

CANYON HIGHWAY DISTRICT No. 4

15435 HIGHWAY 44
CALDWELL, IDAHO 83607

TELEPHONE 208/454-8135
FAX 208/454-2008

Exhibit B

TRANSMITTAL

RECEIVED By
Nampa City Engineer's Office
Date 7-27-15

TO: City of Nampa	DATE: July 22, 2015
Attn: Jenifer Spurling	
411 Third Street So.	
Nampa, ID 83651	
RE: Midway Sports Park Variance	

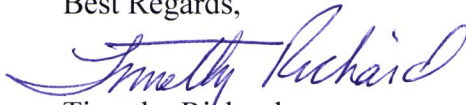
- | | | |
|---------------------------------------|--|---|
| <input type="checkbox"/> For Your Use | <input type="checkbox"/> As Requested | <input type="checkbox"/> For Review & Comment |
| <input type="checkbox"/> For Approval | <input checked="" type="checkbox"/> For Your Information | <input type="checkbox"/> Please Sign & Return |

ENCLOSURES

QUANTITY	DESCRIPTION
1	Original Findings of Fact, Conclusion of Law, and Order of Decision
1	Copy of Fully Executed and Recorded Variance Conditions Acceptance Agreement

Comments: Enclosed are the completed documents regarding the above referenced variance granted by Canyon Highway District No. 4. We will prepare and provide the deed for the right-of-way along Midway Road for execution by the City of Nampa in accordance with the variance conditions within the next week.

Best Regards,


Timothy Richard
District Engineer



00179006201500276970070072

CHRIS YAMAMOTO

CANYON COUNTY RECORDER

Pgs=7 EHOWELL

NO FEE

AGR

CANYON HIGHWAY DISTRICT NO 4

VARIANCE CONDITIONS ACCEPTANCE AGREEMENT**Parties:**

Canyon Highway District No. 4	District	15435 Highway 44, Caldwell ID 83607
City of Nampa	City	411 3 rd Street S., Nampa ID 83651

THIS VARIANCE CONDITIONS ACCEPTANCE AGREEMENT made and entered this 17th day of July, 2015, by and between City of Nampa, 411 3rd Street S., Nampa, Idaho 83651, a Municipal Corporation and Canyon Highway District No. 4 of 15435 Highway 44, Caldwell, Canyon County, Idaho 83607, a Highway District organized and existing pursuant to Chapter 13 of Title 40 Idaho Code, "District" herein, acting by and through its Board of Commissioners.

**ARTICLE 1.
DEFINITIONS**

Wherever used in this Agreement, the following terms shall have the following meaning, unless the context indicates to the contrary.

- 1.1 Agreement:** means and refers to this Variance Conditions Acceptance Agreement by and between the City and the District.
- 1.2 City:** means the City of Nampa, a municipal corporation, whose current address is 411 3rd Street S., Nampa, Idaho 83651, and who is a Party to this Agreement.
- 1.3 District:** means the Canyon Highway District No. 4, a Highway District organized and existing under and by virtue of the Laws of the State of Idaho, located in Canyon County, Idaho, a Party to this Agreement.
- 1.4 FCO:** means and refers to Case No. VAR 2015-04-1 Findings of Fact, Conclusions of Law, and Order of Decision Granting Variance Subject to Conditions issued on July 1, 2015.

- 1.5 Improvements:** means and refers to certain highway frontage improvements including curb, gutter, sidewalk, roadway widening, and drainage/irrigation improvements at all locations which are relevant to the subject of the Variance.
- 1.6 Park Development Phase I:** means and refers to construction or development of 4 ball fields, restrooms, park open space, and parking (approximately 160 spaces) in the southeast portion of the Subject Real Property.
- 1.7 Subject Real Property:** means and refers to the real property described in Exhibit 1 [Application] and being a portion of the north ½ of the southeast ¼ of Section 24, T3N, R3W, Boise Meridian, Canyon County and referenced as County Parcel # R3303301100, containing approximately 52.5 acres.
- 1.8 Variance:** means and refers that certain variance, granted by the Board of Commissioners of the Highway District to the City in CASE NO. VAR 2015-04-1 Findings of Fact, Conclusions of Law and Order of Decision Granting Variance Subject to Conditions issued on July 1, 2015, of the *Highway Standards and Development Procedures for the Highway Districts of Canyon County, Idaho [January 2010]* adopted by this Highway District on or about the January, 2010 and Highway District's amendments thereto §§ 2010.060, 3020.020, 3060.030, 3061.020, 3061.030, 6000, and Standard Drawing ACCHD-102A which provides for the Improvements on the Subject Real Property's frontages on the south side of Smith Avenue between Lake Avenue and Midway Road and on the west side of Midway Road between Smith Avenue and Lone Star Road not be required until further development of the park occurs beyond that provided for in Park Development Phase I or other conditions as set forth herein and provides for an access from the Subject Real Property to Midway Road subject to conditions.

ARTICLE 2. RECITALS

- 2.1 WHEREAS,** the authority and the intentions of the Parties is set forth in the sections IV and V of the Findings of Fact, Conclusions of Law and Order of Decision Granting Variance Subject to Conditions and the same is herein included in these recitals as if set forth at length; and
- 2.2** The Commissioners of the District have granted the City's Variance request subject to certain terms and conditions which the Parties acknowledge is adequate consideration for entering into this Agreement; and
- 2.3** The City does hereby enter into this Agreement and accepts the terms and conditions of the Variance.

ARTICLE 3.
VARIANCE CONDITIONS

The City by entering into this Agreement does hereby accept the terms and conditions of the Variance.

- 3.1** The City shall cause the Improvements to be constructed in accordance with the Highway District's Standards [established at the time such improvements are required] at the time such improvements are required, when:
- 3.1.1** Similar improvements are constructed on Midway Road between Lone Star Avenue and Smith Avenue on either side of the roadway, or on adjoining parcels to the Subject Real Property; or
 - 3.1.2** When further development of the park occurs beyond that provided for in Park Development Phase I on the Subject Real Property; or
 - 3.1.3** After a period of five (5) years from the date of the agreement the Highway District may require the improvements within one (1) year of written notification by the Highway District to make such improvements; and
 - 3.1.4** In the event the City or the City's successor in title fails to timely construct the improvements, then in that event the Highway District may proceed to construct the improvements for which the City or the City's successor in title shall immediately reimburse the Highway District for all expenses the Highway District incurred, including administrative overhead expense upon receipt of written notice and demand for the same.
- 3.2** The City grant a warranty deed for public road right-of-way 50 feet in width along the Midway Road frontages of the subject parcel (being approximately 247' and 266') and provide the Highway District with a title commitment demonstrating unencumbered ownership of the parcel; and
- 3.3** With construction of Park Development Phase I, the slope from the shoulder of the Midway Road shall be flattened to not steeper than 4 horizontal to 1 vertical.
- 3.4** An access, providing left and right turns in and out, may be constructed from the Subject Real Property to Midway Road with Park Development Phase I. This access shall meet the requirements of HSDP, except as granted by this Variance but shall meet the City of Nampa's Driveway Spacing and Design Standards are set forth in the 2015 Engineering Division Development Policy Manual; and
- 3.5** A right-turn deceleration lane shall be constructed from southbound Midway Road into the accesses when initially constructed with Park Development Phase I; and

- 3.6 When further development of the park occurs beyond that provided for in Park Development Phase I, an access to Smith Avenue shall be constructed to the park and the access granted to Midway Road shall be converted to a right-in/right-out only access with left turn movements restricted by construction of raised curb and tubular markers.
- 3.7 The City's development of the Subject Real Property shall comply with all other requirements of Canyon Highway District No. 4's standards.

**ARTICLE 4.
ASSIGNMENT OF VARIANCE CONDITIONS AGREEMENT.**

- 4.1 This Agreement shall run with the Subject Real Property and be fully binding upon the owner(s) and successors of the Subject Real Property. This agreement shall be recorded in the records of Canyon County, Idaho.

**ARTICLE 5.
DEFAULT BY CITY**

- 5.1 In the event the City fails to construct the Improvements to Highway District Standards and/or in a timely manner as required and provided in Section 3 of this Agreement, the City shall be in default of this Agreement.
- 5.2 In the event the City is in default of this Agreement the District may provide thirty (30) days written notice to the City identifying the default and notification of the District's election on default to:
- 5.2.1 Proceed to construct the Improvements and/or as the case may be to reconstruct or complete the construction of the Improvements in accordance with the remedies and procedures provided to the District in Article 6 of this Agreement.

**ARTICLE 6.
DISTRICT REMEDIES ON DEFAULT AND DEFAULT PROCEDURES**

- 6.1 **Default Remedies:** In the event the City is in default of this Agreement and fails to timely cure its default, the District may then elect to proceed to construct the Improvements which are the subject of the default and/or, as the case may be, reconstruct or complete the construction of the Improvements which are the subject of the default, the costs of which shall be paid by the City and which costs shall include:
- 6.1.1 Highway District costs for materials, labor, independent contract expense, and engineering and administration expense associated and incurred in the construction of the Improvements.
- 6.2 **Default Procedure:** In the event of the City is in default of this Agreement and it fails to timely cure its default, the District may then pursue its remedies under this Agreement as

follows:

- 6.2.1 The District shall give written notice to the City that it has elected to proceed with construction of the Improvements.
- 6.2.2 The District shall then cause the Improvements to be constructed and, upon acceptance of the Improvements, send a written Notice of Improvements Construction Costs to the City, which notice shall set forth the amounts of the Improvements Construction Costs and shall notify the City that the same are due within thirty (30) days of the date of the Notice of Improvements Construction Costs.
- 6.2.3 In the event the City does not timely pay District after being provided with written Notice of Improvements Construction Costs, the City agrees the District may file a mechanics and materialmen lien as it is herein agreed that the Improvements are required by the District as a condition of the City's development of and its convenient use and occupancy of the Subject Real Property and therefore are an improvement of the Subject Real Property.

ARTICLE 7. SEVERABILITY

- 7.1 The provisions of this Agreement are hereby declared separable, and if any section, clause or phrase hereof is hereafter declared invalid and unconstitutional, the same shall not affect the validity of the remaining portions of this Agreement.

ARTICLE 8. GENERAL PROVISIONS

- 8.1 **Recording:** This Agreement shall be recorded by the District with the Canyon County Recorder's Office.
- 8.2 **Changes; Alterations.** No change, alteration, modification, or addition to this Agreement shall be effective unless in writing and properly executed by the Parties hereto.
- 8.3 **Governing Law.** This Agreement shall in all respects be subject to, and governed by, the laws of the State of Idaho.
- 8.4 **Attorney's Fees.** If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing Party or Parties shall be entitled to recover reasonable attorney's fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

- 8.5 Notices.** All notices required to be given to each of the Parties hereto under the terms of this Agreement shall be given by depositing a copy of such notice in the United States mail, postage prepaid, to the respective Parties hereto at the following address:

City:

Attention: Robert L. Henry, Mayor
City of Nampa
411 3rd Street S.
Nampa ID 83651

District:

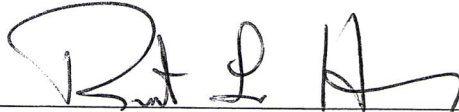
Attention: Director
Canyon Highway District No. 4
15435 Hwy 44
Caldwell ID 83607

Or to such other address as may be designated by writing delivered to the other Party. All notices given shall be deemed completed as of the date of mailing except as otherwise expressly provided herein.

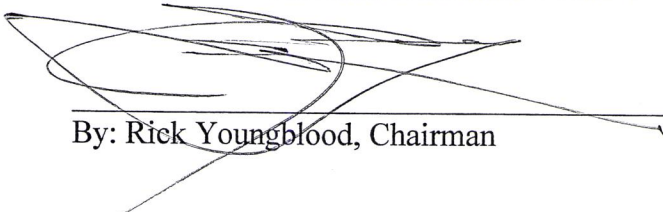
- 8.6 Binding Effect.** This Agreement shall inure to the benefit of and bind the Parties hereto and their respective heirs, representatives, successors and assigns. The City shall have the right to assign its rights hereunder.
- 8.7 Titles.** The titles in this Agreement are for convenience only and shall not be used in any way to interpret the Agreement.
- 8.8 Captions.** The subject headings of the paragraphs and subparagraphs of this Agreement are included for purposes of convenience only and shall not affect the construction of interpretation of any of its provisions.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

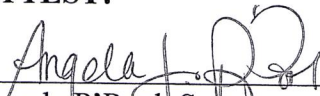
CITY OF NAMPA


By: Robert L. Henry, Mayor

CANYON HIGHWAY DISTRICT NO. 4


By: Rick Youngblood, Chairman

ATTEST:

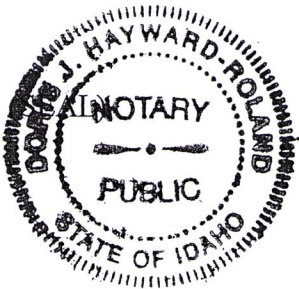

Angela P'Pool, Secretary

ACKNOWLEDGEMENTS

STATE OF IDAHO)
: ss
County of Canyon)

On this 10th day of July, 2015, before me the undersigned, a Notary Public in and for the state of Idaho, personally appeared **Robert L. Henry**, known or identified to me to be the Mayor of the City of Nampa that executed the instrument and acknowledged to me that he executed the same for and on behalf of the City of Nampa, Idaho.

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



Doris J. Hayward-Rolando
Notary Public for Idaho
My Commission Expires: 8-15-2019

STATE OF IDAHO)
: ss
County of Canyon)

On this 17th day of July, 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared **Rick Youngblood**, Chairman of the Board of Commissioners of Canyon Highway District No. 4, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same for and on behalf of Canyon Highway District No. 4.

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



Angela J. P. Pool
Notary Public for Idaho
My Commission Expires: 6/21/18

**BEFORE THE COMMISSIONERS
OF THE CANYON HIGHWAY DISTRICT NO. 4**

IN THE MATTER OF THE)	CASE NO. VAR 2015-04-1
APPLICATION FOR VARIANCE:)	
)	FINDINGS OF FACT, CONCLUSIONS
MIDWAY SPORTS PARK)	OF LAW, AND ORDER OF DECISION
)	GRANTING VARIANCE SUBJECT TO
)	CONDITIONS
APPLICANT: CITY OF NAMPA)	

THIS MATTER, having come on regularly for hearing before the Board of Commissioners, pursuant to Section 2140 of the Highway Standards and Development Procedures for the Highway Districts of Canyon County, Idaho, [hereinafter cited as HSDP] commencing on the 22nd day of April, 2015 and continued to the 17th day of June, 2015, and the hearing was further continued to the 1st day of July, 2015 at 10:00 a.m. for the receipt and consideration of these Findings of Fact, Conclusions of Law and Order of Decision Granting Variance Subject to Conditions. Those appearing were Timothy Richard P.E., Highway District Engineer, and appearing for the Applicant was Darrin Johnson and Cody Swander, City of Nampa, and John Carpenter, Kasey Ketterling, and Levi Howell, T-O Engineers. No other persons appeared.

**I.
THE RECORD OF PROCEEDINGS**

The record of the proceedings of the above-referenced matter consists of the following, to-wit:

1.1 Exhibits

<i>DESCRIPTION OF EVIDENCE</i>		<i>Withdrawn</i>	<i>Refused</i>	<i>Admitted</i>
1	Application for Variance HSDP § 2140 from City of Nampa (prepared by T-O Engineers) dated April 14, 2015 and attachments			X
2	Canyon Highway District No. 4 Staff Report and Attachments			X
3	Draft Midway Park Concept Master Plan – Phase 1			X

1.2 Hearing

A hearing was held on April 22, 2015, at 10:10 a.m. for consideration of variance request submitted by the City of Nampa, an Idaho Municipal Corporation, requesting a variance of the HSDP §§ 2010.060, 3020.020, 3060.030, 3061.020, 3061.030, and Standard Drawing ACCHD-102A specifically requesting that curb, gutter, sidewalk and road widening fronting Canyon County Parcel #R3303301100 on the south side of Smith Avenue between Lake Avenue and Midway Avenue and along Midway Road between Lone Star Avenue and Smith Avenue not be required until a later phase of the park development and requesting an access to the park be granted from Midway Road. The hearing was continued on June 17, 2015, at 10:00 a.m. at which the Board received further information regarding traffic impacts based on a traffic impact study prepared by Thompson Engineers, Incorporated for the proposed park. At said hearing, the Board closed the hearing to the receipt of testimony and exhibits, and the Commissioners deliberated and instructed the Highway District's engineer and attorney to prepare the Findings of Fact, Conclusions of Law, and Order of Decision for their receipt, consideration and decision on the July 1, 2015 at 10:00 a.m.

1.3 Persons Testifying

1.3.1 Timothy Richard, P.E., Highway District Engineer

1.3.2 John Carpenter, TO Engineers, for Applicant

1.3.3 Darrin Johnson, City of Nampa Parks and Recreation Department, for Applicant

1.3.4 Cody Swander, City of Nampa Parks and Recreation Department, for Applicant

1.3.5 Kasey Ketterling, TO Engineers, for Applicant

II. DECISION

Whereupon, the Commissioners having reviewed and considered the record, evidence and testimony received and being fully advised in the premises, do hereby make the following Findings of Fact, Conclusions of Law, and Order, to-wit:

III. DEFINITIONS

For all purposes of these Findings of Fact, Conclusions of Law, and Order of Decision Granting Variances, the following words and phrases shall have the meaning as herein provided for, unless the context of the word and/or phrase clearly requires otherwise.

- 3.1. **Applicant:** means and refers to City of Nampa, a municipal corporation, whose current address is 411 3rd St. S., Nampa, ID 83651, and who is the Applicant in the above entitled matter.
- 3.2. **Findings/Conclusions/Order:** used herein means and refers to these Findings of Fact, Conclusions of Law, and Order of Decision Granting Variance Subject to Conditions.
- 3.3. **Highway District:** means and refers to the above-entitled Highway District, known, organized and existing under the name Canyon Highway District No. 4.
- 3.4. **HSDP:** Means and refers to the *Highway Standards and Development Procedures for the Highway Districts of Canyon County, Idaho [January 2010]* adopted by this Highway District on or about January, 2010 and Highway District's amendments thereto.
- 3.5. **Park Development Phase I:** means and refers to construction or development of 4 ball fields, restrooms, park open space, and parking (approximately 160 spaces) in the southeast portion of the Subject Real Property.
- 3.6. **Subject Real Property:** means and refers to the real property within the north ½ of the southeast ¼ of Section 24, T3N, R3W, Boise Meridian, Canyon County and referenced as County Parcel # R3303301100, containing approximately 52.5 acres.

IV. FINDINGS RELATIVE TO VARIANCE REQUEST

- 4.1 **Findings Regarding Adequacy of Application**
 - 4.1.1 The Applicant has filed a completed Application on a form prescribed meeting the requirements of HSDP 2140.040 for the following Variance, which is the subject of the above entitled matter.
 - 4.1.2 **Variance Request:** Applicant requests a variance of the HSDP §§ 2010.060, 3020.020, 3060.030, 3061.020, 3061.030, 6000 and Standard Drawing ACCHD-102A, specifically requesting that curb, gutter, sidewalk and road widening fronting on Canyon County Parcel # R3303301100 on the south side of Smith Avenue between Lake Avenue and Midway Road and the west side of Midway Road between Lone Star and Smith Avenue not be required until a future phase of the park development (hereinafter referred to as Variance Request #1) and requesting an access to the park be granted from Midway Road (hereinafter referred to as Variance Request #2).

4.1.3 The Application includes all the necessary information and the application fee has been paid.

4.1.4 The Applicant is the real party in interest.

4.2 Findings Regarding the Application and the Applicant

4.2.1 Smith Avenue, located in Canyon County, state of Idaho between Lake Avenue and Midway Road, and Midway Road, located in Canyon County, state of Idaho between Lone Star Road and Smith Avenue, are within the boundaries of the Highway District and at all times herein relevant and are Highways accepted as part of the Highway District's Highway System for perpetual maintenance.

4.2.2 The Applicant's proposed development on the Subject Real Property, which is the subject of this Variance Request, consists of a public sports park.

4.2.3 The Subject Real Property is 52.5 acres currently in agricultural use.

4.2.4 The Subject Real Property is not located within the Nampa city limits and a conditional use permit is being sought from Canyon County for the proposed use.

4.2.5 The Subject Real Property has two separate frontages on Midway Road, with lengths of approximately 247 feet (north) and 266 feet (south). The parcel also has 1516 feet of frontage along Smith Avenue.

4.2.6 The Applicant is proposing the Midway Sports Park would be developed in multiple phases. Park Development Phase I would serve four baseball fields and the overall concept proposes 10 baseball fields, 1 soccer field, basketball courts, pickleball courts, and other miscellaneous sport activity areas.

4.2.7 The Applicant is proposing to have an access on to Midway Road and two accesses on to Smith Avenue. Considering Smith Avenue as an urban minor collector and the proposed park volumes in the range of a minor generator, generally the proposed access to Smith Avenue would be compatible with District Standards.

4.2.8 The Applicant proposed access to Midway Road from the Midway Sports Park is located approximately 800 feet south of Smith Avenue with no other access located in between. An existing residential/agricultural operations access is located approximately 230 feet south of the proposed access and no other access located on the west side of Midway Road between Smith Avenue and Lone Star Avenue. Traffic volume estimates provided by the Applicant indicate weekday PM peak two-way volume for Park Development Phase 1 at 105 to 155 vehicles per hour.

4.3 Findings regarding City Limits & Areas of Impact

- 4.3.1** The Subject Real Property is not located within the City of Caldwell or City of Nampa as shown on the Canyon County Assessor's Geographic Information System (GIS) Interactive Map. The nearest Nampa City Limits lie ½ mile to the north along Orchard Avenue, approximately ½ mile east along Smith Avenue, and approximately ¼ mile southeast along Lone Star Avenue. The nearest Caldwell City Limit lies approximately ½ mile northwest on Orchard Avenue.
- 4.3.2** The Subject Real Property is also not located within the City of Caldwell or City of Nampa Area of Impact based on the Canyon County, Idaho Zoning Map revised November 26, 2013. The section line along the center of Midway Road fronting the parcel is the City of Nampa Area of Impact boundary.
- 4.3.3** The Subject Real Property is not currently within any city impact area and HSDP § Section 2100.010 provides as follows:

***2100.010.** When construction of a new roadway or modification to an existing roadway occurs within the area of city impact, the District may apply the standards and specifications of the City at the Highway District's discretion and shall afford the appropriate City an opportunity to provide comments on the Subdivision or Development and may incorporate any City comments into the District's Approval Requirements.*

4.4 Findings regarding Existing Roadway Conditions

- 4.4.1** Midway Road between Lone Star Avenue and Smith Avenue along which the Subject Real Property has frontage is a rural road section with no curb, gutter, or sidewalk. Roadway ditches and/or waste irrigation ditches exist along the west side of the roadway in this ½-mile section. The average daily traffic volume on this section is 2512 vehicles per day (vpd) in 2015, an increase from 1913 vpd in 2009.
- 4.4.2** Smith Avenue between Lake Avenue and Midway Road along which the Subject Real Property has frontage is a rural road section with no curb, gutter, or sidewalk. Roadway ditches and/or waste irrigation ditches exist along the south side of the roadway in this ½-mile section. No recent traffic counts have been conducted on Smith Avenue. The most recent count was conducted in 2007 with a resulting average daily traffic volume of 421 vpd.
- 4.4.3 Findings regarding the locations of the existing curb, gutter & sidewalk in the vicinity of the Subject Real Property are as follows:**
- 4.4.3.1** There is no existing curb, gutter or sidewalk on Midway Road south of the Subject Real Property.

4.4.3.2 Curb, gutter, and sidewalk are located on Midway Road 1 mile north of the Subject Real Property of the east side of the road.

4.4.3.3 Curb, gutter, and sidewalk are constructed on Smith Avenue approximately 0.7 miles east of Midway Road.

4.4.3.4 Curb, gutter, and sidewalk are constructed on Lone Star Avenue approximately 0.8 miles east of Midway Road, which is located 1.1 miles from the Subject Real Property.

4.5 Findings regarding Functional Classification and Access

4.5.1 Midway Road from Lone Star Avenue to Karcher Road (Hwy 55) is classified as a minor arterial and Smith Avenue is classified as a collector on the current planning functional classification map. Midway Road is located on a section line, and corresponds to the minor or principal arterial 1-mile grid designated throughout Nampa and Caldwell. This designation was not extended south of Lone Star Avenue due to the limited service area created by Lake Lowell. Smith Avenue is along a quarter section line and fits the typical ½-mile collector road grid system found throughout Nampa and Caldwell.

4.5.2 The following is a summary of the current accesses to Midway Road between Lone Star Road and Karcher Road (Hwy 55):

Segment	Residential Access	Other Access
Lone Star to Smith	4	1 (Street – Bighorn Dr)
Smith to Orchard	12	0
Orchard to Dale	7	0
Dale to Karcher (Hwy 55)	1	2 (School & Future Street)

4.5.3 City of Nampa's Driveway Spacing and Design Standards are set forth in the 2015 Engineering Division Development Policy Manual. Similar to the District's standards, the proposed Midway Sport Park accesses would be considered minor generators under the City of Nampa's policy. As such, Nampa's policy allows accesses from minor generators to minor arterials with a spacing of 5-6 times the speed limit. Under the District's standards, arterials have a design speed of 45 mph, resulting in an accesses spacing under Nampa's policy of 225 to 270 feet. The proposed access to Midway Road would meet this requirement.

4.6 Findings regarding Highway District Staff [Deputy Director/Engineer] recommendations

4.6.1 In reviewing Variance Request #1 to postpone installation of frontage improvements along the Subject Real Property, staff considered the following:

- 4.6.1.1 The proposed development has limited frontage on Midway Road for urban improvements on a mile segment of rural roadway and establishing the grade of an arterial roadway based on two separate 200 to 300 foot sections may not result in the best permanent design grade for Midway Road.
- 4.6.1.2 Similar frontage improvements are nearly a mile away from the Subject Real Property and construction of such improvements in the vicinity are not likely in the next few years.
- 4.6.1.3 Further development of the Subject Real Property by the applicant is anticipated under the Park Master Plan and additional frontage improvements would be necessary at that time and all frontage improvements could be made in a coordinated manner at that time.
- 4.6.1.4 Slope flattening along the roadway would, as an interim measure, provide increased roadway safety until frontage improvements are made.
- 4.6.2 Staff recommends granting Variance Request #1 for a postponement of frontage improvements for the Subject Real Property with the following conditions:
 - 4.6.2.1 The owner enter into a recorded agreement that runs with the property requiring frontage improvements, including curb, gutter, sidewalk, roadway widening, and drainage/irrigation improvements in accordance with the Highway District's Standards at the time such improvements are required, when 1) such improvements are constructed on Midway Road between Lone Star Avenue and Smith Avenue on either side of the roadway, or 2) when any further phase of the Midway Sports Park is developed, or 3) after a period of five (5) years from the date of the agreement the Highway District may require the improvements within one (1) year of written notification by the Highway District to make such improvements; and
 - 4.6.2.2 The owner grant a warranty deed for public road right-of-way 50 feet in width along the Midway Road frontages of the Subject Real Property (being approximately 247' and 266') and provide the Highway District with a title commitment demonstrating unencumbered ownership of the parcel; and
 - 4.6.2.3 With development of Phase I of the Subject Real Property, the slope from the shoulder of the Midway Road shall be flattened to not steeper than 4 horizontal to 1 vertical.
- 4.6.3 In reviewing Variance Request #2 to allow an access from Midway Road to the Subject Real Property, staff considered the following:

- 4.6.3.1** Minor arterial roadways are intended to move traffic within a city or sub-regional area by collecting traffic from the collector roadways and are not intended to provide direct access to properties.
- 4.6.3.2** Vehicles entering and existing direct accesses impact traffic flow on the roadway, decreasing operating speeds and capacity, and create conflicts that lead to crashes.
- 4.6.3.3** The proposed access volumes will likely be in the range of a minor generator under both Highway District and City of Nampa Standards; however, greater volumes may use this approach once full park development is complete.
- 4.6.3.4** Although other accesses have been granted prior to the adoption of the current standards or to parcels with no other access, it is not desirable where other means of access to a parcel exist to further degrade the future capacity of a minor arterial. However, the requested access would meet the spacing requirements and limitations of the City of Nampa's Standards.
- 4.6.3.5** The applicant provided a traffic impact study demonstrating that providing a park access to Midway Road would prevent the intersection of Midway Road and Smith Road from dropping to a level of service F at peak hour in the anticipated build out year of 2022.
- 4.6.4** Staff recommends that if Variance Request #2 is granted allowing an access from Midway Road to the Subject Real Property it should be subject to the following conditions:
 - 4.6.4.1** An access, providing left and right turns in and out, may be constructed from the Subject Real Property to Midway Road with Park Development Phase I. This access shall meet the requirements of HSDP, except as granted by this Variance but shall meet the City of Nampa's Driveway Spacing and Design Standards set forth in the 2015 Engineering Division Development Policy Manual; and
 - 4.6.4.2** A right-turn deceleration lane shall be constructed from southbound Midway Road into the accesses when initially constructed with Park Development Phase I; and
 - 4.6.4.3** When further development of the park occurs beyond that provided for in Park Development Phase I, an access to Smith Avenue shall be constructed to the park and the access granted to Midway Road shall be converted to a right-in/right-out only access with left turn movements restricted by construction of raised curb and tubular markers.

- 4.7** A literal interpretation and enforcement of the relevant regulation [HSDP §§ 2010.060, 3020.020, 3060.030, 3061.020, 3061.030, 6000 and Standard Drawing ACCHD-102A] would result in a practical difficulty or unnecessary physical hardship to the Applicant which is inconsistent with the objectives of the HSDP standards for the reasons set forth by Staff Recommendations.
- 4.8** There are extraordinary site characteristics are applicable to the intended park use of the Subject Real Property which do not apply generally.
- 4.9** A literal interpretation and enforcement of [HSDP §§ 2010.060, 3020.020, 3060.030, 3061.020, 3061.030, 6000, and Standard Drawing ACCHD-102A] would deprive the Applicant of privileges enjoyed by the owners of other properties in the area of the Subject Real Property.
- 4.10** Granting the variance, subject to the conditions recommended by Highway District staff, will not constitute a grant or special privilege inconsistent with the limitations on similarly situated properties.
- 4.11** Granting the variance, subject to the conditions recommended by Highway District staff, will not be detrimental to the public health, safety or welfare or be materially injurious to properties or improvements in the vicinity.
- 4.12** The following are found to be reasonable conditions in the public interest that should be imposed as a condition of granting the Application for Variance for the Subject Real Property in the above entitled matter:
- 4.12.1** In the matter of Variance Request #1 for a postponement of frontage improvements for the Subject Real Property:
- 4.12.1.1** The Applicant shall enter into a recorded agreement that runs with the Subject Real Property requiring frontage improvements, including curb, gutter, sidewalk, roadway widening, and drainage/irrigation improvements in accordance with the Highway District's Standards [established at the time such improvements are required], when:
- 4.12.1.1.1** Similar improvements are constructed on Midway Road between Lone Star Avenue and Smith Avenue on either side of the roadway, or on adjoining parcels to the Subject Real Property; or
- 4.12.1.1.2** When any further phase of the Midway Sports Park is developed on the Subject Real Property; or
- 4.12.1.1.3** After a period of five (5) years from the date of the agreement the Highway District may require the improvements within one (1) year of written

notification by the Highway District to make such improvements; and

- 4.12.1.1.4 In the event the Applicant or the Applicant's successor in title fails to timely construct the improvements, then in that event the Highway District may proceed to construct the improvements for which the Applicant or the Applicant's successor in title shall immediately reimburse the Highway District for all expenses the Highway District incurred, including administrative overhead expense upon receipt of written notice and demand for the same.
 - 4.12.1.2 The owner grant a warranty deed for public road right-of-way 50 feet in width along the Midway Road frontages of the subject parcel (being approximately 247' and 266') and provide the Highway District with a title commitment demonstrating unencumbered ownership of the parcel; and
 - 4.12.1.3 With construction of Park Development Phase I, the slope from the shoulder of the Midway Road shall be flattened to not steeper than 4 horizontal to 1 vertical along the Subject Real Property frontage.
 - 4.12.2 In the matter of Variance Request #2 allowing an access from Midway Road to the Subject Real Property:
 - 4.12.2.1 An access, providing left and right turns in and out, may be constructed from the Subject Real Property to Midway Road with Park Development Phase I. This access shall meet the requirements of HSDP, except as granted by this Variance but shall meet the City of Nampa's Driveway Spacing and Design Standards set forth in the 2015 Engineering Division Development Policy Manual; and
 - 4.12.2.2 A right-turn deceleration lane shall be constructed from southbound Midway Road into the accesses when initially constructed with Park Development Phase I; and
 - 4.12.2.3 When further development of the park occurs beyond that provided for in Park Development Phase I, an access to Smith Avenue shall be constructed to the park and the access granted to Midway Road shall be converted to a right-in/right-out only access with left turn movements restricted by construction of raised curb and tubular markers.

4.12.3 The Applicant's development of the Subject Real Property shall comply with all other requirements of Canyon Highway District No. 4's standards.

4.12.4 These conditions shall be set forth in a Variance Conditions Acceptance Agreement, which shall be recorded with the Canyon County Recorder's office and which Agreement shall run with the land and be binding upon the owner of the Subject Real Property.

V.

CONCLUSIONS OF LAW

5.1 The Canyon Highway District No. 4 was duly formed and exists by virtue of Chapter 13 of Title 40 Idaho Code as a Highway District.

5.2 The Commissioners of this Highway District have exclusive general supervision and jurisdiction over all highways and public rights-of-way within the Canyon Highway District No. 4, as provided by Idaho Code § 40-1313(1).

5.3 The Board of Commissioners has the exclusive general supervisory authority over all public highways, public streets, and public rights-of-way within the boundaries of the Highway District and under its jurisdiction, with full power to establish design standards, establish use standards, pass resolutions, and establish regulations in accordance with the provisions of Title 49, Idaho Code, and control access to said public highways, public streets, and public rights-of-way as provided in Idaho Code § 40-1310(8); and

5.4 The Commissioners, in the exercise of their authority, have adopted the Highway Standards and Development Procedures for the Highway Districts of Canyon County, Idaho [January 2010 edition], and amendment thereto which include and is relevant to these proceedings the following:

5.4.1 HSDP § 2010.060. *Construction: The District requires construction of all roadways and drainage improvements within the development, as well as improvements to the roadway and drainage system contiguous to the frontage of the Development in accordance with these standards. At the District's discretion, the applicant of any development may deposit the cost (as estimated by the applicant and approved by the District) of the frontage improvements with the District for the District's use in completing the frontage improvements at a later date. Developments along section or quarter section lines shall be required to construct arterial and/or collector roadways within or contiguous to the frontage of the development, unless otherwise determined by the District. Where there is no existing public road along a section or quarter section line within or contiguous to the frontage of the development, the development shall be responsible for constructing one-half the roadway width, but in no case less than a 20-foot plant mix pavement width.*

5.4.2 HSDP § 3020.020. *All arterials and collectors designated as urban roadways shall meet the urban roadway requirements in these standards.*

5.4.3 HSDP § 3060.030. *The typical curb and gutter section shown on the Standard Roadway Details is required on subdivisions within one mile of a city limit, or where requested by the District.*

5.4.3 HSDP § 3061.020.

B. Urban Roadway Driveway Spacing:

Roadway Classification	Minimum Driveway Spacing (in feet)		
	Minimum Use^a	Minor Generator^b	Major Generator^c
<i>Expressway</i>	<i>d</i>	<i>d</i>	<i>d</i>
<i>Principal Arterial</i>	<i>No New Direct Access</i>	<i>No New Direct Access</i>	<i>No New Direct Access</i>
Minor Arterial	No New Direct Access	No New Direct Access	No New Direct Access
<i>Major Collector</i>	<i>No New Direct Access</i>	<i>No New Direct Access</i>	<i>No New Direct Access</i>
<i>Minor Collector</i>	105	175	210
<i>Local Road</i>	50	100	125
<i>Low Volume Local Road^e</i>	30	60	75

^a less than 50 vehicle trips per day or 5 trips in the peak hour (two-way total).

^b 51 to 5,000 vehicle trips per day or less than 500 trips in the peak hour (two-way total).

^c over 5,000 vehicle trips per day or over 500 trips in the peak hour (two-way total).

^d determined by interchange or roadway spacing; no direct access allowed.

^e or County minimum (whichever is more restrictive).

3061.030. *Driveways are not allowed direct access onto arterial and major collector roads, or roads designated to be arterials or major collectors in the future. If unusual conditions prevent approach locations as specified above, the Applicant may request a variance in accordance with Section 2140. Where a variance is granted, driveways shall be designed and constructed to provide forward vehicular movement for ingress and egress to the adjacent properties.*

5.4.4 HSDP § 6000 – Definitions:

Urban (Urban Roadway) – *All areas and roadways within one mile of an incorporated city limit or within a city limit.*

5.4.5 HSDP § Standard Drawings: ACCHD-102A

5.4.6 HSDP § 2140, which states as follows:

5.4.6.1 HSDP § 2140.01 Purpose: *The Highway District may grant variances in order to prevent or to lessen such practical difficulties and unnecessary physical hardships as would result from a literal interpretation and enforcement in certain of the regulations prescribed by these Standards.*

A variance shall not be considered a right or special privilege, but may be granted to an applicant only upon showing 1) undue hardship

because of special characteristics applicable to the site, and 2) the variance is not in conflict with public interest. Hardships must result from special site characteristics, from geographic, topographic or other physical conditions, or from population densities, existing street locations or traffic conditions.

The purpose of a variance is to provide fair treatment and to see that individuals are not penalized because of site characteristics beyond their control.

5.4.6.2 HSDP § 2140.020 Findings Required for Variance:

(A) The Highway District may grant a variance if, on the basis of application, investigation and evidence submitted, the Highway District makes the following findings:

- 1. That literal interpretation and enforcement of the regulation would result in practical difficulty or unnecessary physical hardship inconsistent with the objections of these Standards.*
- 2. That there are extraordinary site characteristics applicable to the property involved or to the intended use of the property, which do not apply generally to other properties.*
- 3. That literal interpretation and enforcement of the regulation would deprive the applicant of privileges enjoyed by the owners of other properties.*
- 4. That the granting of the variance will not constitute a grant of special privilege inconsistent with the limitations on other properties.*
- 5. That the granting of the variance will not be detrimental to the public health, safety or welfare or be materially injurious to properties or improvements in the vicinity.*

5.2.6.3 2140.03 Duration of Approval: *The use or construction permitted under the terms of any variance shall be commenced within a six month period. If such use or construction has not commenced within such time period, the variance shall no longer be valid. Prior to the expiration of the six month period, the Highway District, upon request of the applicant, may extend the variance for up to an additional six months from the original date of approval.*

5.2.6.4 2140.04 Application: *Application for a variance shall be filed with the Highway District on a form prescribed by the District which shall include any information the District deems necessary.*

The application shall be accompanied by an accurate scale drawing of the site and all adjacent property affected, showing all existing and proposed locations of streets, property lines, uses, structures, driveways, pedestrian walks, off-street parking, off-street loading facilities and landscaped areas.

The application shall be accompanied by the appropriate fee, which is established by District resolution and is nonrefundable.

VI. ORDER OF DECISION

Based upon the above and foregoing Findings of Fact/Conclusions of Law and good cause appearing from the record, IT IS HEREBY ORDERED AND THIS DOES ORDER THAT:

- 6.1 Order No. 1:** The Applicant's Application requesting a variance from HSDP §§ 2010.060, 3020.020, 3060.030, 3061.020, 3061.030, 6000 and Standard Drawing ACCHD-102A, for postponement of curb, gutter, sidewalk and road widening fronting for the Subject Real Property (Variance Request #1) is Granted subject to the following terms and conditions:
- 6.1.1** The Applicant shall enter into a recorded agreement as set forth in Order No. 3 that runs with the Subject Real Property requiring frontage improvements, including curb, gutter, sidewalk, roadway widening, and drainage/irrigation improvements in accordance with the Highway District's Standards [established at the time such improvements are required], when:
 - 6.1.1.1** Similar improvements are constructed on Midway Road between Lone Star Avenue and Smith Avenue on either side of the roadway, or on adjoining parcels to the Subject Real Property; or
 - 6.1.1.2** When any further phase of the Midway Sports Park is developed on the Subject Real Property; or
 - 6.1.1.3** After a period of five (5) years from the date of the agreement the Highway District may require the improvements within one (1) year of written notification to the Applicant by the Highway District to make such improvements; and
 - 6.1.1.4** In the event the Applicant or the Applicant's successor in title fails to timely construct the improvements, then in that event the Highway District may proceed to construct the improvements for which the Applicant or the Applicant's successor in title shall immediately reimburse the Highway District for all expenses the Highway District incurred, including administrative overhead expense upon receipt of written notice and demand for the same.

- 6.1.2** The owner to immediately grant and convey real property by a warranty deed for public road right-of-way 50 feet in width along the Midway Road frontages of the subject parcel (being approximately 247' and 266') and provide the Highway District with a title commitment demonstrating unencumbered ownership of the parcel; and
- 6.1.3** With construction of Park Development Phase I, the slope from the shoulder of the Midway Road shall be flattened to not steeper than 4 horizontal to 1 vertical along the Subject Real Property frontage.
- 6.2 Order No. 2:** The Applicant's Application requesting a variance from HSDP §§ 2010.060, 3020.020, 3060.030, 3061.020, 3061.030, 6000 and Standard Drawing ACCHD-102A, allowing an access from Midway Road to the Subject Real Property (Variance Request #2) is Granted subject to the following terms and conditions:
- 6.2.1** An access, providing left and right turns in and out, may be constructed from the Subject Real Property to Midway Road with Park Development Phase I. This access shall meet the requirements of HSDP, except as granted by this Variance but shall meet the City of Nampa's Driveway Spacing and Design Standards set forth in the 2015 Engineering Division Development Policy Manual; and
- 6.2.2** A right-turn deceleration lane shall be constructed from southbound Midway Road into the accesses when initially constructed with Park Development Phase I; and
- 6.2.3** When further development of the park occurs beyond that provided for in Park Development Phase I, an access to Smith Avenue shall be constructed to the park and the access granted to Midway Road shall be converted to a right-in/right-out only access with left turn movements restricted by construction of raised curb and tubular markers.
- 6.3 Order No. 3:** As a further additional term and condition of Order No. 1 and Order No. 2, the Applicant shall enter into a Variance Conditions Acceptance Agreement [a copy of which is attached marked **Exhibit A** and by this reference incorporated herein this Order] prior to Park Development Phase I to be recorded with the Canyon County Recorder's Office and which runs with the above described Subject Real Property and which Agreement provides for the conditions set forth in Order No. 1 and Order No. 2 of this Variance.
- 6.4 Order No. 4:** The variance herein granted is subject to the provisions of HSDP § 2140.03, which provide as follows:

***2140.03 Duration of Approval:** The use or construction permitted under the terms of any variance shall be commenced within a six month period. If such use or construction has not commenced within such time period, the variance shall no longer be valid. Prior to the expiration of the six month period, the Highway*

District, upon request of the applicant, may extend the variance for up to an additional six months from the original date of approval.

VII. ORDERS TO DISTRICT SECRETARY

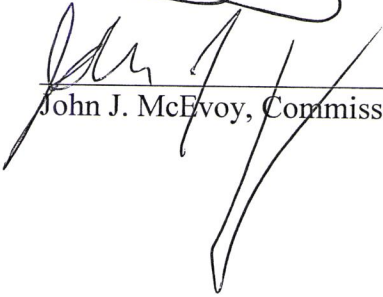
IT IS HEREBY ORDERED AND THIS DOES ORDER:

- 7.1 Secretary Order No. 1:** The Secretary of the Highway District shall forthwith provide and serve a copy of these Findings of Fact, Conclusions of Law, and Order of Decision upon the Applicant, the Highway District's Director, Deputy Director/Engineer and anyone who has been provided notice of the proceedings, and retain the original in the official records of this Highway District.
- 7.2 Secretary Order No. 2:** That at such time as the Applicant enters into the Variance Conditions Acceptance Agreement herein set forth the Secretary Certify shall cause the same to be recorded with the Canyon County Records Office.

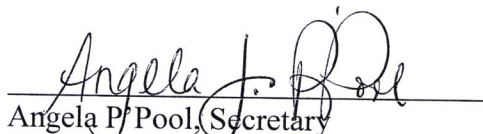
DATED this 1st day of July, 2015.


 Rick Youngblood, Chairman


 Jay Gibbons, Commissioner


 John J. McEvoy, Commissioner

ATTEST:


 Angela P. Pool, Secretary