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IDAHO PUBLIC
UTILITIES COMMISSION

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IDAHO POWER COMPANY,)
COMPLAINT VS. CITY OF EAGLE,) CASE NO. IPC-E-04-04
IDAHO, RESPONDENT)
)

Direct Testimony of
Mayor Nancy C. Merrill
On behalf of
The City of Eagle

July 2, 2004

1 **Q. Would you please state your name and address?**

2 A. Nancy C. Merrill, Mayor, City of Eagle. The address is City Hall, 310 E. State Street, Eagle,
3 Idaho 83616.

4 **Q. Does your testimony include any attachments?**

5 A. Yes. Exhibits 119 through 127 are included at the end of my testimony.

6 **Q. What is the purpose of making your appearance at this hearing?**

7 A. As the Mayor of the City of Eagle, I am testifying to explain the impact on Idaho Power
8 Company's (the Company, IPC) proposed 138 kV power line through the City of Eagle, the
9 City's denial of their request (Exhibit 119) and the efforts the City has made over the years to
10 establish and maintain a viable residential and business community with the changing
11 expectations of the citizens of Eagle. I will also testify that IPC failed to provide the City with
12 viable alternatives regarding the concerns raised about the adverse impact of the high
13 transmission lines.

14 **Q. How is your testimony organized?**

15 A. I provide a brief description of my own participation in Eagle City government, describe
16 changes made to Eagle's Ordinances and Policies to meet the considerable growth and
17 development Eagle has experienced while maintaining its rural residential feel, and the analysis
18 undertaken by the City in denying IPC's request for the high transmission lines.

19 **Q. Can you describe your business prior to your work in Eagle City government?**

20 A. In 1988 I first became involved with the City of Eagle as a citizen, business and property
21 owner that had recently been annexed into the Eagle City limits. Our family business consisted
22 of an egg farm consisting of approximately 500,000 chickens. I also had my own business
23 teaching art classes, selling retail art supplies, and traveling with a local designer around the
24 Pacific Northwest painting murals and faux finishes in homes and commercial businesses.

25 **Q. What was Eagle like at that time?**

1 A. Eagle had a population of approximately 3,000 but had been discovered and began to grow.

2 **Q. When and how did you get involved in Eagle City government?**

3 A. I was appointed to the Planning and Zoning Commission in 1993 and served on the Downtown
4 Task Force as well as the Design Review Committee. I was appointed to the City Council in
5 1994, and was elected to that position in 1995. Also, in 1995 while serving on the City Council
6 was given the job of the City Council's liaison to the Design Review Commission. I was Council
7 President for four years before being appointed to the office of Mayor in December 2002 and
8 elected to that position in 2003.

9 **Q. What was Eagle's vision for its future development?**

10 A. In 1994, Mayor Steve Guerber (he is presently a member of the Eagle City Council)
11 appointed me as the City Council's liaison to the Design Review Committee. It was during my
12 tenure with this committee that it became evident that Eagle should focus on becoming a full-
13 service community, different from other cities close to Boise. We needed to create a commercial
14 area that could support and balance residential taxes, provide jobs in town instead of just being a
15 bedroom community to larger business hubs like Boise, Meridian, and Garden City.

16 **Q. How did Eagle change its regulatory scheme to meet its vision?**

17 A. Eagle began the process by creating fairly strict Design Criteria that included detached sidewalks
18 with planting strips for tree lined streets; trees were required to be of a three inch caliper to
19 provide for a city that did not look like it was entirely new. We created a tree ordinance that
20 makes it difficult to remove old growth trees and established a tree fund to replace these trees if
21 they were removed or damaged.

22
23 We removed signs from poles and required them to be replaced with non-illuminated monument
24 signs. We required lights to be shielded and directed downward to prohibit light pollution at
25 night.

1 We created scenic corridors along Eagle Road and State Street, as well as additional landscape
2 requirements at key entrances into our city. Those entrances are the corner of Eagle Road and the
3 Bypass, State 44 and Edgewood, State 44 and Highway 55, State 44 and
4 Old Hill Road, State 44 and Ballantyne, and Eagle Road and Chinden.

5
6 We have required developers at these sites to provide additional street corner landscaping along
7 our scenic corridors as identified in our Comprehensive Plan. Exhibit 106, p. 48 and Land Use
8 Planning Map indicating the scenic corridors. This provides a beautiful entrance into our city.
9 We have also gone to great lengths to ensure that development has adhered to Eagle's unique
10 rural/urban feel. Examples of the City's high standards for design criteria are contained in the
11 numerous development agreements. See, Exhibits 120 & 121.

12
13 We adopted a height limit of 35 feet to protect our view corridor of the mountains. See, Exhibit
14 101. We have allowed additional height in only three locations of the city: one was an
15 uninhabited tower, a small part of an architectural feature of the Two River Club House. Exhibit
16 122, pp. 5 & 7. The other was a 5 foot addition for the Hilton Hotel that backs up to the Boise
17 River. Exhibit 123, pp. 1, 5-7. This addition was allowed because of gradient changes in the road
18 that placed the Hotel well below the regular grade for a building. The same is true for the Con
19 Agra building that is also placed along the Boise River and was allowed an additional 5 feet to
20 conceal the mechanicals on the roof. This building is in a setting that does not block the view
21 corridor of the mountains. Exhibit 124, pp. 5-6. St. Alphonsus Medical Office Building recently
22 requested additional height at the new Eagle River site, but was limited to the 35 foot standard.
23 See, Exhibit 107, Eagle River Design Review Guidelines p. 2.

24 **Q. When did the City first become aware that pole heights would adversely impact its vision?**

25 I was serving on the Eagle Planning and Zoning Commission that two new issues arose. One was

1 a cell tower that requested to be located at the back of the Container and Packaging building
2 located along State Street and backing up to the Rocky Mountain Business Park. The second issue
3 was the CUP request from Idaho Power to allow for additional pole height along State Street from
4 Edgewood to the existing substation across from City Hall. The cell tower was denied because of
5 the requested height and because it was also too prominent an intrusion into the view corridor. In
6 contrast, in 1995, the Idaho Power poles were allowed, but the discussions were long and lengthy,
7 and because promises were made that these would be the only completing circuit that Eagle
8 would ever need. The CUP also conditioned the sub-station such that if upgrades were ever
9 requested, the sub-station would be removed from the City center. See, Exhibit 100.

10
11 In the mid 1990's the Planning and Zoning Commission was fairly new and the members and had
12 never dealt with a public utility. The desire of the Commission was not to have ugly poles along
13 State Street. I believe that if we had had any idea that this was only the beginning of many tall
14 poles being requested within the city limits, we would have recommended denial of the 1995
15 Conditional Use Permit. See, Exhibit 101.

16
17 A cell tower was later permitted at the Republic Storage Site along Highway 55; however it was
18 limited to a 135 foot height and also allowed co-locations for additional services on the same
19 pole. See, Exhibit 125, pp. 1, 4-7.

20
21 In Eagle we strategically place cell towers away from residences and provide for a fall zone as
22 well as limiting their height and prohibiting them along our scenic corridor. See, Exhibit 101.

23 **Q. Explain the history of IPC's Conditional Use Permit Application?**

24 A. IPC received a CUP from the City in 1995 for the upgrade of the public utility substation,
25 primarily to update the transmission power lines from 69kV to 138kV. See, Exhibit 100. In its

1 Findings of Fact and Conclusions of Law, the City placed conditions on the CUP which required
2 future upgrades to be made at a different location, outside of the City. When IPC came to the
3 City for a new CUP the Council was gravely concerned about how this application would impact
4 property values, how it would fit into Eagle's rural/urban setting, affect our tax base, revenues,
5 job opportunities and inhibit future development. Numerous public hearings were held before
6 both the Planning and Zoning Commission and the City Council. See, Exhibit 126, pp. 3-9, Exhibit
7 127, pp. 1-4. The public repeatedly objected to the proposed pole heights and the impact they
8 would have on Eagle's skyline, the view corridor, and the rural feel of the City.

9
10 As elected officials, we were frustrated with the lack of options presented by IPC and felt
11 powerless to address the concerns of our citizenry. The City was unfamiliar with available
12 alternatives or any options it might have to alleviate these concerns. As a result, the City hired
13 Black and Veatch to evaluate the costs and feasibility of constructing an underground 138kV line.
14 What Black and Veatch did not disclose to Eagle was the fact that they had done significant work
15 for IPC in the past. We are concerned that this influenced the work they did for us. Nevertheless
16 the Black and Veatch report is a narrow evaluation of overhead lines vs. underground lines. The
17 study contained no examination of modern technologies and how they might be used to reach a
18 viable solution or any alternative routes suggested by the City Council. Instead the Black and
19 Veatch study only examined IPC's suggested alternatives. It did not address innovations or
20 alternative technology. See Teinert's Direct Testimony. This may be due in part to the City's
21 unfamiliarity with the intricacies of public utilities and utility planning. We were relying on IPC
22 to identify different options for us to consider. They did not give us information on alternative
23 technologies.

24 **Q. Explain Eagle's goal in having such development standards?**

25 **A.** The City of Eagle has established high design criteria for both the residential and

1 commercial developers. This has been a good partnership and has given the citizens high property
2 values while keeping the property tax base one of the very lowest of all the cities in Idaho.

3
4 Large overhead power lines through the scenic corridors of our City will absolutely destroy
5 everything we have tried so hard to create since we were incorporated in 1972. We recently
6 received the Pat Summerall Champions of Industry Award for one of the Best Small Managed
7 Cities in America. See, Exhibit 104. Much of this was based on our planning and design criteria
8 efforts. We also just received from the Association of Idaho Cities two awards for being a
9 Community of Promise. See, Exhibit 105. The Eagle Architecture and Design Book was created
10 for the purpose of ensuring that developments follow these guidelines.

11
12 Our future could very well be defined by this very important decision. With three state highways
13 intersecting our community – all with utility easements – we will be forever impacted if the PUC
14 allows for this to happen. There just simply must be a better way.

15 **Q. As President elect of the Association of Idaho Cities (AIC) what concerns do you have for**
16 **the cities of Idaho?**

17 **A.** I plan to educate growing cities like Eagle about the dangers of how public utilities can affect
18 property values, result in adverse health perceptions, has impacts on years of careful planning and
19 zoning, and stunt future development. Clearly, utility corridors need to be planned well in
20 advance. Since the cities are given little or no help in this area I would like to see the AIC take a
21 more active role in helping to address this problem. I am also the legislative chair for the AIC and
22 will encourage a review of relevant statutes addressing large utility poles in the territorial limits of
23 Idaho Cities.

24 **Q. Does this conclude your direct testimony?**

25 **A.** Yes.

Case No. IPC-E-04-04
Exhibit 119

May 11, 2004

**Eagle Findings of Fact and Conclusions of Law, Case No. CU-0-02
Denying IPC's Conditional Use Permit Application
for a Height Exception to Construct Utility Poles 70-85 feet**

BEFORE THE EAGLE CITY COUNCIL

**IN THE MATTER OF AN APPLICATION FOR)
 A CONDITIONAL USE PERMIT TO CONSTRUCT A)
 138kV SUB-TRANSMISSION LINE AND A HEIGHT)
 EXCEPTION REQUEST TO CONSTRUCT UTILITY)
 POLES IN EXCESS OF 35-FEET FOR IDAHO POWER)**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
 CASE NUMBER CU-9-02**

The above-entitled conditional use permit application came before the Eagle City Council for their action on October 14, 2003, at which time the public hearing was closed and the item was then continued to October 28, 2003. At that time, the Council remanded this item to staff with direction to schedule a new public hearing to consider additional routing options. A second public hearing was held March 23, 2004, at which time the public hearing was closed and the Council made their decision at that time. The Eagle City Council having heard and taken oral and written testimony, and having duly considered the matter, makes the following Findings of Fact and Conclusions of Law;

FINDINGS OF FACT:

A. PROJECT SUMMARY:

Idaho Power, represented by Layne Dodson, is requesting conditional use approval to construct a 138kV sub-transmission line, and a height exception request to construct utility poles with heights ranging from approximately 70 to 85-feet, (35 to 50-feet higher than the required maximum of 35-feet).

The first proposal for routing the new sub-transmission line would connect with the existing 138kV power line near the intersection of Edgewood and State Street. The new line would proceed west along State Highway 44 to Ballantyne Road, where the line would be constructed along the same route as the existing power lines that parallel the highway, to the new Star, Idaho, substation site.

The second proposal for routing the new sub-transmission line would travel within the existing right-of-way from the Eagle Substation (located on the south side of State Street approximately 300-feet east of 2nd Street) north to the alleyway north of State Street and then west through the alley to a point approximately 300-feet west of Park Road (Jackson Square). The line would then extend south and connect to State Street and continue west along State Street to Ballantyne Road and follow along the same route as the existing power lines that parallel the highway, to the new Star, Idaho, substation site.

B. APPLICATION SUBMITTAL:

The application for this item was received by the City of Eagle on September 9, 2002.

C. NOTICE OF PUBLIC HEARING:

Notice of Public Hearing on the application for the Eagle Planning and Zoning Commission was published in accordance for requirements of Title 67, Chapter 65, Idaho Code and the Eagle City ordinances on October 8, 2002, October 29, 2002, and again on June 24, 2003. Notice of this public hearing was mailed to property owners within three-hundred feet (300-feet) of the subject property in accordance with the requirements of Title 67, Chapter 65, Idaho Code and Eagle City Code on October 2, 2002, October 23,

EXHIBIT 119

CASE NO. IPC-E-04-04

2002, and again on June 18, 2003. Requests for agencies' reviews were transmitted on September 17, 2002, in accordance with the requirements of the Eagle City Code.

Notice of Public Hearing on the application for the Eagle City Council was published in accordance for requirements of Title 67, Chapter 65, Idaho Code and the Eagle City ordinances on September 9, 2003 and March 2, 2004. Notice of this public hearing was mailed to property owners within three-hundred feet (300-feet) of the subject property in accordance with the requirements of Title 67, Chapter 65, Idaho Code and Eagle City Code on September 2, 2003, and March 3, 2004.

D. HISTORY OF RELEVANT PREVIOUS ACTIONS:

On January 23, 1996, the Eagle City Council approved a conditional use permit for capacity upgrades to the Eagle Substation located at 315 E. State Street.

On February 20, 2001, the Eagle Planning and Zoning Commission recommend denial of CU-23-00 for a conditional use permit by Idaho Power Company for a height exception request and the reconstruction, upgrade, and re-routing of an existing 69kV power line to accommodate a 138kV sub-transmission line and placement of existing distribution lines underground, generally extending from the Eagle Substation on State Street west to Ballantyne Road. The item was not heard by the City Council as the applicant withdrew the application following the Planning and Zoning Commission hearing.

E. COMPANION APPLICATIONS: None

F. COMPREHENSIVE PLAN LAND USE MAP AND ZONING MAP DESIGNATIONS:

	COMP PLAN DESIGNATION	ZONING DESIGNATION	LAND USE
Existing	Business Park / Central Business District / Commercial / Mixed Use / Public/Semi-Public / Residential One (1-unit per acre max.) / Residential Two (2-units per acre max.) / Residential Four (4-units per acre max.)	A (Agriculture) / A-R (Agricultural-Residential) / BP (Business Park) / C-3 (Highway Business District) / CBD (Central Business District) / MU (Mixed Use) R-1 (Residential) R-2 (Residential) / R-4 (Residential)	Businesses / Residences/Transmission Power Line
Proposed	No Change	No Change	Transmission Power Line
North of site	Commercial / Central Business District / Residential One (1-unit per acre max.) / Residential Two (2-units per acre max.) Residential Four (4-units per acre max.) / Residential Two (2-units per acre max.) / Mixed Use	A (Agriculture) / A-R (Agricultural-Residential) / CBD (Central Business District) / R-1 (Residential) / R-2 (Residential) / R-4 (Residential)	Businesses / Residences/Transmission Power Line
South of site	Commercial / Central Business District / Public/Semi-Public / Mixed Use / Residential Four (4-units per acre max.) / Residential Two (2-units per acre max.)	A (Agriculture) / A-R (Agricultural-Residential) / C-1 (Neighborhood Business District) / CBD (Central Business District) / PS (public/Semi-Public) / R-1 (Residential) / R-2 (Residential) / R-4 (Residential)	Businesses / Residences/Transmission Power Line
East of site	Business Park / Mixed Use / Residential Four (4-units per acre max.)	BP (Business Park) / C-2 (General Business District) / MU (Mixed Use) / R-4 (Residential)	Businesses / Residences/Transmission Power Line
West of site	Mixed Use / Public/Semi-Public / Residential One (1-unit per acre max.) / Residential Two (2-units per acre max.) / Residential Four (4-units per acre max.)	A (Agriculture) / A-R (Agricultural-Residential) / MU (Mixed Use) / R-1 (Residential) R-2 (Residential) / R-4 (Residential)	Businesses / Residences/Transmission Power Line

G. DESIGN REVIEW OVERLAY DISTRICT:

The existing and proposed lines are located within the DDA (Downtown Development Area), CEDA (Community Entry Development Area), and the TDA (Transitional Development Area) as well as the City's designated Entry Corridor.

H. EXISTING SITE CHARACTERISTICS:

The existing power line is within easements and or public rights-of-way that extend through both residential and commercial areas of the City.

I. SITE DESIGN INFORMATION: N/a**J. GENERAL SITE DESIGN FEATURES:**

Number and Uses of Proposed Buildings: No buildings are proposed.

Height and Number of Stories of Proposed Buildings:

No buildings are proposed, however, the height of the sub-transmission line poles are proposed to be 70 to 85-feet (maximum) through the corridor.

Gross Floor Area of Proposed Buildings: N/a

On and Off-Site Circulation:

Other than the existing Eagle Substation, which has a maintenance access, the power line easement abuts public rights-of-way and no other public access is proposed.

K. PUBLIC SERVICES AVAILABLE:

Central District Health Department and Eagle Fire Department have provided preliminary approval letters. Letters from water and sewer entities, as well as other affected utilities, are required prior to the issuance of any permits.

L. PUBLIC USES PROPOSED: None**M. PUBLIC USES SHOWN ON FUTURE ACQUISITIONS MAP: No map currently exists****N. SPECIAL ON-SITE FEATURES:**

Areas of Critical Environmental Concern – A portion of this site is designated a Special Area and a Hazard Area in the Comprehensive Plan

Evidence of Erosion - unknown

Fish Habitat - unknown

Floodplain - yes

Mature Trees - yes

Riparian Vegetation - unknown

Steep Slopes - unknown

Stream/Creek - yes

Unique Animal Life - unknown

Unique Plant Life - unknown

Unstable Soils - unknown

Wildlife Habitat - unknown

- O. **SUMMARY OF REVIEW OF ENVIRONMENTAL ASSESSMENT PLAN (IF REQUIRED):**
An Environmental Assessment Plan has been prepared and submitted to the City Engineer for review. The Environmental Assessment Plan is incorporated herein by reference.
- P. **AGENCY RESPONSES:**
The following agencies have responded and their correspondence is attached to the staff report. Comments which appear to be of special concern are noted below:
- Ada County Highway District
Central District Health
Department of Environmental Quality
Eagle Fire Department
Eagle Sewer District
- Q. **LETTERS FROM THE PUBLIC:**
Letter from Thomas Dater, 999 Main Street, Boise, ID 83702 date stamped by the City on October 8, 2002.
Letter from Givens-Pursley LLP 277 N. 6th Street, Suite 200 Boise, ID 83701 date stamped by the City on October 11, 2002.
Letter from Capital Development, Inc., 6200 N. Meeker Place, Boise, ID 83713 date stamped by the City on October 30, 2002.
- All letters are incorporated herein by reference.
- R. **EAGLE CITY CODE 8-7-3-2 GENERAL STANDARDS FOR CONDITIONAL USES:**
The Commission/Council shall review the particular facts and circumstances of each proposed Conditional Use in terms of the following standards and shall find adequate evidence showing that such use at the proposed location:
- A. Will, in fact, constitute a conditional use as established in Section 8-2-3 of this title (Eagle City Code Title 8) for the zoning district involved;
- B. Will be harmonious with and in accordance with the general objectives or with any specific objective of the Comprehensive Plan and/or this title (Eagle City Code Title 8);
- C. Will be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area;
- D. Will not be hazardous or disturbing to existing or future neighborhood uses;
- E. Will be served adequately by essential public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.
- F. Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community;

- G. Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors;
- H. Will have vehicular approaches to the property which are designed as not to create an interference with traffic on surrounding public thoroughfares; and
- I. Will not result in the destruction, loss or damage of a natural, scenic or historic feature of major importance.

STAFF ANALYSIS PROVIDED WITHIN THE STAFF REPORT:

A. COMPREHENSIVE PLAN PROVISIONS WHICH ARE OF SPECIAL CONCERN REGARDING THIS PROPOSAL:

Chapter 4 Schools, Public Services and Utilities

4.2.7 Other Services and Utilities

Electricity

Appropriate placement of electric utility facilities on public rights-of-way is encouraged. Public streets and road rights-of-way typically serve as corridors for electric facilities. Transmission lines are usually located on easements that IPC (Idaho Power Company) acquires from private property owners. The joint use of utility corridors is also encouraged, provided that such joint use is consistent with limitations as may be prescribed by applicable law and prudent utility practice for existing and proposed utility facilities.

Additions and improvements to electric utility facilities that enhance the capacity and reliability of regional resources, particularly when multi-jurisdictional benefits within the region can be achieved, should be accommodated.

4.5 Implementation Strategies

- k. Recognize the need for electric utility facilities that are sufficient to support economic development.
- l. Encourage Idaho Power to make additions to and improvements of electric utility facilities that provide adequate capacity for projected growth.

Chapter 7 Natural Resources and Hazard Areas

7.8 Hazard Areas

The Dry Creek floodplain has a potential for flash flooding...

Chapter 11 Special Areas and Sites

11.2 Recognized Special Areas and Sites

The Dry Creek Floodplain is designated as a special area due to its ecological and scenic significance. This area comprises the length of the Dry Creek Floodplain through the Impact Area.

The State Street/Eagle Road Corridor is designated as a Special area due to its historical, architectural and scenic significance.

Chapter 12 Community Design

12.3 Entry Corridors

Entryway corridors are arterial roadways that introduce both visitors and residents to Eagle. City entryways include State Highways 44 (State Street and Alternate Route) and 55 (Eagle Road). These entrances with their landscaping (or lack thereof), commercial signage and building character provide the first, and oftentimes the most lasting impressions of the entire community. The City of Eagle has the responsibility to guide development and redevelopment that occurs along these entryway corridors.

Design review procedures should guide future development and redevelopment of existing uses. Depending on land uses and buildings, more extensive landscaping and fewer points of access may be required. The design review process will afford the opportunity to address the special features of each property and facility in a manner that will best address the overall intent of enhancing Eagle's entryways. Eagle's entrance corridors may take on the look of berms built adjacent to the Banbury and Lexington Hills Subdivisions.

B. ZONING ORDINANCE PROVISIONS WHICH ARE OF SPECIAL CONCERN REGARDING THIS PROPOSAL:

- Section 8-2A-6 (A)(7)(a)
Additional Height Restrictions: All spires, poles, antennas, steeples, towers, and any other such structures shall be limited to a maximum of thirty-five feet (35'). Additional height may be permitted if a conditional use permit is approved by the City Council.
- Section 8-2A-7 (J)(2)(c) & (3)
 - c. To conceal outdoor storage areas, trash receptacles, exposed equipment associated with any commercial or industrial activity, and off-street loading when adjacent to or in view from a residential activity or public street right of way, a five foot (5') wide by six foot (6') high landscaped buffer is required.
 - 3. Materials:
 - a. All buffer areas shall be comprised of, but not limited to, a mix of evergreen and deciduous trees, shrubs, and groundcover in which evergreen plant materials comprise a minimum of sixty percent (60%) of the total plant material used.
 - b. Height requirements shall be accomplished with plant material with a fence or decorative wall.

- c. The required buffer area shall result in an effective barrier within three (3) years and be maintained such that sixty percent (60%) or more of the vertical surface is closed and prevents the passage of vision through it.
- d. Chainlink fencing, with slats or otherwise, is prohibited for screening.

- **Section 8-7-3-5 (D): Conditions Of Permit**

Upon the granting of a conditional use permit, conditions may be attached to said permit including, but not limited to, those:

1. Minimizing adverse impact on other development;
2. Controlling the sequence and timing of development;
3. Controlling the duration of development;
4. Assuring that development is maintained properly;
5. Designating the exact location and nature of development;
6. Requiring the provision for on-site or off-site public facilities or services; and
7. Requiring more restrictive standards than those generally required in this Title.

C. DISCUSSION:

- In February of 2001, the Eagle Planning and Zoning Commission recommended denial of a conditional use permit application proposed by Idaho Power to install a 138kV line that would travel, in part, from the Eagle Sub-station through the downtown area along State Street and on to State Highway 44 near Ballantyne Road. Idaho Power withdrew the application prior to a public hearing before the City Council.

Subsequently, in March of 2002, Idaho Power held an informational open house to inform and garner comment from the public concerning the routing of a proposed 138-kV sub-transmission line. 35% of the questionnaires returned to Idaho Power suggested that the best route would be to utilize a state highway corridor. Through the responses received at the open house, as well as from nominations from the Eagle City Council and Star City Council, a group of volunteers was assembled to form a Community Advisory Committee (CAC). Through both subjective and objective approaches, the CAC determined that the most appropriate routing of a new 138-kV sub-transmission line (out of a total of ten options) would extend from the existing 138-kV sub-transmission line near the intersection of Edgewood Lane and State Highway 44 and travel east along the bypass route to connect to the existing line near the intersection of Ballantyne Road and State Street. The factors involved (as well as the methods used) in determining the route are detailed within the July 2002, Routing Study entitled "Eagle-Star 138-kV Sub-Transmission Project", attached to this report in booklet form.

It should be noted that it has not yet been determined which side of the bypass the line will traverse; this item is left to be determined from comments received at the public hearings as well as the determination of the Eagle Planning and Zoning Commission and the Eagle City Council.

- With regard to placing the sub-transmission line(s) underground, the CAC felt that while this scenario would be most favorable, the committee did not feel "empowered to make a recommendation to IPC that might obligate the citizens of Eagle to higher power rates", due to the costs of installation, and maintenance of, an underground line. Staff will defer discussion regarding this matter to the Eagle Planning and Zoning Commission and the Eagle City Council.

- It is staff's understanding that the existing Eagle Substation (located on the south side of State Street approximately 350-feet east of 2nd Street) will not require modifications and/or upgrades to accommodate the extension of the 138-kV line. The Eagle Substation (located within the downtown Central Business District) was previously determined by the City Council as being located in an area that is not suitable as a long-term site (as noted within the meeting minutes for the original conditional use permit) and that future changes/upgrades may require moving the substation out of the downtown. With the extension of the existing sub-transmission line, which may also eventually become an alternative power source to the Eagle Substation, it would appear that Idaho Power's long-term facility planning efforts include keeping the substation in its current location.

If the City Council determines that the substation may remain in its current location, then staff recommends that the existing chain link fence with slats surrounding the facility be removed since it does not comply with ECC minimum screening requirements. A new screening method such as a minimum 8-foot high decorative block (split face CMU) wall and additional landscaping should be installed around the perimeter of the substation. Design Review Board review and approval of the screen wall and landscaping should be required prior to the issuance of any zoning permits.

- The new power line may travel through an area designated as a "Hazard Area", specifically the Dry Creek floodplain/floodway. This portion of the floodway is located on State Highway 44 in approximate alignment with Riverview Street to the north. Eagle City Code Section 10-1-7 (A) requires that any development that could possibly increase or alter the flood hazard shall obtain a development permit prior to any construction occurring within the special flood hazard area. A flood plain development permit may be issued if documentation prepared by a registered professional engineer is submitted with an application to the City and approved by the City Engineer and the Building Official/Floodplain Administrator. The applicant should be required to obtain a floodplain development permit if any new poles are to be placed within a floodplain/floodway, prior to the City issuance of a Zoning Certificate.

STAFF RECOMMENDATION PROVIDED WITHIN THE STAFF REPORT:

If the City Council approves the transmission line facility as proposed by Idaho Power, then based upon the information provided to staff to date, staff recommends the site specific conditions of approval and the standard conditions of approval as outlined within the staff report.

PUBLIC HEARING OF THE COMMISSION:

- A. A public hearing on the application was held before the Planning and Zoning Commission on October 28, 2002, and continued to November 13, 2002, at which time testimony was taken and the public hearing was continued to a date uncertain. The public hearing was noticed for a meeting held on July 15, 2003, at which time testimony was taken and the public hearing was closed for oral testimony. The Commission continued the public hearing for written testimony to August 11, 2003, at which time the public hearing was closed. The Commission made their recommendation at that time.
- B. Oral testimony in opposition to this proposal was presented to the Planning and Zoning Commission by thirty-one (31) individuals with concerns regarding the rural feel that residents have moved to the City to enjoy would be lost if overhead lines were constructed; the utility poles would detract from the scenic views of the City; willingness (and also lack thereof) of citizens to pay for the cost of undergrounding the sub-transmission line; the need for Idaho Power to take resident's concerns under consideration when designing utility lines; the resultant decrease in property values from overhead

lines; the risks of electricity on health and effects of emissions from the power lines; actual costs for both underground and overhead construction; and the need for the City leaders to act as stewards to maintain the reputation the City has acquired as an upscale community. (NOTE: While fifty-two (52) individuals signed the public hearing sign-in sheet, not all chose to provide testimony.)

- C. Oral testimony in favor of this proposal was presented to the Planning and Zoning Commission by two (2) individuals (not including the applicant/representative) who felt that the proposed route and overhead construction was the most cost effective and least intrusive (to residential uses) means to construct the sub-transmission line.
- D. Written testimony in opposition to this proposal was presented to the Planning and Zoning Commission by one (1) individual with concerns regarding the lack of communication between Idaho Power and the Public Utilities Commission to consider power line routing and construction options, and that this individual has had contact with a staff member at the PUC who is willing to meet with interested property owners to examine the issue.
- E. A report prepared by the consulting firm Black & Veatch, contracted by the City to perform a study regarding the feasibility of under-grounding the line, and routing alternatives, was submitted to the Planning and Zoning Commission for their consideration and is incorporated herein by reference.

COMMISSION DECISION:

The Commission voted 4 to 1 (Deckers against) to recommend denial of the conditional use permit (CU-9-02) to construct an overhead 138 kV sub-transmission line and a height exception for utility poles for Idaho Power Company. The underground installation of the sub-transmission line from the Eagle substation to the western boundary of the Eagle City limits may be taken under consideration as an alternative method, as noted within their Findings of Fact and Conclusions of Law document, dated September 2, 2003.

PUBLIC HEARING OF THE COUNCIL ON OCTOBER 14, 2003:

- A. A public hearing on the application was held before the City Council on October 14, 2003, at which time testimony was taken and the public hearing was closed. The item was continued to October 28, 2003, for a decision to be determined at that date.
- B. Oral testimony in opposition to this proposal was presented to the City Council by six (6) individuals who felt that the State Highway 44 bypass is a prominent entry corridor into the City and that because tall landscaping is not permitted within easements for power lines, there will never be any type of camouflage to soften the visual impact of the lines; the new line should be constructed along the existing right-of-way (State Street), the City should maintain the design standards and character it has established and pursue underground construction of the lines, with either franchise fees, surcharges, or a local improvement district to pay for the cost; the decrease in property values caused by the location of the poles and line; the need for Idaho Power to show the entire power planning area rather than this small area in order to see the "big picture"; the importance of following the standards outlined in Eagle City Code regarding tower height as well as heeding the goals and objectives of the comprehensive plan; the Public Utilities Commission should be requested to require under grounding of all power lines; and there is a need to review other routs and design schemes for the poles and line.
- C. Oral testimony in favor of this proposal was presented to the City Council by no one (not including the applicant/representative).

COUNCIL DECISION:

The Council voted 3 to 1 (Sedlacek absent) to remand this conditional use permit application to staff to notice for a new public hearing to review alternate routes, pole structure designs, and the possibility of constructing the line underground.

A public hearing was scheduled for March 23, 2004, to consider the following described route to construct a 138kV sub-transmission line with poles ranging in height from approximately 70 to 90-feet, (35 to 55-feet higher than the required maximum of 35-feet):

The proposed routing of the sub-transmission line will travel within existing right-of-way from the Eagle Substation (located on the south side of State Street approximately 300-feet east of 2nd Street) north to the alleyway north of State Street and then west through the alley to a point approximately 300-feet west of Park Road (Jackson Square). The line will extend south and connect to State Street and continue west along State Street to Ballantyne Road, where the line will follow along the same route as the existing power lines that parallel the highway, to the new Star, Idaho, substation site.

PUBLIC HEARING OF THE COUNCIL ON MARCH 23, 2004:

- A. A public hearing on the application was held before the City Council on March 23, 2004, at which time testimony was taken and the public hearing was closed. The Council made their decision at that time.
- B. Oral testimony in opposition to this proposal was presented to the City Council by thirteen (13) individuals who felt the city should require that the lines be constructed underground; the attractive character and appearance of the city would be marred, along with a decrease in property values by the construction of large power poles; the City of Eagle should not bear the burden to provide power service to the city of Star; and the City should require Idaho Power to adhere to ordinances requiring developers to install utilities underground.
- C. Oral testimony in favor of this proposal was presented to the City Council by no one (not including the applicant/representative).
- D. Oral testimony neither in opposition to nor in favor of this proposal was presented to the City Council by three (3) individuals with questions regarding the replacement and height of the poles, the availability of existing and future right-of-way for the lines; and consideration was given (during the Community Advisory Committee meetings) to route the line along the bypass to lessen the impact on residential uses.
- E. Written testimony in opposition to this proposal was presented to the City Council by six (6) individuals who felt the city should represent the needs of the residents before the desires of commercial developers, undergrounding of the lines can be paid for through franchise fees; the need to protect views near the Eagle Island State Park; the line should travel through less developed areas rather than established neighborhoods; the decrease in property values due to the construction of power poles and lines; and the issue of "stray voltage" and its impacts on health.
- F. A petition in opposition to this proposal was presented to the City Council signed by one hundred fifty-four (154) individuals.

COUNCIL DECISION:

The Council voted 4 to 0 to deny the conditional use permit of the conditional use permit (CU-9-02) to construct an overhead 138-kV sub-transmission line and a height exception for utility poles for Idaho Power Company.

CONCLUSIONS OF LAW:

1. The application for this item was received by the City of Eagle on September 9, 2002.
2. Notice of Public Hearing on the application for the Eagle Planning and Zoning Commission was published in accordance for requirements of Title 67, Chapter 65, Idaho Code and the Eagle City ordinances on October 8, 2002, October 29, 2002, and again on June 24, 2003. Notice of this public hearing was mailed to property owners within three-hundred feet (300-feet) of the subject property in accordance with the requirements of Title 67, Chapter 65, Idaho Code and Eagle City Code on October 2, 2002, October 23, 2002, and again on June 18, 2003. Requests for agencies' reviews were transmitted on September 17, 2002, in accordance with the requirements of the Eagle City Code.

Notice of Public Hearing on the application for the Eagle City Council was published in accordance for requirements of Title 67, Chapter 65, Idaho Code and the Eagle City ordinances on September 9, 2003 and March 2, 2004. Notice of this public hearing was mailed to property owners within three-hundred feet (300-feet) of the subject property in accordance with the requirements of Title 67, Chapter 65, Idaho Code and Eagle City Code on September 2, 2003, and March 3, 2004.

3. The City Council has reviewed the particular facts and circumstances of this proposed conditional use and has made the following conclusion:

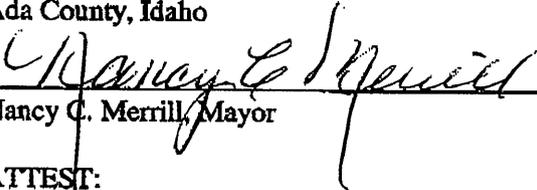
The proposed conditional use for the construction of an overhead sub-transmission line and height exception for utility poles to exceed the maximum of 35-feet is not in accordance with the general objectives of the Comprehensive Plan nor Eagle City Code Title 8. While statements within the Comprehensive Plan encourage Idaho Power to improve electric utility facilities to provide adequate capacity and service for growth, the design and construction of an overhead sub-transmission line conflicts with the City's goal to "protect important views, vistas, and panoramas of the community's natural setting and environment" (Chapter 9, Section 9.6.2 f). The overhead line also conflicts with the city's goal to "Strive to create an aesthetically pleasing community and protect the unique natural beauty and small town character of the City" (Chapter 12, Section 12.2)

The requirement for those who develop properties within the City to place utilities serving said development underground should be applied equally to Idaho Power service projects. Pursuant to the approval of a conditional use permit, it must be found that the proposed use will be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area. Further, the proposed use is to not result in the destruction, loss or damage of a natural, scenic or historic feature of major importance. The installation of new poles will alter the natural setting of the area since power poles are not typical features expected to be found in a natural environs. The historical character and appeal of the downtown will be further diminished since the power poles are not proposed to be designed with features that are harmonious with the existing styles of the downtown area (as shown within the City's adopted Eagle Architecture and Site Design book), nor do they contribute to a pleasing environment for both residents and visitors alike. Moreover, the extension of existing poles will contribute to the obstruction of scenic views of both the tree canopy along the Boise River as well as the foothills north of the City, depending upon the viewing vantage

point. The Council emphasized that to vary from the community's vision of the intended character of the City, consisting of both present and future development, and to change the practices and objectives to achieve this goal, in order to accommodate the overhead power line, would be detrimental to persons, property and the general welfare of the City of Eagle.

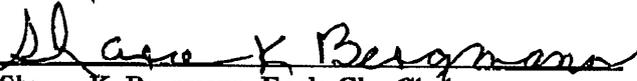
DATED this 11th day of May 2004.

CITY COUNCIL
OF THE CITY OF EAGLE
Ada County, Idaho



Nancy C. Merrill, Mayor

ATTEST:



Sharon K. Bergmann, Eagle City Clerk



Case No. IPC-E-04-04
Exhibit 119

May 11, 2004
Eagle Findings of Fact and Conclusions of Law, Case No. CU-0-02
Denying IPC's Conditional Use Permit Application
for a Height Exception to Construct Utility Poles 70-85 feet

BEFORE THE EAGLE CITY COUNCIL

**IN THE MATTER OF AN APPLICATION FOR)
 A CONDITIONAL USE PERMIT TO CONSTRUCT A)
 138kV SUB-TRANSMISSION LINE AND A HEIGHT)
 EXCEPTION REQUEST TO CONSTRUCT UTILITY)
 POLES IN EXCESS OF 35-FEET FOR IDAHO POWER)**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
 CASE NUMBER CU-9-02**

The above-entitled conditional use permit application came before the Eagle City Council for their action on October 14, 2003, at which time the public hearing was closed and the item was then continued to October 28, 2003. At that time, the Council remanded this item to staff with direction to schedule a new public hearing to consider additional routing options. A second public hearing was held March 23, 2004, at which time the public hearing was closed and the Council made their decision at that time. The Eagle City Council having heard and taken oral and written testimony, and having duly considered the matter, makes the following Findings of Fact and Conclusions of Law;

FINDINGS OF FACT:

A. PROJECT SUMMARY:

Idaho Power, represented by Layne Dodson, is requesting conditional use approval to construct a 138kV sub-transmission line, and a height exception request to construct utility poles with heights ranging from approximately 70 to 85-feet, (35 to 50-feet higher then the required maximum of 35-feet).

The first proposal for routing the new sub-transmission line would connect with the existing 138kV power line near the intersection of Edgewood and State Street. The new line would proceed west along State Highway 44 to Ballantyne Road, where the line would be constructed along the same route as the existing power lines that parallel the highway, to the new Star, Idaho, substation site.

The second proposal for routing the new sub-transmission line would travel within the existing right-of-way from the Eagle Substation (located on the south side of State Street approximately 300-feet east of 2nd Street) north to the alleyway north of State Street and then west through the alley to a point approximately 300-feet west of Park Road (Jackson Square). The line would then extend south and connect to State Street and continue west along State Street to Ballantyne Road and follow along the same route as the existing power lines that parallel the highway, to the new Star, Idaho, substation site.

B. APPLICATION SUBMITTAL:

The application for this item was received by the City of Eagle on September 9, 2002.

C. NOTICE OF PUBLIC HEARING:

Notice of Public Hearing on the application for the Eagle Planning and Zoning Commission was published in accordance for requirements of Title 67, Chapter 65, Idaho Code and the Eagle City ordinances on October 8, 2002, October 29, 2002, and again on June 24, 2003. Notice of this public hearing was mailed to property owners within three-hundred feet (300-feet) of the subject property in accordance with the requirements of Title 67, Chapter 65, Idaho Code and Eagle City Code on October 2, 2002, October 23,

EXHIBIT 119

CASE NO. IPC-E-04-04

2002, and again on June 18, 2003. Requests for agencies' reviews were transmitted on September 17, 2002, in accordance with the requirements of the Eagle City Code.

Notice of Public Hearing on the application for the Eagle City Council was published in accordance for requirements of Title 67, Chapter 65, Idaho Code and the Eagle City ordinances on September 9, 2003 and March 2, 2004. Notice of this public hearing was mailed to property owners within three-hundred feet (300-feet) of the subject property in accordance with the requirements of Title 67, Chapter 65, Idaho Code and Eagle City Code on September 2, 2003, and March 3, 2004.

D. HISTORY OF RELEVANT PREVIOUS ACTIONS:

On January 23, 1996, the Eagle City Council approved a conditional use permit for capacity upgrades to the Eagle Substation located at 315 E. State Street.

On February 20, 2001, the Eagle Planning and Zoning Commission recommend denial of CU-23-00 for a conditional use permit by Idaho Power Company for a height exception request and the reconstruction, upgrade, and re-routing of an existing 69kV power line to accommodate a 138kV sub-transmission line and placement of existing distribution lines underground, generally extending from the Eagle Substation on State Street west to Ballantyne Road. The item was not heard by the City Council as the applicant withdrew the application following the Planning and Zoning Commission hearing.

E. COMPANION APPLICATIONS: None

F. COMPREHENSIVE PLAN LAND USE MAP AND ZONING MAP DESIGNATIONS:

	COMP PLAN DESIGNATION	ZONING DESIGNATION	LAND USE
Existing	Business Park / Central Business District / Commercial / Mixed Use / Public/Semi-Public / Residential One (1- unit per acre max.) / Residential Two (2-units per acre max.) / Residential Four (4-units per acre max.)	A (Agriculture) / A-R (Agricultural-Residential) / BP (Business Park) / C-3 (Highway Business District) / CBD (Central Business District) / MU (Mixed Use) R-1 (Residential) R-2 (Residential) / R-4 (Residential)	Businesses / Residences/Transmission Power Line
Proposed	No Change	No Change	Transmission Power Line
North of site	Commercial / Central Business District / Residential One (1-unit per acre max.) / Residential Two (2-units per acre max.) Residential Four (4-units per acre max.) / Residential Two (2-units per acre max.) / Mixed Use	A (Agriculture) / A-R (Agricultural-Residential) / CBD (Central Business District) / R-1 (Residential) / R-2 (Residential) / R-4 (Residential)	Businesses / Residences/Transmission Power Line
South of site	Commercial / Central Business District / Public/Semi-Public / Mixed Use / Residential Four (4-units per acre max.) / Residential Two (2-units per acre max.)	A (Agriculture) / A-R (Agricultural-Residential) / C-1 (Neighborhood Business District) / CBD (Central Business District) / PS (public/Semi-Public) / R-1 (Residential) / R-2 (Residential) / R-4 (Residential)	Businesses / Residences/Transmission Power Line
East of site	Business Park / Mixed Use / Residential Four (4-units per acre max.)	BP (Business Park) / C-2 (General Business District) / MU (Mixed Use) / R-4 (Residential)	Businesses / Residences/Transmission Power Line
West of site	Mixed Use / Public/Semi-Public / Residential One (1- unit per acre max.) / Residential Two (2-units per acre max.) / Residential Four (4-units per acre max.)	A (Agriculture) / A-R (Agricultural-Residential) / MU (Mixed Use) / R-1 (Residential) R-2 (Residential) / R-4 (Residential)	Businesses / Residences/Transmission Power Line

G. **DESIGN REVIEW OVERLAY DISTRICT:**
The existing and proposed lines are located within the DDA (Downtown Development Area), CEDA (Community Entry Development Area), and the TDA (Transitional Development Area) as well as the City's designated Entry Corridor.

H. **EXISTING SITE CHARACTERISTICS:**
The existing power line is within easements and or public rights-of-way that extend through both residential and commercial areas of the City.

I. **SITE DESIGN INFORMATION:** N/a

J. **GENERAL SITE DESIGN FEATURES:**

Number and Uses of Proposed Buildings: No buildings are proposed.

Height and Number of Stories of Proposed Buildings:

No buildings are proposed, however, the height of the sub-transmission line poles are proposed to be 70 to 85-feet (maximum) through the corridor.

Gross Floor Area of Proposed Buildings: N/a

On and Off-Site Circulation:

Other than the existing Eagle Substation, which has a maintenance access, the power line easement abuts public rights-of-way and no other public access is proposed.

K. **PUBLIC SERVICES AVAILABLE:**

Central District Health Department and Eagle Fire Department have provided preliminary approval letters. Letters from water and sewer entities, as well as other affected utilities, are required prior to the issuance of any permits.

L. **PUBLIC USES PROPOSED:** None

M. **PUBLIC USES SHOWN ON FUTURE ACQUISITIONS MAP:** No map currently exists

N. **SPECIAL ON-SITE FEATURES:**

Areas of Critical Environmental Concern – A portion of this site is designated a Special Area and a Hazard Area in the Comprehensive Plan

Evidence of Erosion - unknown

Fish Habitat - unknown

Floodplain - yes

Mature Trees - yes

Riparian Vegetation - unknown

Steep Slopes - unknown

Stream/Creek - yes

Unique Animal Life - unknown

Unique Plant Life - unknown

Unstable Soils - unknown

Wildlife Habitat - unknown

- O. **SUMMARY OF REVIEW OF ENVIRONMENTAL ASSESSMENT PLAN (IF REQUIRED):**
An Environmental Assessment Plan has been prepared and submitted to the City Engineer for review. The Environmental Assessment Plan is incorporated herein by reference.

P. **AGENCY RESPONSES:**

The following agencies have responded and their correspondence is attached to the staff report. Comments which appear to be of special concern are noted below:

Ada County Highway District
Central District Health
Department of Environmental Quality
Eagle Fire Department
Eagle Sewer District

Q. **LETTERS FROM THE PUBLIC:**

Letter from Thomas Dater, 999 Main Street, Boise, ID 83702 date stamped by the City on October 8, 2002.

Letter from Givens-Pursley LLP 277 N. 6th Street, Suite 200 Boise, ID 83701 date stamped by the City on October 11, 2002.

Letter from Capital Development, Inc., 6200 N. Meeker Place, Boise, ID 83713 date stamped by the City on October 30, 2002.

All letters are incorporated herein by reference.

R. **EAGLE CITY CODE 8-7-3-2 GENERAL STANDARDS FOR CONDITIONAL USES:**

The Commission/Council shall review the particular facts and circumstances of each proposed Conditional Use in terms of the following standards and shall find adequate evidence showing that such use at the proposed location:

- A. Will, in fact, constitute a conditional use as established in Section 8-2-3 of this title (Eagle City Code Title 8) for the zoning district involved;
- B. Will be harmonious with and in accordance with the general objectives or with any specific objective of the Comprehensive Plan and/or this title (Eagle City Code Title 8);
- C. Will be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area;
- D. Will not be hazardous or disturbing to existing or future neighborhood uses;
- E. Will be served adequately by essential public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.
- F. Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community;

- G. Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors;
- H. Will have vehicular approaches to the property which are designed as not to create an interference with traffic on surrounding public thoroughfares; and
- I. Will not result in the destruction, loss or damage of a natural, scenic or historic feature of major importance.

STAFF ANALYSIS PROVIDED WITHIN THE STAFF REPORT:

A. COMPREHENSIVE PLAN PROVISIONS WHICH ARE OF SPECIAL CONCERN REGARDING THIS PROPOSAL:

Chapter 4 Schools, Public Services and Utilities

4.2.7 Other Services and Utilities

Electricity

Appropriate placement of electric utility facilities on public rights-of-way is encouraged. Public streets and road rights-of-way typically serve as corridors for electric facilities. Transmission lines are usually located on easements that IPC (Idaho Power Company) acquires from private property owners. The joint use of utility corridors is also encouraged, provided that such joint use is consistent with limitations as may be prescribed by applicable law and prudent utility practice for existing and proposed utility facilities.

Additions and improvements to electric utility facilities that enhance the capacity and reliability of regional resources, particularly when multi-jurisdictional benefits within the region can be achieved, should be accommodated.

4.5 Implementation Strategies

- k. Recognize the need for electric utility facilities that are sufficient to support economic development.
- l. Encourage Idaho Power to make additions to and improvements of electric utility facilities that provide adequate capacity for projected growth.

Chapter 7 Natural Resources and Hazard Areas

7.8 Hazard Areas

The Dry Creek floodplain has a potential for flash flooding...

Chapter 11 Special Areas and Sites

11.2 Recognized Special Areas and Sites

The Dry Creek Floodplain is designated as a special area due to its ecological and scenic significance. This area comprises the length of the Dry Creek Floodplain through the Impact Area.

The State Street/Eagle Road Corridor is designated as a Special area due to its historical, architectural and scenic significance.

Chapter 12 Community Design

12.3 Entry Corridors

Entryway corridors are arterial roadways that introduce both visitors and residents to Eagle. City entryways include State Highways 44 (State Street and Alternate Route) and 55 (Eagle Road). These entrances with their landscaping (or lack thereof), commercial signage and building character provide the first, and oftentimes the most lasting impressions of the entire community. The City of Eagle has the responsibility to guide development and redevelopment that occurs along these entryway corridors.

Design review procedures should guide future development and redevelopment of existing uses. Depending on land uses and buildings, more extensive landscaping and fewer points of access may be required. The design review process will afford the opportunity to address the special features of each property and facility in a manner that will best address the overall intent of enhancing Eagle's entryways. Eagle's entrance corridors may take on the look of berms built adjacent to the Banbury and Lexington Hills Subdivisions.

B. ZONING ORDINANCE PROVISIONS WHICH ARE OF SPECIAL CONCERN REGARDING THIS PROPOSAL:

- **Section 8-2A-6 (A)(7)(a)**
Additional Height Restrictions: All spires, poles, antennas, steeples, towers, and any other such structures shall be limited to a maximum of thirty-five feet (35'). Additional height may be permitted if a conditional use permit is approved by the City Council.
 - **Section 8-2A-7 (J)(2)(c) & (3)**
 - c. To conceal outdoor storage areas, trash receptacles, exposed equipment associated with any commercial or industrial activity, and off-street loading when adjacent to or in view from a residential activity or public street right of way, a five foot (5') wide by six foot (6') high landscaped buffer is required.
- 3. Materials:**
- a. All buffer areas shall be comprised of, but not limited to, a mix of evergreen and deciduous trees, shrubs, and groundcover in which evergreen plant materials comprise a minimum of sixty percent (60%) of the total plant material used.
 - b. Height requirements shall be accomplished with plant material with a fence or decorative wall.

- c. The required buffer area shall result in an effective barrier within three (3) years and be maintained such that sixty percent (60%) or more of the vertical surface is closed and prevents the passage of vision through it.
- d. Chainlink fencing, with slats or otherwise, is prohibited for screening.

- Section 8-7-3-5 (D): Conditions Of Permit

Upon the granting of a conditional use permit, conditions may be attached to said permit including, but not limited to, those:

1. Minimizing adverse impact on other development;
2. Controlling the sequence and timing of development;
3. Controlling the duration of development;
4. Assuring that development is maintained properly;
5. Designating the exact location and nature of development;
6. Requiring the provision for on-site or off-site public facilities or services; and
7. Requiring more restrictive standards than those generally required in this Title.

C. DISCUSSION:

- In February of 2001, the Eagle Planning and Zoning Commission recommended denial of a conditional use permit application proposed by Idaho Power to install a 138kV line that would travel, in part, from the Eagle Sub-station through the downtown area along State Street and on to State Highway 44 near Ballantyne Road. Idaho Power withdrew the application prior to a public hearing before the City Council.

Subsequently, in March of 2002, Idaho Power held an informational open house to inform and garner comment from the public concerning the routing of a proposed 138-kV sub-transmission line. 35% of the questionnaires returned to Idaho Power suggested that the best route would be to utilize a state highway corridor. Through the responses received at the open house, as well as from nominations from the Eagle City Council and Star City Council, a group of volunteers was assembled to form a Community Advisory Committee (CAC). Through both subjective and objective approaches, the CAC determined that the most appropriate routing of a new 138-kV sub-transmission line (out of a total of ten options) would extend from the existing 138-kV sub-transmission line near the intersection of Edgewood Lane and State Highway 44 and travel east along the bypass route to connect to the existing line near the intersection of Ballantyne Road and State Street. The factors involved (as well as the methods used) in determining the route are detailed within the July 2002, Routing Study entitled "Eagle-Star 138-kV Sub-Transmission Project", attached to this report in booklet form.

It should be noted that it has not yet been determined which side of the bypass the line will traverse; this item is left to be determined from comments received at the public hearings as well as the determination of the Eagle Planning and Zoning Commission and the Eagle City Council.

- With regard to placing the sub-transmission line(s) underground, the CAC felt that while this scenario would be most favorable, the committee did not feel "empowered to make a recommendation to IPC that might obligate the citizens of Eagle to higher power rates", due to the costs of installation, and maintenance of, an underground line. Staff will defer discussion regarding this matter to the Eagle Planning and Zoning Commission and the Eagle City Council.

- It is staff's understanding that the existing Eagle Substation (located on the south side of State Street approximately 350-feet east of 2nd Street) will not require modifications and/or upgrades to accommodate the extension of the 138-kV line. The Eagle Substation (located within the downtown Central Business District) was previously determined by the City Council as being located in an area that is not suitable as a long-term site (as noted within the meeting minutes for the original conditional use permit) and that future changes/upgrades may require moving the substation out of the downtown. With the extension of the existing sub-transmission line, which may also eventually become an alternative power source to the Eagle Substation, it would appear that Idaho Power's long-term facility planning efforts include keeping the substation in its current location.

If the City Council determines that the substation may remain in its current location, then staff recommends that the existing chain link fence with slats surrounding the facility be removed since it does not comply with ECC minimum screening requirements. A new screening method such as a minimum 8-foot high decorative block (split face CMU) wall and additional landscaping should be installed around the perimeter of the substation. Design Review Board review and approval of the screen wall and landscaping should be required prior to the issuance of any zoning permits.

- The new power line may travel through an area designated as a "Hazard Area", specifically the Dry Creek floodplain/floodway. This portion of the floodway is located on State Highway 44 in approximate alignment with Riverview Street to the north. Eagle City Code Section 10-1-7 (A) requires that any development that could possibly increase or alter the flood hazard shall obtain a development permit prior to any construction occurring within the special flood hazard area. A flood plain development permit may be issued if documentation prepared by a registered professional engineer is submitted with an application to the City and approved by the City Engineer and the Building Official/Floodplain Administrator. The applicant should be required to obtain a floodplain development permit if any new poles are to be placed within a floodplain/floodway, prior to the City issuance of a Zoning Certificate.

STAFF RECOMMENDATION PROVIDED WITHIN THE STAFF REPORT:

If the City Council approves the transmission line facility as proposed by Idaho Power, then based upon the information provided to staff to date, staff recommends the site specific conditions of approval and the standard conditions of approval as outlined within the staff report.

PUBLIC HEARING OF THE COMMISSION:

- A. A public hearing on the application was held before the Planning and Zoning Commission on October 28, 2002, and continued to November 13, 2002, at which time testimony was taken and the public hearing was continued to a date uncertain. The public hearing was noticed for a meeting held on July 15, 2003, at which time testimony was taken and the public hearing was closed for oral testimony. The Commission continued the public hearing for written testimony to August 11, 2003, at which time the public hearing was closed. The Commission made their recommendation at that time.
- B. Oral testimony in opposition to this proposal was presented to the Planning and Zoning Commission by thirty-one (31) individuals with concerns regarding the rural feel that residents have moved to the City to enjoy would be lost if overhead lines were constructed; the utility poles would detract from the scenic views of the City; willingness (and also lack thereof) of citizens to pay for the cost of undergrounding the sub-transmission line; the need for Idaho Power to take resident's concerns under consideration when designing utility lines; the resultant decrease in property values from overhead

lines; the risks of electricity on health and effects of emissions from the power lines; actual costs for both underground and overhead construction; and the need for the City leaders to act as stewards to maintain the reputation the City has acquired as an upscale community. (NOTE: While fifty-two (52) individuals signed the public hearing sign-in sheet, not all chose to provide testimony.)

- C. Oral testimony in favor of this proposal was presented to the Planning and Zoning Commission by two (2) individuals (not including the applicant/representative) who felt that the proposed route and overhead construction was the most cost effective and least intrusive (to residential uses) means to construct the sub-transmission line.
- D. Written testimony in opposition to this proposal was presented to the Planning and Zoning Commission by one (1) individual with concerns regarding the lack of communication between Idaho Power and the Public Utilities Commission to consider power line routing and construction options, and that this individual has had contact with a staff member at the PUC who is willing to meet with interested property owners to examine the issue.
- E. A report prepared by the consulting firm Black & Veatch, contracted by the City to perform a study regarding the feasibility of under-grounding the line, and routing alternatives, was submitted to the Planning and Zoning Commission for their consideration and is incorporated herein by reference.

COMMISSION DECISION:

The Commission voted 4 to 1 (Deckers against) to recommend denial of the conditional use permit (CU-9-02) to construct an overhead 138 kV sub-transmission line and a height exception for utility poles for Idaho Power Company. The underground installation of the sub-transmission line from the Eagle substation to the western boundary of the Eagle City limits may be taken under consideration as an alternative method, as noted within their Findings of Fact and Conclusions of Law document, dated September 2, 2003.

PUBLIC HEARING OF THE COUNCIL ON OCTOBER 14, 2003:

- A. A public hearing on the application was held before the City Council on October 14, 2003, at which time testimony was taken and the public hearing was closed. The item was continued to October 28, 2003, for a decision to be determined at that date.
- B. Oral testimony in opposition to this proposal was presented to the City Council by six (6) individuals who felt that the State Highway 44 bypass is a prominent entry corridor into the City and that because tall landscaping is not permitted within easements for power lines, there will never be any type of camouflage to soften the visual impact of the lines; the new line should be constructed along the existing right-of-way (State Street), the City should maintain the design standards and character it has established and pursue underground construction of the lines, with either franchise fees, surcharges, or a local improvement district to pay for the cost; the decrease in property values caused by the location of the poles and line; the need for Idaho Power to show the entire power planning area rather than this small area in order to see the "big picture"; the importance of following the standards outlined in Eagle City Code regarding tower height as well as heeding the goals and objectives of the comprehensive plan; the Public Utilities Commission should be requested to require under grounding of all power lines; and there is a need to review other routes and design schemes for the poles and line.
- C. Oral testimony in favor of this proposal was presented to the City Council by no one (not including the applicant/representative).

COUNCIL DECISION:

The Council voted 3 to 1 (Sedlacek absent) to remand this conditional use permit application to staff to notice for a new public hearing to review alternate routes, pole structure designs, and the possibility of constructing the line underground.

A public hearing was scheduled for March 23, 2004, to consider the following described route to construct a 138kV sub-transmission line with poles ranging in height from approximately 70 to 90-feet, (35 to 55-feet higher than the required maximum of 35-feet):

The proposed routing of the sub-transmission line will travel within existing right-of-way from the Eagle Substation (located on the south side of State Street approximately 300-feet east of 2nd Street) north to the alleyway north of State Street and then west through the alley to a point approximately 300-feet west of Park Road (Jackson Square). The line will extend south and connect to State Street and continue west along State Street to Ballantyne Road, where the line will follow along the same route as the existing power lines that parallel the highway, to the new Star, Idaho, substation site.

PUBLIC HEARING OF THE COUNCIL ON MARCH 23, 2004:

- A. A public hearing on the application was held before the City Council on March 23, 2004, at which time testimony was taken and the public hearing was closed. The Council made their decision at that time.
- B. Oral testimony in opposition to this proposal was presented to the City Council by thirteen (13) individuals who felt the city should require that the lines be constructed underground; the attractive character and appearance of the city would be marred, along with a decrease in property values by the construction of large power poles; the City of Eagle should not bear the burden to provide power service to the city of Star; and the City should require Idaho Power to adhere to ordinances requiring developers to install utilities underground.
- C. Oral testimony in favor of this proposal was presented to the City Council by no one (not including the applicant/representative).
- D. Oral testimony neither in opposition to nor in favor of this proposal was presented to the City Council by three (3) individuals with questions regarding the replacement and height of the poles, the availability of existing and future right-of-way for the lines; and consideration was given (during the Community Advisory Committee meetings) to route the line along the bypass to lessen the impact on residential uses.
- E. Written testimony in opposition to this proposal was presented to the City Council by six (6) individuals who felt the city should represent the needs of the residents before the desires of commercial developers, under grounding of the lines can be paid for through franchise fees; the need to protect views near the Eagle Island State Park; the line should travel through less developed areas rather than established neighborhoods; the decrease in property values due to the construction of power poles and lines; and the issue of "stray voltage" and its impacts on health.
- F. A petition in opposition to this proposal was presented to the City Council signed by one hundred fifty-four (154) individuals.

COUNCIL DECISION:

The Council voted 4 to 0 to deny the conditional use permit of the conditional use permit (CU-9-02) to construct an overhead 138-kV sub-transmission line and a height exception for utility poles for Idaho Power Company.

CONCLUSIONS OF LAW:

1. The application for this item was received by the City of Eagle on September 9, 2002.
2. Notice of Public Hearing on the application for the Eagle Planning and Zoning Commission was published in accordance for requirements of Title 67, Chapter 65, Idaho Code and the Eagle City ordinances on October 8, 2002, October 29, 2002, and again on June 24, 2003. Notice of this public hearing was mailed to property owners within three-hundred feet (300-feet) of the subject property in accordance with the requirements of Title 67, Chapter 65, Idaho Code and Eagle City Code on October 2, 2002, October 23, 2002, and again on June 18, 2003. Requests for agencies' reviews were transmitted on September 17, 2002, in accordance with the requirements of the Eagle City Code.

Notice of Public Hearing on the application for the Eagle City Council was published in accordance for requirements of Title 67, Chapter 65, Idaho Code and the Eagle City ordinances on September 9, 2003 and March 2, 2004. Notice of this public hearing was mailed to property owners within three-hundred feet (300-feet) of the subject property in accordance with the requirements of Title 67, Chapter 65, Idaho Code and Eagle City Code on September 2, 2003, and March 3, 2004.

3. The City Council has reviewed the particular facts and circumstances of this proposed conditional use and has made the following conclusion:

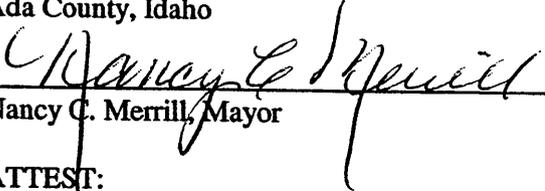
The proposed conditional use for the construction of an overhead sub-transmission line and height exception for utility poles to exceed the maximum of 35-feet is not in accordance with the general objectives of the Comprehensive Plan nor Eagle City Code Title 8. While statements within the Comprehensive Plan encourage Idaho Power to improve electric utility facilities to provide adequate capacity and service for growth, the design and construction of an overhead sub-transmission line conflicts with the City's goal to "protect important views, vistas, and panoramas of the community's natural setting and environment" (Chapter 9, Section 9.6.2 f). The overhead line also conflicts with the city's goal to "Strive to create an aesthetically pleasing community and protect the unique natural beauty and small town character of the City" (Chapter 12, Section 12.2)

The requirement for those who develop properties within the City to place utilities serving said development underground should be applied equally to Idaho Power service projects. Pursuant to the approval of a conditional use permit, it must be found that the proposed use will be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area. Further, the proposed use is to not result in the destruction, loss or damage of a natural, scenic or historic feature of major importance. The installation of new poles will alter the natural setting of the area since power poles are not typical features expected to be found in a natural environs. The historical character and appeal of the downtown will be further diminished since the power poles are not proposed to be designed with features that are harmonious with the existing styles of the downtown area (as shown within the City's adopted Eagle Architecture and Site Design book), nor do they contribute to a pleasing environment for both residents and visitors alike. Moreover, the extension of existing poles will contribute to the obstruction of scenic views of both the tree canopy along the Boise River as well as the foothills north of the City, depending upon the viewing vantage

point. The Council emphasized that to vary from the community's vision of the intended character of the City, consisting of both present and future development, and to change the practices and objectives to achieve this goal, in order to accommodate the overhead power line, would be detrimental to persons, property and the general welfare of the City of Eagle.

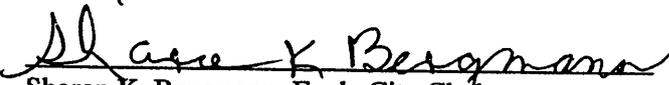
DATED this 11th day of May 2004.

CITY COUNCIL
OF THE CITY OF EAGLE
Ada County, Idaho



Nancy C. Merrill, Mayor

ATTEST:



Sharon K. Bergmann, Eagle City Clerk



Case No. IPC-E-04-04
Exhibit 120

**Development Agreement
between Albertson's and City of Eagle
August 26, 1997**

Recording Requested By and
When Recorded Return to:
Mark Butler - Planning and Zoning Administrator
CITY OF EAGLE
P.O. Box 477
Eagle, Idaho 83616

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

#1101; Eagle - Gas
(#182; Eagle, ID)
9/10/97

DEVELOPMENT AGREEMENT

This Development Agreement, made and entered into this 26 day of August, 1997, by and between the **City of Eagle**, a municipal corporation in the State of Idaho ("Eagle"), by and through its Mayor, and **Albertson's, Inc.** ("Property Owner").

WHEREAS, the Property Owner is owner of record of certain real estate located at 434 S. Eagle Road, Eagle, Idaho ("Property"), which is more particularly described on Schedule "A" attached hereto and made a part hereof by this reference, and which is the subject of an application for rezone in Eagle, identified as Rezone Application No. RZ-5-96; and

WHEREAS, the Property includes properties within an area currently zoned A (Agricultural); and

WHEREAS, the Property Owner desires to develop a parking lot and fuel island with canopy on the Property; and

WHEREAS, the Planning and Zoning Commission and the City Council of Eagle have determined that the scope of any commercial project upon the Property must be limited to prevent undue damage and to otherwise be in harmony with existing development; and

WHEREAS, the intent of this Development Agreement is to protect the rights of Property Owner's use and enjoyment of the Property for the purpose of developing a parking lot and fuel island with canopy while at the same time ensuring the Property is developed in a manner consistent with Eagle's Design Review Ordinance and Comprehensive Plan; and

WHEREAS, the Property Owner has agreed to the use restrictions and other limitations set forth herein upon the use and development of the Property and has requested a C-2 (General Business District) zoning designation for the Property; and

EXHIBIT 120
CASE NO. IPC-E-04-04

WHEREAS, the owner of the Property has previously provided Eagle with an affidavit agreeing to submit the Property to a development agreement pursuant to Eagle City Code Section 8-10-1(C)(1); and

WHEREFORE, Property Owner and the City of Eagle desire to resolve the issues and concerns that have arisen and for and in consideration of the mutual covenants contained herein, it is agreed as follows:

ARTICLE I LEGAL AUTHORITY

1.1 Eagle will adopt an ordinance amending the Eagle Zoning Ordinance to rezone the Property that is the subject of the application to the requested C-2 (General Business District) zoning designation, after recordation of, and subject to the provisions of this Development Agreement. The ordinance will become effective after its passage, approval, and publication and the execution and recordation of this Development Agreement.

ARTICLE II CONDITIONS OF DEVELOPMENT

2.1 The two existing Scots pine trees located on the Property shall not be removed and shall be protected and maintained to allow continued undisturbed growth until such time as the right-of-way for the realigned east/west roadway (Plaza Street) is dedicated to the Ada County Highway District. The realigned roadway, as approved by the City of Eagle Planning and Zoning Commission and City Council on June 30, 1997, shall be located so as to permit the preservation of the four trees north of the Albertson's supermarket site which lies immediately to the north of the Property (Two Catalpas, one Oak, and one Maple), and the real property devoted thereto shall be sufficient to accommodate any Plaza Street construction activity (or any other construction activity) so as to avoid its occurring within the drip line of any of the four trees.

2.2 The Property Owner shall agree to standard terms and conditions of annexation into the Eagle Sewer District, and any other terms or conditions of the Eagle Sewer District Board (i.e., currently only one building is permitted until the remainder of the site is annexed into the Sewer District boundaries - per Eagle Sewer District).

2.3 The Property Owner shall submit a Design Review application for the site (as required by the Eagle City Code), and shall comply with all conditions required by Eagle as a part of the Design Review prior to issuance of a certificate of occupancy.

2.4 The Property Owner understands that Eagle is in the process of revising its Comprehensive Plan and is aware that this site (and general area) is intended to be within a Central Business District shown within the new Comprehensive Plan, and agrees to permit Eagle to rezone this Property to CBD (Central Business District) along with the proposed Comprehensive plan amendments.

The Property Owner also understands that the proposed use (fuel island with canopy) is currently a permitted use in the applicable zoning district (C-2) in the CB area, but may be a prohibited use within the CBD zoning district in the future. If the use becomes prohibited, the use would be permitted to continue under the regulations within Eagle City Code governing nonconforming uses as long as a Design Review application was received by Eagle, prior to adoption of any new applicable CBD regulations.

2.5 The development shall comply with the Zoning Code, as it exists in final form at the time an application for construction and/or improvement, or change in use is made.

2.6 The Property Owner agrees to apply for Council approval of a lot split for this parcel to become a legal parcel of record prior to Eagle publishing the ordinance for the rezone.

2.7 The development on the Property is subject to the following further conditions:

(a) The kiosk building to be located on the site shall not exceed 400 square feet of floor area.

(b) The merchandizing, display, sale or storage of retail goods (other than fuels) shall not be permitted outside of the said kiosk building on the Property.

(c) Only the following categories of products may be sold from the development on the Property:

(1) Gasoline, diesel oil, automotive products (such as oil, windshield wiper fluid, air fresheners, additives);

(2) Beverages in packages not larger than six-packs or two liter containers;

(3) Immediately consumable products (such as doughnuts, muffins, apples);

(4) Candy and snacks;

(5) Tobacco products;

(6) Checkout stand items (such as newspapers, lottery tickets, aspirins);
and

(7) Charitable fundraising products.

**ARTICLE III
AFFIDAVIT OF PROPERTY OWNERS**

3.1 An affidavit of all owners of the Property agreeing to submit the Property to this Development Agreement and to the provisions set forth in Idaho Code Section 67-6511A and Eagle City Code Section 8-10-1 shall be provided and is incorporated herein by reference.

**ARTICLE IV
DEFAULT**

4.1 In the event the Property Owner fails to comply with the commitments set forth herein, within thirty (30) days of written notice of such failure from Eagle, Eagle shall have the right, without prejudice to any other rights or remedies, to cure such default or enjoin such violation and otherwise enforce the requirements contained in this Development Agreement or to terminate the Development Agreement following the process established in Eagle City Code Section 8-10-1.

4.2 If required to proceed in a court of law or equity to enforce any provision of this Development Agreement, Eagle shall be entitled to recover all direct out-of-pocket costs so incurred to cure or enjoin such default and to enforce the commitments contained in this Development Agreement, including attorneys' fees and court costs.

**ARTICLE V
UNENFORCEABLE PROVISIONS**

5.1 If any term, provision, commitment or restriction of this Development Agreement or the application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this instrument shall terminate and the zoning of the Property shall revert to A (Agricultural).

**ARTICLE VI
ASSIGNMENT AND TRANSFER**

6.1 After its execution, the Development Agreement shall be recorded in the office of the County Recorder at the expense of the Property Owner. Each commitment and restriction on the development shall be a burden on the Property, shall be appurtenant to and for the benefit of the Property, adjacent property, and other property near the Property and shall run with the land. This Development Agreement shall be binding on the Property Owner and owners, and their respective heirs, administrators, executors, agents, legal representatives, successors, and assigns; provided, however, that if all or any portion of the development is sold, the sellers shall thereupon be released and discharged from any and all obligations in connection with the Property sold arising under this Agreement. The new owner of the Property or any portion thereof (including, without limitation, any owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all commitments and other obligations arising under this Development Agreement with respect to the Property or portion thereof.

**ARTICLE VII
GENERAL MATTERS**

7.1 Amendments. Any alteration or change to this Development Agreement shall be made only after complying with the notice and hearing provisions of Idaho Code Section 67-6509, as required by Eagle City Code Section 8-10-1.

7.2 Paragraph Headings. This Development Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto. Titles and captions are for convenience only and shall not constitute a portion of this Development Agreement. As used in this Development Agreement, masculine, feminine or neutral gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.

7.3 Choice of Law. This Development Agreement shall be construed in accordance with the laws of the State of Idaho in effect at the time of the execution of this Development Agreement. Any action brought in connection with this Development Agreement shall be brought in a court of competent jurisdiction located in Ada County, Idaho.

7.4 Notices. Any notice which a party may desire to give to another party must be in writing and may be given by personal delivery, by mailing the same by registered or certified mail, return receipt requested postage prepaid, or by Federal Express or other reputable overnight delivery service, to the party to whom the notice is directed at the address of such party set forth below:

Eagle:	Mark Butler Planning and Zoning Administrator City of Eagle 310 E. State Street Eagle, ID 83616
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Property Owner:	Albertson's, Inc. 250 Parkcenter Blvd. P.O. Box 20 Boise, ID 83726 Attention: Legal Department
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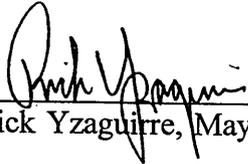
Or such other address and to such other persons as the parties may hereafter designate. Any such notice shall be deemed given upon receipt if by personal delivery, forty-eight (48) hours after deposit in the United States mail, if sent by mail pursuant to the foregoing, or twenty-four (24) hours after timely deposit with a reputable overnight delivery service.

7.5 Effective Date. This Development Agreement shall be effective after delivery to each of the parties hereto of a fully executed original of this Development Agreement.

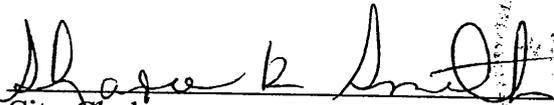
IN WITNESS WHEREOF, the parties have executed this Development Agreement.

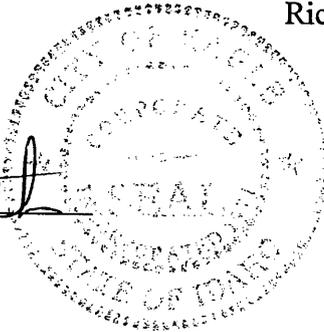
DATED this 16 day of September, 1997.

CITY OF EAGLE, a municipal corporation
organized and existing under the laws of
the State of Idaho

By: 
Rick Yzaguirre, Mayor

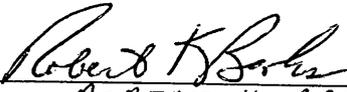
ATTEST:


City Clerk



DATED this 11 day of September, 1997.

ALBERTSON'S, INC.,
a Delaware corporation

CJM
By: 
Name: ROBERT K. BANKS
Its: GROUP V.P., REAL ESTATE

STATE OF IDAHO)
) ss.
County of Ada)

On this 16 day of September, 1997, before me, Tracy E. Osborn, a Notary Public in and for said State, personally appeared Rick Yzaguirre, known or identified to me to be the Mayor of the **City of Eagle**, the municipality that executed the within instrument or the person who executed the instrument on behalf of said municipality, and acknowledged to me that such municipality executed the same.

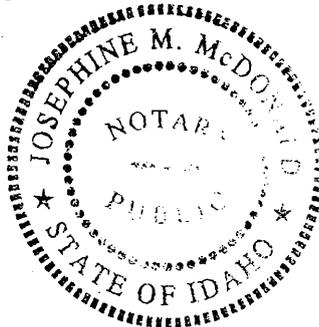
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Tracy E. Osborn
Notary Public for Idaho
Residing at Kuna, Id.
My commission expires 12/23/02

STATE OF IDAHO)
) ss.
County of Ada)

On this 11 day of September, 1997, before me, JOSEPHINE M. McDONALD, a Notary Public in and for said State, personally appeared ROBERT K. BANKS, known or identified to me to be the GROUP V.P., REAL ESTATE, of **Albertson's, Inc.**, the owner of the Property referenced herein and the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Josephine M. McDonald
Notary Public for Idaho
Residing at Nampa, Idaho
My commission expires 2-01-99

SCHEDULE "A"

LEGAL DESCRIPTION OF PROPERTY TO BE REZONED

43

September 10, 1997

A parcel of land in the Northwest Quarter of the Northwest Quarter of Section 16, Township 4 North, Range 1 East of the Boise Meridian, Ada County, Idaho; more particularly described as follows:

BEGINNING at the Northwest corner of said Section 16; thence South $89^{\circ}52'48''$ East 413.00 feet along the northerly line of said Section 16; thence South $00^{\circ}55'47''$ West 150.00 feet and parallel with the westerly line of said Section 16; North $89^{\circ}52'48''$ West 413.00 feet to a point on the westerly line of said Section 16; thence North $00^{\circ}55'47''$ East 150.00 feet along said westerly line to the POINT OF BEGINNING.

Said parcel contains 61,944 square feet more or less.

AFFIDAVIT OF LEGAL INTEREST

STATE OF IDAHO)
) ss.
County of Ada)

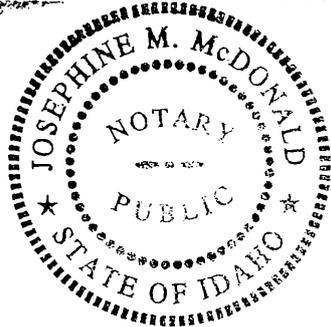
I, ROBERT K. BANKS, the GROUP V.P., REAL ESTATE, of Albertson's, Inc., 250 Parkcenter Boulevard, Boise, Idaho 83706, being first duly sworn upon oath, depose and say:

- 1. That I am the GROUP V.P., REAL ESTATE, for Albertson's, Inc., and that I make this affidavit for and on behalf of Albertson's;
2. That Albertson's, Inc. is the owner of the Property described on the attached, and Albertson's, Inc. agrees to submit the Property to this Development Agreement and to the provisions set forth in Idaho Code Section 67-6511A and Eagle City Code Section 8-10-1;
3. That Albertson's, Inc. agrees to indemnify, defend and hold the City of Eagle and its employees harmless from any claim or liability resulting from any dispute as to the statements contained herein or as to the ownership of the property which is the subject of the application.

DATED this 11 day of September, 1997.

Handwritten signature of Robert K. Banks, followed by printed name: ROBERT K. BANKS, GROUP V.P., REAL ESTATE, Albertson's, Inc.

SUBSCRIBED AND SWORN to before me the day and year first above written.



(seal)

Handwritten signature of Josephine M. McDonald, followed by printed name and address: Notary Public for State of Idaho, Residing at Nampa, Idaho, My Commission Expires: 2-01-99

THIS AFFIDAVIT OF LEGAL INTEREST shall be attached to and be an integral part of that certain Development Agreement executed by and between Albertson's, Inc. and the City of Eagle, dated _____, 1997.

Case No. IPC-E-04-04
Exhibit 121

**Development Agreement
between Eagle Gravel and City of Eagle
October 28, 1998**

Recording Requested By and
When Recorded Return to:

Mark Butler - Planning and Zoning Administrator
City of Eagle
P.O. Box 477
Eagle, Idaho 83616

RECEIVED & FILED CITY OF EAGLE NOV 19 1998 File: _____ Route to: _____
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For Recording Purposes Do
Not Write Above This Line

DEVELOPMENT AGREEMENT

This Development Agreement, made and entered into this 28th day of October, 1998, by and between the City of Eagle, a municipal corporation in the State of Idaho ("Eagle"), by and through its Mayor, and Eagle Gravel, Inc. (Property Owner).

WHEREAS, the Applicant is the owner of record of certain real estate located at the northeast corner of Eagle Road and State Highway 44, Eagle, Idaho, ("Property"), as specifically defined in the attached legal description (Exhibit A) which is the subject of an application for rezone, identified as Rezone Application No. RZ-5-98; and

WHEREAS, the proposed development includes properties within an area currently zoned A (agricultural); and

WHEREAS, the Applicant desires a CBD (Central Business District) zoning classification to develop a commercial use on the above-described property, which is herein referred to as the "Property"; and

WHEREAS, the Planning and Zoning Commission and the City Council of Eagle have determined that the scope of any commercial project upon the Property must be limited to prevent undue damage to, and to otherwise be in harmony with, the existing community; and

WHEREAS, the intent of this Development Agreement is to protect the rights of Applicant's use and enjoyment of the Property while at the same time limiting any adverse impacts of the development upon neighboring properties and the existing community and ensuring the Property is developed in a manner consistent with Eagle's Comprehensive Plan and City Code; and

WHEREAS, the Applicant has agreed to the use restrictions and other limitations set forth herein upon the use and development of the Property and has consented to a CBD (Central Business District) zoning designation for the Property with the requirements set forth in this Development Agreement; and

WHEREAS, the owner of the Property has previously provided Eagle with an affidavit agreeing to submit the Property to a development agreement pursuant to Eagle City Code Section 8-10-1(C)(1); and

WHEREFORE, Applicant and the City of Eagle desire to resolve the issues and concerns that have arisen and for and in consideration of the mutual covenants contained herein, it is agreed as follows:

ARTICLE I LEGAL AUTHORITY

- 1.1 Eagle will adopt an ordinance amending the Eagle Zoning Ordinance to rezone the property that is the subject of the application to a CBD (Central Business District) zoning designation, after recordation of, and subject to the provisions of this Development Agreement. The ordinance will become effective after its passage, approval, and publication and the execution and recordation of this Development Agreement.

ARTICLE II CONDITIONS OF DEVELOPMENT

- 2.1 The owner shall submit a Design Review application for the site (as required by the Eagle City Code), and shall comply with all conditions required by the City as a part of the Design Review prior to issuance of a certificate of occupancy.
- 2.2 The development shall comply with the Zoning Code, as it exists in final form at the time an application is made and the conditions within this agreement shall be satisfied.
- 2.3 All development within area of the Property which is within the 100 year floodplain shall have finished floor level of all buildings which are at least two (2) feet above the Federal Emergency Management Association Base Flood Elevation (BFE).
- 2.4 City approvals shall be subject to the revised study for the Boise River floodplain currently underway by FEMA. (This section applies to applications submitted after the study is complete.)
- 2.5 Provide an on-site tree lined landscaped strip to be an average of 35-feet in width along State

Highway 44 and a minimum 28,000-square foot on-site landscaped area (with trees and other improvements such as shrubs, flowers, drinking water fountain, benches etc. as may be recommended by the Design Review Board and approved by the City Council) with parking to be permitted generally as shown on the colored rendering submitted to the Commission on August 3, 1998) at the corner of State Highway 44 and Eagle Road. Buildings within the 28,000-square foot on-site landscaped area shall be prohibited. Landscaping/intersection entry enhancement plan shall be reviewed by the Design Review Board with final approval to be by the City Council.

- 2.6 Construct a 10-foot wide bicycle/pedestrian pathway (within the 35-foot wide landscape strip noted above) along State Highway 44 from Eagle Road to the east-most end of the property.
- 2.7 A public easement for the greenbelt pathway along State Highway 44 shall be provided. The specific location and design of the pathway shall be reviewed and approved by the City Council and Design Review Board.
- 2.8 Provide a license agreement, approved by ITD and/or ACHD, allowing the right-of-way between this site and the edge of pavement along State Highway 44 and Eagle Road to be landscaped and landscape said area.
- 2.9 The proposed access point at the south end of Second Street shall be designed to make it clear to motorists that they are entering a commercial development and that the road has ended. This can be accomplished with features such as entry landscaping and a landscaped center island between the inbound and outbound lanes.
- 2.10 Provide the City with a letter of approval from Albertson's Corporation regarding the second access point through the Albertson's parcel. If a letter cannot be obtained City Council may consider waiving this requirement if requested by the Applicant.

ARTICLE III AFFIDAVIT OF PROPERTY OWNERS

- 3.1 An affidavit of all owners of the Property agreeing to submit the Property to this Development Agreement and to the provisions set forth in Idaho Code Section 67-6511A and Eagle City Code Section 8-10-1 shall be provided and is incorporated herein by reference.

ARTICLE IV DEFAULT

- 4.1 In the event the Applicant fails to comply with the commitments set forth herein, within

thirty (30) days of written notice of such failure from Eagle, Eagle shall have the right, without prejudice to any other rights or remedies, to cure such default or enjoin such violation and otherwise enforce the requirements contained in this Development Agreement or to terminate the Development Agreement following the process established in Eagle City Code Section 8-10-1.

- 4.2 If required to proceed in a court of law or equity to enforce any provision of this Development Agreement, Eagle shall be entitled to recover all direct out-of-pocket costs so incurred to cure or enjoin such default and to enforce the commitments contained in this Development Agreement, including attorneys' fees and court costs.

ARTICLE V UNENFORCEABLE PROVISIONS

- 5.1 If any term, provision, commitment, or restriction of this Development Agreement or the application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this instrument shall terminate and the zoning of the property shall revert to R-4 as set forth in the above Article.

ARTICLE VI ASSIGNMENT AND TRANSFER

- 6.1 After its execution, the Development Agreement shall be recorded in the office of the County Recorder at the expense of the Applicant. Each commitment and restriction on the commercial/office development shall be a burden on the Property, shall be appurtenant to and for the benefit of the Property, adjacent property, and other residential property near the Property and shall run with the land. This Development Agreement shall be binding on the Applicant and owners, and their respective heirs, administrators, executors, agents, legal representatives, successors, and assigns; provided, however, that if all or any portion of the development is sold, the sellers shall thereupon be released and discharged from any and all obligations in connection with the property sold arising under this Agreement. The new owner of the Property or any portion thereof (including, without limitation, any owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all commitments and other obligations arising under this Agreement with respect to the Property or portion thereof.

ARTICLE VII GENERAL MATTERS

- 7.1 Amendments. Any alteration or change to this Development Agreement shall be made only after complying with the notice and hearing provisions of Idaho Code Section 67-6509, as required by Eagle City Code Section 8-10-1.
- 7.2 Paragraph Headings. This Development Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto. Titles and captions are for convenience only and shall not constitute a portion of this Development Agreement. As used in this Development Agreement, masculine, feminine or neutral gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.
- 7.3 Choice of Law. This Development Agreement shall be construed in accordance with the laws of the State of Idaho in effect at the time of the execution of this Development Agreement. Any action brought in connection with this Development Agreement shall be brought in a court of competent jurisdiction located in Ada County, Idaho.
- 7.4 Notices. Any notice which a party may desire to give to another party must be in writing and may be given by personal delivery, by mailing the same by registered or certified mail, return receipt requested postage prepaid, or by Federal Express or other reputable overnight delivery service, to the party to whom the notice is directed at the address of such party set forth below;

Eagle: Mark Butler
Planning and Zoning Administrator
City of Eagle
310 E. State St.
Eagle, Idaho 83616

Owner: Eagle Gravel, Inc.
Dan Hardee
6477 Fairview Avenue
Boise, Idaho 83704

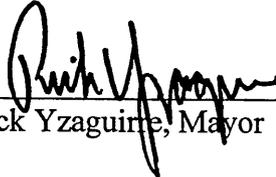
Or such other address and to such other persons as the parties may hereafter designate. Any such notice shall be deemed given upon receipt if by personal delivery, forty-eight (48) hours after deposit in the United States mail, if sent by mail pursuant to the foregoing, or twenty-four (24) hours after timely deposit with a reputable overnight delivery service.

- 7.5 Effective Date. This Development Agreement shall be effective after delivery to each of the parties hereto of a fully executed original of this Development Agreement.

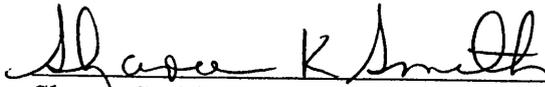
IN WITNESS WHEREOF, the parties have executed this Development Agreement.

DATED this 28th day of October, 1998.

CITY OF EAGLE, a municipal corporation
organized and existing under the laws of the State of
Idaho

By: 
Rick Yzaguirre, Mayor

ATTEST:


Sharon Smith, City Clerk

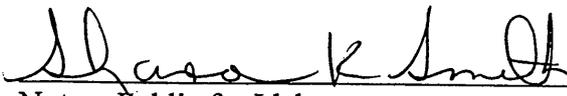
DATED this 28th day of October, 1998.

By: 
George Hobson
Eagle Gravel, Inc. (Owner's)

STATE OF IDAHO)
: ss.
County of Ada)

On this 29th day of October, 1998, before the undersigned notary public in and for the said state, personally appeared RICK YZAGUIRRE, known or identified to me to be the Mayor of the City of Eagle and the person who executed the foregoing instrument on behalf of said City and acknowledged to me that said City executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.


Notary Public for Idaho
Residing at: Boise, ID
My Commission Expires: 4-19-02

STATE OF IDAHO)

: ss.

County of Ada)

On this 28th day of October, 1997, before the undersigned notary public in and for the said state, personally appeared George Nelson known or identified to me to be the owners of the property referenced herein. and the persons who executed the foregoing instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

Deane L. Deschbacher
Notary Public for Idaho
Residing at: Bose ID
My Commission Expires: 5/7/03

Case No. IPC-E-04-04
Exhibit 122

April 11, 2000
Eagle Findings of Fact and Conclusions of Law, Case No. CU-8-99
Granting height exception for Two Rivers Tower and Chimney

ORIGINAL

BEFORE THE EAGLE CITY COUNCIL

IN THE MATTER OF AN APPLICATION FOR)
A CONDITIONAL USE PERMIT FOR A 48-FOOT)
HIGH ARCHITECTURAL TOWER FOR DENNIS)
M. BAKER & ASSOCIATES)

FINDINGS OF FACT AND CONCLUSIONS OF LAW
CASE NUMBER CU-8-99

The above-entitled conditional use application came before the Eagle City Council for their action on March 14, 2000. The Eagle City Council having heard and taken oral and written testimony, and having duly considered the matter, makes the following Findings of Fact and Conclusions of Law;

FINDINGS OF FACT:

A. PROJECT SUMMARY:

Dennis M. Baker & Associates, represented by Dan Torfin, is requesting conditional use approval for a 48-foot high tower which acts as an architectural feature for the Community Center within Two Rivers Subdivision No. 1 (formally Quarter Circle Ranch). The site is located on the west side of Eagle Road approximately 3/4-mile south of State Highway 44 at 1501 S. Eagle Road.

B. APPLICATION SUBMITTAL:

The application for this item was received by the City of Eagle on December 16, 1999.

The letter addressing skateboard areas provided by the applicant on April 6, 2000, is incorporated into these findings by reference.

C. NOTICE OF PUBLIC HEARING:

Notice of Public Hearing on the application for the Eagle Planning and Zoning Commission was published in accordance for requirements of Title 67, Chapter 65, Idaho Code and the Eagle City ordinances on January 21, 2000. Notice of this public hearing was mailed to property owners within three-hundred feet (300-feet) of the subject property in accordance with the requirements of Title 67, Chapter 65, Idaho Code and Eagle City Code on January 21, 2000. Requests for agencies' reviews were transmitted on December 17, 1999 in accordance with the requirements of the Eagle City Code.

D. HISTORY OF RELEVANT PREVIOUS ACTIONS: None

E. COMPANION APPLICATIONS: DR-50-99

F. COMPREHENSIVE PLAN LAND USE MAP AND ZONING MAP DESIGNATIONS:

	COMP PLAN DESIGNATION	ZONING DESIGNATION	LAND USE
Existing	Residential Two (2-units per acre max.)	R-2-P (Residential PUD)	Agricultural land
Proposed	No Change	No Change	Residences
North of site	Residential Two (2-units per acre max.)	A (Agricultural)	Agricultural land
South of site	Residential Two (2-units per acre max.)	A (Agricultural), R-2 (Residential), and C-2 (Commercial)	Residences, commercial business, and vacant land
East of site	Residential Two (2-units per acre max.)	R-2-P (Residential)	Residences and vacant land
West of site	Residential Two (2-units per acre max.)	A (Agricultural) and A-R (Agricultural-Residential)	Residences and Agricultural land

G. DESIGN REVIEW OVERLAY DISTRICT: Not in the DDA, TDA or CEDA.

H. EXISTING SITE CHARACTERISTICS:

There is an existing residence on the site that is proposed to be removed. Approximately 27-coniferous trees are located on the west side of the proposed parking lot. The trees are proposed to be retained.

I. **SITE DESIGN INFORMATION:**

Site Data	Proposed	Required
Total Acreage of Site	47.92-acres	N/A
Percentage of Site Devoted to Building Coverage	Less than 1%	40% (maximum)
Percentage of Site Devoted to Landscaping	40%	10% (minimum)
Number of Parking Spaces	33-parking spaces (per conditions of Design Review)	33-parking spaces
Front Setback	310-feet	30-feet (minimum)
Rear Setback	220-feet	25-feet (minimum)
Side Setback	40-feet	7.5-feet (minimum)
Side Setback	180-feet	7.5-feet (minimum)

J. **GENERAL SITE DESIGN FEATURES:**

Number and Uses of Proposed Buildings:

One community center building is proposed to be used for homeowners activities.

Height and Number of Stories of Proposed Buildings:

Community center building – 31-feet high with a 48-foot high architectural tower, single story with 2nd floor balcony on the east side of the building.

Gross Floor Area of Proposed Buildings:

Entire Community center building - 3,024-square feet.

Architectural tower portion only – approximately 150-square feet (5% of the size of the entire building).

On and Off-Site Circulation:

A 9850-square foot (approx.) paved parking lot provides parking for vehicles using this site. One 50-foot wide driveway separated by a 10-foot wide landscape island is proposed to be located on the north side of this site approximately 200-feet east of the "T" intersection providing access to West Island Woods Drive.

K. **PUBLIC SERVICES AVAILABLE:**

Preliminary approval letters were received from public service providers at the time Quarter Circle Ranch Planned Unit Development was reviewed by the City.

L. **PUBLIC USES PROPOSED:**

The clubhouse is to be used by members of the homeowners association for gatherings and meetings. The applicant is proposing a swimming pool, basketball/sports court,

tennis court and a tot lot. The proposed hours of operation are 10:00 AM to 8:00 PM.

M. PUBLIC USES SHOWN ON FUTURE ACQUISITIONS MAP: No map currently exists

N. SPECIAL ON-SITE FEATURES:

Areas of Critical Environmental Concern - none
 Evidence of Erosion - no
 Fish Habitat - no
 Floodplain - yes (500-year)
 Mature Trees - yes
 Riparian Vegetation - no
 Steep Slopes - no
 Stream/Creek: no
 Unique Animal Life - unknown
 Unique Plant Life - unknown
 Unstable Soils - unknown
 Wildlife Habitat - unknown

O. SUMMARY OF REVIEW OF ENVIRONMENTAL ASSESSMENT PLAN (IF REQUIRED):
 Not required

P. AGENCY RESPONSES:

The following agencies have responded and their correspondence is attached.
 Comments, which appear to be of special concern, are noted below:

Eagle Fire Department
 Eagle Sewer District

Q. LETTERS FROM THE PUBLIC: None received to date.

R. EAGLE CITY CODE 8-7-3-2 GENERAL STANDARDS FOR CONDITIONAL USES:

The Commission/Council shall review the particular facts and circumstances of each proposed Conditional Use in terms of the following standards and shall find adequate evidence showing that such use at the proposed location:

- A. Will, in fact, constitute a conditional use as established in Section 8-2-3 of this title (Eagle City Code Title 8) for the zoning district involved;
- B. Will be harmonious with and in accordance with the general objectives or with any specific objective of the Comprehensive Plan and/or this title (Eagle City Code Title 8);
- C. Will be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area;
- D. Will not be hazardous or disturbing to existing or future neighborhood uses;
- E. Will be served adequately by essential public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer and schools; or that the persons or agencies responsible for the establishment of the proposed use shall

be able to provide adequately any such services.

- F. Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community;
- G. Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors;
- H. Will have vehicular approaches to the property which are designed as not to create an interference with traffic on surrounding public thoroughfares; and
- I. Will not result in the destruction, loss or damage of a natural, scenic or historic feature of major importance.

STAFF ANALYSIS PROVIDED WITHIN THE STAFF REPORT:

- A. COMPREHENSIVE PLAN PROVISIONS, WHICH ARE OF SPECIAL CONCERN REGARDING THIS PROPOSAL: (None)
- B. ZONING ORDINANCE PROVISIONS, WHICH ARE OF SPECIAL CONCERN REGARDING THIS PROPOSAL:
 - Section 8-2A-6 (A)(7)(a)
Additional Height Restrictions: All spires, poles, antennas, steeples, towers, and any other such structures shall be limited to a maximum of thirty five feet (35'). Additional height may be permitted if a conditional use permit is approved by the City Council.

E. DISCUSSION:

- Per ECC, the maximum height allowed for spires, poles, antennas, steeples, towers, etc. is 35-feet unless a conditional use permit is approved by the City Council. The architectural tower proposed with the Two Rivers community center is 48-feet high (13-feet higher than the maximum allowed by code).

Staff believes that the tower provides an interesting architectural height element to the community center building without overwhelming the surrounding landscape. The "footprint" size of the community center is 3,024 square feet. The "footprint" size of the tower is approximately 150-square feet, which is only 5% of the entire size of the building. Other than containing a portion of the stairway that will provide access to the balcony on the east side of the building, the tower is not intended for occupancy.

- Staff has reviewed the particular facts and circumstances of this proposed conditional use and, in terms of Eagle City Code Section 8-7-3-2 "A thru I" (required findings for approval of a conditional use), has made the following conclusions:

The proposed conditional use:

- A. Will, in fact, constitute a conditional use as established in Section 8-2-3 of Eagle City Code Title 8 as referenced "as otherwise provided within this Code" since Eagle City Code Section 8-2A-6 (A)(7)(a) states in part that additional tower height above 35-feet may be permitted if a conditional use permit is approved by

the City Council;

- B. Will be harmonious with and in accordance with the general objectives or with any specific objective of the Comprehensive Plan and/or this title (Eagle City Code Title 8) since there are no inconsistencies with the Comprehensive Plan and since the development will be required to meet conditions of a design review application;
- C. Will be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area since the development will be required to meet the City's design review requirements;
- D. Will not be hazardous or disturbing to existing or future neighborhood uses since the area surrounding the proposed tower is heavily landscaped and since no other structures above 35-feet are proposed in this vicinity;
- E. Will be served adequately by essential public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services as noted in responses received by agencies providing the public services;
- F. Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community;
- G. Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors;
- H. Will have vehicular approaches to the property which are designed as not to create an interference with traffic on surrounding public thoroughfares as are to be approved by the highway district having jurisdiction; and
- I. Will not result in the destruction, loss or damage of a natural, scenic or historic feature of major importance since the City has already approved preliminary development plan/preliminary plat/conditional use permit applications for the site (Quarter Circle Ranch PUD) and has determined that, other than the existing trees, no natural, scenic or historic feature of major importance is existing on the site.

STAFF RECOMMENDATION PROVIDED WITHIN THE STAFF REPORT:

Based upon the information provided to staff to date, staff recommends approval with the site specific conditions of approval and the standard conditions of approval provided within the staff report.

PUBLIC HEARING OF THE COMMISSION:

- A. A public hearing on the application was held before the Planning and Zoning Commission on

February 7, 2000, at which time testimony was taken and the public hearing was closed. The Commission made their recommendation at that time.

- B. Oral testimony in opposition to this proposal was presented to the Planning and Zoning Commission by no one.
- C. Oral testimony in favor of this proposal was presented to the Planning and Zoning Commission by no one (not including the applicant). The applicant testified that the tower is for architectural purposes only, it is not the intention of the applicant to use the tower for storage space, office space, or other human habitation uses other than periodic maintenance.

COMMISSION DECISION:

The Commission voted 5 to 0 to recommend approval for the conditional use permit for a 48-foot high architectural tower for the community center at Two Rivers Subdivision No. 1 for Dennis M. Baker & Associates with the site specific and standard conditions of approval within the Commission's Findings of Fact and Conclusions of Law document dated February 28, 2000.

PUBLIC HEARING OF THE COUNCIL:

- A. A public hearing on the application was held before the Eagle City Council on March 14, 2000, at which time testimony was taken and the public hearing was closed. The Council made their decision at that time.
- B. Oral testimony in opposition to this proposal was presented to the City Council by no one.
- C. Oral testimony in favor of this proposal was presented to the City Council by no one (not including the applicant and their representative).

COUNCIL DECISION:

The Council voted 3-1 (Sedlacek absent) to approve CU-8-99 for the conditional use permit for a 48-foot high architectural tower and a 42-foot high (maximum) chimney for the community center at Two Rivers Subdivision No. 1 for Dennis M. Baker & Associates with the following conditions.

SITE SPECIFIC CONDITIONS OF APPROVAL:

- 1. Comply with the conditions of DR-50-99 and RZ-10-98/CU-9-98/PPUD-2-98/PP-8-98.

STANDARD CONDITIONS OF APPROVAL:

- 1. The applicant shall comply with all requirements of the Ada County Highway District and/or the Idaho Transportation Department, including but not limited to approval of the drainage system, curbs, gutters, streets and sidewalks. A letter of approval from the highway district having jurisdiction shall be submitted to the City prior to issuance of any building permits or Certificate of Occupancy, whichever occurs first.
- 2. Idaho Department of Health & Welfare approval of the sewer and water facilities is required prior issuance of any building permits or Certificate of Occupancy, whichever occurs first.
- 3. All permits from Central District Health, Eagle Sewer District & Eagle Fire District, shall be secured prior to issuance of building permit or Certificate of Occupancy, whichever occurs first.

4. Written approval of all well water for any shared or commercial well shall be obtained from the Idaho Department of Water Resources shall be submitted to the City prior to issuance of any building permits or Certificate of Occupancy, whichever occurs first.
5. Unless septic tanks are permitted, wet line sewers will be required and the applicant will be required to furnish the City Engineer with a letter from the sewer entity serving the property, accepting the project for service, prior to issuance of any building permits or Certificate of Occupancy, whichever occurs first.
6. The applicant shall submit a letter from the appropriate drainage entity approving the drainage system and/or accepting said drainage; or submit a letter from a registered professional engineer certifying that all drainage shall be retained on-site prior to issuance of any building permits or Certificate of Occupancy, whichever occurs first. A copy of the construction drawing(s) shall be submitted with the letter.
7. The applicant shall submit plans and calculations prepared by a registered professional engineer to handle the satisfactory disposal of all storm drainage on the applicant's site. Drainage system plans shall be submitted to the City Engineer for review and approval prior to issuance of any building permits or Certificate of Occupancy, whichever occurs first.

The plans shall show how swales, or drain piping, will be developed in the drainage easements. The approved drainage system shall be constructed, or a performance bond shall be submitted to the City Clerk, prior to issuance of any building permits or Certificate of Occupancy, whichever occurs first. The lot shall be so graded that all runoff runs either over the curb, or to the drainage easement, and no runoff shall cross any lot line onto another lot except within a drainage easement.

All design and calculations shall meet the requirements of Ada County Highway District. Construction of the storm drain disposal system shall be complete before an occupancy permit is issued.

8. No ditch, pipe or other structure or canal, for irrigation water or irrigation waste water owned by an organized irrigation district, canal company, ditch association, or other irrigation entity, shall be obstructed, routed, covered or changed in any way unless such obstruction, rerouting, covering or changing has first been approved in writing by the entity. A Registered Engineer shall certify that any ditch rerouting, piping, covering or otherwise changing the existing irrigation or waste ditch (1) has been made in such a manner that the flow of water will not be impeded or increased beyond carrying capacity of the downstream ditch; (2) will not otherwise injure any person or persons using or interested in such ditch or their property; and (3) satisfied the Idaho Standards for Public Works Construction. A copy of such written approval and certification shall be filed with the construction drawing and submitted to the City prior to issuance of any building permits or Certificate of Occupancy, whichever occurs first.
9. Street light plans shall be submitted and approved as to the location, height and wattage to the City Engineer (if applicable) prior to issuance of any building permits or Certificate of Occupancy, whichever occurs first. All construction shall comply with the City's specifications and standards.

The applicant shall provide a recorded easement, acceptable to the City Engineer, for the purpose of installing and maintaining street light fixtures, conduit and wiring lying outside any dedicated public right-of-way, prior to issuance of any building permits or Certificate of Occupancy, whichever occurs first.

- The applicant shall pay applicable street light inspection fees prior to Certificate of Occupancy.
10. Parking lot light plan shall be submitted and approved as to the location, height and wattage by the City Engineer. All construction shall comply with the City's specifications and standards.

Lighting is required in the parking area and shall be properly illuminated to avoid accidents. Any lights used to illuminate the parking lot shall be so arranged as to reflect the light away from the adjoining property.
 11. The parking area shall be paved and shall be maintained in good condition without holes and free of all dust, trash, weeds and other debris.
 12. One set of building plans, for any non single-family residential use, shall be submitted to the Eagle Fire Department for approval. An approval letter from the Eagle Fire Department shall be submitted to the City prior to issuance of any building permits or Certificate of Occupancy, whichever occurs first. The letter shall include the following comments and minimum requirements, and any other items of concern as may be determined by the Eagle Fire Department officials:
 - a. "The applicant has made arrangements to comply with all requirements of the Fire Department."
 - b. The fire hydrant locations shall be reviewed and be approved in writing by the Eagle Fire Department prior to the City Engineer signing the final plat..
 - c. Minimum flow per hydrant shall be 1,000 gallons per minute for one and two family dwellings, 1,500 gallons per minute for dwellings having a fire area in excess of 3,600 square feet, and 1,500 gallons per minute for non-residential uses (ie; Commercial, Industrial, Schools, etc.). Flow rates shall inspected in accordance with all agencies having jurisdiction, and shall be verified in writing by the Eagle Fire Department prior to issuance of any building permits or certificate of Occupancy, whichever occurs first.
 - d. The proposed fire protection system shall be reviewed and approved by the Eagle Fire Department prior to issuance of a building permit or Certificate of Occupancy, whichever occurs first.
 13. Any recreation area, greenbelt area or pathway area along the Boise River, Dry Creek or any other area designated by the City Council or Eagle City Pathway/Greenbelt Committee for a path or walkway shall be approved in writing by the Eagle City Pathway/Greenbelt Committee prior to issuance of a building permit or Certificate of Occupancy, whichever occurs first.
 14. Conservation, recreation and river access easements (if applicable) shall be approved by the Eagle City Pathway/Greenbelt Committee and shall be shown on the final plat prior to issuance of a building permit or Certificate of Occupancy, whichever occurs first.
 15. The applicant shall comply with the provisions of the Eagle City Code, pertaining to floodplain and river protection regulations (if applicable) prior to issuance of a building permit or Certificate of Occupancy, whichever occurs first.
 16. The applicant shall obtain written approval of the development relative to the effects of the Boise River Flood Plain (if applicable) from the Corps. of Engineers prior to issuance of a building permit or Certificate of Occupancy, whichever occurs first.
 17. The applicant shall obtain approval of the development relative to its effects on wetlands or other natural waterways (if applicable) from the Corps. of Engineers and the Idaho Department of

Water Resources and/or any other agency having jurisdiction prior to issuance of a building permit or Certificate of Occupancy, whichever occurs first.

18. Basements in the flood plain are prohibited.
19. The Americans with Disabilities Act, Uniform Building Code, Eagle City Code, and all applicable County, State and Federal Codes and Regulations shall be complied with. All design and construction shall be in accordance with all applicable City of Eagle Codes unless specifically approved by the Commission and/or Council.
20. New plans which incorporate any required changes shall be submitted for staff approval. Staff may elect to take those plans to the Design Review Board and/or the Planning and Zoning Commission for review and approval.
21. Any changes to the plans and specifications upon which this approval is based, other than those required by the above conditions, will require submittal of an application for modification and approval of that application prior to commencing any change.
22. Any change by the applicant in the planned use of the property which is the subject of this application, shall require the applicant to comply with all rules, regulations, ordinances, plans, or other regulatory and legal restrictions in force at the time the applicant or its successors in interest advises the City of Eagle of its intent to change the planned use of the subject property unless a waiver/variance of said requirements or other legal relief is granted pursuant to the law in effect at the time the change in use is sought.
23. No change in the terms and conditions of this approval shall be valid unless they are in writing and signed by the applicant or the applicant's authorized representative and an authorized representative of the City of Eagle. The burden shall be upon the applicant to obtain written confirmation of any change from the City of Eagle.
24. Approval of any Design Review shall expire without notice to the applicant on the date of expiration of the Design Review, as stipulated in Eagle City Code (one year from the Planning and Zoning Commission approval date).

CONCLUSIONS OF LAW:

1. The application for this item was received by the City of Eagle on December 16, 1999.
The letter addressing skateboard areas provided by the applicant on April 6, 2000, is incorporated into these findings by reference.
2. Notice of Public Hearing on the application for the Eagle Planning and Zoning Commission was published in accordance for requirements of Title 67, Chapter 65, Idaho Code and the Eagle City ordinances on January 21, 2000. Notice of this public hearing was mailed to property owners within three-hundred feet (300-feet) of the subject property in accordance with the requirements of Title 67, Chapter 65, Idaho Code and Eagle City Code on January 21, 2000. Requests for agencies' reviews were transmitted on December 17, 1999 in accordance with the requirements of the Eagle City Code.

Notice of Public Hearing on the application for the Eagle City Council was published in accordance for requirements of Title 67, Chapter 65, Idaho Code and the Eagle City ordinances on February 28, 2000. Notice of this public hearing was mailed to property owners within three-hundred feet (300-feet) of the subject property in accordance with the requirements of Title 67, Chapter 65, Idaho Code

and Eagle City Code on February 28, 2000.

3. The Council has reviewed the particular facts and circumstances of this proposed conditional use and, in terms of Eagle City Code Section 8-7-3-2 "A thru I" (required findings for approval of a conditional use), has made the following conclusions:

The proposed conditional use;

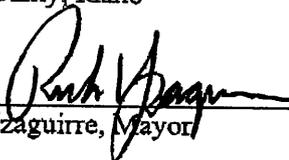
- A. Will, in fact, constitute a conditional use as established in Section 8-2-3 of Eagle City Code Title 8 as referenced "as otherwise provided within this Code" since Eagle City Code Section 8-2A-6 (A)(7)(a) states in part that additional tower height above 35-feet may be permitted if a conditional use permit is approved by the City Council;
- B. Will be harmonious with and in accordance with the general objectives or with any specific objective of the Comprehensive Plan and/or this title (Eagle City Code Title 8) since there are no inconsistencies with the Comprehensive Plan and since the development will be required to meet conditions of a design review application;
- C. Will be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area since the tower is proposed to be setback from Eagle Road approximately 835-feet, since the tower is proposed to be constructed out of materials that are compatible with the building materials proposed for the Two Rivers Subdivision Community Center which are consistent with residential building materials used in the general area, and since the development will be required to meet the City's design review requirements;
- D. Will not be hazardous or disturbing to existing or future neighborhood uses since the tower is not intended for human occupancy, since the area surrounding the proposed tower is heavily landscaped, since the building materials proposed for the tower are compatible with surrounding residences, and since no other stand-alone structures above 35-feet are proposed in this vicinity;
- E. Will be served adequately by essential public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services as noted in responses received by agencies providing the public services;
- F. Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community;
- G. Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors;
- H. Will have vehicular approaches to the property which are designed as not to

create an interference with traffic on surrounding public thoroughfares as are to be approved by the highway district having jurisdiction; and

- I. Will not result in the destruction, loss or damage of a natural, scenic or historic feature of major importance since the City has already approved preliminary development plan/preliminary plat/conditional use permit applications for the site (Quarter Circle Ranch PUD) and has determined that, other than the existing trees, no natural, scenic or historic feature of major importance is existing on the site.

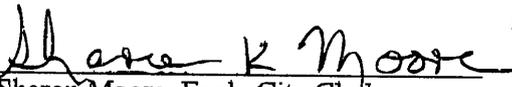
DATED this 11th day of April, 2000.

CITY COUNCIL
OF THE CITY OF EAGLE
Ada County, Idaho

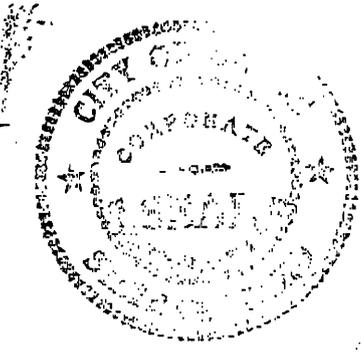


 Rick Yzaguirre, Mayor

ATTEST:



 Sharon Moore, Eagle City Clerk



Case No. IPC-E-04-04
Exhibit 123

March 12, 2002
Eagle Findings of Fact and Conclusions of Law, Case No. CU-11-01
Approving height exception for Hilton Hotel

BEFORE THE EAGLE CITY COUNCIL

**IN THE MATTER OF AN APPLICATION FOR)
 A CONDITIONAL USE PERMIT FOR)
 A 45-FOOT HIGH HOTEL BUILDING)
 WITH A 48-FOOT HIGH CHIMNEY)
 FOR EAGLE RIVER HOSPITALITY LLC)**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
 CASE NUMBER CU-11-01**

The above-entitled conditional use application came before the Eagle City Council for their action on February 26, 2002. The Eagle City Council having heard and taken oral and written testimony, and having duly considered the matter, makes the following Findings of Fact and Conclusions of Law;

FINDINGS OF FACT:

A. PROJECT SUMMARY:

Eagle River Hospitality LLC, represented by Bill Clark with Clark Development, is requesting conditional use approval for a 45-foot high hotel building. The height exception (the portion of the building above 35-feet) is for the purpose of screening mechanical units and includes the installation of a 48-foot high chimney. The site is generally located on the southeast corner of Eagle Road and State Highway 44. (Lot 6, Block 4 of Mixed Use Subdivision #2).

B. APPLICATION SUBMITTAL:

The application for this item was received by the City of Eagle on December 4, 2001.

C. NOTICE OF PUBLIC HEARING:

Notice of Public Hearing on the application for the Eagle Planning and Zoning Commission was published in accordance for requirements of Title 67, Chapter 65, Idaho Code and the Eagle City ordinances on January 12, 2002. Notice of this public hearing was mailed to property owners within three-hundred feet (300-feet) of the subject property in accordance with the requirements of Title 67, Chapter 65, Idaho Code and Eagle City Code on January 9, 2002. Requests for agencies' reviews were transmitted on November 4, 2001, in accordance with the requirements of the Eagle City Code.

Notice of Public Hearing on the application for the Eagle City Council was published in accordance for requirements of Title 67, Chapter 65, Idaho Code and the Eagle City ordinances on February 9, 2002. Notice of this public hearing was mailed to property owners within three-hundred feet (300-feet) of the subject property in accordance with the requirements of Title 67, Chapter 65, Idaho Code and Eagle City Code on February 6, 2002.

D. HISTORY OF RELEVANT PREVIOUS ACTIONS:

On January 25, 2000, the Eagle City Council approved a rezone (RZ-2-98) with a development agreement (including a concept plan) for this site.

On April 24, 2001, the Eagle City Council approved a preliminary plat (PP-14-00) for this

EXHIBIT 123

CASE NO. IPC-E-04-04

site.

On May 8, 2001, the Eagle City Council approved a final plat (FP-13-01) for this site.

On November 7, 2001, the Eagle City Council approved a combined preliminary plat and final plat (PP/FP-01-01) for this site.

E. COMPANION APPLICATIONS: Hilton Hotel Design Review Application (DR-82-01)

F. COMPREHENSIVE PLAN LAND USE MAP AND ZONING MAP DESIGNATIONS:

	COMP PLAN DESIGNATION	ZONING DESIGNATION	LAND USE
Existing	Commercial	C-3-DA (Highway Business District with Development Agreement)	Vacant
Proposed	No Change	No Change	Hilton Garden Inn Hotel
North of site	Commercial	C-3-DA (Highway Business District with Development Agreement)	Riverside Drive/Vacant
South of site	North Channel of the Boise River/Residential Two	R-2-P (Residential)	North Channel of the Boise River/Island Woods Subdivision
East of site	Mixed Use	MU-DA (Mixed Use with Development Agreement)	Vacant
West of site	Commercial	A (Agricultural) & C-1 (Neighborhood Business District)	Eagle Road/Channel Center Commercial Subdivision

G. DESIGN REVIEW OVERLAY DISTRICT: Not in the DDA, TDA or CEDA.

H. EXISTING SITE CHARACTERISTICS:

This site is located within the Eagle River commercial development (Mixed Use Subdivision No. 2). Construction of streets, sidewalks and landscaping for the entire commercial subdivision are nearly complete.

I. SITE DESIGN INFORMATION:

Site Data	Proposed	Required
Total Acreage of Site	2.96-acres (128,938-square feet)	0.02-acres (1,300-square feet) (minimum)
Percentage of Site Devoted to Building Coverage	21%	92% (maximum)
Percentage of Site Devoted to Landscaping	48% (approximately)	10% (minimum)
Number of Parking Spaces	121-parking spaces (Hotel site, Lot 6, Block 4) 117-parking spaces (2 Pad sites, Lots 5 & 7, Block 4 minus the 12 non-exclusive sportsman access parking spaces) 238-Total Parking Spaces (Lots 5, 6, & 7, Block 4 minus the 12 non-exclusive sportsman access parking spaces)	118-parking spaces (minimum)
Front Setback	127-feet (north)	0-feet
Rear Setback	50-feet (south)	0-feet
Side Setback	14-feet (west)	0-feet
Side Setback	11-feet (east)	0-feet

J. GENERAL SITE DESIGN FEATURES:

Number and Uses of Proposed Buildings:

There is to be one building to include a hotel, restaurant, and conference rooms.

Height and Number of Stories of Proposed Buildings:

The building is to be three stories with a height of 45-feet, 2-inches to the peak of the roof covering the mechanical units. A chimney will extend to 48-feet.

Gross Floor Area of Proposed Buildings: 69,900-square feet

On and Off-Site Circulation:

A 40,328-square foot (approximately) paved parking lot provides parking for vehicles using this site. One 35-foot wide driveway is proposed to be located on the north side of this site approximately 335-feet east of Eagle Road providing access to Riverside Drive.

K. PUBLIC SERVICES AVAILABLE:

Preliminary approval letters from Central District Health Department, Eagle Fire Department, and Eagle Sewer District have been received by the City. A water service approval has not been received to date. Approval of the water company having jurisdiction will be required prior to issuance of a building permit.

L. PUBLIC USES PROPOSED: None

M. PUBLIC USES SHOWN ON FUTURE ACQUISITIONS MAP: No map currently exists

N. SPECIAL ON-SITE FEATURES:

Areas of Critical Environmental Concern - Yes - Boise River Floodplain

Evidence of Erosion - no

Fish Habitat - no

Floodplain - Yes - Entire site is located within the 100-year floodplain

Mature Trees - no

Riparian Vegetation - Yes

Steep Slopes - no

Stream/Creek - Yes - North Channel of the Boise River

Unique Animal Life - unknown

Unique Plant Life - unknown

Unstable Soils - unknown

Wildlife Habitat - unknown

O. SUMMARY OF REVIEW OF ENVIRONMENTAL ASSESSMENT PLAN (IF REQUIRED):

An environmental assessment plan was provided to and reviewed by the City Engineer with the preliminary plat of Eagle River Development (PP-14-00). A copy of the environmental assessment plan is on file with the City Engineer.

P. AGENCY RESPONSES:

The following agencies have responded and their correspondence is attached.

Ada County Highway District
 Central District Health Department
 Department of Environmental Quality
 Eagle Fire Department
 Eagle Sewer District
 United Water

Q. LETTERS FROM THE PUBLIC: None received to date.

R. EAGLE CITY CODE 8-7-3-2 GENERAL STANDARDS FOR CONDITIONAL USES:

The Commission/Council shall review the particular facts and circumstances of each proposed Conditional Use in terms of the following standards and shall find adequate evidence showing that such use at the proposed location:

A. Will, in fact, constitute a conditional use as established in Section 8-2-3 of this title (Eagle

- City Code Title 8) for the zoning district involved;
- B. Will be harmonious with and in accordance with the general objectives or with any specific objective of the Comprehensive Plan and/or this title (Eagle City Code Title 8);
 - C. Will be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area;
 - D. Will not be hazardous or disturbing to existing or future neighborhood uses;
 - E. Will be served adequately by essential public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.
 - F. Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community;
 - G. Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors;
 - H. Will have vehicular approaches to the property which are designed as not to create an interference with traffic on surrounding public thoroughfares; and
 - I. Will not result in the destruction, loss or damage of a natural, scenic or historic feature of major importance.

STAFF ANALYSIS PROVIDED WITHIN THE STAFF REPORT:

- A. **COMPREHENSIVE PLAN PROVISIONS, WHICH ARE OF SPECIAL CONCERN REGARDING THIS PROPOSAL:**

Chapter 11 – Special Areas and Sites

11.2 Recognized Special areas and Sites

Boise River Floodplain

The Boise River Floodplain is designated as a special area due to its ecological and scenic significance. The area comprises the two channels of the Boise River and intervening and immediately adjacent areas as generally depicted on the Comprehensive Plan Land Use Map.

- B. **ZONING ORDINANCE PROVISIONS, WHICH ARE OF SPECIAL CONCERN REGARDING THIS PROPOSAL:**

- Section 8-2A-6 (A)(7)(a)
Additional Height Restrictions: All spires, poles, antennas, steeples, towers, and any other

such structures shall be limited to a maximum of thirty-five feet (35'). Additional height may be permitted if a conditional use permit is approved by the City Council.

C. **DEVELOPMENT AGREEMENT PROVISIONS WHICH ARE OF SPECIAL CONCERN REGARDING THIS PROPOSAL:**

• **ARTICLE III - CONDITIONS ON DEVELOPMENT**

Section 3.2.2 (STATES IN PART):

A portion of the C3 Zone land, as shown on Exhibit A (hereinafter referred to as "Hotel Site"), is currently intended to be used for hotel (as defined by the Eagle Zoning Code) including restaurant(s), meeting and/or convention rooms, and similar full service hotel uses, and for two (2) free standing, restaurant uses. ...The hotel approved for the Hotel Site is approved for up to 200 rooms in size and 35-feet in height unless a variance is approved by Eagle or unless Eagle City Code is amended to allow additional height.

D. **DISCUSSION:**

- The development agreement for Eagle River Development allows for the hotel to be constructed as a permitted use within the development and therefore would require only a design review application. Because the applicant has proposed for the hotel roof enclosing the mechanical units and a chimney to be in excess of that which is allowed by Eagle City Code (peak of roof is to be 45-feet, 2-inches high; chimney is to be 48-feet high, 13-feet higher than the 35-foot maximum), a conditional use application is required to request the exception to the height restriction.

STAFF RECOMMENDATION PROVIDED WITHIN THE STAFF REPORT:

If the City approves the requested height exception then staff recommends the site specific conditions of approval and the standard conditions of approval provided within the staff report.

PUBLIC HEARING OF THE COMMISSION:

- A. A public hearing on the application was held before the Planning and Zoning Commission on January 28, 2002, at which time testimony was taken and the public hearing was closed. The Commission made their recommendation at that time.
- B. Oral testimony in opposition to this proposal was presented to the Planning and Zoning Commission by no one.
- C. Oral testimony in favor of this proposal was presented to the Planning and Zoning Commission by one (1) individual who felt that the hotel was designed well and the reason for the 35-foot height restriction as shown in Eagle City Code was to accommodate the fire department's equipment.

COMMISSION DECISION:

The Commission voted 5 to 0 to recommend approval for the conditional use permit for a 45-foot high building and 48-foot high chimney for Eagle River Hospitality LLC with the site specific conditions of approval and standard conditions of approval shown within their Findings of Fact and Conclusions of Law document, dated February 4, 2002.

PUBLIC HEARING OF THE COUNCIL:

- A. A public hearing on the application was held before the City Council on February 26, 2002, at which time testimony was taken and the public hearing was closed. The Council made their decision at that time.
- B. Oral testimony in opposition to this proposal was presented to the City Council by no one.
- C. Oral testimony in favor of this proposal was presented to the City Council by no one (not including the applicant/representative).

COUNCIL DECISION:

The Council voted 4 to 0 to approve CU-11-01 for the conditional use permit for a 45-foot high building and 48-foot high chimney for Eagle River Hospitality LLC, with the following Planning and Zoning Commission recommended site specific conditions of approval and standard conditions of approval.

SITE SPECIFIC CONDITIONS OF APPROVAL:

- 1. Comply with the conditions of DR-82-01, PP-14-00, FP-13-01, PP/FP-1-01
- 2. Comply with any applicable conditions of RZ-2-98 and the development agreement for Eagle River Development.
- 3. A building permit for this proposal shall be obtained within one year, otherwise the conditional use approval for a height exception shall be considered null and void.

STANDARD CONDITIONS OF APPROVAL:

- 1. The applicant shall comply with all requirements of the Ada County Highway District and/or the Idaho Transportation Department, including but not limited to approval of the drainage system, curbs, gutters, streets and sidewalks. A letter of approval from the highway district having jurisdiction shall be submitted to the City prior to issuance of any building permits.
- 2. Idaho Department of Health & Welfare approval of the sewer and water facilities is required prior issuance of any building permits.
- 3. All permits from Central District Health, Eagle Sewer District & Eagle Fire District shall be secured prior to issuance of building permit.
- 4. Written approval of all well water for any shared or commercial well shall be obtained from the Idaho Department of Water Resources shall be submitted to the City prior to issuance of any building permits.
- 5. Unless septic tanks are permitted, wet line sewers will be required and the applicant will be required to furnish the City Engineer with a letter from the sewer entity serving the property, accepting the project for service, prior to issuance of any building permits.
- 6. The applicant shall submit a letter from the appropriate drainage entity approving the drainage system and/or accepting said drainage; or submit a letter from a registered professional engineer

certifying that all drainage shall be retained on-site prior to issuance of any building permits or Certificate of Occupancy, whichever occurs first. A copy of the construction drawing(s) shall be submitted with the letter.

7. The applicant shall submit plans and calculations prepared by a registered professional engineer to handle the satisfactory disposal of all storm drainage on the applicant's site. Drainage system plans shall be submitted to the City Engineer for review and approval prior to issuance of any building permits.

The plans shall show how swales, or drain piping, will be developed in the drainage easements. The approved drainage system shall be constructed, or a performance bond shall be submitted to the City Clerk, prior to issuance of any building permits. The lot shall be so graded that all runoff runs either over the curb, or to the drainage easement, and no runoff shall cross any lot line onto another lot except within a drainage easement.

All design and calculations shall meet the requirements of Ada County Highway District. Construction of the storm drain disposal system shall be complete before an occupancy permit is issued.

8. No ditch, pipe or other structure or canal, for irrigation water or irrigation waste water owned by an organized irrigation district, canal company, ditch association, or other irrigation entity, shall be obstructed, routed, covered or changed in any way unless such obstruction, rerouting, covering or changing has first been approved in writing by the entity. A Registered Engineer shall certify that any ditch rerouting, piping, covering or otherwise changing the existing irrigation or waste ditch (1) has been made in such a manner that the flow of water will not be impeded or increased beyond carrying capacity of the downstream ditch; (2) will not otherwise injure any person or persons using or interested in such ditch or their property; and (3) satisfied the Idaho Standards for Public Works Construction. A copy of such written approval and certification shall be filed with the construction drawing and submitted to the City prior to issuance of any building permits.

9. Street light plans shall be submitted and approved as to the location, height and wattage to the City Engineer (if applicable) prior to issuance of any building permits or Certificate of Occupancy, whichever occurs first. All construction shall comply with the City's specifications and standards.

The applicant shall provide a recorded easement, acceptable to the City Engineer, for the purpose of installing and maintaining street light fixtures, conduit and wiring lying outside any dedicated public right-of-way, prior to issuance of any building permits.

The applicant shall pay applicable street light inspection fees prior to Certificate of Occupancy.

10. Parking lot light plan shall be submitted and approved as to the location, height and wattage by the City Engineer. All construction shall comply with the City's specifications and standards.

Lighting is required in the parking area and shall be properly illuminated to avoid accidents. Any lights used to illuminate the parking lot shall be so arranged as to reflect the light away from the adjoining property.

11. The parking area shall be paved and shall be maintained in good condition without holes and free of all dust, trash, weeds and other debris.

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12. One set of building plans, for any non single-family residential use, shall be submitted to the Eagle Fire Department for approval. An approval letter from the Eagle Fire Department shall be submitted to the City prior to issuance of any building permits or Certificate of Occupancy, whichever occurs first. The letter shall include the following comments and minimum requirements, and any other items of concern as may be determined by the Eagle Fire Department officials:
 - a. "The applicant has made arrangements to comply with all requirements of the Fire Department."
 - b. The fire hydrant locations shall be reviewed and be approved in writing by the Eagle Fire Department prior to the City Engineer signing the final plat.
 - c. Minimum flow per hydrant shall be 1,000 gallons per minute for one and two family dwellings, 1,500 gallons per minute for dwellings having a fire area in excess of 3,600 square feet, and 1,500 gallons per minute for non-residential uses (i.e.; Commercial, Industrial, Schools, etc.). Flow rates shall inspected in accordance with all agencies having jurisdiction, and shall be verified in writing by the Eagle Fire Department prior to issuance of any building permits or certificate of Occupancy, whichever occurs first.
 - d. The proposed fire protection system shall be reviewed and approved by the Eagle Fire Department prior to issuance of a building permit.
 13. Any recreation area, greenbelt area or pathway area along the Boise River, Dry Creek or any other area designated by the City Council or Eagle City Pathway/Greenbelt Committee for a path or walkway shall be approved in writing by the Eagle City Pathway/Greenbelt Committee prior to issuance of a building permit.
 14. Conservation, recreation and river access easements (if applicable) shall be approved by the Eagle City Pathway/Greenbelt Committee and shall be shown on the final plat prior to issuance of a building permit.
 15. The applicant shall comply with the provisions of the Eagle City Code, pertaining to floodplain and river protection regulations (if applicable) prior to issuance of a building permit.
 16. The applicant shall obtain written approval of the development relative to the effects of the Boise River Flood Plain (if applicable) from the Corps of Engineers prior to issuance of a building permit.
 17. The applicant shall obtain approval of the development relative to its effects on wetlands or other natural waterways (if applicable) from the Corps of Engineers and the Idaho Department of Water Resources and/or any other agency having jurisdiction prior to issuance of a building permit.
 18. Basements in the flood plain are prohibited.
 19. The Americans with Disabilities Act, Uniform Building Code, Eagle City Code, and all applicable County, State and Federal Codes and Regulations shall be complied with. All design and construction shall be in accordance with all applicable City of Eagle Codes unless specifically approved by the Commission and/or Council.
 20. New plans, which incorporate any required changes, shall be submitted for staff approval. Staff may elect to take those plans to the Design Review Board and/or the Planning and Zoning Commission for review and approval.

21. Any changes to the plans and specifications upon which this approval is based, other than those required by the above conditions, will require submittal of an application for modification and approval of that application prior to commencing any change. Any change by the applicant in the planned use of the property which is the subject of this application, shall require the applicant to comply with all rules, regulations, ordinances, plans, or other regulatory and legal restrictions in force at the time the applicant or its successors in interest submits application to the City of Eagle for a change to the planned use of the subject property.
22. Approval of any Design Review shall expire without notice to the applicant on the date of expiration of the Design Review, as stipulated in Eagle City Code (one year from the City Council approval date).
23. The City's actions on the application does not grant the applicant any appropriation of water or interference with existing water rights. The applicant indemnifies and holds the City harmless for any and all water rights, claims in any way associated with this application.

CONCLUSIONS OF LAW:

1. The application for this item was received by the City of Eagle on December 4, 2001.
2. Notice of Public Hearing on the application for the Eagle Planning and Zoning Commission was published in accordance for requirements of Title 67, Chapter 65, Idaho Code and the Eagle City ordinances on January 12, 2002. Notice of this public hearing was mailed to property owners within three-hundred feet (300-feet) of the subject property in accordance with the requirements of Title 67, Chapter 65, Idaho Code and Eagle City Code on January 9, 2002. Requests for agencies' reviews were transmitted on November 4, 2001, in accordance with the requirements of the Eagle City Code.

Notice of Public Hearing on the application for the Eagle City Council was published in accordance for requirements of Title 67, Chapter 65, Idaho Code and the Eagle City ordinances on February 9, 2002. Notice of this public hearing was mailed to property owners within three-hundred feet (300-feet) of the subject property in accordance with the requirements of Title 67, Chapter 65, Idaho Code and Eagle City Code on February 6, 2002.

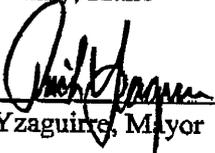
3. The Council reviewed the particular facts and circumstances of this proposed conditional use permit application (CU-11-01) with regard to Eagle City Code Section 8-7-5 "Action by the Commission and Council", and based upon the information provided concludes that the proposed conditional use permit is in accordance with the Eagle City Code because:
 - a. Will, in fact, constitute a conditional use as established in Section 8-2-3 of Eagle City Code Title 8 as referenced "as otherwise provided within this Code" since Eagle City Code Section 8-2A-6 (A)(7)(a) states in part that additional building height above 45-feet may be permitted if a conditional use permit is approved by the City Council;
 - b. Will be harmonious with and in accordance with the general objectives or with any specific objective of the Comprehensive Plan and/or this title (Eagle City Code Title 8) since there are no inconsistencies with the Comprehensive Plan and since the development will be required to meet conditions of a design review application;
 - c. Will be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such

use will not change the essential character of the same area since the hotel building will be required to comply with the conditions of the final plat for Mixed Use Subdivision No. 2, with conditions of design review, and the design guidelines as stated within the development agreement previously approved for the Eagle River Development;

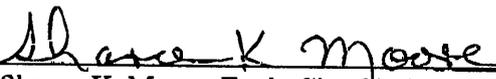
- d. Will not be hazardous or disturbing to existing or future neighborhood uses since the majority of the area surrounding the proposed hotel is planned for commercial uses and will be required to install buffers between this site and any residential uses in the vicinity;
- e. Will be served adequately by essential public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services as noted in responses received by agencies providing the public services;
- f. Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community;
- g. Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors;
- h. Will have vehicular approaches to the property which are designed so as not to create an interference with traffic on surrounding public thoroughfares as the major roadways into the site have been approved by ACHD and ITD and have been constructed to design standards; and
- i. Will not result in the destruction, loss or damage of a natural, scenic or historic feature of major importance since none are apparent on the site.

DATED this 12th day of March 2002.

CITY COUNCIL
OF THE CITY OF EAGLE
Ada County, Idaho


Rick Yzaguirre, Mayor

ATTEST:


Sharon K. Moore, Eagle City Clerk



Case No. IPC-E-04-04
Exhibit 124

September 12, 2000
Eagle Findings of Fact and Conclusions of Law, Case No. CU-3-00
Approval of height exception to screen mechanicals on ConAgra building

BEFORE THE EAGLE CITY COUNCIL

**IN THE MATTER OF AN APPLICATION FOR)
 A CONDITIONAL USE PERMIT FOR TWO 41.5-)
 FOOT HIGH ARCHITECTURAL BUILDING)
 ENTRY FEATURES FOR DENNIS M. BAKER &)
 ASSOCIATES)**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
 CASE NUMBER CU-3-00**

The above-entitled conditional use application came before the Eagle City Council on July 11, 2000. The Eagle City Council having heard and taken oral and written testimony, and having duly considered the matter, makes the following Findings of Fact and Conclusions of Law;

FINDINGS OF FACT:

A. PROJECT SUMMARY:

Dennis M. Baker & Associates, represented by Dan Torfin, is requesting conditional use approval for two 41.5-foot high building entry features which are proposed for the screening of the roof-top mechanical units. The site is located on the west side of South Rivershore Lane within Channel Center Subdivision at 599 South Rivershore Lane.

B. APPLICATION SUBMITTAL:

The application for this item was received by the City of Eagle on April 13, 2000.

C. NOTICE OF PUBLIC HEARING:

Notice of Public Hearing on the application for the Eagle Planning and Zoning Commission was published in accordance for requirements of Title 67, Chapter 65, Idaho Code and the Eagle City ordinances on April 27, 2000. Notice of this public hearing was mailed to property owners within three-hundred feet (300-feet) of the subject property in accordance with the requirements of Title 67, Chapter 65, Idaho Code and Eagle City Code on April 28, 2000. Requests for agencies' reviews were transmitted on April 14, 2000, in accordance with the requirements of the Eagle City Code.

Notice of Public Hearing on the application for the Eagle City Council was published in accordance for requirements of Title 67, Chapter 65, Idaho Code and the Eagle City ordinances on June 24, 2000. Notice of this public hearing was mailed to property owners within three-hundred feet (300-feet) of the subject property in accordance with the requirements of Title 67, Chapter 65, Idaho Code and Eagle City Code on June 23, 2000.

D. HISTORY OF RELEVANT PREVIOUS ACTIONS:

On June 5, 2000, the Eagle Planning and Zoning Commission approved this application with site specific and standard conditions of approval.

E. COMPANION APPLICATIONS: DR-20-00

F. COMPREHENSIVE PLAN LAND USE MAP AND ZONING MAP DESIGNATIONS:

	COMP PLAN DESIGNATION	ZONING DESIGNATION	LAND USE
Existing	Commercial	C-1 (Neighborhood Business District)	Vacant
Proposed	No Change	No Change	Two Office Buildings
North of site	Commercial	C-1 (Neighborhood Business District)	Montessori School
South of site	Commercial	C-1 (Neighborhood Business District)	Vacant
East of site	Commercial	C-1 (Neighborhood Business District)	Two Retail Buildings
West of site	Boise River/ Residential Two	A (Agricultural)	Boise River/ Agricultural

G. DESIGN REVIEW OVERLAY DISTRICT: Not in the DDA, TDA or CEDA.

H. EXISTING SITE CHARACTERISTICS:

This site is within Channel Center Commercial Subdivision. There are several existing trees located on the site. All of the trees are proposed to be retained, however, four of the existing trees are proposed to be relocated within the site.

I. SITE DESIGN INFORMATION:

Site Data	Proposed	Required
Total Acreage of Site	5.07-acres (220,911-square feet)	2,000-square feet (minimum)
Percentage of Site Devoted to Building Coverage	13% (approx.)	50% (maximum)
Percentage of Site Devoted to Landscaping	31% (approx.)	10% (minimum)
Number of Parking Spaces	206-parking spaces	184-parking spaces
Front Setback	170-feet (approx.) Bldg. 1 60-feet (approx.) Bldg. 2	15-feet (minimum) (Per Plat Condition)
Rear Setback	51-feet (approx.) both Bldg.'s	50-feet (minimum) (Per Plat Condition – setback from ordinary high waterline)
Side Setback	340-feet (approx.) Bldg. 1 (measured to the north)	0-feet (minimum)
Side Setback	120-feet (approx.) Bldg. 2 (measured to the south)	0-feet (minimum)

J. GENERAL SITE DESIGN FEATURES:

Number and Uses of Proposed Buildings: Two buildings, Office.

Height and Number of Stories of Proposed Buildings: Parapet height: 32-feet, Accent Element Peak: 41-feet, 6-inches; two stories.

Gross Floor Area of Proposed Buildings: 29,800-square feet

On and Off-Site Circulation:

A 38,700-square foot (approx.) paved parking lot provides parking for vehicles using this site. Access to the site is provided by three driveways located on the north side of South Rivershore Lane.

K. PUBLIC SERVICES AVAILABLE: None

L. PUBLIC USES PROPOSED:

A 10-foot wide pedestrian easement and pathway provides pedestrian access to the Boise River through this site.

M. PUBLIC USES SHOWN ON FUTURE ACQUISITIONS MAP: No map currently exists

N. SPECIAL ON-SITE FEATURES:

Areas of Critical Environmental Concern – An environmental assessment plan was previously completed for the entire subdivision site.

Evidence of Erosion - no

Fish Habitat - no

Floodplain - no

Mature Trees - yes

Riparian Vegetation - unknown

Steep Slopes - no

Stream/Creek – yes – Boise River

Unique Animal Life - no

Unique Plant Life - no

Unstable Soils - unknown

Wildlife Habitat - no

O. SUMMARY OF REVIEW OF ENVIRONMENTAL ASSESSMENT PLAN (IF REQUIRED):
Not required. This plan was provided as a part of the Channel Center Subdivision application.

P. AGENCY RESPONSES:

The following agencies have responded and their correspondence is attached. Comments, which appear to be of special concern, are noted below:

Central District Health Department

Eagle Fire Department

Eagle Sewer District

Q. LETTERS FROM THE PUBLIC: None received to date.

R. EAGLE CITY CODE 8-7-3-2 GENERAL STANDARDS FOR CONDITIONAL USES:

The Commission/Council shall review the particular facts and circumstances of each proposed Conditional Use in terms of the following standards and shall find adequate evidence showing that such use at the proposed location:

- A. Will, in fact, constitute a conditional use as established in Section 8-2-3 of this title (Eagle City Code Title 8) for the zoning district involved;
- B. Will be harmonious with and in accordance with the general objectives or with any specific objective of the Comprehensive Plan and/or this title (Eagle City Code Title 8);
- C. Will be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area;
- D. Will not be hazardous or disturbing to existing or future neighborhood uses;

- E. Will be served adequately by essential public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.
- F. Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community;
- G. Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors;
- H. Will have vehicular approaches to the property which are designed as not to create an interference with traffic on surrounding public thoroughfares; and
- I. Will not result in the destruction, loss or damage of a natural, scenic or historic feature of major importance.

STAFF ANALYSIS PROVIDED WITHIN THE STAFF REPORT:

- A. COMPREHENSIVE PLAN PROVISIONS, WHICH ARE OF SPECIAL CONCERN REGARDING THIS PROPOSAL: (None)
- B. ZONING ORDINANCE PROVISIONS, WHICH ARE OF SPECIAL CONCERN REGARDING THIS PROPOSAL:
 - Section 8-2A-6 (A)(7)(a)
Additional Height Restrictions: All spires, poles, antennas, steeples, towers, and any other such structures shall be limited to a maximum of thirty five feet (35'). Additional height may be permitted if a conditional use permit is approved by the City Council.
- E. DISCUSSION:
 - Per ECC, the maximum height allowed for spires, poles, antennas, steeples, towers, etc. is 35-foot unless a conditional use permit is approved by the City Council. The architectural accent element peaks used to screen the roof-top mechanical units for the two, two-story office buildings proposed within Channel Center Subdivision are proposed to be 41.5-foot high (6.5-foot higher than the maximum allowed by code).

STAFF RECOMMENDATION PROVIDED WITHIN THE STAFF REPORT:

Based upon the information provided to staff to date, staff recommends approval with the site specific conditions of approval and the standard conditions of approval provided within the staff report.

PUBLIC HEARING OF THE COMMISSION:

- A. A public hearing on the application was held before the Planning and Zoning Commission on May 15, 2000, at which time testimony was taken and the public hearing was closed. The Commission made their recommendation at that time.

- B. Oral testimony in opposition to this proposal was presented to the Planning and Zoning Commission by no one.
- C. Oral testimony in favor of this proposal was presented to the Planning and Zoning Commission by no one (not including the applicant).

COMMISSION DECISION:

The Commission voted 4 to 0 (Bloom Absent) to recommend approval of the conditional use permit for two 41.5-foot high architectural building entry features for the screening of roof-top mechanical units for two proposed office buildings within Channel Center Commercial Subdivision for Dennis M. Baker & Associates with the site specific and standard conditions of approval shown within their Findings of Fact and Conclusions of Law document dated June 5, 2000.

PUBLIC HEARING OF THE COUNCIL

- A. A public hearing on the application was held before the City Council on July 11, 2000, at which time testimony was taken and the public hearing was closed. The Council made their decision at that time.
- B. Oral testimony in opposition to this proposal was presented to the City Council by no one.
- C. Oral testimony in favor of this proposal was presented to the City Council by no one (not including the applicant).

COUNCIL DECISION:

The Council voted unanimously to approve CU-3-00 the conditional use permit for two 41.5-foot high architectural building entry features for the screening of roof-top mechanical units for two proposed office buildings within Channel Center Commercial Subdivision for Dennis M. Baker & Associates with the following site specific and standard conditions of approval.

SITE SPECIFIC CONDITIONS OF APPROVAL:

1. Comply with the conditions of DR-20-00.
2. The architecture of the two buildings with the 41.5-foot high building entry features shall be generally as shown on Exhibit "A" which incorporated into these findings by reference.
3. The portion of the buildings which are approved to exceed 35-feet in height (building entry features only) shall be a maximum of 41.5-feet high.

STANDARD CONDITIONS OF APPROVAL:

1. The applicant shall comply with all requirements of the Ada County Highway District and/or the Idaho Transportation Department, including but not limited to approval of the drainage system, curbs, gutters, streets and sidewalks. A letter of approval from the highway district having jurisdiction shall be submitted to the City prior to issuance of any building permits or Certificate of Occupancy, whichever occurs first.
2. Idaho Department of Health & Welfare approval of the sewer and water facilities is required prior

issuance of any building permits or Certificate of Occupancy, whichever occurs first.

3. All permits from Central District Health, Eagle Sewer District & Eagle Fire District, shall be secured prior to issuance of building permit or Certificate of Occupancy, whichever occurs first.
4. Written approval of all well water for any shared or commercial well shall be obtained from the Idaho Department of Water Resources shall be submitted to the City prior to issuance of any building permits or Certificate of Occupancy, whichever occurs first.
5. Unless septic tanks are permitted, wet line sewers will be required and the applicant will be required to furnish the City Engineer with a letter from the sewer entity serving the property, accepting the project for service, prior to issuance of any building permits or Certificate of Occupancy, whichever occurs first.
6. The applicant shall submit a letter from the appropriate drainage entity approving the drainage system and/or accepting said drainage; or submit a letter from a registered professional engineer certifying that all drainage shall be retained on-site prior to issuance of any building permits or Certificate of Occupancy, whichever occurs first. A copy of the construction drawing(s) shall be submitted with the letter.
7. The applicant shall submit plans and calculations prepared by a registered professional engineer to handle the satisfactory disposal of all storm drainage on the applicant's site. Drainage system plans shall be submitted to the City Engineer for review and approval prior to issuance of any building permits or Certificate of Occupancy, whichever occurs first.

The plans shall show how swales, or drain piping, will be developed in the drainage easements. The approved drainage system shall be constructed, or a performance bond shall be submitted to the City Clerk, prior to issuance of any building permits or Certificate of Occupancy, whichever occurs first. The lot shall be so graded that all runoff runs either over the curb, or to the drainage easement, and no runoff shall cross any lot line onto another lot except within a drainage easement.

All design and calculations shall meet the requirements of Ada County Highway District. Construction of the storm drain disposal system shall be complete before an occupancy permit is issued.

8. No ditch, pipe or other structure or canal, for irrigation water or irrigation waste water owned by an organized irrigation district, canal company, ditch association, or other irrigation entity, shall be obstructed, routed, covered or changed in any way unless such obstruction, rerouting, covering or changing has first been approved in writing by the entity. A Registered Engineer shall certify that any ditch rerouting, piping, covering or otherwise changing the existing irrigation or waste ditch (1) has been made in such a manner that the flow of water will not be impeded or increased beyond carrying capacity of the downstream ditch; (2) will not otherwise injure any person or persons using or interested in such ditch or their property; and (3) satisfied the Idaho Standards for Public Works Construction. A copy of such written approval and certification shall be filed with the construction drawing and submitted to the City prior to issuance of any building permits or Certificate of Occupancy, whichever occurs first.
9. Street light plans shall be submitted and approved as to the location, height and wattage to the City Engineer (if applicable) prior to issuance of any building permits or Certificate of Occupancy,

whichever occurs first. All construction shall comply with the City's specifications and standards.

The applicant shall provide a recorded easement, acceptable to the City Engineer, for the purpose of installing and maintaining street light fixtures, conduit and wiring lying outside any dedicated public right-of-way, prior to issuance of any building permits or Certificate of Occupancy, whichever occurs first.

The applicant shall pay applicable street light inspection fees prior to Certificate of Occupancy.

10. Parking lot light plan shall be submitted and approved as to the location, height and wattage by the City Engineer. All construction shall comply with the City's specifications and standards.

Lighting is required in the parking area and shall be properly illuminated to avoid accidents. Any lights used to illuminate the parking lot shall be so arranged as to reflect the light away from the adjoining property.

11. The parking area shall be paved and shall be maintained in good condition without holes and free of all dust, trash, weeds and other debris.

12. One set of building plans, for any non single-family residential use, shall be submitted to the Eagle Fire Department for approval. An approval letter from the Eagle Fire Department shall be submitted to the City prior to issuance of any building permits or Certificate of Occupancy, whichever occurs first. The letter shall include the following comments and minimum requirements, and any other items of concern as may be determined by the Eagle Fire Department officials:

- a. "The applicant has made arrangements to comply with all requirements of the Fire Department."
- b. The fire hydrant locations shall be reviewed and be approved in writing by the Eagle Fire Department prior to the City Engineer signing the final plat..
- c. Minimum flow per hydrant shall be 1,000 gallons per minute for one and two family dwellings, 1,500 gallons per minute for dwellings having a fire area in excess of 3,600 square feet, and 1,500 gallons per minute for non-residential uses (ie; Commercial, Industrial, Schools, etc.). Flow rates shall inspected in accordance with all agencies having jurisdiction, and shall be verified in writing by the Eagle Fire Department prior to issuance of any building permits or certificate of Occupancy, whichever occurs first.
- d. The proposed fire protection system shall be reviewed and approved by the Eagle Fire Department prior to issuance of a building permit or Certificate of Occupancy, whichever occurs first.

13. Any recreation area, greenbelt area or pathway area along the Boise River, Dry Creek or any other area designated by the City Council or Eagle City Pathway/Greenbelt Committee for a path or walkway shall be approved in writing by the Eagle City Pathway/Greenbelt Committee prior to issuance of a building permit or Certificate of Occupancy, whichever occurs first.

14. Conservation, recreation and river access easements (if applicable) shall be approved by the Eagle City Pathway/Greenbelt Committee and shall be shown on the final plat prior to issuance of a building permit or Certificate of Occupancy, whichever occurs first.

15. The applicant shall comply with the provisions of the Eagle City Code, pertaining to floodplain and river protection regulations (if applicable) prior to issuance of a building permit or Certificate

of Occupancy, whichever occurs first.

16. The applicant shall obtain written approval of the development relative to the effects of the Boise River Flood Plain (if applicable) from the Corps. of Engineers prior to issuance of a building permit or Certificate of Occupancy, whichever occurs first.
17. The applicant shall obtain approval of the development relative to its effects on wetlands or other natural waterways (if applicable) from the Corps. of Engineers and the Idaho Department of Water Resources and/or any other agency having jurisdiction prior to issuance of a building permit or Certificate of Occupancy, whichever occurs first.
18. Basements in the flood plain are prohibited.
19. The Americans with Disabilities Act, Uniform Building Code, Eagle City Code, and all applicable County, State and Federal Codes and Regulations shall be complied with. All design and construction shall be in accordance with all applicable City of Eagle Codes unless specifically approved by the Commission and/or Council.
20. New plans which incorporate any required changes shall be submitted for staff approval. Staff may elect to take those plans to the Design Review Board and/or the Planning and Zoning Commission for review and approval.
21. Any changes to the plans and specifications upon which this approval is based, other than those required by the above conditions, will require submittal of an application for modification and approval of that application prior to commencing any change. Any change by the applicant in the planned use of the property which is the subject of this application, shall require the applicant to comply with all rules, regulations, ordinances, plans, or other regulatory and legal restrictions in force at the time the applicant or its successors in interest submits application to the City of Eagle for a change to the planned use of the subject property.
22. Approval of any Design Review shall expire without notice to the applicant on the date of expiration of the Design Review, as stipulated in Eagle City Code (one year from the City Council approval date).

CONCLUSIONS OF LAW:

1. The application for this item was received by the City of Eagle on April 13, 2000.
2. Notice of Public Hearing on the application for the Eagle Planning and Zoning Commission was published in accordance for requirements of Title 67, Chapter 65, Idaho Code and the Eagle City ordinances on April 27, 2000. Notice of this public hearing was mailed to property owners within three-hundred feet (300-feet) of the subject property in accordance with the requirements of Title 67, Chapter 65, Idaho Code and Eagle City Code on April 28, 2000. Requests for agencies' reviews were transmitted on April 14, 2000, in accordance with the requirements of the Eagle City Code.
3. Notice of Public Hearing on the application for the Eagle City Council was published in accordance for requirements of Title 67, Chapter 65, Idaho Code and the Eagle City ordinances on June 24, 2000. Notice of this public hearing was mailed to property owners within three-hundred feet (300-feet) of the subject property in accordance with the requirements of Title 67, Chapter 65, Idaho Code and Eagle City Code on June 23, 2000.

4. The City Council has reviewed the particular facts and circumstances of this proposed conditional use and, in terms of Eagle City Code Section 8-7-3-2 "A thru I" (required findings for approval of a conditional use), has made the following conclusions:

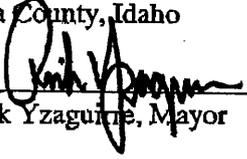
The proposed conditional use;

- A. Will, in fact, constitute a conditional use as established in Section 8-2-3 of Eagle City Code Title 8 as referenced "as otherwise provided within this Code" since Eagle City Code Section 8-2A-6 (A)(7)(a) states in part that additional building height above 35-feet may be permitted if a conditional use permit is approved by the City Council;
- B. Will be harmonious with and in accordance with the general objectives or with any specific objective of the Comprehensive Plan and/or this title (Eagle City Code Title 8) since there are no inconsistencies with the Comprehensive Plan and since the development will be required to meet conditions of a design review application;
- C. Will be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area since the architectural building features are proposed to be setback from Eagle Road approximately 500-feet, since the buildings are proposed to be constructed out of materials that are compatible with the residential and commercial building materials used in the general area and are consistent with turn of the century architecture, and since the development will be required to meet the City's design review requirements;
- D. Will not be hazardous or disturbing to existing or future neighborhood uses since the area surrounding the proposed tower is heavily landscaped, since the building materials proposed for the entry features are compatible with surrounding building architecture;
- E. Will be served adequately by essential public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services as noted in responses received by agencies providing the public services;
- F. Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community;
- G. Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors;
- H. Will have vehicular approaches to the property which are designed as not to create an interference with traffic on surrounding public thoroughfares as are to be approved by the highway district having jurisdiction; and

- I. Will not result in the destruction, loss or damage of a natural, scenic or historic feature of major importance since, other than existing trees which will be preserved, none are apparent at this site.

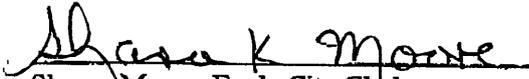
DATED this 12th day of September, 2000.

CITY COUNCIL OF THE CITY OF EAGLE
Ada County, Idaho



Rick Yzaguirre, Mayor

ATTEST:



Sharon Moore, Eagle City Clerk



Case No. IPC-E-04-04
Exhibit 125

August 28, 2001

**Eagle Findings of Fact and Conclusions of Law, Case No. CU-10-96 MOD
Approving height exception to cell tower
and requiring co-location of facilities to avoid numerous towers**

ORIGINAL

BEFORE THE EAGLE CITY COUNCIL

**IN THE MATTER OF AN APPLICATION FOR)
 A CONDITIONAL USE PERMIT FOR A)
 135-FOOT HIGH PERSONAL WIRELESS)
 FACILITY FOR CRICKET COMMUNICATIONS)**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
 CASE NUMBER CU-10-96 MOD**

The above-entitled conditional use application came before the Eagle City Council for their action on August 14, 2001. The Eagle City Council having heard and taken oral and written testimony, and having duly considered the matter, makes the following Findings of Fact and Conclusions of Law;

FINDINGS OF FACT:

A. PROJECT SUMMARY:

Cricket Communications, represented by Kirk Johnson with Pacific Telecom Services, LLC, is requesting a modification to the existing conditional use permit to increase the height of the existing 120-foot high monopole to 135-feet to accommodate the co-location of another cellular service provider. The existing pole is located at the Republic Mini-Storage facility at 8785 Horseshoe Bend Road approximately ¼-mile north of State Street.

B. APPLICATION SUBMITTAL:

The application for this item was received by the City of Eagle on May 3, 2001.

C. NOTICE OF PUBLIC HEARING:

Notice of Public Hearing on the application for the Eagle Planning and Zoning Commission was published in accordance for requirements of Title 67, Chapter 65, Idaho Code and the Eagle City ordinances on June 16, 2001. Notice of this public hearing was mailed to property owners within three-hundred feet (300-feet) of the subject property in accordance with the requirements of Title 67, Chapter 65, Idaho Code and Eagle City Code on June 13, 2001. Requests for agencies' reviews were transmitted on May 4, 2001 in accordance with the requirements of the Eagle City Code.

Notice of Public Hearing on the application for the Eagle City Council was published in accordance for requirements of Title 67, Chapter 65, Idaho Code and the Eagle City ordinances on July 28, 2001. Notice of this public hearing was mailed to property owners within three-hundred feet (300-feet) of the subject property in accordance with the requirements of Title 67, Chapter 65, Idaho Code and Eagle City Code on July 25, 2001.

D. HISTORY OF RELEVANT PREVIOUS ACTIONS:

On March 25, 1997, the Eagle City Council voted to approve a conditional use permit for this site (CU-10-96) for a 120-foot tall personal wireless facility.

E. COMPANION APPLICATIONS: DR-30-01

**EXHIBIT 125
 CASE NO. IPC-E-04-04**

F. COMPREHENSIVE PLAN LAND USE MAP AND ZONING MAP DESIGNATIONS:

	COMP PLAN DESIGNATION	ZONING DESIGNATION	LAND USE
Existing	Business Park	BP (Business Park)	Cellular Tower
Proposed	No Change	No Change	No Change
North of site	Business Park	RT (Residential – Ada County designation)	Residence
South of site	Commercial	C-3 (Highway Business District)	Eagle Towne & Country Centre Shopping Center
East of site	Business Park	BP (Business Park)	Republic Mini Storage
West of site	Residential Three (up to 3-units per acre max.)	R-4 (Residential)	State Highway 55 & Great Sky Estates Subdivision

G. DESIGN REVIEW OVERLAY DISTRICT: Not in the DDA, TDA or CEDA.

H. EXISTING SITE CHARACTERISTICS:

A 120-foot high cellular tower currently exists within the Republic Mini-Storage site.

I. SITE DESIGN INFORMATION:

SITE DATA	PROPOSED	REQUIRED
Total Acreage of Site	.02-acres	N/A
Percentage of Site Devoted to Building Coverage	Less than 50%	50% maximum
Percentage of Site Devoted to Landscaping	N/A	N/A
Number of Parking Spaces	N/A	N/A
Front Setback	600-feet (approx)	20-feet minimum
Rear Setback	600-feet (approx)	13.5-feet
Side Setback	320-feet (approx)	13.5-feet
Street Side Setback	320-feet (approx)	20-feet minimum

J. GENERAL SITE DESIGN FEATURES:

Number and Uses of Proposed Buildings: N/A

Height and Number of Stories of Proposed Buildings:

The tower is to be a maximum of 135-feet (currently 120-feet).

Gross Floor Area of Proposed Buildings: 100-square feet (concrete pad).

On and Off-Site Circulation: The site is accessed through the Republic Mini-Storage facility from Horseshoe Bend Road.

K. PUBLIC SERVICES AVAILABLE:

No water or sewer services are required for this particular use.

L. PUBLIC USES PROPOSED: None**M. PUBLIC USES SHOWN ON FUTURE ACQUISITIONS MAP:** No map currently exists**N. SPECIAL ON-SITE FEATURES:**

Areas of Critical Environmental Concern - none

Evidence of Erosion - no

Fish Habitat - no

Floodplain - no

Mature Trees - no

Riparian Vegetation - no

Steep Slopes - no

Stream/Creek: no

Unique Animal Life - unknown

Unique Plant Life - unknown

Unstable Soils - unknown

Wildlife Habitat - unknown

O. SUMMARY OF REVIEW OF ENVIRONMENTAL ASSESSMENT PLAN (IF REQUIRED):
Not required**P. AGENCY RESPONSES:**

The following agencies have responded and their correspondence is attached. Comments, which appear to be of special concern, are noted below:

Ada County Highway District

Central District Health

Eagle Fire Department

Eagle Sewer District

Q. LETTERS FROM THE PUBLIC: None received to date.**R. EAGLE CITY CODE 8-7-3-2 GENERAL STANDARDS FOR CONDITIONAL USES:**

The Commission/Council shall review the particular facts and circumstances of each proposed Conditional Use in terms of the following standards and shall find adequate evidence showing that such use at the proposed location:

- A. Will, in fact, constitute a conditional use as established in Section 8-2-3 of this title (Eagle City Code Title 8) for the zoning district involved;
- B. Will be harmonious with and in accordance with the general objectives or with any specific objective of the Comprehensive Plan and/or this title (Eagle City Code Title 8);
- C. Will be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area;
- D. Will not be hazardous or disturbing to existing or future neighborhood uses;
- E. Will be served adequately by essential public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.
- F. Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community;
- G. Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors;
- H. Will have vehicular approaches to the property which are designed as not to create an interference with traffic on surrounding public thoroughfares; and
- I. Will not result in the destruction, loss or damage of a natural, scenic or historic feature of major importance.

STAFF ANALYSIS PROVIDED WITHIN THE STAFF REPORT:

- A. COMPREHENSIVE PLAN PROVISIONS, WHICH ARE OF SPECIAL CONCERN REGARDING THIS PROPOSAL: (None)
- B. ZONING ORDINANCE PROVISIONS, WHICH ARE OF SPECIAL CONCERN REGARDING THIS PROPOSAL:
 - ◆ ECC Section 8-3-5 (S) (1) (a) In part states that wireless facilities are necessary in order to:
 - 1) Facilitate the provision of wireless telecommunication services to the residents and businesses of the City;
 - (2) Minimize adverse visual effects of spires, poles, antennas, steeples, towers, and other such structures through careful design and siting standards;
 - (3) Avoid potential damage to adjacent properties from spire, pole, antenna, steeple, tower, and other such structures' failure, through structural standards and setback requirements; and
 - (4) Maximize the use of existing and approved towers and buildings to accommodate new

wireless telecommunication antennas in order to reduce the number of towers needed to serve the community.

- ECC 8-3-5 (S) (3) (a) states in part that a proposal for a new commercial wireless telecommunication service tower in excess of thirty five feet (35') in height shall not be approved unless the City Council finds that the telecommunications equipment planned for the proposed tower cannot be accommodated on an existing or approved tower or building.
- ECC 8-3-5 (S) (4) (a)
All personal wireless facilities shall be required to obtain design review approval prior to construction.

E. DISCUSSION:

- With regard to the functional relationship of the structure and the site in relation to its surroundings, concerns arise as to whether it is appropriate to raise an existing 120-foot high pole to 135-feet, thus making what some consider an "eyesore" more conspicuous. However, if wireless facilities were not allowed to co-locate on an existing pole (which is required by Eagle City Code), multiple poles would be erected to service the communication needs of the community. Thus, one taller pole may be considered less invasive than multiple poles scattered across the landscape.
- There is no impact to on-site traffic conditions or to contiguous streets as the site rarely needs to be accessed and is served by an existing driveway from the Republic Mini-Storage. Adjoining properties to the east and west are over 600-feet from this site, while the property to the north is rural in nature and the property to the south is a proposed commercial shopping center (Eagle Towne & Country Centre). The impact on adjoining properties may be considered minimal because there are no dense residential uses in the immediate area and the industrial/commercial uses surrounding the site are more use-intensive than a personal wireless facility.
- Staff has reviewed the particular facts and circumstances of this proposed conditional use and, in terms of Eagle City Code Section 8-7-3-2 "A thru P" (required findings for approval of a conditional use), has made the following conclusions:

The proposed conditional use;

- A. Will, in fact, constitute a conditional use as established in Section 8-2-3 of Eagle City Code Title 8 as conditioned herein;
- B. Will be harmonious with and in accordance with the general objectives or with any specific objective of the Comprehensive Plan and/or this title (Eagle City Code Title 8) since there are no inconsistencies with the Comprehensive Plan and since the tower will be required to meet conditions of a design review application;
- C. Will be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area since this use will not only be required to meet the City's design review

requirements, but is also utilizing an existing pole rather than constructing a new structure;

- D. Will not be hazardous or disturbing to existing or future neighborhood uses since no known complaints or safety issues have been received from the existing uses surrounding the tower and little change will be made to the tower that would warrant any subsequent concerns regarding these issues;
- E. Will be served adequately by essential public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services as noted in responses received by agencies providing the public services or as conditioned herein;
- F. Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community since the structure will be attached to an existing tower and will not require any additional services;
- G. Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors;
- H. Will have access on an existing vehicular approach to the property which is designed so as to not create an interference with traffic on surrounding public thoroughfares as required by the Ada County Highway District; and
- I. Will not result in the destruction, loss or damage of a natural, scenic or historic feature of major importance since none are apparent on this site.

STAFF RECOMMENDATION PROVIDED WITHIN THE STAFF REPORT:

Based upon the information provided to staff to date, staff recommends approval with the site specific conditions of approval and the standard conditions of approval provided within the staff report.

PUBLIC HEARING OF THE COMMISSION:

- A. A public hearing on the application was held before the Planning and Zoning Commission on July 2, 2001, at which time testimony was taken and the public hearing was closed. The Commission made their recommendation at that time.
- B. Oral testimony in opposition to this proposal was presented to the Planning and Zoning Commission by no one.
- C. Oral testimony in favor of this proposal was presented to the Planning and Zoning Commission by no one (not including the applicant).

COMMISSION DECISION:

The Commission voted 5 to 0 to recommend approval for a conditional use permit for a 135-foot high personal wireless facility for Cricket Communications with the site specific conditions of approval and standard conditions of approval shown within their Findings of Fact and Conclusions of Law document dated July 16, 2001.

PUBLIC HEARING OF THE COUNCIL:

- A. A public hearing on the application was held before the City Council on August 14, 2001, at which time testimony was taken and the public hearing was closed. The Council made their decision at that time.
- B. Oral testimony in opposition to this proposal was presented to the City Council by no one.
- C. Oral testimony in favor of this proposal was presented to the City Council by no one (not including the applicants).

COUNCIL DECISION:

The Council voted 4 to 0 to approve CU-10-96 MOD for a conditional use permit for a 135-foot high personal wireless facility for Cricket Communications with the following Planning & Zoning Commission recommended site specific conditions of approval and standard conditions of approval.

SITE SPECIFIC CONDITIONS OF APPROVAL:

- 1. Comply with the site specific conditions of approval and standard conditions of approval of DR-30-01.
- 2. Comply with all applicable site specific conditions of approval and standard conditions of approval of CU-10-96.
- 3. The tower shall be a maximum of 135-feet high.
- 4. A zoning/building permit is required prior to the construction and installation of the improvements to the personal wireless facility.
- 5. The applicant shall provide a letter from a qualified engineer stating the existing tower is structurally capable of accommodating the proposed height extension to the tower.

STANDARD CONDITIONS OF APPROVAL:

- 1. The applicant shall comply with all requirements of the Ada County Highway District and/or the Idaho Transportation Department, including but not limited to approval of the drainage system, curbs, gutters, streets and sidewalks. A letter of approval from the highway district having jurisdiction shall be submitted to the City prior to issuance of any building permits.
- 2. Idaho Department of Health & Welfare approval of the sewer and water facilities is required prior issuance of any building permits.

3. All permits from Central District Health, Eagle Sewer District & Eagle Fire District shall be secured prior to issuance of building permit.
4. Written approval of all well water for any shared or commercial well shall be obtained from the Idaho Department of Water Resources shall be submitted to the City prior to issuance of any building permits.
5. Unless septic tanks are permitted, wet line sewers will be required and the applicant will be required to furnish the City Engineer with a letter from the sewer entity serving the property, accepting the project for service, prior to issuance of any building permits.
6. The applicant shall submit a letter from the appropriate drainage entity approving the drainage system and/or accepting said drainage; or submit a letter from a registered professional engineer certifying that all drainage shall be retained on-site prior to issuance of any building permits or Certificate of Occupancy, whichever occurs first. A copy of the construction drawing(s) shall be submitted with the letter.
7. The applicant shall submit plans and calculations prepared by a registered professional engineer to handle the satisfactory disposal of all storm drainage on the applicant's site. Drainage system plans shall be submitted to the City Engineer for review and approval prior to issuance of any building permits.

The plans shall show how swales, or drain piping, will be developed in the drainage easements. The approved drainage system shall be constructed, or a performance bond shall be submitted to the City Clerk, prior to issuance of any building permits. The lot shall be so graded that all runoff runs either over the curb, or to the drainage easement, and no runoff shall cross any lot line onto another lot except within a drainage easement.

All design and calculations shall meet the requirements of Ada County Highway District. Construction of the storm drain disposal system shall be complete before an occupancy permit is issued.

8. No ditch, pipe or other structure or canal, for irrigation water or irrigation waste water owned by an organized irrigation district, canal company, ditch association, or other irrigation entity, shall be obstructed, routed, covered or changed in any way unless such obstruction, rerouting, covering or changing has first been approved in writing by the entity. A Registered Engineer shall certify that any ditch rerouting, piping, covering or otherwise changing the existing irrigation or waste ditch (1) has been made in such a manner that the flow of water will not be impeded or increased beyond carrying capacity of the downstream ditch; (2) will not otherwise injure any person or persons using or interested in such ditch or their property; and (3) satisfied the Idaho Standards for Public Works Construction. A copy of such written approval and certification shall be filed with the construction drawing and submitted to the City prior to issuance of any building permits.
9. Street light plans shall be submitted and approved as to the location, height and wattage to the City Engineer (if applicable) prior to issuance of any building permits or Certificate of Occupancy, whichever occurs first. All construction shall comply with the City's specifications and standards.

The applicant shall provide a recorded easement, acceptable to the City Engineer, for the purpose of installing and maintaining street light fixtures, conduit and wiring lying outside any dedicated public right-of-way, prior to issuance of any building permits.

The applicant shall pay applicable street light inspection fees prior to Certificate of Occupancy.

10. Parking lot light plan shall be submitted and approved as to the location, height and wattage by the City Engineer. All construction shall comply with the City's specifications and standards.

Lighting is required in the parking area and shall be properly illuminated to avoid accidents. Any lights used to illuminate the parking lot shall be so arranged as to reflect the light away from the adjoining property.
11. The parking area shall be paved and shall be maintained in good condition without holes and free of all dust, trash, weeds and other debris.
12. One set of building plans, for any non single-family residential use, shall be submitted to the Eagle Fire Department for approval. An approval letter from the Eagle Fire Department shall be submitted to the City prior to issuance of any building permits or Certificate of Occupancy, whichever occurs first. The letter shall include the following comments and minimum requirements, and any other items of concern as may be determined by the Eagle Fire Department officials:
 - a. "The applicant has made arrangements to comply with all requirements of the Fire Department."
 - b. The fire hydrant locations shall be reviewed and be approved in writing by the Eagle Fire Department prior to the City Engineer signing the final plat.
 - c. Minimum flow per hydrant shall be 1,000 gallons per minute for one and two family dwellings, 1,500 gallons per minute for dwellings having a fire area in excess of 3,600 square feet, and 1,500 gallons per minute for non-residential uses (i.e.; Commercial, Industrial, Schools, etc.). Flow rates shall be inspected in accordance with all agencies having jurisdiction, and shall be verified in writing by the Eagle Fire Department prior to issuance of any building permits or certificate of Occupancy, whichever occurs first.
 - d. The proposed fire protection system shall be reviewed and approved by the Eagle Fire Department prior to issuance of a building permit.
13. Any recreation area, greenbelt area or pathway area along the Boise River, Dry Creek or any other area designated by the City Council or Eagle City Pathway/Greenbelt Committee for a path or walkway shall be approved in writing by the Eagle City Pathway/Greenbelt Committee prior to issuance of a building permit.
14. Conservation, recreation and river access easements (if applicable) shall be approved by the Eagle City Pathway/Greenbelt Committee and shall be shown on the final plat prior to issuance of a building permit.
15. The applicant shall comply with the provisions of the Eagle City Code, pertaining to floodplain and river protection regulations (if applicable) prior to issuance of a building permit.
16. The applicant shall obtain written approval of the development relative to the effects of the Boise River Flood Plain (if applicable) from the Corps. of Engineers prior to issuance of a building permit.
17. The applicant shall obtain approval of the development relative to its effects on wetlands or other natural waterways (if applicable) from the Corps. of Engineers and the Idaho Department of Water

Resources and/or any other agency having jurisdiction prior to issuance of a building permit.

18. Basements in the flood plain are prohibited.
19. The Americans with Disabilities Act, Uniform Building Code, Eagle City Code, and all applicable County, State and Federal Codes and Regulations shall be complied with. All design and construction shall be in accordance with all applicable City of Eagle Codes unless specifically approved by the Commission and/or Council.
20. New plans, which incorporate any required changes, shall be submitted for staff approval. Staff may elect to take those plans to the Design Review Board and/or the Planning and Zoning Commission for review and approval.
21. Any changes to the plans and specifications upon which this approval is based, other than those required by the above conditions, will require submittal of an application for modification and approval of that application prior to commencing any change. Any change by the applicant in the planned use of the property which is the subject of this application, shall require the applicant to comply with all rules, regulations, ordinances, plans, or other regulatory and legal restrictions in force at the time the applicant or its successors in interest submits application to the City of Eagle for a change to the planned use of the subject property.
22. Approval of any Design Review shall expire without notice to the applicant on the date of expiration of the Design Review, as stipulated in Eagle City Code (one year from the City Council approval date).
23. The City's actions on the application does not grant the applicant any appropriation of water or interference with existing water rights. The applicant indemnifies and holds the City harmless for any and all water rights, claims in any way associated with this application.

CONCLUSIONS OF LAW:

1. The application for this item was received by the City of Eagle on May 3, 2001.
2. Notice of Public Hearing on the application for the Eagle Planning and Zoning Commission was published in accordance for requirements of Title 67, Chapter 65, Idaho Code and the Eagle City ordinances on June 16, 2001. Notice of this public hearing was mailed to property owners within three-hundred feet (300-feet) of the subject property in accordance with the requirements of Title 67, Chapter 65, Idaho Code and Eagle City Code on June 13, 2001. Requests for agencies' reviews were transmitted on May 4, 2001 in accordance with the requirements of the Eagle City Code.

Notice of Public Hearing on the application for the Eagle City Council was published in accordance for requirements of Title 67, Chapter 65, Idaho Code and the Eagle City ordinances on July 28, 2001. Notice of this public hearing was mailed to property owners within three-hundred feet (300-feet) of the subject property in accordance with the requirements of Title 67, Chapter 65, Idaho Code and Eagle City Code on July 25, 2001.

3. The City Council has reviewed the particular facts and circumstances of this proposed conditional use and, in terms of Eagle City Code Section 8-7-3-2 "A thru F" (required findings for approval of a conditional use), has made the following conclusions:

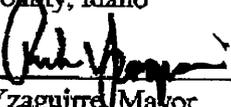
000001-04 10:05 FROM: CITY OF EAGLE ID: 208+939+8827 PAGE 25/26

The proposed conditional use;

- A. Will, in fact, constitute a conditional use as established in Section 8-2-3 of Eagle City Code Title 8 as conditioned herein;
- B. Will be harmonious with and in accordance with the general objectives or with any specific objective of the Comprehensive Plan and/or this title (Eagle City Code Title 8) since there are no inconsistencies with the Comprehensive Plan and since the tower will be required to meet conditions of a design review application;
- C. Will be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area since this use will not only be required to meet the City's design review requirements, but is also utilizing an existing pole rather than constructing a new structure;
- D. Will not be hazardous or disturbing to existing or future neighborhood uses since no known complaints or safety issues have been received from the existing uses surrounding the tower and little change will be made to the tower that would warrant any subsequent concerns regarding these issues;
- E. Will be served adequately by essential public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services as noted in responses received by agencies providing the public services or as conditioned herein;
- F. Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community since the structure will be attached to an existing tower and will not require any additional services;
- G. Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors;
- H. Will have access on an existing vehicular approach to the property which is designed so as to not create an interference with traffic on surrounding public thoroughfares as required by the Ada County Highway District; and
- I. Will not result in the destruction, loss or damage of a natural, scenic or historic feature of major importance since none are apparent on this site.

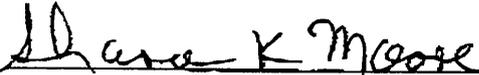
DATED this 28th day of August 2001.

CITY COUNCIL
OF THE CITY OF EAGLE
Ada County, Idaho



Rick Yzaguirre, Mayor

ATTEST:



Sharon Moore, Eagle City Clerk



Case No. IPC-E-04-04
Exhibit 126

October 14, 2003
Eagle City Council Minutes
IPC Height Exception Application for 138 kV lines Public Hearing

ORIGINAL

EAGLE CITY COUNCIL

Minutes

October 14, 2003

1. **CALL TO ORDER:** Meeting called to order at 5:03 p.m.
2. **ROLL CALL: Present:** BASTIAN, GUERBER, NORDSTROM. **Absent:** SEDLACEK. A quorum is present.
3. **PLEDGE OF ALLEGIANCE:**
4. **PUBLIC COMMENT:**

A. Joe Rausch would like to discuss the U-Haul business.
Mayor introduces the item.

Joe Rausch, states that he was notified by the city, that the location of the U-Haul business is a non-conforming use. He would like to openly discuss the Council's desire regarding this issue. The U-Haul business is currently in the same location as the mini-storage facility. Discussion as to what is needed in order to bring the U-Haul business into conformance. Vaughan states that a conditional use permit would need to be obtained in order for both the mini-storage and the trailer rental use to co-exist. Also discusses the need to modify the code to add the definition of a trailer rental business. Mayor would like to expedite this issue as far as staff working with Mr. Rausch in order to find a reasonable solution to this issue. Council feels that a definition of trailer rental business, would be an appropriate addition to current code. And as the U-Haul is basically a complimentary use to the mini-storage at this location the City should find a way to accommodate them.

B. Lawrence Bosio would like to air a complaint before the City Council.
Mayor introduces the issue.

Mr. Bosio expresses his gratitude to the Ada County Sheriff's Office as they have been very responsive to his concerns. Mr. Bosio has concerns with the noise levels of air conditioners and swimming pool motors that are located near neighboring property owners, and that run throughout the night. He would like to see a building code established to address these noise issues. Mr. Bosio is also concerned about the parties continuing at residential areas after the bars have closed, and on street parking problems this situation causes. Discussion.

5. **CONSENT AGENDA:**

- ◆ Consent Agenda items are considered to be routine and are acted on with one motion. There will be no separate discussion on these items unless the Mayor, a Councilmember, member of City Staff, or a citizen requests an item to be removed from the Consent Agenda for discussion. Items removed from the Consent Agenda will be placed on the Regular Agenda in a sequence determined by the Rules of Order.
- ◆ Any item on the Consent Agenda which contains written Conditions of Approval from the City of Eagle City Staff, Planning & Zoning Commission, or Design Review Board shall be adopted as part of the City Council's Consent Agenda approval motion unless specifically stated otherwise.
- ◆ All design review applications will be appealed by the Zoning Administrator to the City Council for their review and approval.
 - A. Claims Against the City.
 - B. Minutes of September 9, 2003.

EXHIBIT 126
CASE NO. IPC-E-04-04

- C. Minutes of September 23, 2003.
- D. **Re-appointment to the Planning and Zoning Commission:** The Mayor is requesting Council confirmation of the re-appointment of Mathew Glavach to the Planning and Zoning Commission. Mr. Glavach recently fulfilled the remainder of a vacated term. His re-appointment would be for a three year term. (NM)
- E. **Re-appointment to the Eagle Arts Commission:** The Mayor is requesting Council confirmation of the re-appointment of Linda Goldman to the Cultural Arts Commission. Ms. Goldman recently fulfilled the remainder of a vacated term. Her re-appointment would be for a three year term. (NM)
- F. **DR-43-98 MOD3 – Modification to the Master Sign Plan for Eagle Pavilion Shopping Center – Pete Loya:** Pete Loya, represented by Chuck Buckner with Idaho Electric Signs Inc., is requesting design review approval to modify the master sign plan for the Eagle Pavilion Shopping Center. The site is located on the northeast corner of South Eagle Road and State Highway 44 at 480 South Eagle Road. (WEV)
- G. **DR-35-03 - Building Wall Sign for Carats Fine Diamonds and Gold – John Grene:** John Grene, represented by Chuck Buckner with Idaho Electric Signs Inc., is requesting design review approval to construct a building wall sign for Carats Fine Diamonds and Gold. The site is located within the Eagle Pavilion Shopping Center at 400 South Eagle Road. (WEV)
- H. **DR-42-03 - Entry Structure and Monument Sign for Henry's Subdivision - Henry's North 40 LLC:** Henry's North 40 LLC, represented by Peter Harris and Kristen Van Engelen, is requesting design review approval to construct an entry structure and monument sign for Henry's Subdivision. The site is located on the west side of Meridian Road approximately 1,320-feet south of Beacon Light Road.
- I. **DR-43-03 - Modification to the Existing Building Elevations for the Eagle Manor Apartment Building – Jim Tomlinson:** Jim Tomlinson, represented by Ray Crowder with Crowder Associates Architects, is requesting design review approval to modify the existing building elevations of the Eagle Manor Apartment Building. The modifications include the installation of dormers, and installing a higher roof over the two stair towers. The site is located on the northeast corner of Cedar Ridge Road and 2nd Street at 276 Cedar Ridge Road. (WEV)
- J. **DR-45-03 - Building Wall Sign For Curves for Women – Cindy Heriford:** Cindy Heriford with Curves for Women, represented by Tony Meade with Idaho Electric Signs Inc., is requesting design review approval to construct an internally illuminated building wall sign for Curves for Women. The site is located on the south side of State Street within Bosanka Village at 393 West State Street. (WEV)
- K. **DR-46-03 - Building Wall Sign for the UPS Store – W&H Limited Liability Co.:** W & H Limited Liability Company, represented by Bruce Williams with Young Electric Sign Company, is requesting design review approval to construct an internally illuminated building wall sign for The UPS Store. The site is located within the Eagle Pavilion Shopping Center at 372 South Eagle Road. (WEV)
- L. **Final Plat Extension of Time for Yorkshire Acres Subdivision - Robert DeShazo:** Robert DeShazo Jr./Berkshire West, represented by Douglas W.

Landwer, is requesting a second one-year extension of time for the final plat for Yorkshire Acres Subdivision. The 4.64-acre, 15-lot (13-buildable, 2-common) residential subdivision is located on the south side of East Floating Feather Road, approximately 900-feet west of Horseshoe Bend Road. (WEV)

M. Review and action on bid for increasing the size of two lawn drains and adding two additional lawn drains at Merrill Park. (SKM)

Buxton states that items 8B, 8C, and 9B will need to be continued to the next meeting as there are legal issues which need to be addressed prior to Council taking action on them.

Bastian moves to continue items 8B, 8C and 9B to the next regular Council meeting. Seconded by Guerber. ALL AYE...MOTION CARRIES.

Discussion regarding time frame at which this item will be acted on.

Bastian moves to approve the Consent Agenda, except for the Claims Against the City which will be moved to the end of the agenda. Seconded by Guerber. Discussion. Bastian amends his motion to remove item J for discussion. Second concurs. BASTIAN AYE; GUERBER AYE; NORDSTROM AYE. ALL AYE...MOTION CARRIES.

Claims Against the City will be moved to item 10B.

J. DR-45-03 - Building Wall Sign For Curves for Women – Cindy Heriford: Cindy Heriford with Curves for Women, represented by Tony Meade with Idaho Electric Signs Inc., is requesting design review approval to construct an internally illuminated building wall sign for Curves for Women. The site is located on the south side of State Street within Bosanka Village at 393 West State Street. (WEV)

Tony Meade, with Idaho Electric Signs, states that there is a site specific condition disallowing the use of the trademark that he believes is a violation of federal law. He would like the trademark symbol to remain. Bastian states he was in attendance at the Design Review meeting and feels that the Design Review Board was merely trying to eliminate clutter with the signage, but as the trademark has been allowed previously he has no issue with allowing it to remain.

Bastian moves to approve DR-45-03 Building Wall Sign For Curves for Women as presented, striking site specific condition #4 in that the 3" ® trademark may be included with the sign. Seconded by Nordstrom. ALL AYE...MOTION CARRIES.

5. PUBLIC HEARINGS:

A. CU-09-02 - Public Service Facility/ Height Exception Request – 138kV Sub-Transmission line – Idaho Power: Idaho Power, represented by Layne Dodson, is requesting conditional use approval to construct a 138kV sub-transmission line and a height exception request to construct utility poles with heights ranging from approximately 70 to 85-feet (35 to 50-feet higher than the required maximum of 35-feet). The specific routing of the new sub-transmission line will connect with the existing 138kV power line near the intersection of Edgewood and State Street. The new line will proceed west along State Highway 44 to Ballantyne Road, where the line will be constructed along the same route as the existing power lines that parallel the highway, to the new Star, Idaho, substation site. It should be noted that it has not yet been determined which side of the bypass the line will traverse; this item is left to be determined from comments received at the public hearings as well as the determination of the Eagle Planning and Zoning Commission and the Eagle City Council. (WEV)

Mayor introduces the item.

Bastian clarifies a comment he made earlier today and would like to assure everyone that he has

an open mind and will consider all testimony in a balanced and fair manner.

Nordstrom also states that he made comment at a Chamber of Commerce meeting, but that he feels he can make a fair and just decision based on information which has been submitted and that which will be received tonight.

Layne Dodson, representative for Idaho Power 10790 Franklin Road. Mr. Dodson presents the application. Dodson gives a history of the application with the City, the public input which was sought and received and the findings thereof. Review of costs for installation for overhead lines versus underground lines. Discussion regarding location and costs.

Jeff Lowe, City Planner, presents the staff report and reviews comment which the outside consultant provided regarding this application. Discussion.

Mayor opens the public hearing.

Mayor swears in Mr. Ricks.

Steven Ricks 1560 N. Crestmont Dr. Ste. B Meridian, Idaho. Represents the property owners immediately north of bypass between the Eagle Forum and Rocky Mountain Fitness Center, an approximately 25 acre parcel. I have three points I wish to make to the Mayor and Council concerning our objection to the location of the transmission line along the Bypass east of Eagle Road, which is the area we are concerned with. The first point is that from the east, that is becoming the entry corridor to the City of Eagle. I think it is fair to state that the City of Eagle has essentially shifted its center of gravity slightly to the south from what existed 30 or 40 years ago when our family bought some property out here. It use to be down State Street it's now shifted so the primary entrance from a visual point of view is along the Bypass and then north on Eagle Road, those two entrances to the City. If the construction of the 138 KV line is located on either of those entrance corridors the visualization of those lines, from my observation, will never be camouflaged. There is no right for the property owners along the Eagle Bypass east of Eagle Road to plant trees close to the lines that would grow up and somewhat shield the visual effects of those 90' poles. For the main reason is that they are in the right of way which the adjacent property owners would have no access to or control over. Once installed there would never be any type of camouflage or landscaping that would soften the visual impact of those features on the landscape. The second point I would like to make is the property we own north of the Bypass has been zoned by this Council, previous administrations as a CBD zone, which means Central Business District. Which essentially means the City of Eagle would desire that, that area be developed into a retail center eventually. In our discussions with prospective purchases, builders, developers and um potential retailers, I can say this based on those discussions, that a 90' tall power lines adjacent to that property would be a very serious disincentive for those kinds of businesses to locate at that location. It simply isn't in harmony with what they view to be the type of property where they would, high class stores, would want to construct. The third point I would like to make which has essentially, this is the fourth, I think third or fourth hearing I have attended on this issue. It has essentially been ignored at the beginning right at the out set the bodies who are hearing this testimony, and the presenters from Idaho Power, Mr. Dodson, who is always gracious in his presentations, have initially discarded the possibility of constructing these lines and power poles in the existing right of way. This decision, as I have observed it, was made initially based on the 14 member citizens advisory committee at a recommendation that the lines should not be located near residential areas. But I would raise the point that the existing right of ways which jogs up an alley and then over to the west and then down Kingsford and then out State Street, has been with us for decades. And has been accommodated, visually by the residents of Eagle for decades. Additionally the landscaping adjacent to this right of way corridor which presently exists had matured and very frankly as you walk around the city of

Eagle you don't even know there is a transmission line above you because of the trees and the vegetation canopy which is provided by that. That will never happen on the Bypass, there will never be in our lifetimes, if ever trees do grow up to shield the visual obstruction from the ground. And so these folks which are adjacent to the corridor now, the existing corridor, have been accustomed to those power lines being there for years and to go up another 30 or 40' is going to be no different because you can't see the existing lines anyway because of the trees. Unless you're back up Eagle Road and are looking down on the City. The last point I would make is that because the difference in \$2,300,000 per mile vs. \$300,000 per mile it would seem to me a lot less money could be spent in locating the new lines along the existing route now and perhaps bringing, for a little cash, to the adjacent property owners for the perceived loss of value to the property if the lines go up another 60'. That to me would be a whole lot cheaper than having \$2,000,000 a mile to go underground. If I were an adjacent property owner who had mature landscaping and all they were going to do was put the pole up another 30' or 40' and I've gotten use to the poles already there, and the lines that are already there I would be happy to put a check in my pocket for the bother of having some additional poles put there. Rather than being taxed the 2 million dollars a mile to put it underground.

Bill Clark, 479 Main St. Boise, Idaho here tonight representing Eagle River. We have been following this proposal since we first read about it in the newspaper about a year ago. We were not part of the advisory team, nor were we aware of the study going on. And we since began to follow this very closely. I think all of you on the Council have followed or have been part of the development and planning for Eagle River, as well as creating the vision for what Eagle is as a community in its physical and social character. And of course one of the things that stands out is the very high standards the City has established and continues to pursue as far as the aesthetics of development. And Eagle River was held to very high standards and we have been happy to do so and be part of a community that has those kinds of standards. We have spent several million dollars on landscaping in Eagle River and along the alternate route underneath where these power lines might go on the south side. We also paid Idaho Power to underground lines, much smaller lines, distribution lines along Eagle Road. At the time we did that we still weren't informed of the fact that within a few months a proposal would be coming along to putting giant lines along our north side. The opinion we have, is that the community in order to maintain the kind of standards and character that *unintelligible* they absolutely be pursuing the underground option. And my recommendation to you after having been through these hearings and so on is, I think has been part of the discussion tonight too, is that there be a serious evaluation of what the options are for financing this. What part Idaho Power can pay in it, if not entirely perhaps there is a cost sharing approach, perhaps there is something with franchise fees, perhaps there's something with a surcharge, perhaps there is something with a community wide local improvement district. But we estimate that for Eagle River alone the combination of the lowered land values and property values, that is, that which would be built on that land that would be impacted would be on the order of 20 million dollars. You take the annual tax revenues to all jurisdictions from that and that's on the order of \$400,000 a year in reduced tax revenues, if our estimate is correct. And that's just the Eagle River project, we are a mile of frontage the most single, the single most impacted property owner, I believe, by this proposal. In any event, I think that you'll see an effect on other property values as well and so I hope that draws your attention even more to the negative effects just from a financial perspective let alone the aesthetics. Everything that Eagle has done to establish itself as a distinctive community of extraordinary quality, I think would be diminished by...*unintelligible*.

NORDSTROM: ...as far as people you have visited to maybe come up with what you think is the most appropriate way to anticipate the extraordinary costs that we may or may not be able to sell the PUC on?

CLARK: Councilman Nordstrom, I, first of all I don't have a very strong knowledge of the procedures and standards of the Public Utilities Commission. I do know in the conversations we have had with Idaho Power and others that, in other states and jurisdictions there are requirements, and I don't know the method of payment, I believe I have heard, but I can't say for certain that in some instances it is required that it is an ordinary and necessary expense and appropriate *unintelligible* and that it is being done quite a bit in various parts of the country including these high voltage transmission lines such as this 138 Kv line here. As far as the standards what the standards are of the Idaho Public Utilities Commission, I don't know. I mean I can't answer that. I believe your legal council has begun to investigate that, but there are I believe these other, I mean they could Ok this is part of the rate base. Now does that mean the rate base for all of Idaho, an area, a more defined area and could it relate to a surcharge within the city of Eagle that has a sunset provision that after it is paid, or your share is paid maybe there is room for negotiation. Maybe there's a you pay 30% they pay 70%, I don't know, I'm just making up those percentage numbers as I go along. But anyway, I think having before you and perhaps with the cooperation with Idaho Power a fair examination of what those alternatives are, maybe the Public Utilities staff could join in on those, although I don't know the standards and criteria that they would use. Idaho Power's staff has told me that "well it is inevitable at sometime, somewhere in Idaho we will have to start under grounding the lines, and this may be the place we do it". I hope it is.

Mayor swears in Mr. Khorsand

Hossein Khorsand 4132 Ballantyne Lane Eagle, Idaho. I want to thank you for this opportunity to give my opinion. It seems that Idaho Power has succeeded to reduce this problem to two choices. Either you bear the 9 million or three million or whatever the figure is or you change the character of the City by these high poles. From my experience with Idaho Power, I have a doubt. And let me qualify that, why I have a doubt. They are suggesting to put a substation very close to someone's house on Linder Road and when I come and ask them for the technical analysis that why don't you put the substation on State Street or on Emmett Highway or on Highway 55 and show that the power loss because of the smaller distribution line does not amount to any significant increase of cost. The letter that I received from them is a very general, generic letter which the most direct answer that they have in that letter states land availability. In other words, this is an example of how they are going to profit because there was cheap land available on Linder Road they choose to put a substation close to someone's house, very close. Therefore, I think we should take a look back and question Idaho Power. Show us a bigger picture, where the power comes from, how its distributed, what is the area of use. And we should take that, if we cannot analyze it ourselves we should hire some technical people to take a second look of what is the broader picture. And if the broader picture does not bring us possibly other solutions then we say ok, these are the two choices and we make our choice. Thank you very much.

Mayor swears in Mr. Butler.

Mark Butler, 52 N. Second Street, actually my home address is 1640 W. Washam Rd. I know it is really difficult to testify against something like this, which is what I plan to do, mostly because of Layne and Blake. They are great people and you get up and you have to testify against and you feel really bad about that, so I can understand how Council feels sometimes, you know when they have to vote one of my projects.

BASTIAN: Mayor, may I interrupt?

MERRILL: Stan.

BASTIAN: Observation Mark, we are dealing with the issue here. And when we work as a Council we have to deal with issues and not each other. So that is the way we can walk away being friends when we disagree and vote against each other, that's ok. And we have some fine people here representing Idaho Power that's their job and that's what they're here to do, is to represent Idaho Power's case the best they can. But it is not the individual, it's the issue we are dealing with.

BUTLER: Thank you. With that in mind its also the zoning code and comprehensive code which that guides your decisions, and that is where I want to concentrate my comments to is the code and the comprehensive plan. First there is a conditional use permit which has been applied for, as you know section 8-7-3-2 General Standards for conditional uses outlines several findings that need to be made by this Council to approve a conditional use permit. I believe there are several findings in here that cannot be made and will provide my evidence for why I believe that's the case. Finding B, and I'll read through these very quickly, the use is suppose to be "harmonious with and in accordance with the general objectives or with any specific objective of the comprehensive plan and/or this title." And I will specifically point out a section of the comprehensive plan that it does not comply with, in my opinion. "C. Will be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area." And I think again that a section of the comprehensive plan I'm going to bring out and talk to you a little bit would show that C. cannot be complied with. "D. Will not be hazardous or disturbing to existing or future neighboring uses." We have already heard testimony on how this will be disturbing to neighborhood uses, and so I don't think I need to go there. But, I did provide the City with a packet of information on a study that has been done by a couple people from, I believe Texas, and I would like that to be in the record. And what they show there is that values have tended to go down where these large power poles have been constructed adjacent to properties. And I think that is an important issue. "F. Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community." We have heard testimony that this would be detrimental to the economic development of Eagle River, for which, as you know, we spent years working on that to try and get that approved, and it's coming about to where it's totally awesome. I., and most importantly "Will not result in the destruction, loss or damage of a natural, scenic or historic feature of major importance." Now, jumping to the comprehensive plan there is a line on the Comprehensive Plan that is called a scenic corridor line, and this line was developed by previous Zoning Administrator, it was taken out to focus groups in 1999 and 2000, and the focus groups supported this line and this line is also defined with language in the comprehensive plan. And I think this is a key issue, because this line shows the area along State Street, as well as Eagle Road, but the area along State Street is where they're proposing these towers. Before we jump to the text in the Comprehensive Plan, an interesting point is in the zoning code there is a map that also uses this line. And that map is exhibit 8, to subsection 8-3-5s13, and that map is the map that is utilized to show where cell towers are not to go. And if you look at the section on cell towers, you could almost interpret a lot of that to be related to towers, but I know that wasn't the intent of when that was written. But there seem to be several inconsistencies with that section, but irregardless if you look at this map here and say in this section here telecommunication towers are not permitted. Why then would be allow numerous towers that are as high or close to the same height as cell towers in this area? And then we ask what is this area. It is the scenic corridor area. Chapter 11 talks about this area, of the Comprehensive Plan, 11.1. "It is a special area and site it's a defined area, sights or structures of historic architectural...I don't need to read it, you have it. But basically what it says is that this is an area to be preserved as visual, a visual corridor for the city that's 11.1. There is another

section in the comp plan the State Street/Eagle Road corridor which is this corridor. And since that is only 2 sentences I will read those. "This State Street/Eagle Road corridor is designated as a special area to its historical, architectural and scenic significance. This area is depicted on the comprehensive plan. So why would we take an area of scenic significance and put towers. What is scenic significance, it's a type of architecture we're seeing there, it's the type of landscaping that we, the City has required Eagle River to put in. It is the entry features that are right there at Eagle Road and State Street, it's the water feature that Eagle River put in there, it's the statue of the Eagle that's at the intersection. These are scenic features of major importance. And, I believe if we look at the zoning code and the comprehensive plan its, pretty clear that we need to recommend denial, or deny the poles and come up with some other alternative. Another location, or underground, or at least a portion underground. And lastly with regard to committees, I'm all for committees, I got the mailing I thought about going to the meetings and being on the committees and I know its great to get public involvement that's really important. But you go by the code and the comprehensive plan and I think both the code and the comprehensive plan say this is the wrong spot. Something needs to be done here. So, I think that concludes my testimony. One other thing, cost there is nothing in the comprehensive plan or code that says, because something is going to cost too much you can then go against the comp plan and code, and isn't that true of all of the developers, myself who has added on downtown Eagle, all these people who put money and come to you and say they can't afford. Remember when we tried to get 28,000 square feet on Eagle River, it was brutal, ya know. So to say here that we are going to use cost as an issue, I know it's important and now being on the private side, I know how important it is. But I think again the guidance we have is the code and comprehensive plan and they are great to work with. You have to be able to come up with a solution that works. Thank you.

Mayor swears in Mr. Hanaford.

Dave Hanaford 3062 N. Linder Rd. I just want to say a couple things. Number one, I am outside of the city limits of Eagle, but we love Eagle as if we are within the city limits so remember that in the future. And um, I am also opposed to these huge towers, I mean anyone can go and look at McMillian Road and get a much better idea that the computer generated graphics of what Eagle is in store for. I read in last weekends paper how Idaho Power is going to PUC to get rates upped for a power plant in Mountain Home, I think. So why can't we go to PUC and have rates raised to make underground the standard, ya know. We're beyond the year 2000 it should be the standard. The other thing, I know it was brought up at one of the earlier meetings I was at, has Idaho Power made any effort to team up with the gas companies and the cable companies and the folks who are constantly digging underground anyway? I mean get all of the services there at once and share the costs. And lastly as far as going to PUC as far as raising rates, maybe that could just be a percentage, maybe the individual towns that want the underground lines pay some percentage, but the rate payers all over the state pay the other percentage. That's really all I had to say, thanks.

Mayor swears in Mr. Buschart.

Russ Buschart 235 W. Floating Feather Road. A couple of ideas, number one I don't see a real obvious alternative to that particular route that is being proposed. It's sort of seems to be the point A and point B and the least *unintelligible*, but I'm not sure if all of the alternatives have been looked at. So we're talking, and I'm getting a little bit out of my realm here, but I think I can give us some suggestions to look into. A 138 kv means 138 thousand volts, I believe, and to run that high of voltage that means you'd have to go way up in the air to get to the same safety level and whatever. So, if we dropped the voltage down to 60 or 40 or something like that what we're really trying to do is get current. We're trying get an amount of current over to Middleton

or wherever it's going to be. So if we drop the voltage considerable and ran a much thicker cable, so instead of ¾" or whatever it would be, you went to 1 ½", you could potentially get to the same current level. And if you are down to 40 thousand volts, I don't know what the height things are for that, but you might be down to 50 feet or something like that which would be a whole lot more palatable. And *unintelligible*, it's going to cost them more because if you're running a lot thicker cable and you gotta run probably more poles, 'cause they can stretch, etcetera, but it's not 9 million dollars, instead of, ya know it might be a half million dollars more in aluminum or whatever. So I think there are some options that we ought to try and look at. But from a location prospective I don't know of any other.

BASTIAN: Russ are you testifying as an expert on this?

BUSCHERT: No, I'm just trying to say, I think there are some alternatives that haven't been looked at and can we get the experts in here to do the math. This is a simple engineering problem. That somebody that knows this stuff, I'm sure there is probably somebody in the room here that could say. Maybe you could recall the Idaho Power guy up here to ask him those questions too.

Mr. Dodson provides rebuttal on the public testimony presented tonight. States that the original application did propose to use exiting right of ways. He does not feel that power lines thwart development, lists the example of Krispy Kreme Donuts and the Cross Roads development in Meridian. Dodson concedes that Mr. Butler has valid comments regarding how the application relates to the Comprehensive Plan. Also notes that the engineers have explored numerous alternatives and this proposal is the most cost effective.

Mayor closes the public hearing.

City Attorney stands for question.

City Engineer, Vern Brewer, addresses questions regarding the use of large lines and shorter power poles. Brewer does not think the outside consultant addressed this option, but is very confident that they could. Brewer states he is not qualified to provide specific comment regarding electrical specifications.

Discussion. Bastian feels that based on the information tonight, he does not feel this application meets the requirements of a conditional use permit, but perhaps there are alternatives which need to be reviewed. He would be in favor of delaying a decision. Guerber feels that the existing route should be looked at again, and perhaps other alternatives such as burying a portion of the line or larger lines should be brought back for further review and discussion. Nordstrom concurs with the comments from Bastian and Guerber. Also feels that this is really a regional power issue and perhaps other entities that will be impacted by the addition of this line should be solely shouldered by Eagle. He is prepared to deny this based on non-conformance to the Comprehensive Plan. Mayor Merrill enjoys the uncluttered feel of Highway 44. She feels the issue should be taken to PUC at this point and plead the case for the need for the line to be buried. In the interim the City should be exploring acceptable alternatives which would be acceptable in lieu of burying the lines. Discussion.

Bastian moves to continue this item to the next regular scheduled meeting, and in the mean time I would like to work with staff develop a motion of denial based upon testimony given tonight and based on the requirements of the CUP, and come back for the next meeting so that we have our reasons clearly stated and that we can stand by our motion if we have to in a legal action.. Seconded by Guerber. Discussion. ALL AYE...MOTION CARRIES.

Mayor calls a 5 minute break.

B. RZ-3-03 - Rezone With Development Agreement From R-4 To MU-DA – Paramount Parks at Eagle LLC: Paramount Parks at Eagle LLC, represented by Gerald Teal with Teal Architects, is requesting a rezone from R-4 (up to four dwelling units per acre) to MU-DA (Mixed Use with development agreement). The 2.9-acre site is located on the west side of Eagle Road approximately 800-feet south of Floating Feather Road at 813 N. Eagle Road. *This item was continued from the September 23, 2003 meeting.*(WEV)
Mayor introduces the item.

The applicant has requested this item be continued.

Bastian moves to continue item RZ-3-03 Rezone with Development Agreement from R-4 to MU-DA. Seconded by Guerber. ALL AYE...MOTION CARRIES.

C. Review of proposed changes to the solid waste contract with BFI. The public hearing is for the adoption of fees and regulations in relation to recycling and trash service within the corporate City limits. (SKM)
Mayor introduces the item.

Mark Miller, Chairman of the Let's Talk Trash Committee, 646 Palmetto Dr. Mr. Miller reviews the history of this issue and the purview of the Committee. The goal has been to extend the life of the landfill and provide equitability to residents. Mr. Miller reviews the findings of the public opinion survey and of the committee.

Mayor opens the public hearing.

Mayor closes the public hearing.

Discussion. Guerber is pleased with the amount of public input this issue has garnered. Bastian is concerned with some of the rates proposed feeling they may be somewhat higher than necessary.

Tanya Mericle 11101 W. Executive Dr. Boise, Idaho representing BFI addresses Council member Bastian's question regarding fees. Discussion.

Bastian moves to continue this item to the first regular meeting in November and at that time BFI, having worked with the committee members, come back with several possibilities of rates that would indicate at what point they can make a profit and contribute to education and to the recycling effort. Seconded by Guerber. ALL AYE...MOTION CARRIES.

D. PP/FP-1-03 - Merrill Subdivision No. 4 (Rocky Mountain Business Park) – Dave Evans Construction: Dave Evans Construction, represented by Dave Evans, is requesting combined preliminary plat and final plat approval for Merrill Subdivision No. 4 (a re-subdivision of Lot 12, Block 3, Merrill Subdivision No. 2, formally known as Rocky Mountain Business Park). The 2.29-acre, 6-lot commercial subdivision is located at 501 S. Fitness Place. (WEV)
Mayor introduces the item.

Mayor swears in Mike Guyagos.

Mike Guyagos 2721 Cinnamon Place, Meridian. Mr. Guyagos makes himself available for questions.

Jeff Lowe, City Staff, reviews the staff report.

Mayor opens the public hearing.

Mayor closes the public hearing.

Mayor states she has no interest in this property and would generally recuse herself from conducting this meeting, but as there is no chance of a tie tonight so she will continue to conduct the meeting, and she will not participate in discussion.

Discussion.

Bastian moves to approve PP/FP-1-03 - Merrill Subdivision No. 4. Seconded by Nordstrom. ALL AYE...MOTION CARRIES.

E. CU-4-03 & PP-2-03 - Paddy Row Subdivision - Steve Roth: Steve Roth, represented by Jane Suggs, is requesting a conditional use permit and preliminary plat approval for Paddy Row Subdivision, a 30-lot (24-buildable, 5-common, 1-private street) residential subdivision. The 3.55-acre site is generally located on the north side of 2nd Street approximately 50-feet north of Plaza Drive at 150 South 2nd Street. (WEV)

Mayor introduces the item.

Mayor swears Ms. Suggs.

Jane Suggs 200 Louisa St. Boise, Idaho representing Steve Roth. Ms. Suggs reviews the application.

Jeff Lowe, City Staff, presents the staff report.

Vern Brewer, City Engineer, provides comment on the variance. Their office did review the application and recommended approval. Discussion regarding FEMA maps.

Larry Sale, with Ada County Highway District, provides comment regarding the future extension of Plaza Street.

Mayor opens the public hearing.

Suggs provides comment regarding the interaction with the Drainage District No. 2.

Mayor closes the public hearing.

Bastian moves to approve CU-4-03 & PP-2-03 Paddy Row Subdivision adding site specific condition# 33: Construct a 6" vertical curb and gutter abutting both sides of the private roadways within the development. Plans detailing the roadway improvements shall be submitted for review and approval by the City Engineer prior to City approval of the final plat. #34: Developer shall provide 3" caliper trees on both sides of Tranquil Street. #35 A break away wrought iron fence shall be installed along the south side of the drainage ditch within the subdivision. Seconded by Nordstrom. Discussion. Bastian amends his motion to include all site specific and standard conditions of approval, as well as the drawings and representations submitted by the applicant. Second concurs. ALL AYE...MOTION CARRIES.

F. V-2-03 - Variance From The Minimum Finished Floor Elevation Above The Base Flood Elevation - Steve Roth: Steve Roth, Represented By Jane Suggs, Is Requesting City Approval Of A Variance From The Requirement To Construct The Residential Finished Floor Two-Foot (2') Above The Base Flood Elevation, And From The Requirement To Construct Roadways And Manholes ½-Foot (0.5') Above The Base Flood Elevation. The Site Is Generally Located On The Northeast Corner Of 2nd Street And Plaza Drive, At 150 South 2nd Street. (WEV)
Mayor introduces the item.

Guerber moves to approve V-2-03 variance from the minimum finished floor elevation above the base flood elevation. Seconded by Nordstrom. ALL AYE...MOTION CARRIES.

G. **ZOA-1-03 – Zoning Ordinance Amendment – City of Eagle:** City of Eagle is proposing to amend Eagle City Code Title 8 “Zoning”, Chapter 2 “Zoning Districts and Maps”, Article A “DR Design Review Overlay District”, amending the code to modify the architecture and site design criteria for development located within the DR design review overlay district, and to adopt a supplemental guidebook to define specific period architectural styles, themes, and elements envisioned for the further enhancement of the City. *Staff is requesting this item be continued to the October 28, 2003 meeting.* (WEV)
Mayor introduces the item.

Guerber moves to continue ZOA-1-03 – Zoning Ordinance Amendment to the October 28, 2003. Seconded by Guerber. ALL AYE...MOTION CARRIES.

Mayor would like to re-arrange the agenda to hear the final plat for Countryside prior to the final public hearing.

Nordstrom moves to hear item 8A prior to item 6H. Seconded by Guerber. ALL AYE...MOTION CARRIES.

8A. FPUD-9-03 & FP-11-03 – Final Development Plan and Final Plat for Countryside Estates PUD Subdivision No. 3 – Countryside Estates LLC: Countryside Estates LLC, represented by Steve Arnold with Briggs Engineering, are requesting final development plan and final plat approval for Countryside Estates Subdivision No. 3, a 27-lot (22-buildable, 5 common) residential subdivision. This 11.02-acre phase of Countryside Estates PUD Subdivision is located near the northwest corner of Ballantyne Road and State Highway 44 (State Street). (WEV)

Mayor introduces the item.

Dave Yorgason, 6200 N. Meaker Pl. representing Countryside Estates. Mr. Yorgason reviews the application. Discussion regarding drainage concerns and mold issues throughout the valley. City Engineer notes that they are planning on bringing forward some recommendations for Council’s review.

Jeff Lowe, City Staff, makes himself available for questions.

Council discussion.

Nordstrom moves to approve FPUD-9-03 & FP-11-03 – Final Development Plan and Final Plat for Countryside Estates PUD Subdivision No. 3 per staff recommendations and findings all inclusive, with one exception that we strike the portion of site specific condition number 10 that refers to tiling the ditch on the western boundary of the development only, and that we leave the portion otherwise dictating tiling of the ditch. Seconded by Guerber. ALL AYE...MOTION CARRIES.

H. **Resolution No. 03-12:** Adoption of fees in association with general business licenses. The proposed annual fee is in the amount of \$25.00. (SKM)

Mayor introduces the item. Discussion.

Bastian moves to approve Resolution 03-12 a resolution of the city council of the city of Eagle Idaho, relating to license fees for general business license and providing an effective date. Seconded by Nordstrom. Discussion. TWO AYE; ONE NAY (Guerber) MOTION CARRIES..

Staff is directed to contact the State Tax Commission and Ada County in an effort to notify all businesses in town of their responsibility to obtain a business license.

7. **PROCLAMATIONS & RESOLUTIONS: NONE**

8. **FINAL PLATS:**

A. **FPUD-9-03 & FP-11-03 – Final Development Plan and Final Plat for Countryside Estates PUD Subdivision No. 3 – Countryside Estates LLC:** Countryside Estates LLC, represented by Steve Arnold with Briggs Engineering, are requesting final development plan and final plat approval for Countryside Estates Subdivision No. 3, a 27-lot (22-buildable, 5 common) residential subdivision. This 11.02-acre phase of Countryside Estates PUD Subdivision is located near the northwest corner of Ballantyne Road and State Highway 44 (State Street). (WEV)

See above.

B. **FPUD-7-03 & FP-9-03 – Final Development Plan and Final Plat for Brookwood Subdivision No. 9: Aries Development, LLC:** Aries Development, LLC represented by Mike Hormaechea, is requesting final development plan and final plat approval for Brookwood Subdivision Phase 9, a 38-lot (32-buildable, 6-common) residential subdivision. This 16.44-acre (approx.) phase of Brookwood PUD is located on the north side of Floating Feather Road and west of Feather Nest Estates Subdivision. The site is within the Eagle City Limits. Mayor introduces the item.

See above.

C. **FPUD-8-03 & FP-10-03 – Final Development Plan and Final Plat for Brookwood Subdivision No. 10 – Aries Development LLC:** Aries Development, LLC, represented by Mike Hormaechea, is requesting final development plan and final plat approval for Brookwood Subdivision Phase 10, a 22-lot (18-buildable, 4-common) residential subdivision. This 15.82-acre (approx.) phase of Brookwood PUD is located on the north side of Floating Feather Road and west of Feather Nest Estates Subdivision. The site is within the Eagle City Limits. Mayor introduces the item.

See above.

9. **UNFINISHED BUSINESS:**

A. **Review and approval of changes to the personnel policy manual.** *This item was continued from the August 12, 2003 meeting. Staff is requesting this item be continued to the November 11, 2003 meeting.* (SKM)

Mayor introduces the item.

Nordstrom moves to continue this time to the November 11, 2003 meeting. Seconded by Guerber. ALL AYE...MOTION CARRIES.

B. **DR-36-03 – Common Area Landscaping for Brookwood Subdivision Phases 9 and 10 – Aries Development LLC:** Aries Development LLC, represented by Phil Hull with The Land Group, is requesting design review approval of the common area landscaping within Brookwood Subdivision Phases 9 and 10. The two phases are located on the north side of Floating Feather Road adjacent to Phase 6 and adjacent to Feather Nest Estates and Lexington Hills Subdivisions. (WEV) *This item was continued from the September 9, 2003 meeting. It should be heard in conjunction with items 8B & 8C.*

C. **Discussion to determine if the Council wishes to hold a City Hall bond election in February 2004.** (NM)

Mayor introduces the item.

Guerber moves that we schedule a bond election on a new civic center for February 2004. Seconded by Nordstrom. Discussion. Perhaps we need to go out to bid for a marketing firm. Discussion. TWO AYE...ONE NAY (Bastian). MOTION CARRIES.

Buxton states that any marketing in favor of a City Hall would need to be paid for by private funds. Informational marketing is allowable, but nothing promotional would be allowed. Discussion.

Community meeting seeking public input on City Hall facility needs will be held on November 5, 2003.

10. **NEW BUSINESS:**

A. **Ordinance No. 459:** An ordinance of the City of Eagle, Idaho amending Title 3, Chapter 1, General Licensing Provisions and providing an effective date. (SKM)

Mayor introduces the item.

Nordstrom moves, pursuant to Idaho Code, Section 50-902, that the rule requiring Ordinances to be read on three different days with one reading to be in full be dispensed with, and that Ordinance # 459 be considered after being read once by title only. Nordstrom reads Ordinance # 459 by title only. Seconded by Bastian. TWO AYE. NAY (GUERBER) MOTION CARRIES.

Nordstrom moves that Ordinance #459 be adopted. Seconded by Bastian (roll call vote) Bastian: AYE; Guerber: NAY; Nordstrom: AYE: TWO AYE: ONE NAY: MOTION CARRIES.

B. **Ordinance No. 460:** An ordinance of the City of Eagle, Idaho, amending Title 1, Chapter 9, Municipal Elections and providing an effective date. (SKM)

Mayor introduces the item.

Guerber moves, pursuant to Idaho Code, Section 50-902, that the rule requiring Ordinances to be read on three different days with one reading to be in full be dispensed with, and that Ordinance # 460 be considered after being read once by title only. Guerber reads Ordinance #460 by title only. Seconded by Nordstrom. Discussion. ALL AYE: MOTION CARRIES.

Bastian moves to amend the ordinance and strike out section B, adopting the remainder of the ordinance as presented. Seconded by Guerber. Bastian: AYE; Guerber: AYE: Nordstrom: AYE: ALL AYE: MOTION CARRIES.

C. **Discussion of the FY 2008-2009 Transportation Improvement Program (TIP) and the Ada County Highway District Five Year Work Program.** (WEV)

Mayor introduces the item.

Vaughan reviews the recommendations forwarded by the Planning and Zoning Commission.

Council discussion regarding re-prioritizing the recommendations as forwarded by the Planning and Zoning Commission.

Bastian moves to continue this item to the October 28, 2003 meeting. Seconded by Nordstrom. Discussion. Bastian rescinds his motion.

Bastian moves to approve the plan as revised tonight. Seconded by Nordstrom. ALL AYE...MOTION CARRIES.

D. Claims Against the City

Mayor introduces the issue.

Guerber moves to pay the claims as presented. Seconded by Nordstrom. Bastian AYE, Guerber AYE, Nordstrom AYE... ALL AYE...MOTION CARRIES.

Larry Sale, the ACHD liaison, states that in regards to landscaping and medians they will try and work with the entities. We would not be willing to pay for it, but would be willing to discuss the issue.

11. REPORTS

1. **Mayor and Council's Report:** Bastian updates Council on the Design Review meeting and actions taken at that meeting. Reports on the Library and current activities there. They have someone who may be coming in to train staff in reference on a contract basis similar to the city arborist and code enforcer. It would behoove the City to have the Library Director reports quarterly. It will improve relations with the Council and the Library Board and Director. Ron Baker may be contacting the Clerk's Office to be added to a November Pre-Council agenda. Guerber states that the locations for the Parks signs were determined last week and should be installed within the next week. Eagle Fire Department had an open house with great response. They will be getting 2 new trucks from Green Bay Wisconsin. Air Quality Board met last week and they are doing an investigation about educating the public about air quality. Nordstrom attended the Senior Center Board meeting today. The Clerk is directed to see if the insurance for the van could be added to the City's policy. The Seniors would still have to pay for the fee, but if they could get a reduced rate that would be a great help to the Seniors. Nordstrom also feels that the van is not being utilized to its maximum, perhaps City staff could help organize them. Mayor relays an idea that she is working on with Sgt. Borgquist to help get the youth in the community teach Senior Citizens to work on computers. Gives an update on the Pat Summerall award. Bastian states perhaps a consultant should be hired to work on a comprehensive plan update for the area of impact. Mayor would like to direct the Zoning Administrator to come up with a list of potential consultants and bring them back to Council for review

2. **City Engineer Report:** Report on pathways the and Corp permits. The fence construction is underway and should be finished up within the next 2 weeks. Letters to the fire department should be sent for their help clearing the pathway Holladay will also be bringing some drainage requirements for consideration. The Mayor had asked Holladay to see about utilizing the City's water shares at the Hill Road location. It has been somewhat challenging getting together with the Dry Creek Ditch Company representatives to discuss the issue. A meeting is being sought with Dry Creek, HECO, and the Mayor.

3. **City Clerk/Treasurer Report:** Deputy Clerk gives a report on a request from the Senior Center regarding making modifications to the parking space for the new van. **Nordstrom moves to allow the Sr. Center to redesign the overhead awning and add a pad, but if there is a request for monies it would need to come back before Council. Seconded by Guerber. ALL AYE...MOTION CARRIES.** Clerk is directed to move forward obtaining proposals for the re-roofing of City Hall this Fall. Invitation to bid for park maintenance. Place the Lloyd Campbell agreement on the October 28, 2003 meeting.

4. **Zoning Administrator's Report:**

Vaughan asks Council's input regarding a banner sign to be placed over Eagle Road by a local church. He wanted to confirm that Council also felt it was inappropriate for it to be placed across the roadway. Vaughan also comments on the type of fencing for Cottonwood

Subdivision. The museum parking lot issue is discussed, and the bids which were received. Vaughan is seeking Council approval to be directed to obtain 3 bids and if Council would approve a not to exceed amount then we can move forward. **Guerber moves to have staff go through the informal bid process and authorize payment up to the \$5000. Seconded by Bastian. ALL AYE...MOTION CARRIES.**

5. City Attorney Report: Chase hearing has been scheduled. Letter has been sent off to Wagner Farms. A letter has been sent to ACHD that we will no longer collect fees on their behalf. Would like a quick executive session for the ITD case.

Nordstrom moves to go into Executive Session for litigation and personnel. Seconded by Guerber. BASTAIN, AYE; GUERBER, AYE, NORDSTROM, AYE: MOTION CARRIES.

12. **ADJOURNMENT:**

Hearing no further business, the Council meeting adjourned at 12:30 am.

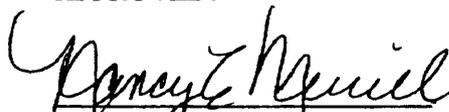
Bastian moves to adjourn at 12:30 a.m.. Seconded by Guerber. ALL AYE: MOTION CARRIES...

Respectfully submitted:


SHARON K. MOORE
CITY CLERK/TREASURER



APPROVED:


NANCY C. MERRILL,
MAYOR

Case No. IPC-E-04-04
Exhibit 127

July 15, 2003
Eagle Planning and Zoning Minutes
IPC Height Exception Application for 138 kV lines Public Hearing

ORIGINAL

EAGLE PLANNING AND ZONING COMMISSION
Special Meeting
July 15, 2003
6:30 PM

The Planning and Zoning Commission met in a special session on July 15, 2003
Chairman Deckers presiding.

1. **CALL TO ORDER: Meeting called to order at 6:35 p.m.**
2. **ROLL CALL: The following members were present BANDY, BLOOM, DECKERS, CROOK, GLAVACH. A quorum is present.**
3. **CONSENT AGENDA: None**
4. **OLD BUSINESS: None**
5. **PUBLIC HEARINGS:**
 - A. **CU-9-02 – Sub-Transmission Line-Idaho Power:** Idaho Power, represented by Layne Dodson, is requesting conditional use approval to construct a 138kV sub-transmission line, and a height exception request to construct the poles ranging in height from approximately 70 to 90-feet, (35 to 55-feet higher then the required maximum of 35-feet).

Deckers introduces the item

Jeff Lowe, City Staff presents the staff report. Mr. Lowe gives a brief history of this application, the hiring of the consultant firm to study the route and the proposed route

Decker asks the Commission to disclose any exparte contact. Bandy states that he has spoken with his neighbors about this proposal.

Layne Dodson, representing Idaho Power, 10790 Franklin, Boise. Mr. Dodson presents the plan for the line and the need for the line in the City.

Mr. Dodson clarifies for the Commission that the proposed line is not along Floating Feather but extends east from the substation down to Edgewood crossing State Highway and along the bypass into Star.

Ted Aguilar with The Black and Veatch Company located in Kansas City, MO, is an electrical engineer who has been with the company for over 30 years.

Mr. Aggelar was hired by the City of Eagle to prepare the study for the proposed power line. Mr. Aggelar presents this study. Mr. Aggelar states that the proposed route is the best route for the overhead line.

Discussion between Mr. Aggelar and the Commissioners.

EXHIBIT 127
CASE NO. IPC-E-04-04

Deckers opens the public hearing

Mark Billings, 3083 West Wind Drive, Eagle, Mr. Billings states this is big, ugly, monstrous, industrial, this is 60's harsh, crash and environmentally obtrusive,

Jeff Kline, 569 N. Cove Colony, Eagle. Mr. Kline disagrees with a couple issues. One being this does affect property values. Does not believe the study showed any additional information.

Susan Thomas, 249 Riverview, Eagle. Ms. Thomas lives along the bypass and is opposed to an overhead route. States that this imposes upon those who contend with the bypass and might have to contend with the visual look of the power poles. This area was suppose to be kept as wildlife habitat.

Lance Pamperin 1547 W Kinai, Eagle. Mr. Pamperin recently moved to Eagle. What attracted him was the cuteness of Eagle and does not want to see this change by the installation of 80 foot power poles.

Lauren Friedman, 368 E. Stonewater Court. Ms. Friedman was on the advisory committee that choose this route. Ms. Friedman states that we need power and this is the best and cheapest route at this time.

Dave Hanaford, 3062 N. Linder Road, Eagle. Mr. Hanaford feels that there is enough open space to be able to install this without impacting any of the residences. States that substations should never be placed in anyone's back yard.

Marie Hanaford, 2888 N. Linder Road, Eagle. Ms. Hanaford came to the meeting to discuss the new substation along Linder Road.

Randall Johnson, 785 N. Cove Colony, Eagle. Has one question on the 1.6 mile amount. Would like the per mile cost.

Barbara Smith, 1377 W. Chance Crt., Eagle, representing her daughter Shelly Krejce who could not attend. Would like to know more about the health risks. Ms. Smith states that the area along the bypass needs to be preserved and not destroyed.

Sue Donnellan, 274 N. Wind Weaver, Eagle. Ms. Donnellan recently moved to this area because of the beauty and is concerned about the safety and the hazards of the power poles. Feels they are unsightly and does not want to see them in Eagle.

City Attorney, John McFadden discusses the legalities of the health hazards and what can be taken into account.

Kelly Daudt, 1350 W. Chance Court, Eagle. Ms. Daudt reads a letter written by her neighbor Lisa Norton (attached to minutes). Ms. Norton bought in Pine Ridge Subdivision for the small town feel and the views. Does not want to have the poles running through her neighborhood. She has safety concerns and property value concerns.

Bob Luffel, 1141 N. Cove Colony Way, recently moved to Eagle for the rural feel. Would like to hear other alternatives and options available.

Christy Williams, 347 Harlan Street, Eagle. Ms. Williams is concerned about the

wildlife along the river and the damage the poles will have on them. Is also concerned about property values.

Nicole Cromwell, 2961 W Dorchester, Eagle. Ms. Cromwell is concerned about the health issues along the pole route.

Steven Ricks, 1560 N Crestmont Drive, Meridian, Mr. Ricks owns property East of Albertsons. Objects to overhead lines along the bypass because of power lines in the gateway. He has a CBD zoning on his property and feels this will be negatively effected by the power lines. Also, does not think contiguous property owners should be the only ones to bear the costs of this project.

R. E. Wood, 214 E. Stonewater Court, Eagle. Does not want to pay for the costs of putting the lines underground and is all for putting the poles along the cheapest route.

Francie Agrusa, 2631 W Conifer, Eagle. Would like the Planning & Zoning Commission to speak with other cities who have overcome these obstacles.

Mary ? 353 N Cove Colony Way, Eagle. Most areas she has lived in have had underground power lines. Not sure what the solution is but feels there is additional studies that need to be done.

John Barrutia, 2508 E Oakborough Court, Eagle. Works for Idaho Power and does not want to pay for the costs of underground poles. The cost would be significant.

Wayne Davis, 2874 W Colony Court Eagle. Recently moved to Eagle. We are all investors in Eagle and the decisions made by the City are important to the property owners. Poles will decrease the desire to live here. Mr. Davis believes the cost of the poles will pay for itself overtime

Dennis Baker, 250 S. Beechwood Boise. Mr. Baker is a developer in Eagle which has lead him to the conclusion that Eagle is the toughest City to do business in, but one of the best cities to work in. States let the PUC make this dicision.

Bill Clark, 479 Main St. Boise. Mr. Clark submits a letter into the record (attached to minutes). Mr. Clark has approximately 1 mile of land that will be affected by this project within Eagle River. Mr. Clark feels that the study should have been more detailed. The impacts on his property values will decrease with overhead lines. Mr. Clark states that this line needs to go underground.

Chris Wier, 1531 N. Tadpole Court, Eagle. Mr. Wier would like to know if there has been a possibility of joint trenching to minimize the cost. Would like to know if the Star substation can come off the Cogen plant proposed for Middleton? Have all the possibilities been discussed

Hossein Khorsand, 4132 Ballantyne Lane, Eagle. Mr. Khorsand would like more details that are not so technical. Also, would like to know how much growth is anticipated and will the houses that are not built yet share in the same benefits as those that exist now. Are there figures to support how Idaho Power justifies the need for the line.

Christy Basil, 1547 W Knight Court. Recently moved from Denver to Eagle because it

was different. As a realtor she states that there is a definite decrease in the value of a house.

Jason Gibson, 2217 W Burns St. Eagle. Mr. Gibson is not happy about lines running through his view. Would like the underground lines given more consideration.

Andrew Peter, 1297 W Chauncer, Mr. Peter asks, what do we want the community to look like two years from now? We have the chance to protect this area and more research needs to go into the costs of placing the poles underground.

Deckers call a break at 8:55 p.m.

Layne Dodson provides rebuttal.

Mr. Dodson addresses most of the questions asked tonight.

Bloom asks Dodson to provide information from the PUC. Dodson suggests that staff contact the PUC to set up a meeting for additional information on undergrounding and rates.

Ted Aggeler provides rebuttal.

Discussion between Mr. Aggeler and the Commissioners.

Deckers asks Staff how an underground line would be financed.

The City Attorney explains the process for an LID.

Deckers closes the public hearing

Deckers reopens the public hearing for written testimony only.

City Staff, Jeff Lowe states that written testimony must be submitted 5 days prior to the day of the meeting.

Bandy states that we should not have to bear the cost for power that is going to other communities. Crook states for the record that he does not agree with Deckers.

Deckers would like Bill Clark to submit a formal appraisal on the Eagle River project.

Bloom moves to continue CU-9-02 – Sub-Transmission Line–Idaho Power to August 11, 2003 at the Senior Center. Seconded by Bandy. Discussion. ALL AYE...MOTION CARRIES.

6. **NEW BUSINESS:** None
7. **REPORTS:** None
8. **ADJOURNMENT:** Crook moved to adjourn at 10:30p.m. Seconded by Bloom. **ALL AYE...MOTION CARRIES...**

RESPECTFULLY SUBMITTED:





SHARON K. MOORE
CITY CLERK/TREASURER

APPROVED:


STEVE DECKERS
CHAIRMAN

**A TRANSCRIBABLE RECORD OF THIS MEETING IS AVAILABLE AT
CITY HALL.**