



CITY OF BLACKFOOT  
PLANNING & ZONING MEETING  
City Council Chambers  
June 25, 2019

**ROLL CALL**

Commissioners present were Chairperson Marilyn Jefferis, Commissioners JoAnne Thomas, Deborah Barlow, Ron Ramirez, Merv Dolan, Rocky Moldenhauer, and Vice-Chairman Quinn Stufflebeam.

**OTHER ATTENDEES**

Garrett Sandow, City of Blackfoot Attorney  
Kurt Hibbert, Planning & Zoning Administrator  
Donna Parkinson, Planning & Zoning Clerk

**APPROVE MEETING MINUTES**

Commissioner Stufflebeam motioned to approve the minutes from the June 18, 2019 meeting as written; Commissioner Barlow seconded; all were in favor, motion carried.

**CONFLICTS OF INTEREST/EX PARTE OF COMMUNICATION**

Commissioner Ron Ramirez and Commissioner Quinn Stufflebeam explained that they had conversations with some patrons in the community about the Blackfoot Charter Community Learning Center but there was nothing divulged as far as important or privileged information regarding the Charter School. City Attorney Garrett Sandow informed the Board that there was no conflict of interest here as it only involves the application and City code issues.

**Commissioner Jefferis opened the meeting to the first item of business; a zone change request for Jeff and Julie Steadman at 1100 East Airport Road.**

Action Item /Public Hearing

Zone Change R-1 to R-2 – 1100 East Airport Road, Blackfoot

Administrator Hibbert presented the Commissioners with the request by Jeff and Julie Steadman to change the zoning of a parcel of property at 1100 E Airport Road from R-1 (single-family dwellings) to R-2 (combined residence). Mr. Hibbert explained that this would allow for higher density housing. He informed them that the applicants have not presented to the Commission a proposed subdivision plat map for this new zone. The new zoning on this property does require a recommendation for zone change from the Planning and Zoning Commission which will be sent to the City Council for final approval.

**Commissioner Jefferis open the meeting to the public:**

**Testimony in Support - None**

**Testimony Neutral**

**Wayne Mikesell, 742 E Airport Road, Blackfoot**

Mr. Mikesell shared his concerns about the subdivision and changing to an R-2 zone. He lives next to this property and is wanting to see the plat map for the new development. He mainly wants to communicate with the Steadman's to see what they are planning to do with the property. Mr. Mikesell complimented the homes that Steadman has built on Ridgecrest Street and is hoping that they will be equivalent for this new area.

**Dr. Leon Peterson, 197 Hillridge, Blackfoot**

Dr. Peterson shared his concerns about the new plans; what is going into this development and those living in this area. He questioned what the cost of this subdivision to the City would be. The Commissioners addressed his issues, letting him know that any additional plating or engineering cost would be the responsibility of the developer.

**Testimony in Opposition – None**

Commissioner Barlow clarified that there is no requirement for a new plat at this stage because they are only requesting a zone change. This meeting is to know whether the City will grant the zone change only. She stated that they are essentially looking specifically to assist in making their decision whether to allow this property to be re-zoned. This decision would not be nullified if the property owner decided that they would like to sell the property instead of developing it.

**Commissioner Jefferis closed the public meeting:**

Jeff or Julie Steadman were not in attendance at this meeting. Questions had by the commission regarding the necessity of rezoning the entire property to R-2 could not be answered.

Commissioner Ramirez moved to table the zone change until the July 23, 2019 Planning & Zoning Meeting, Commissioner Barlow seconded; all were in favor, motion carried.

**Action Item /Public Hearing**

**Zone Change R-1 to R-2, John and Kristin Erickson, 2750 Northlund, Blackfoot**

Administrator Hibbert presented the Commissioners with the request by John and Kristin Erickson to change the zoning of a parcel of property at 2750 Northlund Road from R-1 (single-family dwellings) to R-2 (combined residence). Mr. Hibbert explained that this would allow the Erickson's to build a twin-home in this lot next to their modular home. The Erickson's have intentions of building a twin-home and then removing their current home and building another one.

The Commission questioned whether or not it would be more advantageous for the Erickson's to re-zone both lots at the same time. The Erickson's were willing but were advised by legal counsel that such action would require a further delay and another public hearing. Commissioners decided to act upon the first application as it has been recommended. The second application will be applied later.

**Commissioner Jefferis opened the meeting to the public:**

**There were no public comments.**

**Commissioner Jefferis closed the meeting to the public:**

The Commissioners discussed the benefits of changing the two parcels currently. The question was asked if it was permissible to change them both together. After the discussion, the board decided that the applicant would need to fill out two applications.

Commissioner Ramirez motioned to recommend approval to the City Council of changing the zoning at 2750 Northlund, Blackfoot, from an R-1 to R-2 with the understanding that a zone change for the second property will also be applied at a later date; Commissioner Barlow seconded; all were in favor, motion carried.

Roll call vote:

Commissioner Ramirez – Yes

Commissioner Barlow – Yes

Commissioner Stufflebeam – Yes

Commissioner Dolan – Yes

Commissioner Thomas – Yes

Commissioner Moldenhauer - Yes

**Attorney Garrett Sandow will have the finding of facts prepared at a future date.**

**Action Item – Public hearing**

**Conditional Use Permit for Blackfoot Charter Community Learning Center(Middle School)**

Located at approx. 1350 Parkway, Suite #30, Blackfoot, ID

**Marilyn Jefferis, Deborah Barlow and Joanne Thomas** stated that upon the advice of the city attorney, they would recuse themselves from taking part in the charter school decisions on the grounds of a possible conflict of interest since that they work for other schools.

Commissioner Ron Ramirez will preside as the chairman.

**Action Item /Public Hearing**

**Conditional Use Permit – Blackfoot Charter School Middle School, 1350 #30 Parkway, Blackfoot  
Kurt Hibbert Planning & Zoning Administrator**

Administrator Hibbert stated that the purpose is to provide finding and facts that will help to identify if this Conditional Use Permit is required and if it should be renewed. Mr. Hibbert stated that Conditional Use Permits are required for all schools according to the City code. He explained that the reason the facilities of the Blackfoot School District do not need this permit is that they were built before the land use ordinances were passed.

**Debbie Steele, Chief Administrator for the Blackfoot Charter Community Learning Center Middle School, 1350 Parkway, Suite #30, Blackfoot, Idaho**

Ms. Steele requested approval of the CUP application. She also asked if she could provide additional

information that might aid the Planning and Zoning Commission in their decision.s to its approval. She expressed thanks to the board for all the help that she was given in working with the BCCLC Middle School and helping them with the transition plan. Steele informed the Commission that this school has always had a closed campus and will continue to be so. She feels like they are moving forward with the finest work that they have on the new school and transition plan. The BCCLC school will begin the new year on August 19, 2019.

Commissioner Stufflebeam confirmed with Ms. Steele that the Bingham Academy High School is not in association with the other two schools affiliated with the Blackfoot Charter Community Learning Center. It is a different entity and school district and that her school policies may not be the same as the Bingham Academy.

Commissioner Ramirez expressed thanks to all the interested parties in the Blackfoot Charter Community Learning Center. He was impressed with the interest and support for the meeting and welcomed all patrons. He expressed that the Commission is proud and pleased of the accomplishments of the students and teachers of the Blackfoot Charter schools. He noted the successes achieved and the awards received by the students.

Commissioner Ramirez explained that two Commissioners have not been on the Commission long enough to have been involved in the previous meetings and that he would like to publicly read to them some of the important information from those earlier meetings.

Commissioner Ramirez shared the following timeline:

- I am not sure when the Learning Center was officially organized, but I did find indications they were given a certificate of occupancy and a Conditional Use Permit of Hunter Loop Location in 2003.
- On April 27, 2010, in a Planning and Zoning meeting, the Learning Center asked to add two portable classrooms on the property at 2801 Hunter's Loop. The request was approved, and the findings and facts of the meeting state, "The proposed use is for a period not to exceed five years.
- On July 26, 2011, the Learning Center asked for a Special Use Permit to add the unit to the complex. The Center director, Mr. Fred Ball, brought a photo to show the location of the new building and it showed that three units were already in place, even though only two had been approved. Mr. Ball also stated in that meeting that the Center was going to build a new school, but they wanted to wait one or two more years. The finding from that meeting again states that the proposed use is for a period not to exceed four years.
- On June 14, 2016, a letter was sent to the Learning Center from Mr. Rex Orgill, who was at that time the City Building/Zoning Administrator, indicating that the conditional use permit issued to the Learning Center for the 2801 Hunter's Loop facility needed to be reviewed. According to Blackfoot City Code (11-A), a CUP is normally issued for a term not to exceed 18 months and may be granted a 1-year extension a maximum of 3 times. When I inquired of City staff as to why the school could continue without a valid CUP, I was told that the City does not regularly track the ending dates on CUP. They expect the applicant to do so and to submit a request for

extension or a new application. The Blackfoot Charter Community Learning Center had not done so, and as soon as Mr. Orgill was advised of such, he sent them the letter. No renewal application was ever received.

- On May 22, 2018, a Conditional Use Permit for a childcare center at the elementary school was conditionally approved. It was reported that the learning center had been operating a childcare center for several years but had never applied for the proper certification as required by both state statute and city code.
- On July 6, 2018, a letter was again sent to the Learning Center advising them that an application for renewal or extension of the conditional use permit for the Hunter's Loop Facility and the Riverside Middle School was necessary. In May, the planning and zoning secretary had completed the application form, using information from an older application, so she could properly advertise for the public hearing. The administrators told her they would come and sign the form and pay the fees, but they did not do either before the hearing. The application did not include the facilities which house the Bingham Academy High School.
- On July 24, 2018, The Planning and Zoning commission met to hold a public hearing on the application submitted by the Learning Center. Most of the testimony received was concerned about many of the problems presented by having a school co-located with the businesses of the strip mall. Much testimony was presented indicating that there was student interference with business, and there were unsafe conditions which the students faced outside of the facility without any apparent supervision by school officials. As shown in the Findings and Fact of that meeting, the administrators of the Learning Center admitted that the location of their school was incompatible with the other businesses. Promises were made by the administrators that they would take action to try to ameliorate student interference with businesses and that they would also present a transition plan to move the school to another location. Administrators indicated that an architect and planning administrator had already been hired, and that the new plans were already prepared. The commission allowed the administrators 20 days to submit the transition plan and with that plan, would approve the CUP for only ten months, indicating that the commission would review the CUP in May to determine whether it or not it should be extended
- August 2<sup>nd</sup>, 2018 Mayor Mark Carroll and Zoning Administrator Kurt Hibbert Met with Mr. Fred Ball, the Learning Director, and Mr. Mark Fisk, Bingham Academy Principal, to discuss the transition plan and about other issues raised by the press reporting of accusations against the institution. The school administrators were told that because of the remarks they had made indicating that Bingham Academy was a separate entity a review was made of all the city paperwork and that the City has no application for a CUP for Bingham Academy. They were asked to immediately apply. They were also briefed on the

requirements for the requested transition plan, told that it should be professionally prepared and shown an example of one already submitted by another entity. The administrators indicated that they would submit the required application and again assured the city officials that an architect had been procured and that a detailed project management schedule and transition plan was forthcoming.

- On August 22, 2018, ten days after the due date, the City received a 1-page document from Mr. Ball entitled Blackfoot Charter School Construction Plan and Schedule. It did not contain the information which the city had indicated would be required as part of a transition plan.
- On August 29, 2018, the Planning and Zoning Commission reviewed the document which had been submitted by Mr. Ball and determined that the document did not meet the full requirements of a transition plan, and there was no information relative to a CUP for Bingham Academy and the need to move the Academy out of the business plaza. Mr. Ball was informed of this decision. The commission spent much time discussing what should happen to the Learning Center because the conditions stipulated at the previous meeting for approval of a CUP had not been met and therefore none of the schools under Blackfoot Charter Community Learning Center had a valid CUP. Three members of the commission are employees of other educational institutions, and they explained how difficult it would be on students and teachers to close the school at this late date, especially since school had already started. It was decided that since there was no eminent danger and the school was supposed to be working on the health and safety issues to allow the schools to continue to operate, that we would not close the schools but review the issues in May 2019 as originally planned.
- On January 29, 2019 CUP Permit fees paid. These fees are supposed to be paid at the time of application. They were seven months late.
- On March 13, 2019, Mayor Carroll called the chairman of the Learning Center board to make sure the board was aware of the problems the city was having regarding the CUP for the Learning Center schools. Shortly after that, Mr. Ball called Mayor Carroll to set a meeting on March 14. Mayor Carroll and Mr. Hibbert met with Mr. Ball and two board members at the middle school. The problems previously discussed were explained, the conditions and requirements of a transition plan and the information needed by planning and zoning were all reviewed at that meeting.
- I am not sure of the date it was electronically transmitted, but the city did receive from Ms. Debra Steele, a document entitled Blackfoot Charter Community Learning Center, Transition Plan. On April 16<sup>th</sup>, another meeting was held in the Mayor's office with Learning Center administrators where they were informed that this document did not meet the standards

required in a transition plan. It appears to be more of a marketing document than a professionally prepared transition plan. Again, the administrators were given a copy of a plan submitted by another entity as an example.

- On May 14, 2019, the planning and commission invited the administrators from the Learning Center and invited the business owners adjacent to the schools to a commission work meeting. The purpose was to allow the administrators to explain why the conditions of the last CUP were never met and to find if there had been an amelioration of the conflicts between the schools and businesses. As this was a work meeting, information was received, but no action was taken.
- On May 28, 2019, the regularly scheduled planning and zoning commission meeting was scheduled. This was to be the formal, legal review of the previous CUP as was discussed on May 14<sup>th</sup>. Part of the purpose was to verify that the conditions stipulated last July have not been fully met which calls into question the legality of the CUP now in effect. Ms. Steele had applied for a new conditional use permit for the Hunter's Loop school and the middle school located in the business plaza. However, this application is incomplete, lacking any of the supporting information needed. Tonight, we will hold a public hearing on the CUP application.

All information I have presented has been gleaned from City files relating to the Blackfoot Charter Community Learning Center and is the record I understand. I would now like to give the Learning Center administrators time to refute, correct, or make any additional comments regarding the information that I have provided.

**Debbie Steele, BCCLC**

Ms. Steele stated that she had turned in the application and information that the Commission had requested. Mr. Ramirez reminded her that she had received a list of all the required information before this meeting. Ms. Steele did step down.

**Commissioner Ramirez reviewed the rules for a public hearing and reminded the patrons of the importance to follow the testimonial ruling of the city code.**

**Commissioner Ramirez opened the meeting to the public:**

**Testimony in Support:**

**Dan Cravens, 1775 Vernon, Blackfoot**

Mr. Cravens informed the Commission that they had provided the City of Blackfoot with a legal document containing information for the Planning & Zoning board. (NOTE: It was determined that this document was submitted only 24 hours before the public hearing and had not been given to the commissioners for their review.) He informed the patrons that as a member of the Board, he wants to have their Attorney, Nathan Olsen, take the lead role for the BCCLC school.

**Nathan Olsen, 485 "E" Street, Idaho Falls**

Attorney Nathan Olsen read into the record the information that had been included in the referenced document:

**June 24, 2019**

Blackfoot City Planning and Zoning Commission Marc Carrol, Mayor, City of Blackfoot  
I /c/o Planning & Zoning Administrator Kurt L. Hibbert delivered via e-mail:  
khibbert@cityofblackfoot.org

RE: Blackfoot Charter Community Learning Center and Bingham Academy

Dear Members of the City of Blackfoot Planning and Zoning Commission and Mayor Carrol: I have been retained by Blackfoot Charter Community Learning Center (BCCLC) and Bingham Academy (BA) to represent their legal interests that are now before the Blackfoot Planning & Zoning Commission (Commission) affecting the school properties for these respective entities. It is my understanding that various proposals have been exchanged between my clients and the City of Blackfoot (City), and that this matter is currently set on the agenda for the Commission meeting on June 25, 2019. While my clients are hoping and expecting that this matter is resolved and be put behind them, I hereby notify the Commission and the City of Blackfoot (City) that any offerings made by BA and BCCLC in this matter are made under protest and with all reservation of rights. This letter also identifies concerns worthy of the Commission and City's consideration prior to any decisions that will affect the schools' interests, as well as the administrators, faculty, students and their families - totaling nearly 4,000 individuals in the community that relies upon these schools.

#### **STATUTORY AND CONSTITUTION REQUIREMENTS PERTAINING TO ZONING**

Although the Commission has some authority to enact zoning ordinances pursuant to the police powers set forth under Article XII Section 2 of the Idaho Constitution, such authority is not without limitation. As held by the Idaho Supreme Court: "zoning ordinances cannot be arbitrary since they interfere with the free use of the property and thus the validity of a zoning ordinance depends on a reasonable relation to the police power." *Cole-Callister Fire Protection Dist. v. City of Boise*, 93 Idaho 558,562,468 P.2d 290,294 (1970). Zoning ordinances are considered "unreasonable," "confiscatory," "arbitrary" or "capricious" when they "constitute an invasion of property rights, contrary to constitutional due process and, as such, are invalid, illegal and void enactments." *Id.* Further, "in determining the question of reasonableness or unreasonableness of an ordinance, all the existing circumstances or contemporaneous conditions, the objects sought to be obtained, and the necessity or lack thereof for its adoption, will be considered by the court."

The necessary due process and notice procedures for the enactment of a zoning ordinance, including a conditional use permit are set forth in IC§ 67-6501, et. al. As particularly applied to this matter are IC§ 67-6502, stating the limited purposes on which zoning decisions can be made, and the notice and procedural requirements under IC§§ 67-6509-6516.

"When the statute requires notice and hearing as to the possible effect of a zoning law upon property rights the action of the legislative body becomes quasi-judicial in character, and the statutory notice and hearing then becomes necessary in order to satisfy the requirements of due

process and may not be dispensed with." *Jerome County By and Through Bd. Of Comerford Jerome County, the State of Idaho v. Holloway*, 118 Idaho 681, 799 P.2d 969, (1990).

Additionally, IC § 67-6506 provides the following strict conflict of interest prohibitions:

A member or employee of a governing board, commission, or joint commission shall not participate in any proceeding or action when the member or employee or his employer, business partner, business associate, or any person related to him by affinity or consanguinity within the second degree has an economic interest in the procedure or action. Any actual or potential interest in any proceeding shall be disclosed at or before any meeting at which the action is being heard or considered. For purposes of this section, the term "participation" means engaging in activities which constitute deliberations pursuant to the open meeting act.

**No member of a governing board or a planning and zoning commission with a conflict of interest shall participate in any aspect of the decision-making process concerning a matter involving the conflict of interest.** A knowing violation of this section shall be a misdemeanor.

Id. (Emphasis added.)

### **POTENTIAL VIOLATIONS REGARDING RESPECTIVE SCHOOL PROPERTIES**

With these legal underpinnings in mind, my clients have a solid basis for both procedural and substantive violations with the Commission's conduct and approach in this matter. Those concerns are summarized below about the three respective affected properties.

#### **Bingham Academy - 1350 Parkway Drive, Suite #18**

Bingham Academy is a separate and distinct charter school for grades 9-12 that has occupied this site since 2014. No conditional use permit for occupancy was required or requested because although the site is zoned as "light commercial," it had for two decades housed a school and has, therefore, fit within the traditional model and comprehensive plan for the area.

Simply put, no proper notice was given by the Commission regarding the proposed zoning plan or restrictions pertaining to Bingham Academy. Neither the public, nor the interested parties including both Bingham Academy, which has a leasehold interest in the property, nor the property owner itself Woodbury Corporation, were provided notice of any "summary of a plan" that the Commission had in mind with regard to the zoning and occupancy of Bingham Academy at its current location, prior to its July and August 2018 meetings. Additionally, the actual property location of Bingham Academy has never been properly disclosed in any notice by the City.

Despite these blatant deficiencies, the Commission proceeded to discuss and make decisions about Bingham Academy at the 2018 summer meetings including on July 24, 2018, and August 28, 2018. The Commission even persisted with their work on this issue, despite being informed of the blatant defects with the process. Additionally, the City Mayor Marc Carrol and P&Z Administrator Kurt Hibbert appeared at a meeting on BCCLC's Middle School campus on March 14, 2019, wherein the Mayor informed Chair Holly Lilya, Charter Administrator Fred Ball, and school principal Mark Fisk that the City was going to "pull" the school's permit (that doesn't exist) and "shut the school down" if the school didn't submit a "transition plan" to move off the property by the May 2019 Commission meeting.

Without question, any decision by the Commission or City to evict Bingham Academy from its current location would constitute blatant violations of Constitutionally protected due process rights and would be an arbitrary and capricious invasion upon the school's property rights. Indeed, it is difficult to conceive a more egregious example of a violation of both procedural and substantive rights by a governmental entity than this. Not only has there been a complete absence of the statutory notice requirements, the City is intruding upon and in fact attempting to dictate how the school should conduct its business affairs and threatening eviction if it does not comply. Any action or decision made by the Commission and/or City regarding Bingham Academy is voidable and subject to an award of damages and other appropriate relief. Of further note, Bingham Academy is in the process of renegotiating its lease with Woodbury Corporation. The City's actions will certainly result in consequences and harms to the school's contractual rights, which could result in a tortious interference with contract claim against the City.

Finally, as is the case with all three of the affected school properties, there exists a clear conflict of interest with three members of the Commission whom are associated with other local school districts or a local education agency (LEA). Because school funding formulas are based upon the number of students enrolled at a public school, the continued existence of competing schools would affect the finances of other school district schools and the LEA. Yet, these three conflicted Commissioners, including its chair, have made or been directly involved in conditional use permit discussions for Bingham Academy. This not only makes any of the Commission decisions in 2018 and 2019 based on those deliberations voidable and subject to civil remedies but is also subject to a *criminal* review by the Idaho State Attorney General.

#### **BCCLC Middle School - 1350 Parkway Drive, Suite # 30**

BCCLC Middle School - grades five through eight -- began its occupancy at its current location in 2015, having obtained a Certificate of Occupancy from the City in April of 2016. In reviewing the records that the City provided per public records request, it appears that the school may have obtained this Certificate of Occupancy according to an Application for Conditional Use Permit submitted by Fred Ball on June 16, 2015.

However, and again, an actual CUP was not required because other suites on this site had long been utilized as a school before the middle school's occupancy and has, therefore, fit well within the traditional comprehensive plan of the City.

The notice procedures regarding the middle school have also been defective. The hearing notices I have reviewed merely notify the public and interested parties that its purpose was to "review the Conditional Use Permit previously granted to Blackfoot Community Learning Center at approximately 30 Riverside Plaza# 1." Again, the notice itself is devoid of any "summary of plan" as required by statute and does not accurately describe both the location or the zoning status of the property. At the July 24, 2018, meeting, the Commission made a demand to both BCCLC Middle School and Bingham Academy that they produce a "full transition plan" for the relocation of the respective schools. The matter was again discussed at the August 28, 2018, Commission meeting where Bingham Academy and BCCLC Middle School were granted a temporary permit for ten months, pending vague demands that the schools produce a "viable" business and transition plan that was "imminent."

On March 14, 2019, Mayor Carrol and Mr. Hibbert met with the chairs of BCCLC and BA, Principal Debbie Steele, and Principal Mark Fisk, reiterating an alleged "non-compliance" with the "CUP requirement" (for a CUP that has never existed for the middle school.) This matter was noticed as an "action item" by the Commission for a hearing on May 28, 2019.

Again, the public notices did not accurately describe the location or zoning status of the property and are completely devoid of any "summary of plan" as described by statute. Instead, the Commission had merely intended to provide a "report" regarding the respective schools. It is entirely unclear what "action" the Commission intended to make regarding the "report." The verbal assertions made to BCCLC representatives by City officials were conflicting. The Commission ultimately decided to postpone the "action item" to its June 25, 2019, meeting, where again, the public notice is defective and unclear. On May 30, 2019, BCCLC Administrator Debbie Steele, the architect retained by the school to work on a new facility plan, and I met with Mr. Hibbert, which was later joined by the Mayor. At that meeting, Mr. Hibbert handed Ms.

Steele a handwritten sticky note from the Commission containing cryptic demands of what needed to be put into a "valid transition plan" identified "school by school." Ms. Steele has subsequently submitted a proposal to the best of her ability given the apparent ambiguities of the demands.

Both the process followed by the Commission and the substance of the Commission and City demands is woefully deficient and inadequate. I highly doubt such actions would withstand a legal challenge. The Commission and City would further be subject to civil remedies and damages caused to BCCLC. To make demands of a property occupant to reveal and produce "viable" business plans under threat of eviction is well beyond the jurisdiction and authority of a governmental planning and zoning commission, and frankly, is highly inappropriate.

Additionally, in that BCCLC is also currently in the process of renegotiating its lease with Woodbury Corporation, exposing the City to a potential tortious interference with contract claim. Finally, the Commission should be deeply concerned about the apparent violations of the statutory prohibitions of conflict of interest by three of its members.

### **BCCLC Elementary School - 2801 Hunters Loop**

The K-4 BCCLC Elementary School is the only facility that is functioning under a CUP, which it first obtained in 2004 to construct a building at 2801 Hunters Loop, an entirely different property than the Middle School and Bingham Academy. BCCLC followed up the initial CUP with the application for subsequent modifications to allow for modular units (2011 and 2016 respectively) and the operation of a day care (May 2018). These CUPs were granted on the condition the school would remain compliant with all applicable state, federal and local ordinances as well as the fire code. There has never been a question or concern raised as to whether the elementary school has met these conditions.

The apparent approach taken by the Commission regarding BCCLC Elementary School has been arbitrary and capricious. The discussions and decisions by the Commission since July of 2018 have been entirely focused on their concerns with the other two schools on separate properties. Yet, the conditional use permit for the elementary school is clearly at stake and has been directly tied to the middle school and Bingham Academy. Although these schools shared some administrators at one time, and they do share board members, the issues pertaining to the zoning are entirely separate. The Commission and City have no legal basis or jurisdiction to tie the fate of the elementary school

to the other schools. To do so is an unreasonable, arbitrary and capricious abuse of authority.

Again, the recent Commission and City actions and/or potential action that affects the elementary school are potentially voidable and subject to civil remedies. The same conflict of interest concerns exists with the elementary school as with the other schools.

## **CONCLUSIONS AND RECOMMENDATIONS**

The legal and practical implications of how the Commission proceeds in this matter cannot be understated. It affects the education and livelihood of thousands of area residents. I would further note that one of the purposes of the Local Land Use Planning Act is to address and promote "public school needs." It would appear that the Commission's action in the last year are directly contrary to this stated and worthy purpose.

Additionally, the Commission also needs to consider the problems that it has created even if it approves the CUPs for the respective schools. The flawed process utilized by the Commission will open the door for legal challenges by affected parties who oppose the schools. In short, the Commission and the City has put itself in a legally vulnerable position, prone to attack on any side.

The unnecessary uncertainties that the Commission has created with regard to these schools have had and will have major ramifications and potential legal consequences to the City. I highly suggest that the Commission tread cautiously and reconsider its approach. I will be present at the June 25 meeting, and will be prepared to answer any questions that the Commissioners may have with regard to these stated concerns and legal issues. Nevertheless, please consider this letter a written protest in the preface to a potential appeal of a Commission decision to the Blackfoot City Council.

Nathan M. Olsen, Esq.

cc. Blackfoot City Attorney Garrett Sandow [gsandowlaw@aol.com](mailto:gsandowlaw@aol.com)

### **Nathan Olsen**

Mr. Olsen also presented the charter school's position regarding legal concerns with the wording of the law, as well as the interpretations of the law and court case ruling. He shared his ideas on how the role of the Planning and Zoning Commission should be outlined. He explained that he expects them to work within their boundaries. Attorney Olsen wanted the Planning & Zoning Board to be aware that they do not have the authority to shut down the school.

Commissioner Ramirez reminded Attorney Olsen the responsibility of the Commission is the health, welfare, and safety of this community and school.

### **Tiffany Hansen, 540 Lawndale Drive, Idaho Falls**

Ms. Hansen stated that she sees the importance of the approval of this CUP. She would be very appreciative of it getting passed.

### **Holly Lilya, 377 N 400 W Blackfoot**

Ms. Lilya stated that she is a board member for the charter school. Her concerns are about the transition plan. Lilya questioned if they do have a plan and did the Planning and Zoning Board receive this plan.

**Shelly Gailey, 217 Alexander Blvd., Blackfoot**

Ms. Gailey stated that she has been a teacher at several other schools in this area. She feels that this is a good school, the students are learning good values, and she sees the students being respectful of the area. Ms. Gailey is hoping that the Commission and school can work together to keep the school in place and working.

**Erick Wallace, 238 Dewey Street, Blackfoot**

Is in favor of the school, but if the CUP does not pass, then will the other schools in this area be able to house the extra students? He has never seen anything at the charter school that might be a safety concern. He would hope that this school does not close; this has been a very good thing for our community. He stated that if the charter school closes, he will have to find a new school for his children, and this will most likely be in another town.

**Commissioner Ramirez provided a list of several items that were identified as violations at the schools. See attachment:**

**Debbie Steele 252 S 625 W Blackfoot**

Ms. Steele, the new chief administrator at the BCCLC school, stated that the middle school's policies are for a closed campus. Teachers and parents are always working closely with the students. She confirmed that the middle school has a policy and a student handbook that states plainly that it is a closed campus.

**Jeff Robbins, 442 W. 100 N., Blackfoot**

Mr. Robbins questioned as to why they need a Conditional Use Permit if the other schools do not. Ramirez answered that the facilities of the Blackfoot School Districts were built before the land use ordinances were passed. They were grandfathered into the area.

**Jenney Ball, 208 W 100 N., Blackfoot**

Jenney Ball stated her kids had attended a variety of schools here in Blackfoot. She shares that all schools have safety issues. She knows that the charter school does comply with the City code and is hoping that they will be issued the CUP.

**Sydney Wilkes, Student**

Sydney is a student at BCCLC and is grateful for the teachers at that school and all that they have helped her achieve.

**Lance Stuart, 755 McAdoo, Blackfoot**

Mr. Stuart shared a story about how his son was struggling in school and falling behind the other students, but since he has been attending the BCCLC, he is thriving and doing very well in all the classes. The teachers have not let him fall behind the other students, and he is very grateful.

**Becky Hardy 917 W. Hwy 26, Blackfoot**

Ms. Hardy shared with the Commission that she has spent a lot of her days at the middle school. She feels as if there is no concern about the kids in the parking lots. She stated the students are being watched and taken care between the lunch breaks.

**Mark Fisk 781 W Quail Circle, Blackfoot**

Mr. Fisk stated that when reading the list of issues and concerns that were wrong with the schools, several

of the items belonged to the Bingham Academy school district. These items should not even be discussed at this meeting. He reminded the Commissioners that the school only meets 144 days out of the year, which is a very small majority of the time. Mr. Fisk also feels that it is unfair that the Blackfoot High School & the new Movie Mill has a crosswalk. Mr. Fisk would like the BCCLC Middle School to be considered for a crosswalk as well, questioning why the Commission has not been concerned for this safety issue in this area. He reminded the Board that they should be treated fairly.

**Candra Risa 444 W 100 N, Blackfoot**

Ms. Risa shared her concerns about the school. She wanted to ensure that the Commissioners are addressing the items on the list and they will be fixed. Candra confirmed that she is on the Board of Directors for the BCCLC.

**Stacey Lilya 377 N 400 W, Blackfoot**

Mr. Lilya asked why Commissioners Deborah Barlow, Marilyn Jefferis, and Joanne Thomas stepped down and are not taking part in the charter school decisions. Commissioner Ramirez informed him that they did so on the advice of the city attorney because they work for different schools, there could be a conflict of interest. Lilya shared other issues that will be addressed by the Commission.

**Jessica Evans 294 Jefferson St. Blackfoot**

Ms. Evans expressed the importance of keeping the charter school open and granting the CUP. Jessica stated that we need to do the best we can for the students that will be attending the school.

**Craig Gerand 1350 Parkway Dr. #30, Blackfoot**

Mr. Gerand will be the new Administrator for the middle school. He feels like this school is good. Mr. Gerand informed the Board that he had walked through the school with the building/state inspector and only one violation had been found. He also informed them that when the middle school students are walking outside from class to class, they are never left alone, always being accompanied by teachers. These are good students that talk kindly to the customers that support nearby businesses, and he has witnessed them picking up garbage and showing great deeds of kind-heartedness. He wanted the Board to know that they do care about the students.

**Deseray Cox, 268 Collins, Blackfoot**

Ms. Cox confirmed that this school had helped her child in many ways, expressing that this would never have been possible in a public school. She stated that the teacher at BCCLC had been a tremendous help to her child.

**Several other patrons did not sign up on the form for the testimony to share their comments in favor of the BCCLC. The names and addresses were unable for the City to obtain.**

**Testimony Neutral:**

**Zac Fillmore 1068 W 50 S, Blackfoot (Project Manager)**

Mr. Fillmore approached the Commissioners asking if the Conditional Use Permit would be approved. He questioned if it would be approved in time for the beginning of the new school year. Mr. Fillmore stated that he is only considering the project manager position at this time.

**Testimony in Opposition**

**Carl Slayton, PO Box 384, Blackfoot**

Mr. Slayton informed the Commissioners that the students use the electrical boxes for lunch tables, confirming that he does have pictures of most of the violations that they have listed this evening. He stated that he is not in favor of re-issuing the Conditional Use Permit to these schools.

**Kurt Hibbert, the City of Blackfoot Planning and Zoning Administrator**

Hibbert confirmed that the application for the Blackfoot Charter Community Learning Center is complete.

**Debbie Steele**

Ms. Steele wanted to confirm that the charter schoolteachers are always with the students and that this is their priority. She confirmed that a new transition plan has been filled out. She expressed appreciation for the time and help she has received from Mr. Hibbert on the items of concern.

**Commissioner Ramirez closed the meeting to the public:**

Commissioner Stufflebeam, addressing the Commission asked Mr. Hibbert to provide more information on helping with the commissioner with decision making. Commissioners discussed tabling the CUP until July 23, 2019. Mr. Hibbert said that their decision would need to be made up of Fire Code, Land Use Code, Building Code.

After much discussion between the Commissioners, they decided to table the approval of the Conditional Use Permit. Commissioner Moldenhauer spoke and feels as if great steps have been made but there are issues that have not been met. Commissioner Merv Dolan stated that he did not want to decide this evening, that there is still more information that needs to be presented to the Board. Commissioner Ramirez wanted the charter school Board to know that is all the Planning & Zoning Commission wanted was for the school to work together with the City in making all codes to be correct.

Commissioner Stufflebeam moved to table the decision for the Conditional Use Permit for the BCCLC Middle School until the next meeting, July 23, 2019; Commissioner Rocky Moldenhauer seconded; all were in favor, motion carried.

**Action Item /Public Hearing**

**Conditional Use Permit – Blackfoot Charter Community Learning Center School Elementary, 2108 & 2867 Hunters Loop, Blackfoot, Idaho**

**Debbie Steele, Chief Administrator for the Blackfoot Charter Community Learning Center**

**Ms. Steele read the following:**

Staff Level Modifications:

1. A reduction in density that does not exceed twenty-five percent (25%) of the total units. *N/A*, we are not reducing density at this location.
2. A relocation of dwelling units or building pads for some practical reason, such as road alignment, topography, access or solar access or stability in hillside areas. *N/A*, we are not relocating any dwelling units at this location until the completion of Phase

I of the new building. At the completion of Phase I, four portable classrooms will be removed from this location.

3. A change in the phasing plan. Blackfoot Charter requests a change in the phasing plan to accommodate the loss of the bond in May 2019, due to negative press from the media over the past six months. Also, there is an FAA restriction for 2-story buildings on our current acreage. Therefore, Blackfoot Charter is currently investigating additional grants, bonds, and financing options to move forward with the construction of Phase I of the new building on a different piece of property located away from the Blackfoot Airport.

Blackfoot Charter requests that the City of Blackfoot change the traffic flow by installing One-Way signs entering Hunters Loop on the Westside and Do Not Enter signs existing on the East side to allow all school buses (Blackfoot School District #55, Idaho Science and Technology District, and Blackfoot Charter Districts #477 and \$485) as well as all patrons of the Veterinary Clinic easier access to the roadway.

4. A modification to the recreation area or open space design, but not Elimination of significant reduction. A verbal agreement was made in 2016 between the Charter Director and the Planning and Zoning Administrator to move the fence on the East Playground to allow space for 15 additional parking spaces. This project was completed in the summer of 2017, and the teachers have been parking in this space for the 2017-2018 and 2018-2019 school years. This space will continue to be used for teacher parking, freeing up 15 additional parking spaces closer to the buildings for visitors.
5. Blackfoot Charter requests a modification to the Castle to remove on the wall that was built when our school took ownership from the Castle Daycare. It will be removed to accommodate the library so the existing library can be used for a first-grade classroom for the 2019-2020 school year.
6. An increase or decrease in the proposed setback as long as ordinance requirements are met. N/A
7. A change in building elevation as reviewed and approved by the staff. N/A

### **Support**

#### **Nathan Olsen, 485 "E" Street, Idaho Falls**

Attorney Nathan Olsen discussed issues concerning the Bingham Academy School. He would like to get a resolution for all the clients. On behalf of the teachers and administration, he told the Commissioners of the concern whether they are going to have a job next year. He stated that all charters schools are

governed by their laws.

Commissioner Ramirez addressed him letting Mr. Olsen know that the meeting is not for the Bingham Academy School.

**Stacey Lilya 377 N 400 W, Blackfoot**

Mr. Lilya brought to the attention of the planning and zoning commission that the Blackfoot school district does not have a CUP for the Blackfoot School on Francis Street. He asked for the code reference which requires schools to have a CUP. Commissioner Ramirez indicated that it was City Code chapter 11-6-4 A.

**Kara Hone, Teacher at BCCLC**

Ms. Hone stated that she would like to advise the commission that if they table this issue until July 23, 2019, if the permit does not pass, this will leave several teachers and staff without jobs. She questioned if there was something that she could do to help the Commission decide. This decision will help the future monthly earnings for several people.

**Darwin Cox,**

Mr. Cox stated that a lot of people are putting their lives on the line. These decisions are basically about the lives and future of our children.

**Mark Fisk**

Mr. Fisk shared that this school has been a positive factor in the community, helping to bring new development to this area.

**Jeff Robbins**

Mr. Robbins educated the Commission that if they wait until July 23, this will give the educators less than two weeks to find a job. Registration for fall is fast approaching, beginning August 1, 2019. He stressed the importance of deciding for those who need to know the future of the school. Could the Planning and Zoning Board please decide tonight? What do we need to make it complete?

**Several other patrons did not sign up on the form for the testimony to share their comments in favor of the BCCLC. The names and addresses were unable for the City to obtain.**

**Kurt Hibbert, Administrator**

Mr. Hibbert clarified that the spaces – lots used by the BCCLC were not meant to be school facilities. He did confirm that the buildings used by the Blackfoot School District were built, designed, and intended to be schools, while the current BCCLC locations were not meant to house schools, but built to be commercial stores, it's not the same situation at all.

Mr. Hibbert reminded the patrons that the transition plan is a project management document that shows the steps and timing for the construction of the project which the new school will follow; a timeline for which they will be moving into the new building. The Planning and Zoning Commission requested this transition plan from the charter school in July 2018 and 2019.

Debbie Steele thanked the Commission for all the hard work that everyone has gone through. Steele promised that there would be a transition plan in place.

**Commissioner Ramirez closed the meeting the public:**

Commissioner Stufflebeam stated there are still some issues that need to be taken care of but suggested that the commission approve the CUP conditioned upon a satisfactory review of the transition plan. The suggestion seemed to find acceptance by the other commission members.

Commissioner Stufflebeam moved that the BCCLC at 2801 and 2867 Hunters Loop be approved for a Conditional Use Permit pending the review of the transition plan. Submittal will be by July 16, 2019, for review at the July 23, 2019 Planning and Zoning meeting; Commissioner Dolan seconded; all were in favor, motion carried.

Commissioner Stufflebeam moved to reconsider the motion regarding the BCCLC Conditional Use Permit at 1350 Parkway #30; Commissioner Moldenhauer seconded; all were in favor, motion carried.

Commissioner Stufflebeam motioned for the BCCLC at 1350 #30 Parkway be approved for a Conditional Use Permit pending the review of the transition plan. Submittal will be by July 16, 2019, for review at the July 23, 2019 Planning and Zoning meeting; Commissioner Moldenhauer seconded; all were in favor, motion carried.

**Roll call vote:**

Commissioner Ramirez – Chairman

Commissioner Moldenhauer – Yes

Commissioner Dolan – Yes

Commissioner Stufflebeam – Yes

Commissioner Ramirez did question if there was a CUP application for the Bingham Academy School. Kurt Hibbert stated that a Conditional Use Permit application for Bingham Academy had not been received. Commissioner Ramirez verified with the city attorney since an application had not been submitted that it would be impossible for Bingham Academy to have one approved prior to the proposed opening of school. Attorney Sandow stated that there was an indication that an application would be submitted and that it was possible under city code to have an emergency meeting to approve it before the beginning of school.

**Commissioner Ramirez closed the Planning and Zoning meeting:**

**Adjournment:**

Commissioner Moldenhauer motioned to adjourn the meeting; Commissioner Dolan seconded; all were in favor; the meeting was adjourned at 11:15 P.M.

*Donna Parkinson*  
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City of Blackfoot, Planning & Zoning Clerk  
Donna K. Parkinson