



## BOARD OF ADJUSTMENT

February 25, 2021

City Annex Building, Conference Room  
680 Park Avenue

- Member Present:** Alden Allen, Wendy Nobles, Nathan Kennedy, Ron Johnson, James Wyatt
- Staff Present:** Naysha Foster, Current Planner, Kerry Beutler, Assistant Director, Mike Kirkham, City Attorney
- Call to Order:** James, called the meeting to order at 12:15 p.m.
- Minutes:** Ron made a motion to approve the November 10, 2020. Nathan seconded the motion. The motion carried unanimously.

### **Conditional Use Permit**

**CUP21-001:** James read a statement regarding the process of the meeting stating that this is a quasi-judicial hearing, not a legislative hearing. As such, the hearing will be much more like a court proceeding. He asked that any testimony be addressed to the Board and not anyone else in the room and to please refrain from outbursts or applause, as we intend to maintain order just like a courtroom. This proceeding is to receive testimony, not for the board to answer questions. If there are any questions, please direct them to City staff before or after your testimony or comments. He stated that this is a hearing to receive public comment regarding a conditional use permit. Conditional use permits review proposed land uses that are not immediately granted by the applicable zoning on the land, but which the Zoning Code allows if certain conditions are met. The specific purpose of this hearing is to receive public comment regarding whether a conditional use permit should be issued to construct a Public Service Facility within a Park Zone and which encroaches within 75 feet of a natural waterway or floodway. He asked that public comment be focused on those issues. Comment regarding alternative sites for the water tower or any opinion regarding the old tower are irrelevant to the question before us today. Keep your comments focused on the appropriateness of issuing a conditional use permit for this site or whether there are conditions that should be placed on construction of the water tower that would minimize adverse impacts to adjacent properties. Since this is a quasi-judicial hearing, the Board requests, in the interest of time, that testimony or comment should not be repeated by multiple parties. As the chair of this meeting, he has the authority maintain order. He informed everyone that he may interrupt if anyone presents repeated or irrelevant testimony to keep the hearing moving and focused on the appropriateness of the requested conditional use permit. Everyone will have an opportunity to comment, but to please not simply repeat what has already been provided to the Board. James then explained the process would go as follows:

- The applicant will do a presentation
- Staff will present the staff report
- The meeting will be opened for public testimony, starting with people in person, followed by WebEx, phone and chat.
- The applicant will have an opportunity to rebut

- The public hearing portion of the meeting will be closed, and the Board will deliberate and make a decision.

The Board may approve as presented, approve with conditions, deny and state reasons of denial, table for additional information or postpone to a later date that will be announced at this meeting, to review information, then deliberate and make a decision at a later meeting. We will do our best to get through all the testimony today, so that if we must reconvene later, we do not have to re-open the public hearing.

Dave Richards, the applicant, and Water Superintendent for the City of Idaho Falls provided some background information to let the Board know how they came to the decision of the current location. In 2015 the Water Facility Plant identified the need to replace the existing water tower due to a variety of conditions. In order to determine where the new tower was going to be built, they went out on a public campaign to present the fact that the old tower needed to be replaced and a new tower needed to be built. In April of 2019 they started a public campaign and from the inception of this staff has been insistent that the City needs a one-million-gallon water tower for future growth. Three locations were identified, and the subject parcel today is one of those sites. They put it out to public opinion to see where to place the water tower. The campaign involved the creation of a webpage, presentations were performed in front of civic organizations, there were public open houses, interviews for print and television media, social media posts that were placed on the cities Facebook and twitter account, and the final public meeting was held on February 19, 2020 and was an open house in the City Council Chambers. After this, a three-week public comment period was opened, went until March 2<sup>nd</sup>. Comment was received by staff via email, letter, and flyer. The public comments were tabulated, and South Capital Park was chosen. This was presented to City Council on May 18, 2020. South Capital Park was purchased and developed with Federal funds through the Land and Water Conservation Fund. This means that it is somewhat a protected park but if development occurs or property is taken away it must be mitigated. The City would have to acquire an equivalent dollar amount of the property that is impacted as a result of the construction. The City has been out of compliance with the Land and Water Conservation Funds for years. To be able to build the tower here put the city a little bit more out of compliance. Public Works has been involved with Parks and they have had discussions on the state level. It was decided that even though this puts the city a little more out of compliance it can move forward. When the city goes to get back into compliance this acreage would have to be included. Public Works is committed to bring the Parks Department back into compliance. The footing is 122 feet from the bank of the river. The excavation would require the removal of five total trees. The City Park Horticulturist said that a number of trees identified for removal has the susceptibility to have branches fall during windstorms. Public Works is committed to replacing trees on a three to one basis. There will be an Erosion Control Plan during construction that will keep sediment and runoff from reaching the river. The pedestal is thirty-five feet (35') inside diameter with an estimated one foot (1') thick wall. The setback from South Capital Avenue is 33.7 feet. Fencing is a ten foot (10') offset from pedestal to keep security around the site and to prevent graffiti. Two access drives are shown and the preference from staff is to be off South Capital. The site is averaged to have one trip per day so traffic in and out of the site will be minimal. The Preliminary Plan shows a surface pond to capture storm drainage and will impact the park at one thousand seven hundred and fifty (1750) square feet. This area will not be fenced off. Public Works is willing to put this below grade.

James asked the applicant how they came to the three (3) sites. Dave said they originally had six (6) sites and were looking for an area that was close enough to the original water tower to utilize the existing well. They narrowed it down to three (3) sites when the others were removed because of utility easements. James then asked for any questions for the applicant. No one from the board had questions at this time.

Naysha Foster presented the staff report for the Conditional Use Permit (CUP) to construct a Public Service Facility, a water tower, within 75 feet of a natural water way or floodway on 0.3 acres located north of Hill St. in South Capital Park. Conditional Use Permits are required for Public Service Facilities in a P Zone. Also, any structure or earth work done within seventy-five (75) feet of the river requires a CUP. A legal notice was published on February 7, 2021. Public Hearing notices were mailed to property owners within 300 feet on February 4, 2021 and the property was posted on February 11, 2021. Section 11-2-6 (X) of the Zoning Ordinance states that Public Service Facilities adhere to the following conditions: 1. The activity to be carried on must not generate an amount to traffic significantly higher than the uses in the surrounding area. And 2. Lights must be directed away from surrounding residents. Section 11-4-3 regarding flood channels and water courses state that no encroachments, including new construction, fencing, or other development shall occur within seventy-five (75) feet of such natural waterway of floodway without first obtaining approval of a CUP by the Board of Adjustment. The staff recommends approval of the Conditional Use Permit.

Alden asked Naysha if there have been any fiscal or socio-economic concerns identified with building this around the neighborhood. Naysha said she couldn't answer this and that it would be a better question for the applicant. No further questions.

James opened the meeting to the public. David Morgan, 389 Lava, addressed some concerns regarding the selection of properties for the water tower. He said that the City chose spots that they already owned so they didn't have to purchase new property. James interrupted and informed him that site location is not what we are here to discuss today. David said the consequence to selecting site number one is. He said one problem with choosing this site is it puts the City into further noncompliance with the Land and Water Conservation. Because of this, the City has been refused money for future park projects. He said this is a catch 22 because selecting this site causes the City to have to spend money to buy additional park property. If this is the case, why not just buy a new property and not disrupt the mature park. On a personal level, he moved into this property because he wanted to be close to downtown. The park was a major decision in this purchase. He said he finds it disingenuous that the renderings shown are of mature trees. He believes there are relevant errors in the Conditional Use Permit. One, why give a large general location when the affected area is a very small section of that description. Two, placing the water tower here is not a consistent use.

Miranda Marquette, 1269 Homer Ave. Her concern is that the green belt is one of the jewels of the community and this build will impact, not only the neighborhood, but the City as a whole. The water tower being in this park would impact the green space. She said a friend of hers says for low-income families, this impacts them directly because it takes away their resources.

Catherine Smith, Executive Director of the Idaho Falls Downtown Development Corporation. She is here on behalf of the downtown business owners and is at the meeting in support of the project moving forward as planned. The Idaho Falls Downtown Development Corporation oversees parking in downtown Idaho Falls. She is happy that people are saying that there is not an issue with parking but prior to this people only complained there's not enough parking. For downtown businesses, parking is their life blood. There is concern for the construction season that would impact parking as well as if the site were changed to remove a thirteen-stall parking lot. She has heard concerns that the public were not engaged enough in the site determination. However, they shared quit a bit of the information that was sent out over the two-year process. They ask that the project moves forward as planned.

Angela Farmer, 330 Lava Street. She is an avid user of the green belt and South Capital Park. She is also speaking on behalf of her neighbor Zach who is a schoolteacher and is not able to attend the meeting. She urges the Board not to grant the CUP on several fronts. This park is a beautiful, mature park

that is utilized by many. She has seen a porcupine as well as found shaggy mushrooms. Granting this CUP would ensure that this divides the park and reduces its value. A water tower will greatly conflict with this park's natural and tranquil setting. By giving this permit you will ensure future festivals are gone. The artistic rendering is misleading. It shows many mature trees and leaves out the fence and retaining wall. Please deny this permit and preserve the integrity of the park.

Stephanie Rose, 150 E 11<sup>th</sup> Street. South Capital is one of her favorite parks and she spends a lot of time there. Stephanie showed a video of what the park looks like now. The water tower destroys the character of the park, which is a woody, grassy, naturalized area. It disrupts the harmony of the park and the largest area of green space. She believes this would drive away many park users.

Ross Jones, 3634 S Holmes. There is a special use permit to this site to protect the park. The people that live in these areas are most times older people and until the public hearing notice came out, between COVID and all the things going on in this community, people weren't getting out and being actively involved. In order to get this special use permit the Board needs to look at what it's designated for and what it should be used for and how it should benefit the people of Idaho Falls.

Katherine Curl, 405 West Ridge Dr. Stops at the park while training for triathlons to use the bathrooms. If the City is not in compliance, why are they making it worse?

Halle Kane, 430 E 10<sup>th</sup> Street. Halle owns a business on Cliff Street as well as lives in Downtown Idaho Falls. She has known about this project and has attended every meeting since 2019. Parking is atrocious downtown. If the site changes to the parking lot across the street it will destroy businesses. She loves the park and hates to see trees torn down but does not want to see businesses closed for lack of parking. She does not believe there is another place downtown the water tower can go. Of all the locations that were submitted, the park will impact the least amount of people. Her vote is to keep the water tower in the park.

Janet Orchard, 985 Boise Ave. Her son owns a business downtown and the board should have his letter. They have 70 to 100 patients that would be affected if they moved the water tower site. She believes with the water tower in the park area, there are mature trees that could be transplanted that can make the area look beautiful. Some of the trees in the park that are ear marked for removal would come down during a windstorm they are so old. We need a water tower to take care of needs and, as a business, they agree with the chosen site.

Gary Rose, 2695 S Boulevard. This is the only piece of ground south of the Broadway Bridge where there is room to do much. Idaho Falls should be commended for all the work they have done on the green belt. There has got to be a better place to put a water tower than the site that has been chosen.

Joe Belloff, 1735 Bramble Lane. He is totally in support of the location of the water tower. He feels confident the City will more than mitigate any detrimental effects to that park. The City has spent large sums of money improving the green belt. Most of the trees that are going to be removed are Siberian elm trees that are classified as weeds. Their removal is overdue. The trees suffer from slime fungus and are going to be dead anyway. The City needs the water tower. The town is growing, and the infrastructure needs to expand. In his opinion this is the best location for the tower.

Sue Johnson, 2842 S Bellin Road. She purchased property in this location because of the perfect location. Everyone needs to be working with the same set of information. We all need water; she just asks that we all use the same information to make decisions.

Edith Resendez, 220 W Anderson. She is in favor of the location decision to put the water tower in the park. This decision affects everyone. She does not want to see a park destroyed but parking is important to businesses in the area.

Chris Burnham, 1900 S Boulevard. The City has spent a lot of time cleaning up the area and if they take away this park, they will never be able to get it back. She hopes the Board considers not granting the CUP.

Morgan Stewart, 126 E 23<sup>rd</sup> Street. There is a lot of concerns with the park and he understands the growing needs of the City. He thinks if this site carries on with the project, what can be done to make it more esthetically pleasing. This water tower is an eye sore to the skyline of Idaho Falls. He thinks they could make it more appealing and offer other resources like an amphitheater to bring resources to the park.

Stephanie Rose, 1150 E 11<sup>th</sup> Street. Added to her testimony. She tried not to talk about other sites, but there has been a lot of talk about another site. If the tower were located in the parking lot that the Downtown businesses have been talking about it would be closer to her backyard. This is about what this is going to do to the park. It wholly conflicts with the general characteristics of the park zone.

Tori McCarthy, 155 E 23<sup>rd</sup> Street. Feels the board has the responsibility to preserve what the area was originally dedicated too. She understands the need of water. She would request, with all the high emotions, that it would be better to hear more input from the community. She would like the decision to be postponed so more input could be put into this and alleviate everyone's concerns and come to a middle ground.

Kerry Denning, 445 Mound Ave. Once the land is taken away it can never be given back.

Carlos Villagomez, 358 E 25<sup>th</sup> Street. The City is growing rapidly. We need the water tower, but have we exhausted all our options? It would be counterproductive to put this water tower here when homeowners are trying to revitalize the area. Parks are important and we have a lack of green area.

Buck Fickbohm, 346 Chamberlain. Why not put the water tower next to the one that's there and move the city trucks?

Melanie Orchard, (address unintelligible). She owns Orchard Naturopathic and is concerned about damage if construction happens 15 feet from their building? Parking is very much an issue and it is needed. There is not really a good option, but for them, it's a big deal. She doesn't want to lose the park but feels it is the best location.

Amanda Rynes (WebEx). She likes that the City is becoming more walkable. Green space makes healthier and happier populations. The water tower runs directly against that philosophy. Our green belt sets us apart from other small towns. Pushing this permit through would run in direct conjecture to that goal.

Andrew Chrysler (WebEx). If you let the green space go you will never get it back. He hopes this is taken into consideration before the water tower is allowed to be built in the park. It will change the nature of the park, possibly making it more scetchy.

Jaime Gallup (WebEx). She and her family use this park regularly. Any time a city takes away green space it directly affects the health and wellbeing of the citizens. This would be a huge disservice to the citizens. She opposes this permit.

Jeffrey Forbes (WebEx). Stated that he served on the Parks and Rec Commission for six years and he did not know of this site for the water tower. He is shocked because this is exactly the issue they would discuss. Although there were considerable efforts made for public outreach, many were not aware. He cannot understand why there was nothing in the Post Register letting the public know. This keeps the City out of compliance. He finds it amazing that a project would continue that would put us more out of compliance.

Lisa Loret (WebEx) 2293 Darah Street. One of her concerns is water quality and storm water management. It makes no sense to remove green space around rivers. Rivers change when you develop around them. She would like to see the CUP denied.

Miyai Griggs (WebEx), Executive Director of the Art Museum. She is not in favor of this location. She has received information from people that are very surprised by this project. She expected more engagement with the water tower meetings. She thinks all three site options are terrible choices. She would respectfully request that the Board table this so people in the community can feel like their voices were heard.

Dave Richards, applicant rebuttal. He does not believe that a socioeconomic study was performed. The City has been missing out on Land and Water Conservation funds for years. Since he has been with the City they have been out of compliance. The City is in a concerted effort right now to get back in compliance. The amount of property they are using for the water tower is minimal and will be made up for. Access to the green belt path will not be impacted. The City does not believe that chain link fencing would be appropriate here. They are thinking more along the lines of wrought iron. The Park Department has informed him that the last festival was held at this site in 2005. The rendering that was shown is very generic and only shows what the tower could look like. The City has plans to expand Heritage Park, on the west side of the river. All public meetings that were held in advance for site selectin were held prior to COVID restrictions. The site selection has already been chosen at a separate meeting that was held on February 19, 2020. These concerns have already been addressed. This public comment largely determined this site. Public Works would like the decision to be made today. Since the beginning of this campaign, they have been in discussions with the Parks Department. The restroom facility and playground facility will remain.

**Board Discussion:** James stated that approximately two hours of testimony has been heard and the public hearing will be closed. The board discussed the great deal of personal testimony, both in person and via email, and requested a pause to deliberate so the emails could be read thoroughly. James stated that he believes the City has done what they could and were required to do to get this information out to the public. Ron Johnson made a motion for the Board to reconvene at 12:15 pm March 11, 2021 for deliberation only. Wendy seconded that motion. The Board voted unanimously to table the discussion.

**Business:** Nathan made a motion to postpone the elections until the next meeting on March 25, 2021. Ron Seconded the motion. It was passed unanimously.

**Adjourn:** James adjourned the meeting at 2:25 p.m.

Respectfully Submitted,

Ann Peterson, Recording Secretary