



**Planning & Development Services**  
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 Boise, Idaho 83701-0500 Website: www.cityofboise.org/pds

# #106: Application for Appeal

Fee: \$ 180

I (we) Roxey Place Subdivision No 1 HOA, hereby appeal the decision of the Boise City:

- Planning & Zoning Commission
- Hearing Examiner
- Design Review Committee
- Historic Preservation Commission
- Planning Director

File Number: PUD 19-00017 Address: 5571 N. Eagle Rd.

Specific Action Being Appealed: City of Boise Planning and Zoning Commission approval of PUD 19-00017 on 7/01/2019.

### Grounds for Appeal

1. Please see Document 1, Grounds for Appeal
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_

Appeal Contact Person: Larry Icey VP Roxey Place HOA

Address: P.O. Box 1777 Eagle, ID 83616

Phone: 303-906-5923 Email: roxeyplacehoa@gmail.com

### Appeals

- Appeal of an Administrative Decision to the Planning & Zoning Commission or Design Review Committee (non-refundable fee).
- Appeal of a Design Review Committee Decision to the Planning and & Zoning Commission.\*
- Appeal of a Planning & Zoning or Historic Preservation Commission decision to City Council.\*
- Appeal of a Hearing Examiner decision to City Council.\*

\*Portion of fee is refundable is appeal is successful.

### Notes:

1. If the reasons for the appeal are resolved prior to the appeal hearing, please contact the Planning Staff at 208-608-7100.
2. The only topics which may be discussed during the appeal hearing are the specific reasons for the appeal as stated in the application.
3. Neighborhood groups are encouraged to elect a spokesperson for appeals that are supported by numerous residents of the project to avoid a duplication of testimony.
4. Section 11-3-7.2 of the Zoning Ordinance provides that an appeal to Council may not be withdrawn without the consent of Council.

Signature of Appellant/Representative: *Larry Icey* Date: 7/10/2019

**For Staff Use Only:**  
 If the appellant is not the applicant, the applicant must be contacted immediately following the acceptance of this appeal.  
 Applicant contacted on \_\_\_\_\_ by \_\_\_\_\_  Appeal is by applicant.

# Document 1

## Grounds for Appeal

5 (1) Condition of Approval 1. **Compliance with plans and specifications submitted to and on file in the Planning and Development Services Department dated received April 30, 2019, revised site and landscape plans submitted June 14, 2019, and revised building elevations and floor plans submitted June 17, 2019**, except as expressly modified by the following conditions: ...

10 This condition of approval does not make sense in that the plans and specifications submitted on 4/30/2019 are different in significant details to the plans submitted on 6/14/2019. This requirement for compliance to plans that are in conflict illustrates some of the neighborhood comments that the many plans and revisions submitted by the developer are confusing. The neighborhood commentators found these plans confusing, and by requiring compliance to conflicting plans, obviously the planning department and P&Z commission may have also have  
15 been confused. We appeal the approval of PUD19-00017 because the plan(s) approved are in conflict and the direction is unclear. Further, the decision made by the P&Z Commission was arbitrary, capricious or an abuse of discretion in that it was made without rational basis, or in disregard of the facts and circumstances since the facts and circumstances, in this case the plans submitted, are confusing and in conflict with each other.  
20 See Supplement 1.

(2) Condition of Approval 10. Solid 6' high **fencing shall be provided along all portions of the south and west property lines that currently lack it.**

25 Condition of Approval 10 illustrates possible planning department and P&Z Commission bias against the neighborhood opposition by specifically excluding the requirement for fencing along the north side of the property which borders property owned by the Roxey Place Subdivision No.1 Homeowners Association. This condition is arbitrary and an abuse of discretion in that it was either made without rational basis or was made to punish the HOA for opposing PUD19-  
30 00017. All of the bordering property on the south, west and the **north** is private property and should be treated fairly and equally by the P&Z commission in their decision.  
See Supplement 2.

35 (3) Condition of Approval 11. The pedestrian pathway extending west from Audra Lane shall remain open.

Condition of approval 11 exceeds the statutory authority of the planning staff and the P&Z Commission in that the commission places a requirement upon adjacent private property not included in PUD19-00017. The pedestrian pathway extending west from Audra Lane is completely contained within a lot legally described as 5520 N. Forbes Ave. Boise, ID 83713,  
40 Roxey Place Block 1, Subdivision 2, Lot 12, Ada County Parcel R7599300100. It is private property solely owned by the Roxey Place Subdivision No.1 Homeowners Association and is not part of the property under consideration of PUD19-00017.  
This is another example of the planning department and P&Z Commission appearance of bias against the neighborhood opposition by placing a condition of approval on property owned by  
45 the Roxey Place Subdivision No.1 HOA.

50 Furthermore, we contend that this condition of approval requiring the pedestrian pathway  
extending west from Audra Lane shall remain open is arbitrary, capricious and an abuse of  
discretion in that it was made without rational basis, or in disregard of the facts and  
circumstances presented. The staff report cited a principle GDP-N.1 and a Goal WB-C2.2  
which vaguely **encourage** continuous sidewalks and connectivity. We instead referenced the  
more detailed description and legal requirements found in City of Boise City Code 11-07-04  
Connectivity 5. Micro-paths which documents that this particular pedestrian pathway does not  
fit the **legal** definition or meet the **goals stated in law**.

55 However, we invite the City of Boise City Council to comment upon the legitimacy and future  
of the pedestrian path through lot 12. We feel that allowing the Roxey Place HOA to close this  
pathway will resolve many of the issues PUD19-00017 brings to the existing community. We  
did what we assume our City government expects us to do: Try to work out the details of  
60 property development at the local level, engage, sort through and resolve the issues and present  
solutions before the City proceeds to hearing level. Our assessment is that the applicant  
developer, the city staff, and ultimately the Planning and Zoning Commission have failed us in  
that endeavor to resolve the issues. There was zero compromise.  
See Supplement 3.

65 (4) Condition of Approval 13 and 14.

13. The applicant shall comply with the requirements of the following agencies as identified in their  
submitted memos:

a. Idaho Transportation Department (May 17, 2019);

70 b. Boise City Fire Department (May 20, 2019);

14. The applicant shall comply with the requirements of the Boise City Public Works Department  
(BCPW). The following is a list of department comments by division:

a. Sewer (May 1, 2019);

b. Drainage (May 10, 2019);

75 c. Solid Waste (May 1, 2019);

d. Street Lights (May 1, 2019).

Both of these conditions of approval (13 and 14) further illustrate the confusion caused by the many  
plans and revisions submitted by the developer and also create a situation that doesn't make sense in  
80 that these reports and requirements were submitted on outdated plans that have been significantly  
revised.

Examples:

- The ITD report of 5/17/2019 was based upon a plan submitted 4/30/2019 which featured  
a solid median to separate incoming traffic onto Audra LN. from Eagle Rd. The plan  
85 submitted on 6/14/2019 features a split in that median near the Eagle Rd. intersection  
that, we assume, was placed at this location to allow vehicles exiting the proposed self  
storage units to cross over to the exit lane. We feel that this could cause an unsafe  
situation in that any vehicles using this median so close to the traffic entering on Audra  
Ln could cause a backup onto Eagle Rd. which is 55 miles per hour in this section.  
90 Regardless, the ITD report is not relevant to the project plans submitted on 6/14/2019.
- The Boise City Fire Department report is also based upon the outdated 4/30/2019 plan  
submitted. The streets and parking pattern within the project have completely changed

95 on the 6/14/2019 plan. The fire hydrant placement has changed. The fire department has not reported on the most current plan to ensure the streets are adequate for fire equipment access or that the hydrant count and placement is adequate.

- The solid waste report submitted 5/1/2019 was based upon the plan submitted 4/30/2019 which featured individual waste containers for each unit which were to be stored in the garage of each unit. In the plan submitted 6/14/2014 the garages have been deleted, the individual waste containers have been deleted and replaced with one waste dumpster area and the streets and parking patterns have been revised. The solid waste department has not reported on the most recent plan to comment on the single dumpster location or the space needed within the project for their equipment to empty that dumpster.

Documentation of plans and reports are available in the staff report for PUD19-00017.

105 See Supplement 1.

- 110 (5) Although not mentioned in the approval of PUD19-00017, apparently a waiver requested by the developer of a planner requirement that retail uses be included along Eagle Rd as a buffer to the residential project was granted without comment by the P&Z Commission. In the developer's letter of explanation dated 4/30/2019 he states, **“We are requesting a waiver of the requirement for retail uses on the eastern portion of the property abutting N Eagle Road. We discussed this with the neighbors at our neighborhood meeting and they we adamantly opposed to any retail development. The surrounding area is predominately residential making any retail uses in this location inappropriate and a deterrent to this project and the area.”** This statement, attributed to neighborhood comment has been documented as completely **false** and should not only be ignored, but the submission of a false statement should count against any requested waiver of retail use or approval of PUD19-00017. Any waiver granted is an abuse of discretion by the planning staff and the P&Z Commission in that the decision was made in disregard of the facts and circumstances presented by the neighborhood comments denying and contradicting the developer's statement. Accepting this false statement for consideration in the question of a retail use waiver, when informed that it is false is a disregard of the facts and circumstances and another example of possible bias against the neighborhood opposition by the planning staff and the P&Z Commission.

125 Documentation is available in the staff report an/or video record of the neighborhood meeting.

- 130 (6) The decision is arbitrary and capricious in that it approves a plan where previous similar proposals and/or requirements have been denied..

The city decisions have fluctuated between not allowing storage unit development and allowing it.

135 They've fluctuated on requiring retail along Eagle Rd. and later granting a waiver.

A traffic study for Eagle Rd. was required for a previous similar residential proposal on the same property, yet dropped for PUD19-00017.

135 The P&Z Commission required CCRs at the plat approval of our neighborhood, but at the hearing for PUD19-00017 the P&Z Commission told us that they don't have the authority to allow us to enforce those CCRs.

See Supplement 4 for detail.

- (7) Approval of PUD19-00017 was made upon unlawful and/or unusual procedure.

140 See Supplement 5.

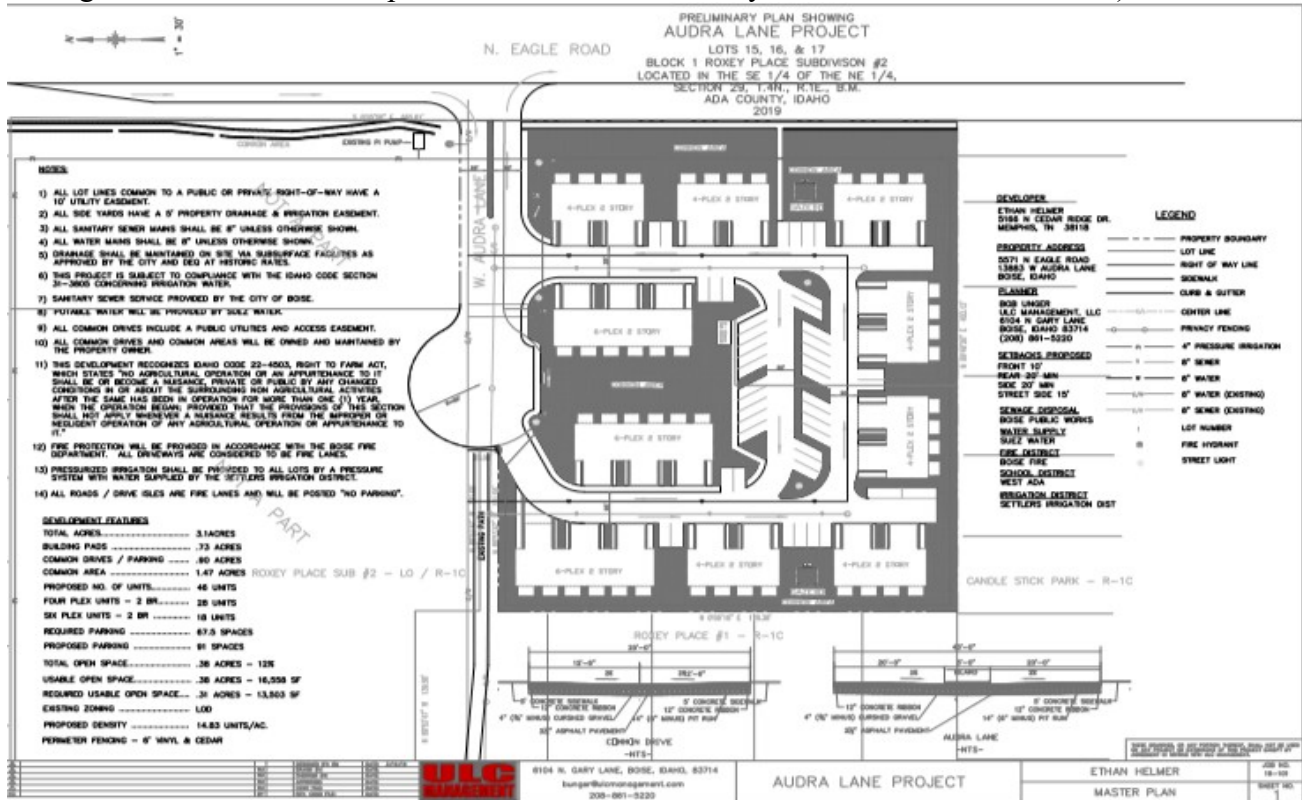
# Supplement 1

## Documentation for Grounds for Appeal 1 & 4

### Condition of Approval 1, 13 & 14

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Below is the site plan submitted 4/30/2019. (There was a different plan presented at the neighborhood meeting invitation that we can provide to illustrate the many revisions of PUD19-00017)



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Please note the solid median on Audra Ln, the lack of solid waste dumpsters, the garages, the location of fire hydrants, the location of open space, the position and width of streets and the angled parking that affects street width.

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Please compare this plan submitted on 4/30/2019 with the one submitted 6/14/2019 and consider how condition of approval 1 requires "Compliance with plans and specifications submitted to and on file in the Planning and Development Services Department dated received April 30, 2019, revised site and landscape plans submitted June 14, 2019, and revised building elevations and floor plans submitted June 17, 2019." About the only consistency is the number of units. How can this be reconciled?

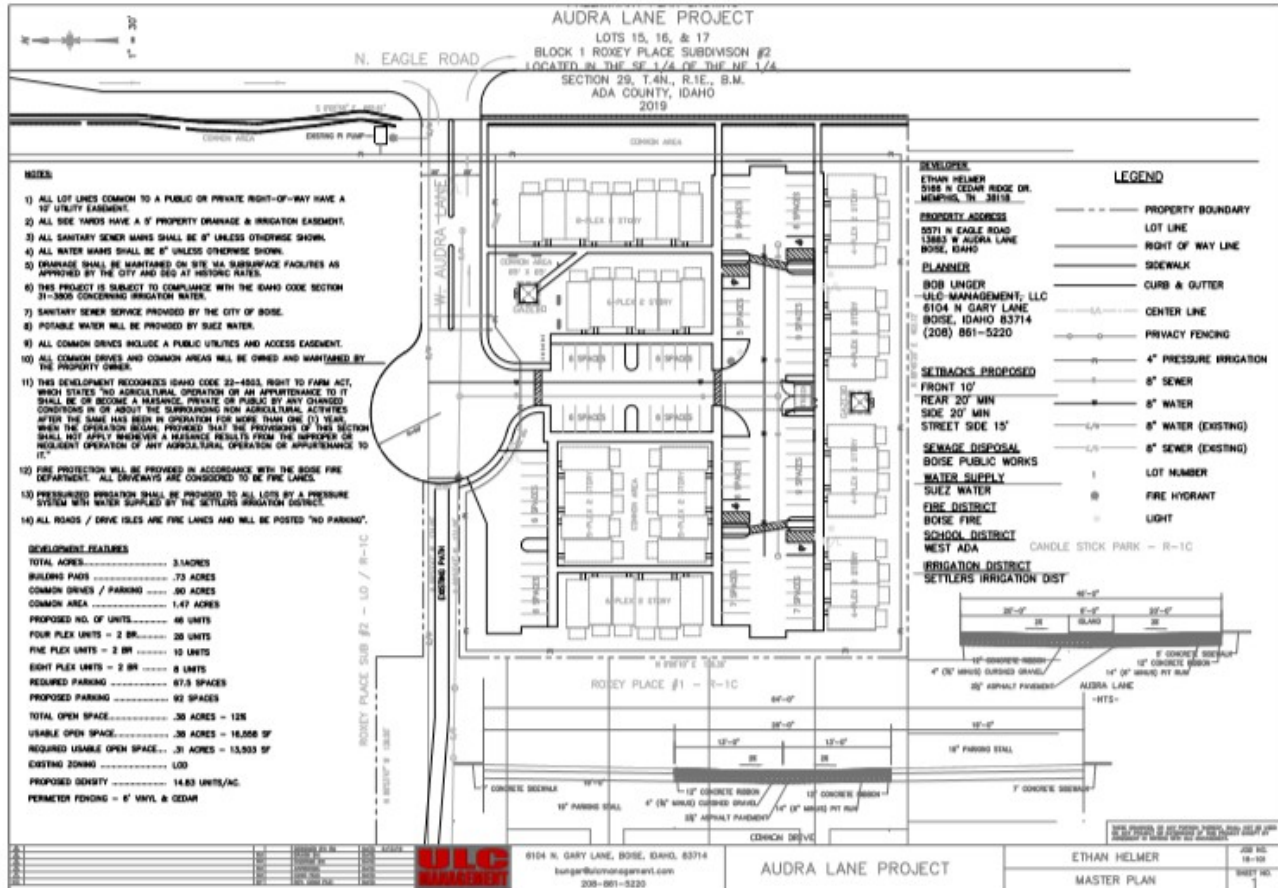
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Also note that the city, county and state agencies that have offered opinions on PUD19-00017 haven't seen the latest site plan revision. Their comments based upon the 4/30/2019 plan are irrelevant.

The Property Information form submitted on 4/30/2019 and included in the Staff Report for the 7/01/2019 P&Z Commission hearing is also out of date and inaccurate in many, if not most of the information submitted.

165 Please also note that between PUD18-00041 and PUD19-00017 the neighborhood has seen 9 different site plans from the same developer for the same property.

Below is the site plan submitted 6/14/2019 (There was an additional different site plan submitted on 5/20/2019 that has since been deleted from PDS Online that we can provide to illustrate the many  
 170 revisions of PUD19-00017)



Note the split median that could cause a backup on Eagle Rd., the waste dumpster location, the lack of garages, the new fire hydrant locations, the different location and size of open space, the new street patterns and widths along with the new number of parking spaces that are straight-in parking that limits street width, especially in the event of large vehicles parking and hanging out into the street.

175 At the hearing 7/1 Commissioner Bratnobar expressed his confusion this way, "So, I agree in terms of meeting the numbers that this is in line. One of the things, well it seems like there's a lot of moving parts that we've been hearing about in terms of the changes going on here so I just want to make sure I'm understanding them. For instance one of the things brought out was trash. The sketch we had up before looked like it showed a spot for a dumpster. I'm not sure what the plan is here, but something  
 180 doesn't jive there or else I'm reading too much into that. The thing about the garages was kind of a surprise. I'm interested if there's a requirement for covered parking for some of those spaces and I really want to understand how that's going to happen without garages, carports or whatever is going on there...There's enough up in the air that it causes me a great deal of concern."

The decision made by the P&Z Commission was arbitrary in that it was made without rational basis, or in disregard of the facts and circumstances since the facts and circumstances, in this case the plans submitted, are confusing and in conflict with each other. We question how the differing plans were reconciled in order for the commission to come to a well reasoned decision and point out how having so many plans in consideration at one time causes confusion for all parties. Condition of Approval 1 that requires compliance with differing plans is unattainable and the approval of 7/1/2019 should be reversed.

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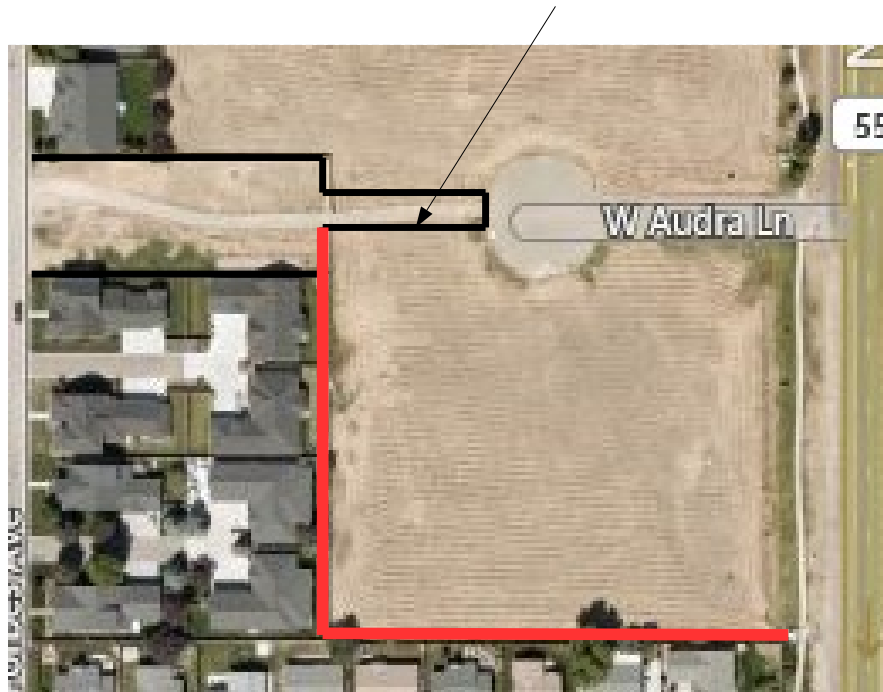
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## Supplement 2 Documentation for Grounds for Appeal 2 Condition of Approval 10

HOA property is lined in black. Fencing required by Condition of Approval 10 on the south and the west of the project is in red. The project property line bordering HOA property on the north should also be fenced.



225 This condition is arbitrary and an abuse of discretion in that it was made without rational basis. If the property in question is to be fenced, then the requirement should be that all of the project bordering private property be fenced and not exclude the private property owned by the Roxey Place HOA.

230 Also note that the fencing required by the Condition of Approval 10 for the south and west is already in place and has been paid for by the bordering homeowners of Roxey Place and Candlestick Park. The missing section of fencing is bordering lot 12 on the north which has been excluded in the condition of approval.

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# Supplement 3

## Documentation for Grounds for Appeal 3

### Condition of Approval 11

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Lot 12 is defined as:

5520 N. Forbes Ave. Boise, ID 83713  
Roxey Place Block 1, Subdivision 2, Lot 12  
Ada County Parcel R7599300100

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It is solely owned by the Roxey Place Subdivision No 1 HOA and is not part of the PUD19-00017 proposal and should not be required to comply to a condition of approval for that project.

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Condition of Approval 11 exceeds the statutory authority of the planning staff and the P&Z Commission in that the commission places a requirement upon adjacent private property not included in PUD19-00017.

**2019 Property Details for Parcel R7599300110**

2019  [Need Help? Email the Appraiser Assigned to this Parcel](#)

[Back to Parcel Search](#) [Print View](#)

**Details** Valuation Tax Districts Taxes Characteristics Sketch

Parcel: R7599300110  
Year: 2019  
Parcel Status: Active in 2019  
Primary Owner:  
ROXEY PLACE SUBDIVISION NO 1 HOA  
INC  
Zone Code: R-1C  
Total Acres: 0.603  
Tax Code Area: 01-110  
Instrument Number:  
2017019886  
Property Description:  
LOT 12 BLK 01  
ROXEY PLACE SUB #2

Ada County Assessor

07 17 2018

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We request and welcome the City of Boise City Council to comment upon the legitimacy and future of the pedestrian path through lot 12. As concerned citizens of Boise we understand the need for growth and the need for housing. While we would prefer offices or retail, we have tried to work with both the developer and the city find solutions that would allow us to support high density housing on the property in question while protecting the character of our community. We feel that allowing the Roxey Place HOA to close this pathway will resolve many of the issues PUD19-00017 brings to the existing

260 community.

This condition of approval requiring the pedestrian pathway extending west from Audra Lane shall remain open is arbitrary, capricious and an abuse of discretion in that it was made without rational basis, or in disregard of the facts and circumstances presented. The staff report cited a principle GDP-N.1 and a Goal WB-C2.2 which vaguely **encourage** continuous sidewalks and connectivity. We instead referenced the more detailed description and legal requirements found in City of Boise City Code 11-07-04 Connectivity 5. Micro-paths which documents that this particular pedestrian pathway does not fit the **legal** definition or meet the **goals stated in law**.

270 Our position on this pathway through our lot 12 is based upon City of Boise Code. The planner sites GDP-N.1 and Goal WB-C2.2.

**Blueprint Boise Principle GDP-N.1 Connectivity**

- a) Provide a continuous network of sidewalks, bicycle, and pedestrian paths, and roadways to connect different areas of neighborhoods.
- 275 (b) Establish linkages to activity centers and other adjacent uses, transit stops, and the surrounding community.
- (c) Avoid isolating neighborhoods with walls and gates that hinder pedestrian, bicycle, and vehicular connectivity.
- (d) Work with neighborhood residents to improve connectivity in established neighborhoods where
- 280 sidewalks are absent or incomplete.

GDP-N.1 is a **principle** as opposed to the city development code. The pathway through our lot would connect the two neighborhoods, but only on a one way basis. It would open the privately owned benefits of our neighborhood but would not offer anything in return from the apartment project. It does not connect any activity centers and other adjacent uses or transit stops. Closing the pathway would not isolate any neighborhoods including the apartment project. Access is still available along Eagle Rd. and the new 10 ft wide sidewalk/bike path required by the conditions of approval.

**Blueprint Boise Goal WB-C 2.2 PEDESTRIAN/BICYCLE CONNECTIVITY**

290 Encourage greater connectivity of pedestrian walkways and bike paths between residential neighborhoods and major employment centers, public parks, plazas, and neighborhood commercial centers (i.e. Ustick Town Site).

WB=C2.2 is a one sentence **goal** that **encourages**. It would encourage connectivity between neighborhoods, but again only on a one way basis. The apartment project will be private. There are no employment centers, public parks, plazas or commercial centers on either side of this path.

In contrast our position on the pathway is based upon the detailed City of Boise Development Code found at <https://cityclerk.cityofboise.org/media/262806/1100.pd>. Below is the code in black and our notes, comments and arguments in red.

**11-07-04 Connectivity**  
**5. Micro-paths**

**5. MICRO-PATHS**

305 **A. Purpose To encourage non-motorized forms of travel, and to provide safe, convenient, and**

aesthetic alternative travel routes to common destinations such as schools, parks, and shopping centers.

## B. General Provisions

### (1) Micro-paths shall be utilized

310 (a) where there are no sidewalks for safe and direct pedestrian access to the common destinations identified above; There are are sidewalks along N. Eagle Rd. that would connect the apartment project with schools, city, parks and shopping centers. The sidewalk is to be widened to 10 ft and landscaped by condition of approval. There are none of these common destinations at the west end of the path through lot 12.

315 (b) to connect with a regional path system; or There are no regional paths connected through lot 12 on either end.

(c) to provide pedestrian connections from an internal to an external street.

Existing sidewalks provide pedestrian connections from internal to external streets without going through lot 12.

320 (2) The following factors will be considered in the location of any micro path:

(a) the utility and need for a given path; Is there a utility or need for this path through lot 12? This path is not used now. There are no benefits for the homeowners of Roxey Place and we only see the tenants of the proposed apartment project using the path for parking purposes or to use Roxey Place playgrounds since there is inadequate parking and no playgrounds available inside the project.

325 (b) impacts to existing neighborhoods; The impact on the existing neighborhood is significant and negative. This path will encourage on-street parking in the small Roxey Place neighborhood, a covenant controlled neighborhood that does not allow residents to park in front of their own homes in order to increase safety, decrease crime and preserve the quality of life within Roxey Place. It is unfair to place the burden of this apartment project's resident parking upon the homeowners of Roxey Place.

330 (c) pathway design as it relates to both crime prevention and function; and On street parking invites car burglaries in that people wandering through the neighborhood can try car doors parked on-street without raising undue suspicion. This is one reason we discourage on-street parking in Roxey Place. The pedestrian access through lot 12 also provides a path for people on either end of the path to commit crimes, then run through the path and disappear into either the apartment project or the neighborhood. Leaving the path through lot 12 open encourages crime. Closing it discourages it.

335 (d) the responsibilities of ownership, maintenance, and liability. The Roxey Place HOA is the sole owner of lot 12. The responsibility for maintaining lot 12 and the path, along with the liability falls on the HOA. To date the developer and/or potential owner of the apartment project have not negotiated or come to an agreement on the sharing of any of these costs even though an proportional sharing of costs is required by the Commercial Owners Associations own CCRs.

## 345 C. Location

(1) The city shall require the creation and maintenance of micro-paths (except in cases where it is shown to be inappropriate) that provide access to the following facilities when adjacent to the new development:

350 (a) Existing or proposed schools. All schools are along N. Eagle and accessible by the existing sidewalk. None are available on the west side through lot 12. The children of Roxey Place do not use this path to walk or bike to school.

(b) Existing or proposed public parks, The public park is on N. Eagle and accessible

355 by the existing sidewalk. No public parks are available through lot 12. Only the private common areas of Roxey Place are available through Roxey Place. Please note that this apartment project proposal does not include any facilities for children. Again, it is unfair to place the burden of this apartment project's amenities upon the homeowners of Roxey Place. And again, to date the developer and/or potential owner of the apartment project have not come to an agreement on sharing any of these costs.

360 **(c) Neighborhoods,** The path through lot 12 does give the residents of the apartment project access to the neighborhood of Roxey Place, however there are no appropriate destinations for them in this small neighborhood. Conversely, the homeowners within the Roxey Place neighborhood also have no appropriate destinations through lot 12 and would not be welcome within the private apartment complex. Both ends of this path end in private property.

365 **(d) Shopping areas,** All shopping areas are along N. Eagle and accessible by the existing sidewalk. None are available in the west through lot 12.

**(e) Public land,** There are no public lands on either side of lot 12.

370 **(f) Transportation or other community facilities,** There are no transportation or community facilities on either end of lot 12. There is no public transportation on N. Eagle Rd.

**(g) Adopted pathway elements of the Boise Metro Plan including but not limited to: Ridge-to-Rivers Pathway Plan, the Parks Comprehensive Plan and the Downtown Plan,** There are no pathways on either end of lot 12 that connect to any existing paths.

375 **(h) Vacant parcels, held either publicly or privately, that could provide future neighborhood connection(s) to the above noted sites, and** After the development of the vacant lots in question under PUD19-00017 there is not any other vacant property on either end of lot 12.

**(i) In similar cases, where deemed appropriate.** No appropriate destinations are accessible through lot 12 on either end.

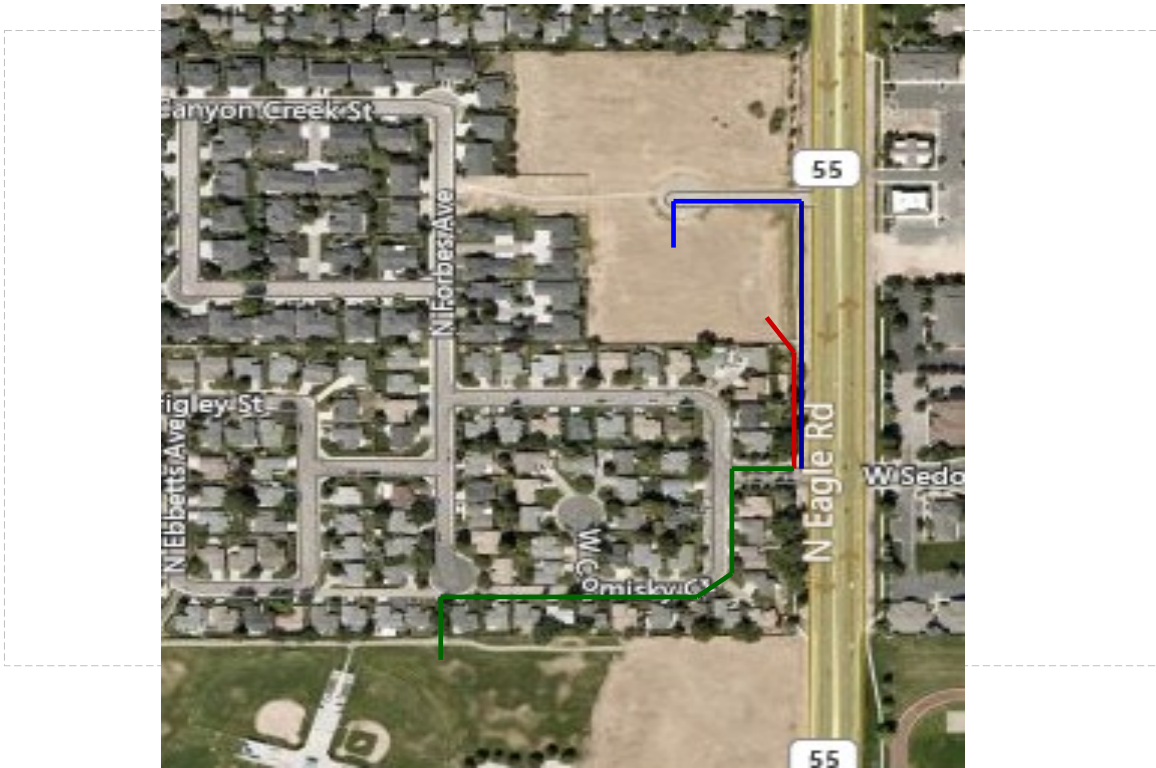
380 **(2) In addition, micro-paths may be required to connect sites other than those noted above:**

385 **(a) When there is evidence that a pedestrian/cyclist would otherwise be forced to travel along a roadway that may be hazardous for non-motorized forms of travel, in order to reach the desired destination; or** The pedestrian path through lot 12 ends on N. Eagle Rd. If N. Eagle Rd. is designated as hazardous for non-motorized forms of travel then the pedestrian path through lot 12 should be closed to discourage people accessing Eagle Rd. through it. If N. Eagle Rd. is not designated as hazardous then the point is moot and the path through lot 12 should not be kept open to satisfy this clause.

390 **(b) When the pedestrian/cyclist would otherwise have to travel a distance of more than one-half mile alongside a local or collector roadway in order to reach the desired destination.** Quoting the planner's comments in the staff report, the longest current stretch along Eagle Rd. is 1/3 mile, less than the 1/2 mile statute. **In addition, a simple path in the apartment project's southeast corner connecting the project to the sidewalk on Eagle Rd. would decrease the distance to travel along Eagle Rd. to enter the residential neighborhoods on the west and access McDevitt Park to less than one block without encouraging on-street parking in our communities, by leaving the pathway through lot 12 open.** The sidewalk on Eagle Rd. is to be widened to 10 ft and landscaped. Please see the illustration below.

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The 1/3 mile walk to the park as described in the staff report. The < 1 block walk along Eagle Rd. with the addition of a short path in the apartment project. Common to both.



This is a short review of the pathway in relationship to the city law and goals. Please refer to the Public Comment section of PUD19-00017 at PDS Online for a deeper view of the large volume of neighborhood comment and the many ways leaving this path open and this particular apartment project approved as currently planned is expected to impact the lives of the surrounding neighbors.

Additionally, an historical perspective: We were told by the planner that the provenance for the pathway requirement is the original plat approval. This plat was approved back in 2005 when all the land was vacant and the projected use for the property in question was to be retail, limited office or a church. The Roxey Place Subdivision #2 SUB05-00049 Final Plat approved by the city in 2005 required Condition #3 “The applicant shall provide pedestrian access **between the residential and office portions of the subdivision.**” The passages cited by the planning staff, GDP-N.1 and Goal WB-C2.2 were not even adopted until 7 years later in 2011. So, this path was not originally created to be public, but to allow Roxey Place residents access to the retail, offices or church envisioned. It was created to be a mutual benefit for the residential neighborhood and the success of commercial business. Approval of PUD19-00017 turns this into a situation where only the apartment owner will benefit and the path becomes a liability and burden on the rest of the community. It creates a situation in which the Roxey Place HOA, by responsibility for the development and maintenance of Lot 12, the path and all the other infrastructure will be burdened financially and will in effect and be subsidizing the apartment

420 project.

In summary, the pathway through our lot is a one way path into our community with no destinations for the residents of Roxey Place on the other side. It will allow apartment residents access to the private benefits of our community without reciprocal benefits or cost sharing from their landlord.

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Please allow Roxey Place HOA the ability to close this path way, avoid future conflict, resolve many of the issues Roxey Place homeowners have with this developer and PUD19-00017 as planned and preserve the character of our community.

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## Supplement 4

### Documentation for Grounds for Appeal 6

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- The city has fluctuated between not allowing storage unit development and allowing it.
- They've fluctuated on requiring retail along Eagle Rd. and granting a waiver.
- A traffic study for Eagle Rd. was required for a previous residential proposal on the same property, yet dropped for PUD19-00017.
- The P&Z Commission required CCRs at the plat approval of our neighborhood, but at the hearing for PUD19-00017 told us that they don't have the authority to allow us to enforce those CCRs.

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465 We feel that the decisions being made are arbitrary and in disregard of the facts and circumstances when very similar projects with very similar facts and circumstances have met with very different fates.

In early 2018, Ali Moayeri and/or his developer met with the planners for a desk meeting. The developers proposed storage units on the southern half of the property and townhouses on the northern half. We were told by the developer, the city turned them down because they didn't want storage units on the property. Today PUD19-00017 proposes apartments on the southern half of the property and Martin Properties has preliminary desk meeting approval for storage units on the north. The current situation including PUD19-00017 is very similar in fact and circumstance to the Moayeri proposal.

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475 On 7/26/2018, the current developer, Robert Unger planned to hold a neighborhood meeting about a similar apartment project on the same property. He met with us and told us the project was dropped because the city insisted on a retail buffer along Eagle Rd. at the desk meeting. Yet on 9/10/2018, Robert Unger held another neighborhood meeting and introduced PUD18-00041, a very similar project to the one that was denied in July for not having retail, but this time the city dropped that requirement. Please note that this retail waiver is the same issue in which the developer submitted a false statement to the city attributed to the neighbors in support of the waiver. He made the same word for word false statement and attributed it to the neighbors for both PUD18-00041 and PUD19-00017. In both proposals the neighbors pointed out the false statement in Public Comments. We did not state that we were, "adamantly opposed to any retail development." In fact the adamant opposition voiced was to this particular residential development.

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In a similar, but larger residential development by the same developer for this property, PUD18-00041, a traffic study was required for the impacted stretch of Eagle Rd. before approval. Additionally, Blueprint Boise WB-C1.2 Eagle Road says "Support the ITD access management policy for Eagle Rd. to promote increased safety and mobility." That policy IDAPA 39.03.42 says that accesses that were previously approved are unaffected unless they **change use or increase trip generations**. Audra Ln. is such an access. It will change use from currently unused to "*This development is estimated to generate 250 vehicle trips per day and 20 vehicle trips per hour in the PM peak hour,*" according to the planning department staff report. Those trips generated are only for the southern half of the property and do not include additional traffic generated by future development on the northern half.

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However, for PUD19-00017 the requirement for a traffic study was waived because the project now proposes less than 50 units (46 proposed). Further more, many of the Public Comments against PUD19-00017 raise safety concerns about U-turns

500 on N. Eagle Rd. at Bristol Heights/Hobble Creek and McMillan which will be increased by the right  
out only, right in only access to this apartment project. I've been told by ITD that ITD has never done a  
U-turn study on Eagle Rd. because U-turns are difficult to model.

Below is an excerpt from the original plat approval for Roxey place Subdivision approved 11/07/2005  
requiring CCRs be established and approved by the Boise City Attorney.

505 ***Covenant Requirements***

***5. Covenants, homeowners' association by-laws or other similar deed restrictions acceptable to the Boise  
City Attorney, which provide for the use, control and maintenance of all common areas, storage  
facilities, recreational facilities or open spaces shall be reviewed and approved by the Boise City  
Attorney.***

510 But, at the P&Z commission hearing for PUD19-00017 on 7/1/2019 we were told that the P&Z  
Commission does not have the authority to address CCRs. These CCRs and the refusal of the  
developer/owner of PUD19-00017 to enter into negotiation with the HOA to provide for the  
development and maintenance of the shared infrastructure mentioned above is one of the primary  
reasons the HOA cannot support the project.

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## Supplement 5

### Documentation for Grounds for Appeal 7

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- The developer failed to notify all property owners within 300 ft of the neighborhood meeting. The official addresses of property owners were not used. Specifically he neglected to notify the HOAs that opposed his previous proposal PUD18-00041. Also missed were any off-site landlords.
- Video documentation showing numerous deceptive and false statements made by the developer at the Neighborhood Meeting was not allowed to be submitted as Public Comment because, according to the planner, “the Neighborhood Meetings are informal.”
- The developer was notified of the selection of the planner, Brent Moore, on 5/3/2019 by email. As of 15:00 on 5/3/2019 the PDS site still shows no planner assigned. “Pending Assignment by CER.” We feel that all parties of record should receive notice of all events at the same time.
- The planning staff changed the procedure for posting Public Comments for PUD19-00017 from a daily posting as we experienced during PUD18-00041 to a posting of comments every two weeks. We were told this decision was because they expected significant opposition, but there was also significant opposition for PUD18-00041. This delayed posting suppressed neighborhood comment.
- Sensitive personal data, not required by the city, was not redacted, but instead was posted publicly on PDS Online under Public Comment such as personal email addresses and personal phone numbers. This disclosure of personal data, or doxing, suppressed neighborhood comment.
- Comments received by the planning staff after 6/23/2019, but before the 6/27/2019 deadline for submitting comment was labeled as Late Correspondence rather than including them as public comment received on time.
- During PUD18-00043, the city notified property owners within 500 ft of the project of the P&Z Commission hearing “as a courtesy.” During PUD19-00017, they reverted back to the 300 ft radius required by code.
- The City of Boise Planning and Zoning webpage was revised or updated during the community comment period. The new site makes it harder to find or access PDS Online or planning staff contact information which suppressed neighborhood comment.
- Not all Public Comment was posted which prevented the P&Z Commission from considering it's merits.
- The planning staff advised the developer on site plan changes needed to gain approval and requested a hearing deferral. This resulted in adding some of the revised plans. The consequence was confusion and suppressed opposition.
- As mentioned, the developer's plans were revised several times which confused the public and suppressed opposition. The city, county and state agencies that reviewed and reported on PUD19-00017, reported on outdated plans that had been significantly revised.
- The developer's revised plans resulted in a P&Z hearing deferral from 6/3/2019 to 7/1/2019, a holiday week. This deferral stalled opposition momentum and suppressed community participation at the hearing. This same developer also requested a deferral on PUD18-00041 when faced with strong opposition.

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- As laymen, we relied upon the planning staff for education and information about procedure and protocol. While the staff responded in a timely fashion and would answer direct questions, we sometimes did not know the correct questions to ask and our Public Comment and presentation at the hearing suffered accordingly which prevented the staff and the P&Z Commission from considering valuable comment which may have affected their decision. We were not aware we would be required to testify in the order of the sign in sheet or that we could bring presentations to show on the screens which could help illustrate our concerns.

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    - Our Neighborhood Association was not in a position to participate in the process because it has not yet been certified.
    - Testifying at the hearing was demeaning.
      - There was insufficient space on the sign-in sheet for all that participated. No one was at the sign-in table to assist and some signed the sheets for the wrong proposal.
      - Testimony time was wasted, because of our inexperience by having to start over to state name and address.
      - People were corrected for asking the commission a question.
      - People were cut off mid sentence.
      - People signed in to testify, then passed on the opportunity, perhaps after watching the reception of previous testimony.
      - The commission chair mentioned her home and neighborhood in the North End where “people are parked all over the North End streets,” as compared to our homes in a covenant controlled suburb. With all due respect to Ms. Stevens and the North End neighborhood – this apartment project is not being proposed in the North End. The comparison, is inappropriate and irrelevant . The fact is that the parking conditions in the North End, while tolerated out of necessity, are a problem one would hope we are not intent to duplicate in new subdivisions. Boise should have a diversity of neighborhoods including for those of us who covenant with our neighbors to respect certain rules established by CCRs. Also during her comments she mentioned an aerial photo of our subdivision and pointed out that there were 3 or 4 cars parked on the neighborhood streets, inferring that parking is not a problem in this neighborhood. This photo is irrelevant to support this argument and any decisions made by the commission because of those decisions would have been made arbitrarily and in disregard of the circumstances. The photo is years old and only relevant in showing the location of the project. We are not against all on-street parking. We have guests and tradespeople regularly, but we are not in favor of long term, overnight, overflow or over size vehicle parking on a consistent basis. If the photo has relevance in this discussion at all, it is as an illustration of the success the HOA has had in keeping the streets free from excessive on-street parking and safer for our children. We were told several times by the commission that these are city streets and parking is legal. We knew that coming in and didn't need several reminders. Our recognition of this fact is the reason we request a waiver of the path through lot 12. We realize we can't prohibit public on-street parking, but we don't want to encourage it or provide on-street parking for the apartments by leaving this path open.
      - Many of us feel the significant number and universal (unanimous, total, not one voice of support) opposition from the surrounding neighborhood was either ignored

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635 or discounted. Commissioner Stead said she approved because the project met  
“density and parking setback requirements of the code.” Commissioner Bradnober  
said, “...that in terms of meeting the numbers that this in in line.” This quote from  
640 the Commission Chair, “I think there is a tendency, unfortunately, for people – we  
hear it all the time – to not want to permit apartment buildings near their houses,”  
suggests the Chair's, and perhaps the commission's previous experience with other  
apartment opposition was a factor in this situation and that she and the commission  
were predisposed to the matter. In rebuttal - the opposition voiced opinions about  
the details of this particular apartment project and this particular developer, not all  
645 apartments in general. The impression we left the hearing with was that the decision  
was made because the project fit the numbers or checked the boxes, but the  
commission did not hear or really consider our detailed concerns.