

**OCTOBER 24, 2002**

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The City Council of the City of Idaho Falls met in Regular Council Meeting, Thursday, October 24, 2002, in the Council Chambers at 140 South Capital Avenue in Idaho Falls, Idaho.

There were present:

Mayor Linda Milam  
Councilmember Brad Eldredge  
Councilmember Mike Lehto  
Councilmember Joe Groberg  
Councilmember Bill Shurtleff  
Councilmember Ida Hardcastle

Also present:

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

Mayor Milam requested Boy Scout Clayton Burton to come forward and lead those present in the Pledge of Allegiance.

Mayor Milam presented Robert W. Barnes as her appointee for Councilmember. It was moved by Councilmember Hardcastle, seconded by Councilmember Eldredge, to confirm the appointment of Robert W. Barnes to serve as Councilmember for the remainder of the term for Council Seat No. 3 to expire in January, 2004. Roll call as follows:

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

Nay: None

Motion Carried.

Mayor Milam administered the Oath of Office to Robert W. Barnes, after which he took his seat at the Council Table.

The City Clerk read a summary of the minutes for the October 10, 2002 Regular Council Meeting. It was moved by Councilmember Eldredge, seconded by Councilmember Groberg, to approve the minutes as printed. Roll call as follows:

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

Nay: None

Motion Carried.

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**CONSENT AGENDA ITEMS**

The City Clerk presented several license applications, including BARTENDER PERMITS to Jerry A. Campbell, Tami Carlyle, Dara Diamond, Ronald F. Olsen, Andrew Pettingill, and Shane Waters, 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 24, 2002.

The Municipal Services Director submitted the following memos:

City of Idaho Falls  
October 18, 2002

MEMORANDUM

TO: Honorable Mayor and City Council  
FROM: S. Craig Lords, Municipal Services Director  
SUBJECT: ADVERTISEMENT FOR BID – DEMOLITION OF THE STRUCTURE  
AT 345 “E” STREET

It is respectfully requested that Council and Mayor authorize Municipal Services to advertise to receive bids for the demolition of the structure at 345 “E” Street.

s/ S. Craig Lords

MEMORANDUM

TO: Honorable Mayor and City Council  
FROM: S. Craig Lords, Municipal Services Director  
SUBJECT: ADVERTISEMENT FOR BID – ACTIVITY CENTER HVAC SYSTEM

It is respectfully requested that Council and Mayor authorize Municipal Services to advertise to receive bids for upgrading the HVAC System at the Parks and Recreation Activity Center.

s/ S. Craig Lords

Councilmember Shurtleff requested that at some time in the future, the Council should have an informational meeting regarding the direction that the Parks and Recreation Activity Center is taking.

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

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

Councilmember Shurtleff

Nay: None

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Motion Carried.

**REGULAR AGENDA ITEMS**

It was moved by Councilmember Hardcastle, seconded by Councilmember Barnes, to recess the Annexation Proceedings for Fairway Estates Addition, Division No. 10, Annexation Proceedings for Fairway Estates Addition, Division No. 11, and the Conditional Use Permit to allow single-family attached homes in Fairway Estates Addition, Division No. 11 to the November 14, 2002 Regular Council Meeting. Roll call as follows:

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

Nay: None

Motion Carried.

Mayor Milam requested Councilmember Hardcastle to conduct Annexation Proceedings for Grupo Modelo Malt Plant Acres, Division No. 1. At the request of Councilmember Hardcastle, the City Clerk read the following memo from the Planning and Building Director:

City of Idaho Falls  
October 1, 2002

MEMORANDUM

TO: Mayor and City Council  
FROM: Renée R. Magee, Planning and Building Director  
SUBJECT: ANNEXATION, INITIAL ZONING, AND FINAL PLAT – GRUPO MODELO

Attached are the Annexation Agreement (Prior to Platting), Annexation Ordinance, and Final Plat for the Grupo Modelo property located east and adjacent to Jameston Road and north of York Road. The requested initial zoning is I & M-1 (Industrial and Manufacturing). The Final Plat is entitled Grupo Modelo Malt Plant Acres, Division No. 1. The Planning Commission heard this request at its May 7, 2002 Meeting and recommended approval of the annexation, initial zoning, and final plat. The request has been reviewed by the Engineering and Planning Departments and found to be in compliance with the Comprehensive Plan and Subdivision Ordinance. The Planning Department concurs with the recommendation of the Commission. This annexation request 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:

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Slide 1	Vicinity map showing surrounding zoning
Slide 2	Aerial Photo
Slide 3	Final Plat outlining the right-of-way for Jameston Road
Slide 4	Final Plat under consideration
Exhibit 1	Map of annexation request
Exhibit 2	Copy of final Plat entitled Grupo Modelo Malt Plant Acres, Division No. 1
Exhibit 3	Planning Commission Minutes dated May 7, 2002, Pages 4-9, Pages 13-16
Exhibit 4	Staff Report, Pages 1-3, 15-16, dated April 24, 2002

The aerial photo shows an area, known as Heather Acres, Division No. 1, that was not yet owned by Grupo Modelo at the time that the Planning Commission considered this annexation. That parcel will be annexed and zoned at the first meeting in November of the Planning Commission. The Planning and Building Director explained that the area for Grupo Modelo is shown in the Comprehensive Plan to be zoned as Industrial and Manufacturing. The Planning Commission and Staff have found it to be in compliance with the Comprehensive Plan. The Engineering Staff and Planning Staff have reviewed this Final Plat and found it to be in compliance with the Subdivision Ordinance.

Lee Radford, 5523 Concord Circle, appeared as a representative for Grupo Modelo and Team Modelo Agriculture. He stated that they are requesting annexation at this time. This request is in compliance with all applicable ordinances and the comprehensive plan. Grupo Modelo requested Mr. Radford to express appreciation for the City of Idaho Falls. They are deeply grateful for the welcome that they have received in this community. This City has made the investment in infrastructure to make it possible for this plant to be located in this community. Grupo Modelo appreciates Mayor Milam for welcoming Grupo Modelo into this City. He also expressed appreciation for City staff and their hard work, courteous support and professional knowledge in assisting the Grupo Model engineers in developing this plan.

Councilmember Groberg questioned what the plans were for the remaining acreage not shown on the Final Plat. Mr. Radford explained that Grupo Modelo is building a 100,000 metro-ton plant, with the remainder of the land being used for agricultural purposes. Councilmember Groberg expressed his concern for emissions that may invade the City as the prevailing winds are usually from the southwest. At some point in time, he would like the Mayor and Council to consider all of the industrial zones for possible restrictions on emissions. Mr. Radford explained that malting plants are relatively clean operations.

Councilmember Shurtleff requested to know whether the canal separated the industrial from other uses. The Planning and Building Director stated that the canal is the buffer between industrial and residential. The Planning Commission discussed this at length. The comprehensive plan shows this area to be a lineal park as a buffer to the residential area.

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

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

Aye:	Councilmember Lehto
	Councilmember Eldredge

Councilmember Hardcastle  
Councilmember Groberg  
Councilmember Barnes

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Councilmember Shurtleff

Nay: None

Motion Carried.

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

**ORDINANCE NO. 2462**

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 Hardcastle moved, and Councilmember Barnes 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:

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

Nay: None

Motion Carried.

It was moved by Councilmember Hardcastle, seconded by Councilmember Barnes, to accept the Final Plat for Grupo Modelo Malt Plant Acres, 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 Hardcastle  
Councilmember Shurtleff  
Councilmember Eldredge  
Councilmember Lehto  
Councilmember Groberg  
Councilmember Barnes

Nay: None

Motion Carried.

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A public hearing was conducted to consider the initial zoning of the newly annexed area. There being no discussion, it was moved by Councilmember Hardcastle, seconded by Councilmember Barnes, to establish the initial zoning of Grupo Modelo Malt Plant Acres, Division No. 1 as I & M-1 (Industrial and Manufacturing) 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 Groberg  
Councilmember Barnes  
Councilmember Shurtleff  
Councilmember Hardcastle  
Councilmember Eldredge  
Councilmember Lehto

Nay: None

Motion Carried.

Mayor Milam requested Councilmember Hardcastle to conduct Annexation Proceedings for Brookside Addition, Division No. 2. At the request of Councilmember Hardcastle, the City Clerk read the following memo from the Planning and Building Director:

City of Idaho Falls  
October 18, 2002

MEMORANDUM

TO: Mayor and City Council  
FROM: Renée R. Magee, Planning and Building Director  
SUBJECT: ANNEXATION, FINAL PLAT, AND INITIAL ZONING FOR  
BROOKSIDE ADDITION, DIVISION NO. 2

Attached are the Annexation Agreement, Annexation Ordinance, and Final Plat for Brookside Addition, Division No. 2. Brookside Addition, Division No. 2 consists of fourteen lots for single-family homes and one lot for storm water. The Division is located north of Division No. 1 and Township Road, west and adjacent to Sand Creek Canal, and east of St. Clair Road. At its September 3, 2002 Meeting, the Planning Commission reviewed this annexation request and recommended approval of the annexation, final plat, and initial zoning of R-1, Single-Family Residential. The Planning Department concurs. This annexation request is being presented for your 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 under consideration  
Exhibit 1    Planning Commission Minutes dated September 3, 2002

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Exhibit 2     Staff Report dated September 3, 2002  
Exhibit 3     Final Plat

The Planning and Building Director stated that this is in accordance with the Comprehensive Plan.

Bob Utterbeck, 3351 Charleston Lane, appeared to state that this is an extension of Brookside Addition, Division No. 1. In this Division, landscaping will be completed on the storm pond.

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

It was moved by Councilmember Hardcastle, seconded by Councilmember Barnes, to approve the Annexation Agreement for Brookside Addition, Division No. 2 and, further, give authorization for the Mayor and City Clerk to sign said Agreement. Roll call as follows:

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

Nay:            None

Motion Carried.

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

**ORDINANCE NO. 2463**

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 Hardcastle moved, and Councilmember Barnes 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:

Aye:            Councilmember Lehto  
                  Councilmember Eldredge  
                  Councilmember Hardcastle  
                  Councilmember Groberg

Councilmember Barnes  
Councilmember Shurtleff

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Nay: None

Motion Carried.

It was moved by Councilmember Hardcastle, seconded by Councilmember Barnes, to accept the Final Plat for Brookside Addition, Division No. 2 and, further, give authorization for the Mayor, City Engineer, and City Clerk to sign the Final Plat. Roll call as follows:

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

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 Hardcastle, seconded by Councilmember Barnes, to establish the initial zoning of Brookside Addition, Division No. 2 as R-1 (Single-Family Residential) 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 Hardcastle  
Councilmember Shurtleff  
Councilmember Eldredge  
Councilmember Lehto  
Councilmember Groberg  
Councilmember Barnes

Nay: None

Motion Carried.

The memo from the Planning and Building Director regarding consideration of a Conditional Use Permit to allow a trailer for an office addition on property located generally south of Lincoln Road, east of Alameda Drive, west of Hollipark Drive, legally described as Lot 1, Block 1, Cook Addition, Division No. 1 was withdrawn by the Division Director.

Mayor Milam requested Councilmember Hardcastle to conduct a public hearing for consideration of an Ordinance approving the Second Amended and Restated Urban Renewal Plan for the Lindsay Boulevard Urban Renewal Plan, now referred to as the Idaho Falls Snake River Urban Renewal Plan of the Idaho Falls Redevelopment Agency. At the request of Councilmember Hardcastle, the City Clerk read the following memo from the Planning and Building Director:



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City of Idaho Falls  
October 21, 2002

MEMORANDUM

TO: Mayor and City Council  
FROM: Renée R. Magee, Planning and Building Director  
SUBJECT: SECOND AMENDED AND RESTATED LINDSAY BOULEVARD  
URBAN RENEWAL PLAN

Attached is the Ordinance adopting the Second Amended and Restated Lindsay Boulevard Urban Renewal Plan. This second amended and restated plan, which revises the 1992 plan, does not extend the term of the 1992 Lindsay Plan nor the area covered under the plan. It does extend the use of tax increment financing through the end of the existing term and allows for additional Agency activities not previously identified in the 1992 plan, primarily in the area south of Broadway. This expansion of activities has been proposed in response to continuing private investment south of Broadway.

The Idaho Falls Planning Commission reviewed this restated and amended plan at its October 1, 2002 Meeting and found it to be in compliance with the City's Comprehensive Plan. The Idaho Falls Redevelopment Agency respectfully requests adoption of the Ordinance by the Mayor and City Council.

s/ Renée R. Magee

Councilmember Barnes stated that he is the Chairman of the Idaho Falls Redevelopment Agency and would withdraw from any discussion and abstain from any decision on this issue. 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 Second Amended and Restated Lindsay Boulevard Urban Renewal Plan:

Slide 1	Aerial Photo
Slide 2	Map of area under consideration
Slide 3	Budget
Exhibit 1	DRAFT Ordinance Approving the Second Amended and Restated Lindsay Boulevard Urban Renewal Plan

Councilmember Hardcastle requested Counsel Ryan Armbruster to come forward to give further explanation of this Plan.

Ryan Armbruster, P. O. Box 1539, Boise, Idaho, appeared to state that he is counsel to the Idaho Falls Redevelopment Agency. This Second Amended and Restated Lindsay Boulevard Urban Renewal Plan does not extend any new area for the jurisdiction of the Idaho Falls Redevelopment Agency. It also does not extend the time frame in which tax increment financing would be used for this particular geographic area. This provides some additional flexibility and identifies some additional traditional public improvements in the area that has been under the jurisdiction of the Redevelopment Agency for quite some time. These changes have been primarily driven by additional private development that is occurring south of Broadway and includes, within the confines of the Plan, additional authority, on a limited basis, to acquire additional sites for development purposes,

participate in some of the unique development costs that are experienced south of Broadway, including site clearance, demolition, environmental remediation, and lava rock removal. There is also a section that provides for utility relocation. The infrastructure improvements

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that have been identified south of Broadway are related to the Taylor Crossing project and the proposed Renaissance project. This plan provides additional funding flexibility on a time line that will allow this plan to terminate when it was originally scheduled and to complete the activities not only south of Broadway, but the completion of some of the activities that were originally described in 1988 and 1992 north of Broadway. The Plan formally incorporates all of the major changes that were made by the legislature in this past legislative session concerning Urban Renewal Agencies, primarily focusing on requirements under the Public Records Law, the Bidding Requirements, Open Meeting Laws and public process of adopting a budget for Fiscal Year 2003.

Harlan Mann, 3800 North 33<sup>rd</sup> Street, Boise, Idaho, appeared as the Idaho Falls Redevelopment Agency Financial Consultant. He stated that this community is very fortunate to have two very devoted and enthusiastic developers working in the area south of Broadway. He was able to visit with these developers regarding what they expected to happen with this project. This made the process much easier. Following is Attachment 5C-1, which Mr. Mann reviewed for the Mayor and City Council:

**Attachment 5C-1 Detailed Presentation (09-03-02)  
Estimated Annual Revenues and Costs (Figures Shown in 000)**

	<u>1989- 2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006- 2013</u>
<b>SOURCES OF FUNDS</b>						
Bond Proceeds			2,000		3,500	4,500
Bond Reserve					296	93
Bank Loan		830				
<b>COSTS</b>						
<u>Streets/Lights/Signals<sup>1</sup></u>						
Utah-Milligan-Pancheri W. St. Lights	1,156	127				
Utah-Pancheri I.C. & Traffic Signal - 50% City Cost Sharing		298				
Houston St. (Part) & New St. to Broadway			330			
Milligan Road - New "L" Section		700	240			
Milligan Road - Bridge and Con. To Utah				220		
Milligan - Balance to Pancheri and St. Lights			851			
Memorial Dr.-Broadway-Riverside Dr. - 90% City Cost Sharing					100	
Pancheri Widening (Utah - I-15)					600	
Simplot Ext. - St. Lights and Greenbelt Lights			20	38		
Simplot Road						1,500
Mercury - Waddell Con. - (Agency)						2,800
Subtotals		1,125	1,441	258	700	4,300
<u>Utilities<sup>1</sup></u>						
Simplot Extension-Water and Sewer			450		450	
Simplot Circle-Backbone conduits for telephone, electric, cable TV, fiber		300				

Sewer Line over River with Pedestrian Bridge					200	
Power Line/Relocation-East of Utah		300	389			
Power Line Relocation-West of Utah		143				

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Milligan Substation Screening			136			
Subtotals		743	975		650	
<u>Site Work</u>		<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006-2013</u>
Rock Removal <sup>2</sup>				249	620	4,200
<u>Storm Water/Landscape/Paths</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2006-2013</u>
Landscaping-Former Utah ROW (Milligan-Pancheri)				120		
Construction				350	500	2,800
Pedestrian River Bridge				250		
Burgess and Quigley Storm Drainage						200
<u>Public Parking</u>						
Construction				500	300	400

<sup>1</sup>Developer reimbursement, unless otherwise noted.

<sup>2</sup>Expected to be reimbursed at no more than 50% of cost, unless developers encounter extraordinary costs and document same.

Mr. Mann explained that previously, the big generator of tax increment revenues was north of Broadway. From this point forward, the situation would be reversed. The bulk of development will be occurring south of Broadway. Mr. Mann explained that when the sewer line that crosses the river is replaced for a larger line, this line could be combined with the pedestrian river bridge in order to disguise the sewer line crossing the river.

Mayor Milam commented that the Idaho Falls Redevelopment Agency has been around for quite a while. The City Council is well acquainted with the work that has been done in the past. More recently, there was a Work Session conducted by the City Council in which a considerable amount of this information was reviewed in detail.

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

Councilmember Eldredge commended the Idaho Falls Redevelopment Agency, Ryan Armbruster and Harlan Mann for the work that they have done. There has been good success with the Redevelopment Agency in the past and he is looking forward to an equally good and productive development to the south of Broadway.

Councilmember Shurtleff questioned whether the pedestrian bridge would be outside of the boundary. Mayor Milam stated that the sewer pipe is as well, except that it will be bringing from that area.

Ryan Armbruster re-appeared to state that this is a tough question. The Idaho Falls Redevelopment Agency does not want to cross the river. It is quite common in Urban Renewal Agencies, when boundaries are described, especially rights-of-way, the far side of the boundary is considered to construct the entire section of the street. The river poses a question and the question of how to append an improvement on the other side. This would be an appropriate use of funds for that purpose, if the agency so desired. He did not know that creating a boundary in the air and across the river would be something that the Tax Commission or the Assessor would be able to determine as accurate. There are no parcels there.

Councilmember Eldredge stated that the land on both sides of the river at the location of the sewer line is owned by the City of Idaho Falls. There would not be any increment.

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The City Attorney stated that the primary purpose for delineating a boundary and limiting the expenditure of funds to properties within that boundary is to insure that tax increment funds are not used to fund other General Fund expenditures outside the increment area. With this particular proposal, the City is providing for the renovation of a structure that would serve the area.

Councilmember Hardcastle stated that with the conclusion of the public hearing, this Ordinance will not be considered at this time. This will be placed on the Council Agenda for the November 14, 2002 Regular Council Meeting.

Mayor Milam requested Councilmember Hardcastle to conduct a public hearing for consideration of a land use change in the Planned Transition-2 (Commercial and High Density Residential) Zone for a retail development of an approximately 9,500 square foot multi-tenant building on property located generally on the north side of East 17<sup>th</sup> Street, west of Cranmer Avenue, south of 16<sup>th</sup> Street, legally described as Lot 42, Block 9, Martins Addition, First Amended. At the request of Councilmember Hardcastle, the City Clerk read the following memo from the Planning and Building Director:

City of Idaho Falls  
October 18, 2002

MEMORANDUM

TO: Mayor and City Council  
FROM: Renée R. Magee, Planning and Building Director  
SUBJECT: SITE PLAN APPROVAL – LOT 42, BLOCK 9, MARTIN'S ADDITION,  
FIRST AMENDED PLAT

Attached is a copy of the site plan submitted by Baker Construction and Development, Inc., for a 9,500 square foot retail center northwest of the intersection of 17<sup>th</sup> Street and Cranmer Avenue. At its October 1, 2002 public hearing, the Planning Commission reviewed a site plan and recommended approval on the conditions a lighting plan be submitted and the proposed access to Cranmer Avenue be replaced with a berm and landscaping to buffer adjacent residential properties from auto headlights. The lighting plan has been submitted to the Department, and the access to Cranmer has been replaced by landscaping and a three-foot berm. The future drive to Cranmer illustrated on the site plan will be constructed when the adjacent residential uses convert to commercial uses. The Planning Department recommends approval of the site plan as submitted to the Council. This site plan 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 Site Plan Approval request:

Slide 1	Vicinity Map showing surrounding zoning
Slide 2	Aerial Photo indicating the subject area
Slide 3	Aerial Photo showing closer view of area under consideration
Slide 4	Site Plan Approved on July 28, 1999

Slide 5	Site Plan
Slide 6	Landscape Plan
Slide 7	Preliminary Front Elevation of Building

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Slide 8	Site Photo showing Cranmer Avenue
Slide 9	Site Photo showing landscape buffer between site and single-family home north of alley
Slide 10	Site Photo looking towards the single-family home east of site and proposed alignment of drive aisle
Slide 11	Site Photo showing home east of site
Slide 12	Site Photo showing intersection of 17 <sup>th</sup> Street and Cranmer Avenue
Slide 13	Site Photo showing approved original lighting plan
Slide 14	Site Photo showing lighting plan
Slide 15	Site Photo showing existing lighting behind Walgreens
Exhibit 1	Planning Commission Minutes dated October 1, 2002
Exhibit 2	Staff Report dated October 1, 2002
Exhibit 3	Site Plan as submitted October 15, 2002

The Planning and Building Director explained that the access to Cranmer Avenue has been closed. On the site plan, a note is found at the access to Cranmer Avenue, that should the property at the corner of 17<sup>th</sup> Street and Cranmer Avenue be converted from a residential use to a commercial use, the developer could open the access to Cranmer. The lighting plan is in accordance with the standards in the PT Zone.

Councilmember Lehto questioned the Planning and Building Director as to access points for this development. The Planning and Building Director stated that there is an access onto 17<sup>th</sup> Street, with a right-turn exit lane, a left-turn exit lane, and an entrance lane. There is also access onto Holmes Avenue. She explained, further, that the access point on Cranmer Avenue is an entrance only.

Joe Stoy, 1104 North Perrine Road, Spokane, Washington, appeared to state that he is with Baker Construction and the designer of this project. He stated that he has met all of the criteria resulting from the Planning Commission Meeting.

Bruce Huffaker, 610 East 16<sup>th</sup> Street, appeared to state that his residence is adjacent to this property. In the Planning Commission Meeting, there was a suggestion to change the design of the building with the "L" shape on the east side of the building, rather than the west side. The reason for the requested design change would be to provide open access to the parking lot in the rear, so that it was more visible and less of an obscured area for young people to congregate. The other reason for the design change would be for the building to provide a buffer to his property, similar to the buffer provided to the people on 16<sup>th</sup> Street. He expressed his concern for the lights that would be installed along the wall. He believed that they would shine on his home as the building is planned. With the "L" shape on the east side of the building, that might provide a buffer from the lighting. He has not seen a proposal for the signing for the new building and expressed his concern for how bright it might be.

June Oler, 685 East 17<sup>th</sup> Street, appeared to express her concern that the walkway will be disturbed with the new development. The Planning and Building Director stated that the berm would be on the west side of Cranmer. The walkway will not be affected. Mrs. Oler expressed her concern for security issues in the area.

Cindy Huffaker, 610 East 16<sup>th</sup> Street, appeared to express her concern for the berms that will be located across from the residence on Cranmer Avenue. She stated that people have been known to cross berms and suggested building a 1-foot concrete barrier that will not be able to be driven across.

Joe Stoy re-appeared to address concerns from the neighbors in the community. He stated that there are no lights proposed for the east side of the new building.

There will be no signage on the residential side of their development. All signs will be placed on the front of the building on sign panels. There will be a monument sign by the large access onto 17<sup>th</sup> Street. Mr. Stoy reassured Mrs. Oler that the walkway would not be taken

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out. There might be a modification to the walkway should the single-family residence on the east side of Cranmer Avenue become commercial. He stated that he has not addressed the issue of changing the design of the building to have the "L" shape on the east side of the building. He stated that he believed that the design as is would accommodate safety better, as the openness is toward the residential side of the development. A brief discussion was held between the developer and the Council regarding the layout of the building. It was determined that the site plan before City Council is what should be considered at this time. Mr. Stoy stated that the berms would be approximately 3 feet high with landscaping.

Bruce Huffaker re-appeared to state that during the public hearing for the Planning Commission, Lieutenant Jared Fuhriman was one of the people who recommended that the building be redesigned for security purposes. He also expressed his concern that should the single-family residence on Cranmer Avenue be used for commercial purposes, and the berms removed, his property would not be protected any longer from the traffic of a commercial development. The other issue regarding the berms, is that there are people who would like to access the alley and they would not think twice about crossing the berms to do that.

Police Chief Livsey appeared to state that the Police Department has not addressed this development issue and that Lieutenant Jared Fuhriman was speaking strictly from a personal standpoint.

Mayor Milam stated that if the residential property on Cranmer Avenue were considered for a commercial use, that proposal would have to be addressed by the Planning Commission and then by the City Council. All requirements would have to be met under the PT Zone.

The Planning and Building Director stated that under the original site plan, there was an access to Cranmer Avenue from this commercial development. At that time it was actually closer to Mr. Huffaker's residence. Under the current plan, the access is moved away from Mr. Huffaker's home by approximately 40 feet.

There being no further comments either in favor of or in opposition to this land use change, Mayor Milam closed the public hearing.

It was moved by Councilmember Hardcastle, seconded by Councilmember Barnes, to approve the site plan for Lot 42, Block 9, Martin's Addition, First Amended Plat, with the condition that the lighting on the rear of the building be no higher than eight feet, the free-standing light at the rear of the building be eliminated, and the lights be pressurized sodium. Roll call as follows:

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

Nay:            None

Motion Carried.

Following a short recess, Mayor Milam requested Councilmember Hardcastle to conduct a public hearing for consideration of an appeal from a decision of the Board of Adjustment for a variance to encroach nine feet into the required twenty-five foot rear yard

for the purpose of building a covered patio on property located generally at 6051 Gleneagles Drive, legally described as Lot 11, Block 8, Fairway Estates Addition, Division No. 9. At the

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request of Councilmember Hardcastle, the City Clerk read the following memo from the Planning and Building Director:

City of Idaho Falls  
October 18, 2002

MEMORANDUM

TO: Mayor and City Council  
FROM: Renée R. Magee, Planning and Building Director  
SUBJECT: APPEAL, VARIANCE REQUEST – LOT 11, BLOCK 8, FAIRWAY ESTATES ADDITION, DIVISION NO. 9

Attached is the variance appeal from Don Potter, 6051 Gleneagles Drive, for a variance to encroach 9 feet into the required 25-foot rear yard to construct a patio cover. On August 27, 2002, the Board of Adjustment considered this variance request and voted 5 to 0 to deny the variance request, since the need for a variance does not result from physical limitations unique to Mr. Potter's property. The Planning Department concurs with the decision of the Board of Adjustment: the lot is a rectangular, flat parcel of 14,800 square feet, rear yards facing west are common to many properties within the City as well as within the zone, and the owner, a building contractor, selected the orientation of his home on the corner lot. This variance request is now being submitted to the Mayor and Council for consideration.

s/ Renée R. Magee

Councilmember Barnes stated that he is an employee of Bank of Idaho, who holds a mortgage security interest in this property and stated that he would withdraw from any discussion and abstain from any decision on this issue. 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 appeal:

Slide 1	Vicinity Map showing surrounding zoning
Slide 2	Aerial Photo indicating the lot under consideration
Slide 3	Site Plan for 6051 Gleneagles Drive
Slide 4	Site Photo showing side view of home and patio at 6051 Gleneagles Drive
Slide 5	Site Photo showing front view of 6051 Gleneagles Drive
Slide 6	Site Photo looking toward new construction to the rear of 6051 Gleneagles Drive
Slide 7	Site Photo showing patio at 6051 Gleneagles Drive and new construction directly behind the patio
Slide 8	Site Photo of deck at 4725 Gleneagles Drive
Slide 9	Site Photo of deck at 5285 Gleneagles Drive
Slide 10	Site Photo of deck at 5325 Gleneagles Drive
Slide 11	Site Photo of deck at 5637 Gleneagles Drive
Slide 12	Site Photo of decks at 5905 Gleneagles Drive
Slide 13	Site Photo of 296 LaCosta

Slide 14	Site Photo of deck at 5995 Gleneagles Drive
Slide 15	Site Photo of 6093 Gleneagles Drive (garage area)
Exhibit 1	Letter from Scott P. Eskelson, Attorney

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- Exhibit 2     Appeal from Don Potter
- Exhibit 3     Findings of Fact and Conclusion of Law – Board of Adjustment
- Exhibit 4     Board of Adjustment Minutes dated August 27, 2002
- Exhibit 5     Staff Report from Board of Adjustment dated August 27, 2002

The Planning and Building Director stated that on a corner lot, one yard has to be at least 25 feet free and open to the sky along the entire width of the lot. The other side has to be at least 7 feet 6 inches in width. The building has to be 30 feet back from the front property line and the street property line. The patio was not shown on the site plan when it was submitted for review. The building permit was taken out in July, 2001. The width of this property on the west side is 131 feet and the depth of the property is 110 feet. In reviewing other properties in this subdivision, 110-foot depth is one of the narrower lots. The 131-foot length is one of the longer lots in the subdivision. The Staff agreed with the Board of Adjustment in that this is a large, flat lot. There are no unique circumstances that the Board of Adjustment could find to justify this variance. The encroachment would be for approximately 30 feet if the variance were approved.

Councilmember Eldredge questioned what options are available if a person wanted to shade a deck or patio area. The Planning and Building Director stated that accessory buildings are allowed and should be 6 feet from the building.

Councilmember Groberg questioned whether the purpose of the 25-foot setback would be for privacy. The Planning and Building Director stated that the purpose of all setbacks is to insure that homes have light and air around them. The Zoning Ordinance addresses open, landscaped areas around each single-family detached home. Privacy is not one of the objectives.

The City Attorney stated that fire protection is an issue. If buildings are spaced further apart, it will diminish fires from leaping from building to building.

Councilmember Groberg questioned what options the owner would have if the appeal were denied. The Planning and Building Director stated that the owner could remove the patio cover or go to District Court.

Councilmember Lehto requested to know the events that led to the construction of this patio cover. The Planning and Building Director stated that the patio cover was constructed while the home was being built. One of the City Inspectors went out to make an inspection and called the homeowners attention to the fact that this cover that was placed on the patio was not in compliance.

Councilmember Hardcastle questioned whether this lot had sufficient area for open area and landscaping. The Planning and Building Director gave an explanation of the areas that were open around the home.

Scott Eskelson, 425 South Holmes Avenue, Attorney for Mr. and Mrs. Don Potter, appeared to present information in the following letter:

Martin and Eskelson,  
PLLC  
October 15, 2002

Mrs. Ida Hardcastle  
President, Idaho Falls City Council  
P. O. Box 50220  
Idaho Falls, ID 83405-0220

Re:            Don Potter

Home @ 6051 Gleneagles Drive, Idaho Falls, ID 83401  
Lot 11, Block 8, Fairway Estates, Division No. 9  
Requested Zoning Variance

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Dear Mrs. Hardcastle and Fellow Councilmembers:

I. Current Status of Matter

I am writing as the representative of Don Potter who is the owner of the lot referenced above. Mr. Potter has previously submitted a request for a variance from the rear yard set back requirements identified in the Idaho Falls Zoning Ordinance. The patio cover currently over the patio of the home extends nine (9) feet into the twenty-five (25) foot minimum rear yard. The requested variance was denied by letter of Todd Meyers dated August 28, 2002 directed to Mr. Potter.

On September 10, 2002, Mr. Potter filed a timely appeal of the denial. He then contacted our office to represent him in presentation of pertinent information to the Idaho Falls City Council ("the Council"). The purpose of this letter is to present the position of Mr. Potter in an organized fashion. It is my hope that by submission of information in this manner the Councilmembers might have an opportunity to study this information prior to the scheduled hearing on October 24, 2002. I believe this will give the Councilmembers a better understanding of the situation and allow a more efficient use of time at the hearing to respond to specific questions.

II. The Applicable Law

The Idaho Falls Zoning Ordinance requires a minimum twenty-five (25) foot rear yard on both interior and corner lots. For accessory buildings no rear yard is required. Mr. Potter seeks a variance from this requirement.

A requested variance must meet two (2) criteria. First, the variance must be necessary due to a unique site characteristic. Second, if those unique characteristics exist, the relief granted must not be contrary to the public interest.

III. The Facts of This Case

Mr. Potter applied for a building permit for construction of a home on this lot. A copy of the plot plan attached to his permit application is attached as "Exhibit A". This plan did not disclose a patio cover on the rear of the home.

During the course of construction, Mr. Potter and his wife were seated on the patio. Mr. Potter and Mrs. Potter noticed that in the summer the patio became so hot as to be virtually unusable without some form of cover. The rear of the Potter home faces directly west. The Potters decided to build a cover over the patio. Because the home is in a very nice area, they wanted the cover to be as attractive as possible. They designed and built a cover integrated into the design of the home.

If the cover were not attached to the home, but was free-standing, no violation of the rear yard requirement would be found. The cost of the cover

was approximately twelve thousand dollars (\$12,000.000) reflecting the fact that this was a design to blend with the upscale home, to not detract from

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neighborhood and, overall to create a covering which would “fit in” with the adjacent neighborhood and maintain high property values.

Mr. Potter is a contractor by profession. In that capacity he interacts with City Building Inspectors on a regular basis. As such, this is not a situation where Mr. Potter was trying to “slide something by” or knowingly violate the City Code. To attempt to do so would only jeopardize his relationship with those personnel he must work with in earning his living. Rather, this is a situation more fairly characterized as “not seeing the forest for the trees”. By that I simply mean that some persons may argue that as a contractor Mr. Potter should be familiar with the requirements of building in the City. This is true. However, in this instance his intense focus (and obvious expense) on creating a nice looking and integrated cover caused him to fail to realize the potential problem with the Zoning Ordinance. When a City Inspector brought the problem to his attention, he immediately sought a variance and has been cooperative.

IV. Position of the Potters

Mr. Potter believes his situation is unique when compared to other similar situations in Fairway Estates (“the Subdivision”). His cover is not a detriment. His surrounding neighbors – those most directly impacted by the cover – do not object to the cover and believe that it actually increases property values in the area. Those neighbors have joined in a consent document submitted with this letter. The cover is not a nuisance. Rather, its quality construction and design are in the public interest – the interest of the surrounding homeowners. To require a removal of the cover at this time would be a significant financial hardship to the Potters.

**A. The Home Could Have Been Oriented In a Different Direction.** Side and rear yard requirements are set, in general, to create some minimum level of privacy for adjacent homeowners. The Potter’s lot is a corner lot. As such, a home could have been constructed facing into a cul-de-sac or onto Gleneagles Drive. If the home had been oriented and built facing the cul-de-sac and had a similar patio cover no violation of rear yard requirements would exist. However, such action would have created less privacy than the current actual construction of the Potter home and the home now being built on Lot 10 (adjacent). The home on Lot 10 is the home closest to the cover and is the home which would be most directly impacted if the variance is granted. This homeowner, Jake Larsen, has no objection to the cover. He has signed the consent document enclosed.

**B. The Situation Is Unique and Yet Is Also Similar to Other Locations in the Subdivision.** Attached to this letter are numbered photographs. Those photographs are identified as follows:

■ Numbers 1, 2, and 3: Photos of the patio cover which is the subject of this variance request.

■ Number 4: A rear view of the home at 5545 Gleneagles Drive showing a rear fence and a patio enclosure. The home is on a cul-de-sac and a patio cover is attached to the far end of the home with staples.

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- Numbers 5 and 6: Home at 290 Pevero Drive showing back deck proximity to front of home at 280 Pevero Drive. Homes are on a cul-de-sac.

- Numbers 7 and 8: Rear photo of home at 200 Pevero Drive showing proximity to home at 210 Pevero Drive. Homes are on a cul-de-sac.

- Number 9: Back porch of home at 250 Pevero Drive in relation to 260 Pevero Drive. Homes are on a cul-de-sac.

- Number 10: Back porch of home at 5995 Gleneagles Drive to home at 6011 Gleneagles Drive.

An examination of the subject cover in Photos 1, 2, and 3 shows it is closest to the home at 6035 Gleneagles Drive. However, the portion of the home at 6035 Gleneagles Drive closest to the cover is the garage. It is that unique aspect of this situation which is why the variance should be granted. To allow the cover to remain will not cause any infringement upon the privacy of the home at 6035 Gleneagles Drive. That home is buffered from the location of the patio on the subject lot by virtue of the garage in between. The privacy objective, which is implicit within the rear yard requirement is met. It is the siting of the subject home in relation to 6035 Gleneagles Drive which make this circumstance unique. The privacy objective is satisfied in a much better fashion than other homes similarly situated which do meet the technical requirements of the rear yard requirement. A few examples are worth noting:

1. Photo 4 shows the home at 5545 Gleneagles. Note how close the enclosed deck area is to the side of the home at 5523 Concord Circle. In particular, please look carefully at the far end of the home in this photo. A close examination shows a cover over a second patio area. The patio satisfies the normal twenty-five (25) foot rear yard requirement. However, the cover is a roll up type cover only temporary attached to the home. This distinction means that no technical violation of the Zoning Ordinance exists. However, please note how much less privacy is maintained than in the subject situation.

2. Photos 5 and 6. These photos show the relationship between the homes at 280 Pevero Drive and 290 Pevero Drive. Please note that the back deck at 290 Pevero Drive which directly overlooks the front and side yard of the adjoining home. Technically, the required distance is maintained, but the lack of privacy and thereby the obvious difference from the situation at hand is noticeable. In such a case a patio cover would be intrusive due to its close proximity to the adjacent home.

3. Photos 7 and 8. These again show two homes in close proximity with a deck on the back of 200 Pevero Drive. This shows the close proximity of the rear patio in 200 Pevero Drive to the living portion of 210 Pevero Drive. Again, in the situation at hand (the Potter home) the patio in question is close only to the garage space of the adjacent house.

4. Photos 9 and 10. These photos again show the proximity of two houses which technically meet the rear yard or side yard requirements but shows the close proximity between a rear patio and living quarters of the

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adjacent home. In those circumstances a patio cover might be intrusive but such is not the case in the situation before the Council.

V. Conclusion

In conclusion, the patio cover of the applicant is an integrated design. It is one which adds to the value and general appearance of the surrounding neighborhood. Surrounding homeowners do not demonstrate objection to the proposed variance. The siting of the subject property is unique in its perspective to the home next door – the patio of the subject is closest only to the garage of the adjacent home, thereby alleviating privacy concerns. The Potters would request that the variance be granted.

Very truly yours,

s/ Scott P. Eskelson  
Scott P. Eskelson

“Exhibit A” – Plot Plan of Home at 6051 Gleneagles Drive

Attachment to Letter:

**CONSENT TO VARIANCE**

The undersigned individuals are residents of Fairway Estates, Division No. 9 Subdivision, Bonneville County, Idaho. The undersigned are aware of the proposed variance requested by Don Potter, owner of the property at 6051 Gleneagles Drive, Idaho Falls, Idaho. The undersigned, as neighbors and adjacent property owners have executed this document to evidence their consent to the granting of such variance and do not have objection to the same. The undersigned believe the patio cover in question is of an attractive design and is not detrimental to property values in the area. The undersigned further acknowledge that this is a unique situation and that the grant of a variance in this case would not constitute grounds or precedent for any future variance in the Subdivision.

s/ Jake Larsen  
Name: Jake Larsen  
Address: 6035 Gleneagles  
Idaho Falls, Idaho 83402

s/ Rebecca Griffeth  
Name: Rebecca Griffeth  
Address: 6093 Gleneagles  
Idaho Falls, Idaho 83402  
Date: October 10, 2002

s/ Dan Bird  
Name: Dan Bird  
Address: 6027 Gleneagles  
Idaho Falls, Idaho 83402  
Date: October 10, 2002

s/ D. Scott Brockway  
Name: D. Scott Brockway  
Address: 5995 Gleneagles  
Idaho Falls, Idaho 83402  
Date: October 14, 2002

Mr. Eskelson stated that the Potters have agreed to not enclose the patio area in the future for any reason. This is not an attempt to provide further living space to the home. He requested that if the Potters were instructed to remove the patio, and due to the end of the construction season and approach of the winter season, that there might be concession

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made to wait until the weather is such that this can be accomplished. Mr. Eskelson explained, further, that when this patio cover was caught by the Building Inspector, Mr. Potter stopped construction and made application for a variance. In addition to the potential removal, the homeowner does not currently have a Certificate of Occupancy on the home that would allow for the closing of the final financing on the home.

Councilmember Lehto requested to know the time line of the construction of the home. Mr. Eskelson stated that the cover was already constructed at the time that the Building Inspector was driving by this area and brought it to Mr. Potter's attention. The application for the variance was submitted to the Board of Adjustment on June 18, 2002.

Councilmember Groberg stated that this patio cover does not appear to be an ugly, obtrusive or out of place improvement based on the photographs that have been shown. He stated that he had not seen anything that would suggest any reason for allowing digression from the Zoning Ordinance, other than just building the patio cover. Mr. Eskelson stated that there is some aspect of that, plus the way the garage is placed on the home next door. If the Potter home had been oriented the other way, because of the minimum side yards permitted, there might have been two homes that were closer together. Councilmember Groberg stated that he did not see the relevance of not objecting to the variance. If he wanted to build a house in some manner other than what the Zoning Ordinance allowed, the fact that the neighbor consented would not justify that.

Councilmember Shurtleff questioned that if the patio cover were not attached, it would be alright. The Planning and Building Director stated that a detached accessory building could be put right up to the property line under the Zoning Ordinance. If the patio cover were detached by at least six feet, it would be allowed in the twenty-five foot rear yard. Councilmember Shurtleff requested the Planning and Building Director to define why there is a side yard requirement. The Planning and Building Director stated that the main building has to have a certain amount of open space around it and such accessory buildings may cover no more than thirty percent of the rear yard.

There being no further discussion either in favor of or in opposition to this variance appeal, Mayor Milam closed the public hearing.

Councilmember Lehto requested the Planning and Building Director to review the time line for this building construction. The Planning and Building Director stated that the applicant applied to the Board of Adjustment on June 18, 2002 for a variance.

Councilmember Shurtleff stated that there are certain inspections that need to be made during construction. At the time that the roof was under construction, this problem should have been addressed. The Planning and Building Director stated that there are five required inspections during construction. If the inspection were called for at that time, then this problem would have been caught.

Councilmember Hardcastle stated that denying this variance would be strictly adhering to the law. She, also, stated that she was bothered that Mr. Potter is in the construction business and should have known better.

Councilmember Lehto stated that he would be more troubled if he had found out that the inspector was ignored and the process for a variance was not initiated.

Councilmember Hardcastle stated that she was inclined to make a motion to grant the variance, as she was not speaking about the letter of the law, but the spirit of the law. There is a great deal of open space surrounding this lot. She again stated that Mr. Potter did not do his business, as he should have. She stated, further, that she could not in good conscience make a motion to deny this variance request, due to the fact that the neighbors are all right with the patio cover and the circumstances surrounding it.

It was moved by Councilmember Hardcastle, seconded by Councilmember Groberg, to grant the variance since the depth of the lot is only 110 feet, one of the narrower lots in Fairway Estates, and the neighbors to the west (the most effected neighbors) are building a garage to the side adjacent to the patio cover in this particular Subdivision.

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Councilmember Groberg stated that the facts that Councilmember Hardcastle has expressed could be justified as creating a sufficiently unique situation. The purpose of having large open spaces around buildings has been met.

Councilmember Eldredge commented that Mr. Potter, being a Contractor, probably does know the rules. It appears to be a case of getting forgiveness instead of permission. He stated that he believed that the Board of Adjustment made the correct decision in denying the request, because there are no physical limitations. It is a standard lot. Mr. Potter should have foreseen the problem with this patio cover and taken steps accordingly. Councilmember Eldredge stated that he does not support this particular request.

Roll call as follows:

Aye: Councilmember Groberg  
Councilmember Shurtleff  
Councilmember Hardcastle

Nay: Councilmember Eldredge  
Councilmember Lehto

Abstain: Councilmember Barnes

Motion carried.

Mayor Milam expressed her concern about a pattern developing regarding appeals from the Board of Adjustment. There has been case after case of people who should have known better, who are either in the business or knew well the people who were doing the work for them. The Board of Adjustment has done the job that the City has required of them and the person who had requested the variance has appealed. In each individual case, taken by itself, it could be argued either way. She stated that she sees a disturbing trend of getting far into the construction of something, then getting permission from neighbors and apologizing for what has been done. If these were anticipated ahead of time, most of the problems could have been avoided. If the City is going to have standards and rules, they must be enforced. If the standards and rules are not to the liking of the Council, then they need to be changed.

Councilmember Groberg stated that in the Board of Adjustment Minutes, the Board was bound by the rules that they could follow, but that the City Council had more latitude, suggesting to these people that they appeal to the City Council. Councilmember Hardcastle said that her instinct told her that this would not do any harm. He stated that it could do harm in the sense that it may create a sense of precedent. The City Council exercises its function in an equitable fashion.

The Idaho Falls Power Director submitted the following memo:

City of Idaho Falls  
October 18, 2002

MEMORANDUM

TO: Honorable Mayor and City Council  
FROM: Mark Gendron, Idaho Falls Power Director

SUBJECT: SECOND REVISED CONSERVATION AND RENEWABLE  
RESOURCES SERVICE SCHEDULE WITH IDAHO ENERGY  
AUTHORITY

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Attached is the Second Revised Conservation and Renewable Resources Service Schedule between Idaho Falls Power and the Idaho Energy Authority. The City Attorney has reviewed this Agreement.

Idaho Falls Power respectfully requests Council authorization for the Mayor to execute this Agreement.

s/ Mark Gendron

It was moved by Councilmember Lehto, seconded by Councilmember Shurtleff, to approve the Second Revised Conservation and Renewable Resources Service Schedule between Idaho Falls Power and the Idaho Energy Authority and, further, give authorization for the Mayor and City Clerk to execute the necessary documents. Roll call as follows:

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

Nay: None

Motion Carried.

The Planning and Building Director submitted the following memo:

City of Idaho Falls  
October 18, 2002

MEMORANDUM

TO: Mayor and City Council  
FROM: Renée R. Magee, Planning and Building Director  
SUBJECT: ORDINANCE NAMING FRONTAGE ROAD IN SUNNY HEIGHTS  
ADDITION, DIVISION NO. 1

Attached is the Ordinance naming the frontage road in Sunny Heights Addition, Division No. 1, Sunny Heights Lane. This frontage road is located north of the Sunnyside Road and west of South Boulevard. The Ordinance also clarifies the frontage road is accepted and dedicated as a public street. The Division respectfully requests consideration and passage of this Ordinance.

s/ Renée R. Magee

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

**ORDINANCE NO. 2464**

AN ORDINANCE NAMING THE FRONTAGE ROAD IN  
SUNNY HEIGHTS ADDITION, DIVISION NO. 1;  
PROVIDING FOR ITS DEDICATION AS PUBLIC

STREET; PROVIDING WHEN THIS ORDINANCE  
SHALL BECOME EFFECTIVE.

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The foregoing Ordinance was presented by title only. Councilmember Hardcastle moved, and Councilmember Barnes 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:

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

Nay: None

Motion Carried.

The Public Works Director submitted the following memos:

City of Idaho Falls  
October 21, 2002

MEMORANDUM

TO: Honorable Mayor and City Council  
FROM: Chad Stanger, Public Works Director  
SUBJECT: CHANGE ORDER NO. 1 – PANCHERI DRIVE/UTAH AVENUE  
INTERSECTION IMPROVEMENTS

Attached is proposed Change Order No. 1 to the Pancheri Drive/Utah Avenue Intersection Improvement Project. As proposed, this Change Order establishes unit prices for utility and paving work not originally anticipated in the project for an estimated additional total cost of \$34,000.00.

Public Works recommends approval of this Change Order; 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 Change Order No. 1 to HK Contractors, Inc. for the Pancheri Drive/Utah Avenue Intersection Improvements Project and, further, give authorization for the Mayor to execute the necessary documents. Roll call as follows:

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

Nay: None

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Motion Carried.

City of Idaho Falls  
October 21, 2002

MEMORANDUM

TO: Honorable Mayor and City Council  
FROM: Chad Stanger, Public Works Director  
SUBJECT: ANNEXATION AGREEMENT AMENDMENT – SPRING CREEK  
ADDITION, DIVISION NO. 3

Attached is a proposed Amendment to the Annexation Agreement for Spring Creek Addition, Division No. 3. If approved, the amended agreement allows the developer to be reimbursed for water line front foot fees as collected on a line installed by the developer.

Public Works recommends approval of this amendment; 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 Amendment to the Annexation Agreement for Spring Creek Addition, Division No. 3 and, further, give authorization for the Mayor and City Clerk to execute the necessary documents. Roll call as follows:

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

Nay: None

Motion Carried.

Mayor Milam requested Councilmember Barnes to take the Council Committee Assignments that were held by Councilmember Rose: Chairman for the Planning and Building Division; Co-Chairman for the Public Works Division; and, Liaison for the Library Board.

There being no further business, it was moved by Councilmember Eldredge, seconded by Councilmember Lehto, that the meeting adjourn at 10:05 p.m.

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CITY CLERK

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MAYOR

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