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TO: Mayor and Council
FROM: Charles I. Wadams, City Attorney
DATE: 11/4/2020
SUBJECT: Consideration of CPAFY2020-0005 & Proposed Ordinance No. 1018-20
(Proposed Specific Area Plan Base Zoning District)

ACTION REQUIRED: Within the City Council's discretion.

RECOMMENDATION: None.

FISCAL IMPACT/BUDGET IMPLICATIONS: The application indicates there will be no fiscal impact.

BACKGROUND: On September 28, 2020, the City Council conducted a properly noticed public hearing to consider the adoption of a Specific Area Plan (SAPD) Base Zoning District. The SAPD would be a new Base Zoning District and not an Overlay District. During deliberations, the matter was continued for additional legal review. Other than continuing the matter, no action on the application was taken at the time. The matter was properly noticed for a public hearing on November 9, 2020. I am now providing the below legal analysis for the City Council's review.

ANALYSIS: Ordinances are local laws that are used to regulate people or property, and for specific situations outlined in state law. The fundamental power of cities to enact laws (ordinances) for the promotion and protection of the public health, safety, and welfare is granted by Article XII, Section 2 of the Idaho Constitution. Ordinances must be used for regulatory measures, especially when there is a penalty for violation. Procedures for adopting ordinances are prescribed by Idaho Code § 50-901 through § 50-906 and must be strictly followed. Failure to follow these requirements can result in an ordinance being struck down by a reviewing court.

Preliminarily, after a public hearing in Idaho, the Council may continue the hearing to a date certain for the purpose of receiving additional evidence and conducting such further proceedings as may, in its discretion, be advisable. When the record has been closed, the council may continue the matter to a date and time certain for further deliberation and decision.

Some jurisdictions indicate that a continued public hearing does not require new public notice but once a public hearing is closed, it cannot be re-opened without issuance of a new public notice. The prevailing view is that no additional publication is needed as long as the date, time, and place of the continued hearing are announced before the adjournment of the initial hearing. If notice was properly published for the initial public

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hearing, an interested person who attended the proceedings would have learned of the rescheduled date.

With a continued hearing, it is important to distinguish situations where the Council is meeting again to hear additional comments on the originally noticed matter, from situations where the Council is soliciting additional comments on something different from that originally advertised. Therefore, a new public notice was provided for November 9, 2020 meeting because the previous public hearing had been closed and November 9, 2020 was not a date and time certain on September 28, 2020.

Second, as indicated in the staff report, for the approval of a Development Code Amendment, the City Council must find the application meets the following findings, found in GCC 8-6B-5:

- (1) The text amendment complies with the applicable provisions of the comprehensive plan;
- (2) The text amendment shall not be materially detrimental to the public health, safety, and welfare; and
- (3) The text amendment shall not result in an adverse impact upon the delivery of services by any political subdivision providing public services within the city.

The application is for a new Base Zoning District, and the particular zone determines the uses to which land may be put. Zoning regulations describe the permissible land uses in each of the various zoning districts identified on the zoning map. They also include dimensional standards for each district, e.g., the height of buildings, minimum distances (setbacks) from buildings to property lines, and the density of development. These are referred to as “area” standards, as opposed to “use” standards. Zoning regulations will also set forth the steps necessary for approval by the type of use, the zoning district involved, or by both.

By themselves, zoning regulations do not ensure that development will occur. It can be said that zoning, by its nature, acts prospectively by indicating what uses will be allowed in the future. If a municipality wants a certain type of development in a particular location, it can ordinarily only wait to see if a developer will find it economical to build. Changes to zoning may alter this dynamic by providing incentives for development that may not otherwise occur.

Here, there has not been a consensus between staff and the applicant of how many acres should be required before the proposed SAPD becomes applicable, but the City Council should be mindful of the spot zoning issue. The size of a parcel or parcels within a particular zoning district does not determine whether or not spot zoning has occurred. Spot zoning can more easily be measured by the benefit provided to a particular property owner or set of owners to the detriment of comprehensive plan or public goals. If a rezoning provides special benefits to a property owner while creating negative impacts to surrounding property, spot zoning likely occurred. Spot zoning is zoning adopted in the absence of proper planning.

However, zoning a property differently than its surroundings does not necessarily qualify as spot zoning. Examples where this might occur is when a small portion of a residential area, perhaps at the intersection of two major roadways, is zoned commercial. Providing a limited amount of commercial uses near residential development is typically considered good planning practice and can be justified based on the need for nearby services.

Sometimes, it is difficult to make a legal determination of spot zoning. The decision maker, along with the City Attorney, should review any zoning amendment with scrutiny to identify whether or not such an issue may exist. The following questions should be considered when reviewing any zoning amendment to help identify whether or not it may constitute spot zoning:

- (1) Is the requested amendment consistent with the Comprehensive Plan?
- (2) Is the requested use or zoning district significantly different from the surrounding area?
- (3) Will the use or district benefit a few landowners while creating negative impacts to surrounding landowners?
- (4) Will the amendment affect a small area and provide private, rather than public benefit?

Here, the stated purpose of the proposal to add a SAPD to the rest of the Base Zoning Districts is, in part, to “correct deficiencies.” The SAPD application indicates the proposed amendment is consistent with the Comprehensive Plan because, in part, it will “avoid the conflicts that occur with piecemeal development decisions.” The application also indicates that the public need and benefit from the proposal will be to, “aid property owners and the City to adopt plans for complex mixed-use developments that fit the location and context and provide greater development and land use certainty for public and private stakeholders.”

However, the Garden City Code currently addresses a Specific Area Plan in the following manner:

8-6B-6 SPECIFIC AREA PLAN:

A. Purpose: It is the intent of this section to describe the process for review and action on a **specific area plan** (SAP). This process will establish a workable framework for the development of large or phased projects. The goal of this section is to ensure the orderly planning and development of land, by requiring new development to:

1. Implement the goals and objectives of the city’s comprehensive plan, as amended, including the future land use map, the land use designations and the land use goals and policies, if applicable;
2. Contribute to the social, economic and environmental sustainability of the city;
3. Develop in a manner that is highly respectful of the natural setting, that is at a human scale and ensures neighborhood compatibility;

4. Provide for an integrated transportation system which prioritizes a pedestrian environment and mass transit and reduces vehicular trips;
5. Result in a contribution of amenities to the community including maintaining public access to the Boise River and recreational facilities;
6. Designate and protect open site area in perpetuity;
7. Provide for a mix of uses, including housing types;
8. If necessary, plan for the coordinated and phased construction of infrastructure, including public facilities and transportation system components; and
9. Remain consistent with the intent of this title.

B. Applicability: The **specific area plan** process may be utilized in all zones within the city and shall be required prior to the development or redevelopment of properties larger than ten (10) acres within the city; for specific sites as defined in the comprehensive plan and for areas requesting annexation.

C. General Provisions:

1. The city may require that properties, whether contiguous or not, be processed under a single comprehensive SAP application.
2. Approval of an SAP will constitute approval of a master plan which establishes a framework to guide all future development within the area defined by the SAP.
3. Development applications may be filed in conjunction with an SAP application, however, no construction shall commence on any component of an approved SAP except upon receipt of design review, conditional use, variance, or subdivision approval.
4. All development of the SAP site shall be regulated by applicable provisions of this title and other code provisions in effect at the time the development application is submitted and certified as complete by the city. Development applications include, but are not limited to, design review, conditional use, variance, subdivision, planned unit development.

D. Procedures:

1. Preapplication Conference: A preapplication conference shall be held with the planning official and, as appropriate, other city staff in order for the applicant to become acquainted with the SAP procedures and any related city requirements and schedules. The applicant shall be the owner(s) of the property. The owner may designate a representative to work with the staff and the city. The staff will give preliminary feedback to the applicant based on information available at the preapplication conference and will inform the applicant of issues or special requirements which may result from the proposal.
2. Preapplication Meeting: After the preapplication conference, a preapplication meeting shall be held with the commission.
3. Application: The SAP application shall be submitted in accordance with article A, "General Provisions", of this chapter.
4. Public Hearings: The commission and council shall hold public hearings on the SAP as set forth in article A, "General Provisions", of this chapter.

5. Commission Review And Action: The commission shall recommend approval or denial of an SAP. Such action shall be in the form of written findings of fact, conclusions of law and in the case of approval, conditions of approval. Action shall occur only after the required public hearing is held.

6. Council Review And Approval: As a condition to approval of an SAP, the council may enter into a development agreement as provided for in section 8-6B-4 of this article.

7. Major And Minor Amendments: An approved SAP may be amended at any time using the process, and may be amended simultaneously with the processing of a development application. The planning official shall decide whether a proposed amendment is a "major" or "minor" amendment. In order to initiate an amendment, the applicant shall submit to the planning official an application on those items that would change if the proposed amendment were approved.

a. Major Amendments: Changes of the following types shall define an amendment as major:

(1) Changes which would modify or reallocate the allowable building height, mix of uses, or density of a development; or

(2) Changes which would alter the location or amount of land dedicated to open space, amenities, trails, natural areas or public facilities; or

(3) Modify any other aspect of the SAP that would significantly change its character; or

(4) A series of minor amendments that cumulatively change the overall character of the SAP.

b. Minor Amendments: Amendments that are not major amendments shall be termed "minor amendments" and shall be reviewed by the planning official. The planning official shall approve, approve with conditions, or deny said amendments.

8. Recording Of An Approved SAP:

a. All approved SAPs, and all approved amendments to such SAPs, specifying the land within its boundaries, shall be recorded in the Ada County recorder's office with a notation that all land within such boundaries shall be subject to the provisions of such SAP.

b. All recorded SAPs and SAP amendments shall be binding upon the applicants and their successors and assigns, and shall guide the location of improvements and infrastructure of site specific applications. It is expressly understood that site specific applications shall be regulated by the zoning, subdivision and other code provisions in effect at the time any application for development, design review, conditional use, variance, or subdivision is submitted and certified as complete by the city.

9. Development Agreement: At the request of the applicant, a development agreement may be submitted to establish and set by mutual contract the zoning, open space dedications and/or SAP densities of an approved SAP. The **specific area plan** agreement shall be consistent with the comprehensive plan, the SAP approval and conditions, if any, and

in a form approved by the city attorney. A development agreement may be applied for concurrently with an SAP application or at any time subsequent to the approval of an SAP application.

E. Required Findings: The commission shall make the following findings in order to recommend approval of an SAP. In some cases, conditions of approval will be attached to the approval to ensure compliance with these findings. The commission, if denying an SAP application, shall state findings why such application does not comply with one or more of the following findings:

1. The SAP, as conditioned, is consistent with the city comprehensive plan, as amended, including the future land use map and the land use planning area guidelines and land use designations, if applicable;
2. The SAP, as conditioned, meets the minimum requirements of this chapter;
3. The SAP promotes the orderly planning and development of land, as set forth in the purpose for this process;
4. The SAP has been noticed and public hearing held in accordance with this code;
5. The SAP complies with all city zoning regulations and codes in effect at the time of the SAP application. (Ord. 898-08, 9-8-2008)

8-4F-5 SIGN DISTRICTS ESTABLISHED:

For the purposes of this title, the city is hereby divided into the following base sign districts (see section 8-4F-6, figure 7 of this article):

Base Districts	Map Symbol
Sign district 1	SD1
Sign district 2	SD2
Sign district 3	SD3
Sign district 4	SD4
Sign district 5	SD5
Sign district 6	SD6
Specific area plan sign district	SDSAP

8-4F-7 SIGN DISTRICT BASE PROVISIONS:

G. **Specific Area Plan Sign District (SDSAP):** All signage requirements shall be determined as part of the approved specific area plan upon annexation or any other means of redevelopment. The SDSAP includes frontage on Remington Street and on Coffey Street west of Penny Lane to Chinden Boulevard and frontage on Bransetter Road. The SDSAP does

not include frontage on Chinden Boulevard, Alworth Street or Glenwood Street. (Ord. 927-10, 2-14-2011)

8-4F-11: REGULATIONS FOR SPECIFIC SIGN DISTRICTS:

G. SDSAP:

1. All signs within the **specific area plan** are subject to the criteria established in the **specific area plan** approved for subject property. (Ord. 927-10, 2-14-2011)

8-6A-2 DUTIES AND AUTHORITY:

E. The following Table 8-6A-1 is a summary list of the actions that the city shall take in administration of this title, the body responsible for the action, and reference to the process under which the action shall be taken:

**TABLE 8-6A-1
AUTHORITIES AND PROCESSES**

Permit/Decision	Recommending Authority	Final Decision Maker	Process	Appeal Body
Annexation	PZ	CC	PH	
Change of use to a permitted use	None	PO	A	PZ
Comprehensive plan amendment	DC/PZ	CC	PH	
Conditional use	None	PZ	PH	CC
Conditional use, revocation	None	CC	PH	
Design review, administrative: dwelling unit, single- or two-family design; alterations under 25%	None	PO	A	DC
Design review: nonresidential structures and/or sites, and more than two attached or adjacent dwelling units	None	DC	AN	CC
Development agreement or amendment	PZ	CC	PH	
Development code amendment	DC/PZ	CC	PH	
Floodplain/floodway	None	PO	A	PZ
Manufactured/mobile home	None	PO	A	PZ
Minor land division	None	PO	AN	CC

Modifications to an approved permit	Same decision maker and process as initial approval			
Nonconforming setback extensions	None	DC	AN	CC
Planned unit development	DC/PZ	CC	PH	
Plat, boundary line amendment	None	PO	A	CC
Plat, final	PO	CC	PH	
Plat, condominium	PO	CC	A	
Plat, preliminary	DC/PZ	CC	PH	
Plat, preliminary and final combined	DC/PZ	CC	PH	
Signs	None	PO	A	DC
Signs, master plan or design review	None	DC	A	CC
Site layout template (minor PUD)	None	DC	AN	CC
Specific area plan	DC/PZ	CC	PH	
Variance	None	PZ	PH	CC
Zoning district amendment	PZ	CC	PH	

CC = Council

A = Administrative

PO = Planning Official

AN = Administrative with Public Notice

PZ = Commission

PH = Public Hearing

DC = Design Committee

(Ord. 898-08, 9-8-2008; amd. Ord. 944-12, 5-14-2012; Ord. 975-15, 4-27-2015)

8-6A-4 REQUIRED APPLICATION INFORMATION:

Permit/Decision	Compliance Statement	Preliminary Title Report	Neighborhood Map	Sketch Plat	Subdivision Map	Master Plan	Site Plan	Landscape Plan	S
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Annexation		X	X			X	X		
Comprehensive plan amendment	X					X			
Conditional use	X		X						
Design review committee	X		X				X	X	
Development agreement		X							
Development code amendment	X								
Floodplain/way						X	X	X	
Minor land division		X	X	X	X		X		
Planned unit development		X	X		X	X	X	X	
Planned unit development, minor			X				X	X	
Plat, amendment	X	X	X		X		X		
Plat, condominium	X						X		
Plat, final		X			X				
Plat, preliminary	X	X	X		X		X		
Plat, preliminary and final combined		X	X		X		X		
Site layout template							X	X	
Specific area plan						X			
Variance	X		X				X		
Zoning map amendment	X	X	X			X	X		

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X Denotes application information that may be waived depending on the nature of the request.

(Ord. 898-08, 9-8-2008; amd. Ord. 905-09, 3-23-2009; Ord. 975-15, 4-27-2015)

8-6A-7 PUBLIC HEARING PROCESS:

A. Purpose: The purpose of this section is to outline the specific application process for actions that require a public hearing.

B. Public Notice Requirements: Applications that require a public hearing shall be noticed in accord with the noticing requirements identified in Table 8-6A-3, and the following relevant procedures:

**TABLE 8-6A-3
PUBLIC NOTICING REQUIREMENTS**

Permit/ Decision	Neighborhood Meeting	Radius	Legal	On Site	Agencies	Public Service Announcement	Interested Parties
Administrative with notice		X			X		X
Appeal							X
Annexation or rezone	X	X	X	X	X	X	
Comprehensive plan or ordinance amendment ¹	X	X	X		X	X	
Conditional use ²	X	X	X	X	X		
Conditional use, revocation			X				
Design review commission		X		X			
Development agreement	X	X	X	X	X		
Development agreement			X		X		

revocation							
Planned unit development	X	X	X	X	X		
Plat, amendment		X		X	X		
Plat, final		X		X	X		
Plat, preliminary	X	X		X	X		
Plat, preliminary and final combined	X	X	X	X	X		
Minor land division	X	X	X	X	X		
Site layout template							
Specific area plan	X					X	
Variance	X	X	X	X			
Zoning district boundary amendment ³	X	X	X	X	X	X	

Notes:

1. Comprehensive Plan Amendment: If the commission or design review committee recommends a material change to the plan after the public hearing, the public notice for the council hearing shall include the recommendation.
2. When mailed notice is required for more than two hundred (200) or more people, the alternate noticing requirements as set forth in subsection B4 of this section may be substituted for mailed notice.
3. Zoning District Boundary Amendment: Notice may be sent to property owners beyond three hundred feet (300') of the external boundaries of the rezone area to those property owners who may be impacted by the rezone application.

8-2A-3 ZONING OF ANNEXED LAND:

The zoning districts applicable to land at the time of incorporation into the city shall be established as follows:

- A. Prior to the annexation of any lands, the commission shall undertake upon its own initiative or shall undertake upon the direction of the council, a **specific area plan** (SAP), as set forth in chapter 6, "Administration", of this title that will study and consider the extension of the comprehensive plan to the land to be annexed.

B. The **specific area plan** shall be the basis for providing recommendations to the council on appropriate zoning districts for the territory involved. (Ord. 898-08, 9-8-2008)

Generally, a Specific Area Plan further defines elements such as land use, transportation, open space, economic development, and infrastructure. For example, the Specific Area Plan concept was codified into California law by a 1979 amendment to give city governments the ability to move away from site-by-site development battles, and to instead plan for cumulative neighborhood changes. A specific area plan is a relatively detailed plan for the development of a particular part of a city, and ideally includes a master environmental impact review for the entire plan area. The City of Meridian has Specific Area Plans such as the Ten Mile Interchange Specific Area Plan. Moreover, as has been previously discussed, Boise City has "Adopted Specific Plans," which are enclosed with this memorandum. Adopted Specific Plans are not classified as Overlay Districts in Boise. Boise separated the Adopted Specific Plans into three areas: Harris Ranch; Barber Valley; and Syringa Valley.

Here, the Design Review Committee and the Planning and Zoning Commission have recommended that the Garden City Code be amended to adopt the new SAPD. However, I am recommending that if the City Council believes that the amendment is a good idea, the City conduct three readings of Ordinance No. 1018-20 because this is a complicated issue. Some questions that should be addressed are:

- (1) Why does the proposed code amendment improve the current code on Specific Area Plans?
- (2) What are the deficiencies in the current code?
- (3) What is the benefit to the City?
- (4) Does the text amendment comply with the applicable provisions of the Comprehensive Plan?
- (5) Is the text amendment materially detrimental to the public health, safety, and welfare?
- (6) Does the text amendment result in an adverse impact upon the delivery of services by any political subdivision providing public services within the city?
- (7) Is the requested zoning district significantly different from the surrounding area?
- (8) Will the district benefit a few landowners while creating negative impacts to surrounding landowners?
- (9) Will the amendment affect a small area and provide private, rather than public benefit?
- (10) Should a master environmental impact review, or some other review, be conducted prior to the City Council deciding whether the proposed code amendment is a sound idea?
- (11) How many acres should be required before the proposed SAPD becomes applicable?

The proposal is a major repeal and replace of portions of the Garden City Code. If the above questions can be satisfactorily answered, then the proposal is likely valid and

legal. If the above questions cannot be satisfactorily answered, then the proposal should not be adopted.