

June 19, 2018

7:00 p.m.

Planning Department

Council Chambers

**MEMBERS PRESENT:** Commissioners George Morrison, George Swaney, Gene Hicks, Joanne Denney, Natalie Black, Margaret Wimborne, Arnold Cantu, Darren Josephson. (8 present with 7 votes).

**MEMBERS ABSENT:** Julie Foster, Brent Dixon, Lindsey Romankiw

**ALSO PRESENT:** Planning Director, Brad Cramer, Assistant Planning Directors, Kerry Beutler, Brent McLane, Brian Stevens; Randy Fife, Esq., and interested citizens.

**CALL TO ORDER:** George Morrison called the meeting to order at 7:00 p.m. and reviewed the public hearing procedure.

**CHANGES TO AGENDA:** None. (Until later in the meeting)

**Public Hearing:**

**1. RZON 18-006: REZONE. Comp Plan Amend Low Density to Commercial/Higher Density Residential/Industrial.** Cramer presented the staff report, a part of the record. Black asked Cramer to point out Staff's recommendation. Cramer explained in detail on the map Staff's recommendation as it is different from the application.

**Applicant: City of Idaho Falls**

**Support/Opposition: No one appeared in support or opposition.**

Morrison closed the public hearing.

Black indicated that she agrees with Staff's recommendation. Black indicated that during the Area of Impact Meetings she felt that it was a large area of commercial that was surrounded by residential, and thus agrees with Staff's recommendation to amend the Plan in smaller portions.

Wimborne agreed with Black that Staff's recommendation to do a step by step process on the amendment is the correct approach.

Denney agreed, and indicated that she likes the higher density being used as a buffer between lower density residential and the commercial.

**Swaney moved to recommend to the Mayor and City Council approval of the Comprehensive Plan Amendment as presented by the Staff's recommendation, Wimborne seconded the motion and it passed unanimously.**

**2. ANNEX 18-009: ANNEXATION/INITIAL ZONING of RMH, R1, P and HC. M&B: 89.5 Acres.** Beutler presented the staff report, a part of the record. Randy Fife, Esq., added that the Idaho State Code Title 50-222-5(b)(i) states that the property can be contiguous or adjacent. Fife indicated that the difference between contiguity and adjacency is contiguity means touching, and adjacent means near and doesn't have to meet the technical legal requirement of contiguity. Fife indicated that you can have a 1 ft wide raspberry patch and the property on the other side would still be adjacent to the City and for Category B or C requirements it can be annexed. Fife

indicated that if it touches it is contiguous. Black confirmed and Beutler agreed that the City owned park on Lincoln is in the County. Black confirmed and Beutler agreed that the City will not annex the roadway until all the area is annexed into the City. Beutler indicated that they work with the County on how to do that process, but typically it has been when annexation occurs on both sides of the road, then the City will take over road maintenance. Morrison asked about access to the large parcel in the proposed commercial area. Beutler stated that the area is under the same ownership and Applewood Way is not constructed and is only a platted right of way.

Morrison opened the public hearing.

**Applicant: City of Idaho Falls**

**Support: None.**

**Opposition:**

**Ron Palmer, 2017 Duchesse Court, Idaho Falls, Idaho.** Palmer owns property in Applewood. Palmer is against the Annexation. Palmer indicated that this is a grasp by the City to make an island in the County to further their allowance to get more property. Palmer stated that he grew up in the County, bought a house in the County and thought he would die in the County. Palmer stated that this annexation is a grab to expand for commercial use for somebody else to make a profit.

**Cherie Halst, 1695 N. Jonathan, Idaho Falls, Idaho.** Halst stated that she has spoke with other property owners on Jonathan and they are against this Annexation. Halst stated that this will raise her property taxes to over double. Halst stated that there are Spanish people, senior citizens, and low income and it will be a challenge if their taxes are raised. Halst stated that they see no benefit from being annexed into the City. Halst stated that the lesser charge on sewer, water and garbage, will not overshadow the increase in taxes. Halst stated that no one in the area can handle this annexation well. Halst stated that they see no benefits, only more bills. Halst stated that they do not want to pay more because the City needs more money, and that is how they feel, that the City is taking the property because they need more money and that the annexation will increase the ability for other people to redo and improve. Halst stated that they cannot improve in their area as they are all mobile homes. Halst stated that the homes do not gain any value, they only depreciate. Halst stated that the land might gain some value. Halst stated that they are not stick built homes. Halst stated that when they re-did Lincoln they raised it higher and now the water drains into their yard. Halst stated that when they moved in, there were no laws that required them to have permanent foundations. Halst stated that there are only 2 homes in the area that have basements and permanent foundations. Halst stated that now the law has changed that they need to have a permanent foundation and now it is difficult to get a loan on a home in the area if they wanted to sell. Halst stated that they are stuck where they are.

**Lloyd Cox, 2174 E Lincoln Rd., Idaho Falls, Idaho.** Cox owns 30 acres (storage units and undeveloped) Cox stated that one reason that was given by the City for the annexation was that they were providing services to the parcels involved in this annexation. Cox stated that he has no City services to his property. Cox stated that his property was the plotted lots for the original Applewood Subdivision. Cox stated that the original owners did the first stage and it was not successful, and that is where the contract for the City to serve the area was given. Cox stated that the original owners did agree to be annexed once they were adjacent to City property. Cox

stated that the property he bought was owned by several owners trying to finish the subdivision. Cox stated that he bought the property from Betty Ritter (Owner of Ranch Homes). Cox stated that Ritter had tried for 8 years to get the City to let them hook onto services. Cox stated that the City would not allow it and changed the way they were doing things and did not provide services unless you were annexed into the City. Cox stated that the renters tried to make the City enforce the contract to provide services even though they weren't adjacent, and the matter went to Court, and the City won, and the contract was considered null and void as the original parties were not involved, so there were no services provided. Cox stated that when he bought the property it had been applied for and approved in the County to be commercial property and the plots had been abandoned and it was one big commercial piece of property. Cox stated that he developed the storage units. Cox stated that he is not receiving City services and in State Statute 50-222 it states that one of the things that are necessary for the City to force an annexation is the property has to be developing and Cox indicated he has not sold any property or attempted to sell any property. Cox stated that he didn't plot the two plots to sell, but rather because he had to, to ensure access off Lincoln Road. Cox stated that there has been mention of the need to be adjacent or contiguous. Cox stated that he has spent a lot of time on this item. Cox stated that he went to the Assessor's Office to find out which property had been annexed to make this property adjacent, it took them a long time to find it because this property was approved in June. Cox stated that he noticed that there is a gap between the properties. Cox stated that the gap is 33' – 36' of gap between the properties. Cox indicated that the City does have the ownership of the canal, but it is not annexed. Cox stated that the State Statute reads in paragraph 2, last sentence, that the property cannot be annexed using shoe string. Cox stated that he wants the Commission to live to the State Statute. Cox stated that he called the State Tax Commission to get their definition of what contiguous and adjacent and what constituted a shoe string. Cox sent them the parcel numbers and the Tax Commission reviewed the information and called him back and indicated that it does not meet the Statute and the Tax Commission would deny it. Cox declared that if he is forced into doing this annexation he will make sure that the City gives him his rights and he wants the City to give him his rights and he will do everything in his power to see that he is given those rights. Cox stated that he wants his property to be removed from the annexation or the fight will continue as it doesn't meet the criteria of being adjacent or contiguous and that has been confirmed by the State Tax Commission which has to approve the annexation before it becomes legal.

Morrison closed the public hearing.

Randy Fife, Esq., addressed Lloyd Cox's assertion about shoe string. Fife read from the Statute 50-222(2) "Provided further that said City Council shall not have the power to declare such land, lots or blocks a part of said City if they will be connected to the City only by a shoestring or strip of land which comprises a railroad or a highway right of way." Fife indicated that a shoestring is only considered by the law to be a shoe string if it is a railroad or a city right of way. Fife indicated that this is not a highway right of way or a railroad. Fife stated that because this is a category B annexation and not Category A then another assertion would be "connected to the City" and if it is adjacent it is not required by the State Code to be contiguous because if it is connected it doesn't need to be connected and therefore it is still ok.

Morrison re-opened the public hearing.

**Lloyd Cox, 2174 E Lincoln, Idaho Falls, Idaho.** Cox asked to clarify the sentence that Fife read. Cox read “Provided for that said City Council shall not have the power to declare such land, lots, or block a part of said City if they will be connected to such City only by a shoe string or a strip of land which comprises a railroad or a highway. Cox asserted it cannot have a shoe string. Cox stated that it doesn’t mean that a shoe string comprises of a highway or railroad, it just states you cannot have a shoe string, and the State Tax Commission has said that this annexation will be denied as this is considered a shoe string. Cox stated that he spoke with Zack Trout from the State Tax Commission. Cox indicated that Zack Trout went to his supervisors and they met together and that is their conclusion.

Morrison closed the public hearing.

Swaney stated that based upon the presentation by the Staff and the comments by the City Legal Staff, it appears that there is a proposed Category B Annexation that is appropriate, and the proposed zones are consistent with the existing zones in the County. Swaney stated that the direction they have received from City Council is not to gain additional tax revenue, but it is to share the burden for the benefits that everybody in the community receives. Swaney stated that the Commission needs to consider recommending approval of the annexation.

Morrison indicated that the Commission represents the entire City and there are many factors that are taken into consideration.

Black stated that she has mixed feelings about annexations like this because in the City there is a lot of vacant commercial areas, and it is difficult to annex new areas when there are vacant commercial areas within the City. Black stated that there is growth in this area, and it was stated that some of the growth was difficult because they couldn’t get City services, so it is a burden for some of the property owners who would like to be within the City. Black stated that there is a burden on the City and the County with the Fire Department and Police Department when they get a call to dispatch they must figure out which area they are and who to send, so the City is trying to clean up some of the County island and eliminate some of the problems. Black stated that the comment about the City doing a grab for commercial profit is not accurate as the property is commercial now and the County could allow any kind of commercial building. Black agreed that the Commission has to make decisions for the benefit of the whole City. Black stated that the City has a park that they have invested in that benefits a lot of this area. Black stated that if the area becomes annexed into the City the road could be improved with sidewalks and that would be a benefit to the area residents. Black again indicated that she has mixed feeling. Black stated that if the State Tax Commission disagrees then they could deny the annexation.

Wimborne added that she has mixed feelings. Wimborne stated that it is clear with the pressure for development around the area that before long this will become an enclaved property.

Wimborne stated that it does make sense to be proactive with this annexation because of the development pressure in the area, and the property is within the Area of Impact. Wimborne stated that the forced annexations are not easy and there are additional costs for the property owners and it can be hard for the property owners to see where the benefits are. Wimborne stated that in the long term these kinds of actions are for the best interest of the City as a whole.

**Swaney moved to recommend to the Mayor and City Council approval of the Annexation and Initial Zoning of RMH, R1, P and HC for 89.5 Acres, Sections 9 & 16, T 2N, R 38 E as described and presented, Denney seconded the motion and it passed unanimously.**

**3. RZON 18-007: REZONE. Heritage Hills 3. R&D to R1, M&B: 7.744.** Stephens presented the staff report, a part of the record. Black asked if it this is the subdivision that came up a few years ago where the developer did not do the right-hand turn. Black asked if they have already done something with this property. Stephens stated that there is a Division 2, and this current rezone will be a portion of the Division 3 that is coming later tonight in Business.

Morrison opened the public hearing.

**Applicant: No one appeared.**

No one appeared in support or opposition.

Morrison closed the public hearing.

Wimborne indicated that the area complies with both the Comprehensive Plan and the zoning change is appropriate based on how the area is being developed.

**Wimborne moved to recommend to the Mayor and City Council approval of the Rezone for Heritage Hills 3 from R&D to R1, Josephson seconded the motion and it passed unanimously.**

**4. RZON 18-009: AMENDMENT TO SIGN CODE:** McLane presented the staff report, a part of the record. Black clarified, and McLane agreed that other than Channing Way, Holmes is the only single lane road that would be allowed a sign. Black stated that is a concern for her because traffic is congested and there are a lot of accidents, and it could increase if people are trying to read signs. McLane stated that the movement of the traffic isn't any faster than any other arterial that is allowed signs. Black asked if the idea behind adding Holmes back in, is because they were too conservative before. McLane indicated that it is a question of equity and they have had requests. McLane stated that there are a lot of properties already along Holmes that portable signs are allowed.

Swaney indicated that the definition section doesn't have a definition for adjacent.

Black asked if there is a commercial property that converts back to a residential home would the residential use take precedent over the commercial sign usage across the street. McLane indicated that the sign would be grandfathered in.

Hicks asked who polices the removal of signs.

McLane indicated that the Sign Code discusses enforcement and it is regulated by the Community Development Department, and generally based off complaints.

Morrison opened the public hearing.

**Applicant: City of Idaho Falls.**

**No one appeared in support or opposition.**

Morrison closed the public hearing.

**Swaney moved to recommend to the Mayor and City Council approval of the Amendment to Sign Code as presented, Black seconded the motion and it passed unanimously.**

**Josephson moved to amend the Agenda to hear items 7, 8 and 9 prior to 5 and 6, Wimborne seconded the motion and it passed unanimously.**

**Business:**

**7. ANNEX 18-007: ANNEXATION/INITIAL ZONING. Folsom/Pickering Annexation.**

Beutler presented the staff report, a part of the record. Wimborne asked for clarification that this annexation is contingent upon the other annexation (Lincoln Road) being successful. Beutler indicated that they will work with the City Attorney's office through everything, and potentially if the Tax Commission were to deny the Lincoln annexation they would also have to deny this parcel because it would not be contiguous to City property. Wimborne confirmed and Beutler agreed that there is no scenario where this will become a "City Island" in the middle of County.

**Applicant: Steve Ellsworth, Ellsworth and Associates, 253 1<sup>st</sup> Street, Idaho Falls, Idaho.**

Ellsworth indicated that they want the property zoned Highway Commercial.

**Swaney moved to recommend to the Mayor and City Council approval of the Annexation and Initial Zoning of HC for M&B Approximately 23.586 Acres SE ¼ Section 9, T 2N, R 38 E, as presented, Hicks seconded the motion.**

Black stated that she wants the City to be careful with annexing properties into the City when there are areas that need to be filled and are vacant.

**Morrison called for a vote on the motion, it passed unanimously.**

**8. ANNEX 18-008: ANNEXATION/INITIAL ZONING OF R1. M&B 10.623 Acres. Heritage Hills.** Stephens presented the staff report, a part of the record.

**Wimborne moved to recommend to the Mayor and City Council approval of the Annexation and Initial Zoning of R1 for M&B 10.623 Acres SE ¼ Section 1, T 2 N, R 37E, as presented, Swaney seconded the motion and it passed unanimously.**

**9. PLAT 18-016: FINAL PLAT. Heritage Hills Division3.** Stephens presented the staff report, a part of the record. Josephson asked if the roadway easement coming off East River Road that is south of Division 2 will remain. Stephens stated that is a temporary fire and emergency access road and that will go away. Josephson asked where the Left-hand turn lane will be. Stephens stated that if you are going down East River Road traveling north, if you want to make a left-hand turn into the development you are currently making the turn out of the traveling lane. Stephens stated that Division 1 Final Plat was shown to have a left hand turning lane installed. Stephens indicated that the turn lane has not been installed during Division 1 or 2. Stephens stated that it was a point of contention in Division 2. Stephens stated that they have changed to ETrackit and there have been a few issues, but Staff will make sure that whatever is supposed to happen will happen in Division 3. Josephson asked if they will widen East River Road. Stephens agreed that the road will be widened, but first there will be a traffic study. Stephens stated that engineering will handle it in the staff review comments and Stephens will watch this application closely. Josephson asked if the turn lane will be in the new entrance or the existing current entrance. Stephens stated that a traffic study will come into play and it could be at both locations depending on the traffic volume of the area.

Black asked if they can recommend denying this application until the roads are built. Stephens indicated that it can be denied. Josephson asked, and Stephens agreed that they will bar entrance

to the new road and sales of lots until the turn lane was developed. Stephens clarified that in ETrackit they will put a notation that building permits will not be allowed to be issued on any of the lots in Division 3 until either a traffic study is performed and money is paid to the City in lieu, if the improvement will not be made until the whole road can improve.

Morrison asked if the problem was caused by the original builder. Stephens indicated that the problem was caused by the original builder and their failure to follow through. Black asked if it is the same developer for Division 3 as it was for Division 1 and 2. Josephson indicated that Rockwell developed Division 1 and Division 3 is a family member of Rockwell.

Swaney clarified that if the plat is approved this will be recorded on the plat that either the developer will have to do a traffic study or provide for the left turn lane at the appropriate entrance for the subdivision before building permits will be issued for any of the lots on Division 3. Stephens agreed with Swaney and added that the building permits will be flagged when they are attempted to be made and the building department will come to Staff to find out why there is a stop on the building permits. Cramer added that it will be in the development agreement as a special condition.

Black stated that she is nervous because Division 1 and 2 have been built and no turn lane has been provided. Black is not in favor of approving this Final Plat.

Swaney stated that it did not get done, but the Community Development Department contributed somewhat to the situation by not having it specified in either of the final plats for Division 1 or 2. Swaney stated that they have a firm remedy to the problem that was presented in Division 1 and 2, by having it recorded in the plat. Swaney proposed that if the motion is made to approve the final plat that the motion have it specified in the motion that they are recommending to City Council that the Turn lane must go in Division 3 or no houses can be built.

Black stated that she believed it was required in Division 2, but it didn't happen. Josephson stated that part of it happened. Josephson stated that the right-hand turn lane did happen and is complete, but the left-hand turn lane is not complete.

Wimborne stated that if the Commission clearly includes the stipulation in the recommendation she is confident that the problem will be addressed by Staff.

**Wimborne moved to recommend to the Mayor and City Council approval of the Final Plat for Heritage Hills Division 3 with the stipulation that the issue of the left-hand turn lane be addressed as part of the Final Plat, Josephson seconded the motion.**

Black asked if the City Council can drop the Stipulation in their recommendation. Cramer stated that they can. Wimborne clarified that the stipulation is only to make sure that City Council notes it, as it is already something that the Staff is going to do. Staff agreed with Wimborne.

**Morrison called for a vote on the motion. The Motion passed 7-1. Black opposed the motion.**

**Black indicated that she is voting to not recommend it, so it is not a unanimous decision and the City Council will have additional notes to look at.**

**Public Hearings:**

**5. RZON 18-008: ZONING ORDINANCE CHANGES.** McLane presented the staff report, a part of the record. McLane amended the report by stating that Washing Vehicle business is not allowed in PT. Black asked (on Accessory dwelling) for clarification. McLane stated that if you wanted to build something 750 sq. ft you'd have to have a 7500 sq. ft lot and so it is a substantial size lot for the availability of building a mother in law apartment. McLane stated that the intent is to make this available, but not make it overly restrictive. McLane stated that lots of the people that are wanting to build accessory dwelling are in areas where their lots are smaller, and the 10% also would include the parking facility. So, with the current code it would make it hard for a lot of people, unless they had a large lot, to build an accessory dwelling.

Morrison opened the public hearing.

**Applicant: City of Idaho Falls**

No one appeared in support or opposition.

Morrison closed the public hearing.

Wimborne commended the staff for walking through this ordinance and making sure they are usable and livable and work in real life situation.

**Wimborne moved to recommend to the Mayor and City Council approval of the Zoning Ordinance Amendments as presented, Josephson seconded the motion and it passed unanimously.**

Black commended the staff for going through the Code thoroughly as it helps the builders and developers, but also the commission in their determination of things.

**6. RZON 18-010: FORM BASED CODE CHANGES.** McLane presented the staff report, a part of the record.

Morrison opened the public hearing.

**Applicant: City of Idaho Falls**

No one appeared in support or opposition.

Morrison closed the public hearing.

**Josephson moved to recommend to the Mayor and City Council approval of the Form Based Code Amendments as presented, Black seconded the motion and it passed unanimously.**

Morrison adjourned the meeting.

**Respectfully Submitted**

**Beckie Thompson, Recorder**