

CITY OF PRESTON PLANNING AND ZONING MEETING
September 7, 2016

ROLL CALL Roll Call showed the following Board members present: Chairman Linda Hansen, Commissioner Penny Wright, Commissioner Charles Chesney, Commissioner Brock Alder; Franklin County Planning and Zoning Chairman Robert Swainston, Franklin County Planning and Zoning Commissioner Kent Egley, Franklin County Planning and Zoning Commissioner Clendon Christensen, Franklin County Planning and Zoning Commissioner Bob Wilkinson, Franklin County Planning and Zoning Commissioner Roger Wright.

Staff present: Wendy Merrill, Mark Owens, Tyler Olson, Preston City Councilmember Terry Larson, Randall Henrie - Franklin County Planning and Zoning Clerk/Inspector

Others: Trent Alder, Dixie Baird, David B. Beckstead, Dustin Brimhall, S. Max Brown, Steve Clark, Chad Cole, Gerald Cole, Dennis Duehren, Don Dunkley, Bill Golightly, Rebecca Golightly, Marvin Golightly, LaDawn Hansen, Larry Hansen, Blake Hull, Jim Hull, David Moser, Maurice Nielson, Kaylene Owen, Mark Owen, Peggy Owens, Richard Owens, Jerry Petterborg, Terri Petterborg, Jeff Pope, Ron Randall, Brandon Roberts, Mary Roberts, Annette Salvesen, Sam Smith, Terry Smith, Dennis Webster, Mike Wilson, Vera Wilson

Meeting was called to order at 7:15 p.m. by Franklin County Planning and Zoning Chairman Robert Swainston.

JOINT PUBLIC HEARING CITY/COUNTY IMPACT AREA Franklin County Planning and Zoning Chairman Robert Swainston called for the joint public hearing before the Planning and Zoning Commissions of Franklin County and the City of Preston for the purpose of considering the adoption of an Area of City Impact ordinance for the City of Preston within the unincorporated area of Franklin County, Idaho, pursuant to the requirements of Idaho Code 67-6526, as follows:

JOINT NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a joint public hearing shall be held before the Planning and Zoning Commissions of Franklin County (County) and the City of Preston (City) on **Wednesday, September 7, 2016, at 7:00 p.m.**, at the Franklin County Courthouse, 39 West Oneida, Preston, Idaho, for the purpose of considering the adoption of an Area of City Impact ordinance for the City of Preston within the unincorporated area of Franklin County, Idaho, pursuant to the requirements of Idaho Code 67-6526.

The purpose of this ordinance is to establish an Area of City Impact for the City of Preston within the unincorporated area of Franklin County. The ordinance shall ensure that development in the Area of City Impact has no unreasonably adverse impact on the City's municipal water supply; ensure that development in the Area of City Impact has no unreasonably adverse impact on or unduly increases the potential for flooding, contamination of groundwater, surface water, fish and wildlife habitat, and protects spring sources, wellhead and watershed protection areas; ensure that development in the Area of City Impact has no unreasonably adverse impact on land use areas within the City; ensure that development in the Area of City Impact has no unreasonably adverse impact on residents of the City or the County by generating demands for new and improved publicly-funded facilities in the

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Area of City Impact; ensure that development in the Area of City Impact has no unreasonably adverse impact by increasing traffic routed through the City, thereby unduly impacting residents' enjoyment of their homes, or creating safety hazards, or necessitating major street improvements at public expense; maintain a buffer area between agricultural activities and urban development; take into full consideration trade areas of the City, geographic factors, and areas that can reasonably be expected to be annexed in to the City in the future; ensure the rights of County residents to make reasonable use of their property.

The geographic Area of City Impact and watershed and wellhead protection area is the area designated on the attached map and more particularly described as follows:

- 1) The unincorporated area generally described as the area lying three-quarters of a mile North of 800 North Street (1400 North), three-quarters of a mile West of 800 West Street (1400 West), three-quarters of a mile South of 800 South Street (1400 South), and three-quarters of a mile East of 800 East Street (1400 East).
- 2) The unincorporated area extending thirty-five (35) feet beyond the centerline of any street or road situated on the boundary of the Area of City Impact.
- 3) Fifty (50) feet on each side of the City's water main line(s) from Bergquist Springs to the City's water storage tanks, and from the storage tanks to the City.
- 4) The Watershed Protection Area and all of the land within 3000 feet of Bergquist Springs.
- 5) The Watershed Protection Area and all the land within 1500 feet of the spring below Glendale Reservoir described in the July 11, 1959 Agreement and Addendum Agreement, dated December 11, 2000, between Preston Eastside Water Company, Preston-Whitney Irrigation Company and the City.

The ordinance provides that the Comprehensive Plan of Franklin County and subsequent amendments thereto shall apply to the Area of City Impact. All other ordinances of Franklin County and subsequent amendments relating to zoning, subdivision, and development shall apply to the Area of City Impact, unless otherwise stated in the ordinance. Both City and County shall amend their Comprehensive Plans to be consistent with the ordinance, if required.

The ordinance provides that the County shall be responsible for the administration and enforcement of the County's ordinances where they apply within the Area of City Impact. All proposed subdivision development plats or any development or building requiring a permit under County ordinances situated within the Area of City Impact shown on the attached map shall be submitted to the City for review and comment at least fourteen (14) days before the first official decision regarding the subdivision or development is to be made by the County. Maintenance of public streets located in the Area of City Impact shall remain the responsibility of Franklin County and the State of Idaho, unless otherwise stipulated by written agreement between Franklin County, State of Idaho, and the City of Preston. Law Enforcement and fire services in the Area of City Impact shall remain the responsibility of Franklin County unless otherwise stipulated by written agreement between the County

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and/or Fire District and the City of Preston. Animal Confinement Operations (ACO's) as defined by Franklin County Ordinance No. 2002-2 within the Area of City Impact should only be allowed with vigilant review and input by both the City and County. No permanent building or structure shall be placed within twenty-five (25) feet of the City's water main lines.

Copies of the proposed ordinance and map are on file with the City Clerk and County Clerk, and may be obtained from the respective Clerk at Preston City Hall, 70 West Oneida Street, Preston, Idaho, 83263, or the Franklin County Court House, 39 West Oneida Street, Preston, Idaho, 83263.

At the public hearing, all persons present will be given the opportunity to be heard. Written comments or objections may be submitted to the City Clerk or County Clerk at the above addresses.

Dated: August 5, 2016

s/Linda Acock, City Clerk
s/Shaina Geddes, County Clerk
Publish: August 10 and 17, 2016

Franklin County Planning and Zoning Chairman Robert Swainston gave guidelines for holding a public hearing, and asked if any Board members needed to declare a conflict of interest, or ex-parte contact with the matter. There being none, Franklin County Planning and Zoning Chairman Robert Swainston opened the public hearing, summarized the ordinance for those present, and informed them this would be a comment only forum. He then read the following letter received from Richard E. Owens:

Richard E. Owens
1274 South State
Preston, ID 83263

To the Franklin County Commissioners and Preston City Officials:

Reference the Joint Notice of Public Hearing for the adoption of a City Impact ordinance.

Unfortunately, I live in the area proposed therefore this letter states my beliefs and desires.

This is a case of the City wanting their cake and eat it, too. In other words, they want to control what we do on our property and give nothing in return except more rules, regulations, and government red tape. This entire ordinance protects the City from any responsibility or commitment to us, yet gives them power to decide what is "reasonable use" of our property and the power to enforce their desires.

It would be very fitting to reverse this ordinance for our protection from them and let us have power to decide what was "reasonable use" of City property. We are also concerned about our wells, springs, water table, roads, enjoyment of our property, adverse use of land in the City, etc. I'm sure they would embrace a reverse ordinance, especially when they realize they would not be able to vote for or against the people, making the decisions concerning their property or what "reasonable use" might mean.

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To add insult to injury this ordinance gives them the right to “renegotiate” at any time they desire with a mere thirty day notice or at the minimum, every five years. That definitely secures us with revolving property rights.

The only way for this to fairly move forward is for an agreement reached between the City, the County, AND THE PEOPLE LIVING IN THE PROPOSED IMPACT AREA. To the best of my knowledge, none of the City fathers or County commissioners live in the proposed impact area, yet they intend to bind us to their decision. Where is our true representation?

This ordinance does not place rules or regulations on anyone in the City or County except those who live in the proposed impact area. That makes this ordinance unique in the sense that it is more like a zoning law change (after the fact). The only “reasonable” way to continue is to make a list of all the people living in this proposed area, contact them, and get a yes or no from each of them, before moving forward. To pass this ordinance without the approval of the people affected might be legal but not morally right.

Sincerely,
s/R.E. Owens
Richard E. Owens

Franklin County Planning and Zoning Chairman Robert Swainston then read the following email sent to Tyler Olson, City Attorney, from Dennis Duehren, District Ranger for the Forest Service, dated Monday, August 22, 2016:

Tyler, thank you for making the time to meet with me today.

With regards to the City of Preston’s creation of an Impact Area for the City the Forest Service would like the City to consider some language changes to the proposed ordinance. I believe where we reached agreement was that the description of the impact area is accurate and it is the wording of where, within the impact area, the City or County would apply/enforce the conditions of the ordinance. I am requesting edits that would clarify that the City or County ordinances would not apply to Federal lands except as allowed through the special use permit for the spring development and water pipeline corridor. I leave it to your discretion to find the appropriate place to make this clarification.

Thank You,
Dennis Duehren
District Ranger
Forest Service

Franklin County Planning and Zoning Chairman Robert Swainston then called for comments from those in attendance.

Terry Smith, 3987 East Glendale Road, stated that the proposed Impact Area would adversely affect him since water lines, irrigation pipes, a County highway, power lines, and the hydro plant all run through his small farm, and suggested changing the easement along both sides of the water line to 20 feet on each side, not 25 feet. He also stated that he appreciates the City water and irrigation water he has access to.

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Blake Hull, 1268 South State, stated that where he lives they have very limited access to culinary water. He has a 10 foot deep well from which he has removed toads, tree roots and mice, and he has been unable to keep these things out of his well. He asked if the City would have jurisdiction of his land. He then stated his main concern was what the City was going to do to help the people in his area with culinary water where needed, since deeper wells are not an option due to contaminated water.

Rebecca Golightly, 3064 East Glendale Road, asked why the County Commissioners and City Councilmembers were not in attendance at the public hearing. She stated that the City has no right to tell her what she can and cannot do with her property, and questioned why the impact area encompasses such a large area. She also stated that the City water line runs through her property and she wanted to know what the City was going to do about hooking people up to the water line when it is clearly accessible to them.

Steve Clark, 1208 South 1200 East, read his comments for the record: It grieves my soul to its very core that I must stand before you today and ask for the maintenance of the freedoms which Almighty God has bestowed upon us. I do not wish to be subject to the City's Impact Zone. I can manage the dealings of my private property on my own. God has blessed me with a sound mind and a faithful understanding of my duties. It is not the government's role to dictate to me what I should do with it. Ronald Reagan got it right when he said the nine most terrifying words in the English language are; I'm from the government, and here to help. If I have disputes with my neighbors about something on my property, then it is up to us to resolve it, not the City or the County Government. If it must be resolved by government intervention, then the proper channel would be through the judicial system, not Mayors or Commissioners. I should not have to ask any local official such as a Mayor or Commissioner, et cetera, for the free exercise of my God given private property rights. Better men than you and I have given their lives for the cause of liberty. Just outside we have erected monuments to these men. Let's not only honor these men with stone and bronze, but with our hearts. Let us firmly establish within ourselves a resolve to make men free. Free from kings and would be kings. Free from Commissioners, and I might add Planning and Zoning Committees. Let's honor them by applying the American litmus test to every current proposed law or ordinance such as the one before us today. The test is this – does this law make us more free, or less free? More liberty or more death? The answer is simple today, the proposed ordinance would make us County residents inside the impact zone less free. We would not only have to seek the permission of the County before we do something on our land, but we would also have to seek the permission from the City. We already have laws and ordinances in this direction. I have enough government imposed unrighteous dominion in my life. More of it will not add to the quality of my life and liberty. If we as citizens of Franklin County cannot stand as protectors of moral agency, individual liberty, freedom, or whatever names it is known as, then does it have a hope anywhere else in this country? Any time an ordinance of subjugation is proposed we must whole-heartedly strike it down. John Adams, the day after the battles of Lexington and Concord, picked his way through the carnage and burial parties, and, smelling the stench of burned buildings, later wrote, Posterity, you who will never know how much it cost the present generation to preserve your freedom, I hope you will make good use of it. If you do not, I shall repent in heaven I ever took half the pains to preserve it. What would John Adams say about this ordinance? Please, I petition the Mayor and Commissioners, even in their absence, you Planning and Zoning committees,

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if there exists any brotherhood or friendship between us, do not adopt this City Impact zone. Strike down this attempt to subjugate our private property rights. In the word of Patrick Henry, give me liberty or give me death. Sincerely, Steve Clark.

Don Dunkley, 1373 East 1400 South, stated that he wanted to be left in the County and didn't want to pay City taxes, but would like to have City water at the new house he is building.

Sam Smith, 3347 East Riverdale Road, stated it would be a good thing if those residing in the Impact Area had the opportunity to ask questions in order to learn more about the ordinance, and be given the chance to vote on it. He further stated that landowners located along the City water lines should be allowed to connect to the water system.

Brandon Roberts, 1415 West Highway 36, expressed his gratitude to the City and County for working together to establish an impact area. He stated that some people would be affected negatively and others positively, but that all those affected should have a chance to comment, and become better educated. He also stated it was his understanding that those located in the impact area would not be forced to annex into the City, but he felt those wanting to be annexed should have the opportunity to do so.

Gerald Cole, 5527 East Glendale Road, explained that the water line runs through a mile and a half of his property, and that he has a son and daughter who live on East Glendale Road who cannot connect to the City water system even though the water line runs through their property. He stated that the ordinance seeks to restrict his land use, which he does not feel to be fair. He also disputed the distances the ordinance requests on each side of the main water line in order to get City equipment into the area to maintain the City's water line. He then stated he will fight this ordinance if it goes through.

Max Brown, 3458 East Glendale Road, stated he has spent his life savings cleaning up this property. He explained the former owners did not have the foresight to enter into the contract for City water when the water line went in, which all the other landowners at the time took advantage of, and those who have bought land since are unable to connect to City water even though the water line runs through their property. He further stated he wants to connect to the water line. He then explained he only learned about the public hearing by word of mouth and did not receive any notification. He was also concerned about Section 6, wherein it states the Area of City Impact shall be reviewed every five years and can be renegotiated at any time upon 30 days written consent, and since he travels a lot he would receive no notification when this took place.

Trent Alder, 1568 East 400 South, owns property on 1200 East and Oneida. His concerns were that the Impact Area is so far reaching, and that even though it wouldn't immediately impact his ability to use his land, what happens if the City should expand into that area and the neighbors begin complaining about his cattle, or tractor operations at night? He felt that the Impact Area is far too big.

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David B. Beckstead, 150 East Valley View, stated he was also representing his father, David W. Beckstead, 1498 South 8th East, in saying they are wholeheartedly against the impact ordinance and do not want anything to do with it. He explained they have extensive agricultural property within the boundaries, they do not want the City telling them how many cows or pigs they can have on their property, and that they already have buildings within 25 feet of the water line. He suggested instead that the impact area extend no more than one block at a time over a 20 year period, and feels the impact ordinance would be intrusive of their freedoms.

Jim Hull, 6887 East Cub River Road, stated the water line runs through his property, and the 25 foot setbacks from the water line make sense to him, but as you look at the ordinance, it just keeps talking about the City, and while he understands the City's desire to be protected, they are offering nothing in return. He stated this ordinance takes his personal property rights from him, and wondered what would happen if the ordinance extends even further next year. He was disappointed the Commissioners were not present at the meeting, and stated there should have been a meeting with all property owners affected by this ordinance before this public hearing.

Terri Petterborg, 32 South 4th East, stated she and her husband are in the process of purchasing property at 2474 East Glendale Road. While most of her concerns had been addressed, she felt a 50 foot easement along the water line was excessive and that 1500 feet around the spring below Glendale Reservoir, which would be about the same as 5 football fields, was also excessive. She stated the ordinance needs to be looked at and re-evaluated.

Brock Alder, 1403 East 4th South, stated that he understands the ordinance wouldn't result in any immediate changes in the farming community, but that it is a foot in the door, and he was concerned that down the road the regulations imposed would affect operations in the farming community. He further stated the impact area as proposed is too large, and suggested maybe it should extend a block, or follow natural boundaries such as rivers or creeks. He wondered if the City was sending a message that they were planning to go out into the farming community to build. He also stated that as a member of the City Planning and Zoning Commission, representing the County, he has voted and will continue to vote against this ordinance.

Mike Wilson, 4633 East Glendale Road, stated that he found out about the public hearing the night before, and since the public hearing was not for questions and answers, he could only conclude that legally the only way the City and County got around this was by calling it an easement comment thing. He stated that he feels if this wasn't illegal, it was immoral. He also stated he moved to the County because he wants to live in the County, not the City.

Mary Roberts, address not given, came here from Utah to escape being dictated to in regards to her property. She stated she wants to stay in the County and to have a voice in what takes place in the County. She further stated that all county landowners should have been notified about the Impact Area Ordinance and Public Hearing.

Dennis Webster, 4323 East Glendale Road, stated the water has run down the pipeline without any problems for a long time, and we don't need a bunch of new regulations. He stated he signed a contract with the City when the water line was put in and he can't see how the City can change that contract when he can't.

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David Moser, 1098 South 1200 East, wondered if the mink sheds on Beckstead Lane were the reason an Area of Impact needed to be implemented. He stated the area involved in the Impact Area is too large and should encompass less area.

Terry Larson, Preston City Councilmember, clarified that there are open meeting laws governing the meetings of the Preston City Council and Franklin County Commission, and that was why they were not all in attendance at this public hearing.

Tyler Olson, Preston City Attorney, explained that according to Idaho State Code there are two ways to adopt an Area of Impact Ordinance, the first being negotiation between the City and County, and we've been in the process of doing this for some time. The second would be to appoint a committee with a judge monitoring the process. If the committee cannot reach an agreement, the judge would decide what's best for the City and for the County. He explained that areas of Impact require that the City and County are in agreement.

Max Brown, 3458 East Glendale Road, wanted to know if a renegotiation of the easement through his property were to take effect by the implementation of the Impact Ordinance, could he likewise renegotiate to receive City culinary water, since he was not grandfathered into the original contract.

Linda Hansen, Chairman of the Preston City Planning and Zoning Commission, explained that the Commission has a responsibility to the residents of Preston City to protect the waterline. Since the State of Idaho is requiring all cities to have an Area of Impact Ordinance, the City and County Planning and Zoning Commissions have been working hard to implement an ordinance based on what is best for both City Residents and County Residents. She clarified the only thing the City is requesting is a chance to comment when someone is building too close to the waterline. She also stated the City would have no jurisdiction over County residents, and that they would still be governed by County Ordinance.

Robert Swainston, Chairman of the Franklin County Planning and Zoning Commission, made the following clarifications: The Public Hearing was for the two Planning and Zoning Commissions to get public input in order to finish hammering out the ordinance, after which it would have to be heard by both the Franklin County Commissioners and the Preston City Council in separate public hearings, so the proposed ordinance would not be set in stone by any decision made at this public hearing. He stated the 100 foot strip over the waterline is a myth. If someone already has a structure in the strip they will be able to keep it there. All the City wants is the right to comment should any structure go in within 25 feet of each side of the waterline. Preston City is the only incorporated City in Franklin County that does not have an Area of Impact, and the last clarification he made was in regards to the property owners who have waterlines running through their property who wish to connect to City water. The reason they are unable do so is because the original owners did not have an agreement with the City for a connection, or because they bought property after the agreement was offered.

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There being no further testimony, Franklin County Planning and Zoning Chairman Robert Swainston closed the public hearing. No decision was made at this time.

ADJOURN Meeting was adjourned at 8:37 P.M. by Franklin County Planning and Zoning Chairman Robert Swainston.

Linda Hansen, Chairman

Linda Acock, Clerk