

FEBRUARY 12, 1998

The City Council of the City of Idaho Falls met in Regular Council Meeting, Thursday, February 12, 1998, in the Council Chambers at 140 South Capital Avenue in Idaho Falls, Idaho.

There were present:

Mayor Linda Milam
Councilmember Gary Mills
Councilmember Joseph Groberg
Councilmember Larry Carlson
Councilmember Beverly Branson
Councilmember Ida Hardcastle
Councilmember Brad Eldredge

Also present:

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

Mayor Milam requested Eagle Scout Ryan Reich to come forward and lead those present in the Pledge of Allegiance.

Mayor Milam and Councilmembers honored Eagle Scout Ryan Reich by presenting him with a Certificate of Recognition for earning his Eagle Scout Award.

The City Clerk read a summary of the minutes for the January 22, 1998 Regular Meeting. It was moved by Councilmember Branson, seconded by Councilmember Eldredge, that the minutes be approved as read. Roll call as follows:

Aye: Councilmember Branson
 Councilmember Hardcastle
 Councilmember Mills
 Councilmember Eldredge
 Councilmember Carlson
 Councilmember Groberg

Nay: None

Motion Carried.

CONSENT AGENDA ITEMS

Mayor Milam requested Council confirmation of the following appointments and re-appointments: Re-Appointment of Jake Cordova to the Board of Adjustment (Term to expire January, 2003); Re-Appointment of David Sargis to the Board of Adjustment (Term to expire January, 2002); and, Appointment of Tim Kelley to the Board of Adjustment (Term to expire January, 1999).

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 a BEER LICENSE to The Frosty Gator; BARTENDER PERMITS to Patricia A. Allen, Tyron A. Brown, Shad A. Burnside, Kimberly A. Copeland, Shere R. Hill, Rena J. Hubert, Shelley L. Jorgensen, Ann Layland, Lisa S. Lensgraf, Christine L. Ramsey, Mabelle Smith, Robin K.

FEBRUARY 12, 1998

Sutton, Wanda J. Walton, and Steven G. Winder, 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 12, 1998.

The Municipal Services Director submitted the following memo:

City of Idaho Falls
February 6, 1998

MEMORANDUM

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

Municipal Services respectfully requests authorization to advertise and receive bids for One (1) New Static Exciter Regulator for the Upper Power Plant.

s/ S. Craig Lords

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

Aye: Councilmember Groberg
Councilmember Mills
Councilmember Branson
Councilmember Hardcastle
Councilmember Eldredge
Councilmember Carlson

Nay: None

Motion Carried.

REGULAR AGENDA ITEMS

The City Clerk presented the following Expenditure Summary dated January 1, 1998 through January 31, 1998, after having been audited by the Fiscal Committee and paid by the Controller:

	<u>GENERAL</u>	<u>STREET</u>	<u>AIRPORT</u>	<u>WATER & SEWER</u>
SERV/MAT	\$1,943,410.00	\$ 101,490.69	\$ 369,089.62	\$ 263,361.65
SALARY	<u>938,534.41</u>	<u>52,187.16</u>	<u>30,937.33</u>	<u>117,543.16</u>
TOTAL	\$2,881,944.41	\$ 153,677.85	\$ 400,026.95	\$ 380,904.81
	<u>ELECTRIC</u>	<u>SANITATION</u>	<u>RECREATION</u>	<u>LIBRARY</u>
SERV/MAT	\$1,353,004.96	\$ 57,779.09	\$ 33,651.54	\$ 120,048.29
SALARY	<u>204,911.13</u>	<u>61,417.03</u>	<u>30,967.76</u>	<u>47,466.06</u>
TOTAL	\$1,557,916.09	\$ 119,196.12	\$ 64,619.30	\$ 167,514.35

FEBRUARY 12, 1998

	<u>AMBULANCE</u>	<u>AIRPORT PASS FAC</u>	<u>BPA WEATH LN FD</u>	<u>SWIM POOL GO BD</u>
SERV/MAT	\$ 65,428.20	\$ 3,013.91	\$ 21,266.29	\$ 163,737.50
SALARY	<u>54,105.48</u>	<u>.00</u>	<u>.00</u>	<u>.00</u>
TOTAL	\$ 119,533.68	\$ 3,013.91	\$ 21,266.29	\$ 163,737.50

TOTALS

SERV/MAT	\$4,495,281.74
SALARY	<u>1,538,069.52</u>
TOTAL	\$6,033,351.26

It was moved by Councilmember Branson, seconded by Councilmember Eldredge, to ratify the payment of the expenditures for the month of January, 1998. Roll call as follows:

Aye: Councilmember Eldredge
Councilmember Carlson
Councilmember Mills
Councilmember Groberg
Councilmember Branson
Councilmember Hardcastle

Nay: None

Motion Carried.

Mayor Milam requested Councilmember Hardcastle to conduct a public hearing for the consideration of the expenditure of the Local Law Enforcement Block Grant funding. At the request of Councilmember Hardcastle, the City Clerk read the following memo:

City of Idaho Falls
January 16, 1998

MEMORANDUM

TO: Honorable Mayor Linda Milam and Councilmembers
FROM: Chief J. K. Livsey, Police Chief
SUBJECT: PUBLIC HEARING

In order for the Police Department to be able to spend the Local Law Enforcement Block Grant funding, a public hearing must be held. It is requested that the Police Department be given the opportunity to hold a public hearing at the City Council Meeting on February 12, 1998.

If given the approval, the attached items will be purchased with the funding.

Your consideration is appreciated.

s/ J. K. Livsey

Councilmember Hardcastle reviewed for the Mayor and Council the items that would be purchased with this Grant funding. There being no one to appear either for or against this

FEBRUARY 12, 1998

Local Law Enforcement Block Grant funding, the public hearing was closed. It was moved by Councilmember Hardcastle, seconded by Councilmember Branson, that the Local Law Enforcement Block Grant funds be used at the discretion of the Citizens Committee. Roll call as follows:

Aye: Councilmember Mills
Councilmember Groberg
Councilmember Carlson
Councilmember Branson
Councilmember Hardcastle
Councilmember Eldredge

Nay: None

Motion Carried.

The Electric Division Director submitted the following memos:

City of Idaho Falls
February 9, 1998

MEMORANDUM

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

Attached for your consideration is an Energy Services Agreement with BPA. The Agreement will allow use of BPA services, when requested by the City. The City Attorney has reviewed this Agreement.

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

s/ Mark Gendron

Following a brief explanation of this Agreement, it was moved by Councilmember Eldredge, seconded by Councilmember Mills, to approve the Energy Services Agreement with Bonneville Power Administration and, further, give authorization for the Mayor to execute the necessary documents. Roll call as follows:

Aye: Councilmember Hardcastle
Councilmember Branson
Councilmember Eldredge
Councilmember Carlson
Councilmember Groberg
Councilmember Mills

Nay: None

Motion Carried.

FEBRUARY 12, 1998

City of Idaho Falls
February 9, 1998

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: Mark Gendron, Electric Division Director
SUBJECT: POWER SALES AGREEMENT WITH WASHINGTON WATER
POWER COMPANY

Attached for your consideration is an Agreement with Washington Water Power Company that allows the City to sell power to WWP. The City Attorney has reviewed this Agreement.

The Electric Division requests approval and authorization for the Mayor to sign this Agreement.

s/ Mark Gendron

It was moved by Councilmember Eldredge, seconded by Councilmember Mills, to approve the Power Sales Agreement with Washington Water Power Company and, further, give authorization for the Mayor to execute the necessary documents. Roll call as follows:

Aye: Councilmember Branson
Councilmember Hardcastle
Councilmember Mills
Councilmember Eldredge
Councilmember Carlson
Councilmember Groberg

Nay: None

Motion Carried.

City of Idaho Falls
February 9, 1998

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: Mark Gendron, Electric Division Director
SUBJECT: POWER PURCHASE AGREEMENT WITH WASHINGTON WATER
POWER COMPANY

Attached for your consideration is the Washington Water Power Company FERC Electric Tariff, Volume No. 9. Execution of this Service Agreement will allow the City to purchase power from Washington Water Power. The City Attorney has reviewed the Agreement.

The Electric Division requests approval and authorization for the Mayor to sign this Agreement.

s/ Mark Gendron

FEBRUARY 12, 1998

It was moved by Councilmember Eldredge, seconded by Councilmember Mills, to approve the Power Purchase Agreement with Washington Water Power Company and, further, give authorization for the Mayor to execute the necessary documents. Roll call as follows:

Aye: Councilmember Eldredge
Councilmember Carlson
Councilmember Mills
Councilmember Groberg
Councilmember Branson
Councilmember Hardcastle

Nay: None

Motion Carried.

City of Idaho Falls
February 9, 1998

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: Mark Gendron, Electric Division Director
SUBJECT: POWER SALES AGREEMENT WITH PACIFICORP

Attached for your consideration is a Power Sales Agreement with PacifiCorp that allows the City to sell power to PacifiCorp. The City Attorney has reviewed the Agreement.

The Electric Division recommends approval and authorization for the Mayor to sign this Agreement.

s/ Mark Gendron

It was moved by Councilmember Eldredge, seconded by Councilmember Mills, to approve the Power Sales Agreement with PacifiCorp and, further, give authorization for the Mayor to execute the necessary documents. Roll call as follows:

Aye: Councilmember Mills
Councilmember Groberg
Councilmember Carlson
Councilmember Branson
Councilmember Hardcastle
Councilmember Eldredge

Nay: None

Motion Carried.

The Municipal Services Director submitted the following memos:

FEBRUARY 12, 1998

City of Idaho Falls
January 28, 1998

MEMORANDUM

TO: Honorable Mayor and City Councilmembers
FROM: S. Craig Lords, Municipal Services Director
SUBJECT: RESOLUTION AUTHORIZING DESTRUCTION OF DOCUMENTS

It is respectfully requested that the Council pass the attached Resolution which would authorize, pursuant to Idaho Code Section 50-907, the destruction of certain documents.

s/ S. Craig Lords

RESOLUTION (Resolution No. 1998-01)

AUTHORIZING DESTRUCTION OF RECORDS

WHEREAS, certain records have been held longer than Idaho Code Section 50-907 requires and are no longer needed for public purposes:

WHEREAS, pursuant to Idaho Code Section 50-907, the City is authorized to destroy certain records:

NOW, THEREFORE, be it resolved that the City Treasurer, City Controller, and City Clerk are hereby authorized to destroy the records listed below:

Documents from the Treasurer's Office:

1. Canceled payroll checks written prior to April 1, 1995.
2. All ambulance and accounts receivable billing statements and payment receipts written prior to October 1, 1992.
3. All receipts issued by the Library, Police Department, Recreation Division, Golf Course, Zoo, Animal Shelter, City Clerk's Office, and for parking violations and all Building and Zoning receipts, as well as any other miscellaneous receipts originated by the Treasurer's Office written prior to October 1, 1992.
4. All claims fund checks, OEA checks, Electric Light Impress Checks, and Recreation Fund checks written prior to October 1, 1992.
5. All deposit books containing records of deposits made no later than October 1, 1992.
6. All receipts and documents pertaining to the investment of City funds written prior to October 1, 1992.

FEBRUARY 12, 1998

7. Quarterly Treasurer's Reports and Proofs of Publication published prior to October 1, 1992.

Documents from the Controller's Office:

1. Claims Vouchers from October, 1991 through September, 1992.
2. Journal Entries from October, 1991 through September, 1992.
3. Payroll Time Sheets for the 1992 Year.

Documents from the City Clerk's Office:

1. Monthly Reports from the Building Maintenance Department, Building Official, Electric Division, Engineering Department, Fire Department, Garage, Parks and Recreation Division, Personnel Department, Police Department, Sanitation Department, Sewer Department, Street Department and Water Department prior to December, 1992.
2. License applications for businesses and tradesmen prior to December, 1992.
3. Dog License Receipts prior to December, 1992.
4. City Council Call Sheets prior to December, 1992.
5. Council Meeting Agendas prior to December, 1987.
6. Auction Records prior to December, 1992.
7. Election Records for the year 1987 to be turned over to the Bonneville County Election Office for disposition.
8. Damage Claims prior to December, 1987.
9. Contracts for Construction prior to December, 1987.

APPROVED by the City Council on the 12th day of February, 1998.

s/ Linda Milam
Linda Milam
Mayor

ATTEST:

s/ Rosemarie Anderson
Rosemarie Anderson
City Clerk

FEBRUARY 12, 1998

It was moved by Councilmember Branson, seconded by Councilmember Eldredge, to authorize the destruction of certain documents as listed in the Resolution and, further, give authorization for the Mayor and City Clerk to sign said Resolution. Roll call as follows:

Aye: Councilmember Carlson
Councilmember Groberg
Councilmember Hardcastle
Councilmember Eldredge
Councilmember Mills
Councilmember Branson

Nay: None

Motion Carried.

City of Idaho Falls
January 29, 1998

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: S. Craig Lords, Municipal Services Director
SUBJECT: CHARGE OFF – UNPAID UTILITY ACCOUNTS 1993

Municipal Services respectfully requests authorization to charge off as uncollectable, all utility accounts that have not had a transaction since 1993, which includes, but not limited to, bankruptcies, skips, deceased persons, and those with no assets. These accounts total \$103,907.31, which is .26% of sales for that year.

It is further requested that authorization be given to charge off the following accounts as uncollectable: Ambulance \$388,086.61, Accounts Receivable \$3,273.31, and Returned Checks \$1,175.93.

s/ S. Craig Lords

It was moved by Councilmember Branson, seconded by Councilmember Eldredge, to authorize charge off as uncollectable unpaid utility accounts that have not had a transaction since 1993 and, further, charge off ambulance, accounts receivable, and returned checks as uncollectable as recommended. Roll call as follows:

Aye: Councilmember Hardcastle
Councilmember Branson
Councilmember Eldredge
Councilmember Carlson
Councilmember Groberg
Councilmember Mills

Nay: None

Motion Carried.

FEBRUARY 12, 1998

City of Idaho Falls
February 4, 1998

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: S. Craig Lords, Municipal Services Director
SUBJECT: EXTENSION AGREEMENT – C. A. R. T., INC.

Attached for your consideration is an Extension Agreement with C. A. R. T., Inc. for furnishing and operating public transportation services in Idaho Falls. This Extension Agreement would terminate September 30, 1998.

It is respectfully requested that Council approve and authorize the Mayor to execute the document.

s/ S. Craig Lords

It was moved by Councilmember Branson, seconded by Councilmember Eldredge, to approve the Extension Agreement with C. A. R. T., Inc. and, further, give authorization for the Mayor and City Clerk to execute said Agreement. Roll call as follows:

Aye: Councilmember Branson
Councilmember Hardcastle
Councilmember Mills
Councilmember Eldredge
Councilmember Carlson
Councilmember Groberg

Nay: None

Motion Carried.

City of Idaho Falls
February 6, 1998

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: S. Craig Lords, Municipal Services Director
SUBJECT: BID IF-98-1, ONE (1) NEW THREE-PHASE MOBILE SUBSTATION

Attached for your consideration is the tabulation for Bid IF-98-1, One (1) New Three Phase Mobile Substation.

It is the recommendation of Municipal Services to reject all bids and request authorization to re-bid.

s/ S. Craig Lords

It was moved by Councilmember Branson, seconded by Councilmember Eldredge, to reject all bids received for the three-phase mobile substation and, further, give authorization to re-bid said substation. Roll call as follows:

FEBRUARY 12, 1998

Aye: Councilmember Groberg
Councilmember Mills
Councilmember Branson
Councilmember Hardcastle
Councilmember Eldredge
Councilmember Carlson

Nay: None

Motion Carried.

The memo regarding the tabulation and award of bid for Bulb Turbine "Lip" Seal Components for the Upper Power Plant was withdrawn by the Division Director. The Planning and Building Director submitted the following memos:

City of Idaho Falls
February 10, 1998

MEMORANDUM

TO: Mayor and City Council
FROM: Renée R. Magee, Planning and Building Director
SUBJECT: APPEALS FROM ASSESSMENTS FOR BUSINESS IMPROVEMENT DISTRICT

Attached are copies of the appeals under Section 30 of Ordinance No. 2245. Fifteen of the appeals are based on arguments that the initiating petitions were invalid, the necessary threshold was not reached to create a business improvement district, and the method of assessment is legally flawed. The two remaining appeals are based on the definition of the term "assessable property", under which all properties used wholly or partially for business purposes are assessed, except those exempt under provisions of Idaho Code Section 63-105, and those "used exclusively for residential purposes". These appeals are now being presented to the Mayor and Council for consideration.

s/ Renée R. Magee

Following are the appeals from assessments for the Business Improvement District in the order they were considered:

December 15, 1997

This is to protest the inclusion of the Bonneville Apartments in the newly created B. I. D.

As you know, the Bonneville is mostly apartments. As you know, the apartment tenants have been excluded from the approval process from the beginning. Let me refer you to the opening statements of the Downtown Development Corporation (RESIDENTIAL TENANTS may not be Class A or Class B members).

The Wackerli Apartments which directly compete with us for business has been completely excluded from the B. I. D. Which is the proper thing to do.

FEBRUARY 12, 1998

However, because my building has a business in the ground floor the entire building comes under the description of those required to be taxed.

The Bonneville Apartments is a five-story building with the upper four stories being apartments. I would agree to the business part of the building being included in the B. I. D.

As you may have noticed, the Bonneville is deeded in just that way. I own the lower floor and the portion of the parking lot that goes with it. And Cheryl Olsen owns the upper four floors and the west portion of the parking lot which is deeded separate and indicated on the deed that it is for residential use.

Please make note of the copies I provided to you showing the legal division of the building which has been recorded at the Courthouse. If this is not sufficient, I will be glad to generate and record any other documents that you feel would be necessary to show the division of the building. I do think it is obvious that it is separate.

Sincerely,

s/ Paul K. Olsen
Paul K. Olsen
635 Park Avenue

The Ballet Society
John and Janice Nelson
P. O. Box 51312
472 Park Avenue
Idaho Falls, Idaho 83405
Telephone No.: 522-3838

November 4, 1997

City of Idaho Falls
P. O. Box 50220
Idaho Falls, Idaho 83405-0220

To Whom It May Concern:

In accordance with Section 30 of Ordinance No. 2245 which created the "Business Improvement District", we wish to appeal the B. I. D. assessment on our property (472 Park Avenue, Parcel No. RPA8610000020).

It has come to our attention that the Wackerli Apartments (676 Memorial Drive, Parcel No. RPA1080013004A, owned by Lyle Taggart and Eldred Butikofer) has been exempted from B. I. D. assessment based on the fact that it is a full-time residence. We believe we have a comparable reason to claim exemption – our property is our full-time residence.

The ordinance stipulates that "assessable property" is "all real property...used wholly or partially for business purposes...except for property used exclusively

FEBRUARY 12, 1998

for residential purposes". "Residential property" is "Real property used solely for residential habitation of human beings".

We would like to point out that the Wackerli Apartments are used "partially for business purposes". Lyle Taggart and Eldred Butikofer rent apartments and make money from doing so. That is the business which they conduct at the Wackerli Apartments.

Since properties, and not the businesses conducted in them, are subject to B. I. D. assessment, then it must be concluded, based on the Wackerli Apartments exemption, that the only real requirement for a "residential" property exemption is the full-time residence of a "human" being. Our property is our full time residence. If the City of Idaho Falls wishes to run the B. I. D. fairly, we believe that, in all fairness, we have a right to claim exemption from B. I. D. assessment.

Thank you,

s/ John & Janice Nelson

NOTICE OF APPEAL

TO: CITY OF IDAHO FALLS, IDAHO

FROM: HISTORICAL FEDERAL BUILDING DEVELOPMENT PARTNERSHIP

PURSUANT TO SECTION 30 of Ordinance No. 2245, appeal is taken from the Idaho Falls Business Improvement District NOTICE OF ASSESSMENT, dated November 17, 1997.

PURSUANT TO SECTION 30 of said Ordinance, it is my understanding that the City Clerk shall forthwith transmit the appeal to the City Council who shall forthwith bear the appeal and render a decision.

I further assume that notice of the time and place for said hearing will be provided to this office and Historical Federal Building Development Partnership.

By filing this appeal, Historical Federal Building Development Partnership is not waiving any other defenses, claims, causes of actions or rights it has or might be entitled to assert. This appeal is only being filed to comply with said Ordinance, the validity of which Historical Federal Building Development Partnership questions.

Dated this 10th day of December, 1997.

s/ Craig W. Simpson
Craig W. Simpson, Esq., of
SIMPSON, GAUCHAY AND
GARDNER,
attorneys for Historical
Federal Development
Partnership

FEBRUARY 12, 1998

City of Idaho Falls
P. O. Box 50220
Idaho Falls, Idaho 83405-0220

To Whom It May Concern:

In accordance with Section 30 of Ordinance No. 2245 which created the "Business Improvement District" (B. I. D.), we wish to appeal B. I. D. assessment of our property:

Liu Wing You	352 West Broadway	RPA1980026009B
Ken and Siu Ping Liu	354 West Broadway	RPA1980026009A
J. Harrison Dennis and Spencer Daw	598 North Capital Avenue	RPA1080019007A
Koon Lap and Mei Wan Chiu	366 Shoup Avenue 376 Shoup Avenue	RPA1980025005B RPA1980025005C
David and Marilyn Nygard	365 Park Avenue	RPA1980027000A
Antique Galleries, Inc.	341 West Broadway	RPA1780001019A
John and Dixie Dixon	380 B Street	RPA1080018005B
Robert and Arva Wuthrich	367 Park Avenue	RPA1980027000B
Donald E. Leymaster	343 A Street 351 A Street 357 A Street	RPA1980026003C RPA1980026004A RPA1980026004B
Nick Vrontikis	254 Constitution Way 244 Constitution Way 264 Constitution Way 290 Constitution Way	RPA1080016004B RPA1080016013O RPA1080016009A RPA1080016007A
Ronald Pedersen	385 West Broadway	RPA1780001024A
Dorsal and Jacqueline Catmull	367 West Broadway	RPA1780001022A
William T. Denning	249 West Broadway 201 West Broadway 247 West Broadway	RPA1780001005A RPA1780001001A RPA1780001004O
Formal Wear and Bridal Center Inc.	365 Shoup Avenue	RPA1980026001B
Historical Federal Building Development Partnership and O & O Partnership	591 Park Avenue	RPA1080019013A

1. We believe the “initiating petition” for the B. I. D. was invalid. Some petitions requesting the B. I. D. deviated from the standard published in the individual petitions and in the City of Idaho Falls’ (City) “Resolution of Intention to Establish” (Resolution) and should have been rejected by the City. If those petitions had been rejected the “initiating petition” would have failed both a 50% “business” or a 50% “assessment” standard as required by State Code.

2. We believe the B. I. D., as established, fails the Supreme Court’s “rational basis” test for compliance with the 14th Amendment’s “equal protection” clause.

ONE

Both the petition submitted to the City of Idaho Falls requesting the B. I. D. and the City’s “Resolution of Intention to Establish” stipulated that the maximum assessment cap of \$3,000.00 would be for *each parcel of property* and not for multiple properties.

Petitions “4. Estimated Rate of Levy. The estimated rate of levy of special assessments to be used is seven mills for each dollar of assessed value with a minimum assessment of \$200.00 and a maximum assessment of \$3,000.00 annually per property.”

Resolution “Section 5. Amount of Special Assessment: The rate of levy for special assessments shall be seven mills for each dollar of assessed value for real property located within the District, with a minimum assessment of \$200.00 and a maximum assessment of \$3,000.00 annually, per parcel of real property.”

Both the Petition and the Resolution clearly stated that the cap would be applied “per parcel of real property”.

While State Code 50-2614 allows that changes can be made to the rate of assessment, it stipulates that such changes be made only after the B. I. D. is established.

“50-2614. Changes in assessment rates. – Changes may be made in the rate or additional rate of special assessment as specified in the ordinance establishing the district, by ordinance adopted after a hearing before the legislative authority.”

50-2610 states that the “The initial or additional rate or levy of special assessment” is only established when the B. I. D. is established by the legislative authority.

“50-2610. Ordinance to establish – Adoption – Contents. – If the legislative authority, following the hearing, decides to establish the proposed district, it shall adopt an ordinance to that effect. This ordinance shall contain the following information: (5) The initial or additional rate or levy of special assessment to be imposed with a breakdown by classification of business, if such classification is used;”

State Code allows for the **acceptance** and **establishment** of deviations in the assessment rate published in the petitions and Resolution only when the "Ordinance to establish" is passed by the legislative authority. Acceptance and establishment of any deviation in the published assessment rate, by the legislative authority, at any time prior to hearings and actual establishment of the B. I. D. is not allowed by State Code. If the legislative authority accepts petitions which deviate from the assessment rate published in the petitions it is accepting and validating changes in the assessment rate before it is allowed by State Code and in a manner not permitted by State Code.

Both the petitions and Resolution stated that the \$3,000.00 assessment cap would be applied "per parcel of real property". For petitions to be valid they had to reflect that published standard. For all subsequent actions by the City to be valid, petitions accepted and validated by the City had to reflect that published standard. Petitions deviating from that published standard should have been rejected by the City.

The following petitions were invalid and should have been rejected by the City because they apply a \$3,000.00 cap to multiple properties or multiple property/multiple ownership entities and did not, therefore, reflect the published standard of the petitions or Resolution.

- Two separate owners (BL&T Properties and J&R Investments) and including four separate properties. A note on petition said that the petition's validity was "contingent upon if the property identified as 493 'B' Street above is exchanged for the Parking Lot described as: Lot 5, Block 21, Railroad Addition, No assessment will be made for such Lot 5 as long as used for Parking. (**Note: This petition was doubly invalid because it demanded other concessions of the City and was stated to be invalid if they could not be given. There is no mention of this in the Resolution. Also, lots are defined as "businesses" by State Code.**)
- Two separate properties under a single owner (C&D Investments).
- Two separate properties under a single owner (Joan Chesbro, Et al).
- Three separate properties under a single owner (First Security Bank of Idaho).
- Two separate properties under two separate owners (Peterson Enterprises and Peterson Development Partnership). A note on petition says "NOT TO EXCEED \$3,000.00 TOTAL. This petition is signed contingent upon the amount due hereunder being a maximum of \$3,000.00 for all properties owned by Owner (including properties under Contract for purchase) at time of approval by City Council." (**Note: This petition was also invalid because it demanded other concessions of the City and was stated to be invalid if they could not be granted. Again, there was no mention of this in the Resolution.**)
- Four separate properties under single ownership (Shoup and B Plaza LLC).
- Two separate properties under single ownership (Valley Bank).
- Thirty Two separate properties under a single owner (Washington Federal Savings and Loan Association).
- Five separate properties under a single owner (West One Bank).

If these petitions had been rejected the "initiating petition" would have failed the 50% requirement of State Code.

TWO

We believe that the B. I. D. as implemented violates the “equal protection” clause of the 14th Amendment.

“Equal protection”, with respect to classification for taxation purposes, does not require identity of treatment, but only (1) that classification rests on real and not feigned differences, (2) that the distinction have some relevance to purpose for which classification is made, and (3) that the different treatments be not so disparate, relative to difference in classification, as to be wholly arbitrary. *Walters v. City of St. Louis, Mo.*, 347 U. S. 231, 74 S. Ct. 505, 509, 98 L. Ed. 660 (Black’s Law Dictionary).

Rational basis test. As a standard of review for statutory enactments challenged on equal protection grounds, this test requires that classifications created by a state must be reasonable, not arbitrary, and must rest on some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike. (Black’s Law Dictionary).

The B. I. D. as proposed is inequitable. It’s most obvious inequity is the exclusion of all but “commercial properties” from assessment (Also, residential rental properties (commercial properties) are excluded from B. I. D. assessment. This is in direct conflict with the “rational basis” test that requires “all persons similarly circumstanced shall be treated alike”).

One of the stated purposes of the B. I. D. is “The general promotion of retail trade activities”, yet no retail business bears direct assessment. The assessment falls solely on real property owners. This is not reasonable and is arbitrary. This cannot be shown to “rest on some ground of difference having a fair and substantial relation to the object of the legislation”. If the promotion of “retail trade” is an “object of the legislation” it is reasonable and fair to expect that retailers be assessed.

The proposed B. I. D. fails all three “equal protection” tests for taxation: (1) that classification rests on real and not feigned differences, (2) that the distinction have some relevance to purpose for which classification is made, and (3) that the different treatments be not so disparate, relative to difference in classifications, as to be wholly arbitrary.

If we examine Idaho State Code we find that the “rational basis” for differences in classification and assessment inevitably derives from the “benefit” a business receives from a B. I. D. (“degree of benefit” 50-2608; “basis of benefit” and “measure of benefit” 50-2609). The statute even allows for the establishment of “Benefit Zones” based upon the degree of “benefit” and allows assessment rates to be different within each zone (50-2615).

We believe the City has failed to comply with statutory requirements for both adoption and implementation of the B. I. D. For that reason, we believe the B. I. D. is defective and we appeal the B. I. D. assessment of our property.

FEBRUARY 12, 1998

The City Attorney clarified for those present, that this issue was not a public hearing, in that the Council would not hear testimony from each person filing an appeal to the Business Improvement District. Rather, this is a proceeding to consider each of the individual appeals and to consider the objections raised thereto.

Craig W. Simpson, Attorney representing all individuals filing appeals, appeared on behalf of Paul K. Olsen. Mr. Simpson requested that this hearing be recorded as stipulated in the Administrative Procedures Act, in that his right to appeal is based upon the record that is established this night. Mr. Simpson noted for the record, his objection for the Mayor and City Council to be hearing this appeal. He submitted 304 pages of documents labeled as Exhibits 1 through Exhibit 11, as follows:

Exhibit 1 – Petitions to City of Idaho Falls, Idaho for Creation of a Business Improvement District from:

000001-000002 – Idaho Falls Arts Council
000003-000004 – St. Clair Family Farms
000005-000006 – Stephen Hart and Jay Kohler
000007-000008 – Julie Ann Clayton
000009-000010 – Kent Lott
000011-000012 – David and Geraldine Sevy
000013-000014 – Idaho Falls Off-Street Parking
000015-000016 – Bingham Lodge No. 14
000017-000018 – Ilene G. Olsen
000019-000020 – Randy Crofts
000021-000022 – Joshua D. Smith Foundation
000023-000024 – Bernice H. McCowin
000025-000026 – Peterson Enterprises
000027-000028 – D & D Investment Company
000029-000030 – Albert Pool D. A. G. Partnership/American Land Title Company
000031-000032 – RRK Corporation
000033-000034 – J. Edwin Strobel
000035-000036 – Eastern Idaho Agricultural Credit Association
000037-000038 – George W. Watkins Family
000039-000040 – M. N. Joe Camp, Jr.
000041-000042 – Marvin R. Stucki
000043-000044 – Vern Kelsch, Saving Center, Inc.
000045-000046 – Vern Kelsch, LTD Partnership
000047-000048 – Ford, Inc.
000049-000050 – T. Douglas O'Brien
000051-000052 – Dick Clayton, Sr.
000053-000054 – Teton Investments
000055-000056 – Darryl W. and Christine Harris
000057-000058 – William P. Holden
000059-000060 – Stan L. and Janet E. Ingram
000061-000062 – Dick Clayton, Sr.
000063-000064 – D. Lynn Smith, Galusha, Higgins & Galusha)
000065-000066 – Schwab Properties LTD
000067-000068 – Lane Archibald, BL&T Properties and J&R Investments
000069-000070 – Alan and Cris Ginkel
000071-000072 – Stanley Berland
000073-000074 – Jeff and Laurie Walchli
000075-000076 – Shoup Executive Suites Partnership

FEBRUARY 12, 1998

000077-000078 – Professional Building Company
000079-000080 – Charles W. Mulhall, Jr.
000081-000082 – The Dawson Company
000083-000084 – West One Bank
000085-000086 – John N. Hart III and Sally Hart
000087-000088 – C & D Properties
000089-000090 – First Security Bank of Idaho
000091-000092 – Alliance Title Company
000093-000094 – Rex S. and Melinda Redden
000095-000096 – Steven S. and Cynthia Carr
000097-000098 – Harper-Leavitt Engineering, Inc.
000099-000100 – Harper-Leavitt Engineering, Inc.
000101-000102 – Howard and Carol Mead
000103-000104 – John D. Hansen
000105-000106 – Treasure Johnston
000107-000108 – Cindy Keller
000109-000110 – Stephen and Marilyn Watts
000111-000112 – Weinpel, Woolf and Combo
000113-000114 – Salisbury Group Partnership
000115-000116 – Fogg Drug Company, Inc.
000117-000118 – Russell Fogg
000119-000120 – Eric and Teri Zenger, John and Tiffani Van Orman
000121-000122 – Key Bank
000123-000124 – Floyd Oberg and Rachanee Edwards
000125-000126 – Scenic Falls Federal Credit Union
000127-000131 – Washington Federal Savings and Loan Association
000132-000133 – First Interstate Bank
000134-000135 – Dorsal J. and Jacqueline Catmull
000136-000137 – Loren R. Blosson and Susan L. Swearingen
000138-000139 – Grace S. and Jasper E. Hardin
000140-000141 – G & S Enterprises Corporation
000142-000143 – Joan Chesbro
000144-000145 – William F. Rigby

Exhibit 2 – Resolution declaring the intention of the City of Idaho Falls to establish a Business Improvement District (000146-000149).

Exhibit 3 – Regular Council Meeting Minutes for June 12, 1997 (000150-000175).

Exhibit 4 – Resolution declaring the intention of the City of Idaho Falls to establish a Business Improvement District, along with mailing list for property owners in District (000176-000196).

Exhibit 5 – Regular Council Meeting Minutes for July 24, 1997 (000197-000205).

Exhibit 6 – Regular Council Meeting Minutes for August 28, 1997 (000206-000225).

FEBRUARY 12, 1998

Exhibit 7 – Notice of Hearing for June 12, 1997, for Mayor and City Council to declare intention to create a Business Improvement District to be designated as the Idaho Falls Downtown Business Improvement District, along with mailing list for property owners in the proposed District (000226-000244).

Exhibit 8 – Regular Council Meeting Minutes for September 25, 1997 (000245-000261).

Exhibit 9 – Ordinance No. 2245, creating a Business Improvement District (000262-000281).

Exhibit 10 – Current Valuation List for the Business Improvement District and Current Business Improvement District Properties sorted by Owner (000282-000300).

Exhibit 11 – Notice of Necessity to File Declaration of Common Ownership on Parcels of Property by or on October 26, 1997, along with Revised Notice of Necessity to File Declaration of Common Ownership on Parcels of Property by or on October 20, 1997 (000301-000304).

Mr. Simpson stated for the record, all of the above-listed appeals will be considered in conjunction with all 17 appeals.

Mr. Simpson stated that with regard to Paul K. Olsen's request for treatment as a residential property, there is nothing more to add to the statement that was presented by Mr. Olsen as shown above.

Councilmember Mills requested the City Attorney give an explanation regarding the residential requirements found in the Ordinance providing for the Business Improvement District.

The City Attorney explained that there is a provision in the Ordinance that exempts from assessment a business that owns property that is used exclusively for residential purposes. The question for Council is whether or not Mr. Olsen has satisfied the criteria for the residential use. The City Attorney explained that Mr. Olsen's building consists of five stories, the upper four stories of which are apartments, and the lower story being used for a commercial use. The question is whether or not this satisfies the definition of exclusive residential use.

Councilmember Groberg requested the City Attorney to define the term "exclusive" as related to the Ordinance establishing the Business Improvement District. The City Attorney explained that this reference is to a provision which is used in the State Tax Code. The use of the word "exclusive" means either all or none, with regard to use. The City did not want to establish a cumbersome procedure in valuing real property. In order to avoid that result, the decision was made to make reference to the 1995 Assessed Valuation of the property in order to avoid having to separately value and establish separate assessments. The reason that the provision for "exclusive use" was included, is so that the mechanism does not have to be set up to separately value a mixed use. The City Attorney stated that there is a procedure by which Mr. Olsen can accomplish what he is requesting to do. Under the Idaho Condominium Act that allows a person to separate the floors of the building. When this is filed properly with the County, then the County will separately value the floors, and the City would have a basis for establishing a separate assessment.

Councilmember Mills stated that it appeared to him that the Bonneville Hotel is not used exclusively for residential purposes as required by our Ordinance. It was moved by Councilmember Mills, seconded by Councilmember Groberg, that the appeal of Paul Olsen be denied and that the City Attorney and City Planner be directed to prepare written findings and conclusions consistent with this motion. Roll call as follows:

FEBRUARY 12, 1998

Aye: Councilmember Groberg
Councilmember Mills
Councilmember Branson
Councilmember Hardcastle
Councilmember Eldredge

Nay: Councilmember Carlson

Motion Carried.

Mayor Milam requested Councilmember Mills to address the appeal of John and Janice Nelson.

Mr. Simpson stated that Mr. Nelson believes that he has set out in detail his grounds for a residential exemption. He stated that Mr. Nelson has nothing further to add to his statement shown above.

Mr. Storer requested Mr. Simpson to explain the nature of the mixed use. Mr. Simpson stated that there are many people in the City who operate businesses out of their home. Mr. Simpson explained, further, that this building is his home, he raises his family in this building, and he eats and sleeps there. He explained, further, that Mr. Nelson conducts a dance studio in his home.

Mayor Milam asked Mr. Simpson whether this property was residential property or commercial property. Mr. Simpson stated that Bonneville County has assessed this residence as 30% residential and 70% commercial.

John Nelson, 472 Park Avenue, appeared to express that he did not understand how Bonneville County arrived at the 30% residential/70% commercial split for tax purposes, but that is indeed what they rate him as.

Councilmember Eldredge questioned the City Attorney as to whether this type of a split from Bonneville County would give the City authority to split the assessment for the Business Improvement District.

The City Attorney stated that he does not know how the property is valued. In order to be able to make the split, a separate valuation needs to be made. This is due to a mill rate being assessed to valuation for the purpose of the Business Improvement District.

It was moved by Councilmember Mills, seconded by Councilmember Groberg, that the appeal of John and Janice Nelson be taken under advisement for further research on the assessment from Bonneville County. Roll call as follows:

Aye: Councilmember Mills
Councilmember Groberg
Councilmember Carlson
Councilmember Branson
Councilmember Hardcastle
Councilmember Eldredge

Nay: None

Motion Carried.

Craig Simpson appeared at this time to represent the remaining 15 appeals as indicated previously. He questioned Council regarding where the authority came from in establishing the method of assessment for the Business Improvement District.

Renée R. Magee, Planning and Building Director, appeared to explain that the method of assessment was arrived at by looking at the 1995 market values for the areas to be within the boundaries of the Business Improvement District. The 1995 assessed market

FEBRUARY 12, 1998

values were then multiplied by the value of 7 mils to arrive at the individual assessment. She further explained that during the petition procedures, the initial idea of the assessment would be 7 mils multiplied by the 1995 market value, with a minimum assessment of \$200.00 per property and a maximum assessment of \$3,000.00. During the petitioning process, the petitioners developed the formula of the \$200.00 minimum and \$3,000.00 cap for multiple properties.

Mr. Simpson questioned the Planning and Building Director regarding whether the City of Idaho Falls' manner of assessment was based upon the City of Pocatello's manner of assessment or was the manner of assessment based upon State Statute. Ms. Magee answered by saying that the City of Idaho Falls' manner of assessment was based upon State Statute, and further the City of Pocatello was used as a model for assessment.

Mr. Simpson addressed the Business Improvement District Ordinance, Ordinance No. 2245. He stated that this Ordinance is invalid for several reasons:

1. The Ordinance was not properly enacted, in that, under State Code 50-902, he understood that the reading could be waived, but still needed to be waived on three different days. The City Council is not allowed to waive the three different days provision.
2. The Ordinance requires that the Business Improvement District be enacted by an initiating petition, when in fact, as shown in Exhibit 1, there were initiating petitions.
3. Idaho Code 50-2605 requires that the notice of hearing shall be given by publication and by the mailing of a complete copy of the Resolution to each business in the proposed or established district. He understood that the notice of hearing was mailed to each property owner, and not to each business.
4. This Ordinance violates the Equal Protection clauses of the State of Idaho's Constitution. He explained that there is an individual receiving a maximum cap of \$3,000.00 on businesses and he owns three different businesses in the Business Improvement District. The land is owned by three definite and different entities known as Bonneville Land and Title, J & R Development and Lane Archibald. The City's Ordinance specifically states under Section 26 that the application of the minimum and maximum limits under Section 6 of this Ordinance shall be strictly construed to mean common ownership. The laws of the State of Idaho recognize corporations as separate entities. Mr. Archibald does not own properties under one name, they are owned by two corporations and an individual. This Ordinance, in requiring a cap, is discriminatory to the small business owners.
5. The enacting statutes that allowed the City to enact the Business Improvement District are unconstitutionally vague.
6. The public hearing to consider the Ordinance did not pass on July 24, 1997, but actually passed on September 27, 1997. Thereby, the Ordinance is defective in that it does not comply with statute.
7. There is no legal authority in the Business Improvement District for the manner of assessment.
8. The Business Improvement District enacting statutes require before the Business Improvement District can be passed, that all protests must be heard. He does not believe that all protests were heard.

Mr. Simpson questioned whether the public hearing notices were mailed to the people on the mailing list in Exhibit 7. The Planning and Building Director appeared to state that the notices were sent to all of the property owners within the proposed boundaries of the

FEBRUARY 12, 1998

Business Improvement District. She noted, further, that Exhibit 7 is a copy of the mailing labels received from the Bonneville County Tax Assessor's Office for that purpose. Mr. Simpson questioned Ms. Magee if the public hearing notices were mailed to only property owners, and not to all businesses. Ms. Magee stated that this depends on the definition of businesses. In the Business Improvement District, authority is found to define a business as a property owner. Mr. Simpson stated that businesses can include more than just property owners. He stated that he did not receive a public hearing notice and his office is within the Business Improvement District boundaries.

Councilmember Groberg questioned Mr. Simpson as to how he would notify all of the businesses. Mr. Simpson stated that he would find out who all of the businesses are in the Business Improvement District, even if someone had to go door-to-door.

Mr. Simpson submitted Exhibit No. 12, entitled "Facts".

Mr. Simpson reviewed facts as stated in previous testimony. The assessments for the Business Improvement District were from the 1995 Tax Roll. The Business Improvement District was enacted pursuant to Chapter 26 of Title 50 of the Idaho Code.

The City Attorney questioned Mr. Simpson as to whether it was his request to dissolve the Business Improvement District. Mr. Simpson stated that it is up to the City Council as to whether the Business Improvement District should be dissolved. He understood that under the statutes, in order to disestablish a Business Improvement District, the Council must have more than 50% of the assessed business owners file petitions against the Business Improvement District to be followed by hearings. Mr. Simpson, further, commented that when he appeals this issue to the District Court, he intends to attack the assessments on the validity of the Ordinance. He also intends to file in District Court a declaratory action, asking the District Court to declare that the Business Improvement District is invalid.

The City Attorney commented that there is a provision under the Business Improvement statute for disestablishment of the district. The statute provides for two methods by which this may be done. One method is upon motion of the Council and the other provides that the City Council shall dissolve or disestablish the District upon being presented with a petition of a majority of the owners who pay an assessment. The City Attorney again questioned Mr. Simpson as to how the City Council may disestablish or dissolve the District if it were to accept his points as correct. The City Attorney stated that the Council would not be able to disestablish the Business Improvement District on this night, without first providing notice and an opportunity for those in the Business Improvement District to be heard. Mr. Simpson stated that if the Ordinance is not valid, then the assessments are not valid, thereby making the Business Improvement District non-existent.

The City Attorney stated that the Business Improvement District is created and is existing as it now stands. The only way that the Council may disestablish the District is to follow the Statute. Even if the City Council were to accept Mr. Simpson's contentions, he did not know of any way to dissolve the District and provide the relief that Mr. Simpson is requesting.

Following a discussion as to whether the Ordinance was valid and whether the Council could disestablish the Business Improvement District, Mr. Simpson presented to the Mayor and City Council a binder filled with 56 petitions asking the City Council to disestablish the Business Improvement District. These petitions do not encompass the majority of the assessed value, but they do represent a majority of the property owners within the boundaries of the Business Improvement District. Mr. Simpson requested the City Council to reconsider the establishment of the Business Improvement District and to consider following the disestablishment statutes and dissolve the Business Improvement District.

FEBRUARY 12, 1998

The City Attorney clarified that the statute provides that the City Council shall disestablish the District if it receives petitions signed by a majority of the owners who would pay a majority of the assessments. The City Attorney stated that he would examine what has been filed to determine whether that threshold has been met and to determine whether or not the City is required by the statute to disestablish the District. The City Attorney stated that they would inform Mr. Simpson what the results of that determination are.

Since the Council does not have the jurisdiction to dissolve the Business Improvement District under this appeal process, it was moved by Councilmember Mills, seconded by Councilmember Groberg, that these appeals based on alleged irregularities in the formation and assessment process of the District be denied and that the City Attorney and City Planner be directed to prepare written findings and conclusions consistent with this motion. Councilmember Groberg stated that he would like to look at what the Council would like to accomplish with the Business Improvement District Ordinance. The City Attorney, further, explained that there is a state statute for a method of alteration in the method of assessment. This would necessitate a public hearing to hear from all members of the Business Improvement District. Roll call as follows:

Aye: Councilmember Mills
Councilmember Groberg
Councilmember Branson
Councilmember Hardcastle
Councilmember Eldredge

Nay: Councilmember Carlson

Motion Carried.

City of Idaho Falls
February 10, 1998

MEMORANDUM

TO: Mayor and City Council
FROM: Renée R. Magee, Planning and Building Director
SUBJECT: C. A. R. T. ASSURANCES

Attached are the Fiscal Year 1998 Certifications and Assurances for Federal Transit Administration Assistance. The C. A. R. T. Board Executive Committee has reviewed these assurances and has determined C. A. R. T., Inc., is in compliance with the assurances. This Division requests the Mayor and City Attorney be authorized to sign these assurances.

s/ Renée R. Magee

It was moved by Councilmember Mills, seconded by Councilmember Groberg, to approve the Fiscal Year 1998 Certifications and Assurances for the Federal Transit Administration Assistance and, further, give authorization for the Mayor and City Attorney to sign the necessary documents. Roll call as follows:

Aye: Councilmember Carlson
Councilmember Groberg
Councilmember Hardcastle
Councilmember Eldredge

FEBRUARY 12, 1998

Councilmember Mills
Councilmember Branson

Nay: None

Motion Carried.

City of Idaho Falls
February 10, 1998

MEMORANDUM

TO: Mayor and City Council
FROM: Renée R. Magee, Planning and Building Director
SUBJECT: FINAL PLAT – WINDSOR ADDITION, DIVISION NO. 1

Attached is a copy of the Final Plat of Windsor Addition, Division No. 1. This property is within the City, zoned C-1, and is currently occupied by Wendy's Restaurant. The Planning Commission reviewed this Final Plat at its November 11, 1997 meeting and recommended approval with the condition that an Agreement for shared parking with the adjacent property be in place prior to consideration by the City Council. This Department concurs with the Commission's recommendation, and this Final Plat is being submitted to the Mayor and City Council for consideration.

s/ Renée R. Magee

Councilmember Mills explained that the Agreement for shared parking was executed. The Planning and Building Director located the subject area on a map and further explained the request. It was moved by Councilmember Mills, seconded by Councilmember Groberg, to approve the Final Plat for Windsor Addition, Division No. 1 and, further, give authorization for the Mayor, City Engineer, and City Clerk to sign the Final Plat. Roll call as follows:

Aye: Councilmember Hardcastle
Councilmember Branson
Councilmember Eldredge
Councilmember Carlson
Councilmember Groberg
Councilmember Mills

Nay: None

Motion Carried.

There being no further business, it was moved by Councilmember Branson, seconded by Councilmember Groberg, that the meeting adjourn at 9:00 p.m.

CITY CLERK

MAYOR
