

March 5, 2019

7:00 p.m.

Planning Department

Council Chambers

MEMBERS PRESENT: Commissioners Natalie Black, Gene Hicks, Arnold Cantu, George Swaney, Joanne Denney. (5 present 4 votes).

MEMBERS ABSENT: Margaret Wimborne, Brent Dixon, George Morrison, Lindsey Romankiw.

ALSO PRESENT: Planning Director, Brad Cramer, Assistant Planning Directors Kerry Beutler, Brent McLane; and interested citizens.

CALL TO ORDER: Natalie Black called the meeting to order at 7:00 p.m.

CHANGES TO AGENDA: None.

MINUTES: Swaney moved to approve the February 5, 2019 minutes, Hicks seconded the motion and it passed unanimously.

Business:

1. PLAT 16-033: FINAL PLAT. Alderwood Professional Plaza. Final Plat. McLane presented the staff report, a part of the record.

Applicant: Jeff Freiberg, 946 Oxbow, Idaho Falls, Idaho. Freiberg stood for questions.

Swaney moved to recommend to the Mayor and City Council approval of the Final Plat for Alderwood Professional Plaza as presented, Denney seconded the motion and it passed unanimously.

2. PLAT 19-001: FINAL PLAT. Windsor Addition Division 1 First Amended. Beutler presented the staff report, a part of the record.

Applicant: Jeff Freiberg, 946 Oxbow, Idaho Falls, Idaho. Freiberg stood for questions.

Cantu moved to recommend to the Mayor and City Council approval of the Final Plat for Windsor Addition Division 1 First Amended, as presented, Hicks seconded the motion and it passed unanimously.

Public Hearings:

3. RZON 19-001: REZONE. First Street Welding. Rezone TN to CC. Beutler presented the staff report, a part of the record. Swaney asked about the requirement for a 10' landscape buffer that is required when CC zones are adjacent to residential. Beutler stated that there are existing structures, and if they redesign the site, they would be required to have the 10' buffer where it could be put in. Beutler added that the home adjacent to the property is owned by someone that works for 1st Street Welding and would be comfortable with the uses. Hicks asked about the ownership of the parcels. Beutler clarified that there is different ownership, but all property owners have submitted the application for rezone.

Black opened the public hearing.

Applicant: No Applicant present.

No one appeared in support or opposition.

Black closed the public the hearing.

Swaney stated that it is significant that all 4 parcels' owners are in agreement in making the application. Swaney indicated it is a good idea to make this area consistent with the actual use of the property.

Hicks moved to recommend to the Mayor and City Council approval of the Rezone from TN to CC for Lot 1-12, Block 30, Capitol Hill Addition (First Street Welding) as presented, Denney seconded the motion and it passed unanimously.

4. RZON 19-002: REZONE.1381 Elmore; 6 Lots Along Fremont Ave. R1 w/ PT to TN.

Beutler presented the staff report, a part of the record. Swaney asked if the alley contiguous with the site will need to be improved along with the street. Beutler indicated that it will depend on the use. Hicks asked about access to the parcels. Beutler indicated that there will be no access to Fremont and access will come from Presto or the alley in the rear. Black asked and Beutler confirmed that with any development, the improvements on Presto will be required.

Black opened the public hearing.

Applicant: Eric Roberts, 185 Pavaro, Idaho Falls, Idaho. Roberts commended the City for the TN Zoning and believes its an amazing idea. Roberts has a project that is on Lomax and they are putting two houses on a 50' wide lot 15x60. Roberts indicted that this property will be used for the same development. Roberts indicated that he owns the property on Elmore and that together there will be 12 total lots with 10 houses on the lots. Roberts indicated that the homes will be two story with a basement, with a potential of 2200 sq. ft. 5 bedrooms, 3 bathrooms. Roberts indicated that if they are unable to get the rezone to TN, they will likely put (2) 4 plexes on the property. Roberts indicated that they would have rear alley access on all of the 10 lots to the houses with the potential for garages.

No one appeared in support or opposition.

Black closed the public hearing.

Swaney thanked the applicant for being present. Swaney cautioned the Commission that the application is for a rezone, and anything that fits within that zone can go on this piece of property. Swaney believes this rezone is a good idea and specifically removing the PT overlay which has been an impediment to any development.

Swaney moved to recommend to the Mayor and City Council approval of the Rezone from R1 with PT Overlay to TN, for Lot 25, Less NW 85.84 sq. ft. and Lots 26-30, Block 24, Highland Park, as presented, Cantu seconded the motion and it passed unanimously.

5. RZON 18-021: REZONE. Amend Comprehensive Zoning Ordinance to Establish Section 11-5-3 Airport Overlay Zone and Amend the Zoning Map to Include the Airport Overlay Zone. McLane presented the staff report, a part of the record. McLane stressed that the purpose of the Code is to protect the Communities interest in the airport and preserve the future of the airport. McLane went through the Code, starting with the land use portion showing the sub-zones including: No Development Zone; Limited Development Approach Surface Zone;

Controlled Development Approach Surface Zone; Limited Development Zone; Controlled Development Zone.

Swaney asked if they have identified the County property that is within the land use area. McLane stated that the Zoning Code only applies to what the City has jurisdiction over, so the County has to enforce their own property. McLane stated that FAA still has interest in the County parcels. Cramer added that he has attempted multiple times to reach out to the County to request a meeting with the County Planner to discuss this and has received no response. Cramer stated that he has sent drafts, and the plan was to get the Code to a point where the City was ready to adopt it, then go through the County's Ordinance and write up some changes that the City would request and present that to the P&Z Board. Swaney stated that none of the members of the County Planning Commission had any idea that there was anything going on in regard to the Airport. Swaney stated that the Assistant to the Director said that they had received information from the City, but they had declined to distribute it to any of the members of the Planning Commission. Swaney recommended that Mayor Casper needs to contact the County Commissioners to inform them that they are placing the airport at risk by not attempting to cooperate to implement zoning that contain the FAA controls that are necessary. Cramer stated that he has not received a response from the Planner, and he has emailed all the Commissioners the same information, and Commissioner Christensen did respond and said please meet with our Planner.

McLane continued on with his presentation going through Compatible Land Uses.

Hicks asked if the existing non-compliant uses would ever have to be removed. McLane stated that they would follow the same non-compliance rules that are in the rest of the Zoning Ordinance and would continue to be allowed to exist as long as they are in continuance, and if they are removed, they cannot go back.

McLane started with No Development Zone (Red) that can have no development except airport facilities; Limited Development Approach Surface Zone (Orange) most critical areas for airport to protect and allow a lot of commercial and industrial uses, but no residential uses; Controlled Development Approach Surface Zone (Purple) allows most things with conditions on the development; Limited Development Zone (Yellow) allows most things with some conditions; Controlled Development Zone (Green) has very little restrictions on development, mostly concerned with heights.

McLane went through the conditions in table 11-5-6. Cramer asked the Commission if it is confusing to have the other colors on the zoning map, where the table and regulations only cover from the green color in towards the airport (residential portion only). Swaney stated that he agrees that only the green inward colors need to show, and they need to show a date on the map so it is clear at what point in time this applied as things change as time goes on and a new map could come forward. Hicks asked if this map considers the airports long range plan to grow. McLane confirmed this is why the map is included in the zones so if there is a change in the airport the City would be prepared to address them. Cramer stated that is a question, as the 2010 Master Plan show the potential to close one of the runways and install a new shorter runway to the west. Cramer added that within the 2010 Plan there is a future Noise Map that looks different. Cramer stated that he is confirming with the Airport Director and the FAA which map to apply. Cramer stated that when this is adopted by City Council it could look a little different. McLane moved on with his presentation. McLane defined Avigation Easement. Cramer stated

that this is one change that could potentially happen before it goes to City Council. Cramer stated that they have asked the FAA if in areas they are asking for the Avigation Easement in the yellow and purple areas, if the Avigation Easement is critical in order to meet the FAA Assurances or if the Real Estate Disclosure Statement is sufficient.

McLane moved on to the Height Restriction portion of the Code.

Hicks asked and McLane confirmed that the FAA has recognized that the City is trying to become compliant.

Cramer noted that this was advertised as an Amendment to the Zoning Ordinance and an Amendment to the Zoning Map (rezoning the map to show the overlay). Cramer stated that they did not get the signs required by law posted to do the rezoning portion, so tonight is only consideration of the Code language not the rezone.

Black opened the public hearing.

Applicant: City of Idaho Falls

Support/Opposition:

1. Kevin Alcott, 101 Park Ave., Idaho Falls, Idaho. Alcott stated he has been involved extensively in this Code Amendment. Alcott stated that the Avigation Easement in the definitions section, differs from the language on page 64 that describes the Avigation Easement. Alcott stated that the description on Page 64 states that the property owner would indemnify the City/Airport for anything that falls out of the sky, and Alcott believes that is overly broad and taking of the property. Alcott stated that he has reviewed a lot of Avigation Easements and they are very clear in the language that states nothing in the easement that causes the property owner to indemnify anyone for careless, negligent or illegal actions, and he believes that is flaw in this current Code document and needs to be addressed. Alcott stated that the footnotes to the allowable uses and it indicates that the Avigation Easement form will be provided, and Alcott believes it is critical that the form is identified, and it is known what it is as part of this Ordinance, so it is clear what property rights are being taken from the property owner. Hicks clarified that Alcott believes the form should be part of the Ordinance. Alcott indicated that there are Federal Land Acquisition Laws that apply specifically to this instance and those need to be looked into. Alcott stated that there are two sets of Federal Regulations that apply to this. Alcott stated that if a Real Estate Disclosure Statement has to be made it needs to be recorded on the plat and that will be sufficient public notice and he doesn't feel that they need to create another set of documentation that could become potential liability in the future if someone doesn't get told, but if it is recorded on the document and in the City Code, then it is public information. Alcott stated that page 68 talks about Overlay Zones, Approach Surface, but doesn't provide a definition or Ordinance Definition for what the Transitional Surface is. Alcott stated that Form 75-60 is not required by a lot of the properties and he believes that the exception is now listed in this document. Alcott stated that he is concerned about the definition for Approach Surface and that differs from the definition in the body of the Ordinance and that will open it up to interpretation. Alcott stated that 14CFR77 applies to height and the R-1 Zone limits the building height to 24' so he believes that this could be simplified that City wide it is a conditional use to go above a certain elevation instead of having this very complicated map that will confuse people and force people to go to Ammon instead of trying to figure out the

complexity of the map, when in reality it has no impact on the houses. Alcott stated that 14CFR150 is noise exposure. Alcott stated that noise is a big concern, but the map shows a lot of land, and in reality, it could be restricted to the small portion near the airport, instead of creating a complex map that will create red flags for potential property buyers. Alcott stated that when the 2010 map was done it looked different than this map and the Federal Regulations require that the Federal National Noise Maps be updated, and it hasn't been, and this map is different than the noise map in the Airport Master Plan. Alcott read "In areas where the values are 65 yearly decibel noise level (yearly average) the airport shall identify land uses and determine land use compatibility". Alcott stated that the only place this land use ordinance should be applied to is where it is in excess of 65 decibels. Alcott read "For the purpose of compliance with this part, all land uses are considered to be compatible with the noise levels less than 65 decibels." Alcott stated that it is not necessary to do Real Estate Disclosures when the federal law states that it is a compatible use, and it has a land use table in the Ordinance. Alcott stated that they need to think about what this will do to land values and the potential risk to the finances of the City to have an overbearing Ordinance. Alcott stated they need an Ordinance that protects the Airport and Federal law dictates what is necessary to protect the Airport, and the City Ordinance should not go further than the Federal Law.

2. Roger Blue, 825 Jerry Ave., Idaho Falls, Idaho. Blue stated that Jerry Ave., is in the Limited Development Zone and his house is within 100' of the Limited Development Approach Surface Zone. Blue stated that he is a private pilot and aircraft owner, was on the Mayor's Airport Review Committee, and was on the Technical Advisory Committee for the Airport Study for the 1735 Plan which is a revision to the Master Plan. Blue stated that it was mentioned earlier that a runway might be closed, and those plans have been eliminated. Blue stated that the new Master Plan will address some of the issues.

Blue read a statement that was provided for the record. Blue's statement gave a historical review on why and how Airport land safety is needed. Blue's statement indicated that an effective airport land use overlay is the next necessary step for protecting the airport.

Cramer emphasized that they are trying to walk the line between what is required to protect the Airport and meet the FAA Assurances through the Grant process, and not require more than they have to from citizens. Cramer stated that Draft 5 is in the packet and they are on Draft 7. Cramer stated that they have made a lot of changes that have been heard tonight, and they have asked the FAA specific questions about the changes to make sure if it is needed or not. Cramer stated that if it is not required by the FAA, they will not require it. Cramer stated that the easement language about Avigation Easements has now changed from Draft 5 and is now the neutral definition listed in the Code and takes out the language about indemnifying. Cramer stated that the form needs to be reviewed with legal and there is a sample form in the Master Plan, and they will review it carefully to make sure it is appropriate. Cramer stated that he read today in the Comprehensive Plan in 2013 talked about that in terms of noise the land uses are compatible in terms of noise, but in terms of the ability to take off and land using precision instruments there is a risk of allowing incompatible uses that don't have anything to do with noise. Cramer stated that he was shown a video of a pilot trying to land in Burley on a clear day in winter and the runway was obstructed by the steam from a food processing plant that was right in the line of sight of the pilot, and those are the things this Ordinance is trying to protect against.

McLane stated that in the new Draft 7 there is a general definition for a transitional surface, and there is a zone called the Transitional Surface Height Zone that they tried to clarify the difference between the two things.

Swaney clarified and McLane agreed that the Zones are specified and defined with one set of language; and the term "Transitional Surface" has a definition in the back, but that is only the term, not the Zone.

McLane stated that they will work through the Avigation Easement definition with the attorney. McLane stated that where there is a definition in the Code, they removed that portion and it is only defined in the definitions to clear it up. McLane stated that they will ask if the Real Estate Disclosure Statement can go on the plat and if it is that easy it will make it easier for everyone.

Hicks voiced his concern about the County not being involved. McLane stated that the FAA will still have an interest and will be aware of what is happening outside of the City's jurisdiction.

Cramer stated that even if the FAA couldn't say no to a development in the County, there are legal tools the City has, but hopefully the County and City will work it out. Cramer stated that he did get a text from the Airport Director and they do need to switch the map to correspond with the Map in the 2010 Master Plan and will not have a dramatic effect in terms of regulation.

Black closed the public hearing.

Swaney commended the staff on their work. Swaney stated that he feels everything is being addressed, other than the question of simplification. Swaney stated that the concern heard during testimony is that there needs to be language in a simplified version that provides an overview of where people have any need to be concerned about the restrictions of the Ordinance. Swaney stated that the Chairman of the County Planning Commission is an avid aviator and if nothing else he should understand that this could have an impact on his ability to pursue his flying time. Swaney indicated that the City and County should get together and allow the Community Development to help the County develop their new ordinance, and the comments received during this hearing should apply, to include simplified language.

Black thanked the community members for their thorough research and communicating with staff to come to a point that they can protect the Airport.

Hicks asked what action is needed tonight, as there are already more revisions than what the Commission has seen tonight.

Cramer stated that his request is because there is a moratorium on the land that won't be lifted until the Ordinances are in place he requested that the Commission recommend approval to the Mayor and City Council with the changes that are important, with the clarifying language, the updated map, the easement language going to the attorney, so this can move forward to get the moratorium off the lands as soon as possible.

Hicks asked if they could have a special meeting in 2 weeks to act on something that the Commission can review and that will carry forward. Cramer stated that it is a possibility if the vote is to recess to date certain, and if they can get a quorum for that date. Cramer stated that they are on Draft 7 but have talked about every change they have already made, including the changes in the easement language, the changes in how the height works, definitions. Cramer

stated that the changes aren't going to significantly change how the ordinance functions and all the changes are going to do is fine tune how it is applied, and the different map.

Swaney believes that for developers and property owners the moratorium needs to be lifted and so they should do what is recommended.

Swaney moved that the minutes of the meeting and the comments submitted in writing and verbally by the public would represent the changes that need to be included in the Ordinance that would be presented to the Mayor and City Council for review and action. Hicks seconded the motion and it passed 3-1.

Swaney moved to recommend to the Mayor and City Council approval of the Amendments to the Comprehensive Zoning Ordinance to Establish Section 11-5-3, Airport Overlay Zone with the following conditions/changes:

- 1. Include the Clarifying Language;**
- 2. Include the updated Map;**
- 3. Take the Easement Language to the Attorney for a determination;**
- 4. Review written and verbal testimony to ensure that all appropriate revisions have been made to the document.**

Hicks seconded the motion and it passed 3-1.

Denney opposed the motion as she does not feel comfortable building the airplane as they are flying it, and she would like to see what was going to be considered as the final draft before she recommends it to the Mayor and City Council.

Black called a 5-minute recess.

Black called the meeting back to order.

Miscellaneous:

Amendment of the Comprehensive Plan Designations within and around the Airport Approach Zone. Cramer indicated that they held a stake holder meeting with property owners and mailed out 950 letters and did a press release to get as many people at the meeting to discuss land uses and potential options. Cramer stated they will have a follow up meeting on March 13th to discuss the results of the meeting and how that will relate to an amended Comprehensive Plan.

Andrea Hansen, Voice. Hansen is in the process of producing a report and that report will be shared with the Commissioners by the end of the week. Hansen went over the surveys that they had at the events with the goals to gauge current levels of understanding of zoning, value of airport, etc.; and what development would people in the community want in this area. Hansen stated that they divided into 4 different round table discussions to discuss different aspects and interest, such as ITD, and work, live, play model. Hansen stated that they have compiled the results from the surveys and notes, and they are putting it into a document. Hansen stated that it is easy to understand multiple perspectives, but hard to resolve the problems. Hansen indicated that just over ¼ of the population of Idaho Falls would be described as matures/baby boomers, and of the people that responded to the surveys 99% of them fit into that ¼ demographic, but that leaves a large portion of the population whose attitudes and views were not documented, so they have been doing additional research. Hansen stated that they left response sheets at tables for

people to leave their take aways from the meeting, and a recurring comment was just move the airport farther away. Hansen indicated that they are working on creating a piece that includes some vital information and other perspectives. Hansen gave some statistics on passengers, cargo (FedEx/UPS) and other things the airport supplies to Idaho Falls. Hansen stated that INL and ISU are both interested in the area in question. Hansen indicated that they are finding a lot of consensus on certain issues for development. Hansen stated that it doesn't ease the landowner's fears, although the value base for the land is present and there is a common sense of purpose.

Cramer showed on the map the concept that staff has come up with for changing the Comprehensive Plan. Cramer stated that if the community wants to see more higher education and research then the higher ed and research developers need to sell their vision to the people investing in the land, not just sell the idea to the City. Cramer showed that part of the Comprehensive Plan in question (east side) shows higher education and really that area is developed in Industrial and should change to industrial. Cramer then showed farther north to change from residential to higher education. Cramer showed right along the river to be changed to Greenbelt mixed use. Cramer showed the very northern portion of the area in question would serve well to have low density housing to serve as a transition area between the County subdivision and future research and high education.

Swaney asked about the southern airport approach. Cramer stated that they do not have the development pressure in the south like they do in the north, so they haven't spent as much time. Cramer stated there are a few areas that might need changes in the south, but right now they need to address the north where the development pressure is heavy. Swaney indicated that the change from higher education to industrial makes a lot of sense, and the mixed-use greenbelt works nicely.

Black asked what kind of development pressure they are receiving. Cramer stated that the north pressure is for residential and INL and ISU don't want to be boxed in and limit their growth.

Cramer indicated that if the Commission agrees with the concept, they will take it to the property owners on the 13th to explain, get the comments from the property owners and the April meeting will have a public hearing on the Plan Amendment. Cramer stated that they want to have everything to City Council by the first part of May to adopt the Code, adopt the Plan and lift the moratorium.

Respectfully Submitted

Beckie Thompson, Recorder