

NOVEMBER 18, 1963

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Pursuant to a call by the Mayor, the City Council of the City of Idaho Falls met in Special Session in the Civic Auditorium on the 18<sup>th</sup> day of November, 1963, at 8:00 P.M. for the purpose of conducting a public hearing on the new proposed comprehensive Zoning Ordinance. There were present at said Meeting: Mayor W. J. O'Bryant; Councilmen Alex D. Creek, Donald R. Foote, Philip C. Leahy, Karl G. Page. Also present: Roy C. Barnes, City Clerk; Vern Kidwell, City Attorney; Alva Harris, Building Official; Floyd Heyrend, Planning Commission Chairman; Lloyd Stalker, Board of Adjustments Chairman; Dale Despain, Professional City Planner.

The Mayor announced that this was the time and the place for a public hearing, as advertised, at which time all interested parties might have an opportunity to protest the proposed comprehensive Zoning Ordinance, verbally or in writing, or otherwise comment on its contents favorably or otherwise, prior to its acceptance and passage by the Council.

The Mayor introduced the members of the City Council, the Chairman of the Planning Commission and the Chairman of the Board of Adjustments. He then turned the Meeting over to Mr. Despain who officiated during the balance of the Meeting. By the use of slides flashed on a large screen, Mr. Despain showed the land use map. He explained that the modern concept of City planning adapts the neighborhood pattern with the school as the hub, surrounded by single family residences and then, in turn, by multiple family units and residential shopping centers. This, he said, insures against major street arteries conflicting with or disrupting the residential areas. A City should strive toward 40 to 45% of its land use in residential dwellings; 90 to 95% of that percentage in single family dwellings; 3 to 5%, commercial; 7 to 10%, industrial; 12%, public buildings and grounds. He said Idaho Falls is not grossly out of line with these percentages.

He warned against zoning too much land commercial to provide for future commercial needs, because in the interim period, such areas serve no more useful purpose than to become overgrown weed patches.

Mr. Glen Collette, 1420 Mountain View, appeared and asked if the proposed zone changes were based upon the new or the old Zoning Code. Mr. Le Grande Marchant, ex-chairman of the Planning Commission, appeared and offered a second question, the answer of which, in his opinion, would in turn answer Mr. Collette's question, to-wit: When the new ordinance was prepared, was it the intention that all proposed zoning changes be effected, concurrent with the passage of said ordinances? Answer: The intended purpose was to leave the existing zones as closely unchanged as possible with as little rezoning disturbance as possible. The zoning ordinance is a medium to implement a land use plan.

Mr. Eugene Berry, 314 Redwood Drive, appeared and asked, under the new ordinance, if night lights can be used around a ball park in a residential area without the consent of the City Council. Answer: There is a provisions for "conditional uses" where such facilities may exist if they are not in conflict and can comply with standards as defined. Such a facility must not be detrimental to surrounding residents and must be by the approval of the Governing Body. City Attorney Kidwell said it was not the intention of the proposed ordinance to create any additional non-conforming use.

Mr. Dennis Olsen, local attorney, appeared and asked, if such a facility were to be proven prohibitive, why would it be limited only to ball parks operated by churches? Answer: It would apply to any and all night lighted ball parks in any public place. Olsen protested item 4 at the bottom

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of the Page 78 in the proposed ordinance on the grounds that, by inference at least, it would appear to refer and be limited to churches.

Mr. Tom Ashton, 369 Redwood Drive, appeared and urged that this or no other part of the proposed ordinance be stricken based upon fragmentary suggestions or protests as might be presented this night. Mr. Richard Little, 756 Grace Avenue, appeared, concurring with Mr. Ashton and questioning the right and the privilege of the City Council to act hastily on matters of this nature. Answer, by the Mayor: No protests made this night will be automatically honored but, instead, will be made subject of further investigation, review and study.

Mr. Robert Flood, 480 3<sup>rd</sup> Street, appeared and asked if there had been a definite date set for passage of the ordinance. Answer: No. Have all interested parties had an opportunity to study thoroughly? Answer, by Mr. Stalker: No. After passage of the ordinance, will the proposed rezoning be automatically affected? Answer: The Zoning Ordinance is only the creation of the police power. The usual legal procedure would then be pursued for rezoning.

Mr. Ed Strobel, 1605 East 17<sup>th</sup>, appeared and proposed that, in the event of any contemplated rezoning all affected property owners be notified in some manner more personalized than by legal notice in the newspaper, recognizing that the latter procedure is all that is required by law. Mr. Flood concurred, why shouldn't the Council consider a five to ten moratorium before rezoning as proposed? Answer, by Foote: It is not the intention of the Council to devalue anyone's property by rezoning.

Mr. Marchant reappeared and said it wasn't the intention of the ordinance to immediately rezone as proposed but that this would still be the subject of further study.

Mr. Keith Collins, 708 K Street, appeared and protested the proposed rezoning from C-1 to R-3 on the area at 17<sup>th</sup> and Woodruff.

Dr. John Hatch, 1421 First Street, appeared and concurred with Mr. Collins. He said he has property interests on Woodruff which is planned as an arterial and that it should be zoned commercial accordingly. Despain urged that Woodruff not be zoned commercial, as this is contrary to the neighborhood concept of planning.

The Mayor noted at this point that, with few exceptions, any proposed zone changes have only incorporated the new intermediate zone classification. Mr. Olsen replied by saying, inadvertently or otherwise, the results are the same if there is rezoning which would be detrimental and which would cause devaluation of property values. Councilman Leahy asked Olsen if he was inferring that the ordinance and the proposed rezoning would be detrimental to certain properties. Olsen answered by saying that the zoning should be piece meal rather than on a comprehensive scale. Councilman Leahy then asked Olsen if he felt the new zone classifications would thwart progress and was answered to the effect that he had no objection as long as they were applied in a progressive manner.

Mrs. Howard Peyton, 291 Balsam Circle, appeared and asked if R-P was the only zone classification in which commercial business was not permitted. Answer: No. Commercial buildings not permitted in any zone as prescribed by the previous ordinance.

Mr. Adolph Toepfer, 420 Ronglyn Avenue, appeared and requested a protest that would change the existing zone of the First Street property on which the Bowl-Ero is planning new construction and has requested rezoning.

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Mr. D. V. Groberg, local realtor, registered a protest to the proposed rezoning on the corner of Ada and Crowley from C-1 to R-1. He protested any change of zoning in any location that would prohibit existing use. He protested the minimum and maximum limitation of the RSC area of 5 to 20 acres. He protested the planned rezoning of the proposed Linden Park Shopping Center on the grounds that there has been much planning ahead toward converting this area into a shopping center.

Mr. Collette reappeared and protested the proposed rezoning of the Kugler Addition from R-1 to R-2 on the grounds that this would deteriorate nearby property values.

Mr. John Homer, local realtor, appeared and noted the many protestants and, on these grounds, proposed that no final action be taken on the ordinance for at least 90 days. He cited, for illustration, a planned real estate development by his firm south of John Adams Parkway where proposed rezoning calls for the area to be rezoned from R-1 to R-2. He protested this and said such contemplated rezoning should be the subject of further study and consideration.

Mr. Dale Homer, local realtor, appeared and concurred with Mr. John Homer.

Mr. Little reappeared and asked for more protection for adjacent property owners to any proposed zone changes.

Mr. Flood reappeared and questioned the argument that the cost of personally notifying all affected residents of proposed rezoning is prohibitive.

Mr. A. W. Brunt, local realtor, appeared and protested the proposed rezoning from C-1 to R-3A at the SW corner of Holmes and Whittier.

Mr. Dave Benton, local engineer, appeared and protested the wording of the last paragraph of Page 43 of this proposed ordinance. He requested that consideration be given toward including the word "engineers" as well as architects. He also protested the advisability of the 5 to 20 acre limitation of RSC zone. Also, Mr. Benton protested the proposed R-2 rezoning at the corner of Woodruff and John Adams Parkway. Also, the proposed R-3 rezoning at the corner of First Street and St. Clair Road and asked for consideration, instead, of an R-3-A zone. He indicated that there were other areas which he felt deserved further consideration.

Mr. John Groberg, local realtor, asked and received assurance from the Mayor and Council that their intention in any and all proposed rezoning was that it be for the ultimate good and benefit of the property owner, rather than to his detriment and that change of use through rezoning would be held to a minimum.

Mr. Grant Ovard, local realtor, appeared and protested the proposed rezoning to R-3A of the strip along Holmes from 2<sup>nd</sup> to 8<sup>th</sup>.

Mr. Heyrend asked that any who had additional protests to any proposed rezoning were invited to file it in writing with the City Clerk. He, in turn, would pass the information to the Planning Commission who were prepared, he said, to have as many special meetings as necessary to completely study and consider all protests.

Mr. Richard Poitevin, member of the Planning Commission, appeared and explained that preliminary work on this ordinance started three years ago. Much time and effort has been expended in the interim period. The ordinance, in the opinion of the Commission, although not perfect, is a step in the right direction and has much merit and value. The proposed rezoning changes,

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although admittedly subject to criticism in some instances, were recommended after considerable study and concurrent with land use.

In the absence of further verbal protests, the Mayor directed the City Clerk to present written protests, as follows:

November 18, 1963

To the Honorable Mayor and City Council  
of the City of Idaho Falls, Idaho

Come now the five stakes of the Church of Latter Day Saints and all the participating wards thereof located in whole or in part in the City of Idaho Falls, and state the following objections to those portions of the proposed Zoning Ordinance pertaining to churches as follows, to-wit:

1.

The Ordinance as proposed discriminates against and unduly interferes with the construction of churches in all residential zones of the City of Idaho Falls in that

- (a) no church may be constructed in a residence park zone,
- (b) churches must obtain "special permission" from the Board of Adjustments to construct a church in all other residential zones.

By virtue of the latter, a faith has no right to construct a church in a residence zone but in essence, must ask permission for such construction, which permission can be denied almost at the whim of the Board of Adjustments, for there are practically no guide lines set to direct the decision of said Board with respect to the construction of a church. Under one of the few guide lines given, no church is allowed to be constructed if such construction would result in a reduction of property values in the "surrounding area". Hence, every time a faith seeks permission to construct a church, it faces the possibility of having to litigate the issue of whether or not the property values in the surrounding area are being reduced as a result thereof. It is very probable that the construction of any church in a neighborhood could have an effect upon the property values of the surrounding area because of increased traffic flow, etc. Hence, a church is placed in the position of having to either locate its church buildings outside the City limits or purchasing a large buffer area around its facilities.

It is further evident that one effect of such ordinance would be to prevent any long range building site acquisition program by a religious group. For it would in deed be foolish to acquire a site until a proposed structure could be submitted for approval and in many long range building site acquisition programs, sites are selected long before a particular structure is decided upon. Hence, a faith could find itself in a position of having acquired a site perhaps

even when the property was not a part of the City and then being placed in a position of not being able to construct a church on it. (Reference Page 50 of the Proposed Ordinance)

2.

The Ordinance as proposed further clearly discriminates against and unduly interferes with the construction of churches and the conducting of their over-all religious programs in that though churches are permitted, if permission is granted, in all residence zones except the residence parks zone, nevertheless the ordinance specifically provides that such churches cannot include "night lighting facilities for outdoor recreational purposes". The discriminatory aspect of this section of the ordinance is made clear by the fact that public and semi-public parks, playgrounds and schools, are permitted in such areas and the ordinance specifically permits such lighting facilities on such public and semi-public parks, playgrounds and schools are defined as "those which are provided and maintained by a church, club, lodge or other non-profit organization". It appears that the intent of the ordinance is to single churches out and specifically prevent them from having such facilities, though clubs, lodges or other non-profit organizations are permitted to do so. Reference Page 7 (definition and semi-public parks and playgrounds); Page 47 and 48 (standards and requirements of semi-public parks, playgrounds and schools and Page 78 (restrictions on night lighting facilities directed specifically at churches).

3.

A review of the history of our nation readily points out that this nation is founded upon the principle of an unrestricted guarantee of religious freedom. Where even in view of modern development can we now justify making a church a second class organization and require it to plead for permission to construct its facilities, thus placing it in the same category as various other establishments which must be licensed before they can operate. We do not believe that it is the desire of the citizens of Idaho Falls that churches be placed in such a category.

It is difficult to believe that those seeking the passage of this ordinance sincerely desires to categorize churches as a second class organization and place restrictions of the nature set forth above upon the construction of their buildings and the implementation of their religious programs, thus depriving churches of the unrestricted status that they have enjoyed throughout the history of the City of Idaho Falls to this time.

Furthermore, the discriminatory and restrictive aspects of this ordinance as it pertains to churches and their programs, we believe infringes upon the rights guaranteed to all citizens to exercise their freedom of worship.

Therefore, it is respectfully requested that the proposed ordinance be modified to remove the aforesaid restrictions.

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Respectfully submitted,  
Idaho Falls Stake  
North Idaho Falls Stake  
East Idaho Falls Stake  
South Idaho Falls Stake  
Ammon Stake

by PETERSEN, MOSS & OLSEN  
Their Attorneys  
s/ George A. Peterson, Jr.  
s/ Reed Moss  
s/Dennis Olsen

SHARP, ANDERSON & BUSH  
Their Attorneys  
s/ John M. Sharp

**BOARD OF REALTORS**  
**Idaho Falls, Idaho**  
**November 15, 1963**

The Honorable William J. O'Bryant  
Mayor of Idaho Falls  
City Building  
Idaho Falls, Idaho

Dear Sir:

By unanimous vote the Idaho Falls Board of Realtors wished to go on record of deferring any action on the new zoning ordinances until after January 1, 1964, for the following reasons:

1. To give adequate time for study of the new zoning book and maps now available.
2. To have the ordinance passed under the new administration that will have to answer to any problems that may arise.

Respectfully submitted,  
Idaho Falls Board of Realtors  
s/ Dean L. Wackerli  
Secretary-Treasurer

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IDAHO LIVESTOCK AUCTION

11-7-63

Honorable Mayor and City Council  
Idaho Falls, Idaho

Gentlemen:

We respectfully request that this protest be made a part of the minutes of the Council Meeting.

We have paid our \$5.00 for a copy of the proposed ZONING ORDINANCE and find on Page 118 an area designated as: I&M-2 Industrial and Manufacturing Zone.

This section sets aside certain parts of the City for Livestock Feed Yards but making no provision for the operation of a Livestock Auction Market.

On calling the City Clerks office they were unable to furnish us with a map showing the location of zone I&M-2 and referred us to the Building Inspector office.

On calling the Building Inspectors office we were informed that he did not have a map available showing the location of this zone and that he could not furnish us with a map of suitable size that we could take to our office to study.

We therefore respectfully request that we be furnished with a written description of the area proposed under I&M-2 and that we also be furnished with a map of the City outlining this area.

We further request that the consideration of this ordinance be delayed at least 90 days so that reasonable study of the ordinance can be accomplished after we are furnished with written descriptions of the area and a map thereof.

Thank you for a consideration of our request.

Yours respectfully,  
IDAHO LIVESTOCK AUCTION  
s/ O. I. Blain

IDAHO LIVESTOCK AUCTION

11-10-63

Mayor Jack O'Bryant  
and City Council  
Idaho Falls, Idaho

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Gentlemen:

Having been now furnished with a copy of the proposed zoning map and a short time in which to study the zones we respectfully suggest that a zone be established for the so called undesirable industries which bring money and labor to Idaho Falls and are also a necessary evil in any City.

We have roughly drawn a paragraph or two describing the area covered by this zone (which is the present usage of the area) and part of the industries which are now in that area.

We, therefore, respectfully request that such a zone be established.

We want to thank Mayor O'Bryant for his personal effort in seeing to it that we got a copy of the map and his taking his own time to come see us and personally explain the Zoning Ordinance. He did far more than is required of any public official and we want it known that it is appreciated.

Yours respectfully,  
IDAHO LIVESTOCK AUCTION  
s/ O. I. Blain

cc: Roy C. Barnes

#### I AND M-3 STOCK YARDS ZONE

Stock yards zone has been established as a district in which the primary use of the land is for the development of the livestock industry.

The area covered shall be bounded on the South by May Street on the North by Anderson Street on the West by the UPRR and on the East by North Yellowstone and the Lewisville Road.

In order to accomplish the objectives and purposes of this ordinance the following regulations shall apply in the Stock Yard Zone.

The following uses shall be permitted in the Stock Yards Zone.

1. Any use permitted in any other zone.
2. Plus farm supply stores, ranch supply stores both wholesale and retail; livestock auctions; livestock feed yards; stock yards and holding pens; garages and truck storage; mechanical equipment storage; hay storage; feed and grain storage; pellet mills; potato handling in all phases; flour mills; seed houses, seed storage; car wash; restaurants; barber

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shops; bars; lumber yards; animal rendering plants and kindred storage and equipment; coal yards, gas and oil bulk plants and kindred gas stations; road equipment sales and kindred storage and display yards; heavy machinery sales; truck and heavy transportation sales and storage; garages and automobile sales rooms and car sales lots; farm machinery sales lots and storage and display lots; and any and all other sales, storage, and meat packing houses, and fertilizer plants or manufacturing plants that might be objectionable in other districts but which bring industry and payroll to Idaho Falls.

Area, width, location, height and size of building requirements:

NONE

Councilman Leahy then asked for the floor. Because of the late hour, he said, and in view of the many points raised by citizens at this hearing, he moved that said hearing be adjourned for sufficient time to allow the Planning Commission, the Board of Adjustments, the City Council and other interested persons to review and consider suggestions and recommendations made during this hearing and further, that this administration recommend to the new administration taking office January 1<sup>st</sup>, 1964 that the next public hearing be set sometime during the first ten days of March, 1964. This motion was seconded by Councilman Page. Roll call as follows: Ayes, 4; No, None; carried.

There being no further business it was moved by Councilman Leahy, seconded by Page, that the Meeting be adjourned.

ATTEST: s/ Roy C. Barnes  
CITY CLERK

s/ W. J. O'Bryant  
MAYOR

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