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Submitted By E-Mail

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RE: Appeal of project approval for Whittier School / Application #CUP17-00004

This memorandum constitutes an appeal of the approval of a conditional use permit for the new Whittier School project, #CUP17-00004, which occurred at the Planning & Zoning Commission (Commission) hearing on April 10, 2017 (Project Approval). The parties of record making this appeal include: Rae Brooks, vice-president of the Veterans Park Neighborhood Association; Kathleen Coskey, a board member of the Veteran Park Neighborhood Association; Jason Durand, a neighbor of Whittier School; Deanna Smith; the North End Neighborhood Association, represented by Stephen R. Miller at the Commission hearing; and Preservation Idaho, represented by Frank Eld at the Commission hearing (collectively, the “Parties of Record” or “Parties”).

I. Proposed Principles for Boise School Site Design

The words of Commissioner Stevens in voting to deny the conditional use permit, are poignant:

I certainly don't think it's good for the city to ever do anything this big and this important because of urgency. Unfortunately, over the last ten years we've demolished Franklin, we've demolished Cole – both places that could have served for overflow for displacement for this exact situation. Unfortunately I don't really think the urgency is a reason that the city should be acting in what I consider at this point with this plan, to be a somewhat irresponsible way. I think that there are other alternatives.

Transcript at 59. The Parties agree, and propose that the Whittier School project, and all other Boise school developments associated with the \$172 million buildout, should begin with deliberation on “first principles” for the type of schools that the city seeks to provide (“Principles of School Site Design” or “Principles”).

The Parties would welcome the opportunity for an inclusive workshop, or multiple workshops, to address the Principles as they apply to Whittier.

The Principles for School Site Design the Parties propose are:

- **Protect park-land** and student outdoor play area on the interior of school sites.
- Keep **parking on the exterior** of sites to **reduce potential conflict points** with pedestrians and bicyclists and make better use of the land.
- Prioritize **walking and biking to school** (bulb-outs, curb cuts, striping, etc.).
- Build for **life-cycle cost savings** today (reduce long-term operations costs to save taxpayers money).
- **Preserve history** of Boise's schools.
- **Preserve mature trees.**
- **Involve the community** early in the decision-making, including Neighborhood Associations, neighbors, teachers, and students, prior to the creation of a site plan.
- **Follow Blueprint Boise**, the City's Comprehensive Plan.

The Parties' previous submittals outline numerous examples of how these principles could be applied at the Whittier School project, and also at future schools. Indeed, the Parties even provided examples of schools in other cities that have utilized these Principles to provide long-term and significant value to their residents. None of these Principles were addressed by the Commission in their deliberations but for Commissioner Stevens, who voted against the project and herself enumerated numerous principles and parts of the project that were in non-compliance with the comprehensive plan. Several notes are made on each of the Principles with regard to the application and the hearing:

- **Protect park-land** and student outdoor play area on the interior of school sites.

At the hearing, the architect noted that the primary reason for why the building had been located in the middle of the site—the sewer pipeline—could now be moved and placed under Jefferson Street. As Mr. Wayne Thowless, part of the project team, clearly stated in the hearing: “[W]e are certain that sewer can be relocated and will work.” Transcript at 26. In other words, there is no reasonable reason to place the structure in the middle of the site any more. Nonetheless, the Commission approved the site design reflecting a reasoning that the architect expressly noted no longer exists. Thus, the site design needlessly eliminated park land and play space for no reason whatsoever.

- Keep **parking on the exterior** of sites to **reduce potential conflict points** with pedestrians and bicyclists and make better use of the land.

The site design clearly illustrates that the Approved Project would create at least nine, and potentially more, conflict points between pedestrians and cars. This actually increases the safety risk at the site. Moreover, images of the site design from the hearing showed that the crosswalks for the children would require walkers and bikers to go through not just one, but two, lanes of traffic in the parking lot to get to the school. Transportation experts note that keeping parking exterior to the site, as proposed in the NENA Alternative and supported by the Parties, would significantly aid in reducing conflict points and would also help to bring back park land.

In addition, there is adequate space on Jefferson and 29th Street to accommodate drop-off and pick-up and there are safer, less expensive and more efficient ways to separate bus and parent vehicle loading areas that have not been considered that would also save the district ongoing maintenance costs.

- Prioritize **walking and biking to school** (bulb-outs, curb cuts, striping, etc.).

The project sponsor noted that, at present, 82% of students are bused to this school. However, a decade ago, that was not the case. The busing occurred because of a change in school policy. That policy could change again in a year, or five years, or a decade. This site design for the school must service the city for a generation. If nothing else, the school should be built to accommodate both a busing approach to students at the school and also a walking and biking approach. Indeed, the school district completely ignores the significant efforts of the mayor and city council to reinvest in this neighborhood and to make it a place where young families would, once again, choose to settle. If the city's efforts are successful, it is very likely that there will be an influx of young families with children back into this neighborhood, which will mean that the walking and biking approaches will be necessary. The NENA Alternative, in accordance with principles from Safe Routes to Schools, suggested the need for significant traffic calming at the site. Indeed, a visit to the school when students go home shows that the school is presently creating a de facto bulb out on 29th Street with cones, a clear indication of this much-needed traffic calming strategy. In addition, there is no consideration of Madison as a possible alternative for expansion. We need to know why the District is not considering Madison as part of the overall equation for this neighborhood school.

- Build for **life-cycle cost savings** today (reduce long-term operations costs to save taxpayers money).

Boise City has made significant strides in energy efficiency. The Twenty Mile South Farm project shows the value of energy efficiency projects: it is producing 15% more energy than it uses and will, over its life-time, cost significantly less to operate than if it had been built in a traditional manner. Here, the school district is claiming that it will simply build to Idaho's energy code provisions, which even the most cursory glance at energycodes.gov will illustrate are among the lowest in the country. The city is clearly asking for more, and it is hard to understand why the school district is reluctant to invest in life-cycle cost savings that will save taxpayers money. We should be building 100 year buildings like the city used to do.

- **Preserve history** of Boise's schools.

The project was approved without any specifics on how much of the existing building will remain. Moreover, the Commission asked for no report back. In other words, there is no guarantee that any of the existing building will be retained. This is problematic because the school district has a history of tearing down buildings rather than restoring them, and thus eliminating significant aspects of the history of the neighborhoods in the city.

- **Preserve mature trees.**

The project as proposed will require the elimination of a number of mature trees on the site. However, as discussed at the hearing, there is no good reason to place the school at the location chosen by architects; it is wholly arbitrary because the sewer line no longer dictates placement and the interior parking lots are not necessary with alternate, exterior options. As Mr. Wayne Thowless, part of the project team, clearly stated in the hearing: “[W]e are certain that sewer can be relocated and will work.” Transcript at 26. Mature trees are defining characteristic of Boise’s urban neighborhoods that should not be removed arbitrarily. Further, as Commissioner Stevens noted in the hearing, “most of the chapter ES in our Blueprint plan, 2 and also 6 with regard to tree canopy,” support preserving mature trees on site. Transcript at 62.

- **Involve the community** early in the decision-making, including Neighborhood Associations, neighbors, teachers, and students, prior to the creation of a site plan.

While the school district did seek input from the community, they did so only after hiring the architect to design a plan that they have hardly altered despite the input they have received. The school district should meet with the people that use the schools—parents, teachers, and administration—as well as the neighborhoods prior to engaging architects to design buildings and projects that do not comply with standards. Our neighborhood schools serve the community and surrounding neighbors in so many ways beyond the educational role the district sees. Without early engagement they cannot know what the community desires. The Parties request that the city council hold working group meetings prior to the city council decision on the project to facilitate this kind of involvement.

- **Follow Blueprint Boise**, the City’s Comprehensive Plan.

This site is in an interurban neighborhood and should be designed with an urban school design, not a suburban design. Both Blueprint Boise and the 30th Street Master Plan call out the preference for urban patterns and design for this area. The planning area in which Whittier resides specifically calls out the schools as contributing to the “overall character of the neighborhood.”

II. Applicable Legal Standard

The Parties allege that the Project Approval was (i) arbitrary, capricious, or an abuse of discretion; (ii) not supported by substantial evidence on the record as a whole; and (iii) made upon unlawful procedure. Idaho Code § 67-5279.

a. The Reasonableness Requirement

Boise City Code requires the Commission to issue a conditional use permit only when criteria in Section 11-03-03.4 are met:

- i. The location is compatible to other uses in the general neighborhood;
- ii. The proposed use will not place an undue burden on transportation and other public facilities in the vicinity;

- iii. The site is large enough to accommodate the proposed use and all yards, open spaces, pathways, walls, fences, parking, loading, landscaping, and such other features as are required by this Code;
- iv. The proposed use, if it complies with all conditions imposed, will not adversely affect other property of the vicinity;
- v. *The proposed use is in compliance the Comprehensive Plan; . . .*

Boise Zoning Code § 11-03-04(6)(C)(7)(a)(i)-(v) (2017) (italics added). In this case, the Planning & Zoning Commission (Commission) has a legal obligation to make findings of “compliance.” A conditional use permit is improperly granted, and must be rescinded, when it fails to make adequate findings of compliance with the comprehensive plan.

Idaho Code § 67–6535(2) requires that the approval or denial of any land use discretionary permit:

shall be in writing and accompanied by a reasoned statement that explains the criteria and standards considered relevant, states the relevant contested facts relied upon, and explains the rationale for the decision based on the applicable provisions of the comprehensive plan, relevant ordinance and statutory provisions, pertinent constitutional principles and factual information contained in the record.

This requirement is not just one of statute in nature; rather, in such quasi-judicial proceedings, it sounds constitutionally in due process and, moreover, is essential to the proper checks and balances courts must perform as part of the democratic governance.

As the Idaho Supreme Court has noted:

For “effective judicial review of the quasi-judicial actions of zoning boards, there must be ... adequate findings of fact and conclusions of law.” *Workman Family P'ship v. City of Twin Falls*, 104 Idaho 32, 36, 655 P.2d 926, 930 (1982). Conclusory statements are not sufficient; instead “[w]hat is needed for adequate judicial review is a clear statement of what, specifically, the decisionmaking body believes, after hearing and considering all of the evidence, to be the relevant and important facts upon which its decision is based.” *Id.* at 37, 655 P.2d at 931 (quoting *S. of Sunnyside Neighborhood League v. Bd. of Comm'rs*, 280 Or. 3, 21–22, 569 P.2d 1063, 1076–77 (1977)). . . .

Cowan v. Bd. of Comm'rs of Fremont Cty., 143 Idaho 501, 511, 148 P.3d 1247, 1257 (2006). In other states with the same mandate of findings in discretionary permits, court have described the due process and judicial review mandate as one that requires the Commission to “set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order.” *Topanga Assn. for a Scenic Cmty. v. Cty. of Los Angeles*, 11 Cal. 3d 506, 515, 522 P.2d 12, 17 (1974).

All of this means that, in the context of a conditional use permit, “compliance” with the comprehensive plan is not an advisory exercise; rather, it must be supported by findings, and those findings must not be conclusory. The findings must show that the Commission has reasonably deliberated and reached a decision backed by evidence in the record to conclude that a proposed project is in “compliance” with the Comprehensive Plan. Reasonableness is not just a matter of

Idaho law, it is a longstanding requirement the U.S. Supreme Court has imposed on a city's exercise of the police power. See *Lawton v. Steele*, 152 U.S. 133, 137, 14 S. Ct. 499, 501, 38 L. Ed. 385 (1894) (“To justify the state in thus interposing its authority in behalf of the public, it must appear . . . that the means are reasonably necessary for the accomplishment of the purpose. . . .”); see also Idaho Code § 67-5279(2)(d) (prohibiting quasi-judicial decisionmaking that is “arbitrary, capricious, or an abuse of discretion”). Without such a finding, the permit cannot be properly issued, and the project must be revised to permit a favorable finding of “compliance” that is supported by evidence in the record and the comprehensive plan.

b. The Substantial Evidence Requirement

The substantial evidence standard for fact-finding in on-the-record proceedings by administrative bodies, such as the Commission here, requires an examination of the whole record, including evidence that would detract from the conclusion reached by the Commission. Perhaps the best statement of the standard in zoning cases is that substantial evidence “is such relevant evidence as a reasonable mind might accept to support a conclusion.” *In re Beyer*, 155 Idaho 40, 43-44, 304 P.3d 1206, 1209-10 (Ct. App. 2013), review denied (Aug. 15, 2013) (quoting *Kinney v. Tupperware Co.*, 117 Idaho 765, 769, 792 P.2d 330, 334 (1990).)

The Idaho Supreme Court has further noted:

[i]n deciding whether the agency's¹ findings of fact were reasonable, reviewing courts should not “read only one side of the case and, if they find any evidence there,” sustain the administrative action and ignore the record to the contrary. *Universal Camera*, supra, 340 U.S. at 481, 71 S.Ct. at 460; quoted in *Local 1494*, supra, 99 Idaho at 634, 586 P.2d at 1350. Certainly reviewing courts should not “displace the [agency's] choice between two fairly conflicting views, even though the court would justifiably have made a different choice had the matter been before it de novo.” [Citations omitted.] Nevertheless, reviewing courts should evaluate whether “the evidence supporting that decision [under review] is substantial, when viewed in the light that the record in its entirety furnishes, including the body of evidence opposed to the [agency's] view.” *Universal Camera*, supra, 340 U.S. at 488, 71 S.Ct. at 464; quoted in *Local 1494*, supra, 99 Idaho at 634, 586 P.2d at 1350; accord, *Local One, Amalgamated Lithographers v. National Labor Relations Board*, 729 F.2d 172, 175 (2d Cir.1984).

Idaho State Ins. Fund v. Hunnicutt, 110 Idaho 257, 260–61, 715 P.2d 927, 930–31 (1985). As the U.S. Supreme Court case on which the Idaho Supreme Court relied in this case noted succinctly, “[t]he substantiality of evidence must take into account whatever in the record fairly detracts from its weight.” *Universal Camera Corp. v. N.L.R.B.*, 340 U.S. 474, 488, 71 S. Ct. 456, 464–65, 95 L. Ed. 456 (1951). As will be illustrated below, the Commission’s findings clearly did not consider the evidence that detracted from approval of the decision, and thus failed to meet the substantial evidence standard.

¹ The standard for judicial review of LLUPA claims is located in the Idaho Administrative Procedure Act. While the Commission is not an “agency” for purposes of IDAPA, the standard of review of the Commission’s action is the same statute as relevant to state agencies, and thus informs the applicable standard here. See Idaho Code §§ 67-6519(4); 67-6521(1)(d).

c. The Lawful Procedure Requirement

The Commission never approved the “Reason for Decision” issued by the Planning Department Team, which violates the Land Use Planning Act.

Idaho Code requires that:

[w]henver a governing board or zoning or planning and zoning commission grants or denies an application, it shall specify: (a) The ordinance and standards used in evaluating the application; (b) The reasons for approval or denial; and (c) The actions, if any, that the applicant could take to obtain approval.

Idaho Code § 67-6519(4). The statute clearly requires the Commission, not the department, to issue the findings. Idaho Code § 67-6535(2) requires that the approval or denial of any land use discretionary permit:

shall be in writing and accompanied by a reasoned statement that explains the criteria and standards considered relevant, states the relevant contested facts relied upon, and explains the rationale for the decision based on the applicable provisions of the comprehensive plan, relevant ordinance and statutory provisions, pertinent constitutional principles and factual information contained in the record.

In the hearing, Commissioner Gillespie made the following motion: “I move we approve CUP17-00004 for the reasons stated in the staff report and with the same terms and conditions.” Transcript at 57. That motion was seconded, and was the motion voted upon by the Commission. The “Reason for Decision,” issued subsequently by the Planning Department, was never approved by the Commission, and is thus unlawful procedure because Idaho Code § 67-6519(4) specifically requires that the findings for discretionary permits must be those approved by the Commission. Thus, the conditional use permit is improperly issued and void for lack of procedural compliance with Idaho Code § 67-6519(4).

III. Findings of the Commission are Arbitrary and Capricious and Unsupported by Substantial Evidence

The Commission’s Project Approval appears to rest entirely upon those findings in the staff report because the Commission made no additional findings at the hearing, but for Commissioner Stevens who made findings illustrating the project’s non-compliance. In the hearing, Commissioner Gillespie made the following motion: “I move we approve CUP17-00004 for the reasons stated in the staff report and with the same terms and conditions.” Transcript at 57. Commissioner Gillespie’s motion expressly limited the Commission’s findings to the staff report, and not any other reasons stated in deliberation. As a result, the staff report constitutes the sole source of findings for the Commission.

The Commission appears to have not read the staff report closely in choosing to rely upon that report for their findings; indeed, the staff report’s findings express substantial doubt about whether

the proposed project complied with Blueprint Boise, the city's comprehensive plan and provide no evidence or logical reasoning that would illustrate compliance.

This section analyzes those findings, as they are presented in the staff report:

The on-going use of the site as an elementary school is consistent with the ideals of Blueprint Boise. The Plan is based on seven fundamental themes, including #5 "A Community That Values its Culture, Education, Arts, and History." This theme, or chapter, includes a number of goals and policies directly related to the project. There is an emphasis on the importance of schools to serve not only the needs of students, but to function as community centers and neighborhood gathering places (Goal CEA7, and Policies CEA6.1, CEA6.5, CEA6.8, and CEA7.3). The inclusion of a community activity center is consistent with these elements of the plan. The center will occupy a portion of the historic school building that opened in 1949. This is supported by Goal NAC13 that encourages the protection of historically significant buildings that contribute to community identity. Preservation of a portion of the school building will also help ensure the overall site compliments the character of the surrounding neighborhood (Goal NE-CCN 1 and Policy NE-CCN 1.4).

The asserted compliance here is all based upon the potential for a community center located at the site. However, as conceded by the architect at the hearing, the plans for the community center are still up in the air because the City of Boise Parks Department has not yet decided upon its programming for this site. See Transcript at 55-56 ("We're going to keep about a third of it. The reason why those plans have not been developed, is that we're still in the process of working with the City of Boise Parks Department in identifying the programming."). While the architect's rationale for waiting on final plans is laudable, and the intention to retain "about a third" of the building is a nice thought, the resulting Project Approval does not condition the project upon the retention of any—much less even "about a third"—of the existing structure, much less the creation of a community center. In other words, there is no legal recourse if, for instance, the City of Boise Parks Department backed out of the project: the Project Approval would permit the razing of the entire existing structure. As a result, the purported compliance with the comprehensive plan on the basis of the community center, is hypothetical at best. Notably, this variation in the programming is stated as a potential reason that more, or less, of the historic structure may be retained. Until the programming is fully known, then, compliance with these sections of the comprehensive plan is speculative in the absence of a condition that expressly requires the retention of some part of the facility.

To further ensure character of the neighborhood is maintained, additional design features could be added to both the school and surrounding landscape. Schools are a focal point of neighborhoods and should be designed accordingly. The elevations included in the application are preliminary but do raise concerns. The form and materials of the building are consistent with other schools in the district. However, additional

detailing could result in a more distinct school for this neighborhood. This could include modulation to the structure and/or roofline, changes in materials and colors, and expanded entryway features such as awnings, canopies and openings in the façade. A recommended condition of approval requires revised elevations to address this concern. An emphasis should be placed on providing architectural details and using materials that compliment features on the portion of the existing school building to be retained.

This section of the staff report findings asserts no compliance with the comprehensive plan; in fact, it actually raises concerns about non-compliance with the comprehensive plan.

In terms of landscape, additional attention could be given to the crosswalk landing at the northwest corner of the site. There is an opportunity to incorporate public art and plaza space, similar to what is proposed at the northeast corner of the site, but at a smaller scale. That corner is the primary interface with the neighborhood so the larger area is warranted. However, even at a smaller scale, similar features could be provided. This has been reflected in the attached recommended conditions of approval.

This section of the staff report findings asserts no compliance with the comprehensive plan; in fact, it actually raises concerns about non-compliance. Indeed, the NENA Alternative discussed at the meeting provided an alternative similar to what staff notes here that would have provided for additional traffic calming around the site. That was expressly rejected by the Commission without any reason given.

While the Comprehensive Plan clearly supports the use, it also includes a number of elements focused on urban form and design (Goal NAC12 and Policy CEA6.9). From that perspective, the building would ideally be located closer to the street, with parking to the rear. This would minimize the visual impact of parking and provide a more pedestrian-friendly environment along the street.

Remarkably, during the hearing, the architects noted that the entire reason that they have stated that the building needs to be located in the middle of the site had vanished. Namely, the architects rested their need to be in the middle of the site on the need on access to an “immovable” sewer pipeline; at the hearing, the architects told the Commission that the pipe was being moved under Jefferson Street and thus there was no limitation on the building’s location. As Mr. Wayne Thowless, part of the project team, clearly stated in the hearing: “[W]e are certain that sewer can be relocated and will work.” Transcript at 26. Nonetheless, the Commission approved the building in the location chosen simply because of access to an old sewer pipeline that is now no longer relevant. That means that there is no reasonable reason why the Commission approved the site of the school at its current location when compliance with the comprehensive plan would otherwise locate it closer to the street with parking elsewhere.

The applicant has taken measures to ensure compliance with these concepts. By providing approximately 20% less parking than required, additional landscape and plaza space has been incorporated into the design. The parking that has been provided will allow the facility to rely less on the right-of-way in the surrounding residential neighborhood and result in a safer school campus for students, parents, faculty, and staff regardless of their mode of transportation (Goal CAE6, and Policies CC4.5, CEA6.2, and CEA6.3). Preservation of the two story gym as a community center, with a prominent location along 29th Street also provides a significant pedestrian oriented focal point for the project.

Simply reducing the amount of parking, when the design prioritizes that parking and literally surrounds the building with parking lots that students must traverse to enter the building, does not comply in any meaningful way with the comprehensive plan's sections that relate to safe schools. As Commissioner Stevens noted:

[A]ll you have to do is look at this site plan to see that it's completely designed for the car. We have nine new sites of contact between little children and cars. Anybody who's walking from a street has to cross not only the street, but the parking lot to get to the school.

Transcript at 60-61.

There is literally no evidence in the staff report's findings that supports the decision by the Commission; in fact, the staff report actually provides substantial evidence for denying the project because it notes how many of the comprehensive plan policies the project opposes. Because the motion approving the conditional use permit expressly limits findings by the Commission to the staff report, there can be no reasonable finding provided by the Commission for how the project complies with the comprehensive plan. As a result, the decision is arbitrary and capricious and was not based upon substantial evidence.

IV. The Commission Failed to Address Any of the Blueprint Boise Policies Raised by the Parties that Detract from the Commission's Findings

As noted above, the substantial evidence standard requires fact-finding by the Commission that would illustrate a "reasonable" person could have made the same decision. Further, that decision must consider the whole of the record, and expressly provide some rationale for why the agency has chosen to reject alternatives and detracting evidence provided.

The Parties, in their briefing and at the hearing, argued that the project did not comply with the following sections of the comprehensive plan. The Commission made no meaningful reply to these allegations and alternatives of the Parties. The Commission also made no findings that would rebut the substantive statements by Commissioner Stevens finding non-compliance with the comprehensive plan. The Commission must engage meaningfully with the record and address meaningful alternatives presented. The Commission did not do so, and thus for these additional

reasons, the decision is arbitrary and capricious and is not based on substantial evidence. Each of the sections of the comprehensive plan addressed by the Parties in the record to which the Commission made no comment are presented below.

Goal CC4.5: Schools and TDM

(c) Discourage and explore ways to reduce on-street parking by students and staff in adjacent residential neighborhoods.

(e) Coordinate the development of Safe Routes to School plans with the Boise School District and Meridian School District to identify obstacles to the use of sidewalks, bike lanes, and pathways for travel to school.

(f) Encourage schools to monitor the use of alternative modes of travel to school each year.

The staff report's findings assert, in conclusory fashion, that the parking reduction addresses CC4.5. However, CC4.5 focuses upon alternative modes of travel to school, which is a separate question from how many parking spaces are located on site. As such, the staff report's analysis of CC4.5 is not relevant and the Commission has failed to address this goal.

CC7.1: PEDESTRIAN SYSTEM

(a) Connect destinations with pedestrian facilities and encourage walking for a wide variety of trips by adding sidewalk connections, restoring damaged sidewalks, and requiring sidewalks as part of development approvals.

(b) Collaborate with ACHD, ITD, neighborhood associations, and schools to fix "gaps" in the pedestrian system that were identified through the ACHD Pedestrian-Bicycle Transition Plan.

(c) Partner with the Meridian and Boise School Districts, private schools, neighborhood associations, ACHD, and ITD to develop and implement Safety Improvement Plans to ensure safe routes to all schools.

The project currently offers no traffic calming and no effort to address the primary concern of parents, which is the road traffic surrounding the site. Bringing the traffic into the school site, as this plan does, will not eliminate the problems around the school site, and thus the project does not address the pedestrian system as required by CC7.1.

CC7.2: DESIGN FOR PEDESTRIAN COMFORT

(a) Support new development designed with compact, mixed-use patterns that are conducive to walking and bicycling.

(b) Minimize pedestrian conflict with vehicles by providing buffers between the sidewalk and automobile traffic and by combining adjacent property driveways to limit curb-cuts.

(c) To protect the most vulnerable street users, maximize pedestrian safety and comfort in the design of pedestrian crossings

(d) Design pedestrian pathways to be well-lit, secure, and with convenient connections between destinations. Avoid meandering pathways except where necessary to protect trees or avoid obstructions.

The project, quite literally, requires students to cross multiple lanes of traffic now interior to the site. It also places bike racks in an area that is surrounded by parking lots. The “pocket park” concept empties students out to the busiest intersection but without any striping or bulbouts to protect them or slow traffic.

Goal CEA6: Create schools that are safe, accessible, and compatible with their neighborhoods.

CEA6.1: SCHOOL SITING

(a) Site schools in accordance with the location criteria outlined for Educational land uses in Chapter 3.

(b) Coordinate the siting and expansion of school facilities with other community and neighborhood facility and infrastructure needs, including parks, to promote schools as neighborhood centers.

(c) Ensure that neighborhoods are provided the opportunity to comment and review plans for new schools or the closure of existing schools.

The school district drafted a finished plan that it presented to the community for review, and from which it has largely not strayed. That does not constitute a meaningful opportunity comment and review plans. Rather, the school district, prior to sending the architect to design plans, should be required to consult with representatives of the neighborhood, as well as parents, teachers and students from the school.

CEA6.2: ACCESS

Work with schools and neighborhoods to map pedestrian and bicycle access to elementary and secondary schools on local streets and/or micropaths.

The project applicant made no indication that any mapping of pedestrian or bicycle access to Whittier ever occurred.

CEA6.3: SAFE ROUTES TO SCHOOLS

(a) Install sidewalks, cross walks, special signage, and traffic control measures along routes to all schools.

(b) Require that new developments near schools provide these features as a condition of approval, and retrofit existing neighborhoods as funding becomes available or as land uses are redeveloped.

The Commission expressly rejected a NENA Alternative that would have required additional bulbouts and signage, which is clearly does not comply this section of the comprehensive plan. In fact, the approved project appears to have no traffic calming measures on the exterior of the site.

CEA6.4: SIZE AND FREQUENCY

Work with the school districts to provide smaller and more frequent school sites than minimum state standards to support the “Neighborhood Schools” concept.

The project sponsor's argument that this school has 82% bused in students, which it uses to justify the suburban nature of the site design, expressly shows that it is not trying to create or design a neighborhood school. In fact, it appears to be trying to design a school that will never serve this neighborhood because they are choosing a site design that specifically does not preference walkers or bikers from the adjacent neighborhood.

CEA6.9: NEIGHBORHOOD CONTEXT

Encourage the incorporation of building and site design features that complement the established neighborhood context as part of new schools and the renovation of existing schools.

The Commission's project approval has no specific requirements for the retention of any of the existing school. Under the existing approval, the entire existing school could be demolished without violating the terms of the permit. As a result, the project does not comply with this section of the comprehensive plan.

CEA7.3: NEIGHBORHOOD SCHOOLS

(e) Work with the school districts to analyze transportation, infrastructure and health impacts of new or relocated school sites.

The project sponsor appears to have made no effort to analyze transportation, infrastructure or health impacts associated with the new school. Moreover, their only effort at transportation planning was to request a curb cut along Whitewater Boulevard from ACHD, which expressly violated the general terms of ACHD's policy to prioritize pedestrian traffic along Whitewater. It also significantly erodes the investment of CCDC in assisting with the funding of the sidewalks by adding one more point of conflict.

SHCC10.3: CO-LOCATION

Place a priority on locating neighborhood parks in conjunction with school sites.

The project is located in the middle of the school site because of the sewer pipeline, which has now can be moved to under Jefferson Street. As a result, there is no reason why the school site cannot be located in another place on the site, which would increase co-located parks and schools. In fact, the location of the building in the middle of the park-land now seems expressly to be a matter of inertia; there is no reason by the this section of the comprehensive plan needs to be violated and the Commission offered no finding to justify it.

Goal ES9: Reduce water and energy consumption in new and existing development.

The Idaho standards on energy and water reduction are among the lowest in the country. The project sponsor states that their efforts to comply with this goal are met because they will comply with those low standards. However, energy code compliance does not mean that the project meets the comprehensive plan requirement, which is arguably higher. It should be higher for public buildings that are funded by taxpayer dollars. The school district has an obligation to act to conserve waste, and thus it must do more and should work with the city on doing more, to make this a building that does not waste taxpayer money. In addition, the below standards from the

comprehensive plan were not addressed by the project sponsor or the Commission, and thus there is no evidence to support that the project sponsor complies with them.

Goal ES10: Reduce water and energy usage in municipal buildings and facilities.

ES10.1: EXISTING MUNICIPAL FACILITIES

- (a) Audit existing municipal facilities to establish a baseline of current energy and water use and identify opportunities for reductions.
- (b) Implement all solutions with a demonstrated payback of seven years or less.
- (c) Monitor energy and water costs at all facilities and compare consumption based on similar parameters, such as square footage.
- (d) Share costs and other data from the city's experience with the development and construction community.
- (e) Consider use of the Environmental Management System, ISO 14001, as a method to assess and track opportunities for meeting the city's sustainability objectives.

ES10.2: MUNICIPAL BUILDING DESIGN

- (a) Design new municipal buildings to meet, at a minimum, Leadership in Energy and Environmental Design (LEED) Silver standards.
- (b) Require the integration of features that will maximize energy reduction and water conservation.

ES10.3: SHADING

Install green roofs, "living walls" (including vine applications), and trees to shade municipal buildings and paving.

ES10.4: GREEN POWER

- (a) Source a minimum of ten percent of the electricity consumption in city facilities from non-hydro, renewable sources, such as purchased green power and power generated on-site.
- (b) Consider integration and net metering of on-site renewable energy production and use in municipal facilities, such as small-scale wind turbines and hydroelectric, geothermal, bio-energy, and solar sources.
- (c) Explore opportunities for the city to become a purveyor of alternative energy. Solar panels can be installed on almost any rooftop and are a great source for green power.

ES10.5: SOIL CARBON SEQUESTRATION

Investigate soil carbon sequestration at Twenty-Mile South Farm and implement reasonable options.

ES10.6: SUSTAINABLE PURCHASING POLICIES

- (a) Implement sustainable purchasing policies for the city such as energy-efficient appliances and equipment, recyclable materials, and items with recyclable content.
- (b) Track and review purchases on an annual basis to find reduction opportunities.

Further, the project does not illustrate how it would comply with Citywide Policy #6, in Blueprint Boise at 2-4, which provides:

Examples of activities with secondary benefits for economic development include providing an efficient and diverse transportation system that includes high-frequency transit, supporting the arts and cultural activity, encouraging high-quality schools, planning for a range of housing needs, promoting the creation of mixed-use activity centers throughout the community, and providing parks and recreational opportunities that improve quality of life and community health and make Boise attractive to employers.

In addition, Commissioner Stevens made a number of points of non-compliance with the comprehensive plan, including those addressing mature trees on the site, which the Parties also assert shows that the decision to approve this project lacks substantial evidence and is arbitrary and capricious. The elimination of the mature trees violates these sections of the comprehensive plan:

Goal ES1: Protect and enhance air quality and minimize health hazards associated with air pollution.

Goal ES2: Protect surface water quality by enhancing natural watershed processes and promoting efficient water use.

Goal ES6: Promote a healthy urban forest to enhance the city's environment, air quality, and appearance.

Policy ES6.2: MAINTENANCE AND REHABILITATION

Rehabilitate, restructure, and enhance the public urban forest through efforts to:

- Preserve healthy specimens of mature, robust, and long-living species;

- Ensure the health and survival of all intermediate aged trees;

V. Boise City Code § 11-03-03.13.A(6)(b) Is Arbitrary and Capricious and Constitutes Unlawful Procedure

Boise City Code § 11-03-03.13.A(6)(b) requires that written testimony and documents “must be submitted to the Planning Director by 5:00 P.M. on the Thursday preceding the review body hearing in order to be printed and included in the printed record presented to the review body.” Testimony not submitted by this time may be admitted by the chair of the Commission, which “shall have the options of rejecting the information, reviewing the information during the hearing, taking a recess to review the information, or deferring the hearing and/or action until the testimony or document can be reviewed. The action to be taken on such request shall be by a majority vote of the review body membership. In deciding whether or not to accept the information the review body shall consider prejudice to other parties if the information is accepted.”

This procedural rule is arbitrary and capricious and constitutes unlawful procedure for two reasons. First, it unnecessarily prejudices those individuals that do not ordinarily participate in the planning process—the common citizen—and erects a barrier to those individuals submitting comments. This procedural rule is not widely known, and in this case, it prohibited several commenters letters from entering the record, including supplementary testimony from NENA. The whole goal of the

public process is to encourage public participation. As the Idaho Attorney General Rules of Procedure, which govern state administrative agency adjudications, notes in Rule 600 that “[e]vidence should be taken by the agency to assist the parties’ development of the record, not excluded to frustrate that development.” In addition, an opinion of the Attorney General of Nevada opined in an opinion (Nevada AGO 2005-08) that, “A public body may create reasonable rules and regulations regarding the written remarks of members of the public. However, any rule or regulation that discourages public comment, or is content based, may violate the [Nevada] Open Meeting Law,” which has similar provisions to Idaho’s Open Meeting Law. Moreover, this rule is not necessary to meet due process standards in zoning proceedings, which were announced in the *Cowan* case, and thus due process requirements are not a defense against this arbitrary and unlawful procedure. See *Cowan v. Bd. of Comm'rs of Fremont Cty.*, 143 Idaho 501, 510, 148 P.3d 1247, 1256 (2006) (“In planning and zoning decisions, due process requires: (a) notice of the proceedings, (b) a transcribable verbatim record of the proceedings, (c) specific, written findings of fact, and (d) an opportunity to present and rebut evidence.”).

VI. Request for Relief

For all of the above reasons, the Parties allege that the Commission’s approval is arbitrary and capricious, not supported by substantial evidence, and made upon unlawful procedure. The Parties request:

1. The City Council to defer action on the project and convene working groups with neighborhood leaders, and especially parents, teachers and students at Whittier School, to determine a site plan that addresses the Principles for School Site Design that the Parties have proposed;
2. In the alternative, the City Council should rescind the Project Approval;
3. In the alternative, the City Council should remand the Project Approval to the Commission for findings as required by Idaho Code § 67-6519(4); and
4. In addition, the City Council should commence further proceedings to amend Boise City Code § 11-03-03.13.A(6)(b) to eliminate arbitrary and unlawful procedures therein.

Submitted by:

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Parties of Record joining this letter:

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