



**A CONTINUED MEETING OF  
THE CITY COUNCIL  
January 14, 2016, 12:00 Noon  
LIBRARY COMMUNITY ROOM**

**AGENDA**

**A. CALL TO ORDER**

**B. OLD BUSINESS:**

- 1. Approval of Minutes from Planning Commission Meeting December 8, 2015**
- 2. Approval of Planning Commission Findings and Order: A-3-15 - PUD-2-15, S-4-15, 2810 & 2960 W. Prairie Avenue**

**C. WORKSHOP WITH THE PLANNING COMMISSION**

**1. DISCUSSION ITEMS:**

- a. Use of Porta Potties for “seasonal” businesses  
**Presented by Hilary Anderson, Community Planning Director**
- b. Vacation Rentals  
**Presented by Sean Holm, Planner**
- c. Neighborhood Compatibility Ordinance Request  
**Presented by Hilary Anderson, Community Planning Director**

**D. ADJOURNMENT**

*NOTE: The City will make reasonable accommodations for anyone attending this meeting who require special assistance for hearing, physical or other impairments. Please contact the City Clerk at (208) 769-2231 at least 24 hours in advance of the meeting date and time.*

**PLANNING COMMISSION  
MINUTES  
DECEMBER 8, 2015  
LOWER LEVEL – COMMUNITY ROOM  
702 E. FRONT AVENUE**

**COMMISSIONERS PRESENT:**

Brad Jordan, Chairman  
Lynn Fleming  
Michael Ward  
Peter Luttrupp  
Tom Messina, Vice Chair  
Lewis Rumpler  
Jon Ingalls

**STAFF MEMBERS PRESENT:**

Hilary Anderson, Community Planning Director  
Sean Holm, Planner  
Tami Stroud, Planner  
Mike Behary, Planner  
Shana Stuhlmiller, Public Hearing Assistant  
Randy Adams, Deputy City Attorney

**COMMISSIONERS ABSENT:**

**CALL TO ORDER:**

The meeting was called to order by Chairman Jordan at 5:30 p.m.

**APPROVAL OF MINUTES:**

Motion by Ingalls, seconded by Luttrupp, to approve the minutes of the Planning Commission meeting on November 10, 2015. Motion approved.

**PUBLIC COMMENTS:**

Ted Smith, stated that the Notice that he received for the first agenda item said that a staff report was to be published on the Friday prior to the meeting on the Planning & Zoning website and he was unable to locate it, and wondered if a staff report was available as part of the presentation tonight. Chairman Jordan said there is a staff report and it is public record. He noted that he thinks he looked on the website on Thursday and saw it. Ms. Anderson said that the staff report was published on the website early Friday morning. Mr. Smith was provided with a hard copy of the staff report.

**STAFF COMMENTS:**

Ms. Anderson said that a joint workshop with the Planning Commission and City Council for January 14<sup>th</sup>, at 12:00 p.m. They have scheduled two hours in the Community Room at the Library. The topics will be a Neighborhood Compatibility Ordinance requested by the Fort Grounds neighborhood, vacation or short-term rentals, and porta-potties. Ms. Anderson said that they had a recent request for the use of seasonal porta-potties for a seasonal business and they wanted to get some input from the commission and the City Council because currently the code does not allow for such use.

Ms. Anderson also said that there is no regular Planning Commission meeting on January 12th.

Chairman Jordan said that he spoke to Ms. Anderson about finding time to schedule a findings workshop after the first of the year for the new commission members and he would also like to get an update from legal on any new items.

**COMMISSIONER COMMENTS:**

None.

**PUBLIC HEARINGS**

1. Applicant: Ron Ayers  
Location: 1808 Northwest Boulevard  
Request: A proposed zone change from R-17(Residential at 17units/acre) to C-17 (Commercial at 17units/acre)  
QUASI-JUDICIAL (ZC-5-15)

Planner Mike Behary presented the staff report and answered questions from the Commission.

Commissioner Ingalls commented regarding the development proposal sketch, and noted that it is not locked in and the developer could change their mind and put any allowed C-17 use on the property. As far as an adequacy of utilities, Commissioner Ingalls confirmed that staff, wastewater and water are look at all of the possibilities.

***Public testimony open.***

Dick Stauffer, applicant representative, provided a PowerPoint presentation and thanked staff for their support. He explained that the applicant, Mr. Ayers, spent most of his professional life in the hospitality business and this is a labor of love for him as well as a business opportunity. The site is the last of the acreage sites on Northwest Boulevard. The Garden Motel and the 4 ½ acres in that area is really the last big piece of property in that section of Northwest Boulevard. Since 2004, Mr. Ayers has been building this piece of property through the acquisition of six parcels, which was actually a street vacation, and part of that is getting it entitled. The most recent acquisition, Parcel F, is where the zone change is being centered with it being broken into two pieces, retaining Parcel G as a buffer zone in order to soften the commercial request. Mr. Stauffer passed out a copy of a letter dated December 16, 2015 from the Marriott Hotel awarding the franchise to Mr. Ayers. Mr. Stauffer stated that because of the building design, the four story building will only appear as a two story building if you are looking at it from the east. He believes that this is a worthy request for the Comprehensive Plan goals and that this is a true infill with appropriate infrastructure. It is a development that could go forth without any negative impacts to the surrounding neighborhoods, and it has the ability to grow a business and create new jobs within this corridor.

Ted Smith asked to look at the map for the subject property and if someone could point out how it is that the subject property is situated adjacent to Northwest Boulevard. He also commented that he has driven by Scoop Street and noted that it was swept and maintained by the city. He doesn't know how ownership may have been conveyed from the city to an individual, but he would like to know a little more about how that deed was conveyed to an individual when the state says that excess land is disposed of by a very specific procedure involving an auction. He commented that he disagrees with the applicant's assertion that the property is located adjacent to Northwest Boulevard. If it is not adjacent, then there should be some combined entry points. In looking at the drawings, it shows entry points off of a single family residential street, Davidson Boulevard, which doesn't meet the intent of the zoning ordinance. One of the last proposals for the hotel to the west and some of the adjacent land was an auto park, which is a trailer park, and under this proposed zoning change C-17 would allow the applicant by special use permit, to install an auto park.

Commissioner Luttrupp commented that the idea of an auto park would have to come back before this commission as a special use, so whatever is done tonight is not guaranteeing that it will be an auto park. He asked staff to explain the process of how a piece of property is vacated.

Ms. Anderson explained that there is a public hearing required with the city council for vacation of a street and it would go back to the adjoining property owners. The street has been vacated and it has been verified with city staff. Notices of the public hearing for a vacation are mailed out 15 days prior to a public hearing to properties within a 300' radius of the property.

Chairman Jordan confirmed that the commission is not approving a hotel, but is discussing a zone change on the parcel. The real question is whether the zone change on that parcel of land is the proper zoning for that parcel.

Commissioner Ward wanted to clarify that auto camp and auto park are two separate uses. One would be permitted and one would be by special use permit.

Doug Raul, stated he owns property to the east and believes the 75 foot buffer will be adequate. He feels that the project is a nice fit and use for the property. He thinks it is a beautiful piece of property and would like to see the project approved subject to approval of a development permit within 48 months or whatever is reasonable.

**Rebuttal:**

Mr. Stauffer provided a copy of Ordinance No. 3277 from the City of Coeur d'Alene which vacated Scoop Street. He stated that part of the reason for this request is that for the model to be successful for current day hospitality properties is to be associated with food service. With the parking requirements of the food service and the hospitality being fairly intense, a further component of the development is to have smaller scale buildings along Northwest Boulevard with the parking behind, but the parking count is fairly substantial, 170 cars. That is why the requirement to get the additional zoning in order to make the project possible.

Mr. Stauffer confirmed that the buffer property, Section G, would remain R-17.

***Public testimony closed.***

***Discussion:***

Chairman Jordan asked if the buffer zone could at some point turn into a parking lot at some point without a special use permit. Ms. Anderson responded that you would be required to have a special use permit to have a parking lot on the R-17 property.

Commissioner Ingalls commented that there are a number of written comments that have come in, and he believes they came in not tied to a vision of a plan. The written comments are hugely in favor. He stated that he is in favor of approving the request.

Commissioner Fleming urged the applicant to look at how the property sits on the hill, and is worried that there is too much asphalt from the road as it rises and she doesn't want to see a "sea of water" coming down onto the Boulevard. Thinks that it is a good move to expand the C-17, and a real beneficial use of the landscape as a profile coming up the hill.

**Motion by Ingalls, seconded by Rumpler, to approve Item ZC-5-15, with no conditions.**

ROLL CALL:

Commissioner Fleming	Voted	Aye
Commissioner Ingalls	Voted	Aye
Commissioner Luttrupp	Voted	Aye
Commissioner Messina	Voted	Aye
Commissioner Rumpler	Votes	Aye
Commissioner Ward	Voted	Aye

**Motion to approve carried by a 6 to 0 vote.**

2. Applicant: Harmony Homes, LLC  
Location: 2810 & 2960 W. Prairie Avenue  
Request:
- A. A proposed annexation from County Agriculture to City R-8 (Residential at 8 units/acre) zoning district. LEGISLATIVE (A-3-15)
  - B. A proposed 19.43 acre Planned Unit Development "Garden Grove PUD" QUASI-JUDICIAL (PUD-2-15)
  - C. A proposed 94-lot preliminary plat "Garden Grove" QUASI-JUDICIAL (S-4-15)

Planner Sean Holm presented the staff report and answered questions from the Commission.

Commissioner Messina asked what would happen if the annexation was approved but the PUD was not. Mr. Holm explained that the annexation will move forward to the council regardless of whether it is denied or approved, which is really a recommendation to the city council. The PUD could be appealed by the applicant to go to council.

Commissioner Luttrupp questioned what is the benefit to the community of a Planned Unit Development. Mr. Holm explained the benefits of a Planned Unit Development is really the design of it and the commission's determination of whether it provides benefit, largely through the open space development it is for the users of the site. The open space is not necessarily open to the public but it can be set up that way. Mr. Holm confirmed that the 10% is not public open space but is for the users of the development and would be considered private property.

Commissioner Fleming asked about the expected open space percentage for an R-8 designation. Mr. Holm said that for an R-8 designation without a PUD, there is no open space requirement. There are some PUDs where the open space is public. Bluegrass Park is open to the public.

Mr. Holm said that the commission should bear in mind that a PUD is intended to provide for flexibility and diversity of use by removing the limitations in the typical lot by lot approach to development. It is not intended to be a means to waive certain development regulations. It is designed to provide some extra amenities to the people that live there, not necessarily to the public. The commission must determine if the concept of the proposal is unique enough that it merits the flexibility afforded by the PUD regulations. The commission should decide if the modifications requested represent a substantial change over what would be allowed if the regulations were applied on a lot by lot basis.

Commissioner Luttrupp asked what incentive does the developer have to meet the open space plans. Mr. Holm said that with a PUD it is required that what you approve is built.

Commissioner Luttrupp asked what is the process that is used to ensure that over the period of time that the development is built that the open space is provided as obligated in the PUD. Mr. Holm said that one way is if it is a phased plan, the developer provides 10% in each phase and it is built out and completed prior to final plat recordation, so it happens at the same time that the streets and utilities go in. In this, Mr. Holm said that he doesn't see where they plan to phase the PUD, so the open space will be complete before recordation.

Commissioner Ingalls confirmed that the zoning is still an R-8, so the PUD is just a different way of organizing the layout. He asked Mr. Holm to share where else in the city has the commission approved similar lot sizes with these setbacks. Mr. Holm said that one development is directly west of the proposed development on the other side of Atlas – Princetown Lane. It was a higher density project, an R-17 PUD, with very small lots. They did provide open space. Largely what they will see through a PUD is a request where the developer doesn't necessarily want to provide sidewalks on both sides of the street. In this case the developer has provided a number of trail systems through the property as well as sidewalks to meet the city standards. Benefits for the applicant are reductions in setbacks and not concessions on street width, parking, or other high dollar items.

Chairman Jordan suggested that another example might be Meadow Ranch by Fred Meyer. The overall density is similar but the lots are smaller because part of the density is taken up in the park land. If this was just a standard R-8 and not a PUD, there would be a requirement for parkland dedication, or fees in lieu of. Mr. Holm said that there would be some fees in lieu of which are done largely through impact fees before they pull the building permits.

Commissioner Messina stated that a lot of the comments they have read most of the people living in this area are concerned about the setbacks to adjacent property.

Commissioner Fleming asked if the driveway length that sits in front of the garage fully accommodates two cars and does not block the sidewalk. Mr. Holm said that the code reads that from the back of sidewalk or property line, whichever is greater, than they provide 20 feet to the face of the garage.

Commissioner Ward said that in looking at the preliminary plat map, at the north end, it looks like Hydrangea, Hibiscus, and Grove Parkway all provide ingress and egress onto Prairie Avenue. Mr. Holm said that they do not, but are designed for emergency Fire Department access, and confirmed that the only ingress/egress point is Rocket and Prairie in the center where the main entrance is.

Sandy Young, applicant representative, presented a power point and introduced her staff. She explained that they are requesting the R-8 zoning which they feel is compatible with the zoning of the adjacent property. Their vision for the PUD request is to take the traditional cookie-cutter R-8 subdivision and rearrange the lots, decreasing their size slightly so that they can provide for the two acres of open space. Access points of Prairie to the north and Rocket to the south, and the two emergency accesses onto Prairie, which will be gated and a Knox box located at each for access by the Fire Department. The plan is for traditional and craftsman-style architecture with high end finishes, city standard streets and sidewalks, and open space and berm plantings. They are anticipating community gardens and pedestrian trails and access points, and a central community park with active and passive recreation as well as barbeque areas and a shelter. They are not asking for a deviation from the front yard setback. Infrastructure meets city requirements for water, wastewater and stormwater. They have not presented their final stormwater plan yet but will be submitting that with the final subdivision application. The primary access has been approved by the Post Falls Highway District. They were asked to perform a gap study by the highway district to ensure that the spacing of cars coming out onto Prairie would be adequate and there wouldn't be a stacking of cars in the center turn lane on Prairie or in the subdivision.

Commissioner Ingalls feels that the annexation and zoning are logical, but has concerns about the reduced setbacks in the backs of the homes and how it would affect people living in the Sunshine Meadows development. Ms. Young explained that the market has changed and that people are looking for less of a yard that they are taking care of, and looking more for community open space. Commissioner

Ingalls said that approving the PUD request would feel like they are “pinching” the existing neighbors. Ms. Young said that she thinks what buffers that somewhat is that there is fencing in Sunshine Meadows and this development will be perimeter fenced as well. There will be an architectural control committee in addition to the CC&Rs that are put into place and the fencing style will be the same style for the entire perimeter and won’t be left up to each individual homeowner. Ms. Young asked the commission to think about what goes into a back yard – it is not always open green space but sometimes it’s the boat and the two dogs and other things in the backyard. In this case, you would have your back deck and a little bit of green space, and perhaps it even becomes a little cleaner and a little nicer.

Ms. Young said that it is her understanding that the Sunshine Meadows development is fenced, but she has not looked at each lot to know if they are for sure. Commissioner Luttrupp asked if there was something that could be done from the PUD side of the fence to ease the feeling of being right on top of the neighbors. Ms. Young said that she would give it some thought while the public testimony is being given and will present some options after that time.

Commissioner Messina inquired if the distance between the back lines of the existing homes and the product being built would be a minimum of 35 feet. Ms. Young said that she is assuming that the existing home setback is 25 feet at R-8 since it is a standard subdivision, and with the 10-foot rear setback in the PUD, there would be 35 feet between the homes in the PUD and the homes in Sunshine Meadows.

Commissioner Messina asked where, approximately, the house is going to sit, i.e., the depth of the house, and is there more than 10 feet in the back yards given the depth of the lots. Ms. Young said that some of the lots do have more depth as proposed right now but it is going to be up to each homeowner to decide what home style they want to put on that lot and what the size of the home would be. Their plan is to delineate a building envelope on each lot and they are asking for the 10 foot setback in the rear so that they can extend the building envelope out. Whether or not the home buyer takes it up to the 10 feet, they don’t know.

Commission Ward inquired what is allowed up to the 10 feet. Mr. Holm said you could put in a garage, a porch, and can go to 0’ on the rear property line; however, it cannot be associated with the interior livable area; i.e., you cannot have a kitchen or bedroom. It has to be open to the air but it can be covered. The eave for the home itself is allowed to extend two feet into the setback. The regulations also apply to regular R-8 zoning and not just for a PUD.

Ms. Young said that they are asking for 10’ setback minimum in the rear with decks encroaching only up to 5 feet. Commissioner Luttrupp said that they have concerns expressed by current property owners and wondered how to be respectful of their needs and make everybody happy.

Commissioner Fleming said that there is an opportunity to realign the streets to pay attention to adjacencies and she doesn’t see this as a good neighbor plan. She is not sure if the relationship of a larger home against very small property makes sense.

#### **Public testimony open.**

Jim Rough said that his comments were as a homeowner and as a member of the board of Sunshine Meadows. He is against the variance part of the request for the development of the lot size and set back requests. He said that putting up a two story building five feet from their gardens would affect what they have been enjoying for years. He would like to see the townhomes moved around. There are also some upland birds in that development and wondered if that issue would need to be mitigated, including pheasants, quails, etc. As a board member, from their experiences from other development, he is concerned in regard to loud noises of nail guns, backup alarms, and other things. He would like to have a limit in regard to noises at all hours of the night. Mr. Rough noted that the backup alarms are loud. Also, Hayden Lake Irrigation District is concerned regarding their water restrictions because of lack of development.



Commissioner Messina asked Mr. Rough if the issues of the homes being too close and too high were addressed and there were just single family homes in the development, would the neighbors' concerns be softened. He also said that the noise from construction can be taken care of. As far as birds and animals on that piece of property, there is nothing that they can do about that since they aren't endangered species. Commissioner Messina said that he believes the developer of the vacant land needs to address what the neighbors are saying. He asked Mr. Rough how far away some of the adjacent homes are from their backyard fences. Mr. Rough said that a lot the homes and lots are different, but he would say more than 25 feet.

Mr. Holm said that the corner house on Gila Court, there is a deck on the rear corner that is 43 feet to the property line.

Commissioner Luttrupp asked about the water availability and how the city makes sure that there is available water. Ms. Anderson said that the development wouldn't be served by city water, but would be the Hayden Lake Irrigation District.

Mark Wilson said that he does not object to the annexation and rezoning of the property and thinks that a single family subdivision is the best use for this parcel of land. He had some concerns about the lack of a traffic analysis for the Rocket Street access point but after speaking with the City Engineer, he has a better understanding of the long-term planning that goes into the development of the master plan. He expressed concern regarding the proposed preliminary plat and request for PUD. He objects to the applicant's request for deviations from the established code, the same code that was utilized for the development of the adjoining subdivisions. In speaking with the Planning Department staff, it is his understanding that there were no PUDs associated with Sunshine Meadows. In looking at the city's GIS map, it also appears that the average lot size in Sunshine Meadows is somewhere around 8,000 square feet, almost twice the size of the requested deviation. It appears that only around 10% of the lots of the proposed PUD conform to the minimum lot size. By dramatically reducing the minimum lot size required is a need for more dramatic reduction in minimum yard setbacks, the most concerning of which is the requested reduction from a minimum of 25 feet rear yard setback to ten feet. If the commission approves the PUD and preliminary plat, the developer would be free to plop down two-story townhomes ten feet behind well-established 8,000 and 12,000 square foot lots. He does not think it conforms to the 2007 Comprehensive Plan, which is to protect and preserve existing neighborhoods from incompatible land uses and developments. He believes that real estate agents and developers agree that the townhomes would reduce the potential resale value of the homes. Mr. Wilson said that the open space in the PUD would only benefit the residents of the development. Sunshine Meadows has substantial open space, including a city park which is open to the public, which was done without the need for a PUD and with substantially larger lots. Mr. Wilson believes that the adjoining lots would be dramatically compromise for no benefit other than to strengthen pro forma. He noted that the 2007 Comp Plan identifies Atlas Prairie as a Transition Area and clearly states that these transition areas should be developed with care.

Jeanine Wilson said that she agrees that the development of the property is a good addition to the north side of the city. She believes that the ability to make 10% of green space was made at demise of the size of the lots. She feels that mitigation of the backward "L" shape would probably assist in improving people's outlook on the project. She would like to move the townhomes and look at having single family homes abutted next to single family homes. She wanted to know if the houses are staggered and if there is an ability to deal with animals in the area. She noted that there are thousands of little mice/voles that are infesting the property. As a homeowner, as soon as they start digging, the voles are going somewhere and they are coming into her lot. She would like to have some type of mitigation. She would like to have a better understanding of how true to form the illustrations of the development project area. The homes look beautiful on paper but she doesn't know if there are any guidelines that the homes would need to be conformed to. She commented that there are no apartments in the immediate area and noted that she has a concern about traffic. The increase of traffic has been a nightmare for homeowners on Courcelles and there will be a dramatic increase in the traffic flow off of Rocket. Fencing in Sunshine Meadows on the east, north to south direction, is not anything that Sunshine Meadows HOA or the developer put in. They are all a mixed-mash of homeowner selection and also on the south end of Sunshine Meadows.



Commissioner Luttrupp asked Ms. Wilson if her concern was because her home would be facing two townhouses, and what her feeling would be if it was just one house but the setback stayed the same. Ms. Wilson said that she is against the setback. Commissioner Luttrupp asked if it would be of any assistance to have required fencing. Ms. Wilson said that she would welcome required fencing and an appropriate setback.

Mr. Holm provided clarification that when the developer brings forth the final development plan that is sent to council for approval, they will have an architectural style for what is going in the development. It doesn't have to look 100% like what is shown.

Commissioner Luttrupp asked if we continue down this path, is there a way that the property owners can see and opine on the types of houses that are being proposed. Mr. Holm said that it doesn't go back to the public and that this hearing is the time for public input.

Commissioner Luttrupp asked how persons with concerns can come to understand what the city would allow and would not allow. Commissioner Messina said that the applicant can establish a design review committee for the subdivision, similar to a homeowners association, but the city doesn't have any direction over that.

Chairman Jordan said that the drawings submitted are illustrative of the style and the level of quality of finish of the houses that they plan to do in the development and it is incorporated into the PUD, so if there is a wide departure from that, then they would have to come to the commission for an interpretation of the PUD.

Commissioner Messina said that he thinks the issue isn't so much what the house is, but it is the setbacks, and the commission could make a condition for setbacks.

Wally Hutchins said that he owns 5 acres off of Atlas Road and a piece of property on N. 21<sup>st</sup> Street. He is a block south of Prairie on the east side of the road and has an adjacent piece of property to the proposed subdivision, and has been there for approximately 30 years. When he first moved to the property, there were no subdivisions or other development. Things have changed and experience is a great teacher and he has been forced to get involved in this process. He assumed developers would allow for traffic. He was told that a two lane road can flow a lot of traffic. The traffic has increased immensely over the last ten years. He would recommend that a pre-fab, concrete fence be put around the subdivision. Also thinks that the level of top soil should be maintained.

Mr. Holm said that the developer is required to provide an artist or architectural rendering sufficient to clearly establish the scale, character and general appearance of the development that can be compared to the final development plan when it is submitted.

Dan Garland said that his problem is the traffic coming out of Rocket Street. There are a lot of kids in the area and he does not approve of the 10 foot setbacks. In regard to the fencing, the only fencing that is provided by Sunshine Meadows is the one that runs across Prairie. He paid for his own fence and doesn't want somebody else butting into his fence.

Kristie Weber said she is concerned about controlling construction traffic from driving through their development. Mr. Holm there are hours allowed for construction and the Engineering Department will usually define which roads can be used and construction vehicles are not supposed to stray from that path. Chairman Jordan said that, generally speaking, when you have construction you have a lot of different companies and drivers, etc. and some might cheat and stray into the neighborhood, but if it happens and starts getting out of hand, citizens can call the Engineering Department and let them know.

Ms. Weber asked if the townhomes could be moved to the other side where there is a vacant field, so that when that field gets developed, at least people moving in know that there are townhomes there.

Jerrod Kimbler commented that he is concerned about the construction and suggested developing the Prairie entrance as opposed to the Rocket side first. He is not opposed to the development or the rezoning of the property. He also thinks that the townhouses should be moved to the other side of the development, but he is concerned about the setbacks. He thinks it is shortsighted to not think about the other neighboring communities which are already established because they are all affected.

John Partridge said that he is opposed to the development as it stands, but is not opposed to a development going into the location. He doesn't mind having neighbors, but would like growth to be responsible. Would hope that the commission is aiming for a better standard, rather than taking the existing standard and reducing it. He believes that a 10 foot setback is deserving of ridicule.

James Knott said he knew they were going to build near his home, but he assumed it would be like Sunshine Meadows, Strawberry Fields, and the Landings. He didn't know it was going to be a greedy developer that is trying to squeeze in everything he can to make money. There was zero consideration for the neighbors. This was a slap in the face when he saw it a week ago, which was the first time he heard about it. He believes that his house value will plummet if he sells because of the townhouses or single family home ten feet from his house. Why not build single level houses with decent setbacks. The townhouses need to be moved. Encouraged the commissioners to go home and stand in their backyards and pretend that their neighbor is 10 feet away. We don't have the privacy that we used to have. He believes that there is a way for the development to work, but something has to change. He believes that the developer should work with the neighbors, and build single family houses with 25 foot setbacks.

#### **Rebuttal:**

Merle Van Houten said he is the civil engineer on the project. The subdivision will be connected to the existing Hayden Lake Irrigation District in three different places. Two will be stubs that exist off of Prairie. The other stub currently exists under Rocket. He attended a board meeting at the Hayden Lake Irrigation District and learned that they have drilled a new well and anticipate that it will be up and functioning within the year. They are currently in the process of testing the well to determine its ultimate capacity but they do anticipate that it can serve this development and go a long ways towards other future development. In regard to a comment that he heard about the city losing some control, the city and the Water District have a Memorandum of Understanding so if someone in the development decides to stop paying their sewer bill, that MOU kicks in and the Water District comes in and turns off their meter. There are checks and balances. As far as traffic is concerned, the 955 trip number that is being used in the traffic study is for total traffic volume per day. There are peak volumes that are closer to about 80, and what the study did is take a look at the gaps within the existing traffic on Prairie and figured out how easily people could move in and out of the subdivision and the ultimate finding was that people can adequately make their left turn maneuvers in all directions in and out of traffic with pretty relative ease. The study said it is a minimal impact. The Highway District vetted them thoroughly but in the end their engineer was in agreement with the study. The city's engineer, Gordon Dobler, has also looked at the traffic study and they have addressed his concerns with connectivity. They have also had the Kootenai Metropolitan Planning Organization (KMPO) look at it and they projected a surplus of over 550 units through 2035 to be developed. They found that this development is within what they have planned for in their master planning. The proposed subdivision meets the R-8 zone and have carefully planned their roads accordingly.

Commissioner Rumpler asked about water restrictions in place. Mr. Van Houten said that he believes the restrictions that are in place deal with irrigating lawns. Hayden Irrigation has drilled a new well and they are in the process of sizing the pump for that well and plan to bring that well online, and once that happens not only do the restrictions get lifted, but they then have capacity to serve the proposed development as well as other developments in the area.

Ms. Young said that it was the fire district that required the connectivity with Rocket Street and the Comp Plan also recommends it. She offered proposed conditions including perimeter fencing no less than 6 feet in height and sight obscuring of the same architectural style that could even be brought to the Planning

Department when they bring the final PUD and subdivision plan in. There will be an architectural control committee/design review committee in addition to CC&Rs, bylaws, etc. The county has requirements for vegetative screening and this development, as well as the surrounding development could be well served by that. In addition to the 6-foot fence, she proposed that the vegetative buffer along the "L" shape could provide a 50 percent sight obscuring vegetative fence. In addition to that, they could move the setback to a minimum of 20 feet. They would also propose moving the townhomes to lots that would abut undeveloped property either on the perimeter of the subdivision or interior in the subdivision. That would eliminate the concerns about looking out on townhomes and should eliminate the concern of even seeing the home that is there. As far as the architectural style goes, there can also be further renderings that are consistent with what has been submitted. There was concern about traffic on Rocket during construction and that could be made a condition during final subdivision approval and also a carry over to the site disturbance with the building permits that are issued. In addition, the lots that the regulations would apply to would be the "L" consisting of Block 5, lots 16 through 20 on the south side, and Block 7, lots 5 through 18 on the east side.

Commissioner Ward asked for clarification from Ms. Young on the blocks, lot numbers and locations of lots with the additional regulations, and the specific regulations that would apply to those lots.

Mr. Holm asked where the vegetative buffer would be. Ms. Young said they would be planted on the lot within the development and would extend above the fence. The vegetation will be installed by the developer so that there would be consistency.

Commissioner Fleming asked if anyone looked at a secondary exit and entry and is there a distance issue onto Prairie, so that the homeowners are encouraged to load to Prairie. Ms. Young said that they had to fight for an access onto Prairie. The Highway District said that they had to use Rocket as their primary means of ingress and egress and so they had to prove to the Highway District that Prairie would work. The city was supportive of going onto Prairie.

Commissioner Ingalls said that the conditions are a good compromise. There are 10 conditions already that are proposed by staff, and Ms. Young acknowledged that they are okay with the first ten conditions in the staff report. The six additional conditions would be the fencing, landscaping, moving townhomes, some effort to work construction traffic so that it comes off of Prairie, and that in the "L" those lots would go to a 20-foot setback, and an architectural design review committee as part of the Homeowners Association.

Ms. Young confirmed that there would be a 20-foot minimum setback and limiting it to a five foot encroachment of a deck or patio. Mr. Holm confirmed that the code already allows for the five foot encroachment.

Commissioner Messina said that he appreciates the trees along the property line inside and noted that trees take a long time to grow, and asked what type of tree they were thinking about. Ms. Young said that what she has presented at times is that the vegetative screen must obtain a 50 percent sight obscuring vegetative buffer within 3 years.

Commissioner Messina asked if they were still planning two story family homes within the "L" shape. Ms. Young confirmed that they were.

Mr. Holm commented regarding the proposed condition for construction traffic coming off of Prairie and said that is under the jurisdiction of the Post Falls High District and he doubts that they will allow huge trucks to travel on Prairie. Ms. Young suggested that as much as possible all construction use the primary ingress and egress to the project as their primary access and it be limited to the greatest degree possible on Rocket.

Commissioner Luttrupp commented that Ms. Young's ideas are good and meet a lot of the concerns and asked her to share with the Post Falls Highway District the community's concern about construction traffic.

Mr. Holm said that the vegetative buffer would be in someone's private backyard and he doesn't know how they can track that over time and ensure that it remains. You can require it to be put in at the beginning and if the property owner decides to take it out, he doesn't know how staff would track that. Ms. Young said that it could be presented on a landscape plan that has to be approved when the final application for the subdivision PUD is approved, and then each building would have to adhere to that. The problem with installing it early would be irrigation might be run as each lot is developed, so she would propose that a landscape plan be presented when they present everything else to the Planning Department.

Commissioner Messina said that control of the buffer could come under the control of the HOA to keep it maintained so that the individual property owner doesn't have the right to remove the buffer and they would be in violation of the HOA if they do. Commissioner Messina added that the CC&Rs would have to require that the future homeowner maintain the trees in good health. Ms. Young said that it will state in the CC&Rs and the design guidelines that there is responsibility for maintenance of the buffer and those that are damaged or diseased would have to be replaced.

**Public Testimony closed.**

***Discussion:***

Commissioner Ingalls said that he thinks this is the best example he's seen yet of a win-win with respect to two parties coming together. There was a discussion regarding a possible delay in preparing the Findings due to there being no meeting of the Planning Commission in January. Chairman Jordan said that the commission could go over the Findings at the Council/Planning Commission Workshop on January 14<sup>th</sup>.

**Motion by Ingalls, seconded by Messina, to approve Item A-3-15. Motion approved.**

ROLL CALL:

Commissioner Fleming	Voted	Aye
Commissioner Ingalls	Voted	Aye
Commissioner Messina	Voted	Aye
Commissioner Luttrupp	Voted	Aye
Commissioner Rumpler	Voted	Aye
Commissioner Ward	Voted	Aye

Motion to approve carried by a 6 to 0 vote.

**Motion by Ingalls, seconded by Ward, to approve Item PUD-2-15. Motion approved.**

ROLL CALL:

Commissioner Fleming	Voted	Aye
Commissioner Ingalls	Voted	Aye
Commissioner Messina	Voted	Aye
Commissioner Luttrupp	Voted	Aye
Commissioner Rumpler	Votes	Aye
Commissioner Ward	Voted	Aye

Motion to approve carried by a 6 to 0 vote.

**Motion by Ingalls, seconded by Messina, to approve Item S-4-15. Motion approved.**

ROLL CALL:

Commissioner Fleming	Voted	Aye
Commissioner Ingalls	Voted	Aye
Commissioner Messina	Voted	Aye
Commissioner Luttrupp	Voted	Aye
Commissioner Rumppler	Votes	Aye
Commissioner Ward	Voted	Aye

Motion to approve carried by a 6 to 0 vote.

**Motion by Messina, seconded by Ward, to take a seven minute break. Motion carried.**

3. Applicant: Riverwalk Townhomes, LLC  
Location: Bellerive Lane  
Request:
  - A. A modification to Riverwalk PUD QUASI-JUDICIAL, (PUD-1-04.4)
  - B. A proposed 2-lot preliminary plat "Riverwalk Townhomes" QUASI-JUDICIAL, (S-6-15)

Planner Stroud presented the staff report and answered questions from the Commission.

Commissioner Ingalls asked where the "goat trail" is and if condition #10 of the added conditions for the inclusion of a 10 foot wide public trail is to improve the "goat trail." Ms. Anderson said that condition #10 is not, and condition #11 is to replace the "goat trail."

Ms. Anderson confirmed that that the applicant would like to replace the "goat trail" with a stairway with an access easement.

Commissioner Ingalls asked that since there is a floating public access in the boardwalk and with the addition of condition #11, is public and waterfront at least preserved, if not enhanced by the PUD modification.

Ms. Anderson clarified that the applicant has concerns with condition #4 as written, but it would include that there would need to be 1.68 acres of open space to be improved, and that would get them to the 10% which is required for the PUD to even exist as a PUD because as staff has done their calculations, they don't believe that some of the other areas that were originally intended to be open space have been improved. The applicant has expressed that they would be willing to do some of the open space areas and improve them, but not all of them. The applicant's proposal would bring them to 7% open space, versus 10%.

Commissioner Luttrupp stated that the original PUD required 4.42 acres of open space, which is 18% open space and asked for clarification from staff on the amount of existing improved open space in the PUD and if they were short 3.77 acres. Ms. Stroud confirmed the amount of open space that was approved and that the current amount of improved open space is 0.65 acres.

Commissioner Luttrupp asked how much of a reduction in open space is the applicant asking for. Ms. Anderson confirmed they are asking for a 0.3 acre reduction, and noted that the other areas have not been improved to meet the requirements to have it be used for open space and recreation.

Commissioner Luttrupp commented that the applicant has not met the requirements for open space and that he thought the PUD requirements ran with the property, and not with the owners. He feels that public access and open space hasn't been provided and doesn't see a good faith effort. It is unfortunate that the city and the developer couldn't resolve the issue and noted that this is a lot of open space acreage to fall through the cracks.

Commissioner Rumpler said it was his understanding that the change of ownership does not change the conditions of the PUD, and asked for legal input on this matter.

Mr. Adams said that a transferee of a PUD is required to follow the requirements of the PUD.

Commissioner Rumpler said we have an applicant who is asking for a reduction in open space when the original open space requirement has not been met.

Commissioner Fleming said that she understands that the current owner has inherited something that was created by somebody else, but unfortunately a commitment was made and it failed to be delivered. She does not think the commission should agree to take more of the land to build two more salable properties and add more traffic and take even more green space away from individuals. She is disinclined to, yet again, reduce an already shameful lack of green space. It is a very compressed area and a very high traffic area and the last thing they need to do is take away more of the green space. The commission represents the owners who have purchased expensive property and the commission should not allow their green space to be whittled away.

Commissioner Messina clarified that there is some open space that can be used and walked on, and there is open space that can't be walked on. Ms. Stroud said that most of the open space areas have not been improved as they should have been. The triangular piece that the applicant is asking to modify has the "goat trail" and one of the conditions addresses that, which will create the ability to get down to the water. On the other area, if there were improvements done to create open space, it would be updated and have the landscaping required and a pathway that would bring it up to a standard to have completed open space.

Commissioner Messina referred to page 12 in the staff report and asked if the rock and landscaping area was considered open space or private property. Ms. Stroud said that it is Tract A, which was supposed to be the open space, but because the boardwalk ended up being on the water, over time Tract A has been landscaped and is being used as private property and it is landscaped. It is not usable open space.

Ms. Stroud said that they couldn't add in Tract A and give the applicant credit for completed open space because they don't consider it to be usable open space.

Chairman Jordan asked if the open space is accessible to the public or is it just open space for the benefit of the residents of Bellerive. Ms. Stroud said that it was specified that it is also open to the public and to the residents. Chairman Jordan confirmed that the land as well as the boardwalk should be open to the public. He asked if the city dropped the ball in enforcing the open space and allowing the encroachment.

Ms. Stroud said that some of the other areas that had requested modification did not impact the open space. Overall, the open space wasn't complete, but some of the other infill lots that had come in for short plats didn't change the amount of open space. Chairman Jordan suggested that maybe the open space didn't get finished because the original developer lost the property.

Commissioner Luttrupp said that he is sorry that the owner went bankrupt, but there is still a requirement for open space.

Commissioner Ward said that it seems to him that last year when they looked at the latest phase, he made a comment about the tiny strip of land between the trail and road where it is only about 3 feet wide and is mostly a swale, and wondered who was going to maintain it. The solution was that it was going to be maintained but you couldn't do anything with it because it was only 3 feet wide.



Chairman Jordan asked if the city wasn't aware of the open space problem until the request came forward and they started doing some research. He noted that this is a non-conforming PUD. Commissioner Messina agreed.

Ms. Stroud said that in this project in particular it goes back to condition #9 that the applicant modified, saying that at a later time they would plat and improve the open space, and the subject property is within that area.

Chairman Jordan said there are two issues – one is the request being brought forward, and then the issue that the PUD is non-conforming because the public open space requirements were never completed. Chairman Jordan asked Mr. Adams for his counsel. Mr. Adams said that the commission should go ahead with the hearing, and the ordinance says that transferees shall complete, use and maintain each unit in strict conformance with the approved development plan. There may be an enforcement issue as well.

John Williams, applicant, thanked staff for the outstanding job. There have been 10 years of change with the property. When the PUD was originally approved ten years ago, it was approved for 412 dwelling units. Today there are 139 HOA members. Since 2013 there have been five PUD modifications. In 2014 they had five single-family home starts. In 2015 they had six single-family home starts, and maybe the same number next year. There is a lot of activity down there and some beautiful homes along the boardwalk.

Mr. Williams said that the purpose of the proposed PUD is to enable them to replace one boardwalk home and a carriage home with courtyard homes. They will take an almost acre lot and put two lots on it – two duplexes on one and a single family on the other. Their plan should be approved by right. The courtyard homes and boardwalk homes were approved with some flexibility in 2005 and it was confirmed again in 2008, 2013, and 2014. They have never requested any modifications to the open space. The proposed plan creates more open space. They think that their proposed plan is 100% compliant with the Bellerive open space plan. 4.597 acres of open space has been approved and platted. It may not be usable, but in 2005 when it was approved the steep riverbank was never usable. People can walk along the riverbank, and last time he checked swimming was still recreation. He asked why somebody couldn't walk along Tract A that goes all the way to the bridge. He thinks that the open space is being sold short because it is not "usable" but he contends that a good part of it is. When they are done there will be 20% of the PUD that is platted as open space, not 0.65 acres.

There have been a lot of previously approved plans and he can't take responsibility for anything that has happened heretofore but he assumes that the city approved the final development plans. The "gooseneck" is a half an acre of open space that remains unimproved and he presumes that the developer had a development plan to make some improvements there. There is also no mention of the Centennial Trail which is very usable open space. An acre of the Bellerive property has the Centennial Trail on it. None of the applicants before him have been required to fix property that they didn't own. He thinks that the commission is selling the neighborhood short because there is a lot of open space around the development, including property owned by the city.

Mr. Williams reviewed the CC&Rs in regard to public space and open space and reviewed other areas of open space in the development that are offered to the public. He believes there is a lot of open space. Most of Tract A along the river is steep so it may never have been usable, and he doesn't know why the city approved it in the open space calculation. It is a riparian zone and there isn't a need for heavy landscape. Mr. Williams said that he can't be responsible for what the private owners did to their space, but it looks nice. He commented that Bellerive and the adjacent Riverstone are perhaps the most generous subdivisions in the city in terms of making space available. There is a mile of Spokane River frontage, 0.5 miles of boardwalk, 4 plus miles of Centennial Trail, and walking paths. There are 5 acres of Riverstone Park nearby. Four million dollars has been invested in open space development in these areas at no cost to the city. Mr. Williams feels that the subdivision is 100% compliant with all previously approved PUD applications and recorded documents. In addition, the city now owns 3.9 acres of

unimproved open space directly adjacent to the PUD where people are playing Frisbee and walking their dogs. Mr. Williams believes that the Bellerive PUD is not shy of open space. No one that he has talked to has commented that they wish they had more open space.

Commissioner Luttrupp said that their understanding of the definition of open space is that the PUD committed "x" number of acres for open space. The open space is defined specifically. Mr. Williams said that he doesn't have anything else to offer in terms of more usable open space. He noted that he has a problem with condition #4 where they are being asked to improve every open space in the entire area. He is willing to improve 0.76 acres but he has a hard time understanding why he would be responsible for something that is on the other end of the neighborhood that is owned by potentially Kootenai County due to tax liens.

Mr. Williams said that he thinks they have a solution for condition #12. In regard to the boardwalk, everybody he has talked to acknowledges that the master plan for the development shows the boardwalk ending right where it ends today. It is lit, it has stairs up to the right of way, has access for fire and standpipes. There is approved public access and they are actually going to create another people trail with a path down to the usable Tract A for swimming.

Mr. Williams said that there is also a sidewalk deviation request where he would like to put trees and landscaping in order to make it more beautiful.

Mr. Williams confirmed that he purchased Lot 1 only. Commissioner Fleming asked if the adjacent Lot 2 was the greenspace dedicated land. Mr. Williams said that the original PUD map and the plat now are different configurations.

Commissioner Fleming asked who owns the boardwalk home land. Mr. Williams said that all of Tract A is owned by the HOA. He said that he is trying to make the best use of a very challenging lot.

Commissioner Luttrupp suggested that the commission might want to ask the city attorney to take a look at the request and come back and advise them since it is a complex issue and there are a lot of loose ends.

Commissioner Ingalls commented one thing that is positive is that Mr. Williams is a late comer but is stepping up to the plate and making public access better. Mr. Williams pointed out that one of the things they will do is put in a five foot walking path to the river.

Commissioner Luttrupp said that maybe it is not appropriate to ask the applicant to provide open space, and noted that the commission tries to do their best not to treat people differently. He commented that he believes the commission needs to have the City Attorney look at it.

Chairman Jordan said that usually in a PUD they are dealing with a developer but in this case they are dealing with a single lot owner. Since staff believes that the PUD is non-conforming, the single lot owner is being asked to correct the problems in the PUD.

Mr. Adams said that Chairman Jordan's assessment is accurate. The commission is looking at a PUD that has certain requirements that aren't met and a part of the PUD is trying to make some modification. The legal question is who is responsible and it may be everybody. It is a complex issue and he hasn't found anything directly on point other than the ordinance cited that the transferee is responsible to follow what the PUD approval had been. If the commission wants to modify it again, that is up to the commission. There is a minimum 10% open space that has to be addressed at some point.

Chairman Jordan said that it seems like on the overall problem of the non-conforming PUD, they would be dealing with the HOA to rectify it. He wondered how the applicant was able to purchase the lot that was originally designated as open space. Mr. Williams said that he bought the lot from the developer, who bought it from the bank. Chairman Jordan said that he thinks Mr. Williams has a good point in that some of that land that is steep could be open space. As an example, there is open space in Copper Ridge at

the end of Shadduck that is probably cliffs and isn't walkable.

Commissioner Fleming said why should the last man standing be the last improver of all of the development. She doesn't think it should fall on his shoulders.

Ms. Anderson clarified that they did inform the applicant as well as the developer who sold the property to him that it was for open space and that there was an intention to have the two boardwalk homes and carriage homes but it was open space.

Mr. Williams said that their analysis has shown that 4.42 acres is required and they tallied up all of the open space and it is more than that. The question is how usable is the open space.

Commissioner Luttrupp said that part of the parcel is depicted as open space, so if the commission were to approve it, what they are saying is that open space can now become buildable space. Commissioner Ingalls said that a big part of the land is buildable but part of it is open space.

Commissioner Fleming asked Mr. Williams if he was aware when he purchased the land that he was in the actual open space.

Mr. Williams said they do not deny that their request goes into an area that was reserved as open space by the original PUD. There is a debate as to where that line is.

Commissioner Messina said that there is plenty of open space. Whether the city is at fault or not at fault, it is a large piece of property that has gone through a lot of things over the last twelve years and things fall through the cracks. He confirmed his understanding that the path that the applicant is proposing to construct is a path to the beach.

Mr. Williams said that they would put stairs in there to make sure that the access is easy.

Commissioner Messina said that he thinks there is plenty of open space but it is an issue of do we have a PUD that is non-conforming, and how do we rectify it.

Commissioner Ward asked if the applicant's property falls under the rules of the HOA and if there is any requirement to maintain any open space as part of the HOAs vision.

Mr. Williams said that he thinks there are some small pieces that they have neglected to pick up and improve because nobody has asked them to, along the railroad right of way. The focus and the money from the HOA has been focused on beautifying the riverfront and the boardwalk.

Chairman Jordan said that under normal circumstances the developer would have developed the open spaces pursuant to the PUD requirements and as he sold out of the property he would have turned it over to the HOA and they would have maintained things. Instead they wound up with a defunct development that couldn't be completed and went into foreclosure and the PUD was amended into something smaller and simpler that would fit the current market. There was really no continuity there to carry through with the intent of the PUD.

Mr. Williams proposed that there are spaces that they could improve, 1.68 acres. Some of it is not usable, but some is not landscaped. They could make it green, or at least take out the weeds. There is a half-acre tract of flat usable open space that is not improved. The developer that just did the Bellerive 5<sup>th</sup> Addition could be asked to make the improvements. There is 3/10ths of an acre which is partially usable. He doesn't think the solution is to abandon the entire lot and give it all to the PUD. He could abandon the townhome plans and shrink up the lot a little bit.

Commissioner Luttrupp said that they have a piece of property that was designated open space. He can't support allowing the applicant to build on property that was designated open space.

Mr. Williams asked if they were saying the lot can't be built on.

Chairman Jordan said that it looks to him like the applicant has a buildable piece of property, but he wouldn't be able to build as many units as he would like until the open space issue is taken care of somehow. He commented that he has been in similar positions where he has purchased a piece of land that has some issues associated with it, and you have to work through the process.

Commissioner Ingalls asked if anyone in attendance wanted testify tonight.

Chairman Jordan clarified that only Mr. Williams signed up to testify.

Commissioner Rumpler stated that riverfront property is not in abundance. Communities that have access to develop this kind of riverfront property is an asset that has to be cherished. The sentiment of the board is they are disappointed in how this project has ended up where it has. The original design from Black Rock was quite an ambitious and extraordinary utilization of the asset. He hopes the lessons we are learning today allow them to maximize the development of the remaining riverfront property. He is sympathetic to the applicant's cause. He would love to find a way to enable him to do what he would like to do. But, he commented that it is pretty clear that there are issues that are larger than the applicant's small piece of the puzzle. He stated that a legal opinion is an important aspect here because he doesn't want to make another mistake or enable bad choices or bad decisions. Commissioner Rumpler clarified that the large "open space" area that Mr. Williams showed next to the Centennial Trail is not beautified open space or what they expected for Bellerive.

Chairman Jordan asked staff if it could be agreed what part of the lot is under the open space designation and what is not, theoretically could the applicant pull a permit and put a couple of buildings in there right now.

Ms. Anderson said that it was discussed before that the applicant could proceed with a plat for what was shown in the master plan, which showed the two boardwalk homes and the two carriage homes. If a proposal was consistent with what was shown and met the calculations of staff based on the approved master plan, that wouldn't require a PUD amendment but would need input from the other departments.

Mr. Williams said that there are configuration challenges going from the old to the new but they could solve that.

Chairman Jordan said that are obviously some issues but from what he has seen on the staff report, he sees that part of the land is buildable and part is encumbered by the open space requirement. He said that the applicant has something that they could move ahead on while they are working on this issue. He noted that he is sympathetic to the applicant's position but there are a number of questions that need to be resolved.

Commissioner Ward asked for clarification from staff on whether the open space issue needs to be resolved before the applicant could move forward with a request for his property, and if condition #9 could be fixed to clarify the open space.

Ms. Anderson said that their calculations show that the open space is still less than 10% of the improved, functional open space, which is still the discrepancy.

Chairman Jordan said that the overall issue is the entire rest of the PUD being non-conforming, so the city probably needs to get together with the HOA and maybe there are some things that can be done to solve the open space issue for the overall development. He said that, personally, as far as reaching a solution, he could probably go along with some of the open space that is not necessarily walkable and maybe that can be coupled with some of the other parcels that weren't developed into open space that could be done and beautified and they could come to an agreement between the city and the homeowners on bringing the PUD into compliance. Then maybe on a parallel track the applicant could make some of his lot buildable.

Mr. Williams suggested that he eliminate the carriage home and boardwalk home and create one lot. He asked if the commission would approve that the two lots be reallocated for four courtyard homes. That would create another third of an acre, approximately, for additional open space. He would like to look at the calculations. It is probably the lot line between the courtyard homes and boardwalk home/carriage home area where it gets bad.

Commissioner Fleming said that the city would have to weigh in on whether the applicant would have to carry the improvements or whether the HOA would have to carry the improvements for the open space on his property and the other open space areas.

Commissioner Fleming said that it doesn't make sense that the applicant should do the cleanup for the rest of the site.

Mr. Williams said the he agrees but that he has interest and the others may not. The HOA costs have gone up even though they have added more people.

Chairman Jordan agreed that other property owners might not be motivated to fix the non-conforming problem with the open space. On the other hand, if they own a home in a non-conforming PUD, that could create some problems when they try to sell their home, so there is some incentive. He thinks the city needs to be reasonable and maybe they can fix the problem. The other proposal from the applicant is in line with what he was thinking. Wherever that line is, part of the lot should be buildable.

Mr. Williams said the lot would still need to be platted and he may move the public access to the water to be closer in. There was discussion if the lot could be platted through the short plat versus long plat process.

Commissioner Luttrup said the commission is trying to be helpful but they can't negotiate on some of the items.

Chairman Jordan said it may be best to direct this to staff and legal.

Chairman Ward also suggested working through this with staff regarding a PUD amendment proposal and replat.

Mr. Williams said he thinks they can keep working through it with staff since they have had some good dialogue.

Commissioner Ingalls said they have three action options in the staff report – approve, deny, or deny without prejudice. He doesn't think the approval is there because of the finding being nonconforming related to open space. He asked if it was better to withdraw the item and if there was an advantage to the applicant withdrawing or deny without prejudice.

Commissioner Luttrupp said the commission doesn't want to set him back a year.

Mr. Williams said he is willing to take the advice of staff and commission on what is best.

After discussion regarding the best way to proceed, Ms. Stuhmiller said that this situation has arisen in the past, and it makes it cleaner to deny without prejudice which will allow the applicant to come with a new application. The applicant doesn't have to wait a year like they would if the request was denied outright. Findings will need to be made.

Mr. Williams said not to worry about reimbursement of fees.

**Motion by Ward, seconded by Fleming, to deny without prejudice Item PUD-1-04.4. Motion approved.**

ROLL CALL:

Commissioner Fleming	Voted	Aye
Commissioner Ingalls	Voted	Aye
Commissioner Messina	Voted	Aye
Commissioner Luttrupp	Voted	Aye
Commissioner Rumpler	Votes	Aye
Commissioner Ward	Voted	Aye

Motion to deny carried by a 6 to 0 vote.

**Motion by Rumpler, seconded by Messina, to deny without prejudice Item S-6-15. Motion approved.**

ROLL CALL:

Commissioner Fleming	Voted	Aye
Commissioner Ingalls	Voted	Aye
Commissioner Messina	Voted	Aye
Commissioner Luttrupp	Voted	Aye
Commissioner Rumpler	Votes	Aye
Commissioner Ward	Voted	Aye

Motion to deny without prejudice carried by a 6 to 0 vote.

**ADJOURNMENT/CONTINUATION:**

Motion by Ingalls, seconded by Fleming, to adjourn. Motion approved

The meeting adjourned at 11:49 p.m.



**COEUR D'ALENE PLANNING COMMISSION  
FINDINGS AND ORDER**

**A. INTRODUCTION**

This matter having come before the Planning Commission on December 8, 2015, and there being present a person requesting approval of ITEM A-3-15, a request for zoning prior to annexation from County Agricultural-Suburban to R-8 (Residential at 8 units/acre) zoning district.

APPLICANT: DONALD R. SMOCK (DBA HARMONY HOMES, LLC)

LOCATION: +/- 19.3 ACRE PARCEL LOCATED BETWEEN ATLAS ROAD, AND GILA COURT, SOUTH OF PRAIRIE AVENUE, AND NORTH OF THE ROCKET STREET TERMINUS.

**B. FINDINGS: JUSTIFICATION FOR THE DECISION/CRITERIA, STANDARDS AND FACTS RELIED UPON**

- B1. That the existing land uses are residential, single-family, large parcels (in county), civic, and vacant land.
- B2. That the Comprehensive Plan Map designation is Transition.
- B3. That the zoning is County Agricultural-Suburban.
- B4. That the notice of public hearing was published on November 20, 2015, which fulfills the proper legal requirement.
- B5. That the notice of public hearing was not required to be posted, which fulfills the proper legal requirement.
- B6. That 115 notices of public hearing were mailed to all property owners of record within three-hundred feet of the subject property on November 20, 2015.
- B7. That public testimony was heard on December 8, 2015.
- B8. That this proposal is in conformance with the Comprehensive Plan policies as follows:
  - Objective 1.01- Environmental Quality: Minimize potential pollution problems such as air, land, water, or hazardous materials.
  - Objective 1.02- Water Quality: Protect the cleanliness and safety of the lakes, rivers, watersheds, and the aquifer.
  - Objective 1.11 – Community Design: Employ current design standards for development that pay close attention to context, sustainability, urban design, and pedestrian access and usability throughout the city.
  - Objective 1.14 – Efficiency: Promote the efficient use of existing infrastructure, thereby reducing impacts to undeveloped areas.

Objective 2.02 – Economic & Workforce Development: Plan suitable zones and mixed use areas, and support local workforce development and housing to meet the needs of business and industry.

Objective 3.05 – Neighborhoods: Protect and preserve existing neighborhoods from incompatible land uses and developments.

Objective 3.07 – Neighborhoods: Emphasize a pedestrian orientation when planning neighborhood and preservation and revitalization.

Objective 3.14 – Recreation: Encourage city-sponsored and/or private recreation facilities for citizens of all ages. This includes sports fields and facilities, hiking and biking pathways, open space, passive parks, and water access for people and boats.

- B9. That public facilities and utilities are available and adequate for the proposed use. This is based on comments from the various departments in the staff report.
- B10. That the physical characteristics of the site do make it suitable for the request at this time. This is based information in the staff report.
- B11. That the proposal would not adversely affect the surrounding neighborhood with regard to traffic, neighborhood character, and existing land uses. This is based information in the staff report.

**C. ORDER: CONCLUSION AND DECISION**

The Planning Commission, pursuant to the aforementioned, finds that the request of DONALD R. SMOCK (DBA HARMONY HOMES, LLC) for zoning prior to annexation, as described in the application should be approved.

Suggested provisions for inclusion in an Annexation Agreement are as follows:

There are none.

Motion by Ingalls, seconded by Messina, to adopt the foregoing Findings and Order.

**ROLL CALL:**

Commissioner Fleming	Voted Yes
Commissioner Ingalls	Voted Yes
Commissioner Luttrupp	Voted Yes
Commissioner Messina	Voted Yes
Commissioner Rumpler	Voted Yes
Commissioner Ward	Voted Yes

Motion to approve carried by a 6 to 0 vote.

\_\_\_\_\_  
CHAIRMAN BRAD JORDAN

**COEUR D'ALENE PLANNING COMMISSION  
FINDINGS AND ORDER**

**A. INTRODUCTION**

This matter having come before the Planning Commission on, December 8, 2015, and there being present a person requesting approval of ITEM S-4-15, a request for preliminary plat approval of a 94-lot preliminary plat to be known as "Garden Grove".

APPLICANT: DONALD R. SMOCK (DBA HARMONY HOMES, LLC)

LOCATION: +/- 19.3 ACRE PARCEL LOCATED BETWEEN ATLAS RD. AND GILA CT.,  
SOUTH OF PRAIRIE AVE., AND NORTH OF THE ROCKET ST. TERMINUS.

**B. FINDINGS: JUSTIFICATION FOR THE DECISION/CRITERIA, STANDARDS AND FACTS RELIED UPON**

- B1. That the existing land uses are residential, single-family, large parcels (in county), civic, and vacant land.
- B2. That the Comprehensive Plan Map designation is Transition.
- B3. That the zoning is County Agricultural-Suburban.
- B4. That the notice of public hearing was published on November 20, 2015, which fulfills the proper legal requirement.
- B5. That the notice of public hearing was posted on the property on November 30, 2015, which fulfills the proper legal requirement.
- B6. That 115 notices of public hearing were mailed to all property owners of record within three-hundred feet of the subject property on November 20, 2015.
- B7. That public testimony was heard on December 8, 2015.
- B8. Pursuant to Section 16.10.030A.1, Preliminary Plats: In order to approve a preliminary plat, the Planning Commission must make the following findings:
  - B8A. That all of the general preliminary plat requirements have been met as determined by the City Engineer.
  - B8B. That the provisions for sidewalks, streets, alleys, rights-of-way, easements, street lighting, fire protection, planting, drainage, pedestrian and bicycle facilities, and utilities are adequate. This is based on comments from various departments in the staff report.
  - B8C. That the proposed preliminary plat does comply with all of the subdivision design standards (contained in chapter 16.15) and all of the subdivision improvement standards (contained in chapter 16.40) requirements. This is based on the staff report, presentation and testimony provided.

B8D. The lots proposed in the preliminary plat do meet the requirements of the applicable zoning district. This is based on the staff report, presentation and testimony provided.

**C. ORDER: CONCLUSION AND DECISION**

The Planning Commission, pursuant to the aforementioned, finds that the request of DONALD R. SMOCK (DBA HARMONY HOMES, LLC) for preliminary plat of approval as described in the application should be approved.

Special conditions applied to the motion are:

**Planning:**

1. The creation of a homeowners association will be required to ensure the perpetual maintenance of the open space.

**Engineering:**

2. A storm water management plan is required for the proposed subdivision and a detailed analysis of the proposed drainage swales will be required for capacity sizing verification.
3. Written permission for access onto Prairie Avenue from the Post Falls Highway District shall be obtained prior to recording the final plat.
4. The proposed east/west street name, Hydrangea Lane does not meet the criteria of the City Street Naming and Addressing Ordinance (#3033) and will be required to be changed.

**Water:**

5. All water service, operations, and, maintenance will be provided by the Hayden Irrigated Tracts water system. The City will have no responsibility for any part of the water system. Construction will need to adhere to all conditions established in the Memorandum of Understanding (MOU) between the irrigation district and the City.
6. The Irrigation District is required to have a statement on the face of the final plat that states that all water facilities and related easements are dedicated to the District, and, there will be a required sign off to that extent on the face of the final plat document.

**Fire:**

7. FD access utilizing Knox products for FD emergency egress on Hydrangea/Hibiscus and Prairie.
8. A grasscrete type of material will be required in the grassy area at Hydrangea/Hibiscus and Prairie Ave.

**Wastewater:**

9. An executed Memorandum of Understanding for a Water Service Agreement (MOU) between the City of Coeur d'Alene and Hayden Lake Irrigation District will be required of the development.
10. The following language (or similar) will be required on the Face of the PUD under the Hayden Lake Irrigation District Approval:  
"This plat is hereby approved by the Hayden lake Irrigation District in accordance with the Water Service Agreement with the City of Coeur d'Alene dated\_\_\_\_\_."

**Other special conditions added at the public hearing:**

11. Move the townhomes away from the established residences in Sunshine Meadows. The townhomes can abut undeveloped lots along the western perimeter or be located within the center of the Garden Grove neighborhood.
12. Form an architectural design review committee as part of the homeowners association to review the style of homes within Garden Grove to ensure that they are consistent with what was presented as part of the application.
13. Block 7, Lots 5-18 to the east and Block 5, Lots 16-20 on the south shall have a minimum 20' setback from the rear property line to back of the residential structure, except that decks may encroach up to 5' into the rear setback. (This is for lots abutting the existing Sunshine Meadows development)
14. Install a 6-foot high site obscuring perimeter fence surrounding the property that is one continuous architectural style. Details of the fencing shall be provided to the city's Planning Department with the final development plan.
15. Install a ten foot (10') wide planting strip buffer containing evergreen trees, approved by the Urban Forester, along the area bordering the existing homes in Sunshine Meadows listed in condition 13. The trees must be at least fifteen feet (15') tall at time of planting and be planted no more than twenty five feet (25') apart. The planting strip buffer shall be installed by the developer prior to final plat.
16. Continued maintenance of the planting strip buffer must be included within the CC&R's.
17. As possible, direct construction traffic away from Rocket Street and onto Prairie Avenue.

Motion by Ingalls, seconded by Messina, to adopt the foregoing Findings and Order.

**ROLL CALL:**

Commissioner Fleming	Voted Yes
Commissioner Ingalls	Voted Yes
Commissioner Luttrupp	Voted Yes
Commissioner Messina	Voted Yes
Commissioner Rumpler	Voted Yes
Commissioner Ward	Voted Yes

Motion to approve carried by a 6 to 0 vote.

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CHAIRMAN BRAD JORDAN

**COEUR D'ALENE PLANNING COMMISSION  
FINDINGS AND ORDER**

**A. INTRODUCTION:**

This matter having come before the Planning Commission on December 8, 2015, and there being present a person requesting approval of Item PUD-2-15, a request for a planned unit development known as "Garden Grove."

APPLICANT: DONALD R. SMOCK (DBA HARMONY HOMES, LLC)

LOCATION: +/- 19.3 ACRE PARCEL LOCATED BETWEEN ATLAS RD. AND GILA CT.,  
SOUTH OF PRAIRIE AVE., AND NORTH OF THE ROCKET ST. TERMINUS.

**B. FINDINGS: JUSTIFICATION FOR THE DECISION/CRITERIA, STANDARDS AND FACTS RELIED UPON**

- B1. That the existing land uses are residential, single-family, large parcels (in county), civic, and vacant land.
- B2. That the Comprehensive Plan Map designation is Transition.
- B3. That the zoning is County Agricultural-Suburban.
- B4. That the notice of public hearing was published on November 21, 2015, which fulfills the proper legal requirement.
- B5. That the notice of public hearing was posted on the property on November 30, 2015, which fulfills the proper legal requirement.
- B6. That 115 notices of public hearing were mailed to all property owners of record within three-hundred feet of the subject property on November 20, 2015.
- B7. That public testimony was heard on December 8, 2015.
- B8. Pursuant to Section 17.07.230, Planned Unit Development Review Criteria, a planned unit development may be approved only if the proposal conforms to the following criteria to the satisfaction of the Planning Commission:
  - B8A. The proposal is in conformance with the Comprehensive Plan. This is based upon the following policies:
    - Objective 1.02 – Water Quality: Protect the cleanliness and safety of the lakes, rivers, watersheds, and the aquifer.
    - Objective 1.11 – Community Design: Employ current design standards for development that pay close attention to context, sustainability, urban design, and pedestrian access and usability throughout the city.



Objective 1.14 – Efficiency: Promote the efficient use of existing infrastructure, thereby reducing impacts to undeveloped areas.

Objective 2.02 – Economic & Workforce Development: Plan suitable zones and mixed use areas, and support local workforce development and housing to meet the needs of business and industry.

Objective 3.05 – Neighborhoods: Protect and preserve existing neighborhoods from incompatible land uses and developments.

- B8B. The design and planning of the site is compatible with the location, setting and existing uses on adjacent properties. This is based on density, Architectural style, layout of buildings, building heights and bulk, off-street parking, open space and Landscaping.
- B8C. The proposal is compatible with natural features of the site and adjoining properties based on Topography, Wildlife habitats and native vegetation.
- B8D. The location, design, and size of the proposal are such that the development will be adequately served by existing streets, public facilities and services. This is based on the comments from staff in the staff report and testimony from the applicant and engineer for the project.
- B8E. The proposal does provide adequate private common open space area, as determined by the Commission, no less than 10% of gross land area, free of buildings, streets, driveways or parking areas. The common open space shall be accessible to all users of the development and usable for open space and recreational purposes. This is based on the staff report.
- B8F. Off-street parking does provide parking sufficient for users of the development. This is based on the staff report.
- B8G. That the proposal does provide for an acceptable method for the perpetual maintenance of all common property. This is based on a homeowners association (HOA) being provided to oversee and maintain common properties.

**C. ORDER: CONCLUSION AND DECISION**

The Planning Commission, pursuant to the aforementioned, finds that the request of DONALD R. SMOCK (DBA HARMONY HOMES, LLC) for approval of the planned unit development, as described in the application should be approved with conditions.

Special conditions applied to the motion are:

**Planning:**

1. The creation of a homeowners association will be required to ensure the perpetual maintenance of the open space.

**Engineering:**

2. A storm water management plan is required for the proposed subdivision and a detailed analysis of the proposed drainage swales will be required for capacity sizing verification.
3. Written permission for access onto Prairie Avenue from the Post Falls Highway District shall be obtained prior to recording the final plat.

4. The proposed east/west street name, Hydrangea Lane does not meet the criteria of the City Street Naming and Addressing Ordinance (#3033) and will be required to be changed.

**Water:**

5. All water service, operations, and, maintenance will be provided by the Hayden Irrigated Tracts water system. The City will have no responsibility for any part of the water system. Construction will need to adhere to all conditions established in the Memorandum of Understanding (MOU) between the irrigation district and the City.
6. The Irrigation District is required to have a statement on the face of the final plat that states that all water facilities and related easements are dedicated to the District, and, there will be a required sign off to that extent on the face of the final plat document.

**Fire:**

7. FD access utilizing Knox products for FD emergency egress on Hydrangea/Hibiscus and Prairie.
8. A grasscrete type of material will be required in the grassy area at Hydrangea/Hibiscus and Prairie Ave.

**Wastewater:**

9. An executed Memorandum of Understanding for a Water Service Agreement (MOU) between the City of Coeur d'Alene and Hayden Lake Irrigation District will be required of the development.
10. The following language (or similar) will be required on the Face of the PUD under the Hayden Lake Irrigation District Approval:  
"This plat is hereby approved by the Hayden lake Irrigation District in accordance with the Water Service Agreement with the City of Coeur d'Alene dated\_\_\_\_\_."

**Other special conditions added at the public hearing:**

11. Move the townhomes away from the established residences in Sunshine Meadows. The townhomes can abut undeveloped lots along the western perimeter or be located within the center of the Garden Grove neighborhood.
12. Form an architectural design review committee as part of the homeowners association to review the style of homes within Garden Grove to ensure that they are consistent with what was presented as part of the application.
13. Block 7, Lots 5-18 to the east and Block 5, Lots 16-20 on the south shall have a minimum 20' setback from the rear property line to back of the residential structure, except that decks may encroach up to 5' into the rear setback. (This is for lots abutting the existing Sunshine Meadows development)
14. Install a 6-foot high site obscuring perimeter fence surrounding the property that is one continuous architectural style. Details of the fencing shall be provided to the city's Planning Department with the final development plan.
15. Install a ten foot (10') wide planting strip buffer containing evergreen trees, approved by the Urban Forester, along the area bordering the existing homes in Sunshine Meadows listed in condition 13. The trees must be at least fifteen feet (15') tall at time of planting and be planted no more than twenty five feet (25') apart. The planting strip buffer shall be installed by the developer prior to final plat.

16. Continued maintenance of the planting strip buffer must be included within the CC&R's.
17. As possible, direct construction traffic away from Rocket Street and onto Prairie Avenue.

Motion by Ingalls, seconded by Ward, to adopt the foregoing Findings and Order.

ROLL CALL:

Commissioner Fleming	Voted Yes
Commissioner Ingalls	Voted Yes
Commissioner Luttrupp	Voted Yes
Commissioner Messina	Voted Yes
Commissioner Rumpler	Voted Yes
Commissioner Ward	Voted Yes

Motion to approve carried by a 6 to 0 vote.

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CHAIRMAN BRAD JORDAN



# MEMORANDUM

Date: January 14, 2016  
To: Mayor, City Council and Planning Commission  
From: Planning Department  
Subject: Council/Planning Commission Workshop on January 14, 2016

## **Workshop Discussion Items**

- ***Use of Porta Potties for “seasonal” businesses***
- ***Vacation Rentals***
- ***Neighborhood Compatibility Ordinance Request***

## **Use of Porta Potties for “seasonal” businesses**

### ***Background:***

The city has received a request from Crafted Tap House to allow the use of porta potties (instead of providing permanent restrooms) for a “seasonal” beer garden on the property at the southwest corner of 6<sup>th</sup> Street and Lakeside Avenue, which is across the alley to the north of Crafted. They are proposing to use the porta potties for no more than 90 days a summer and likely only on weekends and Fridays, subject to demand.

City Code restricts the use of privies in the city other than for construction activities ([City Code Section 13.12.010: Privies; Restrictions](#)) (See Attachment 1).

The Zoning Code defines a “Temporary structure” as a structure which is readily movable and used or intended to be used for a period not to exceed ninety (90) consecutive days.

“Seasonal” is not defined in the City Code other than a provision requiring “seasonal” shade covers from May 1 to October 1 of each year for childcare facilities ([City Code Chapter 5.68, Subsection 5.68.030.I.4c](#)).

Webster Dictionary defines the summer season as June to August.

Porta potties are frequently used at special events and in some city parks in place of permanent restrooms. Porta potties screened with shelters are currently being used in seven city parks, including: Canfield Sports Complex; CDA Soccer Complex; Johnson Mill River; North Pines; G.O. Phippeny; Shaddock; and Sunshine Meadows.

As written, the City Code does not permit the use of porta potties for special events or on public property. Therefore, a code amendment to allow for porta potties to be used in these situations is warranted.

Panhandle Health District has expressed concerns to the city when discussing mobile food vendors and the use of porta potties without handwashing stations. Therefore, if a code

amendment is desired, some conditions related to cleanliness and sanitation should also be considered if porta potties are used for events with food.

***Decision Point:***

Staff is asking for direction from the Planning Commission and City Council on whether an amendment should be made to the code to allow for the use of porta potties for seasonal businesses. Considerations should be given to the following: how seasonal use and seasonal businesses should be defined; locations and zoning districts in the city where porta potties are appropriate; circumstances when porta potties can be used instead of permanent restrooms; how long porta potties should be permitted to remain on a property; screening of porta potties; frequency of cleanout; handwashing stations; and other conditions related to cleanliness and sanitation.

**Vacation Rentals**

***Background:***

The number of vacation rentals has steadily been increasing in the neighborhoods around downtown Coeur d'Alene over the last several years. IRONMAN and other community events, as well as the year-round recreational opportunities surrounding Coeur d'Alene, help generate a demand for vacation rentals. Websites such as VRBO, AirB&B, TripAdvisor, Vacasa, FlipKey, cda getaway, vacationhomerentals, and Craigs List, and several local property management companies have made the vacation rental business convenient for homeowners and investors who are looking to make income. Year-round vacation rentals are also becoming more prevalent and visible in the community, with some rental properties hanging banners and signs advertising year-round vacation rentals.

Vacation rentals are not currently permitted in residential zones in the city; however, this is not clearly stated in the Municipal Code and it has also not been strictly enforced. Enforcement has largely been complaint-based. Former city attorney, Nancy Stricklin, wrote a legal interpretation in 1995 regarding weekly residential rentals. Rentals of less than one month are considered transient (similar to hotel/motel use) versus semi-permanent. Therefore, this legal interpretation continues to be the stance of the city for rental properties in residential zoning districts – including primary residences and accessory dwelling units.

Staff will show how current code is applied for similar uses, share how wide-ranging in scope the codes in other communities can be, and discuss how vacation rentals have the potential to impact a community (both positively and negatively). A vacation rental ordinance would legalize vacation rentals in Coeur d'Alene and could establish important performance standards to help ensure that they are compatible in residential neighborhoods.

Vacation rentals are not unique to Coeur d'Alene and the desire to clarify where and how they are permitted is becoming commonplace in communities nationwide. Local communities have begun regulating vacation rentals. Sandpoint has a vacation rental ordinance, the City of Spokane recently adopted a vacation rental ordinance and the City of Kellogg and Kootenai County are both proposing vacation rental ordinances.

***Decision Point:***

Staff is asking for direction from the Commission and Council on whether a vacation rental ordinance should be drafted for Coeur d'Alene. If directed to proceed, staff will bring back a proposed code for Commission and Council review and further input.

## **Neighborhood Compatibility Ordinance Request**

### ***Background:***

The Fort Grounds Homeowners Association is requesting an amendment to the Zoning Code in the form of an overlay district that would apply certain development standards to future renovation and new construction in a defined area of the Fort Grounds neighborhood. As stated by the association, "The purpose of the proposed ordinance described below is to recognize the value in maintaining the general character and feel of older Fort Grounds residences, while acknowledging that both renovation and replacement of houses in the neighborhood will continue into the future." The proposed ordinance is modeled after an ordinance adopted around 2006 by the City of Austin, Texas, commonly referred to as the "McMansion" Ordinance.

The Fort Grounds Homeowners Association submitted an Executive Summary dated June 18, 2015 for the Proposed Ft. Grounds Neighborhood Compatibility Ordinance and proposal drawings (see Attachment 2). They have requested that the proposed ordinance include the following components:

- Define the Fort Grounds Neighborhood and create an overlay district wherein special rules of development will apply;
- Adopt an additional limitation on the total amount of gross floor area that can be developed based upon a "floor area ratio" (FAR) of 0.4 of gross floor area (not including basements) to each 1.0 foot of lot area, but allowing a minimum of 2300 square feet of floor area;
- Establish a 3-dimensional set-back regimen to govern the "scale" of new structures, using a "virtual tent" mechanism at a maximum height of 32 feet;
- Provide for certain exceptions to the "tent" requirements for eaves, gables, dormers, chimneys, and certain features not designed for occupancy;
- Establish side wall articulation standards to prevent the construction of massive uniform side walls;
- Adopt definitions as necessary, including Gross Floor Area, (to exclude below grade livable space) for use in computing FAR and Natural Grade from which to measure maximum building height, (i.e. top of the curb).
- Provide for the prohibition of a covered porch, deck or other structure within the front setback zone;
- Adopt a maximum "lot coverage percentage" requirement in addition to the FAR, in order to preserve a minimum of open space;
- Adopt an maximum 75% "impervious surface" limitation to insure ensure percolation of storm water run-off and minimum amount of landscaped area;
- Provide for exceptions to accommodate exceptionally small building lots; and,
- Containing a savings clause recognizing the need to replace structures destroyed by fire or other casualty occurring after adoption, applicable to structures in existence as of the adoption date, (i.e., a "grandfather clause").

Representatives from the Fort Grounds Homeowners Association made a presentation to the Planning Commission on August 11, 2015 requesting that the city move forward with a Neighborhood Compatibility Ordinance for the Fort Grounds neighborhood. The Commission took public testimony in support and opposition of the requested ordinance. After hearing the presentation and public testimony, the Commission was in support of scheduling a workshop to discuss the request and receive further input from staff. (See Attachment 3)

It should be noted that not all residents and property owners within the Fort Grounds neighborhood are in support of this proposal. Several residents/property owners attended the August Planning Commission meeting to voice their concerns to such an ordinance. Additionally, the Planning Department has received some phone calls and emails since that time expressing concern or opposition. Stated concerns include: having the ordinance modeled after Austin's "McMansion" Ordinance and the virtual tent guidelines; the comparison of existing homes in Fort Grounds as "McMansions;" concern that an ordinance would be too limiting on future development potential; concern that the ordinance would only apply to Fort Grounds rather than applying to all areas of the city with small lots; and concerns that an ordinance might limit property rights.

Staff believes that the city's Zoning Code could be amended to help provide more guidance for infill development and residential additions by including many of the components and standard requested by the Fort Grounds Homeowners Association and still protect property rights.

It is staff's opinion that most of the components and standards proposed by the homeowners association would be appropriate to be included in an ordinance to help ensure that new development and residential additions are compatible with the character of the neighborhood.

Components and standards proposed by the homeowners association that are supported by staff include: consideration of FAR; side wall articulation; adopting new definitions as appropriate and clarifying existing definitions (including how to measure grade to determine building height); maximum lot coverage; impervious surface; front setbacks and restricted encroachments into the setback; and removing loopholes related to maximum building height.

Staff would also like to consider other tools such as: minimum roof pitch; stepback of upper stories; setbacks; maximum height; protection/mitigation of grand scale trees; and design compatibility of accessory structures with the primary residence.

Sandpoint has successfully incorporated many of these standards into their single-family residential zoning districts, multi-family residential zoning districts, accessory dwelling regulations, substandard original lots of record, and cottage housing sections of the zoning code. Sandpoint's rationale for including these standards in the Zoning Code was to ensure that new development and infill development is compatible with the character and context of the neighborhoods.

Staff has some concerns with the 3-D "virtual tent" mechanism proposed by the Fort Grounds Homeowners Association, including the extra time required to review building plans that have an "virtual tent" and trying to explain to the public what it means and how to provide this information on their building plans. As an example, Austin has posted a 37-minute online training presentation with 40 slides on their website that explains the ordinance and virtual tent concept. Staff also has concerns that if certain architectural features are allowed to penetrate the virtual tent, that it could result in new loopholes and more difficulty in reviewing residential permits.



However, staff believes that a 2-D “virtual tent” or applying additional design standards such as setbacks for upper stories, minimum roof pitch, setbacks, and lot coverage would result in the same overall effect desired by the Fort Grounds Homeowners Association and could be much more user-friendly and easier to implement than a 3-D “virtual tent.” Staff also believes the requested components/standards may be better applied through a new zoning district or incorporated into existing zoning districts versus creating another overlay district.

An ordinance could be drafted to apply only to the Fort Grounds neighborhood or it could be drafted to apply to all of the established neighborhoods in the city that share similar characteristics to the Fort Grounds neighborhood, such as a mix of modern and historical homes, varying lot sizes, and grand scale trees. The benefit of drafting the ordinance to apply only to the Fort Grounds neighborhood is that it could serve as a pilot project to see if it is successful and how easy/difficult it is to implement. The Fort Grounds neighborhood is one of the most organized and has been pursuing this effort for a few years. They have come forward to request the amendment and have come up with a list of components/standards that they would like to see implemented while still allowing flexibility and balancing development rights. Certain elements such as measuring grade from existing curb height would not work in neighborhoods like the Garden District and Sanders Beach where a significant number of properties slope up from the curb. Lastly, it would be easier to work with only one neighborhood versus doing outreach to all established neighborhoods to get input on a new ordinance.

The counterpoint is that no one knows how many new building permits will be submitted for lots in the Fort Grounds neighborhood in the next few years. So it may take several years to determine if a pilot project ordinance is successful. Additionally, development is taking place in all of the established neighborhoods and all of those neighborhoods could benefit from having increased design and performance standards to ensure that new homes, remodels, residential additions and accessory buildings fit with the character and context of the neighborhood.

The Economic Development Clinic, University of Idaho College of Law, under the direction of Director Stephen R. Miller, was enlisted to review the request by the Fort Grounds Homeowners Association as well as to consider background information on the neighborhood and suggestions from the city’s Planning Department. Director Miller provided a memo dated January 11, 2016 with recommendations and research related to the requested neighborhood compatibility ordinance for the Fort Grounds neighborhood (see Attachment 4). Director Miller has recommended an updated survey of the Fort Grounds neighborhood properties to determine the current status of the neighborhood before beginning any serious discussion of drafting ordinances related to neighborhood character. He suggests enlisting a community group to conduct the survey over a weekend and the data could be compiled and processed within a few weeks with assistance from city staff. He proposes that the new survey could be compared to the 1992 History Survey that was conducted in the neighborhood to help indicate to what degree the neighborhood has changed over the past several decades and determine the nature of those changes. It is the opinion of Director Miller and the Economic Development Clinic that without an updated survey, an ordinance for such a small neighborhood has the possibility of implicating constitutional protections and could be subject to equal protection challenges. The survey would help guide regulation so that it doesn’t only apply to a few properties in the neighborhood.

***Decision Point:***

Staff is asking for direction from the Planning Commission and Council on whether to proceed with drafting a neighborhood compatibility ordinance or similar amendment to the Zoning Code. If directed to proceed, then staff would also like direction on whether the ordinance should only

apply to the Fort Grounds neighborhood as a pilot project that could later be applied to other established neighborhoods, or if it should be drafted to apply to the established neighborhoods such as Fort Grounds, Sanders Beach, East Mullan, Garden District, Government Way south of Harrison, and the area referred to as the “ABC Streets” or the “Alphabet District.”

Attachments:

Attachment 1 – City Code Section 13.12.010: Privies; Restrictions

Attachment 2 – Proposed Ft. Grounds Neighborhood Compatibility Ordinance and Drawings

Attachment 3 – Planning Commission Meeting Minutes, August 11, 2015

Attachment 4 – Memo from Stephen R. Miller, Director of the Economic Development Clinic at the University of Idaho College of Law, dated January 11, 2016  
(without attachments)

**FROM:** Stephen R. Miller, Director  
Economic Development Clinic, University of Idaho College of Law (Boise)  
E-mail: millers@uidaho.edu

**TO:** Hilary Anderson, Community Planning Director  
City of Coeur d'Alene, Idaho

**DATE:** January 11, 2016

**RE:** Recommendations and references related to discussion of proposed Fort Grounds neighborhood character ("mansionsization") ordinance

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## **I. Overview**

This memorandum summarizes recommendations and research conducted by the University of Idaho College of Law's Economic Development Clinic on behalf of the City of Coeur d'Alene, Idaho (City) related to community interest in an ordinance to regulate the character of the City's Fort Grounds neighborhood. The memorandum first provides a recommendation to conduct an updated survey of the Fort Grounds neighborhood properties before beginning any serious discussion of drafting ordinances related to neighborhood character (also referred to as neighborhood conservation or mansionsization). See Section II. The second part of the memorandum provides a summary of informational attachments resulting from the Clinic's research. See Section III. These attached documents, which include model ordinances, professional and academic articles, as well as treatise chapters, should serve as useful references for any future ordinance drafting, should you proceed to that step.

## **II. Recommendation for action: Informational survey of Fort Grounds properties**

A 1992 effort to form a historic district in the Fort Grounds neighborhood resulted in the production of the "National Register of Historic Places Registration Form for the Sherman Park Addition/Fort Grounds Neighborhood Historic District" (1992 History Survey) (**Attachment A**). This document provides a comprehensive list and descriptions of each of the 80 buildings in the district at that time. It also includes an analysis of whether the properties were deemed contributing or noncontributing to the proposed historic district, explains the significant architectural characteristics of the district, and provides a picture of almost all of the buildings in the neighborhood.

We suggest that the City's next step should be to conduct a survey similar to the 1992 Historic Survey. The purpose of this new survey (Proposed Survey), would not need to be confined to determinations of buildings' historic merit; rather, a survey would prove valuable in determining the current status of the neighborhood. The 1992 Historic Survey would provide a useful baseline against which to evaluate change. The new information from the Proposed Survey would prove helpful in several ways. First, information gleaned from the Proposed Survey could be compared to the 1992 Historic Survey, which would indicate the degree to which the neighborhood had changed over the past several decades. Our understanding is that the community perceives that the neighborhood has changed significantly; however, a survey would give concrete facts about the pace of change and the nature of those changes. Such a survey might provide more systemic answers to questions like: How many homes, if any, have been significantly altered or demolished? Are the changes limited to a particular sections of the Fort Grounds neighborhood? The Proposed Survey, coupled with the 1992 History Survey, would prove an analytical tool for both the City and the community to speak with greater specificity about the nature of change that has occurred in the community, as well as the types of change that the community may wish to limit.

Without such analysis, it is difficult to offer advice on what approach the City should take in drafting an ordinance. For instance, if most—or a large minority—of the 1.5 story houses have already been modified or replaced with much larger 3-story homes, then an ordinance restricting future modifications to 1.5 or 2 stories may not make sense. Similarly, if additions and new construction have greatly modified the character-defining features of the individual buildings and/or the district, a future ordinance may not focus as much on character. If the significant characteristics described in the 1992 Registration Form, however, are still largely intact, then the City may wish to craft an ordinance to retain the district's character within reasonable means.

Proceeding without this type of information in regulation of such a small neighborhood could also have unintended consequences that may implicate constitutional protections. For instance, it could be that a particular regulation that appeared to be facially applicable to the entire neighborhood may, in fact, only apply to one or two property owners. Such a regulation that applied only to such limited number of properties could be subject to equal protection challenges. See *Village of Willowbrook v. Olech*, 528 U.S. 562 (2000) (upholding “class of one” equal protection claim in development context).

The production of the Proposed Survey should not strain resources. In some cities, such neighborhood surveys have been conducted by community groups with the administrative assistance of City staff or a community group. With an active community group in this location, the Proposed Survey could potentially be conducted over a weekend and the data compiled and processed within a few weeks.

The 1992 Historic Survey contains a paragraph description of each house (1992 Historic Survey, Section 7, pp. 5-16) as well as a picture of each house. The Proposed Survey could take each such property description and update that description with a basic review. For instance, the first house listed in the 1992 Historic Survey provides:

728 Garden Avenue. Myron E. Humphrey House. 1 1/2 story gable-front frame house;

Colonial Revival; narrow clapboard siding with shingles in gable ends; large windows with transom; outset porch. Built in 1907 for Myron E. Humphrey, a teamster, by contractors Fuller and Landt. (Contributing.)

A reviewer participating in the Proposed Survey could simply answer if that description is still accurate for the property at 728 Garden Avenue. If not, what are the changes noticeable from a street review? If a reviewer finds noticeable changes to the property, then staff could assist a community review by pulling permits or other documents related to those changes that could be briefly summarized in a paragraph update. The City and community could agree whether to update the optional historic district “contributing” determination. While the historic determination could be included in the Proposed Survey, it is not necessary to accomplish the purposes of deciding how to address neighborhood character or mansionization.

In addition, a new image of each home in the neighborhood would be an important additional contribution to the Proposed Survey.

### **III. Other resources**

This section highlights several resources that may be useful if the City proceeds to drafting an ordinance with regard to neighborhood character or “mansionization.” These resources include the following:

Ordinance template. A draft ordinance from *Matthews Municipal Ordinances*, a reference treatise, is attached here at **Attachment B**. This template provides basic terms to consider in a neighborhood character ordinance; however, it would need to be tailored to the specifics of the City’s existing regulations as well as the community’s interests.

Professional journal articles. Also attached are several professional articles that address issues to consider in drafting ordinances related to neighborhood character or mansionization. These include: Martin R. Healy, *Municipal Zoning Control over “Mansionization,”* BOSTON BAR JOURNAL (Sept./Oct. 2008) (**Attachment C**); Julie A. Tappendorf & Dwight H. Merriam, *Teardowns and “Mansionization,”* (Aug. 2007) (**Attachment D**); and California Association of Realtors, *Mansionization and Design Standards* (Jan. 1992), <http://www.car.org/governmentaffairs/localgovernmentaffairs/mansion/> (last visited Jan. 10, 2016) (**Attachment E**).

Treatise sections. The next attachment is a section from a leading land use law treatise addressing how bulk, building area, and floor size regulations have fared under legal challenges. 3 RATHKOPF’S THE LAW OF ZONING AND PLANNING § 54:10 (4th ed. 2016) (**Attachment F**).

Academic article challenging concepts of neighborhood conservation. Also included is a recent academic article that argues against the rise of neighborhood conservation districts such as the one considered here. Inclusion of this article does not necessarily indicate agreement with the positions of the article; however, understanding some of the concerns with such ordinances that have arisen in other locations may assist in drafting a better ordinance if that is the ultimate goal of the City and community. Anika Singh Lemara, *Zoning as Taxidermy: Neighborhood Conservation Districts and the Regulation of Aesthetics*, 90 IND. L.J. 1525 (2015) (**Attachment G**).

#### **IV. Concluding remarks**

In addition to this research, the Clinic did make an effort to contact planners at the City of Austin, Texas, which has a neighborhood character ordinance that is of interest to several community members. Despite several attempts, the Clinic was unable to make substantive contact with planners in Austin. If the City and the community so desire, the Clinic will continue its efforts to contact Austin planners.

We hope this guidance, as well as additional resources, provides a useful tool for analyzing the next options for both the City and the community. Let us know if you would like to discuss our research further or wish for us to conduct additional research.

**PLANNING COMMISSION  
MINUTES  
AUGUST 11, 2015  
LOWER LEVEL – COMMUNITY ROOM  
702 E. FRONT AVENUE**

**COMMISSIONERS PRESENT:**

Brad Jordan, Chairman  
Lynn Fleming  
Michael Ward  
Peter Luttrupp  
Jon Ingalls

**STAFF MEMBERS PRESENT:**

Hilary Anderson, Community Planning Director  
Sean Holm, Planner  
Shana Stuhlmiller, Public Hearing Assistant

**COMMISSIONERS ABSENT:**

Tom Messina, Vice Chair  
Lewis Rumpler

**CALL TO ORDER:**

The meeting was called to order by Chairman Jordan at 5:30 p.m.

**APPROVAL OF MINUTES:**

Motion by Ward, seconded by Fleming, to approve the minutes of the Planning Commission meeting on July 14, 2015. Motion approved.

**COMMISSION COMMENTS:**

None

**STAFF COMMENTS:**

Ms. Anderson announced that there is one item scheduled on the September Planning Commission agenda and second interviews have been scheduled for the new planner position next week. She announced that a couple of weeks ago, a group of 30 stakeholders participated in the East Sherman walking audit. After the walk, a discussion was held that provided a lot of feedback to produce some “easy wins” that will be provided in a report expected back in a couple of weeks. A joint workshop with Design Review/Planning Commission has been scheduled for August 18<sup>th</sup> starting at 12:00 p.m., held in the Community Room at the library with a discussion on parking and floor area ratios.

**OTHER:**

Approval of findings for ZC-2-15, 1020 E. Timber Lane

**Motion by Ingalls, seconded by Luttrupp, to approve Item ZC-2-15. Motion approved.**



**ADMINISTRATIVE:**

1. Applicant: Lake Forest, LLC  
Location: 1555 W. Hanley Avenue  
Request: Modification to phasing plan for Lake Forest West  
ADMINISTRATIVE (I-2-15)

Planner Holm presented the staff report and answered questions from the Commission.

Commissioner Ingalls questioned if other departments will be ok with a setback if the road phase for 2A and phase 2B becomes detained.

Mr. Holm stated that other departments are familiar with projects being detained and feels that this would not be a concern if this happens on this project.

**Motion by Ingalls, seconded by Fleming, to approve Item I-2-15. Motion approved.**

**PUBLIC HEARINGS:**

1. Applicant: Ryan Davis  
Location: 930 N. 15<sup>th</sup> Street  
Request: A proposed Community Organization special use permit in the R-12 zoning district.  
QUASI-JUDICIAL (SP-3-15)

Planner Holm presented the staff report and answered questions from the Commission.

Commissioner Ingalls inquired if there will be enough parking available once the building is done.

Mr. Holm explained that after reviewing the site plan, he informed the applicant that the city required 132 stalls. The applicant explained that the reduced parking is because most of the kids using the facility don't have a driver's license.

**Public Testimony open.**

Ryan Davis, applicant, explained that they are proposing a 20,000 square foot Boys and Girls Club. He explained when meeting with the school board about this project they had concerns about the existing bus loop/route and from that discussion, came up with a new bus loop/route that would provide a safer route. The hours of operation during the school year are Monday-Friday from 2:00 p.m. to 6:00 p.m. during the summer months with an estimate of 15-18 staff either carpooling or walk/ride a bike to work. He stated that Monday – Friday will be four administrative staff employees 8:00 a.m. to 5.00 p.m. available on a daily basis. He stated that the mission of the Boys and Girls club is to provide a safe place for all kids and to help provide a positive experience.

Commissioner Luttrupp inquired how this location was chosen for the Boys and Girls Club.

Mr. Davis explained that the Boys and Girls Clubs are neighborhood based where most of the kids who use the facility don't have busing or a way to get to school other than walking.

Commissioner Ingalls questioned why the grassy area next to the school was not chosen for the site of the building.

Mr. Davis explained that the site was chosen to not take away an area that the kids can use to play on.

Amber Gundlach stated that when she attended Lakes Middle School as a student a few years ago, there was not enough parking.

Brian Wallace commented that he works with the school district in Rathdrum and supports this project.

**Public Testimony closed.**

**Motion by Ingalls, seconded by Ward, to approve Item SP-3-15. Motion approved.**

ROLL CALL:

Commissioner Fleming	Voted	Aye
Commissioner Ingalls	Voted	Aye
Commissioner Luttrupp	Voted	Aye
Commissioner Ward	Voted	Aye

Motion to approve carried by a 4 to 0 vote.

**PRESENTATION:**

Fort Grounds Neighborhood – Denny Davis, Patty Jester and Ann Melbourn.

Denny Davis stated that this community is unique with a combination of small and large type of homes that make up the neighborhood. He explained that last year, the City Council approved an ordinance limiting only single-family homes built in this area and is requesting a workshop with the Planning Commission to discuss a way to protect the height and scale, which is now a problem.

Kevin Jester stated that he has lived in the Fort Grounds area for 36 years and is also in favor of trying to preserve the character in this neighborhood. He discussed some bullet points for the neighborhood to consider, for example, lot coverage, available greenspace, scale and proportion, etc.

Ann Melbourn, President of the Fort Grounds Homeowner’s Association, explained that in 2010 some of the neighbors from the Fort Grounds came to the city requesting an ordinance change that would help preserve the integrity of the neighborhood. She commented that since 2010 the neighborhood has changed with some of the historical homes being replaced by larger homes. She explained that a few months ago, 113 packets were mailed to all the homeowners in the neighborhood requesting they provide feedback about what is happening in this area. She is requesting that the Planning Department and this neighborhood have a public workshop to see a way to help preserve this neighborhood.

**PUBLIC COMMENTS:**

Kite Faulkner stated that he currently still lives in the house that his parents own in the Fort Grounds. He feels that people’s property rights should be maintained, but feels that neighbors need to respect the “good-neighbor” policy. He stated that his parents a few years ago remodeled their home using the original setbacks. He supports coming up with a building code for this area.

Mike Dolan stated that he supports having a workshop with the Planning Commission to help this neighborhood come up with a way to eliminate the impact of the “McMansions”.

Randy Bell stated that he is against a group of people trying to tell him what he can do on his property. He commented he owns a couple of houses in this area and would like to remodel them so he will have something for retirement. He feels that a workshop with the city and the Fort Grounds is a waste of time.

Roger Snyder presented an album of photographs of different homes in the Fort Grounds neighborhood and commented that some of the bigger homes are owned by the people who are doing the presentation tonight. He stated that he feels threatened and will not support this workshop.

John Pulsipher commented that he was fortunate enough to buy a house in this neighborhood and loves the location. He explained that he was not aware of any regulations when he bought his home and feels that this would be a waste of time for the commission, especially if the majority of the homeowners do not want a workshop and list the number of people who signed up to talk that support a workshop.

Commissioner Ingalls stated that if a change is granted for this neighborhood that maybe this should be city-wide that might be able to help other communities in the city.

Commissioner Luttrupp stated that after listening to the presentation, he feels that a workshop between staff and the Fort Grounds neighborhood would be beneficial, but that whatever comes out of the workshop, the change should not be city-wide.

Commissioner Fleming commented that when she served on the Hayden Planning Commission, that some of the neighborhoods within the city of Hayden were compromised. She feels that maximizing your lot is not right. She feels this is a good idea for this neighborhood to get their vision on the table.

Commissioner Ward feels that if a workshop is granted it might help to have the City Council involved.

**ADJOURNMENT:**

Motion by Fleming, seconded by Luttrupp, to adjourn the meeting. Motion approved.

The meeting was adjourned at 7:15 p.m.

Prepared by Shana Stuhlmiller, Public Hearing Assistant.

## PROPOSED FT. GROUNDS NEIGHBORHOOD COMPATIBILITY ORDINANCE

### Executive Summary

#### Background and Rationale

The historic Fort Grounds Neighborhood in Coeur d'Alene is a mix of mostly single-family homes varying in size from 585 SF to 6204 SF. The average size is approximately 3121 SF.<sup>1</sup> Lot sizes vary from 3158 SF/.07 acre to 22789 SF/.52 acre. The neighborhood has in roughly the last decade experienced the demolition of a number of older and for the most part small existing homes and their replacement by residential structures which have in many cases maximized the square footage permitted by existing ordinances. Other cities have faced a similar trend. Some have responded with ordinances to restrict the size and scale of structures based upon the size of the building lot. Over-sized residential structures can and do have measurable and negative impact upon adjoining properties and the neighborhood in general. They negatively impact available views, sunlight, vegetation and natural soil percolation. These over-sized houses are starting to proliferate in the Ft. Grounds, threatening to materially and permanently alter the existing character of the Fort Grounds Neighborhood. The purpose of the proposed ordinance described below is to recognize the value in maintaining the general character and feel of older Fort Grounds residences, while acknowledging that both renovation and replacement of houses in the neighborhood will continue into the future. The ordinance described below is modeled after an ordinance adopted around 2006 by the City of Austin, Texas.

#### Proposed Ordinance Summary

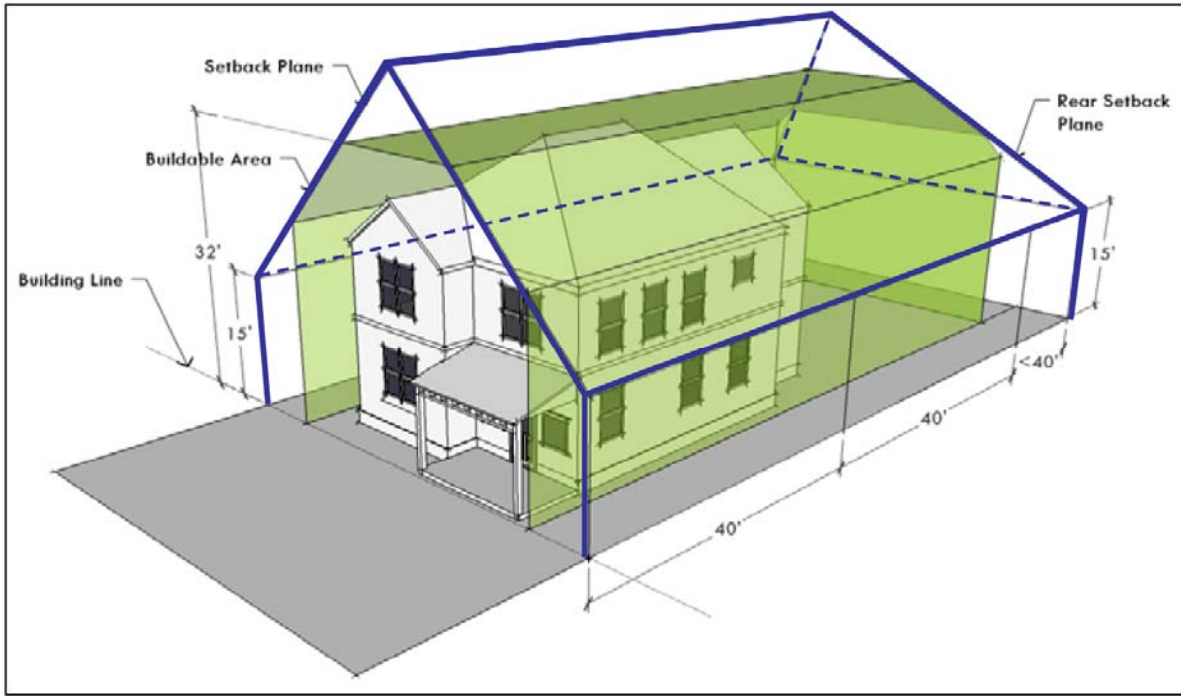
The proposed ordinance will:

- Define the Fort Grounds Neighborhood as an area bounded on the east by Park Drive, the west by Hubbard Avenue, the south by West Lakeshore Drive<sup>2</sup> and the north by the centerline of the east/west alley between Empire and River Avenues, and create an overlay district wherein special rules of development will apply;
- Adopt an additional limitation on the total amount of gross floor area that can be developed based upon a "floor area ratio" (FAR) of 0.4 of gross floor area to each 1.0 foot of lot area, but allowing a minimum of 2300 square feet of floor area;
- Establish a 3-dimensional set-back regimen to govern the "scale" of new structures, using a "virtual tent" mechanism at a maximum height of 32 feet; [See attached illustration.]
- Provide for certain exceptions to the "tent" requirements for eaves, gables, dormers, chimneys, and certain features not designed for occupancy;
- Establish side wall articulation standards to prevent the construction of massive uniform side walls;
- Adopt definitions as necessary, including Gross Floor Area, (to exclude below grade livable space) for use in computing FAR and Natural Grade from which to measure maximum building height, (i.e. top of the curb).
- Provide for the prohibition of a covered porch, deck or other structure within the front setback zone;
- Adopt a maximum "lot coverage percentage" requirement in addition to the FAR, in order to preserve a minimum of open space;
- Adopt an maximum 75% "impervious surface" limitation to insure ensure percolation of storm water run-off and minimum amount of landscaped area;
- Provide for exceptions to accommodate exceptionally small building lots; and,
- Containing a savings clause recognizing the need to replace structures destroyed by fire or other casualty occurring after adoption, applicable to structures in existence as of the adoption date, (i.e., a "grandfather clause").

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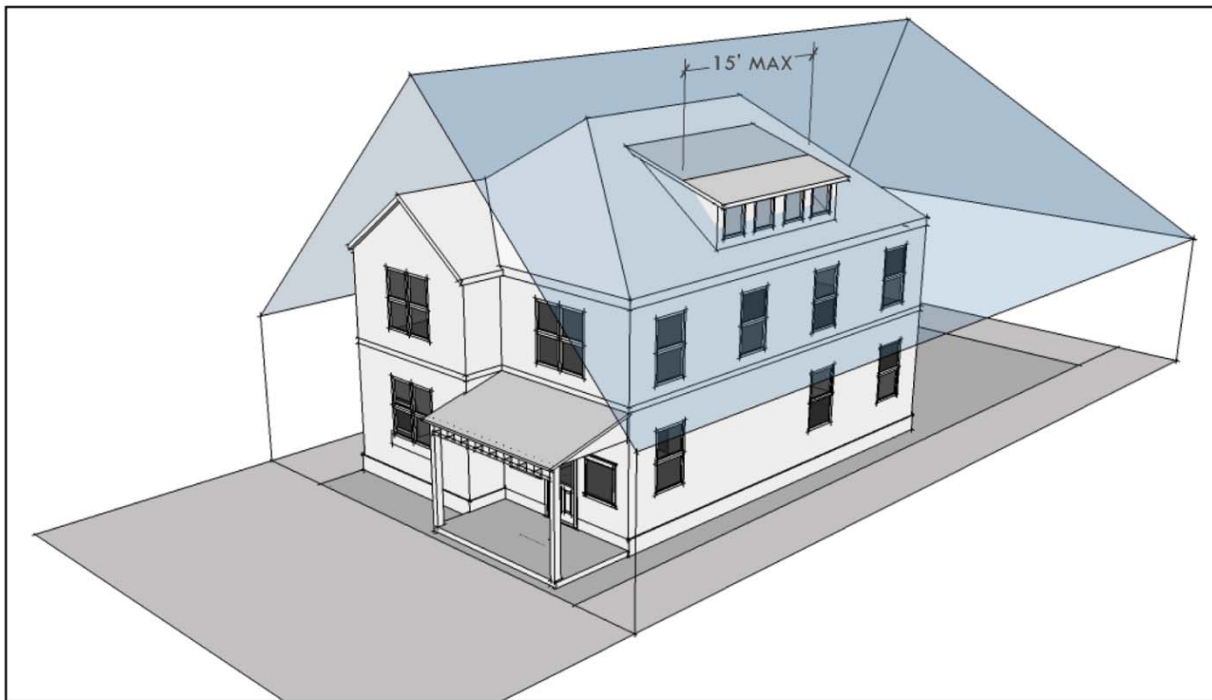
<sup>1</sup> This calculation excludes basement area. Not all residences have basements and basement floor area is excluded in the proposed FAR ratio calculations.

<sup>2</sup> To the extent any of the lots north of West Lakeshore Drive which also include ownership of property south of W. Lakeshore Drive to the mean high water mark of Lake Coeur d'Alene, that beach property is already subject to plat and ordinance restrictions which prohibit most structures. It is intended that this beach area not be considered in computing gross lot area for the purpose of complying with FAR, lot coverage or impervious surface requirements.



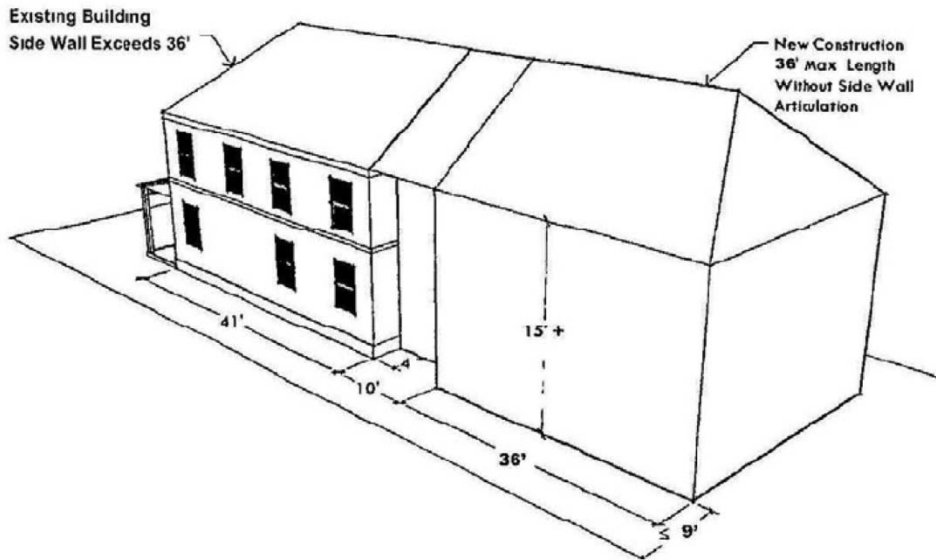
• **Figure 10: Buildable Area (Combination of Yard Setbacks, Maximum Height Limit, and Setback Planes)**

*The heavy blue line indicates the "tent" formed by the side and rear setback planes. The buildable area is the smallest area included within the front, side, and rear yard setbacks; maximum height limit; and the combined side and rear setback planes (shown here as the green area).*



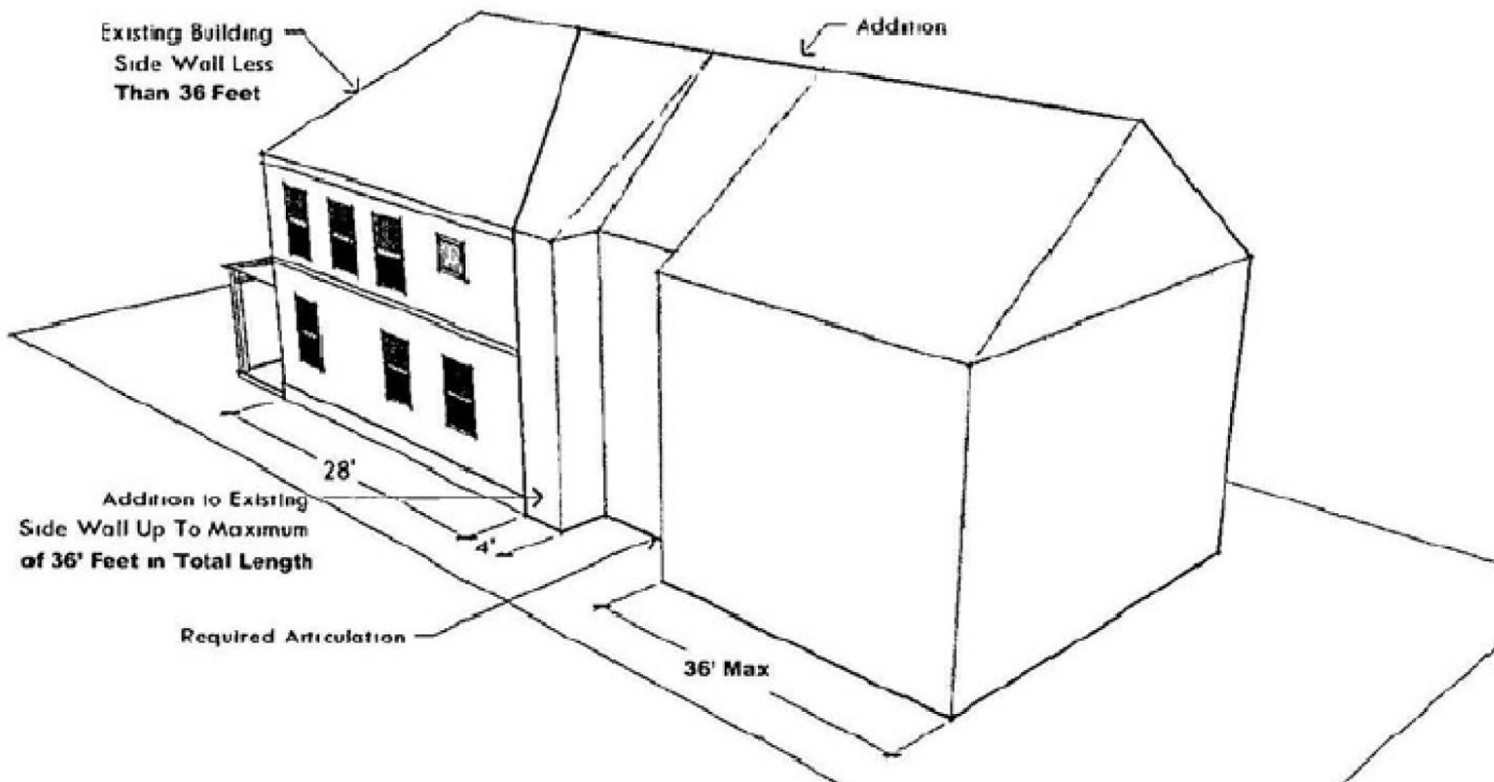
**Figure 16: Dormer Exception (Gable or Shed)**

*One or more dormers with a combined width of 15 feet or less on each side of the roof may extend beyond the setback plane. The width of the dormer is measured at the point that it intersects the setback plane.*



• **Figure 18: Side Wall Articulation (Existing Side Wall Exceeds 36 Feet)**

*Articulation is required for side walls on additions or new construction that are 15 feet or taller and located within 9 feet of the side lot line. No wall may extend for more than 36 feet without a projection or recession of at least 4 feet in depth and 10 feet in length.*



**Figure 19: Side Wall Articulation (Existing Side Wall Less Than or Equal to 36 feet)**

*An addition to an existing building may extend a side wall up to a maximum of 36' in total length without articulation.*

## **Chapter 13.12 INDIVIDUAL SEWER SYSTEMS**

### **13.12.010: PRIVIES; RESTRICTIONS:**

No person or persons shall construct or maintain any privy in the city; provided, however, that temporary privies may be constructed during the course of construction of any building and at a place and in a manner approved by the city engineer. (prior code §8-5-1)

### **13.12.020: CESSPOOLS; PROHIBITED:**

No person shall construct or maintain in the city any cesspool. (prior code §8-5-2(A))

### **13.12.030: SEPTIC TANKS; WHEN PERMITTED:**

No person shall erect, maintain, or continue the use of any septic tank or private disposal system on any property within the city abutting a public street, alley, or easement in which there is an adequate city sewer collector line. (Ord. 2108 §1, 1988; Ord. 1474 §1, 1976; prior code §8-5-2(B))

### **13.12.035: CONNECTION TO CITY SEWER SYSTEM REQUIRED; WHEN:**

The owner of any property within the city of Coeur d'Alene, the use of which property results in the generation or existence of sewage, which property abuts a public street, alley, or easement in which there is an adequate city sewer collector line shall at the owner's expense connect the sewage generating facilities on such property to the city sewer system within three hundred sixty five (365) days after notice to such owner to so connect. The owner will be deemed to have received such notice when the notice has been placed in the United States mail with postage affixed, addressed to the owner at the address of the owner as it appears on the Kootenai County tax rolls. (Ord. 2351 §1, 1991; Ord. 2108 §2, 1988)

### **13.12.036: FAILURE TO CONNECT; CONNECTION MADE BY CITY:**



Should the owner of any property within the city of Coeur d'Alene, described in the foregoing section, fail to connect all sewage generating facilities on such property to the sewer system of the city of Coeur d'Alene after the notice and within the time provided in the foregoing section, the city may cause such facilities to be so connected and assess the cost of connecting such facilities to the owner of the property on which the facilities are located, which costs shall thereafter be a lien on said property and may be collected as provided by Idaho Code section 50-1008 or in any other manner allowed by law. (Ord. 2108 §2, 1988)

### **13.12.037: RESPONSIBILITY FOR INDIVIDUAL SEWER LATERALS:**

The lot owner is responsible for maintenance and replacement as necessary for the private sewer lateral that connects a dwelling or business to the connection (TEE) at the public sewer main including any necessary maintenance and/or replacement within the public rights of way and public utility easements. Any work within the public rights of way or public utility easements must be approved by the city engineer or his/her designee prior to the commencement of work. (Ord. 3097 §8, 2003)

### **13.12.038: RESPONSIBILITY FOR PRIVATE SEWERS:**

Owners of property served by private sewers are responsible for construction and maintenance of those sewers according to the current approved city plumbing code. Private sewers are sewer systems that have not been donated and accepted for ownership and maintenance by the city wastewater department. Private sewers may serve multiple dischargers on an individual lot or lots, and generally are not located on public right of way or public utility easements. (Ord. 3097 §9, 2003)

### **13.12.040: SEPTIC TANKS; CONSTRUCTION; REQUIREMENTS:**

Where, under the provisions of this chapter, the construction and maintenance of a septic tank or private sewage disposal system are authorized, such septic tank or private sewage disposal system shall be constructed according to the recommended standards for individual sewage disposal systems promulgated by the department of health, division of environmental sanitation of the state of Idaho, bulletin no. 6, 1970, which bulletin is adopted as a part of this chapter and three (3) copies of which, certified by the clerk of the city, shall be kept in the office of the city clerk. (prior code §8-5-2(C))

**13.12.050: SEPTIC TANKS; CONSTRUCTION; PLANS; PERMIT APPLICATION AND FEE:**

(Rep. by Ord. 2790 §1, 1996, eff. 1-1-1997: prior code §8-5-2(D))

**13.12.060: SEPTIC TANKS; CLEANING; DUMPING EFFLUENTS; REGULATIONS:**

A. The dumping of any sewage sludge or other refuse from septic tanks, holding tanks or other sources located outside the city limits of the city is prohibited unless approved by the city council. (Ord. 2790 §2, 1996, eff. 1-1-1997: Ord. 2298 §1, 1990: Ord. 1562 §2, 1978: Ord. 1423 §2, 1976)

**13.12.070: VIOLATION; PENALTY:**

Any person violating any of the provisions of this chapter is guilty of a misdemeanor and upon conviction thereof shall be subject to penalty as provided for in section [1.28.010](#) of this code. (1993 Code: prior code §8-5-3)