

062

ORDINANCE NO. 3967

AN ORDINANCE OF THE CITY OF NAMPA, CANYON COUNTY, IDAHO ANNEXING REAL PROPERTY LOCATED AT 16174 MIDLAND BOULEVARD INTO THE CITY OF NAMPA, CANYON COUNTY, IDAHO, ZONING THE PROPERTY BC, ALL SUBJECT TO THE TERMS OF THAT CERTAIN DEVELOPMENT AGREEMENT ENTERED INTO BETWEEN THE APPLICANT AND THE CITY OF NAMPA; AND DIRECTING THE CITY ENGINEER TO ALTER THE USE AND AREA MAP ACCORDINGLY.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF NAMPA, IDAHO:

Section 1: That the following described real property located at 16174 Midland Boulevard, and all thereof, be, and the same is hereby, ANNEXED and made a part of the City of Nampa, Idaho. That the real property so annexed is described as follows, to-wit:

See Exhibit A attached hereto and, by this reference, incorporated herein as if set forth in full.

Section 2: That the real property so annexed as described in Exhibit A above shall be zoned BC

Section 3: That this annexation and zone ordinance is subject to and limited by that certain Development Agreement entered into between the parties.

Section 4: That the City Engineer is hereby directed to alter and change the Use and Area Map of the City of Nampa, Idaho, to comply with this Ordinance.

PASSED BY THE COUNCIL OF THE CITY OF NAMPA, IDAHO, THIS 16th DAY OF May, 2011.

APPROVED BY THE MAYOR OF THE CITY OF NAMPA, IDAHO, THIS 16th DAY OF May, 2011.

Approved:

By 
Mayor

Attest:


City Clerk

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TECHNICAL SUPPORT

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

Commencing at a point on the North line of the North half of the Southwest quarter of the Southwest quarter of Section 9, Township 3 North, Range 2 West of the Boise Meridian, Canyon County, Idaho which is 990 feet West from the Northeast corner of said tract of land; thence running South 165 feet parallel to the West section line to the Northeast corner to the Real Point of Beginning; thence

West 330 feet parallel to the North section line to the Northwest corner which is on the West section line; thence South 165 feet along the West section line to the Southwest corner; thence East 330 feet parallel to the North section line to the Southeast corner; thence North 165 feet parallel to the West section line to the point of beginning.

Excepting therefrom:

A parcel of land being on both sides of the centerline of Frontage Road No. 3 Survey as shown on the plans of Interstate 80N, Project No. I-80N-1(24)28 Highway Survey no on file in the office of the Department of Highways of the State of Idaho, and being a portion of the North half of the Southwest quarter of the Southwest quarter of Section 9, Township 3 North, Range 2 West, Boise Meridian, described as follows, to wit:

Beginning at the Northwest corner of the tract of land as described in that certain Warranty Deed dated April 10, 1963 and recorded May 1, 1963 in Book 283 of Deeds at Page 679, as Document No. 532806 records of Canyon County, Idaho; thence South $0^{\circ}17'46''$ West (shown of record to be South) along the West line of Section 9, Township 3 North, Range 2 West, Boise Meridian a distance of 165.0 feet to the Southwest corner of said tract of land; thence South $89^{\circ}36'58''$ East (shown of record to be East) along the South line of said tract of land 85.0 feet, more or less, to a point in a line parallel with and 25.0 feet Northeasterly from the centerline of Frontage Road No. 3 Survey as shown on the plans of said Interstate 80N, Project No. I-80N-1(24)28 Highway Survey; thence along said parallel line as follows:

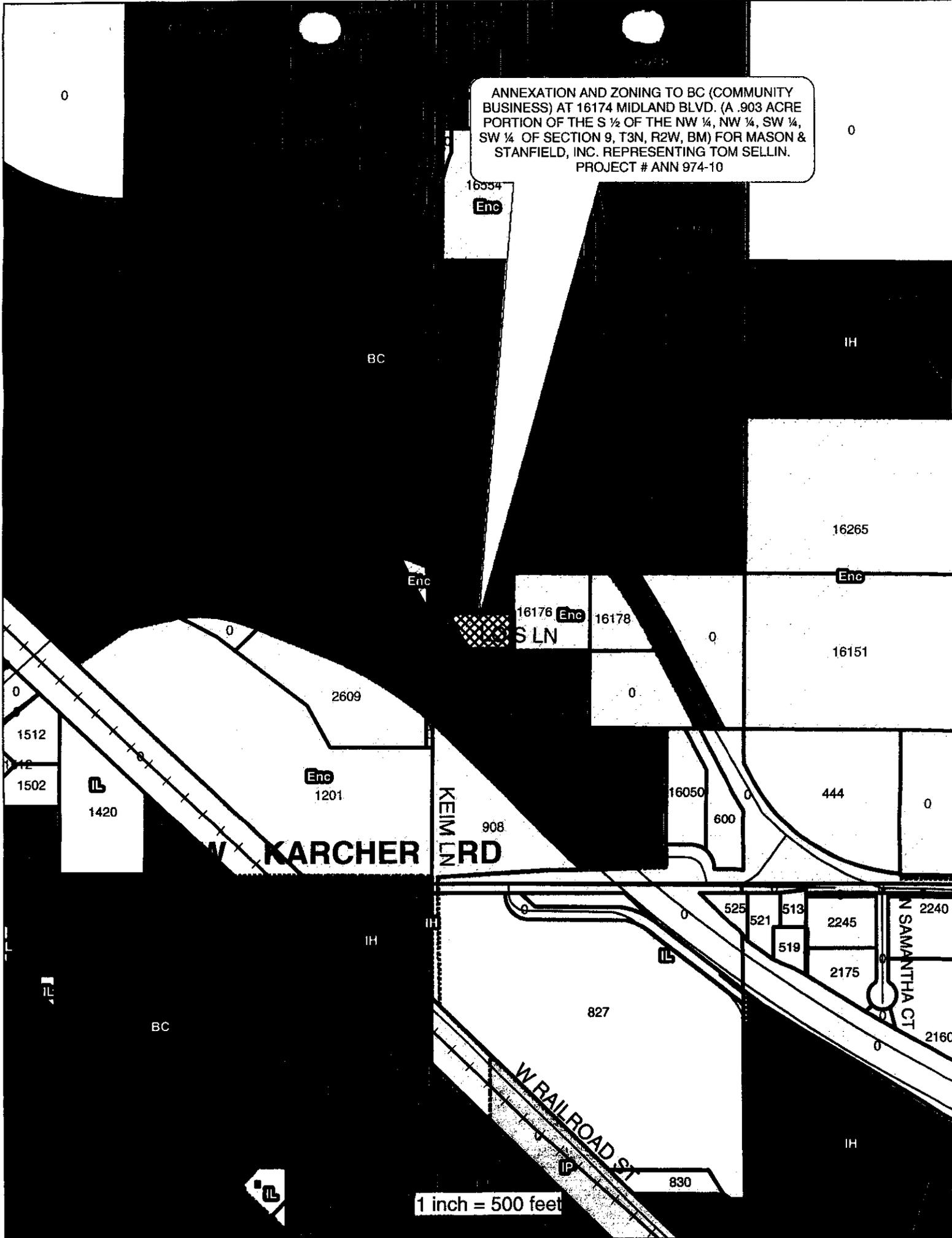
North $43^{\circ}25'58''$ West 20.0 feet, more or less, to a point opposite Station 15+50.76 of said Frontage Road No. 3 Survey, Northwesterly and Northerly along a 175.0 foot radius curve right 133.56 feet to a point opposite Station 17+03.40 of said Frontage Road No. 3 Survey, North $0^{\circ}17'46''$ East 44.0 feet, more or less, to a point in the North line of said tract of land; thence North $89^{\circ}36'58''$ West (shown of record to be West) along said North line 25.0 feet, more or less, to the Place of Beginning.

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ANNEXATION AND ZONING TO BC (COMMUNITY BUSINESS) AT 16174 MIDLAND BLVD. (A .903 ACRE PORTION OF THE S 1/2 OF THE NW 1/4, NW 1/4, SW 1/4, SW 1/4 OF SECTION 9, T3N, R2W, BM) FOR MASON & STANFIELD, INC. REPRESENTING TOM SELLIN.
PROJECT # ANN 974-10



1 inch = 500 feet

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement"), is made and entered into this 16th day of May, 2011 (the "Effective Date"), by and between the City of Nampa, a municipal corporation, hereinafter referred to as the "City," Thomas Sellin, hereinafter referred to as "Owner/Developer."

RECITALS

- A. Owner/Developer is the owner of approximately .903 acres of real property legally described in **Exhibit "A"** attached hereto and made a part hereof (the "Property").
- B. Owner/Developer applied to City on November 29, 2010 (the "date of application") for annexation of the Property into City and for zoning of the Property to BC (Community Business) in anticipation of the development of a commercial project (the "Project").
- C. City, pursuant to Section 10-2-5, Nampa City Code, and Idaho Code Section 67-6511A, has the authority to rezone the Property and enter into a development agreement for the purpose of allowing, by agreement, a specific development to proceed in a specific area and for specific purposes and/or uses that are appropriate in the area.
- D. City's Planning and Zoning Commission and City's City Council have held public hearings as prescribed by law with respect to the annexation, rezoning and development of the Property and this Agreement. City has approved the annexation and requested zoning of the Property to BC (Community Business) subject to the terms and commitments contained in this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the above recitals, which are incorporated below, and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. This Agreement shall not prevent City, in subsequent actions applicable to the Property, from applying new ordinances and regulations of general application adopted by City in the exercise of its police powers that do not conflict with the parties' commitments applicable to the Property as set forth herein, or the zoning designation approved hereby as the Property has been deemed suitable for the uses allowed within said zoning designation..
2. This Agreement is intended to be supplemental to all other local, city, state and federal Code requirements, rules and regulations, and is established to help assure the compatibility of the resulting land use with the surrounding area. Provided, however, that to the extent this Agreement conflicts with any provision of the Nampa City Code, this Agreement shall prevail to the extent permitted by law.

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3. The provisions and stipulations of this Agreement shall be binding on City, Owner/Developer, each subsequent owner of the Property or portion thereof, and each other person acquiring an interest in the Property and are, in no particular order, as set forth in the conditions of approval attached hereto as **Exhibit "B"**, and by this reference incorporated herein.

4. This Agreement may be modified only by the written agreement of Owner/Developer and the City after complying with the notice and hearing procedures required under Idaho Code Section 67-6511A or Nampa City Code Section 10-2-5 (D) or successor provisions.

5. The execution of this Agreement and the written commitments contained herein shall be deemed written consent to change the zoning of the Property to its prior designation upon failure of Owner/Developer to comply with the terms and conditions of this Agreement. Provided, however, that no such consent shall be deemed to have been given unless City provides written notice of any such failure and Owner/Developer or its successors and/or assigns fails to cure such failure as set forth below.

6. This Agreement and the commitments contained herein shall be terminated, and the zoning designation reversed, upon the failure of Owner/Developer, or each subsequent owner or each person acquiring an interest in the Property, to comply with the commitments contained herein within two (2) years after the Effective Date, and after the notice and hearing requirements of Idaho Code Section 67-6509 have been complied with by City. Provided, however, no such termination or reversal shall occur unless City provides written notice of Owner/Developer's failure to comply with the terms and conditions of this Agreement to Owner/Developer and Owner/Developer fails to cure such failure within six (6) months of Owner/Developer's receipt of such notice. The two (2) year period of time for compliance with commitments may be extended by City for good cause upon application for such extension by Owner/Developer, and after complying with the notice and hearing provisions of Idaho Code Section 67-6509.

7. Except as specifically set forth in this Agreement, the rules, regulations and official policies governing permitted uses of land, density, design, improvements and construction standards and specifications applicable to the Project and the Property shall be those rules, regulations and official policies in effect as of the date of annexation. Provided, however, that the applicable building codes for structures shall be the codes in effect when a complete application for a building permit is file. Development impact fees, if imposed by ordinance, shall be payable as specified in said ordinance even if the effective date is after the date of this agreement or the annexation pursuant thereto.

8. It is intended by the parties that this Agreement shall be recorded on the Effective Date or as soon as practicable thereafter. The parties further intend that the provisions of this Agreement shall run with the Property and shall be binding upon City, Owner/Developer, each subsequent owner of the Property, and each other person or entity acquiring an interest in the Property.

9. If any term or provision of this Agreement, to any extent, shall be held invalid or unenforceable, the remaining terms and provisions herein shall not be effected thereby, but each such remaining term and provision shall be valid and enforced to the fullest extent permitted by law.

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10. This Agreement sets forth all promises, inducements, agreements, conditions and understandings between Owner/Developer and City relative to the subject matter hereof. There are no promises, agreements, conditions or understandings, oral or written, express or implied, between Owner/Developer and City, other than as are stated herein. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties hereto unless reduced to writing and signed by the parties or their successors-in-interests or their assigns, and pursuant, with respect to the City, to a duly adopted ordinance or resolution of the City.

11. Should any litigation be commenced between the parties hereto concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorneys' fees as determined by a court of competent jurisdiction.

12. This Agreement may be executed in counterparts, each of which shall constitute an original, all of which together shall constitute one and the same Agreement.

13. In the event Owner/Developer, its successors, assigns or subsequent owners of the Property or any other person acquiring an interest in the Property, or in the event City, fail to faithfully and materially comply with all of the terms and conditions included in this Agreement, enforcement of this Agreement may be sought by either City or Owner/Developer or by any successor or successors in title or interest or by the assigns of the parties hereto, in an action at law or in equity in any court of competent jurisdiction.

a. A waiver by City of any default by Owner/Developer of any one or more of the covenants or conditions hereof shall apply solely to the breach waived and shall not bar any other rights or remedies of City or apply to any subsequent breach of any such or other covenants and conditions. A waiver by Owner/Developer of any default by City of any one or more of the covenants and conditions hereof shall apply solely to the breach waived and shall not bar any other rights or remedies of Owner/Developer or apply to any subsequent breach of any such or other covenants and conditions.

b. Notwithstanding anything to the contrary herein, in the event of a material default of this Agreement, the parties agree that City and Owner/Developer shall have thirty (30) days after delivery of notice of such default to correct the same prior to the non-defaulting party's seeking of any remedy provided for herein; provided, however, that in the case of any such default which cannot with diligence be cured within such thirty (30) day period and thereafter shall prosecute the curing of same with diligence and continuity, then the time within which such may be cured shall be extended for such period as may be necessary to complete the curing of the same with diligence and continuity, but in any event not to exceed six (6) months; and provided further, however, no default by a subsequent owner of a portion of the Property shall constitute a default by Owner/Developer for the portion of the Property still owned by Owner/Developer.

c. In the event the performance of any obligation to be performed hereunder by either Owner/Developer or City is delayed for causes that are beyond the reasonable control of the party responsible for such performance, which shall include, without limitation, acts of civil disobedience, strikes or similar causes, the time for such performance shall be extended by the amount of time of such delay.

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EXHIBIT "B"

CONDITIONS OF APPROVAL

General:

1. Compliance with all adopted City development standards including installation of required street frontage improvements as established by city engineering.
2. Extension of public utilities at owner's expense, including but not limited to the public water, sewer, and pressure irrigation mains.
3. Access to any irrigation district laterals or facilities will need to be maintained in accordance with the irrigation district's policies. The developer may be required to enter into a license agreement with the district regarding access and improvements to their facilities. Plans for any proposed improvements are required to be approved by both the irrigation district and the City of Nampa.
4. Granting of any access or facility easements for and to the City of Nampa and any other utility company or jurisdictional entity as necessary for the operation and maintenance of any utility existing, proposed, or relocated with the development of this site.
5. Abandonment of any existing domestic well or septic systems will be accomplished under the guidelines established by:
 - a. Domestic Well - the Idaho Department of Water Resources
 - b. Septic Systems – Southwest District Health Department
 - c. Copies of all related documents certifying that the well and septic system have been abandoned shall be forwarded to the City of Nampa Engineering Division for the project files.

Midland Blvd:

6. Right-of-way dedication required as necessary to satisfy design requirements and to provide adequate roadway width and alignment.
 - a. Anticipated minimum right-of-way dedication to match dedication from the Fairfield Inn (12.5'), but may be required to be increased dependent on design criteria for the actual emplacement of the widened road section match to the existing travel way along the Fairfield Inn site.
 - b. Design engineer will be required to provide survey, topography, and proposed design from the subject property to the intersection of Midland Boulevard and the Karcher Bypass.
7. Full frontage improvements are required and will include, but not be limited to-
 - a. Curb, gutter, and sidewalk
 - b. Landscaping as required
 - c. Storm drainage
 - d. Pavement widening

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Lois Lane:

8. Right-of-way dedication required. Width shall be adequate to create a total right-of-way with of 56'. It is anticipated that this will require the owner to dedicate 28' matching what was required of the developer of the Fairfield Inn site. This is a design exception and deviation from the currently adopted standards recommended by the Engineering Division.
9. Full frontage improvements are required and will include, but not be limited to-
 - a. Curb, gutter, and sidewalk
 - b. Pavement widening
 - c. Landscaping as required

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