

MINUTES OF SPECIAL MEETING
SUGAR CITY COUNCIL
THURSDAY, MARCH 20, 2008

Presiding: Council President Harold Harris
Meeting Convened at 6:30 p.m.

Present: Marcie A. Smith, Treasurer; Councilmembers Harold Harris, Bruce King, Brad Orme and Lamont Merrill; Vaun Waddell; Scott Lee; Travis Lee; Clair Boyle, and Eddie Pincock. In the absence of City Clerk Sharon L. Bell, Deputy City Clerk/Treasurer Marcie A. Smith took the minutes.

In the absence of Mayor Dalling because of illness, Council President Harold Harris conducted the meeting.

AMENDED ORDINANCE NO. 259 (Annexation of Ball and Jeppesen Properties):

Councilmember Orme introduced Amended Ordinance No. 259 entitled:

“AN ORDINANCE ANNEXING CERTAIN LANDS TO THE CITY OF SUGAR CITY, IDAHO; DESCRIBING SAID LANDS AND DECLARING SAME A PART OF THE CITY OF SUGAR CITY, IDAHO; AND AMENDING AND CHANGING THE ZONING MAP OF 2000, OF THE CITY OF SUGAR CITY, IDAHO, AND THE MADISON COUNTY-SUGAR CITY COMPREHENSIVE PLAN OF 1995, TO SHOW SUCH ANNEXATION AND THE CLASSIFICATION OF THE SAME UNDER THE ZONING ORDINANCE OF THE CITY OF SUGAR CITY, IDAHO; AND PROVIDING WHEN THIS ORDINANCE SHALL BECOME EFFECTIVE.”

It was moved by Councilmember Orme and seconded by Councilmember Merrill to waive the reading on three different days and in full and place it upon its final passage. Thereupon, the Clerk called roll upon said motion.

Those voting aye: Councilmembers Harris, King, Orme and Merrill
Those voting nay: none

Thereupon, the Council President declared that the motion, having been passed by not less than two-thirds of the Council, had been duly carried. It was moved by Councilmember King and seconded by Councilmember Orme to adopt said ordinance. Thereupon, the Clerk called roll upon said motion.

Those voting aye: Councilmembers Harris, King, Orme and Merrill
Those voting nay: none

Amended Ordinance No. 259 was thereupon declared by the Council President to have been duly

passed by not less than two-thirds of the Council, and the Clerk was instructed to publish said Amended Ordinance No. 259 in summary or full immediately in at least one issue of the *Standard Journal*, a newspaper published in the City of Rexburg, Madison County, Idaho.

7:00 p.m. Councilmember Orme was excused.

PROTECTIVE COVENANTS FOR THE BUSINESS PARK: Discussion was had on the Business Park protective covenants. **MOTION:** It was moved by Councilmember King and seconded by Councilmember Merrill that we approve the proposed Protective Covenants of the Sugar City Business Park, as amended; motion carried. See "Attachment 1."

Meeting adjourned at 8:15 p.m.

Signed: _____
Glenn W. Dalling, Mayor

Attested: _____
Marcie A. Smith
Deputy Clerk/Treasurer

Sugar City Business Park Protective Covenants

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Sugar City Business Park Protective Covenants

RECITALS

The City of Sugar City (hereinafter called "City"), a municipal corporation, located in Madison County, Idaho, with its offices located at 10 E. Center Street, Sugar City, Idaho 83448, is the owner of certain real property located in Madison County, Idaho, which is more particularly described in Exhibit A, attached hereto and incorporated herein by reference thereto; and

WHEREAS, it is the desire and intention of the City to develop all of said property as a business park; and

WHEREAS, the City is about to sell, lease, and/or develop the property described in Exhibit A, which it desires to be subject, pursuant to a general plan of improvement, to certain restrictions, conditions, covenants and agreements between it and the several purchasers of said property and between the several purchasers of said property themselves as hereinafter set forth;

NOW, THEREFORE, the City declares that the property described in Exhibit A is held and shall be sold, conveyed, leased, occupied and held subject to the following restrictions, conditions, covenants and agreements between it and the several owners, purchasers and lessees of said property and between themselves and their heirs, successors and assigns:

I. PURPOSE OF COVENANTS AND RESTRICTIONS

For the purpose of enhancing and protecting the value, attractiveness, and desirability of the lots or tracts constituting this development and for the purpose of making this development an enhancement to Sugar City through adherence to standards of statute and community practice, the City declares that all of the following described real property and each part of such property shall be held, sold, and conveyed only subject to the easements, covenants, conditions, and restrictions contained herein, which constitutes covenants running with the land and shall be binding on all parties having any right, title or interest in the described property or any part of such property, their heirs, successors, and assigns, and shall inure to the benefit of each owner of the property.

All of said covenants, restrictions, conditions, and agreements shall be made for the direct, mutual and reciprocal benefit of all of the land described in Exhibit A and shall be intended to create mutual and equitable servitudes upon said land in favor of all other land shown in Exhibit A, and to create reciprocal rights and obligations between the respective owners of all the land shown in said Exhibit A and to create a privity of contract and estate between the Grantees of said land, their heirs, successors and assigns, and shall, as to the owners of said land in said tract, their heirs, successors and assigns, operate as covenants running with the land for the benefit of all land in said business park.

II. CREATION OF REVIEW COMMITTEE

A. Membership and Voting

To administer and supervise the restrictions and protective covenants herein and to give the approvals or consents required, authority is hereby granted to a committee, which shall be known as the Sugar City Business Park Review Committee (hereinafter "Review Committee"). The Review Committee will comprise three representatives of the Sugar City Planning and Zoning Commission and one member of the Sugar City Council, plus one member of Madison Economic Partners Inc. (MEPI).

Although lot owners and community members will have the right to attend all committee meetings as observers, only the five members of the Review Committee will be voting members, with the right to decide matters as required herein. This exclusive voting privilege will continue for a period of at least 1 year from the date of execution of this document. Membership of the five people on the Review Committee is conditioned upon MEPI's agreement to provide management services pursuant to a Property Management Agreement dated April 1, 2008. Should said Property Management Agreement be lawfully terminated or not renewed during the 1-year or longer period, the City will select one new member to serve on the Review Committee.

If, at the expiration of the 1-year or longer period, fewer than 18 lots have been sold, then the original Review Committee shall continue in office at least 1 more year. After the sale of 18 lots, two lot owners may join the Review Committee and serve with full voting powers and authorities until all lots are sold.

Following sale of all the lots in the Sugar City Business Park or termination of the Property Management Agreement with MEPI, the Review Committee shall comprise one representative of the city, one representative of MEPI and three representatives of the lot owners, each with full voting powers and authorities. In overseeing the business park, lot owners may form an association with authority to assess dues.

Regardless of the composition of the Review Committee, all decisions to accept submitted plans in compliance with these covenants must be by majority vote (greater than 50%). Any decision to grant a variance, modification or other exception to the covenants and restrictions, as specifically authorized by these covenants (see sections V(F), VI(B)(2) and XI), requires a two-thirds majority of all voting members.

B. Responsibilities of the Review Committee

The Review Committee shall review and approve the proposed use of each parcel of land, design drawings of the buildings, site and landscaping planned, and any variances requested, keeping in mind the purpose of the business park set forth under "III. Permitted Uses" below.

Formal approval of land use site plans by the Sugar City Design Review Board and Planning and Zoning Commission is required to obtain a building permit. All site plans shall comply with provisions of the Sugar City Code. The Review Committee shall not be liable for damages by

reason of any action, inaction, approval, or disapproval by it with respect to any request made pursuant to this document.

The Review Committee shall have the authority to enforce the provisions of these covenants by all legal means. Should legal action become necessary to enforce these covenants, the prevailing party will be entitled to recover attorneys' fees and court costs associated with enforcing provisions of these covenants.

III. PERMITTED USES

The purpose of the business park is to create a wholesome and accessible location for conducting selective light manufacturing, marketing or research, and professional or business services that do not create a hazard or are not offensive due to appearance or to the emission of noxious odors, smoke, or noise.

Allowed uses in the business park shall include light manufacturing or fabrication; wholesale and distribution; research; professional or business services; and like uses that create benefits to local commerce and provide additional employment opportunities for the community. Any land uses must be approved by the Review Committee and by the Sugar City Planning and Zoning Commission.

IV. PROHIBITED USES

No portion of the property described in Exhibit A may be occupied for any of the following uses:

1. Any use in violation of laws or regulations of Sugar City or Idaho.
2. Residential purposes, except for the dwelling of watchmen or other employees attached to a particular enterprise authorized in the area.
3. Manufacture, storage, distribution or sale of explosives or other hazardous or dangerous materials.
4. Storage of junk, garbage, wrecked autos, or other unsightly or second-hand materials.
5. No portion of the premises or of any buildings or structures thereon shall be used at any time for manufacturing, storage, distribution, or sale of any product or item that increases the fire hazard to adjoining premises or for any business that constitutes a nuisance or causes the emission of odors, smoke or gas injurious to the products manufactured or stored on adjoining premises, or the employees or customers, or that emits noise or vibration which shall injure the reputation of said premises or of the neighboring property.
6. Any commercial retail businesses selling food or alcoholic beverages; retail food markets, restaurants, or fast food establishments on site. However, food or other production facilities whose primary distribution method is by wholesale may operate a retail counter, as long as retail sales do not exceed 10 percent of gross sales.

7. There shall not be erected on any portion of the property set forth in Exhibit A any business offensive, noxious, or detrimental to the intended use of the land as set forth in Section 3, above, nor shall the conveyed property be used for the purposes that, as a matter of common experience, tend to create a nuisance.

8. The Review Committee shall have the right to review the proposed use of the property and shall reserve the right to refuse to approve any plan for use that, in the judgment of the Review Committee, is not in keeping with the stated purpose of the business park. Where a proposed development could become offensive, the Review Committee shall have the right to require special equipment or special design features to overcome such conditions. The Review Committee's right to review proposed uses of property shall be deemed to apply to future changes in proposed uses, whether they be by the original owner, or successors in interest.

V. OPEN AREAS, SETBACKS, ETC.

All buildings that may be erected on any of the property contained in the business park shall maintain the following requirements:

A. Front Yards

Buildings shall not be nearer than 30 feet to the street right-of-way line.

B. Side Yards

Buildings shall not be nearer than 7.5 feet from any side property line separating the lands of different owners, except 30 feet where side yard is on a corner lot facing a street.

C. Back Yards

Buildings shall not be nearer than 7.5 feet from any back property line separating the lands of different owners. On perimeter lots, because of the 10-foot open space easement, buildings shall not be nearer than 17.5 feet from the back property line, and on the north perimeter lots not nearer than 17.5 feet from the nearest point of the canal bank.

D. Size of Building

No more than 50 percent of the property area of any owner shall be covered by the building or buildings.

E. Use of Setback Areas

Within the required setback area from the streets there shall be maintained paved driveways, lawns or landscaping. The Review Committee may, in its sole discretion, require sidewalks within the interior of a lot in order to connect parking lots or improve access between adjoining lots. At least one-half of the surface of the required setback area from the street shall be maintained in lawns and landscaping.

F. Discretionary Setback Variations

The foregoing minimum setbacks and yard requirements have been established to create and preserve an attractive setting for buildings located throughout the subdivision. However, uniformity of setback is not required and accordingly, the committee is authorized, in its sole judgment and discretion, to authorize variations from the minimums on a case-by-case basis when a proposed building or building complex is judged to enhance the street setting rather than detract there from. Such variation must be expressly approved in writing by the Review Committee and cannot be less than would be required by Sugar City Code

VI. PARKING AREAS

Parking areas shall be constructed and maintained by the owners as follows:

A. Parking Setbacks

All parking areas shall be set back a minimum of 10 feet from the street right-of-way line of any streets located within the business park.

All parking areas shall be set back a minimum of five feet from adjoining property lines, except in case of shared parking areas; however, landscaping shall be provided in the vicinity of such common property lines to break the monotony of the parking areas.

Parking shall be set back a minimum of 5 feet from the front of any building.

Parking on corner lots must comply with City setback requirements.

B. Parking Requirements

Parking on streets is prohibited.

There shall be sufficient land allocated by the owner to meet the owner's anticipated parking requirements. As a minimum, there should be one space per 300 sq. ft. of gross floor area if the structure is for commercial or office use. If the structure is for warehouse use, there shall be a minimum of two spaces per 1,000 sq. ft. of gross floor area. The foregoing minimum parking requirements may be modified by the Review Committee in its sole judgment and discretion, which modification must be in writing and must comply with the minimum standards set by the Sugar City Planning and Zoning Ordinances.

C. Parking Surfaces

All parking surfaces must be paved with concrete, asphalt or other hard surface sealing material, must be marked, and must be properly graded to assure adequate drainage.

VII. LOADING DOCKS

There shall be maintained on each site facilities for truck turning, parking, loading, and unloading sufficient to serve the businesses conducted thereon without using adjacent streets or the setback areas thereof. Loading docks are restricted to the area behind the front setback line.

VIII. STORAGE

No land or building shall be used so as to permit the keeping of articles, goods, or materials in the open exposed to public view. When necessary to store or keep such materials in the open, the lot or area shall be fenced with a screening fence at least six feet in height and high enough to fully screen the materials from view of the public as viewed from the streets. Said storage shall be limited to an area behind the front building line. The material and design of all storage structures or fences referred to herein must be approved in writing by the Review Committee, and are subject to the City's Design Review.

IX. SIGNS

The following regulations shall apply to all signs displayed for observation from outside a building whether displayed on, near, or within a building:

A. Permitted Signs

Signs shall be limited to those identifying the uses conducted on the site, to those necessary for directional purposes, and to those required to advertise the rental of the specific property on which the sign is displayed. The size, design, and location of all signs shall require the written approval of the Review Committee prior to installation. Flood lighting of signs at night is acceptable.

B. Prohibited Signs

Outdoor advertising, billboards, or signs with flashing or moving characters shall not be permitted.

C. Area and Location

One sign may be permitted on the front setback line of each lot and one sign may be attached to the side of the building which faces a street. Both signs may state only the name, products and services of the business located on the lot. The sign on the front setback line shall not exceed 75 sq. ft. in area and shall not extend more than 6 ft. in height above the floor line of the building. An approved product or company symbol or device may be used in addition to each sign and, on the front setback line, may extend to any point on the building. Any such symbol or device shall be considered a sign for the purposes of this section and shall require the written approval of the Review Committee prior to installation.

D. Signs in Common Areas

Nothing herein contained shall be deemed to apply to signs constructed in common areas. The content, design, and size of such signs in common areas shall be subject to the approval of the Review Committee.

E. Construction

All signs shall comply with all building codes of the City of Sugar City and with all applicable state and federal rules and regulations.

X. REQUIREMENTS FOR BUILDING AND CONSTRUCTION

A. Building Materials

Any building erected on the property shall be constructed of high-quality construction materials, which shall be defined as including, but not necessarily limited to, the following: masonry construction, tilt up concrete, precast concrete, or equal material as determined by the Review Committee. The exterior finish of the front of the building must consist of face brick, natural rock, or similarly attractive components. Should any building be constructed of plain concrete blocks, tile blocks, or tile brick, the front and sides to a minimum height of three feet must be finished with face brick or their equivalent or better, as determined by the Review Committee. The exterior finish of the remaining side and rear walls must be common or face brick, or concrete block or their equivalent or better, as determined by the Review Committee. All other types of construction must be submitted to and have the written approval of the Review Committee.

A rendering of the drawings, specifications, and sample of materials proposed for use in the construction or alteration of any building, sign, loading dock, parking facility, or landscape planning, must be first submitted to the Review Committee for its written approval. The front and sides of concrete block buildings facing streets shall be painted for aesthetic purposes. Buildings and plans for buildings are subject to the City's Design Review.

B. Other Aesthetic Considerations

All utility services, including but not limited to electrical power, telephone, gas, water and sewer, shall be constructed underground at all building sites in order to preserve a clean and uncluttered appearance for the business park.

The placement on the building roofs of unsightly items such as cooling towers, mechanical equipment, etc., which would have an adverse affect on the aesthetics of the building or the business park will not be allowed unless adequately screened in a matter approved by the Review Committee.

Since backs of buildings on the business park's perimeter lots are exposed to public view, the Review Committee and/or City Design Review are empowered to require building backs to meet aesthetic standards similar to building fronts.

C. Refuse, Trash, and Sewage Disposal Systems

No refuse or trash shall be kept, stored, or allowed to accumulate on any lot. No cesspool, septic tank, or other sewage disposal system or device shall be installed, maintained or used upon any parcel.

All effluents discharged into the sanitary or storm sewer lines shall meet the requirements of the City of Sugar City ordinances.

XI. CONSTRUCTION TIME LIMITS

If, after the expiration of two years from the date of a sales or lease contract or other disposition of any property within the business park, any purchaser shall not have begun in good faith a construction or an acceptable building upon any portion of said property, the Review Committee retains the option to refund the purchase price or lease deposit without interest and enter into possession of said land. At any time, the Review Committee may extend in writing the time in which such building may begin.

XII. LANDSCAPING AND MAINTENANCE

A. Permissible Landscaping

Landscaping of the site may be in the form of grass lawns, natural ground covers such as wood, bark, or rock, shade trees, and shrubs. Landscape treatment includes the use of walls, screenings, terraces, fountains, pools, and other water arrangements. The area between the street curb line and the building or the street curb line and paved parking area shall be landscaped with lawn and/or shrubs and may include other landscaped treatments, except drainage swales shall be fully landscaped with grass and grass only. Plantings in areas used as dividers, street trees, and shade trees in parking areas are encouraged.

Landscaping plans shall be submitted to the Review Committee for written approval prior to installation. Landscaping and landscape plans are subject to the City's Design Review.

B. Maintenance of Lot

The owners or tenants of the developed land in the business park must at all times keep the premises, buildings, and improvements, including all parking and planting areas, in a safe, clean and wholesome condition. All areas of the property not covered by improvements shall be kept free of weeds.

Any owners or tenants shall remove at his or her own expense any rubbish of any character accumulated on his or her property and will at all times keep shrubs and lawns properly trimmed and the exterior of all buildings in a well maintained and attractive condition.

XIII. ASSESSMENT FOR MAINTENANCE OF COMMON AREAS AND COMMON FACILITIES

A. Annual Assessments

The Review Committee may assess each owner for the cost of maintenance and operation of the common areas and facilities. The owner of each lot shall be subject to a periodic assessment on at least an annual basis for the costs of maintenance and operation of such common areas and improvements, multiplied by a fraction, the numerator of which is the land acreage of each such lot and the denominator of which is the total land acreage of all platted lots within the entire property.

B. Special Assessments

In addition to the assessments authorized above, the Review Committee may levy, in any year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any reconstruction, repair, or replacement of a capital improvement upon the common areas or facilities as may be necessitated by normal wear and tear or damages by the elements.

C. Covenant to Pay Assessments, Liens, Etc.

The City covenants, for each lot owned within the property, and the owner of any lot, by acceptance of a deed therefore, whether or not it shall be expressed in such deed, is deemed to covenant and agree to pay to the Review Committee the assessments described in this section. Such assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which such assessment is made and shall also be the personal obligation of the person who was the owner of such property at the time the assessment fell due. The personal obligation for delinquent assessments shall not pass to an owner's successors in title unless expressly assumed by them.

D. Interest on Unpaid Assessments

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Review Committee may bring an action at law against the owner personally obligated to pay the same and/or foreclose the lien against the property. Owner will be obligated for all attorneys' fees incurred by the Review Committee in bringing an action at law against the Owner. No owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the common areas and facilities or abandonment of a lot.

E. Subordination of Lien

The lien on the assessments provided for herein shall be subordinate to the lien of any first mortgages and deeds of trust. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to foreclosure of any first mortgages and deeds of trust, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to

payments which became due prior to such date or transfer but shall not extinguish the liability of the owner therefore. No other sale or transfer shall relieve such lot from liability for any assessment thereafter becoming due or from the lien thereof. In the event that the management or maintenance of the common areas and facilities is undertaken by a public entity, there shall be no assessments, quarterly or special, levied pursuant to these covenants with respect to any common areas and facilities, the responsibility of maintenance on operation for which is assumed by said public entity, but said public entity may levy its customary taxes or assessments to provide for such maintenance and operation.

XIV. COVENANTS RUN WITH THE LAND

It is understood and agreed that these conditions and restrictions shall operate as covenants running with the land and that a breach or violation thereof may be enjoined, abated, or remedied by appropriate proceedings by the said Review Committee and/or other owners of said lots or parcels of land in the park or their heirs, successors, assigns, or bona fide purchasers under contract. Invalidation of any of the foregoing restrictive covenants shall not affect the validity of any other such covenants, but the same shall remain in full force and effect.

XV. MODIFICATIONS AND AMENDMENTS

Any modification or amendments to these Protective Covenants shall be made by a two-thirds (66.67%) vote of the existing members of the Review Committee during the period of time in which the business park is managed by MEPI. Following the expiration of 1 year, the sale of all lots in the subdivision, or the termination of the Property Management Agreement with MEDCO, whichever occurs earlier, modifications or amendments to these covenants shall only be made by a two-thirds (66.67%) vote of each lot owner. Each property owner will be entitled to one vote per lot owned in the business park. Any amendment or modification to these covenants must be recorded and are subject to the standards and regulations of the Sugar City Planning and Zoning ordinances.

DATED This 27th of March, 2008.

THE CITY OF SUGAR CITY,
a municipal corporation

By: Glenn W. Dellinger

Position: Mayor

ATTEST:

Sharon L. Bell

Sharon L. Bell, City Clerk

(SEAL)

EXHIBIT A – SUGAR CITY BUSINESS PARK

Legal Description

The Sugar City Business Park is part of the Southwest 1/4 of Section 4, Township 6 North, Range 40 East of the Boise Meridian:

Commencing at the West ¼ Corner of Said Section 4, thence S89°55'54"W, 612.83 feet along the east/west centerline of Section 4 to a point on the easterly right of way line of U.S. Highway 20, thence N89°55'54"E, 682.25 feet along the east/west centerline of Section 4 to the True Point of Beginning;

Thence N89°55'54"E, 573.89 feet along the east/west centerline of Section 4 to a point on the westerly right of way line of the Eastern Idaho Railroad;

Thence S30°07'08"W, 1252.54 feet along the westerly right of way line of the Eastern Idaho to a point on the northerly right of way line of Center Street;

Thence N53°10'36"W, 177.97 along the northerly right of way line of Center Street to the westernmost corner common to remnant parcels 2 and 3;

Thence N53°10'36"W, 198.58 feet along the northerly right of way line of Center Street to an Idaho Transportation Department right of way monument;

Thence N46°45'29"W, 165.08 feet along the northerly right of way line of Center Street to an Idaho Transportation Department right of way monument;

Thence N46°45'29"W, 363.17 feet along the northerly right of way line of Center Street to an Idaho Transportation Department right of way monument;

Thence N53°10'36"W, 226.36 feet along the northerly right of way line of Center Street to an Idaho Transportation Department right of way monument on the easterly right of way line of U.S. Highway 20;

Thence N33°30'04"E, 388.37 feet along the easterly right of way line of U.S. Highway 20 to an Idaho Transportation Department right of way monument recovered on the southerly right of way line of County Road 3500 North (3rd North Street);

Thence N89°55'54"E, 706.14 feet along the southerly right of way line of County Road 3500 North (3rd North Street) to a point;

Thence N00°04'06"W, 36.0 feet to the True Point of Beginning, said parcels contain 20.69 acres more or less.