



## OFFICE OF THE CITY ATTORNEY

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**TO:** Planning and Zoning Commission  
**FROM:** Charles I. Wadams, City Attorney  
**DATE:** March 24, 2025  
**SUBJECT:** Remand of Potential Municipal Code Amendment on Land Use Administration Code Amendment (Ordinance 1051-24)

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**ACTION REQUIRED:** None at this time.

**RECOMMENDATION:** Eventual Passage of an ordinance with objective standards.

**FISCAL IMPACT/BUDGET IMPLICATIONS:** None if the ordinance is drafted properly.

**BACKGROUND:** On September 9, 2024, after receiving recommendations from the Planning and Zoning Commission (PZC), the City Council (CC) conducted the first reading of Ordinance 1051-24, which is an amendment on the Land Use Administration Code in Title 8. On September 23, CC approved and conducted the second reading as amended.

On October 14, 2024, Ordinance 1051-24 was on the agenda for the third reading, and to adopt and publish it into law. However, based on legal recommendations, CC continued the third reading to December 9, 2024, to await the Idaho Supreme Court's decision in *Veterans Park Neighborhood Ass'n, Inc. v. City of Boise [Interfaith]*, 2025 Ida. LEXIS 5 (01.22.25). On December 9, 2024, the CC again continued the third reading to wait for the *Interfaith* decision. The *Interfaith* decision was issued on January 22, 2025. On February 24, 2025, CC remanded Ordinance 1051-24 back to PZC for a work session, pursuant to legal recommendations, to consider the holdings and conclusions in the *Interfaith* case.

I have previously drafted a legal memo to the mayor and council, for a work session regarding the Local Land Use Planning Act (LLUPA) on February 10, 2025. In the legal memo, I stated:

**BACKGROUND:** The City of Garden City is currently working on three separate code amendments to Title 8 of the Garden City Code. Therefore, it is recommended that the City Council consider the below analysis during the code amendment process.

## **ANALYSIS:**

1. The reasoned statement requirement is a product of the Idaho Land Use Planning Act (LLUPA) and Idaho Code § 67-6535. That standard is higher than the applicable standard in many other administrative contexts. Try rereading Idaho Code § 67-6535 in the shoes of a reviewing judge that rarely gets a LLUPA appeal and gives the words their ordinary judicial meaning. Some jurisdictions do not have the level of staff support (or charge the application fees that would be necessary) to regularly write the type of reasoned statement that Idaho Code § 67-6535 and the Idaho Supreme Court requires. This is especially true for applications that are complicated, contested, or with a long record. Some jurisdictions are considering whether to require applicants to draft a written statement consistent with the jurisdiction's decision for review, modification and adoption (when desired). This could be required at the application stage.
2. Reasoned statements should be written primarily for its intended audience, which is the reviewing body, which ultimately could be the judiciary. Although it is prudent to draft and adopt decisions that also speak to the applicant, neighbors or the public audience, the reasoned statement should be primarily written for the court.
3. Abuse of discretion, unlawful procedure, arbitrary, capricious, and similar concepts, are all terms of art for judges that have established meanings in the judicial context. Those meanings may not match how they are used or understood by planning bodies and governmental bodies in the land use context. In particular, the "abuse of discretion" standard applied by judges may be much more stringent than that applied by reviewing city councils. Because judges are often the reviewing bodies, those terms should be given their judicial meanings if those conflict with other meanings.
4. The "standards and criteria" set forth in the ordinance for any discretionary decision under LLUPA should reflect the nature of the discretionary decision. The standards should not include any superlative words unless the superlative qualification is specifically intended for decisions. Avoid saying "minimize adverse impact" unless the jurisdiction intends that a decision be subject to reversal if the reviewing party finds that impacts could have been further reduced. The standard of reasonableness should be used unless a different objective and obtainable standard is desired. The general rule ought to be that when a jurisdiction has discretion, the jurisdiction uses that discretion to do reasonable things, and not unreasonable things.
5. Consider carefully whether the City Council review of a Planning and Zoning Commission decision should be a *de novo* review or an error correction only review. There are benefits and burdens of each, and each

jurisdiction has different considerations, so one that is better or desired for one jurisdiction may not be better or desired for another jurisdiction. If *de novo* review is selected, then the reviewing body must be prepared for the additional burden of *de novo* reviews (new record and new public hearings). If error correction review is selected, then the reviewing body must be prepared to affirm decisions that they don't like, or that are unpopular, or that are unwise, as long as they are not clearly erroneous (appeal standard). The reviewing body must also be prepared to speak clearly as to the error that was made.

6. Land use ordinances should not give objectors any tools that make it easy for an objector to reverse a jurisdiction's decision in a court. Typically, that means having the ordinance reflect the reality of the jurisdiction's operations and not having "aspirational" language that a jurisdiction may find difficult to meet or establish. It is legal to have goals that are aspirational, as long as the applicable objective standards are practical and achievable.

7. Land use decision makers come to hearings with a lot of context, knowledge and experience that doesn't appear in the record (and will likely never adequately appear in any record). What seems logical or sensible to a person with similar context, knowledge and experience may not seem logical or sensible to a reviewing judge that lacks the same context, knowledge, or experience (and can't see any of that in the record). With complete respect, reviewing judges are often not particularly experienced with land use, and may have no context, knowledge, or experience at all on the matter.

**CONCLUSION:** Therefore, the legal recommendation is for the City Council to decide the answers to the above questions and amend the municipal code accordingly. The risk of being reversed and having to pay attorney fees for a mistake is real.

I am now providing the additional legal analysis below, to include the appeals process and standard of review, for PZC's consideration.

**ANALYSIS:** In the *Interfaith* case, the Idaho Supreme Court found that the Boise City Code (BCC) sufficiently set forth "express standards" (required by LLUPA) for obtaining a CUP by clearly laying out the criteria to be applied in considering whether to grant a CUP. The BCC set forth the relevant standards that guide the review of CUP applications, directing PZC to review CUP applications according to seven criteria, the first five of which were:

- (1) The location is compatible with other uses in the general neighborhood;
- (2) The proposed use will not place an undue burden on transportation and other public facilities in the vicinity;

- (3) The site is large enough to accommodate the proposed use and all yards, open spaces, pathways, walls, fences, parking, loading, landscaping, and such other features as are required by this Code;
- (4) The proposed use, if it complies with all conditions imposed, will not adversely affect other property of the vicinity;
- (5) The proposed use is in compliance with the Comprehensive Plan.

These CUP criteria, coupled with the Comprehensive Plan, which supplies big-picture guidance, provided the express standards by which PZC evaluated, and ultimately approved or denied, an application for a CUP.

Pursuant to the BCC, PZC was directed to consider and review the information and evidence before it. PZC was tasked with determining whether a CUP application conformed with the CUP criteria, and if it conformed, PZC was directed to approve the permit. If it does not conform, PZC must deny the permit. The BCC also provided that PZC may impose conditions as needed to ensure that the approval is consistent with pertinent standards.

However, the Boise PZC's ability to impose conditions was a permissive function, not a mandatory one. Neither PZC nor CC was required to create, consider, or impose conditions when it found that an application for a CUP is deficient. While PZC had the authority to grant or deny a CUP, that decision was not final if it was appealed to CC. In such cases, CC then became the final decisionmaker if it modified the permit. When CC conducted a public hearing on appeal, the BCC did not limit or restrict the evidence or arguments offered at the public hearing.

The BCC mandated that, in order for CC to reverse or modify PZC's decision on appeal, CC must first determine that PZC erred in its determination. The BCC specified that CC may find error on only five specified grounds.

The *Interfaith* Court found that the BCC made it clear that CC did not review decisions by PZC on a de novo basis. For CC to reverse or modify PZC's decision, it must have first found that PZC committed an error enumerated among the five grounds specified by the Code. If CC did not find such an error, then the Code expressly stated that the appeal shall be denied and the decision upheld.

In *Interfaith*, because PZC's consideration of whether to impose conditions was discretionary, the Idaho Supreme Court concluded that CC's determination that PZC erred by failing to consider and impose a slew of additional potential conditions was arbitrary and capricious. Like CC, PZC was permitted to consider potential conditions; however, it was not required to impose any conditions, let alone the specific ones identified later by CC.

Likewise, CC's conclusion that the CUP could be conditioned into compliance with the CUP criteria reflected a difference of opinion over whether that result could be achieved. In reaching the opposite conclusion as PZC, CC simply determined that the imposition of

certain conditions would be sufficient to satisfy the CUP criteria, despite failing to point to a valid deficiency in the reasoning or logic of PZC. Nothing in CC's decision establishes that it was anything other than a difference of opinion between two bodies reaching an opposite conclusion based on the same evidence.

The *Interfaith* Court found it was not an error by PZC to note Interfaith's failure to provide information regarding its proposed security plan. It was simply asking Interfaith to provide enough background information for it to know what, if any, conditions might be necessary and effective to ensure compliance with the CUP criteria.

The *Interfaith* Court found that the fact that PZC specified the security plan as information necessary for it to properly consider potential mitigating conditions belies CC's finding that PZC did not "identify objective standards for, and all necessary elements of, the plans and further application materials" that Interfaith failed to provide. PZC pointed to the CUP criteria and cited the lack of assurances from the Boise Police Department that it could mitigate adverse impacts from the shelter, coupled with the lack of a security plan from Interfaith, as reasons for the denial.

The *Interfaith* Court found that in the end, CC simply disagreed with PZC that the CUP could be conditioned into compliance with the CUP criteria. For these reasons, the Court found that CC erred by faulting PZC for determining the application would not meet the CUP criteria, even with the imposition of potential conditions. Therefore the Court concluded the Boise CC's decision was arbitrary and capricious, and based on unlawful procedure. Accordingly, the *Interfaith* Court decided the district court's conclusion, that CC's decision was not based on unlawful procedure, had to be reversed and the agency action set aside upon remand to the district court.

#### **In *Interfaith*, the Court found the Appellant HOA (VPNA) was not entitled to Attorney Fees on Appeal but Cities are now on Notice**

In a proceeding where a state agency and a person are adverse parties, the Court may award the prevailing party attorney fees on appeal if it determines that the non-prevailing party "acted without a reasonable basis in law or fact." I.C. § 12-117(1).

In *Interfaith*, the appellant HOA argued that the Boise City Council acted without a basis in law or fact when finding that there would be no adverse impacts in the face of overwhelming evidence demonstrating otherwise. The appellant HOA also argued that the City Council acted without a reasonable basis where it overturned the PZC's decision based on what it alleged to be a mere difference of opinions.

The Supreme Court, however, found that as in *N. W. Neighborhood Ass'n v. City of Boise*, 172 Idaho 607, it could not conclude that the City acted without a foundation in fact or law in defending on appeal the judgment it won in the district court. The Court's basis for denying the request for attorney fees, under I.C. § 12-117(1), was that neither the City Council nor the district court had the benefit of the guidance the Supreme Court provided in *North West Neighborhood Association* when making their respective decisions.

Therefore, the Supreme Court concluded that VPNA was not entitled to attorney fees on appeal. But now cities are on notice of this controlling precedent.

Now that Garden City has the benefit of the precedent the Supreme Court provided in *Interfaith and North West Neighborhood Association*, it is on notice that the Supreme Court could conclude that a prevailing party is entitled to attorney fees on appeal if the Court finds that it acted without a reasonable basis in law or fact in light of those cases. It would be problematic, regarding the risk of having to pay attorney fees, if any City Council ever were to make a land use decision without a basis in law or fact with knowledge of *Interfaith and North West Neighborhood Association*.

LLUPA requires that local governing bodies make land use decisions in accordance with express standards, as established by local code or ordinance. I.C. § 67-6535(1). It also requires the governing board to issue a reasoned statement in writing to explain its decision. I.C. § 67-6535(2). Express standards and a reasoned statement that explains those decisions are essential. The failure to identify the nature of compliance or noncompliance with express approval standards shall be grounds for invalidation. I.C. § 67-6535(2)(a). LLUPA requires the city:

- (1) to establish express approval standards for CUPs;
- (2) to issue a written decision that states:
  - a. the relevant facts;
  - b. explains the rationale for the decision; and
  - c. identifies the nature of compliance or noncompliance of the use with the “express approval standards.”

LLUPA requires a decision-maker to issue a written statement in support of its decision, setting forth the relevant contested facts relied upon, and explaining the criteria and standards it considered relevant. I.C. § 67-6535(2). This requirement serves multiple functions, including:

- (1) facilitating judicial review;
- (2) avoiding judicial usurpation of administrative functions;
- (3) assuring more careful administrative consideration;
- (4) helping parties plan their cases for rehearing and judicial review; and
- (5) keeping the matter within their jurisdiction.

### **Standards of Review Must be Specified in the Municipal Code**

LLUPA permits an affected party to seek judicial review of the approval or denial of a land use application, as provided for in the Idaho Administrative Procedure Act ("IDAPA"). I.C. § 67-6521(1)(d). On appeal, the actions of a governing board are afforded a strong presumption of validity. *North West Neighborhood Ass'n v. City of Boise*, 172 Idaho 607, 613, 535 P.3d 583, 589 (2023). Therefore, Ordinance 1050-24 should specify what the standard of review is when the City Council reviews a PZC decision.

For example, when the Idaho Supreme Court reviews a land use decision made by a governing board, it does not substitute its own judgment for that of the governing board. Rather, a land use decision "shall be affirmed" unless this Court determines the governing board's findings, inferences, conclusions, or decisions, were:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) not supported by substantial evidence on the record as a whole; or
- (e) **arbitrary, capricious, or an abuse of discretion.**

I.C. § 67-5279(3). Even if a land use decision is made in violation of I.C. § 67-5279(3), the governing board's decision must still be affirmed unless "substantial rights" of the appellant have been prejudiced. I.C. § 67-5279(4).

When a district court has acted in its intermediate appellate capacity under the IDAPA, the Supreme Court reviews the district court's decision on appeal as a matter of procedure. In reviewing such a decision on appeal, the Idaho Supreme Court conducts an "independent review" of the governing board's record. When the district court has affirmed a land use decision, the Supreme Court will uphold the district court's decision provided the governing board's findings were supported by substantial and competent evidence; however, it freely reviews the district court's conclusions of law. *North West Neighborhood Ass'n*, 172 Idaho at 613, 535 P.3d at 589. Therefore, what is PZC's recommendation for what the City Council's standard of review should be in Ordinance 1051-24?

There are pros and cons of whether City Council review of a PZC decision should be a de novo review or an error correction only review. There are benefits and burdens of each, and each jurisdiction has different considerations, so one that is better or desired for one jurisdiction may not be better or desired for another jurisdiction. For example:

Pros of *de novo* review:

- (1) Do not have to give deference to PZC decision.
- (2) *De novo* review by the City Council of Planning and Zoning Commission's decisions in land use matters allows the Council to re-evaluate the entire case from the beginning, without being bound by the Commission's findings. This process ensures that the Council can consider all aspects of the case afresh, potentially leading to a more thorough and fair decision-making process. It also provides an opportunity to correct any procedural errors or oversights that may have occurred during the Commission's review.

Cons of *de novo* review:

- (1) The reviewing body must be prepared for the additional burden of *de novo* reviews (new record and new public hearings).

- (2) One of the primary cons of *de novo* review by a city council of a planning and zoning commission's decision in land use matters is that the city council is not required to address the findings or decisions of the planning and zoning commission. This means that the council can make a decision without considering whether the commission made any legal errors or whether its findings were supported by the record. Essentially, the *de novo* review process allows the city council to disregard the commission's decision entirely, which can lead to a lack of continuity and potentially inconsistent decision-making. *Marcia T. Turner, L.L.C. v. City of Twin Falls*, 144 Idaho 203.
- (3) Additionally, the *de novo* review process can result in decisions that are based on different criteria or considerations than those used by the planning and zoning commission. For example, in the case of *Marcia T. Turner, L.L.C. v. City of Twin Falls*, 144 Idaho 203, the city council's decision was criticized for being based strictly on aesthetics, without substantial evidence to support reversing the commission's decision. This can create a perception of arbitrariness and undermine the credibility of the decision-making process.
- (4) Furthermore, the *de novo* review process can be seen as an inefficient use of resources, as it requires the city council to re-hear and re-evaluate the entire matter from scratch, rather than building on the work already done by the planning and zoning commission. This can lead to delays and increased costs for all parties involved. *Super Grade, Inc. v. Idaho DOC*, 144 Idaho 386.

Pros of non-*de novo*, error correction only, review:

- (1) A non-*de novo*, error correction only review by the city council of planning and zoning commission's decisions in land use matters offers several advantages. Firstly, it ensures that the city council acts as an appellate body rather than re-evaluating the entire case from scratch. This approach respects the initial findings and decisions made by the planning and zoning commission, which are typically based on detailed local knowledge and expertise. *Marcia T. Turner, L.L.C. v. City of Twin Falls*, 144 Idaho 203.
- (2) Additionally, an error correction review focuses on identifying and rectifying specific legal or procedural errors in the commission's decision, rather than substituting the council's judgment for that of the commission. This can lead to more efficient and streamlined decision-making processes, as the council only intervenes when there is a clear indication of an error, rather than re-litigating the entire matter. *Davisco Foods Int'l, Inc. v. Gooding County*, 141 Idaho 784.
- (3) Moreover, this type of review can enhance the perceived impartiality and fairness of the process. By limiting the council's role to correcting errors, it reduces the risk of bias or undue influence that might arise if the council were to conduct a full *de novo* review. This can help maintain public trust in the land use decision-making process.
- (4) Finally, an error correction review can provide greater predictability and stability in land use planning. Stakeholders, including developers and residents, can have more confidence that the planning and zoning commission's decisions will

generally stand unless there is a significant error, thereby reducing uncertainty and fostering a more stable regulatory environment.

Cons of non-*de novo*, error correction only, review:

- (1) If error correction review is selected, then the reviewing body must be prepared to affirm decisions that they don't like, or that are unpopular, or that are unwise, as long as they are not clearly erroneous (appeal standard).
- (2) The reviewing body must also be prepared to speak clearly as to the error that was made.
- (3) One significant disadvantage of non-*de novo*, error correction only review by a city council of planning and zoning commission's decisions in land use matters is the potential lack of impartiality and due process. In the case of *Marcia T. Turner, L.L.C. v. City of Twin Falls*, 144 Idaho 203, it was argued that if the City Council can decide on its own to review and hear an action of the PZC, it cannot be an impartial decision maker. The Due Process Clause entitles a person to an impartial and disinterested tribunal, and decisions by a zoning board applying general rules or specific policies to specific individuals, interests, or situations are quasi-judicial in nature and subject to due process constraints.
- (4) Another disadvantage is the potential for decisions to be made without substantial evidence. In the same case, Turner contended that the City Council's findings were not supported by substantial evidence and criticized the Council's failure to address the PZC's findings. The City Council was not required to address the PZC's findings or decision, nor was it required to find that the Commission had made any legal error or that its findings lacked support in the record.
- (5) Additionally, the lack of a *de novo* review means that the city council's review is limited to identifying errors in the PZC's decision rather than re-evaluating the entire matter. This can lead to decisions that may not fully consider all aspects of the case, as seen in the *N. W. Neighborhood Ass'n v. City of Boise*, 172 Idaho 607, where the City Council's decision failed to address critical issues such as compliance with fire service requirements and the best interests of the public's general welfare.
- (6) Lastly, the limited scope of review can result in decisions that are arbitrary, capricious, or an abuse of discretion. Judicial review of municipal zoning authorities' decisions is limited, and their actions are presumptively valid. However, a decision will not be sustained if it is not supported by substantial evidence or if it is arbitrary and capricious. *Gordon Paving Co. v. Blaine County Bd. of County Comm'r's*, 98 Idaho 730, *Neighbors for the Pres. of the Big & Little Creek Cmtys. v. Bd. of County Comm'r's*, 159 Idaho 182. This narrow scope of review can undermine the fairness and thoroughness of the decision-making process.

Concerning Ordinance 1052-24, I provided my preliminary legal review to staff on August 20, 2024. On September 9, 2024, I reviewed the draft ordinance again, and provided comment, before the first reading. On September 23, 2024, I reviewed the draft ordinance

again, and provided legal comment, before the second reading. On September 24, I offered to help staff draft the ordinance if needed.

My recommendations and comments to staff were:

- (1) Clean up the title of the ordinance;
- (2) Clean up some definitions, including "appellant," "appellee," "petitioner," "respondent," "sustained," "affirmed," "reject," "reverse," "vacate," "grant," and "deny";
- (3) Clean up the design review process;
- (4) Clean up the process for administrative appeal hearings and decisions;
- (5) Clarify whether the appeal review should be *de novo* or *non-de novo*;
- (6) Clean up the public hearing testimony requirements and procedure;
- (7) Clean up the Planning Official's role regarding recommending a public hearing for items that are processed under the Administrative With Notice process if there are more than ten people who have submitted written testimony in objection to the application, or if there may be significant adverse impact to the city as a result of a decision;
- (8) Change parliamentary procedure to generally being followed instead of being mandatory;
- (9) Remove and move the footnotes to the Tables;
- (10) There have been some changes regarding appeal rights; and
- (11) Clean up or eliminate wording about requests for reconsideration.

On October 12, 2024, the third reading of Ordinance 1051-24 was continued as recommended to wait and understand what the Supreme Court's opinion would be in the *Interfaith* case. After PZC's recommendations in Ordinance 1051-24 are provided to City Council, City Council will need to decide what to do regarding the third reading, and adopting and publishing, of the new version of the ordinance:

**THIRD READING ORDINANCE 1051-24: AN ORDINANCE OF THE CITY OF GARDEN CITY, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO, AMENDING TITLE 8 ("DEVELOPMENT CODE"), CHAPTER 6 ("ADMINISTRATION"), ARTICLE A ("GENERAL PROVISIONS"), SECTION 2 ("DUTIES AND AUTHORITY"); AMENDING SECTION 3 ("GENERAL APPLICATION PROCESS"); REPEALING SECTION 5 ("ADMINISTRATIVE PROCESS WITH NOTICE"); REPEALING SECTION 6 ("ADMINISTRATIVE PROCESS WITHOUT NOTICE"); AMENDING SECTION 7 ("PUBLIC HEARING PROCESS"); AMENDING ARTICLE B ("SPECIFIC PROVISIONS"), SECTION 3 ("DESIGN REVIEW"); REPEALING ALL ORDINANCES OR PARTS THEREOF TO THE EXTENT THEY CONFLICT WITH THIS ORDINANCE; PROVIDING ALL OTHER ORDINANCES INCLUDED IN THE OFFICIAL CODE ARE STILL IN EFFECT NOTWITHSTANDING SOME PROVISIONS THEREOF BEING ELIMINATED; PROVIDING FOR A SEVERABILITY CLAUSE;**

## APPROVING A SUMMARY OF THE ORDINANCE; AND PROVIDING AN EFFECTIVE DATE.

Regarding all ordinance amendments and existing code sections, where things can get somewhat risky is where code starts discussing “purpose” or “intent.” *Interfaith* made it a problematic for Boise’s decisionmakers to rely on aspirational code language instead of objective standards. This isn’t to say that such aspirational language can’t be used (and, indeed, maybe it should inform the decisions of future amendments made), but it cannot be relied on when applications are approved or denied. It is a balancing act between preserving/documenting purposes of code and subsequent amendments and not allowing subjective language to pervade the decision-making processes of Garden City’s decisionmakers. Purpose/intent statements should be backed up by objective standards, and I suggest multiple rounds of review from multiple individuals to ensure that is the case from a variety of perspectives.

That being said, we should avoid areas in this amendment that give “suggestions” on how to be in compliance with subjective standards. Objective language is needed so that a lay person would be able to read and say, “That is what I need to do to be compliant with this code provision.” and staff to say, “This is not in compliance with Code.” Suggestions should be cast aside in favor of rigid requirements. Any suggestive provisions need to be rewritten to require specific things. While this may get rid of creative methods of compliance, I think creativity is the enemy of objectivity in this context.

Moreover, some additions would benefit from expansions in term definitions. Some terms that are more suspect in terms of subjectivity would benefit from being more fleshed out in applicable definition sections, so that code readers do as little independent interpretation as possible. The March 26, 2025, work session is also PZC’s opportunity to begin the conversation about: (1) how much discretion PZC should have; and (2) whose interpretation of the code controls (PZC or CC)? At the work session, PZC should also direct staff on the next steps if it would like to recommend any changes to Ordinance 1051-24 to City Council.

**CONCLUSION:** The PZC can recommend changes to Ordinance 1051-24 based on the rules from the *Interfaith* case if the process is followed. The PZC should recommend objective and express standards regarding appeal processes in this proposed code amendment. It could also recommend what the reasoned statement should look like under *N. W. Neighborhood Ass’n v. City of Boise*.