

MAY 22, 2003

The City Council of the City of Idaho Falls met in Regular Council Meeting, Thursday, May 22, 2003, in the Council Chambers at 140 South Capital Avenue in Idaho Falls, Idaho.

There were present:

Mayor Linda Milam
Councilmember Bill Shurtleff
Councilmember Ida Hardcastle
Councilmember Robert Barnes
Councilmember Mike Lehto
Councilmember Joe Groberg

There were absent:

Councilmember Brad Eldredge

Also present:

Shan Perry, Assistant City Attorney
Rosemarie Anderson, City Clerk
All available Division Directors

CONSENT AGENDA ITEMS

The City Clerk requested approval of the Minutes for the May 8, 2003 Regular Council Meeting.

The City Clerk presented several license applications, including BARTENDER PERMITS to Brandy L. Allen, Robert J. Birch, Danelle M. Clay, Kris R. Goeken, Roberta L. Hall, Sarah R. Logue, Sally A. Lott, Sandra Rogerman, and Leslie A. Villalobos, 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 May 8, 2003.

The Public Works Director submitted the following memo:

City of Idaho Falls
May 19, 2003

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: Chad Stanger, Public Works Director
SUBJECT: AUTHORIZATION TO BID – PAVING EQUIPMENT RENTAL, 2003

Public Works requests authorization to advertise to receive bids for Paving Equipment Rental, 2003.

s/ Chad Stanger

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

Aye: Councilmember Barnes

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Councilmember Groberg
Councilmember Lehto
Councilmember Shurtleff
Councilmember Hardcastle

Nay: None

Motion Carried.

REGULAR AGENDA ITEMS

Mayor Milam requested Councilmember Barnes to conduct a public hearing for consideration of a Land Use Change in the Planned Transition-2 (Commercial and High Density Residential) Zone for additional parking and a building addition on property located generally on the south side of East 17th Street, east of Ponderosa, and legally described as Lots 1 and 2, Block 1, Edgemont Gardens Addition. At the request of Councilmember Barnes, the City Clerk read the following memo from the Planning and Building Director:

City of Idaho Falls
May 19, 2003

MEMORANDUM

TO: Mayor and City Council
FROM: Renée R. Magee, Planning and Building Director
SUBJECT: PT-2 SITE PLAN, LOTS 1-2, BLOCK 1, EDGEMONT GARDENS

Attached is the Site Plan for a small addition to the Help-U-Sell parking lot and office building in the PT-2 Zone. This property is located south and adjacent to 17th Street. The Planning Commission reviewed this Site Plan at its April 15, 2003 Meeting and recommended approval with the conditions that the rear porch light be shielded, the handicapped parking stall be properly identified, and on-site storage be limited to the rear parking area. The staff concurs with this recommendation. This matter is now being submitted to the Mayor and Council for consideration.

s/ Renée R. Magee

The Assistant Planning and Zoning Director located the subject area on a map and further explained the request. Following is a list of exhibits used in connection with this Site Plan approval:

Slide 1	Vicinity map showing surrounding area
Slide 2	Land Use Map
Slide 3	Aerial Photo
Slide 4	Approved Site Plan
Slide 5	Proposed Site Plan
Slide 6	Proposed parking area and adjacent single-family homes
Slide 7	Street frontage on 17 th Street
Exhibit 1	Copy of Site Plan

Exhibit 2 Planning Commission Minutes dated April 15, 2003
Exhibit 3 Staff Report dated April 15, 2003

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The staff has reviewed this application as it applies to the performance standards in the Zoning Ordinance and has been found to be in compliance. The three conditions recommended by the Planning Commission have been addressed and complied with.

Janet Sanders, 994 East 1200 North, Shelley, Idaho, appeared as the applicant for this Site Plan review. She stated that she has complied with all recommendations from the Planning Commission.

There being no comments either in favor of or in opposition to this Site Plan, Mayor Milam closed the public hearing.

It was moved by Councilmember Barnes, seconded by Councilmember Hardcastle, to approve the Site Plan for a Land Use Change in the Planned Transition-2 (Commercial and High Density Residential) Zone for additional parking and a building addition on property located generally on the south side of East 17th Street, east of Ponderosa, and legally described as Lots 1 and 2, Block 1, Edgemont Gardens Addition. Roll call as follows:

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

Nay: None

Motion Carried.

Mayor Milam requested Councilmember Barnes to conduct a public hearing for consideration of a vacation of a portion of 20th Street north of and the alley lying within Block 16, Brodbeck's Addition. At the request of Councilmember Barnes, the City Clerk read the following memo from the Planning and Building Director:

City of Idaho Falls
May 19, 2003

MEMORANDUM

TO: Mayor and City Council
FROM: Renée R. Magee, Planning and Building Director
SUBJECT: VACATION OF A PORTION OF 20TH STREET AND ALLEY, BLOCK 16, BRODBECKS ADDITION

Attached is the Ordinance to vacate the eastern 200 feet of the alley in Block 16, Brodbeck's Addition, and roughly 120 feet of East 20th Street north and adjacent to Block 16 in Brodbeck's Addition. Access to the property will be provided by the proposed First Amended Plat of Brodbeck's Addition. This Department respectfully requests adoption of this Ordinance.

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 street and alley vacation:

Slide 1 Aerial Photo

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Exhibit 1 Sketch map of the area to be vacated
Exhibit 2 Memo from Shawn L. Weingartner, as follows:

City of Idaho Falls
April 21, 2003

MEMORANDUM

TO: Renée R. Magee, Planning and Building Director
FROM: Shawn L. Weingartner, Right-of-Way Agent
SUBJECT: BRODBECKS ADDITION RIGHT-OF-WAY VACATION

Public Works has reviewed the request to vacate a portion of 20th Street right-of-way and a portion of the alley in Block 16 of the above-referenced subdivision. The right-of-way referenced has never been utilized for street or utility purposes and the City knows of no plans or funding to develop the right-of-way as presently configured.

Public Works has no objection to the right-of-way being vacated to the adjacent landowners to facilitate development in a different configuration.

s/ Shawn L. Weingartner
Right-of-Way Agent

Daryl Kofoed, Mountain River Engineering, 1020 Lincoln Road, appeared to state that they are the applicant for the south half of 20th Street and the alley. He stated that the project may be controversial, but the vacation of the street and alley are not. The plan, as will be explained in the next public hearing, is to develop a cul-de-sac for single-family attached homes.

Betty Anderson, 2055 South Higbee Avenue, appeared to state that the area is very narrow. There is no turn-around in this area. Sanitation trucks have to back up to this area to provide services, and have knocked down her brick fence twice. If seven more dwellings are to be built in this area, that will be a real problem. She requested the Mayor and Council to take this into consideration. Mrs. Anderson referred to a portion of the letter from Attorney Craig W. Anderson as follows:

“The portion of the alley to be vacated between 20th and 21st Streets is a “dead end” alley and no provision has been made for an adequate turn around as required by City Ordinance 10-1-9(D). Creating a turn around at the end of the alley will impact Lots 49 and 50 as shown on the February 27, 2003 Plat.”

The Planning and Building Director re-appeared to state that there are dead-end alleys in most of the blocks in Brodbecks Addition, due mostly to the Gustafson Lateral Canal or Idaho Canal running through this area. Brodbecks Addition was first platted in 1891, with an amendment being filed in 1939. As the area was developed, it was not developed with turn arounds or cul-de-sacs. Putting a turn around on the west side of this would not benefit the landowners on the east side of the Gustafson Lateral Canal at this point in time.

Councilmember Lehto commented that if the two parcels are vacated, whether provisions have been made for a utility easement. The Planning and Building Director

explained that the portion of the alley that is not being vacated is being retained to use for utilities. The water line is being proposed to be brought from 21st Street to provide a new

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water service to this area, east of the Gustafson Lateral Canal. The sewer line would be brought in from the existing alley between 20th Street and 21st Street.

Betty Anderson re-appeared to state that she has received seven different plans for this property, and still does not know what the real plan is. She expressed her concern for declining property values in the area, especially when property owners do not understand what is planned for this area. She requested further information.

Marilyn Bass, 424 East 21st Street, appeared to state that she has received several plans for this proposed development. She requested to know what was actually planned.

The Planning and Building Director stated that the Final Plat has not changed since the Planning Commission Meeting. Anyone wanting to review the Final Plat could go to the Planning and Building Division to do so.

Daryl Kofoed, Mountain River Engineering, 1020 Lincoln Road, re-appeared to state that he had some discussions on site with individuals who thought that the plans submitted were radically different from the plans that he presented to the Planning Commission. He did not know where that information came from.

There being no further discussion either in favor of or in opposition to this street and alley vacation, Mayor Milam closed the public hearing.

It was moved by Councilmember Barnes, seconded by Councilmember Hardcastle, to table consideration of the Ordinance to vacate portions of 20th Street and alley lying within Block 16, Brodbeck's Addition until the Final Plat for the First Amended Plat for Brodbeck's Addition, if approved, is presented to the City Surveyor for recording. Roll call as follows:

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

Nay: None

Motion Carried.

Mayor Milam requested Councilmember Barnes to conduct a public hearing for consideration of a Conditional Use Permit to construct seven single-family attached homes on property located generally south of 20th Street, north of 21st Street, west of Holmes Avenue, legally described as Lots 4 through 11 and Lots 32 through 41, Block 16, Brodbeck's Addition. At the request of Councilmember Barnes, the City Clerk read the following memo from the Planning and Building Director:

City of Idaho Falls
May 13, 2003

MEMORANDUM

TO: Mayor and City Council
FROM: Renée R. Magee, Planning and Building Director

SUBJECT: CONDITIONAL USE PERMIT FOR SINGLE-FAMILY ATTACHED
HOMES, LOTS 4-11 AND 32-41, BLOCK 16, BRODBECKS
ADDITION

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Attached is the application and site plan for seven single-family attached homes proposed on Lots 4-11 and 32-41, Block 16, Brodbeck's Addition. These parcels are south of 20th Street, east of South Higbee Avenue, and west of Holmes Avenue and Idaho Canal. The Planning Commission reviewed this application at its March 4, 2003 Meeting and recommended approval of the site plan as presented. The Department concurs with this recommendation. This application is now being submitted to the Mayor and City Council for consideration.

s/ Renée R. Magee

City of Idaho Falls
May 13, 2003

MEMORANDUM

TO: Mayor and City Council
FROM: Renée R. Magee, Planning and Building Director
SUBJECT: FIRST AMENDED PLAT OF BRODBECKS ADDITION

Attached are the Development Agreement and Final Plat for the First Amended Plat of Brodbeck's Addition. This Plat contains seven lots for single-family attached homes, a storm pond retention lot, and a landscape lot. This plat is located south of 20th Street, east of South Higbee Avenue, and west of Holmes Avenue and the Idaho Canal. The Planning Commission reviewed this plat at its March 4, 2003 Meeting and recommended approval. The Department concurs with this recommendation. This Final Plat is now being submitted to the Mayor and City 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 Conditional Use Permit request:

Slide 1	Vicinity Map showing area under consideration
Slide 2	Aerial Photo
Slide 3	Site Plan under consideration
Slide 4	Proposed Front Elevation for units
Slide 5	Site Photo looking west onto 20 th Street from the Gustafson Lateral Canal
Slide 6	Site Photo looking east on 20 th Street towards Gustafson Lateral Canal
Slide 7	Site Photo of 21 st Street right-of-way
Slide 8	Site Photo looking north along Gustafson Lateral Canal
Slide 9	Site Photo looking south along Gustafson Lateral Canal
Slide 10	Site Photo looking northeast from Gustafson Lateral Canal and north of site
Slide 11	Site Photo looking south along the Idaho Canal
Slide 12	Site Photo looking southeast across site from the Idaho Canal

Slide 13 Site Photo looking southeast across site from the Idaho Canal
Slide 14 Site Photo looking north across site

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- Slide 15 Site Photo of area south of 21st Street which presently provides access to the area
- Slide 16 Site Photo looking across site from the Gustafson Lateral Canal
- Slide 17 Staff review of requirements necessary for single-family attached dwellings in an R-1 Zone
- Exhibit 1 Planning Commission Minutes dated March 4, 2003
- Exhibit 2 Staff Report dated February 27, 2003
- Exhibit 3 Addendum to Staff Report dated May 13, 2003
- Exhibit 4 February 23, 2003 Letter of Craig W. Anderson, Attorney
- Exhibit 5 February 25, 2003 Letter of Betty Anderson
- Exhibit 6 June 16, 1980 Letter from Wilford Anderson to Idaho Irrigation District
- Exhibit 7 Copy of Final Plat
- Exhibit 8 Planning Commission Work Session dated March 2, 1999
- Exhibit 9 Planning Commission Minutes dated April 13, 1999
- Exhibit 10 City Council Meeting Minutes dated September 9, 1999
- Exhibit 11 Memo from City Engineer dated May 21, 2003
- Exhibit 12 Pages 1 and 19 of the 2000 Edition of the International Residential Code – Definitions of Single-Family Homes

The Planning and Building Director stated that according to 7-3-10 of the Zoning Ordinance, these units all have a driveway to a public street. They have a separate pedestrian area to the street. The units meet the setback requirements of 20 feet on a cul-de-sac with 7-1/2 foot side yards. A 15-foot side yard is the requirement for Lot 50, as it is adjacent to single-family attached homes.

The Planning and Building Director presented the following letter from Craig W. Anderson, Attorney at Law, as follows:

May 19, 2003

Idaho Falls City Council
c/o City Clerk
140 South Capital Avenue
Idaho Falls, Idaho 83405

Re: Joseph G. Hanson Application for Conditional Use Permit, Block 16,
Brodbecks Addition

Dear Councilmembers:

This letter is written in advance of the public hearing scheduled for May 22, 2003, on Mr. Joseph G. Hanson's application for a conditional use permit. As a designated trust beneficiary, I have an equitable interest in the real property designated as Lots 23 through 31, Block 16, Brodbecks Addition, including a single-family residence and other improvements located thereon. I noted my objections to the application in a letter dated February 23, 2003 addressed to the Planning Commission. Later, I supplemented my comments in a letter faxed to the Planning Department on March 3rd prior to the March 4th Meeting. Copies of my February 23rd and March 3rd letters are enclosed as Attachments 1

and 2. The comments made in my prior correspondence to the Planning Commission are incorporated herein by reference.

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In letters addressed to Renée R. Magee dated March 5th and 16th, 2003, I requested copies of the Planning Commission's recommendation and the minutes of the March 4, 2003 Meeting. I subsequently received the Staff Report and a draft of the March 4th Meeting Minutes, but I did not receive the Planning Commission's findings, conclusions and recommendations. Copies of the March 5th and 16th letters are enclosed as Attachments 3 and 4. Based on my review of the draft minutes, the Planning Commission apparently concurred with the "staff findings" and passed a motion recommending approval but did not issue findings of fact or conclusions of law. My comments are, therefore, based on the Staff Report and draft minutes.¹

I. The Proposed Development Does Not Meet the Net Density Requirements.

A. The Owner's Dedication Conveys All Easements and Rights-of-Way

The R-1 zone requires a minimum net density of one acre.² In response to my February 23rd letter, the Staff Report³ states that the term "right-of-way" has not been interpreted by the "staff" to include easements for the purpose of calculating residential density. The "owner's dedication" on the first amended plat, however, specifically dedicates all streets and rights-of-way and conveys to the City all *easements* shown on the plat.⁴ See, Attachment 5. The area within the streets, rights-of-way and easements cannot, therefore, be included in the net density requirement. The area included within dedicated easements on the plat reduces the area available for development below the 1 acre requirement.⁵ The staff interpretation of the term "right-of-way" is arbitrary and capricious because it was made without specific uniform guidelines in violation of 14th amendment substantive and procedural due process requirements. Only the Board of Adjustment or legislative body has the responsibility to make interpretations.⁶

B. A Right-of-Way Is An Easement

Furthermore, it is not necessary for the staff to make an interpretation, because the term "Right-of-Way" is defined in City Ordinance 10-1-3 as "a strip of land occupied or intended to be occupied by a street, sidewalk, railroad, public utility, or other similar public use." In addition, a right-of-way is "...the right belonging to a party to pass over the land of another" and is an *easement* as a matter of law.⁷ Finally, City Ordinance 7-3-10 I specifically states: "The area within public rights-of-way shall not be included in the calculations for net density." The area encumbered by all easements identified on the plat must, therefore, be excluded and reduces the net development density below the 1 acre requirement.

C. Lots 49 and 52 Are Not "Lots"

In addition to reducing the area encumbered by the easements and rights-of-way depicted on the plat, lots 49⁸ and 53⁹ must be excluded because they do not meet the definition of a "lot".¹⁰ Lot 49 is a buffer easement and the north end is encumbered by a flowing segment of the Gustafson Canal. Lot 53 is designated as a "storm *pond* lot" but is in fact a storm water retention

basin and cannot be developed.¹¹ Furthermore, Lot 53 does not have access to and frontage on a public street.¹² Lots 49 and 53 are not “buildable” lots because they cannot simultaneously be built on and serve their intended

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purpose.¹³ Finally, it should be noted that in the Planning Commission Minutes, Ms. Magee stated that “lot 39 could have a utility easement on top of it and an easement to serve the storm pond could be added to the final plat.” Lots 49 and 53 are easements and must, therefore, be deducted from the one acre density requirement.

Lot 57 is encumbered by a 20 foot wide access easement¹⁴ which must be deducted. The access easement on lot 57 is necessary due to the proposed vacation of a portion of 20th Street. The right-of-way is necessary to provide access to the property owner on the north side of the street. Without the right-of-way, the property owner to the north will be landlocked by the vacation of 20th Street. The right-of-way must also be excluded from the net density requirement.

II. Other Points Not Addressed In the Staff Report

A. Dead Ends and Street Vacations

No conditional use may be issued where the primary vehicular access is on a dead end street in excess of 400 feet.¹⁵ The length of the cul-de-sac depicted on the plat is 460 feet exceeding the limit for a conditional use. The staff determination that the 400 foot limitation does not apply because the development is not a multi-family dwelling is arbitrary and capricious because it was made without specific guidelines in violation of 14th amendment substantive and procedural due process. Only the Board of Adjustment or legislative body has the responsibility for making interpretations. Regardless of how the use is characterized, the fact of the matter is the proposed conditional use will significantly increase the density in the area by adding seven attached single-family dwellings.

The portion of the alley to be vacated between 20th and 21st Streets is a “dead end” alley and no provision has been made for an adequate turn around as required by City Ordinance 10-1-9(D). Creating a turn around at the end of the alley will impact Lots 49 and 50 as shown on the February 27, 2003 plat.

The plat shows portions of 20th Street and a portion of an alley between 20th and 21st Streets as “vacated”. The street and alley were not vacated, however, at the time the public notice was mailed or at the time of the Planning Commission Meeting. Any vacation is deficient due to a failure to give the required notice before the Planning Commission Meeting. Idaho Code Section 50-1321 requires the consent of adjoining landowners where the right-of-way has been open and used by the public for more than five years.

B. Canals and Maintenance

The plat does not include maintenance easements for the Gustafson Canal on the west and the Idaho Canal on the east. Idaho Code Section 42-1202 requires persons in control of any ditch, canal or conduit used

to irrigation to maintain them in good repair. Access is required to maintain the banks and channel of a canal.¹⁶ Easements for canals can be acquired by prescription. *Pioneer Irrigation Dist. v. Smith*, 48 Idaho 734, 285 P. 474 (1930).

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Although the maintenance easements may not appear on the plat they exist as a matter of law. The maintenance easements for the canals should be deducted from the development density requirement. Flooding and safety concerns regarding the canals were also expressed in public comments during the meeting but were not addressed by the Planning Commission.

C. Impact of Project and Value of Existing Properties

The proposed development will increase the existing density in the neighborhood from 4.5 units per acre to 5.878 units per acre.¹⁷ Letters submitted to the Planning Commission in opposition to the proposed development voiced concern regarding the impact of the project on property values. In this regard, Idaho Code 67-6508(a) states that it is the duty of the Planning Commission to ensure that land use policies do not violate private property rights or adversely impact property values.

City Ordinance 1941, Section 5-10A requires that a conditional use not substantially disrupt the character and harmony of the zone or area. Section 5-10F.1 allows the Planning Commission or City Council to impose conditions in addition to the conditions specified in the Zoning Ordinance for conditional uses to minimize the impact on adjacent properties. Furthermore, Section 5-10F.8 provides that the Planning Commission or City Council may impose such other conditions as may be necessary to preserve the character and harmony of the zone and avoid conflict with the general characteristics of the area. Finally, Idaho Code Section 67-6512(e) provides that prior to granting a special use permit, studies may be required of the social, economic, fiscal and environmental effects of the proposed use.

If the Council supports the Planning Commission's recommendation to approve the project, additional conditions such as: fences, landscaping, lighting restrictions, noise buffers, aesthetic controls and property maintenance requirements, should be imposed to minimize the impact of the development on adjoining properties. The adjoining property owners should be consulted regarding appropriate additional conditions to reduce the impact of the proposed development.

III. Fifth and Fourteenth Amendment Substantive and Procedural Due Process Violations

The plat was changed after the notice was mailed. The public notice of the Planning Commission's March 4th Meeting included a diagram of a plat marked "received" February 7, 2003, depicting Lots 49 to 55. See, Attachment 6. The plat was changed after the mailing of the notice. The plat presented at the Planning Commission Meeting was dated February 27, 2003 depicted lots 49 to 57 and was substantially different than February 7th plat.¹⁸ See, Attachment 7. Interested parties were not given notice of the change made to the plat after the mailing of notice and were not given an opportunity to review or comment on the revised plat prior to the March 4th Planning Commission

Meeting in violation of fundamental rights and fairness, including 14th amendment substantive and procedural due process principals.

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In response to my March 3rd written comments¹⁹, a copy of the staff report was faxed to my office at 2:31 p.m. on March 4th, the afternoon of the Planning Commission Meeting. See, Attachment 8. Because the report was faxed the very afternoon of the Planning Commission Meeting, there was inadequate time to comment on the report and the revised plat. It is not sufficient that the plat and report were provided at the time of the hearing itself. *Johnson v. City of Homedale*, 118 Idaho 285, 796 P2d 162 (Ct. App 1990). The inability to respond to the staff report prior to the Planning Commission's Meeting was a violation of substantive and procedural due process principals.

For the reasons set forth hereinafter, I respectfully request that the conditional use permit be denied. I also request copies of all findings of fact, conclusions of law and decisions related to this application.

Sincerely,

s/ Craig W. Anderson
Craig W. Anderson

Encl.

cc: Betty A. Anderson

¹ To date, I have not received a copy of the minutes in final form.

² City Ordinance 7-3-10 I

³ Staff Report, March 4, 2003

⁴ The February 27, 2003 plat shows a 15' wide utility easement along the road frontages shown on the plat.

⁵ City Ordinance 7-3-10 I.

⁶ 19.12 American Law of Zoning, City Ordinance 5-8 I & C

⁷ 25 Am. Jur 2d Easements and Licenses Section 7.

⁸ Lot 49 is approximately 30' wide and 95' long.

⁹ Lot 53 is approximately .11 acre.

¹⁰ City Ordinance 2-1-47

¹¹ City Ordinance 7-2-10 and 10-1-7

¹² City Ordinances 7-3-10 A & 7-4-10.

¹³ The staff findings specifically refer to lots 49 and 53 as "common facilities".

¹⁴ The easement on lot 57 is approximately 20' wide and 38' long.

¹⁵ City Ordinance 10-1-8 F.

¹⁶ Irrigation easements are typically twenty feet wide. The maintenance easement for the Idaho Canal may affect Lots 53, 54, 55, 56 & 57. The maintenance easement for the Gustafson Canal may affect lots 49 and 49.

¹⁷ The density is actually higher after the easements are deducted as described in Point I hereinabove.

¹⁸ The plat describes lot 49 as a buffer easement, lot 53 as a "storm pond lot" and depicts a portion of 20th Street and the alley south of 20th street as "vacated".

¹⁹ The staff materials presented to the Planning Commission apparently did not include a copy of my March 3, 2003 written comments for the March 4th Planning Commission Meeting. The letter was faxed to the Planning Department on March 3rd in time for the meeting.

The Planning and Building Director explained, further, that the way staff calculated density, by including the easements, was based on the fact that the property owner is in control of the

property; and, it had already been considered when the Planning Commission and City Council reviewed this in the past. This development plan has been reviewed and approved by

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the Idaho Irrigation District. The Final Plat under consideration was initially brought into the Planning and Building Department in early February, 2003. There was no storm pond lot and there was no Lot 49. Lot 49 was originally part of Lot 50 and the storm pond lot was a portion of Lots 52 and 54. Due to maintenance issues in the past, lots that are configured immediately adjacent to a street right-of-way become abandoned by the property owner. The Planning and Building Department requested the Developer to create separate lots and to form a homeowners' association to insure that these properties would be cared for in the future. That is the reason for the change to the final plat. The final plat always had seven single-family attached homes proposed under the Conditional Use Permit. The final plat is in compliance with the Zoning Ordinance. All of the lots adjacent to the cul-de-sac are zoned R-1 and are considered single-family residences. Under the 2000 Edition of the International Residential Code, the units are considered single-family residences, thereby allowing for the 460-foot cul-de-sac (which is under the 600 feet allowable for a single-family residential area).

Councilmember Lehto requested to know how access could be achieved to the land north of 20th Street. The Planning and Building Director stated that the land to the north is also owned by the same people. Also, a 20-foot wide access easement has been placed on Lot 57 to provide for access to this area.

Daryl Kofoed, Mountain River Engineering, 1020 Lincoln Road, appeared to give further explanation of easements. He explained that there is only a minimal danger of flooding. The development as proposed, is an enhancement to the neighborhood.

Councilmember Groberg questioned Mr. Kofoed as to the ownership of the property to the south of the proposed development. Mr. Kofoed stated that the ownership of that land is different. Councilmember Groberg stated that single-family attached homes would be a good development for the remainder of the area.

Councilmember Shurtleff requested to know how many driveways could enter onto a short cul-de-sac. Mr. Kofoed stated that there is a limit of how many driveways could be placed on a street, but it is limited by lots that could be developed in a certain location.

Councilmember Barnes requested those in favor of this proposal to come forward at this time.

Kris Hanson, 3360 Creekside Drive, appeared to state that she is a co-developer of the subject property. She stated that she has visited with Mrs. Anderson and let her know that if any damage were done to her property, it would be repaired.

Delores Padilla, 3900 Taylorview Lane in Ammon, appeared to state that she owns a lot to the south of this development. This will enhance the community and raise the property values in the area. Ms. Padilla stated that she would like to create a similar development on her property.

Marilyn Bass, 424 East 21st Street, re-appeared to state that she has a single-family dwelling. She requested to know whether there would be a fence around this development.

Councilmember Barnes requested those in opposition of this proposal to come forward at this time.

Donna Montague, 411 East 20th Street, appeared to express her concern for the increase in traffic. She requested a different configuration, with three houses being built on 20th Street and four houses being built on 21st Street.

Daryl Kofoed re-appeared to state that traffic in this area is currently functioning at a level "A" and will continue to function that way. Mr. Kofoed stated, also, that landscaping would be provided for this area. A fence would not be provided unless it is required.

There being no further discussion either in favor of or in opposition to this Conditional Use Permit request, Mayor Milam closed the public hearing.

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Councilmember Lehto requested to know whether all information requested by Craig W. Anderson had been provided by the Planning Department. The Planning and Building Director stated that she had provided all information requested. She explained that the Planning Commission, as a recommendation committee, does not prepare Findings of Fact and Conclusions of Law. A draft copy of the Planning Commission Minutes was originally sent to Mr. Anderson, with a copy of her memo to City Council and a copy of the final draft of the Planning Commission Minutes being mailed to him. Mr. Anderson received the Staff Report by fax on Tuesday afternoon before the Planning Commission Meeting.

Councilmember Groberg commented that much thought has gone into this development. Traffic impact should be minimal.

The Planning and Building Director explained, according to the Institute of Transportation Engineers, three single-family detached homes on this street compared to seven single-family attached homes on this street, during the peak hour, the difference is one-half car trips. Both developments would generate 4 peak hour trips from this area.

Councilmember Groberg commented that this is an ideal development for this area.

Councilmember Barnes stated that staff has answered all of the items addressed by Mr. Craig W. Anderson.

It was moved by Councilmember Barnes, seconded by Councilmember Hardcastle, to approve the Conditional Use Permit to construct seven single-family attached homes on property located generally south of 20th Street, north of 21st Street, west of Holmes Avenue, legally described as Lots 4 through 11 and Lots 32 through 41, Block 16, Brodbeck's Addition; and, to instruct the City Attorney and City Planner to prepare Findings of Fact, Conclusions of Law and Decision for the next Regular City Council Meeting. Roll call as follows:

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

Nay: None

Motion Carried.

It was moved by Councilmember Barnes, seconded by Councilmember Hardcastle, to approve the Development Agreement for the First Amended Plat of Brodbeck's Addition and, further, give authorization for the Mayor and City Clerk to sign the necessary documents. Roll call as follows:

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

Nay: None

Motion Carried.

It was moved by Councilmember Barnes, seconded by Councilmember Hardcastle, to accept the Final Plat for the First Amended Plat of Brodbeck's Addition and,

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further, give authorization for the Mayor, City Engineer, and City Clerk to sign said Final Plat. Roll call as follows:

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

Nay: None

Motion Carried.

The Airport Director submitted the following memo:

City of Idaho Falls
May 19, 2003

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: Mike Humberd, Director of Aviation
SUBJECT: CHANGE ORDER NO. 1 TO THE EAST/WEST GENERAL AVIATION RAMP PROJECT

Attached for City Council approval is Change Order No. 1 to the East/West General Aviation Ramp Rehabilitation Project with BECO Construction Company. The Change Order totals \$188,650.00. As you are aware, we received an excellent bid for this project and there are additional Federal Funds available in the grant. This will allow us to pave everything south of the air carrier ramp. Ninety percent (90%) of the Change Order will be funded by the available Federal dollars.

The Airport Division recommends approval and requests the Mayor be authorized to execute the document.

s/ Mike Humberd

The Airport Director came forward to explain what areas have been resurfaced. The only area left to do is the apron on the north side that connects the Airport with the rental car companies and FedEx. Next year's project will be the small runway and taxiway, which will be rehabilitated completely. If the City receives additional discretionary funds from the Federal Aviation Administration, all surfaces will be new since 1995.

It was moved by Councilmember Hardcastle, seconded by Councilmember Groberg, to approve Change Order No. 1 to BECO Construction Company, Inc. for the Rehabilitation of the East and West General Aviation Aprons and, further, give authorization for the Mayor to execute the necessary documents. Roll call as follows:

Aye: Councilmember Lehto

Councilmember Groberg
Councilmember Hardcastle
Councilmember Barnes

MAY 22, 2003

Councilmember Shurtleff

Nay: None

Motion Carried.

The Idaho Falls Power Director submitted the following memos:

City of Idaho Falls
May 19, 2003

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: Mark Gendron, Idaho Falls Power Director
SUBJECT: SALE OF ENERGY TO ARIZONA PUBLIC SERVICE COMPANY

Attached for your consideration is a Confirmation Agreement between Arizona Public Service Company and Idaho Falls Power for sale of firm energy to Arizona Public Service Company.

Idaho Falls Power respectfully requests Council ratification of this Agreement.

s/ Mark Gendron

It was moved by Councilmember Lehto, seconded by Councilmember Shurtleff, to ratify the Confirmation Agreement to sell firm energy to Arizona Public Service Company. Roll call as follows:

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

Nay: None

Motion Carried.

City of Idaho Falls
May 19, 2003

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: Mark Gendron, Idaho Falls Power Director
SUBJECT: SLICE LEGAL COUNSEL RETENTION, COST SHARING AND REIMBURSEMENT AGREEMENT

Attached for your consideration is the Slice Legal Counsel Retention, Cost Sharing, and Reimbursement Agreement. The City Attorney has reviewed this document.

MAY 22, 2003

Idaho Falls Power requests approval of this Agreement and authorization for the Mayor to sign.

s/ Mark Gendron

It was moved by Councilmember Lehto, seconded by Councilmember Shurtleff, to approve the Slice Legal Counsel Retention, Cost Sharing, and Reimbursement Agreement and, further, give authorization for the Mayor to execute the necessary documents. Roll call as follows:

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

Nay: None

Motion Carried.

The Municipal Services Director submitted the following memo:

City of Idaho Falls
May 16, 2003

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: S. Craig Lords, Municipal Services Director
SUBJECT: BID IF-03-22, ONE (1) NEW 2003 BIOSOLIDS INJECTOR VEHICLE – SLUDGE APPLICATOR

Attached for your consideration is the tabulation for Bid IF-03-22, One (1) New 2003 Biosolids Injector Vehicle – Sludge Applicator.

It is the recommendation of Municipal Services to accept the sole bid of Agco Corporation/Ag Chem Division to furnish a new 2003 Terra Gator 3104 for an amount of \$204,343.20 with trade-in Unit No. 151.

s/ S. Craig Lords

It was moved by Councilmember Groberg, seconded by Councilmember Hardcastle, to accept the sole bid of Agco Corporation/Ag Chem Division to furnish a new 2003 Terra Gator 3104 as presented. Roll call as follows:

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

Nay: None

MAY 22, 2003

Motion Carried.

The Public Works Director submitted the following memo:

City of Idaho Falls
May 19, 2003

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: Chad Stanger, Public Works Director
SUBJECT: PROFESSIONAL SERVICE AGREEMENT - PARSONS
BRINKERHOFF

Attached is a proposed Professional Service Agreement between the City and Parsons Brinkerhoff to provide design services in the amount of \$37,079.17 for installation of City water and sewer mains in conjunction with Idaho Transportation Department's Sunnyside Road Project between I-15 and the Snake River. Parsons Brinkerhoff is providing design services for the roadway project.

Public Works recommends approval of this Agreement; and, authorization for the Mayor and City Clerk to sign the documents.

s/ Chad Stanger

It was moved by Councilmember Shurtleff, seconded by Councilmember Barnes, to approve the Professional Services Agreement with Parsons Brinkerhoff to provide design services for the installation of City water and sewer mains in conjunction with Idaho Transportation Department's Sunnyside Road Project between I-15 and the Snake River and, further, give authorization for the Mayor and City Clerk to execute the necessary documents. Roll call as follows:

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

Nay: None

Motion Carried.

There being no further business, it was moved by Councilmember Groberg, seconded by Councilmember Lehto, that the meeting adjourn at 9:05 p.m.

CITY CLERK

MAYOR
