

Bellevue Common Council
Special Meeting
July 16, 2018
Minutes

6:00 pm Call to Order:

Mayor Koch called the meeting to order. Council members present were Shaun Mahoney, Greg Cappel, Bob Leahy, Kathryn Goldman, Ned Burns, Craig Wolfrom. Staff present were Diane Shay, Community Development Director; Frank Suwanrit, Public Works Director; Dave Patrie, Benchmark Engineering, and Rick Allington, City Attorney.

The Mayor gave a reminder to please turn off cell phones except for emergency personnel.

1. Notice and Hearing Compliance:

Shay stated notice for the July 16th meeting was published in the Idaho Mountain Express on June 27, 2018 and posted at the Bellevue Post Office, the bulletin board outside City Hall on July 11, 2018. Goldman moved that the notice was in compliance with Idaho Code §67-2343, Burns seconded, motion carried unanimously.

Call for Conflict as outlined in Idaho Code §59-703(f) – 704 with any Agenda item. Koch asked if anyone on the Council had a conflict with any item on the agenda. No one stated they had a conflict.

Call for Disclosure of Ex-Parte Communication regarding Strahorn CUP Appeal - Rick stated that it became evident that Council was getting communications from one of the parties to the appeal. Ex parte communications have to be disclosed. Allington sent Council an email and received responses relating to the Benchmark contract and some of the appellant procedures. Allington wanted to put these on the record and they have been dated and initialed for the record. Allington asked for the record if anyone on Council has been influenced by the emails they received. For the record, there were no responses. Allington additionally stated that there was an opinion piece published in the Mountain Express by one of the parties to the appeal and could also be considered ex parte communication. Leahy stated he has not read the editorial. Allington again asked if the editorial influenced anyone's ability to judge the appeal fairly. For the record there were no responses.

Hearing by City Council of the Strahorn CUP decision appeal by Steve Carlisle, appellant.

Koch stated that the procedure will hear from staff, then the appellant will speak. Each party will be given 15 minutes to speak. Questions will be allowed to staff then to appellant. Jim Laski, representing the applicant, will also be given 15 minutes to speak as well. After all speakers and questions have concluded, City Council will deliberate.

Koch reiterated that this meeting was not a public hearing, no public comment will be taken.

Shay stated that she and Dave Patrie, Benchmark Engineering, generated a staff report with procedural history and a summary along with the analysis of the three standards that are under appeal, E, F & H.

There are standards that state that there is adequate evidence that the standards are met, and the threshold is not that they need to provide "No Impact". Shay stated that she and Patrie were ready to take questions at that point. Koch asked Council if there were any questions for staff.

Goldman asked a question regarding D-4 and D-5 in the large record binder provided to Council. She stated this was relating to Standard H or possibly F. Goldman stated that she saw that there was at the bottom of the page an ICU level of service with a grade number. That was in 2005. In D-4 it appears that there is a grade and in D-5 that letter has changed. She would like to ask if those are grades for the level of service of each street or what they reference. Pine St and 75 D-4 is an A and in 2015 comparing to D4 A becomes a C Similarly, Cedar is an A and becomes a B. Goldman asked if that indicates a drop in the level of service. Patrie stated that yes, it did. He then referred to Page 17 in D-1 where there is a table that defines the level of service. He also stated that you would expect to see some changes. Not only did it look at the 2005 and 2015, it made an assumption that it increased by 3% per year, consequently you will see some drop-in service. Patrie felt the level of service drops in the study didn't warrant any mitigation. Patrie also references Page 25 of D-1. Patrie stated that is for all traffic. Goldman asked why the study covers 150 lots when the build out is 205. Patrie explained that the study built on a prior study on 23 lot subdivision that was existing in the City of Bellevue, plus the 150. That is a cumulative number.

Koch asked if Goldman had other questions. Goldman had no more questions at that time.

Wolfrom asked about Page 1 of the summary in D-1. Wolfrom was concerned about the difference in the original study during the annexation. Patrie stated there was discussion of several emails regarding that situation among the engineer for the City and Peak Hour Engineering, Lori Labrum, and Jeff Loomis, Galena Engineering, and it was concluded that there wouldn't be any impacts that would be significant. Patrie believed that there was some contemplation of community housing at that point and those communications were reviewed.

Wolfrom stated that he wasn't sure that a traffic study can speak to this, but it's a concern. He feels that some of the controversy is traffic moving through neighborhoods, through Sunrise. Wolfrom asked if the findings of the study were that the intersections would be able to handle the traffic. Patrie stated yes, that was the finding. Wolfrom stated the Community is not happy with not having traffic directed in some areas. Wolfrom also stated one thing that he noticed was the report studied two different streets and the Commission talked about traffic coming down two street that were not in the report. He felt there was a disconnect between the streets from P & Z and the study. The study reflected Cedar and Pine and Elm and another street for commission. Wolfrom asked Patrie if there were studies regarding intersections regarding infrastructure or if there was a way to determine different ways for moving traffic through neighborhoods without impacting other streets. Wolfrom wanted to know how the City would be getting people safely and effectively through existing neighborhoods. Wolfrom would like a recommendation from Patrie.

Patrie, if directed, a traffic study could be directed to specific intersections. Patrie restated that he was hearing about people's perceived comfort level. A traffic study is going to take a science-based approach. It's a very systematic and scientific approach. Patrie stated he understood, however, that people didn't like to see one more car on their streets. Goldman followed up stating that Pine street has taken a beating. She asked Patrie his opinion regarding the level of degradation on Pine Street especially

after this spring. Patrie stated he was not directed to study this by the commission so he has no information regarding the level of degradation over a period of time. Patrie said the Commission did consider existing conditions and did take them into consideration. Goldman asked about the process of a traffic study, i.e. they would be measuring where people are traveling with counters. She stated she believed this is to determine where people are choosing to go as opposed to where they might go. Patrie stated she was correct and that it is based on actual counts. It is a reflection of what is happening at the specific time. The traffic may make recommendations based on how to change behaviors, traffic control, stop signs.

Cappel asked for clarification that he was not tasked to look at the long-term impact or degradation of streets from increased traffic generated if this. Patrie restated the question as he perceived it was regarding the degradation over the recent past on Pine Street and he was not directed to do that. The answer is that I don't have an opinion, because I wasn't asked to do it. Shay stated that the damage to Pine St came after the Findings of Fact were signed. The flood event happened on March 23rd.

Wolfrom asked Frank Suwanrit, Public Works Director if he could give his opinion regarding the public services ability to serve. Wolfrom asked if streets, water, sewer, would the City be able to provide those services. Suwanrit stated that just looking at the 47 lot CUP, he feels comfortable that water/sewer and streets. There are potholes, but they are existing now and will need repair whether there is a development. Patrie stated that the commission did condition the CUP based on water sewer studies and the will serve letter. Their approval was conditioned on Public Works issuing the will-serve letter. The study will let the City know where the water/sewer will be.

Cappel asked if the will-serve will address the build out or just Phase One. Cappel is interested in the full build out. Patrie asked Suwanrit about full build out as opposed to the current Phase as he believes that was all the Commission was allowed to address for the application. Cappel stated he believed that study would address full build out.

Koch asked for any other questions for staff. There were none.

Mahoney stated that this appeal process is only for Phase I and not to get ahead of ourselves.

Koch then turned it over to the Appellant.

Steve Carlisle, 270 Sunrise Ranch Road. Carlisle introduced Shawn Crea as the first speaker for the appellant.

Shawn Crea, 230 Sunrise Ranch Road: My name is Shawn Crea. I have resided at 230 Sunrise Ranch Road for the past fifteen years.

I believe that there is a need for additional housing valley-wide and I believe that the Strahorn subdivision can be part of that solution. However, the city of Bellevue should not ask taxpayers to support a development that fails to address the negative impacts to its citizens. The Conditional Use Permit for Strahorn has not adequately addressed traffic impacts and their mitigation.

As an engineer working for Power Engineers, the first thing I look for in any engineering study is what are the presumptions behind the study and what isn't covered. The 2006 traffic study for the subdivision application is based on an Idaho Transportation Department model which focuses on the ability of existing roads to adequately move vehicular traffic. It does not address the impacts of congestion, decreased safety, noise, pollution, and overall quality of life of the community through which these vehicles flow.

When Galena conducted the traffic study, Cedar Street was open and provided another primary pathway in and out of Slaughterhouse Canyon. The study mentions Sunrise Ranch Road only as a minor collector route to Pine Street and does not mention Elm Street at all.

The study also projected a development with less density. In 2006 the developer proposed 173 homes resulting in an estimated 1643 vehicle trips per day. However, the current proposed development has 205 homes, an estimated 1947 trips per day or 18.5% increase. Recreational traffic using O'Donnell Park was not considered and there is no discussion of reduced property values due to noise, traffic congestion and reduced safety.

Driving down Elm or Slaughterhouse during a Friday night soccer game is to encounter chaos around O'Donnell Park; cars double parked, cars parked on the edge of the field, cars on both sides of these narrow residential streets. The addition of Strahorn will only exacerbate this situation, yet the CUP fails to address this ongoing neighborhood problem. Just because these conditions already exist, does not relieve the developer of their obligation to mitigate additional impacts.

The City should conduct a new traffic study, one that examines all options including Cedar Street and Strahorn Ranch Road, Safe Routes to School, park reconfiguration and pedestrian connectivity. A park master plan should address these issues in conjunction with the traffic study. Mitigation should enhance other modes of travel such as walking and bicycling. Mitigation should include calming features such as speed bumps, roundabouts, striped and narrower driving lanes. Mitigation should include No Parking zones and screening from traffic on 8th Street.

Finally, the study needs to assess the cost of mitigation and assign joint responsibility to both the developer and the City.

And lastly, growth is inevitable, but growth should not simply facilitate the flow of vehicles. It should support walkers and runners, kids on bikes, and parents biking with kid carriers. It should provide a safe community that is not harmed by growth. The Council has a choice between a study that facilitates vehicle traffic alone or a study that support community and a high quality of life along with an efficient flow of traffic. Thank you.

The next speaker was Chris Cey. I am Chris Cey, I live at 240 Sunrise Ranch Road and have been a resident since 2002. The Strahorn Subdivision can be an outstanding asset to our community but the way it has been approved in the CUP is inadequate and simply does not follow our comprehensive plan for pedestrian connectivity in multiple ways.

The subdivision needs to provide ease of access to existing and future trails in Slaughterhouse Canyon, China Rock Ridge, Cowcatcher Ridge, East Side mine trail and Slaughterhouse Canyon Road. Every day cars at the entrance to Slaughterhouse and the end of Sunrise Ranch to take advantage of a most important recreational need as determined by a survey in Blaine County and noted in our comprehensive plan. East side access in the plan is convoluted and directs all access into Sunrise Ranch Subdivision on Parkside Road. Safe Routes to School is still inadequate from 6th Streets to the east end of Sunrise Ranch with a four-foot pathway when our ordinance requires a minimum of five feet. There are no sidewalks in Cowcatcher Loop.

Strahorn subdivision does not follow the Comprehensive Plan transportation section in the following objectives:

Objective 4: Enhance pedestrian connectivity and safety by linking major amenities in the City.

1. As Strahorn subdivision is built out continue bicycle and pedestrian route east.
6. Incorporate the recommended guidelines found in the Blaine County Community Bicycle and Pedestrian Master Plan.

Mr. Pfaeffle says that sidewalks will make the subdivision unaffordable and the commission accepted it. Foxmoor subdivision in Hailey put in sidewalks with no curbs to reduce cost yet they provide parking and pedestrian walkways. The same design has been accepted in Carey. By not installing sidewalks we are not following the comprehensive plan for providing pedestrian connectivity.

The Safe Routes to School National Partnership provides strong evidence for incorporating pedestrian routes that have multiple benefits. According to their research "Efforts to increase active (pedestrian) transportation can be slowed by a lack of resources to invest in sidewalks, crosswalks, trails and traffic calming. Improving walkability has more than health benefits though, it can also be good for the pocketbook, government budgets and the overall economy. The cost savings and economic benefits of investing in safe routes to school, walking and biking make the case for increasing those investments.

Objective 5: Incorporate bicycle and pedestrian transportation corridors in new developments.

1. Connect new developments with existing or proposed bicycle and pedestrian routes and include sidewalks and lighting.

Blatantly clear, include sidewalks and lighting.

Objective 6: As the population of Bellevue increases and/or expands ensure sufficient parks and recreation facilities are provided.

1. Work with the City of Hailey, BCRD, Blaine County, the Wood River Land Trust, and other entities and land owners to complete the Toe of the Hill Trail from Hailey to Bellevue.

The Toe of the Hill Trail should go through the Strahorn subdivision to the east side with inviting and safe walkable access for the residents of Strahorn subdivision and residents of Bellevue and not through

Sunrise Ranch. A minimum 10' pedestrian corridor with landscaping along the border of the two subdivisions would provide the trail as it is currently being used.

We all want safe streets plus pedestrian and bike corridors. Bellevue has the opportunity to have it all. We need to demand it from this developer. The benefit will be more enjoyable place to live and an increase in the value of our properties. Pedestrian transportation corridors make common sense and financial sense. Thank you.

Tom Blanchard, 33 Lower Broadford Rd. Local governments such as Bellevue are required to establish procedures that protect both property and due process rights. Bellevue's zoning ordinance establishes procedures for the CUP permit hearings and the appeals. The appeal section 15.4 contains very specific language directing how the Council will hear those appeals with strict limits on who may enter the discussion and how long they may present.

The City has not followed the Ordinance in this appeal. The language is pretty specific. "The parties to the appeal may present briefs to the Council. Each party may present no more than fifteen minutes of oral argument.

There are two parties, the Appellant and the Respondent. The ordinance doesn't mention staggered briefs, it doesn't mention Staff reports, the ordinance doesn't mention third party briefs, but all of the above have been allowed in this appeal process. The City has shifted those rules enough times so that it could be described as arbitrary or capricious. Both parties agree to the staggered brief, but we object to the third-party brief, third party agreed, third party oral presentations and the Staff report is not authorized by the ordinance. In the event the Council chooses to accept third party presentation, we request an opportunity to offer third party presentations.

The City as Respondent failed to present a Respondent brief in a timely manner, and now submits a Staff report that in fact is a Respondent rebuttal. This Staff report is clearly a late Respondent brief and would be thrown out from any court hearing. If the Council chooses to accept this report, we request an opportunity for rebuttal as it contains inaccuracies and misrepresentations.

This appeal is far too complicated to handle in a fifteen-minute response. It is difficult to know where to start but however our rebuttal brief posed one question that is critical to the evaluation of the appeal, the invalidity of the first amendment. This is the place to start your evaluation and Mr. Laski has agreed in saying that it is a threshold issue. The first amendment alters the original agreement, the development agreement in the annexation ordinance and because the annexation agreement is a land use development agreement, any amendment must follow the procedures of the Idaho Land Use Planning Act that provides "an opportunity for all affected persons to present and rebut evidence". The previous Council did not allow public comments at the meeting when they approved the first amendment and without that opportunity for parties to rebut evidence the due process clause has been violated. Therefore, the first amendment is invalid. We urge you to address this issue first because your decisions on this will shape your decision in many of the other issues of the appeal.

There are three components to our appeal:

1. The invalidity of the first amendment
2. Procedural errors in the record and meeting procedures
3. And finally, a lack of reasoned statements of the Findings of Fact for CUP criteria A – J.

We recommend you approach the evaluation in that order. After reviewing the invalidity of the first amendment, we recommend that Council modify the Commission findings and decision. Remanding will add time and expense to the City, while modifying, the Council has the option to open the record and take more evidence which is necessary to adequately address community impact and procedural errors.

We would reserve two minutes for rebuttal, and we have copies for the record. Thank you.

Clark notified the appellant that they have 2 minutes and 18 seconds of time remaining.

Koch asked Allington if he should now allow questions from Council to the appellants.

Goldman asked the appellant to read their list one more time, Appellant asked if that was the components of their appeal, Goldman concurred. Blanchard restated the list, the first being the invalidity of the first amendment, the second is procedure errors and the meeting errors and proceedings that we've identified in our brief, and the third is a lack of a reasoned statement of the Findings of Fact CUP criteria A – J.

Wolfrom asked the appellant were the larger issues the reasons for going after E, F & H, bringing the larger issues in was there no opportunity to ask or stall or stop the proceedings. Wolfrom asked were the Appellant's points on the first amendment not being valid, and the other two points were addressed to the Commission previously and are they grounds for an appeal? If they are, why not come to Council with that appeal on those three grounds, instead of E, F & H. Blanchard stated that they had to base the appeal on the record and all of these issues were part of the record or the evidence for them are contained in the record, so that was the way we structured our appeal. That's the way we had to come to council. Wolfrom stated that he was confused by the request because the Appellant acknowledges that Council has limitations put on them. Wolfrom asked again if the appeal is not based on E, F & H. Blanchard stated they used E F and H as the most obvious examples that needed to be addressed, I think the same reasoning applies to the other criteria, in other words, the lack of reasoned statement applies on every case. He felt that if Council makes the findings on three criteria we've enumerated and discussed Council will have ample reason to modify that decision and go back and look at the total record or the total application.

Goldman asked Rick to weigh in on the discussion for the record, whether they can focus on these standards of criteria or include the additional items brought forth by the Appellant. Allington stated that their notice of Appeal, which is what you file when you want to appeal something, tells you to set forth your reasons for appeal and E, F, & H are the reasons for their appeal. They filed an amended notice of appeal to correct some typographical errors, so they know that there is that process. They did not use that procedure to amend their arguments so as a matter of fairness to the other parties the Council is stuck with that. A party can't start adding arguments down the road as the other parties haven't had time to prepare for it. Allington stated that Council needs to hold to E F and H as that is what is in their

notice of appeal. Cappel stated that what Mr. Blanchard brings up with issues that are overarching in his mind, the Council's evaluation of the appeal and the CUP are far more important than E, F and H. His question to Allington was how or will Council be able to circle back to these issues? Allington suggested that Council allow the applicant to address that, and that Council still has to deliberate.

Jim Laski, here on behalf of the applicant. Thank you for giving me the opportunity to speak. I find it a little bit ironic that the appeal was filed by Steve Carlisle yet now it's a citizens group that just sort of morphed and they can all seem to speak, but the applicant who has an interest in this issue procedurally shouldn't have an opportunity to speak, it doesn't make very much sense to me. It seems to me that this is Steve Carlisle's appeal because he's the only one who signed an appeal. Furthermore, the appeal isn't a LLUPA appeal under the state ordinance, it's an appeal under your ordinance, it's just an appeal under your CUP ordinance. You have broad latitude in interpreting your ordinances and you guys get to decide this appeal. Further the appeal is limited to the record before you, it's pretty clear in your ordinance that it says that, and it seems that the arguments that we've heard here, at least from the first two gentlemen, are beyond the scope of what's in the record. They are sort of opinions about what should happen, more like testimony rather than arguments based on what's in the record.

Another addition to the record, I don't know if it's now become part of the record or not, is a these attachments of the Givens Pursley Land Use Handbook which is basically marketing material for a law firm in Boise. It's got a lot of legal information in it and whatsoever, but it's not a learned, legal treatise that people rely on. People go there and use it as a step to make arguments, but people don't site Givens Pursley, that's like siting to the law office of Rick Allington or the office of Jim Laski. It's not a legal treatise.

The appellants talk about this development being a substantial burden on taxpayers, but what they want is that they wanted the Commission to rely on evidence, testimonial evidence that they rather than the reports in the application package that were before the City Council, so it's an emotional appeal. The record is full of emotional comments by people. The case that they cited in their appeal, *Crown Point vs Sun Valley*, is actually pretty interesting because that case was reversed because Sun Valley relied on that type of testimony from members of the public rather than relying on evidence that was before them, the reports that were in the application materials. Certainly, people have factual evidence about what they see or what they perceive, people driving down the street, that type of stuff. But just the general complaints of people or the general thoughts are not what you can rely on when making a decision and what the P & Z had to do was look at what was before them and then decide taking into effect what the various testimony was, thoughts that people had. They had to weigh what the thoughts of the residents that made discussion, how did they impact the Safe Routes to School. They had to make a decision. They had the staff report which points out they went through that criteria, weighed the evidence that was before them, they weighed the commentary that was before them, and they made a decision and they supported that decision.

I think that decision is properly supported, even with the traffic study. There was a discussion about the traffic study, whether or not that traffic study was still valid and still be used or not. The City had its own experts look at the traffic study and made a determination that traffic levels were not yet at the levels they were predicted to be in that traffic study. That's why everybody, that's why it was agreed that

traffic study was material and could be relied upon and P & Z did rely upon it. So, it wasn't like there was not thought, that they were forced to rely upon it, it was because there was a reasoned process where they looked at the numbers, and they determined it was adequate.

The application before you is only for 47 units, 47 lots. Even in the discussion here today, in the newspaper articles that had guest opinions, whatever, everyone is saying 205, 205. It's for 47, once there is another phase, there's going to have to be another analysis of all of this stuff again, when there's a third phase, there will be another analysis again. You have to look at this in the scope of 47 lots, not in the scope of 205 lots. It's not the entire annexation build out.

With respect to the Annexation agreement, I think you should rely on your City Attorney, obviously. I think the clear intent of the citizens group behind the appeal is to renegotiate the first Amendment to the Annexation agreement. That's clear from the newspaper guest opinion, that's clear from my discussions with them, it's clear from what they basically said, threshold issue, whatever.

The City entered into the annexation under its powers to contract under Title 50. In my brief I pointed out that development agreements are under Idaho Code §65-6511-A and development agreements are valid under that. The annexation agreement was rightly pointed out in their brief was not a development agreement under §65-6511-A. Instead it was just an annexation agreement that the City the power to enter into, under its powers of local government under Title 50 of the Idaho Code. There are tons of annexation agreements, there is lots of law interpreting annexation agreements. They are absolutely enforceable, to the extent that they are not illegal, and you can look at *Lane Ranch vs Sun Valley* a recent case within 10 years interpreting an annexation agreement that impacted development rights. *Cutters* is also a case where the agreement was interpreted and enforced only to the degree that the provisions in it were legal.

The appellants have argued in their brief that the annexation agreement suggests that the fees for the improvements set forth were tied directly to the development itself. That is simply not true. At the time that this annexation came in, annexation agreements were basically set up as the cost burden (inaudible 54:45). Legal advice was basically if they don't want to come in, you can just say no, so you can charge them whatever you want. After *Cutters* it became clear that in December 2012, it became clear that a City couldn't just charge anything for annexation, but rather the fees and contributions that an annexing party made had to be equitably allocated to the impacts of the development. After reanalyzing the impacts of the full annexation development, based on expert opinion, equitable apportionment was redetermined and that's how the First Amendment came about.

Basically, the adjustments made in the First Amendment are not based on the impacts of the Annexation at full development. They are based on what the City charged and what was legal for the City to charge. After reviewing all that and getting the City's own expert analysis on that, the City determined what to remove from the Annexation agreement; what costs to the developer were to be removed from the Annexation agreement. Frankly, those costs were removed because they were illegal. That was the basis for it. Any implication that those costs were tied to direct impacts to the subdivision just aren't true.

Finally, if the Annexation is not valid, then we are hundreds and hundreds and hundreds of thousands of dollars in debt to the City because we've missed deadlines where fees were due, we've missed all sorts of stuff. So, there's a much bigger issue than just how it impacts this development going forward.

The Annexation agreement was adopted as an ordinance, it was amended pursuant to process, the entire City Council sat before it, it's a valid agreement, and I think the City needs to stand by its agreement. If there's a problem with the Annexation agreement, and they determine it's an illegal agreement, the appropriate place for them to file an action is District Court and let District Court make a determination that it was wrong. We've already negotiated with the City and we've already entered into that agreement.

The other arguments with respect to what the development agreement was, that it was a de facto PUD agreement, I don't think that made sense because really what it was, was an annexation agreement. It wasn't a development agreement, it hasn't expired, those arguments don't work. The case they refer to *Buckskin Properties vs Valley County*, as a CUP application didn't have anything to do with as an annexation, so it doesn't really apply.

Ultimately, the Annexation agreement, including the First Amendment, sets the landscape for where we are. Now we are developing Phase One, 47 lots, that's all that's before you. That's what was presented to the Planning and Zoning Commission, that's what they based their decisions on.

Another item that they brought up was the FEMA study. The FEMA study in the Annexation agreement says that it has to be done before the Phase One plat is recorded. There are no concessions to that, we've said in our brief that is required by the Annexation agreement. That's not part of the CUP, it's not part of anything. You don't have to sign the first plat if that's not done!

Finally, the suggestion that we recognize we are wrong or that we conceded anything with respect to the using of the 2006 traffic study is just not true. We offered to do a new traffic study. What we are trying to do is find the path of least resistance so that we can get an application through so can actually develop lots out there and start the Strahorn core development that we think that's good for Bellevue and everybody. And, that's not a concession that what we put forth before was wrong, there was discussion with staff, staff reviewed the analysis on the traffic study, and I believe you guys can support P & Z's decision based what's on the record right now. That being said, my client Mr. Pfaeffle has offered to proceed with a traffic study if that's the direction you guys wish to go. Thank you very much.

Koch – thank you Mr. Laski. Koch asked if there were any questions for the Applicant. There was some crosstalk.

Wolfrom inquired about the most recent plat that is in the record, that has been published. He stated he was on the last page A-8 in the big binder. In trying to stay with Standard E F & H, perhaps in E or F, in consideration of getting this development access to the sidewalk that the City has on Slaughterhouse Rd, is there connection, is it in the entire neighborhood or partial. Wolfrom clarified there is a sidewalk that runs to Slaughterhouse Canyon and in keeping with the Comp Plan for alternative pedestrian movement. Applicant stated it was partial as there are no sidewalks on Cowcatcher Loop, but the

pedestrian/bike path does connect with the existing path. There was some discussion regarding the requirements for or not for sidewalks within the Annexation agreement. Pfaeffle referenced the sections, street standards section – Exhibits F to A-2. Burns paraphrased, saying public roads with have a path, private roads will not? Pfaeffle restated that the roads within the subdivision do not have sidewalks, but there is a path along Slaughterhouse Rd that connects.

Koch asked for other questions.

Cappel stated he was curious that Mr. Laski stated that the public testimony was listened to. Cappel feels the majority of comment was unfavorable or negative, whether it be the density, traffic impacts. He asked Laski for clarification if he felt those comments were not valid because they were emotional. Laski stated he didn't think they were not valid, but that they were opinions and the role of P & Z was to weigh the opinions vs the application materials that present and to determine whether the standards were met. P & Z could determine whether or not the conditions were met and could put conditions on the permit as it was a CUP. P & Z could and did take those opinions into consideration. More discussion was held regarding the role of the P & Z.

Wolfrom went back to the agreement to page 14, description of improvements. Wolfrom wanted to know if an annexation agreement is "married" to the subdivision ordinance at the time, or do we have new subdivision ordinances. Allington stated that our subdivision ordinance does not require sidewalks. Shay stated that while the City adopted a new Comprehensive Plan, our city ordinances have not yet been updated to support the Comp Plan with respect to sidewalks. There is no requirement for sidewalks in the current ordinance at this time. Shay and Allington stated that the Comp Plan is not a law, it is a guideline, that sidewalks are probably an action item.

Allington mentioned that the Annexation agreement states that it must meet all ordinance requirements that are in effect at the time. That is why this is going through a PUD process. Shay also mentioned that on the original plat did not show the bike/ped path. The public and P & Z clearly wanted to see that, and the applicant revised the plat to include the bike/ped path. There was also discussion of the addition of the catch basin and that P & Z required street lighting on the path. There was discussion about the proposed mitigation in Parcel A for the sheet flooding. Patrie stated that there was nothing that could be proposed that would catch all the run off that comes out of that canyon. There will be a flood study, but it cannot be stopped. It's a flood zone and regardless of size it will not mitigate anything,

With no further questions for the applicant, Koch turned the meeting back to the Appellant for final rebuttal with 2:18 remaining.

Blanchard took the floor: Let me make a couple of points in rebuttal to what's been said here. First of all, in our notice we challenged the inclusion of the traffic study and of D-4, D-5 and D-7 that I think are associated with the traffic study, as inclusions into the record. Those inclusions were introduced into the P & Z after the public comments period was closed and the law clearly provides an opportunity for us to rebut those things. We did not get that opportunity, so they can't be part of your consideration. A lot of questions have been directed there. I urge you to examine that. The question about whether we look at

47 units or 205. If you design a road for 47 units right now and 20 years from now you get down to 205 and you're going to look back and say this was a serious error. You've got 1,948 cars coming down there with 205, with 47 you've got 450, if you do a traffic study that talks about 450 you're going to miss your target by about a factor of 400.

The other one that I'd like to make a comment on is I think if I'm not mistaken, I did not see Lori Labrum's email exchange in the record; and I think there's discussion with Dave about how they checked with Lori to see if there was any change that they had to consider, I can see those in the record. That would be considered new evidence and we can't have that. And in addition, all the comments that were made after the flood that were made after March again that's additional new evidence and it can't be in the record or considered by you on this one.

And finally, I want to make one comment on the Annexation agreement and the First Amendment. The Annexation agreement is run through Idaho Code that's different than the Land Use Planning Act, but once you have the annexation agreement with its conditions it becomes the development agreement and its referred to as a development agreement several times in the narrative and it's referred to in the Annexation agreement itself. There are numerous references to it as a development agreement and the development agreement for a land use issue has to be dealt with under the Land Use Planning Act and that did not occur. There was no opportunity to give rebuttal to the Council's choice of refunding all of that money and there are serious problems in their choice in their doing that.

Koch stated that the rebuttal was completed. Mahoney reminded others that for each phase they will have to go over everything again. His recommendation would be that if a new traffic study is done that it be done with a vision of 20 years down the road. He would like to see a study designed that answers questions that they have.

Koch asked about proceedings from this point forward, would it be easier to go through each section, E, F and H, getting a consensus on each standard. Allington stated there were some legal issues that needed to be addressed. First, does Mr. Carlisle have standing to bring this appeal? Allington's opinion is that he does. While it might not be the District Court's opinion, it is his. Second, the Amended Annexation agreement is a longshot argument by the appellant and any time something is argued as de facto development agreement, it means you are stretching things. City followed the full procedure. Allington and Blanchard spent a great deal of time on this annexation. P & Z had no input on what the fees were, that was strictly through Council according to Title 50. What the appellant is asking the City to do is to repudiate an agreement that we are a party to. Allington stated he isn't even sure that the issue of the Annexation agreement is properly in front of you, as it wasn't in the notice of appeal. It wasn't raised until the first brief. It wasn't argued in front of the P & Z Commission. Allington tends to agree with the applicant is that the appropriate venue for challenging the Amended agreement is District Court. There is nothing unusual about the agreement. These are agreements that the City is party to.

Koch asked for clarification on who Council was allowed to ask questions of during deliberations. Allington suggested that Council go through the standards, then try to come up with a consensus about whether there is adequate evidence in the record to support the findings that they made and

consideration of the conditions that they placed. Then if there are any questions about anything in particular in the record, it should be asked of staff and they can point it out. Allington had one other item to point out. The recording machine for the meeting where the Commission made findings on Standard F broke, it does not exist, so there are no deliberations. Clearly you need to send it back to P & Z for Standard F for deliberations as the recorder broke. Allington stated that we have the minutes, but we need the recording.

Goldman began with Standard E, stating that there is adequate evidence showing that such use can be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools, or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services; Goldman stated that Council's job is to deliberate on the standard. Goldman stated that they were provided documents, but they were not allowed to use them according to appellant? She would like clarification from Allington. Clark states that on the 2-5 transcript, page 26, line 767 "Jim Phillips, Another thing that I noted in looking at the traffic study, it was based on 150 homes." This is mentioned by Mr. Phillips in the Feb 5 meeting that he had seen the traffic study at that time. Patri stated that one more thing on the traffic study, January 2nd transcript starting on page 36, page 1289 through page 368-line 1344, represents a discussion among the Commissioners about the traffic study. That provides evidence that they did consider that and that it was available in their packets as early as January 2.

Allington suggested they start with that standard. Wolfrom stated that one of the things that caught his eye was the discussion of schools, per Gwen Carol Holmes. A discussion ensued regarding the addition of 37 students and Holmes comments about additional expense. The discussion centered around the growth of the school, need for new teachers, cost to the taxpayers. Wolfrom also stated that he noted some confusion regarding which streets would be adequate for the development. He pointed out the traffic study referenced a street that was closed. Wolfrom felt that police and fire as well as street repairs were funded by property taxes. He has concerns that he feels the Commission did not address adequately.

Cappel asked Shay about Section E, water and wastewater and if staff was still waiting on numbers from Public Works regarding the adequacy of the City systems. Shay stated that as she understood it, Public Works has had conversations with Eric, who is building the water model, through SPF and there was additional information needed, with possible redaction of the Chief's fire flows. She deferred to Suwanrit.

Suwanrit stated that SPF was done with the water model. SPF feels that City has high fire flows for certain types of buildings. If the City were able to reduce those fire flows we have adequate service, those are set by the Fire Chief in Bellevue. Cappel asked again, that we would adequately be able to serve the City with the first Phase. Suwanrit concurred. Cappel asked for further clarification regarding the wastewater services study. Suwanrit stated that it had been done recently and there was little change and little growth since the study. There was no issue. Shay explained that the first condition placed on this CUP was that the City would have a Will/Serve letter. In other words, the City would be able to say that the City has the will and the ability to serve those 47 lots. Without that will/serve letter.

This can't happen. So that is a condition that is overreaching with this application, as well as the other two applications. Cappel stated he was looking at availability of EDUs and water service. He's looking at the full build out and how that effects people wanting to do ADUs in the old part of town. There won't be any EDUs available. There was some discussion regarding citizens who have lived here for awhile vs those who just come into the City. Allington stated that the City can't assign seniority. Cappel referred back to the Comprehensive Plan that was trying to encourage infill in town. More discussion followed regarding ADUs and capitalization fees go towards expanding existing services. There was a lively discussion regarding ADUs and EDUs.

Wolfrom asked if there was consensus about Standard E? He reiterated the services available with some question regarding schools. He stated he believes that there were continuing issues regarding the streets and O'Donnell Park. There was a lengthy discussion regarding the need for a new traffic study, with emphasis on build out and more emphasis on quality of life, not just the numbers. Allington stated that the Commission put most of the traffic information under standard H. Wolfrom would like to see more focus on the traffic study and information from the schools.

Burns stated that he feels that at some time there will be a need for an additional school in Bellevue's future. That is a school district operation, not the City's. Wolfrom asked if the school district had a plan, Mahoney stated that the district did show a plan for the future. There was more discussion regarding the traffic study in relation to the number of years passed.

Mahoney and Cappel agreed that a new traffic study that looks 20 years out is needed. Goldman would like to see a comparison between the first phase and later phases showing what would need to be done to keep it efficient. Mahoney again asked for clarification regarding a new study. Shay stated that the Council would be remanding the CUP, standards E & H back to P & Z for deliberation after a new traffic study was completed. Standard F would be remanded back for deliberation to meet recording requirements. There was a discussion regarding how a traffic study is conducted, taking into consideration peak hours and fluctuations. Patrie explained that when the study was first conducted the peak hour was 5:00 pm to 6:00 pm. Council wanted more information to make sure that the study would take into consideration the summer.

There was further discussion regarding quality of life issues, the possibilities of moving traffic based on functions happening, Patrie explained how the studies can be designed to meet the needs of the community. Council members discussed how to frame the decision to remand Standards E, F & H back to P & Z.

Goldman made a motion that the Bellevue Common Council remands back to the P & Z Commission to make further findings based on the findings of a new traffic study, said traffic study to include both vehicular and pedestrian travel as related to not just the 47 units, but full build out, to be paid for by the Applicant. Additionally, that traffic study should include Safe Routes to School as recommended by the Blaine County School District under Standards E & H. Standard F is being remanded back to the Commission to meet the proper recording regulations as required. Cappel seconded. Motion passed unanimously by roll call.

A motion was made by Goldman to adjourn, Burns seconded, the motion carried unanimously.

Approved this 23rd day of July 2018

Christopher Koch, Mayor

Kathleen Clark, City Clerk/Treasurer

06/25/18