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The City Council of the City of Idaho Falls met in Special Council Meeting, Tuesday, July 9, 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 John Radford
Councilmember Michelle Ziel-Dingman
Councilmember Jim Freeman
Councilmember Jim Francis

Absent:

Councilmember Shelly Smede

Also present:

All available Department Directors
Randy Fife, City Attorney
Kathy Hampton, City Clerk

Pledge of Allegiance:

Mayor Casper requested Scott Grimmett, Fire Marshal, 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.

Rebecca Pyper, Idaho Falls resident, appeared. Ms. Pyper is representing a large group of people proposing an alternative to the City striping and widening of S. Boulevard. She stated the group wants to preserve S. Boulevard including signage that celebrates S. Boulevard's historic nature, two (2) wide lanes, a 25-mile per hour speed limit, and, no road widening as proposed for 2021. City engineers have suggested the road can serve as an arterial road and serve as a nice pathway for bicycles. Ms. Pyper does not believe both tasks can be accomplished. She is hopeful the City will choose to focus on the safety of families and recreational cyclists. She believes S. Boulevard has an ambiance and sets the tone for the City. The group believes if the plan to widen the road moves forward it would be the end of the S. Boulevard's historical role to the City. Ms. Pyper stated the group believes they have not been heard and they requested a more open dialogue with the City Council to find alternative plans. The group started a petition which is approaching 3000 signatures in support of the proposed plan. Ms. Pyper requested communication on how the conversations between the public and Council can proceed. She realizes complaints have been heard for at least 1½ years. She stated the group has read the BMPO (Bonneville Metropolitan Planning Organization) long-range transportation plan and have seen that expedient growth is not anticipated for this part of Idaho Falls. She noted the bike lane proposals do not fall within those guidelines; the Police Department has not been contacted regarding the safety on the road; and, Hawthorne Elementary does not support increased traffic on that road. Ms. Pyper stated, even if the group was not savvy, the Council's role is to represent the voice of the people. The group hopes the Council will consider an alternative plan.

Linden Bateman, Idaho Falls resident since 1940, appeared. Mr. Bateman concurred with Ms. Pyper. He agrees there should be no parking on S. Boulevard, he thinks the bike lanes should be widened, and he opposes any widening of the street. Mr. Bateman stated he is willing to tolerate some inconvenience to preserve the historical nature of S. Boulevard. He noted his respect for the German people who chose to keep their heritage of their neighborhoods rather than widen their streets. Mr. Bateman shared an experience where he was chairman of a

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group attempting to save the first street in Idaho Falls, Eagle Rock. He stated the community was supportive but there was not a sense of history among some City leaders and the buildings and road were knocked down. He stated he wants to preserve the S. Boulevard in its present configuration.

Cal Ozaki, Idaho Falls resident, appeared. Mr. Ozaki stated he has significant concern for S. Boulevard. His family built their house and has lived on S. Boulevard for 30 years. He expressed concern that the City is turning S. Boulevard into a major transportation artery. Mr. Ozaki believes the changes made to S. Boulevard have destroyed the safety, beauty, and, the ambiance of S. Boulevard. He has three (3) main concerns: 1 – the middle lane is an ineffective use of road space, it could be better used to provide on-street parking and wider bike lanes. 2 – the current bike lanes are too narrow and puts bicyclists at risk of being sideswiped by vehicles. Due to the narrow bike lanes cyclists now ride on the sidewalk which is a risk to pedestrians. He stated the risk is being transferred from the road to the sidewalk. 3 – loss of street parking is a major inconvenience to homeowners as there is no place to park for family or social events. Mr. Ozaki stated the City has allowed the purchase of parking permits for events. He indicated S. Boulevard is the only street in the City where residents have to pay for street parking, he believes this is absurd. He requested the City return S. Boulevard back to its original state prior to restriping and return it back to the peaceful and residential neighborhood.

Jerry Jernagin, S. Boulevard resident, appeared. Mr. Jernagin stated his support for Ms. Pyper and Mr. Ozaki. He also stated he has a problem with the bike path and with visitors having to park on side streets. He questioned if the yellow center line has reduced the number of accidents. Mr. Jernagin also questioned the number of bike paths on Rogers Street. He stated there are none. He believes S. Boulevard is being penalized by having bike paths added. He indicated these changes have lowered his property value and have increased his most recent tax assessment. Mr. Jernagin urges the Council to return S. Boulevard to its original status.

Sarah Mueller, Idaho Falls resident, appeared. Ms. Mueller stated, per conversation with Public Works Director Chris Fredericksen, the issue appears to be on the north side of S. Boulevard and the proposed widening is on the south side of S. Boulevard. She believes there is an opportunity to apply for federal grant money and once complete it will be a number of years before this project takes place. She also believes now is the time to explore other options to the widening.

Mayor Casper noted a public meeting on the topic of S. Boulevard has occurred and an additional meeting is scheduled.

Consent Agenda:

Idaho Falls Power requested approval to amend the Idaho Falls Power Service Policy.

Municipal Services requested approval of Treasurer's Report for the month of May, 2019; Bid IF-19-24, Approval to Purchase Distribution Transformers for Idaho Falls Power; Quote 19-29, Approval to Purchase Butt Treated Cedar Power Poles for Idaho Falls Power; Quote 19-30, Approval to Purchase Reroofing Materials and Services for the Idaho Falls Civic Center for the Performing Arts; and, Quote 19-31, Approval to Purchase Reroofing Materials and Services for City Hall.

The City Clerk requested approval of minutes from the June 24, 2019 Council Work Session; June 27, 2019 Council Meeting and Executive Session; and, July 1, 2019 Council Work Session; and, License Applications, all carrying the required approvals.

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

Regular Agenda:

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Public Works

Subject: Sewer Service Agreement (Outside City Limits) for the Existing Building Located at 1970 N Holmes Avenue

For consideration is a proposed Sewer Service Agreement between the City and Bruce and Jeanne Hendrix, the owners of the building located at 1970 N. Holmes Avenue. The septic system for this building has failed and the owners are requesting access to city sewer services. The property has a city water service agreement that was approved in 1980 and the city is currently evaluating annexation of properties in this area. If approved, this agreement would allow sewer service to the existing building located at this address, even though it is currently outside city limits.

Councilmember Freeman indicated this item was discussed at a recent Council Work Session. He stated the City prefers not to extend services outside the City until an area is annexed but this situation is an exception. Councilmember Francis noted the customer is paying the hook-up fee for the services. Councilmember Radford questioned the timeframe for the annexation of the property. Director Fredericksen believes the annexation will occur within six (6) months. He noted the property owner had previously contacted the City regarding the sewer service. He stated the property would be contiguous if the other properties that also had outside City services (water or sewer) were to be annexed.

It was moved by Councilmember Freeman, seconded by Councilmember Francis, to approve the Sewer Service Agreement with Bruce and Jeanne Hendrix, and give authorization for the Mayor to execute the necessary documents. Roll call as follows: Aye – Councilmembers Hally, Dingman, Freeman, Francis, Radford. Nay – none. Motion carried.

Idaho Falls Power

Subject: Approval of the Joint Use Module Plant (JUMP) Lay-Off Power Sales Agreement

It is the recommendation of Idaho Falls Power (IFP) to accept and approve the Resolution authorizing and approving an increase in IFP's Entitlement Share under the Carbon Free Power Project Power Sales Contract for the Lay-Off Power Sales Agreement Associated with Joint Use Module Plant Operations within the Carbon Free Power Project. The increase of Entitlement Share for JUMP Lay-off is for up to 4,815 kW of capacity.

Councilmember Radford indicated Idaho Falls Power is 100% carbon free and this project will allow additional availability of carbon free power. He noted this project has been discussed in length at Idaho Falls Power Board Meetings. He stated the City is currently committed to 10 megawatts and this will increase the commitment to 14 megawatts. Councilmember Hally stated this gives the City an opportunity to diversify the future portfolio. Mayor Casper noted this project is slated for 2026. Councilmember Radford stated this portion will be paid by the Department of Energy (DOE) to use as research. Once the DOE research is complete it will be an opportunity for the City to purchase the module and power generation. He noted this resolution allows all parties to negotiate. Councilmember Dingman noted the funds to assume operation and maintenance would come from the 2034 Idaho Falls Power budget. Councilmember Radford stated there will be opportunity for review as the project goes forward.

It was moved by Councilmember Radford, seconded by Councilmember Hally, to approve the Resolution authorizing and approving increase in IFP's Entitlement Share associated with the Joint Use Modular Plant, and give authorization for the Mayor and City Clerk to execute the necessary documents. Roll call as follows: Aye – Councilmembers Hally, Radford, Dingman, Freeman, Francis. Nay – none. Motion carried.

RESOLUTION NO. 2019-17

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A RESOLUTION AUTHORIZING AND APPROVING AN INCREASE IN THE PARTICIPANT'S ENTITLEMENT SHARE UNDER THE CARBON FREE POWER PROJECT POWER SALES CONTRACT FOR THE LAY-OFF POWER SALES AGREEMENT ASSOCIATED WITH JOINT USE MODULE PLANT OPERATIONS AT THE CARBON FREE POWER PROJECT; AND RELATED MATTERS.

Police Department

Subject: Proposed additions to Police Personnel Manual (PPM)

For consideration is an addition to the PPM to include certificate pay for officers and dispatchers with advanced POST certificates, language pay, and uniform allowance for officers who are not issued uniforms.

Councilmember Freeman stated the Police Personnel Manual was adopted in the previous year and is a work in progress. He stated certificate pay is currently being paid to officers and dispatchers but will be increased to dispatchers to make it equivalent. The total cost of the increase for the certification pay is approximately \$7,500. The current language pay is for Spanish-speaking only. The proposed changes would open additional languages. The uniform allowance is currently being paid, although the information needs added to the manual. Mayor Casper noted only select languages will be approved. Councilmember Hally stated detectives regularly wear suits rather than uniforms so this allowance covers more than just uniformed officers. Chief Johnson clarified detectives are issued uniforms. Detectives have the option to wear a suit but it is not paid for by the department although this could change in the future. Currently two (2) undercover officers are given an allowance and are not issued uniforms. Councilmember Francis believes the language certification is important as it helps the City be more welcoming.

It was moved by Councilmember Freeman, seconded by Councilmember Hally, to approve the Resolution amending the Police Personnel Manual, and give authorization for the Mayor and City Clerk to execute the necessary documents. Roll call as follows: Aye – Councilmembers Dingman, Freeman, Francis, Hally, Radford. Nay – none. Motion carried.

RESOLUTION NO. 2019-18

A RESOLUTION OF THE CITY OF IDAHO FALLS, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO, ADOPTING AN IDAHO FALLS POLICE DEPARTMENT PERSONNEL MANUAL; AND PROVIDING THAT THIS RESOLUTION BE EFFECTIVE UPON ITS PASSAGE, APPROVAL, AND PUBLICATION ACCORDING TO LAW.

Community Development Services

Subject: Corrected Quitclaim Deed

For consideration is a request to approve a corrected quitclaim deed. In 2003, the City vacated certain rights-of-way in a development that was going to be known as The Narrows. The property is just south of the North Wind Environmental building on Higham Street. When the deed was prepared to convey the vacated areas, the recipients included individuals who did not have claim to the land. As the current owners and families work towards marketing the property, they discovered that this error has created a clouded title. They have taken the initiative to write a corrected deed which, when recorded, will resolve the title issues.

Councilmember Dingman stated this is a clean-up issue.

It was moved by Councilmember Dingman, seconded by Councilmember Radford, to approve the corrected Quitclaim Deed and give authorization for the Mayor to execute the necessary documents. Roll call as follows: Aye – Councilmembers Francis, Dingman, Freeman, Hally, Radford. Nay – none. Motion carried.

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Subject: Public Hearing – Appeal of the Preliminary Plat and Reasoned Statement of Relevant Criteria and Standards for Fairway Estates

For consideration is an appeal of the Preliminary Plat and Reasoned Statement of Relevant Criteria and Standards for Fairway Estates. The Planning and Zoning Commission (P&Z) held a public hearing for this item at its June 4, 2019 meeting and approved the preliminary plat unanimously with the condition that a bridge over the eastern canal to Lewisville Highway be constructed prior to the approval of the final plat for R2 and R3A zoned areas. The City's Subdivision Ordinance Section 10-1-8.B.6 provides for any aggrieved person to appeal to the Council the decision of the Planning and Zoning Commission regarding a preliminary plat. The Community Development Services Department received a timely appeal application of the Planning and Zoning Commission's approval of the Preliminary Plat. Specific concerns identified include traffic volumes and congestion on Pevero Drive and emergency response capabilities in this area. The appeal application states that the Fairway Estates plat should not have been approved without requiring the developer to first build a bridge and road that connects this development area to the adjacent Lewisville Highway.

Mayor Casper stated this type of hearing is a new process for the Council, therefore the Council is considering the prior decision. Mayor Casper opened the hearing and ordered all items presented be included into the record. She indicated only three (3) participants will be presenting testimony in the hearing in the following order: Community Development Services Assistant Director Kerry Beutler, the appellant(s), and, the developer. Mayor Casper requested brief appeal training from Mr. Fife. Mr. Fife confirmed the appeal hearing is not the same as a de novo hearing where the public can participate. The P&Z has made a decision on a land use issue and an effected party, Ms. Allison Hicken, has filed an appeal as she disagrees with the P&Z decision. The hearing is on the record and the facts don't change within the record. The appellant can point out in the record, based upon the facts and the way the facts were applied by P&Z, which she believes was incorrect. Following the hearing the Council action would be to: uphold the P&Z decision (deny the appeal); remand it back to P&Z with or without instructions; or, approve the appeal (this decision would overrule all or part of the P&Z ruling). In the event of approving the appeal, the Reasoned Statement of Relevant Criteria and Standards would need to be changed. Mr. Fife stated there are several signatures on the appeal, however, the appeal is limited to appellant. The focus for the Council is in on the points brought up in the appeal and is limited in a sense as this is not a fact-gathering public hearing. To Mayor Casper's response, Mr. Fife stated he, or Assistant Director Beutler, will help with the deliberation if needed. Mayor Casper believes the Councilmembers are very comfortable in their legislative role. Councilmember Francis questioned the process for the clarification of directors. Mr. Fife stated the Council cannot ask questions outside of the appeal points.

Assistant Director Beutler appeared. He distributed an updated memo which includes the three (3) possible decisions/recommended actions as described by Mr. Fife.

Slide 1 – Preliminary plat for the remaining undeveloped portions of Fairway Estates

He clarified a discrepancy with the two (2) side-by-side maps, the border line along the north-eastern boundary was inadvertently removed. This particular area is included in the preliminary plat.

Slide 2 – Preliminary plat in current zoning

Assistant Director Beutler stated this area includes residential subdivision and neighborhood.

Slide 3 – Aerial photo of property under consideration

Assistant Director Beutler stated the project includes 119 acres, 182 residential lots, and, two (2) larger parcels proposed to be zoned R2 and R3A, Higher Density Residential or Mixed Use.

Slide 4 – Aerial photo with proposed zoning

Assistant Director Beutler briefly reviewed the proposed zoning for the lots. The P&Z approved the preliminary plat with the condition of a bridge be constructed over the eastern canal to the Lewisville Highway prior to approval of final plats for the R2 and R3A zoned areas. There is a proposed Boulevard-type street that would run east/west to the eastern line of the property. This has always been proposed to extend over the canal with a bridge structure. The City's Comprehensive Plan directs that higher-density housing should be located close to service areas and those streets designed to move traffic. This would prevent higher density uses through the neighborhoods. If there is no connection to the east, those connections would be to the south and to the west through the neighborhood. The Comprehensive Plan supports the bridge construction prior to development of the two (2) large parcels.

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Slide 5 – Preliminary plat document

Assistant Director Beutler stated all proposed lots meet the minimum requirements and standards of subdivision ordinance.

Slide 6 – Current active preliminary plat, approved in 2005

Assistant Director Beutler stated the subdivision ordinance states preliminary plats can expire 18 months after the approval of the most recent phase. The last preliminary plat, platted in April 2018, would continue to be active until new a preliminary plat was approved.

Slide 7 – 2017 revised preliminary plat

Assistant Director Beutler stated this is an amendment to the preliminary plat, approved in February 2017, but was only revised on the eastern portion. There were slight adjustments in the lot layout and a slight move of the Boulevard-type street to the north.

Slide 8 – Additional aerial photo of property

Assistant Director Beutler stated staff recommended approval of the preliminary plat as it meets the standards and requirements of the subdivision ordinance. The P&Z held a hearing, took comment, and, approved with the bridge connection conditions. Assistant Director Beutler believes the appellant concerns relate largely to traffic congestion, specifically along Pevero Drive as a main connection along 5th West. He also believes there are concerns regarding emergency response and the accesses to the subdivision. He noted as part of the subdivision process, the Idaho Falls Fire Department (IFFD) reviews the Fire Code for compliance. He expressed his appreciation for this service. Assistant Director Beutler stated the secondary access is required when exceeded beyond 30 lots on a single street. There are mathematical requirements as well, including distance and separation. The preliminary plat met the general Fire Code requirements for access. Individual phases will be reviewed for technical requirement. In addition, Assistant Director Beutler believes the appellant has concerns with the timing of the bridge structure, which should occur sooner than P&Z conditioned. He also believes there is an agreement that the bridge is necessary, it is a question of the timing requirement.

Mayor Casper questioned the basis for Council's decision. Assistant Director Beutler believes the appellant believes P&Z erred in approving the preliminary plat due to the traffic congestion issues, emergency response concerns, and, the bridge being constructed sooner. Mr. Fife stated the burden of proof and persuasion is based on the individual who is appealing the decision made by a governing body. The Council should consider if there was an error by the P&Z based on the appeal points. To Councilmember Francis' response Assistant Director Beutler clarified the 2005 preliminary plat shows the bridge. He also stated the developer has submitted an application requesting the proposed zoning, although the zones are not approved at this point. Councilmember Dingman questioned the bridge development based on the preliminary plat. Assistant Director Beutler stated the only lots of concerns are on the northern end of the development. He indicated this would be reviewed with final plat. Councilmember Dingman questioned the second access point. Assistant Director Beutler reviewed the several access points to the west. He also reviewed the connection at Pevero Drive along the south which would be the most direct route connection throughout the neighborhood. He indicated the IFFD looks at the access points within the individual phases. Councilmember Hally questioned if congestion was the main issue at P&Z hearing. Assistant Director Beutler believes this was one (1) of the issues. Councilmember Hally questioned if the congestion revolves around the developers during construction. Assistant Director Beutler believes the concern is general congestion of traffic as well as a safety concern of construction vehicles. Councilmember Freeman questioned traffic counts in the area. Assistant Director Beutler stated a traffic study was performed in 2006 with the preliminary plat. He is not aware of any new traffic studies. He indicated staff reviewed traffic counts following the P&Z hearing.

Ms. Allison Hicken, 375 Pevero Drive, appeared. Ms. Hicken expressed her appreciation to those neighbors who were present. She stated 110 signatures were collected in less than 36 hours. She indicated the posted public hearing notice stated a public hearing would be allowed. However, she was recently notified that the process was wrong and neighbors were not allowed to speak. Ms. Hicken recognized this appeal process is not common. She stated she paid \$150.00 for the appeal and submitted a 37-page appeal with documentation from Idaho Falls Power (IFP), IFFD, Fire Code, and, from City officials. She stated the purpose of the appeal is not to stop growth as she appreciates growth to be done in a smart way. Ms. Hicken indicated the preliminary plat includes 182 homes which are all feeding off of Pevero Drive as one (1) access point. Final plat for six (6) homes were approved on June 4, there are 25 more homes currently being built. The developer has been seeking final plat approval for six (6) and

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ten (10) houses at a time which coordinates with the 2005 plan. Traffic congestion is not a hypothetical concern, this is an ongoing concern. Ms. Hicken has four (4) children who cross the street. She does not want to wait for a child to be killed. An access point would allow construction traffic to move during construction phases and the residents would have the opportunity to divide their routes. It's the right thing to do, it's the smart thing to do, it's the safe thing to do. According to the developer, if construction of the bridge is waited for R2 and R3, it takes more than a year or two (2) to build 182 homes. There is resident concern that Mr. Alcott may decide to retire before the bridge is built. Ms. Hicken reiterated the traffic study was performed in 2006. She stated her home was built in 1998, the additional growth since 2006 does not give a real picture of traffic. The lack of a traffic count was questioned at the June 4 P&Z hearing. Ms. Hicken stated she requested the traffic study, including the traffic count, although the study could not be used for this hearing as it was considered new information. She confirmed the traffic count was consistent, there are vehicles every 8-12 seconds, 100-200 vehicles every hour between 6:00 a.m.-11:00 p.m. with peaks during rush hours. Ms. Hicken reviewed access points onto 5th West. She indicated residents cannot get out of their driveways where Glen Eagles connects to Pevero Drive as this is where traffic leaves the neighborhood. She reviewed history of a thunderstorm from July 25, 2018 with high winds that blew trees and power lines down. The lightning also struck a power pole on Ms. Hicken's property which caught the adjacent dry grass on fire from the downed line. 911 was called, no one showed. The fire was put out by Ms. Hicken's family and the neighbor(s). Ms. Hicken stated the IFFD arrived 45 minutes later. The IFFD stated they could not get to the house as 33rd North had a tree and a power line down which blocked the road. Ms. Hicken reviewed the multiple IFFD routes to arrive to this area. She believes this is unacceptable. She fears for the safety of her family and the medical fragile who live in the neighborhood. If 5th West were blocked, the residents would be virtually inaccessible. Mr. Hicken noted 5th West consists of two (2) small narrow lanes with one (1) small shoulder on one (1) side only. She also stated during the July 25, 2018 thunderstorm, three (3) calls were submitted to IFP within a three-minute period of time. She heard multiple stories from several IFP staff regarding the in-access to this area. She also stated in the event the power poles along 5th West need work, the multiple trucks must block the road. Ms. Hicken reviewed a previous accident at this location including loss of power and water and no access to the neighborhood. The road has been closed six (6) times over the last five (5) years with no power for extended period of time. In these cases, the residents can't get home and emergency services can't get to the residents. Mr. Hicken reviewed the Fire Code referring to the number of dwellings and approved fire apparatus access roads. She believes there are gray areas in the Fire Code which are open to interpretation. This point was discussed extensively by the P&Z. She reviewed the most direct route of a random centralized house to Idaho Falls, an alternate route of this random house to Idaho Falls with the second access point, and, a route once the bridge is constructed. She questioned the Fire Code regarding proximity and egress and how closely they can be aligned. Hypothetically, in the event of a natural disaster the residents would be backed up in traffic with the neighborhood. Ms. Hicken stated the staff report from the P&Z indicate this was unanimously approved. She indicated this is not correct as there were multiple concerns expressed regarding safety and emergency access. Per the 2005 plat, the bridge was promised prior to the new development. Neighbors also expressed that the City Council allowed leniency to the developer when the housing market crashed although the bridge needed to be built once the housing market recovered. It has been fourteen years and there is still no access point to the Lewisville Highway. Ms. Hicken believes there was a reluctant decision by the P&Z for the approval. She indicated Commissioner Romankiw, who is a resident of Fairway Estates, stated she searched but was unable to find supporting statements from existing City Codes to block this development without the bridge for the R1 phase of development. Ms. Hicken stated Commissioner Romankiw knew first-hand the path of traffic the neighbors would take, how busy the road was, and, the traffic and safety concerns. Commissioner Romankiw also questioned when the City allowed the developers to create the plans for the neighborhoods. Ms. Hicken stated Commissioner Dixon questioned the approval based on the condition that the bridge be constructed before the R1. He was told the subdivision ordinances would allow for this but only if the City Code supported that condition or the guidance came from the Comprehensive Plan. There was a statement of code prohibiting high-density housing traveling through residential roads but there was nothing regarding the egress. The approved entrance points in the Fire Code was again questioned. Commissioner Dixon was reluctant to approve due to the Airport overlay and the egress points regarding a hypothetical plane crash. Ms. Hicken stated Commissioner Swaney questioned the Fire Code with the proximity of egresses. He indicated a better solution needed to be found prior to final plat approval as this was not safe and was not smart. Ms. Hicken stated following the P&Z hearing, and once the live-stream had stopped, she overheard conversation by the commissioners. Mr. Fife instructed the Council not to consider off-record comments. Ms. Hicken stated she was so

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distraught that the commissioners could not do what they wanted. She was told the only process was to appeal. She believes that the developer wants to put in a bridge to make the area more desirable and would help sell properties, although she expressed concern for that promise. She indicated City Code Chapter 2, Bridge and Street Regulations, 10-2-1, typically used at the Public Works level, is the foundation of the subdivision ordinance. She reviewed this code, stating she is confident if Commissioner Romankiw could have found this statement, it would have been grounds for her to recommend this plan not be approved until the bridge is in. Ms. Hicken stated this is a high-stakes issue. This would allow opportunity for great growth for the construction crews. She requested the Council recognize this is a high-stakes issue for the residents. The kids should not have to be in college before this is safe. Ms. Hicken stated she is not willing to let someone die from a vehicle or construction equipment or not have the ability of the IFFD to save a house in unsafe conditions. She requested the City officials act on behalf of the Fairway Estates residents. She reviewed the proposed options, including looking at the Code for the intent of the Code to be carried out. She believes the developer should be held to what he said fourteen years ago, and put the bridge through, before construction begins.

Kevin Alcott, developer, appeared. Mr. Alcott stated he is very conscientious about safety and complies with the codes, including the International Fire Code (IFC) which is nationally recognized. He indicated the preliminary plat is currently active. He believes approximately half of these residents were the subject of this same discussion during the previous plat. Mr. Alcott stated he committed to build the bridge fifteen years ago. He put the bridge on the preliminary plat where it is today and is part of any ordinary progression of development. He never said he would not build the bridge. Mr. Alcott read a letter, dated May 27, 2005, which was part of the preliminary plat record. The letter was in response to concern by then Fire Marshal, Mike Sheets, regarding one (1) or two (2) family residential developments of the International Fire Code. The section references dead-end roads. The Code provides two (2) exceptions to this rule. Exception #2, which is clearly applicable to the proposed plat, states the number of dwelling units on a single fire apparatus access road should not be increased unless fire apparatus access roads will connect with future development as determined by the Code official. Mr. Alcott stated this Code makes it clear that an exception is allowed where a plan is in place. The plan, as presented, will provide two (2) secondary access points in the future, one from the north side and one from Lewisville Highway. One (1) or both of these secondary access points will be completed within five (5) years of the preliminary plat approval, or with timing of the market. The City has consistently applied this exception in Fairway Estates and other developments throughout the City. Nothing has been proposed that is contrary to this historical application of the Code. Mr. Alcott stated this issue was addressed and that section of the IFC, which has been in effect for decades, has not changed. As a developer, they will play and work by the rules. A commitment was made for the second fire connection within five (5) years, the connection was made in 2½ years. The road was built out of the normal sequence of developer. Literally months later, the recession hit. Mr. Alcott stated there was no special preference given, they did exactly what they said they would do. The same thing has been said for the bridge although there is caution in conducting business following the banking issue. Per the fire events and emergency access incidents previously described, Mr. Alcott referred to the fire report included in the record stating the fire alarm was received at 3:30 and the all clear was received 3:45 and the call did not include just one (1) fire apparatus. He stated fire safety is discussed on a regular basis with the development. He expressed his appreciation for the IFFD and their service. Mr. Alcott stated they are following the rules and are working their way to the bridge. He reviewed the changes on plat, stating there is approval for the 2017 revised preliminary plat. A collector road has been added to handle traffic to the bridge, the bridge has been moved, and, high-commercial has been turned into single-family homes. The traffic flow has been improved, the amount of traffic has been reduced, and, the number of lots have not significantly changed. Mr. Alcott believes these changes have made a better product. He stated in the previous year the IFFD had concerns with the timing of the bridge and emergency accesses. Per the development agreement, an IFFD emergency access will be provided. This is not a public road, this is only in the event a secondary access is needed for the IFFD. Mr. Alcott also noted a paved 60' wide right-of-way access was built ten (10) years ago that connects to the landfill and, he believes, will eventually connect to the City. He is unsure why a gate could not be placed in this location for the IFFD access. He stated they have met the code and they want to get to the bridge although they cannot go out of line. Mr. Alcott referred to the Bridge and Streets Regulations, as mentioned by Ms. Hicken, stating this ordinance sets the impact fees for roads and bridges in the City. He indicated he has paid tens of thousands of dollars of these fees into the City on top of the additional costs. This ordinance is not a loophole to allow the City to reject a project. Mr. Alcott reiterated he does not like people saying he's not doing things that he said he would do. He indicated

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there was no promise made that the bridge would be built in 2005, the promise was made that the bridge would be built when they get to that point. All ordinances and Comprehensive Plans call for orderly development of the City. He does not necessarily believe people were looking for outs. In spite of this, the review by fifteen City departments for compliance of code, as well as the P&Z, did not show this is not in compliance with the codes. Mr. Alcott believes the P&Z made a good decision based on the laws and ordinances. He expressed his concern with approval and then enacting new laws to taint the project.

Assistant Director Beutler reappeared. Councilmember Dingman questioned the farm bridge as an access point and whether it is a viable access to hold emergency equipment. Assistant Director Beutler deferred this question to the IFFD. Councilmember Dingman also questioned the developer's options moving forward if the appeal is approved. Assistant Director Beutler stated approval of the appeal would remove the P&Z approval. He indicated the 2017 plat would remain and, he believes the developer could ask for reconsideration. Mr. Fife believes the plat would be denied and the developer would need to start over although there is the option to proceed with the 2005 plat. Mayor Casper questioned the timeframe of a denial and then being re-introduced. Assistant Director Beutler was not aware of a timeframe. Councilmember Francis questioned the 2005 plat. Assistant Director Beutler confirmed the 2005 plat is a preliminary plat. He stated phases of the preliminary plat have been platted/approved as final plats. He confirmed the referenced construction has occurred for the phases of final plats. Councilmember Dingman questioned and confirmed the three (3) options for the appeal. She also questioned the accuracy of the Bridge and Street Regulations as referenced by Mr. Alcott. Assistant Director Beutler confirmed this is his understanding as well. Councilmember Dingman questioned if the results of the new traffic study mandated by the P&Z could mandate the development of a bridge during the R1 phase. Mayor Casper requested clarification of a traffic study and a traffic count. Assistant Director Beutler stated a traffic count is generally counting traffic or trips through a specific area. A traffic study would look at potential solutions if traffic congestion exceeds certain levels and may offer recommendations and improvements. Assistant Director Beutler stated, in this event, a traffic study would look at the congestion issue on Pevero Drive and at what point the congestion would require a bridge. Councilmember Radford questioned the practice to finalize plats in smaller sections to avoid paying large infrastructure costs. Assistant Director Beutler stated the subdivision ordinance does not dictate the size of each phase. The preliminary plat requires the developer to look at the larger area, including traffic and utilities. He believes this review occurred in 2005/2006 for this area. Councilmember Radford questioned the specific reasons in the event this is remanded to the P&Z. Assistant Director Beutler believes specific recommendations are helpful although not required. Councilmember Radford reviewed possible recommendations. Councilmember Francis questioned the Fire Code related to the number of access points on a street. Assistant Director Beutler deferred this question to the IFFD.

Councilmember Francis questioned the P&Z notes referencing a discussion with IFFD. Mr. Fife stated a discussion could not be questioned although a conclusion could be questioned. The Council is to interpret the information as presented in the code. Councilmember Francis questioned the definition of a street with 30 houses as well as the two (2) entrances. Fire Chief Duane Nelson stated these particular access requirements are determined by King's Island. King's Island is actually two (2) streets. Because there are more than 30 residences in that area it requires two (2) accesses. The preliminary plat, as reviewed by Fire Code, looks at whether the section being requested meets those two (2) access points. The access points are determined by the diagonal/arc. Chief Nelson reviewed the arc for this area. If final plats or high density residential were approved to the north the Fire Code would require the bridge access to the east. At this time it does not. Councilmember Dingman questioned if the farm bridge meets the definition of a viable access point per the Fire Code. Chief Nelson stated the farm bridge is not a viable access. Councilmember Radford questioned the frequency of the IFFD decisions. Chief Nelson stated each final plat is reviewed as it is developed. Councilmember Hally questioned Mr. Alcott's smaller development of the preliminary plats. Chief Nelson stated as the developer moves forward with final plats, no matter the size, they are individually reviewed before approval.

Mr. Alcott reappeared. Councilmember Hally questioned if the market determines any alterations in the preliminary plat. Mr. Alcott stated the market dictates the pace and the size of those plats. He reviewed previous lots that have been built. Councilmember Francis requested clarification of the letter referring to construction of the bridge. Mr. Alcott re-read this section of the letter – the plan is that one (1) or both of these secondary access points will be

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completed within five (5) years of the approval of the preliminary plat. The actual timing will be driven by the market. Mr. Alcott indicated the secondary access on the public streets has been completed. Mayor Casper questioned the need for further clarification of the Bridge and Street Regulations by staff. There was none. Mayor Casper closed the appeal hearing.

Councilmember Dingman noted there are no preconceived conversations regarding a decision following a public hearing. She stated she is struggling with understanding the variety of concerns regarding traffic as there was no mention of a traffic study or a traffic count by the P&Z to address the residents' concerns with data. She agrees with the P&Z that the concerns were valid and this is not ideal. The concerns could be addressed in code although the law does not provide for them to deny. However, the P&Z had options and opportunities for additional information that were not pursued. Councilmember Radford agreed. He believes additional information should be the option to consider. Councilmember Freeman agrees with the appellant that this is a traffic and safety issue, however, the code cannot support that decision and the law must be followed. He also believes this item should be sent back to P&Z with new data to make a clear decision. Councilmember Francis questioned the facts for P&Z. Councilmember Dingman indicated facts are not required. She stated there was no traffic study referenced or discussed by P&Z. Councilmember Francis believes the intent can be found in the zoning ordinance, this should be considered by the P&Z if possible. Councilmember Radford questioned the developer's options if the appeal is approved. Mr. Fife is unaware of the developer's plans although the developer could proceed with the approved preliminary plat. Councilmember Radford confirmed if the appeal is denied, this would become the new preliminary plat and the market would dictate construction of the bridge. He also confirmed if the Council remands, he believes this is the only option for the traffic study. Mr. Fife reviewed the options based on the Council's decision. Councilmember Francis questioned if the point of arc would affect the R1. Mr. Fife stated the codes in effect take place automatically. The approval is for the purpose of development. Councilmember Hally believes the issue is the bridge. If the developer could move forward on the original preliminary plat, it appears this would be more dense than what is currently proposed. Councilmember Hally believes there is more traffic in developments. He indicated he is familiar with this area and he does not doubt the developer as he believes the bridge will be built. He believes the developer has played by the rules and this whole area has been well developed. To Councilmember Francis' comment, Mayor Casper confirmed the bridge has always been included in the developer's plans. Councilmember Dingman concurs with Councilmember Hally regarding the developer's intent. It was moved by Councilmember Dingman, seconded by Councilmember Freeman, to remand the preliminary plat back to the Planning and Zoning Commission with the recommendation that the Planning and Zoning Commission consider a traffic count or a traffic study that be provided by the developer. Mr. Fife clarified the motion gives the Planning and Zoning Commission a choice between a traffic count and a traffic study. The motion was then amended by Councilmember Radford to include a traffic study, not solely a traffic count. The motion died for lack of a second. At the request of Mayor Casper, Councilmember Dingman repeated the motion. Roll call as follows: Aye – Councilmembers Dingman, Radford, Freeman, Francis. Nay – Councilmember Hally. Motion carried. Mayor Casper believes this issue may be presented once again to the Council in the future.

Announcements and Adjournment:

There being no further business, the meeting adjourned at 10:16 p.m.

s/ Kathy Hampton
CITY CLERK

s/ Rebecca L. Noah Casper
MAYOR