



City Council Meeting

680 Park Avenue
Idaho Falls, ID 83402

Minutes - Final

Thursday, May 27, 2021

7:30 PM

City Council Chambers

1. Call to Order.

Present: Mayor Rebecca L Noah Casper, Council President Michelle Ziel-Dingman, Councilor John Radford, Councilor Thomas Hally (arrived at 7:41 p.m.), Councilor Jim Freeman, Councilor Jim Francis, and Councilor Lisa Burtenshaw

Also present:

All available Department Directors

Randy Fife, City Attorney

Kathy Hampton, City Clerk

2. Pledge of Allegiance.

Mayor Casper lead those present in the Pledge of Allegiance.

3. Public Comment.

No one appeared.

4. Consent Agenda.

A. Mayor's Office

1) Grant of Easement

The building located at 417 W. Broadway Street in Idaho Falls, Idaho is currently undergoing renovations by a developer. To achieve the desired purpose and use the developer envisions for the building, openings need to be made for windows on the south and west sides of the structure. The international fire code requires a 5-foot no build easement, and because the building is built to the limits of the lot, additional space is needed on the south and west side of the building for this purpose. The easement proposal has been brought before the Idaho Falls Library Board, and the Board recommended the developers be granted a 6-foot easement on the south and west sides of the building to allow some adjustment to the façade of the current building, as well as achieve the 5-foot no build zone required by the fire code. Idaho Code allows the Library to control Library occupied facilities and programs; however, some Library functions require City consent. In this situation, the granting of a 6-foot no-build easement requires approval by the Idaho Falls City Council for the Mayor to authorize the easement. Granting the easement will allow the developer to move forward with the renovation project and revitalize a key structure along the Broadway Street corridor and downtown Idaho Falls.

B. Idaho Falls Power

- 1) IFP Hatch Substation Upgrade Agreement with JM Concrete, Inc.
Idaho Falls Power solicited bids from qualified contractors to provide the concrete foundation work required for the Hatch substation upgrade project, with JM Concrete Inc. being the only responsive, responsible bidder.

C. Public Works

- 1) Bid Award - Street Overlays - 2021
On Thursday, May 11, 2021, bids were received and opened for the Street Overlays - 2021 project. A tabulation of bid results is attached. The purpose of the proposed bid award is to enter into contract with the lowest bidder to furnish all tools, labor, equipment, and materials necessary to complete overlays on prioritized city streets.

CI. Municipal Services

- 1) Minutes from Council Meetings
May 10, 2021 City Council Work Session and Executive Session; and May 13, 2021 City Council Meeting.
- 2) License Applications, all carrying the required approvals

It was moved by Councilor Burtenshaw, seconded by Councilor Radford, to accept all items on the Consent Agenda according to the recommendations presented. The motion carried by the following vote: Aye - Councilors Freeman, Francis, Radford, Burtenshaw, Dingman. Nay - none.

5. Regular Agenda.

A. Idaho Falls Power

- 1) Resolution authorizing financing of certain new transmission facilities.
Idaho Falls Power will enter into a transmission service agreement with the IERA for payment to construct the Sugarmill-Paine 161 kV line and related facilities. These associated facilities and improvements have a life cycle of 60+ years and enables better rate making to match the beneficiaries of these assets with those paying for them; therefore a transmission service payment over 15 years is fiscally prudent. This resolution and attached exhibits enable Idaho Falls Power to execute the necessary agreements for the transmission service contract with IERA.

Mayor Casper stated this item was thoroughly discussed at the May 27, 2021 Idaho Falls Power (IFP) Board Meeting. IFP Director Bear Prairie stated this is a long-time project that began in 2008. Councilor Radford reiterated the amount of work that has gone into this project including the purchase of several properties on the easements. He believes this is an affordable way to finance this project which allows capital funding for other projects. Councilor

Freeman noted this project is not being paid by tax dollars, the project is paid through IFP rates. Director Prairie stated this project is currently under construction with a ribbon cutting anticipated in fall of 2021 for the Paine Substation.

It was moved by Councilor Radford, seconded by Councilor Freeman, to approve the Resolution authorizing the execution and delivery of an asset purchase agreement, a transmission service agreement and related documents to enable the Idaho Energy Resources Authority (IERA) to finance certain transmission facilities. The motion carried by the following vote: Aye - Councilors Radford, Freeman, Burtenshaw, Francis, Dingman, Hally. Nay - none.

RESOLUTION NO. 2021-15

A RESOLUTION AUTHORIZING THE FINANCING OF CERTAIN ELECTRIC TRANSMISSION FACILITIES THROUGH THE IDAHO ENERGY RESOURCES AUTHORITY AND PURCHASING THE TRANSMISSION CAPACITY THEREFROM; AUTHORIZING THE EXECUTION AND DELIVERY OF AN ASSET PURCHASE AGREEMENT, A TRANSMISSION SERVICE AGREEMENT AND RELATED DOCUMENTS; AND APPROVING RELATED MATTERS.

B. Public Works

1) Easement Vacations - Instrument Numbers 827706 and 828967 within Victorian Village Subdivision.

Public Works recommends vacation of the storm drainage easements previously identified. The easements were originally established to provide temporary storm drainage protection until subdivision improvements were fully completed. Now that those improvements are planned for construction, the easements no longer serve a valid purpose.

Public Works Director Chris Fredericksen noted these easements were issued in the early 1990's.

It was moved by Councilor Freeman, seconded by Councilor Radford, to approve the Easement Vacation Ordinance under a suspension of the rules requiring three complete and separate readings and request that it be read by title. The motion carried by the following vote: Aye - Councilors Hally, Burtenshaw, Dingman, Freeman, Francis, Radford. Nay - none.

At the request of Mayor Casper, the City Clerk read the ordinance by title only:

ORDINANCE NO. 3387

AN ORDINANCE OF THE CITY OF IDAHO FALLS, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO, PROVIDING FOR THE VACATIONS OF EASEMENTS LOCATED WITHIN THE CITY OF IDAHO FALLS AND LEGALLY DESCRIBED IN SECTION 1 OF THIS ORDINANCE; PROVIDING THAT TITLE TO SAID VACATED EASEMENTS SHALL VEST AS SPECIFIED IN SECTION 3 OF THIS ORDINANCE; PROVIDING THAT THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT FROM AND AFTER PASSAGE, APPROVAL, AND PUBLICATION ACCORDING TO LAW.

2) State Local Agreement and Resolution with the Idaho Transportation Department (ITD) for the

Path Connection project.

Attached for your consideration is a State Local Agreement for construction with ITD for the Path Connection project. The purpose of the project is to improve pedestrian accommodations within the city pedestrian network. Construction will place sidewalk along the east side of South Capital Avenue from Pancheri Drive to Short Street. In addition, street paving, curb, gutter and sidewalk will be placed within Short Street between South Capital Avenue and Chamberlain Avenue.

Director Fredericksen stated the estimated total amount of the project is \$418,500. He also stated the City's match at 7.34% of the funding amounts to \$30,718 which is intended to be paid by in-kind services.

It was moved by Councilor Freeman, seconded by Councilor Radford, to approve the State Local Agreement and Resolution with ITD for the Path Connection project and authorization for Mayor and City Clerk to sign the documents. The motion carried by the following vote: Aye - Councilors Burtenshaw, Hally, Radford, Dingman, Freeman, Francis. Nay - none.

RESOLUTION 2021-16

WHEREAS, THE IDAHO TRANSPORTATION DEPARTMENT, HEREAFTER CALLED THE STATE, HAS SUBMITTED AN AGREEMENT STATING OBLIGATIONS OF THE STATE AND THE CITY OF IDAHO FALLS, HEREAFTER CALLED THE CITY, FOR CONSTRUCTION OF PEDESTRIAN ACCESS PATH CONNECTION PLAN.

C. City Attorney

1) Library Board Ordinance

The Legislature recently made changes to Idaho Code Sections 33-2604 and 33-2608 to prohibit elected officials and City officers from appointment to library boards and to clarify the relationship between library employees and the City. This Ordinance adopts those changes and, in addition, conforms Title 2, Chapter 1, with recent changes in Title 2 that standardize practices for City boards, committees, and commissions. On May 12, 2021, the Library Board unanimously recommended that the Council pass this Ordinance.

Mr. Fife stated the library exists because of the City, however, it is regulated by the Title 33 of State Code. He noted the proposed ordinance defines how employees of the library, as City employees, are to be considered and treated. He also noted the Director of the library is the only employee of the Board of Trustees. Councilor Francis gave a brief history of the library per the recitals in the proposed ordinance. Mayor Casper noted smaller cities may have a difficult time with board members.

It was moved by Councilor Francis, seconded by Councilor Hally, that Council approve the Ordinance amending Title 2, Chapter 1 to conform the Library Board with recent Idaho Code changes and to align the Chapter with other Title 2 Chapters relative to Board functions under a suspension of the rules requiring three complete and separate readings and direct that it be

read by title and published by summary. The motion carried by the following vote: Aye - Councilors Dingman, Burtenshaw, Francis, Freeman, Hally, Radford. Nay - none.

At the request of Mayor Casper, the City Clerk read the ordinance by title only:

ORDINANCE NO. 3388

AN ORDINANCE OF THE CITY OF IDAHO FALLS, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO; AMENDING TITLE 2, CHAPTER 1, OF THE CITY CODE TO REGULATE COMPOSITION OF LIBRARY BOARD AND TO STANDARDIZE THE CHAPTER WITH OTHER TITLE 2 CHAPTERS; PROVIDING SEVERABILITY, CODIFICATION, PUBLICATION BY SUMMARY, AND ESTABLISHING EFFECTIVE DATE.

2) Animal Ordinance adjustments

The Ordinance allows the keeping of a limited number of rabbits or certain types of fowl not currently regulated by the City Code (ducks, turkeys, geese, and quail). Such animals are commonly permitted in urban agricultural areas and are frequently included in farm-related educational programs. Code changes include consolidation, clarification, and adjustment of definitions and regulations.

Mr. Fife stated there are two (2) ordinances that regulate animals, and all uses in the animal ordinances are regulated by the nuisance ordinance. He indicated he worked with the Idaho Falls Police Department (IFPD), Public Health and animal husbandry interest individuals on this proposed ordinance. Per Councilor Francis' concern, Mr. Fife stated slaughtering could only occur if allowed by Idaho Code and the Zoning Code. Discussion followed regarding slaughtering. Mr. Fife stated this item was previously discussed (at the April 19, 2021 Council Work Session). Councilor Radford noted, per Animal Control Services, a pamphlet will explain the slaughtering.

It was moved by Councilor Hally, seconded by Councilor Radford, to approve the Ordinance adjusting the Code to allow the keeping of a limited number of rabbits or various fowl and making other minor changes under a suspension of the rules requiring three complete and separate readings and direct that it be read by title and published by summary. Per Councilor Burtenshaw's concern, Councilor Radford indicated the number of fowl would also be addressed with Animal Control Services. The motion carried by the following vote: Aye - Councilors Dingman, Freeman, Hally, Radford, Burtenshaw. Nay - Councilor Francis.

At the request of Mayor Casper, the City Clerk read the ordinance by title only:

ORDINANCE NO. 3389

AN ORDINANCE OF THE CITY OF IDAHO FALLS, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO; PROVIDING FOR THE AMENDMENT OF IDAHO FALLS CITY CODE, AMENDING TITLE 5, CHAPTER 5, TO REORGANIZE AND CLARIFY CHAPTER PROVISIONS; ALLOW KEEPING OF RABBITS AND FOWL, INCLUDING CHICKENS, QUAIL, DUCKS, AND GEESE, UNDER CERTAIN CONDITIONS, AND PROVIDING SEVERABILITY, CODIFICATION, PUBLICATION BY SUMMARY, AND ESTABLISHING EFFECTIVE DATE.

D. Community Development Services

- 1) Resolution approving the CDBG PY 2020 Consolidated Annual Performance and Evaluation Report (CAPER).

Pursuant to HUD requirements, entitlement communities receiving CDBG funds must complete an annual performance and evaluation report (CAPER). As part of the reporting process, information on projects completed and funds spent were presented in a public hearing and posted for public comment. The public hearing was held at the May 13, 2021, City Council regular meeting. The meeting was followed by a 15-day public comment period. The CAPER must be submitted to HUD no later than June 30, 2021. Questions about the CAPER or the projects presented may be directed to the CDBG Administrator, Lisa Farris.

Mayor Casper stated the Community Development Block Grant (CDBG) grant is one (1) of the most significant grants on a regular basis. Ms. Farris stated no public comment was received during 15-day public comment period. She explained the City of Idaho Falls has been an Entitlement City since 2004 which allows annual funds from the Department of Housing and Urban Development (HUD). She stated these funds are mainly used for Low-to-Moderate (LMI) individuals and can be used for economic development, public service activities and infrastructure projects. Councilor Hally noted a City must have a population of at least 50,000 to be eligible as an Entitlement City.

It was moved by Councilor Radford, seconded by Councilor Francis, to approve the Resolution for the 2020 CAPER. The motion carried by the following vote: Aye - Councilors Burtenshaw, Hally, Dingman, Radford, Freeman, Francis. Nay - none.

RESOLUTION NO. 2021-17

RESOLUTION OF THE CITY OF IDAHO FALLS ADOPTING THE FY2020 COMMUNITY DEVELOPMENT BLOCK GRANT CONSOLIDATED ANNUAL PERFORMANCE AND EVALUATION REPORT (CAPER).

- 2) Public Hearing - Planned Unit Development (PUD) and Reasoned Statement of Relevant Criteria and Standards, Equinox Townhomes.

Attached is the application for the PUD and Reasoned Statement of Relevant Criteria and Standards for Equinox Townhomes. The Planning and Zoning Commission considered this item at its January 5, 2021, meeting and recommended approval by a unanimous vote. Staff concurs with this recommendation.

Mayor Casper opened the public hearing and ordered all items presented be entered into the record.

Mayor Casper requested applicant presentation.

Blake Jolley, Connect Engineering, appeared. Mr. Jolley stated this project has been in the

works for approximately five (5) months and has been in coordination with the adjacent property owners and City staff. He noted a neighborhood meeting was held in December 2020, prior to the recently approved rezone, where the project was discussed in full. He also noted additional conversations have occurred with the neighbors since that time. Mr. Jolley indicated this is a multi-family project including approximately 66 townhome units. He noted the easterly side of the project has the largest space and gap between the residential homes to allow the largest buffer, and the landscape buffer was increased. Mr. Jolley also noted the height of the fence will be matched with the current fence per a neighbor request. Per Councilor Radford, Mr. Jolley explained the green space within the development. He noted there will be playground equipment and a storm water pond designed to hold the water on the extremities so individuals can utilize the common area. He identified the increased landscaping, the fence, common area, and the utility location. Per Councilor Burtenshaw's concern for the west side of the project, Mr. Jolley stated the landscaping was increased to approximately 14 feet to the property line, with another 10 feet to the sidewalk. He noted the sidewalk may meander to allow spacing for IFP transformers.

Mayor Casper requested staff presentation.

Community Development Services Assistant Director Kerry Beutler appeared. Mr. Beutler stated, per a legal announcement prior to the meeting regarding the public hearings on the agenda, he clarified this hearing is open to public testimony.

Slide 1 - Property under consideration

Mr. Beutler stated the property is currently infill property.

Slide 2 - Aerial photo of property under consideration

Mr. Beutler stated the property is currently vacant. He reiterated the Planned Unit Development (PUD) includes 66 units, five (5) sixplex and nine (9) fourplex type townhomes. The PUD requires increased landscaping requirements of a minimum of 25% open space/common space within the development. This particular layout provides 36% common space.

Slide 4 - Development plan

Mr. Beutler stated amenities are required for individuals residing in a PUD complex. He noted this PUD is providing two (2) amenities - a playground area that is central to the development, and a BBQ area towards the southern end. Mr. Beutler also stated the project is exceeding the minimum parking requirement with 206 parking stalls versus the minimum requirement of 132 parking stalls.

Per Councilor Freeman, Mr. Beutler confirmed the accesses on Jenny Lee Drive will line up.

Mayor Casper requested any public comment. No one appeared.

Mayor Casper closed the public hearing.

Councilor Radford praised the development for using infill for this project. He is hopeful this

housing will be affordable and efficient. He noted this is in a walkable center. Councilor Francis expressed his appreciation to the developer for meeting with the neighbors and making adjustments as requested. Mayor Casper concurred.

It was moved by Councilor Radford, seconded by Councilor Francis, to approve the Planned Unit Development for Equinox Townhomes as presented. The motion carried by the following vote: Aye - Councilors Hally, Francis, Radford, Dingman, Burtenshaw, Freeman. Nay - none.

It was moved by Councilor Radford, seconded by Councilor Francis, to approve the Reasoned Statement of Relevant Criteria and Standards for the Planned Unit Development for Equinox Townhomes and give authorization for the Mayor to execute the necessary documents. The motion carried by the following vote: Aye - Councilors Freeman, Radford, Burtenshaw, Francis, Dingman, Hally. Nay - none.

3) Public Hearing-Appeal of the Preliminary Plat and Reasoned Statement of Relevant Criteria and Standards for Ivywood West.

Attached is the appeal application for the Preliminary Plat of Ivywood West. The following is a chronology of events regarding the preliminary plat and subsequent request for reconsideration and appeal.

- On March 2, 2021 the Planning and Zoning Commission unanimously approved the preliminary plat with the following conditions: Adjust R1 lots that exceed the maximum of 13,500 square feet, show full street right-of-way on S. 12 West, provide connection with S. 8th West, and City staff to review the Connecting Our Community Plan's principles and policies and determine application to the preliminary plat and the applicant would comply with any identified requirements.
- On March 16, 2021, a request for reconsideration of the decision was filed with the Planning Division.
- On April 6, 2021 the Planning and Zoning Commission held the reconsideration hearing and denied the request for reconsideration by affirming their decision to approve the preliminary plat with a vote of 4-1.
- On April 20, 2021 the Planning and Zoning Commission approved the Reasoned Statement of Relevant Criteria and Standards affirming their decision and denying the request for reconsideration.
- On May 4, 2021, a request for appeal to City Council was filed with the Planning Division.

Requirements for Approving a Preliminary Plat

The City Subdivision Ordinance 10-1-8(C)(1) When acting on a preliminary plat application, the Planning and Zoning Commission shall review the preliminary plat to determine that the

preliminary plat is consistent with the principles contained within the Comprehensive Plan and is in compliance with this Chapter and all applicable Federal, State, or local laws. In conducting such reviews, the Commission may recess such hearing for good cause and may solicit information, data, studies, or comments necessary to determine such compliance. In the event the Commission conditionally approves the preliminary plat, it shall advise the developer in writing of the conditions under which the approval is granted, and upon developer's compliance with such conditions and the Director's written certification thereof, the preliminary plat shall be deemed approved. If approval of the plat is denied, the Commission shall advise the developer, in writing, of the reasons for denial of the preliminary plat application.

Codes Related to Appeals

The City's Subdivision Ordinance Section 10-1-8(D) provides for any aggrieved person to appeal to the Council the decision of the Planning and Zoning Commission regarding a preliminary plat. Specific concerns identified by the appellant include the existing road and transportation infrastructure is not adequate for the proposed Ivywood Subdivision. The appeal application states that their existing community is being harmed by a governmental approach that allows new development to proceed without requiring the new development to provide adequate infrastructure.

11-6-4 (C) Appeal Procedures for Board of Adjustment and Planning and Zoning Commission Decisions.

(1) Decisions of the Board of Adjustment and Planning and Zoning Commission shall be final unless a written appeal is made to the City Council within fourteen (14) days of the date of the written notice of decision described above in paragraph Section 11-6-4B (4).

(a) The written notice of appeal shall be filed with the Zoning Administrator and shall set forth the objections to the decision made by the Board of Adjustment or Planning and Zoning Commission.

(b) Upon receipt of the appeal, the Zoning Administrator shall forward to the Council the record of the Board of Adjustment or Planning and Zoning Commission, including the Reasoned Statement of Relevant Criteria and Standards, adopted by the Board or the Commission.

(2) The concurring vote of a majority of the members of the City Council shall be required to reverse any requirement, decision, or condition of the Board of Adjustment or Planning and Zoning Commission.

(3) Any person aggrieved by a decision of the Council may seek recourse as provided in Idaho Code, as amended.

Councilor Radford recused himself from this item. He stated he has a personal relationship with the appellant and this has an impact on his family businesses.

Mayor Casper opened the public hearing and ordered all items presented be entered into the record.

Mayor Casper explained the Council approves final plats, however, the Council does not approve preliminary plats, this is a power reserved to the Planning and Zoning (P&Z) Commission. If an individual does not agree with a decision of the P&Z, the individual can request the P&Z to reconsider, with the next level to appeal before the City Council. Assistant City Attorney Michael Kirkham stated this hearing is similar to an appellant court hearing where only the appellant will be able to speak. The appellant will present reasons that he believes where P&Z made a mistake on their decision. This process is outlined in the City's Subdivision Ordinance and the Local Land Use Planning Act (LLUPA). Mr. Kirkham explained the appellant is to bring specific code provisions or other reasons why the appellant believes that comprises an error. He stated the Council is not making a decision from scratch, instead the Council is looking at the decision of P&Z including statutes and facts. He noted the LLUPA does not allow Council to go outside of the current record. Per Councilor Francis, Mr. Kirkham confirmed the Council could ask questions at any time during the appellant report and the staff report. He reiterated no new items will be introduced into the record, the Council is only reviewing the P&Z decision, and there is no opportunity for other public testimony.

Mayor Casper requested appellant presentation.

Mark Radford, appellant, appeared. Mr. Radford stated a lot of items were discussed in prior hearings with the P&Z. He believes the development plan was not in complete compliance with the City including high density items that were designed for R1, and no traffic study was completed. He also believes development must pay for development.

Slide 1 - Ivywood Subdivision

Mr. Radford stated the neighborhood has expressed concern for 65th S as this road is a major thoroughfare that provides traffic from Ammon and Idaho Falls to I15. He also stated traffic has dramatically increased as the communities have grown. He believes this is a safety risk.

Slide 2 - Photos of Sunnyside Road and York Road

Mr. Radford stated York Road is single lane which has almost as much traffic on a daily basis as Sunnyside Road. He also identified the school bus spot.

Slide 3 - Ivywood Subdivision Preliminary Plat

Mr. Radford stated the plat is planning 527 residential units, and there are 300+ units planned on Ivywood East. According to the US Census Bureau data, there is an average of three (3) persons per home and two (2) vehicles per household, which amounts to 1,054 vehicles in this side of the subdivision. Mr. Radford believes this will create a lot of safety and traffic issues.

Slide 4 - Photo of S 5th W and York Road intersection

Mr. Radford stated this intersection, as well as the 15th W intersection, will be directly impacted by this subdivision and cannot handle the influx of traffic. He expressed his major safety concern.

Slide 5 - Photo of Township Road and Holmes Avenue

Mr. Radford stated there have been several accidents over the last ten (10) years. He noted this intersection was recently changed to a four-way stop following three (3) fatalities.

Slide 6 - The solution: Development must pay for development

Mr. Radford believes 65th W should be paid for by the Ivywood subdivision developers. He

believes there will be a small community within the 120 acres which is going to be a disaster. He expressed his concern.

Slide 7 - The City must pass an impact fee ordinance pursuant to Idaho Code § 67-8201 *et seq.* "...an equitable program for planning and financing public facilities needed to serve new growth and development is necessary in order to promote and accommodate orderly growth and development and to protect the public health, safety and general welfare of the citizens of the state of Idaho." (Idaho Code § 67-8202)

Mr. Radford believes it's important that the Council pass this ordinance before the final plat application is accepted. He also believes the community wants development and it's great the community is growing, however, the problem is safety and traffic as the road systems are not improved. He believes this needs to be addressed.

Slide 8 - The public should have a meaningful opportunity to provide input regarding the developers' infrastructure obligations

Mr. Radford noted during the previous public hearing an engineering firm communicated with neighbors. He indicated no one has talked to the neighbors. He believes, if the preliminary plat passes, it's very important that public input is allowed during the final plat stages. Mr. Radford indicated he consulted with an out of state engineering firm about this subdivision who works with several large communities throughout the west coast. He also indicated this engineering firm stated if the City passes this it would be a major disaster with traffic and fire hazards. Mr. Radford stated there is no way to provide the recommendations to the City as a secondary opinion. He reiterated that he believes it's important to give public input during the final plat process, although he's been told by City officials that it is not possible. He believes this should be changed when it directly affects the neighborhoods. He also reiterated he believes it's very important that development pay for these roads.

Councilor Francis believes many of the statements made are for recommendations for policy, he does not know how fits with an appeal of the decision of P&Z. Mr. Radford stated discussion did occur, although it may be not construed as policy. He questioned why the City does not have a highway district such as Ada County. Mayor Casper reminded the Council that the appeal is for the actual decision made by P&Z. Mr. Radford believes the Subdivision Ordinance is very broad and almost everything could be approved through this ordinance. He also believes the Subdivision Ordinance should be changed as the community grows. He does not believe the preliminary plat coincides with the City plan as there has been no fiscal impact study and no traffic study. He indicated State Codes should reflect and concur with the City plan.

Mayor Casper requested staff presentation.

Councilor Burtenshaw questioned the zoning. Mr. Kirkham stated the zoning change was a different process, this hearing is about the P&Z decision.

Mr. Beutler appeared. He presented the following:

Slide 1 - Property under consideration

Mr. Beutler noted the colors on the slide indicate City limits. He stated the purpose of the preliminary plat is to look at the street outlay and utility layout and whether the subdivision makes sense as a general concept. He also stated the Comprehensive (Comp) Plan is used to guide decisions with regard to growth and is an aspirational document. He indicated sometimes the policies within the Comp Plan conflict with each other so a proposed zone may meet some of the policies and not meet other policies. Mr. Beutler stated this property has R1 and R3A zoning designations. There are 297 lots in the R1 zone and 232 lots in the R3A zone. The minimum density requirements have been met in both zones. Mr. Beutler stated this property was annexed in 2006 with the zoning designations given at that time. He noted a recent rezone slightly expanded the R3A. Mr. Beutler stated the impact fee ordinance is not affective in the City and cannot be retroactively applied. He also stated City staff is obligated to manage the application by following the steps, which cannot be changed mid-stream. He indicated the same is true for a public hearing during the final plat process. The Subdivision Ordinance clearly identifies this process. Mr. Beutler stated neighborhood meetings are encouraged and highly recommended, although not required by Code. He also stated the fiscal impact study comes from the Comp Plan - he read a brief section from the Comp Plan referencing the fiscal impact plan. Mr. Beutler stated the fiscal impact study should be one of the things to consider although it would need to be revised and updated, which has not been completed and is not in affect as it is not normally part of the subdivision review process. Mr. Beutler stated when this subdivision was annexed in 2006 a preliminary plat for 501 lots was approved at that time. The developer provided traffic counts, as well as traffic mitigation measures which included construction of left-hand turn lanes, deceleration lanes, and acceleration lanes for 65th S and S 15th W. Mr. Beutler stated the purpose of traffic study is to look at the potential need of off-site improvements for the development. He indicated a traffic study was not required by the developer although it will be required prior to any final plat approvals. Any improvements will be worked through in the development agreement process. The development agreement will set the timing of improvements, who's responsible for improvements, and what phase of development these should occur in. Mr. Beutler stated the traffic study will be reviewed internally and comments will be provided as needed. He also stated this is an area of City and County streets and any street must be developed to City standards. He noted 5th W is a great example of street improvements. He also noted there are many streets in Bonneville County jurisdiction and the developer will have to work the County on improvements. The City will provide and give input on improvements, although the requirements are limited outside of City jurisdiction.

Per Councilor Francis, Mr. Beutler stated broad brushstrokes refers to the land use map associated with the Comp Plan. The policy statements in the Comp Plan are also written broadly, once a property is zoned it is given development rights allowed in that zone. The Zoning Ordinance is a legal document that regulates property, the Comp Plan is a planning document, and the final plat process includes City departments as the reviewing agency. Mr. Beutler indicated the P&Z Commission will provide a recommendation to the City Council; the City Council would determine if the final plat meets the minimum standards of City Code; and the Community Development Services Departments allows comment and concerns for the final

plat although there is no formal public hearing. He also indicated the traffic count from 2006 is out of date, a traffic study would be required and would determine what changes should be made which is completed before the final plat. Mayor Casper requested explanation by Mr. Beutler of the two-phase plat process. Mr. Kirkham counseled Council not to consider what might happen with the final plat as a basis on the appeal. Mr. Beutler explained the preliminary plat allows public input as a public hearing and it looks at a conceptual standpoint if the subdivision will work based on the number of lots, the street layout, connection to adjacent rights-of-ways, and utility service connections. Mr. Beutler also explained the final plat is actual engineered drawings. Per Councilor Burtenshaw, Mr. Kirkham stated, if denied, the developer would go back to the P&Z. He also stated any mistakes by the P&Z would have to be explained per the LLUPA and the Reasoned Statement of Relevant Criteria and Standards (RSRCS). Per Councilor Francis, Mr. Kirkham believes the Comp Plan, the Zoning Ordinance, or other appropriate ordinance or regulation was read correctly. He referred to an Idaho Supreme Court case regarding the City of Lewiston. He stated the Comp Plan is not the same as the zoning code which set standards and laws in jurisdiction. He also reiterated the Comp Plan is a conceptual document although a City cannot have a zoning code without a Comp Plan. The Comp Plan informs a decision, including any rezone of property, and should be looked at for guidance in the zoning code that is cohesive, follows the plan, and benefits the community. Per Councilor Francis, Mr. Kirkham clarified a factor of the P&Z decision was the consistency of the zoning. Per Councilor Hally, Mr. Beutler stated there were several discussions regarding the existing conditions of 65th S. Mr. Kirkham clarified the Subdivision Ordinance as well as the Zoning Ordinance should be considered. Per Councilor Burtenshaw, Mr. Kirkham stated the Comp Plan cannot be the sole basis for denial especially when the application conforms to the zoning code.

Mr. Radford reappeared. He questioned the purpose of the Comp Plan as he believes the Comp Plan is not being followed; Idaho Falls is about winners and losers; the engineer the developer has hired engineered the roads between Ammon and Iona; the City should be a beacon on the hill; and certain Councilmembers are addicted to growth without considering safety factors. He also believes a new traffic study would be much different from 2006 and the public demands transparency, which is not occurring. He stated all this has been discussed in prior meetings. He believes the Council must curb their addiction to development and growth and do it right and smart.

Mayor Casper closed the public hearing.

Councilor Francis believes there's a difference between the legal requirement and policy recommendations, although he believes the P&Z hearing met the requirements. Discussion followed regarding the RSRCS and the Comp Plan. Mr. Kirkham reiterated the Comp Plan cannot be used as a sole justification for denial of an application. He reminded the Council the Comp Plan is an aspirational goal for the order of planning for the community. Councilor Hally believes traffic is important. Mr. Kirkham reminded the Council that their decision is based on the P&Z decision and should focus on the current ordinances and laws. He stated, per code,

the appellant shall list the specific code provisions or other reasons that comprised error. Councilor Freeman believes P&Z acted appropriately as many of the impacts are out of the Councils' jurisdiction.

It was moved by Councilor Francis, seconded by Councilor Hally, that Council affirm the decision of the Planning and Zoning Commission to approve the Preliminary Plat for Ivywood West. The motion carried by the following vote: Aye - Councilors Hally, Francis, Freeman, Dingman. Nay - Councilor Burtenshaw. Abstain - Councilor Radford.

It was moved by Councilor Francis, seconded by Councilor Freeman, that Council approve the Reasoned Statement of Relevant Criteria and Standards for the Preliminary Plat of Ivywood West. The motion carried by the following vote: Aye - Councilors Francis, Dingman, Freeman, Hally. Nay - Councilor Burtenshaw. Abstain - Councilor Radford.

Mayor Casper stated the City does not ignore growth although she does not believe the Council is addicted to growth. She believes the pursuit of happiness referred to ownership of property, therefore there is a lot of procedure on property. She stated the State must have clear reasoned statements and criteria to deprive someone of their rights. Mayor Casper stated the City does consider safety and traffic, which are done at the final plat stage and within the development agreement. She believes there may be a communication gap regarding impact fees. She noted all concerns raised will be addressed at some point in this process.

6. Announcements.

Mayor Casper announced the Field of Honor for Memorial Day as a drive-thru event; and the Idaho Falls Police Department will sponsor a baseball game with the Idaho Falls Chukars on June 3. Councilor Freeman expressed his appreciation to all those individuals who were in attendance.

7. Adjournment.

There being no further business, the meeting adjourned at 9:53 p.m.

s/ Kathy Hampton

Kathy Hampton, City Clerk

s/ Rebecca L. Noah Casper

Rebecca L. Noah Casper, Mayor