

**City of Rigby**  
**Planning and Zoning Meeting**  
**March 10, 2011**  
**7:00 p.m.**

Those present were: Chairperson Orme, Commissioner Bennett, Commissioner Barker, Commissioner Brown, Commissioner Taylor, Commissioner Richardson and Commissioner Warner. Also present: City Attorney, Robin Dunn.

Chairperson Orme called the meeting to order at 7:10 p.m.

Chairperson Orme stated the next item on the agenda was conflicts of interest and asked if there were any conflicts for any item on the agenda this evening. Commissioner Warner stated that he owns property that is associated with the neighbors. Mr. Dunn asked if the property owned was adjacent to the property being discussed and Commissioner Warner stated that he did not but indicated it was quite close. Mr. Dunn stated it would be best to have Commissioner Warner abstain from participation or voting.

Chairperson Orme stated the next item on the agenda was ex parte communication and asked if there were any to disclose. No ex parte communications were disclosed.

Chairperson Orme stated that due to there being no quorum from the past meetings to approve the minutes the approval would be waived and the minutes would stand as written.

Mr. Dunn asked if he could have a few minutes and Chairperson Orme stated that was fine and turned the time over to him. Mr. Dunn stated the applicant was not present this evening and referred to a document in their packets and explained this is a designated agent form which allows for someone else to speak on the applicant's behalf. Mr. Dunn stated there were some sign up sheets located by the door where the audience can sign up either in favor of, neutral to or against this proposal. Mr. Dunn gave a brief explanation of the proceedings this evening and asked the audience to please try not to repeat themselves as they were giving testimony this evening. Mr. Dunn stated they normally have Paula Sessions, Planning and Zoning Administrator, give a brief history of the application prior to the actual presentation and then the hearing and then discussion amongst the commissioners.

Commissioner Bennett moved to have the meeting end at 9:00 p.m. Commissioner Brown seconded. All were in favor.

**Public Hearing-Preliminary Plat-Bella Wood Townhomes-Jeremiah Bigelow-**

Chairperson Orme stated the next item on the agenda was a public hearing for a preliminary plat for Bella Townhomes. Chairperson Orme turned the time over to Mrs. Sessions for her introduction to this project.

Paula Sessions, Planning and Zoning Administrator, explained this property was previously owned by Kenny Anderson. Mrs. Sessions stated while under his ownership, Mr. Anderson came in and

asked to develop this property as a Planned Unit Development or PUD. Mrs. Sessions explained that residential PUDs allow for more density than in a regular residential subdivision. Mrs. Sessions stated that according to city code a residential PUD requires a minimum of three (3) acres and explained this parcel is 1.23 acres. Mrs. Sessions explained that Mr. Anderson had come before the Planning and Zoning Commission in 2008 and requested a Variance to allow for a smaller PUD. Mrs. Sessions stated this request was denied by Planning and Zoning so Mr. Anderson appealed to City Council. Mrs. Sessions stated that city council overturned the decision and approved the Variance. Mrs. Sessions stated that after the approval the property just sat vacant until August of 2010 when Jeremiah Bigelow purchased the property. Mr. Bigelow asked if he could proceed with the PUD and was told that he could once he submitted a preliminary plat. Mr. Bigelow submitted the plat and met with the Technical Review Committee. Mrs. Sessions explained the Technical Review Committee consists of Jim Deuel, Central Fire, Larry Anderson, Rigby Police, Rick Lamoreaux, Park/Street/Sanitation, Scott Barry, Water/Wastewater/Collections and herself. Mrs. Sessions explained this particular Technical Review meeting was also attended by Dave Swager, City Clerk and Brandon Thompson and John Thompson both of Thompson Engineering as well as Mr. Bigelow. Mrs. Sessions stated this Technical Review meeting was recorded to alleviate any future conflicts over what was said and agreed to in that meeting. Mrs. Sessions referred to a document in the commission packets and stated this was a copy of the December 7, 2010 Technical Review meeting items of discussion and explained that each section was signed by the respective representative. Mrs. Sessions stated that during the Technical Review meeting they discussed the fire department's ability to get their biggest piece of emergency equipment in and turned around safely on this property. Mrs. Sessions stated they also discussed the police department access and safety concerns with the development as well as water, sewer, stormwater retention, snow removal, the Homeowners Association and other applicable items regarding PUDs. Mrs. Sessions stated that Mr. Bigelow has now brought the preliminary plat before Planning and Zoning to seek approval to proceed.

Chairperson Orme opened the public hearing at 7:19 p.m. and turned the time over to Brandon Thompson of Thompson Engineering for his presentation.

Brandon Thompson of Thompson Engineering, 215 Farnsworth Way, stated he was here tonight representing Jeremiah Bigelow, Developer, on this project. Mr. Thompson stated this was the Bella Wood Townhomes Preliminary Plat proposal and explained there are six (6) townhome style buildings that would result in twelve (12) living spaces. Mr. Thompson stated the development would be strictly private property with no public streets. Mr. Thompson stated the access to the development would be onto Highway 48 and explained they have met fire code requirements for access and turn around. Mr. Thompson stated he had a letter from Jeremiah Bigelow and read that into record as follows:

*This parcel has previously been brought before Planning and Zoning Commission on April 30, 2008 for a requested variance. According to the minutes of this meeting, a PUD was sought for this parcel by Kenneth Anderson. The variance was necessary for the PUD because the land was only 1 ¼ acres and not large enough to develop a PUD under the current PUD requirements, which required 3 acres. The Planning and Zoning Commission denied the request that evening. Kenneth Anderson appealed the denial of a variance to the Rigby City Council on May 20, 2008. The city council overturned the previous Planning and Zoning Commission ruling and granted the variance.*

*The parcel came on the market in July 2010 and I purchased the property from KK Investment Properties LLC on August 11, 2010. In doing my preliminary research before purchasing the property, I found that a variance had been granted for this parcel. The variance had been approved to include the building of twelve two story townhomes, which would be six separate buildings. One of the conditions I had for purchasing the parcel was to have a signed access permit by the Idaho Department of Transportation. Thompson Engineering advised me that since the parcel exited onto State Highway 48, a Right-of-Way Encroachment Permit would need to be received from the State of Idaho. Kenneth Anderson was able to receive this permit on 8/5/10 from DOT. You should find a copy of this permit with the application packet and plat. We closed on the parcel and I immediately hired Thompson Engineering to begin the survey and platting process. I also met with Paula Packer multiple times to be sure that we were going to have everything in order before coming before the Planning and Zoning Commission. We completed the survey and plat during the fall of 2010 and were then scheduled for a Technical Review Committee meeting on December 7, 2010. At this meeting, Brandon Thompson of Thompson Engineering, and myself, met with the Committee to review the Preliminary Plat. The Rigby Planning and Zoning, Police, Water, Sewer, Sanitation, Road and Engineering Departments were all represented at this meeting either in person or by letter. We reviewed the plat and any concerns that any of the departments had and all parties signed off on their approval of the preliminary plat as being in accordance with city ordinances. Jim Deuel sent in a separate letter stating the plat was in accordance with city and fire ordinances. You will also find a copy of these findings in your packet.*

*After the Technical Review Committee was finished, we were scheduled for a Planning and Zoning Commission Meeting on January 13, 2011. At this meeting the plat was reviewed by three of the Planning and Zoning Commissioners and testimonies were given for and against the parcel. After all testimonies were given, the Planning and Zoning Committee seemed hesitant to approve or disapprove the plat. It was decided to table the plat until it could be further reviewed and legal counsel from Mr. Rob Dunn was received.*

*Since the plat was tabled, the next Planning and Zoning Committee meeting was held on February 11, 2011. At this meeting, we were told that there were not enough Committee members to form a quorum. Paula Packer stated that there were new Committee members appointed, so the original Planning and Zoning Committee meeting was now void and a new meeting would take place March 10, 2011. Since I am not able to attend this meeting, I would encourage you to review my plat and notice that we are in compliance with all city ordinances and have done everything that has been asked of us by the City thus far.*

*During testimonies given in January, the adjacent property owners spoke against the preliminary plat for a variety of reasons. I would like to respond to some of the concerns here, as I am sure they will be similar to the concerns presented this evening.*

- 1. Some of the neighbors have voiced a concern that my survey is inaccurate. Some of the property marker stakes have even been removed. Thompson Engineering*

*did the survey on this plat as well as most of the section boundaries throughout Rigby. They are licensed land surveyors. They have assured me that their survey is accurate as it stands. Fences, ditches, buildings, trees have never been accurate boundary markers. Should any of the neighbors decide to have their land surveyed, I would be more than happy to sit down with them, and both sets of surveyors, to resolve any concerns that may arise from conflicting surveys.*

- 2. The argument was given previously that there are too many townhomes going in. Originally Kenneth Anderson had asked for seven buildings, or fourteen townhomes. The city council decided that fourteen townhomes was too many because the plat would violate city ordinances, but they concluded that twelve would satisfy all city ordinances. As you can see from our Technical Review Committee we are compliant in all aspects.*
- 3. The complaint was also heard that the neighboring properties would lose their privacy. I think a certain degree of privacy is lost when a person decides to move into the city. As was stated by Kenneth Anderson, to give my townhome owners and the neighbors a degree of privacy, we would install a privacy fence around the property. We would also be planting numerous trees and shrubs, which I would encourage the neighbors to plant as well, thus providing more privacy for all land owners on both sides of the fence.*
- 4. A comment that was given during the January meeting that if we built on this property, access would not be available any longer to some of the back yards through my property. This is true.*
- 5. Concerns over water pressure were also discussed. As stated in the Technical Review notes, this plat would have an 8" water line going into the PUD. We will have sufficient water pressure. Any other water complaints should be addressed to the City of Rigby Water Department for further exploration.*
- 6. Requirements for a traffic study were discussed. In further review of the ordinances of the City, no such study is required. The Idaho Transportation Department has already signed off on the permit and this should be sufficient as the jurisdiction for Highway 48 belongs to them. This PUD should in fact, be safer than most homes on Highway 48 as all residents will be coming out head first, rather than backing out onto the highway. Also, as stated in the access permit, we will post signage stating that all exiting vehicles will need to turn right.*
- 7. Concerns over adequate parking were raised. We are also compliant to city ordinances. Should additional parking be needed, the entry for this plat is sufficiently wide enough for parallel parking.*
- 8. All storm water drainage will be kept on site and will be engineered by Thompson Engineering.*
- 9. Finally, I have begun to clean up this parcel, including the removal of trees that were, according to my survey, on this property. As the snow melts, we will continue to prepare this parcel for development by removing the rest of the debris and trees.*

*Should any other concerns arise that I have not addressed, feel free to direct any questions to Brandon Thompson of Thompson Engineering.*

*I appreciate your consideration of this plat this evening.  
Respectfully,  
Jeremiah Bigelow*

Mr. Thompson referred to the letter and stated that Mr. Bigelow addressed several of the concerns that were brought up during the last meeting. Mr. Thompson stated that he agreed with Mr. Bigelow on the issue of being in accordance with all the city ordinances. Commissioner Barker asked how many parking spaces were designed in this proposal and Mr. Thompson stated there are twenty-six (26) spaces. Commissioner Taylor asked what the acreage left for common area once the buildings are built and Mr. Thompson stated perhaps three-tenths (3/10) and explained this was a guess because it had not been calculated yet. Commissioner Barker referred to common areas being places where people can gather or play and asked where that would be considered on this plat and Mr. Thompson stated that anywhere there was not a building is technically considered common area. There was a brief discussion regarding the definition of green space. Commissioner Barker stated that he believed there needed to be more actual green space and Mr. Thompson stated that as far as he knew they were meeting code requirements. Commissioner Barker stated that per code there is an eighteen (18) parking space requirement and suggested taking some of the additional parking spaces and turning it into green open space which would be better for the residents. Mr. Thompson stated that it has been his experience the 1 ½ parking space requirement is not sufficient. Commissioner Barker stated that in his experience that is too many because people usually just park junk cars in the additional spaces. Chairperson Orme referred to a comment from Commissioner Barker regarding asphalt not being open space and asked for the basis and Commissioner Barker stated that he is an architect and planner. Commissioner Barker stated that when he designs something such as this common space is to be considered green, plantable and landscapable space and explained that asphalt does not meet that criteria. Commissioner Brown asked if there was a city code that provided for the amount of open space needed and Mrs. Sessions read a portion of the code that states five percent (5%) and Commissioner Richardson stated his reads ten percent (10%). Commissioner Brown stated that she would not want her kids or family playing out on the asphalt and asked if this proposal met the 10% requirement and Commissioner Barker stated that he had not done the calculations. Commissioner Barker stated another concern that he had was the asphalt comes so close to the buildings in some places. Commissioner Barker stated he felt this was a fire hazard in the event a car caught fire it could potentially burn the building down as well. Commissioner Barker stated that by reducing the number of parking spaces it allows the buildings to breathe. Commissioner Barker stated that he was not opposed to the development and explained that he is happy to see someone wanted to develop this piece of property. Mr. Thompson stated they could remove some of the parking spaces if necessary. Commissioner Richardson referred to his code book and stated there is a section that reads "a minimum of ten percent (10%) of the gross land area developed in any residential PUD project shall be reserved for common open space and recreational facilities for the residents or users of the area being developed" and explained that further down it refers to this property being designated "for parks, recreation and related uses". Commissioner Richardson stated that open space needs to be used for the intended reasons when this property is developed. Commissioner Richardson stated that public utility easements and right-of-ways cannot be used as part of that 10%. Commissioner Richardson stated that when these developments are put in they want to make sure they facilitate good neighborhoods. Mr. Thompson stated that he was pretty confident they met the 10% requirement with this proposal. Commissioner Taylor asked what the current status of the HOA (Home Owner's Association) was and Mr. Thompson stated they had

discussed it but could not give a definite answer to that question. Mr. Thompson stated the HOA would be responsible for snow removal, payment of utilities and landscaping. Commissioner Taylor asked if Mr. Bigelow had any intent on making the HOA an LLC or what other type entity he was considering and Mr. Thompson stated that he could not answer that at this time. Commissioner Taylor referred to the DOT permission to access Highway 48 and expressed a concern over people still turning left if they wanted to. Commissioner Brown stated they had discussed this at the last meeting because she was concerned over the police not being able to enforce the traffic. Commissioner Taylor asked if Mr. Bigelow had considered building a concrete or asphalt barrier in order to restrict the direction traffic can turn out of the development itself and Commissioner Barker referred to other types of flares or barriers that could be used and Mr. Thompson explained the property boundaries ended at the back of the existing sidewalk and explained the barrier would have to be placed within the state right-of-way and would need their permission and approval. Chairperson Orme asked if they would be asking the other residents that live along this area to do the same thing. Mr. Thompson stated that if the state would consider approving this they would consider placing a barrier of some type at the entrance/exit of the development. Commissioner Taylor stated that he is involved in the real estate industry and stated that he has no problem with responsible building and explained that his desire is to see this developed responsibly. Commissioner Taylor stated that when he thinks of the traffic he thinks of the new high school that is being built just south of town because he lives in that area and explained there is already a large amount of traffic and adding more people is only going to increase the traffic. Commissioner Taylor stated that when schools are built so are commercial and residential developments and explained this is just a natural chain of events. Chairperson Orme stated that while this line of discussion has merit it is not pertinent at this particular time and suggested holding it after the public hearing is closed. Chairperson Orme referred to the adjoining pieces of property and asked if there was the possibility of obtaining additional property for another ingress/egress and Mr. Thompson stated that he did not believe there was but explained they have not aggressively looked into it either.

Chairperson Orme asked for any testimony in favor. No testimony was given.

Chairperson Orme asked for any testimony against.

Boyd Birch, 350 W 1<sup>st</sup> South, stated he had no comments but wanted to sign up in opposition.

Holly Birch, 350 W 1<sup>st</sup> South, stated she had no comments but wanted to sign up in opposition.

Sharon Williams, 167 S 3<sup>rd</sup> West, stated her biggest concern was they have gained access to their backyards through this property for over thirty years. Mrs. Williams stated she understood this gave her some form of an easement that she would lose if this property was developed. Mrs. Williams asked how tall was a second story building and referred to the proposal of newly planted trees and asked how long it would take the tree to meet that height. Mrs. Williams stated this would cause several years to go by with the privacy of their backyards being taken away.

Rick Bingham, 366 W 1<sup>st</sup> South, stated there are numerous problems with this proposal and stated the first is the survey. Mr. Bingham indicated the survey had been done improperly and stated he would show where the mistake had taken place. Mr. Bingham stated it goes back to the building of the two houses to the south of his and explained the survey had been recorded wrong and needs to be fixed. Mr. Bingham stated they found out at the last meeting of the intent to install french

drains along the driveway and explained this would cause basements to become flooded. Mr. Bingham stated that french drains get plugged and cause problems. Mr. Bingham stated there are no sidewalks on this property for kids to walk on to catch the bus and explained they would have to walk down the road. Mr. Bingham referred to fire equipment and ambulances accessing this property and the difficulty they would have. Mr. Bingham stated the development looks good on paper but does not work in reality. Mr. Bingham referred to the plat and stated that some of the buildings are a mere ten (10) feet from their properties. Mr. Bingham referred to the proposal of a septic tank on the west portion of the development and explained this would affect his property and stated he already has problems with his basement leaking. Mr. Bingham stated that he has talked to two realtors and both of them indicated they will lose 20-35% in property values if this is built. Mr. Bingham asked for consideration of whether the commission would want this in their backyards. Mr. Bingham stated this needed to be broken down to three homes and placed in as a good neighborhood. Mr. Bingham stated the way it is proposed will only turn it into a drug clientele with no police enforcement.

Arthur Jensen, 325 W 1<sup>st</sup> South, stated he had no comment.

Gary Williams, 175 S 2<sup>nd</sup> West, referred to the privacy fence and asked if there were going to be mow strips underneath and whether it would be buried in concrete or not. Mr. Williams stated that without the mow strips the area would turn into weeds and dirt and explained this had not been addressed very well. Mr. Williams stated the area for this proposal is in no way large enough to sustain the 6 townhomes and their infrastructure. Mr. Williams stated that private property rights within the city need to be amended because it is allowing too many people to saturate such small areas. Mr. Williams referred to some other properties within the city that have access and open space issues and building concerns. Mr. Williams stated that he had been raised to believe that anything worth doing is worth doing right and expressed his opinion about Bella Wood Townhomes being built cheaply and in such a small area is just asking for future problems.

Bryan Trotter, 330 W 1<sup>st</sup> South, stated that his property is directly adjacent to the entrance to this property. Mr. Trotter stated he felt it is too dense and is irresponsible building. Mr. Trotter stated that his property is about two-thirds (2/3) open space and stated that a mere three-tenths (3/10) in this proposal is just not enough. Mr. Trotter stated that his children have become really good friends with another family close by and explained his daughter goes across this property to her friend's house. Mr. Trotter stated that he would fear for his daughter's safety if there are 26 parking spaces and 12 families in this development. Mr. Trotter referred to the suggestion of lowering the number of parking places and asked where the additional cars would park if that was done. Mr. Trotter asked if these families and their children would come over and play in his back yard. Mr. Trotter stated he felt this is too many people in too small of a space. Mr. Trotter referred to the parcel being 1.23 acres and explained this is half of the allowed three acres necessary for a residential PUD. Mr. Trotter stated that he is very strongly against this development. Mr. Trotter stated that he did not want to lose any property value, did not want to have unsafe conditions for his children and did not want his basement flooded. Mr. Trotter stated that he did not want all this developed and especially did not want to lose his privacy. Mr. Trotter referred to Mr. Bigelow meeting all the requirements and demands of the city, the fire department and the state but asked if that meant this was right and stated he didn't think so.

Janae Shanahan, 320 W 1<sup>st</sup> South, stated she is present this evening with her mother and explained her mother's house is 320 W 1<sup>st</sup> South. Mrs. Shanahan stated that she has some sentimental value in this area as she was born and raised in this house. Mrs. Shanahan explained she was concerned because their proposed access is approximately ten (10) feet away from her mother's circular driveway and did not feel this is enough room. Mrs. Shanahan referred to sitting in the driveway at around 8 a.m. or 4 p.m. and explained that you would be surprised over the amount of traffic. Mrs. Shanahan stated the traffic was bad when she lived there and explained that it has only gotten worse as more homes and things have been built. Mrs. Shanahan stated they are also concerned over the privacy. Mrs. Shanahan stated that her mother was trying to sell the home and is concerned about a prospective buyer reconsidering if this project is built in the back yard. Mrs. Shanahan stated that Rigby is a community and does not need to be treated like a city. Mrs. Shanahan stated they were not opposed to development on this property but felt it needed to be sensible development. Mrs. Shanahan referred to the snow plow coming through and explained that someone needed to dig out the driveway and was curious as to who would be maintaining that. Mrs. Shanahan stated that she had done a search prior to the meeting this evening and found there are 251 residences available for purchase in Rigby and felt this needed to be a consideration.

Vicki Birch, 350 W 1<sup>st</sup> South, stated they were here this evening for the third time requesting the city do not approve this development. Mrs. Birch stated the city should not take this request lightly and felt some thought into this and deny any construction of this density on this small lot once and for all. Mrs. Birch stated this same plan was denied for Mr. Magera and Mr. Anderson by previous Planning and Zoning officials and explained the plan gets more ridiculous each time it is presented. Mrs. Birch stated the residents in the area are tired of attending these meetings every two years and feels the elected officials need to put this issue to rest. Mrs. Birch stated that Mr. Bigelow purchased this property knowing its size limitations and therefore a variance for a hardship has not been established and should be withdrawn. Mrs. Birch stated that only single family dwellings that fit the surrounding neighborhood should be built on such a small lot. Mrs. Birch stated that for years the people surrounding this property have dealt with weeds and trees from the property with some even spending their own time and money keeping a fire line between the properties. Mrs. Birch stated that in 1994 their shop was damaged by a fire from this lot and explained the owner of this property did not repair any of that damage. Mrs. Birch stated that not one of the owners of this property have offered to help keep it clean or reimburse the cost of this task to the area residents who have done so. Mrs. Birch stated that Mr. Magera, Mr. Anderson and Mr. Bigelow have all presented pictures of what they claim is garbage placed on this lot by the residents who surround it and explained this is a complete fabrication meant to make good people look bad. Mrs. Birch stated the piles of trees and weeds are from this property and explained this property has been neglected for many years by the owners. Mrs. Birch stated the property owners could not be expected to change their behavior towards this property just because they were allowed to develop it. Mrs. Birch stated it was her belief that if these units were allowed to be built they would become someone else's problem to deal with and feels that would unfortunately be the adjacent home owners. Mrs. Birch stated that it did not make sense to burden good tax paying citizens with a bad decision of this type of development which they have asked the officials of the city to deny. Mrs. Birch asked the commission to not make the same mistake as that made less than a block away and is presently being condemned because of poor decisions by city leaders. Mrs. Birch asked to consider the apartments a few more blocks away that are in foreclosure due to overbuilding of this type of housing. Mrs. Birch stated they are a burden on the surrounding property owners and a haven for criminals.

Les Birch, 350 W 1<sup>st</sup> South, stated he is present this evening to discuss a project that was denied twice before and explained that nothing has changed. Mr. Birch stated that Mr. Magera, Mr. Anderson and Mr. Bigelow have all stated this development is something that will benefit the community and stated he felt the only benefit would be to Mr. Bigelow's bank account. Mr. Birch stated the variance for this lot was granted based on a hardship to the owner but explained the only hardship is the one being placed on the good families that live around it who will be left with a big problem once Mr. Bigelow has taken his profits and walked away. Mr. Birch stated the lot is too small for this type of density and explained there will be only 2 parking spaces per residence and asked where the additional family members or visitors will park. Mr. Birch asked if a traffic study has been done to see if Highway 48 could even handle the additional traffic. Mr. Birch stated there is only one narrow entry/exit from this property onto Highway 48. Mr. Birch asked if there would be sidewalk and green space on which kids could play. Mr. Birch asked the commission if they would want their children playing in the streets or would they want a potential resident pedophile in this complex looking into your backyard while your children play. Mr. Birch asked if there would be street lights around this complex and stated if there were the area residents would have to deal with them shining into their bedroom windows at night. Mr. Birch stated they do not have enough water pressure now and was unsure what twelve more three bedroom apartments will do to this already poor situation. Mr. Birch asked if the poor water pressure would be able to provide adequate fire suppression for the residents of and surrounding this complex. Mr. Birch referred to the limited parking and asked if the fire department would be able to respond in the event of a fire if someone was parked in the driveway. Mr. Birch referred to the complex being private property and asked who would patrol and ensure calm compliance to the no parking signs. Mr. Birch stated they have been told they will lose property value but explained the property taxes will not decrease accordingly. Mr. Birch stated that many of the area residents have devoted their entire lives to their homes and should not have to suffer lower property values. Mr. Birch stated this development does not make sense and explained it was for more reasons than he could give in his three minutes. Mr. Birch asked the commission to deny this request and keep the community safe.

Scott Hayden, 184 S 2<sup>nd</sup> West, stated he has issues with the loss of privacy and referred to a neighbor's hedge that was planted all the way to the sidewalk and explained that visibility in that area is very poor. Mr. Hayden stated that when I-15 closes the majority of that traffic comes onto Highway 48 which causes an increase in traffic. Mr. Hayden stated that he receives the power to his house from the back and asked if there would be vehicular access back there to maintain those lines once this property is developed. Mr. Hayden stated this proposal allowed too many buildings for everyone involved. Mr. Hayden suggested having the developer lessen the number of buildings to make it a more peaceful development. Mr. Hayden stated that Rigby is a little community and does not need to be built into a city. Mr. Hayden referred to the proposed fence line and stated he couldn't imagine the developer planting trees there because big trees have big roots and big roots cause bubbles in the ground.

Steven Boyce, Attorney, 381 Shoup Ave., Idaho Falls, stated he was contacted by Les Birch originally and explained that he has since met with other adjacent property owners regarding their opposition to this proposal. Mr. Boyce stated that part of the reason they are all present this evening is because a variance was given to allow this PUD on a lot that is too small according to the ordinance. Mr. Boyce stated there are reasons to grant an ordinance as set in 10-13-4 and gave his interpretation of that ordinance as it relates to this property. Mr. Boyce explained this ordinance is very specific in that variances are not to be granted on the grounds of convenience or

profit. Chairperson Orme interjected stating the commission is not in the position to be able to debate the variance itself. Chairperson Orme stated they are only able to deal with the ordinances and variances that are currently in place. Chairperson Orme stated that if they wanted to discuss the variance it needed to be done so at either another meeting or directly with the city council. Mr. Boyce stated that he brings it up because as the commission is looking at this proposed development there are indications of the goal being to pack as many units on this property as possible for profit. Mr. Boyce stated he felt the one ingress/egress is very problematic as well as disturbing for his client who lives adjacent to the access and would have to hear the acceleration of vehicles all day long. Mr. Boyce stated that while an ambulance and fire truck access is very important he referred to just two full sized pick-ups attempting to pass each other on this narrow access. Mr. Boyce stated to have a landlocked development of this size sitting right in the middle of a residential block completely surrounded completely by single family homes seems to be nothing more than a developer trying to maximize profit at the expense of the neighboring land owners. Mr. Boyce stated this development appears to be too much for this lot and should not be approved.

Barbara Jones, 320 W 1<sup>st</sup> South, stated there has been some talk regarding trucks passing and explained that she understood if a car was to park on the entry way and not move there would be no access for any other vehicle. Mrs. Jones stated that her property is to the east of this access and explained the edge of her driveway is about 10 feet from that access. Mrs. Jones stated that she had been talking with someone about the filtering system that was being planned and explained that she had been told they were going to cause a lot of flooding issues in the area. Mrs. Jones stated they built there home in 1967 and were currently trying to sell and did not know how this development would affect that sale.

Susan Kidd, 327 W Main, stated that her main concern was regarding the power and explained the power company told her that she had to have access because they come in from the back. Mrs. Kidd went on to explain that she had been told she could not plant any trees along the power line. Mrs. Kidd explained that if the power company did not have rights to access this property then they would have to come in through her property. Mrs. Kidd stated that her house sits right in the middle of the lot and there is no access on either side to her back yard for the power company.

Brian Hilde, 142 S 2<sup>nd</sup> West, stated he purchased his home in August 2009 and explained the draw for this house was the isolation of the backyard. Mr. Hilde stated that he has a very narrow lot and explained there is no access to the back of his property unless he was to tear down the garage. Mr. Hilde stated that he did not believe a six foot vinyl fence was adequate and stated he felt this was the cheapest way for the developer to go. Mr. Hilde stated he also did not know what was being done with the garbage and asked if there was going to be a large dumpster that would become full of stray cats. Mr. Hilde stated that he does not like the proposal. Chairperson Orme referred to the comment of not being able to access the back yard and asked how he accesses it now. Mr. Hilde explained that his house and garage are so close together that no equipment or vehicles could get to the back of the property. Mr. Hilde stated that he noticed there were no alleys when he purchased his house and explained that when he saw this vacant lot he assumed this was the plan for access to the backs of the properties.

Reed Williams, 167 S 3<sup>rd</sup> West, stated this is the third time this project has been presented and explained that it is getting old. Mr. Williams stated there have been two major fires right in the general vicinity of this property and explained the Kitchen Corner was burned and fire engines

could not get around. Mr. Williams explained they had to park out front and cut down fences to gain access. Mr. Williams referred to the plat map and stated the buildings look very close together and explained that if one of them caught fire you would not stop it with one fire engine. Mr. Williams asked if two engines could get in there and if so what would happen to the access. Mr. Williams stated it was his understanding the new high school was placed on hold due to concerns over water pressure. Mr. Williams stated the developer could say there is no problem with the water but explained that if his neighbor is watering his yard they will not be able to water theirs. Mr. Williams stated that his neighbor had planted a hedge about five years ago which is barely six feet tall and explained it is a fast growing type hedge. Mr. Williams stated there is a transformer at the back corner of his house that has been replaced three times due to squirrels getting caught in it and explained this is a major concern for him. Mr. Williams stated that no one would object to a one story home or even three or four but did not want a second story structure back there.

Mary Sedberry, 351 W Main, stated she had no comment other than her objection to this proposal.

Chairperson Orme asked if there was any further testimony against. No further testimony was given.

Chairperson Orme asked for any testimony neutral. No testimony was given.

Chairperson Orme turned the time over to Brandon Thompson of Thompson Engineering for his rebuttal and explained the rebuttal was only to address the comments that have been addressed during the testimonies heard this evening.

Mr. Thompson stated one of the concerns that was brought up was privacy and explained that he lives in a two-story home and can see into his backyard and so can his neighbors and felt that is just something you deal with. Mr. Thompson stated the developer has committed to putting up a privacy fence. Mr. Thompson referred to the comments made of having this piece of property to enjoy as privacy and stated that no matter how this property is developed that will go away or at least infringed upon. Mr. Thompson addressed the concerns over the french drains and explained the majority of the City of Rigby's stormdrain system is french drains. Mr. Thompson stated that Thompson Engineering did a LID in 1980 that comprised of approximately 40 french drains. Mr. Thompson stated the only other drainage system comprised of lines that carried the stormwater out to the gravel ponds by 5<sup>th</sup> West. Mr. Thompson stated that regardless of the system all the stormwater essentially ends up in the ground. Mr. Thompson stated another option would be a retention pond but indicated the city did not particularly like that system. Mr. Thompson stated the parcel is just over an acre and felt the effect on the stormwater from this property would be minimal. Mr. Thompson stated another concern was raised regarding the possibility of bad neighbors and explained these units are designed to be sold individually and not to be apartments. Mr. Thompson stated that when someone purchases a unit they have an investment in the area just like the adjacent neighbors do. Mr. Thompson referred to the concern over a fire hazard and stated he felt that as the property currently sits is more of a fire hazard than if it were developed. Mr. Thompson explained that once developed the property would have 2 fire hydrants and stated there are currently no fire hydrants. Mr. Thompson stated the fire suppression ability for this property would also pertain to the back yards of the adjacent property owners. Mr. Thompson referred to the comment regarding a traffic study and explained ITD has approved the access. Mr. Thompson stated that ITD is aware of what the traffic is on Highway 48 due to their jobs and

specialties. Mr. Thompson referred to the width of the access and traffic passing each other and stated that a normal driving lane is 12 feet wide and explained that two driving lanes would be 24 feet. Mr. Thompson stated the reason this access is 26 feet is because that is the minimum allowed by the fire code. Mr. Thompson referred to the comment regarding cars parked in the driveway and explained any inappropriately parked car would be towed. Mr. Thompson referred to the concern regarding property values and stated the developer was committed to building nice townhomes. Mr. Thompson stated these would be sold individually and would be nice, new buildings and needed to be taken into consideration.

Commissioner Richardson stated there had been a comment made regarding septic tanks and asked for clarification on this. Mr. Thompson stated there would not be a septic tank and explained the proposed system for the stormwater retention and the use of a sanitary set-up for the surface stormwater. Mr. Thompson gave a brief explanation of this system and the proposed location for this system on the property. Chairperson Orme asked how deep in the ground this system was and Mr. Thompson stated approximately four to five (4-5) feet. Commissioner Barker stated that he was thinking sewer when septic tanks were first mentioned and asked if the sanitary sewer was going to be connected to the city sewer system and Mr. Thompson indicated that was correct. Commissioner Brown asked Mr. Thompson to please address whether there would be streetlights or sidewalks within this development. Mr. Thompson stated the way this is presently designed there are no streetlights and explained this is something that could be addressed if necessary. Mr. Thompson stated there are no sidewalks designed but explained one could be placed along the driveway if necessary. Commissioner Brown asked if there would be enough room for a sidewalk after the 26' drive and Mr. Thompson stated the access is 40' wide and explained there would be 14' left over after the drive and explained if a sidewalk was placed it would only be on one side. Commissioner Taylor referred to the plat and stated he did not see any power easements and asked where those would be located. Mr. Thompson stated the easement would be most likely down the center of the development with the main utility easement. Commissioner Taylor asked if there were any existing utility easements and Mr. Thompson stated that he was unaware of any at this time but explained they generally appear during the title search. There was a brief discussion regarding a public utility easement and what this means to the development and neighboring properties. Commissioner Taylor stated that if there was an easement on this property for Rocky Mountain Power that it would not go away and explained they did not release their easements for anyone or any reason. Commissioner Barker referred to the previous comments regarding the 26' easement and if a car was parked it would be towed and referred to item number 7 in Mr. Bigelow's letter that reads "*concerns over adequate parking were raised. We are also compliant to city ordinances. Should additional parking be needed, the entry for this plat is sufficiently wide enough for parallel parking*" and stated that what was being discussed now is different than what is in the letter. Mr. Thompson stated that Mr. Bigelow had discussed with him the possibility of putting parallel parking in this area and explained he had indicated that it would not work and was advising against it. Commissioner Richardson referred to the previous comment of towing vehicles parked improperly and asked if this would be the responsibility of the Home Owner's Association and Mr. Thompson indicated that was correct. Commissioner Richardson referred to the HOA and stated these responsibilities had not been written yet and Mr. Thompson indicated that was correct. Commissioner Bennett asked for clarification on the access for the power for the adjacent homeowners and Mr. Thompson referred to the plat and indicated some dotted lines that are for a power easement on the West side of this property. Commissioner Bennett asked if there were any on the North side and Mr. Thompson stated that he believed there were but explained they were

located further North than the property boundaries for this lot. Commissioner Bennett asked if the public utilities had been accessing these poles through this property and Mr. Thompson indicated he believed they had been. Commissioner Bennett asked if there was a written easement and Mr. Thompson stated there was not. Mr. Dunn stated the concern of the residents was how they would continue to access these poles if this design was allowed to go in. Mr. Dunn stated the developer would have to come to an agreement with the power company or change their design until an agreement could be met. Commissioner Bennett asked if this 1.23 acres had always been private property and Mr. Thompson indicated that it had. Commissioner Bennett stated the adjacent land owners have been blessed by having this vacant piece of property to dump their lawn clippings, access their yards or haul things in and out and Mr. Thompson indicated that was correct. Commissioner Barker referred to city code 10-11-6 regarding common open space where it reads *"every property developed under the PUD approach should be designed to abut upon common open space or similar areas. A clustering of dwellings is encouraged. In areas where townhouses are used, there shall be no more than eight (8) townhouse units in any contiguous group"* and asked for clarification on the contiguous group. Mrs. Sessions stated the contiguous part comes in when they are sharing that common wall and remain together. Commissioner Barker asked if this proposal was in compliance and Mrs. Sessions indicated it was because there were only 2 contiguous units and then separation.

Chairperson Orme closed the public hearing at 8:43 p.m. and turned the time over to the commission for deliberation. Commissioner Taylor referred to comments of crack houses being built and stated that even if it was one single family home it could still turn into a crack house. Commissioner Taylor referred to comment about Rigby Police not enforcing parking and stated they would be there to enforce everything else. Mr. Dunn stated they really could not anticipate crime and although someone might commit murder they do not anticipate it. Commissioner Taylor stated that crime was not a basis for this proposal and Mr. Dunn stated the city and state are required to prosecute criminal activity no matter where it occurs. Mr. Dunn stated the public is trying to say this development is likely to draw criminal activity to the area but explained that he cannot say whether it will or wont. Commissioner Brown stated that she is concerned with the police department not enforcing the parking because if someone is in there illegally parked and it's up to the homeowners. There was a brief discussion regarding the implementation, enforcement and duties of an HOA. Commissioner Barker stated he felt the biggest concern brought up this evening was the utility access for Rocky Mountain Power and felt this needed to be addressed if they need to get their big trucks back in this property. Commissioner Barker referred to the comments made about the squirrels causing problems with the transformers and stated that it was true. Commissioner Taylor stated it would almost be a detriment to the development if they did not address these issues with Rocky Mountain Power. Chairperson Orme referred to the property owner claiming to have used this property as access for the past 20 plus years and asked if there is an easement established due to grandfathering. Mr. Dunn stated they would have the opportunity of taking that to the courts and have them determine whether they have a prescriptive easement. Mr. Dunn explained the process the homeowner would have to go through and stated that was not something this commission could determine. Commissioner Brown stated that another concern she had was all the people that came forward tonight against this and the sheer density of the development. Commissioner Brown stated that she didn't think the property owners were against developing this property but explained they just didn't want this proposal. Commissioner Brown stated as Planning and Zoning they could not do anything as the variance was already granted. Chairperson Orme stated that regardless of what gets built on this property there is the

concern over the narrow entranceway. Commissioner Barker stated it makes sense for them to consider adjusting the density. There was a brief discussion regarding the size of the individual lots surrounding this property and how that compares to this proposal. Commissioner Richardson stated that he had read the original variance request had been for 7 units but had been told they needed to remove one. There was a brief discussion regarding how many units could be placed on a 3 acre PUD versus this parcel. There was a brief discussion regarding the required amount of green open space and what meets those qualifications. There was a brief discussion regarding the options available regarding the approval, disapproval or tabling of this item. Commissioner Richardson asked if obtaining feedback from the utility company could be an option and Mr. Dunn explained this item would have to be reopened for public hearing if the commission sought feedback. Mr. Dunn stated that if it was denied or approved they could add that as a condition of the plat. Commissioner Taylor asked if they could do their research as a commission and Mr. Dunn stated they could not. Commissioner Barker stated there were three things bothering him and explained they were 1) parking, 2) sidewalks and 3) access easement for utility. Commissioner Barker stated that he did not feel these three issues had been addressed enough. Commissioner Barker stated if they worked on the parking and created some more open space they could make this development feel as though it belongs in this area. Commissioner Barker stated that he did not know how to put this into a motion. Chairperson Orme stated they could either move to approve as presented and recommend to council or they could deny and explain the reasons or stipulations for the denial. Chairperson Orme stated the developer could take that denial and either appeal to the council or they could redesign the project and re-present to the commission. There was a brief discussion regarding different design plans and options they would like to see considered for this property. Commissioner Barker referred to comments regarding other properties in the area and stated that he has seen these and explained that most of them are in foreclosure and wanted to see what they could do in order to get this project to mesh with the surrounding properties. Commissioner Brown moved to deny the preliminary plat due to the safety issues, the power issues, the sidewalk and drainage issues, the fire hazard, the lack of traffic study and the over all density concerns. Commissioner Barker seconded. On a roll call vote:

|                         |         |
|-------------------------|---------|
| Commissioner Bennett    | abstain |
| Commissioner Barker     | aye     |
| Commissioner Brown      | aye     |
| Commissioner Taylor     | aye     |
| Commissioner Richardson | aye     |
| Commissioner Warner     | abstain |

Chairperson Orme informed the audience the motion to deny the preliminary plat has passed and thanked everyone for coming. Chairperson Orme referred to a comment regarding having these proposals end once and for all and explained there is no way to do that except to have the adjacent property owners get together and purchase the property and extend their back yards. There was a brief discussion regarding the possibility of reversing the variance that had been approved on this property.

Commissioner Brown moved to adjourn the meeting. Commissioner Taylor seconded. All were in favor. The meeting was adjourned at 9:03 p.m.