

OCTOBER 9, 2003

The City Council of the City of Idaho Falls met in Regular Council Meeting, Thursday, October 9, 2003, in the Council Chambers at 140 South Capital Avenue in Idaho Falls, Idaho.

There were present:

Mayor ProTem Ida Hardcastle
Councilmember Robert Barnes
Councilmember Joe Groberg
Councilmember Mike Lehto
Councilmember Bill Shurtleff
Councilmember Brad Eldredge

Also present:

Dale Storer, City Attorney
Rosemarie Anderson, City Clerk
All available Division Directors

CONSENT AGENDA ITEMS

Mayor ProTem Hardcastle requested Boy Scout Weston Hayman to come forward and lead those present in the Pledge of Allegiance.

The City Clerk requested approval of the Minutes for the September 25, 2003 Regular Council Meeting.

The City Clerk presented monthly reports from various Division and Department Heads and requested that they be accepted and placed on file in the City Clerk's Office.

The City Clerk presented the following Expenditure Summary dated September 1, 2003 through September 30, 2003, after having been audited by the Fiscal Committee and paid by the Controller:

FUND	TOTAL EXPENDITURE
General Fund	\$ 684,413.76
Street Fund	194,671.43
Recreation Fund	26,731.86
Library Fund	20,014.26
Municipal Equipment Replacement Fund	107,688.00
Electric Light Public Purpose Fund	77,800.81
Sanitary Sewer Capital Improvement Fund	42,571.66
Municipal Capital Improvement Fund	11,924.00
Bridge and Arterial Street Fund	8,343.10
Water Capital Improvement Fund	6,479.66
Airport Fund	257,620.91
Water and Sewer Fund	503,173.90
Sanitation Fund	28,881.01
Ambulance Fund	17,673.18
Electric Light Fund	3,336,516.98
Payroll Liability Fund	1,748,237.31
Airport Fund Certificates of Participation	12,359.13
TOTALS	\$7,085,100.96

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The City Clerk presented several license applications, including BARTENDER PERMITS to Brenda T. Gilliam, John D. Griffin, Courtney J. Hall, Christopher P. Ischay, Theodore E. Johnson, Joe J. Milian, Matthew S. Russell, and Kara S. Shults, all carrying the required approvals, and requested authorization to issue these licenses.

The City Clerk requested Council ratification for the publication of legal notices calling for public hearings on October 9, 2003.

The Municipal Services Director submitted the following memo:

City of Idaho Falls
October 6, 2003

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: S. Craig Lords, Municipal Services Director
SUBJECT: ADVERTISEMENT FOR BIDS

Municipal Services respectfully requests authorization to advertise and receive bids for the following items approved in the 2003 – 2004 Budget:

1. Equipment;
2. Equipment and Materials for Electrical Generation, Transmission, Distribution, Fiber Optics, Metering and Signalization;
3. Water Pipe Fittings and Other Water Line Equipment and Materials;
4. Sewer Department Materials and Supplies;
5. Road Salt and Sand (Street Department);
6. Aggregate (Crushed Gravel) (Street Department);
7. Asphalt Plant Mix/Modified Crack Sealant (Street Department);
8. Traffic Striping Paint and Solvent; and,
9. Motor Fuels, Lubricants and Services; and the Fuel obtained through a computerized fuel dispensing system.

s/ S. Craig Lords

The Parks and Recreation Director submitted the following memo:

City of Idaho Falls
October 9, 2003

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: David J. Christiansen, Parks and Recreation Director
SUBJECT: PHASE III – PRIMATE CENTER

The Parks and Recreation Division respectfully requests the Mayor and City Council approve the plans and specifications for Phase III of the Primate Center at Tautphaus Park Zoo as presented and that it be authorized to solicit bids for such project.

s/ David J. Christiansen

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It was moved by Councilmember Eldredge, seconded by Councilmember Groberg, that the Consent Agenda be approved in accordance with the recommendations presented. Roll call as follows:

Aye: Councilmember Lehto
Councilmember Groberg
Councilmember Hardcastle
Councilmember Eldredge
Councilmember Barnes
Councilmember Shurtleff

Nay: None

Motion Carried.

REGULAR AGENDA ITEMS

Mayor Milam requested Councilmember Barnes to conduct Annexation Proceedings for TRPTA Addition, Division No. 1. At the request of Councilmember Barnes, the City Clerk read the following memo from the Planning and Building Director:

City of Idaho Falls
October 7, 2003

MEMORANDUM

TO: Mayor and Council
FROM: Renée R. Magee, Planning and Building Director
SUBJECT: ANNEXATION, INITIAL ZONING AND FINAL PLAT – TRPTA
ADDITION, DIVISION NO. 1

Attached are the Annexation Agreement, Annexation Ordinance, and Final Plat for TRPTA Addition, Division No. 1. The requested initial zoning is HC-1, Highway Commercial. This parcel, which is located east of Hansen Avenue and north of Broadway Avenue, is being platted into three lots, the northern most lot to be dedicated for storm water retention. This annexation request was considered by the Planning Commission on February 18, 2003, and the Commission recommended approval of the annexation, final plat, and initial zoning of HC-1. This Department concurs. The matter is now being submitted to the Mayor and Council for consideration.

s/ Renée R. Magee

The Planning and Building Director located the subject area on a map and further explained the request. Following is a list of exhibits used in connection with this annexation request:

Slide 1 Vicinity Map showing surrounding zoning
Slide 2 Aerial Photo
Slide 3 Final Plat
Slide 4 Site Photo looking north towards site from Broadway
Slide 5 Site Photo looking north towards site from Broadway
Exhibit 1 Planning Commission Minutes dated February 8, 2003
Exhibit 2 Staff Report dated February 8, 2003

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Lynn Seymour, 380 Constitution Way, appeared as the Director of the Targhee Regional Public Transportation Authority. TRPTA is requesting that this land be annexed into the City of Idaho Falls. They are trying to raise money to construct City water and sewer lines, and to be able to add some wash drains to one of the buildings so that the vehicles may be maintained at this location. The long-range plan is to construct a facility that would be able to house shuttle to the airport, charter buses, provide a Greyhound facility, and be something that would enhance the community transportation program. She stated, further, that TRPTA wanted to be a good neighbor to the residents in the area.

Councilmember Groberg requested to know whether TRPTA owned the property. Mrs. Seymour stated that TRPTA purchased the property as of July 31, 2003. TRPTA will not take possession of this property until sometime between Thanksgiving and Christmas of this year.

There being no further comment either in favor of or in opposition to this annexation request, Mayor ProTem Hardcastle closed the public hearing.

It was moved by Councilmember Barnes, seconded by Councilmember Hardcastle, to approve the Annexation Agreement for TRPTA Addition, Division No. 1 and, further, give authorization for the Mayor and City Clerk to sign said Agreement. Roll call as follows:

Aye: Councilmember Barnes
Councilmember Groberg
Councilmember Lehto
Councilmember Shurtleff
Councilmember Hardcastle
Councilmember Eldredge

Nay: None

Motion Carried.

At the request of Councilmember Barnes, the City Attorney read the following Ordinance by title:

ORDINANCE NO. 2511

TRPTA ADDITION, DIVISION NO. 1

AN ORDINANCE ANNEXING CERTAIN LANDS TO THE CITY OF IDAHO FALLS, IDAHO; DESCRIBING THESE LANDS; REQUIRING THE FILING OF THE ORDINANCE AND AMENDED CITY MAP AND AMENDED LEGAL DESCRIPTION OF THE CITY WITH THE APPROPRIATE COUNTY AND STATE AUTHORITIES; AND ESTABLISHING EFFECTIVE DATE.

The foregoing Ordinance was presented by title only. Councilmember Barnes moved, and Councilmember Hardcastle seconded, that the provisions of Idaho Code Section 50-902 requiring all Ordinances to be read by title, and once in full, on three separate dates be dispensed with, the Ordinance be passed on all three readings, and, further, give authorization for the Mayor and City Clerk to sign the necessary documents. Roll call as follows:

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Aye: Councilmember Hardcastle
Councilmember Shurtleff
Councilmember Eldredge
Councilmember Lehto
Councilmember Groberg
Councilmember Barnes

Nay: None

Motion Carried.

A public hearing was conducted to consider the initial zoning of the newly annexed area. There being no discussion, it was moved by Councilmember Barnes, seconded by Councilmember Hardcastle, to establish the initial zoning of TRPTA Addition, Division No. 1 as HC-1 (Highway Commercial) Zoning as requested, that the comprehensive plan be amended to include the area annexed herewith, and that the City Planner be instructed to reflect said annexation, zoning and amendment to the comprehensive plan on the comprehensive plan and zoning maps located in the Planning Office. Roll call as follows:

Aye: Councilmember Shurtleff
Councilmember Hardcastle
Councilmember Barnes
Councilmember Eldredge
Councilmember Lehto
Councilmember Groberg

Nay: None

Motion Carried.

It was moved by Councilmember Barnes, seconded by Councilmember Hardcastle, to accept the Final Plat for TRPTA Addition, Division No. 1 and, further, give authorization for the Mayor, City Engineer, and City Clerk to sign the Final Plat. Roll call as follows:

Aye: Councilmember Lehto
Councilmember Groberg
Councilmember Hardcastle
Councilmember Eldredge
Councilmember Barnes
Councilmember Shurtleff

Nay: None

Motion Carried.

Mayor ProTem Hardcastle invited anyone present who had something for the Council that was not otherwise on the Agenda to come forward at this time.

Brett Manwaring 2160 Aegean Avenue, appeared as a representative of the Citizens Alliance on Run-off Elections. He requested to know the status of the petitions for run-off elections that were presented to the City and whether that issue would be placed on the ballot for November 4, 2003. The City Attorney stated that Mr. Manwaring should have an answer to his questions by Friday, October 10. Mr. Manwaring wanted to know why he

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could not have an answer at this time. The City Attorney stated that the review of the petitions has not been completed. Mr. Manwaring requested to know whether this issue would be on the ballot. The City Attorney stated that Mr. Manwaring would receive his answer on Friday. Mr. Manwaring stated that, as of Tuesday, October 7, 2003, Bonneville County Elections Office had been instructed to print the ballots without the initiative. The City Attorney stated that he did not know what the Elections Office was told. Mr. Manwaring questioned the City Clerk as to whether she instructed the Elections Office to go ahead. The City Clerk stated that she instructed the Elections Office to proceed with the sample ballot. Mr. Manwaring requested confirmation that the initiative is not on the ballot. The City Clerk stated that the initiative is not on the ballot. Mr. Manwaring requested to know the reasoning for that decision. The City Attorney stated that the City has certain statutory deadlines that are required by law to be met. If those deadlines are not met, then the election stands to be invalidated. Mr. Manwaring requested to know what law addressed those deadlines. The City Attorney stated that the Election Laws of the State of Idaho addressed those deadlines. Mr. Manwaring requested to know the exact code numbers of the laws he was referring to, as the City Code states that if there is an election within 90 days from the time the petition is approved, then it shall be on that ballot. The City Attorney stated that the City Code does not say that and that Mr. Manwaring was reading it strictly out of context. The City Attorney stated, further, that he would not debate the law with Mr. Manwaring. He stated that he has reviewed the matter and does not agree with Mr. Manwaring's interpretation. The City has a statutory duty to insure that elections go forward in accordance with the statutes. At this point, the City intends to do that. The City Attorney stated that Mr. Manwaring would have an answer on Friday regarding the status of his petitions, and at that point, if he had any questions, the City Attorney would be happy to visit with him. Mr. Manwaring requested to know how he would receive the answer. The City Attorney stated that Mr. Manwaring would be notified as soon as the review has been completed. The City Attorney stated, further, that in the City Code, the City Clerk has up to 14 days, and the City is well within that 14 days. Mr. Manwaring stated that the signatures are already certified by the Bonneville County Elections Clerk, and requested to know what more had to be done by the City Clerk. The City Attorney stated that Mr. Manwaring has pre-filed the petitions with the County. That is not an official filing. The filing occurred when the petitions were filed with the City Clerk. Beyond that, the City Clerk is also required to certify that the petitions conform to law. There are a number of issues being examined. Mr. Manwaring stated that he was instructed by the City Clerk to take them to the County prior to bringing them to the City for certification. The City Clerk stated that Mr. Manwaring was welcome to pre-certify the signatures on the petitions, but that was not instruction to do so. The City Attorney stated that the certification process begins once the petitions are filed with the City Clerk. What Mr. Manwaring was attempting to do was to file numerous petitions, contrary to the statute, and ask for serial certifications. That is what the City was not willing to do. Mr. Manwaring was instructed, therefore, to pre-file with the County Clerk for a preliminary review. The City Attorney stated that Mr. Manwaring was to file the petitions only when he so desired. Once that was done, the process begins. That is the process that the City is following. Mr. Manwaring argued with the City Attorney that this was not correct and explained the history behind the petitions and where they had been so far. He stated that the City Clerk instructed him to turn in the petitions to the County Clerk for certification of the signatures before the City Clerk could certify the petitions. He turned in approximately 1600 signatures to the City Clerk in the middle of September. Mr. Manwaring was told by the City Clerk that he did not have enough signatures. Mr. Manwaring reclaimed the petitions at that time until he had the sufficient number of signatures certified by the County Election Office. At that time, he filed the petitions with the City Clerk. The City Attorney stated that at one point in time, Mr. Manwaring filed a number of petitions. There were not enough signatures collected at that time, and Mr. Manwaring requested to be able

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to continue to file those petitions. That does not conform to the statute. Mr. Manwaring kept arguing that he only did what he was instructed to do. The City Attorney stated that there is a difference of opinion as to what occurred. Mr. Manwaring requested to know what the City had to certify on the petitions. He stated that prior to submitting the petitions for signature, the original petition was approved by the City Attorney. The City Attorney disagreed with that and stated that there is a letter in his file that confirms that. Mr. Manwaring stated that he had a letter that confirmed that. The City Attorney stated that Mr. Manwaring has a letter from his own attorney. Mr. Manwaring stated that he had a letter from the City Attorney showing that everything in the letter from Mr. Manwaring's attorney had been reviewed and approved by the City Attorney. The City Attorney stated that Mr. Manwaring could produce the letter and he would be happy to review it. The City Attorney stated that he did not give Mr. Manwaring legal advice. Mr. Manwaring had his own attorney giving him legal counsel. Mr. Manwaring asked, again, if there was a problem with the petitions. The City Attorney told Mr. Manwaring that he would have his answer on Friday. Mr. Manwaring encouraged the City Council to take action as soon as possible. He stated that he may have to wait 14 days, as that is apparently how the City operates, in taking the greatest amount of time prior to make anything happen. Once these petitions are certified, the City Council has 90 days to either set an election or pass the Ordinance. He would encourage the City Council to pass the Ordinance. If the City Council fails to do that, this issue will be taken to an election. Since the City will not place the issue on the ballot for November 4, 2003, then another election can be conducted and paid for.

Don Schanz, 302 11th Street, appeared to state that he has been a resident of the City of Idaho Falls for many years, a voter, and the Chairman of Citizens for Tax Reform in Idaho Falls. Mr. Schanz made the following statement:

Here about 6 months ago, I was sitting in the Legislature as a substitute representative for Representative Jack Barraclough who was called away on important State business representing the State of Idaho. He asked me to substitute in for him and as I was substituting in the last three weeks of the session there, the longest session in Idaho history, I received a telephone call from some concerned constituents here in Idaho Falls. Their concern was about an election that was coming up regarding a recreation center. They asked me if I would review with them the activities and the proceedings of that recreation center and I told them I would. I got back with them a few days later and they asked me if I would be the campaign chairman to run the election to see if we could defeat that recreation center. As we began investigating and looking at that particular issue at the time, it was important for us to be able to gather our facts and be able to put together as much information as we could to be able to analyze the situation with regard to that proposed recreation center. One of the things that we came up with at the time was concerning the expenditure of funds on the recreation center, as I know that early on there seemed to be a well organized and a very expensive campaign in favor of this proposition, and as such that we wanted to find out what was the proper use of taxpayer monies in this regard. And so we did ask our attorney if he would tell us what the proper use of funds would be for taxpayers in this regard and he quoted essentially Idaho Code 18-5701, of which you are all well aware of. In that code, essentially it is a requirement that taxpayer funds are used for the education and knowledge of the people concerning a particular issue, that it is not appropriate for taxpayer funds to be used in a way that would be considered to support or be opposed to any particular issue. The position is, obviously the City should be neutral in that sort of thing and so that is the proper expenditure of funds. As we proceeded in the campaign, which was

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fairly quick and to the point of only several weeks, that we were concerned with a number of things that we continued to investigate. One of the things that I would like to say that we first came up with was on September 12, 2002. The City of Idaho Falls had a meeting that was concerning the recreation center and made some statements here which I would like to read:

“Attached for your consideration are two Professional Service Agreements between the City of Idaho Falls and ASWN, Inc. of Salt Lake City, Utah for the purpose of providing architectural services for the proposed Community Recreation Center project. Agreement No. 1 is for the Schematic Design Phase which will allow ASWN, Inc. to develop detailed conceptual drawings, prepare a preliminary construction budget, develop building elevations, site plan, deliver renderings and develop a 3D animation model to be used for the purpose of promoting the project. Cost for the Schematic Design Phase is \$30,000.00.”

On the next page, there is one line here that also says that:

“The second part of the task is to develop the pictures to help the City sell this project to the public.”

It is specifically indicated in 18-5701 that the City is not to sell or promote, which was exactly the words in the minutes here, concerning this project. Our concern deepened and I, as the Chairman of the Taxpayers, was called into action on this matter. I went to the Mayor and I suggested, through our attorney, that we suspect that there is some misappropriation of funds and that those misappropriation of funds should be investigated. The letter was sent to the Mayor and we received a letter back through the Mayor, that I think was obviously written by Mr. Storer, and the one line in there that I would point out at this point in that letter which was dated May 22 of this year, said:

“To my knowledge, the City has not contributed public funds to the committee, however, I will certainly verify that such is the case.”

I would like to point out that from that point on, I don't think that I heard another word from the Mayor, although I called her several times and I asked for several other individuals to come forward and give me some information. None of this was forthcoming. It was all very difficult for me to gather information as I approached the different department heads and as I tried to find out what was happening with regards to the taxpayer funds in this community concerning it. We all knew that there was \$200,000.00, \$300,000.00, or \$400,000.00 that was expended on this project, but to determine if there was any illegal funds expended that we had to do some more research. We went through the effort of the “Freedom of Information Act”, requesting some things through Mrs. Anderson. She cooperated and helped us try to get some information. To a certain extent, we received a paper trail, but in terms of any questions that we had, they were not forthcoming, and we did receive assurances that they would be coming in the future. But we never really received what we were looking for in terms of an accounting that we originally asked for of the City taxpayer funds. We then, at that point, were very frustrated. As a taxpayer and as a citizen, trying to find out where are these funds coming from. I would like to just say that, with that frustration what we did at that point, I went to our State Representatives Janice

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McGeachin (who is in the audience here today) and I also went to our State Representative Jack Barraclough, who is out of town at the moment and asked them if they could give us some help. They said that they would be glad to. In the interim, I went and talked to the Police Chief. I said to the Police Chief, "Would you give us some help in investigating this?" And he told me, "You would want me to investigate my boss, the one that pays my paycheck?" And he kind of laughed a little bit and said, "You need to go somewhere else." I think I went somewhere else and I went back to State Representatives and they indicated that they would be happy to write a letter to the State Attorney General and ask for an opinion. The State Attorney General did come back with an initial opinion with regards to the expenditure of funds and essentially outlined for us what is the proper expenditure of public funds for projects like the recreation center. Essentially that it is not to advocate one side or the other, but essentially it is to expend funds in educating the public. I would like to say that we then asked for some further information and facts of which we sent to him by way of the website that was on the City's website there which concerned the recreation center and we also sent several other bits of information. That information we have in our possession and the State Attorney General sent back a letter that we have in our possession here, that has been sent to Mr. Storer and to the other members of the City Council. Probably the key line in this thing as far as we are concerned, it says (and this is again from William von Tagen, Chief Division Officer of the Intergovernmental Fiscal Law Division):

"I believe that were this matter to go before a court, the court would probably conclude that the information on the website and in the brochure advocated for the passage of the bond, even though it did not tell people to vote for the bond passage in so many words. Consequently, if taxpayer funds were used, a court would probably also conclude that the expenditure produce such a brochure and the information on the website was an improper expenditure of taxpayer money."

So, with that, we had a decision to make whether we wanted to proceed with trying to legally bring the City Council and the Mayor to accountability, and concluded that it was not our intent and it is not our intent to proceed legally to bring up the information that we have at this point and to prosecute either criminally or civilly which was an option for anyone to do. We felt that all that would do would enrich the attorneys in town and that would not be our function. No offense, Mr. Storer. At the same time, we felt that the taxpayers deserved a break and not expend more taxpayer funds in this matter. And so what we have do though, is decide that we would ask for a new era in the City Council. And that new era that we would like to ask for, is that we would like to feel that the City Council is going to be more open in terms of being forthright to come forth with information that is requested by individuals such as myself concerning the expenditure of funds. We feel very strongly and I think you probably as well know that those funds were expended illegally. It is not our intent to pursue it. But we do seek that we want to trust our City Leaders here. We have elected you to office. We feel very comfortable, for the most part, in a lot of the decisions that you make, but it is very discouraging and it is a very high price that you pay when you leave us as citizens without any alternative but to go to someone like the Attorney General, to get other elected officials involved. And so what we ask for is that we want more public

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input and less closed-door meetings. We want better accounting of taxpayer dollars. We want a paper trail, not a hiding behind a City Attorney with some legal letter saying that, "We don't think that there is any misappropriation of funds, but if we find some we will let you know." I think that we want our public officials to be open and above board. I think the lack of openness builds distrust and suspicion. We want our public officials to remember who they work for, which is, we, the taxpayers and voters of this City. We, the citizens of this community, want a forthright response to our questions. We would appreciate an apology – probably won't get it – and we're looking forward to, perhaps, a debate that would take place within your Chambers in that you would let your personal desires and ambitions, that have taken precedent on this Recreation Center, take front stage and cloud your judgment in terms of your ethical standards of what should be and what is right. We would ask that you consider that an apology is just that, an apology to the taxpayers of this community and that we know, as well as you do, what went on. At the same time, that this is not a hanging offense, this is not something that we would view that should lose anyone a night's sleep. But I think that the people, the taxpayers and the voters of this City deserve your attention in a debate on this issue and I thank you for your time here this evening.

Councilmember Hardcastle requested to know whether there was any one document that he did not have that he has asked for. Mr. Schanz stated that he has received all of the paperwork that he has asked for from the City Clerk. He stated, further, that he has sought testimonies of individuals. That has not been forthcoming.

The City Attorney commended Mr. Schanz for his cooperative approach to a very difficult statutory circumstance that is touched upon by this particular issue. At the outset of the recreation center campaign, the City was aware of a prior opinion that Mr. Von Tagen had authored. In the interest of Mr. Schanz's cooperative approach, there is an area that makes a certain degree of sense. The City Attorney acknowledged Representative McGeachin in the audience and stated that she would be interested in this. In the opinion letter that the Attorney General references, he makes reference to what is the crux of the matter. The crux of the matter is that there is an absolute dearth of statutory basis for the issue at hand. There is no case law whatsoever in the State of Idaho. There is a plethora of opinions in many different states that range from one end to the other. In the interest of what Mr. Schanz suggests, it is an area that would be worthwhile for consideration of the legislative guidance. As the City Attorney has reviewed this, he has struggled to try to ascertain what is the law. It is not clear. It would be an appropriate approach that the City Attorney stated that he would support. The crux of the matter is whether or not public funds were expended. He has reviewed the documentation and have not been able to find any instance where the City itself spent funds. It was his understanding that a campaign committee was formed and the source of their funding was private donations, in recognition of the opinion letter that Mr. Schanz cited. The City Attorney stated that he concurred with Mr. Schanz's approach. A cooperative approach is commendable. From the City Attorney's perspective, it makes a certain degree of sense.

Mr. Schanz stated that he hoped that Idaho Falls is not the first to start that case law. He did not want to enrich the attorneys in the area. This is an important issue and should not be something that should be swept under. He cited several examples of misappropriation of public funds. The proper expenditure of funds is a very serious matter. Taxpayer funds should be expended appropriately and ethically. Taxpayers look for education and understanding of where the voting places are, but the City should not take a side one way or another. Taxpayer monies cannot be used to promote an issue.

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Steve Vucovich, 1133 Londonderry Avenue, appeared to state that Don Schanz mentioned that he would hope that some of the things he discussed would be taken under consideration. He stated, further, that he had a couple of pages of opinions that have been discussed not only within his family, but literally hundreds of people that he has come in contact with over the years. He shared the following statement:

My wife and I have been proud voting residents of the City for 27 years now. We started our present business downtown on Shoup and B Street. Here are some of the observations since that time.

We have seen very little change in the downtown area itself. It is still basically a rundown quadrant, turned into professional offices that exude little eye appeal from any point of the City. And this is an area exposed to visitors from all areas of the country. And this is also an area that has been taxed, individually with special separate committees, in the revitalization of the downtown area. And generally speaking, this important entrance to the heart of our City remains an eyesore. We have also seen this same City bend over backwards to help certain developers in their quest to redevelop areas south of Broadway, west of the river. I think that is pretty self-explanatory. In addition, we have seen the City that caudles mysterious donors of land for recreation centers and greenbelt expansions. We have seen wealthy land developers been able to force geographic boundaries and, consequently, economic corridors of construction in this town, lending a hodge-podge of building expansion with poor visionary support from our City Planning and Zoning Departments. We have seen constant major City blunders, impasses and feuds, such as, but not limited to, the bulb turbines fiasco, widening of Sunnyside Road, City-County Fire Department, Library Services, 100% increase in the cost projections of the south I-15 overpass, 60% increase in our electrical rates, the defeat of the heavily advertised recreation center, and the Ammon-Hitt Road debacle. This City's property taxes outstrip virtually all similar area cities. One complaint that our levy amounts have decreased, but no where near have they decreased as our property values have been assessed. So, consequently, the net result is, we still have a massive increase in our property taxes. In addition to that, we have seen a 5% payment in lieu of taxes, PLT tax. It's assessed to all of our electrical bills. It is basically a hidden tax. Which if it was not assessed, we have to make up some other place. That would be our property taxes. However, we also noticed that even though our utility bills raised 60% over the last two years, that PLT tax percentage stayed the same. That's a huge tax windfall at the expense of the hapless energy user. We have seen a mass exodus of businesses and residential construction from the City limits to the County and the City of Ammon. In addition, we have seen the size of a City government grow substantially, while the percentage number of tax paying entities grow smaller. We have seen this City lose a call center employing hundreds to the City of Pocatello. We have seen this City lose Dell Computer Service Center employing over 1,000 to the City of Twin Falls. We have seen this City government pledge \$3 Million in support of a recreation center, via supposed excess reserve funds to build a recreation center not wanted by 80% of the voters in the Idaho Falls area. And then a few weeks later, the same Council and Mayor voted down the initiative to rebate back to the consumers a measly \$200,000.00. We have seen this City have so many people run for an elected seat that the official put it off as could not garner 50% of the vote. Yet we saw our present City governors vote down an initiative to have run-off elections. We have seen start-up business after start-up business funded by a

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regional development council fail, and yet local profitable businesses looking for expansion capital via loans, grants, what have you, get rebuffed. We have seen huge inefficiencies and duplication of services among governments, school districts and the private sector. And, obviously, I have got a personal note. We have seen since 1999, the City of Idaho Falls unwillingness to work with us in a joint venture for the certain benefit of taxpayers in this community. There was a total lack of disregard from this administration in building a competing tax-funded facility destined to decimate my family business. A competing facility that would have excised over 100 jobs, a million dollar local payroll, \$120,000.00 in property taxes a year, and over \$150,000.00 in state sales and income taxes. And this reality would have been all because of this administration and their departments' personal agendas, and not because of public support nor a fair competitive market place. In summation, we have seen this administration conduct many of its affairs in a self-serving, secretive, boiler room atmosphere, totally insensitive to taxpayer input, combative in nature, to existing and potential businesses, reactive not pro-active, and in general, possessing a complete lack of vision and understanding of the needs of this community as taxpayers. Frankly, my wife and I are extremely disillusioned with this City government. We think it is time for a change in how the City Administration feels in their attitude towards its constituents and its perceived role in government.

Councilmember Shurtleff requested the Clerk's Certificate regarding the Run-Off Election Initiative be circulated to the Mayor and Council.

Councilmember Groberg requested a clarification regarding the initiative petition. An initiative petition has been delivered to the City. It is now being reviewed for its legal acceptability. A memo is being prepared which will address whether it is legally acceptable. The City Attorney stated that the Code requires that as part of the Certificate that the City Clerk issues, that she indicates specifically her findings. Councilmember Groberg requested to know whether options would be included to bring the petitions into compliance. The City Attorney stated that this was correct.

Councilmember Shurtleff requested a Work Session for the City Council to lay out the expenditures for the recreation center. He stated that he does not have a feeling for whether or not money was misspent or not. He would also like to determine whether the City promoted the Recreation Center as was stated by Mr. Schanz.

Councilmember Groberg stated that he remembered the Council Meeting, where the quote from Mr. Schanz came from. His recollection was that the City had to have a concept to put before the voters.

Councilmember Shurtleff again requested a Work Session to discuss the issue.

Councilmember Hardcastle suggested that Councilmember Shurtleff talk with the Parks and Recreation Director regarding any expenditures by the City regarding the Recreation Center proposal.

The City Attorney stated that as he looked at the reference that Mr. Schanz made to the "promoting" term. That term is susceptible to different interpretations. Mr. Schanz is correct, in that there is case law that says that any public entity may and, in fact, has a duty to educate voters. Voters have a right to the facts and a right to know what the issues are.

Councilmember Shurtleff requested to know whether the City used any funds in that manner.

The City Attorney stated that, in his judgment, the City used the funds appropriately. The City Attorney stated, further, that the use of the word "promoting", meant providing the public with facts to make their decision. The problem with the case law is that

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it is not clear as to when you cross the line between providing facts and what is advocated. That is the area that is ripe for legislative clarification.

Councilmember Shurtleff stated that the Council's integrity has been called into question and he wanted to be sure that he felt good about the expenditures made.

The City Attorney stated that the problem is that there is no statute, no Idaho case, and when legal counsel looks at whether or not a line has been crossed, typically, a statute is looked at first, and then, secondly, look to case law within the jurisdiction of the issue. The City Attorney stated that the information that Councilmember Shurtleff is requesting is available.

Councilmember Hardcastle stated that she would have this information available at the Parks and Recreation Council Committee Meeting and invite the rest of the City Council to attend. This information has been reviewed by the Parks and Recreation Council Committee many times. She stated, further, that she is sensitive to someone putting her integrity into challenge.

The Airport Director submitted the following memo:

City of Idaho Falls
October 3, 2003

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: Mike Humberd, Director of Aviation
SUBJECT: WORK ASSIGNMENT ELEVEN (11) FOR REHABILITATION OF
THE EAST/WEST GENERAL AVIATION APRONS

Attached for City Council's approval is Work Assignment No. 11 to the Engineering Agreement with Delta Airport Consultants. This work assignment revises the previous construction phase services to include additional quality acceptance testing and engineering services associated with the extension of the rehabilitation limits previously approved with Change Order No. 1 to the construction contract and problems the contractor has encountered with the asphalt design mix.

This change increases the construction phase services by \$78,287.00. Only actual costs of additional work will be invoiced.

The majority of this additional cost will be covered by already incurred liquidated damages and reduced asphalt payment.

The Airport Division recommends approval of this Work Assignment and requests the Mayor be authorized to execute the documents.

s/ Mike Humberd

It was moved by Councilmember Hardcastle, seconded by Councilmember Eldredge, to approve Work Assignment No. 11 for the Rehabilitation of the East/West General Aviation Aprons and, further, give authorization for the Mayor and City Clerk to execute the necessary documents. Roll call as follows:

Aye: Councilmember Barnes
Councilmember Groberg

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Councilmember Lehto
Councilmember Shurtleff
Councilmember Hardcastle
Councilmember Eldredge

Nay: None

Motion Carried.

The Idaho Falls Power Director submitted the following memo:

City of Idaho Falls
October 6, 2003

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: Mark Gendron, Idaho Falls Power Director
SUBJECT: CONFIRMATION TO LOCK-IN APPENDIX WITH UAMPS

Attached for your consideration is a Confirmation Agreement to purchase power from UAMPS for February, 2004.

Idaho Falls Power respectfully requests ratification of this Agreement.

s/ Mark Gendron

It was moved by Councilmember Lehto, seconded by Councilmember Shurtleff, to ratify the Confirmation Agreement to purchase power from UAMPS for February, 2004. Roll call as follows:

Aye: Councilmember Hardcastle
Councilmember Shurtleff
Councilmember Eldredge
Councilmember Lehto
Councilmember Groberg
Councilmember Barnes

Nay: None

Motion Carried.

The Municipal Services Director submitted the following memos:

City of Idaho Falls
September 30, 2003

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: S. Craig Lords, Municipal Services Director
SUBJECT: GENERAL LIABILITY, PROPERTY, VEHICLE LIABILITY, E & O OF PUBLIC OFFICIALS, POLICE PROFESSIONAL, FIDELITY, EXCESS LIABILITY AND BOILER AND MACHINERY INSURANCE COVERAGE PLACEMENT ON OCTOBER 1, 2003

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It is respectfully requested the Mayor and Council ratify binding the City's insurance for the above coverage with ICRMP. The broker is The Hartwell Corporation. The contract begins on October 1, 2003. The price of this contract is \$596,351.00 for one year.

s/ S. Craig Lords

Councilmember Eldredge noted that this represents a 1% decrease from the previous bid received last April. It was moved by Councilmember Eldredge, seconded by Councilmember Groberg, to ratify the binding of the City's insurance for general liability, property, vehicle liability, E & O of public officials, police professional, fidelity, excess liability and boiler and machinery coverage with ICRMP with The Hartwell Corporation as the broker, as of October 1, 2003. Roll call as follows:

Aye: Councilmember Lehto
Councilmember Groberg
Councilmember Hardcastle
Councilmember Eldredge
Councilmember Barnes
Councilmember Shurtleff

Nay: None

Motion Carried.

City of Idaho Falls
October 6, 2003

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: S. Craig Lords, Municipal Services Director
SUBJECT: PURCHASE FOUR (4) MOWERS PER CITY OF NAMPA BID

It is the recommendation of Municipal Services to accept the bid of Rocky Mountain Turf and Industrial Equipment, Salt Lake City, Utah, to furnish the required mowers per City of Nampa's bid of February 3, 2003. They would furnish a new Jacobsen Rotary Mower (1-Parks Department) for an amount of \$34,918.00 and three (3) Jacobsen Fairway Mowers (1-Sandcreek Golf and 2-Sage Lakes Golf) for an amount of \$27,081.00 each. The Supplier has agreed to honor the price amounts bid and to pay \$1,000.00 each for trade-in Mowers No. 919, No. 858, and No. 859; and \$2,500.00 for trade in Mower No. 217. Final purchase price for all mowers with trade-ins will be \$110,661.00.

s/ S. Craig Lords

It was moved by Councilmember Eldredge, seconded by Councilmember Groberg, to purchase four mowers from Rocky Mountain Turf and Industrial Equipment in Salt Lake City, Utah, as presented, per the City of Nampa's Bid of February 3, 2003. Roll call as follows:

Aye: Councilmember Groberg
Councilmember Barnes

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Councilmember Shurtleff
Councilmember Hardcastle
Councilmember Eldredge
Councilmember Lehto

Nay: None

Motion Carried.

City of Idaho Falls
October 6, 2003

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: S. Craig Lords, Municipal Services Director
SUBJECT: ONE (1) NEW LARGE AREA MOWER (4WD) – NAMPA SCHOOL DISTRICT

It is the recommendation of Municipal Services to accept the bid of Rocky Mountain Turf and Industrial Equipment, Salt Lake City, Utah, to furnish a Jacobsen for an amount of \$57,000.00 per Nampa School District No. 131 Bid of September 4, 2003. The Supplier has agreed to honor the price amount bid and to pay \$1,200.00 for trade-in Unit No. 280. Final purchase price with trade-in will be \$55,800.00.

s/ S. Craig Lords

It was moved by Councilmember Eldredge, seconded by Councilmember Groberg, to accept the bid from Rocky Mountain Turf and Industrial Equipment in Salt Lake City, Utah, for One (1) New Large Area Mower (4WD) per the Nampa School District No. 131 bid of September 4, 2003. Roll call as follows:

Aye: Councilmember Groberg
Councilmember Barnes
Councilmember Shurtleff
Councilmember Hardcastle
Councilmember Eldredge
Councilmember Lehto

Nay: None

Motion Carried.

City of Idaho Falls
October 6, 2003

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: S. Craig Lords, Municipal Services Director
SUBJECT: PURCHASE A COMBINATION SEWER CLEANING AND CATCH BASIN MACHINE MOUNTED ON CAB AND CHASSIS PER CITY OF BOISE BID

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It is the recommendation of Municipal Services to accept the bid of Pacific Utility Equipment Company, Salt Lake City, Utah, to furnish the subject equipment per City of Boise's Bid of May 29, 2002. They would furnish a Super Products Camel 200 mounted on a new 2003 cab and chassis for an amount of \$194,854.00 plus upgrades of \$1,780.00. Total purchase price with trade-in Unit No. 155 is \$179,634.00. The Supplier has agreed to allow us to piggyback City of Boise's Bid and honor the bid amount.

s/ S. Craig Lords

It was moved by Councilmember Eldredge, seconded by Councilmember Groberg, to accept the bid from Pacific Equipment Company, Salt Lake City, Utah, to furnish the subject equipment per City of Boise's Bid of May 29, 2002. Roll call as follows:

Aye: Councilmember Eldredge
Councilmember Lehto
Councilmember Barnes
Councilmember Groberg
Councilmember Shurtleff
Councilmember Hardcastle

Nay: None

Motion Carried.

The Planning and Building Director submitted the following memos:

City of Idaho Falls
October 7, 2003

MEMORANDUM

TO: Mayor and City Council
FROM: Renée R. Magee, Planning and Building Director
SUBJECT: FINAL PLAT - TAYLOR CROSSING ON THE RIVER, DIVISION NO. 5

Attached are the Development Agreement and Final Plat for Taylor Crossing on the River, Division No. 5. This one lot plat is zoned CC-1 and located north of Utah Avenue and south of Milligan Road. At its September 2, 2003 Meeting, the Planning Commission recommended approval with conditions on access which have been incorporated into the Development Agreement. This Department concurs. The matter is now being submitted to the Mayor and Council for consideration.

s/ Renée R. Magee

Following is a list of exhibits used in connection with this Development Agreement and Final Plat approval request:

Exhibit 1 Planning Commission Minutes dated September 2, 2003
Exhibit 2 Staff Report dated September 2, 2003

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It was moved by Councilmember Barnes, seconded by Councilmember Hardcastle, to approve the Development Agreement for Taylor Crossing on the River, Division No. 5 and, further, give authorization for the Mayor and City Clerk to execute the necessary documents. Roll call as follows:

Aye: Councilmember Barnes
Councilmember Groberg
Councilmember Lehto
Councilmember Shurtleff
Councilmember Hardcastle
Councilmember Eldredge

Nay: None

Motion Carried.

It was moved by Councilmember Barnes, seconded by Councilmember Hardcastle, to accept the Final Plat for Taylor Crossing on the River, Division No. 5 and, further, give authorization for the Mayor, City Engineer, and City Clerk to sign said Final Plat. Roll call as follows:

Aye: Councilmember Lehto
Councilmember Groberg
Councilmember Hardcastle
Councilmember Eldredge
Councilmember Barnes
Councilmember Shurtleff

Nay: None

Motion Carried.

City of Idaho Falls
October 6, 2003

MEMORANDUM

TO: Mayor and City Council
FROM: Renée R. Magee, Planning and Building Director
SUBJECT: INTERGOVERNMENTAL AGREEMENT – IDAHO FALLS URBAN RENEWAL AREA

Attached is a Resolution adopting an Intergovernmental Agreement between the City of Idaho Falls and Bonneville County to provide for inclusion of an area outside the City Limits into the Idaho Falls Urban Renewal Area. The Agreement and Resolution were prepared by the Attorney of the Idaho Falls Redevelopment Agency and reviewed by the City Attorney. Bonneville County adopted an Ordinance approving the Agreement on September 30, 2003. This Division and the Idaho Falls Redevelopment Agency respectfully request adoption of the Resolution.

s/ Renée R. Magee

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RESOLUTION NO. 2003-5A

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF IDAHO FALLS TO PROVIDE FOR AN INTERGOVERNMENTAL AGREEMENT FOR ROLES AND RESPONSIBILITIES UNDER CHAPTER 162, IDAHO SESSION LAWS 2000 (HOUSE BILL NO. 581) IDAHO CODE SECTION 50-2906, AND CHAPTER 146, IDAHO SESSION LAWS 2003 (HOUSE BILL 276) BETWEEN BONNEVILLE COUNTY, IDAHO AND THE CITY OF IDAHO FALLS, IDAHO; PROVIDING FOR AREAS OUTSIDE THE CITY LIMITS TO BE INCLUDED WITHIN AN URBAN RENEWAL AREA AS THE COUNTY CONSENTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Mayor and Council have the authority (pursuant to Idaho Code Section 50-302) to establish resolutions not inconsistent with the laws of the State of Idaho as may be expedient, in addition to the special powers therein granted, to maintain the peace, good government and welfare of the corporation and its trade, commerce and industry;

WHEREAS, the Mayor and Council have deemed it expedient and in the best interests of the City of Idaho Falls to establish and enter into an Intergovernmental Agreement For Roles and Responsibilities Under Chapter 162, Idaho Session Laws 2000 (House Bill No. 581), Idaho Code Section 50-2906, and to confirm the consent of Bonneville County under Idaho Code Section 50-2018(r) (Chapter 146, Idaho Session Laws 2003, House Bill 276) between Bonneville County and the City of Idaho Falls.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF IDAHO FALLS, IDAHO, AS FOLLOWS:

Section 1: Pursuant to Idaho Code Section 50-301, et. seq., the Mayor and City Council hereby adopt the Intergovernmental Agreement For Roles and Responsibilities Under Chapter 162, Idaho Session Laws 2000 (House Bill No. 581), Idaho Code Section 50-2906, and to confirm the consent of Bonneville County under Idaho Code Section 50-2018(r) (Chapter 146, Idaho Session Laws 2003, House Bill 276), between Bonneville County and the City of Idaho Falls, a copy of which is attached hereto, and by this reference incorporated herein. A copy of this Resolution and the attached Intergovernmental Agreement For Roles and Responsibilities Under Chapter 162, Idaho Session Laws 2000 (House Bill No. 581), Idaho Code Section 50-2906, and to confirm the consent of Bonneville County under Idaho Code Section 50-2018(r) (Chapter 146, Idaho Session Laws 2003, House Bill 276), between Bonneville County and the City of Idaho Falls shall be held on file in the office of the City Clerk.

Section 2: This Resolution shall be in full force and effect when the Agreement has been adopted by Bonneville County, Idaho by Ordinance as required by law.

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PASSED BY THE COUNCIL OF THE CITY OF IDAHO FALLS,
IDAHO, this 9th day of October, 2003.

PASSED BY THE MAYOR OF THE CITY OF IDAHO FALLS, IDAHO,
this 14th day of October, 2003.

s/ Linda Milam
Mayor Linda Milam

ATTEST:

s/ Rosemarie Anderson
Rosemarie Anderson, City Clerk

Following a brief explanation, it was moved by Councilmember Barnes, seconded by Councilmember Hardcastle, to approve the Resolution adopting the Intergovernmental Agreement between the City of Idaho Falls and Bonneville County to provide for inclusion of an area outside the City Limits into the Idaho Falls Urban Renewal Area and, further, give authorization for the Mayor and City Clerk to execute the necessary documents. Roll call as follows:

Aye: Councilmember Lehto
Councilmember Groberg
Councilmember Hardcastle
Councilmember Eldredge
Councilmember Barnes
Councilmember Shurtleff

Nay: None

Motion Carried.

The Public Works Director submitted the following memo:

City of Idaho Falls
October 7, 2003

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: Chad Stanger, Public Works Director
SUBJECT: EASEMENT VACATION – LOT 8, BLOCK 1, RIDGEWOOD PARK
ADDITION, DIVISION NO. 1

Public Works requests authorization for the City Attorney to prepare documents needed to vacate a portion of a utility easement along the west property line of Lot 8, Block 1, Ridgewood Park Addition, Division No. 1.

s/ Chad Stanger

It was moved by Councilmember Shurtleff, seconded by Councilmember Barnes, to give the City Attorney authorization to prepare the necessary documents for vacation of a portion of a

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utility easement along the west property line of Lot 8, Block 1, Ridgewood Park Addition, Division No. 1. Roll call as follows:

Aye: Councilmember Groberg
Councilmember Barnes
Councilmember Shurtleff
Councilmember Hardcastle
Councilmember Eldredge
Councilmember Lehto

Nay: None

Motion Carried.

There being no further business, it was moved by Councilmember Eldredge, seconded by Councilmember Lehto, that the meeting adjourn at 8:30 p.m.

CITY CLERK

MAYOR
