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	Aase's Canyon Pointe Applications Recommendations From the Planning and Zoning Commission for Annexation & Zone Change CAR07-00042/DA Appeal to the Denial of CUP07-00084 and CHF07-00022	
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Planning & Development Services

Boise City Hall, 2nd Floor
150 N. Capitol Boulevard
P. O. Box 500
Boise, Idaho 83701-0500

Phone: 208/384-3830
Fax: 208/384-3753
TDD/TTY: 800/377-3529
Website: www.cityofboise.org/pds

MEMORANDUM

TO: Mayor and Boise City Council

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

DATE: October 22, 2009

RE: Staff Memorandum of response to the **APPEAL of DENIAL** for Aase's Canyon Pointe Development, CUP07-00084, Conditional Use Permit application; CFH07-00022, the Hillside and Foothills Areas Development located at 6890 Plano Road; and, Staff report for the Annexation and Zone Change with Development Agreement recommendation for modified approval – CAR07-00042/DA

The following applications have been scheduled for **hearing on December 1, 2009**:

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 163 dwelling units in the Boise Foothills Planning Area, as well as the supporting Hillside and Foothills Areas Development application, CFH07-00022, 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 modified approval of CAR07-00042/DA, annexing 296.12 acres, and a zone change for the entire 332.75 acres +/- to the A-1/DA Zone with Development Agreement, (Open Space with a density of one unit per acre with a Development Agreement) to serve as a holding zone until an acceptable conditional use permit is approved.

PUBLIC NOTIFICATION

Newspaper publication: November 14, 2009
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ACTION BY THE BOISE CITY PLANNING AND ZONING COMMISSION

After reviewing the evidence, and hearing all testimony at their September 21, 2009 hearing, the Planning and Zoning Commission **recommended modified approval** of CAR07-00042/DA, annexing 296.12 acres and the zone change of the entire project site, 332.75 acres +/- as an A-1/DA Zone with Development Agreement, (Open Space with a density of one unit per acre 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”. The A-1/DA zone is intended to serve as a holding zone until an acceptable conditional use permit (CUP) is approved.

After reviewing the evidence, and hearing all testimony, the Planning and Zoning Commission **denied** the Conditional Use Permit CUP07-00084 to build 163 dwelling units in the Boise Foothills Planning Area, as well as the supporting Hillside and Foothills Area Development (Hillside) application, CFH07-00022 located at 6890 Plano Road in an Ada County R6 (Medium Density Residential) and RP (Rural Preservation), and Boise City R-1C (Single Family Residential) and A-1 (Open Space) Zones.

History

On August 11, 2008 the Planning and Zoning Commission recommended annexation with an A-2/DA holding zone to City Council, and denied the CUP, Hillside and Subdivision applications (CAR07-00042/DA, CUP07-00084, CFH07-00022 and SUB07-00065). They also recommended a development agreement that would state that the development design would comply with the *Boise Comprehensive Plan*, the *Foothills Policy Plan* and the Foothills Planned Development Ordinance (FPDO). Their denial was largely determined upon their finding that the applicant had a base zoning allowance of only one unit per 40 acres and that they had placed an inappropriate emphasis on protection of steeply sloped Aase's Onion fields as justification for their density bonus request, when the FPDO already required such protection.

The applicant appealed the decisions and recommendations from the Planning and Zoning Commission to the City Council, who heard the items on December 9, 2008. The applicant's appeal stated that the Foothills PUD ordinance allowed them to utilize existing zoning rights in determining their base or starting density for the project, not the one unit per 40-acres that the Commission had asserted, and that they had no need for a density bonus at all. Council found fault with the Commission's recommendation on the base zoning issue and remanded all of the applications back to the Planning and Zoning Commission with direction to follow the code regarding determining base or starting density allowances. Council also asked for clarification on

density transfers and suggested to the applicant that the project should be redesigned, possibly through either a design charrette or mediation process, to better address neighborhood concerns and ordinance requirements.

After the Council's decision to remand, the applicant participated in a work session with the Planning & Zoning Commission to explore an approach for a new round of hearings. At that time the Commission directed and the applicant agreed to pursue a mediation process to resolve a modified design for the project. The City selected and hired a mediator and one mediation session occurred, with a second session planned at the applicant's expense. Due to protest on the part of some of the parties to the mediation, further efforts were terminated with no resolution between the parties. The applicant subsequently submitted a revised site plan that moved some units off of one ridge line and eliminated a segment of roadway. The revised site plan was heard by the Commission and denied on September 21, 2009.

Summary of Revised Application

The first round of hearings in 2008 left unresolved the issue of base density determined by the variety of existing city and county zones that exist on the property. At the September 21, 2009 remanded hearing with revised application, Planning staff recommended that the zoning allowances from the combination of existing City R-1C and A-1 zoning and County RP and R-1 zoning resulted in a base unit allowance of 157 units before any density bonus was required. The Planning and Zoning Commission made findings supporting that analysis. In addition, the revised application changed the site plan to move nine units off the western ridge to a sandpit area on the back of the property. The original plan showed the sand pit as open space, while the new plan relocated nine units there and added seven more for a total of 15 units on a cul-de-sac. A minor density bonus was requested only for the additional seven units in order to raise their request to a total of 163 units on the 332 acres. The Ada County Highway District revised their analysis to accommodate the increase in the units proposed but did not hold another hearing, allowing their 2008 decisions and conditions of approval to stand.

The applicant temporarily dropped their subdivision application in the effort to save time and sunken costs. They felt that they needed a decision from the City Council before they finalized their preliminary plat application.

All else in the applications remained the same. This includes the off-site improvements to Plano Lane; the traffic signal at Hill and Collister Roads; the extension of Collister Drive to the Polecat Gulch Reserve and the installation of a parking lot, fencing, trailhead and appurtenances on the Reserve; the set-aside of 152.6 acres of Aase's Onion reserve to the care Land Trust of Treasure Valley; and the set-aside of 76.4 acres of open space for the homeowner's association. The open space would total 229 of the 332 acres.

At their September 21, 2009 hearing the Planning and Zoning Commission denied both the Conditional Use Permit and the Hillside permit based upon the lack of compliance with the *Foothills Policy Plan* and the FPDO concerning the issues of 1) the amount of construction on the prominent ridge tops; 2) the use of a conventional subdivision layout with little clustering of units; 3) the amount of grading necessitated by the conventional design; and 4) traffic impacts on the surrounding neighborhoods.

The Commission felt that an approvable design solution was still possible and asked the applicant if they were willing to accept a deferral in order to explore further modifications through a work session process. The applicant declined that approach and requested a decision on their applications that night by the Commission. The Commission then denied the Conditional Use and the Hillside requests, and recommended modified approval of the annexation and the zone change to A-1/DA with a development agreement to requiring a design in compliance with the comprehensive plan and ordinance.

The Commission's concerns about the traffic impacts were based upon the two-year-old data upon which the Highway Commission's decisions were based and the general impression that there is not enough capacity in either the local or regional system to support development at this level. This is based upon the number of dwelling units approved by Ada County elsewhere in the Foothills that would also have impacts on this part of the road system.

STAFF RECOMMENDATIONS

Annexation and Rezone

In consideration of the Planning and Zoning Commission's determination that the project does not comply with design related elements of the zoning code, staff concurs with their recommendation to annex and zone the property with A-1/DA as a holding zone. Since the zoning boundaries of R-1A and A-1 can only be determined based upon the site plan contained in a CUP that delineates the areas to be developed and the areas to be preserved, foothills property cannot be rezoned with urban zoning other than in conjunction with approval of a CUP.

The development agreement associated with the zone change ordinance should include the base density of 157 units as presented in the September 21, 2009 hearing and contained in the recommended reasons for the decision from the Planning and Zoning Commission.

Conditional Use Permit and Hillside Application

In regard to the Planning and Zoning Commission's denial of the Conditional Use Permit application, CUP07-00084, and Hillside and Foothills Development Area application CFH07-00022, staff does not find error in their determination that the proposals do not fully comply with the Foothills Planned Development Ordinance and the *Foothills Policy Plan* (FPP). The Commission is correct that the Foothills Plan and Ordinance require creative designs that protect prominent ridge lines from excessive development, that cluster development in desirable locations, that minimize the need for grading, and that protect neighborhoods from traffic impacts. The applicant's proposed design, including the relatively minor revision to move units off of one ridge line, is a fairly conventional approach that can be found to violate Foothills Plan policies and ordinance standards. The plan includes many development lots prominently located out on the edges of highly visible ridge line points.

Staff does believe that the Commission may have underappreciated the effectiveness of some of the design limitations the applicant agreed to apply to the homes to be constructed on some of those lots, including height limits, setbacks and colors. That issue is discussed further in the analysis section of this report.

The Commission did state for the record that they agree that set aside of more open space is not required for the applicant to obtain his requested unit count, but that a better design that is more

reflective of the intent of the Foothills Policy Plan and FPDO is needed before a CUP can be approved. That is, the Commission agrees that the ordinance allows the applicant to establish a right to 157 units based on the combination of existing zoning that they currently have on the property, but that unit count cannot be transferred across the lesser-zoned properties unless the project demonstrates compliance with the design standards of the FPP and FPDO. Staff finds no error with this determination.

In regard to the traffic findings, the Commission may have erred in that the Ada County Highway District has found that there is acceptable traffic capacity to justify approval of the project. However, they have not provided updated traffic counts, nor factored in the cumulative effect of approved but un-built housing units in the area.

In summary, planning staff believes that the Commission did not err in finding the CUP and Hillside Applications to be in violation of various elements of the Foothills Policy Plan and Foothills Planned Development Ordinance. We agree that further redesign was feasible to demonstrate better compliance with standards for protection of ridge tops and minimizing of grading.

ZONING ORDINANCE APPEAL REGULATIONS

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.

BASIS FOR THE APPEAL

The appellant contends the Planning and Zoning Commission committed error in denying the conditional use permit and the Hillside permit, based on four grounds for appeal from the above quoted section of the Zoning Code. The appellant has not provided any memorandum further elaborating on the reasons for the appeal, so each ground is stated below along with staff's response.

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

Response: Staff disagrees with the contention that there was a violation of law, as the City code is clear that the Planning and Zoning Commission has the authority to make decisions concerning requests for conditional use permits and Hillside and Foothill Areas Development permits as outlined in the code sections listed below

The Commission has not strayed outside their realm of decision-making responsibilities in denying the conditional use permit and Hillside permits for this project. They properly heard the cases, deliberated the evidence and provided reasons why the conditional use application did not meet the standards of the Boise Zoning Code and the Boise Comprehensive Plan. The reasons for the decision were written in detail and conveyed to the applicant in a timely manner. Those reasons were based in the context described in Sections 11-06-04.13 Criteria and Findings for the conditional use permit and Section 11-14-03.5 Findings of Fact and Conclusions of Law in the Hillside permit application. (See Exhibit B – Letter to Applicant September 25, 2009 Re: CUP07-00084 & CFH07-00022 / 6890 N. Plano Road).

The Commission found that the CUP did not meet the ordinance requirements for protection of ridge tops, did not properly cluster units away from sensitive areas, did not minimize grading (as evidenced by the fact that no other foothills development has ever required this amount of grading per unit) and that traffic impacts had not been adequately addressed.

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 the City code is clear that the Planning and Zoning Commission has the authority to make decisions concerning requests for conditional use permits and Hillside and Foothill Areas Development permits as outlined in the code sections cited in the

previous section, in particular Section 11-06-04.04 - Commission Action. This basis for appeal has not been demonstrated in regards to the Planning and Zoning Commission's decision on CUP07-00084, and the supporting Hillside and Foothills Areas Development application, CFH07-00022.

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

Response: The appellant states that the decisions are arbitrary, capricious or an abuse of discretion without citing any particular circumstance or action.

Staff disagrees with the appellant's statement. The facts presented in the hearing and the case record as established and contained in this report do support the basis for the denials of the CUP and Hillside applications. The record will show that the findings cited as reasons for the decision are presented as evidence by the public and the commenting agencies. The discussion, findings and conclusions of the Commission were relevant to the body of evidence and a response to and evaluation of that evidence presented on September 21, 2009. (See Exhibit D – Minutes from the Planning and Zoning Commission Hearing September 21, 2009, and the entire body of written evidence attached to this report comprising the record established for that hearing.)

4. The decisions are not supported by substantial evidence.

Response: The appellant further states that the decisions by Planning and Zoning Commission are not supported by substantial evidence.

This issue is refuted by the content, intent and substance of evidence that comprises the entire record of this application process. There have been four hearings before the Planning and Zoning Commission, three work sessions before the Commission, neighborhood meetings, dozens of letters and e-mails and a hearing before City Council to this point. All these public meetings and hearings are documented in the record.

Staff made every effort to provide the Commission with the entire body of evidence pertaining to the CUP and Hillside applications. That evidence is voluminous due to the three separate applications, the hearings in 2008 that spanned the breadth of development entitlements and the high degree of public concern and comment on these requests. The public record to date comprises over two thousand pages of evidence, most of which is substantial to the applications.

The evidence in this case is detailed, the reasons for the decision are part of the evidence and the minutes of the hearings will show that the decisions were made with much deliberation and analysis from the Commission at their hearing of September 21, 2009.

CUP AND HILLSIDE PERMIT ANALYSIS

The key issues in the denial of the proposed Conditional Use Permit and Hillside applications are the conventionally linear site design and the lack of clustering of units on the buildable area, excessive grading and building on the prominent ridge lines, and the traffic impacts on the

neighborhood.

The findings of the Commission focused on the Foothills Policy Plan Chapter 3 Goal 1 Objective 2 Policy 2: “The natural scenic values of prominent ridges and knolls shall be maintained. Project design shall preserve the natural appearance of prominent ridges and skylines, and concentrate development on more obscured areas of the sites.” Their concerns were twofold, first that the development was proposed for the prominent ridge tops to too great an extent, and second, that the grading associated with ridge top development would be excessive. The Commission stated that there seemed to be a workable alternative to both design issues by moving more of the proposed units from the ridge lines to a lower area on the eastern end of the subject properties south of Collister Drive.

Although the applicant had revised their layout in July to remove nine units from the front of the westernmost ridge and situated them and six additional units in the sandpit area in the northern section of the property, the Commission found that this was not sufficient ridge top protection. The revised site plan would still include groups of lots on cul-de-sacs projecting out on the points of prominent ridges that are arguably the most visible part of the property. They felt that the proposed design was reminiscent of Quail Ridge and not what the Foothills Plan intended.

City engineering staff explained that the change in layout would lessen the required grading by approximately 202,000 cubic yards. This would result in an 11% reduction in disturbed area. The proposed cut would be 1,924,000 cubic yards and the fill would be 1,682,000 cubic yards. The project cut and fill would balance in the end due to the filling and leveling of the sand pit area. Even given the fact that the project would balance, the amount of dirt to be moved still seemed excessive by any other standard. Public Works analysis showed that the proposal would meet their standards for safe and reasonable grading practices but that this project still requires more grading per unit than any other existing foothills development.

The revised plan was viewed as a step in the right direction by the Commission, but not a solution that fully complied with the *Foothills Policy Plan*. The Commission’s deliberation of the motions showed that they might have been close to a positive recommendation if further design modifications could be worked out with the applicant. The Commission felt that an appropriate action might be to defer the hearings to provide time for another revision of the site plan, but the applicant requested a decision that night.

In previous hearings on the plan, the applicant had presented visual modeling of how the units on the ridges might be designed to minimize sky lining. The design methods included limiting building height to 25-feet, requiring 30-foot setbacks from the property line facing the ridge, and limiting colors to earth tones. These designs were only minimally addressed at the September 21, 2009 hearing. However, the Commission was skeptical that a 25-foot height limit would require only one story construction or that visibility of the units would be reduced.

The applicant has described that there are three fundamental issues directing their proposed design; first most of the buildable land is on the ridge tops; second, the applicant’s business plan assumes the greatest value per lot would be gained from larger lots on the prominent ridges and third; if smaller lots are used many more lots would be required to justify the cost of construction.

The clustering issue has been a point of discussion between the applicant and staff from the beginning of the review process. The staff, the P & Z Commission and City Council has each in turn advised the applicant to implement a more clustered design, and one that did not so completely focus the development on the prominent ridge tops.

The Commission's discussion of the proposed site plan focused on the possibilities of locating more units on the lower ground on both sides of upper Collister Drive and limiting those on the ridgelines. There are potential building sites south of Collister Drive. The applicant has not seen this as a viable solution for several reasons. It would make the connecting road more costly to build for the return on investment. The units on Collister would be less valuable, so there would have to be more of them to compensate for the loss. That would shift more traffic on to Collister Drive thereby increasing the impact on that neighborhood. The applicant continues to see a need to spread the units across all of the parcels in order have a viable project. The Commission believed that spreading or transferring the units across the other parcels required a more creative and protective design than was proposed.

Base Density

The primary question to emerge from the 2008 hearings was about the base density regulation in the Foothills Planned Development Ordinance, 11-06-05.07.04.A.1:

“A. Basic Provisions:

1. The base density on parcels proposed for development is that given for the existing Boise City or Ada County zone(s).

and,

3. The base density units may be added to the density bonus units without the requirement for additional open space preservation.”

At their hearing of December 9, 2008 Council instructed staff to derive the base density for the existing zone to re-evaluate the proposal for the remanded hearing. The base density was determined to be 157 units. The analysis was based on the following criteria and assumptions: 1) the criteria for a building site are those delineated in the FPDO and *Foothills Policy Plan*, e.g. site must be less than 25 % slope, respect sensitive areas; 2) the required minimum lot sizes and setbacks for the given zones would be observed; 3) the road system proposed by the applicant would be used as it has been proven feasible by their engineered drawings. (A detailed explanation for the methodology is contained in the attached September 21, 2009 staff report.)

July 2009 the applicant submitted a revised layout that moved nine units from the westernmost ridge to the sandpit area and added eight units to the 155 originally requested for the current request of 163 units. The base density of 157 subtracted from 163 is six units above the base density, thus requiring the preservation of some buildable open space. The applicant proposed to set aside 24 acres of buildable area to qualify for the six density bonus units. This is more open space dedication than the six unit density bonus would require.

This analysis of the project base and bonus density was acknowledged as reasonable and valid by the Planning and Zoning Commission during their discussions after the public hearing had closed

and is included in their findings. However, the Commission still found that that number of units could not be transferred onto the other properties unless other standards of the FPP and FPDO were met.

The Ada County Highway District Issues

The Ada County Highway District approved the preliminary plat, CUP/annexation/ rezone/ Hillside for the proposal on June 25, 2008 with conditions of approval. The conditions include off-site improvements of Plano Lane to Hill Road with a 36-foot street section (back-of-curb to back-of-curb) with vertical curb and gutter on both sides and 5-foot attached concrete sidewalk on the east side; and the installation of a traffic signal at Collister and Hill Roads after the 80th unit is built.

They modified their analysis September 14, 2009 to accommodate the increased number of units in the revised request, but their conditions of approval remain the same. This includes the phasing of the connecting road between Plano Lane and Collister Drive with a gravel road installed in phase one and the road finished to ACHD standards at the proposed phase four when the platted lot total exceeds 53 units. It also includes the extension of Collister Drive to the Polecat Reserve and the installation of a 45 foot radius cul-de-sac, gravel parking lot and other trailhead facilities. The internal road sections would be 29-foot (back-of-curb to back-of-curb) with vertical curb and gutter on both sides, all within a 40-foot right-of-way; with continuous 5-foot concrete sidewalk on one side of all internal streets and along all frontages with direct access to the street.

ANNEXATION AND ZONE CHANGE ANALYSIS

At their September 21, 2009 hearing, the Planning and Zoning Commission **recommended modified approval** of CAR07-00042/DA, annexing 296.12 acres, and the zone change for entire project site, 332.75 acres +/- to the A-1/DA Zone with Development Agreement, (Open space with a density of one unit per acre 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”.

The request is for 103.75 acres in the R-1A/DA Zone (Single-Family Residential with Development Agreement) and 229 acres in the A-1/DA Zone (Open Space with Development Agreement).

The majority of the property is currently in the unincorporated County and is contiguous to Boise City Limits. The property has a combination of 122.9 acres in R6 (six units per acre) and 173.1 acres in RP (one unit per 40 acres) county zoning as well as 20.1 acres in R-1C and 16.4 acres in 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’s request for annexation and a zone change for a planned residential development are allowed for by the *Foothills Policy Plan* and the FPDO. They have met the service standards for annexation and the requested zone change, but have not satisfied the design requirements of

the *Foothills Policy Plan*, Foothills Planned Development Ordinance or Hillside Ordinance. The Planning and Zoning Commission determined that while urban zoning and development was potentially allowable, the CUP was not acceptable and urban zoning could not be granted until a CUP was approved.

The Commission's recommendation for the A-1/DA Zone for the entire subject property is based on Section 11-06-05.07.03.3 of the FPDO that directs that, "the buildable areas of the Planned Development shall be zoned 'R-1A,' Single-Family Residential, with the density and design further controlled by the provisions of this ordinance. Slope protection and preserved open space areas shall be zoned A-1 or A-2."

Their concern was that the buildable areas are controlled by the conditional use permit, which was denied, thereby leaving no clearly defined areas for the R-1A/DA Zone. The delineation of the R-1A/DA zone rests upon granting a conditional use permit with an approved site plan and a development agreement that links the site plan to the zone. They were reluctant to recommend the R-1A/DA zone granting entitlement until a site plan was approved under a conditional use permit that fully complied with the FPP and FPDO. They have thus recommended annexation and zoning with A-1/DA as a holding zone until a CUP is approved.

The applicant rejects the recommendations from the Planning and Zoning Commission for the annexation and zone change. Their arguments get to the authority of the City to impose zoning against the will of the applicant where no logical or reasonable basis has been given for that recommendation. They also maintain their right to withdraw their applications in light of an injurious outcome. Their arguments are given force due to the entitlements granted by the existing zoning.

The applicant submitted a letter (attached Exhibit C) addressing the annexation and zoning issues on October 19, 2009. Their primary contention is that, "... [T]here is no discretion provided under the FPDO to zone the buildable area of my client's property to open space rather than R-1A." (Pg. 2) This is in reference to Section 11-06-05.07.03.3. that states that, "... the buildable areas of the PD shall be zoned 'R-1A,' Single-Family Residential, with the density and design further controlled by the provisions of this ordinance."

This describes the problem faced by the Commission, given their denial of the conditional use permit which in turn denied the buildable area proposal contained in that request. Section 11-06-05.07.03.3. ties the buildable area regulated by the conditional use process to the allowed zone boundaries. A change in the site plan buildable area would have to be reflected in the zone boundaries.

The applicant's letter of 10/19/09 states that they will exercise their right to withdraw the applications if outcome does not include R-1A/DA zoning in line with their request.

Their letter also states that "... a review of the Boise City Zoning Ordinance establishes that the recommended 'A-1/DA' zoning would be illegal." They assert that there is no DA district or overlay district in the Zoning Ordinance.

Section 11-06-05.07.03. General Application and Development Requirements requires a development agreement for a conditional use reviewed and approved under the FPDO. Section 11-08-08 DEVELOPMENT AGREEMENTS details the process and purpose of development agreements.

The purpose of a Development Agreement is to provide a vehicle for development in areas and for uses where, in the opinion of the Council or the Commission, approval of a requested rezone by itself does not satisfy the requirements set forth in the Zoning Ordinance for rezone approval; but, that use of a development agreement will assure compliance with the required rezone findings and conclusions.

The applicant further asserts that “P&Z has failed to adhere to the express requirements set forth in ... 11-08-08.B3 and 11-08-08.F.1 providing for P&Z’s recommended action on the development agreement previously requested.”

The Commission directed an alternate development agreement that essentially required compliance with the comprehensive plan and the ordinance as they pertain to the planned development process. As an interim approach to a holding zone recommended by the Commission, this seems like standard requirements. The applicant also said that there would be no agreement if their requests being heard on appeal weren’t granted. That is their prerogative.

In any case the development agreement associated with the zone change ordinance should include the base density of 157 units as presented in the September 21, 2009 hearing and contained in the recommended reasons for the decision from the Planning and Zoning Commission. (See Appendix A)

An alternative to the recommended zone change would be to only change the zone for the 296.12 +/- acres in the annexation request to the A-1/DA Zone and leave the 36.5 acres in the City Limits as is, in the R-1C (20.1 acres) and A-1 Zones (16.4 acres). The development agreement should establish the base density unit levels for the project at 157 units, and include the Commission’s recommendation for compliance with the *Foothills Policy Plan* and the FPDO. This would clear the issue of down-zoning the city R-1C Zone. The 173.1 acres of RP Zone in the County would be changed from 1 unit per 40 acres to 1 unit per acre. The 122.9 acres in the R6 Zone would change from 6 units per acre to 1 unit per acre in the A-1/DA Zone.

Reasons for the Decision Recommend by the Boise Planning and Zoning Commission September 21, 2009

ANNEXATION

Section 11-06-03.03 Commission Shall File Recommendation

The Commission shall file its recommendation on each annexation application with the City Clerk in accordance with Section 11-6-3.4. The Commission’s recommendation on annexation applications shall be in accordance with the following policies:

- A. That the annexation shall incorporate the Boise sewer planning area.**

Finding: The proposed annexation is contiguous with City Boundaries, and it is within the Boise sewer planning area. Boise Public Works Department states that sewers are available to the subject property in a letter dated August 17, 2009.

B. Honor negotiated area of impact agreements.

Finding: The proposed annexation area is in the Boise City Area of Impact and the proposal honors the Area of Impact Agreement with Ada County in compliance with Boise City Code 11-15. The site is subject Boise City Comprehensive Plan and the *Foothills Policy Plan*, and the proposal is generally in compliance with those plans.

C. Attempt to balance costs of services with anticipated revenues.

Finding: The proposed land use within this annexation is single-family residential dwellings with approximately 31% of the land in development and 69% in open space. The gross density would be 0.5 units per acre, half of the density allowed in Boise's R-1A Zone. Higher densities represent a smaller cost per unit for the urban services package. It is a matter of efficiency and economies of scale, the greater the density per acre, and the lower overall costs to service the area on a per unit basis.

The site is accessed up steep hills and is perched on ridge tops, which tends to increase the costs of road maintenance, sewer maintenance and water system maintenance. The cost of school bus transportation would be higher for the same reasons, and because the proposed neighborhood would be at the end of a gulch, requiring a looping back to access other neighborhoods. The proposed neighborhood is within the area where range fires occur. Range fires are difficult and costly to fight and contain, and they require specialized equipment to fight them, at an additional cost to the City.

Finding: The revenues from the proposal would tend to be on the high end for assessed value per residence. It is not clear if the revenues would balance the costs of services, as that data is not available.

D. Promote other goals of population balance, contiguous development and prevention of costs due to leapfrog development.

Finding: The proposed annexation is contiguous with City Boundaries. City sewer, Police, Fire and Parks and Recreation resources serve the area. United Water has indicated that they would provide municipal water supply via a water tank installation at the top elevation of the subject site. The subject site is adjacent to public rights-of-way and has access to them. This is a logical extension of the City boundaries as all the urban services are available to the site.

RECLASSIFICATION OF ZONING DISTRICTS

Section 11-06-01.01 Power to Amend

Any recommendation of the Commission relating to change, modification and reclassification of zoning districts and land use classifications and the regulations and standards thereof shall be in writing. The recommendation shall include findings of fact supporting the purposes and objectives of zoning and otherwise securing public health, safety and general welfare. The recommendation shall specifically find that such changes, modifications and reclassifications of zoning districts and land use classifications and the regulations and the standards thereof:

A. Comply with and conform to the Comprehensive Plan;

Finding: The proposed annexation and zone change area is in the Boise City Area of Impact and the proposal honors the Area of Impact Agreement with Ada County in compliance with Boise City Code 11-15. The site is subject to the *Boise City Comprehensive Plan* and the *Foothills Policy Plan*. The proposal is generally in compliance with those plans, with the exception of the policies (Chapter 3 Goal 1 Objective 1 Policies 1, 2, 3 and 4) concerning site design and the grading of prominent ridge tops.

B. Provide and maintain sufficient transportation and other public facilities, and does not adversely impact the delivery of services by any political subdivision providing services.

Finding: The proposal is in the City's area for police, sewer, parks, and library services. It is served by Ada County Highway District (ACHD) for street services and has received a recommendation for approval from their Board of Commissioners on May 25, 2008, and restated in a memo and revised staff report dated September 18, 2009.

Finding: The Independent Boise School District includes the site in its service area. United Water of Boise would provide municipal water services. These agencies have all indicated by letters in the file that they could provide services to the project site. The provision of services to this site would not diminish services to other parts of the region.

C. Maintain and preserve compatibility of surrounding zoning and development.

Finding: The proposed zone change and annexation area is contiguous to City residentially zoned neighborhoods on the south. Ada County Rural Preservation (RP) surrounds it on the north and east, and a residential neighborhood with R6 zoning on the west. The proposed use and zone change are compatible with the surrounding zones.

Finding: The recommended zone is A-1/DA, open space with development

agreement. This zone is derived from the regulations of the Boise City Zoning Code Chapter 11 Section 11-06-05.07, the Foothills Planned Development Ordinance. The ordinance requires that requests for annexation and/or zone change would result in the R-1A/DA and A-1/DA or A-2/DA Zones.

Finding: The proposed development is in character with, and similar in use and density with the surrounding neighborhoods.

Finding: The City should annex this property with the A-1/DA (Open space), recognizing fully that there is a base density right associated with the current zones.

Finding: The development agreement should state that there is a base density right associated with the current zones. It should further state that it would be appropriate to rezone the subject property to R-1A/DA and A-1/DA when a different conditional use permit may be granted that was found to be in compliance with the *Foothills Policy Plan* and the Foothills Planned Development Ordinance.

Exhibit A - Base Density Calculations Table**Base Density Calculations Table****Aase's Canyon Pointe Planned Development**

10/22/09

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)	(Application + 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	42
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	102
*RP includes 3 permitted lots in County by other ownership								3	3
Totals	332.5	100%	1,178,504	27.1	942,803			157	163



Bruce Chatterton
Director

Boise City Hall
150 N. Capitol Boulevard

Mailing Address
P. O. Box 500
Boise, Idaho 83701-0500

Phone
208/384-3830

Fax
208/384-3814

TDD/TTY
800/377-3529

Web
www.cityofboise.org/pds

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Vernon L. Bisterfeldt
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David Eberle
Jim Tibbs

Exhibit B

Planning & Development Services

September 25, 2009

Aase's Canyon Point Development, LLC
3750 West 500 South
Salt Lake City, UT 84104

Re: CUP07-00084 & CFH07-00022 / 6890 N. Plano Road

Dear Applicant:

This letter is to inform you of the action taken by the Boise City Planning and Zoning Commission on your request for a Conditional Use Permit, CUP07-00084, to construct a 163 unit Planned Residential Development on $\pm$ 332.75 acres located at 6890 N. Plano Road in proposed R-1A/DA (Single Family Residential with a Development Agreement-2.1 DU/Acre) and A-1/DA (Open Land with a Development Agreement) zones; and for a Hillside and Foothills Area Development Permit, CFH07-00022, for the grading associated with a Planned Residential Development.

The Boise City Planning and Zoning Commission, at their meeting of September 21, 2009, **denied** your requests based on the attached Reasons for the Decision.

This decision may be appealed to the Boise City Council. This appeal must be filed with the Boise City Planning and Development Services Department within ten (10) days of the date of this denial. The Appeal must be written, accompanied by the appropriate fee, and submitted to the Boise City Planning and Development Services Department prior to the deadline set forth herein. Appeal Application forms are available in the Planning Department. The appeal must be submitted by 5:00 p.m., October 1, 2009.

If you have any questions, please contact this department at (208) 384-3830.

Sincerely,

A handwritten signature in black ink that reads "Bruce Eggleston".

Bruce Eggleston, AICP
Planning Analyst II
Boise City Planning and Development Services

Attachment

cc: Capital Development, Inc. / 6200 N. Meeker Place / Boise, ID 83713
Stewart Land Group / 6995 S. Union Park Ctr. / Midvale, UT 84047

Reasons for the Decision

CONDITIONAL USE PERMIT

Section 11-06-04.13 Criteria and Findings

The Commission, following the procedures outlined below, may approve a conditional use permit when the evidence presented at the hearing is such as to establish:

A. That the location of the proposed use is compatible to other uses in the general neighborhood;

Finding: The conditional use request, CUP07-00084, is for a Foothills Planned Development to allow 163 dwelling units on 332.75 acres where 103.75 acres are in building lots and infrastructure, with 152.6 acres of steep sloped area dedicated for the preservation of the Aase's Onions, a threatened species; and the remaining 76.4 acres of open space for the homeowners' association. The Aase's Onion Conservancy area would be donated to the Treasure Valley Land Trust for its continuing care and management. The proposal also includes a road and trail head connection to the Boise City owned Polecat Gulch Reserve, as well as set-aside riparian areas.

Finding: The subject site is contiguous to residentially zoned neighborhoods on the south, the upper Collister Drive neighborhood in the R-1B Zone, and to the west, the seven homes on Plano Lane, in an R6 Zone in Ada County. The Ada County Rural Preservation Zone is on the north and east. The Boise City Polecat Gulch Reserve, a recent addition to the City Parks and Recreation system, borders the subject property on the east.

Finding: The proposed use is consistent with the requirements of the density sections of the Foothills Planned Development Ordinance, Section 11-06-07.05.04, which would allow a base density of 157 dwelling units, derived from the current zones on the property, and allowances for additional bonus density that would grant the 163 dwelling units requested.

Finding The most prominent ridges on the western half of this property have been identified as Visual Sensitivity Level 1 in the Public Land Open Space Management Plan (adopted December 5, 2000). The plan recommends that any modification of the [prominent ridges] should be in character with the existing form and, if possible, uses should be moved to lower [visual sensitivity] priority areas. The policies of the Foothills Policy Plan (FPP) also encourage the avoidance of prominent ridge lines for both grading and the siting of structures on the skyline, in which dwellings are sited in manner that defines an area. (Chapter 3 Goal 1 Objectives 2 and 3)

The Commission cited the failure to comply with this policy in their action to deny the application:

Chapter 3 Goal 1 Objective 2 Policy 2:

2) The natural scenic values of prominent ridges and knolls shall be maintained. Project design shall preserve the natural appearance of prominent ridges and skylines, and concentrate development on more obscured areas of the sites. Prominent ridges and knolls shall be designated by the City in the "Open Space Management Plan," and this term is not intended to include every ridge and knoll in the Foothills.

Finding: The geography of the land is such that the majority of buildable portions (less than 25% slopes) of the site are on the ridge tops, with some qualified areas in the lower elevations on the south side of Collister Drive.

Finding: The proposal includes siting and structural design restrictions that would lessen the visual impact to some degree. These design restrictions would have the effect of blending the structures in with the backdrop of the Boise Foothills. Nevertheless, the proposed development would break up that prominent view shed forever, however designed. If the site plan were to cluster dwellings more tightly and away from the prominent ridges, the visual impacts would tend to recede as well.

Finding: There is not a balance of the priorities of the Foothills Policy Plan policies that recommend protection of the ridge tops with those that recommend the allowance of this type of development in the Western Foothills sub-planning area. The project should be re-designed to achieve that balance through moving building lots down in the lower elevations of the property, more tightly clustering the lots together, and locating the roads away from the ridge tops.

B. That the proposed use will not place an undue burden on transportation and other public facilities in the vicinity;

Finding: The proposal is in the City's area for police, sewer, parks, and library services. It is served by Ada County Highway District (ACHD) for street services and has received a recommendation for approval from their Board of Commissioners on May 25, 2008, and restated in a memo and revised staff report dated September 18, 2009.

Finding: The Independent Boise School District includes the site in its service area. United Water of Boise would provide municipal water services. These agencies have all indicated by letters in the file that they could provide services to the project site. The provision of services to this site would not diminish services to other parts of the region.

Finding: The traffic impacts to the adjoining neighborhoods are a concern in regards to public safety. Upper Collister Drive has a gutter-like drain down the center of the road that makes travel difficult under some conditions. It is a narrow road, with front-on housing and driveways, and parking on both sides of the road. The difficulty is compounded by the fact that the residents use the right-of-way for parking their vehicles and trailers. The current residents expressed concerns for traffic safety on both upper Collister Drive and Plano Lane. There are no plans to upgrade Collister Drive north of the entry into Quail Ridge.

Finding: There are concerns with the impacts of cut-through traffic on Outlook and Hillside Avenues where motorists use these public rights-of-way to avoid traffic on the busier Hill and Collister Roads. No mitigation measures were planned for these streets.

Finding: The traffic analysis was done by ACHD in 2007. The Planning and Zoning Commission questioned whether the ACHD had taken into consideration the newly entitled developments in the Ada County Foothills in their revised 2009 traffic analysis. There have been a great number of development lot entitlements granted by Ada County in the Foothills since the subject application came in 2007. The Commission would like the current entitlements considered in a traffic analysis based on the most current data.

C. That the site is large enough to accommodate the proposed use and all yards, open spaces, pathways, walls and fences, parking, loading, landscaping and such other features as are required by this title;

Finding: The site is large enough for the use to accommodate the proposed site and lot layout. It would include 152.6 acres of permanent open space for the conservation of an onion species of concern, and several areas of open space available to the homeowners' for private use comprising 76.4 acres, including drainage basins, private open space with trails and a riparian area next to the Polecat Reserve. Some internal pathways would be provided as well as sidewalks and bike paths. The built area is approximately 103.75 acres of the 332.75 total. The average lot size for 163 dwelling units would be approximately one half acre. The gross density would be 0.49 units per acre.

Finding: The project layout could be re-designed to avoid the visually sensitive ridge tops by developing the lower elevation areas.

D. That the proposed use, if it complies with all conditions imposed, will not adversely affect other property of the vicinity;

- Finding: The City's primary concern is for the health, safety and welfare of the current and future residents as regards to traffic impacts on the neighborhoods in the vicinity of the subject properties.
- Finding: Collister Drive's functional classification is a collector. The acceptable level of service for a two-lane collector is "D" defined as 9,500 vehicle trips per day. Plano Lane is classified as a local road with an acceptable level of service of 2,000 vehicle trips per day (ACHD Policy Manual Local Streets 7202.2.1).
- Finding: The ACHD vehicle trip generation calculations for the total traffic increase would be 1,530 additional trips per day. The traffic on Plano Lane would go from the present 105 average daily trips (ADTs) to 885 ADTs, an eight-fold increase. The traffic on upper Collister Drive would increase from the present 570 to 1,350 ADTs, nearly a 2.4 times increase. There would also be increased auto and bike traffic from recreationists due to the opening of the road to Polecat Gulch Reserve. The potential traffic impacts seem great by comparison to the relatively small amount of traffic experienced today on Plano and Collister Roads that are essentially dead-end streets.
- Finding: Site specific conditions were given by ACHD to mitigate the traffic impacts from the proposed development, both on-site and off-site. These conditions include the phasing of the construction of a through road that would connect Collister Drive and Plano Lane early in the proposed development; installation of a traffic signal at the intersection of Hill and Collister Roads; and variations on street widths on Plano Lane to accommodate the properties fronting on Plano. These improvements would be funded by the developer.
- Finding: Traffic increases will always present the most significant potential for impacts to existing neighborhoods, due to the limited capacities in the supporting roadway system. This was the over-arching issue in the creation of the FPP. It is a property of urban development that new growth will have impacts on existing neighborhoods. The *Foothills Policy Plan* contains goals and policies that would lessen the impacts of new developments.
- Finding: There is no mass transit in this proposal that would lessen the impact on the existing neighborhoods.

E. That the proposed use is in compliance with and supports the goals and objectives of the Comprehensive Plan.

- Finding: The proposed annexation area is in the City's Area of Impact and the proposal honors the Area of Impact Agreement with Ada County in compliance with Boise City Code 11-15. The site is subject to the policies

of the *Boise City Comprehensive Plan* and the *Foothills Policy Plan*. The proposal is generally in compliance with those plans, with the exception of the policies (Chapter 3 Goal 1 Objective 1 Policies 1, 2, 3 and 4) concerning site design and the grading of prominent ridge tops.

Finding: Chapter 5 Objective 2 Policy 4 recommends “mitigation of the effects of increased traffic on existing neighborhoods.” That finding could not be made.

Finding: The subdivision design does not comply with the relevant policies of the *Foothills Policy Plan* and the *Foothills Planned Development Ordinance*. Specifically the proposal has not complied with policies and ordinances addressing site design, grading and traffic impacts on surrounding neighborhoods, and preservation of wildlife habitat as cited below, and in other policies in Chapter 2.

Chapter 1 Objective 1 Policy 3 Environmental and wildlife features, such as wetlands, threatened plant species, riparian areas, big game winter range, and sensitive wildlife habitats shall be maintained through clustering of development away from those features, and development limitations.

- F. Multiple family buildings (any building containing more than 2 residential units) must be designed to include features that add to the visual and aesthetic appearance of the structure and help prevent a sterile, box-like appearance. Such features may include the use of brick or stone, roof or facade modulation, planter boxes, bay windows, balconies, porches, etc. The Commission or committee must make a finding that specific design features have been added to enhance the physical appearance of such multiple-family residential structures.**

Finding: This is not applicable to the application.

Hillside and Foothills Areas Development Ordinance - Section 11-14-03.05 Findings of Fact and Conclusions of Law

A. The findings of facts and conclusions of law to support decisions on hillside and foothill development permit applications must be based upon compliance with this chapter and may only be approved when the evidence presented supports the following finding of fact and conclusions of law:

- 1. That the proposed development is in compliance with the technical requirements of this chapter including those related to grading, drainage, hazardous areas, revegetation, and preservation of outstanding and unique features;**

- Finding: The proposed grading plan complies with the technical requirements of the Boise Hillside and Foothills Areas Development Ordinance and International Building Code and can be approved with the attached conditions of approval. Final approval of the grading plan and the issuance of a grading permit are contingent upon a more extensive onsite investigation con-firming the preliminary opinions of the geotechnical engineer.
- Finding: The proposed development is generally in compliance with the technical requirements of Section 11-14-03.05 as conditioned in letters from Boise City Public Works dated May 28, 2008 and dated September 11, 2009.
- Finding: The Preliminary Soil and Geologic Evaluation, although very preliminary in nature and not based on onsite investigation, indicated that the proposed development could be conceptually approved. A Stormwater Well Report was submitted July 1, 2008 that substantiates that the storm water retention proposal would not adversely affect other property owners in the vicinity.

2. That the proposed development, if it complies with all conditions imposed, will not adversely affect other property in the vicinity;

- Finding: The site plan modified July 29, 2009 was not thorough enough to conclusively make this finding. Some preliminary calculations were made, but the grading plan was not re-engineered to reflect the changes in the site plan.

3. That the land itself is capable of the volume and type of development proposed as determined by geological, hydrological and soils engineering analysis;

- Finding: The built area is approximately 103.75 acres of the 332.75 total. The site is large enough for the use to accommodate the proposed site and lot layout. It would include 152.6 acres of permanent open space for the conservation of an onion species of concern, and several areas of open space available to the homeowners' for private use comprising 76.4 acres, including drainage basins, private open space with trails and a riparian area next to the Polecat Reserve.
- Finding: There is enough land to accommodate the proposal. The preliminary Soil and Geo-logic Evaluation, although very preliminary in nature and not based on onsite investigation, indicated that the proposed development could be conceptually approved. Yet, one of the conditions of approval from Public Works is that the proposed grading plan shows some off-site disturbance that would require either re-design or permission from the land owner.

4. That the project does not create a potential hazard of flooding, soil instability, fire, erosion, etc.

Finding: The proposed project would not create a potential for hazards of flooding, soil instability, fire or erosion if engineered correctly. The applicant did not produce final grading plans for the modified site plan, so this finding can not be made.

5. That the proposal complies with all requirements of the Zoning Ordinance for foothills gulches including the requirements of this chapter and the Floodway and Floodplain Ordinance.

Finding: The proposal meets the application sufficiency standards, and does not require a Floodplain permit. It complies with the requirements for Foothills gulches through the application for the Hillside and Foothills Areas Development permit.

B. The hillside and foothills development permit process is established to assure project compliance with this chapter and to provide a public notification and hearing process for all Category I and II projects. Annexations, zone changes, conditional use permits and subdivision applications submitted prior to or in conjunction with hillside and foothill development permit applications must comply with all respective zoning ordinance requirements including compliance with the Boise Metropolitan Plan.

Finding: The Hillside and Foothills Areas Development permit application was made in conjunction with applications for annexation, zone change, conditional use permit and a preliminary plat subdivision application so this standard has been met.

Moffatt Thomas

MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.

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Benjamin C. Ritchie
Matthew J. McGee
David J. Dance

Robert E. Bakes, *of counsel*

Willis C. Moffatt, 1907-1980
Kirk R. Helvie, 1956-2003

US Bank Plaza Building
101 S Capitol Blvd 10th Fl
PO Box 829
Boise Idaho 83701 0829

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Mayor David H. Bieter and Boise City Council
P.O. Box 500
Boise, Idaho 83701-0500

Re: Plano Road Subdivision--CAR07-00042/DA (Annexation and Rezone)
MTBR&F File No. 23405.0000

Dear Mayor and Councilmembers:

This letter memorandum is hereby submitted on behalf of the project applicants, whom I represent, in connection with your hearing of the annexation/rezone application referenced above.

As you may recall, this same annexation and rezone application was first heard by the Boise City Council last December after the Boise Planning and Zoning Commission ("P&Z") had recommended your annexing 296 acres of my clients' Ada County property and rezoning both it and the adjoining 36.5 acres of my clients' Boise property to "A-2 Open Land," with the requirement for a development agreement containing certain specified provisions. In response to last year's recommendation, I submitted to the Boise City Council my letter memorandum dated October 2, 2008 ("2008 Letter Memorandum"), stating the following reasons why P&Z's recommendation should be rejected:

My clients' property is also subject to the application of Boise's Foothills Planned Development Ordinance ("FPDO"), which provides, in relevant part, as follows:

- "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.*" FPDO § 11-06-05.07.02 (emphasis added).
- "Upon annexation the buildable areas of the [planned development] shall be zoned 'R-1A,' Single-Family Residential, with the density and design further controlled

by the provisions of this ordinance. Slope protection and preserved open space areas shall be zoned A-1 or A-2.” FPDO § 11-06-05.07.03.3 (emphasis added).

Thus, there is no discretion provided under the FPDO to zone the buildable area of my clients’ property to open space, rather than R-1A.

Moreover, as the record before P&Z unequivocally establishes:

1. My clients requested (and hereby again request) that the buildable area of their property be zoned R-1A, as provided in the FPDO.
2. The buildable area of my clients’ property under the FPDO comprises a total of 73.10 acres. *See Amended Planning Division Staff Report (“Amended Staff Report”) at p. 74 (Appendix A).*^[1]
3. No evidence was presented to P&Z establishing the buildable area of my clients’ property to be other than 73.10 acres, nor was there any contrary finding adopted by P&Z.
4. No evidence was presented to P&Z supporting a zoning designation of other than R-1A for the buildable area of my clients’ property.
5. No legal authority or argument was presented to P&Z supporting its avoidance of the express requirement of the FPDO that the buildable area of my clients’ property be zoned R-1A upon annexation.
6. P&Z’s Findings and Conclusions of Fact adopted September 8, 2008 (“Findings & Conclusions”) expressly found that the FPDO “*requires that requests for annexation and/or zone change would result in the R-1A/DA and A-1/DA or A-2/DA Zones, as are so requested in this application.*” Findings & Conclusions at p. 5, finding C (emphasis added).^[2]

¹ With respect to the present appeal, *see* Planning Division Staff Report, dated September 21, 2009, at p. 47 of 51 (Appendix 6).

² With respect to the present appeal, *see* P&Z’s Reasons for Decision at p. 4 of 4 (second stated finding).

Accordingly, based on the foregoing grounds, the Boise City Council is respectfully requested to reject P&Z's recommendation that all of my clients' property be downzoned to open space, and to instead approve my clients' application for annexation and the rezoning of the buildable area of my clients' property to R-1A, as required by the FPDO.

2008 Letter Memorandum at pp. 2-3.

The foregoing reasons are equally applicable to the pending recommendations made by P&Z one year later, which were made following last year's appeal and two additional P&Z work sessions (the first on January 26, 2009, and the second on June 15, 2009), an unsuccessful mediation session with the project opponents on April 10, 2009, and the redesign of my clients' proposed project to accommodate P&Z's suggested revisions provided during the June work session. In fact, the principal differences between P&Z's recommendation last year and now are as follows:

- Last year P&Z repeatedly "found" that my clients' proposal for 155 dwelling units was excessive under the FPDO,³ whereas now P&Z concedes that my clients' property enjoys "a base density right associated with the current zones."⁴
- Last year P&Z recommended zoning all of my clients' property to A-2/DA (open space/low intensity use with a development agreement),⁵ whereas now P&Z recommends zoning all of my clients' property to A-1/DA (open space with a development agreement).⁶

The foregoing distinctions between P&Z's recommendations last year and now are thus both immaterial and manifestly insufficient to justify the annexation and rezoning of the developable area of my clients' property to open space, rather than to R-1A as required by the FPDO. *Cf. Lane Ranch P'ship v. City of Sun Valley*, 145 Idaho 87, 91 (2007) (city's unreasonable interpretation of its zoning code is an abuse of discretion and violative of a landowner's "substantial right to have its application evaluated properly").

³ See, e.g., 2008 Findings & Conclusions at p. 11 ("The subdivision as proposed for 155 lots is excessive in number").

⁴ See P&Z's Reasons for Decision at p. 4 of 4 (final stated finding).

⁵ See 2008 Findings & Conclusions at p. 5.

⁶ See P&Z's Reasons for Decision at p. 4 of 4 (second stated finding).

Moreover, should the Boise City Council decide to annex and rezone my clients' property without also approving their development applications being heard on appeal, no rezoning of my clients' existing Boise property should be adopted, nor should any other zoning designations (such as "DA") be adopted establishing additional requirements from those set forth in the FPDO. *Cf. Highlands Dev. Corp. v. City of Boise*, 145 Idaho 958, 962 (2008) (favorably citing prior precedent establishing that property owners may seek judicial review to void decisions downzoning their property). Indeed, a review of the Boise City Zoning Ordinance establishes that the recommended "A-1/DA" zoning would be illegal for the following additional reasons to those stated above:

1. There is no "A-1/DA" zoning district or "DA" overlay district included in the Boise City Zoning Ordinance, and thus the proposed designation is illegal on its face and devoid of any reasonably ascertainable meaning.
2. P&Z's "finding" that "[t]he City should annex this property with the A-1/DA (open space), recognizing fully that there is a base density right associated with the current zones,"⁷ cannot be legally implemented, as the "A-1" zoning district is for open space and any purported recognition of density rights contrary to that set forth in the Boise City Zoning Ordinance for the A-1 zoning district would be in violation of the zoning ordinance.
3. P&Z has failed to adhere to the express requirements set forth in Boise City Zoning Ordinance §§ 11-08-08.B.3 and 11-08-08.F.1 providing for P&Z's recommended action on the development agreement previously requested by my clients.
4. In order for there to be a development agreement, there must by definition be an agreement between my clients and the Boise City Council establishing what the agreement is⁸ – which there will not be unless the Boise City Council approves my clients' development applications being heard on appeal. Thus, P&Z is recommending that my clients' property be rezoned to open space and then held hostage to whatever terms and conditions may be included in a future so-called "agreement" yet to be even proposed, let alone negotiated and agreed upon by my clients and the Boise City Council.

⁷ See P&Z's Reasons for Decision at p. 4 of 4 (fourth stated finding).

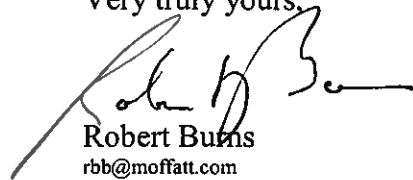
⁸ See, e.g., Boise City Zoning Ordinance § 11-08-08.G ("Upon approval of a development agreement or any modification thereto *by the Council and the applicant . . .*" (emphasis added)).

Mayor David H. Bieter and Boise City Council
October 19, 2009
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Accordingly, in light of the patently arbitrary, unsupported, and illegal action by P&Z in deciding my clients' development applications, as will be further presented at the hearing on the appeal of CUP07-00084 and CFH07-00022, my clients must hereby respectfully (a) reserve their rights to withdraw their annexation and rezone application through the time the Boise City Council should adopt an ordinance annexing and rezoning my clients' property, *see, e.g.*, Boise Municipal Code § 11-08-03 (acknowledging an applicant's right to withdraw an application for annexation or rezone); and (b) object to the annexation of their Ada County property absent the Boise City Council's approval of my clients' development applications in connection with deciding the pending appeal of P&Z's action.

In closing, and in light of the fact that my clients have invested many millions of dollars in acquiring and planning the development of their property with the expectation that Boise will follow its duly adopted ordinances, my clients simply cannot and will not consent to Boise annexing and rezoning to open space property that is already zoned by Boise for the development of up to 176 dwelling units and by Ada County for the development of up to 741 additional dwelling units. Your rejection of P&Z's recommendations and actions, coupled with the annexation and rezoning of my clients' property and the approval of my clients' development applications in accordance with the provisions of the FPDO, is therefore respectfully requested.

Very truly yours,



Robert Burns
rbb@moffatt.com

RBB/smh
Enclosures

cc: Amanda Horton (*via e-mail*)
Hal Simmons (*via e-mail*)
Bruce Eggleston (*via e-mail*)
Ramon Yorgason (*via e-mail*)
Dave Yorgason (*via e-mail*)
Chris Yorgason (*via e-mail*)
Joe Johnson (*via e-mail*)
Kerry Winn (*via e-mail*)



Boise City Planning & Development Services

150 N. Capitol Blvd ■ P O Box 500 ■ Boise, Idaho 83701-0500

Phone 208/384-3830 ■ Fax 384-3753 ■ www.cityofboise.org/pds

Planning & Zoning Commission

Hearing Minutes of September 21, 2009

COMMISSION MEMBERS PRESENT

Doug Russell, Chairman, Jennifer Stevens, Doug Cooper, Gene Fadness, Anne Barker, Lauren McLean, Brian Ellsworth, and Maureen Lavelle (Student)

STAFF MEMBERS PRESENT

Hal Simmons, Bruce Eggleston, Terry Records, Pam Baldwin (Staff Support), and Amanda Horton (Legal)

REGULAR AGENDA

CAR07-00042/DA, CUP07-00084 AND CFH07-00022 / AASE'S CANYON POINT DEVELOPMENT, LLC

Location: 6890 N. Plano Road

REQUESTS APPROVAL TO ANNEX $\pm$ 296.12 ACRES, COMBINED WITH $\pm$ 36.63 ACRES WITHIN BOISE CITY LIMITS FOR A TOTAL OF $\pm$ 332.75 ACRES WITH ZONING DESIGNATION OF R-A/DA AND A-1/DA AND A DEVELOPMENT AGREEMENT. REQUESTS APPROVAL OF A CONDITIONAL USE PERMIT TO CONSTRUCT A 163 UNIT PLANNED RESIDENTIAL DEVELOPMENT ON $\pm$ 332.75 ACRES LOCATED IN PROPOSED R-1/DA AND A-1/DA ZONES.

REQUESTS APPROVAL OF A HILLSIDE AND FOOTHILLS AREA DEVELOPMENT PERMIT FOR THE GRADING ASSOCIATED WITH A PLANNED RESIDENTIAL DEVELOPMENT ON $\pm$ 332.75 ACRES LOCATED IN PROPOSED R-1/DA AND A-1/DA ZONES.

Bruce Eggleston (Staff) – I am the staff member that has been on this project since 2005 when it first came in. The project is known as CAR07-00042/DA, CUP07-00084 and CFH07-00022 for an annexation zone change request, development agreement, a conditional use permit to allow development of 332.75 acres with 163 dwelling units and dedicated open space that would in part be in a conservancy for the Aase's Onion, and part would be the homeowner's association consideration. The location is roughly between the ends of Plano Lane and Collister Drive. This is part of the Foothills that are in the western Foothills sub-planning area and the Foothills Policy Plan designates this area west of 36th Street, actually the ridge above 36th Street and everything west of that being developable if it can meet the constraints of the Foothills Policy Plan and the pertinent ordinances named in the Foothills Planned Development Ordinance and the PUD ordinance. Those parts of the code will be those by which we will analyze this application and those are the standards that have to be met.

The application received May 29, 2007 was for 155 dwelling units on the same 332 acres that also included a subdivision preliminary plat application.

We received an amended application July 29, 2009 that reduced the road length of what is called W. Daylight Drive and leave a cul-de-sac on the top and bottom. The modifications included increasing the number of lots from 155 to 163, and removed lots from the western most ridgeline and added to this area. This is detail of what is known as the sandpit. You can see in the center they have created a cul-de-sac that would fill in the sandpit with overage from other parts of the proposal to make this level enough for building and add 15 building lots into this area.

The major change in this application from 2007 is this point here where it will come in on Plano Road. You can see the outline of what is actually a dirt road which would be taken out. There would be a cul-de-sac down here on Plano Road and there would be another cul-de-sac on the prominent ridge point overlooking Collister Road. The units in between those two cul-de-sacs would be moved over here into the sandpit area.

The process just briefly this went to hearing July 11, 2008, August 11, 2008 and the findings from this condition were finalized on September 8, 2008.

There was then an appeal by the applicant to the decisions made by the P&Z Commission and their recommendation of annexation of 332 acres, plus, at A-2/DA a forty acres holding zone with recommendation that a development proposal brought back that hewed closely to the Foothills Policy Plan, the Foothills Planned Development Ordinance and the Hillside Development Ordinance. This recommendation on zoning and annexation was taken to Council along with the appeal to the denial of the conditional use permit, the hillside permit and the preliminary plat. The City Council then heard the whole package, three items on appeal and two items, the rezone and the annexation recommendation.

The applicant in their appeal the applicant essentially asked City Council to make findings on the zoning recommended by this body and to define whether the base zoning was correct as calculated by staff and this body, that there is the ability to transfer dwelling units from one parcel to another parcel, one zone to another zone, and if R-1A was the correct zone to apply to the developed areas. These questions went with the appeal and are the basis for the appeal. City Council found on December 9th that there were problems with the zoning. The A-2 zoning was not based on the correct interpretation of the base density. Council said they wanted to remand the whole package back to this body for reconsideration and with the direction to find the base zoning that was in accordance with chapter 11.06.D, the Foothills Planned Development Ordinance within that chapter.

As a result there was a work session January 29th with this Commission, the applicants and members of the public, where basically the applicant wanted a review of how we would figure the base zoning. They also were asking about the kinds of modifications to their site plan that would bring their application more in conformance with the Comp. Plan and the Ordinance. One of the outcomes from that is there was a mediation process that did not go anywhere and produced no results. There was another work session in June that the applicant brought back the plan you see

before us where they made the changes I described. There was a discussion of that eventually, if it was ripe for hearing, ready to move into this process we are in tonight. The applicant finalized that design and brought it in for the cut-off July 29th of this year and this hearing date was set.

The original application essentially remains the same. We have the modifications that we are looking at. This is the site plan. Here we have the zoning changes and there is another site plan in here that shows the lots. With these modifications that I have already described these parts of the application changed. The remaining parts of the application remain the same including things such as the onion conservation proposal, the wildlife studies they did, the sensitive plant studies and the proposed agreements with Boise Parks and Recreation concerning access to Polecat Gulch, extending from Collister Road to Polecat Gulch providing a cul-de-sac at the end of Collister and trailhead appurtenances. The agreements with Ada County Highway District (ACHD) are the same even though we did receive an update from the highway district that looked at the proposed 163 dwelling units and reconfigured their traffic counts to allow for the 8 additional units they are asking for.

The Highway District did not change their recommendation except to change the numbers and those traffic count numbers. The recommendations such as the connection with Plano Road, extension of Collister Road, the road dimension width and so forth all remain the same as what was decided by the ACHD Commission in May of 2008. We assume these adjustments would be required by the modifications in all parts of this report, although, some parts of the report don't necessarily reflect those changes. We would carry them forward and make that part of the recommendation from staff that all other parts of this application remain the same.

The most important thing in question asked by City Council and the applicant is what is the base density? The ordinance essentially says that when we figured the density for a property, subject to the Foothills Planned Development Ordinance, that the existing zones would provide the base density for that project. It goes on to say that you can take that base density and add to it to the density bonus process as described in the same chapter and following sections. That would allow, set aside of open space and sensitive areas, in exchange for density on a sliding scale and more open space to set aside the greater density for the areas that require the density bonus.

The application before us looks at an increase from the 155 to 163 units, and after the City Council's direction to establish a base density for this process, staff did an analysis of the property looking very specifically at what the Ordinance says about base density trying to determine in a real world situation, given the current zoning, what might be built there. Simply put, this is what we think the base density requirements in the Ordinance are referring to. This property at the end of Collister Road has sections of A-1 zoning in the City and R-1C. We have a large section of R-6 in Ada County and the remaining portions is a small piece of R6 over here and roughly half of that are in the RP, 1 per forty. Those are the givens in this situation and when we look at zoning, the zoning has certain entitlements to it, but that is not exactly what the ordinance says. It says the base density will be figured on existing zoning.

The assumptions we took in doing this analysis, the obvious one, just the same piece of property, it's the zoning you see before you, we assume the density is allowed in the R6, A-1, RP, etc. A density in a zone is a maximum in the sense that it could be allowed given it meets all of the other

standards, and the other part of the assumption is that we assume the standards of the Foothills Planned Development Ordinance and the Foothills Policy Plan apply to the calculation base density. In other words the restraints on 25 percent slope; protection of sensitive areas, ingress, egress, certain practical matters about, does this truly lay on the land, in a sense to use the word it is doable in the real world. Of course, that is somewhat of a value judgment, but it gets less of a value judgment the closer you engineer the project. The other assumption is that we use the street layout proposed by the applicant because it's probably the most reasonable street layout, given the topography. Having said that, I will zoom in a little bit. The brown rectangles represent the number of building sites. These are not buildings, but these are essentially setback requirements, building pads. Each rectangle is roughly 40 x 60 feet and the yellow area is the buildable, less than 25 percent slope.

Part of the assumption is that these building pads would have to be on land with 25 percent slope or less. Right here you have the four that would be required in the entire R-P area. In the R-6 zone, it's 6 units per acre. We tried to fit them in a manner that would maximize their development to comply with the ordinance and slope restraints. There is a certain amount of leeway in this in as much as two engineers or designers could design this and come up with slightly different numbers. Going through this exercise several times we always came up with somewhere around 154 and 155 base density units. That seemed to be where it was at, given the zone. Over here we have R6, A-1, R-C area and you can see how they lay in there. If you do this exercise we are fairly confident you will come out with somewhere between 150 and 160 units and meet the setbacks and everything else that are allowed in these particular zones.

There are also three existing lots here that are party to the application and three building lots were allowed for those as they are pre-existing, but some have houses on them. One does not, but they are planning to develop a house there. The number came out at 157 as the base density. We discussed this in our January 29th work session with this body, and again in the June 15th work session and we have had time to go back and review this with the numbers coming out in that same general area. We are going to state that as the base density 157 units. The application before you is for 163. They need to come up with density bonus for six additional units, given that base density. The density bonus for the six units was achieved by the amount set-aside by the applicant. It didn't necessarily include sensitive areas, even though they propose to set aside a certain amount in the onion conservancy district. The built area of the flat, the 48.43 acres and the set aside area of the buildable area, the 25 percent or less 24.06 acres which is sufficient to a count for the additional six requested in the density bonus. Staff is satisfied they have met the criteria for the number of units requested in the sense that the base density and the density bonus compute with what the ordinance says.

Left outstanding is the question of whether we think the design before us has fulfilled the rest of the ordinance as staff recommendation that they have. Staff recommends approval of the conditional use permit, the hillside permit and recommends annexation in R-1A and A-1/DA zoning to City Council for their consideration.

I would like to add there are a couple of errata situations here. First of all, we received a couple of letters today that have been given to the Commission. For the record, one is from Mark Fogerty, and one is from Daniel and Katie Young, they're entered in the record. They also received, and

the applicant will talk about this, a phased development based on the new site plan which was received today. It reflects pretty much the same phase plan included in the staff report and is part of that except for adjustments in the so called sandpit area, which is referred to as Phase 12. There are a couple of items in the staff report the applicant brought to my attention, mainly a statement about the height limitations for the dwellings being 25-feet. That was a typo. Actually, their development agreement includes a set of design guidelines where they request a height limitation of 28-feet. I would like to put that on the record. There are also questions about the configuration on Plano Road but the city has a recommendation that is somewhat different from the Ada County Highway District's recommendation and they are not mutually exclusive on the road issue to include sidewalks, bike lanes etc. from Hill Road to the site.

Robert Burns (Applicant Team) – I am with the law firm of Moffat, Thomas, Barrett, Rock and Fields, 101 S. Capitol Blvd, Boise, ID 83703.

I have a 3 page handout I would like to pass out to each of you. We are going to put it on the overhead screen as well. Because of the size of the property it's kind of hard to see on the overhead and I thought it may be easier for you to see what I was talking about by looking directly at the handouts.

The first page of the handouts is the concept plan for the project as currently proposed with the 163 units. The second page is the old concept plan proposed at the last hearing, by flipping back and forth between page one and page two you should be able to readily see the differences of the two concept plans. Page two is the 155 unit concept plan that was the subject of the prior hearings, and then phase three is simply the updated phasing plan that Bruce talked about, that shows the tweaks made to accommodate the shifting of the project back into the sandpit, and the elimination of those units from the southwest leading edge of the project.

I am going to refer to these exhibits as we go through here, but at the June 15th work session this body provided us with some direction on certain revisions that it would like to see considered in connection to the development. The first revision was to lose the lots along the southwest leading lots. These particular lots were sky-lined when you looked up from Hill Road. You could look up and there were no back drops, so they were sky-lined home when constructed. The suggestion was to lose these particular lots, which we have done and you can see that now we have cul-de-saced the project and gotten rid of the road. We got rid of a total of nine lots were lost in this area. We moved the density into the sandpit area and tightened up the width of the lots, adding one lot here. Seventeen lots were added for a net increase of eight lots which took us to 163. Again, by flipping back and forth on the exhibits handed out, hopefully, you will be able to identify those changes, but again, the changes had to do primarily with losing the lots on the leading southwest ridge, which was the prominent ridgeline and adding them to the sandpit area. As indicated in the staff report and as Bruce talked about, if you look on page 48 of the staff report the total potential density reflected is about 193 units as calculated by staff. This project before you is 163 units, so we are about 30 units less than the potential density reflected for the project as calculated by staff in the detailed analysis of staff's undertaking to try to calculate what the base density and the allowable density for the project was.

When we move the lots off of the southwest leading ridgeline it also had the beneficial effect of

opening up a second wildlife corridor that could go through. As you can see, because nothing is constructed there that would open up this entire area from development, so we have this area for a wildlife corridor and we also have this area coming through here. I would point out that Fish & Game has indicated there are no wildlife corridors located on the property, so how beneficial having these wildlife corridors gaps, I will leave it to your own conclusion, but there are two major wildlife corridors constructed there, whether or not there are animals to utilize them, I don't know. Moving the lots reduced the land disturbance area by about 11 percent, and it also reduced the total graded cut by about 202,000 yards. As before, this is a balanced site. There are no materials being hauled into the site to make it work, or being hauled off of the site to get rid of excess materials. All of the graded materials will be utilized in the project itself with no trucking on, or off site.

As I indicated before, the phasing plan attached as a third page of the handout is substantially the same as is attached to the staff report. Again, small tweaks have been made to the phasing plan to accommodate the relocation of those lots from the leading ridgeline on the southwest corner into the sandpit area.

One other comment that came out of the June 15th work session is that Commissioner Stevens inquired about the Onion Conservancy Plan. That was updated and not included in the staff report or the materials that were submitted to you in connection with the first hearing.

The updated Onion Conservancy Plan is included in this staff report on page 68, and I would just bring it to your attention so you know that the updated and completed plan is there for your review and consideration. Although, Bruce talked about the 28-foot verses 25-foot discrepancy in the staff report, I would also point out there was a reference in the summary to the staff report of limiting homes to one story in the highly visible areas. Actually, it was what the design criteria that is included as Exhibit L to the staff report provides, limiting the height to 28 feet, which is generally a one story house, although, two-story elements can be added in certain configurations. I just want to make a clarification that there is not a proposal for one story homes, but rather a limitation on the height, which is 28 feet.

The staff reports also points out certain matters in the development agreement that would need to be revised to accommodate this revised design, including the change of the density from 155 to 163 units and re-writing the portion of the development agreement dealing with the treatment of the sandpit area, now that units are being moved, or relocated into the sandpit area of that particular section six, as pointed out in the staff report, this would need to be modified in the development agreement. Also the exhibits to the development agreement would need to be modified by adding the current exhibits utilizing the concept plan before you for the 163 units, verses the 155 units. There would be small adjustments to the development agreement that would be required in order to make it all work with this proposal.

Finally, I only have one condition of approval that I wanted to raise an issue with and that condition of approval is found on Page 36 of the staff report and is condition of approval 11-J. It deals with the improvements being made to Polecat Gulch Reserve by the developer and some of the materials handed out to you in connection with the first time this matter was heard. There was an August 11, 2008 handout that would be in your overall materials, although, they are probably

not before you tonight, which included certain timing provisions that had been hammered out between the developer and Boise Parks and Recreation, with respect to the construction of the improvements for the Polecat Gulch Reserve area. With those tentatively agreed upon provisions in mind, I would simply ask that Condition 11 J be modified as follows, it currently reads, "*All conditions should be met during phase one of the development*". The modification or amendment we are asking is to tag on to the end of that "*except to the extent otherwise approved by Boise Parks and Recreation and incorporated into the Development Agreement*".

To the extent we can work our language and incorporate it with Boise Parks and Recreation for approval by the City Council, we would ask that condition of approval 11 J conform to that language. A minor tweak, but I wanted to bring it to your attention as well.

Commissioner McLean – On the subject of your request that we change 11 J, you referred to the original agreement, or the piece of paper we saw a while back, I believe it was from Chuck McDevitt, is that what you are referring to?

Robert Burns – That is what was worked out with Chuck McDevitt, yes. I have a copy of that if you would like I can hand them out.

Commissioner McLean – Yes, that would be helpful.

Robert Burns – This exhibit when it was prepared by staff was 17 pages. This handout is page one which has the table indicating the various matters included in this exhibit dated August 11th, and the last page is 17 of 17, is the tentative agreement hammered out with Chuck McDevitt.

Commissioner McLean – Do we have any comment from the Parks Department on this proposed change?

Bruce Eggleston – I received an e-mail from Cheyne Weston of the Parks Department today saying all the conditions remain the same from what I am assuming is the July 11th hearing before this body. There have been no changes from their standpoint since that time.

Commissioner Russell – I just received a note from a fellow Commissioner that has some disclosure we would like to put on the record at this time. It was a surprise. I will let Commissioner Stevens explain what is happening.

Commissioner Stevens – I apologize to my fellow Commissioners, as well as to the public. It has come to my attention now as I am looking back over the record. As you all probably remember, I had to make a disclosure about my involvement with The Land Trust of the Treasure Valley when this process first started. Having gone over it in my mind, I think I may have also gotten confused and thought I had disclosed a relationship I have with Moffatt, Thomas as well. Now that I look back through the dates I can't recall if I did or not, because I don't remember exactly when that contract was signed. I have been retained as an expert by the law firm of Moffatt Thomas in another matter unrelated to this and I wanted to make sure that is on the record and also to ask legal whether or not that was grounds for recuse, or if we wanted to have a vote on that point? There was no copy of our transcript of our prior hearing, and so I'm not exactly sure

what was on it before.

Commissioner McLean – I do recall that we had that disclosure. It could have been a year ago at this point, but both the Land Trust issue, as well as the Moffatt Thomas contract.

Commissioner Stevens – Amanda, would you mind giving us some guidance on this because I think at the time I may have disclosed that I was in negotiations with them, but I have since been retain as an expert in two different matters by the law firm.

Amanda Horton – The conflict of interest laws prohibit involvement of a commissioner in making a decision if there is some pecuniary gain that could become available to them for the decision they make, or a relationship, a familial relationship, or a business relationship based on whether the business you have a relationship with, if they are successful, if that would somehow have a pecuniary impact or benefit to you. The other issue is certainly a perception issue and it's really up to the Commissioners to decide if they believe you should be excused from voting. Basically, you have a duty to vote unless you are excused from doing so. When people recuse themselves, they are really doing so with the consent of the commission. It's up to the commission if you are unsure, to determine whether or not this is a de minimus, or if the appearance, or the reality is such that you should not continue making a decision in this regard, I don't know. Do you have a contract directly with Moffatt Thomas?

Commissioner Stevens – I don't have the contract with me. I believe it is with the client of Moffatt Thomas.

Amanda Horton – Moffatt Thomas represents a client of yours?

Commissioner Stevens – They represent the two clients I work for. If you give me a moment I might be able to actually pull them up. Does that make a difference?

Amanda Horton – Well, yes and no. It's hard to know from the scant details here.

Commissioner Stevens – What do you need to know?

Amanda Horton – Things like, is the contract dependent on success or failure of specific things? In other words, is it for a set amount? Is it completely separate from this issue? Is it dealing with any of the parties here?

Commissioner Stevens – That's a lot of questions. I will start with yes, I have pulled up the contract and they are both worded such that Moffatt Thomas has in fact retained me as an expert. Neither case I am working on with the law firm has anything to do with any of the parties here present, nor with the attorney representing the applicant here today.

Amanda Horton – You having a direct contractual relationship is a pretty concrete connection relationship between you and the applicant, in my opinion.

Commissioner Stevens – Do I need to ask if we need to vote, or does that....

Amanda Horton – If you want to ask to be recused, you may do so.

Commissioner Stevens – I think that is probably the proper thing to do.

Commissioner Russell – Are you recusing at this time, or would you like us to discuss this among ourselves and take a vote as a commission?

Commissioner Stevens – It sounds like our counsel has advised me to ask for that, and I suppose it sounds like it's my duty to vote unless all of you tell me not to.

Commissioner Russell – Commissioners, I think at this time it's probably wise to take the advice of our legal counsel and have Commissioner Stevens recuse unless any of you think differently. Are there any comments on this item? Commissioner Stevens thank you for keeping your head in the game and realizing this sooner than later. We apologize for the interruption but it was wise to deal with it at this time. We were asking questions of staff or the applicant. Are there any further questions for staff or the applicant?

Commissioner Barker – I heard counsel for the applicant say this was a balanced project with respect to cut and fill and no material would be coming onto the site, and no material would be coming off of the site. This is a simple question. Right now in our staff report it looks like the grading volumes will be about 1.9 million cubic yards of cut and 1.7 million cubic yards of fill.

Robert Burns – Where is the difference, is that the question? The difference relates to the compaction factor having to do with the cut. When you factor in the compaction factor, which I understand is probably 10 or 15 percent, that brings you down to a one or two percent range, which is as close as you can conceptually design at this stage of design. So, they will make small adjustments with road heights, lot dimensions or whatever, but all of the material will be consumed in constructing the project on site without export or import.

Commissioner McLean – This is a question for either staff or the applicant. I noticed in this report and I hadn't noticed it before, that there is about 75 acres of open space that would be given to the homeowners association, as opposed to dedicated it as open space. I'm wondering if this is new, and if there will be public access to this?

Robert Burns – Your question is whether there would be public access to the homeowner association property?

Commissioner McLean – Is this a new addition, a dedication of some of the open space to the homeowners association?

Robert Burns – There always was some property that was going to go to the homeowner association and it has expanded because of losing the lots on that southwest ridgeline. So the amount of property that would be deeded to the homeowners association has increased. My planner is telling me because of the trade-off in the sandpit. It's about an acre, so there is very

little change from what was going to the homeowners association before and after. Within an acre, I guess.

Commissioner Barker – This question is for staff. The applicant has indicated that a 28-foot height limit on homes, whether those be on the ridgeline or otherwise, would be comparable to limiting these homes to one story. I would like staff's take on that. It seems like 28 feet is not your typical one story house. I could be wrong about that.

Bruce Eggleston – Commissioner Barker, 28 feet is, at least in my humble opinion, is doable for two stories and the measurement is from the ground level, the grade level, depending on the type of roof used, the measurement varies with the architecture. That would also allow for a daylight basement and we are counting height of course underground is not figured into that, so it could very easily be a basement, a ground floor and loft situation. We are not to limit to one story, just to 28 feet and to do whatever architecturally is possible within that constraint.

Commissioner Fadness – My question is for Bruce. The applicant pointed us to page 48 of the staff report that calculates the density bonus plus the base density of 193. From what I heard you explain after you did the calculations with all of the densities per zone as the City Council requested, I thought you came up with somewhere in the vicinity of 155. What is the discrepancy there? What am I not getting?

Bruce Eggleston – The calculation was for the 154 units. That's actually the number of little parcels I was able to reasonably apply to the landscape, then there are the three additional lots that are existing. Two have houses and one would be developed by the owner who is not part of this group, but is a co-applicant. It is 154 plus the three existing, is how we got to the 157.

Commissioner Fadness – Do you agree with the applicant's claim that the total potential unit's density bonus plus base density is 193 units?

Bruce Eggleston – That is what the numbers run out to. They didn't prove up 193, but if you simply run the formula for the density bonus with the amount of acreage set aside, the buildable acreage, the 24 some-odd acres, multiply it with the multiplier and you come up with that additional number. That's an arithmetic exercise because they have set aside that much open space and would qualify for it, but they have by no means shown us a development plan that could accommodate that. There are two different worlds here. One world sets the limit and the other world is what is actually doable when complying with the ordinance and the plan.

Commissioner Cooper – I have a question for the applicant. One of the comments made by staff in their report, one of their concerns was they seemed like they would have preferred to see some narrower lot widths, and obviously that would take up a space. These maps are very tiny and so I'm making gross guesses, but it looks like it varies certainly, but it looks like there are some that may be approaching 100 feet wide. Is there a range you can give me?

Robert Burns – Let me have the land planner speak of that. He will give you more accurate information than my guesses.

Kerry Winn (Applicant Team) – There is a variety of them. I think we figured the average width of a lot is about 110 feet. There are some that are longer, and some are shorter, but I think that is a good average of the front width of the lot. We think they are, given the constraints at Quail Ridge that is not a very wide front.

Commissioner Cooper – So, on the north side of the project there are some quite a bit smaller lots.

Kerry Winn – There are some patio lots. If we had the map to show in below there are some 75 foot frontages. We are basically not considering those. The rest of the lots, which are the single family lots, I think you would look at the average of about 110-foot frontages, not including those that Bruce is pointing to. Those are the patio lots. The rest of the lot fronts are at about an average of 110, 105, 107-feet.

Commissioner Russell – Before we go into the public testimony this evening I would like to make a couple of quick comments. We did receive a couple of letters in our packets that were less than friendly directed towards the P&Z Commission or the City of Boise.

I would just like to respectfully request this evening that as you are testifying, if you could keep your comments civil and that you would comment on the project and keep in mind that the P&Z Commission is a group of volunteers appointed by the Mayor and City Council.

We are not elected officials and we ask that you keep that in mind and that you would be brief in your comments. You are going to have three minutes total to speak and we ask that you would be constructive in those comments. If you are not, I will have the unfortunate task of interrupting you and try to get you back on track.

PUBLIC TESTIMONY

Jerry Bowers – I've been working with the applicant for many, many years on this project. The main concerns I have noted that have been brought up by the Commission was primarily the roof tops. That concern has been eliminated by removing those six lots in the front ridgeline. Also, dealing with the grading of so many million of yards being graded are now being filled through the sandpit that will allow 15 lots back through there, which was a major concern I heard in the past as well. I think the applicant has done a wonderful job in presenting this proposal to you. Things through my meetings with ACHD and other meetings I think need to be brought to your attention. There are going to be quite a few new improvements made, over \$550,000 worth of impact fees being made as well as a four way light at Hill and Collister, and also a three-way stop at Plano and Hill which will have a positive impact on the community, and will also help with traffic direction, as well. I think this proposal should be approved. I'm in favor of it and I think the changes made by the applicant are extremely well thought out. I am for it.

Michael Jones – I have some pictures that Mr. Eggleston is willing to show. They are going to use up my three minutes and I have nine points that I wrote to you and Mr. Eggleston told me it was on page 226 of the staff report and I hope you look at them because they are extremely important issues that have not been addressed, at least so far in this application. It is a

fundamentally flawed application which you rejected last time and I urge you to reject it again. It's an application presented as if important provisions of the Foothills Ordinance did not exist and an approval, I believe, would render the meaningless of those provisions of the Foothills Ordinance. In particular, the one I am going to focus on with the pictures regards the text in the Foothills Ordinance. I'm sorry I don't have chapter and verse, but I quoted it from the staff report the first time around which it says, "*The natural scenic values of prominent ridges and knolls shall be maintained.*" How clear is that? That is clear. Natural Scenic values of ridges and knolls do not include luxury homes on 100-foot lots. This is the ridge from my farm which is a lovely view and an enhancement. If I understand the proposal, the one improvement to this proposal is the removal of five lots up there that I think would take away the luxury homes from the left half of that picture. That's an improvement. I utterly agree that it is, but its five ridge-top units out of 85 or 90 ridge-top units being proposed in this proposal. The pictures you see up there now is one of my neighbor's pictures, but see those white dots? This is a photo shop kind of deal. They wouldn't actually be that high because these ridge-tops actually are not buildable because some of them are, there is a little bit of flat space up there, but they are scrapping 50 vertical feet off of these ridge-tops. This is not leaving them natural. Scrapping 50 vertical feet so they can get enough width to put their lots, so they wouldn't sit quite that high, but the ridge-top would be compressed down. This is the ridge in question. This is from the southeast and a ridge in question is on the right. Oh no, I'm sorry. We are a little bit out of order. This is showing what you can see. Are we on the ridge-top? This is on the ridge-top that would be developed and all of that is the Hill Road Parkway Neighborhood which by the laws of physics means if you can see them from up there, they can see you from down below.

This is looking down on Collister Drive from the area of this development. Collister Drive is visible and everything on both sides of it, the houses are going to be visible from Collister Drive. This is part of the thing, what I did here; I panned basically from downtown up to the northwest and from basically the whole valley. These ridge-tops are not just ridge-tops; they are prominent ridge-tops. The Foothills Ordinance says they should be left natural. I don't know why we are even talking about this proposal, except for the gully bottoms. Put density in the gully bottoms.

Julie Klocke (President of the Collister Neighborhood Association) – I am also a volunteer. The Collister neighborhood recognizes that the applicant has existing development rights under current zoning, but the opposition is based on what this application is asking for. In essence, a trade of existing development rights at the north end of Collister Drive in exchange for ridge-top development. Currently, the parcel zoned is rural preservation and would allow for four housing units up top, but the applicant is asking for 100 units on the ridge, where there is currently R-1C zoning allowing for 72 units. The applicant wants to reduce that to 13 units and put the remainder on the ridge. We acknowledge the revised application does provide more clustering of units, particularly in the gravel pit is and has removed some lots from the south facing ridge. However, the development will still be visible throughout the valley. Sky lining may have been lessened but we don't feel it has been minimized. The staff report on page 19 states that the public Open Space Management Plan for Boise would recommend against development of these properties based upon the visual impacts and the value of big game wildlife habitat, as supported by the letter from the Idaho Department of Fish & Game. The open space plan shows the western half of the subject property to be sensitive to one visual sensitivity level. This is defined as having the highest priority for visual protection. Any modifications to the landscape would be carefully planned to

match the existing landscape character and should not be evident. Human modifications should be moved to lower priority landscapes where possible. Grading and ridge-top development violate the standard. Page 23 of the staff report also acknowledges that despite siting and structural design restrictions, the proposed development would break up that prominent view-shed forever, however it is designed. This application has moved some of the lots from the southern ridge and moved access roads to those lots. However, this development will still require nearly 2 million cubic yards of grading. Excess grading is not defined specifically in the Ordinance, but if 2 million yards isn't excessive, I don't know what is. Excessive grading would not be an issue if the current zoning remained in effect and the application denied. The Aase's Onion species is most typically found on, or near ridge-tops, although, the applicant has provided some plan for the preservation for some of the onion fields. This proposed development would still scrape off ridge-tops. The onion would have much more protection if the current zoning remained in effect and the application denied.

Much seems to be made of the Foothills Policy Plan that identifies the western Foothills area west of 36th Street as the lowest priority area for open space protection. The first priority area for development in the Foothills, but this development is also subject to compliance with other policies and regulations as well as adequate street capacity and infrastructure.

The Collister Neighborhood objected to this (inaudible) favored status at the time the Foothills Policy Plan was adopted, although, the Collister Neighborhood is not granted the same protections or the same level of scrutiny with regard to development.

The Collister Neighborhood Plan adopted by the City of Boise in 2007 attempted to address this issue and asked that the Foothills Policy Plan and related Ordinances be rewritten. The Collister Neighborhood Plan calls for the preservation, enhancement and protection of our existing neighborhoods, as well as minimizing the impact from development and growth in the Foothills. We don't believe this current application does this. The impact from the proposed increase in traffic from the 163 unit proposed development would be hugely negative to not only north Collister, but also to our neighbors on Plano and Hill Road. Generally, estimated trips from residential development are approximately 10 trips per unit. With 163 units we will have an additional 1600 car trips a day coming through our neighborhood. This proposed development is an isolated automobile dependant development and we predict the daily number of trips will be higher.

North Collister and north to their entrance to Quail Ridge is problematic now. Narrow with front-on housing and steep driveways, gutter in the center of the road and on-street parking on both sides of the road. There are no plans to improve this section of the road. Again, under the Foothills Policy Plan the Collister neighborhood does not qualify for a higher standard of protection as granted to the central and eastern Foothills which would require that it be demonstrated that traffic impacts on existing neighborhoods be minimized. We acknowledge that under limited ACHD scrutiny that the proposed traffic increases could be accommodated by the neighborhood, whether designated as a local street, or as a collector, but we believe it is not a question of whether increased traffic could be accommodated, but whether it should be, given the negative impact.

We are also not in agreement with ACHD's requirement to signalize the intersection at Hill Road and Collister. We are concerned about traffic backing up like it does at 36th and Hill. The corresponding air quality that exist, there are people who live there who cannot open their windows during rush hour because their smoke alarms go off. The safety of our school children and safe access to bus stops on the corner of Hill Road and Collister is also a concern. We will continue to work with ACHD to find appropriate traffic solutions for the neighborhood.

With regard to Polecat Gulch, access to the Polecat Gulch Reserve currently exists off Cartwright Road where trails were constructed in 2007. Prior to that time in 2005 the Collister Neighborhood supported the trailhead on north Collister including a parking lot and restroom. At that time the neighborhood was to be included on the development of plans for the trailhead that would minimize the impact on the neighborhood. What we did not foresee at that time was that supporting the trailhead would open the door for adjacent Foothills development. The Collister neighborhood does not see applicants offered to pay for the long planned trailhead is enough justification to approve the proposed development.

We are also concerned that the applicant has not demonstrated that the cost to provide services to the development would be balanced by anticipated revenues. As pointed out in the staff report this is an isolated development, low in density, access of steep hills perched on ridge-tops which tends to increase the cost to maintain sewer and water rose. Costs for school transportation would be higher. The proposed neighborhood may increase the potential for property damage and fire coverage due to wildfires. Throughout the City Comprehensive Plan there are policies that require protection and preservation of existing neighborhoods.

This proposed development does not protect or preserve the existing Collister Neighborhoods. At best we are told we can handle it. In recent years the city has frequently encouraged and approved high density development, including skinny houses on sub standard lots in an effort to minimize urban sprawl, often to the detriment of existing neighborhoods. This proposed development is not smart growth. It is an example of urban sprawl. It is isolated, low density and automobile dependant. Alternative means of transportation are not realistic. There is no connectivity, just exclusivity. It is the type of housing that the city says it wants to get away from if the city is to be sustainable in the future.

In 2001 the voters in this city passed the Foothills levy including over 60 percent of the voters in the Collister neighborhood. The people wanted to see their Foothills, Boise's backyard protected. Approving this application flies in the face of that preservation effort. For these reasons and others that will be presented by my neighbors we ask that the commission deny this application.

Janel Brown – I wrote a really long thing here and the more I thought about it the more I thought it is really not appropriate because you guys can't address my concerns. My concerns are traffic and wildlife and they are not being addressed by anyone and apparently they are not going to. Basically, the gist of what I wrote is that this has been going on for years. It's not going anywhere and it's not moving forward and I have been thinking about why is that? I sort of think it is because people are being asked to make major decisions based on opinion with very little in the way of fact or verifiable statistics, for instance the wildlife issue. It's like I have seen no study or actual wildlife counts for my area that are recent, and I have yet to find a definition what causes

one area to be significant, and another one to be insignificant. My experience forms my opinion. There are 8 – 10 deer daily in my yard. There are fox, skunks and hawks. I think my little friends and I share my area and think that their area is significant. I'm not sure where Fish & Game or whoever has made the determination it is not significant and as I have said, I've not seen any hard facts that prove it one way or the other. It's the same with the traffic and so much else that we find objectionable. It all boils down to opinion. The developer's engineer has offered the opinion that there is no other access point except upper Collister. I asked ACHD, "Don't you guys study that?" No, it's the developer's engineer's opinion that there is no other access point. I think that is sort of silly.

I guess basically the up-shot is I don't envy you or your jobs. You have to make decisions based on opinions and who knows what informs those opinions. On the one side it's money and special interests and on the other side it's a bunch of citizens who live there, our opinions are formed by what we know because we are there every single day. So, ACHD and engineers can say our road can handle more traffic all they want but that doesn't make it so, and until or unless you actually spend time in that area I don't think you can understand how drastic this is going to impact our quality of life. Basically, I have come to the conclusion of other speakers here tonight and that's just to deny the whole thing. They have private property rights and they can exercise those rights as currently zoned and if they don't get annexed to the city, fine by me.

Genie Sue Weppner – I'm on the executive committee of the Central Foothills Neighborhood Association and our neighborhood association has discussed this plan a number of times in our meetings.

Every time we have those discussions the two issues that come up are the issues related to traffic, and it sounds to me like this particular plan means there are going to be more homes, rather than fewer than the last proposal they had in place, which I know would be of great concern to our neighborhood association. The other thing is the Foothills Ordinance and faithfully implementing the intent of the Foothills Plan by preserving the look and the feel of the Boise Foothills. I would ask that you deny this application and we try to come up with an application that would be faithful to those things and still allow some development, but make the development one that isn't going to be negatively impacting our traffic and also preserve the look of the City of Boise's Foothills.

Karen Knudtsen – I am in the Collister Neighborhood Association and my little street is one block from the intersection of Hill and Collister. My basic concern is the increased traffic. Besides violating the Foothills Ordinance and the loss of our beautiful Foothills sky-line in this area, I'm opposed because of the really negative traffic impacts that this development will have on the local residential area. Collister, particularly upper Collister, Hill Road, Plano Lane and my little street Shirley are among the streets that will have the greatest increase in traffic due to this development. These residential streets were not built to handle the streams of arterial traffic we currently have. They are narrow and often curvy with many blind spots. In fact tonight just coming down here a truck pulled up from Greer which is a blind intersection like Shirley, right in front of me. He could not see me, and I had to slam on my brakes to avoid him. That was just coming down here tonight, and that happens all of the time. My little street Shirley, one block from the Hill Collister intersection is a little L shaped street. It connects Hill Road with Collister. Traffic often bypassing the traffic at the intersection of Hill and Collister will cut-off and zoom

down my street which is very narrow with lots of cars and trucks parked on the street. We have little kids that play. People walk, ride bikes etc. We can't handle any more traffic cutting off and with the street lights that are proposed at Hill and Collister, that won't help the problem. I urge you to deny this due to the traffic concerns of the residents in that area.

Paul Werner – I am the past president of the CFNA (Central Foothills Neighborhood Association) which is east of 36th. The reason our neighborhood association talks about this development is because this is setting a precedent. Your vote is setting a precedent for future Foothills development including Steve Appleton which is right next to this, the Terteling property and Kip Bedard's property. I could go on and on, so the vote on this is very important for the future of not just development, but many down the road. I think it is flawed in a few key areas. I would like to quote probably the most prominent developer that I know of in Boise. He built BoDo. He's the founder of the curb cut and he told me at a meeting that the Boise Foothills are the beachfront of this city. We are talking about the beachfront of Boise, Idaho. He's a developer and that's how important he looks at these Foothills. That's the way I look at them.

The view-shed is extremely important. The Foothills Policy Plan stipulates that the aesthetics of the Foothills be protected and that excessive disturbance of the land should be minimized and development shall be avoided in areas that would necessitate excessive grading, cut and fill. This development still has too many violations of the Foothills Policy Plan. They need to go back to the drawing board, work it out, reduce more of the cut and fill. Reduce more of the prominent ridge line development. Preserve our beachfront to a greater extent.

That's my main message. Keep our standards high here in Boise. People are going to move here. This is Boise Idaho, the capitol city of the state. Let's keep our standards, high let's keep our view-shed in tact and they can come up with a better development. I know they can. Involve the people a little bit more.

Bob Lazechko – Many of my neighbors are much more eloquent speakers than I so I will be brief. The one thing I want to reiterate is it is a precedent and I have tried to say that in my letters. I haven't always had my facts accurate; I will be honest with you because I see updated information, so in my letter I realized I was in error on some of the statements. The one thing is that it is a huge thing with the precedence. To me, what seems to happen is it kind of picks and chooses what parts of the Foothills Ordinance are enforced and what aren't. What really concerns me as a father is the impact on existing neighborhoods, or goal 5 which is listed on page 30 and 31 of your report. One of the statements says "mitigation of effects of increased traffic on existing neighborhoods shall be paid for by the public causing such effects on a proportionate basis through the use of mechanisms such as impact fees, installation of traffic calming infrastructure trail and pathway development on page 31 of the report.

One of the proposals is a four-way light on Collister and Hill Road. I would argue, and once again it is opinion, but I don't think that's going to be traffic calming. That's going to be traffic problem causing because you are going to get the backup like you do at 36th and Hill Road. Annoyingly, it is going to divert traffic up onto upper Collister Road. If I have a choice of going to Plano or driving on Hill Road and I have a lighted thing, and have a connection, I am naturally going to turn at the light rather than trying to fight the traffic at Plano, which there are no

proposed improvements off of Hill Road, other than the widening at the entrance way. There are no stop lights, or roundabouts, no proposals there. In a statement, ACHD, which is in your staff report, Collister Drive is problematic and then it's dismissed, in my opinion. It's ignored and basically it's a problem and that is it. Nobody has any plans to improve it. I guess my biggest thing is not only is with the cubic yards of fill is the construction traffic. I really don't see how that is going to work on my street. Possibly, granted after the development is built, but when you have dump truck after dump truck going up and down that road that is problematic in your statements and there are cars parked in the road, it's just a disaster waiting to happen.

Katie Watts – I appreciate the chance to testify although, I did already send a letter. I want to be brief. I have a concern and a request. My concern is that our numbers were greater a year ago and so now a year later we have all been through this process and we haven't really made much of a difference from where we began. My concern is that the intention of the applicants is just to wear us down to the point that our numbers are dwindled and you'll perceive it as our acceptance of this development, and that is not the case, but that's my concern. My request is to make the process work and help the developers, or the applicants make it more of a compromise so that we all can at least look at it more with acceptance and feel that we can move forward and now it's setting a precedent we can all be proud of.

Gene Wortham – There's a letter in this packet from Mr. Charles Link. He used to be a civil engineer for the Idaho Transportation Department. I was also the former state construction engineer for the Idaho Transportation Department.

In Mr. Link's letter to you he stated that the egress from Plano Lane to Hill Road had site restrictions and was unsafe, and I guarantee you it is unsafe. Based on my past history with the Highway Department, I don't really like to report things like this, but there were times our traffic section said that the numbers said it was safe and no problem. After accidents and even fatalities, trust me the road was fixed. The one at Plano and Hill Road is not safe for egress from Plano to Hill Road. I want to make that a matter of record.

Regarding the sandpit, there has been a lot of talk lately about the sandpit. There wasn't too much talk about it at first until all these things started getting juggled around and adjusted, but now there are going to be all of these houses going up to the sandpit. I want to tell you that this sandpit was mined and work just recently until a developer purchased it. The cuts in that sandpit are on vertical slopes. It wouldn't pass any kind of OSHA (Occupational Safety and Health Administration) regulations, and is very unsafe. I hope Bruce is taking a real close look at what it is going to take to reclaim that sandpit and how much land area will be left for building houses based on a safe angle of repose. The excavation of 1.9 million yards for this project has been adjusted slightly? Now contractors in the Boise area and I have talked with quite a few of them lately, none of them have had a construction project in Boise, or a roadway project that had this much excavation on it. I heard the developer say nothing is going to be leaving the project, but if you look at his numbers in this report there is about a quarter of a million waste excavation left. Where is it going to go? That needs to be defined and spelled out. One point nine million cubic yards of excavation on the hillsides up there is going to leave a scar that you can't believe. Trust me.

Regarding the wildlife corridor, there have been a lot of things said for and against the wildlife corridor. All I want to tell you is I live up there, and have been living there for forty years, and I keep a close eye on things. Last winter there were 60 deer using the area in the wintertime. I don't think they know anything about a corridor, they just live there in the winter and that is where they reside. Just the other day we saw a white one. I don't know if it is an albino, I didn't get a look at its eyes. There might not be any excavation leaving this project, but trust me as it has been brought up and said there is going to be hundreds and hundreds of truck loads of material base, plant mix, pipes, and everything else you can think of going up there in terms of traffic on the local streets.

Patti Raino – I live basically right under much of where the proposed subdivision is. I have several concerns and I concur with the Collister Association comments. Part of my concerns is that West Outlook is a small street. We are already a pass through street for traffic that doesn't want to hit the stop light that wants to go onto Albertson and other places. We get all of that traffic down our street and we can only expect there will be more.

The other is that putting more houses up on Polecat Gulch concerns me as far as flood zone. I know I have been told, I asked this question before, that they have looked into that but I saw the amount of water that came down our street this year when we had storms that occurred. In fact, they have been doing work on storm drains down below and hopefully that may help it, but as you put more houses up there the amount of sand and debris that will come down Collister and then turn onto Outlook is going to only increase significantly. I would urge you to not pass this. I think you are looking at a very important precedent of the Foothill Ordinance.

Lowell Browning – I have lived in this area since 1956 and the neighbors who live on Hillside feel the same way I do. I don't know anybody that is excited about this project. I wish you could find another way to get the people out of Plano, some other way besides Collister. I live on Hillside and I have to go east on Hillside to get onto Collister. I have to look up and down the street to see if there's anybody coming. If there is anybody coming, I have to wait for the traffic to clear because by the time I turn my car to the right to go downtown I have to cross the other side of the street to get onto Collister. Sometimes, even now I have a problem getting on there and sometimes people coming from somewhere up there like to come down our Hillside avenue as a short cut because of traffic backing up at other places on Hill Road and Castle Drive. We get together and talk and we all have the same problem. I wish you would listen to our complaint and deny this application.

Justin Wortham – I wanted to go on the record that Kerry and I are good friends, with no problems or hard feelings. I just want the facts set for the way I see them. Everybody talks about the Polecat Gulch access. Everybody goes crazy over it, but mountain biking here lately to our people are like okay, fantastic, we are going to put a hundred and something homes in the Foothills to have this little bit of access, and will go right around to Cartwright and have the same trails. It doesn't make sense. The city is like we are going to get the Polecat Gulch access, but at the same time you are putting all of the homes there defeating the purpose of the mountain bike trails. In regards to the sandpit, another gentleman commented on the vertical height of the sandpit. Each one of you, before you make a decision, better go look at them. It's not fun and games. I put a home up there myself and I have lived there my entire life. It took a lot of cutting,

a lot of sloping to even get access for one home, so let's not brush over the fact that we are putting them in the sandpit. You better be real clear what you are looking at. I'm talking something so vertical that before you sit here tonight without looking and making a decision, you better understand. The gentleman here talked about the deer and what Fish & Game thinks. The other guy talked about it saying there are about 60 to 70. I'll dispute it, there are 80. If you want to come up and look at them, we'll look at them. A corridor, I don't know if they can read the sign that says corridor or not. They are there.

The mayor on TV the other night talking about Boise, great for biking, great for wildlife and everybody is going crazy. I guarantee you, you put the homes where you want to, but at the same time you put them there you are going to lose it. I just said Kerry Winn is a personal friend. I appreciate what he is doing and I appreciate private development. I'm not against that at all. At the same time I'm just trying to say that if you put them there it's going to be gone. We all appreciate that and we appreciate what Boise is. We all appreciate the Foothills, and yes I am very blessed to live there myself, so do we go less density? Do we go do something different? I don't know. All I know is that it seems overwhelming. It seems Polecat Gulch access, fantastic. Everybody is going crazy. Who is going crazy? You have a hundred and something homes up there where you are up there riding in the first place to where you don't want the homes. The deer don't want it, corridors, nobody is reading in the word corridor. We are going to move the homes to the sandpit. I would love to have one up there with the vertical all behind me. You better look at the excavation going on and the fill going on to the sandpit, because it's big time, it's very big time.

Diane McConnaughey – I appreciate your time for being here and giving us a chance to testify. I think we are really facing a lot of tough decisions in Boise with where do we develop and how do we develop.

Unfortunately, it seems like most of these developments are considered case by case and we look at each impact by its own impact and not comprehensively, which is very difficult to do. We know this is not the only development planned in the Foothills area, or in the areas north of Boise. All of this is going to have a tremendous impact on Boise as they progress. My main concern tonight with this development is the increase on Hill Road. Hill Road has no sidewalks. It has bike lanes, but sometimes these bike lanes are somewhat narrow and at times visibility is rather poor along it. The increase of 1,500 trips or more a day just from this development would be tremendous to the bike riders. Right now I live just off of Hill Road. If I leave the house after 7:20 in the morning, getting onto Hill Road is an interesting experience. In the winter I have had to put chains on the car because I have to stop before I get onto Hill Road. Increased traffic will probably make that access impossible for me. Again, I would like you to consider that together with other development proposed and the traffic and the reduced quality of life this will have on the neighborhoods already there.

Carsten Peterson – As someone has already mentioned, Outlook Avenue is often a cut-through street between Hill Road and Collister. We get a lot of traffic from Quail Ridge. As you go west down Outlook, its downhill at a pretty good slant. People basically treat that like a race track or freeway going down there. There is no posted speed limit but it is a 20 mile an hour zone rarely treated that way. The frontage of the homes on Outlook is very close to the street. We have kids

on the street that are endangered by the driving. I'm concerned about the traffic impact by this proposal that anticipated cars at the intersection on Hill Road and Collister will only increase the cut-through traffic through Outlook, Hillside and the other streets up there that should be taken into consideration. In addition, the wildlife concern, it is again going to have a negative impact on wildlife. As stated earlier, they don't know where a corridor is and I am concerned of the impact.

Devin Ogden – I would like to echo everything that has been said. I don't want to be too redundant. The one thing I wanted to bring up and I think someone did mention it earlier. One of my main concerns is that, it's a cliché and I hate to use it, but opening of the floodgates for development in the Foothills. Approval of a project like this can open up the standards for future development. We are having this issue now, but it can open up to a lot of other developments in the works now trying to go through the same process, as well as things in the future, and then we can lose control from there.

Stephanie Bacon – The impacts of this development on my home and those of the other households would be absolutely hideous, but I'm not going to focus on that tonight. I want to take a moment to state that the land in question is quite beautiful and is very steep. It is much too steep for a development of this density. It seems like exactly the kind of development the Foothills Ordinance was intended to prevent. Serious scrapping of narrow ridgelines would be necessary to place these home sites and create the road and that is why there is an obscene amount of cut and fill proposed. I'm particularly disturbed that the credit being claimed for the protection of Aase's Onion. Since the entire site current zoned RP is very steep, the entire site is habitat for the onion. I, myself have observed them blooming for the last two consecutive years on the very trails and ridgeline that would have to be scrapped to build the roads and the home sites. This proposal makes a significant loss of onion habitat inevitable and no one can say with certainty how dangerous the grading and result in habitat intergradations to the protected acres would be.

I want to point out that the onion is only visible in April. At other times of the year it's not realistic to think it could be even be recognized, let alone protected during construction. While it is well intended, I think the Aase's Onion Conservation Plan prepared by the Treasure Valley Land Trust is conspicuously vague. It notes that "*no current monitoring protocol for Aase's Onion which has been adoptive...It has been anticipating that a monitoring protocol will be developed and adopted within the next two years. Monitoring of current population and habitat trend will begin when such a protocol is created.*" In the interim they "*offered to create a snapshot of the current population extent, but they don't define what that term means, or who is going to do it or with what regularity. They also note the Land Trust will work with Boise City Public Works to inform contractors of the conservation land and to outline best management practices to avoid inadvertent impacts during site grading. This is the time the conservation land is most at risk of impacts.*" However, as the developers repeatedly acknowledge construction and in hence grading could extend over a period of several years. Five years, ten years, we don't know. This is long enough to wipe out a sensitive plant community through inadvertent impacts.

Other neighbors have spoken well about the negative impacts of this proposed density on downstream neighborhoods and traffic. I would like to add again that the project offers no economic diversification. Its big fancy houses and we already have a lot of those sitting empty in Boise, so I don't think the development has anything to offer the city to justify the harms and

degradations associated with it.

John Odle – My largest concern with the development is the safety of bicyclists on the road with the opening of the Polecat Gulch area. There are a huge number of cyclists up and down north Collister. There is no improvement in north Collister and with the deaths of cyclists already it is a huge concern, concerning how many houses from that end. I have seen a huge increase.

Scott Kolb – I'm up hiking at the end of the canyon usually three or four times a week. I can verify from this gentleman's earlier testimony there are at least 80 or more deer that live up in the canyon. There is a huge wildlife area. What you can't see from this map is that Collister Canyon opens up to a big bowl at the end where there is currently a small ranch and that is the current reserve area. Besides the deer, anyone who has hunted elk, it is very evident that we have the elk wintering in the canyon every single winter. I noticed there is a pair of albino deer and that green area at the end of Collister is usually where they can be spotted on almost any winter or fall day. You can usually spot them from the beginning of the ridge. I don't know what Fish & Game's definition of a wildlife corridor is. I am curious to find that out, but I can tell you that this side of the road they want to punch up from the end of Collister towards the west is a very narrow slot canyon. From everything I've seen that is in fact a wildlife corridor. In fact, two nights ago I saw 32 deer before they went out of sight heading up that slot canyon where the road is very narrow. The reason they are going up there is because to the west of this development is the only really good source of water for this wildlife in this entire area, and that is Deer Creek and the ponds and the primeval water that exists up there. The impact on wildlife needs to be seriously thought out here and needs to be reexamined again, because this is severely going to affect the deer at least and probably numerous other animals that are now using that corridor where they are building a road.

As I said, I am up there three or four times a week, usually in the evening times and I can tell you that in the last couple of years I have not seen any Fish and Wildlife people there observing.

Something about deer and wildlife, they only come out at dusk, very early morning hours and at night time, so, unless you live up there and have spent some time getting to know the wildlife, it's very difficult, unless they have spent some serious time and effort into that area as an outsider to observe what the wildlife is like.

Carrie Jones – The Boise Foothills are the defining characteristic of our valley and our city by evidence by the beautiful mural behind you and I don't see housing developments on that mural, because whereas we need houses and housing developments, that isn't how we define ourselves as Boiseans and southern Idaho. I think because this is a precedent setting decision in regards to the Foothills Planning Ordinance that what we are faced with is what we want our legacy to be right now. Do we want responsible development considering the existing neighborhoods, wildlife and the recreation that we enjoy in the Foothills to be the precedent that we set right now, and I would respectfully plead the answer to be yes to that question. My other concern is also one of legacy and sustainability. Boise is showing itself to be very concerned with sustainability and one big chunk of evidence towards that is the increase of bikers, and Hill Road is a main biking corridor. I firmly believe we ought to have considerations of sustainability becoming embedded in the developments we are planning for our increase in population. As was pointed out by the

neighborhood association representative this isolated vehicle dependant development doesn't address the needs of sustainability that Boise needs to be looking at as we go forward.

Ester Ceja – I am part of the Collister Neighborhood Association. My biggest concern is traffic and I'm wondering if you guys have looked at the cumulative traffic impacts. I know tonight many people have voiced their concerns about traffic, and one of the things ACHD, the county and the traffic planners for developers do is they fail to look at cumulative impacts from proposed, or approved developments in the neighboring areas that would add more cars to Hill Road and Collister. Before you make your decision, I would urge you to look at those cumulative traffic impacts.

Mary Gendron – I am a fourth generation Boisean. My great grandfather came out here in the lumber industry and helped build Idaho City. So, I have grown up here and witnessed this town going from 35,000 people my senior year in high school to the size it is now. It is a beautiful city. I've gone around the world and I have lived in Australia. I have seen damage big cities have done to their beautiful landmarks. I do not want to see it in my home. I want your decisions to be a benchmark for the future of our city to stop these developers who come in and want to take our beautiful pristine Foothills and turn them into skyscrapers by virtue of 28 feet on top of a mountain. It isn't to be done. It can't be done. This is so very important.

It's like you give them an inch and tell them today, okay, you can scrape this little bit and put this little house here, but next week it's a bigger house next door. Then there is no stopping it because somebody let it happen to begin with. We have to stop. If they want to build back in the Foothills, build back in the Foothills not on the front of our ridgelines. Not where it is visible from the bench, from the airport or from the freeway. They need to build back further into the Foothills and build sustainable smaller communities with access by virtue of established roads, roads that do not cause impacts in residential only areas. Use roads that use commercial viable routes.

The other thing I want to know is if our developers had the courtesy of presenting you, or the neighborhood with elevations, renderings showing us what your visual impact anticipations are going to be. I am the daughter of a commercial construction contractor. I know what a rendering is and I know that they will identify how badly you want to impact us. My backyard looks straight up to the hill. Whoever builds up there will look right down into my backyard and all of my neighbors'. It's unfortunate that you can't understand that moving back one more ridgeline so that you aren't right over the top of everybody, and using arterial roadways in there that are more commercial, not residential with the volume of traffic you want to have there.

Ed Genthner – I have lived in the valley all of my life. I have actually lived on Plano Lane all of my life. I elected to stay there after high school. I got married and bought a place right at the base of the canyon as you come out of the development on Plano Lane. Twenty seven years after I bought it I tore it down and built a new place there, just because there is no other place that has so much privacy and that is going to be lost if this development goes in. I can hardly believe that somebody can come in and develop an area. It totally devastates our pristine homes as many of the neighbors will testify also. Another thing that is going to happen on Hill Road is if you have ever had the pleasure of driving in on Hill Road in the morning and sitting through two or three

lights at 36th Street, and sometimes four lights. People do u-turns and it is absolutely amazing after growing up in the area and watching this traffic increase with each development and as a kid with no traffic you could ride your bikes. We won't even let our kids go out on Hill Road on bicycles anymore, although there are a lot of bikes. I have seen some crazy things happen there every day, morning and night. The devastation of that and the devastation of the Foothills and wildlife are all important factors. That is why we are all out there and that is why we all live in Boise to hopefully be able to control some of those things that are going to be detrimental with the development.

Brent Smith – Mr. Eggleston, could you put up that photograph of mine, the distant view with the shot from above Chinden? I have had major problems with this from the beginning and it was originally based on, and of course it still is, based on the developer's contention that there are environmentally positive elements that are going along with this development and based on those, he at first was asking for a density bonus, and now he is still asking for a density bonus. I'm not sure if it is based on his riparian area, wetland, onion preservation or not, but now he is asking that his density rights be transferred from land, some of which is very buildable and is zoned appropriately, to land that is not buildable and is not zoned appropriately. Much of this land has been bought in the last two or three years. The land on top, the sandpit land is zoned as RP, as everyone knows, and I simply do not understand what the basis is for even considering transferring these density rights from this land to the RP land? The developer has had this land that was developable for years.

It's been zoned appropriately and now all of a sudden he would like to take land that his partner purchased and convert it from RP land to developable land. This development is really about nothing more than money. It has no interest in trying to adhere to the Foothills Ordinance. It's really about getting the houses on the hillside and this is the photograph taken from above Chinden Blvd. where you see Quail Ridge on the right, and you see where Plano Subdivision is going to be which are represented by the white dots. You can blow that up or take a look at that from closer along State Street.

Those houses are going to be visible from a lot of places in the valley and there is nothing the developer can do about it. I do not see how you can possibly say this proposal fits the Foothills Ordinance. I just had someone tell me that the wildlife study indicates the contention is a low impact area for wildlife. That study was done six years ago and I personally have been in the Foothills many, many times and have seen up to 30 – 40 deer that live there all year long.

Commissioner McLean – I would like to ask Mr. Smith a question, just so I understand these pictures. Are these dots corresponding with the new proposal? They are different than the pictures he submitted last year?

Brent Smith – Yes.

Commissioner Russell – Before we took the break, we had finished all of the public testimony, I believe. Are there any other members of the public that would wish to testify this evening? Seeing none, commissioners do you have any questions for staff, or the applicant at this time?

Commissioner McLean – I've got a list, but I would like to start first with a question for Hal. I was wondering if you could address, because I don't see it in this packet and I know it exists, some of the reasons City Council sent this back to us, specifically regarding annexation and zoning designation.

Hal Simmons – City Council did have this item on appeal. They provided statements of concern about the way the base density was calculated. They basically determined the Commission had made an error in not allowing for density calculations based on the existing zoning on some of the properties. They concluded that the Ordinance we are all following did require you to allow for transfer of density off of existing parcels onto the larger Foothills parcels. Beyond that they expressed concern, as you did the first time you saw this, about some aspects of the design of the project. They did ask the applicant to, when they had a chance to come back to the commission, to re-evaluate the base density issue. They did ask the applicant to seriously consider working with the neighborhood either through neighborhood workshops and design charrettes, or through a mediation process to come up with a re-design of the project that did make more significant effort to cluster development. They did ask that they try to protect the most prominent ridges and move units off of those ridges to other portions of the property and to explore the use of narrower lot sizes and other techniques. Those are the two things they said. They instructed the commissioners to go back and look at what the ordinance says about base density and recognize that they have a right for more than one unit per forty areas. Secondly, they told the applicant to re-design.

Commissioner Barker – I have a question for someone from Public Works. This may seem like I'm not being serious about my question but I am very serious about this. I was wondering if you could explain to me how moving 1.9 million cubic yards of material applies to the Foothills Development Ordinance with respect to minimizing Foothills disturbance?

Terry Records – I can't answer that.

Commissioner Barker – The reason I ask somebody from Public Works is, if I understand this correctly it's you folks that will be looking at the grading plans and looking at how the land would be contoured in order to meet some engineering requirements but also on top of that is the Foothills Ordinance which talks about minimizing Foothills disturbance. I just need somebody to answer that question as best they can.

Terry Records – Minimizing grading has always been something that is difficult to answer and I don't know how to answer it. There is no criteria about what minimizing grading is. The City Engineers Office looks at the engineering of the project. The other project, if we get another project, we will make sure it is engineered properly. Minimizing grading, I think that is a planning quote.

Commissioner McLean – I have a question to tag onto Commissioner Barker's questions. Along those lines, and I know it's hard because you can engineer most things it seems and that is what you do is make it safe, but we have before us an issue, and in the Foothills Policy Plan it mentions excessive grading, or excessive fill and it is a planning question for us to decide. I am wondering

if you could shed some light on some other examples in two developments I was thinking about. I don't know if you've got information, or not. Quail Ridge; I'm wondering about how much fill was moved at that development. Somerset and the other one I was thinking about was Warm Springs Mesa, the number of homes and amount of fill, because when it comes down to it, if it is a planning question we've got to compare it to other dirt moved.

Terry Records - Thank you for asking me something I can answer. I anticipated this question and I was ready the last time, hoping someone would ask. I apologize for my response, but seriously, as for criteria, as an engineer, I can answer that. Arrow Head Canyon, which is at the end of 36th Street, had 400,000 cubic yards and 40 units. It works out to 10,000 cubic yards per lot. Arrow Head Ridge, which is just up the hill from that, also had 400,000 cubic yards, 53 homes, which works out to about 7,500 cubic yards per lot. Summer Set Ridge, 420,000 cubic yards, 89 lots, which works out to 4,700 cubic yards per lot. Hackberry, 45,000 cubic yards in one phase of that development; 45,000 cubic yards, 7 lots for 6,500 cubic yards per lot. But I caution you, you can't compare developments as they are different topography.

Commissioner McLean - Mr. Chairman, where are we on this list then?

Terry Records - Plano Lane, 2 million cubic yards, a 155 lots, approximately 12,500 cubic yards per lot. The only other development that you can compare this to is Quail Ridge, and it was before my time and I really don't know the numbers. I suspect that they were similar numbers. There is one area where I can say they did minimize grading on this development in comparison to Quail Ridge, because of the action of the Foothills Planned Development Ordinance, and the prohibition on developing on slopes steeper than 25%. In Quail Ridge they took the cut, they filled in the tops of the gully, the eight building lots. In this development because of the prohibition on putting a house on ground that is steeper than 25%, they didn't do that. So in that respect this development did minimized grading because they couldn't put dirt where Quail Ridge did. Does that make sense?

They were forced to minimize grading, and in that respect they did, because they couldn't fill in places as they did in Quail Ridge.

Chairman Russell - Is that clear Commissioner McLean?

Commissioner McLean - Yes.

Commissioner Barker - I didn't mean to put you on the spot. I really was looking for a way for us to say that this amount of fill complies with the Foothills Development Ordinance. Having said that, I now have a question about the traffic volume. I guess it will go to Bruce since we don't have anybody from ACHD here. The ACHD letter of July 30th seems to indicate that upper Collister is sufficient to handle increased volume and that planned improvements on Hill Road will improve peaked capacity. Could you review for me the current level of service on Hill Road and how this will be impacted, not only by the proposal that we have, but by other potential build outs?

Bruce Eggleston - The ACHD report addresses it in a couple of places. The account table was based on 2007 numbers which were current when the application came in. They are saying the 2007 figures are LOS C or better, and they go on later in their report and say that in 2012 the level of service on Hill Road will go to E at the intersection of Collister and Hill Road and this is the justification for the off-site improvement of the traffic signal at that intersection. They don't go further than that; they level us at 2012 and level of service E at that intersection. As far as the other developments, I'm assuming that they are taking them into account, that's all I can say. We would have to ask them specifically what they did take into account for the 2012 estimate.

Commissioner Fadness - Bruce can you tell me, when we say this western edge of the Foothills is the most developable compared to other parts, what are the criteria? What is it that makes us say that this section of the Foothills, as compared to other sections, is the most developable?

Bruce Eggleston - There is a literal answer to that and a historical answer. The literal answer is that on page 4 of the Foothills Policy Plan it divides the hills into the 3 areas, the West, Central and the East. The East is more dedicated to wild life habitat, Central as small capacity that would have to be proved up and the West basically is the desirable area. The background around that, extensive studies before the Foothills Policy was developed in 1997 and later through the interim, the Foothills Transportation Plan, the premise was that the traffic was essentially consumed in the eastern areas. At that time Harris Ranch was pending, Harris Ranch had already applied, Warm Springs had already applied, Boulder Height Estates, various other applications had come in. Looking at these applications that we knew were already in or on deck, prior to the adoption of the Foothills Policy Plan, the eastern foothills capacity was gone. And as we see with the adoption of Harris Ranch and Brighton, that capacity is gone. The Central, their studies showed that and the Foothills Transportation showed that there was approximately 90 units that could be built in addition to what was already entitled but that has long ago been consumed. This area, when we did the traffic studies in 1996 and 1997, did have capacity on Hill Road, 28th Street, Etc. That was the real issue behind that statement in the Foothills Policy Plan.

Commissioner Cooper - There has been a lot of discussion about the idea of transferring density across this entire application. The diagram that you made is pretty dramatic, in that it shows a similar density using existing allowed densities. There is an element you show in your diagram that is concentrated in the A-1, R6 and R-1C areas, there is very little in the RP. I just wanted you to go over again for everybody, the idea of how one can transfer density across the project.

Bruce Eggleston - The Foothills Plan Development Ordinance specifically allows that transfer of density, once it meets the criteria. This is the same for any planned development; it's not exclusive to the Foothills. Where property is assembled under one application, or a planned development, that transfer of density is commonplace. The same applies here. There is a line drawn in the sand when calculating the base density which was calculated on exactly, specifically, those parcels without transferring density to come to some kind direct approach to calculate base density here, or as a precedence being set for the Foothills in general that we look at the density on each parcel individually, and that was to set that number for base density. The broader plan development ordinance allows once you have that entitlement conditional use permit the density can be transferred wherever and that is the way we look at it here. The first part of the exercise

was to set the base density on each individual parcel, the result of that is the ability to put those anywhere they're suitable to meet the other criteria and standards.

Commissioner McLean - Was the intent of that allowance in code, the ability to transfer density, related to the desire to see more clustered development within the Foothills or is it strictly, you can put it where it could be built?

Bruce Eggleston - That's exactly right. We constrain the development to this, the less steep areas. That was a primary design criteria, clustering. To achieve both of those things we have to allow units to be moved from where they might generate to where the clustering would work the best. The clustering is the one thing that is kind of universally supported in the development of the Foothills Policy Plan, clustering and building on slopes less than 25%. Everyone could see the rationale behind that in the results it would have in protecting the steeper areas where sensitive things occur. It was very much part of the design, the simple ability to move units from one part to another part. The clustering is the very essence of lessening the overall impact in the Foothills.

Commissioner Russell – Any more questions?

Commissioner McLean - A question for the applicant. The City Counsel addressed several concerns in remanding this back to us and I think what Councilmember Eberle said was the design, and that we reevaluate the base density, which has been done. That the applicant enter into either a charette or a mediation of some sort and then came back with something that would protect ridges, cluster development and narrow the lot sizes and I am wondering why you chose mediation as opposed to a charette, we could start there. Then if you could address how you believe that you did what the City Council asked you to do.

Robert Burns - Mediation verses charette; there had been a series of meetings with the neighborhood groups prior to the time of the hearings in which the development proposals had been discussed and revisions had been made. The developer viewed that the progress had gone as far as it could for a meeting with the community groups in a presentation type format. In order to get over the hurdle, we felt that it was important to have somebody that could do some arm twisting on both sides, mediate the process so that it would try to elicit, or even better, force an engagement by both sides to find common ground to bring the issues to the table, to understand the other's point of view. We felt that the mediation process was the only way that we knew how to get to that because of what we viewed as a deadlock with moving with the community. And so we asked for this city supported mediation. The city supported mediation was initiated, we had one mediation session, the developer agreed to fund additional mediation sessions to try to keep that process from going but unfortunately all but one of the participants in the mediation process withdrew and wouldn't participate any further. So that is the reason we're here. With respect to the design criteria, when you come to the lots and you talk about reducing the size of the lots, first of all... (interrupted by Commissioner McLean).

Commissioner McLean - Mr. Chairman, instead of the reasons for, I'd prefer to hear whether or not lot sizes were reduced.

Robert Burns - If we further reduce lot sizes the density goes up.

Commissioner McLean - So Mr. Chairman this was not changed...

Robert Burns - There was minor reduction as I pointed out earlier, there were 2 lots added to the existing development which has the effect of reducing lot width. If we reduce lot width additionally, we are going to increase density. The density is along the backbone roads. The road is required in order to have dual connection between Plano Road and Collister. The road is there. To the extent that we reduce the width of those lots, we increase the density.

Commissioner Baker - So help me out, I understand that the road goes from one end to the other and you have to keep that. So what you're saying is that you can't afford or it is very expensive to build portions of the road that have no lot frontage on them and you make them narrower. Is that what you mean?

Robert Burns - Absolutely. Building the road is an extremely expensive proposition. The road has got to be constructed from one end to the other, unless there is going to be a grading in other locations as well as where the road is being cut in order to gain access to the site. The logical place for the density is along the road. If we reduce the width of the lots along the road, that increases the density. One of the criteria that this Commission provided to us when we met on June 15th was to do a redesign without increasing the density to any more than necessary. We can increase density by reducing the width, it's a tradeoff.

Chairman Russell - Any further questions at this time? Alright, at this time I would like to go back to the members of the public that have testified, there have been some questions asked, comments made and some additional facts presented. If there were any facts or comments that any of the folks that testified earlier disagree with, you have a short opportunity to dispute them at this time. I am going to limit that testimony to 2 minutes and I don't want to hear the same question or the same fact disputed over and over again by different folks, but I do want to give you the opportunity to comment on what has been said just during this Q and A period.

Brent Smith - I just want to address the reasoning that I just heard about lot sizes, widths. Why do we have to increase density if you reduce lot width? Why don't you just reduce the number of houses?

Stephanie Bacon - I don't know if it is correct to address what I believe to be misinformation regarding the mediation?

Chairman Russell - If there was something that was stated in this Q & A, which you dispute you are welcome to address it.

Stephanie Bacon - I was present at the mediation and I was one of the three of the four neighborhood representatives that asked that that mediation session be discounted and that mediation be reinitiated at city expense with a new mediator because we had good reasons to question the partiality of the mediator. Letters were addressed to Planning and Zoning, to City Council, to ACHD, and others involved in the process. City staff explaining our objections to the

mediator but at a work session subsequently, apparently the developers represented that everything had gone great at the mediation and that they didn't understand what the problem was. We did not withdraw from the mediation, we would have been happy to continue the mediation process but we could not continue with the mediator who initiated that process for reasons that my letter outlined.

Chairman Russell - Ma'am real quick, who determined who the mediator was?

Stephanie Bacon - I believe that was hired by city attorney Amanda Horton.

Ester Ceja - My question is actually regarding a comment that Bruce Eggleston made and that is regarding the ACHD traffic count. I would ask that you provide the Planning and Zoning Commission with clarification as to those traffic count numbers, whether they were projections or they were actual vehicles traveling on Hill Road.

Chairman Russell - Legal is it appropriate to have staff answer questions from the audience?

Amanda Horton (Legal) - The Commission may direct question to the staff, not the audience.

Chairman Russell - Bruce can you just give a quick explanation of those traffic counts and how those counts were obtained.

Bruce Eggleston - The traffic counts that I pointed out were actual surveys of 2007. Hill Road was a state count, a rubber road count for want of a better term. Those counts are maintained on a regular basis throughout the county and periodically as these types of applications come up they may do recounts but it is sort of an ongoing project, ITD.

Michael Jones - I have a question about this base density thing, based on what's been said. So we take these units from some place that could have been developed but wasn't, and now is moved to establish density to a more desirable place.

But the more desirable place for more than half of the units is the ridge-tops, which have to be scraped off to make them buildable and so when the Foothills Planning Ordinance says that the visual ridge-tops shall be maintained then how can that land which actually doesn't exist now and won't exist until the bulldozers treat it be used as a bases to transfer density from land that actually already does exist? It doesn't make sense to me but maybe there is a reason.

Paul Werner - I have a question for Bruce. When I was the President of Central Foothills Neighborhood Association we had ACHD at our meetings. One of the things we brought up was the Hill Road, because we are right on Hill Road, was the Foothills Policy Plan and the way it impacts. Somewhere in the Foothills Policy Plan it says *development is not to negatively impact downstream neighborhoods*, something to that effect. Now when ACHD came to our meetings, and I didn't bring the statistics, east of 36th and Hill, I believe it is LOS D and when you get Harrison Boulevard it is near F. It's at capacity and that is one of the reasons they can't develop anymore in the Central Foothills because Harrison Boulevard is at capacity and so is 15th, so this development will add roughly 1,500 more vehicles, most of those will be going on Hill Road,

many of them east of 36th. I believe Bruce you need to have the statistics but I believe we will be at LOS F, east of 36th. I think that this is something that needs to be brought up in more detail.

Chairman Russell - Any further comments from the audience specifically addressing the comments or questions taken place here? Seeing none we would like to move into rebuttal, you have 5 minutes.

Robert Burns - One of the speakers of opposition tonight raised the question of why does the density have to go up if you reduce the width of the lots on the backbone road. Why don't you just not build as many homes? I guess what the proposal is, is that there be gaps between the lots so that you don't have utilization of all the frontage along the road, and there is an easy answer to that question. If you look at page 48 of the staff report the allowable density on this project is an additional 30 units. So if you reduce the width of those lots obviously the developer is going to utilize the allowable density that is allowed under the city's ordinances. They're not going to just say look, lets just build fewer lots, make less money if any money at all or go bankrupt on a project that's not economically viable, the developer is going to use the density that the city's ordinance allows it to use. So if you reduce the widths of the lots, the additional density that the city's ordinance allows to be utilized will be picked up and that's the reason a reduction of the width of the lot results in increased density on the project.

One opponent has asked for a rehearing showing what the visual impacts would be but of course sophisticated renderings were already presented to this body as well as at other public hearings and I draw your attention to the booklet that was handed out at the first hearing here where there were detailed renderings that showed the visual impacts from the train station, Vista Avenue, from Hewlett Packard at Chinden Boulevard and Cloverdale Road, at the fairgrounds, Chinden Boulevard and Glenwood Street, at the Walmart, State Street and Glenwood Street, at Hill Road as well as an overview visual. The developer spent tens of thousands of dollars preparing these renderings of what the visual impacts would be and I'd ask this body to go back and take a look at what those are. They are in booklet that looks just like this, it was passed down on August 15th to this body and we also showed it on the overhead with the projector and with the computer back last August. Bruce could you go to the visual that was on the screen with the last speaker before we took the break, it showed a shot of the hills with homes on it.

What I want to bring to your attention is that the project has been designed not to look like the picture that was put on the screen, we have designed criteria that limits the height of homes, requires setbacks from ridge lines, requires color pallets to make the homes blend into the hillside, requires non-glare glass so that there is no reflection. All of these and other criteria are included in the design criteria to ensure that the visual impacts will be minimized for this project. Another of the opponents talked about the sandpit problem, about the vertical walls and how it is already a dangerous place. The whole concept of putting homes back in that ridgeline will require the impartment of cut from other portions of the project into the sandpit. It will fix an existing problem area. A problem area that is a visual scar viewed from many parts of the city will go away because of this development. We admit the sandpit is a problem. The project however fixes both the visual and the safety problems associated with the existing sandpit problem.

Some of the opposition suggested that the developer go back to the drawing board and work with

the neighborhood again on the design of the project but as I referenced in my answer to Commissioner McLean's inquiry just a little bit ago, the developer has worked with the neighborhood until there was no more fruitful give or take by either of the parties. We sought mediation for the purpose of resolving that, that lead to absolutely nowhere, and a withdrawal of the participants from that mediation process. The problem that we've got is that the Foothills Policy Plan designates the subject property as being within the first priority of development in the Foothills. Let me put that another way, the City's Foothills Policy Plan provides for the development of the project area as a first priority. Needless to say, a Foothills project is going to be in the Foothills. We can't develop our property, which is in the Foothills without developing the Foothills. The city's plan provides that this area is a first priority for development. I have more but I see my time is up.

Chairman Russell -That concludes our public hearing for the evening, the public hearing is closed and Commissioners will deliberate for the decision.

Commissioner Baker - We probably need to consider the annexation separate from the conditional use permit and separate from the Foothills Development permit. I would like to recommend approval of the annexation of the 296.12 acres with the approval of a rezone zoning designation of R-1A/DA, that's single family residential with a development agreement and zoning of A1/DA, open land with development agreement on the specified acreage that we see in the staff report. The intent of my motion is to approve the annexation request and the recommended rezones.

Commissioner Fadness - Seconded

Chairman Russell - Is there a discussion?

Commissioner Baker - I know we focused on things other than the proposed zone change. Referenced page 23 of the staff report...*that the zone to contiguous to city residentially zoned neighborhoods and the proposed use and zone change are compatible with the surrounding zones.*

Commissioner Cooper - I would just comment that I think we saw in here a map with a specific distribution of these two zones based on this design, and that's where I'm having a little trouble.

I agree with the annexation and I'm not sure about the design and therefore I'm not sure about the specific zone layout.

Commissioner McLean - That was my hesitancy to second the motion as well, the rezone issue. I'm not sure what happens if the design is tied to the rezone, with the design and the development agreement. I have some concerns with that as well.

Amanda Horton - These matters are kind of tied, especially in light of the Foothills Ordinance that says that development shall occur through annexation and zoning of the developable property or the properties that are approved for development as R-1A. So it's kind of chicken and the egg, which came first? However, in this case you are making a recommendation to the City Council on

the annexation and rezone. It is not done with you. If you, through the consideration of the conditional use, need to change that I think you could make some changes. The rezone is going to follow the CU.

Commissioner Barker - I think in making the motion, I felt like perhaps through the CU and through any other applications that we have before us, such as the subdivision, that conditions could be placed on this development regardless whether it was R-1A. Conditions could be placed through the development agreement, which we are applying to this zone also. So although there is the argument that by establishing the zone we're establishing where development can occur, I still think we have enough power among all the other permits before us to express concern about what that development looks like.

Commissioner Cooper - Maybe then, I think many of us don't know how they would vote on that motion without going through the rest of this; with the zone and the CU just so we could get a whole picture.

Chairman Russell - Maybe the appropriate thing to do is to have some discussion on the CU, not a motion, but maybe just some discussion about the design. Talk about the things that are of concern and then come back to the motion on the annexation and the rezone, at which time we can hopefully place some conditions on the annexation and the rezone which are tied to the changes we perceive making in the CU approval.

Commissioner Barker - With that request and with the approval of the second, I'll withdraw my motion regarding annexation.

Chairman Russell: Now is the appropriate time to discuss the issues and concerns that we have. Is there any discussion at this time regarding design and issues with the conditional use application?

Commissioner Cooper - I understand the reasons that Council remanded this back to us with the problems of how much development we were allowing based on our zoning selections last time and I accept the density that staff has come up with, and the bonuses. I continue to have a lot of trouble with the specific conditional use layout of the project. I think it is better. There has been some compromise.

I'm sure that the applicant has given up some very high dollar ridge-top sites in exchange for ones in the sandpit, which I'm sure would be worth less. But there still remains in my opinion places where this development could be changed to better represent the goals of the *Foothills Policy Plan*, such as use of the area south of Collister Lane to the east. I believe that was an area that Bruce had shown several lots with the course reduction on the ridge-top. Reflecting on Mr. Burn's discussion about reducing lot width by increasing density, I guess I would suggest that we focus on the cul-de-sacs. They are not part of the backbone road but some of them are very prominent. It's very hard to tell with this scale what the elevations of various parts are. I guess that's where I'm sitting right now.

Commissioner McLean - Question for Commissioner Cooper, if I may. When you talk about the

area south of Collister Lane, are you talking about the little area of the map that says A3, the area around the blue?

Commissioner Cooper - Map 1 of the booklet we received this evening. The map shows, as I understand the blue areas are buildable areas and there is a substantial blue area after Collister on the east side of the project.

Commissioner McLean - When you mentioned the cul-de-sacs appeared to be in somewhat prominent places are you implying, or would you prefer to see, some of those scaled back so we have fewer ridge-top homes, is that what you're looking for?

Commissioner Cooper - I would like to reduce the ridge-top prominence of the project. I know some of this backbone road kind of follows the ridge-top. There is a cul-de-sac that is at one end of the part that was deleted, which seems like it would be very prominent. If that were deleted we'd still have the backbone arrangement, we would still have the situation that Mr. Burns was discussing, I believe.

Commissioner Ellsworth - Just a clarification. Commissioner Cooper, if you transfer the last would that be 2/3rds of Phase 11 then? You'd be substituting quite a few of those lots in phase 11 and dropping them over in what's now Phase 4.

Commissioner Cooper - Yes.

Commissioner Ellsworth - That's striking more of a compromise than we've already got?

Commissioner Cooper - Yes.

Commissioner Ellsworth - I'm with you on that. I like that, because my concern is it's still too prominent on the ridge-tops. If I look at the Foothills Ordinance I think I could deny this application, at least the CU, just by talking about Section 11.14-01, about protecting the ridgelines and the uniqueness of the ridgelines. I think to be fair to the applicant we did give them some direction in August, that they were going in the right direction. What I am hearing now is that the applicant hasn't gone quite far enough. So I think that with that, it would go along ways towards improving this.

Commissioner Russell - I would agree as well that my concern about the current plan is the ridgeline development. I think that there have been some developments that have taken place with ridgelines over the years that have definitely created some visual impacts that I don't think the leaders of the city are 100% satisfied with. I don't want to speak for the Commission, but I'm thinking that maybe this Commission isn't 100% satisfied with this either, and I think that we should take a hard look at this design. I agree that the developers have come back, they have made some concessions, and I think that the effort was there but at the same time I do have concerns that there is going to be a visual impact from the valley. I know we did see some illustrations in our workshop. I know that there has been some effort to minimize the height of the roofs and to try to put the cuts on the backside of that ridgeline, but it still appears that the road is going up the spine, and because of that those homes are going to be more visible than we like for

them to be.

Commissioner Ellsworth - I think part of the problem is the Foothills Policy. There are some flaws in the Foothills Policy, and we've talked about some of these things. We're looking at maybe rewriting that at some point, but that is a big discussion and it includes a lot of people. I wasn't around when we did the Foothills Policy, but my understanding was the Foothills Policy was written with land owners that had rights to develop up there and a lot of people set down at the table and so far this is the best thing we've come up with. This is one of the first applications that's really tested the Foothills Policy and it is kind of interesting to me to see some of the flaws that have been brought up here. One of the flaws is we really force the developer to build on the ridge-top because that is the developable area and it's the 25% slope issue. I'm not saying that we should necessarily change that but maybe we should look at developing on slopes that are 25% because then you could build houses into the side of the hill instead of right on top of the hill, even though that is more expensive. If people really want to live in the foothills, then maybe that is part of the discussion we'll have when we take another look at the Foothills Policy. That's not in front of us tonight but I think it's worthy of some discussion. We really have this Catch 22, we have to build the road where it's easy or it takes less cut and fill and that makes a lot of sense from an engineering standpoint. Then once you build the road you pretty much have to build the houses along the road and that ends up on the ridge-top. I think if we're going to build on these ridge-tops and future developments come along, I think we do need to set the bar quite high. I think that the message is quite clear from Council and the public that we do not want to destroy the backdrop of the City of Boise. Sixty percent of the people came out and voted for the Foothills levy and that told me that people are very interested in preserving the backdrop of Boise City and you still have to respect development rights. So I think the public is on our side and with that, we have some power up here to demand from the developers that they take a very creative approach when they start looping off hillsides and putting houses up there. If that means one story, if that means doing what some of the great architects have done in the past, creative design, building into the slopes of the hills instead of doing what is easier which is cutting a lot, next lot, cut a lot, next lot. Quail Ridge is a really good example of a bad development. Some of them have gotten better since then and you can tell from some of the cut and fills that Terry gave us that some of these developments are so destructive to the hillside. So developers have got to be creative and I think we have some power to tell them to do so.

Commissioner McLean - I'm struggling here because it is clear that the city has gone back now and done a base right that I can't agree with, this 157. So it is a matter as Brian mentioned, trying to balance this right to develop this land with all the other issues that are contained within the plan. The ridge-tops are a big concern of mine and so I would want us to make some edits there. I'm frustrated that we haven't seen more and I think it was the nature of the process that was chosen to design this. We've seen some very successful developments come before us and having used different processes where neighbors went to impasse to agreement and I think we would have gotten something much better than this. It's hard for me to feel comfortable designing from the bench, so my gut would be to start restricting this to death, really. As Brian mentioned, look at all different conditions we could put on to make this to work within the confines of the Foothills Development Policy. Actually I don't like that solution either. I am really concerned about

Collister Road. We've got a report from '07, but I feel like we've just heard in the last couple of weeks that there are new numbers out there and this was filed at that point. I think that we're not necessarily reflecting on reality when it comes to what's happening on Hill and the condition of Collister Road, so I'm really puzzled by ACHD's report on Collister's ability to handle it. The Foothills Ordinance wants us to cluster and get off the ridges so we look at the part at the top of Collister, but then more people are likely to go up and down there than they would the other direction. I'm struggling with that solution as well.

Commissioner Fadness - To address Commissioner McLean's concern about the approach we take. We were given some guidance; Commissioner Cooper made some excellent suggestions where the development could be shifted without reducing the numbers necessarily. But rather than add conditions, I would just as soon that we deny the CUP and have them come back with something else than to try and condition it.

Commissioner McLean - By doing that I just want to make sure we aren't in a situation where we've found ourselves in the past, where we've presumed something and then denied what was proposed, and then didn't like what ended up coming back and had to rezone. If we rezone this and annex this, there will be a requirement that we see a Development Agreement, that's agreed to. Correct?

Commissioner Russell - I would think that if we're heading down the road of denying the CUP then we should probably deny the rezone and annexation as well.

Commissioner Cooper - I wonder if we can ask legal if it is appropriate for us to approve the annexation with these zones without specifying acreage for the zones.

Amanda Horton - Under the Foothills Planned Development Ordinance, development is to occur through annexation and zoning of the developable property as R-1A. And that's the CU that you are considering. The Foothills Planned Development is the CU application that you are considering. So if you aren't approving the CUP or the Foothills Planned Development Ordinance, then I presume you are relieved from following the direction of that ordinance and you can annex and zone as you believe is appropriate. Does that answer your question?

Commissioner McLean - My interpretation of that is we could send it back to City Council again like what we did a year ago or if we want to be able to apply the Foothills Ordinance to this property we have to annex and zone it as R-1A.

Chairman Russell - Then you're suggesting annexing the entire property as R-1A.

Commissioner McLean - Annexed as proposed. While there is some discussions, I think it's important too because we're in the middle of Comprehensive Planning right now. It doesn't apply to this, but something that comes up often is whether or not this was a call to developers to develop this section of Foothills. A committee of land owners, estate holders and other people worked for many years to put together the target areas for the levy and then the Foothills Policy Plan. This was looked at as an area that would be developed in the future but that was not by any means meant to be a call for people to start opposing neighborhoods. We've struggled with that,

as we think about how we're writing this Comprehensive Plan going forward, but I do want to be clear that we recognize that there is a development right here, but we don't recognize that statement within the plan that means by golly it has to be done.

Chairman Russell - Back to the conversation regarding rezoning this application as presented to us. I guess I am concerned that in doing that we are limiting the ability to possibly do some creative design that Commissioner Ellsworth had alluded to, because we're not allowing him to work outside the perimeters of the R-1A area. So I am wondering if there is any validity in, this is just an idea but because we currently have the slopes protected in the Foothills Ordinance, would it be possible to annex it all as R-1A and let the Foothills Ordinance govern slopes and things of that nature. Then if there are some creative design ideas that the developer comes up with where potentially he needs to encroach on slopes that are steeper, is it possible at that time, through sound engineering ideas and reviews by Mr. Records, to allow us to encroach on areas that are a little steeper than we typically allow, if it's good design?

Commissioner Cooper - The density is established by the base zoning. It's already done; we can't do anything about that, so the developer has that. I am interested in your idea of rezoning it as all R-1A, because that means it's all developable but he can't exceed the density that is already established.

Commissioner McLean - Mr. Chairman, does that mean by doing that, that the Foothills Ordinance wouldn't apply?

Chairman Russell - I'm saying that my understanding of this application is that we're establishing the R-1A zone on the areas that they have proposed to develop with homes and they are zoning the remaining property as A-1 to keep it as open space. What I'm suggesting is that we annex it all as R-1A and then allow the Foothills Policies that are in place right now to protect the steeper slopes and things of that nature. What we are trying to do with this rezone here is we're trying to say, here's where you can develop and anything that's not rezoned is R-1A you can't touch it. So if we rezone it all as R-1A it gives them the flexibility to go back to the drawing board, be creative with their design and they are not limited by zoning lines. They would still be limited by the Foothills Policy.

Commissioner Fadness - Mr. Chairman, if I understand you right, you would remove the A-1 zoning and then they would come back with a plan that would still have a necessary amount of open space but it gives them more flexibility as to where to put single family residential units. Whereas if we leave both zones where they are, they are extremely limited in design proposals that they could come up with.

Chairman Russell - That is correct. I think Commissioner Cooper hit the nail on the head when he mentioned that they are also limited by the base density.

Commissioner Barker - I am intrigued by the idea, but in the process we can't change the ordinance, the Foothills Ordinance. When you suggested that we might be looking at development on slopes greater than 25%, I believe that could not be the case unless we amended the Foothills Ordinance.

Chairman Russell - I think you may be correct. What I was curious about; is there any possibility to go through a variance process to be allowed to do so if they came to us with a sound idea.

Commissioner McLean - Mr. Chairman, I would hate to go down that road, to be honest with you. A lot more cut and fill, it would seem to me. I know in some ways that would be more creative but I'm just not ready to look at something like that. I wonder if we could deny the annexation, rezone as we've mentioned and we could defer the annexation, rezone if we want to make sure that we are still working within the same confines, just to see a plan that we all like more. Those are the two alternatives that I see as possible tonight.

Commissioner Barker - I think with something this serious before us, where we are talking about how to interpret and apply the Foothills Development Ordinance, I really don't want us to venture too far into new territory. I am very uncomfortable with the broad base annexation, when we don't understand what that would mean and we don't understand how that could be applied. I just think that this is such an important project that we need to stick to a few things that we think we know. My big stumbling block on this is the amount of cut and fill. I think when we're talking about applying a policy that talks about maintaining or avoiding excessive grading and protecting ridge lines and at the same time we're looking at a proposal that has the highest volume of material to be moved per residential unit than any we've seen so far I just can't come to grips with how that is minimizing. Personally I can't support it for that very reason. I would be interested in seeing what this project might look like if it had, and I know every parcel is unique, and I know every development is unique, but if it was only moving as much ground as the highest volume we've seen so far in other developments and I know they are saying no, that's not possible. But I just don't see how I can say this is minimal when it's maximum. I'm really stumbling on that.

Hal Simmons - I thought maybe I could offer some suggestions. I guess if you have deep-felt concerns about the very basic elements of this development that is completely out of line with the adopted policy plan in the ordinance then I think you should just deny it and recommend denial to the City Council.

If you truly believe that there is an opportunity, or if you agree that it is reasonable to develop this property, and it is possible to achieve close to the unit count the applicant has proposed then I think rather than deny the project you ought to look for opportunities to work further with the applicant to redesign it. I think some of you have stated some ways that you would look more favorably on a redesign of the project such as removing some of the cul-de-sacs, replacing units elsewhere on other portions of the property. I guess at this point you could ask the applicant if they would be willing to come back and meet with you at a future work session.

I think they understand the depth of your concerns at this point and maybe agreeable, maybe not, to a further deferral to come back and make a last-ditch effort at relocating and redesigning the project. I think they could have a discussion with you at that time as well regarding the economics of that redesign. I guess that would be one suggestion that you just see at this time if the applicant is willing to take one more step back and work further with you on a redesign of the project. They didn't get that far through the neighborhood process, but you can at least suggest

that.

Commissioner McLean - I understand what he suggested, I'm not sure where everybody would vote, but if there are deep-seated concerns with this project I recommend that somebody makes a motion to deny and we'd see if that worked. Otherwise we could see if the applicant wants to work further with us directly. So there would be deferral, work a little further, try to get something better or just recommend denial to City Council.

Chairman Russell - I think what I heard there was that if this Commission feels that development is warranted up here, maybe not in this form, but at all, then we should look to defer and hopefully work with the applicant. If we feel like we're just not comfortable with the development in this area at all then we should go ahead and deny it.

Commissioner Fadness - I would like to hear how the applicant responds.

Mr. Burns - What I would like to do is have a short recess so I could discuss this topic with my client so I could speak. (A five minute recess was given). I've got to say the applicants are about as frustrated as they can be. They've worked on this for five years; they've met over and over and gotten direction. Every time they've gotten direction from somebody they reduced the number, changed the plan, there has been study after study, plan after plan, review after review at this point in time all of the staff is in support of the project, all of the agencies that have reviewed it are not in opposition to the project. We don't know how to design a better project. There has got to be development along the ridge line of this project because that is where the 25% or less area is. First of all we believe it is possible to study forever a project and never come to a resolution. We simply don't believe it's going to be fruitful to come to an economically viable project by going forward and study and study, do more plans and do more studies. We're at the end of our rope. We would therefore ask the Commission to vote on this project as it is, up or down but if it votes down we would want reasons why it does not comply with the Foothills Ordinances based upon the extensive review and comments that have been obtained from all of the agencies and staff that have reviewed the project. So we are asking this Commission to vote on the project as it's been proposed, after five years of modification, after study, after study, after plan, after plan after revision, after revision. And if you vote it down, please give us concrete reasons why it does not comply with the City's ordinance. Thank you.

Chairman Russell - Thank you Mr. Burns, I will say that I do appreciate your comments and I do understand your frustration. It's a tough decision for this Commission, obviously and the Foothills are a sensitive area. I would just like to say that it has not been our intention to waste your time. It's not been our intention to harm you or your client as a developer. It is our intentions to make smart decisions for the Foothills and that's really where we are coming from here. I appreciate your strategy at this point and I do apologize for the difficulty we're having in making this decision. So thank you very much.

Robert Burns - Thank you for your comment.

Chairman Russell - Commissioners I think that Mr. Burns request is a fair request. I think if we are going to decide to deny these applications this evening lets just please give him very good

reasons and grounds for why we are doing so. That way they can figure out what they are going to do from here.

Commissioner Ellsworth - I think it's unfortunate that they take that tack because I think that we're pretty close and I really think that we could get it. It's too bad because there is going to be a lot of time lost. To me that's not the right approach. I can state reasons and I will if we deny it.

Commissioner McLean - We don't have to do an up or down deny or accept, we are the Planning Commission and we can condition this to look appropriate. To go with our interpretation as the Planning and Zoning Commission of what the Foothills Ordinance looks like and desires in this very special part of our city.

Commissioner Ellsworth - Someone made the comment that we shouldn't be designing from the bench and I was hoping that we could send the applicant back to work with staff one more time to see if we couldn't find a little more compromise in some of the things we've already stated. It's the cut and fill; it's still too prominent on the ridge-tops. They do have a right to develop up here, I don't think we have a problem with the base density and I don't think we have a problem with the density house bonus. Maybe there is even more density bonus, I don't know what that comes out of this. But it does have to be economically feasible to do this, I understand that. We're not trying to take away from the economic feasibility of this.

Commissioner McLean - To respond to Commissioner Ellsworth, I agree. I would prefer not to be designing from the bench. There's no options designed from the table, again and I know that we've done this and we've looked at it a lot and we've spent a lot of time on it. But this is the first one that has come through with the Foothills Ordinance and we have to do this right. I think that there are enough of us on the bench here to believe it is a development right, so it's a matter of developing it in compliance with our interpretation of the ordinance. I think we would be better off to send something to City Council that clearly shows what we would like to see up here. I want to make sure that City Council realizes that we would prefer not to be designing from the bench up here. With that I would be happy to take a little time and start to design from the bench, if necessary, when we get to the CUP.

Commissioner Fadness - I guess I don't understand why in either case of denial or deferral we have to design from the bench. I think through our stated comments the Council understands our problems, basically the ridge-top development. For instance, if we made a motion to defer this to give the applicant another opportunity, the applicant can choose whether or not they want to do that. They might feel like they have a strong enough case. We're just the recommending body, they can go to the City Council and say the Commission told us to defer and come back with another plan, we choose not to do that, we're going to appeal the P&Z and make our case before the City Council. In that case, deferral or denial, I don't see any reasons why we have to, your concerns about designing from the bench are valid; I don't think we have to do that.

Commissioner McLean - Mr. Chairman, that's a great point, I understand that. I guess my concern in response to that is I'd like City Council to know what we would like to see. I'd forgotten about the fact that we could just defer as wanted and be clear in what we want to see in this and if they choose to appeal to City Council then City Council would be able to see what we

would like to see. Perhaps in comments we could be clear about what we'd like in this. If there is an agreement that there is a development right, I'd be comfortable with that.

Chairman Russell - Amanda I have a question for you. If we deferred this can the applicant appeal a deferral?

Amanda Horton - The applicant can't really appeal your decision until you have a decision. The CUP would be appealable; the other would be a recommendation only so there would be no appeal, so no.

Chairman Russell - I definitely have some concerns. I think this property is complicated enough, as the applicant has mentioned they have been working on design on this project for years and for us to redesign it up here this evening, it's not possible. I think we can make some suggestions as to what we'd like to see, but I'm not sure we can get to where we may want to get by making a few suggestions of design changes. I would feel more comfortable denying the project this evening. I think that the applicant is being clear that they don't want to go back through a design process; they don't want to go through a bunch of neighborhood meeting and design charettes. Most likely, I would guess, they want us to deny it and work with City Council through an appeal process. I can surely respect that. I think in our motion for denial we can provide input to Council as to why we denied it. Also the applicant requested that we provide him the reasons why we are denying it, and I think if we construct those reasons appropriately Council will know why we made the decision that we made.

Commissioner Fadness - I make a motion that we deny CUP07-00084.

Chairman Russell - Commissioner Fadness I believe we need to start with the annexation and rezone first.

Commissioner Barker - Mr. Chairman, one thing I was going to add. I still have significant concerns about the project but part of my uneasiness is that we've had a change to this project and we haven't seen all the parts and pieces that go with that change. We haven't seen a grading plan.

Now it is one thing to talk about moving 2 million cubic yards of ground but I'd just like to see what that looks like. We talked about having to make changes in a development agreement based on what we have before us this evening but those changes occurred in a lot of different places. I guess we could accept that, that would come hand in hand with what we do, but I'd still like to see a more complete package with everything in place. We've talked about ACHD saying there is no problem on Collister, there is no problem on Hill Road from 2007 data but now we're seeing that there might be new numbers. I'm not suggesting that we take a long time but I'm just not sure that we have a clear set of documents. The other thing I wanted to say is I think that when we had our work session it's fair to say that we talked about direction, but I know several of us at that time said that this is merely direction and it doesn't mean that the Commission has given it's approval one way or the other. I just wanted to be clear that, hopefully that meeting did not say this was going forward with those changes. I just don't feel like we have what we need.

Chairman Russell - Amanda just came over and she had a discussion with Hal and they have

decided because of the cart before the horse kind of thing that it would be appropriate if we chose to do so to make a motion and have a vote on the CUP prior to the annexation and rezone if that's what we feel more comfortable in doing.

Commissioner Fadness - I feel more comfortable in doing that because I'm not sure in how I feel about the annexation. I guess I don't see harm in going ahead with the annexation. But on the CUP, I will then renew my motion that we deny CUP07-00084. If I get a second, I'll state my reasons.

Commissioner Cooper - I second.

Chairman Russell - Does that include the foothills, CFH07-00022, which is the hillside application?

Commissioner Fadness - Can we vote on those both in the same motion?

Chairman Russell - Yes.

Commissioner Fadness - Yes it does, if the seconder concurs.

Commissioner Cooper: Secunder concurs.

Commissioner Fadness - I would state that the basic reason for the denial of the CUP is Objective 2, number 2 under the Foothills Policy Plan, stating that the natural scenic values of prominent ridges and knolls shall be maintained. Project design shall preserve the natural appearance of prominent ridges and skylines, and concentrate development on more obscured areas of the sites. Prominent ridges and knolls shall be designated by the City in the "Open Space Management Plan." The plan does state that this term is not intended to include every ridge and knoll in the foothills, and I understand that. I think that some of these are very prominent and I do think with a better design we could have more of the development set further back. So that would be my major reason, I'm sure there are others that maybe other Commissioners would like to add.

I might also add that the traffic reports by the ACHD, we didn't get a real clear indication from staff as to whether those reports included projected development and how much projected development. The numbers we have, as I understand, were based on 2007 numbers. I think we need a lot more detail in that area. Mr. Chairman there also seems to be a difference of opinion on dedicated wildlife habitat. I don't know how recent the numbers are in this report, apparently Fish and Game claims no wildlife corridor but we heard lots of testimony tonight from people who live there and daily see deer and other wildlife. I think we need to hear more information about that before proceeding.

Commissioner McLean - I'm not yet sure if I'll vote for this motion because I would have preferred to defer. As much as the applicant wants clear reasons why we are denying, I think that we've agreed that this is developable and I'd like clear engagement on what this ends up looking like. Beyond that, just to be clear on why we could argue that this should be denied, the CUP, the proposal includes siting and structural designs that will change the backdrop of the Boise Foothills

forever. The proposal would break-up the prominent view-shed. The geography of the land is such that the buildable portions of the site are on ridge-tops and we're very concerned about that. There is not a balance between the priorities of the Foothills Ordinance protecting the ridge-tops with allowing this type of development in the area. I can't find, so I would say that there is undue burden placed on transportation and public facilities in the downstream areas and from the proposed subdivision. With quite a bit of concern resting on the traffic impacts of the Plano Lane neighborhood, the Brier Ridge neighborhood, and the Quail Ridge neighborhood taking access from upper Collister Drive.

Chairman Russell - Any further discussion?

Commissioner Fadness - In response to Commissioner McLean's preference to motion to defer, I agree, I would too, because I think that we are close. But I just gather from the applicant, they're really not interested and I'm not sure a deferral would do any good for them other than cost them more money, if they're not interested in another plan. To me I gather that their approach is to take this to the City Council and appeal the decision that we make tonight. Even though I would like to see a deferral I just don't see it as being very workable.

Commissioner McLean - Mr. Chairman I prefer to put that in the applicant's court. Why I would vote against this motion and vote to defer and give the applicant one more chance. If the applicant decides not to sit at the table with us, if we defer it to time certain and it comes back to us then we deny it at that point, then it will be clear to the City Council that we tried and were unable to reach an agreement with the applicant. We'll do right by the City of Boise at that point as far as my interpretation of what we're suppose to do in interpreting this ordinance.

Commissioner Fadness - That's a good point but I thought we did put it in his court when we asked him and they didn't express an interest. But I understand what you're saying.

Chairman Russell - Any further discussion? Can we please get a roll call vote?

Four in favor, two opposed.

Commissioner McLean - I want it to be clear on the record that I did not deny because I support the CUP as proposed. I had hoped to have one more opportunity to make this better.

Commissioner Ellsworth - Pretty much the same comment.

Chairman Russell - We need to deal with the annexation and rezone now. Is there a motion?

Commissioner McLean - I would motion that we annex and rezone as proposed, R-1A.

Commissioner Fadness - Second.

Chairman Russell - We have a motion and a second, is there any discussion?

Commissioner McLean - I think we can probably find findings and discussion in all that we said,

it was my understanding that we believe that this should be annexed and rezoned and developed in accordance with the Foothills Policy. It is a recommendation to the City that they pick this up and we know they will be seeing the CUP as well.

Commissioner Barker - I can support this motion too because I think some steps have been taken that are important for this development. One of the most important is that the base density has been established. The legal basis for distributing that density over the entire parcel has been explained to my satisfaction. I think by establishing the zoning we are also saying that we do accept the base density that's been discussed this evening.

Commissioner Cooper - I really don't know what to do with this. I also agree that the base density has been established and that the land can be developed with that density and should be annexed. But the annexation, the zoning map that has been provided exactly follows the CUP that we denied.

Commissioner McLean - What is the potential impact of not annexing and rezoning:

Chairman Russell - You can't rezone without the annexation.

Commissioner McLean - But we're not making a decision, we're making a recommendation to the City Council. But the alternative of not being annexed and rezoned by the City would be follow course to develop through other jurisdictions such as the County, correct?

Chairman Russell - As I understand it, yes.

Commissioner McLean -Based on the CUP I shouldn't have made that motion. If the seconder believes that we should.

Commissioner Fadness - I'm not so sure that I do. I guess I'd like to hear more from Commissioner Cooper. There are some parcels here that are zoned R-1A, or proposed to be zoned R-1A, and the rest is the A-1.

Even through the R-1 portion generally follows the plan of what the applicant has proposed, it seems to me that there are lots of areas where there could be lots added behind other lots or without necessary having to follow the same plan as they have now.

Chairman Russell - The area that Commissioner Cooper was speaking of earlier is southeast of Collister. That area is identified to remain in the A-1/DA, but that was an area that was also identified as potentially developable. I have the same concern that Commissioner Cooper has, if we annex and rezone this property as presented to us tonight I think we're limiting the applicant from doing his best job and coming in with the next design.

Commissioner McLean - I thought the applicant wasn't willing to produce another design, either for us or for City Council. I think that we're probably better off to care about what we want at this point rather than create potential options for something that I think we might not see. Because we could have done that redesign together.

Commissioner Fadness - What were the objections to your proposal that we zone it all A-1 and then let them work with, whoever the applicant might be, with the acceptable base density. If I remember right there were objections to that and now I can't recall what they were.

Chairman Russell - My suggestion was to rezone it as R-1A and then utilize the variance process and the Foothills guidelines to govern the design from there. I don't want to put words in her mouth, so correct me if I'm wrong here, but Commissioner Barker had concerns with that approach because there are perhaps too many things that we don't understand at this time and we may be backing ourselves into a corner that we don't want to be in where we to rezone it as R-1A.

Commissioner McLean - Mr. Chairman, with us just denying the CUP because we thought it needed too much work, I feel really uncomfortable proposing we rezone the entire property to R-1A. Then we might see something different than we see right now.

Commissioner Fadness - For the sake of getting other motions, I'll withdraw my second.

Commissioner Barker - I would move that we recommend denial of the annexation and the rezone request.

Commissioner Fadness - I'll second it, if we're not going to approve it we're going to deny it.

Commissioner Barker - We really don't have at this time the basis to approve a rezone. The zone follows the land. I don't think we can do a generic zoning at this point. I don't think that we can do an overlay type zoning at this point. We're just saying we're not comfortable with the zone change as it relates to how this land is proposed to be developed. So the CUP and zoning are intertwined and if we deny one I think our only solution is to deny the other.

Commissioner McLean - This makes me really uncomfortable. I know that in the annexation process this will have to go to City Council otherwise I'd be really, really, uncomfortable at this point.

City Council will make the final decision on annexing but if we were to choose to say no completely to all of this, then it would no longer be in the preview of the City when it comes to development decisions. That is a situation that we do not want to find ourselves in. Now if we can't annex and zone as proposed because we denied the CUP, send it back to City Council with further recommendation that we annex and zone as A-1, open space, because we've been really clear about what we need to see. We've denied the CUP and now we can make a recommendation on the annexation to City Council.

Commissioner Barker - Mr. Chair, if I could clarify. Regardless of your recommendation on the annexation and rezone, that goes to City Council, whether you recommend denial or approval.

Commissioner Fadness - That's what we did last time, we rezoned the whole thing A-1, and the Council remanded it back to us. How is that any different?

Commissioner McLean - It's not.

Commissioner Cooper - The problem is that we've sat here tonight and agreed that the base density is valid. If we zone it as A-1 we're saying that the density is not valid.

Commissioner Ellsworth - Hal do we have another option?

Hal Simmons - I just want to clarify first of all that your grounds for denial last time for rezoning was that the density should only be 1 for 40 based on the Foothills Plans, so that is different from last time. I suppose that you could recommend approval of annexation with A-1 zoning along with the statement that you recognize that the only reason for that open space zoning was because you denied the CUP. A different CUP should warrant different zoning in line with what the Foothills Plan would allow. That is all I can think of. Go on the record to state that although you are recommending this low zone you recognize that a different CUP would warrant a higher zone.

Commissioner McLean - Mr. Chairman that was pretty much the reason why I was saying worst case scenario we could do this.

Chairman Russell - But regardless of the decision that we make it has still got to go to City Council for final approval. I believe your concern of this property being under the jurisdiction of another governing agency at this point in time is not relevant because Council still has to make a decision one way or the other.

Commissioner McLean - I think we all feel really comfortable with annexation, rezone and a different CUP. Suddenly we have no CUP and we're discussing how we should rezone this and I think that's a difficult conversation.

Commissioner Cooper - Mr. Chairman, I think that Hal has given us a way to go, which I would follow, but isn't the motion on the table to deny.

Chairman Russell - That is correct.

Commissioner McLean - Can we propose a substitute motion, following Roberts Rules of Order?

Chairman Russell - That would be up to the maker of the motion.

Commissioner McLean - As a substitute motion I would move that we annex this property with the designated zone of A-1/D, open space. Recognizing fully that there is a base density right and it would be appropriate to annex and rezone differently with a different CUP.

Commissioner Cooper - Second

Chairman Russell - We have a motion and a second is there any discussion? We are going to vote on the substitute motion first.

Roll call vote: Vote is unanimous for the motion.

Hearing is adjourned.

Approved:

Doug Russell, Chairman
Planning & Zoning Commission



Planning & Development Services

Boise City Hall, 2nd Floor
150 N. Capitol Boulevard
P. O. Box 500
Boise, Idaho 83701-0500

Phone: 208/384-3830
Fax: 208/384-3753
TDD/TTY: 800/377-3529
Website: www.cityofboise.org/pds

Application for Appeal

AASE's Canyon Pointe Development, LLC and Capital

Fee: \$ 182.00

I (we) Development, Inc., hereby appeal the decision of the Boise City:

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

File Number: CAR07-00042/DA

Address: 6890 N. Plano Road

Specific Action Being Appealed:

Denial of CUP07-00084 (conditional use permit) and CFH07-00022 (hillside and foothill development permit).

Grounds for Appeal (See Boise Municipal Code § 11-03-07.05.G.8.)

1. The decisions below are in violation of constitutional, state or city law.
2. The review body's decisions exceed its statutory authority.
3. The decisions below are arbitrary, capricious or an abuse of discretion.
4. The decisions below are not supported by substantial evidence.

Appeal Contact Person: Robert B. Burns, Esq.

Address: Moffatt, Thomas, Barrett, Rock & Fields, 101 S. Capitol Blvd., P.O. Box 829, Boise, ID 83701

Home Phone: _____

Work Phone: 208-345-2000

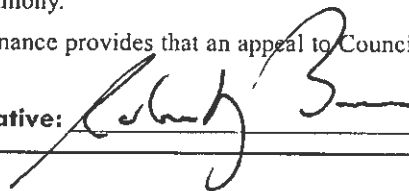
Appeals

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

* Portion of fee is refundable if appeal is successful.

Notes

1. If the reasons for the appeal are resolved prior to the appeal hearing, please contact the Planning Staff at 384-3830.
2. The only topics which may be discussed during the appeal hearing are the specific reasons for the appeal as stated in the application.
3. Neighborhood groups are encouraged to elect a spokesperson for appeals that are supported by numerous residents of the project to avoid a duplication of testimony.
4. Section 11-3-7.2 of the Zoning Ordinance provides that an appeal to Council may not be withdrawn without the consent of Council.

Signature of Appellant/Representative: 

Date: October 1, 2009

For Staff Use Only:

If the appellant is not the applicant, the applicant must be contacted immediately following the acceptance of this appeal.

Applicant contacted on _____ by _____. ☒ Appeal is by applicant



Exhibit F

Planning & Development Services

September 25, 2009

Bruce Chatterton
Director

Boise City Hall
150 N. Capitol Boulevard

Mailing Address
P. O. Box 500
Boise, Idaho 83701-0500

Phone
208/384-3830

Fax
208/384-3814

TDD/TTY
800/377-3529

Web
www.cityofboise.org/pds

Mayor
David H. Bieter

City Council
President
Marianne Jordan

Council Pro Tem
Alan W. Shealy

Vernon L. Bisterfeldt
Elaine Clegg
David Eberle
Jim Tibbs

Aase's Canyon Point Development, LLC
3750 West 500 South
Salt Lake City, UT 84104

Re: **CAR07-00042/DA / 6890 N. Plano Road**

Dear Applicant:

This letter is to inform you of the action taken by the Boise City Planning and Zoning Commission on your request to annex ± 296.12 acres, combined with ± 36.63 acres within Boise City Limits for a total of ± 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).

The Boise City Planning and Zoning Commission, at their meeting on September 21, 2009 recommended to the Mayor and the Boise City Council, approval of the request with the zoning designation of A-1/DA (Open Land with a Development Agreement), based on the attached Reasons for the Decision.

This application will be considered by the Boise City Council to establish a public hearing date. You will be notified of the established hearing date.

If you have any questions, please contact this department at (208) 384-3830.

Sincerely,

Bruce Eggleston, AICP
Planning Analyst II
Boise City Planning and Development Services

BE/bjc

Attachment

cc: Capital Development, Inc. / 6200 N. Meeker Place / Boise, ID 83713
Stewart Land Group / 6995 S. Union Park Ctr. / Midvale, UT 84047

Reasons for the Decision

ANNEXATION

Section 11-06-03.03 Commission Shall File Recommendation

The Commission shall file its recommendation on each annexation application with the City Clerk in accordance with Section 11-6-3.4. The Commission's recommendation on annexation applications shall be in accordance with the following policies:

A. That the annexation shall incorporate the Boise sewer planning area.

Finding: The proposed annexation is contiguous with City boundaries, and it is within the Boise sewer planning area. Boise Public Works Department states that sewers are available to the subject property in a letter dated August 17, 2009.

B. Honor negotiated area of impact agreements.

Finding: The proposed annexation area is in the Boise City Area of Impact and the proposal honors the Area of Impact Agreement with Ada County in compliance with Boise City Code 11-15. The site is subject Boise City Comprehensive Plan and the *Foothills Policy Plan*, and the proposal is generally in compliance with those plans.

C. Attempt to balance costs of services with anticipated revenues.

Finding: The proposed land use within this annexation is single-family residential dwellings with approximately 31% of the land in development and 69% in open space. The gross density would be 0.5 units per acre, half of the density allowed in Boise's R-1A Zone. Higher densities represent a smaller cost per unit for the urban services package. It is a matter of efficiency and economies of scale, the greater the density per acre, and the lower overall costs to service the area on a per unit basis.

The site is accessed up steep hills and is perched on ridge tops, which tends to increase the costs of road maintenance, sewer maintenance and water system maintenance. The cost of school bus transportation would be higher for the same reasons, and because the proposed neighborhood would be at the end of a gulch, requiring a looping back to access other neighborhoods. The proposed neighborhood is within the area where range fires occur. Range fires are difficult and costly to fight and contain, and they require specialized equipment to fight them, at an additional cost to the City.

Finding The revenues from the proposal would tend to be on the high end for assessed value per residence. It is not clear if the revenues would balance the costs of services, as that data is not available.

D. Promote other goals of population balance, contiguous development and prevention of costs due to leapfrog development.

Finding: The proposed annexation is contiguous with City boundaries. City sewer, Police, Fire and Parks and Recreation resources serve the area. United Water has indicated that they would provide municipal water supply via a water tank installation at the top elevation of the subject site. The subject site is adjacent to public rights-of-way and has access to them. This is a logical extension of the City boundaries as all the urban services are available to the site.

RECLASSIFICATION OF ZONING DISTRICTS

Section 11-06-01.01 Power to Amend

Any recommendation of the Commission relating to change, modification and reclassification of zoning districts and land use classifications and the regulations and standards thereof shall be in writing. The recommendation shall include findings of fact supporting the purposes and objectives of zoning and otherwise securing public health, safety and general welfare. The recommendation shall specifically find that such changes, modifications and reclassifications of zoning districts and land use classifications and the regulations and the standards thereof:

A. Comply with and conform to the Comprehensive Plan;

Finding: The proposed annexation and zone change area is in the Boise City Area of Impact and the proposal honors the Area of Impact Agreement with Ada County in compliance with Boise City Code 11-15. The site is subject to the *Boise City Comprehensive Plan* and the *Foothills Policy Plan*. The proposal is generally in compliance with those plans, with the exception of the policies (Chapter 3 Goal 1 Objective 1 Policies 1, 2, 3 and 4) concerning site design and the grading of prominent ridge tops.

B. Provide and maintain sufficient transportation and other public facilities, and does not adversely impact the delivery of services by any political subdivision providing services.

Finding: The proposal is in the City's area for police, sewer, parks, and library services. It is served by Ada County Highway District (ACHD) for street services and has received a recommendation for approval from their Board of Commissioners on May 25, 2008, and restated in a memo and revised staff report dated September 18, 2009.

Finding: The Independent Boise School District includes the site in its service area. United Water of Boise would provide municipal water services. These agencies have all indicated by letters in the file that they could provide services to the project site. The provision of services to this site would not diminish services to other parts of the region.

C. Maintain and preserve compatibility of surrounding zoning and development.

- Finding:** The proposed zone change and annexation area is contiguous to City residentially zoned neighborhoods on the south. Ada County Rural Preservation (RP) surrounds it on the north and east, and a residential neighborhood with R6 zoning on the west. The proposed use and zone change are compatible with the surrounding zones.
- Finding:** The recommended zone is A-1/DA, open space with development agreement. This zone is derived from the regulations of the Boise City Zoning Code Chapter 11 Section 11-06-05.07, the Foothills Planned Development Ordinance. The ordinance requires that requests for annexation and/or zone change would result in the R-1A/DA and A-1/DA or A-2/DA Zones.
- Finding:** The proposed development is in character with, and similar in use and density with the surrounding neighborhoods.
- Finding:** The City should annex this property with the A-1/DA (Open space), recognizing fully that there is a base density right associated with the current zones.
- Finding:** The development agreement should state that there is a base density right associated with the current zones. It should further state that it would be appropriate to rezone the subject property to R-1A/DA and A-1/DA when a different conditional use permit may be granted that was found to be in compliance with the *Foothills Policy Plan* and the Foothills Planned Development Ordinance.



Bruce Chatterton
Director

Boise City Hall
150 N. Capitol Boulevard

Mailing Address
P. O. Box 500
Boise, Idaho 83701-0500

Phone
208/384-3830

Fax
208/384-3814

TDD/TTY
800/377-3529

Web
www.cityofboise.org/pds

Mayor
David H. Bieter

City Council
President
Maryanne Jordan

Council Pro Tem
Alan W. Shealy

Vernon L. Bisterfeldt
Elaine Clegg
David Eberle
Jim Tibbs

Exhibit G

Planning & Development Services

October 6, 2009

Robert B. Burns, Esq.
Moffatt, Thomas, Barret, Rock & Fields
101 S. Capitol Blvd.
Boise, ID 83701

RE: CUP07-00084 & CFH07-00022/ Appeal

Dear Mr. Burns:

An appeal of the Planning Commission's decision on CUP07-00084 and CFH07-00022 has been filed and accepted on October 1, 2009. This appeal will be scheduled before the Boise City Council by the City Clerk. Once the date is established a letter will be forthcoming.

Parties to the appeal (the applicant and those whose names are listed on the appeal submitted to the City on October 1, 2009) should be aware of the following:

- a. The parties to the appeal may file memoranda consisting of written arguments that support their position within 14 days after the date of the appeal deadline.
- b. Any replies to the memoranda must be filed within 21 days of the appeal deadline. No further memoranda shall be accepted after that time.
- c. Neither memoranda nor responses may contain new facts or evidence or discuss matters outside the record. Memoranda are limited solely to why the record does or does not support the decision, or meet the other enumerated grounds for appeal.

If you have any questions, please contact this department at (208) 384-3830.

Sincerely,

Bruce Eggleston, AICP
Planning Analyst II
Boise City Planning and Development Services

cc: AASE'S Canyon Point Development, LLC/ Attn: Aspen Capital / 8899 S. 700 E.
Suite 180 / Sandy, UT 84070
Capital Development, Inc. / 6200 N. Meeker Place / Boise, ID 83713
Parties of Record

**PARTIES OF RECORD FOR
P&Z HEARING SEPT. 21, 2009**

CAR07-00042/DA, CUP07-00084, & CFH07-00022

JERRY BOWER
3055 S. VIRGINIA
BOISE, ID 83705

MICHAEL JONES
5218 CASTLE DRIVE
BOISE, ID 83703

JULIE KLOCKE
4946 N. CONTOUR DRIVE
BOISE, ID 83703

ROBERT BURNS
5225 N. QUAIL SUMMIT WAY
BOISE, ID 83703

JAMES RUSSELL
4800 HILL ROAD
BOISE, ID 83703

BEVERLY RUSSELL
4800 HILL ROAD
BOISE, ID 83703

JANEL BROWN
5736 N. COLLISTER
BOISE, ID 83703

GENIE SUE WEPPNER
2800 LANCASTER DRIVE
BOISE, ID 83702

KAREN KNUDTSEN
4621 SHIRLEY STREET
BOISE, ID 83703

CARRIE JONES
3802 W. TAFT STREET
BOISE, ID 83703

ED GENTHER
6060 PLANO LANE
BOISE, ID 83703

SCOTT KOLB
5627 COLLISTER
BOISE, ID 83703

MARY L. GENDRON
4920 W. HILLSIDE AVE.
BOISE, ID 83703

KATIE WATTS
5954 N. COLLISTER
BOISE, ID 83703

DIANE MCCONNAUGHEY
4315 CASTLEBAR COURT
BOISE, ID 83703

PATTI RAINO
4905 W. OUTLOOK AVE.
BOISE, ID 83703

plano road development

site plan

Exhibit H

0125250500750

NORTH

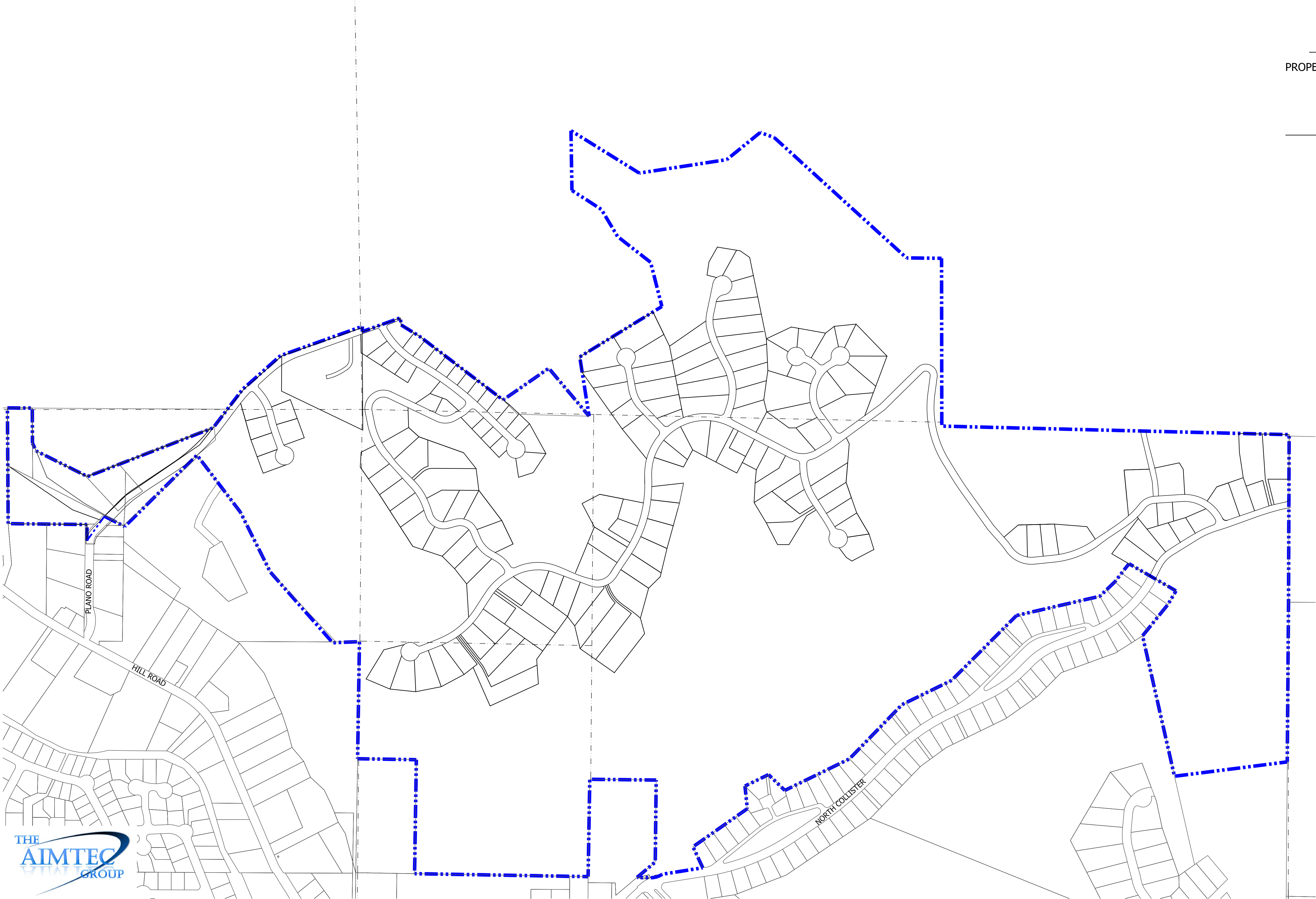
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7-30-2009

LEGEND

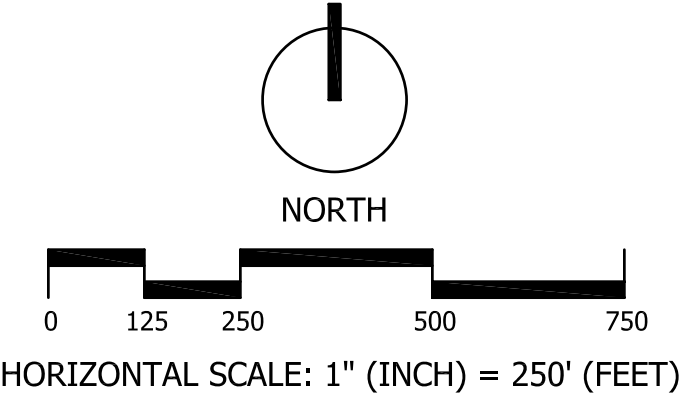
PROPERTY BOUNDARY

SITE SUMMARY	
TOTAL AREA	332.75 AC
TOTAL UNITS	163



plano road development

ZONING MAP



8-4-2009
LEGEND

- PROPERTY BOUNDARY 
- R1A/DA (103.75 ac.) 
- A1/DA (229 ac.) 

