

April 7, 2015

7:00 p.m.

Planning Department  
Council Chambers

**MEMBERS PRESENT:** Commissioners James Wyatt, Natalie Black, Darren Josephson, Joanne Denney, Brent Dixon, Donna Cosgrove.

**MEMBERS ABSENT:** George Morrison, Margaret Wimborne.

**ALSO PRESENT:** Planning Director Brad Cramer, Assistant Planning Director Kerry Beutler, City Attorney Randy Fife, and interested citizens.

**CALL TO ORDER:** Vice Chairman Wyatt called the meeting to order at 7:00 p.m.

**Modification to Agenda:** Vice Chairman Wyatt proposed that the Agenda item related to the Reconsideration of Avalon Subdivision Preliminary Plat be presented first. No one opposed the change to the Agenda.

**Minutes:** Black moved to approve the Minutes of March 17, 2015, Josephson seconded the motion and it passed unanimously.

**Miscellaneous:**

**1. Reconsideration of Avalon Subdivision Preliminary Plat.** Randy Fife explained the process of the reconsideration. A reconsideration is a step for an affected party to be able to proceed to court on judicial review. Idaho Code requires in order to have a judicial review the aggrieved party must go back to the Board that made the decision and have them review the decision. It is a chance for the Board to think about the basis for the decision, what the law is, and how it was applied in the decision. In this case the Board is acting as a quasi-judicial body. When a Board acts as a quasi-judicial body, what they are doing is applying the law to a specific group, person or focused area. The Board is acting as a judge or judicial panel. When the Board is thinking about things today, they will consider the same kinds of things that a judicial review would be considering, including whether the decision was arbitrary (not based upon facts or their application), whether it was capricious (a whim), whether it was abuse of discretion (something the Board should not have done), unlawful procedure (mistake in the way things happened), whether it was in excess of the Board's authority, a violation of the Constitution, an ordinance, or a statute. This is not a public hearing and the only person that has the right under the due process to speak is the person who made the application for reconsideration. It is an opportunity for the applicant to point out on the record what they think was incorrect about the decision. After the applicant presents, then the Board can make a decision choosing one of the following: affirm the decision; modify the decision; or reverse the decision and adopt a different decision. After the Board makes its decision on the reconsideration, regardless of the decision, no one should address the Board in any form of communication, as this might not be the last opportunity for either side to receive a decision about this matter. If the petitioner disagrees with the decision made, the applicant can go directly to judicial review. If the people who feel like they are an aggrieved party have a grievance with the decision, they have an opportunity to proceed with the same due process. Black asked and Fife confirmed that the Board is allowed to ask questions of

the applicant. Fife added for clarification that the applicant must stick to the record in their response to the Board. Cosgrove asked and Fife confirmed that the Board will confirm or reverse decisions made via a motion. Fife clarified that there has to be a decision made tonight on the reconsideration. Cramer indicated that there are no prepared slides to present. Cramer stated he will answer any questions about the presentation. Cramer stated that there are two motions that need to be made (1) either confirm, modify or reverse the decision; (2) approval of a written decision. Once the written decision is issued and signed, that begins the period to request either judicial review from the current applicant, or reconsideration by aggrieved parties if the decision is reversed. The roll of staff is to provide the facts of the application and to advocate for the law and the Comprehensive Plan. The Commission is responsible to compare applications against the law and Comprehensive Plan. The Commission may require reasonable conditions for approval. Cramer stated that if the Commission is going to put conditions on an approval it is important to have a nexus between those conditions and either a standard in the law or a standard in the Comprehensive Plan. For example, staff recommended that if the Commission approves the preliminary plat that all of the landscape lots along the arterials include berms, trees and opaque fence, and that recommendation is related to a section in the Subdivision Ordinance that talks about lots that are adjacent to an arterial. The other condition recommended is that all of the entrances to the subdivision from the arterials include right and left hand turn lanes. The nexus to that decision relates to the traffic study that was conducted in 2004 for the development.

Cramer corrected one fact that was presented as part of the record. Cramer represented that the preliminary plat for Traditions Subdivision had been approved. When Cramer reviewed the record, he found conflicting statements. The preliminary plat was submitted, it was reviewed, but at the meeting, it was recessed. Cramer cannot find a record that it ever came back and was approved. Cramer found a conflicting record that says a preliminary plat, that was not named, was denied in 1997 and resubmitted in 1998 and approved. Cramer does not know the name of the plat. Cosgrove asked and Cramer confirmed that a preliminary plat gets reviewed by all required offices such as traffic, fire department, etc. Cosgrove added and Cramer confirmed that the preliminary plat as presented on March 17, 2015, has been reviewed by all of the relevant offices. Cramer stated that both internal City Departments, including all utilities, fire and power, as well as outside agencies such as telephone, cable and County review the preliminary plats. Cosgrove asked about the removal of bollards. Cramer directed the Commission to the slides in the packet. Cramer stated that there are three locations where bollards currently exist. He pointed out the three locations and gave a brief description of efforts to remove the bollards.

Dixon stated and Cramer confirmed that all of Division 1 and 5 and a small part of Division 4 of the proposed preliminary plat are already annexed into the City. Dixon asked if there were existing preliminary plats for the areas that are already annexed into the City. Cramer stated that it was part of the Sunterra preliminary plat. Dixon asked if they are current or expired. Cramer stated they are not expired because Divisions 1 and 2 of the preliminary plat for Sunterra have been recorded. The Subdivision Ordinance states that once a preliminary plat is approved, it expires within one year unless the final plat is recorded. Dixon asked if the preliminary plat for Division 1 is the same as the previous preliminary plat for Sunterra. Cramer stated there are two additional lots and the lot sizes have been modified in that Division. Dixon asked if this is a revised or new preliminary plat. Cramer indicated that this is a new preliminary plat. Cramer stated there is no defined process in the ordinance for revising a preliminary plat and creating a new preliminary plat, other than to submit one and start the process. Cramer stated the ordinance is clear that any preliminary plat to be reviewed is compared against the Zoning Ordinance and Comprehensive Plan. The preliminary plat that had been approved for Sunterra is not legally binding upon future revisions for the preliminary

plat or a new preliminary plat. Staff does review final plats against a preliminary plat, but there is no ordinance that requires the review. Dixon stated and Cramer agreed that a preliminary plat can be approved and then a brand new preliminary plat can be brought in at a later date and the previous preliminary plat has no bearing on the new one. Dixon asked if that procedure is the way the Idaho Statutes are set up or if that is just the City's process. Cramer stated that the State's Statutes do not address preliminary plats. The State Statute instructs the jurisdiction to develop a subdivision ordinance and follow that process. Dixon stated that process does not give a lot of assurances to neighbors or potential buyers.

Dixon asked if all five divisions are set up for single family homes. Cramer stated they are with the exception of the future development that has a commercial zone, which is the large lot along York Road. Dixon asked if the division immediately north had the same size lots. Cramer indicated they are smaller than the average. The average lot size was 15,639 sq. ft. The lots north of the commercial lot is approximately 10,500 sq. ft., except for the cul-de-sac lots as they are bigger. The lots are different than the preliminary plat for Sunterra, which showed the area as twin homes. Dixon asked about the preliminary plat to the west that has large lots along York Road. The preliminary plat showed a commercial office and further west of the South Point Subdivision there is more of the same, as well as a large lot that is north of York Road intended for an elementary school. Cramer clarified for Cosgrove that the commercial lot would be consistent with wording in the Comprehensive Plan regarding intersections of major arterials having small commercial uses to service neighborhoods, but not consistent with the Comprehensive Plan map. Cosgrove stated that the approval or disapproval of the preliminary plat does not speak at all to the zoning of any property not already annexed to the City. Preliminary plats propose land use, but does not set a zone. Dixon stated that the Comprehensive Plan had the idea that commercial should be in nodes rather than stretched along the length of major roads, and this area is showing a business or residential shopping center all along the north side of York Road as a long strip, like 17<sup>th</sup> Street in areas. Dixon asked about the time frame for the preliminary plats to the west, South Point and Yorkside. Cramer stated that it was in the early 2000's. When Yorkside went through the process it was approved before Sunterra, and Sunterra was 2004.

Cosgrove asked about the concept of preserving estate properties to the south. Cosgrove has no recollection of this board ever preserving estate properties. Black commented that she recalled the intention of the Comprehensive Plan was to preserve the larger estates south of town allowing horses. Cramer indicated that the Comprehensive Plan recommends to develop a zone to accommodate existing homes on lots of 1 acre or larger, and the minutes described a zoning ordinance to include a residential zone which recognizes existing homes on lots of 1 acre or more and permits horses. Cosgrove stated that another point that was raised in the March 17<sup>th</sup> meeting was a uniformity of flavor of design. Cosgrove stated her recollection is that it has only been applied to PUD's. Cosgrove asked if there is an obligation on the Commission to retain flavor or spirit of a development from subdivision to subdivision. Cramer stated there is no obligation of the Commission to retain flavor or style. Cramer added that the Zoning Ordinance and Subdivision Ordinance regulate minimum lot sizes, lot widths, and maximum heights and is the extent of what the Commission has the ability to enforce. Cosgrove stated implied promises from the City, realtors, and previous developers were discussed at the March 17<sup>th</sup> meeting, and never has the Commission been obligated to follow up on any promise made by a realtor or previous developer. Cramer stated the City has no control over what anybody says to another person. The City has laws and those are the promises. The promise with a preliminary plat is if it is going to be revised that there is going to be a process, and that is what is taking place here.

**Applicant: Curt Thomsen, Esq., Thomsen Holm and Weiler, 2635 Channing Way, Idaho Falls, Idaho.** Thomsen represents Rockwell. Thomsen stated that the reconsideration is being requested as they believe the Commission made a mistake. They are asking for it to be fixed so the matter does not have to proceed to Court. Thomsen indicated that the mistake they believe the Commission made was a failure to measure this preliminary plat request for the Avalon Subdivision against the Subdivision Ordinance and the Zoning Ordinance. Thomsen stated that Rockwell bought the property with no encumbrances on it. The prior owner and developer of Sunterra 1 and 2 recorded no covenants and conditions concerning the 85 acres being discussed. There were no deed restrictions on the use of the property. After researching the property, Rockwell bought the property in good faith. The property was intended to develop as residential. The process was started anew because Rockwell wanted to go through the public process. The ordinances being discussed are in place to protect the public related to what kind of development can occur, and they also confer on the developer certain rights and abilities to develop the property in accordance with the ordinances. The facts are well stated in the Commission Report and in the Reasoned Statement, except for the conclusion. The facts are that the preliminary plat for the Avalon Subdivision complies with the ordinances completely. All the lots are larger than the minimum requirement and Rockwell has no problem with the recommendations of the planning staff as stated initially. There were no facts presented that this preliminary plat failed to comply with the ordinances. There was emotional testimony about property values and why people built in the subdivision and promises made by the realtors involved in previous subdivisions, however, there were no facts that indicated this preliminary plat did not comply with the ordinances. Thomsen stated that Commissioner Wyatt made a statement on the record the application essentially met the literal letter of the law. The mistake was made when the “essence” of the law was brought up. How does Rockwell know what the “essence” of the law is going to be as decided by the Planning Commission? The law is as it’s written, not as you think it ought to read. Without the laws there is no certainty or knowledge as how to proceed. If this “essence issue” had been incorporated in the Zoning Ordinance, Rockwell would have followed it, but it is not in the Zoning Ordinance. Saying the preliminary plat did not comply with the “essence” of prior developments was a mistake because it is not a criteria under the Zoning Ordinance. By imposing that rule, the Commission has in essence legislated a new standard and this body is not legislative and cannot make a new ordinance or rewrite ordinances. If every time something was brought before the Commission and a change was made without prior notice or without public input and without going through the legislative process there would not be a process. It would be at the whim of the Commission. That is the issue being raised through the reconsideration concerning the arbitrary and capricious nature of the decision and the unconstitutional nature of the decision. The Commission cannot apply a law that has not been enacted. You cannot create something after the fact and say it applies. This Commission cannot hold Rockwell’s development hostage based on what someone else did. There is nothing in the law or ordinance that says you should measure this development against a prior development. Each one has to be considered on its own merit and whether it complies with the controlling ordinances. There was a lot of testimony about the alleged effect on property values. In the record are two studies referred to by planning staff indicating smaller homes next to bigger homes do not affect the property values of the bigger homes. The testimony was hearsay of people talking to a realtor. In terms of the ordinance, protecting someone’s property values is not a criteria for granting or denying approval of a subdivision plat that otherwise complies completely with the ordinance. One thing the Commission failed to do in its decision was tell Rockwell how modify the preliminary plat to obtain approval, as required by statute. Rockwell is complying with the ordinance and is willing to accept the recommendations of planning staff. The commercial lot was intended to be a node as recommended by the City. A “fix” that says you need to change your lot sizes to be bigger and you need to impose a

restriction on what type of housing can be built is beyond the Commission's authority and outside the scope of the ordinances being discussed. The applicant is asking the Board to reverse its previous decision and approve the preliminary plat.

Cosgrove asked and Fife confirmed it is permissible for the Commission to discuss a motion amongst themselves. Cosgrove stated she read all the email traffic and letters and watched 3 hours of streaming video to see the hearing and watch all the testimony. Cosgrove indicated she perceived the lot sizes as platted are generous for R-1. An average of 15,000 sq. ft. is approximately 1/3 of an acre and is generous for entry level homes in the \$160,000 range. Cosgrove researched the commercial lot and believes most people would benefit by having some small commercial close to their home. The Commission is not bound by previous promises of realtors. This is not the first subdivision that starts to encroach upon either agricultural land or estate land and it will continue to happen as the City grows. There is no obligation carried forward from previous preliminary plats and no obligation to the City from an HOA. Cosgrove stated she believes the debate of property values could go on forever and it is not relevant to how the outcome would be. Part of the job of the Commission is sorting out what is immediately relevant from what is immediately pertinent. There is no evidence that this preliminary plat is anything but in compliance with the Subdivision Ordinance and the zoning laws and the Comprehensive Plan.

Cramer asked Cosgrove regarding the email traffic and letters she referenced reading. Cramer asked if those were the letters contained in the packet that was provided. Cosgrove indicated the opening statement made by the Chair at the March 17<sup>th</sup> meeting referred to questions that he had sent to staff and answers staff had sent to him. The Commission was copied on all of them. Cosgrove continued that Cramer in his opening statements tried to respond to the questions. Dixon stated that in general he agrees with Commissioner Cosgrove. Dixon noticed a few things that he believes are inconsistent with some other planning. Dixon stated that at this point in the process the only planning that things can be based on is the Comprehensive Plan and adjacent development. The Comprehensive Plan gives guidance on what type of development. Adjacent development including preliminary plats that are current gives the idea of how road networks may develop and how they tie into existing roads. Also, the previously approved preliminary plat may show where a road may stub into the current land. Dixon stated that the policy is to have nodes of commercial development rather than strips along arterials. The Comprehensive Plan shows a node of commercial development to the west and it stretches out along York Road toward the preliminary plat, but stops before it. That encompasses the other preliminary plats on the west, but does not encompass this preliminary plat, and so in that regard Dixon feels the commercial lot in the corner of the preliminary plat is not consistent with the Comprehensive Plan. Dixon stated he saw no inconsistencies in tying into existing roads. Dixon stated that cities don't develop to densities of 1 acre plus lots, except in rare circumstances. This preliminary plat shows a density of less than 2 units per acre. There has to be a blending when you are up against larger County lots. On the preliminary plat along both Hallmark and the southern portion of View Avenue, the amount of frontage that is allowed by the lots in the proposed preliminary plat is very similar to the frontage of the adjacent county lots. Dixon continued that the catchment basin is positioned so it is a buffer between the smaller city lots and the larger county lots. The one place where there is a difference is along York Road where the RSC-1 lot is recommended by the applicant, and the cul-de-sac immediately north having smaller lots is somewhat of a transition from commercial to residential. Dixon does note that the smaller lots at 10,500 sq. ft. is still a density of 4 lots per acre, which is well above the minimum for R-1.

Black stated she previously asked the applicant about any proposed parks. There isn't one, only the storm pond. Black stated it is a lot of houses without a park for the area. Black would like to see

something in the storm pond area to make that more park like. Black stated that they definitely need to include the landscaping lots along the arterials. Black stated that in discussing diversity, as stated in the Comprehensive Plan, “to meet the projected needs by 2035, Idaho Falls will need 75 additional acres of neighborhood parks”. Black believes that a park is important and is not on the preliminary plat.

Dixon asked Wyatt to review what the options of the Board are in making motion. Wyatt stated that the options are (1) reaffirm the decision, (2) modify the decision, and (3) reverse the decision.

**Cosgrove moved to reverse the decision made on March 17, 2015. Cosgrove further moved to approve the preliminary plat with the conditions that landscape lots along the arterials include berms, trees and opaque fences, and all driveways into the development include left and right hand turn lanes, and access to the commercial lot will comply with the Access Management Plan. Dixon seconded the Motion. Dixon moved to amend the motion to include the commercial lot on the southeast portion of the preliminary plat be removed, as it is inconsistent with the Comprehensive Plan for the area, and that area be replatted into either additional residential lots or some other use such as drainage basin or park. Black seconded the motion. Wyatt called for a roll call vote on the amendment: Cosgrove, no; Dixon, yes; Denney, yes; Josephson, yes; Black, yes. The amendment passed with a vote of 4-1. Wyatt called for a roll call vote on the original motion as amended: Cosgrove, yes; Dixon yes; Josephson, yes; Black, yes; Denney, yes. The Motion as amended passed with a vote of 5-0.**

Cramer stated there is a Reasoned Statement denying the preliminary plat with the reason it does not meet the “essence” and so the Reasoned Statement needs to be amended. The Commission may amend the Reasoned Statement and approve that as its written decision. Fife stated the Commission also added a condition not in the previous Reasoned Statement and needs to be addressed by a reference to something in the law. Cramer added that if the Commission is not going to have the preliminary plat come back to the board for review, then staff would ask that the Board be clear on what they want the commercial lot replaced with. Fife stated his notes indicate the Commission suggested residential lots, a park, or drainage area. The Commission can instruct Mr. Cramer if one, or a combination of those things, fit within the commercial lot that would be adequate, or the Commission can have the preliminary plat reviewed to confirm that it was done. Wyatt stated he thinks the preliminary plat should be brought back. **Dixon moved that the modified preliminary plat be brought back for the Commission’s review. Black seconded the motion. The motion passed 4-1. Cosgrove voted against the motion.**

Cramer clarified with the Commission’s input that when the preliminary plat is brought back it will appear as an item of business and not a public hearing. Cramer stated that due to the reversal of the decision he is assuming that there will be a request for reconsideration from the aggrieved party. Cramer asked Fife if that reconsideration needed to be heard prior to the submittal of the preliminary plat or following the submittal of the preliminary plat. Fife advised that if there is something left other than strictly administrative, then there has not been a final decision and an action would trigger the right of the people who feel they are aggrieved by the decision to move forward with a reconsideration. All it will do is potentially delay the people who will ask for a reconsideration, but it is within the process to have it come back, make the final decision, accept the Reasoned Statement that accompanies it, and that doesn’t change anyone’s position or right. Cramer summed up for clarification that the plat will come back, will be reviewed by the Commission and assuming that the plat is approved, there will be a new Reasoned Statement. The new Reasoned Statement will be approved as the written decision for the motion the Commission just made, and that action will start a 14 day period for an aggrieved party to submit their request for reconsideration.

Fife stated a final decision has not been made and it is inappropriate and against due process rules for anyone to contact a member of the Commission. Everyone needs to wait until a final decision has been made. Any communications that are received will be kept from the Commission because it is required by law. Cramer added staff may be contacted or Fife may be contacted. Cosgrove asked and Fife clarified that they should not be talking to City Council as there is a potential that this will come to the City Council level. Dixon asked and Fife clarified that the developer and concerned citizens can talk to each other about anything they want. Dixon stated it would be more efficient for staff to present the revised Reasoned Statement at the time that the preliminary plat comes back to the Board.

### **Business:**

**1. Final Plat: Rose Nielsen, Division No. 101 3<sup>rd</sup> Amended.** Beutler presented the staff report, a part of the record. Wyatt asked and Beutler confirmed that staff reached out to General Growth Properties and there was no response. Dixon asked if the perimeter road that goes all the way around the mall was identified as a private street and if it would take care of the issue of frontage on a public street. Beutler stated that private streets are only allowed in PUD's. Dixon asked if this lot will have to comply with the updated requirements for interior landscaping in parking areas. Beutler indicated that as long as the use does not change, then the lot will not have to meet current requirements. Wyatt asked the Commission's thoughts on including the turn lane into the final plat. Beutler clarified that staff's recommendation was the Commission make a recommendation, but would caution on requiring that a dedication be made as part of the plat as it might interfere with the negotiations. Josephson indicated that it appears to meet the requirements for the area. Dixon stated he is hesitant to see a replatting like this. Ownership of the second lot is going to be different than the main lot. Dixon stated he understands wanting to do something to get them to respond, but is not sure if it is the right way to go about it or not. Cosgrove stated that it is all one plat, and it is not about Dillards, it is the whole plat and the right-of-way is relevant to the plat. **Cosgrove moved to recommend to the Mayor and City Council approval of the final plat: Rose Nielsen, Addition Division No. 101, as presented, with the stipulation that a copy of the cross access agreement be provided to the City prior to proceeding to City Council; and a determination be made on the additional requested right-of-way at 17<sup>th</sup> and Hitt Rd. Denney seconded the motion and it passed unanimously.**

**2. Final Plat: Dora Erickson Elementary, Division No. 1, 1<sup>st</sup> Amended.** Beutler presented the staff report, a part of the record. Cosgrove asked and Beutler confirmed that the school is under a conditional use permit. Cosgrove asked and Beutler confirmed that releasing that piece via a sale, will just revert the property to R-1 with no conditional use permit. Dixon asked what uses are allowed in R-1 that may use an asphalt lot, specifically uses that are not compatible with the uses that already exists on 3 sides of the lot. Beutler stated that the zoning is proposed to be changed as the next item on the agenda and the intent, once rezoned, would be residential four-plexes. Allowed in R-1 is residential use, cemeteries, and daycare centers. Dixon asked and Beutler agreed that the area could be used for additional parking for a single family home on an adjacent lot. Wyatt does not want to see a vacant parking lot that no one takes care of and is an eye sore. **Dixon moved to recommend to the Mayor and City Council approval of the final plat: Dora Erickson Elementary, Division No 1, 1<sup>st</sup> Amended, as presented. Cosgrove seconded the motion and it passed unanimously.**

**Rezoning: Lot 3, Block 1, Dora Erickson Elementary, Division No. 1, 1<sup>st</sup> Amended.** Beutler presented the staff report, a part of the record. Dixon asked for clarification on the landscape buffer requirements. Beutler clarified that the buffer would be a minimum of 10' on the side of the property adjacent to the school property. Dixon stated that given the density and lot size with this zone, they may be able to put 15 units on this site. Dixon asked if there is any access to this lot from the south.

Beutler indicated that the access would only come from Cleveland. Cosgrove asked about other uses in R-3, such as small retail within an apartment building. Beutler indicated that it is used mainly for residential, and small retail services located within a residential building are allowed.

Wyatt opened the public hearing.

**Randy Waters, High Desert Commercial, 700 South Woodruff, Idaho Falls, Idaho.** Mr. Waters represents the potential buyers. Waters stated that they are trying to get the best use out of the property. In looking at the area it was probably originally zoned R-3, and then the school bought it and rezoned it to R-1. Waters is anticipating putting two four-plex apartment buildings on the property, however, with the setbacks required, they will have to decide what might work on the property.

**Stewart Harup, 830 Cleveland, Idaho Falls, Idaho.** Mr. Harup indicated he is in opposition to the re-zone. Mr. Harup owns the property immediately adjacent to the property. Mr. Harup believed he had an agreement with the School District to purchase the property when it was placed for sale. Mr. Harup wants to purchase the property and remove the black top. Mr. Harup would like the property to stay zoned R-1. If the property is not kept R-1, then Mr. Harup would like some sort of retaining fence or privacy wall built along the property line. Mr. Harup does not believe the property is big enough for 2 four-plexes, as it is a small piece of land.

**Kristine Harup, 830 Cleveland, Idaho Falls, Idaho.** When the Harups purchased the property, they were told that the school property was going to extend to their property line. Ms. Harup is worried about the traffic on the street. The way the lot is set, there is no back access so all access to property would have to be on Cleveland.

**Randy Waters, High Desert Commercial, 700 South Woodruff, Idaho Falls, Idaho.** Waters asked about the fencing requirements for the property if zoned R-3. Beutler stated there is a buffer required adjacent to the school. Cramer added that because there is a single-family dwelling on the adjacent property to the west, if there is a parking lot on that west side having more than 5 stalls a buffer is required.

Black clarified that if the four-plexes put the parking lot next to the existing home, they would be required to have landscaping if there were more than 5 parking spaces, and they are required to have the landscaping and fencing in back to buffer the school. Cramer reminded the Board that they do not have the ability to condition a re-zone. Black asked if there is enough room for parking, landscaping and two four-plexes on the property. Cramer stated that it would be tight and they have only seen a few preliminary sketches. Wyatt clarified that if the adjacent land is owned by one person and is one lot, then the parking lot anywhere along the property line would trigger the requirement, not just by the house.

Waters indicated that with the setbacks if they can only fit one four-plex that is fine they are just trying to get the best use out of the property.

**Kristine Harup, 830 Cleveland, Idaho Falls, Idaho.** Ms. Harup asked if the applicant intends to access the property from Cleveland only. Ms. Harup asked if there are plans to get a back entrance.

Denney asked Harup if Cleveland was the road being used to access the school. Harup indicated that it was. Denney asked Harup what the traffic was like when the school was using the access point. Harup stated that the traffic was heavy in the mornings and afternoons. But since the school was moved, Harups have enjoyed the quietness for the last year.

**Randy Waters, High Desert Commercial, 700 South Woodruff, Idaho Falls, Idaho.** Waters stated that the traffic from the school was heavier than it will be with a four-plex. There will be some traffic, but to say that it will be heavy is not accurate. There was further discussion regarding setbacks and required buffers.

**Wyatt closed the public hearing.**

Black stated the objective in establishing an R-3 residence zone is to designate appropriate areas within the City for rental dwelling units. This is a small piece of land to pack in a few rentals. The area is surrounded by R-3 and R-1, but the lot is small. Cosgrove stated that R-3 to the west is a single-family use. If the home to the west was in an R-1 zone, this zoning would be inappropriate.

Dixon asked staff if the property was R-3, but not developed could it stay in its current state. Beutler stated that regardless of the zoning it could stay as is. Dixon stated that if it is developed with any dwelling unit whether the coverage and landscaping clause require that some of the asphalt be taken out. Beutler stated that in order to meet the coverage requirements and the hard surfacing, some hard surface would have to be removed. Dixon stated that he understands the neighbor situation with a verbal agreement with the School District, but this Board cannot do anything about that. From Zoning Ordinance perspective there is R-3 and R-2 in the area that is residential and the school is R-1. This area being R-1 makes it stand out as different, rather than being a continuation of the school. The surrounding uses are single-family to the west and multi-family to north and south. Putting multi-family on this lot with the rezone would be consistent with other development in the area. Wyatt agreed with Dixon. Wyatt believes the size of the lot will drive the density and they won't get where they are wanting to be with the four-plexes. Cosgrove asked if R-3 has height restriction on a building. Beutler stated that R-3 has no height requirement, but the parking requirements will limit density. Black stated that if it the R-3 presented a possibility of a small four-plex with beautiful landscaping she would feel more supportive, but the rezone is opening it to everything in R-3, not just what the developer has in mind. Josephson stated that if the current buyer decides that it doesn't function as R-3, a single family residence can be built on R-3. Cosgrove stated that they need to look at the zone on the property, not the proposal of development. **Josephson moved to recommend to the Mayor and City Council rezoning from R-1 to R-3 on Lot 3, Block 1, Dora Erickson Elementary, Division No. 1, 1<sup>st</sup> Amended, be approved. Denney seconded the Motion. The Motion passed 3-2, Cosgrove and Black opposing.**

Cosgrove stated her opposition is that the R-3 to the west is an anomalous zone because it is a single family use and that potentially by rezoning to R-3 puts undo stress on the single family dwelling. Black stated that her opposition is from the potential for a high development, as there are no height restrictions.

Wyatt adjourned meeting at 10:00 p.m.

Respectfully Submitted,

Beckie Thompson, Recorder