

October 2, 2019

7:00 p.m.

Planning Department
Council Chambers

MEMBERS PRESENT: Commissioners Margaret Wimborne, Joanne Denney, Brent Dixon, George Swaney, Lindsey Romankiw, Arnold Cantu, Gene Hicks, Natalie Black, George Morrison. (9 present 8 votes).

MEMBERS ABSENT: None.

ALSO PRESENT: Planning Director Brad Cramer; Assistant Planning Directors Kerry Beutler, Brent McLane and Brian Stephens; City Attorney, Michael Kirkham, Esq.; and interested citizens.

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

CHANGES TO AGENDA: None.

MINUTES: Romankiw moved to approve the September 3, 2019 minutes, Cantu seconded the motion and it passed unanimously.

Business:

1. PLAT 19-021: FINAL PLAT. MK Simpson Center Division No 1. Stephens presented the staff report, a part of the record. Dixon asked if the lots are under the same ownership. Stephens confirmed that the lots are under the same ownership.

Applicant: Jeff Freiberg, 936 Oxbow, Idaho Falls, Idaho. Freiberg stood for questions.

Morrison moved to recommend to the Mayor and City Council approval of the Final Plat for MK Simpson Center Division No. 1 as presented, Black seconded the motion and it passed unanimously.

2. ANNX 10-010. ANNEXATION/INITIAL ZONING OF LC. Beutler presented the staff report, a part of the record. Dixon asked if there is a right of way on the east boundary. Beutler indicated that there is Crow Creek that is on the east boundary and there are tiny parcels. Beutler clarified that there are multiple parcels and each property owner has requested annexation. Dixon asked if there would be access off Lincoln Rd. Beutler showed that the area immediately south is zoned LC and there is a preliminary plat on record with stub roads going to the north that would provide a network system from Woodruff through to Lincoln. Beutler clarified that LC allows for single family residential as well as commercial, so if a residential development made sense it could develop in the LC zone.

Applicant: No applicant was present.

Swaney moved to recommend to the Mayor and City Council approval of Annexation and Initial Zoning of LC for M&B: Approximately 27.8 Acres NW ¼, Section 16, T 2N R 38 E as presented by staff, Morrison seconded the motion and it passed unanimously.

Public Hearing(s):

Beutler indicated that they held a joint neighborhood meeting on September 17, 2019. Beutler indicated that they have grouped the annexations into commercial and residential annexations. Beutler reviewed the criteria for Category B Annexation.

3. ANNEX 19-009: ANNEXATION/INITIAL ZONING OF I&M, HC, LC, LM, AND R1.

Beutler presented the staff report, a part of the record. Black asked, (4) regarding the area that would require a comprehensive plan amendment prior to the zoning moving forward, what the reasons the property owners were requesting the change in zoning to manufacturing. Beutler stated that the property owners aren't in favor of annexation, but the feedback was that they were concerned that some of their operations might not coincide or comply and they feel that they would be limited to the uses current and future, and they feel the I&M designation would provide more flexibility. Beutler indicated staff is not opposed to the industrial designation. Beutler continued with the staff report.

Dixon asked if the only thing that makes a property enclaved is a road or a right of way such as a canal, does that still consider the property to be enclaved. Beutler indicated that generally no, and you are looking for the City to be completely surrounding the parcel. Dixon stated that a large number of the parcels have a parcel that meets different criteria, and next to it, also enclaved is a parcel that doesn't meet criteria such as less than 5 acres. Beutler stated that the annexation principles are, or statements and the parcels do not have to comply with every criterion. Dixon indicated its hard to tell what is still County on the map because of the color. Dixon stated that his biggest concern is trying to determine the appropriateness of the proposed zone because the proposed zone map doesn't show the surrounding zones. Dixon showed some concern in spot zoning. Beutler indicated that they found the first zone in this instance with the storage units, that would allow the use, so HC was suggested.

Wimborne opened the public hearing.

Applicant: City of Idaho Falls.

No one appeared in support.

Opposition:

Lisa Lorette, 2293 Darrah, Idaho Falls, Idaho. (Slide 1A) Lorette is concerned about the canal being zoned R1 because you cannot build a house over a canal and concerned with the property to the west that zoned R1 and there are no ways to get into or out of the property without going from the church.

Lamoyne Hyde, 4542 N 5th West, Idaho Falls, Idaho. (Slide 2A) Hyde owns Hyde Drift Boats on Pancheri. Hyde indicated that there are 3 parcels that are receiving water and they've tried to hook onto water and power and have not been able to do so. Hyde stated that he built the property next to the business and that is where Colorado connected to Pancheri. Hyde would like it cleaned up because the road is going across his property and he's let it be because he wants people to be able to access Pancheri and Colorado. Hyde believes legally he could shut off the road.

Bruce Hendricks, 2488 Eastview, Idaho Falls, Idaho. (Slide 3A) Hendricks was concerned at the appearance of a piece of property not being annexed, but it was confirmed it is proposed to be annexed the hatch marks are just missing. Hendricks stated that he does have a water hook up

that was enacted by the previous owner in 1980. Hendricks stated the purchased the property in 2007 and 2010 he had a sewer issue and now has a cesspool and septic tank between the building and the road and there are only 35' between building and road. Hendricks stated that he was having issues determining whether he was hooked up to City sewer, as he was paying for City sewer, and had paid City Sewer, and in 2016 it was determined that he was not hooked up to City Sewer and he wanted to be hooked up, but the ordinances at the time restricted him from hooking up so he asked the City to refund the money he had been paying since 2007 and the City complied. Hendricks had another sewer issue this year and wanted to resolve his sewer problems. Hendricks was told that he could now connect to the City Sewer and he applied and paid the fee, but since then he has had difficulty in hooking up. Hendricks stated that there is a sewer hookup 10' from his septic tank, but there is a light pole where the connection is and no one can tell for sure whether the connection to the City sewer is under the light pole to on one side or the other and his contractor doesn't want to attempt to find the sewer with the power pole in the way. Hendricks stated it was determined that they wouldn't take the power pole down to find the sewer connection, so his next alternative was to go south to the next parcel and ask for an easement to connect to sewer. Hendricks stated that if he hooked on in the street it would be very expensive, and the easement will cost thousands of dollars, so it seems impossible to hook to City sewer. Hendricks asked that he not be annexed and allow him to operate as he is at this point.

Alan Bradshaw, 255 S 65th W, Idaho Falls, Idaho. (3B Idaho Steele) Bradshaw is against the annexation. Bradshaw stated the property was built in the early 1960's and he understands the problem of connecting to City sewer as it would be impossible for them to connect due to their 4 different septic tanks. Bradshaw stated that logistically there is no way to connect, so there is not advantage. Bradshaw stated that the raise in the tax levy rate from County levy of .0040 to the City levy of .0095 is a large increase.

David Farnsworth, 1895 N Woodruff, Idaho Falls, Idaho. (Slide 4A) Farnsworth is concerned with the annexation. Farnsworth stated that the levy in County of .004 and increased to the City levy of .0095 would be a 2.3x increase in his property taxes. Farnsworth stated he is currently paying \$7593.70 in taxes and he would increase to \$17,806.61. Farnsworth stated that this building was built in the 70's and he purchased it 3 years ago for a small business and he is trying to grow and make ends meet. Farnsworth believes the tax burden is a "kick to the teeth". Farnsworth stated that Hertz did request to be annexed, and Woodruff Circle is County and then his property is next, then they skip the neighbors and go to Mountain West Rental. Farnsworth is hoping to fight the annexation. Farnsworth is learning that Idaho is one of 4 states that allows the City to annex people without their consent. Farnsworth stated that he feels that he has no options and understands that the annexations are at the request of Mayor Casper and City Council. Farnsworth has asked if there is any way they would reconsider the proposed annexations and has been told that this is what they feel like the City needs and they will move forward. Farnsworth is not opposed to growth, but he feels that it is not always the best for the citizens interest. Farnsworth stated that the City is looking past individual needs. Farnsworth asked to not be considered for annexation, or in the alternative the city come up with a better solution for annexing and creating a process that gives him 5 years to work hard so that he can keep his business open and be able to afford the tax raises. Farnsworth also provided written comment.

Corbin Cook, 3455 Crestwood Ln. Idaho Falls, Idaho. Cook stated that in Idaho Statute under Title 50 55-222 which addresses annexations by Cities. Cook stated there is a section that that indicates B Annexations should have a plan that addresses the manner providing tax support municipal services to the land proposed to be annexed. Cook does not believe the City has a plan to provide services to the parcels. Cook stated there has been testimony regarding people that would like sewer that are unable to get that service provided to them. Cook stated that power is an issue and there are substantial costs and issues that have to be addressed in order to bring the parcels in and convert the power to City Power. Cook stated that the plan must also show how to provide fee supported municipal services.

Mark Miskin, 1075 W Sunnyside, Idaho Falls, Idaho. (Slide 6). Miskin stated that his company has been in Eastern Idaho for over 100 years. Miskin is discouraged by the doubled tax rate. Miskin stated that the slide is inaccurate and there has been property sold in the last 90 days that is not accounted for. Miskin stated that 10 acres of ground has 40' bordering the City and he doesn't feel like they are part of Idaho Falls. Miskin stated he recently spent over 100,000 investing in electrical upgrades to the property. Miskin stated that Rocky Mountain Power required them to spend the money to rent the equipment, but they get nothing back when they quit renting the equipment. Miskin stated that they need the high power for their power requirements, and it will go away and they will have to do something with the City for more money. Miskin stated that they are selling 4 lots currently and only 2 are listed to be annexed.

Beutler responded to issues.

Beutler stated that the State Statute does require the City to create an annexation plan and they have done that, and it is included in the packet and available to the property owners. Beutler stated that it generally talks about the ability to provide services. Beutler stated that the properties being considered tonight have services, so the City is able to provide a service. Beutler stated generally speaking the services are available to be provided and the ability to provide the service does exist, however it might take more development to get to the service. Beutler doesn't believe the intent of the statute is to provide or engineer the service for each parcel and the annexation plan is adequate and the City can and is providing services to the properties. Beutler stated that power is different than water and sewer and power is not mentioned in the Statute. Beutler stated that there is no requirement that a property owner after annexation, change their power service provider and it is the decision of Rocky Mountain Power to allow the customer to change to the City of Idaho Falls.

Beutler stated that slide 1B shows zoning of the canal as R1 and that is common, and it doesn't indicate that a home will be built on the canal and rather they are zoning the canal the same as the surrounding properties. Beutler stated that the property south of the church is owned by the church and this annexation will bring their entire property into the City.

Beutler stated that the Slide 3 had issues when trying to hook onto sewer but had problems. Beutler stated that this is a great example of why the City needs to act on the annexation agreements to keep contiguity in the City and that will keep services easier to obtain. Beutler stated that there might be difficulties in providing the connection to water and sewer, even though the ability to provide the service exists, the specific engineering tasks will have to be done with each property owner and they can work with Public Works on the issues.

Beutler stated, with regards to Slide 6C and the statement from owner that they have sold parcels, the City goes off the parcel information and records provided by Bonneville County so if there is a recent sale or purchase, those records have not been updated when the process was started. Beutler stated that the parcels that are shown are the parcels that actually receive a service and are associated with an annexation agreement.

Beutler stated that the Statement of Annexation Principles that the Council created describes well why the City is now considering the annexations and is an effort to provide efficient and equitable services and clean up the municipal boundaries. Beutler stated that the City provides more services than just utilities to its residents.

Brad Cramer stated that Idaho Law is different in that it considers connection to a municipal utility as consent and the will of the property owner to be annexed. Cramer stated that there is a difference between fee supported and tax supported services. Cramer stated that people get caught up in the fee supported service and not wanting to pay the taxes and those two things are unrelated. Cramer stated that taxes do not pay for sewer, water and power, but rather they pay for tax supported services, and there is already a benefit being derived from the properties from tax supported services, such as police services, roads, fire service and these tax supported services are already a benefit to each of the properties. Cramer stated that part of the tax supported services are also in the County so all of the properties that are in the City, pay a City tax to get the City services and they are also County tax payers, so the inefficiencies that Beutler was referring to is when the County has to service properties that are enclaved by the City, that is a cost to all of the County tax payers and that includes those in the City. Cramer mentioned there is no win with notification, so they stick with the law on time frame notification.

Wimborne closed the public hearing.

Wimborne asked if there are concerns with Slide 1 with a recommendation of R1. There was no discussion amongst the Commissioners.

Wimborne asked if there are concerns with Slide 2. Dixon expressed concern with some parcels being annexed and some not being annexed even though they are entirely enclaved. Beutler stated that those parcels were discussed and they decided because of the amount of parcels already in this annexation package, they wanted to make it straight forward and deal with the parcels that receive a service and at a later date deal with the enclaved parcels that do not receive any service. Michael Kirkham expressed concern that the hearing has been closed and that they are now deliberating, and it should be conducted within the Commissioners and if they reopen the hearing to get information from Beutler that is fine, but it has to be reopened for everyone. Wimborne stated that the issue of which parcels have been included and which ones haven't had been addressed during the public hearing.

Wimborne reopened the public hearing in order to work through the specific questions. Dixon stated that he is trying to understand the hopscotch pattern.

Dixon asked about the parcel on Utah and why it was not considered for annexation. Beutler stated that the parcel is vacant and undeveloped and receives no service.

Black asked who is responsible for the road on W Colorado. Beutler stated that the City will take over jurisdictional maintenance of the road and the road might receive improvements at a later date.

Wimborne asked about Slide 3. There was no discussion with Commissioners.

Lamoyne Hyde, 4542 N 5th W, Idaho Falls, Idaho. Hyde proposed that they put package 2 under review instead of deciding because there is all of Happy Ville that is in the County and it needs to be looked at conclusively. Hyde stated that the road cannot just be maintained, it is his property and it goes all the way across the road, and it was allowed to have the road go in so they could make a better approach. Hyde wants the whole area to develop. Hyde wants to have City Power. Hyde wants to be annexed. Hyde stated that the Mayor would like to see it done, but it needs to go under review.

Black clarified that Happy Ville is annexed into the City. Beutler indicated that it was annexed, and the only remaining area is in the center. Beutler clarified that there has been some dispute regarding right of way in this area. Beutler stated that annexation will not affect the right of way it will only affect the jurisdiction of the property. Beutler stated that Hyde can request to have the rest of his property annexed and they would process the annexation. Beutler stated that the only parcels being addressed are the ones receiving service and later they will address the ones that are enclaved but do not receive a service.

Dixon asked if the properties when annexed will need to go through a platting process. Beutler stated that they will prior to development, but if development has already occurred there is no requirement to plat unless they do some change to the parcel. Beutler stated that the right of way on Colorado will remain the way it is until there is some type of development action and if there is right of way that needs to be dedicated it would be done at the time of platting for the new development.

Wimborne asked if there are questions on slide 4.

Dixon asked if they are going to have to iterate. Dixon stated that the parcel to the south west of the drive in is not being annexed, but with this annexation will become an enclaved parcel. Dixon asked if they are going to iterate around and these annexations will create new things that are enclaved and now, they must go back. Beutler agreed that it occurs with any annexation. Dixon stated that on slide 4D the west side north of the sound end of Woodruff Circle, there are two parcels, then a parcel is skipped, then there are two more being considered for annexation. Dixon asked if the properties being skipped have no utilities. Beutler stated that this is the area they are doing further research to see if there are services being received by those parcels.

Wimborne asked if there are questions on slide 5. Dixon asked what zoning is recommended for the 5H (substation) Beutler indicated it is LM.

Wimborne asked if there are questions on slide 6.

Wimborne offered the public another opportunity to address any further issues.

Gary Mills, 777 Linden Place, Idaho Falls, Idaho. Mills believes the North Woodruff area is a prime example of the issue of where a plan coming in place for many of the small businesses who deserve an urban renewal area because it is one of the poorest places in the community for street service, drainage, sidewalks, etc. Mills believes those tax-based services they should receive as they are in a blighted area of town.

Mark Miskin, 1075 W Sunnyside, Idaho Falls, Idaho. Miskin stated that the silver lining in annexation is the lower power rates from City Power, however, if they stay on Rocky Mountain

Power, they get the worst of both worlds, with the higher power from Rocky Mountain and the higher taxes from City tax levy.

Wimborne closed the public hearing.

Wimborne suggested the motions be separated out by number and do individual recommendations for each package.

Hicks believes that being annexed into the City, but unable to get City Power, but still have to pay all the other taxes is highly unfair. Hicks wants the City to figure out a way that if they bring the parcels in for annexation, they should have all the benefits apply, instead of a select few.

Swaney stated that the City of Idaho Falls cannot resolve the power issue, because it is established by Board of Public Utilities that the power supplier owns the customer until the power supplier makes an agreement with the customer to release them from their service, and then there are further problems where the hardware that has been rented or leased by the customer and it has to be paid for between the City of Idaho Falls and the customer. Swaney stated that getting City of Idaho Falls Power might have a higher cost, but that is not within the control of the annexation process to relieve the customer of their agreement with the power provider. Swaney stated that there is direction from Mayor and City Council that they have been following to try and annex the properties, not to increase a burden on them financially, and not to increase the size of Idaho Falls, but rather the reason for annexation is to share the cost of the City Services among all the people of Idaho Falls. Swaney stated that the Commission represents the entire City and all citizens and the direction that Mayor and City Council have given the Commission to proceed with annexation is what needs to happen

Black agrees with Swaney and the general principles are to encourage core development, strengthen the tax base, balance property rights with growth, provide public services and amenities that enhance quality of life and support the Comprehensive Plan. Black stated that often when discussing County islands they have to consider the fire and police protection and it puts a cost and burden on those services. Black stated that as City Council goes through and reviews, she wants them to understand why some people don't want to be annexed into the City and it is because of the great cost of the tax. Black stated that a \$10,000 a year tax increase is extremely dramatic. Black wants them to look when there is a request for tax increase and see what the taxes are used for. Black stated that when they annexed Happy Ville, they wanted the City to put some resources in that area, including a City Park, and the City needs to follow through. Black can see how the tax increase can hurt businesses and push businesses out of the City.

Morrison stated that the law is not always fair in its appearance. Morrison stated that THE CITY NEEDS TO WORK OUT A WAY THAT WHEN THEY ANNEX CERTAIN PROPERTIES, THEY NEED TO PHASE IN THE TAX PAYMENTS SO IT EASES THE BURDEN FOR PEOPLE ON FIXED INCOMES OR SMALL BUSINESSES. Morrison agrees that we do work for the entire City and that is what we consider as a whole, but there could be solutions that could make everyone happier.

Dixon agrees with the comments. Dixon stated that when they discussed Area of Impact there was discussion about a business being located near the City because it was either getting suppliers, customers, employees, or something else from the City and that business was

benefiting from being near the City. Dixon believes that if the business doesn't support the City that, that is unfair and if the law allowed them to be annexed then they should be annexed. Dixon stated that the properties that are enclaved but not included in this annexation are the reason he will be voting against certain slides. Dixon stated that both the Idaho Falls Statement of Annexation Principles and the staff notes provided state that if the land is completely enclaved or the property has at least one utility connection, etc. Dixon believes that the criteria given why one property was included and one was excluded is inconsistent.

Morrison moved to recommend to the Mayor and City Council approval of the annexation and initial zoning of slide package #1, Denney seconded the motion and it passed unanimously.

Romankiw moved to recommend to the Mayor and City Council approval of the annexation and initial zoning of slide package #2, Hicks seconded the motion and it passed 7-1. Dixon opposed the motion for the reason previously stated.

Swaney moved to recommend to the Mayor and City Council approval of the annexation and initial zoning of slide package #3, Cantu seconded the motion and it passed unanimously.

Morrison asked if he could eliminate a property from the package. Wimborne believes it would be difficult and the cleaner way is to oppose the motion and provide feedback.

Denney moved to recommend to the Mayor and City Council approval of the annexation and initial zoning of slide package #4, Black seconded the motion and it passed 7-1. Morrison opposed the motion.

Denney moved to recommend to the Mayor and City Council approval of the annexation and initial zoning of slide package #5, Black seconded the motion and it passed 7-1. Dixon opposed the motion for the reason previously stated that the enclaved parcels are not included.

Morrison moved to recommend to the Mayor and City Council approval of the annexation and initial zoning of package #6, Denney seconded the motion and it passed unanimously.

Wimborne called a 5-minute recess.

Wimborne called the meeting back to order.

4. ANNEX 19-002: ANNEXATION/INITIAL ZONING OF RP, R3A, R1, R2, LC, RE AND RMH. Beutler presented the staff report, a part of the record. Dixon asked about the process of how they are getting a mix of what staff is proposing and what property owners are wanting. Beutler stated that during the neighborhood meeting they try to explain the process and help them to understand that zoning is important, and they need to really think about the zoning designation that controls future land use. Beutler then asks them to follow up with staff with any questions or concerns and if it makes sense to modify the zoning designation upon request, they will do that. Beutler continued with the staff report. Dixon asked on slide 3A about the annexation of the canal. Beutler stated that the rest of the canal is annexed into the City and this is the remaining parcel. Beutler explained that canals, like streets will get a zoning designation, but on the maps, it is challenging to read so they show up as white. Dixon asked if the rest of the canal that is immediately west of Hawthorne zoned RMH or is it HC. Beutler stated that he is

unsure but typically they try to match the zoning of canals and streets to the adjacent zone so there could be some LC. Beutler stated that he can check, but it doesn't typically make a difference. Dixon is concerned if the canal is zoned HC and then one little section is zoned RMH it will be odd. Beutler continued with the staff report. Black asked for clarification on slide 4B and asked what City is. Beutler showed that Ammon is across the street. Black asked if this parcel receives City services and if that is why it is qualifying. Beutler agreed that this property has a City service and is less than 5 acres. Dixon asked about 4A and the land near Woodruff Park and asked if it is enclaved or not. Beutler indicated that because of the canal it is not enclaved. Dixon asked if canals are treated different than roads because it is property that is owned by a company. Beutler stated that canals are treated different in the annexation Statute. Beutler stated that you can annex across a road or canal and have it be contiguous. Beutler indicated that there has been a preliminary plat that has been approved for the entire area for development in the City so when development occurs, they will annex and come into the City. Beutler continued with the staff report. Black asked on slide 5 why only the two properties on the end of Crestwood receive City services. Beutler believes it relates to the widening of Sunnyside and the need for additional right of way and services were extended. Black asked if the actual property owners were the ones concerned with the zoning. Beutler stated that he has not heard from the property owners of the homes but rather property owners within the subdivision of Crestwood. Beutler continued with the staff report. Dixon asked why there is medical services on the Comprehensive Plan near Pioneer. Cramer stated that although the east side of town has the medical hub, eventually as I-15 becomes busier it is more common to see the major medical facilities along major freeways, and to recognize that the interchange would develop with a mix of uses and the Comprehensive Plan doesn't have a great mixed use single designation so they put a variety of uses in that area because a variety of things will likely happen in that area. Beutler continued with the staff report.

Wimborne opened the public hearing.

Applicant: City

No one appeared in support.

Opposition:

Kay Frei, 4015 N 5th West, Idaho Falls, Idaho. Frei is protesting her home and 1 acre into the City. Frei stated that when they built the Sage Lakes Golf course you destroyed the road to put the facilities in. Frei stated that at the time they were offered to let her hook onto City water and paid \$2000 to hook on. Frei stated that she is on City Power and that is a blessing, but she cannot afford to pay City taxes.

Sherry Shell, 2000 W Broadway, Idaho Falls, Idaho. Shell stated the proposed zoning for her property is R3A. Shell stated that her property is south of Skyline and her neighbors are a gas station, day care, credit union, rental storage, dentist and she has her residence and her business on the property. Shell is concerned about existing uses. Shell stated that in the 1990s the City tried to close down all home-based businesses, but it was never implemented. Shell is concerned that her property would be non-conforming and allowed to continue until "its not". Shell is concerned for the future of the property and her heirs when she dies. Shell wants to know what assurances she gets that they can continue in their legal/non-conforming uses into the future.

Bill Koester, 3660 S Koester Rd., Idaho Falls, Idaho. Koester read the letter that he presented as part of the record concerning the Red Barn and its 109-year history in the Koester family. Koester stated that the letter from the City states that typically a departure from these principles would occur as a response to an unusual circumstance or need and Koester doesn't feel that there is a possibility of a departure from the principles and feels like it's a slam dunk for the City.

Lamoyne Hyde, 4542 N 5th West, Idaho Falls, Idaho. Hyde would like the three parcels (2B) left alone as it sounds like in the near future the Interstate is likely going to be going through those parcels. Hyde stated that he moved there 40 years ago and the power at the time they were able to buy a permit to be able to hook onto the City and a week later he was denied because Rocky Mountain Power didn't want to lose him as a customer, so he was forced to build his house with a generator because of the conflict between the City and Rocky Mountain Power and that conflict still exists today. Hyde understands that Rocky Mountain can be bought out and he feels that if the City wants to annex a piece of property they should be forced to buy the customer out of Rocky Mountain and make it so that they can receive Power, water and sewer and that would help divert some of the cost of taxes. Hyde stated that his property will increase by \$5700/year. Hyde stated that several years ago he had a water treatment purification and the City Dump came up against their property and the 12" well casing penetrated the Aquaphor and the sewer was built over the top of that. Hyde stated that the water coming from the well was contaminated. Hyde stated that the test wells in the City area have to be tested often and he has a copy of the report that can be dug up if necessary. Hyde stated that the well was so contaminated that the City agreed to hook them up to water rather than deal with contamination. Hyde stated that he has City water because of the contamination from the City Dump. Hyde proposed that the City buy the customers out from Rocky Mountain so they can have complete services of water, sewer and power. Hyde stated that he is not opposed to paying his fair share, but the sewage from the dump has come to his property and that is why they are hooked to City water. Hyde stated that for 5 years he wasn't charged for water from the City and then when leadership was changed, they started to get charged. Hyde believes that they knew they had a problem and that is why they weren't charging for water. Hyde wants the City to leave the property out of the annexation because it will change again soon, as they are in the final 3 proposed spots for the Interstate.

Laron Shumway, 3496 Crestwood Lane, Idaho Falls. Shumway stated that Crestwood was started 50 years ago by dividing up 10 one acre lots to build a haven. Shumway stated they are trying to maintain their haven and the designation of RA1 in the County allows them to have some animals. Shumway stated that they have covenants in their subdivision that allow for animals to be used on the property. Shumway understands that the end pieces need to be annexed into the City because they do have a City utility, but he would suggest that the zoning be RE instead of R3A as proposed by staff. Shumway stated that R3A allows some professional development and those are opposed in the subdivision covenants. Shumway noticed that the City was conscious of helping existing uses remain in conformance and Shumway would like the zoning to be RE instead of R3A.

Nick Day, 907 N 25th E, Idaho Falls, Idaho. Day lives immediately north of the Substation (4B). Day believes this is a land grab by the City. Day does have City water and the reason they are on City water is because in November of 1960 the Sugar Factory dumped waste into the gravel pit across the road and contaminated wells in the area. Day stated that the Peterson's that homesteaded the property in the 1890's owned the property and still own the farm around Day's

property. Day worked for the Peterson's in the 1950's and when they needed to move for health reasons Day bought the 5 acres on the corner. Day stated that there are two plats of land due to a foul up in the platting. Day indicated that he now has 4.586 acres instead of the original 5 acres, because Bonneville County made a raceway out of 25th East (Hitt) when it was widened and that took .5 acres from his property to widen. Day stated that between the water line and losing the ground for the road he is getting hit twice on this property. Day stated that the water originally came out of Falls Valley to his property ¼ mile away and the next City property is another ¼ mile away and they are not enclaved. Day indicated that the substation is to his south, Ammon is to the east, and the north and west is agriculture and will remain agriculture for many years, so he will never be enclaved by the City. Day stated that when he moved in 29 years ago, he was getting rusty water as the galvanized pipe had rusted. Day had to put a 2-filter system on the property to make it drinkable. Day stated that when they put the sewer in 25th Street it is 23' down and there is a stub that he can hook onto. Day stated that he has a functioning septic system and doesn't want to add 80' of line 23' deep to hook on. Day has good water and pays double the water of City residents. Day stated that he pays seasonal water, irrigation water, and once a year water on top of the double City water. Day stated that he pays a lot of water and he only uses City water in the house. Day indicated that he rents out his pasture for people to graze cows and he maintains the fences and watches the cows for the renters. Day is concerned that if he goes 1 year without renting the ground, he will lose the privilege. Day is concerned that at his age he could get sick and not be able to do cows for a year and when he was healthy again, he has lost the ability to have the cows. Day stated that he has complained about the way the city takes care of the thin strip from Falls Valley down to Sugar Mill Park because they were letting weeds grow and not spraying. Day stated that he has historically sprayed the weeds and mowed the weeds himself. Day asked the City if they would buy him spray to spray the weeds and they would not agree to do that, and they contract the spraying out. Day doesn't believe the City will expand past him in the foreseeable future. Day stated that he is trying to maintain his property so he can pass it on to his sons. Day pays \$4500/year in taxes to Bonneville County and they would raise 33% to pay the City taxes. Day was told he doesn't have to buy a library card anymore if he is annexed, and he doesn't feel that is a good trade. Day is against the annexation and he feels that they only want him in the City for property taxes. Day looked into drilling a well now that the water is not contaminated, and he is considering unhooking from City Water to stay out of city annexation.

Clara Jacobson, P.O. Box 52804, Idaho Falls, Idaho. Jacobson is the owner of the Farm that surrounds Nick Day's property. Jacobson's grandparents homesteaded the property in the 1890's. Jacobson has documentation regarding the homesteading. Jacobson agrees with Nick Day's assertion. Jacobson stated that Day's property surrounding his house (<5 acres) is watered through Progressive Irrigation and Day pays taxes to Progressive for his portion of water for flood irrigating of his lawn. Jacobson indicated that her mother had polio in 1910. Jacobson grew up in the house and had a wonderful well with clean water. Jacobson indicated that the Sugar Factor across Hitt Road had a huge gravel pit and they filled it with junk from the factory and it contaminated the well that the cows wouldn't drink the water. Jacobson stated that her father bought a tank and a trailer and got water from the neighbors on Lincoln Road to haul water for the animals. Jacobson stated that her Dad filed a lawsuit against the Sugar Factory for contaminating the well. Jacobson's father got an attorney and met with the Sugar Factory officials on the Courthouse steps and came to an agreement that the Sugar Factory would take care of the water problem by paying to hook up the property to the City water. Jacobson stated

that the City made an agreement with her father that for a flat rate for the house and animals. Jacobson stated that she believes the City is assuming that the entire 5-acre parcel is watered by the City Water, and it is not, it is only the house that uses City water. Jacobson went through a genealogy of her father and mother and past history for them. Jacobson objects to the annexation of the property because the water was forced upon them due to the contamination. Jacobson stated that she feels that it is a breach of the agreement that was reached between her father the Sugar Factory and the City originally.

Arnold Leslie Heirs Jr. (Ron Heirs), 1340 Washburn Ave., Idaho Falls, Idaho. Heirs is married to Clara Jacobson. Heirs showed the area that the Sugar Factory put the waste in and showed how it migrated to contaminate the well. Heirs stated that when the Sugar Factory contaminated the well there was no other option for them to get water and they were forced to hook to the City water. Heirs stated that the City was affected to.

Brett Parmenter, 351 Crestwood Lane, Idaho Falls, Idaho. Parmenter indicated that Crestwood is an island oasis for the people that live there. Parmenter answered Black's question regarding the lot owners not participating because the home on the west side has sold the house and the east side has renters so they don't have a vested interest in the meeting. Parmenter stated that they have a community well. Parmenter is not against the annexation, just wants the property zoned RE to be residentially appropriate. Parmenter indicated that the lots are not big enough to have a semi-commercial vested interest. Parmenter asked for the Commission to consider a residential priority on the 1 acre lots.

William Cutler, 3591 South Glenn Koester Lane, Idaho Falls, Idaho. Cutler opposes the annexation and believes the tax burden will be high. Koester stated that they are hooked up to City water and the annexation around them has changed the property a lot around them. Cutler clarified that they have not moved their house toward the City, the City has moved to them. Cutler is concerned about the water. Cutler stated that there is one line to feed the 4 houses. Cutler is concerned about water meters. Cutler asked about the City paying Rocky Mountain Power out for the customers and he now understands it is 50/50 and it could be thousands of dollars if Rocky Mountain Power decides to release Cutler as a customer. Cutler is concerned that he cannot even ask to see how much until he is annexed to the City. Cutler wanted to know when the procedure changed with the City buying out the customers and asked if Beutler could send that information to him. Cutler stated that it will take decades for him to buy out the power with 50/50.

Clara Jacobson, P.O. Box 52015, Idaho Falls, Idaho. Jacobson owns the farm that her grandparents homesteaded and has met with Ammon Planning and Zoning and City Council and they were trying to annex everything from 25th East (Hitt) to Woodruff. Jacobson feels caught in the crazy zone. Jacobson stated that the only reason they couldn't annex was because the City had the park on Lincoln Rd. and Jacobson had the farm. Jacobson stated that she had made arrangements at that time that the farm could go to the City of Idaho Falls upon her death, to be made into a park. Jacobson tried to give the land to the City until someone in the City decided that it wouldn't be the way Jacobson wanted to give it and they wanted the last 40 acres in a lump sum. Jacobson took all bets off the table at that time.

Brian Robison, 2748 South Pioneer Rd., Idaho Falls, Idaho. Robison is not opposed to paying his fair share and is hooked up to City Sewer. Robison would be happy if there was a water line

near that he could hook up to. Robison stated that he appreciates Beutler's efforts to resolve his questions.

Better Muir, 4484 N 5th W, Idaho Falls, Idaho. Muir is a recent widow, lives on a fixed income. Muir has City water because the City came to them and told them the well could be contaminated because of the dump. Muir hooked to City water approximately 10 years ago and pays 2x the regular City amount. Muir stated that her property should be left alone because the Freeway will likely take their houses any way.

Corwin Cook, 3455 Crestwood Lane, Idaho Falls, Idaho. Cook stated that Crestwood was established before the hospital was built. Cook stated that he asked questions at a City meeting to try to protect the area and have a road going out a different direction and was told that because he was in the county, they could not represent him. Cook feels the City has been making decisions as if Crestwood does not exist. Cook stated that the zoning that exists around Crestwood was created after the subdivision existed. Cook doesn't feel that the City has acknowledged them as a subdivision. Cook stated that the City plan was developed after the subdivision was in existence and the plan intends for the entire area to become medical and failed to consider the homes that exist. Cook asked the Commission to allow the covenants to work the way they should, and the covenants allow the zoning to change when it is time. Cook stated that the recommended zoning of R3A will force a violation/disagreement between the covenants the City zoning. Cook requested the Commission to zone the properties on the end of Crestwood as RE. Cook asked if they are annexing the entire road, which will annex part of the water system, and are the bridal paths behind the properties being annexed as well that have been dedicated to the public. Cook feels that enough developers have not showed enough interest in the area to try to transition it to a medical area.

Wimborne asked the Commissioners if they have any questions about the 7 parcels.

Dixon asked about 2A and asked if the properties are considered enclaved with only corners touching. Beutler indicated that it would be considered enclaved. Beutler stated that the City dump is in the County but is a City parcel and the City has proposed to annex the parcel and they are waiting for a finalization through City Council. Beutler clarified that there are several options that ITD is considering and that is a decision of ITD and not something the City would determine the alignment. Beutler stated that all 5 parcels on 2A have annexation agreements, and he doesn't have information regarding the agreement and the contamination to the wells from the dump. Beutler stated that the annexation agreements indicate that the properties would annex when it was time for annexation. Dixon asked if the agreement was a standard "for access to water" agreement. Beutler stated that they vary a little depending on the era they were done in, but the language is standard. Dixon asked if the water connection was due to the City pollution of ground water but there was a standard agreement to sign, then maybe that is why they have an annexation agreement. Beutler stated that the property owner would have reviewed the agreement at the time and understood the intent as the language is fairly plain.

Wimborne asked if there are questions on package 3. None were raised.

Wimborne asked if there are questions on package 4. Wimborne asked if these properties have an annexation agreement. Beutler indicated that there was no annexation agreement with the property on 4B and the City service is the only reason for annexation, and they are less than 5 acres and it is adjacent to the City. Dixon asked if there is anything in the record that the reason,

they have the service is because of an agreement with the Sugar Factory. Beutler stated that the City has not record that he can confirm. Dixon stated that the Statement of Annexation Principles state that the principles do not apply to lands subject to Idaho Code 50-222(5)(b)(v)(c) which exempts land of 5 acres or greater or actively devoted to agriculture as defined in Section 63604-1 of the Idaho Code regardless of whether it is surrounded or abounded on all sides by land within City from City initiated annexation. Dixon asked if that clause is only relative to being enclaved and doesn't have anything to do with the other "Or" conditions as the other "or" conditions don't seem to refer to that portion of the Code. Beutler indicated that the specific Code section was changed in the last legislative session and specifically indicates that land 5 acres or greater that is in active ag use, must have the expressed written permission of the owner for annexation to be considered, so it doesn't relate to the other "or" statements.

Wimborne asked if there are questions on package 5. Wimborne asked if the requested zoning of the neighborhood of RE has been considered by the City. Beutler stated that they have looked at what the appropriate zoning designation would be and they have reviewed it since the neighbors request, but the City's comprehensive plan shows medical service designation for land use and the surrounding zoning is more consistent with the R3A and the R3A does allow for single family residence so it seems more appropriate because it will preserve the covenants and is in sync with the Comprehensive Plan. Morrison asked what can be built on RE. Beutler stated that residential estate is a single dwelling as well as some ag uses and some home businesses; R3A would allow for single dwelling, multi-unit dwelling and professional businesses. Kirkham clarified what real covenants are and what zoning uses are. Kirkham stated that they are independent and can work simultaneously. Kirkham stated that you can have real covenants that are far more restrictive than what the zoning would allow and that is fine, and the covenants will usually trump whatever the zoning is unless its ridiculous and then the Court's won't enforce those. Kirkham stated that the neighborhood can enforce the covenants through civil court action. Kirkham wanted the Commission to keep in mind that the real covenants are not something the City can enforce, and not something the City can take away. Wimborne asked if someone sells a home to someone who wants to build an office building but the covenants in the neighborhood state that its only residential, then how does that work through the system. Kirkham stated that at that point the neighborhood could come and enforce the covenant against their neighbor by going to the property owner and explaining the problem, and the covenants are recorded with the County and if the new owner doesn't want to conform to the covenant then you can enforce the covenant at the District Court level. Black asked what the current zoning is in the County. Beutler indicated in the County it is RA1 and the closest City zoning would be RE designation. Beutler indicated that the bridal paths and right of way will be included in the annexation.

Corwin Cook, 3455 Crestwood Lane, Idaho Falls, Idaho. Cook stated that if the R3A is more restrictive than the RE, then the R3A will be enforced, so it depends on which policy or law is more restrictive.

Laron Shumway, 3496 Crestwood, Idaho Falls, Idaho. Shumway stated that if you zone RE it will prevent the problem of having to face the issue of enforcing the covenants. Shumway suggested that if someone wants to build a community business in the area and its not zoned for that, then she should have to go through the zoning process first in order to help current neighbors preserve their covenants, and that is why they are asking for the RE designation.

Wimborne asked if there are questions on package 6. No questions on 6

Wimborne asked if there are any questions on package 7. Wimborne stated there was an issue regarding the barn and the proposal for zoning is I&M and that was made after consultation and feedback from the property owner. Wimborne asked if the I&M zoning would allow them to continue what they are doing, or would they have to make improvements to continue. Beutler stated that nothing would need to change unless there was a change to the use of the property, such as developing a business, and then they would have to meet the standards for development. Beutler added that they would be able to utilize the barn for cold storage without any changes. Black asked about stopping the use for a year and then wanting to go back and use the property. Beutler stated that if the use was legally established in the County and the new zoning the City doesn't allow for that use it would be considered a non-conforming use and can continue as long as it continues and there is a spot in the code that states if the use ceases for more than a year then there is the potential that the use can go away, but there are requirements for the City to demonstrate that the use is not longer there. Wimborne asked who determines that the use goes away. Kirkham stated that the one-year term is not correct, and the Legislature amended the code and amended definitions. Kirkham stated that there are statutory criteria for what constitutes that and when it potentially could end. Kirkham stated that Legislature wrote that the City or County can't deprive somebody of a non-conforming use because it stopped if that has been for a period of less than 10 years. Kirkham stated that if the use stops for a decade then the use could go away, but if your use is interrupted temporarily the City will not swoop in and take that use away. Kirkham states that the Code does allow the City to look into it after a year of not using the property and there are some provisions. Wimborne asks what activates the City looking into the use, is it based on complaints? Kirkham stated that he has not run into it. Beutler stated that the burden of proof is on the City to demonstrate the use is not being used. Beutler stated that the city has responsibility to document their actions and the historic use of the property and when the historic use ceased. Wimborne asked if the conforming use pertains to the resident or the property. Kirkham stated that it is the use of the property and not the people using it. The Use can continue forever with the same use and non-conforming until it stops. Beutler has offered residents that if they have a concern about a non-conforming use, he will talk with them and document the use.

Black asked about the property on Pioneer and how long they would have to wait to get City water. Beutler showed where the closest water main is located in the area. Beutler showed where the water is located near the Koester Road property. Beutler stated that both cases the water is there, but the customer would have to pay for the extension.

Nick Day, 907 N 25th East, Idaho Falls, Idaho. Day asked if there will be a time limit on testimony during City Council meeting. Wimborne was unsure and will find the information for him after the meeting. Cramer was able to meet with Mr. Day in the hall to address his concerns.

Arnold Leslie Heirs Jr., 1340 Washburn, Idaho Falls, Idaho. Heirs understands that the law implies that if you provide a service to someone, that gives them implied consent, but what if the service was forced upon you without your consent.

Jay Anne Hyde, 4542 N 5th West, Idaho Falls, Idaho. Hyde asked if the City water service is the reason for annexation, if they decide not to have City water, would they still be annexed. Beutler indicated that this area (2D) has an agreement for annexation and the properties are enclaved and the City would intend to move forward with the annexation. Beutler stated that the

disconnect from City would have to be discussed with the health department in order to drill a well and typically if you are within 300' of a municipal service the health department won't issue the permit to drill a well or septic because you have the utility in close proximity.

Lamoyne Hyde, 4542 N 5th West, Idaho Falls, Idaho. Hyde asked if his 5-acre parcel would make him exempt from annexation and they already have a well.

Beutler stated that the statute requires consent of the property owner, and there is an annexation agreement for this property.

Hyde stated that they were forced into that agreement because they needed water because of the pollution from the City and County.

Karen Daniel, 4400 N 5th West, Idaho Falls, Idaho. Daniel stated that 40 years ago when they went to build their home, they were assured by the City that it would not be the final dump area and they were looking for a new area. Daniel stated that once the home was built, they continued with the dump and finalized that is where the dump would be. Daniel stated they had to have their well tested monthly because they were scared the well was contaminating the well and would make their children sick. Daniel stated that when they started Sage Lakes, they offered them to hook onto City water. Daniel wrote a letter and in it stated that it cost \$2400 to hook on, but that is incorrect, and it cost of \$4000 to hook onto water. Daniel feels that she is being treated unfairly and is very much against being annexed.

Wimborne closed the public hearing.

Black stated that package 4 is a reach since Bonneville County is on one side, there is no annexation agreement and City of Ammon is on the other side. Black wants to be clear with where the emergency personnel are going, but this parcel seems very clear and completely out of the City area. Wimborne clarified that she is only concerned with the property around the substation (Slide 4B) or would it include the other two parcels. Black is fine with the other two parcels and is opposed to the property on Slide 4B.

Black believes the two properties on 5B should be annexed, but is not appropriate to change the zoning and the zoning should be the most restrictive, even though it is in the Comprehensive Plan for Medical services, that is a neighborhood and if you change those two properties that will change the character of the neighborhood that is established. Black doesn't feel they should make the change to allow someone to buy the two properties and change the character of the neighborhood. Morrison agreed with Black's assertion.

Dixon agreed with Black's comments. Dixon stated that he is hesitant about 2A because he doesn't feel that if its just corners touching it is not really enclosed. Dixon would like a legal look at those properties. Dixon stated that even if it is enclosed/enclaved for the three properties that are 5 acres each he is questioning if they are agricultural uses, which would exempt them from the enclaved clause. Dixon stated there are two instances where hooking up to the City utility was not their choice and possibly due to a problem caused by the City where the City may have polluted the ground water. Dixon doesn't feel that the standard agreement is sufficient reason to say that they should be forced annexed, because they were signing the agreement due to a problem the City created. Dixon stated that 1, 5, 6, and 7 there are properties that are also enclaved that are not included because they don't have hook up to the City and that was the complaint he had with the last hearing. Dixon feels it is an inconsistency in the City's statement

of annexation principals versus what is being put forward. Dixon agrees with Blacks' comment regarding zoning on package 5, and he disagrees with only annexing the two properties and he believes the entire subdivision should be annexed to enforce that it is a residential neighborhood. Dixon stated that there is another neighborhood to the South of Crestwood now that is not shown in the aerial. Dixon believes RE will be appropriate to protect the neighborhood. Dixon stated that their road isn't developed to the rural road standard and RE allows for a road section that does not include curb and gutter and that is consistent with the area. Dixon stated that 4B appears to have the water hook up due to an arrangement with a 3rd party due to a problem caused by the 3rd party and there is no annexation agreement and that deserves more research to find out more and the implied consent was not there because it was arranged because of the 3rd party.

Morrison moved to recommend to the Mayor and City Council approval of Package 1 for annexation and initial zoning as presented, Denney seconded the motion and it passed 7-1. Dixon opposed the motion for the reason stated regarding the other enclaved properties that are not included.

Dixon moved to recommend to the Mayor and City Council delay on consideration of the properties in package 2 until more research can be completed, and the issues to be researched include: whether they are truly enclaved or not; and if the hook up to City water and the annexation agreement that came with that hook up is due to a direct result of City ground water pollution from the dump and was the hook up coerced by the City, Cantu seconded the motion and it passed unanimously.

Dixon moved to recommend to the Mayor and City Council approval of package 3 for annexation with initial zoning of that portion of the property which is canal property to be consistent with the existing zoning of the canal immediately to the south and for the rest of the parcel to be RMH. Denney seconded the motion and it passed unanimously.

Denney moved to recommend to the Mayor and City Council approval of package 4 for annexation and initial zoning, with the exclusion of slide 4B, Morrison seconded the motion and it passed unanimously.

Black moved to recommend to the Mayor and City Council approval of package 5 for annexation with initial zoning of RE, Morrison seconded the motion and it passed 7-1. Dixon opposed the motion because there are enclaved properties not included in the annexation.

Black moved to recommend to the Mayor and City Council approval of Package 6 for annexation and initial zoning as presented, Denney seconded the motion and it passed 7-1. Dixon opposed the motion because there are enclaved properties not included although some of them might qualify for agricultural exemption based on their size and current use.

Black moved to recommend to the Mayor and City Council approval of Package 7 for annexation and initial zoning as presented, Denney seconded the motion and it passed 7-1. Dixon opposed the motion because there are enclaved properties that are not included that may qualify for agricultural exemption.

Wimborne adjourned the meeting at approximately 11:45 p.m.

Respectfully Submitted
Beckie Thompson, Recorder