

February 11 2008

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*2 **GEM COUNTY PLANNING AND ZONING PUBLIC HEARING***

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*6 **Date: February 11, 2008***

*7 **Time: 7:00pm - 8:42pm***

*8 **Place: Gem County Courthouse***

9

*10 **MEMBERS PRESENT:***

*11 **Don Wilkerson, Lawrence Whitsell, David Poole, Debbie***

*12 **Rouwenhorst, and Will Maupin.***

13

*14 **OTHERS PRESENT:***

*15 **Brad Hawkins-Clark - Planning Director/Administrator, and***

*16 **David Hargraves - Deputy Prosecuting Attorney.***

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*24 **This transcript is a summary of the meeting, not verbatim.***

*25 **Transcription done by Amanda Shaw.***

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ITEMS REFERENCE PAGE

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PROCEEDINGS

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Gem County, City of Emmett, February 11, 2008

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5 **Consent Agenda:**

6 **Item No. 1A - Vickery Estates Minor Subdivision**

7 **Item No. 1B - Shipman Acres Minor Subdivision**

8 **MR. DAVID POOLE: So the first item on our consent agenda**

9 **is the Vickery Estates Minor Subdivision and that has been**

10 **postponed until March. So that leaves the Shipman Acres Minor**

11 **Subdivision. Do you have any comments, Commissioners?**

12 **MR. DON WILKERSON: I'd like to make a motion that it be**

13 **moved from the consent agenda.**

14 **MRS. DEBBIE ROUWENHORST: I second it.**

15 **MR. DAVID POOLE: All those in favor of the motion signify**

16 **by saying I. Opposed same sign. Motion carries. It's been**

17 **moved from the consent agenda to the regular meeting.**

18

19 **(Motion carries unanimously.)**

20

21 **Consent Agenda:**

22 **Item No. 2 - Approval of the Minutes of January 14, 2008,**

23 **February 12, 2007, and March 12, 2007**

24

25 **MR. DAVID POOLE: Approval of the minutes for January 12,**

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1 2007.

2 MR. DON WILKERSON: I make a motion that we approve the
3 minutes for January 12, 2007 as submitted.

4 MR. DAVID POOLE: Do we have a second to that motion?

5 MR. DON WILKERSON: I second it.

6 MR. DAVID POOLE: All those in favor of the motion signify
7 by saying I. Motion carries. On the approval of these minutes,
8 the reason is that these other members were not there. March
9 12, 2007.

10 MR. DON WILKERSON: I make a motion that we approve the
11 minutes as presented for March 12, 2007.

12 MR. DAVID POOLE: And second it too, Don.

13 MR. DON WILKERSON: And second it.

14 MR. DAVID POOLE: And I'm in favor. All those in favor
15 signify by saying I.

16 Now we have the approval of the minutes for January 14,
17 2008. Does anybody want to make a motion on that or do we have
18 discussion on it?

19 MR. LAWRENCE WHITSELL: On page 43 there was no second to
20 Will's motion on MacGregor gravel pit. Then there was an
21 amendment to amend the motion and there was no motion on that.
22 Will seconded the motion that does not exist.

23 MR. DAVID POOLE: It was first and seconded by Will.

24 MR. LAWRENCE WHITSELL: To change from 75% of the predicted
25 cost to 25% of the \$7500 projected cost, I guess.

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1 MR. DAVID POOLE: And then we voted on the motion after
2 that as amended, right?

3 MR. LAWRENCE WHITSELL: Yep.

4 MR. DAVID POOLE: Any other corrections? If not, does
5 somebody want to place a motion on that as amended?

6 MR. LAWRENCE WHITSELL: I'll make a motion on the minutes
7 for January 14, 2008 to be accepted as amended.

8 MR. WILL MAUPIN: I'll second it.

9 MR. DAVID POOLE: Opposed same sign. Motion carries.

10

11 (Motion carries unanimously.)

12

13 Items Moved from Consent Agenda:

14 Item No. 1B - Shipman Acres Minor Subdivision

15

16 MR. DON WILKERSON: Looking at the maps, Brogan Road, does
17 it run straight north and south from Highway 52 to Dewey Road?

18 The reason I'm asking is because you put that 40 foot easement
19 there along the east side of the Reed Ditch. It says in the

20 minutes that lot 2 is going to get access from Dewey Road and
21 lot 1 will get access from Brogan Road.

22 MR. BRAD HAWKINS-CLARK: So the question is whether the 40
23 foot right-of-way on Brogan is accurate.

24 MR. DON WILKERSON: Does Brogan actually make a curve there
25 and follow the ditch or does it go straight?

□

7

1 MR. BRAD HAWKINS-CLARK: No. It goes straight.

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2 MR. DON WILKERSON: I just wondered what that 40 foot -- it
3 doesn't say it's an easement. It just shows 40 feet. It
4 doesn't say anything on there. I guess it's showing as an
5 easement. I just want to know what it's for.

6 MR. BRAD HAWKINS-CLARK: That's actually a right-of-way
7 dedication for future widening of the roadway.

8 MR. DON WILKERSON: But the road goes straight north and
9 south. It's not even near the road is it?

10 MR. BRAD HAWKINS-CLARK: The center line of Brogan is the
11 dark dash. The easement that's shown there is the irrigation
12 but the road should just continue straight south.

13 MR. DON WILKERSON: That 40 foot easement to the east of
14 the ditch, what's that one for?

15 MR. BRAD HAWKINS-CLARK: The conditions recommend that be
16 removed. That does not belong to the irrigation company. It's
17 strictly a users lateral and the irrigation company has no
18 interest in it.

19 MR. DON WILKERSON: There's nothing in here that guarantees
20 that water gets to those properties; is that not a concern? I
21 know we usually get a letter from irrigation.

22 MR. BRAD HAWKINS-CLARK: We did not receive a letter from
23 the ditch company but we do have a recommended condition. Well
24 maybe we don't have a recommended condition. It was originally
25 in there. Sorry about that. Oh, it's on John Henderson's

□

8

1 report.

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2 **MRS. DEBBIE ROUWENHORST:** *It's number 3 on John's report.*

3 **MR. DON WILKERSON:** *Well that mentions the boundary but it*
4 *doesn't say anything about a commitment to supply water.*

5 **MR. BRAD HAWKINS-CLARK:** *Just to be sure, that would*
6 *probably be a good addition to item number 1, would be to amend*
7 *the plat to insure that the easement extends to lot 1.*

8 **MR. DON WILKERSON:** *Yeah. Right now, we don't know how*
9 *water is delivered to the whole parcel.*

10 **MR. BRAD HAWKINS-CLARK:** *The plat shows the irrigation flow*
11 *arrow. There's that kind of wind break and the ditch is just on*
12 *the west side of that tree row but you're right. It does need*
13 *to angle up and connect to lot 1. They'll have to make that*
14 *change before we accept the plat.*

15 **MR. DON WILKERSON:** *Also, on your County Engineer's letter,*
16 *there's no easements on this for utility or irrigation. There*
17 *may not be a need required. I'm not sure.*

18 **MR. BRAD HAWKINS-CLARK:** *You're talking about 5A?*

19 **MR. DON WILKERSON:** *Yes.*

20 **MR. BRAD HAWKINS-CLARK:** *They will need to show those,*
21 *basically, along Brogan and Dewey. They will need to have that.*
22 *It's a note, but it's not graphically shown.*

23 **MR. DON WILKERSON:** *That's all the questions I have. Thank*
24 *you.*

25 **MR. DAVID POOLE:** *Any other questions for staff? If not,*

□

9

1 *you want to make a determination on this, Commissioners?*

2 **MR. DON WILKERSON:** *I make a motion that we recommend to*

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3 the County Commissioners approval of this Minor Subdivision Plat
4 for Shipman Acres as per the conditions of approval in our
5 packets, provided by staff, with the following two additions:
6 That a statement concerning irrigation water be established to
7 serve both lots with provided easements to ensure that and also
8 that there be right-of-way easements provided on the plat along
9 the parcels on Dewey Road and the portion on Brogan Road.

10 MR. LAWRENCE WHITSELL: I second it.

11 MR. DAVID POOLE: It's been seconded by Commissioner
12 Whitsell. Is there discussion on the motion? If not, all those
13 in favor signify by saying I. Opposed same sign. Motion
14 carries.

15

16 (Motion carries unanimously.)

17

18 Public Hearing:

19 Item No. 1 - (Continued) Special Use Permit #SUP-07-007

20 King 2070 Mining, LLC

21

22 MR. DAVID POOLE: Next item on our agenda is the continued
23 special use permit 07-007. Mr. Garrigan, do you have any
24 further comments you would like to make?

25 MR. BRET GARRIGAN: Bret Garrigan, 1450 Artesian Road in

□

10

1 Eagle. I met with Kim Reed, both in person and telephone
2 conversations over the past two weeks. We worked through the

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3 process of determining what would be an equitable solution to
4 our impact on the roads out there. His letter dated February
5 the 8th, I'm in agreement with, to be able to provide 2,000
6 cubic yards of road mix, annually. The road mix is from my rock
7 mining operation. He's looking forward to using it. We'll put
8 it in a smooth hard surface area where the material will be
9 available for the County to use. We'll have accessible
10 materials at all times.

11 MR. DAVID POOLE: Did he give you some specific spec's for
12 this gravel?

13 MR. BRET GARRIGAN: No. This road mix is our reject
14 material.

15 MR. DAVID POOLE: But usually, in a road mix, there are
16 some specifics.

17 MR. BRET GARRIGAN: Yes. He understands that it is our
18 reject mix. It has a combination of half inch, three quarter
19 inch, and quarter inch stone in it.

20 MR. DAVID POOLE: So it passes SE content for road mix
21 then?

22 MR. BRET GARRIGAN: He and I both understand that it does
23 not conform to an Ada County spec, Gem County road mix spec, or
24 a Boise County road mix spec. It can be used anywhere from road
25 mix to sanding or whatever else they want to use it for.

□

11

1 There is over 2,000 yards in the pile right now. I have a
2 scale at the property. So, at my expense, I will have it tested
3 to see what a ton of this weighs and we can either scale it out

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4 on the scale or if he takes a truck load out and the truck loads

5 12 yards, then it's 12 yards.

6 MR. DAVID POOLE: So you'll weigh a yard and see what it
7 weighs.

8 MR. BRET GARRIGAN: Correct. Since I have over 2,000 yards
9 there on-site, I don't want to have to bear the cost of doing a
10 bond. I do not agree to do the bond. The material is there.

11 MR. DAVID POOLE: So you've had it surveyed?

12 MR. BRET GARRIGAN: I know that there's well over 2,000
13 yards there.

14 MR. DAVID POOLE: It's documented, right?

15 MR. BRET GARRIGAN: It's documented by people that have
16 been up to see my pit that have experience in the gravel
17 industry.

18 MR. DAVID POOLE: I suppose that as long as that's
19 acceptable to Kim but that's not what the letter reads. It
20 needed to be surveyed.

21 MR. BRET GARRIGAN: I invited Kim up today but he had an
22 emergency up in Ola so he hasn't been able to come up. If
23 there's any disagreement as to it, then we will have it
24 surveyed. Kim will be the final arbitrator on that.

25 MR. LAWRENCE WHITSELL: Was that decision by Kim made

□

12

1 today?

2 MR. BRET GARRIGAN: It was the 5th of February.

3 MR. LAWRENCE WHITSELL: We still have bondage's here on the

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4 February 11th letter.

5 MR. BRET GARRIGAN: I haven't seen this letter before.

6 MR. BRAD HAWKINS-CLARK: You might want to take a minute
7 and let him read that.

8 MR. DAVID POOLE: Questions for staff while we're letting
9 him read this?

10 MR. DON WILKERSON: Brad, should we be looking at the
11 letter from February 11th or February 5th?

12 MR. BRAD HAWKINS-CLARK: I think a combination.

13 MR. DAVID POOLE: Dave, I had a question as far as the
14 letter from his attorney goes. Do you think this is going to be
15 considered an impact fee?

16 MR. DAVID HARGRAVES: No. The pile of gravel wouldn't be
17 considered an impact fee.

18 MR. DAVID POOLE: Cash would be an impact fee.

19 MRS. DEBBIE ROUWENHORST: I have a question on the 3
20 quarter road mix. Is there an issue because we do have road
21 standards that the road has to have a certain type of mix on it?
22 Is that an issue, that it might not be the standard of Ada
23 County or Gem County?

24 MR. BRAD HAWKINS-CLARK: I'm not able to answer that. I
25 was hoping that Kim might be here but it sounds like maybe his

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13

1 family situation has kept him away.

2 MRS. DEBBIE ROUWENHORST: Okay. That's a question because
3 I know we have passed a road standard just in the last several
4 months.

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5 MR. DAVID HARGRAVES: *That's for creation of new roads.*

6 MR. DAVID POOLE: *I think it's a situation where if need*
7 *be, we can just leave that decision to Kim.*

8 MRS. DEBBIE ROUWENHORST: *Okay. It just doesn't verify on*
9 *the papers.*

10 MR. DON WILKERSON: *Like you mentioned, you and Kim have*
11 *kind of come to a verbal agreement that you have 2,000 yards*
12 *stockpiled up there and it meets a quality that he can use. I'd*
13 *like to see that in writing between you and Kim. That could be*
14 *a condition of our approval tonight.*

15 MR. BRET GARRIGAN: *Sure.*

16 MR. DON WILKERSON: *Are you in agreement with item 3?*

17 MR. BRET GARRIGAN: *The agreement that Kim and I have is*
18 *that if ICRMP would allow us to use my road grader to blade the*
19 *road, then I could use that blading credit against having to*
20 *provide this road mix because there is some value to this road*
21 *mix. So the understanding is if ICRMP allows me to put my road*
22 *grader on that road and grade it to Kim's specifications, then he*
23 *would have the option this year, next year, whenever, to offset*
24 *my impact.*

25 MR. DON WILKERSON: *I guess it's been determined by either*

□

14

1 *David or somebody in the County that you as a private individual*
2 *are not to be working on a public road.*

3 MR. DAVID HARGRAVES: *From a legal standpoint, I think it's*
4 *okay. This Commission has allowed that to happen in the past.*

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5 *That's just up to Kim.*

6 *MR. WILL MAUPIN: So you're saying that your agreement is*
7 *you can trade grader time for the value of three quarter not*
8 *taken out of the stockpile.*

9 *MR. BRET GARRIGAN: Yes. I'm going to provide 2,000 ton*
10 *and if ICRMP would then allow us to run our road grader on the*
11 *road, then he and I will work out to where you say per his*
12 *request we did grading this month, this month, and this month*
13 *and we don't have to provide that much rock. That will be at*
14 *his call.*

15 *MR. WILL MAUPIN: I understand the trade. My concern is we*
16 *have units of measure here and we have 2,000 cubic yards but we*
17 *have no dollar value per cubic yard but we have \$95 an hour.*

18 *MR. DAVID POOLE: I think we did have a dollar value*
19 *somewhere. I think that's where we came up with the \$12,000.*

20 *MR. DON WILKERSON: It was valued at \$12,000.*

21 *MR. WILL MAUPIN: Okay.*

22 *MR. DAVID POOLE: So we do have a dollar value on both if*
23 *we decide to head that direction.*

24 *One other problem I see here is that we've had a radical*
25 *change on the number of trips that you suggested you're going to*

□

15

1 *do. I understand it's kind of difficult thing to do until you*
2 *start doing it. I feel that we need to leave this open for*
3 *review and adjustment in the event that there are some wild*
4 *changes.*

5 *MR. BRET GARRIGAN: Understood. I'm under an annual review*

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6 and adjustment.

7 MR. DAVID POOLE: We may want to shorten that down.

8 MR. LAWRENCE WHITSELL: I was thinking of going quarterly
9 review.

10 MRS. DEBBIE ROUWENHORST: I have a question for staff. In
11 the letter from Dave Hargraves, it had stated that a review
12 needed to be done on the legal risks. When would we get those
13 results?

14 MR. DAVID HARGRAVES: What does it say?

15 MRS. DEBBIE ROUWENHORST: It said, to mitigate Garrigan, he
16 will provide the material and maintenance under Kim's
17 supervision. In addition, Garrigan has no problem providing
18 dust control for his trucks and placing cautionary traffic signs
19 at key points in the roadway under Kim's direction. I will need
20 to review the legal risks to having Garrigan provide road
21 maintenance under Kim's direction.

22 MR. DAVID HARGRAVES: I did that and I don't see a problem.

23 MR. LAWRENCE WHITSELL: I just want to make sure I've got
24 this figured out. Basically, the way Kim's seeing it, you're
25 liable for \$12,000 worth of gravel or services or whatever fits

□

16

1 in with what Kim agrees with to mitigate the impact. There are
2 some things here that we probably need a definition on. If you
3 did supply a dump truck, I don't believe there's a mentioning of
4 what the rate would be and all that sort of thing.

5 MR. BRET GARRIGAN: We agreed to keep it simple. It's

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6 2,000 yards and if we get the opportunity through ICRMP, Kim and
7 I will work it out to where if we decide to do the road grader,
8 we can do the road grader and reduce this 2,000 down to a lesser
9 number.

10 MR. DAVID POOLE: We have a starting point. That's
11 important. Is there any further questions for Mr. Garrigan?
12 Thank you very much. Do we have any public input on this? If
13 not, I think we can probably close the public portion of this
14 meeting and bring it before the Board for questions and
15 comments.

16 MR. DON WILKERSON: When I brought up the point that we
17 need to have Kim Reed verify that the quantity and quality
18 that's already in stockpile at the site meets his criteria, I
19 think that's possibly going to be a condition. I think if it
20 comes back he does meet his criteria, then the bond kicks in
21 automatically.

22 MR. DAVID POOLE: He says there's no problem. We are
23 moving forward on his say so. Like Commissioner Whitsell was
24 suggesting, I think instead of an annual review we do a
25 quarterly review on this. Any other comments?

□

17

1

2 MR. LAWRENCE WHITSELL: I make a motion that we approve
3 this request for the special use permit on King 2070 Mining,
4 LLC. There are a couple of conditions that I think we should
5 attach. One, Kim Reed needs to submit a letter supporting that
6 there will be a \$12,000 requirement supplied to Mr. Garrigan in

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7 *the form of either gravel supplied with certain qualifications*
8 *or certain specifications met. Also, there will be a grader per*
9 *hour rate applied, a water truck per hour rate applied, and a*
10 *dump truck rate applied in writing. Also, there is a quarterly*
11 *review on site specific conditions approval from staff, rather*
12 *than an annual review.*

13 *MR. DAVID POOLE: You possibly want to do an and/or bond?*

14 *MR. LAWRENCE WHITSELL: Well, Mr. Garrigan said they*
15 *weren't going to do that.*

16 *MR. DON WILKERSON: If Kim Reed goes up there and finds out*
17 *that the quality and the quantity is not meeting the needs, they need to*
18 *have something to take its place.*

19 *MR. LAWRENCE WHITSELL: I'll add to the motion that if Kim*
20 *Reed requires a bond, that will have to be satisfied in lieu of*
21 *the necessary grader, water truck, dump truck time, and/or*
22 *gravel supply.*

23 *MR. DAVID POOLE: Second to that motion? Did we get that*
24 *number 9 in there?*

25 *MR. WILL MAUPIN: I think that all those are in addition to*

□

18

1 *the staff items.*

2 *MR. DON WILKERSON: Mr. Whitsell made a statement there*
3 *that bond was in lieu of road grader, dump truck, and water*
4 *truck. I think the bond is if there's not sufficient material*
5 *or proper material, then it's for the purchase of the material.*

6 *MR. DAVID POOLE: Yeah. The bond would be in leu of the*

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7 road mix.

8 MR. LAWRENCE WHITSELL: Specific to the road mix then.

9 MR. DAVID POOLE: These other things just gives him an

10 alternate. Is that acceptable to be in your motion?

11 MR. LAWRENCE WHITSELL: Yes.

12 MR. DAVID POOLE: Do we have a second?

13 MRS. DEBBIE ROUWENHORST: I'll second it.

14 MR. DAVID POOLE: Discussion? If not, all those in favor

15 signify by saying I. Opposed same sign. Motion carries.

16

17 (Motion carries unanimously.)

18

19 MR. DAVID POOLE: You'll get all the appropriate paperwork

20 from the staff.

21

22 Public Hearing:

23 Item No. 2 - Rezone #RZ-07-020 - Lawrence Whitsell

24

25 MR. DAVID POOLE: Next item on the agenda is a rezone

□

19

1 RZ-07-020, Lawrence Whitsell.

2 MR. LAWRENCE WHITSELL: I need to excuse myself because

3 there will be a conflict of interest, I believe.

4 MR. DAVID POOLE: Do you want to give us a run down on this

5 one, Brad?

6 MR. BRAD HAWKINS-CLARK: Thank you, Commissioners. So this

7 application is for a rezone. Currently, the property is zoned

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8 A-1, which is a 40 acre minimum. This is 116 and a half acres,
9 more or less. The proposal is to go to an A-2 zone, which is a
10 5 acre minimum zone. It is located at 1690 East Idaho
11 Boulevard. It's outlined here on the screen.

12 Here's the intersection of East Black Canyon Highway and
13 Idaho Boulevard. This parcel has frontage on both East Black
14 Canyon and Idaho. The property does have an existing residence,
15 well, septic, and some existing vegetation around the house.
16 For the most part, it is being actively farmed. You can see
17 that it's surrounded by mostly agricultural land and some
18 housing.

19

20 (Mr. Brad Hawkins-Clark showed some site photos.)

21

22 MR. BRAD HAWKINS-CLARK: So you're probably all familiar
23 with it. The application states that the main reason for the
24 rezone is to have the opportunity to break off a couple of
25 parcels. At this point in time, the application says nothing

□

20

1 about an actual subdivision, in terms of multiple lots.

2 There is a pretty good size drainage ditch that runs across
3 the property.

4 In terms of the findings you have in staff report, the main
5 finding, of course, has to do with the Comprehensive Plan and
6 whether it applies. It does fall within the County Residential
7 Area. It is a Priority Growth Area 2. Within Priority Growth

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8 Area 2, the Comp Plan says they may request down to a 5 acre
9 minimum as long as all the other findings can be met. The staff
10 report kind of goes through the Comprehensive Plan starting on
11 page 4. The other findings follow.

12 Most of the permitted uses in the A-2 Zone, which is the
13 proposed zone, are quite similar to the A-1. The main
14 difference is the A-2 zone, the proposed zone, on the top of
15 page 7, does allow for open parking or garage. That's a
16 difference in the Matrix that you can do in the A-2 but not in
17 the A-1.

18 We do find that all 5 required findings can be met. As
19 with most rezones, the Commission should look at the requested
20 uses and whether not those are compatible. This is largely a
21 compatibility decision and whether or not you feel the proposed
22 zone fits that area. The recommendation is for approval.

23 The only other comment that we received in writing when we
24 sent out the transmittals on this application was from John
25 Henderson, in the Assessor's Office, and Emmett Irrigation

□

21

1 District. Both of those letters are attached to your packet.

2 MR. DAVID POOLE: Questions for staff?

3 MR. DON WILKERSON: Back some time ago, I think in 2004,
4 this pre-parcel was granted as a split. Does that have any
5 bearing on this? Has that ever been recorded?

6 MR. BRAD HAWKINS-CLARK: Kandi did note that split was done
7 on August 9th of '04 and I do believe it has not been recorded.
8 There was a survey done, but in terms of this decision tonight,

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9 we didn't find that it had any impact in terms of whether you
10 believe the property should be rezoned or not.

11 MR. DON WILKERSON: Does it stay with the property if it
12 was recorded?

13 MR. BRAD HAWKINS-CLARK: Yes. If it was, right.

14 MR. DON WILKERSON: But it never was recorded so it's a non
15 issue.

16 You mentioned right-of-way dedication on East Idaho and
17 Black Canyon Highway. Does the County have jurisdiction over
18 right-of-way dedication on a State Highway?

19 MR. BRAD HAWKINS-CLARK: No. We don't.

20 MR. DON WILKERSON: It would be just be on East Idaho
21 Boulevard then.

22 MR. BRAD HAWKINS-CLARK: That's correct. The Idaho
23 Transportation Department does not accept dedications from
24 individual property owners. They just buy it at the time of a
25 project, when it's being designed.

□

22

1 MR. DAVID POOLE: Any questions for staff? Thank you. At
2 this point, the applicant can step forward. Please state your
3 name and address.

4 MRS. LYN WHITSELL: Lyn Whitsell, 1690 East Idaho
5 Boulevard. Dear Planning and Zoning Commissioners, we are
6 applying for a rezone from A-1 to A-2 on three contiguous
7 parcels of property, which totals 116.5 acres. This property is
8 bordered by East Black Canyon Highway, which is a major

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9 collector on the north, East Idaho Boulevard, which is a minor

10 collector on the east, and the northern boundary of Priority

11 Growth Area No. 1 on the south.

12 Our residence is located in the southeast corner of the

13 116.5 acres. In a three quarter mile radius there are numerous

14 1 and 5 acre residences and subdivisions. We feel that this

15 rezone request is harmonious with the surrounding area and is

16 also supported by the policies of the 2007 Comprehensive Plan.

17 I have several examples if you would like me to site them.

18 Example 1, Housing, Chapter 3G 1.5, rural residential and small

19 ranchette type developments shall be encouraged in areas where

20 it is compatible with existing agriculture and ranching

21 development. Example 2, page 84, General Land Use Policies

22 12.2, will also put no burden on County or municipal needs and

23 12.11, would create growth from community centers and radiate

24 outwards in a in a logical, orderly fashion. Example 3, page

25 84, Residential Land Use Policies, 12A.3, this request would

□

23

1 also compliment existing neighborhoods. Example 4, line item 3,

2 page 79, our rezone request would coincide with the land use

3 objectives of designating ample land for urban expansion and

4 encouraging in-fill.

5 If we are approved for A-2 rezone, we plan to sell our

6 current home and build a smaller home on the 6 acre field south

7 of our current residence. We would also like the opportunity to

8 gift our four children property with the intention of them

9 residing on it in the future.

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10 **MR. DAVID POOLE:** *Questions for Mrs. Whitsell?*

11 **MR. DON WILKERSON:** *You said three contiguous parcels of*
12 *property but on the legal description it shows four and on our*
13 *cover letter to the staff report it shows there's four. So are*
14 *there really four or is there three?*

15 **MRS. LYN WHITSELL:** *It's three. I think why it's confusing*
16 *is when Lawrence's mother passed away she split a full 40 piece*
17 *parcel between his sister and Lawrence. So we have purchased*
18 *that from her. It's really a one piece parcel but I think it*
19 *had to be listed as split in half, through the will.*

20 **MR. DON WILKERSON:** *But by the staff's document here there*
21 *is actually four legal parcels through that property.*

22 **MRS. LYN WHITSELL:** *I don't think it's four legals. I think*
23 *it's three legals but it was the one had to be listed*
24 *separately because it was split in a will, but it's really one*
25 *legal parcel.*

□

24

1 **MR. DON WILKERSON:** *It shows as one parcel of 20 acres,*
2 *another parcel of 20.*

3 **MRS. LYN WHITSELL:** *Right. That's the one that was split.*

4 **MR. DON WILKERSON:** *Another parcel of 40, and another*
5 *parcel of 36.5, which equals your 116. I just thought there*
6 *ought to be a clarification.*

7 **MRS. LYN WHITSELL:** *I believe it's one legal number, the*
8 *40.*

9 **MR. DON WILKERSON:** *At one point, I think in John*

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10 Henderson's letter, your existing home was on a .84 acres and

11 you had a survey done to move it to a 5 acre parcel.

12 MR. LAWRENCE WHITSELL: Correct.

13 MR. DON WILKERSON: That's never been recorded, per John

14 Henderson.

15 MR. LAWRENCE WHITSELL: It was recorded and that's what

16 brought this all about.

17 MR. DON WILKERSON: So in essence, you have recorded one 5

18 acre parcel on this.

19 MR. LAWRENCE WHITSELL: Well, we tried to. It's illegal.

20 MRS. LYN WHITSELL: That's what brought us to this point.

21 MR. DON WILKERSON: So somebody let that slip through then.

22 MR. LAWRENCE WHITSELL: Yeah. We didn't know until several

23 months after it had been surveyed that it was actually not

24 considered a legal split.

25 MR. DON WILKERSON: I would think the County would catch

□

25

1 that when you go try to record a 5 acre parcel in a 40 acre

2 zone. That's my opinion.

3 MR. DAVID POOLE: Any other questions for Mrs. Whitsell?

4 Thank you.

5 MRS. LYN WHITSELL: Thank you.

6 MR. DAVID POOLE: Any public input in favor of this rezone?

7 MS. CATHY SMITH: I'm Cathy Smith. I live at 76 South

8 Grandean in Eagle. I have property at 1111 East Idaho

9 Boulevard, which is on the southern/eastern boundary of the

10 Whitsell's property. I, generally, am in favor of the rezone.

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11 *I just have a couple of concerns and maybe staff can comment on*
12 *a couple of questions.*

13 *As I understand, a rezone doesn't necessarily mean a*
14 *subdivision will occur but splits, will they be able to occur*
15 *one at a time without a subdivision plat?*

16 *MR. DAVID POOLE: That's still a subdivision by definition.*

17 *MR. BRAD HAWKINS-CLARK: That's correct.*

18 *MR. DAVID POOLE: You can cut off one 5 acre piece and it's*
19 *still a split.*

20 *MS. CATHY SMITH: It's still a split but no subdivision --*

21 *MR. DAVID POOLE: That comes into a minor subdivision*
22 *qualification with four splits or less; right?*

23 *MR. BRAD HAWKINS-CLARK: You can split 40's off without*
24 *going through the Development Services office but anything less*
25 *than a 40, that is created as a building lot, does require a*

□

26

1 *subdivision plat.*

2 *MS. CATHY SMITH: Okay. With that stated, my concern would*
3 *be, as we have similarly done in the County in the past,*
4 *particularly the south side of the valley, individual splits*
5 *occur without proper plat design, proper weed control, all of*
6 *those things. I would just make it be known that I have no*
7 *objection at all. I just want to make sure that good planning*
8 *occurs and good CC&R's exist when a plat does come through.*

9 *MR. DAVID POOLE: Thank you. Is there further input in*
10 *favor of the rezone?*

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11 **MR. TIM WALKER:** *My name is Tim Walker. I live at 1330*
12 *Edgemont Road in Emmett. My wife and I currently own the*
13 *property immediately to the east of Lawrence and Lyn Whitsell.*
14 *It is just under a 25 acre parcel. It's across Idaho Boulevard.*
15 *It's currently being farmed. We are one of the most immediate*
16 *neighbors to Lawrence and Lyn. We are in full support of them*
17 *and their plans. We hope that this Commission would allow them*
18 *to go forward.*

19 **MR. DAVID POOLE:** *Thank you. Any questions? Thank you.*

20 **MR. TIM WALKER:** *Thank you.*

21 **MR. DAVID POOLE:** *Further public input in favor of this*
22 *rezone? Any neutral input? Any public input opposed to this*
23 *rezone? If not, I suppose you don't have any rebut, right?*

24 **MRS. LYN WHITSELL:** *No.*

25 **MR. DAVID POOLE:** *Then we'll close the public portion of*

□

27

1 *this and bring it before the Board. Comments, Commissioners.*

2 **MRS. DEBBIE ROUWENHORST:** *Just on the application summary*
3 *and it goes back to the three parcels because on here it's four.*
4 *So if we can just verify that it's those numbers that are all*
5 *accurate.*

6 **MR. DAVID POOLE:** *So to make it accurate, if it's actually*
7 *four as staff has found it, we should probably make this four*
8 *instead of three.*

9 **MR. BRAD HAWKINS-CLARK:** *If you move this on for the Board*
10 *of County Commissioners, we will definitely clarify. We did*
11 *take the four off the cover sheet to the application. There may*

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12 *be a difference between the definition of tax parcel and*
13 *building parcel. There were four tax parcels listed on the*
14 *cover sheet of the application and that's what we used but we*
15 *will definitely clarify that for a recommendation to the Board.*

16 *MR. WILL MAUPIN: In the packet, the letter that just*
17 *proceeds John Henderson's letter, it doesn't say where it came*
18 *from, but it lists four parcels as well.*

19 *MR. DAVID POOLE: Any further comments from the*
20 *Commissioners?*

21 *MR. DON WILKERSON: Being the 5 acre parcel has already*
22 *been recorded, probably without a right-of-way dedication, does*
23 *that have to be re-done? That's something you'll have to look*
24 *at, right?*

25 *MR. BRAD HAWKINS-CLARK: Yeah.*

□

28

1 *MR. DAVID POOLE: Is there enough setback for that without*
2 *a problem?*

3 *MR. DON WILKERSON: Just move his house back 15 feet.*

4 *MR. DAVID POOLE: I think there's probably enough room*
5 *there. Any other comments or discussion? Before we take a vote*
6 *on this I think I need, in this case, to ask if there's been any*
7 *ex parte communication.*

8

9 *(The Commission responded that there has been no ex parte*
10 *communication as to this rezone.)*

11

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12 MR. DAVID POOLE: Any site visits? I drive by it every

13 time I come to work.

14 MR. DON WILKERSON: Most of us know where it's at. Having

15 said that, do we want to make a determination on this?

16 MRS. DEBBIE ROUWENHORST: I make a motion to pass this on

17 to the Board of County Commissioners with the only correction

18 for the four parcels versus the three contiguous pieces.

19 MR. WILL MAUPIN: I'll second it.

20 MR. DAVID POOLE: Discussion? If not, all those in favor

21 signify by saying I. Opposed same sign. Motion carries. Thank

22 you.

23

24 (Motion carries unanimously.)

25

□

29

1

2

3 Public Hearing:

4 Item No. 3 - Appeal #APP-07-001 - Robert Tawney

5

6 MR. DAVID POOLE: The next item on our agenda is an appeal.

7 The appeal was withdrawn. I think we need to make a motion on

8 that. Do we have somebody willing to make a motion to decline

9 or deny based on the fact that it was withdrawn?

10 MRS. DEBBIE ROUWENHORST: I will make a motion that we deny

11 Appeal #APP-07-001 for an appeal for a variance on the basis

12 that it was withdrawn.

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13 **MR. LAWRENCE WHITSELL:** *I'll second it.*

14 **MR. DAVID POOLE:** *Any discussion? If not, all those in*
15 *favor signify by saying I. Opposed same sign. Motion carries.*

16

17 *(Motion carries unanimously.)*

18

19 **Regular Meeting:**

20 **Item No. 1 - Items from the Public**

21

22 **MR. DAVID POOLE:** *Okay. We'll move on to the regular*
23 *meeting. Items from the public.*

24

25 *(There was no comments from the public.)*

□

30

1

2 **Regular Meeting:**

3 **Item No. 2 - Items from the Planning Director/Administrator**

4 **A. Summary of AIC Training on February 2, 2008**

5

6 **MR. DAVID POOLE:** *Items from the Planning*

7 *Director/Administrator.*

8 **MR. BRAD HAWKINS-CLARK:** *I do have one item I'd like to get*

9 *your feedback on. From time to time the staff is put into a*

10 *position of having to make an interpretation about the code,*

11 *which we kind of run into either differences of opinion between*

12 *me and the County Engineer or somebody else. That's kind of*

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*13 where we're actually at on this one. This application you have
14 seen once before. This was View Acres. This is on County Line
15 Road, just north of Dewey. You probably saw this about two
16 months ago and forwarded on a recommendation to the County
17 Commissioners. The County Commissioners have not acted on this
18 minor subdivision. The main reason they have not acted on it is
19 because I asked to have it held up until we could make a firm
20 determination about whether it's a hillside subdivision or not.
21 The reason that we got to you is that it was staff's
22 understanding that it was not a hillside subdivision. At that
23 point in time, there actually were no spot topo's done. We
24 continued it on as a minor because we did not, at that time,
25 believe it was a minor hillside subdivision.*

□

31

*1 Tri-County Surveying, Roger, went out and shot what you see
2 in front of you, which are areas that are more than 10 percent
3 slope. That's the purple line and the blue on the other lot.
4 So you have three lots here.
5 The reason I'm bringing this to you is to get your feedback
6 on the code, from a Commission standpoint, in terms of what a
7 hillside subdivision is. So I'd just like to read the
8 definition in the code. It's in the Subdivision Ordinance under
9 Chapter 2. It's towards the back. It should be page 8,
10 probably. The hillside is a parcel, lot, tract or other defined
11 area of land that has at least 30 percent of it's total area
12 containing an average slope of 10 percent. It goes on to say
13 that the slope determinations are USGS. The main thing here is*

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14 parcel, lot, tract or other area has at least 30 percent of it's
15 area that is 10 percent or greater. So staff's interpretation
16 is that we are to take the whole boundary of the subdivision,
17 whatever they are wanting to subdivide, and the only development
18 that would actually occur in this subdivision are on the 2 lots
19 that front on County Line Road.

20 You see the lot that has a house kind of drawn on it there?
21 That's an existing house that is about 9.7 acres. It's under
22 ten and so that parcel could not be split into two fives, under
23 today's code, but the other two lots, which are right about 5
24 acres, would be where new houses would go.

25 The question or help with interpretation from the

□

32

1 Commission for staff is whether or not, in a situation where you
2 have new development, where you do not have 30 percent, you can
3 see the 30 percent line drawn in the purple. That's 30 percent
4 of the area of each of those lots. You can see that the one on
5 the bottom, there is a little less than 10 percent of that. Of
6 that 30 percent area, most of it is 10 percent slope. In the
7 other lot, to the north, you can see the 10 percent kind of
8 drawn in the blue. That's not 30 percent of that parcel.
9 That's more like 10 percent.

10 The big difference with this is that a hillside subdivision
11 goes through the standard process. You have public hearings
12 before you and before the Board of County Commissioners. Also,
13 in a hillside subdivision, you have to do a geological report,

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14 soil report, and hydrology report, like you saw with Lynda Vista
15 last month. Lynda Vista Subdivision, where you have cuts and
16 fills, and issues with drainage and culverts and things. The
17 majority of the two lots shown here are less than 10 percent.
18 It's reasonably flat, sloping ground. So the new development
19 would not actually take place on slope area.

20 MR. DAVID POOLE: So the questionable side of this is going
21 to be the fact that where this 30 percent line is drawn, does
22 that leave 70 percent of each of those lots to be built -- you
23 have a 10 percent, plus 10 percent slope. There is the one,
24 that I can see, where it actually plugs the gap. The other one
25 you've probably got -- a fair percentage of that is a plus 10.

□

33

1 MR. BRAD HAWKINS-CLARK: Yes.

2 MR. DAVID POOLE: The other one you have very little of
3 plus 10. The majority of it is a buildable lot.

4 MR. BRAD HAWKINS-CLARK: Right.

5 MR. DAVID POOLE: I guess, the balance of it, the one that
6 is already built upon, which at this point in time is not going
7 to be developed, you didn't give us the lines on that.

8 MR. BRAD HAWKINS-CLARK: No. That's correct.

9 MR. WILL MAUPIN: But it's still part of the subdivision.

10 MR. BRAD HAWKINS-CLARK: It is still part of the
11 subdivision. It is a three lot subdivision.

12 MR. WILL MAUPIN: It looks like neither one of those lots
13 exceeds the hillside limit, to me.

14 MR. ROGER BENNIE: Neither one of the two new lots do.

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15 *This lot does. That's got an existing house on it.*

16 *MR. DAVID POOLE: But without having a line drawn, we can't*
17 *see that.*

18 *MR. ROGER BENNIE: Other than where the house is, this is*
19 *all plus 10. When we get up into this area, this goes up toward*
20 *Black Canyon County. The bulk of that lot is plus 10 percent.*

21 *MR. DAVID POOLE: And it's already developed.*

22 *MR. LAWRENCE WHITSELL: So if you include this in it, it*
23 *doesn't meet the guidelines of the subdivision.*

24 *MR. ROGER BENNIE: It doesn't, but there is a section in*
25 *the code that you can make an exception. It's number 9.*

□

34

1 *MR. DAVID POOLE: You can do an exception because it's not*
2 *going to be built.*

3 *MR. ROGER BENNIE: Right.*

4 *MR. DAVID HARGRAVES: Commissioners, what it says is the*
5 *portion of a hillside subdivision having the slope of less than*
6 *10 percent may, with the permission of the Commission, be dealt*
7 *with in a separate phase or phases and are not subject to the*
8 *special provisions under Chapter 7 of this Ordinance. So what*
9 *that does say is that everything that is above 10 percent slope*
10 *has to be dealt with under the Hillside Subdivision Provision.*

11 *MR. DON WILKERSON: So in this particular minor sub, would*
12 *we only be dealing with the existing lot and not the other two?*

13 *MR. DAVID HARGRAVES: You look at the whole parcel to see*
14 *if it's a hillside subdivision. If 30 percent has 10 percent or*

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15 *greater slope, it's a hillside subdivision and it has to follow*
16 *these guidelines except that which is less than 10 percent can*
17 *be dealt with in a different phase and it doesn't have to come*
18 *under the hillside provisions.*

19 *MR. DON WILKERSON: But in the definition where it says*
20 *parcel, lot, track or other defined area of land, can you look*
21 *at this as individual lots or can you not because their*
22 *proposing individual lots and are not lots today?*

23 *MR. DAVID HARGRAVES: That's kind of the way we read it.*

24 *MR. BRAD HAWKINS-CLARK: There's only one parcel there*
25 *today. So you can't just take a phase of that parcel because*

□

35

1 *you have to do with the whole thing that is there.*

2 *MR. WILL MAUPIN: If we considered it a hillside*
3 *subdivision, that lot that's already built on, split off we can*
4 *mitigate some costs for them and make it a little more cost*
5 *effective and still go by the Ordinance because we have a*
6 *Chapter 7 saying we can phase out these other two and do it*
7 *outside the Hillside Ordinance.*

8 *MR. BRAD HAWKINS-CLARK: The problem is that you can't*
9 *really draw a phase line. Well, I guess you could. That's the*
10 *reason that we're here. We want to make a decision and stick*
11 *with it from here on.*

12 *MR. DAVID POOLE: You have to do a full blown subdivision*
13 *in order to have more than one phase.*

14 *MR. BRAD HAWKINS-CLARK: Not necessarily. I don't think*
15 *there's anywhere in the code where it says you can't phase a*

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16 *minor, but if you were to phase, let's say you were to phase*
17 *this. You would put the big lot that has the house on it in one*
18 *phase and put the other two in another phase, but part of the*
19 *other two is still a hillside.*

20 *MR. DAVID POOLE: I still don't think they're going to be*
21 *more than the 30 percent.*

22 *MR. DAVID HARGRAVES: Well, that provision in paragraph 9*
23 *says anything less than 10 percent can be in another phase.*

24 *MR. DAVID POOLE: So we're going to have to adjust the lot*
25 *lines in order to meet it.*

□

36

1 *MR. BRAD HAWKINS-CLARK: But you can't adjust the lot lines*
2 *because they're already at the minimum 5 acres.*

3 *I don't think that the County should interpret a hillside*
4 *as being anything other than a full boundary of the subdivision.*
5 *You get into this question about the buildable area and the*
6 *whole purpose to the hillside subdivision is to mitigate against*
7 *potential risks that are created by cutting into hillsides. So*
8 *if you have a subdivision where you're not going to cut into a*
9 *hillside, is it a benefit to Gem County to have them go through*
10 *the public hearing process?*

11 *MR. ROGER BENNIE: We intended to declare this as open space, we're*
12 *going to put an open space line across here. This will all be*
13 *open space and the same thing up in this area here. So they*
14 *can't build in it.*

15 *MR. DON WILKERSON: Open space would be a different lot,*

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16 *wouldn't it?*

17 *MR. ROGER BENNIE: No.*

18 *MR. DON WILKERSON: It's an easement. Okay.*

19 *MR. DAVID POOLE: What about that other lot? How much of*
20 *that's going to be open space?*

21 *MR. DON WILKERSON: Is the existing house at a high point?*

22 *MR. ROGER BENNIE: No.*

23 *MR. DON WILKERSON: It's in the low point of the lot.*

24 *MR. ROGER BENNIE: It's in the middle of the lot. It was*

25 *brought up and cut down around to get to it.*

□

37

1 *MR. DAVID POOLE: I guess, at this point, my feeling would*
2 *be that if it's supposed to include the whole piece of ground,*
3 *then that's probably what we need to be working with, even*
4 *though there's already a building on it, unless our ordinance*
5 *allows us to do anything different than that, which is less than*
6 *anything ten percent we can. The problem with that is you can't*
7 *get your 5 acre lots; your minimums. So under that*
8 *circumstance, we can't fit the ordinance here.*

9 *MR. DAVID HARGRAVES: We might need an ordinance amendment.*

10 *MR. LAWRENCE WHITSELL: With that being said, they'd have*
11 *to resubmit it under a Hillside Ordinance.*

12 *MR. BRAD HAWKINS-CLARK: That's correct.*

13 *MR. ROGER BENNIE: The biggest problem is that the cost*
14 *would be four or five times as much and you're not going to*
15 *accomplish anything.*

16 *MR. LAWRENCE WHITSELL: The issue is we're trying to create*

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17 *some sort of consistency with our rulings and if you open*
18 *floodgate and all of a sudden you have to take every hillside*
19 *subdivision and view it differently -- am I seeing this correct*
20 *Brad?*

21 *MR. BRAD HAWKINS-CLARK: Yeah. You're seeing my concern.*

22 *MR. LAWRENCE WHITSELL: That's the downside. We certainly*
23 *understand that this particular subdivision but what about the*
24 *next one? What happens when this comes up again?*

25 *MR. DON WILKERSON: But if you had a larger subdivision,*

□

38

1 *say 1 acre lots, you may be able to phase more parcel's of that*
2 *because you have more ground to work with. David just said*
3 *something about, possibly, an amendment to the ordinance.*

4 *MR. LAWRENCE WHITSELL: Well and we were going to do*
5 *amendments to several ordinances, weren't we?*

6 *MR. WILL MAUPIN: Is there any other way to configure those*
7 *other two lots?*

8 *MR. ROGER BENNIE: I think so.*

9 *MR. WILL MAUPIN: I think you could take that, where you*
10 *have the 10 percent written in, and include that in the one lot*
11 *that already has a lot of 10 percent written in. Then take some*
12 *of the flatter stuff up there by Weaver Lane, in the corner and*
13 *turn that into -- just have to message it a little and you may*
14 *be able to get away without having an amendment to the*
15 *ordinance.*

16 *MR. ROGER BENNIE: Then the question is, do we bring it*

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17 *back here then after I've done that? If I can do that and get*

18 *it, would it be acceptable? If not, then there's no reason to*

19 *spend the extra money and my time to do that.*

20 **MR. DAVID POOLE:** *Was it continued at the County*

21 *Commissioners level?*

22 **MR. BRAD HAWKINS-CLARK:** *No. They have not been there.*

23 **MR. DAVID HARGRAVES:** *The Board of County Commissioners*

24 *need to make that call, in my opinion.*

25 **MR. WILL MAUPIN:** *Even if he was successful in doing what*

□

39

1 *we were talking about, you're still going to have to phase it*

2 *for those two lots. You're still going to have the hillside*

3 *problem, according to the ordinance, in one lot.*

4 **MR. ROGER BENNIE:** *But one lot exists. I mean, the house*

5 *is there and nothing is going to be done with it.*

6 **MR. WILL MAUPIN:** *I don't know what kind of studies they're*

7 *going to have to do but if you're not going to do anymore*

8 *development on it, it's pretty obvious. That would be my*

9 *recommendation.*

10 **MR. BRAD HAWKINS-CLARK:** *I didn't bring it to you for you*

11 *to make a decision per se. It's helpful to me to just talk*

12 *through some of the interpretations of code with you since*

13 *you're ultimately responsible.*

14 **MR. DON WILKERSON:** *This is in a 5 acre zone.*

15 **MR. ROGER BENNIE:** *Yes.*

16 **MR. DON WILKERSON:** *And they own all this 20 acres. Could*

17 *they quick claim deed 9.7 acres to that one party and minor sub*

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18 *the other two parcels?*

19 **MR. ROGER BENNIE:** *No because you can't quick claim*
20 *anything in the County without doing a subdivision because it's*
21 *less than 40.*

22 **MR. DON WILKERSON:** *I notice here, and you may have it on*
23 *your computer, what's the difference between the low point and*
24 *the high point on the whole parcel? It looks like it's around*
25 *80 feet or 8 feet. Do you know?*

□

40

1 **MR. ROGER BENNIE:** *It's more than that. It's about 80*
2 *feet. The top boundary on this is the old Canyon Canal.*

3 **MR. DON WILKERSON:** *I'd like to get down to Mr. Hargraves*
4 *coming up with an amendment to the ordinance.*

5 **MR. LAWRENCE WHITSELL:** *Roger, the new Canyon Canal, the*
6 *Black Canyon Canal, how far is it from that?*

7 **MR. ROGER BENNIE:** *It's up the hill another 40 or 50 feet*
8 *and it's close to it, going up to it.*

9 **MR. BRAD HAWKINS-CLARK:** *I guess what I'm hearing is,*
10 *generally, you agree that the full boundary of a parcel should*
11 *be used to determine a hillside. If it can be phased, depending*
12 *on the project, we can work with them on that.*

13 **MR. DAVID POOLE:** *Work on the exception situation but you*
14 *still have to be able to phase it, is what I'm hearing from our*
15 *ordinance, without rewriting or amending the ordinance.*

16 **MR. DON WILKERSON:** *So where does that leave you?*

17 **MR. BRAD HAWKINS-CLARK:** *Well, that would leave us with,*

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18 unless Roger can find a way to figure them, we would require
19 resubmission.

20 MR. WILL MAUPIN: But if he was successful in adjusting
21 those lot lines and made an exception for the one lot that's not
22 going to be developed, that's an exception that's going to be
23 hard to argue if somebody comes in and asks for the same
24 exception but they want to develop on it.

25 MR. BRAD HAWKINS-CLARK: The tough thing with that is what's

□

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1 buildable and what's not. The code doesn't say you can't build
2 on them. You can build on 60 percent slope if you can get it to
3 work. I mean, the code allows it.

4 MR. LAWRENCE WHITSELL: Well we did that with Walker.

5 MRS. DEBBIE ROUWENHORST: You didn't give him any
6 stipulations.

7 MR. DAVID HARGRAVES: The rub, I think, is an applicant
8 having to pay for additional reports and lengthen the process
9 when they're not going to get any benefit out of it.

10 MR. WILL MAUPIN: That was kind of the point I was making.
11 That lot's already developed. In this case, we could
12 conceivably make an exception. So the next person that comes
13 around and actually qualifies for a hillside subdivision, they
14 try to put all of it in one lot and there's no development on
15 it, they either can't develop that or build on that lot or they
16 have to comply with the Hillside Ordinance.

17 MR. DAVID POOLE: It's just a little three lot subdivision,
18 couldn't all of this be done with the Board of County

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19 *Commissioners and not have to come back before this Board?*

20 *MR. DAVID HARGRAVES: I think we need to drop this and let*
21 *the Commissioners make that decision. It may come back to you,*
22 *Dave.*

23 *MR. DAVID POOLE: It seems like it could be resolved with*
24 *the Board of County Commissioners.*

25 *MR. DAVID HARGRAVES: We hope we can resolve it with the*

□

42

1 *Board of County Commissioners. We hope it doesn't have to come*
2 *back.*

3 *MR. DON WILKERSON: So you're letting it go on through the*
4 *Board of Commissioners.*

5 *MR. DAVID HARGRAVES: That's where it's at in the process*
6 *right now.*

7

8 *Regular Meeting:*

9 *Item No. 3 - Items from the Deputy Prosecuting Attorney*

10

11 *MR. DAVID POOLE: So we're going to move on to Item 3.*

12 *Anything else, David?*

13 *MR. DAVID HARGRAVES: I just hate to keep talking about an*
14 *application that you might have to make a decision on again.*

15 *MR. DAVID POOLE: I guess it's just one of those things*
16 *that we should be looking at a little closer.*

17 *MR. DAVID HARGRAVES: Right.*

18 *MR. WILL MAUPIN: Did we help the applicant at all?*

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19 MR. ROGER BENNIE: *We thank you for your input.*

20 MR. DAVID POOLE: *Anything else, David?*

21 MR. DAVID HARGRAVES: *One or two things for educational*
22 *purposes. The reason that Mrs. Whitsell testified on behalf of*
23 *Lawrence is because the conflict of interest statute requires*
24 *that he not participate. So if you have a conflict of interest,*
25 *you're required not to participate in the proceedings any*

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1 *further. I don't know if the legislature was thinking about*
2 *what happens if an individual Commissioner submits an*
3 *application. Then what are his rights to speak on his own*
4 *behalf?*

5 MR. DAVID POOLE: *As a citizen.*

6 MR. DAVID HARGRAVES: *Right. To avoid that, I just*
7 *recommended that Mrs. Whitsell proceed.*

8 *There's a couple of other things. We have been working up*
9 *in Boise County a little bit. We've learned a couple of things*
10 *up there that we wanted to come back and share with you guys.*
11 *So we'll schedule it with Brad where we can spend just about a*
12 *half an hour and talk to you. Some lessons learned from a big*
13 *application that's going on up there right now.*

14 *On the letters I send, I mark them attorney/client*
15 *privilege. I like to give you my legal opinions in writing so*
16 *that you have that privilege. If you talk about my advice in*
17 *the letter and reveal it to anybody else, you waive that*
18 *privilege. In other words, anything in that letter is not*
19 *privileged anymore and can be used against you. That's why,*

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20 *sometimes, when you ask me for an opinion, I'm hesitant to give*
21 *you an opinion out loud because it waives your attorney/client*
22 *privilege. Sometimes it's okay. It's kind of hard to know when*
23 *it is and when it isn't.*

24

25

□

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2 *Regular Meeting:*

3 *Item No. 4 - Items from the Planning and Zoning Commission*

4

5 *MR. DAVID POOLE: All right. Items from the Planning and*
6 *Zoning Commission.*

7 *MR. DON WILKERSON: I just have a question of clarification*

8 *to Brad. I've brought this up before. Where Lawrence was able*

9 *to go in and record a 5 acre parcel on a 40 acre zone with no*

10 *cross reference checks between the ordinance and the Recorder's*

11 *Office.*

12 *MR. BRAD HAWKINS-CLARK: None. You could draw out a plat*

13 *on a napkin, take it down to the Recorder's Office, ask them to*

14 *record it, and they'll put an instrument on it. I'm*

15 *exaggerating a little bit but not too much.*

16 *MR. DON WILKERSON: Is that the law or is that just their*

17 *understanding?*

18 *MR. BRAD HAWKINS-CLARK: I've called six different*

19 *Counties. This happened when I was at Meridian as well. It*

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20 seems to be kind of universal. Ada County has gotten to the
21 point where they will not record a survey unless there is a
22 stamped approval that Development Services has reviewed it.
23 That's the only one I'm aware of. Other counties, you have the
24 right to go and record a document.

25 MR. DON WILKERSON: So if you did have a cross reference,

□

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1 it would help limit the amount of non-conforming lots you've got
2 out there?

3 MR. DAVID HARGRAVES: The place we normally catch it is
4 when deeds are drawn up and people try to transfer property and
5 it splits the property. At that point, we can consider that was
6 a subdivision and that's usually when we catch it.

7 MR. BRAD HAWKINS-CLARK: But we only catch it after it's
8 been recorded.

9 MR. DAVID HARGRAVES: Well the survey doesn't convey
10 property. It's the same parcel, just divided with different
11 lines on it. So when a parcel is split off by conveyance of a
12 deed, we interpret that as triggering a subdivision.

13 MR. LAWRENCE WHITSELL: But it wasn't deeded yet. How was
14 it brought to your attention?

15 MR. BRAD HAWKINS-CLARK: The survey was.

16 MR. LAWRENCE WHITSELL: It could have went on a long time
17 then before we had known this wasn't allowed.

18 MR. BRAD HAWKINS-CLARK: Yeah.

19 I didn't get a chance under mine to talk about Saturday's
20 training. We do have some worksheets that kind of go over it if

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21 *you're interested. There's a lot of good input that those*
22 *attorneys had. They spent a full day doing it. So I'm not*
23 *going to bore you with all that but there's some really helpful*
24 *tips and reminders about Idaho Code and how Commissions are*
25 *supposed to operate. We have probably about 20 pages.*

□

46

1 *MRS. DEBBIE ROUWENHORST: And they only went through about*
2 *half of it but you could have stayed the rest of the day. They*
3 *were just very good.*

4 *I will comment and congratulate our Planning Services*
5 *because the order in which Will and Jerry said it should follow*
6 *is what you do and you do it very well. All the Development*
7 *Services people were there.*

8 *MR. BRAD HAWKINS-CLARK: Actually, we don't do what they*
9 *want us to do though. They want the applicant to always go*
10 *first.*

11 *MRS. DEBBIE ROUWENHORST: I'm saying you do a good job.*

12 *MR. BRAD HAWKINS-CLARK: Thank you.*

13 *MRS. DEBBIE ROUWENHORST: You said that we make sure the*
14 *person, the applicant, is either the owner of record or the*
15 *representative that can speak for the owner. Well, if we set*
16 *conditions to that applicant or the owner and that person says*
17 *yes we will meet these conditions, then they have to be the one*
18 *responsible so that the owner can not come back and say no that*
19 *wasn't me.*

20 *On any written response, do we read that into the record?*

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21 **MR. DAVID POOLE:** *We used to and it's boring.*

22 **MRS. DEBBIE ROUWENHORST:** *Okay. That's just one thing they*
23 *suggested.*

24 **MR. BRAD HAWKINS-CLARK:** *We have a notarized consent. We*
25 *do not accept an application unless the notarized consent of*

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1 *whoever is on deed has signed it. If it's an LLC, if it's Inc.,*
2 *if they have members, then we ask the Secretary of State whose*
3 *legally able to represent this LLC and we have that person do*
4 *the notarized consent.*

5 **MRS. DEBBIE ROUWENHORST:** *One other thing that they really*
6 *stressed was Mitigation Ordinance. Don has talked and we've*
7 *talked about schools, mitigation for schools. Unless you have*
8 *that set up in an ordinance, there's nothing you can do to*
9 *enforce it. So they were talking any mitigation, not impact*
10 *fees, but even this with the gravel pit, if we have it set up in*
11 *an ordinance ahead of time, that takes care of any issues that*
12 *come up.*

13 **MR. DAVID POOLE:** *So the gravel can be considered a*
14 *mitigation instead of an impact fee.*

15 **MR. DAVID HARGRAVES:** *Maybe an ordinance would be more*
16 *helpful. I don't know exactly what they said but your job as a*
17 *Commissioner is just to look at the evidence and see what the*
18 *impact is. That's going to change from application to*
19 *application so I don't know how you can have an ordinance to*
20 *cover every situation, but an ordinance could be helpful to give*
21 *you some guidelines.*

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2 *Regular Meeting:*

3 *Item No. 5 - Adjourn*

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5 *MR. LAWRENCE WHITSELL: I make a motion that we adjourn.*

6 *MR. DON WILKERSON: Second.*

7 *MR. DAVID POOLE: Motion granted.*

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