

April 4, 2023

7:00 p.m.

Planning Department

City Annex Building

MEMBERS PRESENT: Commissioners Margaret Wimborne, Kristi Brower, Marsha McDaniel, Forrest Ihler, Bill Scott, Arnold Cantu, Dale Storer

MEMBERS ABSENT: Scott Geddes, Glen Ogden

ALSO PRESENT: Planners Naysha Foster, Brian Stevens and interested citizens.

CALL TO ORDER: Margaret Wimborne called the meeting to order at 7:00 p.m.

MINUTES: Cantu moved to accept the minutes of March 7, 2023, Scott seconded the motion. The motion passed unanimously.

Public Hearing(s):

1. ANNX 23-001: ANNEXATION/INITIAL ZONING HC, Highway Commercial; LC, Limited Commercial; and R3A, Residential Mixed Use for approximately 166 acres.

Applicant: Rod Ellsworth, Ellsworth Engineering. Ellsworth is bringing forth a proposal for annexation of 160+ acres. This property is now possibly part of the ITD connector route, and unfortunately there is not an alignment for that, and it is difficult to present a preliminary plan. Ellsworth related a story from 1985 when the City was working on a realignment of Pancheri Drive for many years, and one day they were driving by where the new alignment might go, and there was a property owner pouring a foundation in the middle of a new road. The City didn't have any idea that the foundation had been poured, and the owner had just used his division right with the County and built, and the realignment that the City had done, was down the drain. Ellsworth concluded that if the City doesn't annex this property, this property has division rights, and the same thing could happen. Ellsworth will have to come back with a plat in the future, but if it is not annexed, the City loses control.

Ihler asked if the zones proposed are based off what ITD might do. Ellsworth stated that the zones were set up prior to ITDs comments and possibly before the final route decision. Ellsworth stated that he came to planning in the beginning and asked what they could do, and this proposal is what staff suggested. There has been rumor from ITD that the intersection might not end up in this area and could end up farther east, but without the annexation, the City loses control of the property.

Ellsworth added that the R3 Zone is not impacted, and the developer could move forward with the R3 portion and as he needs to move farther south, hopefully ITD will have an alignment to work with.

Scott asked what the zoning is currently on the property. Ellsworth stated that it is zoned agriculture in the County. Scott stated that the zoning as proposed anticipates the interchange going through the property. Ellsworth stated that the interchange came in after his plan was presented to the City. Scott clarified and Ellsworth confirmed that the zoning map with the HC on the bottom was the original plan.

Storer asked if the property is currently in the area of impact. Ellsworth indicated that it is not in the impact area.

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

Scott asked if the main issue is the LC Zone where that zone is located. Foster stated that LC and HC are a problem because the route could shift higher. Scott asked if the interchange was not in this area, then neither the HC nor LC would be appropriate for the area. Foster clarified that if the interchange were to be in this area, the HC zone would go along the interchange, and the LC would function as a buffer between the HC and the R3A. If the interchange didn't go there at all, the designation would be fine. Scott clarified that the only issue is what are the boundaries of the HC. Foster agreed that is the biggest issue. Foster indicated that when ITD met with the City to give them the recommended preferred route, it is pretty concrete, and not often the Federal Highway doesn't go along with the ITD recommended preferred route.

Storer clarified that this is an annexation unplatted. Foster agreed that staff usually see an annexation along with a plat, which the commission is not supposed to consider, but at this point they have only talked about the annexation and zoning. Storer indicated that the reality is the real control over how a project goes, comes when they submit that final plat.

Wimborne clarified that the annexation must include zoning. If the City approves the proposal, the City cannot come back and change it if they don't like it, because at that point it is a property right.

Scott asked if they were to approve as presented, what is the issue that staff foresees. Foster stated that it is not a problem, but there are different types of development allowed in those types of zones. HC is strictly commercial, LC would allow 35 units per acre of residential use, as well as limited commercial.

Wimborne opened the public hearing.

Lance Schuster, Esq., Beard St. Clair. Representing the property owners Steele Land Holdings. Schuster stated that Scott Steele is the principal of Steele Land Holding and wants to address the Commission separately. Schuster feels it is beneficial to the City and Steele Land Holding. Schuster stated that this will give the City some control over future development of the property. Schuster stated that it is beneficial to his client so he can market the property as annexed property. Steele is not a developer, but is a farmer, and the property is alfalfa and feed lot, and he will relocate the feed lot out of town, and in order to make that work financially, he needs to sell some of the property. There has been discussion about the northern portion of the property being annexed as R3A. Schuster understands from staff is there is no objection to that portion of the property being annexed, and that is compatible with the annexation that has already occurred on the other side of the Lewisville Highway. So, there should be no hesitation in annexing that portion of the property to the City with the R3A designation. Schuster stated that the southern half could likely have the interchange in this location, and since property needs to be zoned with annexation, it would make sense to zone it HC and LC as presented. They are requesting that all property be annexed even without knowing where the interchange will be. Schuster has met with ITD, and he understands that ITD is working on finalizing it and they have no deadline as to when it will happen. Schuster stated that it could not happen at all because the Federal Highway must approve too. Schuster stated that the proposed zoning is consistent with what the future development in this area could look like. Staff report reads that the "shoe fits" but there is concern about the highway and where it could be located, but annexation gives the City more control, and it makes sense for the City to annex it all and let his client market the

property as annexed. Schuster stated that by annexing the City will be in a better position to approve plats and approve development of the property and thus it is consistent with the Cities goals. Schuster added that the staff report as read, says the property is contiguous to City limits, it is included in the future use planning map, and that annexation is consistent with the policies of the City's Comprehensive Plan. It makes sense to annex at this time, and the City can tailor it in the future as plats come forward. Schuster urged the Commissioners to recommend annexation.

Scott Steele, 6130 1st Street, Idaho Falls, 83401. Steele stated that Schuster and Ellsworth have covered it well. Steele stated that he is not a developer, his business is feeding cattle, in a small feed lot on his property and he hadn't planned to do anything with his property. Steele stated that the property north of his has been recommended for annexation, (Foster agreed). Steele stated that there is development going on all over, and he is becoming an island in the middle of the City. Steele doesn't need to convince the Commission that a feed lot and residential development don't go together. Steele stated that because of that he has decided to move his operation away from the City and to do that he needs to sell, as his wealth is invested in his property. He doesn't have time to wait for the State and Federal Government to wait to see what is going to happen to him. Steele stated that he is nearing retirement, but his son is going to take over. Steele stated that time is of the essence, and he cannot wait for a year. Steele stated that he can understand the reluctance and the questions about what might happen with the zones that would be impacted by the interchange. Steele stated that in discussions with future property owners, no one wants to deal with the State or Federal Government on imminent domain. Steele stated that the only interest in the property is in the R3, and maybe in the end if he can get the R3 annexed, he'd be willing to compromise and annex that portion. Steele understands the reluctance, given the concerns with ITD.

Storer clarified that the real issue is marketability now, in order to facilitate the relocation of the stock yards. Steele agreed with Storer, that is his driving force. Steele stated that this has happened quickly, and the development north of him is annexed, and his property is contiguous, and he needs to be moving, and annexation into the City will give the highest and best use of the property. Steele's business cannot be left in limbo.

Storer asked if he looked at the impact on the tax levy on Steele's property should the property be annexed. Steele stated that he has not. He has looked at selling in the County, and there are options, but he'd rather not go that direction, and he feels the "shoe fits" and he would like the entire piece of property in the City.

Scott stated that Steele is willing to negotiate on what is annexed, and asked if there would be room for negotiation on the boundary of the HC Zone.

Kirkham stated that negotiation is not the right word. Wimborne added that they need to make a proposal after hearing the information. Kirkham stated that the question is whether annexation makes sense, and does the City have the resources and power and does it make sense to take the governing authority to this property. Kirkham stated that the projects that could happen on the property goes beyond the scope of the question of annexation and zoning. Kirkham stated that there will not be a negotiation, there will be a recommendation made.

Scott stated that his seems to be a package, and that the problem isn't the annexation, but the zoning is the problem. Kirkham stated that it is a package deal, and the Local Land Use Planning

Act requires a zone with annexation. It is a two-step question (1) is it inappropriate for the land to fall within the Cities governing power, and if it is a bad idea to take jurisdiction over land, then don't annex and the zoning doesn't matter; (2) If it makes sense for the City to exercise its governing power over land, then you apply a zone. It is a two-step process, but a package deal that cannot be split up.

Scott stated that it is presented to the Commission with the question that it is appropriate to annex it, but they are not thrilled with the zoning, then what is their voice in that. Wimborne clarified that they could vote with a new zone that the Commission chooses. Kirkham agreed that these are the zones the applicant requested, and the Commission can choose to annex with a different zone. You do not have to adopt the zoning as presented, with an explanation of why you chose that conclusion.

Scott asked if they could annex the property with the condition that the zoning is different. Foster clarified that you cannot do conditions with an annexation or zoning. Kirkham stated that you cannot condition the annexation and zoning and you must deal with what is before you. Everyone acknowledges that there is uncertainty and Kirkham advised not to think about the highway too much, but rather answer the question if the City should govern this land, and what are the appropriate uses.

Storer asked if there would be a problem with property notice, if for instance this body was to recommend a different zoning, is there not proper notice if you are going to change the zoning in the middle of the process. Kirkham stated that it is a legislative zoning and not a rezone, so he feels that if the City wanted to be safe, they could re-notice, but it is a legislative zoning. Storer asked if the proper process would be to re-notice the hearing with the different zoning so that they could have proper notice. Kirkham stated that would be the safest way to give the community notice of what would occur. Foster stated that because this is a legislative action, they do not notice property owners, as they statutorily don't have to. It is published, but they have had other circumstances where the Commission has approved the annexation with a different zone, and it will be published again prior to the City Council.

Wimborne asked if they have the latitude to break the property into pieces and do separate motions. Kirkham stated that the City has the ultimate decision on how to exercise authority. Kirkham stated they would need an explanation of why one makes sense, and one doesn't make sense based on hypotheticals. Wimborne stated that Kirkham has said that the Commission shouldn't consider the interchange as part of the discussion, but HC is all about whether there is a highway there or not, and how do you separate that question. Kirkham stated that is the difficulty with that request. Normally there is a plan and vision of what the land is going to have happen with it, however this annexation doesn't have that vision. The City needs to look at the Comprehensive Plan and look at the vision for how the community is going to grow, and it still could make sense to exercise the governing authority. Kirkham stated that without knowing everything, if you do what the applicant is requesting, the City will exercise its governing authority over the land and will apply zoning. If a plat comes in that is consistent with the Comprehensive Plan and meets the conditions of the zone, but doesn't take into account the Highway, and the Highway is still hypothetical, then the plat could be approved, as that is the landowners right to subdivide and plat. There isn't a right to come in and be annexed the City gets to make the decision as to whether it makes sense for the City to govern this land, and if it

does then determine the right zone, and if you feel that the highway is so uncertain, then apply a zone that would make sense with or without the highway.

Scott asked if there are legal issues/liability down the road, if they make a decision based on the green line, and if they have impacted the landowners involved, with the Commissioner's decision. Kirkham stated that liability suggests a question of whether the City will be extracted damages and money because of a legal decision it made, and there won't be liability for that, but the City will have "made its bed and have to sleep in it." If they approve a specific zone, then the rights for those zones attach as soon as the City applies the zone. If the decision is made based on the expectation that there will be a highway and no highway comes, the land can develop as HC regardless of the Highway being there or not. Kirkham stated he is only giving advice, and he is not trying to make the decision for the Commission.

Wimborne stated that R3 makes sense even without a highway, but the HC doesn't make sense without the highway.

Scott asked Foster that if the highway were not going on this property, this proposed zoning would be ok, including the HC. Foster agreed.

Scott Steele, 6130 1st Street, Idaho Falls. Steele stated that the zones were chosen not by him but were recommended by City planners and the placement of the interchange is up in the air. Steele stated that the line between LC and R3 was recommended specifically because it aligns with the bridge that is coming in from the other side. Steele stated that he would like the entire piece annexed regardless of how the zoning is approved. Steele asked if he could amend his request.

Rod Ellsworth, Ellsworth and Associates, Idaho Falls, Idaho. Ellsworth stated that the property to the north has been annexed and that makes this property contiguous on 2 sides. Ellsworth's concern about separating this annexation would be the ability to move division rights to the south if the R3 portion is annexed. There could be 18 division rights on the south two pieces of property that could be used in the County as 5 acre lots, and the City would lose control of the property. If the property is annexed the division rights are gone. Ellsworth stated that the City needs to take control before they lose control over it.

Wimborne closed the public hearing.

Brower stated that she doesn't have a crystal ball, and feels it should be approved as written, and not get hung up on a highway that doesn't exist. Brower stated that based on the properties around it, it is appropriate to annex into the City.

McDaniel concurs and doesn't think it is right to wait for this decision which might take years.

Scott stated that he feels they need to consider Ellsworth comments that if they don't annex, they lose control to the County. Scott stated that the area that is zoned LC cannot be marketed realistically because there might be a road through it. Scott stated that they shouldn't have to worry about houses going up in that area.

Wimborne stated that based on her experience, the concern is that once it is zoned that way, all the uses are allowed, and whether the highway goes in or not, there are issues that need to be addressed, and whatever zone that is approved gives property rights to that property to develop.

Scott stated that the City has no control as is without annexation, and the City will have more control with annexation.

Cantu feels they are overthinking it and the question is whether it should be annexed, and he concurs with Brower.

Storer appreciates Steele's comments. Storer has a different view in terms of the amount of control the City has if the property is annexed, because once you approve the zone, any of the permitted uses within that zone are allowed, and you could not have timing in sync with what is going to happen with the property. Storer has more concern with annexing now, and having less control over the zones, as opposed to deferring until the highway decides what they are doing. Storer stated that a smaller annexation would make sense.

Ihler stated that being in real estate he sees both the City and developer side of things. Ihler stated that he doesn't want to see the same thing that has happened at every other single interchange, which is unorganized unattractive industrial or random buildings around the interchange, which could be used in a better way. Ihler stated that the Amazon Warehouse and RC Willey and Smith Chevrolet is in the County, which is less tax revenue coming into the City, and the people are using the interchange coming into the City, and the City should be able to control what is going on around the interchange. The County does whatever they want. Ihler stated that having some control is good. Ihler stated that from a developer's point of view, this property may sell in 6 months or a year, and once a developer is interested, they will know about the interchange, and want to design a plan around the interchange and not deal with eminent domain, and whatever developer comes along will wait and see what the Highway does. When they buy this property, they will wait and see what ITD does with the highway. If the developer is ready to go, it still takes a while to get a preliminary plat and engineering and it could be 2 years out and by then hopefully there is a determination on the ITD Highway. Development takes time, and if the developer needs to rezone the developer will know that, and know the risks associated therewith. Ihler stated that if they keep this zoning and the freeway interchange 49th North is shifted north going right through LC, LC does allow residential. Jackson Hole Junction has apartments, and that is an LC zone right on the freeway. A Developer is confident enough that they know people will move there. It is not fair that the City recommended the zones and now is saying "not right now." Ihler feels that Steele needs to get the ball rolling and cannot move on without selling his property. A developer will know what they are buying.

Cantu Moved to recommend to the Mayor and City Council approval of the Annexation of 166.59 acres in the SE ¼ of Section 6 Township 2 North, Range 38 East with an Initial Zoning of HC, Highway Commercial, LC Limited Commercial, R3A, Residential Mixed Use, and Controlled Development Airport Overlay Zone, Brower seconded the motion. Wimborne called for roll call vote: Brower, yes; Ihler, yes; Storer, no; Wimborne, yes; McDaniel, yes; Scott, yes; Cantu, yes. The motion passed 6-1.

Storer feels it is a classic chicken and egg issue, and the question they are dealing with is who has control over the development. He is concerned that they are too far ahead of the game in terms of knowing what is going to happen, and how the property is going to be developed. Storer feels that they are too far ahead of the curve, and that is why he voted no.

Wimborne added that it is difficult, and it does make sense to annex with the surrounding property, although she is nervous with the LC/HC and what might happen with ITD.

Wimborne called 5-minute recess.
Wimborne called the meeting back to order.

Business (s):

2. PLAT 21-028: FINAL PLAT. Ivy Wood Division No. 4

Applicant: Kurt Rolland, Eagle Rock Engineering, 1331 Fremont Ave., Idaho Falls, Idaho.
Rolland stated this is Division 4 of Ivy Wood Estates and consists of 37 acres that has been zoned R1. They have 109 lots and 105 are buildable. There is a park in this division that will be a green space.

Ihler asked if the park is a storm pond. Rolland agreed it is a storm pond and park with amenities.

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

Wimborne asked if some of the intersections like Chapelle and Montezuma have a circle intersection to slow traffic. Stevens doesn't think it will be a roundabout, and it will be a standard intersection. Stevens stated that the road lengths with the cul-de-sac are not much different than what has already been built.

Scott is concerned that the City has put an emphasis on building walkable centers, and this is a lot of development, with no commercial services. Scott feels they should be more concerned with services. Wimborne stated that there is some commercial on the corner of 65th and 5th West. Stevens stated that they do propose that the intersection of 5th West and 65th will have a walkable center, and the owner of the property would love to see a retail center coming to a location near the development to provide jobs and groceries. This development has the potential to bring the necessary rooftops to bring commercial to the area. There is planned to have a large road built at W 65th S in the future, and between the combination of the large development, large road, and pathways, this area could see a walkable center at 65th.

Ihler does not like single family neighborhoods on the edge of town as it is bad for the City, but this follows all the rules that are established. Ihler thinks that even though it is a single family with a commercial center, it is not walkable enough, especially if 65th becomes a bigger road. Ihler commented on Wimborne's concern about speed on the roads, and indicated that Montezuma has a canal, and if you have two neighborhoods connected over a canal, it usually rises and then goes down, which creates a natural speed bump and slows people down.

Rolland stated that Montezuma is a collector with 70' right of way.

Storer moved to recommend to the Mayor and City Council approval of the Final Plat for Ivy Wood Division No. 4, as presented, Scott seconded the motion. Wimborne called for roll call vote: Brower, yes; Ihler, yes; Storer, yes; Wimborne, yes; McDaniel, yes; Scott, yes; Cantu, yes. The motion passed unanimously.

3. PLAT 23-003: FINAL PLAT. Fanning Place Division No. 1.

Applicant: None appeared.

Ihler disclosed that the real estate group that he works for is the one doing this project, and asked if he should he recuse himself. Kirkham stated that conflict of interest rules that apply to the

Commissioners, as public officials, are required to disclosure if there is a conflict of interest, which means, that if by making this decision there is a direct way to put money in your pocket. If you disclose that conflict, and participate in the vote, that is the bare minimum, you can make the decision whether you participate and vote, but you must disclose the conflict, and many people feel they should recuse themselves.

Wimborne stated that often when she recuses herself, she steps down to the audience.

Ihler stated he has a conflict of interest because the Anderson Hicks group he works with as a partner and he helps update their investors each month, and this is one of the projects. Ihler recused himself and stepped down to the audience.

Foster presented the Staff report, a part of the record.

Brower moved to recommend to the Mayor and City Council approval of the Final Plat for Fanning Place Division No. 1, as presented, McDaniel seconded the motion. Wimborne called for roll call vote: Brower, yes; Storer, yes; Wimborne, yes; McDaniel, yes; Scott, yes; Cantu, yes. The motion passed unanimously.

Ihler recused himself from this matter.

4. PLAT 22-007: FINAL PLAT. The Reserve at Snake River Landing Division NO. 1.

Applicant: Kurt Rolland, Eagle Rock Engineering, 1331 Fremont Ave., Idaho Falls, Idaho.

Rolland stated that this project is 15.901 acres, and the property is zoned LC. Rolland stated that they are proposing the final plat with 3 lots to accomplish development in phases. Rolland stated that they have a City dedicated road designed through the middle of the property for a collector road that will continue to the south into other property of same ownership and then go around to Ball Ventures property for a loop road.

Wimborne asked about Reserve Drive emptying into Pioneer and then an undetermined project on the other side. Rolland agreed and stated that there will be a bridge and then go to Division 2.

Ihler asked if they are required to widen both sides of Pioneer. Rolland stated that City Ordinance requires them to widen the road and they are putting water and sewer in that road and build on both sides along the section by the freeway and once there are property owners on the other side, they only do their half. Ihler confirmed it is annexed into the City on both sides.

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

Ihler asked if the City would pay for their side of the road development, and will it happen at the same time, or will the City widen later. Foster stated that will come as part of the development agreement and Public Works will arrange that.

Scott moved to recommend to the Mayor and City Council approval of the Final Plat for The Reserve at Snake River Landing Division No.1., Storer seconded the motion.

Wimborne called for roll call vote: Brower, yes; Ihler, yes; Storer, yes; Wimborne, yes; McDaniel, yes; Scott, yes; Cantu, yes. The motion passed unanimously.

Miscellaneous:

Discussion: Meeting Minutes. Foster stated that at the last meeting someone was asking about restructuring meeting minutes and after staff met and had discussion with their liaisons at City Council, they feel that the minutes are currently at a happy medium. Foster indicated that they don't want to quote word for word, and don't want to summarize what people are saying, but there needs to be a happy medium. They need to be detailed enough to get the point across. The meeting minutes are currently consistent with other meeting minutes, including IFRA, and some of the City Council meetings.

Wimborne asked what the request for restructuring was.

Kirkham stated that it was Storer's request to discuss the minutes and talk about it as a Commission to make sure they are getting what they wanted to see in the minutes.

Storer stated that there is a lot of work and effort to recapture everything that is said, and he frequently says, I didn't say that or that doesn't adequately summarize what I said. He has seen circumstances where you end up with a lot of debate and arguing over whether the verbatim minutes correctly reflect what was said. Storer asked about shortening the minutes, so they become a sense of the tenor of the meeting. There is always a transcribable record recorded, so you don't need minutes as to what occurred, but rather the general tenor of the discussion. That would free up staff time and avoid future conflict with commissioners arguing about what they said/didn't say and did/didn't mean.

Wimborne asked for an example of what it would look like.

Storer stated that the minutes could look like: "After some discussion, Commissioner Storer expressed some concern about the proposed annexation in that it didn't comply with the Comprehensive Plan."

Wimborne's concern with that approach would be that would not give the Mayor and City Council some of the details that they have provided traditionally. Wimborne worried that there was a lot of discussion and different commissioners have different points that they shared, and lot of that would be lost if there was a general line or two.

Ihler can see both sides, and having been to City Council meetings, City Council Members Francis and Burtenshaw they are liaisons to Community Development Services, and they are very thorough with the reading of the minutes and what the Commissioners for Planning and Zoning have to say. Ihler understands Commissioner Storer's concern to meet in the middle, but he also feels the element of detail is important.

Storer suggested there needs to be a balance with not being too detailed but capturing what the Commissioner is feeling or recommending trying to stay away from disputes.

Ihler stated that the meetings are recorded, and if there is confusion about what was said, could they pull up the video or recording during Planning and Zoning. Foster agreed there is live stream and that is posted on the website, and the recordings are kept forever. That is something that could happen within a reasonable amount of time.

Brower asked if there has ever been a need for that?

Wimborne stated that commissioners have asked for changes in the minutes because a Commissioner indicated that “this is what they meant” and those adjustments have been made, but not very often.

Ihler confirmed that when they vote on the minutes, they can change if it is not what was said. Foster agreed and stated that you cannot say “that is not what I meant to say and have it changed, but you can say I didn’t say that this is what I remember saying,” and that can be changed. If you said it, but that is not what you meant, you cannot retract it from the record.

Wimborne stated that if someone is not comfortable with how they are captured they can table the minutes and come back after review of the meeting video to review for approval of the minutes.

Cantu hasn’t seen an issue.

McDaniel doesn’t see a need for change and is neutral.

Wimborne asked the Commission to pay attention to the minutes over the next month and if they do feel there are issues, they can come back around and address the issue again.

Next Meeting May 2, 2023.

Ihler asked about the level of applications for planning and zoning, and asked if they are slowing down. Foster stated last year they were doing 2 meetings, and right now they are seeing average agendas for each month.

Adjourned at 8:56 p.m.

Respectfully Submitted

Beckie Thompson, Recorder