

November 10 full meeting

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2 GEM COUNTY ZONING PUBLIC HEARING

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6 Date: November 10, 2008

7 Time: 7:00pm - 9:23pm

8 Place: Gem County Courthouse

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10 MEMBERS PRESENT:

11 David Poole, Don Wilkerson, Reisse Perin, Fran Yett, and

12 Will Maupin.

13

14 OTHERS PRESENT:

15 Brad Hawkins-Clark - Planning Director/Administrator, David

16 Hargraves - Deputy Prosecuting Attorney, and Jennifer

17 Kharrl.

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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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PROCEEDINGS

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Gem County, City of Emmett, November 10, 2008

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CONSENT AGENDA:

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Item No. 1 - Approval of the Minutes of October 14, 2008

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MR. WILL MAUPIN: I'd like to call this meeting to order

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for November 10th zoning meeting. First item on the agenda is

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approval of the minutes for October 14th, 2008.

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MR. DAVID POOLE: I will suggest that we approve the

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minutes as submitted.

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MR. DON WILKERSON: I second.

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MR. WILL MAUPIN: Those in favor? Those against? Motion

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carries. Minutes are approved.

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(Motion carries unanimously.)

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19 PUBLIC HEARING:

20 Item No. 1 - (Continued) Variance #VAR-08-004

21 Jeremy and Becky Davis

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23 MR. WILL MAUPIN: The first order of business on the public

24 hearing is the continued hearing for variance 08-004 with Jeremy

25 and Becky Davis. Brad, do you want to do any review on this?

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1 MR. BRAD HAWKINS-CLARK: Sure. You should have received,

2 in your packets, a memo dated November 4th, which was just more

3 or less to catch you up. It's been 4 months since the Davis's

4 were here last. They had requested a continuance largely to

5 give them some time on the Southwest District Health. There

6 were actually three items on the motion. The Southwest District

7 Health, the site plan, and clarifying on the rezone. I did get

8 a call from Brodey Hodges with Southwest District Health and he

9 could not make it tonight. I originally thought that he would

10 be here but he had to leave out of town. So he is not here

11 tonight but I think Jeremy can give us more information on the

12 application that you should have received in your packets on

13 that accessory use.

14 On the bottom of that accessory use application, that is

15 written by Brodey Hodges, that hand written portion. He is

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16 stating if there is enough room after the split to fit a septic  
17 system in a replacement field, approval is granted upon the  
18 request. As you know, they do not have a specific survey on  
19 this property so what you have received is all dimensions on  
20 their property from the legal description. So there is a little  
21 bit of guess work going on with that site plan, at least in  
22 terms of the dimensions and whatnot. Unless you had questions  
23 of staff, I think that kind of brings you up to date on where  
24 you left off before. There are slides and overviews on our  
25 Power Point if you want to have an update.

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6

1 MR. DON WILKERSON: Brad, do you have a copy of this?

2 MR. BRAD HAWKINS-CLARK: Yes. Thank you.

3 MR. DON WILKERSON: Okay. That kind of differs with your  
4 statement in your second paragraph in your letter dated 7/1 of  
5 '08. It looks like the 40 foot road easement is already in  
6 place. So the total dimensions of that property from the south  
7 side of the road back is the 304.69. So there wouldn't be a  
8 deduction of 5,090 feet, would there?

9 MR. DAVID POOLE: So that's centerline of the road is it,  
10 Don?

11 MR. DON WILKERSON: Well, that's what it says on here.  
12 They show centerline Sales Yard Road, then there's a 40 foot  
13 easement, and then you go from that pin south 369 feet and,

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14 referring to Brad, he minused out a 40 foot section there. So  
15 it looks like if you would multiply 127.25 by 304.69 you'd come  
16 out with the 38,772 and there would be no deduction of that for  
17 road easement. This came from the County. It look's like a  
18 survey when they surveyed the property to the east of the  
19 Davis's because this is different than the paperwork we got back  
20 in June. So I just wanted clarification. Would the true square  
21 footage of that parcel, if you made it rectangular, be that  
22 38,772.

23 MR. BRAD HAWKINS-CLARK: Well based on what you submitted  
24 from the Assessor's Office, yes.

25 MR. DON WILKERSON: 0.89 acres.

□

7

1 MR. BRAD HAWKINS-CLARK: It would be the .89.

2 MR. DON WILKERSON: Okay. So there would be no deduction  
3 for road easement. Again, you've got several pieces of  
4 paperwork that tell you different stories but it looks like this  
5 might be the most recent because it looks like there was a  
6 survey to do parcels 1 and 2.

7 MR. WILL MAUPIN: Any more comments? At this point, we'll  
8 ask that the applicant step forward if they want to make a  
9 comment.

10 MR. JEREMY DAVIS: I'll answer whatever questions you need  
11 answered. My name is Jeremy Davis. My address is 1517 Sales

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12 Yard Road.

13 MR. DAVID POOLE: In light of what Don brought up, do you  
14 have any reason that we can't extend that over to get that other  
15 .11 acres, pulling that property line closer, even though it's  
16 going to go past your fence?

17 MR. JEREMY DAVIS: That's not a problem. If that's what  
18 you guys need, then that's what we will do.

19 MR. DAVID POOLE: I mean providing that this survey is  
20 correct, you're not looking at that much of a movement.

21 MR. JEREMY DAVIS: Yeah. That's not a problem.

22 MR. DON WILKERSON: If we approved a variance to make a lot  
23 127.25 deep, east to west, in your original drawing you showed  
24 that shop was 36 feet from the fence.

25 MR. JEREMY DAVIS: Yeah, roughly.

□

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1 MR. DON WILKERSON: So do you have an approximate distance,  
2 if you brought that fence back to the west, how far you'd be  
3 moving it?

4 MR. JEREMY DAVIS: Not off hand, no.

5 MR. DON WILKERSON: Brad, we can make conditions on the  
6 variance?

7 MR. BRAD HAWKINS-CLARK: Commissioner, yes you can.

8 MR. DON WILKERSON: Okay. Thank you.

9 MR. WILL MAUPIN: No other comments? Anybody in opposition

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10 that would like to speak? Neutral? At this point, the public  
11 hearing is closed. Any discussion by the Commissioners?

12 MR. DAVID POOLE: I think Don has the right idea. As long  
13 as we can bring that into the 1 acre area, keep the setbacks  
14 from the existing buildings, and with that I see no reason to  
15 not go ahead with allowing the variance.

16 MR. DON WILKERSON: Dave, if we do that, make a rectangle  
17 out of it to that one corner, we'll be just short of an acre but  
18 we'll be awful close.

19 MR. DON WILKERSON: I'd like to make a motion that we  
20 approve this variance with the following conditions: That we  
21 create a west property line to this parcel, a distance of 143  
22 feet, approximately, to make the parcel right at 1 acre and  
23 that would be a condition that would require survey before the  
24 variance is finally granted.

25 MR. DAVID POOLE: So you're stating that we're requiring a

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1 1 acre and it needs to be surveyed?

2 MR. DON WILKERSON: Right. In addition, they would still  
3 need to maintain the setback from the shop to the new property  
4 line.

5 MR. DAVID POOLE: I second that motion.

6 MR. WILL MAUPIN: And that includes this statement of  
7 Southwest District Health, as well.

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8 MR. DON WILKERSON: Yes. Include the statement from  
9 Southwest District Health and the other information that we  
10 require.

11 MR. WILL MAUPIN: Those in favor? Those opposed? Motion  
12 carries.

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14 (Motion carries unanimously.)

15

16 PUBLIC HEARING:

17 Item No. 2 - (Continued) Rezone #RZ-08-003 - Craig Gibson

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19 MR. WILL MAUPIN: The second item on the agenda tonight is  
20 the Rezone #RZ-08-003. It's a continuation of last month's  
21 hearing.

22 MR. BRAD HAWKINS-CLARK: This application, as you noted,  
23 was continued from your September 8th meeting. As I stated in  
24 my memo dated November 4th, myself, staff, and David Hargraves  
25 did meet with Craig Gibson and Jeff Chandler, who are the

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1 applicants, with the Board of County Commissioner's. Just to  
2 clarify the reason for this, the main point of continuance was  
3 Union Lane, which is here on the west boundary of the parcel.  
4 It's a triangular shaped piece. There was concern about  
5 rezoning that to heavy industrial. Yes, there's an existing

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6 gravel pit. That is recognized. However, any other heavy  
7 industrial uses, the concern was Union Lane is substandard  
8 construction and is probably not going to hold up to a lot of  
9 heavy truck traffic.

10 The Development Agreement was drafted, which you received  
11 in your packets. That Development Agreement was largely  
12 premised on Union Lane itself. The applicants came back with  
13 another idea, which was to possibly add a second option in the  
14 Development Agreement. I'll just show you what the discussion  
15 was about. Here's an aerial photo with the parcels overlay in  
16 the blue. This is Highway 52. This smaller lot down here is  
17 the Shadow Butte Industrial Park. This is the road. If you've  
18 driven out that way, there's now a turn lane on Highway 52, a  
19 deceleration lane, and then a center turn lane that lines up  
20 with this entry road. It is intended, in the future, to  
21 probably stub to go to the north. This piece that says Gem  
22 County is owned by Gem County. That is not a part of the Shadow  
23 Butte Industrial Park but is being held by the County for some  
24 other use in the future, possibly like a Road Department yard.

25 Here's Cascade Road. The gravel pit is here. The proposal

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11

1 that was talked about, again, no agreements have been made, but  
2 for the purpose of this rezone I think the question here tonight  
3 is if the Commission is comfortable with the concept of a future

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4 access road coming from Shadow Butte Industrial Park. It could  
5 go straight or it could curve. The Commissioner's actually had  
6 a preference to curve a little bit to the west so that it didn't  
7 bisect this 8 and a half acre parcel that the County owns.  
8 Regardless, the point on the table is that is this an acceptable  
9 option to provide another access between Cascade and Union Lane  
10 and obviously that would imply probably signing Union Lane to  
11 have a weight limit. One key advantage is that the road in the  
12 Industrial Park is constructed to County standards already and  
13 is equipped to handle any heavy traffic. This new access would  
14 obviously have to be constructed to the same standard. So while  
15 there is no formal agreement, I think the staff and the  
16 Commissioner's were at least comfortable taking it to you as  
17 part of the rezone to have that as another option so that in the  
18 future if they do want to develop this property into some other  
19 heavy industrial use, they are going to have to deal with the  
20 heavy traffic but they would have two options to do that.

21 MR. DAVID POOLE: One being Union Lane.

22 MR. BRAD HAWKINS-CLARK: One being Union Lane and the  
23 improvements already in the Development Agreement and the second  
24 is another new access.

25 MR. WILL MAUPIN: So we could do that with an addition to

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12

1 the proposed Development Agreement.

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2 MR. DAVID POOLE: So we can amend that with an either/or;  
3 is that what your saying?

4 MR. BRAD HAWKINS-CLARK: Right. The language can be worked  
5 out. We felt the reason for your continuance was to address the  
6 concerns about the heavy industrial traffic. We thought this  
7 was at least a good step to doing that. Obviously, you still  
8 have the other findings to make on the rezone about whether or  
9 not there's five findings. You still have to make those five  
10 findings but this particular issue was, I think, one of the  
11 drivers for us to continue the hearing and to get together.

12 MR. DON WILKERSON: So the thought of approaching TJT to  
13 possibly go through their property, it's off the table? That's  
14 from your letter here dated November the 4th.

15 MR. BRAD HAWKINS-CLARK: No. That would not be off the  
16 table. This is the parcel owned by TJT right here. So one  
17 alternative would be to extend the stub street and begin your  
18 curve right there. So you would cut across this parcel. That  
19 was the area we were talking about.

20 MR. DON WILKERSON: Okay. Has anybody approached the  
21 Railroad about an additional crossing? Would they approve an  
22 additional crossing so close to that other one? Also, I see by  
23 the legal description that it looks like the Gibson's own clear  
24 to the center line of the Enterprise Ditch but is there a need  
25 to get approval from them to put a bridge across Enterprise

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1 Ditch.

2 MR. BRAD HAWKINS-CLARK: There would definitely need to be  
3 approval from both Idaho Northern Pacific Railroad and  
4 Enterprise Ditch Company. To my knowledge, those conversations  
5 have not taken place.

6 MR. DON WILKERSON: In reality, what your proposing there  
7 is a new county road up to County specs. So it would be open  
8 to the public to drive through an industrial park to get to  
9 Highway 52. It would be a public road.

10 MR. BRAD HAWKINS-CLARK: Well, that hasn't been decided.  
11 What was discussed was an access. Is it public or is it  
12 private? I personally can't see how it could not be public.

13 MR. DON WILKERSON: I think the same way. Say some other  
14 company wanted to drive through there to get access to Highway  
15 52 and if it's public, they would have the right to do that.

16 MR. BRAD HAWKINS-CLARK: Sure. Obviously, that's one of  
17 the advantages. You're utilizing an existing intersection and  
18 most of that traffic does centralize within that block between  
19 Unimin and Union.

20 MR. WILL MAUPIN: That access would only hold true from  
21 Highway 52 to Gibson's property because it would be on the  
22 Industrial Park and on County owned property but once you get to  
23 Gibson, then it doesn't have to be a public road.

24 MR. BRAD HAWKINS-CLARK: Well, it doesn't have to be;

25 correct. I think it's whatever the Commission and the Board

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1 decide but I think there's a lot of advantages to having it go  
2 to Cascade. It may need to shift to the west or the existing  
3 driveway that crosses the railroad, maybe that gets abandoned  
4 and you move it to the east to accommodate a better access  
5 because the one that is there is not a public standard access,  
6 it's private. I think if you didn't connect it all the way  
7 through to Cascade, Gibson would be losing some benefit as well  
8 because Cascade is a direct route, without using the Highway, to  
9 Emmett.

10 MR. DON WILKERSON: If this option is approved, who would  
11 stand the cost of the new road? Would it be the County or the  
12 applicant or would it be a shared cost?

13 MR. BRAD HAWKINS-CLARK: That has also not been decided.

14 MR. WILL MAUPIN: Can we address, in the Development  
15 Agreement, some mitigation for the road surfaces that are  
16 already in place from the north side of the Industrial Park to  
17 52?

18 MR. BRAD HAWKINS-CLARK: From the north side of the  
19 Industrial Park?

20 MR. WILL MAUPIN: Where you would leave the Industrial Park  
21 and go onto Gem County's property to Highway 52, they're going  
22 to gain benefit from that infrastructure that's been put in

23 place.

24 MR. BRAD HAWKINS-CLARK: Yes, but that's already existing,

25 public infrastructure. We can look into what you're proposing

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1 but mitigation ordinarily implies infrastructure that's not

2 currently up to standard and that their causing an impact above

3 and beyond that.

4 MR. REISSE PERIN: On the lots that are set up there, would

5 they all have some access to that road to get back to 52 then?

6 Is it those lots that are outlined in blue.

7 MR. BRAD HAWKINS-CLARK: The blue represents tax parcels as

8 the Assessor's Office has them, but the only ones that actually

9 have access to that are the ones within phase 1 of the Shadow

10 Butte Industrial Park.

11 MR. WILL MAUPIN: Any more questions for staff? If the

12 applicant would like to make a comment, you may do so.

13 MR. CRAIG GIBSON: My name is Craig Gibson. I live at 357

14 East Amity in Meridian. I stand here more to just answer

15 questions and to plead the case. I think Brad has probably hit

16 everything right on the head. One point we would make is we're

17 hoping to make that road as straight as possible and potential

18 land swap with the County might improve that. I built roads for

19 a living for a few years and one thing we'd like not to see is a

20 curve in it for a lot of reasons, safety is obviously the major

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21 one. If we can find a way around that, great. If we can't find  
22 a way around it, we can build road anywhere; virtually. As far  
23 as the railroad tracks, I believe if we alleviate one, we'd be  
24 able to put a better one in place of it to try and straighten  
25 that out. That may be of some help.

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1 MR. DAVID POOLE: You had discussion with the County  
2 Commissioner's on this and the County Commissioners were really not  
3 in favor of going straight through.

4 MR. CRAIG GIBSON: I think what the discussion was, at the  
5 time, was their fear was there was an 8 acre piece that I  
6 believe the Highway District was going to put their equipment  
7 and things on. After we left the meeting I kind of put some  
8 thought into it and if we exchanged, we'd end up with an  
9 easement through there and they'd end up with 4 more acres of my  
10 property. It would give them the same amount of acreage. If we  
11 did that swap, we'd end up on the other side and we'd have a  
12 straight road.

13 MR. DAVID POOLE: A straight road makes a lot more sense.

14 MR. DON WILKERSON: You'd give them some more acreage and  
15 you'd gain some of the area that is in the proposed Industrial  
16 Park for your use.

17 MR. CRAIG GIBSON: Correct. Whatever they lost we would  
18 give and switch it back and forth.

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19 MR. DON WILKERSON: Have you had any discussion with the  
20 County Commissioners or your own people about cost or anything like  
21 that?

22 MR. CRAIG GIBSON: We've been throwing numbers around but  
23 it's so preliminary at this point that just the prices of oil  
24 today, if we through one number out there, tomorrow could be  
25 completely different.

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1 MR. DON WILKERSON: Well, not so much about figures but  
2 about shared responsibility.

3 MR. CRAIG GIBSON: It is a shared responsibility. I agree.  
4 I don't expect the County to do everything but if they gain by  
5 it, I do expect them to play a large role in this. Obviously in  
6 the nurturing stages of this it would be my responsibility to be  
7 able to use that access but in allowing an easement I would  
8 expect that the County come forward and help build that road  
9 because they'll get as much use out of it as I will, eventually.

10 MR. DON WILKERSON: And that would give you access to your  
11 property south of the ditch line too.

12 MR. CRAIG GIBSON: It's a very good thing for me. Don't  
13 get me wrong, it helps me greatly. I think it will help the  
14 public as well. It will be one more access. As we're finding  
15 out more and more, some of these things that were considered  
16 side roads are now becoming major thoroughfares. It's just part

17 of living in this valley today. There's no question Union is  
18 not built to carry the traffic we're talking about as far as  
19 heavy equipment goes. I completely agree.

20 MR. DAVID POOLE: It sounds like it's beneficial to Black  
21 Canyon, to yourself, to the County, and it makes a lot of sense  
22 to go that direction, providing that all things can be put into  
23 place and make it work.

24 MR. REISSE PERIN: In your understanding, would you be open  
25 to this being a public road?

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1 MR. CRAIG GIBSON: Absolutely. I'd, if things work out,  
2 dedicate access to the County. So therefore I'd be donating  
3 land as well as an easement for that. It would benefit all of  
4 us. It dissects my property but at the end of the day I'd be  
5 better having two sides of a road that I could do industrial on  
6 rather than just one side. So either way it goes I'd benefit.

7 MR. DAVID POOLE: It sounds like one of those win/win  
8 situations to me.

9 MR. WILL MAUPIN: Do we have any comment in opposition?

10 MR. ROBERT LANGNER: My name is Robert Langner. I live at  
11 4770 Cascade Road, which is across the street and over to the  
12 right a little bit. I've got a pretty decent parcel over there.  
13 I'm concerned about all the fish and game property and all the  
14 fishing and everything with all this extra noise that's going to

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15 be there. It's already starting to thin out. You can ask any  
16 of the duck hunters around. They just go out there to shoot the  
17 shotguns because there's no more game out there and then we'll  
18 have all this extra noise. To me, I don't think we really need  
19 another industrial park that close to that river.

20 MR. WILL MAUPIN: Do we have any comment in the neutral?  
21 Do we have any comment in favor?

22 MR. WILL MAUPIN: Do you want to rebut your position?

23 MR. CRAIG GIBSON: The gentleman is correct. We are losing  
24 portions of our wildlife. It's not uncommon but I think we've  
25 got to pick and choose the areas we go to and this is a good

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19

1 place for another industrial park. I wish there were a way  
2 sometimes to supply all things in all places. It doesn't work  
3 that way today. I do appreciate his position though. Thank  
4 you.

5 MR. WILL MAUPIN: I think if there's no further comment,  
6 we'll close the public hearing and put it up for discussion with  
7 the Commission.

8 MR. DAVID HARGRAVES: I just want to remind the Commission  
9 the purpose of the development agreement. The purpose of the  
10 Development Agreement is you're given the statutory authority to  
11 attach conditions to a rezone and that's done through the  
12 Development Agreement. If those conditions outlined in the

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13 Development Agreement are not met, then you have the opportunity  
14 to revert the zoning back to what it originally was. So that's  
15 kind of how that Development Agreement operates. The two  
16 options that are before you, one of them still kind of needs to  
17 be flushed out, but you can choose either one and still be able  
18 to keep the rezone.

19 MR. DAVID POOLE: As far as the wording on this, should we  
20 decide that's the direction we want to travel, it's a situation  
21 I think where you have our feeling on this but the wording would  
22 have to come from your office; is that correct?

23 MR. DAVID HARGRAVES: Right. We'd structure the wording to  
24 try to accomplish all we're trying to accomplish while we still  
25 have all the detail worked out as specific as we can.

□

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1 MR. DON WILKERSON: I would like to see this continued  
2 again and let staff and legal come up with additions to the  
3 Development Agreement that curves this new option and would be  
4 in agreement with the applicant and us before we make the  
5 recommendation to the Board of County Commissioners so it goes  
6 to them with a pretty well final of what we approved instead of  
7 we're hoping this all gets done between us and them.

8 MR. BRAD HAWKINS-CLARK: I agree with that position. My  
9 concern is I think there's enough discussion with the Board of  
10 County Commissioners to know that this is a feasible

11 alternative. If you say we have to come up with specific  
12 language before you forward this to the Board of County  
13 Commissioners, we may be moving into a level of detail that the  
14 County Commissioners or the applicant aren't prepared quite yet  
15 to go into. I think what was discussed is that this alternative  
16 access needs to be part of the public record, which you are  
17 making it here tonight, but it also needs to be part of the  
18 public record for the Board of County Commissioners and there  
19 may be some things that come out of that other hearing and we  
20 spent time working on crafting language that would be for not.

21 MR. DAVID POOLE: We still have to rezone this if we're  
22 going to go that step, do we not?

23 MR. BRAD HAWKINS-CLARK: Yes.

24 MR. DAVID POOLE: So it seems to be that your putting the  
25 cart, Don, a little bit before the horse. At least we could

□

1 give them some guidance and understanding before we get there so  
2 that they know if we don't suggest that they rezone it, then I  
3 think all the rest of it's a moot point.

4 MR. WILL MAUPIN: Do we have any other comments by the  
5 Commission?

6 MR. DAVID POOLE: I would suggest that we recommend for a  
7 rezone to the County Commissioners using the staff's finding of  
8 fact and that with the development agreement be either Union

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9 Lane brought up to standard or that an alternate route be  
10 developed as proposed here through the Shadow Butte Industrial  
11 Park. So I think that we should suggest that it be rezoned  
12 under those conditions.

13 MR. WILL MAUPIN: Any additions to the motion?

14 MR. DON WILKERSON: I have one question. I guess what  
15 we're saying if we approve this, when it goes to the Board of  
16 County Commissioners, there will probably be a new Development  
17 Agreement or there will be something hashed out before it get's  
18 finalized.

19 MR. DAVID HARGRAVES: We'll just add that second option to  
20 the Development Agreement. It won't have all the specifics yet  
21 because we won't know those and they'll have to get those  
22 negotiated.

23 MR. DON WILKERSON: I would like to add one item to Dave's  
24 motion. It's in the bottom of Brad's letter dated April the  
25 4th, that anything done will be an addition to the existing

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22

1 development agreement. It appears you wanted to retain the  
2 existing Development Agreement as it was written pertaining to  
3 Union Lane due to future owners or developers.

4 MR. BRAD HAWKINS-CLARK: I believe the motion on the table  
5 had an either/or so we would retain all that language and just  
6 add a second.

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7 MR. WILL MAUPIN: Anyone want to second the motion?

8 MS. FRAN YETT: Second.

9 MR. WILL MAUPIN: Those in favor? Opposed? Motion  
10 carries.

11

12 (Motion carries unanimously.)

13

14 PUBLIC HEARING:

15 Item No. 3 - (Continued) Timber Butte Preliminary Plat

16 #PP-08-002 - Robb Menlove

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18 MR. WILL MAUPIN: The next item on the agenda was another  
19 continued hearing on a Preliminary Plat 08-002 by Robb Menlove.

20 Do you want to give us a quick overview on that, Brad?

21 MR. BRAD HAWKINS-CLARK: You bet. The last page of the  
22 staff report from the last meeting, which was section 6, page 5,  
23 items for special consideration, included A through G. Those  
24 items, some of which were touched on in that October 14th  
25 meeting and some of which were not. That was the reason for the

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1 continuance. You got a memo from Jennifer Kharri, in our  
2 office, dated November 5th, which attached new information in  
3 the record. There is a letter from Fire District No. 2, a  
4 letter from the neighboring property owner, William E. Dean, who

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5 is the managing member of Timber Butte Development LLC, and an  
6 e-mail letter from Gem County EMS. Tonight, I believe, on your  
7 desks was a letter from the Idaho Department of Lands regarding  
8 a potential access to the Department of Lands on the north  
9 boundary of this proposed subdivision. Finally, also on your  
10 desks was an e-mail from Justin Druffel with Highland Livestock  
11 and Land Company. It's a follow up to their earlier letter of  
12 September 22, emphasizing the condition of Timber Butte Road and  
13 access. So those are all the new items in the record that were  
14 submitted for this hearing.

15 We checked and the hearing last time was not left open for  
16 just limited testimony. I think your intention was to take  
17 testimony on those A through G. So I think you can take  
18 testimony on any part of the application.

19 Going to that last page of the staff report, A through G,  
20 fire protection is Number A. The letter from Gem County Fire  
21 District No. 2 does deal with the access. It talks about the  
22 driveway but it doesn't mention anything about fire suppression.  
23 So I took their letter to imply they didn't have any issues with  
24 the additional two lots that would be created by the  
25 subdivision. I just wanted to point out that fire suppression

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1 wasn't actually a part of that letter. I don't think that,  
2 since it wasn't brought up by the Chief, it does not seem to be

3 an issue for them.

4 The Keller Associates letter, you did receive an amended  
5 letter at your last hearing. If you do decide to move this on,  
6 please remember that Keller Associates letter was the one that  
7 was amended, not the original one, and it's dated October 14th.

8 On C, the road easement, that is addressed by the letter  
9 from the neighboring property owner, Timber Butte LLC.

10 D is the Idaho Department of Lands. As I mentioned, you  
11 received their letter tonight and they are pulling back a little  
12 bit from a full access to a pedestrian only.

13 MR. DON WILKERSON: Question on that, Brad. It says grant  
14 an administrative, non-motorized progression access. How did  
15 you find administrative? Is that only for their use or for  
16 public use?

17 MR. BRAD HAWKINS-CLARK: Well, that's a good question.  
18 They say in the last sentence of that paragraph 'we no longer  
19 intend to pursue full public access. I don't know Department  
20 of Lands policies well enough to fully answer that question.

21 MR. DON WILKERSON: Well maybe the applicant can address  
22 that.

23 MR. BRAD HAWKINS-CLARK: Remember also that on this  
24 application it's a preliminary plat, not a minor subdivision.

25 So you have just the preliminary plat and they would have to

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1 come back with a final plat application, if this gets approved.  
2 Unlike minors which have the preliminary and the final together,  
3 these hillsides are separated. So the preliminary plat has to  
4 go to the Board of County Commissioners and if they approve it,  
5 it would have to go final plat, which is not a hearing and you  
6 don't see it, but you can put conditions that have to be met at  
7 the final plat. This is probably an example of one of those  
8 that could easily happen at the final plat because it doesn't  
9 substantially change the lot sizes or configuration or anything  
10 like that.

11 E is the Road and Bridge Department. That was really just  
12 for your discussion and information. It really wasn't any  
13 documentation that the applicant had to submit.

14 F is the emergency services. You saw the letter from the  
15 Ambulance Director.

16 G is the ground water. It's also really just a point of  
17 information and for your discussion.

18 I think that summarizes the points for the continuation.

19 MR. WILL MAUPIN: Any questions for staff?

20 MR. DAVID POOLE: The CIP on this is how much; do you know?

21 MR. BRAD HAWKINS-CLARK: 1,800.

22 MR. DAVID POOLE: That's the CIP?

23 MR. BRAD HAWKINS-CLARK: It's not. This application was  
24 submitted prior to the adoption of the CIP.

25 MR. DAVID POOLE: So the CIP does not come into effect.

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1 MR. BRAD HAWKINS-CLARK: No.

2 MR. DON WILKERSON: We received another letter here from  
3 Mr. Druffel. What he's really concerned about is the conditions  
4 of the existing road, looks like Liberty Road and Timber Butte  
5 Road. I guess everybody knows that the existing roads aren't in  
6 the best condition and now they're looking at two additional  
7 houses. It looks like they could also develop in Boise County.  
8 That would also impact these roads. At the time we do a  
9 subdivision, we could do possibly a DA to discuss mitigation of  
10 those roads because I don't know if the County can afford or  
11 wants to add additional cost to maintain those roads above their  
12 existing condition with no money received from the developer.  
13 So that can be addressed at the time of the subdivision or  
14 should it be addressed at the time of the rezone.

15 MR. BRAD HAWKINS-CLARK: Commissioner, this isn't a rezone.

16 MR. DON WILKERSON: I apologize. So we could address that  
17 at this time if we wanted to. What's the staff's standing?

18 MR. BRAD HAWKINS-CLARK: The Subdivision Ordinance has in  
19 the first chapter, it talks about the mitigation and it does  
20 clearly say the County can require a subdivider to mitigate the  
21 impacts of their development. As David has pointed out, that is  
22 coming from state statute. So what the County did in 2005 and  
23 2006 was said since there is no really good documentation for

24 how much impact that mitigation is, what is the dollar on that?

25 We just said 1,800 dollars per lot. That's what triggered the

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1 full CIP. So now we can get better numbers. I guess the way

2 I'm hearing your question, Commissioner Wilkerson, is 1,800

3 dollars sufficient and if not can the County now increase that

4 figure?

5 MR. DON WILKERSON: But you may have answered the question

6 with the old 1,800 dollars or the new CIP in effect, that's all

7 you can get. Is that true under the current guideline?

8 MR. BRAD HAWKINS-CLARK: Well, it's certainly true for the

9 CIP. I think the fairness piece with this application was

10 submitted, that's what the County was charging. Is it enough?

11 Probably not. However, that was the policy of Gem County when

12 they applied.

13 MR. DAVID POOLE: Is there a legal opportunity for a

14 Development Agreement or not?

15 MR. DAVID HARGRAVES: No. Development Agreements go with a

16 rezone. You can require mitigation. To mitigate the impact,

17 you have to know what the impact is. If you think the 1,800

18 dollars doesn't cover the impact, you need somebody to go out

19 and study what the impact of this proposal is going to be and

20 come up with a way for them to number 1, either pay for

21 improvements to be made, or for them to make the improvements

22 themselves.

23 MR. WILL MAUPIN: One concern I have with this particular  
24 instance -- I hear and appreciate what Don is saying, but one of  
25 the property lines is basically a County line. The way the

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1 Boise County maintains that road, the probability of more access  
2 or more use on Timber Butte could be a very big realty and it's  
3 out of our control. So to deny one person that is in our County  
4 a minor increase in impact just to have that impact in the next  
5 subdivision in the other County, to me, in this special  
6 circumstance, is not a fair treatment of that particular item in  
7 this preliminary plat.

8 MR. DON WILKERSON: But I think we can see if the Timber  
9 Butte Development develops the ground that is served by this  
10 area in Boise County, we can't enforce any fees. So those  
11 people get the benefit of our road because that's how their  
12 going to get to it 90 percent of the time.

13 MR. WILL MAUPIN: That's my point, Don. To force this  
14 particular land owner to pay more than what the Ordinance  
15 allowed for in the first place, knowing that there may be more  
16 use, that's out of our control anyway. It just doesn't seem  
17 fair.

18 MR. DON WILKERSON: On the other hand, if there's future  
19 development and we force that individual to upgrade the roads or

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20 go through some type of mitigation fee, then these folks benefit  
21 from it at no cost to them other than they're 1,800 dollars.

22 MR. WILL MAUPIN: They do, but it's timing of the  
23 Ordinance. We got to go with what it says.

24 MR. DON WILKERSON: Well yeah. I understand that.

25 MR. WILL MAUPIN: Any more questions for staff? The

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1 applicant can step forward and speak.

2 MR. ROBB MENLOVE: I'm Robb Menlove. I live at 11660  
3 Timber Butte Road in Sweet. Last month's meeting, as we met,  
4 there were the three things that we wanted to bring still. One  
5 was the letter from the Fire Department that we have. You have  
6 that letter and he says he does not see any problem with it.

7 The second was from the Department of Lands. I have spoke  
8 with her, Becky, several times about what they wanted. At first  
9 they weren't really sure. They don't really know what their  
10 intentions are with that land and they don't know what kind of  
11 access they wanted. Then they came back pretty quickly and just  
12 said they want that administrative access, which means if hey,  
13 we want to walk up there. Can we cross your land and just walk  
14 up there and see what it is and just see what we have up there  
15 and decide what we want to use that for? Of course we granted  
16 that. That's fine with us.

17 The third thing was the letter from the Timber Butte

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18 Development Company. That just granted that easement and you've  
19 got that letter.

20 So we've got those three things that you were looking for.

21 MR. DAVID POOLE: This administrative access, is that going  
22 to be a designated access?

23 MR. ROBB MENLOVE: It sure can be. She says in there that  
24 would be something we put on the final plat. What we would  
25 probably do is just right in the eastern corner at the utmost

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1 corner of our property there's a fence that goes across --

2 MR. DAVID POOLE: So there's going to be a dedicated deeded  
3 access.

4 MR. ROBB MENLOVE: If that's what required, then sure.

5 MR. DON WILKERSON: For public use?

6 MR. ROBB MENLOVE: That would not be for public use. That  
7 would be for their people to go and look at.

8 MR. DON WILKERSON: So the letter dated October 31st from  
9 William E Dean, that really addresses easement across the  
10 property in Boise County to get to that top lot; is that right?

11 MR. ROBB MENLOVE: Yes, sir.

12 MR. DON WILKERSON: It doesn't really address the easement  
13 for the benefit of the public lands.

14 MR. ROBB MENLOVE: It does mention that in the first  
15 paragraph. It says 'the purpose of this letter is to confirm

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16 for you and Gem County that in the event this subdivision is  
17 approved by Gem County, Timber Butte Development LLC, and Idaho  
18 --

19 MR. DON WILKERSON: You and/or Idaho Department of Public:  
20 Lands. So it gives you access to that.

21 MR. ROBB MENLOVE: It does go on to mention the Idaho  
22 Department of Lands.

23 MR. DON WILKERSON: Then you're going to provide another  
24 easement along that east boundary of lot 4 up to the public  
25 lands for administrative use.

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1 MR. ROBB MENLOVE: Yes, sir.

2 MR. DON WILKERSON: Do you know how wide that easement is  
3 going to be?

4 MR. ROBB MENLOVE: I don't. I don't know what their  
5 requirements are, what their standard is. It will be whatever  
6 it would need to be.

7 MR. DAVID POOLE: And Becky says nonpublic in there too.

8 MR. WILL MAUPIN: Any more questions for the applicant?

9 MR. ROBB MENLOVE: You spoke about the roads as well.  
10 Maybe just a quick word about it. You know we drive it every  
11 day, two times a day. We think it's maintained very well.  
12 Every time it starts to get a little washboard we kind of say  
13 it's kind of getting a little bit washboard and within a short

14 time, they just did it about 2 weeks ago, they just came in and  
15 ran the grader over it. It's 4 miles of dirt road we drive  
16 every day and we don't mind because we think it's taken care of  
17 very well.

18 MR. DAVID POOLE: I live in Ola and I understand that but  
19 the more the road is used, the more that washboarding happens  
20 and the more they're going to have to maintain it. That's the  
21 reason for this mitigation.

22 MR. ROBB MENLOVE: I understand that.

23 MR. WILL MAUPIN: If there's no more questions, you're free  
24 to sit down. Any public comment in opposition?

25 MR. DAVID LITTLE: David Little, 989 Edgemont. I think all

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1 of our last meeting, when Justin Druffel came to represent us, I  
2 think all of those things have been addressed. That letter that  
3 we sent in to Brad Hawkins-Clark, that was from the Boise County  
4 Road Department. So they were just saying that on their end  
5 they don't maintain that road during the winter. So all that  
6 traffic is going to come down the Gem County side. So that's  
7 just something to consider for Kim Reed or the Gem County Road  
8 Department of how much this is going to cost if we keep adding  
9 houses out there. So that's something for the Commission to at  
10 least consider as far as mitigation.

11 I know we had the issue of open range and to fence or not

12 to fence. With my little research I did this week, you don't  
13 have to fence. I didn't see any statute that said you have to  
14 fence it out. It's only if the cattle, whether it's ours or the  
15 neighbors, if they do get into that subdivision and cause some  
16 damages, then the property owners are on the hook for it. I  
17 think those were the only two issues we wanted to highlight.  
18 Thanks.

19 MR. WILL MAUPIN: Any further comment in opposition?  
20 Neutral? Any comments in favor? I guess you don't need to  
21 rebut. We'll close the public hearing at this time and have  
22 discussion between the Commission.

23 MR. BRAD HAWKINS-CLARK: I'm coming to apologize. I didn't  
24 give you a final staff recommendation. You have a preliminary  
25 and it has the issues from the last meeting. I apologize, I

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1 completely missed that. So you don't have in front of you  
2 proposed conditions or findings. I can read our nine required  
3 findings. I can read those into the record.

4 MR. WILL MAUPIN: I think if you would, for the record.

5 MR. BRAD HAWKINS-CLARK: This is what you need to decide  
6 on. If you find in favor or find not in favor, I guess just  
7 stop me and let me know.

8 Number 1 is adequate provisions have been made for a  
9 domestic water supply system that meets or exceeds the adopted

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10 water quality standards in Gem County.

11 They are proposing individual wells. The standard finding

12 for us on that one is they just have to provide a well drillers

13 permit through the Idaho Department of Water Resources.

14 Number 2, adequate provisions have been made and approvals

15 from the health authority sought for treatment of waste water

16 within the subdivision.

17 Our standard on that is to refer to Southwest District

18 Health Department. I do not believe that we received any

19 feedback. What happens on these once they submit a final plat

20 application is, typically, the Health Department refers to the

21 hydrology report, which the applicant did do. Leavitt and

22 Associates did provide that soils geology report, which you

23 received in your last packet. Normally, if you have a 5 acre

24 lot or larger, the Health Department has not had any comments

25 that would preclude development. They can find a place on 5

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1 acres where septic can work.

2 Number 3, proposed streets are consistent with the

3 transportation element of the Comprehensive Plan and meet Gem

4 County Road and Bridge Department standard.

5 There are no proposed public streets within this

6 subdivision.

7 Number 4, all areas of the proposed subdivision, which may

8 involve soil or topographical conditions, presenting hazards,  
9 have been identified and the proposed uses of these areas are  
10 compatible with such conditions.

11 By the way, if you have your Subdivision Ordinance with  
12 you, these are on page 25 and 26.

13 So that finding number 4 deals with the soil and  
14 topographical conditions and the hazards being identified. As a  
15 reminder, what they have done on this subdivision is restricted  
16 the areas to be built upon to the areas identified in the soil  
17 and hydrology report. So the majority of the land in this  
18 subdivision can not be built upon. This map doesn't reflect it  
19 but the map that is attached to the Leavitt and Associates does.  
20 It identifies build areas. So they have to build within those  
21 areas that their engineer has identified as safe and flat. I  
22 think the main issue is the driveway accessing the lots and  
23 that's where you're going to see the need to have carefully  
24 designed and constructed driveway access because of the  
25 topography. That will definitely need to be engineered because

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1 you're talking slopes that are 7 percent.

2 Finding 5, the area proposed for the subdivision is zoned  
3 for the proposed use and the use conforms to other requirements  
4 found in the Gem County Code and Comprehensive Plan.

5 This is zoned A-3, which is 5 acre minimum lot sizes.

6 Their four proposed lots are all greater than that.

7 Number 6, the applicant has made adequate plans to insure  
8 Gem County and it's citizens will bear no more than their fair  
9 share of costs to provide services by paying fees, furnishing  
10 land, or providing other mitigation measures for outside  
11 impacts.

12 You discussed the 1,800 dollar per lot fee compared to the  
13 CIP. That was on the record.

14 Number 7, the proposed subdivision complies with the design  
15 and improvement standards set forth in this Ordinance.

16 The main design and improvement standard involved with that  
17 is the power. Each lot does have to have power. Each lot has  
18 to have adequate vehicular access. At this point, they have  
19 stated that they will build those to Gem County standards.

20 MR. DON WILKERSON: Do they have to be underground?

21 MR. BRAD HAWKINS-CLARK: It needs to be. Again, this would  
22 really be more of a final plat issue where you get into the  
23 design. The wording is in Chapter 6 and it says any new  
24 utilities proposed for a subdivision, including electric power,  
25 shall be installed by the applicant. Such utilities must

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1 include underground surface connections to the street property  
2 line of each platted lot. So what we have usually required is  
3 to provide that underground. If there is overhead power that

4 can reach a building site, then if Idaho Power says that is  
5 sufficient -- there is no street, for example, in the back of  
6 this subdivision. So there is no underground unless they went  
7 through the private road, but it's not even a private road.  
8 It's a driveway. So if there is a private road or a public  
9 road, we require them to put an underground in. If there is no  
10 public road or private road, we allow them to extend overhead if  
11 it's possible and Idaho Power approves it.

12 Number 8, the proposed subdivision, when applicable, meets  
13 any standards for subdivision in a flood plain or hillside area.

14 This is a hillside subdivision. They do have to comply  
15 with the standard. Those standards were outlined in the Levitt  
16 and Associates engineer study.

17 Number 9 finding, the proposed subdivision complies with  
18 all other standards set forth in this ordinance or any other  
19 applicable ordinance or statute.

20 So those are the 9 required findings for a preliminary  
21 plat. Obviously, it's the Commission's call on how you'd like  
22 to proceed.

23 MR. DAVID POOLE: What's staff's comment on that?

24 MR. BRAD HAWKINS-CLARK: My review of the application, I  
25 believe the only one that probably needs a little bit of closer

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1 look is the hillside finding number 8, the hillside standards

2 are all met. This is largely an engineering issue.  
3 Re-vegetation, grading, cut and fills. Our engineer did look at  
4 their engineer's report and did not raise any significant  
5 concerns. As you saw in their letter, they do ask for a lot of  
6 information to be supplied with the final plat but they have not  
7 said that this is a significant concern enough to recommend  
8 denial.

9 MR. WILL MAUPIN: So that's not something that should hold  
10 this up because it's still going to be kind of a live issue  
11 through the final plat.

12 MR. BRAD HAWKINS-CLARK: It will. Of course, the Board of  
13 County Commissioners does hold a second public hearing. If this  
14 was the final decision, obviously, you would have to see these.  
15 My opinion is there is enough information in the record here  
16 that I think the Board of County Commissioners, through our  
17 findings and based on your decision tonight, we can prepare a  
18 more detailed recommendation.

19 MR. WILL MAUPIN: In Kim Reed's letter he mentions lack of  
20 right-of-way along the frontage of Timber Butte. Does he want  
21 more dedication?

22 MR. BRAD HAWKINS-CLARK: This plat does have right-of-way  
23 dedication along lots 2 and 3. I believe Kim's letter is  
24 referencing Timber Butte Road to the west, which is definitely  
25 narrow. I mean, it does not meet Gem County's 36 or 24 foot

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1 standard. It's out of the applicants hand. I think Kim Reed's  
2 reference is getting to this parcel.

3 MR. DAVID POOLE: Future development needs to be kept in  
4 mind.

5 MR. DON WILKERSON: There's one other item on Kim Reed's  
6 letter. It's the last item on the second page. The turn around  
7 on Timber Butte Lane should be 100 to 50 feet on either side of  
8 the centerline of the road, just before it enters Boise County.  
9 It looks like their looking at a turn around there. I don't  
10 know how far the Road Department maintains that road. So do we  
11 want to address Kim Reed's letter about the turn around at the  
12 end of the road before it enters Boise County.

13 MR. WILL MAUPIN: Isn't that something we can put as a  
14 condition of approval?

15 MR. DAVID POOLE: If they meet the Gem County Road  
16 standards, because then they're going to have to be approved by  
17 Kim Reed.

18 MR. BRAD HAWKINS-CLARK: On the plat, there is a 60 foot  
19 turn around actually on the face of the plat. Some of that is  
20 on Harvey Church's property who owns on the south side of Timber  
21 Butte. I just asked the applicant if he thought that would be a  
22 problem if the Commission made a condition that they provide  
23 that whole 60 foot, even if it impacts the south side and he did  
24 not think it would be.

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25 MR. DON WILKERSON: So would they have to get an easement

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1 from Mr. Church to put that there.

2 MR. BRAD HAWKINS-CLARK: Yes.

3 MR. DON WILKERSON: I'd like to make a motion that we

4 recommend approval of the preliminary plat for Timber Butte

5 Subdivision, in agreement with the 9 requirements of the

6 subdivision as stated by staff and also additional condition

7 that the applicant work with the property owner to provide

8 additional required easement to address the 60 foot turn around

9 at the driveway into the subdivision.

10 MR. WILL MAUPIN: Anything to be added to the motion?

11 MR. BRAD HAWKINS-CLARK: There are some other recommended

12 conditions from Keller. Does that include the accompanying

13 impact agency recommendations?

14 MR. DON WILKERSON: We'll amend it to include all letters

15 that were received from the impacted agencies and the County

16 engineer in reference to this application.

17 MR. DAVID POOLE: I'll second that motion.

18 MR. DAVID POOLE: Motion seconded. Any further discussion?

19 Those in favor? Those opposed? Motion carries.

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21 (Motion carries unanimously.)

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2 PUBLIC HEARING:

3 Item No. 4 - Rezone #RZ-08-005 - Elden Smith

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5 MR. WILL MAUPIN: Next item on the agenda tonight is the  
6 Rezone #RZ-08-005, Elden Smith.

7 MR. BRAD HAWKINS-CLARK: This application is to rezone 1.9

8 acres from currently M-2 heavy industrial to R-2 residential,

9 transitional, one acre minimum lot size. The address is 4698

10 Cascade Road. This property is outlined in the black box there

11 on the north side of Cascade Road, south of the Payette River.

12 A portion of the property does lie within Zone B of the flood

13 plain maps. Zone B is actually not the 100 year flood plain.

14 There is enough of a rise, apparently, on this property that

15 FEMA did not include the property in Zone A, which is the 100

16 year, but clearly there would be some potential flood concerns

17 even though it is zoned B.

18 They are proposing to maintain a single family residence

19 that is on the property, which is here in the southeast corner.

20 There are a couple of other out buildings on the parcel.

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21 The property has been zoned industrial since Gem County  
22 adopted zoning in 1978. That house is nonconforming and that is  
23 the reason that is driving this application. Since it is  
24 residential use in a heavy industrial zone, they are having some  
25 issues with their lending institution because of that.

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1 There was a letter that our Department issued back in  
2 September at the applicants request asking for the verification  
3 on the zoning and that's where we raised the nonconforming  
4 status and presented their options. We had to correct the  
5 letter a few weeks after that but basically it says the only way  
6 you can get it to be conforming is to have it be some sort of  
7 residential or agricultural zone. That's what triggered the  
8 application and they submitted for this R-2 zone.

9 (Brad showed and explained some site photos.)

10 MR. BRAD HAWKINS-CLARK: As far as the Comprehensive Plan,  
11 one of the main things you make your decision on with these  
12 rezones, it is designated agricultural and natural resources to  
13 the north, industrial to the south. So the south side of  
14 Cascade has got industrial designation on the Comp Plan. To the  
15 east is Priority Growth Area 3 within the County Residential  
16 Area and then to the west is the quasi-public, which is the  
17 Idaho Fish and Game property. This property itself is in the  
18 County Residential Area Priority Growth Area 3. As the staff

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19 report talks about, normally that would have to wait to be  
20 rezoned until 80 percent of Growth Area 2 is completed. One key  
21 difference with this property is it's already below 5 acres.  
22 It's 1.9 acres and has been that way for years. They're trying  
23 to bring the property into conformance with the appropriate  
24 zoning. Another key question for you tonight is industrial uses  
25 an appropriate use on the north side of the river. You heard in

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1 the other testimony tonight that they felt industrial was not  
2 appropriate in this area. The County has found that on the  
3 south side of Cascade Road there's already some industrial uses.  
4 That seems to be a growing industrial area on the north side of  
5 Cascade Road.

6 Staff's recommendation is to remove that industrial.

7 There's just not sufficient property there to have an  
8 environmentally friendly use that close to the river. I think  
9 agricultural or residential is a more appropriate use on the  
10 north side of Cascade Road, and being next to Fish and Game  
11 property, at least you have Cascade Road and the railroad as a  
12 buffer. So that discussion took place on page 4 of the staff  
13 report and the top of page 5.

14 The R-2 proposed zoning is more restrictive than the M-2  
15 zone that is currently there. The industrial would probably be  
16 less appropriate in terms of the flood plain and the wetland

17 area.

18 The last point in the staff report that I wanted to mention  
19 is on page 6, under zoning ordinance section 6. The zoning  
20 ordinance does say if your going to do R-2 zoning, you need to  
21 be on central water or community water. This property is not on  
22 either one. I think one of the things that the Commission needs  
23 to talk about tonight is that requirement for the R-2 zone. Our  
24 discussion in staff was that since there are no new dwellings  
25 being proposed and no new subdivision, is it really feasible,

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1 since they're below the 1 acre, that the existing well and  
2 septic would not change. If central water ever got close to  
3 that property then there may be that need to hook up. At this  
4 point in time, it seems appropriate to allow it to move on since  
5 there really is no change to the property. The closest central  
6 water is at the Shadow Butte Industrial Park but the agreement  
7 with the City of Emmett says that water system can only be used  
8 for the Industrial Park. So they really don't have the option  
9 to go down to the Industrial Park to get that central water.  
10 You really can't do community water unless your talking about  
11 more than one house. So if we were talking about a potential  
12 subdivision, I think that would be reason to deny since that's  
13 the purpose of the R-2 zone, but there's not a potential  
14 subdivision at hand here.

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15 MR. DAVID POOLE: Simply because the size of the property?

16 MR. BRAD HAWKINS-CLARK: Right. 1.9 acres. They would  
17 have to have 2 acres to do a split into a subdivision.

18 MR. DAVID POOLE: And if we went to an R-3 it would be out  
19 of compliance again; right?

20 MR. BRAD HAWKINS-CLARK: Right.

21 MR. DAVID POOLE: And the home was built before 1975, so  
22 it's been there.

23 MR. WILL MAUPIN: Questions for staff? We'll ask the  
24 applicant to step forward.

25 MR. MATT HEATH: My name is Matt Heath. My address is 332

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1 South Fernon Lake Way in Star. I'm here on behalf of Elden and  
2 Bonnie Smith. Mr. Smith bought this property in 1975, prior to  
3 when zoning came into affect in 1978. He's been the only person  
4 there. He's recently gone into assisted living and they're low  
5 on funds. They're trying to sell this property so they can  
6 continue paying for his healthcare. We have a buyer for this  
7 property. When everything went through underwriting,  
8 underwriter said we have to have a letter that says we can  
9 rebuild on this piece of property if for some reason the house  
10 burns down or whatever. The way it was zoned, we could not get  
11 that letter from Planning and Zoning. So we decided we would go  
12 into trying to get a rezone and go about it that way. So that

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13 brings us here today.

14 MR. WILL MAUPIN: Questions for the applicant? Do we have  
15 any public comment in favor?

16 MS. PATTI LANGNER: My name is Patti Langner. I live right  
17 there at 4770 Cascade Road and we really don't need any more  
18 noise.

19 MR. DAVID POOLE: So you think residential is good?

20 MS. PATTI LANGNER: Oh, yes. We really don't need any more  
21 noise.

22 MR. WILL MAUPIN: Any public comment in opposition?

23 MR. STEVE GROENING: My name is Steve Groening. I'm the  
24 plant manager for the Unimin Corporation at 4601 Cascade Road.  
25 I'm the maker of noise. We've been making noise over there for

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1 a lot of years just kitty corner to the property that Smith  
2 owns. I'm sorry to hear about his going into the nursing home.  
3 It's a hard thing for industry to co-exist with residential  
4 people in a community and we understand that. We do the best we  
5 can. I come here with a little bit of mixed emotion trying to  
6 oppose a good neighbor with what they're trying to do and  
7 survive in a community but we understand there are times when  
8 our goals aren't necessarily the same. I think, in this  
9 particular case, we're looking at opportunities of growth and if  
10 we had our way we would look for opportunities to grow and see

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11 our business grow and potentially provide more jobs for this  
12 community and expand our operations. So what happens when  
13 people come in and buy property and they want to put new houses  
14 on that property and they want to see their dream homes built  
15 and those kinds of things whether it's next to a sand plant or  
16 not? What used to be in 1975 has changed in 2008 and we're  
17 seeing a lot of people that want to come in and they want to  
18 change what's happening next door. Frankly, those are the  
19 things that we're concerned about. From Unimin's perspective,  
20 we don't want to see people necessarily come into our  
21 neighborhood and say we want you to change the way you do  
22 business because we've tried to adapt and change the way we try  
23 to react with our noise making, dust making, all the kinds of  
24 things that heavy industry does. At the same time, we need room  
25 to do what we do. We need opportunity to do what we do and

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1 still provide jobs for people in the community. So that's just  
2 what we're about. That's what heavy industry is about and what  
3 I believe the whole M-2 zoning classification is about. To go  
4 right next to it and put an R-2 zoning classification in where  
5 there's existing M-2 classification seems like a conflicting use  
6 thing. To me, it just doesn't make sense in this particular  
7 opportunity where we have sort of a clear cut buffer already in  
8 place.

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9 I understand that Elden has been there all this time. It  
10 hasn't been without opportunities to have to work together. I  
11 mean there's been times where he's asked us to make changes to  
12 our stock piles or do things. There's been times our stock  
13 piles were so high that he said he couldn't get TV reception  
14 because it blocked his view of the butte or something like that.  
15 So we'd get out there and knock the pile down so he could get  
16 his TV reception to come in. Those are things we're willing to  
17 do but times change and we understand that with new neighbors  
18 things change; relationships change. With this transition, who  
19 knows what it will bring. For us, I think it's good to have a  
20 buffer. I know that in long term planning and with all the work  
21 that you guys do in your planning, it makes sense to us from a  
22 corporate point of view that we could look for maybe a  
23 commercial or other kind of arrangement, maybe even put some  
24 kind of restriction on the deed. There may be some creative  
25 ways to look at it rather than just kind of grinding an R-2

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1 residential zoning in. So I'd just be asking for some kind of  
2 consideration for us to co-exist together and have some kind of  
3 a buffer between absolute residential neighbors and heavy  
4 industrial neighbors.

5 MR. DAVID POOLE: Do you feel that 1.9 acre piece of ground  
6 would be a good place to put in something that is heavy

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7 commercial or even industrial because it's so close to the  
8 river? Because it's so close to the water, do you feel there  
9 would be any complications in leaving it where it's at? I've  
10 got a manufacturing plant myself so I understand, but there's  
11 certain things that being that close to a flood plain and the  
12 situation there, I think probably the best use is residential.  
13 It's been there since 1975. It's not like we're adding  
14 something in.

15 You're saying you wish there was something we could do and  
16 I wish there was too. I totally understand, but I don't know  
17 what the answer to that is unless we can get the public to  
18 suggest some of that, sometimes it's difficult to deal with.

19 MR. STEVE GROENING: I stood actually before this  
20 Commission at one point a number of years ago about the parcel  
21 of ground directly to the north of us. This case to the east of  
22 the parcel that we're discussing now is very similar. It was 2  
23 acres and he wanted to build it and we ended up working out a  
24 deal there to where he wanted to build a place and it worked  
25 where we put a conditional thing together. I guess he opted out

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1 of doing that but as it turned out we looked back over the  
2 records and it turns out that all that property along there was  
3 originally built by the original sand plant. That's why that  
4 land is there in the first place. So there's some consideration

5 on what you can do with that land. We've got people that are  
6 mixing our sand with peat moss and selling it to the golf  
7 industry. So now we've got people that are starting to do  
8 creative things with blending sand and there's people that are  
9 talking about all kinds of things like what can we do to bring  
10 industry in and make concrete block and do things that maybe  
11 aren't quite as impacting to the environment as you might think  
12 you see is happening on the sand plant site right now but might  
13 be a little more compatible with a site like that. I'm not  
14 saying it would happen but it could happen. You don't know  
15 those things when all of a sudden all the heavy industrial zoned  
16 land is gone and all you have are houses. So we're just making  
17 the case that we need to preserve what heavy industrial land  
18 we've got because I think that's the future of jobs in this  
19 valley.

20 MR. DAVID POOLE: Have you made an offer on the land?

21 MR. STEVE GROENING: Well, we don't have a use for the land  
22 or we would.

23 MR. DAVID POOLE: But it's still in your use.

24 MR. REISSE PERIN: You don't have an offer but since it is  
25 zoned the same, do you have an interest and do you have a

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1 proposed use if you did?

2 MR. STEVE GROENING: I can tell you we could have an

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3 interest. I can't tell you we have a use for it. Unimin is  
4 always looking for opportunities for expansion.

5 MR. WILL MAUPIN: Do we have any further comment in  
6 opposition? Neutral?

7 MS. MICKI BUTTLER: My name is Micki Buttler. I live at  
8 4175 South Johns Avenue. We're the owners of the property on  
9 the east side, 3 acres on the north side across from Unimin. I  
10 guess I'm speaking in the neutral mode. I just think you need  
11 to take into consideration it's 2008. We're not in the sixties  
12 anymore. We're starting to see development, as you know. I  
13 just think that along the river, heavy industry doesn't have any  
14 use. You see that in every County they're taking heavy industry  
15 off the river. I don't think it's fair to punish a home owner  
16 that already has a house there.

17 MR. WILL MAUPIN: Any further comment in neutral?  
18 Rebuttal?

19 MR. MATT HEATH: The house was listed and it was about 2  
20 and a half, 3 weeks on the market until we had an offer. The  
21 gentleman that made the offer on the place realized across the  
22 street is Unimin Sand Plant. He knows that's industrial. He is  
23 fine with that. Our gentleman is out of funds. We have a  
24 buyer. There is a pending contract and it is pending on the  
25 zoning change.

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1 MR. WILL MAUPIN: Any questions for the applicant? At this  
2 point, we'll close the public hearing and open discussion by the  
3 Commission.

4 MR. DAVID POOLE: My feeling is the finding of facts from  
5 the staff report pretty much makes me decide that to rezone this  
6 property to R-2 is probably the right thing to do. First of  
7 all, it was purchased prior to the zoning decision. Secondly,  
8 it fills the bill enough that we're not trying to go outside the  
9 envelope of what our zoning ordinances are. I think it fits  
10 well enough that we can go ahead with recommending the rezone to  
11 the Board of County Commissioners. I would move that we  
12 recommend to the Board of County Commissioners that this be  
13 rezoned from M-2 to R-2 in light of the staff recommendations  
14 and the findings that the staff made. I see no problem with  
15 doing that.

16 MR. WILL MAUPIN: I have a question for staff before we  
17 finalize the recommendation. Can we put in that anywhere that  
18 mandatory hook up to sewer and water if it becomes available?

19 MR. BRAD HAWKINS-CLARK: Not without a Development  
20 Agreement.

21 MR. WILL MAUPIN: Never mind then. Do we have a second to  
22 the motion?

23 MR. REISSE PERIN: Second.

24 MR. WILL MAUPIN: Motions been seconded. All in favor?  
25 Opposed? Motion carries.

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2 (Motion carries unanimously.)

3

4 REGULAR MEETING:

5 Item No. 1 - Items from the Public

6

7 MR. WILL MAUPIN: Are there any items from the public?

8

9 (No public comment.)

10

11 REGULAR MEETING:

12 Item No. 2 - Items from the Planning

13 Director/Administrator

14

15 MR. WILL MAUPIN: Items from the Planning

16 Director/Administrator.

17 MR. BRAD HAWKINS-CLARK: I do have a couple of quick

18 things. Number 1 is minutes. Due to fairly substantial budget

19 cuts that the County is doing right now, we lost our

20 transcriptionist. So what we would like to propose is that we

21 do a summary minutes for you except when you have a continued

22 hearing and then we could do a lot more detail. So what do you

23 need for minutes?

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24 MR. DAVID POOLE: I think, for the most part, summary.

25 MR. DON WILKERSON: I agree that a summary is good and if

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1 there's something of special importance then we get a full blown

2 copy of the minutes for that particular item.

3 MR. BRAD HAWKINS-CLARK: Okay. You'll still have the

4 basics but we're going to cut it way back.

5 The ordinance workshop. The last time we had this matrix

6 discussion Commissioner Perin has voiced a little bit of concerns about that.

7 Terri has had a couple of deaths in her family. So

8 unfortunately, she has lost a little bit of time but I think she

9 is close to having a completely revamped matrix for you. So I

10 guess we're down to the question of timing and workshop and

11 whether or not you want to meet in December. At this point, we

12 told the one person that applied that we wouldn't get them in

13 December. So you don't have any hearings for December. As far

14 as the workshop, do you want to meet one more time and then set

15 up a hearing in January?

16 MR. DON WILKERSON: I guess you make the dates and we'll

17 see if we can work with you.

18 MR. BRAD HAWKINS-CLARK: So is the 24th of November an

19 option? We'll tentatively put the 24th down.

20 MS. FRAN YETT: What time?

21 MR. BRAD HAWKINS-CLARK: 6 o'clock.

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22 The Board of County Commissioners did approve the Merrill  
23 rezone with your recommendation.

24 Thank you to Don and Will for attending our BLM workshop.

25 There's going to be a report coming out from the economist that  
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1 did that. We'll be sure to get that to all of you.

2 The last thing is on this Thursday there's a workshop at  
3 Boise State on land use and transportation that is going on all  
4 day but there is an evening presentation. It's just a training  
5 opportunity if you're interested.

6

7 REGULAR MEETING:

8 Item No. 3 - Items from the Deputy Prosecuting Attorney

9

10 MR. WILL MAUPIN: David, anything from you?

11 MR. DAVID HARGRAVES: Do all of you have a copy of this?

12 These are the ordinances that we use in our land use here in Gem

13 County. I just want to let you know there's a little cheat

14 sheet on hearings. In case you guys are ever required to fill

15 in for Will there's a little thing here that talks about the

16 hearings.

17 The last thing I have for you is findings. Your decisions

18 have to be based on the information that is in the record and it

19 also has to be based on the ordinance standards and there are

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20 always certain findings that have to be made. If any of your  
21 cases go up to the Board of County Commissioners on appeal, the  
22 Board is going to be looking at your findings and  
23 recommendations. If any of the Boards decisions go up to the  
24 courts, they're going to be looking at the findings and the  
25 decisions and make sure that the ordinance standards were

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1 followed.

2 So any decisions you make, take a close look at Brad's  
3 staff report. He defines what those are and he gives you a  
4 little analysis. With your decision, if you would just take a  
5 minute and read through those and specify if you agree with  
6 staff or not, it helps staff to go through each one of those and  
7 it helps to draft a written decision, which is required for any  
8 decision that you make.

9

10 REGULAR MEETING:

11 Item No. 4 - Items from the Zoning Commission

12

13 (No comments from the Commission.)

14

15 REGULAR MEETING:

16 Item No. 5 - Adjourn

17

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18 MR. DAVID POOLE: I move that we adjourn the meeting.

19 MR. DON WILKERSON: I second.

20 MR. WILL MAUPIN: Meeting adjourned.

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