

Public Hearing for Avani Neighborhood (H-2023-0049) by Conger Group, located at Southeast of Franklin Rd. and Black Cat, North of I-84.

- A. Request: Annexation of 35.086 acres of land from RUT to the R-15 (Medium High Density Residential) zoning district.
- B. Request: Preliminary Plat consisting of 256 buildable lots and 25 common lots on 33.71 acres of land in the proposed R-15 zoning district.

Seal: All right. Thank you all very much. And with that, we will open File No. H-2023-0049 for Avani Neighborhood and we will begin with the staff report.

Hersh: Good evening, Mr. Chair and Commissioners. The applicant has submitted applications for annexation and preliminary plat for Avani Neighborhood. This site consists of 33.71 acres of land, currently zoned RUT in Ada county, located southeast of Franklin Road and Black Cat, north of I-84. History on the property is none. The comprehensive FLUM designation is medium density -- medium high density residential. The applicant is -- proposes to annex 35.214 acres of land with an R-15 zoning district, which is listed in the zoning district compatibility matrix in the Ten Mile Area Plan as one of the best choices for the zoning in the high -- medium high density residential designation. The property is designated medium high density residential -- residential on the future land use map and is located within the area known as the Ten Mile Interchange Specific Area Plan. Medium high density residential areas are recommended to develop primarily with relatively dense multi-family housing types, such as row houses, townhouses, condominiums and apartments. Not all single family and attached and detached homes as proposed by the applicant. These are -- these areas should have a mix of housing types that achieve an overall average density target of 12 dwelling units per acre, with densities ranging from eight to 15 units per acre. The proposed development incorporates a mix of single family attached, single family detached, resulting in an overall gross density of 7.59 units per acre, consistent with the target density desired in the medium high density residential FLUM designation in the Ten Mile Area Plan. Townhouses should be included in this development to be more consistent with the plan. However, the property to the east has approval to construct a 550 unit -- unit multi-family development to offset the need for additional multi-family in the area. Mixed employment areas are also entitled or in the development process to the west, south and southeast. So, it is conceivable that this development may provide additional housing options for these employment areas. Background on the Ten Mile area was intended to look like and feel and function differently than a typical residential subdivision. It operates as a form based specific area plan where the design of the built environment is the primary review element is intended to work in conjunction with land use and zoning designations. These design elements should not be treated as a checklist, but used to implement the overall vision and support a traditional neighborhood designed desired by the plan. Out of the 256 single family units only ten are alley loaded. The others are all front loaded with living area either at the same plane or behind the garages away from

the street. A few of the units have usable porches that might meet the guidelines. No porches are proposed on the side. All units have single two car garage doors, not separate garage doors. The proposed elevations do not meet the design criteria that encourage building entrances to be situated close to the street, primarily due to the garage dominated nature. Elevations for the alley loaded units were not submitted with the application, making it difficult for staff to determine if they comply with these guidelines. Staff believes that the plat should incorporate more alley loaded lots. However, the applicant believes that there isn't a market for this type of housing and has elected to limit the number of alley loaded -- alley loaded homes to ten, which is inconsistent with the plan. Shorter block lengths and narrow streets help with a greater sense of the community in a traditional neighborhood design. As proposed these lots are narrower and garage dominated, creating more driveways and less tree lined streets along the primary street, which contradict the Ten Mile -- or which contradicts the traditional neighborhood principles. More alley loaded homes would enhance the streetscape for this development and ground the front porches to the primary street per the plans. Some of these design elements are not required by the UDC as envisioned by the plan. Therefore, the applicant requests the Commission and Council to allow some deviations to these design elements. A preliminary plat is proposed, again, consisting of 256 lots. Ninety-five are single family attached. As mentioned prior, ten are alley loaded and 151 single family detached building lots are proposed. Twenty-five landscape lots are proposed. Six common driveways, two alley and one nonbuildable lot on 33.707 acres of land in the R-15 zoning district. The lots range in size from 2,436 to 5,357 square feet. The average lot size is 3,584 square feet. The subdivision is proposed to develop in three phases as indicated on the preliminary plat. The applicant is -- is currently collaborating with the property owners directly to the south and east to complete the collector street connection to Black Cat. The city desires to have the street dedicated and constructed before residents occupy the homes in this development. The site amenities provided a minimum of seven points of site amenities are required based on the area of the single family residential development. Qualified amenities should include features listed in the UDC, a large park that includes a children's playground with a play structure, swings, climbing rocks, a climbing dome, seating benches with a safe fenced area, two pickle ball courts, a fenced dog park, are proposed, which meets the minimum standard. The ten foot wide regional pathways along the Black Cat Road and Vanguard Way consists of approximately 2,500 linear feet. Additionally, there is a micro -- five foot micro pathway running north-south on the east side of the property that spans approximately a thousand linear feet. Overall, the proposed amenities do exceed the minimum standards required. Written testimony is none. Staff recommends -- is recommending denial of the -- of the proposed annexation and preliminary plat as proposed. The project does not align with the purpose and intent of the Ten Mile Interchange Specific Area Plan as outlined in the analysis in the staff report in accordance with the findings. The applicant has been made aware of staff's concerns and has elected to forego some of the staff's recommendations to change -- change and gain a favorable recommendation. However, the Commission and Council should rely on all relevant information when determining if this project is consistent with the plan and open to allowing deviations from the design elements as desired by the applicant. That concludes staff's presentation and I stand for any questions.

Seal: Thank you very much. Would the applicant like to come forward. Good evening. Name and address, please.

Clark: Hi, everyone. Hethe Clark. 251 East Front Street in Boise. Representing the applicant. And do we have my PowerPoint available, Stacy? Maybe. Thank you. Okay. So, we are here tonight to talk about the Avani Neighborhood and as you heard in the staff presentation, there is going to be a fair amount of conversation about what the Ten Mile Interchange Specific Area Plan means and does and how we actually satisfy the Comprehensive Plan. But first I wanted to give you a little bit of history. You might be wondering what site plan that is that's on your screen. This is not the site plan that we are talking about tonight. This is a site plan from a project that was approved by the city nine months ago, just a little bit north of here, also in the Ten Mile Interchange Specific Area Plan -- or I'm going to call it the Ten Mile Plan, because that's way too much of a mouthful. It involves the same issues we are going to be discussing tonight, which is how to reconcile the required density in the medium high density residential designation with the design elements that staff has talked about tonight. That project was approved in spring 2023 with a positive P&Z recommendation and, again, the same issues were present. So, as we look at the project that's actually before you, Avani, the -- you can see that it's located just north of the freeway in the -- excuse me -- and east of Black Cat in the Ten Mile Plan area. You can see the property here against the land use designations that are included in the Ten Mile Plan. Again, it's planned medium high density residential or MHDR, which has a density band of eight to 15. When staff says there is a target of 12, the approved band is eight to 15 and 12 is a target for the larger area. Under the code we round typically to the nearest whole number, so our 7.59 dwelling units per acre means we are holding on by our fingernails to try to get high enough density to satisfy what's in the Ten Mile Plan. It is true in-fill. It's a priority growth area. City services are available and it will complete the transportation network that's shown on the Ten Mile Plan. So, I'm going to start by talking about the project itself and, then, go from there into the Ten Mile Plan issues. So, again, the site is 33.71 acres, 256 single family homes proposed. I think an important detail is that this is for sale product, which the -- a lot of the product that's going in around us, including the apartments to the east, are not. They are -- they are rental product. So, it adds to the -- to the variety of uses there. The dimensions and the density are consistent with R-15 and, again, we meet that R -- the density band for the medium high density residential. This also completes the area transportation -- transportation network by providing the mid mile collector, which you see here that's Vanguard Way. That is a collaboration amongst the three developers that are working in that area and that is planned to be completed later this year. As we look at the site, we have proposed 19.8 percent qualified open space. There is additional open spaces that's not qualified that's shown in the lighter green on this map. In addition we have the 3,500 feet of paths and regional paths, as well as numerous amenities that is typical for these -- for this developer attractive landscaping. As noted in the project we are providing ten foot wide multi-use pathways at Black Cat and Vanguard. So, on the west and on the -- on the south and we also exceed the -- the amenity requirements, but I want to be clear about when we say we exceed the amenity requirements, we blow them out of the water. The amenity requirements are seven

points. We are at 24.5. That includes a community pool, which is, obviously, a significant investment. Again, the pedestrian -- pedestrian pathways. You can see the regional pathway in blue. In terms of the housing proposed -- and this is a point I'm going to introduce now and, then, we will come back to later. We do have ten ally loaded lots and I want you to note the depth of those ally loaded lots, as that -- as that's an issue that I'm going to return to in a moment. Those are by far the longest or deepest lots in the project. In addition, we have the 95 two story attached, 102 story detached and 51 single story detached and this is what they look like. Here is the single story detached, the detached two story and the two story attached. So, that's the project. And now let's really dig into the staff recommendation. So, I would summarize the staff report like this. I would say as -- as I reviewed the staff report, it says there is not an issue with the UDC; right? It meets all the R-15 standards. The staff report doesn't cite any issues with the city's overall comprehensive plan. But what -- but what it does say is that there are issues with the Ten Mile Plan as that we don't meet the mandatory -- and I'm putting mandatory in quotes, because there is nothing mandatory about a comprehensive plan, and we don't meet the target density. Those are the two issues. Design elements and target density. So, next time I teach a land use law class I'm actually going to include this staff report and the reason I'm going to is because it illustrates an important principle and that is the relationship between the comprehensive plan and the zoning code. So, a comprehensive plan is not legally controlling zoning law. It's a policy document. It's a guide to local government agencies. We can't treat it like a zoning code. But it's -- because it's not written like a zoning code. It's a collection of policy objectives that, then, need to be translated into code in order to be functional. So, in the meantime, if the governing body is charged with determining if a project is in accordance with the Comprehensive Plan, it makes a factual inquiry based on the specific circumstances of the project. So, let's be clear, a comprehensive plan is a Rorschach. You guys have heard enough conversations about comprehensive plans to know that people pick -- cherry pick whatever they want out of a comprehensive plan, some things will be supported in the project, other things will not. A zoning code is where we take the comprehensive plan, we actually dig into the details and, then, we translate those goals into bulk standards and into setbacks and other controlling zoning requirements and that process is important, because you work through the kinks to identify the issues and these issues are important in this case. That hasn't happened in the case of the Ten Mile Plan and that's why staff is in a tough position with this report. They want to uphold the Ten Mile Plan, but the city hasn't translated these design elements in such a way to figure out if you can actually implement them in the higher density zones and so I'm going to show you what I mean here in a moment. So, as we look at the Ten Mile Plan, it's most useful to look at the density and, then, the design elements; right? So, let's look first at the density. This is the language from the plan. The Ten Mile Plan calls for a mix of housing types in the MHDR category. It is not the list that Stacy mentioned. It includes multi-family, but also allows for single family as well and I will show you that on the next slide. The density range again is between eight to 15, with a target of 12. We are on the very low end of the density range at -- at just below eight. So, if we look in more detail at the MHDR zone and its requirements, there is only -- only one possible choice as you can see with the checkmark, that's the possible choice, which is R-15. R-8 is the only other one that gets any sort of consideration and it's a marginal choice and in the uses that are identified -- as you can see here are single

family detached townhouses and two family duplex. In other words, R-15 per the plan is the only possible choice in the area. We are just at the bottom edge of that density band and we provide the exact housing types that are identified in the -- in the Ten Mile Plan. That includes the alley loaded product. So, that was density. So, let's talk about the design elements, because I think that's where -- the kind of the rubber meets the road. Those design elements are described in the Ten Mile Plan as recommendations that should be adopted by the city in code. There is other language that speaks to them being mandatory, it's inconsistent with the description of them as recommendations. It's also inconsistent -- when we say that it's mandatory, that's inconsistent with how a comprehensive plan should be treated. Excuse me. Those design elements include things like usable porches at 30 percent of the front facade, with a recommendation of a higher percentage than 30 percent and to have the porches on two sides. In addition, alley loaded garages are to be used, quote, when possible, again, not mandatory, but when possible and setback garages are to be, quote, no less than 20 feet behind the primary facade, which all sounds great, but in order to do that you actually have to implement it into code, so you can work out the kinks in an otherwise aspirational document. The Ten Mile Plan has an action plan that's -- you can see it here on the screen. It calls for amendments to the zoning code and it calls for a set of design guidelines specific to the Ten Mile interchange area and that hasn't happened. So, the vetting that I'm talking about -- talking about hasn't -- also hasn't happened, which leads to the tension that's in the staff report. As I mentioned, staff is in a tough position. I'm not mad at staff, I know I'm -- I'm up here lecturing a little bit, but, you know, we always get along and I understand that they are trying to uphold the planning document for the area when they take the positions that they have taken in the staff report. But, ultimately, what happened here is that the staff report elevates the comp plan -- the Ten Mile Plan above the zoning code and it fails to acknowledge internal inconsistencies within the Ten Mile Plan and in the staff report itself. So, here is what I mean. Staff recommends denial because we fall short of the target density of 12 dwelling -- dwelling units to the acre and because we -- excuse me -- lack specific Ten Mile plan design elements. So, again, the density band is eight to 15. That's a target of 12, but it's eight to 15 and we are right at - - right at eight. But, ultimately, what's happening here is staff is criticizing the application for lacking density, while requiring design elements that would further reduce density and that includes the alley loaded lots, the shorter block lengths and the porches. So, let me show you what I mean. If we look at ally loaded product, this is a diagram that I showed this group in -- in connection with the New -- the Newkirk application. You have two blocks right next to each other. Both include 95 foot deep lots. Ally loaded blocks require an additional 20 foot minimum, which pushes the block this direction and reduces density. In addition to these other factors that I have mentioned, one really important thing and that goes to the marketability of these lots, is that they don't provide for private open space or front private outdoor space and the only way you get that private outdoor space is to do it in the side setbacks. So, not only do you push the blocks out this way, you also push them out this way, losing density and, again, we are holding on by our fingernails to try to hit eight. With regard to porches -- or excuse me. Let's go back to block length. Staff wants shorter block lengths, but here is the problem. We are already well below the UDC requirement of 750 feet. What is the preferred block length in the Ten Mile Plan is not defined. If we want a different block length, that's fine, but we need to specify what

that is and, to be clear, we are well below this -- the allowed block length as permitted in the UDC and let's also be clear, the shorter block lengths, what does that do? Adds roads, adds maintenance, reduces density. With regard to porches, you know, we find that they are not going to be used by the residents, but if you are going to include a porch, what are you going to do, you are going to widen the lot. You -- if -- you are going to go with the UD -- or, excuse me, the Ten Mile Plan's recommendations and have it on two sides, you are going to widen the lot even further and so that is also going to reduce density. Now, I want to point out on the porch question -- I don't know why that's an annexation question. That's ultimately a design review question. So, I don't think it's actually relevant. But I just want to point out why we have a concern about the -- that direction that we have more porches. And, then, recessed garages. That's pretty simple. If you recess the garage you increase the lot depth, you reduce the density. So, to summarize, you know, the staff report in our view elevates the comp plan above the code. It acknowledges that we meet the R-15. The only issues that it identifies are in the Ten Mile Plan and the staff recommendations that -- you know, that we were asked to take on in order to get to a positive recommendation, all they do is reduce the density further. That's the -- that's the tension. The -- you know, this -- this is the -- it illustrates the issues that were created because the Ten Mile Plan hasn't been incorporated in the code. If you work through these items, you translate them into code, you translate them into bulk setbacks or bulk standards and setbacks, we get the issues figured out. But what we have discovered as we have been looking at it is that these design elements might be possible in the lower density zones; right? If you don't have to hit a certain density band you can put in the porch, you can put in the alley load, but at the medium high density residential designation to say that you have to have that as the predominant feature on all of these lots isn't impossible if you have to also hit the density. But I do want to point out that just like at Newkirk, our application includes alley loaded lots. We don't -- we didn't want them. We are -- if I'm going to be a little bit sarcastic about it, we are placing them on the sac -- you know, our sacrifice on the altar of the Ten Mile Plan with those alley loaded lots. We do have block lengths that are well below code. We have the variety of housing types and we have provided the density at the medium high density range. So, just like at Newkirk, you know, we think that we have satisfied the Ten Mile Plan where we can and while still providing the plan density and just like at Newkirk we are asking for this group's recommendation of approval. So, I appreciate you all hanging in there with me. That was a little bit of a technical discussion, but I'm happy to answer questions.

Seal: Okay.

Smith: Mr. Chair?

Seal: Commissioner Smith, go ahead.

Smith: Yeah. So, I think one thing that mentally is creating a significant difference between Newkirk and this is my memory -- Newkirk met a lot of conditions and a -- and a lot of -- a lot of what was kind of required and desired, but especially pertaining to the ally load, there was kind of not really a way to make it workable in the plan while maintaining the density. It seems to me here that a lot of the same issues arise there, but we are also

not even in kind of the ballpark of the target density and -- and I mean that in a sense that to me, technically meeting the minimum doesn't really seem to align with kind of where the goal is and the -- and I understand, but I prefer to follow the guide. So, my question with all that in context is does it not make more sense or is there a reason that you are -- while Newkirk felt like you maybe sacrifice some of the -- similar to this, you kind of prioritize the ones, either that you are -- you are, again, not really fully meeting or any kind of targets that were --

Clark: Commissioner Smith, thank you. If I understand the question, so it -- Newkirk -- it was a little different into something in some ways in the sense that that was a TN-R designation and so we had multi-family on the east side that pulled up our density somewhat; right? We did include -- we have one block of alley load and, then, the rest of it was not alley load. So, that was another internal block in all of the outer ring was -- so, in this case we don't have the benefit of being able to push up our density with some multi-family on the east side like we did at Newkirk. So, we are already just barely at the density that is required for the medium high density. So, that's where we feel like we are put in a difficult position of saying, okay, we want you to use ally loaded lots predominantly through the whole thing, which will knock our density down significantly. Like it won't -- it won't -- I don't even know if it will be in the sevens. It's probably less. And -- but still being asked to hit a medium high density residential density band, that's an impossible position and, then, when you are asking us to do it with -- with the type of product that we don't think people want, that -- it starts to become an ask that is, essentially, too much. Now -- but we have included it and we have included it at the entry of our project. So, it's predominant, but it is not the majority of the lots by any means.

Smith: I guess my question -- and this can also be a question for staff. Is there anything excluding this application from taking more of an approach like a Newkirk where there was maybe a pocket that's more similar to kind of your higher density that can offset some of the decreased density that would be created by incorporating some of staff's plan? Is there anything that's preventing them from building more dense multi-family in a pocket and, then, offsetting that with incorporating those plans? That seems to me to kind of fit within a little bit more of the spirit of what we are going for here, which is, to me, why I was more in support of Newkirk than this. Or anything other than just kind of the desire of the developments preventing kind of an orbit of density offset by alley and those things that would reduce density elsewhere.

Clark: Commissioner Smith, I'm not sure I understand your question. I mean are you asking if -- if we would -- if we could do like multi-family in a portion of the project?

Smith: Yes. So, essentially, in Newkirk you had multi-family that hit was denser that offset some of the less dense single family created by the alley load and some of those other design elements that were desirable. Is there a reason that you can't do that here, given that, like you are talking about, there are somewhat similar scenarios, similar limitations, but the application is vastly different to what we saw in Newkirk.

Parsons: Mr. Chair, Members of the Commission, I will start on the topic and, then, let the applicant rebut as well. But, no, there isn't. The R-15 -- it would require redesign for sure and we are -- because of it is R-15, instead of the TN-R, like the Newkirk project, it would require them to also submit a concurrency CUP. What we tried to do in the staff report is make the argument for the applicant that additional multi-family wasn't required on this property, because of what we have already entitled to the east and so we were trying to give -- when we met with them and discuss some of these issues, we were like we are fine with something other than multi-family here, but can we get closer to these design concepts? And, like I said, we got to the ten alley loaded lots, but we were hoping it would go further than that. But to your initial question, no, they could have proposed multi-family as part of this development and, to be honest with you, in current -- in early discussion with the applicant their land plans did include that, they just elected to remove that, because of what they are seeing in the area already that's entitled. That's why they -- they wanted to provide something different than has already been provided in this area.

Clark: And, Commissioner Smith, yeah, I would just -- to further elaborate on that, immediately to our east is already entitled 500 apartment units; right? So, you know, the -- the idea of the Ten Mile Plan and the way I read the Ten Mile Plan is not that you are looking at each project, project by project, you are looking at the overall area to see, okay, what kind of product is out there? What -- what kind of -- of homes are -- are on offer and, then, in addition, that target of 12 is also spread across the area; right? So, the project immediately to our east pulls up that area -- that area density. Meanwhile, we are trying to just keep ourselves within the medium high density residential band and -- but still have a project that's viable when you got -- you know, it doesn't make sense to do additional multi-family there when you got 500 units that are just -- have just been approved.

Smith: Thank you.

Seal: Commissioners, anything else? Madam Clerk, do we have anybody signed up to testify? There are only two other people -- three. Sorry. Three other people in here. Sorry, sir.

Lomeli: Catrina Waddell.

Seal: No. Anybody else?

Lomeli: That's it.

Seal: Anybody else want to testify?

Smith: Mr. Chair?

Seal: Go ahead.

Smith: I guess a question for staff or the applicant, whoever. Is there a rough idea, you know, looking at it less as a plot by -- or plot by plat, kind of project basis, looking at kind

of more of the total area. I guess that's where I'm still struggling and might be one of the few people in Meridian who might be opposed something because it's not dense enough. But I -- I think that's where I'm getting at is one of the key things is, you know, that -- we are not kind of meeting really any of the goals here and so it seems to me -- and I don't want to put words in your mouth -- it seems to me that like maybe hitting slightly lower density here would be somewhat amenable, that if it meets more of the design concept. So, my question is around the density of the overall area, around including -- including this project and the other projects that are kind of within that -- I don't know -- within the relevant transitions, if anyone has any thoughts or numbers on that?

Hersh: Mr. Chair, Commissioner Smith, so we did have conversations with the applicant about that and so staff is amenable to a lower density if there were more design elements that met the plan. Definitely. And we did have multiple conversations about that.

Parsons: Mr. Chair, Members of the Commission, just to elaborate a little bit more, it's -- to the applicant's point, it is -- it is a difficult topic. We are both kind of backed into a corner trying to defend our position and we never want to be in that predicament, but the facts are we really don't have code to support us, but this is annexation. That's the difference here, is it's -- they are requesting the annex into the city. We are not forcing them to do anything that -- that -- that wouldn't be -- they are asking, hey, we want to come into your city. If I look at the definition of in-fill in the UDC, this does not meet the definition of in-fill. So, I would be hesitant to say that this is a ripe and true in-fill project. But with that being said, the comp plan isn't parcel specific, like this property. So, yes, we would concede on some of the density if they can make it work. Where Stacy and I have a hard time telling you whether or not density would change if they changed their project and had more alley load or diff -- or adding more townhomes, we can't tell you that, because we haven't seen a plan to -- to let you know if that would work or not. But to Commissioner Smith's point, Newkirk was offset by the multi-family and there was a significant less amount of single family or attached and townhome lots than there was on this particular project. This one has 256 detached homes and attached homes, where the other one had 64 and that's a huge difference here and that is a completely different side of the road here. So, you can see here if you look at the applicant's graphic here, you are looking at Baraya, you can see they have a mix of zoning designations, they have townhomes in there, they have single family, they have alley load, they have multi-family, all in keeping with the spirit -- spirit of the plan, even though the plan wasn't adopted at the time that they got their entitlements, but they were required in the development agreement to meet specific design criteria and that's why you see that developed here. So, everyone that we have met with on this significant -- or this section of town or in the Ten Mile area, we are holding as much as possible to those design elements and so we don't want the -- the applicant to think that we are not supportive of this plan. I think -- I love the open space. I like the amenities. It's -- it's -- it's a good development. Unfortunately, it's hard for Stacy and I to support that when it misses the mark from the design elements in the plan. The zoning matrix that is in the -- in the Comprehensive Plan isn't to specify what's allowed to go in there, it just -- it's just to show you what the code -- what is allowed in that zoning designations for example. So, if someone came in with an R-15 those are permitted uses in the R-15 zone. So, when we say it's consistent

with the zone, it is because single family attached and detached and townhomes are principally permitted uses in those zones. It doesn't mean it's the right use for that land use in the Ten Mile Plan. It just references -- if this is your land use designation, here is the preferred zoning and these are the uses allowed in that zone. So, it's not meant to be a guide or a thou shalt do these uses in the Ten Mile Plan, we are going let the zone control -- to the applicant's point zoning controls everything and over the years we have made some modifications to the UDC after the adoption of the plan. So, we did add the MU zone to our code and the AC zone, which are commercial designations, and, then, we have also modified our TN-R zoning standards to reflect some of these design concepts, but not all of them. So, that's why Stacy and I put it in our recommendation to you is, you know, obviously, you are hearing both sides of the story here and I think that's where we left it off with all of you, because it's really -- the plan is a visionary document and the -- the code is -- is the tool we use to implement the plan. So, I can't fault the applicant in their argument, it's just the fact that we are at annexation, we had asked for a little bit more, we did not get that, the applicant wanted to move forward with their plan and we were very straightforward with them and said if you don't incorporate some of these other additional items we can't -- we can't recommend -- make a favorable recommendation on the plan and that's why we are in front of you tonight.

Seal: Thank you, Bill. Appreciate that.

Lorcher: Mr. -- oh, go ahead.

Starman: Mr. Chairman. Can I -- let's see if I can -- I want to just say -- I want to add this in a very kind of abstract high level way, so I don't want to participate in the policy discussion, that's your job and staff is doing -- planning staff is doing a fine job. I do want to comment about a legal topic that Mr. Hethe discussed and Bill's comments touched upon and that is ethics. I think we are conflating some issues and, Mr. Hethe, you are welcome to rebut if you think I'm off base, but I think it's important to recognize you have multiple requests before you today that you are making recommendation -- recommendations on. One is an annexation and with that, if we go down that path, becomes the initial zoning and, then, secondly, is the preliminary plat and so Mr. Hethe is quite right where courts have consistently held that a comprehensive plan is more aspirational, provides guidelines -- you can't ignore it, but it's not law either. That's more applicable under -- those rulings are under the Local Land Use Planning Act. That's our preliminary plat category. Annexations are under Title 50, something different than LUPA and it says -- Mr. Parsons, which is pointing toward and talking about annexation is a little bit different animal and so in that instance, you know, clearly you can look at the bigger picture in terms -- does this annexation request before the city fit the vision of the community and what we are trying to accomplish and so, ultimately, you make a recommendation and the City Council makes that decision as to whether annexation is in the city's best interest or not. But we are not confined to those LUPA decisions relative to -- that Mr. Hethe was describing earlier. So, I just wanted to -- I don't want to conflate those two issues. We have an annexation request, which stands on its own and is a little bit different animal and, then, we have the other part of this request before you, which is

those parts of the preliminary plat in particular that fall within LUPA. Does that -- does that make sense? And if you think I'm off base let me know.

Clark: I think what I would clarify is absolutely on the preliminary plat side of things; right? That's -- you know, you can't -- you can't conflate the two. When it comes to the Comprehensive Plan, it's a factual evaluation based on the specific circumstances in this case; right? So, you -- yeah, is it generally in accordance with -- yeah, then, that's what that means is generally. You have to look at it as a policy matter and not as a technical detail matter and that's why we are asking in this case for you to look at it from the perspective of there are inconsistent requirements within the Ten Mile Plan. You can't hit the density band and include the design elements that we are talking about. That's -- really, that was the discussion that we had with everyone on the Newkirk. That's why all of these projects that you see on this plan up north, many of them are garage dominated. There is a mix of alley loaded, but there is a lot of garage dominated up there as well and, you know, that same request was made. These projects were all still approved, because I think that -- as people have looked at this they have realized, okay, we have to try to look at these goals together and if we are going to try and get the density that we have contemplated in the Ten Mile Plan, then, we are not going to be able to have all the design elements that the Ten Mile Plan speaks to.

Seal: Commissioners?

Lorcher: Mr. Chair?

Seal: Commissioner Lorcher, go ahead.

Lorcher: Staff, is the R-15 required for the Ten Mile interchange?

Hersh: Mr. Chair, Commissioner Lorcher, so that is actually the zoning that was on the Comprehensive Plan FLUM designation was medium high density residential for this area.

Lorcher: And so is R-8 an option or no?

Hersh: They would have to apply for a comp plan amendment. They could do so and they would have bigger lots. I don't know if the applicant is amenable to that or not, but that is an option.

Clark: Now, as we look at the Ten Mile Interchange Plan, this is what's called for is R-15. The -- the -- the plan specifically says your -- this is -- R-15 is actually the only designation that gets the regular checkmark that means it's a possible choice. R-8 is the only other one that gets any sort of a checkmark and it's a marginal choice and, as Stacy mentioned, that's going to require a comp plan amendment. So, it's -- it's -- it's a multi-step dance to get to an R-8. If we are trying to uphold the Ten Mile Plan, we should be doing R-15.

Lorcher: Right. But you are -- everything's falling short of what the city wants and what you want for R-15. I mean they are -- they are not -- they are not meshing, so did you have a conversation about R-8 at all or that wasn't even on the table?

Clark: Not on the table, because it's -- again, it's not -- it was -- it's not consistent with your comp plan. What your comp plan calls for is R-15. So, we are trying to be consistent with the planning that's been asked for -- you know, that the city has identified in this case.

Lorcher: But you also mentioned that you are looking at the overall entire area and you already said there is 500 units being -- for apartments or townhouses already. So, even though the designation is R-15 and you already have that, you don't want that product, you want to have single family in your area, but now there is conflict between density and space and all those other things. So, yes, in and of itself it's R-15, but like you pointed out, now you have to look at the whole area. It's not marketable for you to add more townhouses or apartments to your density plan, because there is already going to be 500 right next door. So, how do you resolve when you have all of these things kind of happening around you, yet you are trying to fulfill the need of the zoning in the first place. I mean right now I think we are all still kind of here. You know, you are trying to -- you are trying to fit it in and the city is saying, well, yes, if you are going to do that, then, this needs to be happening, but in your argument you are saying, well -- but that's already happening over there, so, therefore, we shouldn't do it over here. So, how is -- I don't -- I mean I'm struggling with how is that in the best interest of anybody for you to be able to sell a product that's not already replicated next door and to be able to fulfill the -- the Comprehensive Plan or the future land use map of what the city is trying to do? So, I think that's kind of part of the crux of it, too.

Clark: Well, Commissioner Lorcher, I mean I think the -- the clarification I would make to that is that that tension is not one of our making; right? That tension is inherent in the Ten Mile Plan itself, because the Ten Mile Plan says this spot should be R-15. R-15 has as permitted uses single family detached townhouses, two family duplexes. We want you to get from eight to 15 dwelling units, but we also want you to have porches and alley loads and that's the tension. That's the problem with treating this -- and, you know, to -- I almost said -- when -- just first name with Kurt, but the -- you know, to your attorney's point, that's my concern with the way this is being treated is that that -- that interlocking between those design density standards is being treated like a zoning code question, when, in fact, it's a Comprehensive Plan question and the only way you can reconcile it is by saying something's got to give; right? And something gave at all of those projects that I showed you there north of us and that the -- and that the city has approved throughout the past couple of years. This is the first time I have seen a recommendation for denial on this question and so that's where my concern comes from, is that we didn't create the tension, we are caught in the tension and we are trying to resolve it in a way that makes sense to us and we are already just below that density band, but being asked to make changes they are going to push us further down.

Smith: Mr. Chair?

Seal: Commissioner Smith, go ahead.

Smith: I hear what you are saying, but it is -- and to Commissioner Lorcher's point and with respect -- and not as a personal thing, but it feels a little bit like trying to -- like it's all the other ones -- there is a tension and something did get -- it feels like you are -- everything's -- there is not -- your direction that we are taking this, we are just kind of failing to meet the requirements all across the board evenly and that is not there to say where it will -- or be at the density requirements a lot more clearly, you missed some of the design elements, but that was a compromise that happened. It feels like we are missing across the board and that's -- that's my -- my issue here. You talk about the requirements and hitting none of them, but it's not really -- but --

Clark: Yeah.

Smith: -- missing the ones regarding the -- the -- specifically the sign elements and the density, you are not really hitting -- and so between those requirements, yeah, they might be just one another, but -- but to my mind there is -- like I am just searching for a reason that we are not either choosing -- we are not choosing either of them working with staff to clean up the -- I don't want to put words in your mouth of staff, staff just kind of seemed okay with lower density -- with lower density here for meeting more design elements. Seems like they have kind of given you a direction for what to -- what might be able to give and it's not being taken. So, it's just -- there is not a clear single sentence question there, but I just -- I'm struggling to wrap my head around why -- it feels like they are kind of saying, hey, this area can budge a little bit and you are not --

Clark: Yeah. I don't -- I don't know that that's a fair characterization of it. I guess I was - - is my response. You know, first of all, we do have shortened block lengths as compared to UDC. We do have -- we did add the alley loads. Like I said, we would love not to have any ally loads, but we have got -- we have got ten ally loads. You know, we have provided the same -- I just showed you the chart of what types of structures are permitted in the R-15. We have those structures and, you know, when you round -- in which we do in the - - in the city code, we round from -- to the nearest whole number up or down, then, we are at the bottom of the density scale. But when it comes to this concept of, you know, staff's okay with a lower density, you know, again, that -- that begs the question of like, you know, what are we doing here? You know, if staff can just say, well, yeah, it's eight to 15, but, you know, we think you are okay with five if you -- if you include three quarters of it as -- as ally load, what are the standards -- the objective standards that an applicant has to look at to be able to understand where that came from; right? Ultimately, what we are talking about here is trying to balance the density with the design elements and we have proposed what we think is an appropriate balance, but I understand that there is a disagreement on that.

Seal: Well, yeah, I was going to say I think -- it reminds me of a buddy of mine. Loved to go to the prom in jeans, so -- wasn't appropriate, wasn't allowed to go. So, rules were set. He knew that. Showed up anyway, so -- and as far as Newkirk and Aviator, I mean, you know, I remember those applications. I remember being lenient on them and I

remember things going through, as we negotiated through some of those and I had a feeling at that point in time that was going to come back and bite us in the butt and here we are. So, I mean the comp plan is really what's going to hold it R-15, not the Ten Mile Plan. Okay. So, the UDC is going to determine your plat. The Ten Mile Plan is going to be to the design elements. So, we have managed to -- with other applications we have managed to reconcile all of that in a way that we thought fit best for the city and that's I think all the staff is trying to do here and I do agree -- that there is just too much to it. So, I don't think staff is saying, yeah, go ahead and put in five, you know, let's -- that's what we need to meet for density, as long as you meet this other stuff. I don't think that's what's happening here. We have had a lot of applications that have come in and they have -- they have asked for a comp plan amendment to reduce, you know, the density. So, in fact, we have had one tonight that was part of the application that comes in. So, that is available to you to do here. Does it fit in with the rest of the Ten Mile Plan? I don't know. Is there a plan that can go along with that? We haven't seen one. But we do know that it's not meeting the spirit of the Ten Mile Plan. Again, you know, I mean it kind of showed up to the location in the wrong attire. So, yeah, all of this was known and I understand that there is some tension and that you are trying to navigate it, it's just in my mind it doesn't hit the mark. So, the Ten Mile Plan is the Ten Mile Plan. If you don't want to adhere to the Ten Mile Plan, don't build in that area.

Clark: And I guess my question in response would be how do you adhere to the Ten Mile Plan in the -- in the medium high density residential area? That's the rhetorical question that the city has to ask.

Seal: Sure.

Clark: Because there are conflicting goals in that policy document that have got this to a point where if you try to adhere to all of them you can't adhere to any of them and that's - - you know, that -- you know, to -- with the prom metaphor, you know, we came to it knowing what the Ten Mile Plan says and knowing the tension there and tried to address that by, you know, presenting something that gets as close to that density band is possible, but you just can't do it with everything that staff's asked for.

Seal: Okay.

Smith: Mr. Chair?

Seal: Commissioner Smith.

Smith: One -- one thing I want to add. I know we looked at the comp plan slide a few times. It feels like we are focusing laser target on those permitted uses and not really even discussing this conditional uses and that's something to my mind where conditional uses are there for a reason and I don't know if that -- if those -- I'm not trying to be prescriptive on what it should look like, because, you know, I'm not staff, I haven't seen any of -- I'm not you. I'm just saying there -- there are -- there do also seem to be other areas to flex, it just also, you know, holding in tandem like, well, there are -- these are

these policy -- policy documents, but they are constraining this excessively. There is -- there is an inconsistency from where the code -- the code is kind of pushing you, there is also an inconsistency and to me I would -- I would personally prefer -- and I personally feel more comfortable, you know, like in Newkirk where, you know, staff had some asks and we didn't quite -- you know, there was -- there was negotiation and I think to your point we were a little lenient, but even, then, there was still a lot of discussion and consideration and pushing and trying to -- and it only kind of went through after it was clear that like this is really kind of the best we can get in this kind of configuration. It just feels like we are not there and so I just -- I struggle with, you know, to what staff was saying about there initially being some multi-family or initially being some other areas and now that has been removed. I'm sure there was a reason for it. I don't know that that's necessarily relevant to tonight. I just think that there is -- I look at those -- those things as areas that flex and I look at other instances of them being kind of flexing and push and prodded and massaged to build a better project. I just don't think we are at the level of those other projects. So, again, I don't know what that looks like. I just -- you know, there is -- there is the -- the old saying, you know, I know it when I see it and I can't remember who originally said it, but, you know, it just -- it just doesn't get that -- the obscenity litmus test I guess.

Clark: Yeah. Different -- different context. Yeah.

Smith: Yeah. I think that's just where I'm wrestling personally. So, I don't know if you wanted to respond to that in the process here. Maybe I'm missing something in that whole process of how we kind of massage it, that was really the best solution here. I just -- I want to give you that opportunity and I'm wrestling with that a lot and I'm also wrestling with, you know, Newkirk and that's coming to bite us a little bit here, you now, if we approve this, you know, if you give a mouse a cookie, you are not saying you are the mouse here.

Clark: And I don't know that that's -- you know. And I hope I don't sound offensive, but I don't know that that's a fair characterization of Newkirk.. Newkirk, we -- we had a long conversation about, okay, here is what you can do, here is what you can't do and, ultimately, the conclusion that everyone arrived at was, okay, do the alley loads here. Do the single family detached here. You know, we think that even though it's not perfect, it addresses enough; right? That -- that was the conversation at Newkirk and there wasn't any special variance or, you know, waivers that were given. What happened in Newkirk is what is exactly what should happen on every comprehensive plan question. You have to look at the policies and decide which ones control and ultimately in Newkirk it was -- that was enough to be able to get to the density and still have the design elements. So, otherwise, I -- you know, I don't know if -- I would probably just be repeating myself, Commissioner Smith, so -- but, you know, appreciate your comments and, you know, we obviously would take all of that into account, you know, in a recommendation and decide what to do next.

Seal: You looked -- you looked like you were going to go for it.

Lorcher: I will make sure it's --

Seal: Commissioners, all good? Anything for closing?

Clark: No, I think -- I think I have done enough damage here tonight.

Seal: Thank you very much. Appreciate it.

Clark: Thank you.

Seal: And with that, I will take a motion to close public hearing for File No. H-2023- 0059 for Avani Neighborhood.

Lorcher: So moved.

Smith: Second.

Seal: It's been moved and seconded to close the public hearing for File Number H-2023-0049. All in favor, please, say aye. Opposed nay? The public hearing is closed.

MOTION CARRIED: FOUR AYES. ONE ABSENT.

Seal: Further comment?

Lorcher: Mr. Chairman?

Seal: Go ahead,

Lorcher: So, I struggle on this for a couple different reasons. We can't ignore staff comments, but we don't -- and I don't want to ignore the applicant's comments either and it just seems that the compromise of being able to make this work doesn't seem to be there. I really see it as kind of a square and a circle and I know it's probably not part of the Ten Mile Plan, but I would like to see less density over there, but that's just me, because with everything else going on over at that corner -- or that, you know, between Ten Mile, Black Cat, Franklin and the interchange with Farmstone being industrial and who knows what the heck's going across the street with Ada county over there, they have, you know, more high density housing on a corridor that's really going to be designed for a lot of manufacturing, brings me pause as a parent and as a subdivision, because now you are not only competing with high density, you are competing with trucks and manufacturing and light industrial, but that's not your problem, because that's not your project. This is your project. And the other thing is is that one of the reasons why we look at every application individually is that they are based on the merit of the application in front of us and, yes, we can use other applications and approvals as guidelines, but in and of itself this should stand alone. So, you have a good memory. I don't remember Newkirk and I'm sure I was here, but, you know, it just doesn't seem like the city and the applicant are close enough with a design plan to warrant annexation at this time. I think

conversations need to keep going. Now, that doesn't mean you can't go to City Council, because they may see it completely different than we do. They do these more than we do. We are just a recommending body, we are not the decision makers. So, with that in mind, knowing everything else that's going around, I appreciate the fact that you don't want to do multi-family housing there and I also appreciate that you don't want to do alley loaded, because you said that's a product that people don't really necessarily want to buy. So, you want to be able to sell these individually as opposed to have rentals. So, that part I like. But at the same time you are not also considering looking at other zoning opportunities to be able to fit that in a different way. So, that conversation hasn't happened and you didn't consider it. So, I just think right now for me, the city and what's in the best interest of the city, which is what we are charged to do and what you are proposing as an applicant are too far away.

Smith: Mr. Chair?

Seal: Commissioner Smith, go ahead.

Smith: Yeah. I'm contrasting this a lot of the time. I won't go into the specifics of the -- all the reasons why. I think I have covered that a lot already, just be repeating myself. I'm just thinking contextually like there are a lot of times when there is opposition to a project that you are from the community or from, you know, some -- some well-meaning individual that, you know, on net it still is kind of the best project for the area for the city and my -- my thought at that time -- a lot of the time is -- is I feel for them. I get where they are coming from. I think on that it just still is -- is a better project and he is still on that good for the city. I think here is the inverse. I would not want to be in your shoes. I think this is a tough position and I'm glad that I'm on this side of the dais tonight, so -- and I fully -- I totally any -- any -- any characterizations that are felt as unfair are totally, you know, not intentional. I appreciate the work you have done in this area. I just -- I just don't think this one is -- I feel for where you are at. I get -- I get the different -- the pulls and pushes, I just -- I can't see it for this and so that's where I'm at. Yeah. I think anything more would be beating a dead horse.

Seal: Commissioner Rivera, anything else?

Rivera: Yeah. I'm just -- I felt like the common denominator here was just -- we are just too far apart. We need to come up with something -- maybe add some dialogue -- dialogue and go back and see if there is a -- we can get closer to meeting in the middle.

Seal: And I appreciate everything that was said on both sides and the applicant brought up some very good points. I mean some of this is difficult to reconcile when it's put that way, so -- I mean, you know, I'm -- I'm going to -- you know, my -- my vote is going to go towards supporting staff and, you know, the request for denial, but I do think it's in the city's best interest to definitely try to take some of the information that's been provided tonight and help to reconcile some of that in order to kind of maybe head something like this off in the future. So, if R-15 isn't where it needs to be, it's okay. I mean if that's in the spirit of the Ten Mile Plan, then, yeah, there has to be some other stuff that needs to happen. But, you know, again, at -- I think part of the spirit of the Ten Mile Plan is to

provide something different, not exactly the same as everywhere else you are going to see in the city and this has a lot of those characteristics I would say. So, we have -- we have seen, you know, applications like this over and over and over again, where Ten Mile is somewhere where we don't want to see the same thing over and over and over as much as some of it might end up looking like that, so -- but I do appreciate all the dialogue tonight and appreciating everybody staying respectful for certain and with that I will take a motion.

Lorcher: Mr. Chair?

Seal: Commissioner Lorcher.

Lorcher: After considering all staff, applicant and public testimony, I move to recommend denial to the City Council for File No. H-2023-0049 as presented at the hearing of February 1st, 2024, for the following reasons: I'm not done yet. Wait, there is more. Proposed -- for the following reasons: The proposed annexation and preliminary plat I want that which aligns with the Ten Mile Plan and the R-15 designation and the inability for the current preliminary plat to meet those guidelines and not currently consider other alternative solutions for the parcel.

Smith: Second.

Seal: It's been moved and seconded to recommend denial of File H-2023-0049 to City Council, with the affirmation of modifications I guess I should say.

Lorcher: Yes.

Seal: All in favor of denial say aye. None opposed? Motion is recommended for denial.