

MINUTES OF REGULAR MEETING  
SUGAR CITY COUNCIL  
THURSDAY, JULY 13, 2017

Presiding: Mayor David D. Ogden  
Meeting Convened at 6:30 p.m.  
Prayer: Joe Cherrington  
Pledge of Allegiance

Present: Mayor David D. Ogden; Clerk-Treasurer Wendy McLaughlin; Councilmen Bruce King, Bruce Arnell, Matt Garner, and Joe Cherrington; City Public Works Director Zane Baler; Chairman Brent Barrus of the Planning and Zoning Commission; Commissioner Dave Thompson of the Planning and Zoning Commission; City Attorney Bill Forsberg and Assistant Attorney Dylan Anderson; Attorney Michael W Brown for Jeff and Ryan Lerwill, Citizens for the Rule of Law Attorney Forrest Fitcher; Randy Johnson of Forsgren Associates, Kylie Anderson of Forsgren Associates; Kurt Roland of Eagle Rock Engineering, and several citizens listed below.

**PUBLIC HEARING (Reconsideration of the Findings, Conclusions, and Recommendations for Division #3):** Mayor Ogden welcomed everyone and brought the public hearing to order. Councilman King read a brief statement to the public as to why he chose to recuse himself from any further discussion or decision as part of the council. He then stepped down from the podium.

Mayor Ogden then introduced Attorney Trent Grant as the hearing officer for this public hearing. Mr. Grant stated that he was impartial and independent of the matter before the hearing and not affiliated with any of the entities. He then presented a brief review of the procedure for the public hearing to more than 115 citizens who crowded into the city conference hall. Mr. Grant then introduced the two main purposes for the public hearing, the preliminary plat and zone changes for Division #3 of Old Farm Estates. A Motion to Reconsider was filed by the Citizens for the Rule of Law. The council granted another public hearing for those who did not have a chance to testify and for any new information not brought forth at the Planning and Zoning public hearing held on 6 April, 2017.

Mr. Grant asked the council if there had been any ex parte communication or conflict of interests to which they replied there had been none. Clerk-Treasurer Wendy McLaughlin reported that all required notices were published, mailed, and posted in a timely fashion as required by law.

Several items were made part of the record:

- Findings, Conclusions, and Recommendation for a Preliminary Plat Division #3 Old Farm Estates
- Findings, Conclusions, and Recommendation for a Zone Change Division #3 Old Farm Estates
- Hearing Publication Affidavit
- Motion for Reconsideration

- Points and Authority
- All written testimony (including those letters submitted after the deadline)

The names of those submitting prior written testimony were read into the record: Jess Brown, Bo Crofoot, Joyce Cromar, Debra Johnson, Richard Johnson, Elaine King, Jim Martin, Greg and Elaine Preslar, Janae Raty, Richard Rembish, Sarah Romrell, William Schofield, Vaun Waddell, Gene Weller, and Mary Lou Wilding. Walt Kolditz submitted his written testimony at the meeting. All were against the findings and recommendations adopted by the council. Citizens were reminded to treat all with respect, to be civil and courteous. No name calling, cheers, boos, hisses, amens, and etc would be allowed. The council will take comments from the public and can also ask questions of the public, but the public will not be allowed to ask questions of the council and will be limited to 3 minutes each.

The owners of the subject property were represented by Attorney Mike Brown. Owner Ryan Lerwill was also present and helped with the opening statement. Attorney Brown reminded everyone of the extensive and careful consideration Planning and Zoning went through before their recommendations and findings were given to the council. All procedures and decisions concerning Old Farm Estates Division #3 were done within the law and city code as stated in the Points and Authority (Attachment #1). Ryan Lerwill used a large map to show the public the plans he has for Division #3 which include a possible regional YMCA center, a medical center, park, recreation area, and cottage homes. 1400 apartment units are not feasible when considering supply and demand, area size and mandatory green space, parking, and roads spaces, and should not be presented as fact even in a worst case scenario.

Attorney Forrest Fisher represented the Citizens for the Rule of Law. He maintained that the open meeting law was violated because the meeting hall was inadequate to accommodate all who wanted to testify. Due process was denied, the applications were incomplete, the Comprehensive Plan was violated and disregarded, procedures were ignored, insufficient information was not given to the public, and notice to the public was defective. The only way to fix all the problems is to start back at the beginning with a public hearing in Planning and Zoning.

Citizens who attended, include the following:

Adair, Richard	Brown, Jesse	Cook, Miriam
Ball, Joy	Brown, Virginia	Cook, Spencer
Barker, Devan	Butikofer, Sam	Cutler, Lisa
Barker, Heidi	Christensen, Renee	Eaton, Joseph
Barney, Mary Louise	Clark, JoAnn	Eaton, Mychelle
Barney, Wells Ray	Clark, Ron	Fuquay, Beau
Bean, Coleen	Cleverley, Nantalie	Fuquay, Hannah
Bird, Connie	Cobia, Craig	Furness, Dewey
Brandt, Becky	Cook, Jeff	Furness, Vicky

Galbraith, Kevin  
Galbraith, Kristin  
Galbraith, Merilee  
  
Griggs, Jeff  
Griggs, Jim  
Griggs, Sheila  
Griggs, Terri  
Haacke, Clyde  
Haacke, Rosida  
Harris, Bryan  
Harris, Ganene  
Harris, Harold  
Harris, Janine  
Hemsley, Linda  
Hibbert, Kurt  
Hirschi, Derrick  
Hoopes, Necia  
Howard, Kami  
Humphries, Alana  
Jackman, Harvey

Jeppson, Becky  
Jeppson, Joan C.  
Jeppson, Paul  
  
King, Elaine K.  
Kofford, Marc  
Kolditz, Walt  
Lerwill, Kalle D.  
Lerwill, Ryan  
Loosli, Stephen  
Lusk, Barbara  
Mackay, Tom & Karen  
Madsen, Ralph & Betty  
Mattson, Nakia  
Millet, Boyd  
Millet, Joan  
Moon, Bev  
Morgan, Craig  
Morris, Darcee  
Morris, Lori Ann  
Morris, Makaila

Morris, Zachery  
Moser, Kerry  
Nelson, Glen and  
Bonnie  
Nelson, Grant  
Nielsen, Catherin  
Nielsen, Jade  
Nielsen, Lawrence  
Nielsen, Robert S.  
Olliphant, Mark  
Owens, Quinton  
Palmer, Sharee  
Peck, Teya  
Pinnock, Brooke  
Pinnock, Glade  
Pinnock, John  
Presler, Greg  
Rembish, Kathleen  
Rembish, Richard  
Ricks, Karalee

Ricks, Charles  
Roberts, Robert J.  
Romrell, Natella  
Sharp, Alaina  
Smith, Heidi  
Smith, Roger  
Sommer, Annette  
Speakman, Gene  
Strong, Brent & Kelly  
Thompson, Debra  
Tillery, Chrystal

Tingy, Karri  
Virgin, Debbie  
Virgin, Kade  
Waddell, Vaun  
Wegner, Mike & Beth  
Whittington, Bill  
Wilding, Verle  
Williams Suzanne  
Williams, Travis  
Williams, Troy

Citizens listed whether they were for, against, or neutral at sign in, and all those signing in to testify were given the opportunity to make comments if they would like.

### **In Favor**

Mr. Grant called for those in favor of approving the Council's decision to adopt the Findings on the Preliminary Plat and Zoning changes for Division #3.

Stephen Loosli – introduced himself as a potential investor looking at bringing a medical

services center - surgery center, health clinic, overnight clinic, and research. The center would bring many good jobs into the area. He is only interested in this particular area and hopes he has an opportunity to come here.

Craig Morgan – testified that he has lived here all his life and would welcome apartments and new people and diversity. He said that back in 1968 the population of Sugar City was 720 and today it is a little over 1500 – not much growth.

Those in favor who did not testify were Kalle Lerwill, Kurt Roland of Eagle Rock Engineering. (Attorney Michael Brown and Ryan Lerwill testified in the opening statement).

**Neutral**

Mr. Grant called for those neutral to the Council’s decision to adopt the Findings on the Preliminary Plat and Zoning changes for Division #3

Kylie Anderson, Becky Brandt, Jesse Brown, Sam Butidofer, Jeff Cook, Kevin and Kristin Galbraith, Kurt Hibbert, Paul Jeppson, Randall Johnson, Marc Kofford, Grant Nelson, Glade Pinnock, Natella Romrell, Alaina Sharp, Brent and Kelly Strong, Karri Tingy, Kade Virgin, Mike and Beth Wegner, and Bill Whittington, and all indicated they were neutral. Kurt Hibbert indicated he wanted to testify but voluntarily left early. There were no testimonies given.

**Against**

Mr. Grant called for those indicating they are against the Council’s decision to adopt the Findings on the Preliminary Plat and Zoning changes for Division #3.

- |                     |                     |                       |
|---------------------|---------------------|-----------------------|
| Adair, Richard      | Christensen, Renee  | Fuquay, Beau          |
| Ball, Joy           | Clark, JoAnn        | Fuquay, Hannah        |
| Barker, Devan       | Clark, Ron          | Furness, Dewey        |
| Barker, Heidi       | Cleverley, Nantalie | Furness, Vicky        |
| Barney, Mary Louise | Cook, Miriam        | Galbraith, Merilee    |
| Barney, Wells Ray   | Cook, Spencer       | Griggs, Jeff          |
| Bean, Coleen        | Cutler, Lisa        | Griggs, Jim           |
| Bird, Connie        | Eaton, Joseph       | Griggs, Sheila        |
| Brown, Virginia     | Eaton, Mychelle     | Griggs, Terri         |
| Haacke, Clyde       | Hoopes, Necia       | Kolditz, Walt         |
| Haacke, Rosida      | Howard, Kami        | Lusk, Barbara         |
| Harris, Bryan       | Humphries, Alana    | Mackay, Tom & Karen   |
| Harris, Ganene B    | Jackman, Harvey     | Madsen, Ralph & Betty |
| Harris, Harold      | Jeppson, Joan C.    | Mattson, Nakia        |
| Hemsley, Linda      | King, Elaine K.     | Millet, Boyd          |
| Hirschi, Derrick    | King, Bruce         | Millet, Joan          |

Moon, Bev	Nielsen, Robert S.	Ricks, Karalee
Morris, Darcee	Oliphant, Mark	Ricks, Charles
Morris, Lori Ann	Owens, Quinton	Smith, Heidi
Morris, Makaila	Palmer, Sharee	Smith, Roger
Morris, Zachery	Peck, Teya	Sommer, Annette
Moser, Kerry	Pinnock, Brooke	Speakman, Gene
Nelson, Glen and Bonnie	Pinnock, John	Thompson, Debra
Nielsen, Catherin	Presler, Greg	Tillery, Chrystal
Nielsen, Jade	Rembish, Kathleen	Virgin, Debbie
Nielsen, Lawrence	Rembish, Richard	Waddell, Vaun
Wilding, Verle		
Williams Suzanne		
Williams, Travis		
Williams, Troy		

Those who testified brought out the following:

- Procedures and decisions were not done by law or code
- 1400 apartment units is more of a reality than a medical center or YMCA
- No published reasoned decisions
- No transparency in city government
- Public information was lacking or confusing
- Development goes against the Comprehensive Plan
- Councilman King should not have been asked to recuse himself
- Roads are inadequate to handle 1600 cars
- Voice of citizens were not heard
- Used fear to push through own agenda such as Rexburg will swallow us up if we do not allow growth
- Not against the right growth
- Schools cannot handle any more students
- Planning and Zoning was ignorant and did not do their homework
- We need more businesses in the Business Park instead
- School district was not included in testimony, Sugar City is already diverse enough
- Start over from the beginning and do it right
- Hire a city administrator so that things are done right
- 98% of citizens are opposed to the decision
- Would welcome more businesses but not apartments
- Way of life and Comprehensive Plan have been jeopardized
- To maintain the predominance of residential living we must be exclusive
- Developers/City have opened the door for sweeping changes to our way of life that we cannot get back

The developer was given time to at the end of public testimony for rebuttal. He welcomed the enthusiasm for growth but was concerned about at what point the citizens would actually be satisfied with the procedures or if they would ever be satisfied.

9:50 p.m      The public hearing ended.

**PUBLIC HEARING (Environmental Impacts of Proposed Water System):** Mayor Ogden welcomed everyone and brought the public hearing to order and introduced Randy Johnson of Forsgren and Associates. Mr. Johnson briefly reviewed the findings of the study to find potential impacts to wildlife, water quality, wet lands, cultural resources, and species that the proposed new water tank and well might have on the surrounding area. The study is a mandatory requirement from the Department of Environmental Quality (DEQ) when applying for a new well. Little or minimal impacts were observed and an approval from DEQ is expected within the next few weeks.

Clerk-Treasurer Wendy McLaughlin reported that there were no prior written testimonies submitted and reported that all required notices were published and posted in a timely fashion as required by law.

The mayor called for those in favor of approving the proposed revisions. No one testified.

The mayor called for those neutral to approving the proposed revisions. No one testified.

The mayor called for those against approving the proposed revisions. No one testified.

10:07 p.m      The public hearing ended, and the council convened its regular meeting.

**DISCUSSION ON RECONSIDERATION OF OLD FARM ESTATES ZONE CHANGE AND PRELIMINARY PLAT DIVISION #3:** The council tabled the discussion and decision until next week Thursday, July 20<sup>th</sup> for review.

**DISCUSSION AND POSSIBLE MOTION TO ADOPT THE PROPOSED DRINKING WATER IMPROVEMENTS:** No discussion or motion.

**MINUTES:** (The minutes and reconciliation reports were done prior to the public hearing while giving time for the citizens to sign in for the public hearing). Mayor Ogden asked if there were any corrections to the minutes of the regular meeting held on June 29, 2017. Each councilman had a copy of the minutes prior to the meeting. It was moved by Councilman Garner and seconded by Councilman King to accept the minutes; motion carried.

**RECONCILIATION REPORTS:** Wendy presented the June reconciliation reports for the General Fund. It was moved by Councilman Garner and seconded by Councilman Arnell to accept the June reconciliation reports for the General Fund; motion carried. Wendy presented the June reconciliation reports for the Utility Fund. It was moved by Councilman Arnell and seconded by Councilman Cherrington to accept the June reconciliation reports for the Utility Fund; motion carried.

Wendy presented the current bills in the amount of \$193,916.84. It was moved by Councilman Garner and seconded by Councilman King to pay the current bills, together with all regular July bills; motion carried.

**PLANNING AND ZONING COMMISSION REPORT:** No report

**MAYOR'S REPORT:** No report.

**DEPARTMENT REPORTS:**

**COUNCILMAN KING:** No report

**COUNCILMAN CHERRINGTON:**

**Community Breakfast:** Councilman Cherrington reminded everyone of the community breakfast this Saturday July 22 from 7:00 am – 10:00 am.

**COUNCILMAN ARNELL:** No report

**COUNCILMAN GARNER:** No report

Meeting adjourned at 10:20 p.m.

Signed: \_\_\_\_\_  
David D. Ogden, Mayor

Attested: \_\_\_\_\_  
Wendy McLaughlin, Clerk-Treasurer

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*Attorneys for Ryan Lerwill and Jeff Lerwill*

**BEFORE THE CITY COUNCIL OF SUGAR CITY, IDAHO**

In re: Application for a Zone Change of Two  
Parcels of Property Commonly Known as  
Old Farm Estates, Division No. 3, to MU-1  
and MU-2.

Memorandum of Points and Authority

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Ryan Lerwill and Jeff Lerwill (collectively the “Property Owners”), through counsel Beard St. Clair Gaffney PA, respectfully submits the following Memorandum of Points and Authority in support of the Property Owners’ position regarding the zoning change of Old Farm Estates, Division No. 3, which will be addressed the Sugar City Council Meeting on July 13, 2017.

**BACKGROUND AND INTRODUCTION**

On May 25, 2017 the City Council of the city of Sugar City (hereinafter “the Council”) adopted Ordinance No. 326\_2017 (hereinafter “the Decision”), which approved an amendment to the zoning map of the city of Sugar City in order to provide for the approval of the preliminary plat of Division No. 3 of Old Farm Estates. Thereafter, an unincorporated association of citizens describing themselves as “Sugar City Citizens for the Rule of Law” (hereinafter “Concerned Citizens”) filed a motion for reconsideration of the Decision to adopt the Findings, Conclusions, and Recommendation of the Sugar City Planning and Zoning



Commission, dated May 10, 2017 (hereinafter “the P&Z Decision”). At a special meeting held on June 19, 2017, the Council granted the motion for reconsideration and set for public hearing reconsideration of its May 25 decision to adopt Ordinance No. 326\_2017.

The Council’s apparent desire to provide a forum for the Concerned Citizens to express viewpoints about Old Farm Estates is laudable, as it reflects Sugar City’s commitment to foster an environment in which citizens are encouraged to engage in civic matters. The fervor the proposed development of Old Farm Estates has engendered in this community is unmistakable, but it is common in communities in which new development is considered. Observing this fact is not intended to be a dismissive gesture to the Concerned Citizens. However, it is recognition of the fact that any proposed development will have its proponents and its detractors, and any decision by elected officials will inevitably please some and disappoint others.

Here, the Council is tasked with the responsibility of determining the relatively narrow issue of whether a zoning change should be granted to permit Division No. 3 of Old Farm Estates to proceed. This decision should be based on applicable law, as it currently exists. Contrary to the assertions of some of the Concerned Citizens, the issue before the Council is not whether the Comprehensive Plan should be revised or whether certain features of the Comprehensive Plan, such as the concept of multi-use zones, were ill conceived in the first place. Under applicable law, the Council is given significant latitude to approve or deny zoning change requests and to interpret its own zoning regulations. *See Neighbors for a Healthy Gold Fork v. Valley Cty.*, 145 Idaho 121, 126, 176 P.3d 126, 131 (2007). The substantive basis on which the City Council’s Decision remains sound, and the Council, after affording community members an additional opportunity to express their viewpoints before and including the July 13

public hearing, should again adopt the well-reasoned P&Z Decision and approve the Property Owners' requested zoning change.

### LEGAL AUTHORITY AND ANALYSIS

**I. The Council's decision approving the proposed zoning change was appropriate under Idaho law and Sugar City's Comprehensive Plan.**

**A. The Council's decision was in accordance with the Comprehensive Plan, and the Council's Decision is entitled to deference.**

The Council's Decision approving the zoning change is both appropriate under Idaho Code § 67-6511 and in accordance with Sugar City's Comprehensive Plan. While zoning districts "shall be in accordance with the policies set forth in the adopted comprehensive plan," *see* Idaho Code § 67-6511 (2017), this language, as explained by the Idaho Supreme Court, does not elevate a comprehensive plan to that of a binding zoning law or ordinance. The Idaho Supreme Court has repeatedly held that "[a] comprehensive plan is *not a legally controlling zoning law, it serves as a guide* to local government agencies charged with making zoning decision." *Evans v. Teton County*, 139 Idaho 71, 76, 73 P.3d 84 (2003) (emphasis added). *See also Bone v. City of Lewiston*, 107 Idaho 844, 850, 693 P.2d 1046, 1052 (1984) ("Our holding is supported by a large body of case law which states that comprehensive plans do not themselves operate as legally controlling zoning law, but rather serve to guide and advise the various governing bodies responsible for making zoning decisions." (internal citations omitted)).

Contrary to what the Concerned Citizens claim in their Motion for Reconsideration (Mot. for Recons. 3), the requirement that zoning decisions be made "in accordance with" a city's comprehensive plan "does not require zoning decisions to strictly conform to the land use designations of the comprehensive plan." *Evans*, 139 Idaho at 76, 73 P.3d at 89 (citing *Bone*, 107 Idaho at 850, 693 P.2d at 1052; other internal citations omitted). A municipal

comprehensive plan does not operate on a “snapshot” mentality, forever locking in all zoning designations and prohibiting or hindering community growth. It is axiomatic and undisputed that communities such as Sugar City will continue to grow through the decades, and Sugar City’s comprehensive plan “reflects the ‘desires, goals and objectives, or desirable future situations’” for Sugar City. *Urrutia v. Blaine County*. 134 Idaho 353, 357, 2 P.3d 738, 742 (2000) (citing Idaho Code § 67-6508).

Indeed, Sugar City’s Comprehensive Plan notes its advisory, rather than legally binding, role in land use planning:

The multiple-use zoning district in the city ordinances, however, is *guided only indirectly by the comprehensive plan*. Lands are designated for multiple use *on a case-by-case basis* as directed by the ordinance, consistent with values and goals in the comprehensive plan.

(Comprehensive Plan at 15 (emphasis added).) The Concerned Citizens cite the above language in their Motion for Reconsideration as a basis for why the Council’s Decision approving the proposed zoning change is impermissible spot zoning and violative of Idaho law. (Mot. for Recons. 3.) However, that precise language, on which the Planning and Zoning commission relied, is quoted directly from Sugar City’s comprehensive plan. The issue of spot zoning will be addressed *infra*. It is illogical therefore to argue that Sugar City’s “adoption of MU-1 and MU-2 zones in this case violates the requirement of Idaho Code § 67-6511(2)(c) which requires all zoning district boundary changes to be in accordance with the Comprehensive Plan” because Sugar City’s Comprehensive Plan expressly supports the Decision. It appears the Concerned Citizens take issue with the general concept of MU-1 and MU-2 zones. If that is the case, then the Concerned Citizens have chosen the wrong forum to address their concerns.

The express language of the Comprehensive Plan itself establishes that it is to be considered a guide for zoning designation decisions, rather than absolute, binding legal

authority, in keeping with Sugar City’s acknowledgement that “growth in the region will bring growth to Sugar City, meaning expansion of residential areas and also expanding needs and opportunities for commercial and public services.” (Comprehensive Plan at 3.)

The Idaho Supreme Court has provided additional clarification regarding a governing body’s role in seeing that zoning designations are made “in accordance with” a comprehensive plan on the “case-by-case” basis established in the Comprehensive Plan:

We hold that “in accordance with” is a question of fact. What a governing body charged to zone “in accordance with” under §67-6511 must do is make a factual inquiry into whether the requested zoning ordinances or amendment reflects the goals of, and takes into account those factors in, the comprehensive plan in light of the present factual circumstances surrounding the request.

*Bone*, 107 Idaho at 850, 693 P.2d at 1052. Ultimately, “[w]hether approval of a zone change is ‘in accordance with’ the comprehensive plan is a question of fact.” *Evans*, 139 Idaho at 76, 73 P.3d at 89 (internal citations omitted). Here, the Council has considered, and, by the time it has held the July 13 public hearing, presumably will have further considered, a substantial amount of information to guide it in its factual inquiry, including without limitation citizen testimony, public entity comment, and planning and zoning commission reports. The Council’s Decision was in accordance with Idaho law, including the requirement that zoning changes be in accordance with the Comprehensive Plan.

**B. The proposed zoning change is not impermissible spot zoning.**

The Council’s decision approving the proposed zone change was not, as suggested by the Concerned Citizens, spot zoning impermissible under Idaho law. (*See* Mot. to Recons. 4.) As noted by the Idaho Supreme Court, “[a] claim of ‘spot zoning’ is essentially an argument the change in zoning is not in accord with the comprehensive plan.” *Evans v. Teton County*, 139

Idaho 71, 76, 73 P.3d 84, 89 (2003) (citing *Price v. Payette County Bd. of Comm'rs*, 131 Idaho 426, 432, 958 P.2d 583, 589 (1998)). The *Evans* court defined two types of spot zoning:

Type one spot zoning may simply refer to a rezoning of property for a use prohibited by the original zoning classification...The test for whether such a zone reclassification is valid is whether the zone change is in accord with the comprehensive plan...Type two spot zoning refers to a zone change that singles out a parcel of land for use inconsistent with the permitted use in the rest of the zoning district for the benefit of an individual property owner...This latter type of spot zoning is invalid.

*Evans*, 139 Idaho at 76-77, 73 P.3d at 89-90 (internal citations omitted). The Concerned Citizens have based their claim of spot zoning on the first of these categories - the rezoning of property for a use prohibited by the original zoning classification. The Concerned Citizens argue that the proposed zoning change to mixed-use zones would lead to "case-by-case spot zoning." (Mot. to Recons. 4.) However, the case-by-case approach of which the Concerned Citizens complain is the very process outlined in the Comprehensive Plan, as noted above. The Comprehensive Plan expressly contemplates that multiple-use zoning designations are to be determined on a "case-by-case" basis. Because the case-by-case approach is in accord with the comprehensive plan, under the *Evans* test the purported type one spot zoning complained of by the Concerned Citizens is valid and appropriate under both Idaho law and the Comprehensive Plan.

**C. The Council's prior decision was appropriate based on facts in the record.**

Based on the record, including the application submitted by the Property Owners, the Council's adopted findings of fact regarding its approval of the proposed zoning change was also sufficient under Idaho Code § 67-6535, which requires that:

The approval or denial of any application required or authorized pursuant to this chapter shall be in writing and accompanied by a reasoned statement that explains the criteria and standards considered relevant, states the relevant contested facts relied upon, and explains the rationale for the decision based on the applicable

provisions of the comprehensive plan, relevant ordinance and statutory provisions, pertinent constitutional principles and factual information contained in the record.

IDAHO CODE § 67-6535 (2017). “An agency’s findings of fact will stand if supported by substantial and competent, although conflicting, evidence in the record.” *Jasso v. Camas County*, 151 Idaho 790, 793, 264 P.3d 897, 900 (citing *Terrazas v. Blaine County*, 147 Idaho 193, 196, 207 P.3d 169, 172 (2009)). The findings adopted by the Council, as promulgated by the Planning and Zoning Commission, were supported by substantial and competent evidence in the record. In the P&Z Decision, adopted by the Council, the Planning and Zoning Commission included, among other information:

1. The proposed zoning changes and the legal descriptions of the impacted property;
2. A list of individuals present at the public hearing;
3. Minutes of the public hearing;
4. A list of present individuals in favor of and opposed to the proposed zoning changes;
5. Commentary from those present regarding their opinion as to the proposed zoning changes;
6. A summary of the benefits expressed by those in favor of the proposed zoning changes and the concerns expressed by those neutral to or opposed to the proposed zoning changes; and
7. An express reference to the evidence in the record, including the application, attached documents and maps, and testimony presented at the public hearing.

(P&Z Decision.) After incorporating the following information, the Planning and Zoning Commission set forth its Findings. Given the extensive nature of the information contained in the P&Z Decision, it is difficult to ascertain what additional information the Concerned Citizens

would like to see included in the P&Z Decision. Simply put, the P&Z Decision, as adopted by the Council, is a reasoned statement that explains and references the relevant criteria, standards, and facts, including contested facts, utilized by the Planning and Zoning Commission, and later the Council, in approving the proposed zoning change, that contains an explanation of the rationale for the findings, as adopted by the Council. The P&Z Decision, as adopted by the Council, is supported by substantial and competent evidence in the record, and was therefore appropriate under Idaho law.

**D. The Council appropriately considered the effect of MU-1 and MU-2 zones.**

The P&Z Decision, which the Council adopted, reflects a thoughtful and considered review of the effect of the zoning change, including the effect of MU zones. For example, the P&Z Decision incorporates a detailed summary of many issues raised by hearing attendees, both in favor of and against the zone change. It is simply unsupported by the record to suggest the Council's Decision did not identify contested facts on which its decision was based. In their Motion to Reconsider, the Concerned Citizens make much ado of the fact that they cannot meaningfully evaluate the proposed zoning change "because of the unlimited nature of uses permitted in the MU-1 and MU-2 zones." (Mot. Recons. 4.) The Concerned Citizens appear to demand that the Property Owners provide a detailed disclosure of what type of structure will be built on each and every lot in all of Division No. 3. It would be impossible for the Property Owners to comply with such an unreasonable expectation, as many lots in the proposed Division No. 3 cannot be sold until prospective purchasers have confidence in the types of uses permitted on those lots.

The Concerned Citizens further argue that "Multiple use zoning is essentially no zoning at all because it allows 'lands in *any* land use classification on the Land Use map.'" (*Id.*) Here,

the Concerned Citizens appear to be arguing against the concept of MU zones generally speaking, not whether the zoning map should be amended to permit Division No. 3 to be zoned as MU-1 and MU-2. The issue of whether MU zones in Sugar City should exist is not the issue under consideration before the Council. MU zones exist in the Comprehensive Plan, and it is the prerogative of the Property Owners to apply to Sugar City to change the zoning of their property to a zone designation fully contemplated by the Comprehensive Plan. The Property Owners should not be required to expand the scope of review of their lawful application to afford the Concerned Citizens an opportunity to re-litigate the wisdom of adopting MU zones in the first place.

**II. No party will be prejudiced by the Council approving the proposed zoning change.**

Importantly, no party will be prejudiced or suffer due process violations by the Council approving the zoning change. The Idaho Supreme Court articulated the requirements to ensure a party's procedural due process rights are protected in a zoning dispute similar to the matter at hand:

Procedural due process requires some process to ensure that the individual is not arbitrarily deprived of his or her rights in violation of the state or federal constitutions...This requirement is met when the defendant is provided with notice and an opportunity to be heard...The opportunity to be heard must occur at a meaningful time and in a meaningful manner in order to satisfy the due process requirement.

*Neighbors for a Healthy Gold Fork v. Valley County*, 145 Idaho 121, 127, 176 P.3d 126, 132 (2007) (internal citations omitted). The Concerned Citizens and all other parties interested in the proposed zoning changes have had myriad opportunities to be heard in a meaningful manner at a meaningful time. As established by the record, multiple hearings regarding the proposed zoning changes have been held, with at least one hearing lasting more than three hours to provide each participant the opportunity to speak to the issue. (See Minutes of Regular Meeting, Sugar City



Council, Thursday, May 25, 2017.) Subsequent hearings provided five more hours of deliberation. Local media outlets have covered the proposed zoning change extensively, including publishing a letter to the editor from Elaine King, one of the Concerned Citizens, in The Upper Valley Standard Journal on or about May 29, 2017.

The Concerned Citizens make claim in their Motion for Reconsideration of insufficiencies of process regarding notice of the April 6, 2017 hearing. (Mot. for Recons. 1.) However, as the record reflects, the Concerned Citizens had adequate notice of the proceedings sufficient to overcome any perceived failures in providing notice of the April 6, 2017 hearing or the proposed zoning change. After hearing a similar argument in *Neighbors for a Healthy Gold Fork*, the Idaho Supreme Court determined that though the petitioners argued they were not properly served notice of a proposed zoning change, because the record showed the petitioners (and their counsel) presented evidence at a public hearing, all of which was considered by the Valley County Board of Commissioners, the petitioners had an adequate opportunity to be heard, and were not denied due process.

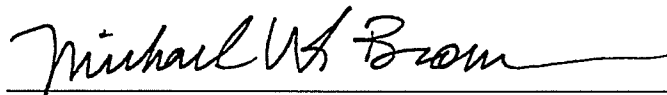
Like the petitioners in *Neighbors for a Healthy Gold Fork*, the Concerned Citizens cannot meet their legal burden of showing actual harm caused by any alleged due process violations related to the Council's decision approving the proposed zoning changes. "Only those whose challenge to a decision demonstrates actual harm or violation of fundamental rights, not the mere possibility thereof, shall be entitled to a remedy or reversal of a decision." *Neighbors for a Healthy Gold Fork*, 145 Idaho at 129, 176 P.3d at 134. As noted above and as evidenced in the record, the Concerned Citizens and any other interested parties had numerous opportunities to express their opinions regarding the proposed zoning changes. Because the Concerned Citizens have had meaningful opportunities at meaningful times to make their feelings known

vis-a-vis the proposed zoning change, their due process rights have not been violated. Likewise, no parties will be prejudiced by the Council upholding its decision to grant the requested zone change.

**CONCLUSION**

For the reasons set forth above, *supra*, the Council's May 25, 2017 Decision was both appropriate under Idaho statutory law and in accordance with Sugar City's Comprehensive Plan. The Council should uphold and confirm its Decision to adopt Ordinance No. 326\_2017.

DATED: July 11, 2017.



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