

AUGUST 8, 2002

The City Council of the City of Idaho Falls met in Regular Council Meeting, Thursday, August 8, 2002, in the Council Chambers at 140 South Capital Avenue in Idaho Falls, Idaho.

There were present:

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

Also present:

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

Mayor Milam and Councilmembers honored the following retirees by presenting them with watches and/or gift certificates: Edie Fowler (Utility Department – Watch); Andre (Dee) Brown (Police Department – Gift Certificate); Farrell Tracy (Engineering Department – Pocket Watch); and, Fire Chief Bob Drake (Fire Department – Watch).

The City Clerk read a summary of the minutes for the July 25, 2002 Regular Council Meeting. It was moved by Councilmember Eldredge, seconded by Councilmember Groberg, that the minutes be approved as printed. Roll call as follows:

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

Nay: None

Motion Carried.

CONSENT AGENDA ITEMS

Mayor Milam requested Council confirmation for the appointment of Dean Ellis to serve as the Fire Chief.

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

The City Clerk presented several license applications, including BARTENDER PERMITS to Leon Bailey, Frankie Bentley, Lynda Eddy, Lisa M. Erickson, Terry Gohr, Russell W. Hooker, John T. Jones, Linda L. Jones, Debbie Koontz, Ryan Liljenquist, Bonnie Mallo, Mark M. Moorefield, Sindy M. Moorefield, Patti J. Payne, Ronald H. Raymond, Laney Robertson, Kayleen Sessions, Elissa A. Sierra, Richard P. Snyder, Tonya Stevenson, William J. Waters, Dora M. Woolsey, and Ron Wright, all carrying the required approvals, and requested authorization to issue these licenses.

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The City Clerk requested Council ratification for the publication of legal notices calling for public hearings on August 8, 2002.

The Public Works Director submitted the following memo:

City of Idaho Falls
August 5, 2002

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: Chad Stanger, Public Works Director
SUBJECT: BID AUTHORIZATION – DOWNTOWN PARKING DEVELOPMENT
AND RENOVATION, EASTERN AVENUE, FROM ELM TO ASH

Public Works requests authorization to advertise to receive bids for the Downtown Parking Development and Renovation, Eastern Avenue, from Elm to Ash.

s/ Chad Stanger

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

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

Nay: None

Motion Carried.

Mayor Milam introduced Dean Ellis as the new Fire Chief. Chief Ellis responded with a few comments regarding the Fire Department. Mayor Milam stated that she has had many great comments about Chief Ellis' integrity.

REGULAR AGENDA ITEMS

Following a brief recess, the City Clerk presented the following Expenditure Summary dated July 1, 2002 through July 31, 2002, after having been audited by the Fiscal Committee and paid by the Controller:

| <u>FUND</u> | <u>TOTAL EXPENDITURE</u> |
|--------------------------------------|---------------------------------|
| General Fund | \$644,617.13 |
| Street Fund | 38,259.09 |
| Recreation Fund | 19,009.14 |
| Library Fund | 48,483.54 |
| Municipal Equipment Replacement Fund | 55,197.01 |
| Electric Light Public Purpose Fund | 32,387.44 |

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| FUND | TOTAL EXPENDITURE |
|--|--------------------------|
| Business Improvement District | 98,492.43 |
| Sanitary Sewer Capital Improvement Fund | 30,735.35 |
| Municipal Capital Improvement Fund | 9,509.94 |
| Street Capital Improvement Fund | 508.00 |
| Surface Drainage Fund | 2,596.70 |
| Airport Fund | 448,758.65 |
| Water and Sewer Fund | 796,628.15 |
| Sanitation Fund | 82,026.37 |
| Ambulance Fund | 5,105.05 |
| Electric Light Fund | 1,902,186.50 |
| Payroll Liability Fund | 1,744,900.32 |
| Airport Fund Certificates of Participation | 676,226.82 |
| TOTALS | \$7,635,627.63 |

It was moved by Councilmember Eldredge, seconded by Councilmember Groberg, to ratify the payment of the expenditures for the month of July, 2002. Roll call as follows:

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

Nay: None

Motion Carried.

Mayor Milam requested Councilmember Rose to conduct a public hearing, as legally advertised, for consideration of an appeal from a decision of the Board of Adjustment for a variance to encroach 7-1/2' into the required 30' front setback to construct a covered deck onto an existing single-family residence on property located generally at 426 East 22nd Street, legally described as Lots 13, 14, and the East Half of Lot 15, Block 24, Brodbeck's Addition. At the request of Councilmember Rose, the City Clerk read the following memo from the Planning and Building Director:

City of Idaho Falls
August 2, 2002

MEMORANDUM

TO: Mayor and City Council
FROM: Renée R. Magee, Planning and Building Director
SUBJECT: APPEAL FROM BOARD OF ADJUSTMENT, 426 EAST 22ND STREET

Attached is the appeal and application for a variance on Lots 13, 14, and the east one-half of Lot 15, Block 24, Brodbeck's Addition. The purpose of the variance is to construct a front porch which measures 6 feet by 14 feet and will encroach into the front setback four feet. The average front setback on this

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portion of East 22nd Street is 26-1/2 feet, according to the applicant. The porch extends to 22-1/2 feet from the sidewalk. The Board found the property has no unique physical limitations and, therefore, denied the variance. The vote was 4 to 3. The Department concurs with the decision of the Board. The appeal is now being submitted to the Mayor and Council for approval.

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 appeal:

| | |
|-----------|---|
| Slide 1 | Vicinity Map showing surrounding zoning |
| Slide 2 | Aerial Photo |
| Slide 3 | Building Footprints in general area of East 22 nd Street |
| Slide 4 | Site Plan |
| Slide 5 | Site Photo of property east of site |
| Slide 6 | Site Photo of 426 East 22 nd Street |
| Slide 7 | Site Photo – View of Porch |
| Slide 8 | Site Photo of property to the north of the site |
| Slide 9 | Site Photo north of site |
| Exhibit 1 | Appeal to Council |
| Exhibit 2 | Application |
| Exhibit 3 | Board of Adjustment Minutes dated June 11, 2002 |

The Planning and Building Director explained that this area is unique in and of itself, as it is isolated by the canal and by Holmes Avenue. The Zoning Ordinance has a provision on blocks that are already established, the average setback is used. The average setback on this block is 26-1/2 feet. The applicant's home is the only two-story home on this block. The Board of Adjustment, under a split vote, found that there were no unique characteristics to this property. It is a rectangular lot and large enough for the R-1 Zone. The owner purchased this property understanding the limitations at the time he purchased it. Staff reviewed this issue to determine whether the age of the property presented any unique characteristics. There are four properties along this street that are the same age or older.

Councilmember Rose requested to know whether the porch would extend beyond that pictured. The Planning and Building Director stated that the porch that is pictured in Slide 7 is the size of the porch. It would also have eaves constructed that would extend beyond the foundation. This would extend the porch 4 feet into the required setback.

Councilmember Groberg stated that the applicant has most of the neighbors concurring with the construction of the porch. The Planning and Building Director stated that this was true.

Councilmember Lehto questioned the Planning and Building Director as to how the applicant got to this point. The Planning and Building Director stated that there was not a building permit issued for this porch.

Councilmember Shurtleff requested to know what was present before this porch was started. The Planning and Building Director stated that the applicant informed her that there was a concrete stoop. She further explained that unroofed porches, steps, and terraces could encroach into the setback. When a roof is constructed over the porch, that becomes the issue.

Councilmember Hardcastle requested to know whether there were setback requirements when the house was moved to this location. The Planning and Building Director stated that there were no setback requirements in 1940. The first Zoning Ordinance was not adopted until the late 1940's or early 1950's.

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David Vineyard, 426 East 22nd Street, appeared as the applicant. He stated that the home originally had a concrete stoop. When he purchased the house, there was a wooden deck similar to the one he is building. The deck that he is building is shorter than the one that he removed. He shared the following prepared statement with the Mayor and City Council.

August 8, 2002

To: The Mayor and City Council Members of the City of Idaho Falls

FROM: R. David Vineyard, 426 East 22nd Street, Idaho Falls, Idaho

Dear Madam Mayor and Council Members:

I am here to appeal the decision of the Board of Adjustment on my request for a variance. I feel that the Board of Adjustment made the wrong decision and I request that this Board overturn their decision based on the following reasons:

1. My request is reasonable. Putting a small covered porch on the front of my house will be a welcomed addition to my neighborhood and to the community. I have widespread support from my neighbors as demonstrated by the numerous signatures on the letter addressed to the Board that is included in the packet I provided. Among the signatures is every neighbor on my street along with the signatures of many other homeowners who live on the surrounding streets.

2. My request fits in with the nature and character of the neighborhood. On my block there is a wide variety of home styles and setbacks from brick Rambler to pre-manufactured. Setbacks range from 37 to only 16 feet. My project will not conflict with the harmony of the neighborhood. With such a variety of home styles, there are 11 homes and nine different home types on my block, anything that improves the look and appeal of one home will in fact improve the appeal of the entire neighborhood. I have provided sketches of what the porch will look like when it is completed.

3. The dissenting members of the Board of Adjustment cited a state statute and voted no saying that I did not meet the requirements for granting a variance. I was not allowed to refute their argument. There was not enough discussion on what the real intent of the law is and how we want it applied in our community. We as citizens should decide what our community looks like.

4. Now, to speak to the unique characteristics of my lot. My home was built outside of Idaho Falls and moved to its current address in 1940. The house was put in place long before the City even had zoning regulations. That is a unique characteristic by itself. It was simply placed too close to the street. My house is the only one of its kind in the entire neighborhood. That also makes it unique. This style of home lends itself to having a porch. When this house was originally built it most likely had a porch, which was not kept when the house was moved. So, from a historical perspective a porch would be warranted. The street that my home is located on is locked in by canals on either end. Therefore, it is very unlikely that there will ever be more improvements or a need to widen the street. Please keep in mind that there is a six-foot wide

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parking strip by the curb and that my porch will still be over 34 feet from the street.

5. My variance request is small. Officially, my request is to encroach 7.5' into the setback. After measuring again, the encroachment will be closer to only 7' and if you take into account that the average setback on my street is under 26.5' my variance will really be less than 4 feet. That is only about 15% of the required setback.

6. Another unique characteristic of my home is that it is north facing. As a safety issue, ice and snow simply don't melt away in winter. I have a daughter who is mentally disabled and physically challenged. She receives both physical and occupational therapy to help her with her balance, her strength, her stride and her sensory awareness. When you or I slip on ice, our brain reacts in a millisecond and we quickly catch ourselves and stay on our feet. When Emily slips, her brain can't react that quickly. I want to provide her with a sure-footed entry into our home. I have owned this home for over 10 years. In that time, we have never had a covered entry and I want to provide one for her.

Since the meeting of the Board of Adjustment, I have researched and studied variances and zoning laws. I read as much as I could preparing for this appeal. I now know that the reasons for granting a variance are as wide ranging as the reasons people request them. But the one underlying tone I found was that the burden of proof, as to the unique physical characteristic of a lot, is very low for the homeowner. As long as the request meets with the spirit of the law and is in harmony with community standards the variance should be granted with very little reasoning. I have enumerated several ways that you can find my property unique. Any one of which would constitute reason enough to grant my request.

If I would have had the opportunity to present this same argument to the Board of Adjustment, I am confident that meeting would have come to a different and positive result.

Thank you for your attention and hearing my appeal. I leave myself open to your questions on the matter and hope that as you debate the issue that I may be included in your discussion. I would also like to thank you in advance for voting favorably in my behalf.

Very truly yours,

s/ R. David Vineyard
R. David Vineyard

August 1, 2002

To: The Mayor and City Council Members for the City of Idaho Falls

From: Neighbors and Homeowners who reside near the Vineyards and in the vicinity of their home at 426 East 22nd Street, Idaho Falls

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Subject: Support of variance request for the Vineyards, 426 East 22nd Street, Idaho Falls

Dear Madam Mayor and Council Members:

We, the undersigned are neighbors and homeowners who live near the Vineyards, in the vicinity of 426 East 22nd Street.

We wish to make it known that we support the Vineyard's request for a variance. We believe that their home improvement will not only add to the beauty, functionality, value and safety of their property but also, that it would add to the beauty, desirability and value of the entire neighborhood.

Once again, we fully support their request and we respectfully request that it be granted. Thank you.

Kristie Martin
s/ Kristie Martin
414 East 22nd Street

LeeAnne Hodge
s/ LeeAnne Hodge
475 East 22nd Street

Wendy Wallace
s/ Wendy Wallace
442 East 22nd Street

Darren Campbell
s/ Darren Campbell
437 East 22nd Street

Scott Archibald
s/ Scott Archibald
455 East 22nd Street

Leonard Powell
s/ Leonard Powell
421 East 22nd Street

Nancy Tatham
s/ Nancy Tatham
420 East 22nd Street

Louis Gunerud
s/ Louis Gunerud
2183 South Higbee

Laura Lynch
s/ Laura Lynch
405 East 23rd Street

Rick Phillips
s/ Rick Phillips
380 East 21st Street

Jesse Robbins
s/ Jesse Robbins
455 East 23rd Street

Robert Hansen
s/ Robert Hansen
341 East 22nd Street

Michael Wallace
s/ Michael Wallace
445 East 23rd Street

Michele Hiatt
s/ Michele Hiatt
350 East 22nd Street

Robert B. Moncur
s/ Robert B. Moncur
423 East 23rd Street

Verna C. Olsen
s/ Verna C. Olsen
324 East 22nd Street

Joyce Moncur
s/ Joyce Moncur
423 East 23rd Street

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Also, attached to Mr. Vineyard's packet were the following:

Photo of home with sketch of porch overlaid.
Sketch of porch and measurements.

Councilmember Rose requested Mr. Vineyard to answer Councilmember Lehto's question regarding how he got to this point. Mr. Vineyard stated that he had a wooden deck on his house. In early May, he began the process of applying for a building permit. He also found out that he would require a variance to be able to construct the porch. He was on vacation at the time and did not want to waste valuable time, so he began reconstruction on the deck portion of the porch. He put the posts in place, thinking that he could gain approval for the variance, and continued with the construction.

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

Councilmember Rose questioned the Planning and Building Director regarding whether State Statute governs this variance or if the City of Idaho Falls Zoning Ordinance takes precedent. The Zoning Ordinance governs the variance requirements, but the Zoning Ordinance is based upon State Statute. The State Statute says that variances will be granted due to physical limitations on the property that are due to the physical characteristics of the property and that there will be no general harm to the neighborhood.

Councilmember Hardcastle requested to know whether the information presented by Mr. Vineyard was presented to the Board of Adjustment. The Planning and Building Director stated that the age of the home was presented to the Board of Adjustment. The rest of the information was not presented at that time.

Councilmember Eldredge requested to know if the sidewalk was constructed with no parking strip, if the Council would be considering this issue at this time. The Planning and Building Director stated that the paving width of the street is narrower to accommodate the parking strip. The right-of-way is the same as is required at this time. Mr. Vineyard would still be addressing the variance issue.

Councilmember Rose questioned the criteria for requiring a variance. The Planning and Building Director stated that State Statute provides for two criteria, which were addressed earlier. The Zoning Ordinance provides for four criteria. The first is physical limitations on the property that are due to the physical characteristics of the property; the second is that there will be no general harm to the neighborhood; the third is that the issue not be self-created by the property owner; and, the fourth is that it be in accordance with the Comprehensive Plan (allowing light, air, and meeting the general standards of the plan).

Councilmember Groberg stated that the request is very reasonable. The Board of Adjustment was torn also, as shown by the 4-3 vote. The criteria can be expanded to find the unique characteristics of this property. The house was moved onto this property prior to the establishment of the Zoning Ordinance. The request for the variance is for the benefit of a child with physical limitations coupled with the fact that he is limited with what he can do. There is no other way that he can have that type of protection, making this a unique situation. The fact that almost every neighbor agrees with this porch addition, suggests that there is no nuisance or problem. He suggested that most of the homes on that block would have unique circumstances that could be considered upon such a request.

Councilmember Eldredge stated that the 6-foot wide parking strip adds a unique characteristic to the lot. It is not wholly unique, but the intent of the setback is to insure that we are not too close to the road and provide that margin of safety to people. If the sidewalk were by the roadway instead of 6 feet back, there would be more than a 30-foot distance between the edge of the sidewalk and his home.

It was moved by Councilmember Rose, seconded by Councilmember Hardcastle, to grant the variance request on property located generally at 426 East 22nd Street, legally

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described as Lots 13, 14, and the East Half of Lot 15, Block 24, Brodbeck's Addition as requested. Roll call as follows:

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

Nay: None

Motion Carried.

Councilmember Rose thanked the Board of Adjustment for their hard work and diligence in making their decisions.

Mayor Milam requested Councilmember Rose to conduct a public hearing, as legally advertised, for consideration of a rezoning from PB (Professional Business) to R-3A (Apartments and Professional Offices) on property located generally north and south of Alan Street, west of Hoopes Avenue, legally described as Lot 3, Block 1, and Lot 5 Block 2, R & V Park Addition. At the request of Councilmember Rose, the City Clerk read the following memo from the Planning and Building Director:

City of Idaho Falls
August 2, 2002

MEMORANDUM

TO: Mayor and City Council
FROM: Renée R. Magee, Planning and Building Director
SUBJECT: REQUEST TO REZONE LOT 3, BLOCK 1, AND LOT 5, BLOCK 2, R & V PARK ADDITION FROM PB TO R3-A

Attached is the application to rezone Lot 3, Block 1, and Lot 5, Block 2, of R & V Addition from PB (Professional Business) to R3-A (Apartments and Offices). The property is located on the west side of the intersection of Hoopes Avenue and Alan Street. After its July 2, 2002 public hearing, the Planning Commission recommended the parcels be rezoned R-2 (Four-plexes), not R3-A. The Department concurs with this recommendation. The application is now being submitted to the Mayor and Council for approval.

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 rezoning request:

Slide 1 Vicinity Map showing surrounding zoning
Slide 2 Aerial Photo
Slide 3 Land Use Map
Slide 4 Site Photo of Block 2, Lot 5 looking towards the north
Slide 5 Site Photo of Block 1, Lot 3 looking towards the south
Slide 6 Site Photo of northeast corner of Hoopes Avenue and Alan Street

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| | |
|-----------|---|
| Slide 7 | Site Photo of southeast corner of Hoopes Avenue and Alan Street |
| Slide 8 | Site Photo looking north of site, north of Alan Street |
| Slide 9 | Site Photo looking west at site, south of Alan Street |
| Exhibit 1 | Application for Rezoning |
| Exhibit 2 | Planning Commission Minutes dated July 2, 2002 |

The Planning and Building Director stated that this is the third time that this request has been to the Planning Commission and City Council to rezone these particular lots to R3-A. The first request to rezone to R3-A was when the PB Zone was approved. The applicant wanted to build professional offices and it was felt that the professional offices would not aggravate the parking problem that already existed at this location. Another request was turned down. The Staff agrees with the Planning Commission recommendation in terms of land use. This area is primarily single-family. There are three four-plexes already at the entry. Rezoning this area to the R-2 Zone would allow for two more four-plexes, but it would not allow the density that would be seen in an R3-A Zone. In an R3-A Zone, 35 units per acre can be developed, assuming that the necessary parking and landscaping can be provided for. The Planning Commission and Staff recommend that this property be retained in the PB Zone or be zoned R-2.

Councilmember Eldredge requested to know whether the developer was trying to develop multi-family housing or professional businesses. The Planning and Building Director stated that the developer is looking at multi-family for at least one lot and was undecided on the other property. Councilmember Eldredge requested to know how large the lots were. The Planning and Building Director stated that the northern lot has at least 9,000 square feet, with the southern lot being at least 15,000 square feet.

Councilmember Groberg requested the Planning and Building Director to explain parking requirements for R3-A or R-2 Zones. The Planning and Building Director explained that two parking spaces are required per unit and that the existing four-plexes are not using the garages and are parking in the street, causing a problem with parking in the area. She also explained that the PB Zone is a good entryway into single-family residential. If PB is not used as an entryway to single-family residential, then a lower density residential is a good alternative.

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

Councilmember Eldredge questioned whether the applicant would favor R-2 Zoning or would he rather keep the PB Zoning. Mayor Milam directed attention to the Planning Commission Minutes in which the applicant was agreeable with R-2 Zoning, which would allow four-plexes, on both lots. The applicant replied he would not be opposed to R-2 Zoning on the northern lot. The southern lot requires more flexibility for either PB or apartments, and R-3A is the desired zoning.

Councilmember Lehto stated that in the absence of the applicant, he would prefer to leave the lots zoned PB.

It was moved by Councilmember Rose, seconded by Councilmember Hardcastle, to rezone Lot 3, Block 1 and Lot 5, Block 2, of R & V Addition from PB to R-2 and that the City Planner be instructed to reflect said zoning change on the official zoning map located in the Planning Office. Roll call as follows:

Aye: Councilmember Shurtleff
 Councilmember Hardcastle
 Councilmember Rose
 Councilmember Eldredge
 Councilmember Groberg

Nay: Councilmember Lehto

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Motion Carried.

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

City of Idaho Falls
August 5, 2002

MEMORANDUM

TO: Mayor and City Council
FROM: Renée R. Magee, Planning and Building Director
SUBJECT: ANNEXATION AND INITIAL ZONING – WESTRIDGE COMMERCIAL PLAZA, DIVISION NO. 1

Attached are the Annexation Agreements, Annexation Ordinance, and Final Plat for Westridge Commercial Plaza, Division No. 1. The requested initial zoning is C-1 (Limited Retail) on Lot 1, Block 1, and the northern unplatted portion and PB (Professional Business) on Lots 2 and 3, Block 1. The unplatted portion is the northern most five acres and is anticipated to be the storm water retention pond for the area. The Final Plat, Westridge Commercial Plaza, Division No. 1, is the southern portion of 27 acres. There are two Annexation Agreements to cover this request, one for the unplatted portion and one for the Final Plat. The Planning Commission considered this annexation request and a similar plat at its February 5, 2002 Meeting. The Commission recommended approval with the conditions there be a landscape buffer on the east side of the plat, a twenty-foot utility/landscape easement along Pancheri Drive, and twelve feet of landscaping along the north of the PB zone. A twenty-foot utility/bike easement has been placed on the Plat and the Annexation Agreement provides for landscaping and a wall on the east side of the Plat. The Department recommends the annexation and accompanying documents be approved. This annexation request is now being submitted to the Mayor and Council for approval.

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 | Aerial Photo with Final Plat superimposed |
| Slide 4 | Preliminary Plat |
| Slide 5 | Final Plat |
| Exhibit 1 | Planning Commission Minutes dated February 5, 2002 |
| Exhibit 2 | Staff Report dated February 5, 2002 |
| Exhibit 3 | Letter from Steve McCormick dated February 22, 2002 as follows: |

February 22, 2002

Idaho Falls Mayor Linda Milam and City Council

Subject: Annexation, Final Plat, and Initial Zoning on Westridge Commercial Plaza, Division No. 1

There are several design features that should be incorporated into this zoning request and/or building permit.

1. The height of the building in the development should not exceed one-story, especially lots 2 and 3.
2. The existing ground level should be maintained in the proposed development. No additions to the grade should be allowed such that new buildings would be higher than a one-story home.
3. A vegetative buffer must be required on the south side of Pancheri Road directly across from the proposed development. At minimum, a vegetative buffer zone must be required on the north side of Pancheri along the proposed development. The zone should be the type of vegetation that will grow to at least 30 feet high and planted within 12 months of approval of the project. If the development is approved for a two-story building the vegetative buffer zone should be at least 40 feet high.
4. Any outside lighting, such parking lot lighting, sign lighting, etc., must be limited to ground level (4-feet or less high). In addition, the period of lighting should not extend beyond 10:00 p.m., which would require automatic timers on the electrical system to shut off any outside lighting.
5. Any signage associated with the proposed development must be less than 6-feet high, unlighted, affixed to the ground (not the building). Any sign lighting that is approved should be directed at the sign rather than an internally lighted sign. Also, the period of sign lighting should not extend beyond 10:00 p.m.
6. It seems apparent that the Pancheri Road extension recently completed by the County was modified from its original design to accommodate this development. The original planning called for a gentle bend in the road toward the north rather than a sharp bend (as shown on the plat). The gentle bend would have directed traffic away from the homes in the subdivision along Pancheri Road. In addition, the road was constructed to an excessive height. Concrete barriers slapped-up along the south edge of the road to prevent a possible slide-off from rolling into the backyard of the adjacent homes; not very safe for drivers or homeowners. It appears to be a pretty shoddy road design and excessively expensive given the amount of fill material that was hauled to the roadbed. The only possible reason I can see that for this type of design is to accommodate the developer who also wants to raise the grade on the proposed development. Please do not allow this to happen! The height of the grade should be kept at its present level and the overall height of the buildings, signs, or any other feature in the development should be kept at the height of a one-story residential home.

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7. All drainage on the proposed development should be managed within confines of the property and a plan showing the drainage should be required by the City as part of the building permit. No runoff should be allowed to leave the property or inadvertently allowed to escape to the subdivision across the road. As part of the building permit, the developers should formally assume responsibility for any flooding from the proposed development to the adjacent subdivision. In the 11 years that I have lived at 949 Lowell Drive there has been no flooding on the subdivision lots from this adjacent property. It should remain that way.

8. All of the above comments approved by the City should be incorporated into the building permit.

Thank you for the opportunity to comment on the proposed development. One of my comments refers to Pancheri Road extension. Overall this road is a welcome addition to the west side of the City, even though it was constructed with little thought for adjacent property use and sound engineering. I would urge the Council to avoid creating these types of problems by looking critically at this project and incorporating features that allow the development to be buffered from existing uses.

Thank you,

s/ Steve McCormick
Steve McCormick
949 Lowell Drive
Idaho Falls, Idaho 83402

The Planning and Building Director stated that there would be four accesses into this area. This meets the Access Management Plan. She stated further that there is a 20-foot easement on the west side of the lots that is primarily for utilities, but could be used, if it were necessary, for the separated bike path along Old Butte Road. At this point in time, Staff does not believe that it is necessary.

Councilmember Groberg requested elaboration on the bike path. The Planning and Building Director stated that the right-of-way may be sufficient along Old Butte Road to have a separated bike path, but the Planning Commission recommended that the easement be increased by five feet. She explained, further, that the bike path would be similar to the one on Hitt Road, in that there are the travel lanes, a small landscaped area, and then an 11-foot sidewalk that would operate as a bike path.

Councilmember Lehto requested the Planning and Building Director to speak to the concept of the Planned Transition Zones. The Planning and Building Director stated that there is approximately 200 feet of PB (Professional Offices) located across the street from this development. The Planning Commission had some discussion as to whether the PB should become R3-A. The Planning Commission would not allow R3-A, as that zone will allow for parking lots for adjacent commercial uses. It was required that office buildings be constructed in the PB Zone along with the required landscaping. There will be a commercial area to the north, with at least one row of offices plus the 114-foot right-of-way backing up to the homes that will back up to Pancheri Drive. This will provide a good buffer to the single-family residential. The Developer volunteered, and it is addressed in the Annexation Agreement, to construct an 8-foot masonry wall on the east side of this development along with 12 feet of landscaping.

Councilmember Eldredge stated that there have been some complaints from the neighbors that Pancheri Drive is very close to the yards. When Pancheri was originally

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designed, it was going to have a much larger radius curve and it would not have come as close to the houses as it now does. On arterial streets, rear yards are typically deeper. These lots did not have that because of the original design of Pancheri Drive. He stated that he was pleased with the buffering that was added by the Developer to help mitigate some of the affects that exist at this time.

Darryl Kofoed, Mountain River Engineering, 1020 Lincoln Road, appeared to represent Larry Reinhart. He stated that the PB Zone is a good buffer to single-family residential. This is a natural addition to the west side of town and it is needed.

Councilmember Groberg questioned how the bike path would be connected along Pancheri to the West Broadway bike path. Mr. Kofoed gave a brief explanation that it will be similar to what is being accomplished on Sunnyside Road. As this is built, there will be a landscaping strip with a separated bike path.

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 Rose, seconded by Councilmember Hardcastle, to approve the Annexation Agreement (Prior to Platting) for Westridge Commercial Plaza, Division No. 1 and, further, give authorization for the Mayor and City Clerk to sign said Agreement. Roll call as follows:

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

Nay: None

Motion Carried.

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

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

Nay: None

Motion Carried.

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

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ORDINANCE NO. 2454

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

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

Nay: None

Motion Carried.

It was moved by Councilmember Rose, seconded by Councilmember Hardcastle, to accept the Final Plat for Westridge Commercial Plaza, 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 Eldredge
Councilmember Lehto
Councilmember Rose
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 Rose, seconded by Councilmember Hardcastle, to establish the initial zoning of Westridge Commercial Plaza, Division No. 1 as C-1 (Limited Commercial) Zoning on Lot 1, Block 1, and the unplatted portion of five acres immediately north of Lot 1, and PB (Professional Office) Zoning on Lots 2 and 3, Block 1 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

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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 Rose

Nay: None

Motion Carried.

The Idaho Falls Power Director submitted the following memos:

City of Idaho Falls
July 29, 2002

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: Mark Gendron, Idaho Falls Power Director
SUBJECT: LETTER AGREEMENT WITH BONNEVILLE POWER
ADMINISTRATION

Attached for your consideration is a Letter Agreement to the BPA Block and Slice Power Sales Agreement. This Agreement has been reviewed by the City Attorney.

Idaho Falls Power respectfully requests Council approval of this Agreement.

s/ Mark Gendron

It was moved by Councilmember Lehto, seconded by Councilmember Shurtleff, to approve the Letter Agreement with Bonneville Power Administration for the Block and Slice Power Sales Agreement and, further, give authorization for the Mayor to execute the necessary documents. Roll call as follows:

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

Nay: None

Motion Carried.

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City of Idaho Falls
August 7, 2002

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: Mark Gendron, Idaho Falls Power Director
SUBJECT: ELECTRIC RATE INCREASE

Attached for your consideration is an Ordinance amending electrical rates for retail customers and providing for effective date.

s/ Mark Gendron

Councilmember Lehto requested the Idaho Falls Power Director to come forward to summarize the Ordinance.

The Idaho Falls Power Director stated that Idaho Falls Power Division is facing a shortfall of approximately \$10.5 Million in the proposed Fiscal Year Budget for 2002-2003. This shortfall is due exclusively to the continued high cost of wholesale power, commitments and purchases that have been made by the utility. Over the past couple of months, Idaho Falls Power has worked to mitigate the need for a rate increase through reduction in expenditures; however, even with significant reduction in other operating costs and reductions or deferrals in capital investments, it is necessary at this time to consider a rate adjustment in order to balance the budget. The Ordinance provides for an average increase of retail rates of 31.1%. This increase varies by approximately plus/minus 3%, depending on the class of customer. The surcharge has been proposed to be eliminated. The surcharge has been a confusing element of the existing rates. The current rates for energy and demand include a base rate and a surcharge rate. The surcharge was intended to reflect the volatility and high nature of costs that have occurred over the past couple of years. The sum of the base rate and surcharge equals the total rate. Those two components will be combined, so that one single energy rate will be charged to the customers. The proposed 31.1% rate increase would be applied to a single rate. The new rates, if adopted as proposed, would go into effect on bills sent out on and after October 1, 2002.

Councilmember Groberg requested to know how long into the future the forward-purchases of power have been contracted. The Idaho Falls Power Director explained that the terms of the contracts vary dramatically, with the longest commitment being with Bonneville Power Administration for ten years. This increase is necessary to cover the cost of forward-purchases and also to cover the cost of past purchases that were very expensive and are still costs that Idaho Falls Power is enduring at this time.

Mayor Milam explained that Bonneville Power Administration is expecting an \$860 Million shortfall over the next four years. This is symptomatic of hydro-based dilemmas and growing populations without any new resources.

Councilmember Lehto stated that the City Council met earlier in the day to discuss the Electric Rate Increase Ordinance.

Brett Manwaring, 2160 Aegean Avenue, appeared to state that everyone in the City of Idaho Falls was shocked to hear that there would be another rate increase, especially due to the fact that the wholesale rates have been declining in the past 6-12 months. The City of Idaho Falls has had an approximate 60% increase in the rates that the people of Idaho Falls are paying. Bonneville Power Administration has 130 subscribers, with 60 of those pre-subscribing a couple of years ago and avoiding the rate increases. Mr. Manwaring requested to know who was responsible for not pre-subscribing with the Bonneville Power Administration at that time. He stated, further, that he met with the Mayor of the City of Soda Springs. Soda Springs is still paying the same rates that they had two years ago

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because they pre-subscribed their contract. Mr. Manwaring questioned why the new agreement approved this evening with Bonneville Power Administration was not covered by news media to inform the public. He also questioned why Idaho Falls Power entered into the Slice Contract with Bonneville Power Administration. He visited with someone from Bonneville Power Administration who said that this Agreement is the most risky contract that could be entered into. The City of Idaho Falls owns a portable substation. He requested to know how many times this substation has been used, why is it necessary for the City to own a substation, and why is rent being paid to store the substation. Mr. Manwaring expressed his concern for the advertising budget of Idaho Falls Power and requested an accounting. He did not understand why Idaho Falls Power does not put greater emphasis on generating their own electricity, rather than being satisfied to purchase power on the market or from some other cooperative. He also requested to know the status of the heat reactor at the site that was offered. With that, the capacity could be doubled for Idaho Falls Power.

The Idaho Falls Power Director appeared to address Mr. Manwaring's comments. He stated that Mr. Manwaring referred to a product that Bonneville Power Administration offered well in advance of the other subscription products which included Slice, Block, etc. at a time when BPA rates were significantly higher than alternatives and at a time when the City Council was heading in a direction of not leaving Bonneville Power Administration, but diversifying their needs through other more competitive supplies. The pre-subscription product that BPA offered was designed and intended for smaller utilities than Idaho Falls. Idaho Falls Power looked at the pre-subscription resource. There was no formal decision, it was a part of a process that is ongoing in considering alternative power supplies.

Councilmember Groberg stated that there were utilities that chose to continue their existing purchases from Bonneville Power Administration and avoided market shifts. He requested to know whether the City had an opportunity to pre-subscribe and denied that opportunity. The Idaho Falls Power Director stated that the City had a brief opportunity to purchase a small quantity of pre-subscription. Bonneville Power Administration only offered this for a brief period of time. Given to hindsight, this would have been the best wholesale deal available at the time, but was a missed opportunity.

Councilmember Lehto requested the Idaho Falls Power Director to comment on the Slice Contract with Bonneville Power Administration that was approved earlier this evening. The Idaho Falls Power Director explained that the Slice Contract with Bonneville Power Administration was first discussed with the Electric Council Committee, that Committee being comprised of Mayor Milam, Councilmember Lehto, and Councilmember Shurtleff. Each item is discussed thoroughly before being presented to the City Council for a decision. The Contract that was approved earlier this evening is an amendment to the major Slice Agreement with Bonneville Power Administrative. It is a housekeeping matter relative to treatment, conservation, renewable discount moneys, and relating to a particular exhibit regarding the potential for loss of load. The Council Committee, the Idaho Falls Power Director, and other advisors spent a great deal of time exploring and discussing the power supply alternatives at a point in time when a decision needed to be made with respect to what BPA products to purchase and what quantity of products to purchase. It is a mischaracterization that the Slice Product does not fit the City's load. It does not fit the City's load perfectly, but it is not a bad load following product. It requires management of the resource. Because of that, Slice needs to be pooled when it is surplus and return it at times when the resource is not adequate to serve the City's loads. It also requires the time to go into the market to purchase power when the federal resource is insufficient. The City also has the opportunity to sell that resource when the federal resource is sufficient. It is important to note that the City Council did recognize that the BPA resource, whether in the form of Slice, Block, or any of their products, was a resource the City was interested in getting as much of as the City could. Slice comes with something more than anything else

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that BPA offered and that is surplus. There is risk in every product that Bonneville Power Administration offers. The Idaho Falls Power Director stated that the portable substation was purchased for approximately \$800,000.00. Utilities purchase portable substations for the purpose of providing service at a time when a critical substation goes down. The City has not used the substation as yet, as we have not had that situation. This was a prudent purchase so that should a critical substation be lost at a critical time, service could be restored as quickly as possible. This substation will also be used for routine maintenance on other substations. The City did not have an area to store the substation, so space had to be rented. In the process of looking at ways to reduce costs, the substation will be moved to an existing facility at Gem State. The advertising budget at the present time is \$100,000.00. Idaho Falls Power will spend \$50,000.00 of that during this fiscal year. The proposed budget includes \$30,000.00 for advertising. That money will be used to make customers aware of safety concerns that exist relative to the nature of the electric business. It will also be used to promote the energy efficiency programs that are designed to help customers use energy more efficiently. This budget is down dramatically from that of recent years. The City has a long history of exploring new resource opportunities and investing in the City's own generating facilities so that the City can control its own destiny. This was started better than 100 years ago with the construction of the first power plant on a canal and continuing with the hydro projects on the Snake River. The last hydro project was built in 1988 as the Gem State Hydroelectric Plant. The City failed in an attempt to get a license to build the next hydro project, which was referred to as the Shelley Project. The City has looked at numerous other generating resources over a period of time, including hydro and thermal. Presently, the City is considering the potential of investing in a thermal generating plant (coal-fired) in the State of Utah. There is a coal-fired steam plant that is located at the old CPP Facility at the Site. The City is looking at converting that steam plant to an electric generating facility.

Mayor Milam explained that coal-fired steam plant has been in the General Counsel's Office at the Department of Energy Headquarters for some months. There are three parties that have expressed an interest in this facility. No one can do anything until DOE makes the decision to move ahead with the project. This facility would generate approximately 15 megawatts, which is approximately one-third of what the City produces.

The Idaho Falls Power Director stated that Idaho Falls Power generates approximately 40% of the total needs for the City with the hydro resources. Most of what is generated is sold at wholesale to the Bonneville Power Administration or to PacifiCorp. The sale to BPA has been in place since 1980. It was extended in 2001, and will conclude in 2006, at which point in time, the City will have the opportunity to consider other options with respect to the output of the bulb turbine project. Sixty-one percent of the output of the Gem State Project serves our consumers needs. Thirty-nine percent is sold to PacifiCorp at cost plus a small margin and that sale was necessary to allow the project to be constructed, because the land that the Gem State Project is built on is owned by Utah Power and Light Company.

Mayor Milam stated that prices for current sales of power have dropped, which has exacerbated the problem for many utilities. That is why new generating resources are such a problem. Idaho Power was going to build a large gas turbine that would have produced several hundred megawatts. Those plans have been dropped because the expense of building that facility could not be regained through the sale of power at the current price levels. The problem in the Northwest continues to get worse.

Councilmember Lehto thanked the Idaho Falls Power Director for his comments and orientation about where Idaho Falls Power is going. He also thanked Mr. Manwaring for his comments.

Councilmember Groberg stated that he appreciated the efforts of the Idaho Falls Power Council Committee. He stated that his general feeling was that the purchase of the

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Slice Product from BPA will prove to be a valuable resource for the City. The production of electricity from the various dams that BPA has the right to the power from, will be less risky and less costly than any new generation that could be acquired. Even though it is a difficult thing to increase the rates, especially twice, it is an important aspect of the Idaho Falls Power Division. Idaho Falls Power will continue to provide quality electricity in the future. He believed that the current situation will reverse itself and rates will go down. For those who heat their homes with electricity, this rate increase is especially hard to take. He has been concerned that we not encourage people to heat with electricity.

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

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 8-5-30 OF THE CITY CODE OF THE CITY OF IDAHO FALLS, IDAHO; AMENDING ELECTRICAL RATES FOR CUSTOMERS OF THE ELECTRIC LIGHT DIVISION; PROVIDING FOR EFFECTIVE DATE OF ORDINANCE.

The foregoing Ordinance was presented by title only. Councilmember Lehto moved, and Councilmember Shurtleff seconded, that the Ordinance be passed on the first reading only. Roll call as follows:

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

Nay: None

Motion Carried.

The Municipal Services Director submitted the following memos:

City of Idaho Falls
August 2, 2002

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: S. Craig Lords, Municipal Services Director
SUBJECT: PUBLICATION OF "NOTICE OF PUBLIC HEARING" FOR IMPOSITION OF NEW FEES AND FEE INCREASES GREATER THAN 105% FOR FISCAL YEAR 2002-2003

Municipal Services respectfully requests the Mayor and Council to authorize the publication of the attached "Notice of Public Hearing" regarding the imposition of new fees and fee increases greater than 105% for Fiscal Year 2002-2003, with publication dates set for August 11, 2002 and August 18, 2002.

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The Public Hearing is scheduled for 7:30 p.m., Thursday, August 22, 2002, in the Council Chambers in the Idaho Falls Power Building at 140 South Capital Avenue in Idaho Falls, Idaho.

s/ S. Craig Lords

It was moved by Councilmember Eldredge, seconded by Councilmember Groberg, to authorize the publication of the "Notice of Public Hearing" regarding the imposition of new fees and fee increases greater than 105% for Fiscal Year 2002-2003 with publication dates set for August 11 and 18, 2002. Roll call as follows:

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

Nay: None

Motion Carried.

City of Idaho Falls
August 2, 2002

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: S. Craig Lords, Municipal Services Director
SUBJECT: PUBLICATION OF "NOTICE OF PUBLIC HEARING" FOR 2002-2003 FISCAL YEAR BUDGET

Municipal Services respectfully requests the Mayor and Council to tentatively approve the 2002-2003 Fiscal Year Budget in the amount of \$125,860,694.00.

Approval is also requested to publish the attached "Notice of Public Hearing" of the 2002-2003 Fiscal Year Budget with publication dates set for August 11, 2002 and August 18, 2002.

The Public Hearing is scheduled for 7:30 p.m., Thursday, August 22, 2002, in the Council Chambers in the Idaho Falls Power Building at 140 South Capital Avenue in Idaho Falls, Idaho.

s/ S. Craig Lords

It was moved by Councilmember Eldredge, seconded by Councilmember Groberg, to tentatively approve the 2002-2003 Fiscal Year Budget in the amount of \$125,860,694.00 and authorize the publication of the Notice of Public Hearing for the 2002-2003 Fiscal Year Budget, with publication dates of August 11 and 18, 2002. Roll call as follows:

Aye: Councilmember Eldredge
Councilmember Lehto
Councilmember Rose

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Councilmember Groberg
Councilmember Shurtleff
Councilmember Hardcastle

Nay: None

Motion Carried.

The Public Works Director submitted the following memo:

City of Idaho Falls
August 5, 2002

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: Chad Stanger, Public Works Director
SUBJECT: BID AWARD - PANCHERI DRIVE AND UTAH AVENUE
INTERSECTION IMPROVEMENTS

On July 30, 2002, bids were received and opened for the Pancheri Drive and Utah Avenue Intersection Improvements Project. A tabulation of the bid results is attached.

Public Works recommends award to the low bidder, HK Contractors, Inc. in the amount of \$498,733.00; and, authorization for the Mayor and City Clerk to sign the contract documents.

s/ Chad Stanger

It was moved by Councilmember Shurtleff, seconded by Councilmember Rose, to accept the low bid from HK Contractors, Inc. to complete the Pancheri Drive and Utah Avenue Intersection Improvements and, further, give authorization for the Mayor and City Clerk to sign the necessary documents. Roll call as follows:

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

Nay: None

Motion Carried.

There being no further business, it was moved by Councilmember Eldredge, seconded by Councilmember Lehto, that the meeting adjourn at 9:40 p.m.

CITY CLERK

MAYOR
