

May 7, 2013

7:00 p.m.

Planning Division
Council Chambers

MEMBERS PRESENT: Commissioners Natalie Black, Doug Branson, Jake Cordova, Donna Cosgrove Brent Dixon, Kurt Karst, George Morrison, Leslie Polson, and George Swaney.

MEMBERS ABSENT: Commissioners David Hodder, Dee Whittier, and Margaret Wimborne.

ALSO PRESENT: Planning Director Renée Magee, Assistant Director Brad Cramer, and 25 interested citizens.

CALL TO ORDER: Chair Cordova called the meeting to order at 7:00 p.m. and reviewed the public hearing process.

MODIFICATIONS TO THE AGENDA: The planned unit development ordinance discussion will take place at the next meeting.

MINUTES: Morrison moved to approve the minutes of April 16, 2013, as presented. Motion seconded by Black and passed.

PUBLIC HEARINGS:

Annexation with Initial Zoning of HC-1: 29.982 Acres, A Portion of Sunnyside Road including the Interchange with I-15. Magee presented the staff report, a part of the record. The applicant is the City of Idaho Falls. She said there is an error in the staff report. The length of the segment of Sunnyside Road east of the interchange with I-15 should be sixteen hundred feet, not nine hundred as stated in the staff report. The area to be annexed has been part of the Comprehensive Plan since 1967 and is within the area of impact. It is an area in which the City has anticipated to grow. Idaho Falls has invested \$1.2 million to place water and sewer within the Sunnyside Road right-of-way. This roadway is central in Idaho Falls. One-third of the population lives west of the Snake River and two-thirds to the east. Bellin Road will be improved by the City and, therefore, Sunnyside Road in this area will play a greater role in connecting portions of the City. Entryways are important in the City's comprehensive plan. The annexation will permit the city to incorporate attractive landscaping to attract the traveling public. She emphasized it is not a request to annex private lands at the end of a road. Magee told Dixon the land between Outlet Boulevard and I-15 to Pioneer Road is owned by ITD but annexed to the city and is zoned HC-1. HC-1 zoning is recommended since the parcel west of the interchange are zoned HC-1 and Teton Toyota is zoned HC-1. The owners of the parcels south of Sunnyside Road want uses consistent with HC-1.

Chair Cordova opened the hearing to public comment.

Willard Price, 697 E. 1600 N., Idaho Falls. Mr. Price owns the property at the southeast corner of I-15 and Sunnyside Road. He said the city spent the money to extend water and sewer to Sunnyside Road. The annexation makes sense for emergency services.

Brian Young, 5975 W. 65th S., Idaho Falls. Mr. Young represents property just north of the annexation. He would like to know how the annexation will affect county parcels.

Bob Meikle, Alpine, Wyoming. Mr. Meikle represents the owner of four parcels north of the proposed annexation. He is in favor of the annexation and creation of a beautiful entrance to the area.

Steve Serr, 605 N. Capital Avenue, Idaho Falls. Mr. Serr is the Planning and Zoning Administrator for Bonneville County. He believes the annexation is premature. He said the city has established a pattern of annexing road rights-of-way in strips that are not contiguous and do not have adjacent land. State statute does not allow or approve strip annexations. The roadway to be annexed is one-half mile long. Once the strip is annexed adjacent county land becomes eligible for annexation. The Area of Impact Agreement between the county and the city obligates or forces owners of county parcels, who want to develop, to annex into the city. For consistency, the land adjacent to the road should be annexed too. He said using the argument the annexation connects two parts of the city implies the right-of-way south on I-15 to 65th South and east across to the Anheuser-Busch property could be annexed to connect two pieces of the city. Serr said this random pattern of annexation creates county islands. The length of the strip being annexed does not justify the creation of a flagpole lot. He said for a proper annexation a landowner must make a formal request for annexation. The State of Idaho has not made such a request and has no intention of developing the land. He suggested the Idaho Tax Commission be consulted before such annexation requests are made. Serr said the city is overstepping the law by creating a flagpole annexation. Dixon asked Serr if the annexation of a road to connect two sections of city property by the most direct route is a flagpole annexation or a bridge. Serr said it is a flagpole annexation. He referenced the annexation of one hundred sixty feet of Lewisville Highway by the city for the Maverik development which the Idaho Tax Commission rejected as non-compliant and a violation of the law. He told Dixon the only time he knows that courts have upheld the breaching of a strip is in cases where property under public ownership impeded by natural features such as a river or roadways. Serr restated the Area of Impact Agreement says owners of county parcels adjacent to the city wanting to develop land are referred to the city to determine if annexation is fitting. If not, they may develop in the county. Dixon believes the agreement has established orderly development within the area of impact.

Jake Cobb, Melaleuca, Idaho Falls. Mr. Cobb, Associate General Counsel, represents Melaleuca. He believes the city can be held to legal challenge if the annexation proceeds as presented. Idaho State Statute, Title 50, Section 222, states “*cities may annex lands reasonably necessary to assure orderly development of Idaho’s cities*”. The annexation is not in accordance with policy and creates a large county island and is discouraged by law. Concerns raised by Mr. Serr make it difficult for the city to defend its position the annexation is “orderly development”. Mr. Cobb said the ability to annex a road is addressed by statute, “*In any annexation proceeding, all portions of highways lying wholly or partially within an area to be annexed shall be included within the area annexed unless expressly agreed between the annexing city and the governing board of the highway agency providing road maintenance at the time*”.

of annexation”. He said it presupposes an area will be annexed and the road lies within. This does not say when the road is the only thing being annexed.

Mr. Cobb says the annexation does not meet the requirement for a Category A annexation as private property owners must consent and it is a public entity making the request. The email from ITD states they have no issue but could be called to question whether they are the governing body having statutory authority to give consent. His recommendation is to abandon or delay the annexation until it can be done properly. Cordova said the existing highway commercial parcels are contiguous to the interstate and are not a strip annexation. Mr. Cobb said annexing the extension of Sunnyside Road is the main concern for Melaleuca holdings. He told Karst Melaleuca owns property south of the annexation and received notice of the public hearing. They are present to express their position toward the annexation. He said the property is not contiguous but further annexation and development will have an effect. He told Polson the county island created is from Sunnyside to Pancheri. She said the land is contiguous and will eventually be annexed to the city. He said it is important the infill be done in a proper and orderly manner. Swaney said, according to Mr. Cobb’s position, the proposed annexation should be divided into two separate actions for contiguity. Mr. Cobb said the issue is one of proper annexation protocol. Karst said Mr. Cobb’s position is clear and recommended moving forward with the hearing.

Magee said the annexation is based on the provision of city services. The long and short term impact of the annexation on county properties depends on contiguity to the city boundary, not Sunnyside Road. In reply to Serr’s comments regarding strip annexation by the city, there are few instances when a roadway was involved in the annexation; however, the annexation was based on the ability to provide city services. As to the Maverick annexation, the area annexed is served by the city, roads are constructed to city standards, and Idaho Falls Power is being run to the property. Targhee Partners has agreed to annex additional lands next to the Maverik development to resolve that issue. The annexation of Woodruff Circle was necessary to provide two emergency access points to the mobile home park being proposed. She said the annexation under consideration was prompted by uniformity in city services, including law enforcement along a 1,600 foot section of Sunnyside Road, and a request by a private land owner. She told Dixon the sheriff has the authority to deputize city police but she does not know if such is being done. Magee said annexations may cross natural barriers such as rivers. In response to a question from Morrison, Magee confirmed the city attorney had reviewed this annexation request.

Mario Hernandez, 810 West River View Drive, Idaho Falls, ID. Mr. Hernandez said the majority of land within the county island is for sale and will be developed in the next five to twelve years. He said the city has gone to great expense to prepare for future development in the area and as a retailer his business is dependent on the City of Idaho Falls community. Access to city services is a benefit to all and he is in favor of the annexation.

Chair Cordova closed the hearing to public comment.

Karst said the argument for orderly development asserts the city should grow as a cube which it does not. He understands there are issues with county islands but he does believe the annexation creates any more of a problem than what exists. The parcels north of Sunnyside Road are presently contiguous to the City.

The argument that city development is extending its tentacles into the county is not any different than it is for large commercial developments extending into the county and referenced the Melaleuca project along I-15. He said ITD does not need to be the applicant so long as they have no opposition. They are not a taxing entity nor adversely affected. The agreement with the county is a method for addressing orderly growth within the area of impact and does not prevent development of county land should the city not support the request for annexation. His only concern is whether or not the request is a strip annexation. Polson said the city is not annexing land outside the area of impact. Dixon said the county island is already ninety-five percent contained by the city and should not be ground for denial. Cosgrove said Magee made the argument, if land in the county is not contiguous to private parcels in the city, it is not contiguous. Continuity of emergency services weighs in heavily over other arguments. Swaney said in the future the interchange will be used more and more by residents of Idaho Falls and the area will become more dependent on emergency services. There is always potential for legal challenge, but it is up to city to deal with those challenges. He supports the approval of the annexation. **Cosgrove moved to recommend to the Mayor and Council the annexation of 28.92 Acres of Sunnyside Road and the I-15 Interchange, a portion of Sections 26, 27, 34, and 35, T2N, R 37 E, with initial zoning of HC-1. Motion seconded by Black and passed. Yea: 9, Nay: 0, Abstain: 0.**

Annexation Prior to Platting with Initial Zoning of HC-1: 2.423 Acres, Request of Williard Price, Southwest Corner of Bellin and Sunnyside Road. Cramer presented the staff report, a part of the record. The site is located east of I-15 on the southwest corner of the intersection of Bellin Road and Sunnyside Road. The request was initiated by the property owner. He said the map showing annexed properties in blue demonstrates contiguity whether the prior annexation request of a portion of Sunnyside Road and the I-15 interchange is approved or not. He said the annexation statute does not define contiguity. It only states annexation must be contiguous. The only gap between the property and current city limits is state right-of-way. The HC-1 request for initial zoning is consistent with the area and meets purpose of the zone. He said access to Sunnyside Road is controlled by ITD. If the commission recommends approval of the annexation, staff requests a condition there be no direct access to Sunnyside Road. Dixon asked whether the county road between the applicant's property and the land to the east will be constructed to city standards. Cramer said the exact terms for development of the road is better answered by the city engineer.

Chair Cordova opened the hearing to public comment.

Willard Price, 697 E 1600 N, Idaho Falls. Mr. Price said a portion of his property will become a part of roadway and the main connection for the one hundred twenty-five acres to the south.

Jake Cobb, Melaleuca, Idaho Falls. Mr. Cobb, Associate General Counsel, represents Melaleuca. Mr. Cobb said their concern with the proposal is technical and procedural. He found discrepancies with the legal notice and property notice. The applicant is shown as the City of Idaho Falls and not the landowner. The affidavit of legal interest lists two entities, Mr. Price and Park John LLC. The issue is one of consent. The legal description incorporated in the notices does not include the entire parcel being annexed. He said it is a procedural and technical issues and detrimental to the annexation. Karst asked if there are impacts to Melaleuca if annexation occurs. Mr. Cobb said they are within the area of notification of hearing and

are expressing their concerns. Cramer clarified the property owner and Parker John LLC on affidavit are the same parties. He said the legal description covers properties of the same owner and both properties are in the control of Mr. Price. The legal description was checked and corrected by the city surveyor. He told Dixon his understanding is the important part of the notice is the legal description. Any issues will be addressed and corrected prior to the City Council hearing.

Steve Serr, 605 N. Capital Avenue, Idaho Falls. Mr. Serr is the Planning and Zoning Administrator for Bonneville County. He said the public hearing is improperly noticed as it does not list the property owner as applicant and there is an error in the legal description. The annexation includes one-half of county road right-of-way which is illegal. If anything, the annexation should include the entire right-of-way; however, including the entire roadway constitutes a forced annexation. Dixon believes partial annexation of a road is not favorable as only a portion will be developed to city standard. Serr said the preference by the county is none of the road be annexed due to easements. Adjacent property owners own the land to the center of the road and cannot dedicate land for public right of way. He recommends resolving the notice and legal description before moving forward with the annexation.

Chair Cordova closed the hearing to public comment.

Cramer told Karst the southeast corner of the property jutting out onto Bellin Road is a prescriptive easement for roadway. He received confirmation not all of the parcel shown tonight on the slides was included in the legal description in the advertisement. Karst does not have an issue with the annexation request but does with the discrepancy of the legal description in the notices. He recommends tabling the item until it is corrected and properly advertised. Cosgrove concurs and said it is to the owner's advantage. **Karst moved to table the annexation until the legal description and notices are corrected and properly advertised. Motion seconded by Morrison and passed. Yea: 8, Nay: 1, Abstain: 0.**

Rezone from R-3A with PUD Overlay to RSC-1 with PUD Overlay: Lots 17 and 20, Block 1, Lorin C Anderson, Division No. 1, 2nd Amended. Cramer presented the staff report, a part of the record. The property is located south of 17th Street, north of 25th Street, and west and adjacent to Woodruff. He said the applicant is requesting the rezone for more flexibility in marketing the property and the rezone request to RSC-1 is compatible with zoning to the north. Cramer told Dixon the property to the north zoned RSC-1 also has a PUD overlay. He said there are numerous files on various rezoning changes to the parcel and the adjacent parcels. Staff's recommendation to the applicant was a zone of medical services which the applicant declined.

Chair Cordova opened the hearing to public comment.

Mike Groberg, 540 Castle Rock Lane, Idaho Falls, ID. Mr. Groberg said the property was purchased by the company three months ago. Money invested in engineered drawings, site plans, and cost estimates makes the property extremely expensive to develop. There is not enough of an area to develop and little interest in developing as medical and professional offices. The rezone will allow greater flexibility for development. Black believes it is a great location for retirement housing but changing the zoning will preclude the use. Mr. Groberg said cost estimates for residential development show it fiscally unsound.

Dixon questioned the addition of more RSC-1 when the adjacent land has not developed as RSC-1. He believes R-3A is more consistent. Mr. Groberg told Morrison a cap over the canal is very costly and not allowed by the irrigation district.

Clint Boyle, Horrocks Engineers, 901 Pier View Drive, Suite 205, Idaho Falls. Mr. Boyle said there are issues with the canal that limit development of the site. He believes the addition of commercial is well within the guidelines of the comprehensive plan. The property has not developed because it is a narrow and deep lot. He told Cosgrove he has not researched whether there are other uses in the medical services zone that are more advantageous.

Chair Cordova closed the hearing to public comment.

Cosgrove said the property was considered by the commission in the past. The RSC-1 is compatible with shopping center to the north and she is in favor of the rezone. Cramer told Karst limited medical uses may develop in the RSC-1. Karst concurs with Boyle regarding long narrow lot. Dixon has no issue with the rezone but is concerned about land locking the property near St. Clair due to canal. Karst said there could be several separate parcels in the development. Cramer said regardless of zone the entire area has a PUD overlay and any site plan will be reviewed by the Planning Commission. **Polson moved to recommend to the Mayor and City Council approval of the rezone from R-3A with PUD overlay to RSC-1 with PUD overlay for Lot 17 and 20, Block 1, Lorin C. Anderson, Division No. 1, 2nd Amended, as presented. Motion seconded by Cosgrove. Yea: 9, Nay: 1, Abstain: 0.**

Business:

Final Plat: Sunnyside Retail at SRL, Division No. 1, 1st Amended. Cramer presented the staff report, a part of the record. The site is located north of Sunnyside Road and west and contiguous to Pioneer Road. The plat divides one lot into two lots and complies with the subdivision ordinance. Dixon said Pioneer Lane should be changed on the plat to Pioneer Road. Cramer stated the PUD overlay on this parcel was removed in a previous hearing. He told Dixon the site will not be landlocked as the HC-1 zone does not require frontage on a public street. Public access agreements are in place.

Clint Boyle, Horrocks Engineers, 901 Pier View Drive, Suite 205, Idaho Falls. Mr. Boyle said the developer is experienced in commercial development and any site plan for Lot 6 or Lot 7 will meet fire code requirements for access.

Marion Hernandez, 810 W Riverview Drive, Idaho Falls. Mr. Hernandez said the building on Lot 4 meets all codes for fire suppression and does not require additional access. Lot 4 meets requirements for emergency access. **Dixon moved to recommend to the Mayor and City Council approval of the final plat for Sunnyside Retail at SRL, Division No. 1, 1st Amended, as presented. Motion seconded by Branson. Yea: 9, Nay: 0, Abstain: 0.** Karst requested the more straightforward agenda items be placed first on the agenda.

The meeting adjourned at 9:45 p.m.

Debra Petty, Recording Secretary