

CURRENT INNER ISLAND ACTIVITIES

July 21st

Hello to all

Check the WHAT'S NEW tab for regular BIA info

It seems as a board we have kind of taken a break through the winter but we are still here and we are getting ready for the summer activities on the island.

The gate is working again for the summer. We had a little issue with the exit last fall so we did have to leave the gate up all winter. We tried to go in and out of the same gate last year but the old system didn't have the ability to distinguish loop one from loop two. There are loop sensors in the ground that detect cars as they drive through and lower the gate. We added a second one that will open the gate as you drive out and then the first one was supposed to close it, but it could not handle the second loop. Hopefully the new system will handle it, if not we will put it on the old exit and use it there. We are still planning on using one gate this summer but we are not sure if it will be too congested at the gate during the busy weekends. We ask that you be patient with us during the trial time.

You will need your gate key to get in for now. The phone system is in and has been tested on a small trial bases. We are adding the phone numbers that we collected last year and we will try to get the phone system going before the busy summer. If your home phone or cell phone number has not changed from last year you should be ready to go as soon as we get it running. If you are current on your dues you will be allowed to use the phone system free as part of being a paid up member.

Oct 2nd

Here is the Boards response to Dave Hume's letter.

DEAR BILLS ISLAND PROPERTY OWNER:

WE, THE DUES PAYING BOARD MEMBERS, WOULD LIKE TO CLEAR UP SOME OF THE CONTROVERSY OVER THE CENTER ISLAND DEVELOPMENT. WE WILL START FEB. 1st, 2007, AFTER THE WOODLANDS (i.e. "THE RICHEY GROUP" FEATURING, RYAN DAVIS, PROJECT MANAGER, JASON NIETT & PAUL RICHEY) BOUGHT THE PROPERTY FROM THE WILDERNESS GROUP, BRENT CALL, ROY LEAVITT, JOLENE JENKINS, AND REED RICHMAN MET WITH RYAN DAVIS ON 2/1/07. OUR CONCERNS WERE THE SAME THEN AS NOW: SAFETY, ACCESS, WATER QUALITY AND DENSITY. MR. DAVIS STATED AT THAT TIME THE WOODLANDS WOULD JOIN THE HOME OWNERS ASSOCIATION, NOT HAVE A GATE AT THE ENTRANCE OF THE WOODLANDS DEVELOPMENT, HELP IMPROVE THE GATE AND ENTRANCE TO THE ISLAND, HELP WITH DRAFTING NEW C.C. & R.'S FOR THE ENTIRE ISLAND, WORK WITH AND DISCUSS WITH THE ISLAND ASSOCIATION ON HOW THE CAUSEWAY PROPERTY WOULD BE DEVELOPED, BUILD A PAVILION, HELP WITH UPDATING THE TRACTOR, SNOW BLOWER, FIRE TRUCK AND SECURITY CABIN. MR. DAVIS HAS BEEN ASKED EACH TIME THE BOARD MEMBERS HAVE MET WITH HIM IF THE RICHEY GROUP WOULD REDUCE THE NUMBER OF LOTS AND EACH TIME HE HAS REPLIED THEY WOULD NOT.

BRENT CALL AND REED RICHMAN MET BRIEFLY WITH MR. DAVIS AFTER THE P & Z HEARING FEB 11th 2007 AND AT THAT TIME MR. DAVIS STATED THAT THE RICHEY GROUP WOULD NOT BE MEMBERS OF THE ASSOCIATION, WOULD INSTALL A GATE AT THE ENTRANCE OF THE WOODLANDS DEVELOPMENT, WOULD NOT HELP IMPROVE THE GATE OR SECURITY CABIN, WOULD NOT HELP WITH THE ISLAND C. C.& R'S AS THEY WOULD HAVE THEIR OWN C.C. & R'S AND WOULD ALLOW RENTALS. MR. DAVIS OFFERED TEN THOUSAND DOLLARS TO BUILD A PAVILION, UPDATE THE GATE, IMPROVE THE SECURITY CABIN, UPDATE THE TRACTOR, SNOW BLOWER AND FIRE TRUCK. MR. DAVIS' COMMENT WAS "THAT'S THE BEST WE CAN DO".

AFTER P & Z DENIED THE DEVELOPMENT AND THE COUNTY COMMISSIONERS APPROVED THE DEVELOPMENT, THE B.I.A. ASSOCIATION FILED AN APPEAL WITH DISTRICT COURT. AT THE FIRST HEARING WITH JUDGE MOSS IN DISTRICT COURT, JUDGE MOSS STATED THAT THE WOODLANDS COULD BUILD THE CAUSEWAY "AT THEIR OWN RISK". WE, THE B.I.A. BOARD, AGREED TO A MEDIATION MEETING WITH WOODLANDS. WE MET AT BAKER & HARRIS OFFICES IN BLACKFOOT IDAHO ON OCTOBER 4, 2007. BOARD MEMBERS PRESENT WERE: BRENT CALL, CON HAYCOCK, JOLENE JENKINS, ROY LEAVITT, SCOTT WATSON, REED RICHMAN AND LEGAL COUNSEL REED LARSEN. IN THE WOODLANDS ROOM: RYAN DAVIS, CHARLES HOMER AND KARL LEWIES. MR. BAKER WENT BACK AND FORTH BETWEEN ROOMS FOR OVER EIGHT HOURS. THE B.I.A. BOARD KEPT ASKING FOR ENGINEERED DRAWINGS OF THE IMPROVEMENT OF THE CAUSEWAY. AS SET FORTH BY THE FREMONT COUNTY COMMISSIONERS UPON THEIR APPROVAL OF THE DEVELOPMENT. AFTER ABOUT EIGHT HOURS THE WOODLANDS ADMITTED THAT THEY DID NOT HAVE ANY DRAWINGS OF THE CAUSEWAY IMPROVEMENT. JUDGE MOSS THEN RULED THAT THE WOODLANDS MUST PRODUCE ENGINEERED DRAWINGS TO COUNTY SPECIFICATIONS WITHIN 72 HOURS. THEN THE B.I.A. ASSOCIATION'S ENGINEER WOULD HAVE 72 HOURS TO REVIEW THE DRAWINGS AND APPROVE OR DISAPPROVE. WE THEN WENT BACK TO JUDGE MOSS'S COURT AND THE JUDGE RULED THAT THE WOODLANDS COULD

PROCEED WITH CAUSEWAY CONSTRUCTION "AT THEIR OWN RISK". JUDGE MOSS ALSO RULED THAT THE WOODLANDS MUST POST A PERFORMANCE BOND WITH THE COUNTY TO INSURE THE WORK WAS DONE ACCORDING TO THE ENGINEERED DRAWINGS AND COMPLETED. THE WOODLANDS QUICKLY STARTED CONSTRUCTION OF THE CAUSEWAY, THEN IN LATE JANUARY 2008 THEY PETITIONED FREMONT COUNTY FOR THE RELEASE OF THE PERFORMANCE BOND. FREMONT COUNTY RETURNED THE PERFORMANCE BOND TO WOODLAND STATING THAT THE CAUSEWAY WAS FINISHED. THE FREMONT COUNTY ENGINEER WAS NEVER GIVEN ANY DRAWINGS OF THE CAUSEWAY AND WAS NOT EVEN MADE AWARE THAT THERE WAS ANY WORK BEING DONE ON THE CAUSEWAY SO THAT IT COULD BE INSPECTED. THE COUNTY ENGINEER NEVER SIGNED OFF ON THE CAUSEWAY CONSTRUCTION, SHE WAS NEVER ASKED!! B.I.A.'S ENGINEER, WINSTON DYER WAS NEVER CONTACTED AND ASKED TO SIGN OFF ON THE COMPLETION OF THE CONSTRUCTION OF THE CAUSEWAY.

WHEN BOARD MEMBER REED RICHMAN WAS CONTACTED AND INFORMED THAT FREMONT COUNTY WAS GIVING THE WOODLAND'S PERFORMANCE BOND BACK, HE CALLED MR. DAVIS AND ASKED IF THE CAUSEWAY WAS TRULY FINISHED. MR. DAVIS NEVER ANSWERED THE QUESTION AND FINALLY HUNG UP ON MR RICHMAN. MR. RICHMAN THEN CONTACTED THE COUNTY ENGINEER AND THE B.I.A. ENGINEER TO SEE IF THEY HAD INSPECTED AND SIGNED OFF ON THE CONSTRUCTION COMPLETION. BOTH ENGINEERS HAD NOT EVEN BEEN MADE AWARE OF THE FACT THAT THE WOODLANDS WAS GETTING THEIR BOND BACK.

THEN THE WOODLANDS SENT OUT A LETTER TO THE ASSOCIATION MEMBERS STATING, AMONG OTHER THINGS THAT THE CAUSEWAY WAS FINISHED.

ON APRIL 15th, 2008 BRENT CALL, CON HAYCOCK, JOLENE JENKINS, SCOTT WATSON, ROY LEAVITT AND REED RICHMAN MET WITH JASON NIETT AND PAUL RICHEY IN REED LARSEN'S OFFICE. RYAN DAVIS WOULD NOT ATTEND. BOTH JASON NIETT AND PAUL RICHEY INSISTED THAT THE CAUSEWAY WAS FINISHED? NOW LET US ASK, IS THE CAUSEWAY FINISHED? WHO IS GOING TO HOLD THE DEVELOPER ACCOUNTABLE? WE DON'T THINK THE COUNTY WILL. DOES THE ASSOCIATION WANT TO PICKUP THE BILL FOR FINISHING THE CAUSEWAY? WHAT ELSE WILL THE ASSOCIATION HAVE TO PAY FOR AFTER THE DEVELOPER GETS HIS MONEY AND RUNS? IS THE B.I.A. BOARD BEING UNREASONABLE AS STATED BY RYAN DAVIS? CAN ANYONE LOOK AT THE CAUSEWAY AND HONESTLY SAY THAT THERE ARE THREE TRAFFIC LANES AND GUARD RAILS? IS IT FINISHED? CAN WE REALLY TAKE THE DEVELOPER AT HIS WORD?? SHOULD WE WITHDRAW THE APPEAL FROM THE SUPREME COURT? ONCE AGAIN WHO IS GOING TO HOLD THE WOODLAND ACCOUNTABLE?

On August 11, 2008, after receiving Judge Brent Moss' decision, Brent Call, Con Haycock, Jolene Jenkins, Scott Watson, Roy Leavitt, Randy Hayes, and Reed Richman met with the legal counsel for the BIA, Reed Larsen and Ron Kerl. At this meeting, discussion included the likelihood of a successful appeal to the Idaho Supreme Court, the fact that the BIA will have no bargaining position should the appeal be lost, and the cost of the appeal to the BIA association members. BIA's counsel discussed with the board members at length the likelihood of a successful appeal. The cost of the appeal was determined to be between \$15,000 and \$20,000, of which \$11,000 was currently in the legal fund. Counsel informed the board members that the Supreme Court Justices would in all probability oversee arbitration between the BIA and the Woodlands before the suit comes before the bench. The seven board members voted unanimously that it was in the best interest of the BIA to proceed with the appeal.

We are willing to negotiate with the Woodlands. They need to just call and set up a meeting and bring their paper and pen ready to sign any agreements made at the meeting instead of saying they will consider all ideas. We, the Board, are trying to protect the island. We don't want to have to fix the

problems that the developer leaves behind. They claim District 7 will inspect their sewer systems, does anyone really believe that?

Why are the Woodlands meeting with individuals on the island and not with the board? Some members on the island have met with the developer and had their own mediation meeting, yet refuse to be a member on the board and some of them don't pay BIA dues. How can they speak for anyone? Is it to break us up as an association? Of course it is. Once they stop the unity in the association then they can start to divide us.

There are rumors of the developer offering the Island a park, repair the roads around the island, fire hydrants, a large sum of a cash infusion, all of which are not true. Dave Hume did meet with two people, one of whom was the developer, and did get an agreement from the developer to pay a user fee but they did not sign the agreement. So here we have the same thing. They agreed to continue to discuss those items and as long as it goes their way they will keep discussing them, else they stop negotiations and say we are being unreasonable.

We can stop the litigation at anytime, and we will if the developer comes to the table with real commitment to settle the dispute and be ready to sign any agreement we make.

IF WE LET UP NOW WE WILL BE RUN OVER BY THE DEVELOPER.

WHO WILL MAKE THEM FOLLOW THE RULES SET DOWN BY LAW?

JUST LOOK AT THE CAUSEWAY FOR STARTERS.

They have had all summer to finish it but no they cut a hole in the center of the island to take our attention off the causeway.

As a board we may not stop them but if they don't build it right we will be there to protect the Island and make them do it right.

Why do we feel they need to contribute a cash amount?

Because the infrastructure around the center of the island is what makes the center ground as appealing as it is. Who has paid for the infrastructure? Everyone on the Island that has ever paid his or her dues or when you purchase your cabin it was a part of that price.

WHAT HAS THE CENTER ISLAND OWNERS EVER CONTRIBUTED TO THAT INFRASTRUCTURE? The answer is nothing.

If anyone in the center of the Island ever has a problem where will they go?

Straight to Terry and ask for help. Is he going to turn them down? Should he turn them down? We all know the value of Terry and Marg at the gate. They need to pay their share of the cost of having such people available on the Island to turn to.

We feel they need to join the association, pay dues and be a part of the association, then they can come to the meetings, express their concerns and hear our concerns, then we can all work together. When it's all said and done we are going to have to be neighbors and work together to keep the Island a special place for us all to enjoy.

P.S.

We just received notice that we have an arbitration meeting with the Supreme Court and the Woodlands Nov 4th. We will attend and be open to all offers to settle but we will be firm in protecting the Island and the B.I.A. association's interest.

THE B.I.A. BOARD
Brent Call

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Aug 4th

Judge Moss Ruling

Friday Judge Moss ruled against the BIA. We now have to meet with our attorney to look at our options to determine where we go from here. We have 30 days to appeal the ruling to the Supreme Court. Please let us know your thoughts on this issue.

June 11th 08

Hello B.I.A.

We have three items for you to read.

- 1) Judge Moss Hearing**
- 2) Terry's surgery**
- 3) July 4th Island parade and boat parade**

1) The Board attended the hearing at the St Anthony courthouse with Judge Moss. Our attorney's presented our case very well, now we just wait for his ruling.

2) For your info Terry had knee surgery Tuesday the 10th. He is doing fine at this time. He will be home Friday. We wish him a speedy recovery. We need him on the Island. We would also like to wish Terry and Marg a happy 50th wedding anniversary on the 28th of June.

3) The last item is the July 4th parades. We would like to honor our service men and women. If you know of anyone that would like to ride in the B.I.A float in full dress uniform please give Jolene a call, 208-589-5050. We would like them to ride on the B.I.A boat to lead us around the island during the boat parade that night.

Hope to see all of you on the 4th. Let's hope for warm weather

May 23rd

To all B.I.A. Members

1-Judge Moss hearing

First item we have is to let you know that Judge Moss has moved the hearing for the inner island back to June 10th 2pm. We had hoped he would have his ruling by the July 4th but it doesn't look like it will happen.

2- FRIDAY July 4th activities

Our annual meeting and activities were approved last year for Friday July 4th. We will start with our annual parade at 9:30 am. Start lining up at 9:00 at the top of the causeway. Decorate your boat, 4 wheelers, bikes or anything you have and come and join us. Parents there will be a trailer for you to ride on to follow your little ones around the loop should they not make it all the way. We will stop at the Rexburg boat club for a short refreshment break.

Our annual membership meeting will be at 12:30pm at Peterson's shop lot #178.

PLEASE DO NOT PARK ON PRIVATE PROPERTY

2008 dues are payable at this time.

YOUR DUES MUST BE PAID IN FULL TO HAVE VOTING RIGHTS

Annual meeting Agenda

- A- Verification of a Quorum
- B- Discussion on increase of Dues
- C- Replacement of Snow Blower- Removal of fire truck for the winter
- D- Update of Gate and Card reader
- E- Consideration of new Home Owner Bylaws
- F- Election of two board members

G- Inner Island update

This meeting will last approximately 1hr.

Dutch Oven Dinner- BBQ Chicken, Potatoes, Beans, and Cobbler with a scoop of ice cream will start at 5:30 at the same place. We are planning to feed 400 people. We ask that you bring a **salad OR Two**. Plates will be provided.

Your whole group is welcome.

Fee is by donation.

We will end with a boat parade at 8pm. Gather inside the cove. Decorate your boat. Look for the flag on the dock and the Sheriff's Boat. He will lead us around the island to Lake Side for the Fireworks at dusk.

APRIL 16th

We had the opportunity to meet with the Woodlands Group Tuesday April 15th. The purpose of the meeting was to find common ground to settle the lawsuit between B.I.A., Fremont Co. and the Woodlands. Any agreement between the parties has to be done before Judge Moss rules on the suit and all litigation must be dropped. At this time we as a board, with direction from the Association members feel it is not in our best interest to settle before hearing the ruling from Judge Moss. Please feel free to email me or call with your comments.

Con Haycock

208-431-0835

chaycock@pmt.org

BIA has received an offer to settle the dispute between Woodlands and BIA. Woodlands' offer is as follows:

- 1) The Woodlands will donate the property, approximately one acre, that lies in between the guard shack and the existing BIA boat ramp to the BIA for the mutual use of all BIA homeowners on the Island.
- 2) The Woodlands will donate \$25,000 to the BIA to construct a pavilion on the property donated by The Woodlands.
- 3) We propose that the remaining money in the legal fund be returned to the homeowners.
- 4) The Woodlands will replace and reconstruct the entry gate near the guard shack. This gate will have an arch that will be made from large timber, the gate itself will be metal, similar to the gate that is at Stevens Ranch.
- 5) As The Woodlands has indicated before, The Woodlands will agree to pay its proportionate cost to maintain common roads, facilities, and property. In the past the BIA has indicated that this can be done through paying a user fee or through joining the BIA, we are amenable to either scenario.
- 6) In effort to show good faith, we ask that all litigation by the BIA be withdrawn, the claims dismissed and released, and that concerns be worked out through reasonable means.
- 7) Establish a mandatory HOA to govern The Woodlands and existing homeowners, with CC&R's that will provide for attractive site-built homes or cabins.

- 8) Establish a 50' setback between The Woodlands and existing homeowners on the Island so that existing wells, structures, and the impact on the use of existing property owners' property is minimized, in which 50' there can be no structure, fence or other improvement built.
- 9) Establish a 100' setback for any septic system within The Woodlands so that all Woodlands septic tanks must be at least 100' from the boundary of any existing homeowners property.
- 10) Provide that all roads within The Woodlands be maintained by The Woodlands so that there is no economic impact or burden on existing homeowners to maintain improvements within The Woodlands, this includes snow removal, road upkeep, etc.
- 11) Install a dry hydrant in Island Park Reservoir for the use of the Island Park fire district for the benefit of the entire Island, and also install yard hydrants within the Woodlands, and fire breaks within the Woodlands. This will improve the safety of the entire Island in the event that a fire ever breaks out on the Island.
- 12) Construct a central water system to service the Woodlands, eliminating the need for multiple wells to be drilled on the property.
- 13) As we said that we would, we have improved the Causeway to three lanes. We will add a layer of aggregate to the Causeway and will construct guard rails as required by the County.
- 14) This offer is to be accepted by BIA before the May hearing.

APRIL 10th 2008

Bills Island Homeowner Association P.O. Box 344

Dear Property Owners, Recently we were notified that the Woodland Development Group purchased a lot in the

Welling Addition. They paid the purchase price for the lot and paid all BIA and Welling dues, in addition to the legal fund assessment. By doing so, they became members of our association. Within a few days we received a demand letter, from their attorney, asking for all of our association documents, all minutes of annual meetings held, bylaws, Articles of Incorporation and C & R records and any changes that have been made, names and addresses of all board members. They asked for these records for the past seven years. Since we are a public organization and they are entitled to this information we sent them approximately 875 pages of documents.

As a board, we try to manage the association like a business. An independent certified public accountant firm audits all our financial records systematically each year and provides a financial report at our annual meetings. Our secretary/treasurer writes all checks but does not have check signing authority. All checks are approved and signed by two board members. All meetings have minutes taken, reread at the next meeting and approved by the board. At our annual meeting we have a voting quorum of members present to conduct business. All business is presented to the membership for their approval, which is done by motion, seconded, and then voted upon. New business from the floor is discussed and voted on the same way. Any member of our association has voting rights in these meetings. Everything is done up front and in a business-like manner. We have a legal firm that audits what we do and how we do it. We have a dedicated board that works hard for the association to keep things moving smoothly.

Recently Woodlands sent a letter to the Bills Island membership. The intent of this letter was to discredit the BIA board and try to get association members to lose confidence in the board and the BIA. Their main interest is to dismantle the association's funding, especially the legal fund. Their goal is to get the BIA legal action stopped so they can proceed with their development. This is the Bills Island Association's position:

1. Fremont County Planning and Zoning denied The Woodlands development for failure to meet the building code ordinances.
2. Woodlands appealed to the county commissioners to overturn Planning and Zoning's decision.
3. After much discussion and debate in public comment meetings the County Commissioners and the county attorney met in a "no comment" work meeting and decided to bypass or tweak parts of the building code and approved the Woodlands application.
4. Bills Island Association appealed that decision to District Court for failure to meet county building code and fire safety regulations.
5. The building code is very explicit on access and fire safety.
6. The BIA is standing in the way of the developer until he either meets code or the court ruling is made.
7. The BIA is in a good position for this lawsuit. Judge Moss has briefs from Cooper and Larsen, the BIA attorney, briefs from the developer's attorney, Chuck Homer, and briefs from Fremont County attorney, Karl Lewies. He also has the rebuttal brief from BIA. The hearing date, for oral arguments, is May 20th The judge has approximately 30 days after that to make a decision.
8. We received a letter from the Woodlands dated March 19, 2008 where they asked us to drop the lawsuit in exchange for a small settlement. We feel we should wait for the court's decision. Hopefully we will have a decision before our annual meeting in July. The legal system moves very slowly.

We appreciate your patience and support both financially and emotionally. Please understand that all efforts by the developer are being done at their own peril. That includes the work on the causeway and any work on the development while the judicial review is proceeding.

Thank you,

Bills Island Association Board

Here is a request from the Woodlands

Brent and Con,

Paul Ritchie and myself (without Ryan) were wondering if we could come meet with you and the board to discuss the latest written proposal we sent regarding the interior development of the island. We would be fine in coming up to Pocatello to meet at Larsen's office if that is a convenient place to meet. The premise for the meeting is to simply try to discuss the points in the letter and see if a mutually beneficial solution can be reached.

If you are open to meeting with us, please let us know some potential dates that work for you.

Thanks,

Jayson

We send this to all Homeowners.

— We have had an opportunity to review your March 19, 2008, letter. We have also reviewed your previous demands which were made upon Bills Island Association for our corporate records. Traditionally, Bills Island Association has moved forward with directives and initiatives that are adopted at the annual meeting. Certainly, the Board has power to run the Association. However, the Board has always been sensitive to following the direction that the Board receives at the annual meeting.

The homeowners at the annual meeting have consistently, since the Wilderness Group and now since the Woodlands Group, been adamant that any development of the interior portion of the island would require compliance with all planning and zoning laws and ordinances and require compliance with all BIA rules for the private road. We have discussed on numerous occasions with you, Bills Island Association's view that the Woodlands subdivision does- not comply with Fremont County planning ordinance. The Planning and Zoning Commission agreed with us. The county commissioners disagreed. We believe that the judicial review that is going on is appropriate and ultimately that a court will require two points of ingress and egress to the subdivision to comply with the provisions of Fremont County Development Code Section KK which has been often discussed and with the Uniform Fire Code which also requires two points of ingress and egress.

You have provided certain items that are of interest for settlement discussion. However, there is no showing of a good faith to ask that all litigation be withdrawn and dismissed and released before there is any indication that there would be face to fact settlement negotiations. Such is not good faith and it is not reasonable.

We remain open to discussions concerning resolution, but also remain firm in following through with the expressed intent of the majority of the homeowner's association at the annual meeting to require the Woodlands to comply with all legal

requirements for development. We as an association believe that is the only way that safety and the future of the island can be preserved.

We welcome a meeting with you and would encourage you to bring up any items which you wish at the annual meeting over the 4th of July.

Sincerely,

B.I.A. Board

March 20th 2008

Welcome new B.I.A. members *(A must read)*

Status report on Bills Island Appeal

We would like to welcome the newest members to the island.

It is The Woodlands at Bill's Island L.L.C. They have purchase a lot in the Willing Addition. They have joined the B.I.A association and have paid their dues and have paid their legal fee assessment to oppose the center island development. Welcome and Thank you!

States Report Bill's Island Appeal:

B.I.A has filled its appeal and the opening brief. On Friday March 14th 2008 the county and Woodlands filed their response brief. Our attorney's will file a reply brief within the next 2 weeks. After the briefing is completed a hearing will be held before Judge Moss. This will probably be sometime in May. We remain confident in the merits of the appeal.

Please understand that all efforts by the developer, The Woodlands, are being done at their own peril. That includes the work on the causeway and any work on the development while the judicial review is proceeding.

If you have any question or concerns feel free to call your board members.

Brent Call

Con Haycock

Reed Richman.

Jolene Jenkins

Roy Leavitt

Randy Hayes

Scott Watson

February 18, 2008

To: Members of Bills Island Association

Please read our response to the letter you received and the court papers below then make up your mind as to the direction we are going. We hope you will find that we are in a good position going into court with the appeal. Email us with for feedback PLEASE

Subject: Response to the Woodlands Letter to BIA Property Owners

1. Woodlands Developers sent a letter to Property Owners on Bills Island stating their opinions. Remember- **“A product comes highly recommended by those that sell it.”** It was a propaganda letter and not all the facts stated were true. The letter is designed to under mine our Association, to divide and conquer us and is inappropriate conduct on their behalf. We as a board have been open with the Association. We have discussed this matter in our annual meeting and asked for your input. As a member, you voted unanimously on the direction we should go and you gave the board authority to make the day-to-day decisions and you voted to move ahead. If you have questions about the BIA or board it seems the people to ask is your board. We try to keep all information on our website and we are sending information updates to each member by mail. Please take the time to read it and be informed.

2. A 42-unit development is not a minimal or small development. It is the maximum or largest amount of dwelling units allowed to be built on the acreage Woodlands owns. It is not a small development, 6 or less is considered a small development.
3. The Woodlands Plot was denied by the Freemont County Planning and Zoning Board for failure to meet Freemont County Building Code for access, i.e. 2 points of Ingress and 2 points for Egress and uniform fire safety.
4. The developers group of qualified Attorneys and Consultants they hired to get their desired end results of getting the development approved did not change the end result. **Non-compliance to the building code was the result. Planning and Zoning denied their application.**
5. Our team of Attorneys and Engineers are just as qualified and they read and understand the Building Code rules and regulation and access is very defiant and is an absolute must comply to obtain approval. **The Developer did not meet the code.**
6. The Developer appealed to the County Commissioner to over ride the Planning and Zoning decision and figure a way to bypass that portion of the County Building Code. The development code is still in force but the County Commissioner has chosen to ignore the KK3 Section of the code and gave the developer approval for the application with restrictions, 29 absolutes they had to comply with including negotiations with Property Owners and BIA.
7. The causeway Riprapping had to be done while the reservoir was empty. Judge Moss, the BIA Board and Developer met to make decisions. Judge Moss ordered the developer to provide Engineering plans for the causeway widening within 48 hours and gave BIA 48 hours to review plans and then we went back to court. Judge Moss said widening the causeway would add to Bills Island. But it had no bearing or influence on the court case. The Developer could widen the causeway at his expense with the understanding it was at risk construction. If BIA wins in court the causeway construction is a donation to BIA. The Developer has no recourse.
8. BIA did indeed file an appeal in District Court. We are defending our right to hold county officials responsible to see they uphold the County Building Code and Laws and not be misled to interpret code different from its intent. Attorneys like to put their own twist to accomplish their own goals.
9. The Developers statement, **The Woodlands have agreed to accommodate most requests.** The examples they use are very misrepresented and are not true. BIA made several requests at mediation and they were all rejected including i.e. the loop road improvement, membership in BIA, user fee, update equipment, update gate and meeting facilities.
10. We as a Board have met with the developers on several occasions including mediation with Attorneys present. **Their comments have been, “we have deeper**

pockets than BIA". We told them having more money does not make you right or give you the right to change or alter the Building Code Laws that govern the place we live in and hold dear.

11. Encroachments of existing lots, wells, etc. Often time's property gets surveyed several times and Surveyors come up with different correction points. This is why set backs on Property lines are required to allow for difference in surveys. Courts will not disallow older surveys unless they are off an extra large amount.
12. Where do we go from here?

The Developers statement in their letter, about BIA, should be reversed. They say they will take it to the Supreme Court and have redirected money to do it. This is what they have told us all along. **They have deeper pockets**. Does this make them right? Does this give them the right to find loopholes to override or ignore or tweak the laws and rules we all live by? It's hard to interpret 2 ingress and 2 egress in any other way. The County Commissioners ignored or tweaked that law; **they need to be held accountable**. And that is the purpose for the Lawsuit.

CURRENT INNER ISLAND ACTIVITIES

July 21st

Hello to all

Check the WHAT'S NEW tab for regular BIA info

It seems as a board we have kind of taken a break through the winter but we are still here and we are getting ready for the summer activities on the island.

The gate is working again for the summer. We had a little issue with the exit last fall so we did have to leave the gate up all winter. We tried to go in and out of the same gate last year but the old system didn't have the ability to distinguish loop one from loop two. There are loop sensors in the ground that detect cars as they drive through and lower the gate. We added a second one that will open the gate as you drive out and then the first one was supposed to close it, but it could not handle the second loop. Hopefully the new system will handle it, if not we will put it on the old exit and use it there. We are still planning on using one gate this summer but we are not sure if it will be too congested at the gate during the busy weekends. We ask that you be patient with us during the trial time.

You will need your gate key to get in for now. The phone system is in and has been tested on a small trial bases. We are adding the phone numbers that we collected last year and we will try to get the phone system going before the busy summer. If your home phone or cell phone number has not changed from last year you should be ready to go as soon as we get it running. If you are current on your dues you will be allowed to use the phone system free as part of being a paid up member.

Oct 2nd

Here is the Boards response to Dave Hume's letter.

DEAR BILLS ISLAND PROPERTY OWNER:

WE, THE DUES PAYING BOARD MEMBERS, WOULD LIKE TO CLEAR UP SOME OF THE CONTROVERSY OVER THE CENTER ISLAND DEVELOPMENT. WE WILL START FEB. 1st, 2007, AFTER THE WOODLANDS (i.e. "THE RICHEY GROUP" FEATURING, RYAN DAVIS, PROJECT MANAGER, JASON NIETT & PAUL RICHEY) BOUGHT THE PROPERTY FROM THE WILDERNESS GROUP, BRENT CALL, ROY LEAVITT, JOLENE JENKINS, AND REED RICHMAN MET WITH RYAN DAVIS ON 2/1/07. OUR CONCERNS WERE THE SAME THEN AS NOW: SAFETY, ACCESS, WATER QUALITY AND DENSITY. MR. DAVIS

STATED AT THAT TIME THE WOODLANDS WOULD JOIN THE HOME OWNERS ASSOCIATION, NOT HAVE A GATE AT THE ENTRANCE OF THE WOODLANDS DEVELOPMENT, HELP IMPROVE THE GATE AND ENTRANCE TO THE ISLAND, HELP WITH DRAFTING NEW C.C. & R.'S FOR THE ENTIRE ISLAND, WORK WITH AND DISCUSS WITH THE ISLAND ASSOCIATION ON HOW THE CAUSEWAY PROPERTY WOULD BE DEVELOPED, BUILD A PAVILION, HELP WITH UPDATING THE TRACTOR, SNOW BLOWER, FIRE TRUCK AND SECURITY CABIN. MR. DAVIS HAS BEEN ASKED EACH TIME THE BOARD MEMBERS HAVE MET WITH HIM IF THE RICHEY GROUP WOULD REDUCE THE NUMBER OF LOTS AND EACH TIME HE HAS REPLIED THEY WOULD NOT.

BRENT CALL AND REED RICHMAN MET BRIEFLY WITH MR. DAVIS AFTER THE P & Z HEARING FEB 11th 2007 AND AT THAT TIME MR. DAVIS STATED THAT THE RICHEY GROUP WOULD NOT BE MEMBERS OF THE ASSOCIATION, WOULD INSTALL A GATE AT THE ENTRANCE OF THE WOODLANDS DEVELOPMENT, WOULD NOT HELP IMPROVE THE GATE OR SECURITY CABIN, WOULD NOT HELP WITH THE ISLAND C. C.& R'S AS THEY WOULD HAVE THEIR OWN C.C. & R'S AND WOULD ALLOW RENTALS. MR. DAVIS OFFERED TEN THOUSAND DOLLARS TO BUILD A PAVILION, UPDATE THE GATE, IMPROVE THE SECURITY CABIN, UPDATE THE TRACTOR, SNOW BLOWER AND FIRE TRUCK. MR. DAVIS' COMMENT WAS "THAT'S THE BEST WE CAN DO".

AFTER P & Z DENIED THE DEVELOPMENT AND THE COUNTY COMMISSIONERS APPROVED THE DEVELOPMENT, THE B.I.A. ASSOCIATION FILED AN APPEAL WITH DISTRICT COURT. AT THE FIRST HEARING WITH JUDGE MOSS IN DISTRICT COURT, JUDGE MOSS STATED THAT THE WOODLANDS COULD BUILD THE CAUSEWAY "AT THEIR OWN RISK". WE, THE B.I.A. BOARD, AGREED TO A MEDIATION MEETING WITH WOODLANDS. WE MET AT BAKER & HARRIS OFFICES IN BLACKFOOT IDAHO ON OCTOBER 4, 2007. BOARD MEMBERS PRESENT WERE: BRENT CALL, CON HAYCOCK, JOLENE JENKINS, ROY LEAVITT, SCOTT WATSON, REED RICHMAN AND LEGAL COUNSEL REED LARSEN. IN THE WOODLANDS ROOM: RYAN DAVIS, CHARLES HOMER AND KARL LEWIES. MR. BAKER WENT BACK AND FORTH BETWEEN ROOMS FOR OVER EIGHT HOURS. THE B.I.A. BOARD KEPT ASKING FOR ENGINEERED DRAWINGS OF THE IMPROVEMENT OF THE CAUSEWAY. AS SET FORTH BY THE FREMONT COUNTY COMMISSIONERS UPON THEIR APPROVAL OF THE DEVELOPMENT. AFTER ABOUT EIGHT HOURS THE WOODLANDS ADMITTED THAT THEY DID NOT HAVE ANY DRAWINGS OF THE CAUSEWAY IMPROVEMENT. JUDGE MOSS THEN RULED THAT THE WOODLANDS MUST PRODUCE ENGINEERED DRAWINGS TO COUNTY SPECIFICATIONS WITHIN 72 HOURS. THEN THE B.I.A. ASSOCIATION'S ENGINEER WOULD HAVE 72 HOURS TO REVIEW THE DRAWINGS AND APPROVE OR DISAPPROVE. WE THEN WENT BACK TO JUDGE MOSS'S COURT AND THE JUDGE RULED THAT THE WOODLANDS COULD PROCEED WITH CAUSEWAY CONSTRUCTION "AT THEIR OWN RISK". JUDGE MOSS ALSO RULED THAT THE WOODLANDS MUST POST A PERFORMANCE BOND WITH THE COUNTY TO INSURE THE WORK WAS DONE ACCORDING TO THE ENGINEERED DRAWINGS AND COMPLETED. THE WOODLANDS QUICKLY STARTED CONSTRUCTION OF THE CAUSEWAY, THEN IN LATE JANUARY 2008 THEY PETITIONED FREMONT COUNTY FOR THE RELEASE OF THE PERFORMANCE BOND. FREMONT COUNTY RETURNED THE PERFORMANCE BOND TO WOODLAND STATING THAT THE CAUSEWAY WAS FINISHED. THE FREMONT COUNTY ENGINEER WAS NEVER GIVEN ANY DRAWINGS OF THE CAUSEWAY AND WAS NOT EVEN MADE AWARE THAT THERE WAS ANY WORK BEING DONE ON THE CAUSEWAY SO THAT IT COULD BE INSPECTED. THE COUNTY ENGINEER NEVER SIGNED OFF ON THE CAUSEWAY CONSTRUCTION, SHE WAS NEVER ASKED!! B.I.A.'S ENGINEER, WINSTON DYER WAS NEVER CONTACTED AND ASKED TO SIGN OFF ON THE COMPLETION OF THE CONSTRUCTION OF THE CAUSEWAY.

WHEN BOARD MEMBER REED RICHMAN WAS CONTACTED AND INFORMED THAT FREMONT COUNTY WAS GIVING THE WOODLAND'S PERFORMANCE BOND BACK, HE CALLED MR. DAVIS AND ASKED IF THE CAUSEWAY WAS TRULY FINISHED. MR. DAVIS NEVER ANSWERED THE QUESTION AND FINALLY HUNG UP ON MR RICHMAN. MR. RICHMAN THEN CONTACTED THE COUNTY ENGINEER AND THE B.I.A. ENGINEER TO SEE IF THEY HAD INSPECTED AND SIGNED OFF ON THE CONSTRUCTION COMPLETION. BOTH ENGINEERS HAD NOT EVEN BEEN MADE AWARE OF THE FACT THAT THE WOODLANDS WAS GETTING THEIR BOND BACK.

THEN THE WOODLANDS SENT OUT A LETTER TO THE ASSOCIATION MEMBERS STATING, AMONG OTHER THINGS THAT THE CAUSEWAY WAS FINISHED.

ON APRIL 15th, 2008 BRENT CALL, CON HAYCOCK, JOLENE JENKINS, SCOTT WATSON, ROY LEAVITT AND REED RICHMAN MET WITH JASON NIETT AND PAUL RICHEY IN REED LARSEN'S OFFICE. RYAN DAVIS WOULD NOT ATTEND. BOTH JASON NIETT AND PAUL RICHEY INSISTED THAT THE CAUSEWAY WAS FINISHED? NOW LET US ASK, IS THE CAUSEWAY FINISHED? WHO IS GOING TO HOLD THE DEVELOPER ACCOUNTABLE? WE DON'T THINK THE COUNTY WILL. DOES THE ASSOCIATION WANT TO PICKUP THE BILL FOR FINISHING THE CAUSEWAY? WHAT ELSE WILL THE ASSOCIATION HAVE TO PAY FOR AFTER THE DEVELOPER GETS HIS MONEY AND RUNS? IS THE B.I.A. BOARD BEING UNREASONABLE AS STATED BY RYAN DAVIS? CAN ANYONE LOOK AT THE CAUSEWAY AND HONESTLY SAY THAT THERE ARE THREE TRAFFIC LANES AND GUARD RAILS? IS IT FINISHED? CAN WE REALLY TAKE THE DEVELOPER AT HIS WORD?? SHOULD WE WITHDRAW THE APPEAL FROM THE SUPREME COURT? ONCE AGAIN WHO IS GOING TO HOLD THE WOODLAND ACCOUNTABLE?

On August 11, 2008, after receiving Judge Brent Moss' decision, Brent Call, Con Haycock, Jolene Jenkins, Scott Watson, Roy Leavitt, Randy Hayes, and Reed Richman met with the legal counsel for the BIA, Reed Larsen and Ron Kerl. At this meeting, discussion included the likelihood of a successful appeal to the Idaho Supreme Court, the fact that the BIA will have no bargaining position should the appeal be lost, and the cost of the appeal to the BIA association members. BIA's counsel discussed with the board members at length the likelihood of a successful appeal. The cost of the appeal was determined to be between \$15,000 and \$20,000, of which \$11,000 was currently in the legal fund. Counsel informed the board members that the Supreme Court Justices would in all probability oversee arbitration between the BIA and the Woodlands before the suit comes before the bench. The seven board members voted unanimously that it was in the best interest of the BIA to proceed with the appeal.

We are willing to negotiate with the Woodlands. They need to just call and set up a meeting and bring their paper and pen ready to sign any agreements made at the meeting instead of saying they will consider all ideas. We, the Board, are trying to protect the island. We don't want to have to fix the problems that the developer leaves behind. They claim District 7 will inspect their sewer systems, does anyone really believe that?

Why are the Woodlands meeting with individuals on the island and not with the board? Some members on the island have met with the developer and had their own mediation meeting, yet refuse to be a member on the board and some of them don't pay BIA dues. How can they speak for anyone? Is it to break us up as an association? Of course it is. Once they stop the unity in the association then they can start to divide us.

There are rumors of the developer offering the Island a park, repair the roads around the island, fire hydrants, a large sum of a cash infusion, all of which are not true. Dave Hume did meet with two people, one of whom was the developer, and did get an agreement from the developer to pay a user fee but they did not sign the agreement. So here we have the same thing. They agreed to continue to discuss those items and as long as it goes their way they will keep discussing them, else they stop negotiations and say we are being unreasonable.

We can stop the litigation at anytime, and we will if the developer comes to the table with real commitment to settle the dispute and be ready to sign any agreement we make.

IF WE LET UP NOW WE WILL BE RUN OVER BY THE DEVELOPER.

WHO WILL MAKE THEM FOLLOW THE RULES SET DOWN BY LAW?

JUST LOOK AT THE CAUSEWAY FOR STARTERS.

They have had all summer to finish it but no they cut a hole in the center of the island to take our attention off the causeway.

As a board we may not stop them but if they don't build it right we will be there to protect the Island and make them do it right.

Why do we feel they need to contribute a cash amount?

Because the infrastructure around the center of the island is what makes the center ground as appealing as it is. Who has paid for the infrastructure? Everyone on the Island that has ever paid his or her dues or when you purchase your cabin it was a part of that price.

WHAT HAS THE CENTER ISLAND OWNERS EVER CONTRIBUTED TO THAT INFRASTRUCTURE? The answer is nothing.

If anyone in the center of the Island ever has a problem where will they go?

Straight to Terry and ask for help. Is he going to turn them down? Should he turn them down? We all know the value of Terry and Marg at the gate. They need to pay their share of the cost of having such people available on the Island to turn to.

We feel they need to join the association, pay dues and be a part of the association, then they can come to the meetings, express their concerns and hear our concerns, then we can all work together. When it's all said and done we are going to have to be neighbors and work together to keep the Island a special place for us all to enjoy.

P.S.

We just received notice that we have an arbitration meeting with the Supreme Court and the Woodlands Nov 4th. We will attend and be open to all offers to settle but we will be firm in protecting the Island and the B.I.A. association's interest.

THE B.I.A. BOARD
Brent Call

208-339-4168

REED RICHMAN

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Roy Leavitt

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208-558-7959

Aug 4th

Judge Moss Ruling

Friday Judge Moss ruled against the BIA. We now have to meet with our attorney to look at our options to determine where we go from here. We have 30 days to appeal the ruling to the Supreme Court. Please let us know your thoughts on this issue.

June 11th 08

Hello B.I.A.

We have three items for you to read.

1) Judge Moss Hearing

2) Terry's surgery

3) July 4th Island parade and boat parade

1) The Board attended the hearing at the St Anthony courthouse with Judge Moss. Our attorney's presented our case very well, now we just wait for his ruling.

2) For your info Terry had knee surgery Tuesday the 10th. He is doing fine at this time. He will be home Friday. We wish him a speedy recovery. We need him on the Island. We would also like to wish Terry and Marg a happy 50th wedding anniversary on the 28th of June.

3) The last item is the July 4th parades. We would like to honor our service men and women. If you know of anyone that would like to ride in the B.I.A float in full dress uniform please give Jolene a call, 208-589-5050. We would like them to ride on the B.I.A boat to lead us around the island during the boat parade that night.

Hope to see all of you on the 4th. Let's hope for warm weather

May 23rd

To all B.I.A. Members

1-Judge Moss hearing

First item we have is to let you know that Judge Moss has moved the hearing for the inner island back to June 10th 2pm. We had hoped he would have his ruling by the July 4th but it doesn't look like it will happen.

2- FRIDAY July 4th activities

Our annual meeting and activities were approved last year for Friday July 4th. We will start with our annual parade at 9:30 am. Start lining up at 9:00 at the top of the causeway. Decorate your boat, 4 wheelers, bikes or anything you have and come and join us. Parents there will be a trailer for you to ride on to follow your little ones around the loop should they not make it all the way. We will stop at the Rexburg boat club for a short refreshment break.

Our annual membership meeting will be at 12:30pm at Peterson's shop lot #178.

PLEASE DO NOT PARK ON PRIVATE PROPERTY

2008 dues are payable at this time.

YOUR DUES MUST BE PAID IN FULL TO HAVE VOTING RIGHTS

Annual meeting Agenda

- A- Verification of a Quorum
- B- Discussion on increase of Dues
- C- Replacement of Snow Blower- Removal of fire truck for the winter
- D- Update of Gate and Card reader
- E- Consideration of new Home Owner Bylaws
- F- Election of two board members
- G- Inner Island update

This meeting will last approximately 1hr.

Dutch Oven Dinner- BBQ Chicken, Potatoes, Beans, and Cobbler with a scoop of ice cream will start at 5:30 at the same place. We are planning to feed 400 people. We ask that you bring a **salad OR Two**. Plates will be provided.

Your whole group is welcome.

Fee is by donation.

We will end with a boat parade at 8pm. Gather inside the cove. Decorate your boat. Look for the flag on the dock and the Sheriffs Boat. He will lead us around the island to Lake Side for the Fireworks at dusk.

APRIL 16th

We had the opportunity to meet with the Woodlands Group Tuesday April 15th. The purpose of the meeting was to find common ground to settle the lawsuit between B.I.A., Fremont Co. and the Woodlands. Any agreement between the parties has to be done before Judge Moss rules on the suit and all litigation must be dropped. At this time we as a board, with direction from the Association members feel it is not in our best interest to settle before hearing the ruling from Judge Moss. Please feel free to email me or call with your comments.

Con Haycock

208-431-0835

chaycock@pmt.org

BIA has received an offer to settle the dispute between Woodlands and BIA. Woodlands' offer is as follows:

- 1) The Woodlands will donate the property, approximately one acre, that lies in between the guard shack and the existing BIA boat ramp to the BIA for the mutual use of all BIA homeowners on the Island.
- 2) The Woodlands will donate \$25,000 to the BIA to construct a pavilion on the property donated by The Woodlands.

- 3) We propose that the remaining money in the legal fund be returned to the homeowners.
- 4) The Woodlands will replace and reconstruct the entry gate near the guard shack. This gate will have an arch that will be made from large timber, the gate itself will be metal, similar to the gate that is at Stevens Ranch.
- 5) As The Woodlands has indicated before, The Woodlands will agree to pay its proportionate cost to maintain common roads, facilities, and property. In the past the BIA has indicated that this can be done through paying a user fee or through joining the BIA, we are amenable to either scenario.
- 6) In effort to show good faith, we ask that all litigation by the BIA be withdrawn, the claims dismissed and released, and that concerns be worked out through reasonable means.
- 7) Establish a mandatory HOA to govern The Woodlands and existing homeowners, with CC&R's that will provide for attractive site-built homes or cabins.
- 8) Establish a 50' setback between The Woodlands and existing homeowners on the Island so that existing wells, structures, and the impact on the use of existing property owners' property is minimized, in which 50' there can be no structure, fence or other improvement built.
- 9) Establish a 100' setback for any septic system within The Woodlands so that all Woodlands septic tanks must be at least 100' from the boundary of any existing homeowners property.
- 10) Provide that all roads within The Woodlands be maintained by The Woodlands so that there is no economic impact or burden on existing homeowners to maintain improvements within The Woodlands, this includes snow removal, road upkeep, etc.

- 11) Install a dry hydrant in Island Park Reservoir for the use of the Island Park fire district for the benefit of the entire Island, and also install yard hydrants within the Woodlands, and fire breaks within the Woodlands. This will improve the safety of the entire Island in the event that a fire ever breaks out on the Island.
- 12) Construct a central water system to service the Woodlands, eliminating the need for multiple wells to be drilled on the property.
- 13) As we said that we would, we have improved the Causeway to three lanes. We will add a layer of aggregate to the Causeway and will construct guard rails as required by the County.
- 14) This offer is to be accepted by BIA before the May hearing.

APRIL 10th 2008

Bills Island Homeowner Association P.O. Box 344

■

Dear Property Owners, Recently we were notified that the Woodland Development Group purchased a lot in the

Welling Addition. They paid the purchase price for the lot and paid all BIA and Welling dues, in addition to the legal fund assessment. By doing so, they became members of our association. Within a few days we received a demand letter, from their attorney, asking for all of our association documents, all minutes of annual meetings held, bylaws, Articles of Incorporation and C & R records and any changes that have been made, names and addresses of all board members. They asked for these records for the past seven years. Since we are a public organization and they are entitled to this information we sent them approximately 875 pages of documents.

As a board, we try to manage the association like a business. An independent certified public accountant firm audits all our financial records systematically each year and provides a financial report at our annual meetings. Our secretary/treasurer writes all checks but does not have check signing authority. All checks are approved and signed by two board members. All meetings have minutes taken, reread at the next meeting and approved by the board. At our annual meeting we have a voting quorum of members present to conduct business. All business is presented to the membership for their approval, which is done by motion, seconded, and then voted upon. New business from the floor is discussed and voted on the same way. Any member of our association has voting rights in these meetings. Everything is done up front and in a business-like manner. We have a legal firm that audits what we do and how we do it. We have a dedicated board that works hard for the association to keep things moving smoothly.

Recently Woodlands sent a letter to the Bills Island membership. The intent of this letter was to discredit the BIA board and try to get association members to lose confidence in the board and the BIA. Their main interest is to dismantle the association's funding, especially the legal fund. Their goal is to get the BIA legal action stopped so they can proceed with their development. This is the Bills Island Association's position:

1. Fremont County Planning and Zoning denied The Woodlands development for failure to meet the building code ordinances.
2. Woodlands appealed to the county commissioners to overturn Planning and Zoning's decision.
3. After much discussion and debate in public comment meetings the County Commissioners and the county attorney met in a "no comment" work meeting and decided to bypass or tweak parts of the building code and approved the Woodlands application.
4. Bills Island Association appealed that decision to District Court for failure to meet county building code and fire safety regulations.
5. The building code is very explicit on access and fire safety.
6. The BIA is standing in the way of the developer until he either meets code or the court ruling is made.

7. The BIA is in a good position for this lawsuit. Judge Moss has briefs from Cooper and Larsen, the BIA attorney, briefs from the developer's attorney, Chuck Homer, and briefs from Fremont County attorney, Karl Lewies. He also has the rebuttal brief from BIA. The hearing date, for oral arguments, is May 20th. The judge has approximately 30 days after that to make a decision.

8. We received a letter from the Woodlands dated March 19, 2008 where they asked us to drop the lawsuit in exchange for a small settlement. We feel we should wait for the court's decision. Hopefully we will have a decision before our annual meeting in July. The legal system moves very slowly.

We appreciate your patience and support both financially and emotionally. Please understand that all efforts by the developer are being done at their own peril. That includes the work on the causeway and any work on the development while the judicial review is proceeding.

Thank you,

Bills Island Association Board

`Here is a request from the Woodlands`

Brent and Con,

Paul Ritchie and myself (without Ryan) were wondering if we could come meet with you and the board to discuss the latest written proposal we sent regarding the interior development of the island. We would be fine in coming up to Pocatello to meet at Larsen's office if that is a convenient place to meet. The premise for the meeting is to simply try to discuss the points in the letter and see if a mutually beneficial solution can be reached.

If you are open to meeting with us, please let us know some potential dates that work for you.

Thanks,

Jayson

We send this to all Homeowners.

— We have had an opportunity to review your March 19, 2008, letter. We have also reviewed your previous demands which were made upon Bills Island Association for our corporate records.

Traditionally, Bills Island Association has moved forward with directives and initiatives that are adopted at the annual meeting. Certainly, the Board has power to run the Association. However, the Board has always been sensitive to following the direction that the Board receives at the annual meeting.

The homeowners at the annual meeting have consistently, since the Wilderness Group and now since the Woodlands Group, been adamant that any development of the interior portion of the island would require compliance with all planning and zoning laws and ordinances and require compliance with all BIA rules for the private road. We have discussed on numerous occasions with you, Bills Island Association's view that the Woodlands subdivision does- not comply with Fremont County planning ordinance. The Planning and Zoning Commission agreed with us. The county commissioners disagreed. We believe that the judicial review that is going on is appropriate and ultimately that a court will require two points of ingress and egress to the subdivision to comply with the provisions of Fremont County Development Code Section KK which has been often discussed and with the Uniform Fire Code which also requires two points of ingress and egress.

You have provided certain items that are of interest for settlement discussion. However, there is no showing of a good faith to ask that all litigation be withdrawn and dismissed and released before there is any indication that there would be face to face settlement negotiations. Such is not good faith and it is not reasonable.

We remain open to discussions concerning resolution, but also remain firm in following through with the expressed intent of the majority of the homeowner's association at the annual meeting to require the Woodlands to comply with all legal requirements for development. We as an association believe that is the only way that safety and the future of the island can be preserved.

We welcome a meeting with you and would encourage you to bring up any items which you wish at the annual meeting over the 4th of July.

Sincerely,

B.I.A. Board

March 20th 2008

Welcome new B.I.A. members *(A must read)*

Status report on Bills Island Appeal

We would like to welcome the newest members to the island.

It is The Woodlands at Bill's Island L.L.C. They have purchase a lot in the Willing Addition. They have joined the B.I.A association and have paid their dues and have paid their legal fee assessment to oppose the center island development. Welcome and Thank you!

States Report Bill's Island Appeal:

B.I.A has filed its appeal and the opening brief. On Friday March 14th 2008 the county and Woodlands filed their response brief. Our attorney's will file a reply brief within the next 2 weeks. After the briefing is completed a hearing will be held before Judge Moss. This will probably be sometime in May. We remain confident in the merits of the appeal.

Please understand that all efforts by the developer, The Woodlands, are being done at their own peril. That includes the work on the causeway and any work on the development while the judicial review is proceeding.

If you have any question or concerns feel free to call your board members.

Brent Call

Con Haycock

Reed Richman.

Jolene Jenkins

Roy Leavitt

Randy Hayes

Scott Watson

February 18, 2008

To: Members of Bills Island Association

Please read our response to the letter you received and the court papers below then make up your mind as to the direction we are going. We hope you will find that we are in a good position going into court with the appeal. Email us with for feedback PLEASE

Subject: Response to the Woodlands Letter to BIA Property Owners

1. Woodlands Developers sent a letter to Property Owners on Bills Island stating their opinions. Remember- **“A product comes highly recommended by those that sell it.”** It was a propaganda letter and not all the facts stated were true. The letter is designed to under mine our Association, to divide and conquer us and is inappropriate conduct on their behalf. We as a board have been open with the Association. We have discussed this matter in our annual meeting and asked for your input. As a member, you voted unanimously on the direction we should go and you gave the board authority to make the day-to-day decisions and you voted to move ahead. If you have questions about the BIA or board it seems the people to ask is your board. We try to keep all information on our website and we are sending information updates to each member by mail. Please take the time to read it and be informed.
2. A 42-unit development is not a minimal or small development. It is the maximum or largest amount of dwelling units allowed to be built on the acreage Woodlands owns. It is not a small development, 6 or less is considered a small development.
3. The Woodlands Plot was denied by the Fremont County Planning and Zoning Board for failure to meet Fremont County Building Code for access, i.e. 2 points of Ingress and 2 points for Egress and uniform fire safety.
4. The developers group of qualified Attorneys and Consultants they hired to get their desired end results of getting the development approved did not change the end result. **Non-compliance to the building code was the result. Planning and Zoning denied their application.**
5. Our team of Attorneys and Engineers are just as qualified and they read and understand the Building Code rules and regulation and access is very defiant and is an absolute must comply to obtain approval. **The Developer did not meet the code.**
6. The Developer appealed to the County Commissioner to over ride the Planning and Zoning decision and figure a way to bypass that portion of the County Building Code. The development code is still in force but the County Commissioner has chosen to ignore the KK3 Section of the code and gave the developer approval for the

application with restrictions, 29 absolutes they had to comply with including negotiations with Property Owners and BIA.

7. The causeway Riprapping had to be done while the reservoir was empty. Judge Moss, the BIA Board and Developer met to make decisions. Judge Moss ordered the developer to provide Engineering plans for the causeway widening within 48 hours and gave BIA 48 hours to review plans and then we went back to court. Judge Moss said widening the causeway would add to Bills Island. But it had no bearing or influence on the court case. The Developer could widen the causeway at his expense with the understanding it was at risk construction. If BIA wins in court the causeway construction is a donation to BIA. The Developer has no recourse.
8. BIA did indeed file an appeal in District Court. We are defending our right to hold county officials responsible to see they uphold the County Building Code and Laws and not be misled to interpret code different from its intent. Attorneys like to put their own twist to accomplish their own goals.
9. The Developers statement, **The Woodlands have agreed to accommodate most requests**. The examples they use are very misrepresented and are not true. BIA made several requests at mediation and they were all rejected including i.e. the loop road improvement, membership in BIA, user fee, update equipment, update gate and meeting facilities.
10. We as a Board have met with the developers on several occasions including mediation with Attorneys present. **Their comments have been, “we have deeper pockets than BIA”**. We told them having more money does not make you right or give you the right to change or alter the Building Code Laws that govern the place we live in and hold dear.
11. Encroachments of existing lots, wells, etc. Often time’s property gets surveyed several times and Surveyors come up with different correction points. This is why set backs on Property lines are required to allow for difference in surveys. Courts will not disallow older surveys unless they are off an extra large amount.
12. Where do we go from here?

The Developers statement in their letter, about BIA, should be reversed. They say they will take it to the Supreme Court and have redirected money to do it. This is what they have told us all along. **They have deeper pockets**. Does this make them right? Does this give them the right to find loopholes to override or ignore or tweak the laws and rules we all live by? It’s hard to interpret 2 ingress and 2 egress in any other way. The County Commissioners ignored or tweaked that law; **they need to be held accountable**. And that is the purpose for the Lawsuit.

Feb 14 08

To all B.I.A. members

This is the PETITIONER'S BRIEF for the appeal of the Woodlands development that we have filed with the court. Please take the time to read it completely and then make up your mind if we can stop them.

Reed W. Larsen, Esq. - ISB # 3427

COOPER & LARSEN, CHARTERED

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Email: reed@cooper-larsen.com

Attorneys for Bills Island Association

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

BILLS ISLAND ASSOCIATION,)

)

)

Petitioner,)

) CASE NO. CV 07-381

vs.)

) **PETITIONER’S BRIEF IN
SUPPORT OF JUDICIAL REVIEW**

FREMONT COUNTY, FREMONT COUNTY)

COMMISSIONERS; COMMISSIONER PAUL)

ROMRELL, COMMISSIONER DONALD)

TRUPP, and COMMISSIONER RONALD)

“SKIP” HURT, all named individually; and)

WOODLANDS AT BILLS ISLAND, LLC,)

)

Respondents.)

)

_____)

COMES NOW the Petitioner, Bills Island Association (hereinafter the “Association”), by and through its attorneys of record, and submit this brief to aid the Court in ruling upon the Association’s Amended Petition for Review now pending before it.

BACKGROUND

The Association has brought this Petition for Judicial Review of a June 11, 2007 decision of the Fremont County Board of Commissioners which overruled the Fremont County Planning and Zoning Commission’s decision denying the Woodlands at Bills Island, LLC’s application for a Class II permit to subdivide 91.8 acres of undeveloped real property located on I.P. Bills Island. I.P. Bills Island (“Bills Island”) is an island situated within the Island Park Reservoir located in north Fremont County, Idaho. Woodlands at Bills Island, LLC (hereinafter “Woodlands”) seeks to subdivide this undeveloped land into 42 residential lots. (Exhibit 1).

The Planning and Zoning Commission, on November 13, 2006, denied Woodland’s application because Woodland’s proposed development failed to satisfy Section VIII.KK.3 of the Fremont County Development Code (“FCDC”) because it did not provide for a minimum of two points of ingress and egress from Bills Island to the mainland.

The purpose of the FCDC is set out in Chapter I.B.:

B. Purpose. The purpose of this ordinance shall be to promote the health, safety and general welfare of the people of Fremont County by fulfilling the purposes and requirements of the Local Planning Act and implementing the comprehensive plan. Specific statements of purpose accompany selected provisions of this ordinance, **but the comprehensive plan provides the full statement of the**

county's purpose and intent in planning and zoning activities.^[1] (Emphasis added).

The Fremont County Comprehensive Plan, in Part II - Policy Statements, sets out Policy 4:

Policy 4. Protect Public Safety and the Public Investment in Roads. **Fremont County will require safe, adequate access to all new developments and protect the efficient functioning of existing roads by limiting access where necessary**, protecting rights-of-way from unnecessary encroachments, and ensuring that utilities work and other necessary encroachments do not create safety hazards or result in added maintenance costs...

A. **Safe, adequate access to new developments is required** in all three zoning districts...^[2] (Emphasis added).

Section VIII.KK.3 of the FCDC reads as follows:

Access. **All developments containing six or more dwelling units, or with a distance of more than 660 feet from a public road which is maintained on a year round basis shall provide a minimum of two points of ingress and egress from the public road or highway serving the development.** "Loop" systems that return to a single point of access to the public road or highway may be acceptable for relatively small developments (1,000 or less projected ADT).^[3] (Emphasis added).

See, also, Exhibit 1, Tab 3, page 2.

Section VIII.KK.3 is designed to carry into effect Policy 4 of Fremont County's Comprehensive Plan and the express Purpose of the FCDC **by requiring safe and adequate access to any new development.** For developments of six or more dwelling units, FCDC Section VIII.KK.3 requires a 'minimum' of two points of ingress and egress to a public road or

highway. This access requirement is obviously intended to avoid bottlenecks which impede safe egress and ingress of residents and emergency vehicles to any existing and new development. It is also designed to protect the existing roads by requiring alternate and additional means of access to every new development.

Section VIII.KK.3 is an ‘absolute performance standard’.^[4] Such a designation means that any failure to satisfy its requirements must result in a denial of the application. *See*, FCDC Section III.I.7 of the FCDC reads as follows:

“If the proposed development fails to comply with any applicable absolute performance standards of this ordinance or has a cumulative score insufficient to permit the proposed density on the relative performance standards of this ordinance, the application for a permit shall be disapproved.”

Chapter V.C. of the FCDC mandates that the ‘only exceptions to the requirement for compliance with all absolute performance standards shall be those specifically provided in this ordinance and those allowed by variance...’.^[5]

It is undisputed that the access to the Woodlands development is approximately 1,690 feet from any public road or highway and that there is only one point of ingress and egress from Bills Island to the mainland - an existing causeway owned by the Association. Tr. Vol. 1., P.115, L. 8-10 and Exhibit 12. The existing roads serving I.P. Bills Island are private roads and the entrance to Bills Island is protected by a private gate. Exhibit 12 is an ariel photograph of Bills Island and the surrounding area. At the top of the photograph, colored in red, is the location of the only public road giving ingress and egress to the island. The private gate is located at the western end of the public road. The ‘white’ roads are existing private roads owned by the

Association. The ‘yellow’ roads are those roads proposed to be constructed by Woodlands as part of its development. *See*, Findings of Fact and Conclusions of Law, Exhibit 1 to Petitioner’s Petition for Judicial Review, page 14.

In denying Woodland’s application, the Planning and Zoning Commission determined that the Woodlands development was not a ‘small development’ and that Woodlands did not satisfy requirements of Section VIII.KK.3 because it did not provide for a second means of access. Tr. Vol 1., P. 6, L 4-16. The fact that the Woodlands development is on an island accentuates Fremont County’s express obligation to insure that existing access to Bills Island is not impaired by any new developments. Islands, unlike almost all other developable lands, have unique and limited access points. They are surrounded by water which significantly impairs the safe and speedy evacuation of the island in the event of an emergency. Unlike the mainland, where a person can evacuate relatively easily by walking away in any safe direction, a person situated upon an island must know how to swim, have access to a boat, or find a bridge in order to retreat to the mainland. If there is an obstruction to the only bridge to the mainland, or if the person cannot swim or use a boat, there is no reasonable avenue of escape from an island in the event of an emergency.

The Association has a vested right in seeing that its’ members ability to evacuate the island is not impaired by the increased demands for access caused by the Woodland’s development and the addition of 42 additional families to the equation. Likewise, it has a vested right in having emergency vehicles gain unfettered access to Bills Island in the event of an emergency. The addition of 42 additional dwellings and families on the island will adversely

impact the Association's vested rights. Section VIII.KK.3 recognizes that right by stating the unequivocal means for protecting it: a minimum of two points of access to the public year round road.

Woodlands and the Board of Commissioners believe that the Woodlands' 'loop' road system satisfies the exception stated in Section VIII.KK.3. The so-called "Loop" system exception inartfully states that the development's road system must return "to a single point of access to the public road or highway" and that loop system "may be acceptable for relatively small developments (1,000 or less projected ADT)."

The Association believes that the 'loop' system exception is vague and unenforceable and that since the Woodlands development is more than 660 feet from the public road providing access to Bills Island, Woodlands must, at a minimum, provide no less than two points of ingress and egress from the island to the mainland. Since the Woodlands development is not designed to provide more than the single existing access to the island, Fremont County's absolute performance standard has not been satisfied and the Woodlands' application for a Class II permit should have been denied.

The Association, therefore, disputes the Fremont County Board of Commissioner's finding and conclusion, and urges the Court to find that the Board of Commissioners acted arbitrarily when interpreting and applying Section VIII.KK.3 in a manner which found that an enforceable 'loop' system exception exists in Section VIII.KK.3 and applies to the Woodlands' development. The Association also urges the court to find that the 'loop' system exception

relied upon by Woodlands and the Commissioners is unconstitutionally vague and therefore must be stricken from Section VIII.KK.3.

The Association also asks this Court to conclude that the Board of Commissioner's findings and conclusions that the 'loop' road system exception applies to the Woodlands' development is not supported by substantial and competent evidence.

APPLICABLE LAW - JUDICIAL REVIEW

On July 6, 2007, the Petitioner timely filed its Petition for Judicial Review of the Fremont County Board of Commissioner's June 11, 2007 decision pursuant to *I.C. §67-5270 and §67-6521(d)*.^[6] Petitioner has exhausted all of its administrative remedies pursuant to *I.C. §67-5271*. This Court has jurisdiction over the Petition pursuant to *I.C. §67-5272*. The record and transcript of the proceedings before the Board of County Commissioners have been prepared and submitted to the Court pursuant to *I.C. §67-5275*.

This Court may reverse the Board of Commissioner's decision if it was: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) not supported by substantial evidence on the record as a whole; or (e) arbitrary, capricious, or an abuse of discretion. *I.C. §67-5279(3)*.

STATEMENT OF THE LAW AND ARGUMENT

- A. The Board of Commissioners' Decision was Arbitrary and Capricious.

The Idaho Supreme Court, in *Eacret v Bonner County*, 139 Idaho 780, 784 (Idaho 2004), set out the rules related to judicial review as follows:

The Court shall affirm the zoning agency's action unless the Court finds that the agency's findings, inferences, conclusions or decisions are: "(a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) not supported by substantial evidence on the record as a whole; and (e) *arbitrary, capricious, or an abuse of discretion*. I.C. §67-5279(3). The party attacking a zoning board's action must first illustrate that the board erred in a manner specified therein and must then show that a substantial right of the party has been prejudiced. (Emphasis added).

The Association believes that the 'loop' exception relied upon by Woodlands and the Board of Commissioners is vague and ambiguous because its material elements are not defined and no standards for its application exists within the FCDC, leaving the application of the 'loop' exception to the unbridled arbitrary and capricious discretion of the Board of Commissioners.

It is fundamental constitutional law that a legislative enactment must establish minimum guidelines to govern its application. *State v Bitt*, 118 Idaho 584 (1990); *Voyles v Nampa*, 97 Idaho 597, 599 (1976). The absence of such guidelines will justify a finding that the Board of Commissioner's conclusion was arbitrarily made:

A city's actions are considered arbitrary and capricious if made without a rational basis, or in disregard of the facts and circumstances, ***or without adequate determining principles***. *Enterprise, Inc. v. Nampa City*, 96 Idaho 734, 739, 536 P.2d 729, 734 (1975). *Lane Ranch P'ship v. City of Sun Valley*, 2007 Ida. LEXIS 239 (Idaho 2007). (Emphasis added).

See, also, Am. Lung Ass'n v. State, 142 Idaho 544, 547 (Idaho 2006), in which the Idaho Supreme Court stated: "An action is capricious if it was done without a rational basis. *Enterprise, Inc. v.*

Nampa City, 96 Idaho 734, 536 P.2d 729 (1975). It is arbitrary if it was done in disregard of the facts and circumstances presented or without adequate determining principles. *Id.*”

The FCDC offers no determining principles or guidelines for the application of the ‘loop’ exception in Section VIII.KK.3. The ‘loop’ exception reads as follows:

“Loop” system that returns to a single point of access to the public road or highway may be acceptable for relatively small developments (1,000 or less projected ADT).

The absence of adequate governing principles with which to employ and apply the ‘loop’ system exception renders the Board of Commissioner’s decision to employ it in this case arbitrary and capricious. The Commission used this exception as the sole basis for not enforcing the minimum access standards required by Section VIII.KK.3. *See*, Findings of Fact and Conclusions of Law, p. 7.

In *Lane Ranch P'ship v. City of Sun Valley*, 2007 Ida. LEXIS 239 (Idaho 2007), the role of the court in construing a planning and zoning ordinance was outlined as follows:

Analysis of a statute or ordinance begins with the literal language of the enactment. *Friends of Farm to Market*, 137 Idaho at 197, 46 P.3d at 14 (citations omitted). "Where the language is unambiguous, the clearly expressed intent of the legislative body must be given effect, and there is no occasion for a court to construe the language." *Friends of Farm to Market*, 137 Idaho at 197, 46 P.3d at 14 (citing *Lawless v. Davis*, 98 Idaho 175, 560 P.2d 497 (1977)).

The converse exists, however, when the ordinance is ambiguous. The Court, under those circumstances, has discretion to reverse the Commissioner's findings and conclusions.

Where language of a statute or ordinance is ambiguous, however, this Court looks to rules of construction for guidance. *Lawless v. Davis*, 98 Idaho 175, 560 P.2d 497 (1977). It may also consider the reasonableness of proposed interpretations. *Umphrey v. Sprinkel*, 106 Idaho 700, 706, 682 P.2d 1247, 1253 (1983). "Constructions that would lead to absurd or unreasonably harsh results are disfavored." *Gavica v. Hanson*, 101 Idaho 58, 60, 608 P.2d 861, 863 (1980); *Lawless*, 98 Idaho at 177, 560 P.2d at 499.

ADVANCE \d4 Language of a particular section need not be viewed in a vacuum.

And all sections of applicable statutes must be construed together so as to determine the legislature's intent." *Lockhart v. Dept. of Fish and Game*, 121 Idaho 894, 897, 828 P.2d 1299, 1302 (1992) (quoting *Umphrey*, 106 Idaho at 706, 682 P.2d at 1253; see also *J.R. Simplot Co. v. Idaho State Tax Comm'n*, 120 Idaho 849, 853-54, 820 P.2d 1206, 1210-11 (1991). Statutes and ordinances should be construed so that effect is given to their provisions, and no part is rendered superfluous or insignificant. See *Brown v. Caldwell Sch. Dist. No. 132*, 127 Idaho 112, 117, 898 P.2d 43, 48 (1995). There is a strong presumption of validity favoring the actions of a zoning authority when applying and interpreting its own zoning ordinances. *South Fork Coalition v. Bd. of Comm'rs*, 117 Idaho 857, 860, 792 P.2d 882, 885 (1990).

See, *Friends of Farm to Mkt. v. Valley County*, 137 Idaho 192, 197 (Idaho 2002).

More recently, in *Lane Ranch P'ship v. City of Sun Valley*, *supra*¹⁷¹, the Idaho Supreme Court stated:

This Court applies the same principles in construing municipal ordinances as it would in construing statutes. *Friends of Farm to Market*, 137 Idaho at 197, 46 P.3d at 14 (citing *Cunningham v. City of Twin Falls*, 125 Idaho 776, 779, 874 P.2d 587, 590 (Ct. App. 1994)). "Any such analysis begins with the literal language of the enactment." *Ada County v. Gibson*, 126 Idaho 854, 856, 893 P.2d 801, 803 (Ct. App. 1995) (citations omitted). If the language is unambiguous, then the clear and expressed intent of the legislative body governs. Specific language is not viewed in isolation, the entire statute and applicable sections must be construed together to determine the overall legislative intent. *Friends of Farm to Market*, 137 Idaho at 197, 46 P.3d at 14 (citing *Lockhart v. Dept. of Fish and Game*, 121 Idaho 894, 897, 828 P.2d 1299, 1302 (1992)).

The 'loop' exception to the 'two points of ingress and egress' requirement of Section VIII.KK.3 is clearly ambiguous. The exception does not describe what road configuration constitutes a 'loop' system. The exception does not place any limits on the distance separating the 'single point of access' required of the 'loop' system and the 'public road or highway' providing access to the development. The exception does not define 'relatively small developments' and the exception does not explain what is meant by the parenthetical phrase "(1,000 or less projected ADT)" or how it is to be applied in the context of Section VIII.KK.3.

When the ambiguous language of the 'loop' system exception is juxtaposed against the unambiguous Policy 4 of Fremont County's Comprehensive Plan and the unambiguous Purpose of the FCDC, as well as the unambiguous minimum access requirement of Section VIII.KK.3 for

subdivisions with more than six dwellings, the Commissioner's use of the ambiguous 'loop system' exception should be carefully scrutinized by the Court.

It is clear from the Comprehensive Plan, the FCDC, and the express requirements of FCDC Section VIII.KK.3, that the overall legislative intent of Fremont County is to insure safe and adequate access to all new developments. Fremont County cannot apply exceptions to the objective safe and adequate access policy and rules in the absence of some form of legislative guidance. There is no such guidance applicable to the 'loop' system exception. The absence of adequate determining principles with which to apply the 'loop' system exception renders the Board of Commissioner's decision wholly subjective and therefore arbitrary and capricious.

Lane Ranch P'ship v. City of Sun Valley, supra.

1. The Phrase "Loop System" is Not Defined and is Vague and Ambiguous. Exhibit 12 illustrates the location of the Woodlands road system (colored in yellow). It consists of a 'loop' with two cul-de-sacs jutting outward to the west and southwest, and a connecting road between the 'loop' and the existing private roads of the Association. Can the two planned cul-de-sacs be a part of the 'loop' system? Does the connecting road constitute a part of the 'loop'? Would a cul-de-sac, on its own, constitute a 'loop' and bring the exception into play? After all, a cul-de-sac has a 'loop' at one end!

The answers to these questions, and many more, are simply unknown because the FCDC does not attempt to define what constitutes a 'loop' system and the Board of Commissioners did not attempt to address this issue when rendering its findings and conclusions. The

Commissioners simply assumed and concluded that Woodland's road system is a 'loop' system without any analysis of the question whatsoever.

2. Single Point of Access to the Public Road or Highway. The alleged 'loop' system set out in the Woodlands development is located 1,690 feet from the only public road providing year round access. The 'loop' itself does not come in contact with any public road or highway. Rather, Woodlands must use 1,690 feet of the private roads owned by the Association and its own connecting road in order to reach the requisite public road. If this exception is to be consistently applied by the Commissioners it would not matter if the required public road or highway was 1,690 *miles* from the development - as long as the development's 'loop' is somehow or somewhere connected to a 'public road or highway'.

Obviously the Board of Commissioners would not apply the 'loop' exception if the public road were 1,690 *miles* from the public road. However the ordinance itself offers no determining principles which would assist the Board of Commissioners in determining the proper distance separating the proposed development from the public road necessary to employ the 'loop' system exception. The FCDC is silent on this question - except that both the Comprehensive Plan and the FCDC require the Board of Commissioners to insure safe and adequate access to Bills Island for its residents and emergency vehicles before authorizing any further development on the island and the Commissioners must keep these policies and principles in mind when enforcing the FCDC.

3. *Relatively Small Developments.* The 'loop' road system exception is only applicable to 'relatively small developments.' Section VIII.KK.3 itself only applies to

developments containing six or more dwelling units. Any development containing less than six dwelling units is, therefore, automatically considered ‘small’ and exempt from the minimum two points of access requirement. If a development containing five dwelling units is considered ‘small’ by the FCDC, how many dwelling units would should be considered ‘relatively small’? The FCDC does not define this term.

Should a 42 dwelling unit development also be considered ‘relatively small’? The FCDC states that 60 dwelling units is a ‘large’ development.¹⁸¹ If a ‘large’ development is only 18 more dwelling units than that proposed by the Woodlands, perhaps the Woodland’s development is ‘relatively large’ rather than ‘relatively small’. Perhaps the outside limit for ‘relatively small’ should be closer to the number 5 than the number 60. The Woodlands development (42 lots) is clearly closer to the number 60 than the number 5, yet Fremont County has determined it is a ‘relatively small development’ for purposes of excusing the Woodlands from providing a second access point between Bills Island and the mainland. FCDC offers no guiding principles to help the Commissioners make a reasonable decision in this regard, thus rendering their decision in this case arbitrary and capricious.

The Board of Commissioners concluded that the parenthetical phrase “(1,000 or less projected ADT)” provides it with a basis for determining which developments are ‘relatively small developments’. It is clear from the questions posed by the Commissioners during the hearing that they did not know what “ADT” stood for, or how this measurement is to be applied in reaching any conclusion.

COMMISSIONER ROMRELL: Marla, does ADT mean peak day each year or daily average the whole year?

MS. VIK: Well, ADT is the daily average over the year.

COMMISSIONER ROMRELL: It's whatever –

MS. VIK: It's –

COMMISSIONER ROMRELL: – you want.

MS. VIK: It's a little looser. It's your average daily traffic. And as Ryan said, as long as you have more than two days of data, you can have an average, so it's whatever you decide to study.

COMMISSIONER ROMRELL: Commissioner Romrell continuing. Is there an industry standard or I know our code says ADT?

MS. VIK: Um-h'm.

COMMISSIONER ROMRELL: I guess my question is still it's subjective I guess. It could be anytime.

MS. VIK: it can be whatever time you feel is appropriate to the situation.

Tr. Vol. 1. P. 79-80.

Ms. Vik referred to the testimony of Ryan Hales, an expert who testified on behalf of Woodlands. Mr. Hales testified that ADT is the average daily traffic count. “That is a time period that’s anything less than 365 days or more than two days.” Tr. Vol. 1. P. 80, L. 3-7. The result of this testimony is that an ADT can be taken at any time of the year, as long as it relates to data collected over more than two days but less than 365 days. There is no requirement in the FCDC that the traffic data be collected on weekdays, weekends, holidays, or non-holidays. The absence of any guidance directing when and how this traffic data is to be collected renders any decision based upon such traffic data seriously subjective.

The Bills Island area is typically used for seasonal, recreational, and second home purposes. Bills Island and its access road will experience significant usage differences over the four seasons of the year. A measurement taken during July will differ significantly from a traffic measurement taken in October or April. In fashioning an exception to the ‘two access’ rule embodied in Section VIII.KK.3, Fremont County should have provided more direction on how and when the data establishing ADTs should be collected, and whether or not that data should be collected differently in the recreational district of Island Park, as compared to other zoning districts in Fremont County.^[9]

The absence of any governing principles to employ the ‘1,000 ADT’ benchmark allows subjective manipulation of the decision making process. It allows the Commission to recognize traffic data collected at one time and ignore traffic data collected at another time, so that the data chosen to be relied upon dictates the conclusion they desired to reach. In fact, the traffic counts presented to the Commissioners in this case were manipulated by the Commission in order to justify their application of the ‘loop’ system exception. The Commission accepted the traffic data collected by Woodlands and ignored the traffic data collected by the Idaho Department of Transportation and a nationally recognized compilation of traffic data relied upon by traffic engineers nationwide.^[10]

Nor does Section VIII.KK.3 state how this parenthetical phrase is to be applied when using the ‘loop’ road system exception. Does the “(1,000 or less projected ADT)” phrase apply only to the development under consideration by the Board of Commissioners? Or, does it apply only to the existing developments currently served by the public road in question? Or does it

apply to a combination of all existing and all future developments which are or could be served by the public road? The FCDC offers no guidance to the Commissioners when this question is presented as the basis for employing the 'loop' exception.

The Board of Commissioners applied the parenthetical phrase as follows: the Commission estimated the total existing traffic on Bills Island and added that estimate to the estimated future traffic expected from the Woodlands development. From that data it concluded that the combined total average daily traffic to and from Bills Island would be less than 1,000. *See*, Findings of Fact and Conclusions of Law, pp. 7-14. However, since the FCDC itself provides no basis for such an interpretation and application of the parenthetical phrase, the Commissioner's interpretation and application of the parenthetical phrase in this manner is arbitrary, capricious, and an abuse of its discretion.

The absence of any guiding principles in the FCDC also makes the exception constitutionally infirm, vague and ambiguous, and the Board of Commissioner's use of that exception was arbitrary. The exception should be stricken by the Court.

***[Idaho Supreme] Court has observed that "when part of a statute or ordinance is unconstitutional and yet is not an integral or indispensable part of the measure, the invalid portion may be stricken without affecting the remainder of the statute or ordinance." *Voyles v. City of Nampa*, 97 Idaho 597, 600, 548 P.2d 1217, 1220 (1976); *see also Lynn v. Kootenai County Fire Protective Dist. No. 1*, 97 Idaho 623, 626, 550 P.2d 126, 129 (1976) ("If the unconstitutional section does not in and of itself appear to be an integral or indispensable part of the chapter, then it may be stricken therefrom."). *In re Srba Case No. 39576*, 128 Idaho 246, 263-264 (Idaho 1995).

The ‘loop’ exception is vague and ambiguous, is not an integral or indispensable part of the FCDC, its elimination by the Court will not adversely affect the remainder of Section VIII.KK.3, and its elimination will serve the Purpose of the FCDC and the Policy 4 of Fremont County’s Comprehensive Plan by insuring safe and adequate access to Bills Island for its residents and emergency vehicles.

B. The Board of Commissioners’ Decision was Not Supported by Substantial and Competent Evidence.

The Board of Commissioners made the following observation when issuing their findings and conclusions: “The most contentious issue during the public hearing had to do with the access to the proposed development site.” The Board of Commissioners then concluded that “Approval of loop systems that return to a single point of access is within the reasonable discretion of the county, with the limit on the county’s discretion being the 1,000 ADT standard.”^{[111](#)}

The bulk of the evidence presented at the hearing related to what the Board of Commissioners described as the “1,000 ADT standard.” Recognizing that the FCDC itself offers no guidance with which to apply this ‘standard’, the Commissioners concluded that both the Association and Woodlands’ generally agreed that the 1,000 ADT threshold number was an appropriate standard.^{[112](#)} This finding and conclusion is not supported by substantial or competent evidence. There was no admission on the part of the Association that the 1,000 ADT threshold number was an ‘appropriate standard’ or that the manner in which the Commissioners applied that standard was appropriate. Woodlands did not offer any evidence that the 1,000

ADT threshold number was an ‘appropriate standard’. This finding and conclusion by the Commissioners is clearly erroneous and not supported by substantial or competent evidence in the record.

The Board of Commissioners also ignored their obligations under *I.C. §41-253*, which adopts the International Fire Code as the ‘minimum standards for the protection of life and property from fire and explosions in the state of Idaho.’ Fremont County’s obligation in this regard was pointed out by witness Winston Dyer. Tr. Vol. 2. P. 9. L 1-7, Exhibit 15. The International Fire Code adopted by the State Fire Marshall requires, through Appendix D thereof, that “Multiple-family residential projects having more than 100 dwelling units shall be equipped throughout with two separate and approved fire apparatus access roads.”^[13] The Board of Commissioner’s decision did not address how the Woodlands application satisfied the International Fire Code requirement, or why this requirement doesn’t apply to the Woodlands’ application. The Commissioner’s failure to address this issue is clearly erroneous and not supported by substantial or competent evidence in the record.

In reaching their decision, the Board of Commissioners received evidence related to two on-site traffic studies. One was performed by Woodlands and the other was performed by the Idaho Transportation Department (“ITD”) and offered into evidence by the Association. (Exhibit 13). The Association also offered additional evidence in the form of a national compilation of traffic studies prepared by the Institute of Transportation Engineers. (“Trip Generation” - Exhibit 14). Lastly, the Commissioners heard the testimony of the Fremont County Public Works Director, Marla Vik. Ms. Vik is a professional engineer. (Tr. Vol. 2. P.

74. L. 13-17). None of the offered evidence, including the testimony of Marla Vik, concluded that 1,000 ADT is an appropriate standard or that the Commissioner's actual application of that standard was appropriate. In fact Ms. Vik testified on the issue as follows:

COMMISSIONER HURT: Okay. Do you see any safety concerns with 1,000 ADTs with three lanes?

MS. VIK: Safety involves so many different factors. They can't be simply based on ADT. It has to be based on speed, grade, with a recoverable area, barriers. It's just not a one-factor issue.

Tr. Vol. 2. P. 86 L 20-25.

The Woodlands traffic study was accepted by the Commissioners without any question. The Woodland's data related to a traffic count taken between Saturday, July 9, 2005 and Tuesday, July 19, 2005.^[14] (Tr. Vol 1. P. 81, L. 12-13), some twenty-two months *before* the April 10, 2007 hearing before the Board of Commissioners. That relatively stale study was founded upon the following facts: there are 301 platted lots currently located on Bills Island, and 197 of them have dwellings constructed upon them. (Tr. Vol 1. P. 78, L. 5-6). Based upon Woodlands' traffic count for the existing 197 dwellings, the average weekday non-holiday trips averaged 2.5 per dwelling unit per day, and the average weekend non-holiday trips averaged 3.7 trips per dwelling unit per day. Woodlands then averaged the weekday ADTs with the weekend ADTs to come up with an average of 2.8 trips per dwelling unit per day. Woodlands then projected the average trips per day if every platted lot (301 lots) and Woodlands' proposed development (42 lots) were occupied with a dwelling and concluded that 2.8 trips x 343 dwellings = 960.4 trips per day, or 'ADT'. It is this evidence upon which the Commissioners

based their decision to apply the 'loop' road system exception to Section VIII.KK.3. The Commission concluded that the 960.4 trips per day estimated by the Woodlands data were less than the 1,000 ADT parenthetically referenced in Section VIII.KK.3, and therefore the Woodlands proposal was a 'relatively small development' and could use the 'loop' road system exception to avoid the express obligations of Section VIII.KK.3.

Based on Mr. Hales and Ms. Vik's testimony - that more than two days of data is sufficient to provide an ADT - the Commissioners could have used the Woodlands' average weekend/non-holiday count of 3.7 ADT, and the Woodlands' 3.5 ADT measurement for Friday July 15, 2005^[15], for an average of 3.63, and a far different conclusion would have been reached. The average trips per day if every platted lot (301 lots) and Woodlands' proposed development (42 lots) were occupied with a dwelling, the conclusion would have been that 3.63 trips x 343 dwellings = 1,245.09 trips per day. This results in a number which is nearly 25% higher than the 1,000 ADT standard adopted by Fremont County!

The ITD traffic study took place between Saturday, July 1 and Wednesday, July 5, 2006. The Commissioners disregarded this data because it was collected over a holiday weekend.^[16] This data was disregarded because Woodlands' expert Hales and Ms. Vik both testified that traffic counts would typically not be taken during holidays.^[17] Neither Hales nor Vik testified that holiday traffic counts should *never* be considered. To the extent the Commissioners totally disregarded the ITD traffic count taken over the 4th of July weekend in 2006, without any discussion whatsoever, makes this finding and conclusion clearly erroneous and not supported by substantial or competent evidence in the record.

The ITD data established a 5.5 ADT average. Exhibit 10, 13; Tr. Vol 1. P. 109-112. If this data had been relied upon by the Commissioners, again, a far different conclusion would have been reached. The average trips per day, if every platted lot (301 lots) and Woodlands' proposed development (42 lots) were occupied with a dwelling, would be calculated as follows: 5.5 trips x 343 dwellings = 1886.5 trips per day. This calculation results in a number which is more than 88% higher than the 1,000 ADT standard adopted by Fremont County!

The Commissioners also disregarded the Institute of Transportation Engineers Trip Generation Report. ("Trip Generation" - Exhibit 14). However, the Commission's Findings of Fact and Conclusions of Law do not state any reason for totally disregarding the data contained within Exhibit 14. The Commissioners did quote the rebuttal testimony received from Woodland's expert, Mr. Hales, who opined that actual traffic counts overrule the national study.

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Sun

Valley,

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P.3d

573,

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(Idaho

2007),

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Court

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ADVA

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In this case, the majority of the City's findings of fact fail to make actual factual findings; instead, the "findings" merely recite portions of the record which could be used in support of a finding. For instance, Findings 7(a) and 7(b) merely state that Crown Point's Phase 5 applications contain certain information about the size of the units. Additionally, several of the findings consist of nothing more than a recitation of testimony given in the record. ***By reciting testimony, a court or agency does not find a fact unless the testimony is un rebutted in which case the court or agency should so state.*** "A finding of fact is a determination of a fact by

the court [or agency], which fact is averred by one party and denied by the other and this determination must be founded on the evidence in the case." *C.I.T. Corp. v. Elliott*, 66 Idaho 384, 397, 159 P.2d 891, 897 (1945) (Emphasis added).

The Commission cited from Hale's testimony, but it did not adopt Hale's testimony as a 'finding' or state that it was un rebutted by the record. In fact Hale's testimony on this subject was rebutted by Ms. Vik, who testified that the Trip Generation report *was the standard used by the traffic engineering industry*. Tr. Vol 2. P. 76 L. 1-3. For these reasons there is no sound basis to disregard Exhibit 14. The Commissioners failure to state the basis for their total disregard of Exhibit 14 is, therefore, clearly erroneous and not supported by substantial or competent evidence in the record.

The Trip Generation Report, Exhibit 14, reveals (at page 508) that the national average ADT per recreational dwelling unit is 3.16. If the Trip Generation Report data was used by the Commission, again, a far different conclusion would have been reached. The average trips per day, if every platted lot (301 lots) and Woodlands' proposed development (42 lots) were occupied with a dwelling, the Commission would have concluded the following: 3.16 trips x 343 dwellings = 1083.88 trips per day. This results in a number which is still higher than the 1,000 ADT standard adopted by Fremont County!

Overall, the Commission's conclusion that the 1,000 ADT standard will not be exceeded by approving the Woodlands applicaiton is not supported by 'substantial evidence.' Rather, it is supported by minimal evidence. The substantial evidence in the record supports a conclusion that the ADT for Bills Island will exceed 1,000 ADT when the existing and proposed Woodlands

lots are fully developed. For that reason the Woodlands' application for a Class II permit should have been denied. [\[19\]](#)

If the Commission had disregarded Woodlands' weekday/non holiday data, or not averaged all of Woodlands' weekday/non-holiday data with the higher weekend/non-holiday data, the Woodlands data alone would have required the Commission to conclude that the 1,000 ADT standard would be exceeded by the Woodlands development. If the Woodlands weekend/non-holiday data were combined with the ITD data and the Institute of Traffic Engineer's Trip Generation Report, the only reasonable conclusion the Commissioners could reach is that the 1,000 ADT standard would be exceeded by the Woodlands development.

Instead, the Commission gave undue weight to the Woodlands' weekday /non holiday data, and ignored all other relevant data so that it could employ the 'loop' road system exception and approve the Woodlands application.

In *Eastern Idaho Regl. Med. Ctr. v. Ada County Bd. of Comm'rs* (In re Hamlet), 139 Idaho 882, 884-885 (Idaho 2004) the Idaho Supreme Court said: "Although this Court may disagree with Ada County's conclusion, this Court "may not substitute its judgment for that of the administrative agency on questions of fact... *if supported by substantial and competent evidence.*"

In this case, however, the Commission's decision is based on insubstantial evidence - the weekday/non holiday traffic data collected by the Woodlands some 22 months before the hearing. The substantial evidence before the Commission - *consisting of the Woodlands'*

weekend/non-holiday traffic data, the Woodlands' data for Friday, July 15, 2005, the IDT data, and the Trip Generation Report - required the Commission to conclude that the 'loop' system of roads exception was **not** available and the Woodlands had **not satisfied** the absolute performance standard of Section VIII.KK.3.

In *Laurino v. Bd. of Prof'l Discipline*, 137 Idaho 596, 602 (Idaho 2002), the Idaho Supreme Court defined 'substantial evidence' as follows:

ADVANCE \d4 The violations that the Board found against Dr. Laurino must be reviewed to determine whether the evidence in the record as a whole supports the findings, inferences, and conclusions made by the Board. *I.C. §67-5279(3)(d)*. **Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate and reasonable to support a conclusion.** *Idaho State Ins. Fund v. Hunnicutt*, 110 Idaho 257, 260, 715 P.2d 927, 930 (1985). (Emphasis added).

If the Woodlands' weekday/non-holiday data were disregarded, the material evidence remaining before the Commissioners - *consisting of the Woodlands' weekend/non-holiday traffic data, the IDT data from July 2006, and the Trip Generation Report* - all support a conclusion that the ADTs for Bills Island would exceed 1,000 if the Woodlands application were granted. For these reasons the decision of the Board of Commissioners to apply the 'loop' road system exception to FCDC Section VIII.KK.3 is not supported by substantial evidence in the record as a whole.

CONCLUSION

The Association has demonstrated that the Findings of Fact and Conclusions of Law issued by the Fremont County Board of Commissioners were reached arbitrarily and capriciously because there are no guiding principals in FCDC as a whole, or in Section VIII.KK.3 in particular, which would allow the Commissioners to objectively apply the 'loop' system of roads exception.

Further the Findings of Fact and Conclusions of Law are not based upon substantial evidence in the record, as a whole.

Under the authority of *I.C. §67-5279(3)(d)* this Court should reverse the Board of Commissioner's decision to approve the Woodlands application for a Class II permit and thereby grant the Association's Petition for Judicial Review.

Dated this ____ day of February, 2008.

COOPER & LARSEN, CHTD.

Attorneys for Petitioner

By _____

Ron Kerl, of the firm

By _____

Reed W. Larsen

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on the ____ day of February, 2008, I served a true and correct copy of the foregoing document as follows:

Charles A. Homer	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid
HOLDEN, KIDWELL, HAHN & CRAPO, PLLC	<input type="checkbox"/> Hand Delivery
P.O. Box 50130	<input type="checkbox"/> Overnight Mail
Idaho Falls, ID 83401	<input type="checkbox"/> Facsimile
	<input checked="" type="checkbox"/> Email

Karl H. Lewies	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid
Fremont Co. Prosecuting Attorney	<input type="checkbox"/> Hand Delivery
22W. 1 st N.	<input type="checkbox"/> Overnight Mail
St. Anthony, ID 83445	<input type="checkbox"/> Facsimile
	<input checked="" type="checkbox"/> Email

ADVANCE \x236

ADVANCE \x236**COOPER & LARSEN, CHTD**

ADVANCE \x236By:

ADVANCE \x259Ron Kerl, of the firm

^[1]An excerpt of the FCDC containing Chapter I. B is attached as Appendix 1.

^[2]An excerpt of the Fremont County Comprehensive Plan containing Policy 4 is attached as Appendix 2.

^[3]An excerpt of the Fremont County Development Code containing Section VIII.KK.3 is attached as Appendix 3.

^[4]The Board of Commissioner's Findings of Fact and Conclusions of Law, at page 6, correctly concluded that Section VIII.KK.3 is an 'absolute performance standard'.

^[5]An excerpt of the Fremont County Development Code containing Section III.I.7 and Chapter V.C. is attached as Appendix 4.

^[6]The Petitioner filed its Amended Petition on July 13, 2007.

^[7]*2007 Ida. Lexis 239, page 2.*

^[8]An excerpt of the Fremont County Development Code containing Section OO, page 54, is attached as Appendix 5.

^[9]Fremont County is divided into zoning districts, and the Island Park area is its own zoning district and has its own, unique, rules for development. Excerpts of the FCDC, Chapter IV.B and Chapter VIII.B are attached as Appendix 6.

^[10]The Commissioner's arbitrary selection and application of this traffic data in making its decision will be addressed more directly below, when discussing the fact that its decision is not supported by substantial and competent evidence.

^[11]Findings of Fact and Conclusions of Law, pp 6-7.

^[12]Findings of Fact and Conclusions of Law, p. 7.

^[13]A copy of Appendix D to the International Fire Code is attached hereto as Appendix 7.

^[14]The date of this study was strategically scheduled between two very busy holidays for the Island Park area - the 4th of July and the 24th of July.

^[15]Exhibit 21. The data for Friday, July 15, 2005 shows a total of 686 trips for the day. When divided by the 197 actual dwellings located on Bills Island, the ADT for that Friday is 3.48. If you combine two weekend days at an average of 3.7 each, with the Friday July 15, 2005 ADT of 3.48, the resulting average ADT is 3.63.

^[16]Findings of Fact and Conclusions of Law, page 11.

^[17]Tr. Vol. 1. P. 81 L 18-19, and Tr. Vol. 2. P. 75 L 13-15.

^[18]See, Findings of Fact and Conclusions of Law, page 11

^[19]The Commissioners critically commented on the fact that an ITD traffic study conducted on Bills Island over the Labor Day weekend in 2006 was not offered by the Association into evidence. See, Findings of Fact and Conclusions of Law, pp. 11-12. The data from that ITD study is, however, set out in Exhibit 22. Woodlands' expert Hales testified that the best reliable traffic data should be that which is collected in July, the peak month for evaluating traffic in the Island Park area. Tr. Vol. 1. P. 80-81. The Association agrees with this conclusion. For that reason the 2006 Labor Day traffic data is not material.

Feb 7 2008

This is a response to the letter that all members received from the Woodlands.

COOPER & LARSEN

151 NORTH 3rd AVE. - 2nd FLOOR

P.O. BOX 4229

POCATELLO, ID 83205-4229

RON KERL of Counsel

TELEPHONE (208) 235-1145

FAX (208) 235-1182

Feb 7, 2008

Charles A. Homer
Holden Kidwell Hahn & Crapo
P.O. Box 50130
Idaho Falls, ID 83405-0130

Re: *Bills Island Association v. Woodlands at Bills Island, LLC*

Dear Chuck:

This letter is in response the mass mailing that was sent out by Ryan Barker, Paul Ritchie, Jayson Newitt and Rick Olsen. I am assuming this letter was sent by your clients without your knowledge. To the extent you had knowledge of this document being sent, I am asking that you seriously reconsider the propriety of that content. One of the issues that is discussed is the legal appeal and it appears to be a misstatement of certain facts. The facts appear to be misstated in an effort to interfere with my attorney-client relationship with Bills Island Association and it's members. This appears to be done to try to dissuade people from continuing to pay assessments for legal fees. Any legal fees should not be discussed by your client in a way that tries to interfere with my legal representation of my clients. It is not welcome and it is an inappropriate contact. At the outset, I would ask that those who are signatories immediately print a retraction or apology.

Further, by now you have received our Brief in Opposition to the Proposed Development. I believe your client's letter is inaccurate as to the status of the law and the status of the case. The case was initially denied by Planning and Zoning, and rightfully so because there is no two points of ingress and egress and no compliance with the Uniform Fire Code. These are areas that your client has never been interested in addressing.

I would suggest that your client keep it's communications within the confines of their organization and leave the BIA members alone. To the extent a designated representative of your client wishes to meet with my client, that is acceptable. However mass mailings are inappropriate and potentially violate attorney client privilege and it also interferes with attorney client contractual relationships. This letter is to advise you that

we expect you and your clients to cease from such unwanted and unwarranted conduct. I assure you I would feel the same if the BIA sent a letter to your client's investors.

Sincerely,

REED W. LARSEN

RWL/ek

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1

COOPER & LARSEN, CHARTERED

Attorneys at Law

P.O. Box 4229

Pocatello, ID 83205-4229

To all B.I.A. members.

The Woodlands At Bills Island is just trying to break up our association.

First we met with them to settle this whole thing. They offered \$10k to go away. We asked them to move their gate to our gate for just one gate, they said no. They never offered to build the gate as they stated. We asked for the ground SE of the guard cabin for a pavilion they said it would be a cabin sight. They said there will be no renting of the cabins in their homeowners, we read their bylaws ---it is permitted. They said they would not join our association. More to come on the web page. Thanks for your concern and please stay with us. We have a strong position in court. You will receive a 36-page brief from the attorney, to the appeals court this month. Don't let them divide our association.

Jan 25th 2008

The developer has asked the court for their performance bond back, they claim they are done with the work on the causeway. We have asked the county if they have signed off on the work and they haven't, our engineer hasn't, so we have asked that they do not get their money back until it is checked off by all. . We will keep you posted.

Dec 15th 2007

We have no news at this time.

We are waiting for the courts to give us a date on the ruling. When you come onto the Island you will notice the causeway has been widened, they are permitted a 50ft width.

We also have 3 remote gate openers available. They allow you to open the gate as you approach without interring your card. They are \$40.00. Contact Terry for one. We will be updating the card system this spring and these will still work with the new system.

Oct 16th

The BIA board attended the hearing for the causeway and reviewed the construction plans. We feel the wider causeway would be the best but Woodlands must get permission to build on all property owners land. They also submitted a plan to build the causeway with in the 50ft right away. The board hired the Dyer Group to review the plans and to oversee the construction.

The construction of the causeway in no way affects the lawsuit on the center of the Island.

Here is Dyer's review of the construction.

We have reviewed the plans and associated documentation received late yesterday concerning Causeway improvements proposed for the causeway crossing at Bills Island. Due to the extremely limited time for examination, our review is fairly cursory in nature and limited to addressing what has been shown on the plans and not any other further detailed analysis or evaluation.

Following are our comments after reviewing the information provided:

1. We agree with their engineer Mr. Bastian that Option 1 (working outside the existing 50 foot easement) is the best approach if construction is to occur. The biggest concern we see is obvious evidence of erosion occurring on the reservoir faces of the causeway and this option allows for correcting and stabilizing this by the placement of riprap material and some additional fill. This treatment will enhance stability of the proposed improvements and significantly prolong their service life.
2. We concur with the concept of placing guardrail along the edges of the causeway. However, normally when guardrail is placed along any roadway there is a small shoulder area to give additional safety and shy distance. If you are going to work outside the existing easement it would be appropriate to add 3-4 foot shoulders on each side.

3. The three lanes apparently terminate at the guardhouse on the northeast end of the causeway. We suggest the improvements be continued to carry two of the three lanes out through the existing exit area. Without an appropriate transition at the end there will just be confusion and backup of traffic across the causeway – defeating the purpose of providing additional width and lanes.

4. We note a proposal for lane marking by burying precast concrete stripes flush with the roadway surface. We presume this is in response to some requirement that lanes be delineated to assist in traffic flow should an emergency evacuation be required. We do note however that on a gravel surfaced road (as proposed) these will very likely become a maintenance concern in trying to grade and plow the roadway. We strongly recommend the causeway crossing be paved for safety, operation, and longevity.

5. The gabion basket concept is appropriate for erosion control and widening the roadway embankment. It was not clear however how the gabions would be stabilized with respect to the new embankment construction. We presume that they would be tied to the geogrid reinforcing or otherwise have some type of tieback to keep them stable and vertical.

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6. The details of embankment construction did not specify a depth of excavation prior to placing new embankment and geogrid reinforcing. Also, the details should call for compaction of the existing sub grade after excavation and before construction of the new embankment is initiated.

7. The geogrid reinforcing called for is a good solution but the system is sensitive to the size of the grid and corresponding material to be used. We suggest further detail or specification be given to make sure the geo-grid system and associated embankment

material are appropriately matched to produce a quality final product.

8. We see that the applicant has a permit from the Corps of Engineers to conduct causeway construction work as necessary. The permit "encourages" installation of a culvert through the causeway as was apparently shown in some application material to the COE in obtaining a permit. We concur that a culvert would help improve water quality in the area but did not see it called for on the plans nor any associated details.

9. The COE permit also called for re-vegetation of disturbed areas but there were not any details or specifications about how that would be accomplished in the materials we received.

10. We feel the plan presented is an appropriate engineering solution to widening and stabilizing the causeway, given some of the refinements we have suggested above. We are concerned however about making sure the construction is done in accordance with the plans and specifications that have been developed. We might suggest that we be involved to observe construction periodically to make sure this is the case, or otherwise you should make sure that their engineer is properly retained and positioned to certify upon completion that the project has been constructed in accordance with the approved plans and specifications.

Our overall conclusion is that if improvements of any kind are to be made to the causeway then they ought to be the best and most long-lasting possible for the effort made and expense invested. Therefore we recommend Option 1 which goes outside the existing 50 foot easement as it will unquestionably improve the final product. We presume the applicant will obtain the necessary permits and approvals from other agencies/land owners necessary to accomplish this.

Oct 4th

BIA board members went into mediation with the Woodlands Group. The purpose was to work out the differences on the causeway construction...

AND TRY TO SETTLE THE LAWSUIT ON THE CENTER DEVELOPMENT.

We had a hearing the next day with the judge and he would rule on the suit on just the causeway.

We were in mediation for over 8 hours. We feel as a board we are in a good position to stop them at this time. But we have no control over the Judges rulings. Our attorney asked us to put together a Christmas wish list of desires that we could accept that would settle the suit.

The first item on our list is for them to just go away. At the bottom of our list we would roll over and give up. We need to meet somewhere in the middle. We asked for the engineered construction plans for the causeway, a big cash infusion, a building to meet in and ground to build it on, for the center people to join our association, and no gate at their property

They countered with the following: We will build the new causeway correctly, a new gate for us, a new exit gate, the quarter acre next to the guard cabin, \$10,000 so that we can build our own building, AND we must give them a right-of-way at the gate property to make the third exit and allow them to exceed the 50ft right-of-way to build the crossway. Most of what they are giving us is what they have to give to meet what is required of them by the commissioners.

All day long our attorney asked for their engineered plans for building the crossway. They said they had them but not with them, they would get them for us Monday or sometime next week. After 6 1/2 hours, our attorney demanded the plans. The mediator went to the Woodlands Group with our demand then came back to us and said they don't have them yet but will get them next week. Then the mediator stated, "If you are stuck on this item, the Woodlands Group is ready to got to court tomorrow and ask the court to fine us for holding up the work on the CAUSEWAY". Our attorney said "See you tomorrow in court" and it was over after 8 1/2 hrs.

We showed up at court the next day and the Judge called the two attorneys into his chambers to see what had been agreed upon. He looked at the Woodlands Group attorney and said build it right or don't build it at all. Woodlands You have 48 hrs to produce the plans then, B.I.A. you have 48 hrs to review, then agree or we go back to court on Friday the 12th. It was over in 5

minutes. The Woodlands Group did say they would submit two plans: one to stay in the 50 ft width by building a retaining wall that will cost them \$235,000 and one to exceed the width to 72 ft to build it at a lower cost of \$135,000. Then it would be up to us to pick which one we prefer that they build.

At this point, with the legal funds the way they are

We are ready to fight this to the END

If you have not paid your legal assessment

PLEASE DO SO ASAP

Sept 27th 2007

Many of you may have seen the survey stakes along the cosway. Woodlands group is going ahead with work on the road. We asked our attorney to file paper work to stop them. We had a court date of the 25th of Sept. The Judge would not rule on it because we included the county in the complaint and that was in error because the county

ISSUED A BUILD PERMIT TO THE WOODLANDS FOR THE ROAD.

So again the county is writing their own rules. The Judge instructed that we need to file a new injunction in which we did. It is set for Oct 5th.

The judge suggested a break and instructed the attorneys to meet and work out the differences between the parties. Both attorneys agreed to go to mediation to solve the whole issue of the roads and center Island development.

The Judge also stated we can't stop them from working on the center of the island. They do the work at their own cost should they lose the appeal.

We have a sizable amount of money in the legal fund. If you have not paid your \$300.00 please do so immediately. We have a meeting set for Oct 4th to here their proposal to settle. If they lose this time our attorney assured us that they would just come at us again with a smaller development. We will meet and see what we can work out. If you have any comments please let us know ASAP

B.I.A. Board

Con Haycock

Printed From The Island Park News

2007-06-29

**Bills Island group files appeal of county decision allowing more island development
B.I.A. to hold fundraiser for legal fund**

By ELIZABETH LADEN

The Bills Island Homeowners Association filed an appeal Monday of the Board of Fremont County Commissioners decision to approve the Woodlands at Bills Island development. The appeal was filed in District Court in St. Anthony.

Reed Richman, board member of the Bills Island Homeowners Association, said Tuesday that the appeal is based on several areas where BIA does not believe the developer meets the Fremont County Development Codes requirements. These include access, fire safety, and protecting water quality.

Richman said BIA will host a community fundraiser to help boost its legal fund for the appeal. It will be a Dutch oven cook-out at the island's entrance, from 5 to 7 p. m. Saturday, July 28.

Richman said he hopes all Fremont County residents concerned about how the county is applying its development code will come to this fundraiser. Hopefully, he said, BIA will raise enough money to be able to help others who find themselves having to battle the county for responsible development.

In November 2006, the Fremont County Planning and Zoning Commission denied Utah businessman Ryan Davis' application to develop the Bills Island interior into a 42-lot subdivision, Woodlands at Bills Island. They believed the project failed to meet the code's absolute standards for access and were also concerned about fire safety and water quality.

Davis appealed the decision to the County Commission, which held its appeal hearing in April.

Commissioners then held work sessions to discuss the appeal testimony. In June, the commissioners decided to allow Davis to proceed with his development.

The code states, "All developments containing six or more dwelling units or with a distance of more than 660 feet from a public road which is maintained on a year-round basis shall provide a minimum of two points of ingress and egress from the public road or highway serving the development. Loop systems that return to a single point of access to the public road or highway may be acceptable for relatively small developments (1,000 or less projected ADT - Average Daily Trips)."

The requirement for a development more than 660 feet from a public road to have two access points is an absolute standard in the code, meaning that the project must be denied. Woodland's main entrance is 1,667 feet from the county road to Bills Island.

The appeal hearing before Fremont County Commissioners Paul Romrell, Skip Hurt, and Don Trupp at the County Annex in St. Anthony devoured more than six hours time, with the developer and his team — as well as opponents to the project — bringing up many issues in addition to the main one — the failure to meet the absolute standard.

Around 35 people attended the appeal hearing.

Davis, his attorney — Chuck Homer of Idaho Falls — and several "expert" witnesses were able to steer the Fremont County Planning and Zoning Commission and the Fremont County Commission away from the absolute standard failure to discussions pertaining to the word, "may" in the second part of the standard — that the development may utilize the one road to the island as a loop road. The developer's team asserted to both commissions that they could improve the island's only access road to make it safe for their own buyers and the entire island community.

They said they could obtain a permit from the Army Corps of Engineers to add more land to the isthmus connecting the island to the mainland, and widen the road so it would have three 12-ft. lanes.

In the November meeting, their plan was to widen the road to 31-ft., which is still much narrower than the county's width standard of at least 60 ft.

The developer's team found another loophole in the code — the definition of a large-scale development being one that is 59 lots or more, to assert that their 42-lot subdivision should be considered a "small" development.

And, they asserted that data from traffic counters they placed on the island the week after the Fourth of July holiday last summer shows that there were fewer than 1,000 ADT's on the isthmus.

The Bills Island Homeowners Association hired an Idaho Department of Transportation

employee to place a traffic counter on the road to the island, and his report, from counts taken on July 4, 2006 and the preceding week, shows close to 1,000 ADT's on some days.

The developer argued that a count during a peak period for travel to the island does not give a balanced picture of traffic. Opponents argued that the ADT counts are supposed to be estimates of what will happen at a development's build out.

There are 301 lots on platted on the Island now, and 197 are developed, so BIA members said ADT's at build-out will be well over 1,000 even without Woodlands traffic.

Hours of discussion were spent at both hearings on the developer's proposal to use enhanced septic tanks instead of building a central sewer supply, concerns about his wells drawing down the island's water supply, and concerns about his proposal to pump water out of the reservoir, which is either frozen or depleted many months of the year, as a back up firefighting supply.

The developer, builders, and Realtor Brett Whitaker, also an Island Park volunteer fireman, testified that the subdivision's roads and homesites would make the island safer because trees would be removed from the island's heavily wooded interior, making it less vulnerable to wildfires.

County Attorney Karl Lewies' findings of fact and conclusions of law played a huge part in the commissioners decision' to approve the project. Part of Lewies' defense of the approval is based on what he calls the "Gunbarrel rule." This is a ruling he wrote in findings of facts and conclusions of law for the Gunbarrel at Shotgun Villages development, which the County Commission denied. The rule basically says that a developer can bring inadequate roads up to current county standards "as far as reasonably possible." Because of this rule, Gunbarrel's developer, Gregg Williams, resubmitted plans to subdivide land he owns adjacent to the Shotgun Villages. A public hearing on the development has not yet been scheduled.

The County Commission has not adopted the Gunbarrel rule as county policy or added it to the development code.

Some county roads cannot be widened to meet today's standards because widening them would encroach on private property, or for some other reason there is no room to widen them, as is the case with the Bills Island causeway.

Lewies' conclusions also support the Woodlands plan for fire protection. And, they support the plan to use individual septic tanks in the development, despite concerns opponents have expressed about water pollution from failed septic systems.

And, Lewies supports the developer's expert testimony about traffic counts on the island and dismisses testimony provided by a Bills Island Association expert witness. The developer's expert looked at traffic counts during a non -holiday period and found them to indicate less than 1,000 "average daily trips. (ADT)" The development code states that loop roads can serve developments if they accommodate less than 1,000 ADT's The BIA witness counted traffic on a holiday weekend, and the count exceeded 1,000 ADT. The count was done at a busy time to

illustrate what it could be at build-out, but Lewies did not agree with this method.

The development code does not define loop road or explain the meaning of an average daily trip. In addition, old copies of the development code state that a loop road can satisfy the two-access point rule if the ADT's are 100, not 1,000.

And, loop roads are generally roads that surround a development that people turn off to reach their driveways. The so-called "loop" road to Woodlands is a narrow one-way road on the causeway that two vehicles can barely use at once. It ends at a T intersection, at which people can turn left or right onto the real loop road that provides access to the original Island. If Woodlands is developed, this intersection will become a three-way, with the third option being to head to Woodland's entrance.

A condition of the Woodlands approval is that the causeway be widened to have a 36 ft. surface and two feet for shoulders. Lewies' findings state that this wider road will accommodate three-way traffic.

In his findings, Lewies notes that at the public hearing, no one questioned the 1,000 ADT threshold.

The developer and his team, as well as supporters from Fremont County and other states, said he is committed to doing high quality projects. If the island is to be developed they said, there couldn't be a better person to manage the project.

Sugar City developer Mike Vickers tried to develop the interior in 2005, but his application was turned down because of access and safety issues. But in a 2006 appeal hearing, rather than addressing the access, County Attorney Karl Lewies found that Vickers' proposal to develop 59 lots was in error. Vickers had purchased a TDR (transfer of development rights) on 70 acres of wetlands from a landowner on Henry's Lake Flat to raise the total acreage of his proposal so he could build more lots that would normally be allowed on 92 acres — 37 lots. But the Planning Department erroneously treated the wetlands as normal land, allowing more lots to be platted on the island than there should have been. Rather than reduce the development's size and reapply, Vickers sold the land with the TDR to Davis.

APR 12th 07

By ELIZABETH LADEN

Vague language in the Fremont County Development Code has caused hours of time to be spent debating the merits of a development proposed for the interior of Bills Island in Island Park. The 42-lot Woodlands at Bills Island subdivision does not appear to meet an absolute standard in the development code — that certain developments must have two access points.

Developments that do not meet even one absolute standard are supposed to be denied, according to the county's code. And for that reason, in November, the Fremont County Planning and Zoning Commission denied Utah developer Ryan Davis' application to develop 42 lots in the

middle of the island.

Davis appealed the decision. The appeal hearing before Fremont County Commissioners Paul Romrell, Skip Hurt, and Don Trupp at the County Annex in St. Anthony Tuesday devoured more than six hours time, with the developer and his team — as well as opponents to the project — bringing up many issues in addition to the main one — the failure to meet the absolute standard.

Around 35 people attended the appeal hearing.

The Planning and Zoning Commission's denial was based on a section of the development code that states:

"All developments containing six or more dwelling units or with a distance of more than 660 feet from a public road which is maintained on a year-round basis shall provide a minimum of two points of ingress and egress from the public road or highway serving the development. Loop systems that return to a single point of access to the public road or highway may be acceptable for relatively small developments (1,000 or less projected ADT - Average Daily Trips)."

The requirement for a development more than 660 feet from a public road to have two access points is an absolute standard in the code, meaning that the project must be denied. Woodland's main entrance is 1,667 feet from the county road to Bills Island.

Nonetheless, Davis, his attorney — Chuck Homer of Idaho Falls — and several “expert” witnesses were able to steer the Fremont County Planning and Zoning Commission and the Fremont County Commission away from the absolute standard failure to discussions pertaining to the word, “may” in the second part of the standard — that the development may utilize the one road to the island as a loop road. The developer's team asserted to both commissions that they could improve the island's only access road to make it safe for their own buyers and the entire island community.

They said they could obtain a permit from the Army Corps of Engineers to add more land to the isthmus connecting the island to the mainland, and widen the road so it would have three 12-ft. lanes.

In the November meeting, their plan was to widen the road to 31-ft., which is still much narrower than the county's width standard of at least 60 ft.

The developer's team found another loophole in the code — the definition of a large-scale development being one that is 59 lots or more, to assert that their 42-lot subdivision should be considered a “small” development.

And, they asserted that data from traffic counters they placed on the island the week after the Fourth of July holiday last summer shows that there were fewer than 1,000 ADT's on the isthmus.

The Bills Island Homeowners Association, which opposes Woodlands and is represented by

attorney Reed Larsen, hired an Idaho Department of Transportation employee to place a traffic counter on the road to the island, and his report, from counts taken on July 4, 2006 and the preceding week, shows close to 1,000 ADT's on some days.

The developer argued that a count during a peak period for travel to the island does not give a balanced picture of traffic. Opponents argued that the ADT counts are supposed to be estimates of what will happen at a development's build out.

There are 301 lots on platted on the Island now, and 197 are developed, so BIA members said ADT's at build-out will be well over 1,000 even without Woodlands traffic.

Hours of discussion were spent at both hearings on the developer's proposal to use enhanced septic tanks instead of building a central sewer supply, concerns about his wells drawing down the island's water supply, and concerns about his proposal to pump water out of the reservoir, which is either frozen or depleted many months of the year, as a back up firefighting supply.

The developer, builders, and Realtor Brett Whitaker, also an Island Park volunteer fireman, testified that the subdivision's roads and homesites would make the island safer because trees would be removed from the island's heavily wooded interior, making it less vulnerable to wildfires.

Opponents to Woodlands have long said the interior is what makes the island so special, and a main reason they purchased their lots on the island was that Ivan P. Bills, the Utah man who developed the island, had promised that the interior would never be developed. Bills, however, never set the interior aside as open space, and his original plans show roads to the center.

The developer and his team, as well as supporters from Fremont County and other states, said he is committed to doing high quality projects. If the island is to be developed they said, there couldn't be a better person to manage the project.

Sugar City developer Mike Vickers tried to develop the interior in 2005, but his application was turned down because of access and safety issues. But in a 2006 appeal hearing, rather than addressing the access, County Attorney Karl Lewies found that Vickers' proposal to develop 59 lots was in error. Vickers had purchased a TDR (transfer of development rights) on 70 acres of wetlands from a landowner on Henry's Lake Flat to raise the total acreage of his proposal so he could build more lots that would normally be allowed on 92 acres — 37 lots. But the Planning Department erroneously treated the wetlands as normal land, allowing more lots to be platted on the island than there should have been. Rather than reduce the development's size and reapply, Vickers sold the land with the TDR to Davis.

Commissioners will mull the testimony in work sessions, and study the appeal hearing's transcript and County Attorney Karl Lewies findings of fact and conclusions of law based on the hearing testimony, before making a decision by their 60 day deadline.

After the testimony ended, Commission Chairman Paul Romrell said the county is in the process of "tweaking the development code. We invite you to be involved and tell the Planning and

Zoning Commission what you think about the code and what needs to change.”

Several developers have appealed Planning and Zoning Commission decisions in recent months, and Romrell said his commission is “trying to do one a month — we have five or six pending. We are finalizing the one we did last month (Gunbarrel at Shotgun). It is a busy time for us. We take it seriously. This is the most beautiful county in Idaho. What we do in the next few months will dictate what Fremont County looks like forever.”

Commissioners set a work session on the development for 9 a. m. Friday, April 13 in the Commission Room at the courthouse. The public can attend, but they cannot talk, since the public comment period ended with Tuesday’s hearing

March 26th 07

Tuesday April 10th 2007

This is the date for the Fremont County Commission to review the Woodland’s request to develop the center Island. Your attendance is needed. If you can attend the more people we have there the better. You may comment at this meeting. If you would like to send a letter of comment please do so, but keep your comments on issues. Water, sewer or fire safety. Written comments must be in by 4th of April. County Clerks Office 151 W 1st N St Anthony ID 83445

Fremont County Commission

Tuesday April 10th, 2007

9:00 am

Fremont Co. Annex Building

125 N Bridge St

St. Anthony ID.

Fremont County Commission

Tuesday April 10th, 2007

9:00 am

Fremont Co. Annex Building

125 N Bridge St

St. Anthony ID.

Feb 14-06

P & Z to consider development moratorium next month

Advertisement

By *ELIZABETH LADEN*

Fremont County Planning Administrator Jeff Patlovich said today that the Planning and Zoning Commission will discuss an interim moratorium on new development at its next regular meeting, set for 6 p. m. Monday, March 9 at the County Annex on Bridge Street.

Planning Commissioner Kip Martindale requested the moratorium during the Monday, Feb. 12 Planning and Zoning Commission meeting. Martindale's motion asking for a vote on imposing the moratorium for one year died for lack of a second after Patlovich said he would put the item on next month's agenda.

In making the motion, Martindale read a prepared statement that asks for the interim moratorium while the county's comprehensive plan and building code are being updated. Martindale stated that such an action is allowed by the state's Local Land Use Planning Act, which states, "If a governing board finds that a plan, a plan component, or an amendment to a plan is being prepared for its jurisdiction, it may adopt an interim moratorium upon the issuance of selected classes of permits if ... the governing board finds and states in writing that an imminent peril to the public health, safety, or welfare requires the adoption of an interim moratorium. An interim ordinance or moratorium shall state a definite period of time, not to exceed one calendar year, when it shall be in full force and effect."

Martindale stated that he made the motion "because the pace of current projects would not be in

compliance with the new plan. Members of the Planning and Zoning Commission cannot appropriately evaluate each project as well as make revisions to the comprehensive plan and development code. For example we have transfers of development rights in our code that have not often been used. When used properly, TDR's in other states and counties have brought private property owners \$7,500 to \$200,000 per acre."

Patlovich said if the Planning and Zoning Commission supports the moratorium, the Fremont County Commission would hold a public hearing on the measure.

If the county commission decides to impose a moratorium, it would do so by an ordinance.

In the last few months, other planning commissioners and members of the Fremont County Commission, have casually discussed the idea of a moratorium on Class 2 permits until the planning document revision is completed.

Online Poll Results: Do you support a one-year moratorium on development in Fremont County?

Yes:	80%
No:	15%
I support a moratorium, but for less than one year.:	5%

Jan 24 07

Printed From The Island Park News
2007-01-19

We're a county in crisis

Valley Perspectives by Chan Atchley

We are a county in crisis. We are like cows contentedly chewing our cud, oblivious to the wolves circling for the kill.

County government is in danger of being paralyzed by ever increasing development applications and lengthy approval and appeals timelines. Decisions are being made in the heat of the moment that are not good for county government and citizens.

Skeptical? Here is a short list of what I have encountered.

While conducting an appeal, the county commissioners overturned a P & Z decision to deny a class II permit. The commissioners accepted the applicant's claim that a Forest Service road was a private driveway and adequate for firefighting equipment to get to the resort. In reality it is a single lane road more than a mile long, accessible only by 4-wheel drive vehicles most of the year and cannot be safely accessed by fire fighting equipment any time.

Early last year, a permit was issued for remodeling an old barn into a single family dwelling. However, from the outset, it was known that the developer was planning a bed and breakfast with the capability of handling wedding receptions. Neighbors whose home and outbuildings are overshadowed by the huge structure just 35 feet from their property line had to hire an attorney to pressure the county Building Department to red tag the construction until a permit was presented to the P & Z. Application for the permit was filed about six months later in December 2006. The public hearing requesting the upgrade was held January 8, 2007 and the permit was denied. In the meantime, the neighbors, who are working hard to put two children through college, spent thousands of dollars in legal fees trying to get the county to enforce its own building code.

I was one of 49 people to witness the appeal hearing on the Shadow Ridge at Stephens Ranch subdivision. Most were opposed to the project as well as more than 50 other individuals who signed a petition. It was not easy to sit still as the developer's attorney talked about the wonderful plans for protecting wildlife while he downplayed the importance of the migratory elk corridor. Or listening to how infrastructure costs such as rebuilding the Fish Creek Road were minimal while the costs of additional services such as fire and police protection, solid waste disposal, and schools were barely mentioned. Again, individuals appealing the development spent thousands of dollars trying to insure that the county commissioners consider all consequences of the development.

County commissioners are overloaded. Under normal conditions the job is supposed to be half time, but now nearly always exceeds that target. Add

to it the time required for appeals - there are already four more lined up to be heard in as many months - and we have a real problem. The commissioners are now working full time while other problems requiring attention loom on the horizon. By some accounts, they've already spent more than 60 hours on Shadow Ridge appeals and that may double before they are finished. Right or wrong, they must make a decision 60 days after hearing an appeal.

Obviously, strengthening the comprehensive plan and closing loopholes in the development code would simplify the evaluation process. There would be fewer appeals and enforcement of the code would be enhanced. Therefore, we must dramatically speed up the comprehensive plan and the code revision process. We can't afford to let our county government become so preoccupied with development that other issues are not adequately addressed.

So what can you do? I know, I'm beginning to sound like a broken record, but please go to county meetings. Learn how we can intelligently meet the challenges of growth in a way that will benefit all of us, not just developers.

Our way of life is as endangered as our wildlife and will disappear if we don't find ways to protect it. Once it disappears, it will be gone forever.

Chan Atchley

Jan 18th 07

Fremont County Commissioners will review the denial of the Woodlands at Bills Island Development project Apr 10th at 9:00 A.M. in the county Annex Building on Main Street in St Anthony. Everyone is welcome to attend. You are welcome to comment at this meeting. The board members will be in attendance and we will report any and all info on the web page ASAP.

UPDATE on Snow conditions

Snow conditions are great but there is an Avalanche warning in the mountain areas. Please be aware of the high risk of avalanche. Check with local authorities before going into the mountain areas. Three people were killed in avalanches during the New Year Holiday.

Snowmobile Safety

An 11-year-old boy must have had a guardian angel last weekend when he crashed his snowmobile and slid under a flatbed truck — with no serious injuries.

According to witnesses, the boy was snowmobiling out of a side road at the Island Park Village Resort onto the upper Big Springs Road on Friday, December 29 when he ran into a truck owned

by an Island Park business. He was then run over by a flatbed trailer the truck was hauling.

He was flown by helicopter to the Eastern Idaho Regional Medical Center in Idaho Falls, and released soon after with no serious injuries

Please keep safety in mind

Nov 14 06

P and Z sinks Bills Island plan

By ELIZABETH LADEN

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Island Park News

Advertisement

In a unanimous decision Monday, the Fremont County Planning and Zoning Commission denied a Class II permit to Salt Lake City developer Ryan Davis to put 42 lots on the 91.8 acres in the middle of Bills Island.

According to Molly Knox, the Planning Department's administrative assistant, commissioners denied the project because Planning Administrator Jeff Patlovich's findings of fact stated that it does not meet the development code's requirement that developments with six or more lots have two access points 670 feet or more from a county road. The development's proposed access would have been at a single point from a loop road that goes around the island, and which is more than 670 feet from the county road that accesses the island.

In 2005, the P and Z Commission turned down Sugar City developer Mike Vickers' application to develop the island because of several safety issues. Then, in January this year, the County Commission denied Vickers' appeal of the P and Z Commission's decision because the P and Z administrator at the time had made a mistake in the number of lots that could be built in the island's interior.

The commission heard more than three hours of testimony from the new developer's representatives and the public at its regular meeting in October. Bills Island residents and others have expressed concerns about the development polluting the Island Park Reservoir, creating too much traffic, not being safe if there is a fire, and harming wildlife.

Nov 11 06

Island plan a washout

Woodlands  project may be rejected

ST. ANTHONY – A lack of adequate access to Bills Island from the nearest public road may halt a 42-lot subdivision proposed for the interior of the island.

The Fremont County Planning and Zoning Commission voted Monday night that the access proposed in the Woodlands preliminary plat fails to meet the county's performance standard requiring two accesses into a subdivision.

The access performance standard is considered an absolute standard in the county's development code, which means if the project fails to meet the standard, the project can't be approved.

The commission was meeting in a work session when the vote was taken. A formal vote to accept or reject the preliminary plat will be taken as scheduled at a meeting Monday.

As proposed, the Woodlands would be accessed via a widened and improved causeway to the island and a connecting loop road around the outer edge of the island.

While the county's code calls for a minimum of two accesses into subdivisions of six lots or more, the code also says loop roads may be allowed in smaller developments if traffic can be shown to be less than 1,000 projected average daily traffic.

At an earlier hearing the developer produced an engineer's survey that showed that the average daily traffic would be less than 1,000.

The planning commission also was concerned the loop road, as proposed, didn't "return to a single point of access to a public road" as the code provides. Rather, it connects to a private road.

The Woodlands project was proposed once before and rejected by the planning commission on life safety issues. In an appeal to the Fremont County Commission, the commission didn't reject the loop road proposal made by the developer, County Attorney Karl Lewies said, though the plat was rejected by the county commission due to failure to comply with the density provisions of the code.

Lewies said the county commission ruling "might be considered precedence" by allowing the access as proposed in the first Woodlands preliminary plat.

Lewies also encouraged the planning panel to ignore issues related to the ownership of the causeway, predicting legal battles over ownership between the developer and I.P. Bills Island Association will be lengthy.

Rather, the planning panel is required only to determine if the proposal meets the county development code, regardless of actual ownership of the causeway, which will likely be determined in court.

Planning Administrator Jeff Patlovich has prepared findings of fact based on the work session vote for the planning commission to review and approve at a meeting Monday at 6 p.m. at the Fremont County Courthouse in St. Anthony.

P & Z delays Bills Island decision

Advertisement

Salt Lake City developer Ryan Davis will have to wait until next month to see if the county Planning and Zoning Commission will approve his plan to put 42 lots on the 91.8 acres in the middle of Bills Island.

On Monday — the county Planning and Zoning Commission decided to wait until Monday, November 6 to discuss the development proposal and possibly vote on Davis' Class 2 application to subdivide the acreage.

The commission delayed the decision after hearing more than three hours of testimony from the developer's representatives and the public. They were also given a pile of documents to review that had not arrived at the county in time to be included in the information packet they review before their meetings. They wanted time to digest all the testimony and all the new written information, Planning Administrator Jeff Patlovich said Tuesday.

Davis wants to transfer development rights from 70 acres of wetlands on Henry's Lake Flat, many miles from Bills Island, so he can bring the total acreage of "developable" land to 160 acres and be able to put 42 lots on the 91.8 acres. Each lot would have an individual septic system and well. Without the transfer, the most lots the development could have would be around 36.

Sugar City developer Mike Vickers had a similar plan that was turned down this January because it had too many lots.

Both developers have faced significant protest from long time Bills Island residents and others who have expressed concerns about the development polluting the Island Park Reservoir, creating too much traffic, not being safe if there is a fire, and harming wildlife.

The November 6 meeting starts at 6 p. m in the County Annex on Bridge Street in St. Anthony.

[Back](#)

BILLS ISLAND ASSOCIATION,)

)

)

Petitioner,)

)

vs.)

)

FREMONT COUNTY, FREMONT COUNTY)

COMMISSIONERS; COMMISSIONER PAUL)

ROMRELL, COMMISSIONER DONALD)

TRUPP, and COMMISSIONER RONALD)

“SKIP” HURT, all named individually; and)

WOODLANDS AT BILLS ISLAND, LLC,)

)

Respondents.)

)

)

CASE NO. CV 07-381

PETITIONER'S BRIEF IN SUPPORT OF JUDICIAL REVIEW

CURRENT INNER ISLAND ACTIVITIES

July 21st

Hello to all

Check the WHAT'S NEW tab for regular BIA info

It seems as a board we have kind of taken a break through the winter but we are still here and we are getting ready for the summer activities on the island.

The gate is working again for the summer. We had a little issue with the exit last fall so we did have to leave the gate up all winter. We tried to go in and out of the same gate last year but the old system didn't have the ability to distinguish loop one from loop two. There are loop sensors in the ground that detect cars as they drive through and lower the gate. We added a second one that will open the gate as you drive out and then the first one was supposed to close it, but it could not handle the second loop. Hopefully the new system will handle it, if not we will put it on the old exit and use it there. We are still planning on using one gate this summer but we are not sure if it will be too congested at the gate during the busy weekends. We ask that you be patient with us during the trial time.

You will need your gate key to get in for now. The phone system is in and has been tested on a small trial bases. We are adding the phone numbers that we collected last year and we will try to get the phone system going before the busy summer. If your home phone or cell phone number has not changed from last year you should be ready to go as soon as we get it running. If you are current on your dues you will be allowed to use the phone system free as part of being a paid up member.

Oct 2nd

Here is the Boards response to Dave Hume's letter.

DEAR BILLS ISLAND PROPERTY OWNER:

WE, THE DUES PAYING BOARD MEMBERS, WOULD LIKE TO CLEAR UP SOME OF THE CONTROVERSY OVER THE CENTER ISLAND DEVELOPMENT. WE WILL START FEB. 1st, 2007, AFTER THE WOODLANDS (i.e. "THE RICHEY GROUP" FEATURING, RYAN DAVIS, PROJECT MANAGER, JASON NIETT & PAUL RICHEY) BOUGHT THE PROPERTY FROM THE WILDERNESS GROUP, BRENT CALL, ROY LEAVITT, JOLENE JENKINS, AND REED RICHMAN MET WITH RYAN DAVIS ON 2/1/07. OUR CONCERNS WERE THE SAME THEN AS NOW: SAFETY, ACCESS, WATER QUALITY AND DENSITY. MR. DAVIS STATED AT THAT TIME THE WOODLANDS WOULD JOIN THE HOME OWNERS ASSOCIATION, NOT HAVE A GATE AT THE ENTRANCE OF THE WOODLANDS DEVELOPMENT, HELP IMPROVE THE GATE AND ENTRANCE TO THE ISLAND, HELP WITH DRAFTING NEW C.C. & R.'S FOR THE ENTIRE ISLAND, WORK WITH AND DISCUSS WITH THE ISLAND ASSOCIATION ON HOW THE CAUSEWAY PROPERTY WOULD BE DEVELOPED, BUILD A PAVILION, HELP WITH UPDATING THE TRACTOR, SNOW BLOWER, FIRE TRUCK AND SECURITY CABIN. MR. DAVIS HAS BEEN ASKED EACH TIME THE BOARD MEMBERS HAVE MET WITH HIM IF THE RICHEY GROUP WOULD REDUCE THE NUMBER OF LOTS AND EACH TIME HE HAS REPLIED THEY WOULD NOT.

BRENT CALL AND REED RICHMAN MET BRIEFLY WITH MR. DAVIS AFTER THE P & Z HEARING FEB 11th 2007 AND AT THAT TIME MR. DAVIS STATED THAT THE RICHEY GROUP WOULD NOT BE MEMBERS OF THE ASSOCIATION, WOULD INSTALL A GATE AT THE ENTRANCE OF THE WOODLANDS DEVELOPMENT, WOULD NOT HELP IMPROVE THE GATE OR SECURITY CABIN, WOULD NOT HELP

WITH THE ISLAND C. C.& R'S AS THEY WOULD HAVE THEIR OWN C.C. & R'S AND WOULD ALLOW RENTALS. MR. DAVIS OFFERED TEN THOUSAND DOLLARS TO BUILD A PAVILION, UPDATE THE GATE, IMPROVE THE SECURITY CABIN, UPDATE THE TRACTOR, SNOW BLOWER AND FIRE TRUCK. MR. DAVIS' COMMENT WAS "THAT'S THE BEST WE CAN DO".

AFTER P & Z DENIED THE DEVELOPMENT AND THE COUNTY COMMISSIONERS APPROVED THE DEVELOPMENT, THE B.I.A. ASSOCIATION FILED AN APPEAL WITH DISTRICT COURT. AT THE FIRST HEARING WITH JUDGE MOSS IN DISTRICT COURT, JUDGE MOSS STATED THAT THE WOODLANDS COULD BUILD THE CAUSEWAY "AT THEIR OWN RISK". WE, THE B.I.A. BOARD, AGREED TO A MEDIATION MEETING WITH WOODLANDS. WE MET AT BAKER & HARRIS OFFICES IN BLACKFOOT IDAHO ON OCTOBER 4, 2007. BOARD MEMBERS PRESENT WERE: BRENT CALL, CON HAYCOCK, JOLENE JENKINS, ROY LEAVITT, SCOTT WATSON, REED RICHMAN AND LEGAL COUNSEL REED LARSEN. IN THE WOODLANDS ROOM: RYAN DAVIS, CHARLES HOMER AND KARL LEWIES. MR. BAKER WENT BACK AND FORTH BETWEEN ROOMS FOR OVER EIGHT HOURS. THE B.I.A. BOARD KEPT ASKING FOR ENGINEERED DRAWINGS OF THE IMPROVEMENT OF THE CAUSEWAY. AS SET FORTH BY THE FREMONT COUNTY COMMISSIONERS UPON THEIR APPROVAL OF THE DEVELOPMENT. AFTER ABOUT EIGHT HOURS THE WOODLANDS ADMITTED THAT THEY DID NOT HAVE ANY DRAWINGS OF THE CAUSEWAY IMPROVEMENT. JUDGE MOSS THEN RULED THAT THE WOODLANDS MUST PRODUCE ENGINEERED DRAWINGS TO COUNTY SPECIFICATIONS WITHIN 72 HOURS. THEN THE B.I.A. ASSOCIATION'S ENGINEER WOULD HAVE 72 HOURS TO REVIEW THE DRAWINGS AND APPROVE OR DISAPPROVE. WE THEN WENT BACK TO JUDGE MOSS'S COURT AND THE JUDGE RULED THAT THE WOODLANDS COULD PROCEED WITH CAUSEWAY CONSTRUCTION "AT THEIR OWN RISK". JUDGE MOSS ALSO RULED THAT THE WOODLANDS MUST POST A PERFORMANCE BOND WITH THE COUNTY TO INSURE THE WORK WAS DONE ACCORDING TO THE ENGINEERED DRAWINGS AND COMPLETED. THE WOODLANDS QUICKLY STARTED CONSTRUCTION OF THE CAUSEWAY, THEN IN LATE JANUARY 2008 THEY PETITIONED FREMONT COUNTY FOR THE RELEASE OF THE PERFORMANCE BOND. FREMONT COUNTY RETURNED THE PERFORMANCE BOND TO WOODLAND STATING THAT THE CAUSEWAY WAS FINISHED. THE FREMONT COUNTY ENGINEER WAS NEVER GIVEN ANY DRAWINGS OF THE CAUSEWAY AND WAS NOT EVEN MADE AWARE THAT THERE WAS ANY WORK BEING DONE ON THE CAUSEWAY SO THAT IT COULD BE INSPECTED. THE COUNTY ENGINEER NEVER SIGNED OFF ON THE CAUSEWAY CONSTRUCTION, SHE WAS NEVER ASKED!! B.I.A.'S ENGINEER, WINSTON DYER WAS NEVER CONTACTED AND ASKED TO SIGN OFF ON THE COMPLETION OF THE CONSTRUCTION OF THE CAUSEWAY.

WHEN BOARD MEMBER REED RICHMAN WAS CONTACTED AND INFORMED THAT FREMONT COUNTY WAS GIVING THE WOODLAND'S PERFORMANCE BOND BACK, HE CALLED MR. DAVIS AND ASKED IF THE CAUSEWAY WAS TRULY FINISHED. MR. DAVIS NEVER ANSWERED THE QUESTION AND FINALLY HUNG UP ON MR RICHMAN. MR. RICHMAN THEN CONTACTED THE COUNTY ENGINEER AND THE B.IA. ENGINEER TO SEE IF THEY HAD INSPECTED AND SIGNED OFF ON THE CONSTRUCTION COMPLETION. BOTH ENGINEERS HAD NOT EVEN BEEN MADE AWARE OF THE FACT THAT THE WOODLANDS WAS GETTING THEIR BOND BACK.

THEN THE WOODLANDS SENT OUT A LETTER TO THE ASSOCIATION MEMBERS STATING, AMONG OTHER THINGS THAT THE CAUSEWAY WAS FINISHED.

ON APRIL 15th, 2008 BRENT CALL, CON HAYCOCK, JOLENE JENKINS, SCOTT WATSON, ROY LEAVITT AND REED RICHMAN MET WITH JASON NIETT AND PAUL RICHEY IN REED LARSEN'S OFFICE. RYAN DAVIS WOULD NOT ATTEND. BOTH JASON NIETT AND PAUL RICHEY INSISTED THAT THE CAUSEWAY WAS FINISHED? NOW LET US ASK, IS THE CAUSEWAY FINISHED? WHO IS GOING TO HOLD THE DEVELOPER ACCOUNTABLE? WE DON'T THINK THE COUNTY WILL. DOES THE ASSOCIATION WANT TO PICKUP THE BILL FOR FINISHING THE CAUSEWAY? WHAT ELSE WILL THE ASSOCIATION HAVE TO PAY FOR AFTER THE DEVELOPER GETS HIS MONEY AND RUNS? IS THE B.I.A. BOARD BEING UNREASONABLE AS STATED BY RYAN DAVIS? CAN ANYONE LOOK AT THE CAUSEWAY AND HONESTLY SAY THAT THERE ARE THREE TRAFFIC LANES AND GUARD RAILS? IS IT FINISHED? CAN WE REALLY TAKE THE DEVELOPER AT HIS WORD?? SHOULD WE WITHDRAW THE APPEAL FROM THE SUPREME COURT? ONCE AGAIN WHO IS GOING TO HOLD THE WOODLAND ACCOUNTABLE?

On August 11, 2008, after receiving Judge Brent Moss' decision, Brent Call, Con Haycock, Jolene Jenkins, Scott Watson, Roy Leavitt, Randy Hayes, and Reed Richman met with the legal counsel for the BIA, Reed Larsen and Ron Kerl. At this meeting, discussion included the likelihood of a successful appeal to the Idaho Supreme Court, the fact that the BIA will have no bargaining position should the appeal be lost, and the cost of the appeal to the BIA association members. BIA's counsel discussed with the board members at length the likelihood of a successful appeal. The cost of the appeal was determined to be between \$15,000 and \$20,000, of which \$11,000 was currently in the legal fund. Counsel informed the board members that the Supreme Court Justices would in all probability oversee arbitration between the BIA and the Woodlands before the suit comes before the bench. The seven board members voted unanimously that it was in the best interest of the BIA to proceed with the appeal.

We are willing to negotiate with the Woodlands. They need to just call and set up a meeting and bring their paper and pen ready to sign any agreements made at the meeting instead of saying they will consider all ideas. We, the Board, are trying to protect the island. We don't want to have to fix the problems that the developer leaves behind. They claim District 7 will inspect their sewer systems, does anyone really believe that?

Why are the Woodlands meeting with individuals on the island and not with the board? Some members on the island have met with the developer and had their own mediation meeting, yet refuse to be a member on the board and some of them don't pay BIA dues. How can they speak for anyone? Is it to break us up as an association? Of course it is. Once they stop the unity in the association then they can start to divide us.

There are rumors of the developer offering the Island a park, repair the roads around the island, fire hydrants, a large sum of a cash infusion, all of which are not true. Dave Hume did meet with two people, one of whom was the developer, and did get an agreement from the developer to pay a user fee but they did not sign the agreement. So here we have the same thing. They agreed to continue to discuss those items and as long as it goes their way they will keep discussing them, else they stop negotiations and say we are being unreasonable.

We can stop the litigation at anytime, and we will if the developer comes to the table with real commitment to settle the dispute and be ready to sign any agreement we make.

IF WE LET UP NOW WE WILL BE RUN OVER BY THE DEVELOPER.

WHO WILL MAKE THEM FOLLOW THE RULES SET DOWN BY LAW?

JUST LOOK AT THE CAUSEWAY FOR STARTERS.

They have had all summer to finish it but no they cut a hole in the center of the island to take our attention off the causeway.

As a board we may not stop them but if they don't build it right we will be there to protect the Island and make them do it right.

Why do we feel they need to contribute a cash amount?

Because the infrastructure around the center of the island is what makes the center ground as appealing as it is. Who has paid for the infrastructure? Everyone on the Island that has ever paid his or her dues or when you purchase your cabin it was a part of that price.

WHAT HAS THE CENTER ISLAND OWNERS EVER CONTRIBUTED TO THAT INFRASTRUCTURE? The answer is nothing.

If anyone in the center of the Island ever has a problem where will they go?

Straight to Terry and ask for help. Is he going to turn them down? Should he turn them down? We all know the value of Terry and Marg at the gate. They need to pay their share of the cost of having such people available on the Island to turn to.

We feel they need to join the association, pay dues and be a part of the association, then they can come to the meetings, express their concerns and hear our concerns, then we can all work together. When it's all said and done we are going to have to be neighbors and work together to keep the Island a special place for us all to enjoy.

P.S.

We just received notice that we have an arbitration meeting with the Supreme Court and the Woodlands Nov 4th. We will attend and be open to all offers to settle but we will be firm in protecting the Island and the B.I.A. association's interest.

THE B.I.A. BOARD
Brent Call

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Aug 4th

Judge Moss Ruling

Friday Judge Moss ruled against the BIA. We now have to meet with our attorney to look at our options to determine where we go from here. We have 30 days to appeal the ruling to the Supreme Court. Please let us know your thoughts on this issue.

June 11th 08

Hello B.I.A.

We have three items for you to read.

- 1) Judge Moss Hearing**
- 2) Terry's surgery**
- 3) July 4th Island parade and boat parade**

1) **The Board attended the hearing at the St Anthony courthouse with Judge Moss. Our attorney's presented our case very well, now we just wait for his ruling.**

2) **For your info Terry had knee surgery Tuesday the 10th. He is doing fine at this time. He will be home Friday. We wish him a speedy recovery. We need him on the Island. We would also like to wish Terry and Marg a happy 50th wedding anniversary on the 28th of June.**

3) **The last item is the July 4th parades. We would like to honor our service men and women. If you know of anyone that would like to ride in the B.I.A float in full dress uniform please give Jolene a call, 208-589-5050. We would like them to ride on the B.I.A boat to lead us around the island during the boat parade that night.**

Hope to see all of you on the 4th. Let's hope for warm weather

May 23rd

To all B.I.A. Members

1-Judge Moss hearing

First item we have is to let you know that Judge Moss has moved the hearing for the inner island back to June 10th 2pm. We had hoped he would have his ruling by the July 4th but it doesn't look like it will happen.

2- FRIDAY July 4th activities

Our annual meeting and activities were approved last year for Friday July 4th. We will start with our annual parade at 9:30 am. Start lining up at 9:00 at the top of the causeway. Decorate your boat, 4 wheelers, bikes or anything you have and come and join us. Parents there will be a trailer for you to ride on to follow your little ones around the loop should they not make it all the way. We will stop at the Rexburg boat club for a short refreshment break.

Our annual membership meeting will be at 12:30pm at Peterson's shop lot #178.

PLEASE DO NOT PARK ON PRIVATE PROPERTY

2008 dues are payable at this time.

YOUR DUES MUST BE PAID IN FULL TO HAVE VOTING RIGHTS

Annual meeting Agenda

- A- Verification of a Quorum
- B- Discussion on increase of Dues
- C- Replacement of Snow Blower- Removal of fire truck for the winter
- D- Update of Gate and Card reader
- E- Consideration of new Home Owner Bylaws
- F- Election of two board members
- G- Inner Island update

This meeting will last approximately 1hr.

Dutch Oven Dinner- BBQ Chicken, Potatoes, Beans, and Cobbler with a scoop of ice cream will start at 5:30 at the same place. We are planning to feed 400 people. We ask that you bring a **salad OR Two**. Plates will be provided.

Your whole group is welcome.

Fee is by donation.

We will end with a boat parade at 8pm. Gather inside the cove. Decorate your boat. Look for the flag on the dock and the Sheriffs Boat. He will lead us around the island to Lake Side for the Fireworks at dusk.

APRIL 16th

We had the opportunity to meet with the Woodlands Group Tuesday April 15th. The purpose of the meeting was to find common ground to settle the lawsuit between B.I.A., Fremont Co. and the Woodlands. Any agreement between the parties has to be done before Judge Moss rules on the suit and all litigation must be dropped. At this time we as a board, with direction from the Association members feel it is not in our best interest to settle before hearing the ruling from Judge Moss. Please feel free to email me or call with your comments.

Con Haycock

208-431-0835

chaycock@pmt.org

BIA has received an offer to settle the dispute between Woodlands and BIA. Woodlands' offer is as follows:

- 1) The Woodlands will donate the property, approximately one acre, that lies in between the guard shack and the existing BIA boat ramp to the BIA for the mutual use of all BIA homeowners on the Island.
- 2) The Woodlands will donate \$25,000 to the BIA to construct a pavilion on the property donated by The Woodlands.
- 3) We propose that the remaining money in the legal fund be returned to the homeowners.
- 4) The Woodlands will replace and reconstruct the entry gate near the guard shack. This gate will have an arch that will be made from large timber, the gate itself will be metal, similar to the gate that is at Stevens Ranch.

- 5) As The Woodlands has indicated before, The Woodlands will agree to pay its proportionate cost to maintain common roads, facilities, and property. In the past the BIA has indicated that this can be done through paying a user fee or through joining the BIA, we are amenable to either scenario.
- 6) In effort to show good faith, we ask that all litigation by the BIA be withdrawn, the claims dismissed and released, and that concerns be worked out through reasonable means.
- 7) Establish a mandatory HOA to govern The Woodlands and existing homeowners, with CC&R's that will provide for attractive site-built homes or cabins.
- 8) Establish a 50' setback between The Woodlands and existing homeowners on the Island so that existing wells, structures, and the impact on the use of existing property owners' property is minimized, in which 50' there can be no structure, fence or other improvement built.
- 9) Establish a 100' setback for any septic system within The Woodlands so that all Woodlands septic tanks must be at least 100' from the boundary of any existing homeowners property.
- 10) Provide that all roads within The Woodlands be maintained by The Woodlands so that there is no economic impact or burden on existing homeowners to maintain improvements within The Woodlands, this includes snow removal, road upkeep, etc.
- 11) Install a dry hydrant in Island Park Reservoir for the use of the Island Park fire district for the benefit of the entire Island, and also install yard hydrants within the Woodlands, and fire breaks within the Woodlands. This will improve the safety of the entire Island in the event that a fire ever breaks out on the Island.

- 12) Construct a central water system to service the Woodlands, eliminating the need for multiple wells to be drilled on the property.
- 13) As we said that we would, we have improved the Causeway to three lanes. We will add a layer of aggregate to the Causeway and will construct guard rails as required by the County.
- 14) This offer is to be accepted by BIA before the May hearing.

APRIL 10th 2008

Bills Island Homeowner Association P.O. Box 344

██████████
Dear Property Owners, Recently we were notified that the Woodland Development Group purchased a lot in the

Welling Addition. They paid the purchase price for the lot and paid all BIA and Welling dues, in addition to the legal fund assessment. By doing so, they became members of our association. Within a few days we received a demand letter, from their attorney, asking for all of our association documents, all minutes of annual meetings held, bylaws, Articles of Incorporation and C & R records and any changes that have been made, names and addresses of all board members. They asked for these records for the past seven years. Since we are a public organization and they are entitled to this information we sent them approximately 875 pages of documents.

As a board, we try to manage the association like a business. An independent certified public accountant firm audits all our financial records systematically each year and provides a financial

report at our annual meetings. Our secretary/treasurer writes all checks but does not have check signing authority. All checks are approved and signed by two board members. All meetings have minutes taken, reread at the next meeting and approved by the board. At our annual meeting we have a voting quorum of members present to conduct business. All business is presented to the membership for their approval, which is done by motion, seconded, and then voted upon. New business from the floor is discussed and voted on the same way. Any member of our association has voting rights in these meetings. Everything is done up front and in a business-like manner. We have a legal firm that audits what we do and how we do it. We have a dedicated board that works hard for the association to keep things moving smoothly.

Recently Woodlands sent a letter to the Bills Island membership. The intent of this letter was to discredit the BIA board and try to get association members to lose confidence in the board and the BIA. Their main interest is to dismantle the association's funding, especially the legal fund. Their goal is to get the BIA legal action stopped so they can proceed with their development. This is the Bills Island Association's position:

1. Fremont County Planning and Zoning denied The Woodlands development for failure to meet the building code ordinances.
2. Woodlands appealed to the county commissioners to overturn Planning and Zoning's decision.
3. After much discussion and debate in public comment meetings the County Commissioners and the county attorney met in a "no comment" work meeting and decided to bypass or tweak parts of the building code and approved the Woodlands application.
4. Bills Island Association appealed that decision to District Court for failure to meet county building code and fire safety regulations.
5. The building code is very explicit on access and fire safety.
6. The BIA is standing in the way of the developer until he either meets code or the court ruling is made.
7. The BIA is in a good position for this lawsuit. Judge Moss has briefs from Cooper and Larsen, the BIA attorney, briefs from the developer's attorney, Chuck Homer, and briefs from Fremont County attorney, Karl Lewies. He also has the rebuttal brief from BIA. The hearing date, for oral arguments, is May 20th The judge has approximately 30 days after that to make a decision.
8. We received a letter from the Woodlands dated March 19, 2008 where they asked us to drop the lawsuit in exchange for a small settlement. We feel we should wait for the court's decision. Hopefully we will have a decision before our annual meeting in July. The legal system moves very slowly.

We appreciate your patience and support both financially and emotionally. Please understand that all efforts by the developer are being done at their own peril. That includes the work on the causeway and any work on the development while the judicial review is proceeding.

Thank you,

Bills Island Association Board

Here is a request from the Woodlands

Brent and Con,

Paul Ritchie and myself (without Ryan) were wondering if we could come meet with you and the board to discuss the latest written proposal we sent regarding the interior development of the island. We would be fine in coming up to Pocatello to meet at Larsen's office if that is a convenient place to meet. The premise for the meeting is to simply try to discuss the points in the letter and see if a mutually beneficial solution can be reached.

If you are open to meeting with us, please let us know some potential dates that work for you.

Thanks,

Jayson

We send this to all Homeowners.

— We have had an opportunity to review your March 19, 2008, letter. We have also reviewed your previous demands which were made upon Bills Island Association for our corporate records. Traditionally, Bills Island Association has moved forward with directives and initiatives that are adopted at the annual meeting. Certainly, the Board has power to run the Association. However, the Board has always been sensitive to following the direction that the Board receives at the annual meeting.

The homeowners at the annual meeting have consistently, since the Wilderness Group and now since the Woodlands Group, been adamant that any development of the interior portion of the island would require compliance with all planning and zoning laws and ordinances and require compliance with all BIA rules for the private road. We have discussed on numerous occasions with you, Bills Island Association's view that the Woodlands subdivision does- not comply with Fremont County planning ordinance. The Planning and Zoning Commission agreed with us. The

county commissioners disagreed. We believe that the judicial review that is going on is appropriate and ultimately that a court will require two points of ingress and egress to the subdivision to comply with the provisions of Fremont County Development Code Section KK which has been often discussed and with the Uniform Fire Code which also requires two points of ingress and egress.

You have provided certain items that are of interest for settlement discussion. However, there is no showing of a good faith to ask that all litigation be withdrawn and dismissed and released before there is any indication that there would be face to face settlement negotiations. Such is not good faith and it is not reasonable.

We remain open to discussions concerning resolution, but also remain firm in following through with the expressed intent of the majority of the homeowner's association at the annual meeting to require the Woodlands to comply with all legal requirements for development. We as an association believe that is the only way that safety and the future of the island can be preserved.

We welcome a meeting with you and would encourage you to bring up any items which you wish at the annual meeting over the 4th of July.

Sincerely,

B.I.A. Board

March 20th 2008

Welcome new B.I.A. members *(A must read)*

Status report on Bills Island Appeal

We would like to welcome the newest members to the island.

It is The Woodlands at Bill's Island L.L.C. They have purchase a lot in the Willing Addition. They have joined the B.I.A association and have paid their dues and have paid their legal fee assessment to oppose the center island development. Welcome and Thank you!

States Report Bill's Island Appeal:

B.I.A has filled its appeal and the opening brief. On Friday March 14th 2008 the county and Woodlands filed their response brief. Our attorney's will file a reply brief within the next 2 weeks. After the briefing is completed a hearing will be held before Judge Moss. This will probably be sometime in May. We remain confident in the merits of the appeal.

Please understand that all efforts by the developer, The Woodlands, are being done at their own peril. That includes the work on the causeway and any work on the development while the judicial review is proceeding.

If you have any question or concerns feel free to call your board members.

Brent Call

Con Haycock

Reed Richman.

Jolene Jenkins

Roy Leavitt

Randy Hayes

Scott Watson

February 18, 2008

To: Members of Bills Island Association

Please read our response to the letter you received and the court papers below then make up your mind as to the direction we are going. We hope you will find that we are in a good position going into court with the appeal. Email us with for feedback PLEASE

Subject: Response to the Woodlands Letter to BIA Property Owners

1. Woodlands Developers sent a letter to Property Owners on Bills Island stating their opinions. Remember- **“A product comes highly recommended by those that sell it.”** It was a propaganda letter and not all the facts stated were true. The letter is designed to under mine our Association, to divide and conquer us and is inappropriate conduct on their behalf. We as a board have been open with the Association. We have discussed this matter in our annual meeting and asked for your input. As a member, you voted unanimously on the direction we should go and you gave the board authority to make the day-to-day decisions and you voted to move ahead. If you have questions about the BIA or board it seems the people to ask is your board. We try to keep all information on our website and we are sending information updates to each member by mail. Please take the time to read it and be informed.
2. A 42-unit development is not a minimal or small development. It is the maximum or largest amount of dwelling units allowed to be built on the acreage Woodlands owns. It is not a small development, 6 or less is considered a small development.
3. The Woodlands Plot was denied by the Fremont County Planning and Zoning Board for failure to meet Fremont County Building Code for access, i.e. 2 points of Ingress and 2 points for Egress and uniform fire safety.
4. The developers group of qualified Attorneys and Consultants they hired to get their desired end results of getting the development approved did not change the end result. **Non-compliance to the building code was the result. Planning and Zoning denied their application.**
5. Our team of Attorneys and Engineers are just as qualified and they read and understand the Building Code rules and regulation and access is very defiant and is an absolute must comply to obtain approval. **The Developer did not meet the code.**
6. The Developer appealed to the County Commissioner to over ride the Planning and Zoning decision and figure a way to bypass that portion of the County Building Code. The development code is still in force but the County Commissioner has chosen to ignore the KK3 Section of the code and gave the developer approval for the application with restrictions, 29 absolutes they had to comply with including negotiations with Property Owners and BIA.
7. The causeway Riprapping had to be done while the reservoir was empty. Judge Moss, the BIA Board and Developer met to make decisions. Judge Moss ordered the developer to provide Engineering plans for the causeway widening within 48 hours and gave BIA 48 hours to review plans and then we went back to court. Judge Moss said widening the causeway would add to Bills Island. But it had no bearing or influence on the court case. The Developer could widen the causeway at his expense with the understanding it was at risk construction. If BIA wins in court the causeway construction is a donation to BIA. The Developer has no recourse.

8. BIA did indeed file an appeal in District Court. We are defending our right to hold county officials responsible to see they uphold the County Building Code and Laws and not be misled to interpret code different from its intent. Attorneys like to put their own twist to accomplish their own goals.
9. The Developers statement, **The Woodlands have agreed to accommodate most requests**. The examples they use are very misrepresented and are not true. BIA made several requests at mediation and they were all rejected including i.e. the loop road improvement, membership in BIA, user fee, update equipment, update gate and meeting facilities.
10. We as a Board have met with the developers on several occasions including mediation with Attorneys present. **Their comments have been, “we have deeper pockets than BIA”**. We told them having more money does not make you right or give you the right to change or alter the Building Code Laws that govern the place we live in and hold dear.
11. Encroachments of existing lots, wells, etc. Often time’s property gets surveyed several times and Surveyors come up with different correction points. This is why set backs on Property lines are required to allow for difference in surveys. Courts will not disallow older surveys unless they are off an extra large amount.
12. Where do we go from here?

The Developers statement in their letter, about BIA, should be reversed. They say they will take it to the Supreme Court and have redirected money to do it. This is what they have told us all along. **They have deeper pockets**. Does this make them right? Does this give them the right to find loopholes to override or ignore or tweak the laws and rules we all live by? It’s hard to interpret 2 ingress and 2 egress in any other way. The County Commissioners ignored or tweaked that law; **they need to be held accountable**. And that is the purpose for the Lawsuit.

Feb 14 08

To all B.I.A. members

This is the PETITIONER'S BRIEF for the appeal of the Woodlands development that we have filed with the court. Please take the time to read it completely and then make up your mind if we can stop them.

Reed W. Larsen, Esq. - ISB # 3427

COOPER & LARSEN, CHARTERED

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Attorneys for Bills Island Association

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

BILLS ISLAND ASSOCIATION,)

)

)

Petitioner,)

) CASE NO. CV 07-381

vs.)

) **PETITIONER’S BRIEF IN
SUPPORT OF JUDICIAL REVIEW**

FREMONT COUNTY, FREMONT COUNTY)

COMMISSIONERS; COMMISSIONER PAUL)

ROMRELL, COMMISSIONER DONALD)

TRUPP, and COMMISSIONER RONALD)

“SKIP” HURT, all named individually; and)

WOODLANDS AT BILLS ISLAND, LLC,)

)

Respondents.)

)

_____)

COMES NOW the Petitioner, Bills Island Association (hereinafter the “Association”), by and through its attorneys of record, and submit this brief to aid the Court in ruling upon the Association’s Amended Petition for Review now pending before it.

BACKGROUND

The Association has brought this Petition for Judicial Review of a June 11, 2007 decision of the Fremont County Board of Commissioners which overruled the Fremont County Planning and Zoning Commission's decision denying the Woodlands at Bills Island, LLC's application for a Class II permit to subdivide 91.8 acres of undeveloped real property located on I.P. Bills Island. I.P. Bills Island ("Bills Island") is an island situated within the Island Park Reservoir located in north Fremont County, Idaho. Woodlands at Bills Island, LLC (hereinafter "Woodlands") seeks to subdivide this undeveloped land into 42 residential lots. (Exhibit 1).

The Planning and Zoning Commission, on November 13, 2006, denied Woodland's application because Woodland's proposed development failed to satisfy Section VIII.KK.3 of the Fremont County Development Code ("FCDC") because it did not provide for a minimum of two points of ingress and egress from Bills Island to the mainland.

The purpose of the FCDC is set out in Chapter I.B.:

B. Purpose. The purpose of this ordinance shall be to promote the health, safety and general welfare of the people of Fremont County by fulfilling the purposes and requirements of the Local Planning Act and implementing the comprehensive plan. Specific statements of purpose accompany selected provisions of this ordinance, **but the comprehensive plan provides the full statement of the county's purpose and intent in planning and zoning activities.**^[1] (Emphasis added).

The Fremont County Comprehensive Plan, in Part II - Policy Statements, sets out Policy 4:

Policy 4. Protect Public Safety and the Public Investment in Roads. **Fremont County will require safe, adequate access to all new developments and**

protect the efficient functioning of existing roads by limiting access where necessary, protecting rights-of-way from unnecessary encroachments, and ensuring that utilities work and other necessary encroachments do not create safety hazards or result in added maintenance costs...

A. **Safe, adequate access to new developments is required** in all three zoning districts... ^[2] (Emphasis added).

Section VIII.KK.3 of the FCDC reads as follows:

Access. **All developments containing six or more dwelling units, or with a distance of more than 660 feet from a public road which is maintained on a year round basis shall provide a minimum of two points of ingress and egress from the public road or highway serving the development.** “Loop” systems that return to a single point of access to the public road or highway may be acceptable for relatively small developments (1,000 or less projected ADT).^[3] (Emphasis added).

See, also, Exhibit 1, Tab 3, page 2.

Section VIII.KK.3 is designed to carry into effect Policy 4 of Fremont County’s Comprehensive Plan and the express Purpose of the FCDC ***by requiring safe and adequate access to any new development.*** For developments of six or more dwelling units, FCDC Section VIII.KK.3 requires a ‘minimum’ of two points of ingress and egress to a public road or highway. This access requirement is obviously intended to avoid bottlenecks which impede safe egress and ingress of residents and emergency vehicles to any existing and new development. It is also designed to protect the existing roads by requiring alternate and additional means of access to every new development.

Section VIII.KK.3 is an ‘absolute performance standard’.^[4] Such a designation means that any failure to satisfy its requirements must result in a denial of the application. *See*, FCDC Section III.I.7 of the FCDC reads as follows:

“If the proposed development fails to comply with any applicable absolute performance standards of this ordinance or has a cumulative score insufficient to permit the proposed density on the relative performance standards of this ordinance, the application for a permit shall be disapproved.”

Chapter V.C. of the FCDC mandates that the ‘only exceptions to the requirement for compliance with all absolute performance standards shall be those specifically provided in this ordinance and those allowed by variance...’.^[5]

It is undisputed that the access to the Woodlands development is approximately 1,690 feet from any public road or highway and that there is only one point of ingress and egress from Bills Island to the mainland - an existing causeway owned by the Association. Tr. Vol. 1., P.115, L. 8-10 and Exhibit 12. The existing roads serving I.P. Bills Island are private roads and the entrance to Bills Island is protected by a private gate. Exhibit 12 is an ariel photograph of Bills Island and the surrounding area. At the top of the photograph, colored in red, is the location of the only public road giving ingress and egress to the island. The private gate is located at the western end of the public road. The ‘white’ roads are existing private roads owned by the Association. The ‘yellow’ roads are those roads proposed to be constructed by Woodlands as part of its development. *See*, Findings of Fact and Conclusions of Law, Exhibit 1 to Petitioner’s Petition for Judicial Review, page 14.

In denying Woodland's application, the Planning and Zoning Commission determined that the Woodlands development was not a 'small development' and that Woodlands did not satisfy requirements of Section VIII.KK.3 because it did not provide for a second means of access. Tr. Vol 1., P. 6, L 4-16. The fact that the Woodlands development is on an island accentuates Fremont County's express obligation to insure that existing access to Bills Island is not impaired by any new developments. Islands, unlike almost all other developable lands, have unique and limited access points. They are surrounded by water which significantly impairs the safe and speedy evacuation of the island in the event of an emergency. Unlike the mainland, where a person can evacuate relatively easily by walking away in any safe direction, a person situated upon an island must know how to swim, have access to a boat, or find a bridge in order to retreat to the mainland. If there is an obstruction to the only bridge to the mainland, or if the person cannot swim or use a boat, there is no reasonable avenue of escape from an island in the event of an emergency.

The Association has a vested right in seeing that its' members ability to evacuate the island is not impaired by the increased demands for access caused by the Woodland's development and the addition of 42 additional families to the equation. Likewise, it has a vested right in having emergency vehicles gain unfettered access to Bills Island in the event of an emergency. The addition of 42 additional dwellings and families on the island will adversely impact the Association's vested rights. Section VIII.KK.3 recognizes that right by stating the unequivocal means for protecting it: a minimum of two points of access to the public year round road.

Woodlands and the Board of Commissioners believe that the Woodlands' 'loop' road system satisfies the exception stated in Section VIII.KK.3. The so-called "Loop" system exception inartfully states that the development's road system must return "to a single point of access to the public road or highway" and that loop system "may be acceptable for relatively small developments (1,000 or less projected ADT)."

The Association believes that the 'loop' system exception is vague and unenforceable and that since the Woodlands development is more than 660 feet from the public road providing access to Bills Island, Woodlands must, at a minimum, provide no less than two points of ingress and egress from the island to the mainland. Since the Woodlands development is not designed to provide more than the single existing access to the island, Fremont County's absolute performance standard has not been satisfied and the Woodlands' application for a Class II permit should have been denied.

The Association, therefore, disputes the Fremont County Board of Commissioner's finding and conclusion, and urges the Court to find that the Board of Commissioners acted arbitrarily when interpreting and applying Section VIII.KK.3 in a manner which found that an enforceable 'loop' system exception exists in Section VIII.KK.3 and applies to the Woodlands' development. The Association also urges the court to find that the 'loop' system exception relied upon by Woodlands and the Commissioners is unconstitutionally vague and therefore must be stricken from Section VIII.KK.3.

The Association also asks this Court to conclude that the Board of Commissioner's findings and conclusions that the 'loop' road system exception applies to the Woodlands' development is not supported by substantial and competent evidence.

APPLICABLE LAW - JUDICIAL REVIEW

On July 6, 2007, the Petitioner timely filed its Petition for Judicial Review of the Fremont County Board of Commissioner's June 11, 2007 decision pursuant to *I.C. §67-5270 and §67-6521(d)*.^[6] Petitioner has exhausted all of its administrative remedies pursuant to *I.C. §67-5271*. This Court has jurisdiction over the Petition pursuant to *I.C. §67-5272*. The record and transcript of the proceedings before the Board of County Commissioners have been prepared and submitted to the Court pursuant to *I.C. §67-5275*.

This Court may reverse the Board of Commissioner's decision if it was: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) not supported by substantial evidence on the record as a whole; or (e) arbitrary, capricious, or an abuse of discretion. *I.C. §67-5279(3)*.

STATEMENT OF THE LAW AND ARGUMENT

A. The Board of Commissioners' Decision was Arbitrary and Capricious.

The Idaho Supreme Court, in *Eacret v Bonner County*, 139 Idaho 780, 784 (Idaho 2004), set out the rules related to judicial review as follows:

The Court shall affirm the zoning agency's action unless the Court finds that the agency's findings, inferences, conclusions or decisions are: "(a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) not supported by substantial evidence on the record as a whole; and (e) *arbitrary, capricious, or an abuse of discretion*. I.C. §67-5279(3). The party attacking a zoning board's action must first illustrate that the board erred in a manner specified therein and must then show that a substantial right of the party has been prejudiced. (Emphasis added).

The Association believes that the 'loop' exception relied upon by Woodlands and the Board of Commissioners is vague and ambiguous because its material elements are not defined and no standards for its application exists within the FCDC, leaving the application of the 'loop' exception to the unbridled arbitrary and capricious discretion of the Board of Commissioners.

It is fundamental constitutional law that a legislative enactment must establish minimum guidelines to govern its application. *State v Bitt*, 118 Idaho 584 (1990); *Voyles v Nampa*, 97 Idaho 597, 599 (1976). The absence of such guidelines will justify a finding that the Board of Commissioner's conclusion was arbitrarily made:

A city's actions are considered arbitrary and capricious if made without a rational basis, or in disregard of the facts and circumstances, ***or without adequate determining principles***. *Enterprise, Inc. v. Nampa City*, 96 Idaho 734, 739, 536 P.2d 729, 734 (1975). *Lane Ranch P'ship v. City of Sun Valley*, 2007 Ida. LEXIS 239 (Idaho 2007). (Emphasis added).

See, also, Am. Lung Ass'n v. State, 142 Idaho 544, 547 (Idaho 2006), in which the Idaho Supreme Court stated: "An action is capricious if it was done without a rational basis. *Enterprise, Inc. v. Nampa City*, 96 Idaho 734, 536 P.2d 729 (1975). It is arbitrary if it was done in disregard of the facts and circumstances presented or without adequate determining principles. *Id.*"

The FCDC offers no determining principles or guidelines for the application of the ‘loop’ exception in Section VIII.KK.3. The ‘loop’ exception reads as follows:

“Loop” system that returns to a single point of access to the public road or highway may be acceptable for relatively small developments (1,000 or less projected ADT).

The absence of adequate governing principles with which to employ and apply the ‘loop’ system exception renders the Board of Commissioner’s decision to employ it in this case arbitrary and capricious. The Commission used this exception as the sole basis for not enforcing the minimum access standards required by Section VIII.KK.3. *See*, Findings of Fact and Conclusions of Law, p. 7.

In *Lane Ranch P'ship v. City of Sun Valley*, 2007 Ida. LEXIS 239 (Idaho 2007), the role of the court in construing a planning and zoning ordinance was outlined as follows:

Analysis of a statute or ordinance begins with the literal language of the enactment. *Friends of Farm to Market*, 137 Idaho at 197, 46 P.3d at 14 (citations omitted). "Where the language is unambiguous, the clearly expressed intent of the legislative body must be given effect, and there is no occasion for a court to construe the language." *Friends of Farm to Market*, 137 Idaho at 197, 46 P.3d at 14 (citing *Lawless v. Davis*, 98 Idaho 175, 560 P.2d 497 (1977)).

The converse exists, however, when the ordinance is ambiguous. The Court, under those circumstances, has discretion to reverse the Commissioner’s findings and conclusions.

Where language of a statute or ordinance is ambiguous, however, this Court looks to rules of construction for guidance. *Lawless v. Davis*, 98 Idaho 175, 560 P.2d

497 (1977). It may also consider the reasonableness of proposed interpretations. *Umphrey v. Sprinkel*, 106 Idaho 700, 706, 682 P.2d 1247, 1253 (1983). "Constructions that would lead to absurd or unreasonably harsh results are disfavored." *Gavica v. Hanson*, 101 Idaho 58, 60, 608 P.2d 861, 863 (1980); *Lawless*, 98 Idaho at 177, 560 P.2d at 499.

ADVANCE \d4 Language of a particular section need not be viewed in a vacuum.

And all sections of applicable statutes must be construed together so as to determine the legislature's intent." *Lockhart v. Dept. of Fish and Game*, 121 Idaho 894, 897, 828 P.2d 1299, 1302 (1992) (quoting *Umphrey*, 106 Idaho at 706, 682 P.2d at 1253; see also *J.R. Simplot Co. v. Idaho State Tax Comm'n*, 120 Idaho 849, 853-54, 820 P.2d 1206, 1210-11 (1991). Statutes and ordinances should be construed so that effect is given to their provisions, and no part is rendered superfluous or insignificant. See *Brown v. Caldwell Sch. Dist. No. 132*, 127 Idaho 112, 117, 898 P.2d 43, 48 (1995). There is a strong presumption of validity favoring the actions of a zoning authority when applying and interpreting its own zoning ordinances. *South Fork Coalition v. Bd. of Comm'rs*, 117 Idaho 857, 860, 792 P.2d 882, 885 (1990).

See, *Friends of Farm to Mkt. v. Valley County*, 137 Idaho 192, 197 (Idaho 2002).

More recently, in *Lane Ranch P'ship v. City of Sun Valley*, [supra](#)^[7], the Idaho Supreme Court stated:

This Court applies the same principles in construing municipal ordinances as it would in construing statutes. *Friends of Farm to Market*, 137 Idaho at 197, 46 P.3d at 14 (citing *Cunningham v. City of Twin Falls*, 125 Idaho 776, 779, 874 P.2d 587, 590 (Ct. App. 1994)). "Any such analysis begins with the literal

language of the enactment." *Ada County v. Gibson*, 126 Idaho 854, 856, 893 P.2d 801, 803 (Ct. App. 1995) (citations omitted). If the language is unambiguous, then the clear and expressed intent of the legislative body governs. Specific language is not viewed in isolation, the entire statute and applicable sections must be construed together to determine the overall legislative intent. *Friends of Farm to Market*, 137 Idaho at 197, 46 P.3d at 14 (citing *Lockhart v. Dept. of Fish and Game*, 121 Idaho 894, 897, 828 P.2d 1299, 1302 (1992)).

The 'loop' exception to the 'two points of ingress and egress' requirement of Section VIII.KK.3 is clearly ambiguous. The exception does not describe what road configuration constitutes a 'loop' system. The exception does not place any limits on the distance separating the 'single point of access' required of the 'loop' system and the 'public road or highway' providing access to the development. The exception does not define 'relatively small developments' and the exception does not explain what is meant by the parenthetical phrase "(1,000 or less projected ADT)" or how it is to be applied in the context of Section VIII.KK.3.

When the ambiguous language of the 'loop' system exception is juxtaposed against the unambiguous Policy 4 of Fremont County's Comprehensive Plan and the unambiguous Purpose of the FCDC, as well as the unambiguous minimum access requirement of Section VIII.KK.3 for subdivisions with more than six dwellings, the Commissioner's use of the ambiguous 'loop system' exception should be carefully scrutinized by the Court.

It is clear from the Comprehensive Plan, the FCDC, and the express requirements of FCDC Section VIII.KK.3, that the overall legislative intent of Fremont County is to insure safe

and adequate access to all new developments. Fremont County cannot apply exceptions to the objective safe and adequate access policy and rules in the absence of some form of legislative guidance. There is no such guidance applicable to the ‘loop’ system exception. The absence of adequate determining principles with which to apply the ‘loop’ system exception renders the Board of Commissioner’s decision wholly subjective and therefore arbitrary and capricious. *Lane Ranch P’ship v. City of Sun Valley, supra.*

1. The Phrase “Loop System” is Not Defined and is Vague and Ambiguous. Exhibit 12 illustrates the location of the Woodlands road system (colored in yellow). It consists of a ‘loop’ with two cul-de-sacs jutting outward to the west and southwest, and a connecting road between the ‘loop’ and the existing private roads of the Association. Can the two planned cul-de-sacs be a part of the ‘loop’ system? Does the connecting road constitute a part of the ‘loop’? Would a cul-de-sac, on its own, constitute a ‘loop’ and bring the exception into play? After all, a cul-de-sac has a ‘loop’ at one end!

The answers to these questions, and many more, are simply unknown because the FCDC does not attempt to define what constitutes a ‘loop’ system and the Board of Commissioners did not attempt to address this issue when rendering its findings and conclusions. The Commissioners simply assumed and concluded that Woodland’s road system is a ‘loop’ system without any analysis of the question whatsoever.

2. Single Point of Access to the Public Road or Highway. The alleged ‘loop’ system set out in the Woodlands development is located 1,690 feet from the only public road providing year round access. The ‘loop’ itself does not come in contact with any public road or highway.

Rather, Woodlands must use 1,690 feet of the private roads owned by the Association and its own connecting road in order to reach the requisite public road. If this exception is to be consistently applied by the Commissioners it would not matter if the required public road or highway was 1,690 *miles* from the development - as long as the development's 'loop' is somehow or somewhere connected to a 'public road or highway'.

Obviously the Board of Commissioners would not apply the 'loop' exception if the public road were 1,690 *miles* from the public road. However the ordinance itself offers no determining principles which would assist the Board of Commissioners in determining the proper distance separating the proposed development from the public road necessary to employ the 'loop' system exception. The FCDC is silent on this question - except that both the Comprehensive Plan and the FCDC require the Board of Commissioners to insure safe and adequate access to Bills Island for its residents and emergency vehicles before authorizing any further development on the island and the Commissioners must keep these policies and principles in mind when enforcing the FCDC.

3. *Relatively Small Developments.* The 'loop' road system exception is only applicable to 'relatively small developments.' Section VIII.KK.3 itself only applies to developments containing six or more dwelling units. Any development containing less than six dwelling units is, therefore, automatically considered 'small' and exempt from the minimum two points of access requirement. If a development containing five dwelling units is considered 'small' by the FCDC, how many dwelling units would should be considered 'relatively small'? The FCDC does not define this term.

Should a 42 dwelling unit development also be considered ‘relatively small’? The FCDC states that 60 dwelling units is a ‘large’ development.¹⁸¹ If a ‘large’ development is only 18 more dwelling units than that proposed by the Woodlands, perhaps the Woodland’s development is ‘relatively large’ rather than ‘relatively small’. Perhaps the outside limit for ‘relatively small’ should be closer to the number 5 than the number 60. The Woodlands development (42 lots) is clearly closer to the number 60 than the number 5, yet Fremont County has determined it is a ‘relatively small development’ for purposes of excusing the Woodlands from providing a second access point between Bills Island and the mainland. FCDC offers no guiding principles to help the Commissioners make a reasonable decision in this regard, thus rendering their decision in this case arbitrary and capricious.

The Board of Commissioners concluded that the parenthetical phrase “(1,000 or less projected ADT)” provides it with a basis for determining which developments are ‘relatively small developments’. It is clear from the questions posed by the Commissioners during the hearing that they did not know what “ADT” stood for, or how this measurement is to be applied in reaching any conclusion.

COMMISSIONER ROMRELL: Marla, does ADT mean peak day each year or daily average the whole year?

MS. VIK: Well, ADT is the daily average over the year.

COMMISSIONER ROMRELL: It’s whatever –

MS. VIK: It’s –

COMMISSIONER ROMRELL: – you want.

MS. VIK: It's a little looser. It's your average daily traffic. And as Ryan said, as long as you have more than two days of data, you can have an average, so it's whatever you decide to study.

COMMISSIONER ROMRELL: Commissioner Romrell continuing. Is there an industry standard or I know our code says ADT?

MS. VIK: Um-h'm.

COMMISSIONER ROMRELL: I guess my question is still it's subjective I guess. It could be anytime.

MS. VIK: it can be whatever time you feel is appropriate to the situation.

Tr. Vol. 1. P. 79-80.

Ms. Vik referred to the testimony of Ryan Hales, an expert who testified on behalf of Woodlands. Mr. Hales testified that ADT is the average daily traffic count. "That is a time period that's anything less than 365 days or more than two days." Tr. Vol. 1. P. 80, L. 3-7. The result of this testimony is that an ADT can be taken at any time of the year, as long as it relates to data collected over more than two days but less than 365 days. There is no requirement in the FCDC that the traffic data be collected on weekdays, weekends, holidays, or non-holidays. The absence of any guidance directing when and how this traffic data is to be collected renders any decision based upon such traffic data seriously subjective.

The Bills Island area is typically used for seasonal, recreational, and second home purposes. Bills Island and its access road will experience significant usage differences over the four seasons of the year. A measurement taken during July will differ significantly from a traffic measurement taken in October or April. In fashioning an exception to the 'two access' rule embodied in Section VIII.KK.3, Fremont County should have provided more direction on how

and when the data establishing ADTs should be collected, and whether or not that data should be collected differently in the recreational district of Island Park, as compared to other zoning districts in Fremont County.^[9]

The absence of any governing principles to employ the ‘1,000 ADT’ benchmark allows subjective manipulation of the decision making process. It allows the Commission to recognize traffic data collected at one time and ignore traffic data collected at another time, so that the data chosen to be relied upon dictates the conclusion they desired to reach. In fact, the traffic counts presented to the Commissioners in this case were manipulated by the Commission in order to justify their application of the ‘loop’ system exception. The Commission accepted the traffic data collected by Woodlands and ignored the traffic data collected by the Idaho Department of Transportation and a nationally recognized compilation of traffic data relied upon by traffic engineers nationwide.^[10]

Nor does Section VIII.KK.3 state how this parenthetical phrase is to be applied when using the ‘loop’ road system exception. Does the “(1,000 or less projected ADT)” phrase apply only to the development under consideration by the Board of Commissioners? Or, does it apply only to the existing developments currently served by the public road in question? Or does it apply to a combination of all existing and all future developments which are or could be served by the public road? The FCDC offers no guidance to the Commissioners when this question is presented as the basis for employing the ‘loop’ exception.

The Board of Commissioners applied the parenthetical phrase as follows: the Commission estimated the total existing traffic on Bills Island and added that estimate to the

estimated future traffic expected from the Woodlands development. From that data it concluded that the combined total average daily traffic to and from Bills Island would be less than 1,000. *See*, Findings of Fact and Conclusions of Law, pp. 7-14. However, since the FCDC itself provides no basis for such an interpretation and application of the parenthetical phrase, the Commissioner's interpretation and application of the parenthetical phrase in this manner is arbitrary, capricious, and an abuse of its discretion.

The absence of any guiding principles in the FCDC also makes the exception constitutionally infirm, vague and ambiguous, and the Board of Commissioner's use of that exception was arbitrary. The exception should be stricken by the Court.

***[Idaho Supreme] Court has observed that "when part of a statute or ordinance is unconstitutional and yet is not an integral or indispensable part of the measure, the invalid portion may be stricken without affecting the remainder of the statute or ordinance." *Voyles v. City of Nampa*, 97 Idaho 597, 600, 548 P.2d 1217, 1220 (1976); *see also Lynn v. Kootenai County Fire Protective Dist. No. 1*, 97 Idaho 623, 626, 550 P.2d 126, 129 (1976) ("If the unconstitutional section does not in and of itself appear to be an integral or indispensable part of the chapter, then it may be stricken therefrom."). *In re Srba Case No. 39576*, 128 Idaho 246, 263-264 (Idaho 1995).

The 'loop' exception is vague and ambiguous, is not an integral or indispensable part of the FCDC, its elimination by the Court will not adversely affect the remainder of Section VIII.KK.3, and its elimination will serve the Purpose of the FCDC and the Policy 4 of Fremont County's Comprehensive Plan by insuring safe and adequate access to Bills Island for its residents and emergency vehicles.

- B. The Board of Commissioners' Decision was Not Supported by Substantial and Competent Evidence.

The Board of Commissioners made the following observation when issuing their findings and conclusions: “The most contentious issue during the public hearing had to do with the access to the proposed development site.” The Board of Commissioners then concluded that “Approval of loop systems that return to a single point of access is within the reasonable discretion of the county, with the limit on the county’s discretion being the 1,000 ADT standard.”^[11]

The bulk of the evidence presented at the hearing related to what the Board of Commissioners described as the “1,000 ADT standard.” Recognizing that the FCDC itself offers no guidance with which to apply this ‘standard’, the Commissioners concluded that both the Association and Woodlands’ generally agreed that the 1,000 ADT threshold number was an appropriate standard.^[12] This finding and conclusion is not supported by substantial or competent evidence. There was no admission on the part of the Association that the 1,000 ADT threshold number was an ‘appropriate standard’ or that the manner in which the Commissioners applied that standard was appropriate. Woodlands did not offer any evidence that the 1,000 ADT threshold number was an ‘appropriate standard’. This finding and conclusion by the Commissioners is clearly erroneous and not supported by substantial or competent evidence in the record.

The Board of Commissioners also ignored their obligations under *I.C. §41-253*, which adopts the International Fire Code as the ‘minimum standards for the protection of life and property from fire and explosions in the state of Idaho.’ Fremont County’s obligation in this

regard was pointed out by witness Winston Dyer. Tr. Vol. 2. P. 9. L 1-7, Exhibit 15. The International Fire Code adopted by the State Fire Marshall requires, through Appendix D thereof, that “Multiple-family residential projects having more than 100 dwelling units shall be equipped throughout with two separate and approved fire apparatus access roads.”^[13] The Board of Commissioner’s decision did not address how the Woodlands application satisfied the International Fire Code requirement, or why this requirement doesn’t apply to the Woodlands’ application. The Commissioner’s failure to address this issue is clearly erroneous and not supported by substantial or competent evidence in the record.

In reaching their decision, the Board of Commissioners received evidence related to two on-site traffic studies. One was performed by Woodlands and the other was performed by the Idaho Transportation Department (“ITD”) and offered into evidence by the Association. (Exhibit 13). The Association also offered additional evidence in the form of a national compilation of traffic studies prepared by the Institute of Transportation Engineers. (“Trip Generation” - Exhibit 14). Lastly, the Commissioners heard the testimony of the Fremont County Public Works Director, Marla Vik. Ms. Vik is a professional engineer. (Tr. Vol. 2. P. 74. L. 13-17). None of the offered evidence, including the testimony of Marla Vik, concluded that 1,000 ADT is an appropriate standard or that the Commissioner’s actual application of that standard was appropriate. In fact Ms. Vik testified on the issue as follows:

COMMISSIONER HURT: Okay. Do you see any safety concerns with 1,000 ADTs with three lanes?

MS. VIK: Safety involves so many different factors. They can’t be simply based on ADT. It has to be based on speed, grade, with a recoverable area, barriers. It’s just not a one-factor issue.

Tr. Vol. 2. P. 86 L 20-25.

The Woodlands traffic study was accepted by the Commissioners without any question. The Woodland's data related to a traffic count taken between Saturday, July 9, 2005 and Tuesday, July 19, 2005.^[14] (Tr. Vol 1. P. 81, L. 12-13), some twenty-two months *before* the April 10, 2007 hearing before the Board of Commissioners. That relatively stale study was founded upon the following facts: there are 301 platted lots currently located on Bills Island, and 197 of them have dwellings constructed upon them. (Tr. Vol 1. P. 78, L. 5-6). Based upon Woodlands' traffic count for the existing 197 dwellings, the average weekday non-holiday trips averaged 2.5 per dwelling unit per day, and the average weekend non-holiday trips averaged 3.7 trips per dwelling unit per day. Woodlands then averaged the weekday ADTs with the weekend ADTs to come up with an average of 2.8 trips per dwelling unit per day. Woodlands then projected the average trips per day if every platted lot (301 lots) and Woodlands' proposed development (42 lots) were occupied with a dwelling and concluded that 2.8 trips x 343 dwellings = 960.4 trips per day, or 'ADT'. It is this evidence upon which the Commissioners based their decision to apply the 'loop' road system exception to Section VIII.KK.3. The Commission concluded that the 960.4 trips per day estimated by the Woodlands data were less than the 1,000 ADT parenthetically referenced in Section VIII.KK.3, and therefore the Woodlands proposal was a 'relatively small development' and could use the 'loop' road system exception to avoid the express obligations of Section VIII.KK.3.

Based on Mr. Hales and Ms. Vik's testimony - that more than two days of data is sufficient to provide an ADT - the Commissioners could have used the Woodlands' average

weekend/non-holiday count of 3.7 ADT, and the Woodlands' 3.5 ADT measurement for Friday July 15, 2005^[15], for an average of 3.63, and a far different conclusion would have been reached. The average trips per day if every platted lot (301 lots) and Woodlands' proposed development (42 lots) were occupied with a dwelling, the conclusion would have been that $3.63 \text{ trips} \times 343 \text{ dwellings} = 1,245.09 \text{ trips per day}$. This results in a number which is nearly 25% higher than the 1,000 ADT standard adopted by Fremont County!

The ITD traffic study took place between Saturday, July 1 and Wednesday, July 5, 2006. The Commissioners disregarded this data because it was collected over a holiday weekend.^[16] This data was disregarded because Woodlands' expert Hales and Ms. Vik both testified that traffic counts would typically not be taken during holidays.^[17] Neither Hales nor Vik testified that holiday traffic counts should *never* be considered. To the extent the Commissioners totally disregarded the ITD traffic count taken over the 4th of July weekend in 2006, without any discussion whatsoever, makes this finding and conclusion clearly erroneous and not supported by substantial or competent evidence in the record.

The ITD data established a 5.5 ADT average. Exhibit 10, 13; Tr. Vol 1. P. 109-112. If this data had been relied upon by the Commissioners, again, a far different conclusion would have been reached. The average trips per day, if every platted lot (301 lots) and Woodlands' proposed development (42 lots) were occupied with a dwelling, would be calculated as follows: $5.5 \text{ trips} \times 343 \text{ dwellings} = 1886.5 \text{ trips per day}$. This calculation results in a number which is more than 88% higher than the 1,000 ADT standard adopted by Fremont County!

The Commissioners also disregarded the Institute of Transportation Engineers Trip Generation Report. (“Trip Generation” - Exhibit 14). However, the Commission’s Findings of Fact and Conclusions of Law do not state any reason for totally disregarding the data contained within Exhibit 14. The Commissioners did quote the rebuttal testimony received from Woodland’s expert, Mr. Hales, who opined that actual traffic counts overrule the national study.

The Commissioners, however, did not give

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In this case, the majority of the City's findings of fact fail to make actual factual findings; instead, the "findings" merely recite portions of the record which could be used in support of a finding. For instance, Findings 7(a) and 7(b) merely state that Crown Point's Phase 5 applications contain certain information about the size of the units. Additionally, several of the findings consist of nothing more than a recitation of testimony given in the record. ***By reciting testimony, a court or agency does not find a fact unless the testimony is un rebutted in which case the court or agency should so state.*** "A finding of fact is a determination of a fact by the court [or agency], which fact is averred by one party and denied by the other and this determination must be founded on the evidence in the case." *C.I.T. Corp. v. Elliott*, 66 Idaho 384, 397, 159 P.2d 891, 897 (1945) (Emphasis added).

The Commission cited from Hale's testimony, but it did not adopt Hale's testimony as a 'finding' or state that it was un rebutted by the record. In fact Hale's testimony on this subject was rebutted by Ms. Vik, who testified that the Trip Generation report *was the standard used by*

the traffic engineering industry. Tr. Vol 2. P. 76 L. 1-3. For these reasons there is no sound basis to disregard Exhibit 14. The Commissioners failure to state the basis for their total disregard of Exhibit 14 is, therefore, clearly erroneous and not supported by substantial or competent evidence in the record.

The Trip Generation Report, Exhibit 14, reveals (at page 508) that the national average ADT per recreational dwelling unit is 3.16. If the Trip Generation Report data was used by the Commission, again, a far different conclusion would have been reached. The average trips per day, if every platted lot (301 lots) and Woodlands' proposed development (42 lots) were occupied with a dwelling, the Commission would have concluded the following: 3.16 trips x 343 dwellings = 1083.88 trips per day. This results in a number which is still higher than the 1,000 ADT standard adopted by Fremont County!

Overall, the Commission's conclusion that the 1,000 ADT standard will not be exceeded by approving the Woodlands applicaiton is not supported by 'substantial evidence.' Rather, it is supported by minimal evidence. The substantial evidence in the record supports a conclusion that the ADT for Bills Island will exceed 1,000 ADT when the existing and proposed Woodlands lots are fully developed. For that reason the Woodlands' application for a Class II permit should have been denied.^{[119](#)}

If the Commission had disregarded Woodlands' weekday/non holiday data, or not averaged all of Woodlands' weekday/non-holiday data with the higher weekend/non-holiday data, the Woodlands data alone would have required the Commission to conclude that the 1,000 ADT standard would be exceeded by the Woodlands development. If the Woodlands

weekend/non-holiday data were combined with the ITD data and the Institute of Traffic Engineer's Trip Generation Report, the only reasonable conclusion the Commissioners could reach is that the 1,000 ADT standard would be exceeded by the Woodlands development.

Instead, the Commission gave undue weight to the Woodlands' weekday /non holiday data, and ignored all other relevant data so that it could employ the 'loop' road system exception and approve the Woodlands application.

In *Eastern Idaho Regl. Med. Ctr. v. Ada County Bd. of Comm'rs* (In re Hamlet), 139 Idaho 882, 884-885 (Idaho 2004) the Idaho Supreme Court said: "Although this Court may disagree with Ada County's conclusion, this Court "may not substitute its judgment for that of the administrative agency on questions of fact... *if supported by substantial and competent evidence.*"

In this case, however, the Commission's decision is based on insubstantial evidence - the weekday/non holiday traffic data collected by the Woodlands some 22 months before the hearing. The substantial evidence before the Commission - *consisting of the Woodlands' weekend/non-holiday traffic data, the Woodlands' data for Friday, July 15, 2005, the IDT data, and the Trip Generation Report* - required the Commission to conclude that the 'loop' system of roads exception was **not** available and the Woodlands had **not satisfied** the absolute performance standard of Section VIII.KK.3.

In *Laurino v. Bd. of Prof'l Discipline*, 137 Idaho 596, 602 (Idaho 2002), the Idaho Supreme Court defined 'substantial evidence' as follows:

ADVANCE \d4 The violations that the Board found against Dr. Laurino must be reviewed to determine whether the evidence in the record as a whole supports the findings, inferences, and conclusions made by the Board. *I.C. §67-5279(3)(d)*. **Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate and reasonable to support a conclusion.** *Idaho State Ins. Fund v. Hunnicutt*, 110 Idaho 257, 260, 715 P.2d 927, 930 (1985). (Emphasis added).

If the Woodlands' weekday/non-holiday data were disregarded, the material evidence remaining before the Commissioners - *consisting of the Woodlands' weekend/non-holiday traffic data, the IDT data from July 2006, and the Trip Generation Report* - all support a conclusion that the ADTs for Bills Island would exceed 1,000 if the Woodlands application were granted. For these reasons the decision of the Board of Commissioners to apply the 'loop' road system exception to FCDC Section VIII.KK.3 is not supported by substantial evidence in the record as a whole.

CONCLUSION

The Association has demonstrated that the Findings of Fact and Conclusions of Law issued by the Fremont County Board of Commissioners were reached arbitrarily and capriciously because there are no guiding principals in FCDC as a whole, or in Section VIII.KK.3 in particular, which would allow the Commissioners to objectively apply the 'loop' system of roads exception.

Further the Findings of Fact and Conclusions of Law are not based upon substantial evidence in the record, as a whole.

Under the authority of *I.C. §67-5279(3)(d)* this Court should reverse the Board of Commissioner's decision to approve the Woodlands application for a Class II permit and thereby grant the Association's Petition for Judicial Review.

Dated this ____ day of February, 2008.

COOPER & LARSEN, CHTD.

Attorneys for Petitioner

By _____

Ron Kerl, of the firm

By _____

Reed W. Larsen

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on the ____ day of February, 2008, I served a true and correct copy of the foregoing document as follows:

Charles A. Homer	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid
HOLDEN, KIDWELL, HAHN & CRAPO, PLLC	<input type="checkbox"/> Hand Delivery
P.O. Box 50130	<input type="checkbox"/> Overnight Mail
Idaho Falls, ID 83401	<input type="checkbox"/> Facsimile
	<input checked="" type="checkbox"/> Email

Karl H. Lewies	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid
Fremont Co. Prosecuting Attorney	<input type="checkbox"/> Hand Delivery
22W. 1 st N.	<input type="checkbox"/> Overnight Mail
St. Anthony, ID 83445	<input type="checkbox"/> Facsimile
	<input checked="" type="checkbox"/> Email

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ADVANCE \x236**COOPER & LARSEN, CHTD**

ADVANCE \x236By:

ADVANCE \x259Ron Kerl, of the firm

^[1]An excerpt of the FCDC containing Chapter I. B is attached as Appendix 1.

^[2]An excerpt of the Fremont County Comprehensive Plan containing Policy 4 is attached as Appendix 2.

^[3]An excerpt of the Fremont County Development Code containing Section VIII.KK.3 is attached as Appendix 3.

^[4]The Board of Commissioner's Findings of Fact and Conclusions of Law, at page 6, correctly concluded that Section VIII.KK.3 is an 'absolute performance standard'.

^[5]An excerpt of the Fremont County Development Code containing Section III.I.7 and Chapter V.C. is attached as Appendix 4.

^[6]The Petitioner filed its Amended Petition on July 13, 2007.

^[7]*2007 Ida. Lexis 239, page 2.*

^[8]An excerpt of the Fremont County Development Code containing Section OO, page 54, is attached as Appendix 5.

^[9]Fremont County is divided into zoning districts, and the Island Park area is its own zoning district and has its own, unique, rules for development. Excerpts of the FCDC, Chapter IV.B and Chapter VIII.B are attached as Appendix 6.

^[10]The Commissioner's arbitrary selection and application of this traffic data in making its decision will be addressed more directly below, when discussing the fact that its decision is not supported by substantial and competent evidence.

^[11]Findings of Fact and Conclusions of Law, pp 6-7.

^[12]Findings of Fact and Conclusions of Law, p. 7.

^[13]A copy of Appendix D to the International Fire Code is attached hereto as Appendix 7.

[14] The date of this study was strategically scheduled between two very busy holidays for the Island Park area - the 4th of July and the 24th of July.

[15] Exhibit 21. The data for Friday, July 15, 2005 shows a total of 686 trips for the day. When divided by the 197 actual dwellings located on Bills Island, the ADT for that Friday is 3.48. If you combine two weekend days at an average of 3.7 each, with the Friday July 15, 2005 ADT of 3.48, the resulting average ADT is 3.63.

[16] Findings of Fact and Conclusions of Law, page 11.

[17] Tr. Vol. 1. P. 81 L 18-19, and Tr. Vol. 2. P. 75 L 13-15.

[18] See, Findings of Fact and Conclusions of Law, page 11

[19] The Commissioners critically commented on the fact that an ITD traffic study conducted on Bills Island over the Labor Day weekend in 2006 was not offered by the Association into evidence. See, Findings of Fact and Conclusions of Law, pp. 11-12. The data from that ITD study is, however, set out in Exhibit 22. Woodlands' expert Hales testified that the best reliable traffic data should be that which is collected in July, the peak month for evaluating traffic in the Island Park area. Tr. Vol. 1. P. 80-81. The Association agrees with this conclusion. For that reason the 2006 Labor Day traffic data is not material.

Feb 7 2008

This is a response to the letter that all members received from the Woodlands.

COOPER & LARSEN

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P.O. BOX 4229

POCATELLO, ID 83205-4229

RON KERL of Counsel

TELEPHONE (208) 235-1145

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Feb 7, 2008

Charles A. Homer
Holden Kidwell Hahn & Crapo
P.O. Box 50130
Idaho Falls, ID 83405-0130

Re: *Bills Island Association v. Woodlands at Bills Island, LLC*

Dear Chuck:

This letter is in response the mass mailing that was sent out by Ryan Barker, Paul Ritchie, Jayson Newitt and Rick Olsen. I am assuming this letter was sent by your clients without your knowledge. To the extent you had knowledge of this document being sent, I am asking that you seriously reconsider the propriety of that content. One of the issues that is discussed is the legal appeal and it appears to be a misstatement of certain facts. The facts appear to be misstated in an effort to interfere with my attorney-client relationship with Bills Island Association and it's members. This appears to be done to try to dissuade people from continuing to pay assessments for legal fees. Any legal fees should not be discussed by your client in a way that tries to interfere with my legal representation of my clients. It is not welcome and it is an inappropriate contact. At the outset, I would ask that those who are signatories immediately print a retraction or apology.

Further, by now you have received our Brief in Opposition to the Proposed Development. I believe your client's letter is inaccurate as to the status of the law and the status of the case. The case was initially denied by Planning and Zoning, and rightfully so because there is no two points of ingress and egress and no compliance with the Uniform Fire Code. These are areas that your client has never been interested in addressing.

I would suggest that your client keep it's communications within the confines of their organization and leave the BIA members alone. To the extent a designated representative of your client wishes to meet with my client, that is acceptable. However mass mailings are inappropriate and potentially violate attorney client privilege and it also interferes with attorney client contractual relationships. This letter is to advise you that

we expect you and your clients to cease from such unwanted and unwarranted conduct. I assure you I would feel the same if the BIA sent a letter to your client's investors.

Sincerely,

REED W. LARSEN

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COOPER & LARSEN, CHARTERED

Attorneys at Law

P.O. Box 4229

Pocatello, ID 83205-4229

To all B.I.A. members.

The Woodlands At Bills Island is just trying to break up our association.

First we met with them to settle this whole thing. They offered \$10k to go away. We asked them to move their gate to our gate for just one gate, they said no. They never offered to build the gate as they stated. We asked for the ground SE of the guard cabin for a pavilion they said it would be a cabin sight. They said there will be no renting of the cabins in their homeowners, we read their bylaws ---it is permitted. They said they would not join our association. More to come on the web page. Thanks for your concern and please stay with us. We have a strong position in court. You will receive a 36-page brief from the attorney, to the appeals court this month. Don't let them divide our association.

Jan 25th 2008

The developer has asked the court for their performance bond back, they claim they are done with the work on the causeway. We have asked the county if they have signed off on the work and they haven't, our engineer hasn't, so we have asked that they do not get their money back until it is checked off by all. . We will keep you posted.

Dec 15th 2007

We have no news at this time.

We are waiting for the courts to give us a date on the ruling. When you come onto the Island you will notice the causeway has been widened, they are permitted a 50ft width.

We also have 3 remote gate openers available. They allow you to open the gate as you approach without interring your card. They are \$40.00. Contact Terry for one. We will be updating the card system this spring and these will still work with the new system.

Oct 16th

The BIA board attended the hearing for the causeway and reviewed the construction plans. We feel the wider causeway would be the best but Woodlands must get permission to build on all property owners land. They also submitted a plan to build the causeway with in the 50ft right away. The board hired the Dyer Group to review the plans and to oversee the construction.

The construction of the causeway in no way affects the lawsuit on the center of the Island.

Here is Dyer's review of the construction.

We have reviewed the plans and associated documentation received late yesterday concerning Causeway improvements proposed for the causeway crossing at Bills Island. Due to the extremely limited time for examination, our review is fairly cursory in nature and limited to addressing what has been shown on the plans and not any other further detailed analysis or evaluation.

Following are our comments after reviewing the information provided:

1. We agree with their engineer Mr. Bastian that Option 1 (working outside the existing 50 foot easement) is the best approach if construction is to occur. The biggest concern we see is obvious evidence of erosion occurring on the reservoir faces of the causeway and this option allows for correcting and stabilizing this by the placement of riprap material and some additional fill. This treatment will enhance stability of the proposed improvements and significantly prolong their service life.
2. We concur with the concept of placing guardrail along the edges of the causeway. However, normally when guardrail is placed along any roadway there is a small shoulder area to give additional safety and shy distance. If you are going to work outside the existing easement it would be appropriate to add 3-4 foot shoulders on each side.

3. The three lanes apparently terminate at the guardhouse on the northeast end of the causeway. We suggest the improvements be continued to carry two of the three lanes out through the existing exit area. Without an appropriate transition at the end there will just be confusion and backup of traffic across the causeway – defeating the purpose of providing additional width and lanes.

4. We note a proposal for lane marking by burying precast concrete stripes flush with the roadway surface. We presume this is in response to some requirement that lanes be delineated to assist in traffic flow should an emergency evacuation be required. We do note however that on a gravel surfaced road (as proposed) these will very likely become a maintenance concern in trying to grade and plow the roadway. We strongly recommend the causeway crossing be paved for safety, operation, and longevity.

5. The gabion basket concept is appropriate for erosion control and widening the roadway embankment. It was not clear however how the gabions would be stabilized with respect to the new embankment construction. We presume that they would be tied to the geogrid reinforcing or otherwise have some type of tieback to keep them stable and vertical.

2

6. The details of embankment construction did not specify a depth of excavation prior to placing new embankment and geogrid reinforcing. Also, the details should call for compaction of the existing sub grade after excavation and before construction of the new embankment is initiated.

7. The geogrid reinforcing called for is a good solution but the system is sensitive to the size of the grid and corresponding material to be used. We suggest further detail or specification be given to make sure the geo-grid system and associated embankment

material are appropriately matched to produce a quality final product.

8. We see that the applicant has a permit from the Corps of Engineers to conduct causeway construction work as necessary. The permit "encourages" installation of a culvert through the causeway as was apparently shown in some application material to the COE in obtaining a permit. We concur that a culvert would help improve water quality in the area but did not see it called for on the plans nor any associated details.

9. The COE permit also called for re-vegetation of disturbed areas but there were not any details or specifications about how that would be accomplished in the materials we received.

10. We feel the plan presented is an appropriate engineering solution to widening and stabilizing the causeway, given some of the refinements we have suggested above. We are concerned however about making sure the construction is done in accordance with the plans and specifications that have been developed. We might suggest that we be involved to observe construction periodically to make sure this is the case, or otherwise you should make sure that their engineer is properly retained and positioned to certify upon completion that the project has been constructed in accordance with the approved plans and specifications.

Our overall conclusion is that if improvements of any kind are to be made to the causeway then they ought to be the best and most long-lasting possible for the effort made and expense invested. Therefore we recommend Option 1 which goes outside the existing 50 foot easement as it will unquestionably improve the final product. We presume the applicant will obtain the necessary permits and approvals from other agencies/land owners necessary to accomplish this.

Oct 4th

BIA board members went into mediation with the Woodlands Group. The purpose was to work out the differences on the causeway construction...

AND TRY TO SETTLE THE LAWSUIT ON THE CENTER DEVELOPMENT.

We had a hearing the next day with the judge and he would rule on the suit on just the causeway.

We were in mediation for over 8 hours. We feel as a board we are in a good position to stop them at this time. But we have no control over the Judges rulings. Our attorney asked us to put together a Christmas wish list of desires that we could accept that would settle the suit.

The first item on our list is for them to just go away. At the bottom of our list we would roll over and give up. We need to meet somewhere in the middle. We asked for the engineered construction plans for the causeway, a big cash infusion, a building to meet in and ground to build it on, for the center people to join our association, and no gate at their property

They countered with the following: We will build the new causeway correctly, a new gate for us, a new exit gate, the quarter acre next to the guard cabin, \$10,000 so that we can build our own building, AND we must give them a right-of-way at the gate property to make the third exit and allow them to exceed the 50ft right-of-way to build the crossway. Most of what they are giving us is what they have to give to meet what is required of them by the commissioners.

All day long our attorney asked for their engineered plans for building the crossway. They said they had them but not with them, they would get them for us Monday or sometime next week. After 6 1/2 hours, our attorney demanded the plans. The mediator went to the Woodlands Group with our demand then came back to us and said they don't have them yet but will get them next week. Then the mediator stated, "If you are stuck on this item, the Woodlands Group is ready to got to court tomorrow and ask the court to fine us for holding up the work on the CAUSEWAY". Our attorney said "See you tomorrow in court" and it was over after 8 1/2 hrs.

We showed up at court the next day and the Judge called the two attorneys into his chambers to see what had been agreed upon. He looked at the Woodlands Group attorney and said build it right or don't build it at all. Woodlands You have 48 hrs to produce the plans then, B.I.A. you have 48 hrs to review, then agree or we go back to court on Friday the 12th. It was over in 5

minutes. The Woodlands Group did say they would submit two plans: one to stay in the 50 ft width by building a retaining wall that will cost them \$235,000 and one to exceed the width to 72 ft to build it at a lower cost of \$135,000. Then it would be up to us to pick which one we prefer that they build.

At this point, with the legal funds the way they are

We are ready to fight this to the END

If you have not paid your legal assessment

PLEASE DO SO ASAP

Sept 27th 2007

Many of you may have seen the survey stakes along the cosway. Woodlands group is going ahead with work on the road. We asked our attorney to file paper work to stop them. We had a court date of the 25th of Sept. The Judge would not rule on it because we included the county in the complaint and that was in error because the county

ISSUED A BUILD PERMIT TO THE WOODLANDS FOR THE ROAD.

So again the county is writing their own rules. The Judge instructed that we need to file a new injunction in which we did. It is set for Oct 5th.

The judge suggested a break and instructed the attorneys to meet and work out the differences between the parties. Both attorneys agreed to go to mediation to solve the whole issue of the roads and center Island development.

The Judge also stated we can't stop them from working on the center of the island. They do the work at their own cost should they lose the appeal.

We have a sizable amount of money in the legal fund. If you have not paid your \$300.00 please do so immediately. We have a meeting set for Oct 4th to here their proposal to settle. If they lose this time our attorney assured us that they would just come at us again with a smaller development. We will meet and see what we can work out. If you have any comments please let us know ASAP

B.I.A. Board

Con Haycock

Printed From The Island Park News

2007-06-29

**Bills Island group files appeal of county decision allowing more island development
B.I.A. to hold fundraiser for legal fund**

By ELIZABETH LADEN

The Bills Island Homeowners Association filed an appeal Monday of the Board of Fremont County Commissioners decision to approve the Woodlands at Bills Island development. The appeal was filed in District Court in St. Anthony.

Reed Richman, board member of the Bills Island Homeowners Association, said Tuesday that the appeal is based on several areas where BIA does not believe the developer meets the Fremont County Development Codes requirements. These include access, fire safety, and protecting water quality.

Richman said BIA will host a community fundraiser to help boost its legal fund for the appeal. It will be a Dutch oven cook-out at the island's entrance, from 5 to 7 p. m. Saturday, July 28.

Richman said he hopes all Fremont County residents concerned about how the county is applying its development code will come to this fundraiser. Hopefully, he said, BIA will raise enough money to be able to help others who find themselves having to battle the county for responsible development.

In November 2006, the Fremont County Planning and Zoning Commission denied Utah businessman Ryan Davis' application to develop the Bills Island interior into a 42-lot subdivision, Woodlands at Bills Island. They believed the project failed to meet the code's absolute standards for access and were also concerned about fire safety and water quality.

Davis appealed the decision to the County Commission, which held its appeal hearing in April.

Commissioners then held work sessions to discuss the appeal testimony. In June, the commissioners decided to allow Davis to proceed with his development.

The code states, "All developments containing six or more dwelling units or with a distance of more than 660 feet from a public road which is maintained on a year-round basis shall provide a minimum of two points of ingress and egress from the public road or highway serving the development. Loop systems that return to a single point of access to the public road or highway may be acceptable for relatively small developments (1,000 or less projected ADT - Average Daily Trips)."

The requirement for a development more than 660 feet from a public road to have two access points is an absolute standard in the code, meaning that the project must be denied. Woodland's main entrance is 1,667 feet from the county road to Bills Island.

The appeal hearing before Fremont County Commissioners Paul Romrell, Skip Hurt, and Don Trupp at the County Annex in St. Anthony devoured more than six hours time, with the developer and his team — as well as opponents to the project — bringing up many issues in addition to the main one — the failure to meet the absolute standard.

Around 35 people attended the appeal hearing.

Davis, his attorney — Chuck Homer of Idaho Falls — and several "expert" witnesses were able to steer the Fremont County Planning and Zoning Commission and the Fremont County Commission away from the absolute standard failure to discussions pertaining to the word, "may" in the second part of the standard — that the development may utilize the one road to the island as a loop road. The developer's team asserted to both commissions that they could improve the island's only access road to make it safe for their own buyers and the entire island community.

They said they could obtain a permit from the Army Corps of Engineers to add more land to the isthmus connecting the island to the mainland, and widen the road so it would have three 12-ft. lanes.

In the November meeting, their plan was to widen the road to 31-ft., which is still much narrower than the county's width standard of at least 60 ft.

The developer's team found another loophole in the code — the definition of a large-scale development being one that is 59 lots or more, to assert that their 42-lot subdivision should be considered a "small" development.

And, they asserted that data from traffic counters they placed on the island the week after the Fourth of July holiday last summer shows that there were fewer than 1,000 ADT's on the isthmus.

The Bills Island Homeowners Association hired an Idaho Department of Transportation

employee to place a traffic counter on the road to the island, and his report, from counts taken on July 4, 2006 and the preceding week, shows close to 1,000 ADT's on some days.

The developer argued that a count during a peak period for travel to the island does not give a balanced picture of traffic. Opponents argued that the ADT counts are supposed to be estimates of what will happen at a development's build out.

There are 301 lots on platted on the Island now, and 197 are developed, so BIA members said ADT's at build-out will be well over 1,000 even without Woodlands traffic.

Hours of discussion were spent at both hearings on the developer's proposal to use enhanced septic tanks instead of building a central sewer supply, concerns about his wells drawing down the island's water supply, and concerns about his proposal to pump water out of the reservoir, which is either frozen or depleted many months of the year, as a back up firefighting supply.

The developer, builders, and Realtor Brett Whitaker, also an Island Park volunteer fireman, testified that the subdivision's roads and homesites would make the island safer because trees would be removed from the island's heavily wooded interior, making it less vulnerable to wildfires.

County Attorney Karl Lewies' findings of fact and conclusions of law played a huge part in the commissioners decision' to approve the project. Part of Lewies' defense of the approval is based on what he calls the "Gunbarrel rule." This is a ruling he wrote in findings of facts and conclusions of law for the Gunbarrel at Shotgun Villages development, which the County Commission denied. The rule basically says that a developer can bring inadequate roads up to current county standards "as far as reasonably possible." Because of this rule, Gunbarrel's developer, Gregg Williams, resubmitted plans to subdivide land he owns adjacent to the Shotgun Villages. A public hearing on the development has not yet been scheduled.

The County Commission has not adopted the Gunbarrel rule as county policy or added it to the development code.

Some county roads cannot be widened to meet today's standards because widening them would encroach on private property, or for some other reason there is no room to widen them, as is the case with the Bills Island causeway.

Lewies' conclusions also support the Woodlands plan for fire protection. And, they support the plan to use individual septic tanks in the development, despite concerns opponents have expressed about water pollution from failed septic systems.

And, Lewies supports the developer's expert testimony about traffic counts on the island and dismisses testimony provided by a Bills Island Association expert witness. The developer's expert looked at traffic counts during a non -holiday period and found them to indicate less than 1,000 "average daily trips. (ADT)" The development code states that loop roads can serve developments if they accommodate less than 1,000 ADT's The BIA witness counted traffic on a holiday weekend, and the count exceeded 1,000 ADT. The count was done at a busy time to

illustrate what it could be at build-out, but Lewies did not agree with this method.

The development code does not define loop road or explain the meaning of an average daily trip. In addition, old copies of the development code state that a loop road can satisfy the two-access point rule if the ADT's are 100, not 1,000.

And, loop roads are generally roads that surround a development that people turn off to reach their driveways. The so-called "loop" road to Woodlands is a narrow one-way road on the causeway that two vehicles can barely use at once. It ends at a T intersection, at which people can turn left or right onto the real loop road that provides access to the original Island. If Woodlands is developed, this intersection will become a three-way, with the third option being to head to Woodland's entrance.

A condition of the Woodlands approval is that the causeway be widened to have a 36 ft. surface and two feet for shoulders. Lewies' findings state that this wider road will accommodate three-way traffic.

In his findings, Lewies notes that at the public hearing, no one questioned the 1,000 ADT threshold.

The developer and his team, as well as supporters from Fremont County and other states, said he is committed to doing high quality projects. If the island is to be developed they said, there couldn't be a better person to manage the project.

Sugar City developer Mike Vickers tried to develop the interior in 2005, but his application was turned down because of access and safety issues. But in a 2006 appeal hearing, rather than addressing the access, County Attorney Karl Lewies found that Vickers' proposal to develop 59 lots was in error. Vickers had purchased a TDR (transfer of development rights) on 70 acres of wetlands from a landowner on Henry's Lake Flat to raise the total acreage of his proposal so he could build more lots that would normally be allowed on 92 acres — 37 lots. But the Planning Department erroneously treated the wetlands as normal land, allowing more lots to be platted on the island than there should have been. Rather than reduce the development's size and reapply, Vickers sold the land with the TDR to Davis.

APR 12th 07

By ELIZABETH LADEN

Vague language in the Fremont County Development Code has caused hours of time to be spent debating the merits of a development proposed for the interior of Bills Island in Island Park. The 42-lot Woodlands at Bills Island subdivision does not appear to meet an absolute standard in the development code — that certain developments must have two access points.

Developments that do not meet even one absolute standard are supposed to be denied, according to the county's code. And for that reason, in November, the Fremont County Planning and Zoning Commission denied Utah developer Ryan Davis' application to develop 42 lots in the

middle of the island.

Davis appealed the decision. The appeal hearing before Fremont County Commissioners Paul Romrell, Skip Hurt, and Don Trupp at the County Annex in St. Anthony Tuesday devoured more than six hours time, with the developer and his team — as well as opponents to the project — bringing up many issues in addition to the main one — the failure to meet the absolute standard.

Around 35 people attended the appeal hearing.

The Planning and Zoning Commission's denial was based on a section of the development code that states:

"All developments containing six or more dwelling units or with a distance of more than 660 feet from a public road which is maintained on a year-round basis shall provide a minimum of two points of ingress and egress from the public road or highway serving the development. Loop systems that return to a single point of access to the public road or highway may be acceptable for relatively small developments (1,000 or less projected ADT - Average Daily Trips)."

The requirement for a development more than 660 feet from a public road to have two access points is an absolute standard in the code, meaning that the project must be denied. Woodland's main entrance is 1,667 feet from the county road to Bills Island.

Nonetheless, Davis, his attorney — Chuck Homer of Idaho Falls — and several “expert” witnesses were able to steer the Fremont County Planning and Zoning Commission and the Fremont County Commission away from the absolute standard failure to discussions pertaining to the word, “may” in the second part of the standard — that the development may utilize the one road to the island as a loop road. The developer's team asserted to both commissions that they could improve the island's only access road to make it safe for their own buyers and the entire island community.

They said they could obtain a permit from the Army Corps of Engineers to add more land to the isthmus connecting the island to the mainland, and widen the road so it would have three 12-ft. lanes.

In the November meeting, their plan was to widen the road to 31-ft., which is still much narrower than the county's width standard of at least 60 ft.

The developer's team found another loophole in the code — the definition of a large-scale development being one that is 59 lots or more, to assert that their 42-lot subdivision should be considered a “small” development.

And, they asserted that data from traffic counters they placed on the island the week after the Fourth of July holiday last summer shows that there were fewer than 1,000 ADT's on the isthmus.

The Bills Island Homeowners Association, which opposes Woodlands and is represented by

attorney Reed Larsen, hired an Idaho Department of Transportation employee to place a traffic counter on the road to the island, and his report, from counts taken on July 4, 2006 and the preceding week, shows close to 1,000 ADT's on some days.

The developer argued that a count during a peak period for travel to the island does not give a balanced picture of traffic. Opponents argued that the ADT counts are supposed to be estimates of what will happen at a development's build out.

There are 301 lots on platted on the Island now, and 197 are developed, so BIA members said ADT's at build-out will be well over 1,000 even without Woodlands traffic.

Hours of discussion were spent at both hearings on the developer's proposal to use enhanced septic tanks instead of building a central sewer supply, concerns about his wells drawing down the island's water supply, and concerns about his proposal to pump water out of the reservoir, which is either frozen or depleted many months of the year, as a back up firefighting supply.

The developer, builders, and Realtor Brett Whitaker, also an Island Park volunteer fireman, testified that the subdivision's roads and homesites would make the island safer because trees would be removed from the island's heavily wooded interior, making it less vulnerable to wildfires.

Opponents to Woodlands have long said the interior is what makes the island so special, and a main reason they purchased their lots on the island was that Ivan P. Bills, the Utah man who developed the island, had promised that the interior would never be developed. Bills, however, never set the interior aside as open space, and his original plans show roads to the center.

The developer and his team, as well as supporters from Fremont County and other states, said he is committed to doing high quality projects. If the island is to be developed they said, there couldn't be a better person to manage the project.

Sugar City developer Mike Vickers tried to develop the interior in 2005, but his application was turned down because of access and safety issues. But in a 2006 appeal hearing, rather than addressing the access, County Attorney Karl Lewies found that Vickers' proposal to develop 59 lots was in error. Vickers had purchased a TDR (transfer of development rights) on 70 acres of wetlands from a landowner on Henry's Lake Flat to raise the total acreage of his proposal so he could build more lots that would normally be allowed on 92 acres — 37 lots. But the Planning Department erroneously treated the wetlands as normal land, allowing more lots to be platted on the island than there should have been. Rather than reduce the development's size and reapply, Vickers sold the land with the TDR to Davis.

Commissioners will mull the testimony in work sessions, and study the appeal hearing's transcript and County Attorney Karl Lewies findings of fact and conclusions of law based on the hearing testimony, before making a decision by their 60 day deadline.

After the testimony ended, Commission Chairman Paul Romrell said the county is in the process of "tweaking the development code. We invite you to be involved and tell the Planning and

Zoning Commission what you think about the code and what needs to change.”

Several developers have appealed Planning and Zoning Commission decisions in recent months, and Romrell said his commission is “trying to do one a month — we have five or six pending. We are finalizing the one we did last month (Gunbarrel at Shotgun). It is a busy time for us. We take it seriously. This is the most beautiful county in Idaho. What we do in the next few months will dictate what Fremont County looks like forever.”

Commissioners set a work session on the development for 9 a. m. Friday, April 13 in the Commission Room at the courthouse. The public can attend, but they cannot talk, since the public comment period ended with Tuesday’s hearing

March 26th 07

Tuesday April 10th 2007

This is the date for the Fremont County Commission to review the Woodland’s request to develop the center Island. Your attendance is needed. If you can attend the more people we have there the better. You may comment at this meeting. If you would like to send a letter of comment please do so, but keep your comments on issues. Water, sewer or fire safety. Written comments must be in by 4th of April. County Clerks Office 151 W 1st N St Anthony ID 83445

Fremont County Commission

Tuesday April 10th, 2007

9:00 am

Fremont Co. Annex Building

125 N Bridge St

St. Anthony ID.

Fremont County Commission

Tuesday April 10th, 2007

9:00 am

Fremont Co. Annex Building

125 N Bridge St

St. Anthony ID.

Feb 14-06

P & Z to consider development moratorium next month

Advertisement

By *ELIZABETH LADEN*

Fremont County Planning Administrator Jeff Patlovich said today that the Planning and Zoning Commission will discuss an interim moratorium on new development at its next regular meeting, set for 6 p. m. Monday, March 9 at the County Annex on Bridge Street.

Planning Commissioner Kip Martindale requested the moratorium during the Monday, Feb. 12 Planning and Zoning Commission meeting. Martindale's motion asking for a vote on imposing the moratorium for one year died for lack of a second after Patlovich said he would put the item on next month's agenda.

In making the motion, Martindale read a prepared statement that asks for the interim moratorium while the county's comprehensive plan and building code are being updated. Martindale stated that such an action is allowed by the state's Local Land Use Planning Act, which states, "If a governing board finds that a plan, a plan component, or an amendment to a plan is being prepared for its jurisdiction, it may adopt an interim moratorium upon the issuance of selected classes of permits if ... the governing board finds and states in writing that an imminent peril to the public health, safety, or welfare requires the adoption of an interim moratorium. An interim ordinance or moratorium shall state a definite period of time, not to exceed one calendar year, when it shall be in full force and effect."

Martindale stated that he made the motion "because the pace of current projects would not be in

compliance with the new plan. Members of the Planning and Zoning Commission cannot appropriately evaluate each project as well as make revisions to the comprehensive plan and development code. For example we have transfers of development rights in our code that have not often been used. When used properly, TDR's in other states and counties have brought private property owners \$7,500 to \$200,000 per acre."

Patlovich said if the Planning and Zoning Commission supports the moratorium, the Fremont County Commission would hold a public hearing on the measure.

If the county commission decides to impose a moratorium, it would do so by an ordinance.

In the last few months, other planning commissioners and members of the Fremont County Commission, have casually discussed the idea of a moratorium on Class 2 permits until the planning document revision is completed.

Online Poll Results: Do you support a one-year moratorium on development in Fremont County?

Yes:	80%
No:	15%
I support a moratorium, but for less than one year.:	5%

Jan 24 07

Printed From The Island Park News
2007-01-19

We're a county in crisis

Valley Perspectives by Chan Atchley

We are a county in crisis. We are like cows contentedly chewing our cud, oblivious to the wolves circling for the kill.

County government is in danger of being paralyzed by ever increasing development applications and lengthy approval and appeals timelines. Decisions are being made in the heat of the moment that are not good for county government and citizens.

Skeptical? Here is a short list of what I have encountered.

While conducting an appeal, the county commissioners overturned a P & Z decision to deny a class II permit. The commissioners accepted the applicant's claim that a Forest Service road was a private driveway and adequate for firefighting equipment to get to the resort. In reality it is a single lane road more than a mile long, accessible only by 4-wheel drive vehicles most of the year and cannot be safely accessed by fire fighting equipment any time.

Early last year, a permit was issued for remodeling an old barn into a single family dwelling. However, from the outset, it was known that the developer was planning a bed and breakfast with the capability of handling wedding receptions. Neighbors whose home and outbuildings are overshadowed by the huge structure just 35 feet from their property line had to hire an attorney to pressure the county Building Department to red tag the construction until a permit was presented to the P & Z. Application for the permit was filed about six months later in December 2006. The public hearing requesting the upgrade was held January 8, 2007 and the permit was denied. In the meantime, the neighbors, who are working hard to put two children through college, spent thousands of dollars in legal fees trying to get the county to enforce its own building code.

I was one of 49 people to witness the appeal hearing on the Shadow Ridge at Stephens Ranch subdivision. Most were opposed to the project as well as more than 50 other individuals who signed a petition. It was not easy to sit still as the developer's attorney talked about the wonderful plans for protecting wildlife while he downplayed the importance of the migratory elk corridor. Or listening to how infrastructure costs such as rebuilding the Fish Creek Road were minimal while the costs of additional services such as fire and police protection, solid waste disposal, and schools were barely mentioned. Again, individuals appealing the development spent thousands of dollars trying to insure that the county commissioners consider all consequences of the development.

County commissioners are overloaded. Under normal conditions the job is supposed to be half time, but now nearly always exceeds that target. Add

to it the time required for appeals - there are already four more lined up to be heard in as many months - and we have a real problem. The commissioners are now working full time while other problems requiring attention loom on the horizon. By some accounts, they've already spent more than 60 hours on Shadow Ridge appeals and that may double before they are finished. Right or wrong, they must make a decision 60 days after hearing an appeal.

Obviously, strengthening the comprehensive plan and closing loopholes in the development code would simplify the evaluation process. There would be fewer appeals and enforcement of the code would be enhanced. Therefore, we must dramatically speed up the comprehensive plan and the code revision process. We can't afford to let our county government become so preoccupied with development that other issues are not adequately addressed.

So what can you do? I know, I'm beginning to sound like a broken record, but please go to county meetings. Learn how we can intelligently meet the challenges of growth in a way that will benefit all of us, not just developers.

Our way of life is as endangered as our wildlife and will disappear if we don't find ways to protect it. Once it disappears, it will be gone forever.

Chan Atchley

Jan 18th 07

Fremont County Commissioners will review the denial of the Woodlands at Bills Island Development project Apr 10th at 9:00 A.M. in the county Annex Building on Main Street in St Anthony. Everyone is welcome to attend. You are welcome to comment at this meeting. The board members will be in attendance and we will report any and all info on the web page ASAP.

UPDATE on Snow conditions

Snow conditions are great but there is an Avalanche warning in the mountain areas. Please be aware of the high risk of avalanche. Check with local authorities before going into the mountain areas. Three people were killed in avalanches during the New Year Holiday.

Snowmobile Safety

An 11-year-old boy must have had a guardian angel last weekend when he crashed his snowmobile and slid under a flatbed truck — with no serious injuries.

According to witnesses, the boy was snowmobiling out of a side road at the Island Park Village Resort onto the upper Big Springs Road on Friday, December 29 when he ran into a truck owned

by an Island Park business. He was then run over by a flatbed trailer the truck was hauling.

He was flown by helicopter to the Eastern Idaho Regional Medical Center in Idaho Falls, and released soon after with no serious injuries

Please keep safety in mind

Nov 14 06

P and Z sinks Bills Island plan

By ELIZABETH LADEN

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Island Park News

Advertisement

In a unanimous decision Monday, the Fremont County Planning and Zoning Commission denied a Class II permit to Salt Lake City developer Ryan Davis to put 42 lots on the 91.8 acres in the middle of Bills Island.

According to Molly Knox, the Planning Department's administrative assistant, commissioners denied the project because Planning Administrator Jeff Patlovich's findings of fact stated that it does not meet the development code's requirement that developments with six or more lots have two access points 670 feet or more from a county road. The development's proposed access would have been at a single point from a loop road that goes around the island, and which is more than 670 feet from the county road that accesses the island.

In 2005, the P and Z Commission turned down Sugar City developer Mike Vickers' application to develop the island because of several safety issues. Then, in January this year, the County Commission denied Vickers' appeal of the P and Z Commission's decision because the P and Z administrator at the time had made a mistake in the number of lots that could be built in the island's interior.

The commission heard more than three hours of testimony from the new developer's representatives and the public at its regular meeting in October. Bills Island residents and others have expressed concerns about the development polluting the Island Park Reservoir, creating too much traffic, not being safe if there is a fire, and harming wildlife.

Nov 11 06

Island plan a washout

Woodlands  project may be rejected

ST. ANTHONY – A lack of adequate access to Bills Island from the nearest public road may halt a 42-lot subdivision proposed for the interior of the island.

The Fremont County Planning and Zoning Commission voted Monday night that the access proposed in the Woodlands preliminary plat fails to meet the county's performance standard requiring two accesses into a subdivision.

The access performance standard is considered an absolute standard in the county's development code, which means if the project fails to meet the standard, the project can't be approved.

The commission was meeting in a work session when the vote was taken. A formal vote to accept or reject the preliminary plat will be taken as scheduled at a meeting Monday.

As proposed, the Woodlands would be accessed via a widened and improved causeway to the island and a connecting loop road around the outer edge of the island.

While the county's code calls for a minimum of two accesses into subdivisions of six lots or more, the code also says loop roads may be allowed in smaller developments if traffic can be shown to be less than 1,000 projected average daily traffic.

At an earlier hearing the developer produced an engineer's survey that showed that the average daily traffic would be less than 1,000.

The planning commission also was concerned the loop road, as proposed, didn't "return to a single point of access to a public road" as the code provides. Rather, it connects to a private road.

The Woodlands project was proposed once before and rejected by the planning commission on life safety issues. In an appeal to the Fremont County Commission, the commission didn't reject the loop road proposal made by the developer, County Attorney Karl Lewies said, though the plat was rejected by the county commission due to failure to comply with the density provisions of the code.

Lewies said the county commission ruling "might be considered precedence" by allowing the access as proposed in the first Woodlands preliminary plat.

Lewies also encouraged the planning panel to ignore issues related to the ownership of the causeway, predicting legal battles over ownership between the developer and I.P. Bills Island Association will be lengthy.

Rather, the planning panel is required only to determine if the proposal meets the county development code, regardless of actual ownership of the causeway, which will likely be determined in court.

Planning Administrator Jeff Patlovich has prepared findings of fact based on the work session vote for the planning commission to review and approve at a meeting Monday at 6 p.m. at the Fremont County Courthouse in St. Anthony.

P & Z delays Bills Island decision

Advertisement

Salt Lake City developer Ryan Davis will have to wait until next month to see if the county Planning and Zoning Commission will approve his plan to put 42 lots on the 91.8 acres in the middle of Bills Island.

On Monday — the county Planning and Zoning Commission decided to wait until Monday, November 6 to discuss the development proposal and possibly vote on Davis' Class 2 application to subdivide the acreage.

The commission delayed the decision after hearing more than three hours of testimony from the developer's representatives and the public. They were also given a pile of documents to review that had not arrived at the county in time to be included in the information packet they review before their meetings. They wanted time to digest all the testimony and all the new written information, Planning Administrator Jeff Patlovich said Tuesday.

Davis wants to transfer development rights from 70 acres of wetlands on Henry's Lake Flat, many miles from Bills Island, so he can bring the total acreage of "developable" land to 160 acres and be able to put 42 lots on the 91.8 acres. Each lot would have an individual septic system and well. Without the transfer, the most lots the development could have would be around 36.

Sugar City developer Mike Vickers had a similar plan that was turned down this January because it had too many lots.

Both developers have faced significant protest from long time Bills Island residents and others who have expressed concerns about the development polluting the Island Park Reservoir, creating too much traffic, not being safe if there is a fire, and harming wildlife.

The November 6 meeting starts at 6 p. m in the County Annex on Bridge Street in St. Anthony.

[Back](#)

Charles A. Homer

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Fremont Co. Prosecuting Attorney

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U.S. Mail, postage prepaid

Hand Delivery

Overnight Mail

Facsimile

Email

U.S. Mail, postage prepaid

Hand Delivery

Overnight Mail

Facsimile

Email

CURRENT INNER ISLAND ACTIVITIES

July 21st

Hello to all

Check the WHAT'S NEW tab for regular BIA info

It seems as a board we have kind of taken a break through the winter but we are still here and we are getting ready for the summer activities on the island.

The gate is working again for the summer. We had a little issue with the exit last fall so we did have to leave the gate up all winter. We tried to go in and out of the same gate last year but the old system didn't have the ability to distinguish loop one from loop two. There are loop sensors in the ground that detect cars as they drive through and lower the gate. We added a second one that will open the gate as you drive out and then the first one was supposed to close it, but it could not handle the second loop. Hopefully the new system will handle it, if not we will put it on the old exit and use it there. We are still planning on using one gate this summer but we are not sure if it will be too congested at the gate during the busy weekends. We ask that you be patient with us during the trial time.

You will need your gate key to get in for now. The phone system is in and has been tested on a small trial bases. We are adding the phone numbers that we collected last year and we will try to get the phone system going before the busy summer. If your home phone or cell phone number has not changed from last year you should be ready to go as soon as we get it running. If you are current on your dues you will be allowed to use the phone system free as part of being a paid up member.

Oct 2nd

Here is the Boards response to Dave Hume's letter.

DEAR BILLS ISLAND PROPERTY OWNER:

WE, THE DUES PAYING BOARD MEMBERS, WOULD LIKE TO CLEAR UP SOME OF THE CONTROVERSY

OVER THE CENTER ISLAND DEVELOPMENT. WE WILL START FEB. 1st, 2007, AFTER THE WOODLANDS (i.e. "THE RICHEY GROUP" FEATURING, RYAN DAVIS, PROJECT MANAGER, JASON NIETT & PAUL RICHEY) BOUGHT THE PROPERTY FROM THE WILDERNESS GROUP, BRENT CALL, ROY LEAVITT, JOLENE JENKINS, AND REED RICHMAN MET WITH RYAN DAVIS ON 2/1/07. OUR CONCERNS WERE THE SAME THEN AS NOW: SAFETY, ACCESS, WATER QUALITY AND DENSITY. MR. DAVIS STATED AT THAT TIME THE WOODLANDS WOULD JOIN THE HOME OWNERS ASSOCIATION, NOT HAVE A GATE AT THE ENTRANCE OF THE WOODLANDS DEVELOPMENT, HELP IMPROVE THE GATE AND ENTRANCE TO THE ISLAND, HELP WITH DRAFTING NEW C.C. & R.'S FOR THE ENTIRE ISLAND, WORK WITH AND DISCUSS WITH THE ISLAND ASSOCIATION ON HOW THE CAUSEWAY PROPERTY WOULD BE DEVELOPED, BUILD A PAVILION, HELP WITH UPDATING THE TRACTOR, SNOW BLOWER, FIRE TRUCK AND SECURITY CABIN. MR. DAVIS HAS BEEN ASKED EACH TIME THE BOARD MEMBERS HAVE MET WITH HIM IF THE RICHEY GROUP WOULD REDUCE THE NUMBER OF LOTS AND EACH TIME HE HAS REPLIED THEY WOULD NOT.

BRENT CALL AND REED RICHMAN MET BRIEFLY WITH MR. DAVIS AFTER THE P & Z HEARING FEB 11th 2007 AND AT THAT TIME MR. DAVIS STATED THAT THE RICHEY GROUP WOULD NOT BE MEMBERS OF THE ASSOCIATION, WOULD INSTALL A GATE AT THE ENTRANCE OF THE WOODLANDS DEVELOPMENT, WOULD NOT HELP IMPROVE THE GATE OR SECURITY CABIN, WOULD NOT HELP WITH THE ISLAND C. C.& R'S AS THEY WOULD HAVE THEIR OWN C.C. & R'S AND WOULD ALLOW RENTALS. MR. DAVIS OFFERED TEN THOUSAND DOLLARS TO BUILD A PAVILION, UPDATE THE GATE, IMPROVE THE SECURITY CABIN, UPDATE THE TRACTOR, SNOW BLOWER AND FIRE TRUCK. MR. DAVIS' COMMENT WAS "THAT'S THE BEST WE CAN DO".

AFTER P & Z DENIED THE DEVELOPMENT AND THE COUNTY COMMISSIONERS APPROVED THE DEVELOPMENT, THE B.I.A. ASSOCIATION FILED AN APPEAL WITH DISTRICT COURT. AT THE FIRST HEARING WITH JUDGE MOSS IN DISTRICT COURT, JUDGE MOSS STATED THAT THE WOODLANDS COULD BUILD THE CAUSEWAY "AT THEIR OWN RISK". WE, THE B.I.A. BOARD, AGREED TO A MEDIATION MEETING WITH WOODLANDS. WE MET AT BAKER & HARRIS OFFICES IN BLACKFOOT IDAHO ON OCTOBER 4, 2007. BOARD MEMBERS PRESENT WERE: BRENT CALL, CON HAYCOCK, JOLENE JENKINS, ROY LEAVITT, SCOTT WATSON, REED RICHMAN AND LEGAL COUNSEL REED LARSEN. IN THE WOODLANDS ROOM: RYAN DAVIS, CHARLES HOMER AND KARL LEWIES. MR. BAKER WENT BACK AND FORTH BETWEEN ROOMS FOR OVER EIGHT HOURS. THE B.I.A. BOARD KEPT ASKING FOR ENGINEERED DRAWINGS OF THE IMPROVEMENT OF THE CAUSEWAY. AS SET FORTH BY THE FREMONT COUNTY COMMISSIONERS UPON THEIR APPROVAL OF THE DEVELOPMENT. AFTER ABOUT EIGHT HOURS THE WOODLANDS ADMITTED THAT THEY DID NOT HAVE ANY DRAWINGS OF THE CAUSEWAY IMPROVEMENT. JUDGE MOSS THEN RULED THAT THE WOODLANDS MUST PRODUCE ENGINEERED DRAWINGS TO COUNTY SPECIFICATIONS WITHIN 72 HOURS. THEN THE B.I.A. ASSOCIATION'S ENGINEER WOULD HAVE 72 HOURS TO REVIEW THE DRAWINGS AND APPROVE OR DISAPPROVE. WE THEN WENT BACK TO JUDGE MOSS'S COURT AND THE JUDGE RULED THAT THE WOODLANDS COULD PROCEED WITH CAUSEWAY CONSTRUCTION "AT THEIR OWN RISK". JUDGE MOSS ALSO RULED THAT THE WOODLANDS MUST POST A PERFORMANCE BOND WITH THE COUNTY TO INSURE THE WORK WAS DONE ACCORDING TO THE ENGINEERED DRAWINGS AND COMPLETED. THE WOODLANDS QUICKLY STARTED CONSTRUCTION OF THE CAUSEWAY, THEN IN LATE JANUARY 2008 THEY PETITIONED FREMONT COUNTY FOR THE RELEASE OF THE PERFORMANCE BOND. FREMONT COUNTY RETURNED THE PERFORMANCE BOND TO WOODLAND STATING THAT THE CAUSEWAY WAS FINISHED. THE FREMONT COUNTY ENGINEER WAS NEVER GIVEN ANY DRAWINGS OF THE CAUSEWAY AND WAS NOT EVEN MADE AWARE THAT THERE WAS ANY WORK BEING DONE ON THE CAUSEWAY SO THAT IT COULD BE INSPECTED. THE COUNTY ENGINEER NEVER SIGNED OFF ON THE CAUSEWAY CONSTRUCTION, SHE WAS NEVER ASKED!! B.I.A.'S ENGINEER, WINSTON DYER WAS NEVER CONTACTED AND ASKED TO SIGN OFF ON THE COMPLETION OF THE CONSTRUCTION OF THE CAUSEWAY.

WHEN BOARD MEMBER REED RICHMAN WAS CONTACTED AND INFORMED THAT FREMONT COUNTY WAS GIVING THE WOODLAND'S PERFORMANCE BOND BACK, HE CALLED MR. DAVIS AND ASKED IF THE CAUSEWAY WAS TRULY FINISHED. MR. DAVIS NEVER ANSWERED THE QUESTION AND FINALLY HUNG UP ON MR RICHMAN. MR. RICHMAN THEN CONTACTED THE COUNTY ENGINEER AND

THE B.I.A. ENGINEER TO SEE IF THEY HAD INSPECTED AND SIGNED OFF ON THE CONSTRUCTION COMPLETION. BOTH ENGINEERS HAD NOT EVEN BEEN MADE AWARE OF THE FACT THAT THE WOODLANDS WAS GETTING THEIR BOND BACK.

THEN THE WOODLANDS SENT OUT A LETTER TO THE ASSOCIATION MEMBERS STATING, AMONG OTHER THINGS THAT THE CAUSEWAY WAS FINISHED.

ON APRIL 15th, 2008 BRENT CALL, CON HAYCOCK, JOLENE JENKINS, SCOTT WATSON, ROY LEAVITT AND REED RICHMAN MET WITH JASON NIETT AND PAUL RICHEY IN REED LARSEN'S OFFICE. RYAN DAVIS WOULD NOT ATTEND. BOTH JASON NIETT AND PAUL RICHEY INSISTED THAT THE CAUSEWAY WAS FINISHED? NOW LET US ASK, IS THE CAUSEWAY FINISHED? WHO IS GOING TO HOLD THE DEVELOPER ACCOUNTABLE? WE DON'T THINK THE COUNTY WILL. DOES THE ASSOCIATION WANT TO PICKUP THE BILL FOR FINISHING THE CAUSEWAY? WHAT ELSE WILL THE ASSOCIATION HAVE TO PAY FOR AFTER THE DEVELOPER GETS HIS MONEY AND RUNS? IS THE B.I.A. BOARD BEING UNREASONABLE AS STATED BY RYAN DAVIS? CAN ANYONE LOOK AT THE CAUSEWAY AND HONESTLY SAY THAT THERE ARE THREE TRAFFIC LANES AND GUARD RAILS? IS IT FINISHED? CAN WE REALLY TAKE THE DEVELOPER AT HIS WORD?? SHOULD WE WITHDRAW THE APPEAL FROM THE SUPREME COURT? ONCE AGAIN WHO IS GOING TO HOLD THE WOODLAND ACCOUNTABLE?

On August 11, 2008, after receiving Judge Brent Moss' decision, Brent Call, Con Haycock, Jolene Jenkins, Scott Watson, Roy Leavitt, Randy Hayes, and Reed Richman met with the legal counsel for the BIA, Reed Larsen and Ron Kerl. At this meeting, discussion included the likelihood of a successful appeal to the Idaho Supreme Court, the fact that the BIA will have no bargaining position should the appeal be lost, and the cost of the appeal to the BIA association members. BIA's counsel discussed with the board members at length the likelihood of a successful appeal. The cost of the appeal was determined to be between \$15,000 and \$20,000, of which \$11,000 was currently in the legal fund. Counsel informed the board members that the Supreme Court Justices would in all probability oversee arbitration between the BIA and the Woodlands before the suit comes before the bench. The seven board members voted unanimously that it was in the best interest of the BIA to proceed with the appeal.

We are willing to negotiate with the Woodlands. They need to just call and set up a meeting and bring their paper and pen ready to sign any agreements made at the meeting instead of saying they will consider all ideas. We, the Board, are trying to protect the island. We don't want to have to fix the problems that the developer leaves behind. They claim District 7 will inspect their sewer systems, does anyone really believe that?

Why are the Woodlands meeting with individuals on the island and not with the board? Some members on the island have met with the developer and had their own mediation meeting, yet refuse to be a member on the board and some of them don't pay BIA dues. How can they speak for anyone? Is it to break us up as an association? Of course it is. Once they stop the unity in the association then they can start to divide us.

There are rumors of the developer offering the Island a park, repair the roads around the island, fire hydrants, a large sum of a cash infusion, all of which are not true. Dave Hume did meet with two people, one of whom was the developer, and did get an agreement from the developer to pay a user fee but they did not sign the agreement. So here we have the same thing. They agreed to continue to discuss those items and as long as it goes their way they will keep discussing them, else they stop negotiations and say we are being unreasonable.

We can stop the litigation at anytime, and we will if the developer comes to the table with real commitment to settle the dispute and be ready to sign any agreement we make.

IF WE LET UP NOW WE WILL BE RUN OVER BY THE DEVELOPER.

WHO WILL MAKE THEM FOLLOW THE RULES SET DOWN BY LAW?

JUST LOOK AT THE CAUSEWAY FOR STARTERS.

They have had all summer to finish it but no they cut a hole in the center of the island to take our attention off the causeway.

As a board we may not stop them but if they don't build it right we will be there to protect the Island and make them do it right.

Why do we feel they need to contribute a cash amount?

Because the infrastructure around the center of the island is what makes the center ground as appealing as it is. Who has paid for the infrastructure? Everyone on the Island that has ever paid his or her dues or when you purchase your cabin it was a part of that price.

WHAT HAS THE CENTER ISLAND OWNERS EVER CONTRIBUTED TO THAT INFRASTRUCTURE? The answer is nothing.

If anyone in the center of the Island ever has a problem where will they go?

Straight to Terry and ask for help. Is he going to turn them down? Should he turn them down? We all know the value of Terry and Marg at the gate. They need to pay their share of the cost of having such people available on the Island to turn to.

We feel they need to join the association, pay dues and be a part of the association, then they can come to the meetings, express their concerns and hear our concerns, then we can all work together. When it's all said and done we are going to have to be neighbors and work together to keep the Island a special place for us all to enjoy.

P.S.

We just received notice that we have an arbitration meeting with the Supreme Court and the Woodlands Nov 4th. We will attend and be open to all offers to settle but we will be firm in protecting the Island and the B.I.A. association's interest.

THE B.I.A. BOARD
Brent Call

REED RICHMAN

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Aug 4th

Judge Moss Ruling

Friday Judge Moss ruled against the BIA. We now have to meet with our attorney to look at our options to determine where we go from here. We have 30 days to appeal the ruling to the Supreme Court. Please let us know your thoughts on this issue.

June 11th 08

Hello B.I.A.

We have three items for you to read.

1) Judge Moss Hearing

2) Terry's surgery

3) July 4th Island parade and boat parade

1) The Board attended the hearing at the St Anthony courthouse with Judge Moss. Our attorney's presented our case very well, now we just wait for his ruling.

2) For your info Terry had knee surgery Tuesday the 10th. He is doing fine at this time. He will be home Friday. We wish him a speedy recovery. We need him on the Island. We would also like to wish Terry and Marg a happy 50th wedding anniversary on the 28th of June.

3) The last item is the July 4th parades. We would like to honor our service men and women. If you know of anyone that would like to ride in the B.I.A float in full dress uniform please give Jolene a call, 208-589-5050. We would like them to ride on the B.I.A boat to lead us around the island during the boat parade that night.

Hope to see all of you on the 4th. Let's hope for warm weather

May 23rd

To all B.I.A. Members

1-Judge Moss hearing

First item we have is to let you know that Judge Moss has moved the hearing for the inner island back to June 10th 2pm. We had hoped he would have his ruling by the July 4th but it doesn't look like it will happen.

2- FRIDAY July 4th activities

Our annual meeting and activities were approved last year for Friday July 4th. We will start with our annual parade at 9:30 am. Start lining up at 9:00 at the top of the causeway. Decorate your boat, 4 wheelers, bikes or anything you have and come and join us. Parents there will be a trailer for you to ride on to follow your little ones around the loop should they not make it all the way. We will stop at the Rexburg boat club for a short refreshment break.

Our annual membership meeting will be at 12:30pm at Peterson's shop lot #178.

PLEASE DO NOT PARK ON PRIVATE PROPERTY

2008 dues are payable at this time.

YOUR DUES MUST BE PAID IN FULL TO HAVE VOTING RIGHTS

Annual meeting Agenda

- A- Verification of a Quorum
- B- Discussion on increase of Dues
- C- Replacement of Snow Blower- Removal of fire truck for the winter
- D- Update of Gate and Card reader
- E- Consideration of new Home Owner Bylaws
- F- Election of two board members
- G- Inner Island update

This meeting will last approximately 1hr.

Dutch Oven Dinner- BBQ Chicken, Potatoes, Beans, and Cobbler with a scoop of ice cream will start at 5:30 at the same place. We are planning to feed 400 people. We ask that you bring a **salad OR Two**. Plates will be provided.

Your whole group is welcome.

Fee is by donation.

We will end with a boat parade at 8pm. Gather inside the cove. Decorate your boat. Look for the flag on the dock and the Sheriff's Boat. He will lead us around the island to Lake Side for the Fireworks at dusk.

APRIL 16th

We had the opportunity to meet with the Woodlands Group Tuesday April 15th. The purpose of the meeting was to find common ground to settle the lawsuit between B.I.A., Fremont Co. and the Woodlands. Any agreement between the parties has to be done before Judge Moss rules on the suit and all litigation must be dropped. At this time we as a board, with direction from the Association members feel it is not in our best interest to settle before hearing the ruling from Judge Moss. Please feel free to email me or call with your comments.

Con Haycock

208-431-0835

chaycock@pmt.org

BIA has received an offer to settle the dispute between Woodlands and BIA. Woodlands' offer is as follows:

- 1) The Woodlands will donate the property, approximately one acre, that lies in between the guard shack and the existing BIA boat ramp to the BIA for the mutual use of all BIA homeowners on the Island.

- 2) The Woodlands will donate \$25,000 to the BIA to construct a pavilion on the property donated by The Woodlands.
- 3) We propose that the remaining money in the legal fund be returned to the homeowners.
- 4) The Woodlands will replace and reconstruct the entry gate near the guard shack. This gate will have an arch that will be made from large timber, the gate itself will be metal, similar to the gate that is at Stevens Ranch.
- 5) As The Woodlands has indicated before, The Woodlands will agree to pay its proportionate cost to maintain common roads, facilities, and property. In the past the BIA has indicated that this can be done through paying a user fee or through joining the BIA, we are amenable to either scenario.
- 6) In effort to show good faith, we ask that all litigation by the BIA be withdrawn, the claims dismissed and released, and that concerns be worked out through reasonable means.
- 7) Establish a mandatory HOA to govern The Woodlands and existing homeowners, with CC&R's that will provide for attractive site-built homes or cabins.
- 8) Establish a 50' setback between The Woodlands and existing homeowners on the Island so that existing wells, structures, and the impact on the use of existing property owners' property is minimized, in which 50' there can be no structure, fence or other improvement built.
- 9) Establish a 100' setback for any septic system within The Woodlands so that all Woodlands septic tanks must be at least 100' from the boundary of any existing homeowners property.

- 10) Provide that all roads within The Woodlands be maintained by The Woodlands so that there is no economic impact or burden on existing homeowners to maintain improvements within The Woodlands, this includes snow removal, road upkeep, etc.
- 11) Install a dry hydrant in Island Park Reservoir for the use of the Island Park fire district for the benefit of the entire Island, and also install yard hydrants within the Woodlands, and fire breaks within the Woodlands. This will improve the safety of the entire Island in the event that a fire ever breaks out on the Island.
- 12) Construct a central water system to service the Woodlands, eliminating the need for multiple wells to be drilled on the property.
- 13) As we said that we would, we have improved the Causeway to three lanes. We will add a layer of aggregate to the Causeway and will construct guard rails as required by the County.
- 14) This offer is to be accepted by BIA before the May hearing.

APRIL 10th 2008

Bills Island Homeowner Association P.O. Box 344



Dear Property Owners, Recently we were notified that the Woodland Development Group purchased a lot in the

Welling Addition. They paid the purchase price for the lot and paid all BIA and Welling dues, in addition to the legal fund assessment. By doing so, they became members of our association. Within a few days we received a demand letter, from their attorney, asking for all of our association documents, all minutes of annual meetings held, bylaws, Articles of Incorporation and C & R records and any changes that have been made, names and addresses of all board members. They asked for these records for the past seven years. Since we are a public organization and they are entitled to this information we sent them approximately 875 pages of documents.

As a board, we try to manage the association like a business. An independent certified public accountant firm audits all our financial records systematically each year and provides a financial report at our annual meetings. Our secretary/treasurer writes all checks but does not have check signing authority. All checks are approved and signed by two board members. All meetings have minutes taken, reread at the next meeting and approved by the board. At our annual meeting we have a voting quorum of members present to conduct business. All business is presented to the membership for their approval, which is done by motion, seconded, and then voted upon. New business from the floor is discussed and voted on the same way. Any member of our association has voting rights in these meetings. Everything is done up front and in a business-like manner. We have a legal firm that audits what we do and how we do it. We have a dedicated board that works hard for the association to keep things moving smoothly.

Recently Woodlands sent a letter to the Bills Island membership. The intent of this letter was to discredit the BIA board and try to get association members to lose confidence in the board and the BIA. Their main interest is to dismantle the association's funding, especially the legal fund. Their goal is to get the BIA legal action stopped so they can proceed with their development. This is the Bills Island Association's position:

1. Fremont County Planning and Zoning denied The Woodlands development for failure to meet the building code ordinances.
2. Woodlands appealed to the county commissioners to overturn Planning and Zoning's decision.
3. After much discussion and debate in public comment meetings the County Commissioners and the county attorney met in a "no comment" work meeting and decided to bypass or tweak parts of the building code and approved the Woodlands application.
4. Bills Island Association appealed that decision to District Court for failure to meet county building code and fire safety regulations.
5. The building code is very explicit on access and fire safety.

6. The BIA is standing in the way of the developer until he either meets code or the court ruling is made.

7. The BIA is in a good position for this lawsuit. Judge Moss has briefs from Cooper and Larsen, the BIA attorney, briefs from the developer's attorney, Chuck Homer, and briefs from Fremont County attorney, Karl Lewies. He also has the rebuttal brief from BIA. The hearing date, for oral arguments, is May 20th The judge has approximately 30 days after that to make a decision.

8. We received a letter from the Woodlands dated March 19, 2008 where they asked us to drop the lawsuit in exchange for a small settlement. We feel we should wait for the court's decision. Hopefully we will have a decision before our annual meeting in July. The legal system moves very slowly.

We appreciate your patience and support both financially and emotionally. Please understand that all efforts by the developer are being done at their own peril. That includes the work on the causeway and any work on the development while the judicial review is proceeding.

Thank you,

Bills Island Association Board

Here is a request from the Woodlands

Brent and Con,

Paul Ritchie and myself (without Ryan) were wondering if we could come meet with you and the board to discuss the latest written proposal we sent regarding the interior development of the island. We would be fine in coming up to Pocatello to meet at Larsen's office if that is a convenient place to meet. The premise for the meeting is to simply try to discuss the points in the letter and see if a mutually beneficial solution can be reached.

If you are open to meeting with us, please let us know some potential dates that work for you.

Thanks,

Jayson

We send this to all Homeowners.

—We have had an opportunity to review your March 19, 2008, letter. We have also reviewed your previous demands which were made upon Bills Island Association for our corporate records. Traditionally, Bills Island Association has moved forward with directives and initiatives that are adopted at the annual meeting. Certainly, the Board has power to run the Association. However, the Board has always been sensitive to following the direction that the Board receives at the annual meeting.

The homeowners at the annual meeting have consistently, since the Wilderness Group and now since the Woodlands Group, been adamant that any development of the interior portion of the island would require compliance with all planning and zoning laws and ordinances and require compliance with all BIA rules for the private road. We have discussed on numerous occasions with you, Bills Island Association's view that the Woodlands subdivision does- not comply with Fremont County planning ordinance. The Planning and Zoning Commission agreed with us. The county commissioners disagreed. We believe that the judicial review that is going on is appropriate and ultimately that a court will require two points of ingress and egress to the subdivision to comply with the provisions of Fremont County Development Code Section KK which has been often discussed and with the Uniform Fire Code which also requires two points of ingress and egress.

You have provided certain items that are of interest for settlement discussion. However, there is no showing of a good faith to ask that all litigation be withdrawn and dismissed and released before there is any indication that there would be face to fact settlement negotiations. Such is not good faith and it is not reasonable.

We remain open to discussions concerning resolution, but also remain firm in following through with the expressed intent of the majority of the homeowner's association at the annul meeting to require the Woodlands to comply with all legal requirements for development. We as an association believe that is the only way that safety and the future of the island can be preserved.

We welcome a meeting with you and would encourage you to bring up any items which you wish at the annual meeting over the 4th of July.

Sincerely,

B.I.A. Board

March 20th 2008

Welcome new B.I.A. members *(A must read)*

Status report on Bills Island Appeal

We would like to welcome the newest members to the island.

It is The Woodlands at Bill's Island L.L.C. They have purchase a lot in the Willing Addition. They have joined the B.I.A association and have paid their dues and have paid their legal fee assessment to oppose the center island development. Welcome and Thank you!

States Report Bill's Island Appeal:

B.I.A has filled its appeal and the opening brief. On Friday March 14th 2008 the county and Woodlands filed their response brief. Our attorney's will file a reply brief within the next 2 weeks. After the briefing is completed a hearing will be held before Judge Moss. This will probably be sometime in May. We remain confident in the merits of the appeal.

Please understand that all efforts by the developer, The Woodlands, are being done at their own peril. That includes the work on the causeway and any work on the development while the judicial review is proceeding.

If you have any question or concerns feel free to call your board members.

Brent Call

Con Haycock

Reed Richman.

Jolene Jenkins

Roy Leavitt

Randy Hayes

Scott Watson

February 18, 2008

To: Members of Bills Island Association

Please read our response to the letter you received and the court papers below then make up your mind as to the direction we are going. We hope you will find that we are in a good position going into court with the appeal. Email us with for feedback PLEASE

Subject: Response to the Woodlands Letter to BIA Property Owners

1. Woodlands Developers sent a letter to Property Owners on Bills Island stating their opinions. Remember- **“A product comes highly recommended by those that sell it.”** It was a propoganda letter and not all the facts stated were true. The letter is designed to under mine our Association, to divide and conquer us and is inappropriate conduct on their behalf. We as a board have been open with the Association. We have discussed this matter in our annual meeting and asked for your input. As a member, you voted unanimously on the direction we should go and you gave the board authority to make the day-to-day decisions and you voted to move ahead. If you have questions about the BIA or board it seems the people to ask is your board. We try to keep all information on our website and we are sending information updates to each member by mail. Please take the time to read it and be informed.
2. A 42-unit development is not a minimal or small development. It is the maximum or largest amount of dwelling units allowed to be built on the acreage Woodlands owns. It is not a small development, 6 or less is considered a small development.
3. The Woodlands Plot was denied by the Fremont County Planning and Zoning Board for failure to meet Fremont County Building Code for access, i.e. 2 points of Ingress and 2 points for Egress and uniform fire safety.
4. The developers group of qualified Attorneys and Consultants they hired to get their desired end results of getting the development approved did not change the end result. **Non-compliance to the building code was the result. Planning and Zoning denied their application.**
5. Our team of Attorneys and Engineers are just as qualified and they read and understand the Building Code rules and regulation and access is very defiant and is an absolute must comply to obtain approval. **The Developer did not meet the code.**
6. The Developer appealed to the County Commissioner to over ride the Planning and Zoning decision and figure a way to bypass that portion of the County Building Code. The development code is still in force but the County Commissioner has

chosen to ignore the KK3 Section of the code and gave the developer approval for the application with restrictions, 29 absolutes they had to comply with including negotiations with Property Owners and BIA.

7. The causeway Riprapping had to be done while the reservoir was empty. Judge Moss, the BIA Board and Developer met to make decisions. Judge Moss ordered the developer to provide Engineering plans for the causeway widening within 48 hours and gave BIA 48 hours to review plans and then we went back to court. Judge Moss said widening the causeway would add to Bills Island. But it had no bearing or influence on the court case. The Developer could widen the causeway at his expense with the understanding it was at risk construction. If BIA wins in court the causeway construction is a donation to BIA. The Developer has no recourse.
8. BIA did indeed file an appeal in District Court. We are defending our right to hold county officials responsible to see they uphold the County Building Code and Laws and not be misled to interpret code different from its intent. Attorneys like to put their own twist to accomplish their own goals.
9. The Developers statement, **The Woodlands have agreed to accommodate most requests**. The examples they use are very misrepresented and are not true. BIA made several requests at mediation and they were all rejected including i.e. the loop road improvement, membership in BIA, user fee, update equipment, update gate and meeting facilities.
10. We as a Board have met with the developers on several occasions including mediation with Attorneys present. **Their comments have been, “we have deeper pockets than BIA”**. We told them having more money does not make you right or give you the right to change or alter the Building Code Laws that govern the place we live in and hold dear.
11. Encroachments of existing lots, wells, etc. Often time’s property gets surveyed several times and Surveyors come up with different correction points. This is why set backs on Property lines are required to allow for difference in surveys. Courts will not disallow older surveys unless they are off an extra large amount.
12. Where do we go from here?

The Developers statement in their letter, about BIA, should be reversed. They say they will take it to the Supreme Court and have redirected money to do it. This is what they have told us all along. **They have deeper pockets**. Does this make them right? Does this give them the right to find loopholes to override or ignore or tweak the laws and rules we all live by? It’s hard to interpret 2 ingress and 2 egress in any other way. The County Commissioners ignored or tweaked that law; **they need to be held accountable**. And that is the purpose for the Lawsuit.

Feb 14 08

To all B.I.A. members

This is the PETITIONER'S BRIEF for the appeal of the Woodlands development that we have filed with the court. Please take the time to read it completely and then make up your mind if we can stop them.

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Attorneys for Bills Island Association

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

BILLS ISLAND ASSOCIATION,)

)

)

Petitioner,)

)

CASE NO. CV 07-381

vs.)

)

**PETITIONER’S BRIEF IN
SUPPORT OF JUDICIAL REVIEW**

FREMONT COUNTY, FREMONT COUNTY)

COMMISSIONERS; COMMISSIONER PAUL)

ROMRELL, COMMISSIONER DONALD)

TRUPP, and COMMISSIONER RONALD)

“SKIP” HURT, all named individually; and)

WOODLANDS AT BILLS ISLAND, LLC,)

)

Respondents.)

)

_____)

COMES NOW the Petitioner, Bills Island Association (hereinafter the “Association”), by and through its attorneys of record, and submit this brief to aid the Court in ruling upon the Association’s Amended Petition for Review now pending before it.

BACKGROUND

The Association has brought this Petition for Judicial Review of a June 11, 2007 decision of the Fremont County Board of Commissioners which overruled the Fremont County Planning and Zoning Commission's decision denying the Woodlands at Bills Island, LLC's application for a Class II permit to subdivide 91.8 acres of undeveloped real property located on I.P. Bills Island. I.P. Bills Island ("Bills Island") is an island situated within the Island Park Reservoir located in north Fremont County, Idaho. Woodlands at Bills Island, LLC (hereinafter "Woodlands") seeks to subdivide this undeveloped land into 42 residential lots. (Exhibit 1).

The Planning and Zoning Commission, on November 13, 2006, denied Woodland's application because Woodland's proposed development failed to satisfy Section VIII.KK.3 of the Fremont County Development Code ("FCDC") because it did not provide for a minimum of two points of ingress and egress from Bills Island to the mainland.

The purpose of the FCDC is set out in Chapter I.B.:

B. Purpose. The purpose of this ordinance shall be to promote the health, safety and general welfare of the people of Fremont County by fulfilling the purposes and requirements of the Local Planning Act and implementing the comprehensive plan. Specific statements of purpose accompany selected provisions of this ordinance, **but the comprehensive plan provides the full statement of the county's purpose and intent in planning and zoning activities.**^[1] (Emphasis added).

The Fremont County Comprehensive Plan, in Part II - Policy Statements, sets out Policy 4:

Policy 4. Protect Public Safety and the Public Investment in Roads. **Fremont County will require safe, adequate access to all new developments and**

protect the efficient functioning of existing roads by limiting access where necessary, protecting rights-of-way from unnecessary encroachments, and ensuring that utilities work and other necessary encroachments do not create safety hazards or result in added maintenance costs...

A. **Safe, adequate access to new developments is required** in all three zoning districts... ^[2] (Emphasis added).

Section VIII.KK.3 of the FCDC reads as follows:

Access. **All developments containing six or more dwelling units, or with a distance of more than 660 feet from a public road which is maintained on a year round basis shall provide a minimum of two points of ingress and egress from the public road or highway serving the development.** “Loop” systems that return to a single point of access to the public road or highway may be acceptable for relatively small developments (1,000 or less projected ADT).^[3] (Emphasis added).

See, also, Exhibit 1, Tab 3, page 2.

Section VIII.KK.3 is designed to carry into effect Policy 4 of Fremont County’s Comprehensive Plan and the express Purpose of the FCDC ***by requiring safe and adequate access to any new development.*** For developments of six or more dwelling units, FCDC Section VIII.KK.3 requires a ‘minimum’ of two points of ingress and egress to a public road or highway. This access requirement is obviously intended to avoid bottlenecks which impede safe egress and ingress of residents and emergency vehicles to any existing and new development. It is also designed to protect the existing roads by requiring alternate and additional means of access to every new development.

Section VIII.KK.3 is an ‘absolute performance standard’.^[4] Such a designation means that any failure to satisfy its requirements must result in a denial of the application. *See*, FCDC Section III.I.7 of the FCDC reads as follows:

“If the proposed development fails to comply with any applicable absolute performance standards of this ordinance or has a cumulative score insufficient to permit the proposed density on the relative performance standards of this ordinance, the application for a permit shall be disapproved.”

Chapter V.C. of the FCDC mandates that the ‘only exceptions to the requirement for compliance with all absolute performance standards shall be those specifically provided in this ordinance and those allowed by variance...’.^[5]

It is undisputed that the access to the Woodlands development is approximately 1,690 feet from any public road or highway and that there is only one point of ingress and egress from Bills Island to the mainland - an existing causeway owned by the Association. Tr. Vol. 1., P.115, L. 8-10 and Exhibit 12. The existing roads serving I.P. Bills Island are private roads and the entrance to Bills Island is protected by a private gate. Exhibit 12 is an ariel photograph of Bills Island and the surrounding area. At the top of the photograph, colored in red, is the location of the only public road giving ingress and egress to the island. The private gate is located at the western end of the public road. The ‘white’ roads are existing private roads owned by the Association. The ‘yellow’ roads are those roads proposed to be constructed by Woodlands as part of its development. *See*, Findings of Fact and Conclusions of Law, Exhibit 1 to Petitioner’s Petition for Judicial Review, page 14.

In denying Woodland's application, the Planning and Zoning Commission determined that the Woodlands development was not a 'small development' and that Woodlands did not satisfy requirements of Section VIII.KK.3 because it did not provide for a second means of access. Tr. Vol 1., P. 6, L 4-16. The fact that the Woodlands development is on an island accentuates Fremont County's express obligation to insure that existing access to Bills Island is not impaired by any new developments. Islands, unlike almost all other developable lands, have unique and limited access points. They are surrounded by water which significantly impairs the safe and speedy evacuation of the island in the event of an emergency. Unlike the mainland, where a person can evacuate relatively easily by walking away in any safe direction, a person situated upon an island must know how to swim, have access to a boat, or find a bridge in order to retreat to the mainland. If there is an obstruction to the only bridge to the mainland, or if the person cannot swim or use a boat, there is no reasonable avenue of escape from an island in the event of an emergency.

The Association has a vested right in seeing that its' members ability to evacuate the island is not impaired by the increased demands for access caused by the Woodland's development and the addition of 42 additional families to the equation. Likewise, it has a vested right in having emergency vehicles gain unfettered access to Bills Island in the event of an emergency. The addition of 42 additional dwellings and families on the island will adversely impact the Association's vested rights. Section VIII.KK.3 recognizes that right by stating the unequivocal means for protecting it: a minimum of two points of access to the public year round road.

Woodlands and the Board of Commissioners believe that the Woodlands' 'loop' road system satisfies the exception stated in Section VIII.KK.3. The so-called "Loop" system exception inartfully states that the development's road system must return "to a single point of access to the public road or highway" and that loop system "may be acceptable for relatively small developments (1,000 or less projected ADT)."

The Association believes that the 'loop' system exception is vague and unenforceable and that since the Woodlands development is more than 660 feet from the public road providing access to Bills Island, Woodlands must, at a minimum, provide no less than two points of ingress and egress from the island to the mainland. Since the Woodlands development is not designed to provide more than the single existing access to the island, Fremont County's absolute performance standard has not been satisfied and the Woodlands' application for a Class II permit should have been denied.

The Association, therefore, disputes the Fremont County Board of Commissioner's finding and conclusion, and urges the Court to find that the Board of Commissioners acted arbitrarily when interpreting and applying Section VIII.KK.3 in a manner which found that an enforceable 'loop' system exception exists in Section VIII.KK.3 and applies to the Woodlands' development. The Association also urges the court to find that the 'loop' system exception relied upon by Woodlands and the Commissioners is unconstitutionally vague and therefore must be stricken from Section VIII.KK.3.

The Association also asks this Court to conclude that the Board of Commissioner's findings and conclusions that the 'loop' road system exception applies to the Woodlands' development is not supported by substantial and competent evidence.

APPLICABLE LAW - JUDICIAL REVIEW

On July 6, 2007, the Petitioner timely filed its Petition for Judicial Review of the Fremont County Board of Commissioner's June 11, 2007 decision pursuant to *I.C. §67-5270 and §67-6521(d)*.^[6] Petitioner has exhausted all of its administrative remedies pursuant to *I.C. §67-5271*. This Court has jurisdiction over the Petition pursuant to *I.C. §67-5272*. The record and transcript of the proceedings before the Board of County Commissioners have been prepared and submitted to the Court pursuant to *I.C. §67-5275*.

This Court may reverse the Board of Commissioner's decision if it was: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) not supported by substantial evidence on the record as a whole; or (e) arbitrary, capricious, or an abuse of discretion. *I.C. §67-5279(3)*.

STATEMENT OF THE LAW AND ARGUMENT

A. The Board of Commissioners' Decision was Arbitrary and Capricious.

The Idaho Supreme Court, in *Eacret v Bonner County*, 139 Idaho 780, 784 (Idaho 2004), set out the rules related to judicial review as follows:

The Court shall affirm the zoning agency's action unless the Court finds that the agency's findings, inferences, conclusions or decisions are: "(a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) not supported by substantial evidence on the record as a whole; and (e) *arbitrary, capricious, or an abuse of discretion*. I.C. §67-5279(3). The party attacking a zoning board's action must first illustrate that the board erred in a manner specified therein and must then show that a substantial right of the party has been prejudiced. (Emphasis added).

The Association believes that the 'loop' exception relied upon by Woodlands and the Board of Commissioners is vague and ambiguous because its material elements are not defined and no standards for its application exists within the FCDC, leaving the application of the 'loop' exception to the unbridled arbitrary and capricious discretion of the Board of Commissioners.

It is fundamental constitutional law that a legislative enactment must establish minimum guidelines to govern its application. *State v Bitt*, 118 Idaho 584 (1990); *Voyles v Nampa*, 97 Idaho 597, 599 (1976). The absence of such guidelines will justify a finding that the Board of Commissioner's conclusion was arbitrarily made:

A city's actions are considered arbitrary and capricious if made without a rational basis, or in disregard of the facts and circumstances, ***or without adequate determining principles***. *Enterprise, Inc. v. Nampa City*, 96 Idaho 734, 739, 536 P.2d 729, 734 (1975). *Lane Ranch P'ship v. City of Sun Valley*, 2007 Ida. LEXIS 239 (Idaho 2007). (Emphasis added).

See, also, Am. Lung Ass'n v. State, 142 Idaho 544, 547 (Idaho 2006), in which the Idaho Supreme Court stated: "An action is capricious if it was done without a rational basis. *Enterprise, Inc. v. Nampa City*, 96 Idaho 734, 536 P.2d 729 (1975). It is arbitrary if it was done in disregard of the facts and circumstances presented or without adequate determining principles. *Id.*"

The FCDC offers no determining principles or guidelines for the application of the ‘loop’ exception in Section VIII.KK.3. The ‘loop’ exception reads as follows:

“Loop” system that returns to a single point of access to the public road or highway may be acceptable for relatively small developments (1,000 or less projected ADT).

The absence of adequate governing principles with which to employ and apply the ‘loop’ system exception renders the Board of Commissioner’s decision to employ it in this case arbitrary and capricious. The Commission used this exception as the sole basis for not enforcing the minimum access standards required by Section VIII.KK.3. *See*, Findings of Fact and Conclusions of Law, p. 7.

In *Lane Ranch P'ship v. City of Sun Valley*, 2007 Ida. LEXIS 239 (Idaho 2007), the role of the court in construing a planning and zoning ordinance was outlined as follows:

Analysis of a statute or ordinance begins with the literal language of the enactment. *Friends of Farm to Market*, 137 Idaho at 197, 46 P.3d at 14 (citations omitted). "Where the language is unambiguous, the clearly expressed intent of the legislative body must be given effect, and there is no occasion for a court to construe the language." *Friends of Farm to Market*, 137 Idaho at 197, 46 P.3d at 14 (citing *Lawless v. Davis*, 98 Idaho 175, 560 P.2d 497 (1977)).

The converse exists, however, when the ordinance is ambiguous. The Court, under those circumstances, has discretion to reverse the Commissioner’s findings and conclusions.

Where language of a statute or ordinance is ambiguous, however, this Court looks to rules of construction for guidance. *Lawless v. Davis*, 98 Idaho 175, 560 P.2d

497 (1977). It may also consider the reasonableness of proposed interpretations. *Umphrey v. Sprinkel*, 106 Idaho 700, 706, 682 P.2d 1247, 1253 (1983). "Constructions that would lead to absurd or unreasonably harsh results are disfavored." *Gavica v. Hanson*, 101 Idaho 58, 60, 608 P.2d 861, 863 (1980); *Lawless*, 98 Idaho at 177, 560 P.2d at 499.

ADVANCE \d4 Language of a particular section need not be viewed in a vacuum.

And all sections of applicable statutes must be construed together so as to determine the legislature's intent." *Lockhart v. Dept. of Fish and Game*, 121 Idaho 894, 897, 828 P.2d 1299, 1302 (1992) (quoting *Umphrey*, 106 Idaho at 706, 682 P.2d at 1253; see also *J.R. Simplot Co. v. Idaho State Tax Comm'n*, 120 Idaho 849, 853-54, 820 P.2d 1206, 1210-11 (1991). Statutes and ordinances should be construed so that effect is given to their provisions, and no part is rendered superfluous or insignificant. See *Brown v. Caldwell Sch. Dist. No. 132*, 127 Idaho 112, 117, 898 P.2d 43, 48 (1995). There is a strong presumption of validity favoring the actions of a zoning authority when applying and interpreting its own zoning ordinances. *South Fork Coalition v. Bd. of Comm'rs*, 117 Idaho 857, 860, 792 P.2d 882, 885 (1990).

See, *Friends of Farm to Mkt. v. Valley County*, 137 Idaho 192, 197 (Idaho 2002).

More recently, in *Lane Ranch P'ship v. City of Sun Valley*, [supra](#)^[7], the Idaho Supreme Court stated:

This Court applies the same principles in construing municipal ordinances as it would in construing statutes. *Friends of Farm to Market*, 137 Idaho at 197, 46 P.3d at 14 (citing *Cunningham v. City of Twin Falls*, 125 Idaho 776, 779, 874 P.2d 587, 590 (Ct. App. 1994)). "Any such analysis begins with the literal

language of the enactment." *Ada County v. Gibson*, 126 Idaho 854, 856, 893 P.2d 801, 803 (Ct. App. 1995) (citations omitted). If the language is unambiguous, then the clear and expressed intent of the legislative body governs. Specific language is not viewed in isolation, the entire statute and applicable sections must be construed together to determine the overall legislative intent. *Friends of Farm to Market*, 137 Idaho at 197, 46 P.3d at 14 (citing *Lockhart v. Dept. of Fish and Game*, 121 Idaho 894, 897, 828 P.2d 1299, 1302 (1992)).

The 'loop' exception to the 'two points of ingress and egress' requirement of Section VIII.KK.3 is clearly ambiguous. The exception does not describe what road configuration constitutes a 'loop' system. The exception does not place any limits on the distance separating the 'single point of access' required of the 'loop' system and the 'public road or highway' providing access to the development. The exception does not define 'relatively small developments' and the exception does not explain what is meant by the parenthetical phrase "(1,000 or less projected ADT)" or how it is to be applied in the context of Section VIII.KK.3.

When the ambiguous language of the 'loop' system exception is juxtaposed against the unambiguous Policy 4 of Fremont County's Comprehensive Plan and the unambiguous Purpose of the FCDC, as well as the unambiguous minimum access requirement of Section VIII.KK.3 for subdivisions with more than six dwellings, the Commissioner's use of the ambiguous 'loop system' exception should be carefully scrutinized by the Court.

It is clear from the Comprehensive Plan, the FCDC, and the express requirements of FCDC Section VIII.KK.3, that the overall legislative intent of Fremont County is to insure safe

and adequate access to all new developments. Fremont County cannot apply exceptions to the objective safe and adequate access policy and rules in the absence of some form of legislative guidance. There is no such guidance applicable to the ‘loop’ system exception. The absence of adequate determining principles with which to apply the ‘loop’ system exception renders the Board of Commissioner’s decision wholly subjective and therefore arbitrary and capricious. *Lane Ranch P’ship v. City of Sun Valley, supra.*

1. The Phrase “Loop System” is Not Defined and is Vague and Ambiguous. Exhibit 12 illustrates the location of the Woodlands road system (colored in yellow). It consists of a ‘loop’ with two cul-de-sacs jutting outward to the west and southwest, and a connecting road between the ‘loop’ and the existing private roads of the Association. Can the two planned cul-de-sacs be a part of the ‘loop’ system? Does the connecting road constitute a part of the ‘loop’? Would a cul-de-sac, on its own, constitute a ‘loop’ and bring the exception into play? After all, a cul-de-sac has a ‘loop’ at one end!

The answers to these questions, and many more, are simply unknown because the FCDC does not attempt to define what constitutes a ‘loop’ system and the Board of Commissioners did not attempt to address this issue when rendering its findings and conclusions. The Commissioners simply assumed and concluded that Woodland’s road system is a ‘loop’ system without any analysis of the question whatsoever.

2. Single Point of Access to the Public Road or Highway. The alleged ‘loop’ system set out in the Woodlands development is located 1,690 feet from the only public road providing year round access. The ‘loop’ itself does not come in contact with any public road or highway.

Rather, Woodlands must use 1,690 feet of the private roads owned by the Association and its own connecting road in order to reach the requisite public road. If this exception is to be consistently applied by the Commissioners it would not matter if the required public road or highway was 1,690 *miles* from the development - as long as the development's 'loop' is somehow or somewhere connected to a 'public road or highway'.

Obviously the Board of Commissioners would not apply the 'loop' exception if the public road were 1,690 *miles* from the public road. However the ordinance itself offers no determining principles which would assist the Board of Commissioners in determining the proper distance separating the proposed development from the public road necessary to employ the 'loop' system exception. The FCDC is silent on this question - except that both the Comprehensive Plan and the FCDC require the Board of Commissioners to insure safe and adequate access to Bills Island for its residents and emergency vehicles before authorizing any further development on the island and the Commissioners must keep these policies and principles in mind when enforcing the FCDC.

3. *Relatively Small Developments.* The 'loop' road system exception is only applicable to 'relatively small developments.' Section VIII.KK.3 itself only applies to developments containing six or more dwelling units. Any development containing less than six dwelling units is, therefore, automatically considered 'small' and exempt from the minimum two points of access requirement. If a development containing five dwelling units is considered 'small' by the FCDC, how many dwelling units would should be considered 'relatively small'? The FCDC does not define this term.

Should a 42 dwelling unit development also be considered ‘relatively small’? The FCDC states that 60 dwelling units is a ‘large’ development.¹⁸¹ If a ‘large’ development is only 18 more dwelling units than that proposed by the Woodlands, perhaps the Woodland’s development is ‘relatively large’ rather than ‘relatively small’. Perhaps the outside limit for ‘relatively small’ should be closer to the number 5 than the number 60. The Woodlands development (42 lots) is clearly closer to the number 60 than the number 5, yet Fremont County has determined it is a ‘relatively small development’ for purposes of excusing the Woodlands from providing a second access point between Bills Island and the mainland. FCDC offers no guiding principles to help the Commissioners make a reasonable decision in this regard, thus rendering their decision in this case arbitrary and capricious.

The Board of Commissioners concluded that the parenthetical phrase “(1,000 or less projected ADT)” provides it with a basis for determining which developments are ‘relatively small developments’. It is clear from the questions posed by the Commissioners during the hearing that they did not know what “ADT” stood for, or how this measurement is to be applied in reaching any conclusion.

COMMISSIONER ROMRELL: Marla, does ADT mean peak day each year or daily average the whole year?

MS. VIK: Well, ADT is the daily average over the year.

COMMISSIONER ROMRELL: It’s whatever –

MS. VIK: It’s –

COMMISSIONER ROMRELL: – you want.

MS. VIK: It's a little looser. It's your average daily traffic. And as Ryan said, as long as you have more than two days of data, you can have an average, so it's whatever you decide to study.

COMMISSIONER ROMRELL: Commissioner Romrell continuing. Is there an industry standard or I know our code says ADT?

MS. VIK: Um-h'm.

COMMISSIONER ROMRELL: I guess my question is still it's subjective I guess. It could be anytime.

MS. VIK: it can be whatever time you feel is appropriate to the situation.

Tr. Vol. 1. P. 79-80.

Ms. Vik referred to the testimony of Ryan Hales, an expert who testified on behalf of Woodlands. Mr. Hales testified that ADT is the average daily traffic count. "That is a time period that's anything less than 365 days or more than two days." Tr. Vol. 1. P. 80, L. 3-7. The result of this testimony is that an ADT can be taken at any time of the year, as long as it relates to data collected over more than two days but less than 365 days. There is no requirement in the FCDC that the traffic data be collected on weekdays, weekends, holidays, or non-holidays. The absence of any guidance directing when and how this traffic data is to be collected renders any decision based upon such traffic data seriously subjective.

The Bills Island area is typically used for seasonal, recreational, and second home purposes. Bills Island and its access road will experience significant usage differences over the four seasons of the year. A measurement taken during July will differ significantly from a traffic measurement taken in October or April. In fashioning an exception to the 'two access' rule embodied in Section VIII.KK.3, Fremont County should have provided more direction on how

and when the data establishing ADTs should be collected, and whether or not that data should be collected differently in the recreational district of Island Park, as compared to other zoning districts in Fremont County.^[9]

The absence of any governing principles to employ the ‘1,000 ADT’ benchmark allows subjective manipulation of the decision making process. It allows the Commission to recognize traffic data collected at one time and ignore traffic data collected at another time, so that the data chosen to be relied upon dictates the conclusion they desired to reach. In fact, the traffic counts presented to the Commissioners in this case were manipulated by the Commission in order to justify their application of the ‘loop’ system exception. The Commission accepted the traffic data collected by Woodlands and ignored the traffic data collected by the Idaho Department of Transportation and a nationally recognized compilation of traffic data relied upon by traffic engineers nationwide.^[10]

Nor does Section VIII.KK.3 state how this parenthetical phrase is to be applied when using the ‘loop’ road system exception. Does the “(1,000 or less projected ADT)” phrase apply only to the development under consideration by the Board of Commissioners? Or, does it apply only to the existing developments currently served by the public road in question? Or does it apply to a combination of all existing and all future developments which are or could be served by the public road? The FCDC offers no guidance to the Commissioners when this question is presented as the basis for employing the ‘loop’ exception.

The Board of Commissioners applied the parenthetical phrase as follows: the Commission estimated the total existing traffic on Bills Island and added that estimate to the

estimated future traffic expected from the Woodlands development. From that data it concluded that the combined total average daily traffic to and from Bills Island would be less than 1,000. *See*, Findings of Fact and Conclusions of Law, pp. 7-14. However, since the FCDC itself provides no basis for such an interpretation and application of the parenthetical phrase, the Commissioner's interpretation and application of the parenthetical phrase in this manner is arbitrary, capricious, and an abuse of its discretion.

The absence of any guiding principles in the FCDC also makes the exception constitutionally infirm, vague and ambiguous, and the Board of Commissioner's use of that exception was arbitrary. The exception should be stricken by the Court.

***[Idaho Supreme] Court has observed that "when part of a statute or ordinance is unconstitutional and yet is not an integral or indispensable part of the measure, the invalid portion may be stricken without affecting the remainder of the statute or ordinance." *Voyles v. City of Nampa*, 97 Idaho 597, 600, 548 P.2d 1217, 1220 (1976); *see also Lynn v. Kootenai County Fire Protective Dist. No. 1*, 97 Idaho 623, 626, 550 P.2d 126, 129 (1976) ("If the unconstitutional section does not in and of itself appear to be an integral or indispensable part of the chapter, then it may be stricken therefrom."). *In re Srba Case No. 39576*, 128 Idaho 246, 263-264 (Idaho 1995).

The 'loop' exception is vague and ambiguous, is not an integral or indispensable part of the FCDC, its elimination by the Court will not adversely affect the remainder of Section VIII.KK.3, and its elimination will serve the Purpose of the FCDC and the Policy 4 of Fremont County's Comprehensive Plan by insuring safe and adequate access to Bills Island for its residents and emergency vehicles.

- B. The Board of Commissioners' Decision was Not Supported by Substantial and Competent Evidence.

The Board of Commissioners made the following observation when issuing their findings and conclusions: “The most contentious issue during the public hearing had to do with the access to the proposed development site.” The Board of Commissioners then concluded that “Approval of loop systems that return to a single point of access is within the reasonable discretion of the county, with the limit on the county’s discretion being the 1,000 ADT standard.”^[11]

The bulk of the evidence presented at the hearing related to what the Board of Commissioners described as the “1,000 ADT standard.” Recognizing that the FCDC itself offers no guidance with which to apply this ‘standard’, the Commissioners concluded that both the Association and Woodlands’ generally agreed that the 1,000 ADT threshold number was an appropriate standard.^[12] This finding and conclusion is not supported by substantial or competent evidence. There was no admission on the part of the Association that the 1,000 ADT threshold number was an ‘appropriate standard’ or that the manner in which the Commissioners applied that standard was appropriate. Woodlands did not offer any evidence that the 1,000 ADT threshold number was an ‘appropriate standard’. This finding and conclusion by the Commissioners is clearly erroneous and not supported by substantial or competent evidence in the record.

The Board of Commissioners also ignored their obligations under *I.C. §41-253*, which adopts the International Fire Code as the ‘minimum standards for the protection of life and property from fire and explosions in the state of Idaho.’ Fremont County’s obligation in this

regard was pointed out by witness Winston Dyer. Tr. Vol. 2. P. 9. L 1-7, Exhibit 15. The International Fire Code adopted by the State Fire Marshall requires, through Appendix D thereof, that “Multiple-family residential projects having more than 100 dwelling units shall be equipped throughout with two separate and approved fire apparatus access roads.”^[13] The Board of Commissioner’s decision did not address how the Woodlands application satisfied the International Fire Code requirement, or why this requirement doesn’t apply to the Woodlands’ application. The Commissioner’s failure to address this issue is clearly erroneous and not supported by substantial or competent evidence in the record.

In reaching their decision, the Board of Commissioners received evidence related to two on-site traffic studies. One was performed by Woodlands and the other was performed by the Idaho Transportation Department (“ITD”) and offered into evidence by the Association. (Exhibit 13). The Association also offered additional evidence in the form of a national compilation of traffic studies prepared by the Institute of Transportation Engineers. (“Trip Generation” - Exhibit 14). Lastly, the Commissioners heard the testimony of the Fremont County Public Works Director, Marla Vik. Ms. Vik is a professional engineer. (Tr. Vol. 2. P. 74. L. 13-17). None of the offered evidence, including the testimony of Marla Vik, concluded that 1,000 ADT is an appropriate standard or that the Commissioner’s actual application of that standard was appropriate. In fact Ms. Vik testified on the issue as follows:

COMMISSIONER HURT: Okay. Do you see any safety concerns with 1,000 ADTs with three lanes?

MS. VIK: Safety involves so many different factors. They can’t be simply based on ADT. It has to be based on speed, grade, with a recoverable area, barriers. It’s just not a one-factor issue.

Tr. Vol. 2. P. 86 L 20-25.

The Woodlands traffic study was accepted by the Commissioners without any question. The Woodland's data related to a traffic count taken between Saturday, July 9, 2005 and Tuesday, July 19, 2005.^[14] (Tr. Vol 1. P. 81, L. 12-13), some twenty-two months *before* the April 10, 2007 hearing before the Board of Commissioners. That relatively stale study was founded upon the following facts: there are 301 platted lots currently located on Bills Island, and 197 of them have dwellings constructed upon them. (Tr. Vol 1. P. 78, L. 5-6). Based upon Woodlands' traffic count for the existing 197 dwellings, the average weekday non-holiday trips averaged 2.5 per dwelling unit per day, and the average weekend non-holiday trips averaged 3.7 trips per dwelling unit per day. Woodlands then averaged the weekday ADTs with the weekend ADTs to come up with an average of 2.8 trips per dwelling unit per day. Woodlands then projected the average trips per day if every platted lot (301 lots) and Woodlands' proposed development (42 lots) were occupied with a dwelling and concluded that 2.8 trips x 343 dwellings = 960.4 trips per day, or 'ADT'. It is this evidence upon which the Commissioners based their decision to apply the 'loop' road system exception to Section VIII.KK.3. The Commission concluded that the 960.4 trips per day estimated by the Woodlands data were less than the 1,000 ADT parenthetically referenced in Section VIII.KK.3, and therefore the Woodlands proposal was a 'relatively small development' and could use the 'loop' road system exception to avoid the express obligations of Section VIII.KK.3.

Based on Mr. Hales and Ms. Vik's testimony - that more than two days of data is sufficient to provide an ADT - the Commissioners could have used the Woodlands' average

weekend/non-holiday count of 3.7 ADT, and the Woodlands' 3.5 ADT measurement for Friday July 15, 2005^[15], for an average of 3.63, and a far different conclusion would have been reached. The average trips per day if every platted lot (301 lots) and Woodlands' proposed development (42 lots) were occupied with a dwelling, the conclusion would have been that 3.63 trips x 343 dwellings = 1,245.09 trips per day. This results in a number which is nearly 25% higher than the 1,000 ADT standard adopted by Fremont County!

The ITD traffic study took place between Saturday, July 1 and Wednesday, July 5, 2006. The Commissioners disregarded this data because it was collected over a holiday weekend.^[16] This data was disregarded because Woodlands' expert Hales and Ms. Vik both testified that traffic counts would typically not be taken during holidays.^[17] Neither Hales nor Vik testified that holiday traffic counts should *never* be considered. To the extent the Commissioners totally disregarded the ITD traffic count taken over the 4th of July weekend in 2006, without any discussion whatsoever, makes this finding and conclusion clearly erroneous and not supported by substantial or competent evidence in the record.

The ITD data established a 5.5 ADT average. Exhibit 10, 13; Tr. Vol 1. P. 109-112. If this data had been relied upon by the Commissioners, again, a far different conclusion would have been reached. The average trips per day, if every platted lot (301 lots) and Woodlands' proposed development (42 lots) were occupied with a dwelling, would be calculated as follows: 5.5 trips x 343 dwellings = 1886.5 trips per day. This calculation results in a number which is more than 88% higher than the 1,000 ADT standard adopted by Fremont County!

The Commissioners also disregarded the Institute of Transportation Engineers Trip Generation Report. (“Trip Generation” - Exhibit 14). However, the Commission’s Findings of Fact and Conclusions of Law do not state any reason for totally disregarding the data contained within Exhibit 14. The Commissioners did quote the rebuttal testimony received from Woodland’s expert, Mr. Hales, who opined that actual traffic counts overrule the national study.

The Commissioners, however, did not give

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In this case, the majority of the City's findings of fact fail to make actual factual findings; instead, the "findings" merely recite portions of the record which could be used in support of a finding. For instance, Findings 7(a) and 7(b) merely state that Crown Point's Phase 5 applications contain certain information about the size of the units. Additionally, several of the findings consist of nothing more than a recitation of testimony given in the record. ***By reciting testimony, a court or agency does not find a fact unless the testimony is un rebutted in which case the court or agency should so state.*** "A finding of fact is a determination of a fact by the court [or agency], which fact is averred by one party and denied by the other and this determination must be founded on the evidence in the case." *C.I.T. Corp. v. Elliott*, 66 Idaho 384, 397, 159 P.2d 891, 897 (1945) (Emphasis added).

The Commission cited from Hale's testimony, but it did not adopt Hale's testimony as a 'finding' or state that it was un rebutted by the record. In fact Hale's testimony on this subject was rebutted by Ms. Vik, who testified that the Trip Generation report *was the standard used by*

the traffic engineering industry. Tr. Vol 2. P. 76 L. 1-3. For these reasons there is no sound basis to disregard Exhibit 14. The Commissioners failure to state the basis for their total disregard of Exhibit 14 is, therefore, clearly erroneous and not supported by substantial or competent evidence in the record.

The Trip Generation Report, Exhibit 14, reveals (at page 508) that the national average ADT per recreational dwelling unit is 3.16. If the Trip Generation Report data was used by the Commission, again, a far different conclusion would have been reached. The average trips per day, if every platted lot (301 lots) and Woodlands' proposed development (42 lots) were occupied with a dwelling, the Commission would have concluded the following: 3.16 trips x 343 dwellings = 1083.88 trips per day. This results in a number which is still higher than the 1,000 ADT standard adopted by Fremont County!

Overall, the Commission's conclusion that the 1,000 ADT standard will not be exceeded by approving the Woodlands applicaiton is not supported by 'substantial evidence.' Rather, it is supported by minimal evidence. The substantial evidence in the record supports a conclusion that the ADT for Bills Island will exceed 1,000 ADT when the existing and proposed Woodlands lots are fully developed. For that reason the Woodlands' application for a Class II permit should have been denied.^{[119](#)}

If the Commission had disregarded Woodlands' weekday/non holiday data, or not averaged all of Woodlands' weekday/non-holiday data with the higher weekend/non-holiday data, the Woodlands data alone would have required the Commission to conclude that the 1,000 ADT standard would be exceeded by the Woodlands development. If the Woodlands

weekend/non-holiday data were combined with the ITD data and the Institute of Traffic Engineer's Trip Generation Report, the only reasonable conclusion the Commissioners could reach is that the 1,000 ADT standard would be exceeded by the Woodlands development.

Instead, the Commission gave undue weight to the Woodlands' weekday /non holiday data, and ignored all other relevant data so that it could employ the 'loop' road system exception and approve the Woodlands application.

In *Eastern Idaho Regl. Med. Ctr. v. Ada County Bd. of Comm'rs* (In re Hamlet), 139 Idaho 882, 884-885 (Idaho 2004) the Idaho Supreme Court said: "Although this Court may disagree with Ada County's conclusion, this Court "may not substitute its judgment for that of the administrative agency on questions of fact... *if supported by substantial and competent evidence.*"

In this case, however, the Commission's decision is based on insubstantial evidence - the weekday/non holiday traffic data collected by the Woodlands some 22 months before the hearing. The substantial evidence before the Commission - *consisting of the Woodlands' weekend/non-holiday traffic data, the Woodlands' data for Friday, July 15, 2005, the IDT data, and the Trip Generation Report* - required the Commission to conclude that the 'loop' system of roads exception was **not** available and the Woodlands had **not satisfied** the absolute performance standard of Section VIII.KK.3.

In *Laurino v. Bd. of Prof'l Discipline*, 137 Idaho 596, 602 (Idaho 2002), the Idaho Supreme Court defined 'substantial evidence' as follows:

ADVANCE \d4 The violations that the Board found against Dr. Laurino must be reviewed to determine whether the evidence in the record as a whole supports the findings, inferences, and conclusions made by the Board. *I.C. §67-5279(3)(d)*. **Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate and reasonable to support a conclusion.** *Idaho State Ins. Fund v. Hunnicutt*, 110 Idaho 257, 260, 715 P.2d 927, 930 (1985). (Emphasis added).

If the Woodlands' weekday/non-holiday data were disregarded, the material evidence remaining before the Commissioners - *consisting of the Woodlands' weekend/non-holiday traffic data, the IDT data from July 2006, and the Trip Generation Report* - all support a conclusion that the ADTs for Bills Island would exceed 1,000 if the Woodlands application were granted. For these reasons the decision of the Board of Commissioners to apply the 'loop' road system exception to FCDC Section VIII.KK.3 is not supported by substantial evidence in the record as a whole.

CONCLUSION

The Association has demonstrated that the Findings of Fact and Conclusions of Law issued by the Fremont County Board of Commissioners were reached arbitrarily and capriciously because there are no guiding principals in FCDC as a whole, or in Section VIII.KK.3 in particular, which would allow the Commissioners to objectively apply the 'loop' system of roads exception.

Further the Findings of Fact and Conclusions of Law are not based upon substantial evidence in the record, as a whole.

Under the authority of *I.C. §67-5279(3)(d)* this Court should reverse the Board of Commissioner's decision to approve the Woodlands application for a Class II permit and thereby grant the Association's Petition for Judicial Review.

Dated this ____ day of February, 2008.

COOPER & LARSEN, CHTD.

Attorneys for Petitioner

By _____

Ron Kerl, of the firm

By _____

Reed W. Larsen

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on the ____ day of February, 2008, I served a true and correct copy of the foregoing document as follows:

Charles A. Homer	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid
HOLDEN, KIDWELL, HAHN & CRAPO, PLLC	<input type="checkbox"/> Hand Delivery
P.O. Box 50130	<input type="checkbox"/> Overnight Mail
Idaho Falls, ID 83401	<input type="checkbox"/> Facsimile
	<input checked="" type="checkbox"/> Email

Karl H. Lewies	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid
Fremont Co. Prosecuting Attorney	<input type="checkbox"/> Hand Delivery
22W. 1 st N.	<input type="checkbox"/> Overnight Mail
St. Anthony, ID 83445	<input type="checkbox"/> Facsimile
	<input checked="" type="checkbox"/> Email

ADVANCE \x236

ADVANCE \x236**COOPER & LARSEN, CHTD**

ADVANCE \x236By:

ADVANCE \x259Ron Kerl, of the firm

^[1]An excerpt of the FCDC containing Chapter I. B is attached as Appendix 1.

^[2]An excerpt of the Fremont County Comprehensive Plan containing Policy 4 is attached as Appendix 2.

^[3]An excerpt of the Fremont County Development Code containing Section VIII.KK.3 is attached as Appendix 3.

^[4]The Board of Commissioner's Findings of Fact and Conclusions of Law, at page 6, correctly concluded that Section VIII.KK.3 is an 'absolute performance standard'.

^[5]An excerpt of the Fremont County Development Code containing Section III.I.7 and Chapter V.C. is attached as Appendix 4.

^[6]The Petitioner filed its Amended Petition on July 13, 2007.

^[7]*2007 Ida. Lexis 239, page 2.*

^[8]An excerpt of the Fremont County Development Code containing Section OO, page 54, is attached as Appendix 5.

^[9]Fremont County is divided into zoning districts, and the Island Park area is its own zoning district and has its own, unique, rules for development. Excerpts of the FCDC, Chapter IV.B and Chapter VIII.B are attached as Appendix 6.

^[10]The Commissioner's arbitrary selection and application of this traffic data in making its decision will be addressed more directly below, when discussing the fact that its decision is not supported by substantial and competent evidence.

^[11]Findings of Fact and Conclusions of Law, pp 6-7.

^[12]Findings of Fact and Conclusions of Law, p. 7.

^[13]A copy of Appendix D to the International Fire Code is attached hereto as Appendix 7.

[14] The date of this study was strategically scheduled between two very busy holidays for the Island Park area - the 4th of July and the 24th of July.

[15] Exhibit 21. The data for Friday, July 15, 2005 shows a total of 686 trips for the day. When divided by the 197 actual dwellings located on Bills Island, the ADT for that Friday is 3.48. If you combine two weekend days at an average of 3.7 each, with the Friday July 15, 2005 ADT of 3.48, the resulting average ADT is 3.63.

[16] Findings of Fact and Conclusions of Law, page 11.

[17] Tr. Vol. 1. P. 81 L 18-19, and Tr. Vol. 2. P. 75 L 13-15.

[18] See, Findings of Fact and Conclusions of Law, page 11

[19] The Commissioners critically commented on the fact that an ITD traffic study conducted on Bills Island over the Labor Day weekend in 2006 was not offered by the Association into evidence. See, Findings of Fact and Conclusions of Law, pp. 11-12. The data from that ITD study is, however, set out in Exhibit 22. Woodlands' expert Hales testified that the best reliable traffic data should be that which is collected in July, the peak month for evaluating traffic in the Island Park area. Tr. Vol. 1. P. 80-81. The Association agrees with this conclusion. For that reason the 2006 Labor Day traffic data is not material.

Feb 7 2008

This is a response to the letter that all members received from the Woodlands.

COOPER & LARSEN

151 NORTH 3rd AVE. - 2nd FLOOR

P.O. BOX 4229

POCATELLO, ID 83205-4229

RON KERL of Counsel

TELEPHONE (208) 235-1145

FAX (208) 235-1182

Feb 7, 2008

Charles A. Homer
Holden Kidwell Hahn & Crapo
P.O. Box 50130
Idaho Falls, ID 83405-0130

Re: *Bills Island Association v. Woodlands at Bills Island, LLC*

Dear Chuck:

This letter is in response the mass mailing that was sent out by Ryan Barker, Paul Ritchie, Jayson Newitt and Rick Olsen. I am assuming this letter was sent by your clients without your knowledge. To the extent you had knowledge of this document being sent, I am asking that you seriously reconsider the propriety of that content. One of the issues that is discussed is the legal appeal and it appears to be a misstatement of certain facts. The facts appear to be misstated in an effort to interfere with my attorney-client relationship with Bills Island Association and it's members. This appears to be done to try to dissuade people from continuing to pay assessments for legal fees. Any legal fees should not be discussed by your client in a way that tries to interfere with my legal representation of my clients. It is not welcome and it is an inappropriate contact. At the outset, I would ask that those who are signatories immediately print a retraction or apology.

Further, by now you have received our Brief in Opposition to the Proposed Development. I believe your client's letter is inaccurate as to the status of the law and the status of the case. The case was initially denied by Planning and Zoning, and rightfully so because there is no two points of ingress and egress and no compliance with the Uniform Fire Code. These are areas that your client has never been interested in addressing.

I would suggest that your client keep it's communications within the confines of their organization and leave the BIA members alone. To the extent a designated representative of your client wishes to meet with my client, that is acceptable. However mass mailings are inappropriate and potentially violate attorney client privilege and it also interferes with attorney client contractual relationships. This letter is to advise you that

we expect you and your clients to cease from such unwanted and unwarranted conduct. I assure you I would feel the same if the BIA sent a letter to your client's investors.

Sincerely,

REED W. LARSEN

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COOPER & LARSEN, CHARTERED

Attorneys at Law

P.O. Box 4229

Pocatello, ID 83205-4229

To all B.I.A. members.

The Woodlands At Bills Island is just trying to break up our association.

First we met with them to settle this whole thing. They offered \$10k to go away. We asked them to move their gate to our gate for just one gate, they said no. They never offered to build the gate as they stated. We asked for the ground SE of the guard cabin for a pavilion they said it would be a cabin sight. They said there will be no renting of the cabins in their homeowners, we read their bylaws ---it is permitted. They said they would not join our association. More to come on the web page. Thanks for your concern and please stay with us. We have a strong position in court. You will receive a 36-page brief from the attorney, to the appeals court this month. Don't let them divide our association.

Jan 25th 2008

The developer has asked the court for their performance bond back, they claim they are done with the work on the causeway. We have asked the county if they have signed off on the work and they haven't, our engineer hasn't, so we have asked that they do not get their money back until it is checked off by all. . We will keep you posted.

Dec 15th 2007

We have no news at this time.

We are waiting for the courts to give us a date on the ruling. When you come onto the Island you will notice the causeway has been widened, they are permitted a 50ft width.

We also have 3 remote gate openers available. They allow you to open the gate as you approach without interring your card. They are \$40.00. Contact Terry for one. We will be updating the card system this spring and these will still work with the new system.

Oct 16th

The BIA board attended the hearing for the causeway and reviewed the construction plans. We feel the wider causeway would be the best but Woodlands must get permission to build on all property owners land. They also submitted a plan to build the causeway with in the 50ft right away. The board hired the Dyer Group to review the plans and to oversee the construction.

The construction of the causeway in no way affects the lawsuit on the center of the Island.

Here is Dyer's review of the construction.

We have reviewed the plans and associated documentation received late yesterday concerning Causeway improvements proposed for the causeway crossing at Bills Island. Due to the extremely limited time for examination, our review is fairly cursory in nature and limited to addressing what has been shown on the plans and not any other further detailed analysis or evaluation.

Following are our comments after reviewing the information provided:

1. We agree with their engineer Mr. Bastian that Option 1 (working outside the existing 50 foot easement) is the best approach if construction is to occur. The biggest concern we see is obvious evidence of erosion occurring on the reservoir faces of the causeway and this option allows for correcting and stabilizing this by the placement of riprap material and some additional fill. This treatment will enhance stability of the proposed improvements and significantly prolong their service life.
2. We concur with the concept of placing guardrail along the edges of the causeway. However, normally when guardrail is placed along any roadway there is a small shoulder area to give additional safety and shy distance. If you are going to work outside the existing easement it would be appropriate to add 3-4 foot shoulders on each side.

3. The three lanes apparently terminate at the guardhouse on the northeast end of the causeway. We suggest the improvements be continued to carry two of the three lanes out through the existing exit area. Without an appropriate transition at the end there will just be confusion and backup of traffic across the causeway – defeating the purpose of providing additional width and lanes.

4. We note a proposal for lane marking by burying precast concrete stripes flush with the roadway surface. We presume this is in response to some requirement that lanes be delineated to assist in traffic flow should an emergency evacuation be required. We do note however that on a gravel surfaced road (as proposed) these will very likely become a maintenance concern in trying to grade and plow the roadway. We strongly recommend the causeway crossing be paved for safety, operation, and longevity.

5. The gabion basket concept is appropriate for erosion control and widening the roadway embankment. It was not clear however how the gabions would be stabilized with respect to the new embankment construction. We presume that they would be tied to the geogrid reinforcing or otherwise have some type of tieback to keep them stable and vertical.

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6. The details of embankment construction did not specify a depth of excavation prior to placing new embankment and geogrid reinforcing. Also, the details should call for compaction of the existing sub grade after excavation and before construction of the new embankment is initiated.

7. The geogrid reinforcing called for is a good solution but the system is sensitive to the size of the grid and corresponding material to be used. We suggest further detail or specification be given to make sure the geo-grid system and associated embankment

material are appropriately matched to produce a quality final product.

8. We see that the applicant has a permit from the Corps of Engineers to conduct causeway construction work as necessary. The permit "encourages" installation of a culvert through the causeway as was apparently shown in some application material to the COE in obtaining a permit. We concur that a culvert would help improve water quality in the area but did not see it called for on the plans nor any associated details.

9. The COE permit also called for re-vegetation of disturbed areas but there were not any details or specifications about how that would be accomplished in the materials we received.

10. We feel the plan presented is an appropriate engineering solution to widening and stabilizing the causeway, given some of the refinements we have suggested above. We are concerned however about making sure the construction is done in accordance with the plans and specifications that have been developed. We might suggest that we be involved to observe construction periodically to make sure this is the case, or otherwise you should make sure that their engineer is properly retained and positioned to certify upon completion that the project has been constructed in accordance with the approved plans and specifications.

Our overall conclusion is that if improvements of any kind are to be made to the causeway then they ought to be the best and most long-lasting possible for the effort made and expense invested. Therefore we recommend Option 1 which goes outside the existing 50 foot easement as it will unquestionably improve the final product. We presume the applicant will obtain the necessary permits and approvals from other agencies/land owners necessary to accomplish this.

Oct 4th

BIA board members went into mediation with the Woodlands Group. The purpose was to work out the differences on the causeway construction...

AND TRY TO SETTLE THE LAWSUIT ON THE CENTER DEVELOPMENT.

We had a hearing the next day with the judge and he would rule on the suit on just the causeway.

We were in mediation for over 8 hours. We feel as a board we are in a good position to stop them at this time. But we have no control over the Judges rulings. Our attorney asked us to put together a Christmas wish list of desires that we could accept that would settle the suit.

The first item on our list is for them to just go away. At the bottom of our list we would roll over and give up. We need to meet somewhere in the middle. We asked for the engineered construction plans for the causeway, a big cash infusion, a building to meet in and ground to build it on, for the center people to join our association, and no gate at their property

They countered with the following: We will build the new causeway correctly, a new gate for us, a new exit gate, the quarter acre next to the guard cabin, \$10,000 so that we can build our own building, AND we must give them a right-of-way at the gate property to make the third exit and allow them to exceed the 50ft right-of-way to build the crossway. Most of what they are giving us is what they have to give to meet what is required of them by the commissioners.

All day long our attorney asked for their engineered plans for building the crossway. They said they had them but not with them, they would get them for us Monday or sometime next week. After 6 1/2 hours, our attorney demanded the plans. The mediator went to the Woodlands Group with our demand then came back to us and said they don't have them yet but will get them next week. Then the mediator stated, "If you are stuck on this item, the Woodlands Group is ready to got to court tomorrow and ask the court to fine us for holding up the work on the CAUSEWAY". Our attorney said "See you tomorrow in court" and it was over after 8 1/2 hrs.

We showed up at court the next day and the Judge called the two attorneys into his chambers to see what had been agreed upon. He looked at the Woodlands Group attorney and said build it right or don't build it at all. Woodlands You have 48 hrs to produce the plans then, B.I.A. you have 48 hrs to review, then agree or we go back to court on Friday the 12th. It was over in 5

minutes. The Woodlands Group did say they would submit two plans: one to stay in the 50 ft width by building a retaining wall that will cost them \$235,000 and one to exceed the width to 72 ft to build it at a lower cost of \$135,000. Then it would be up to us to pick which one we prefer that they build.

At this point, with the legal funds the way they are

We are ready to fight this to the END

If you have not paid your legal assessment

PLEASE DO SO ASAP

Sept 27th 2007

Many of you may have seen the survey stakes along the cosway. Woodlands group is going ahead with work on the road. We asked our attorney to file paper work to stop them. We had a court date of the 25th of Sept. The Judge would not rule on it because we included the county in the complaint and that was in error because the county

ISSUED A BUILD PERMIT TO THE WOODLANDS FOR THE ROAD.

So again the county is writing their own rules. The Judge instructed that we need to file a new injunction in which we did. It is set for Oct 5th.

The judge suggested a break and instructed the attorneys to meet and work out the differences between the parties. Both attorneys agreed to go to mediation to solve the whole issue of the roads and center Island development.

The Judge also stated we can't stop them from working on the center of the island. They do the work at their own cost should they lose the appeal.

We have a sizable amount of money in the legal fund. If you have not paid your \$300.00 please do so immediately. We have a meeting set for Oct 4th to here their proposal to settle. If they lose this time our attorney assured us that they would just come at us again with a smaller development. We will meet and see what we can work out. If you have any comments please let us know ASAP

B.I.A. Board

Con Haycock

Printed From The Island Park News

2007-06-29

**Bills Island group files appeal of county decision allowing more island development
B.I.A. to hold fundraiser for legal fund**

By ELIZABETH LADEN

The Bills Island Homeowners Association filed an appeal Monday of the Board of Fremont County Commissioners decision to approve the Woodlands at Bills Island development. The appeal was filed in District Court in St. Anthony.

Reed Richman, board member of the Bills Island Homeowners Association, said Tuesday that the appeal is based on several areas where BIA does not believe the developer meets the Fremont County Development Codes requirements. These include access, fire safety, and protecting water quality.

Richman said BIA will host a community fundraiser to help boost its legal fund for the appeal. It will be a Dutch oven cook-out at the island's entrance, from 5 to 7 p. m. Saturday, July 28.

Richman said he hopes all Fremont County residents concerned about how the county is applying its development code will come to this fundraiser. Hopefully, he said, BIA will raise enough money to be able to help others who find themselves having to battle the county for responsible development.

In November 2006, the Fremont County Planning and Zoning Commission denied Utah businessman Ryan Davis' application to develop the Bills Island interior into a 42-lot subdivision, Woodlands at Bills Island. They believed the project failed to meet the code's absolute standards for access and were also concerned about fire safety and water quality.

Davis appealed the decision to the County Commission, which held its appeal hearing in April.

Commissioners then held work sessions to discuss the appeal testimony. In June, the commissioners decided to allow Davis to proceed with his development.

The code states, "All developments containing six or more dwelling units or with a distance of more than 660 feet from a public road which is maintained on a year-round basis shall provide a minimum of two points of ingress and egress from the public road or highway serving the development. Loop systems that return to a single point of access to the public road or highway may be acceptable for relatively small developments (1,000 or less projected ADT - Average Daily Trips)."

The requirement for a development more than 660 feet from a public road to have two access points is an absolute standard in the code, meaning that the project must be denied. Woodland's main entrance is 1,667 feet from the county road to Bills Island.

The appeal hearing before Fremont County Commissioners Paul Romrell, Skip Hurt, and Don Trupp at the County Annex in St. Anthony devoured more than six hours time, with the developer and his team — as well as opponents to the project — bringing up many issues in addition to the main one — the failure to meet the absolute standard.

Around 35 people attended the appeal hearing.

Davis, his attorney — Chuck Homer of Idaho Falls — and several "expert" witnesses were able to steer the Fremont County Planning and Zoning Commission and the Fremont County Commission away from the absolute standard failure to discussions pertaining to the word, "may" in the second part of the standard — that the development may utilize the one road to the island as a loop road. The developer's team asserted to both commissions that they could improve the island's only access road to make it safe for their own buyers and the entire island community.

They said they could obtain a permit from the Army Corps of Engineers to add more land to the isthmus connecting the island to the mainland, and widen the road so it would have three 12-ft. lanes.

In the November meeting, their plan was to widen the road to 31-ft., which is still much narrower than the county's width standard of at least 60 ft.

The developer's team found another loophole in the code — the definition of a large-scale development being one that is 59 lots or more, to assert that their 42-lot subdivision should be considered a "small" development.

And, they asserted that data from traffic counters they placed on the island the week after the Fourth of July holiday last summer shows that there were fewer than 1,000 ADT's on the isthmus.

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employee to place a traffic counter on the road to the island, and his report, from counts taken on July 4, 2006 and the preceding week, shows close to 1,000 ADT's on some days.

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There are 301 lots on platted on the Island now, and 197 are developed, so BIA members said ADT's at build-out will be well over 1,000 even without Woodlands traffic.

Hours of discussion were spent at both hearings on the developer's proposal to use enhanced septic tanks instead of building a central sewer supply, concerns about his wells drawing down the island's water supply, and concerns about his proposal to pump water out of the reservoir, which is either frozen or depleted many months of the year, as a back up firefighting supply.

The developer, builders, and Realtor Brett Whitaker, also an Island Park volunteer fireman, testified that the subdivision's roads and homesites would make the island safer because trees would be removed from the island's heavily wooded interior, making it less vulnerable to wildfires.

County Attorney Karl Lewies' findings of fact and conclusions of law played a huge part in the commissioners decision' to approve the project. Part of Lewies' defense of the approval is based on what he calls the "Gunbarrel rule." This is a ruling he wrote in findings of facts and conclusions of law for the Gunbarrel at Shotgun Villages development, which the County Commission denied. The rule basically says that a developer can bring inadequate roads up to current county standards "as far as reasonably possible." Because of this rule, Gunbarrel's developer, Gregg Williams, resubmitted plans to subdivide land he owns adjacent to the Shotgun Villages. A public hearing on the development has not yet been scheduled.

The County Commission has not adopted the Gunbarrel rule as county policy or added it to the development code.

Some county roads cannot be widened to meet today's standards because widening them would encroach on private property, or for some other reason there is no room to widen them, as is the case with the Bills Island causeway.

Lewies' conclusions also support the Woodlands plan for fire protection. And, they support the plan to use individual septic tanks in the development, despite concerns opponents have expressed about water pollution from failed septic systems.

And, Lewies supports the developer's expert testimony about traffic counts on the island and dismisses testimony provided by a Bills Island Association expert witness. The developer's expert looked at traffic counts during a non -holiday period and found them to indicate less than 1,000 "average daily trips. (ADT)" The development code states that loop roads can serve developments if they accommodate less than 1,000 ADT's The BIA witness counted traffic on a holiday weekend, and the count exceeded 1,000 ADT. The count was done at a busy time to

illustrate what it could be at build-out, but Lewies did not agree with this method.

The development code does not define loop road or explain the meaning of an average daily trip. In addition, old copies of the development code state that a loop road can satisfy the two-access point rule if the ADT's are 100, not 1,000.

And, loop roads are generally roads that surround a development that people turn off to reach their driveways. The so-called "loop" road to Woodlands is a narrow one-way road on the causeway that two vehicles can barely use at once. It ends at a T intersection, at which people can turn left or right onto the real loop road that provides access to the original Island. If Woodlands is developed, this intersection will become a three-way, with the third option being to head to Woodland's entrance.

A condition of the Woodlands approval is that the causeway be widened to have a 36 ft. surface and two feet for shoulders. Lewies' findings state that this wider road will accommodate three-way traffic.

In his findings, Lewies notes that at the public hearing, no one questioned the 1,000 ADT threshold.

The developer and his team, as well as supporters from Fremont County and other states, said he is committed to doing high quality projects. If the island is to be developed they said, there couldn't be a better person to manage the project.

Sugar City developer Mike Vickers tried to develop the interior in 2005, but his application was turned down because of access and safety issues. But in a 2006 appeal hearing, rather than addressing the access, County Attorney Karl Lewies found that Vickers' proposal to develop 59 lots was in error. Vickers had purchased a TDR (transfer of development rights) on 70 acres of wetlands from a landowner on Henry's Lake Flat to raise the total acreage of his proposal so he could build more lots that would normally be allowed on 92 acres — 37 lots. But the Planning Department erroneously treated the wetlands as normal land, allowing more lots to be platted on the island than there should have been. Rather than reduce the development's size and reapply, Vickers sold the land with the TDR to Davis.

APR 12th 07

By ELIZABETH LADEN

Vague language in the Fremont County Development Code has caused hours of time to be spent debating the merits of a development proposed for the interior of Bills Island in Island Park. The 42-lot Woodlands at Bills Island subdivision does not appear to meet an absolute standard in the development code — that certain developments must have two access points.

Developments that do not meet even one absolute standard are supposed to be denied, according to the county's code. And for that reason, in November, the Fremont County Planning and Zoning Commission denied Utah developer Ryan Davis' application to develop 42 lots in the

middle of the island.

Davis appealed the decision. The appeal hearing before Fremont County Commissioners Paul Romrell, Skip Hurt, and Don Trupp at the County Annex in St. Anthony Tuesday devoured more than six hours time, with the developer and his team — as well as opponents to the project — bringing up many issues in addition to the main one — the failure to meet the absolute standard.

Around 35 people attended the appeal hearing.

The Planning and Zoning Commission's denial was based on a section of the development code that states:

"All developments containing six or more dwelling units or with a distance of more than 660 feet from a public road which is maintained on a year-round basis shall provide a minimum of two points of ingress and egress from the public road or highway serving the development. Loop systems that return to a single point of access to the public road or highway may be acceptable for relatively small developments (1,000 or less projected ADT - Average Daily Trips)."

The requirement for a development more than 660 feet from a public road to have two access points is an absolute standard in the code, meaning that the project must be denied. Woodland's main entrance is 1,667 feet from the county road to Bills Island.

Nonetheless, Davis, his attorney — Chuck Homer of Idaho Falls — and several “expert” witnesses were able to steer the Fremont County Planning and Zoning Commission and the Fremont County Commission away from the absolute standard failure to discussions pertaining to the word, “may” in the second part of the standard — that the development may utilize the one road to the island as a loop road. The developer's team asserted to both commissions that they could improve the island's only access road to make it safe for their own buyers and the entire island community.

They said they could obtain a permit from the Army Corps of Engineers to add more land to the isthmus connecting the island to the mainland, and widen the road so it would have three 12-ft. lanes.

In the November meeting, their plan was to widen the road to 31-ft., which is still much narrower than the county's width standard of at least 60 ft.

The developer's team found another loophole in the code — the definition of a large-scale development being one that is 59 lots or more, to assert that their 42-lot subdivision should be considered a “small” development.

And, they asserted that data from traffic counters they placed on the island the week after the Fourth of July holiday last summer shows that there were fewer than 1,000 ADT's on the isthmus.

The Bills Island Homeowners Association, which opposes Woodlands and is represented by

attorney Reed Larsen, hired an Idaho Department of Transportation employee to place a traffic counter on the road to the island, and his report, from counts taken on July 4, 2006 and the preceding week, shows close to 1,000 ADT's on some days.

The developer argued that a count during a peak period for travel to the island does not give a balanced picture of traffic. Opponents argued that the ADT counts are supposed to be estimates of what will happen at a development's build out.

There are 301 lots on platted on the Island now, and 197 are developed, so BIA members said ADT's at build-out will be well over 1,000 even without Woodlands traffic.

Hours of discussion were spent at both hearings on the developer's proposal to use enhanced septic tanks instead of building a central sewer supply, concerns about his wells drawing down the island's water supply, and concerns about his proposal to pump water out of the reservoir, which is either frozen or depleted many months of the year, as a back up firefighting supply.

The developer, builders, and Realtor Brett Whitaker, also an Island Park volunteer fireman, testified that the subdivision's roads and homesites would make the island safer because trees would be removed from the island's heavily wooded interior, making it less vulnerable to wildfires.

Opponents to Woodlands have long said the interior is what makes the island so special, and a main reason they purchased their lots on the island was that Ivan P. Bills, the Utah man who developed the island, had promised that the interior would never be developed. Bills, however, never set the interior aside as open space, and his original plans show roads to the center.

The developer and his team, as well as supporters from Fremont County and other states, said he is committed to doing high quality projects. If the island is to be developed they said, there couldn't be a better person to manage the project.

Sugar City developer Mike Vickers tried to develop the interior in 2005, but his application was turned down because of access and safety issues. But in a 2006 appeal hearing, rather than addressing the access, County Attorney Karl Lewies found that Vickers' proposal to develop 59 lots was in error. Vickers had purchased a TDR (transfer of development rights) on 70 acres of wetlands from a landowner on Henry's Lake Flat to raise the total acreage of his proposal so he could build more lots that would normally be allowed on 92 acres — 37 lots. But the Planning Department erroneously treated the wetlands as normal land, allowing more lots to be platted on the island than there should have been. Rather than reduce the development's size and reapply, Vickers sold the land with the TDR to Davis.

Commissioners will mull the testimony in work sessions, and study the appeal hearing's transcript and County Attorney Karl Lewies findings of fact and conclusions of law based on the hearing testimony, before making a decision by their 60 day deadline.

After the testimony ended, Commission Chairman Paul Romrell said the county is in the process of "tweaking the development code. We invite you to be involved and tell the Planning and

Zoning Commission what you think about the code and what needs to change.”

Several developers have appealed Planning and Zoning Commission decisions in recent months, and Romrell said his commission is “trying to do one a month — we have five or six pending. We are finalizing the one we did last month (Gunbarrel at Shotgun). It is a busy time for us. We take it seriously. This is the most beautiful county in Idaho. What we do in the next few months will dictate what Fremont County looks like forever.”

Commissioners set a work session on the development for 9 a. m. Friday, April 13 in the Commission Room at the courthouse. The public can attend, but they cannot talk, since the public comment period ended with Tuesday’s hearing

March 26th 07

Tuesday April 10th 2007

This is the date for the Fremont County Commission to review the Woodland’s request to develop the center Island. Your attendance is needed. If you can attend the more people we have there the better. You may comment at this meeting. If you would like to send a letter of comment please do so, but keep your comments on issues. Water, sewer or fire safety. Written comments must be in by 4th of April. County Clerks Office 151 W 1st N St Anthony ID 83445

Fremont County Commission

Tuesday April 10th, 2007

9:00 am

Fremont Co. Annex Building

125 N Bridge St

St. Anthony ID.

Fremont County Commission

Tuesday April 10th, 2007

9:00 am

Fremont Co. Annex Building

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St. Anthony ID.

Feb 14-06

P & Z to consider development moratorium next month

Advertisement

By *ELIZABETH LADEN*

Fremont County Planning Administrator Jeff Patlovich said today that the Planning and Zoning Commission will discuss an interim moratorium on new development at its next regular meeting, set for 6 p. m. Monday, March 9 at the County Annex on Bridge Street.

Planning Commissioner Kip Martindale requested the moratorium during the Monday, Feb. 12 Planning and Zoning Commission meeting. Martindale's motion asking for a vote on imposing the moratorium for one year died for lack of a second after Patlovich said he would put the item on next month's agenda.

In making the motion, Martindale read a prepared statement that asks for the interim moratorium while the county's comprehensive plan and building code are being updated. Martindale stated that such an action is allowed by the state's Local Land Use Planning Act, which states, "If a governing board finds that a plan, a plan component, or an amendment to a plan is being prepared for its jurisdiction, it may adopt an interim moratorium upon the issuance of selected classes of permits if ... the governing board finds and states in writing that an imminent peril to the public health, safety, or welfare requires the adoption of an interim moratorium. An interim ordinance or moratorium shall state a definite period of time, not to exceed one calendar year, when it shall be in full force and effect."

Martindale stated that he made the motion "because the pace of current projects would not be in

compliance with the new plan. Members of the Planning and Zoning Commission cannot appropriately evaluate each project as well as make revisions to the comprehensive plan and development code. For example we have transfers of development rights in our code that have not often been used. When used properly, TDR's in other states and counties have brought private property owners \$7,500 to \$200,000 per acre."

Patlovich said if the Planning and Zoning Commission supports the moratorium, the Fremont County Commission would hold a public hearing on the measure.

If the county commission decides to impose a moratorium, it would do so by an ordinance.

In the last few months, other planning commissioners and members of the Fremont County Commission, have casually discussed the idea of a moratorium on Class 2 permits until the planning document revision is completed.

Online Poll Results: Do you support a one-year moratorium on development in Fremont County?

Yes:	80%
No:	15%
I support a moratorium, but for less than one year.:	5%

Jan 24 07

Printed From The Island Park News
2007-01-19

We're a county in crisis

Valley Perspectives by Chan Atchley

We are a county in crisis. We are like cows contentedly chewing our cud, oblivious to the wolves circling for the kill.

County government is in danger of being paralyzed by ever increasing development applications and lengthy approval and appeals timelines. Decisions are being made in the heat of the moment that are not good for county government and citizens.

Skeptical? Here is a short list of what I have encountered.

While conducting an appeal, the county commissioners overturned a P & Z decision to deny a class II permit. The commissioners accepted the applicant's claim that a Forest Service road was a private driveway and adequate for firefighting equipment to get to the resort. In reality it is a single lane road more than a mile long, accessible only by 4-wheel drive vehicles most of the year and cannot be safely accessed by fire fighting equipment any time.

Early last year, a permit was issued for remodeling an old barn into a single family dwelling. However, from the outset, it was known that the developer was planning a bed and breakfast with the capability of handling wedding receptions. Neighbors whose home and outbuildings are overshadowed by the huge structure just 35 feet from their property line had to hire an attorney to pressure the county Building Department to red tag the construction until a permit was presented to the P & Z. Application for the permit was filed about six months later in December 2006. The public hearing requesting the upgrade was held January 8, 2007 and the permit was denied. In the meantime, the neighbors, who are working hard to put two children through college, spent thousands of dollars in legal fees trying to get the county to enforce its own building code.

I was one of 49 people to witness the appeal hearing on the Shadow Ridge at Stephens Ranch subdivision. Most were opposed to the project as well as more than 50 other individuals who signed a petition. It was not easy to sit still as the developer's attorney talked about the wonderful plans for protecting wildlife while he downplayed the importance of the migratory elk corridor. Or listening to how infrastructure costs such as rebuilding the Fish Creek Road were minimal while the costs of additional services such as fire and police protection, solid waste disposal, and schools were barely mentioned. Again, individuals appealing the development spent thousands of dollars trying to insure that the county commissioners consider all consequences of the development.

County commissioners are overloaded. Under normal conditions the job is supposed to be half time, but now nearly always exceeds that target. Add

to it the time required for appeals - there are already four more lined up to be heard in as many months - and we have a real problem. The commissioners are now working full time while other problems requiring attention loom on the horizon. By some accounts, they've already spent more than 60 hours on Shadow Ridge appeals and that may double before they are finished. Right or wrong, they must make a decision 60 days after hearing an appeal.

Obviously, strengthening the comprehensive plan and closing loopholes in the development code would simplify the evaluation process. There would be fewer appeals and enforcement of the code would be enhanced. Therefore, we must dramatically speed up the comprehensive plan and the code revision process. We can't afford to let our county government become so preoccupied with development that other issues are not adequately addressed.

So what can you do? I know, I'm beginning to sound like a broken record, but please go to county meetings. Learn how we can intelligently meet the challenges of growth in a way that will benefit all of us, not just developers.

Our way of life is as endangered as our wildlife and will disappear if we don't find ways to protect it. Once it disappears, it will be gone forever.

Chan Atchley

Jan 18th 07

Fremont County Commissioners will review the denial of the Woodlands at Bills Island Development project Apr 10th at 9:00 A.M. in the county Annex Building on Main Street in St Anthony. Everyone is welcome to attend. You are welcome to comment at this meeting. The board members will be in attendance and we will report any and all info on the web page ASAP.

UPDATE on Snow conditions

Snow conditions are great but there is an Avalanche warning in the mountain areas. Please be aware of the high risk of avalanche. Check with local authorities before going into the mountain areas. Three people were killed in avalanches during the New Year Holiday.

Snowmobile Safety

An 11-year-old boy must have had a guardian angel last weekend when he crashed his snowmobile and slid under a flatbed truck — with no serious injuries.

According to witnesses, the boy was snowmobiling out of a side road at the Island Park Village Resort onto the upper Big Springs Road on Friday, December 29 when he ran into a truck owned

by an Island Park business. He was then run over by a flatbed trailer the truck was hauling.

He was flown by helicopter to the Eastern Idaho Regional Medical Center in Idaho Falls, and released soon after with no serious injuries

Please keep safety in mind

Nov 14 06

P and Z sinks Bills Island plan

By ELIZABETH LADEN

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Island Park News

Advertisement

In a unanimous decision Monday, the Fremont County Planning and Zoning Commission denied a Class II permit to Salt Lake City developer Ryan Davis to put 42 lots on the 91.8 acres in the middle of Bills Island.

According to Molly Knox, the Planning Department's administrative assistant, commissioners denied the project because Planning Administrator Jeff Patlovich's findings of fact stated that it does not meet the development code's requirement that developments with six or more lots have two access points 670 feet or more from a county road. The development's proposed access would have been at a single point from a loop road that goes around the island, and which is more than 670 feet from the county road that accesses the island.

In 2005, the P and Z Commission turned down Sugar City developer Mike Vickers' application to develop the island because of several safety issues. Then, in January this year, the County Commission denied Vickers' appeal of the P and Z Commission's decision because the P and Z administrator at the time had made a mistake in the number of lots that could be built in the island's interior.

The commission heard more than three hours of testimony from the new developer's representatives and the public at its regular meeting in October. Bills Island residents and others have expressed concerns about the development polluting the Island Park Reservoir, creating too much traffic, not being safe if there is a fire, and harming wildlife.

Nov 11 06

Island plan a washout

Woodlands  project may be rejected

ST. ANTHONY – A lack of adequate access to Bills Island from the nearest public road may halt a 42-lot subdivision proposed for the interior of the island.

The Fremont County Planning and Zoning Commission voted Monday night that the access proposed in the Woodlands preliminary plat fails to meet the county's performance standard requiring two accesses into a subdivision.

The access performance standard is considered an absolute standard in the county's development code, which means if the project fails to meet the standard, the project can't be approved.

The commission was meeting in a work session when the vote was taken. A formal vote to accept or reject the preliminary plat will be taken as scheduled at a meeting Monday.

As proposed, the Woodlands would be accessed via a widened and improved causeway to the island and a connecting loop road around the outer edge of the island.

While the county's code calls for a minimum of two accesses into subdivisions of six lots or more, the code also says loop roads may be allowed in smaller developments if traffic can be shown to be less than 1,000 projected average daily traffic.

At an earlier hearing the developer produced an engineer's survey that showed that the average daily traffic would be less than 1,000.

The planning commission also was concerned the loop road, as proposed, didn't "return to a single point of access to a public road" as the code provides. Rather, it connects to a private road.

The Woodlands project was proposed once before and rejected by the planning commission on life safety issues. In an appeal to the Fremont County Commission, the commission didn't reject the loop road proposal made by the developer, County Attorney Karl Lewies said, though the plat was rejected by the county commission due to failure to comply with the density provisions of the code.

Lewies said the county commission ruling "might be considered precedence" by allowing the access as proposed in the first Woodlands preliminary plat.

Lewies also encouraged the planning panel to ignore issues related to the ownership of the causeway, predicting legal battles over ownership between the developer and I.P. Bills Island Association will be lengthy.

Rather, the planning panel is required only to determine if the proposal meets the county development code, regardless of actual ownership of the causeway, which will likely be determined in court.

Planning Administrator Jeff Patlovich has prepared findings of fact based on the work session vote for the planning commission to review and approve at a meeting Monday at 6 p.m. at the Fremont County Courthouse in St. Anthony.

P & Z delays Bills Island decision

Advertisement

Salt Lake City developer Ryan Davis will have to wait until next month to see if the county Planning and Zoning Commission will approve his plan to put 42 lots on the 91.8 acres in the middle of Bills Island.

On Monday — the county Planning and Zoning Commission decided to wait until Monday, November 6 to discuss the development proposal and possibly vote on Davis' Class 2 application to subdivide the acreage.

The commission delayed the decision after hearing more than three hours of testimony from the developer's representatives and the public. They were also given a pile of documents to review that had not arrived at the county in time to be included in the information packet they review before their meetings. They wanted time to digest all the testimony and all the new written information, Planning Administrator Jeff Patlovich said Tuesday.

Davis wants to transfer development rights from 70 acres of wetlands on Henry's Lake Flat, many miles from Bills Island, so he can bring the total acreage of "developable" land to 160 acres and be able to put 42 lots on the 91.8 acres. Each lot would have an individual septic system and well. Without the transfer, the most lots the development could have would be around 36.

Sugar City developer Mike Vickers had a similar plan that was turned down this January because it had too many lots.

Both developers have faced significant protest from long time Bills Island residents and others who have expressed concerns about the development polluting the Island Park Reservoir, creating too much traffic, not being safe if there is a fire, and harming wildlife.

The November 6 meeting starts at 6 p. m in the County Annex on Bridge Street in St. Anthony.

[Back](#)

Printed From The Island Park News 2007-06-29 Bills Island group files appeal of county decision allowing more island development

B.I.A. to hold fundraiser for legal fund

By ELIZABETH LADEN

The Bills Island Homeowners Association filed an appeal Monday of the Board of Fremont County Commissioners decision to approve the Woodlands at Bills Island development. The appeal was filed in District Court in St. Anthony.

Reed Richman, board member of the Bills Island Homeowners Association, said Tuesday that the appeal is based on several areas where BIA does not believe the developer meets the Fremont

County Development Codes requirements. These include access, fire safety, and protecting water quality.

Richman said BIA will host a community fundraiser to help boost its legal fund for the appeal. It will be a Dutch oven cook-out at the island's entrance, from 5 to 7 p. m. Saturday, July 28.

Richman said he hopes all Fremont County residents concerned about how the county is applying its development code will come to this fundraiser. Hopefully, he said, BIA will raise enough money to be able to help others who find themselves having to battle the county for responsible development.

In November 2006, the Fremont County Planning and Zoning Commission denied Utah businessman Ryan Davis' application to develop the Bills Island interior into a 42-lot subdivision, Woodlands at Bills Island. They believed the project failed to meet the code's absolute standards for access and were also concerned about fire safety and water quality.

Davis appealed the decision to the County Commission, which held its appeal hearing in April. Commissioners then held work sessions to discuss the appeal testimony. In June, the commissioners decided to allow Davis to proceed with his development.

The code states, "All developments containing six or more dwelling units or with a distance of more than 660 feet from a public road which is maintained on a year-round basis shall provide a minimum of two points of ingress and egress from the public road or highway serving the development. Loop systems that return to a single point of access to the public road or highway may be acceptable for relatively small developments (1,000 or less projected ADT - Average Daily Trips)."

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County Attorney Karl Lewies' findings of fact and conclusions of law played a huge part in the commissioners decision' to approve the project. Part of Lewies' defense of the approval is based on what he calls the "Gunbarrel rule." This is a ruling he wrote in findings of facts and conclusions of law for the Gunbarrel at Shotgun Villages development, which the County Commission denied. The rule basically says that a developer can bring inadequate roads up to current county standards "as far as reasonably possible." Because of this rule, Gunbarrel's developer, Gregg Williams, resubmitted plans to subdivide land he owns adjacent to the Shotgun Villages. A public hearing on the development has not yet been scheduled.

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The developer and his team, as well as supporters from Fremont County and other states, said he is committed to doing high quality projects. If the island is to be developed they said, there couldn't be a better person to manage the project.

Sugar City developer Mike Vickers tried to develop the interior in 2005, but his application was turned down because of access and safety issues. But in a 2006 appeal hearing, rather than addressing the access, County Attorney Karl Lewies found that Vickers' proposal to develop 59 lots was in error. Vickers had purchased a TDR (transfer of development rights) on 70 acres of wetlands from a landowner on Henry's Lake Flat to raise the total acreage of his proposal so he could build more lots that would normally be allowed on 92 acres — 37 lots. But the Planning Department erroneously treated the wetlands as normal land, allowing more lots to be platted on

the island than there should have been. Rather than reduce the development's size and reapply, Vickers sold the land with the TDR to Davis.

CURRENT INNER ISLAND ACTIVITIES

July 21st

Hello to all

Check the WHAT'S NEW tab for regular BIA info

It seems as a board we have kind of taken a break through the winter but we are still here and we are getting ready for the summer activities on the island.

The gate is working again for the summer. We had a little issue with the exit last fall so we did have to leave the gate up all winter. We tried to go in and out of the same gate last year but the old system didn't have the ability to distinguish loop one from loop two. There are loop sensors in the ground that detect cars as they drive through and lower the gate. We added a second one that will open the gate as you drive out and then the first one was supposed to close it, but it could not handle the second loop. Hopefully the new system will handle it, if not we will put it on the old exit and use it there. We are still planning on using one gate this summer but we are not sure if it will be too congested at the gate during the busy weekends. We ask that you be patient with us during the trial time.

You will need your gate key to get in for now. The phone system is in and has been tested on a small trial bases. We are adding the phone numbers that we collected last year and we will try to get the phone system going before the busy summer. If your home phone or cell phone number has not changed from last year you should be ready to go as soon as we get it running. If you are current on your dues you will be allowed to use the phone system free as part of being a paid up member.

Oct 2nd

Here is the Boards response to Dave Hume's letter.

DEAR BILLS ISLAND PROPERTY OWNER:

WE, THE DUES PAYING BOARD MEMBERS, WOULD LIKE TO CLEAR UP SOME OF THE CONTROVERSY OVER THE CENTER ISLAND DEVELOPMENT. WE WILL START FEB. 1st, 2007, AFTER THE WOODLANDS (i.e. "THE RICHEY GROUP" FEATURING, RYAN DAVIS, PROJECT MANAGER, JASON NIETT & PAUL RICHEY) BOUGHT THE PROPERTY FROM THE WILDERNESS GROUP, BRENT CALL, ROY LEAVITT, JOLENE JENKINS, AND REED RICHMAN MET WITH RYAN DAVIS ON 2/1/07. OUR CONCERNS WERE THE SAME THEN AS NOW: SAFETY, ACCESS, WATER QUALITY AND DENSITY. MR. DAVIS STATED AT THAT TIME THE WOODLANDS WOULD JOIN THE HOME OWNERS ASSOCIATION, NOT HAVE A GATE AT THE ENTRANCE OF THE WOODLANDS DEVELOPMENT, HELP IMPROVE THE GATE AND ENTRANCE TO THE ISLAND, HELP WITH DRAFTING NEW C.C. & R.'S FOR THE ENTIRE ISLAND, WORK WITH AND DISCUSS WITH THE ISLAND ASSOCIATION ON HOW THE CAUSEWAY PROPERTY WOULD BE DEVELOPED, BUILD A PAVILION, HELP WITH UPDATING THE TRACTOR, SNOW BLOWER, FIRE TRUCK AND SECURITY CABIN. MR. DAVIS HAS BEEN ASKED EACH TIME THE BOARD MEMBERS HAVE MET WITH HIM IF THE RICHEY GROUP WOULD REDUCE THE NUMBER OF LOTS AND EACH TIME HE HAS REPLIED THEY WOULD NOT.

BRENT CALL AND REED RICHMAN MET BRIEFLY WITH MR. DAVIS AFTER THE P & Z HEARING FEB 11th 2007 AND AT THAT TIME MR. DAVIS STATED THAT THE RICHEY GROUP WOULD NOT BE MEMBERS OF THE ASSOCIATION, WOULD INSTALL A GATE AT THE ENTRANCE OF THE WOODLANDS DEVELOPMENT, WOULD NOT HELP IMPROVE THE GATE OR SECURITY CABIN, WOULD NOT HELP WITH THE ISLAND C. C.& R'S AS THEY WOULD HAVE THEIR OWN C.C. & R'S AND WOULD ALLOW RENTALS. MR. DAVIS OFFERED TEN THOUSAND DOLLARS TO BUILD A PAVILION, UPDATE THE GATE, IMPROVE THE SECURITY CABIN, UPDATE THE TRACTOR, SNOW BLOWER AND FIRE TRUCK. MR. DAVIS' COMMENT WAS "THAT'S THE BEST WE CAN DO".

AFTER P & Z DENIED THE DEVELOPMENT AND THE COUNTY COMMISSIONERS APPROVED THE DEVELOPMENT, THE B.I.A. ASSOCIATION FILED AN APPEAL WITH DISTRICT COURT. AT THE FIRST HEARING WITH JUDGE MOSS IN DISTRICT COURT, JUDGE MOSS STATED THAT THE WOODLANDS COULD BUILD THE CAUSEWAY "AT THEIR OWN RISK". WE, THE B.I.A. BOARD, AGREED TO A MEDIATION MEETING WITH WOODLANDS. WE MET AT BAKER & HARRIS OFFICES IN BLACKFOOT IDAHO ON OCTOBER 4, 2007. BOARD MEMBERS PRESENT WERE: BRENT CALL, CON HAYCOCK, JOLENE JENKINS, ROY LEAVITT, SCOTT WATSON, REED RICHMAN AND LEGAL COUNSEL REED LARSEN. IN THE WOODLANDS ROOM: RYAN DAVIS, CHARLES HOMER AND KARL LEWIES. MR. BAKER WENT BACK AND FORTH BETWEEN ROOMS FOR OVER EIGHT HOURS. THE B.I.A. BOARD KEPT ASKING FOR ENGINEERED DRAWINGS OF THE IMPROVEMENT OF THE CAUSEWAY. AS SET FORTH BY THE FREMONT COUNTY COMMISSIONERS UPON THEIR APPROVAL OF THE DEVELOPMENT. AFTER ABOUT EIGHT HOURS THE WOODLANDS ADMITTED THAT THEY DID NOT HAVE ANY DRAWINGS OF THE CAUSEWAY IMPROVEMENT. JUDGE MOSS THEN RULED THAT THE WOODLANDS MUST PRODUCE ENGINEERED

DRAWINGS TO COUNTY SPECIFICATIONS WITHIN 72 HOURS. THEN THE B.I.A. ASSOCIATION'S ENGINEER WOULD HAVE 72 HOURS TO REVIEW THE DRAWINGS AND APPROVE OR DISAPPROVE. WE THEN WENT BACK TO JUDGE MOSS'S COURT AND THE JUDGE RULED THAT THE WOODLANDS COULD PROCEED WITH CAUSEWAY CONSTRUCTION "AT THEIR OWN RISK". JUDGE MOSS ALSO RULED THAT THE WOODLANDS MUST POST A PERFORMANCE BOND WITH THE COUNTY TO INSURE THE WORK WAS DONE ACCORDING TO THE ENGINEERED DRAWINGS AND COMPLETED. THE WOODLANDS QUICKLY STARTED CONSTRUCTION OF THE CAUSEWAY, THEN IN LATE JANUARY 2008 THEY PETITIONED FREMONT COUNTY FOR THE RELEASE OF THE PERFORMANCE BOND. FREMONT COUNTY RETURNED THE PERFORMANCE BOND TO WOODLAND STATING THAT THE CAUSEWAY WAS FINISHED. THE FREMONT COUNTY ENGINEER WAS NEVER GIVEN ANY DRAWINGS OF THE CAUSEWAY AND WAS NOT EVEN MADE AWARE THAT THERE WAS ANY WORK BEING DONE ON THE CAUSEWAY SO THAT IT COULD BE INSPECTED. THE COUNTY ENGINEER NEVER SIGNED OFF ON THE CAUSEWAY CONSTRUCTION, SHE WAS NEVER ASKED!! B.I.A.'S ENGINEER, WINSTON DYER WAS NEVER CONTACTED AND ASKED TO SIGN OFF ON THE COMPLETION OF THE CONSTRUCTION OF THE CAUSEWAY.

WHEN BOARD MEMBER REED RICHMAN WAS CONTACTED AND INFORMED THAT FREMONT COUNTY WAS GIVING THE WOODLAND'S PERFORMANCE BOND BACK, HE CALLED MR. DAVIS AND ASKED IF THE CAUSEWAY WAS TRULY FINISHED. MR. DAVIS NEVER ANSWERED THE QUESTION AND FINALLY HUNG UP ON MR RICHMAN. MR. RICHMAN THEN CONTACTED THE COUNTY ENGINEER AND THE B.I.A. ENGINEER TO SEE IF THEY HAD INSPECTED AND SIGNED OFF ON THE CONSTRUCTION COMPLETION. BOTH ENGINEERS HAD NOT EVEN BEEN MADE AWARE OF THE FACT THAT THE WOODLANDS WAS GETTING THEIR BOND BACK.

THEN THE WOODLANDS SENT OUT A LETTER TO THE ASSOCIATION MEMBERS STATING, AMONG OTHER THINGS THAT THE CAUSEWAY WAS FINISHED.

ON APRIL 15th, 2008 BRENT CALL, CON HAYCOCK, JOLENE JENKINS, SCOTT WATSON, ROY LEAVITT AND REED RICHMAN MET WITH JASON NIETT AND PAUL RICHEY IN REED LARSEN'S OFFICE. RYAN DAVIS WOULD NOT ATTEND. BOTH JASON NIETT AND PAUL RICHEY INSISTED THAT THE CAUSEWAY WAS FINISHED? NOW LET US ASK, IS THE CAUSEWAY FINISHED? WHO IS GOING TO HOLD THE DEVELOPER ACCOUNTABLE? WE DON'T THINK THE COUNTY WILL. DOES THE ASSOCIATION WANT TO PICKUP THE BILL FOR FINISHING THE CAUSEWAY? WHAT ELSE WILL THE ASSOCIATION HAVE TO PAY FOR AFTER THE DEVELOPER GETS HIS MONEY AND RUNS? IS THE B.I.A. BOARD BEING UNREASONABLE AS STATED BY RYAN DAVIS? CAN ANYONE LOOK AT THE CAUSEWAY AND HONESTLY SAY THAT THERE ARE THREE TRAFFIC LANES AND GUARD RAILS? IS IT FINISHED? CAN WE REALLY TAKE THE DEVELOPER AT HIS WORD?? SHOULD WE WITHDRAW THE APPEAL FROM THE SUPREME COURT? ONCE AGAIN WHO IS GOING TO HOLD THE WOODLAND ACCOUNTABLE?

On August 11, 2008, after receiving Judge Brent Moss' decision, Brent Call, Con Haycock, Jolene Jenkins, Scott Watson, Roy Leavitt, Randy Hayes, and Reed Richman met with the legal counsel for the BIA, Reed Larsen and Ron Kerl. At this meeting, discussion included the likelihood of a successful appeal to the Idaho Supreme Court, the fact that the BIA will have no bargaining position should the appeal be lost, and the cost of the appeal to the BIA association members. BIA's counsel discussed with the board members at length the likelihood of a successful appeal. The cost of the appeal was determined to be between \$15,000 and \$20,000, of which \$11,000 was currently in the legal fund. Counsel informed the board members that the Supreme Court Justices would in all probability oversee arbitration between the BIA and the Woodlands before the suit comes before the bench. The seven board members voted unanimously that it was in the best interest of the BIA to proceed with the appeal.

We are willing to negotiate with the Woodlands. They need to just call and set up a meeting and bring their paper and pen ready to sign any agreements made at the meeting instead of saying they will consider all ideas. We, the Board, are trying to protect the island. We don't want to have to fix the problems that the developer leaves behind. They claim District 7 will inspect their sewer systems, does anyone really believe that?

Why are the Woodlands meeting with individuals on the island and not with the board? Some members on the island have met with the developer and had their own mediation meeting, yet refuse to be a member on the board and some of them don't pay BIA dues. How can they speak for anyone? Is it to break us up as an association? Of course it is. Once they stop the unity in the association then they can start to divide us.

There are rumors of the developer offering the Island a park, repair the roads around the island, fire hydrants, a large sum of a cash infusion, all of which are not true. Dave Hume did meet with two people, one of whom was the developer, and did get an agreement from the developer to pay a user fee but they did not sign the agreement. So here we have the same thing. They agreed to continue to discuss those items and as long as it goes their way they will keep discussing them, else they stop negotiations and say we are being unreasonable.

We can stop the litigation at anytime, and we will if the developer comes to the table with real commitment to settle the dispute and be ready to sign any agreement we make.

IF WE LET UP NOW WE WILL BE RUN OVER BY THE DEVELOPER.

WHO WILL MAKE THEM FOLLOW THE RULES SET DOWN BY LAW?

JUST LOOK AT THE CAUSEWAY FOR STARTERS.

They have had all summer to finish it but no they cut a hole in the center of the island to take our attention off the causeway.

As a board we may not stop them but if they don't build it right we will be there to protect the Island and make them do it right.

Why do we feel they need to contribute a cash amount?

Because the infrastructure around the center of the island is what makes the center ground as appealing as it is. Who has paid for the infrastructure? Everyone on the Island that has ever paid his or her dues or when you purchase your cabin it was a part of that price.

WHAT HAS THE CENTER ISLAND OWNERS EVER CONTRIBUTED TO THAT INFRASTRUCTURE? The answer is nothing.

If anyone in the center of the Island ever has a problem where will they go?

Straight to Terry and ask for help. Is he going to turn them down? Should he turn them down? We all know the value of Terry and Marg at the gate. They need to pay their share of the cost of having such people available on the Island to turn to.

We feel they need to join the association, pay dues and be a part of the association, then they can come to the meetings, express their concerns and hear our concerns, then we can all work together. When it's all said and done we are going to have to be neighbors and work together to keep the Island a special place for us all to enjoy.

P.S.

We just received notice that we have an arbitration meeting with the Supreme Court and the Woodlands Nov 4th. We will attend and be open to all offers to settle but we will be firm in protecting the Island and the B.I.A. association's interest.

THE B.I.A. BOARD
Brent Call

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208-558-7959

Aug 4th

Judge Moss Ruling

Friday Judge Moss ruled against the BIA. We now have to meet with our attorney to look at our options to determine where we go from here. We have 30 days to appeal the ruling to the Supreme Court. Please let us know your thoughts on this issue.

June 11th 08

Hello B.I.A.

We have three items for you to read.

- 1) Judge Moss Hearing**
- 2) Terry's surgery**
- 3) July 4th Island parade and boat parade**

1) The Board attended the hearing at the St Anthony courthouse with Judge Moss. Our attorney's presented our case very well, now we just wait for his ruling.

2) For your info Terry had knee surgery Tuesday the 10th. He is doing fine at this time. He will be home Friday. We wish him a speedy recovery. We need him on the Island. We would also like to wish Terry and Marg a happy 50th wedding anniversary on the 28th of June.

3) The last item is the July 4th parades. We would like to honor our service men and women. If you know of anyone that would like to ride in the B.I.A float in full dress uniform please give Jolene a call, 208-589-5050. We would like them to ride on the B.I.A boat to lead us around the island during the boat parade that night.

Hope to see all of you on the 4th. Let's hope for warm weather

May 23rd

To all B.I.A. Members

1-Judge Moss hearing

First item we have is to let you know that Judge Moss has moved the hearing for the inner island back to June 10th 2pm. We had hoped he would have his ruling by the July 4th but it doesn't look like it will happen.

2- FRIDAY July 4th activities

Our annual meeting and activities were approved last year for Friday July 4th. We will start with our annual parade at 9:30 am. Start lining up at 9:00 at the top of the causeway. Decorate your boat, 4 wheelers, bikes or anything you have and come and join us. Parents there will be a trailer for you to ride on to follow your little ones around the loop should they not make it all the way. We will stop at the Rexburg boat club for a short refreshment break.

Our annual membership meeting will be at 12:30pm at Peterson's shop lot #178.

PLEASE DO NOT PARK ON PRIVATE PROPERTY

2008 dues are payable at this time.

YOUR DUES MUST BE PAID IN FULL TO HAVE VOTING RIGHTS

Annual meeting Agenda

A- Verification of a Quorum

B- Discussion on increase of Dues

C- Replacement of Snow Blower- Removal of fire truck for the winter

D- Update of Gate and Card reader

E- Consideration of new Home Owner Bylaws

F- Election of two board members

G- Inner Island update

This meeting will last approximately 1hr.

Dutch Oven Dinner- BBQ Chicken, Potatoes, Beans, and Cobbler with a scoop of ice cream will start at 5:30 at the same place. We are planning to feed 400 people. We ask that you bring a **salad OR Two**. Plates will be provided.

Your whole group is welcome.

Fee is by donation.

We will end with a boat parade at 8pm. Gather inside the cove. Decorate your boat. Look for the flag on the dock and the Sheriffs Boat. He will lead us around the island to Lake Side for the Fireworks at dusk.

APRIL 16th

We had the opportunity to meet with the Woodlands Group Tuesday April 15th. The purpose of the meeting was to find common ground to settle the lawsuit between B.I.A., Fremont Co. and the Woodlands. Any agreement between the parties has to be done before Judge Moss rules on the suit and all litigation must be dropped. At this time we as a board, with direction from the Association members feel it is not in our best interest to settle before hearing the ruling from Judge Moss. Please feel free to email me or call with your comments.

Con Haycock

208-431-0835

chaycock@pmt.org

BIA has received an offer to settle the dispute between Woodlands and BIA. Woodlands' offer is as follows:

- 1) The Woodlands will donate the property, approximately one acre, that lies in between the guard shack and the existing BIA boat ramp to the BIA for the mutual use of all BIA homeowners on the Island.
- 2) The Woodlands will donate \$25,000 to the BIA to construct a pavilion on the property donated by The Woodlands.
- 3) We propose that the remaining money in the legal fund be returned to the homeowners.
- 4) The Woodlands will replace and reconstruct the entry gate near the guard shack. This gate will have an arch that will be made from large timber, the gate itself will be metal, similar to the gate that is at Stevens Ranch.
- 5) As The Woodlands has indicated before, The Woodlands will agree to pay its proportionate cost to maintain common roads, facilities, and property. In the past the BIA has indicated that this can be done through paying a user fee or through joining the BIA, we are amenable to either scenario.
- 6) In effort to show good faith, we ask that all litigation by the BIA be withdrawn, the claims dismissed and released, and that concerns be worked out through reasonable means.
- 7) Establish a mandatory HOA to govern The Woodlands and existing homeowners, with CC&R's that will provide for attractive site-built homes or cabins.

- 8) Establish a 50' setback between The Woodlands and existing homeowners on the Island so that existing wells, structures, and the impact on the use of existing property owners' property is minimized, in which 50' there can be no structure, fence or other improvement built.
- 9) Establish a 100' setback for any septic system within The Woodlands so that all Woodlands septic tanks must be at least 100' from the boundary of any existing homeowners property.
- 10) Provide that all roads within The Woodlands be maintained by The Woodlands so that there is no economic impact or burden on existing homeowners to maintain improvements within The Woodlands, this includes snow removal, road upkeep, etc.
- 11) Install a dry hydrant in Island Park Reservoir for the use of the Island Park fire district for the benefit of the entire Island, and also install yard hydrants within the Woodlands, and fire breaks within the Woodlands. This will improve the safety of the entire Island in the event that a fire ever breaks out on the Island.
- 12) Construct a central water system to service the Woodlands, eliminating the need for multiple wells to be drilled on the property.
- 13) As we said that we would, we have improved the Causeway to three lanes. We will add a layer of aggregate to the Causeway and will construct guard rails as required by the County.
- 14) This offer is to be accepted by BIA before the May hearing.

APRIL 10th 2008

Bills Island Homeowner Association P.O. Box 344

██████████
Dear Property Owners, Recently we were notified that the Woodland Development Group purchased a lot in the

Welling Addition. They paid the purchase price for the lot and paid all BIA and Welling dues, in addition to the legal fund assessment. By doing so, they became members of our association. Within a few days we received a demand letter, from their attorney, asking for all of our association documents, all minutes of annual meetings held, bylaws, Articles of Incorporation and C & R records and any changes that have been made, names and addresses of all board members. They asked for these records for the past seven years. Since we are a public organization and they are entitled to this information we sent them approximately 875 pages of documents.

As a board, we try to manage the association like a business. An independent certified public accountant firm audits all our financial records systematically each year and provides a financial report at our annual meetings. Our secretary/treasurer writes all checks but does not have check signing authority. All checks are approved and signed by two board members. All meetings have minutes taken, reread at the next meeting and approved by the board. At our annual meeting we have a voting quorum of members present to conduct business. All business is presented to the membership for their approval, which is done by motion, seconded, and then voted upon. New business from the floor is discussed and voted on the same way. Any member of our association has voting rights in these meetings. Everything is done up front and in a business-like manner. We have a legal firm that audits what we do and how we do it. We have a dedicated board that works hard for the association to keep things moving smoothly.

Recently Woodlands sent a letter to the Bills Island membership. The intent of this letter was to discredit the BIA board and try to get association members to lose confidence in the board and the BIA. Their main interest is to dismantle the association's funding, especially the legal fund. Their goal is to get the BIA legal action stopped so they can proceed with their development. This is the Bills Island Association's position:

1. Fremont County Planning and Zoning denied The Woodlands development for failure to meet the building code ordinances.
2. Woodlands appealed to the county commissioners to overturn Planning and Zoning's decision.
3. After much discussion and debate in public comment meetings the County Commissioners and the county attorney met in a "no comment" work meeting and decided to bypass or tweak parts of the building code and approved the Woodlands application.
4. Bills Island Association appealed that decision to District Court for failure to meet county building code and fire safety regulations.
5. The building code is very explicit on access and fire safety.
6. The BIA is standing in the way of the developer until he either meets code or the court ruling is made.
7. The BIA is in a good position for this lawsuit. Judge Moss has briefs from Cooper and Larsen, the BIA attorney, briefs from the developer's attorney, Chuck Homer, and briefs from Fremont County attorney, Karl Lewies. He also has the rebuttal brief from BIA. The hearing date, for oral arguments, is May 20th The judge has approximately 30 days after that to make a decision.
8. We received a letter from the Woodlands dated March 19, 2008 where they asked us to drop the lawsuit in exchange for a small settlement. We feel we should wait for the court's decision. Hopefully we will have a decision before our annual meeting in July. The legal system moves very slowly.

We appreciate your patience and support both financially and emotionally. Please understand that all efforts by the developer are being done at their own peril. That includes the work on the causeway and any work on the development while the judicial review is proceeding.

Thank you,

Bills Island Association Board

Here is a request from the Woodlands

Brent and Con,

Paul Ritchie and myself (without Ryan) were wondering if we could come meet with you and the board to discuss the latest written proposal we sent regarding the interior development of the island. We would be fine in coming up to Pocatello to meet at Larsen's office if that is a convenient place to meet. The premise for the meeting is to simply try to discuss the points in the letter and see if a mutually beneficial solution can be reached.

If you are open to meeting with us, please let us know some potential dates that work for you.

Thanks,

Jayson

We send this to all Homeowners.

—We have had an opportunity to review your March 19, 2008, letter. We have also reviewed your previous demands which were made upon Bills Island Association for our corporate records. Traditionally, Bills Island Association has moved forward with directives and initiatives that are adopted at the annual meeting. Certainly, the Board has power to run the Association. However, the Board has always been sensitive to following the direction that the Board receives at the annual meeting.

The homeowners at the annual meeting have consistently, since the Wilderness Group and now since the Woodlands Group, been adamant that any development of the interior portion of the island would require compliance with all planning and zoning laws and ordinances and require compliance with all BIA rules for the private road. We have discussed on numerous occasions with you, Bills Island Association's view that the Woodlands subdivision does- not comply with Fremont County planning ordinance. The Planning and Zoning Commission agreed with us. The county commissioners disagreed. We believe that the judicial review that is going on is appropriate and ultimately that a court will require two points of ingress and egress to the subdivision to comply with the provisions of Fremont County Development Code Section KK which has been often discussed and with the Uniform Fire Code which also requires two points of ingress and egress.

You have provided certain items that are of interest for settlement discussion. However, there is no showing of a good faith to ask that all litigation be withdrawn and dismissed and released before there is any indication that there would be face to fact settlement negotiations. Such is not good faith and it is not reasonable.

We remain open to discussions concerning resolution, but also remain firm in following through with the expressed intent of the majority of the homeowner's association at the annual meeting to require the Woodlands to comply with all legal

requirements for development. We as an association believe that is the only way that safety and the future of the island can be preserved.

We welcome a meeting with you and would encourage you to bring up any items which you wish at the annual meeting over the 4th of July.

Sincerely,

B.I.A. Board

March 20th 2008

Welcome new B.I.A. members *(A must read)*

Status report on Bills Island Appeal

We would like to welcome the newest members to the island.

It is The Woodlands at Bill's Island L.L.C. They have purchase a lot in the Willing Addition. They have joined the B.I.A association and have paid their dues and have paid their legal fee assessment to oppose the center island development. Welcome and Thank you!

States Report Bill's Island Appeal:

B.I.A has filled its appeal and the opening brief. On Friday March 14th 2008 the county and Woodlands filed their response brief. Our attorney's will file a reply brief within the next 2 weeks. After the briefing is completed a hearing will be held before Judge Moss. This will probably be sometime in May. We remain confident in the merits of the appeal.

Please understand that all efforts by the developer, The Woodlands, are being done at their own peril. That includes the work on the causeway and any work on the development while the judicial review is proceeding.

If you have any question or concerns feel free to call your board members.

Brent Call

Con Haycock

Reed Richman.

Jolene Jenkins

Roy Leavitt

Randy Hayes

Scott Watson

February 18, 2008

To: Members of Bills Island Association

Please read our response to the letter you received and the court papers below then make up your mind as to the direction we are going. We hope you will find that we are in a good position going into court with the appeal. Email us with for feedback PLEASE

Subject: Response to the Woodlands Letter to BIA Property Owners

1. Woodlands Developers sent a letter to Property Owners on Bills Island stating their opinions. Remember- **“A product comes highly recommended by those that sell it.”** It was a propaganda letter and not all the facts stated were true. The letter is designed to under mine our Association, to divide and conquer us and is inappropriate conduct on their behalf. We as a board have been open with the Association. We have discussed this matter in our annual meeting and asked for your input. As a member, you voted unanimously on the direction we should go and you gave the board authority to make the day-to-day decisions and you voted to move ahead. If you have questions about the BIA or board it seems the people to ask is your board. We try to keep all information on our website and we are sending information updates to each member by mail. Please take the time to read it and be informed.

2. A 42-unit development is not a minimal or small development. It is the maximum or largest amount of dwelling units allowed to be built on the acreage Woodlands owns. It is not a small development, 6 or less is considered a small development.
3. The Woodlands Plot was denied by the Freemont County Planning and Zoning Board for failure to meet Freemont County Building Code for access, i.e. 2 points of Ingress and 2 points for Egress and uniform fire safety.
4. The developers group of qualified Attorneys and Consultants they hired to get their desired end results of getting the development approved did not change the end result. **Non-compliance to the building code was the result. Planning and Zoning denied their application.**
5. Our team of Attorneys and Engineers are just as qualified and they read and understand the Building Code rules and regulation and access is very defiant and is an absolute must comply to obtain approval. **The Developer did not meet the code.**
6. The Developer appealed to the County Commissioner to over ride the Planning and Zoning decision and figure a way to bypass that portion of the County Building Code. The development code is still in force but the County Commissioner has chosen to ignore the KK3 Section of the code and gave the developer approval for the application with restrictions, 29 absolutes they had to comply with including negotiations with Property Owners and BIA.
7. The causeway Riprapping had to be done while the reservoir was empty. Judge Moss, the BIA Board and Developer met to make decisions. Judge Moss ordered the developer to provide Engineering plans for the causeway widening within 48 hours and gave BIA 48 hours to review plans and then we went back to court. Judge Moss said widening the causeway would add to Bills Island. But it had no bearing or influence on the court case. The Developer could widen the causeway at his expense with the understanding it was at risk construction. If BIA wins in court the causeway construction is a donation to BIA. The Developer has no recourse.
8. BIA did indeed file an appeal in District Court. We are defending our right to hold county officials responsible to see they uphold the County Building Code and Laws and not be misled to interpret code different from its intent. Attorneys like to put their own twist to accomplish their own goals.
9. The Developers statement, **The Woodlands have agreed to accommodate most requests.** The examples they use are very misrepresented and are not true. BIA made several requests at mediation and they were all rejected including i.e. the loop road improvement, membership in BIA, user fee, update equipment, update gate and meeting facilities.
10. We as a Board have met with the developers on several occasions including mediation with Attorneys present. **Their comments have been, “we have deeper**

pockets than BIA". We told them having more money does not make you right or give you the right to change or alter the Building Code Laws that govern the place we live in and hold dear.

11. Encroachments of existing lots, wells, etc. Often time's property gets surveyed several times and Surveyors come up with different correction points. This is why set backs on Property lines are required to allow for difference in surveys. Courts will not disallow older surveys unless they are off an extra large amount.
12. Where do we go from here?

The Developers statement in their letter, about BIA, should be reversed. They say they will take it to the Supreme Court and have redirected money to do it. This is what they have told us all along. **They have deeper pockets.** Does this make them right? Does this give them the right to find loopholes to override or ignore or tweak the laws and rules we all live by? It's hard to interpret 2 ingress and 2 egress in any other way. The County Commissioners ignored or tweaked that law; **they need to be held accountable.** And that is the purpose for the Lawsuit.

Feb 14 08

To all B.I.A. members

This is the PETITIONER'S BRIEF for the appeal of the Woodlands development that we have filed with the court. Please take the time to read it completely and then make up your mind if we can stop them.

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IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

BILLS ISLAND ASSOCIATION,)

)

)

Petitioner,)

)

CASE NO. CV 07-381

vs.)

)

**PETITIONER’S BRIEF IN
SUPPORT OF JUDICIAL REVIEW**

FREMONT COUNTY, FREMONT COUNTY)

COMMISSIONERS; COMMISSIONER PAUL)

ROMRELL, COMMISSIONER DONALD)

TRUPP, and COMMISSIONER RONALD)

“SKIP” HURT, all named individually; and)

WOODLANDS AT BILLS ISLAND, LLC,)

)

Respondents.)

)

_____)

COMES NOW the Petitioner, Bills Island Association (hereinafter the “Association”), by and through its attorneys of record, and submit this brief to aid the Court in ruling upon the Association’s Amended Petition for Review now pending before it.

BACKGROUND

The Association has brought this Petition for Judicial Review of a June 11, 2007 decision of the Fremont County Board of Commissioners which overruled the Fremont County Planning and Zoning Commission's decision denying the Woodlands at Bills Island, LLC's application for a Class II permit to subdivide 91.8 acres of undeveloped real property located on I.P. Bills Island. I.P. Bills Island ("Bills Island") is an island situated within the Island Park Reservoir located in north Fremont County, Idaho. Woodlands at Bills Island, LLC (hereinafter "Woodlands") seeks to subdivide this undeveloped land into 42 residential lots. (Exhibit 1).

The Planning and Zoning Commission, on November 13, 2006, denied Woodland's application because Woodland's proposed development failed to satisfy Section VIII.KK.3 of the Fremont County Development Code ("FCDC") because it did not provide for a minimum of two points of ingress and egress from Bills Island to the mainland.

The purpose of the FCDC is set out in Chapter I.B.:

B. Purpose. The purpose of this ordinance shall be to promote the health, safety and general welfare of the people of Fremont County by fulfilling the purposes and requirements of the Local Planning Act and implementing the comprehensive plan. Specific statements of purpose accompany selected provisions of this ordinance, **but the comprehensive plan provides the full statement of the county's purpose and intent in planning and zoning activities.**^[1] (Emphasis added).

The Fremont County Comprehensive Plan, in Part II - Policy Statements, sets out Policy 4:

Policy 4. Protect Public Safety and the Public Investment in Roads. **Fremont County will require safe, adequate access to all new developments and**

protect the efficient functioning of existing roads by limiting access where necessary, protecting rights-of-way from unnecessary encroachments, and ensuring that utilities work and other necessary encroachments do not create safety hazards or result in added maintenance costs...

A. **Safe, adequate access to new developments is required** in all three zoning districts... ^[2] (Emphasis added).

Section VIII.KK.3 of the FCDC reads as follows:

Access. **All developments containing six or more dwelling units, or with a distance of more than 660 feet from a public road which is maintained on a year round basis shall provide a minimum of two points of ingress and egress from the public road or highway serving the development.** “Loop” systems that return to a single point of access to the public road or highway may be acceptable for relatively small developments (1,000 or less projected ADT).^[3] (Emphasis added).

See, also, Exhibit 1, Tab 3, page 2.

Section VIII.KK.3 is designed to carry into effect Policy 4 of Fremont County’s Comprehensive Plan and the express Purpose of the FCDC ***by requiring safe and adequate access to any new development.*** For developments of six or more dwelling units, FCDC Section VIII.KK.3 requires a ‘minimum’ of two points of ingress and egress to a public road or highway. This access requirement is obviously intended to avoid bottlenecks which impede safe egress and ingress of residents and emergency vehicles to any existing and new development. It is also designed to protect the existing roads by requiring alternate and additional means of access to every new development.

Section VIII.KK.3 is an ‘absolute performance standard’.^[4] Such a designation means that any failure to satisfy its requirements must result in a denial of the application. *See*, FCDC Section III.I.7 of the FCDC reads as follows:

“If the proposed development fails to comply with any applicable absolute performance standards of this ordinance or has a cumulative score insufficient to permit the proposed density on the relative performance standards of this ordinance, the application for a permit shall be disapproved.”

Chapter V.C. of the FCDC mandates that the ‘only exceptions to the requirement for compliance with all absolute performance standards shall be those specifically provided in this ordinance and those allowed by variance...’.^[5]

It is undisputed that the access to the Woodlands development is approximately 1,690 feet from any public road or highway and that there is only one point of ingress and egress from Bills Island to the mainland - an existing causeway owned by the Association. Tr. Vol. 1., P.115, L. 8-10 and Exhibit 12. The existing roads serving I.P. Bills Island are private roads and the entrance to Bills Island is protected by a private gate. Exhibit 12 is an ariel photograph of Bills Island and the surrounding area. At the top of the photograph, colored in red, is the location of the only public road giving ingress and egress to the island. The private gate is located at the western end of the public road. The ‘white’ roads are existing private roads owned by the Association. The ‘yellow’ roads are those roads proposed to be constructed by Woodlands as part of its development. *See*, Findings of Fact and Conclusions of Law, Exhibit 1 to Petitioner’s Petition for Judicial Review, page 14.

In denying Woodland's application, the Planning and Zoning Commission determined that the Woodlands development was not a 'small development' and that Woodlands did not satisfy requirements of Section VIII.KK.3 because it did not provide for a second means of access. Tr. Vol 1., P. 6, L 4-16. The fact that the Woodlands development is on an island accentuates Fremont County's express obligation to insure that existing access to Bills Island is not impaired by any new developments. Islands, unlike almost all other developable lands, have unique and limited access points. They are surrounded by water which significantly impairs the safe and speedy evacuation of the island in the event of an emergency. Unlike the mainland, where a person can evacuate relatively easily by walking away in any safe direction, a person situated upon an island must know how to swim, have access to a boat, or find a bridge in order to retreat to the mainland. If there is an obstruction to the only bridge to the mainland, or if the person cannot swim or use a boat, there is no reasonable avenue of escape from an island in the event of an emergency.

The Association has a vested right in seeing that its' members ability to evacuate the island is not impaired by the increased demands for access caused by the Woodland's development and the addition of 42 additional families to the equation. Likewise, it has a vested right in having emergency vehicles gain unfettered access to Bills Island in the event of an emergency. The addition of 42 additional dwellings and families on the island will adversely impact the Association's vested rights. Section VIII.KK.3 recognizes that right by stating the unequivocal means for protecting it: a minimum of two points of access to the public year round road.

Woodlands and the Board of Commissioners believe that the Woodlands' 'loop' road system satisfies the exception stated in Section VIII.KK.3. The so-called "Loop" system exception inartfully states that the development's road system must return "to a single point of access to the public road or highway" and that loop system "may be acceptable for relatively small developments (1,000 or less projected ADT)."

The Association believes that the 'loop' system exception is vague and unenforceable and that since the Woodlands development is more than 660 feet from the public road providing access to Bills Island, Woodlands must, at a minimum, provide no less than two points of ingress and egress from the island to the mainland. Since the Woodlands development is not designed to provide more than the single existing access to the island, Fremont County's absolute performance standard has not been satisfied and the Woodlands' application for a Class II permit should have been denied.

The Association, therefore, disputes the Fremont County Board of Commissioner's finding and conclusion, and urges the Court to find that the Board of Commissioners acted arbitrarily when interpreting and applying Section VIII.KK.3 in a manner which found that an enforceable 'loop' system exception exists in Section VIII.KK.3 and applies to the Woodlands' development. The Association also urges the court to find that the 'loop' system exception relied upon by Woodlands and the Commissioners is unconstitutionally vague and therefore must be stricken from Section VIII.KK.3.

The Association also asks this Court to conclude that the Board of Commissioner's findings and conclusions that the 'loop' road system exception applies to the Woodlands' development is not supported by substantial and competent evidence.

APPLICABLE LAW - JUDICIAL REVIEW

On July 6, 2007, the Petitioner timely filed its Petition for Judicial Review of the Fremont County Board of Commissioner's June 11, 2007 decision pursuant to *I.C. §67-5270 and §67-6521(d)*.^[6] Petitioner has exhausted all of its administrative remedies pursuant to *I.C. §67-5271*. This Court has jurisdiction over the Petition pursuant to *I.C. §67-5272*. The record and transcript of the proceedings before the Board of County Commissioners have been prepared and submitted to the Court pursuant to *I.C. §67-5275*.

This Court may reverse the Board of Commissioner's decision if it was: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) not supported by substantial evidence on the record as a whole; or (e) arbitrary, capricious, or an abuse of discretion. *I.C. §67-5279(3)*.

STATEMENT OF THE LAW AND ARGUMENT

A. The Board of Commissioners' Decision was Arbitrary and Capricious.

The Idaho Supreme Court, in *Eacret v Bonner County*, 139 Idaho 780, 784 (Idaho 2004), set out the rules related to judicial review as follows:

The Court shall affirm the zoning agency's action unless the Court finds that the agency's findings, inferences, conclusions or decisions are: "(a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) not supported by substantial evidence on the record as a whole; and (e) *arbitrary, capricious, or an abuse of discretion*. I.C. §67-5279(3). The party attacking a zoning board's action must first illustrate that the board erred in a manner specified therein and must then show that a substantial right of the party has been prejudiced. (Emphasis added).

The Association believes that the 'loop' exception relied upon by Woodlands and the Board of Commissioners is vague and ambiguous because its material elements are not defined and no standards for its application exists within the FCDC, leaving the application of the 'loop' exception to the unbridled arbitrary and capricious discretion of the Board of Commissioners.

It is fundamental constitutional law that a legislative enactment must establish minimum guidelines to govern its application. *State v Bitt*, 118 Idaho 584 (1990); *Voyles v Nampa*, 97 Idaho 597, 599 (1976). The absence of such guidelines will justify a finding that the Board of Commissioner's conclusion was arbitrarily made:

A city's actions are considered arbitrary and capricious if made without a rational basis, or in disregard of the facts and circumstances, ***or without adequate determining principles***. *Enterprise, Inc. v. Nampa City*, 96 Idaho 734, 739, 536 P.2d 729, 734 (1975). *Lane Ranch P'ship v. City of Sun Valley*, 2007 Ida. LEXIS 239 (Idaho 2007). (Emphasis added).

See, also, Am. Lung Ass'n v. State, 142 Idaho 544, 547 (Idaho 2006), in which the Idaho Supreme Court stated: "An action is capricious if it was done without a rational basis. *Enterprise, Inc. v. Nampa City*, 96 Idaho 734, 536 P.2d 729 (1975). It is arbitrary if it was done in disregard of the facts and circumstances presented or without adequate determining principles. *Id.*"

The FCDC offers no determining principles or guidelines for the application of the ‘loop’ exception in Section VIII.KK.3. The ‘loop’ exception reads as follows:

“Loop” system that returns to a single point of access to the public road or highway may be acceptable for relatively small developments (1,000 or less projected ADT).

The absence of adequate governing principles with which to employ and apply the ‘loop’ system exception renders the Board of Commissioner’s decision to employ it in this case arbitrary and capricious. The Commission used this exception as the sole basis for not enforcing the minimum access standards required by Section VIII.KK.3. *See, Findings of Fact and Conclusions of Law, p. 7.*

In *Lane Ranch P'ship v. City of Sun Valley*, 2007 Ida. LEXIS 239 (Idaho 2007), the role of the court in construing a planning and zoning ordinance was outlined as follows:

Analysis of a statute or ordinance begins with the literal language of the enactment. *Friends of Farm to Market*, 137 Idaho at 197, 46 P.3d at 14 (citations omitted). "Where the language is unambiguous, the clearly expressed intent of the legislative body must be given effect, and there is no occasion for a court to construe the language." *Friends of Farm to Market*, 137 Idaho at 197, 46 P.3d at 14 (citing *Lawless v. Davis*, 98 Idaho 175, 560 P.2d 497 (1977)).

The converse exists, however, when the ordinance is ambiguous. The Court, under those circumstances, has discretion to reverse the Commissioner’s findings and conclusions.

Where language of a statute or ordinance is ambiguous, however, this Court looks to rules of construction for guidance. *Lawless v. Davis*, 98 Idaho 175, 560 P.2d

497 (1977). It may also consider the reasonableness of proposed interpretations. *Umphrey v. Sprinkel*, 106 Idaho 700, 706, 682 P.2d 1247, 1253 (1983). "Constructions that would lead to absurd or unreasonably harsh results are disfavored." *Gavica v. Hanson*, 101 Idaho 58, 60, 608 P.2d 861, 863 (1980); *Lawless*, 98 Idaho at 177, 560 P.2d at 499.

ADVANCE \d4 Language of a particular section need not be viewed in a vacuum.

And all sections of applicable statutes must be construed together so as to determine the legislature's intent." *Lockhart v. Dept. of Fish and Game*, 121 Idaho 894, 897, 828 P.2d 1299, 1302 (1992) (quoting *Umphrey*, 106 Idaho at 706, 682 P.2d at 1253; see also *J.R. Simplot Co. v. Idaho State Tax Comm'n*, 120 Idaho 849, 853-54, 820 P.2d 1206, 1210-11 (1991). Statutes and ordinances should be construed so that effect is given to their provisions, and no part is rendered superfluous or insignificant. See *Brown v. Caldwell Sch. Dist. No. 132*, 127 Idaho 112, 117, 898 P.2d 43, 48 (1995). There is a strong presumption of validity favoring the actions of a zoning authority when applying and interpreting its own zoning ordinances. *South Fork Coalition v. Bd. of Comm'rs*, 117 Idaho 857, 860, 792 P.2d 882, 885 (1990).

See, *Friends of Farm to Mkt. v. Valley County*, 137 Idaho 192, 197 (Idaho 2002).

More recently, in *Lane Ranch P'ship v. City of Sun Valley*, [supra](#)^[7], the Idaho Supreme Court stated:

This Court applies the same principles in construing municipal ordinances as it would in construing statutes. *Friends of Farm to Market*, 137 Idaho at 197, 46 P.3d at 14 (citing *Cunningham v. City of Twin Falls*, 125 Idaho 776, 779, 874 P.2d 587, 590 (Ct. App. 1994)). "Any such analysis begins with the literal

language of the enactment." *Ada County v. Gibson*, 126 Idaho 854, 856, 893 P.2d 801, 803 (Ct. App. 1995) (citations omitted). If the language is unambiguous, then the clear and expressed intent of the legislative body governs. Specific language is not viewed in isolation, the entire statute and applicable sections must be construed together to determine the overall legislative intent. *Friends of Farm to Market*, 137 Idaho at 197, 46 P.3d at 14 (citing *Lockhart v. Dept. of Fish and Game*, 121 Idaho 894, 897, 828 P.2d 1299, 1302 (1992)).

The 'loop' exception to the 'two points of ingress and egress' requirement of Section VIII.KK.3 is clearly ambiguous. The exception does not describe what road configuration constitutes a 'loop' system. The exception does not place any limits on the distance separating the 'single point of access' required of the 'loop' system and the 'public road or highway' providing access to the development. The exception does not define 'relatively small developments' and the exception does not explain what is meant by the parenthetical phrase "(1,000 or less projected ADT)" or how it is to be applied in the context of Section VIII.KK.3.

When the ambiguous language of the 'loop' system exception is juxtaposed against the unambiguous Policy 4 of Fremont County's Comprehensive Plan and the unambiguous Purpose of the FCDC, as well as the unambiguous minimum access requirement of Section VIII.KK.3 for subdivisions with more than six dwellings, the Commissioner's use of the ambiguous 'loop system' exception should be carefully scrutinized by the Court.

It is clear from the Comprehensive Plan, the FCDC, and the express requirements of FCDC Section VIII.KK.3, that the overall legislative intent of Fremont County is to insure safe

and adequate access to all new developments. Fremont County cannot apply exceptions to the objective safe and adequate access policy and rules in the absence of some form of legislative guidance. There is no such guidance applicable to the ‘loop’ system exception. The absence of adequate determining principles with which to apply the ‘loop’ system exception renders the Board of Commissioner’s decision wholly subjective and therefore arbitrary and capricious. *Lane Ranch P’ship v. City of Sun Valley, supra.*

1. The Phrase “Loop System” is Not Defined and is Vague and Ambiguous. Exhibit 12 illustrates the location of the Woodlands road system (colored in yellow). It consists of a ‘loop’ with two cul-de-sacs jutting outward to the west and southwest, and a connecting road between the ‘loop’ and the existing private roads of the Association. Can the two planned cul-de-sacs be a part of the ‘loop’ system? Does the connecting road constitute a part of the ‘loop’? Would a cul-de-sac, on its own, constitute a ‘loop’ and bring the exception into play? After all, a cul-de-sac has a ‘loop’ at one end!

The answers to these questions, and many more, are simply unknown because the FCDC does not attempt to define what constitutes a ‘loop’ system and the Board of Commissioners did not attempt to address this issue when rendering its findings and conclusions. The Commissioners simply assumed and concluded that Woodland’s road system is a ‘loop’ system without any analysis of the question whatsoever.

2. Single Point of Access to the Public Road or Highway. The alleged ‘loop’ system set out in the Woodlands development is located 1,690 feet from the only public road providing year round access. The ‘loop’ itself does not come in contact with any public road or highway.

Rather, Woodlands must use 1,690 feet of the private roads owned by the Association and its own connecting road in order to reach the requisite public road. If this exception is to be consistently applied by the Commissioners it would not matter if the required public road or highway was 1,690 *miles* from the development - as long as the development's 'loop' is somehow or somewhere connected to a 'public road or highway'.

Obviously the Board of Commissioners would not apply the 'loop' exception if the public road were 1,690 *miles* from the public road. However the ordinance itself offers no determining principles which would assist the Board of Commissioners in determining the proper distance separating the proposed development from the public road necessary to employ the 'loop' system exception. The FCDC is silent on this question - except that both the Comprehensive Plan and the FCDC require the Board of Commissioners to insure safe and adequate access to Bills Island for its residents and emergency vehicles before authorizing any further development on the island and the Commissioners must keep these policies and principles in mind when enforcing the FCDC.

3. *Relatively Small Developments.* The 'loop' road system exception is only applicable to 'relatively small developments.' Section VIII.KK.3 itself only applies to developments containing six or more dwelling units. Any development containing less than six dwelling units is, therefore, automatically considered 'small' and exempt from the minimum two points of access requirement. If a development containing five dwelling units is considered 'small' by the FCDC, how many dwelling units would should be considered 'relatively small'? The FCDC does not define this term.

Should a 42 dwelling unit development also be considered ‘relatively small’? The FCDC states that 60 dwelling units is a ‘large’ development.¹⁸¹ If a ‘large’ development is only 18 more dwelling units than that proposed by the Woodlands, perhaps the Woodland’s development is ‘relatively large’ rather than ‘relatively small’. Perhaps the outside limit for ‘relatively small’ should be closer to the number 5 than the number 60. The Woodlands development (42 lots) is clearly closer to the number 60 than the number 5, yet Fremont County has determined it is a ‘relatively small development’ for purposes of excusing the Woodlands from providing a second access point between Bills Island and the mainland. FCDC offers no guiding principles to help the Commissioners make a reasonable decision in this regard, thus rendering their decision in this case arbitrary and capricious.

The Board of Commissioners concluded that the parenthetical phrase “(1,000 or less projected ADT)” provides it with a basis for determining which developments are ‘relatively small developments’. It is clear from the questions posed by the Commissioners during the hearing that they did not know what “ADT” stood for, or how this measurement is to be applied in reaching any conclusion.

COMMISSIONER ROMRELL: Marla, does ADT mean peak day each year or daily average the whole year?

MS. VIK: Well, ADT is the daily average over the year.

COMMISSIONER ROMRELL: It’s whatever –

MS. VIK: It’s –

COMMISSIONER ROMRELL: – you want.

MS. VIK: It's a little looser. It's your average daily traffic. And as Ryan said, as long as you have more than two days of data, you can have an average, so it's whatever you decide to study.

COMMISSIONER ROMRELL: Commissioner Romrell continuing. Is there an industry standard or I know our code says ADT?

MS. VIK: Um-h'm.

COMMISSIONER ROMRELL: I guess my question is still it's subjective I guess. It could be anytime.

MS. VIK: it can be whatever time you feel is appropriate to the situation.

Tr. Vol. 1. P. 79-80.

Ms. Vik referred to the testimony of Ryan Hales, an expert who testified on behalf of Woodlands. Mr. Hales testified that ADT is the average daily traffic count. "That is a time period that's anything less than 365 days or more than two days." Tr. Vol. 1. P. 80, L. 3-7. The result of this testimony is that an ADT can be taken at any time of the year, as long as it relates to data collected over more than two days but less than 365 days. There is no requirement in the FCDC that the traffic data be collected on weekdays, weekends, holidays, or non-holidays. The absence of any guidance directing when and how this traffic data is to be collected renders any decision based upon such traffic data seriously subjective.

The Bills Island area is typically used for seasonal, recreational, and second home purposes. Bills Island and its access road will experience significant usage differences over the four seasons of the year. A measurement taken during July will differ significantly from a traffic measurement taken in October or April. In fashioning an exception to the 'two access' rule embodied in Section VIII.KK.3, Fremont County should have provided more direction on how

and when the data establishing ADTs should be collected, and whether or not that data should be collected differently in the recreational district of Island Park, as compared to other zoning districts in Fremont County.^[9]

The absence of any governing principles to employ the ‘1,000 ADT’ benchmark allows subjective manipulation of the decision making process. It allows the Commission to recognize traffic data collected at one time and ignore traffic data collected at another time, so that the data chosen to be relied upon dictates the conclusion they desired to reach. In fact, the traffic counts presented to the Commissioners in this case were manipulated by the Commission in order to justify their application of the ‘loop’ system exception. The Commission accepted the traffic data collected by Woodlands and ignored the traffic data collected by the Idaho Department of Transportation and a nationally recognized compilation of traffic data relied upon by traffic engineers nationwide.^[10]

Nor does Section VIII.KK.3 state how this parenthetical phrase is to be applied when using the ‘loop’ road system exception. Does the “(1,000 or less projected ADT)” phrase apply only to the development under consideration by the Board of Commissioners? Or, does it apply only to the existing developments currently served by the public road in question? Or does it apply to a combination of all existing and all future developments which are or could be served by the public road? The FCDC offers no guidance to the Commissioners when this question is presented as the basis for employing the ‘loop’ exception.

The Board of Commissioners applied the parenthetical phrase as follows: the Commission estimated the total existing traffic on Bills Island and added that estimate to the

estimated future traffic expected from the Woodlands development. From that data it concluded that the combined total average daily traffic to and from Bills Island would be less than 1,000. *See*, Findings of Fact and Conclusions of Law, pp. 7-14. However, since the FCDC itself provides no basis for such an interpretation and application of the parenthetical phrase, the Commissioner's interpretation and application of the parenthetical phrase in this manner is arbitrary, capricious, and an abuse of its discretion.

The absence of any guiding principles in the FCDC also makes the exception constitutionally infirm, vague and ambiguous, and the Board of Commissioner's use of that exception was arbitrary. The exception should be stricken by the Court.

***[Idaho Supreme] Court has observed that "when part of a statute or ordinance is unconstitutional and yet is not an integral or indispensable part of the measure, the invalid portion may be stricken without affecting the remainder of the statute or ordinance." *Voyles v. City of Nampa*, 97 Idaho 597, 600, 548 P.2d 1217, 1220 (1976); *see also Lynn v. Kootenai County Fire Protective Dist. No. 1*, 97 Idaho 623, 626, 550 P.2d 126, 129 (1976) ("If the unconstitutional section does not in and of itself appear to be an integral or indispensable part of the chapter, then it may be stricken therefrom."). *In re Srba Case No. 39576*, 128 Idaho 246, 263-264 (Idaho 1995).

The 'loop' exception is vague and ambiguous, is not an integral or indispensable part of the FCDC, its elimination by the Court will not adversely affect the remainder of Section VIII.KK.3, and its elimination will serve the Purpose of the FCDC and the Policy 4 of Fremont County's Comprehensive Plan by insuring safe and adequate access to Bills Island for its residents and emergency vehicles.

- B. The Board of Commissioners' Decision was Not Supported by Substantial and Competent Evidence.

The Board of Commissioners made the following observation when issuing their findings and conclusions: “The most contentious issue during the public hearing had to do with the access to the proposed development site.” The Board of Commissioners then concluded that “Approval of loop systems that return to a single point of access is within the reasonable discretion of the county, with the limit on the county’s discretion being the 1,000 ADT standard.”^[11]

The bulk of the evidence presented at the hearing related to what the Board of Commissioners described as the “1,000 ADT standard.” Recognizing that the FCDC itself offers no guidance with which to apply this ‘standard’, the Commissioners concluded that both the Association and Woodlands’ generally agreed that the 1,000 ADT threshold number was an appropriate standard.^[12] This finding and conclusion is not supported by substantial or competent evidence. There was no admission on the part of the Association that the 1,000 ADT threshold number was an ‘appropriate standard’ or that the manner in which the Commissioners applied that standard was appropriate. Woodlands did not offer any evidence that the 1,000 ADT threshold number was an ‘appropriate standard’. This finding and conclusion by the Commissioners is clearly erroneous and not supported by substantial or competent evidence in the record.

The Board of Commissioners also ignored their obligations under *I.C. §41-253*, which adopts the International Fire Code as the ‘minimum standards for the protection of life and property from fire and explosions in the state of Idaho.’ Fremont County’s obligation in this

regard was pointed out by witness Winston Dyer. Tr. Vol. 2. P. 9. L 1-7, Exhibit 15. The International Fire Code adopted by the State Fire Marshall requires, through Appendix D thereof, that “Multiple-family residential projects having more than 100 dwelling units shall be equipped throughout with two separate and approved fire apparatus access roads.”^[13] The Board of Commissioner’s decision did not address how the Woodlands application satisfied the International Fire Code requirement, or why this requirement doesn’t apply to the Woodlands’ application. The Commissioner’s failure to address this issue is clearly erroneous and not supported by substantial or competent evidence in the record.

In reaching their decision, the Board of Commissioners received evidence related to two on-site traffic studies. One was performed by Woodlands and the other was performed by the Idaho Transportation Department (“ITD”) and offered into evidence by the Association. (Exhibit 13). The Association also offered additional evidence in the form of a national compilation of traffic studies prepared by the Institute of Transportation Engineers. (“Trip Generation” - Exhibit 14). Lastly, the Commissioners heard the testimony of the Fremont County Public Works Director, Marla Vik. Ms. Vik is a professional engineer. (Tr. Vol. 2. P. 74. L. 13-17). None of the offered evidence, including the testimony of Marla Vik, concluded that 1,000 ADT is an appropriate standard or that the Commissioner’s actual application of that standard was appropriate. In fact Ms. Vik testified on the issue as follows:

COMMISSIONER HURT: Okay. Do you see any safety concerns with 1,000 ADTs with three lanes?

MS. VIK: Safety involves so many different factors. They can’t be simply based on ADT. It has to be based on speed, grade, with a recoverable area, barriers. It’s just not a one-factor issue.

Tr. Vol. 2. P. 86 L 20-25.

The Woodlands traffic study was accepted by the Commissioners without any question. The Woodland's data related to a traffic count taken between Saturday, July 9, 2005 and Tuesday, July 19, 2005.^[14] (Tr. Vol 1. P. 81, L. 12-13), some twenty-two months *before* the April 10, 2007 hearing before the Board of Commissioners. That relatively stale study was founded upon the following facts: there are 301 platted lots currently located on Bills Island, and 197 of them have dwellings constructed upon them. (Tr. Vol 1. P. 78, L. 5-6). Based upon Woodlands' traffic count for the existing 197 dwellings, the average weekday non-holiday trips averaged 2.5 per dwelling unit per day, and the average weekend non-holiday trips averaged 3.7 trips per dwelling unit per day. Woodlands then averaged the weekday ADTs with the weekend ADTs to come up with an average of 2.8 trips per dwelling unit per day. Woodlands then projected the average trips per day if every platted lot (301 lots) and Woodlands' proposed development (42 lots) were occupied with a dwelling and concluded that 2.8 trips x 343 dwellings = 960.4 trips per day, or 'ADT'. It is this evidence upon which the Commissioners based their decision to apply the 'loop' road system exception to Section VIII.KK.3. The Commission concluded that the 960.4 trips per day estimated by the Woodlands data were less than the 1,000 ADT parenthetically referenced in Section VIII.KK.3, and therefore the Woodlands proposal was a 'relatively small development' and could use the 'loop' road system exception to avoid the express obligations of Section VIII.KK.3.

Based on Mr. Hales and Ms. Vik's testimony - that more than two days of data is sufficient to provide an ADT - the Commissioners could have used the Woodlands' average

weekend/non-holiday count of 3.7 ADT, and the Woodlands' 3.5 ADT measurement for Friday July 15, 2005^[15], for an average of 3.63, and a far different conclusion would have been reached. The average trips per day if every platted lot (301 lots) and Woodlands' proposed development (42 lots) were occupied with a dwelling, the conclusion would have been that 3.63 trips x 343 dwellings = 1,245.09 trips per day. This results in a number which is nearly 25% higher than the 1,000 ADT standard adopted by Fremont County!

The ITD traffic study took place between Saturday, July 1 and Wednesday, July 5, 2006. The Commissioners disregarded this data because it was collected over a holiday weekend.^[16] This data was disregarded because Woodlands' expert Hales and Ms. Vik both testified that traffic counts would typically not be taken during holidays.^[17] Neither Hales nor Vik testified that holiday traffic counts should *never* be considered. To the extent the Commissioners totally disregarded the ITD traffic count taken over the 4th of July weekend in 2006, without any discussion whatsoever, makes this finding and conclusion clearly erroneous and not supported by substantial or competent evidence in the record.

The ITD data established a 5.5 ADT average. Exhibit 10, 13; Tr. Vol 1. P. 109-112. If this data had been relied upon by the Commissioners, again, a far different conclusion would have been reached. The average trips per day, if every platted lot (301 lots) and Woodlands' proposed development (42 lots) were occupied with a dwelling, would be calculated as follows: 5.5 trips x 343 dwellings = 1886.5 trips per day. This calculation results in a number which is more than 88% higher than the 1,000 ADT standard adopted by Fremont County!

The Commissioners also disregarded the Institute of Transportation Engineers Trip Generation Report. (“Trip Generation” - Exhibit 14). However, the Commission’s Findings of Fact and Conclusions of Law do not state any reason for totally disregarding the data contained within Exhibit 14. The Commissioners did quote the rebuttal testimony received from Woodland’s expert, Mr. Hales, who opined that actual traffic counts overrule the national study.

The Commissioners, however, did not give

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In this case, the majority of the City's findings of fact fail to make actual factual findings; instead, the "findings" merely recite portions of the record which could be used in support of a finding. For instance, Findings 7(a) and 7(b) merely state that Crown Point's Phase 5 applications contain certain information about the size of the units. Additionally, several of the findings consist of nothing more than a recitation of testimony given in the record. ***By reciting testimony, a court or agency does not find a fact unless the testimony is un rebutted in which case the court or agency should so state.*** "A finding of fact is a determination of a fact by the court [or agency], which fact is averred by one party and denied by the other and this determination must be founded on the evidence in the case." *C.I.T. Corp. v. Elliott*, 66 Idaho 384, 397, 159 P.2d 891, 897 (1945) (Emphasis added).

The Commission cited from Hale's testimony, but it did not adopt Hale's testimony as a 'finding' or state that it was un rebutted by the record. In fact Hale's testimony on this subject was rebutted by Ms. Vik, who testified that the Trip Generation report *was the standard used by*

the traffic engineering industry. Tr. Vol 2. P. 76 L. 1-3. For these reasons there is no sound basis to disregard Exhibit 14. The Commissioners failure to state the basis for their total disregard of Exhibit 14 is, therefore, clearly erroneous and not supported by substantial or competent evidence in the record.

The Trip Generation Report, Exhibit 14, reveals (at page 508) that the national average ADT per recreational dwelling unit is 3.16. If the Trip Generation Report data was used by the Commission, again, a far different conclusion would have been reached. The average trips per day, if every platted lot (301 lots) and Woodlands' proposed development (42 lots) were occupied with a dwelling, the Commission would have concluded the following: 3.16 trips x 343 dwellings = 1083.88 trips per day. This results in a number which is still higher than the 1,000 ADT standard adopted by Fremont County!

Overall, the Commission's conclusion that the 1,000 ADT standard will not be exceeded by approving the Woodlands applicaiton is not supported by 'substantial evidence.' Rather, it is supported by minimal evidence. The substantial evidence in the record supports a conclusion that the ADT for Bills Island will exceed 1,000 ADT when the existing and proposed Woodlands lots are fully developed. For that reason the Woodlands' application for a Class II permit should have been denied.^{[119](#)}

If the Commission had disregarded Woodlands' weekday/non holiday data, or not averaged all of Woodlands' weekday/non-holiday data with the higher weekend/non-holiday data, the Woodlands data alone would have required the Commission to conclude that the 1,000 ADT standard would be exceeded by the Woodlands development. If the Woodlands

weekend/non-holiday data were combined with the ITD data and the Institute of Traffic Engineer's Trip Generation Report, the only reasonable conclusion the Commissioners could reach is that the 1,000 ADT standard would be exceeded by the Woodlands development.

Instead, the Commission gave undue weight to the Woodlands' weekday /non holiday data, and ignored all other relevant data so that it could employ the 'loop' road system exception and approve the Woodlands application.

In *Eastern Idaho Regl. Med. Ctr. v. Ada County Bd. of Comm'rs* (In re Hamlet), 139 Idaho 882, 884-885 (Idaho 2004) the Idaho Supreme Court said: "Although this Court may disagree with Ada County's conclusion, this Court "may not substitute its judgment for that of the administrative agency on questions of fact... *if supported by substantial and competent evidence.*"

In this case, however, the Commission's decision is based on insubstantial evidence - the weekday/non holiday traffic data collected by the Woodlands some 22 months before the hearing. The substantial evidence before the Commission - *consisting of the Woodlands' weekend/non-holiday traffic data, the Woodlands' data for Friday, July 15, 2005, the IDT data, and the Trip Generation Report* - required the Commission to conclude that the 'loop' system of roads exception was **not** available and the Woodlands had **not satisfied** the absolute performance standard of Section VIII.KK.3.

In *Laurino v. Bd. of Prof'l Discipline*, 137 Idaho 596, 602 (Idaho 2002), the Idaho Supreme Court defined 'substantial evidence' as follows:

ADVANCE \d4 The violations that the Board found against Dr. Laurino must be reviewed to determine whether the evidence in the record as a whole supports the findings, inferences, and conclusions made by the Board. *I.C. §67-5279(3)(d)*. **Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate and reasonable to support a conclusion.** *Idaho State Ins. Fund v. Hunnicutt*, 110 Idaho 257, 260, 715 P.2d 927, 930 (1985). (Emphasis added).

If the Woodlands' weekday/non-holiday data were disregarded, the material evidence remaining before the Commissioners - *consisting of the Woodlands' weekend/non-holiday traffic data, the IDT data from July 2006, and the Trip Generation Report* - all support a conclusion that the ADTs for Bills Island would exceed 1,000 if the Woodlands application were granted. For these reasons the decision of the Board of Commissioners to apply the 'loop' road system exception to FCDC Section VIII.KK.3 is not supported by substantial evidence in the record as a whole.

CONCLUSION

The Association has demonstrated that the Findings of Fact and Conclusions of Law issued by the Fremont County Board of Commissioners were reached arbitrarily and capriciously because there are no guiding principals in FCDC as a whole, or in Section VIII.KK.3 in particular, which would allow the Commissioners to objectively apply the 'loop' system of roads exception.

Further the Findings of Fact and Conclusions of Law are not based upon substantial evidence in the record, as a whole.

Under the authority of *I.C. §67-5279(3)(d)* this Court should reverse the Board of Commissioner's decision to approve the Woodlands application for a Class II permit and thereby grant the Association's Petition for Judicial Review.

Dated this ____ day of February, 2008.

COOPER & LARSEN, CHTD.

Attorneys for Petitioner

By _____

Ron Kerl, of the firm

By _____

Reed W. Larsen

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on the ____ day of February, 2008, I served a true and correct copy of the foregoing document as follows:

Charles A. Homer	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid
HOLDEN, KIDWELL, HAHN & CRAPO, PLLC	<input type="checkbox"/> Hand Delivery
P.O. Box 50130	<input type="checkbox"/> Overnight Mail
Idaho Falls, ID 83401	<input type="checkbox"/> Facsimile
	<input checked="" type="checkbox"/> Email

Karl H. Lewies	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid
Fremont Co. Prosecuting Attorney	<input type="checkbox"/> Hand Delivery
22W. 1 st N.	<input type="checkbox"/> Overnight Mail
St. Anthony, ID 83445	<input type="checkbox"/> Facsimile
	<input checked="" type="checkbox"/> Email

ADVANCE \x236

ADVANCE \x236**COOPER & LARSEN, CHTD**

ADVANCE \x236By:

ADVANCE \x259Ron Kerl, of the firm

^[1]An excerpt of the FCDC containing Chapter I. B is attached as Appendix 1.

^[2]An excerpt of the Fremont County Comprehensive Plan containing Policy 4 is attached as Appendix 2.

^[3]An excerpt of the Fremont County Development Code containing Section VIII.KK.3 is attached as Appendix 3.

^[4]The Board of Commissioner's Findings of Fact and Conclusions of Law, at page 6, correctly concluded that Section VIII.KK.3 is an 'absolute performance standard'.

^[5]An excerpt of the Fremont County Development Code containing Section III.I.7 and Chapter V.C. is attached as Appendix 4.

^[6]The Petitioner filed its Amended Petition on July 13, 2007.

^[7]*2007 Ida. Lexis 239, page 2.*

^[8]An excerpt of the Fremont County Development Code containing Section OO, page 54, is attached as Appendix 5.

^[9]Fremont County is divided into zoning districts, and the Island Park area is its own zoning district and has its own, unique, rules for development. Excerpts of the FCDC, Chapter IV.B and Chapter VIII.B are attached as Appendix 6.

^[10]The Commissioner's arbitrary selection and application of this traffic data in making its decision will be addressed more directly below, when discussing the fact that its decision is not supported by substantial and competent evidence.

^[11]Findings of Fact and Conclusions of Law, pp 6-7.

^[12]Findings of Fact and Conclusions of Law, p. 7.

^[13]A copy of Appendix D to the International Fire Code is attached hereto as Appendix 7.

[14] The date of this study was strategically scheduled between two very busy holidays for the Island Park area - the 4th of July and the 24th of July.

[15] Exhibit 21. The data for Friday, July 15, 2005 shows a total of 686 trips for the day. When divided by the 197 actual dwellings located on Bills Island, the ADT for that Friday is 3.48. If you combine two weekend days at an average of 3.7 each, with the Friday July 15, 2005 ADT of 3.48, the resulting average ADT is 3.63.

[16] Findings of Fact and Conclusions of Law, page 11.

[17] Tr. Vol. 1. P. 81 L 18-19, and Tr. Vol. 2. P. 75 L 13-15.

[18] See, Findings of Fact and Conclusions of Law, page 11

[19] The Commissioners critically commented on the fact that an ITD traffic study conducted on Bills Island over the Labor Day weekend in 2006 was not offered by the Association into evidence. See, Findings of Fact and Conclusions of Law, pp. 11-12. The data from that ITD study is, however, set out in Exhibit 22. Woodlands' expert Hales testified that the best reliable traffic data should be that which is collected in July, the peak month for evaluating traffic in the Island Park area. Tr. Vol. 1. P. 80-81. The Association agrees with this conclusion. For that reason the 2006 Labor Day traffic data is not material.

Feb 7 2008

This is a response to the letter that all members received from the Woodlands.

COOPER & LARSEN

151 NORTH 3rd AVE. - 2nd FLOOR

P.O. BOX 4229

POCATELLO, ID 83205-4229

RON KERL of Counsel

TELEPHONE (208) 235-1145

FAX (208) 235-1182

Feb 7, 2008

Charles A. Homer
Holden Kidwell Hahn & Crapo
P.O. Box 50130
Idaho Falls, ID 83405-0130

Re: *Bills Island Association v. Woodlands at Bills Island, LLC*

Dear Chuck:

This letter is in response the mass mailing that was sent out by Ryan Barker, Paul Ritchie, Jayson Newitt and Rick Olsen. I am assuming this letter was sent by your clients without your knowledge. To the extent you had knowledge of this document being sent, I am asking that you seriously reconsider the propriety of that content. One of the issues that is discussed is the legal appeal and it appears to be a misstatement of certain facts. The facts appear to be misstated in an effort to interfere with my attorney-client relationship with Bills Island Association and it's members. This appears to be done to try to dissuade people from continuing to pay assessments for legal fees. Any legal fees should not be discussed by your client in a way that tries to interfere with my legal representation of my clients. It is not welcome and it is an inappropriate contact. At the outset, I would ask that those who are signatories immediately print a retraction or apology.

Further, by now you have received our Brief in Opposition to the Proposed Development. I believe your client's letter is inaccurate as to the status of the law and the status of the case. The case was initially denied by Planning and Zoning, and rightfully so because there is no two points of ingress and egress and no compliance with the Uniform Fire Code. These are areas that your client has never been interested in addressing.

I would suggest that your client keep it's communications within the confines of their organization and leave the BIA members alone. To the extent a designated representative of your client wishes to meet with my client, that is acceptable. However mass mailings are inappropriate and potentially violate attorney client privilege and it also interferes with attorney client contractual relationships. This letter is to advise you that

we expect you and your clients to cease from such unwanted and unwarranted conduct. I assure you I would feel the same if the BIA sent a letter to your client's investors.

Sincerely,

REED W. LARSEN

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COOPER & LARSEN, CHARTERED

Attorneys at Law

P.O. Box 4229

Pocatello, ID 83205-4229

To all B.I.A. members.

The Woodlands At Bills Island is just trying to break up our association.

First we met with them to settle this whole thing. They offered \$10k to go away. We asked them to move their gate to our gate for just one gate, they said no. They never offered to build the gate as they stated. We asked for the ground SE of the guard cabin for a pavilion they said it would be a cabin sight. They said there will be no renting of the cabins in their homeowners, we read their bylaws ---it is permitted. They said they would not join our association. More to come on the web page. Thanks for your concern and please stay with us. We have a strong position in court. You will receive a 36-page brief from the attorney, to the appeals court this month. Don't let them divide our association.

Jan 25th 2008

The developer has asked the court for their performance bond back, they claim they are done with the work on the causeway. We have asked the county if they have signed off on the work and they haven't, our engineer hasn't, so we have asked that they do not get their money back until it is checked off by all. . We will keep you posted.

Dec 15th 2007

We have no news at this time.

We are waiting for the courts to give us a date on the ruling. When you come onto the Island you will notice the causeway has been widened, they are permitted a 50ft width.

We also have 3 remote gate openers available. They allow you to open the gate as you approach without interring your card. They are \$40.00. Contact Terry for one. We will be updating the card system this spring and these will still work with the new system.

Oct 16th

The BIA board attended the hearing for the causeway and reviewed the construction plans. We feel the wider causeway would be the best but Woodlands must get permission to build on all property owners land. They also submitted a plan to build the causeway with in the 50ft right away. The board hired the Dyer Group to review the plans and to oversee the construction.

The construction of the causeway in no way affects the lawsuit on the center of the Island.

Here is Dyer's review of the construction.

We have reviewed the plans and associated documentation received late yesterday concerning Causeway improvements proposed for the causeway crossing at Bills Island. Due to the extremely limited time for examination, our review is fairly cursory in nature and limited to addressing what has been shown on the plans and not any other further detailed analysis or evaluation.

Following are our comments after reviewing the information provided:

1. We agree with their engineer Mr. Bastian that Option 1 (working outside the existing 50 foot easement) is the best approach if construction is to occur. The biggest concern we see is obvious evidence of erosion occurring on the reservoir faces of the causeway and this option allows for correcting and stabilizing this by the placement of riprap material and some additional fill. This treatment will enhance stability of the proposed improvements and significantly prolong their service life.
2. We concur with the concept of placing guardrail along the edges of the causeway. However, normally when guardrail is placed along any roadway there is a small shoulder area to give additional safety and shy distance. If you are going to work outside the existing easement it would be appropriate to add 3-4 foot shoulders on each side.

3. The three lanes apparently terminate at the guardhouse on the northeast end of the causeway. We suggest the improvements be continued to carry two of the three lanes out through the existing exit area. Without an appropriate transition at the end there will just be confusion and backup of traffic across the causeway – defeating the purpose of providing additional width and lanes.

4. We note a proposal for lane marking by burying precast concrete stripes flush with the roadway surface. We presume this is in response to some requirement that lanes be delineated to assist in traffic flow should an emergency evacuation be required. We do note however that on a gravel surfaced road (as proposed) these will very likely become a maintenance concern in trying to grade and plow the roadway. We strongly recommend the causeway crossing be paved for safety, operation, and longevity.

5. The gabion basket concept is appropriate for erosion control and widening the roadway embankment. It was not clear however how the gabions would be stabilized with respect to the new embankment construction. We presume that they would be tied to the geogrid reinforcing or otherwise have some type of tieback to keep them stable and vertical.

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6. The details of embankment construction did not specify a depth of excavation prior to placing new embankment and geogrid reinforcing. Also, the details should call for compaction of the existing sub grade after excavation and before construction of the new embankment is initiated.

7. The geogrid reinforcing called for is a good solution but the system is sensitive to the size of the grid and corresponding material to be used. We suggest further detail or specification be given to make sure the geo-grid system and associated embankment

material are appropriately matched to produce a quality final product.

8. We see that the applicant has a permit from the Corps of Engineers to conduct causeway construction work as necessary. The permit "encourages" installation of a culvert through the causeway as was apparently shown in some application material to the COE in obtaining a permit. We concur that a culvert would help improve water quality in the area but did not see it called for on the plans nor any associated details.

9. The COE permit also called for re-vegetation of disturbed areas but there were not any details or specifications about how that would be accomplished in the materials we received.

10. We feel the plan presented is an appropriate engineering solution to widening and stabilizing the causeway, given some of the refinements we have suggested above. We are concerned however about making sure the construction is done in accordance with the plans and specifications that have been developed. We might suggest that we be involved to observe construction periodically to make sure this is the case, or otherwise you should make sure that their engineer is properly retained and positioned to certify upon completion that the project has been constructed in accordance with the approved plans and specifications.

Our overall conclusion is that if improvements of any kind are to be made to the causeway then they ought to be the best and most long-lasting possible for the effort made and expense invested. Therefore we recommend Option 1 which goes outside the existing 50 foot easement as it will unquestionably improve the final product. We presume the applicant will obtain the necessary permits and approvals from other agencies/land owners necessary to accomplish this.

Oct 4th

BIA board members went into mediation with the Woodlands Group. The purpose was to work out the differences on the causeway construction...

AND TRY TO SETTLE THE LAWSUIT ON THE CENTER DEVELOPMENT.

We had a hearing the next day with the judge and he would rule on the suit on just the causeway.

We were in mediation for over 8 hours. We feel as a board we are in a good position to stop them at this time. But we have no control over the Judges rulings. Our attorney asked us to put together a Christmas wish list of desires that we could accept that would settle the suit.

The first item on our list is for them to just go away. At the bottom of our list we would roll over and give up. We need to meet somewhere in the middle. We asked for the engineered construction plans for the causeway, a big cash infusion, a building to meet in and ground to build it on, for the center people to join our association, and no gate at their property

They countered with the following: We will build the new causeway correctly, a new gate for us, a new exit gate, the quarter acre next to the guard cabin, \$10,000 so that we can build our own building, AND we must give them a right-of-way at the gate property to make the third exit and allow them to exceed the 50ft right-of-way to build the crossway. Most of what they are giving us is what they have to give to meet what is required of them by the commissioners.

All day long our attorney asked for their engineered plans for building the crossway. They said they had them but not with them, they would get them for us Monday or sometime next week. After 6 1/2 hours, our attorney demanded the plans. The mediator went to the Woodlands Group with our demand then came back to us and said they don't have them yet but will get them next week. Then the mediator stated, "If you are stuck on this item, the Woodlands Group is ready to got to court tomorrow and ask the court to fine us for holding up the work on the CAUSEWAY". Our attorney said "See you tomorrow in court" and it was over after 8 1/2 hrs.

We showed up at court the next day and the Judge called the two attorneys into his chambers to see what had been agreed upon. He looked at the Woodlands Group attorney and said build it right or don't build it at all. Woodlands You have 48 hrs to produce the plans then, B.I.A. you have 48 hrs to review, then agree or we go back to court on Friday the 12th. It was over in 5

minutes. The Woodlands Group did say they would submit two plans: one to stay in the 50 ft width by building a retaining wall that will cost them \$235,000 and one to exceed the width to 72 ft to build it at a lower cost of \$135,000. Then it would be up to us to pick which one we prefer that they build.

At this point, with the legal funds the way they are

We are ready to fight this to the END

If you have not paid your legal assessment

PLEASE DO SO ASAP

Sept 27th 2007

Many of you may have seen the survey stakes along the cosway. Woodlands group is going ahead with work on the road. We asked our attorney to file paper work to stop them. We had a court date of the 25th of Sept. The Judge would not rule on it because we included the county in the complaint and that was in error because the county

ISSUED A BUILD PERMIT TO THE WOODLANDS FOR THE ROAD.

So again the county is writing their own rules. The Judge instructed that we need to file a new injunction in which we did. It is set for Oct 5th.

The judge suggested a break and instructed the attorneys to meet and work out the differences between the parties. Both attorneys agreed to go to mediation to solve the whole issue of the roads and center Island development.

The Judge also stated we can't stop them from working on the center of the island. They do the work at their own cost should they lose the appeal.

We have a sizable amount of money in the legal fund. If you have not paid your \$300.00 please do so immediately. We have a meeting set for Oct 4th to here their proposal to settle. If they lose this time our attorney assured us that they would just come at us again with a smaller development. We will meet and see what we can work out. If you have any comments please let us know ASAP

B.I.A. Board

Con Haycock

Printed From The Island Park News

2007-06-29

**Bills Island group files appeal of county decision allowing more island development
B.I.A. to hold fundraiser for legal fund**

By ELIZABETH LADEN

The Bills Island Homeowners Association filed an appeal Monday of the Board of Fremont County Commissioners decision to approve the Woodlands at Bills Island development. The appeal was filed in District Court in St. Anthony.

Reed Richman, board member of the Bills Island Homeowners Association, said Tuesday that the appeal is based on several areas where BIA does not believe the developer meets the Fremont County Development Codes requirements. These include access, fire safety, and protecting water quality.

Richman said BIA will host a community fundraiser to help boost its legal fund for the appeal. It will be a Dutch oven cook-out at the island's entrance, from 5 to 7 p. m. Saturday, July 28.

Richman said he hopes all Fremont County residents concerned about how the county is applying its development code will come to this fundraiser. Hopefully, he said, BIA will raise enough money to be able to help others who find themselves having to battle the county for responsible development.

In November 2006, the Fremont County Planning and Zoning Commission denied Utah businessman Ryan Davis' application to develop the Bills Island interior into a 42-lot subdivision, Woodlands at Bills Island. They believed the project failed to meet the code's absolute standards for access and were also concerned about fire safety and water quality.

Davis appealed the decision to the County Commission, which held its appeal hearing in April.

Commissioners then held work sessions to discuss the appeal testimony. In June, the commissioners decided to allow Davis to proceed with his development.

The code states, "All developments containing six or more dwelling units or with a distance of more than 660 feet from a public road which is maintained on a year-round basis shall provide a minimum of two points of ingress and egress from the public road or highway serving the development. Loop systems that return to a single point of access to the public road or highway may be acceptable for relatively small developments (1,000 or less projected ADT - Average Daily Trips)."

The requirement for a development more than 660 feet from a public road to have two access points is an absolute standard in the code, meaning that the project must be denied. Woodland's main entrance is 1,667 feet from the county road to Bills Island.

The appeal hearing before Fremont County Commissioners Paul Romrell, Skip Hurt, and Don Trupp at the County Annex in St. Anthony devoured more than six hours time, with the developer and his team — as well as opponents to the project — bringing up many issues in addition to the main one — the failure to meet the absolute standard.

Around 35 people attended the appeal hearing.

Davis, his attorney — Chuck Homer of Idaho Falls — and several "expert" witnesses were able to steer the Fremont County Planning and Zoning Commission and the Fremont County Commission away from the absolute standard failure to discussions pertaining to the word, "may" in the second part of the standard — that the development may utilize the one road to the island as a loop road. The developer's team asserted to both commissions that they could improve the island's only access road to make it safe for their own buyers and the entire island community.

They said they could obtain a permit from the Army Corps of Engineers to add more land to the isthmus connecting the island to the mainland, and widen the road so it would have three 12-ft. lanes.

In the November meeting, their plan was to widen the road to 31-ft., which is still much narrower than the county's width standard of at least 60 ft.

The developer's team found another loophole in the code — the definition of a large-scale development being one that is 59 lots or more, to assert that their 42-lot subdivision should be considered a "small" development.

And, they asserted that data from traffic counters they placed on the island the week after the Fourth of July holiday last summer shows that there were fewer than 1,000 ADT's on the isthmus.

The Bills Island Homeowners Association hired an Idaho Department of Transportation

employee to place a traffic counter on the road to the island, and his report, from counts taken on July 4, 2006 and the preceding week, shows close to 1,000 ADT's on some days.

The developer argued that a count during a peak period for travel to the island does not give a balanced picture of traffic. Opponents argued that the ADT counts are supposed to be estimates of what will happen at a development's build out.

There are 301 lots on platted on the Island now, and 197 are developed, so BIA members said ADT's at build-out will be well over 1,000 even without Woodlands traffic.

Hours of discussion were spent at both hearings on the developer's proposal to use enhanced septic tanks instead of building a central sewer supply, concerns about his wells drawing down the island's water supply, and concerns about his proposal to pump water out of the reservoir, which is either frozen or depleted many months of the year, as a back up firefighting supply.

The developer, builders, and Realtor Brett Whitaker, also an Island Park volunteer fireman, testified that the subdivision's roads and homesites would make the island safer because trees would be removed from the island's heavily wooded interior, making it less vulnerable to wildfires.

County Attorney Karl Lewies' findings of fact and conclusions of law played a huge part in the commissioners decision' to approve the project. Part of Lewies' defense of the approval is based on what he calls the "Gunbarrel rule." This is a ruling he wrote in findings of facts and conclusions of law for the Gunbarrel at Shotgun Villages development, which the County Commission denied. The rule basically says that a developer can bring inadequate roads up to current county standards "as far as reasonably possible." Because of this rule, Gunbarrel's developer, Gregg Williams, resubmitted plans to subdivide land he owns adjacent to the Shotgun Villages. A public hearing on the development has not yet been scheduled.

The County Commission has not adopted the Gunbarrel rule as county policy or added it to the development code.

Some county roads cannot be widened to meet today's standards because widening them would encroach on private property, or for some other reason there is no room to widen them, as is the case with the Bills Island causeway.

Lewies' conclusions also support the Woodlands plan for fire protection. And, they support the plan to use individual septic tanks in the development, despite concerns opponents have expressed about water pollution from failed septic systems.

And, Lewies supports the developer's expert testimony about traffic counts on the island and dismisses testimony provided by a Bills Island Association expert witness. The developer's expert looked at traffic counts during a non -holiday period and found them to indicate less than 1,000 "average daily trips. (ADT)" The development code states that loop roads can serve developments if they accommodate less than 1,000 ADT's The BIA witness counted traffic on a holiday weekend, and the count exceeded 1,000 ADT. The count was done at a busy time to

illustrate what it could be at build-out, but Lewies did not agree with this method.

The development code does not define loop road or explain the meaning of an average daily trip. In addition, old copies of the development code state that a loop road can satisfy the two-access point rule if the ADT's are 100, not 1,000.

And, loop roads are generally roads that surround a development that people turn off to reach their driveways. The so-called "loop" road to Woodlands is a narrow one-way road on the causeway that two vehicles can barely use at once. It ends at a T intersection, at which people can turn left or right onto the real loop road that provides access to the original Island. If Woodlands is developed, this intersection will become a three-way, with the third option being to head to Woodland's entrance.

A condition of the Woodlands approval is that the causeway be widened to have a 36 ft. surface and two feet for shoulders. Lewies' findings state that this wider road will accommodate three-way traffic.

In his findings, Lewies notes that at the public hearing, no one questioned the 1,000 ADT threshold.

The developer and his team, as well as supporters from Fremont County and other states, said he is committed to doing high quality projects. If the island is to be developed they said, there couldn't be a better person to manage the project.

Sugar City developer Mike Vickers tried to develop the interior in 2005, but his application was turned down because of access and safety issues. But in a 2006 appeal hearing, rather than addressing the access, County Attorney Karl Lewies found that Vickers' proposal to develop 59 lots was in error. Vickers had purchased a TDR (transfer of development rights) on 70 acres of wetlands from a landowner on Henry's Lake Flat to raise the total acreage of his proposal so he could build more lots that would normally be allowed on 92 acres — 37 lots. But the Planning Department erroneously treated the wetlands as normal land, allowing more lots to be platted on the island than there should have been. Rather than reduce the development's size and reapply, Vickers sold the land with the TDR to Davis.

APR 12th 07

By ELIZABETH LADEN

Vague language in the Fremont County Development Code has caused hours of time to be spent debating the merits of a development proposed for the interior of Bills Island in Island Park. The 42-lot Woodlands at Bills Island subdivision does not appear to meet an absolute standard in the development code — that certain developments must have two access points.

Developments that do not meet even one absolute standard are supposed to be denied, according to the county's code. And for that reason, in November, the Fremont County Planning and Zoning Commission denied Utah developer Ryan Davis' application to develop 42 lots in the

middle of the island.

Davis appealed the decision. The appeal hearing before Fremont County Commissioners Paul Romrell, Skip Hurt, and Don Trupp at the County Annex in St. Anthony Tuesday devoured more than six hours time, with the developer and his team — as well as opponents to the project — bringing up many issues in addition to the main one — the failure to meet the absolute standard.

Around 35 people attended the appeal hearing.

The Planning and Zoning Commission's denial was based on a section of the development code that states:

"All developments containing six or more dwelling units or with a distance of more than 660 feet from a public road which is maintained on a year-round basis shall provide a minimum of two points of ingress and egress from the public road or highway serving the development. Loop systems that return to a single point of access to the public road or highway may be acceptable for relatively small developments (1,000 or less projected ADT - Average Daily Trips)."

The requirement for a development more than 660 feet from a public road to have two access points is an absolute standard in the code, meaning that the project must be denied. Woodland's main entrance is 1,667 feet from the county road to Bills Island.

Nonetheless, Davis, his attorney — Chuck Homer of Idaho Falls — and several “expert” witnesses were able to steer the Fremont County Planning and Zoning Commission and the Fremont County Commission away from the absolute standard failure to discussions pertaining to the word, “may” in the second part of the standard — that the development may utilize the one road to the island as a loop road. The developer's team asserted to both commissions that they could improve the island's only access road to make it safe for their own buyers and the entire island community.

They said they could obtain a permit from the Army Corps of Engineers to add more land to the isthmus connecting the island to the mainland, and widen the road so it would have three 12-ft. lanes.

In the November meeting, their plan was to widen the road to 31-ft., which is still much narrower than the county's width standard of at least 60 ft.

The developer's team found another loophole in the code — the definition of a large-scale development being one that is 59 lots or more, to assert that their 42-lot subdivision should be considered a “small” development.

And, they asserted that data from traffic counters they placed on the island the week after the Fourth of July holiday last summer shows that there were fewer than 1,000 ADT's on the isthmus.

The Bills Island Homeowners Association, which opposes Woodlands and is represented by

attorney Reed Larsen, hired an Idaho Department of Transportation employee to place a traffic counter on the road to the island, and his report, from counts taken on July 4, 2006 and the preceding week, shows close to 1,000 ADT's on some days.

The developer argued that a count during a peak period for travel to the island does not give a balanced picture of traffic. Opponents argued that the ADT counts are supposed to be estimates of what will happen at a development's build out.

There are 301 lots on platted on the Island now, and 197 are developed, so BIA members said ADT's at build-out will be well over 1,000 even without Woodlands traffic.

Hours of discussion were spent at both hearings on the developer's proposal to use enhanced septic tanks instead of building a central sewer supply, concerns about his wells drawing down the island's water supply, and concerns about his proposal to pump water out of the reservoir, which is either frozen or depleted many months of the year, as a back up firefighting supply.

The developer, builders, and Realtor Brett Whitaker, also an Island Park volunteer fireman, testified that the subdivision's roads and homesites would make the island safer because trees would be removed from the island's heavily wooded interior, making it less vulnerable to wildfires.

Opponents to Woodlands have long said the interior is what makes the island so special, and a main reason they purchased their lots on the island was that Ivan P. Bills, the Utah man who developed the island, had promised that the interior would never be developed. Bills, however, never set the interior aside as open space, and his original plans show roads to the center.

The developer and his team, as well as supporters from Fremont County and other states, said he is committed to doing high quality projects. If the island is to be developed they said, there couldn't be a better person to manage the project.

Sugar City developer Mike Vickers tried to develop the interior in 2005, but his application was turned down because of access and safety issues. But in a 2006 appeal hearing, rather than addressing the access, County Attorney Karl Lewies found that Vickers' proposal to develop 59 lots was in error. Vickers had purchased a TDR (transfer of development rights) on 70 acres of wetlands from a landowner on Henry's Lake Flat to raise the total acreage of his proposal so he could build more lots that would normally be allowed on 92 acres — 37 lots. But the Planning Department erroneously treated the wetlands as normal land, allowing more lots to be platted on the island than there should have been. Rather than reduce the development's size and reapply, Vickers sold the land with the TDR to Davis.

Commissioners will mull the testimony in work sessions, and study the appeal hearing's transcript and County Attorney Karl Lewies findings of fact and conclusions of law based on the hearing testimony, before making a decision by their 60 day deadline.

After the testimony ended, Commission Chairman Paul Romrell said the county is in the process of "tweaking the development code. We invite you to be involved and tell the Planning and

Zoning Commission what you think about the code and what needs to change.”

Several developers have appealed Planning and Zoning Commission decisions in recent months, and Romrell said his commission is “trying to do one a month — we have five or six pending. We are finalizing the one we did last month (Gunbarrel at Shotgun). It is a busy time for us. We take it seriously. This is the most beautiful county in Idaho. What we do in the next few months will dictate what Fremont County looks like forever.”

Commissioners set a work session on the development for 9 a. m. Friday, April 13 in the Commission Room at the courthouse. The public can attend, but they cannot talk, since the public comment period ended with Tuesday’s hearing

March 26th 07

Tuesday April 10th 2007

This is the date for the Fremont County Commission to review the Woodland’s request to develop the center Island. Your attendance is needed. If you can attend the more people we have there the better. You may comment at this meeting. If you would like to send a letter of comment please do so, but keep your comments on issues. Water, sewer or fire safety. Written comments must be in by 4th of April. County Clerks Office 151 W 1st N St Anthony ID 83445

Fremont County Commission

Tuesday April 10th, 2007

9:00 am

Fremont Co. Annex Building

125 N Bridge St

St. Anthony ID.

Fremont County Commission

Tuesday April 10th, 2007

9:00 am

Fremont Co. Annex Building

125 N Bridge St

St. Anthony ID.

Feb 14-06

P & Z to consider development moratorium next month

Advertisement

By *ELIZABETH LADEN*

Fremont County Planning Administrator Jeff Patlovich said today that the Planning and Zoning Commission will discuss an interim moratorium on new development at its next regular meeting, set for 6 p. m. Monday, March 9 at the County Annex on Bridge Street.

Planning Commissioner Kip Martindale requested the moratorium during the Monday, Feb. 12 Planning and Zoning Commission meeting. Martindale's motion asking for a vote on imposing the moratorium for one year died for lack of a second after Patlovich said he would put the item on next month's agenda.

In making the motion, Martindale read a prepared statement that asks for the interim moratorium while the county's comprehensive plan and building code are being updated. Martindale stated that such an action is allowed by the state's Local Land Use Planning Act, which states, "If a governing board finds that a plan, a plan component, or an amendment to a plan is being prepared for its jurisdiction, it may adopt an interim moratorium upon the issuance of selected classes of permits if ... the governing board finds and states in writing that an imminent peril to the public health, safety, or welfare requires the adoption of an interim moratorium. An interim ordinance or moratorium shall state a definite period of time, not to exceed one calendar year, when it shall be in full force and effect."

Martindale stated that he made the motion "because the pace of current projects would not be in

compliance with the new plan. Members of the Planning and Zoning Commission cannot appropriately evaluate each project as well as make revisions to the comprehensive plan and development code. For example we have transfers of development rights in our code that have not often been used. When used properly, TDR's in other states and counties have brought private property owners \$7,500 to \$200,000 per acre."

Patlovich said if the Planning and Zoning Commission supports the moratorium, the Fremont County Commission would hold a public hearing on the measure.

If the county commission decides to impose a moratorium, it would do so by an ordinance.

In the last few months, other planning commissioners and members of the Fremont County Commission, have casually discussed the idea of a moratorium on Class 2 permits until the planning document revision is completed.

Online Poll Results: Do you support a one-year moratorium on development in Fremont County?

Yes:	80%
No:	15%
I support a moratorium, but for less than one year.:	5%

Jan 24 07

Printed From The Island Park News
2007-01-19

We're a county in crisis

Valley Perspectives by Chan Atchley

We are a county in crisis. We are like cows contentedly chewing our cud, oblivious to the wolves circling for the kill.

County government is in danger of being paralyzed by ever increasing development applications and lengthy approval and appeals timelines. Decisions are being made in the heat of the moment that are not good for county government and citizens.

Skeptical? Here is a short list of what I have encountered.

While conducting an appeal, the county commissioners overturned a P & Z decision to deny a class II permit. The commissioners accepted the applicant's claim that a Forest Service road was a private driveway and adequate for firefighting equipment to get to the resort. In reality it is a single lane road more than a mile long, accessible only by 4-wheel drive vehicles most of the year and cannot be safely accessed by fire fighting equipment any time.

Early last year, a permit was issued for remodeling an old barn into a single family dwelling. However, from the outset, it was known that the developer was planning a bed and breakfast with the capability of handling wedding receptions. Neighbors whose home and outbuildings are overshadowed by the huge structure just 35 feet from their property line had to hire an attorney to pressure the county Building Department to red tag the construction until a permit was presented to the P & Z. Application for the permit was filed about six months later in December 2006. The public hearing requesting the upgrade was held January 8, 2007 and the permit was denied. In the meantime, the neighbors, who are working hard to put two children through college, spent thousands of dollars in legal fees trying to get the county to enforce its own building code.

I was one of 49 people to witness the appeal hearing on the Shadow Ridge at Stephens Ranch subdivision. Most were opposed to the project as well as more than 50 other individuals who signed a petition. It was not easy to sit still as the developer's attorney talked about the wonderful plans for protecting wildlife while he downplayed the importance of the migratory elk corridor. Or listening to how infrastructure costs such as rebuilding the Fish Creek Road were minimal while the costs of additional services such as fire and police protection, solid waste disposal, and schools were barely mentioned. Again, individuals appealing the development spent thousands of dollars trying to insure that the county commissioners consider all consequences of the development.

County commissioners are overloaded. Under normal conditions the job is supposed to be half time, but now nearly always exceeds that target. Add

to it the time required for appeals - there are already four more lined up to be heard in as many months - and we have a real problem. The commissioners are now working full time while other problems requiring attention loom on the horizon. By some accounts, they've already spent more than 60 hours on Shadow Ridge appeals and that may double before they are finished. Right or wrong, they must make a decision 60 days after hearing an appeal.

Obviously, strengthening the comprehensive plan and closing loopholes in the development code would simplify the evaluation process. There would be fewer appeals and enforcement of the code would be enhanced. Therefore, we must dramatically speed up the comprehensive plan and the code revision process. We can't afford to let our county government become so preoccupied with development that other issues are not adequately addressed.

So what can you do? I know, I'm beginning to sound like a broken record, but please go to county meetings. Learn how we can intelligently meet the challenges of growth in a way that will benefit all of us, not just developers.

Our way of life is as endangered as our wildlife and will disappear if we don't find ways to protect it. Once it disappears, it will be gone forever.

Chan Atchley

Jan 18th 07

Fremont County Commissioners will review the denial of the Woodlands at Bills Island Development project Apr 10th at 9:00 A.M. in the county Annex Building on Main Street in St Anthony. Everyone is welcome to attend. You are welcome to comment at this meeting. The board members will be in attendance and we will report any and all info on the web page ASAP.

UPDATE on Snow conditions

Snow conditions are great but there is an Avalanche warning in the mountain areas. Please be aware of the high risk of avalanche. Check with local authorities before going into the mountain areas. Three people were killed in avalanches during the New Year Holiday.

Snowmobile Safety

An 11-year-old boy must have had a guardian angel last weekend when he crashed his snowmobile and slid under a flatbed truck — with no serious injuries.

According to witnesses, the boy was snowmobiling out of a side road at the Island Park Village Resort onto the upper Big Springs Road on Friday, December 29 when he ran into a truck owned

by an Island Park business. He was then run over by a flatbed trailer the truck was hauling.

He was flown by helicopter to the Eastern Idaho Regional Medical Center in Idaho Falls, and released soon after with no serious injuries

Please keep safety in mind

Nov 14 06

P and Z sinks Bills Island plan

By ELIZABETH LADEN

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Island Park News

Advertisement

In a unanimous decision Monday, the Fremont County Planning and Zoning Commission denied a Class II permit to Salt Lake City developer Ryan Davis to put 42 lots on the 91.8 acres in the middle of Bills Island.

According to Molly Knox, the Planning Department's administrative assistant, commissioners denied the project because Planning Administrator Jeff Patlovich's findings of fact stated that it does not meet the development code's requirement that developments with six or more lots have two access points 670 feet or more from a county road. The development's proposed access would have been at a single point from a loop road that goes around the island, and which is more than 670 feet from the county road that accesses the island.

In 2005, the P and Z Commission turned down Sugar City developer Mike Vickers' application to develop the island because of several safety issues. Then, in January this year, the County Commission denied Vickers' appeal of the P and Z Commission's decision because the P and Z administrator at the time had made a mistake in the number of lots that could be built in the island's interior.

The commission heard more than three hours of testimony from the new developer's representatives and the public at its regular meeting in October. Bills Island residents and others have expressed concerns about the development polluting the Island Park Reservoir, creating too much traffic, not being safe if there is a fire, and harming wildlife.

Nov 11 06

Island plan a washout

Woodlands  project may be rejected

ST. ANTHONY – A lack of adequate access to Bills Island from the nearest public road may halt a 42-lot subdivision proposed for the interior of the island.

The Fremont County Planning and Zoning Commission voted Monday night that the access proposed in the Woodlands preliminary plat fails to meet the county's performance standard requiring two accesses into a subdivision.

The access performance standard is considered an absolute standard in the county's development code, which means if the project fails to meet the standard, the project can't be approved.

The commission was meeting in a work session when the vote was taken. A formal vote to accept or reject the preliminary plat will be taken as scheduled at a meeting Monday.

As proposed, the Woodlands would be accessed via a widened and improved causeway to the island and a connecting loop road around the outer edge of the island.

While the county's code calls for a minimum of two accesses into subdivisions of six lots or more, the code also says loop roads may be allowed in smaller developments if traffic can be shown to be less than 1,000 projected average daily traffic.

At an earlier hearing the developer produced an engineer's survey that showed that the average daily traffic would be less than 1,000.

The planning commission also was concerned the loop road, as proposed, didn't "return to a single point of access to a public road" as the code provides. Rather, it connects to a private road.

The Woodlands project was proposed once before and rejected by the planning commission on life safety issues. In an appeal to the Fremont County Commission, the commission didn't reject the loop road proposal made by the developer, County Attorney Karl Lewies said, though the plat was rejected by the county commission due to failure to comply with the density provisions of the code.

Lewies said the county commission ruling "might be considered precedence" by allowing the access as proposed in the first Woodlands preliminary plat.

Lewies also encouraged the planning panel to ignore issues related to the ownership of the causeway, predicting legal battles over ownership between the developer and I.P. Bills Island Association will be lengthy.

Rather, the planning panel is required only to determine if the proposal meets the county development code, regardless of actual ownership of the causeway, which will likely be determined in court.

Planning Administrator Jeff Patlovich has prepared findings of fact based on the work session vote for the planning commission to review and approve at a meeting Monday at 6 p.m. at the Fremont County Courthouse in St. Anthony.

P & Z delays Bills Island decision

Advertisement

Salt Lake City developer Ryan Davis will have to wait until next month to see if the county Planning and Zoning Commission will approve his plan to put 42 lots on the 91.8 acres in the middle of Bills Island.

On Monday — the county Planning and Zoning Commission decided to wait until Monday, November 6 to discuss the development proposal and possibly vote on Davis' Class 2 application to subdivide the acreage.

The commission delayed the decision after hearing more than three hours of testimony from the developer's representatives and the public. They were also given a pile of documents to review that had not arrived at the county in time to be included in the information packet they review before their meetings. They wanted time to digest all the testimony and all the new written information, Planning Administrator Jeff Patlovich said Tuesday.

Davis wants to transfer development rights from 70 acres of wetlands on Henry's Lake Flat, many miles from Bills Island, so he can bring the total acreage of "developable" land to 160 acres and be able to put 42 lots on the 91.8 acres. Each lot would have an individual septic system and well. Without the transfer, the most lots the development could have would be around 36.

Sugar City developer Mike Vickers had a similar plan that was turned down this January because it had too many lots.

Both developers have faced significant protest from long time Bills Island residents and others who have expressed concerns about the development polluting the Island Park Reservoir, creating too much traffic, not being safe if there is a fire, and harming wildlife.

The November 6 meeting starts at 6 p. m in the County Annex on Bridge Street in St. Anthony.

[Back](#)

P & Z to consider development moratorium next month

By *ELIZABETH LADEN*

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If the county commission decides to impose a moratorium, it would do so by an ordinance.

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I support a moratorium, but for less than one year.:	5%

CURRENT INNER ISLAND ACTIVITIES

July 21st

Hello to all

Check the WHAT'S NEW tab for regular BIA info

It seems as a board we have kind of taken a break through the winter but we are still here and we are getting ready for the summer activities on the island.

The gate is working again for the summer. We had a little issue with the exit last fall so we did have to leave the gate up all winter. We tried to go in and out of the same gate last year but the old system didn't have the ability to distinguish loop one from loop two. There are loop sensors in the ground that detect cars as they drive through and lower the gate. We added a second one that will open the gate as you drive out and then the first one was supposed to close it, but it could not handle the second loop. Hopefully the new system will handle it, if not we will put it on the old exit and use it there. We are still planning on using one gate this summer but we are not sure if it will be too congested at the gate during the busy weekends. We ask that you be patient with us during the trial time.

You will need your gate key to get in for now. The phone system is in and has been tested on a small trial bases. We are adding the phone numbers that we collected last year and we will try to get the phone system going before the busy summer. If your home phone or cell phone number has not changed from last year you should be ready to go as soon as we get it running. If you are current on your dues you will be allowed to use the phone system free as part of being a paid up member.

Oct 2nd

Here is the Boards response to Dave Hume's letter.

DEAR BILLS ISLAND PROPERTY OWNER:

WE, THE DUES PAYING BOARD MEMBERS, WOULD LIKE TO CLEAR UP SOME OF THE CONTROVERSY OVER THE CENTER ISLAND DEVELOPMENT. WE WILL START FEB. 1st, 2007, AFTER THE WOODLANDS (i.e. "THE RICHEY GROUP" FEATURING, RYAN DAVIS, PROJECT MANAGER, JASON NIETT & PAUL RICHEY) BOUGHT THE PROPERTY FROM THE WILDERNESS GROUP, BRENT CALL, ROY LEAVITT, JOLENE JENKINS, AND REED RICHMAN MET WITH RYAN DAVIS ON 2/1/07. OUR CONCERNS WERE THE SAME THEN AS NOW: SAFETY, ACCESS, WATER QUALITY AND DENSITY. MR. DAVIS STATED AT THAT TIME THE WOODLANDS WOULD JOIN THE HOME OWNERS ASSOCIATION, NOT HAVE A GATE AT THE ENTRANCE OF THE WOODLANDS DEVELOPMENT, HELP IMPROVE THE GATE AND ENTRANCE TO THE ISLAND, HELP WITH DRAFTING NEW C.C. & R.'S FOR THE ENTIRE ISLAND, WORK WITH AND DISCUSS WITH THE ISLAND ASSOCIATION ON HOW THE CAUSEWAY PROPERTY WOULD BE DEVELOPED, BUILD A PAVILION, HELP WITH UPDATING THE TRACTOR, SNOW BLOWER, FIRE TRUCK AND SECURITY CABIN. MR. DAVIS HAS BEEN ASKED EACH TIME THE BOARD MEMBERS HAVE MET WITH HIM IF THE RICHEY GROUP WOULD REDUCE THE NUMBER OF LOTS AND EACH TIME HE HAS REPLIED THEY WOULD NOT.

BRENT CALL AND REED RICHMAN MET BRIEFLY WITH MR. DAVIS AFTER THE P & Z HEARING FEB 11th 2007 AND AT THAT TIME MR. DAVIS STATED THAT THE RICHEY GROUP WOULD NOT BE MEMBERS OF THE ASSOCIATION, WOULD INSTALL A GATE AT THE ENTRANCE OF THE WOODLANDS DEVELOPMENT, WOULD NOT HELP IMPROVE THE GATE OR SECURITY CABIN, WOULD NOT HELP WITH THE ISLAND C. C.& R.'S AS THEY WOULD HAVE THEIR OWN C.C. & R'S AND WOULD ALLOW RENTALS. MR. DAVIS OFFERED TEN THOUSAND DOLLARS TO BUILD A PAVILION, UPDATE THE GATE, IMPROVE THE SECURITY CABIN, UPDATE THE TRACTOR, SNOW BLOWER AND FIRE TRUCK. MR. DAVIS' COMMENT WAS "THAT'S THE BEST WE CAN DO".

AFTER P & Z DENIED THE DEVELOPMENT AND THE COUNTY COMMISSIONERS APPROVED THE DEVELOPMENT, THE B.I.A. ASSOCIATION FILED AN APPEAL WITH DISTRICT COURT. AT THE FIRST HEARING WITH JUDGE MOSS IN DISTRICT COURT, JUDGE MOSS STATED THAT THE WOODLANDS COULD BUILD THE CAUSEWAY "AT THEIR OWN RISK". WE, THE B.I.A. BOARD, AGREED TO A MEDIATION MEETING WITH WOODLANDS. WE MET AT BAKER & HARRIS OFFICES IN BLACKFOOT IDAHO ON OCTOBER 4, 2007. BOARD MEMBERS PRESENT WERE: BRENT CALL, CON HAYCOCK, JOLENE JENKINS, ROY LEAVITT, SCOTT WATSON, REED RICHMAN AND LEGAL COUNSEL REED LARSEN. IN THE WOODLANDS ROOM: RYAN DAVIS, CHARLES HOMER AND KARL LEWIES. MR. BAKER WENT BACK AND FORTH BETWEEN ROOMS FOR OVER EIGHT HOURS. THE B.I.A. BOARD KEPT ASKING FOR ENGINEERED DRAWINGS OF THE IMPROVEMENT OF THE CAUSEWAY. AS SET FORTH BY THE FREMONT COUNTY COMMISSIONERS UPON THEIR APPROVAL OF THE DEVELOPMENT. AFTER ABOUT EIGHT HOURS THE WOODLANDS ADMITTED THAT THEY DID NOT HAVE ANY DRAWINGS OF THE CAUSEWAY IMPROVEMENT. JUDGE MOSS THEN RULED THAT THE WOODLANDS MUST PRODUCE ENGINEERED DRAWINGS TO COUNTY SPECIFICATIONS WITHIN 72 HOURS. THEN THE B.I.A. ASSOCIATION'S ENGINEER WOULD HAVE 72 HOURS TO REVIEW THE DRAWINGS AND APPROVE OR DISAPPROVE. WE THEN WENT BACK TO JUDGE MOSS'S COURT AND THE JUDGE RULED THAT THE WOODLANDS COULD PROCEED WITH CAUSEWAY CONSTRUCTION "AT THEIR OWN RISK". JUDGE MOSS ALSO RULED THAT THE WOODLANDS MUST POST A PERFORMANCE BOND WITH THE COUNTY TO INSURE THE WORK WAS DONE ACCORDING TO THE ENGINEERED DRAWINGS AND COMPLETED. THE WOODLANDS QUICKLY STARTED CONSTRUCTION OF THE CAUSEWAY, THEN IN LATE JANUARY 2008 THEY PETITIONED FREMONT COUNTY FOR THE RELEASE OF THE PERFORMANCE BOND. FREMONT COUNTY RETURNED THE PERFORMANCE BOND TO WOODLAND STATING THAT THE CAUSEWAY WAS FINISHED. THE FREMONT COUNTY ENGINEER WAS NEVER GIVEN ANY DRAWINGS OF THE CAUSEWAY AND WAS NOT EVEN MADE AWARE THAT THERE WAS ANY WORK BEING DONE ON THE CAUSEWAY SO THAT IT COULD BE INSPECTED. THE COUNTY ENGINEER NEVER SIGNED OFF ON THE CAUSEWAY

CONSTRUCTION, SHE WAS NEVER ASKED!! B.I.A.'S ENGINEER, WINSTON DYER WAS NEVER CONTACTED AND ASKED TO SIGN OFF ON THE COMPLETION OF THE CONSTRUCTION OF THE CAUSEWAY.

WHEN BOARD MEMBER REED RICHMAN WAS CONTACTED AND INFORMED THAT FREMONT COUNTY WAS GIVING THE WOODLAND'S PERFORMANCE BOND BACK, HE CALLED MR. DAVIS AND ASKED IF THE CAUSEWAY WAS TRULY FINISHED. MR. DAVIS NEVER ANSWERED THE QUESTION AND FINALLY HUNG UP ON MR RICHMAN. MR. RICHMAN THEN CONTACTED THE COUNTY ENGINEER AND THE B.I.A. ENGINEER TO SEE IF THEY HAD INSPECTED AND SIGNED OFF ON THE CONSTRUCTION COMPLETION. BOTH ENGINEERS HAD NOT EVEN BEEN MADE AWARE OF THE FACT THAT THE WOODLANDS WAS GETTING THEIR BOND BACK.

THEN THE WOODLANDS SENT OUT A LETTER TO THE ASSOCIATION MEMBERS STATING, AMONG OTHER THINGS THAT THE CAUSEWAY WAS FINISHED.

ON APRIL 15th, 2008 BRENT CALL, CON HAYCOCK, JOLENE JENKINS, SCOTT WATSON, ROY LEAVITT AND REED RICHMAN MET WITH JASON NIETT AND PAUL RICHEY IN REED LARSEN'S OFFICE. RYAN DAVIS WOULD NOT ATTEND. BOTH JASON NIETT AND PAUL RICHEY INSISTED THAT THE CAUSEWAY WAS FINISHED? NOW LET US ASK, IS THE CAUSEWAY FINISHED? WHO IS GOING TO HOLD THE DEVELOPER ACCOUNTABLE? WE DON'T THINK THE COUNTY WILL. DOES THE ASSOCIATION WANT TO PICKUP THE BILL FOR FINISHING THE CAUSEWAY? WHAT ELSE WILL THE ASSOCIATION HAVE TO PAY FOR AFTER THE DEVELOPER GETS HIS MONEY AND RUNS? IS THE B.I.A. BOARD BEING UNREASONABLE AS STATED BY RYAN DAVIS? CAN ANYONE LOOK AT THE CAUSEWAY AND HONESTLY SAY THAT THERE ARE THREE TRAFFIC LANES AND GUARD RAILS? IS IT FINISHED? CAN WE REALLY TAKE THE DEVELOPER AT HIS WORD?? SHOULD WE WITHDRAW THE APPEAL FROM THE SUPREME COURT? ONCE AGAIN WHO IS GOING TO HOLD THE WOODLAND ACCOUNTABLE?

On August 11, 2008, after receiving Judge Brent Moss' decision, Brent Call, Con Haycock, Jolene Jenkins, Scott Watson, Roy Leavitt, Randy Hayes, and Reed Richman met with the legal counsel for the BIA, Reed Larsen and Ron Kerl. At this meeting, discussion included the likelihood of a successful appeal to the Idaho Supreme Court, the fact that the BIA will have no bargaining position should the appeal be lost, and the cost of the appeal to the BIA association members. BIA's counsel discussed with the board members at length the likelihood of a successful appeal. The cost of the appeal was determined to be between \$15,000 and \$20,000, of which \$11,000 was currently in the legal fund. Counsel informed the board members that the Supreme Court Justices would in all probability oversee arbitration between the BIA and the Woodlands before the suit comes before the bench. The seven board members voted unanimously that it was in the best interest of the BIA to proceed with the appeal.

We are willing to negotiate with the Woodlands. They need to just call and set up a meeting and bring their paper and pen ready to sign any agreements made at the meeting instead of saying they will consider all ideas. We, the Board, are trying to protect the island. We don't want to have to fix the problems that the developer leaves behind. They claim District 7 will inspect their sewer systems, does anyone really believe that?

Why are the Woodlands meeting with individuals on the island and not with the board? Some members on the island have met with the developer and had their own mediation meeting, yet refuse to be a member on the board and some of them don't pay BIA dues. How can they speak for anyone? Is it to break us up as an association? Of course it is. Once they stop the unity in the association then they can start to divide us.

There are rumors of the developer offering the Island a park, repair the roads around the island, fire hydrants, a large sum of a cash infusion, all of which are not true. Dave Hume did meet with two people, one of whom was the developer, and did get an agreement from the developer to pay a user fee but they did not sign the agreement. So here we have the same thing. They agreed to continue to discuss those items and as long as it goes their way they will keep discussing them, else they stop negotiations and say we are being unreasonable.

We can stop the litigation at anytime, and we will if the developer comes to the table with real commitment to settle the dispute and be ready to sign any agreement we make.

IF WE LET UP NOW WE WILL BE RUN OVER BY THE DEVELOPER.

WHO WILL MAKE THEM FOLLOW THE RULES SET DOWN BY LAW?

JUST LOOK AT THE CAUSEWAY FOR STARTERS.

They have had all summer to finish it but no they cut a hole in the center of the island to take our attention off the causeway.

As a board we may not stop them but if they don't build it right we will be there to protect the Island and make them do it right.

Why do we feel they need to contribute a cash amount?

Because the infrastructure around the center of the island is what makes the center ground as appealing as it is. Who has paid for the infrastructure? Everyone on the Island that has ever paid his or her dues or when you purchase your cabin it was a part of that price.

WHAT HAS THE CENTER ISLAND OWNERS EVER CONTRIBUTED TO THAT INFRASTRUCTURE? The answer is nothing.

If anyone in the center of the Island ever has a problem where will they go?

Straight to Terry and ask for help. Is he going to turn them down? Should he turn them down? We all know the value of Terry and Marg at the gate. They need to pay their share of the cost of having such people available on the Island to turn to.

We feel they need to join the association, pay dues and be a part of the association, then they can come to the meetings, express their concerns and hear our concerns, then we can all work together. When it's all said and done we are going to have to be neighbors and work together to keep the Island a special place for us all to enjoy.

P.S.

We just received notice that we have an arbitration meeting with the Supreme Court and the Woodlands Nov 4th. We will attend and be open to all offers to settle but we will be firm in protecting the Island and the B.I.A. association's interest.

THE B.I.A. BOARD
Brent Call

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Aug 4th

Judge Moss Ruling

Friday Judge Moss ruled against the BIA. We now have to meet with our attorney to look at our options to determine where we go from here. We have 30 days to appeal the ruling to the Supreme Court. Please let us know your thoughts on this issue.

June 11th 08

Hello B.I.A.

We have three items for you to read.

- 1) Judge Moss Hearing**
- 2) Terry's surgery**
- 3) July 4th Island parade and boat parade**

1) The Board attended the hearing at the St Anthony courthouse with Judge Moss. Our attorney's presented our case very well, now we just wait for his ruling.

2) For your info Terry had knee surgery Tuesday the 10th. He is doing fine at this time. He will be home Friday. We wish him a speedy recovery. We need him on the Island. We would also like to wish Terry and Marg a happy 50th wedding anniversary on the 28th of June.

3) The last item is the July 4th parades. We would like to honor our service men and women. If you know of anyone that would like to ride in the B.I.A float in full dress uniform please give Jolene a call, 208-589-5050. We would like them to ride on the B.I.A boat to lead us around the island during the boat parade that night.

Hope to see all of you on the 4th. Let's hope for warm weather

May 23rd

To all B.I.A. Members

1-Judge Moss hearing

First item we have is to let you know that Judge Moss has moved the hearing for the inner island back to June 10th 2pm. We had hoped he would have his ruling by the July 4th but it doesn't look like it will happen.

2- FRIDAY July 4th activities

Our annual meeting and activities were approved last year for Friday July 4th. We will start with our annual parade at 9:30 am. Start lining up at 9:00 at the top of the causeway. Decorate your boat, 4 wheelers, bikes or anything you have and come and join us. Parents there will be a trailer for you to ride on to follow your little ones around the loop should they not make it all the way. We will stop at the Rexburg boat club for a short refreshment break.

Our annual membership meeting will be at 12:30pm at Peterson's shop lot #178.

PLEASE DO NOT PARK ON PRIVATE PROPERTY

2008 dues are payable at this time.

YOUR DUES MUST BE PAID IN FULL TO HAVE VOTING RIGHTS

Annual meeting Agenda

- A- Verification of a Quorum
- B- Discussion on increase of Dues
- C- Replacement of Snow Blower- Removal of fire truck for the winter
- D- Update of Gate and Card reader
- E- Consideration of new Home Owner Bylaws
- F- Election of two board members
- G- Inner Island update

This meeting will last approximately 1hr.

Dutch Oven Dinner- BBQ Chicken, Potatoes, Beans, and Cobbler with a scoop of ice cream will start at 5:30 at the same place. We are planning to feed 400 people. We ask that you bring a **salad OR Two**. Plates will be provided.

Your whole group is welcome.

Fee is by donation.

We will end with a boat parade at 8pm. Gather inside the cove. Decorate your boat. Look for the flag on the dock and the Sheriffs Boat. He will lead us around the island to Lake Side for the Fireworks at dusk.

APRIL 16th

We had the opportunity to meet with the Woodlands Group Tuesday April 15th. The purpose of the meeting was to find common ground to settle the lawsuit between B.I.A., Fremont Co. and the Woodlands. Any agreement between the parties has to be done before Judge Moss rules on the suit and all litigation must be dropped. At this time we as a board, with direction from the Association members feel it is not in our best interest to settle before hearing the ruling from Judge Moss. Please feel free to email me or call with your comments.

Con Haycock

208-431-0835

chaycock@pmt.org

BIA has received an offer to settle the dispute between Woodlands and BIA. Woodlands' offer is as follows:

- 1) The Woodlands will donate the property, approximately one acre, that lies in between the guard shack and the existing BIA boat ramp to the BIA for the mutual use of all BIA homeowners on the Island.
- 2) The Woodlands will donate \$25,000 to the BIA to construct a pavilion on the property donated by The Woodlands.
- 3) We propose that the remaining money in the legal fund be returned to the homeowners.
- 4) The Woodlands will replace and reconstruct the entry gate near the guard shack. This gate will have an arch that will be made from large timber, the gate itself will be metal, similar to the gate that is at Stevens Ranch.
- 5) As The Woodlands has indicated before, The Woodlands will agree to pay its proportionate cost to maintain common roads, facilities, and property. In the past the BIA has indicated that this can be done through paying a user fee or through joining the BIA, we are amenable to either scenario.
- 6) In effort to show good faith, we ask that all litigation by the BIA be withdrawn, the claims dismissed and released, and that concerns be worked out through reasonable means.
- 7) Establish a mandatory HOA to govern The Woodlands and existing homeowners, with CC&R's that will provide for attractive site-built homes or cabins.
- 8) Establish a 50' setback between The Woodlands and existing homeowners on the Island so that existing wells, structures, and the impact on the use of existing property owners' property is minimized, in which 50' there can be no structure, fence or other improvement built.

- 9) Establish a 100' setback for any septic system within The Woodlands so that all Woodlands septic tanks must be at least 100' from the boundary of any existing homeowners property.
- 10) Provide that all roads within The Woodlands be maintained by The Woodlands so that there is no economic impact or burden on existing homeowners to maintain improvements within The Woodlands, this includes snow removal, road upkeep, etc.
- 11) Install a dry hydrant in Island Park Reservoir for the use of the Island Park fire district for the benefit of the entire Island, and also install yard hydrants within the Woodlands, and fire breaks within the Woodlands. This will improve the safety of the entire Island in the event that a fire ever breaks out on the Island.
- 12) Construct a central water system to service the Woodlands, eliminating the need for multiple wells to be drilled on the property.
- 13) As we said that we would, we have improved the Causeway to three lanes. We will add a layer of aggregate to the Causeway and will construct guard rails as required by the County.
- 14) This offer is to be accepted by BIA before the May hearing.

APRIL 10th 2008

Bills Island Homeowner Association P.O. Box 344

Dear Property Owners, Recently we were notified that the Woodland Development Group purchased a lot in the

Welling Addition. They paid the purchase price for the lot and paid all BIA and Welling dues, in addition to the legal fund assessment. By doing so, they became members of our association. Within a few days we received a demand letter, from their attorney, asking for all of our association documents, all minutes of annual meetings held, bylaws, Articles of Incorporation and C & R records and any changes that have been made, names and addresses of all board members. They asked for these records for the past seven years. Since we are a public organization and they are entitled to this information we sent them approximately 875 pages of documents.

As a board, we try to manage the association like a business. An independent certified public accountant firm audits all our financial records systematically each year and provides a financial report at our annual meetings. Our secretary/treasurer writes all checks but does not have check signing authority. All checks are approved and signed by two board members. All meetings have minutes taken, reread at the next meeting and approved by the board. At our annual meeting we have a voting quorum of members present to conduct business. All business is presented to the membership for their approval, which is done by motion, seconded, and then voted upon. New business from the floor is discussed and voted on the same way. Any member of our association has voting rights in these meetings. Everything is done up front and in a business-like manner. We have a legal firm that audits what we do and how we do it. We have a dedicated board that works hard for the association to keep things moving smoothly.

Recently Woodlands sent a letter to the Bills Island membership. The intent of this letter was to discredit the BIA board and try to get association members to lose confidence in the board and the BIA. Their main interest is to dismantle the association's funding, especially the legal fund. Their goal is to get the BIA legal action stopped so they can proceed with their development. This is the Bills Island Association's position:

1. Fremont County Planning and Zoning denied The Woodlands development for failure to meet the building code ordinances.
2. Woodlands appealed to the county commissioners to overturn Planning and Zoning's decision.

3. After much discussion and debate in public comment meetings the County Commissioners and the county attorney met in a “no comment” work meeting and decided to bypass or tweak parts of the building code and approved the Woodlands application.
4. Bills Island Association appealed that decision to District Court for failure to meet county building code and fire safety regulations.
5. The building code is very explicit on access and fire safety.
6. The BIA is standing in the way of the developer until he either meets code or the court ruling is made.
7. The BIA is in a good position for this lawsuit. Judge Moss has briefs from Cooper and Larsen, the BIA attorney, briefs from the developer’s attorney, Chuck Homer, and briefs from Fremont County attorney, Karl Lewies. He also has the rebuttal brief from BIA. The hearing date, for oral arguments, is May 20th The judge has approximately 30 days after that to make a decision.
8. We received a letter from the Woodlands dated March 19, 2008 where they asked us to drop the lawsuit in exchange for a small settlement. We feel we should wait for the court’s decision. Hopefully we will have a decision before our annual meeting in July. The legal system moves very slowly.

We appreciate your patience and support both financially and emotionally. Please understand that all efforts by the developer are being done at their own peril. That includes the work on the causeway and any work on the development while the judicial review is proceeding.

Thank you,

Bills Island Association Board

Here is a request from the Woodlands

Brent and Con,

Paul Ritchie and myself (without Ryan) were wondering if we could come meet with you and the board to discuss the latest written proposal we sent regarding the interior development of the island. We would be fine in coming up to Pocatello to meet at Larsen’s office if that is a convenient place to meet. The premise for the meeting is to simply try to discuss the points in the letter and see if a mutually beneficial solution can be reached.

If you are open to meeting with us, please let us know some potential dates that work for you.

Thanks,

Jayson

We send this to all Homeowners.

– We have had an opportunity to review your March 19, 2008, letter. We have also reviewed your previous demands which were made upon Bills Island Association for our corporate records. Traditionally, Bills Island Association has moved forward with directives and initiatives that are adopted at the annual meeting. Certainly, the Board has power to run the Association. However, the Board has always been sensitive to following the direction that the Board receives at the annual meeting.

The homeowners at the annual meeting have consistently, since the Wilderness Group and now since the Woodlands Group, been adamant that any development of the interior portion of the island would require compliance with all planning and zoning laws and ordinances and require compliance with all BIA rules for the private road. We have discussed on numerous occasions with you, Bills Island Association's view that the Woodlands subdivision does- not comply with Fremont County planning ordinance. The Planning and Zoning Commission agreed with us. The county commissioners disagreed. We believe that the judicial review that is going on is appropriate and ultimately that a court will require two points of ingress and egress to the subdivision to comply with the provisions of Fremont County Development Code Section KK which has been often discussed and with the Uniform Fire Code which also requires two points of ingress and egress.

You have provided certain items that are of interest for settlement discussion. However, there is no showing of a good faith to ask that all litigation be withdrawn and dismissed and released before there is any indication that there would be face to fact settlement negotiations. Such is not good faith and it is not reasonable.

We remain open to discussions concerning resolution, but also remain firm in following through with the expressed intent of the majority of the homeowner's association at the annual meeting to require the Woodlands to comply with all legal requirements for development. We as an association believe that is the only way that safety and the future of the island can be preserved.

We welcome a meeting with you and would encourage you to bring up any items which you wish at the annual meeting over the 4th of July.

Sincerely,

B.I.A. Board

March 20th 2008

Welcome new B.I.A. members *(A must read)*

Status report on Bills Island Appeal

We would like to welcome the newest members to the island.

It is The Woodlands at Bill's Island L.L.C. They have purchase a lot in the Willing Addition. They have joined the B.I.A association and have paid their dues and have paid their legal fee assessment to oppose the center island development. Welcome and Thank you!

States Report Bill's Island Appeal:

B.I.A has filled its appeal and the opening brief. On Friday March 14th 2008 the county and Woodlands filed their response brief. Our attorney's will file a reply brief within the next 2 weeks. After the briefing is completed a hearing will be held before Judge Moss. This will probably be sometime in May. We remain confident in the merits of the appeal.

Please understand that all efforts by the developer, The Woodlands, are being done at their own peril. That includes the work on the causeway and any work on the development while the judicial review is proceeding.

If you have any question or concerns feel free to call your board members.

Brent Call

Con Haycock

Reed Richman.

Jolene Jenkins

Roy Leavitt

Randy Hayes

Scott Watson

February 18, 2008

To: Members of Bills Island Association

Please read our response to the letter you received and the court papers below then make up your mind as to the direction we are going. We hope you will find that we are in a good position going into court with the appeal. Email us with for feedback PLEASE

Subject: Response to the Woodlands Letter to BIA Property Owners

1. Woodlands Developers sent a letter to Property Owners on Bills Island stating their opinions. Remember- **“A product comes highly recommended by those that sell it.”** It was a propaganda letter and not all the facts stated were true. The letter is designed to under mine our Association, to divide and conquer us and is inappropriate conduct on their behalf. We as a board have been open with the Association. We have discussed this matter in our annual meeting and asked for your input. As a member, you voted unanimously on the direction we should go and you gave the board authority to make the day-to-day decisions and you voted to move ahead. If you have questions about the BIA or board it seems the people to ask is your board. We try to keep all information on our website and we are sending information updates to each member by mail. Please take the time to read it and be informed.
2. A 42-unit development is not a minimal or small development. It is the maximum or largest amount of dwelling units allowed to be built on the acreage Woodlands owns. It is not a small development, 6 or less is considered a small development.
3. The Woodlands Plot was denied by the Fremont County Planning and Zoning Board for failure to meet Fremont County Building Code for access, i.e. 2 points of Ingress and 2 points for Egress and uniform fire safety.
4. The developers group of qualified Attorneys and Consultants they hired to get their desired end results of getting the development approved did not change the end

result. **Non-compliance to the building code was the result. Planning and Zoning denied their application.**

5. Our team of Attorneys and Engineers are just as qualified and they read and understand the Building Code rules and regulation and access is very defiant and is an absolute must comply to obtain approval. **The Developer did not meet the code.**
6. The Developer appealed to the County Commissioner to over ride the Planning and Zoning decision and figure a way to bypass that portion of the County Building Code. The development code is still in force but the County Commissioner has chosen to ignore the KK3 Section of the code and gave the developer approval for the application with restrictions, 29 absolutes they had to comply with including negotiations with Property Owners and BIA.
7. The causeway Riprapping had to be done while the reservoir was empty. Judge Moss, the BIA Board and Developer met to make decisions. Judge Moss ordered the developer to provide Engineering plans for the causeway widening within 48 hours and gave BIA 48 hours to review plans and then we went back to court. Judge Moss said widening the causeway would add to Bills Island. But it had no bearing or influence on the court case. The Developer could widen the causeway at his expense with the understanding it was at risk construction. If BIA wins in court the causeway construction is a donation to BIA. The Developer has no recourse.
8. BIA did indeed file an appeal in District Court. We are defending our right to hold county officials responsible to see they uphold the County Building Code and Laws and not be misled to interpret code different from its intent. Attorneys like to put their own twist to accomplish their own goals.
9. The Developers statement, **The Woodlands have agreed to accommodate most requests.** The examples they use are very misrepresented and are not true. BIA made several requests at mediation and they were all rejected including i.e. the loop road improvement, membership in BIA, user fee, update equipment, update gate and meeting facilities.
10. We as a Board have met with the developers on several occasions including mediation with Attorneys present. **Their comments have been, “we have deeper pockets than BIA”.** We told them having more money does not make you right or give you the right to change or alter the Building Code Laws that govern the place we live in and hold dear.
11. Encroachments of existing lots, wells, etc. Often time’s property gets surveyed several times and Surveyors come up with different correction points. This is why set backs on Property lines are required to allow for difference in surveys. Courts will not disallow older surveys unless they are off an extra large amount.
12. Where do we go from here?

The Developers statement in their letter, about BIA, should be reversed. They say they will take it to the Supreme Court and have redirected money to do it. This is what they have told us all along. **They have deeper pockets.** Does this make them right? Does this give them the right to find loopholes to override or ignore or tweak the laws and rules we all live by? It's hard to interpret 2 ingress and 2 egress in any other way. The County Commissioners ignored or tweaked that law; **they need to be held accountable.** And that is the purpose for the Lawsuit.

Feb 14 08

To all B.I.A. members

This is the PETITIONER'S BRIEF for the appeal of the Woodlands development that we have filed with the court. Please take the time to read it completely and then make up your mind if we can stop them.

Reed W. Larsen, Esq. - ISB # 3427

COOPER & LARSEN, CHARTERED

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Attorneys for Bills Island Association

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

BILLS ISLAND ASSOCIATION,)

)

)

Petitioner,)

)

CASE NO. CV 07-381

vs.)

)

**PETITIONER’S BRIEF IN
SUPPORT OF JUDICIAL REVIEW**

FREMONT COUNTY, FREMONT COUNTY)

COMMISSIONERS; COMMISSIONER PAUL)

ROMRELL, COMMISSIONER DONALD)

TRUPP, and COMMISSIONER RONALD)

“SKIP” HURT, all named individually; and)

WOODLANDS AT BILLS ISLAND, LLC,)

)

Respondents.)

)

_____)

COMES NOW the Petitioner, Bills Island Association (hereinafter the “Association”), by and through its attorneys of record, and submit this brief to aid the Court in ruling upon the Association’s Amended Petition for Review now pending before it.

BACKGROUND

The Association has brought this Petition for Judicial Review of a June 11, 2007 decision of the Fremont County Board of Commissioners which overruled the Fremont County Planning and Zoning Commission's decision denying the Woodlands at Bills Island, LLC's application for a Class II permit to subdivide 91.8 acres of undeveloped real property located on I.P. Bills Island. I.P. Bills Island ("Bills Island") is an island situated within the Island Park Reservoir located in north Fremont County, Idaho. Woodlands at Bills Island, LLC (hereinafter "Woodlands") seeks to subdivide this undeveloped land into 42 residential lots. (Exhibit 1).

The Planning and Zoning Commission, on November 13, 2006, denied Woodland's application because Woodland's proposed development failed to satisfy Section VIII.KK.3 of the Fremont County Development Code ("FCDC") because it did not provide for a minimum of two points of ingress and egress from Bills Island to the mainland.

The purpose of the FCDC is set out in Chapter I.B.:

B. Purpose. The purpose of this ordinance shall be to promote the health, safety and general welfare of the people of Fremont County by fulfilling the purposes and requirements of the Local Planning Act and implementing the comprehensive plan. Specific statements of purpose accompany selected provisions of this ordinance, **but the comprehensive plan provides the full statement of the county's purpose and intent in planning and zoning activities.**^[1] (Emphasis added).

The Fremont County Comprehensive Plan, in Part II - Policy Statements, sets out Policy 4:

Policy 4. Protect Public Safety and the Public Investment in Roads. **Fremont County will require safe, adequate access to all new developments and**

protect the efficient functioning of existing roads by limiting access where necessary, protecting rights-of-way from unnecessary encroachments, and ensuring that utilities work and other necessary encroachments do not create safety hazards or result in added maintenance costs...

A. **Safe, adequate access to new developments is required** in all three zoning districts... ^[2] (Emphasis added).

Section VIII.KK.3 of the FCDC reads as follows:

Access. **All developments containing six or more dwelling units, or with a distance of more than 660 feet from a public road which is maintained on a year round basis shall provide a minimum of two points of ingress and egress from the public road or highway serving the development.** “Loop” systems that return to a single point of access to the public road or highway may be acceptable for relatively small developments (1,000 or less projected ADT).^[3] (Emphasis added).

See, also, Exhibit 1, Tab 3, page 2.

Section VIII.KK.3 is designed to carry into effect Policy 4 of Fremont County’s Comprehensive Plan and the express Purpose of the FCDC ***by requiring safe and adequate access to any new development.*** For developments of six or more dwelling units, FCDC Section VIII.KK.3 requires a ‘minimum’ of two points of ingress and egress to a public road or highway. This access requirement is obviously intended to avoid bottlenecks which impede safe egress and ingress of residents and emergency vehicles to any existing and new development. It is also designed to protect the existing roads by requiring alternate and additional means of access to every new development.

Section VIII.KK.3 is an ‘absolute performance standard’.^[4] Such a designation means that any failure to satisfy its requirements must result in a denial of the application. *See*, FCDC Section III.I.7 of the FCDC reads as follows:

“If the proposed development fails to comply with any applicable absolute performance standards of this ordinance or has a cumulative score insufficient to permit the proposed density on the relative performance standards of this ordinance, the application for a permit shall be disapproved.”

Chapter V.C. of the FCDC mandates that the ‘only exceptions to the requirement for compliance with all absolute performance standards shall be those specifically provided in this ordinance and those allowed by variance...’.^[5]

It is undisputed that the access to the Woodlands development is approximately 1,690 feet from any public road or highway and that there is only one point of ingress and egress from Bills Island to the mainland - an existing causeway owned by the Association. Tr. Vol. 1., P.115, L. 8-10 and Exhibit 12. The existing roads serving I.P. Bills Island are private roads and the entrance to Bills Island is protected by a private gate. Exhibit 12 is an ariel photograph of Bills Island and the surrounding area. At the top of the photograph, colored in red, is the location of the only public road giving ingress and egress to the island. The private gate is located at the western end of the public road. The ‘white’ roads are existing private roads owned by the Association. The ‘yellow’ roads are those roads proposed to be constructed by Woodlands as part of its development. *See*, Findings of Fact and Conclusions of Law, Exhibit 1 to Petitioner’s Petition for Judicial Review, page 14.

In denying Woodland's application, the Planning and Zoning Commission determined that the Woodlands development was not a 'small development' and that Woodlands did not satisfy requirements of Section VIII.KK.3 because it did not provide for a second means of access. Tr. Vol 1., P. 6, L 4-16. The fact that the Woodlands development is on an island accentuates Fremont County's express obligation to insure that existing access to Bills Island is not impaired by any new developments. Islands, unlike almost all other developable lands, have unique and limited access points. They are surrounded by water which significantly impairs the safe and speedy evacuation of the island in the event of an emergency. Unlike the mainland, where a person can evacuate relatively easily by walking away in any safe direction, a person situated upon an island must know how to swim, have access to a boat, or find a bridge in order to retreat to the mainland. If there is an obstruction to the only bridge to the mainland, or if the person cannot swim or use a boat, there is no reasonable avenue of escape from an island in the event of an emergency.

The Association has a vested right in seeing that its' members ability to evacuate the island is not impaired by the increased demands for access caused by the Woodland's development and the addition of 42 additional families to the equation. Likewise, it has a vested right in having emergency vehicles gain unfettered access to Bills Island in the event of an emergency. The addition of 42 additional dwellings and families on the island will adversely impact the Association's vested rights. Section VIII.KK.3 recognizes that right by stating the unequivocal means for protecting it: a minimum of two points of access to the public year round road.

Woodlands and the Board of Commissioners believe that the Woodlands' 'loop' road system satisfies the exception stated in Section VIII.KK.3. The so-called "Loop" system exception inartfully states that the development's road system must return "to a single point of access to the public road or highway" and that loop system "may be acceptable for relatively small developments (1,000 or less projected ADT)."

The Association believes that the 'loop' system exception is vague and unenforceable and that since the Woodlands development is more than 660 feet from the public road providing access to Bills Island, Woodlands must, at a minimum, provide no less than two points of ingress and egress from the island to the mainland. Since the Woodlands development is not designed to provide more than the single existing access to the island, Fremont County's absolute performance standard has not been satisfied and the Woodlands' application for a Class II permit should have been denied.

The Association, therefore, disputes the Fremont County Board of Commissioner's finding and conclusion, and urges the Court to find that the Board of Commissioners acted arbitrarily when interpreting and applying Section VIII.KK.3 in a manner which found that an enforceable 'loop' system exception exists in Section VIII.KK.3 and applies to the Woodlands' development. The Association also urges the court to find that the 'loop' system exception relied upon by Woodlands and the Commissioners is unconstitutionally vague and therefore must be stricken from Section VIII.KK.3.

The Association also asks this Court to conclude that the Board of Commissioner's findings and conclusions that the 'loop' road system exception applies to the Woodlands' development is not supported by substantial and competent evidence.

APPLICABLE LAW - JUDICIAL REVIEW

On July 6, 2007, the Petitioner timely filed its Petition for Judicial Review of the Fremont County Board of Commissioner's June 11, 2007 decision pursuant to *I.C. §67-5270 and §67-6521(d)*.^[6] Petitioner has exhausted all of its administrative remedies pursuant to *I.C. §67-5271*. This Court has jurisdiction over the Petition pursuant to *I.C. §67-5272*. The record and transcript of the proceedings before the Board of County Commissioners have been prepared and submitted to the Court pursuant to *I.C. §67-5275*.

This Court may reverse the Board of Commissioner's decision if it was: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) not supported by substantial evidence on the record as a whole; or (e) arbitrary, capricious, or an abuse of discretion. *I.C. §67-5279(3)*.

STATEMENT OF THE LAW AND ARGUMENT

A. The Board of Commissioners' Decision was Arbitrary and Capricious.

The Idaho Supreme Court, in *Eacret v Bonner County*, 139 Idaho 780, 784 (Idaho 2004), set out the rules related to judicial review as follows:

The Court shall affirm the zoning agency's action unless the Court finds that the agency's findings, inferences, conclusions or decisions are: "(a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) not supported by substantial evidence on the record as a whole; and (e) *arbitrary, capricious, or an abuse of discretion*. I.C. §67-5279(3). The party attacking a zoning board's action must first illustrate that the board erred in a manner specified therein and must then show that a substantial right of the party has been prejudiced. (Emphasis added).

The Association believes that the 'loop' exception relied upon by Woodlands and the Board of Commissioners is vague and ambiguous because its material elements are not defined and no standards for its application exists within the FCDC, leaving the application of the 'loop' exception to the unbridled arbitrary and capricious discretion of the Board of Commissioners.

It is fundamental constitutional law that a legislative enactment must establish minimum guidelines to govern its application. *State v Bitt*, 118 Idaho 584 (1990); *Voyles v Nampa*, 97 Idaho 597, 599 (1976). The absence of such guidelines will justify a finding that the Board of Commissioner's conclusion was arbitrarily made:

A city's actions are considered arbitrary and capricious if made without a rational basis, or in disregard of the facts and circumstances, ***or without adequate determining principles***. *Enterprise, Inc. v. Nampa City*, 96 Idaho 734, 739, 536 P.2d 729, 734 (1975). *Lane Ranch P'ship v. City of Sun Valley*, 2007 Ida. LEXIS 239 (Idaho 2007). (Emphasis added).

See, also, Am. Lung Ass'n v. State, 142 Idaho 544, 547 (Idaho 2006), in which the Idaho Supreme Court stated: "An action is capricious if it was done without a rational basis. *Enterprise, Inc. v. Nampa City*, 96 Idaho 734, 536 P.2d 729 (1975). It is arbitrary if it was done in disregard of the facts and circumstances presented or without adequate determining principles. *Id.*"

The FCDC offers no determining principles or guidelines for the application of the ‘loop’ exception in Section VIII.KK.3. The ‘loop’ exception reads as follows:

“Loop” system that returns to a single point of access to the public road or highway may be acceptable for relatively small developments (1,000 or less projected ADT).

The absence of adequate governing principles with which to employ and apply the ‘loop’ system exception renders the Board of Commissioner’s decision to employ it in this case arbitrary and capricious. The Commission used this exception as the sole basis for not enforcing the minimum access standards required by Section VIII.KK.3. *See*, Findings of Fact and Conclusions of Law, p. 7.

In *Lane Ranch P'ship v. City of Sun Valley*, 2007 Ida. LEXIS 239 (Idaho 2007), the role of the court in construing a planning and zoning ordinance was outlined as follows:

Analysis of a statute or ordinance begins with the literal language of the enactment. *Friends of Farm to Market*, 137 Idaho at 197, 46 P.3d at 14 (citations omitted). "Where the language is unambiguous, the clearly expressed intent of the legislative body must be given effect, and there is no occasion for a court to construe the language." *Friends of Farm to Market*, 137 Idaho at 197, 46 P.3d at 14 (citing *Lawless v. Davis*, 98 Idaho 175, 560 P.2d 497 (1977)).

The converse exists, however, when the ordinance is ambiguous. The Court, under those circumstances, has discretion to reverse the Commissioner’s findings and conclusions.

Where language of a statute or ordinance is ambiguous, however, this Court looks to rules of construction for guidance. *Lawless v. Davis*, 98 Idaho 175, 560 P.2d

497 (1977). It may also consider the reasonableness of proposed interpretations. *Umphrey v. Sprinkel*, 106 Idaho 700, 706, 682 P.2d 1247, 1253 (1983). "Constructions that would lead to absurd or unreasonably harsh results are disfavored." *Gavica v. Hanson*, 101 Idaho 58, 60, 608 P.2d 861, 863 (1980); *Lawless*, 98 Idaho at 177, 560 P.2d at 499.

ADVANCE \d4 Language of a particular section need not be viewed in a vacuum.

And all sections of applicable statutes must be construed together so as to determine the legislature's intent." *Lockhart v. Dept. of Fish and Game*, 121 Idaho 894, 897, 828 P.2d 1299, 1302 (1992) (quoting *Umphrey*, 106 Idaho at 706, 682 P.2d at 1253; see also *J.R. Simplot Co. v. Idaho State Tax Comm'n*, 120 Idaho 849, 853-54, 820 P.2d 1206, 1210-11 (1991). Statutes and ordinances should be construed so that effect is given to their provisions, and no part is rendered superfluous or insignificant. See *Brown v. Caldwell Sch. Dist. No. 132*, 127 Idaho 112, 117, 898 P.2d 43, 48 (1995). There is a strong presumption of validity favoring the actions of a zoning authority when applying and interpreting its own zoning ordinances. *South Fork Coalition v. Bd. of Comm'rs*, 117 Idaho 857, 860, 792 P.2d 882, 885 (1990).

See, *Friends of Farm to Mkt. v. Valley County*, 137 Idaho 192, 197 (Idaho 2002).

More recently, in *Lane Ranch P'ship v. City of Sun Valley*, [supra](#)^[7], the Idaho Supreme Court stated:

This Court applies the same principles in construing municipal ordinances as it would in construing statutes. *Friends of Farm to Market*, 137 Idaho at 197, 46 P.3d at 14 (citing *Cunningham v. City of Twin Falls*, 125 Idaho 776, 779, 874 P.2d 587, 590 (Ct. App. 1994)). "Any such analysis begins with the literal

language of the enactment." *Ada County v. Gibson*, 126 Idaho 854, 856, 893 P.2d 801, 803 (Ct. App. 1995) (citations omitted). If the language is unambiguous, then the clear and expressed intent of the legislative body governs. Specific language is not viewed in isolation, the entire statute and applicable sections must be construed together to determine the overall legislative intent. *Friends of Farm to Market*, 137 Idaho at 197, 46 P.3d at 14 (citing *Lockhart v. Dept. of Fish and Game*, 121 Idaho 894, 897, 828 P.2d 1299, 1302 (1992)).

The 'loop' exception to the 'two points of ingress and egress' requirement of Section VIII.KK.3 is clearly ambiguous. The exception does not describe what road configuration constitutes a 'loop' system. The exception does not place any limits on the distance separating the 'single point of access' required of the 'loop' system and the 'public road or highway' providing access to the development. The exception does not define 'relatively small developments' and the exception does not explain what is meant by the parenthetical phrase "(1,000 or less projected ADT)" or how it is to be applied in the context of Section VIII.KK.3.

When the ambiguous language of the 'loop' system exception is juxtaposed against the unambiguous Policy 4 of Fremont County's Comprehensive Plan and the unambiguous Purpose of the FCDC, as well as the unambiguous minimum access requirement of Section VIII.KK.3 for subdivisions with more than six dwellings, the Commissioner's use of the ambiguous 'loop system' exception should be carefully scrutinized by the Court.

It is clear from the Comprehensive Plan, the FCDC, and the express requirements of FCDC Section VIII.KK.3, that the overall legislative intent of Fremont County is to insure safe

and adequate access to all new developments. Fremont County cannot apply exceptions to the objective safe and adequate access policy and rules in the absence of some form of legislative guidance. There is no such guidance applicable to the ‘loop’ system exception. The absence of adequate determining principles with which to apply the ‘loop’ system exception renders the Board of Commissioner’s decision wholly subjective and therefore arbitrary and capricious. *Lane Ranch P’ship v. City of Sun Valley, supra.*

1. The Phrase “Loop System” is Not Defined and is Vague and Ambiguous. Exhibit 12 illustrates the location of the Woodlands road system (colored in yellow). It consists of a ‘loop’ with two cul-de-sacs jutting outward to the west and southwest, and a connecting road between the ‘loop’ and the existing private roads of the Association. Can the two planned cul-de-sacs be a part of the ‘loop’ system? Does the connecting road constitute a part of the ‘loop’? Would a cul-de-sac, on its own, constitute a ‘loop’ and bring the exception into play? After all, a cul-de-sac has a ‘loop’ at one end!

The answers to these questions, and many more, are simply unknown because the FCDC does not attempt to define what constitutes a ‘loop’ system and the Board of Commissioners did not attempt to address this issue when rendering its findings and conclusions. The Commissioners simply assumed and concluded that Woodland’s road system is a ‘loop’ system without any analysis of the question whatsoever.

2. Single Point of Access to the Public Road or Highway. The alleged ‘loop’ system set out in the Woodlands development is located 1,690 feet from the only public road providing year round access. The ‘loop’ itself does not come in contact with any public road or highway.

Rather, Woodlands must use 1,690 feet of the private roads owned by the Association and its own connecting road in order to reach the requisite public road. If this exception is to be consistently applied by the Commissioners it would not matter if the required public road or highway was 1,690 *miles* from the development - as long as the development's 'loop' is somehow or somewhere connected to a 'public road or highway'.

Obviously the Board of Commissioners would not apply the 'loop' exception if the public road were 1,690 *miles* from the public road. However the ordinance itself offers no determining principles which would assist the Board of Commissioners in determining the proper distance separating the proposed development from the public road necessary to employ the 'loop' system exception. The FCDC is silent on this question - except that both the Comprehensive Plan and the FCDC require the Board of Commissioners to insure safe and adequate access to Bills Island for its residents and emergency vehicles before authorizing any further development on the island and the Commissioners must keep these policies and principles in mind when enforcing the FCDC.

3. *Relatively Small Developments.* The 'loop' road system exception is only applicable to 'relatively small developments.' Section VIII.KK.3 itself only applies to developments containing six or more dwelling units. Any development containing less than six dwelling units is, therefore, automatically considered 'small' and exempt from the minimum two points of access requirement. If a development containing five dwelling units is considered 'small' by the FCDC, how many dwelling units would should be considered 'relatively small'? The FCDC does not define this term.

Should a 42 dwelling unit development also be considered ‘relatively small’? The FCDC states that 60 dwelling units is a ‘large’ development.¹⁸¹ If a ‘large’ development is only 18 more dwelling units than that proposed by the Woodlands, perhaps the Woodland’s development is ‘relatively large’ rather than ‘relatively small’. Perhaps the outside limit for ‘relatively small’ should be closer to the number 5 than the number 60. The Woodlands development (42 lots) is clearly closer to the number 60 than the number 5, yet Fremont County has determined it is a ‘relatively small development’ for purposes of excusing the Woodlands from providing a second access point between Bills Island and the mainland. FCDC offers no guiding principles to help the Commissioners make a reasonable decision in this regard, thus rendering their decision in this case arbitrary and capricious.

The Board of Commissioners concluded that the parenthetical phrase “(1,000 or less projected ADT)” provides it with a basis for determining which developments are ‘relatively small developments’. It is clear from the questions posed by the Commissioners during the hearing that they did not know what “ADT” stood for, or how this measurement is to be applied in reaching any conclusion.

COMMISSIONER ROMRELL: Marla, does ADT mean peak day each year or daily average the whole year?

MS. VIK: Well, ADT is the daily average over the year.

COMMISSIONER ROMRELL: It’s whatever –

MS. VIK: It’s –

COMMISSIONER ROMRELL: – you want.

MS. VIK: It's a little looser. It's your average daily traffic. And as Ryan said, as long as you have more than two days of data, you can have an average, so it's whatever you decide to study.

COMMISSIONER ROMRELL: Commissioner Romrell continuing. Is there an industry standard or I know our code says ADT?

MS. VIK: Um-h'm.

COMMISSIONER ROMRELL: I guess my question is still it's subjective I guess. It could be anytime.

MS. VIK: it can be whatever time you feel is appropriate to the situation.

Tr. Vol. 1. P. 79-80.

Ms. Vik referred to the testimony of Ryan Hales, an expert who testified on behalf of Woodlands. Mr. Hales testified that ADT is the average daily traffic count. "That is a time period that's anything less than 365 days or more than two days." Tr. Vol. 1. P. 80, L. 3-7. The result of this testimony is that an ADT can be taken at any time of the year, as long as it relates to data collected over more than two days but less than 365 days. There is no requirement in the FCDC that the traffic data be collected on weekdays, weekends, holidays, or non-holidays. The absence of any guidance directing when and how this traffic data is to be collected renders any decision based upon such traffic data seriously subjective.

The Bills Island area is typically used for seasonal, recreational, and second home purposes. Bills Island and its access road will experience significant usage differences over the four seasons of the year. A measurement taken during July will differ significantly from a traffic measurement taken in October or April. In fashioning an exception to the 'two access' rule embodied in Section VIII.KK.3, Fremont County should have provided more direction on how

and when the data establishing ADTs should be collected, and whether or not that data should be collected differently in the recreational district of Island Park, as compared to other zoning districts in Fremont County.^[9]

The absence of any governing principles to employ the ‘1,000 ADT’ benchmark allows subjective manipulation of the decision making process. It allows the Commission to recognize traffic data collected at one time and ignore traffic data collected at another time, so that the data chosen to be relied upon dictates the conclusion they desired to reach. In fact, the traffic counts presented to the Commissioners in this case were manipulated by the Commission in order to justify their application of the ‘loop’ system exception. The Commission accepted the traffic data collected by Woodlands and ignored the traffic data collected by the Idaho Department of Transportation and a nationally recognized compilation of traffic data relied upon by traffic engineers nationwide.^[10]

Nor does Section VIII.KK.3 state how this parenthetical phrase is to be applied when using the ‘loop’ road system exception. Does the “(1,000 or less projected ADT)” phrase apply only to the development under consideration by the Board of Commissioners? Or, does it apply only to the existing developments currently served by the public road in question? Or does it apply to a combination of all existing and all future developments which are or could be served by the public road? The FCDC offers no guidance to the Commissioners when this question is presented as the basis for employing the ‘loop’ exception.

The Board of Commissioners applied the parenthetical phrase as follows: the Commission estimated the total existing traffic on Bills Island and added that estimate to the

estimated future traffic expected from the Woodlands development. From that data it concluded that the combined total average daily traffic to and from Bills Island would be less than 1,000. *See*, Findings of Fact and Conclusions of Law, pp. 7-14. However, since the FCDC itself provides no basis for such an interpretation and application of the parenthetical phrase, the Commissioner's interpretation and application of the parenthetical phrase in this manner is arbitrary, capricious, and an abuse of its discretion.

The absence of any guiding principles in the FCDC also makes the exception constitutionally infirm, vague and ambiguous, and the Board of Commissioner's use of that exception was arbitrary. The exception should be stricken by the Court.

***[Idaho Supreme] Court has observed that "when part of a statute or ordinance is unconstitutional and yet is not an integral or indispensable part of the measure, the invalid portion may be stricken without affecting the remainder of the statute or ordinance." *Voyles v. City of Nampa*, 97 Idaho 597, 600, 548 P.2d 1217, 1220 (1976); *see also Lynn v. Kootenai County Fire Protective Dist. No. 1*, 97 Idaho 623, 626, 550 P.2d 126, 129 (1976) ("If the unconstitutional section does not in and of itself appear to be an integral or indispensable part of the chapter, then it may be stricken therefrom."). *In re Srba Case No. 39576*, 128 Idaho 246, 263-264 (Idaho 1995).

The 'loop' exception is vague and ambiguous, is not an integral or indispensable part of the FCDC, its elimination by the Court will not adversely affect the remainder of Section VIII.KK.3, and its elimination will serve the Purpose of the FCDC and the Policy 4 of Fremont County's Comprehensive Plan by insuring safe and adequate access to Bills Island for its residents and emergency vehicles.

- B. The Board of Commissioners' Decision was Not Supported by Substantial and Competent Evidence.

The Board of Commissioners made the following observation when issuing their findings and conclusions: “The most contentious issue during the public hearing had to do with the access to the proposed development site.” The Board of Commissioners then concluded that “Approval of loop systems that return to a single point of access is within the reasonable discretion of the county, with the limit on the county’s discretion being the 1,000 ADT standard.”^[11]

The bulk of the evidence presented at the hearing related to what the Board of Commissioners described as the “1,000 ADT standard.” Recognizing that the FCDC itself offers no guidance with which to apply this ‘standard’, the Commissioners concluded that both the Association and Woodlands’ generally agreed that the 1,000 ADT threshold number was an appropriate standard.^[12] This finding and conclusion is not supported by substantial or competent evidence. There was no admission on the part of the Association that the 1,000 ADT threshold number was an ‘appropriate standard’ or that the manner in which the Commissioners applied that standard was appropriate. Woodlands did not offer any evidence that the 1,000 ADT threshold number was an ‘appropriate standard’. This finding and conclusion by the Commissioners is clearly erroneous and not supported by substantial or competent evidence in the record.

The Board of Commissioners also ignored their obligations under *I.C. §41-253*, which adopts the International Fire Code as the ‘minimum standards for the protection of life and property from fire and explosions in the state of Idaho.’ Fremont County’s obligation in this

regard was pointed out by witness Winston Dyer. Tr. Vol. 2. P. 9. L 1-7, Exhibit 15. The International Fire Code adopted by the State Fire Marshall requires, through Appendix D thereof, that “Multiple-family residential projects having more than 100 dwelling units shall be equipped throughout with two separate and approved fire apparatus access roads.”^[13] The Board of Commissioner’s decision did not address how the Woodlands application satisfied the International Fire Code requirement, or why this requirement doesn’t apply to the Woodlands’ application. The Commissioner’s failure to address this issue is clearly erroneous and not supported by substantial or competent evidence in the record.

In reaching their decision, the Board of Commissioners received evidence related to two on-site traffic studies. One was performed by Woodlands and the other was performed by the Idaho Transportation Department (“ITD”) and offered into evidence by the Association. (Exhibit 13). The Association also offered additional evidence in the form of a national compilation of traffic studies prepared by the Institute of Transportation Engineers. (“Trip Generation” - Exhibit 14). Lastly, the Commissioners heard the testimony of the Fremont County Public Works Director, Marla Vik. Ms. Vik is a professional engineer. (Tr. Vol. 2. P. 74. L. 13-17). None of the offered evidence, including the testimony of Marla Vik, concluded that 1,000 ADT is an appropriate standard or that the Commissioner’s actual application of that standard was appropriate. In fact Ms. Vik testified on the issue as follows:

COMMISSIONER HURT: Okay. Do you see any safety concerns with 1,000 ADTs with three lanes?

MS. VIK: Safety involves so many different factors. They can’t be simply based on ADT. It has to be based on speed, grade, with a recoverable area, barriers. It’s just not a one-factor issue.

Tr. Vol. 2. P. 86 L 20-25.

The Woodlands traffic study was accepted by the Commissioners without any question. The Woodland's data related to a traffic count taken between Saturday, July 9, 2005 and Tuesday, July 19, 2005.^[14] (Tr. Vol 1. P. 81, L. 12-13), some twenty-two months *before* the April 10, 2007 hearing before the Board of Commissioners. That relatively stale study was founded upon the following facts: there are 301 platted lots currently located on Bills Island, and 197 of them have dwellings constructed upon them. (Tr. Vol 1. P. 78, L. 5-6). Based upon Woodlands' traffic count for the existing 197 dwellings, the average weekday non-holiday trips averaged 2.5 per dwelling unit per day, and the average weekend non-holiday trips averaged 3.7 trips per dwelling unit per day. Woodlands then averaged the weekday ADTs with the weekend ADTs to come up with an average of 2.8 trips per dwelling unit per day. Woodlands then projected the average trips per day if every platted lot (301 lots) and Woodlands' proposed development (42 lots) were occupied with a dwelling and concluded that 2.8 trips x 343 dwellings = 960.4 trips per day, or 'ADT'. It is this evidence upon which the Commissioners based their decision to apply the 'loop' road system exception to Section VIII.KK.3. The Commission concluded that the 960.4 trips per day estimated by the Woodlands data were less than the 1,000 ADT parenthetically referenced in Section VIII.KK.3, and therefore the Woodlands proposal was a 'relatively small development' and could use the 'loop' road system exception to avoid the express obligations of Section VIII.KK.3.

Based on Mr. Hales and Ms. Vik's testimony - that more than two days of data is sufficient to provide an ADT - the Commissioners could have used the Woodlands' average

weekend/non-holiday count of 3.7 ADT, and the Woodlands' 3.5 ADT measurement for Friday July 15, 2005^[15], for an average of 3.63, and a far different conclusion would have been reached. The average trips per day if every platted lot (301 lots) and Woodlands' proposed development (42 lots) were occupied with a dwelling, the conclusion would have been that 3.63 trips x 343 dwellings = 1,245.09 trips per day. This results in a number which is nearly 25% higher than the 1,000 ADT standard adopted by Fremont County!

The ITD traffic study took place between Saturday, July 1 and Wednesday, July 5, 2006. The Commissioners disregarded this data because it was collected over a holiday weekend.^[16] This data was disregarded because Woodlands' expert Hales and Ms. Vik both testified that traffic counts would typically not be taken during holidays.^[17] Neither Hales nor Vik testified that holiday traffic counts should *never* be considered. To the extent the Commissioners totally disregarded the ITD traffic count taken over the 4th of July weekend in 2006, without any discussion whatsoever, makes this finding and conclusion clearly erroneous and not supported by substantial or competent evidence in the record.

The ITD data established a 5.5 ADT average. Exhibit 10, 13; Tr. Vol 1. P. 109-112. If this data had been relied upon by the Commissioners, again, a far different conclusion would have been reached. The average trips per day, if every platted lot (301 lots) and Woodlands' proposed development (42 lots) were occupied with a dwelling, would be calculated as follows: 5.5 trips x 343 dwellings = 1886.5 trips per day. This calculation results in a number which is more than 88% higher than the 1,000 ADT standard adopted by Fremont County!

The Commissioners also disregarded the Institute of Transportation Engineers Trip Generation Report. (“Trip Generation” - Exhibit 14). However, the Commission’s Findings of Fact and Conclusions of Law do not state any reason for totally disregarding the data contained within Exhibit 14. The Commissioners did quote the rebuttal testimony received from Woodland’s expert, Mr. Hales, who opined that actual traffic counts overrule the national study.

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In this case, the majority of the City's findings of fact fail to make actual factual findings; instead, the "findings" merely recite portions of the record which could be used in support of a finding. For instance, Findings 7(a) and 7(b) merely state that Crown Point's Phase 5 applications contain certain information about the size of the units. Additionally, several of the findings consist of nothing more than a recitation of testimony given in the record. ***By reciting testimony, a court or agency does not find a fact unless the testimony is un rebutted in which case the court or agency should so state.*** "A finding of fact is a determination of a fact by the court [or agency], which fact is averred by one party and denied by the other and this determination must be founded on the evidence in the case." *C.I.T. Corp. v. Elliott*, 66 Idaho 384, 397, 159 P.2d 891, 897 (1945) (Emphasis added).

The Commission cited from Hale's testimony, but it did not adopt Hale's testimony as a 'finding' or state that it was un rebutted by the record. In fact Hale's testimony on this subject was rebutted by Ms. Vik, who testified that the Trip Generation report *was the standard used by*

the traffic engineering industry. Tr. Vol 2. P. 76 L. 1-3. For these reasons there is no sound basis to disregard Exhibit 14. The Commissioners failure to state the basis for their total disregard of Exhibit 14 is, therefore, clearly erroneous and not supported by substantial or competent evidence in the record.

The Trip Generation Report, Exhibit 14, reveals (at page 508) that the national average ADT per recreational dwelling unit is 3.16. If the Trip Generation Report data was used by the Commission, again, a far different conclusion would have been reached. The average trips per day, if every platted lot (301 lots) and Woodlands' proposed development (42 lots) were occupied with a dwelling, the Commission would have concluded the following: 3.16 trips x 343 dwellings = 1083.88 trips per day. This results in a number which is still higher than the 1,000 ADT standard adopted by Fremont County!

Overall, the Commission's conclusion that the 1,000 ADT standard will not be exceeded by approving the Woodlands applicaiton is not supported by 'substantial evidence.' Rather, it is supported by minimal evidence. The substantial evidence in the record supports a conclusion that the ADT for Bills Island will exceed 1,000 ADT when the existing and proposed Woodlands lots are fully developed. For that reason the Woodlands' application for a Class II permit should have been denied.^{[119](#)}

If the Commission had disregarded Woodlands' weekday/non holiday data, or not averaged all of Woodlands' weekday/non-holiday data with the higher weekend/non-holiday data, the Woodlands data alone would have required the Commission to conclude that the 1,000 ADT standard would be exceeded by the Woodlands development. If the Woodlands

weekend/non-holiday data were combined with the ITD data and the Institute of Traffic Engineer's Trip Generation Report, the only reasonable conclusion the Commissioners could reach is that the 1,000 ADT standard would be exceeded by the Woodlands development.

Instead, the Commission gave undue weight to the Woodlands' weekday /non holiday data, and ignored all other relevant data so that it could employ the 'loop' road system exception and approve the Woodlands application.

In *Eastern Idaho Regl. Med. Ctr. v. Ada County Bd. of Comm'rs* (In re Hamlet), 139 Idaho 882, 884-885 (Idaho 2004) the Idaho Supreme Court said: "Although this Court may disagree with Ada County's conclusion, this Court "may not substitute its judgment for that of the administrative agency on questions of fact... *if supported by substantial and competent evidence.*"

In this case, however, the Commission's decision is based on insubstantial evidence - the weekday/non holiday traffic data collected by the Woodlands some 22 months before the hearing. The substantial evidence before the Commission - *consisting of the Woodlands' weekend/non-holiday traffic data, the Woodlands' data for Friday, July 15, 2005, the IDT data, and the Trip Generation Report* - required the Commission to conclude that the 'loop' system of roads exception was **not** available and the Woodlands had **not satisfied** the absolute performance standard of Section VIII.KK.3.

In *Laurino v. Bd. of Prof'l Discipline*, 137 Idaho 596, 602 (Idaho 2002), the Idaho Supreme Court defined 'substantial evidence' as follows:

ADVANCE \d4 The violations that the Board found against Dr. Laurino must be reviewed to determine whether the evidence in the record as a whole supports the findings, inferences, and conclusions made by the Board. *I.C. §67-5279(3)(d)*. **Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate and reasonable to support a conclusion.** *Idaho State Ins. Fund v. Hunnicutt*, 110 Idaho 257, 260, 715 P.2d 927, 930 (1985). (Emphasis added).

If the Woodlands' weekday/non-holiday data were disregarded, the material evidence remaining before the Commissioners - *consisting of the Woodlands' weekend/non-holiday traffic data, the IDT data from July 2006, and the Trip Generation Report* - all support a conclusion that the ADTs for Bills Island would exceed 1,000 if the Woodlands application were granted. For these reasons the decision of the Board of Commissioners to apply the 'loop' road system exception to FCDC Section VIII.KK.3 is not supported by substantial evidence in the record as a whole.

CONCLUSION

The Association has demonstrated that the Findings of Fact and Conclusions of Law issued by the Fremont County Board of Commissioners were reached arbitrarily and capriciously because there are no guiding principals in FCDC as a whole, or in Section VIII.KK.3 in particular, which would allow the Commissioners to objectively apply the 'loop' system of roads exception.

Further the Findings of Fact and Conclusions of Law are not based upon substantial evidence in the record, as a whole.

Under the authority of *I.C. §67-5279(3)(d)* this Court should reverse the Board of Commissioner's decision to approve the Woodlands application for a Class II permit and thereby grant the Association's Petition for Judicial Review.

Dated this ____ day of February, 2008.

COOPER & LARSEN, CHTD.

Attorneys for Petitioner

By _____

Ron Kerl, of the firm

By _____

Reed W. Larsen

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on the ____ day of February, 2008, I served a true and correct copy of the foregoing document as follows:

Charles A. Homer	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid
HOLDEN, KIDWELL, HAHN & CRAPO, PLLC	<input type="checkbox"/> Hand Delivery
P.O. Box 50130	<input type="checkbox"/> Overnight Mail
Idaho Falls, ID 83401	<input type="checkbox"/> Facsimile
	<input checked="" type="checkbox"/> Email

Karl H. Lewies	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid
Fremont Co. Prosecuting Attorney	<input type="checkbox"/> Hand Delivery
22W. 1 st N.	<input type="checkbox"/> Overnight Mail
St. Anthony, ID 83445	<input type="checkbox"/> Facsimile
	<input checked="" type="checkbox"/> Email

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ADVANCE \x236**COOPER & LARSEN, CHTD**

ADVANCE \x236By:

ADVANCE \x259Ron Kerl, of the firm

^[1]An excerpt of the FCDC containing Chapter I. B is attached as Appendix 1.

^[2]An excerpt of the Fremont County Comprehensive Plan containing Policy 4 is attached as Appendix 2.

^[3]An excerpt of the Fremont County Development Code containing Section VIII.KK.3 is attached as Appendix 3.

^[4]The Board of Commissioner's Findings of Fact and Conclusions of Law, at page 6, correctly concluded that Section VIII.KK.3 is an 'absolute performance standard'.

^[5]An excerpt of the Fremont County Development Code containing Section III.I.7 and Chapter V.C. is attached as Appendix 4.

^[6]The Petitioner filed its Amended Petition on July 13, 2007.

^[7]*2007 Ida. Lexis 239, page 2.*

^[8]An excerpt of the Fremont County Development Code containing Section OO, page 54, is attached as Appendix 5.

^[9]Fremont County is divided into zoning districts, and the Island Park area is its own zoning district and has its own, unique, rules for development. Excerpts of the FCDC, Chapter IV.B and Chapter VIII.B are attached as Appendix 6.

^[10]The Commissioner's arbitrary selection and application of this traffic data in making its decision will be addressed more directly below, when discussing the fact that its decision is not supported by substantial and competent evidence.

^[11]Findings of Fact and Conclusions of Law, pp 6-7.

^[12]Findings of Fact and Conclusions of Law, p. 7.

^[13]A copy of Appendix D to the International Fire Code is attached hereto as Appendix 7.

[14] The date of this study was strategically scheduled between two very busy holidays for the Island Park area - the 4th of July and the 24th of July.

[15] Exhibit 21. The data for Friday, July 15, 2005 shows a total of 686 trips for the day. When divided by the 197 actual dwellings located on Bills Island, the ADT for that Friday is 3.48. If you combine two weekend days at an average of 3.7 each, with the Friday July 15, 2005 ADT of 3.48, the resulting average ADT is 3.63.

[16] Findings of Fact and Conclusions of Law, page 11.

[17] Tr. Vol. 1. P. 81 L 18-19, and Tr. Vol. 2. P. 75 L 13-15.

[18] See, Findings of Fact and Conclusions of Law, page 11

[19] The Commissioners critically commented on the fact that an ITD traffic study conducted on Bills Island over the Labor Day weekend in 2006 was not offered by the Association into evidence. See, Findings of Fact and Conclusions of Law, pp. 11-12. The data from that ITD study is, however, set out in Exhibit 22. Woodlands' expert Hales testified that the best reliable traffic data should be that which is collected in July, the peak month for evaluating traffic in the Island Park area. Tr. Vol. 1. P. 80-81. The Association agrees with this conclusion. For that reason the 2006 Labor Day traffic data is not material.

Feb 7 2008

This is a response to the letter that all members received from the Woodlands.

COOPER & LARSEN

151 NORTH 3rd AVE. - 2nd FLOOR

P.O. BOX 4229

POCATELLO, ID 83205-4229

RON KERL of Counsel

TELEPHONE (208) 235-1145

FAX (208) 235-1182

Feb 7, 2008

Charles A. Homer
Holden Kidwell Hahn & Crapo
P.O. Box 50130
Idaho Falls, ID 83405-0130

Re: *Bills Island Association v. Woodlands at Bills Island, LLC*

Dear Chuck:

This letter is in response the mass mailing that was sent out by Ryan Barker, Paul Ritchie, Jayson Newitt and Rick Olsen. I am assuming this letter was sent by your clients without your knowledge. To the extent you had knowledge of this document being sent, I am asking that you seriously reconsider the propriety of that content. One of the issues that is discussed is the legal appeal and it appears to be a misstatement of certain facts. The facts appear to be misstated in an effort to interfere with my attorney-client relationship with Bills Island Association and it's members. This appears to be done to try to dissuade people from continuing to pay assessments for legal fees. Any legal fees should not be discussed by your client in a way that tries to interfere with my legal representation of my clients. It is not welcome and it is an inappropriate contact. At the outset, I would ask that those who are signatories immediately print a retraction or apology.

Further, by now you have received our Brief in Opposition to the Proposed Development. I believe your client's letter is inaccurate as to the status of the law and the status of the case. The case was initially denied by Planning and Zoning, and rightfully so because there is no two points of ingress and egress and no compliance with the Uniform Fire Code. These are areas that your client has never been interested in addressing.

I would suggest that your client keep it's communications within the confines of their organization and leave the BIA members alone. To the extent a designated representative of your client wishes to meet with my client, that is acceptable. However mass mailings are inappropriate and potentially violate attorney client privilege and it also interferes with attorney client contractual relationships. This letter is to advise you that

we expect you and your clients to cease from such unwanted and unwarranted conduct. I assure you I would feel the same if the BIA sent a letter to your client's investors.

Sincerely,

REED W. LARSEN

RWL/ek

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1

COOPER & LARSEN, CHARTERED

Attorneys at Law

P.O. Box 4229

Pocatello, ID 83205-4229

To all B.I.A. members.

The Woodlands At Bills Island is just trying to break up our association.

First we met with them to settle this whole thing. They offered \$10k to go away. We asked them to move their gate to our gate for just one gate, they said no. They never offered to build the gate as they stated. We asked for the ground SE of the guard cabin for a pavilion they said it would be a cabin sight. They said there will be no renting of the cabins in their homeowners, we read their bylaws ---it is permitted. They said they would not join our association. More to come on the web page. Thanks for your concern and please stay with us. We have a strong position in court. You will receive a 36-page brief from the attorney, to the appeals court this month. Don't let them divide our association.

Jan 25th 2008

The developer has asked the court for their performance bond back, they claim they are done with the work on the causeway. We have asked the county if they have signed off on the work and they haven't, our engineer hasn't, so we have asked that they do not get their money back until it is checked off by all. . We will keep you posted.

Dec 15th 2007

We have no news at this time.

We are waiting for the courts to give us a date on the ruling. When you come onto the Island you will notice the causeway has been widened, they are permitted a 50ft width.

We also have 3 remote gate openers available. They allow you to open the gate as you approach without interring your card. They are \$40.00. Contact Terry for one. We will be updating the card system this spring and these will still work with the new system.

Oct 16th

The BIA board attended the hearing for the causeway and reviewed the construction plans. We feel the wider causeway would be the best but Woodlands must get permission to build on all property owners land. They also submitted a plan to build the causeway with in the 50ft right away. The board hired the Dyer Group to review the plans and to oversee the construction.

The construction of the causeway in no way affects the lawsuit on the center of the Island.

Here is Dyer's review of the construction.

We have reviewed the plans and associated documentation received late yesterday concerning Causeway improvements proposed for the causeway crossing at Bills Island. Due to the extremely limited time for examination, our review is fairly cursory in nature and limited to addressing what has been shown on the plans and not any other further detailed analysis or evaluation.

Following are our comments after reviewing the information provided:

1. We agree with their engineer Mr. Bastian that Option 1 (working outside the existing 50 foot easement) is the best approach if construction is to occur. The biggest concern we see is obvious evidence of erosion occurring on the reservoir faces of the causeway and this option allows for correcting and stabilizing this by the placement of riprap material and some additional fill. This treatment will enhance stability of the proposed improvements and significantly prolong their service life.

2. We concur with the concept of placing guardrail along the edges of the causeway. However, normally when guardrail is placed along any roadway there is a small shoulder area to give additional safety and shy distance. If you are going to work outside the existing easement it would be appropriate to add 3-4 foot shoulders on each side.

3. The three lanes apparently terminate at the guardhouse on the northeast end of the causeway. We suggest the improvements be continued to carry two of the three lanes out through the existing exit area. Without an appropriate transition at the end there will just be confusion and backup of traffic across the causeway – defeating the purpose of providing additional width and lanes.

4. We note a proposal for lane marking by burying precast concrete stripes flush with the roadway surface. We presume this is in response to some requirement that lanes be delineated to assist in traffic flow should an emergency evacuation be required. We do note however that on a gravel surfaced road (as proposed) these will very likely become a maintenance concern in trying to grade and plow the roadway. We strongly recommend the causeway crossing be paved for safety, operation, and longevity.

5. The gabion basket concept is appropriate for erosion control and widening the roadway embankment. It was not clear however how the gabions would be stabilized with respect to the new embankment construction. We presume that they would be tied to the geogrid reinforcing or otherwise have some type of tieback to keep them stable and vertical.

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6. The details of embankment construction did not specify a depth of excavation prior to placing new embankment and geogrid reinforcing. Also, the details should call for compaction of the existing sub grade after excavation and before construction of the new embankment is initiated.

7. The geogrid reinforcing called for is a good solution but the system is sensitive to the size of the grid and corresponding material to be used. We suggest further detail or specification be given to make sure the geo-grid system and associated embankment

material are appropriately matched to produce a quality final product.

8. We see that the applicant has a permit from the Corps of Engineers to conduct causeway construction work as necessary. The permit "encourages" installation of a culvert through the causeway as was apparently shown in some application material to the COE in obtaining a permit. We concur that a culvert would help improve water quality in the area but did not see it called for on the plans nor any associated details.

9. The COE permit also called for re-vegetation of disturbed areas but there were not any details or specifications about how that would be accomplished in the materials we received.

10. We feel the plan presented is an appropriate engineering solution to widening and stabilizing the causeway, given some of the refinements we have suggested above. We are concerned however about making sure the construction is done in accordance with the plans and specifications that have been developed. We might suggest that we be involved to observe construction periodically to make sure this is the case, or otherwise you should make sure that their engineer is properly retained and positioned to certify upon completion that the project has been constructed in accordance with the approved plans and specifications.

Our overall conclusion is that if improvements of any kind are to be made to the causeway then they ought to be the best and most long-lasting possible for the effort made and expense invested. Therefore we recommend Option 1 which goes outside the existing 50 foot easement as it will unquestionably improve the final product. We presume the applicant will obtain the necessary permits and approvals from other agencies/land owners necessary to accomplish this.

Oct 4th

BIA board members went into mediation with the Woodlands Group. The purpose was to work out the differences on the causeway construction...

AND TRY TO SETTLE THE LAWSUIT ON THE CENTER DEVELOPMENT.

We had a hearing the next day with the judge and he would rule on the suit on just the causeway.

We were in mediation for over 8 hours. We feel as a board we are in a good position to stop them at this time. But we have no control over the Judges rulings. Our attorney asked us to put together a Christmas wish list of desires that we could accept that would settle the suit.

The first item on our list is for them to just go away. At the bottom of our list we would roll over and give up. We need to meet somewhere in the middle. We asked for the engineered construction plans for the causeway, a big cash infusion, a building to meet in and ground to build it on, for the center people to join our association, and no gate at their property

They countered with the following: We will build the new causeway correctly, a new gate for us, a new exit gate, the quarter acre next to the guard cabin, \$10,000 so that we can build our own building, AND we must give them a right-of-way at the gate property to make the third exit and allow them to exceed the 50ft right-of-way to build the crossway. Most of what they are giving us is what they have to give to meet what is required of them by the commissioners.

All day long our attorney asked for their engineered plans for building the crossway. They said they had them but not with them, they would get them for us Monday or sometime next week. After 6 1/2 hours, our attorney demanded the plans. The mediator went to the Woodlands Group with our demand then came back to us and said they don't have them yet but will get them next week. Then the mediator stated, "If you are stuck on this item, the Woodlands Group is ready to got to court tomorrow and ask the court to fine us for holding up the work on the CAUSEWAY". Our attorney said "See you tomorrow in court" and it was over after 8 1/2 hrs.

We showed up at court the next day and the Judge called the two attorneys into his chambers to see what had been agreed upon. He looked at the Woodlands Group attorney and said build it right or don't build it at all. Woodlands You have 48 hrs to produce the plans then, B.I.A. you have 48 hrs to review, then agree or we go back to court on Friday the 12th. It was over in 5

minutes. The Woodlands Group did say they would submit two plans: one to stay in the 50 ft width by building a retaining wall that will cost them \$235,000 and one to exceed the width to 72 ft to build it at a lower cost of \$135,000. Then it would be up to us to pick which one we prefer that they build.

At this point, with the legal funds the way they are

We are ready to fight this to the END

If you have not paid your legal assessment

PLEASE DO SO ASAP

Sept 27th 2007

Many of you may have seen the survey stakes along the cosway. Woodlands group is going ahead with work on the road. We asked our attorney to file paper work to stop them. We had a court date of the 25th of Sept. The Judge would not rule on it because we included the county in the complaint and that was in error because the county

ISSUED A BUILD PERMIT TO THE WOODLANDS FOR THE ROAD.

So again the county is writing their own rules. The Judge instructed that we need to file a new injunction in which we did. It is set for Oct 5th.

The judge suggested a break and instructed the attorneys to meet and work out the differences between the parties. Both attorneys agreed to go to mediation to solve the whole issue of the roads and center Island development.

The Judge also stated we can't stop them from working on the center of the island. They do the work at their own cost should they lose the appeal.

We have a sizable amount of money in the legal fund. If you have not paid your \$300.00 please do so immediately. We have a meeting set for Oct 4th to here their proposal to settle. If they lose this time our attorney assured us that they would just come at us again with a smaller development. We will meet and see what we can work out. If you have any comments please let us know ASAP

B.I.A. Board

Con Haycock

Printed From The Island Park News

2007-06-29

**Bills Island group files appeal of county decision allowing more island development
B.I.A. to hold fundraiser for legal fund**

By ELIZABETH LADEN

The Bills Island Homeowners Association filed an appeal Monday of the Board of Fremont County Commissioners decision to approve the Woodlands at Bills Island development. The appeal was filed in District Court in St. Anthony.

Reed Richman, board member of the Bills Island Homeowners Association, said Tuesday that the appeal is based on several areas where BIA does not believe the developer meets the Fremont County Development Codes requirements. These include access, fire safety, and protecting water quality.

Richman said BIA will host a community fundraiser to help boost its legal fund for the appeal. It will be a Dutch oven cook-out at the island's entrance, from 5 to 7 p. m. Saturday, July 28.

Richman said he hopes all Fremont County residents concerned about how the county is applying its development code will come to this fundraiser. Hopefully, he said, BIA will raise enough money to be able to help others who find themselves having to battle the county for responsible development.

In November 2006, the Fremont County Planning and Zoning Commission denied Utah businessman Ryan Davis' application to develop the Bills Island interior into a 42-lot subdivision, Woodlands at Bills Island. They believed the project failed to meet the code's absolute standards for access and were also concerned about fire safety and water quality.

Davis appealed the decision to the County Commission, which held its appeal hearing in April.

Commissioners then held work sessions to discuss the appeal testimony. In June, the commissioners decided to allow Davis to proceed with his development.

The code states, "All developments containing six or more dwelling units or with a distance of more than 660 feet from a public road which is maintained on a year-round basis shall provide a minimum of two points of ingress and egress from the public road or highway serving the development. Loop systems that return to a single point of access to the public road or highway may be acceptable for relatively small developments (1,000 or less projected ADT - Average Daily Trips)."

The requirement for a development more than 660 feet from a public road to have two access points is an absolute standard in the code, meaning that the project must be denied. Woodland's main entrance is 1,667 feet from the county road to Bills Island.

The appeal hearing before Fremont County Commissioners Paul Romrell, Skip Hurt, and Don Trupp at the County Annex in St. Anthony devoured more than six hours time, with the developer and his team — as well as opponents to the project — bringing up many issues in addition to the main one — the failure to meet the absolute standard.

Around 35 people attended the appeal hearing.

Davis, his attorney — Chuck Homer of Idaho Falls — and several "expert" witnesses were able to steer the Fremont County Planning and Zoning Commission and the Fremont County Commission away from the absolute standard failure to discussions pertaining to the word, "may" in the second part of the standard — that the development may utilize the one road to the island as a loop road. The developer's team asserted to both commissions that they could improve the island's only access road to make it safe for their own buyers and the entire island community.

They said they could obtain a permit from the Army Corps of Engineers to add more land to the isthmus connecting the island to the mainland, and widen the road so it would have three 12-ft. lanes.

In the November meeting, their plan was to widen the road to 31-ft., which is still much narrower than the county's width standard of at least 60 ft.

The developer's team found another loophole in the code — the definition of a large-scale development being one that is 59 lots or more, to assert that their 42-lot subdivision should be considered a "small" development.

And, they asserted that data from traffic counters they placed on the island the week after the Fourth of July holiday last summer shows that there were fewer than 1,000 ADT's on the isthmus.

The Bills Island Homeowners Association hired an Idaho Department of Transportation

employee to place a traffic counter on the road to the island, and his report, from counts taken on July 4, 2006 and the preceding week, shows close to 1,000 ADT's on some days.

The developer argued that a count during a peak period for travel to the island does not give a balanced picture of traffic. Opponents argued that the ADT counts are supposed to be estimates of what will happen at a development's build out.

There are 301 lots on platted on the Island now, and 197 are developed, so BIA members said ADT's at build-out will be well over 1,000 even without Woodlands traffic.

Hours of discussion were spent at both hearings on the developer's proposal to use enhanced septic tanks instead of building a central sewer supply, concerns about his wells drawing down the island's water supply, and concerns about his proposal to pump water out of the reservoir, which is either frozen or depleted many months of the year, as a back up firefighting supply.

The developer, builders, and Realtor Brett Whitaker, also an Island Park volunteer fireman, testified that the subdivision's roads and homesites would make the island safer because trees would be removed from the island's heavily wooded interior, making it less vulnerable to wildfires.

County Attorney Karl Lewies' findings of fact and conclusions of law played a huge part in the commissioners decision' to approve the project. Part of Lewies' defense of the approval is based on what he calls the "Gunbarrel rule." This is a ruling he wrote in findings of facts and conclusions of law for the Gunbarrel at Shotgun Villages development, which the County Commission denied. The rule basically says that a developer can bring inadequate roads up to current county standards "as far as reasonably possible." Because of this rule, Gunbarrel's developer, Gregg Williams, resubmitted plans to subdivide land he owns adjacent to the Shotgun Villages. A public hearing on the development has not yet been scheduled.

The County Commission has not adopted the Gunbarrel rule as county policy or added it to the development code.

Some county roads cannot be widened to meet today's standards because widening them would encroach on private property, or for some other reason there is no room to widen them, as is the case with the Bills Island causeway.

Lewies' conclusions also support the Woodlands plan for fire protection. And, they support the plan to use individual septic tanks in the development, despite concerns opponents have expressed about water pollution from failed septic systems.

And, Lewies supports the developer's expert testimony about traffic counts on the island and dismisses testimony provided by a Bills Island Association expert witness. The developer's expert looked at traffic counts during a non -holiday period and found them to indicate less than 1,000 "average daily trips. (ADT)" The development code states that loop roads can serve developments if they accommodate less than 1,000 ADT's The BIA witness counted traffic on a holiday weekend, and the count exceeded 1,000 ADT. The count was done at a busy time to

illustrate what it could be at build-out, but Lewies did not agree with this method.

The development code does not define loop road or explain the meaning of an average daily trip. In addition, old copies of the development code state that a loop road can satisfy the two-access point rule if the ADT's are 100, not 1,000.

And, loop roads are generally roads that surround a development that people turn off to reach their driveways. The so-called "loop" road to Woodlands is a narrow one-way road on the causeway that two vehicles can barely use at once. It ends at a T intersection, at which people can turn left or right onto the real loop road that provides access to the original Island. If Woodlands is developed, this intersection will become a three-way, with the third option being to head to Woodland's entrance.

A condition of the Woodlands approval is that the causeway be widened to have a 36 ft. surface and two feet for shoulders. Lewies' findings state that this wider road will accommodate three-way traffic.

In his findings, Lewies notes that at the public hearing, no one questioned the 1,000 ADT threshold.

The developer and his team, as well as supporters from Fremont County and other states, said he is committed to doing high quality projects. If the island is to be developed they said, there couldn't be a better person to manage the project.

Sugar City developer Mike Vickers tried to develop the interior in 2005, but his application was turned down because of access and safety issues. But in a 2006 appeal hearing, rather than addressing the access, County Attorney Karl Lewies found that Vickers' proposal to develop 59 lots was in error. Vickers had purchased a TDR (transfer of development rights) on 70 acres of wetlands from a landowner on Henry's Lake Flat to raise the total acreage of his proposal so he could build more lots that would normally be allowed on 92 acres — 37 lots. But the Planning Department erroneously treated the wetlands as normal land, allowing more lots to be platted on the island than there should have been. Rather than reduce the development's size and reapply, Vickers sold the land with the TDR to Davis.

APR 12th 07

By ELIZABETH LADEN

Vague language in the Fremont County Development Code has caused hours of time to be spent debating the merits of a development proposed for the interior of Bills Island in Island Park. The 42-lot Woodlands at Bills Island subdivision does not appear to meet an absolute standard in the development code — that certain developments must have two access points.

Developments that do not meet even one absolute standard are supposed to be denied, according to the county's code. And for that reason, in November, the Fremont County Planning and Zoning Commission denied Utah developer Ryan Davis' application to develop 42 lots in the

middle of the island.

Davis appealed the decision. The appeal hearing before Fremont County Commissioners Paul Romrell, Skip Hurt, and Don Trupp at the County Annex in St. Anthony Tuesday devoured more than six hours time, with the developer and his team — as well as opponents to the project — bringing up many issues in addition to the main one — the failure to meet the absolute standard.

Around 35 people attended the appeal hearing.

The Planning and Zoning Commission's denial was based on a section of the development code that states:

"All developments containing six or more dwelling units or with a distance of more than 660 feet from a public road which is maintained on a year-round basis shall provide a minimum of two points of ingress and egress from the public road or highway serving the development. Loop systems that return to a single point of access to the public road or highway may be acceptable for relatively small developments (1,000 or less projected ADT - Average Daily Trips)."

The requirement for a development more than 660 feet from a public road to have two access points is an absolute standard in the code, meaning that the project must be denied. Woodland's main entrance is 1,667 feet from the county road to Bills Island.

Nonetheless, Davis, his attorney — Chuck Homer of Idaho Falls — and several “expert” witnesses were able to steer the Fremont County Planning and Zoning Commission and the Fremont County Commission away from the absolute standard failure to discussions pertaining to the word, “may” in the second part of the standard — that the development may utilize the one road to the island as a loop road. The developer's team asserted to both commissions that they could improve the island's only access road to make it safe for their own buyers and the entire island community.

They said they could obtain a permit from the Army Corps of Engineers to add more land to the isthmus connecting the island to the mainland, and widen the road so it would have three 12-ft. lanes.

In the November meeting, their plan was to widen the road to 31-ft., which is still much narrower than the county's width standard of at least 60 ft.

The developer's team found another loophole in the code — the definition of a large-scale development being one that is 59 lots or more, to assert that their 42-lot subdivision should be considered a “small” development.

And, they asserted that data from traffic counters they placed on the island the week after the Fourth of July holiday last summer shows that there were fewer than 1,000 ADT's on the isthmus.

The Bills Island Homeowners Association, which opposes Woodlands and is represented by

attorney Reed Larsen, hired an Idaho Department of Transportation employee to place a traffic counter on the road to the island, and his report, from counts taken on July 4, 2006 and the preceding week, shows close to 1,000 ADT's on some days.

The developer argued that a count during a peak period for travel to the island does not give a balanced picture of traffic. Opponents argued that the ADT counts are supposed to be estimates of what will happen at a development's build out.

There are 301 lots on platted on the Island now, and 197 are developed, so BIA members said ADT's at build-out will be well over 1,000 even without Woodlands traffic.

Hours of discussion were spent at both hearings on the developer's proposal to use enhanced septic tanks instead of building a central sewer supply, concerns about his wells drawing down the island's water supply, and concerns about his proposal to pump water out of the reservoir, which is either frozen or depleted many months of the year, as a back up firefighting supply.

The developer, builders, and Realtor Brett Whitaker, also an Island Park volunteer fireman, testified that the subdivision's roads and homesites would make the island safer because trees would be removed from the island's heavily wooded interior, making it less vulnerable to wildfires.

Opponents to Woodlands have long said the interior is what makes the island so special, and a main reason they purchased their lots on the island was that Ivan P. Bills, the Utah man who developed the island, had promised that the interior would never be developed. Bills, however, never set the interior aside as open space, and his original plans show roads to the center.

The developer and his team, as well as supporters from Fremont County and other states, said he is committed to doing high quality projects. If the island is to be developed they said, there couldn't be a better person to manage the project.

Sugar City developer Mike Vickers tried to develop the interior in 2005, but his application was turned down because of access and safety issues. But in a 2006 appeal hearing, rather than addressing the access, County Attorney Karl Lewies found that Vickers' proposal to develop 59 lots was in error. Vickers had purchased a TDR (transfer of development rights) on 70 acres of wetlands from a landowner on Henry's Lake Flat to raise the total acreage of his proposal so he could build more lots that would normally be allowed on 92 acres — 37 lots. But the Planning Department erroneously treated the wetlands as normal land, allowing more lots to be platted on the island than there should have been. Rather than reduce the development's size and reapply, Vickers sold the land with the TDR to Davis.

Commissioners will mull the testimony in work sessions, and study the appeal hearing's transcript and County Attorney Karl Lewies findings of fact and conclusions of law based on the hearing testimony, before making a decision by their 60 day deadline.

After the testimony ended, Commission Chairman Paul Romrell said the county is in the process of "tweaking the development code. We invite you to be involved and tell the Planning and

Zoning Commission what you think about the code and what needs to change.”

Several developers have appealed Planning and Zoning Commission decisions in recent months, and Romrell said his commission is “trying to do one a month — we have five or six pending. We are finalizing the one we did last month (Gunbarrel at Shotgun). It is a busy time for us. We take it seriously. This is the most beautiful county in Idaho. What we do in the next few months will dictate what Fremont County looks like forever.”

Commissioners set a work session on the development for 9 a. m. Friday, April 13 in the Commission Room at the courthouse. The public can attend, but they cannot talk, since the public comment period ended with Tuesday’s hearing

March 26th 07

Tuesday April 10th 2007

This is the date for the Fremont County Commission to review the Woodland’s request to develop the center Island. Your attendance is needed. If you can attend the more people we have there the better. You may comment at this meeting. If you would like to send a letter of comment please do so, but keep your comments on issues. Water, sewer or fire safety. Written comments must be in by 4th of April. County Clerks Office 151 W 1st N St Anthony ID 83445

Fremont County Commission

Tuesday April 10th, 2007

9:00 am

Fremont Co. Annex Building

125 N Bridge St

St. Anthony ID.

Fremont County Commission

Tuesday April 10th, 2007

9:00 am

Fremont Co. Annex Building

125 N Bridge St

St. Anthony ID.

Feb 14-06

P & Z to consider development moratorium next month

Advertisement

By *ELIZABETH LADEN*

Fremont County Planning Administrator Jeff Patlovich said today that the Planning and Zoning Commission will discuss an interim moratorium on new development at its next regular meeting, set for 6 p. m. Monday, March 9 at the County Annex on Bridge Street.

Planning Commissioner Kip Martindale requested the moratorium during the Monday, Feb. 12 Planning and Zoning Commission meeting. Martindale's motion asking for a vote on imposing the moratorium for one year died for lack of a second after Patlovich said he would put the item on next month's agenda.

In making the motion, Martindale read a prepared statement that asks for the interim moratorium while the county's comprehensive plan and building code are being updated. Martindale stated that such an action is allowed by the state's Local Land Use Planning Act, which states, "If a governing board finds that a plan, a plan component, or an amendment to a plan is being prepared for its jurisdiction, it may adopt an interim moratorium upon the issuance of selected classes of permits if ... the governing board finds and states in writing that an imminent peril to the public health, safety, or welfare requires the adoption of an interim moratorium. An interim ordinance or moratorium shall state a definite period of time, not to exceed one calendar year, when it shall be in full force and effect."

Martindale stated that he made the motion "because the pace of current projects would not be in

compliance with the new plan. Members of the Planning and Zoning Commission cannot appropriately evaluate each project as well as make revisions to the comprehensive plan and development code. For example we have transfers of development rights in our code that have not often been used. When used properly, TDR's in other states and counties have brought private property owners \$7,500 to \$200,000 per acre."

Patlovich said if the Planning and Zoning Commission supports the moratorium, the Fremont County Commission would hold a public hearing on the measure.

If the county commission decides to impose a moratorium, it would do so by an ordinance.

In the last few months, other planning commissioners and members of the Fremont County Commission, have casually discussed the idea of a moratorium on Class 2 permits until the planning document revision is completed.

Online Poll Results: Do you support a one-year moratorium on development in Fremont County?

Yes:	80%
No:	15%
I support a moratorium, but for less than one year.:	5%

Jan 24 07

Printed From The Island Park News
2007-01-19

We're a county in crisis

Valley Perspectives by Chan Atchley

We are a county in crisis. We are like cows contentedly chewing our cud, oblivious to the wolves circling for the kill.

County government is in danger of being paralyzed by ever increasing development applications and lengthy approval and appeals timelines. Decisions are being made in the heat of the moment that are not good for county government and citizens.

Skeptical? Here is a short list of what I have encountered.

While conducting an appeal, the county commissioners overturned a P & Z decision to deny a class II permit. The commissioners accepted the applicant's claim that a Forest Service road was a private driveway and adequate for firefighting equipment to get to the resort. In reality it is a single lane road more than a mile long, accessible only by 4-wheel drive vehicles most of the year and cannot be safely accessed by fire fighting equipment any time.

Early last year, a permit was issued for remodeling an old barn into a single family dwelling. However, from the outset, it was known that the developer was planning a bed and breakfast with the capability of handling wedding receptions. Neighbors whose home and outbuildings are overshadowed by the huge structure just 35 feet from their property line had to hire an attorney to pressure the county Building Department to red tag the construction until a permit was presented to the P & Z. Application for the permit was filed about six months later in December 2006. The public hearing requesting the upgrade was held January 8, 2007 and the permit was denied. In the meantime, the neighbors, who are working hard to put two children through college, spent thousands of dollars in legal fees trying to get the county to enforce its own building code.

I was one of 49 people to witness the appeal hearing on the Shadow Ridge at Stephens Ranch subdivision. Most were opposed to the project as well as more than 50 other individuals who signed a petition. It was not easy to sit still as the developer's attorney talked about the wonderful plans for protecting wildlife while he downplayed the importance of the migratory elk corridor. Or listening to how infrastructure costs such as rebuilding the Fish Creek Road were minimal while the costs of additional services such as fire and police protection, solid waste disposal, and schools were barely mentioned. Again, individuals appealing the development spent thousands of dollars trying to insure that the county commissioners consider all consequences of the development.

County commissioners are overloaded. Under normal conditions the job is supposed to be half time, but now nearly always exceeds that target. Add

to it the time required for appeals - there are already four more lined up to be heard in as many months - and we have a real problem. The commissioners are now working full time while other problems requiring attention loom on the horizon. By some accounts, they've already spent more than 60 hours on Shadow Ridge appeals and that may double before they are finished. Right or wrong, they must make a decision 60 days after hearing an appeal.

Obviously, strengthening the comprehensive plan and closing loopholes in the development code would simplify the evaluation process. There would be fewer appeals and enforcement of the code would be enhanced. Therefore, we must dramatically speed up the comprehensive plan and the code revision process. We can't afford to let our county government become so preoccupied with development that other issues are not adequately addressed.

So what can you do? I know, I'm beginning to sound like a broken record, but please go to county meetings. Learn how we can intelligently meet the challenges of growth in a way that will benefit all of us, not just developers.

Our way of life is as endangered as our wildlife and will disappear if we don't find ways to protect it. Once it disappears, it will be gone forever.

Chan Atchley

Jan 18th 07

Fremont County Commissioners will review the denial of the Woodlands at Bills Island Development project Apr 10th at 9:00 A.M. in the county Annex Building on Main Street in St Anthony. Everyone is welcome to attend. You are welcome to comment at this meeting. The board members will be in attendance and we will report any and all info on the web page ASAP.

UPDATE on Snow conditions

Snow conditions are great but there is an Avalanche warning in the mountain areas. Please be aware of the high risk of avalanche. Check with local authorities before going into the mountain areas. Three people were killed in avalanches during the New Year Holiday.

Snowmobile Safety

An 11-year-old boy must have had a guardian angel last weekend when he crashed his snowmobile and slid under a flatbed truck — with no serious injuries.

According to witnesses, the boy was snowmobiling out of a side road at the Island Park Village Resort onto the upper Big Springs Road on Friday, December 29 when he ran into a truck owned

by an Island Park business. He was then run over by a flatbed trailer the truck was hauling.

He was flown by helicopter to the Eastern Idaho Regional Medical Center in Idaho Falls, and released soon after with no serious injuries

Please keep safety in mind

Nov 14 06

P and Z sinks Bills Island plan

By ELIZABETH LADEN

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Island Park News

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In a unanimous decision Monday, the Fremont County Planning and Zoning Commission denied a Class II permit to Salt Lake City developer Ryan Davis to put 42 lots on the 91.8 acres in the middle of Bills Island.

According to Molly Knox, the Planning Department's administrative assistant, commissioners denied the project because Planning Administrator Jeff Patlovich's findings of fact stated that it does not meet the development code's requirement that developments with six or more lots have two access points 670 feet or more from a county road. The development's proposed access would have been at a single point from a loop road that goes around the island, and which is more than 670 feet from the county road that accesses the island.

In 2005, the P and Z Commission turned down Sugar City developer Mike Vickers' application to develop the island because of several safety issues. Then, in January this year, the County Commission denied Vickers' appeal of the P and Z Commission's decision because the P and Z administrator at the time had made a mistake in the number of lots that could be built in the island's interior.

The commission heard more than three hours of testimony from the new developer's representatives and the public at its regular meeting in October. Bills Island residents and others have expressed concerns about the development polluting the Island Park Reservoir, creating too much traffic, not being safe if there is a fire, and harming wildlife.

Nov 11 06

Island plan a washout

Woodlands  project may be rejected

ST. ANTHONY – A lack of adequate access to Bills Island from the nearest public road may halt a 42-lot subdivision proposed for the interior of the island.

The Fremont County Planning and Zoning Commission voted Monday night that the access proposed in the Woodlands preliminary plat fails to meet the county's performance standard requiring two accesses into a subdivision.

The access performance standard is considered an absolute standard in the county's development code, which means if the project fails to meet the standard, the project can't be approved.

The commission was meeting in a work session when the vote was taken. A formal vote to accept or reject the preliminary plat will be taken as scheduled at a meeting Monday.

As proposed, the Woodlands would be accessed via a widened and improved causeway to the island and a connecting loop road around the outer edge of the island.

While the county's code calls for a minimum of two accesses into subdivisions of six lots or more, the code also says loop roads may be allowed in smaller developments if traffic can be shown to be less than 1,000 projected average daily traffic.

At an earlier hearing the developer produced an engineer's survey that showed that the average daily traffic would be less than 1,000.

The planning commission also was concerned the loop road, as proposed, didn't "return to a single point of access to a public road" as the code provides. Rather, it connects to a private road.

The Woodlands project was proposed once before and rejected by the planning commission on life safety issues. In an appeal to the Fremont County Commission, the commission didn't reject the loop road proposal made by the developer, County Attorney Karl Lewies said, though the plat was rejected by the county commission due to failure to comply with the density provisions of the code.

Lewies said the county commission ruling "might be considered precedence" by allowing the access as proposed in the first Woodlands preliminary plat.

Lewies also encouraged the planning panel to ignore issues related to the ownership of the causeway, predicting legal battles over ownership between the developer and I.P. Bills Island Association will be lengthy.

Rather, the planning panel is required only to determine if the proposal meets the county development code, regardless of actual ownership of the causeway, which will likely be determined in court.

Planning Administrator Jeff Patlovich has prepared findings of fact based on the work session vote for the planning commission to review and approve at a meeting Monday at 6 p.m. at the Fremont County Courthouse in St. Anthony.

P & Z delays Bills Island decision

Advertisement

Salt Lake City developer Ryan Davis will have to wait until next month to see if the county Planning and Zoning Commission will approve his plan to put 42 lots on the 91.8 acres in the middle of Bills Island.

On Monday — the county Planning and Zoning Commission decided to wait until Monday, November 6 to discuss the development proposal and possibly vote on Davis' Class 2 application to subdivide the acreage.

The commission delayed the decision after hearing more than three hours of testimony from the developer's representatives and the public. They were also given a pile of documents to review that had not arrived at the county in time to be included in the information packet they review before their meetings. They wanted time to digest all the testimony and all the new written information, Planning Administrator Jeff Patlovich said Tuesday.

Davis wants to transfer development rights from 70 acres of wetlands on Henry's Lake Flat, many miles from Bills Island, so he can bring the total acreage of "developable" land to 160 acres and be able to put 42 lots on the 91.8 acres. Each lot would have an individual septic system and well. Without the transfer, the most lots the development could have would be around 36.

Sugar City developer Mike Vickers had a similar plan that was turned down this January because it had too many lots.

Both developers have faced significant protest from long time Bills Island residents and others who have expressed concerns about the development polluting the Island Park Reservoir, creating too much traffic, not being safe if there is a fire, and harming wildlife.

The November 6 meeting starts at 6 p. m in the County Annex on Bridge Street in St. Anthony.

P and Z sinks Bills Island plan

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