

CITY OF PRESTON PLANNING AND ZONING MEETING
October 12, 2016

ROLL CALL Roll Call showed the following Board members present: Chairman Linda Hansen, Commissioner Bruce Hodges, Commissioner Charles Chesney, Commissioner Joe Perry, Commissioner Steve Call

Staff present: Wendy Merrill, Mark Owens, Tyler Olson

Others: Jer Barnard, Bob Fellows, Scott Fellows, Mike Hopkins, Sandra Hubbard, Ethan Miller, Angela Smith, H.K. Smith

Meeting was called to order at 6:00 p.m. by Chairman Linda Hansen

Commissioner Penny Wright arrived at 6:10 P.M.

REVIEW AND APPROVAL OF PLANNING & ZONING MINUTES 09/28/16 It was moved by Commissioner Steve Call and seconded by Commissioner Charles Chesney to approve the Planning and Zoning Minutes of September 28, 2016. The motion received unanimous approval.

REPORT OF APPROVED BUILDING PERMITS City Engineer Mark Owens reported on the following approved building permits:

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|-----------------|--------------------------------|-------|
| Lifestyle Homes | 750 South 8 th East | House |
| Higley Homes | 770 McIntosh Cir. | House |

PUBLIC HEARING H.K. SMITH 1098 N 1400 W VARIANCE Chairman Linda Hansen called for the Public Hearing to give consideration to the application of H.K. and Angela Smith, 1098 North 1400 West, for a Variance to the requirements of Section 17.28.065(A)(B), Preston Municipal Code, which requires improvements such as curb, gutter, drainage swales and sidewalks to be constructed prior to the construction of any building or structure, as follows:

NOTICE OF PUBLIC HEARING

Notice is hereby given that a public hearing will be held on October 12, 2016, before the City of Preston Planning and Zoning Commission at the hour of 6:15 P.M. at the city hall located at 70 West Oneida St., Preston, Idaho, to give consideration to the application of H.K. and Angela Smith, 1098 North 1400 West, for a Variance to the requirements of Section 17.28.065(A)(B), Preston Municipal Code, which requires improvements such as curb, gutter, drainage swales, sidewalks, etc. to be constructed prior to the construction, erection or placement of any building or structure, in accordance with the city's then-current standards and specifications. Specifically, the applicants are requesting that they not be required to put in improvements along 1400 West, fronting their property. A copy of the Application for Variance is on file with the City Clerk at the above stated address, and may be reviewed upon request to the City Clerk.

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All persons present will be given the opportunity to be heard in regard to said Application. Written comments or objections to said variance may be submitted to the City Clerk at the above stated address, and the same will be considered if received prior to said public hearing.

Dated this 14th day of September, 2016.

s/Linda Acock, City Clerk

Chairman Linda Hansen gave guidelines for holding a public hearing, and asked if any Board member needed to declare a conflict of interest, or ex-parte contact with the matter. There being none, Chairman Linda Hansen asked H.K. Smith to present his request for a Variance to the required improvements of curb, gutter, drainage swales and sidewalks, at his newly constructed home at 1098 North 1400 West.

H.K. Smith presented a request for a Variance to the ordinance requiring improvements such as curb, gutter, drainage swales and sidewalks for all newly constructed homes, stating that the required improvements would create an undue hardship for him financially, and he wondered why his \$17,500 bond was set so high when most people's bonds are set lower. He also stated he felt it would be a hardship for the City to maintain the street he would be required to build.

Chairman Linda Hansen asked if there was anyone in attendance to provide testimony in favor of granting the Variance.

There being none, Chairman Linda Hansen asked if there was anyone in attendance to provide neutral testimony.

There being none, Chairman Linda Hansen asked if there was anyone in attendance to provide testimony against granting the Variance.

Sandra Hubbard stated for the Board that she was opposed to granting the Variance due to the fact that the City had entered into a Construction and Easement Agreement with Mr. Smith in February of 2015, and that Mr. Smith had signed an Improvement Agreement with the City in November of 2015, stating he would make the improvements, and therefore he knew he would be required to do so.

City Engineer Mark Owens explained the bond was based on real numbers obtained from actual contractors, and representative of all work involved in the improvements on Mr. Smith's property. He also stated the land in this area is flat and the required improvements would not result in flooding to either Mr. Smith or any of the surrounding neighbors, and therefore posed no undue hardship due to flooding issues.

City Attorney Tyler Olson referred the Board to Section 17.30.020 of the Preston Municipal Code which outlines the qualifications of an undue hardship as the loss of property value, the inability to preserve the property rights of the owner, or prohibition of reasonable enjoyment of the property. He explained to Mr. Smith that the City has already accepted the street and the maintenance of the street, so that would not constitute a hardship for the City. He then reviewed the history of Mr. Smith's Variance request. On January 14, 2015, a Public Hearing was held for the same Variance, after which the Planning and Zoning Board recommended approval of the Variance to the

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City Council. On February 9, 2015, the City Council granted the Variance request, contingent upon a signed easement agreement with the City which was signed on February 23, 2015. Mr. Smith came before the City Council again on May 11, 2015, asking for the option to install the improvements at the same time his house was being built, to which the City Council agreed as long as the work was completed by September 1, 2015. On October 26, 2015, Mr. Smith again came before the City Council and requested a delay agreement due to weather concerns. This Improvement Agreement was entered into and signed on November 18, 2015. Bond was posted in the amount of \$17,500, and Mr. Smith was given 7 months, or until June 9, 2016, to complete the improvements. City Attorney Tyler Olson stated the Agreements entered into were legal and binding on both parties, and therefore he saw no way to grant this Variance.

H.K. Smith stated he was just asking for a yea or nay vote. He stated the asphalt required to construct the road would be a burden on him, and questioned the swale requirement. He also stated constructing a sidewalk would cause problems with the circular driveway he had already constructed.

Chairman Linda Hansen asked if any written comments, either for, or against, this matter had been received. There were none.

There being no further testimony, Chairman Linda Hansen closed the public hearing and opened the meeting up to the Board for discussion.

After discussion, it was moved by Commissioner Steve Call and seconded by Commissioner Joe Perry to deny approval of the Request for Variance for H.K. Smith, as presented, and to allow Chairman Linda Hansen to sign the Findings and Recommendations. The vote was as follows:

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|------------------------------|-----|
| Chairman Linda Hansen | Aye |
| Commissioner Bruce Hodges | Nay |
| Commissioner Penny Wright | Aye |
| Commissioner Charles Chesney | Aye |
| Commissioner Joe Perry | Aye |
| Commissioner Steve Call | Aye |

Motion passed by majority vote.

The Findings and Recommendations follow the minutes.

**REZONE
APPLICATION
IPEX
640 S HWY 91**

Mike Hopkins, on behalf of IPEX USA, 640 South Highway 91, approached the Board with a preliminary request to rezone sections of their property currently zoned Residential as Industrial, so that the whole property would be zoned Industrial. The Board asked Mr. Hopkins to submit plans for review and they would revisit this issue at a future meeting.

**CITY/COUNTY
IMPACT AREA**

Chairman Linda Hansen reported to the Board the upcoming educational meeting between City officials and the County residents affected by the Area of Impact had been scheduled for Wednesday, October 19, 2016, at 7:00 P.M. at City Hall.

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**REVIEW/
UPDATE
MUNICIPAL
CODE** At the request of Mayor Mark Beckstead, the Board reviewed Preston Municipal Code 17.28.065-A, requiring that all improvements such as curb, gutter, swales, sidewalks and roads are to be constructed prior to construction.

 City Engineer Mark Owens updated the Board on the progress of the Sidewalk Ordinance, stating it will soon be ready to set for Public Hearing.

ADJOURN Meeting was adjourned at 6:55 P.M. by Chairman Linda Hansen.

Linda Hansen, Chairman

Linda Acock, Clerk