

MINUTES

McCall City Council Regular Meeting Thursday, March 24, 2005

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CALL TO ORDER AND ROLL CALL

Mayor Eimers called the regular meeting of the McCall City Council to order at 6:06 p.m. Council Member Bertram, Council Member Muller, Council Member Greer, Council Member Robertson, and Mayor Eimers answered roll call. A quorum was present.

City staff members present were Lindley Kirkpatrick, City Manager; Bill Keating, Public Works Director; Anne Kantola, Library Director; Roger Millar, Community Development Director; and Dan Irwin, City Clerk.

Mayor Eimers announced that Mr. Kirkpatrick had requested that an item be added to the agenda to approve the Timbercrest Downtown final plat. He asked if the Council would like to amend the agenda.

Council Member Muller stated that he doesn't like late additions being made to the agenda without having the opportunity to review the material beforehand.

Mr. Kirkpatrick stated that the final plat for the Timbercrest Downtown Condominiums was a part of the I&I reduction project agreement approved by the Council at their last meeting. He stated that the item should have been included on the last agenda.

The Council decided not to add the item to the agenda. Council Member Robertson suggested that the item be added to the next Council agenda along with the findings and conclusions for the Fox Ridge and Lick Creek Meadows zoning request.

PUBLIC HEARING

AB 05-61 ZON-05-2 Whitetail, A Club for All Seasons request for zoning designation upon annexation / Ordinance No. 805

Mr. Kirkpatrick introduced the agenda bill. He stated that the Council will be conducting two public hearings in regard to the Whitetail development. He stated that the first public hearing is for the applicant's request for zoning designation upon annexation, and the second is for the Planned Unit Development application. Mr. Kirkpatrick stated that the Planning and Zoning Commission has conducted public hearings in regards to both applications and have been presented with the preliminary plat for the development. He explained that the Council will have an agenda bill for a final plat at a future meeting. Mr. Kirkpatrick stated that the applicant's request was to zone the property a mixture of zone type A, zone type R-5, and zone type R-10. He stated that the Planning and Zoning Commission has recommended zoning the property as requested with no additional conditions of approval. He stated that the Council will also be conducting a public hearing in regards to the PUD application.

Mayor Eimers stated that the public hearing for the PUD application wasn't indicated on the agenda.

Mr. Kirkpatrick requested that the public hearing for the PUD application be added to the agenda. He stated that the PUD application is intricately linked to the zoning request upon annexation. He stated that the public notice that was published and sent to adjoining property owners included both items. He stated that the addition of the PUD application was simply overlooked when the agenda was prepared.

Council Member Robertson stated that the public hearing for the PUD application could be added to the agenda and not acted upon by the Council. He stated that he would like to hear the public testimony in regards to the application but needs additional time to review the materials that were given to the Council only minutes before the start of the meeting. Council Member Robertson stated that he would like to withhold taking action on the PUD application until he has time to review the materials. He is willing to act upon the zoning upon annexation request since the issue is non-controversial.

Council Member Bertram suggested that the Council hold a work session in the future before acting upon large development requests. She stated that the Council needs to have sufficient time to read and understand the materials before making a decision.

Mayor Eimers moved to amend the agenda to include a public hearing for the Whitetail Planned Unit Development application. Council Member Robertson seconded the motion. All Council Members voted aye.

Mr. Kirkpatrick stated that draft findings and conclusions have been prepared for the Council which reflect the findings and conclusions issued by the Planning and Zoning Commission. Mr. Kirkpatrick stated that the findings and conclusions were prepared as a result of many hours of testimony received during the public hearings at the Planning and Zoning Commission level. He stated that four public hearings were conducted by the Commission and a site visit took place.

Council Member Robertson asked if both public hearings should be conducted concurrently or if they should be heard separately. He stated that it seems the Council will be able to reach a decision on the request for zoning upon annexation but will probably need to continue the public hearing for the PUD application.

Mayor Eimers stated that he would like to conduct two separate public hearings.

Mr. Kirkpatrick stated that both of the applications are very closely linked. He stated that after going through both applications during the Planning and Zoning process, the presentation for the zoning designation is very much dependent upon the details contained in the PUD application.

Council Member Robertson suggested that the applicant should have the opportunity to decide if he would like to present both applications together or separately.

Steve Millemann, representative for the applicant, stated that since the Council has determined to conduct two separate public hearings he will limit his first presentation to the zoning request unless the Council has specific questions about the project. Mr. Millemann stated that 95% of the testimony received at the public hearings was in regard to the anticipated traffic on Club Hill Blvd. He said that the Planning and Zoning Commission has issued a very specific condition of approval that addresses that concern. Mr. Millemann stated that the application before the Council is for the annexation of 730 acres located outside the city limits. He stated that the Herrick property is currently zoned as type A and C. He explained that the PUD property is zoned as a mixture of A, C, R-5, and R-10. Mr. Millemann stated that the density allowed under the current zoning would allow one unit per 2.25 acres which equates to 350 units. He stated that the proposed zoning request doesn't significantly deviate from the existing zoning. Mr. Millemann identified the zoning areas on a graphical map to orient the Council. He explained that the only change under the proposed zoning request is to square off the area zoned as type A residential to provide for more consistency. Mr. Millemann stated that under the proposed zoning request a total of 224 units are planned to be developed. He stated that if the project was fully developed under the proposed zoning request three lots in the PUD would provide for a higher density and could result in up to 248 units. Mr. Millemann stated that the proposed zoning request would provide for considerably less density than what is currently allowed under the existing zoning designation and in the comprehensive plan. He explained that the density allowed by the Payette Lakes Recreational Water and Sewer District will be the ultimate limiting factor in determining the density. Mr. Millemann stated that the City will gain substantial benefits if the annexation request is approved. He stated that it is expected that approximately \$100 million would be added to the City's tax base if the bare land is added to the boundaries of the City. He stated that approximately \$200 million would be added to the City's tax base at 50% build out. Mr. Millemann explained that private roads have been proposed in the development that will be entirely maintained by the homeowners association and have no impact on City services. Mr. Millemann stated water service would be provided to the development by the City and sewer service would be primarily served by the Sewer District. He stated that approval of the annexation would allow for the completion of the westside water master plan and the placement of a one million gallon water tank. He stated that the applicant will replace the entire West Lakeside Water Line during Phase 1 of construction in order to provide sufficient supply. Mr. Millemann stated that the only other demand on the City would be for emergency services.

Council Member Robertson stated that he understands that the cost for the water pipes would be borne by the developer. He asked if the cost for the water tank would be paid for by the City.

Mr. Millemann stated that the cost for the water tank would be a joint venture. He stated that the infrastructure cost is almost entirely paid by the developer. He stated that he is

currently working with City staff on a development agreement as required under the conditions of approval established by the Planning and Zoning Commission.

Mayor Eimers explained that the public hearings have been isolated into two components. He stated that the first component relates only to the request for zoning upon annexation and the second relates to the PUD application. Mayor Eimers clarified that the current issue being discussed is only the issue of zoning upon annexation.

Mayor Eimers opened the public hearing at 6:42 p.m.

Don Griffiths asked how the cost arrangement for the water tank would be split between the City and the developer.

Mayor Eimers stated that the details of the development agreement are being negotiated by City staff and the developer. He stated that the details of the agreement will be finalized before the final plat of Phase 1 is approved.

Steve Millemann stated that an extensive amount of work has been completed by Secesh Engineering and Holladay Engineering. He believes enough data exists to begin finalizing the details of the development agreement.

Council Member Bertram asked what capacity of water supply is required under the westside master plan.

Mr. Kirkpatrick stated that one million gallons is cited under the plan.

Don Griffiths asked who would be responsible for negotiating the details of the development agreement with the developer.

Council Member Robertson stated that the development agreement will be negotiated by the City Manager, City Attorney, and Planning and Zoning Commission.

Council Member Bertram asked for clarification about the density allowed by the Payette Lakes Water and Sewer District as compared to the zoning approval.

Steve Millemann stated that a total of 248 units would be allowed under the Sewer District's approved density for the project. He explained that the applicant has proposed to develop 248 units even though the zoning request would allow for 350 units.

Hearing no further comments, Mayor Eimers closed the public hearing to public testimony at 6:46 p.m.

Council Member Robertson stated that a density of 200 units was approved for the development four years ago. He stated that the annexation of the property will be beneficial to both sides. He stated that the City will expand its tax base and the westside water master plan will be completed.

Council Member Muller asked if any infrastructure problems were encountered by Secesh Engineering or Holladay Engineering. He stated that he was aware of possible pressure issues and maintenance costs.

Jim Fronk, Secesh Engineering, stated that he has been working with Holladay Engineering for the plans of Phase 1 and 2 of the development. He stated that the first phase entails the upsizing of lines and replacement of the Lake Street line. Mr. Fronk stated that a booster pump will be installed during Phase 2 that will provide water to the tank which will flow back down by gravity. He stated that the master plan has always envisioned pumping water to supply the water tank.

Council Member Bertram asked if the maintenance costs would be shared under the terms of the agreement.

Mr. Fronk stated that he understands that the City will be responsible for the maintenance costs after the completion of the project. He stated that the ongoing maintenance should be minimal.

Council Member Robertson moved to adopt the draft findings and conclusions for ZON-05-2 and to suspend the rules and read Ordinance No. 805 by title only, one time only. Mayor Eimers seconded the motion. In a roll call vote, Council Member Muller, Council Member Greer, Council Member Bertram, Council Member Robertson, and Mayor Eimers voted aye. The motion carried.

Mr. Kirkpatrick read Ordinance No. 805 by title only.

Council Member Robertson moved to adopt Ordinance No. 805. Mayor Eimers seconded the motion. In a roll call vote, Mayor Eimers, Council Member Muller, Council Member Robertson, Council Member Greer, and Council Member Bertram voted aye. The motion carried.

PUD-05-1 Whitetail

Mr. Kirkpatrick summarized the findings and conclusions issued by the Planning and Zoning Commission for approval of the application. He stated that applicant has requested that the roads within the development be designated as private. He said that the Planning and Zoning Commission issued a condition of approval requiring that all of the roads be built to City standards and provide for emergency access. Mr. Kirkpatrick stated that the Planning and Zoning Commission issued conditions of approval that require the developer to comply with the proposed outdoor lighting standards being reviewed by the Commission for implementation in the revised zoning ordinance, obtain and comply with the terms of all federal, state and county permits or approvals which are necessary to implement the General P.U.D. Plan, and provided for conditions for tree removal located outside of approved roadways.

Council Member Greer asked who wrote the condition regarding tree removal outside of approved roadways.

Mr. Kirkpatrick stated that the condition of approval was written by Don Bailey. He stated that the requirements are very similar to what was required of the developers of Aspen Ridge.

Mr. Kirkpatrick stated that other conditions of approval issued by the Planning and Zoning Commission address landscaping, require that progress reports be filed with the Commission every six months after approval of the first preliminary plat and PUD general development plan until all infrastructure is completed, and requires the commitment for the construction of the greenbelt be satisfied. Mr. Kirkpatrick stated that items L&M of the findings and conclusions address the issue of private roads and gates which arose as a result of the public testimony received during the public hearings. He stated that his position on those two items differs from those of the Planning and Zoning Commission. Mr. Kirkpatrick stated that the McCall City Code provides a mechanism for the establishment of private roads but doesn't define how their use is regulated. He explained that that conditions established by the P&Z's findings and conclusions require that one of the roads become public and prohibit the establishment of any gates. Mr. Kirkpatrick stated that after reviewing the City Code and consulting with the City Attorney, he believes that there are no provisions in the McCall City Code that would allow private roads but prohibit the establishment of gates. He stated that his conclusion is different from the one that was reached by the Planning and Zoning Commission. He said that he doesn't think the City has the authority to regulate private roads by prohibiting the establishment of gates. He thinks that private property owners are allowed to control access upon their property. Mr. Kirkpatrick stated that the issue of gates was the main topic of discussion at the public hearings.

Council Member Robertson asked if the preclusion of gates would be allowed on public roads.

Mr. Kirkpatrick confirmed that the establishment of public roads in the development would allow the City to prohibit the establishment of gates.

Council Member Bertram asked if Mr. Kirkpatrick's opinion would be changed if public infrastructure was installed through the roads.

Mr. Kirkpatrick stated that the condition wouldn't change his opinion. He stated that the developer would grant easements to the City for infrastructure projects. He stated that the granting of an easement for water or sewer lines is not the same as granting a road for public access.

Council Member Muller asked if there was any precedence set in case law that would allow the City to prohibit the installation of gates on private roads based upon the language of the comprehensive plan.

Mr. Kirkpatrick stated that the public testimony presented at the P&Z public hearings presented eloquent arguments for the banning of gates. He stated that it is his opinion that there is a difference between a definitive statute in the Code compared to a general statement contained in the comprehensive plan. He stated that other communities have prohibited gates by passing a regulatory ordinance but the Planning and Zoning Commission made their decision based upon language contained in the comprehensive plan. Mr. Kirkpatrick stated that he is uncomfortable imposing conditions of approval without clear legislative authority.

Council Member Bertram asked why the Planning and Zoning Commission came to the conclusion that the developer didn't demonstrate sufficient cause that private roads should be approved.

Mr. Kirkpatrick stated that during the course of the public hearing, the developer presented the rationale for the establishment of private roads. He stated that the Commission disagreed with the developer's request and established the condition of approval as a result. He stated that the Commission cited that the developer did not demonstrate sufficient cause that private roads should be approved. He stated that the Commission reasoned that the road in the development that connects to Gun Hill road should be considered as a collector street as it was proposed with a 70 foot wide right-of-way. Mr. Kirkpatrick explained that the McCall City Code states that a collector street must be dedicated to the public. Mr. Kirkpatrick explained the hierarchy of streets defined in the McCall City Code. He explained that local streets are designed to filter into collector streets which eventually filter into arterial streets.

Council Member Bertram stated that she would like to hear the definitive reasons from the Planning and Zoning Commission why they opposed the approval of private roads.

John Sabala, applicant, stated that he had recently moved to McCall with his family. He said that as the person responsible for overseeing the operations of Whitetail he always keeps the interests of the City in mind when making decisions. He stated that he would like to meet with the City officials to discuss the interests and needs of the community with them. Mr. Sabala introduced the members of the Whitetail Development team. He stated that the members of the team have spent hundreds of hours preparing a quality development application. Mr. Sabala stated that under the development plan he is committed to providing quality land management, low density, protection of the trees, and is committed to the community. He said that the development will create new jobs in addition to the property tax benefits to the City. Mr. Sabala stated that Whitetail is committed to providing affordable housing to their employees and will construct a greenbelt that will provide community access to the land. He stated that he is willing to accept all of the conditions of approval issued by the Planning and Zoning Commission except for the elimination of the gates and private roads. Mr. Sabala stated that the creation of private roads will not place a burden onto the City for maintenance. He stated that the development would provide many financial benefits to the City without requiring a large demand on public services. Mr. Sabala stated that some members of the public have voiced their concerns about the establishment of gates. He stated that

the future residents will support the community by spending revenue in the City and will provide benefits to all citizens in the area. Mr. Sabala stated that the golf course was designed before the concept of the development was pursued. He stated that roads will be required to be constructed through the golf course as a result. He stated that gates are needed in order to control access in the golf course. Mr. Sabala stated that there are 27 properties in the region that will serve as a direct competition to the development. He stated that 20 of those communities are gated and only two that have public roads contained in them. Mr. Sabala stated that the future residents who move into the development will support the community of McCall.

Steve Millemann, representative for the applicant, stated that the only real controversial issue brought out during the public testimony received at the Planning and Zoning Commission meetings was in regard to Club Hill Boulevard. He stated that testimony received in regards to gates was equal on both sides of the issue. Mr. Millemann stated that the project will provide for low density and has 256 acres of open space platted. He said that the project will provide significant tax revenue to the City without placing a heavy burden onto City services. Mr. Millemann stated that the tax revenue generated by the property would allow the City Council to provide significant property tax relief to the other residents in the City. He explained that approval of the project will allow for the completion of the westside water plan and will establish a greenbelt for public enjoyment. He stated that the development will provide a significant economic boost to the local economy. Mr. Millemann said that the existence of gates will not stop residents from being a part of the community and that the residents will contribute to the City in many ways. He stated that that the project received unanimous approval from the Planning and Zoning Commission with several conditions of approval. He commended the Commission's work in the process, but stated that he disagrees with the Chairman's views on gates. Mr. Millemann identified the layout and orientation of the property on a map. He stated that the application has had significant review from City Staff, the City Engineer, and the Fire Department.

Council Member Robertson inquired where Club Hill Boulevard was located.

Mr. Millemann identified the location of the road on the map. He explained that the road is maintained by the County and provides access to the King's Pines subdivision. Mr. Millemann stated that the Planning and Zoning Commission issued a condition of approval that requires the developer to obtain written confirmation from Valley County and the Idaho Transportation Department approving the applicant's plans for the use of Club Hill Blvd.

Council Member Bertram asked if Gun Hill road was paved.

Mr. Millemann stated that it is a dirt road that is maintained by the County. He stated that the P&Z Commission established a similar condition of approval for the use of the road in its findings and conclusions.

Mr. Millemann stated that the applicant invited three neighborhood groups to review the plans for the development prior to submitting the application to the City. He stated that several meetings were held and a traffic analysis was presented. Mr. Millemann stated that a consensus still hasn't been reached with the residents of King's Pines. He thinks that the recommendations made by the Planning and Zoning Commission to obtain County and State approval for the use of the two roads is the responsible approach to the situation. He stated that the neighborhood meetings were conducted out of respect of the neighbors and to attempt to address any concerns before the process began.

Mr. Millemann explained that the total project encompasses 782 acres. He stated that the application provides for a higher density in a couple of lots to enable the developer to construct employee housing. He stated that amenities in the development will include a golf course, pools, lakefront views, tennis courts, and a trail system. He stated that the developer has proposed constructing a greenbelt that will serve as a public amenity. Mr. Millemann stated that the portal to the greenbelt will begin at the Little Ski Hill and continue through two miles of the development. He stated that the overall plan is to assist in connecting the path throughout the City. Mr. Millemann stated that the Planning and Zoning Commission issued a condition for the developer to provide the surface for the path and implemented a time restriction for its completion.

Council Member Bertram stated that the former pathways committee had always wanted the paths to have a 14' surface but the project calls for a 10' surface. She asked if the new committee has changed the standard of design.

Mr. Millemann stated that the group had met with the Pathways Committee and followed their suggestions. He stated that acquisition of a few parcels adjoining the development would eventually establish the most impressive greenbelt in the country. He stated that the developer has met with all of the bike committees to locate a 501(C)3 organization that could be granted the project. He stated that the goal to establish the connected greenbelt needs to begin and that Mr. Sabala is willing to set a precedence of private developers constructing the path.

Council Member Bertram asked if any gates or fences would be located along the path.

Mr. Millemann stated that there isn't a plan to establish parallel fencing along the path.

Council Member Bertram asked if any wetlands in the area would present potential problems to the development.

Mr. Millemann stated that wetlands exist on the property but the project will be manageable.

Council Member Bertram asked if there were any additional access points to the development besides Club Hill Boulevard.

Mr. Millemann stated that there are four different access points to the development located on Boydston Street, Gun Hill Road, Club Hill Boulevard, and Crawley Lane. He stated that the Planning and Zoning Commission collected significant amounts of information about the Club Hill access. He stated that the County Engineer has informally reviewed the plan for the Club Hill access and indicated it would be feasible if designed correctly. He stated that road was stubbed out to the property by the County in anticipation of future development. Mr. Millemann reiterated that the Planning and Zoning issued a condition of approval that requires the developer to obtain approval from the County and Idaho Transportation Department for extending the road.

Mr. Kirkpatrick added that a fifth access point exists on the road that accesses the maintenance facility.

Mr. Millemann confirmed that the fifth access exists. He stated that road was never intended as a main access to the development. Mr. Millemann added that the condition of approval established by the P&Z Commission requiring the traffic study of Gun Hill Road also exists for Club Hill Blvd.

Mr. Millemann stated that the residents of King's Pines presented testimony supporting the installation of gates to control the amount of construction traffic. He explained that the gates need to be installed since the design of the golf course predated the development and will require roads to be installed throughout the course.

Mr. Millemann stated that the development plan has been well prepared and complies with the requirements of the City Code. He stated that developer is willing to comply with all of the conditions of approval adopted by the Planning and Zoning Commission except for the issues of private roads and gates. Mr. Millemann stated that in the City ordinance there are provisions for both private and public roads. He stated that public roads are controlled and maintained by the City. He stated that private roads are controlled and maintained by a private person. Mr. Millemann said that the City Council has the right to act with discretion but the Planning and Zoning Commission is required to act in accordance with the provisions of the ordinance. He stated that the only examples in case law where denials of gates were upheld were in instances where cities had adopted ordinances specifically banning the installation of gates. Mr. Millemann stated that the State Supreme Court recently ruled against the City of Coeur d' Alene's ordinance banning fences around the lake based upon a takings ruling. He stated that it isn't his intention to make a legal argument to the Council as he just wants to make sure that their decision is fair and right. Mr. Millemann stated that Whitetail has proposed to build and maintain their own roads without public support. He stated that there is no public land that adjoins the streets of the development and the roads will only access the homes in the development. Mr. Millemann stated that roads will have to be constructed through the Whitetail Golf Course in order to access the homes in the development. He stated that unrestricted access can't be allowed as result. He stated that the need for private roads is functionally driven in order to manage traffic through the golf course.

Council Member Bertram asked how people would access the development if gates were installed.

Mr. Millemann stated that the development would be accessed by either voice contact or a keypad combination.

Mr. Millemann stated that need for private roads and gates are due to the fact that the homes will be vacant more often than in a typical development. He believes the approval of the gates is both legal per the City's ordinance and is functional for the design of the project. Mr. Millemann requested that the Council apply the conditions of the City's ordinance and approve the development request.

A break was taken from 8:29 p.m. to 8:49 p.m.

Mayor Eimers opened the public hearing to public testimony at 8:49 p.m.

Harold Wiking, 1408 Club Hill Blvd., stated there is potential access to the development from State land along Adams County. He stated that the potential access point has been identified to the developer but there hasn't been any effort to investigate the possibility. He stated that the development will eventually need to develop on the Adams County border and they should be required to investigate the potential access point.

Mike Smith, 1042 Bitterroot, stated that he supports the project for the expansion of the tax base and economic stimulus that will be provided by the future residents of the development, and appreciates the design of the greenbelt plan. Mr. Smith stated that the project is currently gated and hasn't established a lack of community involvement. He stated that there isn't a need to be driving around in the development unless a person owns property there. He stated that it is naïve to think that tourists will not drive through the property to look at the homes.

Brigid Wiking, 129 Sue Drive, stated that she is opposed to gated communities because of the negative effects that they bring. She stated that Spokane, Washington doesn't have a specific ordinance banning gates but still doesn't allow them to be installed. She stated that the City's comprehensive plan promotes the connectivity among the community and gates will not allow that goal to be met. She would like the Council to respect the decision made by the Planning and Zoning Commission. Ms. Wiking stated that Ketchum, Idaho recently adopted an ordinance to ban gates based upon the negative effects which they bring. Ms. Wiking stated that Apple Valley, California has approved gated communities and is now facing problems with the visual aesthetics of their installation along the highway. She stated that the issue is community wide and would like the Council to uphold the decision made by the Planning and Zoning Commission.

Jim Hinson stated that when he moved to McCall five years ago the community had a strong resentment to Whitetail and felt alienated by the gated golf course. He stated

that over that time the community hasn't suffered any ill effects from the installation of the gates. Mr. Hinson stated that private property owners should have the right to develop their property in the manner as they see fit.

Don Griffiths, 235 Ernesto, stated that he recently moved to McCall from Winter Park Colorado. He said that he moved to the area because Winter Park had begin to change from the friendly atmosphere he was used to. Mr. Griffiths stated that the issue comes down to determining what the face of the community should look like. He doesn't believe that security is an issue in the development as the homeowners will be able to afford security systems. Mr. Griffiths stated that the establishment of gates will construct barriers. He stated that McCall is a friendly place and he would like it to remain as such.

Charles Griffin, Club Hill Blvd., asked about the condition of approval that requires the developer to obtain County and ITD approval for the use of Club Hill Blvd. He stated that the condition isn't listed on the draft findings and conclusions that have been prepared for the Council.

Mr. Kirkpatrick clarified that the Planning and Zoning Commission granted other conditions of approval for the preliminary plat application. He stated that the Commission has acted upon the preliminary plat which doesn't come before the Council. He stated that the requirement for the developer to seek the approval for the use of Club Hill Blvd. and Gun Hill Road by the County and State will be contained in the subdivision approval which will be presented to the Council with the final plat.

Don Bailey, Planning and Zoning Commission Chairperson, stated that conditions in the Whitetail development have changed. He stated that the current request is for the development of a subdivision with streets and homes which is a big difference from a private resort with one gate. Mr. Bailey stated that a clause was left out of paragraph L of the findings and conclusions that have been presented to the Council. He stated that the clause finds that the road identified as Whitetail Drive to Road 5 and Road 6 to Gunhill Road is proposed as a 70 foot wide ROW street; and upon review of the McCall City Code, it is apparent that the road is a collector street and must be dedicated as a public street. Mr. Bailey explained that the McCall code defines a collector street as a street designated on the comprehensive plan that is designed for the purpose of carrying traffic from minor streets to other collector streets or arterial streets of which the ROW must not be less than 70 feet in width. Mr. Bailey said that after reviewing the streets proposed in the development plan, it was apparent that the street in question was designed as a collector street. He stated that the code also specifies that the right of way for collector and arterial streets shall not be private property, but must be dedicated; where the actual collector or arterial use of the right of way is in the judgment of the Commission not a near-term use, the Commission may authorize interim construction as a private roadway without public maintenance. Mr. Bailey stated based upon those conditions, the Planning and Zoning Commission determined that the street that connects Boydston to Highway 55 is a collector street and must be a public street. He stated that the Commission recommended that the road be private for a period of

three years for infrastructure development. Mr. Bailey stated that the code defines a private street as a street not accepted by the City for public maintenance, but requires that it be dedicated to the public. He said that the question of opening of a private road for public maintenance remains at the discretion of the Council. Mr. Bailey stated that he interprets those code sections to require that all of the remaining streets are dedicated to public use and the City determines which streets are public and which are private. Mr. Bailey said that there is no mention of gates in the City code or comprehensive plan but there are requirements for connectivity and preserving the character of the City. He stated that based upon the Commission's interpretation of the comprehensive plan it was determined that gates weren't appropriate for the City.

Robert Sweetgall, 1422 Club Hill Blvd., stated that the argument that the design of the golf course warrants the need for the installation of the gate isn't justified. He said that when he resided in St. Louis there was a golf course that had an intricate road installed through it. He added that the sewer permits were allocated to the development several years before the golf course was constructed so the developer should have made plans for the road system. Mr. Sweetgall voiced concerns about pedestrian safety on the hairpin corner that will lead into the development. Mr. Sweetgall stated that he would like to see a final design of the road rather than taking the County Engineer's word that the project is feasible.

Darren Johnson stated that he currently owns homes in two other gated communities and plans on building another in the Whitetail development. He stated that the residents of Whitetail will still be a part of the community. Mr. Johnson stated that he would like to see the gates installed to provide for the security of his family and the development. He stated that the majority of homes in the development will be vacation homes which are more vulnerable to burglaries. He stated that gated communities are self-sufficient and the homeowners association will provide for the maintenance of the private roads. Mr. Johnson stated that he currently resides on Boydstun and the roads are poorly maintained. He stated that the installation of gates will make the development more attractive to buyers of the property.

Dawn Griffin stated that the fencing that will be installed on the property will block the views of the forest. She stated that the property values in the development will increase even without the installation of gates. Mrs. Griffin stated that property owners can install security systems in their homes if they are concerned about security.

Kevin McKee stated that he is the current chairman of the Capital City Development Corporation and formerly served on the Planning and Zoning Commission in Boise. He stated that while serving on the Planning and Zoning Commission he attempted to make sure that all rulings were made in conjunction with the regulatory laws. Mr. McKee urged the Council to approve the development.

Bob Youde, Planning and Zoning Commissioner, stated that he believes the Planning and Zoning process worked. He stated that the Commission let all testimony and hearings to be held. Mr. Youde stated that the proposal is a tremendous project but he

is opposed to the establishment of gates. Mr. Youde stated that the developer has requested annexation which would make them part of the community. He stated that the establishment of gates are anti-community and do not conform to the connectivity of the community required in the comprehensive plan.

Rachel Dugan, 23 Hembeck, questioned if the residents of King's Pines should have the opportunity to comment since the area hasn't been annexed. She stated that gated communities are established to provide safety and security. She said that the purchasers of property in the development are able to feel safer because of the limited amounts of traffic that are allowed. Ms. Dugan stated that property values increase in the communities because of the pride of ownership and feel for community togetherness. She stated that the amenities contained in gated communities are usually superior. Ms. Dugan stated that the residents of the development will still be involved in the community of McCall.

Ken Keifer stated that he has a friend who resides in Donnelly and a new high density subdivision is being developed next to his home. He stated that the Whitetail will be a low density development with a lot of open space. Mr. Keifer stated that the majority of the lots will be accessed from the lower roads and believes the upper road still needs work. He stated that jobs will be created from the approval of the development and many school children will have the opportunity to become employed there.

Rick Mooney, 1420 Gun Hill Road, stated that Couer d' Alene and Pebble Beach require private access to their golf courses. He stated that the majority of developments that Whitetail will be competing against are gated. He believes the installation of gates will make the project better.

Charlie Taber, 815 Pinedale, stated that he thinks the development of the greenbelt is a good idea but doesn't think he'll see much use of it. He would like to see the Boydston extension of the path completed for connectivity. Mr. Taber stated that he doesn't believe that approval of the project will result in property tax relief. He believes his taxes will actually increase because of the increasing property values. Mr. Tabor stated that he thinks that the Council should set a precedent on the establishment of gates. He believes that the installation of gates will close the development from being a part of the community.

Guy Rivers, 1510 Club Hill Blvd., stated that he has safety concerns about the use of Club Hill to access the development. He likes the condition of approval from the Planning and Zoning Commission that requires a traffic impact study to be completed. He would like the Council to review the findings of the study before approving the project. Mr. Rivers stated that the neighbors of King's Pines don't oppose the Whitetail project, they actually like the quality of the development but are concerned about safety. He stated that the Planning and Zoning Commission heard an equal amount of testimony regarding the gates proposed for the development. He asked the Council to respect the Commission's findings.

Mr. Millemann stated that he is disturbed by the fact that members of the Planning and Zoning Commission were allowed to make presentations at the public hearing. He stated that he advises his clients that the process is governed by a quasi-judicial process. He stated the quasi-judicial process requires impartiality and application of the law in place. Mr. Millemann stated that in 26 years he has never witnessed a Chairman and member of the Planning and Zoning Commission advocate their position to the City Council. He stated that he finds it disturbing that the impartiality and neutrality of the quasi-judicial process has possibly been disturbed by the testimony of the members. Mr. Millemann stated that the Council is told not to reverse the will of the people. He asked if the will of the people is based upon the majority of persons testifying at the hearing. Mr. Millemann asked if decisions were going to be made based upon the contents of the City's ordinance or the whims heard in the public testimony.

Mayor Eimers stated that he asked Mr. Kirkpatrick if he made the same impassioned plea to the Planning and Zoning Commission that he made to the Council regarding the issue of private roads and gates. He stated that Mr. Kirkpatrick informed him that he didn't to the same degree. Mayor Eimers stated that the Council Members inquired of how the Planning and Zoning Commission came to their decision and Mr. Bailey responded to their question.

Mr. Millemann stated that the process needs to be guided by impartiality and neutrality. He stated that he was disturbed by the decision of Mr. Bailey and Mr. Youde to advocate for an outcome in their testimony to the Council.

Mayor Eimers asked if the City Attorney felt the process was flawed by allowing the testimony.

Tammy Zokan, City Attorney, stated that she felt it was inappropriate for the testimony to be made before the Council.

Mayor Eimers stated that he wished they would have been informed. He stated that he considered the possible conflict before it occurred.

Mr. Millemann stated that the decision for approval is now in the hands of the Council. He stated that the Council needs to base their decision on the requirements of the ordinance, merits of the project, and public testimony received.

Council Member Bertram stated that she needed clarification of how the Planning and Zoning arrived at their decision.

Mayor Eimers stated that several members of the Council had requested such clarification and that is why he allowed the testimony.

Mr. Millemann stated that he has no problems with the Council being informed, but believes that the testimony presented went beyond a finding of fact.

Council Member Bertram stated that the Council is often left in the dark without materials to base their decisions on. She stated that the Council should have scheduled a work session to discuss the project.

Mayor Eimers stated that he was elected to represent the will of the people but Mr. Millemann is stating that he has to follow the advice of City staff who stated he wasn't an expert on the law. Mayor Eimers stated that he takes offense to being threatened by Mr. Millemann.

Mr. Millemann apologized if his comments came across as a threat as it wasn't his intention. He stated that he just wants to ensure that the process is impartial.

Council Member Muller stated that he needs to gather as much information as possible in order to make an informed decision. He stated that he doesn't place any more weight upon an individual's testimony over another. Council Member Muller stated that he can't make decisions without being provided with the available information.

Mr. Millemann stated that he takes the process seriously and informs clients that the process is in place to protect their interests. He stated that he respects the comments and opinion made by the Council, Staff, and City Attorney. Mr. Millemann stated that the City of McCall, through its governing body, has not elected to legislate on the subject of gates.

Mayor Eimers asked if the City Attorney had issued a legal opinion to the Council.

Tammy Zokan stated that she hasn't issued an opinion but has spoken with the City Manager. She stated that she is concerned that the Planning and Zoning Chairman's interpretation of the Code is flawed. She would like to review the issue and issue a formal opinion to the City Council.

Council Member Robertson stated that the issue of Planning and Zoning Commissioner's testifying before the Council was brought up in 1999. He stated that there is no specific regulation forbidding them from testifying but advice has been given discouraging the practice. He stated that the Council should address the issue in the near future. Council Member Robertson stated that the Council needs to listen to the public testimony and read the material that has been given to them in order to make an informed decision.

Mr. Millemann stated that he appreciates the consideration of the Council's concern. He understands that everyone approaches the process in good faith. It was his intention to ensure that the perception by the applicant was known to the Council and to ensure the process remains impartial. Mr. Millemann stated that he doesn't agree with the Planning and Zoning Chairman's interpretation that all roads with a 70' right-of-way are public streets. He stated that all roads must be built to City standards and the only reason for the proposed width is to allow for a bike path. Mr. Millemann stated that the width of the right-of-way doesn't define the status of the street, as it is the City who

makes the determination. He said that the City's ordinance defines private streets as such and the Council makes the decision if they think a showing has been made that justifies the designation. He stated that the declaration that the road is a collector street doesn't define its status. Mr. Millemann confirmed that Ketchum did implement an ordinance that legislates gated communities. He stated that they adopted such an ordinance after following the process and conducting the required public hearings. Mr. Millemann stated that the issue before the Council is a development application and not about the subject of gates. He stated that the majority of testimony given the Council at the public hearing favored gates and private roads in the Whitetail Development. He stated that a decision must be rendered based upon facts presented on the individual case. Mr. Millemann stated that the only benefit the public would receive from not allowing gates and private roads is the right to drive through the development. He stated that in contrast the public will benefit from the greenbelt and the extension of the Boydston bike path. Mr. Millemann stated that the property extends down into Adams County. He stated that Fish Lake Road access has a gap that would have to be closed. Mr. Millemann stated that the access from Adams County wouldn't benefit this development but would possibly provide a benefit if the development was to extend into Adams County. Mr. Millemann stated that the developer would be happy to work with the residents of King's Pines to explore all possible options. He stated that the plat shows that Club Hill Blvd is platted to intersect the Whitetail development. Mr. Millemann stated that it was the opinion of the County Engineer that a sufficient right-of-way could be installed that would allow for the safe use of the road. He stated that a final design hasn't been approved but the Planning and Zoning Commission did issue the requirement as a condition of approval for the project. Mr. Millemann stated that if the design review can't pass the approval process the developer will have to look at other alternatives. He stated that the design review process with the County and ITD is an open process that allows the public to be involved.

Harold Wiking stated that the developers of Whitetail need to pursue possible alternative access points to the development from Adams County. He stated that he could provide the applicant with the phone numbers of the private property owners that need to be contacted. Mr. Wiking stated that he opposes the use of Club Hill Blvd. to filter the majority of construction traffic into the development.

Mr. Millemann stated that the development has multiple points of access. He stated that the County Engineer has indicated that it is feasible and possible to construct a safe road. He stated that if the design process can't be approved then the developer will explore the potential access points from Adams County. Mr. Millemann stated that the five access points will ensure the appropriate distribution of construction traffic.

Council Member Bertram requested clarification about the sharing of roads with the other neighborhoods.

Mr. Millemann stated that the multiple points of access are a benefit to the development. They approached the neighbors with the contention that traffic would be distributed evenly and they wouldn't negotiate with a neighborhood at the expense of another. Mr.

Millemann stated that the residents on Gun Hill and Lakeforest seem to be satisfied of the plan.

Council Member Robertson asked if the development would be promoting the selling of pre-built homes or bare lots.

Mr. Millemann stated that the development would primarily be selling lots. He stated that some spec homes may be constructed in the development. He stated that the developer is working on a builder program.

A discussion occurred about the continuance of the public hearing. It was the decision of the Council that the issue would be better decided if the full Council was present.

Mayor Eimers stated that the allowance of gates would be a community character changing event. He stated that he feels it would be a significant change from the community which he moved to 15 years ago. Mayor Eimers stated that he was elected to represent the community and feels they are opposed to the concept of gates.

Mr. Kirkpatrick stated that it sounds like the members of the Council would like a formal analysis of the issue.

Mayor Eimers stated that the specific inclusion or omission of language in the ordinance isn't enough for him to base his decision on. He stated that he would like to make a decision based upon the will of the people unless there is a specific law that directs how he must rule.

Council Member Robertson requested that an opinion from the City Attorney be given to the Council. He stated that it is a significant decision for the Council to make and he would like the full Council to be present when a final decision is made.

Mr. Millemann agreed that it would be best if the entire Council was present when a decision was reached. He stated that it would be prejudicial to the applicant who is attempting to move into a short building season. He requested that the Council make a decision if they are able to meet as a quorum.

Council Member Bertram stated that a work session for the Council may be beneficial so that the Council is aware of all of the details.

Mr. Kirkpatrick suggested that a special Council meeting could be scheduled with the Whitetail application as the only item on the agenda.

Council Member Robertson stated that he doesn't want to reopen the public hearing to hear the same issues from the same individuals. He stated that additional time is needed to review the material in order to make an informed decision. He stated that the Council should do whatever is necessary to schedule a meeting with the full Council.

Mr. Kirkpatrick stated that the earliest a meeting could be held and allow the City Attorney to draft an opinion would be in one week.

Mr. Millemann stated that March 30th would be the best date for the applicant.

Mayor Eimers asked what a legal opinion from the City Attorney would entail.

Mrs. Zokan stated that she agrees that the City Council has discretion in making their decision but doesn't agree with the Planning and Zoning Chairman's interpretation of the City Code in regards to the issue.

Council Member Muller stated that any decision that is made needs to have a qualification of law. He would only like to receive new information during the next public hearing. Council Member Muller stated that continuing the public hearing will allow him to review the material that was given to him late. He voiced his displeasure in not receiving the information in a timely manner in order to be prepared. Council Member Muller stated that he needs time to review the material in order to make an informed decision. He stated that he is opposed to making a decision without the entire Council.

Mr. Kirkpatrick stated that the City Attorney will provide an interpretation if there is a way under the comprehensive plan and zoning code to allow for the restriction of gates. He stated that an opinion could be prepared by Monday.

Mayor Eimers moved to continue the public hearing until 6:00 p.m. on March 30, 2005 at the McCall Golf Course. Council Member Robertson seconded the motion. All members voted aye. The motion carried.

VAC 05-1 Payette View Subdivision Vacation Request / Ordinance No. 806

Mr. Kirkpatrick stated that the applicant had originally requested the vacation of both an alleyway and a portion of the Pinedale Street right-of-way in conjunction with a proposal for a condominium development. He stated that the Planning and Zoning Commission conducted multiple public hearings and made the recommendation to approve the vacation of the alleyway but not the portion of Pinedale. He stated that the Planning and Zoning Commission also recommended that the developer grant an easement from the high water mark of the Payette River to 10 feet west of the top of the river bank for the construction of a public path. Mr. Kirkpatrick stated that the Planning and Zoning Commission issued another condition of approval that would require the developer to participate in the design and construction of the path system and a driveway and parking area within the Parkdale right-of-way.

Steve Arnold, 1940 Tinodo Way Boise Idaho, stated that the alleyway had been previously approved for vacation in 1995 but an ordinance was not officially adopted. He stated that he is no longer requesting the vacation of Pinedale and is willing to comply with the conditions of approval issued by the Planning and Zoning Commission.

Council Member Bertram asked what type of path would be constructed.

Mr. Arnold explained that he will use compacted gravel to establish a six feet wide path on the top of the river bank. He explained that the material will be more durable than using asphalt.

Council Member Robertson asked if all of the correspondence received about the proposal were included in the materials for the Council. He stated that he didn't have a copy of Mr. Seetin's letter.

Mayor Eimers opened the public hearing to public testimony at 11:05 p.m.

Jon Seetin stated that he is the owner of the property located on the other side of the Pinedale right-of-way. He stated that since the applicant has withdrawn the request to vacate the portion of Pinedale Street he no longer opposes the proposal. Mr. Seetin stated that he believes it to be in the best interest of the City to retain the Pinedale property.

Council Member Bertram asked if the letters that were received by the Council Members were in opposition to the original project.

Mr. Kirkpatrick confirmed that the letters were written in opposition to the original proposal. He stated that Planning and Zoning Commission established a compromising recommendation after going through the process.

Council Member Bertram asked if the original proponents of the project were supportive of the recommendations made by the Planning and Zoning Commission.

Mr. Seetin stated that he is supportive of the recommendations made by the Planning and Zoning Commission.

Charlie Taber, 815 Pinedale, stated that the recommendations made by the Planning and Zoning Commission were a direct result of the four public hearings that took place during the P&Z process. Mr. Taber stated that he supported the original vacation request that was made 10 years ago but the development was significantly different. He said that he has no current objections to the vacation of the alleyway.

Mayor Eimers closed the public hearing to public testimony at 11:17 p.m.

Council Member Robertson moved to adopt the draft findings and conclusion of VAC05-1. Council Member Muller seconded the motion. All Council Members voted aye.

Council Member Robertson moved to suspend the rules and read Ordinance No. 806 by title only, one time only. Council Member Muller seconded the motion. In a roll call vote, Council Member Bertram, Council Member Greer, Council Member

Robertson, Council Member Muller, and Mayor Eimers voted aye. The motion carried.

Mr. Kirkpatrick read Ordinance No. 806 by title only.

Council Member Robertson moved to adopt Ordinance No. 806. Mayor Eimers seconded the motion. In a roll call vote, Mayor Eimers, Council Member Muller, Council Member Robertson, Council Member Greer, and Council Member Bertram voted aye. The motion carried.

PUBLIC COMMENT

Mayor Eimers called for public comment.

Hearing no comments, Mayor Eimers closed the public comment at 11:20 p.m.

CONSENT AGENDA

Council Member Robertson provided corrections to the minutes.

Council Member Robertson inquired if all developers were current in reimbursing development costs to the City.

Mr. Kirkpatrick stated that the Finance Department regularly reviews the development fees owed to the City. He believes that most of the payments are current.

Council Member Robertson requested that AB 05-63 be tabled from consideration until the next Council agenda. He stated that he would like to have the opportunity to review the contract before acting upon the request.

Council Member Robertson moved to approve the Consent Agenda as modified and authorize the Mayor to sign all necessary documents. Mayor Eimers seconded the motion. In a roll call vote, Council Member Bertram, Council Member Muller, Council Member Greer, Council Member Robertson and Mayor Eimers voted aye. The motion carried.

BUSINESS AGENDA

Mayor Eimers announced that the Library Districting presentation was removed from the agenda in the interest of time. He stated that the item will be placed on the next regular Council meeting agenda.

AB 05-62 Local Option Tax Commission Appointment

Dan Irwin, City Clerk, stated that Henry McCauley resigned from the Local Option Tax Commission due to unforeseen personal circumstances. He stated that as a result, a new appointment to the commission must be made from an existing City committee member. Mr. Irwin stated that after sending an email to all existing City committee members, Don Bailey and Rick Fereday expressed their interests of serving on the Committee.

Mayor Eimers moved to appoint Don Bailey to the Local Option Tax Commission. Council Member Bertram seconded the motion. All Council members voted aye. The motion carried.

AB 05-59 ROW Negotiation Services for Boydston Street Project

Bill Keating stated that the Boydston St. project is scheduled to be constructed in 2006, and the right-of-ways need to be acquired. He said that the City advertised a RFQ for qualified firms to conduct the negotiation services for the Boydston Street Project. Mr. Keating stated that Negotiation Services, L.L.C. submitted the only proposal in the amount of \$127,100. He explained that the project consists of negotiating the acquisition of forty-one (41) properties at \$1,200 each and the cost to appraise the properties is \$77,900. He added that the City attorney had reviewed the agreement.

Mayor Eimers asked about the cost sharing arrangements with LHTAC.

Mr. Keating stated that the City will pay for 10% of the project and LHTAC will cover the rest.

Tammy Zokan stated that since only one person responded to the RFQ the City has the right to reject the bid if they determine the bid amount is too high.

Mayor Eimers moved to approve the agreement for professional services with Negotiations Services, L.L.C. and authorize the mayor to sign all necessary documents. Council Member Greer seconded the motion. In a roll call vote, Mayor Eimers, Council Member Muller, Council Member Robertson, Council Member Greer, and Council Member Bertram voted aye. The motion carried.

REPORTS

Council Member Bertram asked who was conducting the investigation into the Police Vehicle rollover. She stated that many customers have asked her why the officer wasn't cited in the accident.

Mr. Kirkpatrick stated that he believes an internal investigation and third party investigation is occurring. He stated that he will research the issue and report back to the Council.

Council Member Greer stated that a citizen of the community approached him and voiced their displeasure in the Council's decision not funding the narcotics officer with the surplus fund balance. He also stated that the stop bars by the middle school need to be repainted.

Council Member Robertson asked about the City's control over trees in private developments. He stated that a property in Spring Mountain Ranch had been purchased and the owner plans on eliminating some of the trees. He requested Mr. Kirkpatrick contact the new property owner.

Council Member Bertram asked if any progress was made in developing the RFP for the impact fees.

Mr. Kirkpatrick stated that he is still in the process of working with the City Attorney and City Engineer in developing the RFP.

Council Member Robertson requested an update on the search for a new Airport Manager.

Mr. Kirkpatrick stated that three candidates have been scheduled for formal interviews which will begin on April 11th.

ADJOURNMENT

Without further business, Council Member Greer moved to adjourn. Council Member Robertson seconded the motion. All Council Members voted aye. The motion carried. The Council adjourned at 12:09 a.m.

William A. Robertson, City Council President

ATTEST:

Dan Irwin, City Clerk