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The City Council of the City of Idaho Falls met in Regular Council Meeting, Thursday, July 25, 2019, in the Council Chambers in the City Annex Building located at 680 Park Avenue in Idaho Falls, Idaho at 7:30 p.m.

Call to Order:

There were present:

Mayor Rebecca L. Noah Casper
Councilmember Thomas Hally
Councilmember Jim Francis
Councilmember John Radford
Councilmember Michelle Ziel-Dingman
Councilmember Shelly Smede
Councilmember Jim Freeman

Also present:

All available department directors
Randy Fife, City Attorney
Kathy Hampton, City Clerk

Pledge of Allegiance:

Mayor Casper requested Lyn Stanglund-Cameron, Minister Emeritus to the Unitarian Universalist Church, to lead those present in the Pledge of Allegiance.

Public Comment:

Mayor Casper requested any public comment not related to items currently listed on the agenda or not related to a pending matter.

Mike Ubelhack, Idaho Falls resident, appeared. Mr. Ubelhack requested an article regarding Connecting Us-- Sustaining Progress (CUSP) be distributed to the Council.

Rebecca Pyper, Idaho Falls resident, appeared. Ms. Pyper stated she is representing citizens who hope for alternative plans for South Boulevard. She indicated a petition was circulated for three (3) weeks which received 5162 signatures and comments. Ms. Pyper distributed a flyer for a community bike-in to be held on July 29th. The group will ride bicycles up and down South Boulevard. Ms. Pyper stated a police presence has been requested and accepted for safety. She clarified the group is not anti-bike, they want to promote a pedestrian and bike friendly neighborhood.

Consent Agenda:

It was moved by Councilmember Francis, seconded by Councilmember Dingman, to remove Fire Department item 4.A.1), regarding the contract from the Bonneville County Fire Protection District #1, from the Consent Agenda and bring it back on August 8 after the district has adjusted the wording that needs changed. Roll call as follows: Aye – Councilmembers Francis, Dingman, Freeman, Hally, Radford, Smede. Nay – none. Motion carried.

Municipal Services requested approval of Bid IF-19-29, Purchase of Labor and Materials for the Lincoln Road Underground Power Extension Project for Idaho Falls Power; and, Bid IF-19-30, Purchase of Medium Voltage Pole Mounted Reclosers for Idaho Falls Power.

Public Works requested approval of Bid Award – Thermoplastic Citywide – 2019; and, Bid Award – Hawk Signals – 2018.

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The City Clerk requested approval of minutes from the July 8, 2019 Council Budget Session; July 9, 2019 Special Council Meeting; and, July 15, 2019 Council Budget Session; and, License Applications, all carrying the required approvals.

It was moved by Councilmember Radford, seconded by Councilmember Smede, to approve all items on the Consent Agenda according to the recommendations presented. Roll call as follows: Aye – Councilmembers Smede, Hally, Dingman, Radford, Freeman, Francis. Nay – none. Motion carried.

Regular Agenda:

Office of the Mayor

Subject: Connecting Us--Sustaining Progress (CUSP)

For consideration is a resolution calling for the appointment of a Steering Committee to research and recommend ways to attract and retain a diverse workforce for the city. The steering committee will set the scope and parameters of this initiative and appoint eight subcommittees to conduct research, set benchmarks, and otherwise gather data useful to the inquiry. These findings would be gathered into a report that might include community benchmarks and possible policy options and community recommendations. The report, to be shared with the City Council and other community leaders, would include, but may not be limited to a focus on the following areas: 1) Education and Workforce; 2) Healthcare and Public Health; 3) Housing, Transportation and Accessible Infrastructure; 4) Diversity and Inclusion; 5) Demographics and Intergenerational Linkages; 6) Public and Personal Safety (Crime, Suicide, etc.); 7) Community Enrichment (Arts, Culture, Recreation, etc.); and 8) Economic and Business Climate. The overall intention is to obtain fresh perspectives and to reveal new, missing, exciting and/or impactful directions for community and city management, budgeting and innovation.

Councilmember Smede expressed appreciation to the connection of the Priority Based Budgeting (PBB) results. Councilmember Hally stated this resolution falls into the responsibility the Council has for economic growth and inclusion of several areas. He believes it is important to hear from the community. Mayor Casper stated the steering committee is populated by residents from the community. She also stated there will be opportunity for staff to provide support.

It was moved by Councilmember Hally, seconded by Councilmember Dingman, to approve the resolution calling for the appointment of a Connecting Us—Sustaining Progress (CUSP) Steering Committee to research, recommend and facilitate ways to attract and retain a diverse workforce for the city, and give authorization the Mayor and City Clerk to execute the necessary. Roll call as follows: Aye – Councilmembers Freeman, Radford, Smede, Francis, Dingman, Hally. Nay – none. Motion carried.

RESOLUTION NO. 2019-19

A RESOLUTION OF THE CITY OF IDAHO FALLS, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO, APPOINTING A CONNECTING US--SUSTAINING PROGRESS (CUSP) STEERING COMMITTEE TO RESEARCH AND RECOMMEND WAYS TO ATTRACT AND RETAIN A DIVERSE WORKFORCE FOR THE CITY; AND PROVIDING THAT THIS RESOLUTION BE EFFECTIVE UPON ITS PASSAGE, APPROVAL, AND PUBLICATION ACCORDING TO LAW.

Public Works

Subject: Task Order Amendment No. 2, Murraysmith – Well 13 and 19 Improvements

For consideration is proposed Amendment No. 2 with Murraysmith for the Well 13 and 19 Improvements project. The amendment will provide an additional \$56,459.00 for Well 13 and Well 19 bidding and construction services, which was not included within the original contract.

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It was moved by Councilmember Freeman, seconded by Councilmember Francis, to approve Amendment No. 2 with Murraysmith for the Well 13 and 19 Improvements project, and give authorization for the Mayor to execute the necessary documents. Roll call as follows: Aye – Councilmembers Francis, Dingman, Freeman, Hally, Radford, Smede. Nay – none. Motion carried.

Parks and Recreation

Subject: City Code Amendment

On July 1, 2019, the City Council reviewed a draft of an ordinance presented by the Parks and Recreation Department to amend City Code sections 4-3-16, 4-4-11, and 8-3-5. During that discussion, the Council directed the City Attorney’s Office to make certain changes to the proposed draft. For consideration is the ordinance which includes the Council’s directed changes.

Councilmember Freeman stated this amendment will change how and where alcohol can be served in the City’s park places. This item has been discussed at length in two (2) Council Work Sessions.

It was moved by Councilmember Freeman, seconded by Councilmember Radford, to approve the Ordinance amending Title 4, Chapters 3 and 4, and Title 8, Chapter 3, under the suspension of the rules requiring three complete and separate readings and request that it be read by title and published by summary. Roll call as follows: Aye – Councilmembers Freeman, Francis, Hally, Radford, Smede, Dingman. Nay – none. Motion carried.

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

ORDINANCE NO. 3262

AN ORDINANCE OF THE CITY OF IDAHO FALLS, IDAHO, AMENDING CITY CODE SECTIONS 4-3-16, 4-4-11; AND 8-3-5 TO CLARIFY WHICH ALCOHOLIC BEVERAGES MAY BE POSSESSED AND CONSUMED IN THE CITY’S PUBLIC PARKS AND OUTDOOR RECREATION FACILITIES PURSUANT TO THE CITY’S PERMITTED EVENT REGULATIONS; TO COORDINATE ALCOHOL USES AT THE ZOO WITH CITY SPECIAL EVENT PERMITTING REQUIREMENTS; AND PROVIDING A LIST OF PUBLIC PARKS THAT ARE LIMITED TO BEER AND WINE CONSUMPTION ONLY; PROVIDING SEVERABILITY, CODIFICATION, PUBLICATION BY SUMMARY, AND ESTABLISHING EFFECTIVE DATE.

Municipal Services

Subject: Purchase of Central Square Technologies Software Modules for Municipal Services Department

It is the recommendation of Municipal Services to approve the purchase of additional Central Square Technologies software modules. The additional software modules would replace legacy {homegrown} code that cannot be supported in the near future. The module purchase request is a total estimated first-phase project cost of \$350,000.

It was moved by Councilmember Radford, seconded by Councilmember Smede, to approve the purchase of the additional Central Square Technologies software modules in the amount of \$350,000, and give authorization for the Mayor to execute the necessary documents. Roll call as follows: Aye – Councilmembers Dingman, Radford, Francis, Smede, Hally, Freeman. Nay – none. Motion carried.

Subject: Tentative Approval of 2019/20 Fiscal Year Budget

Municipal Services respectfully requests the Mayor and Council to tentatively approve the 2019/20 fiscal year budget for a not to exceed amount.

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Mayor Casper stated the Council have spent many hours on the budget discussion. Councilmember Radford stated great effort from the Council, directors, and the finance team has been put in to the budget discussion. He expressed appreciation for the last-minute changes. He clarified the tentative budget sets the capacity of the budget as the actual assessed amounts of properties from the County are unknown. He noted a public hearing will be held followed by additional meetings prior to passing the final budget in August. Mayor Casper clarified the public hearing will be held on August 8, 2019. She believes the budget amount will be refined. Councilmember Radford stated this budget includes many Capital projects which may or may not occur. He clarified there is no money being spent haphazardly.

It was moved by Councilmember Radford, seconded by Councilmember Smede, to tentatively approve the 2019/20 fiscal year budget for a not to exceed amount, and give authorization to publish the Notice of Public Hearing of the 2019/20 fiscal year budget for \$238,805,558 with publication dates set for July 28, 2019, and August 4, 2019, with the Public Hearing scheduled for Thursday, August 8, 2019. Roll call as follows: Aye – Councilmembers Radford, Freeman, Smede, Francis, Dingman, Hally. Nay – none. Motion carried.

Community Development Services

Subject: Resolution Prioritizing Certain Census Tracts for Development of Affordable Housing

For consideration is a resolution identifying three census tracts in Idaho Falls as priority areas for development of affordable housing. The census tracts match those identified in the Community Development Block Grant (CDBG) 5-year plan, which also includes development of affordable housing as a priority. Though the CDBG program has regularly identified a need for affordable housing and the City's Comprehensive Plan has referenced the need for diversified housing stock in general, there has not been a general City designation to specifically identify priority areas for affordable housing. The timing of this proposed resolution comes because CDS staff was recently notified that scoring criteria for affordable housing incentive programs such as Low-Income Housing Tax Credits were modified to include additional points for projects within urban renewal districts or areas identified by the jurisdiction as priority for affordable housing. Designating these areas increases the competitiveness of applications for these programs within the City of Idaho Falls within the identified census tracts. The Bonneville Hotel is an example of a project which utilized these programs.

Councilmember Smede stated the map to be approved will be re-evaluated in six (6) months and then annually to make adjustments as needed. She noted this item was discussed at the July 22 Council Work Session. Councilmember Francis expressed his appreciation to the Community Development Services staff for the review as he believes it's difficult to determine which sections of town are considered affordable housing. Councilmember Radford stated this will be a time to promote and prepare for the 2020 census. He concurred with Councilmember Francis as he believes affordable housing will continue to be a growing concern. Councilmember Hally stated the Redevelopment Agency was involved with Bonneville Hotel. He stated it was difficult to get tax credits to become financially feasible. He briefly reviewed occupants of the Bonneville and stated how it contributes to a vibrant City. Mayor Casper stated if there is an accurate census count then the nature of a census tract will be updated to include more accurate information.

It was moved by Councilmember Smede, seconded by Councilmember Dingman, to approve the Resolution identifying certain census tracts as priority areas for development of affordable housing, and give authorization the Mayor and City Clerk to execute the necessary documents. Roll call as follows: Aye – Councilmembers Hally, Smede, Dingman, Freeman, Francis, Radford. Nay – none. Motion carried.

RESOLUTION NO. 2019-20

A RESOLUTION OF THE CITY OF IDAHO FALLS, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO, TO SPECIFICALLY TARGET CERTAIN AREAS WITHIN THE CITY FOR THE DEVELOPMENT OF AFFORDABLE HOUSING AND TO REVIEW THOSE DESIGNATIONS ON AN

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SCHEDULED BASIS; AND PROVIDING THAT THIS RESOLUTION BE EFFECTIVE UPON ITS PASSAGE, APPROVAL, AND PUBLICATION ACCORDING TO LAW.

Subject: Final Plat, Development Agreement, and Reasoned Statement of Relevant Criteria and Standards, Costco Subdivision

For consideration is a Final Plat, Development Agreement, and Reasoned Statement of Relevant Criteria and Standards for Costco Subdivision. The Planning and Zoning Commission considered the plat at its July 11, 2019 meeting and recommended approval by unanimous vote with one abstention.

Dana Briggs, Economic Development Coordinator, appeared. Ms. Briggs stated the Costco project is moving forward in a positive manner and noted the attention to detail Costco gives to the project. She also stated Costco hopes to break ground in September for their site work. Councilmember Radford expressed his appreciation to Ms. Briggs and Community Development Services Director Brad Cramer. He noted it is important for the public to understand the economic benefits that were offered in the ordinance were reasonable and will be recovered in one (1) year. Councilmember Hally recognized previous Councils for the development of this ordinance tool that assisted Ms. Briggs to meet with Costco and to entice them to choose the community. Councilmember Smede reiterated Ms. Briggs comments regarding Costco and noted their studies are very precise and clear. She stated specific mitigation measures that are needed will be collaborated with the applicant. She expressed her appreciation for the research Ms. Briggs put into the project. She noted the excitement that citizens express for the opening and she believes the location was well selected.

It was moved by Councilmember Smede, seconded by Councilmember Dingman, to approve the Development Agreement for Costco Subdivision, and give authorization for the Mayor and City Clerk to execute the necessary documents. Roll call as follows: Aye – Councilmembers Smede, Hally, Radford, Dingman, Freeman, Francis. Nay – none. Motion carried.

It was moved by Councilmember Smede, seconded by Councilmember Dingman, to accept the Final Plat for Costco Subdivision, and give authorization for the Mayor, City Engineer, and City Clerk to sign said Final Plat. Roll call as follows: Aye – Councilmembers Dingman, Smede, Francis, Freeman, Hally, Radford. Nay – none. Motion carried.

It was moved by Councilmember Smede, seconded by Councilmember Dingman, to approve the Reasoned Statement of Relevant Criteria and Standards for the Final Plat for Costco Subdivision, and give authorization for the Mayor to execute the necessary documents. Roll call as follows: Aye – Councilmembers Francis, Dingman, Freeman, Hally, Radford, Smede. Nay – none. Motion carried.

Subject: Public Hearing – Amendments to the Zoning Code Related to Small Wireless Facilities

For consideration is an ordinance amending Title 11, Chapter 5 of the City's Zoning Code related to Small Wireless Facilities (SWF). The Planning and Zoning Commission considered this item at its June 4, 2019 meeting and recommended approval by unanimous vote.

Mayor Casper opened the public hearing and ordered all items presented be entered into the record. She noted the Councilmembers, as Idaho Falls Power (IFP) Board Members, have been given the opportunity to have insight with this item.

Director Cramer appeared. He stated IFP, the Legal Department, and, Public Works have prepared the bulk of the work related to this technology and the appropriate permitting process. He noted, per an order from the Federal Communications Commission (FCC), cities cannot prohibit this technology and these facilities must be built in a certain amount of time. Per the IFP Service Policy, and lease agreements, these amendments addresses those facilities located in rights-of-way (ROW). The Zoning Ordinance addresses those facilities that may show up on private property and where they may be appropriate in residential and non-residential areas.

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Slide 1 – Images of Small Cell Wireless Facility (SWF) examples

Director Cramer stated these are small antennas that may be attached to current infrastructure or stand-alone that support wireless technology.

Slide 2 – FCC Order

- Communities cannot exclude small cell wireless facilities from their jurisdiction
- Can have reasonable regulations
- Must consider an application within a certain time frame

Slide 3 – Idaho Falls' Approach

- Master Lease Agreement with IFP
- IFP Service Policy – includes design standards
- Zoning Ordinance

Slide 4 – Ordinance Summary

- SWF's in ROW regulated by service policy and master lease agreement
- Zoning Ordinance regulates SWF's in utility easements – in residential zones, only allowed in an easement on City-owned or controlled property

Slide 5 – Aerial photo of utility easements in residential area

Director Cramer stated if an ordinance were passed that did not specify a location there is potential for SWF in residential yards.

Slide 5 – Ordinance Summary

- Zoning Ordinance regulates SWF's in easements – in non-residential zones, allowed in any City-owned or controlled utility easement
- Height restricted outside Tower Overlay zones to 10 feet above the tallest existing utility structure
- SWF's must be at least 300 feet apart – may be closer with approval of a Conditional Use Permit (CUP)

Slide 6 – Ordinance Summary

- Limitations on antenna size and equipment cabinet size – antennas: three (3) cubic feet; equipment cabinets: ranges from 21-35 cubic feet depending on pole type and number of providers supported

IFP Director Bear Prairie appeared. Director Prairie believes these amendments, along with changes at IFP, will comply with the FCC and will allow sitings that are aesthetically pleasing in the right zones. Mayor Casper questioned multiple carriers sharing the space versus one (1) carrier per facility. Director Prairie stated carriers do not typically share space due to the equipment size. He also stated multi-carriers would be ideal to minimize impact depending upon the location and the needs. Mayor Casper questioned the distance with each carrier or with any other carrier. Director Cramer stated the distance would be between any other facility.

Mayor Casper requested any public comment. No one appeared.

Councilmember Radford questioned any concerns around the Airport Zone. Director Cramer stated anything proposed within the Airport Zone would be subject to the height restrictions and would be reviewed simultaneously.

Mayor Casper closed the public hearing.

Councilmember Smede stated the time limits, referred to as a shot clock, is for a community to act. She reiterated Director Cramer's comments regarding regulations. She stated the Zoning Ordinance is occasionally revised to keep the City and the developers up-to-date and within the law. Councilmember Freeman stated the SWF will most likely be placed in areas of congregation of people as the City is trying to protect property rights. Councilmember Radford expressed his appreciation to Director Prairie, Director Cramer, and, Public Works to make this most appealing to our citizenry. He also expressed his appreciation to the forward-thinking, he believes the City has been thoughtful and productive. Mayor Casper stated these Federal regulations were issued without a lot of opportunity for comment or consideration of municipalities. She believes there is a short amount of time for considerations which may create unfair advantage to the telecommunications industry. She also believes cities can be reasonable without the Federal Government regulations. Mayor Casper stated this rule was not ideal in the way it was

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introduced as Congress was not involved. She also stated other Idaho cities may not be as quick to respond, she believes this ordinance may be used as a model for other communities.

It was moved by Councilmember Smede, seconded by Councilmember Dingman, to approve the Ordinance amending Title 11, Chapter 5 of the Comprehensive Zoning Code under the suspension of the rules requiring three complete and separate readings and request that it be read by title and published by summary. Roll call as follows: Aye – Councilmembers Smede, Hally, Dingman, Radford, Freeman, Francis. Nay – none. Motion carried.

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

ORDINANCE NO. 3263

AN ORDINANCE OF THE CITY OF IDAHO FALLS, IDAHO, AMENDING TITLE 11, CHAPTER 5 BY THE ADDITION OF A COMPREHENSIVE APPLICATION AND PERMITTING SYSTEM FOR SMALL WIRELESS FACILITIES IN CERTAIN LOCATIONS WITHIN CITY LIMITS; ADDING DEFINITIONS TO THE ZONING CODE; PROVIDING SEVERABILITY, CODIFICATION, PUBLICATION BY SUMMARY, AND ESTABLISHING EFFECTIVE DATE.

Subject: Appeal of the Preliminary Plat and Reasoned Statement of Relevant Criteria and Standards for Manchester Estates

For consideration is an appeal of the Preliminary Plat and Reasoned Statement of Relevant Criteria and Standards for Manchester Estates. The Planning and Zoning (P&Z) Commission held a public hearing for this item at its May 7, 2019 meeting to consider the plat and moved to delay a decision until the next meeting. At the June 4, 2019, meeting the Commission approved the Preliminary Plat by unanimous vote with one abstention.

Per Mayor Casper's request, Mr. Fife clarified this type of hearing is related only to the subject matter and is based upon the record. He indicated no public testimony will be taken and the appellant will be limited to making points on the appeal. The Council will then hear from the respondent, followed by Council deliberation, and, a decision based on the three (3) options for recommended actions. Mr. Fife also clarified if the Council wants more information it would go back to P&Z.

Councilmember Smede disclosed that she lives in this neighborhood and works for School District #91. She confirmed her decision will not be affected and she feels comfortable staying in the discussion.

Councilmember Radford recused himself due to his excessive knowledge on this matter at no fault of his own.

Mayor Casper opened the hearing.

Director Cramer appeared. He noted there were two (2) appeals to the plat – one (1) appeal is the appellants' belief that the plat is not consistent with the principles of Comprehensive Plan or the intent of the Subdivision Ordinance and other City Codes; the second appeal relates to a letter that was submitted by the attorney for Rockwell and the appellants' belief that the letter tainted the process of P&Z. He reminded the Council of the actions available including: approve the appeals (deny the plat), deny the appeals (agree with the P&Z decision to approve the plat), or, remand the preliminary plat back to P&Z for more information needed.

Director Cramer presented the following:

Slide 1 – Preliminary plat in the proposed zoning

Slide 2 – Aerial photo of plat under consideration

Slide 3 – Additional aerial photo of plat under consideration

Director Cramer noted the 10-foot wide pathway intended to connect the neighborhood to the adjacent junior high.

Slide 4 – Preliminary Plat

Director Cramer stated the plat includes 53 buildable lots with proposed zoning of RP and a minimum lot size requirement of 12,000 square feet. All lots within the subdivision meet the requirement. Director Cramer noted the

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two (2) access points complies with the Fire Code. He stated there is planned connectivity to the south with the road that will be stubbed to the southern property. The eastern side of the plat, next to the pathway, is a proposed storm water retention area. All land uses are proposed to be single-family residential. Director Cramer reviewed the through/reverse frontage lots located on the north end along Castlerock Lane and the west along Stonebrook Lane. He explained that through-lots and reverse-frontage lots have frontage on two (2) different streets. He also noted there are two (2) landscape areas and a sidewalk immediately adjacent to the through-lots. From the street side moving into the plat is a 5.5' wide landscape strip, then a 5' sidewalk, then a 4' wide landscape lot, then the private property.

Slide 5 – Photo looking west across the property

Slide 6 – Photo looking west along Castlerock Lane

Slide 7 – Photo looking north along Stonebrook Lane

Slide 8 – Photo looking east across property

Director Cramer stated staff recommended approval of the plat and continues to recommend approval. He also stated the plat complies with the Subdivision Ordinance, all reviewing departments have reviewed, and staff has found no codes that are not in compliance. He indicated only Preliminary Plats, not Final Plats, need to be consistent with the principles of the Comprehensive Plan and pursuant to staff's opinion, the plat is consistent with the principles of the Comprehensive Plan. Director Cramer indicated in the packet there is the appeal application and a letter of explanation from the appellants referring to a letter that was submitted from Rockwell's legal counsel. The appeal application suggested the letter was aggressive and threatening and tainted the decision and process of P&Z. Director Cramer stated he did not include the letter because staff did receive the letter which was initially forwarded on to members of the Planning Commission, along with other information, and then legal determined the letter was new information and unless P&Z reopened the public hearing the letter could not be part of the record. The letter should not have been forwarded to P&Z although a few members of the Commission saw the letter. P&Z chose not to reopen the public hearing and the letter was not officially made part of the record and therefore is not included in the packet. Director Cramer stated, per the hearing, the discussion amongst the Commissioners was not about the letter but rather the principles of the Comprehensive Plan and whether it met the Code. Staff gave a brief presentation at the June hearing for clarification. Director Cramer indicated it is staff's opinion that the process and the actual information voted on was the appropriate information.

Mayor Casper questioned comments at the June 4 meeting. Director Cramer stated all comments were from staff, which included both planning staff and Legal staff, which clarified all testimony that was given at the May hearing. Councilmember Francis questioned if there are two (2) separate appeals and two (2) separate hearings. Director Cramer indicated the appellants have divided amongst themselves topics they will address as one (1) hearing process. Mr. Fife stated appeals can be consolidated with the same topic, same time period, and, based upon the same decision from P&Z. He indicated a motion can be made addressing those two (2) distinct appeals so it is clear that either one (1), if not satisfied, can be taken to another tribunal. Mr. Fife suggested hearing everything together, then deal with each appeal separately. Director Cramer noted one (1) appeal fee was submitted. Mr. Fife then indicated they need to hear everything together and address both sides. Mayor Casper concurred as the agenda only lists one (1) appeal. Councilmember Francis questioned the landscaping described by Director Cramer. Director Cramer stated the fence is part of development, not part of the plat, and is not required. Councilmember Francis questioned the information given at the May 7 hearing. Director Cramer stated P&Z originally made a motion to deny the plat. They were then advised that the Reasoned Statement of Relevant Criteria and Standards required a reason for denial, which is also in the code, and the developer must be told of any amendments to the plat in order to receive approval. At the time, P&Z could not point to a specific code or plan policy so they moved to table the plat to the following meeting to give them time to look into the codes and standards. P&Z did not reopen the hearing at the June meeting, they only discussed plans and codes already in the record and then made the decision to approve the plat. Director Cramer reiterated staff recommendation is for approval. Councilmember Dingman questioned whether the principles of the Comprehensive Plan should or should not be considered. Director Cramer stated the Comprehensive Plan is not a regulatory document, but it does need to be consistent with the principles of the Comprehensive Plan. He also stated codes state "shall" or "must", while plans state "want" or "should work". Staff reviews the Comprehensive Plan on a consistent basis and they are familiar with the plan. Staff also reviews the Comprehensive Plan without an emotional tie to the land. Director Cramer clarified P&Z was asked to find a policy that is explicit and specifically states that "x" isn't consistent with the principle. Staff reviewed the

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residential section, found more policies that would suggest approval, and, could not find anything to suggest denial. Councilmember Dingman questioned the basis for the appeal relating to the reverse-frontage on collector streets that the Comprehensive Plan is silent on. Director Cramer stated the purpose of having reverse-frontage lots required on arterial streets is to prevent driveways along arterial streets. The Subdivision Ordinance requires the lots be deeper than average (minimum 150') and have a berm, or something similar, to deal with noise pollution. Director Cramer stated the silence does not mean the reverse-frontage lots are not allowed on collectors, it only indicates that they "must" be on arterials. He indicated the code is also silent with the exception of arterial streets. Councilmember Smede questioned if the through-lots are only on arterial streets. Director Cramer stated there are reverse-frontage lots in other places in the City. He indicated the anomaly is reverse-frontage lots on a local or collector street across from front-facing homes. He also added it is not common although it does exist. Director Cramer stated it is more expensive due to the fact they have to build two (2) roads instead of one (1). He noted he could not find any reverse-frontage lots that run for this distance, but to say they do not exist would be inaccurate. Councilmember Dingman questioned other reverse-frontage lots in this subdivision. Director Cramer stated there are reverse-frontage lots across the street from the church and the entrance to Stonebrook Lane begins with reverse frontage lots on a collector.

Mayor Casper requested public comments from the appellants.

Larry Agasan, 4340 East Stonebrook Lane, Idaho Falls, appeared. Mr. Agasan stated the proposed plat does not comply with the Comprehensive Plan or the Idaho Falls Municipal Code. He believes the reverse-frontage of this plat is unusual as indicated by staff. He also believes the plat does not conform to the code, including: safety and visibility issues at the intersection of Stonebrook and Castlerock; non-conformance regarding front lot lines; and, non-conformance with the Comprehensive Plan. Mr. Agasan stated the 6' fence on Stonebrook and Castlerock will create a hazard for pedestrians and motorists and violates several sections of the code. He quoted from the recent version of the plat "fence shall be installed on back lot lines along Castlerock and Stonebrook". He also read Code Section 11-4-7-A1 "Clear view triangle". Mr. Agasan believes the proposed plat does not allow for a clear view triangle pursuant to code. He read Code Section 11-4-AC. He indicated that because the lot lines on the west and north side of the plat are contiguous to existing streets, a 6' fence at the lot line is prohibited pursuant to code. He also indicated the lot lines abut existing streets (Stonebrook and Castlerock) and the code requires front lot lines. Mr. Agasan read Code Section 11-3-2A4. He indicated Stonebrook and Castlerock is 50% developed and therefore, future development along the streets must have a setback equivalent to the average front yard setback, pursuant to code. He stated per the current design, the structures do not meet the requirements for setbacks on the blocks. Mr. Agasan read from Table 11-4-1. He stated that Stonebrook and Castlerock are existing public streets and thus the development requires front yard setbacks equivalent to the average front yard setbacks for houses or fences. He indicated the appeal letter gave detail on the facts showing the plat does not conform with the Comprehensive Plan. Mr. Agasan stated Section 11-2-2D, which requires substantial conformance with the Comprehensive Plan and the proposed plat, does not substantially conform as was detailed in the appeal application. He also stated the City Attorney representative advised the Commission not to consider the Comprehensive Plan in their decision on the plat application based on the Case of Blaine County vs. Euridious. Mr. Agasan disputed the applicability of the case as a direct precedent to the proposed Manchester Estates because in Blaine County vs. Euridious the Board relied exclusively on the Comprehensive Plan to deny the application and did not reach a decision on the compliance with the code. He believes Manchester Estates violates both the Comprehensive Plan and the code. He stated Blaine County vs. Euridious had a specific land use that was permitted, and the Comprehensive Plan was used to overrule the local code. Mr. Agasan stated that Manchester Estates' use of reverse-frontage on collector streets is not specifically permitted in the Idaho Falls Code and it runs counter to the spirit and goals of the code. He stated the neighbors are strongly opposed to the reverse-frontage and the 6' fence and request City Council to deny the approval of the preliminary plat based on the non-conformities.

Jessica Zeller, 209 Castlerock Lane, Idaho Falls, appeared. Ms. Zeller stated the reference to "design flaw" is in reference to front-facing homes situated directly across from reverse-facing homes. She recommended that Rockwell put in cul-de-sacs as they would be preferable. Ms. Zeller stated they will have numerous front yards facing neighbors' back yards or front yards facing the fence. She believes this has negative long-term impact for the

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City and neighborhood and conflicts with the plans for future development as per the Bonneville Metropolitan Planning Organization (BMPO). Ms. Zeller stated the long perimeter stretch of reverse-frontage homes is a problem. She perused google maps and covered a 2-mile square surrounding her community and found six (6) homes in Waterford that are an island with a road surrounding them. Mr. Fife questioned if this information is in the record. He clarified the principle of reverse-frontage homes is in the record, but if the actual information is not in the record, it should not be referred to in this appeal process. He also clarified new information cannot be discussed. Ms. Zeller wanted to clarify the accurate number of reverse-frontage homes listed in their appeal. Mr. Fife stated they need to keep the record clear and the appellants need to make the points in their presentation about a point they dispute. He also stated when they add information to bolster the argument when it's not in the record is inappropriate. Councilmember Francis believes Ms. Zeller should be allowed to tell the information because they were challenged on the accuracy of the statement that is in their appeal about this being a unique situation and the appellant is defending a point. Ms. Zeller stated that allowing this anomaly design will set a precedent for other developers to create more exclusionary communities. She does not believe houses fit in standards, criteria, or, vision of the Comprehensive Plan or conform to the intent of the City's Reverse-Frontage Ordinance found in Title 9, Chapter 1, J2 referring to reverse-frontage on arterial streets. She stated the design creates an excess of road and sidewalk to maintain and plow. Ms. Zeller stated several P&Z Commissioners expressed dismay and explained their reasons for not supporting it. She also stated the City Surveyor proposed an alternate plat design eliminating the reverse-frontage homes to Rockwell through an email dated June 14, 2019. Mr. Fife indicated that information is not in the record and should be ignored by Council. Ms. Zeller indicated there are various plat designs that could have the same number of lots, be more pleasing, have less road to maintain, and, would eliminate the need for 1,775' of outside sidewalk that would be on the backsides of the homes. She believes the new plat design would save money with new plat. She also believes Rockwell does not have to do this plat design to accomplish their objectives. Ms. Zeller believes City staff is willing to work with Rockwell. She doesn't believe they should implement development designs that are substantially more costly to maintain as this design sets up a judicial headache for maintenance and snow removal in the long term. Ms. Zeller indicated that Rockwell stated the Homeowners Association (HOA) will be responsible for sidewalks, however the residents of Manchester Estates could dissolve the HOA. She stated it is unrealistic to expect residents to shovel snow on the backside of homes. She questioned if Rockwell will be required to disclose to the buyers that the sidewalks on the back of the property are their responsibility. She indicated the streets are classified as residential collector and as a cyclist and pedestrian priority street by the BMPO. She stated by changing the plat design the question of who is responsible for the sidewalk goes away. Ms. Zeller believes the reverse-frontage design will increase speeding on the streets. She stated reverse-frontage is intended for arterials to keep up the speed and flow of traffic and these two (2) streets are not designated to keep up speed and flow of traffic, and both streets have sections of school zones. Ms. Zeller asked the Council to deny the plat and require Rockwell to design an alternate plat with an inclusive and integrated plat.

Emily Robinson, 3660 Cobblestone Lane, Idaho Falls, appeared. Ms. Robinson has been an insurance agent for 18 yrs. She addressed her concerns regarding the reason for the City plan stating the 6' fence around the development needs to be addressed. She also stated reverse-frontage lots are a major safety concern. Ms. Robinson showed the curve going in one (1) direction heading north onto Stonebrook, and an opposite curve going in another direction going the other way. She believes a fence in this area would create an extremely dangerous intersection and she invited an engineer to come out and do the measurements. Mayor Casper indicated Ms. Robinson is likely introducing new information that is not in the record. Ms. Robinson indicated there was 79' of visibility from one (1) car to another with a 6' fence and that is not enough distance for stopping time. She presented a picture of the area stating there are multiple children traveling to and from school. Mr. Fife stated Ms. Robinson cannot read from the contents of the letter even if they are listed word for word in the appeal. Ms. Robinson stated the letter was handed out and the appellants were not able to have fair trial at the second meeting. She believes the letter changed the opinions and had Counsel interjecting which was inappropriate and disturbing.

Matt Larsen, Stonerun, Idaho Falls, appeared. Mr. Larsen requested to enter pictures from the area. Mayor Casper stated pictures presented by staff are included in the record. Mr. Larsen believes the recommendation is highly unusual and is trying to thread through loopholes. He also believes the Comprehensive Plan is clear that reverse-frontage lots are for arterials and they don't want residential streets as arterials. He indicated P&Z realized there

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was an issue and they denied it at first due to the reverse-frontage and wanted Rockwell to go and talk to neighbors and flip the houses. Mr. Larsen stated the second meeting had no public hearing and that created a mess, so the neighbors appealed. He does not feel that Stonebrook is an exclusive community but feels that this design will create an exclusive community with a wall around it in the middle of a neighborhood. He wants the houses flipped to face neighbors, decrease speed, and, increase safety. He indicated they did a lot of research to find the codes that creates violations. Mr. Larsen stated the recommended plat breaks several codes, doesn't match the Comprehensive Plan, it doesn't create community, and, it creates safety risks. He believes the Planning Commission didn't feel they could vote on the Comprehensive Plan. He wants homes and neighbors that face current neighbors.

Mayor Casper stated Mr. Agasan referenced codes that had been violated, however the appeal alluded to Comprehensive Plan violations and no codes listed. She questioned whether the introduction of new codes constitutes new information. Mr. Fife stated on an appeal a person has a range of ability to point out wrong doings and can relate back to the record. He also stated it is appropriate for them to say there are things that didn't meet the conditions of approval. Mr. Fife noted this is a plat consideration and not development. He indicated there is no requirement in City Code to put up a fence, or not, in the plat stage, so the note on the plat that talks about a 6' fence can only be instructive or aspirational but is not part of the consideration. Mr. Fife stated this is also true with the site triangle, setbacks, buffers, and there are no aesthetic requirements in plats. He also stated the appellants can talk generally about safety, or design, and bringing in specific code references is not a problem, however considering some of those codes is irrelevant.

Jessica Zeller reappeared. Ms. Zeller stated when they were writing their appeal and having discussions regarding their written statements that were not allowed into the record, the second portion of the appeal was formed as they were trying to get two (2) different ideas that didn't mesh. She indicated one (1) appeal is due to what happened in the process, and one (1) appeal is what happened on the plat. She stated she spoke with staff and realized they had concerns with both process and plat. Ms. Zeller assumed that because the letter from Rockwell's attorney had already been forwarded to the P&Z and because it was referenced in the appeal, she didn't realize it needed to be attached to the appeal as it is difficult to appeal something if you can't mention the letter. Mayor Casper stated they can talk about why the letter is relevant without quoting from it, in the course of making the argument that Council should remand the plat back to P&Z. Mr. Fife concurred. Ms. Zeller stated they were concerned by the content listed and the letter came across as threatening the Commissioner's positions if they did not side with Rockwell. She indicated the word used in the letter was "educate" and the Commission needs to be educated about the process. Ms. Zeller stated they understood it would be a hearing, appeal to City Council, and then judicial review. She believed the process is a legal process and the Commission didn't need to be educated on the process, but rather she feels Rockwell's attorney wanted them to be educated on what Rockwell wanted. Ms. Zeller stated it was originally a unanimous vote to deny the plat, and then the Commission was advised by Mr. Kirkham to site a specific ordinance and the Commission gave criteria and standards from the Comprehensive Plan but were not able to find an ordinance so they postponed the meeting. She believes the second meeting had a different feeling and they just moved on. She also believes it is likely that the threatening nature of the letter had a distinct influence on what the P&Z did going forward and that is why they appealed the process. Ms. Zeller believes due process didn't happen and there wasn't an opportunity to give them the extra information they asked for at the first meeting. She requested the plat be remanded to P&Z to do a public hearing to enter the extra information because there are things in the ordinance and Comprehensive Plan that don't work with this plat design.

William Kesley, 4370 Stonebrook Lane, Idaho Falls, appeared. Mr. Kesley questioned if there will be an opportunity for rebuttal following Rockwell. Mayor Casper indicated they will have a thorough discussion. Mr. Fife reviewed typical process of an appeal hearing with appellant speaking, respondent speaks, appellant gets to rebut, and sometimes the respondent will get a chance to talk again to clarify a point. Mr. Kesley expressed his concern about the discussion of a traffic study in the first meeting. They felt the plat would create over 200 cars in a PM period of time. Mr. Kesley stated the traffic study idea was thrown out by one (1) of the P&Z members stating that it will not be a problem and the issue was not addressed. Mr. Kesley believes the addition of 53 new homes does constitute a high increase of traffic which would constitute a traffic study. He requested that the Council require Rockwell to perform a traffic study.

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Mayor Casper requested public comments from the appellants.

Kurt Thompson, 2636 Channing Way, Idaho Falls, appeared. Mr. Thompson noted the absence of Mr. Josh Chandler who is an attorney and the attorney who sued the School District and Rockwell. Mayor Casper indicated he is not listed as an appellant. Mr. Thompson stated he was not present at the May 7 meeting although the P&Z conducted a hearing and decided to find out more about the Comprehensive Plan. They did not deny the plat, but simply postponed the proceeding to June 4 to allow them to go through the Comprehensive Plan to see if there was anything overlooked. The Commission came back on June 4, 2019 and had nothing new to add after reviewing the Comprehensive Plan and therefore did not open the public hearing. They finished what was started on May 7 and recommended approval of the Manchester Estates Plat. Mr. Thompson stated this is the plat approval stage, there is no discussion of a development agreement that has to be approved or a final plat so all of the issues regarding the 30' triangle, clear site, etc., can be addressed in the development agreement and the final plat. He also stated the fence which is proposed on the plat would require a permit in certain circumstances and the City can require the fence has certain parameters and conditions attached to it. Mr. Thompson stated the alleged code violations are not code violations because this is the approval of a plat. He also stated staff has gone through the plat many times and has recommended and still recommends approval of the plat because it complies with the ordinance and meets all the criteria. Mr. Thompson stated the ordinance has requirements for arterial streets, these are collectors and there is nothing in the ordinance that deals with reverse-frontage homes on these types of residential homes. He also stated they cannot expect Rockwell to put things in that aren't required by the ordinance. Mr. Thompson indicated they meet with City staff and they hire engineers to design plats. He stated staff has and continued to recommend approval of the plat. Mr. Thompson deferred to Director Cramer as to why there is no traffic study, but clearly it is because there aren't enough houses for a traffic study. Mr. Thompson reiterated within 400 yards of this development there are through-lots that the City has approved in the past, therefore, the reverse-frontage is not a highly unusual situation. He stated that Mr. Kirkham indicated on June 4, the Idaho Supreme Court has made it clear that the Comprehensive Plan is an aspirational document and not an ordinance, and you cannot govern the conduct of the developer based on an aspirational document. Mr. Thompson stated staff has noted several times that the plat complies with the Comprehensive Plan. He also stated Rockwell has tried to comply with the ordinance and staff has found that to be the case, as well as P&Z. Mr. Thompson read from the May 7 minutes stating: when you deny a plat you must point to the law or the ordinance or the standards that have been adopted by the City that were not met by the application for the basis of denial, and they have not done that. He quoted "relying on the vibe of the Comprehensive Plan is not enough, you must site the specific clause word by word in the Plan to show non-compliance." Mr. Thompson stated on May 7 there was a hearing with testimony and the Commissioners wanted to gather more information, so they postponed the decision. In June the Commission decided they had nothing new to affect the decision and moved on. He also stated the letter he sent was to Mr. Fife about this matter. Mr. Thompson stated the Commissioners decided on their own to not open the record and not put the letter in to the record. He does not believe his letter was threatening. He indicated the process was discussed in the letter to Mr. Fife and Rockwell had nothing to do with whether it was distributed to P&Z. He does not believe the letter effected the decision of the P&Z.

Councilmember Smede questioned the ordinances Mr. Agasan referenced regarding the preliminary plat and if it is typical to plan revisions after a preliminary plat. Mr. Thompson stated things do come up in the development agreement phase and final plat. He also stated there is no specific requirements in the ordinance that governs the fence. He indicated staff can address issues with the developer and the developer will bend over backwards to deal with significant issues that come up before the plat is finalized and the development agreement is signed, but not at this stage in the development.

Greg Hansen, Rockwell Homes, 4743 Tanglewood, Idaho Falls, appeared. Mr. Hansen believed the fence would be good due to the opposition to the through-lots and green space was added so there would be a better walking area. He stated the fence can be eliminated from the plat in the final plat process. He also stated if they have to apply for a permit for a fence, then the application would ensure they adhere to the clear view triangle and that can be taken care in the height of the fence, or language attached to the title as far as a development agreement with the City. Mr. Hansen reiterated the fence could be eliminated immediately if that is the problem. He believes Rockwell has done

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everything required by the City in the ordinances, spent a lot of money and resource to look at a project, and, they meet what the City and ordinance want.

Councilmember Dingman questioned community meetings with neighbors. Mr. Hansen stated they had meetings in another subdivision although he believes the meetings created more problems. He also stated they had a meeting with some of the residents and felt like they just had a difference of opinion and wasn't getting anywhere. Mr. Hansen believes the neighborhood is safer with this design. He stated Stonebrook and Castlerock are busy streets and gave an example of his daughter being backed over on her way to school. He also stated the road will have no driveways that would go into the busy street so pedestrians would be safer walking along the sidewalk with no one going in and out of driveways. This design provides another place for someone to walk and be safe.

Councilmember Freeman questioned the snow removal issue. Mr. Hansen stated they always create CC&R for the subdivision and that would be something the subdivision would need to maintain. He also stated each lot would be responsible for their sidewalk in the rear and front yards.

William Kesley reappeared. Mr. Kesley stated he served on the City Council in Twin Falls and knows the authority citizens place on Council to protect the well-being of a community. He requested the Council to better the community. He indicated the lack of action can inadvertently create precedent and policy and it will be followed by developers moving forward because it is not specifically forbidden. Mr. Kesley rebutted several points: this division does not qualify for a traffic study, however the results from 2017 showed 225-250 cars in a 10-minute period on that street; back lot fences would likely have gates to park RVs and things in the back yard so there would be RVs and boats going across the sidewalk, he requested the CC&R prohibit cutting gates in fences; Rockwell did not meet with citizens and did not follow counsel from the Commission; there is concern about the attorney tainting the Commission with the letter. Mr. Kesley stated there was recommendation to share the letter with the appropriate personnel and that would constitute a mistrial as it was evidence produced to the Commission that the appellants were not allowed a rebuttal and the process needs to start over to get the evidence correct; and, there is belief the staff has acted under a feeling of a threat. Mr. Kesley plead with Council to approve the appeal, make the plat go back and be done correctly, and, address the hindsight of the code that does not properly protect the community and the Council has the authority to help. He also requested the Council send the plat to P&Z so the record is complete and all information can be properly assessed.

Councilmember Francis questioned the procedural appeal. Mr. Kesley believes that because the letter was distributed to the Commission that it is part of the record and the appellants should be allowed to address it. He reiterated the three (3) options for Council – to approve the appeal, deny the appeal, or, remand back to P&Z.

Director Cramer reappeared. He stated that in fairness the specific locations of through-streets should be stricken from the record. He indicated while reviewing a plat the zoning ordinance is considered to a degree, although staff is looking for lot size and dimensions to ensure the lot has enough building envelope to construct a building. He stated staff does not review setbacks at the time of plat, clear view triangles, fences, or buildings, they only review the lots to make sure they will accommodate building. Director Cramer stated when permits are submitted the zoning standards are reviewed at a later time. He indicated none of the zoning violations exist that were referenced. He emphasized the standard for a traffic study is 100 peak-hour trips and according to the Institute of Transportation Engineers, a single-family dwelling will produce one (1) trip per unit in peak hour which is halfway to the threshold that would require a traffic study. Director Cramer stated the City does not get involved in CC&R's. He also stated, with regards to setting a precedent, codes and policies change. He indicated plats are reviewed per the code regardless of what approvals have happened before. Director Cramer stated there is a Comprehensive Plan Policy that was referenced in the appellants' letter that discusses the City involving neighborhoods early in the process. He indicated he has attempted twice to require neighborhood meetings prior to certain development application types, such as a preliminary plats, within the code and has twice been rejected by the P&Z. The method in which the Comprehensive Plan is applied in a neighborhood meeting is strongly encouraged, but is not a requirement. Director Cramer stated snow removal is not related to plat requirements. Snow removal is a separate City Code and it is not reviewed as part of the plat. The code on snow removal states it is the responsibility of the adjacent property owner. Director Cramer stated if there is snow not being removed, they

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will send a letter to the property owner. He also stated snow removal is not a reason to approve or deny a plat, and it is only whether the plat meets the code and the principles of the Comprehensive Plan. Councilmember Francis confirmed the HOA has nothing to do with the preliminary plat. Director Cramer reiterated what is required for a preliminary plat, including compliance with the Subdivision Ordinance Standards and being consistent with the principles of the Comprehensive Plan. He stated that a preliminary plat is a planning document and is not drawn to the standards of a final plat, not dimensioned, engineered the same and things can shift between preliminary plat and final plat. Director Cramer stated the final plat requirements must meet the code and be consistent with the preliminary plat, which means if road or utility systems change, or if they try to add a certain percentage of lots differing from what is shown in an preliminary plat, they are required to come back and re-do the preliminary plat.

Councilmember Smede questioned the codes Mr. Agasan referenced and if the plat will then not comply with the code at the next level on the final plat. Director Cramer stated the dimensions would be reviewed when a building permit is submitted. He also stated staff takes the dimensions of the lot, looks at the setbacks required and draws a box to make sure a typical building can fit within the box. The lots on this plat comply with those minimum standards. Councilmember Smede verified this preliminary plat meets the subdivision ordinances, complies with the development standards of the residential park zone, and, is consistent with the City's Comprehensive Plan Policies. She questioned if the revisions and updates can come forward after the fact to change fences, add fences, or, eliminate fences. Director Cramer stated a fence is irrelevant to a plat and is typically never shown on a plat. Councilmember Smede questioned if a developer ever creates a preliminary plat and because of the less complex requirements when they get to the final plat they are turned away. Director Cramer stated this is a mischaracterization of the process. He stated when a final plat complies with the code and is consistent with the preliminary plat the Council "shall" approve it and there is no hearing or discussion. He indicated the preliminary plat has the bulk of the work and then it is fined tuned. If it is consistent, the final plat is a quick process. Councilmember Francis questioned whether the landscaping distances could change. Cramer stated those are part of a typical street standard and those will not change, although the smaller landscape distance could change.

Mr. Kesley requested time to make a rebuttal to make sure the record is accurate as he believes the standard is incorrect.

Councilmember Smede noted several times in the first hearing it was highly recommended by the Commissioners that the reverse-frontage "situation" be remedied/discussed/changed and then after the initial denial they continued to discuss. She quoted from the minutes "Swaney indicated that if the postponed . . . it would give the developer the opportunity to reconfigure the reverse-double frontage lots on two (2) collector streets and bring it back in July and that would be fair to the developer.", and, "Swaney suggested amended the decision from a denial to a postponement and added that if the community outreach occurs and reverse-frontage lots are fixed in some respects so there isn't a fence. . ." Smede questioned if anything changed with the suggestion from Planning Commission. Mr. Hansen stated no changes were made as they didn't do anything wrong. The plat has been reviewed multiple times. Mr. Hansen believes the subdivision would be safer and more marketable and Rockwell has spent a large amount of money for development. He stated when they develop they look at a piece of ground and they look at the ordinances so they are protected by the State Legislation which says they can develop as long as they follow the ordinances. He also stated they met with staff, did due diligence, and, met every criterion. Mr. Hansen stated they are the ones doing the developing and so they follow the criteria of the ordinances. He also stated there is diversity and a difference of opinion.

Jessica Zeller reappeared. Ms. Zeller stated she understands the City has already signed off on and contractually obligated themselves to follow the BMPO's Code and Standards. She indicated pursuant to the codes and standards a traffic impact study is required using four (4) different components: 1 – all applications for rezone or annexation; and this site was rezoned from residential agricultural and rezoned to Residential Park; 2 – if an original Traffic Information Study is more than two (2) years old; and there has never been one done on that intersection. Ms. Zeller indicated ITD did a traffic study two (2) houses away to the next intersection and it did fall within the ranges that would require a traffic study; 3 – any new developments or changes to existing developments that are expected to generate more than, and also added that if it is expected to generate less than. Ms. Zeller indicated if they go with the theory that the development will only generate 53 new trips, one (1) of the things it states is that as an

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exception, if it includes high accident locations, currently congested areas, areas of critical local concern, or significant changes in directional distribution of side traffic. Ms. Zeller stated Director Cramer indicated that during the preliminary plan this is the time when the strategic plan, the Comprehensive Plan, the higher plans are supposed to be evaluated and considered. There are problems that should be evaluated and considered, and moving forward the problems will not be allowed to be considered. Ms. Zeller quoted Mr. Hansen stating they have put in time and money, but Ms. Zeller believes that an execution of a poor business decision on their part, the inability to look through the code or analyze BMPO or know the standards, or not have staff tell you the appropriate standards, does not absolve them from having to conform to the criteria. Ms. Zeller stated developers invest money to make profit, with a short-term goal, and if it doesn't comply with the plan and there is nothing that can be done after this proceeding there are no consequences for long-term for developer, but the rest of the City and citizens will have consequences forever. She stated that because of a misunderstanding with Planning Department, it was not clearly stated what could or could not be brought forward, and because that wasn't clearly stated all of the other safety issues are still outstanding and open for interpretation. Ms. Zeller requested the Council remand the plat back to P&Z.

Mayor Casper closed the hearing.

Councilmember Smede stated, as a representative of the citizens and the law, the component of this development questions whether the developer has met the conditions of the code for the preliminary plat, and the law says if they have, Council does not have the right to deny the plat. Councilmember Dingman questioned the second portion of the appeal which is the process by which P&Z did not open the public hearing but received a letter from the developer's attorney. Councilmember Smede stated it is discomfoting but she does not believe the letter had any influence on the decision although she does not like that the letter wasn't able to be addressed. Councilmember Freeman believes if this is remanded back to the P&Z they will receive the same answer. He believes the Council needs to make a decision. Councilmember Francis concurred with the terms of code, although he expressed concern regarding the letter and the procedure in the second meeting. He believes the second appeal is stronger but he is unsure of what the options are. To Mayor Casper's response, Councilmember Francis stated he is concerned that the letter came at the wrong time and it is not appropriate that even part of the Commission read it. Councilmember Smede stated in the June hearing Community Development Services Assistant Director Kerry Beutler gave an overview and "indicated that staff recommends they reopen the public hearing and they have received additional letters and those could be entered into the record." She also stated it is their right not to open the hearing. Councilmember Dingman stated she has had conversations with Legal staff regarding disadvantages and advantages given to parties within hearings. She believes there was a disadvantage given to one (1) party by P&Z by not entering the letter from the developers' attorney in the public record and, by leading the public to believe that information as going to come forward in the second hearing that was not received. Therefore, an advantage was given to the applicant at the final meeting. Councilmember Dingman stated there is an appearance of impropriety and in a situation where City staff is recommending they open the public hearing. Commissioners who have read the letter, which is now at the center of an appeal, and was not entered into the public record, subsequently creates an opportunity for Council to make a decision in a manner that is uncomfortable without all the information. She stated this is not a new situation. She concurs with Councilmember Smede on the first part of the appeal. Councilmember Smede reiterated the developer did comply and with or without the letter it should have been a legal preliminary plat. Councilmember Hally stated he is not in a position to determine the impact of letter. He cannot see where the developer did not comply with the code. He indicated he is reluctant to stop development that has followed the code based upon a process that P&Z didn't handle smoothly. He concurs with Councilmember Smede that permits are required and there are safeguards that go along with development to make sure there is visibility. Councilmember Hally believes the Council needs to make a decision as the developer has followed the code. Councilmember Francis again expressed his frustration that the letter was not made part of the public hearing and considers it an impropriety but he does not deny, according to staff, the plat meets the standards set by the City and he doesn't feel he can vote against it. Mayor Casper believes the process was not tainted. She stated P&Z members meet on a monthly basis and are there to interpret the law and apply the ordinances. She believes they come under a lot of fire on a regular basis. She does not believe staff was intimidated by the letter. Mayor Casper believes this property owner is intending to develop their property according to the constraints laid out by the law and they have abided by them. She also believes if this is returned to P&Z the same conclusion will be reached and

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at that point the Council will be faced with the same decision. Mayor Casper believes this was an innocent mistake. Councilmember Dingman believes the Council sends a message with their words to P&Z that they have the authority to rule on their decisions and they need to understand the expectation is that the process is as clean as possible. She also concurs the process likely wasn't tainted and they are an ethical and upstanding Commission. Councilmember Dingman believes a lot of the issues brought up will likely be discussed between now and the final plat. She doesn't believe the City wants to build gated communities within an already established community, and many of those decisions will be made before the final plat.

It was moved by Councilmember Smede, seconded by Councilmember Freeman, to deny the appeal. Roll call as follows: Aye – Councilmembers Hally, Francis, Dingman, Smede, Freeman. Nay – none. Abstain – Councilmember Radford. Motion carried.

Mayor Casper encouraged the developer and the appellants work together to achieve some goals in the spirit of the community. She stated her confidence in staff will also hold the developer to high standards, she believes the developer will comply with these high standards.

Announcements:

Mayor Casper stated a Suicide Awareness Run is being held July 27; the Sidewalk Art Festival is being held July 28 and 29; a rodeo preview is being held on July 31; and, the rodeo is being held August 1 through August 3.

Executive Session:

It was moved by Councilmember Francis, seconded by Councilmember Dingman, to adjourn at 10:55 p.m. move into Executive Session. The Executive Session has been called pursuant to the provisions of Idaho Code Section 74-206(1)(j) To consider labor contract matters authorized under section 74-206A (1)(a) and (b), Idaho Code. The Executive Session will be held in the City Annex Conference Room. At the conclusion of the Executive Session the Council will not reconvene into Regular Council Meeting as no further actions are anticipated. Roll call as follows: Aye – Councilmembers Freeman, Radford, Smede, Francis, Dingman, Hally. Nay – none.

The City Council of the City of Idaho Falls met in Special Council Meeting (Executive Session), Thursday, July 25, 2019, in the City Annex Conference Room in the City Annex Building located at 680 Park Avenue in Idaho Falls, Idaho at 11:00 p.m.

There were present:

- Mayor Rebecca L. Noah Casper
- Councilmember Thomas Hally
- Councilmember Jim Francis
- Councilmember John Radford
- Councilmember Shelly Smede
- Councilmember Jim Freeman
- Councilmember Michelle Ziel-Dingman

Also present:

- Duane Nelson, Fire Chief
- Randy Fife, City Attorney

The Executive Session was called pursuant to the provisions of Idaho Code Section 74-206(1)(j) To consider labor contract matters authorized under section 74-206A (1)(a) and (b), Idaho Code.

There being no further business, the Executive Session concluded at 11:17 p.m.

s/ Kathy Hampton
CITY CLERK

s/ Rebecca L. Noah Casper
MAYOR