

CITY OF KIMBERLY

PLANNING & ZONING COMMISSION
MEETING AGENDA

SEPTEMBER 2, 2014
6:00PM

Planning & Zoning Commission meetings are televised, videotaped and/or recorded

Location: 242 Highway 30, Kimberly, Idaho 83341

CALL TO ORDER

WELCOME – PLEASE TURN OFF CELL PHONES – THANK YOU.

ROLL CALL OF COMMISSION MEMBERS

1. CONSIDER APPROVAL OF:

- a. Minutes from August 5, 2014 Meeting

2. PUBLIC HEARINGS

- a. None

3. OLD BUSINESS

- a. Consideration of Findings of Fact of an ordinance and application by Lucas and Jade Christensen to amend the City of Kimberly Zoning Map, which was adopted on February 10, 2009. As a condition of approval, the applicant has consented to sign a development agreement which includes conditions for the rezone. The proposed area for rezone is approximately 2.63 (+ or -) acres and is within the NE1/4 NW1/4 Section 21, Township 10 South, Range 18 East, Boise Meridian, Twin Falls County, Idaho (approximately at 27 Highway 50), and is proposed to be rezoned from Agriculture to Commercial-Gateway (CG). On August 5, 2014 the P&Z Commission voted to recommend the Council approve the development agreement and application.

4. NEW BUSINESS

- a. Workshop consideration of an ordinance for withholding, red tagging, or revocation of building permits where violations of Title 17 exist
- b. Workshop consideration of an ordinance pertaining to development agreements

5. UPCOMING MEETINGS: –

Regular P&Z October 7, 2014 – 6 PM

6. STAFF REPORTS

Community Development Director

7. ADJOURNMENT

Questions concerning items appearing on this Agenda or requests for accommodation of special needs to participate in the meeting should be addressed to the Office of the City Clerk, 242 Highway 30, Kimberly, Idaho 83341 or call 208-423-4151.

Ted Wasko	Leland Belin	Perry Dangerfield	Candy Weth	VACANT	Cindy Schmidt	Dan Shewmaker
		<i>Co-Chair</i>	<i>Chairperson</i>		<i>Area of Impact</i>	<i>Area of Impact</i>

KIMBERLY PLANNING AND ZONING

August 5, 2014

Call to Order:

The meeting was called to order at 6:02pm.

Roll Call of Commission Members:

Members present were Ted Wasko, Leland Belin, Candy Weth, and Perry Dangerfield. Impact Area Representatives Dan Shewmaker and Cindy Schmidt were also present.

1. Approve:

Cindy Schmidt moved that the Commission approve as presented the minutes from the regular meeting of June 3, 2014. The motion was seconded by Leland Belin and passed unanimously.

2. Public Hearing:

A. Public Hearing and consideration of an ordinance and application by Lucas and Jade Christensen to amend the City of Kimberly Zoning Map, which was adopted on February 10, 2009. As a condition of approval, the applicant has consented to sign a development agreement which includes conditions for the rezone. The proposal for rezone is approximately 2.63 (+ or -) acres (recently adjusted from a larger 3.10 (+ or -) acres and is with the NE1/4 Section 21, Township 10 South, Range 18 East, Boise Meridian, Twin Falls County, Idaho (approximately at 27 Highway 50), and is proposed to be rezoned from Agriculture (AG) to Commercial Gateway (CG). Susan Brown, Real Estate Agent, representing the owners came before the Commission to request the rezone. She stated that the Comprehensive Plan and the current Zoning Map show the subject property eventually being part of the Commercial Gateway Zone. The property owners have moved and want to sell the property and think it should be rezoned so that it can be marketed as Commercial Gateway. The meeting was open for Public comment. Clare Gibbs who owns adjacent property wanted to know how the rezone would affect her property which is mostly farmland. She was told that the subject property and rezone would not impact her land. Ms. Gibbs was unsure where the property was in relation to her land and had no further comment when she learned of the location of the parcel being considered for rezone. With no more Public input the



Public Hearing was closed. Commissioner Leland Belin was concerned that if this rezone was granted that it would be considered "spot" zoning because the land to the west had not been rezoned yet. The Commission decided that because the Comprehensive Plan and the Kimberly City Zoning Map show the land to the west as being in the Commercial Gateway (CG) Zone that it would not be a problem to rezone the subject parcel. With no further discussion Cindy Schmidt made a motion to recommend the Council approve the development agreement and application to amend the zone district map for the City of Kimberly Area of Impact to change the zoning of the approximately 2.63 (+ or -) acres within the NE1/4 NW1/4 Section 21, Township 10 South, Range 18 East, Boise Meridian, Twin Falls County, Idaho (approximately at 27 Highway 50), from Agriculture (AG) to Commercial Gateway (CG), finding that the proposed amendment will promote the public health, safety, and general welfare. Perry Dangerfield seconded the motion and it was carried unanimously.

3. Old Business:

A. Consideration of Findings of Fact for an application on a preliminary plat submitted by EHM Engineers, Inc. representing the owners of Redcap Corner, the application proposing to re-plat Lot 4, Block 1, Redcap Subdivision (22349 Kimberly Road) as a 2 unit condominium plat. The re-plat would allow each created condominium unit to be divided and sold off as separate units. After reviewing the application and discussing the Business Association Agreement concerning parking and maintenance of the parking area and sidewalks Ted Wasko moved that the Commission approve the Findings of Fact. The motion was seconded by Cindy Schmidt and passed unanimously.

4. New Business:

Bart Bingham, Kimberly City Zoning Administrator, informed the Commission of the need for a special meeting to discuss the proposed Kimberly Pedestrian and Bike path. He hopes the Commission can meet on August 18 or 19. The City is waiting for the Engineers report on the Bike path so City Staff can comment and the Commission can review the proposal.

5. Adjournment:

With no further business before the Commission the meeting



was adjourned at 6:57pm.

Respectfully submitted,

Perry C. Dangerfield

Approved this _____ day of _____, 2014.

Candy Weth, Commission Chair

Attest:

Bart Bingham, Community Development Director



FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION

On August 5, 2014, the Kimberly Planning and Zoning Commission considered an application submitted by applicants Lucas and Jade Christensen to amend the City of Kimberly Zoning Map, which was adopted on February 10, 2009. As a condition of approval, the applicants have signed a development agreement with its conditions, of which the Commission has also agreed to with the conditions. The proposed area for rezone is approximately 2.63 (+ or -) acres and is within the NE1/4 NW1/4 Section 21, Township 10 South, Range 18 East, Boise Meridian, Twin Falls County, Idaho (approximately at 27 Highway 50), and is proposed to be rezoned from Agriculture to Commercial-Gateway (CG). The Commission, having been presented with all information and testimony in favor and in opposition to the proposal, hereby makes the following Findings of Fact, Conclusions of Law and Recommendation.

FINDINGS OF FACT

Notice

Notice for the public hearing was published in the Times News on July 21, 2014 and was mailed to owners within 300 feet and to public agencies on July 22, 2014. The property was also properly posted on July 22, 2014

Application

Applicants Lucas and Jade Christensen made application to amend the City of Kimberly Zoning Map, which was adopted on February 10, 2009. The amendment would change the zoning from Agriculture to Commercial-Gateway (CG) for the property noted above.

Procedural History

The P&Z Commission conducted a public hearing on August 5, 2014 to consider the rezone.

Standards of Evaluation

Note: **Standards are in bolded typed**, staff analysis is in lighter type.

17.14.040: COMMISSION ACTION:

Zoning districts, zoning subdistricts and overlay districts shall be amended in the following manner:

- A. Requests for an amendment to this title shall be submitted to the commission, which shall evaluate the request to determine the extent and nature of the amendment requested.**

The Commission evaluated the zone change and found that because the Comprehensive Plan shows the area along Kimberly Road as Gateway Commercial, the rezone complies with the Comprehensive Plan.

- B. (If the request is in accordance with a comprehensive plan, the commission may recommend and the council may adopt or reject the ordinance amendment**

under the notice and hearing procedures as herein provided; and

The Comprehensive Plan designates Commercial Gateway (GC) as the land use extending approximately 300 feet in either direction appurtenant to Hwy 50. Using a broad brush, the Commission finds that the piece of property extending 740 feet south of Hwy 50 may be considered part of the Commercial Gateway area and thus the request is in accordance with the Comprehensive Plan.

C. If the request is not in accordance with the comprehensive plan, the request shall be submitted to the commission or, in its absence, the council, which shall recommend and the council may adopt or reject an amendment to the comprehensive plan under the notice and hearing procedures provided in Idaho Code section 67-6509. After the comprehensive plan has been amended, this title may then be amended as hereinafter provided for.

Staff was recently directed to use a “broad brush” in defining Commercial Gateway lines along the Kimberly Road corridor, including for 500’ to 1000’ beyond the shown periphery.

Other goals in the Comprehensive Plan that the Commission chose to consider are from the Economic and Community Development section in the plan which state:

1. Promote economic growth in the City as opportunities arise that are fitting with its goals and objectives.

The Commission found that rezoning the property would most likely create additional economic development opportunities in the future.

2. And identify and zone areas for economic growth and development for commercial, light and heavy industrial use (as a policy).

The Commission found that the property would qualify as an area for economic growth.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the Commission makes the following Conclusions of Law and Recommendation:

1. Adequate notice, pursuant to the requirements of the City of Kimberly Code Title 17 and Idaho Code, Section 67-6511, was provided.
2. The Zoning Map amendment is in accordance with the Kimberly Comprehensive Plan, the proposed uses are compatible with the area; and the proposed amendment will promote the public health, safety and the general welfare.



RECOMMENDATION

The City of Kimberly Zoning Map amendment to change the zoning of the approximately 2.63 (+ or -) acres and is within the NE1/4 NW1/4 Section 21, Township 10 South, Range 18 East, Boise Meridian, Twin Falls County, Idaho (approximately at 27 Highway 50), is hereby recommended for rezone from Agriculture to Commercial-Gateway (CG) and adoption of such rezone to the City Council, with the following conditions:

1. Development Agreement, showing attached Exhibit A (pgs 1 -2) shall be signed by the applicant, and notarized prior to Council consideration.
2. The applicant and all future applicable parties shall abide the Development Agreement and its conditions.

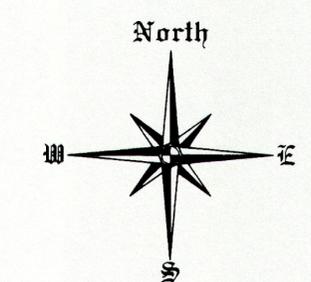
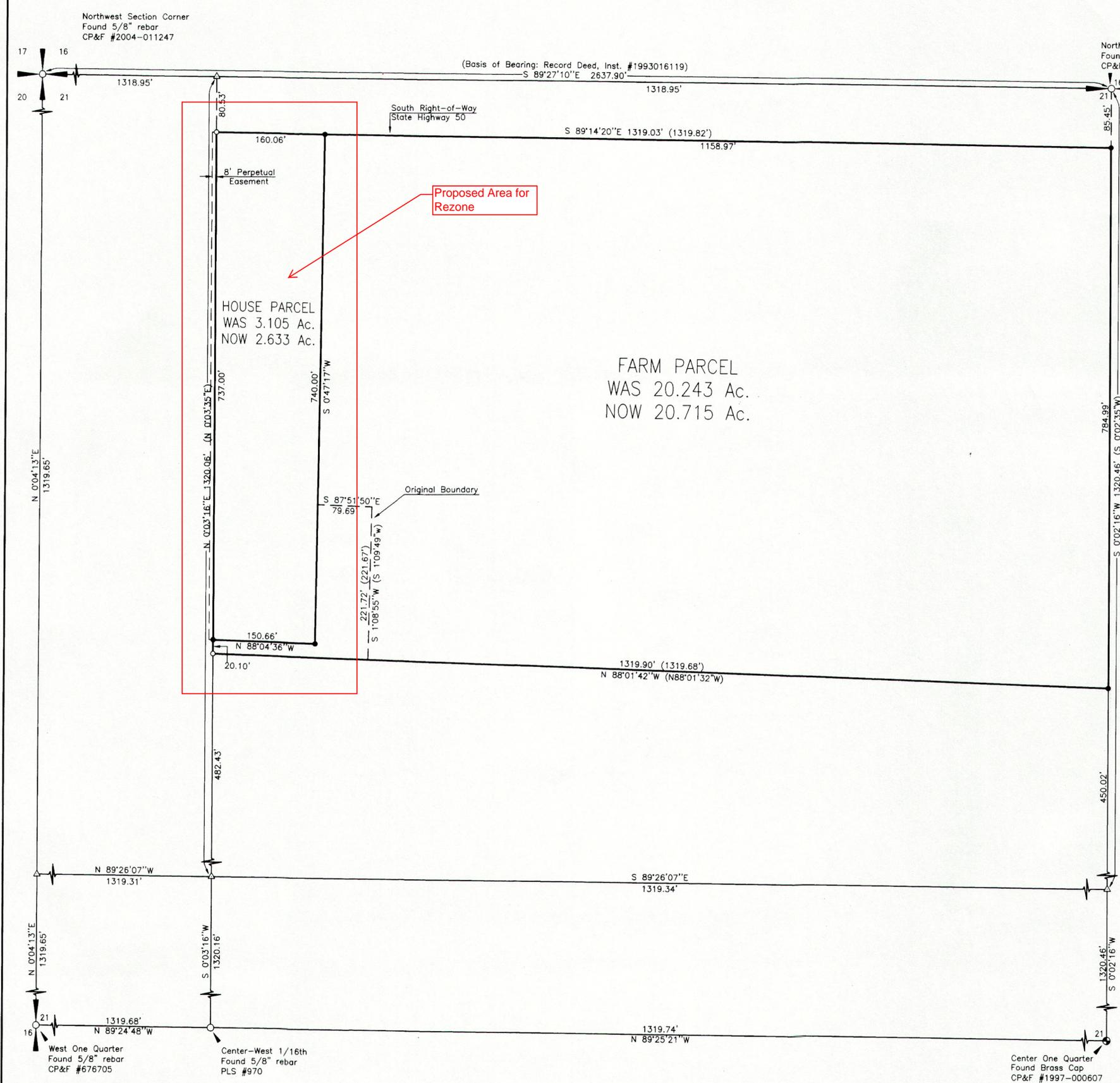
Signed this _____ day of _____, 2014.

Candy Weth, Commission Chair
City of Kimberly

Attest:

Bart Bingham, Community Development Director
City of Kimberly





SCALE
1" = 100'

LOCATED IN
NE⁴ NW⁴ SECTION 21,
TOWNSHIP 10 SOUTH,
RANGE 18 EAST,
BOISE MERIDIAN
TWIN FALLS COUNTY, IDAHO
2011

LEGEND

- SURVEY BOUNDARY LINE
- RIGHT-OF-WAY LINE
- FOUND BRASS CAP
- FOUND 5/8" STEEL PIN
- FOUND 1/2" STEEL PIN
- SET 1/2" REBAR & CAP
- CALCULATED POINT - NOT SET
- DEED RECORD

TWIN FALLS COUNTY
Recorded for:
ALL POINTS LAND SURVEY
3:21:35 PM 10-13-2011
2011-019014
No. Pages: 1 Fee: \$ 5.00
KRISTINA GLASCOCK
County Clerk
Deputy: DWRIGHT

I, JOHN O. ROOT, DO HEREBY CERTIFY THAT THIS
MAP IS A TRUE AND ACCURATE MAP OF THE LAND
SURVEYED UNDER MY SUPERVISION AND DIRECTION.



- REFERENCES**
- DEEDS:
INST. #1993016119
#1993018175
#2010-003463
- RECORDS OF SURVEYS:
INST. #1996-607116
#2001-023504
#2002-026915
#2002-026916
#2006-029819
#2007-014480
- HIGHWAY PLANS: PROJECT 2741(8)

ALL POINTS LAND SURVEYING JOHN ROOT - P.L.S. #889 SURVEYING - CONSTRUCTION MANAGEMENT	
RECORD OF SURVEY FOR: KELLY MUNSEE	
LOCATED IN: NE1/4 NW1/4 SEC. 21, T. 10 S., R. 18 E., B.M.	
DRAWN BY: S. ROOT	REVISIONS:
DATE: 08/20/2011	SHEET NO.: 1 OF 1
JOB NO.: 11-061	SHEET NO.: 1 OF 1

TWIN FALLS COUNTY
RECORDED FOR:
ALLIANCE TITLE - TWIN FALLS OF
02:59:24 PM 01-31-2014
2014001855
NO. PAGES 2 FEE: \$13.00
KRISTINA GLASCOCK
COUNTY CLERK
DEPUTY: JWD
Electronically Recorded by Simplifile

WARRANTY DEED

Alliance Title & Escrow Corp. Order No.:215130

FOR VALUE RECEIVED

**Kelly P. Munsee and Wendy R. Munsee, husband and wife, who acquired title as
Kelly P. Munsee an unmarried man and Wendy R. Fullmer, an unmarried woman**

the grantor(s), do(es) hereby grant, bargain, sell and convey unto

Lucas W. Christensen and Jade B. Christensen, husband and wife

whose current address is

**27 Highway 50
Kimberly, ID 83341**

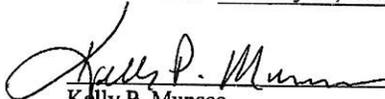
the grantee(s), the following described premises, in Twin Falls County, Idaho, TO WIT:

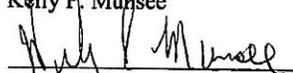
SEE ATTACHED LEGAL DESCRIPTION

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee(s), that (s)he is/are the owner(s) in fee simple of said premises; that they are free from all encumbrances Except: Current Year Taxes, conditions, covenants, restrictions, reservations, easements, rights and rights of way, apparent or of record.

And that (s)he will warrant and defend the same from all lawful claims whatsoever.

Dated: January 27, 2014



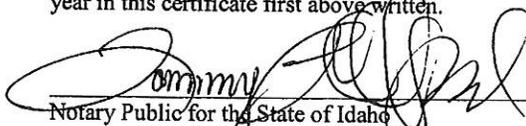
Kelly P. Munsee


Wendy R. Munsee

State of Idaho } ss
County of Twin Falls }

On this 31st day of January, 2014, before me, the undersigned, a Notary Public in and for said state, personally appeared Kelly P. Munsee and Wendy R. Munsee, known or identified to me to be the person(s) whose name(s) is/are subscribed to the within Instrument and acknowledged to me that he/she/they executed same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Notary Public for the State of Idaho
Residing at: Twin Falls, ID
Commission Expires: 11.14.2019



EXHIBIT "A"

215130

Township 10 South, Range 18 East, Boise Meridian, Twin Falls County, Idaho

Section 21: A parcel of land located in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ being more particularly described as follows:

COMMENCING at the Northwest corner of Section 21 from which the North One Quarter (N $\frac{1}{4}$) corner of Section 21 bears South 89°27'10" East 2637.90 feet;

THENCE from the Northwest corner of Section 21 South 89°27'10" East along the North boundary of the NW $\frac{1}{4}$ of Section 21 for a distance of 1318.95 feet to the Northwest corner of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 21;

THENCE South 00°03'16" West along the West boundary of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 21 for a distance of 80.53 feet to a point on the South right-of-way boundary of State Highway 50 and being the TRUE POINT OF BEGINNING;

THENCE South 89°14'20" East along the South right-of-way boundary of State Highway 50 for a distance of 160.06 feet;

THENCE South 00°47'17" West for a distance of 740.00 feet;

THENCE North 88°04'36" West for a distance of 150.66 feet to a point on the West boundary of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 21;

THENCE North 00°03'16" East along the West boundary of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 21 for a distance of 737.00 feet to the TRUE POINT OF BEGINNING.

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“Agreement”) is dated this ___ day of _____, 2014, by and between the CITY OF KIMBERLY, IDAHO, a municipal corporation (“City”) and Lucas and Jade Christensen, husband and wife (“Owners”) who own 2.63 (+ or -) acres of property within the jurisdiction of Kimberly to be rezoned and covered within this Agreement.

RECITALS

A. The City is a municipal corporation possessing all powers granted to municipalities under the applicable provisions of the Idaho Code, including the power to zone and enforce zoning within the boundaries of the property and the power to contract.

B. Owners, as undivided interest holders of the 2.63 (+ or -) acres, which is located within the City of Kimberly Area of Impact, more particularly described as shown on attached **Exhibit A** (“Record of Survey showing 2.63 acres for rezone from agricultural to Commercial Gateway (CG)) - which also has the legal description of the property attached with it), hereby agree to the following recitals.

C. Owners filed an application to rezone the 2.63 (+ or -) acres from Agriculture to Commercial Gateway (CG) in June, 2014, all in accordance with and pursuant to the provisions of the City’s Zoning Ordinance. The 2.63 acres are presently located in the City of Kimberly’s Area of City Impact and located immediately south of US Highway 50 and east of the present Red-Cap Corner location.

D. Owners intend to market the property as commercial property rather than agricultural property.

F. After consideration of the rezone by the Kimberly Planning & Zoning Commission, but prior to consideration of the rezone by the City of Kimberly City Council and the Twin Falls County Board of Commissioners, this Agreement shall be accepted and executed by the applicant (including being signed by the applicant and notarized by an authorized notary). The City’s acceptance and execution of this Agreement shall be after consideration and approval of this Agreement by the City Council and Twin Falls County Board of Commissioners.

G. The Parties agree the property shall be re-developed in accordance with the terms and conditions of this Agreement and any additional conditions and requirements imposed by the City during the approval of the rezone application or during later permitting processes.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, promises, agreements, terms and conditions set forth herein, the parties covenant and agree as

follows:

1) Incorporation of Recitals. The Recitals set forth above are an integral part of this Agreement and are fully incorporated herein by this reference.

2) Zoning Designation. Upon approval of this Agreement and the Rezone by the Kimberly Planning and Zoning Commission, the Kimberly City Council, and the Twin Falls Board of County Commissioners, the 2.63 acres shall be classified and zoned Commercial Gateway (CG). The parties acknowledge that the rezoning of the 2.63 acres cannot exist solely by virtue of this Agreement.

3) Development of Property. Owners agree the 2.63 acres shall generally be developed as set forth in the Findings of Fact and Conclusions of Law which may be adopted by the Kimberly City Council and the Twin Falls County Board of Commissioners approving the rezone of 2.63 acres, which shall be attached hereto as **Exhibit B** and incorporated herein. Also previously noted and attached as **Exhibit A** is ("Record of Survey showing 2.63 acres for rezone from agricultural to Commercial Gateway (CG)) which are subject to the conditions contained in paragraphs 3(A - E) for the rezone, which conditions shall run with the land:

- A. The owner or all owners of the property making up the 2.63 acres or any portion thereof, consent to the City of Kimberly creating or causing to create a Local Improvement District (LID) encompassing the 2.63 acres, any property combined with it or any portion of either. The purpose of the LID could be or may be to make the following improvements for any portion of the 2.63 acres or any portion combined to it: To purchase, acquire, construct, improve, and/or repair city sewer and water service providing service to the Local Improvement District; provided any improvements for sanitary sewer facilities shall conform with the rules of the Idaho Department of Environmental Quality.
- B. Whenever and at such time City of Kimberly water and sewer service is available at or within twenty (20) feet of the present perimeter of the 2.63 Acres or any other property combined with it, the owner or owners of property making up the 2.63 Acres (and any other land combined with it) agree to immediate annexation into the City of Kimberly of the 2.63 Acres and any other land combined with it.
- C. Whenever and at such time City of Kimberly water and sewer is available at or within twenty (20) feet of the present perimeter of the 2.63 Acres or any other property combined with it, the owner or owners of the 2.63 Acres and any other property combined with it agree as follows:
 - i. To immediately consent to and extend city water and sewer service to any and all buildings and any other improvement utilizing water and/or sewer service, except those buildings or

other improvements which utilize water which is entirely provided by surface irrigation water and no sewer is used by such buildings and other improvements, within a year's time from the time service is within the twenty foot distance;

- ii. To halt and no longer use any and all well or non-city septic tank service or facilities within the 2.63 Acres or any property combined to it;
- iii. To pay any and all costs and fees associated with installing and connecting into city water and sewer services from where the City provides the service within the twenty foot distance of the perimeter of the 2.63 Acres or any other property added to it and to pay any and all costs associated with closing off, removing, and/ or capping off any and all onsite wells and/or septic facilities as may be required.

D. Whenever any portion of the 2.63 Acres is platted, appropriate utility easements shall be included on the plat to provide for the water and sewer requirements noted herein and City of Kimberly Subdivision requirements.

E. Whenever and at such time an Urban Renewal District (URA) is created or proposed to be created encompassing the 2.63 Acres or any portion thereof (as shown on **Exhibit A**), the owner or owners of property making up the 2.63 Acres (and any other land combined with it or any portion of it or land combined with it) consent to inclusion within the Urban Renewal District.

4) Police Powers. Except as otherwise expressly provided herein, nothing contained herein is intended to limit the police powers of the City or its discretion in review of subsequent applications regarding development of the Property. This Agreement shall not be construed to modify or waive any law, ordinance, rule, or regulation, including, without limitation, applicable building codes, fire codes, zoning ordinance and subdivision ordinance requirements for the Property.

5) Amendment. This Agreement may be revised, amended, or canceled in whole or in part, only by means of a written instrument executed by both parties hereto and as evidenced by amended plats and development plans.

6) Remedies. In the event the Property is not developed in accordance with this Agreement, or if Owners, either individually or jointly, or their successors and assigns, if any, materially breach, default or fail to perform any material obligation under this Agreement and do not cure such breach, default or failure within thirty (30) days after written notice from City of the breach, default or failure, or in the case of a breach which is incapable of being cured within a thirty (30) day time period, the Owners, either individually or jointly fail within thirty (30) days after written notice from City to commence to cure the same and thereafter to prosecute the cure of such breach with due

diligence and continuity, the City has the right to take any and all remedies allowed at law or equity. Subject to the conditions set forth herein, in the event of a breach of this Agreement, in addition to all other remedies of law or in equity, this Agreement shall be enforceable by specific performance by either party hereto. All remedies shall be cumulative.

7) Attorney's Fees. If a suit, action, or other proceeding arising out of or related to this Agreement is instituted by any party to this Agreement, the prevailing party shall be entitled to recover its reasonable attorney fees, expert witness fees, and costs (i) incurred in any settlement negotiations, (ii) incurred in preparing for, prosecuting or defending any suit, action, or other proceeding, and (iii) incurred in preparing for, prosecuting or defending any appeal of any suit, action, or other proceeding. For the purpose of this section, "attorney fees" shall mean and include (i) attorney fees and (ii) paralegal fees. This section shall survive and remain enforceable notwithstanding any rescission of this Agreement or a determination by a court of competent jurisdiction that all or any portion of the remainder of this Agreement is void, illegal, or against public policy.

8) Successors and Assigns; Covenant Running with Land. This Agreement shall inure to the benefit of the City and Owners and their respective heirs, successors and assigns. This Agreement, including all covenants, terms, and conditions set forth herein, shall be and shall be and is hereby declared a covenant running with the land with regard to the Property or any portion thereof, and is binding on both parties to this Agreement as well as their respective heirs, successors and assigns.

9) Recordation and Release. This Agreement may be recorded with the Twin Falls County Recorder by either party.

10) No Waiver. In the event that the City or Owners, or their successors and assigns, do not strictly comply with any of the obligations and duties set forth herein, thereby causing a default under this Agreement, any forbearance of any kind that may be granted or allowed by Owners, the City, or their successors and assigns, to the other party under this Agreement, shall not in any manner be deemed or construed as waiving or surrendering any of the conditions or covenants of this Agreement with regard to any subsequent default or breach.

11) Partial Invalidity. In the event that any provision of this Agreement is deemed to be invalid by reason of the operation of any law, or by reason of the interpretation placed thereon by any court or other governmental body, this Agreement shall be construed as not containing such provision and the invalidity of such provision shall not affect the validity of any other provision hereof, and any and all other provisions hereof which otherwise are lawful and valid shall remain in full force and effect.

12) Entire Agreement. This Agreement sets forth the entire understanding of the parties hereto, and shall not be changed or terminated orally. Any other agreements between the parties, express or implied, are hereby cancelled and of no further force nor

effect. It is understood and agreed by the parties hereto that there are no verbal or written promises, agreements, stipulations or other representations of any kind or character, express or implied, other than as set forth in writing in this Agreement.

13) Authority. Each of the persons executing this Agreement represents and warrants that he has the lawful authority and authorization to execute this Agreement, as well as all deeds, easements, liens and other documents required hereunder, for and on behalf of the entity executing this Agreement.

14) Governing Law. The validity, meaning and effect of this Agreement shall be determined in accordance with the laws of the State of Idaho.

15) Time of Essence. Time is of the essence in this Agreement.

16) Necessary Acts. Each party agrees to perform any further acts and execute any documents that may be reasonably necessary to effect the purpose of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year written herein.

DATED this ____ day of _____, 2014.

“CITY”

CITY OF KIMBERLY

By: _____
Tracy Armstrong, Mayor

ATTEST:

Shoshonie Heitmann, City Clerk

On this ____ day of _____, 2014, before me the undersigned Notary Public in and for said State, personally appeared TRACY ARMSTRONG, known or identified to me to be the Mayor of Kimberly and the person whose name is subscribed to the within instrument, and acknowledged that he executed the same on behalf of the City of Kimberly.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.

Notary Public for Idaho
Residing at : _____
My commission expires: _____

On this _____ day of _____, 2014, before me, a Notary Public in and for said State, personally appeared Lucas Christensen, known or identified to me as owner of 2.63 acres of property identified in this agreement, who executed the foregoing instrument, and acknowledged to me that he executed the same.

By _____
Lucas Christensen
Owner of 2.63 Acre Property Identified
in this Agreement

ATTEST:

Notary
STATE OF IDAHO)
 : ss.
County of Twin Falls)

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.

Notary Public for Idaho
Residing at : _____
My commission expires: _____

On this _____ day of _____, 2014, before me, a Notary Public in and for said State, personally appeared Jade Christensen, known or identified to me as owner of 2.63 acres of property identified in this agreement, who executed the foregoing instrument, and acknowledged to me that she executed the same.

By _____
Jade Christensen
Owner of 2.63 Acre Property Identified
in this Agreement

ATTEST:

Notary
STATE OF IDAHO)
 : ss.
County of Twin Falls)

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.

Notary Public for Idaho
Residing at : _____
My commission expires: _____

KIMBERLY ORDINANCE NO. _____

Withholding, Red Tagging, or Revocation of Building Permits

AN ORDINANCE OF THE CITY OF KIMBERLY, IDAHO, AMENDING KIMBERLY'S CITY CODE, BY AMENDING TITLE 17: CHAPTER 17.17 ADMINISTRATION AND ENFORCEMENT: SECTION 17.17.010D, ADDING LANGUAGE STATING:

ANY BUILDING PERMIT, PERTAINING TO A PROPERTY IN VIOLATION OF TITLE 17 ZONING REGULATIONS, WILL BE WITHHELD FROM ISSUANCE OR MAY BE RED TAGGED OR REVOKED UNTIL SUCH TIME AS THE VIOLATION IS BROUGHT INTO COMPLIANCE WITH TITLE 17.

WHEREAS, the proposed amendments are in accordance with the general safety and welfare of the community; and

WHEREAS, the amendments are thought to be mechanisms to assist in the Administration and Enforcement of the Title 17;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY KIMBERLY, IDAHO, AS FOLLOWS:

Ordinance amendments are shown below in bold text, language deleted is delineated by a single-line strikethrough, and regular text is neither amended nor deleted, but is shown to provide context and placing of the amendments in the ordinance.

Chapter 17.17
ADMINISTRATION AND ENFORCEMENT

17.17.010: D

- D. Investigate all violations of this title and notify in writing the person responsible for such violations, **and** the action necessary to correct such violation. **If such violation remains not corrected, any building permit pertaining to such property will be withheld from issuance or may be red tagged or revoked to stop building and or construction until such time as the violation is brought into compliance with the provisions of this title. Issuance of a certificate of occupancy may also be withheld until such a violation is brought into compliance.**



NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY KIMBERLY, IDAHO, AS FOLLOWS:

SECTION 1. The above described and shown text amendments are the subject of text amendments to the Kimberly City Code.

SECTION 2. Should any section or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

SECTION 3. All City of Kimberly ordinances or resolutions or parts thereof, which are in conflict herewith, are hereby repealed.

SECTION 4. This ordinance shall be in full force and effect from and after the approval, and publication according to law.

PASSED AND ADOPTED BY THE KIMBERLY CITY COUNCIL AND APPROVED BY THE MAYOR THIS ____ DAY OF _____, 2014.

Tracy Armstrong, Mayor, City of Kimberly

Attest:

Shoshonie Heitmann, City Clerk

Publish: Times News _____, 2014



KIMBERLY ORDINANCE NO. _____

Development Agreements

AN ORDINANCE OF THE CITY OF KIMBERLY, IDAHO, AMENDING KIMBERLY'S CITY CODE, BY AMENDING TITLE 17: CHAPTER 17.14 AMENDMENTS: ADDING SECTION 17.14.035 DEVELOPMENT AGREEMENTS WHICH LAYOUTS THE PROCESSES FOR DEVELOPMENT AGREEMENT CREATION AND FORM, APPLICATION, SAFEGAURDS, EXECUTION, RECORDING, AND MODIFICATION POSSIBILITIES.

WHEREAS, the proposed amendments are in accordance with the general safety and welfare of the community; and

WHEREAS, the amendments are thought to be mechanisms to assist in the Administration and Enforcement of the Title 17; and

WHEREAS, Idaho Code Section 67-6511A authorizes a city to adopt an implementing ordinance for development agreements, but does not self-execute the authority and such an ordinance is required.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY KIMBERLY, IDAHO, AS FOLLOWS:

Ordinance amendments are shown below in bold text, language deleted is delineated by a single-line strikethrough, and regular text is neither amended nor deleted, but is shown to provide context and placing of the amendments in the ordinance.

Chapter 17.14 AMENDMENTS

SECTION

17.14.030: Amendment Application Contents

17.14.035: Development Agreements

17.14.035 Commission Action

17.14.035: DEVELOPMENT AGREEMENTS:



In accordance with the notice and hearing procedures for Zoning Boundary Changes (including inclusion within those notices- notice that a development agreement is part of the rezone), a property owner or developer may request, or the city may require, that an application for zoning map amendment or rezone be processed in conjunction with the execution of a development agreement. The purpose of such agreements shall be to allow development that provides benefits for both the property owner or developer and the city by providing a balance between the owner's or developer's desire for certainty in the development process and the city's desire for control of the impacts of the project. Through such agreements, a property owner or developer may agree to make written conditional commitments concerning the use or development of a subject parcel in exchange for the change of zoning requested.

Such conditional commitments in development agreement are in addition to the regulations provided for in the zoning district by Title 17, and are established to ensure compatibility of the resulting land use with the surrounding area. Otherwise the use of a PUD permit process shall be the only means whereby the City of Kimberly will/shall entertain allowing uses in a zone not normally allowed therein; and a development agreement does not provide an exception.

A. Creation and Form: At a minimum, development agreements shall include the following:

- 1) a legal description of the subject property,**
- 2) identification of present zoning of subject parcel or property,**
- 3) provisions for any dedication or reservation of all applicable land,**
- 4) a site map showing all boundaries, land area in acres, and natural features including water bodies and any other relevant features**
- 5) the duration of the agreement,**
- 6) Agreements may also include, if provided by an applicant and/or requested by the Community Development Director, P&Z Commission and/or City Council,**
 - 1) Proposed conceptual site plan arrangement of any structure(s), business or industrial or multi-family areas, freestanding signage, landscaping and parking area design(s), and/or**
 - 2) a set of building(s) elevations showing exterior building treatments and design(s), and/or**
 - 3) Infrastructure plans and/or agreements**

B. Safeguards: The following safeguards shall be applied:

- 1. A development agreement shall not prevent the city in subsequent actions to the property from applying new rules, regulations or policies that do not conflict with commitments applicable to the property as set forth within any duly executed agreement.**



2. If the owner or developer fails to comply with a conditional commitment in a development agreement after completion of construction, the city may deal with the violation through all penalty provisions allowed under city ordinances and state law.

3. When a commitment is required to be satisfied prior to completion of construction, and it is not so satisfied, construction shall be halted until compliance is established.

C. Recording: Development agreements shall be attached as an exhibit to the ordinance establishing the zoning map amendment. Agreements shall take effect and shall be recorded in the Twin Falls County recorder's office upon the adoption of the ordinance establishing the zoning map amendment by the City Council or County Board of Commissioners if the property is in the area of impact. Should a development agreement be terminated by the City, and the zoning designation upon which the use is based be reversed, a document recording such termination and zoning reversal shall also be recorded by the City in the Twin Falls County recorder's office. An agreement shall be binding on the owner of the parcel, each subsequent owner, and each other person acquiring an interest in the parcel.

D. Modification, Enforcement, and Termination of Commitments: A development agreement may be modified by request of an applicant or the city only after receiving a recommendation by the P&Z Commission and by an approval vote of the City Council after compliance with the notice and hearing provisions for Zoning Boundary Changes. The following are circumstances where a modification may be considered:

1. A change to any of the terms or conditions of the original development agreement is proposed; and/or

2. A substantial change to any established positioning of any structure over two hundred (200) square feet in area is proposed; and/or

3. A substantial change to any approved parking or landscaping area layout or arrangement is proposed; and/or

4. A substantial change to any approved set of building elevations or exterior appearance or design is proposed; and/or

5. A substantial change in infrastructure from what was agreed upon, and/or

6. A change to any development agreement approved freestanding commercial or industrial center signage or multi-family area is proposed.

A development agreement may be terminated by the city, and the zoning designation granted by the agreement reversed to the zoning that was in effect on the pertinent site before the agreement was executed, upon the failure of the owner, developer, or each subsequent owner or each person acquiring an interest in the subject parcel, to comply with the commitments in their agreement within two (2) years. Exception: The failure to begin site development of all or a portion of a project proposed under a development agreement does not necessarily have to serve as impetus to claim that an owner or developer has failed to comply with their commitments contained in their respective development agreement. Rather, commencement of site work and/or construction then left in abandon or failure to abide by development agreement terms, as iterated above, shall serve as impetus to consider termination of an agreement and reversion of



zoning. A hearing for termination may be convened by the City Council after complying with the same notice and hearing provisions required for a Zoning Boundary Change and any relevant termination terms of the pertinent agreement. During the hearing, the council may vote to take no action, cause modification of the agreement if the applicant is willing, or terminate the agreement.

The two (2) year period of time for compliance of commitments may be extended by the city for just cause, and upon application for such by the owner, after complying with the notice and hearing provisions required for a Zoning Boundary Change.

In accordance with state law, the establishment of a development agreement and the written commitments contained therein shall provide written consent for the city council to change the zoning of the subject property to its prior designation upon failure of an applicant to comply with the conditions imposed by their agreement.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY KIMBERLY, IDAHO, AS FOLLOWS:

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PASSED AND ADOPTED BY THE KIMBERLY CITY COUNCIL AND APPROVED BY THE MAYOR THIS ____ DAY OF _____, 2014.

Tracy Armstrong, Mayor, City of Kimberly

Attest:

Shoshonie Heitmann, City Clerk

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