



PLANNING AND DEVELOPMENT SERVICES

MAYOR: David H. Bieter | DIRECTOR: Mark Lavin

July 11, 2019

Terry Copple
Davison, Copple, Copple, & Copple, LLP
199 N. Capitol Blvd, Suite 600
Boise, ID 83701
tc@davisoncopples.com
(sent via email)

**Re: Appeal Received & Appeal Reply Period Extended / PUD19-00011 & CFH19-00013
/ 3600 W. Americana Terrace**

Dear Appellant(s):

An appeal of **PUD19-00011** and **CFH19-00013** was received on **June 17, 2019**. A public hearing on the appeal has been scheduled before the Boise City Council on **Tuesday, September 10, 2019 at 6:00 P.M., in the Maryanne Jordan City Council Chambers** on the third floor of City Hall.

Parties to the Appeal (the applicant and those whose names are listed on the appeal) should be aware of the following:

- a. The parties to the appeal had until **July 5, 2019** to file memoranda consisting of written arguments that support their position.
- b. As notification of the receipt of this appeal was inadvertently not transmitted to all parties of record, the reply period to the applicant's and appellant's memorandum has been extended to **July 19, 2019 at 5:00 pm**.
- c. Neither memoranda nor responses may contain new facts or evidence or discuss matters outside the record. Memoranda are limited solely to why the record does or does not support the decision.
- d. All documents related to the application are available at:
<https://pds.cityofboise.org/permits>

If you have any questions, please contact me at (208) 608-7087 or dmoser@cityofboise.org.

Sincerely,

David E Moser
Associate Planner
Boise City Planning and Development Services

DM/nh

cc: Jane Suggs / WHPacific, Inc. / jsuggs@whpacific.com
Doug Jayo / Jayo Holdings / jsuggs@whpacific.com
Joann Butler / Butler & Spink, LLP / jbutler@butlerspink.com
Joe Scott / 800 N. Houston Road, Boise ID 83706
Jamie Scott / 920 N. Houston Road, Boise ID 83706
Tim Flaherty / Downtown Boise Neighborhood Association / tim@astegos.org
Parties of record from the June 10, 2019 PZC hearing



Davison, Copple, Copple & Copple, LLP
Attorneys at Law

Direct Contact:

Terry C. Copple
Direct: (208) 472-4551

E-Mail: tc@davisoncopples.com
www.davisoncopples.com

199 North Capitol Boulevard, #600
Post Office Box 1583
Boise, Idaho 83701

Telephone: (208) 342-3658
Facsimile: (208) 386-9428

July 3, 2019

SENT VIA HAND DELIVERY

Mayor David H. Bieter
City of Boise
150 N. Capitol Blvd.
Boise, Idaho 83701

Elaine Clegg, Council President Pro Tem
Boise City Council
150 N. Capitol Blvd.
Boise, Idaho 83701

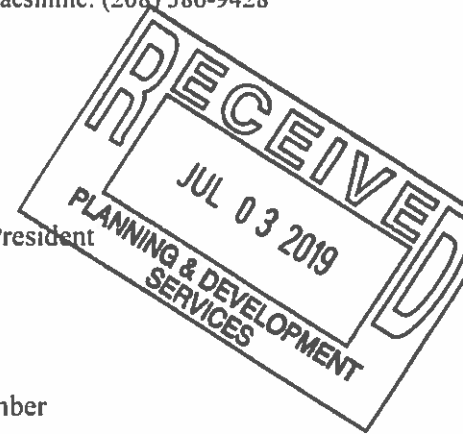
Lisa E. Sánchez, Council Member
Boise City Council
150 N. Capitol Blvd.
Boise, Idaho 83701

Holli Woodings, Council Member
Boise City Council
150 N. Capitol Blvd.
Boise, Idaho 83701

Lauren McLean, Council President
Boise City Council
150 N. Capitol Blvd.
Boise, Idaho 83701

Scot Ludwig, Council Member
Boise City Council
150 N. Capitol Blvd.
Boise, Idaho 83701

TJ Thomson, Council Member
Boise City Council
150 N. Capitol Blvd.
Boise, Idaho 83701



Re: *Appeal to Boise City Council - Trappers Island Project Proposed by Jayo Holdings LLC for Premises at 3600 West Americana Terrace, Boise, Idaho; Application Nos. CVA19-00011 and CFH19-00013*

Dear Mayor Bieter and Members of the Boise City Council:

This office represents Joe Scott who owns a rim residence at 800 N. Houston Road and Jamie Scott who also owns a rim residence at 920 N. Houston Road in Boise, Idaho (collectively the "Scotts"). We are writing to you on their behalf to express their objection to the 63-foot height exception for the proposed Trappers Island project ("Project") located at 3600 West Americana Terrace, Boise, Idaho, proposed by Jayo Holdings LLC ("Applicant").

Purpose of Appeal:

This letter is written as the argument or memorandum pursuant to Boise City Code (BCC) § 11-03-03 for the Scotts as a result of the appeal filed by them of the approvals referenced above which were granted at a Boise City Planning and Zoning Commission ("P&Z") hearing held June 10, 2019, and as

memorialized in the written decision dated June 12, 2019, authored by David Moser, Associate Planner for the Boise City P&Z Commission.

This memorandum also is in opposition to the appeal filed by the Applicant of the reduction of the height of the Project from 81 feet to 63 feet and of the denial of its variance to encroach upon the Greenbelt area.

The Applicant argues that the City needs to approve this oversized project despite its clear incompatibility with its neighbors. The Applicant argues that if the Project is approved, the City will meet all of the City's revenue funding goals for the Shoreline Urban Renewal District and presumably the proposed sports stadium infrastructure. This argument is highly inappropriate and cannot justify ignoring sound land use planning principles. See testimony of Jane Suggs appearing on page 11 of this letter.

The purpose of this appeal and objection is not to prevent the development of the Applicant's property into a residential development but rather to ensure that the new Project is scaled down to match the neighborhood of 3-story structures and does not overwhelm this very unique and green area of urban Boise adjacent to the Kathryn Albertson Park.

Relief Requested:

The relief that is sought by the Scotts is for denial of the height exception of 63 feet of PUD19-00011 and CFH19-00013 and for the Boise City Council to limit the height of the Project to 45 feet or, alternatively, that the two applications be remanded back to the Boise City P&Z for rehearing to be held in accordance with the appropriate standards of the law.

The exhibits attached to this memorandum or referenced herein are documents admitted at the original P&Z hearing on the Applicant's Project.

The Proposed Project:

This massive Project proposes 304 residential unit condominiums with five buildings located on only 7.4 acres of real property consisting of two floors of podium parking with four floors of single residential units above those parking areas with major tall rooftop improvements. Although the Project is described as a multi-use project, it only has 5,000 square feet of commercial space for as yet undefined commercial uses. Accordingly, the Project is in reality a high intensity residential use.

The current proposed Project is the third version of the original project proposed by this developer for the property. It was originally designed to have only 84 dwellings then was expanded to 104 condominiums *with three stories* but the project was put on hold due to the recession in 2008. As a result of the recent explosion in real estate values in Boise, the Project has now been redesigned a third time to add 200 more condominiums. The Applicant now proposes tripling the number of units in this Project to 304, thereby far exceeding the height limitation in the zone and overwhelming the immediate park and neighborhood. The Applicant has never explained why it was necessary to triple the size of the number of condominium units for its previously approved project of 104 units other than (1) it is essential to support a small 5,000 square foot commercial spot in the Project for a small coffee shop, bistro and bike repair shop and (2) the extra property taxes will build the infrastructure for the Shoreline Urban Renewal District. Transcript p. 9 and p. 10.

Depictions of the proposed Project are set forth as Exhibits "A-1" and "A-2." Exhibit "A-1" is what the Project will look like upon completion. A drone picture showing the actual trees in the Kathryn Albertson Park as well as the actual design of the Applicant's Project and scaled to include both together shows an accurate depiction of what the Project would look like from neighboring property. The depiction shows the height at 45 feet, the drone flight line at 71 feet, and the height of the proposed Project at 81 feet. Attached to this memorandum is the expert's discussion of the substantial effort that went into preparing this accurate depiction. See the attached Exhibit "F." Many hours were spent in ensuring that the depiction is accurate and with a margin of error of only 1 or 2 feet.

Exhibit "A-2" is the Applicant's own rendering of the Project. As can clearly be seen, it towers over the neighborhood and particularly Kathryn Albertson Park.

The Applicant's renderings in Exhibit "A-2" also show how it is oversized for its neighborhood, all of which is a natural, green environment.

It should be emphasized that the trees at the Kathryn Albertson Park and around the Project are not evergreens and thus for six months out of each year there will be no leaves on the trees and the Project will be even more dominate over the neighborhood and park.

P&Z Decision.

The Boise City P&Z clearly saw that the volume of the buildings and their 81-foot proposed height were too extreme for this unique area in Boise and therefore limited the height of the Project to 63 feet. This reduction in the height from 81' to 63' was a clear recognition by the P&Z that the height proposed by the Applicant was inappropriate for the area.

Nevertheless, because of the errors committed by the Boise City P&Z in evaluating the application and in applying the law, its decision should be reversed and the 45' limitation applied, or alternatively, the matter remanded back to the Boise City P&Z for rehearing. Upon the matter being reheard by the Boise City P&Z, it should lower the height limitation from 63 feet to the zone's existing height limitation of 45 feet. This will ensure that the Project is in scale with the neighborhood and does not damage this unique area.

City Council's Standard of Review:

The City Council may find error by the Boise City P&Z if (1) the decision is in violation of constitutional, state or city law; (2) the P&Z's decision exceeds its statutory authority; (3) the decision is made upon unlawful procedure; (4) the decision is arbitrate, capricious or an abuse of discretion in that it was made without rational basis or in disregard to the facts and circumstances presented; and (5) the decision is not supported by substantial evidence. *BCC Section 11-03-03.*

In the decision of *917 Lusk, LLC v. City of Boise*, 158 Idaho 12 (343 P.3d 41) (2015), the Idaho Supreme Court ruled that error had occurred arising out of the Boise City Council's decision granting a conditional use permit to the Royal Boulevard Associates, LP for a 5-story, multi-family apartment complex called River Edge Apartments ("River Edge"), adjacent to the Boise River near Boise State University and east of Ann Morrison Park. The site was zoned Residential Office with a Design Review Overlay ("R-

OD”). The ordinance required that a conditional use permit be granted in order to construct a building more than 35 feet tall in an R-OD zone and if constructed the River Edge project would be between 59 and 63 feet tall.

In that case the P&Z and City Council were under the mistaken impression that they did not have discretionary authority to impose parking requirements beyond minimum requirements established by the Parking Chapter of the Boise City Code.

The Idaho Supreme Court ruled as follows:

As previously noticed, Idaho Code section 67-6512(d) (7) provides that “conditions may be attached” to a CUP “[r]equiring more restrictive standards than those generally required in an ordinance.” BCC section 11-06-04.13.D requires that the Commission determine “[t]hat the proposed use ... will not adversely affect other property of the vicinity.” BCC § 11-06-04.13.D. The testimony before the Commission related the potential for adverse effects to the vicinity due to automobile parking needs that would result from the project. The Commission failed to recognize that Idaho law and the BCC provided it with discretion to require the project to provide on-site automobile parking beyond the minimum required by the Parking Chapter. As a result of this failure to apply governing legal standards, the Commission refused to consider the adverse effects on property in the vicinity. Thus, we find that the decision reflected an abuse of discretion. *Dunagan v. Dunagan*, 147 Idaho 599, 603, 213 P.3d 384, 388 (2009) (error found when trial court failed to recognize grounds for exercise of discretion). 158 Idaho at p.15

The same type of error that was committed in the foregoing case has occurred with regard to the current matter because the Boise City P&Z misinterpreted the law applicable to this matter, abused its discretion, and failed to make a decision that was supported by substantial evidence.

Rules Applicable to Exceptions:

Boise City P&Z cannot grant a height exception under a PUD application unless it properly applies the following seven criteria contained in Section 11-03-04.7.a:

- (a) The location is compatible to other uses in the general neighborhood;
- (b) The proposed use will not place an undue burden on transportation and other public facilities in the vicinity;
- (c) The site is large enough to accommodate the proposed use and all yards, open spaces, pathways, walls, fences, parking, loading, landscaping, and such other features as are required by this Code;
- (d) The proposed use, if it complies with all conditions imposed, will not adversely affect other property of the vicinity;
- (e) The proposed use is in compliance with the Comprehensive Plan;
- (f) A multi-family building (any building containing more than two residential units) is

designated to comply with the Citywide Design Standards and Guidelines;

- (g) A drive-up window in a C-5 District, if it complies with all conditions imposed ...
(Underlining added.)

The above mandatory criteria adopted by the City of Boise implements Idaho Code § 67-6512(d) of the Local Land Use Planning Act which provides the following with regard to the granting of exceptions:

- (d) Upon the granting of a special use permit, conditions may be attached to a special use permit including, but not limited to, those:
 - (1) Minimizing adverse impact on other development;
 - (2) Controlling the sequence and timing of development;
 - (3) Controlling the duration of development;
 - (4) Assuring that development is maintained properly;
 - (5) Designating the exact location and nature of development;
 - (6) Requiring the provision for on-site or off-site public facilities or services;
 - (7) Requiring more restrictive standards than those generally required in an ordinance;
 - (8) Requiring mitigation of effects of the proposed development upon service delivery by any political subdivision, including school districts, providing services within the planning jurisdiction. (Underlining added.)

The above requirements are mandatory.

Summary of Errors:

The following is a summary of the errors committed by P&Z and as more fully analyzed in this memorandum:

1. Error was Committed by the P&Z Commission in Determining that the P&Z Commission did not have the Authority to Evaluate the Effect of the Height of the Project and How it Would be Viewed by Neighboring Properties
2. Violation of Boise City's Comprehensive Plan
3. The P&Z Commission Erroneously Concluded that the "Neighborhood" for the Project was the Entire Boise Downtown Area and the River Edge Apartments Located in the Lusk Street Planning Area, East of Ann Morrison Park
4. P&Z Commission Should Have Required a Rezone of the Property
5. The P&Z Commission Errored in Determining that the Parks and Recreation Department Approved of the Height and Other Design Aspects of the Project
6. Error was Committed by the P&Z Commission by Failing to Require the Applicant to Redesign the Project
7. The Decision to Approve the Project with a 63-Foot Height Limitation is not Supported by Substantial Evidence
8. It was Error for P&Z to Approve the Boise River System Permits

1. **Error was Committed by the P&Z Commission in Determining that the P&Z Commission did not have the Authority to Evaluate the Effect of the Height of the Project and How it Would be Viewed by Neighboring Properties.**

On page 9 of the 21-page staff report, the staff emphasized in its report to the P&Z that the Development Code does not specifically protect view corridors and thus it cannot consider the effect of a project's height on properties in the neighborhood from a view or volume prospective.

This erroneous view of the law was reiterated by Commissioner Milt Gillespie at the public hearing on the applications wherein he advised the public who appeared in opposition to the height and thereby the size of the Project that the view of the project and its effect of its height on the neighboring properties was irrelevant and not a factor which the Commission could take into account in ruling on the applications:

So I have pretty consistently over many years, not liked it when we just go way over the height exceptions in PUDs and I just think we have setback and height restrictions to control the bulk of buildings, and the placement, and if the City wants to change that, we need to change the language in the C-3 definition, etcetera.

I do, however, support basically some compromise. I think Commissioner Bratnaber's 63 feet is a great suggestion. I think I would also point out to the people in opposition, just a little, and the lawyers know this, they talked about it. There is no provision in city law, state law, or federal law for view protection. And this hearing perfectly illustrates why because it is notoriously difficult to create objective facts around a view.

There are HOAs in cities in California that have destroyed themselves arguing about views, HOAs, trees, chimneys, antennas, and this is why. Because it's not an objective fact of life. It's very hard to establish what is and isn't an acceptable view. Views change over time. So for example, if those trees grow that we're talking about, that changes the view. How does that impact this? Nothing stays the same with respect to views in our community. So that's why we don't have view laws in the city or at the state.

So I do have a problem with the argument, the whole view argument, and Mr. Butler said it right off the bat, this isn't a view argument, then we spent 30 minutes arguing about the damn view. So okay, I got it.

But I do feel strongly that the C-3 45's a real number, and it has real meaning. I think we have that number there not just for view considerations. Takes into effect massing, and size. So I'd like us to stick a little bit closer to it. But I hope we can find a way to move ahead with the 63-foot building, and get what you want, and it's a good place for this kind of development. So that's what I got.

See Transcript pp. 23-24.

This conclusion is clear error. The height and volume of a project and thus its view impact is a critical component of its design and it is for this reason that the Development Code sets forth very specific limitations on the height of projects in particular zones. As one of the most important criteria in evaluating a project, it is essential that the height of a project and thus its view impact on its neighbors be evaluated under the criteria for the approval of a planned unit development because it directly impacts (1) the determination of whether the location is compatible for the uses in the general neighborhood; (2) whether the site is large enough to accommodate the proposed use in all yards; and (3) whether the proposed use will not adversely affect other properties of the vicinity as required by the previously cited provisions of the BCC.

Significantly, Idaho Code § 67-6512 of the Local Land Use Planning Act as previously quoted specifically requires extra notice to neighbors if the project is unusually high:

Notwithstanding jurisdictional boundaries, notice shall also be provided to property owners or purchasers of record within the land being considered, three hundred (300) feet of the external boundaries of the land being considered, and any additional area that may be substantially impacted by the proposed special use as determined by the commission, provided that in all cases notice shall be provided individually by mail to property owners or purchasers of record within the land being considered and within three hundred (300) feet of the external boundaries of the land being considered and provided further that where a special use permit is requested by reason of height allowance that notice shall be provided individually by mail to property owners or purchasers of record within no less than three (3) times the distance of the height of the allowed height of a structure when more than one hundred (100) feet and within no less than one (1) mile when the peak height of a structure in an unincorporated area is four hundred (400) feet or more and, when four hundred (400) feet or more, the structure's proposed location and height shall be stated in the notice. Any property owner entitled to specific notice pursuant to the provisions of this subsection shall have a right to participate in public hearings before a planning commission, planning and zoning commission or governing board. (Underlining added.)

Accordingly, the height of a project and how it's viewed and the effect on neighboring properties is a major factor in the criteria to be evaluated by the P&Z.

Unfortunately, the P&Z took the extraordinary position that the effect on neighboring properties by the height of the project and the effect on their views cannot be considered by it is clearly was an abuse of discretion and contrary to law just as occurred in the *Lusk, LLC v. City of Boise* case.

2. Violation of Boise City's Comprehensive Plan.

The height and volume of this Project also violates the Comprehensive Plan of the City of Boise relating to infill for mixed-use projects:

Principle IDP-MU.2: Relationship to Surrounding Neighborhoods

Use the following techniques to promote compatibility between redevelopment within existing activity centers and the surrounding neighborhood:

- (a) Concentrate tallest buildings at the center of the site or along primary street frontages;
- (b) Provide gradual decreases in building height and mass so that new structures have a comparable scale as adjacent homes along the shared lot line or street frontage;
- (c) Respect existing block patterns by carrying street connections to and through the activity center; or
- (d) Incorporate lower-intensity housing types (e.g., townhomes, duplexes, etc.) along a shared street frontage.

See Principle IDP-MU.2 (Underlining added.)

Location	High-density residential neighborhoods should generally be located within or adjacent to designated Mixed-Use Activity Centers and along Corridors where they may be readily served by transit.
----------	---

See page 3-21 of Neighborhood Land Use Categories

In the current Project, the tallest buildings are actually bordering Kathryn Albertson Park to take advantage of the view over the park. Transcript p. 2.

3. The P&Z Commission Erroneously Concluded that the “Neighborhood” for the Project was the Entire Boise Downtown Area and the River Edge Apartments Located in the Lusk Street Planning Area, East of Ann Morrison Park.

A critical component in granting a special exception are the two requirements that the P&Z must find that the location of the project is compatible to other uses in the “general neighborhood” and that it will not adversely affect other property in the “vicinity.” The P&Z committed error by concluding that the neighborhood for this project was not the Americana Terrace area but rather was all of downtown Boise as well as the off-campus BSU student housing area located in the Lusk planning area which includes the River Edge Apartments located east of Ann Morrison Park.

The word “neighborhood” is defined in the Cambridge Dictionary as the area surrounding a particular person or place. “Vicinity” is similarly defined as an area near or surrounding a particular place.

The staff report on the Project at pages 2 and 7 defines the neighborhood of the Project as the Americana Terrace “island” because of its highly unique nature:

The surrounding area is isolated from the rest of the downtown area by the Boise River to the north and interstate connector (I-184) to the west. Due to this isolation the surrounding neighborhood is primarily comprised of public parks (i.e. Kathryn Albertson and Ann Morrison parks). A small amount of office development is located along Americana Boulevard adjacent to the site.

The development is located on a unique site and is essentially an island, with little opportunity for street interconnectivity to other parcels. The interstate connector (I-184) borders the site on the west with three small commercial parcels and Americana Boulevard located on the eastern boundary. The Boise River and Greenbelt parallels the northern side of the project, while the Settlers Canal and Kathryn Albertson Park form the southern boundary.

The larger site, which encompassed the current office buildings [all one, two or three stories] was home to a recreational vehicle (RV) park for approximately 55 years. In 2005 and 2006 a planned residential development for a 105 dwelling units [three stories] was approved. This project was never constructed and the entitlement eventually expired. With the construction of the rehabilitation facility in 2010, the overall site was reduced to 7.4 acres and has remained vacant.

The staff's characterization of the Americana Terrace neighborhood is accurate and it is truly an extraordinarily unique piece of property in that it is undeveloped and is in the heart of a natural area that is rare for urbanized Boise. See last page in Exhibit "A-2" attached hereto. It is in the center of an open, naturalistic urban sanctuary comprised of the Boise River Greenbelt, Settlers Canal, and the Kathryn Albertson Park.

The staff in its report to the P&Z Commission also acknowledges that the actual buildings in this neighborhood are only one, two, and three-story buildings. Attached as Exhibit "B" are photographs of those existing buildings which were admitted into evidence at the P&Z hearing. Absolutely no building in this area exceeds three stories and all are within the 45-foot height limitation for the existing C-3D (Service Commercial with Design Review Zone). All of the remaining area consists of the Boise River Greenbelt and large Kathryn Albertson Park.

Despite the uncontradicted evidence that the project is located in a neighborhood in which the buildings in the vicinity are no more than three stories, the P&Z concluded that the proposed project was consistent with the neighborhood of the highly urbanized downtown Boise zone and with the River Edge Apartments R-O zone.

This is a stunning about-face in the staff report. The staff advised that the P&Z the Project was consistent with the much taller buildings in downtown Boise. The staff wrote on page 13 of the report and in its "Reason for the Decision" set forth on page 3 of the June 12, 2019 P&Z decision in this matter that "The residential mixed use development is compatible with the adjacent office buildings to the within downtown area along the Boise River in terms of height and mass." How a project located in such a park-like area as Americana Terrace where one building is 1 story, the second building is 2 stories, and another building is 3 stories could be comparable in height to the buildings in downtown Boise is never explained because the comparison is unsupportable.

When one looks to the east of the Project, one only sees Ann Morrison Park. Not a multi-use, high-density residential area. When one looks to the west of the Project, one sees nothing but additional park-like greenbelt areas.

The Applicant testified to P&Z that the new use was compatible to the area because “Residential is compatible to residential.” See Transcript p. 21. No residential use exists at Americana Terrace.

To compound the error, the decision of the P&Z on page 3 then states that the new Project composed of 6 stories at a modified height of 63 feet “... is also comparable to the adjacent commercial uses (i.e. rehabilitation center and offices) and public parks.” Again, the adjacent buildings are only 1, 2 and 3 stories. They are not 6 stories as proposed by the Applicant. Kathryn Albertson Park, of course, is an extremely naturalistic park with no electricity or other recreational uses like in Ann Morrison or the other city parks. Thus, to state the Project is comparable to its neighbors is wildly inaccurate.

Further, the decision of the P&Z fails to make reference to another property that the staff and the P&Z at the hearing thought was comparable to the current property involved in this application.

On page 13 of the staff report it is written that “Finally, there are building or similar height[s] within the Downtown area and along the river. In particular, there are 5 story buildings adjacent to the river to the east side of Ann Morrison Park.”

Again, nowhere does the P&Z or the staff explain why they are stating that the neighborhood for evaluation is miles away at the off-campus BSU rental building area located on the east side of Ann Morrison Park.

This referenced other area is an entirely different zone (R-OD for high density residential) which is filled with industrial uses and large 5-story apartment complexes for BSU students and other residents. The apartment complex that is being referred to in the staff report, of course, is the River Edge Apartment building that was involved in the litigation with the City of Boise referenced above in the Idaho Supreme Court decision. That building is in the Lusk Street Area Master Plan, an entirely different planning area.

The Lusk Street Area Master Plan makes it clear that it is not like the Americana Terrace area:

The Lusk Street Master Plan envisions a distinct downtown neighborhood that is urban in density, texture and character – a neighborhood that functions as an active 24-hour district of the downtown core.

The Lusk Street area has experienced renewed development interest due to its close proximity to Boise State University and downtown Boise. Uses in the area has been incrementally transitioning from industrial uses to multi-family residential uses and commercial uses.

The Lusk Street Area Master Plan envisions the continued evolution of this area as a great mixed use urban downtown neighborhood. High density housing opportunities exist on residentially zoned parcels generally located in the western portions of the district.

Student housing will continue to play a role in the Lusk Street neighborhood, but it should not be the sole form of housing. A concentration of students will add vitality, demand for retail services and street life to the district, but may also overwhelm the area with a single demographic. Housing opportunities for downtown workers, seniors and even low-income individuals who seek access to transit will be promoted in this area.

Existing zoning in the Lusk Street area includes the following zones: R-3 (High Density Residential 43.5 DU/acre), R-O (Residential Office 87.1 DU/acre), C-3 (Service Commercial), and C-2 (General Commercial). The R-3 and R-O zones accommodate higher densities that support the vitality of the downtown core and contribute to the housing stock in the area. The C-2 and C-3 zones are located along Capitol Boulevard and Lusk Street and are generally more characteristic of suburban commercial environments seen outside of the downtown core. Properties that are currently zoned C-3 and C-2 would benefit from rezoning to a more intense mixed use zone that the City will develop.

Thus, the River Edge Apartment complex is in no way similar to the current property and is certainly not in the neighborhood of the Applicant's property.

Finally, the staff report and the P&Z relied upon a fire training tower as "comparable property" located on the north side of the Boise River that cannot be seen from the Americana Terrace island or the park as a justification for the excessive height of the new project. First, the fire training building is a small 5-story tower used for training for fires and pursuant to the River Street Master Plan adopted by the City on December 5, 2017, *and which is going to be relocated to an entirely new site.*

Secondly, this training tower cannot be seen from the Americana Terrace island and is blocked by large series of trees on the north and south side of the river. Accordingly, relying upon it being part of the "neighborhood" at Americana Terrace is unjustified.

Mark Butler, professional planner, testified that the Project was definitely not compatible to the area. Transcript p. 14.

Finally, the Kathryn Albertson Park should not be sacrificed to raise money for the City:

I [Jane Suggs] wanted to let you know, and you probably already know, that recently City Council approved the Shoreline Urban Renewal District. Trapper's Island is the largest undeveloped parcel in the shoreline URD. This project has been designed to meet the goals of the Shoreline District. We've actually estimated the impact of Trapper's Island on the tax revenue for the Urban Renewal District and we found out that this development alone will fund a large majority of the proposed infrastructure projects planned for the Shoreline District based on that increase in tax revenue from the existing to the proposed project. (Underlining added.)

With the current design and density of Trapper's Island, the CCDC and City of Boise will reach their goals and with the expected tax revenue funding infrastructure in the district.

Transcript p. 8-9.

Thus, it was an abuse of discretion for the P&Z to ignore the neighborhood in which this property is located and to justify its decision by going to entirely different and far away neighborhoods that are not similar to the Project's neighborhood.

4. **P&Z Commission Should Have Required a Rezone of the Property.**

The Applicant in this matter first prepared a rezone application for the property involved in this matter for it to be rezoned to the Residential Office with a Design Review Overlay ("R-OD"). This is the appropriate zoning classification for this property for a multi-story residential use under the BCC.

It is also the zoning classification for the properties located east of Ann Morrison Park and is the zoning classification for the River Edge Apartments project involved in the foregoing Idaho Supreme Court decision.

The R-OD district facilitates mixed use development for "higher density residential areas." See BCC 11-04-04. It is for this reason that the Applicant originally proposed having a rezone of the area from its existing C-3D to R-OD.

This rezone process of course would have required approval by both the P&Z and the City Council and additional rights and protections for property owners in the neighborhood.

Instead, however, the Applicant decided to keep the zone as commercial (although no commercial uses exist in the Americana Terrace "island"), and in essence obtain an informal zone change through a special exception procedure via the PUD and CUP process as suggested by staff. The Applicant's June 5, 2019 letter to David Moser in the record stated the following and confirms the foregoing:

Further, so the Commission is aware, during our pre-application discussions with planning staff we discussed the possibility of rezoning the site to a zone with a higher base height. Staff recommended that we keep the existing C-3 zone and make the PUD application for multi-family use with a height exception.

The Applicant was told by staff not to file a rezone because it would be "simpler and easier." Transcript p. 22.

The error made by the P&Z was not seeing that the commercial zone for this property is totally inappropriate because there are only office uses in the neighborhood on Americana Terrace and no commercial uses. Accordingly, the Applicant should have been compelled to file a rezone application to go to the high-density residential zone of R-OD rather than try to bypass and subvert the BCC process by staying with the commercial zone and ignoring the height restriction by a special exception process.

Such an attempt to avoid a rezone renders the BCC zoning classifications and their districts meaningless and thus it is an abuse of discretion by the P&Z Commission in not demanding a rezone of the property.

5. The P&Z Commission Errored in Determining that the Parks and Recreation Department Approved of the Height and Other Design Aspects of the Project.

The Applicant in its responsive memorandum to P&Z responding to our objection stated in response to item number 4 that “The Boise Parks Commission approved Trappers Island or found that there was no negative impact on park related property.” Attached hereto as Exhibit “C” is a true and accurate copy of the memo from the Parks and Recreation Department. The staff told P&Z that the Parks Commission approved of the height. See p. 3 of hearing transcript. The Applicant told P&Z the same thing. See p. 21 of the transcript. As can be seen, the Parks and Recreation expressed no opinion with regard to the height or the desirability of such a gigantic residential project shoehorned into a small parcel of property between the Greenbelt and the quiet, naturalistic area of Kathryn Albertson Park.

Rather, the Parks Commission dealt with the technical issues of whether or not the development adversely impacted the adjacent Greenbelt, animal habitat on the Project property and access for emergency vehicles.

Indeed, the Parks and Recreation Department’s total silence about whether this large Project adjacent to Kathryn Albertson Park was appropriate is significant.

Accordingly, the representations that somehow the City through its Parks Department had approved of the height of the Project is not supported by substantial evidence.

6. Error was Committed by the P&Z Commission by Failing to Require the Applicant to Redesign the Project.

As a result of the decision of the P&Z Commission to reduce the height of the Project to 63 feet, it will require that the Project be redesigned in order to accommodate the change. This should by necessity require an additional public hearing in order to allow the interested public to comment upon the new design.

Equally as important is the fact that the P&Z Commission requires the Applicant to comply with the 30-foot easement requirement mandated by Settlers Irrigation District. See Site Specific Condition of Approval No. 4 in the June 12, 2019 approval letter. A true and accurate copy of the requirement from the Settlers canal company is attached hereto as Exhibit “D.” By complying with the 30-foot requirement, the Project does need to be redesigned and thus a redesigned project should be required to go through a rehearing process with the P&Z Commission and allow this new design to be aired.¹

The failure of the Commission to require a redesign and resubmittal with notice and hearing to the public was in error.

¹ “Settlers Irrigation Company stated that a 30-foot access easement as measured from the top of the canal is required. Providing this access easement would require a major redesign of the project.” See page 11 of staff report.

7. The Decision to Approve the Project with a 63-Foot Height Limitation is not Supported by Substantial Evidence.

The Project at 63 feet should not be approved because the evidence produced by the Applicant fails to support such an intense use in this area of Boise for the following reasons:

a. Applicant's Depiction of Completed Project is Not Accurate.

The computer-generated depiction of the developer's project is not accurate. See Exhibit "E." The photograph constituting part of the Applicant's application were taken from the far west end of the area on Happy Drive distorting the view of the buildings rather than accurately portraying the volume of the new development and the way the buildings will look from neighboring properties on Houston Drive and the negative impact this multi-story Project will have on the Kathryn Albertson Park.

The expert who prepared the rendering for the Scotts took great care to make it accurate. His letter attached as Exhibit "F" details the effort that went into the depiction and involved many hours of professional effort at great expense.

b. Intrusive Project into Visually Sensitive Kathryn Albertson Park.

The Kathryn Albertson Park is an extraordinary park by any standard. It is based upon the naturalistic model of parks emphasizing solitude, nature and wildlife. Doug Holloway, Director of Boise Parks and Recreation, was recently quoted as saying that the Kathryn Albertson Park "is a sanctuary...You have this enormous wildlife sanctuary that is a home to a number of species of animals." The park is filled with deer, geese, foxes, squirrels, heron, beavers, song and game birds, owls, turtles, salamanders, ducks, voles, as well as migratory birds. The two-mile aggregate pathways within the park allow visitors to enjoy unrestricted nature at its most beautiful.

Kathryn Albertson Park was donated by Mr. Joe Albertson to the City of Boise in 1979, subject to the condition on the title to the property that it would always be used as a nature park for only walking. The park has limited parking; food, drink and alcohol are prohibited; chairs are discouraged but are limited to 10 and are prohibited on the turf. There is no bicycling, skateboarding, skating, and rice, confetti, birdseed or the like are prohibited because the park is based upon the concept that it is a nature preserve for people to enjoy the beauty of wildlife and solitude while being in an urban environment. See list of park rules in the record.

The quiet, natural beauty of Kathryn Albertson Park is depicted in the photographs attached to our P&Z Commission submission and emphasize the deleterious effect such a tall condominium project would have on the park.

The uniqueness of Kathryn Albertson Park is exemplified in correspondence in the 1980's addressing the extraordinary nature of the Kathryn Albertson Park. John Cooper, then

Director of the Boise Park Department, wrote to Mr. Albertson on April 29, 1981, the following:

This use is planned to be extremely different from Ann Morrison and Julia Davis parks. The older design of these parks leads to misuse by a small segment of the area residents, causing problems for the community. The informal open space provided by these parks is more than sufficient for community use along the river. The Albertson Park site is seen as an opportunity to provide the kind of park use and facilities available in communities that hold their park system in high esteem and use their parks accordingly. The current park plan has high emphasis in providing interest areas within the park to attract the visitor from area to area which will eliminate potential misuse problems as viewed occasionally in other parks.

As you have been updated, the citizens committee has continued to work diligently in reviewing and contributing to the latest plan. As developing, the plan is an idea of what would be a new interest, walk through emphasis park, without designing a no car Ann Morrison Park which would serve no real need.

The Idaho Fish and Game Department was extremely impressed with the uniqueness of this type of park and in a July 31, 1989 letter, John J. Beecham, Wildlife Research Manager for the Bureau of Wildlife of the Idaho Fish and Game Department wrote:

I really believe that the interpretative and educational potential at Kathryn Albertson Park and the Department's interpretive center is unique among the states and will be a credit to the state and the nation. I look forward to working with you on this very worthwhile project.

The citizens of Boise contributed an excess of 330 hours and 19 meetings in early 1981 to prepare a concept plan for the Kathryn Albertson Park that emphasized quiet reflection and for it to be an oasis from city life. One of the City's subcommittees working on the park articulated these objectives of the park as follows:

Concept: Preserve and enhance the J.A. & Kathryn Albertson Park as a natural area and botanical center for the community by providing respite from the rigors of every day living throughout the year.

Objectives:

1. Emphasis on indigenous wetland area plant and animal life on site.
2. Plan human entry into park which retains optimum balance with natural environment.
3. Evolve identification, education and display projects based on life present in the park to enlarge public understanding of particular wetland ecology.
4. Respect, preserve and enhance wetland area during development and functional use periods of the park.
5. Emphasize the passive recreational values that come from contemplation, serenity, quietness and beauty which are to be paramount. See their letter in the record.

The height of the current Project violates these principles because of its excessive height.

Imagine 63 feet of structure and an additional one story of elevator and rooftop improvements towering over the park. The Kathryn Albertson Park was never intended to be the backyard for a condominium project and visually dominated by a private and oversized condominium project.

c. **Applicant's Proposed Building Height Violates the Integrity of the Park System's "Ribbon of Jewels" and Greenbelt System.**

The Boise River Greenbelt serves as the uniting ribbon that links the City's parks which have been donated to the citizens of Boise by its civic-minded community leaders. The legacies given to the City in honor of remarkable women and their commitment to the community are well known and consist of the Kathryn Albertson Park located by the Project as well as the adjacent Ann Morrison Park, Julia Davis Park, Esther Simplot Park, and six other parks constituting the Ribbon of Jewels.

This Project at its proposed 81-foot height level as well as at 63 feet constitutes a striking intrusion and violation of the scale and beauty of the park and greenbelt systems. Exhibit "A" dramatically shows the maximum height under the zoning ordinance as well as the height of the 81-foot proposed exception being requested by the Applicant. As can be seen, the project far exceeds the appropriate sight line for this area even at a 63-foot height and the volume of the structure.

The depiction in Exhibit "A-1" is highly accurate because a drone was used to scale the new buildings based upon the Applicant's architectural plans to the local terrain.

These proposed buildings are far too high for the area and thus should be reduced to 3 stories at 45 feet.

It is impossible for the Applicant to allege that it is a hardship to build fewer than 304 condominiums because the Applicant's prior applications were for 84 dwellings and then 104 condominiums.

While we have no objections to a condominium development in the appropriate scale being constructed on the Applicant's property, the request to exceed the height restriction by almost two times in an effort to cram 304 residential units into this small acreage is highly inappropriate and should be rejected.

d. **Prior Efforts to Keep the Scale of Structures and Buildings in the Area Limited to 45 Feet.**

Prior to Mr. Albertson purchasing the 41 acres that became the Kathryn Albertson Park, it was originally designed to be part of a temple structure for the Scottish Rite Masons in the 1970's. The Masons proposed a very tall temple in excess of 44 feet. At the time, this created a controversy which resulted in the agreement of the Scottish Rite Masons to limit

Mayor David H. Bieter
Boise City Council
July 3, 2019
Page 17

any temple building to 44 feet on that property. In the interim, of course, Mr. Albertson purchased the property from the Masons and thereafter the property was donated to the City and landscaped to its current unique character.

8. **It was Error for P&Z to Approve the Boise River System Permits.**

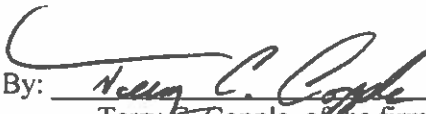
As a result of the granting of the exception on the height of the buildings to 63 feet, it allows the massive buildings to be directly adjacent to the Greenbelt and river area. As can be seen from the exhibits denoted as "A," the size and height of the buildings are far too intrusive into the Greenbelt and park areas and thus the river system permits should be denied.

Conclusion

Based upon the foregoing, we respectfully urge the Boise City Council to reduce the height of the Project to 45 feet, affirm the decision of P&Z to not grant the variance allowing encroachments into the Greenbelt area, or alternatively, refer this matter back to the P&Z Commission in order to allow it to review the Project in accordance with the standards set forth in this memorandum.

Very truly yours,

DAVISON, COPPLE, COPPLE & COPPLE, LLP

By: 
Terry C. Copple, of the firm

TCC/ms
Enclosures

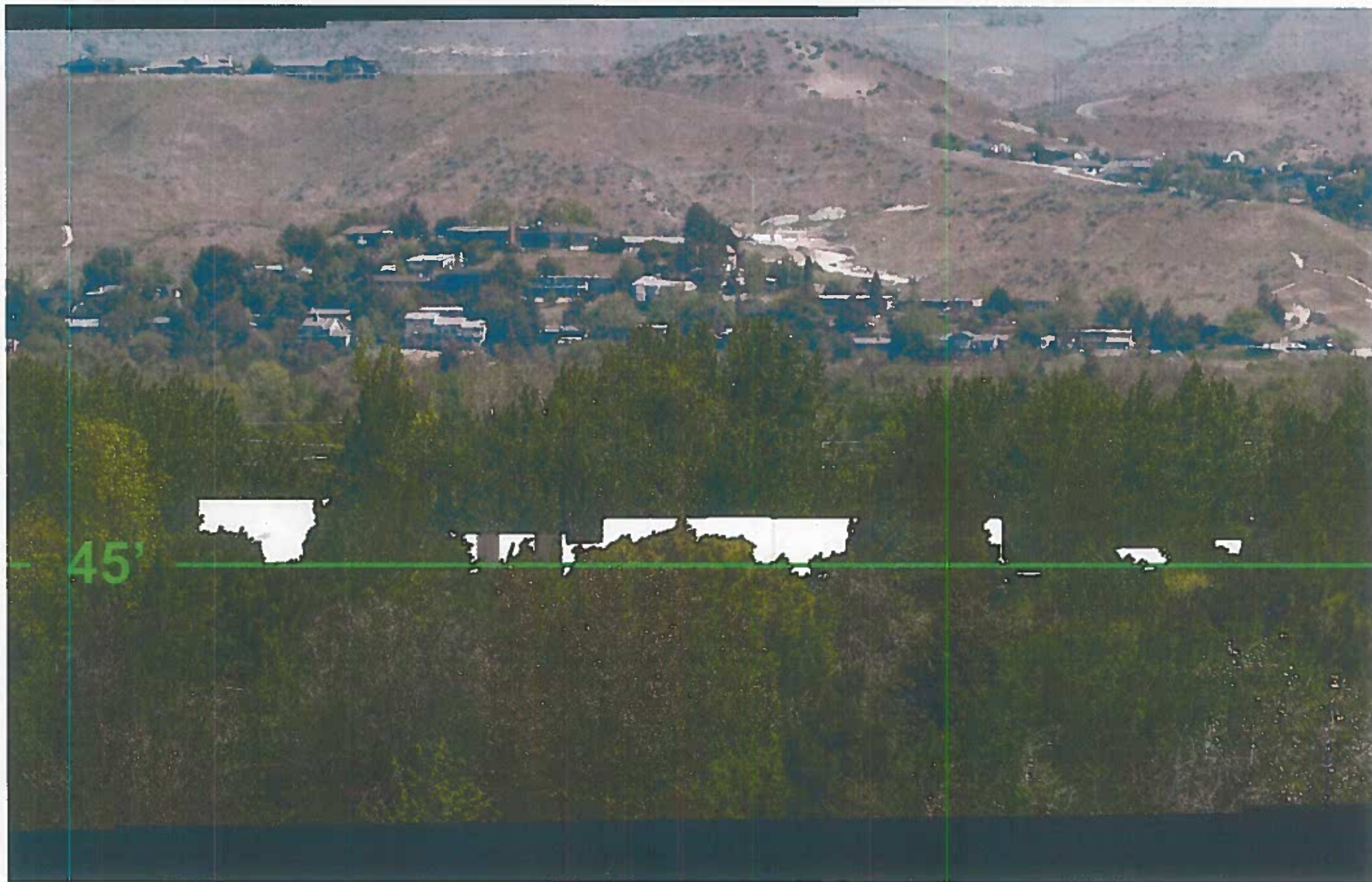


TRAPPER'S ISLAND - PROPOSED DEVELOPMENT PANORAMIC VIEW



PROJECT LIMITED TO THE C-3 MAX HEIGHT LIMIT

Yellow Line - 81' Proposed Exception
Blue Line - 71' Drone Flight Line
Green Line - 45' Zone Max Height Limit







REVISIONS	
COPYRIGHT © BY DG GROUP ARCHITECTURE PLLC	
DATE	03/04/19
PROJECT	AW
REVISION	ECP17-32
	
<p>DG GROUP ARCHITECTURE PLLC 432 E. STATE STREET, SUITE 100 EAGLE, COLORADO 80618 TEL: 303.461.1237 FAX: 303.461.1237 ALASKA · ARIZONA · CALIFORNIA · COLORADO · HAWAII · ILLINOIS · IOWA · KANSAS · LOUISIANA · MICHIGAN · MINNESOTA · NEBRASKA · NORTH DAKOTA · OREGON · SOUTH DAKOTA · TEXAS · UTAH · WASHINGTON · WYOMING</p>	
PROJECT	TRAPPERS ISLAND
BOISE, ID	AMERICAN TERRACE
ENTITLEMENT APPLICATION	
A9.14	

Exhibit "A-2"

09/04/19



REVISIONS	
COPYRIGHT © BY DG GROUP ARCHITECTURE PLLC	
DATE	03/04/19
BY	AW
PROJECT	ECP17-32
	
<p>DG GROUP ARCHITECTURE PLLC 432 E. STATE STREET, SUITE 100 EAGLE, IDAHO 83616 (208) 461-1327</p> <p>ALASKA ARIZONA CALIFORNIA COLORADO HAWAII IDAHO ILLINOIS KANSAS KENTUCKY LOUISIANA MARYLAND MASSACHUSETTS MICHIGAN MINNESOTA MISSISSIPPI MISSOURI MONTANA NEBRASKA NEVADA NEW JERSEY NEW YORK NORTH CAROLINA NORTH DAKOTA OREGON SOUTH DAKOTA UTAH WASHINGTON WYOMING</p>	
PROJECT	TRAPPERS ISLAND
AMERICAN TERRACE	BOISE, ID
ENTITLEMENT APPLICATION	
A9.5	



REVISIONS	
COPYRIGHT © BY DG GROUP ARCHITECTURE PLLC	
DATE	02/15/19
DESIGNER	AW
PROJECT	ECP17-32
	
<p>DG GROUP ARCHITECTURE PLLC</p> <p>400 E. STATE STREET, SUITE 100 EAGLE, IDAHO 83616 (208) 361-0000 WWW.DGARCHITECTURE.COM</p> <p>ALASKA • ARIZONA • CALIFORNIA • COLORADO • HAWAII • LOUISIANA • MONTANA • NEW MEXICO • NEVADA • NORTH CAROLINA • OREGON • SOUTH CAROLINA • TEXAS • UTAH • WASHINGTON • WYOMING</p>	
PROJECT	<p>TRAPPERS ISLAND</p> <p>AMERICAN TERRACE BOISE, ID</p>
<p>A9.3</p> <p>ENTITLEMENT APPLICATION</p>	



REVISIONS

COPYRIGHT © BY DG GROUP
ARCHITECTURE PLLC
Date: 03/04/19
Revised:
AW
Revised:
ECP17-32



DG GROUP ARCHITECTURE
PLLC

400 E. STATE STREET, SUITE 100
BOISE, IDAHO 83720
Tel: (208) 461-3347
Fax: (208) 461-3347
ALABAMA · ARIZONA · CALIFORNIA · COLORADO · HAWAII ·
LOUISIANA · MONTANA · NEW MEXICO · NEVADA · NORTH
DAKOTA · OREGON · SOUTH DAKOTA · U.S.V.I. · UTAH ·
WASHINGTON · WYOMING

PROJECT

TRAPPERS ISLAND

AMERICAN TERRACE

BOISE, ID

A9.6

ENTITLEMENT APPLICATION



REVISIONS

Copyright © by DG GROUP
ARCHITECTURE PLLC

03/04/18

A W

ECP17-32



DG GROUP ARCHITECTURE
PLLC

430 E. STATE STREET, SUITE 100

DAKOTA CITY, NE 68601

NE 1200 481-2287

ALASKA - ARIZONA - CALIFORNIA - COLORADO - HAWAII -

LOUISIANA - MONTANA - NEW MEXICO - NEVADA - NORTH

DAKOTA - OREGON - SOUTH DAKOTA - U.S.V.I. - UTAH -

WASHINGTON - WYOMING

PROJECT

TRAPPERS ISLAND

AMERICAN TERRACE

3038.13

A9.13

ENTITLEMENT APPLICATION

PUD19-00011, CVA19-00011, CFH19-00013
1" : 300'

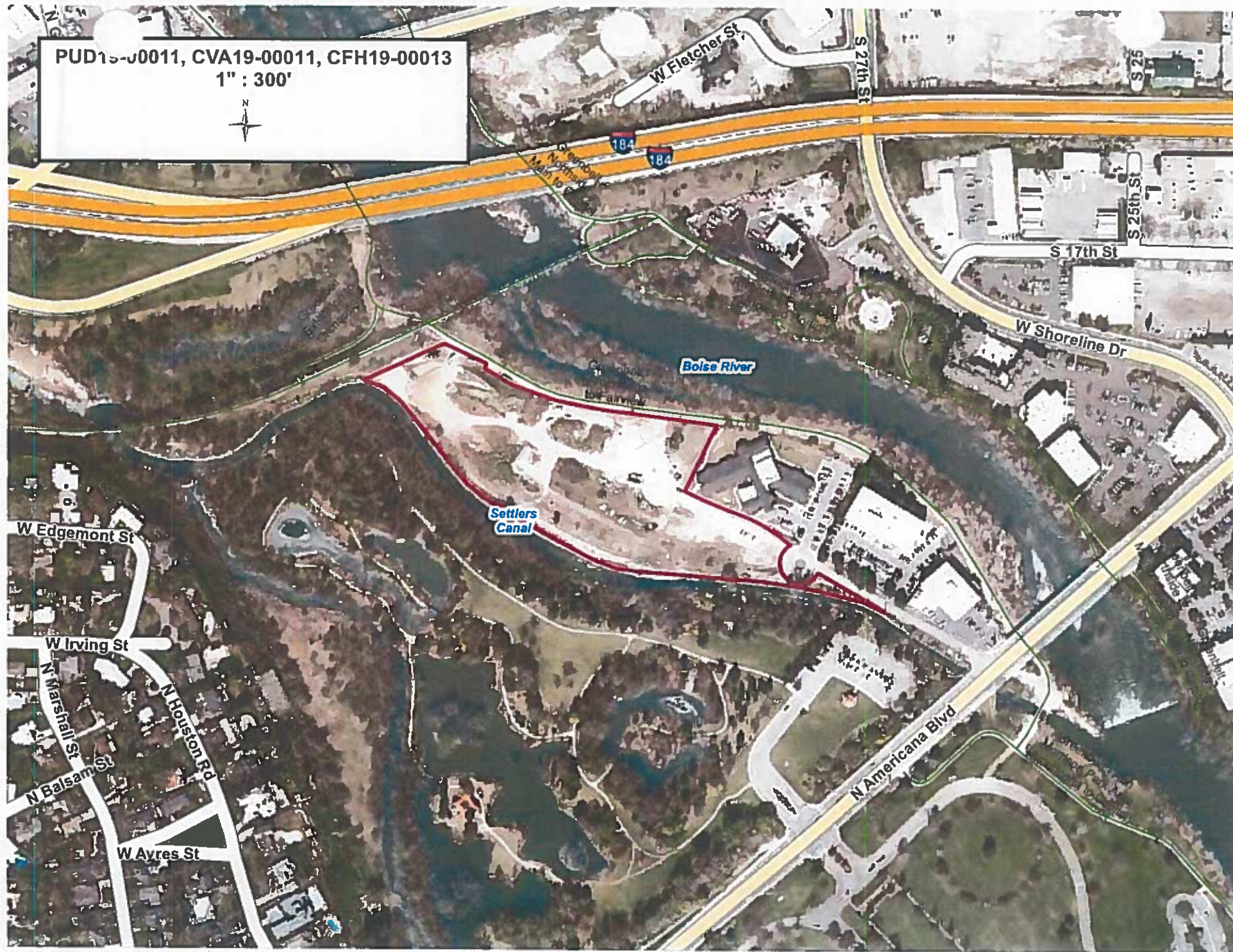
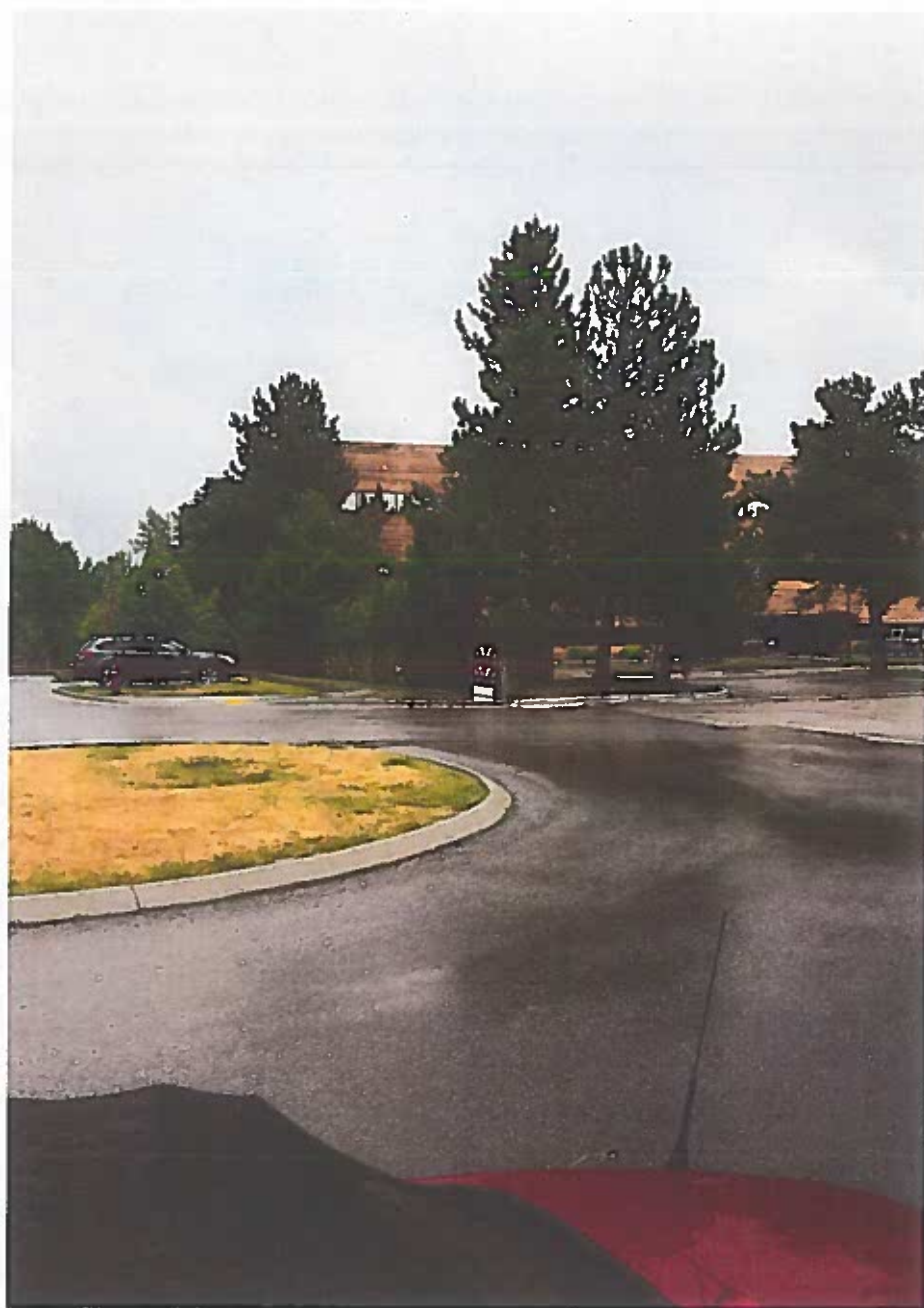


Exhibit "B"









PARKS AND RECREATION DEPARTMENT

MAYOR: David H. Bieter | DIRECTOR: Doug Holloway

MEMO

TO: David Moser, Assoc. Subdivision/Current Planner
FROM: Trevor Kesner, Parks Planning Administrator
CC: Jennifer Tomlinson, Boise Parks Superintendent; Jane Suggs, WH Pacific
DATE: 03/15/19
RE: CFH19-00014; Boise River System Permit Application for 3600 Americana Terrace

The Parks and Recreation Commission voted to recommend approval of the above listed Boise River System application on March 14th, 2019.

BACKGROUND:

The owner of the property situated at 3600 Americana Terrace recently submitted applications for the following: Conditional Use Permit, Planned Unit Development, Floodplain Permit and Boise River System permit for the development of an approximately 304 residential unit condominium community. The condominiums will be housed within 5 buildings, on a 7.4-acre parcel, also known as 'Trapper's Island Condominiums'. Each building will include 2 floors of podium parking, with 4 floors of single-level residential units above the parking areas.

As shown on the applicant's submitted site plan, three of the buildings are to be located directly adjacent to the Boise Greenbelt and two buildings are located along the south side of the entry service drive, adjacent to the Settler's Canal. There is no direct access to the Boise River from the site; however, the applicant is showing a direct connection to Kathryn Albertson Park via a future bridge crossing over the Settler's Canal. The project also proposes an 8-foot pathway situated on Boise City property, parallel to the Greenbelt, along the northwestern boundary of the site.

Although no structures are proposed to be located within the 70-foot Greenbelt setback, portions of the project's landscaping and plaza amenities will be. The applicant is also requesting a building height exception utilizing the multi-family PUD process. The maximum building height in the C-3 zone is 45 feet. The exterior parapet height on some of the buildings is 71'4", with some interior elements, such as elevator projections for rooftop access are up to 79 feet above ground elevation. The applicant has also proposed to utilize the Greenbelt as an emergency fire access on the northwestern corner of the parcel. Use of the Greenbelt as emergency access, and the placement of amenities within the Greenbelt setback along with direct connections to the Greenbelt will require an approved access agreement with the City.

Required by the Commission:

The Boise Parks & Recreation Commission is required to provide a recommendation to Mayor and Council when an application for a Boise River System permit is received to determine what, if any, effect the request may have upon park related property. Based on site specific recommendations from the Park & Recreation Commission, setback requirements may be waived, reduced or increased by the Planning & Zoning Commission or City Council. The Boise Park & Recreation Commissioners shall set forth specific findings of fact supporting their recommendations.

Setback Lands and Water: (Section 11-05-06) Setback lands and waters are lands and water set aside for protection and preservation of the Greenbelt; Heron rookeries; eagle perching, feeding and loafing areas and Riparian areas.

Greenbelt Setback Lands and Waters: The Greenbelt Setback area is a minimum seventy-foot (70') setback (measured landward) from the 6500 c.f.s. flow line and reserved for Greenbelt purposes. These areas shall be maintained in the Boise River System to provide lands for protection of wildlife, for bank protection, a holding area for floodwaters, and protection of recognized natural resource functions and values.

1. Maintain water quality,
2. Maintain safety of the greenbelt corridor and pathway,
3. Minimize noise impacts,
4. Protect Bald Eagle perching trees
5. Conserve aesthetic features within the greenbelt corridor as viewed from within the corridor,
6. Preserve views of significant cultural or geologic landmarks as seen from within the Greenbelt corridor,
7. Address other special and unique characteristics of the site or uses consistent with the purposes of the Boise River System Ordinance.

Analysis**Greenbelt Setback Lands and Waters**

The applicant's submitted site plan does not appear to be within the Setbacks for Class A lands and waters, or areas set aside for the protection and preservation of the greenbelt, Heron rookeries; eagle perching, feeding and loafing areas, or Riparian areas.

Greenbelt Setback Impacts

The project directly abuts the Greenbelt, but construction activities shall not impede or prevent public access to the greenbelt corridor or any adjacent public uses. The project will not impact the Greenbelt, adjacent uses and condition of the pathway.

Findings of Fact:

- The proposed improvements appear to avoid adverse impacts to Class A habitat. All construction activities will occur within the existing boundaries of the applicant's property, thereby avoiding impacts to Class A lands and habitat.



- The proposed project complies with the Boise River System Ordinance.
- The proposed project is located outside of the Heron Rookeries Setback lands and waters.
- Aesthetic features within the Greenbelt Setback Area, as viewed from within the corridor, shall not be adversely affected by the project's construction, or when the project is completed.
- The applicant will continue to work with Boise Parks and Recreation Department for the proposed access into Kathryn Albertson Park.
- Use of the Greenbelt as emergency access, and the placement of amenities within the Greenbelt setback area along with direct connections to the Greenbelt will require an approved access agreement with the City.



David Moser

From: Kathleen Collins
Sent: Monday, April 22, 2019 2:36 PM
To: Mack Myers
Cc: David Moser
Subject: RE: [External] RE: PUD19-00011 PZC Level Planned Development transmittal

Mack,
I will forward these comments to David Moser the planning analyst for the project.

Thank you.

From: Mack Myers [mailto:mack@settlersirrigation.org]
Sent: Monday, April 22, 2019 2:28 PM
To: Kathleen Collins <KCollins@cityofboise.org>
Subject: [External] RE: PUD19-00011 PZC Level Planned Development transmittal

Good afternoon Kathleen,

I did not see any reference to the Settlers Irrigation District facilities in the transmittal. The Settlers Irrigation District main canal is located on the south side of the proposed project and runs the entire length from east to west. We previously met with Mr. Jayo and reviewed the proposed design. The design that was proposed did not give adequate access to the Settlers Irrigation District for operation and maintenance. It was explained in our meeting that given the size of the canal at this location, a 30' minimum easement would be required and be fenced off from residential access, lockable gates would be required at both ends of the easement. Settlers Irrigation District requests that the developer provided plans detailing the 30' easement w/ fencing prior to receiving approval from the City of Boise.

Thanks,

Mack Myers
District Manager
Settlers Irrigation District
P.O. Box 7571
Boise, ID 83707
Office 208-343 5271 Fax 208 343-1642

From: Kathleen Collins [mailto:KCollins@cityofboise.org]
Sent: Wednesday, April 17, 2019 11:46 AM
To: Stefanie Keen; Mack Myers
Subject: PUD19-00011 PZC Level Planned Development transmittal

Attached is a Boise City Planning & Development Services application for your review. Please e-mail comments back to PDSTransmittals@cityofboise.org.

If you would like access to better resolution drawing (i.e. site and landscape drawings) they should be available on line here:



REVISIONS

COPYRIGHT © BY DG GROUP
ARCHITECTURE PLLC

02/04/12

AW

ECP17-32



DG GROUP ARCHITECTURE
PLLC

420 E. STATE STREET SUITE 100
DENVER, CO 80202
TEL (303) 461-2367

ALASKA ARIZONA CALIFORNIA COLORADO HAWAII
LOUISIANA MONTANA NEW MEXICO NEVADA NORTH
DAKOTA OREGON SOUTH DAKOTA U.S.V.I. UTAH
WASHINGTON WYOMING

PROJECT

TRAPPERS ISLAND

BOULE 30

AMERICAN TERRACE

ENTITLEMENT APPLICATION

A9.12



May 30, 2019

Terry C. Copple, ESQ.
Davison, Copple, Copple & Copple, LLP
Attorneys at Law
Chase Capital Plaza
199 N. Capital Blvd., Suite 600
PO Box 1583
Boise, ID 83701

Re: Trappers Island 3D Visualizations

Dear Terry,

This letter is a description of the process we used to create our 3D visualizations. We developed the model using the Trapper's Island drawings submitted to the City of Boise's PDS system dated March 3rd, 2019.

Our process involved a site assessment and preliminary impact study to determine the potential visual impact from 800 Houston Drive. We have included the Initial Site Assessment and Preliminary Impact Study image in our submittal package. It shows the drone (circled in red) and the flight line in red of 71'. We also developed a Section Study to establish elevational data from the proposed development through Albertson Park and through the rear yard of 800 Houston. To make our visualizations as accurate as possible, we refined the impact study by taking still images and video from a panoramic head tripod to establish height lines and a visual record for 3D image development. We then compiled the images, and information submitted to the City for the project along with Google Earth data to create a composite model in Sketch Up and finally used Photoshop to merge the images with 3D views to create our final 3D visualizations.

We have included a series of images and a video that show the study in Site Plan View, the Existing Panoramic View from 800 Houston Drive, the Proposed Development Overall Panoramic View, the Proposed Development Panoramic View Versus Project Limited to the C-3 Max. Height Limit, Match Line Enlarged Panoramic View, Comparison Studies A, B and C and a Drone Flight Video. The video showing the flight of the drone over the site at 71' above existing grade demonstrates locations of trees in the fore and background.

The Trapper's Island Composite site plan study shows the Google Earth imagery with the proposed site plan overlay with the site lines from 800 Houston to two reference points: The flagpole at the Cottonwood Suites and the spire at True Hope Church. These reference lines are also identified on the Proposed Development Overall Panoramic View and were placed in Sketch Up to accurately overlay the panoramic picture with Sketch Up developed 3D building view.

Attached with our package is the Existing Panoramic View from 800 Houston's back patio. It is our reference point for the development of the 3D renderings and images.

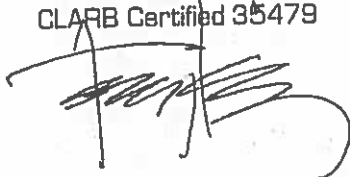
The Proposed Development Panoramic View vs. Project Limited to the C-3 Max. Height Limit view pdf image shows the overall view of the proposed development with reference lines at the proposed exception height of 81', at 71' which correlates with the drone flight images and video flight path, and at 45' which is the C-3 zone maximum height limit. Below the proposed development image, we have shown a version of the development at the 45' C-3 zone maximum height limit.

The Match Line Enlarged Panoramic View shows the proposed development with match lines for the series of comparison images that follow within our package. The Comparison Study images are enlarged and reference the same view with the proposed development compared to what would be allowed under the current height limitations.

In summary, the 3D visualizations were developed using AutoCAD, Photoshop, Google Earth and Sketch Up. We developed the renderings using real world measurement and data collection and created the views using geolocated data from Google Earth. Our perspective view from 800 Houston Drive was taken using a panoramic head tripod. We located the camera position within our Sketch Up model and developed the screen shot view from the same height and location. We believe the renderings are extremely accurate and show the impact to the primary view from 800 Houston Drive of the proposed development.

Sincerely,

Terry King
Principal Landscape Architect
Idaho LA-265
CLARB Certified 35479



Davison, Copple, Copple & Copple, LLP
Attorneys at Law

Direct Contact:

Terry C. Copple
Direct: (208) 472-4551

E-Mail: tc@davisoncopple.com
www.davisoncopple.com

199 North Capitol Boulevard, #600
Post Office Box 1583
Boise, Idaho 83701

Telephone: (208) 342-3658
Facsimile: (208) 386-9428

June 5, 2019

SENT VIA EMAIL ONLY
dmoser@cityofboise.org

David Moser
Associate Planner
Boise City Planning and Zoning Services
150 N. Capitol Boulevard
Boise, Idaho 83701

Re: *Trappers Island Project Proposed by Jayo Holdings LLC for Premises at
3600 West Americana Terrace, Boise, Idaho; Application No. CVA19-00011*

Dear David:

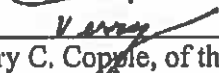
Enclosed herewith is a letter dated May 30, 2019, from Terry T. King of TTKLA P.L.L.C.
with regard to the 3D visualizations concerning the Trappers Island Project.

Please add the enclosed letter to the packet to the Planning and Zoning Commission.

If you should have any questions with regard to the enclosed letter, please do not hesitate
to contact me.

Very truly yours,

DAVISON, COPPLE, COPPLE & COPPLE, LLP

By: 
Terry C. Copple, of the firm

TCC/ms
Enclosure

BUTLER SPINK LLP

ATTORNEYS AT LAW

JOANN BUTLER
208-388-1093
JBUTLER@BUTLERSPINK.COM

*Sent by Email: David Moser (dmoser@cityofboise.org)
Mayor David H. Bieter (mayor@cityofboise.org)*

July 5, 2019

Mayor David H. Bieter
City of Boise
150 N. Capitol Blvd.
Boise, Idaho 83702

Lauren McLean, Council President
Boise City Council
150 N. Capitol Blvd.
Boise, Idaho 83702

Elaine Clegg, Council President Pro Tem
Boise City Council
150 N. Capitol Blvd.
Boise, Idaho 83702

Scot Ludwig, Council Member
Boise City Council
150 N. Capitol Blvd.
Boise, Idaho 83702

TJ Thomson, Council Member
Boise City Council
150 N. Capitol Blvd.
Boise, Idaho 83702

Lisa E. Sanchez, Council Member
Boise City Council
150 N. Capitol Blvd.
Boise, Idaho 83702

Holli Woodings, Council Member
Boise City Council
150 N. Capitol Blvd.
Boise, Idaho 83702

**RE: 3600 West Americana Terrace/Trapper's Island/Boise City File No. PUD19-00011
BS File No. 23663.1**

Dear Mayor Bieter and City Council Members:

Our client, Jayo Holdings LLC, through its consultant WH Pacific, made the Planned Unit Development (PUD) application referenced above requesting that the City review and approve the mixed-use project commonly known as Trapper's Island. Your professional Staff recommended approval of this application, and the Planning & Zoning Commission approved

the application at its June 10, 2019 hearing. This letter is being written to support our appeal of just one condition of approval.¹

Background

The City is aware that our client has owned the Trapper's Island property for many years, has explored development of the property, and received previous approvals for development.² These approved projects – all consistent with the City's then-applicable comprehensive plan guidance and the then-existing height limitations under the Zoning Ordinance -- did not go forward for various reasons, including financial feasibility.

Previous development proposals, at the density then proposed, were not financially feasible to be constructed, and construction costs have not reduced over the years. Changes to the City's building code (for example, the allowance of 4 floors of wood over 2 floors of concrete) have helped mitigate the high price of construction. Changes in the City's Zoning Ordinance to allow for height exception have helped mitigate the cost of construction and have the added benefit of supporting the City's adopted Plans' call for increased density. The increase in the Trapper's Island density, provided with the increased height requested, assists the Applicant with financial feasibility, allows the Applicant to provide expensive public infrastructure and amenities, all of which assists the City carry out its adopted Plans.

Changes to the City's Zoning Ordinance

The Local Land Use Planning Act was specifically amended in 2012 to enable municipalities to permit flexibility with general standards, including height, through their zoning ordinance.³

¹ Boise City Files related to PUD-19-00011(Planned Unit Development) include: CFH19-00013 (River System Permit) and CVA19-00011 (Variance from Greenbelt setback). This letter concerns only the Planned Unit Development application and an appeal of condition of approval number 3 that limited the height of Trapper's Island buildings to 63 feet.

We are aware that another party has appealed the Planning & Zoning Commission's approval of Trapper's Island at the height proposed. We have just received that separate appeal and will provide the City with our response in a separate letter within the time frame provided by City Code.

² Previous City approvals in connection with the Trapper's Island property include: SUB05-00064/CUP05-00092; density of 84 dwelling units (2005); and SUB07-00085/CUP07-00088; 104 dwelling units per acre (2007). Today, over 12 years since the last approval, our client revisited development of Trapper's Island in light of adopted changes to the City's Zoning Ordinance allowing for height exceptions, and today's planning guidance where the City strives to encourage housing developed at increased density and in close proximity to transportation, transit, work, recreation and other amenities of the City.

³ See, Idaho Code Section 67-6512(f): In addition to other processes permitted by this chapter, exceptions or waivers of standards [including height], other than use, inclusive of the subject matter addressed by section [67-6516](#), Idaho Code, in a zoning ordinance may be permitted through issuance of a special use permit or by administrative process specified by ordinance

Boise's Zoning Ordinance follows State Code and permits height exceptions through the City's conditional use process.⁴

Trapper's Island is in the C-3 Zone, which zone has a general building height standard of 45 feet. That general height standard applies in several other zones, including the C-2, C-3, C-4 zones and the L-O zone (which L-O zone governs the existing buildings on Americana Terrace). This general height standard can be, actually, the "minimum" height because, as the Council knows, "[e]xceptions to height limits for structures and appurtenances in this Code . . . may be authorized by conditional use permit. . ."⁵ Boise has provided (by ordinance) the flexibility for applicants in all zones, including the C-3 zone, to request and obtain an exception to the general height standard stated in the Zoning Ordinance.

Changes to the City's Plans

Starting in 2016, property owners, business owners, and residents of the River Street Neighborhood – of which Trapper's Island is a part – met and assisted the City develop the River Street Master Plan.⁶ That Plan pointed out that the neighborhood is uniquely poised for new development and rehabilitation of existing structures with great access to downtown, and the nearby amenities of downtown and cultural district make it an area for high density residential and mixed-use development.⁷ That Plan also clearly described the "Edge" area where Trapper's Island is located:

The Edge District occupies an area which is somewhat isolated by the I-184 Connector that looms over it on the north side and blocks street connections in that direction. . . .

⁴ There has been a trend throughout the Country, and in Idaho, to ensure greater zoning flexibility. The flexibility provided to municipalities by Idaho's State legislature is relatively new. Until 2012, a change from the height within a zone required a showing of "hardship." When the existing buildings on Americana Terrace were constructed, for example, this hardship standard would have been the law. Accordingly, it would have been unlikely that those building developers would have asked for a height exception from the existing C-3 zone.

The fact that the existing buildings on Americana Terrace were constructed at a different time and under different laws, does not mean that Trapper's Island, at its increased height under today's Zoning Ordinance, is incompatible with those existing buildings. Both the professional planning Staff and the Commission made a finding of compatibility. **It is very important to note, that none of the closest neighbors of Trapper's Island -- the businesses, owners and tenants on Americana Terrace -- objected to the height exception requested by the Applicant.**

⁵ Boise Zoning Ordinance § 11-04-01.3.

⁶ The Planning & Zoning Commission recommended approval of the Plan on August 7, 2017 and City Council adopted the plan on December 5, 2017 by RES-614-17.

⁷ River Street Master Plan, page 5.

On the south side of the Boise River is the site of a former KOA RV campground that is partially redeveloped with offices and an assisted living facility. The remainder of the property was previously approved for attached housing but remains vacant. The Boise Greenbelt has been recently extended past this area and the property remains suitable for attached housing and even mixed use development including dining that would cater to Greenbelt and park users.⁸

Since 2017, CCDC and the City have worked to develop and approve the feasibility studies, and the urban renewal plans for the adopted Shoreline Urban Renewal District (District) of which Trapper's Island also is a part. Along with changes to the City's Zoning Ordinance, the City's adoption of the River Street Master Plan, the public establishment of the District, and the public commitment to infrastructure improvements in the District, has had its desired effect of encouraging this private Applicant to revisit the Trapper's Island project. The City's legislatively-adopted changes to its Zoning Ordinance and Plans allow the Applicant to invest in this area of the City with a denser, mixed-use plan focused on housing in keeping with the goals and objectives of the River Street Master Plan, the District's Plan⁹ and the general purpose of Boise's Zoning Ordinance.¹⁰

This Applicant took the City at its word as contained in all the publicly adopted Plans for this area. This Applicant brought to the City a proposal for dense, mixed use development with a focus on housing designed sensitively to ensure compatibility with the surrounding

⁸ River Street Master Plan, page 10.

⁹ The District Plan was adopted by CCDC on October 8, 2018, and adopted by Boise City on December 4, 2018:

Reason for District Creation: Outlined as a part of Blueprint Boise's goals, objectives, and policies for downtown, are priorities of infill development, job growth, and growth in housing options. . . . Reinforcing these ideas of concentrated growth within downtown is Boise's future land use map. This map calls for mixed-use development in the Shoreline District. . . . Establishment of the Shoreline District allows for re-investment of both public and private dollars Key investments in public facilities and assets that attract and encourage private investment supports the overarching goals of the city of Boise to increase infill development, attract and retain jobs in the downtown core, and increase and diversify housing options. Ultimately, the strategies of public and private investment support the identified goals of addressing public health, economic vitality, and aesthetic appeal in a neighborhood that is adjacent to the core of downtown Boise. See, District Plan, page 15.

¹⁰ See, Boise Zoning Ordinance § 11-01-03. The focus of the City and CCDC on the Shoreline District has been encouraging for the Applicant. As pointed out in the District Plan (and as well known by the Applicant), the Trapper's Island property has been an area of concern for the police for many years. With the focus of CCDC and the City now squarely on the District, private investment in the area is perceived as less risky. Also, an increase in housing at Trapper's Island will help make Kathryn Albertson Park safer by discouraging visitors from staying overnight or using the park as a makeshift home – which is a known occurrence.

neighborhood. That density is achieved with building height¹¹ of the five buildings at Trapper's Island:

Building A -74.4'
Building B - 75.5'
Building C - 67.3'
Building D - 73.8'
Building E - 74.3'¹²

The increase in density was welcomed by the Commission at its June 10th hearing. As stated by Commissioner Gillespie: "I really like the development, and I like the mixed use, and I certainly like the density."¹³ Trapper's Island represents a type of housing project - and at a density -- that the City has been planning and encouraging for years.

However, as explained further below, the Commission undermined its approval by adopting condition number 3 - limiting the height to 63 feet, which reduces the density by over 25 percent -- without any basis in law or fact. Hence, our appeal of condition number 3.

Planning Staff Recommendation to the Planning & Zoning Commission

The Planning Staff prepared a comprehensive analysis and recommended that the Planning & Zoning Commission approve the Trapper's Island PUD application on the basis that the application complies with the PUD criteria set out in Boise Zoning Ordinance especially compatibility with its surroundings.¹⁴ As provided in Staff's executive summary:

¹¹ City Code measures height as "[t]he vertical distance from the grade to the highest point of the coping of a flat roof or to the deck line of a mansard roof or the average height of the highest gable of a pitch or hip roof." See, Boise Zoning Ordinance § 11-012-03.

¹² Note that there are architectural features on each building that are not part of the defined height, which is why the PUD application asked for a maximum of 79' for those architectural features. Please note that the Staff Report indicated that we were requesting up to 81'4" for these features, which we explained at the Commission hearing on June 10th is actually 79'.

¹³ Planning & Zoning Commission Minutes, Approx. Page 24.

¹⁴ Boise Zoning Ordinance § 11-03-04(7):

- (a) The location is compatible to other uses in the general neighborhood;
- (b) The proposed use will not place an undue burden on transportation and other public facilities in the vicinity;
- (c) The site is large enough to accommodate the proposed use and all yards, open spaces, pathways, walls, fences, parking, loading, landscaping, and such other features as are required by this Code;
- (d) The proposed use, if it complies with all conditions imposed, will not adversely affect other property of the vicinity;
- (e) The proposed use is in compliance the Comprehensive Plan;

Planned Unit Development

The proposal is in compliance with planned unit development approval criteria, detailed in Boise City Code Section 11-03-04.7(C7). The residential mixed use development is compatible with the adjacent office buildings to the within Downtown area along the Boise River in terms [of] height and mass. It is also compatible with the adjacent commercial uses (i.e. rehabilitation center and offices) and public parks. With conditions of approval the project will not place an undue burden on public services in the vicinity. It is large enough to accommodate the proposed use and with conditions of approval it will comply with all required setbacks. The residential mixed use development and building heights will not adversely affect other property in the vicinity. It is supported by the Comprehensive Plan. There are several policies that encourage mixed use residential projects close to downtown and within walking distance of employment, parks, greenbelt and other amenities (*Policies DT-CCN 2.1, 2.4 Policy DT-CCN 1.2 and Policy PDP 1.1*). The project enhances and expands the pedestrian and bike pathway connections within the neighborhood. This include the new bridge over Settlers Canal to Kathryn Albertsons park and the projects' location directly along the greenbelt. These improvements to the pedestrian and bike connectivity within the area are encouraged by the Comprehensive Plan (*Policies CC 7.1 and 9.1*). The project design also complies with the Citywide Design Standards and Guidelines.¹⁵

Planning & Zoning Commission Decision

The Planning & Zoning Commission agreed with Staff, echoing Staff's analysis in the Commission's written decision approving the PUD finding that the zoning Ordinance criteria, most especially compatibility are met.

However, the Commission was in error in connection with one condition of approval – condition number 3, which reduced the requested height to 63 feet. The Commission's decision is in error, is contrary to law and undermines the City's planning goals and the Commission's stated desire for good, dense housing development at this location. The Commission approved the plans and specifications submitted yet imposed a height limit of 63 feet that will cause an entire floor from each building to be removed reducing the approved density by over 25 percent.

The Council will read in the minutes of the Commission's June 10th hearing that Commissioner Bratnobar moved to approve the PUD application but deny the height exception because "they

(f) A multi-family building (any building containing more than two residential units) is designed to comply with the Citywide Design Standards and Guidelines.

¹⁵ Staff Report, Page 1.

need to go lower.”¹⁶ When asked by his fellow Commissioners what he had in mind and on what basis he would lower the height, Commissioner Bratnobar referred to a project almost a mile away and said that the height exception at that location provided “a good guideline to go on.”¹⁷

Let alone the fact that a height exception for a different project at a different location is not an adopted, applicable standard or criteria of either the Zoning Ordinance or the Comprehensive Plan, the Council understands that conditional use criteria are applied to any particular conditional use request in light of the circumstances of that particular location. What is approved for one conditional use request is not a legal “good guideline to go on” for any other conditional use request.

The Planning & Zoning Commission did not find non-compliance with the adopted Plans and Zoning Ordinance but, instead, made up its own standard on the fly based on a project almost a mile away. This the Commission cannot do. Decisions of the Commission must be based on “applicable standards and criteria of [the Boise Zoning Ordinance] and the Boise City Comprehensive Plan.” Condition number 3, without any foundation based in the Code or the Plan exceeds the authority of the Commission. The Commission is in error.¹⁸

Condition number 3, because it was made without reference to applicable standards and criteria of the Code and Plan, and was imposed on the Applicant without a rational basis, makes the condition arbitrary, capricious, and an abuse of discretion. Because the Commission did not rely on factors the City intends the Commission to consider (that is, applicable standards of the Code and the Plan) when crafting conditions of approval, the condition, without foundation, is arbitrary, capricious and an abuse of the Commission’s discretion. The Commission is in error.

Revised Condition of Approval Number 3

The Commission was in error in adopting condition number 3, and that condition should be revised as provided in the Staff’s report and as clarified at the Commission’s June 10th hearing (see Footnote # 12 above):

¹⁶ Planning & Zoning Commission Minutes, Approx. Page 22.

¹⁷ Planning & Zoning Commission Minutes, Approx. Page 25.

¹⁸ (i) The Council may find error on the following grounds:
(ii) The decision is in violation of constitutional, state, or city law.
(iii) The review body's decision exceeds its statutory authority.
(iv) The decision is made upon unlawful procedure.
(v) The decision is arbitrary, capricious or an abuse of discretion in that it was made without rational basis, or in disregard of the facts and circumstances presented. The decision is not supported by substantial evidence.
See, Boise Zoning Ordinance § 11-03-03.9.C(2)(a).

3. A height exception is allowed up to ~~81' 4"~~79'.

However, the Applicant appreciates the Commission's general comment made at the hearing that the Commission looks for compromise. The Applicant can meet the City's building code and architectural requirements to achieve the City's desire for density as approved by the Commission with a modified condition number 3.¹⁹ We would propose:

3. The Applicant shall revise the plans and specifications on file with the Planning and Development Services to demonstrate that the density approved can be achieved at a height of 70 feet measured per Boise City Zoning Ordinance.

Conclusion

We appreciate the Council's attention to the City's Zoning Ordinance and various Plans adopted over the past decade, and the Council's willingness to promote design and development flexibility to achieve the City's goals and objectives. Each Development represents an opportunity of the City to reconfirm its goals and objectives and mission to be the most livable City in the country. Trapper's Island gives the City this opportunity.

The Commission approved Trapper's Island but erred in adopting condition number 3. We respectfully ask the Council to uphold our appeal and delete that condition for the reasons provided above. In the alternative, we respectfully request that the Council uphold our appeal and modify condition number 3 also as provided above.

Sincerely,



JoAnn C. Butler

cc: Doug Jayo (doug@jayoconstruction.com)
Jane Suggs (jsuggs@whpacific.com)
Doug Gibson (dougg@tpchousing.com)
Andrew Wheeler (andreww@tpchousing.com)
James Smith (jbsmith@cityofboise.org)

¹⁹ The Council, in reaching a decision that the Commission is in error, has the authority to modify the Commission's decision in connection with this condition number 3. See, Boise Zoning Ordinance § 11-03-03.9.C(2)(b).