

FEBRUARY 10, 2000

The City Council of the City of Idaho Falls met in Regular Council Meeting, Thursday, February 10, 2000, in the Council Chambers at 140 South Capital Avenue in Idaho Falls, Idaho.

There were present:

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

Absent was:

Councilmember Beverly Branson

Also present:

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

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

Mayor Milam explained that at the Council Meeting held two weeks ago, a public hearing was conducted regarding the Teton Apartment Subdivision, Division No. 1, at which there was a considerable amount of testimony and evidence presented for Council consideration. Because of the number of exhibits submitted, the Council voted to recess their decision until this night. In the motion, it was stated that Council deliberation and decision would be done at the Civic Auditorium. Prior to that motion being made, public hearings had already been scheduled at the City Council Chambers for this night. Mayor Milam explained that the Council would make a motion to recess to the Civic Auditorium for final deliberation and discussion and then make a decision on the above issue. Following that decision, the Council will recess to the Council Chambers for consideration of the remainder of the Council Agenda.

It was moved by Councilmember Rose, seconded by Councilmember Eldredge, to recess the final determination regarding whether a final plat application complies with the provisions of Title 10, Chapter 1, of the Idaho Falls City Code on Teton Apartments Subdivision, Division No. 1, located generally west of Woodruff Avenue, east of St. Clair Road, and south of 25th Street, to the Civic Auditorium at 501 South Holmes Avenue. Roll call as follows:

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

Nay: None

Motion Carried.

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Upon arrival and set-up at the Civic Auditorium, 501 South Holmes Avenue, Mayor Milam reconvened the Regular Meeting of the City Council of the City of Idaho Falls at 8:00 p.m. At the request of Mayor Milam, the City Clerk called the roll as follows:

There were present:

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

Absent was:

Councilmember Beverly Branson

Also present:

Ryan Armbruster, City Attorney (Special Counsel)
Rosemarie Anderson, City Clerk
All available Division Directors

Mayor Milam announced that Councilmember Branson has been allowed to return home from the hospital, but unfortunately is very ill and she has the good wishes from all those present.

Mayor Milam stated that a public hearing was conducted on January 27, 2000 for determination whether a final plat application complies with the provisions of Title 10, Chapter 1, of the Idaho Falls City Code on Teton Apartments Subdivision, Division No. 1, located generally west of Woodruff Avenue, east of St. Clair Road, and south of 25th Street. At this public hearing there was a considerable amount of testimony and evidence presented for the City Council to consider. Because of the number of exhibits, the decision was made to delay the decision until this night. Mayor Milam stated that during the past two weeks, the City Council had the opportunity to review those exhibits that were submitted at the public hearing on this issue. As a matter of explanation, Mayor Milam stated that three other public hearings were scheduled for this night, so the City Council met at the City Council Chambers long enough to call the meeting to order and to recess the meeting to the Civic Auditorium for this final determination.

Mayor Milam turned the proceedings over to the Chairman of the Planning and Building Council Committee, Councilmember Rose.

Councilmember Rose stated that this was the time and place set for deliberation on the Teton Apartments Subdivision, Division No. 1 final plat application. A public hearing was held on January 27, 2000, at which time evidence and testimony were received by the City Council from City Staff, interested citizens, and the applicant. With the public hearing having been closed, no additional testimony and evidence will be taken this evening. The matter is properly before the City Council for discussion, deliberation and decision. Councilmember Rose stated that following the close of the public hearing on January 27, 2000, the petitioners' attorney has submitted a document for inclusion in the record regarding objections to procedures employed at the public hearing. Special Counsel

has informed Councilmember Rose that, in his opinion, the objections are without merit. Councilmember Rose made the following document a part of the record:

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Thomsen and Stephens,
Law Office
February 1, 2000

Via Facsimile (208-384-5844)

RYAN P. ARMBRUSTER
ELAM & BURKE PA
702 W IDAHO 10TH FL
P O BOX 1539
BOISE ID 83701-1539

RE: *OLSEN, et al. v. City of Idaho Falls*
Bonneville County Case No. CV-00-370

Dear Mr. Armbruster:

This letter is in response to Tim Hopkins' January 28, 2000 letter. The petitioners renew this objection to admission of the documentary evidence referenced in Mr. Hopkins' letter. It is my recollection and understanding from the procedures adopted and implemented at the January 27, 2000 public hearing that if the developer or citizens had any evidence they wished to present in support of their respective positions, they were obligated to do so during their first presentation, and that rebuttal and "surrebuttal" evidence was to be strictly limited to responses to the other parties' initial presentation. The documentary evidence submitted by Mr. Hopkins on rebuttal could and should have been presented during their initial presentation. The City Council adopted and enforced the foregoing ground rules with rigor regarding the citizens. It should do likewise with regard to the developer.

This letter will also memorialize my request to enter an objection before the City Council adjourned the January 27, 2000 public hearing. As you will recall, after Councilwoman Hardcastle announced a 2-minute recess shortly before adjournment, I approached you and Councilman Groberg requesting an opportunity to state an objection for the record. You refused, stating that the evidence was closed. The reason the objection was not made until that time is that it pertained to Renée Magee's testimony and argument presented after the "close of evidence".

Ms. Magee's comments at the beginning of the hearing constituted testimony and argument in support of Teton Apartment's application. Her comments at the close of the hearing constituted *rebuttal* argument and testimony in support of Teton Apartment's application. This was improper.

The City of Idaho Falls was not a party at the hearing with an opportunity to present argument or evidence. The hearing was primarily for the citizens who were forced to sue the City to obtain the hearing in the first instance, and secondarily for Teton Apartments. The City Council sat as *quasi-judges*, who were required to objectively and neutrally consider the evidence and render a decision, not advocate the position of one of the parties. Ms. Magee's testimony

only exemplified the City Council's bias and prejudgment of the facts before it could make any decision.

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This bias and prejudice was first demonstrated by the January 27, 1998 fax from Ken Koss (on behalf of the developer) to Mayor Milam thanking her for pledging support for the developer's application a year before it was even submitted, and attaching an exemplar support letter for Mayor Milam to sign, addressed back to Mr. Koss. These documents are in the record. On February 9, 1998, the Mayor signed the Koss letter adding her (pre)judgment that the land was already "appropriately zoned". See Citizens' Exhibit L. It was improper for Mayor Milam in 1998, as it was for Renée Magee and the City at the January 27, 2000 public hearing, to advocate the developer's position before a quasi-judicial hearing at which the City was to act as the judge.

Furthermore, Renée Magee's rebuttal argument and testimony was nothing more than a disguised rebuttal of citizens' surrebuttal. Your own rules and procedures correctly allowed the citizens the opportunity for final rebuttal. Ms. Magee's testimony violated the City's own rules, and the citizens were thereby denied the opportunity to rebut Ms. Magee's arguments and testimony.

The petitioners therefore object to Ms. Magee's argument and testimony at the January 27, 2000 public hearing on the foregoing grounds. Having been denied the opportunity to enter such objection into the record, petitioners hereby request that this letter be entered into evidence as a statement of the objection that they would have made had the City allowed them to do so.

Sincerely,

s/ T. Jason Wood
T. Jason Wood

cc: Tim Hopkins, Esq.
Idaho Falls Mayor and City Council

Councilmember Rose questioned Special Counsel Armbruster as to what a Planned Unit Development Overlay was. Mr. Armbruster stated that a Planned Unit Development, as described in the City Ordinances, is an area of land in which a variety of various uses are permitted. The procedure for an approval of a PUD, is similar to a Conditional Use Permit, wherein public hearings are held and required pursuant to the Local Land Use Planning Act. A PUD Overlay would be the designation attached to a particular parcel of property and where a PUD application was filed and ultimately approved by the City Council. Typically, a PUD approval is sought at the time an initial zoning is established or a zoning change is requested. If the City Council were inclined to approve a PUD, an accompanying motion and notation on the zoning map would indicate the zoning is approved along with the PUD Overlay.

Councilmember Groberg questioned Special Counsel Armbruster as to what issues would be discussed at a hearing involving a parcel of land with a PUD Overlay. Mr. Armbruster stated that the PUD Overlay takes into account traffic and density. That is the purpose of a PUD Overlay, to address some of those issues. This would come from the Planning Commission with a recommendation, and final action would be taken by the City Council.

Councilmember Rose questioned Special Counsel Armbruster as to whether the Teton Apartments Subdivision, Division No. 1 was ever zoned with a PUD Overlay, and what

is the significance of that. Mr. Armbruster stated, that based upon the records of the City of Idaho Falls, it does not appear that a PUD Overlay was ever formally adopted by the City of Idaho Falls to this particular piece of property. Throughout the history of the attempted

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development of this parcel of property, certain developers have indicated a desire to develop the property as a Planned Unit Development. No Planned Unit Development Overlay ever made it from the Planning Commission to the City Council, and consequently the City Council has never been asked to formally approve a PUD application on this particular piece of property.

Councilmember Rose stated that a Preliminary Plat application was submitted to the Planning Commission. He asked Mr. Armbruster whether this was required before the Developer could submit a Final Plat application. Mr. Armbruster stated that the Subdivision Ordinance, under Section 10-1-14, a preliminary plat is not required for a short subdivision. A short subdivision is one with fewer than five lots. As presented, the Teton Apartments Subdivision, Division No. 1 Final Plat is a short subdivision, as it contains only one lot.

Councilmember Rose stated that evidence was received stating that the Teton Apartments were not compatible with the nature of the surrounding area. He questioned Mr. Armbruster as to whether the Subdivision Ordinance requires consideration of compatibility. Mr. Armbruster stated that this issue has been discussed and addressed under several other occasions. The Subdivision Ordinance does not address issues as dealing with compatibility of surrounding area. Those issues are taken into account when the property is initially zoned or a modification to the Zoning Ordinance is requested. It is at the time of the zoning or rezoning of property, that the City Council would consider those issues. Subdivision Plat approval does not entail that type of inquiry.

Councilmember Rose stated that the Idaho Falls Subdivision Ordinance requires proof of ownership. He requested Mr. Armbruster to discuss this requirement. Mr. Armbruster stated that the Subdivision Ordinance defines "Owner" as anyone who has an interest in property or proof of current ownership of the real property included in the proposed plat. At the time this application was filed, this entity had an interest in the land as set forth in the Option Agreements, which they presented as part of the record.

Councilmember Rose stated that the Subdivision Ordinance asks for proof of sole ownership. He asked Mr. Armbruster to define "sole ownership". Mr. Armbruster stated that "sole owner" refers to evidence of ownership by the particular entity that is presenting the application to the City Council.

Councilmember Rose stated that the Development Agreement was executed on May 28, 1999. In this Agreement, it stipulated that the Developer was the sole owner. With the Warranty Deed was not being executed until July 14, 1999, would that create a problem. Mr. Armbruster stated that the Development Agreement is between the Developer and the City of Idaho Falls. It would be up to the City of Idaho Falls to enforce that Agreement. The critical key, as far as the Subdivision Ordinance is concerned, is that the titled owner be the titled owner prior to recordation of the Final Plat. The Plat recordation is what dedicates the various easements, streets, and other utility information. Mr. Armbruster stated that Teton Apartments LLC owned the property at the time that the Final Plat was recorded. In the record, in as early as May, 1999, a title insurance company had agreed to provide title insurance in the name of Teton Apartments LLC subject only to the Warranty Deed passing between Custom Land Development and Teton Apartments LLC.

Councilmember Rose stated that some of the opponents to the Teton Apartments have alleged that the Assignment from American Property Development to Teton Apartment Associates was fraudulent and void. Mr. Armbruster stated that he is not in a position to determine whether this Assignment is fraudulent or not. The critical piece of information concerning the Subdivision Ordinance is whether or not the vested titled owner at the time of the recordation of the Plat was in fact Teton Apartments, LLC. At that point,

Custom Land Development signed a Warranty Deed, which Deed was backed up by title insurance, that Teton Apartments was the titled owner of the property at the time.

Councilmember Rose questioned whether the Warranty Deed that was executed on July 14, 1999 was a valid transfer of legal title to Teton Apartments Associates, and at

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what point in time is legal fee, simple ownership required on a Subdivision like Teton Apartments. Mr. Armbruster stated that the Warranty Deed from Custom Land Development to Teton Apartments LLC was signed in early July, prior to recordation of the Final Plat. The critical time is the recordation of the Final Plat. The sole purpose of the Subdivision Ordinance is to assure that proper title is in the property so that any future owner or buyer of the property can be assured that the Subdivision Ordinance was complied with. This also provides that all required dedications contained within the Subdivision Plat have been agreed to by the titled owner. All of that did occur prior to recordation of the Final Plat.

Councilmember Groberg requested Mr. Armbruster to indicate what issues would be discussed at a Planned Unit Development Overlay public hearing, assuming that the property is annexed and zoned with a Planned Unit Development Overlay, but not platted. Mr. Armbruster explained that the Subdivision Ordinance and the Zoning Ordinance are two separate and distinct requirements of a development. The Subdivision Ordinance deals with issues such as street location, utilities, and easements. On a Planned Unit Development, the Zoning Ordinance requires that the Developer bring forth a specific site plan, with the specific location of buildings, setbacks, and landscaping. For example, an individual property owner comes forward to plat several acres of property without providing any specific plan for the development. At the time a Site Plan is prepared, then the Ordinance requires that the Site Plan be formally submitted to the Planning Commission for their consideration.

Councilmember Hardcastle commented that there was a great deal of testimony stating that this was not an appropriate zone for the Teton Apartments. She requested to know if there was a way that the City Council could change that zone once the City Council became aware of what was being developed at that location. Mr. Armbruster stated that the City Council retains the authority and reserves the right to consider any particular rezone of a piece of property or a geographic area. The difficulty is that without consent of the property owner, such type of downzoning is extremely difficult. If a property owner has relied on the previously designated zone and has incurred any expense to proceed through development in that zone, that property owner would be allowed to continue. The use, if the rezone were to occur, would be non-conforming. The use would continue. At the time the Final Plat application was filed for this development, the property owner had expended resources to develop the property and had a right to move forward.

Councilmember Lehto stated that Judge St. Clair had requested the City Council to hold a public hearing and make a decision on whether the Final Plat complies with all City Ordinances and applicable laws. He requested to know what, in that decision, should he consider with regards to timing. Does the City Council take this back to the May 27, 1999 or July 22, 1999 City Council Meeting, or is the time frame considering the January 27, 2000 City Council Meeting? Mr. Armbruster explained that Judge St. Clair stated that because the City had not adopted formal and final Findings of Fact and Conclusions of Law prior to a petition being submitted, the City Council was required under the Local Planning Act to hold a hearing on the issue of Subdivision compliance. The hearing, which was held on January 27, 2000, provided the opportunity for both sides of this issue to present information as to why this project complies or does not comply with the Subdivision Ordinance. Information that is now contained within the record is appropriately considered by the City Council to make this decision.

Councilmember Lehto questioned that since a Traffic Impact Study was not required to be done for this Subdivision, given the fact that the Developer and the Planning and Building Director spoke about the traffic impact, should he consider that testimony in

making his decision for this final plat application? Mr. Armbruster stated that this information is part of the record and should be considered.

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Councilmember Lehto stated that the contiguous R-1 and R-3 zoning on the landlocked piece of property between St. Clair Road and Woodruff Avenue, should have raised red flags at both the Planning Commission and in the adjacent neighborhoods. From the testimony that was offered, it was his impression that there appears to be some confusion in the 1979 Meeting and the Planning Commission Meeting held in 1996, regarding the contiguous nature of the R-1 and R-3 Zone. Mr. Armbruster stated that the records of the City of Idaho Falls show that this property has been zoned R-3 since 1978. Though there have been references to other types of development and potential consideration of a different zoning classification, no application or ordinance was ever adopted by the City of Idaho Falls reclassifying this particular property from anything but R-3 zoning. It remains R-3 zoning today.

Councilmember Eldredge stated that there was a great deal of discussion regarding building permits at the public hearing. He requested Mr. Armbruster to comment on the requirement for a Final Plat before issuing a building permit. Mr. Armbruster stated that in a particular piece of property that has been previously annexed and previously zoned, there is no interplay between the Subdivision Ordinance and the building permit. The owner of this 10-acre parcel could have approached the City and filed for building permit for this project without having to go through the Subdivision process since this is a 1-lot subdivision. The building permit issue is a separate and distinct issue from the Subdivision Plat.

Councilmember Eldredge stated that if the owner had come in for a building permit, obtained it and built something in this location, when, if ever, would he have been required to file a Final Plat. Mr. Armbruster stated that the only time he would be required to file a Final Plat is if he intended to divide the property into 2 or more lots for the purposes of selling a portion of the property.

Councilmember Hardcastle requested Mr. Armbruster to explain why this is a 1-lot Subdivision. Mr. Armbruster stated that the Plat, as presented, is set out as one large lot and one project. Under the Subdivision Ordinance, this is considered a short subdivision and processed in that manner. This does not require a Preliminary Plat filing first.

Councilmember Eldredge stated that the reason this is an 1-lot development is because the owner wants to retain ownership of all the apartment units in this development. Mr. Armbruster stated that this was his understanding. The way that it is presently platted, nothing else could be done, unless he was to request a resubdivision of this plat.

Councilmember Rose commented that in regard to the Development Agreement being signed in May, 1999, the Warranty Deed being executed on July 14, 1999, and the Final Plat being recorded later in July, 1999, the most important date is not the date of the Development Agreement, but it is the date of the recordation of the Final Plat. Mr. Armbruster stated that, as far as the Subdivision Ordinance compliance, the date of the Final Plat recording is the critical date.

Councilmember Lehto stated that if it is considered where the City Council is in the process and what was presented at the January 27, 2000 public hearing, the Developer is already the owner at the January 27, 2000 Meeting. Mr. Armbruster stated that the record shows that the Teton Apartments Associates LLC obtained the title to the property on July 14, 1999. The Final Plat was recorded on July 28, 1999.

Councilmember Rose commented that the issue of possible school overcrowding was addressed. He requested to know what impact this issue has on the Final Plat application and its compliance with the Subdivision Ordinance. Mr. Armbruster stated that under the Subdivision Ordinance, those issues are not taken into account to determine compliance with that Ordinance.

Councilmember Rose requested to know the relationship between the Idaho Falls Subdivision Ordinance and the Local Land Use Planning Act. Mr. Armbruster stated

that the Subdivision Ordinance is adopted by the City Council, and any amendment to the Ordinance would run through the public hearing process, considered, and adopted by the Council. Judge St. Clair said that there is no requirement under the City of Idaho Falls

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Subdivision Ordinance to have held a hearing for approval of this Final Plat. Judge St. Clair did say that because the petition was timely filed prior to final action, the Local Planning Act would require the City Council to hold a public hearing.

Councilmember Rose requested Mr. Armbruster to compare the Subdivision Ordinance with the Local Land Use Planning Act. If there were something in the Local Land Use Planning Act that was not addressed in the Idaho Falls Subdivision Ordinance, how would the City Council deal with those issues. Mr. Armbruster stated that if there were a requirement under the Local Land Use Planning Act, then the City Council would have to address that requirement in the Subdivision Ordinance.

Councilmember Lehto requested to know how the Access Management Plan for the Idaho Falls Metropolitan Area interplays with the Subdivision Ordinance. Mr. Armbruster stated that the Access Management Plan has not been formally adopted by the City of Idaho Falls for consideration in decisions that fall under those criteria. Except for references in the Subdivision Ordinance, which only address the overall topic of traffic, there is no other nexus to the Subdivision Ordinance. As the testimony was presented, the Comprehensive Plan is the only guidance on record for the City, which requires any kind of traffic plan only if trips generated per day exceed 200.

Councilmember Rose presented the following statement:

First of all, let me tell you how I interpret the relationship between the Local Land Use Planning Act and the Idaho Falls Subdivision Ordinance as I have read it. The Idaho Falls Subdivision Ordinance exists because the Local Land Use Planning Act says it has to. The Local Land Use Planning Act gives requirements and the Subdivision Ordinance tells us how we are going to be in compliance with those requirements of the Land Use Planning Act. With that, I have a couple of concerns and statements regarding a couple of issues. My first concern has to do with the traffic. I realize that the Subdivision Ordinance does not necessarily address traffic, but the issue of traffic was in the Staff Report. There was evidence presented in the hearing that questioned the determination that was made by Staff not to have a Traffic Impact Study done. I do respect the Staff and their conclusion that a Traffic Impact Study was not required. This is their area of expertise. They are professionals and they certainly understand the 6th Edition of the Trip Generation Manual they used to make their determination. I have reviewed the facts and figures the Staff used to substantiate their decision not to require a Traffic Impact Study. In my opinion, these facts and figures are very technical in nature and they are beyond the easy comprehension of the average citizen not trained in traffic study. An average citizen, I believe, would simply try to envision the traffic on 17th Street, Sunnyside, St. Clair, 25th Street, Woodruff, and Disney, and then imagine the increase in traffic generated by new apartments. Questions would be: "How much traffic? At what times of day? How safe will the crosswalks be? How much traffic would be too much? How would an average citizen draw any conclusions?" I believe it would be very difficult for the average citizen to get answers to their questions. In my opinion, in this case, even though a Traffic Impact Study was not required, I believe the Traffic Impact Study should be done, evaluated, and presented in such a way that the average citizen would understand and accept. My next concern has to do with the schools. Granted, the Idaho Falls Subdivision Ordinance does not address schools, but in my opinion, the Local Land Use Planning Act, as I have read it and tried to

interpret it myself, tells us we must deal with the school districts and their interests. In this act, a stated purpose, "to allow local school districts to participate in the community planning and development process so as to

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address public school needs and impacts on an ongoing basis.” Input from school districts is required regarding zoning. It is hard for me to accept that discussions ended with School District No. 91 in 1978. Further, the Local Land Use Planning Act states that regarding Subdivision Ordinances, “Each such Ordinance may provide for mitigation of the effects of subdivision development on the political subdivision of the state, including school districts, to deliver services without compromising quality of service, delivery to current residents where imposing substantial additional costs upon current residents to accommodate the proposed subdivision”. The Idaho Falls Subdivision Ordinance, at this time, does not provide for this mitigation, but I believe that it should. Entered into the record were two documents, and because they were entered into the record, I believe that we must address them. One was a letter to School District No. 91 dated May 17, 1999 advising them of the apartment project. The other was a report faxed from School District No. 91 to our Staff on January 21, 2000. Again, in my opinion, since these were included, this opens the door for further discussion. The lack of communication between the City and the School District is material at this point. I have two concerns with the faxed Report from the School District. First, it was not signed nor does it appear to be an official position statement of the School District. Second, a member of the School Board, Mr. Robert Collette, publicly refuted figures found in this report. He further stated that he was not satisfied with communications with the City. Since no one else from the School District stepped forward during the hearing or since, or have tried to enter material since, I have to assume that Mr. Collette represented the School Board and its administration. Essentially, Mr. Collette asked for mitigation and, I believe, that is what we should consider. In my opinion, we should ask for a timely official signed document from the School District, which represents their findings, so that a proper evaluation can be given. As to my statement, I am now open for questions and discussion. After our discussions, if my personal opinion remains unchanged, I will make a motion and I will further vote that this application be denied and it be remanded to the Planning Commission, based on the two reasons that I have stated; based on the fact that a Traffic Impact Study should be completed and official communications with School District No. 91 should be received and considered.

Councilmember Groberg restated Councilmember Rose’s feelings about a Traffic Impact Study not being conducted and, therefore, it should go back to the Planning Commission to conduct this Traffic Impact Study. Councilmember Groberg questioned why the City Council could not require that Traffic Impact Study. Councilmember Rose stated that this is a procedural question. He stated that due to his newness to the City Council, he did not know how to proceed. If it is within the parameters of the City Council to require a Traffic Impact Study to be completed, then he is requesting that a Traffic Impact Study be completed. Councilmember Groberg questioned Councilmember Rose as to what he would hope to learn from a Traffic Impact Study. Councilmember Rose stated that he would hope that a Traffic Impact Study would clarify issues and make those issues understandable for everyone. Councilmember Groberg questioned Councilmember Rose whether he would expect to learn from the Traffic Impact Study information that would require widening of roads or installation of traffic signals, or would he expect to learn information that would lead him to

not want to approve this Plat. Councilmember Rose stated that it would depend on the information that was presented in the Traffic Impact Study.

Councilmember Lehto presented a portion of his statement:

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The one item that stands out most is the lack of a Traffic Impact Study. The City has tried to atone for this by presenting some January, 2000 explanations. The bottom line is the standard 100 peak hour trips, as I see it. Although it may be argued that 88 and 97 trips were below 100 trips, these arguments are weak and shallow considering the large deviations in the input data. In other words, I believe 97 trips essentially equal 100 trips and a Traffic Impact Study should have been conducted.

Councilmember Lehto stated that we heard the Division Director talk about 200 peak hour trips. The Access Management Plan and the Developer's Engineer talked about 100 peak hour trips. Delving further into the information that was presented at the public hearing, there was a statement made that the road capacities in the area were in the neighborhood of one-quarter full on St. Clair Road and Woodruff Avenue. He requested to know what the City Council would gain from a Traffic Impact Study with regard to signalization and widening of roadways. The City's own plans indicate that we can accommodate 3-4 times the traffic on those roads. He did not believe that we would accomplish much by requiring a Traffic Impact Study. Councilmember Lehto stated that Councilmember Rose is struggling with whether there was a steadfast requirement that would mandate a Traffic Impact Study, no matter how minor the conclusions are.

Councilmember Groberg questioned Councilmember Rose and Councilmember Lehto whether a Traffic Impact Study should be required whenever there is a plat that could possibly create more than 100 peak hour trips. Councilmember Lehto stated that it was his understanding that in the Access Management Plan, it clearly states 100 peak hour trips. Many arguments were presented for the figures that should be used to require a Traffic Impact Study. Each Councilmember needs to consider the bigger picture.

Councilmember Groberg questioned how Councilmember Lehto would handle the case that is the most common, in which the platting occurs without the Council having any knowledge about what would be built on the parcel.

Councilmember Lehto stated that the conventional wisdom would be to error on the side of the most intrusive development. Under this final plat, that would have been 350 apartment units. That should gauge the policy.

Councilmember Groberg restated Councilmember Lehto's calculations, that in taking the size of the lot being platted and the uses that are allowed in that zone, then it can be determined what would be the maximum amount of traffic that would be generated by those uses. The result would be the basis for the Traffic Impact Study.

Councilmember Lehto stated that this would be his starting point.

Councilmember Rose stated that in a case where the figures are close to requiring a Traffic Impact Study, maybe a Traffic Impact Study should be required. If the City Council is going to error, the Council should error on the side of more evaluation than less.

Councilmember Eldredge questioned Mr. Armbruster regarding whether the Traffic Study prepared by the applicant's Traffic Engineer was a part of the record of this hearing. Mr. Armbruster stated that the Traffic Study prepared by Gary Funkhouser, the applicant's Traffic Engineer, was included as part of the record. Councilmember Eldredge questioned whether that Traffic Study should be considered as part of the record of decision for this plat. Mr. Armbruster stated that it was to be used. Various different pieces of information were presented on the traffic issue, including information generated by Staff, petitioners, and the applicant. Councilmember Eldredge commented that the Access Management Plan has been quoted to require a Traffic Impact Study whenever a development would generate more than 100 trips, but the Ordinances that govern development in the City

of Idaho Falls specify 200 trips. He believed that there might be some confusion about what the applicability of the Access Management Plan is. Councilmember Eldredge stated that it is a guideline that has been adopted by the Bonneville Metropolitan Planning Organization.

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It does not have the force of law for the City of Idaho Falls, because it is not a binding document on the City and has not been adopted as such. Therefore, for the purposes of this plat, the applicable standard that the City Council should apply, is to require a Traffic Impact Study if there is more than 200 peak hour trips.

Councilmember Lehto stated that he came to that same conclusion. He stated that the Access Management Plan is not a binding document, and he submitted that the Access Management Plan is a better document than the Comprehensive Plan with regards to guidance and codified procedure.

Councilmember Eldredge restated that the Access Management Plan is a guidance document, and that the Ordinance that rules the actions of the City states that 200 peak hour trips is the rule.

Councilmember Groberg questioned whether the 100 peak hour trips would apply whether or not there was access onto an arterial street.

Councilmember Lehto stated that the Plat under consideration, has both egress and ingress onto St. Clair Road, which is a collector street. The conclusions from the Traffic Engineer still stands, there are less than 100 peak hour trips out of the development. Councilmember Lehto suggested that if he listened to this public hearing in May of 1999, he would have fought vigorously for a Traffic Impact Study, believing that essentially 97 trips equals 100 trips.

Councilmember Groberg questioned whether the Access Management Plan addresses accesses onto arterials or 100 peak hour trips onto any street.

Councilmember Lehto read from the Access Management Plan and determined that the Access Management Plan did not specify an arterial street in the requirement for a Traffic Impact Study.

Councilmember Rose restated that the Access Management Plan and the 6th Edition of the Trip Generation Manual provide good information, but very technical information. He stated again that a Traffic Impact Study should be completed. He stated that he would be willing to listen to anyone who could convince him that this should not be done.

Councilmember Lehto stated that he is not going to insist on a Traffic Impact Study. He shared another portion of his statement, as follows:

The Access Management Plan albeit, I believe, is exceptionally good guidance. It is not binding on this City Council. This is not what we are looking at. We are looking at 200 peak hour trips. If this was a different place in time and this was more of a warm, fuzzy decision, I think I would argue that we ought to do the Traffic Impact Study. The plain nuts and bolts of it are, 200 peak hour trips seems to be the amount that the Subdivision Ordinance asks us to look at. The City Planner has indicated that we are in the neighborhood of 88-90 trips, the Developer 97-100 trips, and the petitioner has it up over 100, but not to the 200 criteria. That would be reason enough to make the point to not insist upon it.

Councilmember Eldredge stated that a traffic safety study was done. The results of that are that there is no significant impact on any of the streets that are around this development. To say that the City Council should wait until a Traffic Impact Study is completed, is an odd position. In his opinion, a traffic study has been completed.

Councilmember Eldredge made the following statement:

We have been discussing a topic that has received much attention in the past few months, and one that has resulted in many strong feelings and statements. We are here to render a decision on this matter. Before we do so, I would like to

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make a few comments about this City, the City Council, and how I personally reached my decision.

We all acknowledge that Idaho Falls is a great place to live, raise a family, and enjoy the wonders of nature around us. But a city is more than a cluster of buildings and people. A city has a feeling, a vibrancy, a connectivity that makes the whole more than the sum of its parts. This controversy has strained that common bond that makes this city what it is. I hope that our decision tonight will help us start a healing process that must take place. There is no place for the anger, fear or mistrust that has, to this point, characterized these proceedings. We really are on the same team and need to learn how to talk, work and laugh together again.

This Council serves the citizens of Idaho Falls. We do so knowing that not all our decisions will be agreeable to or accepted by those we serve. But I have never seen an instance where this Council made a decision that was not felt to be in the best interests of the people in this great city. If you know anything about the individuals that make up this Council, you know that we are a strong-willed, opinionated, stubborn group of people. But, we are also a Council that pulls together and works together, expressing our feelings and concerns in the most forceful way possible to ensure that they are fully addressed before decisions are made. I can assure you that our decision tonight will not be made lightly. And it will be made sincerely with the best interests of Idaho Falls in mind.

Much has been said about how we, as elected officials, represent the people in this dispute. Generally, this has been expressed that we have a duty and obligation to protect those who live in the surrounding neighborhood against a profit-motivated corporation that is attempting to destroy the lifestyle, property values or safety of the people who live in this area. It has been said that, in a democracy, this is the proper role for elected officials to take. But we do not live in a democracy. We live in a democratic republic where we elect officials to represent us in making decisions for the welfare and benefit of the City as a whole. I do not represent anyone here individually or as a factional group – I represent all of the people of this City collectively and consider it my duty to make my decisions on that basis.

Before casting any vote, I usually try to talk with citizens, affected parties and staff to get the best information I can. Unfortunately, this has not been possible through much of this proceeding. In retrospect, it would have been better if we had held a hearing when it first was requested. But I will not condemn any prior action we have taken based on this hindsight. We all have 20/20 vision in hindsight. I have carefully studied the record of the January 27th hearing and my decision will be based on the facts contained in that record.

The decision to be made here tonight centers on the conformance of the Teton Apartments plat with the City of Idaho Falls Subdivision Ordinance. Although much has been said about land use, the impact of this development on the

surrounding neighborhood, schools and property values; this decision is to be made on the plat, and only on the plat.

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In *A Man for All Seasons*, Sir Thomas Moore says, "The world will construe according to its wits; this court must construe according to the law." The pertinent law regarding plats is contained in Idaho Falls City Code, Title 10, Chapter 1. Therein is laid out the procedures and regulations with regard to plats and plat approval. Idaho Falls City Code 10-1-17-C states, in part:

If the final plat conforms to the provisions of this Chapter and all other State and Federal Laws and Local Ordinances, the City Council shall approve the final plat and authorize the Mayor and City Clerk to sign the original plat. (Emphasis added.)

A great deal of evidence was submitted during the public hearing held January 27, 2000. Unfortunately, very little of this evidence dealt with the conformance of this plat to City Code; most related to land use and alleged impacts on property values, schools, etc. My conclusion, after examination of all the evidence on the record, shows that this plat does conform to City Code and all other applicable laws. Therefore, in accordance with my oath of office and the clear requirements of Idaho Falls City Code 10-1-17-C, I announce my intention to vote for approval of this plat. Thank you.

Councilmember Hardcastle made the following statement:

I, too, have carefully studied the volumes of the record and I feel like I have memorized Title 10, Chapter 1 of the Subdivision Ordinance. I am greatly saddened by the division that has happened in this City and I agree with a great deal of what Councilmember Eldredge has said. One of the things, two Council Meetings ago, I was unable to attend when several of the Councilmembers were sworn in. Several of you were at that meeting and heard that oath. I, too, took that oath two years ago and four years prior to that. I take that very seriously. It is my opinion that the first thing that I have to do, and I would suspect that every one of you would expect me to do, is uphold the laws. That is what I said in that oath when I raised my hand, to uphold the laws, not only the City of Idaho Falls, but the State of Idaho, and the Constitution of the United States. As I have mentioned, I have studied this Ordinance and it is my opinion that this plat complies with all the provisions in that Ordinance. I, too, feel strongly that I would be breaking the law if I did anything but vote for that considering how I have interpreted that law, along with the record that was presented two weeks ago.

Councilmember Groberg shared his statement, as follows:

So much of what has been said is also in my mind, especially the general comments about the neighborhood. For me particularly, because so many close friends and people whom I respect and whose opinions I respect have been talking about this and affected by it. I see the essence of the controversy, basically, that the neighbors do not want this apartment project in their neighborhood for all the reasons that they have stated, those being school crowding, traffic, possible devaluation of their houses, and incompatibility with the neighborhood. I don't question any of their concerns. They are all valid concerns that neighbors should have. On the other hand, the Developer

believes it has the legal right to build these apartments. That is not something that can be lightly overlooked either. So, you have two really genuine competing interests. Unfortunately, there crept into the controversy a

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secondary issue that perhaps bothers many as much as the real issue. It has appeared to many that the City should have been more helpful to have notice and forums to hear the neighbors concerns. In fact, many have expressed that it seems as if the City has taken an adversarial position promoting the position of the Developer. I think those are real concerns. I would like to address them briefly. First, with respect to the approval or non-approval of the plat, as has been suggested, unlike zoning and annexation in which the City has almost unlimited latitude and discretion, in the Platting Ordinance, we are virtually given no discretion. If the plat meets the specifications of the Ordinance, the Ordinance says the Council shall approve it. I think Councilmember Eldredge read from that Ordinance. I have listened closely to what has been presented and have searched for something that was wrong with the plat, that would make it not comply with the Subdivision Ordinance, that would require us to have the owner change it. I emphasize that "would require us to have the owner change it", because under the Ordinance we can't just say, "You can't build this". We have to specify, "These things will have to be changed in your plat". Then, he has an opportunity, under our Ordinance, to go and change them. I haven't found anything wrong with the plat application, regardless of how we might feel about what is being built on the lot that is being platted. I believe that the owner is entitled to have his plat approved. And as I mentioned earlier, it might help to understand, usually we do not know what is going to be built on property that is presented to us for platting. What restricts what's built there is the Zoning Ordinance and the Building Code. But we usually don't know what is going to be built there. It was almost gratuitous, in this case, that the Owner or Developer of the property told the Council what he was planning to build. But he had no obligation to do that. There was no binding agreement that he would do that. Frequently someone has an idea what he might want to build and then he builds something else later. That's the way platting interrelates with the Zoning Ordinance. By the way, I had no problem with listening to everything. I think everything was relevant. Everything was germane. Everything was a true concern. It seemed to me that I heard very little evidence that directly contradicted compliance with the Subdivision Ordinance. We have talked a little bit about the traffic study. I really think it would be quite unfair of us to, at this point, go back and require a traffic study, for someone who did everything that our Staff asked them to do with respect to that and has even gone further in submitting a traffic study here. We have discussed a lot about the PUD, so I do not want to go into that. Originally, that was a real concern of mine, but I am satisfied that it is not a germane point here today. Again, based on information I have had from many friends and people that I respect, I have no doubt that they would like to see me vote to deny this plat and would consider that courageous on my part as looking out for their interests. But, frankly, I just don't think it would be the right thing to do. I think it would be arbitrary government, contrary to our own Ordinances. The very type of government that might benefit one at one time, but turn around and bite him another time. We have to uphold our laws and be fair and straightforward with the people that deal with us. So, my intention would be to vote to accept the plat.

Councilmember Lehto gave the following statement:

I would just like to tell all of you that during this process, I have overheard many emotional comments, both positive and negative. Many emotional pleas

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and arguments have been presented in the newspaper. I have paid little attention to these comments, but rather to the information presented at the public hearing on January 27, 2000. During my deliberations, I weighed all that evidence presented at the hearing, divided it for the most part into three categories: Things that count, things that don't count, and things that should be cause for concern. I have raised probably the one most substantive issue in my mind that could probably derail the plat application, and that was the lack of a Traffic Impact Study upfront. The things that don't count, I am not going to go into. Suffice it to say, I agree with Councilmember Groberg, that it was appropriate to hear those concerns at the public hearing. I am somewhat concerned about a couple of things and then I just want to articulate a thought or two on the process. The evidence basically showed that this land was zoned R-3 some 22 years ago. The land basically sat idle with that zoning until 1996, when some plans were discussed at the Planning Commission about how that land was to be developed. And then three years later in 1999, boom, it's upon us, it's platted, and we are faced with the Teton Apartments development. I believe that the City of Idaho Falls might have been acting within it's own laws during this process, but it should have been more proactive in getting the message out to the citizens. I think that one item resonates more than any other through the public hearing testimony, the fact that the City did not do an adequate job of informing the public and the residents adjacent to the development. Finally, I would like to say that the decision before the City Council is whether the final plat complies with all City Ordinances and applicable laws at this time. The issue is not whether the City's current process adequately and fairly addresses all of the citizens concerns. This is a debate for another time. The Developer has met his commitments and obligations to the City of Idaho Falls and developed and utilized the land for its intended purpose, R-3 zoning. Finally, I would like to say that, having waded through the volumes of testimony, I intend to vote to pass or reaffirm the final plat decision.

Councilmember Groberg stated that he has worked with the Planning Department, both inside and outside of the government. It is his honest impression that the way that this was handled was the complete, normal, non-adversarial effort to try to do what has been the City's practice in the past. There was no bias.

It was moved by Councilmember Rose, to deny the Final Plat for Teton Apartment Subdivision, Division No. 1, and to remand it to the Planning Commission for the following reasons:

No. 1 – There is a need for official input from School District No. 91 in regards to potential overcrowding caused by the Teton Apartments; and,

No. 2 – There is a need for a traffic impact study to be completed.

This motion failed, due to the lack of a second.

It was moved by Councilmember Eldredge, seconded by Councilmember Hardcastle, to approve the Final Plat for Teton Apartments Subdivision, Division No. 1 and, further, give authorization for the Mayor and City Clerk to sign said Final Plat. Roll call as follows:

Aye: Councilmember Eldredge
Councilmember Lehto

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Councilmember Hardcastle
Councilmember Groberg

Nay: Councilmember Rose

Motion Carried.

It was moved by Councilmember Eldredge, seconded by Councilmember Hardcastle, to have the City Planning Staff prepare Findings of Fact, Conclusions of Law, and Record Decision for the Teton Apartment Subdivision, Division No. 1 Final Plat. Roll call as follows:

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

Nay: None

Motion Carried.

It was moved by Councilmember Eldredge, seconded by Councilmember Hardcastle, that the previous signatures on the Teton Apartments Subdivision, Division No. 1 Final Plat be ratified. Roll call as follows:

Aye: Councilmember Eldredge
Councilmember Lehto
Councilmember Groberg
Councilmember Hardcastle

Nay: Councilmember Rose

Motion Carried.

It was moved by Councilmember Eldredge, seconded by Councilmember Hardcastle, to approve the Development Agreement that was previously approved for Teton Apartments Subdivision, Division No. 1, and ratify the signatures on said Agreement. Roll call as follows:

Aye: Councilmember Hardcastle
Councilmember Eldredge
Councilmember Lehto
Councilmember Groberg

Nay: Councilmember Rose

Motion Carried.

It was moved by Councilmember Hardcastle, seconded by Councilmember Eldredge, to recess the remainder of this City Council Meeting to the City Council Chambers at 140 South Capital Avenue. Roll call as follows:

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

Nay: None

Motion Carried.

Upon arrival at the City Council Chambers, 140 South Capital Avenue, Mayor Milam reconvened the Regular Meeting of the City Council of the City of Idaho Falls at 9:45 p.m. At the request of Mayor Milam, the City Clerk called the roll as follows:

There were present:

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

Absent was:

Councilmember Beverly Branson

Also present:

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

The City Clerk read a summary of the minutes for the January 27, 2000 Regular Council Meeting. It was moved by Councilmember Eldredge, seconded by Councilmember Lehto, that the minutes be approved as printed. Roll call as follows:

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

Nay: None

Motion Carried.

Mayor Milam thanked Councilmember Hardcastle for conducting the January 27, 2000 City Council Meeting in the Mayor's absence. Mayor Milam stated that she has heard good comments about her conduct of that meeting and also for Councilmember Rose's

conduct of the public hearing for the Teton Apartments Subdivision, Division No. 1 Final Plat consideration.

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CONSENT AGENDA ITEMS

Mayor Milam requested Council confirmation of the appointment of Robert "Dary" Newbry to serve on the Parks and Recreation Commission (Term to Expire in December, 2002) and the appointment of Cliff Laughlin to serve on the Parks and Recreation Commission (Term to Expire in December, 2001).

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 Cheneé M. Kokko, Dawn W. Millward, and Leon O. Noel, 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 February 10, 2000.

The Municipal Services Director submitted the following memo:

City of Idaho Falls
February 3, 2000

MEMORANDUM

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

Municipal Services respectfully requests authorization to advertise and receive bids for City-owned vehicles, equipment, and furnishings that are surplus and no longer needed nor used by the City of Idaho Falls.

s/ S. Craig Lords

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

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

Nay: None

Motion Carried.

REGULAR AGENDA ITEMS

The City Clerk presented the following Expenditure Summary dated January 1, 2000 through January 31, 2000, after having been audited by the Fiscal Committee and paid by the Controller:

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<u>FUND</u>	<u>SERVICE AND MATERIALS</u>	<u>GROSS PAYROLL</u>	<u>TOTAL EXPENDITURE</u>
General Fund	\$1,399,602.63	\$1,046,670.90	\$2,446,273.53
Street Fund	47,645.62	56,609.57	104,255.19
Airport Fund	71,271.85	30,562.19	101,834.04
Water and Sewer Fund	181,100.26	238,747.11	2,847,743.68
Electric Light Fund	2,608,996.57	238,747.11	2,847,743.68
Sanitation Fund	34,356.03	63,613.57	97,969.60
Recreation Fund	31,102.75	32,278.08	63,380.83
Municipal Capital Improvement Fund	1,302.00	.00	1,302.00
Library Fund	68,542.96	52,155.79	120,698.75
Street Capital Improvement Fund	17,559.60	.00	17,449.60
Ambulance Fund	129,712.84	61,613.64	191,326.48
Municipal Equipment Replacement Fund	248,322.00	.00	248,322.00
Electric Light Public Purpose Fund	32,432.29	.00	32,432.29
Swimming Pool G. O. Bond	185,125.00	.00	185,125.00
Business Improvement District	124.00	.00	124.00
TOTALS	\$5,057,086.40	\$1,706,523.32	\$6,763,609.72

It was moved by Councilmember Lehto, seconded by Councilmember Eldredge, to approve Check No. 20097 in the amount of \$1,825.77 made payable to the Red Cross and Check No. 51140 in the amount of \$106.25 made payable to the Red Cross. Roll call as follows:

Aye: Councilmember Groberg
Councilmember Hardcastle
Councilmember Eldredge
Councilmember Lehto

Nay: None

Abstain: Councilmember Rose (As he is the Director for the Red Cross)

Motion Carried.

It was moved by Councilmember Lehto, seconded by Councilmember Eldredge, to ratify the payment of the remainder of the expenditures for the month of January, 2000. Roll call as follows:

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

Nay: None

Motion Carried.

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Mayor Milam requested Councilmember Rose to conduct Annexation Proceedings for Stonebrook Addition, Division No. 15. At the request of Councilmember Rose, the City Clerk read the following memo from the Planning and Building Director:

City of Idaho Falls
February 6, 2000

MEMORANDUM

TO: Mayor and City Council
FROM: Renée R. Magee, Planning and Building Director
SUBJECT: ANNEXATION, FINAL PLAT, AND INITIAL ZONING FOR STONEBROOK ADDITION, DIVISION NO. 15

Attached is the Final Plat, Annexation Agreement, and Annexation Ordinance for Stonebrook, Division No. 15. The requested initial zoning is RP-A. The annexation request contains fifteen single-family lots and is located immediately south and adjacent to Sunnyside Elementary School and east of Nathan Drive. The Planning Commission reviewed this request at its January 11, 2000 Meeting and recommended approval with the stipulation an eight-foot pedestrian walkway be located between Lots 15 and 16, Block 12. The Final Plat being submitted for Council approval has such a walkway. 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:

Slide 1	Vicinity Map
Slide 2	Aerial Photo
Slide 3	Land Use Map
Slide 4	Final Plat
Slide 5	Looking south from Woodhaven Lane
Slide 6	Looking north from Woodhaven Lane at the back of Sunnyside Elementary School
Exhibit 1	Planning Commission Minutes dated January 11, 2000
Exhibit 2	Staff Report dated January 11, 2000

The Planning and Building Director stated that this Final Plat is in compliance with the Subdivision Ordinance, the Preliminary Plat, and the Comprehensive Plan.

Daryl Kofoed, Mountain River Engineering, 1020 Lincoln Road, appeared to state that they have complied with everything that has been requested.

There being no further comment 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 Eldredge, to accept the Final Plat for Stonebrook Addition, Division No. 15 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 Rose

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Councilmember Eldredge
Councilmember Lehto
Councilmember Groberg

Nay: None

Motion Carried.

It was moved by Councilmember Rose, seconded by Councilmember Eldredge, to approve the Annexation Agreement for Stonebrook Addition, Division No. 15 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 Hardcastle
Councilmember Groberg

Nay: None

Motion Carried.

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

ORDINANCE NO. 2360

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 Eldredge 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 and the Ordinance be passed on all three readings. Roll call as follows:

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

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

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by Councilmember Eldredge, to establish the initial zoning of Stonebrook Addition, Division No. 15 as RP-A (Single-Family Residential Park) as requested and, 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 Eldredge
 Councilmember Lehto
 Councilmember Rose
 Councilmember Groberg
 Councilmember Hardcastle

Nay: None

Motion Carried.

Mayor Milam announced that the Annexation Proceedings for Stonebrook Addition, Division No. 16 was withdrawn by the Developer.

Mayor Milam requested Councilmember Rose to conduct Annexation Proceedings for George Washington Estates, 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
February 6, 2000

MEMORANDUM

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

Attached is the Final Plat, Annexation Ordinance, and Annexation Agreement for George Washington Estates, Division No. 1. This property is located south of Eastern Idaho Regional Medical Center (EIRMC) and Sunnyside Road and west of Crestwood Lane. The plat contains almost 24 acres and eleven lots, the largest of which is sixteen acres. At its December 14, 1999 Meeting, the Planning Commission recommended approval with the following conditions: (1) the initial zoning be PB-PUD, (2) the owner secure an agreement from EIRMC to relocate their emergency access to align with George Washington Parkway, (3) a traffic study be prepared prior to the Council Meeting, and (4) temporary turnarounds be provided on the plat. The Department concurs and requests, if this annexation is approved, the initial zoning be PB with a PUD overlay. This annexation request is now being submitted to the Mayor and City Council for consideration.

s/ Renée R. Magee

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

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Slide 1	Vicinity Map
Slide 2	Aerial Photo
Slide 3	Land Uses
Slide 4	Final Plat
Exhibit 1	Planning Commission Minutes dated December 14, 1999
Exhibit 2	Staff Report dated December 14, 1999

The Planning and Building Director stated that one lot is 16 acres in size, which will be a property for the Eastern Idaho Regional Medical Center. The smaller lots along the western edge of the property are proposed for medical offices or professional offices. When the Planning Commission looked at this plat, they discussed two issues extensively:

1. Configuration of this plat, in that there is one long street that is 1300 feet in length and one access point to Sunnyside Road. The one access point to Sunnyside Road was felt to be necessary by the Planning Commission, because access points to Sunnyside Road are to be limited. There is approximately 750 feet of frontage to Sunnyside Road. The problem was how to provide 2 access points to 16 acres for hospital use. Due to this fact, the Planning Commission recommended the Planned Unit Development Overlay. As it is developed, it can come back to the Planning Commission and City Council to review the building placement, the accesses between the buildings, and provide an internal circulation pattern on the 24 acres.
2. The Sunnyside Corridor Study was addressed, as this area is suggested to develop as single-family residential. The Sunnyside Corridor Study suggests that R3-A and PB zoning be confined to the north side of Sunnyside Road. The Planning Commission found that a great deal of the land immediately east of the hospital has been sold and is no longer available for medical and professional offices. There is a need to expand the zoning available for that use. This seemed the most likely area as it was immediately south of the hospital.

Councilmember Hardcastle requested to know how far from St. Clair Addition is this subdivision, to allow for an access point onto St. Clair Road. The Planning and Building Director stated that the Developer has prepared a sketch, whereby a road pattern would be established to St. Clair Road eventually. The Developer does not have control of the land between his development and St. Clair Addition. The Planning Commission felt that it would be necessary for George Washington Parkway to develop to the south as Crestwood Lane has developed in the County and would not be a collector street to carry traffic out of this area. George Washington Parkway will be a collector street.

A general discussion among Council was held regarding other possibilities for a connecting roadway pattern from George Washington Parkway. The Planning and Building Director explained that a second access to Sunnyside Road would not be approved. The Sunnyside Corridor Study states that collector streets should be spaced at approximately ½ mile apart on Sunnyside Road. The City has not been able to reach that goal. They are now at approximately ¼ mile intervals. The Access Management Plan recommends that collector streets be 460 feet apart, or at the very least 350 feet apart, depending upon the amount of traffic generated from this land use. Several other options were suggested for accesses to this development.

Councilmember Rose questioned whether agreement had been reached with Eastern Idaho Regional Medical Center about moving the emergency access to align with George Washington Parkway. The Planning and Building Director stated that Mr. Hall has a short agreement with the hospital. There is a provision in the Annexation Agreement that

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would require that the emergency access point from the hospital, would be moved to align with George Washington Parkway. The City of Idaho Falls does not have an agreement with the hospital.

Councilmember Lehto commented that the Sunnyside Corridor Study has not provided for extensive civilization on Sunnyside Road. This development needs to be looked at much closer. Councilmember Lehto recommended that a Traffic Impact Study be done on this development. The Planning and Building Director stated that a Traffic Impact Study has been completed with the recommendation that a deceleration lane be provided for George Washington Parkway. The Engineering Department feels that there is sufficient right-of-way that the deceleration lane can be built into the development at the time it is improved.

Mayor Milam stated that Sunnyside Road will be designed in the near future, and signalization will be addressed at that time.

Councilmember Groberg questioned whether the PB zone would be adequate for the intended use. The Planning and Building Director stated that the Planning Commission determined this zone would be appropriate, as it was being developed for a clinical nature.

Craig Hall, 1660 John Adams Parkway, appeared as the applicant. Mr. Hall read the following statement:

Two hundred years ago, this past December, George Washington passed away. It has been said that no person in history has ever been given so much absolute power, voluntarily, by his countrymen, as was George Washington at the completion of the Revolutionary War. The neat thing about George Washington was how calmly he gave back the power to the common citizen. Sometimes we forget that there was no democracy on the earth for George Washington and his associates to pattern the new nation after. And it is for this reason that I am most pleased to present to the Mayor and City Council this evening, a new addition in honor of this great man, George Washington.

This piece of ground that would be considered for annexation this evening, also has a great past. Approximately 53 years ago, Helen Purcell, as a newlywed, moved into this property with her husband, Mark. In the beginning, they took their truck (and she corrected me, not their wagon) to the Ammon well to bring home water in glass jars. Over the past 50 years, Helen Purcell did the greatest thing that any of us can do. She had and raised her six children and supported her husband. The children are all grown now, with children of their own. The Purcell legacy, at this site, will live on for a long time as we drive down Sunnyside and look at that huge row of pine trees that still stands on the Purcell home site to protect from the Idaho winds. Helen Purcell planted those trees as 2-inch seedlings. Hopefully, that row of trees will remind all of us that we walk on the shoulders of those who came before us. One day, Mark Purcell, who passed away prematurely from cancer, can look down on his old dairy farm and see people receiving medical care.

Thirteen years ago, in December, Eastern Idaho Regional Medical Center moved to its current location. A lot has happened since then. That same year, Candace Carlton came to town. She brought with her, what I would consider, modern Neurosurgery. Although she has passed on, we now have three excellent Neurosurgeons. Even more recent is the birth of the Cardiac Surgery Department. People may decide to go elsewhere, but our two cardiovascular

surgeons and our nine cardiologists are outstanding. In recent years, we have been averaging 12 to 15 new physicians coming to town, because we have truly become a regional medical center. The hospital has rapidly used up all of its

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current space in 13 years. How much longer will the hospital remain in its current location? 50, 70, 100 years or more. No one knows for sure. Who is the hospital? The hospital is 1,300 of our neighbors who take care of the smallest and the sickest of our community. Those employees work hard covering shifts 24 hours a day, 365 days a year. I don't know if any of those 1,300 employees at the hospital that are getting rich, but they are supporting their families and paying taxes that provide services for all of us. The hospital is an organization that is paying approximately \$1.5 Million in property tax year after year after year, to support our parks, schools, and roads. Eastern Idaho Regional Medical Center is the largest taxpayer in Bonneville County. Very few people realize that there are over 50 hospitals in Idaho and only two, one small hospital in Caldwell, Idaho and Eastern Idaho Regional Medical Center that even pay property tax in Idaho. I am one who strongly believes in competition and I feel very comfortable in telling you in front of the hospital's CEO that I, as well as many other medical providers, do not object to a new competitive hospital, if that competitive hospital will provide care for all of the people in our community, and not just cherry-pick with full-party payers, excluding the Medicare, Medicaid and indigent patients. In the meantime, just as State and Local Governments must compete with each other to get moneys back from Washington, D. C., we, meaning the medical staff, the hospital, and the community, have to compete with 450 other Columbia Hospitals get money sent back from Nashville. We are going to continue to send money to Nashville. That's for sure. The question is whether we will send them a strong enough message that we want and deserve to have some of the money sent back. I have met with the Columbia officials and they are very committed to participate in a medical campus south of the hospital at this proposed location.

I chose PB zoning over R3-A because I did not want any buildings over two stories. I do not believe the hospital has ever decreased any of the neighbors property values, nor will this project. Furthermore, the hospital is not the only entity that needs and deserves a place to grow. A lot of the physicians here now and those to come in the future need a place in close proximity to their sickest patients that are in the hospital ICU's. The future of medicine is for the sickest patients to be in the hospital, but as for myself, I mainly take care of healthy patients. I will fight for money to come back in the form of a birthing center, an outpatient rehab center, an outpatient cancer center, and the like at this location. I made a very strong effort to meet with the neighbors that actually live next to this property. As far as I know, they are relatively supportive of this project. None of them testified against it at the two prior public hearings. Of note, we had two public hearings to get here tonight, since at the first hearing, a few people did not get their mailed notices. I, personally, like to avoid confrontation. I tried to explain the need for the hospital and the medical providers to expand in the future, and how this project would benefit the entire community. There was one gentleman that lives in Prestwich Estates who came to the second public hearing in a generalized opposition. So, I am left to say to him, this project will not significantly affect his street, that he might consider joining the City of Idaho Falls along with his neighbors, since they live next to the City Park, and that a Study is not a City Ordinance. The City Council will

and should determine what's best in the interest of all the people of Idaho Falls and not be enslaved to his interpretation of a prior study.

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In conclusion, City Council, please consider the Planning Commissioners, in accepting George Washington Estates into the City of Idaho Falls. Thank you for your time and I would be happy to try to answer your questions. I would also be very happy if you decided to forego the PUD Overlay on Lots 1-10, Block 10, but I would really accept your judgment.

Mr. Hall stated that for many months, he had a strong impression to stop and talk with Helen Purcell. After several months, he was able to satisfy the needs of her and her six children, along with the Finns. He was also able to meet with Mr. May, President of the western half of Columbia. Mr. Hall stated that the hospital is interested in this development. They have committed to him in writing. He described how he and the Planning and Building Director configured this property to meet Fire Codes. Between the first public hearing and the second public hearing with the Planning Commission, he met with the hospital to arrange for the re-alignment of the hospital's emergency access to meet with George Washington Parkway. No one will receive a building permit for this development until the access change is made. The hospital has committed to do that. Mr. Hall stated that if the hospital is not allowed to expand at this location, he does not know where the growth could take place. Mr. Hall stated that it took a lot of work to get to this point in the development of his land.

Councilmember Hardcastle requested confirmation that the people living on Crestwood Lane are in agreement with this development as presented. Mr. Hall explained that he met with the people of Crestwood Lane, showing them the final plat and explaining to them what PB zoning entailed. He felt that the neighbors were comfortable with the development. No one appeared to testify against this development.

Councilmember Lehto stated that an option would be to get the neighbors signatures on a petition, stating their desire to have this development as a neighbor. Mr. Hall stated that he did not do that. He felt that he has done everything within his power to comply with all of the requests made of him for this development.

Councilmember Eldredge stated that he was concerned about a second access. Since it would be a long distance for this development to have an access to St. Clair Road, Councilmember Eldredge questioned whether an access could be provided to Crestwood Lane, with a barricade provided allowing for emergency vehicles only.

Mr. Hall stated that he would do whatever it would take to comply. When he met with the engineers to plan the storm drain pond, he suggested that the pond be placed near the neighbors to provide a buffer from the development. He also oversized the pond requirements. He stated that it would not work to have heavy traffic travel down Crestwood Lane in its current condition. Mr. Hall stated that the last three lots at the end of Crestwood Lane are vacant and he has made an effort to purchase those lots. They are not available. Following a discussion by Council regarding how to make this access work on Crestwood Lane, it was determined that this would be difficult to accomplish.

Councilmember Lehto stated that the Council is not present to brainstorm for the Developer. He submitted that it is on the Developer to secure the appropriate accesses to make this viable. He has no doubt that this will be a wonderful project when it is completed. In the future, this development will have the need of additional accesses. Mr. Hall stated that he talked with Tim Marshall, the owner of the property to the west of this land, to discuss a method of providing a street design to have an access to St. Clair Road. Mr. Marshall told him that the land was not for sale.

Councilmember Eldredge agreed that they were not present to brainstorm. He felt strongly that a second access is needed for this development, and it occurred to him that if it can be provided on Crestwood Lane, this might work. Councilmember Eldredge

suggested recessing this annexation request for a couple of weeks to allow for the development of the second access.

Mr. Hall stated that he has done everything that he could to comply.

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Councilmember Rose requested those in favor of this annexation request, to come forward at this time.

Guy Thompson, 3440 Sonoma Circle, appeared to state that he is the Chief Nursing Officer at the hospital and part of the Administrative Team. The hospital is in the process of a \$42 Million expansion and remodel. Since the time that the hospital was built, single-family homes have been built around the hospital, not allowing room for expansion. Mr. Thompson stated that 15 new physicians come to our community every year. The hospital is recruiting right now for a number of new specialties. They cannot find office space available in the community. The hospital has committed with Mr. Hall to purchase this ground for future growth and development of hospital-related needs. There does not appear to be any other viable alternatives available to the hospital. The hospital is very much in support of this project.

Helen Purcell, 3205 Central Avenue in Ammon, Idaho, appeared to state that over the years, a lot of people have approached her to purchase her land. There were none of the offers that appealed to her, as she was looking out for her Crestwood neighbors, as they are her friends. When Mr. Hall approached her about what he wanted to accomplish, it seemed like something that would be compatible with the neighbors.

Darla Miller, 7656 North 55 East, Idaho Falls, Idaho, appeared to state that she is the Director of Women's Services at the hospital. She wanted to announce her support for this development. Women's Services are full at this time, and are hoping to be able to expand to another location. She was hoping that this development would be the answer to that.

Councilmember Rose requested those opposed to this annexation request to come forward at this time.

Lynn Collings, 3231 Merlin Drive, appeared to state that in accordance with the Sunnyside Corridor Study, the development of the Sunnyside Road Corridor should be predominately residential, but R3-A or PB zoning may be permitted on the north side of Sunnyside, between St. Clair Road and Hitt Road to allow for development associated with the hospital. All points of access on Sunnyside Road should be on collector streets or developed at approximately ½ mile intervals. Over the weekend, he counted 7 roads accessing Sunnyside Road in .7 of a mile from St. Clair Road and Channing Way. Once the Council begins to rezone contrary to the Sunnyside Corridor Study, the land south of Sunnyside, then the door is opened for others to rezone the property to make it more commercial in nature. The concern that he has, and he stated that he is representing the overwhelming majority of home owners in the land surrounding the north, south, east and west of the large parcel of land immediately west of Mr. Hall's proposed development, are opposed to the proposition that was submitted by Tim Marshall of R-3 zoning. The developers need to meet with each other and determine how this will develop. He requested a unified development in this area.

Corwin Cook, 1355 Crestwood Lane, appeared to plead with the City Council to place as many restrictions on this development as possible. He stated that when this becomes zoned, anything permitted within that zone could be built there. He has been promised that something related to the hospital will be constructed here. He requested that this be restricted to that promise. He stated, further, that the people that live on Crestwood Lane do not want the traffic from this development to use Crestwood Lane. This is a very small road. He stated that Valencia Court has a road. If they would like to pass Crestwood Lane to access Valencia Road, they are welcome to pass Crestwood Lane. Mr. Cook requested to have another approval process whereby the public can have an input as to what is constructed in this development. He stated that Mr. Hall did visit with the neighbors. He reaffirmed that most of the neighbors did not express any concern with this development.

Delwin Roberts, 3232 Merlin, appeared to state that the Comprehensive Plan does not allow for PB zoning in this area. The Comprehensive Plan calls for this to be single-family residential. In addition, the Sunnyside Corridor Study calls for residential in this

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area. Mr. Roberts stated that there has not been a substantial change to this area since the adoption of the Sunnyside Corridor Study and the Comprehensive Plan were adopted that would justify a zoning change of this magnitude. He submitted the following petition with 127 signatures as being opposed to anything other than single-family residential in this area:

January 10, 2000

TO: Idaho Falls Planning Commission Members and City Council
SUBJECT: Developer Requests for Other Than R-2A Zoning for Undeveloped Land South of Sunnyside and East of St. Clair to Sunnyside Park

We the undersigned property owners are opposed to R-3 and RSC-1 rezoning of the undeveloped property south of Sunnyside Road and east of Buck's Service Station all the way east to the existing homes south of Sunnyside Park. We petition you to **follow the established Sunnyside Corridor Study for R-2A, predominantly single residential homes on the south side of Sunnyside Road. We request that you reject any business development, which would request rezoning for anything except R-2A for this area.** Homeowners along Sunnyside Road have built or purchased homes in such residential developments as Stonebrook and Spring Creek on the south side and Cedar Ridge, Home Ranch, Shamrock Park and Prestwich Estates on the north side with the expectation that the development of land south of Sunnyside Road would follow the City's Comprehensive Plan and the Sunnyside Corridor Study. This undeveloped land is the last large undeveloped parcel remaining south of Sunnyside as part of the Sunnyside Corridor Study. As Planning and Zoning Commission Members, it is within your power to restrict zoning of this land to only R2-A. We respectfully request that you do restrict it to only R-2A. We are mindful of your role and responsibility and the role and responsibility of City Council Members to affected persons in developmental areas, as defined by the Land Use Protection Act. That Act provides for careful study of impact for schools, infrastructure, traffic and safety, **including how the use of the land will impact the surrounding residents.** As residents surround this proposed developmental area and as taxpayers, we hold you accountable in you role and responsibility as defined by this Land Use Protection Act. We again respectfully request that you allow only R-2A zoning in this area. Thank you.

s/ 127 signatures from
surrounding neighbors

Mr. Roberts read a portion of a statement from Justice Trout of the Idaho Supreme Court, from a case by the name of *Edward Price vs. Payette County Board of County Commissioners*, "The Board should deliberate first on the proposed Amendment to the Comprehensive Plan and consider whether or not a general type of growth should be permitted in a particular area. Then, once the Board has made that determination, the Board should decide the appropriateness of the rezone within the area. This procedure insures that the Board considers the overall development scheme's of the County prior to consideration of an individual request for amendments to the Zoning Ordinance." Mr. Roberts stated that this is what is happening with this development. There is a request to change the Comprehensive Plan, to overturn the Sunnyside Corridor Study, and to do that all in one procedure, the

Supreme Court found it does not give the right consideration in the process. Mr. Roberts stated, further, from the case, "Consider whether the Board violated Idaho Code 67-6509(b) by failing to hold a second hearing prior to its adoption of the Amendment to the

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Comprehensive Plan, if the Board after a public hearing on a request to amend the Comprehensive Plan, makes a material change in the Plan, the Board must provide notice of and conduct a second hearing before the Board adopts the amendments. Because the Comprehensive Plan states as one of its goals the avoidance of residential development on prime agricultural lands, and amendment to the Comprehensive Plan which rezones agricultural property or residential property, constitutes a material change for the purposes of that Code Section.” Mr. Roberts stated that if the development of this land is the right thing to do, then the Comprehensive Plan and Sunnyside Corridor Study be amended prior to acceptance of this annexation.

Councilmember Groberg questioned whether the petitions that were submitted were signed relative to a development to the west of the land under consideration. Mr. Collings re-appeared to state that the petitions were composed and signed for a development to the west of the proposed annexation.

Councilmember Lehto questioned whether the neighbors were aware of the proposed annexation and zoning at the time that the petitions were prepared. Mr. Collings stated that they were aware of the development.

Delwin Roberts re-appeared to state, with regard to the petitions, that it was unanimous that the desire for this property was for single-family residential.

Councilmember Rose requested Mr. Hall to re-appear to provide rebuttal information. Mr. Hall stated that no one signed a petition against his development. He stated that this is the best use for the 24 acres. He questioned that if the medical community cannot go in this location, where can they develop.

There being no further comments or questions, Mayor Milam closed the public hearing.

Councilmember Eldredge requested Fire Chief Bob Drake to appear to address the plat and the length of George Washington Parkway. Chief Drake appeared to state that he has a real concern regarding this single access. Any of the options that were considered earlier would work for the Fire Department regarding emergency vehicle access. If access is not addressed in the beginning of a development, typically it is not addressed in the future.

Councilmember Groberg questioned whether the Fire Department was able to address any concerns on the Final Plat prior to the meeting. Chief Drake stated that the Fire Prevention Bureau reviews all plats that are presented for approval. Under the first review, the Fire Prevention Bureau expressed concern over the single access. Under the second review, the Fire Prevention Bureau approved the Final Plat. When the Chief was made aware of the contradiction, he reviewed the plat himself. Chief Drake stated that the single access is a problem, until any of the options become more permanent.

Councilmember Rose questioned whether the City is protected by not having an agreement with the hospital regarding the emergency access being moved to align with George Washington Parkway. The City Attorney stated that the City is not a party in the agreement with Mr. Hall. Therefore, the City would not be able to enforce the agreement with the hospital. He stated that the Annexation Agreement provides that Mr. Hall would be not be issued any building permits until the access is re-aligned.

Councilmember Lehto requested copies of any Traffic Impact Studies that are conducted prior to the Council Meeting. He questioned whether it would be more likely that if the zone was established for this development as PB, that any surrounding property would be allowed to establish a zone of PB. The Planning and Building Director stated that this would be a possibility and offered some alternatives of how this property could be transitioned back to residential. She commented, further, that when the property is zoned, it is open to those land uses. The Planned Unit Development Overlay was recommended to

address the design and layout of the property and to address a second access to this property.

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Councilmember Rose expressed his concern over making sure that all steps are taken for a change to the Comprehensive Plan and the Sunnyside Corridor Study. The City Attorney stated that Delwin Roberts correctly recited the case; however, the case was a situation involving property already inside the City. There was already a Comprehensive Plan adopted and what was being considered was a rezone that was inconsistent with the Comprehensive Plan. That is not the situation with this annexation. This is an amendment to the Comprehensive Plan for the first time. The case that Mr. Roberts is quoting from, does not apply in this context.

Councilmember Lehto stated that he understood Mr. Roberts to mean that if a commercial zone is allowed in this location, it would be more likely that another commercial zone would be allowed right next to this development. He strongly voiced his objection to creating another 17th Street along Sunnyside Road. Councilmember Lehto stated that Mr. Hall and the neighbors should get together to resolve any issues with this development.

Councilmember Groberg stated that the Planning Commission considered this plan two times, imposing as restrictive a zone as can be placed. The Developer was told that he should not have accesses onto Sunnyside Road, but on the other side, was told that there is only one access. Councilmember Groberg stated that this is unfair. He is trying to develop only the land that he owns. He does not believe that the Sunnyside Corridor Study prohibits this type of use. The Developer has made a real effort to comply with all requirements. The Planning Commission has tried to contain this, so that it develops in a way that will not interfere with overall development.

Councilmember Lehto stated that he does not disagree, but he recalled an article to the newspaper approximately 3 weeks ago, when Cherry Creek Estates was before the Planning Commission. The Planning Commission tabled consideration of this issue for further information. With this plat not going forth, there are too many issues that are not addressed. He requested the City Council to recess this issue to some date in the future to allow for further consideration.

Mayor Milam stated that the Planning Commission has been instructed to review the Sunnyside Corridor Study and to recommend any changes they feel are necessary.

Councilmember Eldredge stated that the appropriate thing to do at this time would be to recess this annexation request. The approval granted by the Planning Commission should stand. Mr. Hall should be given some time to provide an emergency access to his development so that the Fire Department's concerns are met.

Councilmember Lehto stated that he respectfully disagreed. He believed that it should be remanded back to the Planning Commission.

The City Attorney stated that if this matter was recessed, it would come back before the City Council again. Depending upon what changes are presented at the City Council Meeting, it may then be considered by Council or remanded back to the Planning Commission for their consideration.

It was moved by Councilmember Rose, seconded by Councilmember Lehto, to remand consideration of the annexation request for George Washington Estates, Division No. 1 to the Planning Commission, for consideration of a second access and consultation with the Fire Department for approval. Roll call as follows:

Aye: Councilmember Rose
 Councilmember Lehto
 Councilmember Hardcastle
 Councilmember Groberg

Nay: Councilmember Eldredge

Motion Carried.

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Mayor Milam requested Councilmember Rose to conduct a public hearing for consideration of a Planned Unit Development for a Medical Imaging Laboratory on property located generally on the west side of Woodruff Avenue, north of Parley Drive, south of East 17th Street, legally described as Lot 13, Block 1, First Amended Plat of Lorin C. Anderson Addition, 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
February 6, 2000

MEMORANDUM

TO: Mayor and City Council
FROM: Renée R. Magee, Planning and Building Director
SUBJECT: PLANNED UNIT DEVELOPMENT, LORIN C. ANDERSON,
DIVISION NO. 1

Attached is the site plan for the first phase of a Planned Unit Development at the above-described property. The first phase will house Teton MRI of Idaho Falls. This site plan and accompanying documents were reviewed by the Planning Commission in December, 1999, and January, 2000. At its January Meeting, the Commission recommended approval. The Department concurs in this recommendation. The application for Phase I, Planned Unit Development, is now submitted for the consideration of the Mayor and Council.

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 Planned Unit Development request:

Slide 1	Vicinity Map
Slide 2	Aerial Photo
Slide 3	Final Plat – Dated 1987
Slide 4	Site Plan for Phase I
Slide 5	Traffic Circulation Plan
Slide 6	Building Elevation
Exhibit 1	Planning Commission Minutes dated December 14, 1999 and January 11, 2000
Exhibit 2	Staff Report dated January 11, 2000

Larry Hudson, Mountain River Engineering, 1020 Lincoln Road, appeared as the representative for the Developer. He stated that he would be happy to answer any questions.

Jerry Britschigi, 1595 Parley, appeared to question whether a fence would be constructed along the south boundary of this Planned Unit Development. The Planning and Building Director stated that there is a 6-foot wooden fence proposed along the south boundary of the PUD. He expressed his concern about whether there would be warning signs placed around this facility that notify people that if they have a heart condition to stay away from this area. Mr. Britschigi commented regarding the bridge that was installed with

the first proposed Planned Unit Development. This bridge allows short-cut access off of St. Clair Road and provides an area for motorcycles to run.

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Larry Hudson re-appeared to state that the imaging facility would have every intention of providing a shield to protect the neighborhood. Mr. Hudson stated, further, that the bridge is part of the canal right-of-way and is not a part of this development. The Developer does not intend to use it in any way. The canal company would have to be contacted regarding what could be done to protect the area from motorcycle traffic.

The Planning and Building Director stated that this could be considered with another Phase of the development.

There being no further discussion, Mayor Milam closed the public hearing.

It was moved by Councilmember Rose, seconded by Councilmember Eldredge, to approve Phase I, as well as the Site Plan, for the entire Lorin C. Anderson Addition, Division No. 1 Planned Unit Development as submitted. Roll call as follows:

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

Nay: None

Motion Carried.

The Airport Director submitted the following memo:

City of Idaho Falls
February 7, 2000

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: Mike Humberd, Director of Aviation
SUBJECT: AMENDMENT TO KINGSTON PROPERTIES LEASE AGREEMENT

Attached for City Council approval is an Amendment to the Kingston Properties L.P. Lease Agreement. This Amendment is for monthly fuel flowage fee payments as required by Title 8 of the City Code.

Kingston Properties is currently the only self-fueled lessee.

The City Attorney has reviewed and approved this document.

The Airport Division requests approval of the Amendment and authorization for the Mayor to execute this Agreement.

s/ Mike Humberd

It was moved by Councilmember Groberg, seconded by Councilmember Hardcastle, to approve the Amendment to the Lease Agreement with Kingston Properties, L.P. and, further, give authorization for the Mayor and City Clerk to execute the necessary documents. Roll call as follows:

Aye: Councilmember Hardcastle
Councilmember Rose

FEBRUARY 10, 2000

Councilmember Eldredge
Councilmember Lehto
Councilmember Groberg

Nay: None

Motion Carried.

The Electric Director submitted the following memos:

City of Idaho Falls
February 2, 2000

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: Mark Gendron, Electric Division Director
SUBJECT: CONFIRMATION AGREEMENT WITH BONNEVILLE POWER
ADMINISTRATION

Attached for your consideration is a Confirmation Agreement to buy power from the Bonneville Power Administration for the month of March. This Agreement is for 10 megawatts.

The Electric Division respectfully requests ratification of this Agreement.

s/ Mark Gendron

It was moved by Councilmember Eldredge, seconded by Councilmember Hardcastle, to ratify the Confirmation Agreement to buy power from the Bonneville Power Administration for the month of March, 2000. Roll call as follows:

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

Nay: None

Motion Carried.

City of Idaho Falls
February 4, 2000

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: Mark Gendron, Electric Division Director
SUBJECT: FUEL CELL AGREEMENT

FEBRUARY 10, 2000

Attached for your consideration is an Alpha Fuel Cell Unit Sales and Testing Agreement with the Bonneville Power Administration. The City Attorney has reviewed the Agreement.

The Electric Division requests City Council approval of this Agreement and authorization for the Mayor to execute the documents.

s/ Mark Gendron

It was moved by Councilmember Eldredge, seconded by Councilmember Hardcastle, to approve the Alpha Fuel Cell Unit Sales and Testing Agreement with the Bonneville Power Administration and, further, give authorization for the Mayor to execute the necessary documents. Roll call as follows:

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

Nay: None

Motion Carried.

The Municipal Services Director submitted the following memos:

City of Idaho Falls
February 1, 2000

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: S. Craig Lords, Municipal Services Director
SUBJECT: BID IF-00-07, ONE (1) NEW 2000 TRAILER MOUNTED LINE PULLER/TENSIONER

Attached for your consideration is the tabulation for Bid IF-00-07, One (1) New 2000 Trailer Mounted Line Puller/Tensioner.

It is the recommendation of Municipal Services to accept the low bid of Pacific Utility Equipment Company to furnish a New 2000 DPT International, Model DPT 30 B Puller/Tensioner for an amount of \$38,569.00, without trade-in.

s/ S. Craig Lords

It was moved by Councilmember Lehto, seconded by Councilmember Eldredge, to accept the low bid from Pacific Utility Company to furnish the required Trailer-Mounted Line Puller/Tensioner. Roll call as follows:

Aye: Councilmember Eldredge

Councilmember Lehto
Councilmember Rose

FEBRUARY 10, 2000

Councilmember Groberg
Councilmember Hardcastle

Nay: None

Motion Carried.

City of Idaho Falls
February 3, 2000

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: S. Craig Lords, Municipal Services Director
SUBJECT: BID IF-00-09, NEW 2000 POLICE VEHICLES

Attached for your consideration is the tabulation for Bid IF-00-09, New 2000 Police Vehicles.

It is the recommendation of Municipal Services to accept the low bid of Smith Group. They would furnish 2000 Chevrolet Impala Sedans. Three (3) sedans would become Detective units for an amount of \$18,450.56 each with options and five (5) Patrol Sedans for an amount of \$18,622.56 each with options. We will trade-in two (2) units (No. 558 and No. 5511) for an amount of \$2,501.00. They will also furnish a 2000 Chevrolet S Blazer for an amount of \$22,654.01 with options. Total purchase price for all vehicles required is \$168,617.49.

s/ S. Craig Lords

It was moved by Councilmember Lehto, seconded by Councilmember Eldredge, to accept the low bid from the Smith Group to provide the required New Year 2000 Police Vehicles. Roll call as follows:

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

Nay: None

Motion Carried.

City of Idaho Falls
February 1, 2000

MEMORANDUM

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

SUBJECT: BID IF-00-12, ONE (1) NEW 2000 COMBINATION VACUUM-
SWEEPER UNIT MOUNTED ON A CAB AND CHASSIS

FEBRUARY 10, 2000

Attached for your consideration is the tabulation for Bid IF-00-12, One (1) New 2000 Combination Vacuum-Sweeper Unit mounted on a Cab and Chassis for the Street Department.

It is the recommendation of Municipal Services to accept the sole bid of Hirning Truck Center to furnish a New 2000 Leach Vac/All Model LV10 with dual sweeper and catch basin attachment mounted on a new 2000 GMC Model F7B042 C.O.E. cab and chassis for an amount of \$163,593.00, without trade-in.

s/ S. Craig Lords

It was moved by Councilmember Lehto, seconded by Councilmember Eldredge, to accept the sole bid from Hirning Truck Center to furnish the New 2000 Combination Vacuum-Sweeper Unit Mounted on a Cab and Chassis. Roll call as follows:

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

Nay: None

Motion Carried.

The Parks and Recreation Director submitted the following memo:

City of Idaho Falls
February 2, 2000

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: David J. Christiansen, CLP, Parks and Recreation Director
SUBJECT: INDEPENDENT CONTRACTOR AGREEMENT FOR VETERINARY SERVICES AT TAUTPHAUS PARK ZOO

Attached for your consideration is an Independent Contractor Agreement for Veterinary Services at Tautphaus Park Zoo. This Agreement between the City of Idaho Falls and Dr. Rhonda Aliah-Remsberg of Skyline Animal Clinic is for a one-year term. The City Attorney has drafted and reviewed the Agreement. It is respectfully requested that the Mayor and City Clerk sign and execute said Agreement.

s/ David J. Christiansen

It was moved by Councilmember Hardcastle, seconded by Councilmember Rose, to approve the Independent Contractor Agreement for Veterinary Services with Dr. Rhonda Aliah-Remsberg of Skyline Animal Clinic for a one-year period. Roll call as follows:

Aye: Councilmember Hardcastle
Councilmember Rose

FEBRUARY 10, 2000

Councilmember Eldredge
Councilmember Lehto
Councilmember Groberg

Nay: None

Motion Carried.

The memo from the Planning and Building Director regarding the Final Plat and Development Agreement for Waterford Addition, Division No. 4 was withdrawn by the Division Director.

The Planning and Building Director submitted the following memo:

City of Idaho Falls
February 6, 2000

MEMORANDUM

TO: Mayor and City Council
FROM: Renée R. Magee, Planning and Building Director
SUBJECT: FINAL PLAT – HOLIDAY OIL

Attached is the Final Plat for Holiday Oil, a one-lot plat which is located at the southwest corner of Skyline Drive and West Broadway. The property is within the City and is zoned HC-1. The Commission reviewed this Final Plat at its September 14, 1999 Meeting and recommended approval with the elimination of the access points closest to the intersection. The applicant has subsequently submitted a site plan in which the existing accesses closest to the intersection have been removed. This Final Plat is now being submitted to the Mayor and Council for consideration.

s/ Renée R. Magee

Following is a list of exhibits used in connection with this Final Plat request:

Exhibit 1 Planning Commission Minutes dated September 14, 1999
Exhibit 2 Staff Report dated September 6, 1999

It was moved by Councilmember Rose, seconded by Councilmember Eldredge, to accept the Final Plat for Holiday Oil and, further, give authorization for the Mayor, City Engineer, and City Clerk to sign said Plat. Roll call as follows:

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

Nay: None

Motion Carried.

The Public Works Director submitted the following memos:

FEBRUARY 10, 2000

City of Idaho Falls
February 7, 2000

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: Chad Stanger, Public Works Director
SUBJECT: EASEMENT VACATION – LOT 4, BLOCK 1, RIDGEWOOD PARK,
DIVISION NO. 1

As previously authorized, the City Attorney has prepared documents to vacate an easement located in Lot 4, Block 1, Ridgewood Park, Division No. 1.

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

s/ Chad Stanger

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

ORDINANCE NO. 2361

AN ORDINANCE VACATING A CERTAIN EASEMENT WITHIN THE CITY OF IDAHO FALLS, IDAHO; PARTICULARLY DESCRIBING THE SAID EASEMENT; AUTHORIZING AND DIRECTING THE MAYOR AND CITY CLERK TO EXECUTE AND DELIVER ON BEHALF OF THE CITY A QUITCLAIM DEED CONVEYING THE VACATED EASEMENT TO THE OWNER OF THE ADJACENT LAND, AND NAMING IT; PROVIDING FOR EFFECTIVE DATE OF ORDINANCE.

The foregoing Ordinance was presented by title only. Councilmember Lehto moved, and Councilmember Groberg 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 and the Ordinance be passed on all three readings and, further, give authorization for the Mayor and City Clerk to execute the necessary documents. Roll call as follows:

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

Nay: None

Motion Carried.

FEBRUARY 10, 2000

City of Idaho Falls
February 7, 2000

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: Chad Stanger, Public Works Director
SUBJECT: EASEMENT VACATION – LOTS 14-19, BLOCK 17, EASTVIEW
ADDITION, DIVISION NO. 3

As earlier authorized, the City Attorney has prepared the documents to vacate easements located in Lots 14-19, Block 17, Eastview Addition, Division No. 3.

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

s/ Chad Stanger

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

ORDINANCE NO. 2362

AN ORDINANCE VACATING A CERTAIN EASEMENT WITHIN THE CITY OF IDAHO FALLS, IDAHO; PARTICULARLY DESCRIBING THE SAID EASEMENT; AUTHORIZING AND DIRECTING THE MAYOR AND CITY CLERK TO EXECUTE AND DELIVER ON BEHALF OF THE CITY A QUITCLAIM DEED CONVEYING THE VACATED EASEMENT TO THE OWNER OF THE ADJACENT LAND, AND NAMING IT; PROVIDING FOR EFFECTIVE DATE OF ORDINANCE.

The foregoing Ordinance was presented by title only. Councilmember Lehto moved, and Councilmember Groberg 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 and the Ordinance be passed on all three readings and, further, give authorization for the Mayor and City Clerk to execute the necessary documents. Roll call as follows:

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

Nay: None

Motion Carried.

FEBRUARY 10, 2000

There being no further business, it was moved by Councilmember Rose, seconded by Councilmember Eldredge, that the meeting adjourn at 12:00 Midnight.

CITY CLERK

MAYOR
