

May 3, 2022

7:00 p.m.

Planning Department

City Annex Building

**MEMBERS PRESENT:** Commissioners Joanne Denney, Kristi Brower, Glen Ogden, Arnold Cantu (via Webex) George Morrison (via Webex)

**MEMBERS ABSENT:** Brent Dixon, Lindsey Romankiw, Margaret Wimborne

**ALSO PRESENT:** Assistant Planning Director Kerry Beutler; planner Caitlin Long, Brian Stevens, Assistant City Attorney Michael Kirkham, Esq. and interested citizens.

**CALL TO ORDER:** Joanne Denney called the meeting to order at 7:00 p.m.

**CHANGES TO AGENDA:** None.

**MINUTES:** Morrison moved to accept the minutes of April 5, 2022 and April 19, 2022 with the correction requested on the April 19, 2022 minutes (check vote), Ogden seconded the motion. Denney called for roll call vote: Cantu, yes; Morrison, yes; Brower, yes; Ogden, yes. The motion passed unanimously.

**Public Hearing(s):**

**1. RZON 22-003: REZON. Rezone from Planned Transition Zone (PT) with no underlying zone district to LC, Limited Commercial and R2, Mixed Residential Zones.**

Denney opened the public hearing.

**Applicant: City of Idaho Falls.**

Long Presented the staff report a part of the record.

No one appeared in support or opposition.

Denney closed the public hearing.

Ogden asked about the overlay. Long indicated that most of the properties along 17<sup>th</sup> Street do have the PT Overlay still in place.

Morrison feels the designation matches well and the application make sense.

**Morrison moved to recommend to the Mayor and City Council approval of the Rezone from PT Overlay with no underlying zone district to LC and R2 as presented, Ogden seconded the motion. Denney called for roll call vote: Cantu, yes; Morrison, yes; Brower, yes; Ogden, yes. The motion passed unanimously.**

**2. PLAT 22-010: PRELIMINARY PLAT. Fairway Estates Subdivision.**

Denney opened the public hearing.

**Applicant: Kevin Alcott, 101 Park Ave., Idaho Falls, Idaho.** Alcott is presenting to start the platting process for the R2 in the middle of Fairway Estates. Alcott will not discuss traffic unless needed. Alcott stated that they are wanting to develop this into lots. Alcott stated that there was

discussion with the previous plat about the bridge, traffic, and exaggerations that were presented as evidence, and that became a basis for a limitation that was put on Alcott regarding the bridge to the Lewisville Highway. Alcott stated that a month ago they got through most of the bridge, and they had a shoring failure when they poured the deck and that was 10 days before water was in the canal, and so the deck will be poured in the fall when the water comes out of the canal. Alcott stated that the center pier and abutments are in place, and everything is ready for the deck. Alcott stated that they have had discussions with public works and the City engineer and several others regarding the bridge. Alcott stated that people have always questioned whether he would get the bridge put in, but he never questioned that. Alcott stated that they issued a contract and had an unfortunate accident. Alcott stated that to alleviate the City's concerns, they have arranged to bond the completion of the bridge, and they got final approval today on the language of the bond, and they have bonded the City for the completion of the bridge. Alcott stated that the language bonds the City for the bridge, regardless of whether the contractor ever gets paid. Alcott feels that the bridge is now a moot point and Division 26 is in final design right now with the approved preliminary plat that has the road going out to the bridge. Alcott stated that the road and the bridge will likely be done at the same time. Alcott stated that they have to follow the irrigation district now for timing when water comes out of the canal before the bridge can be finalized. Alcott stated that they are in compliance with the Zone, although the City would like a higher density development. Alcott stated that they are trying to maintain what they had originally planned in the area. Alcott showed the preliminary plat.

Stevens presented the staff report, a part of the record.

Ogden asked if there are alternative construction methods to building the bridge that wouldn't require the water being out of the canal. Alcott indicated that there is not, and the issue with the bridge is the topography from Lewisville Highway and the water surface from the canal, make it a tight working area. Alcott indicated that they have to be 12 inches above the water surface for the canal company, and they have to be relatively flat to the center of the Lewisville Highway, so you aren't coming down to the highway in icy conditions that would be unsafe. Alcott stated that they have 17" to work in that area and that is the exact thickness of the actual concrete deck that will be placed for the bridge. Alcott stated that they explored all other options, and it is physically impossible as they are limited in space. Ogden reiterated that they have limited space to work with. Alcott stated that they could not get enough strength out of precast bridge.

### **Support/Opposition:**

**Jeremiah Lily, 4965 River Bend Ln, Idaho Falls, Idaho.** Lily is the president of the Fairway Estates HOA. Lily wants clarification from the Commission, Staff, or applicant. Lily asked the difference between a preliminary and final plat.

Kirkham stated that this is not an opportunity to present questions to the Commission, but an opportunity to present comments and testimony.

Lily stated that one of the restrictions is based on a bond for the bridge as part of the preliminary plat. Lily wants to know what the term is on the bond associated with the bridge to ensure that the City and homeowners are going to get a bridge that has been guaranteed. Lily wants to know when the bridge will be completed.

Denney indicated that they are not answering questions, and Lily can make comments and when the Commission has their discussion, the questions could be answered at that time.

Lily had emailed Mr. Peter questions ahead of time and some of them were brought up, but he would like clarification on those questions.

Kirkham again stated that this is an opportunity to raise specific issues for the Commission about the plat, and this is not a forum of exchange, and asked Lily to present to the Commission the points that you are concerned about so they can review them in line with the zoning ordinance and subdivision ordinance.

Lily stated that the primary point of concern for the homeowners is that if given this preliminary plat, the bridge may not get built, and therefore more houses to deal with for egress without a bridge. Lily wanted to know if the connection of the bridge to the Lewisville Highway has been approved and if the preliminary platting has restrictions for the bridge. Lily stated that it is not clear in the preliminary plat as far as the status or requirements for the bridge to connect to the Lewisville Highway.

**Alison Hicken, 375 Pevero Drive, Idaho Falls, Idaho.** Hicken asked them to go back to the map of the entire neighborhood. Pevero showed where her home is on Pevero Drive. Hicken is frustrated that 20 years ago they were told that the neighborhood would be connecting, and as it stands all exit points out of Fairway Estates which is approximately 700 homes and all exit points of the neighborhood feed to 5<sup>th</sup> West (Pevero Drive, Fairway Blvd., La Quinta, North Point), and the only other access point out of the neighborhood that goes to 65<sup>th</sup> West is a long way away. Hicken stated that they have gotten frustrated with recent plats being approved. Hicken is uncomfortable sending her 4 small children out to play or cross the road to friend's house, because with each new plat that is developed there are many construction crews coming through Pevero. Hicken stated that in 2019 they fought and have traffic studies to show numbers. Hicken stated that Pevero is not an arterial road, and it is a residential collector and is not designed to be handling all of this traffic. Hicken stated that the heavy construction trucks are having to go over a mile on Pevero to get where they need to go. Hicken stated that they have addressed speed limits and patrols with the City and they are concerned that until the bridge is connected, which was promised in 1998, they have no assurance other than a hand shake that the bridge is going to be developed, and when the bridge is developed it allows egress to get out of the neighborhood, and also allows another access point for fire, police, ambulance to get into the neighborhood. Hicken related a story from 2016 where there was a fire behind her house and fire department could not get to them for 40 minutes because of downed trees on 5<sup>th</sup> West and 33<sup>rd</sup> North, and finally could get to 65<sup>th</sup> North. Hicken is concerned that they are continuing to approve plats without having the access points they were promised as residents, and the residents are sick of having 17<sup>th</sup> street type road in their neighborhood. Hicken is concerned about the fire code requirement to have an access point, and one of the points that they approved is an access point on Eagle Wood that goes to a dirt berm with a fence, and behind is the City landfill, and no exit point from the neighborhood, but that has been counted for Fire Code. Hicken stated that they continue to measure the fire code exit point based off of a radius from a measured point. Hicken stated that they were told they would not continue to approve preliminary plats without the bridge being in place and functional, because of that Fire Code. Hicken stated that she doesn't fault Alcott, and he is trying his best. Hicken is nervous if Alcott has a heart attack and no longer has the ability or desire to continue building and doesn't do the bridge, then they are

stuck with no way to get out of their neighborhood. Hicken was excited to see that the bridge was starting to be constructed and they cried when the construction collapsed. Hicken asked the Commission to favor the homeowners and recognize that there shouldn't be further development until they have a completed access point which includes a road. Hicken stated that where the bridge is at is a dirt field, and the construction equipment can't get there. Hicken understands that Alcott is hoping to build the access points so that other construction equipment can travel that direction, but it is not there yet, and they want to make sure that it is there before there is any more building.

**Lyle Hippin, 379 Rockhill Lane, Idaho Falls, Idaho.** Hippin's home is near where the bridge is being built. Hippin is asking the Commission to hold Alcott and engineering accountable to make sure that this doesn't happen again. Hippin stated that this bridge was promised to the community 3 years ago, and that is plenty of time. Hippin understands that there was an attempt and it failed, and he doesn't know whether engineering was at fault, or contractor, but there has been time to build the bridge and he is asking the Commission to enforce accountability on previous promises made to the community and not allow further platting until the bridge is completed.

**Applicant: Kevin Alcott, 101 Park Ave., Idaho Falls, Idaho.** Alcott stated that the bridge will be built this fall as soon as the water is out. Alcott stated that they have posted a performance and payment bond to ensure that completion. Alcott stated that if he dies or has a heart attack, or decides he doesn't like the residents, the bridge will be built. Alcott stated that the statement that there was a promise 20 years ago to build a bridge, but 20 years Alcott didn't own the farm that the bridge is going on, and that is a blatant mis statement and exaggeration. Alcott stated that there was a fire, and this has been discussed twice in the last years hearings, and Alcott brought the incident report from the fire department, and it showed from the time they received the call, until the time it was "all clear" and the fire department was ready to go on another call was 17 minutes. Alcott talked to the Fire Marshall and the station that normally responded to that area was out on another call, so the truck came from a secondary station and still got there in 17 minutes. Alcott stated that last time Hicken testified she said that it felt like an hour, but the facts are the fire department was there and ready to go in 17 minutes, and there is nothing to say that having a bridge in place would have made it any different. Alcott stated that the fire department has reviewed the Fire Code and there are no problems with the access point, and they are not relying on an access point to the dump, but rather the end of the road of Pevero to the road that comes through Kings Island and that is the distance that is measured. Alcott has met with the fire department 3 weeks ago and they have no concern with what is going on in Fairway Estates, and they were only concerned that the bridge be strong enough to drive a bridge across it. Alcott stated that the bridge will be highway rated. Alcott stated that the bridge on 65<sup>th</sup> North is not made to handle construction traffic and therefore legally couldn't handle a fire truck. Alcott stated that this bridge is designed to highway standards and is pretty significant. Alcott stated that he said 3 years ago when they were going through the bridge issue, Alcott said that when they get to the point they will put in the bridge. Alcott stated that absent a construction issue, the bridge would be there today. Alcott stated that the deck for the bridge will happen as soon as the water goes out. Alcott stated that he has been hearing people's concerns for 20 years that he cannot be trusted to do anything, and he has done everything that the City has asked and then some. Alcott asked that the traffic study be include in the record.

Denney closed the public hearing.

Morrison stated that Alcott had made an agreement with the City and has been following that along and Morrison has no doubt that the bridge will be built, and they have the contractor's assurance and the bonding. Morrison stated that it is only 5–6-month delay and none of the houses will be finished in that time, so it shouldn't make much difference in the traffic.

Ogden took the opportunity to drive to Fairway Estates today and drove around. Kirkham stopped Ogden and told him he cannot consider anything that wasn't introduced tonight in the hearing, so his decision cannot be relied upon anything that wasn't received on the record tonight. Ogden stated that he doesn't have history on why the bridge wasn't constructed before Plat 26. Ogden is assuming from Alcott's comments that the bridge was to be built at the tail end of development through that process. Ogden feels that the access point is crucial. Ogden feels that the access point should have been done sooner. Ogden understands that they are 5 months out from potential completion, and there is a bond in place.

Denney stated that there was a question about a preliminary plat and final plat and Denney asked Stevens to address that question.

Stevens stated that a preliminary plat is a rough guide of what they intend to do, and a final plat is the recorded document that closes out and is the legal instrument for the completion of the outlaying of the shapes of the land that is to be sold in the future, or given as right of way, or other public utility improvements to the City.

Kirkham agreed and added that a preliminary plat doesn't create a right to subdivide the property, and it only gives the idea to the City of what the area would look like when it is split and sold. Kirkham stated that when a final plat is approved that is when lots can be sold.

Denney asked if they could discuss what the conditions of the bond.

Kirkham has reviewed the bond and stated that the bond is for \$370,000+ and is conditioned on the payment to the contracted bridge builder listed on the Bond (Cannon Builders). Kirkham stated that the condition is that they have already received parts of that contracted payment to construct a bridge and that is why they began the bridge, and the conditions of the bond are that if they fail to finish completion of the project after they have been completely paid then either Cambridge Development or the City can come in and get a new bridge builder and the surety company that issued the bond will pay a contractor to build a bridge. Kirkham stated that he is not sure what the performance date on the contract since they hit some trouble with that and that has pushed the completion date out as a matter of necessity. Kirkham stated that if the contractor fails to perform and the City is unsatisfied they will demand to see the contract and see when the performance date was and if Cambridge Development refuses to enforce that contract the City will come in and enforce the contract for them and that is what the bond provides the City the mechanism to enforce and to have it paid for if the bridge builder refuses. Kirkham stated that in some ways it replaces the developer with the City. Kirkham stated that there has been concern if the developer became uninterested in building the bridge, that the City now has the ability to step in place of the developer and demand the bridge be built, and the bond gives the City the ability to get a new bridge builder, and have it paid for without taking from taxpayers.

Ogden asked if it is only if the contractor fails to complete the bridge, then the City would step in after an undisclosed date. Kirkham stated that the performance date has already supposed to have occurred, and the bridge was supposed to be completed, but the fact that there was a reason

why the portion collapsed and now it's not complete. Kirkham stated that they have the performance bond, and that performance date will be pushed back because it is impossible to perform right now. Kirkham stated that they will give a reasonable time to complete the contract and if it doesn't get built this fall the City can step in and require the bridge be built. Ogden asked if it is public works that will make that decision. Kirkham agreed that public works does it, but they haven't had to do it often because of the credit worthiness implications if your bond gets pulled can be catastrophic for your business, so many people have performance bond issued, but the City rarely has to enforce those because it is a major deterrent for you to avoid your obligations, and it is a significant protection for the City.

Cantu asked about the response to the traffic study. Denney stated that it wasn't discussed but was asked to be included into the information of the report.

**Brower moved to approve the Preliminary Plat for Fairway Estates North East as presented, Morrison seconded the motion. Denney called for roll call vote: Cantu, yes; Morrison, yes; Brower, yes; Ogden, no. The Motion passed 3-1.**

Ogden opposed the motion because he feels that the bridge should have been done a few years back, and he feels it is appropriate to pause a little bit and let some time go by and work get done so that is accessible to the plat before it is approved.

**Morrison moved to accept the Reasoned Statement of Relevant Criteria and Standards, Brower seconded the motion. Denney called for roll call vote: Cantu, yes; Morrison, yes; Brower, yes; Ogden, yes. The motion passed unanimously.**

### **Business:**

### **3. PLAT 22-011: FINAL PLAT. Fairway Estates Division No. 30.**

**Applicant: Kevin Alcott, 101 Park Ave., Idaho Falls, Idaho.** Alcott stated that this is part of the currently approved preliminary plat. Alcott showed one section that is in the preliminary plat that was just approved, and that portion will allow them to build out both sides of the street in the area. Alcott stated that Division 26 is building the street, and this Plat will allow them to get the utilities stubbed where they need to be on that side of the street. Alcott stated that these lots might get started this fall but will not be completed this fall due to building costs and getting pipe, etc. is taking 1 year out. Alcott stated that the discussion about the bridge being built earlier, wouldn't make sense because there is no road to that bridge. Alcott stated that this division will provide the road to the bridge, and that is now when it makes sense to have a bridge in this place. Alcott stated that all utilities come in from the southwest corner of the development and it is not feasible to build a 1.5-mile road and 1.5 mile of utilities ahead of time. Alcott stated that they meet all the criteria, and the recommendation revolves around the bond for the bridge, and that is in place.

Stevens presented the staff report, a part of the record.

Ogden stated that it is 34 lots and that no homes will receive final occupancy before the bridge is complete, but that is a lot of construction vehicles that will go through that area along Pevero to get there. Ogden is hoping that what Mr. Alcott stated is true, that they won't have much work going on until the fall, because Ogden would be concerned with any additional traffic going through the development go get to the 34 lots.

Morrison is in favor and willing to make a motion.

**Morrison moved to recommend to the Mayor and City Council approval of the Final Plat for Fairway Estates Division 30 as presented, Brower seconded the motion.**

Kirkham asked for a clarification on the motion, as to whether it includes the condition that the bridge improvement be connected. Denney stated that the motion is “as presented,” and that is listed in the staff recommendations.

**Denney called for roll call: Cantu, yes; Morrison, yes; Brower, yes; Ogden, yes. The motion passed unanimously.**

**4. PLAT 22-008: FINAL PLAT. Bombardier Industrial Park.**

**Applicant: Clint Jolley 101 S. Park Ave., Idaho Falls, Idaho.** Jolley showed that Bombardier Industrial Park is south of Peterson Street and West of Bombardier Ave. Jolley stated that the current zone is I&M, and it is just over 7.8 acres, and they are splitting the property into 3 lots. The current road to the west has been built and they are using it, but it hasn’t been dedicated as public right of way, so this plat will fix that.

Beutler presented the staff report, a part of the record.

**Ogden moved to recommend to the Mayor and City Council approval of the Final Plat for Bombardier Industrial Park, Brower seconded the motion. Denney called for roll call vote: Cantu, yes; Morrison, yes; Brower, yes; Ogden, yes. The motion passed unanimously.**

**6. PLAT 20-048: FINAL PLAT. Victory Ranch (Extension Request).**

**Applicant:** None.

Beutler explained that it is only staff presenting as this is just an extension. Beutler presented the staff report, a part of the record.

Morrison feels this is straight forward.

**Morrison moved moved to recommend to the Mayor and City Council approval of the Final Plat for Victory Ranch, as presented, Brower seconded the motion. Denney called for roll call vote: Cantu, yes; Morrison, yes; Brower, yes; Ogden, yes. The motion passed unanimously.**

**Next Meeting June 7, 2022 and June 21, 2022 (2 meetings in June)**

Denney adjourned the meeting at approximately 8:15 p.m.

**Respectfully Submitted**

**Beckie Thompson, Recorder**