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Planning & Development Services

December 10, 2009

AASE'S Canyon Point Development, LLC
Attn: Aspen Capital
8899 S. 700 E., Ste. 18
Sandy, UT 84070

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

Dear Applicant:

This letter is to inform you of the action taken by the Boise City Council 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 Council, at their meeting of December 1, 2009, **denied** your request, and instructed staff to prepare new findings to be presented at their December 8, 2009 hearing. Attached are the adopted findings.

This decision may also be appealed to the District Court within 28 days following the decision. The landowner may request a **taking analysis** within 28 days following such final decision in accordance with Section 67-80003 of the Idaho Code.

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

Sincerely,

Hal Simmons
Planning Director
Boise City Planning and Development Services

Attachment: Reasons for the Decision
City Council Reasons for Decision

cc: Capital Development, Inc. / 6200 N. Meeker Place / Boise, ID 83713
Parties of Record

Reasons for the Decision

The Council determined that the Foothills Policy Plan and the Foothills Planned Development Ordinance, Section 11-06-05.07, require that annexation and zoning in the Foothills occur under the guidance of and in conjunction with approval of a Conditional Use Permit that demonstrates compliance with the requirements of the Foothills Policy Plan and Foothills Planned Development Ordinance. The City Council determined that the Conditional Use Permit was not in compliance with the Foothills Policy Plan and Ordinance and therefore the CUP did not provide proper guidance for annexing and zoning the property. For this reason, the City Council denied CAR07-00042 / DA.



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Planning & Development Services

To: Mayor and City Council
From: Hal Simmons, Planning Director
Date: December 3, 2009

Subject: CUP07-00084 and CFH07-00022/Appeal/ Aase's Canyon Development, LLC and Capital Development, Inc and CAR07-00042/DA/Annexation/ Aase's Canyon Pointe Development - Reasons for Decision

On December 1, 2009 the City Council held a public hearing to consider an appeal of the Planning Commission's denial of CUP07-00084 and CFH07-00022/Appeal/Aase's Canyon Development, LLC and Capital Development, Inc; a request to approve a 163 unit planned residential development at 6890 N. Plano Road. The Council also heard CAR07-00042/DA/Annexation/Aases' Canyon Point Development; a request to annex 296.12 acres, combined with 36.63 acres within Boise City for a total of 332.75 acres with zoning designations of R-1A/DA and A-1/DA.

The City Council denied the appeal of CUP07-00084 and CFH-00022 and upheld the Planning and Zoning Commission's September 21, 2009 denial of those applications. In denying the appeal, the Council determined that the CUP and Hillside applications failed to meet the intent of the Foothills Policy Plan and the Foothills Planned Development Ordinance; particularly in regard to the emphasis on prominent ridge top development, the conventional lot layout with minimal clustering of units and the excessive amount of grading required. The Council found no error in the decision of the Planning and Zoning Commission and supported their findings for denial.

The City Council also denied CAR07-00042/DA, the request for annexation and zoning of 332.75 acres. The Council determined that the Foothills Policy Plan and the Foothills Planned Development Ordinance, Section 11-06-05.07, require that annexation and zoning in the Foothills occur under the guidance of and in conjunction with approval of a Conditional Use Permit that demonstrates compliance with the requirements of the Foothills Policy Plan and Foothills Planned Development Ordinance. The City Council determined that the Conditional Use Permit was not in compliance with the Foothills Policy Plan and Ordinance and therefore the CUP did not provide proper guidance for annexing and zoning the property. For this reason, the City Council denied CAR07-00042/DA.

Attachment: Planning and Zoning Commission's Reasons for the Decision for Denial of CUP07-00084 and CFH00022 on September 21, 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 ± 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., September 30, 2009.

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

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 07-00084

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

CFH07-00022 Reasons for Decision

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 confirming 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 Geologic 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.