



Boise City Planning & Development Services

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Planning & Zoning Commission

Hearing Minutes of

July 18, 2005

Commission Members Present Gene Fadness/Chairman, Brian Ellsworth, Andy Brunelle, Doug Cooper & Brandy Wilson (Vice-Chairman).

Staff Members Present Scott Spjute, Susan Riggs, Carl Miller, Cody Riddle, Sarah Schafer Vicki Van Vliet, Teresa Sobotka (Legal) & Mary Watson (Legal)

Withdrawals

CSN05-00117/Northgate Shopping Center

Location: 6998 W. State Street

REQUEST A SIGN VARIANCE TO PLACE 2 ADDITIONAL FREESTANDING MONUMENT SIGNS IN A C-2D ZONE.

Deferrals

CUP05-00069/Gary Schweiger, Sageland Homes – COMMISSIONER WILSON MOVED TO DEFER TO SEPTEMBER 12, 2005. COMMISSIONER COOPER SECONDED AND THE MOTION CARRIED UNANIMOUSLY.

SUB04-00093/Stonyfield Farm Subdivision – COMMISSIONER WILSON MOVED TO DEFER TO SEPTEMBER 12, 2005. COMMISSIONER COOPER SECONDED AND THE MOTION CARRIED UNANIMOUSLY.

CAR05-00027/Randy Haverfield – COMMISSIONER WILSON MOVED TO DEFER TO SEPTEMBER 12, 2005. COMMISSIONER COOPER SECONDED AND THE MOTION CARRIED UNANIMOUSLY.

CAR05-00029-DA/Ameritel Inn – COMMISSIONER WILSON MOVED TO DEFER TO AUGUST 1, 2005. COMMISSIONER COOPER SECONDED AND THE MOTION CARRIED UNANIMOUSLY.

CAR05-00019-DA/The Terteling Company, Inc.
CUP05-00033/The Terteling Company, Inc.
CFH05-00012/The Terteling Company, Inc.

COMMISSIONER WILSON MOVED TO DEFER THE APPLICATIONS UNTIL AUGUST 8, 2005. COMMISSIONER COOPER SECONDED AND THE MOTION CARRIED UNANIMOUSLY.

Consent Agenda

CUP05-00065 & CVA05-00020/Boise Hotels & Lodging, LLC.

Location: 1455 S. Capitol Blvd.

REQUEST A HEIGHT EXCEPTION TO CONSTRUCT A 54' HIGH, 123 ROOM HOTEL IN c-2dc & r-3dc ZONES, AND REQUEST A GENERAL EXCEPTION TO USE C-2DC SETBACKS FOR THE ENTIRE LOT AND VARIANCES FOR THE SETBACKS.

CUP05-00066/Garnette Monnie

Location: 4106 W. Sand Creek Street

EXPAND A NON-CONFORMING USE BY CONSTRUCTING A 6,200 SQ. FT. GREENHOUSE ADDITION, RELOCATE 2 BUIDLINGS AND A BREAK/RESTROOM IN AN R-1C ZONE.

SUB05-00052/Trailside Place Subdivision #2

Location: On the north side of Amity Road at the northeast corner of Trailside Place Subdivision #1.

3-LOT, SINGLE FAMILY RESIDENTIAL SUBDIVISION.

ON THE CONSENT AGENDA, COMMISSIONER WILSON MOVED TO APPROVE THE ABOVE APPLICATIONS BASED ON THE FINDINGS OF FACT, CONCLUSIONS OF LAW AND SUBJECT TO THE CONDITIONS OF APPROVAL AS STATED IN THE STAFF REPORTS.

COMMISSIONER COOPER SECONDED AND THE MOTION CARRIED UNANIMOUSLY.

Regular Agenda

CUP05-00032/Orchard, LLC.

REQUEST FOR RECONSIDERATION.

Angela Wood – CUP05-32 was heard before the Commission on June 6, 2005. Staff does not support the request for reconsideration as the applicant has not provided new information to

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inform the decision of denial on the previous hearing. Instead the applicant is requesting review of a new project and so staff recommends not accepting the request of reconsideration. The applicant is encouraged to reapply for a planned unit development review if the project is viewed as different enough from the previous submittal.

COMMISSIONER ELLSWORTH MOVED TO DENY THE REQUEST FOR RECONSIDERATION.

COMMISSIONER WILSON SECONDED THE MOTION.

Commissioner Ellsworth – I’ve read this and I concur with staff. I think that there’s not new information, just a completely different application. I encourage the applicant to move forward with a new application.

MOTION TO DENY RECONSIDERATION CARRIED UNANIMOUSLY.

DRH05-00116/Southwest Ada County Alliance & the Millcreek Homeowners

Location: 1432 S. Maple Grove Road

APPEAL THE PLANNING DIVISION’S DECISION TO APPROVE A REQUEST BY CINGULAR WIRELESS TO CONSTRUCT A 45 FT. TALL CELL TOWER IN A C-2D ZONE.

Sarah Schafer – This application is in front of the Planning & Zoning Commission because it was an appeal of a staff level approval for a cell tower located at 1432 S. Maple Grove Road. At the June 13th Planning & Zoning hearing the Commission requested that the original applicant, Cingular Wireless, bring back documentation that showed other sites considered for their project. The Southwest Ada County Alliance and Millcreek Homeowners Association are the ones that had appealed the original approval of the Planning staff. The use of the cell tower in the zone is currently not what’s under question. The applicant is allowed to put the cell tower in the zone that they are in. What is currently under question is whether there were opportunities to co-locate on other cell tower sites. Staff believes with the letter that the Cingular Wireless representative has submitted that documentation has been shown that other facilities were not available in this location where the applicant needs to place their cell tower.

Kevin Merrill (1547 S. Allante Pl./Boise) – I attended the June 13th hearing on the cell tower proposed for 1423 S. Maple Grove Road. As a residential of the subdivision that will be impacted by the cell tower, I come before you tonight to urge you to deny the request for the tower. Perhaps because cell phone technology is ubiquitous and popular, I’ve never given it much thought, the notion of cell towers one way or another until the folks of Cingular Wireless announced they wanted to put a tower right next to my neighborhood. While I have nothing against Cingular Wireless, in my opinion a cell tower is an ugly, obtrusive addition to anybody’s neighborhood starting with mine. I discovered other more disturbing reasons not to erect a cell tower within yards of my neighbors’ back door. On the internet I found groups all over the

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world from widely varying backgrounds that through observation and scientific testing have come to believe that prolonged exposure to the non thermal radiation from cell phone towers is potentially harmful to human beings. The International Fire Association of Firefighters is a 200,000 strong body comprising professional firefighters in Canada and the United States. They have come to believe that cell towers on top of fire stations all across the United States and Canada pose a long term risk to their members. To quote from their position paper: "Internationally acknowledged experts in the field of radio frequency microwave radiation research have shown that RF and MW transmissions..."

Commissioner Fadness – Sir, we're not allowed, under Federal Communications Commission regulations to consider health-related issues related to cell towers. If you would like to testify on the sighting or other issues, sight obstruction, those types of things, you are free to do so but this Commission cannot consider health impacts and those types of issues.

Mr. Merrill – Understood. Then I would like to conclude that I have no way of verifying any of the conclusions of these folks or any of the many claims by government bodies and industry associations that cell towers are harmless. But, these findings from the widely varied groups raise serious concerns in my mind. My wife is a cancer survivor. From what I read I'm not convinced that the cell tower won't pose a threat. I also believe that just having a cell tower will raise potential issues with folks who may want to purchase my property eventually.

Kelley Smith (1529 S. Allante Pl./Boise/83709) – Several years ago AT&T came forward and wanted to put a cell tower in. We, as a neighborhood, went together and wrote letters saying we did not want the cell tower. I have a patio in my back yard and if I were to walk out the back door it's right there in sight where I can see it. It's just right there. It's not a tree. It's not a power pole. It's a cell tower and there's several business parks in the area with property available where a cell tower could be established. My problem with it is the fact that it's right in my back yard. Working in my garden, working in my yard, there's the cell tower. I have a letter from a realtor who has property in the area. It talks about the fact that property values in a neighborhood where he sold a house previously where a cell tower went in, her property values went down \$15,000.

Commissioner Fadness – Let the record reflect that we've received a letter from Dorothy Hardy of Holland Realty.

Betty Bermensolo (Representing the Southwest Ada County Alliance/1970 Cannonero/Boise) – I also was here June 13th. At that time the Commissioners did ask for indication of property value concerns. I would encourage the Commissioners to read in total the letter that Mrs. Hardy submitted. She's had 25 years of real estate experience and I think that it is something that's substantive that you can actually know that there are concerns out there when people are looking for property and they are looking at a cell tower in the back yard. I'm going to ask the Commissioners to do one thing right now and that's to take the opportunity, because I know that staff didn't have the opportunity, to look at the body of information that might have convinced

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staff that the location of the cell tower was not a compatible use. I'd urge the Commissioners to take this body of information that was collected by the neighborhood that will be living by it and consider that before they make a decision tonight. I think that there's a huge responsibility. This is the last chance that this neighborhood has to bring evidence to this Commission that could keep a health risk from their neighborhood. I understand that you are unable to consider that tonight, but I think as members of this Commission making a decision that could have some harmful affects on residents there, you owe it to them just as I think staff would have taken the opportunity to read this information. It's highlighted by Mr. Merrill and I think it's important. I would like it to be on the record that we brought it to your attention for that purpose so that you would have the opportunity to at least consider it. That's the evidence that the Commissioners asked for in terms of property value concerns. We have someone that has been dealing in real estate for many years that says there is enough concern be it health or that it's going to turn potential buyers away from the properties in this little neighborhood. They've been subjected, as one of the Commissioners said at the June 13th meeting, to a number of other changes in the neighborhood. Should this be another risk that they have to take and even think about having to dip into their own pocketbooks to sell their home when it looks like this could be averted. I haven't had a chance to ask Mr. Wilson whether he contacted his engineers to look at some of the locations that we pointed out that are in the general vicinity of the letter that includes the locations of other potential spots for the cell tower. The locations that we had talked about were the beauty school behind Walmart, that location close to the freeway, and also speaking to the Sundance Corp., the gentleman that I talked to said no one had approached him in regards to even utilizing the Quail Building where they have positioned towers on the top of it. I don't know whether or not Mr. Wilson has contacted his engineers to see whether those would be suitable locations. I have to take his word that he has explored all other locations that might not put a residential area at risk. I'm not certain that that has been done. I guess it remains the decision of the Commissioners as to whether or not that Cingular has proven their point that they attempted to locate in another area. I'd be interested in knowing if either one of those locations, since it was so proximal to the fire station and that was one of the areas that they considered. I am urging the Commission to look at the highlighted areas and consider this. I feel that there's a lot at stake. The two cell towers that the staff did point out that were in residential areas just reinforces to me that the Commission looks at this as maybe being compatible because they've also done it for two other residential areas. Because of that same line of thought, it makes it even more concerning to us to see this one go in which sets a precedent for other applicants to come forward. We certainly hope that just because two have gone it, it doesn't set precedence for us to have another one, certainly in view of some of this recent information.

Ms. Schafer – The only thing I am unaware of is the documentation that Ms. Bermensolo is referring to as far as highlighted information. I have not received anything additional from the neighborhood association since the past hearing.

Tony Wilson (Representing Cingular Wireless/1831 W. Boise Ave./Ste. B/Boise) – Cingular has met the ordinance for setback requirements. It is a permitted use within this zone. It's my understanding that in an appeal it's got to be based on staff error in making that decision. At this

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point we have seen nothing that shows that staff did error in allowing us to build there because we do meet the requirements of the ordinance. As far as property values, I've been doing cell sites since October if 1996. It's something that gets brought up at every hearing. In nine years I've yet to see a study presented that shows that either plus or minus on property values. It's basically a case by case basis and it's something that there's neither pro nor con to it. You do this on a site by site basis. There's no precedent set because of the fact that everyone must come before you either through the Design Review staff or a conditional use permit, therefore it's not something that's going to allow massive amounts of cell sites. Granted in an area where it is an allowable use, permitted use, you probably will see more. One of the things that people have got to realize is the industry is evolving from when I started 9 years ago they came into the Boise market the criteria was cover the Interstate, the business district and gradually the residential. One of the things that's happening now is the wireless internet. There is a company called Clearwire that's coming into the area. They are wireless internet and there are probably going to be 30 to 40 sites in the area. Most of those will be co-location, but wireless internet started in the business area and now they are going residential. The reason I mention this is because Cingular is also developing their own wireless internet system. It's going to be a UMTS system and this site, as well as all of our other sites, will have those equipment capabilities when they finally launch that. You are going to see more and more communication facilities reaching out and trying to reach into the residential areas because they are trying to cover the residential areas with the wireless internet. It does not cover as wide an area as a digital phone service will, but it also doesn't need the equipment but it's something that a 45 ft. cell tower is something that in this area again, as my letter to the staff indicated, when we go into an area we drive the area and I did a poor job last time of explaining the system. But, I will give our RF department 3 to 4 different sites and they will evaluate that and tell me which ones may or may not work. In this case this was the only one that they said will meet all the criteria which is coverage at 45 ft. We have a certain area. It's more like an infill type site because there is coverage all the way around this area and our propagation charts indicated that it's a very low in-building coverage area and that's why we pretty much went to this spot.

Commissioner Ellsworth – As a part of your criteria was it the cost of the lease or is it just simply coverage?

Mr. Wilson – Mostly coverage.

Commissioner Ellsworth – Does cost come into it?

Mr. Wilson – No. We pay more based on the area, for instance the downtown Boise site on top of the Idaho Power Building costs 4 to 5 times more monthly rent as a site like this one would. It's based more on the coverage objectives and where we're at.

Commissioner Ellsworth – But if you've got 4 sites in this area that let's cell would all cover the cell phone usage in this area, but site A is more expensive than site B, then you're likely to go to site B.

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Mr. Wilson – Actually it's a lot more technical, a lot more scientific than that. We would definitely go with the site that meets our coverage objectives first. I don't consider the costs and neither does my client as far as rent cost. Now if somebody comes back to us and says they want five times what we think it's worth, then we'll negotiate that down but eventually if it's in an area that we have to be in and we want the coverage and it's important to us we'll meet that demand.

Commissioner Ellsworth – What is the reason that the applicant can't locate the tower towards Maple Grove Road?

Ms. Schafer – If you'd like to place a condition of approval for them to move it up further you could. The reason they have sited it at this location is so it's out of the way of future development on the parcel. This parcel (here) currently has not been developed. There's development going in (in) this area which was Red Cliff Development. It has 4-plexes going into the rear with two commercial properties up front. We have not seen a development plan for (this) property yet and that's why they placed the tower at the back corner to keep it out of the way of any proposed development.

Commissioner Wilson – Does this just have to do with health affects or is there other information in here that you think is pertinent?

Ms. Bermensolo – I think the scope of it is one that shows that it's all through the country where there's concerns about health risks.

Commissioner Wilson – It is strictly health risks then.

Ms. Bermensolo – Health risks, yes.

Commissioner Fadness – To keep the record clear on this I will give this back to you then.

Ms. Bermensolo – I know that this is going to launch, because of what's in this envelope, a real effort to get an ordinance that speaks to what's in this envelope because I will provide what's in here to the Fire Chief of Boise. I don't know whether it's going to make a difference in terms of tightening the perimeters about placing cell towers, but I'm still hopeful that we can look at what is here and utilize it. Certainly I think it's something that staff would have had an opportunity to look at had it been available. I also feel that I didn't get an answer as to whether Mr. Wilson attempted to co-locate at Sun Dance. That concerns me, or the beauty school behind Walmart. Those were presented at the last meeting. I think those were two avenues that he could have at least gone to those locations and seen whether or not Sun Dance would have had any objections to placing towers there where there are already towers. If this tower does go in I'm hoping that the least concession would be that it would be a tan color rather than silver. But, I'm hoping that we've attempted to put enough concern in front of you that you don't look at this as just another cell tower and look at the proximity. I don't if staff can tell you how a proximal that is to that

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fence line, but we're not talking about many feet. I'm sure staff could relay that to any of the Commissioners that want to consider that again, but it's very proximal.

COMMISSIONER WILSON MOVED TO DENY THE APPEAL OF DRH05-116.

COMMISSIONER COOPER SECONDED THE MOTION.

Commissioner Wilson – One of the things I'd like to bring up, because it's been brought up so much this evening, is the consideration of health effects. It's not a local zoning ordinance that prohibits us from discussing that, it's the Federal Communications Commission that says that cannot be part of a decision. So even if that had been provided to staff and had been to provided to us, that's still not something that we are allowed to consider. Right now that's just the way that the law of the land is written. I just wanted to make that clear that wasn't something that staff was choosing to ignore or that we were choosing to ignore but something that we are not allowed to consider. The second issue is that in our last meeting we asked for evidence from the applicant that he had attempted to look at other sites. He has provided us with a letter in the packet that explains why the other sites weren't selected and why he didn't approach those landlords and that's because according to their guidelines it did not meet their coverage objectives. Within this zone this is a use that is allowed with all of it's regular setbacks and landscaping features and all the other conditions that apply. I think that we really have little choice but to approve what he's put here before us and I do appreciate his efforts in coming back to us with some explanation of why the other sites were rejected and I would encourage future Cingular applications or other cell phone applications to include that information up front so that we can see what other sites were considered and why the basis for rejection.

Commissioner Cooper – Unlike other cell towers where there's been a height exception involved, there's really nothing here that is not permitted, the use or the height, so we really have nothing that is within our purview to rule against this.

Commissioner Fadness – I would add that the issue of co-location was also addressed by the applicant which is really the only issue that we were allowed to consider in this zone since the project does meet the requirements of the zone. You could actually build a 45 ft. building in this zone and it would meet the zoning requirements.

Commissioner Ellsworth – Could we attach a condition of approval that would at least have a tan cell phone tower instead of silver. That was something that Ms. Bermensolo brought up that sounds easy enough to do. I think that the applicant could hopefully agree to that and would hopefully do a good job of landscaping this to screen it from the neighbors.

Commissioner Fadness – I think the applicant has already indicated an agreement to work with that. I think we can perhaps count on that rather than attaching a condition to the application.

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Commissioner Wilson – As the maker of the motion I am open to either way. I can add the condition or we can let the application stand.

Commissioner Fadness – Instead of adding the condition maybe we can ask the representative from Cingular to come up and address that item. No, we can't do that. We were instructed as to what we could consider in this application, which issues we were to look at, does it meet the zoning requirement, did the applicant make an effort to co-locate. We did attempt, at the last meeting, to perhaps go beyond where we should have gone and I guess just to keep this record clean I would prefer that the applicant is well aware of the neighborhood desires and that we trust that they will follow through on that.

MOTION FOR DENIAL OF THE APPEAL CARRIED UNANIMOUSLY.

CAR05-00028/The Cat Doctor Veterinary Hospital

Location: 9151 W. Ustick Road
REZONE 1.89 ACRES FROM R-1C TO N-OD.

CUP05-00067/The Cat Doctor Veterinary Hospital

Location: 9151 W. Ustick Road
CONSTRUCT A 6,000 SQ. FT. CAT HOSPITAL IN A PROPOSED N-OD ZONE.

Susan Riggs – The Cat Doctor Veterinary Hospital requests approval of a 1.89 acre rezone at 9151 W. Ustick from R-1C to N-OD (Neighborhood Commercial). The applicant is also requesting a conditional use permit approval to construct a 600 sq. ft. feline hospital located at the same address in a proposed N-OD zone. The Boise City Comprehensive Plan does designate this parcel as low density, 4 dwelling units per acre and the Land Use Consistency Matrix does indicate that N-OD is an appropriate zoning designation for this site. The proposed rezone would continue to maintain compatibility with the surrounding development. The Cat Hospital has co-existed in this neighborhood for 11 years without any complaints to Boise City. The development has quite large landscape setbacks. They meet all their parking requirements and they are compatible with the surrounding residential uses and commercial uses across the street. One parcel to the east is an Idaho Power substation. The design of the facility is also compatible with the neighborhood and with the existing design. Currently on the site is an old vacant dilapidated home that will be removed to accommodate the new facility. This building is proposed with an attic in it. According to the applicant, at the neighborhood meeting they asked that there be no windows on the south side of the building and the applicant has agreed to comply with that request. The existing cat hospital is 2,733 sq. ft. so the 600 sq. ft. is an addition of a separate building. This building will be located 25 ft. to the east of the existing facility and will only serve as a feline hospital. There is no additional boarding proposed beyond what is already there which is boarding for 32 cats. They've created a very lovely wrap around porch. They've kept the residential style with the neighborhood. We believe that this fits nicely with the existing hospital. This is in a Design Review overlay zone and it will require Design Review approval.

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Randy Haverfield (Applicant's Architect) – The Cat Doctor has existing in this location for over 11 years and they've been a good neighbor. There have been no complaints and the proposed rezone is supported by the Comp Plan.

Gary LaFay (9085 Ustick/Boise/83704) – My property is located between the proposed building and Idaho Power. They have been very good neighbors and I'm in favor of them doing this. We've lived there since February of 1966.

COMMISSIONER COOPER MOVED TO APPROVE CAR05-28.

COMMISSIONER ELLSWORTH SECONDED THE MOTION.

Commissioner Cooper – I think this is pretty simple and covered pretty well by staff. This an expansion of an existing business that is very well run within the neighborhood and has had no complaints. The building is nicely designed to be compatible and I think we should approve it.

Commissioner Wilson – The rezone for this parcel seems appropriate given the use that's going to be taking place and also given the residential nature of the building that will be placed on the rezoned property.

MOTION FOR APPROVAL CARRIED UNANIMOUSLY.

COMMISSIONER COOPER MOVED TO APPROVE CUP05-67.

COMMISSIONER ELLSWORTH SECONDED AND THE MOTION CARRIED UNANIMOUSLY.

CAR05-00026/Courly Development, LLC.

Location: 2830 S. Five Mile Road
REZONE 4.88 ACRES FROM 'A' TO R-1B.

SUB05-00051/Kylee Cove Subdivision

Location: On the east side of S. Five Mile north of Victory Road.
16-LOT SINGLE FAMILY RESIDENTIAL SUBDIVISION.

No one was present to testify so presentation of the staff report was waived. Applicant concurred.

COMMISSIONER WILSON MOVED TO APPROVE CAR05-26.

COMMISSIONER ELLSWORTH SECONDED THE MOTION.

Commissioner Wilson – I believe the rezone is appropriate for this area and enhances the compatibility and provides an opportunity for this development to take place which I think will be compatible with the surrounding area.

COMMISSIONER WILSON MOVED TO APPROVE SUB05-51.

COMMISSIONER ELLSWORTH SECONDED AND THE MOTION CARRIED UNANIMOUSLY.

CUP05-00071/Quail Ridge Partnership

Location: 4760 N. Quail Terrace Pl.

MODIFICATION OF CUP-94-90 TO SUBDIVIDE LOT #80 CREATING ONE BUILDABLE LOT AND ONE COMMON LOT IN AN R-1C ZONE.

CHF05-00024/Quail Ridge Partnership

Location: 4760 N. Quail Terrace Pl.

REQUEST FOR A CATEGORY II HILLSIDE & FOOTHILL DEVELOPMENT PERMIT FOR THE GRADING ASSOCIATED WITH QUAIL RIDGE #10.

SUB05-00053/Quail Ridge

Location: On the east side of Quail Terrace Pl. south of the intersection of Quail Terrace & Quail Heights, generally northwest of Hill and Collister roads.
2-LOT SINGLE FAMILY RESIDENTIAL SUBDIVISION.

Susan Riggs – This application was approved by the Planning & Zoning Commission on May 6, 2002. This application is before you tonight because the applicant failed to obtain a building permit within the required 18 months. The applicant is entitled to three 1-year time extensions, however the application expired prior to an extension being requested. When this application was originally approved in 2002 the applicant requested 2 buildable lots. Much negotiation occurred with the neighbors in terms of lot numbers and building height. Ultimately the applicant agreed to one building lot and the construction of a single story home with the option for a daylight basement. The concerns of the neighborhood at that time was one that the plat indicated that the subject lot was a non-buildable lot and concerns with the building height. I understand that there are people here to testify. For the record I have not had any correspondence personally prior to this application being heard this evening. The application is requesting to modify the original CU in order to create Lot 94 which would be .65 acres and this would allow the construction of a single family home, and lot 95, 3.21 acres would be dedicated as common open space. The plat indicated that Lot 80 was designated as a non-buildable lot. It has not been designated as a common area and as such would not impact the deeded common open space approved for Quail Ridge Subdivision. According to the applicant, it has always been the intention of Quail Ridge Partnership to develop these parcels. This site is large enough to accommodate the proposed use, all yards, open space, pathways, etc. without impacting the adjacent neighborhoods. I think one of the biggest issues that was discussed when this

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application came before the Commission was the difference between a buildable lot and a non-buildable lot. I gave you some excerpts from some minutes where the applicant discussed how this lot came about being designated as a non-buildable lot. Scott Spjute further elaborated on that explaining how the subdivision process uses the term for plotting of a non-buildable lot. Hopefully those questions have been answered in the past and everybody understands their intention. The proposed modification will be compatible with the lots as similar lots have already been created in the subdivision. The lot meets the 5,000 sq. ft. minimum requirement, it actually exceeds that for the R-1C zone and can easily accommodate a single family home. Jim Wylie is here to discuss the hillside application. I noted that prior to the commencement of this hearing people seemed to be mostly concerned with the CU and not with the foothill review so I will skip over that unless there are some specific questions that need to be addressed. For the record I would like to state that there are three conditions of approval that were inadvertently left out of the staff report and are very important to the approval of this process. These are three conditions that were initially applied to the project when this was reviewed in 2002. They are: The applicant shall restrict the height of the building by a deed restriction. The residence shall be single story by deed restriction and may have a daylight basement. The height of the home will be a minimum of 2 ft. below the sidewalk at the proposed property line between the property located at 3781 W. Quail Ridge Court and the proposed buildable lot.

Carl Baker (Applicant/6200 N. Meeker Pl./Boise) – This project was initially approved in 2002. For some reason that extension was not done and it did expire. We are here today to ask for approval as was originally approved in 2002 as staff indicated. We spent a lot of time both in 2002 in talking with the neighbors listening to their concerns and trying to arrive at something that was compatible for them. We also held a neighborhood meeting this past April where we met with a number of the residents, over a dozen to discuss what was intended and the intent to maintain the original conditions as were indicated by Ms. Riggs which we do agree with and had planned to ask to be included had that not been done. We believe that we've made a best effort to turn this area, which at present at best has weeds and areas of slough. We believe that by building this lot and doing the revegetation, which was successfully done in other areas of the subdivision that we will enhance the view that is currently there. We'd also like to point out that we believe the issue of non-buildable was addressed to quite a large extent previously in 2002. I believe all of you have Mr. Spjute's comments regarding that.

William Hickey (3813 W. Quail/Boise/83703) – I live on the edge of the proposed development. I'd like to take strong issue with the manner of the approval in April of 2002, but I have a couple of points to make first. The issue has been put forward as a matter of amending a conditional use permit and also vacating a note on a plot plan. As a matter of fact when we were in Quail Ridge looking around we looked at this empty lot and looking at the view and the information that we had gathered, including a plot plan, we decided to buy that lot from the developer and get an architect and a builder and build on that lot, which we did. The note at that time that helped us make up our mind on the plot plan, which is a part of our contract that we got from the title company, is quite plain. There's no room for a misunderstanding. It says: "Non-buildable lot, Lot 80 and 86 are designated as non-buildable lots. No buildings shall be built thereon." That

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does not seem to me to be open to much interpretation. There was a meeting in March of 2002 and we came down and made our input at that time. After awhile a lady said as a point of order, the applicant had not held a public meeting in the subdivision in a proper fashion and this could lead to a challenge to any decision. She proposed it was accepted that a new date be set for a follow up meeting to give time to the applicant to hold a public meeting. We came down here on the date of that meeting and it actually was a City Council meeting. We spoke with a couple of people here, Vern Bisterfeldt and Caroline Terteling. They looked on the agenda and said there was no such item on the agenda. The staff person at that time said there has something back and forth between the Commissioners and the applicant and it has been approved. Secondly, we just recently had a site meeting on that land and the applicant had with him his chief engineer and we were asking where the roof was going to be, where is the actual building going to be, how high is it, how much is it going to block our view, a lot of questions. He said it would all be up to the builder so it looked like a blank check was being asked for. We have a contract here as well as notes on plot plans, etc. and we're being asked to set aside our contract as well as give him a piece of extra property to build upon.

Joyce Hickey (3813 W. Quail Heights/Boise/83703) – We were not informed of the approval of this application at the time it came forward. We bought our lot in good faith and did all the pertinent checking that we could. The lot was sold and it does impact our house. My favorite chair will now, if this home is allowed to look out onto a rooftop as will all the rooms in the rear of the home. There are no curb cuts on Quail Terrace so I'm assuming that the driveway will be the small service road which was told to us was an emergency service access because Quail Ridge only has one access road in or out and this rear road has gates across it which can easily be breached should there be fires or other disasters. There is one home down there now that has been built since the previous discussion. This would appear to violate public safety because it is a narrow road. As the property was designated as non-buildable, I'm assuming that the building has not paid any homeowner's association fees over the years as he has done on all of the lots that were designated as buildable. Although it's not your concern I think that would have to be brought up to the homeowners' association. We feel there are enough red flags raised by the lack of concern for our view as well as other views. There should be further consideration given to not building. The plot now, even though we could not get a straight answer, is not built closer to where our home is and would we would definitely have a view of the rooftop. It would definitely impede and restrict our quiet enjoyment of our home. We are retired and spend a great deal of time there. I enjoy sitting there and looking out and that is the view corridor for us. I would like your consideration to deny this application.

Mike Holmes (3825 W. Quail Heights/Boise/83703) – My wife and I just purchased Lot #71. We looked around at the subdivision at great length with a couple of real estate people. We got to this house which was for sale and we bought. We were told that the area below would remain as it is. We were given this information with restrictive covenants and lots 80 and 86 were designated non-building lots, no dwelling will be built thereon. This was just a matter of months ago. Everybody that we talked to assured us that this area would remain the same. We just moved in a couple of weeks ago and the first thing that hit us in the face was this and there very

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likely is going to be a building down there. As far as weeds, weeds to not detract from the tranquil beauty of that area. One of the reasons we bought out house is because of the information that we had. We thought it would be a point of law since it was in the records and the developer said it wasn't going to be built on and it was in the public records and the County Recorder. I can't understand how this could be bypassed so easily. It happened in 2002 that this transpired but nobody knew about it, nobody told us about it and we were assured by a number of people that valley would remain the same. Nobody would be building a house within our view. We can't understand how this could transpire and would ask this building be turned down.

Commissioner Ellsworth – Could staff give a brief summary of what brought us to the decision that we could approve this back in 2002?

Ms. Riggs – The term non-buildable is fairly common in the development of subdivisions for reasons of fire protection, lots being located in floodways or floodplains. Very often there is non-buildable stipulations put on such lots. They are unbuildable, but they are not non-buildable for the time that the conditions, which require the non-build agreement, until they are removed or dissolved. Apparently it happens all the time where the Planning Department receives letters from Public Works and other agencies saying that it's okay to remove a non-build agreement for a particular lot and then we release it for the building permits. It is very common. In this case the note was put on the plat and apparently there were some representations made to some of the people who have spoken here tonight that it was a non-buildable lot. The City certainly never intended that a lot labeled “non-build” be forever unbuildable. There is a procedure for removing the non-build designation and condition and that is the process we are going through right now, to vacation the non-build dedication on the plat.

Scott Spjute – There is a procedure for removing notes, there is a procedure for changing conditions. There's nothing technical what happened last time. The Commission came to the conclusion that they would recommend approval of the plat note, they would modify the conditional use permit. You have to make the findings that modification of the conditional use permit meets the findings for such, no adverse impact on surrounding properties, etc. It's not an issue of what that non-build note means. There's a process for removing the note and that's what was done 3 years ago. But, you've got to make the findings for a conditional use modification which are the standard conditional findings that you deal with all the time. What was intended by the City and the developer when that note was put on the plat way back in the early 90's is another issue. What I was trying to say back in 2002 and what Susan was quoting is that there's a procedure for removing plat notes and in addition to removing the plat note the conditional use had to be modified. The decision is yours. If you can make the findings as far as no adverse impact and the other CU findings then you can do it. If you can't make those findings then you deny the project.

Commissioner Fadness – I understand the decision to remove the non-build designation was made back in 2002. What conditions changed to remove the non-buildable designation? It was

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placed on there as a condition until those conditions changed. What conditions changed at that time?

Mr. Spjute – I don't recall what conditions changed, but the developer presented their case for removing the non-build note. I don't know if there was any particular condition. I think there contention at the time was that it had always been their intent to add another two lots there. I don't know what conditions changed at the time, but they submitted an application to remove the plat note and modify the CU and that was done. They went through the process and that's what they are doing here. The decision is yours and it's discretionary and it's not based on what non-build means. It's based on the findings that you have to make to modify a conditional use permit.

Commissioner Wilson – Could staff address the curb cut in the potential location for the driveway location on this lot?

Ms. Riggs – I think I will have Carl Baker address that. We don't have development plans in at this time. I don't know if there has been a designated access point to this yet. Usually that comes in at the time the development application comes in for a foothill development permit.

Carl Baker (Applicant) – With regard to the curb cut, it will be towards the lower portion of that lot. It will not be on that access road. It will be where the pad meets the sidewalk. With regard to the reason as to why that was termed non-buildable at the time, foothill subdivisions require a considerable amount of cut and fill and at the time we did not have the proper dirt balance to perform the fill that was required. We had felt that lot sales in the ensuing months would be sufficient that we would be able to stockpile that dirt and do the project. Shortly after receiving approval for this application, nor nearly the next two years there were only one or two lot sales which prevented us from having adequate dirt plus we didn't feel it was wise to add to the inventory of a subdivision where lots were not selling. Since then a number of lots have closed and we have stockpiled an adequate amount of dirt so we have the requisite fill material that is required to continue. It was our understanding in 2002 that during that process the term non-buildable was vacated and that would not be readdressed. I may be in error there and would ask Susan Riggs or Scott Spjute to correct that if I misunderstood. What I believed was at issue here tonight was whether or not this single lot would be reapproved as it was initially approved in 2002.

COMMISSIONER ELLSWORTH MOVED TO APPROVE CUP05-71 WITH STAFF'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND CONDITIONS OF APPROVAL ADDING CONDITION #10.

Ms. Riggs – It's condition #1 adding A, B & C.

COMMISSIONER ELLSWORTH – THEN IT'S ADDING REVISED CONDITION #1.

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COMMISSIONER COOPER SECONDED THE MOTION.

Commissioner Ellsworth – I sat on this Commission back in 2002 and after hearing the testimony tonight, and Mr. Baker brought up the fact that they didn't have the fill, I remember that now. I think that at this point this is just a technicality that they didn't get their building permit in time and I think that staff's done a good job in identifying the conclusions of law in how we can approve the CUP. I don't think it impacts the neighbors, especially with the condition of approval that was mentioned.

MOTION FOR APPROVAL CARRIED UNANIMOUSLY.

COMMISSIONER ELLSWORTH MOVED FOR APPROVAL OF CFH05-24.

COMMISSIONER COOPER SECONDED AND THE MOTION CARRIED UNANIMOUSLY.

Commissioner Fadness – I take it that your motion includes the reason for the decision that was added in our packet tonight?

COMMISSIONER ELLSWORTH – YEAH, ALONG WITH STAFF'S CONCLUSIONS OF LAW AND FINDINGS OF FACT AND ADDED REASON FOR THE DECISION AS GIVEN TO US BY STAFF.

COMMISSIONER COOPER – THE SECOND WILL CONCUR.

COMMISSIONER COOPER MOVED TO APPROVE SUB05-53 ALONG WITH STAFF'S FINDINGS OF FACT AND CONCLUSIONS OF LAW.

COMMISSIONER COOPER SECONDED AND THE MOTION CARRIED UNANIMOUSLY.

CAA05-00155/Vista Neighborhood Association

Location: 2020 S. Hervey Street

APPEAL THE PLANNING DIVISION'S DECISION TO ISSUE A BUILDING PERMIT TO CONSTRUCT A 2-STORY SINGLE FAMILY HOME ON A 25' WIDE LOT IN AN R-1C ZONE.

Susan Riggs – Curt Ship requested a building permit to construct a 2-story single family home on Lot 13, Block 30 of the Eagleston Park Addition. The Building Department denied the building permit as it was determined at that time that the parcel resulted in an illegal lot split. At that time it was staff's understanding the Lots, 11, 12 and 13 had been purchased as one parcel. The establishment of Lot 13 created 11, 12 and 13. It was believed that the issuance of a building permit here would create nonconforming setbacks on parcels 11 and 12 to the east of that parcel. The applicant appealed the denial of the building permit to the Planning & Zoning Commission. That application was pulled off the Commission's agenda as it was decided that this was an

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individual lot of record. Prior to this being heard the applicant brought in a warranty deed documenting that in 1951 the home on Lots 11 and 12 was a legal lot of record. He also presented a warranty deed indicating that in 1956 Lot 13 was its own separate lot of record and then after that some sales went back and forth between these lots with Lot 13 always being conveyed as a separate individual lot. The ordinance states that lots created prior to August, 1966 are considered legal lots of record. The home on Lots 11 and 12 was constructed in 1937. It was considered a legal non-conforming structure and had a 2'6" setback on the south side. Lot 13 is not required to provide the additional setbacks for that lot. The Vista Neighborhood Association is appealing this application. The grounds for appeal are as follows. "This legal lot of record is not a vacant lot or an unused parcel of residential property that can accommodate a new home without special concessions and impact on the adjacent properties. A conditional use permit will be necessary to allow the reduced setbacks. Existing structures on adjacent property will immediately be a condition of non-compliance with the existing code requirements such as setbacks. This is an example of misdirected, bad infill development. It is because of these kinds of developer's desire projects and lack of common sense that infill policies are now under fire and many neighborhoods are upset." They therefore appealed the decision to allow a single family home to be built on this lot. The house on Lots 11 and 12 has about a 2'6" setback. However, the house itself does meet the 5' side yard setbacks, the 15 ft. front yard setback and the 15 ft. rear yard setback. The additional warranty deed research was conducted as a result of this appeal and it appears to demonstrate that Lot 13 is a separate, single, individual legal lot of record. By current code the development of a single family home on this lot does not require conditional use approval and the City is obligated to allow development of the parcel. The building plans submitted for Lot 13 complies with all the required dimensions and parking for the R-1C zone. Staff agrees with the neighborhood association that this is a very marginal site for the development given the non-conforming setbacks of the structures on the adjacent lot. Planning & Development services is currently working with the neighborhood committee to determine design standards for narrow single family homes. Unfortunately at this time we do not have any design standards in place that would control development of these types of lots. There may be opportunities to work with the developer on specific standards that would help this project fit better with the existing neighborhood. Some of those standards that might be considered this evening would be preserving one of the large trees on the front of the property limiting the 2nd story, maybe dropping the 2nd story back at the rear of the property so you don't have a huge rectangular box and perhaps some architectural design. This appeal basically raises a policy issue of whether or not 25 ft. lots should be deemed buildable or whether there should be additional code restrictions based on concerns such as the location of adjacent structures within setbacks, the ability to provide normal separation between uses, and compatibility with the existing neighborhood and design. It may be appropriate for the Commission to solicit testimony from the neighborhood association tonight regarding the design treatment for projects. However, compliance on the developer's part would be legally voluntary tonight, but this would be a good opportunity to open this up for discussion and we'd encourage the Commission to do so.

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Lorene Spencer (Representing the Vista Neighborhood Association/Appellant/1625 S. Latah/Boise/83705) – Our opposition to this project is on record with you as documented in letters to you from the association dated May 8, 2005 and June 10, 2005. The City initially denied this project because it was considered an illegal lot split, then reversed itself based on information that there is indeed a lot at this location be it a substandard, original lot of record, Lot 13 of the Eagleson Park Addition. We will withdraw our second reason for the appeal which is dealing with the CUP because at the time we did not know that it might be legal to put a house in a space that is less than 30 ft. without a CUP. I would like to summarize the history of this lot once again. The information we have available to us indicates that Eagleson Park Addition may have been platted as early as 1912. The history shows that for the last 49 years, in 1956, Lot 13 was sold the owner of Lots 11 and 12 and they were non-conforming lots to the north making one residential parcel of lots 11, 12 and 13 which also brought 11 and 12 back into conformance. The address for this combined group of residential lots is 2018 S. Hervey. The home was constructed in 1937. This entire residential parcel consisting of lots 11, 12 and 13 sold again to new owners twice in 1960, again in 1983, 1984 and in 1991. For the last 49 years the property recognized that the residential street address of 2018 S. Hervey consisting of legally surveyed lots 11, 12 and 13 of Eagleson Park Addition was conveyed in its entirety on one deed as one residential parcel to five successive owners. Property tax records show that lots 11 and 12 were assessed as developed parcels while Lot 13 was assessed independently as an undeveloped parcel. The different evaluations were to the apparent benefit of the property owner because the undeveloped Lot 13 has a significantly lower assessed value and therefore lower property tax obligation. In 2004 the owner of the three lots at 2018 S. Hervey sold Lot 13 to Mr. James Paulson. Mr. Paulson is a real estate agent who sold Lot 13 to Mr. Chip in February of 2005. For 50 years this lot served as a buffer until less than a year ago when it is not considered a building lot. Our primary concern is that Lot 13 simply does not provide sufficient space to allow a new house to be constructed and still keep the setbacks intact for the neighboring buildings. The existing 1-story house on the property to the north and the existing 1-story garage on the property to the south will each be less than 3 ft. from the property line to Lot 13. The house to the north constructed in 1937 has a south-facing picture window that was oriented overlooking the yard for nearly 7 decades.

Commissioner Fadness – Let the record reflect that we've received a picture from Ms. Spencer.

Ms. Spencer – The second picture I will be referring to later in my testimony. There is a mature ash tree on the lawn of this yard that is now proposed to become an independent new residential lot with a 2-story skinny row house. The vista offered by the picture window is proposed to be a 2-story wall less than 8 ft. away. The historical intention of the original property owners up through 2004 was to keep the property intact, otherwise they would not have placed their home within 2 or 3 feet of the property line and the next door neighborhood would not have constructed a garage 2 to 3 feet from the property line and landscaping and shade trees would not have been planted in the middle of the lot. The legal survey substantiates that this is a legal lot, but the question we would like to pose is with 50 years of deeds treating this as one parcel, what exactly determines how and when a lot is split? There is confusion. Does a deed rule or the tax

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notice? Representatives of the Vista Neighborhood Association met with Mr. Curt Chip and Mr. Jim Paulson on Wednesday, July 13th. Mr. Chip presented to us the plans that he has for the property. It's like I said before, it's a 2-story row house with alley access. There will be no garage. It's just a pad. The setbacks for Lot 13 will be the required 5 ft. on each side, but since the total distance between the neighboring buildings is less than 30 ft. the actual effective side setbacks will be approximately 7 ft. We are very concerned about this type of project. It's simply not good for any 25 ft. parcel or fragment of land to be at risk or considered available for a 15 ft. wide 2-story row house. This is an excellent example of a substandard lot of record that was never intended to be anything but someone's yard and the buffer between existing residents. It's been this way for nearly 70 years. Today an undeveloped, substandard lot of record that has been part of a recognized package for one residence under one deed is subject to being split out to accommodate misdirected infill and make the existing original structures on either side look out of place. Please refer to the photographs that accompanied our May 8th letter. This does not add to the neighborhood. This is not good infill. I also have some pictures that we had put with our first letter that shows better where the survey stakes are.

Commissioner Fadness – Let the record reflect that we have two more pictures presented by the Vista Neighborhood Association.

Ms. Spencer – The 2-story row house will tower over the adjacent properties, the ever present looming effect. There will be no garage. Bicycles, lawn mower, other tools, toys and equipment will necessarily be stored unsecured and unprotected. More likely a cheap shed will shortly be added. Homes like this that are allowed to be built without garages packed to any possible space do nothing for the long-term health of the neighborhood. Current building standards in almost any new subdivision require garages to park cars, store belongings and keep possessions from accumulating in the yard and detracting from the neighborhood. One of the biggest downsides to the Vista Neighborhood is lack of control exerted over past infill which has resulted in a large variety of homes to be built and current infill that is aligned more of the same and on substandard lots. The split entry homes of the 70's built inexpensively with no garages were certainly popular in their day, but look at them now. Today this style of home probably has one of the lowest resale values and lowest demand on the real estate market. The row houses now being built are the 70's homes of the 21st century. If the City of Boise wants to keep families within its boundaries, to attend its schools, keep its tax base strong it has to encourage building projects that attract families and enhance the neighborhood. This in turn encourages maintenance and remodeling other homes in the neighborhood. Are we prepared to allow homes to go up on every 25 ft. of open space? I hope the answer to that question is a resounding no. It was never intended to be that way. Obviously this is going to be a tough decision. Do the planning and zoning laws follow the absolute strict guidelines of a legal lot or do they also require or allow for practical consideration, interpretation and historical intent? Remember even staff agrees that this is marginal site for development given the non-conforming setbacks of the structures on the adjacent lot. If this project is allowed to proceed as proposed with severely restricted setbacks, anomalies with existing adjacent buildings and no garage jeopardizes the conformity and continuity of the existing neighborhood. If we set precedent with this lot we fear that anyone

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with 25 ft. will be selling it to developers for future buildings. These legitimate concerns and issues that have been identified need to be considered. We, as an association, have to take a stand on what we feel is best for the neighborhood as a whole. We are already under tremendous pressure with multi-family projects and numerous row houses being built. As an example may I remind you of a past hearing of the ugly duplex property on Cleveland Street. The developer had already built the duplex and was seeking a CUP to build another duplex facing it and a single family house in the back. The first duplex was built within allowed setbacks and the neighboring home also had the allowed setbacks, but was it right for the neighborhood? This Commission didn't think so and stopped the developer from building the single family house and City Council didn't think so and stopped the developer from building the other duplex right next to it. Please look at the picture I submitted to you. It's already starting to deteriorate and the motor home that's parked there, someone is living there. I will quote from the *Vista Neighborhood Plan*, page 2-5: "Insure that development adjacent to residential properties is built at a scale and with architectural designs that are compatible with residential characteristics and for land uses characterized by differing functions intensity and or density and where building design cannot attain compatibility between them, provide adequate physical and visual buffers to insure their compatibility." On page 3-26: "Any new construction or renovation should respect the character and scale of the immediate surroundings." The Boise City Comprehensive Plan encourages the maintenance of existing housing. Allowing this house to be built on this particular lot conflicts with the neighborhood plan and the Comprehensive Plan. Infill is an issue that is of critical concern to all neighborhood associations in Boise. There are numerous examples of good infill in the city and there are too many examples of bad infill. The neighborhood associations are working with the city and developers and the recently formed Infill Ordinance Development Task Force. We urge you to consider the impacts, the historical intent, the current highly competitive market for developing these substandard lots and the concern all the neighborhood associations in Boise have with bad infill and uphold the Vista Neighborhood's appeal to this project and do not approve it as proposed.

Jim Paulson (645 Wickham Fenway/Boise/83709) – I'm the individual that bought the subject lot as a freestanding lot and then I subsequently sold the property to Mr. Chipp. We then worked on a plan for this lot and it meets all current guidelines by the city. We have had that reviewed. As staff mentioned, originally the application was denied because of a misunderstanding between the Building Department and ourselves. They were of the impression we were trying to do a subdivision. A couple of times this evening I wanted to make clarification we are not a developer, we are not subdividing any parcel. This is a separate parcel that is unique as a separate building entity for 50 some years. It would be a totally different hearing this evening if we were trying to do a lot split to create a new unique parcel that is far from the case. The case is that this property, as shown in public testimony this evening, Susan's looked at it, Dave Abo has looked at it. After reviewing the documents they have agreed with us that this is indeed a unique separate building lot and has been. It is not a development. It is not a subdivision so a lot of the argument that was just presented by the Vista Neighborhood Association should be totally dismissed because it's irrelevant. If we were trying to do a subdivision of that parcel this evening to create a new lot of record, they might have a case for argument but that is not the

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case. It was mentioned earlier this evening when Commissioner Wilson made a comment and was echoed by Commissioner Ellsworth on the cell tower application this evening that we have to, on an appeal, make it based upon an error in staff decision. Staff hasn't made any mistakes on this parcel. Susan Riggs has done a commendable job working on behalf of the city, working with her staff and other people to review and document exactly what this lot is. We are trying to build on that lot based on current guidelines. Subjective comments of whether 2-stories is appropriate for the lot, there is nothing in covenants nor restrictions, there are no requirements by Boise City to only build single family houses. There was a comment made about ugly, skinny row houses. Would this house have any less impact if it were a 50 ft. wide 2-story versus 15? The building lot does not allow for that. We have designed a home that meets the current stated, written guidelines and so on that basis the property should be allowed to go forward. Earlier this evening I feel very privileged that another case was on the cell phone tower. There was testimony against building a 45 ft. cell tower on a commercial piece of ground behind somebody's house. We are proposing to build only a 2-story home in a residential subdivision on a lot that's been approved for 50 some years.

Commissioner Brunelle – In comments from staff there was mention of preserving a tree or two in front of the property. I think staff mentioned it in her presentation. I wanted to get your comments and your reaction to that.

Mr. Paulson – This property has actually sold a couple of times because of delays getting the building permit. The first person backed away. I believe the current buyer would like to retain the tree. I am not directly involved with any discussions on whether that tree is going to stay or go. If it can be retained, if that's the buyer's choice obviously we'd love to leave the tree there. I know that some pruning will have to occur to accommodate the building, but since there is no garage, going to the front of the parcel, if it can be retained obviously we'd like to retain it. It would save us money to retain it if that's something the buyer would like to do and it will fit within the building envelope. I'm not a builder. I haven't looked at that so I can't specifically address that. Speaking of the garage, there was a statement that it was perceived negatively that we weren't building a garage. Again, that is not current guideline in the Vista Neighborhood Association in general that houses have to be built with a garage. So whether they should be or should not be is not at issue here this evening. The fact is they are not required and we're not planning to put one in.

Commissioner Cooper – As having lived on a perfectly charming little house on a 25 ft. lot I know it is possible to do a nice one, but design really matters and also the presence of the alley makes a lot of difference too. You mentioned that the person you are building for does not want to keep the tree?

Curt Chip (Applicant/1454 E. Pine Ridge Dr./Boise) – They requested the tree in front of the large one in question be maintained. The problem that I have with the tree that we're talking about here, which is the large ash, the neighbors on both sides would like it removed because

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they complain about the mess. It drips on their cars, etc. If it's possible to save it I would be willing to do that.

Commissioner Cooper – It looks like from the small site plan that we received that there is a porch on the front of the house, is that true?

Mr. Chip – Yes.

Commissioner Cooper – Is there any interest in setting back the second floor behind the first floor on the front?

Mr. Chip – That would really destroy the design of the house and what it's intended for. I've got two bedrooms upstairs. It's not large enough the way it is proposed and to fit the lot to really get a 2-bedroom house and save the tree. There's not enough depth in the lot.

Commissioner Cooper – Does the porch extend from both the first and second floors?

Mr. Chip – No, just the lower level.

Commissioner Cooper – The second floor does not come out over the porch?

Mr. Chip – No, it does not.

Ms. Spencer – The argument is not irrelevant to Lot 13 because Lot 13 has legally been attached to a deed, 11 and 12, for 50 years so saying it's just a separate lot. When we did talk with Mr. Chip and Mr. Paulson, Mr. Paulson said it may have been used for speculation. We don't agree with that because it's very apparent from the picture that it was used to be a buffer between the two buildings. We also agree that Susan did an excellent job, but I also want to remind you that even staff agrees that this is not a good site for a house. We also want to remind you that separate building lot was separated only for tax purposes. It was separate on the assessment, it was not separate on the deed. The neighborhood plan that we have is part of the Comprehensive Plan and this project does not support the plan. I want to say that Mr. Paulson is not an expert on the neighborhood plan, we do encourage garages. Since this has alley access the garage can be put in the back. We do want to say that it may be possible to eliminate some of the bad effect we see through Design Review and site review. We want that the garage be required because that helps to keep our neighborhood from deteriorating because of people storing their junk on site. We would go with a story and a half but we would also like to have the building moved back so that it's not blocking the picture window on one of the adjacent houses. We would also like to have a side fence restriction along the house and garage. This is for safety. If a fence is built along the property lines, the neighbors will not be able to maintain their buildings because they can't get a ladder up to paint their house. Even now as the neighbors are trying to take care of their landscaping on the sides of their homes and the garage, they are trespassing on this lot

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because you can't do it without trespassing on this lot. There's no room. I hope that the Commission will use the discretion and consider the historical intent of this lot.

Commissioner Ellsworth – Does the neighborhood association have preference on the tree?

Ms. Spencer – We would like for it to stay there. We're very pro-tree.

Commissioner Ellsworth – Do you know what the preference of the neighbors is?

Ms. Spencer – We tried to talk with the neighbors but they wouldn't talk with us. They wouldn't come to the door.

Commissioner Cooper – There is no design review process for this area and this is our only chance at this?

Ms. Riggs – There's no design review process, there's no conditional use process. Staff has determined that this is a legal lot of record and it would just go through the normal review for building permits so there's no vehicle to attach conditions to this application. It would have to be voluntary on the part of the applicant.

Commissioner Ellsworth – One of the problems I see with this is that the houses on either side are within 2 ft. of the property line. They don't have the 5 ft. setback and we don't have anything in our current ordinance that allows us to do anything with this particular lot with that condition.

Ms. Riggs – That's true and I think one of the purposes of this meeting is to bring some of these issues to the table so that in the future staff can come up with an ordinance to address these issues such as do we allow development on a 25 ft. lot when they create insufficient setback. But that's not before us tonight. We have no standards in the process at this time to deny this application.

Commissioner Wilson – The neighborhood association's representative alluded to the fact that she was unable to contact the property owners adjacent on either side. Has staff had contact with the neighbors on either side past the two letters that are in the packet that indicate support?

Ms. Riggs – I have not.

Commissioner Brunelle – So a part of a collateral purpose of this discussion is try to highlight the need for some ordinance change to address the fact that we do have some of these lots, and I've seen them in my neighborhood over on the East End where over the last few years and recent months houses have been going up I side yards or back yards of single family homes.

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Ms. Riggs – I think this is an opportunity to have the neighborhood association, as they did tonight, state what they would want to see and how do they want to see these 25 ft. lots developed because there are a number of them within the city. We'll need to look at in the future as to what can we do to set some guidelines and perimeters for developing these. I think that the Vista Neighborhood Association tonight outlined some of those and I think there will be additional meetings coming up with staff in the future that will look at these even more closely, but tonight it's just kind of a platform to get some ideas rolling.

COMMISSIONER BRUNELLE MOVED TO DENY THE APPEAL, CAA05-155.

COMMISSIONER COOPER SECONDED THE MOTION.

Commissioner Brunelle – I think the staff report is complete in pointing out that there really are no handles by which we can address the concerns within the existing ordinances that the Vista Neighborhood Association has brought forward tonight in regards to this single family home proposal for a 25 ft. wide lot. I think that it is an area that with the trend towards infill, especially on the Central Bench and as I've also seen in the East and North Ends, I think we need to be thinking a little more critically about infill especially these smaller lots and how they are handled. I agree with what I heard from Commissioner Cooper that design is a very important part of being able to have proper infill, especially on these very small lots. I think the staff may have been a little generous in saying that this is a marginal site for a building. I've got mixed feelings personally over retention of the trees or not retaining the trees. If the trees are not retained it may become a very good poster child for the needed ordinances to be changed in this city. If the trees are there it may hide something that we probably in this community need to see.

Commissioner Cooper – There is a shortcoming in our ordinance here that we really cannot attach any design conditions to the project. I do believe that 25 ft. lots are capable of being developed with homes. I've seen successful ones, I've lived in one, but you really do have to have standards. It seems to work better when there are other 25 ft. lots adjacent.

Commissioner Fadness – I would echo those comments on the 25 ft. lots. We live in one that I think is about that size and is an infill in the North End. The nice thing about it is it's setback off the street quite a ways as the neighborhood association wanted on this one. There is a garage in the back. This is basically a building permit. We can't attach conditions like that so we'll have to trust in the good faith efforts of the owner to do as much as he can to make this an attractive lot, which is as Commissioner Cooper said, I know they can be.

Commissioner Ellsworth – There's a meeting tomorrow night to address some of these issues so tonight it's very timely that this comes before our commission. It was great to hear the comments of the neighborhood association. I think most of us up here agree with the comments that were stated tonight by the neighborhood association, but we don't have a lot of legal basis for upholding the appeal. One thing that you might discuss tomorrow, as part of the new ordinance, it seems to me like we had a design overlay district put in one of the neighbors down

by Boise State University just for this reason. I believe that we just added a “D” to it so it has to go before the Design Review Committee and then we would get into design on some of these small lots that we’re trying to cram a house on. If design is important then maybe that’s an appropriate way to handle some of this.

MOTION TO DENY THE APPEAL CARRIED UNANIMOUSLY.

CUP05-00056/Max Coursey

Location: 854 N. Hampton Road

CONSTRUCT AN INFILL PUD CONSISTING OF 8 4-PLEXES AND 1 COMMON LOT ON 1.9 ACRES IN AN R-2D ZONE.

SUB05-00050/Everett Estates Subdivision

Location: On N. Hampton Road

9-LOT MULTI-FAMILY RESIDENTIAL SUBDIVISION.

Susan Riggs – The applicant is proposing to construct a planned unit development consisting of two 7-story 4-plexes for a total of 28 units on 1.9 acres. This application has changed slightly from the original submittal from 8 4-plexes to 7 4-plexes or from 32 units to 28 units. They initially had a cul-de-sac designed. They have revised that plan in order to add some amenities and some open space into the project. The site is located on E. Hampton Dr. just south of Irving Street. The proposed multi-family development should not be incompatible with the adjacent residential uses. Surrounded by residents on 3 sides, an irrigation canal runs along the south boundary of the property with industrial uses just beyond the canal to the south. The canal is currently fenced off from the property. The 1.9 acre site is zoned R-2D which allows for 14.5 dwelling units per acre. The applicant is proposing to construct 7 4-plexes for a total of 28 units. This would consist of a density bonus infill request which would be a 1.3% allowance over what is allowed for that zone. They have submitted a site map indicating that 80% of the property surrounding this development is developed. There’s an existing single family home on the property. The parking requirement for the PUD is 42 parking spaces. The applicant has provided 52 spaces. Parking is proposed off of a 24 foot wide driveway which allows adequate room for vehicles to back out onto the private drive. All the lots are in excess of a minimum of 5,000 sq. ft. requirement for the interior lots with the exception of one corner lot which is 49 sq. ft. short of the required 7,000 sq. ft. The setbacks are being met along the perimeter of the site and along the private street frontage. Staff asked the applicant to increase the landscape buffer going along the street between the single family homes to the north to 7 ft. in order to plant trees. There’s a 15 ft. setback along the property line which should also be sufficient to grow some dense vegetation to screen the houses in the adjacent subdivision. The applicant is also proposing to reduce the front yard setbacks for 5 of the buildings along the private street to accommodate some stairways which will add some modulation along street which staff requested they do with their buildings to allow a little bit more design interest. Staff supports the requested setback reduction finding that they will not have a negative impact on the adjacent property. It’s within the development, it’s not on the boundaries. Initially they had no open space. It was 8 4-

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plexes straight down with a cul-de-sac. They now have 2 amenities in exchange for the above noted development standards. They've provided Lot 4 which is a 9,204 sq. ft. common area with a picnic table, barbecue pit and a children's tot lot. Lot 8 is 1,677 sq. ft. that provides some more common space. It has a picnic area, barbecue pit and a basketball hoop. These lots are centrally located to provided amenities to all people within that development. The Ada County Highway District, in their staff report, said that this would not place an undue burden on transportation. They estimate that the proposed development would generate about 205 trips per day. The applicant is proposing a 24 ft. wide private drive that intersects with Hampton Drive. This has been approved by ACHD as it meets their policies. Hampton Road is a residential collector. Staff finds the proposed development in compliance with the goals and objectives of the Comprehensive Plan. Goal 7.0 indicates that the City is in need of safe and sanitary housing at price levels appropriate to the varied financial capabilities of the city's residents. This will provide new updated and sanitary rental housing close to the proximity of where people work. It's also close to Fairview Avenue where goods and services can be obtained. The design of the single family homes, we've been working with the applicant to come up with a nice design. The applicant has used a variation of building materials, color, wainscoting, bellybands and shutters for architectural enhancement. The 2nd stories have balconies which provide modulation. The units which face Hampton Road and a common open space will have additional modulation on the side elevations. The site is located in a Design Review Overlay District and will be required to get Design Review approval. Staff did hear from one woman today who is here to speak. She was disappointed to find out that the road did not any longer end in a cul-de-sac, that there would be houses there that could be 2 stories and would be looking into her property. Perhaps the applicant tonight can address some design alternatives for maintaining privacy for these people who will be 15 ft. away from the property.

Chris Findley (Applicant/145 Horizon Dr./Boise) – We think this project is a good infill transition for 4-plexes because of the industrial behind it on the backside. The houses to the east are also R-2D and they are kind of a duplex/townhouse setup. To the north is an older mobile home project and the trailers are on foundations. We had originally had the cul-de-sac on there thinking that we wanted to buffer the people as much as we could and that's why we set the 4-plexes on the canal side so they weren't looking into the people's back yard of the trailers. We agreed with the City to try and get a better buffer with the setback allocations. We're also going to put a 6 ft. high cedar fence along the north side to buffer. On the south side we are going to be down closer to the property line plus we have the 15 ft. setback and we plan on doing a nice landscaping job and put a larger tree capacity along that. We'll work with our landscape design people to try to buffer those people as much as possible. We have worked with staff bringing this down from an 8-unit complex to a 7-unit complex. Their suggestions have really made this a really nice project with 2 small park locations on it. We're trying to give a really nice amenity with those. The units will have 4 different color pallets to them so each of the units will vary color-wise and with have shake. They are not vinyl. These are all masonite siding so they will be painted and we're adding a 3-color pallet to them which will help with the overall look. The other thing we agreed with staff on was we'll have small pump-outs with eyebrows over the top

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of them on the interior lots of each unit that is on the park and on Hampton. We think this is a great transition piece from industrial into the residential area.

Letizia Wetzel (Applicant's Engineer/5217 Denton St./Boise) – This meets the requirements. We're requesting a CUP because we want to do a 14.7 density unit per acre and a 1.3 increase from the 14.5. It meets and exceeds the parking requirements. One of the concerns has been traffic issues. I believe in the report that we have from ACHD it said it would generate 205 vehicle trips per day. That was based on 32 units. If that's scaled back proportionally that would be 180 additional trips per day, 25 less than originally stated in the report. We had scaled back the project in accordance with some of the city comments to provide more open space. There are 3 common lots and in the common lots there are about 17,000 sq. ft. of landscaped area which is 20% of the overall area in the development. There are 3 common lots with amenities as Mr. Findley alluded to. As far as the setbacks are concerned, we are requesting a modification on the front interior setback just to provide some visual interest. If the Commission doesn't think that is a good thing we can meet that, but it will provide a more row like appearance.

Darren Cray (910 N. Hampton Rd./Boise/83704) – I'm adamantly opposed to this project. I've lived on Hampton Road since 1992 when I built my home. I believe it's senseless infill. It doesn't fit with the neighborhood. There are no multiple dwellings in our access area. Hampton Road is a 1-way in, 1-way out. It's very narrow. On some of the photos that she had you'll notice that there is no curb, gutter or sidewalk of any kind from the end of Hampton Road where it dead ends to Irving. We've had issues with the City of Boise Law Enforcement. One of the drivers for the school district parked a school bus on Hampton. Law enforcement said that could not occur. It effectively makes the road a 1-lane road. If anyone parks on Hampton it is not a 2-lane road, it's that narrow. I don't think that's been addressed. It's also posted as 20 mph. It's a very dangerous intersection. We have major traffic issues because from Irving south to the end of Hampton most of the homes are in subdivisions that face away so it's all 6 ft. high fence. Everyone thinks it's a speed zone. We have had drag racing issues. I personally have been hit by a car from a drag racing issue on Hampton Road with alluded to someone being arrested and jailed for that. We feel that it's a senseless project. It's way too big for the nature of the street. There is no way in or out. For anybody that knows the Fairview corridor right now it's basically grid locked. We're adding 180 to 220 car trips. How are they going to get out onto Fairview? It's nearly impossible now for a stop sign access road. It's very dangerous in traffic. We're very opposed.

Craig Korell (9985 W. Mesquite Ct./Boise/83704) – When we had the neighborhood meeting, of course the proposal was completely different than what we have here. I don't any visions that this is going to stay undeveloped my whole life that I live there. When they proposed this, I almost guaranteed 160 ft. from my home to that apartment, that was the figure that was given to us and now we're at about 25 ft. It has a balcony that's going to be looking directly into my back yard. I'll be able to share barbecue with whoever is living right there. I live at the southeast corner of that property. I'm on a flag lot and so my front yard is closed in. Of course I'm adjacent to another duplex. My other side is a commercial property so now the back will be

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completely closed in. We'll have not one window that I can actually even look out at any type of vista at all other than homes or some sort of a property. Of course I'll be looking into somebody else's yard and they of course will be looking into our bedroom. If I were to try to resell this, I think it's going to make it impossible. You walk around and it's going to look like a fortress. There's going to be homes or apartments all the way around it. In this report it mentions the subdivisions that are adjacent to it. Mine's not listed. My subdivision is the very closest one to it, Mesquite #1. It's not even listed on there as being affected, but it will very much be adversely affected by having these as they are put here in place. One of the comments was made that they changed it because they would have no open space. Now I'm not going to have any open space. I would hope that you reject this as proposed. I understand that there is going to be something that's built in there. I was in agreement with the first proposal that was there. I understand that living in town things are going to happen, but as it is it very much adversely affects the enjoyment of our day to day life.

April Korell (9985 W. Mesquite Ct./Boise/83704) – When this first became know to me my concern right away was that there is going to be 2-story apartments looking right down into our back yard. Both of our bedroom windows are on that side. We went to the neighborhood meeting in the month of April and of course they proposed something different. We actually went home that evening. My husband and I were okay because what was now going to be facing our back yard was a cul-de-sac and maybe a barbecue pit and possibly a basketball court which I wasn't really happy with not know if kids were going to be out there late at night. We were okay with that because they said they would be about 150 to 160 feet away and therefore nobody would be looking down in our back yard. I was the one that called today and talked to Susan. She's the one that made me aware that this is now changing and she made the comment that they would be maybe 15 ft. away and chances are we may have balconies and windows looking in our private back yard. I know the developer mentioned there might be trees, but what are we talking here maybe 10 years down the road before these trees mature? My biggest concern is I still would like them to be at a much further distance so that we don't have people sitting in their balconies and we're sitting in our back yard where our bedrooms are and we're right on top of each other. It just would be nice to have some sort of privacy. I understand they are proposing trees, but again how long are they going to take to mature? We're not against. I'm surprised something hasn't gone in their sooner, but if we could just have more of a buffer so that we don't have people looking right down into the only privacy we have. At the time of the neighborhood meeting I did talk to Chris Findley and ask even with the buildings being 150 ft. way, I asked about windows. He had mentioned that windows would not even be facing that side. They would have the windows facing the canal side. I was thrilled about that because I figured they were going to be away. My concern now is that this is closer and if there's balconies and windows then they are right on top of us in our private back yard and where our bedrooms are. I would like them to go back to their original plan.

Scott Sabell (1280 N. Julian/Boise) – I too own property to the east in the Mesquite #1 Subdivision the one not referenced in the report from the City. I too was at the neighborhood meeting. We did have assurances from the developer that there would be a buffer and now

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unbeknownst to us that buffer has totally disappeared. It's now just 15 ft., virtually 1/10th of what promised. Through no fault of the developer I'm sure, but he indicated that he's already been consultation with the city to come up with that preliminary plat so we had reasonable assurances at that point that that plan would be the one going forward. Now that it's changed, I have to question why bother with a neighborhood meeting because what we are seeing today is in no way reflective of what was originally presented in the meeting in terms of addressing concerns with surrounding properties. I understand he has said they moved the 4-plexes to the south side because of concerns for the neighbors on the north which is where the trailer park site is. I would ask that they afford that same consideration to the neighbors to the east, that we have some buffer. The buffers that are being provided in the new plan are large and wonderful, I'm just asking at this point having seen this plan for the first time tonight, that you share some of that buffer with us. Does it all need to be in the middle in that little swath separating the last 4 units deepest into the lot? Can we move those high 2-story apartment complexes away from our town homes? To me I think that would be a reasonable compromise. I'm not against building for the sake of building and developing, that's fine but I think we just need to be a bit more reasonable. I don't know that any one of us would enjoy having someone looking right down into your private yard.

Commissioner Fadness – Just to clarify, you listed your address on the sign-up sheet as 9987 W. Mesquite but then you cited a different address.

Mr. Sabell – Correct. When I put that on there I thought that was the address I needed to put down because of my reason of interest being in proximity. I live in a different house.

Commissioner Ellsworth – Are there windows on that south elevation facing that neighborhood to the east?

Mr. Findley – There are 2 bedroom windows on that side facing the neighborhood to the east. There is also an upstairs balcony. The City is requiring 100 sq. ft. of open space on those decks up there. There's 15 ft. between just the buffer area and there's almost 6 ½ ft. from the buffer to the actual building so there's going to be a little over 21 ft. If we want to take some out and slide them together on the open space that was just an agreement between staff and us to do that. We're happy to slide everything down. The only thing we have a concern with is the turn-around that the Fire Department wants. I think that location was dictated for distance in where it has to be. Do we need to put certain sized trees in our architectural plan to do that with Design Review, maybe that's something that we could do too, try to put more mature landscaping in between.

Commissioner Ellsworth – The turn around probably keeps you from moving those two units to the south.

Mr. Findley – I would suspect that's probably an issue. We tried to do that with our original design. We tried to do a Snoopy. We tried to do some different things that would work within

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what we had designed and showed it during the neighborhood meeting. We thought we had some assurances with that. We had some discussions with P&Z staff and thought we had a lot of that worked out before and we kind of had two different hearing processes with it. I think some of the designs that they did come back and what they are allowing us to do, I think it does make for a better project. There are some gives and takes just because of the area that we're dealing with.

Commissioner Fadness – So the open space is the major reason for the changes in the width of the buffers, meeting the open space requirements?

Mr. Findley – The other thing too is staff wanted is that instead of having the buffer down at the end and the cul-de-sac area there, was that they want the amenities more centrally located to the units. I don't have a problem with that, but it did change the design of what they were wanting. We were working with staff on that to get their concept of what they wanted to see where the three units on the front and the two units in the middle all have the ability to use it and it's more centrally located than having to walk all the way down to the end to use it.

Commissioner Brunelle – So we're talking about with the turn around, it's basically a judgment call to try to make that open area more accessible to more of these lots.

Ms. Riggs – The original submittal had no open space at all. There were no amenities, no common lots and that's when they gave up one of the 4-plexes and turned that into an open space area. They are also required to have additional open space because of the private drive with the subdivision. The land that's saved from the private drive needs to be put into open space. The two open space areas were an attempt to meet that requirement and to provide amenities. The purpose for the location of these common lots is to provide the amenities centrally located for the future residents.

Commissioner Fadness – Is the open space that is now in the plan the absolute minimum they must have or do they have any excess open space?

Ms. Riggs – They are pretty close to what they need to have for the subdivision in terms of open space.

Commissioner Brunelle – Could the turn-around that we see on the subdivision drawing for the fire trucks be moved down to the east end of the lot?

Ms. Riggs – I'd be hesitant to answer that without input from the Fire Department in terms of a turn-around. Initially they had a cul-de-sac with a 45 degree radius for the turn-around.

Ms. Wetzel – That fire truck turn-around cannot be moved much more to the left because of requirements by the Fire Department. That distance is at about 135 ft. and the maximum accepted by the Fire Department is 150 ft. so we may be able to move it down 15 ft. What that

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essentially do would take some of the open space out of the common lot #4 and move it down to the end. It wouldn't be a lot but if that would help appease some of the neighbor's concerns we would certainly be willing to look into that.

Commissioner Cooper – It's my experience that it's the distance to the end so the T could move down as long as the end of the drive moved with it.

Ms. Wetzel – Yes.

Commissioner Cooper – Staff said earlier said you're pretty much at the minimum on shared space. It seems to be about 80 ft. across in that central space. It sounds like we can't reduce that just because we can't reduce the total area of open space. Is that correct?

Ms. Wetzel – I think what we'd be talking about would be almost a transfer of open space from the common lot to the end so there wouldn't be a reduction. It would just become part of the common lot. The 15 ft. setback on the east side, that's part of common Lot #7. We'd be transferring area from Lot 4 to common Lot 7 if we did that. There has been some discussion between the applicant and the City concerning the open space. From our calculations we exceed the open space required. The City calculated it in a different manner. When we sat down and talked to them about it we agreed that this seemed reasonable and they agreed to the amount of open space we currently have.

Commissioner Fadness – Either you or Mr. Findley referred to the 6 ft. high cedar fence. That's along the east side?

Ms. Wetzel – Yes.

Commissioner Fadness – And then the buffer on the north side is just the trees?

Ms. Wetzel – There will be a fence there also, a 6 ft. cedar fence in addition to the trees.

Commissioner Fadness – They plant new trees? They can't export in really tall ones?

Ms. Wetzel – As I recall there are some existing trees that are mature on the property. Whether those can be retained and protected would be something that the developer would have to address in construction. I would like to address some of the concerns that were mentioned by the neighbors. As far as traffic concerns, this does meet the ACHD requirements. ACHD requires a traffic report for anything over 200 vehicle trips per day so this wouldn't even need a traffic study. As far as Fairview access goes, currently you can drive north on Hampton and then go east on Irving and then north on Mitchell to utilize the stop light that's existing at the intersection of Mitchell and Fairview Ave. This is a dead-end street so there isn't a lot of through traffic currently. As far as the neighborhood buffers and setbacks I want to reiterate that this does meet the rear yard setback. We've discussed some of the things that we might be able to do to

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increase that, but as it stands it meets the 15 ft. rear yard setback requirement. The plan has changed because of our conversations with the City. I personally feel that the design/layout we have now has changed positively. It's less dense. It provides more open space and it is generally a more appealing design. The windows on the east side that they were concerned about, those partly were due to City requirements that we have larger windows to be more appealing. We will do things to work with the neighbors, but as the project currently stands I think it's a positive change, a good transition between residential and industrial as they are currently zoned and used.

Ms. Riggs – If you wanted to add a landscape condition for trees along the property line to have Design Review require a dense evergreen buffer, Design Review could take a look at that and decide the size of trees at planting, etc. That would be a condition that could be added, but Design Review has worked with me and the applicant through this whole process so we've been working together on the design, the site layout. I think they are well aware of the concerns for landscaping.

Commissioner Fadness – Second story windows, I would think that the requirements might be different or more lenient on design for those, especially if they are looking onto adjoining properties, or is there a separate standard for that?

Ms. Riggs – There may be some Building Code issues with windows in bedrooms. They could maybe do some clear story higher windows that don't really have a direct view into the neighbors'. I do think that all over the City we have windows that look into other windows. I appreciate the fact that these people have not had any intrusion of neighbors, but I guess the two options are landscaping and/or requiring clear story high windows and maybe some direction to Design Review when they review these homes as to what they can work out to help mitigate this impact to the neighbors.

Commissioner Brunelle – Wouldn't another option be to make Lot 10 a 1-story building?

Ms. Riggs – That is an option.

COMMISSIONER COOPER MOVED TO APPROVE CUP05-56 WITH STAFF'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND SOME ADDED CONDITIONS FOR THE APPLICANT TO WORK WITH THE STAFF AND DESIGN REVIEW TO TRADE OFF SOME SPACE IN LOT 4 AND ADD IT TO THE EASTERN LOT TO INCREASE THE SETBACK FROM THE BUILDINGS TO THE NEIGHBORS AND TO WORK WITH STAFF AND DESIGN REVIEW ON PROVIDING A DENSE EVERGREEN LANDSCAPE BUFFER AND ALSO TO STUDY THE EAST ELEVATION OF THE LAST UNIT TO TRY TO LIMIT THE IMPACT OF THE WINDOWS.

COMMISSIONER WILSON SECONDED THE MOTION.

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Commissioner Cooper – I think generally this is an appropriate project in a tough spot between some single family residences and an industrial area. I believe the things we discussed tonight will make the project better for the people that are quite close on the eastern side. I'm not convinced about the traffic conditions on Hampton Road being a dead-end. There should be very little traffic now.

Commissioner Wilson – I supported the motion because of Commissioner Cooper's addition that some of the common area be transferred from Lot 4 to Lot 7. I think that will go a long way in helping to address the concerns of the neighbors to the east. I think that through the Design Review process there could be some creative thinking going on there on how to best use those common lots so they just don't become little chunks of grass but they can still contribute to the community that is being put together in this development.

MOTION FOR APPROVAL CARRIED UNANIMOUSLY.

COMMISSIONER COOPER MOVED TO APPROVE SUB05-50.

COMMISSIONER WILSON SECONDED AND THE MOTION CARRIED UNANIMOUSLY.

CUP05-63 & CVA05-18/Baker Construction

Location: 10440 W. Ustick Road

CONSTRUCT A COFFEE SHOP WITH A DRIVE-THRU WINDOW IN A C-1D ZONE WITH A VARIANCE REQUEST TO LOCATE THE DRIVE-THRU WITHIN 200 FT. OF A RESIDENTIALLY ZONED PROPERTY.

Cody Riddle – This application is a request for conditional use approval to construct a retail building which will include a drive-up window or coffee shop, and this includes a variance request as the drive-up window and lane are proposed within 200 ft. of residentially zoned or utilized property. The subject property is located just northeast of the intersection of Five Mile and Ustick roads. The subject property has a zoning designation of C-1D. Properties adjacent to the site, north and east of the site as well as across Ustick Road to the south are zoned R-1C for single family residential. Property to the west is zoned C-1D or neighborhood commercial just as the subject property. Drive-up windows have very strict regulations to insure their compatibility and this is especially prevalent when adjacent to residential uses or residentially zoned property. Staff finds that this request, as submitted, does not meet the findings for conditional use or variance approval or all of the criteria for drive-up windows and therefore recommends denial. The site, as designed, is not compatible with the residential uses in the neighborhood. While west of the site is a fast-food restaurant and south of the site is Ustick Road and then additional residential property, both north and east of the site is property that's zoned R-1C and a good portion of it contains single family homes. In the C-1 zone, there's a 200 ft. setback requirement from a drive-thru lane or window from property that's zoned residential or utilized for residential purposes. Staff does recognize that there's a unique circumstance associated with a portion of the residential property to the east which was approved

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for a use exception for commercial uses through the benefit of a planned development. However, this site design, as proposed, does not respond to this unique circumstance. Rather, the drive-up window, speaker and associated lanes have been located in close proximity to the residential uses rather than the use exception. Comments received from Public Works have indicated issues with trash collection as it relates to the trash enclosure. The speaker, as proposed, would be located right here and with just two vehicles, possibly three stacked behind the speaker, it wouldn't be uncommon to render the trash enclosure inaccessible creating a significant amount of congestion on site and actually at times not allowing access to the speaker itself. Further, the distance between the waiting lane and the planter island or drainage basin does not provide for 2-way vehicular circulation. If vehicles stack, once again there would be issues with backing out of the parking spaces and leaving the site. It essentially be sharing the waiting lane. Another criteria that this site plan fails to meet is for all drive-up windows it is required that pedestrians aren't forced to cross waiting lanes to access the main entrance to the building. As you can see, in this situation pedestrians could be forced to cross the waiting lane sometimes even twice. The applicant has contended that these spaces would be designated for employees only. However it's important to note that the Zoning Ordinance doesn't distinguish between employees or customers therefore both would be considered pedestrians and both would be forced to cross the waiting lane. Staff finds that as designed this proposal would adversely impact properties in the vicinity. There is a unique circumstance with the commercial use exception east of the site and Ustick Road to the south. However the drive-up lane and speaker have been located in very close proximity to the residential property creating issues with lighting, noise, etc. Staff also finds in working with the application that there does appear to be a multitude of design alternatives available that could take advantage of the use exception. An original site plan that came in involved 2 buildings. By possibly eliminating some of the seating or some of the square footage, the number of parking space required could be reduced and therefore not forcing pedestrians to cross the waiting lane. Staff believes that the drive-up window, as proposed, has dictated the site's design and this design does not meet the findings for conditional use or variance approval and fails to meet some of the criteria for drive-up windows. Staff therefore recommends denial and would encourage the applicant to pursue one of the many design alternatives that appear to be available on this site exceeding one acre in size.

Billy Ray Strite (Applicant's Architect/1010 S. Alante/Boise) – We come before you tonight with the endorsement of the West Valley Neighborhood Association. Steven Loop is here tonight to testify in our behalf. I would also like to share with you a plan that we shared with the staff prior to the hearing which I think addresses all the concerns that were brought forth. I will make these a part of the record.

Commissioner Fadness – Let the record reflect that we've received from Mr. Strite a conceptual drawing of the project.

Jayne Chase (6971 W. Irving Ln./Boise/83704) – I own property at 3265 N. Aster which is Lot 5. My home is right at the center point of the drive-thru. I am not against the development. I am just concerned about compatibility such as fencing, noise, security, landscaping, gas fumes,

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and lights, especially because of where my property is located. I have talked to the architect and also the construction company. I do want to thank them and Cody Riddle for his information. I do feel quite confident that between Baker Construction and BRS Architects that they have addressed many of my concerns and I feel they are willing to work with me on any other concerns.

Steven Loop (Representing the West Valley Neighborhood Association/9637 Kampton Dr./Boise) – As President of the West Valley Neighborhood Association and also as co-chairman of the West Valley Community Center Plan which as you all remember was an amendment to the Comp Plan that dealt with the Five Mile/Ustick Center. The point of developing our Comp Plan amendment was recognizing that the Five Mile/Ustick intersection is kind of the central activity point of our neighborhood and through the development of that plan we wanted to bring in additional commercial development into the area to increase pedestrian activity in the area. To make it the area more pedestrian friendly we were funded with a grant from the Treasure Valley Future's Foundation for the purpose of doing this pedestrian friendly development. Also as part of that plan we did a social economics study with Boise State University as well as an architectural study with the University of Idaho and put about \$100,000 into this project developing this plan. We identified the types of uses that the people who live in this area wanted to see that would encourage them to stay in the area and not get into their car and drive across town to do their business, and the activities that would make it pleasant for them to be there. In looking at this particular 5-acre site where the residences have been built and this particular site was part of an area that we proposed for commercial and multi use activities to create that synergy of activities. Previously the Commission had approved a carwash at this location which while not what we thought would have been the best fit for the area, apparently and according to the Commission did not have an adverse impact on the immediate residential area. We feel that a coffee shop at this location along with the pharmacy, the vet clinic and the drive-in and some of the options that are going in on the adjacent 5-acre site do create the type of multi uses that create the synergy. This would be a very low intense activity. Especially being on the north side of Ustick Road the high impact of a drive-in that you might normally think of when you are looking at these severe standards for drive-ins really wouldn't be an impact here because there are other drive-thru coffee shops on the south side which is the main commuter route. This would tend to be more of a coffee shop that would cater to the people in the area as do some of the other sit down coffee shops in the area. Our neighborhood association is in support of this project. We think the developer has gone one step extra to try to work with the neighbors and with the association to try to address all of our interests. I think this is about his 10th iteration on the plan. He actually started out with a plan that according to staff would have been better and put the drive-thru window more to the front. However the problem was that due to the requirement for inner connectivity between sites that did not work well with the requirement from ACHD to have the access to the adjacent commercial area to the east of this site. He's been forced to move it back further but I think with the provision for a masonry wall and the overall design of the site, there should not be any kind of an impact from where the speakers are located or how the circulation works. We would like to go on record as supporting the project with the latest drawing which you were handed tonight.

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Lynn Perraud (Representing Baker Construction & Development/5410 N. Turret Way/Boise/83703) – I am part of the entity that's been putting together the plans and been going back and forth with Cody's plans which we appreciate the time and effort that he's put into. We have tried to take into consideration the entire neighborhood in terms of the highest and best use, in terms of types of use and the layout itself. The primary issue, staff said there were a number of alternatives available to us and we've very closely considered all of those plans. But the other half of the equation is the ability to find tenants willing to lease a space in a configuration that's presented before them. We once had the building in the rear. By shifting that entire building to the east, it rendered it completely unleaseable. We're not going to build a building that will sit empty because it's unacceptable to the standards of retail. Our goal is to have a win-win-win, a win with the City, with the neighborhood and with the tenants, presenting them an opportunity for their greatest opportunity for a successful business in servicing the community. We felt that Cody had brought up enough good issues that we ended up with this generation of a plan that just as of this morning and a result of a few more comments, we responded very quickly. I'm excited about the plan before you because I think it addresses everyone's concerns and all of Cody's very valid points. It is a very leaseable project. We chose to diminish the amount of square footage of the building in favor of this particular layout and felt it was really in the best interest, looking again to the success of the retail tenants who always prefer their store fronts to be close to and facing the road. We feel that the drive-in is a crucial element because unlike a lot of other locations, the density of this particular neighborhood, it's one of the densest neighborhood pockets/markets in all of Boise. There's more than 50,000 people in a two mile radius and right now those people are forced to go out to Eagle Road and to Fairview for a lot of things that they are shopping for. There are very limited opportunities for commercial development in that area. Albertson's is there with a very small center, Walgreens has one corner.

Mr. Strite – Could staff put up the original exhibit that delineated those concerns that you expressed in your testimony? I would like to identify each and every one of those individually. The trash enclosure area, I spoke to BFI today and their pickup is not necessarily 8:30 to 9:30 in the morning. They can pick it up at anytime the tenant would like so there is no concern with congestion between the drive-thru and pick-up. If you will note on the plan that I've provided you, at BFI's suggestion we now have a straight in pull where the BFI truck enters. The trash enclosure at the 90 degrees has the back-up position of 25 ft. back to the east, turns back out and proceeds south and out of the project. Unfortunately because of such a late hour I was unable to get this over to BFI, but I did discuss this with them and they think this particular proposal works well. As to the pedestrian crosswalk, let me suggest to you that the American Planning Association as well as the Urban Land Institute in defining your parking ordinance and includes employee parking as part of the 250 sq. ft. that's allowed in a retail use. However we are prepared to suggest that maybe somebody would like to park on the far north side and walk to this facility. It's highly unlikely, however a possibility. You'll note now that we've made a pedestrian walk that goes back to the east, turns south and goes around the drive-thru such that there is no crossing of pedestrian traffic through, over or across the drive-thru on either leg of that drive-thru. Also I'd like to point out that according to the tenant, their transaction time is 35

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to 45 seconds. Their suggestion is that they have a maximum of 5-car stack. Apparently the Ada County Highway District thinks differently. They think it has to be a minimum of an 8 car stack so we've provided approximately a 12 car stack which I think will satisfy everybody's concern. The most important issue is the speaker itself. I think you should be aware that the Sonic adjacent has 25 speaks, all of which are pointed either north, east, south or west. We have one speaker which we are pointing to the west so any of the decibel levels would be pointed back towards the Sonic. I should also note that according to the people I talked to at ACHD, they are suggesting that the ambient road noise along Ustick Road today is around 65 decibels and we are restricted by ordinance to be less than 55 decibels at the property line so I think it's obvious to us that there's going to be a greater amount of traffic noise than there is in fact speaker noise.

Commissioner Fadness – Does this change the project enough that we have a project, or are these changes that we can adopt tonight?

Mr. Riddle – We would have to come back with new findings, conditions of approval if this plan is satisfactory to you. We would also like the opportunity to transmit this plan to Fire and Public Works.

Commissioner Ellsworth – How are we now with the speaker to the residential?

Mr. Strite – The speaker from the eastern boundary, which is probably the most prominent, keeping in mind that you have a 6 to 8 ft. high block wall going along the north boundary as well as along the east boundary, it is 85 ft. from the speaker to the back of the proposed wall and it is 62 ft. from the speaker to the north wall. You'll also note that the speaker for Sonic is only 42 ft. so the speakers at the Sonic are closer to the north boundary than we are with his proposal. If in fact you can act on this tonight with the idea that we would be prepared to come back with the findings, we have no objection to staff sending this down. I've already been to the Fire Department so I'm not concerned with that. We would like to have this acted on tonight with the idea that we might have findings available for us to review?

Commissioner Fadness – Procedurally that will be up to the Commission.

COMMISSIONER ELLSWORTH MOVED TO APPROVE CUP05-63 AND CVA05-18 AND DIRECT STAFF TO COME BACK WITH A NEW SITE PLAN WITH NEW CONDITIONS OF APPROVAL.

Mary Watson (Legal) – We need some conditions of approval put on the record tonight as to the Commission.

Commissioner Ellsworth – If I get a second on the motion I think we can address that.

COMMISSIONER WILSON – I WILL SECOND THE MOTION.

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Commissioner Ellsworth – I think that the new site plan has addressed one of the main concerns and that is the trash corral and the problem with traffic blocking the trash corral. So I believe that issue is probably off the table. I guess that I'm willing to approve this because the neighborhood association is behind it and it seems like the applicant has addressed most of the concerns of the neighbor that's here to testify tonight so I think that's one of the main reasons I support a motion to approve this.

Commissioner Wilson – In seconding the motion I sort of had to objectives. One is that I kind of agree with the motion and the other is I kind of see the other side of it too. I am concerned about the location of speaker, but in light of the fact that the Sonic next door already has speakers back there and there's going to be a masonry wall around the sides, I feel this makes it difficult for me to find that you can't put a speaker within 200 ft. of the residences if we've already just recently put a speaker within 200 ft. of residences. I would be interested in hearing what some of the other Commissioners have to say and discussing this a bit further.

Commissioner Cooper – If I were to just look at this quickly and see how close that drive-thru lane process is to the residences, I really have an objection to that but after hearing the testimony and seeing the constraints placed on this site, particular by that cross access at the front of the site, I don't know that there is a better solution than this. It seems to be okay that we approve this project attaching this plan that we have tonight. I think the changes that have been made have been definite improvements.

Commissioner Fadness – Do we need to attach conditions that address the issues in the original plan such as the trash issue, the location of the speaker, the pedestrian walkway or is it enough in the motion to just say see attached plan? Are we covering ourselves?

Ms. Watson – I'd direct you to look at pages 4 and 5 of the staff report that really set forth the findings that you have to make tonight if you are going to approve this project. Both findings for the conditional use permit under City Code 11-6-4.13 and then also for the drive-up window, 11-6-6.05, the staff has set forth all the different code details there that really you need to speak to in order to have staff come back with those findings at our next meeting. I'm pointing these out and hoping that you focus on these because it really requires, especially with the drive-up window, that your Commission finds that there is substantial compliance with the drive-up window provisions as noted on page 4.

Commissioner Fadness – Well in the drive-up window issue we really don't know yet the distance on the new plan for the speaker from the residences. Isn't that a part of what will be submitted?

Commissioner Wilson – It looks like the speaker is going to be even closer to the lots on the east than it was on the original drawing. It's further away from the ones to the north, but it's still well within 200 ft. That's the difficulty that I'm having and seconded the motion so that we could have some discussion, but I'm still not certain.

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Commissioner Brunelle – It seems to me that we’ve been handed a new plan halfway through the presentation after staff had presented the reasons for denial of what had been presented in the record. It would just be cleaner if we would just go forward and deny the request for the variance and the CUP for the drive-thru. The indication that I’m getting from staff is that this looks like progress but there are other agencies within city government that ought to see this. We can sit here and try to construct findings to approve something that we were just handed and then it would be brought back to us at the next meeting for official adoption. Why not just go forward with a new application that would most likely end up on the consent agenda next month anyway? Doesn’t that make sense?

Commissioner Fadness – That is the route I would prefer we take.

Commissioner Ellsworth – That’s fine. Is the process that fast if the other agencies that need to look at this are okay with the new design? Does staff see this on an agenda in the near future?

Mr. Riddle – The next hearing would be in September and we could hear this at that time. That would give us adequate time for notice and for the other agencies involved to respond.

COMMISSIONER ELLSWORTH – WITH THAT SAID AND AS THE MAKER OF THE MOTION I’M WILLING TO LISTEN TO A SUBSTITUTE MOTION.

COMMISSIONER BRUNELLE – I WILL MOVE THAT WE DENY CUP05-63 AND CVA05-18.

COMMISSIONER COOPER SECONDED THE MOTION.

COMMISSIONER BRUNELLE – I WOULD INCLUDE IN MY MOTION THE STAFF’S FINDINGS SUPPORTING THE DENIAL ON THE VARIANCE. I CLEARLY THINK THERE ARE PROBABLY JUST SOME MINOR ISSUES THAT NEED TO BE SORTED THROUGH, BUT I ALSO THINK THAT IT’S IMPORTANT THAT THE OTHER AGENCIES HAVE A LOOK AT THE PARTICULAR ISSUES THAT WERE THE BASIS FOR THE STAFF DENIAL IN THE PROPOSAL THAT HAD BEEN PRESENTED TO US AND THAT THERE BE SUFFICIENT TIME FOR THE CITY AGENCIES TO EXAMINE THE ONE THAT WAS PRESENTED TO US THIS EVENING.

MOTION FOR DENIAL CARRIED UNANIMOUSLY.

CUP05-00068/Jennifer M. Edwards

Location: 4464 N. Fifeshire Way

OPERATE A NON-OWNER OCCUPIED CHILD CARE FACILITY FOR UP TO 12 CHILDREN IN AN R-1C ZONE.

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Cody Riddle – This application is a request for conditional use approval to operate a non-owner occupied child care facility supporting up to twelve children on property at 4464 Fifeshire Way in an R-1C zone. As you can see from the aerial photo the subject property is surrounded primarily by single family homes. Up until the date of publication staff had not received correspondence regarding this request. However, since that time we have received numerous letters in opposition voicing concerns primarily around the introduction of a commercial business in a residential neighborhood and noise associated with children at play. It's important to note that this application is not a request for a change in zoning, therefore would not allow for the introduction of other commercial businesses beyond the child care facility, nor would it allow for an increase in the number of children beyond twelve. The Zoning Ordinance clearly has criteria once you exceed twelve children and this request would not meet those criteria. Staff would also like to note that the applicant indicated that this day care has been in operation supporting up to 6 children in this location for around 5 years. In researching the property staff did not find any records of Planning and Zoning Code violations associated with the subject property or the operation of a child care facility. Staff has found that this request does meet the findings for conditional use approval and is recommending approval for the following reasons. First is compatibility. North and west of the site are single family homes. South and east are streets followed by additional single family homes as this is a corner lot. Other than replacing a dilapidated fence, no changes have been proposed to the exterior of this home therefore the residential character will be maintained. While the applicant hasn't indicated a request for signage, staff has recommended an additional condition of approval to limit the amount of signage that would be allowed. Instead of 12 sq. ft. of signage, staff is recommending it be limited to 6 sq. ft. to help insure the residential character of the neighborhood. While on-site children will be engaged in activities typically found in a residential neighborhood, eating, sleeping and playing which typically will occur within the home but at times will be out in the yard. Staff finds that the site is large enough to accommodate the proposed use. The 2 required parking spaces for such a facility have been provided for within the 2-car garage leaving the driveway apron available for drop-off and pick-up activities. The applicant has indicated that parents will typically remain on site for less than 5 minutes therefore preventing any sort of congestion within the neighborhood. 1,900+ square feet have been provided as an outdoor play area, exceeding the minimum requirement of 1,200 sq. ft. for 100 sq. ft. per child. Additionally 1,200 sq. ft. of indoor play area has been provided, exceeding the minimum of 420 sq. ft. or 35 sq. ft. per child. Staff has been unable to identify any adverse impacts on adjacent properties associated with this request. The applicant has indicated the hours of operation will be between 7:30 a.m. and 6:00 p.m. While children will typically be inside, when playing outside a good portion of the play area including the play equipment is actually located out near the street side of the property providing additional buffer or separation from the residential property to the west. Further, there's a significant amount of landscaping in the back yard to mitigate the noise associated with the children playing in the yard. Staff hasn't received any comments from any public agency indicating this proposal would place an undue burden on the services they provide. Based on the information submitted as well as multiple site visits, staff concludes that all of the findings for conditional use approval have been met and therefore recommends approval.

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Jennifer Edwards (Applicant/3804 Twin Eagles Way) – I have been operating a small day care out of my home for the past several years. Recently my family and I moved to a larger home that better meets the needs of our growing family. I would like to continue watching the kids I currently care for out of our Fifeshire home as it is much closer to where these families live. The location of the day care is also convenient for the children who attend McMillan Elementary School as I am located one block south of the school. These kids are able to walk to school through a safe neighborhood and onto a safe walking path that deliveries them directly onto the school grounds. I provide a service to the families in the neighboring subdivisions that I believe is greatly needed. Quality child care in a loving, clean, home environment is something that will always be needed in Boise especially as the city continues to grow. In the several years I have been operating a day care out of my home I have never received a complaint from a neighbor. My husband and I have routinely checked with our adjacent neighbors to see if they were having any problems with the noise which I believe have been minimal and the traffic which amounts to 3 to 4 cars a day. Again there has never been any problems or concerns communicated to us. My husband and I are conscientious to our neighbors and are more than willing to accommodate them in any way that we can. Currently I keep the kids inside the house until 10 a.m. to allow the boys of the neighbors behind me to sleep in on their summer break. I will be willing to work my day care schedule around my neighbors in order to keep the outside play noise down at requested times of day. It is not my goal to upset the neighborhood, only to continue on as I have been for the past several years watching children out of my Fifeshire home. I would like to thank the staff for recommending approval for the conditional use permit. I ask that you also will grant approval so that I may continue to provide quality child care for the children in my neighboring subdivisions.

Commissioner Cooper – What is the provision for employee parking if any at the property?

Mr. Riddle – 2 spaces have been provided for within the garage.

Blake Edwards (3804 N. Twin Eagles Way/Meridian) – My wife is Jennifer Edwards and she has been running the business there for about 5 years. Obviously I am for this for a number of reasons, the first being it has allowed us to landscape the front and back of our yard. We also are planning to paint the exterior of the residence this year, put in some underground sprinkling and also replace the fence on the east side. Additionally when we bought the property in August of 1999 we kept a very good relationship with the neighbors to the north and west of us and have not had any negative feedback from them until the meeting we had in May or June of this year. Nothing will change as far as the upkeep of the property. The front and back yards look great. We are going to take care of the fence pending the decision this evening, but nothing will change as far as the upkeep, the maintenance and the property value of the area.

Ty Schneider (14450 Guinness Dr./Boise/83713) – I'm here to support the request and the day care. As a customer of the day care, they do provide a very loving, caring environment for our infant child. As they stated they will continue to provide improvements on the property.

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Cary Weigle (4529 N. Citrus Ave./Boise/83713) – I live in the house to the west. The side of my home is just over 11 feet from the backyard fence line of the proposed day care. Our bedrooms are located on that side of our house. My husband works graveyard shifts with his job on any given day and has to be able to sleep during the day. With the main outside play area of this day care 11 feet away, I feel this noise level is an unfair request for us to deal with on an on-going basis. The distance from our bedrooms to the day care play yard is about the distance from me to you. In the past the children have spent many hours playing in the yard. We have been able to deal with the activity noise of 6 but are very concerned about having that grow to 12. We enjoy our yard and our patio which is also that distance from the fence. Play equipment in the yard that is there for the children to climb on does allow them to be above the top of the fence which again is a noise activity that we are very concerned about. A fence or a tree cannot really buffer the noise of 12 children playing and those children should not be expected to have to worry about being quiet at a day care. We know this because it has been a day care for 6 children which gives us a very good idea of what 12 children will be like. We live in small homes on small lots. We live very close together. We should be able to enjoy our homes and our yards as they were intended, raising our families and enjoying our neighbors. I do not feel approving this request would consider those of us living around and especially right next to this day care. To this point I have spoken for myself, but I ask that you consider the daily living of all of our neighbors and how that will be affected before you approve this request.

Jennifer Sato (13248 Telemark Ct./Boise) – I'm here to support the request. Two of my children go to this day care and if she moved to Emmett I would take my kids there. Their home is clean and the yard is kept up. They provide wonderful loving care. My children are happy to go there, excited to do there and are happy when I go to pick them up. They are always clean. They are always attended to. She always has activities and things for them to do. It couldn't be a better environment for children. So for me it's really important that she continues to be allowed to operate there. It's close to the school my child will be going to so it makes it perfect for him to be able to go and have after school care instead of trying to do the latch key thing. In my neighborhood if I had a choice of having her running it and keeping it up nice, I'd much rather have that than a renter. Across the street from the place there are some rented places. The yards are all yucky, it's dry weeds. I would rather have her running a small day care than I would have a renter in there which is what will happen if you don't grant the request.

Gary Wright (4530 N. Citrus Ave./Boise/83713) – Not only do I represent myself here tonight, but I represent my parents who live right next door to me at 4508 N. Citrus. My wife and I are empty nesters and we have no children at home. We go to work before most of these day care people show up and they are usually gone before we get home. But my mom and dad are there all day long and their primary concern is the amount of noise generated from this day care. They live directly across the street. I'm sure that Jennifer is a good provider of day care services. She treats the children lovingly, but that's not the issue here. It's the point of how much noise and traffic congestion on the narrow streets in this neighborhood. I urge you to deny this request.

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Lois Blount (4506 N. Fifeshire/Bois/83713) – I live next door to Blake and Jennifer’s former residence. My back door is right on top of their back yard. I have been gone most of the time working long hours and I didn’t notice the noise level. I’m getting ready to retire now and what I do know is that landscaping, notwithstanding, when children are out in the back yard playing, it comes right into my back yard and it’s the thing you are aware of, that noise from the children playing. Children play. They yell. They shout. They make noise. They laugh. I feel that that deprives me of my right to the quiet enjoyment of my property. I’ve spent a great deal of effort, time and money getting my back yard landscaped so that I can have friends over and enjoy my back yard. Having a day care center next door is going to end that. It will end that for me. When I mentioned that to Blake and Jennifer they said well if the children are making a noise call or come over and we’ll deal with it. I don’t think that’s reasonable to expect people to monitor and to advise, on a regular basis, when what we did on that street, most of those houses are empty nester homes and people move in there on the quiet little cul-de-sac expecting that they are going to live in a sheltered little area. If you notice the width of those streets, those are very narrow streets. The man across the street, I know that since he moved there a short time ago he has had his mailbox wiped out twice by people dropping off children and backing up. That’s a very narrow street. Someone earlier made the comment that if there is someone parked on one side of the street it becomes a 1-way streets. That’s Fifeshire. If there’s someone parked on that street it becomes a 1-way street. I think they are wonderful neighbors and great with children. I don not think it is fair for them to impose a 12-child day care center in a residential area that will then change the use for at least one house.

Harold Noyes (10836 W. Albany/Boise/83713) – My house backs up to McMillan Elementary School. I’m well familiar with noise from children having chosen to build to an elementary school playground. To me that is that is not the issue. The issue is what is the definition of a neighborhood. In providing for the recommendation for the conditional use the report says in section 7.2: “Create a community composed of neighborhoods in which services and amenities are convenient, visually pleasing, properly integrated and designed to encourage walking and cycling.” What is the definition of a neighborhood? In the applicant’s own letter she says the location of her day care is perfect for families who live in the Legends and Bristol Heights and she watches children of several families who reside in those subdivisions. I challenge you to find those subdivisions on that picture. Those subdivisions are a mile and a half away. They are not even in this school district for the McMillan Elementary School. They are in Pioneer and Joplin school districts. What is the definition of a neighborhood and do we need that amenity? It’s one thing to have a day care in your home, providing a kind and loving home environment. It’s a different thing to have a commercial establishment that is no longer owner occupied. She’s asked for the maximum limit which staff indicated that different regulations apply. She’s asked for 12. I do not believe you can successfully charge enough per child for 12 children to maintain a home, pay the bills, pay for staff, pay for upkeep. My fear is she will be asking for more. What is the definition of a neighborhood? There is a commercial child care at Shamrock and McMillan. There are two home owner-occupied day cares on Edna. There’s a commercial day care on Cloverdale servicing Joplin. There’s a commercial day care on McMillan servicing the

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Pioneer. This is not a service that is needed in this neighborhood. We are empty nesters. None of us have children.

Julie Porter (4546 N. Buckboard/Boise/83713) – My main concern is that I have children that go to that elementary school. We have two paths that go to that elementary school. My children use those paths so they do not have to go out onto McMillan Road. We figure 12 people, that's almost 50 trips those cars plus the two employees are going to have to make. That's 50 cars that my children could be run over by if you want to be drastic about it. It scares me. Children do not always look for cars. 50 cars driving through your neighborhood makes a huge impact. There are plenty of day care centers that are available for the schools that serve the Legends and Bristol Heights. In 7.0 it does say that they want to provide the necessary businesses to be able to provide that and I don't see how this will help. This does not provide a service that isn't already being provided for.

Commissioner Ellsworth – What's in the ordinance as far as like 12 to go 13 or going from 6 to 12?

Mr. Riddle – Currently the applicant has been operating as an in-home facility for up to 6 children which based on the Zoning Ordinance is just an allowed use. They work with the Clerk for licensing, health codes, and things like that. 7 to 12 children in-home is reviewed at staff level. Anytime you go to non-owner occupied requires conditional use approval and then beyond 12 children there are different set of criteria namely that the facility would need to be located at the edge of a neighborhood, things of that nature so beyond 12 would not be suitable in this location.

Commissioner Fadness – Tell me how often the children are outside. I know that might vary depending on the time of year, are they inside most of the day even during the nice times and if they are outside, about how much time are they outside?

Mrs. Edwards – Roughly an hour a day. They don't play outside very often. I have a lot of activities and crafts. We do a lot of things inside the house. I'm flexible with that. I'm willing to work with my neighbors and if there's a time that they need them in the house, they will be in the house. I have applied for 7 to 12 kids, but I have absolutely no intention of taking 12 children. I couldn't do 12 children, but I've gone through so much work to get through all this paperwork that you have to do to stand right here before you, that I don't want to short change myself. However, I couldn't do 12 kids. Right now I have 4 full time and 2 part time. I could take maybe 7 kids, not 12. I understand how the neighbors must feel about that.

Commissioner Fadness – So that is the maximum, even during the nice weather an hour a day?

Mrs. Edwards – Right not it's too hot. They don't want to go outside. Sometimes I split it up to 30 minute sessions twice a day.

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Commissioner Cooper – Could you describe in terms of time and activities what happens from when the very first person, you or staff, arrives, what happens when the kids start arriving and then again at the end of the day?

Mrs. Edwards – I get there at 7 a.m. and prepare breakfast. The first kids arrive around 7:30. Usually they are sleepy so I'll have a movie on where they will wake up. We'll have breakfast. After that it's usually a free playtime for a couple of hours. I haven't been letting them go outside until the boys behind us wake up, around 10:00. They will go outside for a half hour to an hour and then will come inside and do craft and then have lunch at noon. 1 o'clock is quiet time where they sit down and read books, watch a movie. That usually lasts till about 3. By that time parents start to come to pick kids up. I have one family who come at 6. There's only two older kids and then there's two younger kids that are under a year. The older two are that are fulltime are 5 years old. After quiet time at 3:00 we'll do craft, read stories and maybe the kids will go out for maybe a half hour. That time they are exhausted and ready to relax and read books until they go home at 6:00. Most of them are gone by 4:00.

Commissioner Brunelle – Have you run this as just a sole proprietorship or have you hired staff?

Mrs. Edwards – It has been myself. I've had my mother be licensed so that I have someone to help me out if I have a doctor's appointment or need to leave for some reason. If I bring on more kids I will have her come on part time, but it will be just myself and a part time worker. It wouldn't be economically feasible for me to keep a smaller amount of children which I plan to do. I don't want a huge daycare. I wouldn't be able to afford to hire a lot of employees. I love children. I very strongly believe in what I'm doing. I like the one on one with kids that my small day care provides. There are a lot of day cares around. There is a day care just down the street from me, the Guardian Angels. There are a lot of day cares in my area, but I think that the point that a lot people without young children that they forget is that not every day care is for every person. It depends on the day care provider. Somebody might go to a day care that has just 6 kids, but then they will come to me and I have just 6 kids but they will click with me or they will go do a big day care like Guardian Angels. Maybe that would work for one person, but it might no work for another. I feel I provide a service that meets the needs of the parents I'm currently providing for. That's really important to have that security when you are at work, to know that there's somebody there that you are confident in and you know is loving your children.

COMMISSIONER ELLSWORTH MOVED TO APPROVE CUP05-68.

COMMISSIONER WILSON SECONDED THE MOTION.

Commissioner Ellsworth – I've read staff's report and I concur with the report and the reasons for the decision. I do think that these child care centers located in a neighborhood are supported by the Comp Plan and are compatible with our existing neighborhoods. This comes before our Commission quite often and I think that the Zoning Ordinance is quite clear when we get beyond

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12 that it needs to be moved to the edge of a neighborhood or in a different zone altogether, but up to 12 I think that these day care centers, if they are run properly, work quite well and are compatible with our neighborhoods. I also think that this site is large enough to accommodate this existing and proposed center... inaudible.

Commissioner Cooper – The proximity of this facility to the school is a real synergy for letting kids move from one to the next without having to be sheperded in a car and I agree that the Comp Plan supports this kind of thing. We really need to have this kind of thing right inside of neighborhoods, not at the edges. Particularly with the applicant's discussion of having existing clients that are nearby and use that school makes this a stronger case.

Commissioner Wilson – I concur with the other Commissioners that this is an appropriate use and as Commissioner Ellsworth pointed out, once it goes beyond 12 children then other ordinances come into play. But this is an allowed use in this area and I think with the way that it has been run with respect to the neighbors and trying to accommodate when people are sleeping, etc. and the limited playtime outside really speaks strongly to this applicant's desire to work with the neighborhood.

Commissioner Fadness – I just want to say that I am sensitive to the concerns brought up by the neighbors about the noise. We live near a school and near a gentleman who lives 1 house to the south of us who has a band and they play in the basement every Wednesday night and Saturday afternoon. Part of that is city living. It's not convenient at times. From what the applicant has said I trust that she will be sensitive to neighbors' concerns, that she will take complaints that and that you'll be free to offer complaints in a constructive manner. If someone is in need of rest or shift work, that she will sensitive to that and maybe adjust play times according to that. I certainly understand those concerns.

Commissioner Brunelle – I want to state that I found the applicant's presentation and her answers to our questions persuasive.

MOTION TO APPROVE CARRIED UNANIMOUSLY.

CUP05-00051/Kevin & LaRae Deats and Marilyn Gossett

Location: 12081 W. DeMeyer Street

APPEAL THE PLANNING DIVISION'S DECISION TO APPROVE A REQUEST BY THE MERIDIAN JOINT SCHOOL DISTRICT TO CONSTRUCT A 7,430 SQ. FT. ADDITIONAL PARKING LOT AT JOPLIN ELEMENTARY SCHOOL IN AN 'A' ZONE.

Carl Miller – Joplin Elementary School is located northeast of Cloverdale Road and McMillan. Joplin Elementary is surrounded by DeMeyer Estate Subdivisions which are primarily single family residential subdivisions and is separated from a residential subdivision to the southwest by the Zinger Ditch. Joplin Elementary School is in the 'A' (Open Land) zone and is surrounded by the R-1C (Single Family Residential) zone. Schools can be approved through conditional use

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in that zone and the Comprehensive Plan Map designates this parcel as a school site. The Planning Division approved a parking lot expansion, as indicated on the site plan, to locate 24 parking spaces to the southwest of the existing school as well as 5 parking spaces to the northwest. This decision is being appealed on the following grounds. The conditional use approval violates Boise City Code, 11-06-04.14, for compatibility, safety and compliance with the Boise City Comprehensive Plan. The proposed location of the parking lot will adversely affect safety of children in the neighborhood. The approval fails to address city fire code which requires 150 ft. access to exterior walls of the building and current parking meets school needs. Staff finds that the parking lot expansion, with staff's recommended conditions of approval, will not negatively affect other properties nor will it infringe on the other grounds for appeal. On the aerial photograph as well as site visits staff noticed illegal parking as well as there has been testimony in the record in e-mails that you've received in your packet tonight that parking spills over into the adjacent residential subdivisions. Conditions of approval require landscaping as well as vinyl slatting in the existing chain link fence separating the parking lot expansion from the residential subdivision. Staff finds that there is 36 ft. between the parking lot expansion and the property line or the center line of the Zinger Ditch, therefore mitigating any negative impact of this parking lot expansion. The Zoning Ordinance requires 87 parking spaces for Joplin Elementary. Currently there are 53 parking spaces on the site. This addition would increase that number to 82 spaces which still would not be in compliance, however it would be a step towards compliance and therefore staff has recommended approval. Staff has also recommended a condition that the applicant increase the landscaping which they've show on the revised site plan, shown landscaping to the north as well as the south of the site and to move portable restrooms that are currently near the parking lot expansion area. As well as in your packet that you received tonight, I have spoken with Dave Miller of the Fire Department. They are not pushing the issue to require the school to come into compliance with the 150 ft. of access. The additional parking will provide additional access, however it still won't bring it into complete compliance with that 150 ft. access point. I will submit a letter to you received tonight.

Commissioner Fadness – For the record we've received a 2-page letter from Jim and Selina Lamanchia.

Kevin Deats (Appellant/12028 Jody Dr./Boise/83713) – We have actually two issues here and you received a memo today from staff. There are a number of issues that happened with both the package that you received as well as the notification that occurred within our neighborhood. First we'd like to get a ruling on the potential of just deferring this to the next session so that we make sure that proper notification and information is distributed to neighbors and also to give you the correctly collated information for your packages. I'd like to get a ruling on that first and invite Tess Farley to talk about the lack of notification and then get a ruling on whether we should defer or if we want to move ahead.

Commissioner Fadness – So she is part of your presentation?

Mr. Deats – She has a separate presentation on deferral.

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Commissioner Fadness – She’s alleging she was not notified?

Mr. Deats – Yes, and she has proof.

Commissioner Fadness – Before we do that, and we will certainly give her the opportunity to testify during the public hearing portion, I guess I would turn to staff and their response to the claim that all neighbors within 300 ft. of the property were not notified of today’s hearing.

Mr. Miller – I will put on the overhead the notification map that was included in your memo for tonight. The parking lot expansion sites are indicated with the 300 ft. radius. The property in question is located at 11974 Jody Dr. It is included in the notification map and our records indicate that notification was sent to 11974 Jody Dr. Those records we sent based off the Ada County Assessor information and at that time the property was indicated to be owned by Lynn Blake. Nevertheless, notification was sent to that address.

Commissioner Fadness – It now has a different property owner?

Mr. Miller – That’s what it appears to be.

Commissioner Fadness – Are there other folks saying that they were not notified?

Mr. Deats – No, not that we have here. We have within our neighborhood group, which is a sample of all that were sent out, a sampling of 8 families. We had one family who was not so I cannot comment for the rest of the mailings. We suspect, because a large number of these say occupant, that there may be more. If they were sent to occupant at the address they were delivered, this one was not delivered it appears.

Commissioner Fadness – My inclination is to follow staff’s recommendation to proceed. Certainly those who want to protest that they were not notified can do so tonight and also at any appeal if that becomes necessary. I would ask my fellow Commissioners if this is their feeling as well.

Commissioner Wilson – I believe that staff has shown the process that the city typically takes to notify the neighbors and that we have done our diligence in that respect and we should go ahead and move forward this evening.

Commissioner Fadness – With no other comments from the Commission we will go ahead and hear the proposal.

Mr. Deats – Before we can start I have to note the other disparities. If you will note in your packets you have an appeal document which is miss numbered. I would like to give you the correct one.

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Commissioner Fadness – Let the record reflect that we've received a revised appeal notice with the pages in the correct order.

Mr. Deats – With my neighbors I want to make it clear that I don't want a parking lot behind my house. With my neighbors I do not think additional parking is needed at Joplin. I am not opposed to additional parking. I was not able to meet with Carl during the approval process, I was out of town. I'd like to ask you as Commissioners to please join me in looking back on the project and the alternatives as my neighbors and I have. As we move forward I want to make sure that you understand that this project affects me and my family. It directly affects the Mosier family. We are joined in our concern by many neighbors. These are the neighbors who have actively signed a petition. With these neighbors we are asking staff to recognize that this is a bigger issue. It's much bigger than Marilyn, Loray, Eric, Teresa and I in that we really want to make sure that you understand that we are very proud neighbors of the Joplin Elementary but we would also like to continue to be a good neighbor with Joplin. Also I want to note with the zoning and all of the things that go on, it takes time to engage neighbors. It takes time to make decisions and so I would like to apologize if I may to the applicant as well for anything that looks like stalling as we go through, but are trying to make good decisions and to really have a good neighborhood. I think that staff did a good job of explaining his reasoning for wanting to approve the parking and that explanation is good, but an explanation really needs to be supported by facts to be effective and there are some facts here. A lot of the parking design is for new schools. As much as we love Joplin it's not a new school. It's almost 30 years old. The design of 87 spaces is 410 students, but Joplin hasn't had 410 students in over half a decade. It's at its lowest enrollment in history now. Just the K thru 2 numbers that we've been able to obtain suggest that within 3 years the school could be even lower, as low as 340 students by 2008. These low enrollment numbers are beginning to force some changes in how Joplin is staffing so even the numbers of teachers are affected by the lower enrollments. This doesn't mean that Meridian doesn't have an enrollment problem, it means that our neighborhood is becoming more mature and the enrollment is changing. Staff observed in his visit to Joplin that there were 8 open parking spaces. That's almost 20%. There were no excess cars out in the streets. This is supported by our survey which we ran for 29 non-event days at the school and we found between April 22nd there were an average of 6 and never any parking problems. That's also illustrated in the satellite imagery that Carl had which was taken in 2003. Joplin already has more parking spaces today than any Boise elementary school we surveyed of equivalent size. It's very comparable both in the number of spaces and students. Joplin has 10 less parking spaces than its newest sister school, Chief Joseph whose 63 spaces accommodate 519 students. Why we ask, with the projected enrollment of almost 200 students less, should Joplin Elementary have 87 parking spaces. With declining enrollment and the number of spaces, what happens now is the faculty becomes a bigger part of the parking. But as we approach 2008 with declining enrollment, up to 56% of the normal parking that will occur in the Joplin Elementary will occur behind the Mosier house and our house. That's significant. We are worried because that traffic will not be controlled after hours. When faculty is gone that parking will be left open. That makes it open 24-hours a day, 365 days a year which becomes a problem potentially for noise,

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traffic, lighting damage to the neighborhood. As Joplin enrollment continues to decline the damage from an irreversible parking lot behind our homes will not. We try to appreciate how difficult it is and it must be to run a school and a school district, but we are concerned. When the school didn't notify the neighbors of plans to extend parking behind our houses, and we only became aware on April 22nd when drilling equipment showed up behind my doors, I began to work very hard. I worked with Albert Millagross, Eric, Teresa, Marilyn and Lorraine and I talked about alternatives that would work for adding parking behind our homes. I sent e-mails to Dr. Clark and really began to work with the Meridian team and we set up a meeting on May 3rd and Albert, Marilyn and LaRae and I met with them and presented 6 alternatives to the staff that added up to 60 spaces. These alternatives are fairly significant. You can add 11 spaces in a grassy area which is accessible in the existing parking area. This gives you an idea of just how much of this parking lot is unused right now because of a berm in the middle. The berm option alone I calculated 32 and when Doug Russell did a concept drawing he came up with 27 or 28. There were other options too. Putting compact car spaces in 35% of the area added space. Then there were 7 spaces and 4 spaces down here so it added up to us to almost 80 extra spaces in the area. That was pretty significant. We actually found out later that Linder Elementary has done a parking lot that adds 20 spaces. By simply putting it north of the school that actually adds parking, increases fire safety and in the end can give up to 133 spaces again with putting parking lots behind our homes. We took these into our meeting and Doug Russell came to the meeting and thanks to Doug, although this becomes controversial, presented only 1 of the alternatives. That alternative was to take the berm out of the center and became very excited in the meeting. Doug presented it and Wendell Bingham was the meeting a the meeting and said he could afford to do that and do both. He said he had the capital budget to do that. We took that to mean that this alternative was a real alternative and I sent my summary to Dr. Clark and Dr. Clark reassured me it is important to get parking in the area and also suggested in her memo to me that actually our suggestion was good, that if you added the berm along with the parking behind our homes they could have even more parking. We don't want parking behind our homes. We suggested if you could only do one alternative pick this alternative. It's very important to remember when you are balancing the neighborhood and doing the hard work that we have to do with zoning that the cheapest solution is not always the best solution. Because these were so close, because they look like they could both fit in the same budget, we said look, let's do one. Let's do the first with the berm and then let's add behind. This is not a A-typical design and the school ream will know that Chief Joseph, for instance, has a very large open area also with a berm as does Linder have a berm. Chief Joseph actually open up their parking lot and both Chief Joseph and Linder have their staff and faculty parking out front. We really don't think parking is necessary, but if we add it, we would like to see it in this area. Though it may be a little bit difficult, we ask that in light of the alternatives that we suggested and we ask again for you to step back by the neighbors, and these were numbers that we felt were encouraged. We felt that Dr. Clark encouraged us to work together with the school district to take a look at alternatives and to see if we could, as neighbors, make things work well, that in light of these alternatives and the great choices made at Chief Joseph and Linder, that the location, and again taking a look at this against the code section, that the location of the proposed use, although it is compatible it is not as compatible as the alternatives which allow for parking within the existing space. So

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parking will be available behind our house for all hours, this is not compatible because this isn't the way our neighborhood was designed and it's not necessary with the alternatives that are available up front. Code D says that the proposed use, if it complies with all conditions imposed, will not adversely affect other property in the vicinity. Joplin faculty, very important people, work late. They work after hours, whereas Chief Joseph and Linder, the faculty are in clear view of the office and clear view of the streets, these faculty will have to walk behind the school. They will be out of site of the office and out of site of the streets. We worry there is a safety issue there because they will be shielded. We won't be able to see them from our homes with the fencing and so there's a potential there. For children no one likes to know, there's 85 registered sex offenders in the Joplin School zip code and that's from Ada Sheriff.org. This is only one of the dangers the children face. Many children use playground equipment during and after hours and in light of the alternatives which maintain the current distance of 75 ft. to our children, we believe that having the parking lot within 10 ft. the playground is not an appropriate thing for children and in general the safety of the neighborhood. In light of the alternative which maintains parking in front of Joplin Elementary School, visibility both to the school office and DeMeyer, this proposed parking area will be visible 24-hours a day and we know from past history with the gravel pits behind our homes that leads to kids that do drugs, alcohol and we've had problems. We're really excited about the grass back there now because we don't have those problems. The other thing to note here is that this proposal is not particularly consistent. We would like to maintain the distance by having the parking put in the existing areas. In the Comprehensive Plan it asks that the proposed use is in compliance and supports the goals and objectives of the City of Boise Comprehensive Plan. Objective 2 of that plan calls for public schools to create schools that are compatible and complimentary to their neighborhoods. In light of the alternatives which limit traffic noise, high voltage lighting, urinals and open trash in the current parking area, the proposed parking area increases traffic significantly into our neighborhood. The proposed parking area significantly changes the acoustics of traffic adjacent to the neighborhood and it places high voltage elevated lighting outside second story bedrooms, in particular the Mossiers and mine. We are very concerned about the illuminatory affects. In light of the alternative that enables Joplin Elementary to add parking and enclose dumpsters and urinals within the existing parking area. The proposed location does not resolve problems with open trash and public urination. Both the Izaguirre family and our family have had that in front of our homes this spring. I would add that if there are any improvements at the school, please remove urinals from school boundaries. We are very proud of our school. We're proud of our teachers, but we're not proud of what's happened to bring us to the point of this appeal. Adding parking to Joplin we believe is not necessary, but we believe being good neighbors is. We believe that Dr. Clark asked us to consider alternatives and we believe we've worked hard to come up with and to work those alternatives and we've brought those alternatives to the school. We believed that we listened to when Doug Russell presented an alternative at our meeting. We believe Meridian School should submit this alternative or look at these other alternatives. There's seven alternatives that it could design to put parking for students and to preserve the safety of our faculty, our children and our neighborhoods.

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Commissioner Wilson – One of the things mentioned in the staff report is that even with the parking addition the site is not going to be in full compliance with the fire code with having the 150 ft. around. Is there a plan that would help the school meet the fire code or are the site conditions are just such that there's really nothing you can do and this is really the best option.

Mr. Miller – According to the site plan, the expansion of the parking lot to the southwest of the school does increase the availability for fire access to the southern portion of the building. However to bring the building into complete compliance it would require access drives to almost circumscribe the building to get to the furthest eastern portions of the building. While this proposal does help increase the compliance, it does fall short. However I have not seen any alternatives that increase that in a suitable way.

Commissioner Fadness – Even though the appellant requests the desire for less parking because apparently enrollment has declined, when staff determines the number of parking, the ordinance requires 80 some parking spaces. Does it look into projected enrollment 20 years out or does it look long range? Right now the last 5 years enrollment's gone down, but what's to say 10 to 15 years enrollment will start going back up again?

Mr. Miller – The Zoning Ordinance requires 1 parking space per 6 seats as well as 1 parking space per teaching station. There is fluctuations in enrollment as well as difficulty ascertaining who exactly drives to the school and who can walk. Therefore the Zoning Ordinance has been established to those numbers. That would require 87 parking spaces. Although this request would only bring it up to 82, that is closer than what is current.

Commissioner Brunelle – Wouldn't the school district, as an alternative, be able to apply to apply for a parking reduction?

Mr. Miller – That could be a proposal by the Meridian School District as well.

Teresa Farley (11974 Jody Dr./Boise/83713) – I would like to go on record stating that we did not receive proper legal notice of these proceedings. We found out late Saturday afternoon when Mr. Deats came to our door and told us a little bit about this. My husband and I have lived at this address since June 3rd. Just before the hearing began Mr. Miller informed us that notice was sent to the previous property owner who no doubt has forwarding order on the post office mailbox. Surely the duly recorded property's transaction should have been discoverable, especially in all this time. I noticed on Mr. Miller's overhead that he pulled this list on May 20th. You would think in this hot real estate market with neighborhoods changing daily that the list could be pulled reasonably and expected to be pulled before each notice is sent out to insure that all new neighbors receive these notices as well. Because of that I respectfully request that this matter be tabled to later date so that we have adequate time to research this proposed parking expansion to determine what effect this will have on our property. We haven't even had time to come down on a business day to look and see what the documents are in the file since we found out on the weekend. Notwithstanding lack of property notice, I have to agree with Mr. Deats about the

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proximity of the parking lot to the playground. Briefly leafing through the staff report you've provided tonight during these proceedings, I noticed that the intent is to put up a 6 ft. chain fence in between the playground and the parking lot. There's nothing that prevents these sexual predators or other evil doers from driving straight in there and sitting and watching those children. Maybe a 6 ft. fence would keep a child out of the parking lot, although if their ball bounces over that fence I'm not so sure. Most young children that I've ever seen are pretty good climbers. I don't think the 6 ft. chain link fence is going to do much to deter a predator of some sort or any other criminal. I think the safety of our children should be the up most concern and we should take whatever steps are necessary to deter the potential for crime back there. In looking at Mr. Deets proposed alternative, it seems very reasonable. If the school district wants more parking places and that's there objective and if simply getting rid of the berm and some grass can provide them with the number of parking places that they want, why not?

Commissioner Wilson – For the record we have received written testimony from LaRae Deets and she has also submitted testimony for Loni Wall.

LaRae Deets (12028 Jody Dr./Boise/83713) – I have a letter from Loni Wall giving me permission to read her statement this evening. K. Loni Wall, she resides at 11993 Jody Dr., Boise, ID. She writes: “To Whom it May Concern, I am writing to express my stand on the Boise City Planning Division for a Joplin Elementary School parking lot extension. I am in agreement with the Deets, Mosier, Izagurrie and Gosset families. There is an alternative solution for parking which makes more sense in regard to the safety of students and staff. I am a former Meridian School District employee who was employed at Joplin Elementary School. While working at Joplin it was my understanding that a parking lot was to be constructed at the northeast end of the school. This was being considered due to the convenience of the entrance located at the end of what is the 4th and 5th grade hallway. I have also reviewed the alternative plans done by the Land Group that were supposed to be submitted to the Boise Planning & Zoning and agree with these plans. These plans seem more sensible than the plan to construct closer to the playground, thus deducting from the playground area. The plans created by the Land Group also do not take away from the students' playground area. I also want to express my concern that the Meridian School District is more concerned with adding an extension to the parking lot rather than bringing the school up to code in the fire hydrant and sprinkler system. I, as a parent of a Joplin student, would rather see the fire sprinkler system and hydrant locations brought to code than I would a parking lot extension. For me, student safety is the bigger and more important issue. Thank you for your time and consideration. Sincerely, K. Loni Wall.” Now I will provide you with my testimony. In 1989 Kevin and I purchased our home from Rick and Betty Ridgeway. Before purchasing our home we had concerns about the school and how it would impact our lifestyle. Rick Ridgeway is also the builder of our home and helped develop and design DeMeyer Estates. Betty Ridgeway informed us that the school was designed to compliment the neighborhood and have as little impact as possible. In the 1990-91 school year I registered our son for kindergarten. During registration a question was asked of Dr. Clark, who was principal at the time. What about the safety of our children? To the best of my recollection her response was: “There is one playground person on duty in the morning and two during lunch

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recess.” She also explained that with the parking lot in front of the school and with the office conveniently located near the front entrance, the staff could keep an eye on who comes and goes. She assured that with the playground in the back of the school separated by a chain link fence that the playground was not visually noticeable from the front and the children were quite safe. During the years that our children were enrolled at Joplin they experienced the largest enrollment of their history of 643 students.

Commissioner Fadness – I’m hearing two things on the order and how we should process this. The Code reads that in case of an appeal the order of presentation before the review body shall be staff, appellant, applicant unless the applicant is the appellant and then the other parties to the appeal and the general public. Questions by the review body shall be held until after the staff report and presentations by the appellant and applicant. The appellant, the applicant and the registered neighborhood association representative may each be given up to 30 minutes for their presentation. It’s been suggested that we allow the original applicant, the School District, the same amount of time as we would allow a neighborhood association. We’ll go ahead and interrupt the public testimony and allow the School District to give a presentation that can be no longer than that presented by the appellant.

Mr. Miller – LaRae Deets is listed as one of the appellants in this case, the testimony that you just heard. I believe Mr. Deets used about 18 or 19 minutes of his allowed 30 if that allows for any additional time for the rest of the appellants to also testify.

Mr. Deets – Inaudible.

Commissioner Fadness – That should have been a part of your presentation. She has signed up on our sign-up sheet for public testimony. We’ll continue with the sign-up sheet after the School District’s presentation and hold to the 3-minute limit. You will be allowed time to do a rebuttal.

Doug Russell (Representing the Meridian School District/The Land Group/462 E. Shore Dr./Eagle/83616) – In 2002 I was contracted by the Meridian School District to design a playground and irrigation improvement design for this site. As part of that design I was asked to a parking lot as a master plan to make sure that any of the new playground would not conflict with the new parking lot that they knew they were going to have to implement on this site because they were having come severe problems. In 2002 when we did that playground project we designed this parking lot adjacent to the playground. In December of 2004 after the irrigation/playground project had been constructed, they were ready to go ahead and move forward with the parking lot project. We also provided them with a cost estimate at that time and it was submitted for their budget and we moved forward. We submitted it on May 3rd of 2005. One of the things I’d like to clarify about the alternative design that you keep hearing about is that really there never was an alternative. Basically when we did this design that you see here, we knew that it met the ordinance requirements as far as required buffer, landscaping along with a parking area of this size. We were going to provide adequate screening per the ordinance. There really weren’t any issues, it was just a matter of going through the formality of a modified conditional use because

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when this school was built there was a conditional use permit that was associated with it. There really never was an alternative. However when the School District was contacted by Mr. Deets because he had some concerns, on May 3rd we had the meeting that he is speaking about which was pretty much just an informational meeting. We wanted to let him and some other interested parties know what was going on so we set that up. One of the things that Mr. Deets brought up was this idea of providing a parking lot within the existing parking lot. He had provided us with an aerial photograph. It was definitely a good college try, he cut and pasted some of the existing cars in the parking lot and he pasted them on top of the island area and indicated with that addition we could get up to possibly 113 or 110 parking stalls. I came up with realistically what could be done if indeed we took the island out. We could not get anywhere near the amount of parking stalls that he thought we might be able to do. What this plan was, was just a plan to show him that it wasn't going to get us any more parking stalls than what our concept was going to get us. The problem with his concept is that it's extremely expensive. It was the School District's decision to go ahead and submit the concept that we had submitted. We never went to the neighbors with two alternatives and said pick one and they did and we went the other direction. That's not what happened. As far as parking counts go, we have an existing 53 spaces. Obviously we're not meeting the ordinance requirement, but even more importantly we're not meeting the requirements of the school. If you go over to the school site you can tell during operational hours that there is a problem. I've been over there and witnessed it several times during several different times of day. There's people parking in fire and bus lanes and there's just not an adequate amount of parking. To give you an idea, a new elementary school in the Meridian School District, they design those sites with up to about 120 parking stalls and they have a separate bus drop-off area and a separate parent drop-off area. Here we have the parents and the busses sharing the drop-off area and only 53 parking stalls so there definitely is an issue here. The amount of spaces we are getting with the preferred concept, we getting 84 parking stalls and with the alternative concept we'd get about 82 spaces, so the difference in the number of space is pretty trivial, but there's a lot of issues as to why we want to use the concept that we've submitted to the City. I'd like to show you a photograph of the parking lot during some high use hours. The island is existing in the middle of the parking lot and around that entire island is a fire lane. As you can see in the photo there's 3 cars parked in the fire lane. There are some parking issues at this site. One of the things to consider when it comes to enrollment at the school, with the current enrollment whether it's 400 or 375, 53 parking stall just aren't enough. Right now they currently 54 staff and right there the parking lot is full unless there are some people who carpool or walk there. This school is slated to handle overflow students from Pioneer Elementary School as well so that enrollment may not be on the current record at Joplin Elementary, but the School District will adjust boundaries and shuffle kids around to optimize facilities. We feel that this plan has the least impact on the site. There's a couple of things that we are dealing with right now and one of them is cost, the other is schedule. We had planned to build this project this summer to be ready for this next school year. Obviously that's not going to happen at this point, but this plan, we can build during school and we'll still have the current parking lot in working order. Obviously the other idea is going to require a complete tear-out of the existing parking lot and a rebuilt which means that we're going to be waiting until next summer and we're going to be dealing with this issue for a whole other year. This plan meets the

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intent of the code. We more than meet the buffer requirement. I believe the required landscape buffer between a parking lot and a residential area is 5 ft. with a landscape buffer. We have 35 ft. We have 30 ft. from the center of the irrigation canal, which is the property line, we have 30 ft. from that property line to the fence then we have an additional 5 ft. from the fence to the back of the curb to the landscape screen. We intend to install vinyl slats in the chain link fence for not only the length of the new parking lot, but the existing parking lot as you move to the north. We're providing 5% of the parking lot area and other thing that is very important to us is the existing parking island, we have 5 mature conifer trees of 15 to 18" caliper. We also have an existing monument sign with very nice landscaping. One of the intentions of the code is to retain as many existing healthy trees as we possibly can. This parking lot has been built for a number of years and we have some nice existing mature landscaping and we would like to retain it. That is another reason why we feel our plan is the best plan. I have a cost estimate that I presented to the school when we were asked to move forward with this project. It comes out to a total of around \$90,000 which is what has been budgeted by the school district to build this parking lot. Actual construction cost if you take away contingencies, consultant fees, mobilization and bonding, the actual construction it going to be around \$65,000. An estimate for the alternative, there's a pretty substantial amount of additional work that's going to have to take place with that concept, mainly with demolition. There's actually going to be more square footage of new paving and then because of all the cuts that we're going to have to do through the pavement that would remain, we're going to have to do so many cuts for sleeving, irrigation, etc. that after we pave the area the we demolish, we're actually going to have to do an entire overlay to protect the integrity of all the existing asphalt. Total cost, \$194,000 but actual construction cost around \$141,000 so if we take the fluff out, things that aren't really associated with actual construction but are actual costs to the district, if you just look at actual construction costs, we're around \$80,000 more for the alternative that Mr. Deets keeps speaking of and that's not even including the utilities that we are fairly confident that we are going to get into but we can't say that until we start digging so I didn't even include that part of the work into the project. The packet that staff presented to you today that has some additional information, there's just a few things that I want to specifically point you to. If you turn to the addresses that staff included in the packet and go to the next page past the addresses at the top of it it says "From Albert" One of the things that we want to make very clear is that we met with this gentleman in the neighborhood meeting and his name has been mentioned several times as being opposed to this project and we just want the Commission to know for the record that's absolutely not true. He submitted a letter and an e-mail saying that he does not oppose the parking lot expansion. He had an issue with us putting slats in the fence and once he found out we were going to do that, he supported us. If you turn to the page just after that there's a gentleman who wrote a letter, Dennis Layman, who lives on DeMeyer Street. He's in support of this project because when the parking overflows, it goes out into DeMeyer and there's a big traffic jam out there on DeMeyer St. and he's in support of the parking lot expansion because all the cars that need to get into the school site can't even get into it. The next page is actually from David Miller, an e-mail for the acting fire marshal, Steve Keuter, who says' they've reviewed the project, they know the site and they are not concerned with any of the fire code issues out here. The Fire Department is very strict about how they make the school district keep their facilities and they are obviously not concerned with

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this facility based on its dates, based on the fact that it does have fire sprinkling inside and it does have hydrants in the proper location. This parking lot extension is actually going to allow them to get a little bit further around the building and there is a gate where if they did need to drive back there, they could get through it. One of the things that Commissioner Brunelle mentioned is why don't we go for a parking reduction? Well, we could go for a parking reduction to bring the site within the requirements of the ordinance so that we wouldn't be out of compliance with the ordinance, however we are not doing this project to be in compliance with the ordinance. We're doing it because we have a parking issue. We can't accommodate the parents and the facility that come to this site on a regular basis. Mr. Deets claims that there are already a number of unused spaces on the site. You've got to realize that when you develop a school site you are doing it so that you can accommodate peak use just like a football stadium or shopping mall or something that has a large sea of parking. You're not doing it just for the Monday through Wednesday crowd at the shopping mall, you provide enough parking for the Friday and Saturday crowd that's going there on the weekends for the maximum crowd. I'm sure there are times when you can go to this site and there's going to be a few empty parking stalls, but at the times when they have special activities or when parents are coming to drop their kids off during lunch hours or volunteer hours, there are times when cars cannot fit onto this site. Mr. Deets made a statement that this new parking lot was going to put 51% of the parking behind his house. In reality with 84 spaces, 24 comes up to roughly about 31% of the parking that would be back there. Some of the school sites that he mentioned in comparison, we have built new parking lots at Linder right adjacent to the residential areas and another school that he said could accommodate Chief Joseph, the only reason that that parking lot hasn't been expanded yet is because it just hasn't come onto the capital budget list. They do have a need over there and it will be addressed sooner or later.

Judy Taylor (Principal of Joplin Elementary) – My staff, if I have everybody coming to school, not only teachers but the support staff, plus volunteer program, I have no room. People do park around the island. They park out on DeMeyer. If I have specific programs, Muffins for Mom, Donuts for Dad, we just go all the way down DeMeyer out on Jody. They park wherever they can. My enrollment is down right now, however the Meridian School District designated Pioneer as a magnet school, therefore my boundaries have been extended and I will cover their area meaning that I will get additional children. I currently have 10 to 15 new applications on my secretary's desk that we don't have in the program. We will not be at 374. We're going to be higher.

Erik Moser (12046 Jody Dr./Boise/83713) – My property is located directly behind the proposed parking lot expansion and I feel like I'm kind of in the middle of this issue. I have two children that attend Joplin Elementary and we've had an excellent working relationship with the school and at times have seen the need for additional parking. On the other hand I understand the concerns of my neighbors and believe they have valid points and issues that have not been addressed. I was unable to attend the meeting on May 3rd. It's my understanding that a feasible alternative site was proposed but not submitted which is the issue I have. Based on the

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documents I have reviewed I feel this alternative site would be an excellent compromise between the two parties and would like to voice my support for this.

Marilyn Gossett (12010 Jody Dr./Boise/83713) – I would like the Boise City Planning & Zoning Commission to consider another alternative for the placement of the proposed parking addition for Joplin Elementary School. The proposal from Joplin Elementary School for the addition of 24 parking spaces is in the same vicinity as the majority of the density, noise, lighting and pollution we currently have behind our homes. This addition would add to the present maximum use and density of this space and infringe on our privacy in our back yards and homes. This space is also used daily for outdoor school activities and personal enjoyment. Crime would be more likely since the proposed parking provides easy access to the back portion of the school. An alternative plan would be to develop the center of the current parking lot, thereby not infringing on any residents and yet provide for additional parking for Joplin Elementary. Another alternative plan would be to do nothing. The monetary expense is unnecessary since the school population 15 years ago was 266 more students than currently and has been in a steady declining mode. The money allocated for this project could be used more wisely for the education of the students.

Wayne Hanners (12003 W. Albany Dr./Boise/83713) – I'm the Supervisor of Operations for the School District. We're locked into this budget, which Mr. Russell noted, at \$90,000. If we have to come up with the additional to fund this expansion that Mr. Deets and the neighbors proposing, the parking lot expansion will not happen this year.

Dr. Linda Clark (Superintendent of Schools, Joint School Dist. #2) – I have a very long history at Joplin School. I had the privilege to open the school as the first principal in 1978 and to serve in that capacity for 16 years prior to moving to the district office. From the first day of Joplin's opening the parking was inadequate. During the years when I was principal there we had some very high enrollments, even higher than the numbers that have been presented tonight because they don't go back to 1978. In the late 1970's and early 1980's our school district did a very poor job of how they organized sites to accommodate parking, bus pickup and the safety issues that are a part of our responsibility to our students and patrons. As a district we have attempted to address those issues over the past 3 or 4 years. Year by year as money becomes available the Joplin project has been faithfully requested by the principal as long as I've been sitting at the budget table which is about 12 years. But there were other sites that had the same kinds of problems and you've heard how some of those have been addressed at Frontier, Summerwind Elementary, Linder and Eagle Hills. When Mr. Deets originally contacted me I encouraged him to spend some time with our staff and see if there were alternatives. That's a matter of practice that I would do with any patron who was unhappy with something that we were doing. I believe that we have met with him and the other folks around the school who have been very good neighbors to the school and I think the school has been a good neighbor as well. A lot of time has been invested on the part of our staff, on the part of the City's staff. As you've heard by the previous two speakers we are still moving forward and we believe that the plan that we have presented is the best plan for the site given all the factors including the cost and other issues that

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you've heard as well. I have a particular fondness for the trees on the berm. Most of them are almost 30 years old. We have a lot of concern about not only the cost, but also what it would do to that site to remove that grassy bermed area that really is the only buffer now as the traffic moves around in the pattern in the parking lot. I speak in favor of the proposal as it was brought forward and in opposition to the appeal. I ask you to consider all of the things that have been presented.

Commissioner Fadness – I should note for the record that we did receive today a letter from Jim and Selina Lamanchia of 12073 W. DeMeyer expressing their support of the School District's proposal and in opposition to the alternative proposal.

Mr. Deets – We want parking for our parents and faculty. We want safety for our children and we want to make sure that the future is secure for all of us. The discussion that I particularly enjoyed from Judy was the discussion that as we move forward there may be more students at Joplin Elementary. That becomes very important to me because when I think about that I realize that maybe doing the fast thing, maybe doing the cheap thing isn't necessarily doing the right thing. We have one alternative and I wanted to note that there were seven. I actually want to show you a couple of things. First on the alternative I did want to address Doug's comment. I estimated 32 spaces. Doug estimated 28 so we weren't that far off in what that center island had. If you look at the that and the alternative and the current spaces, so what is the right thing? What is \$50,000 worth? It's worth thinking about that. The other thing I'd like to note is maybe \$50,000 is an issue and in that regard I've met with both Steve Cutter and with Dave Miller and had many discussions about the fire safety. We had notice from Lonnie and also received from Gloria Rollands from the district and I then reviewed it with Steve Cutter, the current sprinkler system inside of the school is an above-the-ceiling sprinkler system in the rafters. It is considered illegal and the Fire Department said if there was any opportunity to improve that or improve the access, they would encourage that. This is one of the alternatives which we did not present because we worried about the neighbors on the north side of the school, but this adds 33 parking places. This does not have any problem with the berm in the middle and essentially gives access within 150 ft. of the school. I actually encourage this sort of thought because it covers Judy's issues with expanding enrollment, covers Linda's issues with maintaining the berm. It covers issues with not having parking directly behind the house and it creates a safer environment for the children of the future and the potential volumes that may occur in that. The other thing I'd like to note is that Albert Izagurie is a very good friend of mine. Albert and Milagros are heroes. Albert and I spent some time this week to really understand his letter more in depth. They've lived next to the school with defoliation, open trash, open urinals. They've had duck habitat destroyed. Albert's lived by the parking lot for 20 years. He's been very frustrated. Albert is elated by this process because Albert is finally going to get some fencing. Albert doesn't care where the parking lot goes. Albert wants to see things cleaned up around his house. In adding these few parking spaces, that's not going to cover events. There are precious few events during the year. The important time is the time that occurs with teachers and faculty. In this example, which is very similar to Doug's showing that if you just take a look by the mound you see illegal parking, you see all sorts of traffic not properly parked. But if you look

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beyond that you'll see 6 open spaces. It's not just that there are not open spaces. It's that the people aren't using the spaces that are right. LaRae surveyed 29 times at all hours of the day. She looked at volunteers, faculty and what she found typically was illegal parking and open spaces. Adding more parking doesn't take care of people's behaviors, but I do think that some good work could happen there. The 53rd or 52nd parking place is actually an illegal parking place which evens the numbers. This is a commonly used parking place but not technically a parking place because it's half red. We really don't think additional parking is necessary, but if it is necessary there is an alternative which is good for our children, good for our faculty, good for our safety and good for our neighborhood. I want to work with the school district to make that happen.

Mr. Russell – Photographs of empty parking stalls really don't tell the story. The story I get from cars parked illegally and empty parking stalls is during the peak hours people were parking in illegal spots. Some people came out who got there a little earlier and left and therefore there's an empty stall with people parked illegally. The bottom line is I think the principal and the school superintendent have pretty much stated that there is a parking issue spilling out onto DeMeyer. It's causing illegal parking. If we want to talk about safety issues let's talk about the time when all of a sudden there is an issue where a fire truck has to get in there and it's at a peak use hour and cars are parked in fire lanes and things like that. In regard to some of the safety issues of the playground, right not it's the same situation. We have a 6 ft. fence separating the school yard from the parking lot. They are always monitors out on the fields when the school children are out there playing. Yeah, this is a little bit closer but there is a 6 ft. chain link fence with landscaping and trees separating that. The school district feels very comfortable with these safety measures as what they have throughout the district. Regarding Linder Elementary, we have just this year constructed a new parking lot and it's within 10 ft. of adjacent residential neighbors. We went through the same process in the City of Meridian. They had to have the parking. It was a very similar site plan. They got it approved. The neighbors supported it and it's a lot closer and had a lot more impact on their property. The last concept Mr. Deets showed you, one thing you need to consider also is with that design I don't think you could even get the required landscape buffer on the north side of that proposal between that residential area to the north. What do we do? We put it where we have a 35 landscape buffer or do we put it where we have a 2 ft. landscape buffer just so some other neighbor has to deal with it. We have tried to design this site so it has as little impact as possible. It's got nice landscaping. It's going to have a lot of trees planted there. It's going to have a nice shrubbery screen. It's not going to have an impact on the neighbors. I know they thing otherwise, but we feel very comfortable that we have taken all the measures that we can to meet the ordinance and to meet the needs of the school. Sure, we'd love to have more parking. I've been told by the district that they could use all they can get. We're asking for 31 additional spaces if you count the two stalls that we're going to restripe in the parking lot.

COMMISSIONER WILSON MOVED TO DENY THE APPEAL.

COMMISSIONER ELLSWORTH SECONDED THE MOTION.

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Commissioner Wilson – I do hear the concern about placing the parking lot next to the playground and that could create a safety hazard for the kids, but I'd also like to stay that I'm not an expert in what does and does not constitute a safety hazard to children on playground. But the professionals who did testify here tonight did not see any issue with this and in fact did point to the benefits of having the expanded parking lot increasing the safety from a traffic perspective. I think that a 35 ft. buffer is really nice. That's going to help out a lot from the impacts to the adjoining properties and that's something as you heard earlier this evening, does not happen very often. You don't often get a buffer that wide between your property and any adjacent use in development that's going in so I think that's a really nice benefit to this particular design that's being proposed. Just to address removing the berm and the alternative to remove the berm, in our Comprehensive Plan and in our codes we actually require people to add landscaping into the interior of parking lots. This is something that already has landscaping in the interior of a parking lot so I think it would go against our policies to support an action that would remove that rather than encourage the berm to remain in place.

Commissioner Brunelle – In our role here as a commission on this particular question, it is to review whether the staff's decision to grant the permit was in compliance with the City Code and the Comprehensive Plan. I'm confident that the decision made by the staff tonight was the correct decision when they issued the permit. Our job in this case is not to try to find a better idea or a substitute or look at alternatives. We're not doing a Federal project where you might have an EIS with numerous alternatives for public review. At the city level what we do is respond to a specific proposal and see whether it meets the test of the City Code and Comprehensive Plan. It's clear that this does. It's clear also that the school district really wants this project to solve a problem. The problem is with peak use and not necessarily an average use. We do design a lot of our traffic systems and energy systems to have excess capacity at certain times to meet those needs. It's clear in this case that we need more capacity. Also I think that what's been put together appears to be a thoughtful design. Our job here is to review the staff's decision and not necessarily substitute our own judgment for what the staff did on that.

MOTION TO DENY THE APPEAL CARRIED UNANIMOUSLY.

CAR05-00024/City of Boise

AMEND THE SUBDIVISION ORDINANCE, TITLE 9, CHAPTER 20, SECTIONS 3 & 4, AMENDING STANDARD FOR RECORDS OF SURVEY AND LOT SPLITS, AND AMEND THE ZONING ORDINANCE, TITLE 11, CHAPTERS 1 & 4 AMENDING STANDARDS FOR SUBSTANDARD LOTS.

Angela Brosious – This is a proposal by the City to amend sections of the Boise City Subdivision and Zoning Ordinances. The City Staff held an open house with a Power Point presentation and open discussion of this ordinance amendment on June 30th. Over 200 invitations were sent out to various developers, engineers, architects, landscape architects and neighborhood groups. Approximately 40 to 50 people, representing a wide range of interests, attended the meeting.

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The majority of input that we have received has been supportive. All of the comments that we got back after that meeting and the e-mails that were received were supportive. Up until this afternoon I had not received any negative comments on this amendment. This afternoon I did receive comments from SENA which were positive comments. Those were presented to you earlier tonight at the work session. I also received some comments of concern from Joe Canning. Those were also presented to you. I also received about an hour ago comments from Lorene who is with the Vista Neighborhood Association which I will now give to you.

Commissioner Fadness – Let the record reflect that we have received a 2-page letter from Lorene Spencer, Vice-President of the Vista Neighborhood Assoc.

Ms. Brosious – I would also like to add the invitation and the ordinance amendment were also posted on the front page of our web site and the Idaho Statesman ran an article with the meeting information. The majority of the changes that are proposed in this ordinance are to the record of survey requirements for property line and lot line adjustments. We are proposing adjustments to the property line adjustment requirements for substandard original lots of record. We are adding language to insure parking, open space and setback requirements are met not just for new construction but for existing homes as well. We are putting restrictions on the adjustment of corner lots, insure room for open space, setbacks and lot width that will allow driveways to be located 50 ft. ... section. In the diagrams we are proposing to have two 25 ft. lots. The 25 ft. wide corner lot is non-buildable based on setback requirements. Our ordinance says if you have an original lot of record, no matter how substandard it is, if you can meet setbacks and parking, it's a buildable lot. Because that corner lot is not buildable, we get a lot of proposals where they come in wanting to adjust the property line to create two buildable lots. The 3rd example is when one corner lot is 35 ft. wide. It would have to be adjusted so that the new corner lot is the same size as the existing corner lot so it would not make the lot more substandard. In this scenario it works because we have room to get the parking in and have it located out of the requirements for intersection. On this scenario when we divide them in the center, we're not able to meet the ordinance requirements and we have actually created a situation where we had only one lot that was unbuildable, we now have two lots that are buildable but they do have a negative impact on the neighborhood. We are also requiring that the interior side lot lines of substandard lots remain perpendicular to the street. Substandard lots, I have never seen any that weren't just on a grid pattern basically with all the lot lines existing perpendicular to the street. But in order to meet the minimum requirements, they often come in and create very odd lot lines in trying to jog the lot lines around shops, existing outbuildings or create small portions to meet the minimum square footage requirements through the lot line adjustment. Again the lot lines can't become any more substandard than they were. Our current Subdivision Ordinance states that lot lines shall be perpendicular to the street or as nearly perpendicular as is reasonable or considered good for development. They are actually creating lots that are more substandard than they already were which is what the ordinance says you're not supposed to do. Another proposal that we have for the substandard lots is several years ago there was an automatic parking reduction granted through the Zoning Ordinance for substandard lots that have alley access, but if they had alley access they only had to have one parking space instead of two. Since that time its been a

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concern with the neighborhood groups due to the amount of parking that they end up with on-street when you put all these little row houses into the existing neighborhoods and it makes sense that when you have an alley that's when there's room to put the two parking spaces. That doesn't seem to be the time to automatically be reducing the parking spaces to one. We are removing that reduction. We will be looking at possible ordinance standards or design standards in the future that might instead limit the amount of parking to only have access from the street. That seems like that would be a better time to be reducing parking on substandard lots ... available. One of the biggest concerns that the neighborhood groups have and the residents in areas where the infill developments go in is when there aren't any improvements on the street. If you don't have sidewalks and curb, you end up with a big area between the driveway and the street that is left in gravel and an unimproved area. You end up with a big parking lot in the front. We're proposing language that would require to either pave the driveways out to the edge of the street in the right-of-way area where it's unimproved or to install landscaping, fences... parking area. We're also proposing some standards to conforming lots of record. One is to limit the number of lots adjusted without a subdivision to 4. Staff had originally proposed 2 but bumped it up to 4. We looked through our surveys. The majority of surveys encompassed 4, but we were having problems coming up with 15 lots. It's very hard to follow where the property line adjustments were at and it was taking smaller lots and encompassing them into large areas where really it would have been more beneficial to have a subdivision. We are proposing to limit the area that can be transferred between lots to 10% of the total area. This has basically been to areas where you have a larger piece of section land and next to that you might have several substandard lots of record that might have one existing home on all the lots. That home can be torn down although substandard lots can then be reconfigured into the large piece of section land, avoiding the subdivision of that area where you don't get your public streets, your curb, gutter and sidewalk. Limiting the number of property line adjustments to 2 per parcel, this is one that we had a comment on today. I had originally proposed it to 1 per parcel. It was going to be considered more like a 1-way split or 1-time exception and after that subdivide. Change it to allowing 2 parcel or subdivision as required. Regarding 1-time lot splits, we are requiring a record of survey for all 1-time splits. The ordinance currently states that all record of surveys for 1-time lot splits shall include the following – that the interpretation has been many years since before I started, since it doesn't say you have to submit a record of survey, but it's optional. This has led to problems with us not being able to review that and finding buildings that are too close to the property or on the property line for lots that were split without many of the dimensional standards sold off. Someone comes in to get their permit and finds out they bought an illegal lot. This will insure that does not happen. 1-time splits ... same record of survey process that other property line adjustments do. We can insure up front before they are sold that they are in compliance. We are also clarifying requirements for parking and setbacks and consolidating them into the Subdivision Ordinance so we can insure compliance to make sure that the engineers and surveyors know what these requirements are up front. Right not a lot of different requirements are in the Subdivision Ordinance, but people aren't aware of them until after they submit the actual record of survey. The neighborhood notification, right now for record of surveys we do not require any neighborhood notification. This has been a concern of citizens and neighborhood groups as well as members of Council. We are requiring neighborhood

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notification for all record of surveys for both property line adjustments and lot splits. This would be the same as required for all other administrative approvals such as home occupations and child cares. There's the issue of 5-acre subdivision exception. We are limiting the 5-acre exception to non-buildable parcels. The parcel that cannot be issued a building permit, we left it in for non-buildable parcels so if somebody wants to split off a piece for a park site or something of that nature, they can still do that without a subdivision. The intent of the 5-acre exception was originally for the owner of a large parcel to be able to split off one 5-acre piece for a family member. Especially in the case of farms they would often want to split off one piece. Recently what's been happening is that multi-lot developments are then not reviewed for appropriate infrastructure such as public roads, fire access lanes, fire turnarounds, fire hydrants, sidewalks, infrastructure, sewer and water that we generally get are not under review. The one record of survey creates all these parcels with the 5-acre exception. In some cases we end up with long lots that can't be developed because they need a road. You're not supposed to be able to use a 5-acre exception if you're going to need a road. They have to come back later and get a variance for a private road or a private drive to get access to them. Unfortunately the 5-acre exception can be a way to avoid the Subdivision process and the Foothills Ordinance. Since we no longer have very many large parcels within the City or any large farms where people need to use that 5-acre exception there doesn't seem to be any reason to keep this in here when this is what it's leading to. I don't recall, in all the time I was reviewing the record of surveys any that actually came in were just 1 to 5 acre parcels. This is what we were seeing with the 5-acre exception. The intent of this ordinance amendment is to improve infill development and to insure that proper infrastructure is secured at the time of development. Staff recommends that the Commission forward CAR05-24 to the Council with a recommendation to approve.

Fred Fritchman (Representing the Southeast Neighborhood Assoc./1321 Denver Ave./Boise/83706) – As I mentioned in my letter to you this amendment is a necessary and reasonable to problems occurring because of redevelopment of our older neighborhoods. The amendment provides for consistent review of one-time lot splits and insures that setbacks, open space and parking requirements can be met before the lot is split. These are just common sense. The amendment also removes the 50% parking reduction for substandard lot development that was granted in the substandard lot amendment of 2002. Often in an older neighborhood streets are already crowded due to a lack of off-street parking. The parking reduction from the substandard lot amendment exacerbates this problem. I live two blocks from a perfect example of this problem. Months after the substandard lot amendment was passed, a lot line adjustment was granted on a parcel at Euclid and Hale streets. Essentially the 4,000 sq. ft. back yard of an existing home was split off and a 7-bedroom duplex was built on this site. The 3 required parking spaces are within the duplex. Very little useable open space was provided for this duplex development. Residents cars are often parked on both sides of the street in the alley and in the rear setback. The property has declined in appearance and is on its way to blighting our neighborhood. If these standards proposed tonight had been in effect this would not have been a buildable duplex lot. Perhaps a nice single family home could have been built here instead. That project is a perfect example of a substandard lot development that has burdened the neighborhood, just too much use on too small a lot. I urge you to approve this amendment

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tonight to insure that our neighborhoods get quality new development that adds to their livability rather than subtracts.

Commissioner Fadness – Let the record reflect we've received a 2-page letter from Joe Canning of B&A Engineers.

Joe Canning (B&A Engineers/5505 W. Franklin/Boise/83705) – I read the proposed revision and did go to the open house. It was good information. I think some of the things coming next after this are even more exciting than what happened on this particular section of the ordinance. I did read through this. It appears to be almost entirely written for residential projects, lot line adjustments, property splits, etc. My concern reading it was looking at commercial projects. A lot of the lot line adjustments we do are for commercial projects. That was my area of concern as I read through this. We did notice the additional definition of buildable parcel but there is no definition of unbuildable parcel. Apparently that came up earlier this evening on another item. The question I have is how does one convert an unbuildable parcel to a buildable parcel? I gathered from the way the ordinance is worded here the answer is a subdivision, but I don't know for sure. In the proposed exception 1B that covers the conversion of a duplex to a townhouse, I was wondering if it's really the intent to waive any frontage requirement? In proposed exceptions 2A1, that's the area that limits the number of parcels to 4 in a property line adjustment. One would presume that an applicant could perform a series of 4 adjustments. In other words say if someone had 12 parcels, he could do 3 different adjustments of the different parcels to accommodate all 12. Sometimes I wonder if that's in the best interest of what could be done. Occasionally if you do a number of parcels you might be more creative in adjustments and do a little better job. In the same section there's a restriction on the percentage of land area that can be changed. This is the one I had a real concern on with commercial projects. A lot of times we will have a subdivision plat with a commercial use. There just platted up in the air until you really know who's coming in as a buyer on those lots. Some of the changes can be rather significant area differences. As I read this, the only alternative would be to turn around and file a new subdivision plat which is the reason a lot of commercial developers get so excited to get some development going up front. There's a lot of time spent on substandard lots which I think is pretty much appropriate. I tried to think of some substandard lots that were not in the grid pattern, but I could not think of any but I wasn't sure if any existed because my concern there was perpendicular lot lines, etc.

Jeff Huber (5209 Turret Way/Boise) – I'm representing the citizens of this community because of this Subdivision Ordinance. If I only have 3 minutes, if you're the applicant, I'm not the applicant. If I were the applicant would I get 30 minutes?

Commissioner Fadness – The applicant and the staff are allowed an equal amount of time. In this case you are a member of the public testifying.

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Mr. Huber – But my testimony may take more than 3 minutes. I was most interested in Mr. Canning's testimony and he got cut off short. It seems like since the City's the applicant and we are the City, we should get more than 3 minutes.

Commissioner Fadness – You can take 3 minutes here and then submit written testimony to the City Council when they hear it in a few weeks.

Mr. Huber – Is that somewhere in the ordinance?

Commissioner Fadness – On public testimony the ordinance limits, and we read it at the beginning of the meeting tonight, public testimony to 3 minutes. You can see by looking at the clock why we do that.

Mr. Huber – I know it's late, but we've waited a long time.

Commissioner Fadness – I appreciate that but I'm afraid if I allow an exception for you then certainly everyone else who was a part of the public who testified tonight would be able to call us on that and say that we allowed an exception that we should not have.

Mr. Huber – No, only in the case where the City is the applicant. If the City's the applicant then you work for us, we are the City then and we should get 30 minutes. I think that staff's done a great job with this Subdivision Ordinance. They've cleaned up a lot of things in the ordinance that needed to be cleaned up, but there are some issues that need to be addressed and need further discussion. I agree with Mr. Canning's testimony, especially if you look at commercial property there is a number of times when it requires a lot line adjustment that is more than 10% or involves more than 4 lots. I don't know what is so special about 4 lots or 10%, but it often times would exceed those limits in a commercial subdivision and would simply require us to come in for a variance to the ordinance and then require late hearings and more time by staff. As an alternative I would suggest that we eliminate the 4 lots and exceed the 10% in that instance. The next issue I have is a parcel that has been altered by a property line adjustment may not be further adjusted unless a subdivision plat is approved. I don't know exactly what that means. Does that mean a subdivision plat that's already been approved or does that mean that another subdivision plat has to be approved. These are gray areas that you are creating. I'm trying to help the City so they don't handcuff themselves and create more work for themselves and I don't know what that really means on page 5, item 26. On page 6, item D, adjusted property lines shall be perpendicular to the public street. I don't know how that serves the City. There are instances where property lines need to be in different configurations to meet certain needs that are appropriate for the citizens of this community. I would suggest that be deleted. There a number of issues in here that I wish I had time to go over with staff. I don't believe I was notified of the work shops. I may have been. I've been so busy just as everybody else in this community. The green notice got my attention last Wednesday. I have called 2 engineering firms that are very prominent in this community. They know nothing about this subdivision revision. I would request that you defer this until we have a chance to have another work shop

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and I would volunteer my time to organize the engineering firms in this town and some of the other development community people to work with staff which we have done in the past to iron out some of these issues. There are some typographical errors in this and I don't think I should use my testimony time to correct your typographical errors, but I would like to point them out to you now if you would allow me to.

Commissioner Fadness – Point them out in written comments if you would please to the City Council. I don't think typographical errors, unless they are errors of substance.

Mr. Huber – There's some errors in the numbering system.

Commissioner Fadness – Please point those out to us in written form. Thank you.

Ms. Brosious - I did receive the comments from Mr. Canning in writing so I can give you comments on what his concerns were. He did mention that we didn't have a definition for unbuildable parcel. It's basically anything that's not defined as a buildable parcel, something that's not eligible for a building permit. He was concerned about the exceptions for the 5-acre lots and that if something was created that way and we allowed a 5-acre exception for a park or some kind of non-buildable parcel, how it would become buildable. The answer to that would be through a subdivision. More specifically Mr. Canning's question was how does a non-buildable lot become buildable? It just depends on the situation. There can be many ways that a non-buildable lot can become buildable. It might be something like the situation we had earlier this evening where there was a CU that had put a condition, there was some kind of restriction on the lot or easement. You can easily remove those and they can become buildable. They have been through the subdivision process. As far as with the 5-acre exception, that would only be allowed for non-buildable parcels. If you had a park or something that was split off and they decided not to develop that site and the developer wanted to come in, they would just do a subdivision for the lower density lots. As far as the question about if it was really our intent to waive frontage requirements for duplex to townhouse conversions, yes. That's already in the Zoning Ordinance. It's an exception that's allowed. If you have a legal duplex on a legal lot, which can be only 50 ft. wide, the Zoning Ordinance says that you may split it. This creates two lots that have 25 ft. of frontage versus the 30 ft. that is normally required. We are amending the Subdivision Ordinance to eliminate the conflict between the Zoning and Subdivision Ordinances. As far as the issue of limiting the amount transferred between records of surveys to 10%, and Mr. Canning's concerns of how this would affect commercial parcels, we should be able to find an alternative solution. The issue is small substandard lots being transferred to large adjoining parcels and essentially creating a subdivision without any review, proper infrastructure or connectivity. One solution that I think would work for everyone would be to only put a limit on the amount transferred through a record of survey only when the property line adjustment occurs between section land and subdivided lots. This would prevent the problems we are having with residential development without hindering commercial development. And I thank Mr. Canning for that comment. Regarding limiting the number of property line adjustments to one per parcel without a subdivision, I had already changed that to two per parcel before receiving Mr. Canning's

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comments. This will allow for a little more flexibility, but still ensure that subdivisions aren't drastically changed without public review. Regarding the requirement that side lot lines remain perpendicular to the street, the Subdivision Ordinance requires that when lots are platted that the side lot lines are perpendicular to the street. The Zoning Ordinance says that property lines can be adjusted as long as no lot becomes more nonconforming. This is not changing the content of the current ordinance. We are clarifying this to ensure compliance with, and consistent interpretation of, the ordinances we have in place. Regarding Mr. Canning's question about requiring lots that abut improved access to take all parking access from the alley, that is not a change that is proposed in this ordinance. It is underlined in the draft ordinance due to the fact that I relocated the requirement, which can cause confusion. That was a requirement that the neighborhood groups worked very hard to get adopted several years ago, and it is not under review at this time. Regarding not allowing adjustment between corner lots and interior lots to create a new buildable, I thank Mr. Canning for pointing out that the way I have this it would appear that a 25 ft. corner lot could not be included in an adjustment that includes three or more lots and results in a reduction in density. This was not the intent, the intent was only to prevent the scenario shown in the diagrams, and I will change the language to make it clear. I again thank Mr. Canning for taking the time to review and comment on this amendment. I think we have found solutions to address all of his concerns, and improve the content and clarity of the ordinance. As far as Mr. Huber's comments, the only thing I can say is that we have given opportunity for public input. We held an open house with a detailed power point presentation. I had Dave Abo, who is our Chief Subdivision planner compile a list of engineers and surveyors and developers that he works with. There were approximately 70 people on that list. I also invited architects, landscape architects, neighborhood groups, the Building Contractors Association and the Ada County Association of Realtors. I know the engineering firms in the community received the invitation because of the requests they sent me for an electronic copy of the amendments. We were in contact with the Idaho Statesman and they ran an article about the amendment with my e-mail address and phone number. They ran a second article giving notice of the proposed open house. I know people read the articles based on the high volume of both phone calls and e-mails that I received. An invitation to our open house has also been posted on the front page of our web site for weeks. There is a direct link to all three of the amendments I am working on as well as the power point presentation I gave at the open house. That is all the comments I have at this time.

Commissioner Wilson - At first I thought that this only applied to residential properties. I saw a reference in one section to residential buildings but not commercial buildings.

Ms. Brosious - That is probably in the substandard lot section. I probably wrote that with a residential slant because our problems are with residential properties, and almost all substandard lots are residential. There could be a few substandard lots that are zoned commercial though. I will look through that section again and make sure the requirements for setbacks and parking clearly apply to both residential and commercial buildings.

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Commissioner Brunelle - Can you tell me why you are proposing a sanitary sewer easement when adjusted property lines cross over sewer line, but you are not requiring an easement for any other underground utilities?

Ms. Brosious - The reason I added that was because I received comments from Public Works asking me to address that issue. You bring up a very good point. It should cover any underground utility. I will make that adjustment to the language.

Commissioner Brunelle - You didn't receive comments from Idaho Power, United Water, the cable guy, anyone?

Ms. Brosious - I did not.

Commissioner Wilson - It is obvious that staff is willing to make changes to this amendment and has found solutions to the issues that were brought up tonight. What I think we need to do now is determine if we want to approve this and direct staff to make the changes or defer it and have it come back so we can review the changes. I feel staff could probably make the changes based on the discussion tonight.

Commissioner Cooper - It seems that there might be some members of the community that would like to have additional input, so maybe a deferral would be in order.

Chairman Fadness - I agree that we should differ this, but for different reasons. I think that the public has clearly had ample opportunity for comment. A public work shop has already been held. There have been quite a few changes discussed and I would like those to come back to us for review before we forward this on to the Council. I do not feel it is necessary to have any more public testimony on this item. This is a recommendation to Council and public testimony will be taken at that time. Can we close the public hearing and have this come back for review of changes?

Teresa Sobotka (Legal) - Yes, you can do that. I would suggest scheduling for August 1st.

Commissioner Brunelle - So it would be like in the legislature, kind of a mark up session if needed?

Ms. Sobotka - Yes.

COMMISSIONER FADNESS MOVED TO DEFER TO AUGUST 1, 2005. COMMISSIONER BRUNELLE SECONDED AND THE MOTION CARRIED UNANIMOUSLY.

Planning & Zoning Commission Minutes of June 13, 2005. – COMMISSIONER WILSON MOVED FOR APPROVAL. COMMISSIONER COOPER SECONDED AND THE MOTION CARRIED UNANIMOUSLY.

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Approved:

Gene Fadness, Chairman
Planning & Zoning Commission

Date: _____