

CAR07-00042 / DA / AASE'S CANYON POINT DEVELOPMENT, LLC

SUB07-00065 / PLANO ROAD SUBDIVISION

CUP07-00084 / AASE'S CANYON POINT DEVELOPMENT, LLC

CFH07-00022 / AASE'S CANYON POINT DEVELOPMENT, LLC

Commissioner Fadness – As the vast majority of people here tonight know, we took this matter up on July 14. We took testimony on a wide range of issues and we decided we still had a number of unresolved issues that we wanted to work out through a work session which involved the applicant, city staff and some other agencies including Fish & Game and Parks. Those issues are the scope of our public hearing tonight. Let me just quickly state what those issues are. These are the issues determined by the Commission that they wanted to hear more about and which we have received more information in our packets. The first issue is phasing of the development and the completion of the proposed Daylight Rim Drive. The second issue is to consider issues again around phasing of the extension of Collister Drive to the Boise City Pole Cat Reserve, and the installation of a parking lot and trailhead. The third issue has to do with deer and wildlife corridors, and we do have some updated information from the Idaho Department of Fish & Game. The fourth issue is the management program proposal for the onion conservancy. We are asking that you limit your comments to those four issues. We already discussed at length and have in the record issues regarding traffic, traffic counts on Collister Road, the issue of the ridge top and the material removed required for the project. We would rather not hear those issues again tonight. Those are issues that the Commissioners felt they received adequate information at the last public hearing. I don't want to be a stickler and I want to give everyone an opportunity to comment, but if I do feel like you are veering off into these already determined issues, I may try to get you to either end your testimony or limit the scope of your testimony to the four issues that we want to discuss tonight. Is there any testimony from the Neighborhood Association? We will take those first. Okay, we will go to the sign-up sheets.

Commissioner Baskin – I just wanted to comment on an ex parte contact I may have had. I am a member of the Foothills Citizen Advisory Committee. I did attend the 8-6-08 meeting of that committee of which there was discussion about a possible resolution of the Pole Cat Reserve access issue. I did not participate in that discussion. Everything that took place in that discussion has been or will be revealed by Mr. Eggleston in his comments if not already included in the written materials the Commission has received.

Commissioner Fadness – Commissioners, are there any concerns about including Commissioner Baskin in our deliberations tonight in light of what he told us?

Teresa Sobotka – Commissioner Baskin, is there anything about that that would make it so you could not be fair and impartial?

Commissioner Baskin – No Council. I feel that I can still be fair and impartial in the matter.

Commissioner Fadness – Do we need to take a vote on this?

Teresa Sobotka – Yes, I think it would be best for the record to go ahead and take a vote.

Commissioner Fadness – I will entertain a motion then.

Commissioner McLean – Is the motion that this is de minimus?

COMMISSIONER MCLEAN MOVED THAT THIS DUAL ROLL IS DE MINIMUS.

COMMISSIONER COOPER SECONDED THE MOTION.

Commissioner Fadness – We have a motion and a second. Is there any discussion? Okay we will take a roll call vote.

ROLL CALL VOTE

COMMISSIONER BARKER	AYE
COMMISSIONER COOPER	AYE
COMMISSIONER MCLEAN	AYE
COMMISSIONER STEVENS	AYE
COMMISSIONER FADNESS	AYE

Bruce Eggleston (Staff) – There are four issues that are continuing over from the work session on July 31. We were instructed to find further information on those four issues. These are the items that were submitted since Friday afternoon at 4:55 pm which are rather important to the case; a letter from Robert Lazechko, who is a citizen in the neighborhood and opposes the project, a letter from Rob Tiedemann, part of the application team from Ecological Design discussing the issues and conversations they had with Idaho Fish & Game on the wildlife issue, a letter from Fish & Game describing their position on the wildlife corridors that may result from this proposed development, two maps were submitted and I put together a table summary of the deer counts in the area for the past 10 years or so, a letter from Ms. Janel Brown, who expressed comments relating directly to the issues tonight and is generally in opposition. Also, a letter from Mr. Brent Smith, a resident of Plano Lane area expressing opposition and issues pertaining to the four issues tonight. We received a letter from Stephanie Bacon, a resident from the area expressing the issues before us tonight. A letter from Matt Edmond with the Highway District saying basically that they would like to continue the same positions they had at the Highway District Hearing. A draft letter from the Park's and Recreation Department on a negotiation between the applicant, the Park's and Recreation Department and the Foothills Citizen Advisory Committee concerning the

timing, phasing, and installation of facilities at the end of Collister Road that would provide access to Pole Cat Gulch. I will be addressing problems found in this document to reference. This document has changed considerably since Thursday. On page 2, the first item of discussion was to work with the applicant and Briar Hills Subdivision representative on the phasing for completion of the proposed Daylight Rim Drive. To find the best solution to provide for public safety and there are many issues associated with that. Basically, we wanted to find a situation that would provide for the safety of the citizens living on Collister Road and Briar Hills Subdivision, a solution that should this application be proposed to allow the development to go ahead in a timely manner and also provide safety for the citizens of the proposed subdivision as well as those in the area who may need fire service and so forth.

Based on the condition from the Highway District, that road would be installed in it's entirety from the end of Collister Drive to Plano Lane. The greatest majority would be in a graveled situation up to Fire District standards to be able to sustain the weight of fire equipment. The built portions where Daylight Rim Drive had dwelling units on it would be paved to Ada County Highway District (ACHD) standards for a local road as recommended in their conditions of approval. Also, from ACHD maintain the number of dwelling units to be built at 53 prior to the completion of the pavement one end to the other the proposed Daylight Rim Drive. At that point, the interim gate will go across that gravel section in the road with a remote control optics type of control to allow safety access in the area. The Fire Chief thought they could work with that as long as the gate came down when the pavement was installed. This was sent out Thursday evening to members of the public and the Planning and Zoning Commission. There were about 17 copies and I believe they may be gone. This was emailed out Thursday afternoon of last week. We do have a list of participants, citizen neighborhood representatives who have provided email address, they were emailed as well. Anybody who has provided me with an email address through the process got this document. We don't have much to add to the first item will pretty much stays as is. The applicant certainly has some comments on that.

The second item, item 2, they are asking to specific issues around phasing, extension of Collister Drive to Boise City Pole Cat Gulch Reserve an installation of a parking lot and trailhead. We had a negotiation on Tuesday of last week that included myself, Mr. Hal Simmons from Planning And Development Services, Terry Records from Public Works, Dave Hanneman from the Fire Department, Mr. John Watts with Briar Hills Neighborhood Association and the applicant Mr. Ramon Yorgason and his son, Dave Selva from Parks and Recreation and the Honorable Charles McDevitt representing the Foothills Advisory Committee on the issues having to do with the interface of the subdivision and Pole Cat Gulch Reserve. There was a lot of discussion on all of the issues. Nothing was resolved at that time and in a letter we received this afternoon and the packet I showed earlier there is a tentative agreement with the applicant representative and representative of Parks allotted to us Pole Cat Gulch Trailhead dated today's date. The essence of that agreement is one that the City Parks and Recreation Department wanted to accelerate their access to Pole Cat Gulch. They didn't want to be

dependant on the timing of this proposed subdivision and so the standard agreement looks at acquiring easement over the connection at the end on Collister Road and Pole Cat Gulch Reserve. Installing a gravel road and parking area that would be temporary. Then that would meet the three conditions that would trigger further improvements. Let's say the finished improvements from the end of Collister Road and Pole Cat Gulch, that would include Holsack, Old County Road, speck pavement, curb, gutter, sidewalk and then a trailhead facility with parking lot and other facilities, utilities to the site and they would be triggered by one of the following three; close of sale of 28 lots in the entire development, close of sale of any single lot in the Collister area, that would be in the east end of the development nearest to Pole Cat Gulch Reserve, or item C, a passage of three years, 36 months from the day of construction activity then planting any portion of the R-Y applicants subdivision to take this to Pole Cat Gulch. It is my understanding that this agreement would have to be sustained and finalized by Foothills Citizens Advisor Committee. The particulars of this would be subject to the Development Agreement and so we are still some what in a tentative situation. I think that it's a solid agreement but needs a little bit more verification within the Parks Department on that. That would amend conditions in the Conditional Use Permit that address the installation of those items at the beginning of phase one for the whole project. In other words, at the out set of the subdivision of the entire project and would have to be looking at a condition of approval recommendation from the Commission to that affect.

The third item talked about, the applicant proposed wildlife corridors on the property. We asked for verification from the Idaho Fish & Game Department as to the adequacy or potential liability of these wildlife corridors and to sum up their letter that I received about 3:30 pm this afternoon, there's one corridor to be represented by these two arrows that have a span between the two proposed built parts of the subdivision greater than 600 feet. The 600 feet standard is the narrowest linear corridor that would serve as a viable corridor for wildlife big game to pass through. Their letter says "*one that would probably be an acceptable corridor, the terrain there is very rugged and there is Open Space to the north of it*". The other part of that letter says the quarter that is proposed isn't viable and probably wouldn't serve by any reasonable stretch of the imagination for wildlife corridors. That letter is in the material you received today. We have a letter from The Land Trust of Treasure Valley that further expands the original letter they quoted in the July 11th packet. It outlined the management of the perpetual onion conservancy on the property and the Commission has concerns with the adequately of the management program. We asked the applicant to give us a little more detail. In fact, we would have to have this in a relatively final format before it could go to City Council because it is also subject to the Development Agreement. Even though the details of the description of how this would be operated would be part of the condition of approval and would be looking for condition of approval to refer to this letter and the management program they are in. Staff feels that this is a good start but there are still a lot of issues that need far more detail and need to be worked out before the finalization of both the management plan and the proposed Development Agreement. I would like to note for the public record a few more items that were sent out last week. An amended zoning map and this has a small error. The proposed zones for the project in the yellow color, the developed

part of the project would result in the R-1A/DA, even though this doesn't have the DA designation, that's the zone being proposed. For the green hashed area, the proposed zone is A-1/DA, subject to the Development Agreement. This would replace the map that was part of the July 11 packet. Lastly, we prepared this map just to show the relationship of the proposed development to the Pole Cat Gulch Reserve. Three properties owned by Boise City. This one, which is adjacent to the property where that proposed cul-de-sac would end up. This is the Blessinger property that was both purchased and provided as a gift from the Blessinger family. The property was provided under a similar agreement with the Dangler family. You can see this large horseshoe page that is part of the Idaho Department of Lands which is public space and provides a great buffer to the Pole Cat Gulch Reserve. I also want to point out that the city itself doesn't have direct access into the reserve without going over the public lands.

Commissioner Baskin – What is the procedure you would like to follow? I do have some questions for Mr. Eggleston.

Commissioner Fadness – Typically what we do is hear from city staff, the applicant and then we open it up to questions unless you feel you need to ask them now.

Robert Burns (Applicant) – My assistant is going to flip a couple of exhibits up on the computer. Let me address, in reverse sequence, the four items discussed by Mr. Eggleston. First, with respect to the details on the onion management plan, the applicant's position is that we concur with the proposal from the Land Trust of the Treasure Valley attached to the staff report for tonight's hearing. Together, with the refinements to that proposal as suggested in the staff report by Mr. Eggleston. I don't believe there is any difference between what staff is proposing and what the applicant is willing to accept with respect to the onion management plan. With respect to the deer migration corridors, this is an exhibit that was prepared by Rick Ward with the Idaho Fish & Game Department and it is in your packet. I think those pictures that were just handed out were for rebuttal purposes. Those will be for later on.

Commissioner Fadness – Since we have received them Mr. Burns, I need to note for the record that we have received a submission from the applicant regarding the Plano Road Subdivision.

Robert Burns (Applicant) – The exhibit packets that are being handed out will be for the rebuttal this evening. The exhibit that is on the wall is an exhibit that was prepared by Rick Ward at Idaho Fish & Game Department and it essentially depicts the area where the density of the mule deer within the project area and as indicated on the particular exhibit. It is all shaded in a brown which is a low density of mule deer. The second exhibit is the exhibit that Mr. Eggleston had on the wall just a few minutes ago depicting the proposed wildlife corridors. There are really 2 proposed wildlife corridors that meet the 600-foot linear requirement. The first is on the eastern portion of the project where they are currently marking. There was another potential 600-foot wildlife corridor on the western portion that goes between the end of the project at Plano Road and the first

housing project. There are 2, 600-foot areas that meet Fish & Game's proposal, but I would like to point out, as established in the staff report itself, there are no wildlife corridors located anywhere on this property. This is a low density mule deer area. The areas we are depicting are areas where deer that might find themselves on the property, could work themselves back into the hills, but these are not corridors in the sense that deer commonly move back and forth in these areas today. We would also point out that Fish & Game has reviewed the proposed limitations that are required by Section 8 of the Development Agreement, having to do with fencing and the limitation on dogs by the residence in the subdivision requiring that all dogs be maintained on a leash. Rich Ward has indicated that the proposed corridors together with the limitations required by Section 8 of the Development Agreement will be helpful and adequate for purposes of Fish & Game's point of view.

With respect to the phasing of the completion of the Pole Cat Gulch Reserve parking lot and trailhead, there was a proposal made by Mr. John Watts that was discussed both at the initial hearing on July 14, as well as at a meeting we held last Monday we held at Planning and Development Services. Essentially, Mr. Watts proposal, as I understand it, Collister Road should be completed in the improvements built when either the city can pay for those improvements or the Daylight Rim Drive which is to be constructed on the property is paved. The applicant's position is that the requirements of the Foothills Conservation Advisory Committee can not be reconciled with Mr. Watt's proposal. The applicants can accept either Mr. Watt's proposal or the phasing that was negotiated with the Foothills Conservation Advisory Committee and submitted to the staff today and shown by Mr. Eggleston. Those are acceptable alternatives. We would support the phasing plan for the construction of those improvements submitted by Mr. McDevitt and the Foothills Conservation Advisory Committee. We can also live with the phasing plan, with respect to the completion of those improvements proposed by Mr. Watts, understanding that it is at odds with the requirements or the suggestion of the Foothills Conservation Advisory Committee. In exhibit #3 shows phasing plan for the project. The phasing plan for the project, the single biggest issue I think that needs to be discussed tonight.

Mr. Watts has proposed that the project be developed exclusively from the west end of the project until the road is paved throughout, until Daylight Rim is paved throughout. With a gated access road approximately midway, the specific location has not been called out. The applicant has an objection to that proposal and the gate is a problem to the applicants for three reasons; it is an expensive fix. The electricity is going to have to be brought to that gate to service it. That means building the infra-structure in the road all the way to the gate area. If it was expense it self, maybe one way or another we can make it work, but the reality of the situation, the applicant feels that the gate is really unnecessary because the road coming from Collister Drive, up the hill, in to the project area that is going to be graveled. The fact that that road is graveled will limit and dissuade people from utilizing the gravel road to get to Collister Road, instead of taking the Plano Road exit over on the other side, the western side. The applicant believes that a gravel road will serve the purpose of a temporary gate that is to dissuade the usage of the

graveled area or the uncompleted area. Finally, based upon the comments that were included in the work session staff report and specifically the comments that are found on page 14 and 15 of that work session staff report, it appears that putting a gate there would be illegal and in violation of Boise City's Ordinances, with respect to gated communities. The applicant also has a problem with a requirement that the project be developed exclusively from the west side, or the Plano Road side to the east for two reasons; the first reason is that such a limitation as proposed by Mr. Watts would restrict or limit the applicants ability to flexibly construct it's development. The real problem is that as you go into the hills, the lots become much more expensive. Because of the slow down in housing development currently, the applicant needs the ability to develop those lots that will be most marketable in a slow environment. Those are the lots that are down lower. If you take a look on the western portion of the project along Collister Road, those lots in there are not view lots and they offer the developer the ability to go forward and construct lots that may meet today's economic constraints and limitations. More importantly or equally important to that concern is the fact that this project is owned by 2 developers. The eastern part of the project is owned by Capital Development, Mr. Ramon Yorgason who has appeared before this Commission. The western portion of the project is owned by another developer, Mr. Joe Johnson. By forcing the development to start over on the western side and work eastward means that only one developer has the ability to generate the revenue to pay for the front end costs associated with building that road through and any other front end development costs. It is not economically feasible to impose on one developer substantial costs of starting this project if he has no ability to develop lots and sell them. For those two reasons the developers are opposed to a requirement that the phasing of this project be exclusively from the west to the east as proposed by Mr. Watts.

In summary, the applicant's position is that the requirements imposed by the Ada County Highway District, the Boise Fire Department and the Foothills Planned Development Ordinance can not be reconciled with Mr. Watts proposal. The applicants are willing to accept most any compromise so long as no temporary gate is required and both developers can start the development of their respective properties without unreasonable delay so they can both participate to the substantial front end costs required for building the required road through the project.

Commissioner Barker – My question deals with the 53 lots specifically. I will address this to Bruce. Just so I am clear on this. We have a letter from ACHD staff that says that the 53 lots are not generic. That is a total of 53 lots. It says that ACHD has set a limit of 36 lots on the Plano Road side, and 17 on the Collister Road side. My question is will any one of these require the development of the Daylight Rim Road, beyond just a gravel road? What the letter indicates is that 36 lots on the Plano side will then be the threshold for complete development of that road. Is that correct?

Bruce Eggleston – The Highway's recommendation about the 53 lots has a couple of fundamental premises. One is the distribution of the traffic overall and the second issue and one that is shared with the city is the safety aspects of providing two points of ingress/egress into the subdivision and it is outside of the current 4-minute response time,

a mile and a half drive through that. That is our major concern that any kind of delay to provide safety services to this area could be tenacious to the residents therein. The Highway District and the city agree on that point. That is the whole nexus for putting the road in completely to start with and finishing it off fairly early in the project, at 53 units being roughly a third of the project. We feel that is the point where safety concerns become over riding and requiring the full paving of the road.

Commissioner Barker – I think where I need clarity is this note we got from Matt Edmond. It spells out that it isn't 53 lots, that there is 36 on one end and 17 on the other. Let me ask you hypothetically. If 36 lots were built up on the Plano Road side, would the roadway, that Daylight Rim Road, according to ACHD, would that roadway need to be fully developed?

Bruce Eggleston – Yes. Our Fire Department regulation is such that one can only have 750 feet of dead end roadway from the nearest intersection. The initial installation of Plano Road just to get to the first runoff is several hundred feet beyond that. They are already essentially beyond the standard at the outset. That is why there is an overwhelming need to complete the road from one end to another is felt by the Highway and the City Safety Services.

Commissioner Fadness – If 36 were built on the Plano side and none on the other side, the 53 really doesn't apply. It's either side if they are built out 17 on Collister and 36 on Plano then we need to complete the road according to ACHD.

Bruce Eggleston – That is correct.

Commissioner Baskin – I think I got part of my answer in Mr. Burn's presentation in which he stated there are no wildlife corridors on the property. One of the criteria for establishing the greater than 25 percent slopes as priority Open Space is preservation or the finding that the lands in question constitute "*critical deer and elk winter range and migration corridors*". I read that it doesn't suggest to me that you satisfy that criteria by simply creating corridors for deer that might not be there and that you satisfy that criteria by protecting extant migration corridors with current known deer traffic. What is your comment on that?

Robert Burns – When we get into the rebuttal section, I will address that further. The basic comment to that is the requirements that you are talking about I believe go to the density bonus issue and for the reasons I will discuss in the rebuttal portion of the hearing tonight. The applicant does not need and is not requesting the bonus density. We are relying on the existing density, or based density allowed by the zoning for the property so my response to your question is we are not looking for bonus density.

Commissioner Baskin – I'm really troubled by that. I have tried to convey my frustration with that assertion at our work session and our previous meeting. We need an analytical framework to evaluate this application. It has been presented as though you

are applying under the density bonus analysis. It is present as though you acknowledge the base density is 1 unit for 40 acres. Frankly, if it is your position that that is not what you are doing, I don't know how you expect the Commission to evaluate this.

Robert Burns – The applicant has worked for three years with staff to try to put together a development proposal that meets the Foothills Planned Development Ordinance. We think we have succeeded in doing that. That is the way the project has been presented in the staff report. Having said that, in connection with reviewing the staff report prior to the hearing, it became apparent to me, which is the first time I reviewed this documentation, that based on the existing zoning in place and based on the city's ordinance, there was no requirement or need to seek a density bonus. Based upon that analysis which occurred just shortly before the first hearing in this matter and after the initial staff report was prepared, I submitted the matter to the Teresa Sobotka, from Boise City's Legal Council. We've had extensive discussions around this and we both concur that based upon the Foothills Planned Development Ordinance requirements the based density of this project is in excess of the 155 units that the applicant is requesting. There is no bonus density that is necessary in order to support the project that is before you.

Commissioner Barker – I think that I will be very interested in going through this again because, one of my concerns was in looking at the based density, and we've introduced that at this point, that so much of this property exceeds the 25 percent slope. Could you tell me how that related to your based density calculations?

Robert Burns – The based density calculation is derived, not looking at the 25 percent slope, but is based upon the existing zoning as providing by Boise code and Ada County code and applying it by the acreage. That is the basis for determining the allowed density. If you go through that analysis, that gives you a number that is in excess of 900 units without any bonus density. You also have to take a look at what limitations are imposed by the city codes, the Foothills Planned Development Ordinance. Not number limitations, but rather developmental constraints limitations. No matter what that limitation may be, the city staff and the applicant are in concurrence that the number is substantially greater than the 155 units being proposed and requested by the applications pending before this Commission.

Commissioner Fadness – Just one second. I just want to caution the Commissioners. I don't want to cut off questions, but we have heard these bonus density arguments and that was not one of the four that are on the list for tonight. Although, I realize that it is related to the wildlife corridors. I would caution the Commission that the density issue, which you can certainly use as reasoning for your vote for or against later on, is really not up for discussion tonight.

Commissioner McLean –Mr. Chairman, just a point of clarification then. I felt that at the work session it was both the applicant and staff that walked us through the formulations of how it came about. We didn't hear this 900 number. If we are indeed

not discussing that tonight, I don't think this number, that this based density should be brought up either by the applicant now or in the rebuttal.

Commissioner Fadness – I could be mistaken, but I heard the 900 number come up at a previous hearing, however, I thought I had left the work session under the impression that it was clarified so to hear this based density number brought up again (interrupted by Commissioner Fadness)

Commissioner Fadness – I certainly agree, although I don't think that the applicant has brought up anything new in their argument.

Robert Burns – Attached to the applicant's comments from the work session was an exhibit. There was only one exhibit attached to our comments which I prepared, and that exhibit went through the calculations for the 917 plus units. That was submitted at the work session. I wasn't at the work session, but it was part of the applicant's submission for the work session.

Commissioner Cooper – I have a question for staff that relates to the Fish & Game deer corridors. In our packet tonight from Idaho Fish & Game, it mentions that they feel there is one corridor of 600 feet or greater in width that would be in their requirements to be adequate for deer to use. Then in Mr. Burn's discussion tonight, he mentions what he called a potential corridor to the west of adequate width. I don't recall seeing that on any documents from the applicant before and it certainly is not mentioned in this letter. Have you discussed that with the applicant, this western corridor?

Bruce Eggleston – No. That's new evidence tonight.

Commissioner Barker – That's related to the proposed corridors and I will direct this to the applicant. Since Fish & Game does not feel a corridor less than 600 feet is really viable for the deer migration, do you still plan to leave open the areas that you have on your plan that are less than 600 feet? I believe there are a couple of them that are 100 feet.

Robert Burns – Absolutely. They are absolutely going to be the same. They are part of the tentative map and they won't change.

Commissioner Baskin – A question for Mr. Eggleston. The same question I posed to Mr. Burns about the priority Open Space characteristics subdivision part four "*preservation of critical deer and elk winter range and migration corridors*". Is it staff's view that this relates just to extant demonstrative migration corridors or to somebody's wish that if you provide the space, the deer will migrate thorough it?

Hal Simmons (Staff) – I just want to clarify on that particular question. There is a list of 11 items and you have to have 4 of those in concert in order to get the density bonus credit. The deer migration corridor was not one of the 4 that we counted. We counted

the riparian areas, the wetlands, the adjacency to public lands, the trailhead and the roadway so we had 4 or 5 issues that we counted. The deer migration corridors are not needed to meet the density bonus formula.

Commissioner Baskin – The reason I ask is because it is referenced in the July 30 memorandum and is one that might satisfy one of the requirements.

Hal Simmons – In light of Fish & Game's response back to us, we don't think it is that significant of an issue, to tell you the truth.

Commissioner McLean – If I could ask you the 4 that you were counting.

Hal Simmons – We counted wetlands on the property, riparian area, rare plant community, which would be the onion, public trails and trailheads as approved by the Boise City Parks & Recreation Board, and lands adjacent to publicly held Open Spaces.

Commissioner Stevens – With regards to the wetlands, my recollection is that there was one that met the Army Corp of Engineers definition of wetlands and then one that did not.

Hal Simmons – That is correct.

Commissioner Stevens – Could you refresh my memory on how the density bonus calculation is calculated? Do you just need one wetland? Does one of them need to meet that definition? If you could enlighten us a little bit.

Hal Simmons – The formula isn't that specific. Basically, they have to form a contiguous package of items. If we had a wetland that was isolated away from the onion field and away from the publicly held land, if there was one small piece on its own, we probably wouldn't count it. If it can be counted as an entire package if it can be managed as a package, we would count it.

Commissioner Fadness – Are there any further questions of staff or applicant on the 4 issues before us.

Commissioner Baskin – Another question on the Pole Cat Reserve access. I reviewed the proposal which I think comes from the City Parks dated 8-11-08, which we received tonight. I'm puzzled about the proposal that the City of Boise first pays the applicant \$25,000.00 for the easement. The city will then gravel the roadway to the trailhead and then after one of three things occur, the applicant shall re-pay the Park's Department the \$25,000.00, the cost of the road and they will go ahead and pave the road. How does the \$25,000.00 creep into this? It seems to me that we are paying for the easement and then we are getting it back. Why don't we side step that and dedicate the right-of-way and then tell the city to build the road and you won't have this extra step in there about exchanging \$25,000.00.

Robert Burns – This particular language was not discussed with the developer. It came from the Parks Department. I suspect, but don't know that the reason for the language is Parks wanted to make sure that there was consideration given and that there could be no question as to its ownership of that property, the gap from the existing end of Collister Road to the Pole Cat Gulch Reserve. I suspect that Justice McDevett included that in order that he would feel 100 percent comfortable that the city would end up with that property, but I am just speculating.

Commissioner Stevens – Can I briefly go back to the 917, for a point of clarification from staff?

Commissioner Fadness – Go back to what?

Commissioner Stevens – The 917 number that was discussed during the work session with regard to the based density.

Commissioner Fadness – We have already ventured for into it and we will probably have to allow public testimony on this topic anyway, so go right ahead.

Commissioner Stevens – It is just a quick point of clarification. If you can find page 7 of 21, back on the memo from July 31. Bruce, you wrote, *“the claim for a potential 917 dwelling units under current zoning is based solely upon the theoretically maximum allowed density for the zones and not the real world of steep geography and slope constraint site design”*. If I remember correctly, you said during that work session that you had not done the analysis of that so there was no way for you to tell us the exact number because you hadn't done that slope analysis, is that correct?

Bruce Eggleston – That is correct. We have looked at that a little bit more if you wanted to go into detail on how the ordinance regards that.

Commissioner Stevens – Mr. Chair, I would if he has more information since the last time we spoke.

Bruce Eggleston - I will bring up a particular slide on that. What we are looking at is the Foothills Concept Plan and the reason I bring this up is that it has very faint property lines as well as the proposed building sites. It is extremely difficult to see this, but this red line on top of the property is a parcel line that runs over here and a ¼ section right here.

This is the northwest corner of Mr. Yorgason's property that is zoned R-6. It is sort of a triangle wedge shape that comes over to the end of Collister and follows this boundary of their project. That is the R6 area and comprised of 122.9 acres and if we were to count the lots in the green, the green lots that they placed on the R6 area amounts to

approximately 37 units because there are several lots that straddle the boundaries. In the R6 area under this proposal that R6 zoning would account for 37 of the proposed units.

If you look at the parcel that is actually Quail Ridge #7, which has a city zoning of R-1A and A-1, the applicant has proposed some 17 units on that portion of it, and that is comprised of about 36.5 acres.

Those are the two portions of the development that have development zoning in either the City or the County. As the proposal stands, we could count for 54 building lots of the 155, approximately a third.

About a third of their proposal is on what lands currently have zoning other than RP in the county. Out of that, we have 332 acres total. There are 173 acres that comprise all the rest of it through Plano Lane. Everything west and north of that is RP Zoning and on that RP Zoning would be another 100 dwelling units, the other $\frac{2}{3}$ of the proposal is proposed to be on RP zoning on 173 acres. I might note that there is already a dwelling here, the Casey Family. There are 3 other parties with dwelling units that also figure into the equation.

The answer to that is we looked at the base density for those areas. The ordinance doesn't say anything about taking that 900 theoretical number and spreading it across the parcels and the zoning specific to those parcels that I pointed out. Those are parcels that would receive a base density other than 1 per 40. The remainder still has the based density of 1 per 40 because it has RP Zoning and I would like to make the contention that we made in the staff report, that we feel this development represents pretty closely the maximum type of development that would comply with all of the other Comprehensive Plan and Policies and ordinances in the Foothills Planned Development Ordinance, and the whole City Ordinance.

My contention of this proposal is, given the lot size and the type of product, is pretty much what they could get under the regulations, with or without the density bonus. This is a fairly optimum design. What I would like to further include is that the 100 units that are on the RP zone will have a requirement to meet the density bonus to go beyond the 1 per 40.

Commissioner Fadness – Further questions. With that we will go to public testimony. I will point out that public testimony is limited to 3 minutes. Try as much as possible to stick to the four issues that are up for discussion this evening.

PUBLIC TESTIMONY

Michael Jones – I live below the hill that would be rendered into upper 50 feet of oblivion crowned by houses. That is my view from my little farm. Based on the question that the Commission ended the public session with last time, I thought there would be opportunity to talk about important things. I went and took photographs of issues relating

to excessive cut and fill. I have a different report than you would have gotten from staff. I think the reason onions is even mentioned in this proposal is as a diversion from a proposal that is a direct head to head conflict with the Foothills Policy Plan, and also a direct head to head conflict with a recent plan from a County Task force that listed the Foothills Preservation as the highest priority of land use in the county. This direct head to head conflict is why these extraneous issues keep coming up. The onions have been there since whenever they started until now in those steep slopes. They do not need the protection of the Treasure Valley Land Trust or anyone else. The onions that do need the protection are the ones that are going to be bulldozed if this project goes through, if they take the 50 feet off the ridge-tops. The resistance on the part that the developer just stated about wanting to be able to develop the lower lots first, against the proposal made by the other neighbor person.

It is just further evidence that this proposal as a whole is going to have the massive impact on those 2 exit lanes, neither of which can handle anything like the traffic. The phasing and the new an sing is just trying to make a proposal that essentially conflicts with the Foothills Plan, look somehow viable. I would just like to conclude by saying it really is an important decision that you have. The Foothills Ordinance was drafted, as I said last time in public testimony, in response to Quail Ridge, with all due respect to Mr. Yorgason and the Quail Ridge residents and everyone else, that thing was the inspiration of the language in the Foothills Ordinance and when they come back with another one just like it, it better be a conflict or there is no reason to have a Foothills Ordinance.

Jerry Bower – I for one am for approval of this project. I have been working with Kerry Winn and the developers on this for 3 years and I just want to say they have gone through a lot in the 3 years to worked closely with Planning and Zoning to get this approved. Dealing with the issues at hand, I think they proposed a very good plan with the onion management. The deer migration; since they do not have a clear migration path right now, I think they have given 2 good proposals for this 600-foot linear requirement. Phasing; they are clearly trying to put together a good plan that will not create a burden on traffic on both sides. Most of the traffic will go off of Plano Road where there is very of it based on the plan should come down to Collister. Both parties on both sides are going to be unhappy with this proposal, but the developers are really trying to do a very good plan to meet everybody's requirements as best they can. The phasing of a total of 53, splitting it off from both sides so the developer can develop lower priced lots and sell those to help pay for the development, I think it is a very reasonable plan and affordable for them and meet all of the requirements. They are proposing to pay, including impact fees and lights and everything else with impact fees, close to a million dollars. That will go directly into the local area to improve the roads and the community. The phasing I think of 53 and enabling the developer to develop from both sides is a very good compromise for everybody. From what I have heard of the migration and the onions, I think they are really doing a good job and a delicate job of trying to create safety for everyone and also preserving the wildlife that is going to be there as well as preserving the onions. I for one am for approval of this project. I think it will be a great benefit and will give a great tax base to the city, and will be helpful to the whole community.

Stephanie Bacon – On the new management proposal for the onion conservancy, I question the fitness of The Treasure Valley Land Trust to protect this important colony of Aase's Onion. The relative newness and inexperience of The Treasure Valley Land Trust, evidence by their vague inadequate first proposal and their hasty revisions makes them unsuitable for the task. I also think that Robert Tiedemann's association with the Land Trust raises serious conflicts of interest. I have provided Planning & Zoning (P&Z) a CD with many photos showing the onions blooming on the ridgelines in April 2008. I did not find creditable The Treasure Valley Land Trust's claim that they will transplant the quote "*small amount of rare plants that will be disturbed during initial construction*". The amount of plants is not small and these plants are not suitable for transplanting. We have all heard how they only grow in certain soils, on certain slopes, at certain altitudes. There rareness is evidence of their particularity as to habitat and disruption. It is not a creditable quote "*a pre-construction education effort to guide initial grading activities*" will help unless all grading is restricted to the month of April because the onion is not visible at other times of year. When the stapes and leaves are visible for a short time before and after blooming, they are indistinguishable visually from grasses that grow in the area. Before this project goes forward, a new and impartial onion study must be prepared by a qualified professional who's livelihood does not depend on enabling development.

Regarding the August 5th meeting; there are procedural problems with the August 5th meeting and the recommendations proceeding from it. The phasing negotiations spearheaded by the developers and their colleague Mr. Watt are improper because no representatives of Plano Lane and adjacent sections of Hill Road, who are profoundly impacted in any scenario were party to the discussion. While Mr. Watt claims his concerns regard safety and timing only, it is clear to us that he hopes to force as much as possible of the impact onto Plano Lane for as long as possible. It's a transparent, not in my backyard strategy. In their findings ACHD sought to distribute the impacts of construction and other traffic between Plano and Collister from the outset. They did not think it was fair to subject Plano to all of the negative impacts of the project when another larger street already classed as a collector also would inevitably access the project. We don't think it would be fair either and we don't think it is fair to have the spirit of ACHD's decision undermined at a closed meeting. To suggest that the 53 units would be platted on the western end of the proposed subdivision, taking access from Plano Road to provide a delay to increase traffic on Collister Drive simply seems like doing a nice favor for Collister at the expense of the residents of Plano. I don't think ACHD would approve it and I hope P&Z will not endorse it. Please note that Plano is in the county and adjacent to R-P zoning, while Collister is in the city and adjacent to mixed zoning and might reasonably expect to share some of the burden of the development.

Brent Smith – I submitted an email to you this afternoon. With respect to the deer, my wife and I walk up there weekly, particularly in the winter. We generally find between 12 and 24 deer on that property all winter long. I don't know if that has anything to do with migration but those deer live there. This 600-foot corridor is not going to do

anything. The houses are not going to do anything but move the deer out so they are not going to have access to whatever it is they access through the property, which they do go down across Hill Road. In terms of other things I have heard tonight, regarding something that may or may not be allowed, that is the density bonus issue. I am not hearing a lot of clarity from, with all due respect, the Commissioners, about what these developers are actually trading to get these 148 additional lots. It is a dry gulch that they are trading. They are going to put a fence around this dry gulch and there is a little water seep, which I have been unable to find. Ask yourself, what good is a fence? What kind of public good does that fence do? Ask the City and Parks & Rec. if this fence is so valuable, are they going to fence the rest of Pole Cat Gulch? If not, why not, if this fence is so valuable. Is it going to look more beautiful to see the gulch through the fence? The onion, the developer has basically put together this package so that he is basically holding us hostage to this trailhead access, is the way it looks to me. He has put together these other 3 elements; the protection of the rare plant, the protection of the riparian area, which is a dry gulch, the protection of wetlands, which is a water seep that could be a little puddle. In fact, one of the water seeps I did locate is a little puddle. These elements together are giving this developer the supposed right to put a 148 additional lots in this property with 100 of them on the ridgeline, which is specifically excluded in the Foothills Policy Plan.

Raelene McGavis – Having grown up in a Foothills environment I can certainly understand the emotional attachment that all of the neighborhoods have expressed. However, with that being said, there are a few people that get to enjoy that, but when you bring it up where no one in your backyard can develop, then that is an issue. My compliments go to the staff and the developers. I have been in here through the beginning. I am completely for this project. I know that it took a lot of time and effort to understand, not only the Boise Foothills Comprehensive Plan, but also the Boise Comprehensive Plan. They have done a lot of research and they have had more than one study for the onions to be able to appreciate and understand where they grow. They have taken into consideration the expert witnesses that may have been hired but certainly they are outstanding in their field and reputable in the community. I believe that those witnesses testimony should stand as is. The subdivision will benefit many, where as now there are just a few. I admire Mr. Watts for coming forward. Having been a participant during all of the neighborhood meetings, Mr. Watts was the only one that came forward after many invitations from everybody to come and have a collaborative effort. I can appreciate the phasing plan that the developers are presenting to you and ask for your consideration that given all of the information that has been presented to you and the compliments that they have and the compromises that they have made along the way, that they have a very viable and safe community in which they want to introduce to the valley. I think the Treasure Valley at large will benefit from having access to the Pole Cat Gulch Trailhead as well as other trailheads that will be accessible there. Thank you and good luck. This is not an easy job.

Paul Warner – I know that this is not directly on the four issues, but if I may because this is important in setting a precedent for future development. In 3 weeks they will be

back with Eyrie Canyon, which is another 106 units that are going to come before you. It's just one issue on traffic that I would like to bring up again.

Commissioner Fadness – I did let the Commissioners stray on the density bonus, so I guess we can add that to tonight's. We do have the ACHD traffic as well as the comments from traffic, so if you can tie them into any of those 4, that would be fine, but I'm asking you not to make it based on traffic alone. We have an adequate record on that. I will allow you another 30 seconds since I took that time.

Paul Warner – Basically, in the Foothills Policy Plan it says to mitigate the traffic going east on Hill because Harrison Blvd. and 15th Street are at capacity. If you could put somewhere in this when you vote, a statement in there so that ACHD sees this and that you are concerned about the traffic that is going to be created from this and Eyrie Canyon and others going east on Hill Road and impacting our neighborhoods, would you please put a note on that to try to mitigate it some way so that it goes to the State Street Corridor? If you can do that, it would be sincerely appreciated. I also, in due respect, Chairman, I wish you would have let a few other people talk about some of these other areas. I would have like to hear some of these things on the cut and fill.

Bob Lazechko – I will make my comments brief. I am going to try to relate them to #1 on the best solution to provide for public safety. To me it seems like I hear a lot of numbers, the 900 number. I see a lot in the written documents and all the proposal traffic numbers, number of houses put in, how many acres are doing that. It seems like to me that the cart is being put before the horse. Before all of these numbers can be discussed whether it's R-6 or all of these numbers and $\frac{1}{3}$ falls under the city and $\frac{2}{3}$ fall under the county. The issue that it comes down to is this Foothills initiative. It really does and that is a tough one for you guys. It's a precedent setting thing. I think that applies to the safety in my household or my neighborhood since I live on Collister because obviously the decision on how the Foothills initiative applies to this application will effect the density and the bonus and whether it needs to be applied or not. For me to make any more comments on that it's kind of mute until that question has been answered. Because then I feel like as a public citizen I can make informed comments on whether I think it is safe or not. How it is going to affect my children on that road based upon the number of houses. That seems to be in big debate. I just noticed in watching you, that when the 900 number was mentioned there was a lot of questions and a lot of confusion there. I was at the previous meeting where there were a lot of questions on the intent and you have a tough job. I think that is the thing, because this is a huge thing. The man has the right or the developers have the right to develop their land providing they don't use a ruse or disguise to develop that land. I have nothing against that. If he wants to develop 900 lots and it is zoned that way and you guys feel that is the way, I'm not going to be happy about it, but I have to accept that. If I don't feel it's properly administered and proper decisions made for everybody based on the how the Foothills initiative applies to the situation, we are just going down a wrong road. I also did submit a letter that you guys received and my other comments are in there.

Commissioner Fadness – We did get that letter.

Mariah Courtwright – I just wanted to touch on a couple of things. First, I talked about the traffic count last time and I wanted to clarify that there are driveways that actually do come out below Outlook. You had asked that question last time and I had misrepresented that information last time and so I wanted to clarify. Second, the thing that is frustrating to me is that I have been here through the beginning and all I hear is that we have been spending a lot of time, three years, we are getting a lot of community support or talking to. I think it is unique then that within the last month they can come to you and say; “*we just recently discovered we don’t need the density bonus in order to get what we want*”. They are able to take it off of the table and I think it is extremely confusing to know what you need to have in, what you don’t need to have in, how many counts need to be where, if it’s 80 here, 80 there, do you need a road, not need a road, do you need a gate or not need a gate. I feel for you guys because, I am so confused as to what is required and not required, what somebody has negotiated, not negotiated. I really think that if they have taken that long to try to figure it out and then are still having issues or taking things off of the table, then I don’t know that we should expect you guys to figure it out in a couple of months. I hope that you guys take the opportunity to step back and try to get the actual facts of what is required. Everybody gets emotionally attached to it and I think that you are getting some misinformation that could or could not sway your discussion.

Patrick Courtwright – I will start off with the deer. When I look at the Fish & Game data I notice there is no data beyond 2003 and I question why. A lot has happened in the last 5 years. We have had new developments, more pressure. I’m an outdoors guy. I love the deer. I have to believe that there is more deer than what I see presented in the data from fish & game. I am not a biologist but I’ll tell you this is a wintering zone and we do have game there. Onto phasing, a different tune tonight. We heard that the developer would be pursuing, or at least identifying some other ideas. Mr. Watts presented some additional ideas and then we talked about punishing a developer for if we put the road on one side, if we don’t do it. My understanding is that there is one applicant, there are 2 developers, if the road is to be gated or the roads need to be built. We are not punishing anybody. They made the decision to buy each piece of property. It has come through as one proposal. I think that is null and void. I will say that I do analytics as a living. I am thoroughly confused as well. I hear numbers, 900 lots, 1 per 40, 155. We surely have all of the numbers. I say the same thing. The developers and staff have spent 3 years trying to make a decision? How can the public be informed, how can we make a good decision, how can we make sure that we understand everything when documents are still coming in at 3:45 this afternoon? With that, I have one last point, and that is all of the witnesses and public who have come here tonight in support of this, I didn’t hear any of this in the last meeting, so I go gosh, everybody has a right to an opinion but they seem kind of weird that we didn’t hear them on the first meeting and we are hearing them now.

Don Plum – I would just like to follow up on Paul Warner's testimony about western Foothills development and traffic and two reasons for this development is the wildlife corridors and the capacity downstream from these developments and I don't see the Commission or the staff addressing the second one and where the traffic is going to go once it hits Hill Road. I would just encourage this Commission to include some sort of a condition especially with the Collister intersection that is going to be redesigned and signalized that we encourage traffic to head south. Especially traffic from this development if you are going to approve it to head south towards State Street to the major arterials instead of east where the traffic capacity doesn't exist and we are hoping we approve development in the western Foothills because of the capacity that does exist downstream.

Commissioner Stevens – Do you have anything specific you would recommend at the Collister intersection to make that happen?

Don Plum – I believe that there are a number of different ways you can design that intersection whether it's a free right turn at Collister, and timed signals for eastbound traffic for those that are heading east into downtown and possibly. I'm not sure how you could address it for those that are heading out of downtown, west, but this is all part of the Interim Foothills Transportation Plan. We were looking for diversions at 36th, at Collister, at Gary Lane and at 28th Street. When we made this decision that we were going to encourage development in the western Foothills, we were going to put some of these phases into action. Whether it was the 36th Street extension or these diversions at these intersections because we recognized the lack of capacity east.

John Watts –The point I would like to make clear. I have 3 things in front of you this evening. Number 1 is I am a resident that built my home and have lived there for 20 years. I am the former co-chairman of then Mayor Dirk Kempthorn's Foothills Advisory Task Force that wrote the plan and the ordinance that you are considering. I am a former Fish & Game Commissioner. I am not a colleague of Mr. Yorgason or the applicant or the folk from Utah. Let's be really clear on that. I am also shocked as I stand here this evening at the rejection I heard by Council for the applicant for the many ideas that have been proposed. I am a student of public policy and a practitioner of the process that is why I was involved in the meetings. I asked at a public meeting to be involved. We had agreements and they were all set aside tonight and I am shocked. They have supported the gate here before. They had the gate in the original ACHD application. Tonight, they don't. For electricity reasons, there are solar panels today. But perhaps that could create vandalism and they would have that destroyed. Well that would be the point of the road that we are concerned about too. Vandalism, and what happens when the vandalism turns to a Foothills fire because somebody is up on top of that ridge that doesn't belong there. It's an ungated road, it's a paved road and it's not policed. As far as the gated community, sided by council for the applicant tonight, we had this discussion once before and I thought the matter was settled. It's clear in your ordinances at 1.3.6 that this is not a gated community. This is a Foothills subdivision seeking zoning, seeking conditional use. I would also point out that there are 2 applications, one application and 2 owners. If

there is a hardship for the owners because of a west and east end, let me suggest they split it and bring 2 applications to you. That would resolve a lot of these issues because then they could deal with how are they going to get off the top without connecting to Collister? They are going to fix up Plano but they are not going to do anything for Collister, so what would that front end applicant do if they had to come by themselves? What if the applicant on the east end had to come by themselves? How would they get up there, they can't. How would they get off, they can't get off. Then what happens with the city park trailhead? If that gets split, the city loses this leverage with the applicant, at least with Mr. Yorgason in order to get the trailhead built for the park. If you reject this completely tonight and watch everyone scurry because what now has occurred is some agreements have been made and some hard work has been put in by all the neighborhoods here tonight for all their reasons, by myself, by Briar Hill, by the city, by P and Z, by Parks and Rec. and now we are still in this state of disarray of 80 lots, 0 lots, 53 lots, 36 lots, 17 lots. Then the parks, 18 months, 5 years, 7 years and now an agreement that just occurred outside of a public meeting that was referenced earlier, 28 lot, 1 year or maybe 3 years. I think you should reject this thing completely. I wasn't going to ever say that, but I am tonight. I think you should reject it completely. I think they need to go back to the drawing board, I think you need to study your Foothills ordinances very closely and line them up with respect Mr. Chairman, particularly to 5.1.5, 5.2.1 and 6.2.3, those three. This application violates them all.

Commissioner Fadness – Is there anybody else from the public that wishes to testify?

Gene Wortham – As far as the mule deer out there are concerned. I have lived out there since 1968. I live up on top of the hill. You can see the whole west side of this proposed subdivision. There are quite a few deer that reside there all year and in the wintertime I have counted up to 42 different deer at one time. There are a lot of mule deer that live out there. Before, I don't seem to comprehend what Mr. Watts has been talking about. But now Mr. Watts tonight has finally brought this whole thing to a head and what it boils down to is all of these meetings we have had and the public suppose to know what the developer is going to be doing, I guarantee you, we don't know for sure what's going on. Before anything is voted on, I think somebody better get this proposed development scheme summarized, finalized and then the public would like to look at it and I think you would be entitled or the proper perspective as to what you are going to be voting on.

Commissioner Fadness – Anybody else that wants to testify? Commissioners, you may now ask questions of the applicant or the staff.

PUBLIC HEARING CLOSED

Bruce Eggleston – I would like to reiterate the suggestion I made a little earlier to implement some of these changes that have occurred since the July 14th hearing. We would be looking at motions to change those and in particular to the onion management plan, the phasing plan and any changes to those that might be reflected in a motion for adoption. I did fail to mention, a letter that I entered into the record passed out this

evening from Mrs. Marie Casey, who happens to be one of the applicant in support of that. They were handed out this evening.

Robert Burns – I would like to address a couple of the comments Mr. Watts made. The first comment of criticism he had is that there was an agreement with respect to the gate. The applicant has no problem supporting a gate. The applicant's problem is that a temporary fence makes no sense. If in fact a gated community would be allowed by this Commission and the city, the applicant can support it. The problem is that a temporary fence makes no sense if it has to be taken down after 36 lots are built on the Plano Road side or 17 lots are built on the Collister Road side, so it's a temporary gate, not a gate that is the issue. With respect to building all 53 lots off of Plano Road, the applicant was working with Mr. Watts as well as the community to come up with a solution. My client has informed me that to the best of his knowledge at no time was there an agreement made for the reasons and because of the concerns I earlier discussed, that would limit the first 53 lots to be constructed off of Plano Road. We are sorry for any confusion or misunderstanding with Mr. Watts, but at no time did the applicant intend to deceive or other wise mislead Mr. Watts or any of the other neighborhoods with respect to its development plans. Every development of course, imposes impacts on a community. The question is not whether or not impacts result from a project, but whether the development proposal complies with a development planning objectives and ordinances. There has been extensive analysis of the project before you by the city staff with a multitude of departments and agencies. I think that the record is clear that the city staff, the agencies and the departments that have all looked at this have all concur that the project before you complies with the city's planning goals, policies, and ordinances. Having said that, there are a few issues that have been brought up by the opponents to this project that I would like to quickly address; these are in the packets that were distributed to you earlier today.

The first slide is an excerpt taken from the work session handout that staff prepared and this has to do with the density and the density bonus. The yellow portion out of the staff report specifically states that the density bonus methodology is not necessary to qualify for 155 units for this project. There can be no doubt about that. Staff, city's attorney and the developer are all in concurrence on that point. The next exhibit is from the staff's original staff report. It was prepared in connection with figuring the density bonus, but I am submitting it in the yellow portions, not because of the density bonus, but rather to do with the clustering concept. As this report that was prepared by staff indicates a total of almost 73 acres of land that is developable on this property based upon the 25 percent slope analysis. The developer is setting aside over $\frac{1}{3}$ of this land and not developing on it. By definition the developer is clustering his project, the 155 requested units, into a little less than $\frac{2}{3}$ of the developable land that is possible and available for development. This exhibit is the letter from ACHD that I believe you saw as part of the work session handout. There are a couple of items that I want to bring to the Commissions attention. The first is that there has been argument that the Collister Drive is not capable of handling the additional development that this project will introduce. As indicated, on page 3 of the letter from ACHD, the ACHD response is "the upper portion of Collister

Drive is sufficient to accommodate both current and projected traffic volume and drainage requirements at build-out of this proposed development. The experts in the area, the ACHD, have looked at this issue and they have determined that there is no requirements, no improvements to Collister Road that are required to meet the ACHD's requirements. I would just point out that the yellowed portion on that map establishes that we are going to be in gridlock. We are going to be a problem at Foothill and Collister by 2015 unless the improvements are constructed by the developer. The Commission has asked to take a look at the remaining exhibits that are included. Most of them are self explanatory. I would be more than happy to answer any question the Commission may have with respect to the exhibits included in the packet.

Commissioner Fadness – With that, Commissioners, we are done. You may deliberate towards a decision.

Commissioner Stevens – Could we take a break?

Commissioner Fadness – Yes we can. We probably should have taken the break before the public testimony portion and that is my fault. I would just encourage the Commission not to discuss this proposal, as I know you won't with either each other or the applicant or the public.

BREAK

Commissioner Fadness – It looks like we have all of the Commissioners back and we will reconvene the meeting. Commissioners we are at the point of deliberation and a vote on these items. We will probably need to take them up separately. I am getting a yes from legal council. First up is the annexation issue with the zoning designations recommended and then we will take up the Subdivision, Conditional Use Permit and the Hillside and Foothill Area Development Permit. As you know we have done in the past on applications such as this, we want to discuss any and all portions of this before motions we can do that as well since some of these issues do overlap.

Commissioner Baskin - I don't have a motion to make, but I do have something I'd offer to start the discussion. I think for me it's the starting point, and that is; "*what are the rules?*" as some of the neighborhood folks have asked.

I noticed that the applicant in his rebuttal was quick to point out the statement that was contained in the staff report from July 30, about how staff concurred that the base density given the existing zoning would exceed the 155 units requested by the applicant. There are a number of other statements in the staff report, as well as provisions in the applicable Ordinance that suggest to me that staff is persuaded that this project is to be evaluated on the basis of 1 unit per 40 acres to apply the density bonus provisions of the Foothills Planning and Development Ordinance.

Quote, *“in working with the applicant for 3 years on this project, all were in agreement to utilize a base density of 1 unit per 40 acres”*, end of quote.

Quote; *“for purposes of this application, the applicant is bound by the densities reflected in the application and proposed development agreement. The applications expressed the intent of the applicant for the proposal. Their applications invoke the density bonus regulations and went to great lengths to comply with those regulations. The applicant followed the density bonus and the calculations are expressed on the work sheet”*, end of quote.

I think this recognition or realization that maybe some other based density applies, comes too late. I am going to evaluate this under the Foothills Planned Development Ordinance or I'm not going to evaluate it. That's the entire premise for this entire exercise is that this applies.

With that starting point, I've got some real problems with the density bonus analysis. First of all, the Ordinance seems to require that in identifying the Priority Open Space, is satisfying ourselves that the 81 acres of the 25 percent slope or greater qualifies the criteria for Priority Open Space. I am not convinced that a lot of that area meets the criteria. For example, the general guidelines in Section 11-6-5.07.4 of the Ordinance which discusses Priority Open Spaces; it says that you have to be satisfied generally and initially that there is a demonstrable increase in the public value of the resource by such allowance that would not be realized by strict adherence to the other provisions of the code. We are told by staff that the 81 acres in question meets 4, if not 5 of the Priority Open Space characteristics; wetlands, riparian areas, rare plant communities, public trails, lands adjacent to public areas. Rare plant communities, that's figured prominently in all of these discussions, the Aase's Onion. First of all, as it's been noted, it is protected because you can't build on it anyway. There aren't any other permitted uses like mining or logging that are going to interfere with the onion preservation. I suppose grazing might be out there as a permitted use that will not be allowed if this land is dedicated or conservation easement is dedicated to the Land Trust. But, grazing has been out there already as a possibility, and the onions seem to have survived it.

The onions and the natural vegetative cover which are to be protected by the designation of this area as Priority Open Space might also be protected under the Hillside Development Ordinance because, that Ordinance, which they must comply with does contain provisions that protect from the disturbance of these areas already. I refer to a Section 11-14-04 sub parts F and G, and 11-14-09 sub parts C of the Hillside Development Ordinance. I'm not persuaded that there isn't protection that is already extant for the rare plant communities. For that reason, I'm not sure I would assign as much value to the 81 acres as the applicant would have us do.

Second thing, my point on elk and deer winter range and migration corridors, I think staff has indicated that never figured as a significant reason supporting the Priority Open Space Designation. The wetlands and riparian areas, as I looked at this, are pretty small,

they aren't significant. The fact that these lands are going to open up access to the Pole Cat Reserve is important and in my mind may be the most important criteria that satisfy Priority Open Space characteristics. Once you go through that analysis, you're supposed to demonstrate an increase in public value of the Priority Open Space. True, it does allow for public access. I don't think it does much to protect the onions. For those reasons, I'm not persuaded that we should assign the value to the protection of that area that the applicant says we should. I point out again that this is a matter that's to our discretion. Referring to Section 11-6-5.7.4, quote, *"when the applicant demonstrates that a portion of his property, not otherwise qualified as Open Space, eligible for a density bonus does meet the above listed criteria, the Commission may classify it as Priority Open Space and allow some or all of it to qualify, with the grants and the density bonus. The amount allowed to qualify is Open Space eligible for a density bonus shall be discretionary based on the criteria or the extent to which the property in question exceeds the minimum criteria"*. Contained in that same section is the admonition that priority Open space when it exist should be used in balance with the other forms of eligible Open Space, that is the space that is actually buildable to meet the requirements of the code.

Here, we have 81 acres proposed to be Priority Open Space verses 25 acres that are otherwise buildable. I think the Ordinance specifically invites us to make some determination as to whether that 81 acres provides the City with sufficient value to justify the density bonus the applicant has requested. I'm not persuaded that it does. By the same token, I'm not really in a position to say that you should credit them for 30 acres, or 20 acres, or 40 acres. I am persuaded that to give them full credit under the statute or under the Ordinance for 81 acres is more than the circumstances justify. I wouldn't support the proposal as a recommended by staff for that reason.

Commissioner Fadness – But you are not making that in form of a motion.

Commissioner Baskin – No, not just yet.

Commissioner Fadness – That's fine, we can have discussion. I want to be careful that we don't have really long discussion before we have at least have a motion on the table.

Commissioner Stevens – I actually have quite a few things I want to say, but I am not going to say them right now. I just want to piggy back off of what Commissioner Baskin said regarding the based density, and I want to point out if I'm not mistaken that one of the things that staff assumed in it's calculation of that based density, let's call it 155 for argument sake, was that they, being the applicant, would go to the County, if not to us and use the existing zoning that the County has on it. Or that they would come and we would annex it at 1 per 40. I just want to make the point that we also have the option of doing a holding zone and asking for something different.

Commissioner Fadness – Thank you, Commissioner. Further discussion or motions?

Commissioner Barker – We could start with a motion about zoning, with the annexation.

COMMISSIONER BARKER MOVED THE APPROVAL OF CAR07-00042/DA TO INCLUDE THE ANNEXATION OF 332.75 ACRES WITH A ZONING DESIGNATION OF R-1A DEVELOPMENT AGREEMENT AND A-1 DEVELOPMENT AGREEMENT.

COMMISSIONER COOPER SECONDED THE MOTION.

Commissioner Barker – I think it would benefit the City and the community that we bring all of this property into the City to have a consistent and hopefully, more clear designation of the zones involved in this development.

Commissioner Baskin – I have a concern about that because I think if I understand what staff is proposed correctly, would that bring the property in at a based density of greater than one unit per forty acres?

Commissioner Fadness – Unfortunately we have closed the public hearing and so I don't think we can direct that question to staff. We can try and resolve it among ourselves.

Commissioner Barker – This does get to the root of the based density question. I think there are other provisions, other than just density per acre that come into play when looking at Foothills development and more specifically, the development on increased slopes, 25 percent slope. Where I would agree with Commissioner Baskin is that we are taking a look at the density. I think that there are other ordinance provisions that overlay that density that would come into play.

Commissioner Baskin – I appreciate Commissioner Barker's comment but I think that pre-supposes that we'll come to some agreement about what type of development agreement should be attached to this development because it's R-1A with a Development Agreement. Isn't it?

Commissioner Fadness – That's correct.

Commissioner Baskin - And if we don't come to agreement about the development agreement or about the Conditional Use Permit (CUP), then we have this parcel that's annexed and it's annexed with zoning that is greater than 1 unit per 40 acres.

Commissioner Fadness – That's a good point Commissioner Baskin. I would note that that assumes then that the other Commissioners would not come to agreement or have any development agreement attached. I guess I don't foresee that as a realistic situation. Further discussion before we take a vote on this motion?

Commissioner Stevens – I concur with Commissioner Baskin on this. I think there needs to be more discussion about the CUP before we vote to annex the development agreement that we haven't had any discussion about. I would move to table the motion until further discussion on the CUP takes place.

Commissioner Fadness – When there is a substitute motion, don't we have to vote on the original motion first?

Teresa Sobotka – You would have to vote on the substitute first. I think you are getting a little confused here. There are two types of rezones: one with the development agreement, and one without a development agreement. When you annex, you would have to rezone either with or without a development agreement. You could stop right there. You don't have to look at underlying development of the Conditional Use Permit. You can if you want to, you don't have to.

Commissioner Barker – I think that we have to begin somewhere. Again, I will argue for annexation because there's certainly been presented to us some confusion about what would be allowed or not allowed in the County. This is an important parcel for the City to be looking at as a whole. Secondly, I think the zone to require development agreement should be applied to this parcel regardless of what kind of development we are going to see. The development agreement is the key piece of information that we would want attached to any development, any application for this parcel.

Commissioner Fadness – Further comments?

Commissioner Cooper – I seconded the motion for discussion purposes. I wish we were able to discuss all aspects of this application before making a decision on the annexation. I understand we can't do that. I have been trying to look through the report to see what other avenues we have besides the one before us with this annexation. It does all depend on the development agreement.

Commissioner Baskin – That was part of the motion. I have a question for Council. If the motion is passed as proposed by Commissioner Barker, does that require consideration of the CUP to take place under the Foothills Policy Plan Ordinance? In other words, would it require us to consider the density bonus provisions of the Ordinance as applicable to that property as a rezone?

Teresa Sobotka – Yes and no. The first motion was to annex with the development agreement. Then after that you are looking at the Conditional Use Permit. Once you annex, the County zoning goes away. You totally be looking at what ever the City zoning with the development agreement was. The application and the development agreement state its 155 units. You were looking at a rezone for 155 units spread out over the property. Then look at the clustering and the density bonus requirements in relation to the rest of the CUP issues.

Commissioner Baskin – Let's suppose that this application isn't adopted, the property changes hands, ten years from now we are faced with another application, this time for 300 homes. Would the Foothills Policy Plan Ordinance apply to evaluate that application or does the rezone impact that?

Teresa Sobotka – In your hypothetical, this was denied, once you deny, then the applicant can go to the County and develop pursuant to the zoning he has in the County, as well as to the City pursuant to the zoning in the City. Now, in the County they have to look at our Comprehensive Plans and the Foothills Policy Plan. Our plan talks about the density bonus and preserving the 11 issues. They would be applying it to a based zoning using that as a starting place, the Foothills Policy Plan, but they would be applying it to the zoning.

Commissioner Baskin – If the annexation is approved, but the CUP is denied, then the property is still annexed. Correct?

Teresa Sobotka – That is correct.

Commissioner Baskin – Having done that, what would the base density be for any future Foothills Planning Development applications?

Teresa Sobotka – It's the 155 units. I think it is the 1 per 40. I would have to re-look at everything to make sure. I believe the 1 per 40 is what it would turn out to be. The 155 units are what the development agreement would be considered. Everything that is in that development agreement, those are commitments that they would be making. Since there would be no development, a specific CUP approval, then when they came in with another application or modified this one, they would have to do that in accordance with the development agreement. When you would look at the CUP in the future, you would have to check off to make sure they met every one of the requirements in the development agreement, unless they wanted to modify the development agreement.

Commissioner Stevens – I have a question since I am new on this Commission. I have a question regarding zones. I will address this to Commissioner Barker. The R-1A, is that the lowest density that you can have or a development agreement to be attached to it? I'm just curious, why that zone, as opposed to anything else?

Commissioner Barker – No, it is not the lowest density for which a development agreement can be attached. I don't believe that development agreements are tied to density. R-1 is a single family residential development zone.

Teresa Sobotka – I have the answer to Commissioner Baskin's question. The two zones are A Open and R-1A, so the CUP would have to develop pursuant to those two zones, and in particular they are R-1A.

Commissioner Fadness – Further discussion on the motion to accept the annexation and the zoning designations.

Commissioner Stevens – I have a follow up question. Is the A-1 zone then, I know that is open space, is there a density associated with that, like 1 per forty? I'm trying to figure out what our choices are before I am comfortable voting on this.

Commissioner Cooper – I believe that the density for A-1 is 1 per acre.

Commissioner Fadness – Further discussion on the motion. The motion is to approve the annexation along with the zoning. We have a motion to table.

Commissioner McLean – That was never seconded.

Commissioner Fadness – Is there a second on the motion to table? Okay, with no second, we are back to the original motion to approve the annexation with the zoning designations. With that, we will take a roll call vote.

ROLL CALL VOTE

COMMISSIONER BARKER	AYE
COMMISSIONER COOPER	AYE
COMMISSIONER BASKIN	NO
COMMISSIONER MCLEAN	NO
COMMISSIONER STEVENS	NO
COMMISSIONER FADNESS	AYE

THREE IN FAVOR, THREE OPPOSED, MOTION FAILS.

Commissioner Fadness – With the tie, I believe that the motion fails. Is that correct? The motion fails in event of a tie.

Teresa Sobotka – The motion fails, yes. You could keep making motions until you get somewhere.

Commissioner Fadness – If the motion to annex fails on a 3-3 vote.

Commissioner McLean – It was my intention of making that vote against annexing with that zone designation. Are we able to entertain other motions?

Commissioner Fadness – We can certainly entertain other motions. I'm gathering your motion would be to annex with different zoning designations.

Teresa Sobotka – In that consideration, I think you could say that this motion failed for lack of approval. You could annex with something like an A-2, which would be a holding zone. Perhaps that could get you to where you want to get.

Commissioner Fadness – We could annex with a holding zone, perhaps an A-2. Could you define what an A-2 zone would be?

Teresa Sobotka – Literally, the holding zone of 1 per 40 and it does not have the development agreement attached to it. That's what we have been discussion over here because Foothills Development requires a development agreement, so what would happen is it simply puts it in a holding zone so they could do some sub-development of the 1 per 40, but when they want to do a higher density, a zoning urban level development, they would have to come back and they would have to get a development agreement at that point, approved with a rezone that gives you the higher level density, perhaps an R-1A.

Commissioner Fadness – Would that require a whole new application?

Teresa Sobotka – Yes.

Commissioner Stevens – I am going to go ahead and state a basic opinion. There is no question in my mind that there is a development right associated with this land. There are a lot of things in this proposal in front of us tonight that I am very uncomfortable with. I would like to annex the property with an A-1 holding zone.

Commissioner Fadness – Wouldn't that be an A-2?

Teresa Sobotka – A-2 is our lowest zone.

Commissioner Stevens – I thought A-1 was the 1 per 40.

Teresa Sobotka – A-2 is too. They are both 1 per 40. I'm sorry A-1 is 1 per acre, A-2 is 1 per 40.

Commissioner Stevens- I am going to restate my motion to annex the property with an A-2 holding zone.

COMMISSIONER MOVED TO APPROVE CAR07-00042 WITH AN A-2 HOLDING ZONE.

COMMISSIONER MCLEAN SECONDED FOR DISCUSSION.

Commissioner Fadness – We have a motion and a second, discussion.

Commissioner Stevens – I also made the motion for discussion purposes. I feel strongly that there is going to be development here for a host of reasons. I think that what is in front of us tonight needs to comply with parts of the plan; the Foothills Policy Plan, the Foothills Ordinance and the Comprehensive Plan that it doesn't currently comply with.

Therefore, by annexing in with that zone, I'm hoping that we can encourage the applicant to come back with something more appropriate for the site.

Commissioner Baskin – I think I understand the intent of this motion. I have some concerns about whether it will do what we hope it will do. If this motion is passed and we bring it in as a holding zone, A-2, 1 unit per 40 acres, hypothetically, if somebody comes in wants to develop a 40 acre estate with a prominent house up on the ridge top, is that application going to be governed by the provisions of the Foothills Policy Plan and the Foothills Planning Ordinance?

Teresa Sobotka – Yes, the Foothills Policy Plan for sure. We are in agreement that the Foothills Plan would apply, but not the Ordinance. It goes to a straight subdivision in that situation. You would limit it to the flatter area and protect all the things it states in the plan. Actually, we started requiring the development agreements.

Commissioner Cooper – Under that motion with the zone of A-2, or 1 unit per 40, then the requirements that would have to be met would be dramatically reduced as I understand. They would have to meet the requirements of the Subdivision Ordinance.

Teresa Sobotka – The Foothills Plan, we can start with that, we can not specifically require something. That is what you encourage. What you can require is in the Ordinance, so you are correct. It would simply be that if they want to do the 1 unit per 40 acres, it would be the subdivision requirements. However, we would strongly encourage a look at the Foothills Plan. If they came down to say, we are not going to, I would enforce it.

Commissioner Stevens – I would like to withdraw my motion.

Commissioner McLean – Second concurs.

Commissioner Fadness – Do I have another motion?

Commissioner Barker – It is unfortunate that we have some confusing information before us. We owe it to ourselves and we owe it to the public to be very clear about the basis of our decision, particularly, with attempting to apply to this parcel, the Foothills Policy Plan, and the Ordinance requirements. It is unfortunate that we have an application before us that deals with density bonus and then when we began to question, or others questioned how we arrived with the density bonus, we found out late in the game that there is an argument that we really don't even need to consider it. I think where I would like to go is for more clarification about all of these issues. If we don't need to deal with density bonus then we should have an application before us that doesn't consider it. That it lays out for us exactly the facts related to the densities and the slope issues. I would like us to annex this ground. I think that it serves the City and the community to have a consistent set of policies related to Foothills Development. I would like to annex it with a development agreement clearly attached to it so that we have some basis for reviewing the development.

Commissioner McLean – I agree. This has been in many ways extremely frustrating because we have gotten conflicting information late in the game. We've been told that conversations were held and they weren't, but it's important that we annex tonight if nothing more.

COMMISSIONER MCLEAN MOVED TO APPROVE CAR07-00042, ANNEXING IN THE ENTIRE PARCEL INTO THE CITY WITH AN A-1 ZONING WITH DEVELOPMENT AGREEMENT, AND THAT WOULD BE OPEN SPACE DESIGNATION MAKING IT ONE UNIT PER ACRE WITH A DEVELOPMENT AGREEMENT ATTACHED TO IT.

Commissioner Fadness – So your motion would be not to do the A-1 with the Development Agreement zoning, but the entire parcel R-1A with the Development Agreement, which is 1 unit per acre.

Commissioner McLean – No, it's the other way around because, if I understood the motion correctly, it was split between R-1A and A-1. I am proposing that we annex the entire parcel with the Open Space designation, which is 1 unit per acre with a Development Agreement attached to it. It's A-1/DA.

Commissioner Stevens – May I ask a question of legal? Teresa, would that fall then fall under the Foothills Hillside Ordinance?

Teresa Sobotka - You would have to amend the development agreement to specifically requirement of the development agreement would be that any development would have to comply with the Foothills Ordinance.

Commissioner Stevens – Can the motion be stated as such?

Teresa Sobotka – Yes.

Commissioner McLean – Before I restate my motion, I just want to make sure that by making this motion that we are not throwing out some of the changes people wanted to make to the development agreement.

Teresa Sobotka – You can say, the development agreement as is with the addition to comply with the Foothills Ordinance. I suggest that you don't, I suggest you do is the A-1 with a development agreement with the sole condition of the development agreement be that any future development has to comply with the Foothills Ordinance.

Commissioner McLean – That was my intent. I would like to amend my motion as such that the development agreement would have to comply the sole condition would have to comply with the Foothills Planning and Development Ordinance.

Commissioner Fadness – Does the seconder concur?

Commissioner Stevens – I don't think there was a seconder.

COMMISSONER BASKIN SECONDED THE MOTION.

Commissioner Fadness – Is there any discussion?

Commissioner Baskin – I have a question for legal. As crafted, the motion would admit the property into the City under a designation of A-1 with development agreement that is generic speaking with some subsequent development agreement that we may decide upon. Correct? It's not this development agreement.

Teresa Sobotka – No, it is a new development agreement and that new development agreement has one condition in it at this point, which says you must comply with the Foothills Ordinance and it runs with the land and is binding on their successors and its assigns. Any other conditions would come up at another time.

Commissioner Cooper – The application before us has both R-1A and A-1. The proposed motion has just A-1 and in reading in the staff report under the 11.06.05.07.03, describes, *upon annexation of buildable areas the PD shall be zoned R-1A, single family residential*. Then in bold, *with the density and designed further controlled by the provisions of this ordinance and slope protection and preserved Open Space areas shall be A-1 or A-2*. I'm not sure what the difference is.

Commissioner Fadness – Are you asking that to the maker of the motion?

Commissioner McLean – What I was trying to prevent was one of the questions we have had all along was whether or not 155 units should indeed be the based density from which we begin to have this discussion. With the original motion that we put forth, the base density would have been 155 units. That is not the way that I wanted to vote to annex this piece of property right now. Instead, my intention was that we wouldn't be as low as the 1 per 40, yet we would be looking at one unit per acre with a development agreement, so that we can revisit some of these questions that we have. And to make sure that the next application we see with this zone _____. I would be proposing that we annex it, and it does indeed have to comply with the Foothills Ordinance.

Commissioner Cooper – The difference is that it excludes the R-1A single family dwelling and that zoning. The intent is that we will get as application that meets the requirements of the Foothills Ordinance and have fewer units on it.

Commissioner McLean - At that point by meeting the requirement of the Foothills Ordinance would be applying for a density bonus. That would be an option that we revisit the calculations of ____.

Teresa Sobotka – Mr. Chair. It doesn't quite work. It gives you too much density even with the development agreement attached. I am very sorry for all of this. It is hard to keep thinking all through these technicalities. Going back to the A-2, the problem with the A-2 is that you just went straight to the subdivision. If you did the A-2 with the development agreement and the development agreement's sole condition was that you had to comply with the Foothills Ordinance, I think that gets you to where you are actually trying to go.

Commissioner McLean – I would like to amend my motion to an A-2 with a development agreement with the sole condition being the proposal must comply with the Foothills Development Policy Plan Ordinance.

Commissioner Fadness – Does the seconder concur?

Commissioner Baskin – Second concurs.

Commissioner Fadness – Is there any further discussion on this amended motion? With that we will go for a roll call vote. Again, the motion is to go for an A-2 zone with a Development Agreement with a single, thus far, condition of the development agreement that it comply with the Foothills ~~Policy~~ Planned Development Ordinance. Am I correct in stating the motion?

Commissioner McLean – Yes, Mr. Chairman.

Commissioner Stevens – Just for clarification, so A-2 is 1 per 40, is that correct?

Commissioner McLean – Yes, and this would require the development agreement, which is different than the motion that came earlier.

Commissioner Baskin – Would any development under such a zoning classification have attached to it a requirement to comply with the Hillside Ordinance?

Teresa Sobotka – Yes.

Commissioner Stevens – A follow up question for Teresa. Is there any other Ordinance that this zoning designation would exclude the developer from complying with?

Teresa Sobotka – Exclude?

Commissioner Stevens – Are there any Ordinances that are excluded, other than the Foothills Ordinance?

Teresa Sobotka – With the development agreement, I'm confused about the word exclude, with the development agreement?

Commissioner Stevens – No, I know that the way the motion is worded that the development agreement is required to comply with the Foothills Ordinance. I'm wondering if there are other Ordinances besides that one that this zoning doesn't require compliance with.

Commissioner McLean – I think that our intent from this is that we want to make sure what we have covered tonight; the Hillside Ordinance, the Foothills Ordinance, density calculations are going to be covered by this zone because we made the mistake previously by choosing the wrong zone. I think you understand our intent.

Teresa Sobotka – I suggest the most conservative thing you can do is to say in your development agreement that the development agreement has a condition of must comply with the Foothills Policy Plan, the Foothills Ordinance and the Hillside Ordinance. That is all of the ordinances that are applicable to this development, so rather than by reference you would include it specifically.

Commissioner Cooper – I believe that would be required to meet the Hillside Ordinance because of the slopes.

Teresa Sobotka – That is what we were saying, you would naturally. But her question was being the most conservative way of making sure everything is included.

Commissioner Fadness – Are we ready for a vote on this motion?

[Note: restatement of the motion in its final form for clarity:
Ed.

COMMISSIONER MCLEAN MOVED TO APPROVE
CAR07-00042/DA, ANNEXING IN THE ENTIRE
~~PARCEL~~ PROJECT SITE INTO THE CITY WITH AN A-
2/DA ZONING WITH DEVELOPMENT AGREEMENT,
AND THAT WOULD BE THE OPEN SPACE
DESIGNATION MAKING IT ONE UNIT PER FORTY
ACRES WITH A DEVELOPMENT AGREEMENT. THE
DEVELOPMENT AGREEMENT SHALL STATE THAT
DEVELOPMENT PROPOSALS SHALL COMPLY WITH
THE FOOTHILLS POLICY PLAN, THE "FOOTHILLS
PLANNED DEVELOPMENT ORDINANCE" AND THE
"FOOTHILLS AND HILLSIDE AREA DEVELOPMENT
ORDINANCE".

COMMISSONER BASKIN SECONDED THE MOTION.]

ROLL CALL VOTE

COMMISSIONER MCLEAN	AYE
COMMISSIONER BASKIN	AYE
COMMISSIONER COOPER	AYE
COMMISSIONER STEVENS	AYE
COMMISSIONER BARKER	AYE
COMMISSIONER FADNESS	NO

FIVE IN FAVOR, ONE OPPOSED, MOTION CARRIES.

Commissioner Fadness – Given that, the subdivision no longer applies. Do we need to take a vote on it?

Teresa Sobotka – Yes, I think you need to vote on the CUP and the Subdivision because you don't know what is going to happen at City Council.

Commissioner Fadness – Should we go with the CUP next?

Teresa Sobotka – Yes.

Commissioner Fadness - We will take up the Condition Use Permit next which is Item #8 on your agenda.

Commissioner Barker – I'm hoping I understanding the concerns of the Commission. It's two-fold; one is that the density may be too high, too high for the type of terrain we have. The second concern is that the entire confusion about how the density was derived with the density bonus or not. Having said that, I would like to say that there was a lot of thought that went into this development and application. Hopefully, we will see something that will comes back to us that is more clear, more straight forward and more easy for us to digest.

COMMISSIONER BARKER MOVED TO DENY CUP07-00084.

COMMISSIONER BASKIN SCONDED THE MOTION.

Commissioner Fadness – We have a motion and a second, do we have further discussion?

Commissioner Cooper – I walked in tonight thinking I knew what I was going to do here and after the applicant's testimony, I was completely confused. I think it was a different presentation tonight and I don't agree with Commissioner Baskin on his opinions on the 11 points of the Policy Plan. While they might not be the largest wetlands around, I think they meet the requirement so f the application. Clearly, the Commission

was not going to go that way. I just wanted to get that on the record, that I will be supporting the motion.

Commissioner Stevens – This [Planning] area contains the thousands acres of land. Not all of it is equally suitable for development and that this parcel's mere existence within this designated area does not mean that the City, when it adopted the City's Foothills Policy Plan, meant for it to be developed.

I would argue that the spirit of the Foothills Policy Plan which is accessed in my mind, via specifics sections, which I will get into in a minute, suggests that this parcel should not be developed in the density that is proposed tonight. I find staff's revelation that the Foothills Policy Plan was created prior to Ada County's passage of the Planned Community Ordinance, really pretty telling. The communities of Avimor, Hidden Springs, Cartwright Ranch and the list goes on, were, according to staff's report, not anticipated when Boise passed the Foothills Policy Plan in 1997. I would argue that that changes everything.

The Western Foothills area is slated for development only subject to adequate street capacity and infrastructure. There is clearly a lack of coordinating planning between the City and the County and I am unwilling to tax our streets, our infrastructure, not to mention our downstream neighborhoods until it gets sorted out. Again, I feel real strongly that there is a development here, but I think there are some important things that need to happen between the County and the City before that can happen. Second, while the western area was slated as most appropriate for development, that was only the most broad of designations.

The Foothills Policy Plan then directs us to look at more specific items and to determine appropriateness for development. The first of those things is grading. In the Foothills Plan Development Ordinance says in 11-06-05.07.05, "*disturbance in the land shall be minimized and development shall be avoided in areas that would necessitate excessive grading, cut and fill*". There is no question in my mind that this proposal in front of us qualifies as excessive. The plan goes on to say "*grading shall seek to blend development into the Foothills backdrop. Fills and grading shall be contoured to the maximum extent to avoid a flat or squared off appearance on ridges and toe slopes and create the appearance of natural topography*". This proposal is clearly squaring off the tops of the ridges. We also need to look at skylines and prominent ridges. I think the applicant is doing some interesting things. When they say that they aren't sky lining, I think the homes are being put on ridges and I think it is a matter of parsing words. In the Foothills Open Space Management Plan it is very clear that these ridges have been identified as prominent ridges. The Foothills Policy Plan guides that "*the natural scenic values of prominent ridges and knolls shall be maintained. Project design shall preserve the natural appearance of prominent ridgelines and skylines and concentrate development on more obscured areas of the site*".

I think it is important that those items have not been complied with in the plan and in the ordinance. I think that while there is the one part of the ordinance that tells us, this is the area we need to develop in. I think there is a whole bunch of other parts of the ordinance and the plan that suggests that what we saw tonight and the proposal that is in front of us is not appropriate. With that said, I will be supporting the motion.

Commissioner Baskin – I appreciate Commissioner Cooper’s comment and I certainly didn’t mean by my comments to suggest that there is no worth be attached to the applicant’s proposal, to set aside these 81 acres. I think that the applicant has attached more significance to it than it warrants. Again to quote from the ordinance, *“the commission may classify the area as Priority Open Space and allow some or all of it to qualify for the granting of a density bonus”*.

What I would like the applicant to consider is to come back with the same type of Open Space protection that has been proposed and yet attach to it a lesser demand for a density bonus for setting those 81 acres aside. I did some calculations to give you some idea of what I am thinking of. Under your proposal, you would take full credit for the 81.9 acres that you have set aside, supposing that if you had some of the concerns that have been tossed around tonight, you said *“well, we will just acetate credit worth 30 of those acres in our density calculations”*, although, we will still set aside the full 81 acres. If you did that, my calculations show that you could develop 91 dwellings, as opposed to 155. That might go along ways towards addressing some of the concerns that you’ve heard tonight from Commissioner Stevens and others about the amount of fill involved. It might even satisfy some of Mr. Watt’s traffic concerns.

My suggestion would be that you look at attaching less significance to those areas that you propose to set aside, at least in the terms of the density bonus transfer. I appreciate that this is a tough process and you have to fine pencil it out, and I know that you have done the due diligence on it and it has to pencil out or you can’t do it. That is where I am coming from.

Commissioner Fadness – With Commissioner Cooper, I do want to go on the record to state the reason for my vote for the motion but with great hesitancy. I guess the main reason I am going to vote for the motion is because I do feel like we had some information come to us extremely late and perhaps our error was in scheduling our second hearing so close to the work session and the hearing of July 14. I was disappointed to hearing the change of tune regarding the density bonus although I tend agree with the applicant and the staff’s position on the density bonus. I was disappointed to learn that there are 2 developers on one application. I feel like that is critical information. I’m disappointed that, we were so close, we had a draft agreement with the Park’s Department, we had an agreement regarding the onion conservancy plan that seemed to be in agreement with most parties, and I guess I just feel comfortable in voting for the motion but not for some of the same reasons that my fellow Commissioners have stated. Are there any other comments? With that I we will take a roll call vote.

ROLL CALL VOTE

COMMISSIONER BARKER	AYE
COMMISSIONER BASKIN	AYE
COMMISSIONER MCLEAN	AYE
COMMISSIONER STEVENS	AYE
COMMISSIONER COOPER	AYE
COMMISSIONER FADNESS	AYE

ALL IN FAVOR, NONE OPPOSED, MOTION CARRIES.

Commissioner Fadness – The final two motions are matters of formality even though we should still vote on them. We will first take up the subdivision proposal item 7A.

Teresa Sobotka – It's not just formality. We need to give council a little guidance in case they overturn you. So in other words, do you like the way the subdivision is set out? Did you also vote on the Hillside?

Commissioner Fadness – Not yet. The Hillside is the final one. I will entertain a motion on the subdivision.

COMMISSIONER BASKIN MOVED TO DENY SUB07-00065.

COMMISSIONER COOPER SECONDED THE MOTION.

Commissioner Baskin – For reasons previously stated I would support the motion denying the subdivision application with 154 buildable lots.

Commissioner Fadness – Even though there were reasons previously stated, if you could give a summary. We need to have it in the record.

Teresa Sobotka – I don't think you need to go through everything you went through before, but if Council overturns you, are you okay with the subdivision, or do you think it needs to be more clustered?

Commissioner Baskin – First of all, I believe that the subdivision as proposed for 154 lots is excessive in number for the reasons I previously stated in the connection with the CUP and the density bonus provisions of the Foothills Planning and Development Ordinance. I feel that the subdivision as proposed places too many houses or units on prominent ridges. This is something that is specifically prohibited in the Foothills Policy Plan. It is not a matter for our discretion. The Foothills Policy Plan says that prominent ridges shall be protected from development. This is identified as a prominent ridge. I recognize that the Foothills Policy Plan is a plan that we are not governed by as we are the Zoning Ordinance. It still informs my decision about this. The development is too

linear; it does not do any service to the clustering requirements of the Foothills Planning and Development Ordinance so I would oppose the subdivision for that reason as well.

Commissioner Stevens – I would just add to that that I think there were parts of the parcel that weren't being developed on, that I think would be useful for development and I would like to see on the next round, lots be located in those areas as opposed to the ridge tops.

Commissioner McLean – Just for City Council's notes, there was quite a bit of concern, at least in discussion and I still have it, with that decision not to develop back towards the back where it isn't visible in the sand pit, verses to being on the ridge-tops. I think it was 25 acres that were being set aside as opposed to being developed, it wouldn't have been noted.

ROLL CALL VOTE

COMMISSIONER BASKIN	AYE
COMMISSIONER COOPER	AYE
COMMISSIONER MCLEAN	AYE
COMMISSIONER STEVENS	AYE
COMMISSIONER BARKER	AYE
COMMISSIONER FADNESS	AYE

ALL IN FAVOR, MOTION CARRIES.

Commissioner Fadness – Finally we have the Hillside and Foothills Area Development Permit.

COMMISSIONER BASKIN MOVED TO DENY CFH07-00042.

COMMISSIONER MCLEAN SECONDED THE MOTION.

Commissioner Baskin – Again, for a lot of the reasons previously stated, I would vote to reject the Hillside Permit application. I'm not convinced, under Section 11-14-04 of the Hillside Development Ordinance that enough consideration has been given to allocation for Open Spaces and protection of soil, geology, vegetation and minimizing disruption of existing plant and animal life. As well, Section 11-14-08 of Section C existing vegetation should not be disturbed or removed beyond the limits of the cuts and fills of the approved grading plan. Because of the degree of cut and fill proposed by this development, I question whether it meets the spirit and intent of the Hillside Ordinance and to preserve, enhance with existing or future appearance and resources of Hillside areas. I'm not sure it meets the spirit of that purpose and intent language of the Hillside and Foothills Areas and Development Ordinance and would vote to reject the application on that basis.

Commissioner Barker – I think this is one of the areas I struggled with and I will concur with Commissioner Baskin that in moving over 1 million cubic feet of material as proposed, I believe it does violate the intent of the Hillside Ordinance with respect to excessive grading.

Commissioner Fadness – My comment on that motion is that I would like to see in a future application maybe more guidance for us. Staff said that there really was no definition for what excessive grading is and one of the reasons I understood that there was a lot of grading in this , is so we would avoid houses right on the very top and have more of a hill hugging development. That was the reason for the grading. The slides that were shown to us by the applicant did not show in my opinion houses on the ridge top unlike what we see in some other parts of the Foothills. So I was of the opinion that grading was necessary in order to have a more hill hugging development although I realize that some of the grading was at the top of the hill. What's excessive, what's not, I hope that is more clarified in a future application.

ROLL CALL VOTE

COMMISSIONER BASKIN	AYE
COMMISSIONER MCLEAN	AYE
COMMISSIONER STEVENS	AYE
COMMISSIONER COOPER	AYE
COMMISSIONER BARKER	AYE
COMMISSIONER FADNESS	AYE

ALL IN FAVOR, NONE OPPOSED, MOTION CARRIES.

Commissioner Fadness – With that we have come to the end of the agenda tonight. We are adjourned.