good answer for this. I recognize that, but I'm curious, can you give us insight as to the level of involvement the Shakespeare Festival and the neighborhood association had with regard to the Comprehensive Plan process, specifically this particular area and how it was zoned and handled, and so forth?

**Gary Allen** – Are you speaking specifically of this property?

**Commissioner Danley** – As much as possible.

**Gary Allen** – This property was excluded from the Master Planning process for both Harris Ranch and Barber Valley. We understand the property owner chose not to be part of that planning process, so our understanding is this particular parcel has not been through that detailed planning the way other areas of Harris Ranch and Barber Valley have been. There are a few parcels which were not part of this process and have been given this large lot residential designation in the plan, but were not ever addressed in that planning process.

**Commissioner Bradbury** – We're going to call people up to testify. When you come up, I'm going to do this in the order you are signed up on the three sheets starting with 8, 9 and 9a.

**Bob Carigan** – I'm the head of Riverstone International School and I'd like to thank the Commission for doing their due diligence and allowing me to speak tonight on behalf of our school. Riverstone International School is a pre K-12 independent school with 325 students located directly north of the property. This year in part, because of the development which has gone on in East Boise, we are at record enrollment. Please be clear we are not against development in this area and support thoughtful growth. However, we ask the Commission to not approve this plan tonight and allow more thought and consideration to ensure this project better addresses the concerns being expressed. Let me briefly outline our concerns.

First and foremost, we are concerned with the safety of our students. We are very concerned about the removal of the sludge from the former sewer ponds. Our students play 100 feet from these ponds and we have been offered no assurance the process will keep them out of harm's way. We have seen a DEQ (Department of Environmental Quality) report which states as expected, this Phase 1 has been identified and there are concerns associated with the onsite sewage wastewater lagoons, sewage affluent and potential related residues from pharmaceutical and personal care products. We are very concerned about the possibility of air borne contaminants. What happens when the wind blows the dust into our playgrounds and fields?

Once again, no one has ever guaranteed the safety of our students and by proximity, those students at East Jr. High. This is magnified by the plan to truck the sludge out, these contaminants out and we want this as far from our property line and students as possible. We have also voiced concern about the traffic this will cause.

The congestion in the area has gone up dramatically and we're worried about the increased car trips on Lysted Road which is directly west of our property. We don't know what a storage facility will do to traffic and other developments are planned as well, which will continue to increase the traffic. There was a proposal to create a new Greenbelt between our property and this development. As far as we know it is on hold as the City lost their federal grant bid. Riverstone and the developer agreed to keep this in place as we both saw the value of it. Unfortunately, that plan has been delayed which leaves a border zone between the two properties. We need to be assured a proper buffer zone will be put in place between our two properties. What we oppose is this development in its current configuration. We ask if approved the developer is required to put two fence lines, one on the back of his property and one on ours, creating a buffer zone on both sides of the proposed Greenbelt. This area is adequately landscaped with trees and shrubs until the final Greenbelt solution is reached.

Another major concern for us is, like the Shakespeare Festival, this development puts us in the position to be the bad neighbors. Currently, we enjoy seeing families use our playground and fields after the school day. Because this development has no public or green space planned, that only leaves the children of the neighborhood one place to play and that is our fields and playground. We are very concerned as a non-profit we rely solely on our parents for support as this increased maintenance will become a drain on our limited resources. It will put us in a position to be the bad guys asking kids to leave, putting gin gates and more fences which is not something we want to do as a relationship and good will we have developed with our neighbors and community are essential to our success.

**Frances Bolt** – We didn't know we were signing up to talk. We're just on the list as being opposed.

**Rob Tiedemann** - Speaking on behalf of the Shakespeare Festival, but I also speak on behalf of those who were one of the principle authors of the Boise River System Ordinance. I offer you what I've learned from the law, as well as the spirit and intent of the Committee that put the document together. There are two issues I have spoken to with Gary and with members of the Shakespeare Festival. The first has to do with the 6,500 cubic foot per second line.

The second has to do with the designated status when the property is Class B or C. I believe people of science and people of good engineering expertise can answer the question of where the 6,500 cubic foot per second line lies. I leave it to them to do so. However, I will tell you based on my over 30 years of professional experiences as an ecologist, as a certified fishery scientist, as a certified wildlife biologist and as a certified wetland delineator I have no argument with the line which has been laid out. I do have argument with the designation of the property as Class C habitat. Class B habitat is identified as properties which include gravel pits and open ponds that provide good potential for improving fish and wildlife functions and services. This property meets this task.

I say this not just as a professional but I say that as a common man who can look at it and say it's immediately adjacent to one of the most important open spaces in southwest Idaho. It's refuge for deer, its refuge for fish and refuge for rafters. This property provides good potential for improvements for fish and wildlife habitat, not just by definition but also by fact of precedent.

Two downstream properties, the Barber Mill Ponds in particular, which are not that different than the sewage ponds on the Triplett property have been restored. It hasn't been a large effort. It has been an effort of expertise, time and money, but it was accomplished. It was done there, it can be done again. I have nothing more to say except to offer you my expertise and to share with you what I know in my experience administering the Boise River Ordinance as a lay person, not as staff or a professional of the City of Boise. I offer my expertise as an ecologist, as a faculty at the University of Idaho and again my 30 years knowledge of working this valley.

**Jeannie Peterson** – I was married to Danny Peterson, one of the founding members of the Idaho Shakespeare Festival back in 1997. So I've been involved with this festival for quite a while. The first set was built in a horse pasture in our backyard. They rehearsed in there too, tripping around the horse turds. I've seen this festival go from our gang production where the set was built in our (inaudible). We all did things and participated to a highly sophisticated, well-orchestrated, well performed theatrical experience. The theater is in a very unique location and it's a very unique experience. I would hate for audiences to be denied the unique theater experiences which are wonderful. I think we would be greatly impacted by this development. I think the compatibility is not there and I am in favor of public use.

**Laura Lindsey** – My house is right across the street from the proposed subdivision, and not only that but the one road in and out of the subdivision is right in front of my house. I want to tell you thank you for listening to us and forgive me, I'm very nervous. I don't normally do anything like this. That's all I can do. I'm a mother of two and I simply want to tell you what it's like for us to live in such close proximity to Shakespeare because this is what I'm in a position to do.

Whenever Shakespeare is performing my family and I can hear everything. Not only can we hear it, but we can understand every word said, even with the windows closed, the doors closed. If the TV is on and the children are playing maybe we don't understand everything but I'm also pursuing a Master's degree and when I want to study and they're performing, I have to go to the back of the house. I don't find it a nuisance because I love Shakespeare and they're a tremendous asset, but I'm pretty sure some of those 43 families who might be living even closer to Shakespeare would be bothered. My 8 year old has trouble falling asleep when Shakespeare is performing. I'm guessing some of those 43 families will have young children they want to put to bed before 10 o'clock at night. I just think it's inevitable there will be complaints both ways. My little dog will bark when there are unexpected noises coming from the festival and if we were closer that would be very disruptive to them. In my opinion it's simply not compatible with what's going on there and it's not compatible with the design of the area in large. There's a sign right across the street which indicates the area belongs to the Barber Pool Conservation Area. When I bought the home and when my neighbors bought their homes, we were directed to look at that sign indicating this was part of the Barber Pool Conservation, which makes sense. That's why it feels like it belongs. There are also concerns about traffic. There are so many children. I watch them coming to from Riverstone and also just the children playing. Our neighborhood has so many young children and the cars already speed down Sawmill, so I think it's a huge concern to add the amount of traffic they are talking about given the number of young children who currently travel on the street to East Jr. High, to Riverstone and also to play at Riverstone.

**Mark Hofflund** – I'm the Managing Director of the Shakespeare Festival and I'm tasked with talking with the common man every night at the theater to find out what they think of the compatibility of this proposal. At the instruction of the Board of Trustees and with the help of counsel we put together a very simple form. We also put protocols in place which did not force people to sign or did not advertise we needed this from the stage. The integrity of the theater experience was maintained for all of the patrons coming, but we did make volunteers available for people to express themselves. If they had further questions and issues, they could of course speak to the management and the Board themselves. We have found now that 6,800 people have signed to the opposition of just the basic idea of the compatibility of these 2 activities in the proximity in which they have been designed. I would add in terms of the development process, the Shakespeare Festival was not formerly contacted until we filed a letter of opposition with the City on April 2, which was more than 3 months after the process had started. So we have not felt like we were included from the beginning and we have felt like there has been the need to use the public process to the best of our abilities to find out what everybody else thinks about compatibility. It has been an instructive process. It has allowed the festival to hear the thoughts and desires of those using the amphitheater this summer. It has affirmed the festival's opposition to the Barber Mill Estates and I submit this to you for the record.

Exhibit 1 handed in.

**John Sims** – I'm Vice President and Trustee of the Board of Idaho Shakespeare Festival. I wanted to tell you about two brief experiences I've had with sound at the theatre. One is I know a few years ago Mark Hofflund, who just spoke, had to basically hop in a car and drive to one of the existing neighborhoods because somebody was having an outside party. In the middle of our play you could very clearly hear the music they were playing which unfortunately had nothing to do with our play. Thankfully the people were nice enough to turn the music off and the play continued.

The other thing that happened, which I think is very instructive is during *Blind Spirit*, I don't know if anybody saw the play on the board, but there's a voice of a child which is played over the loud speaker and in sound check they were testing that and the police showed up. Someone had heard a child's voice coming from the theater in the middle of the afternoon and was so alarmed by it they actually sent the police to find out if there was a child in jeopardy. I think those are antidotal stories but I think they are indicative of the fact we can hear things going on outside of the theater and people outside can hear even low level noises coming from the theater.

The other thing I'd like to point out to you is the practical problem. If we have a problem during a performance with sound coming from outside, it is very difficult for us, absent being able to find the person who is making the sound and getting them to agree to stop making the sound. The remedies available to us are very slight. Calling the police, by the time it gets resolved the performance is probably ruined.

Mr. Conger talked about restrictive covenants; those of course would not be enforceable by the Shakespeare Foundation. We would have to find someone on the home owners association, if they had such a restrictive covenant and ask them to try to enforce it which involves a process.



So the practical effect of us trying to control outside noises in time, our performance or even performances are ruined is really very limited and that's really all I had.

**Jan Flynn** – I am a close neighbor to the proposed development and also to the Shakespeare Festival. I want to note there have been many well-articulated objections to the proposed development, all of which I support and agree with. I don't need to repeat any of them here. I am here to urge you to very carefully consider the many objections brought up, and not only your duty to look at what the rules are as they apply to this property, but to the common good, the greater good. The fact this is an incalculably important culture resource, not just for East Boise but the entire Treasure Valley. I am very concerned as a neighbor but this is not a "not in my backyard" objection. This is Boise's backyard and I am truly hopeful you will take that very carefully into consideration. I urge you to deny this request as it now stands. There is probably a way to develop this property in a way which isn't conformity with the intention and character, but this is not it.

**Erin Shilt** - I am going to read you a letter from Lisa Benjamin who is the General Manager from Hotel 43. As General Manager of Hotel 43 I would like to speak about Idaho Shakespeare Festival's value to Boise's economy and why the festival merits full protection under the City's Comprehensive Plan as a business with particular unusual and well established needs. ISF (Idaho Shakespeare Festival) plays a key role in Boise's travel and hospitality industry. It's a magnet for visitors from across Idaho, from every state in the nation and from many nations around the world. The ISF amphitheater and reserve comprise one of the top venues of this kind nationally, as recognized by the Shakespeare Theatre Association whose international conference was hosted by ISF and the Institute of Outdoor Drama, one of the nation's oldest art source organizations, headquartered in North Carolina. As the first permanent home by ISF the amphitheater and reserve hosted 30 US governors at once, hosted the current and future US Secretaries of the Interior with the nay-per-say travel chairman, and hosted ambassadors, members of Congress, Chairman of the National Endowment For the Arts and public officials at all levels of service. ISF is a business with important, as well as commercial functions. The IFS grounds create a distinct public face for both our Capitol City and the region, as well as a cultural gathering place for tens of thousands annually who enjoy theater performances, environmental programs, corporate events and private gatherings.

Isolated along the Boise River, the grounds are perfect for both security and privacy as needed by public and private officials for ease of access to nearby city amenities for offerings of solitude and beauty and for moments of tranquil inspiration. Nothing could be more incompatible with these grounds than a high density residential subdivision immediately adjacent to them, let alone a commercial storage facility. As a baseline of economic vitality brought to the City of Boise during 93 performances of the amphitheater this summer, please consider a log of license plates was taken in the IFS parking lot during 51 performances in order to determine the states and counties from which the vehicles arrived. Five percent came from outside Idaho representing more than 40 states, British Columbia, Germany and the Yakama Nation. Twelve percent represented all but 3 of the 43 Idaho counties other than Ada. Twenty five percent had specialty plates locating them in any of Idaho counties and the remaining 58 percent were from Ada County. Many of these visitors patronize Boise's merchants, restaurants and hotels and do so in a steady and reliable way.

It is hard to think of another private sector business that so well represents the community, so comfortably advances public values, serves the public sector and so readily brings visitors and vitality to the local economy. As a volunteer who has spent many evenings with friends and colleagues ushering on the grounds of the amphitheater, let me please note how well integrated the grounds are with the theater facility itself, both the physical landscape architecture...

**Lynn Johnson** – I am the President of the Board of Trustees for the Idaho Shakespeare Festival. As trustees we are actually entrusted with the oversight and planning for the future of this crown jewel of our city and state. We're very proud to be one of the most often cited reasons people love Boise. We're humbled by the pride our community has in us. Historically, the festival has been forced from its past two locations due to development, the Plantation and Park Center. With the help and support of this wonderful community the ISF finally found a permanent home in the Barber Valley. We've strived to be the best neighbor we can be. We try to be sensitive to our neighbors and this unique environment. Although we've welcomed the well planned and thought out development within Harris Ranch, BME (Barber Mill Estate) is just so ill conceived. We just cannot support this development. The ISF would be threatened and encroached upon by this BME development. The Comprehensive Plan actually does address this situation in Goal EC-3 regarding protecting existing businesses. Specifically EC-3 Section 2 which is on page 2-71. The goal states: *Protect existing business in industrial areas from encroachment of incompatible or non-complimentary uses that would threaten their viability of ability to continue to operate.* Having learned from our experience working with our current neighbors we fear the short distance between these new homes and the festival will be so inadequate that no amount of sound or acoustical mediation is going to be sufficient. We will be jeopardized in our ability to be able to continue to operate as we have for 16 years.

Our concerns are not only with sound coming from the theatre but the normal sounds coming from the neighborhood that are amplified because of the design of an amphitheater. This is a situation that is both incompatible and non-complimentary with the current operations. Our concern is eventually the festival will have to fundamentally change their programming, the theater design or worse yet, possibly even be able to be forced out of its home again. The developer claims the deeply restricted CC&R's (Covenants, Restrictions and Restrictions) and deed restrictions will take care of the complaints. These measures have not saved other businesses from being driven out. We only get one chance to get this right. If we do this and it proves to be wrong, it can't be undone. The City, the festival and the neighborhood will be left in a terrible situation which won't make anyone happy. We believe there is a better option, one that respects the investment of the long term landowner and the desires of the people who live right around the Barber Pool. We ask you to deny this entire application. Give us a clean slate and let us go back to the drawing board and find a better solution for our community.

**Chris Hendrickson** – I am presenting as the President of the Harris Ranch Neighborhood Association. First, I want to thank the Commission for the opportunity to speak tonight and Mr. Conger's team for including our association in the project planning meetings. We support the comments made by Mr. Allen on our behalf so I won't belabor those.

I'm presenting a few additional items which he didn't have time to discuss and are important to our membership for our neighborhood.

The main point I want to make this evening is the development, as proposed is incompatible with the surrounding uses in numerous ways, as you've heard and will continue to hear. I remind you as Commissioners you have the ability to reject the application based on that evidence alone. One of the reasons it is not compatible is the large amount of fill does cause the development to tower above the adjacent properties in the Mill District. The home foundations for Barber Mill Estates will be approximately 10 feet higher than those directly across the street. The first story homes from Barber Mill will look directly into the second story of the homes across the street and block their view. Keep in mind the single story restriction along the west side of the development is only on the first row of homes. The second row of homes will only be 10 feet behind the first row.

The design of the Barber Mill homes is incompatible with the adjacent, more traditional homes in the Mill District. Homes in the Mill District all have a craftsman style, while in stark contrast the Barber Mill homes propose a modernistic prairie style. In our letter we submitted on August 5<sup>th</sup> are some attachments which compare or contrast the two different styles. The proposed development provides no open space or play areas for children, which will therefore encourage children to trespass on the Riverstone school playground, Shakespeare Festival grounds and then to the Barber Pool Conservation Area. We believe the applicant's traffic study was not properly done because it did not account for the nearly 2,000 dump truck trips by Riverstone School for the remediation and filling of the property. Traffic counts were done in the summer and not accurate to include the traffic for Riverstone School and East Jr. High. So those should be redone. Capacity on the street isn't our first concern in the first place, it's speed. There's a documented history of complaints from our neighbors about speed on the street which is 20 miles-an-hour, and people using that street as a cut through to avoid the corner at Warm Springs and Eckert. By adding the additional 450 vehicle trips is only going to compound this problem.

In closing, this is a very unique and sensitive piece of land. It's made extra special by the surrounding neighbors and their uses. This project is being rush through without adequate notification and planning and is an incompatible use for the area as submitted. Our association asks you to deny support of the application until a more appropriate use is brought forward with adequate time and information for all parties to evaluate it.

**Yvonne McCoy** – I'm a member of the Idaho Shakespeare Festival Board of Trustees and I'd like to speak on my behalf, as well as on behalf of my husband Gary Winske and Bethany Church, widow of US Senator Frank Church, who's Bethany Church River Trail runs near this area we are talking about. I think people chose to live in Boise because of the quality of life we have here. Some aspects of that quality of life are easy to quantify, but other aspects are more difficult. They speak to things of the heart, personal and community health and opportunities for emotional and intellectual growth. The Idaho Shakespeare Festival contributes to the quality of life on the very highest level. It's one of the reasons my husband and I moved here to Boise rather than Seattle or Portland. From the minute we moved here 10 years ago we became season subscribers of the Shakespeare Festival. We often invite friends with their tourist dollars to visit here and offer all sorts of sights and activities to entice them to see the Stanley Basin, the Sawtooth Mountains, open wilderness areas and of course the Idaho Shakespeare Festival here in Boise. Invariably when we attend a production we take a pleasant walk around the reserve after our picnic dinner and before the start of that night's production.

We're lucky to be able to hear every word when we see a hilarious play like *The Foreigner*, as we did last night. No dogs barking, no car alarms going off and no lawn mowers stepping on the punch lines. Not once when we've taken our friends and out of town visitors to the festival have we heard them say afterwards that they love the density of the housing around the festival. It's always about how lucky we are to have the Shakespeare Festival at this beautiful outdoor venue. It's always about the beautiful nature reserve around it. It's always about what great artistic opportunities we have here in Boise, exemplified by the Shakespeare Festival. I ask you to think about this. There's a difference between the right to develop and whether we ought to develop. As we've learned with regard to the great wilderness areas we have here in Idaho, we must protect the spaces we love and value in our community. I urge you, I urge you strongly to help us protect the reserve around the Idaho Shakespeare Festival, the artistic experience we value so much when we bring our families and friends here and the artistic legacy we want to leave for the next generation.

**Georgiann Raimondi** – I am here speaking as a concerned citizen of Boise, a patron of the Idaho Shakespeare Festival and a member of the Board of Trustees of the Idaho Shakespeare Festival. Aaron Paul, raised in Boise and an award winning co-star of the TV hit show *Breaking Bad*, was quoted in today's Idaho Statesman; *You must support your local arts, the local theater when you can*. Without them you have no local history. We have that choice before us today to support our local arts and theater and the beautiful area around it, or to support a misguided and no conceived development. The Idaho Shakespeare Festival has been an integral part our family's summers over the past 35 years. After several locations around Boise, the current amphitheater on Warm Springs Avenue provides a beautiful, peaceful and enjoyable experience, along with outstanding theater. We have brought many friends and family members to the Shakespeare Festival at this site and reviews are always positive. One example, last July we hosted over 30 members and guests of the National Board of Trustees for the Trey McIntire Project (TMP) for the play *The Imaginary Invalid*. Every one of the TMP Board members have been to our productions and theaters around the country and to a person they raved about the quality of the art and the incredibly beautiful and peaceful theater setting. It is my opinion that this beautiful and peaceful setting is at a significant risk should the current proposal of development adjacent to the festival site be approved. There are numerous things I find fault with in the current proposal; the number of homes proposed, the proximity to the site, noise concerns from both directions, the height of the majority of the housing, the visual impact and the potential damage to the Barber Pool Conservation Area. Further encroachment of residential use adjacent to sensitive wildlife habitat, which ISF has worked hard to protect and respect in cooperation with other members of the community, and the impact on the ISF's business and our community, I strongly recommend you deny the developers annexation and rezone requests and I thank you all for being here.

**Gene Ritti** – I'm one of the people Yvonne mentioned just a couple of minutes ago. Thirty six years ago I threw what I could in my small car, including my wife to be, and moved to Boise because I wanted to live in Boise. It was a great place in 1977 and it's only gotten better since with things like the Morrison Performing Arts Center, the Boise State Pavilion and Shakespeare. I have never once left a Shakespeare performance, often times with people who don't live in our community, and ever had somebody say, "Well, that was a bummer. Sorry I came to this." Everyone has raved about it because, and it's not just the actors, it's the whole atmosphere.

What I'd like to address briefly this evening is this hint I'm hearing there won't be problems because we can do restrictive covenants. We can put in restrictions and deeds and these people buying these homes know what they're going to get into. Robert Frost in his poem Mending Wall debated whether good fences make good neighbors. Maybe they do, but I can assure you as someone who has tried law suits for over 40 year these types of covenants are not going to prevent litigation. It is going to happen. It's going to be very expensive. It's going to take an emotional toll on everyone and I don't think there's a need to go down that road. If you have some hint, some feeling that maybe this isn't the right thing to do with this piece of ground, I would ask you to follow that instinct, follow that feeling and deny this application.

**Cyndi Kay** – I'm here tonight as a business woman, a homeowner, a patron of the Idaho Shakespeare Festival, as well as a member of the Board of Trustees. I have concerns about this proposal at each of those levels. My ability to stand up here and talk to you following Gene's comments because he stated probably my greatest concern, as a homeowner I've seen multiple issues in complying with the CC&Rs I signed up for, or I agreed to when I bought my home, not being able to enforce those restrictions and basically being irrelevant. As the Idaho Shakespeare Festival we have, I think it was what John Simms said; *We have no ability to ask these people to be quiet and to be compatible to an organization that has been there for 16 years.* We have been members of the Idaho Shakespeare Festival for 15 years, taking our children since they were 4 and 6 years old to see performances and I will tell you it inspired one of our children to participate in the arts and both of them chose to do reports in high school on Shakespeare, a topic I avoided at all costs when I was in high school. You don't get these kinds of opportunities and treasures all the time. There's a value here and I think Lynn Johnston, Yvonne McCoy and Georgiann Raimondi all stated very succinctly my feelings on this topic. I would ask you to deny this request as it is currently proposed.

**Hethe Clark** – I represent the Triplets and I'm going to go a little bit off script so if papers are flying, you'll have to forgive me. Some applications are more difficult than others. This obviously falls within that category. Sometimes the difficulty can be self-imposed and sometimes the difficulty comes when an applicant is unwilling to hear a neighbors concern. That certainly is not the case here. The Triplets have been long time landowners in this area. They have a lot riding on this application. They are people who have lived and worked in the Barber Valley for decades. They appreciate their neighbors and they appreciate the valley itself, both for what it is and for what it's planned to be. After their offer to Shakespeare to buy the property was refused, Dave and Ann entered into an agreement with this applicant. They've been pleased with what the applicant has done. The applicant has gone above and beyond and showed itself to be reliable and trustworthy. They've conducted a number of meetings many of those have been graciously attended by staff. Those have led to a number of changes in the application which you see before you today. They've also seen an applicant in this case who has been willing to offer up a number of conditions we believe show this property can in fact co-exist with its neighbors. With the result being that under the microscope of an application which has drawn a significant amount of public attention, all of the agencies have reviewed and approved it and staff has recommended it for approval as well. Here's the off script part. Mr. Allen has made a couple of comments with regard to a few things I wanted to address briefly. I want the Commission to focus on the planning which has gone on here and remember this is planned for residential. It's been planned that way for a number of years. It's not planned for commercial.

In fact, we've provided you with evidence that would not be an appropriate use. I'd point you to my letter from last week which goes over a number of the Comprehensive Plan issues, but I want to identify a couple just to focus on. First, looking at the larger lot designation, Mr. Allen would have you believe R-1B somehow is not an appropriate designation, even though it's listed as an appropriate designation. It's already been legislatively decided that R-1B is appropriate for this property. The other issue is SP-O1 and SP-O2 being the policy basis. I want to make clear the Triplett's never declined to participate in the SP-O1 or SP-O2 planning policies. They were never invited to participate because obviously their property is not part of the Harris Ranch or the Barber properties, but Blueprint Boise does show us, Harris Ranch and SP-O1 and SP-O2 do provide guidance. The comparisons Mr. Allen made are simply not going to work. The first comparison he identified was the north/south Idaho Power Corridor. Obviously, there's not going to be any residential development in the north/south Idaho Power Corridor because Idaho Power owns it.

I would wrap up by focusing the Commission as well on the area south of there. Mr. Allen pointed to those as being parks and being the appropriate comparison. This property is not planned as a park. This property is planned residential and the areas of SP-O1 and SP-O2 that are in the area show density greater than this one. This actually buffers into the Barber Pool well and we believe it's an appropriate use.

**David Triplett** (Owner of the property) – My wife Ann, so I won't have to buy her a dress for not introducing her. Short history, hence dad came home one day and said we bought a town, the old Barber. That area down there had been part of the mill and also part of industrial use. That was in 1967. He developed the Golden Dawn Mobile Home Subdivision where I worked at and helped sell. He then developed Barberton 1 and 2 while I took a break from teaching. He built those temporary ponds and it was cited until City sewer was available. Barber Sewer service was extended to the 250 mobile homes, Shakespeare and the International School. Working closely with the City of Boise, which I appreciated very much, and the DEQ were able to end that service and the City now has total responsibility for all of the sewer. That was January 1, 2013. Our family, our good neighbor policy and my partner Jim Reese signed off on Shakespeare's current location in 1996. It was a condition of requirement. They are there because they shouldn't have been that close to a sewer development, period. So they are there. Then we attended, we like Shakespeare. The little orange stinky things were there and I said, "Why don't you run a line over and I'll give you free service for the next 15 years?" at the tune of about \$10,000 plus dollars. Then they had some free dirt and wanted to build a berm. I said, "You bet 'cha, it's work but I need to be able to have that dirt if I need it". The berm has been a very good thing. I've found in this life there's a price to pay for what you do, or what you don't do. We did approach Shakespeare several times when we found out there's going to be a sale. As well, I talked to the school. They were not interested at the time and I'm sure it was due to the dollars and maybe the liability of cleaning the sewer lagoon itself. I was looked straight in the eye and told even though they couldn't do that; they would not interfere with the sale of what I was going to do. I'm sure their attentions at the time were heartfelt but did not carry weight with the 40 board members of Shakespeare. To rehabilitate, the land costs over \$250,000. As a teacher for 33 years I know what bullying is and I know what propaganda does. I just urge you to look at the science, the issues and the staff report.

**Larry Maneely** – I'm here as Chief of Staff of the Ada County Board of Commissioners. I actually have lived here long enough that I saw a Shakespeare performance at the original site where Angell's Patio now is at 9<sup>th</sup> and Main. I also want to say the Commissioners and our staff have a great deal of respect for the Triplets. We've had a great relationship with them for a better part of a decade now. We have some serious concerns though about a project that involves safety and a dam that is a hydroelectric facility, which we are licensed to operate for the United States Government and the Federal Energy Regulatory Commission. We are concerned about the integrity of the dam, which if you look at the map in the lower left corner, you'll see the portion of the dam that is over water, but the dam itself extends for several hundred feet as an earthen embankment and all of it is part of the process of designing a dam and going to protect the citizens who are behind the dam. We're extremely worried about them getting approval from FEMA (Federal Emergency Management Agency). They set insurance rates for flood insurance across the country. They have not weighed positively into the program yet and until they do the tax payers and the property owners are at risk. We're concerned that FERC has not weighed in on this. They share our concerns about the integrity of this embankment and one of the things most important to us is a modification of the easement which has been in place since 2006. This easement protects, or should, the embankment but also a highly sensitive piece of equipment that monitors the integrity of that embankment. At this time through an oversight early the piezometer, it's called, is outside the easement, outside the protected area. Our staff has been working diligently with the Triplets representatives' to try and get an expansion of that easement. It has not been completed yet and until it is the FERC will not approve this project. If they don't approve this project, we have serious issues which could turn into serious issues and could turn into serious financial problems for the owners of the Barber Dam, who in affect are the taxpayers of Ada County. Ada County owns the dam. We are licensed and we have an operator who is co-licensed with us, Fulcrum and their representative Jeremy Clayton are here tonight. I'm not sure whether he signed up to testify but if you would like information from his perspective, they share our concern over the unanswered questions to be resolved. The best thing I can tell you is Ada County Commissioners are not against this project, but they are seriously interested in having questions answered and some of the loops closed before you move on with this project.

**Bill Vasconcellos** – I turned to Jen a little while ago and said, "first of all I really am glad I don't have your job". Jen and I also attended the first Shakespeare play at Angell's in 1977 and we did write a letter. I didn't see it in your packet so I don't know if we should resend it, but the main point is I'd like to get that letter in the record.

Secondly, I won't take up much time. I wanted to say I agree with what Gary Allen, John Sims, Lynn Johnston, Georgiann Raimondi and Gene Ritti said. I don't think I could say it any better and Steve, you know I'm not much of a guy who does speaking. I'd like to second what's been said here and ask you to deny this request.

**Ron Eardley** – I'm here speaking as a concerned community member in support of preserving compatible use of the Greater Pool Conservation Area and in opposition to the Barber Mill Estates application. Regularly, Boise is identified as the most livable city and boasts a whole list of best of characteristics. Consistently topping those characteristics are quality of life, our river and park system, public access and use of open space along with its many cultural amenities.

In a recent KBSU community conversation broadcast discussing Boise at 150 years old a discussion panel, including City Council President Mary Ann Jordan, credited the quality of the City we know today to “having done things right”. When asked what it would take to preserve the unique qualities of the City into the future, all agreed we need to continue to do things right. Within this umbrella Council President Mary Ann Jordan specifically stated, “we need to develop properly and with plenty of open space”. I believe the approval of the proposed Barber Mill Estates would fail to live into the spirit and need. While the project may be consistent with Barber Flat Development to the west, it is ill placed to the east of the Lysted Sawmill right-of-ways. It is uniquely incompatible with its surroundings and the uses to the north, east and south. It would encroach into the Barber Pool Conservation Area, intrude into historical and established public use areas and poses from its inception to create conflict and disruptions to one of Boise’s, and arguably Idaho’s, finest arts amenities in the Idaho Shakespeare Festival. Over the years city and county leaders have taken many bold steps to do things right to establish and preserve these amenities. With due respect to staff, to the applicant and the energy put forth to achieve the compromises that have compliance is not synonymous with right. I would ask and encourage you as a Commission to continue to do things right. To be acutely aware of the incompatibility of this project location. I would ask you preserve the intent and integrity of the Barber Pool Conservation Plan, to limit development to the right places, to hold this area for public use that is compatible with its surroundings and to ensure quiet enjoyment of the Idaho Shakespeare location for the benefit of our entire community and our visitors. Accordingly, I ask you to take another bold step and vote to deny the Barber Mill Estate application.

**Eileen Barber** – I am proud to serve on the Shakespeare Festival Board and to chair their Board Operations Committee. I want to clear up the record about the festivals efforts to acquire this property. As chair of board ops I have been present at several of the meetings with landowners Dave and Annie Triplett. The Triplett are wonderful people who have been supporters of the festival right from the get go. When I (inaudible) in 1998 it was considered well outside the City, as such city sewer was not available. The Triplett generously allowed ISF to tie into their lagoons and they have been providing sewage at no charge from 1998 until just recently when the City sewer made its way out there. The Triplett have been good neighbors and they are good people. We met with them and Mr. Reese at their home April 10<sup>th</sup> where we were hoping to discuss presenting them with a written offer after the developer’s offer expired, which was the end of April. But instead, at the meeting they informed us they extended the developer’s option by two months until June 28<sup>th</sup>. Also at this meeting they asked us to make a backup offer in writing and not wait for the developer’s option until it was up.

Initially, the task force, we were concerned with interfering with the contract and thought we should not present a written offer until the developer’s option had fully expired. We then discussed it with our legal counsel, Gary Allen, and he advised us a backup written offer appropriately honors the existing contract and we could proceed. Please understand we are a nonprofit organization with a 40 plus person board. Material decisions such as acquiring land cannot be made by one person alone. It requires a vote by the full board.

At our executive meeting on May 13<sup>th</sup> we were given the authority to make a backup offer on the property subject to full board approval. We met again with Mr. Triplett and Mr. Reese on May 20<sup>th</sup>, well ahead of the June 28<sup>th</sup> option expiration date.



We had anticipated discussing deal structure to let them know we started fund raising efforts and we had earnest money deposit which we'd like to get this all in writing ASAP. Instead, the meeting started with them informing us they again extended the developer's option, this time until the end of November. Since our main meeting we have received considerable pledges from individuals, families and organizations. These supporters are not only interested in protecting and preserving Shakespeare, but also in protecting and preserving the Barber Pools. At our most recent meeting with the developer we mentioned we would consider compensating him for reasonable expenses for an (inaudible) this option, which is also stated in our letter September 6<sup>th</sup>. This parcel is a unique piece of property and I believe the Triplett's should be fairly compensated for it. It's truly a special place and a spot which can be a treasure for the entire community. We all know Boise is one of the best places to live and we can make it even better.

**Mike Reineck** – I stand in awe of the great effort and the amount of time City staff, developers and the owners have taken to keep the public informed and engaged. However, I am agreeably disagreeing with this application. I'd like to also report I'm with the Harris Ranch Neighborhood Association and the Harris Ranch Homeowners Association has also voted unanimously to stand opposed to this. They couldn't be here tonight because they're having their own board meeting.

First, I have two points. One is inadequate notification to other agencies and the first of these is on August 27<sup>th</sup>. On August 27<sup>th</sup> the latest plat was formerly submitted. So the new plat came in on the 27<sup>th</sup> and Idaho Fish & Game was able to comment on the 28<sup>th</sup>. Unfortunately, it was on the wrong plat. So it's happening too fast in this particular case and you might hear in reputation that Idaho Fish & Game on the phone today said; *Well we looked at the new plat and it looks like it might not have changed*, but that's not the kind of staffing we want to look at as the poetic or probably anybody wants to look at. As such, we haven't been able to find any comments from ACHD regarding the new plat. Whether we missed them in the 900 plus pages is entirely possible. In addition, the developer mentioned tonight the Idaho Foundation for Parks and Land's support in August is standing but today a letter came up which says they would now support a 30 day delay in the process. So it sounds like their position may be is shifting which is critical because of how critical that land is right next to Barber Pool.

My final point is look at the City staff's statement on the 12<sup>th</sup> of August in which they said; *There are sensitive land uses in the area that could negatively be impacted by the proposed zoning*. That zoning hasn't changed with the new proposal. They also said; *This is a potential to create conflicts between incompatible land uses*. Well, those are still incompatible. They have taken our 4 units but added 80 to 120 storage units, which actually adds to the density of human activity, not reduces it. One last recommendation, allow the property owners and Shakespeare time to attempt to reach a purchase agreement.

**Mark Templeton** – My wife and I operate Templeton Real Estate which focuses primarily on East Boise real estate which includes the Barber Valley, and we are extremely knowledgeable on the area's real estate values, activity and options. We also live in the area and have followed closely the implementation of the Master Plan of the Barber Valley over the last several years. As a realtor I support growth as long as it is thought out and adds value to the area.

We have supported recent developments and proposed development in the area such as Lucky 13 by Boise Hunter Homes, Privada Estates, Antelope Springs, Mill District Square by Brighton and Riverheights Extension by Brighton, just to name a few. In fact, we have not opposed any residential development in the area as they all seem to fit the overall vision of the Barber Valley Comprehensive Plan. Barber Mill Estates however is misplaced, not compatible and will not add value to the area. In fact, I would argue it could devalue the adjacent community. When the project was first brought to my attention it included 23 unit single family homes. Since then I've seen it change to 47 units, and now 43 units with an additional 80 to 120 storage units. The changes are knee jerk reactions which are devaluing the project and are in no way supported by the adjacent residential community. The addition of these storage units will have a negative impact on the value of proposed homes in Barber Mill Estates, as well as the value of homes in the adjacent community. The proposed development has no amenities, no open space and no yards. Adding the storage units with only one access road through the development further degrades the project's value and appeal. While I do not believe this site is suitable for residential development, the Comprehensive Plan did indicate large lots. Therefore I would potentially support a development with 12-unit single family development with no storage units and one which takes into account the concerns of the adjacent property owners.

In closing, as a realtor I do support growth and those of us who live and work in the Barber Valley depend on the Planning and Zoning Commission and City Council to deny projects that are a blatant diversion from the Barber Valley Comprehensive Plan and only benefit a small few. I ask you to deny this project.

**Dawn Templeton** – I would like to address the addition of the storage units to the Barber Mill Estates, which is being touted as a concession and an enhancement to the new proposed project. As you can see there are currently 6 storage units within 4.7 miles of Barber Mill Estates, but City staff reported, and I quote, *"Residents in this area currently have no other options for storage in the immediate vicinity"*. This is clearly inaccurate based on the table above. We have six storage units within a 4.7 mile radius. Also, the City staff report said; *"The storage will function as an amenity for residents of the project"*. In my combined 13 years of real estate experience I have never once seen a buyer say; *Oh, I love a neighborhood that also has storage units*, and actually look at that as an amenity. In fact, my 13 years of real estate experience tells me this is a detriment to the community. No one wants the visual distraction or the unknown people coming at all times of the day. The City staff report also said many of the homes in the adjacent subdivision were constructed with small garages and minimal storage. Again, this is inaccurate. Many of the adjacent home owners have larger garages in comparison to other areas of Boise City. As a real estate agent I am in homes and garages every day. I know this is true.

Lastly, the City report regarding the storage says; *Replacing the building lots with the storage units will increase setback between homes and Shakespeare Festival*. This should reduce conflict associated with the noise. I don't believe there is a guarantee these storage units will reduce the conflicts with noise.

In conclusion, the storage units are not needed. They are not sound buffers and they are definitely not amenities. This proposal is not the only option for this property. Therefore I ask you deny this current proposal.

**Linda Dixon** – I want to join with Bill Vasconcellos. I would hate to do what you do. Thank you for doing it. I am a long time Shakespeare attendee from the very beginning at Angells. But what I want to talk to you about is my first experience of the Barber Pools. In the late 1960's I was a biology major at Boise State University, it may have been Boise State College at that time, and we were brought up to the Barber Dam by a biology teacher who was lecturing us on ecology and he said; *I've got this place I want to show you.* We hiked in from the dam up along the north rim of the river. It was spectacular. There was nobody there. There were eagles, ospreys, deer and elk. I mean there was so much wildlife there I was just blown away. The next time I saw the Barber Pool was when Mark Hofflund was organizing expeditions out here to take a look at it and I was astounded at how unspoiled it still was. There was some development across the river but it was still the way I remembered it, spectacular and today I think it still is. It's an absolutely wonderful place to visit. If this subdivision is built, the view from the river which has been protected, I mean it looks almost the same as it did when I walked through the first time, will be destroyed. I think it is to the interest of everyone in the City of Boise we maintain this corridor, this Barber Pool, this wonderful, wonderful thing we have.

**Ben Andrick** – I am a resident in the Mill District near the proposed BME (Barber Mill Estates) development. My wife Jo and I submitted a letter in opposition and most of these points were made tonight. One item I did not bring up in the letter is we hear Idaho Shakespeare performances inside our home when it's closed up with the AC running. We live about a quarter of a mile away. It would be basically the equivalent of a spoken word. We would not want to live any closer.

The main item I'd like to talk about tonight is the sewer lagoons. Through the process the applicant has indicated the development is a way to get the ponds decommissioned, when in reality the ponds need to decommission regardless of this development. The DEQ rejection of the lagoon closure application says just that. Let's talk about the lagoons. They stink. They are a nuisance to those who live on Sawmill Way and force these residents, including myself, to alter the way we go about our lives. Opening up our homes in the evening is unthinkable for fear of waking up with the odor of an outhouse on a hot summer day. Entertaining on our patio is not an option. The odor has been an issue for three years. One question I repeat asking is what are the health risks with living and breathing this odor? No one seems to have this answer. Yet it seems the landowner is more concerned with developing his parcel rather than taking responsibility for closing the sewage lagoons to standards. The closure process should have started last January when those using the Barber Sewage System were hooked up to the city system. As neighbors, our concern is to date no plan has been approved. The landowner submitted a plan which was rejected by DEQ with two-and-a-half pages of objections. The number of objections indicates a lack of adequate planning and preparation for use of land in such a sensitive area. The lack of planning has been common throughout this process. I will not dive into the detail of these objections as I realize the intent of tonight's meeting is not about sewer lagoon odor or proper disposal of sewer sludge. I do want to make it clear considering the approval of this development should taking a back seat at least until the a proper decommission plan is in place and approved by DEQ. The record clearly shows there is no guarantee an approved plan is affordable or at hand.

**Gregory Taylor** – I'm a school teacher in the Boise School District and I'm also on the Shakespeare Festival Board of Trustees. As somebody who gets to teach Shakespeare to ninth graders and expose them to Shakespeare for the first time in their school curriculum and as somebody who is a big fan of Shakespeare and at the festival every chance I get, I'm out at that amphitheater not just for the professional productions, but also every time there are other events going on, tours, special productions and student things. In fact, the staff good naturedly call me super fan. It even says that on my Board of Trustee name tag. I've also been out there when little kids are performing who aren't professionals, or the teenage apprentices, people who don't know how to project their voice and who don't have the whole lavish production behind them. So sound is very important for some of those quieter events which happen out there as well, and smaller performances with very small audiences. I've been out there for student matinees with some of my own students. We've heard a lot of expert testimony about the sound and I couldn't hope to compete with that. I can just support it and say I've been out there where performances have been affected by sound, but I want to tell you my personal reaction when I first heard about this housing development. First of all thinking about how that sound, lawn mowers, dogs, traffic and everything that might affect the festival concerned me, but just from a personal reaction I thought I'm super fan. I should be the prime candidate for wanting a house right there. I have often wished I lived closer to the festival because I'm traveling out there so often. I would never want to live that close because I've been out at the amphitheater for tech rehearsals and fight calls where they play the same sound queue, or sound affect, or run the same lines of dialog dozens of times in a row over and over and that's not even the performances which run all summer for almost 100 performances. Just thinking from that perspective I was interested to hear the testimony earlier from the neighbor, who lives not even as close as this development would be, about how that would be, about how the sound affects their household every single night.

**Aaron Milette** – I'm the IT Systems Administrator for the Shakespeare Festival and I just want to play a brief video which illustrates the experience at Shakespeare for people who might not be familiar with it. (Video played)

**Commissioner Bradbury** – Just so we're all clear that was set as if we're standing behind the berm which is on the east boundary of the property.

**JoAnn Uberuaga** – In addition to submitting a letter to you on September 9<sup>th</sup>, I'm here to share a few of those comments on why I oppose the proposed development, some background information. I live in the East End near Warm Springs Park near the water treatment plant. Nearly 20 years ago the Idaho Shakespeare Festival had the encouragement of the City Parks Department, the City Council and the Mayor of Boise to locate a permanent home very close to my existing neighborhood. It would have been very convenient for many of the festivals attendees who could park on the south side of the river, incorporate lots on Park Center and sodded across a footbridge with picnic and blankets in hand to an empty field at the western edge of the Warm Springs Golf Course. It all looked perfect and the festival was proceeding with the approval process but there was one big problem. Many of my neighbors and I who knew and loved the festival also knew this would be a huge encroachment on both our lives and our property, located about 500 feet or so downstream from the site proposed.

We felt horrible yet we knew we would be miserable listening to sound queues every night of the summer and we knew the cumulative impact of tens of thousands of people would drastically change the field and intimacy of our little neighborhood, regardless of how many people did or did not park their cars and walk to the theater through our streets and yards. I think we surprised the festival with our views. Again, we felt very bad at the time since there were no other alternatives for Shakespeare and the festival had been told it needed to move quickly, but we were there first and they knew it. The festival then did a very noble and classy thing and changed course. They said they didn't want to harm anyone nor did they want to create any enemies. Their project needed the whole community to support it and needed all the friends possible to make it happen in the right way. The rest is history. Working with state, the county and Garden City, as well as Boise opened the door ultimately for the amphitheater we have known and loved for 16 years. I said I would support the right location and I was true to my word. As for more than 2,800 families and organizations who gave to build our Shakespeare Festival, I request the City tonight remember Shakespeare was here first. I urge you to please uphold, please uphold the special harmony and public benefits currently in place. I suggest it is the appropriate and right thing to do as for the actions of Shakespeare 20 years ago, knowing if the tables turned today this development would be opposing a Shakespeare. This proposed development is simply not compatible and I urge you to deny the application.

**James Strite** – My concerns have been addressed.

**Commissioner Bradbury** – For the record Mr. Strite waived the opportunity to Commission.

**Ralph Hammer** – What I was going to say I threw out because I heard something a little bit more interesting on the whole development and that's the storage units. If you've ever been to storage units there are no time limits. You can put anything in there; a motorcycle, car, engines, guns and they can go off at any given time at all hours, any day of the week. Looking at the development I was also struck as it's like a golf course. The developer wants to paint this beautiful picture and I'm sure it's a nice picture in his mind. Just like any golf course is to any golfer loves to hit that hole in one. Once the developer leaves the golf course the community has to take it and the City has seen some golf courses go under, go bad because they did not take care of what's around it because the developer is gone. I don't believe people are going to want to live right next to storage units that were brought in earlier. I urge you to look at it as being a golf course.

**Kay Hummel** – I grew up in 83712 and I have a longtime history with the East End near the river playing in it, and later being part and observer of the Boise River System Ordinance as it was developed and many subsequent plans using it or not using it, as the case may be. I have a long history as well with the original approvals of the Harris Ranch development in this valley where the present application is adjacent.

I have great concerns about the water issues, the river flows, the fill which will be required and may alter flood flows. In particular I want to draw your attention to something Dr. Rob Tiedemann brought to your attention in his testimony and I hope you will review it carefully. That is, much has been made about the 200-foot setback.

However, the jurisdiction of the Boise River System Ordinance goes clear back to the FEMA floodplain line, not just to the 200-foot setback from 6,500 cfs line. It's really important in understanding our River System Ordinance. What Dr. Tiedemann and the rest of us are concerned about in this issue is the preliminary floodplain line is the orange one shown on the last page of his testimony. This is where the Ordinance applies to; in this case the applicant has not given you a Mitigation Plan. The Mitigation Plan needs to go to this line, absent FEMA, defining the floodplain anywhere else. That has not happened because the applicant has not sent the normal letter that most applicants in an incredible riparian area like this would. They would send the typical (inaudible) letter for a map revision, as Harris Ranch did back in 1997. They have not sent one because they think they don't have to, I guess. I won't speak for them but that seems to be what's going on and they think they are excluded from this requirement. I present to you this application, not only is it incompatible for all the other reasons stated tonight by many others, it is truly in violation of an annexation and development planning because no Mitigation Plan has been provided that can conform to the correct line, which is the current FEMA floodplain line. So that needs to be attended to. I think staff needs to make a finding and I hope you Commissioners will urge them the present application must be turned down for failure to comply with the Boise River System Ordinance. In addition, I would add my wonderful childhood in the East End included trespassing everywhere on everyone's land. I ran along the railroad tracks before there was a Greenbelt, I played in front of the trains, I rode other people's horses around there, I swam all over the river valley and kids will do that.

The other concern I have with this project is the open space is not very usable for children who will live in this very highly dense neighborhood. They will trespass, as people have said, onto Riverstone's playground, onto the Shakespeare property and more importantly into the Barber River Pool. They'll be everywhere and it will be a problem so the project is too dense, is my second point.

**Richard O'Hara** – I want to thank you for the opportunity tonight and you have a very friendly and supportive atmosphere here. It's really refreshing to see that. I wanted to talk tonight about conservation and the conservancy zoning. We heard about the possibility of acquisition of this property for public use which is a possible outcome. I've been involved in similar issues of land use politics when I lived in Illinois and I know these things can be done. It takes time and what's very helpful is if you would refrain from making any decisions which create any rights, which don't already exist. That would complicate the process to seek alternative uses for this land. I've lived in Boise now for 10 years. I'm a real fan of the Idaho Shakespeare Festival but I really like the wildlife in this town. The first month I lived here I was walking across the parking lot in January going into my office and a bald eagle went overhead holding a fish. I'd never seen that. This is really a unique town. That was the start of my love affair with Boise. I've been all over the world and I've never seen anything like this. That painting behind you is the spirit of the City. The little piece of urbanity surrounded by hundreds of miles of mountains and deserts and what's really important in that painting is the edges, the way the Foothills come down to the City and become parks and then backyards and the way the river goes through town. That's what we're talking about tonight from an ecological perspective are the edges, a very important element. Those ecological values I'm talking about provide some guidance for your decision making tonight. One of the things you learn in ecology is when you're dealing with an edge issue is; take away a little, you lose a lot.

So you take away 11 acres and you say, “well, does that matter?” But you put in 42 estates and you put in 92 cars and the ATV, the motorcycles, the RVs and the boats, the 29 cats, the 39 dogs, 105 human consumers and they take a lot away. What would be lost? Let me tell you. Last Thursday night I was at the Shakespeare Festival watching the Foreigner and in the second scene in the first act there was a little flash of lightning and all of a sudden a Great Northern Heron sprung out and went flying stage left, right through the scene bobbing and weaving up and down off into the mist. That’s Boise. What I’d ask you to do tonight is recommend to City Council that the annexation be denied. That’s the key issue. This property should be retained in conservancy zoning. When you do that every other issue becomes moot. I ask you to allow the magic to continue to occur and to vote tonight as I’ve recommended.

**Eric Shaw** – I’m definitely impacted by this development. My first concern is the storage units. I find it a little bit irresponsible to put a storage facility imbedded in a neighborhood. We’re not even talking it has direct access to a main feeder so I’m concerned for my kids. I have young kids and not only now do I have to contend with new residences cutting through Sawmill Lane, I now have to contend with people with trailers, boats, every other piece of traffic that comes through there. That’s one of my big concerns and I think everyone who spoke before me have done an incredible job of hitting all the points that I fully support.

One thing I do want to remind everyone is the issue Boise City is competing with right now for the Police Gun Range. For everyone that doesn’t know the gun range is a facility which has been in the Foothills since 1960. At the time who would have thought you could shoot a gun in the Foothills and offend somebody because there was none there. As we can see, 50 years later residents have built around the gun range and now they want to expand the gun range. The neighbors are up in arms because they don’t want to hear the sound of gun shots.

The City has said they will put in thicker concrete and do all these sound proofing issues but the residents are unchanged and I guarantee over the next decades whether it’s 10 years, 20 or 30 the residents will become annoyed with the sound from Shakespeare and you guys will be in the same position fighting a battle, or trying to mitigate a battle between Shakespeare and residents. I think the gun range is a classic example on the table today for Boise.

**Michael Shaughnessy** – I’m not too far from where the development will go in and everyone has made eloquent points so I’ll be concise. I have controlled traffic on that street personally. I have seen with the limited traffic flow that’s on there that’s mentioned at peak times at 8 vehicles. I will guarantee this is not the case during peak hours during school season, during the fall. I would invite all of you if you’d like to come and sit on my front lawn and watch, but I have personally stopped vehicles. I’ve chased vehicles and I’ve called the police on many occasions and with an additional 450 vehicles on that road every day, it will be significantly worse. There are an unbelievable number of children and I’m very concerned about their wellbeing, especially my own child. I ask you deny this request based on the current density, the amount of traffic flow going through there, the size of the roads and the only access to that development through the neighborhoods.

**Jenna Vasconcellos** – I want to go on record as I’m also on the Advisory Board of the Shakespeare Festival and in 1977 was at the first production. I’ve been a great supporter.

I want to go on record as supporting the opposition and the great testimony that's gone before me against this proposal. I would also like to submit a letter received earlier today from one of the actors, Lynn Allison Hofflund. I won't read it because most of her points have already been discussed, but I'd like to have this put into the record.

Exhibit handed in.

**Doug Kay** – I came forward as a patron but also as a concerned citizen. I've actually worked as a home owner association president for many years. One of the concerns that appeared to me as soon as I saw this design was, and I don't want to quote City Code, I would have to double check it but it looks like, I know there's over 700 feet of roadway with a single access point. My concern is some of those are common homes served by a common driveway. Has the Fire Chief reviewed this application? It seems like they've tried to herd this through in a quick manner. I would ask you decline this application.

**Jeremy Clayton** – I'm the dam man. I'm with Fulcrum Inc. and we don't stand in opposition to or support of the proposal. Our concerns are the same as Ada County's. If you can look and see where that area is, it looks like its right in the middle like its dug out there. This is where the end of the embankment is if you go right in the middle there. There's a piezometer well there. Also if you come back diagonally down the screen this way this would be towards the dam. There are two serving markers also. As was said before, the way the easement, which Dave and Ann Triplett were kind to help us get in 2006 as we were pressured by FERC to do so, doesn't include that piezometer well, so we are certainly in need of getting that. We're working right now with Jim Conger. I think we're on our way of doing which shouldn't be too far out. I think we should have that to him very soon, so that's what our issue is. There is one other thing which hasn't been mentioned. FERC has said they share our concerns, but they haven't come out and said these are the only concerns they'll have. There could be additional concerns coming up.

**Kevin Richmond** – I'm the Business Director at Riverstone International School. I wanted to follow up on a lot of the comments made about the sound, specifically generating from Shakespeare towards the neighborhood. As John Sims mentioned we have actually been on the receiving end of a drive over to tell us our music from our fall carnival was too loud and it was distracting the performance there. It was occurring closer to the gym which would be a significant distance further away than where these houses are going to be. We didn't feel our music was loud but as the partnership we've developed over the years with the Shakespeare Festival and the rest of the community, we definitely turned the music down to accommodate their request. Having these additional houses in that area, having the storage units in that area, I've worked with companies in the past who have used storage units for production facilities. They are running saws and using them as places of business. I'm not privy to what restrictions may or may not be put upon these specific storage units as far as hours of operations and specific activities which occur within them. There are so many more unanswered questions. Yet from what I've seen and from what I've heard those are the biggest concerns, the unanswered questions as additional questions come up, the plan changes to address them. I definitely respect Jim Conger and his group and the work they've done to accommodate these, but they still continue. There are new questions every time I'm in a meeting, every time I'm in a conversation there are new questions coming up.



I feel at this time having a hasty decision leaving so many unresolved issues, the spirit of this area, the Barber Pool area, the Barber Valley, the work Shakespeare has done, the homeowners have done, Riverstone has done to create that community, at this point I think having so many unanswered questions is going to lead to potentially one group against the other. Having this development come in there and upset the neighborhood which has been established, I definitely can't support it.

**Trent Reagan** – One concern I didn't see addressed very thoroughly was a traffic impact study. In the application it states over 240 trips per day would require a traffic impact study. ACHD thinks it will be over 447 per day. In thoughts of kids and all those kind of things headed to Riverstone, I think that will be worth making any decisions on this application contingent upon the traffic impact study.

**Jamie Richmond** – I have two little girls who wanted to come and see how government works. This affects them because they go to Riverstone and they love Shakespeare Festival. When I told them we were going to go to this hearing my littlest one who is five said; *does that mean no more Shakespeare?*. I said; *no, if the people who live there think Shakespeare is too loud, yes there might be some arguing and Shakespeare might have to shut down for a while*. Tears just started rolling down her face. We took them to Blithe Spirit at the beginning of the season and the Foreigner. They want to go again and just to let you know it's only 10 o'clock here and Shakespeare is able to keep them awake until 10:45, so you guys need to pick it up. I'm speaking on behalf of them. They wanted to get up and say they were opposed to this. That's all I have to say for them. Next time jazz it up and maybe they'll be able to stay awake.

## **REBUTTAL**

**Jim Conger** – Thank you for the time and thanks for all the testimony. Clearly, we're in complete agreement with everything you've heard today as far as values of Shakespeare, values of the Barber Pool and values of the entire Barber Valley. This is why so many people, including myself, live in East Boise. We're lucky enough to live there as opposed to travel there just to watch Shakespeare.

I'll go through and address the items we've heard. First was from Mr. Hofflund regarding them not being involved in the process. That couldn't be further from the truth. In fact, you'll find on the record Shakespeare had submitted the first opposition letter prior to our application even being submitted. They've been involved in the process the entire time.

Let's go to slide four of ours. We're going to address the wetlands issue and Mr. Tiedemann. Mr. Tiedemann was on the original task force. Carl Gerhardt, who is our consultant, was also on that original task force. This is a 1983 River Study Map which was utilized and clearly shows Class C wetlands in their original intent. All those applications are in and you have very competent staff at the City of Boise to go through those.

I would go to slide three quickly to show the bottom area as well, in its current condition. Everybody is enjoying the view of the Barber Valley. Our low area I'm certain isn't one of those areas they are currently enjoying the view of. That will be mitigated.

That will be pulled out, but right now that is the view of our lower areas that will ultimately be wetlands. Currently, the Army Corp. has established there are no jurisdictional wetlands on this property. To carry on in the concerns of the Barber Pool, we have as much concerns and we'll talk about the Idaho Foundation and where we stand, but I want to currently show what Shakespeare's been able to do and pull off successfully. Go to slide 5. They have a 100-foot setback. City of Boise is more restrictive than Ada County. We have a 200-foot setback. As you can see the festival came in within 100-foot of the wildlife, of the Barber Pool and the entire area and have masterly pulled off a wonderful facility and live within it. Probably too many of their patrons are walking through the Barber Pool because it's actually to be protected from humans. They're at 100 feet. We're going to be at 200 feet.

Sewer ponds, we've heard a lot about the sewer ponds. We're in the middle of the DEQ process and we should possibly say it's the EPA (Environmental Protection Agency) process but DEQ is the jurisdictional requirement. They don't have any rules and regulations to close sewer lagoons so they use EPA's, which is going through the system. As far as the homeowners next to it, the school next to it, the sewer ponds were there. They built next to it. Everybody understands they are going away which is why they moved next to them. That is in process and will take care of itself in very due time.

As far as the 6,400 cubic yards of fill, the floodplain and the dikes. This property, due to what we will call the FERC easement, or Ada County, or the Energy Company easement has kikes on this property. They are anywhere from 2 to 4 feet taller than our eventual floodplain elevation, which is why the great flood of 1983, or any other flood that ran a little over 10,000 cfs. This property doesn't flood because it's protecting a sewer pond which has been operating since within the last 40 years or longer. I think it's important to quickly touch base on the 6,500 yards of fill. That's not a surprise. We are filling the ponds which are currently sewer ponds. They will be mitigated and they will be filled up to the flood elevation, which is a lower elevation than the FERC easement we're going to talk about shortly. So there is no net flood displacement or anything of that nature and that's well documented in our application.

Traffic study, ACHD doesn't require a traffic study. This is minimal impact on streets that are well below the capacity. It doesn't hit their threshold for requirement. You will see in the packet the Boise City Fire Chief has approved this layout, the entrance and the distances. ACHD has seen the new plat and will not act on the new plat. They have given us notification it will most likely be staff approval, or staff modification of their base approval. They will not act on it again until we get through Boise City.

I will wrap up. Deed restrictions were built in suspenders. We already said that. We committed to leaving the berm. We talked about the land use, we talked about the buffering, the clustering of homes, everything of that nature. I think it's important to follow up on Ada County or I can conclude and you can ask me a question what Ada County is saying. We are working with Ada County. Show the easement. While we're pulling up the easement, Shakespeare is not going anywhere. They have a Conditional Use Permit from 1996 which allows them to be the intimate theater they've masterly pulled off as well. They aren't going anywhere. They have a conditional use and they can't disrupt their use.

Quickly, touching base on Ada County, the yellow strip is all they have today for an easement. Our goal in Ada County is doing the survey instead of having our surveyor do it, which is fine, it's going to be the blue area. The entire area is going to be overlaid. And what this is for Ada County is a storage easement. It's a water storage easement. Yes, several items of their facility are outside the current easement and will be taken care of. We have no issues with that. Idaho Foundation hasn't changed their approval letter. Their approval letter still stands and we have a lifetime fence which will be put to keep all humans and all animals out of the preserve.

## **PUBLIC HEARING CLOSED**

**Commissioner Bradbury** – We'll take a minute to remind ourselves what we have in front of us. We have three applications; an annexation of 11.97 acres with a zoning designation of R-1B/DA which is a recommendation to City Council, and Conditional Use and Boise River System Permit applications for a planned unit development which is a decision matter by the Commission, and we have a preliminary subdivision plat which is a recommendation to City Council.

**Commissioner Demarest** – I'm not ready to make a motion but I would like to weigh in based on what I've heard and what I've read prior to this evening. I've been on the Planning & Zoning Commission for about a year-and-a-half and this is by far the hardest of the decisions we've had. As I think about where we are, it seems to me this is a very unique application. I think it's unique because the agencies, the entities and the area are unique. We've got the Shakespeare Festival, we've got Boise River issues, we've got a school and we have sewer ponds. We've got a dam. I would say that's a pretty unique set of influences in a fairly small area. I want to also confirm, how shall I say, the goodness of all the parties involved. I've heard lots of good will amongst them. The Triplett's, the land owners and of course I have a lot of regard for the Idaho Shakespeare Festival, which I'm involved in going there for a number of years now and all of the good will of the people who work for us here. With that said, what I keep coming back to is a big old question mark. There are lots of questions and some of them are really big. When the Ada County Board of Commissioners has a representative saying they have many questions. Well, because they have questions, we have questions. There are a lot of other things too. If I'm going to get specific one of those is the issue of sound. Both parties, homeowners and Shakespeare Festival folks, none of whom are as close as this particular subdivision, are already having a problem with sound.

The other is safety of the dam. It's a concern which raises red flags. These lagoons and the drainage there seem to be somewhat unprecedented as well. So I have many, many questions. By the way, I hope everybody realizes we don't get paid for what we're doing up here except for the good will of making such decisions.

**Commissioner Danley** – I have a similar position in the sense of how to get to a motion. I certainly think this warrants further discussion amongst the Commission. First of all I want to say to everybody who is here, thank you for coming out. It means a lot. I know to watch government in action takes its toll and does put you to sleep. You are still here and many have testified and have gone through the process. I think all of us thank you for doing so.

There are a few things I want to get out. One, Mr. Conger, I would like to address you in a sense that I think you've done a pretty good job in trying to work with the folks who are out there trying to make a lot of different changes to the site plan, and trying to accommodate some of the needs. I want to recognize that. I think it's important to do so. One other thing and this is sort of anecdotal. A month-and-a-half ago some of you in this room may have went to a Steely Dan concert as I did. I knew this was going to be in front of us and the noise issue for me was something I wanted to get a feel for. The concert wasn't over until about 10 PM and I rode my bike home that night. I was all the way to the River Run clubhouse and I could still hear the concert. Where the concert was being held was being broadcast away from the direction I was, towards the Foothills. Yes, I could still hear it. I don't know how many trees, berms and everything that was in between, but I could still hear it. I got home and I was curious. I was a mile away and I could still hear that pretty clearly. That's important because I do believe this is going to be an issue. But it's not the reason why I feel the way I do and I want to read a couple of things, if you will, just to highlight. We have a staff report that says: *"Properties designated large lots are typically developed at 1 to 2 units per acre, with clustering of homes to preserve natural features and open space. This designation is generally located in fringe areas where conventional, suburban and compact residential development might not be appropriate."* Going to another area in the staff report and there are sensitive land uses in this area which could be negatively impacted by the requested R-1B implementing zone. This is the highest density zone allowed. It will maximize the number of dwellings in close proximity to the Shakespeare Festival which has the potential to create conflicts between incompatible land uses. A lower density and the inclusion of a development agreement could mitigate these issues. One last part of this is annexation with a residential zone is reasonable and somewhat anticipated. However, there are two alternatives to the zone being discussed. It would be more appropriate given the unique characteristics of the site surrounding uses and it goes into detail of what those are. R-1A with the lower density residential of up to 2.1 units per acre, and then even open land. When I read this I see what works and what we're talking about is we're right up against the crest of what was always envisioned for this area or at least the recent plan and there are lots of concerns. Lots of concerns in the report and more importantly, I think there are alternative suggestions within the report which is helpful to us in this particular situation.

**Commissioner Morrison** – I've had a lot of thoughts on this for a long time. I don't have the privilege of having seen the Shakespeare Festival at Angell's but I do remember the cyclists going by when they were on Park Center thinking, oh that kind of wrecked my show. Then again so did the ducks. All in all I think we're all very interested in all of the same things. The question really comes about with annexing sewer ponds which haven't been decommissioned yet and are kind of a problem because it's putting responsibility on the City to deal with something that is currently the County's problem. Secondly, is the zoning of it because it doesn't have any zoning right now because it's sewer ponds? I recognize the Triplett's great gift to the old Southeast Boise area by allowing the sewer ponds to go in. How that happened is beyond me and that's only because I've been doing Wincos in California, so I can't imagine anything like that ever happening over there but it happened here.

Lastly is compatibility with the neighborhood. The fact of the matter is it really wasn't ever studied as part of any plan. It's sewage for the lagoons so we'll not deal with it because its sewage lagoons. When it first came to my attention its like what a win.

We're taking sewer out and we're giving it back to the community, but then the whole density issue kind of came up with it all. I'm really having trouble with it because we need to look at the area and just look at the map up there. It was never anticipated to go dense. That was never the plan. It was even in the Blueprint to Boise. It was yellow. We can argue how dense yellow is in the Boise Blueprint, but the fact of the matter is it's the closest property that's privately owned and adjacent to the river and we are being asked to annex it, rezone it and approve a PUD (Planned Unit Development) for compatibility with the neighborhood. At this point I think truthful discussion this evening brought up more questions than it answered, especially when the County says no we're not quite there yet. That's bothersome to me because I don't want the City to annex property the County and federal government still aren't sure what they want to do with. That's really my biggest issue this evening. I think we're getting annexation before resolution of all the rest of the issues out here. Lastly, my guiding philosophy is land next to the river should stay next to the river and shouldn't be turned into homes.

**Commissioner Bradbury** –I'll toss out a couple of my ideas. On one hand a couple of things I think about is this is private property owned by private individuals. It's not public land. We may wish it was public land but it isn't. As a result, it has some right to be put to a beneficial use in essence. That's one thing rattling around in the back of my mind. The other things I'm thinking about are this site, according to our Comprehensive Plan this is planned for a residential development. Maybe it wasn't very good planning but it's the plan which is on the books. I'm struggling with the notion it's okay to put 8 or 10 or 20 houses in there with 10 or 20 residences out there. That's somehow more compatible than 40 some houses out there? It's still houses and there are still people living there who are going to be affected by what's going on in the surrounding neighborhood. I understand the debate which is fewer people, lower likelihood of complaints from fewer people. Maybe, maybe not. It's pretty clear to me there will be conflicts between the different uses. It's pretty hard to escape that because those conflicts apparently exist today. When we look at this, I keep glancing up as I speak because I'm struck with the fact there are few houses out there now. So, what do you do about it? How do you reconcile those competing interests? Frankly, I don't have a good answer for it and maybe because, unlike some of the kids who can sit up until 10:45 PM, it's getting late for me. That's kind of what I'm thinking about. In my mind we've got a classic case of new development encroaching on an existing use. You see them all the time. This isn't really anything new. Sometimes it's a little bit more. Sometimes it's a bigger conflict and sometimes it's a lesser conflict. We see them all the time, but we also have a very unique site and because it's a unique site it needs unique scrutiny. It's down there by the river and we try to take care of the river so there's a lot of competing interests and concerns. I'm not sure I have a solution to them but now you know where I am. Is there any discussion or would someone like to add a motion?

**Commissioner Demarest** – I have a procedural question and I would like response from the City Attorney. Can you tell us what our options are? I understand denial is one of them. I assume defer is one of them but I think we can only do that for one month. Am I correct about that?

**Mary Watson (Legal)** – Yes.

**Commissioner Demarest** - With no action on our part, would that amount to denial?

**Mary Watson** – There is the possibility at this stage. Because you've had an initial public hearing tonight you are limited and restricted by the City Code to 44 days if the applicant is not in agreement to any sort of deferral. If you were going that route you would first want to check with the applicant on whether they willingly want to defer for whatever reason, to get more information, to work with parties, etc. But on your own you're limited to the 44 days per code which is essentially next month, next month's hearing. You can't take the route of non-action tonight. You have before you three decisions to make. The annexation, you can certainly choose to annex at the requested zone or annex with a recommendation of a lower zone. This is a recommendation to Council. That's already been noted tonight. The Conditional Use Permit is the next step with the River System Permit, which stops here with you unless it's appealed to Council, and you do need to make a decision on that tonight and finalize it. The third of course is the subdivision which is like the annexation, a recommendation to City Council. This is one big package and denial of one could get tricky if you're approving some and denying others. I'd just like you to take this into consideration.

**Commissioner Danley** – I agree with you 100 percent regarding the notion of reducing the number of homes, with respect to the noise issue in particular. I don't know how big of a deal that's going to be. Going back to the staff report, it mentions the fact there are concerns going both directions but it does say, going back to your point particularly, it respects the private property issue. While these might be valid concerns, the property is delineated as residential. As a result annexation with residential zoning is a reasonable and somewhat anticipated request. We've heard from multiple representatives, specifically Mr. Allen, that there was willingness, I think I heard, to look at one unit per acre. Maybe there's a reasonable or little bit of give in between. The point is we have alternatives which still fit within the overall zone or overall district and are not specific zones being applied for and seems to be more compatible, at least with even one representative of the Shakespeare Festival of course saying it is okay. I've still got concerns. There are a lot of issues to be addressed with respect to the river floodplain and the cleaning up of the site and so forth, but specific to the zoning and to the density and so forth, I do see a little ground there.

**Commissioner Morrison** – I also agree with Commissioner Danley that annexation, if you think of what we were doing last month when we had 97 landlocked parcels annexed without much debate, this one is right on the edge and is not a burden to the City, from the annexation standpoint, for providing utilities or services because it's already a served area. Staff did not express any concerns about the annexation and the burden which annexation would place on the City. As Commissioner Danley pointed out, annexation with the underlying zone is still a viable recommendation because both of those have little effect on the PUD. The initial action this evening which would validate the other two is if we could achieve a successful vote on annexation and then we could consider the PUD and the subdivision plat.

**Commissioner Bradbury** – We'll take three separate motions starting with the motion on the annexation.

**Commissioner Danley** – Before making a motion I want to make sure, based on what we heard from the City Attorney as well, that all of what we're suggesting comes right back to the applicants themselves, and whether or not this would even be something in their interest.

We have a couple of options. We can make the motion to annex with a denial of the PUD under the current plat as proposed to us, with the idea it comes back in front of us with a lower zoning. That's an assumption on our part and is okay with them. The alternative I heard was that by deferring and with that being okay with the applicant under the assumption we have concerns we feel need to be reworked which would then allow them to make those changes and come back before us next month with any changes to the design of the plat. Are we permitted to ask the applicant?

**Commissioner Bradbury** – What do you want to ask the applicant?

**Commissioner Danley** – I'd like to ask the applicant if we made a motion for deferral would there be a willingness to make more changes....part of my question right off the bat is from the first meetings there was a number of 22 to 26 units being discussed. That's closer to what we're hearing from the Shakespeare Festival representative and the neighborhood association. Not exactly, but it's closer. Is this a reasonable request or is that off the table?

**Commissioner Bradbury** – Before you answer the question I want to make sure we're all in the right place. It's okay if we ask the applicant a procedural question but we can't ask the applicant a substantive question since we've closed the hearing. In other words, if the applicant is prepared to consider a deferral for purposes of revisiting their plan we can probably do that. Are you alright with that? We're not asking anything substantive.

**Mary Watson** – I understand your question. Let me add regardless of the applicant's opinion on a deferral you could independently defer for a month. If you want to go longer than that you'll need to have the applicant's buy-off.

**Commissioner Bradbury** – Commissioner Danley, did you understand the distinction? We can defer for up to 44 days, but this means we're back here on October 7<sup>th</sup> because 44 days doesn't get us all the way to a November meeting. Do we have a second meeting scheduled in October?

**Cody Riddle** – We do.

**Commissioner Bradbury** – It could be October 14<sup>th</sup> and we can get out a month all by ourselves. The question is whether the applicant would be willing to defer for a longer period of time. We could ask the applicant that question because we need the applicant's approval to defer for longer than 44 days.

**COMMISSIONER DEMAREST MOVED TO DEFER CAR13-00007 FOR THE MAXIMUM AMOUNT OF TIME FOR DEFERRAL, WHICH IS 44 DAYS.**

**Commissioner Bradbury** – There's a motion on the floor to defer and we're only talking about Item #8 on our agenda at the moment, but this can certainly be the case for all three of the items.

A couple of things now that you've made the motion. We don't have a second yet, but I'll get around to that in a quick second.

One of the things I'm going to ask the Commission to do, if we do get a second to the motion, is to articulate what it is we expect from the applicant, staff, from the public or from ourselves during this deferral period. There's a motion on the floor to defer to our second meeting in October which is, does anybody have that date for us?

**Pam Baldwin** (Planning Team) – October 14<sup>th</sup>.

**Commissioner Bradbury** – October 14<sup>th</sup>. Is there a second to the motion? Motion dies for lack of a second. Does somebody have another idea?

**COMMISSIONER MORRISON MOVED FOR THE DENIAL OF CAR13-00007 (ANNEXATION OF 11.97 ACRES), PUD13-00002 AND CFH13-00019.**

**Commissioner Bradbury** – Why don't we handle one at a time?

**COMMISSIONER MORRISON MOVED TO DENY CAR13-00007.**

**COMMISSIONER DEMAREST SECONDED THE MOTION.**

**Commissioner Bradbury** – Any discussion on the motion?

**Commissioner Danley** – I'm going to support this motion. Ultimately what it boils down to is there are a lot of unanswered questions. The vision we heard amongst ourselves and discussed, and what we heard from the audience is ultimately we're landing in a very different place than what's being presented to us. Even if a deferment was thrown out, we're a far ways away. This is where I'm landing and I hope that's understood, but this is why I will support the motion.

**Commissioner Demarest** – I was trying to land on a deferral and it didn't work so this is the next stop on the journey. I want to weigh in with Commissioner Danley. There are just too many questions on this thing for me to feel okay about voting for Item #8. I would add I do believe the applicant does have the option to come back to us at any time in the future.

**Commissioner Morrison** – I don't think the efforts today have all been fruitless, but I do think it's important the various agencies have a given approval prior to coming to the Planning & Zoning Commission for recommendation of annexation and zoning to City Council.

**Commissioner Bradbury** – Commissioner Morrison, as the maker of the motion, I think the City Council might like to have a little bit more information as to why we're recommending denial. I know we've talked a little bit about it, but maybe you could articulate a little bit more for us.

**Commissioner Morrison** – At the fundamental level it's currently county property and the County operates a facility on that. They've expressed concerns to us this evening and I hate to use this phrase, having all of their ducks in a row prior to this annexation going forward. There are still some issues which need to be resolved. There are legal issues and survey issues that can be resolved and they should be resolved before they're brought back before this Commission.



Secondly, there are some issues between DEQ (Department of Environmental Quality), EPA (Environmental Protection Agency) and FERC (Federal Energy Regulatory Commission) which have to do with the retirement of the lagoon, the lines in the floodplain and who has jurisdiction over all of this. All of this was brought up this evening and inadequately answered as to whether or not they have been put to bed. On top of all that you have a fundamental issue of compatibility with the overall proposed plan and the neighbors, which has yet to be addressed in a satisfactory fashion so the project could go forward.

**Commissioner Bradbury** – Any further discussion on the motion? Hearing none, Pam will you please call the roll?

**ROLL CALL VOTE**

<b>COMMISSIONER MORRISON</b>	<b>AYE</b>
<b>COMMISSIONER DEMAREST</b>	<b>AYE</b>
<b>COMMISSIONER DANLEY</b>	<b>AYE</b>
<b>COMMISSIONER BRADBURY</b>	<b>NO</b>

**THREE IN FAVOR, ONE AGAINST MOTION CARRIES.**

**Commissioner Bradbury** – #9, PUD13-00002 and CFH13-00019, a Conditional Use and Boise River System Permits. These are matters for decision by the Commission.

**COMMISSIONER MORRISON MOVED TO DENY PUD13-00002 AND CFH13-00019.**

**COMMISSIONER DANLEY SECONDED THE MOTION.**

**Commissioner Morrison** – With respect to some of the testimony this evening, there appear to be issues with the Boise River System Permit and it's not clear the project adequately addresses those standards.

**Commissioner Bradbury** – As a voter I voted no on the last motion and the reason I did is because this could be made to work. I probably would have gone the deferral route and tried to give the applicant an opportunity to address some of these things but, we'd have to tell them what they are. As I said before, I have to admit I'm a little bothered by the status of the Boise River System permitting. There is some serious doubt in my mind about that one. Nevertheless the bottom line is I am not prepared to actually just flat out deny it but, I'm just one vote.

**ROLL CALL VOTE**

<b>COMMISSIONER MORRISON</b>	<b>AYE</b>
<b>COMMISSIONER DANLEY</b>	<b>AYE</b>
<b>COMMISSIONER DEMAREST</b>	<b>AYE</b>
<b>COMMISSIONER BRADBURY</b>	<b>NO</b>

**THREE IN FAVOR, ONE AGAINST MOTION CARRIES.**

**Commissioner Bradbury** – Now Item #9a on the agenda, SUB13-00017. This is the preliminary subdivision plat which is also a recommendation to City Council.

**COMMISSIONER MORRISON MOVED TO RECOMMEND DENIAL OF SUB13-00017 TO CITY COUNCIL.**

**COMMISSIONER DANLEY SECONDED THE MOTION.**

**ROLL CALL VOTE**

<b>COMMISSIONER MORRISON</b>	<b>AYE</b>
<b>COMMISSIONER DANLEY</b>	<b>AYE</b>
<b>COMMISSIONER DEMAREST</b>	<b>AYE</b>
<b>COMMISSIONER BRADBURY</b>	<b>NO</b>

**THREE IN FAVOR, ONE AGAINST MOTION CARRIES.**

Hearing adjourned.

Approved:

\_\_\_\_\_  
Jay Story, Chairman  
Boise City Planning & Zoning Commission

Date: \_\_\_\_\_