

**JULY 12, 2007**

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The City Council of the City of Idaho Falls met in Regular Council Meeting, Thursday, July 12, 2007, in the Council Chambers at 140 South Capital Avenue in Idaho Falls, Idaho.

There were present:

Mayor Jared D. Fuhriman  
Councilmember Joe Groberg  
Councilmember Ida Hardcastle  
Councilmember Michael Lehto  
Councilmember Thomas Hally

Absent was:

Councilmember Karen Cornwell  
Councilmember Larry Lyon

Also present:

Dale Storer, City Attorney  
Rosemarie Anderson, City Clerk  
All available Division Directors

Mayor Fuhriman requested City Treasurer Craig Rockwood to come forward to lead those present in the Pledge of Allegiance.

Mayor Fuhriman and City Councilmembers honored Geri Ransom for having retired as the Deputy Treasurer following 32 years of service. Mayor Fuhriman presented her with a gold watch.

**CONSENT AGENDA ITEMS**

The City Clerk requested approval of the Minutes from the June 28, 2007 Regular Council Meeting and the July 3, 2007 Executive Session and Council Work Session.

The City Clerk presented monthly reports from various Division and Department Heads and requested that they be accepted and placed on file in the City Clerk's Office.

The City Clerk presented the following Expenditure Summary dated June 1, 2007 through June 30, 2007, after having been audited by the Fiscal Committee and paid by the Controller:

<b>FUND</b>	<b>TOTAL EXPENDITURE</b>
General Fund	\$ 2,981,227.26
Street Fund	289,560.38
Recreation Fund	26,313.40
Library Fund	42,706.26
Municipal Equipment Replacement Fund	56,549.00
Electric Light Public Purpose Fund	27,055.20
Business Improvement District	12,250.00
Sanitary Sewer Capital Improvement Fund	19,718.53
Street Capital Improvement Fund	711.42
Traffic Light Capital Improvement Fund	4,783.57

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<b>FUND</b>	<b>TOTAL EXPENDITURE</b>
Airport Fund	136,355.84
Water and Sewer Fund	1,524,146.40
Sanitation Fund	1,449.77
Ambulance Fund	8,549.63
Electric Light Fund	3,030,871.57
Payroll Liability Fund	2,844,867.84
<b>TOTALS</b>	<b>\$11,007,116.07</b>

The City Clerk presented several license applications, including BEER Licenses to Pinecrest Inn (Transfer) and Ruby River Steakhouse No. 811, all carrying the required approvals, and requested authorization to issue those licenses.

The City Clerk requested Council ratification for the publication of legal notices calling for public hearings on July 12, 2007.

It was moved by Councilmember Groberg, seconded by Councilmember Hally, that the Consent Agenda be approved in accordance with the recommendations presented. Roll call as follows:

Aye: Councilmember Lehto  
Councilmember Groberg  
Councilmember Hardcastle  
Councilmember Hally

Nay: None

Motion Carried.

**REGULAR AGENDA ITEMS**

Mayor Fuhriman requested the Kailey Smith, President of the Mayor's Youth Advisory Council to come forward to present her report to the City Council. Kailey stated that all of the applicants that introduced themselves at the last City Council Meeting in May are now members of the Mayor's Youth Advisory Council. She stated that they were all good candidates. There are now 21 members to this Council. Kailey stated that at their meeting on the previous night, the Youth Council was trying to determine what direction to take. It was determined that their motto would be "Youth Leading Youth". The Mayor's Youth Advisory Council is setting up a role model system, whereby they will meet with elementary school students in an after school program, as well as to conduct camps, to help them stay out of trouble. This will provide a support system for these students. The Council will work with the Student Body Presidents from all of the other schools in the area to unite all schools with this program. Kailey designed and presented a PowerPoint presentation from the Association of Idaho Cities' Annual Conference that she attended with the Mayor's Administrative Assistant Ruby Taylor.

Councilmember Hardcastle thanked Kailey for her presentation as well as her enthusiasm. She always had a smile on her face at the Association of Idaho Cities Conference.

Councilmember Groberg requested to know how many youth delegates attended the AIC Conference. Kailey stated that there were approximately 35 delegates. Councilmember Groberg requested to know how many youth delegates attended from the City of Idaho Falls. Kailey stated that she was the only one.

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The Idaho Falls Power Director submitted the following memo:

City of Idaho Falls  
July 6, 2007

MEMORANDUM

TO: Mayor Fuhriman and City Council  
FROM: Jackie Flowers, Idaho Falls Power Director  
SUBJECT: BID AWARD FOR PHASE ONE OF THE IDAHO FALLS POWER INTERIOR REMODEL

Attached for your consideration is a memo from our architect, Alderson, Karst & Mitro regarding the recent bid opening for Phase One of the Idaho Falls Power Interior Remodel, with a recommendation for award of the base bid item only.

Staff respectfully requests approval of the contract to Rivers West Construction LLC of Idaho Falls, Idaho for base bid items in the amount of \$697,000.00.

s/ Jackie Flowers

Attached memo from Alderson, Karst & Mitro Architects, P. A.:

Alderson, Karst & Mitro Architects,  
P. A.  
June 29, 2007

Jackie Flowers  
General Manager  
Idaho Falls Power  
140 South Capital  
Idaho Falls, Idaho 83402

RE: IDAHO FALLS POWER  
INTERIOR REMODEL PHASE ONE

Ms. Flowers:

On June 26, 2007 at 2:30 p.m., bids were received for the Interior Remodel to the Idaho Falls Power Administration/Warehouse Building. At that time, bids were opened and publicly read aloud. There were no protests expressed by any of the bidders.

Bids were received from five (5) contractors. All bids were complete and submitted in accordance with the requirements of the specifications. The low bid was submitted by Rivers West Construction, LLC of Idaho Falls, Idaho. Their base bid was in the amount of \$697,000.00. Alternate No. One which was the re-roof was \$316,900.00.

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The public works licenses and expiration dates for the General Contractor and the subcontractors listed were verified to be correct and valid. The only item which needs to be addressed by the low bidder is that his Plumbing Subcontractors will be required to obtain a City of Idaho Falls Plumbing License.

At this time, I would recommend that the City of Idaho Falls accept the base bid since it is within the budget. I would not recommend accepting Alternate No. One at this time, since Phase Two is expected to be bid later this year. I would recommend moving the re-roof into the scope of Phase Two.

Please remember this project is a remodel and there still could be some unknowns when the ceilings start coming out.

If you have any questions, please call me.

Respectfully,

s/ Roxane L. Mitro

Roxane L. Mitro

Anderson, Karst & Mitro Architects,  
P. A.

It was moved by Councilmember Lehto, seconded by Councilmember Hally, to accept the low bid submitted to Rivers West Construction, LLC to complete Phase One of the Idaho Falls Power Interior Remodel for the base bid item only and, further, give authorization for the Mayor and City Clerk to execute the necessary documents. Roll call as follows:

Aye: Councilmember Hally  
Councilmember Hardcastle  
Councilmember Lehto  
Councilmember Groberg

Nay: None

Motion Carried.

The Municipal Services Director submitted the following memo:

City of Idaho Falls  
June 29, 2007

MEMORANDUM

TO: Honorable Mayor and City Council  
FROM: S. Craig Lords, Municipal Services Director  
SUBJECT: BID IF-07-23, DISTRIBUTION TRANSFORMERS

Attached for your consideration is the tabulation for Bid IF-07-23, Distribution Transformers.

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It is the recommendation of Municipal Services to accept the lowest evaluated bid for Northern Power Equipment. They will furnish two (2) each 2000 kVA Transformers for an amount of \$35,779.00 each.

s/ S. Craig Lords

It was moved by Councilmember Groberg, seconded by Councilmember Lehto, to accept the lowest evaluated bid of Northern Power Equipment to furnish two (2) each 2000 kVA Transformers for an amount of \$35,779.00 each. Roll call as follows:

Aye: Councilmember Groberg  
Councilmember Hardcastle  
Councilmember Lehto  
Councilmember Hally

Nay: None

Motion Carried.

The Planning and Building Director submitted the following memos:

City of Idaho Falls  
July 8, 2007

MEMORANDUM

TO: Mayor and Council  
FROM: Renée R. Magee, Planning and Building Director  
SUBJECT: FINAL PLAT ENTITLED FIRST AMENDED PLAT OF LOT 1,  
BLOCK 1, OF RIDGEWOOD PARK ADDITION, DIVISION NO. 1

Attached is a Final Plat entitled First Amended Plat of Lot 1, Block 1, Ridgewood Park Addition, Division No. 1. This two-lot plat is located on the southwest corner of Sunnyside Road and Park Taylor Road (South 5<sup>th</sup> West). The Planning Commission reviewed this request at its June 5, 2007 Meeting and recommended approval. This Final Plat is now being submitted to the Mayor and Council for consideration.

s/ Renée R. Magee

It was moved by Councilmember Hally, seconded by Councilmember Groberg, to accept the Final Plat entitled First Amended Plat of Lot 1, Block 1, Ridgewood Park Addition, Division No. 1 and, further, give authorization for the Mayor, City Engineer, and City Clerk to sign said Final Plat. Roll call as follows:

Aye: Councilmember Hally  
Councilmember Groberg  
Councilmember Hardcastle  
Councilmember Lehto

Nay: None

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Motion Carried.

City of Idaho Falls  
July 9, 2007

MEMORANDUM

TO: Mayor and Council  
FROM: Renée R. Magee, Planning and Building Director  
SUBJECT: FINAL PLAT ENTITLED SNAKE RIVER LANDING, DIVISION  
NO. 2

Attached is a Final Plat entitled Snake River Landing, Division No. 2. This one-lot plat is slightly more than 10 acres and is located west and adjacent to Snake River Parkway and south of Porter Canal. The parcel is located within the City of Idaho Falls and is zoned C-1. This Final Plat is now being submitted to the Mayor and Council for consideration.

s/ Renée R. Magee

It was moved by Councilmember Hally, seconded by Councilmember Groberg, to accept the Final Plat entitled Snake River Landing, Division No. 2 and, further, give authorization for the Mayor, City Engineer, and City Clerk to sign said Final Plat. Roll call as follows:

Aye: Councilmember Lehto  
Councilmember Groberg  
Councilmember Hardcastle  
Councilmember Hally

Nay: None

Motion Carried.

The Police Chief submitted the following memo:

City of Idaho Falls  
June 4, 2007

MEMORANDUM

TO: Mayor and Council  
FROM: J. K. Livsey, Chief of Police  
SUBJECT: COUNCIL AGENDA ITEM

I respectfully request approval of the attached Ordinance amending Section 5-9-4 of the City Code of Idaho Falls, Idaho; providing for further conditions constituting cruel impoundment of animals. This Ordinance will be presented for your approval at the City Council Meeting of Thursday, July 12, 2007.

Thank you for your consideration.

s/ J. K. Livsey

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The City Attorney stated that the revised draft of the Ordinance has essentially two changes that have been made. The first change was inclusion of language adding a standard that the treatment of the animals, in order to be a violation of the Ordinance, must be in a cruel or inhumane manner. Councilmember Groberg's concern at the previous Council Meeting was that it could not be applied in a clear fashion. The new language becomes the controlling standard for the manner in which the animals are treated. The second change that was made involves the elimination of earlier language making reference to the prohibition against abuse of animals. In the process of revising this Ordinance, it became apparent that there is another section in the Ordinance which is duplicative of that topic.

Councilmember Hardcastle explained that the reason for bringing this Ordinance forward was at the request of Animal Control. These types of issues have been recurring. Animal Control has not been able to effectively handle cruel and inhumane treatment of animals.

Councilmember Groberg stated that there are standards in case law that allow a person to be aware of what he might do to his pet that could result in a misdemeanor or his pet being picked up and rescued by a good Samaritan.

Chaz Houpt, Peaches Pets Feed and Supply, 1954 North Yellowstone Highway, appeared to state that he was fully in support for the well-being and care of domesticated animals. He expressed his concern for access to private property, whereby the Ordinance states, "...any person may enter upon any place where such animal is confined, and supply it with necessary food, water or care. Such person shall not be liable for trespass as a result of such action for such entry..." He requested the City Attorney to identify other areas in the City Code that allows free access to private property.

The City Attorney stated that, as a general rule, under the common law access can be made to private property if necessary for health, safety, and welfare reasons. This follows the common law principal of allowing that access.

Mr. Houpt stated that as a private landowner and a business owner, he expressed his concern for people having access to his property without due cause. With twelve consecutive hours being allowed prior to access, it seemed to him that some authoritative figure should be contacted to make access and control the situation more adequately. Any potential liability would be eliminated if the authoritative figure (Animal Control Officer or Police Officer) were to make access first.

The City Attorney stated that as a practical matter, that is exactly what will occur. Most citizens are not willing to take upon themselves to provide the care. The City would expect that an individual would call Animal Control. That would begin the time frame. At the end of the twelve hours, then an Animal Control Officer would then be able to provide the care to the animal.

Councilmember Hardcastle explained, that in her experience, that is exactly what has happened. An individual has reported the problem to Animal Control, who then takes over.

Mr. Houpt expressed his concern that an individual could use this wording to access property and not have any liability. He did not want someone to break into his business under the pretense that he heard a dog barking in distress and decided to break the door down.

Councilmember Hally stated that this allows for someone to rescue an animal that might be within minutes of dying from neglect.

A brief discussion was held regarding certain situations where it would be imminent to rescue an animal that was in distress.

Mr. Houpt expressed his concern over the definition of the words "Pound", "Poundmaster", "Animal Shelter", "Animal Control" and "Animal Control Officer". These terms should be clarified and use only one phrase for what is appropriate.

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Councilmember Hardcastle indicated that the City Council could do some house keeping and change those items in the future.

Mr. Houpt stated that the title of this Ordinance is misleading, in that "impoundment" is not something that a pet owner does. Domesticated animals are not impounded. That is an activity of government.

Andy Elliott, President of the Humane Society of the Upper Valley, appeared to state that she was appreciative that the Mayor and City Council were addressing these issues. She stated, further, that she wanted to support any efforts to enhance the animal welfare laws. She has worked with Animal Control Departments for decades. She stated that she could not recall one instance where she barged in on someone's property. They were always able to contact some legal authority to accompany them. It would be an uncomfortable situation to do otherwise. She stated that the Humane Society of the Upper Valley supported this Ordinance and stated that they would be happy to be of service.

Councilmember Groberg stated that Ordinances should be drafted as clearly and precisely as possible. He requested to know whether it was possible to pass the Ordinance with changes in wording to the title.

The City Attorney stated that it was not significant to make the wording change from "cruel impoundment" to "cruel or inhumane treatment".

Councilmember Groberg requested to know whether there was any change in the law that was accomplished with this rescue effort language.

The City Attorney stated that this language has been in the City Code in excess of 25 years. There is not a functional change as to what has been in the City Code for many years.

Councilmember Hardcastle requested Captain Steve Roos from the Police Department to come forward to explain what happens on the weekends when the Animal Shelter is closed.

Captain Steve Roos appeared to state that if someone is not on duty in Animal Control, then a regular Police Officer responds to the situation. If it is necessary, then an Animal Control Officer is called out and then paid overtime to cover any emergency with animals.

Councilmember Groberg requested that the title to the Ordinance be amended to say "CRUEL OR INHUMANE TREATMENT" rather than what it now says as "CRUEL IMPOUNDMENT".

At the request of Councilmember Hardcastle, the City Attorney read the following Ordinance by title only:

**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE AMENDING SECTION 5-9-4 OF THE CITY CODE OF IDAHO FALLS, IDAHO; PROVIDING FOR FURTHER CONDITIONS CONSTITUTING CRUEL IMPOUNDMENT OF ANIMALS; PROVIDING FOR METHODOLOGY, SEVERABILITY; AND ESTABLISHING EFFECTIVE DATE.

The foregoing Ordinance was presented by title only. Councilmember Hardcastle moved, and Councilmember Hally seconded, that the title of the Ordinance be amended to read, as follows:

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**ORDINANCE NO. 2709**

AN ORDINANCE AMENDING SECTION 5-9-4 OF THE CITY CODE OF IDAHO FALLS, IDAHO; PROHIBITING CRUEL OR INHUMANE TREATMENT OF ANIMALS; PROVIDING FOR METHODOLOGY, SEVERABILITY; AND ESTABLISHING EFFECTIVE DATE.

And, that the provisions of Idaho Code Section 50-902 requiring all Ordinances to be read by title, and once in full, on three separate dates be dispensed with, the Ordinance be passed on all three readings, and, further, give authorization for the Mayor and City Clerk to sign the necessary documents. Roll call as follows:

Aye: Councilmember Hally  
Councilmember Groberg  
Councilmember Hardcastle  
Councilmember Lehto

Nay: None

Motion Carried.

The Public Works Director submitted the following memos:

City of Idaho Falls  
July 9, 2007

MEMORANDUM

TO: Honorable Mayor and City Council  
FROM: Chad Stanger, Public Works Director  
SUBJECT: ADDENDUM - IONA-BONNEVILLE SEWER DISTRICT AGREEMENT

Attached is a proposed addendum to the Sewage Agreement with Iona-Bonneville Sewer District. This Agreement provides terms and conditions under which Iona-Bonneville Sewer District is allowed to flow a portion of their sewage through a City of Idaho Falls line located at the intersection of Hitt and Lincoln Roads.

Public Works recommends approval of this agreement; and, authorization for the Mayor and City Clerk to sign the documents.

s/ Chad Stanger

It was moved by Councilmember Groberg, seconded by Councilmember Hally, to approve the Addendum to the Cooperative Agreement for Sewage Treatment Services with Iona-Bonneville Sewer District allowing a portion of their sewage to flow through a City of Idaho Falls line located at the intersection of Hitt and Lincoln Roads and, further, give authorization for the Mayor and City Clerk to execute the necessary documents. Roll call as follows:

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Aye: Councilmember Groberg  
Councilmember Hally  
Councilmember Lehto  
Councilmember Hardcastle

Nay: None

Motion Carried.

City of Idaho Falls  
July 9, 2007

MEMORANDUM

TO: Honorable Mayor and City Council  
FROM: Chad Stanger, Public Works Director  
SUBJECT: AMENDMENT NO. 1 TO CONTRACT NO. 00062546, BATTELLE  
ENERGY ALLIANCE, LLC

Attached is proposed Amendment No. 1 to Contract No. 00062546, Battelle Energy Alliance, LLC. This amendment increases the amount to be paid to the City of Idaho Falls by \$184,499.68, which represents additional materials and labor to be provided by the City.

Public Works recommends approval of this amendment; and, authorization for the Mayor and City Clerk to sign the documents.

s/ Chad Stanger

Councilmember Lehto stated that he would abstain from the discussion and decision on this Amendment, due to a conflict of interest.

It was moved by Councilmember Groberg, seconded by Councilmember Hally, to approve Amendment No. 1 to Contract No. 00062546 with Battelle Energy Alliance, LLC increasing the amount to be paid to the City of Idaho Falls by \$184,499.68 which represents additional materials and labor to be provided by the City and, further, give authorization for the Mayor and City Clerk to execute the necessary documents. Roll call as follows:

Aye: Councilmember Hally  
Councilmember Hardcastle  
Councilmember Groberg

Nay: None

Abstain: Councilmember Lehto

Motion Carried.

Following a brief recess, Mayor Fuhrman requested Councilmember Hally to conduct a public hearing for consideration of a land use change to allow for construction of two four-plexes located generally at the southern end of Teresa Bunker Elementary School site on East 16<sup>th</sup> Street, south and east of Bunker Lane, west of St. Clair Road, and legally

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described as Lots 1 and 2, Block 1, Desborough Place, Division No. 1 (Recessed from June 28, 2007 Regular Council Meeting). At the request of Councilmember Hally, the City Clerk read the following memo from the Planning and Building Director:

City of Idaho Falls  
June 18, 2007

MEMORANDUM

TO: Mayor and City Council  
FROM: Renée R. Magee, Planning and Building Director  
SUBJECT: LAND USE CHANGES – LOTS 1 AND 2, BLOCK 1,  
DESBOROUGH PLACE, DIVISION NO. 1

Attached is the site plan for a land use change on Lots 1 and 2, Block 1, Desborough Place, Division No. 1. The property is presently vacant and the developer is proposing two four-plexes be constructed on this property. On July 27, 2006, this parcel was rezoned from PT-2 (Multi-Family and Commercial) to PT-1 (Multi-Family). Prior to 2006, the underlying zone was R-1 (Single-Family Residential). Planning Commission heard this request at a public hearing on May 15, 2007, and recommended approval with six conditions, most of which have been incorporated into the site plan and elevations. This request is being submitted to the Mayor and Council for consideration.

s/ Renée R. Magee

The Planning and Building Director located the subject area on a map and further explained the request. Following is a list of exhibits used in connection with this land use change request:

Slide 1	Vicinity Map showing surrounding zoning
Slide 2	Aerial Photo of large portion of this area
Slide 3	Aerial Photo – close up
Slide 4	Site Plan under consideration
Slide 5	Calculations on lot coverage and photo metrics
Slide 6	Elevations proposed by developer
Slide 7	Site Photo on 16 <sup>th</sup> Street at approximately 7:45 a.m.
Slide 8	Site Photo on 16 <sup>th</sup> Street at approximately 7:45 a.m.
Slide 9	Site Photo on 16 <sup>th</sup> Street at approximately 7:45 a.m.
Slide 10	Site Photo on 16 <sup>th</sup> Street at approximately 7:45 a.m.
Slide 11	Site Photo in front of Theresa Bunker Elementary
Slide 12	Site Photo looking west across site
Slide 13	Site Photo of intersection of Bunker Lane and 16 <sup>th</sup> Street from the site
Slide 14	Site Photo looking southeast across the site
Slide 15	Site Photo looking southwest across site
Slide 16	Site Photo looking at fence south of site
Slide 17	Site Photo looking at Bunker Lane and 16 <sup>th</sup> Street at 8:15 a.m.
Slide 18	Site Photo showing students walking to school
Slide 19	Site Photo of homes west of site

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Slide 20	Site Photo looking at home northwest of site
Slide 21	Site Photo of view of site from west of Bunker Lane
Slide 22	Trip Generation Manual looking at approximately 50% ratio for peak hour trips for apartment complexes
Slide 23	Traffic Generation Figures
Slide 24	Average Daily Traffic Counts in front of other schools:
	Teresa Bunker Elementary            898            2007
	Sunnyside Elementary            857            1998
	A. H. Bush Elementary            3,000            2002
	Linden Park Elementary            3,325            2000
	Hawthorne Elementary            9,000            2002
Exhibit 1	Planning Commission Minutes dated May 15, 2007
Exhibit 2	Staff Report dated May 15, 2007
Exhibit 3	Vicinity Map
Exhibit 4	Copy of Final Plat

The Planning and Building Director submitted the following letters:

**Attachment 1**

June 9, 2007

Dear City Councilmembers,

This letter is to give my family's feelings and interest with regards to the proposed 2 four-plexes being constructed on the property located generally at the southern end of Teresa Bunker Elementary School site on East 16<sup>th</sup> Street, south and east of Bunker Lane, west of St. Clair Road and legally described as: Desborough Place Subdivision, Block 1, Lots 1 and 2.

It has already been established in the first hearing that the developer and owner of this property has in mind 2 four-plexes in order to make a nice amount of money to provide for his retirement. While he would have the right to do so, since the Planning and Building Division approved of this land use change, my family and others feel that this is **very unfair to the many other families affected by this proposed change**. We have already seen and experienced a lot of promises from another land owner (Lee Gagner) who promised years ago on two separate legal hearing occasions to follow certain guidelines with regards to the use and traffic caused by the ReMax Homestead lot. Even before the law was changed for him, he NEVER followed through with the conditions that were set down. Even the Zoning Commission was not happy with him, yet nothing was done about it. (I know because I spoke several times to their Department about the happenings on his parking lot.) He never provided the wall that he was supposed to construct on 16<sup>th</sup> Street about 15 years earlier (for one thing), not to mention the traffic problem and parking lot. He also rented out the top and bottom part of the green house on the back of the lot (bordering on 16<sup>th</sup> Street). Many, many times our family and other families in the area had to call the I. F. Police due to loud beer parties, screaming, drugs, etc. The City told us that we would have to keep reporting these happenings until they finally had enough of a record on the various renters. Yet, Mr. Gagner had promised to rent only to good people. There was even a police chase through the ReMax Homestead parking lot! The

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traffic is already too busy on this street. You put in 8 families in one little area and that is a recipe for disaster! So you see that **all the promises in the world cannot make us in this neighborhood believe that this new developer won't do the same thing.**

Also, it is not right that one man should have the power and approval to have a nice neighborhood changed just so he can be comfortably rich in his retirement **at the expense of the rest of the property owners in the area.** Everyone knows, whether they will honestly admit it or not, that in the majority of cases when a four-plex or rentals are brought in, the tenants might start out neat and clean, but eventually the area turns to more trashy living conditions. There will not be nearly enough parking. Why can't the school buy the lot for parking for the school? **Those of us who have our life savings in our homes and property and have tried hard to keep them nice will not be able to sell them for even close to what they would be worth should such a condition happen in our neighborhood.** It seems that the majority of rental owners just want the money and could honestly care less about enforcing the rules. I am sure that you would not like a bunch of rentals right by where you live. Please, while we are not to plead in this matter, I can't help but ask you to put yourself in our shoes. **We would never be able to afford another home of the same size and condition to move to if the rentals come in and cause our property values to be less valuable. The traffic is another issue.** On different occasions when Lee Gagner was putting in the paved parking lot, my family counted over 20 cars in one hour that cut through their lot from 17<sup>th</sup> Street to 16<sup>th</sup> Street. Our home is at 1315 East 16<sup>th</sup> Street. We were living at (NOW) a major intersection of traffic that was not supposed to be in front of my driveway!! People have enough trouble when they come quickly around the corner off of Bower onto 16<sup>th</sup> Street to even stop at the STOP sign on the corner of Merrett and 16<sup>th</sup> Street. We do not need that many families living in this area on that property in question. We are dismayed and appalled that all the testimonies presented by the school were taken so lightly.

We would not mind **2 beautiful homes built on the property** in question (NOT RENTALS). Or, possibly 2 townhouses for people to **own but not rent.** As far as bringing people to Idaho Falls...I don't see what value rentals in a nice neighborhood would do for the city...it would only help the developer. There are plenty of other land areas on which to build rentals such as four-plexes.

Your kind and thoughtful consideration of our concerns will be greatly appreciated. I know we are praying for a miracle in this case and can only hope that each of you will do the right thing for the majority and not for the one with the money and/or clout. We know that you are good people and pray that while the decision is a hard one, you will not fail us and our future lives in this area.

Thank you for your time.

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May God bless you in your decision.

s/ Marilyn Kelly  
The family of Marilyn Kelly  
1315 East 16<sup>th</sup> Street  
Idaho Falls, Idaho 83404  
528-0911

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**Attachment 2**

June 17, 2007

E-Mail from Rene Miller – [rener@srv.net](mailto:rener@srv.net)

TO: Renée R. Magee – [rmagee@ci.idaho-falls.id.us](mailto:rmagee@ci.idaho-falls.id.us)  
SUBJECT: DESBOROUGH PLACE SUBDIVISION

I am writing in opposition to land use change for the Desborough Place Subdivision which would allow two four-plexes to be built. As a resident of the neighborhood, I feel allowing two four-plexes to be built across from Theresa Bunker Elementary would put the whole neighborhood in danger with the increased traffic. During the school year, traffic is very congested in the morning and afternoon with parents, day care providers, other transportation companies and school buses dropping off and picking up children at the school. The residents of the proposed four-plexes would have a very difficult time entering or leaving their parking lot in the morning and afternoon. Any other resident of the neighborhood would also have a difficult time accessing 16<sup>th</sup> Street during the morning and afternoon. Adding to that congestion would be school children walking to school or home in the afternoon putting them at risk of being hit by impatient, frustrated drivers. I think it would be in the best interest of the children that attend Theresa Bunker Elementary School and the residents of the neighborhood to leave the land use as it is now. Please do not approve the land use change.

Rene Miller  
1465 Bower Drive  
Idaho Falls, Idaho 83404

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**Attachment 3**

June 22, 2007

Honorable Mayor and City Councilmembers,

The proposed Desborough Place Subdivision application fails to comply with procedural and substantive due process requirements of the Zoning Ordinance of the City of Idaho Falls. Therefore, I respectfully request that this application for a proposed land use change be denied.

1. This property does not meet the second of three requirements for an exception to § 7-18-4(C) of the Idaho Falls Zoning Ordinance. Section 7-18-

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4(C) states that all PT uses “shall have a minimum size of at least 30,000 square feet,” unless three conditions are met. (This applicant’s property has less than 20,000 square feet, so it is less than two thirds of the minimum size for PT uses.)

Idaho Falls Zoning Ordinance § 7-18-4(C) requires that **“the Commission and City Council find that the use cannot be practicably developed.”** There was no finding by the Commission at its Public Hearing on May 15, 2007 that “the use cannot be practicably developed.” The only mention of this issue, reflected on May 15, 2007 Planning Commission Minutes, was:

Karst asked about Ms. Smith’s reference to Section 7-18-4(C) regarding the PT Zone. Magee indicated she told Ms. Smith it is to be a finding. In the past staff has indicated to applicants with a parcel of less than 30,000 square feet, if their parcel is adjacent to another parcel previously reviewed under the ordinance, it is acceptable. Magee believes the section is similar to a hardship or variance situation. If it is impracticable for a parcel less than 30,000 square feet to meet the 30,000 square foot minimum, but it meets the PT process, a finding could be made that it complies with all three requirements. Karst asked if the second standard, that the use cannot be practicably developed, is what ties it in with hardship. Magee answered yes.

The Planning Commission minutes do not set forth any statement, evidence, or indication whatsoever from which the City Council could conclude that the Planning Commission found that “the use cannot be practicably developed.” Therefore, the present application fails to meet procedural due process requirements.

There are substantive due process problems with this application as well. After diligent search, I was unable to find any definition in the Zoning Ordinance of the City of Idaho Falls, Idaho, Administrative Code, Idaho Agency Opinions and Decisions, Idaho Court Decisions, or Idaho Statutes, for the phrase “practicably developed” or the terms “practicability”, or “impracticable” in a zoning or land use context. Other states which use the words “practical difficulties” in this context require a showing that there is no other reasonable alternative that would allow the applicant to enjoy a legally permitted beneficial use of the property. *State ex rel. Ziervogel v. Washington County Bd. Of Adjustment*, 661 N. W.2d 884, 2003 WI App. 82 (Ct. App. 2003); *Bernuth v. Zoning Board of Review of Town of New Shoreham*, 770 A.2d 396 (R. I. 2001). A mere decrease in landowner profits is insufficient to establish hardship. *Zoning Hearing Bd. Of Indiana Tp. V. Weitzel*, 465 A.2d 105, 77 Pa. Commw. 108 (1983).

Moreover, there is no support in Idaho Code or case law for the conclusion that “this section is similar to a hardship or variance situation.” Even if one assumes for the sake of argument that Section 7-18-4(C) could be interpreted using a variance analysis, this application would still fail because it does not meet the variance requirements set forth in Idaho Code § 67-6516. For example, in *City of Burley v. McCaslin Lumber Co.*, 107 Idaho 906 P.2d 1108

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(Ct. App. 1984), the applicant sought a zoning variance to convert his rental property from a duplex to a triplex. The local zoning ordinance prohibited triplexes on lots less than 9,000 square feet. His lot encompassed 6,250 square feet, about two thirds of the required size. 107 Idaho at 907. Idaho Code § 67-6516 provided then, as it still does, that:

A variance shall not be considered a right or special privilege, but may be granted to an applicant **only** upon a showing of **undue hardship** because of characteristics of the site and that the variance is not in conflict with the public interest (emphasis added).

107 Idaho 909. The applicant argued that converting the rental structure into a triplex was necessary because increasing the density of the land use, from a duplex to a triplex, would make his remodeling project feasible. "However," noted the court, "the same could be said of any investment in real property. When the density of land use is increased, the potential income flow also increases...*This correlation between density of land use and the scope of feasible investments is not 'peculiar' to the property at issue in this case. It could apply to real properties anywhere.*" (emphasis added). Thus, because the applicant's alleged "undue hardship" could apply to any real property and was not, as the statute required, related to the characteristics of the particular site, the court held that the zoning board's grant of the variance was improper. 107 Idaho 910.

A similar analysis was used in the rezoning case of *Drake v. Craven*, 105 Idaho 734, 672 P.2d 1064 (Ct. App. 1983), where a developer sought a parcel from agricultural to residential use so that he could develop the property into a subdivision. The Canyon Zoning Ordinance provided that a zoning change could be granted "when there are practical difficulties or unnecessary hardships in carrying out the strict letter of this Ordinance." 105 Idaho at 739. The Court stated that a denial of the rezoning request "would not be arbitrary unless the denial made it not possible to use and develop the property for any other use enumerated in the existing zoning." (quoting with approval *Ford Leasing Development Co., v. Board of County Commissioners*, 528 P.2d 237, 241, 186 Colo. 418 (1974)). Because the developer had not presented evidence that the property could not profitably be used for *any* of the permitted uses, the Court of Appeals held that he had not been deprived of the reasonable use of his property. Finally, the court noted the Idaho Supreme Court's sharp language in *Dawson Enterprises, Inc. v. Blaine County*, 98 Idaho 506, 567 P.2d 1257 (1977): "**Once again, we hold that a property owner has no vested interest in the highest and best use of his land, in the solely monetary sense of that term.**" 105 Idaho 734, 740.

The present applicant seeks to develop his property in the most dense PT-1 use possible, on a lot which is only two thirds the required size, in a neighborhood of single-family homes, without any showing that other permitted uses of his property, such as duplexes, were considered and deemed to be impracticable. Clearly, many uses less dense than two four-plexes are practicable on this lot. The Planning Commission's determination that this application complied with Zoning Ordinance requirements is not supported by

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substantial evidence. It would be a waste of resources for the City to have to defend an Idaho Code § 67-5279 claim which it has no hope of winning.

2. Finally, the third requirement of Zoning Ordinance § 7-18-4(C), that “the applicant can satisfy the performance standards set forth by use of the improvements, premises, and facilities of the contiguous use,” is not met because the site plan violates the requirements of § 7-18-4(C) 12.

§ 7-18-4(C) 12, Use of and Access to Streets, states, **“No uses shall create a traffic or pedestrian safety hazard.”**

This plat has not been developed until now for a reason. It is situated on a narrow road directly across from the entrance to Theresa Bunker Elementary School. The development’s proposed driveway is exactly where parents currently drop off and pick up their children. It would inject traffic from a completely new direction, perpendicular to the current flow of traffic, requiring all cars leaving the development to take an immediate left or right. If cars are parked along 16<sup>th</sup> Street during drop off and pick up times, which they always are, the parked cars will prevent drivers exiting the development from being able to see children who are crossing the street.

The developer is certainly entitled to develop his land, and cars will be exiting the property with any residential use. However, fewer cars would lessen the chances of a child being seriously injured or killed. A less dense multi-family use, perhaps with a circular driveway for safety, would maintain the residential character of the neighborhood, lessen the chances for injury to children, comply with Zoning Ordinance requirements, and still give the developer the multi-family use to which he is entitled.

Thank you very much for your service to our community. I appreciate the time and effort that you spend in considering these difficult issues.

Sincerely,

Mary Ann Smith  
781 Cedar Ridge Drive  
Idaho Falls, Idaho 83404

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**Attachment 4**

June 20, 2007

E-Mail from Marilyn Kelly – [mkelly@grandtetoncouncil.org](mailto:mkelly@grandtetoncouncil.org)

TO: Renée R. Magee – [rmagee@ci.idaho-falls.id.us](mailto:rmagee@ci.idaho-falls.id.us)  
SUBJECT: PUBLIC HEARING ON PROPERTY AT 16<sup>TH</sup> STREET

Dear City Councilmembers and Planning Commission,

This letter is an additional letter regarding the proposed 2 four-plexes being constructed on the property located on 16<sup>th</sup> Street south of Theresa Bunker

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Elementary School and legally described as: Desborough Place Subdivision, Block 1, Lots 1 and 2.

To add to the other e-mail and mailed letter that my family have already sent to Renée R. Magee.

The perfect use for the property would be if the School District No. 91 would buy it for a parking lot. They do not have nearly enough parking. Linden Park School has two large parking lots. Many people in the community use Theresa Bunker's field for soccer games, other sports, drill team practices, etc. So they cannot use a part of their field for parking.

The extra traffic that would be caused by 8 families living in that little area would be terrible. Most families have at least 2 cars now days. That means 16 cars just for that little area. And you know there is not enough parking off the street for all those cars. We have enough trouble with extra traffic cutting through ReMax Homestead parking lot and also running the stop signs at the corner of Merrett and 16<sup>th</sup> Street. While there would not be any access off of 17<sup>th</sup> for this new area, it still would cause much congestion and traffic. We have a family (the Jason Bernert family) where the parents are both blind. They live right behind us close to the corner of Merrett and 16<sup>th</sup> Street. Although they have taught their two little children to be careful crossing the streets, etc., it is still very dangerous as it is.

Also, as I already mentioned in my first letter, I know that once many land owners get their apartments ok'd to be built, they rarely care to continue to follow the rules of the agreement made with the City. The Zoning Commission and other agencies do not have the time to police these areas to make sure all is well. Please take into account all of our requests and testimonies against having this land turned into apartments for rentals ... not to mention for 8 FAMILIES!!!! This will ruin our area that we have invested our life savings into for our futures. We are not getting rich, but to have a fairly nice and peaceful neighborhood is worth much to us. Please listen to the many and represent us instead of the desires of the one who just wants to get rich off of money continually coming in to him through rent. If the parking lot cannot be ok'd, then please seriously consider selling the property to 2 or three families for permanent homes or condos that are not rented out.

Thank you for your time and concern.

Marilyn Kelly  
1315 East 16<sup>th</sup> Street  
Idaho Falls, Idaho 83404

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**Attachment 5**

June 21, 2007

Honorable Mayor and City Councilmembers,

**JULY 12, 2007**

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Our names are Michael and Heather Medema and we reside at 1455 East 16<sup>th</sup> Street, just east of the proposed land use change. Our older son will be attending Theresa Bunker Elementary in the Fall of 2008. For this reason, we are very concerned about his safety walking to school in the years to come. We are writing to you in protest of the proposed land use change of Desborough Place, Lots 1 and 2. While we understand the contractor's desire to develop these lots, we feel that the proposed use change is a dangerous one for the school children in our neighborhood. There are a few factors of the proposed change that we would like to address:

**A. Density/Traffic Impact**

First and foremost, we would like to address the issue of density and the effect this high number of apartment dwellers will have on the current traffic problem on Sixteenth Street. Because 50% of the property is required to be landscaped, the end result is two 4-plex apartments and 16 parking spots, on ¼ of an acre. Although there are 16 parking spots for the complex, there is not a maximum occupancy for these apartments, so the possibility that there will be more than 16 cars belonging to apartment residents is quite high. In addition, more parking will be required for guests, deliveries, moving vehicles, etc. Without a backup parking lot, the additional cars will be either parallel parking on the street or in the Theresa Bunker Teacher's Parking Lot located north of the complex.

Theresa Bunker is allotted a mere 26 parking spaces. This provides one parking space for each classroom and then an additional 5 spaces. There is not sufficient parking for parents, visitors or the four transportation and day care facility services which deliver the school children to and from school. While passing around a petition against the land use change on May 8<sup>th</sup>, I spoke with Arlitta Longacre, a van driver from AIT Transportation who was waiting to pick up several children. Ms. Longacre expressed that the lack of parking made her job difficult, so much so that she has to show up 20 minutes early to secure a safe spot in front of the school to gather them. She said that if she fails to get a spot, she feels it is very dangerous, trying to load the children into the van as it is parked on the street.

The degree of congestion is significant during morning drop off between 7:30 and 8:00 a.m. and afternoon pick up between 2:00 and 3:00 p.m. Those parents who are unable to secure a parking spot in the teacher's parking lot in front of the school must either parallel park along the street and the children must cross 16<sup>th</sup> Street, or the parents must turn at the entrance of Bunker Lane, located directly across from the proposed complex and proceed down the very narrow Bunker Lane. During this very busy time, school buses are arriving simultaneously, delivering children as young as 4 years old. There are limited routes to Theresa Bunker School, and the majority of traffic travels from the intersection of 16<sup>th</sup> and St. Clair west to the school in the morning and from the school to the same 16<sup>th</sup> Street/St. Clair intersection in the afternoon. Although children in the neighborhood are walking down streets such as Merrett and Bower, there are also a large number of them traveling from the neighborhood east of the canal on St. Clair, walking down St. Clair from both directions and then turning onto 16<sup>th</sup> Street, right into this chaotic traffic situation.

**B. Lack of Buffer**

Despite the fact that many in the neighborhood were opposed to the building of the Aaron's store, the reality is that it was easier to accept because of the large concrete wall that served as a buffer between the establishment and 16<sup>th</sup> Street. In the end, we were just grateful that access to 16<sup>th</sup> Street was closed off and that while the store would be (and is) a definite eyesore, there would be no increase in traffic. Unfortunately, in the case of the proposed apartment complex, the presence of the single-family residence turned hospice to the south of Lots 1 and 2, prevents access to 17<sup>th</sup>, so there is no way to put up a wall and shield the 16<sup>th</sup> Street neighborhood and the Theresa Bunker School from the traffic congestion and noise. Without the possibility of a buffer, we feel the negative impact on the neighborhood is entirely too great.

**C. Crime**

While we know that the occurrence of crime is not determined by the dwelling someone resides in, we feel that crimes which occur in this particular location, across from an elementary school can be especially dangerous and damaging to the students. One major concern is the rampant manufacture and use of methamphetamine in our City. One only needs to open the daily Post Register to learn of the large numbers of meth-related criminal activities in Idaho Falls. Meth is easy and cheap to manufacture and this process often takes place in apartment dwellings where residents can desert the premises after enough damage has occurred in the dwelling, with the most common repercussion being loss of a cleaning deposit. The landlords rarely see the inside of the apartments unless there is a non-payment issue or noise complaint, so this activity can be carried out for long periods of time unbeknownst to the property managers or owners. Besides the damaging environmental issues associated with being so close to this sort of activity, the possibility of dangerous situations is high, placing the children, parents, and teachers at risk of harm.

Another issue we consider to be a threat associated with the placement of this apartment complex is that of proximity of sexual offenders so close to a school. Again, although we are not implying there is a direct connection between apartment dwelling and criminal activity, we do believe that apartment living tends to be transitional with significant turnover. The majority of residents who inhabit apartments will be moving on within a year. This means most residents do not know their neighbors well and there is less interaction, so criminal activity is not often detected or reported. Although sex offenders are required to register new addresses with their probation or parole officers, the system is not strictly enforced and situations do occur where offenders are lost in the system and commit crimes before the law catches up with them. Also, according to Idaho law, sexual offenders who do report their addresses have 10 days to do so, and we feel that this 10 day leeway is too permissive. If parents are not aware that someone with this record is living amongst them, they may not be vigilant about the situation. We strongly feel that this is not a risk we want young school children in our neighborhood to be exposed to.

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**D. Options**

It has been brought to our attention that two families have approached the property owner, wishing to purchase the property and each build single-family homes. Both have been denied by the owner, who has expressed that he needs to make more money from the property than this transaction would provide. While we realize that that would involve a significant zoning change, we feel that this process would be more readily accepted by the neighborhood. Also, neighbors, parents and school employees have expressed that they would not be offended by a zoning change which would allow single-family twin homes which would be sold, rather than rented to be placed on this land. While we by no means wish to offend anyone by offering this information, we feel that it must be conveyed that the neighborhood does not protest the development of this property, but we strongly oppose the building of apartment complexes or other rental units. There are several attractive town homes being built throughout Idaho Falls. I can specifically point out the two sets of town homes on the corner of 25<sup>th</sup> and St. Clair streets. Why can't Mr. Peterson build something like these that add value and an overall upgrade to our neighborhood rather than putting in these cheap, garish eyesores which are already ubiquitous throughout the City, and judging from the number of "For Rent" signs before them, not renting.

In conclusion, although we know that because these two lots are zoned PT-1 and therefore, the concept of spot zoning does not apply to them, we feel that the effect is the same. We have a beautiful neighborhood comprised of single-family residential homes surrounding a beloved elementary school, and the idea of putting in 8 apartment buildings which will increase an already dangerous traffic situation, reduce the existing parking places, and possibly introduce criminal activity into our lives is too much to consider. As of Tuesday, May 8<sup>th</sup>, we have gathered roughly 171 signatures from neighbors, parents, and teachers who strongly feel that this is a horrible thing to do to such a wonderful area.

Again, we are not against the development of this property, but why must the safety of our children, our property value and the overall quality of our neighborhood be sacrificed so that Mr. Peterson can make a buck? Don't cave to developers who have no interest in the quality of life of anyone other than themselves. We plead with you to consider the effect this will have on our neighborhood. Please deny the proposed land use change on 16<sup>th</sup> Street and preserve the tranquility of our neighborhood.

Thank you so much for your time.

Sincerely,

Michael and Heather Medema  
1455 East Sixteenth Street  
Idaho Falls, Idaho 83404

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**JULY 12, 2007**

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**Attachment 6**

June 20, 2007

Honorable Mayor and City Councilmembers,

My name is Miriam Rohde and I reside at 1346 East 16<sup>th</sup> Street here in Idaho Falls. I would like to address the issue of a land use change on the Desborough Place property to be discussed in the June 28<sup>th</sup> City Council Meeting. My property is adjacent to the west of the proposed building site and my children attend Theresa Bunker Elementary School located directly north of the site. As I begin I ask for your patience. I have spent many hours on this issue because I feel that it is an important one to my family's well-being and I know that I let my vehemence take hold of my message at times. As this is my last input before a final judgment is made I am laying everything out before you.

**I. Historical Information**

I must admit some disappointment in the decision of the Planning Commission to recommend this project to you as it now appears. Let me first explain that I am not opposed to some sort of residence being placed on this property. It has been vacant since we moved in 7 years ago and has generally been an overgrowth of weeds and not very attractive. I have already hoped that it would be developed as two single-family residences, but at every turn it seems that hopes of that are dashed.

**a. Planning Commission Meeting for Rezone**

When I attended the public hearings for the zoning change last summer, I expressed my hopes of single-family residences and was basically told it was not possible. At the time, I was led to believe that the only choices for zoning the land were multi-family residential or commercial. This choice was presented to me by a Zoning Commission member while I was testifying and, not having time to really think it through and not having a clear understanding of all the options, I chose multi-family residential. I felt that having someone live next to my family was a much better choice than to have, for example, a convenience store next door. At the time I was unfamiliar with the City Zoning Ordinance, nor what this could mean in the future. I have since studied, to the best of my ability and understanding, the Zoning Ordinance and feel that I was grossly ignorant of the real possibilities of this zoning change and that I now feel that I was somewhat misled during the Commission hearing.

Even Mr. Steve Peery the applicant in that case was confused about the zone change. "Mr. Peery said he misunderstood the request before the Commission. He was under the impression that his request was for R-2 Zoning for potential multi-family dwellings.

Meyers clarified PT-1 is a multi-family zone that requires the site plan to be presented to the Planning Commission and City Council. PT-2 is both commercial and multi-family. This action removes the possibility of

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commercial being on the northern portion ... Yurman informed the applicant that he has the option of recessing the request. Mr. Peery said he wants to be clear on what can and cannot be built on the property. He understood the rezone allows for multi-family dwellings. He wants to tell potential buyers their options." June 20, 2006 Planning Commission Minutes, Page 6.

(An informational side note is that in this same discussion, Commissioner "Yurman clarified previous conditions imposed on the entire property are still required by September 22, 2006." In the paragraph at the top of Page 6 it states, "According to stipulations at the time of City Council approval of the previous action, the applicant has until September 22, 2006 to establish a sidewalk and landscape the northern portion. This request does not affect those stipulations which have not been completed at this time." Please see current photos of the site. Those stipulations were not met. **How can we trust that any stipulations placed on Mr. Petersen will be met?** There is supposed to be an official who enforces these things, [City Ordinance, 5-4 Powers and Duties of the Enforcing Officers. It shall be the duty of the Zoning Administrator and/or Building Official or other designated official to inspect or cause to be inspected all buildings in the course of construction or repair. He/she shall enforce all provisions of this Ordinance and refer all violations to the City Attorney, entering actions in the courts when necessary, but his/her failure to do so shall not legalize any violation of such provisions, nor shall the failure of the City Attorney to enter actions in the courts legalize any violation of such provisions] and it has not been done. I can cite two other instances of things not being done in accordance with the requirements. The western wall of Aaron's Furniture was to be a continuation of the masonry wall and is only a chain link fence. The landscaping requirements on the orthodontist office turned radio station to the southwest of my property have not even been thought about by the appearance of the place and in my recollection, it was part of the approved site plan that the radio antenna would be placed between the two evergreen trees to hide it from view and that something would be done to prevent anyone from climbing on it and getting hurt. The tower is to the north of the trees and in plain view of all of the residents to the north and any mischievous teen can climb to the top of the tower if they so desire. I know that there is a certain hope that residents would complain about these things so the responsible parties can take action, but I do not feel it is our responsibility to spur someone to do the job they should already be doing.)

I, along with some neighbors, spoke to Mr. Peery and his wife on the way out of the Council Chambers and they were obviously frustrated. The Peery's were extremely upset, stating that staff "made" them do the rezone and they didn't understand why they had to go through that. Since going through this process again, I, too, wonder why staff told them that they should rezone the land to PT-1. Can the PT overlay not be removed when the area in question no longer abuts an arterial street? The Peery's plan was to sell the lots to be developed. It could have been rezoned a number of ways to remove the threat of commercial development. Or better yet, it could have been left to be rezoned after the sale so that the buyer could have had more options and we, as a neighborhood, would have had a site plan to consider and not just an abstract and misleading notion of what might happen.

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In the minutes of the June 20, 2006 Planning Commission Meeting this discussion is recorded after the initial motion was proposed, “Cosgrove referred to the landscaping requirements precluding a large apartment complex being built. She asked the size of the largest building that could be built. Meyers did not know without seeing a site plan. The two lots are the area requirements of an R-2 for **a four-plex**. He has **never seen a four-plex built on a lot less than 10,000 square feet** since 6,000 square feet are needed for the first dwelling.” (emphasis and italics added) Can you see why we in the audience felt secure in the thought that nothing larger than a four-plex would be built on this property? That we felt confident it may not even be that large? And suddenly we have an approved site plan for not just a four-plex, but **two** four-plexes in an area less than 10,000 square feet! Would I be validated in my concerns of being misled? Is a four-plex now defined as Commissioner Mills put it, “little wooden boxes, wrapped in vinyl?”

**b. City Council Meeting for Rezone**

Furthermore, in the City Council Meeting Minutes of July 27, 2006, it states, “Councilmember Hardcastle requested the Planning and Building Director to speak to the four-plexes. The Planning and Building Director appeared to state that it would be difficult to build **a four-plex unless the two lots were combined**. The advantage to having the PT-1 Zone on this property rather than a multi-family zone is that there are eighteen performance standards that must be met, as well as a public hearing before the Planning Commission and a public hearing before the City Council prior to any construction being allowed.” (emphasis and italics added)

At the time of the rezoning my major concern was making sure there would be no cross access from 17<sup>th</sup> to 16<sup>th</sup> Street, which would dump traffic right across the street from the school. My first concern has always been the safety of my family, my children, and the other children who attend Bunker Elementary. Yet here is the dramatically increased problem again presented to us, only in a different form.

**c. Aaron’s Furniture Planning Commission Meeting**

As I attended the public hearings on Aaron’s furniture I distinctly remember, though it is not verbatim in the Meeting Minutes (June 6, 2006 Planning Commission Minutes, Page 3, Arnold Hiram: “There will not be a lot of traffic. A safe situation will be created for the school area.), the mention that the store would only generate approximately a dozen trips **per day**. That was one of the selling points for Mr. Hiram, the previous owner of the property, that it would be a low-traffic, quiet business. Even with the low volume of trips, it was strongly suggested by staff that the business not plan on through access to 16<sup>th</sup> Street because of the presence of the school. They knew that it would meet a lot of neighborhood opposition and it would never be passed by the Planning Commission because of the potential dangers. **I ask you, why then should the most intense usage, which will generate dozens of trips per day be allowed to be placed across the street from that very same school?**

**II. Current Request for Land Use Change**

**a. Planning Commission Hearing, May 15, 2007**

Two four-plexes have the potential to generate 16+ cars with nearly half that number completing peak hour trips. (Renée R. Magee, 5-15-07 Planning Commission Minutes, Page 1) The morning peak hours match that of the school's start time. With the constant flow of traffic on 16<sup>th</sup> Street before school, a driver trying to leave the parking lot of the four-plexes would be watching traffic to his left looking for an opening and taking it at the first opportunity, not looking to his right where a child may be crossing. A driver pulling out to his left may not be able to see a child walking from behind a parked car or a car stopped to let the left turner out.

Commissioner Karst was adamant that any use would create an adverse affect on traffic and pedestrian safety and in that he was correct. But what he, and some other commissioners could not seem to realize is that it is not a question of just creating another adverse affect, it is the intensity of the impact that needs to be considered. *The request for the maximum density usage of this relatively small parcel of land will create the maximum adverse affect on its traffic and pedestrian safety.* It is as simple as that. Karst asked what impact is acceptable, and to him I answer and to you I exhort, *the least adverse affect is the safest option for our children.*

Mr. Peterson can develop this property for a nice profit and comfortable monthly returns by developing two nice duplexes, or one nice four-plex, effectively cutting in half the amount of traffic, hence the danger that traffic could introduce. He says that this is his "nest egg for his wife and family" and I do not begrudge him that cushion of safety, but I cannot imagine that a responsible adult with children would knowingly endanger others' families and children, to the degree it would with this maximum usage, to pad his pockets. My future is tied up in my family and my beautiful children and I will do anything necessary to protect them from any and all dangers presented. That is why I have put so much time and effort into opposing this proposed development. You do not approach a mother bear and her cubs well aware that you will increase her sense of danger and unease, because undoubtedly she will protect those cubs with her every ounce of being. If this site plan had been introduced somewhere other than directly across the street from an elementary school where there are children to be looked after and protected, you would not see near the opposition. This is the crux of the problem. These children are too young to realize the dangers facing them. They are not always as prudent and careful as we hope they would be. We, therefore, must look out for them and safeguard them in any possible way.

**III. Non-Compliance to City Ordinance**

You may be saying, after reading my passionate statements, yes, Mrs. Rohde, but this is all water under the bridge now and Mr. Peterson is being unfairly dealt with because of what has happened before he bought the property and because the school has a traffic problem. I will now address parts of the current city ordinance in which I hold Mr. Peterson's site plan in violation.

**a. No Use Shall Create a Traffic or Pedestrian Safety Hazard**

First, and this has already been addressed, is that "...no use shall create a traffic or pedestrian safety hazard." It was effectively addressed by these comments made by Mrs. Mary Ann Smith in her testimony to the Planning Commission on May 15<sup>th</sup>. After describing traffic conditions at Bunker, Mrs. Smith continued, "When the proposed lot is developed, it will have a 24-foot driveway with parked cars on either side. It will be difficult for cars leaving the parking lot to turn left or right with vehicles backed up on 16<sup>th</sup> Street and children crossing everywhere. The Zoning Ordinance also requires school to harmonize with the surrounding area and to provide adequate ingress and egress for vehicles and pedestrians served by the school. The proposed site plan converts an inconvenient situation into a dangerous situation. The fewer the number of cars exiting the development, the safer it will be for the children. The current proposal is the most intensive use possible with PT-1 zoning. Less intensive uses, such as two duplexes, [are] more consistent with the character of the neighborhood and will cut potential traffic problems in half while providing the developer with the multi-family use he desires.

**b. Character and Make Up of Neighborhood**

Speaking of the character of the neighborhood, the ordinance states that a PT zone's purpose is to "maintain land use compatibility and enhance the functioning of arterial streets by requiring conformity to the performance standards set forth herein with respect to land use changes in areas experiencing transition." (Page 106) There is a unique situation presented to us here. This land no longer connects to an arterial street, but only a local street and is effectively part of an established neighborhood more than 50 years old. The PT zoning is unnecessary.

There are two hundred fifty-five (255) lots in our neighborhood, using the boundaries presented to us in past public hearings, of St. Clair (E), to Juniper Drive (W), 12<sup>th</sup> St (N), 17<sup>th</sup> Street (S). Of those lots two hundred thirty (230) contain a single-family residence and are zoned R-1. This constitutes 90.2% of the land usage. Eighteen (18) lots are zoned R-3A, constituting 7.1% of the land usage. Five (5) of these eighteen (18) lots are apartments located on the corner of St. Clair and 12<sup>th</sup> Streets, both of which I believe are collector streets.

**General Objectives and Characteristics.** (Of R-3A Zone)

The objective in establishing the R-3A Residence Zone is to establish an area within the City in which the primary use of the land is for residential purposes, but in which office buildings and certain other types of uses of a semi-commercial nature may be located. Characteristic of this zone is a greater amount of automobile traffic, greater density, and a wider variety of dwelling types and uses than is characteristic of the R-3 Residence Zone. While office buildings and certain other uses of a semi-commercial nature may be located in the Zone, the *R-3A Zone is essentially residential in character; therefore, all uses must be developed and maintained in harmony with residential uses. Also, while a greater volume of automobile and pedestrian traffic*

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*is characteristic of this Zone, attractive lawns, shrubs, trees, both on the street and around the buildings, is also characteristic of this Zone. -Zoning Ordinance, Page 74 (italics added).*

The apartments on the corner of St. Clair and 12<sup>th</sup> border a residential neighborhood and face a collector street, so it would make sense to have them here. The other thirteen (12) R-3A lots border 17<sup>th</sup> Street on the north, 17<sup>th</sup> Street obviously being an arterial street, and are being used for some sort of office building. Again, this makes sense. However, to drop apartments on a local street, on less than half an acre of land, in the midst of over 90% single-family residences baffles me. Two four-plexes are not needed to buffer anyone from the transitioning land usage.

There are two (2) conditional use permits, one for Theresa Bunker and one for an LDS Church on the corner of 12<sup>th</sup> and Juniper Drive. This area is still zoned R-1.

Five (5) of the lots are zoned C-1 for KIDK and the surrounding businesses, which constitute 1.9% of the current land usage. The final two (2) lots are zoned PT-1 and are the lots now under consideration. These lots constitute a mere .8% of the current land uses. **How is this maintaining land use compatibility?**

**c. Non-Compliance with Section 7-18-4.C**

The second part of the ordinance that is hard to see this plan being in compliance with is parts of Section 7-18-4.C. I have read and reread this section of the ordinance and find myself left needing further explanation. I met with Renée R. Magee in hopes that I could come to an adequate understanding. Ms. Magee was very helpful in explaining what I was unclear on, but I cannot say that I agree with what was explained to me. I will provide here a verbatim copy of parts of this section and highlight those parts I feel need addressing by your body.

C. All development in the PT Zone shall comply with the supplementary regulations established in Article IV of this Zoning Ordinance and the Idaho Falls Subdivision Ordinance, unless the performance standards established in this chapter impose more stringent requirements than the performance standards shall control. The following performance standards shall apply to all uses in the PT Zone.

1. Minimum Size Land Use Changes. All uses shall have a minimum size of at least 30,000 contiguous square feet. A use may have a size less than 30,000 contiguous square feet if the use is contiguous to any existing use for which a permit has been issued under this chapter, and the Commission and City Council find that the use cannot be practicably developed and that the applicant can satisfy the performance standards set forth by use of the improvements, premises and facilities of the contiguous use. The issuance of a permit having less than

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30,000 square feet may be conditioned upon the conveyance, dedication, grant or joint use agreement between the applicant and the owner of the contiguous use as may be required by the Commission and City Council in order to demonstrate the applicant's ability to meet the performance standards set forth herein. The documents of conveyance or agreement shall include a provision that the document of conveyance or agreement shall be irrevocable without the express written consent of the City Council (pg. 107).

2. Connections. All uses shall be designed to share functional connections with adjoining uses. Connections that should be considered include shared access from the street, shared parking and service access, and shared pedestrian circulation between uses (pg. 108).

12. Use of and Access to Streets

a. No uses shall create a traffic or pedestrian safety hazard or generate traffic in excess of the capacity of the public streets serving it or of its own proposed access points to those streets (pg. 109).

**1. Practicability**

Mrs. Smith addressed the issue of practicability very well in her testimony to the Planning Commission on May 15<sup>th</sup>. "A minimum size of 30,000 contiguous square feet is required, but the parcel may be less than 30,000 square feet if three requirements are met. The second requirement, in order to have less square footage, is the "Commission and City Council find that the use cannot be practicably developed." It appears there are other practicable uses for this parcel, e. g. two duplexes. **"Practicable is not necessarily synonymous with the most profitable use possible."** (pg. 4) (emphasis added).

In response, "Karst asked about Ms. Smith's reference to Section 7-18-4(C) regarding the PT Zone. Magee indicated she told Ms. Smith it is to be a finding. In the past staff has indicated to applicants with a parcel of less than 30,000 square feet, if their parcel is adjacent to another parcel previously reviewed under the ordinance, it is acceptable. Magee believes the section is similar to a hardship or variance situation. If it is impracticable for a parcel less than 30,000 square feet to meet the 30,000 square foot minimum, but it meets the other standards and is adjacent to properties approved under the PT process, a finding could be made that it complies with all three requirements. Karst asked if the second standard, that the use cannot be practicably developed, is what ties it in with hardship. Magee answered yes." (pg. 7).

I inquired about the use of a hardship or variance situation in this sense of the word usage, since there is no definition for either in the Ordinance. Ms. Magee explained them to me, and said that if an applicant was to be held to the 30,000 square foot requirement, this parcel could never be developed. I

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understood that, and yet wonder why there is not some conditioning that could happen when the lot is undersized rather than just overlooking the other parts of the Ordinance? (e. g. a reduction in possible usage intensities).

**2. Satisfying Performance Standards ... by use of the improvements, premises, and facilities of the contiguous use**

Next, it talks about the applicant satisfying the performance standards set forth by use of the improvements, premises and facilities of the contiguous use. In what way is the applicant doing any of this? Does this include sharing a fence? Ms. Magee agreed that it is not doing this. Mr. Peterson's plan in no way that I can see shares anything other than that with Aaron's Furniture or the Hospice Office to the south of it. If this is to be complied with, I offer a suggestion that a "grant or joint use agreement between the applicant and the owner of the contiguous use" be required and that residents of the four-plexes use the parking lot entrance to the hospice as proposed in Number 2. Connections, above. "All uses shall be designed to share functional connections with adjoining uses. Connections that should be considered include shared access from the street..." There is already a curb cut between the lots and the existing vinyl fence went up in a day and part of it can be removed in less than that. They could also continue the 8-foot masonry wall that Aaron's has erected and continue that all the way across the northern border of the lot. That is using the improvements, premises and facilities of the contiguous use.

**3. Pedestrian Safety and Possible Compromise**

Ms. Magee reminded me of the stipulation set forth at the rezoning hearing that there be no through access from Lot 1 (southern end) to Lots 2 and 3 (northern end). This stipulation was fought for when trying to keep traffic from the office building from cutting through the lots to 16<sup>th</sup> Street. Essentially, in trying to safeguard our school, we effectively shot ourselves in the foot in this instance. I do assume, however, or at least sincerely hope that there is a way to rescind this stipulation given the change in land usage.

I offer this suggestion in all seriousness as it would remove the safety hazard to pedestrians by putting the burden onto the arterial 17<sup>th</sup> Street rather than on the local 16<sup>th</sup> street. Also, it would truly serve the PT Zone purpose of buffering. There has been a lot of talk of how unsightly the masonry wall is, but in my opinion it is much better than dealing with the traffic and sight of the business, and would hold true for the traffic and sight of these four-plexes. We are asked in the pamphlet, How to Testify at a Public Hearing, to be ready to compromise. This should apply to the applicant as well since compromise, in its very definition, is not one-sided.

**IV. Conclusion/Final Statement**

I am currently researching a few more issues, including the results of a traffic study on 16<sup>th</sup> Street during the last week of school, and I hope to come more fully prepared to the City Council Meeting next week. It has been difficult for me to find the time to put my thoughts together as I care for my five young

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children and other responsibilities, so I ask for your patience for the length and possible lack of coherence of my letter to you.

I strongly believe that to let this land use change go through as it is presented to you at this time would be a grave injustice to our neighborhood, children, and school, and that it is not in full accordance with the City Zoning Ordinance. I, therefore, ask you in all sincerity to study this out carefully, to pay close attention to every detail, and to know that it is in your power to stop something that feels so wrong.

In the pamphlet given out about effectively testifying it instructs me not to plead, but along with my pleading is reason and reasonable proof of non-compliance. I will not leave you wondering what I want you to do. I have said it. I have offered suggestions to put things back into compliance. (1) Decrease the intensity of the use (e.g., two duplexes, or one four-plex), to lessen the traffic and pedestrian hazard and to fit more with the current land usage; or (2) Block the lots off from 16<sup>th</sup> Street, also lessening the traffic and pedestrian hazard and putting it back in better compliance with the purpose of the PT Zone, to use the land and the buildings that occupy it to buffer the current residential usages around it.

Thank you for your time and efforts in our behalf.

Respectfully,

Miriam Rohde

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**Attachment 7**

July 12, 2007

E-Mail from David H. Schoonen

TO: Renée R. Magee, Planning and Building Director  
SUBJECT: DESBOROUGH PLACE LAND USE CHANGE

I object to the proposal to construct two four-plexes on the vacant lot directly south of Theresa Bunker School. The Mayor and City Council need to consider the overall community, the entire City, with regard to the safety and welfare of our school children and youth.

The idea of placing four-plexes next to a school set a bad precedent for Idaho Falls and the State of Idaho. Other states are prohibiting registered pedophiles from residing several hundred yards from schools. Placing four-plexes next to a school gives these predators an opportunity to sneak in next to their intended prey whether they are registered or not.

Any proposal to put four-plexes next to a school is an irresponsible act by the Mayor and Councilmembers with regard to the safety of children, both from the above concern as well as the additional traffic hazard.

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Please present this message at the scheduled meeting for the subject matter.

D. H. Schoonen, Sr.  
522-9060  
1364 12<sup>th</sup> Street  
Idaho Falls, Idaho 83404

I may be on record as David H. or David H. Schoonen.

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**Attachment 8**

July 12, 2007

Honorable Mayor and City Councilmembers,

My son, Liam, is in the 5<sup>th</sup> Grade at Theresa Bunker Elementary School. I oppose the Desborough Place Subdivision Land Use Change Application because the Idaho Falls Planning and Zoning Commission improperly substituted the word "parcel" for the word "use" in its findings of fact and conclusions of law, in breach of the clear language of Idaho Falls Zoning Ordinance § 7-18-4(C), Idaho statutes, and Idaho case law.

As you are aware, this applicant seeks to develop this property in the most dense PT-1 use possible, on a lot which is only two thirds the required size, in a neighborhood of single-family homes, directly across the street from Theresa Bunker Elementary School. He seeks to do so by asking you to grant an exception from Zoning Ordinance § 7-18-4(C), which states that "All uses shall have a minimum size of at least 30,000 square feet." To be granted an exception, the applicant must meet all three of the following requirements:

... A use may have a size less than 30,000 contiguous square feet if [1] the use is contiguous to any existing use for which a permit has been issued under this chapter, and [2] ***the Commission and City Council find that the use cannot be practicably developed*** and [3] that the applicant can satisfy the performance standards set forth by use of the improvements, premises and facilities of the contiguous use [emphasis and numbers added.]

What are the rules for interpreting local laws? Just yesterday, on July 11, 2007, the Idaho Court of Appeals upheld the Idaho Falls Police Department's interpretation of Idaho Falls City Ordinance § 4-3-17. In doing so, the Court reiterated its criteria for the interpretation of the Idaho Falls City Ordinance and also of any Idaho statute. *State of Idaho v. Schmitt*, 2007 WL 1988963 (July 11, 2007).

So, according to the Idaho Court of Appeals, these are the rules.

1. "The literal words of the statute [must] be examined."
2. "The language of the statute is to be given its plain, obvious, and rational meaning."

3. “It is incumbent upon a court to give a statute an interpretation, which will not render it a nullity.”

*Id.*, 2007 WL 1988963 (citations omitted.)

The court’s requirement to focus on “the literal words of the statute” means that it is permissible to ignore the words that are actually written on the page (this would “render [them] a nullity”); or worse, to substitute other words with completely different meanings.

Unfortunately, this is what the Planning and Zoning Commission did – *twice* – once in its Findings of Fact, and again in its Conclusions of Law.

After quoting Zoning Ordinance § 7-18-4 accurately in Paragraph 20, the Commission noted the obvious in Paragraph 21: That this parcel, as the last undeveloped lot on the block, is never going to get any bigger. Then it found, “To require a 30,000 square foot lot minimum will mean this ***parcel*** cannot be practicably developed.”

There are two problems here. The first is that the Commission substituted the word “parcel”, which means “piece of land”, for the Ordinance’s word, “use”, in this case, apartment buildings. They are two completely different things. The second problem is that by substituting the word “parcel”, the Commission rendered the second requirement of the Ordinance a nullity. Now, says the Commission, because the parcel does not, and never can, contain 30,000 square feet, then ipso facto, it can’t be practicably developed. This is circular reasoning. It vitiates the entire second exception requirement of the Zoning Ordinance, as if it never existed. The Commission’s Conclusions of Law say the same thing. At Paragraph 3, the Commission finds, “This parcel cannot be practically [sic] developed if 30,000 square feet is required for a land use change.”

Suppose we, instead, consider “the literal words” of the Zoning Ordinance. We are going to consider the “use”, which in this case is apartment buildings. If the Commission finds that “the use” (apartment buildings) “cannot be practicably developed”, is the commission saying that these apartment buildings cannot be built anywhere but on this lot? Or is it saying that the ONLY use to which this property can be put is these apartment buildings? Is the choice between building these apartments here or not building them anywhere?

If an administrative body does not know what an Ordinance means, it is impossible for it to find compliance with that Ordinance. Two Idaho statutes address this. The first, Idaho Code § 67-6535, states that “it is the intent of the legislature that [local land use decisions] should be founded upon ***sound reason*** and practical application of ***recognized principles of law***”. Thus, in reviewing local land use decisions, the courts are directed to emphasize “***fundamental fairness*** and ***the essentials of reasoned decision-making*** (emphasis added).” The second statute, Idaho Code § 67-5279, provides that a local body’s findings, inferences, conclusions and decisions must be supported by “***substantial evidence***” and may not be “***arbitrary, capricious, or an abuse of discretion.***”

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A decision premised on lack of understanding of the meaning of an Ordinance, or on substituting words which mean different things for the actual language of the Ordinance, cannot possibly justify a finding of compliance with that Ordinance. It goes to the very heart of what an "arbitrary and capricious" decision means. For this reason, I respectfully request that this application be denied.

Sincerely,

Mary Ann Smith  
781 Cedar Ridge Drive  
Idaho Falls, Idaho 83404

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**Attachment 9**

May 3, 2007

E-Mail from Rodger Barlow

TO: Renée R. Magee, Planning and Building Director  
SUBJECT: POSSIBLE ZONE CHANGE ACROSS FROM THERESA BUNKER  
ELEMENTARY

To Whom It May Concern:

I am writing in opposition to the possible zone change to allow two four-plexes to be built across the street from Theresa Bunker Elementary. The street in front of my school is narrow and not a through street. We are already suffering with traffic congestion and parking shortages. If these four-plexes were to be built, there would be a minimum of eight more cars added to the congestion, but probably sixteen cars that would also end up taking all the parking on the street in front of my school. I'm concerned that my school parents will have no place to park when they visit our school.

I am also concerned about the safety of our students as well. Since our street is not a through street and it is narrow, the school buses have a difficult time maneuvering around the parent cars as they drop off their children. Not all my students ride the buses. I worry about the students who walk to school and have to dodge the increased traffic congestion. I am limited in manpower and financial resources to protect these walking students. It makes no sense to add more danger to these students.

I am pleading for the safety of my students and the convenience of my school parents and ask that this proposed zone change be denied. Why can't a small park be built on this site to add beauty to our neighborhood instead of increasing the danger for our children? Please deny this request.

Thank you,

Rodger Barlow, Principal  
Theresa Bunker Elementary  
1385 East 16<sup>th</sup> Street  
Idaho Falls, Idaho 83404  
208-525-7606

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**Attachment 10**

May 8, 2007

Dear Planning and Zoning Commission Members:

We are writing to you in protest of the proposed land use change of Desborough Place, Lots 1 and 2. While we understand the contractor's desire to develop these lots, we feel that the proposed use change is a dangerous one for the school children in our neighborhood. There are a few factors of the proposed change that we would like to address:

A. Density/Traffic Impact

First and foremost, we would like to address the issue of density and the effect this high number of apartment dwellers will have on the current traffic problem on Sixteenth Street. Because 50% of the property is required to be landscaped, the end result is two four-plex apartments and 16 parking spots, on less than an acre. Although there are 16 parking spots for the complex, there is not a maximum occupancy for these apartments, so the possibility that there will be more than 16 cars belonging to apartment residents is quite high. In addition, more parking will be required for guests, moving vehicles, etc. Without a backup parking lot, the additional cars will either be parallel parking on the street or in the Theresa Bunker Teacher's Parking Lot located north of the complex.

Theresa Bunker is allotted a mere 26 parking spaces. This provides one parking space for each classroom and then an additional 5 spaces. There is not sufficient parking for parents, visitors or the four transportation and day care facility services which deliver the school children to and from school. A van driver, Arlitta Longacre from AIT Transportation who was waiting to pick up children at the school in the afternoon on 05/08 said that parking is so poor that she has to show up 20 minutes early to secure a safe spot in front of the school to gather them. She said that if she fails to get a spot, she feels it is very dangerous, trying to load the children into the van as it is parked on the street.

The degree of congestion is significant during morning drop off between 7:30 and 8:00 a.m. and afternoon pick up between 2:00 and 3:00 p.m. Those parents who are unable to secure a parking spot in the Teachers Parking Lot in front of the school must either parallel park along the street and the children must cross 16<sup>th</sup> Street, or the parents must turn at the entrance of Bunker Lane, located directly across from the proposed complex and proceed down the very narrow Bunker Lane. During this very busy time, school buses are arriving simultaneously, delivering children as young as 4 years old. There are limited routes to Theresa Bunker School, and the majority of traffic travels from the intersection of 16<sup>th</sup> and St. Clair west to the school in the morning and from the school to the same 16<sup>th</sup> Street/St. Clair intersection in the afternoon. Although children in the neighborhood are walking down streets such as Terry, Merrett, and Bower, there are also a large number of them traveling from the neighborhood east of the canal on St. Clair, walking

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down St. Clair living amongst them, they may not be vigilant about the situation. We strongly feel that this is not a risk we want young school children in our neighborhood to be exposed to.

B. Options

It has been brought to our attention that two families have approached the property owner, wishing to purchase the property and each build single family homes. Both have been denied by the owner, who has expressed that he needs to make more money from the property than this transaction would provide. While we realize that that would involve a significant zoning change, we feel that this process would be more readily accepted by the neighborhood. Also, neighbors, parents, and school employees have expressed that they would not be offended by a zoning change which would allow single-family twin homes which would be sold, rather than rented to be placed on this land. While we by no means wish to offend anyone by offering this information, we feel that it must be conveyed that the neighborhood does not protest the development of this property, but we strongly oppose the building of apartment complexes or other rental units.

In conclusion, although we know that because these two lots are zoned PT-1 and therefore, the concept of spot zoning does not apply to them, we feel that the effect is the same. We have a beautiful neighborhood comprised of single-family residential homes surrounding a beloved elementary school, and the idea of putting 8 apartment buildings which will increase an already dangerous traffic situation, reduce the existing parking places, and possibly introduce criminal activity into our lives is too much to consider. As of Tuesday, May 8<sup>th</sup>, we have gathered roughly 98 signatures from neighbors, parents, and teachers who strongly feel that this is a horrible thing to do to such a wonderful area. We will spend the next week meeting our neighbors and gathering more. We plead with you to consider the effect this will have on our neighborhood and deny the proposed land use change on 16<sup>th</sup> Street.

Thank you so much for your time.

Sincerely,

Michael and Heather Medema  
1455 East Sixteenth Street  
Idaho Falls, Idaho 83404

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**Attachment 11**

May 9, 2007

E-Mail from Heather Maynes:

TO: Renée R. Magee, Planning and Building Director

To Whom It May Concern:

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This letter is to express a concern that I have in regards to the property located on 16<sup>th</sup> Street across from Theresa Bunker Elementary. It has come to my attention that a request has been submitted to change the land use of this piece of property allowing a multi-family dwelling to be built.

As a parent of five kids (three of which will be attending Theresa Bunker in the fall), this concerns me. The proposed buildings would include 16 new parking spaces. Which means in all reality that will bring a MINIMUM of 16 new cars on that already congested street with very little parking already.

We take the chance of introducing an increase in crime and possible drug use that often comes with multi-family units. This is a chance we SHOULD NOT take. We owe it to our children to safeguard them from these challenges that occur in every community. We need to do our part to keep our schools and the area around them a safe place for our children.

On behalf of me and my family please seriously consider this decision.

Feel free to contact me with any questions.

Heather Maynes  
542-6175

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**Attachment 12**

May 9, 2007

E-Mail from Miriam H. Rohde

TO: Renée R. Magee, Planning and Building Director  
SUBJECT: DESBOROUGH PLACE, LOTS 1 AND 2

Dear Members of the Idaho Falls Planning and Zoning Commission,

My name is Miriam Rohde. I reside at 1346 East 16<sup>th</sup> Street. My property is located directly west of the Desborough Place lots that are being considered for a land use change. I have been working closely with other neighbors, including Heather Medema, to organize the opposition to this land use change. Mrs. Medema has submitted a detailed statement of the neighborhood's opposition and I give her statement my full agreement and support, and will therefore try not to reiterate what she has said in my statement. I have also read Mr. Barlow's email and do the same for it.

We have been circulating a petition in opposition to the submitted plans for the two 4-plexes, with accompanying parking and 50% landscaping on an approximate ½ acre of land. Thus far we have gathered over 90 signatures of neighbors in our immediate area, parents of Bunker school children, those who transport Bunker school children, and those who teach or work in the school. This issue not only affects us as neighbors, but anyone connected with Bunker school. We have the support of Mr. Rodger Barlow, Bunker principal, the Bunker faculty, and the Bunker Parent Teacher Organization. This petition will be submitted at the public hearing on May 15<sup>th</sup>.

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As Mrs. Medema has covered most issues that concern the neighborhood as a whole, I would like to address my comments on a more personal level as one who would be living contiguous to this property. As we moved into this neighborhood 7 years ago we appreciated that we had moved into a place of more permanence. We had lived in apartments for the previous four years and knew the goods and bads of apartment dwelling. Though the two lots next to our house were considered vacant, the properties contained a single-family residence on the southernmost part of each lot facing 17<sup>th</sup> Street. We had hopes that if the property ever changed, that with the school across the street, surely the lots would be developed into single-family residences. You may say it was naivety, but that is what we envisioned. Overall the neighborhood is filled with families setting down some roots and planning to stay awhile. There are not even many rental properties in the vicinity. The transient nature of two four-plexes does not fit with the overall state of our neighborhood. I will be doing more research into the density of use in our area before next Tuesday's Meeting, but to have 8 single family dwellings on a piece of land only an approximate ½ acre is quite a deviation from the standard of our street and neighborhood. (FYI – on a document filed by our appraiser on August 10, 2001 these were some interesting things I found on the form called Uniform Residential Appraisal Report. It has a section called Neighborhood. In a subsection of that called Under Present Land Use % it said: One family 85%; 2-4 family 5%; multi-family (blank); and commercial 10%. The neighborhood was defined as this: North to John Adams Parkway, South to 25<sup>th</sup> Street, East to Woodruff, and West to Holmes. I will attempt to get more recent data before next Tuesday's meeting, but I thought those numbers were telling.)

My question for a developer would be, why two 4-plexes, here in the middle of a single-family home residential area, directly across from an elementary school? Especially since there are so many apartments going up in Idaho Falls and Ammon that are not even being rented out? For example, there are very similar four-plexes across from the District 91 offices near the 4<sup>th</sup> Street post office that have been finished for months now but still have numerous For Rent signs posted.

I am concerned with the buffering that would be between the four-plexes and our home and the four-plexes and the school. We still deal with the wild overgrowth on the lots and especially our fence line, that was supposed to be taken care of by the previous owners no later than last fall, but never was. We appreciate the staff's suggestion to the developer that the large landscaped area should be placed between the four-plexes and our home. It is never comfortable to have the possibility of someone looking into your single story home from an upper-story window. The fence that has existed between our two lots is most likely the original fence from the late 1970's and is a severely inadequate buffer from the potential noise and light generated by this site plan. It is a wooden slat fence that has an inch or more between each slat. It used to have the additional buffer of large lilac bushes and other trees on the neighbor's side, but much of that was bulldozed to make a trench for what I believe was a water line, leaving ripped up bushes and a poor barrier. (The incredible noise and sight of some of the big machinery that came through when they were working on the Aaron's Furniture Store scared my younger children enough that they would not play in our back yard.) I would hope that

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we could count on a more sufficient barrier and more cooperation in meeting the Commission's requirements from this developer. In a slightly different, but related vein, I would hope that any lights on the buildings or those used to light the parking area would not shine directly into my home.

I would not want anything interfering with driver's abilities to see pedestrians as they pull out of the parking area, but I hope that there are proper buffering measures being taken by the developer to shield the school as much as possible. As Mrs. Medema stated there is such a danger, especially for the school children, when it comes to cars and pedestrians on this street. Our greatest desire is to keep our children safe. We do what we can as far as teaching them to be mindful of their surroundings, but they cannot control the awareness of someone behind the wheel.

Some questions I have not been able to ask, but I would like an answer to are:

1. Are these apartments regular housing or low income housing? (There has been concerns raised about the quality of similar structures by the same developer.)
2. Will there be an on-site landlord?
3. Will the landlord (on-site or not) play an active role in the maintenance of the structures, parking lot, and landscaping? Will they be available to hear complaints about noise, lighting, traffic, parking, etc. and be willing to do something about it?

As Mrs. Medema mentioned there have been people interested in buying these lots to build a single-family home on. Is this not an option? When the property was up for rezoning I seem to remember only being given two real choices. I remember being asked would I rather have it commercial or multi-family residential, it seemed that single-family residential was out of the question. As I've read over the Ordinance (yes, all 150 pages of it), though I do not claim to understand it all, I have come to realize that we should have fought the rezoning as hard as we are trying to fight this land use change. In the Ordinance, it states that if 20% of residents within 300 feet of the property opposed the rezoning then it would have to pass by a  $\frac{1}{2} + 1$  vote of the City Council. We have so many more than 20% of the nearby residents who have voiced their concern by signing our petition. But as the rezoning hearing seemed to be more about the southern part of the property (which is not in question at this hearing) and it seemed that we only had the two choices it feels like it was somehow "slipped by" us. Is there something we can do now that we are better informed?

Thank you for your time and attention to this matter. I appreciate your efforts in behalf of the citizens of Idaho Falls. I apologize for what may seem like rambling, but my concerns are many and varied and have the most to do with the safety of my children, my neighbors' children, and the school they attend; the cohesiveness and unity of our neighborhood; the security and safety of my home and the ability of my family to enjoy all aspects of our home and

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property. I feel assured that most, if not all of you, feel the same about your own neighborhoods and homes.

Again, I thank you and look forward to attending the meeting next Tuesday.

Sincerely,

Miriam H. Rohde

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**Attachment 13**

E-Mail from Robert J. Gehrke

City of Idaho Falls  
City Planning and Building Division

Dear Ms. Magee:

I understand that there is a public hearing addressing the zoning of a vacant lot directly south of Theresa Bunker School. I would like to express my displeasure with the proposal to build two four-plexes at this location!

I was surprised late last year and early this year when I watched the construction of the retail store, Aaron's Furniture, just south of Theresa Bunker School. I was baffled by the large unsightly concrete wall surrounding most of the rear of the building, and I was not aware of the facility being built till I heard their advertisement on TV. I now assume that the wall is to isolate the 17<sup>th</sup> Street business district from our residential neighborhood. I still thought that this wall was unsightly for the adjacent neighbors on 16<sup>th</sup> Street and totally inappropriate. At least the traffic for Aaron's will be only from 17<sup>th</sup> Street.

Today, I received a flier regarding the building of two four-plex apartments alongside the rear of Aaron's store but with their entrance on 16<sup>th</sup> Street. This is the same entry street for Theresa Bunker School. These four-plex buildings do not belong in this residential neighborhood and could be a source of trouble for the school beyond that of potential traffic problems for the neighbors and decreased property values.

For example, the apartment building on the corner of 12<sup>th</sup> Street and St. Clair has been and continues to be one of the least attractive properties in our neighborhood. It is poorly kept by the landlord and the renters alike. I have lived in this neighborhood for more than 40 years. Each of us homeowners on Merrett Drive have been proud of our neighborhood and have made continuing efforts to keep up and improve our property. The home on the northwest corner of Merrett Drive and 12<sup>th</sup> Street is an excellent example of the pride taken to keep up our homes. This home was previously owned by an elderly man who liked to do his own construction but made a mess of it causing bad feelings and anger in the neighborhood. Because of his age we were more than reasonably tolerant! Fortunately, the new owners have turned this eyesore of a house into a beautiful home the envy of the neighborhood.

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Please do not cave in to the developers who only see dollar signs and after they have made their money are gone from the neighborhood.

Sincerely,

Robert J. Gehrke  
1245 Merrett Drive  
Idaho Falls, Idaho 83404

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**Attachment 14**

E-Mail from Tiffany Benedict

TO: Renée R. Magee, Planning and Building Director  
SUBJECT: DEVELOPMENT CONCERNS

To Whom It May Concern:

As a parent of a student attending Theresa Bunker Elementary I am concerned about the proposed development plans for the property on 16<sup>th</sup> Street directly across from the school. I understand that the developers would like to build two four-plexes on this property. Although I do not fault the developers for wanting to build something that will be a financial investment, I do feel it necessary to realize that this property is unique because of its location. The parking by Theresa Bunker Elementary is already inadequate and I am concerned that the additional traffic that would come as a result of the duplexes would be a hazard to the children coming and going from school each day. I would truly appreciate any consideration given to my concerns as the plans for this property are decided. Thank you for your time.

Sincerely,

Tiffany Benedict

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**Attachment 15**

May 15, 2007

Dear Planning and Zoning Commission Members,

The current site plan for the development of two four-plexes directly across the street from Theresa Bunker Elementary School, on land currently zoned PT-1, appears to violate two sections of the Idaho Falls Zoning Ordinance. Therefore, I respectfully request that this proposed land use change be denied.

1. First, this property does not meet the second of three requirements to § 7-18-4 (C) of the Idaho Falls Zoning Ordinance.

§ 7-18-4 (C) states that all PT uses “shall have a minimum size of at least 30,000 square feet,” unless three requirements are met. The first requirement, “the use is contiguous to any existing use for which a permit has

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been issued under this chapter,” has been met because the contiguous property has been rezoned to accommodate a furniture store.

The second requirement is that **“the Commission and City Council find that the use cannot be practicably developed.”** I do not think that the developer can argue, or that a finding has been made by the Commission *and* City Council in this matter, that “the use cannot be practicably developed.” Uses which are different from the currently proposed use are certainly practicable on this lot. “Practicable” is not synonymous with “the most profitable possible.”

The third requirement, that “the applicant can satisfy the performance standards set forth by use of the improvements, premises, and facilities of the contiguous use” is vague, but I assume it means that the applicant must meet the rest of the requirements for PT-1. I do not think that this Site Plan meets the requirements of § 7-18-4 (C) 12, for the reasons below.

2. § 7-18-4 (C) 12, Use of and Access to Streets, states, **“No uses shall create a traffic or pedestrian safety hazard.”**

Theresa Bunker Elementary is unique in District 91 in that it uses a Continuous Progress Curriculum Model of Instruction; placing each student at his or her level in math and reading. Over fifty students, including my son, are attending Bunker School on a waiver. This is nearly a fifth of the entire Bunker student population. All “wavered” students must provide their own transportation to and from school each morning and afternoon, adding to the already heavy traffic around the school.

Because Bunker School has only 26 parking spaces, the south side of 16<sup>th</sup> Street is completely full with parked cars, morning and afternoon from Terry Drive to the east all the way to Bower Drive at the west side of the school. The streets and sidewalks on 16<sup>th</sup> Street are filled with children walking and riding to school. Students regularly cross 16<sup>th</sup> Street along the whole length of 16<sup>th</sup> Street, which is only 35 feet wide, to get to school.

The most prized parking spots at Bunker School are on the north side of 16<sup>th</sup> Street, directly across from the proposed development. These spots never empty during the whole school day. As a result, cars are backing in and out of them all day long, while cars, buses and children on bicycles pass behind them. The on-street parking across from them to the south is always full, too. Adding more cars from the proposed development traveling in a perpendicular direction to this mix is a recipe for disaster.

Any car leaving the proposed development in the morning must exit the parking lot between the long line of parked cars on the south side of 16<sup>th</sup> Street, then take an immediate right or left onto heavy traffic on 16<sup>th</sup> Street. In the morning and afternoon, there is a constant double row of cars dropping children off and picking children up in Bunker Lane, immediately to the northwest of the proposed development to make a left turn onto 16<sup>th</sup> Street.

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Finally, if you look at your site plan and imagine cars parked all along the south side of 16<sup>th</sup> Street, you will see that even though the site plan complies technically with Zoning Ordinance § 4-7, Clear View of Intersecting Streets and Ways, there is a huge safety problem that has not been addressed which could easily result in the death of one or more children. Cars exiting the development have 15 feet of visibility ahead of them, between the end of the berm on the west and the sidewalk on the north, to look up and down the street, checking for traffic. After they proceed over the sidewalk, however, the row of parked cars prevents them from being able to see children in the street. They would then have to inch forward slowly over the sidewalk, checking traffic on both sides, proceeding carefully between the parked cars on the south side of 16<sup>th</sup> Street, to enter the heavy traffic flow to take a left or a right on 16<sup>th</sup> Street (providing that a car leaving the 16<sup>th</sup> Street parking lot did not back into them first.) If they are not careful, they could easily run over a child trying to cross 16<sup>th</sup> Street.

The Zoning Ordinance requires schools, at § 4-26 (B) (1), “to harmonize ... with the surrounding area, so as to produce sound, stable residential neighborhoods.” Thus under § 4-26 (B) (3) (e), “Adequate ingress and egress shall be provided for both vehicles and pedestrians which the ... school is intended to serve.” Bunker School has insufficient parking as it is. The proposed site plan converts an inconvenient situation into a dangerous situation.

For these reasons, the fewer cars exiting the development, the safer for the children. The current site plan proposes the most dense, intensive use possible on these tiny PT-1 lots. Other, less intensive uses, such as two duplexes, would be more consistent with the character of the neighborhood, cut potential traffic problems in half, and still provide the developer with the multi-family use he desires. For these reasons, I respectfully request that this proposed land use change be denied.

Thank you very much for your service to our community. I appreciate the time and effort that you spend in considering these difficult issues.

Sincerely,

s/ Mary Ann Smith  
Mary Ann Smith  
781 Cedar Ridge Drive  
Idaho Falls, Idaho 83404

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**Attachment 16**

We, the undersigned do not support the proposed land use change in the Desborough Place Subdivision Block 1, Lots 1 and 2 with plans to build two 4-plexes with accompanying parking and landscaping on an approximately ½ acre of land.

<b><u>Name</u></b>	<b><u>Address</u></b>
J. Wall	1145 East 16 <sup>th</sup> Street
Melinda Cebull	933 Limestone Drive

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<b><u>Name</u></b>	<b><u>Address</u></b>
Amy Fisher	1643 Shady Pines Drive
Yesenia Luna	1571 Stanger Drive
Janiel Erb	4400 Natalie
Jennifer Olsen	1541 Maricopa Street
Michael Reed	1275 Terry Drive
Jared P. Smith	4682 East 113 North
Brenda Hare	1340 Tower Street
Jana Saari	1365 Merrett
Joshua Dubreuil	1565 Bower Drive
Jennifer Dubreuil	1565 Bower Drive
Shanna Hardman	1085 Orlin Drive
Laura Tomchak	1180 Merrett Drive
Jeanne Mattson	965 Orlin Drive
Jeanie Cousin	960 Terry Drive
Judd Shaw	1515 Merrett Drive
David B. Shaw	1485 Merrett Drive
Kayleen Shaw	1485 Merrett Drive
Maneselo Santelan	1320 East 16 <sup>th</sup> Street
Tiffany M. Benedict	1625 East 12 <sup>th</sup> Street
Cara Crystal	1300 Merrett Drive
Adam Crystal	1300 Merrett Drive
Heather Priest	1075 Stanger Avenue
Ann Broughton	1270 First Street
Holly Reed	1275 Terry Drive
Bert Earley	1452 Terry Drive
Allen Perkins	1558 Terry Drive
Michelle Voisin	627 Hoopes Avenue
Cindy Bell	2111 Balboa Drive
Rodney A. Gartrell	2340 Richards Avenue
Henry Ng	1260 Terry Drive
JoAnne Berrand	3863 Clearfield
Cathy Duckwitz	1959 Ririe Circle
Margaret Albiston	1730 Delmar Drive
Carlos Guererro	1245 Irving Street
Nancy S. Hart	1316 Homer Avenue
Jana K. Mitchell	646 East 16 <sup>th</sup> Street
Jeannie L. Martinez	2011 Ririe Circle
Charles Westoner	333 Delbert Drive
Kathleen Church	1225 Merrett Drive
Mickey Towers	1335 Bower Drive
Megan M. Towers	1350 Bower Drive
Phillicia Peterson	1555 Juniper Drive
Kassie Ruberry	2144 East 113 North
Debbie Rumsey	969 East Elva
Marci Call	3108 Chasewood No. 2 – Ammon
Mariebel Cananza	1027 Jefferson Avenue
Bobbie Opfar	400 Butterfly Drive
Gina Vazquez	425 Holbrook
Clancy Passey	453 10 <sup>th</sup> Street

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<b><u>Name</u></b>	<b><u>Address</u></b>
Annette G. Simpson	1343 East 16 <sup>th</sup> Street
Carol Scarborough	1565 Merrett Drive
Dean Johnston	1535 Merrett Drive
Mark J. Hiatt	1460 Merrett Drive
Kathleen Hiatt	1460 Merrett Drive
Jason Bernert	1560 Merritt Drive
Georgina Favela	1320 East 16 <sup>th</sup> Street
Sylvia E. Gomez	1560 Merrett Drive
John W. Farren Jr.	1332 East 16 <sup>th</sup> Street
Heather Medema	1455 East 16 <sup>th</sup> Street
Michael Medema	1455 East 16 <sup>th</sup> Street
Marsha Jones	1454 East 16 <sup>th</sup> Street
Richard Jones	1454 East 16 <sup>th</sup> Street
Edger Hoffman	1544 St. Clair Road
Roger Hoffman	1544 St. Clair Road
Jan Blackridge	7524 St. Clair Road
John Pitman	1468 East 16 <sup>th</sup> Street
Carol Pitman	1468 East 16 <sup>th</sup> Street
Betsy Monson	1386 St. Clair Road
Melinda Desmond	1415 Fairmont Drive
Travis Hathaway	1220 Nixon
Aimee A. Barfuss	280 East 18 <sup>th</sup> Street
Erica Skidmore	1575 Juniper
Lisa Patterson	3101 John Adams
Melissa Strahle	1516 Terry
Dan Dalton	461 East 16 <sup>th</sup> Street
Arlitta Longacre	190 Monterey
Mary Ann H. Smith	781 Cedar Ridge Drive
Jodi Gladu	1467 Three Fountains Drive
Christina Gallaway	1530 South Woodruff Avenue
Veronica Santillani	2235 Hoopes, Apartment G161
Jeni Beseris	1690 June Avenue
Bethany Kitt	1355 South Woodruff Avenue
Paul Manning	1557 Terry Drive
Penny Manning	1557 Terry Drive
Trenna LePage	1495 Terry Drive
Joel Hubbell	1494 Terry Drive
Letti Colvin	1385 Terry Drive
Michael Hansen	1363 Terry Drive
Joseph P. Ruschetti	1346 Terry Drive
Patricia A. Ruschetti	1346 Terry Drive
Kaye Zorn	1366 Terry Drive
Travis Hackett	1384 Terry Drive
Nick Bowman	205 Terry Drive
Mave A. Potelunas	1453 Terry Drive
Jack Stokes	1473 Terry Drive
Roland Clark	1537 Terry Drive
Marva Clark	1537 Terry Drive
Normajean Kontes	1495 East 16 <sup>th</sup> Street

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<b><u>Name</u></b>	<b><u>Address</u></b>
Darby Heyrend	2318 Malibu Drive
Allison Willarson	954 Syringa Drive
Britton Taylor	171 Hummingbird Lane – Shelley
George Wilkerson	921 Safstrom Drive
Kathy Smith	4173 Frontier Drive
Linda Hole	2408 Briarcliff
Lorlei Smith	980 Terry Drive
Carma A. Hobbs	729 Leona Circle
Jack Klein	201 Sunset Drive
Margaret Morgan	1536 Rosewood Circle
Nancy J. Winterbottom	1556 South Woodruff Avenue
Adam Crystal	1300 Merrett
Irel Church	1225 Merrett
Brett Haddon	1507 Stanger Drive
Susan Hardy	1200 Bower Drive
Richard Hardy	1200 Bower Drive
Carol Schuette	2957 Druvor Street
Stacy Chandler	987 Ada Avenue
Gary Beckman	1245 Bower Drive
Sandy Beckman	12456 Bower Drive
Trina Whitbeck	2695 Tipperary Lane
Linda Way	2239 Brandon
J. Croft	1370 Bower Drive
Larry Croft	1370 Bower Drive
Jill Boyd	1330 Bower Drive
Mike Boyd	1330 Bower Drive
Faye Wall	813 Linden Place
Michelle Graham	6343 South Holmes Avenue
Joe Towers	1350 Bower Drive
Jeffrey Towers	1335 Bower Drive
Neil Jardine	1380 Bower Drive
Neta Hansen	1385 Bower Drive
Jackie Croft	1370 Bower Drive
Jennifer Cardon	1280 Bower Drive
Nathan Rowe	1260 Bower Drive
Sandra Rowe	1260 Bower Drive
Patty Jo Moore	1230 Bower Drive
Steven Wade Baxter	1260 Bower Drive
Miriam H. Rohde	1346 East 16 <sup>th</sup> Street
Nancy J. Moss	455 Tryall Circle
Margaret B. Meacham	791 West 66 <sup>th</sup> South
Cynthia Christensen	2215 Baltic Avenue
Heather Maynes	2409 Briarcliff Avenue
Jena Wahlquist	2386 Richards Avenue
Jose Favela	1320 East 16 <sup>th</sup> Street
Christopher Kelly	1315 East 16 <sup>th</sup> Street
Jane Bell	1293 East 16 <sup>th</sup> Street
Vonnie Coombs	1235 Terry Drive
Robert Coombs	1235 Terry Drive

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<b><u>Name</u></b>	<b><u>Address</u></b>
James L. Hunter	1438 East 16 <sup>th</sup> Street
K. Smith	980 Terry Drive
David Reed	1160 Homer Avenue
Debbie Hunter	1438 East 16 <sup>th</sup> Street
Kathy Hampton	1302 12 <sup>th</sup> Street
Malinda Ball	1295 Tower Street
Marilyn Nackos	1536 Terry Drive
Karen Nebeker	1305 Merrett Drive
Jason S. Benedict	1625 12 <sup>th</sup> Street
Sheila Nadauld	3556 Grove Lane
Valerie Jensen	3143 Hartert Drive
Carlos Guererro	1245 Irving Street
Caroline Edward	2205 Monticello Drive
Darrell Andrus	1515 Terry Drive
J. Croft	1370 Bower Drive
Kaylee Ogden	1911 East 17 <sup>th</sup> Street, No. 50
Glenn Whittle	1425 East 16 <sup>th</sup> Street
Troy A. Posio	1530 Merrett Drive

- Site Photo of empty lots
  - Site Photo of empty apartments
  - Site Photo of traffic at Theresa Bunker Elementary School
  - Site Photo of parking at Theresa Bunker Elementary School
  - Site Photo of traffic around Theresa Bunker Elementary School
  - Site Photo of traffic around Theresa Bunker Elementary School
  - Site Photo of traffic congestion on Bunker Lane
  - Site Photo of traffic congestion on Bunker Lane
  - Site Photo of traffic and parking on East 16<sup>th</sup> Street
  - Site Photo of parking along Bunker Lane
  - Site Photo of parking on East 16<sup>th</sup> Street
  - Site Photo of parent and child crossing East 16<sup>th</sup> Street
  - Site Photo of pick up and drop off on Bunker Lane
  - Site Photo of pick up and drop off on Bunker Lane
  - Site Photo of parking along East 16<sup>th</sup> Street
  - Site Photo of pick up and drop off on Bunker Lane
  - Site Photo of parking along East 16<sup>th</sup> Street
  - Site Photo of vacant lots looking across to Theresa Bunker Elementary School
  - Site Photo of parking in front of vacant lots on East 16<sup>th</sup> Street
  - Site Photo of pick up and drop off on Bunker Lane
  - Site Photo of apartment building
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**Attachment 17**

Lots 1 and 2, Block 1, Desborough Place  
July 12, 2007  
City Council Hearing

Telephone Calls

7-10-07

**JULY 12, 2007**

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Neil Jardine  
1380 Bower  
Idaho Falls, Idaho

Mr. Jardine stated it is not good to have the 4-plex units near the school and suggested a better use of the lots would be a parking lot for the school.

Ole Smith  
1285 Susanne  
Idaho Falls, Idaho

Ms. Smith is opposed to the construction of 4-plexes across from the Theresa Bunker Elementary School.

Everett Goldman  
1225 Susanne Avenue  
Idaho Falls, Idaho

Mr. Goldman said the area is already a bottleneck for traffic and is not a through street. Additional homes are not needed and the "apartments" would bring in elements not desirable to the neighborhood.

7-11-07

Wanda Butt  
1320 Susanne  
Idaho Falls, Idaho

Ms. Butt is opposed to the construction of 4-plexes due to the additional amount of traffic on 16<sup>th</sup>, how this type of housing will negatively impact a predominantly single-family neighborhood, and the type and care of animals that are usually part of this type of development.

Daryl Andrus  
1515 Terry Drive  
Idaho Falls, Idaho

Mr. Andrus was opposed to apartments as there are too many in too small a space. He also stated that this will increase traffic too much.

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The Planning and Building Director explained, further, that the parcel of land under consideration is zoned PT-1, which means high density residential. High density residential is defined in the Planned Transition Zone as two or more attached dwelling units. In 1987, this parcel was zoned PT-2. This allowed for commercial use. In 2006, the commercial use provision was removed from this parcel of land under consideration. This parcel of land was eligible for multi-family use since 1987. Most of the land uses north of 16<sup>th</sup> Street are single-family residential. There are a few multi-family residences mixed in this residential neighborhood. The Planning and Building Director explained that a site plan was submitted and lot coverage was re-examined. Staff found that lot coverage was at 49.7%, which is just below the maximum of 50%. The Planning Commission recommended that the lighting be shielded and directed downward. Neighboring properties will not have more lighting than is required by the Ordinance. The parcel of land under consideration is a

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residential use and will not be sharing access with Aaron's Furniture as it is a commercial use. The Planning and Building Director stated that the parcel of land does not have 30,000 square feet. It has 19,475 square feet. That means it does not meet the standard for the minimum lot size. There are three requirements in the Ordinance, if it is a lot less than 30,000 square feet. One of them is that it be contiguous to other lots that were developed under the Planned Transition Zone. The land under consideration is contiguous to two other parcels of Planned Transition Zone. The second requirement is that performance standards may be met with the use of improvements on contiguous parcels; however, this cannot be done here as it is a residential use. Planning Commission felt that it was best to not share facilities and access points as the neighboring lands were commercial. The third issue is that the land be practicably developed. If this parcel is held to the 30,000 square foot minimum standard, would it be able to be practicably developed. The Planning and Building Director gave a brief description of obstacles that would prevent it from being developed in the PT Zone if it were held to the 30,000 square foot standard. The Planning and Building Director then explained that the 8 dwelling units may generate approximately 7 vehicles leaving this apartment complex. These would be 7 forward-moving vehicles onto 16<sup>th</sup> Street, which would be a safer situation than 4 single-family attached dwelling units in which the vehicles would back out into that same area during the same hour. The Planning and Building Director then submitted the Findings of Fact and Conclusions of Law from the Planning Commission as follows:

**BEFORE THE IDAHO FALLS PLANNING COMMISSION**

IN RE:	)	
Land Use Change to Construct Two	)	FINDINGS OF FACT,
Four-Plexes – Lots 1 and 2, Block 1	)	CONCLUSIONS OF LAW,
Desborough Place, Division No. 1	)	DECISION

The above-entitled request for approval of land use change in the Planned Transition Zone came before the Planning Commission of Idaho Falls on May 15, 2007, and testimony and evidence was presented at such time by the applicant, staff, and other interested parties.

NOW, THEREFORE, the Planning Commission makes the following Findings of Fact, Conclusions of Law, and Decision.

**FINDINGS OF FACT**

1. The applicant, Brian Peterson, is the owner of Lots 1 and 2, Block 1, Desborough Place, Division No. 1.
2. The applicant proposes to construct two four-plexes on Lot 1 and provide parking, storm water retention, and landscaping on Lot 1. The parking lot which straddles Lot 1 and 2 will contain 16 parking spaces or 2 spaces per dwelling unit. The subject property is presently vacant.
3. The affidavit of Legal Interest submitted with the application is executed by Brian Peterson.
4. Legal notices of the Planning Commission public hearing were printed in a newspaper of general circulation on April 29, 2007, and May 6, 2007. In

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addition, a display advertisement to announce the public hearings to be considered by the Planning Commission was published in the newspaper of general circulation on May 8, 2007.

5. The Planning and Building Division mailed notice of a public hearing to be held by the Planning Commission on a permit for a land use change to construct four-plexes to property owners within 300 feet of Lots 1 and 2, Block 1, Desborough Place, Division No. 1, on April 25, 2007. Notices were posted on the subject property at least seven days prior to the public hearing.

6. The above described parcel is within the corporate limits of the City of Idaho Falls and parcel is zoned PT-1, High Density Residential.

7. The parcels to the south and east of the subject property are zoned PT-2, Commercial and High Density Residential, with underlying zones of R-1 and R-3A. The properties to the north and west are zoned R-1, Single-Family Residential.

8. This area is designated as Commercial in the Land Use Plan, *Policy Statements, Idaho Falls Comprehensive Plan*. This designation is immediately adjacent to Low Density Residential and near Planned Transition designation on 17<sup>th</sup> Street.

9. A site plan is required for approval of a land use change under Section 7-18-8 of the Zoning Ordinance and was submitted with the application on March 30, 2007. The site plan was modified in response to staff review and resubmitted on the following dates: April 18, 2007; April 30, 2007, May 10, 2007, May 11, 2007.

10. Under Section 7-18-1 of the Zoning Ordinance, the purpose of the Planned Transition Zone is to:

... to maintain land use compatibility and enhance the functioning of arterial streets by requiring conformity to the performance standards set forth herein with respect to land use changes in areas experiencing transition.

11. Section 7-18-4 sets out the performance standards for the Planned Transition Zone which are to be met for approval of a land use change within the PT Zone.

12. The site was zoned R-1 until 1987 when the subject property was included in PT Zone approved along 17<sup>th</sup> Street. In 1987, the property was zoned PT-2 (High Density Residential and Commercial) with an underlying zone of R-1.

13. In July, 2006, the parcel was rezoned to PT-1 which permits "all high density residential uses and accessory buildings and public utilities used in conjunction therewith".

14. The site contains 19,475 square feet.

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15. The site was a portion of a parcel which contained 42,365 square feet until July, 2006.

16. The original parcel of 42,365 square feet was approval for a land use change under PT-2 Zoning for an office and associated parking on September 22, 2005. In July, 2006, when this subject parcel was rezoned to PT-1, a final plat was approved by the Commission and Council for three lots entitled Desborough Place, Division No. 1. The office and associated parking are located on Lot 3, Block 1, Desborough Place, Division No. 1 which is zoned PT-2. Since the land use on Lot 3 was an office building, one of the conditions of approval for the final plat was no access be allowed to Lot 3, which has frontage on 17<sup>th</sup> Street.

17. Immediately east of this site is Aaron's Furniture, a land use change which was approved under the PT-2 Zone on July 13, 2006. North of the subject property and across 16<sup>th</sup> Street is Theresa Bunker Elementary School. West of the site are single-family homes, and south is the office building on Desborough Place, Lot 3.

18. The street access and parking for Theresa Bunker Elementary School are north of the subject property.

19. This subject property is contiguous to previously approved requests for land use changes under the Planned Transition Zone. The first, in 2005, was an office building on the present Lot 3, Block 1, Desborough Place, Division No. 1, and is addressed 1379 East 17<sup>th</sup> Street. The second request, in 2006, was for Aaron's Furniture addressed as 1385 East 17<sup>th</sup> Street.

20. The Planned Transition Zone requires a minimum size of 30,000 square feet for land use changes unless three conditions are fulfilled:

Minimum Size Land Use Changes. All uses shall have a minimum size of at least 30,000 contiguous square feet. A use may have a size less than 30,000 contiguous square feet if the use is contiguous to an existing use for which a permit has been issued under this chapter, and the Commission and City Council find that the use cannot be practicably developed and that the applicant can satisfy the performance standards set forth by use of the improvements, premises and facilities of the contiguous use. The issuance of a permit having less than 30,000 square feet may be conditioned upon the conveyance, dedication, grant or joint use agreement between the applicant and the owner of the contiguous use as may be required by the Commission and City Council in order to demonstrate the applicant's ability to meet the performance standards set forth herein. The documents of conveyance or agreement shall include a provision that the document of conveyance or agreement shall be irrevocable without the express consent of the City Council.

21. Any land use change under the PT provisions requires a minimum size of at least 30,000 square feet. Unless this parcel is utilized by a contiguous parcel(s), it will not have a 30,000 square foot minimum. Aaron's Furniture is almost entirely separated from this parcel by the wall of its building. It is a

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new development which meets the PT standards without the use of this lot; this parcel is not attractive as customer parking and it is unlikely an addition to Aaron's Furniture building will be needed in the foreseeable future. The office building to the south meets the standards of the PT provisions, including required parking, without the use of this parcel. It is unlikely the single-family home to the west will acquire this parcel. To require a 30,000 square lot minimum will mean this parcel cannot be practicably developed.

22. The *Trip Generation Manual*, 6<sup>th</sup> Edition, Institute of Transportation Engineers, estimates the a.m. peak hour traffic (7:00 a.m. to 9:00 a.m.) will be 4 to 7 trips for eight low-rise apartments (one to two stories).

23. The one observation completed by City Planning Staff on May 14, 2007, at Daggett Heights, a development of 32 four-plex buildings, found 43 trips in the half-hour between 7:43 a.m. and 8:17 a.m. At 7:35 a.m., prior to the count of vehicle trips, there were 93 vehicles parked in the parking lots and on streets at Daggett Heights. This is a ratio of 43 trips to 93 vehicles or slightly less than 0.5, which indicates 7 to 8 morning peak hour vehicle trips may be anticipated with 16 parked cars at the applicant's complex of two four-plexes.

24. Cars exiting the proposed parking lot of the applicant will be traveling forward onto 16<sup>th</sup> Street. Forward travel provides more visibility when the street is busy with vehicles coming to and from the school, when children are being dropped off, when children are on sidewalks, and when buses are entering the school.

25. The vehicles parked at Theresa Bunker Elementary School parking lot back into 16<sup>th</sup> Street. The vehicles parked on-site at the adjacent single-family homes on 16<sup>th</sup> Street back in to the public street.

26. Under Section 4.23.N of the Zoning Ordinance, no parking area, except those serving single-family homes, shall create a situation which requires vehicles to back onto a public street. The situation of Theresa Bunker predates the Ordinance provision.

27. Theresa Bunker Elementary School has 26 parking spaces for a staff of 44 employees. Tower Street and Bunker Lane as well as 16<sup>th</sup> Street are used for student drop-off and visitor parking. The subject parcel was being used by visitors for school parking without an approved land use change.

28. Theresa Bunker Elementary School is a magnet school and almost a fifth of the total students come from outside the immediate vicinity of the school. Students arrive at the school as early as 7:15 a.m. and many come between 7:15 a.m. to 7:45 a.m.

29. There is a traffic issue at Theresa Bunker Elementary School. The traffic issue is a result of an existing situation and has a negative impact on the applicant's parcel.

30. The lot coverage on the site plan is 49.7%; therefore, the site plan meets the lot coverage requirements of the ordinance.

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31. The single-family home to the west of this proposal for two four-plexes will be buffered by the location of the four-plexes on the east side of the subject parcel, 46 feet of landscaping adjacent to the west property line, and a 6-foot high solid fence. There will also be a berm placed on the northwest portion of the property to buffer the parking area from those homes west and northwest of the site.
32. The exterior lighting will be located on the front of the four-plexes, will be directed downward, and will not reach more than 0.5 foot candles on the adjacent residential property.
33. Shared access with Lot 3 was eliminated by action of Commission and Council with approval of the final plat containing this parcel. This elimination was due to anticipated residential uses on this parcel and commercial uses to the east and south.
34. Two or more attached dwelling units are permitted in this zone and have been since 1987.
35. The majority of the Commission find no nuisances or hazards relating to noise, glare, odors, hazardous materials, emergency access, or intensive traffic are anticipated on a routine basis with this proposed development.
36. An on-site storm water retention pond has been proposed on the site and the City Engineer has reviewed the calculations.
37. The height on Aaron's Furniture is 24 feet. The height of the four-plexes will not exceed 22 feet.
38. Seven peak hour trips will not generate need for additional right-of-way on 16<sup>th</sup> Street.
39. Sidewalk on the property will be constructed with construction of four-plexes. There is no current sidewalk at this location.
40. Two parking spaces per dwelling unit, the standard required by the Zoning Ordinance, will be provided.
41. Handicapped spaces will be provided in parking lot.
42. There will be no permanent signs on the project.
43. Any development of the site, such as duplexes, will create construction traffic on 16<sup>th</sup> Street and will create additional traffic entering and exiting the site. Development as attached homes with garages will create a situation in which vehicles of the occupants back into the street immediately south of the Theresa Bunker Elementary School.

**CONCLUSIONS OF LAW**

1. The site plan meets the performance criteria of Section 7-18-4 as conditioned.

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2. The subject property is contiguous to two other properties which have been approved under the Planned Transition Zone.
3. This parcel cannot be practically developed if 30,000 square feet is required for a land use change.
4. Due to the different nature of the land uses, residential on the subject property and commercial on the adjacent properties zoned Planned Transition, shared facilities will create the potential for conflicts.
5. The applicant is able to meet the performance standards under Section 7-18-4 without sharing improvements and facilities with Aaron's Furniture and the office building to the immediate south of the subject parcel.

DECISION

NOW, THEREFORE, in consideration of the foregoing Findings of Fact and Conclusions of Law, in a 5 to 3 vote:

1. Finds the parcel is eligible as a land use change although it is 19,475 square feet. It is adjacent to parcels previously reviewed under the Planned Transition Zone, it cannot be practically developed if held to the 30,000 square foot standard, and it meets the performance standards of Section 7-18-4 without sharing improvements; and,
2. Recommends approval to the Mayor and Council of the site plan with the conditions:
  - A. The light fixtures be shielded and directed downward;
  - B. A solid fence six feet in height be constructed on the west side of the subject parcel;
  - C. A berm at least three feet in height with landscaping on top of the berm be constructed on the northwest corner on a northeast to southwest axis;
  - D. Shutters be added to the exterior in accordance with the drawings presented;
  - E. A brick wainscot veneer be added to the level of the windows on the front and sides of both buildings; and,
  - F. Sod and landscaping be complete prior to certificate of occupancy being issued.

DATED this 10<sup>th</sup> day of July, 2007.

ATTEST:

s/ Val Carpenter  
Val Carpenter, Secretary

s/ Brent Dixon  
Brent Dixon, Chair

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Councilmember Hally questioned whether it was the opinion of the Planning and Building Director if the parking situation at this school was more dangerous than at other schools. The Planning and Building Director stated that the cars from Theresa Bunker Elementary School back out onto 16<sup>th</sup> Street. This creates a situation that many of the schools in School District 91 have moved away from. She explained, further, that the parking area for the four-plexes would allow for forward-moving vehicles, rather than backing out onto 16<sup>th</sup> Street.

Councilmember Hardcastle requested know where the fencing would be located. The Planning and Building Director explained that additional shrubbery was considered, but it was determined that there should not be that much concealment close to the elementary school. The proposed berms will be only three feet in height and they will be landscaped.

Councilmember Groberg requested to know whether there were any items that the City has required the property owner of the ReMax Building to complete in connection with the approval of the development that took place on 16<sup>th</sup> Street that is not in compliance. The Planning and Building Director stated that the landscaping may not be in compliance. The portion that is immediately adjacent to 16<sup>th</sup> Street went through a rezoning and the Planned Transition Overlay was removed from that. Councilmember Groberg stated that the second condition, which is "The City Council and Planning Commission find that it cannot be practically developed," seems to be the principal issue. The Planning and Building Director agreed, stating, further, that a third issue could be, "The applicant may satisfy the performance standards set forth by use of the improvements, premises, and facilities of the contiguous use". This applicant satisfies the performance standards. Their lot coverage does not exceed the maximum requirement. The reason for non-use of the contiguous properties is because of the difference in the nature of the land uses. Councilmember Groberg stated that if there is any question about whether this applicant fails to meet the 30,000 square foot minimum requirement, it would be whether this land could be practicably developed. The Planning and Building Director stated that the surrounding neighbors believe that to be their strongest argument. She explained further that there is no longer any underlying zone for this Planned Transition property. Councilmember Groberg requested to know whether the planned 16 parking spaces included handicapped parking spaces. The Planning and Building Director stated that the handicapped parking spaces are included in the 16 parking spaces for the apartment complex.

The City Attorney requested to know whether the original purpose of the 30,000 square foot requirement was to eliminate the number of accesses onto an arterial street. The Planning and Building Director stated that the 30,000 square feet was a minimum that was designed to minimize access points onto arterial streets. The City Attorney stated that it occurred to him that inasmuch as this particular use does not access 17<sup>th</sup> Street, that function would not be served by holding it to the 30,000 square foot requirement. The Planning and Building Director agreed. The City Attorney stated that the purpose of the PT Zone was to try to minimize the conflict with residential zones and the adjoining commercial uses. He stated, further, that if the City Council were to hold the applicant to the 30,000 square foot requirement, whether that would encourage a commercial use that would then be inconsistent with the neighboring residential uses. That would be the exact opposite of what the PT Zone was established to do. The Planning and Building Director agreed.

Councilmember Lehto requested to know whether duplexes could go on this property under the PT Zone. The Planning and Building Director stated that the PT Zone provides for two or more attached units. Councilmember Lehto requested to know whether there was a square footage requirement if duplexes were to be constructed in this location. The Planning and Building Director stated that the Planned Transition Zone does not

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require setbacks and minimum area requirements. The Planned Transition Zone depends on lot coverage to reduce density and site plan review for buffering. She explained, further, that the 30,000 square foot requirement minimum is to allow for buffering, landscaping, fencing, and to reduce the number of access points to arterial streets.

Councilmember Hally commented that if duplexes were constructed at this location, vehicles would have to back out onto 16<sup>th</sup> Street, as opposed to the forward-moving vehicles from the four-plexes. The Planning and Building Director agreed.

Brian Peterson, 2303 Olympic, appeared to state that he is the developer and applicant for this land use change request. All items that have been requested of the applicant have been set forth and provided for. The buffer zones have been shown. Modifications have been made as set forth by the Planning Commission. Shutters have been provided for. The square footage of the building has been adjusted to make the minimum lot coverage work. The lighting adjustments have been made. Mr. Peterson stated that he is planning to use a variety of cobble-filled stone for the wainscot. He stated that the 30,000 square foot minimum requirement was a concern of his as he began this process. It has been shown that he would be held to that standard whether he built 4-plexes or if he built duplexes. Mr. Peterson stated that this has been a difficult process for him. He has received a lot of mail from people in opposition to his development. He is not a big-time developer. He stated that this is a horrible position that the residents are being placed in. There are only 26 parking spaces for the 44 staff members at Theresa Bunker Elementary School and that does not include any spaces for anyone visiting the school. Mr. Peterson stated that he values the safety of children. The problem with this situation is that it existed before he began this process. He did not create the problem. The 4 to 7 vehicles that will travel during peak hour times will be a drop in the bucket for the current situation at Theresa Bunker Elementary School. Mr. Peterson stated that there is no cross-walk for children on the south side of 16<sup>th</sup> Street, nor has a crossing guard been provided for. Approximately one week ago, he visited with his wife at which time they contemplated that if someone were to step forward and purchase these lots, they could be used for parking for the school. In that effort, he made a telephone call to George Boland, School District 91 Administrator, to offer for the School District to purchase these lots from him. He stated that he could not take a loss on the property. He did not have money to pay cash for the land. Mr. Boland was going to a District Meeting on Tuesday Night and he was going to call Mr. Peterson on Wednesday. As of this time, Mr. Peterson has not heard from Mr. Boland regarding the School District's decision to purchase this land. He requested the City Council to approve the land use change so that he might construct the 4-plexes.

Allen Perkins, 1558 Terry Drive, appeared to state that for many years his job was to solve complicated problems at the INL. He expressed his appreciation to the Planning and Building Director for the complicated issues with regard to the land use change. He stated that many facets of the PT-1 Zone do not make sense to him. He reviewed for the Mayor and City Council the minutes from several different Planning Commission Minutes regarding this property. Mr. Perkins stated that this parcel of land does not meet the requirements of the Planned Transition Zone. He requested that the City Council reject this land use change. Mr. Perkins felt that the City Council would have the authority to change the zoning back to PT-2 with the condition that it be developed with Lot 3.

Miriam Rohde, 2346 East 16<sup>th</sup> Street, appeared to state that her property is to the west of the proposed site. She submitted a petition carrying 167 signatures, identified as Attachment No. 16 above. She requested those present who were opposed to this land use change to stand before the City Council. There were approximately 10 people who stood in opposition. Mrs. Rohde clarified that many of the elementary schools that were listed in the traffic study are located on arterial or collector streets. Sixteenth Street is a

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local street and should not have as much traffic as the other locations. She stated, further, that a single-family residence usually has only one vehicle backing out onto the street. Duplexes would have approximately two backing out onto the street. She agreed that the traffic would be forward-moving from the apartments, but stated that it would still add 7 or more cars to the congestion already present on 16<sup>th</sup> Street. Mrs. Rohde presented information from her two letters identified as Attachment No. 12 and Attachment No. 6 above.

Councilmember Hally stated that it appears that the main traffic problem and parking problem is generated from the school. He requested to know whether Mrs. Rohde or her neighbors have ever approached the School District to assist in solving some of these problems.

Mrs. Rohde stated that she did not address this issue with the School District until recently. She understood from Mr. George Boland, Administrator for School District No. 91 that the District is planning on completing upgrades to five schools in the next few years. She understood that Theresa Bunker Elementary is not on that list as of yet.

Mary Ann Smith, 781 Cedar Ridge Drive, appeared to state that she completed a legal analysis of the Findings of Fact and Conclusions of Law from the Planning Commission. Mrs. Smith submitted her analysis under Attachment No. 8 above and discussed same with the Mayor and City Council. Mrs. Smith also shared from her letter under Attachment No. 3 above. For the reasons that she stated, she respectfully requested that this application be denied. The Planning Commission and the City Council have the right to control the use, not the parcel. Mrs. Smith stated that if the requirements are confusing and cannot be understood, how it can be complied with.

Vicki Towers, 1335 Bower Drive, appeared to state that not only are there elementary children going to school at Theresa Bunker Elementary, there are also Junior High School children being boarded in front of the school.

Carla LaOrange, 940 Dairy Lane, appeared to state that she is the Director of Elementary Education for School District No. 91. She stated that she apologized for Mr. Boland not calling Mr. Peterson back with regard to his offer. The applicant, Mr. Peterson, approached the School District to purchase his property for a cost of \$120,000.00. The Board from School District No. 91 respectfully declined this offer.

Mary Ann Smith re-appeared to explain that she was at the School Board Meeting and explained that it would cost the School District \$3,400.00 per parking spot to purchase this land. This amount did not include any asphalt on the land. At that price, the School District could not afford to purchase the land.

Carla LaOrange re-appeared to state that she wanted to focus on the safety issues with regard to this development. The School District's No. 1 goal is the safety and welfare of the students that they serve. She explained the differences between what took place at Linden Park Elementary School and those at Theresa Bunker Elementary School regarding safety. As there is no crosswalk at Theresa Bunker, parking and traffic are not the same thing. She stated that parking can be controlled, but traffic cannot be controlled.

Councilmember Lehto cited an example of School District buses going through subdivisions rather than taking the direct route to the school from arterial streets. He questioned that if the School District was concerned for children's safety, why are adjustments not made to the bus routes.

Mrs. LaOrange stated that she was unaware of the situation that Councilmember Lehto cited. She stated that she would be more than happy to set up a meeting with the School District's Transportation's Supervisor to rectify the situation.

Councilmember Hardcastle stated that she was not representing that the same problem exists at Linden Park that exists at Theresa Bunker. She explained, further, that many of the letters and comments that the Mayor and City Council have received have

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stated that the City Council is exasperating a problem that already exists. Councilmember Hardcastle requested to know whether she understood Mrs. LaOrange to say that there was no way to correct the problem from the School District's standpoint.

Mrs. LaOrange stated that, as a School District, they could address parking. They cannot address traffic flow.

Councilmember Hardcastle stated that there were more teachers at Theresa Bunker School than there were parking stalls.

Mrs. LaOrange stated that is not atypical. When these schools were built in the 1950's, students walked to school. Moms did not work. Students walked home for lunch. Came back and walked home after school. Now, because of working mothers and because of concerns of safety, everyone is more careful about letting their children walk.

Councilmember Groberg clarified that the School District feels that traffic can be controlled within its own property. The School District cannot control the public streets.

Councilmember Hally stated that the question was brought up about the decision of the Planning Commission making a decision on use as opposed to parcel. He requested the City Attorney to give his opinion with regard to the previous discussion.

The City Attorney stated that the case law is very clear that the Court will accord a great amount of discretion to the interpretation that the City Council would put on its own Ordinance. He did not believe that it was entirely fair to refer to an interpretation of the Court of Appeals in a slightly different context. That being said, the City Council needs to read the Ordinance as it is drafted. As the City Attorney looked at the Ordinance, it was clear to him that the phrase "use" is employed in both contexts. Under subsections (A) and (B) in Section 7-18-4, both make reference to the word "use". The manner in which that term is used is in the broad, general sense. However, under subsection (C) (1), it is apparent that a different meaning is used. The Ordinance needs to be read in the context. The City Attorney stated that he viewed this section as a variance. There is a standard, initially, of 30,000 square feet. There is an exception. That exception is premised in part upon a finding by this City Council that the parcel cannot be practicably developed. This is like the variance standard, where the City Council is finding a hardship. There are circumstances that would justify making an exception to the rule. The City Attorney stated that one of the main purposes of the Planned Transition Zone is to enhance the function of an arterial street. If that purpose is looked at and inasmuch as that parcel is not fronted on an arterial street, it is questionable whether this parcel should be subjected to the 30,000 square foot requirement.

Councilmember Hardcastle requested the Planning and Building Director to come forward and respond to Mr. Perkins statement. The Planning and Building Director stated that on June 20, 2006, the rezoning on this parcel went forward. Following the rezoning, a final plat was approved. Final plats are not subject to public hearing.

Councilmember Groberg requested the Planning and Building Director to explain what uses were allowed in the PT-1 Zone. The Planning and Building Director stated that the uses allowed in the PT-1 Zone are high-density residential and accessory uses to high-density residential. High-density residential is defined as any housing for human occupation with two or more attached dwelling units. Councilmember Groberg requested to know whether a detached, single-family home was a use under the PT-1 Zone. The Planning and Building Director stated that single-family residential is not a use.

Councilmember Lehto requested to know how many units of high-density residential could be placed on one acre. The Planning and Building Director stated that unlike other zones, there is no maximum density. This is controlled by lot coverage, height requirement and parking requirements. She explained, further, that staff conducted an analysis on this parcel and determined that 18 units could be built on an acre. There can be no more lot coverage than 50%. This particular zone includes the parking areas, the

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driveways, the sidewalks, and the rooftops. The proposed plan covers approximately 49.7% lot coverage. The R-2 Zone would have required 9,000 square feet for a four-plex. Each lot has approximately 9,700 square feet.

Mary Ann Smith, re-appeared to share comments from her letter dated June 22, 2007 shown as Attachment 3 above.

Carla LaOrange, 940 Dairy Lane, re-appeared to state that the School District can set up parking, but the School District cannot control the flow of traffic. That is not within the jurisdiction of the School District. The City can control traffic through the Public Safety Committee, Public Works Division, and the Planning and Zoning Division. The more traffic you put onto a street, the more likely it is that you increase the risk to children.

Annette Simpson, 1343 East 16<sup>th</sup> Street, appeared to cite the many problems that her neighborhood has had with the Gagner development and Voigt development in being allowed access to 16<sup>th</sup> Street. It caused too much traffic to the school. The only people that are compromising are the single-family residential homes. Mrs. Simpson cited examples of parking problems that are a direct result from the school. She stated that the apartments will only exacerbate the problem. She requested the City Council to not allow more traffic to her neighborhood.

Brian Peterson, 2303 Olympic, re-appeared to state that the School District could control the flow of traffic around the school by providing a crosswalk and a crosswalk attendant at this location. He stated, further, that Mrs. Smith has completed a great amount of research. He refuted the word "use". He pointed out that "all uses" need to be considered. He stated that if he decided not to build the four-plexes and tried to construct 2 duplexes, he would be opposed yet again. If he is not in compliance with four-plexes, he would not be in compliance with duplexes.

Miriam Rohde, 1346 East 16<sup>th</sup> Street, re-appeared to state that she was requesting a compromise. As a neighborhood, they were not telling Mr. Peterson to build nothing. He questioned the City Attorney as to whether it made sense to have the PT Zone on this parcel of land when it was no longer connected to the arterial street. The PT Zone is supposed to be compatible to other land uses.

Amy Peterson, 2303 Olympic, appeared to state that the major concerns at the Planning Commission Meeting was traffic and the safety of the children. She stated that she has children and is concerned with the safety of children. She stated that she has a problem with the School District's level of control on traffic versus parking. The elementary school that she attended in Pocatello was at a major three-way intersection. They have crossing guards who shut down the traffic in order for the children to cross. She did not understand how this could not take place at Theresa Bunker Elementary School.

There being no further discussion either in favor of or in opposition to this land use change request, Mayor Fuhrman closed the public hearing.

Councilmember Lehto stated that this is a properly zoned parcel. There is someone who wants to develop the land under that PT-1 use. Councilmember Lehto stated that a single-family residence belongs on this parcel of land. He stated, further, that he has been a proponent of people who invest their resources, time and money in the process. He stated that he was leaning towards voting for this development. His dilemma is in looking at where this development is situated. It should have been developed at a lesser density. This plan is developed to the limit.

Councilmember Groberg stated that he appreciated all of the comments, oral and written. His predisposition is not to do anything that would compromise or limit the ability of the school to prosper. He tried to make sure that all three criteria would be met. The 30,000 square foot requirement was mainly designed to limit the accesses onto arterial streets. Single-family residences are not a permitted use for this parcel. This land has already been zoned. The question becomes whether the City will honor that zoning criteria

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or find some way to dodge it. Councilmember Groberg doubted whether any Councilmember was influenced by the fact that the owner is concerned with the expenses he has incurred. The City Council is determining what the law is and how to apply it to this parcel. He stated that if there have been any understandings or agreements with respect to the ground that borders 16<sup>th</sup> Street that are not being enforced by the City, that needs to be taken into consideration and enforced. Councilmember Groberg stated that he appreciated Mrs. Rohde's statement regarding compromise. The impression that he has had is that the owner or developer has made every effort to comply with the recommendations of the Planning Commission. He stated that he intended to support the applicant.

Councilmember Hardcastle stated that she was sympathetic to the neighbors. The zoning has been established and the purchaser bought this property in good faith under that zoning. Legally, the City Council cannot change this. In the spirit of defending the Ordinance and laws that are already in place, along with the private property rights of the purchaser, she stated that she intended to support the applicant.

Councilmember Hally stated that he has listened to all of the testimony and spent much of the afternoon reviewing the information provided. Many comments were focused on traffic. Ownership occurred for the person that wants to develop the land under the paradigm that it was zoned properly for him to do certain things. Many of the concerns that he read about have been dealt with, or at least partially, by the developer. Councilmember Hally did not believe that the applicant wanted to be a bad neighbor. He has offered another compromise in that the School District could purchase the land. He disagreed with the School District, in that they could control traffic. The planning of traffic needs to be ongoing. He encouraged the School District to take a look at this school for improvements that can be made. Councilmember Hally stated that he was sympathetic to the people who brought up concerns about safety. He does not see that the addition of two four-plexes would increase traffic. If the School District did some modifications in controlling traffic, they would have a greater impact.

Councilmember Lehto stated that all the City Council guaranteed for the PT-1 Zone was high-density development. Would it be a "dodge" to reject a proposed development, given the concerns that have been raised throughout this process where the developer might have recognized those conflicts and developed this at a lesser density. Given the concerns that have been voiced throughout this process, lot coverage of 49.7% is taking the biggest piece of the pie that can be taken.

Councilmember Groberg stated that his thought was that this parcel should be single-family detached homes. A request for a rezoning is the process for that. This is a process for approving an application for an existing zone. This applicant has completed those requirements. The applicant has come before staff, found out what is permitted in the zone, has met every criteria, and acted in good faith. The City Council needs to honor that.

Councilmember Hally stated that based upon the language in the Ordinance and the comments made by the Planning Commission to withstand appeal, this is arguable should an appeal take place.

Councilmember Lehto stated that the developer has done everything and complied with the PT Zone. He believed that the developer took a little more than was needed for the density of the zone, given the opposition and the proximity of the school. He stated that he would not support this request.

It was moved by Councilmember Hally, seconded by Councilmember Hardcastle, to approve the land use change to allow for construction of two four-plexes located generally at the southern end of Teresa Bunker Elementary School site on East 16<sup>th</sup> Street, south and east of Bunker Lane, west of St. Clair Road, and legally described as Lots

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1 and 2, Block 1, Desborough Place, Division No. 1 with the conditions recommended by the Planning Commission; and, that the City Attorney and City Planner be instructed to prepare Findings of Fact, Conclusions of Law, and Decision. Roll call as follows:

Aye: Councilmember Groberg  
Councilmember Hardcastle  
Councilmember Hally

Nay: Councilmember Lehto

Motion Carried.

Following a brief recess, Mayor Fuhriman requested Councilmember Hally to conduct a public hearing for consideration of a Planned Unit Development for ten (10) single-family homes of property located generally south of 9<sup>th</sup> Street, north of 12<sup>th</sup> Street, east of Hoopes Avenue, west of Pend Oreille Circle and legally described as Midtown at Twelfth Street, a portion of Lot 1, Block 2, Lakewood Aspens Addition, Division No. 1. At the request of Councilmember Hally, the City Clerk read the following memo from the Planning and Building Director:

City of Idaho Falls  
July 8, 2007

MEMORANDUM

TO: Mayor and Council  
FROM: Renée R. Magee, Planning and Building Director  
SUBJECT: PLANNED UNIT DEVELOPMENT – A PORTION OF LOT 1, BLOCK 2, LAKEWOOD ASPENS ADDITION, DIVISION NO. 1

Attached is the Planned Unit Development for ten single-family homes to be located on a portion of Lot 1, Block 2, Lakewood Aspens Addition, Division No. 1. This development named Midtown at 12<sup>th</sup> Street is located north and adjacent to 12<sup>th</sup> Street, east of Hoopes Avenue, and west of Ashment Avenue. The Planning Commission reviewed this request at its June 5, 2007 Meeting and recommended approval with conditions which have been incorporated into the site plan and covenants. This Planned Unit Development is now being submitted to the Mayor and Council for consideration.

s/ Renée R. Magee

The Planning and Building Director located the subject area on a map and further explained the request. Following is a list of exhibits used in connection with this Planned Unit Development request:

Slide 1 Vicinity Map showing surrounding zoning  
Slide 2 Aerial Photo  
Slide 3 Landscape Plan and Site Plan  
Slide 4 Elevation of homes – Proposed 10 town homes  
Slide 5 Site Photo looking north across site from 12<sup>th</sup> Street  
Slide 6 Site Photo looking from southwest across the site

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Slide 7 Site Photo showing existing landscaping  
Slide 8 Site Photo showing existing landscaping on 12<sup>th</sup> Street and home  
Exhibit 1 Planning Commission Minutes dated June 5, 2007  
Exhibit 2 Staff Report dated June 5, 2007  
Exhibit 3 Vicinity Map

Greg Casperson, 4067 East 159 North, Rigby, appeared to answer any questions from the Mayor and City Council. There were no comments or questions.

Lisa Hanson, Harper-Leavitt Engineering, 985 North Capital Avenue, appeared to state that the main concern with the adjacent property owners was the north property line where the roadway comes close to the property line. The adjacent property owners wanted to modify the fence along the diagonal portion which runs up to the existing cul-de-sac. The owners were worried about eliminating some existing landscaping. The fence has been eliminated in that area.

There being no further discussion either in favor of or in opposition to this Planned Unit Development request, Mayor Fuhriman closed the public hearing.

It was moved by Councilmember Hally, seconded by Councilmember Groberg, to approve the Planned Unit Development for ten (10) single-family homes of property located generally south of 9<sup>th</sup> Street, north of 12<sup>th</sup> Street, east of Hoopes Avenue, west of Pend Oreille Circle and legally described as Midtown at Twelfth Street, a portion of Lot 1, Block 2, Lakewood Aspens Addition, Division No. 1, including the conditions recommended by the Planning Commission. Roll call as follows:

Aye: Councilmember Hally  
Councilmember Groberg  
Councilmember Hardcastle  
Councilmember Lehto

Nay: None

Motion Carried.

Mayor Fuhriman requested Councilmember Hally to conduct a public hearing for a rezoning of the North Half of Lot 20, Lots 21-30 of Block 9 of the Highland Park Addition from R-1 (Single-Family Residential) to R-3A (Apartments and Professional Offices) located generally south of Science Center Drive, north of Presto Street, east of Canyon Drive, west of Jefferson Avenue. At the request of Councilmember Hally, the City Clerk read the following memo from the Planning and Building Director:

City of Idaho Falls  
July 8, 2007

MEMORANDUM

TO: Mayor and Council  
FROM: Renée R. Magee, Planning and Building Director  
SUBJECT: REQUEST FOR REZONING FROM R-1 TO R-3A – NORTH HALF OF LOT 20, LOTS 21-30, BLOCK 9, HIGHLAND PARK

Attached is the request to rezone the north half of Lot 20 and Lots 21-30, Block 9, Highland Park Addition from R-1 (Single-Family Residential) to R-3A (Apartments and Offices). This parcel is located south and adjacent to Science

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Center Drive, east of Canyon Avenue, and west of Jefferson Avenue. The Planning Commission reviewed this request at its June 5, 2007 Meeting and recommended approval in a 4 to 3 vote. This rezoning request is now being submitted to the Mayor and Council for consideration.

s/ Renée R. Magee

The Planning and Building Director located the subject area on a map and further explained the request. Following is a list of exhibits used in connection with this rezoning request:

Slide 1	Vicinity Map showing surrounding zoning
Slide 2	Aerial Photo
Slide 3	Aerial Photo – Close Up
Slide 4	Comprehensive Plan
Slide 5	Existing land uses
Slide 6	Site Photo looking northwest across site
Slide 7	Site Photo of Science Center Drive north of site
Slide 8	Site Photo looking east on Science Center Drive
Slide 9	Site Photo looking northwest of site
Slide 10	Site Photo of Canyon Avenue west of site
Exhibit 1	Planning Commission Minutes dated June 5, 2007
Exhibit 2	Staff Report dated June 5, 2007
Exhibit 3	Vicinity Map

The Planning and Building Director stated that the Comprehensive Plan designates this specific site as low-density residential. The Planning Commission felt that this request was in compliance with the Comprehensive Plan, as the Comprehensive Plan is a broad-brush document. Science Center Drive is an arterial street. One of the policies in the Comprehensive Plan is that there will be higher-density residential uses along an arterial street. There is a policy that promotes this rezoning request, as well as the actual land use map. Three of the Commission Members voted against this rezoning request, because of the existing single-family homes in the area.

Councilmember Groberg requested to know whether there were new homes that were built on Science Center Drive between Elmore Drive and Canyon Avenue. The Planning and Building Director stated that they were mostly modular homes. As this area has been rezoned, it seems to be developing. She explained, further, that R-3A will allow for single-family residential through multi-family residential. This zone change was primarily for multi-family residential use.

Delbert Johnson, 2044 Hughes Drive, appeared to submit the following photographs:

Photograph 1	Site Photo on southeast side of lot
Photograph 2	Site Photo of Science Center Drive and Canyon Avenue
Photograph 3	Site Photo of Science Center Drive and Jefferson Avenue
Photograph 4	Site Photo of residence at the corner of Science Center Drive and Canyon Avenue
Photograph 5	Site Photo of single-family residence from west side of lot
Photograph 6	Site Photo of single-family residence from southwest side of lot
Photograph 7	Site Photo of Jefferson Avenue and Science Center Drive

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Photograph 8	Site Photo of Jefferson Avenue and Science Center Drive
Photograph 9	Site Photo of single-family residence from south side of lot
Photograph 10	Site Photo from lot looking northeast

Mr. Johnson explained, further, that there are all older homes in the area. He believed that this R-3A development, with the possibility of office buildings, would only improve the area. This land is close to the INL and University Place.

Councilmember Hardcastle requested to know where access to the property would be. Mr. Johnson stated that one side is on Science Center Drive, intersecting with Jefferson Avenue and Canyon Avenue.

Councilmember Groberg requested to know what motivated Mr. Johnson to change the zone. Mr. Johnson stated that street improvements need to be made. He did not feel that a modular home fits the area. It should have a better use than modular homes. Mr. Johnson stated that he has not tried to market the lots for single-family residential. The usage would be served with a better zone.

Glen Michael Miller, 1341 Canyon Avenue, appeared to state that Mr. Johnson has owned this property for more than 20 years. Science Center Drive is a busy street. The ISU/UI University Place, Willow Creek Building, and EROB Building are in this area. There is a great amount of traffic every morning. There are five blocks of single-family residential around Mr. Johnson's lots. Mr. Miller's wife has family that owns property at the other end of Canyon Avenue and they are trying to sell the property due to a death in the family. If this rezoning is granted, it would be spot zoning. If the City Council will allow spot zoning, he requested to have the whole block be zoned R-3A to allow for the ability to sell his property.

Councilmember Hardcastle requested to know whether Mr. Miller would like to have a single-family residence on Science Center Drive, considering what he had just told the City Council. Mr. Miller stated that he would not like to have a single-family residence on Science Center Drive.

There being no further discussion either in favor or in opposition to this rezoning request, Mayor Fuhrman closed the public hearing.

Councilmember Lehto stated that this area has been under an R-1 Zone for many years.

Councilmember Groberg stated that he could see the idea of zoning this to R-3A. This would give a greater variety of uses. Some of those uses may front of Science Center Drive more easily than a single-family detached house. He stated that the City Council needs to be thoughtful about making zoning changes, even when the neighborhood is not concerned about them. Councilmember Groberg requested the Planning and Building Director to give her opinion regarding this zoning. The Planning and Building Director stated that the triplexes and assisted living center were single-family homes. It is difficult to put single-family homes next to Science Center Drive. That is not always the best environment. This is a strong single-family neighborhood.

Councilmember Hardcastle requested to know why the three Planning Commissioners voted against this zone change. The Planning and Building Director stated that the primary land use is single-family residential. Councilmember Hardcastle stated that a neighborhood is a neighborhood, regardless of the value of the homes.

It was moved by Councilmember Hally, seconded by Councilmember Hardcastle, to deny the request to rezone the North Half of Lot 20, Lots 21-30 of Block 9 of the Highland Park Addition from R-1 (Single-Family Residential) to R-3A (Apartments and Professional Office) located generally south of Science Center Drive, north of Presto Street, east of Canyon Drive, west of Jefferson Avenue and, further, instruct the City Attorney and Planning and Building Director to prepare Findings of Fact, Conclusions of Law, and Decision for same. Roll call as follows:

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Aye: Councilmember Hally  
Councilmember Hardcastle  
Councilmember Lehto  
Councilmember Groberg

Nay: None

Motion Carried.

Mayor Fuhriman requested Councilmember Hally to conduct Annexation Proceedings for a Metes and Bounds Description of 1.91 Acres in the Southwest Quarter of Section 27, Township 2 North, Range 37, East of the Boise Meridian – Sunnyside Crossroads. At the request of Councilmember Hally, the City Clerk read the following memo from the Planning and Building Director:

City of Idaho Falls  
July 8, 2007

MEMORANDUM

TO: Mayor and Council  
FROM: Renée R. Magee, Planning and Building Director  
SUBJECT: ANNEXATION AND INITIAL ZONING OF HC-1 AND R-3A -  
SUNNYSIDE CROSSROADS

Attached are the Annexation Agreement and Annexation Ordinance for 1.91 acres west of I-15 and north of Sunnyside Road (33<sup>rd</sup> South). The requested initial zoning is HC-1 and R-3A. The Planning Commission reviewed this annexation request at its June 5, 2007 Meeting and recommended approval. This annexation request is now being submitted to the Mayor and Council for consideration.

s/ Renée R. Magee

The Planning and Building Director located the subject area on a map and further explained the request. Following is a list of exhibits used in connection with this annexation request:

Slide 1 Vicinity Map showing surrounding zoning  
Slide 2 Aerial Photo  
Slide 3 Comprehensive Plan  
Exhibit 1 Planning Commission Minutes dated June 5, 2007  
Exhibit 2 Staff Report dated June 5, 2007  
Exhibit 3 Vicinity Map

The Planning and Building Director explained, further, that the developer did not annex 60 feet with the original annexation. He was considering his options in terms of road development. He has been approached by potential developers and is now bringing in the 60 feet.

Daryl Kofoed, Mountain River Engineering, 1020 Lincoln Road, appeared to state that at the time that this parcel of land was held from annexation, there was a concern that an access road around this property would have to be developed. There were

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concerns from residents on the north that they did not want to be next to HC-1 Zoning. The R-3A Zoning is a good neighbor to the commercial.

There being no further discussion either in favor of or in opposition to this annexation request, Mayor Fuhriman closed the public hearing.

It was moved by Councilmember Hally, seconded by Councilmember Lehto, to approve the Second Amendment to the Annexation Agreement for Teton Peaks Subdivision and, further, give authorization for the Mayor and City Clerk to sign said Agreement. Roll call as follows:

Aye: Councilmember Groberg  
Councilmember Hally  
Councilmember Lehto  
Councilmember Hardcastle

Nay: None

Motion Carried.

At the request of Councilmember Hally, the City Attorney read the following Ordinance by title:

**ORDINANCE NO. 2710**

**SUNNYSIDE CROSSROADS – NORTH REGIONAL CENTER  
ANNEXATION PRIOR TO PLATTING – HC-1 AND R-3A STRIP**

AN ORDINANCE ANNEXING CERTAIN LANDS TO THE CITY OF IDAHO FALLS, IDAHO; DESCRIBING THESE LANDS; REQUIRING THE FILING OF THE ORDINANCE AND AMENDED CITY MAP AND AMENDED LEGAL DESCRIPTION OF THE CITY WITH THE APPROPRIATE COUNTY AND STATE AUTHORITIES; AND ESTABLISHING EFFECTIVE DATE.

The foregoing Ordinance was presented by title only. Councilmember Hally moved, and Councilmember Hardcastle seconded, that the provisions of Idaho Code Section 50-902 requiring all Ordinances to be read by title, and once in full, on three separate dates be dispensed with, the Ordinance be passed on all three readings, and, further, give authorization for the Mayor and City Clerk to sign the necessary documents. Roll call as follows:

Aye: Councilmember Hally  
Councilmember Hardcastle  
Councilmember Lehto  
Councilmember Groberg

Nay: None

Motion Carried.

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A public hearing was conducted to consider the initial zoning of the newly annexed area. There being no discussion, it was moved by Councilmember Hally, seconded by Councilmember Groberg, to establish the initial zoning for the Metes and Bounds Description of 1.91 Acres in the Southwest Quarter of Section 27, Township 2 North, Range 37, East of the Boise Meridian – Sunnyside Crossroads as HC-1 (Limited Retail and Service Business) and R-3A (Apartments and Professional Offices) Zoning as presented, that the comprehensive plan be amended to include the area annexed herewith, and that the City Planner be instructed to reflect said annexation, zoning and amendment to the comprehensive plan on the comprehensive plan and zoning maps located in the Planning Office. Roll call as follows:

Aye: Councilmember Groberg  
Councilmember Hardcastle  
Councilmember Lehto  
Councilmember Hally

Nay: None

Motion Carried.

Mayor Fuhriman requested Councilmember Hally to conduct Annexation Proceedings for Idaho Canal Metes and Bounds Description of 7.62 Acres in the Northeast Quarter of Section 17, Township 2 North, Range 38, East of the Boise Meridian. At the request of Councilmember Hally, the City Clerk read the following memo from the Planning and Building Director:

City of Idaho Falls  
July 8, 2007

MEMORANDUM

TO: Mayor and Council  
FROM: Renée R. Magee, Planning and Building Director  
SUBJECT: ANNEXATION AND INITIAL ZONING OF R-1 – IDAHO CANAL

Attached is the Annexation Ordinance for 7.62 acres located on the Idaho Canal north of Kearney Street, east of Alameda Drive, west of Hollipark Drive, and south of Lincoln Road. This request has been initiated by the Planning Department Staff to eliminate a county island. The requested initial zoning is R-1. The Planning Commission recommended approval of this annexation at its June 5, 2007 Meeting. This annexation request is now being submitted to the Mayor and Council for consideration.

s/ Renée R. Magee

The Planning and Building Director located the subject area on a map and further explained the request. Following is a list of exhibits used in connection with this annexation request:

Slide 1 Vicinity Map showing surrounding zoning  
Exhibit 1 Planning Commission Minutes dated June 5, 2007  
Exhibit 2 Vicinity Maps

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Exhibit 3 Letter from Peter and Gabrielle Hannon  
Exhibit 4 Letter from the Idaho Irrigation District

At the request of Councilmember Hally, the City Attorney read the following Ordinance by title:

**ORDINANCE NO. 2711**

**IDAHO CANAL - ALAMEDA/BOWEN**

AN ORDINANCE ANNEXING CERTAIN LANDS TO THE CITY OF IDAHO FALLS, IDAHO; DESCRIBING THESE LANDS; REQUIRING THE FILING OF THE ORDINANCE AND AMENDED CITY MAP AND AMENDED LEGAL DESCRIPTION OF THE CITY WITH THE APPROPRIATE COUNTY AND STATE AUTHORITIES; AND ESTABLISHING EFFECTIVE DATE.

The foregoing Ordinance was presented by title only. Councilmember Hally moved, and Councilmember Groberg seconded, that the provisions of Idaho Code Section 50-902 requiring all Ordinances to be read by title, and once in full, on three separate dates be dispensed with, the Ordinance be passed on all three readings, and, further, give authorization for the Mayor and City Clerk to sign the necessary documents. Roll call as follows:

Aye: Councilmember Lehto  
Councilmember Groberg  
Councilmember Hardcastle  
Councilmember Hally

Nay: None

Motion Carried.

A public hearing was conducted to consider the initial zoning of the newly annexed area. There being no discussion, it was moved by Councilmember Hally, seconded by Councilmember Hardcastle, to establish the initial zoning for Idaho Canal Metes and Bounds Description of 7.62 Acres in the Northeast Quarter of Section 17, Township 2 North, Range 38, East of the Boise Meridian as R-1 (Single-Family Residential) Zoning as presented, that the comprehensive plan be amended to include the area annexed herewith, and that the City Planner be instructed to reflect said annexation, zoning and amendment to the comprehensive plan on the comprehensive plan and zoning maps located in the Planning Office. Roll call as follows:

Aye: Councilmember Hardcastle  
Councilmember Lehto  
Councilmember Hally  
Councilmember Groberg

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Nay:           None

Motion Carried.

There being no further business, it was moved by Councilmember Lehto, seconded by Councilmember Hally, that the meeting adjourn at 11:30 p.m.

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CITY CLERK

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MAYOR

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