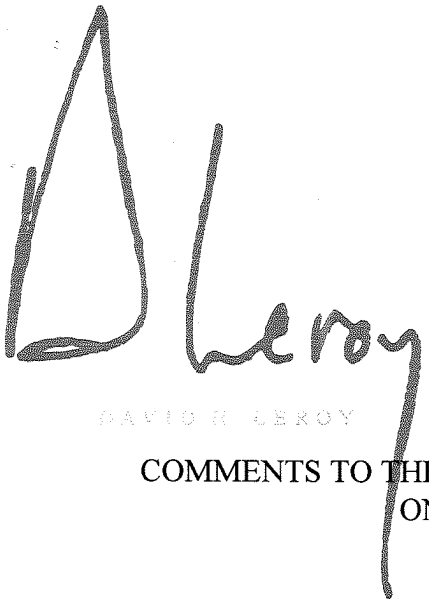

DAVID H. LEROY ATTORNEY AT LAW

COMMENTS TO THE GARDEN CITY PLANNING AND ZONING COMMISSION
ON THE RIVER CLUB SAP APPLICATION

Work Session - February 15, 2023

I.

INTRODUCTION

This office has been retained to represent a group of interested and affected River Club - Plantation Subdivision area residents numbering approximately 100 people, organized under the name "Preserve Plantation 23". (hereinafter "Objectors") The group website is preserveplantatation23@ gmail.com and its contact leaders are Dr. John and Lynn Livingston of 6273 North Fair Oaks Place, Bob and Reci Schmellick of 6253 North Fair Oaks and Dave and Jeanne Patterson of 6326 North Charleston Place, Garden City, Idaho, 83703

These comments, concerns and complaints are offered as constructive and corrective suggestions in opposition to the Specific Area Plan Application of the Lincoln Property Company (hereinafter "Applicant"), SAPFY2023-0001, as revised January 9, 2023. This proposal seeks the privilege of increasing density from the current R2 Zone of approximately 6 residential units per acre, to an excessive proposal of 744 housing and apartment spaces allocated between at least seventeen buildings, each of between 3 and 5 stories in height. As described below, these Objectors suggest that an SAP is not appropriate for adoption at this location upon the various details, both included and omitted, within this Application.

II.

THE OWNERSHIP OF THE PROPERTY REMAINS UNCLEAR

The Applicant lists the purported Property Owner and Applicant as "LB River Club Owner LLC" c/o Lincoln Property Company at an address in downtown Boise, with the name of "Trevor Nicoll, Sr. Vice President," and a "Jenny Pham, Vice President" at Lincoln Property Company with a Wilshire Boulevard address in Los Angeles.

There is nothing in the application or its supporting materials that directly evidences the



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ownership of the Property. Ada County Assessor's records identity the "Primary Owner" (starting in 2022) as "LB RIVER CLUB OWNER LLC." In 2021, the owner is shown as "BRCP RIVER CLUB LLC," which the Idaho Secretary of State shows as a Georgia limited liability company doing business in Idaho under that name. Its Manager, according to the Idaho records, is Bay Point Advisors, LLC. The LLC and the Manager LLC share an address in Atlanta, GA. A Charles Andros signed the Idaho foreign registration as the manager of Bay Point Advisors, LLC which, in turn, is the manager of BRCP Advisors as the "Founding Partner, President and Chief Investment Officer." That firms's "investment philosophy" appears to be focused on distressed credit situations. However, the documents refer to an unrecorded June 22, 2022 "Put and Option" Agreement which also appears to pertain to undescribed rights in the same property.

III.

THE USE OF AN SAP AT THIS SITE CONSTITUTES IMPROPER "SPOT ZONING" UNDER IDAHO LAW

On November 4, 2020 when the proposed Specific Area Plan ordinance was under consideration, Garden City Attorney Charles Wadams authored a memo to the Mayor and Council which warned them to be "mindful of the spot zoning issue." At page 2 Wadams stated:

> "Spot zoning can more easily be measured by the benefit provided to a particular property owner or set of owners to the detriment of comprehensive plan or public goals. If a rezoning provides special benefits to a property owner while creating negative impacts to surrounding property, spot zoning likely occurred. Spot zoning is zoning adopted in the absence of proper planning."

The Garden City Future Land Use Map currently in effect designates by color coding and site specific layout the entire River Club-Plantation Subdivision area as "Green Boulevard Corridor" and "Future Parks/Open Space." A small overlay semi-circle on State Street indicates the potential specific location of a "Neighborhood/Destination." However, a star at that same site promises planning for "Future Parks/Open Space." The Idaho Supreme Court has held that the creation of small, localized zoning areas inconsistent with comprehensive plan concepts can constitute illegal "Type-Two" spot zoning. See Evans v. Teton County, 139 Idaho 71, 73 P 3d 84 (2008), Exhibit "A" attached hereto. By Garden City Code Section 8-6B-6-E, the City authorities must specifically find that "The SAP application, as conditioned, is consistent with the city comprehensive plan, as amended, including the future land use map . . ." The Applicant contends that the Council has previously approved "this area of the intersection of State Street and Pierce Park Lane as a Neighborhood/Designation activity Node." However, this SAP application covering twenty two acres goes far beyond the intersection area and has little to do with a multi-modal transportation site on State Street. Any included small scale retail or office locations are merely an afterthought in a huge, intrusive, neighborhood-disrupting and green space-eliminating, high-density housing venture. A little used Boise City bus stop already exists at that area. As such, the Application is an adventure

in spot zoning.

Paragraphs such as the following, found in the Application at Tab 3, Page 4 are illustrative, conclusory and false:

> "The Residences at River Club supports and is harmonious with the goals and objectives of Garden City's Comprehensive Plan. The following table lists the several planning goals adopted by Garden City, which, along with the objectives and action steps supported by the Residences at River Club, will assist Garden City continue its evolution as a city committed to: (1) maintain, preserve and enhance its assets; (2) improve the community's appearance, especially the appearance of streets and highways; and (3) build on community amenities and development potential."

In fact, the existing open-space greenery of the golf course and the integrated and adjacent high end, low density, large lot, residential homes will be overwhelmed and conflicted with this "evolution."

The features of this SAP at this location squarely forecast that Garden City authorities can not make the Required Findings under Garden City Development Code Section 8-6B-6-E-1 that "The SAP application, as conditioned, is consistent with the city comprehensive plan . . ." Without that finding, an SAP can not and should not be approved!

As the Code itself says:

> "If an application does not meet one or more of the criteria above, the application shall be denied, and the reason the application does not meet the finding or findings shall be writing."

## IV.

## THE ELIMINATION OF GOLF COURSE HOLES 10, 11, 7 AND 8 APPEARS TO VIOLATE SEVERAL MASTER DECLARATION CONTRACT PROVISIONS FOR PLANTATION SUBDIVISION RESIDENTS

At issue is about 18% of the entire golf course open area green space.

Some 17 different subdivisions have been created in the area of and surrounding the former Plantation Golf Club since adjacent land first began to be developed for residences in the 1970's. However, the same "Master Declaration of Covenants, Conditions and Restrictions," dated February 21, 1978 has been used consistently for each such subdivision to constitute the contractual bond among purchasing homeowners and the developer-golf course owners and their successors. The Lincoln Property Company or the current actual property owner is thusly also now bound, subject

to all the conditions contained therein. The Master Declaration is made applicable to all "Open Space Areas." As far as is known to these Objectors, no "Supplemental Declaration" or amendment to the CC&Rs has been issued to authorize the planned intrusive development. Section 5.16.B provides that "No Lot, Common Area . . . may be further subdivided . . . by the Owner thereof, but excluding the Grantor." Lincoln is not the "Grantor." See attached documents Exhibit "B" The golf course area, including the four threatened holes, is both "open space" and designated as "Lot 1" in the CC&Rs and associated maps.

Section 5.17 of the Master Declaration promises residents that:

> "All improvements on the Plantation shall be of such quality and nature and located so as to create a harmonious relationship between all improvements, including but not limited to structures, landscaping, lines of sight, open areas, common facilities, means of ingress and egress, etc."

Among the contractual guarantees which follow are "exclusivity and quality," "common aesthetics" "maximum enjoyment of home and neighborhood" and particularly those of Subparagraph 5. D:

> "Privacy and Enjoyment. All improvements on The Plantation shall be designed and constructed in such a manner so as to promote and protect the privacy and enjoyment of the residence of each owner without detracting from the aesthetics and environment of each individual residence of the aesthetics and environment of the Development as a whole."

Section 5.18 D contains a specific restriction on:

> > "Business or Commercial Activity. Unless specifically permitted in a Supplemental Declaration, no Property shall be used at any time for business or commercial activity, provided, however, that the Grantor or its nominee may use any Property for model homes or real estate sales offices."

The only known Supplemental Declaration as to such activity was adopted June 5, 2002 and simply authorized home office business conduet by the occupant owners of a residence. The limitation was further codified by Architectural and Environmental Control Committee Regulations as Business Enterprise Restrictions, in paragraph 3Y, dated April 27, 2005

While not binding upon the City directly, contractual disputes and CC&R obligations between the city's taxpaying residential owners and neighborhood developers should be noted and such rights respected in planning and zoning decisions, to the maximum extent possible. Further, if Lincoln as an "owner" is legally restricted from proposing the subdivision and uses which it intends to drive into a spot zone SAP herein, it arguably is not a lawful "Applicant" under the Zoning

Ordinance.

V.

THE SCOPE OF THIS DEVELOPMENT IS TOO MASSIVE TO DO WITHOUT CONTINUING PUBLIC SCRUTINY

At full build out, this project could increase the 12,288 population of Garden City by up to ten percent. Yet, the effect of the approval of an SAP for this area is to largely eliminate future City Council and Planning and Zoning Commission direct oversight of the implementation and all post-initial approval changes, revisions and amendments of the proposal and to place all such decisions behind closed doors with staff-only determinations made with developer-only input.

Based on recently approved changes to Garden City's Design Review process, it appears that such issues may also go to an unnamed "design review consultant."

This specific development will increase density in this neighborhood of large lot, upscale residences by up to 94% per acre. The public's involvement in continued scrutiny over evolving details and plan changes directly and through its elected and appointed officials, arguably will be entirely eliminated, as the SAP ordinance is currently constituted. Design review committee involvement is replaced by staff level-only or consultant review. Neighbors will have neither prior notice of changes nor subsequent avenue for input, as impacts are experienced or enhanced. Even if appeals are permitted, unnoticed alterations will slip past until impacts are experienced. Putting such an SAP on a major arterial roadway with existing traffic challenges and overlaying it over and projecting it into and against an existing upscale residential neighborhood will predictably cause continuing conflicts and raise all manner of issues. These should not be resolved in the backroom of City Hall at the staff level. Instead, the traditional notice, opportunity of comment, scrutiny and electoral accountability of the everyday planning and zoning process should be available to all parties as to this development. An SAP eliminates that. A more traditional rezone request, subject to the existing Garden City ordinances and process, focused solely on the State Street adjacent portion of the plans, will protect the nearby neighborhood, require the Applicant to specifically detail and then stick to what it proposes to do, and give the City continuing and regular oversight.

VI.

THE TRAFFIC IMPACTS HAVE NOT BEEN FULLY, ADEQUATELY STUDIED

More than 1000 resident vehicles may be brought to this area, some making two or more trips a day, driven by the occupants of the 722 units. As of now, the intersection redesign of State Street and Pierce Park is not fully completed. Even so, the ACHD traffic study of these impacts upon State Street indicates:

A. The development will generate 4945 daily vehicle trips onto and out of the

project, by estimate.

B. "Mitigation" will be needed for vehicle access on State Street by the year 2026, to possibly include additional turn or traffic lanes.

C. With 95% probability, even with the mitigation, cars desiring to turn in the area of the development are projected to back up into and impede traffic lanes at six different locations.

D. Any development greater than 83% of the current proposal is unacceptable from a traffic perspective, even with all available mitigation options.

An elaborate bus stop, even if called a "future TOD transit station," does not eliminate the readily predictable automobile traffic generation which a dense cluster of housing will produce. Nor does it eliminate, even with an upgraded intersection at Pierce Park, the back up of ingress and egress-seeking vehicles. It appears that this insufficient vehicle "stacking space" will overwhelm such access during rush hours at the River Club primary access point. As discussed below, it is also foreseeable that ACHD and the applicable Fire Department authority will demand another access point, especially if Phase 3 is approved, through the existing neighborhoods to the South, most likely via North Fair Oaks Place. Furthermore, the internal traffic pattern and as-planned extremely inadequate parking within the development seems destined to inbuild other automobile related difficulties.

## VII.

## THE SAP IN FACT HAS NO ADEQUATE PUBLIC ACCESS TO THE GREENBELT THROUGH THE NEIGHBORHOOD

The only available route to the Greenbelt for River Club denizens is through the existing neighborhood. The Applicant promises that the residents of all 722 units will have Greenbelt and Boise River access as quality of life benefits and identifies a narrow, 137 foot long pedestrian public pathway located between two existing residences at the end of Plantation River Drive as the route for walkers and bikers. (See Exhibit "C" hereto) However, that accessibility is not a well-developed or easily located public path. It is situated all the way at the other side of the existing neighborhood with no direct connection to any phase of the SAP area. Perhaps incorrectly, the accessway is also currently posted with signage as "Private" and non-public. See Exhibit "D" hereto. Attached as Exhibit "E" is an area map which shows how ill-located and indirectly accessable said pathway would be for the many hundreds of new residents when offered to them as a promise of ready river access and greenbelt amenities. Obviously, the location and design of the path were never anticipated to handle either the non-existent on street vehicle parking or hundreds of people.

VIII.

## THE IMPACTS ON THE EXISTING ADJACENT NEIGHBORHOOD HAVE NEITHER BEEN FULLY ANALYZED NOR APPROPRIATELY MITIGATED

The proposed Phase 3 is particularly intrusive and offensive to the Objectors and the Applicant's promises and projections as to impacts and protections are not sufficiently developed to comply with the City Code. This entire Phase 3 area has no state Street adjacency, is a profit-seeking afterthought, and is guaranteed to cause significant impact upon and conflict within the adjacent residences. In an attempt to mollify the existing residents to the adjacent South, the Applicants have promised that no rear entrance connection to existing roads will be sought via North Fair Oaks Place. This is an amendment to the earlier proposals which sought exactly that. In fact, agents and employees of ACHD have already been detected while conducting onsite inspections of this prospective interconnection. It is eminently predictable that the Highway District will necessarily and by code demand just such a second exit point at the Eastern terminus of Phase 3 as a condition of its development. The Garden City authorities should not inbuild such a conflict for its citizens nor should it blithely assume that ACHD and the Boise City Fire Department will not require a mandatory, typical, development and service second access as necessary.

Likewise, it is easy to anticipate that the under-designed number of parking spaces for this SAP will force overflow parking onto the adjacent residential streets of the existing neighborhoods. The conceptual design layout illustrates 1246 parking spaces. Up to 1070 may be capable of approval as designed. Some 176 spaces would apparently require vehicles to back in to primary fine or emergency access drives, and are thus suspect. This is even more concerning as the Council is just now considering and acting to downgrade its developer parking requirement to allow fewer spaces for multiple unit buildings. When confronted with the high liklihood that the insufficient number of on-site planned parking spaces will push resident, shopper and transit rider vehicles into parking on the adjacent residential streets, as agent for the development merely offers "Garden City will police that." Just as right-sized, correctly designed improvements along State Street may be proper, the Phase 3 plan is correspondingly improper and troublesome.

IX.

## WITHOUT PROPERLY DEVELOPED WATER OR SEWER PLANS, THIS PROPOSED HIGH DENSITY SAP LOCATION IS PREMATURE

Upon information and belief, as far as the Objectors can discern from the existing record, the issues of water access and sewer planning, which typically precede development, remain unaddressed for this proposal. In their conditional will serve letter, Garden City has recommended that the Applicant contact Boise City about possible sewer and water access. If this is so, particularly where the significant density construction is within or adjacent to the Boise River Flood Plain, those elements should be a clearly demonstrated feasability before any such SAP site is planned at River Club. A formal confirmation of sewer and water "ability to serve" has not been issued. The

Objectors look forward to receiving and reviewing this data before, not after, either a zone is sited or further progress is initiated.

X.

CONCLUSION

For each and all of the above stated reasons, the Garden City Planning and Zoning Commission should:

1. Require the Applicant to Withdraw and Revise the SAP Application to comply with applicable Garden City Codes and the Comprehensive Plan and supply appropriately sufficient and compliant detail therein.

2. Suggest to the Applicant that it eliminate Phase 3 from any subsequent Application, confining its apartment, commercial and condo ambitions with lesser impact to State Street adjacent parcels and thereby eliminating or mitigating the potential damage to the adjacent established neighborhood.

3. Work with the Objectors to clarify and the Applicant to compel compliance with all applicable CC&Rs and utilize appropriate and existing homeowner amendment procedures to obtain neighborhood approved Supplement Declarations to define, explain and conform the planned development through the existing property owners.

4. Recommend to the City Council for developments of this magnitude adjacent to existing residential neighborhoods, that elected and appointed officials should retain full involvement and continuing authority, rather than delegating the same to staff-level agents and consultants via an SAP approach.

5. Ask the SAP Applicant to designate and protect the remaining golf course as an "open site area in perpetuity," utilizing a deed restriction per Garden City Development Code 8.6B.6.A-6.

DATED This 7th day of February, 2023.

Respectfully Submitted:

David H. Leroy, Attorney for Preserve Plantation 23

KeyCite Yellow Flag - Negative Treatment
Declined to Extend by Sunnyside Indus. and Professional Park, LLC v. Eastern Idaho Public Health Dist., Idaho App., April 28, 2009

139 Idaho 71
Supreme Court of Idaho,
Boise, March 2003 Term.

Richard EVANS and Matthew Finnegan, Plaintiffs–Appellants,
v.
TETON COUNTY, Idaho Board Of Commissioners, Teton Springs, L.L.C., Max H. Rammell and Denice K. Rammell, husband and wife, Merrill R. Rammell and Roberta L. Rammell, husband and wife, Miles E. and Jessie M. Hastings Family Trust, Kearsley Family L.L.C., and John H. Winger, Defendants–Respondents.

No. 27854.
|
June 3, 2003.
|
Rehearing Denied July 28, 2003.

**Synopsis**
Property owners petitioned for judicial review of a decision by county board of commissioners approving a planned unit development (PUD) and zoning change. The Supreme Court, Kidwell, J., held that: (1) board of commissioners did not violate comprehensive plan; (2) board did not violate subdivision ordinance; and (3) property owners could not challenge area-of-impact agreement.

Affirmed.

West Headnotes (28)

[1] **Zoning and Planning**⇐Review in general

For purposes of judicial review of Local Land Use Planning Act (LLUPA) decisions, a local agency making a land use decision, such as a board of commissioners, is treated as a government agency under Idaho Administrative Procedural Act (IDAPA). I.C. §§ 67-6501 et seq., 67-6521(1)(d).
9 Cases that cite this headnote

[2] **Administrative Law and Procedure**⇐Trial or review de novo

The Supreme Court reviews decisions under the Idaho Administrative Procedural Act (IDAPA) independently of any intermediate appellate court. I.C. § 67-6521(1)(d).
1 Case that cites this headnote

[3] **Zoning and Planning**⇐Decisions of boards or officers in general

There is a strong presumption that the actions of a county board of commissioners, where it has interpreted and applied its own zoning ordinances, are valid.

3 Cases that cite this headnote

[4] **Zoning and Planning**⇐Decisions of boards or officers in general

Whether a county board of commissioners violated a statutory provision in a zoning and planning decision is a matter of law over which the Supreme Court exercises free review.

1 Case that cites this headnote

[5] **Zoning and Planning**⇐Substantial evidence in general

The Supreme Court defers to a county board of commissioners' findings of fact in a zoning and planning case, unless the findings of fact are clearly erroneous; findings are not "clearly erroneous" so long as they are supported by substantial, competent, although conflicting, evidence.

EXHIBIT "A"

[6] **Zoning and Planning**⇐Right of Review; Standing

Landowners were "affected persons" with standing to challenge zoning decision of county board of commissioners, where they lived near proposed development site, and their property would be adversely affected by development. I.C. § 67-6521(d).

7 Cases that cite this headnote

[7] **Zoning and Planning**⚭Comprehensive or general plan

A comprehensive plan is not a legally controlling zoning law, but serves as a guide to local government agencies charged with making zoning decisions.

1 Case that cites this headnote

[8] **Zoning and Planning**⚭Conformity of regulations to comprehensive or general plan
**Zoning and Planning**⚭Conformity of change to plan

The statutory requirement that a zoning ordinance be "in accordance with" comprehensive plan does not require zoning decisions to strictly conform to the land-use designations of the comprehensive plan; however, a board of commissioners cannot ignore its comprehensive plan when adopting or amending zoning ordinances. I.C. § 67-6511.
1 Case that cites this headnote

[9] **Zoning and Planning**⚭Modification or amendment; rezoning

Whether approval of a zone change is "in accordance with" the comprehensive plan is a question of fact, which can only be overturned when the factual findings supporting the zone change are clearly erroneous. I.C. § 67-6511.

[10] **Zoning and Planning**⚭Conformity of regulations to comprehensive or general plan
**Zoning and Planning**⚭Conformity of change to plan

The governing body charged with making zoning decisions "in accordance with" a comprehensive plan must make a factual inquiry into whether requested zoning ordinance or amendment reflects the goals of, and takes into account factors in, the comprehensive plan in light of the present factual circumstances surrounding the request. I.C. § 67-6511.

[11] **Zoning and Planning**⚭Spot zoning

A claim of "spot zoning" is essentially an argument that a change in zoning is not in accord with the comprehensive plan.

3 Cases that cite this headnote

[12] **Zoning and Planning**⚭Spot zoning

Type-one spot zoning may simply refer to a rezoning of property for a use prohibited by the original zoning classification; the test for whether such a zone reclassification is valid is whether the zone change is in accord with the comprehensive plan.

2 Cases that cite this headnote

[13] **Zoning and Planning**⚭Spot zoning

Type-two spot zoning refers to a zone change that singles out a parcel of land for use inconsistent with the permitted use in the rest of the zoning district for the benefit of an individual property owner; this type of spot zoning is invalid.

3 Cases that cite this headnote

[14] **Zoning and Planning**⚭Conformity of change to plan

County board of commissioners did not violate county comprehensive plan by granting developers a zoning change; commissioners took into consideration impact on water quality, wildlife habitat, riparian systems, traffic, public utilities, schools, health-care providers, wastewater management, and many other issues related to comprehensive plan. I.C. § 67-6511.

[15] **Zoning and Planning**⚭Substantial evidence in general

The Supreme Court must affirm the findings of a county board of commissioners in a zoning and

planning decision if they are supported by substantial, competent, although conflicting, evidence.

[16] Municipal Corporations⊜Applicability of statutory construction rules

The Supreme Court construes a local ordinance as it construes a statute.

[17] Municipal Corporations⊜Applicability of statutory construction rules
Statutes⊜Literal, precise, or strict meaning; letter of the law

Statutory construction always begins with the literal language of the statute or ordinance.

[18] Municipal Corporations⊜Plain, ordinary, or common meaning

If an ordinance is unambiguous, a court need not consider rules of statutory construction, and the ordinance will be given its plain meaning.

1 Case that cites this headnote

[19] Statutes⊜In general; factors considered

Where the language of a statute is ambiguous, a court applies rules of construction for guidance.

[20] Statutes⊜Unintended or unreasonable results; absurdity

Courts disfavor statutory constructions that lead to absurd or unreasonably harsh results.

[21] Statutes⊜Statute as a Whole; Relation of Parts to Whole and to One Another

All sections of a statute must be construed together to determine the legislative body's intent.

[22] Municipal Corporations⊜Ordinance as a whole
Statutes⊜Superfluousness

Statutes and ordinances must be construed so as to give effect to all their provisions, and not to render any part superfluous or insignificant.

[23] Zoning and Planning⊜Decisions of boards or officers in general

There is a presumption that a local zoning board's actions are valid when interpreting and applying its own zoning ordinances.

4 Cases that cite this headnote

[24] Zoning and Planning⊜Maps, plats, and plans; subdivision regulations

Subdivision ordinance's two percent limit on using developed acreage for incidental uses did not apply to Planned Use Development (PUD), where PUD was for residential, commercial, and industrial (RCI) use.

[25] Zoning and Planning⊜Architectural and structural designs; area and lot considerations

Planned Use Development (PUD) did not violate county's comprehensive plan by allowing small lots, where board approved PUD application, and PUD did not compromise health, safety, or general welfare of the county.

1 Case that cites this headnote

[26] Zoning and Planning⊜Right of Review; Standing

Property owners could not challenge area-of-

impact agreement between county and city, where they were not parties to agreement.

[27] Zoning and Planning⊜Filing, publication, and posting; minutes and findings
Zoning and Planning⊜Findings, reasons, conclusions, minutes or records

County board of commissioners was not required to make its own findings in support of approval of Planned Use Development (PUD) and zoning change; it could adopt findings of zoning commission. I.C. § 67-6535.

[28] Zoning and Planning⊜Costs; attorney fees

Property owners were not entitled to attorney fees for appeal of decision of county board of commissioners approving Planned Use Development (PUD) and zoning change, where they were not the prevailing party.

1 Case that cites this headnote

**Attorneys and Law Firms**

****86 *73** Phyllis Lamken, Victor, argued for appellants.

Teton County Attorney, Driggs, for respondent Teton County. Laura Lowery argued.

Holden, Kidwell, Hahn & Crapo, Idaho Falls, for respondent Teton Springs, L.L.C. Dale Storer argued.

Roy Moulton, Driggs, for respondents Rammell, et al.

**Opinion**

KIDWELL, Justice.

Richard Evans and Matthew Finnegan (appellants) appeal the Teton County Board of County Commissioners' (Board of Commissioners) decision to approve Teton Springs, L.L.C.'s (Teton Springs) final plat of phase 1 of the Teton Springs subdivision, request for a zone change from A–2.5 to R–1, and application for a Planned Unit Development (PUD). The Board of Commissioners' decision is affirmed.

**I.**

**FACTS AND PROCEDURE**

Teton Springs, a Wyoming limited liability company authorized to do business in the state of Idaho, proposed to convert 780 acres of mostly undeveloped farmland and wetland in southern Teton County into a PUD consisting of a golf course and residential resort. The PUD is adjacent to the Targhee National Forest in southern Teton County, south of Victor, Idaho. Upon completion, the proposed development will include an 18–hole golf course, clubhouse, pro shop, maintenance buildings, fishing ponds, equestrian facility, 100–room hotel, 50 overnight units, health club and tennis facility, swimming pool, restaurant, conference rooms, nordic ski facility, storage facilities, helicopter pad, parking lots, 18 two to three acre ranch estates, 100 three-quarters to one acre golf estates, 170 one-third to one-half acre golf homes, 180 five thousand square foot residential lots, and 100 overnight cabin lots from one thousand to twenty-five hundred square feet.

Of the 780 acres upon which the PUD will be built, the respondents Rammel own 460 acres, the Hastings own 160 acres, the Kearsleys own 80 acres, and the Wingers own 80 acres. Approximately 140 of the 780 acres are located within the "Area of City Impact," an unincorporated area of Teton County neighboring the city of Victor. In addition to the national forest to the south, the acreage surrounding the PUD supports a mix of agricultural, residential, and commercial uses. There are some pre-existing subdivisions to the north of the PUD. The appellants live on two-and-one-half acre residential lots near the PUD.

On August 2, 1999, Teton Springs filed an application for approval of the PUD. Teton Springs also requested a zone change from A–2.5 to R–1. On September 1, 1999, the Teton County Planning and Zoning Commission (Zoning Commission) held a public hearing to consider the application. Following the hearing, the Zoning Commission recommended approval of the concept plan for the PUD and zone change. On October 25, 1999, ****87 *74** the Board of Commissioners conducted a public hearing to consider the Teton Springs PUD and proposed zone change. At the conclusion of the hearing, the Board of Commissioners approved the concept plan of the PUD conditionally upon resolution of issues regarding natural stream flows, the development's impact on the city of Victor, traffic flow, impact on county services, sewer system capacity, and density. The Board of Commissioners decided to wait to consider the zoning change when it considered Teton Springs' final plat.

After the October hearing, the Zoning Commission obtained comments regarding the PUD application from the Idaho Department of Water Resources, the U.S. Environmental Protection Agency, the Idaho Department

of Environmental Quality, the U.S. Fish and Wildlife Service, the Idaho Fish and Game Department, the District 7 Health Department, and various other county and local agencies. On May 3, 2000, the Zoning Commission held another public hearing to consider the Teton Springs PUD application and the proposed zone change. At the hearing's conclusion, the Zoning Commission recommended accepting the PUD application and granting the zone change. On May 9, 2000, the Zoning Commission issued Findings of Fact and Conclusions in support of its decision.

On June 12, 2000, the Board of Commissioners and the city of Victor held a joint public hearing to consider the Teton Springs PUD and request for a zone change. At the conclusion of this hearing, the Board of Commissioners and the city of Victor approved the PUD and granted the zone change. The Board of Commissioners also adopted the Findings of Fact and Conclusions issued by the Zoning Commission.

On July 7, 2000, the appellants filed a Petition for Judicial Review of Teton Springs' application for approval of a PUD and zone change. The appellants alleged the Board of Commissioners violated Teton County Zoning Ordinance (Zoning Ordinance), Teton County Subdivision Ordinance (Subdivision Ordinance), and the Teton County Comprehensive Plan (Comprehensive Plan) by approving the PUD and granting a zone change. As a result, the appellants alleged they would suffer substantial injury. On September 25, 2001, the district court issued a decision affirming the Board of Commissioners' approval of Teton Springs' application for a PUD and zone change. The appellants timely filed this appeal.

## II.

## STANDARD OF REVIEW

[1] [2] The Local Land Use Planning Act (LLUPA) allows an affected person to seek judicial review of an approval or denial of a land use application, as provided for in the Idaho Administrative Procedural Act (IDAPA). Idaho Code § 67–6521(1)(d) (2002); *Evans v. Bd. Of Comm'rs of Cassia County,* 137 Idaho 428, 430, 50 P.3d 443, 445 (2002). The district court conducts judicial review of the actions of local government agencies. I.R.C.P. 84(a)(1) (2002). For purposes of judicial review of LLUPA decisions, a local agency making a land use decision, such as the Board of Commissioners, is treated as a government agency under IDAPA. *Urrutia v. Blaine County,* 134 Idaho 353, 357, 2 P.3d 738, 742 (2000). The district court bases its judicial review on the record created before the local government agency. I.R.C.P. 84(e)(1). This Court reviews decisions under the IDAPA independently of any intermediate appellate court. *Evans,* 137 Idaho at 431, 50 P.3d at 446.

[3] This Court must affirm the Board of Commissioners unless it determines the Board of Commissioners' findings, inferences, conclusions, or decisions: (1) violated the constitution or statutory provisions; (2) exceeded its statutory authority; (3) were made upon unlawful procedure; (4) were not supported by substantial evidence on the record; or (5) were arbitrary, capricious, or an abuse of discretion. *Id.;* I.C. § 67–5279(3). There is a strong presumption that the actions of the Board of Commissioners, where it has interpreted and applied its own zoning ordinances, are valid. *Evans,* 137 Idaho at 431, 50 P.3d at 446. The party appealing the Board of Commissioners' decision must first show the Board of Commissioners erred in a manner specified under I.C. § 67–5279(3), ****88 *75** and second, that a substantial right has been prejudiced. I.C. § 67–5279(4); *Price v. Payette County Bd. Of Comm'rs,* 131 Idaho 426, 429, 958 P.2d 583, 586 (1998).

[4] Whether the Board of Commissioners violated a statutory provision is a matter of law over which this Court exercises free review. *Friends of Farm to Market v. Valley County,* 137 Idaho 192, 196, 46 P.3d 9, 13 (2002); *Polk v. Larrabee,* 135 Idaho 303, 308, 17 P.3d 247, 252 (2000).

[5] This Court defers to the Board of Commissioners' findings of fact unless the findings of fact are clearly erroneous. *Evans,* 137 Idaho at 431, 50 P.3d at 446; *Friends of Farm to Market,* 137 Idaho at 196, 46 P.3d at 13. The Board of Commissioners' factual findings are not clearly erroneous so long as they are supported by substantial, competent, although conflicting, evidence. *Friends of Farm to Market,* 137 Idaho at 196, 46 P.3d at 13.

## III.

## ANALYSIS

### A. Appellants Have Standing To Challenge The Board of Commissioners' Decision to Approve Teton Springs' Application And Request For A Zone Change.

[6] Teton Springs argues the appellants lack standing because they are not "affected persons" under I.C. § 67–

6521(d). For this proposition, Teton Springs cites *Rural Kootenai Organization, Inc. v. Board. of Commissioners,* 133 Idaho 833, 993 P.2d 596 (1999), where this Court ruled members of RKO lacked standing to raise a due process claim without demonstration of a distinct, palpable injury and a causal connection between the injury and lack of notice. Teton Springs also relies on I.C. § 67–6535(c), which requires "actual harm or a violation of fundamental rights" to obtain a remedy under LLUPA. The appellants counter that they have standing to appeal the Board of Commissioners' decision to approve the PUD and zone change because they own land within 300 feet of the PUD and will be adversely affected by its construction.

LLUPA confers standing to seek judicial review of a local land use decision to an "affected person" aggrieved by the decision. I.C. § 67–6521(d). This Court notes that while it recognizes the underlying policy of I.C. § 67–6521(d) conferring standing to affected persons, the legislature cannot, by statute, relieve a party from meeting the fundamental constitutional requirements for standing. *See Noh v. Cenarrusa,* 137 Idaho 798, 53 P.3d 1217 (2002). An affected person is "one having an interest in real property which may be *adversely affected* by the issuance or denial of a permit authorizing the development." I.C. § 67–6521(a) (emphasis added).

The appellants emphasize they own land within 300 feet of the PUD. The record shows the appellants received notice of a hearing, presumably pursuant to the Subdivision Ordinance and Idaho Code, which require notice to all landowners within 300 feet of a proposed variance or amendment to a zoning district. However, the notice sent to the appellants stated they received it because they owned land *either* within 300 feet of the PUD or in the Pole Canyon Ranches Subdivision, a development adjacent to the proposed PUD. The Subdivision Ordinance and Idaho Code arbitrarily designate 300 feet. The appellants standing status depends on whether they own property that may be adversely affected by the PUD's construction, not because they can claim they own property within a specified distance. Proximity is a very important factor. A property owner in Tetonia, Driggs, or even Victor may be less likely to qualify for standing to challenge the PUD because it is less likely they can show their property will be adversely affected. However, this Court will not look to a predetermined distance in deciding whether a property owner has, or does not have, standing to seek judicial review of a LLUPA decision.

Clearly, the appellants' properties may be adversely affected by a development proposing an 18–hole golf course and pro shop, nearly five hundred homes, a helicopter pad, a 100–room inn, and 50 overnight cabins all on property adjacent to their rural homes. The appellants have standing to seek judicial review of the Board of Commissioners' decision ****89 *76** to approve Teton Spring's PUD application and request for a zone change because they may be adversely affected by the decision.

Teton Springs' reliance on *Rural Kootenai Organization* for the proposition the appellants lack standing is misplaced. The standing analysis in that case was relevant only to the narrow issue of whether RKO had standing to raise a due process claim relating to notice of two specific public hearings. The standing analysis did not extend to any other issue raised by RKO.

Teton Springs' reliance on the language of I.C. § 67–6535 to argue the appellants lack standing is equally misplaced. I.C. § 67–6535(a) requires that approval or denial of any application provided for in LLUPA be based on criteria set forth in the local zoning ordinances and comprehensive plan. I.C. § 67–6535(c) directs the review of a LLUPA decision. The language in I.C. § 67–6535(c) instructing courts that "[o]nly those whose challenge to a decision demonstrates actual harm or violation of fundamental rights, not the mere possibility thereof, shall be entitled to a remedy or reversal of a decision" cannot be construed as a standing requirement. The existence of real or potential harm is sufficient to challenge a land use decision. I.C. § 67–6535(c) requires a demonstration of actual harm or violation of a fundamental right in order to be entitled to a remedy in cases disputing a LLUPA decision.

**B. The Board of Commissioners Did Not Violate The Teton County Comprehensive Plan When It Granted A Zone Change From A–2.5 to R–1.**

The appellants argue the change in zoning from A–2.5 to R–1 is inconsistent with the permitted use in the rest of the zoning district and violates the Comprehensive Plan. As a result, the appellants argue the zone change is spot zoning, which is impermissible.

[7] [8] [9] [10] A county board of commissioners must establish one or more zones or zoning districts within the county. I.C. § 67–6511. The zoning districts shall be "in accordance with" the policies of the County's comprehensive plan. *Id.* Rezoning property requires an amendment to the zoning ordinance. After considering the comprehensive plan, the planning and zoning commission may recommend, and the board of commissioners may accept or deny, an amendment to the zoning ordinance. I.C. § 67–6511(b); *Bone v. City of Lewiston,* 107 Idaho 844, 849, 693 P.2d 1046, 1052 (1984). A comprehensive plan is not a legally controlling zoning law, it serves as a guide to local government agencies charged with making

zoning decisions. *Bone* at 850, 693 P.2d at 1052; *Friends of Farm to Market,* 137 Idaho at 200, 46 P.3d at 17; *Urrutia,* 134 Idaho at 357–58, 2 P.3d at 742–43. The "in accordance with" language of I.C. § 67–6511 does not require zoning decisions to strictly conform to the land use designations of the comprehensive plan. *Bone* at 850, 693 P.2d at 1052; *Sprenger, Grubb, & Assoc., Inc. v. City of Hailey,* 127 Idaho 576, 585, 903 P.2d 741, 750 (1995); *See Also* I.C. § 67–6508. However, a board of commissioners cannot ignore their comprehensive plan when adopting or amending zoning ordinances. *Bone* at 850, 693 P.2d at 1052. Whether approval of a zone change is "in accordance with" the comprehensive plan is a question of fact, which can only be overturned when the factual findings supporting the zone change are clearly erroneous. *Id.; Friends of Farm to Market,* 137 Idaho at 200, 46 P.3d at 17; *Sprenger, Grubb, & Assoc., Inc.,* 127 Idaho at 585, 903 P.2d at 750; *Ferguson v. Bd. Of County Comm'rs for Ada County,* 110 Idaho 785, 787, 718 P.2d 1223,1225 (1986). The governing body charged with making zoning decisions "in accordance with" the comprehensive plan must "make a factual inquiry into whether requested zoning ordinance or amendment reflects the goals of, and takes into account those factors in, the comprehensive plan in light of the present factual circumstances surrounding the request." *Bone* at 850, 693 P.2d at 1052.

[11] [12] [13] A claim of "spot zoning" is essentially an argument the change in zoning is not in accord with the comprehensive plan. *See Price,* 131 Idaho at 432, 958 P.2d at 589. There are two types of "spot zoning." *Dawson Enter., Inc. v. Blaine County,* 98 Idaho 506, 514, 567 P.2d 1257, 1265 (1977). Type ****90 *77** one spot zoning may simply refer to a rezoning of property for a use prohibited by the original zoning classification. *Id.* The test for whether such a zone reclassification is valid is whether the zone change is in accord with the comprehensive plan. *Id.* Type two spot zoning refers to a zone change that singles out a parcel of land for use inconsistent with the permitted use in the rest of the zoning district for the benefit of an individual property owner. *Id.* at 515, 567 P.2d at 1266. This latter type of spot zoning is invalid. *Id.*

[14] The record reflects that the Board of Commissioners approved the PUD application and zone change conditionally upon the input it requested, and received, from several local, state, and federal agencies regarding the PUD's impact on water quality, wildlife habitat, riparian systems, traffic, public utilities, schools, health care providers, wastewater management, and many other topics. This input addressed many of the policies of the Comprehensive Plan, including public services and utilities, open spaces, and use and preservation of natural resources. Teton Springs also provided reports based on studies conducted by its own engineers and planners answering the concerns raised by the agencies and the public in general. The record also contains a fiscal impact report provided by a consulting firm hired by Teton Springs. The report concludes that the PUD will be advantageous for county revenues, another policy of the Comprehensive Plan. The record indicates throughout this process Teton Springs adjusted its application in order to meet the requirements demanded by the Zoning Commission.

[15] The record also contains numerous objections to the PUD. One in particular, from a professional Hydrologist, outlines valid questions regarding the impact of the PUD on ground and surface water systems. However, many of the other objections were based on personal opinion and emotion rather than on the Comprehensive Plan and violations of its many policies. This Court must affirm the findings of the Board of Commissioners where, as here, if they are supported by substantial, competent, although conflicting, evidence. *Friends of Farm to Market,* 137 Idaho at 196, 46 P.3d at 13. Since the Board of Commissioners' finding that the zone change is in accord with the comprehensive plan is supported by substantial, competent evidence. The appellants' claim of spot zoning need not be addressed because the type one "spot zoning" in this case is valid.

### C. The Board of Commissioners Did Not Violate The Teton County Zoning And Subdivision Ordinance Or Comprehensive Plan When It Approved Teton Spring's Application For A PUD.

#### 1. The Subdivision Ordinance's two percent limitation on developed acreage that can be used for incidental purposes does not apply to the Teton Springs PUD.

[16] [17] [18] This Court construes a local ordinance as it construes a statute. *Friends of Farm to Market,* 137 Idaho at 196, 46 P.3d at 13. Statutory construction always begins with the literal language of the statute or ordinance. *Id.* at 197, 46 P.3d at 14. If an ordinance is unambiguous, this Court need not consider rules of statutory construction and the statute will be given its plain meaning. *Hamilton ex rel. Hamilton v. Reeder Flying Serv.,* 135 Idaho 568, 572, 21 P.3d 890, 894 (2001); *Canal/Norcrest/Columbus Action Comm. v. City of Boise,* 136 Idaho 666, 670, 39 P.3d 606, 610 (2001).

[19] [20] [21] [22] [23] Where the language of a statute is ambiguous, this Court applies rules of construction for guidance. *Friends of Farm to Market,* 137 Idaho at 197, 46 P.3d at 14. This Court disfavors constructions that lead to absurd or unreasonably harsh results. *Id.* All sections of

the applicable statute must be construed together to determine the legislative body's intent. *Id.* (citing *Lockhart v. Dept. of Fish and Game,* 121 Idaho 894, 897, 828 P.2d 1299, 1302 (1992)). Statutes and ordinances must be construed so as to give effect to all their provisions and not to render any part superfluous or insignificant. *Id.* (citing *Brown v. Caldwell Sch. Dist. No. 132,* 127 Idaho 112, 117, 898 P.2d 43, 48 (1995)). There is a presumption that a local zoning board's actions are valid when interpreting **91 *78 and applying its own zoning ordinances. *iD.; eVans,* 137 IDaho at 431, 50 p.3D at 446.

[24] The Subdivision Ordinance allows all PUDs to contain "incidental components" inconsistent with the underlying land use zones as long as: (1) the uses are incidental and necessary to the primary purpose of the PUD; and (2) no more than two percent of the developed acreage within the PUD is devoted to incidental use. Teton County, Idaho, Subdivision Ordinance § 1–7–5 (1999). The appellants argue the PUD violates the Subdivision Ordinance's two percent limitation on land developed for uses incompatible with the underlying zoning because the PUD's proposed commercial uses are incidental, not primary uses. As a result, the appellants claim many of the uses proposed by Teton Springs are prohibited in a residential zone.

The Subdivision Ordinance permits three types of PUDs, including RCI PUDs. T.C.S.O. § 1–7–1. The Subdivision Ordinance defines an RCI PUD as one where "[p]roperty located in *residential,* commercial, *and* industrial zones may be developed pursuant to an approved" residential, commercial, *or* industrial (RCI) PUD. T.C.S.O. Art. II (emphasis added). In terms of the permitted uses in an R–1 zone, the Subdivision Ordinance states, "[p]roperty located within an R–1 ... zone may be developed pursuant to an approved 'Residential, Commercial or Industrial PUD' (referred to as an 'RCI PUD')." *Id.* Under the Subdivision Ordinance, all PUD's may be used for primarily residential developments, but only an RCI PUD may be used for primarily commercial or industrial developments. T.C.S.O. § 1–7–4. Under the Zoning Restrictions and Land Use Table found in the Zoning Ordinance, an RCI PUD is a permitted use in R–1 zones as long as the use is permitted as outlined in the PUD Process of the Zoning Ordinance. Teton County, Idaho, Zoning Ordinance § 1–4–1 (1999).

The Teton Springs PUD is an RCI PUD. The Zoning Ordinance unambiguously permits use of an RCI PUD in an R–1 Zone as long as the use is permitted as outlined in the PUD process. The Subdivision Ordinance unambiguously allows development of property located within an R–1 zone pursuant to an approved RCI PUD. The Subdivision Ordinance also unambiguously allows commercial or industrial development in an approved RCI PUD. Based on the plain meaning of the Zoning and Subdivision Ordinance, the two percent incidental use limitation of § 1–7–5 of the Subdivision Ordinance does not apply to an approved RCI PUD built in an R–1 zone as long as the use is permitted as outlined in the PUD process.

**2. The density of the Teton Springs PUD is not impermissible.**

[25] The appellants claim the PUD violates the Comprehensive Plan because the density of development is too high and many of the lots are smaller than allowed. Under the Subdivision Ordinance, "A PUD application may depart from applicable height, setback and lot size restrictions when ... approved by the Board." T.C.S.O. § 1–7–3. "Any departures from the height, setback, and lot size ... [required by] the Zoning Ordinance must be recorded and justified as not compromising the health, safety and general welfare of the county." *Id.*

The Subdivision Ordinance also states that "[t]he protection of open space is a central feature of all PUD's." T.C.S.O. § 1–7–7. "In the case of an RCI PUD, a minimum of fifty percent (50%) of the land within the gross acreage of the PUD shall be dedicated to open space." *Id.* "Open spaces may take a variety of forms, including ... a golf course." *Id.*

The Subdivision Ordinance also expects that in a well-planned PUD, the housing units will be clustered in higher density groups allowing for open space. T.C.S.O. § 1–7–10. However, the Subdivision Ordinance does not provide a formula for clustering because a prescribed method for clustering would be counterproductive given the uniqueness of each development. *Id.* Rather, the Board of Commissioners is instructed to decide on projects based on how intelligently the project uses the existing land within the PUD. *Id.* The Subdivision Ordinance limits the base density of an RCI PUD, on that portion of the property that is not open **92 *79 space, to a maximum of one unit per one-half acre. T.C.S.O. § 1–7–12A. Nonetheless, the Subdivision Ordinance allows the Board of Commissioners to approve a greater or lesser density, provided it determines the public health, safety, and welfare service of the county will not be negatively impacted. *Id.*

Based on the provisions of the Subdivision Ordinance and the Board of Commissioners' unique position in interpreting and applying its own zoning laws, the Teton Springs PUD does not violate the density requirements of Teton County's zoning laws. The PUD departs from the allowed lot size restrictions, but under the Subdivision Ordinance the Board of Commissioners has flexibility to approve such departures as long as it finds the departure

does not compromise the health, safety and general welfare of the county. The Board of Commissioners specifically found no such compromise, as discussed above.

**3. Approval of the Teton Springs PUD application is not dependent upon compliance with the policies of the Teton County Comprehensive Plan.**

The appellants assert that the Teton Springs PUD violates several important policies of the Comprehensive Plan. The respondents counter that the Comprehensive Plan is not a zoning ordinance that regulates project compliance.

The discussion in Part III.B above applies to this claim. While the Board of Commissioners may not disregard the Comprehensive Plan, it is not a zoning ordinance by which a development project's compliance is measured. Rather, the Comprehensive Plan provides guidance to the local agency charged with making zoning decisions. The appellants may or may not be correct in their concern that the Teton Springs PUD will adversely affect the present lifestyle and alter the character of the area in violation of the policies of the Comprehensive Plan, that point was heavily debated during the approval process. Similarly, the fear of the "Jacksonization" of the Teton Valley, as the billionaires force the millionaires over Teton Pass into Driggs and Victor, may be well founded. However, regardless of the wisdom, or lack thereof, in approving Teton Springs' PUD application, the Comprehensive Plan does not provide a legal basis for this Court to reverse the Board of Commissioners' decision to approve the application.

**D. The Teton Springs PUD does not violate the area of impact agreement between Teton County and the City of Victor.**

[26] The appellants argue the PUD violates the Area of Impact Agreement (Agreement) between Teton County and the City of Victor. The agreement requires lots located in the Area of City Impact to be 2.5 acres, except developments located within 1500 feet of city limits may be divided into lots of one acre or larger. The appellants argue because the lot sizes in this PUD are much smaller than one acre, the county is in violation of an ordinance.

The Agreement is between Teton County and the city of Victor. On the issue of enforcement of the Agreement, it specifically states:

> A. Teton County shall be responsible for the administration and enforcement of the Area of Impact within the unincorporated area in Teton County, Idaho. This shall not prevent the City from bringing enforcement proceedings in its own behalf if the County refuses to enforce these provisions after being requested to do so by the City.
>
> B.... [R]equests for preliminary and final plats or the vacation thereof, and requests for zone changes involving property located in the Area of City Impact within the unincorporated area of Teton County relating to any non-agricultural development shall be reviewed and approved by both governing bodies upon recommendation from their respective Planning and Zoning Commission in accordance with Title 67 and Title 50, Idaho Code.

Ordinance # 94–1206, Area of Impact Agreement Between Teton County and the City of Victor, § 6A. The appellants are not entitled to seek enforcement of the Agreement because they are not a party to the Agreement ****93 *80** and not subject to it. the agreement provides for enforcement only by Teton County or the city of Victor. Both the Board of Commissioners and the City Council of Victor approved the PUD application and zone change as required by the Agreement. Furthermore, the zoning district description of the Area of City Impact between Teton County and Victor allows for smaller lot sizes if part of an approved PUD. T.C.Z.O. § 1–3–5.

**E. The Findings Of Fact And Conclusions Issued By The Zoning Commission Are Adequate.**

[27] The appellants argue the record does not contain any written findings of fact and conclusions from the Board of Commissioners and, thus, violates I.C. § 67–6535. The appellants acknowledge the Board of Commissioners adopted the Zoning Commission's findings of fact and conclusions, but contend these findings of fact and conclusions are inadequate as a matter of law because they fail to acknowledge whether the zone change or PUD comply with the Zoning Ordinance, Subdivision Ordinance, or Comprehensive Plan.

The respondents counter that the Board of Commissioners' adoption of the findings of fact and conclusions as issued by the Zoning Commission is appropriate under I.C. § 67–6535. Additionally, the respondents argue the Board of Commissioners made findings of fact and conclusions to the relevant criteria for approving a zone change and the PUD application, as required by I.C. § 67–6535.

I.C. § 67–6535 governs the issuance of findings of fact or conclusions of law relevant to a local land use agency's approval or denial of a land use application. Approval or denial of a land use application must be in writing explaining the relevant criteria and standards, the relevant contested facts, and the rationale for the decision based on the applicable provisions of the comprehensive plan and relevant ordinances. I.C. § 67–6535(b). There is no

requirement that both the Commission and Board make written findings and conclusions, only that they are made. The Board of Commissioners did not err by adopting the written findings of fact and conclusions issued by the Zoning Commission.

I.C. § 67–6535(c) clearly states the legislature's intent that decisions made pursuant to LLUPA are to be based on reason and the practical application of recognized principles of law. Courts reviewing LLUPA decisions are to consider the proceedings as a whole and evaluate the adequacy of the procedures and resulting decisions in light of practical considerations. I.C. § 67–6535(c). The Zoning Ordinance requires that any zone change conform to the goals of the Comprehensive Plan, preserve compatibility with surrounding zoning districts, and secure public health, safety, and general public welfare. T.C.Z.O. § 1–3–6. The Subdivision Ordinance requires that, before accepting the concept plan of a PUD, the Commission consider the objectives of the Subdivision Ordinance; conformance to the Comprehensive Plan; availability of public services and the financial capability of the public to support the services; continuity with capital improvements, and other health, safety, or environmental problems. T.C.S.O. Art. III § B1. The Subdivision Ordinance also requires the Zoning Commission and/or Board of Commissioners to issue written findings, but does not require written findings where the public documents or records of the public meeting are already contained in the record. T.C.S.O. § 1–7–13(J).

Based on the totality of the record, the findings of fact and conclusions adopted by the Board of Commissioners satisfy the requirements of I.C. § 67–6535(b). The Findings of Fact and Conclusions address the applicable provisions of the Comprehensive Plan and Zoning Ordinance and how the zone change and PUD will comply with them. The Board of Commissioners concluded that the PUD conformed to the applicable ordinances based on the materials submitted by the developer, engineer, and Staff Reports on file. These materials included input by several public agencies on the impact of the development and matters Teton Springs needed to consider in order to comply with local, state and federal law. The record reflects that Teton Springs altered its PUD application according to this input in order to **94 *81 satisfy the Zoning Commission and Board of Commissioners. The Board of Commissioners concluded the zone change satisfied the Comprehensive Plan based on the material submitted by the developer, engineer, and Staff Reports. The Board of Commissioners also concluded the zone change will preserve compatibility with the surrounding zoning districts and secure public health, safety, and general welfare based on the approval process as a whole.

While the Board of Commissioners would be better served by more specifically and extensively articulating its findings of fact and conclusions, the required information can be found in the record produced during the application process. This is in accord with I.C. § 67–6535(c), which requires a reviewing court to consider the whole process, and T.C.S.O. § 1–7–13(J), which does not require written findings where the public documents or records of the public meetings are already contained in the record. Therefore, we conclude the record, when viewed in its entirety, contains sufficient findings of fact to support the Board of Commissioners' decision.

### F. The Appellants Are Not Entitled To Attorney Fees On Appeal.

[28] The appellants are not entitled to an award of attorney fees on appeal because they are not the prevailing party and have not shown the Board of Commissioners and Zoning Commission acted without a reasonable basis in fact or law.

## IV.

## CONCLUSION

The appellants have standing to challenge the Board of Commissioners' decision to approve the Teton Springs PUD. The Board of Commissioners' decision to grant the requested zone change and approval of the PUD does not violate the Teton County Subdivision and Zoning Ordinance or the Teton County Comprehensive Plan. The appellants are not entitled to seek enforcement of the Area of Impact Agreement between Teton County and the city of Victor. The Board of Commissioners' Findings of Fact and Conclusions, as adopted from the Zoning Commission, satisfy the requirements of I.C. § 67–6535. No attorney fees are awarded on appeal. Costs to the respondents.

Chief Justice TROUT, and Justices SCHROEDER, EISMANN, and Justice Pro Tem McLAUGHLIN concur.

**All Citations**

139 Idaho 71, 73 P.3d 84

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MASTER DECLARATION
OF
THE PLANTATION #1

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EXHIBIT "B"

Class A Members: All owner-purchasers of lots or units who are members of the Master Association and are entitled to one (1) vote per unit or lot.

Class B Members: The Grantor who shall be a member of the Master Association and with respect to each individual tract shall have three (3) votes for each lot or unit, subject to the provisions of Section 3.28.

Commercial Area: Those tracts or parcels of real property on the Plantation designated as Commercial Areas by Grantor in a Supplemental Declaration and which are excluded from certain provisions of this Master Declaration as set forth in Section 2.09.

Common Area: All real property in which the Master Association or a Sub-Association owns an interest which is held for the common use and enjoyment of all of its members.

Completion: Fifteen years from the date of the execution of this Master Declaration or upon notice of completion by Grantor, whichever occurs first.

Condominium: A Condominium as defined in Section 55-101B of the Idaho Code, i.e. an estate consisting of (i) an undivided interest in common real estate, in an interest or interests in real property, or in any combination thereof, together with (ii) a separate interest in real property, in an interest or interests in real property, or in any combination thereof.

Condominium Project: A project as defined in Section 55-1503 (b) of the Condominium Act of the State of Idaho, i.e. the entirety of an area divided or to be divided into condominiums.

Deed of Trust: A mortgage or a deed of trust, as the case may be.

Development: The project to be carried out by Grantor (or that process) resulting in the improvement of the Plantation, including landscaping, construction of roadways, utility services and other improvements.

Fiscal year. That twelve-month period (or portion thereof if the initial period of existence is less) ending on September 30 of each year which shall be the accounting period for the Master Association and all Sub-Associations.

Grantor: Plantation Development, Inc., an Idaho corporation.

advisable in the course of development of The Plantation so long as any Lot or Condominium in The Plantation remains unsold, or to use any structure in The Plantation as a model home or real estate sales or leasing office. The rights of Grantor hereunder and elsewhere in these Restrictions may be assigned by Grantor. During the course of actual construction of any permitted structures or improvements, the restrictions contained in this Declaration or in any Supplemental Declaration shall be deemed waived to the extent necessary to permit such construction. Provided that, during the course of such construction, Grantor's activities will not create a situation which will result in a violation of this Master Declaration upon completion of construction.

B. No Further Subdividing. No Lot, Common Area, or Condominium may be further subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof (including any Sub-Association but excluding Grantor) without the prior written approval of the AECC; provided, however, that nothing herein shall be deemed to prevent or require the approval of the AECC for (1) the sale of Condominiums in any Condominium Project in compliance with the Condominium Property Act of Idaho, or (2) transfer or sale of any Lot or Condominium to more than one person to be held by them as tenants in common, joint tenants, tenants by the entirety or as community property.

Notwithstanding the foregoing, with written approval of the AECC authorizing a variance, adjoining property owners may sell or purchase adjoining property to accomplish relocation of the boundary line between such properties if such sale and purchase will not cause or result in a violation of any setback, building or other restriction herein contained. In such cases, the new property line thus established shall be deemed the new boundary line between the respective properties but no setback lines, easements or land classifications established for such properties shall be shifted by reason of the change of boundary lines.

C. Combining Parcels. Two or more adjoining Lots, Units or other parcels of Property of the same land classification which are under the same ownership may be combined and developed as one parcel. Setback lines along the common boundary line of the combined parcels may be removed with the written consent of the AECC if the AECC finds and determines that any improvements to be constructed within these setback lines will not cause unreasonable diminution of the view from other property and that such removal will result in an improvement consistent with the provisions of this Master Declaration. If setback lines are removed or easements changed along the common boundary line of combined parcels, the combined parcels shall be deemed one parcel and may not thereafter be split and developed as two parcels.

SECTION 5.17. General Design Standards. The AECC shall, in reviewing applications for the construction, alteration, modification, removal or destruction of improvements on The Plantation, and in monitoring, inspecting and enforcing such processes and the maintenance of all improvements on The Plantation, consider in making its decisions, determinations, promulgations and directives, the following general design standards:

A. Harmonious Relationship. All improvements on The Plantation shall be of such quality and nature and located so as to create a harmonious relationship between all improvements, including but not limited to structures, landscaping, lines of sight, open areas, common facilities, means of ingress and egress, etc.

In order to achieve this result, the AECC may, in its sole discretion, require that:

(1) The Improvements be of certain design and/or style;

(2) The Improvements include certain exterior finishes and landscaping materials of certain colors, textures and type;

(3) The placement of structures and other improvements shall be within certain perimeters on any lot or tract.

B. Exclusivity and Quality.

(1) General. All improvements on The Plantation shall be in keeping with the objectives of exclusivity and quality.

(2) Aesthetics. All improvements on The Plantation should promote a high quality level of common aesthetics.

(3) Quality of Construction. All improvements on The Plantation should be of high quality design, materials and construction.

C. Ease of Movement. The design and construction of any improvements on The Plantation shall be of such a nature and contain such features so as to promote (or not interfere with) the ease and fluidity of movement throughout the development consistent with the primary objective of providing maximum enjoyment of home and neighborhood without detracting from the privacy of the owners and their residences located thereon.

D. Privacy and Enjoyment. All improvements on The Plantation shall be designed and constructed in such a manner so as to promote and protect the privacy and enjoyment of the residence of each owner without detracting from the aesthetics and environment of each individual residence or the aesthetics and environment of the Development as a whole.

E. Safety and Protection. All improvements on The Plantation shall be designed and constructed so as to promote the health and safety of all residents and to provide protection for the improvements of the owners and Associations.

F. Recreational Activities. The design, placement and approval of common recreational facilities of the Master Association and the Sub-Associations shall be strongly influenced by the objective of providing the residents of The Plantation with convenient, aesthetically designed and placed recreational facilities.

G. Interrelationship. No one of the above listed General Design Standards shall be controlling over another, but shall be considered by the AECC in performing its functions together with the other objectives and standards expressed within this Master Declaration so as to obtain the best overall result for the Development.

SECTION 5.18 Specific Restrictions.

A. Animals. No animals, birds, insects or livestock shall be kept nor shall their presence be allowed, on any Property except domesticated dogs, cats or other household pets which so not unreasonably bother or constitute a nuisance to others.

B. Annoying Lights. No light shall be emitted from any Property which is unreasonably bright or causes unreasonable glare.

C. Antennas. Antennas may only be erected after receipt of approval in writing from the AECC.

D. Business or Commercial Activity. Unless specifically permitted in a Supplemental Declaration, no Property shall be used at any time for business or commercial activity, provided, however, that The Grantor or its nominee may use any Property for model homes or real estate sales offices.

E. Cesspools or Septic Tanks: No cesspools or septic tanks shall be permitted on any Property.

landproDATA

# Access to Greenbelt

## Compared to R. Wilper Lot

BUTLER SPINK LLP


EXHIBIT C

Jan 1 , 2023 - la oDATA com
Scale 1 inch app 100 fe

The mat rials availa le at th website a e for inf rmational

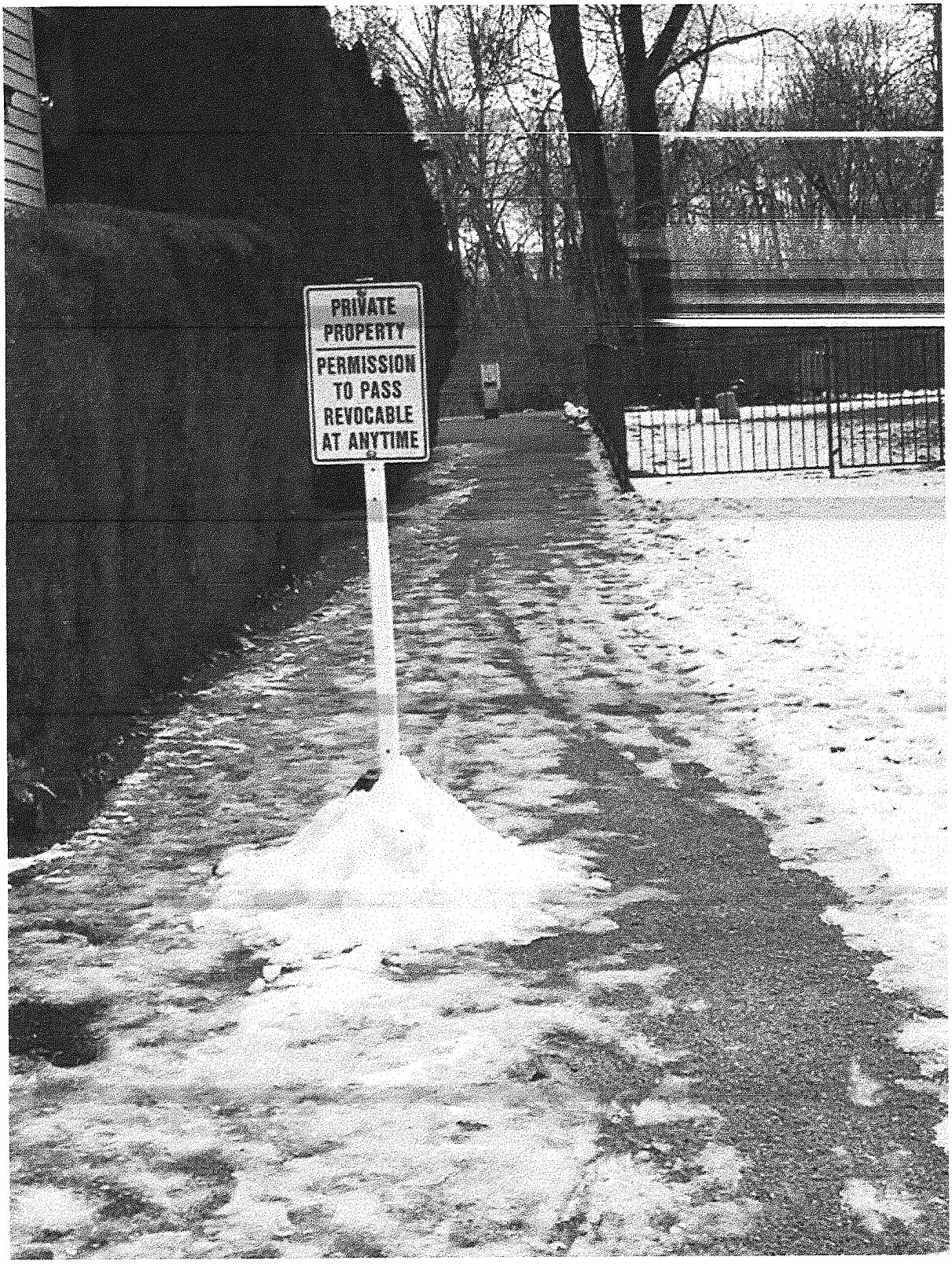
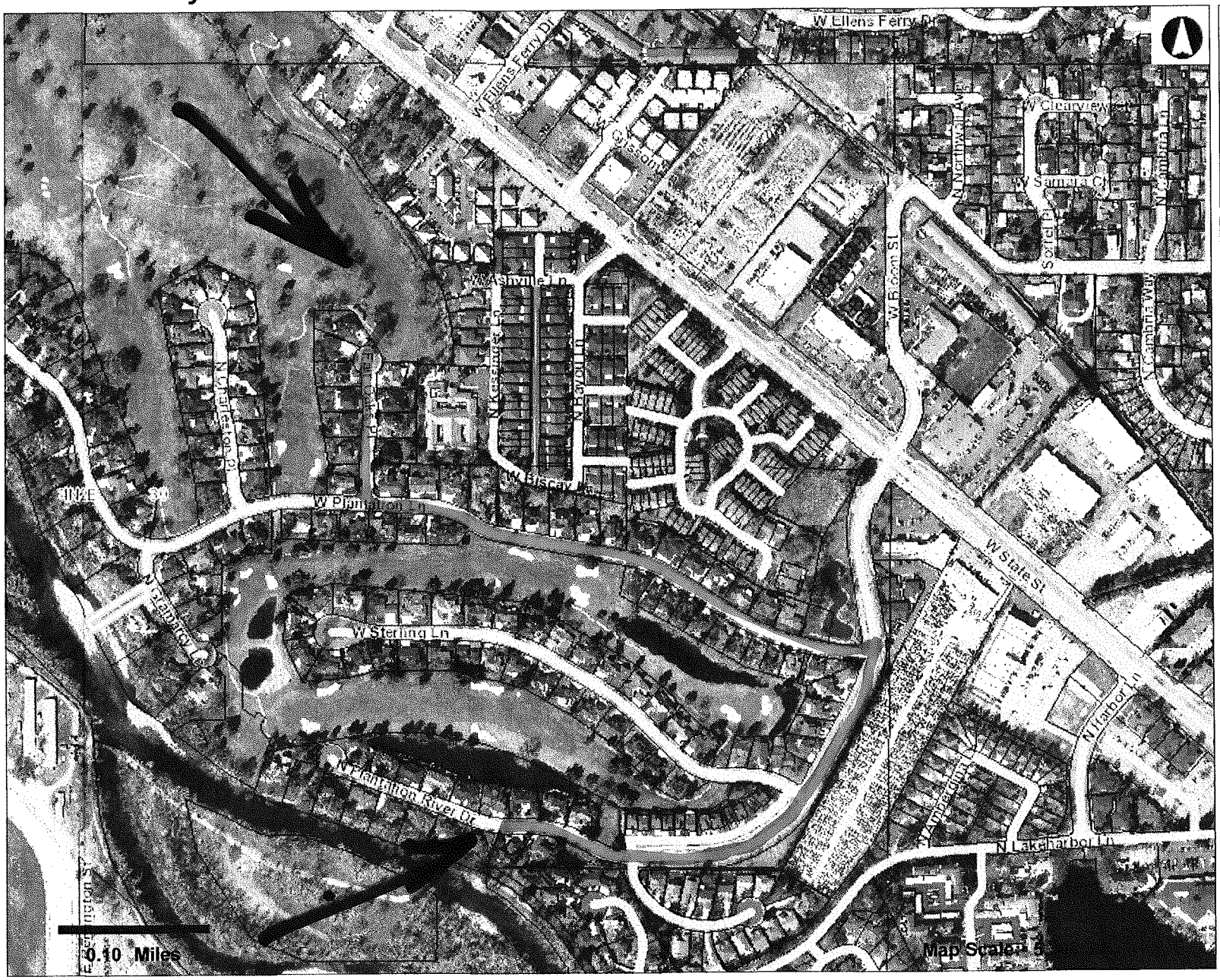


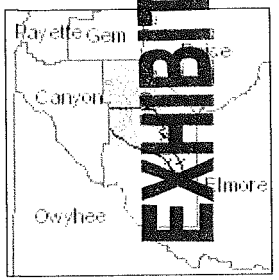

EXHIBIT "D"

# Ada County Assessor

This map is a user generated static output from an Internet mapping site and is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. THIS MAP IS NOT TO BE USED FOR NAVIGATION OR LEGAL PURPOSES.

EXHIBIT 4 of 11




## Legend

- Railroad
- Roads (4,000 - 8,000 s
  - <all other values>
  - Interstate
  - Ramp
  - Principal Arterial
  - Collector
  - Minor Arterial
  - Local
  - Parks
  - Alley
  - Driveway
- Parks
- Townships
- Sections
- Condos
- Parcels

1/31/2023