



## Planning & Development Services

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# Planning Division Staff Report Work Session January 26, 2009

<b>File Number</b>	<b>CAR07-00042/DA, CUP07-00084, CFH07-00022 and SUB07-00065</b>
Applicant	Aase's Canyon Pointe Development LLC
Property Address	6890 N. Plano Lane
Work Session Date	January 26, 2009
Heard by	Boise City Planning and Zoning Commission
Planning Analyst	Bruce Eggleston, AICP
Planning Supervisor	Patricia Nilsson, AICP

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## 1. Summary

### History

The applications for Aase's Canyon Pointe Development LLC at 6890 N. Plano Lane were heard by the Planning and Zoning Commission on August 11, 2008 and the findings and conditions were approved on September 8, 2008, as stated below.

The Boise City Planning and Zoning Commission annexation and zone change to an A-2/DA holding zone with a Development Agreement that contains the following condition:

- 1) Any development application shall be required to comply with the *Boise Foothills Policy Plan*, the Foothills Planned Development Ordinance 11-06-05.07, and the Hillside and Foothill Areas Development Ordinance 11-14.

They denied the request for a Conditional Use Permit, CUP07-00084; the Hillside and Foothills Area Development permit application, CFH07-00022; and the preliminary plat application, SUB07-00065.

The applicant appealed the decisions and recommendation to City Council. The Boise City Council, at their meeting of December 9, 2008, concurred with the appeal and determined that the Planning & Zoning Commission erred by not recognizing the base rights associated with the current zoning on the applicant's parcels. They found that the Foothills Planned Development Ordinance does allow the current zoning to be used to establish the base unit count for a subdivision in the foothills. They remanded all of the associated applications back to the Planning & Zoning Commission to be reviewed and heard again in consideration of this determination on base zoning rights. They specifically directed that the Foothills Ordinance be followed and that the Commission address the applicant's three questions as stated in their appeal Memorandum.

Staff arranged a public work session on January 26, 2009 for the forum where these issues could be addressed.

### Topics for the Work Session

The purpose of the work session is to:

- 1) Address the questions at issue in the appeal;
- 2) Address the project design issues raised by the public and the Planning and Zoning Commission;
- 3) Establish the process for review of the applications. The Commission should determine the process to get this proposal back to a hearing. The applicant has indicated that they intend to proceed as quickly as possible to move this proposal forward.

## 2. Questions Raised in the Appeal

The applicants raised these questions in their appeal for consideration in light of the recommendations and decisions made by the Commission. The public testimony and Council discussion on the motion to

remand provided some insight and direction for the following issues.

1. Does FPDO establish that the base density on parcels proposed for development is that given for the existing zones on the property?
2. Does the Foothills Planned Development Ordinance (FPDO) require that upon annexation, the buildable areas be zoned R-1A?
3. Does FPDO implement by reference the intent to allow for density transfers among parcels within a project in accordance with the Foothills Policy Plan?

The Council also asked the applicant to work further with the neighborhood in an effort to arrive at a project design that is more acceptable to them. They suggested that a City-initiated Mediation process may be used if agreement cannot be reached.

There was considerable discussion on the motion about the subject property being located in the “Western Foothills ... first priority area for development, subject to adequate street capacity and infrastructure”. (*Foothills Policy Plan* Goal 1 Objective 2 Policy 5) It is clearly within that area, the ACHD has found that adequate street capacity exists, with proposed off-site improvements, and the infrastructure is available. The subject property also has urban density zoning on 43% of the proposal which establishes entitlement for some level of development in compliance with the Comprehensive Plan.

**Detailed Discussion:**

**1. Does FPDO establish that the base density on parcels proposed for development is that given for the existing zones on the property?**

**Yes, but it is dependant on the conditional use permitting process to determine the allowable density and the areas upon which the units could be distributed.**

**Commentary:**

The Council’s decision states that, “They found that the Foothills Planned Development Ordinance does allow the current zoning to be used to establish the base unit count for a subdivision in the foothills.”

There has been much discussion on the manner in which base density is calculated under the FPDO. The ordinance only says that, “The base density on parcels proposed for development is that given for the existing Boise City or Ada County zone(s)”. (Boise Municipal Code 11-06-05.07.04.A.1. Density Bonus)

Staff has examined several methodologies to calculate the base density that would apply to all applications in the Foothills Planning Area. The method that is consistent with the density calculations for planned developments under Chapter 11-06 is as follows in the Base Zoning Table, the map and the expanded base zoning density table:

**Base Density for Existing Zoning =**  
**(Buildable Area\* minus 20% for roads, infrastructure and terrain)**  
**divided by**  
**(Minimum lot size for given zone)**

**Base Density Units in Existing Zoning for the Plano Road Subdivision application**

R6 Zone= (446,070 square feet) divided by (1 unit per 6,000 square feet) = 74 units

R-1C Zone= (360,090 square feet) divided by (1 unit per 5,000 square feet) = 72 units

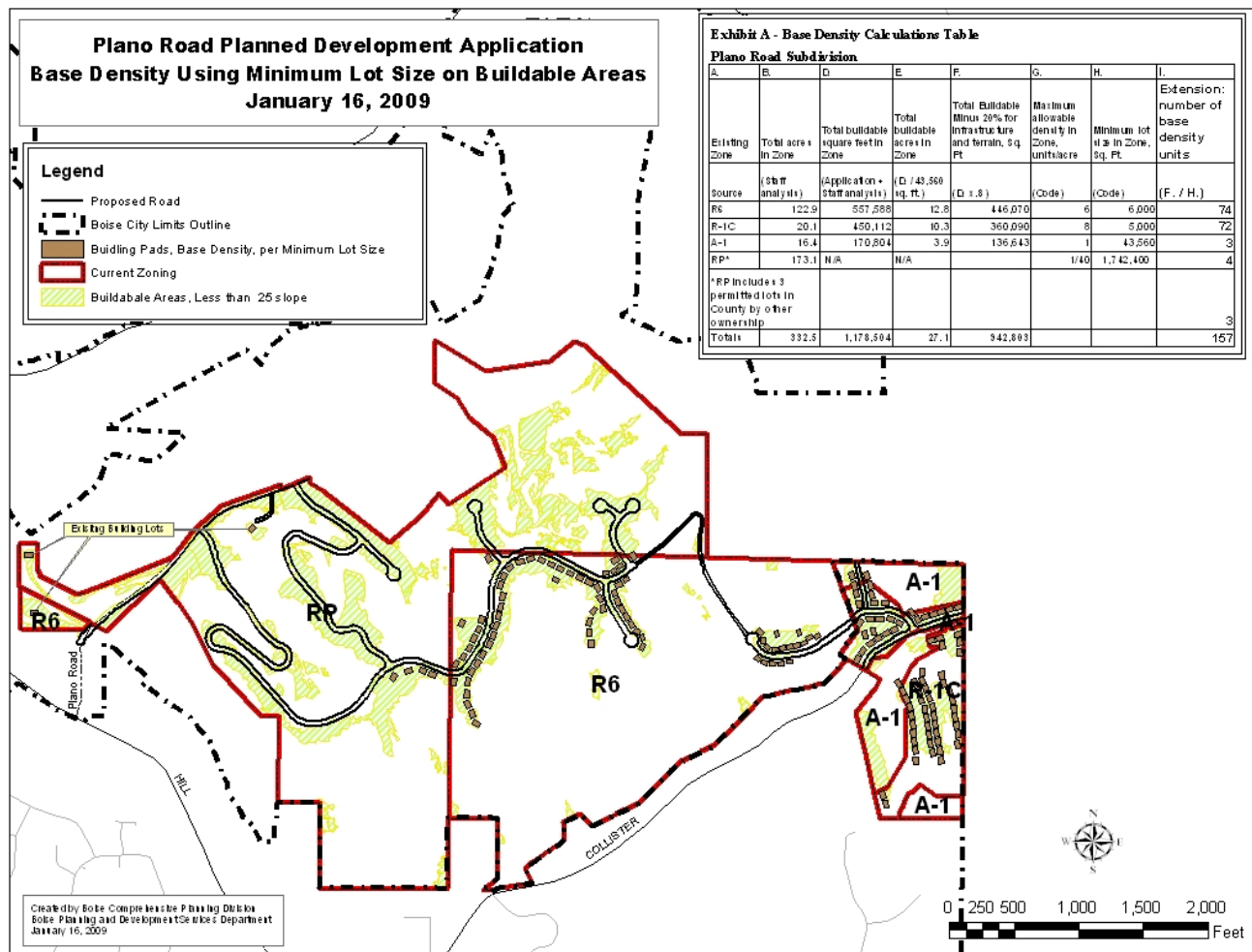
A-1 Zone= (136,643 square feet) divided by (1 unit per 5,000 square feet) = 3 units

RP Zone= (173.1 acres) divided by (1 unit per 40 acres) = 4 units

RP Zone includes three permitted lots in County under other ownership = 3 units

**Total Base Units 157 units**

The map demonstrates hypothetically how those base density units might be distributed on the buildable areas in compliance with the FPDO.



**Exhibit A - Base Density Calculations Table**

**Plano Road Subdivision**

A.	B.	C.	D.	E.	F.	G.	H.	I.	J.
Existing Zone	Total acres in Zone	Percent of Total Acreage	Total buildable square feet in Zone	Total buildable acres in Zone	Total Buildable Minus 20% for infrastructure and terrain, Sq. Ft.	Maximum allowable density in Zone, units/acre	Minimum lot size in Zone, Sq. Ft.	Extension: number of base density units	Proposed lots in the Zone
Source	(Staff analysis)	(B. / Total Acres)	Staff analysis)	(D. / 43,560 sq. ft.)	(D. x .8)	(Code)	(Code)	(F. / H.)	(Application)
R6	122.9	37%	557,588	12.8	446,070	6	6,000	74	38
R-1C	20.1	6%	450,112	10.3	360,090	8	5,000	72	13
A-1	16.4	5%	170,804	3.9	136,643	1	43,560	3	3
RP*	173.1	52%	N/A	N/A		1/40	1,742,400	4	101
*RP includes 3 permitted lots in County by other ownership									3
<b>Totals</b>	<b>332.5</b>	<b>100%</b>	<b>1,178,504</b>	<b>27.1</b>	<b>942,803</b>			<b>157</b>	<b>155</b>

**\*As defined by the Foothills Planned Development Ordinance in 11-06-05.07.09. Definitions AREA WITH A SLOPE OF 25% OR LESS:**

An area with a natural (pre-grading) slope of 25% or less, mapped to a minimum resolution of 6,000 square feet in area, also called a Buildable Area.

**BUILDABLE AREA:**

Lands with a slope of 25% or less are buildable areas, if outside floodways or geologic hazards. Buildable areas must be designated in the Conditional Use site plan as either development pockets or permanent open space in the ratio chosen under the density bonus formula. Buildable area is determined by natural topography, not by post-construction graded contours.

**DEVELOPMENT POCKETS:**

These are the buildable areas designated on the site plan and plat map where the structures and appurtenances will be clustered. These areas will be largely less than 25% slope but may contain fragments of steeper areas as needed to accommodate the site design.

**2. Does the Foothills Planned Development Ordinance (FPDO) require that upon annexation, the buildable areas be zoned R-1A?**

**Yes. The conditional use permitting process determines the buildable areas where this zoning could be granted.**

**Commentary:**

The Council’s discussion and the staff report on the appeal make clear that a development proposal that meets the policies of the *Foothills Policy Plan* and the requirements of the FPDO should receive the R-1A Zone for buildable or developable areas as described in 11-06-05.07.03.

The Planning and Zoning Commission's findings for the denial of the conditional use permit and Hillside and Foothill Areas Development permit applications demonstrate that the applicant has a challenge to comply with the *Foothills Policy Plan* and FPDO. The applicant's appeal failed to address those findings.

**3. Does FPDO implement by reference the intent to allow for density transfers among parcels within a project in accordance with the *Foothills Policy Plan*?**

**Yes. The conditional use permitting process determines the buildable areas where this zoning could be granted.**

**Commentary:**

The only way to transfer density is through a CUP/PUD process. The problem is that the Plano Lane developer has no approved County or City CUP to transfer those units (a CUP independent of the Foothills CUP process). The City Code doesn't consider something potentially allowable under a theoretical CUP to be counted as base zoning rights. The base zoning rights are only what could be developed by straight subdivision without CUP flexibility. It must be clear that this non-allowed, not Foothills PUD-related transfer is not the same as the transfer that can be allowed through the Foothills PUD process.

Some confusion with this issue may relate to the applicant's contention that they have a base right to 917 units. The only way they could ever achieve 917 units under the existing R6 and R1-C zoned (and steeply sloped) properties would be to transfer the otherwise non-achievable units from the non-buildable sloped areas and cluster them at very high density on the small flat areas on the ridge tops. The only way to do that would be through a CUP/PUD process. The problem is that the Plano Lane developer has no approved County or City CUP to transfer those units.



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Exhibit A

### MEMORANDUM

**TO: Mayor and Boise City Council**

**FROM: Hal Simmons  
Planning Director  
Boise City Planning and Development Services**

**DATE: October 14, 2008**

**RE: Staff Memorandum of Response to the APPEAL of DENIAL for CUP07-00084, Conditional Use Permit application; CFH07-00022, the Hillside and Foothills Areas Permit; and SUB07-00065, Preliminary Subdivision Plat application,; located at 6890 Plano Road; and, RECOMMENDATION FOR APPROVAL of CAR07-00042/DA Annexation and Zone Change with Development Agreement**

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The following applications have been scheduled for **hearing on December 9, 2008:**

**Aase's Canyon Pointe Development LLC and Capitol Development, Inc.** are appealing the Planning and Zoning Commission's denial of the Conditional Use Permit CUP07-00084 to build 155 dwelling units in the Boise Foothills Planning Area, as well as the supporting Hillside and Foothills Areas Development application, CFH07-00022, and Preliminary Plat application SUB07-00065 located at 6890 Plano Road in an Ada County R6 (Medium density residential zone) and RP (Rural preservation zone), and Boise City R-1C (Single Family Residential) and A-1 zones.

**The Planning and Zoning Commission** recommended approval of CAR07-00042/DA, annexing in the entire project site, 332 acres +/-, into the City with an A-2/DA Zone with Development Agreement, (Open space with a density of one unit per forty acres with a development agreement).

### **PUBLIC NOTIFICATION**

Newspaper publication: November 22, 2008

Radius Notices: November 21, 2008

Site Posting: November 21, 2008

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**ACTION BY THE BOISE CITY PLANNING AND ZONING COMMISSION**

After reviewing the evidence, and hearing all testimony, the Planning and Zoning Commission **denied** the conditional use permit CUP07-00084 to build 155 dwelling units in the Boise Foothills Planning Area, as well as the supporting Hillside and Foothills Areas Development application, CFH07-00022, and preliminary plat application SUB07-00065 located at 6890 Plano Road in an Ada County R6 (Medium density residential zone) and RP (Rural preservation zone), and Boise City R-1C (Single Family Residential) and A-1 zones.

After reviewing the evidence, and hearing all testimony at their August 11, 2008 hearing, the Planning and Zoning Commission **recommended approval** of CAR07-00042/DA, annexing in the entire project site, 332 acres +/-, into the city with an A-2/DA Zone with Development Agreement, (Open space with a density of 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”.

**ZONING ORDINANCE****11-03-07 - Quasi-judicial Appeals; Form; Content:**

Any administrative, committee or Commission level decision may be appealed to the appropriate Commission, or Council in accordance with the procedures established herein. All such appeals must be written, accompanied by the appropriate fee and submitted to the Planning Director prior to the deadlines set forth herein. If the appeal deadline falls on a weekend or holiday the appeal period is automatically extended to the next workday. Each appeal must clearly state the name, address and phone number of the person or organization appealing and specify the issues, items or conditions that are being appealed.

**11-03-07.2: Quasi-judicial Appeals to City Council of Decisions of the Planning & Zoning Commission, Hearing Examiner and Historic Preservation Commission**

7. The City Council may find error on the following grounds:

(a) The decision below is in violation of constitutional, State or City provisions. An

example would be that the review body's decision would be a taking or failed to comply with mandatory notice required under the local planning act.

- (b) The review body's decision exceeds its statutory authority. An example would be when there is no authority for the decision in federal or Idaho law, local ordinance or the Comprehensive Plan. Because the decision-makers below are experts in their substantive areas, the City Council shall give due consideration to a reasonable interpretation of a City Ordinance adopted by the review body.
- (c) The decision below is made upon unlawful procedure. An example would be if inadequate notice of the hearing was provided.
- (d) The decision below is arbitrary, capricious or an abuse of discretion. For the City Council's actions to be deemed arbitrary or capricious, it must be shown that that its actions were done without rational basis; or in disregard of the facts and circumstances presented; or without adequate determining principles. Where there is room for two opinions, action is not arbitrary and capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached.
- (e) The decision below is not supported by substantial evidence.

### **APPEAL**

The appellant contends the Planning and Zoning Commission committed error in denying the conditional use permit, the Hillside permit and the preliminary plat, based on improper procedure. Four grounds were included in the appeal and supporting memoranda. Each ground has been summarized below, along with staff's response.

#### **1. The decisions below are in violation of constitutional, state or city law.**

**Response:** The appellant contends that the Planning and Zoning Commission's decisions violate constitutional, state or city law.

The appellant's memorandum of October 2, 2008 largely addresses the issues of annexation and zone change that the Boise Planning and Zoning Commission (P&Z) at their hearing of August 11, 2008 made as recommendations to City Council. Recommendations to City Council on annexation and zone change are not subject to appeal, and the normal statutory course of hearing review and decision-making on these issues reside only at City Council. Because the issues of annexation and zone change are so intertwined with the application for conditional use permit in this case, we will address those issues as well in this memorandum stating the City's analysis of the appeal of the conditional use permit.

Staff disagrees as City code is clear that the Planning and Zoning Commission has the authority to make decisions concerning requests for conditional use permits, Hillside and

Foothill Areas Development permits and preliminary plats as outlined in the following code sections:

**Section 11-06-04.04 Commission Action**

Following the hearing, the Commission shall approve, deny or modify the application for a conditional use permit, imposing any conditions needed to establish the findings of Section 11-06-04.11.

**Section 11-06-05.03 Development Standards**

The Planning and Zoning Commission may approve planned unit developments in accordance with the following standards:

A. Changes from the development standards of the underlying zone may be approved.

**Section 11-06-05.07 FOOTHILLS PLANNED DEVELOPMENT ORDINANCE**

**11-06-05.07.01. Purpose and Intent**

The purpose of the Foothills Planned Development Ordinance is to implement residential subdivision density and design elements of the *Boise City Foothills Policy Plan* (The Plan) and the *Boise City Comprehensive Plan*. It is also designed to protect and promote preservation of contiguous areas of Foothills open space that contain important and significant natural and cultural resource values, as identified in The Plan and this ordinance.

**11-06-05.07.02. Applicability**

The Foothills Planned Development Ordinance shall apply to all proposed developments in the Boise City Foothills Planning Area where an annexation and/or rezone is required.

**11-06-05.07.03. General Application and Development Requirements**

1. All developments shall be processed as Planned Developments (PDs) under Section 11-06-05 of the Boise City Zoning Ordinance.

**2. In excess of the statutory authority of the agency.**

**Response:** The appellant contends that the Planning and Zoning Commission's decisions exceed its statutory authority.

Staff disagrees as City code is clear that the Planning and Zoning Commission has the authority to make decisions concerning requests for conditional use permits (CUP), Hillside and Foothill Areas Development (Hillside) permits and preliminary plat as outlined in the code sections cited in the previous section. The appellant's claims to this effect address the recommendations for annexation and zone change, not the findings for the CUP, Hillside and preliminary plat. Therefore this basis for appeal has not been demonstrated in regards to the P&Z's decision on CUP07-00084, and the supporting Hillside and Foothills Areas Development application, CFH07-00022, and preliminary plat application SUB07-00065.

**3. The decisions are arbitrary, capricious or an abuse of discretion.**

**Response:** The appellant further argues that the decisions are arbitrary, capricious or an abuse of discretion. Staff disagrees in light of the testimony from all parties, and that the discussion, findings and conclusions of the Commission were relevant to the body of evidence and a response to that evidence. The appellant's discussion of this is again focused on the recommendations for annexation and zone change and do not address the findings and conclusions approved by the Commission on September 11, 2008.

**4. The decisions are not supported by substantial evidence.**

**Response:** The appellant further argues that the decisions by P&Z are not supported by substantial evidence. Staff would agree that this may be the case in regard to the issue of base density associated with current zoning on the parcels and the extent to which the base density may have impacted the applicant/appellants need for a density bonus under the terms of the CUP. While Staff made every effort to provide the Commission with the entire body of evidence pertaining to the CUP, Hillside and Preliminary Plat, it became evident during the public hearing that there was an unresolved question about how the Foothills Planned Development Ordinance addressed base zoning and base dwelling unit allowances. As described in the narrative that follows, that unresolved issue may constitute error on the part of the Planning & Zoning Commission in a portion of their justification for denial of the CUP.

**The following is a narrative developed by Staff to summarize the history of this application; the Planning & Zoning Commission's rationale for their actions; the appellant's bases for appeal; staff's responses and a discussion of possible remedies; and a recommendation to City Council.**

**Project Proposal**

Aase's Canyon is a request for Annexation/Zoning, Conditional Use Permit, Hillside Permit and Subdivision for a 155-unit Foothills planned development on 332.5 acres. The property is located in the Western Foothills north of Hill Road and west of Collister Drive. The majority of the property is currently in the unincorporated County and is contiguous to Boise City limits. The property has a combination of R6 (six units per acre) and RP (one unit per 40 acres) county zoning as well as some R-1C and A-1 city zoning. The geography of the property is characterized by unbuildable steep slopes topped with a relatively narrow ridgeline that constitutes the majority of the buildable area less than 25% in slope. The steep hillsides are heavily populated with Aase's Onion, a relatively rare plant species of concern.

The applicant has proposed a CUP for development of the property in accordance with the standards of the *Foothills Policy Plan* and Foothills Planned Development ordinance. Their proposal is to develop the ridgelines with single-family homes and to provide vehicular access from both Plano Lane and Collister Drive. In accord with the *Foothills Policy Plan*, the applicant and staff assumed a starting base density of one dwelling unit per 40 acres with an option to increase to a density of 2 units per acre on the 73 buildable acres in return for set-aside of open

as Priority Open Space. They also discounted the suggestion that deer corridors had been adequately demarcated as part of the Priority Open Space formula. The result of these determinations was that the applicant should have set aside flat land on the ridge tops for their density bonus credit.

Subdivision Design. The Commission also expressed concerns with the layout of the subdivision. They noted that the front ridge (southwest-facing ridgeline) was a visually prominent ridge and should not have been developed to the extent proposed by the applicant. They suggested that the most prominent ridges should have been preserved as open space set-aside with development concentrated on the northern and western portions of the property, primarily in the area currently occupied by a sand and gravel pit, which was proposed by the applicant to be filled and used as open space.

Grading. Lastly, the Commission expressed general disagreement with the amount of grading proposed by the applicant for the project overall. They felt that the proposed 1-million cubic yards of grading was excessive and inconsistent with the Hillside Ordinance and the Foothills Plan/Ordinance which both require “minimizing” grading.

Zoning. After stating reasons for denial of the CUP, the Commission debated what zoning to place on the property. The applicant had requested a combination of R-1A zoning for the developable areas and A-2 zoning for the sloped and non-built areas. Ultimately, the Commission voted to recommend A-2 zoning for the entire property along with a Development Agreement requiring that the property cannot be developed or rezoned in any way until a CUP application consistent with the *Foothills Policy Plan* and Foothills Planned Development Ordinance is approved. This zoning recommendation was made despite the applicant’s contention that based on current City and County zoning, they really have a starting density of up to 12 units per acre on the 73 buildable acres of their development, not one unit per 40 acres. The P&Z Commission disagreed and cited the *Foothills Policy Plan* statement that one unit per 40 acres is the base.

### **Grounds for Appeal**

The applicant has appealed the Planning and Zoning Commission’s denial of the CUP/Hillside Permit/Subdivision and is also contesting the recommended zoning of A-2 Open for the entire property. Their primary contention is that they have a base right to development of up to 917 units on the property (based on current city and county zoning) and that the Commission should have approved their request for 155 units on that basis, or at least approved the R-1A zoning on the 73.5 buildable (less than 25% slope) acres of their property.

Their contention of a base allowance of 917 units comes from a statement in the Foothills Planned Development ordinance regarding how base (starting) density in the Foothills should be calculated. Although the *Foothills Policy Plan* states that the base density is one unit per 40 acres, the Foothills Ordinance provides additional clarification that base density is actually to be calculated using the existing zoning on the property as follows: “The base density on parcels proposed for development is that given for the existing Boise City or Ada County zones;” and “the base density may be added to the density bonus units without the requirement for additional open space preservation.”

In this case, the applicant has 122.8 acres currently zoned R6 in the County, 165.5 acres zoned RP in the County, 20.1 acres zoned R-1C in the City and 16.4 acres zoned A-1 in the City. Based

on the zones and the acreages associated with each, the applicant is claiming a base right to construct up to 917 dwelling units on the property. Accordingly, they are arguing that they have no need for the density bonus formula requirements contained in the Foothills Ordinance, and that all they need to gain approval of a 155-unit subdivision is a CUP and Hillside permit that demonstrate basic consistency with the design requirements of the Foothills and Hillside ordinances.

During the Planning & Zoning Commission work session and public hearing the applicant noted that their project design provides “linear” clustering of the units along the buildable areas of the ridgelines, with single-loading of the roadway used in some locations to minimize grading and other disturbance of the ridge. In order to minimize visual impacts (skylining) of the ridge tops, the applicant’s design includes extra-large setbacks for the homes from the ridge slopes, thus preventing the homes from looming over the tops of the slopes and becoming less visible from vantage points below the project. They submitted perspectives from various points in Boise to demonstrate that the setbacks will minimize the visual impact of the units on the ridge tops. They also proposed design review conditions and building height limitations for the homes on the prominent ridges in order to further ensure non-intrusive home designs.

The applicants also contend that the layout of the subdivision includes breaks in the development at critical locations that will allow for passage by resident mule deer and other wildlife in the area. They also contend that the grading is minimal given the steepness of the property and the fact that the excess grading will be used to fill in and restore the existing gravel pit on the back of the property in order to create useable open space and eliminate an unattractive scar on the landscape.

Lastly, the applicants have asserted that they are providing significant protection and enhancement of the priority open space in and around their development by dedicating the sloped areas to a land trust for ownership and management, by providing access to and trailhead development for Polecat Gulch Reserve, and by protecting existing wetlands and riparian areas from development. They have argued that this combination of factors meets the intent of the Foothills Ordinance for Priority Open Space and as a result the steeply sloped portions of their property should be allowed to be counted toward their open space set-aside in order to meet the density bonus formula requirements.

In summary, the applicants/appellants contend that:

1. Their project complies with the Foothills Policy Plan/Foothills Planned Development Ordinance and Hillside Ordinance in all respects including density bonus allowances, cluster design, environmental protection and aesthetics.
2. The density bonus/open space set aside portion of their application is essentially voluntary since they have a base zoning right for 917 units, or nearly six times the number of 155 units they are actually requesting.
3. The P&Z Commission erred in not giving them credit for a base allowance of 917 units and thus erred in denial of the CUP based on lack of proper open space set aside.

4. Based on the existing zoning rights associated with their property, they should be annexed with R-1A zoning on the 73 acres of buildable (less than 25% slope) land area on their property.

### **Planning Staff Response**

This application has provided a difficult case for interpretation and use of the *Foothills Policy Plan* and Foothills Planned Development Ordinance. The subject property is located within the portion of the Western Foothills that is designated as the area of highest priority for development based primarily upon downstream traffic capacity as well as upon general lack of critical deer and elk winter range on the property itself. The property is located adjacent to the recently City-acquired Polecat Gulch Reserve and is positioned to provide much needed public access to the park. High quality and biologically valuable Aase's onion fields on the steep southern slopes characterize much of the property. Planning staff agreed that if these onion fields were actively owned, managed and protected by a public agency or land trust and if public access and related improvements were granted to the City owned Polecat Gulch Reserve, it may be within the standards of the Foothills Planned Development Ordinance to allow the steeply sloped portions of the property to count toward their open space/density bonus requirements. Staff took an admittedly liberal approach to this issue largely in recognition that this property was within the priority development area defined in the Foothills Plan.

A key part of staff's agreement to this approach also had to do with the potential long term value to the onion fields of active management and protection. However, the applicant prepared an inadequate management plan for the onion fields and their own consultants discounted the value or feasibility of such a plan. The Planning & Zoning Commission, therefore, determined that in the absence of a more detailed management plan that the sloped areas should not be allowed to qualify as Priority Open Space to the extent that they were. In light of the applicant's own testimony, Planning staff cannot disagree with the Planning & Zoning Commission's decision and thus we do not believe that they erred in this regard. We do believe, however, that there should be some credit given for access granted to the public property to the northeast (Polecat Gulch) and that some density credit for the sloped areas may be factored into this, but not to the extent proposed by the applicant and initially agreed to by staff.

In regard to the subdivision design and grading issues, staff would offer the following commentary. Steeply sloped areas in the Foothills are inherently difficult to develop in an unobtrusive manner because in most cases the only area that meets the slope criteria for development is on the ridge tops. That is the situation with this property. While the Policy Plan and Ordinance both say that grading and ridge topping should be minimized, we believe that the intent is to minimize grading in the context of the individual unique nature and constraints of the property that is being developed. In this case is it not possible to develop the property without significant grading. Nor is it possible to define large areas for development apart from the ridge tops. We do not believe it was the intent of either the Policy Plan or the Foothills Ordinance to disallow development of a property if the strictest interpretation of the design standards cannot be met.

We believe that the applicant has made efforts to minimize grading by proposing single-loaded sections of the roadway in some areas. We believe they have also addressed aesthetic concerns by establishing large setbacks in conjunction with design review conditions for the homes on the most prominent ridges. However, we also agree in some regards with the Planning & Zoning Commission that too much emphasis was placed on conventional development of the ridge lines

and that additional effort should have been made to locate units in other areas such as the filled gravel pit on the upper end of the property and/or to reduce lot widths so that units could be clustered along the ridge tops rather than spread uniformly upon them. The proposed breaks in development along the ridgelines are minimal. Staff believes that rather than outright denial of the subdivision design, the Commission could have considered directing the applicant to explore design modifications such as smaller lot widths to better meet the intent of the ordinance. But such direction should not have implied that development of the ridge tops is prohibited or that grading could be significantly reduced.

A most significant difficulty with this application arose during the public hearing process when the applicant suddenly changed their position on how base density for their project should be calculated. They had initially agreed with staff that the base density was one unit per 40 acres as stated in the *Foothills Policy Plan*. When they realized that there may be concerns with the Priority Open Space/Density Bonus determinations they were proposing, they then focused their argument on the existing zoning of the property and the fact that they may have enough base zoning rights to avoid the need for a density bonus all together. The Planning & Zoning Commission was not swayed by this last-minute argument and determined that the applicants' initial agreement to a base density of one unit per 40 acres had committed them - and the City - to that approach and that it should not be changed at this late point in time.

Planning staff believes that the applicants are correct in their assertion that the starting or base density should be based upon the combination of city and county zoning that currently exists on the property. As noted at the beginning of this memorandum, the property is zoned RP (one unit per 40 acres), R6 (6 units per acre), R-1C (8 units per acre) and A-1 (one unit per acre). It is clear what the base unit allowance of the RP zoned property is, but the base allowance of the other properties is subject to interpretation. The most logical method may be to apply the minimum lot size of the zone to the amount of buildable area of the property, where it is applied after first subtracting a percentage of land for roads. Since the majority of the R6 zoned property is very steep and unbuildable under any possible scenario, the buildable area is much less than the total acreage of the property.

The buildable area is in fact only what the applicant has already proposed to develop under the CUP. They have proposed a total of 38 units on the R6 property and 13 units on the R-1C property. Since the proposed lot size is equal to or greater than the minimum lot size of the R6 and R-1C zones, that may be considered a reasonable starting point for determining the base allowance of that property. The same general approach may hold true for their A-1 zoned properties, although no subdivision lots are currently proposed for the A-1 properties and staff would need to assume a subdivision layout with one-acre lots to generate a base right for that property. Planning staff did in fact verbally suggest this approach to determining base density or unit allowance at the August 11<sup>th</sup> public hearing, so this issue is a part of the public record. Staff had suggested a base unit allowance of at least 54 units.

The applicant, however, is not taking actual buildable area into account under their base unit calculations, nor are they taking into account roads, grading or minimum lot sizes. Rather, they are taking the maximum density allowed in the zone by CUP and multiplying that number by total acreage to arrive at 917 units as a base right. Further, they are assuming the ability to spread that unit count across all their lots despite the low density (RP) zoning on 52% of the subject property. Planning staff and the Planning & Zoning Commission strongly disagree with this approach to determining base zoning rights.

Planning staff would note that the Foothills Planned Development Ordinance contains an overly simplified statement about how to calculate base unit allowances and essentially leaves it up to the planning review process to resolve a reasonable base allowance, taking into account the unique circumstances of the property. In this case, planning staff can see a potential base allowance of at least 54 units and perhaps significantly more, depending upon which exact set of assumptions about lot size, buildable area, zone density allowances, subdivision layout and averaging of density across parcels are applied; perhaps even approaching the requested 155-units. However, such an upper end calculation would rely almost entirely upon the R6 and R-1C zoned portions of the property where in this case the fewest number of units are actually proposed and assume some right to apply that excess density to the RP zoned property where the majority of development is actually proposed to occur.

It is unfortunate that this base allowance approach was not resolved early on by staff and the applicant. However, our initial assessment of the site and the proposal seemed to suggest enough confidence in the ability to obtain adequate density bonus through Priority Open Space set aside that there was no need to tackle the difficult issue of base zoning allowances other than one unit per 40 acres. The applicant was in agreement with this approach at the time.

In consideration of the potential base zoning rights associated with the property, it seems clear to staff that the applicant does in fact have an ability to assume a much higher starting unit count prior to putting into effect the density bonus formula. However, it is not proven that the base rights equal the 155 units that they have requested and there may still be a need for set-aside of either flat developable land or sloped Priority Open Space land, or some combination of the two in the context of the Foothills Ordinance.

Staff's assessment is that the Planning & Zoning Commission did err in determining that the applicant's base density was only one unit per 40 acres. We also believe that the applicant is incorrect in the assertion that they have a right for 917 units. Staff believes that a more appropriate action for the Planning Commission to have taken may have been to defer action on all of the applications so that staff and the applicant could jointly work to resolve the base unit allowance issue. Two or three reasonable approaches for determining base unit allowance could have been prepared for consideration by the Commission. We believe it could be determined they acted on the density issue with insufficient information and should instead have set the items over for further work.

### **STAFF RECOMMENDATION**

Planning staff recommends that the City Council find that the Commission erred in not adequately resolving the base zoning allowance for the property. Not resolving the base density issue prevented the Commission from fully understanding how many units were permitted on the property by CUP either with or without the requested density bonus. Planning staff also does not agree with the applicant/appellant that the R-1A zoning should be applied to the buildable portion of the property in the absence of an approved CUP.

**Recommendation: City Council should remand all of the applications back to the Planning & Zoning Commission for further study, revision and recommendation/action.**

Staff would also ask that the City Council provide some policy guidance on how to resolve the issues related to Priority Open Space and subdivision clustering, design and grading.

Specifically, we would appreciate guidance regarding whether or not inclusion of this site in the Foothills Priority Development area and/or the overall character of the site warrants a particular approach to how the density bonus is calculated and to how strictly the grading and aesthetic standards of the ordinance are applied. It will, of course be up to the Planning & Zoning Commission, staff and the applicant to utilize that guidance in preparing a revised plan.

### **Alternatives to the Staff Recommendation**

1. The Council may deny the appeal and uphold all elements of the Planning & Zoning Commission's decisions on these applications.
2. The Council may determine that the P&Z Commission erred in their denial of the CUP and may approve it as proposed by the applicant/appellant. The recommended conditions of approval from the August 11, 2008 Planning & Zoning Commission staff report should be adopted when approving the CUP, Hillside Permit and Subdivision applications. The requested combination of R-1A and A-2 zoning with Development Agreement should also be approved.

## **Exhibit B**

December 11, 2008

AASE's Canyon Point Development, LLC  
8899 South 700 East, Ste. 180  
Sandy, UT 84070

Capital Development, Inc.  
6200 N. Meeker Place  
Boise, ID 83713

Re: **CAR07-00042/DA / 6890 N. Plano Road**  
**CUP07-00084, CFH07-00022 & SUB07-00065 / Appeal**

Dear Applicants:

This letter is to inform you of the action taken by the Boise City Council on your request to annex  $\pm 296.12$  acres, combined with  $\pm 36.63$  acres within Boise City Limits for a total of  $\pm 332.75$  acres located at 6890 N. Plano Road with zoning designations of R-1A/DA (Single Family Residential with a Development Agreement-2.1 DU/Acre) and A-1/DA (Open Land with a Development Agreement). Also your appeal of the Planning and Zoning Commission's denial of Conditional Use CUP07-00084, Hillside and Foothills Development Areas Permit CFH07-00022 and Subdivision SUB07-00065 for the construction of a 155 unit Planned Residential Development on  $\pm 332$  acres located at 6890 N. Plano Road in a proposed R-1C/DA (Single Family Residential) and A-1/DA (Open Space with a Development Agreement) zones.

The Boise City Council, at their meeting of December 9, 2008, voted to remand the entire application back to the Planning and Zoning Commission with explicit directions to follow the ordinance as detailed in their decision.

The Boise City Council finds that the Commission erred in their findings and decisions and directed a reconsideration of the applications based upon the following:

zoning ordinance 11-06-05.07.03 which addresses the buildable lot during the annexation the buildable lot area being zoned as R-1A.

Secondly, the appellant raised the issue of the base density and that was referred to as the buildable lot and I specifically direct the Planning and Zoning Commission to look at the section ordinance 11-01-03.01 which sets forth the decision of a buildable lot and reconcile that with the section 11-06-05.07.03.

Third, that they discuss they wanted clarification of the ruling on the density transfer issue and I referred them as was also articulated by the appellant themselves to the density transfer was to meet the objectives of the foothills ordinance and that is in fact section 11-14-01.01 and that is the area where most of you probably wanted to

discuss tonight is that these density transfers must meet the objectives of the foothill policy.

The Council issued specific instructions that will need to be followed. A workshop to discuss these issues will be scheduled for late January.

You will be notified when dates for the workshop and the Planning and Zoning hearings have been made.

If you have any questions, please contact Bruce Eggleston in this department at 208/384-3830.

Sincerely,

Hal Simmons  
Planning Director  
Boise City Planning and Development Services

cc: Moffatt Thomas Barrett Rock & Fields, CHTD. / Robert Burns /  
US Bank Plaza Building / 101 S. Capitol Blvd., 10<sup>th</sup> Fl. / Boise, ID 83701

## **Exhibit C**

### **City Council Hearing December 9, 2008**

#### **Aasee's Canyon Pointe Development, LLC, CAR07-00042, CUP07-00084, CFH07-00022 & SUB07-00065 Appeal**

Transcription of the Motion:

Council Member Eberle:

I move that the Council finds that the Commission erred in their findings and that the error was such that it made the decision of the Planning and Zoning Commission essentially defective. That we remand the entire application back to the Planning and Zoning Commission with explicit directions to follow the ordinance.

Now, the appellant asked for a couple of points of clarification therefore I would direct the Planning and Zoning Commission to specifically address... zoning ordinance 11-06-05.07.03 which addresses the buildable lot during the annexation the buildable lot area being zoned as R-1A.

Secondly, the appellant raised the issue of the base density and that was referred to as the buildable lot and I specifically direct the Planning and Zoning Commission to look at the section ordinance 11-01-03.01 which sets forth the decision of a buildable lot and reconcile that with the section 11-06-05.07.03.

Third, that they discuss they wanted clarification of the ruling on the density transfer issue and I referred them as was also articulated by the appellant themselves to the density transfer was to meet the objectives of the foothills ordinance and that is in fact section 11-14-01.01 and that is the area where most of you probably wanted to discuss tonight is that these density transfers must meet the objectives of the foothill policy.

Now I suspect as they go through those and address them specifically, this subdivision will not look the same as it was brought forth tonight. And that there should be opportunity to get your concerns aired at the Planning and Zoning level.

**Motion passes, All in favor**