

**SPECIAL CITY COUNCIL MEETING  
MINUTES  
NOVEMBER 9, 2009  
KUNA CITY HALL COUNCIL CHAMBER, 763 W. AVALON**

**1. CALL TO ORDER AND ROLL CALL:**

Mayor Dowdy called the meeting to order at 6:00 p.m.

**PRESENT:** Mayor Dowdy, Council President Jeffery Lang, Council Members Lisa Bachman, Trina Stroebel and Council Member Cardoza.

**ALSO PRESENT:** Former City Attorney Randy Grove; City Attorney Richard Johnson; City Engineer Gordon Law; City Clerk Lynda Burgess; City Treasurer John Marsh; Mapping Specialist Mike Borzick and Jim Keller and Justin Walker, Keller Associates.

**2. CANVASS ELECTION RETURNS AND APPROVE RESULTS – NOVEMBER 3, 2009 GENERAL MUNICIPAL ELECTION**

See verbatim minutes transcript attached hereto and made a part hereof.

Moved by C/Lang, seconded by C/Bachman to approve the canvass. Motion carried 4-0.

**3. PROTEST HEARINGS REGARDING LOCAL IMPROVEMENT DISTRICT 2006-01**

See verbatim minutes transcript attached hereto and made a part hereof.

There being no further protests offered, M/Dowdy closed the Protest Hearing at 7:20 p.m.

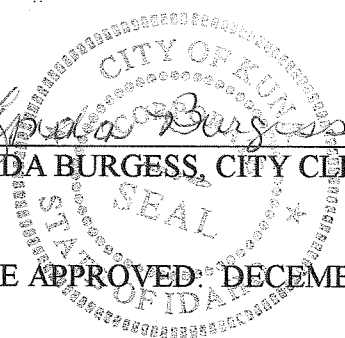
**4. ADJOURNMENT:** There being no further business to conduct, it was moved by C/Lang, seconded by C/Stroebel to adjourn at 7:21 p.m.

**ATTEST:**

  
\_\_\_\_\_  
J. SCOTT DOWDY, MAYOR

  
\_\_\_\_\_  
LYNDA BURGESS, CITY CLERK

DATE APPROVED: DECEMBER 1, 2009

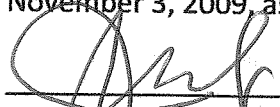



**CITY OF KUNA, IDAHO**  
**ABSTRACT OF VOTES**  
**GENERAL MUNICIPAL ELECTION – NOVEMBER 3, 2009**


| For Councilmember Four-Year Term (2 positions) | Precinct 700<br>7 <sup>th</sup> Day<br>Adventist<br>Church | Precinct 701<br>Kuna Fire | Precinct 702<br>Kuna Library |            |
|--|--|---------------------------|------------------------------|------------|
| Briana Buban-Vonder Haar                       | 49   | 41                        | 22                           | 112        |
| Richard C. Cardoza                             | 181  | 74                        | 105                          | 360        |
| Warren Christensen                             | 56   | 45                        | 30                           | 131        |
| Kelly L. Driesel                               | 71   | 36                        | 84                           | 191        |
| Douglas W. Hoiland                             | 250  | 102                       | 101                          | 453        |
| Richard Scott                                  | 43   | 7                         | 19                           | 69         |
| Corinna H. Stiles                              | 95   | 72                        | 58                           | 225        |
| Trina Stroebel                                 | 153  | 78                        | 61                           | 292        |
| David B. Szplett                               | 37   | 8                         | 8                            | 53         |
| Carl Trautman                                  | 240  | 56                        | 59                           | <u>355</u> |
|  |  |                           |                              | 2,241      |
| Ballots Cast at Polls                          | 563  | 265                       | 282                          |            |
| Absentee Ballots Cast                          | <u>77</u>  | <u>33</u>                 | <u>31</u>                    |            |
| Total Ballots Cast                             | 640  | 298                       | 313                          | 1251       |
| Registered Electors on November 2, 2009        | 3192   | 1323                      | 1355                         |            |
| Election Day Registrants                       | 37   | 17                        | 26                           |            |
| In-person Absentee Registrants                 | 0  | 0                         | 0                            |            |
| Total Registered Electors                      | 3229   | 1340                      | 1381                         |            |
| Percentage of Registered Electors Voting       | 19.8%  | 22.2%                     | 22.6%                        |            |


STATE OF IDAHO     )  
                                   ) ss.  
 COUNTY OF ADA     )


We, the councilmembers of the City of Kuna, acting as a Board of Canvassers of election, do hereby state that this is a true and complete abstract of all votes cast within this City at the General Election held November 3, 2009, as shown by the records now on file in the City Clerk's office.

  
 \_\_\_\_\_  
 J. Scott Dowdy, Mayor

  
 \_\_\_\_\_  
 Lisa Bachman, Councilmember

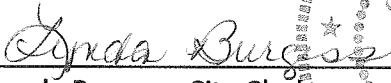
  
 \_\_\_\_\_  
 Trina Stroebel, Councilmember

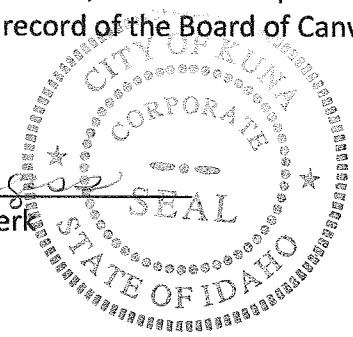
  
 \_\_\_\_\_  
 Jeffery Lang, Council President

  
 \_\_\_\_\_  
 Richard Cardoza, Councilmember

STATE OF IDAHO )  
 ) ss.  
COUNTY OF ADA )

I, Lynda Burgess, City Clerk of the City of Kuna, do hereby certify that this is a full, true and complete copy of the abstract of votes for the candidates herein named as shown by the record of the Board of Canvassers filed in my office this 4<sup>th</sup> day of November, 2009.

  
Lynda Burgess, City Clerk



0001

1           BEFORE THE KUNA CITY COUNCIL

2

3 In the Matter of:    ) TRANSCRIPT OF PROCEEDINGS

)

4 Kuna LID 2006-1 Protest )    VOLUME I

Hearing.            )

5                    ) Pages 1 - 56

6

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9

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12

13 Date:   November 9, 2009

Time:   6:00 p.m.

14 Place:   Kuna City Hall

          763 West Avalon Street

15           Kuna, Idaho 83634

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25 Andrea L. Chandler, CSR #748, RPR

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1           A P P E A R A N C E S

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KUNA CITY COUNCIL:    J. Scott Dowdy, Mayor

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                  Jeffrey Lang, Council President

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                  Lisa Bachman, Council Member

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                  Richard Cardoza, Council Member

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                  Trina Stroebel, Council Member

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9

10

Also Present:        Lynda Burgess, City Clerk

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                  Randy Grove, City Attorney

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                  Gordon Law, City Engineer

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1 PROTESTANT STATEMENTS

2  
3 STATEMENT BY: PAGE  
4  
5 RAYMOND SCHILD 14  
6 SOO KANG 23  
7 RICHARD EVANS 37  
8 FRANK FAZZIO 38  
9 DARWIN VANDERSTELT 39  
10 STEPHEN BRADBURY 41  
11 TIM ECK 48  
12 ALEX McLAUGHLIN 50  
13 CHARLEY CONNELLY 52

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1 KUNA, IDAHO, MONDAY, NOVEMBER 7, 2009, 6:00 P.M.

2  
3 PROCEEDINGS

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5 MAYOR DOWDY: We'll go ahead and call the Special  
6 City Council meeting to order.  
7 Roll call.

8 (Roll Call Was Taken.)

9 MAYOR DOWDY: Okay. There's one preliminary matter  
10 we need to take up, and that is the candidacy election,  
11 which has to be done within seven days of the election.  
12 Today being the seventh day.

13 So, Lynda, I'll go ahead and turn that over to  
14 you.

15 MS. BURGESS: Yes. First of all, I wanted to let  
16 you know that I have the tally sheets and the pollbooks  
17 here. If you would like to look at them, I will  
18 distribute them.

19 COURT REPORTER: I'm sorry. I can't hear.  
20 "pollbooks here if you would like to"...

21 MS. BURGESS: I'm sorry?

22 COURT REPORTER: Can you repeat that? I can't hear.

23 MS. BURGESS: I have the pollbooks and the tally  
24 sheets for everyone to look at. If you would like to  
25 see them, I will distribute them. Also, I wanted to  
0005

1 explain about the sheet I just gave you about the  
2 results.

3 As we discussed last week, there were a couple  
4 of areas that were of concern the night that -- the  
5 night after the election. One of them was the fact that  
6 the county's report to me of the number of registered  
7 voters did not agree -- let me back up. Excuse me.

8 The county's verbal report to me the day after  
9 the election did not agree with their written report  
10 that they had provided the week before and the number of  
11 registered voters for the election.

12 After discussing it with them on several  
13 occasions, they finally agreed to run the report again,  
14 which they did as of the day of the election, and the  
15 count of the number of registered voters agreed with the  
16 count that I already had. So everything matched up  
17 perfectly. The same number of voters counted, and so  
18 that discrepancy was resolved.

19 The other area that we were concerned about had  
20 to do with the number of ballots cast at the polls  
21 versus the number of votes. And it appeared at the time  
22 that I gave you that preliminary that there were more  
23 votes cast than ballots issued.

24 As I told you that night, I would be going over  
25 the pollbooks to determine whether or not they were  
0006

1 accurately tallied and tabulated. And I spent a couple  
2 of days doing that and found that in one precinct they  
3 did not include in their pollbook the list of newly  
4 register voters who had voted at the polls, which  
5 resulted in a 37-voter discrepancy.

6 They did have those people filled out in an  
7 exit pollbook, but not in the original pollbook that I  
8 was looking at. The one that everybody signs before  
9 they get their ballot, that is not the book that they

10 put those names in. So that's why I missed them in my  
11 cursory look at the pollbooks election night.

12 So with the addition of those and some minor  
13 corrections to their tabulations, we were able to come  
14 up with an adequate number -- a more than sufficient  
15 number of ballots cast for the number of votes counted.

16 Does that make any sense?

17 Originally we had -- I think we were short like  
18 150 ballots cast for the number of votes counted, and it  
19 just didn't jive, but everything worked out just  
20 perfectly. We have 1200 -- no. I didn't add it right  
21 in my head. Where is that figure? That's not down  
22 here. I'll shut up before I get myself into trouble.

23 Do you have any questions?

24 MAYOR DOWDY: Any questions from Council?

25 MS. BURGESS: Did you want to look at the books?

0007

1 COUNCILMAN CARDOZA: I don't.

2 COUNCILWOMAN BACHMAN: No.

3 PRESIDENT LANG: Mayor, I move that we would approve  
4 the election results from November 3rd, 2009.

5 COUNCILWOMAN BACHMAN: Second.

6 MAYOR DOWDY: It's been moved and seconded we  
7 approve the election results of November 3rd of 2009.

8 All in favor?

9 (Councilmembers all indicating "Aye.")

10 MAYOR DOWDY: Opposed?

11 Motion passed. Thank you.

12 All right. We'll move into the meat of the  
13 night here, which is the protest hearing. As -- we've  
14 never done one of these before, so bear with us.

15 As indicated in a letter that was sent out on  
16 October 27th regarding the protocol for tonight's  
17 meeting, each applicant -- or protestant will be given  
18 ten minutes to address the Council. Only one person for  
19 each protest or parcels included in the protest will be  
20 allowed to speak.

21 I think what we're going to do tonight is go  
22 until about 9:00 p.m. I think we go much longer than  
23 that, then people get tired, and we don't think as  
24 straight or as clearly as we should. So I think each  
25 night we're going to go ahead and do a three-hour block,

0008

1 and then the last night, if necessary, we'll go longer.

2 As indicated in the letter, we did receive a  
3 number of written protests that were submitted. There  
4 was a number of them that were -- you know, as  
5 indicated, we are going to go through and hear from  
6 those who submitted the earliest, prior to that  
7 November 6th at noon deadline. And then anyone -- any  
8 that were submitted after that will be next in line.  
9 And if there's any just oral testimony or protests to be  
10 presented, those will be heard last.

11 So what I want to do first off is go through

12 the list, as I've got them from the order in which we --  
13 the City has them as received.

14 It looks like we've got a protest that was  
15 filed by attorney Raymond Schild.

16 Mr. Schild, are you here?

17 You're here for K&C Investments, LLC. Now,  
18 that was received on October 30th, with an addendum that  
19 was received again today. That was the first one  
20 received.

21 On November 4th we received one from Bighorn,  
22 LLC; Roger Michener and Nicole Brown.

23 Are they present? Is there --

24 MR. KANG: We're representing them.

25 MAYOR DOWDY: Are they represented -- Mr. Kang,  
0009

1 they're represented by your firm; is that correct?

2 MR. KANG: That's correct.

3 MAYOR DOWDY: Okay. And if anybody -- we did get  
4 some separate protests, and also some that were -- that  
5 are represented by an attorney. So if I read them out,  
6 let's make sure we get everything put together  
7 correctly.

8 So the next one that we received was from Alpha  
9 Lending on behalf of Steve Vaught. Alpha Mortgage Fund  
10 I.

11 Is anybody here for that?

12 Next was Thomas Nicholson.

13 Is Mr. Nicholson here?

14 MR. KANG: That's us.

15 MAYOR DOWDY: Okay. That's you, too.

16 The next one I've got is Earl Gripentrog.

17 MR. GRIPENTROG: Ozzie.

18 MAYOR DOWDY: Did I understand that correctly?

19 MR. GRIPENTROG: Yes. We're both --

20 MAYOR DOWDY: And you're with Mr. Kang also?

21 And then the next one was obviously the one  
22 from Mr. Kang on behalf of a whole bunch of people.

23 The Timbermist Partners?

24 MR. KANG: I'll be on that.

25 MAYOR DOWDY: That's yours also?

0010

1 Evans Construction & Management Company?

2 MR. EVANS: Right here.

3 MAYOR DOWDY: Okay. Sir, are you going --

4 COURT REPORTER: I'm sorry. Can I get your name?

5 MR. EVANS: Richard Evans.

6 COURT REPORTER: Thank you.

7 MAYOR DOWDY: Mr. Evans, are you presenting on your  
8 own -- for yourself?

9 MR. EVANS: Yes.

10 MAYOR DOWDY: We've got one here filed by  
11 Derek Pica on behalf of Mr. Fazzio.

12 MR. FAZZIO: Present.

13 COURT REPORTER: I'm sorry. I need your name.

14 MR. FAZZIO: Greg Fazzio.  
15 COURT REPORTER: And you, sir?  
16 MR. PICA: Derek Pica, P-I-C-A.  
17 COURT REPORTER: Thank you.  
18 MAYOR DOWDY: Okay. Next I have one filed by  
19 Mr. Vanderstelt.  
20 Mr. Vanderstelt is here.  
21 And are you going to be speaking on your own  
22 behalf, sir?  
23 MR. VANDERSTELT: I'm speaking on behalf of my  
24 father.  
25 MAYOR DOWDY: Okay. Very good.  
0011  
1 And you are?  
2 MR. VANDERSTELT: Darwin.  
3 MAYOR DOWDY: Darwin. Okay.  
4 Next I have one submitted by Dr. Soo W. Lee.  
5 Mr. Kang, again, is that one of yours?  
6 I have one filed here from Williams Bradbury on  
7 behalf of Timothy Gordon.  
8 MR. BRADBURY: Stephen Bradbury.  
9 MAYOR DOWDY: Very good, Mr. Bradbury.  
10 Next is one filed from Spink Butler on behalf  
11 of Sanctuary Subdivision.  
12 No one here for that one?  
13 Next I have one from Hubble Homes.  
14 For K&C Investments, is that tied in with  
15 yours, Mr. Schild, or not?  
16 MR. SCHILD: I believe it does.  
17 MAYOR DOWDY: Are you representing --  
18 MR. SCHILD: No, I'm not.  
19 MAYOR DOWDY: I don't know. Is it two different  
20 interests that are represented --  
21 MR. SCHILD: I referred to that as an exhibit in the  
22 supplement I filed today.  
23 MAYOR DOWDY: Oh, okay. Very good.  
24 The next one -- the final one I had was filed  
25 for -- on behalf of Stetson Properties, Applewood  
0012  
1 Subdivisions.  
2 Is someone here for that?  
3 Mr. Jewett, are you going to be presenting on  
4 that one?  
5 MR. JEWETT: Yes.  
6 MR. ECK: Tim Eck.  
7 COURT REPORTER: I'm sorry. What was that?  
8 MR. ECK: Tim Eck.  
9 MAYOR DOWDY: All right. So we'll see how far we  
10 get here. We'll start off then.  
11 Mr. Schild, you'll have ten minutes. Please  
12 come to the stand, state your name, spell your last name  
13 for the record, who you're speaking on behalf of,  
14 identify the parcels, if you would, by number, the name  
15 of the protestants for whom you are speaking, and you'll

16 be given ten minutes.

17 The Council will have an opportunity to ask  
18 questions if they want to or need to. That will not  
19 count against your ten-minute time frame. And we'll  
20 go -- we'll start there.

21 MR. McLAUGHLIN: Mayor Dowdy, my name is Alex  
22 McLaughlin. I'm here on behalf of Washington Federal  
23 Savings. We haven't submitted a written objection. I  
24 do have a written objection here; we just haven't done  
25 that in a timely fashion.

0013

1 If I could submit it, please?

2 MAYOR DOWDY: Well, that will be fine. We need to  
3 make copies -- the city clerk will have to get those.

4 Is there anybody here who didn't submit  
5 anything written that is planning on providing just an  
6 oral protest?

7 Is that you Charley?

8 MR. CONNELLY: Yes.

9 MAYOR DOWDY: Are you planning on submitting --

10 MR. CONNELLY: Just real quick.

11 MAYOR DOWDY: On behalf of?

12 MR. CONNELLY: Craig. And he may be here before  
13 it's time.

14 COURT REPORTER: I need a last name. Charlie?

15 MR. CONNELLY: Connelly, C-O-N-N-E-L-L-Y.

16 COURT REPORTER: Thank you.

17 MAYOR DOWDY: If you want -- Lynda, if you could get  
18 this paperwork from him and make copies for the Council,  
19 and then we'll go ahead and get started. Try not to  
20 trip.

21 Did we effect the recording at all.

22 MS. BURGESS: Something is spilling.

23 MAYOR DOWDY: And just so you all are aware, this is  
24 being transcribed, so try to speak clearly and enunciate  
25 and speak loudly into the microphone.

0014

1 Do we have a timer, Lynda?

2 Okay. Go ahead, Mr. Schild.

3 MR. SCHILD: Thank you Members of the Council.

4 Please excuse my voice. I'm getting over the flu.

5 Swine flu, lawyer flu, same thing, I think.

6 On behalf of K&C Investments; Mr. Jim Kranz,  
7 who's a Boise chiropractor; and his brother-in-law, Mike  
8 Carpenter, who's a retired rancher from Washington. I  
9 believe the Parcel Nos. are S1327233606. And S132723--

10 COURT REPORTER: I'm sorry. Can you start the  
11 second one again.

12 MR. SCHILD: Pardon?

13 COURT REPORTER: The second one. Can you start the  
14 second one again?

15 MR. SCHILD: S1327233876, if I'm not mistaken.

16 Members of the Council, I think I'll call them  
17 KCI for short. They're kind of different from the pack

18 and from what you're going to hear from a lot of  
19 protesters, I believe. They're in a situation where  
20 they were selling their land to Hubble Homes --  
21 actually, Providence, LLC, and a Mr. Blackstock was  
22 their manager back in November of '05.

23 They didn't know a thing about the LID. They  
24 didn't know a thing about the progress of their  
25 annexation. They didn't take part in the annexation  
0015

1 process. They didn't sign anything, other than the  
2 affidavit of interest. They were never sent anything  
3 about the LID. They didn't know its terms, its  
4 condition. They knew nothing about assessments or  
5 encumbrances.

6 They basically knew nothing of what was going  
7 on out here until long after the fact, after Hubble had  
8 breached the contract and were no longer buying the  
9 land -- when they got notification of the resolution for  
10 EDU transfers and finally called in and talked to the  
11 City and found out that this all had been going on.

12 I think it's -- I think it's very important,  
13 and it will be germane to a couple of the arguments that  
14 not only Hubble, but the City kept them out of the loop.  
15 There was no communication with them, no notice to them.  
16 They were never consulted or informed.

17 They knew nothing of any of the terms and  
18 conditions of the LID. They had no idea that they could  
19 be being made liable for assessments, or that their land  
20 would possibly be subject to encumbrance, and if those  
21 assessments weren't paid, to foreclosure.

22 And the reason they weren't is because both the  
23 City and Hubble dealt with Hubble as the owner of their  
24 land. On April 19th, Mr. Blackstock wrote a letter that  
25 Hubble's intent was to include the land in the LID,  
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1 depending on the final version of the LID.

2 I might note, parenthetically, that final  
3 version never existed until after the annexation was  
4 complete. This property was annexed on June 5th of '06.  
5 The terms and conditions of the LID were never made  
6 public until the August of '06 resolution.

7 On April 21st, there was an annexation  
8 application which listed Hubble's address in Meridian,  
9 Idaho, not KCI's. The annexation addendum falsely  
10 listed Blackstock, Hubble's agent, as the owner, when,  
11 in fact, KCI was the owner.

12 The City, in its own records on Exhibit F,  
13 carried Hubble's address as KCI's, and therefore,  
14 certainly all of the notices that went out regarding  
15 this LID, regarding the annexation, went to Hubble.  
16 They never went to KCI.

17 The City and Hubble did everything; annexed  
18 this property, purportedly put it in the LID, put forth  
19 the assessment and the encumbrance, and there's not a

20 shred of paper. When I asked the City in a public  
21 records request for all of the documents dealing with  
22 these parcels and the annexation and the LID, there's  
23 not a shred of paper where the City notified or  
24 communicated with KCI directly.

25 Now, I think KCI is also different from the  
0017

1 pack, because its position, basically, is it's not in  
2 the LID, and, in fact, it never was annexed properly.  
3 The annexation addendum states that property must be  
4 annexed to be in the LID. The annexation here is  
5 invalid.

6 The application was signed on April 21st. The  
7 affidavit of interest giving Hubble authority to annex  
8 the property and even submit an annexation application  
9 was not signed until about seven weeks later on  
10 June 6th. At the time that the annexation application  
11 was submitted, there was absolutely no authority and no  
12 document giving authority.

13 The purchase and sale agreement that I've  
14 attached gave them no such power to annex or do  
15 anything. The Hubble letter that the Mayor referred to  
16 even admits that they have no authority to commit more  
17 than it owned, and all it owned was the right to buy the  
18 land.

19 Even Hubble is admitting it had no authority to  
20 annex this land. There is nothing after June 6th, when  
21 KCI gave Hubble the authority to submit an annexation  
22 application that is in any file.

23 There is no document applying for annexation of  
24 this property after there was authority to submit an  
25 application. The application that was submitted was  
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1 invalid. The annexation is invalid. They're not in the  
2 LID.

3 Second, Hubble had no power to commit the land  
4 to the LID. Mr. Laws' letter of March of '08 admitted  
5 that including the property in the LID, as based on the  
6 addendum that was signed by Hubble -- the annexation  
7 addendum -- and that in turn depends on the affidavit  
8 being viable when it was signed.

9 There was no power in the purchase and sale  
10 agreement. That's Exhibit M if you're looking for it.  
11 Hubble admits it didn't have the power to commit the  
12 land to the LID in its letter. Again, the addendum was  
13 signed April 21st. The affidavit of interest was not  
14 signed until June 6th.

15 The addendum at the -- annexation addendum,  
16 which is the only document upon which the City can base  
17 any argument that this land was included in the LID was  
18 signed without authority. And I might note that the  
19 City knew or should have known when it took in the  
20 annexation application, when it took in the annexation  
21 addendum, there was no affidavit of interest

22 accompanying it giving anybody the power to submit it,  
23 because it didn't exist.

24 And the City accepted those applications and  
25 that addendum with no supporting document giving any  
0019

1 power to find -- to file it. And, again, there was no  
2 other document after any -- the affidavit of interest  
3 was signed that has anything to do with including this  
4 property in the LID.

5 Third, the affidavit and the addendum under the  
6 statute of frauds are legally insufficient to commit the  
7 land to the LID or grant the authority to do so.

8 The Idaho laws dealing with encumbering land,  
9 and specifically in Section 9-503 in the cases  
10 interpreting it, state that any power in or estate in  
11 land must be in writing, it must be signed by the person  
12 charged, it must describe the property, and it must  
13 describe the interest specifically.

14 The encumbrance that the LID places on the  
15 property is an estate in or a power over land.  
16 Therefore, the addendum application -- affidavit --  
17 annexation addendum would have to satisfy that statute.  
18 It does not. It is not signed by KCI. It does not  
19 describe the interests as being transferred. It does  
20 not put -- have anything in writing that this could be  
21 granting an encumbrance over land, and it does not even  
22 describe the property.

23 The LID encumbrance is such an interest it has  
24 to satisfy state law. It doesn't. All it has is  
25 general, vague, nonspecified, and ambiguous land that  
0020

1 the signer -- which by the way, was not KCI. It was  
2 signed by Hubble without authority and without an  
3 affidavit of interest -- but the signer agrees to,  
4 quote, Participate to form an LID."

5 It contains no terms, no conditions, nothing  
6 about an assessment, nothing about an encumbrance,  
7 nothing -- it doesn't even describe the property. It  
8 therefore is legally insufficient as a matter of law to  
9 commit our property or any property into the LID.

10 The affidavit of interest suffers from the same  
11 infirmities. All it says is: We give the power to,  
12 quote, Submit applications." That would imply, under  
13 the course of trade in the industry, normal entitlement  
14 applications, like an affidavit -- like an application  
15 to annex. But even in that case, it didn't exist at the  
16 time.

17 Fourth, the ordinance was invalid --  
18 MS. BURGESS: Time.

19 MR. SCHILD: Okay. Then I will stand for any  
20 questions. I will refer you to the written  
21 documentation for the arguments that the ordinance was  
22 invalid due to lack of proper notice and the fact that  
23 it is not in the LID and cannot be assessed because it

24 is not specially benefited by the LID improvements as  
25 required by state law, specifically Title 50 of 1703,  
0021

1 1707, 1705, and 1708.

2 And the Council, therefore, should and can  
3 exclude this property, because it is not benefited by  
4 the improvements under 50-1714. And I believe, after  
5 the protest hearing, is obligated to correct the role in  
6 relation to benefits accruing to LID properties. This  
7 property has no benefit and will not have any benefit  
8 and cannot be included.

9 MAYOR DOWDY: Thank you, Mr. Schild.

10 Is there any questions?

11 COUNCILMAN CARDOZA: I have one. Exhibit A is a  
12 real estate purchase agreement --

13 MR. SCHILD: Yes.

14 MR. CARDOZA: -- is it not?

15 MR. SCHILD: That's the real estate purchase and  
16 sale agreement between K&C Investments and Hubble Homes  
17 -- actually, Providence, LLC.

18 COUNCILMAN CARDOZA: And it's signed both by  
19 Mr. Kranz and Don Hubble?

20 MR. SCHILD: That's correct.

21 COUNCILMAN CARDOZA: Okay.

22 MR. SCHILD: But in it -- it nowhere contains any  
23 authority for them to do anything with the land, to  
24 annex the land, and specifically it does not allow them  
25 to do something like encumber the land, which including

0022

1 it in the LID would.

2 COUNCILMAN CARDOZA: Thank you.

3 MAYOR DOWDY: Any other questions?

4 Thank you, Mr. Schild.

5 MR. SCHILD: Thank you.

6 MAYOR DOWDY: Before we move on to the next  
7 applicant, one thing I forgot to mention is there won't  
8 be any decisions made by the Council tonight regarding  
9 any specific protest. We are going to go ahead and take  
10 in all of the separate protests and the issues, and then  
11 we will deliberate and set another special meeting to  
12 issue the findings and conclusions that the Council has.

13 All right. The next one then would be  
14 Mr. Kang.

15 Mr. Kang, I understand you represent a number  
16 of the different protestants here, so I'll let you  
17 decide the manner in which you're going to proceed with  
18 each of those. Again, I -- you need to address each one  
19 separately. I mean, I understand they're going to have  
20 similar issues, but to the extent possible, you need to  
21 identify each separate owner and move forward with your  
22 arguments, and then so on and so forth.

23 MR. KANG: If I can address that real briefly,  
24 Mayor, and Members of the Council?

25 MAYOR DOWDY: Yes.

0023

1 MR. KANG: The arguments that we are proposing are  
2 related to all the parties that we represent in Exhibit  
3 A. So to the extent that you want identification of  
4 what argument goes to which person or parcel, I would  
5 say it goes to all of them.

6 MAYOR DOWDY: Very good.

7 MR. KANG: And so maybe the best way to start out is  
8 for me to notate for the record all of the parties that  
9 we represent.

10 MAYOR DOWDY: Very good.

11 MR. KANG: And then we can proceed on with oral  
12 argument.

13 MAYOR DOWDY: That would be fine. But please go  
14 ahead and state your name and spell your last for the  
15 record before you start.

16 MR. KANG: My name is Soo, S-O-O; last name is  
17 K-A-N-G, Kang. Law firm of Greener Burke & Shoemaker  
18 representing the individuals and businesses identified  
19 in Exhibit A of our written protest.

20 And those people are: Kendrick and Eva  
21 Wallace, Craig Wallace, Don and Mary Johnson, Tim Hill,  
22 Craig Groves, Sam, and the last name is actually  
23 Johnston, Jerry Frederick, Timbermist Partners, Bank of  
24 the Cascades as custodian for Jerry Hess IRA, Tim Eck,  
25 Tuck Ewing and John Ewing of Ewing Companies, Ozzie

0024

1 Gripentrog, Roger Michener and Craig and Nicole Brown,  
2 Dr. Soo W. Lee, James and Luella Buchanan, Richard and  
3 Charlotte Neddo, Lavar Thornton, Bill Washbourn, Jim  
4 Clark, Dennis Wolfgram, Floyd and Patricia Smart, Steve  
5 Guinn, Transportation Services, LLC, John Burget, Tom  
6 Nicholson.

7 And the one party that we failed to identify  
8 was Todd Bailey. The one name that we did skip over is  
9 Richard Evans. They have not yet decided to come on  
10 board with our firm, so they're going to be representing  
11 themselves at this hearing today.

12 And then as another matter of procedure, I did  
13 receive three written protests from the individuals that  
14 we represent at today's meeting that we'd like to use as  
15 an addendum to our Exhibit B, if I could hand that over  
16 to -- who is it?

17 MAYOR DOWDY: Ms. Burgess.

18 MS. BURGESS: Thank you.

19 MR. KANG: Thank you. And then lastly, as a matter  
20 of procedure, as stated at the beginning, we are making  
21 the common arguments that are to each of the individual  
22 owners that we represent, but there are specific issues  
23 to each of their lands that we, for reasons of conflict,  
24 cannot argue on their behalf, and they would request  
25 some leniency from Mayor and the Council and allow them

0025

1 a few moments to address their specific issues

2 individually to you.

3 With that said, our purpose here today is to be  
4 critical but not to criticize the Council and the  
5 decisions that you have made. As you have gathered from  
6 our written protest, our standard that we're looking at  
7 is what would happen if this were to go to appeal to the  
8 district court and to the Supreme Court, and what would  
9 they be looking at in terms of what decisions did the  
10 Council make, and did they have the authority to make  
11 that decision?

12 So our basic outline is that, one, at this time  
13 we believe that any assessment is premature because it  
14 does not fall within the improvement definition that is  
15 provided in the ordinance.

16 Two, there is no --

17 COURT REPORTER: I'm sorry. That's provided within  
18 the what?

19 MR. KANG: Within The ordinance.

20 COURT REPORTER: Thank you. And will you slow down  
21 just a tiny bit, please?

22 MR. KANG: You bet. Yep.

23 COURT REPORTER: Thank you.

24 MR. KANG: Second, with respect to the benefits,  
25 there are no benefits that have been issued or provided  
0026

1 to the individual landowners, and therefore, there is no  
2 authority of the Council to impose an assessment on  
3 those lands.

4 And third, even if there were such a benefit,  
5 there are reductions that need to be taken from the  
6 assessments that have been proposed by the City Council  
7 and provided through its notice to all of the individual  
8 landowners.

9 Take up my first point, prematurity at this  
10 time. There -- I would direct the Council's attention  
11 to its own definition that is provided in the ordinance  
12 and the purpose for which the LID was created.

13 "The LID was created for the purpose of  
14 acquiring, constructing, and installing the following  
15 described public improvements in the City." And that's  
16 found in Section 1 of the ordinance.

17 Now, if you will take a look at the definition  
18 of an ordinance within that same -- or an improvement  
19 within that ordinance, it provides that an improvement  
20 is defined as the construction of waste water treatment  
21 facilities and conveyance pipelines, lift stations, and  
22 related facilities and improvements for the provision of  
23 waste water collection and treatment for 8,353 new sewer  
24 connections to serve the property within the local  
25 improvement district, No. 2006-1.

0027

1 Now, the first thing that we contend is that  
2 there were no pipelines that were built from the  
3 properties to the waste treatment facility plant that

4 has been built.

5 Now, I understand from some of the background  
6 that I've read, the Council's position may be that it  
7 was always the position that the developers were  
8 supposed to lay down the pipelines that were to lead  
9 from the properties to the waste water treatment  
10 facility.

11 Well, based on the law and how the courts have  
12 interpreted what to do when you are looking at an  
13 ordinance, you read it as if you are reading an  
14 interpreted statute. The first place that you start is  
15 within the wording, the claim and the lower meaning  
16 within the ordinance itself. And only when there is an  
17 ambiguity do you go to the intent of what was supposed  
18 to be.

19 In this case, by reading this definition, I  
20 don't see a place where there is any ambiguity to get to  
21 the intent purposes of what the Council meant or did not  
22 mean when they said "conveyance pipelines." Because if  
23 you read the rest of it, it says "conveyance pipelines  
24 for the collection and treatment."

25 Now, it is the term "collection" read in

0028

1 conjunction with the conveyance pipelines that lead me  
2 to assume or interpret this as a pipeline that needed to  
3 be built by the City from the properties within the LID  
4 district to the waste water treatment facility plant.  
5 Without these conveyance pipes, I don't believe that the  
6 City has fulfilled its obligation in providing the  
7 improvement that they defined within the ordinance.

8 The second argument that we have is that the  
9 lift station that is mentioned within the term  
10 improvements -- it is our understanding from talking  
11 with our clients that no lift stations have been built  
12 pursuant to this ordinance.

13 I may be wrong on that. We're doing some  
14 further investigation through a records production  
15 request with the City. But that is our understanding at  
16 the time -- or at this time.

17 And so without the lift station, and without  
18 the building of the conveyance pipelines, our position  
19 is that the improvements, as defined within the  
20 ordinance, have not been --

21 COURT REPORTER: I'm sorry. The improvements have  
22 to --

23 MR. KANG: The ordinances within the ordinance have  
24 not been completed, and it is too early to make any  
25 assessments at this time.

0029

1 Additionally, when our clients' reviewed and  
2 went to the waste water treatment facility plant, it was  
3 discovered that at this time the facility is only  
4 capable of treating up to 5,000 sewer connections.

5 Now, there are two issues with this. First,

6 under the definition of improvements, it states that  
7 there will be built -- these facilities, conveyance  
8 pipelines, lift stations, related facilities to service  
9 8,353 sewer connections. Well, 5,000 does not cover  
10 that.

11 Secondly, with the contract that this Council  
12 entered into with Osprey Ridge where it dedicated 3,000  
13 connections to Osprey, that mult -- or that adds on to  
14 the burden of what the City Council was supposed to  
15 provide in order to satisfy its obligations to the LID  
16 members. Because as the facility stands now, it is not  
17 at 8,353. Again, it is too -- it is premature to make  
18 any assessments at this time.

19 The second part of our argument is that there  
20 have been no benefits that have been provided to the  
21 owners -- the landowners within the LID. Now,  
22 fundamental to an assessment under an LID is that there  
23 has to be a special benefit that is provided to the  
24 members of the LID.

25 Now, the special benefit has a meaning that

0030

1 says it has to be a benefit that is not provided to the  
2 general public. It is something that is reserved for  
3 the members of the LID.

4 Now, again, going to the terms of the  
5 ordinance, it defines the benefit within, and describes  
6 it as -- I apologize -- the benefit derived is the  
7 collection and treatment of waste water and is related  
8 directly to the number of EDUs allocated or assigned to  
9 each particular parcel of property.

10 Again, it uses the term "collection and  
11 treatment." Our argument for the same being premature  
12 also applies to no benefits, because under the benefits  
13 argument you were supposed to provide a method by which  
14 both the waste water effluent could be collected and  
15 treated. And without the pipes, that cannot be done.

16 However, even if you were to provide the pipes,  
17 what benefit is there to the members of the LID? As it  
18 stands now, there is no limitation that says that people  
19 who are not members of the LID can participate in the  
20 waste water treatment facility plant.

21 When this proposal was first made to our  
22 clients, and from their recollection, it was that if you  
23 don't join the LID, you will not be provided any sewage  
24 services, so you have to join in order to partake in the  
25 new waste water treatment facility plant that we're

0031

1 going to be building.

2 Well, now we are in 2009, the facility has been  
3 built, and they discover that these services are  
4 provided to people who are outside the LID for -- if  
5 they pay for the cost of the connection. Not only that,  
6 but while the LID members are burdened with three EDUs  
7 per acre, which they may or may never use, the people

8 who are outside of the LID can choose to use or get  
9 connections when they desire or when they have the  
10 money.

11 It's on an as-needed basis. They are not  
12 threatened with the foreclosure of any land. They don't  
13 have to put up any collateral, but when they choose to  
14 make those connections, they can do so. That is not a  
15 choice that is possessed by the LID members.

16 In fact, again, if you recall my definition --  
17 or the definition provided by the Idaho Supreme Court is  
18 that a special benefit must be provided to the LID  
19 members, which means that it can't be to the general  
20 populous.

21 Based on the fact that the general populous of  
22 Kuna can connect to the sewage treatment plant, and that  
23 they are not burdened with having to pay for the  
24 improvement cost, we argue and contend that they are  
25 actually the beneficiaries of the waste water treatment  
0032

1 facility.

2 On top of that is that there was excess  
3 capacity that was built to the waste water treatment  
4 facility leading up to 52,000 connections that it could  
5 handle.

6 Now, if the point and the purpose of the LID  
7 was to truly benefit only the LID members, why did a  
8 facility have to be built that's capable of handling  
9 52,000 connections when the ordinance itself limits it  
10 to 8,353?

11 MS. BURGESS: Time, Mr. Kang.

12 MR. KANG: Okay. That's my first ten minutes. May  
13 I continue with the remainder?

14 MAYOR DOWDY: Well, okay. I mean, how are you  
15 separating this out now, Mr. Kang?

16 MR. KANG: Well, I'm going to continue my -- as I  
17 understand the procedure, every participant/protester  
18 was allotted ten minutes.

19 MAYOR DOWDY: Sure.

20 MR. KANG: I don't have that much further to go. I  
21 would say probably another ten minutes, and I will  
22 finish up my portion.

23 MAYOR DOWDY: All right. That's fine.

24 MR. KANG: All right. Now, if it was up to 52,000  
25 connections, and the ordinance itself limits it to 8,353  
0033

1 connections, we don't see how that specifically benefits  
2 only the LID members.

3 And instead it seems to appear -- or it appears  
4 that the true benefit is to the City as it moves along  
5 and there's further growth, and it offers these  
6 connections beyond the 8353 to new residents, new  
7 developers as they come in.

8 Lastly, even if you do decide that there is  
9 some benefit that is provided to the LID owners, these

10 benefits need to be reduced, and I have four arguments  
11 for what needs to be reduced in this case.

12 The amount of the assessment needs to be  
13 limited to the actual cost of improvement. Again, based  
14 on our clients' visit to the facility, there were  
15 headworks and buildings and channel sites for 52,000  
16 connections with components therein for 26,000.

17 The wastage building is the same. The  
18 electrical-generating building was built for -- to  
19 handle up to 26,000 connections. And the discharge  
20 pipes were built to handle up to 26,000 connections.  
21 Anything above the 8353 that is outlined within the  
22 ordinance is an excess and do not benefit the property  
23 owners, and they should not be liable for that excess.

24 Secondly, under both the statute and within the  
25 terms of the ordinance, the amount of the assessment  
0034

1 cannot exceed the value of the property. Now, we do  
2 have the tax assessor's rolls, which will outline for  
3 you one method of determining what the actual value of  
4 the property is.

5 Now, the only quantifiable number that we do  
6 have, based on the engineer's report and the assessments  
7 given so far, is that there is a \$3,200 -- approximately  
8 \$3,200 allocated for each EDU.

9 So based on an acre, we're talking about \$9600,  
10 \$10,000. Now, does an acre of land, as it currently  
11 sits today, measure up to \$10,000? I would say, if you  
12 look at the assessor's value, that it will not.

13 Another method by which we can determine this  
14 is to use appraisers and figure out what is the current  
15 value of the land. If the assessments exceed the value  
16 of the land, then you cannot charge for it. It has to  
17 be at -- capped at the appraisal value of the land or  
18 the value of the real property.

19 Third, we understand that pursuant to a  
20 resolution that was adopted by this Council, there was a  
21 transfer registry that was created, and some of the  
22 property owners, including our clients, partook in that  
23 transfer registry.

24 It was their understanding that if any EDUs  
25 were sold or transferred through that registry, they  
0035

1 were going to be credited that value in their  
2 assessments. In taking a look through the Assessment  
3 Rolls, we did not see where that value was given or  
4 credited to our property owners, and the engineer's  
5 report is lacking in that detail also.

6 Lastly, there were a couple of buildings that  
7 were built within the waste water treatment facility;  
8 the operations building and lab and the maintenance  
9 shop, which our understanding is that it's used for the  
10 general use of the employees of the City, that services  
11 the entire city of Kuna.

12 Again, to the extent that these buildings are  
13 used for purposes other than servicing or the  
14 improvement of the LID members, again, the law states  
15 that you cannot charge an assessment for that amount.

16 Aside from that, we have a couple of other --  
17 there are some due process concerns that we're looking  
18 into whether or not our property owners actually  
19 received notice at the time of the creation of the LID.

20 We did come in on Friday to take a look at the  
21 records, and we were not -- or we have not yet looked  
22 at -- or were given the documents regarding the notice  
23 and how the notice was provided. We will be looking  
24 into that further.

25 And then, as stated earlier, there are some

0036

1 deficiencies with the engineer's report. I think that's  
2 another procedural step that the Council needs to take  
3 into consideration as to whether or not these hearings  
4 are premature.

5 And with that, I stand for any questions that  
6 you may have.

7 MAYOR DOWDY: Questions for Mr. Kang?

8 COUNCILWOMAN BACHMAN: Mayor, I have a question.

9 What do you mean by deficiencies in the  
10 engineering report?

11 MR. KANG: Well, under the statute it states that  
12 any engineer's report that is submitted to the Council  
13 must be in detail. There are -- I would say that the  
14 engineer's report is remarkable in its brevity.

15 It summarizes certain aspects of the  
16 construction project, but does not go into detail about  
17 what expenditures were allocated to which building to  
18 which headworks; how much was allocated to make the  
19 52,000 versus the 8353 in headworks, and in that  
20 respect, we find that it is deficient.

21 COUNCILMAN CARDOZA: I have one question, Mayor.

22 Mr. Kang, have you taken a tour of the waste  
23 water treatment plant physically?

24 MR. KANG: I have not. Every representation I've  
25 made tonight is based on comments from our clients.

0037

1 COUNCILMAN CARDOZA: Okay.

2 MAYOR DOWDY: Any other questions?

3 Thank you, Mr. Kang.

4 MR. KANG: Thank you.

5 MAYOR DOWDY: The next one I have then is -- of  
6 those not represented by Mr. Kang then would be Richard  
7 Evans; is that correct?

8 Mr. Evans, come on up and state your name and  
9 spell your last for the record, your parcel number that  
10 you're dealing with, and --

11 COURT REPORTER: I'm sorry. And what?

12 MAYOR DOWDY: Present his arguments.

13 MR. EVANS: My name is Richard Evans. I represent

14 Arroyo Indio Subdivision. I don't have the parcel  
15 number with me this evening, but it's in the LID.

16 I don't really need to go over all of the  
17 arguments that were in my written protest. They will be  
18 gone over many, many times I'm sure.

19 But one thing that I did want to bring up is  
20 that the City Council has the ability to stop all of  
21 this. You have the ability to back up and straighten  
22 this out so that it becomes what it was originally  
23 intended to be.

24 And I just want to urge you to stop, take a  
25 deep breathe, back up, and get back to the original

0038

1 intent and bring forth something that actually benefits  
2 all of the LID people.

3 Thank you.

4 MAYOR DOWDY: Do you have any questions for  
5 Mr. Evans?

6 All right. Thank you, sir.

7 The next one is Mr. Derek Pica.

8 MR. FAZZIO: My name is Frank Fazzio. I reside at  
9 2802 North Ten Mile Road in Kuna. I'm here to discuss  
10 parcels S1314223410, S1314233616, and R378270040.

11 My attorney, Mr. Pica, has previously filed a  
12 written protest. It is -- seems -- it seems clear to me  
13 that there are a multitude of statutes that have  
14 potentially been violated by the methodology that the  
15 staff has used to implement the directives of the City  
16 Council.

17 Our protest details many of those which we  
18 think are rock solid. I don't see the point in arguing  
19 the details of these legal matters in front of the City  
20 Council. I'd just refer to the written protest and have  
21 that incorporated into my oral protest.

22 That being the case, I don't have a lot more to  
23 say, except I would go on the record as being willing to  
24 negotiate the matter.

25 MAYOR DOWDY: Any questions?

0039

1 Thank you, sir.

2 The next one I have is Vanderstelt.

3 MR. VANDERSTELT: I'm Darwin Vanderstelt. I'm  
4 representing my parents, Henry and Theresa Vanderstelt.  
5 The parcel number that is concerned is S1336233950. And  
6 we believe that that parcel was included -- erroneously  
7 included in the LID.

8 Henry and Theresa Vanderstelt owned two parcels  
9 -- Ada County parcels totaling about 155 acres prior to  
10 February 28th. A purchase and sale agreement was  
11 accepted on March 30 agreeing to sell all but five acres  
12 to Odd Rock Real Estate, and this was later assigned to  
13 Trail Bridge, LLC. And that transaction was not closed  
14 until February of 2007.

15 In connection with that transaction, a survey

16 was done, and a copy of the record of survey which I  
17 have appended to my written -- to my submitted testimony  
18 delineates a parcel 1 of 5.01 acres, and a parcel 2 of  
19 159 acres. And we had a survey, and it was evident at  
20 all times that the intention was to -- for my parents to  
21 retain parcel 1 and to sell parcel 2.

22 What happened is that in the process -- in the  
23 City's process of the City's negotiations with Odd Rock  
24 Real Estate, they included parcel 1, and -- even though  
25 my parents had signed this nonparticipation in the LID  
0040

1 on the annexation, the non LID addendum was signed and  
2 submitted to the City, and it still was included. And  
3 there was never one scrap of paper that my parents'  
4 signed that indicated an interest in being in the LID,  
5 particularly not on that parcel.

6 The City did have negotiations with the  
7 developer. And even in that case, I think the City was  
8 on pretty tenuous ground, because the developer never  
9 had the right to commit that to the LID.

10 But as things turned out, the transaction did  
11 go through, and it belongs to the developer, and he  
12 did -- it is in the LID, but that is none of my parents'  
13 concern.

14 But what is of their concern is that the five  
15 acres that remains is -- was placed in the LLD -- LID,  
16 and that was -- there's not a scrap of paper anywhere  
17 that indicated that he ever had any interest in being in  
18 that. So we would appreciate if you would take them out  
19 again.

20 MAYOR DOWDY: Any questions?

21 Thank you, sir.

22 The next one I have is from Mr. -- from  
23 Williams Bradbury on behalf of Timothy Gordon, Belinda  
24 Gordon, and Michael Green.

25 MR. BRADBURY: Thank you, Mayor, Members of the  
0041

1 Council. My name is Steve Bradbury. I'm representing  
2 Tim and Belinda Gordon, Michael Green, Clark and Green  
3 Associates, and Clark and Green Pension and Profit  
4 Sharing Plan. They're the owners of five parcels:  
5 S1322325605, S1322325610 --

6 Am I going to fast?

7 COURT REPORTER: You're okay.

8 MR. BRADBURY: -- S1322244275, S132223010, and  
9 S132223400.

10 That's just about 10 minutes, isn't it?

11 MAYOR DOWDY: Yes. Thank you.

12 MR. BRADBURY: My office address is 1015 West Hays  
13 in Boise. You probably recognize me having been to, oh,  
14 I don't know, gosh, a half a dozen or a dozen of these  
15 meetings where we've visited about the local improvement  
16 district.

17 And I guess tonight's the night where the

18 rubber starts to hit the road. I've submitted a written  
19 protest on behalf of my clients, and I think you have it  
20 in front of you. If you don't, I brought extra copies  
21 for you, but I'm getting the impression that it's there  
22 in front of you.

23 And I'm not going to go through the whole  
24 thing. I couldn't do it in ten minutes anyways. And a  
25 lot of it has already been spoken to. And I agree, at  
0042

1 least in part, that there's no point in being too  
2 awfully repetitive.

3 There's a couple of things, though, that I  
4 think I ought to address to you tonight. Maybe three  
5 different issues. And one of them is perhaps a bit  
6 repetitive. But the first one that I wanted to talk to  
7 you about has to do with the number of EDUs which were  
8 assessed to these five parcels.

9 The ordinance that you all adopted back in  
10 September 2006 -- well, not all of you, but those on the  
11 Council -- that were adopted by the Council in September  
12 of 2006 said that properties were going to be assessed  
13 in a certain manner.

14 The way the ordinance reads is that platted  
15 subdivisions, platted lands were going to be assessed at  
16 one EDU per lot, and unplatted lands were going to be  
17 assessed at three EDUs per acre.

18 And the time that the ordinance sets out for  
19 determining which is platted and to be assessed at one  
20 EDU per lot, or unplatted and being three per acre, was  
21 at the time of adoption of the resolution that initially  
22 gave notice of your intention to create an LID.

23 You can find that by reading your ordinance.  
24 So you're looking back in time to August of 2006 to  
25 determine which properties are to be assessed at one EDU  
0043

1 per lot, and which properties are to be assessed at  
2 three EDUs per acre.

3 Now, my client's property, in August of 2006,  
4 was unplatted. And, in fact, it's still unplatted today  
5 under both -- under both the City's ordinances, the  
6 subdivision ordinances, and state law, and should only  
7 be assessed -- well, it's 188 acres -- actually, a  
8 little bit less -- but should only be assessed 563 EDUs,  
9 if my math is right. Maybe it's 564.

10 But under the preliminary assessment roll that  
11 -- those properties have been assessed a total of 637  
12 EDUs. The 637 EDUs exceeds the number of EDUs which can  
13 be assessed to those properties under the ordinance that  
14 you adopted in September of 2006.

15 And what that -- the difference is 74 EDUs, and  
16 comes out to some 200 some thousand dollars. I wrote  
17 the exact number in the written submittal. So it's a  
18 fairly significant amount of money.

19 So on that point, if you folks ever get to the

20 point of assessing EDUs, and if they're going to be  
21 assessed at -- in accordance with your ordinance, these  
22 properties -- the assessments attributable to these  
23 properties needs to be reduced to the number that your  
24 ordinance calls for.

25 The second thing that I want to talk about for  
0044

1 just a minute has been addressed, to a certain extent,  
2 and I've got probably a slightly -- slightly different  
3 take on it, maybe.

4 And you've been told that in order to conform  
5 to state law, that to validly assess a property in an  
6 LID, that property has to enjoy a special benefit, one  
7 that's different than what is enjoyed by the rest of the  
8 city.

9 And unfortunately, the actions of the Council  
10 since the formation of the LID have eliminated that  
11 special benefit to the district property owners. The  
12 most significant action of the Council was in oversizing  
13 the sewer treatment plant at the expense of the LID  
14 owners in order to make sewer connections available to  
15 properties outside of the district -- of the local  
16 improvement district.

17 According to the materials that were delivered  
18 to those who did tour the sewer treatment plant, the  
19 plant was sized far in excess of the 8500 -- 8353 EDUs  
20 which were necessary to serve the local improvement  
21 district property owners.

22 And the engineer's report which was submitted  
23 to you verifies that fact. It is created -- the plant  
24 was sized much larger than was necessary. And as a  
25 result, now there are sewer connections which are

0045  
1 available to others outside of the local improvement  
2 district.

3 Anybody who wants to come and get one just  
4 needs to come with the amount of money that you'll be  
5 charging from time to time over however long it takes to  
6 use them all up.

7 And that, in my mind, eliminates the one and  
8 only special benefit that was promised to the LID  
9 property owners; sewer connections. Sure they get them,  
10 if they can afford to pay for them, but it's not the  
11 special benefit that the statute and the case law  
12 requires.

13 And then, of course, on top of that, the  
14 Council entered into a contract with another landowner  
15 promising that landowner -- by the way, who was outside  
16 of the LID -- as many as 3,000 connections.

17 From my perspective, those two facts  
18 essentially say, LID property owners, you're not getting  
19 a benefit different than anybody else. And if that's  
20 the case, I don't think you can validly assess the LID  
21 property owners.

22 The third thing that I wanted to talk about is  
23 perhaps -- again, another slightly different look at or  
24 approach to this issue of, you know, are the property  
25 owners benefitted -- LID property owners benefitted or  
0046

1 not?

2 And in my estimation, even aside from the  
3 special benefit rule, which means something more, many  
4 of the LID property owners, including the Gordon and  
5 Green properties that I'm talking -- that are the owners  
6 of the properties that I have filed the protest for  
7 aren't benefitted at all.

8 And the reason I say that is because the  
9 benefit that the Council has promised to the LID  
10 property owners are sewer connections. Now, sewer  
11 connections only have value if they can be put to some  
12 use; right?

13 I mean, it's pretty obvious. Owning a sewer  
14 connection that doesn't have -- that can't be used  
15 for -- you know, to deliver sewer -- sewage to a  
16 treatment plant -- something that can't be used has no  
17 value.

18 The only way a sewer connection can be used is  
19 if the property has received development approvals which  
20 would allow for those use -- the use of those  
21 connections.

22 In other words, unless a property is subdivided  
23 and a final plat has been recorded, or unless the  
24 Council has granted final development approvals for  
25 something other than a plat, which would allow for the  
0047

1 development of the property, the sewer connections can't  
2 be used. They have no benefit to the property. They're  
3 not valuable to the property.

4 And the only way that you can get a subdivision  
5 plat approved or final development entitlements approved  
6 is if someone makes an application for it, if the  
7 ordinances allow it, the city's ordinances allow it, if  
8 the city's comprehensive plan allows it, only after a  
9 developer survives the hearing process, and only after  
10 -- I said a developer. I should probably say an owner  
11 or developer -- and only after an owner and developer  
12 survives the potential that a property owner -- a  
13 neighboring property owner might object or file an  
14 appeal --

15 MS. BURGESS: Time.

16 MR. BRADBURY: -- and none of those things -- oh,  
17 well, and only after all of the other agencies that have  
18 to approve a development have approved it. And this  
19 Council can't guarantee any of those things to a  
20 property owner.

21 I'm out of time. I'll be pleased to answer any  
22 questions.

23 MAYOR DOWDY: Any questions of the Council?

24 Thank you, Mr. Bradbury.

25 MR. BRADBURY: Thank you.

0048

1 MAYOR DOWDY: The next one that I have is for  
2 Stetson Properties.

3 MR. ECK: Mayor and Council, my name is Tim Eck.  
4 Last name is spelled E-C-K. I live at 6152 West Half  
5 Moon Lane in Eagle.

6 MAYOR DOWDY: One clarification, Mr. Eck.

7 Is this one different parcels than the one that

8 Mr. Kang -- you're on Mr. Kang's list.

9 MR. ECK: Right. This is supplemental comments that  
10 he is not representing.

11 MAYOR DOWDY: So is he representing you or not?

12 MR. ECK: Yes, he is, but not on these -- the issues  
13 I wish to present here.

14 MAYOR DOWDY: Go ahead.

15 MR. ECK: I have copies of the written protest that  
16 we sent in that you may already have, but there are  
17 larger copies on the back of this if you'd like to have  
18 them.

19 I represent Stetson Properties and Applewood  
20 Development. The Applewood Development owner is here  
21 also and may wish to reserve his ten minutes for any  
22 comments that I fail to bring up.

23 Our parcel numbers --

24 MAYOR DOWDY: You only have one representative per  
25 protest. So if one of you speaks, then that's it. So

0049

1 you need to decide between the two of you which one of  
2 you wants to present here.

3 MR. ECK: I'll continue.

4 MAYOR DOWDY: Very good.

5 MR. ECK: Are Parcel Nos. are: R1727700011,  
6 R1727700032, R1727730020, R1727740020, S1311111350,  
7 R1727740012, R7172370800, and S1311336210.

8 We have a development agreement submitted to  
9 the City of Kuna for our property. Our request is that  
10 you look at our development agreement and look at our  
11 EDU distribution as we've requested.

12 The development agreement fully lays out the  
13 property and its proposed uses, and this application --  
14 our protest is that we would like to see the EDUs  
15 assessed per parcel as the use is going to exist.

16 We currently have one parcel out there that is  
17 a 2.5-acre parcel that was assessed 8 EDUs. It is a  
18 platted lot. It has a life estate, it has a residential  
19 use, it should be one EDU. That said, our total density  
20 currently exists -- exceeds the EDU allocation by ten  
21 EDUs.

22 So we would just request that the Council look  
23 at our EDU allocation and modify it to be in compliance  
24 with what our development agreement currently shows the  
25 use to be.

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1 And if you have any questions, I'll be glad to  
2 answer them the best I can.

3 MAYOR DOWDY: Any questions of Mr. Eck?

4 Thank you, sir.

5 Okay. The next one that I have is Davison,  
6 Copple, Copple & Copple on behalf of, it looks like,  
7 Washington Federal Savings.

8 MR. McLAUGHLIN: Thank you very much.

9 Typically when I'm in court and the matters are  
10 well stated in writing, we simply just rest on our  
11 briefing. I see no reason to deviate from that  
12 principal here.

13 MS. BURGESS: Please state your name, sir.

14 MR. McLAUGHLIN: Oh, Alex McLaughlin,  
15 M-C-L-A-U-G-H-L-I-N.

16 With that in mind, I would simply note our  
17 objection for the record. The parcel numbers are as  
18 stated in our written objection, and I would simply tag  
19 along with the arguments presented today by Mr. Soo  
20 Kang, which I think were done very well with regards to  
21 just the legal analysis presented to this Council.

22 Thank you very much.

23 MAYOR DOWDY: Any questions?

24 Thank you, sir.

25 All right. I only have a few left, and none of

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1 these -- or two left, and neither of these individuals  
2 were present at the time we got started, so we'll go  
3 back again. I have one submitted by Alpha Mortgage Fund  
4 I, LLC from Steve Vaught.

5 Is he present?

6 Okay. I'll just state that one was submitted  
7 in writing. And the next is from Spink Butler on behalf  
8 of Sanctuary Subdivision.

9 Is anyone here on behalf of that group?

10 All right. I'll note that one is submitted in  
11 writing also.

12 All right. That's all of the written comments  
13 that we had.

14 Is there anyone here who has not been -- whose  
15 property or protest has not been represented at this  
16 point in time?

17 Oh, Mr. Connelly, would you like to come  
18 forward?

19 MR. CONNELLY: Charley Connelly. I'm representing  
20 Craig Groves this evening. He's at another meeting.  
21 Mayor and Council, I'll be very brief.

22 I have provided you with the individual parcels  
23 and a color photo with the parcel outlined in yellow of  
24 all of the acres that Mr. Grove is involved with. This  
25 represents a very small percentage. And I just want to

0052

1 clarify a couple of things.

2 The first or top parcel I've presented you  
3 ending in No. 9350 is a road and water retention lot  
4 that leads into Crimson Point 5. Obviously there will  
5 be no houses on this lot. You can tell by looking at  
6 the outline there in yellow. So it does not make sense  
7 to allocate EDUs to a parcel that will never have a  
8 house on it.

9 The second parcel ending in 9450 is, per the  
10 approval, set up for three 3500-square foot office  
11 buildings. Normal office buildings create less sewage  
12 than a house. I'm not familiar with the City's policies  
13 regarding the number of EDUs that would be allocated to  
14 a 3500-square foot office building, but this parcel was  
15 allocated 12 EDUs for what we perceive will be less than  
16 three houses worth of sewage.

17 And then the last parcel ending in 0100 is a  
18 water retention lot that consists of one acre. The  
19 pond -- you can see on the aerial photo that dark  
20 colored area on the north side of that parcel is all an  
21 existing pond.

22 It's already, I'm going to guess, at least ten  
23 feet deep. That is the low point for the southern half  
24 section that that parcel sits in. We are assuming that  
25 there will never be a house on that parcel as well, that  
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1 it will always be used for water retention.

2 With that, I'll stand for questions.

3 MAYOR DOWDY: Any questions?

4 Thank you.

5 MR. CONNELLY: Thank you.

6 MR. GORDON: Mr. Mayor, can I ask a couple of  
7 questions to make sure I got the --

8 MAYOR DOWDY: Yes.

9 MR. GORDON: Is this the Crimson Point Villa? Is  
10 that what you're referring to?

11 MR. CONNELLY: No. One -- the legal name is Park  
12 Point Realty, Inc. 401(k) Pension and Profit Sharing  
13 Plan. That is, Gordon -- this is the road and water  
14 retention that leads into Crimson Point 5.

15 MR. GORDON: Is that the property?

16 MR. CONNELLY: Well, it's just this little skinny  
17 thing that comes in here.

18 MR. GORDON: (Inaudible).

19 COURT REPORTER: I can't hear. You guys need to  
20 speak into the microphone, please.

21 MR. CONNELLY: Gordon, the parcel is this real  
22 skinny, odd-shaped parcel that comes from Ten Mile Road  
23 into Crimson Point 5. This is what it looks like here.

24 And then to clarify, the parcel number that  
25 ends in 9450 is basically adjacent to that, and that's a  
0054

1 1.23 acre office lot.

2 MR. GORDON: Thank you.

3 MR. CONNELLY: Thank you.

4 MAYOR DOWDY: All right. With that, are there any  
5 protests that have not been heard or represented in one  
6 way or another?

7 So now we will end the protest hearing. And I  
8 don't know if Council has any questions of staff at this  
9 point or if you want to digest what we've heard tonight  
10 and go through the written record again or submissions  
11 and then formulate questions for staff.

12 I think it will probably be best if we had a  
13 meeting in between this and our actual decision for you  
14 guys to digest this information and ask any questions  
15 that you might have and then set a meeting for a  
16 decision.

17 So with that having been said, I think we're  
18 ready for an adjournment tonight then.

19 COUNCILMAN LANG: I move that we adjourn at 7:21.

20 COUNCILWOMAN STROEBEL: Second.

21 MAYOR DOWDY: It's been moved and seconded that we  
22 adjourn at 7:21.

23 All those in favor?

24 (Councilmembers all indicating "Aye.")

25 MAYOR DOWDY: All those opposed?

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1 Motion is passed.

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3 (The proceedings concluded at 7:18 p.m.)  
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1 REPORTER'S CERTIFICATE.

2  
3 STATE OF IDAHO )

4 ) ss.

5 County of Ada )

4  
5 I, ANDREA L. CHANDLER, Certified Shorthand Reporter  
6 and Notary Public in and for the State of Idaho, do  
7 hereby certify:

8 That said proceedings were taken down by me in  
9 shorthand at the time and place therein named and  
10 thereafter reduced to typewriting under my direction,  
11 and that the foregoing transcript contains a full, true,  
12 and verbatim record of said proceedings.

13 I further certify that I have no interest in the  
14 event of the action.

15 WITNESS my hand and seal this 17th day of November,  
16 2009.

17

18 ANDREA L. CHANDLER  
19 RPR and Notary  
20 Public in and for the  
21 State of Idaho.

22

23

24

25

My Commission Expires: 7-20-10

My Commission Expires: 7-20-10