

**PLANNING COMMISSION
MINUTES
MAY 10, 2022
CITY HALL – UPSTAIRS, CONFERENCE ROOM #6
702 E. FRONT AVENUE**

COMMISSIONERS PRESENT:

Tom Messina, Chairman
Jon Ingalls, Vice-Chair
Lynn Fleming
Phil Ward
Peter Luttrupp
Sarah McCracken
Brinnon Mandel

STAFF MEMBERS PRESENT:

Hilary Anderson, Community Planning Director
Sean Holm, Senior Planner
Shana Stuhmiller, Public Hearing Assistant
Randy Adams, City Attorney/Legal Services Director
Wes Somerton, Chief Criminal Deputy City Attorney

COMMISSIONERS ABSENT:

CALL TO ORDER:

The meeting was called to order by Chairman Messina at 12:00 p.m.

APPROVAL OF MINUTES:

Motion by Ingalls, seconded by Luttrupp , to approve the minutes of the Planning Commission meeting on April 12, 2022. Motion approved.

OTHER BUSINESS: *ITEMS BELOW ARE CONSIDERED TO BE ACTION ITEMS.**

1. Applicant: Kerr Family Properties, LLC
 Location: 7820 N. Ramsey Road
 Request: A request for an extension to the Planning Commission Meeting on July 12th for A-4-21 (a proposed +/- 15-acre annexation from Ag Suburban to R-17).

Hilary Anderson, Community Planning Director, stated that this is a second extension request by the applicant in order for them to evaluate wastewater's comments regarding the connection to sewer, so staff advised them that this would be their last extension request. Commissioner McCracken asked if this hearing will be on the same day Coeur Terra is scheduled for a public hearing since the previous annexation did have a lot of citizen turnout. Ms. Anderson explained that we would schedule them both and continue the meeting if it gets too late. Sean Holm, Senior Planner, replied many years ago, we used to have a meeting rule if we hit 10:00 p.m. and there were public hearings still on the agenda that the commission would continue the items for an additional meeting later that month, but he doubts that will happen with these two items.

Motion by Ingalls , seconded by Fleming, to approve Item Motion approved.

2. Development Agreement Ordinance - A discussion on the need for and purpose of development agreements, and a review of the draft ordinance allowing development agreements.

Hilary Anderson, Community Planning Director providing the following comments.

Ms. Anderson provided an overview of the draft Development Agreement Ordinance that staff has been working on. The plan, after the workshop, is to bring forward the ordinance for a public hearing with the Planning Commission who would make a recommendation for approval or denial to City Council. Chairman Messina inquired how will the public know about this request. Ms. Anderson explained that the ordinance will only be published in the paper and that we wouldn't do any mailings, since it applies to the entire city. Chairman Messina inquired if something will be sent out to North Idaho Building Contractors Association (NIBCA) as a "heads up". Ms. Anderson replied that's a great idea and noted that Councilmember Miller is doing a presentation today to the development committee and will be mentioning to them that we are working on this ordinance.

Ms. Anderson commented that we are the only city in Kootenai County who doesn't have this in our code and if approved it can be used as a tool to provide for the creation, enforcement and termination of development agreements used as a contract between the land developer and the local government.

Commissioner Mandel questioned why are we the last municipality to do this. Ms. Anderson explained that we typically handle conditions through an Annexation Agreement or a PUD and that staff thought it was time to have a Development Agreement especially for bigger projects where additional conditions could be added by using this agreement. Commissioner Mandel inquired if this would give us extra negotiating latitude contained in an agreement versus conditions in an Annexation Agreement. Ms. Anderson replied it does to a degree and noted in the draft ordinance allows staff and the commission to add any additional conditions as a formal agreement that will be recorded.

Commissioner Luttrupp inquired if this will be considered a "third step" to a PUD and Annexation Agreement. Mr. Adams explained that a Development Agreement won't be used in every situation and is allowed in cases where there is a zone change that happens with an annexation, rezoning etc. Commissioner Luttrupp inquired if this will be a tool used by the city that could correct deficiencies between a PUD and Annexation Agreement. Mr. Adams explained that it gives the city an extra way of enforcing conditions and if not honored would be a breach of contract.

Commissioner Ingalls explained that in the past we have had various PUDs that had many conditions versus an Annexation Agreement that doesn't have conditions but recommendations and inquired if a Development Agreement could take the place of an Annexation Agreement. Mr. Adams explained that a Development Agreement would be included with the Annexation Agreement with the difference between the two is an Annexation Agreement there are costs pending development where a Development Agreement gets into the "weeds" and allows the City to make the developer commit to a certain type of development which you can't do with an Annexation Agreement.

Commissioner Fleming inquired if this is an agreement between a developer and the city, will the public have any jurisdiction over this agreement? She also inquired if a public hearing is needed since the agreement is between the city and developer. Mr. Adams explained that the statute doesn't require a public hearing but staff felt if there was a restriction on the use of property that it would be advised to have a public hearing with the Planning Commission to forward a recommendation to City Council that a Development Agreement should be approved.

Chairman Messina referenced a recent project on 15th that was for an annexation and using that project explain how a Development Agreement would work with that scenario. Ms. Anderson explained a Development Agreement would be prepared to come to you and if not prepared at the time of the staff report and public hearing, a condition could be added that an agreement is needed.

Ms. Anderson explained that a Development Agreement is intended to be a binding agreement that includes conditions proposed during the review and approval process and when looking at State Statutes with case law noted the last paragraph in the draft ordinance talks about workforce housing and open

space that is in the public interest.

Mr. Adams noted that a zone change isn't a matter of right and if the developer doesn't care for the conditions, then the developer doesn't have to sign the agreement or rezone their property. Chairman Messina inquired about open space/workforce housing benefits and questioned how are these defined.

Ms. Anderson continued and explained the requirements for termination of a Development Agreement. Chairman Messina commented that staff had referenced Mill River that they had an issue with open space and what triggered staff that the project didn't meet the requirement for open space. Mr. Adams explained that with Mill River we had a copy of the final development plan showing where the open space was and with being the last piece of property to be developed, they are almost 4-acres short of open space that needs to be addressed now.

Ms. Anderson explained if someone submits for a zone change that requires a condition for a buffer between them and the neighbors and the abutting property comes back at a later date with the same zone request, it may be determined that the buffer is no longer required, so termination of the agreement may be appropriate.

Commissioner McCracken inquired if that would be a modification. Ms. Anderson answered it could be a termination or an amendment depending on other conditions and circumstances. Commissioner Mandel inquired about fees and would fees be based on a percentage of the development. Mr. Adams explained the fee would be based on the work the city has to do to prepare the Development Agreement which Council will set to be the same fee for preparation of every Development Agreement.

Commissioner McCracken inquired about enforcement. Mr. Adams explained it depends on the terms of the Development Agreement and if the project has benchmarks. So, for example, if something was required to be done by a certain date before building permits are issued, staff would have to watch to see if those obligations in the development agreement were done.

Commissioner Luttrupp inquired if staff can require a developer to donate land for schools etc. Mr. Adams replied that you could include that as a condition in a Development Agreement and the applicant might disagree and not sign it and then the city decides how far we have to push. Wes Somerton, Deputy City Attorney explained a benefit of a Development Agreement is it ties these things down.

Commissioner McCracken inquired what happens if the applicant gets half way through the project and can't continue because of costs. Commissioner Ingalls commented that every project will not have a development agreement with the Planning Director deciding if one is needed. Ms. Anderson explained that if it was determined by the Planning Director that a Development Agreement isn't needed, the Planning Commission can overturn that decision at the public hearing and require one as a condition of approval. Mr. Adams added that the commission can ask for additional conditions at the hearing and if the developer disagrees then the commission can say a development agreement is needed and if they still disagree the applicant can withdraw the application. Commissioner Fleming inquired about enforcement. Mr. Adams explained we have ways to enforce by going to court with the termination reverting back to the original zone of the property.

Commissioner Ingalls stated that he understands the benefits of this tool and in going forward would staff go to NIBCA and explain to them the benefits of this tool. Chairman Messina agrees that this is a great tool but has a concern about enforcement. Ms. Anderson concurs and why this won't be done with every project and that we have to be cautious.

Chairman Messina inquired if other cities have hired extra staff to track these types of things. Ms. Anderson explained that staff still looks at the conditions to make sure they are completed for a building permit to be issued. Commissioner McCracken asked if we had a project with townhomes and then the developer didn't have the funds to finish the project and decide to sell the property, questioned if the Development Agreement associated with that project would be required to be completed based on the terms of that agreement or have the choice to go back to the original zone. Ms. Anderson explained they would have the option to amend the agreement or terminate the agreement. Commissioner McCracken inquired if there could be language added for termination saying that property reverts back to the original zone especially for a new buyer that might be prohibited from selling their property that had all these

restrictions.

Mr. Adams explained that the applicant would have to make a request to the city since we put in the effort to prepare the document the city should have a say to terminate the contract. It shouldn't be automatic.

Mr. Holm inquired about the scenario when someone would like to revert the zoning back to the original zoning, and would they be able to bypass the Planning Commission and go straight to City Council since the agreement was approved by Council. Because the prior zone change was predicated on the Development Agreement. Mr. Adams clarified that no the request would need to follow the Municipal Code related to a zone change request and go through Planning Commission for a recommendation to the City Council.

Commissioner McCracken commented if the property is marketed as C-17 and if the new buyer has not thoroughly read the Title Report and isn't aware of what they bought. Is there a way to get out of the agreement before you sell? Chairman Messina said there is the case of "buyer beware" and said it is the responsibility of buyer to do their due diligence. Mr. Adams said it sounded like Commissioner McCracken was talking about process. He explained this is a draft and if the commission would like the process to be more streamlined or special exemptions for purchasers, you can request staff to redraft the ordinance with the changes. Ultimately City Council will be adopting this ordinance and they may make changes. Commissioner McCracken suggested it would be helpful to add something about the process for how a buyer or future owner could change or remove the agreement. Ms. Anderson suggested adding in this type of language in the Development Agreements. Staff may or may not support a termination or amendment for future buyers, and stated that we do not want the process for amendment or termination to be too easy. Commissioner McCracken agreed.

Commissioner Ward compared a Development Agreement to an overlay agreement and said this would be on a larger property with multiple parcels, it wouldn't be on one single-family lot. There would need to be some legal research required. He stated he has worked with Development Agreements previously, although he doesn't claim to have any expertise. His bigger concern is in a phased development and what happens if the developer doesn't want to comply with the agreement for the second phase. It is his understanding that it would then revert back to the original zoning, if the developer is in noncompliance. The question is how to adjust during the middle of the project as a phase closes out. He gave the example of Coeur d'Alene Place as a 30-year phased project and if they were to get to the last phase of 50 acres and how the developer may reevaluate what uses they want in the final phase. He said the draft ordinance includes language on phasing. It is important because the agreement is signed by the owner. The owner is making a guarantee. He asked if future developers of a phase had to get approval from the other owners, or if they could proceed under the agreement to develop the phase as anticipated. He also said the Development Agreements he worked with had the city as a signatory. He also worked on some where the city approved it, but did not sign the agreement. It is important that the city is part of and signed by the city. That eliminates a lot of concerns. As far as the agreement, he thinks we are overplaying it. We could agree to the proposed use and concessions. He also inquired if this agreement was voluntary. Mr. Adams clarified that yes it was voluntary, but if the developer/owner didn't sign the agreement then they would not get the zone change. Mr. Ward asked if it was something other than a zone change, for example a density that was less than what was requested -- for example if they had R-17 zoning and were seeking R-34 but they only wanted 22 units per acre. He asked if they could limit the density to 22 units per acre in the agreement where we are limiting density. Ms. Anderson said that yes that could be outlined in the agreement if they are wanting to limit the density. We have done that with other requests. Mr. Adams said that we have done that with PUDs. The Statute authorizing development agreements seems to tie it specifically to zone changes. Mr. Ward said R-34 isn't a zone change. Ms. Anderson said it kind of is because they are requesting a density increase, which affects zoning. She clarified that a PUD isn't a zone change either, but we have added special use permits with density increases and PUDs in the same category in the draft ordinance because they are both modifying zoning. Mr. Holm stated that Commissioner Ward brings up a really good point, that is are we somehow legalizing variances. Could they do the opposite to increase the zoning above what is allowed by the code. Commissioner Ward said no he didn't think so. Mr. Adams said the City still has to comply with our Zoning Code. We couldn't allow something that is not allowed in the Development Agreement. Ms. Anderson stated that additionally the underlying density has to be allowed and they should never be able to ask for more density that what would be allowed by the request. Mr. Ward inquired if there was a scenario when a developer wanted to

enter into negotiations on an agreement as part of a give and take, but it wasn't tied to a zone change request. Could the City and developer enter into an agreement. Mr. Adams explained that it is possible to enter into agreements and they don't all have to be called a Development Agreement. It wouldn't necessarily be called a Development Agreement under the Statute if it didn't involve a zoning request. But the City can enter into a contract with anyone they like. Commissioner Luttrupp asked if we have ever had one of those. Mr. Adams said not since he has been around. Commissioner McCracken asked if we were creating an opportunity that someone could purchase properties and set up an agreement with the intent to sell the properties with the process already complete. Ms. Anderson said that yes that could happen, but it wouldn't make it easier. They would have to go through the hoops and future buyers may not be interested in all of the conditions. Mr. Adams said it is up to the City to determine if it's in the best interest of the City to do what they are asking. He said we have the ability to say no to the agreement. Mr. Holm said in response to Commissioner Ward's question, the draft ordinance says, "Purchasers of lots in approved subdivisions shall not be third-party beneficiaries of a development agreement." So, it limits owners from buying property from being able to modify the agreement.

Chairman Messina had a question about amendments under C and D. Chairman Messina noted on page 4 of the proposed code, under letters "c" and "d" it clearly explains the process and puts it in simple terms. His opinion is that those two paragraphs say what needs to be done. MS. Anderson suggested incorporating that same language into the Development Agreements so that it is clear. Commissioner McCracken agreed.

Chairman Messina inquired if staff could explain the next steps for this process.

Ms. Anderson stated that staff is requesting any recommendations for changes, and ultimately a recommendation to bring this forward for a public hearing, hopefully at the June meeting. Chairman Messina asked the Commission to share any changes that they would like.

Ms. Anderson asked the group about the need for a public hearing. She added that the State Statutes don't require a public hearing. In the instance where we have a condition of approval that requires a Development Agreement, and asked if it would it be tedious to have another hearing on the agreement. Would the commission consider waving that hearing since you would have already discussed the condition associated with the Development Agreement as part of the development request's public hearing. It would still go to City Council for their review. She wanted input on whether that process was sufficient and if the second hearing could be waived. Commissioner Mandel suggested to authorize staff after the hearing to enter into a Development Agreement pending Council approval. Mr. Adams suggested the motion be recommending council approve the Development Agreement. After the hearing with the Planning Commission, staff would draft the Development Agreement. Commissioner Mandel agreed as the commission would establish the conditions and would make a recommendation. She doesn't see the added value in having a separate hearing. Commissioner Ingalls concurs. The practical matter is that the commission would have already had the hearing and added conditions. He doesn't have concerns if staff adds in other conditions after the hearing. Mr. Holm asked about the scenario when workforce housing was a condition. He asked if the commission would clarify what conditions should be in a Development Agreement. Commissioner Ingalls said in the real world staff comes to the commission for an interpretation. He sees this working in the same way if staff needs further clarification from the commission. Commissioner McCracken asked if the commission should see any agreements or if the process should be the same and staff prepares the agreements after the Planning Commission hearing. Commissioner Ingalls said the commission wouldn't be adding much value by reviewing the draft agreement. The commissioners concurred that they didn't want to slow down the process or see agreements that aren't complete. Commissioner McCracken proposed that all agreements only go forward to the City Council. Commissioner Mandel agreed that the commission does not want to set a precedence or go beyond their scope. Commissioner Ingalls agreed that it is staff's world to work on the agreements. Ultimately there is a recorded hammer that gives you the better enforcement, that is the benefit. Commissioner Luttrupp asked if the reason we are having the public hearing is to get public input on the project from the people affected. Chairman Messina asked if the City Council would have a public

hearing on the agreement. Mr. Adams stated that a hearing would be required as the ordinance is drafted. The commissioners discussed that they would not add much value to the actual agreement. Mr. Holm said that they brought up a good point about amending an agreement and if it needed to come back to the Planning Commission, what would happen if the quorum was different. Commissioner McCracken said that she would like some clarification for the sale of a property and options. Commissioner Mandel said that this would be a likely use cases for the Realtors' Association and NIBCA. Commissioner Fleming suggested that we need to introduce the development agreements as something they are already doing with other jurisdictions and that we are not trying to make it burdensome. Ms. Stuhlmiller stated that the applicant is already reviewing conditions as part of the staff report and noted that if they were needing to review the development agreement before the hearing with Planning Commission, it would slow down the process and make it difficult to coordinate with the applicant. They see the conditions before they go in the packet.

NEXT STEPS:

Chairman Messina asked for any recommendations to be included in the ordinance and to provide direction to staff to move ahead.

Commissioner Mandel asked for clarification on what would be likely triggers for a project that requires a development agreement, such as size. She said it is important to have objective criteria and to be fair and consistent. Mr. Adams referred the commissioners to 17.50.020 Sections A and B. Section A states, "a zone change in conjunction with annexation, a planned unit development, and a conditional zoning request, the developer and/or owner may be required to enter into a development agreement with the City." So that is the basic trigger. Section B references minor requests. He clarified that it is the Director that makes the determination and we will keep the developer informed during the process and they will be aware of the need for an agreement early on in the process. Commissioner Ingalls said the ordinance says a "sizeable project." Mr. Adams said it could also be noted in the application form.

Chairman Messina asked again for direction to staff on any code changes and next steps. Ms. Anderson clarified that the next step would be to bring back the revised ordinance at a public hearing in June with any changes from the commission. Commissioner Luttrupp asked for clarification about public input. Ms. Anderson asked the commission to make any edits now and then can direct staff to make any additional edits at the public hearing.

Commissioner Ward commented that a Development Agreement is a great tool but questioned what would happen if he was a developer and staff recommended that he needed a Development Agreement and he declined, would the application be sent back to the commission or be denied to go forward. Ms. Anderson explained that it would go forward with staff's recommendation that a Development Agreement is required and the applicant could state their case, and the Planning Commission could also make it a condition. The applicant could appeal the recommendation to the City Council.

Commissioner Ingalls motioned for staff to take comments made by the commission and bring the ordinance back with those changes at the June meeting. Commissioner Fleming noted that she has just a few changes. On page 3 at the bottom of the page under "d" in that paragraph that states, "shall be an action." We should clarify "by whom" for specific performance. She stated the language is too loose. Mr. Adams explained that this language is regarding legal action. This refers specifically to breeches by the City, so by the developer or their success that interest. Commissioner Fleming noted on page 4 amendment A, "a development agreement may be amended only in a written document in a writing. She asked if that was a legal thing. Mr. Adams clarified that it was a legalese. Commissioner McCracken asked for clarification on page 4 under amendment A if the successor would be a purchaser. Mr. Adams responded that it would be the purchaser.

Motion by Ingalls, seconded by Fleming, to have staff bring back a draft with the requested changes to the next Planning Commission Meeting on June 14th. Motion passed.

3. Development Impact Fees - A discussion on updating the City's development impact fees, the proposed RFQ for professional services to update the Capital Improvement Plan and fees, and the role of the Commission as the Development Impact Fee Advisory Committee.

Hilary Anderson, Community Planning Director providing the following comments.

Ms. Anderson explained this item is a discussion item and wanted to explain the Commission's role as the Development Impact Fee Advisory Committee tasked by City Code that allows for the Planning Commission to serve in this capacity with two members who are active in real estate and two members employees of official governmental entity who aren't involved in the development industry.

Commissioner Ingalls inquired if we are automatically the Development Impact Fee Advisory Committee or is it a committee that would grab a couple members from this commission kind of like Design Review. Ms. Anderson explained that our City Code states that this commission has been tasked with this role and in 2021 the State Statutes were modified slightly. The Statutes allow for the Planning Commission to serve if they meet the criteria. If a commission didn't meet the criteria, a few members would need to be added. She added with this commission we won't need any new members. The committee will need to have some noon meetings or whatever works in everyone's schedule. She added we may have Glenn Miles, KMPO, as an advisor to the committee. He has served on other committees and he would be a great asset. If he accepts, his role would be acting not as a member but as an advisor.

She stated that the Development Impact Fee Act for Idaho is within the Idaho Code. It allows us to actively collect fees so growth is paying for itself to protect the health, safety and welfare of our citizens. We need to have adequate public facilities for orderly growth establishing minimum standards for adopting our fees and will be hiring a consultant to help us through the process.

Commissioner Mandel inquired if schools were involved. Ms. Anderson explained that schools aren't included as an allowed impact fee but there have been discussions around the State about possibly trying to change the State Statutes to allow the collection of impact fees for schools, but that hasn't happened yet.

She noted that the impact fees we collect are for parks, police, fire and circulation, and that water and wastewater are handled differently through the capitalization fees. She explained one thing we will be looking at is hiring a consultant for assistance updating the fees.. She added that the City of Hayden recently did a Transportation Analysis which is something we intend to do. The consultant would also be asked to help update the Annexation Fees.

Commissioner Ward inquired if circulation is the same as roadway fees. Ms. Anderson answered that is correct. Commissioner Mandel inquired is that because we can access the fees based on the added impact. Ms. Anderson explained working with KMPO the city will use their master plan which will be incorporated into our city transportation plan that includes a 5-year plan. Commissioner Ward explained if someone wanted to donate 3 acres of land to the city would that equate to the cost and questioned if that is allowed. Ms. Anderson explained we have done that with parks in the past if we determined if it's equal or better in value.

Commissioner Mandel inquired if other municipalities like Post Falls, Rathdrum, Hayden are doing the same thing. Ms. Anderson explained that the county is going to start collecting impact fees and Post Falls and Hayden are currently in the process of updating their fees. Commissioner Ingalls inquired if the County will start collecting impact fees that are in the City. Ms. Anderson replied no.

Commissioner Fleming inquired how we can "fast track" this process. Ms. Anderson explained that we have a RFQ started and will be meeting with other departments and inquire what their status is with the CIP (Capital Improvement Plans). She added that we have been asked by Kootenai County Emergency Medical Services System to collect their impact fees determined by the State that they can receive impact fees but don't have a way to collect them so they will be coming to commission in June/July making a presentation. Commissioner McCracken inquired who has collected their fees in the past. Ms. Anderson answered they haven't been collected. Mr. Adams explained that they are allowed to collect impact fees on properties throughout the County but they don't have a way to collect so they are coming to the cities to ask to provide that service. Ms. Anderson stated that one way to collect the fees is through a building permit and once collected our Finance Department would send them a check.

ADJOURNMENT:

Motion by Ingalls, seconded by Luttrupp, to adjourn the meeting. Motion approved.

The meeting adjourned at 1:42 p.m.

Prepared by Shana Stuhlmiller, Public Hearing Assistant