

1 **Providence Board of Adjustment Meeting**

2 Providence City Office Building

3 Providence City Council Chambers

4 15 South Main, Providence, UT

5 April 19, 2006

6 Acting Chair: Elden Dattage

7 Commission: Susan Lemon, Nelson Palmer, Jane Wiser

8 City Administrator: Skarlet Bankhead

9 Secretary: Rebecca Billings

10 Excused: None

11  
12 **CONFERENCE CALL**

- 13 • At 5:30 p.m., the Board of Adjustment held a conference call in the Mayor's office with  
14 attorney for the Utah Local Governments Trust, Craig Bott.

15 **MEETING**

- 16 • E Dattage was appointed to act as chairman due to the absence and illness of Clint  
17 Thompson, Chair.
- 18 • Pledge of Allegiance.
- 19 • Clint Thompson's letter or resignation was presented to the Board of Adjustment, Mayor,  
20 and secretary. A copy of the letter is contained with these minutes.
- 21
- 22 • **Disclosure of any conflicts of interest on any of the agenda items:** Susan Lemon said  
23 that two people came to her home with a petition. She was in a hurry, preparing to leave  
24 home. The petition was regarding a subdivision west of Grandview Drive, and she didn't  
25 read it, which she said was to her negligence. The petitioners explained briefly the  
26 concern. The size of the subdivision that was proposed or approved (she didn't know  
27 which they said) would put traffic on Canyon Road, and they were concerned about the  
28 safety if the road is not widened. The petitioners also said the water situations weren't  
29 adequate to take care of the subdivision as it was being planned. She said, "So, the  
30 infrastructure is not in place? That being the case, I will sign the petition." She said her  
31 name is on one petition, but she doesn't know which one. She feels that, having signed  
32 the petition, she can still act in a fair and impartial manner.
- 33
- 34 • **Disclosure of any ex parte communication on any of the agenda items:** None.
- 35
- 36 • Mark Hancey wondered if S Lemon ever found the actual petition and read it.
- 37 • S Lemon she had not before or since.
- 38 • M Hancey wondered if she had formed the opinion as to whether the infrastructure was  
39 adequate. He also wondered if that was the sole reason she signed the petition.
- 40 • S Lemon said she had not formed an opinion, and the inadequate infrastructure (based on  
41 what she was told) was the reason she signed.
- 42

43 **ITEM 1 Larry Tanaka is appealing the Providence City Council decision of**  
44 **February 14, 2006 approving a preliminary plat for The Cove, a 26-lot residential**  
45 **subdivision, located generally at 690 Grandview Drive.**

- 46
- 47 • Larry Tanaka presented four new points:
- 48

1. The City did not give written notification to property owners concerning the subdivision. He said he hadn't, and neither (to his knowledge) had the property owner received notification of any/all meetings.
  2. Several citizens have requested water—no response has been published.
  3. Proper access roads and safety. Proper and safe access roads have not been proposed. School children safety and emergency access are concerns.
  4. Canyon Road access. The title deed does not allow subdivision access roads as passed on the Cove subdivision. The deed doesn't allow utilities to cross Tanaka's property. Mr. Ream was not notified of any public meetings.
- B Billings passed out a copy of the preliminary plat to the Board of Adjustment.
  - Bruce Jorgenson, acting as attorney for Providence City, said the appeal that was filed was what the Board of Adjustment must go by—not new information submitted by Mr. Tanaka tonight. He said the appeal that was filed was dated March 6—more than 10 working days after the decision was made, which made the appeal late. The Code that Providence has adopted doesn't have a specific time period specified for appeals; therefore, the default period is ten days from the date of the decision.
  - L Tanaka said he asked the City the day after the subdivision was approved how much time he had, and they said they thought he had 30 days.
  - Rand Henderson said Skarlet admitted that she did tell him 30 days.
  - L Tanaka said he went on the 30-day assumption (recommendation from the City). He said former City Council members verified that he had 30 days.
  - S Lemon said, prior to this meeting, the Board of Adjustment had the opportunity to ask some legal questions to another attorney. This appeal involves a new law. In the training session, Craig Bott said if a City official gives someone information that they have 30 days when they hand the application in, the due process would give the person the 30 days (if a City official informed them). Susan is of the opinion that that Larry Tanaka had the 30 days.
  - N Palmer said it still leaves open the other issues. The actual appeal doesn't list the points Tanaka presented here.
  - B Jorgenson said he didn't realize she had said 30 days. The application was filed on March 6 with four points. When an appeal is filed, a person should live and die by what they file—can't keep adding. It's beyond the 30 days and this is appealing issues that are beyond the 30 days.
  - L Tanaka said he asked the City the requirements when he submitted the appeal, and he voluntarily submitted the items listed on the agenda, but no one requested to have a written appeal.
  - B Billings believed he should have been told to submit his appeal in writing so the City knows what the appeal is.
  - E Dattage said that the ruling of the Board is that these 4 items presented tonight (not the original items), are not Tanaka's original appeal.
  - L Tanaka said that one item not addressed in the written appeal he read tonight was going to be addressed in item 2 for this meeting. This appeal was submitted after he submitted his original appeal.
  - E Dattage wanted proof of the notices that were sent out for the public hearings.
  - Mayor Simmons said under the law the City is required to have one public hearing. The City will hold a hearing in due process of time.
  - E Dattage said he knows it's required to have one public hearing before the final plat. He wondered why the City didn't choose to hold that hearing before the final plat.

- 1 • Mayor Simmons said the City will do that in the future. The City was following a  
2 process that had been in place. In the new process, rezones will be held before  
3 discussions of the plat. Rezones will be held at the preliminary plat—as opposed to the  
4 final plat.
- 5 • E Dattage wondered if that public hearing would address water and sewer.
- 6 • Mayor Simmons said the public hearing will have every issue citizens are concerned  
7 about to that point. This will be in accordance with state law Senate Bill 60.
- 8 • N Palmer said if there will be a public hearing on this, the Board can just reject this, and  
9 the things listed on his appeal will have to be covered by a public hearing anyway.
- 10 • L Tanaka said it was the first he had heard that a public hearing was held.
- 11 • Mayor Simmons said there is no public hearing scheduled. Before a final plat can be  
12 legally approved, there has to be a public hearing.
- 13 • S Lemon said she was unclear about the Board’s responsibility. Since there has been no  
14 public hearing scheduled, no definite ruling, since nothing has been finalized—does the  
15 Board rule whether the appeal is legitimate or rule on his concerns?
- 16 • B Jorgenson said that, given the fact that the public hearing is going to be held, he feels it  
17 is an early action from this Board. There is an opportunity for Larry Tanaka to appeal  
18 after the City Council makes the final action.
- 19 • S Lemon said it was her understanding that the Board doesn’t hear appeals until a final  
20 decision has been rendered.
- 21 • Rand Henderson reminded the Board that Mr. Jorgenson is not their attorney. He is  
22 representing the City.
- 23 • B Billings explained that a preliminary plat is an action taken by the City Council to  
24 approve a plat. It is not a final document. It is a resolution—so the City approves that  
25 plat. It doesn’t mean that it can go forward. They have to wait for the final plat for  
26 building.
- 27 • S Lemon said that, at this stage, water and roads and whether or not the City can  
28 accommodate a subdivision this size, is determined. Then the public is given an  
29 opportunity for a public hearing.
- 30 • B Billings explained that the City has not yet determined when the public hearing would  
31 be held.
- 32 • Mayor Simmons said the process the City will have in the future is that all of these  
33 discussions are more useful at the preliminary plat stage than the final plat stage, given  
34 that what happened here is the preliminary plat came before the public hearing. The City  
35 will now be holding the public hearing before the final plat. He said the City will not  
36 hold the public hearing and vote immediately; the City will hold the hearing and then  
37 wait to make the decision so City Council can think it over.
- 38 • E Dattage wondered what authority/grounds the developer had for moving forward from  
39 the preliminary plat.
- 40 • Mayor Simmons explained that, once a preliminary plat is approved, a developer begins  
41 working on a final plat—begins working on sewer lines, etc. Mr. Tanaka is correct about  
42 not being able to run water and sewer down that right of way.
- 43 • E Dattage said a preliminary plat allows a subdivider to go ahead.
- 44 • Mayor Simmons said he can’t go in and move dirt until the construction drawings are  
45 signed by the City engineer.
- 46 • L Tanaka said his main point still stands. The City Council passed the preliminary plat,  
47 and it was in violation of property rights. They proposed an access road. They are  
48 planning on putting utilities through that violate property rights.

- 1 • E Dattage said that nothing is going to be done until the public hearing is held at the final  
2 plat stage.
- 3 • L Tanaka said the City should want to know all the issues before approving the  
4 preliminary plat.
- 5 • S Lemon said the preliminary plat shows the intent of the developer. Nothing is finalized  
6 until the public hearing is held on the final plat. The preliminary part can be approved  
7 and move forward, but until the water issues and road issues are addressed, nothing can  
8 be done. With a preliminary plat, a developer's intent is approved.
- 9 • Tanaka wondered if the City Council had to approve a final plat.
- 10 • S Lemon said that they do. Once the final approval has been given, a person can appeal  
11 to the Board of Adjustment.
- 12 • L Tanaka said the City does not communicate.
- 13 • E Dattage thinks that's an argument understood, but not one the Board wants to get in to.
- 14 • S Lemon said that until there is a hearing, the City doesn't have to—but she understands  
15 Tanaka's concern.
- 16 • B Jorgenson said that one of the difficulties with the new act that went in to affect with  
17 LUDMA is things are not very clear. You didn't used to have to hold a public hearing  
18 before a plat was approved. Now it says to hold the public hearing, but it doesn't say  
19 when—just that you must hold one. Some cities have held them before the concept plan,  
20 others have waited until the preliminary plat or final plat. Some Cities have come to the  
21 conclusion that it ought to be held before the preliminary plat because then you get the  
22 input before a lot of the work is done. But the practice up until the first of the year was  
23 that you went through the platting process, and then rezoned. The whole state is feeling  
24 its way through the new land use act. All the cities are holding public hearings at  
25 different times. There hasn't been one held, and there needs to be one held. There will  
26 be a lot of the issues here discussed at the public hearing.
- 27 • Michael Bennel, 475 Spring Creek Road, had two points. First: Sometimes you have to  
28 do better than what the law provides. If the right thing is to notify property owners and  
29 have a public hearing—that's the right thing. State law gives only minimums—  
30 sometimes you need to exceed those to serve constituency. Second: By giving approval  
31 at the preliminary plat stage, the City is giving the developer a lot of go ahead to spend a  
32 lot of money. The county once gave a developer the go-ahead, and then, at the last  
33 minute, said no. The developer could lose at the last minute. The developer could have  
34 been the one to try to get the public hearing earlier.
- 35 • S Lemon said it is important to hear these comments now. She knows the public  
36 comment is necessary, but the Board's concern is their responsibility at this point. Mr.  
37 Tanaka's appeal is legitimate. The law says that the 30 days he was told is his due  
38 process. The Board is all in agreement that it is legitimate. His appeal needs to be  
39 accepted.
- 40 • Cheryl Eames said she wonders why the people are leaving the word minimum out of the  
41 discussion. The law says a minimum of 10 days—the fewest days are 10.
- 42 • B Jorgenson said if it doesn't say more, the City can move to give more time; but if  
43 there's no time provided, a person only has ten days. He read from Craig Call's book  
44 *Land Use Regulation* that states "you only have ten days." The City Council determines  
45 if the time to appeal should perhaps be raised.
- 46 • M Hancey said the law precludes a City from setting a deadline of less than 10 days—has  
47 to be 10 at a minimum. At the absence of a city ordinance, it's at least 10 days. As a  
48 practical matter, a City can't have a floating deadline. It would cause too much

1 confusion to citizens. It sets the City up for a huge fiasco. A line should be drawn in the  
2 sand. It's important for the Board of Adjustment. The Board's authority is limited to that  
3 granted to them by the statute. Statute sets the requirements; therefore, absent that  
4 timeframe, the Board loses jurisdiction to hear the appeal. City officers are not given the  
5 discretion to modify. It must be done by ordinance or statute. Focus on that  
6 jurisdictional. Skarlet doesn't have the authority to change the law. Whether you do or  
7 don't know the law, you have to abide by the law, whether you knew it or not. Mr.  
8 Tanaka had an obligation to know the law. On the one hand, he wants more  
9 communication, if there's any communication that can lead left or right. The City has to  
10 be careful communicating the law. There is going to be a public hearing on the  
11 subdivision for the final plat. That is the time for citizens to present issues to the  
12 Council. The Board ought to re-look at the issue of the deadline. Whatever happens here  
13 will be redone at the final plat stage.

- 14 • R Henderson passed out a copy of the Utah law. He feels it is very bad language: "At a  
15 minimum 10 days." This law goes in to affect May 1. You don't have much in terms of  
16 hearings. Henderson read Providence City Code 2-2-5. This ordinance says there is a  
17 two week application submittal deadline prior to scheduled hearings by both the Planning  
18 Commission and Board of Adjustment. Henderson feels this applies. Either that or the  
19 30-day thing applies. If you look deeper in to Tanaka's concern: consider his appeal in  
20 connection with the zoning ordinance—he didn't receive notice for those ordinance  
21 changes. Consider that the law is in flux right now. There are a lot of issues concerning  
22 vesting. Mr. Hancey represents Mr. Hogan. It may benefit the City to go back and redo  
23 everything that's been done.
- 24 • Mae Coover said she served on Planning and Zoning for 6 ½ years—enough at that time  
25 to make her realize that one public hearing is not enough. There needs to be a public  
26 hearing before the preliminary plat. In this case is a very vivid example of why of that.  
27 The subdivision being proposed to be built is in a bowl. There's only one entrance in to  
28 the subdivision. It can't be built without a great deal of trauma on the neighbors. From  
29 winter driving conditions to the difficulty of entering Canyon Road. During her 6 ½  
30 years, all of the Commission were troubled by the fact that the whole of Foxridge had  
31 only one entrance and exit. Recently there was an accident at an entrance to a  
32 subdivision that had only one entrance. One of the occupants was in trouble medically—  
33 there was no way to get past that accident to get her medical treatment. I think there  
34 needs to be two hearings—one before the plat. There are strong drawbacks to building in  
35 the area at all. Those things ought to be seen and treated before the builder spends  
36 money. Keep in mind: laws of the state are very strongly slanted to the benefit of the  
37 developer—and it's quite easy to see why. They have the organization and money to  
38 influence our legislators. It behooves us as a community to keep our eye on the people  
39 who are being served here—are they the citizens or the developers? She proposes two  
40 hearings—whether the state law says so or not. One before original plat, and one before  
41 the final.
- 42 • Laura Fisher supports Mae Coover. She's at the meeting because there was no reason for  
43 a preliminary plat approval to have been given. The road difficulties are considerable.  
44 No water was identified. It is important to decide whether the preliminary plat should be  
45 considered without these issues.
- 46 • E Dattage wondered if Fisher's statements reflected that Councilmen acted knowingly  
47 that there were water and road issues.
- 48 • L Fisher felt that it was a "cart before the horse" thing. She has trouble believing  
49 everything is fine.

- 1 • E Dattage said the Council should have had enough judgment.
- 2 • L Fisher said there were conversations from June until February concerning this matter.
- 3 • N Palmer read Mr. Tanaka's argument and the City's rebuttal. The plat obviously goes
- 4 across Tanaka's land, but the comment from the City is that they had obtained the Right
- 5 of Way complete, and it doesn't sound like they have. Since they haven't, this plat
- 6 couldn't have been approved—because of the misunderstanding. The developer didn't
- 7 get the correct information. He didn't get the correct approvals to present this. The
- 8 developer was in error. N Palmer is not sure the Board can do much more than accept
- 9 that this is true. Though they based it on good faith, they didn't have the complete
- 10 information to approve this plat, so not having correct information to approve it, he
- 11 doesn't know that the Board can do any more than approve the appeal.
- 12 • Dan Hogan, developer of the Cove subdivision, said that is totally false. He has worked
- 13 on this for a year and a half. Providence City has an engineer, a City public works
- 14 director, etc. looking at this. The easements are a right of way across Tanaka's property.
- 15 They've been on the deeds since 1962 when it was granted by Kay Baker to Bill
- 16 Fletcher—it was on Mr. Tanaka's deed. That right of way has always been there. Jody
- 17 Burnett took all the deeds—we surveyed those and had Staff look at them. There were
- 18 flags flying. A week after they were put up all of the flags were gone. The right of way
- 19 is legitimate for Bill Fletcher and Kay Baker. The developer met with Mr. Tanaka with
- 20 the City. They spent 6 months negotiating. The part the development crosses is less than
- 21 half the size of the table in the Council room. The way any attorney would look at it, we
- 22 could cross Tanaka's driveway. They have a right of way to pass. There are no water
- 23 and sewer lines going across.
- 24 • N Palmer said even though the right of way could be improved, it doesn't tell the Board if
- 25 that could allow multiple owners.
- 26 • D Hogan said anyone that owns property may pass.
- 27 • R Henderson said, when you increase the use of an easement, you're taking more
- 28 property.
- 29 • M Hancey said that's if it's prescriptive—not actual easement. An easement granted in a
- 30 deed (like a title) is an express easement in a deed. This is a battle between the property
- 31 owners. If the City is hesitant about whether they can run pipes through, that's
- 32 something we work out in the final plat. No conveyances or rights are granted by the
- 33 preliminary plat approval.
- 34 • D Hogan said the preliminary plat for the Cove in with a cul-de-sac that didn't come
- 35 down there. This property owns land almost to the road—the subdivision goes across a
- 36 little parcel in the borrow pit of the road. One problem with people doing their own
- 37 subdividing is that some owners have deeds to the center line of the road. When
- 38 developers do a plat, they have to dedicate the road and deed it to the City. Some of
- 39 these people still have their deeds. Ralph Call has a building permit from the City that
- 40 never deeded the road. As subdivisions overlay the meets and bounds descriptions, they
- 41 have conflicts. The Cove plan was a cul-de-sac. Hogan worked with the City and
- 42 Tanaka, Skarlet and Randy Mr. Eames. They spent 6 months discussing this—4 months
- 43 for a response. If the City wants the development to go back to a cul-de-sac, Hogan has
- 44 no problem with that. Emergency vehicles want two accesses. Tanaka changed his
- 45 mind. The development won't run pipe or sewer across Tanaka's right of way, but
- 46 they'll travel across if that's what City wants.
- 47 • R Henderson said a deed easement is different than a prescriptive easement, but deeds
- 48 only run to so much land. This is Mr. Tanaka's only shot for this appeal—the court will
- 49 look at the Board's decision based on the record. Henderson urged the Board to look at

- 1 any evidence they think is important. There's a famous case—the Culvertson Case—that  
 2 deals with problems with a deed.
- 3 • Michael Bennel said the density should be 1 or 5-acre lots—not ¼.
  - 4 • Bob Bissland wondered why Mr. Eck and Skarlet were up with the developer instead of  
 5 the developer talking to the private property owner.
  - 6 • L Fisher said that 20 feet is not enough for a legal road in this town right now. She  
 7 restated that the preliminary plat should not have been approved.
  - 8 • D Hogan said 20 feet is an emergency access road. It is legal and was reviewed by the  
 9 fire department for emergency vehicles. A gate is supposed to be there. 20 feet can get a  
 10 snowplow and car driving next to each other.
  - 11 • E Dattage wondered why the City makes some roads so small.
  - 12 • Gary Stauffer said he challenges anyone to find a 24-foot, 50-foot, 66-, or 88- foot road  
 13 in the ordinances. He doesn't think there's anything in the ordinances that allow that.
  - 14 • D Hogan said they are in the ordinances—they're in the specifications. The right of way  
 15 is the road + sidewalk + parkstrip. When he talks about road, he means the asphalt you  
 16 drive down. The right of way is greater than 20 feet—it is in the ordinance—to  
 17 accommodate sidewalks and utilities.
  - 18 • E Dattage wondered if changing when the public hearing is held has to be an ordinance or  
 19 a policy change.
  - 20 • Mayor Simmons said if you look through the list from Craig Call of the LUDMA  
 21 changes, there are 78 issues that have to be addressed—at least 20 require ordinance  
 22 changes. This one doesn't require an ordinance change, but it wouldn't be a bad idea to  
 23 make an ordinance change. All of these issues are the issues being addressed as we move  
 24 from preliminary plat to final plat. The preliminary plat suggests the emergency road  
 25 coming next to Larry's property. Unless those issues get solved in a different way, in all  
 26 likelihood, the final plat will have a cul-de-sac.
  - 27 • E Dattage said this is much like a prescribed burn—how can you tell whether it's a  
 28 prescribed burn or a wildfire?
  - 29 • S Lemon encouraged members of Planning and Zoning to take note of the concerns here  
 30 tonight.
  - 31 • N Palmer said the Board doesn't have to say whether development is good or bad.
  - 32 • S Lemon said that neither does the Board have to do anything with the approval of the  
 33 preliminary plat. She wondered if the appeal would go forward.
  - 34 • N Palmer said the Board has to agree or disagree with the appeal.
  - 35 • R Henderson said the appeal is to vacate the approval of the preliminary plat.
  - 36 • N Palmer quoted Providence City's rebuttal from 1A of the *Conclusions of Law* in the  
 37 staff report:  
 38 “Providence City rebuttal: Mr. Hogan provided the City with copies of deeds showing a right-  
 39 of-way into the property. Attorney Jody Burnett reviewed the deeds and gave the City a  
 40 verbal opinion that the existing right-of-way could be improved. Providence City acted in  
 41 good faith based on the information contained in the deeds presented to the City. If there is a  
 42 disagreement between the property owner's as to the intent of the deeds, that is something to  
 43 be decided between two private parties (the property owners); the City is not a party to that  
 44 dispute.”
  - 45 • N Palmer said the Board doesn't know if that opinion holds or doesn't hold.
  - 46 • B Jorgenson said the Board is not deciding if the right of way is legitimate. The City  
 47 must decide if they want the emergency access. If they do, they better hold the  
 48 subdivision up. If they're going to approve the subdivision with the emergency access,

1 knowing there would be a lawsuit, then there's a subdivision built on a premise of an  
2 emergency access—and there isn't one. Jorgenson felt it is important that the City know  
3 that before the City approves the final plat. He imagines that the City Council will tell  
4 the developer to figure it out or go back to the cul-de-sac idea. They have two  
5 alternatives: wait and let parties work it out, and then approve the subdivision with the  
6 emergency access—or approve the subdivision with a cul-de-sac.

- 7 • M Hancey said a preliminary plat either meets or doesn't meet city ordinances. It isn't
- 8 the Board, Council or Commission's decision to say no. If it meets the ordinances, it's
- 9 approved; if it doesn't, it doesn't. That's not part of the issue. The four issues of Mr.
- 10 Tanaka's appeal (road, water, etc.) are grounds for the Board to deny the appeal.
- 11 • N Palmer said that the one comment was that the City can't agree or disagree with the
- 12 right of way. The discussion presented by Mr. Tanaka's attorney was that the two
- 13 property owners could use the right-of-way.
- 14 • R Henderson represents Bob Bissland and Laura Fisher.
- 15 • R Henderson said if a subdivision is illegal, even the preliminary plat is illegal.
- 16 • M Hancey said it is Tanaka's burden to supply the proof. There is no evidence to suggest
- 17 his appeal should be granted.
- 18 • B Jorgenson said the attorneys are asking the Board to make a legislative decision.
- 19 Jorgenson said Tanaka can present evidence. This Board is not able to grant the decision.
- 20 They're not a district court. It's like asking them to grant a divorce.
- 21 • R Henderson said he thinks all of these proceedings are illegal.
- 22 • B Jorgenson said this is a matter of state statute.
- 23 • E Dattage wondered what proof there was of the right-of-way.
- 24 • Mayor Simmons said Jody Burnett, who works for the ULCT had the actual deeds and
- 25 documents. He said (even this week) that 1. the deeds allow the access. 2. The deeds
- 26 don't allow water and sewer lines.
- 27 • R Henderson wondered if the Mayor asked him if they allowed ingress and egress.
- 28 • Mayor Simmons said he had the plat. He did not say how much use was allowed by the
- 29 deeds. He said the road is allowed, but sewer and water is not allowed.
- 30 • S Lemon wanted to clarify that it was the City Council who asked for the emergency
- 31 access because the original plat presented had only one access (which was within the
- 32 law—without discrepancy). It is the second road causing the problem.
- 33 • C Eames clarified that it was the Staff that requested the second access.
- 34 • Mayor Simmons said Staff wanted the emergency access.
- 35 • S Lemon said it's not the subdivision that's the problem—it's the road. That's something
- 36 the Board doesn't have authority to handle. That is between the developer and Tanaka.
- 37 The Board cannot remove the preliminary plat approval—it's the road that's the question.
- 38 • M Bennel wondered how the City could approve a preliminary plat based on some other
- 39 zoning that wasn't approved. He doesn't feel the City has the right to approve something
- 40 outside the zoning.
- 41 • S Lemon asked why the City would rezone if there wasn't a request for it.
- 42 • Mayor Simmons said, in terms of good policy, that's correct—in terms of the law, it's
- 43 incorrect.
- 44 • M Hancey said the rezone has occurred.
- 45 • N Palmer said that the comment says that the City had Jody Burnett's verbal opinion
- 46 about the existing right of way. He wondered if that meant it was approved—it could be
- 47 used as such?



- 1 • Mayor Simmons said the City determined that the right-of-way was an appropriate use  
2 for that area. That's a different statement than saying it would be used by 55 homes.  
3 This would be emergency and gated. Randy Eck [Providence City public works director]  
4 was concerned about snow plowing and being able to bring a plow in the cul-de sac. He  
5 prefers an emergency access to a cul-de-sac.
- 6 • S Lemon wondered who has the key to a gated community.
- 7 • Mayor Simmons said ambulances and fire trucks have bolt cutters. The City would have  
8 a key so they could unlock the gate and plow the snow.
- 9 • S Lemon said it sounds like a nightmare.
- 10 • Mayor Simmons said there are members of the City Council who would prefer a cul-de-  
11 sac. Whether it's a cul-de-sac or a road, that is an issue for the final plat.
- 12 • B Bissland said an example of a gate that has not worked is Stan Checketts deer gate.  
13 The locks lasted 5 or 10 minutes. People continually cut the lock. It's not fire trucks  
14 going up there.
- 15 • M Hancey said the gate will be part of the final plat.
- 16 • N Palmer wondered if it would be shown as a through road.
- 17 • M Hancey said that the preliminary plat is absent a lot of detail—and that is typical for  
18 preliminary plats.
- 19 • E Dattage was concerned that there was no public hearing and the City allowed for this.
- 20 • S Lemon said the Board can't set lot size—they can't say whether a subdivision is going  
21 in or not going in. She wondered if Mr. Tanaka had a concern in his appeal for the road.  
22 There has been legal counsel that there may be concern over the right-of-way. The right-  
23 of-way is the concern, not the subdivision. Preliminarily, the City needs to eliminate the  
24 road. She feels the City should keep the subdivision with the cul-de-sac and let the two  
25 property owners decide legally what can be done.
- 26 • M Hancey said the Board doesn't have the authority to redo or amend a plat.
- 27 • B Bissland said that what is being appealed is a poorly done preliminary plat.
- 28 • S Lemon said that, in the expense to the developer, a lot of things don't come until the  
29 final plat.
- 30 • B Bissland said that is when the City gets sued. The developer has money invested, and  
31 the City said it was okay for the preliminary plat—then at the end . . . Bissland said it is a  
32 poorly done preliminary plat. The appeal is the Board can say no to the preliminary plat  
33 and they will have to come back with another preliminary plat. He wondered why the  
34 City was up there pushing Tanaka to put in an emergency road.
- 35 • D Hogan said the City was brought up there numerous times. There was lots of  
36 discussion with everyone in the City. Skarlet went up as City manager. (She took the ex-  
37 manager's place.) We talked to Richard Eames, and Larry Tanaka said he might. We  
38 have overheads on projections. We went up and surveyed and painted it out. The road  
39 came about from the public works director and people wanting another access for the  
40 snow plow. Many of these people here have not been to the meetings. They haven't  
41 talked to attorneys. Clint Thompson came up the day we had the meeting.
- 42 • S Lemon wondered if there was anything unusual about City personnel coming up when  
43 they're considering development.
- 44 • D Hogan said engineers, managers, fire department, and the public workings of the City  
45 reviews these things first. Providence City is starting to do this process here now that  
46 was in Ogden ten years ago.
- 47 • E Dattage said this plat was presented with a cul-de-sac.

- 1 • Mayor Simmons explained the process of development in Providence City. A plat comes  
2 to the Development Review Committee for recommendation, then goes to the Planning  
3 Commission for recommendation, then to City Council for the final approval. The  
4 Board's choice is to either approve the appeal that vacates the City Council's decision or  
5 to reject it.
- 6 • N Palmer said if the Board approves the appeal, then the preliminary plat starts fresh at  
7 the Development Review Committee level. It rejects the City Council's action.
- 8 • Dan Hogan said the concept plan was approved with the cul-de-sac, then the City  
9 changed to the emergency access.

10 MOTION by Elden Dattage to approve Larry Tanaka's appeal the Providence City Council  
11 decision of February 14, 2006 approving a preliminary plat for The Cove, a 26-lot residential  
12 subdivision, located generally at 690 Grandview Drive. SECOND by Nelson Palmer. All in  
13 favor.

- 14 • N Palmer said this is based on what the Board's understanding of what an improved  
15 right-of-way is and how that applies.
- 16 • S Lemon said there's enough concern from the people in the community that she feels it's  
17 best to get things resolved now before the City goes further.
- 18 • R Henderson said there are specific findings that will be seen by the District Court that  
19 will be beyond the Board of Adjustment's ability. It includes property that doesn't  
20 belong to the developer. There wasn't a discussion about the amount of the easement  
21 available for this emergency road. He feels that would be a sustainable finding in District  
22 Court.
- 23 • M Hancey said that the Mayor did say clearly that Jody Burnett saw the subdivision plat.  
24

25 **ITEM 2: Denise Strong is appealing the City Council's decision of February 14, 2006**  
26 **approving a rezone from Agricultural to Single Family Estate for the Hillcrest**  
27 **Subdivision, a 55-lot subdivision, located generally at 870 South 400 East.**  
28

29 Denise Strong said that, although this is an appeal to a rezone, and arguably legislative, she  
30 listened to Craig Call say a person can appeal—rezones—legislative actions if there's a  
31 compelling public good. She said that, today, based on the arguments, there is such a public  
32 good at stake. There are almost 55 homes proposed. Combined with the 28 on the Cove and  
33 possibly some annexed from Art Checketts, the amount of traffic that will spill on to Canyon  
34 Road is enormous. Canyon Road is a dangerous road to begin with). These issues should be  
35 addressed before the City does anything. Other issues are ingress and egress (example: the  
36 same problems involved with Hillcrest as in the Cove). In order to get a secondary access for  
37 55 homes, that will involve eminent domain. This says to the developer that he gets to have  
38 the City condemn this land for him for his economic development. The state legislature, at  
39 the request of supreme court, has said that economic interest isn't good enough for eminent  
40 domain. So the City would be asking one land owner to cough up land to benefit a developer  
41 to accommodate safety issues. If this subdivision would go to 1-acre lots, it would alleviate  
42 safety concerns. Likewise, there are flood issues. That should be looked at as a safety issues.  
43 Water is a safety issue. We don't know how much water there is available. What if there  
44 isn't enough fire pressure or drinking water? Before considering any rezones, we ought to  
45 hire a licensed hydrologist. There is help available from Roland Jeppson. He is an  
46 independent water expert. Resolve the controversy regarding the Knighton and Crow study.  
47 There are allegations that the information maybe isn't as accurate as it ought to be. If we do  
48 have enough water in Providence, how do we allocate it? Hold hearings and let the people  
49 decide. If there are 55 homes that go in, and water is not adequately addressed first, there is

1 the safety issue of pressure to fight a fire. There is the issue of the conflicting master plan.  
2 The master plan was disregarded. Throughout the master plan it says,  
3 “Open-space policies-including agricultural preservation, growth limitations, mixed uses,  
4 canyon development, . . . protection of valuable environmental qualities, . . . slower land  
5 consumption, . . . air quality improve[ment]. Master Plan, Introduction-2-3.

- 6 • Strong said that we ought to not allow further land use decisions until we identify which  
7 areas ought to be purchased with impact fees—I understand a portion is supposed to be  
8 set aside to purchase open space. There may be no open space left to identify. Strong  
9 asked the Board to address the safety issues. View the safety issues as a compelling  
10 enough concern. She asked the board to put the land back to Agricultural zone—  
11 otherwise, if the subdivision is sent back to the City Council, Providence City ordinances  
12 are not set up to deal with all of these: for example, water. If Highlands doesn’t end up  
13 having the water from Richmond, then the City will bear the burden. Let’s address water  
14 and wait until all the appeals have been exhausted before we go ahead with that. It’s a  
15 matter of public safety. There seems to be this understanding that D Strong is the vocal  
16 minority—that most people in Providence just want to move ahead. If that’s the case,  
17 Strong said she will stifle her protests; however, she sees quite the opposite. She wants  
18 the City to determine what the people want. Prove her wrong. Let her know that  
19 everyone wants lots—no open space. It’s in the master plan that the City ought to have  
20 open space and maintain a rural atmosphere. Based on all these compelling issues, the  
21 City ought to start from the beginning. Mr. Hancey is correct—all they have to do is  
22 meet the ordinances. There’s no ability to make them preserve open space. No  
23 ordinance to require otherwise—just a handshake and a nod. Based on these compelling  
24 public interests at stake, she felt the Board should put Hillcrest back to square one.
- 25 • Mayor Simmons showed the Board the area of the Hillcrest Subdivision on a city map.
- 26 • S Lemon wanted to clarify that the Board does not have the authority to put a moratorium  
27 on a building.
- 28 • R Henderson said the City Council passed a moratorium.
- 29 • D Strong said she’d like the City to reapply the moratorium on all innerblock  
30 developments. Maybe the Board doesn’t have the authority, but perhaps they could  
31 recommend to the City to place a moratorium. It would comprise the same issues.  
32 Strong has land that she could put 5 homes on, but there are the same safety and water  
33 issues.
- 34 • M Hancey said that Strong has set forth the criteria for reviewing a rezone. If it’s  
35 arguably debatable, it’s okay. The problem is that is left solely to the district court. The  
36 Board of Adjustment doesn’t have the right to appeal a legislative act. A rezone is a  
37 modification of an ordinance.
- 38 • B Jorgenson said the City’s position is that the district court is where this should be  
39 heard.
- 40 • D Strong said that in Craig Call’s book, it says that if you can argue that there is a public  
41 good, then why spend taxpayer money? Here is an opportunity to address the needs of  
42 the citizens without going to that step.
- 43 • B Jorgenson said it will go to District Court either way.
- 44 • M Hancey said it has been filed, but not served.
- 45 • D Strong said it would make that moot if the Board could remedy that issue based on  
46 compelling public interest (p. 250 7B—Craig Call’s Land Use Regulation book).
- 47 • S Lemon said the Board has a definite interest in the City because they live here. She is a  
48 sixth generation Providence resident. We wouldn’t be here if there was a moratorium put

- 1 on building when we came. She feels like this met the codes of the existing law. She  
2 feels the City needs to adhere to what's been done—according to the law.
- 3 • R Henderson said the problem is between the attorneys—the statute talks in terms of  
4 applying land use ordinance, but we're not sure if City Council could increase that  
5 jurisdiction if it wanted to. The City has also scheduled the hearing. If anyone is going  
6 to district court, the City needs to take the position on that. The City will often take the  
7 position that this needs to be heard at the district court, but the district court will often  
8 take the position that the City should have heard this at their level. It needs to be pinned  
9 down whether the Board has the authority to decide on the appeal or not. It needs to be  
10 on the record if the City says the Board does not have the authority. If they say the Board  
11 does, it is a difficult hurdle. The Board will hear from Ms. Hanson regarding illegal  
12 proceedings relating to adoption of the zoning ordinance, which Henderson thinks is a  
13 viable reason to sustain the appeal—if the Board has the authority to hear the appeal.
  - 14 • S Lemon said her comments are based on this going to district court one way or another.
  - 15 • R Henderson felt that was a mistake.
  - 16 • B Jorgenson said if the decision was made by a legislative body—that's the standard that  
17 the district court uses whether to uphold the action of the City Council. The Board of  
18 Adjustment is not in a position to review a legislative action. The point is, this is stating  
19 the standard the district court will use for review of the action of the City Council.
  - 20 • D Strong wondered if the Board would consider safety and the general welfare.
  - 21 • B Jorgenson said the district could—not the Board of Adjustment.
  - 22 • D Strong said if she goes to district court, she will run in to the same problem as Cache  
23 County. The developer wanted to appeal before the Board of Adjustment, and was told  
24 he couldn't, so they filed to the district court. The district court told them they didn't  
25 exhaust their remedies. So, by not allowing the Board to rule on it, the City could have  
26 problems for thwarting remedies.
  - 27 • B Jorgenson said he wasn't saying they don't make a decision. This is accomplishing  
28 Strong's remedies. This Board does not, in his opinion, have the authority to vote to  
29 reverse the zoning. If they make the decision that they can't reverse a City Council  
30 action, that exhausts the administrative remedy.
  - 31 • D Strong has two issues: 1. There are new laws on the books. Providence City is out of  
32 date with those laws. They don't have ordinances in place that comply; as a remedy in  
33 equity, the City ought to send it back to square one, get ordinances in place, and then  
34 address these issues. Right now the City's ordinances are questionable. Throw it back to  
35 square one based on inadequacy of ordinances. 2. Bruce Jorgenson is advising this Board  
36 and representing the City.
  - 37 • B Jorgenson said she asked him his opinion. He's not telling the Board what to do. He's  
38 saying he doesn't believe they have that authority. He's not trying to advise them. He  
39 hears lots of advice tonight!
  - 40 • D Strong said perhaps the Board would entertain her appeal about putting the subdivision  
41 back to square one. Providence City is over a year late with updating ordinances in  
42 accordance with LUDMA. If stuff is already in the pipe, save the tax payers' money and  
43 anxiety and put it back to square one and do it right. Address the master plan, find out  
44 what the people want, address the safety issues of adding cars on to Canyon Road—  
45 schools, impact fees. It can stop here. There is A. a compelling safety argument and B.  
46 Providence Laws are messed up under LUDMA.
  - 47 • B Bissland said that what S Lemon said about her forebears is very true. But they had the  
48 foresight to have 1 ¼-acre lots that gave everyone plenty of space—not saying this

- 1 subdivision has to be 1 ¼ lots. That's what makes Cache Valley as desirable as it still  
 2 is—the open space in cities. Lemon's forebears would not go along with 55 houses in  
 3 that area. 10 or 12 might fit this area better. The heritage in Cache Valley is for a little  
 4 bit bigger lots. To use the argument for the 55 lots that they will be good people . . . there  
 5 are already people here who are going to be greatly impacted if they don't have water and  
 6 roads.
- 7 • S Lemon said she has three married children who can't afford acre lots who want to come  
 8 back to Cache Valley.
  - 9 • B Bissland said Macey's will have units.
  - 10 • D Strong said she doesn't believe that the 55 lots in Hillcrest will be that much more  
 11 affordable. She has a feeling they will be \$250,000 homes.
  - 12 • Mayor Simmons explained that Single Family Traditional zoning is 10-12,000 square  
 13 foot lots, and Single Family Estate zoning is no smaller than one acre. He said the City  
 14 Council was first asked to zone this land from Agricultural to Single Family Traditional.  
 15 Instead, the Council rezoned it to Single Family Estate. Then the issue was brought back  
 16 to Council and they rezoned it to Single Family Traditional.
  - 17 • Mayor Simmons said the issue is claimed that the Board has jurisdiction over this change.
  - 18 • D Strong said they've now got ¼ acre lots. She wanted the City to at least bring the zone  
 19 back to 1 acre.
  - 20 • D Strong said the Knighton and Crow study was concerning water. She doesn't know  
 21 how much the study says must be allocated for homes. There's a lot of hearsay.
  - 22 • Mayor Simmons said this report was done for the worst case scenario. The City engineer  
 23 is appearing before the Planning Commission to report to them about that report and what  
 24 it means.
  - 25 • E Dattage said the ordinances are old and outdated.
  - 26 • Mayor Simmons said the City is not in violation of LUDMA, but one thing that Denise  
 27 Strong mentioned is that there is a moratorium on rezoning from Agricultural to  
 28 Residential. The City Council wants to look at the current ordinances and make some  
 29 decisions. These are questions the Council will be asking. They couldn't apply the  
 30 moratorium to this or to the Cove under LUDMA—you could only apply it to future  
 31 requests.
  - 32 • D Strong said she begs to differ—if there's a compelling safety issue, that that should be
  - 33 • Mayor Simmons said the Council couldn't find a compelling safety issue.
  - 34 • R Henderson said that Mayor Simmons mentioned there are 78 things—20 have to be  
 35 changed by ordinance. The appeal process, the issue of affordable housing—it cuts a lot  
 36 of different directions. The City needs to do this right. The City was out of compliance  
 37 before LUDMA for affordable housing—they were out of compliance before LUDMA.  
 38 The law now requires it be incorporated in to the master plan. He told the Board that if  
 39 they decide they don't have jurisdiction, make a clear record of that. If they do have  
 40 jurisdiction, there have been lots of successful suits on affordable housing. It would be  
 41 good, in his opinion, to strike down the zoning at the district court level—that Providence  
 42 has no affordable housing plan. It doesn't mean it has to be done in the subdivision, it  
 43 just means we have to put it somewhere. That is a critical to the Providence City  
 44 ordinance.
  - 45 • M Hancey said he moonlights as a North Logan Councilman. The North Logan Council  
 46 is working on their certain elements in the general plan. They've spent a bunch of time in  
 47 LUDMA. It tells cities to do a general plan: address land use (not low income—it's  
 48 moderate), address transportation. There are no deadlines put in there. This is statewide.

1 There hasn't been a ban on development until this is done. Cities can't stop living until  
2 the ordinances are done. The general plan is not binding upon any city. It's supposed to  
3 be advisory, but not binding. Even if it's lacking or supposed to be done yesterday, it's  
4 not binding. They're working on it in an orderly fashion—that can't be done overnight.  
5 It takes time.

- 6 • Mayor Simmons said the general plan was last updated in 2000. The Council also met on  
7 affordable housing. This is difficult in Providence. The Council addressed the issue, and  
8 it needs to be readdressed.
- 9 • Mark Thompson wondered how many appeals have we seen over subdivisions in the last  
10 five years. For some reason there are 4 on the schedule tonight. There are concerns over  
11 infrastructure. The City has been on a runaway with development. Things are not under  
12 control—that's why the City is seeing these appeals. The citizens are concerned enough.  
13 We could be here all night. The Board's job is to decide whether you approve or don't  
14 approve these appeals.
- 15 • D Strong said unless they're based on faulty laws or ordinances.
- 16 • S Lemon said that LUDMA takes time to it right, to come in to compliance. We've heard  
17 expressions from the mayor that there are definite concerns the City knows they need to  
18 address. The City is made up of people who want to work for the good. Does the board  
19 have the authority to decide on these appeals? For two years, prior to tonight, there have  
20 been 2 appeals. This is ground the Board has never been to before. She doesn't feel the  
21 Board has the legal jurisdiction.
- 22 • E Dattage wondered if a public hearing was held and these things were addressed.
- 23 • D Strong said the public hearing was held, but these things were not officially answered.

24 MOTION by Nelson Palmer that the Board deny Denise Strong's appeal of the City  
25 Council's decision of February 14, 2006 approving a rezone from Agricultural to Single  
26 Family Estate for the Hillcrest Subdivision, a 55-lot subdivision, located generally at 870  
27 South 400 East because the Board does not have the legal jurisdiction to handle it. SECOND  
28 by Janie Wisser. All in favor.  
29

30 **ITEM 3: Ralph Call is appealing the City Council's decision of March 14, 2006**  
31 **approving a rezone from Agricultural to Single Family Traditional for the Cove**  
32 **Subdivision, a 26-lot residential subdivision, located generally at Canyon Road and**  
33 **Grandview Drive.**  
34

- 35 • S Lemon felt that if the Board didn't have the authority to decide on Denise Strong's  
36 appeal, that they didn't have the authority for this appeal.
- 37 • Brian Cannell said that if that's the course of action this body is going to take, then  
38 he'd like to be included in that motion and ratified that it is at the urging of the  
39 opinion/counsel from the City and Mark Hancey.
- 40 • E Dattage said he doesn't think it was encouraging—the law was read.
- 41 • S Lemon said that the attorney said the Board needs determine whether they have the  
42 authority.
- 43 • R Henderson said the attorney did more than that—he said the City's position is that  
44 you don't have the authority. The problem in district court is that if it's not in writing  
45 in the minutes, they make the applicant prove that the Board's position was they can't  
46 vote on it. Then they will be unable to say this was an administrative decision. He  
47 told of an example given by Ralph Call where someone tried to file an appeal and the  
48 City wouldn't let him. Brian Cannell read the story (*Land Use Regulation* by Craig  
49 Call p. 186).

- Brian Cannel said they'd like the Board to make the finding whether they have the authority or not. If they make a finding, he'd like to find that they've read the law, and that's their same opinion. Make the same decision if they don't have the authority on the rezone. He wants it to be based on what they've reviewed and relied upon, not what he's said.
- R Henderson said that, based on the City's assertion, an opinion was given. If the City gave the Board an opinion as to legal advice, there's a problem.
- S Lemon said the Board has received opinions from several places (pointing to the attorneys in the room). They respect these opinions because the attorneys have more knowledge than the Board does.
- R Henderson said the Board can't take a position that is inconsistent with District Court; they will be able to assert it.

MOTION by Nelson Palmer to deny Ralph Call's appeal of the City Council's decision of March 14, 2006 approving a rezone from Agricultural to Single Family Traditional for the Cove Subdivision, a 26-lot residential subdivision, located generally at Canyon Road and Grandview Drive because the Board doesn't have the legislative authority to act on this appeal. SECOND by Elden Dattage. All in favor.

**ITEM 4: Elinor Hanson is appealing the Planning Commission's recommendation of October 18, 2005 to approve the preliminary plat for the Hillcrest Subdivision, a 55-lot subdivision, located generally at 870 South 400 East.**

- Elinor Hanson said that back in Aug 2005, the neighbors got together to see what had happened with the preliminary plat for the Hillcrest Subdivision. They all took turns talking about the density. Turns out to be 110 lots. Other people expressed concern about the safety—water is always an issue. We don't see it in writing. There is concern about the temporary turnabouts. There are two cul-de-sacs and two dead-ends. There was a consideration about the turnabouts. It was also felt that this plan was not really thought through. We felt residents needed to get involved. Standing room only. We thought maybe that would give an indication of the concern in Providence. It was explained that the City would post notices, but sometimes they weren't there. Logan City notifies cities in the area where there will be development. There were people upset because of the density with our development and Logan, so we changed our plan. We were willing to work with the people, accepted a revised plan, and things worked out. We appreciate the thought that there is an opportunity to communicate. October 18, 2005 minutes (PC?) someone commented that the green area of AG was disappearing. She read from the minutes. The general plan is to protect and promote the safety and well-being of the citizens. Skarlet pointed out that there is a general plan, a map of the existing zones—City Council minutes? Or personal notes? Roy and Eleanor picked up 5 plat maps of the area surrounding the subdivision plan. There is a lot of land that is more open. The feeling is open space. Somewhere along the line, the property was zoned from Ag to SFE—the developer requested to go back to ¼ acre—we're back where we started. There's still over 100 cars in and out of one entrance. I don't understand why someone hasn't sat down and talked with us—present what could be done different to help the neighbors be happy. Talking with someone on the north bench—how congested it is in Foxridge with just one entrance. She read from PCC 11-4-2-F, H. She pointed out a double frontage lot. She and her husband have property where the developers want to put a road through—making a double frontage lot.

- 1 • Kathy Baker owns property to the South. There are two roads going to the south. She
- 2 has no intention of subdividing. She's been told the roads will go across her property.
- 3 Elinor said no one wants more than ¼ acre, but we see people who have their homes for
- 4 sale because they want larger lots. It's silly to say no one wants larger lots. It's sad to all
- 5 of us—why is this happening—why is the city not listening to us. E Hanson read about
- 6 the shed that collapsed and killed Kent Brenchley, mayor of Wellsville. She quoted from
- 7 the newspaper. K Brenchley had said, “What we try to do is follow the vision of the
- 8 people who live here.” E Hanson is not against development going in—she even offered
- 9 to buy it years ago, and the price looks good now!
- 10 • The Hillcrest subdivision was rezoned in 2006, and the preliminary plat was approved
- 11 in 2005.
- 12 • E Dattage wondered why the plan was approved without the zoning being changed
- 13 first.
- 14 • Mayor said it was the cart and horse issue. The Planning Commission's
- 15 recommendation was Oct 18, 2005. E Hanson filed her appeal on March 31, 2006.
- 16 • Mayor Simmons said that what was in place with the old city manager. It was a way of
- 17 holding the developers hostage.
- 18 • Mayor Simmons said conversations with the developer of the Hillcrest subdivision and
- 19 he has volunteered to work outside the City's ordinances to develop a preliminary plat.
- 20 • S Lemon clarified: to exceed the City's requirements.
- 21 • J Neilson, developer of the Hillcrest Subdivision, said because of the moratorium, the
- 22 City wants to look at mixed zones and open space. When Hillcrest got their ¼ acre
- 23 rezone, the developer agreed to revisit the preliminary plat. (It was tabled until the
- 24 rezone was done.) It will be revisited to see what can be done to make it more appealing
- 25 with the possibilities of what the potential ordinances will be. The developer reserves the
- 26 right to come back to this plat. The preliminary plat has been reviewed two or three
- 27 times. One reason for the dead end road is it is a master planned road—a City planned
- 28 road. The original plat didn't have dead end roads, but because of the master plan, that
- 29 road was put in.
- 30 • E Hanson wondered if there would be cluster developments.
- 31 • J Hanson said that's a safety discussion—road meets the requirements of the vehicles
- 32 coming down.
- 33 • N Palmer said the Board is trying to accept or reject an appeal on a preliminary plat on
- 34 something that isn't approved.
- 35 • Mayor Simmons said if they approve E Hanson's request, it is to oppose the
- 36 recommendation by the Planning Commission.
- 37 • J Nielson said he appeal is very outdated.
- 38 • Howard Christenson said he lived in the bay area, in the middle of Silicone Valley. He
- 39 lived in a moderate size house on a dinky lot. In California, lots are 1/8 acre. He knows
- 40 what people are talking about when they want more land. He bought ¾ acre here in
- 41 Providence, and he loves that a lot more—but the issue is the developer is in to make
- 42 money. He wants to put the maximum number of houses on the land. If people are
- 43 concerned about the density, the houses will still sell—it's a no brainer.
- 44 • C Eames said she tries to come to every meeting. She said that the way that it was
- 45 determined that 400 E was safe for that many cars was by going on the internet to an
- 46 Army Corps of Engineers study that said that size of the road could handle that many cars
- 47 in each direction.



- 1 • N Palmer said another issue is to determine how wide the roads should be. On this
- 2 plat, there's nothing, really, they can do because of the date issue. This appeal is well
- 3 beyond ten days, and beyond 30 days.
- 4 • S Lemon said the action has been tabled and not been visited. She wondered if they
- 5 could make a recommendation that the developer visit and get input from people.
- 6 • J Nielson said the citizens want 1 acre lots. That is what Elinor told him [she disagreed
- 7 that she had spoken with him about that]. J Nielson said his company works with a
- 8 number of cities. The cities around are highly complementary of their company working
- 9 with them. Here there was no compromise because they pushed forward. Even though
- 10 this did get recommended to be approved, the developer is working with the City.
- 11 • S Lemon wondered if there was a date to revisit the plat.
- 12 • J Nielson said they gave the City 30-45 days to come up with the direction they're
- 13 going with the new ordinances.
- 14 • B Bissland said that, contrary to what was said tonight, most citizens have been to these
- 15 meetings. His recollection is that 400 East is a mess, and that's why it was tabled. There
- 16 are property issues if the road goes through—he thinks that's why they tabled that. There
- 17 will probably have to be imminent domain or negotiations with property owners. He
- 18 wonders where the money would come from to upgrade 400 E.
- 19 • Mayor Simmons said that no one would expect 400 E to carry the traffic the Army says
- 20 it could carry. 400 E is at least 22 feet wide. One issue is curb, gutter and sidewalk. The
- 21 City owns the right-of-way on 400 E, except the Hansons. In order to put curb, gutter,
- 22 and sidewalk, the City would have to purchase property from the Hansons. The City
- 23 wants to propose curb, gutter, and sidewalk, regardless of whether there is
- 24 development—to put it along at least a portion of the east side of 400 East and the north
- 25 side of Canyon Road. It's time to deal with that.
- 26 • Kathy Baker said, in order to go south, she and her husband own to the center of the
- 27 road, and the City would have to negotiate to get across their property, and Doran doesn't
- 28 want to negotiate. The developer feels like he's been vested with 55 units, regardless of
- 29 the fact that there have been no approvals, and that any plan we come up with must
- 30 include 55 homes. She feels like, assuming the two roads going south are going to go
- 31 across her property, this development is wrong.
- 32 • E Hanson feels the same about her property.
- 33 • N Palmer said that the developer did mention it could be 150 years before the dead end
- 34 road goes through.
- 35 • E Dattage wondered why the City would approve a plat with two dead-end roads.
- 36 • Mayor Simmons said they have to have temporary turnarounds. The developer has to
- 37 provide them.
- 38 • J Nielson said he loses a lot for 100 yrs until the City decides to do something. They
- 39 don't touch anyone else's property. They were designing with the master plan in mind.
- 40 The City wanted the master planned road.
- 41 • E Hanson said she's talked to her neighbors, and all of them (with the exception of one
- 42 person who thought she would love to see an acre in there, but she'd be happy with ½
- 43 acre) think it would be great to communicate with the developer.
- 44 • N Palmer said he may be the only one that lives in a densely populated neighborhood—
- 45 less than ¼ acre. He appreciates the larger lots, but it's not all bad living close together,
- 46 either.
- 47 MOTION by Nelson Palmer to deny Elinor Hanson's request to appeal the Planning
- 48 Commission's recommendation of October 18, 2005 to approve the preliminary plat for

1 the Hillcrest Subdivision, a 55-lot subdivision, located generally at 870 South 400 East  
2 because the time. SECOND by Susan Lemon. All in favor.  
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5 Meeting adjourned.  
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38 Minutes of the April 19, 2006 Board of Adjustment meeting approved.  
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49 *Elden Dattage, Acting Chair*

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*Rebecca Billings, Secretary*