



STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL  
LAWRENCE G. WASDEN

June 8, 2011

The Honorable Kathleen Sims  
Idaho State Representative  
206 Stonington Court  
Coeur d'Alene 83815

Re: Potential Conflicts of Interest – Our File No. 11-37017

Dear Representative Sims:

This letter is in response to your May 23, 2011, inquiry regarding the recent action taken by the Coeur d'Alene City Council in reference to the refurbishment of McEuen Park. Within your inquiries, you question various connections of the Mayor and City Council members with business and other governmental interests, as well as whether a public vote should be taken prior to commencement of this project. Finally, it appears that you seek an investigation. Each of these components will be addressed below.

**I. This Office Cannot Initiate a Law Enforcement Investigation Upon a Legislator's Request**

According to Idaho Code § 67-1401(6), this Office provides analyses to legislators of legal issues. But this statute does not authorize the Attorney General to initiate a law enforcement investigation into a local matter at the request of a legislator. If after reviewing this analysis, you believe an investigation is warranted, I recommend that you contact your local county prosecutor or county sheriff's office because they have primary law enforcement authority. This Office only acquires law enforcement authority in matters such as this at the request of the County Prosecutor or pursuant to a legislative directive under a specific statute that does not exist here.

This response will, therefore, be limited to an analysis of the relevant ethical statutes as applied to the facts presented in your inquiry, and the draft minutes of the May 24, 2011 meeting. Additionally, this Office has received written legal analyses from the attorneys for the City of Coeur d'Alene and the Lake City Development Corporation (Coeur d'Alene's Urban Renewal Agency). These documents are included with this analysis for your review and reference. It is this Office's understanding that your concerns have also been forwarded to the Kootenai County

Prosecuting Attorney's Office. Based upon the law enforcement primacy applicable to this matter, this Office will necessarily defer any conclusions reached herein to those reached by the Prosecuting Attorney's Office.

## **II. Conflict Analysis Requires Consulting Several Statutes**

Idaho's ethical statutes are primarily organized into three chapters of the Idaho Code. The Bribery and Corrupt Influences Act is found in Title 18, Chapter 13; the Prohibition Against Contracts With Officers statutes are found in Title 59, Chapter 2; and the Ethics in Government Act is found in Title 59, Chapter 7. It is important to note that valid or unaddressed conduct in one chapter may be prohibited by another. For example, the provisions within the Bribery and Corrupt Influences Act are much more restrictive than the provisions of the Ethics in Government Act. Additionally, more specific ethical prohibitions are spread throughout the Idaho Code. Two additional ethics statutes are referred to in this analysis because the questions raised involve a planning commissioner (Idaho Code § 67-6506) and an Urban Renewal Agency board member (Idaho Code § 50-2017). Against this backdrop, the following analysis is offered.

## **III. There Is No Conflict Serving on Dual Governmental Entities**

Your inquiry implies that service on multiple governmental boards creates a conflict of interest. In order to assess whether a conflict of interest applies, the term "conflict of interest" must be defined. Idaho Code § 59-703(4) provides the following definition:

"Conflict of interest" means any official action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit of the person or a member of the person's household, or a business with which the person or a member of the person's household is associated, unless the pecuniary benefit arises out of the following:

(a) An interest or membership in a particular business, industry, occupation or class required by law as a prerequisite to the holding by the person of the office or position;

(b) Any action in the person's official capacity which would affect to the same degree a class consisting of an industry or occupation group in which the person, or a member of the person's household or business with which the person is associated, is a member or is engaged;

(c) Any interest which the person has by virtue of his profession, trade or occupation where his interest would be affected to the same degree as that of a substantial group or class of others similarly engaged in the profession, trade or occupation;

(d) Any action by a public official upon any revenue measure, any appropriation measure or any measure imposing a tax, when similarly situated

members of the general public are affected by the outcome of the action in a substantially similar manner and degree.

Within the above definition, a conflict of interest requires the following elements to be satisfied:

1. Public official;
2. Decision; and
3. Private pecuniary benefit or
4. Person/household/or associated business.

The first two elements appear to be satisfied—each of the council members (Kennedy, Hassell, Goodlander, and Bruning) is a public official, and a review of the draft minutes of May 24, 2011, indicate that they all participated in the decision to approve the McEuen Master Plan. No “revenue measure” is involved here. The answer to your question thus turns on the third element—*i.e.*, whether a private pecuniary benefit inures to any of these council members.

The Ethics in Government Act (Idaho Code §§ 59-701 to -705) does not define “pecuniary benefit,” but the Bribery and Corrupt Influences Act (Idaho Code §§ 18-1301 et seq.) defines it as:

“Pecuniary benefit” is any benefit to a public official or member of his household in the form of money, property or commercial interests, the primary significance of which is economic gain.

Idaho Code § 18-1351(7). “Benefit” is also defined within this section of the Code as:

“Benefit” means gain or advantage, or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose.

Idaho Code § 18-1351(1).

In short, the statutes require that some tangible, measurable benefit attach to the public official as a result of his or her action. With respect to Council members Hassell, Goodlander, and Bruning, your letter does not indicate that any *private* pecuniary benefit has accrued to them. The sole basis for a conflict that you identify instead arises out of their dual service as members of the City Council and Lake City Development Corporation (Urban Renewal) board. Three considerations suggest the absence of a conflict premised exclusively on their dual service:

1. Idaho Code § 50-2006 specifically permits the appointment of Council Members to Urban Renewal Board positions, which reflects that the Legislature was aware of the likelihood of dual office holding would occur and accordingly authorized it.

2. Urban Renewal Board members receive no compensation for their service as board members, and thus any benefit to the Urban Renewal Board would inure only to the entity, not the individual board members.
3. The actions of the City Council members who are also Urban Renewal members are within their clearly delineated responsibilities as Council and Board members. Your letter indicates nothing other than the public benefits consistent with the powers and duties of Council members and Urban Renewal members.<sup>1</sup>

It does not appear that any pecuniary benefit, as defined by Idaho Code § 59-703(4) attaches to Council members Hassell, Goodlander, or Bruning based on the facts and information provided. Since no pecuniary benefit attaches to these individuals, elements 3 and 4 required for a conflict of interest do not attach, and, therefore, it does not appear that any conflict exists.

#### **IV. Property Ownership Near a Project Does Not Create a Direct Conflict of Interest**

Within your inquiry, it is alleged that Mayor Bloem and LCDC Board Member Brad Jordan own buildings near the entrance of the park that is to be refurbished.

##### **A. Mayor Bloem's Ownership Interest Is Near, Not Part of, the Project**

Mayor Bloem is President of Dingles Inc., which is a one-third owner of a commercial building at the corner of Fourth Street and Sherman Avenue in Coeur d'Alene.<sup>2</sup> The park that is being refurbished is near the building, and your letter states that the street on which the building sits may be closed to vehicle traffic, making it a pedestrian walkway. Based on the information provided in the letter, it does not appear that Mayor Bloem or the Corporation in which she is a partial owner/shareholder will receive any direct benefits such as contracts, public funds, building improvements, etc. There may be a possibility that the Mayor's corporation will receive indirect benefits from the park refurbishment due to increased pedestrian traffic, increased interest in building tenancy opportunities and other attendant benefits. But it is also possible that these indirect benefits could be offset by the detrimental loss of vehicular traffic and the closure of the street to parking. These are factual questions that your letter does not address and that would require further factual investigation/analysis to answer.

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<sup>1</sup> For example, Idaho Code § 50-303 empowers cities "to create, purchase, operate and maintain recreation and cultural powers facilities and activities within or without the city limits and regulate the same." And, Idaho Code § 50-2007 provides within the of an Urban Renewal Agency to: "to install, construct, and reconstruct streets, utilities, parks, playgrounds, off-street parking facilities, public facilities, other buildings or public improvements."

<sup>2</sup> Assigning a conflict to the Mayor may be difficult because the Mayor does not cast a vote on issues such as this unless there is a tie. Idaho Code § 50-602. Additionally, this section of the Code declares that the Mayor is the Chief Administrative Official of the city. In reviewing the draft minutes of the May 24, 2011 meeting, it does not appear that the Mayor participated in the debate or cast a vote in any of the matters before the council. In one case known to the undersigned, a charge of a conflict of interest was successfully defended by arguing that the Mayor's role in matters such as this is largely ministerial. If an actual conflict were alleged, this defense would likely be presented on the Mayor's behalf.

Idaho's ethical statutes are primarily concerned with the use of a public position for personal gain. For example, Idaho Code § 59-703(5) defines economic gain as an "increase in pecuniary value from sources other than lawful compensation as a public official." Based upon the facts contained in your letter, it appears uncertain that any gain will be recognized by the Project's nearby property owners. If the nearby property owners did benefit, such benefit would likely be shared by all such owners to a greater or lesser extent depending upon their property's location and uses. All similarly-situated building owners within the vicinity may be affected to the same degree, which might provide the basis for satisfying the requirements of the exception to a conflict of interest in Idaho Code § 59-703(4)(b) & (c).

**B. Board Member Brad Jordan's Property Is Near, Not Part of, the Project**

Within your inquiry, it is alleged that Brad Jordan is a member of both the Urban Renewal Agency (LCDC) and the Chair of the Coeur d'Alene Planning Commission. Both of these positions are volunteer (non-paid) positions for the respective entities.<sup>3</sup> Both the Planning Commission and the Urban Renewal organic statutes contain conflicts of interest provisions. Idaho Code § 50-2107 states:

No public official or employee of a municipality (or board or commission thereof), and no commissioner or employee of an urban renewal agency shall voluntarily acquire any personal interest, direct or indirect, in any urban renewal project, or in any property included or planned to be included in any urban renewal project in such municipality or in any contract or proposed contract in connection with such urban renewal project. Where such acquisition is not voluntary, the interest acquired shall be immediately disclosed in writing to the agency and such disclosure shall be entered upon the minutes of the agency.

Similarly, Idaho Code § 67-6506 provides:

A member or employee of a governing board, commission, or joint commission shall not participate in any proceeding or action when the member or employee or his employer, business partner, business associate, or any person related to him by affinity or consanguinity within the second degree has an economic interest in the procedure or action. Any actual or potential interest in any proceeding shall be disclosed at or before any meeting at which the action is being heard or considered. For purposes of this section the term "participation" means engaging in activities which constitute deliberations pursuant to the open meeting act. No member of a governing board or a planning and zoning commission with a

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<sup>3</sup> Section 50-2006(c), Idaho Code, directs that a commissioner shall receive no compensation for service except for necessary travelling expense. Section 67-6504, Idaho Code, allows for Planning Commission board members organized under that chapter to be reimbursed for mileage and per diem as set by the Governing Board (City Council). The City of Coeur d'Alene website indicates that members of the Planning Commission are volunteers. See <http://www.cdaid.org/index.php/committees/planning-commission>.

conflict of interest shall participate in any aspect of the decision-making process concerning a matter involving the conflict of interest.

Both of these statutes require disclosure and nonparticipation in the matters before either of these Boards. But based on the information provided to this Office, it does not appear that Mr. Jordan's property is included within these projects. As outlined above, it does not appear that a conflict of interest arises merely because property owned is near the project. Similarly, it does not appear that Mr. Jordan has an economic interest in the project because no information has been provided that he is seeking a contract, revenue, or any other employment based upon the project.

**V. The Status of Councilman and Salaried Employee of an Entity Owning a Building Near the Project Does Not Create a Conflict of Interest**

A conflict of interest has been alleged due to Councilman Kennedy's being an employee of a company that owns property near the project. This Office's understanding is that Councilman Kennedy is a salaried employee of Newmax, LLC, which operates as a business under the name Intermax Networks. No allegation has been made that any benefit has or will accrue to Newmax or Intermax other than the speculative indirect benefit of a potential increase in property value. Idaho Code § 59-201 prohibits city council members from being interested in any contract made by them, but specifically exempts officials with "remote interests." See Idaho Code §§ 59-201 and -201A. Specifically exempted are employees whose compensation consists entirely of fixed wages or salaries. Idaho Code § 59-201A(b).

Based upon the information provided in your letter, no contract or bid or any other proceeding involving Intermax or Newmax is being considered, has been considered, or is anticipated for consideration. Therefore, the requirements of § 59-201 do not apply. Similarly, Councilman Kennedy's status as a salaried employee of the owner of a building near (adjacent) to the project does not create a conflict of interest under Idaho Code § 59-701 *et seq.*

**VI. A Private Company Is Not Prohibited From Working on a Project Because It Has Buildings Near The Project**

Within your inquiry, the participation of Miller Stauffer Architects as the designer of the park is also called into question. Based on the facts and information provided to this Office, it does not appear that Miller Stauffer meets the definition of "public official" or "public servant" contained within Idaho Code §§ 59-201 (Officers not to be interested in contracts), 59-703(10), or 18-1351(8). The closest definition that could potentially apply to Miller Stauffer is Idaho Code § 59-703(10)(d), were they employed by the City of Coeur d'Alene as consultants. But even assuming § 59-703(10)(d) applied, there must be some official action that Miller Stauffer took or could take to create a conflict of interest. Under the facts identified in your letter, the official actions that have occurred were taken by the City Council, most likely when it hired Miller Stauffer, and then again when it considered and adopted the plan that Miller Stauffer was a part of. Lacking the capacity to take an official action, award a contract, or otherwise

compensate themselves, Miller Stauffer likely had no exposure to the conflict of interest liability by virtue of their owning property near the park the City Council is planning.

## **VII. Based Upon the Current Plan Underground Parking Will Connect Only to the Park**

Within your inquiry, it is alleged that the creation of underground parking will benefit property owners along Front Street in Coeur d'Alene. This office asked for more specifics regarding the connection between the buildings and the underground parking. It was alleged that access (via tunnels) would be provided to buildings along Front Street, which would thereby directly benefit the owners and tenants of those buildings. This office has reviewed and approved the master plan (available at: <http://mceuenpark.com/wp-content/uploads/2011/05/approved-master-plan-5-24-11.pdf>) and it does not appear that any connecting tunnels or other underground infrastructure is anticipated. Close examination of the concept reveals that the parking will be partially dug down and covered as opposed to fully underground. Based upon this Office's understanding of the proposed parking, it appears to create the same benefit for all building owners and tenants within the vicinity of McEuen Park. It is possible that as this project develops or as the plans evolve regarding the parking structure and its access, it may be appropriate for a reviewing entity to engage in a renewed conflict analysis.

## **VIII. Constituents Could Still Seek a Referendum or an Initiative on This Project**

Within your letter, you express a strong desire on behalf of your constituents to put this to a public vote. Within Idaho, your constituents have the ability to refer an issue decided by the City Council to the people for a vote through the use of a municipal referendum. Section 50-501, Idaho Code, provides for municipal referenda, and Coeur d'Alene City Code §§ 1.10.010-1.10.110 provide for referenda as well. The Idaho Supreme Court has recognized the power of the initiative specifically noting: "Sometimes it compels authorities to listen when nothing else will." *City of Boise City v. Keep the Commandments Coalition*, 143 Idaho 254, 257 (2006). In sum, the Court recognized the ability of constituents to circulate petitions for initiatives with regard to virtually any issue that may come before a city council. *Id.* at 256-57.<sup>4</sup>

It is important to note that the timeline for a referendum is very short (according to the City Code, it appears that the referendum must be filed within 60 days of final adoption). Coeur d'Alene City Code § 1.10.040; *see also* Idaho Code § 50-501. In short, although the City Council may have rejected an approach to place the McEuen Master Plan before the electorate, your constituents may have the option of placing the McEuen Master Plan on the ballot themselves through either the Referendum or Initiative processes.

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<sup>4</sup> The Court expressly overturned three previous decisions related to initiatives and referenda: "To the extent the conclusion in this case is inconsistent with *Weldon*, *Gumprecht* and *Perrault* they are overruled." *Id.* at 257.

## **IX. As a Legislator, You May Seek Amendment of These Statutes**

Within this analysis, a number of Idaho's ethics statutes have been presented and discussed. If you believe that any of these statutes need to be amended as a result of this analysis or the factual scenario presented by this park refurbishment, it is within your authority to seek those amendments. For example, this letter has identified the necessity of consulting separate chapters of the Idaho Code to properly define terms and identify the applicable law. It could be beneficial to collect the majority of Idaho's ethical statutes under a single chapter that also includes definitions of the applicable terms. This Office can assist you in the development of appropriate language as well as assessing the legal scope and effect of such amendments.

## **X. Your Constituents Should Consult an Attorney to Discuss Their Options**

Based upon this analysis, you and your constituents have the following options available:

1. Seek an initiative or referendum on the decision of the Coeur d'Alene City Council with respect to the park plan;
2. Bring a private cause of action against the members of the City Council of Coeur d'Alene under Idaho Code § 59-705;
3. Seek an investigation through the Kootenai County Prosecuting Attorney and/or Sheriff's Offices; or
4. Seek reconsideration of this decision through the City Council.

Your options may not be limited to these; therefore, if your constituents are considering additional steps related to this analysis or the decision of the Coeur d'Alene City Council, I recommend they contact an attorney to discuss their options and the legal ramifications of the exercise of those options.

## **XI. A Publicly Disclosed Conflict Analysis at the Inception of This Project May Have Been Beneficial**

Based upon the information that this Office has reviewed, it is clear that this project has received intense scrutiny from all interested stakeholders. Idaho Code § 59-704(4) permits members of a municipality to solicit an advisory opinion from their attorney or independent counsel. Upon obtaining this advice, the official is then free to act upon the advice of counsel. Having the benefit of hindsight, this Office observes that when confronted with an issue like the present one, it may be worthwhile for entities to seek an advisory opinion from counsel, and then enter it into the public record at the commencement of proceedings such as those that took place on May 24, 2011. Although this will not foreclose debate, it will establish that potential conflicts of interest, both real and perceived, have been considered and analyzed prior to any Board or council consideration.

Representative Sims

June 8, 2011

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I hope that you find this analysis helpful. Please contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Kane", with a long horizontal flourish extending to the right.

BRIAN KANE

Assistant Chief Deputy

BK/tjn

RECEIVED

MAY 25 2011

OFFICE OF THE  
ATTORNEY GENERAL

May 23, 2011

Lawrence G. Wasden  
Idaho Attorney General  
Office of the Idaho Attorney General  
700 W. Jefferson Street  
Boise, ID 83720

Lawrence,

Thank you for taking the time to read my concerns about possible conflicts of interest and possible ethics concerns within Coeur d'Alene's City Government. The concerns I will outline for you have been brought to me by many of my constituents in District 4. I feel I must bring them to your attention. I will also forward a copy of this letter to my local prosecuting attorney.

We have two government entities involved in this matter; the local Urban Renewal Agency Lake City Development Corporation (LCDC – [www.lcdc.org](http://www.lcdc.org)) and the Coeur d'Alene City Council.

The city council is preparing to vote on approving the McEuen Park plan ([www.McEuenPark.com](http://www.McEuenPark.com)), an expansive urban renewal project, that as depicted, will change the character of downtown with a vast range of amenities, closes streets, reroutes traffic, includes an expensive underground parking garage, removes the 3rd Street boat launch & eliminates the American Legion ball field. The estimated cost for this plan is \$39 Million. The city council will soon be voting to approve the conceptual plan thus directing it to LCDC's control.

The concerns being raised by my constituents are conflicts of interest of several members involved in this project who will benefit directly; members of the Coeur d'Alene City Council, the planning commission and LCDC board.

I have read the Idaho Ethics in Government published by your office and sections of it certainly seem to apply in this matter. I am asking for your help in interpreting and applying these statutes here in my district. This project is very controversial, will be funded by the taxpayers and invests significant urban renewal monies.

I have included a map of the proposed project and on it you will see a diagram of the buildings surrounding the project and the relationship to the parties seen as benefiting from and having a conflict of interest.

- Mayor Sandy Bloem: Owns a corner building on the proposed entrance to the new project.
- Councilman Mike Kennedy: Mike's employer owns a half block adjacent to the project
- Brad Jordan: Chairman of the Planning and Zoning and member of the LCDC board is the owner of a building that sits on the corner of the proposed entrance to the new project.

- Councilman Al Hassell: Member of the LCDC board and city council member.
- Councilwoman Deanna Goodlander: Member of the LCDC board and city council member.
- Councilman John Brunning: Served on the McEuen Park project advisory board which planned the park.
- Miller Stauffer Architects: The firm that was awarded the contract to design the park also owns two new high-rise condo buildings facing the new project.

Below is a quote from the pamphlet on Idaho Ethics in Government:

“The purpose of the ethical statutes is to establish a ground floor for conduct by public officials. Proper analysis of ethical statutes should not be for “loopholes” or “technicalities” by which one can take advantage of government, the public, or other interested parties. If your analysis requires that you find a “loophole”, within Idaho’s ethical statutes, then your conduct is likely unethical. Ethics for public officials is also tricky for another reason.”

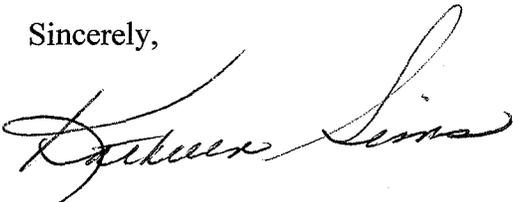
“Within the public service, there are often two courts: the traditional legal system and the court of public opinion. A win in one does not guarantee a win in the other. When determining the proper answer to any ethics determination, a public official should be mindful of the impact his/her decision may have both legally and publicly. Public officials, by trusteeship given them by the electorate, are held to a higher ethical standard.”

The controversy over this proposed plan has been further complicated by the fact that the public has been denied a vote. It is my understanding that the city council by law (Economic Development Act) is not required to put this project to a public vote and has insisted that it is actually illegal for them to do so. Given the potential conflicts of interest and vast expenditures this plan will entail I am getting numerous calls asking why this cannot go before the public for a vote. A public vote seems the only logical solution. I look to you for guidance in this area also.

Please review the enclosed map with the property owners highlighted.

I believe a thorough investigation of the conflicts of interest outlined here must be undertaken as soon as possible. I am available to discuss this by phone or in person.

Sincerely,



Representative Kathleen Sims  
District 4  
(208)640-1154  
mkathleensims@gmail.com

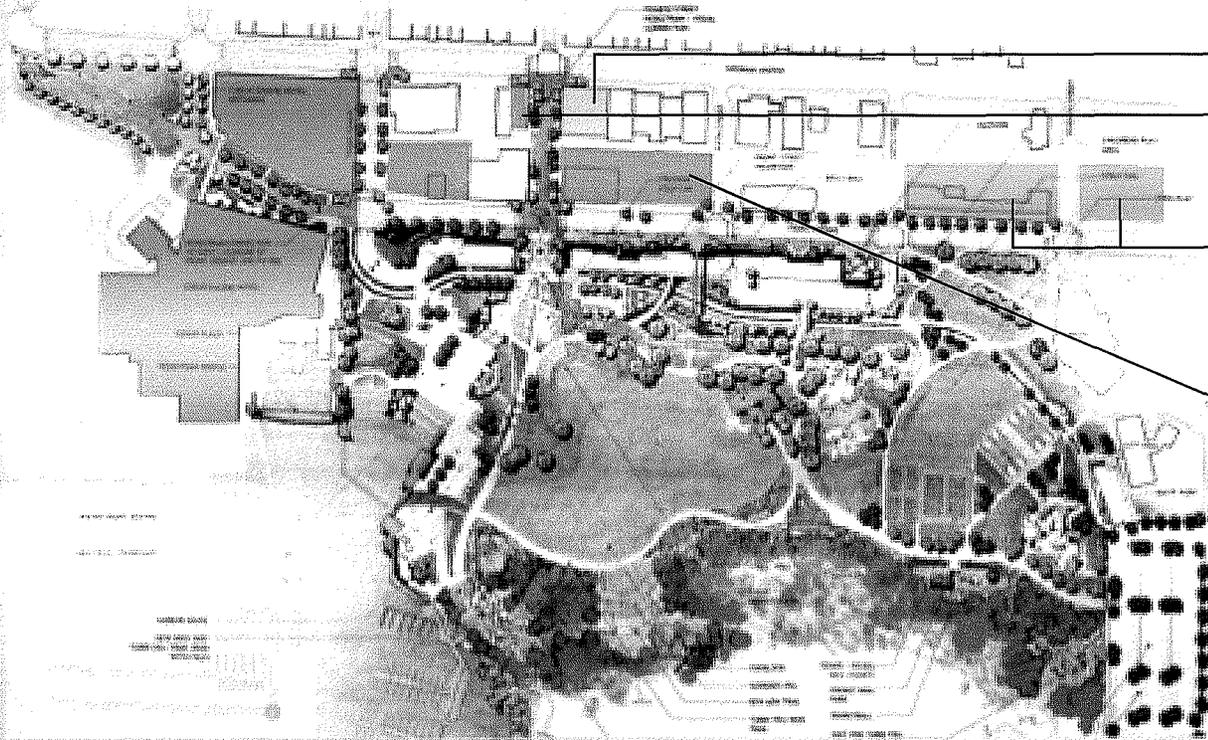
# Adjacent properties owned by influential people

Property owned by Mayor Bloem

Property owned by Brad Jordan

Property owned by  
Miller Stauffer Architects

Property owned by  
Mike Kennedy's employer





## CITY OF COEUR D'ALENE

LEGAL DEPARTMENT

City Hall, 710 E. Mullan Avenue  
Coeur d' Alene, Idaho 83814  
(208)769-2348 – FAX (208)769-2349  
Legal@cdaid.org  
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May 27, 2011

Mr. Brian P. Kane, Esq. VIA E-MAIL: [brian.kane@ag.idaho.gov](mailto:brian.kane@ag.idaho.gov)  
Assistant Chief Deputy Attorney General  
P.O. Box 83720  
Boise, ID 83720-0010

RE: Rep. Kathleen Sims conflict of interest complaint

Dear Brian:

Thank you for forwarding to me a copy of Rep. Sims' scurrilous letter to Attorney General Wasden requesting an investigation of alleged conflicts of interest in Coeur d'Alene. It appears that Rep. Sims has opened a new front in her on-going battle against urban renewal and Coeur d'Alene city government. My response to the allegations in her letter is as follows:

As the Coeur d'Alene city attorney I analyzed the alleged conflicts several weeks ago and advised the Mayor and Council members that, pursuant to Idaho Code 59-700 et seq, no real or potential conflict of interest exists regarding their vote on the proposed McEuen Park Master Plan (hereinafter "MPMP"). Pursuant to that advice, the proposal was voted on by the full council at a properly noticed city council meeting on May 24, 2011 and the MPMP was approved by a 5 – 1 vote. Mayor Bloem presided over the meeting but did not vote on the matter.

**Mayor Sandi Bloem** Mayor Bloem is a 1/3 owner of a family run corporation (Dingles, Inc.) that owns a commercial building at the corner of Fourth and Sherman in Coeur d'Alene. It is in the heart of downtown and is surrounded by several blocks of commercial buildings. McEuen Park is one block from this building. The MPMP that was approved includes a proposal to close one block of Fourth Street in order to create a pedestrian link from McEuen Park to Sherman Avenue. It is arguable that this link will benefit Dingles, Inc., and therefore the Mayor, in the same way it will benefit every other business in downtown. I think it is self-evident that the only reason for doing the improvements to create a pedestrian link between the park and downtown is to create a beneficial link for all park and downtown property owners and visitors. There is no "private pecuniary benefit" accruing to Mayor Bloem. If the plan involved painting the Mayor's building or relieving her of some financial obligation then there would likely be a private pecuniary benefit to her. However this is not the case. In fact it could be argued that Dingle's Inc. and the Mayor may suffer a private pecuniary detriment because of the elimination of car access to Fourth Street and the possibility of assessments for improvements along Fourth Street. The bottom line is there is no private pecuniary benefit that accrues to Mayor Bloem because of the proposed improvements to McEuen Park.

**Councilman Mike Kennedy** Councilman Kennedy is a salaried employee of Newmax, LLC d/b/a Intermax Networks. Steve and Judy Meyer are the 100% owners of Newmax, LLC. Steve and Judy Meyer are also 50% owners of Black Ridge Properties, LLC. Black Ridge Properties, LLC owns a commercial building that is on the corner of Third Street and Front Avenue (across the street from McEuen Park) in Coeur d'Alene. Rep. Sims allegation is that any official action by Councilman Kennedy relating to McEuen Park would create a private pecuniary benefit to a business with which he is associated because the owner of the company he works for owns half interest in an LLC that owns one of the many buildings across the street from the park. Even the broadest reading of I.C. 59-703 does not recognize a conflict of interest merely because a public official is an employee of a corporation that is owned by individuals that are part owners of another corporation that owns a building that might derive some pecuniary benefit from the public official's official action. Even if you adopt that tortured interpretation of the statutory definition of a "business with which the public official is associated", as with Dingle's Inc., there is absolutely no evidence of any "private pecuniary benefit" accruing to the property owner. Any benefit would be shared by many, if not all, Coeur d'Alene citizens and in fact there may be detriments to the property owner caused by the official action.

**P&Z Chairman/LCDC Board Member Brad Jordan** I have not been previously called upon to analyze Mr. Jordan's potential conflict of interest. Mr. Jordan apparently owns or is part owner of a building on Fourth Street however, as with Mayor Bloem, there is no discernable "private pecuniary benefit" that Mr. Jordan would receive because of the proposed MPMP. He may choose to recuse himself in the unlikely event that this matter comes before the Coeur d'Alene Planning and Zoning Commission, but I am not aware of any legal justification requiring him to do so. I believe that counsel for LCDC has addressed the lack of conflict of interest under the relevant urban renewal statutes so I will not address that issue.

**Councilmen Al Hassell and Deanna Goodlander** I can find no statute that defines "conflict of interest" to exist merely because council members also sit on a city's urban renewal agency's board. In fact the urban renewal statutes in Idaho specifically allow the urban renewal agency's governing board to be made up of city council members.

**Councilman John Bruning** Councilman Bruning was one of the 21 members of the citizen advisory committee that developed the MPMP. I can find no statute that defines "conflict of interest" to include council members who sit on advisory boards relating to city projects where there is no private pecuniary benefit accruing to the council member, the proscribed family members or business associates.

**Miller Stauffer Architects** Monte Miller and Dick Stauffer are architects who are part of the "Team McEuen" design team that was selected to design the MPMP after an RFP process conducted pursuant to IC 67-2320. I believe that they are partial owners of two buildings across the street from McEuen Park. They are also talented, long-time residents of Coeur d'Alene who are members of a team of professionals that is being compensated by the city for professional services rendered pursuant to a written contract that was the result of a publicly conducted RFP process. They are not public officials and are not taking any official action that would cause them to run afoul of any Idaho conflict of interest law.

In summary, under the clear terms of the Idaho Ethics in Government Act none of allegations by Rep. Sims have any merit. Rep. Sims' broad allegations contain no facts showing any violation of any laws, ethical or otherwise. Under the ethical standard posited by Rep. Sims, no public official in Idaho could ever take official action on an item if they were a property owner, or even a resident in general, in their jurisdiction because every item that comes before public officials has the potential to provide some nominal or incremental benefit to a class to which they belong. Luckily, that is not the standard contained in the Idaho statutes and I sincerely doubt that that is the standard followed by Rep. Sims in her own role as a State Representative.

I hope that your office will quickly deal with these absurd allegations so that the trust in public officials in Coeur d'Alene is not further corroded by false allegations. Please contact me if you need any additional information. Thank you for your consideration.

Very truly yours,

A handwritten signature in blue ink, appearing to read "M. C. Gridley", with a long horizontal stroke extending to the right.

Michael C. Gridley  
City Attorney

cc: Barry McHugh – Kootenai County Prosecutor  
Mike Patrick - Coeur d'Alene Press  
Dave Oliveria – Spokesman Review  
Kathleen Sims – Representative, District 4



## MEMORANDUM

**TO:** Denny Davis, Chairman of Lake City Development Corporation

**FROM:** Hawley Troxell Ennis & Hawley LLP

**DATE:** May 25, 2011

**RE:** Conflicts of Interest Provisions Applicable to Urban Renewal Agencies

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We represent Lake City Development Corporation, the urban renewal agency of the City of Coeur d'Alene (the "Agency"). This Memorandum outlines Idaho conflict of interest laws applicable to the Agency. In summary, the Urban Renewal Law, Idaho Code § 50-2017, requires a Board member with an existing interest in an urban renewal project or property to be acquired to fully disclose the conflict and abstain in any decision-making affecting that interest. In circumstances that do not fall within 50-2017, Section 18-1361A of the Idaho Code likely applies and contains similar safeguards as outlined below.

### **1. The Urban Renewal Law**

Idaho Code Section 50-2017 deals with conflicts of interest of an urban renewal agency's employees and/or commissioners. It provides, in full:

No public official or employee of a municipality (or board or commission thereof), and no commissioner or employee of an urban renewal agency shall voluntarily acquire any personal interest, direct or indirect, in any urban renewal project, or in any property included or planned to be included in any urban renewal project in such municipality or in any contract or proposed contract in connection with such urban renewal project. Where such acquisition is not voluntary, the interest acquired shall be immediately disclosed in writing to the agency and such disclosure shall be entered upon the minutes of the agency. If any such official, commissioner or employee presently owns or controls, or owned or controlled within the preceding two (2) years, any interest, direct or indirect, in any property which he knows is included or planned to be included in an urban renewal project, he shall immediately disclose this fact in writing to the agency, and such disclosure shall be entered upon the minutes of the agency, and any such official, commissioner or employee shall not

participate in any action by the municipality (or board or commission thereof), or urban renewal agency affecting such property. Any violation of the provisions of this section shall constitute misconduct in office.

In other words, there are three separate requirements, triggered by slightly varying conflicts:

1. *Voluntary acquisition of a personal interest in an existing project, property, or contract.* A member of the Board or employee of the Agency may not voluntarily acquire a personal interest, direct or indirect, in an existing urban renewal project, property included in a project, or in a contract in connection with a project. This is an absolute prohibition. The term “voluntary” is not defined or further clarified in case law or elsewhere. At minimum, this likely requires some type of affirmative action on the part of the Board member to acquire such an interest.

2. *Involuntary acquisition of a personal interest in an existing project, property or contract.* Where the acquisition of a personal interest is not voluntary, the interest must be immediately disclosed in writing to the agency and entered into the minutes of the Agency. Neither the statute nor case law further elucidate what it means to involuntarily acquire an interest. However, this is likely meant to cover instances where a Board member might be a passive investor in a fund or in some other way acquire an interest through another entity or organization of which he has no control, or perhaps a family member’s acquisition of an interest over which the Board member has no control. In this case, the prohibition is not absolute, but disclosure is required. The statute does not appear to require the Board member to abstain from any decision-making regarding the existing project, property, or contract, however, such action would likely be prudent.

3. *Prior or existing interest in property.* If a Board member or employee owns or controls (or owned or controlled within the preceding two years) any interest in property to be included in a project, he or she must immediately disclose such interest in writing to the Agency, which disclosure shall be entered into the minutes. In addition, in this case, the Board member shall not participate in any action by the City or the Agency affecting such property. This safe harbor does not on its face apply to an existing interest in contracts with the Agency, so the

procedures of Section 18-1361A (which are similar) likely apply in the event the Board member is interested in a contract rather than property. These procedures are discussed below in connection with the Ethics in Government Act.

Although there are many other generally applicable statutes which may apply to the Agency, to the extent they conflict with this provision, the more specific rule applicable directly to the Agency controls. With regard to those situations not covered in Section 50-2017, the more general provisions of the Ethics in Government Act will apply. *See* 1993 Idaho Op. Atty. Gen. 112 (Opinion No. 93-10, September 22, 1993) (holding that the specific provisions of Idaho Code § 33-507, where applicable, dealing with school board trustees, takes precedence over the more general provisions of the Ethics in Government Act).

## **2. Ethics in Government Act**

The Ethics in Government Act, Section 59-704 (the “**Act**”), also contains a requirements regarding conflicts of interest. It provides that a public official shall not take any official action or make a formal decision or recommendation concerning any matter where he or she has a conflict of interest and has failed to disclose such conflict. If the public official has disclosed a conflict of interest, he or she may then be counted toward a quorum and is entitled to vote on the matter unless he or she requests to be recused. *See* Idaho Code § 59-704 (“Disclosure of a conflict does not affect an elected public official’s authority to be counted for purposes of determining a quorum and to debate and to vote on the matter, unless the public official requests to be excused from debate and voting at his or her discretion.”) The Act defines “conflict of interest”:

“Conflict of interest” means any official action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit of the person or a member of the person’s household, or a business with which the person or a member of the person’s household is associated, unless the pecuniary benefit arises out of the following:

- (a) An interest or membership in a particular business, industry, occupation or class required by law as a prerequisite to the holding by the person of the office or position;
- (b) Any action in the person’s official capacity which would affect to the same degree a class consisting of an industry or occupation

group in which the person, or a member of the person's household or business with which the person is associated, is a member or is engaged;

(c) Any interest which the person has by virtue of his profession, trade or occupation where his interest would be affected to the same degree as that of a substantial group or class of others similarly engaged in the profession, trade or occupation;

(d) Any action by a public official upon any revenue measure, any appropriation measure or any measure imposing a tax, when similarly situated members of the general public are affected by the outcome of the action in a substantially similar manner and degree.

Idaho Code § 59-703(4). In other words, a conflict of interest involves, by definition, a "private pecuniary benefit" for the person, for a person's business or for a member of his or her household, including that person's spouse or dependent children, and/or persons whom the public official is legally obligated to support. If there is no such benefit, there is no prohibited conflict of interest. In the event of a conflict of interest, the public official may seek legal advice as to whether a conflict exists, and if a conflict exists, he or she shall prepare a written statement of the nature of the conflict and the matter to be acted upon and deliver this statement to the appointing authority. The public official may then act upon the advice of the attorney general or from an attorney representing the agency. *See* Idaho Code § 59-704(3).

In addition to the general requirement to disclose conflicts of interest, the Act contains specific provisions for non-compensated public officials:

When a person is a public official by reason of his appointment or election to a governing board of a governmental entity for which the person receives no salary or fee as compensation for his service on said board, he shall not be prohibited from having an interest in any contract made or entered into by the board of which he is a member, if he strictly observes the procedures set out in Section 18-1361A, Idaho Code.

I.C. § 59-704A.<sup>1</sup> The Board members of the Agency are appointed, non-compensated public officials, in which case Section 18-1361A would apply in the event the conflict of interest

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<sup>1</sup> Although not entirely clear from the text of the statute, the Agency's board members are most likely "public officials" within the purview of the Ethics in Government Act. *See, e.g.* Idaho Atty. Gen. Guideline 11/23/91 (holding hospital Board members are public officials within the purview of the Ethics in Government Act).

provisions of Section 50-2017 do not cover a particular situation. The procedures listed in Section 18-1361A include:

- (1) The contract is competitively bid and the public servant or his relative submits the low bid; and
- (2) Neither the public servant nor his relative takes any part in the preparation of the contract or bid specifications, and the public servant takes no part in voting on or approving the contract or bid specifications; and
- (3) The public servant makes full disclosure, in writing, to all members of the governing body, council or board of said public body of his interest or that of his relative and of his or his relative's intention to bid on the contract; and
- (4) Neither the public servant nor his relative has violated any provision of Idaho law pertaining to competitive bidding or improper solicitation of business.

Idaho Code § 18-1361A. In situations 50-2017 does not cover, these procedures provide a safe harbor for the Agency. Assuming the Agency follows these procedures, or the procedures in 50-2017, as applicable, conflicts of interest can be effectively addressed.

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**MINUTES OF A CONTINUED MEETING OF THE CITY  
COUNCIL OF THE CITY OF COEUR D'ALENE, IDAHO,  
HELD AT WOODLAND MIDDLE SCHOOL,  
2101 ST. MICHELLE**

**MAY 24, 2011**

The Mayor and Council of the City of Coeur d'Alene met in a continued session at Woodland Middle School, 2101 St. Michelle, Coeur d'Alene, Idaho, on May 24, 2011, there being present upon roll call the following members:

Sandi Bloem, Mayor  
A. J. "Al" Hassell, III, Councilman  
Loren Ron Edinger, Councilman  
John Bruning, Councilman  
Deanna Goodlander, Councilman  
Woody McEvers, Councilman  
Mike Kennedy, Councilman

**STAFF PRESENT:**

Wendy Gabriel, City Administrator  
Amy Ferguson, Deputy City Clerk  
Doug Eastwood, Parks Director  
Mike Gridley, City Attorney  
Steve Anthony, Recreation Director

**MCEUEN STEERING COMMITTEE:**

LaDonna Beaumont  
Scott Cranston  
Jim Elder  
Sandy Emerson  
Tina Johnson  
Peter Luttrupp  
Lynn Morris  
Ron Ouren  
Dave Patzer  
John Barlow  
Dennis Spencer

**TEAM MCEUEN:**

Dick Stauffer  
Monte Miller  
Phil Boyd  
Dell Hatch

**CALL TO ORDER:** Mayor Bloem called the meeting to order.

**McEUEN PARK MASTER PLAN PRESENTATION:**

Doug Eastwood, Parks Director, noted that McEuen Park has been on the radar screen since 1997, or nearly 14 years when the city first formed its urban renewal agency. Over

the past 14 months, they have brought this idea forward. The Design Team and the McEuen team adopted the seven Community Values. They wanted McEuen Park to have the greatest number of uses for the greatest number of people. This project is not unlike other enhancements to the quality of life in our community. Other community projects mentioned were the North Idaho Centennial Trail. It was not met without concern by the citizens. In 1995, Mr. Eastwood said that a board of visionaries introduced the idea of a new public library in the city. That vision was not entirely embraced. In September of 2007 the city of Coeur d'Alene opened its library. There was also discussion regarding a community center facility idea for 20 plus years. When an opportunity came to apply for a grant for the Salvation Army Ray and Joan Kroc Center, it was opposed. The idea was also not embraced by everyone. Mr. Eastwood asked the audience to imagine what our community and quality of life would be like to today if we did not have the North Idaho Centennial Trail, Coeur d'Alene Public Library, or Kroc Center.

Mr. Eastwood said that the McEuen Master Plan embraces the opportunity for a larger number of people to access the waterfront area. The benefits are endless. Outdoor recreation opportunities increase by many fold and include other benefits that often go unmentioned, including social benefits, health benefits, and economic benefits that the parks provide to the community. The master plan is a vision of a place making park and is the result of many months of work.

Mr. Eastwood further noted that the value of the Coeur d'Alene parks system is estimated to be well over \$200 million. The acquisition and development of the Coeur d'Alene parks system did not come from the general fund or at the expense of the taxpayer. They were able to acquire and build the parks system because we have a huge number of "can do" people in the system and a great many volunteers who serve on committees, in addition to donations of land, cash, and materials by service clubs and special interest groups, grants, businesses and individuals.

Mr. Eastwood said that great parks make great communities. The parks system contributes significantly to the healthy quality of life and economy in our community.

LaDonna Beaumont, McEuen Steering Committee representative, noted that the steering committee members are not citizens with more to gain than other citizens. They are not paid, and are not chosen based upon expectations of compliance from designers or politicians. Not all of the members were aware of the potential for controversy on this project. The comments have sharpened their focus and reminded them that the job they are assigned is important.

Ms. Beaumont discussed the role of the Steering Committee and the stakeholders it represents, which include the City of Coeur d'Alene Mayor, City Council, Administration, Parks, Recreation, Planning and Engineering Departments, the Parks & Recreation Commission, the Coeur d'Alene Parks Foundation, North Idaho Centennial Trail Foundation, Tubbs Hill Foundation, Coeur d'Alene Library, Citizen/Local Neighborhoods Representative, Downtown Business Association, American Legion Baseball, ADA Accessibility/Playgrounds representative, Coeur d'Alene Resort,

Citizen/Theater and Entertainment Representative, City Parking Commission/LCDC, and the Boating/Waterways Community. The stakeholders represent the citizens of Coeur d'Alene.

The purpose of the Steering Committee was to guide the creation of a McEuen Park Master Plan that establishes an overall community vision for McEuen Park in order to allow the park to develop in an orderly manner, over time, as funding permits. The committee came together early 2010 to chose a design team. Team McEuen was chosen because they are the best. After the selection, they began to guide the design process.

The process has been long and sometimes difficult. The current Master Plan is very different than the first version. The Steering Committee recommends that the Council adopt the McEuen Master Plan Vision as presented.

Dick Stauffer, Team McEuen, noted that McEuen Park is a critical piece of real estate. This highly valuable public asset should offer the greatest access to the widest cross section of Coeur d'Alene residents and visitors. Some issues that were discussed were (1) improve visual and pedestrian linkages, (2) capitalize on the waterfront, (3) reduce the amount of surface parking on McEuen Field, (4) provide for festivals, events, and markets and other community activities, and (5) incorporate art, including performance into the planning and design.

Mr. Stauffer noted that there have been 14 separate studies since 1997 that have referenced McEuen Park. He discussed some of the Master Plan changes and refinements and listed the activities that you could do in the park. Mr. Stauffer also noted the community values which emanated from the original Walker Macy study and were expanded and enhanced by the Committee of Nine and endorsed by the City Council in 2002. He also discussed the survey results and noted that people are generally in favor of the amenities.

Mr. Stauffer next discussed the various amenities to the park, including Front Avenue parking improvements, Front Avenue improvements and promenade, Freedom Fountain, Front Avenue, Sherman & 3<sup>rd</sup> Street, seawall and steps, grand plaza and waterfront promenade, Centennial Trail, Veterans Memorial, child play area, trailhead/accessible trail, east parking lots, main pavilion, basketball courts, tennis courts, dog park, bocce ball court, skate park, splash pad, sledding hill, ice skating, amphitheater/green space, marina expansion, relocated boat launch, and a regional baseball stadium on 15<sup>th</sup> Street with all weather turf, taking advantage of amenities already in place.

Mr. Stauffer discussed the cost summary and estimates and noted that Team McEuen is confident in their accuracy.

Scott Cranston noted that is a member of the Parks & Recreation Commission and also a member of the McEuen Steering Committee. Conceptual development of the Parks Master Plan began almost a year ago. He expressed appreciation for the commitment and sacrifice of the Steering Committee and many others who enabled this process to move

forward. This community is passionate about its parks and public spaces. Mr. Cranston said that the McEuen Park design process and decision making were guided by the adopted 7 community values and the McEuen mission statement. Relocating the boat launch and ball fields were necessary to best meet the community values and mission statement. The Coeur d'Alene downtown is going to continue to grow and develop and with it will come greater commercial and residential density, and vehicle and pedestrian traffic. Now is the time to develop plans for long term facilities with better access and sustainability. In 10 years alternative site opportunities may no longer be available.

The Front Avenue redevelopment and parking concept addresses downtown parking needs and adds 5 acres of parking space. The design creates a greater number of opportunities for a greater number of citizens of all ages. McEuen Park will not happen overnight but adopting this master plan vision will allow the next steps to take place. Mr. Cranston noted that some of our best public spaces evolve over time. The Coeur d'Alene Parks & Recreation Commission has given McEuen park master plan its unanimous endorsement with the understanding that the 7 community values will continue to guide the process, including replacing facilities with equal or better. The Steering Committee recommends that the council adopt the McEuen Master Plan as presented.

Councilman Edinger read a statement that he prepared to the council and general public. He disagrees with the proposed plan but has great respect for the members of Team McEuen and city staff that have spent many hours on the development of the proposal and expressed his thanks to the mayor and council as a body. Councilman Edinger asked if we are here tonight to listen to the interests of both sides of the public, or has this council already made their decision and brought the public here to pacify them. He would expect that this council would still be open to the opinions and voices of those who are in opposition. Some of their concerns are also his.

Councilman Edinger said at the presentation at the Senior Center nothing was mentioned about Tubbs Hill and then within a short time it became part of the design. Tubbs Hill is one of the jewels of this great city. The Tubbs Hill Foundation has worked endless hours to preserve the hill in its natural state. There is no reason to scar Tubbs Hill and it should not be included within this plan.

The Third Street boat launch is the largest launch at the north end of the lake. It has many functions. Emergency medical personnel use it as a site for convenience. Families and avid fisherman enjoy it. This launch is bought and paid for. Who is going to pay for the new launch if it is developed along Lake Coeur d'Alene Drive. The new proposed launch is not equal or better. Where are the studies for the new proposed launch site? Councilman Edinger is in total opposition to the removal of the Third Street boat launch.

In regard to the Legion Baseball Field, Councilman Edinger said that the city has pledged, even in the last city election, that this baseball field would not be moved unless there was a location that was designed as equal or better. He personally does not feel that moving the ball field to a temporary location is justified when all along our pledge was to produce a field of equal or better value. We should honor the pledge we have made to the

Legion program. The proposed new site is not an equal or better value compared to the location where it presently sits. We must recognize that tax dollars will be used to construct this project.

Councilman Edinger said that, unfortunately, we are not all privy to know where the money for this relocation is coming from. He needs more answers to the questions he has raised. He asked when did it become responsible governing to develop a project at this time with the shape our economy is in. This project will cost millions in tax dollars. He would like to see a plan that will not cost as much and that takes less time to develop, maintain and enjoy. We can develop a park that represents our citizens rather than a grandiose park used as an attraction. We have an opportunity at this time to provide and develop McEuen without stretching resources and at the same time maximizing its potential. Councilman Edinger said that he thinks it is important for everyone to know that he is very passionate about McEuen Field and Tubbs Hill. He noted that he is not against improvements at McEuen Field and is in favor of additions and improvements to McEuen east of the Legion ball field.

**MAIN MOTION:** Motion by Edinger, seconded by Kennedy, to remove Tubbs Hill from the proposed plan.

**DISCUSSION:** Councilman Kennedy said that this project has brought a tremendous amount of focus on Tubbs Hill as it relates to McEuen Park. He has found that there is a pretty important goal that has been agreed upon, and that is accessibility to Tubbs Hill for everyone. There is no intention to do blasting, paving, or permanently deface or scar Tubbs Hill in any scenario. He asked Councilman Edinger if he would amend his motion to take Tubbs Hill out of consideration for this McEuen Park planning process and send the topic of Tubbs Hill management and improvement back to the City Parks and Recreation department on a separate track from McEuen altogether. He would also like to include in the motion the following directive: That the Parks and Recreation Commission put a specific plan together regarding comprehensive Tubbs Hill management and improvement, including but not necessarily limited to: trail accessibility, public safety, connectivity to McEuen Park, downtown, and nearby neighborhoods, management of invasive species, forest health and restoration, maintenance and operations. Also, that the Parks and Recreation Commission include the input of citizens with disabilities and proponents of Tubbs Hill Foundation efforts, and report back to the City Council by the end of this calendar year 2011 with a comprehensive plan including specific dates for increased trail accessibility.

**MOTION TO AMEND:** Motion by Edinger, seconded by Kennedy, amending his motion to remove Tubbs Hill out of consideration for this McEuen Park planning process and send the topic of Tubbs Hill management and improvement back to the City Parks and Recreation department on a separate track from McEuen altogether, and directing that the Parks and Recreation Commission put a specific plan together regarding comprehensive Tubbs Hill management and improvement, including but not necessarily limited to: trail accessibility, public safety, connectivity to McEuen Park, downtown, and nearby neighborhoods, management of invasive species, forest health and restoration,

maintenance and operations. Also, that the Parks and Recreation Commission work together with the Tubbs Hill Foundation and persons with disabilities, and report back to the City Council by the end of this calendar year 2011 with a comprehensive plan including specific dates for increased trail accessibility.

DISCUSSION: Councilman Hassel noted that all structures and amenities on Tubbs Hill have already been taken out of the plan. Councilman Kennedy said that this process has been contentious but has brought the disabled and the Tubbs Hill Foundation together.

MOTION AS AMENDED CARRIED.

MOTION by Edinger that the Third Street boat launch be removed from the McEuen Plan. The motion died for lack of a second.

MOTION by Edinger that the Legion Baseball field be removed from the McEuen Plan. The motion died for lack of a second.

MOTION by Edinger that the citizens of Coeur d'Alene have the chance to make their voices heard with a vote on the November of 2011 election ballot with the intent to approve or disapprove the McEuen proposal. The motion died for lack of a second.

Councilman Kennedy said that he was contacted by Robert Cliff who asked for a resolution to provide clarity for the funding of the park. He noted that a current council cannot bind a future council in terms of funding, but Councilman Kennedy asked the council to make a resolution or pledge that would apply to the current council in office as a way to codify the funding.

MOTION by Kennedy, seconded by Goodlander, that the council make a resolution to provide clarity for funding for McEuen Park which states that the current council cannot bind future councils in terms of funding. As a result this informal resolution/pledge would only apply to members here today for their terms in office. The resolution would state that the funding for McEuen Park come from the following sources: Urban renewal districts, grants, Parks Capital Improvement Fund, private donations, service clubs and community groups, in-kind contributions of services, general funds dedicated to park improvements, dedicating Parking funds, foundations, state, federal, county partnership potentials, city departments that would otherwise be involved in the project due to proximity to Front Avenue and other utilities (i.e., Streets, Wastewater, Stormwater, etc.), Arts Commission. Furthermore, expressly resolve that funding for McEuen Park will NOT come from: General Obligation Bonds requested by the city, new property taxes above and beyond those proportionately allocated for such parks and/or stated above, and new levies requested or increased for maintenance and construction of McEuen Park.

DISCUSSION: Councilman Kennedy said that the pledge can be made but it is not binding on a future council. Councilman Goodlander said that she appreciates the clarification. Mr. Gridley commented that he had no legal problem with the resolution, but it is not legally binding on any future council.

Motion carried.

MOTION by Hassell, seconded by Kennedy, that public comments be limited to 3 minutes per person. Motion carried.

**PUBLIC COMMENTS:**

Marlo Falkner 207 Park Drive, said that she is a 3<sup>rd</sup> generation native. Her family held leases on the Third Street docks. While growing up in this city, there was never any vision. She thinks it is time for a vision and time for a concept. It is time for the city council to make a stand. There is no performing arts center. This community has only responded to what the needs were. She urged the council to vote yes on the proposal.

Dolene Lind 2501 Sherman, said that McEuen Field has always been a place where families gather. She spoke in opposition to the McEuen Plan. The downtown does need parking and with LCDC money a parkade can be constructed downtown. LCDC tax money could be used for a shelter for the bus depot at Riverstone. We should honor Mae McEuen's memory. The bottom line is the public has the right to vote. Don't force us into a recall.

Patrick Moon, 1323 E. Sherman, thanked the council for standing up for people with disabilities. He loves the project because they thought about accessibility. If you keep the vision of accessibility for all and quality for all, there is no reason for these fights. There are a lot of good things here. He and the disability community are proud of the McEuen Plan. They want open spaces to be accessible as best as possible.

Virgil Edwards, 4451 Seltice Way, said that he works for the Disability Action Center. He applauded everyone who has been involved in this project. McEuen Field allows everyone to be with their families and friends. He supports the McEuen Plan, and believes there needs to be a voice for the homeless, disabled, elderly, and people who can use this facility. He believes McEuen Field will be very successful.

Charlotte Cheryl, 1308 Coeur d'Alene Avenue, said that society puts great importance on being entertained constantly. What happened to children's imaginations? Where is the need for a wading pool or fountain? Cool off at the beach. She suggested flooding a portion of McEuen in the winter for ice skating. She has always enjoyed the boat launch although they are not boaters. Silver Beach does not afford that same availability. Glitz and glamour can be found elsewhere. She asked the council to not approve the plan as is and take more time for citizen input and put it to an advisory public vote.

Sharon Culbreth, 206 Hubbard, thanked Councilman Edinger and said she thinks the citizens should be able to vote. The economy in Coeur d'Alene is still declining and foreclosures are up. There are 146 vacant commercial spaces just in the city of Coeur d'Alene. She asked how the council in good conscience could make the park such a priority during these economic times. The community is strongly asking for a vote.

Kathleen Sims, 206 Stoneington Court, said that she is a State Representative and represents District 4 and her constituents have been calling and emailing her about this project. She delivered a letter to the State Attorney General listing conflicts of interest that she finds on the City Council in dealing with this project. She believes a thorough investigation will be done by the Attorney General.

Casey Kaiser, 8635 E. Sunnyside Road, thanked Councilman Edinger for suggesting a public vote. She is tired of representatives from all aspects of government thinking that the public's opinion means nothing. It is time to listen. Council should be happy she doesn't live in the city. She is tired of council's attitude and arrogance.

Lorna Kay Carpenter, 902 E. Hastings, discussed the unemployment rate. She wants a public vote. No one has said how the project will be maintained.

Ron Daydon, 8281 N. Ramsey Road, Athol, said that he lived in Lake Tahoe and saw how overdevelopment can spoil a community. This Disneyland park isn't for us, it's for the high rollers who can entertain their out of town guests in high style.

Justin Druffel, 1101 E. lakeshore Drive, said he is very excited about the possibilities of McEuen Park. Great parks make great cities, and great cities have great parks. The current McEuen Park is not configured for the highest and best use for all citizens. He appreciates the council members' vision and hard work and hopes to be able to enjoy the new McEuen Park with his family.

Dorothy Hatch, 1507 S. Fairmont Loop, CDA, thanked the mayor and council for their service to the community. She applauded the McEuen Steering Committee for a job well done. She agrees that the park is in need of upgrades. Having a beautiful park with numerous amenities will draw many people to this area. Tourists spend money, benefiting the community. American Legion baseball can be played in another field. She agrees with moving the boat launch. This should be a park for the entire community with something for everyone. She looks forward to the day when this project is complete and Coeur d'Alene has another feather in its cap.

Jeff Connaway, 1523 N. 2<sup>nd</sup> Street, thanked the mayor and council for the opportunity to speak and thanked Team McEuen. He respects the quality of work. He said that many people in attendance think that by choosing to do away with the Third Street boat launch and ball fields that the city is heading in the wrong direction. He thinks most of the amenities can be included by keeping the boat launch and ball fields and using the current parking lot. He requested the city council vote to reject the current proposal to rebuild McEuen Field. He thinks the city council should conduct a survey and take an advisory vote.

James Filmore, 1215 E. Lakeshore Drive, said that he thinks the city should move forward with the plan. He asked for more parking at City Park, and thanked the council

for the vote removing Tubbs Hill from the plan. He asked for a special designation for Tubbs Hill as a nature park.

Jennifer Drake, 1419 E. Skyline Drive, said that she is a 4<sup>th</sup> generation Coeur d'Alene resident and wanted to reassure council members and the mayor that there is a very large portion of the community that strongly supports this plan. It isn't just about the people in this room – it is about the children who want to have something amazing. She wants to tell her daughter that she is growing up in a community that is forward thinking. Why are we satisfied with fine? We need to save McEuen from atrophy and underutilization. It is about aiming for greatness. Now more than ever we need to reinvest in this place that we all call home. It is the right thing to do for the future of this community.

Nathan Baker, 2699 Versaille, said that he is representing skateboarders and bike riders, and spoke in support of the proposed skate park.

Chase Turner, 1623 E. Mullan Avenue, spoke in support of the skatepark. He will help to raise money for the project.

Peter Riggs, 9961 N. Huetter Road, said that what this is about is his newly born son. As a new dad looking towards the future, he wants it for his son so that he can take him somewhere and have a place that he can really be proud of.

Bob MacDonald 1407 Silver Beach Road. spoke in support of the plan for his dog. Dog parks are great for the community. McEuen is a great opportunity for this community to do something special. He asked the council to represent the many people who support this plan.

Steve Ayles, 2925 E. Packsaddle Drive, said that he talked to two or three people who are upset because their names are listed in the newspaper ad in favor of the plan. He is against moving the boat launch. He couldn't find one instance where a child or anyone was hurt at the dock. We don't need extra green space or waterfront. Boat ramp is handicap accessible. He discussed his concern with the proposed new dock location.

Gary Johnson, 601 E. Front, spoke in support of the McEuen plan. It is the ideal time to think of the future for our children and the next generations. Nothing that is in the park now is being eliminated. Everything is being replaced with equal or better, guaranteed. This plan, if implemented, will provide jobs for the city, will bring in more visitors and pour money into the community. He asked for a vote in favor of this plan, and asked Councilman Edinger to have an open mind towards those who are in favor of the plan.

Douglas Stellman, 186 Chain Drive, said that the McEuen that we have is a treasure. He would ask to preserve the beauty of the green area. Orin Lee, the first NIC president and business owner, was tireless in advocating preserving this place. It is hard to build something as precious as God's creation.

Harry Amend, 4449 Greenchain Loop, said that he hopes as former school superintendent and one of the founding directors of the KROC center that when the issues are over, they can look at what is best for the community and we can move ahead. He hopes we can pull back together for the betterment of this city. Mr. Amend holds Councilman Edinger in the highest esteem and believes that we will have a ball field that the citizens will be proud of. He has worked with the mayor and city council on some tough issues but they have earned his trust. He will support their decision and will help to make it work.

Derek Ojay, 710 River Avenue said that he doesn't think its government's job to provide entertainment. It doesn't seem right. The time isn't right and we don't have the money. If council goes ahead with this plan, you may not have a job next year.

Rick Williams, 18<sup>th</sup> & Sherman, said that he is an avid boater and taking out the Third Street ramps is wrong, and not giving them the vote is wrong. It should be equal to or better, and the same value. He said he did not get correction information from the city council and has lost respect for Doug Eastwood for not being honest with him.

William Cushman, 3252 Needle Pines Ct., said that it is a beautiful idea but moving the Third Street launch would be disastrous.

Frank Orzell, 310 E. Garden, spoke in opposition to plan and costs involved. In his opinion the costs today would not support a decision to move forward. He could not get a consistent response as to how costs were developed. Costs are incomplete as they do not include post construction costs and repair and maintenance.

Julie Clark, 602 Tubbs Hill Drive, and Rebecca Priano, 2205 Stagecoach, Post Falls. discussed parking north of Sherman Avenue and proposed giving parking management to an Idaho company. Ms. Clark said that haste makes waste and encouraged a vote.

Terry Cooper, 125 W. Eaglecrest Drive, said that the Downtown Board of Directors sent out a letter supporting the concept of going forward to look at the design elements of McEuen field. He encouraged the council to go forward and look with caution at what can be done with McEuen. The Downtown has worked with the city for so long that they have trust that the council will do its best to lead us in the right direction.

Jean Felker, 915 Front Avenue, said she had concerns regarding equal to or better. She feels they get a chance to talk but the council doesn't really hear what they say. Who decides what is equal to or better? She thanked Councilman Edinger for his integrity. More and more isn't always better. McEuen Park is the citizens' park, the hometown park. She spoke in favor of a public vote. She thinks most people would like some changes but are is blown away by the scope of the plan.

Jeff Crensdorf, 2205 Stagecoach Drive, Post Falls, spoke in opposition to the McEuen plan. He feels there needs to be public input. The plan is not entirely backed by the

community. Mae McEuen would like some of the elements, but council needs to listen to the people.

Todd Christiansen, 105 N. 1<sup>st</sup> Street, spoke as President of the Coeur d'Alene Chamber of Commerce. The Chamber had a board member serve on the McEuen Steering Committee. He spoke in support of the McEuen Master Plan.

Tom McTevia, 4586 W. Princetown Lane, said that he is a member of the Coeur d'Alene Ped/Bike Committee. He read a letter from the committee chair in support of the McEuen plan. He spoke in support of an ADA accessible trail at the base of Tubbs Hill and would like to provide input as the plan progresses. He said that the idea of a park of this magnitude is a great thing and is in support of the plan. He also spoke in support of moving the Third Street boat ramps.

Mayor Bloem called for a break.

Rachel Reid, 803 E. Young, said she is the parent of 3 children under the age of 6. She loves Tubbs Hill the way it is. What is happening to citizens tonight is what is happening all over Idaho. She spoke in support of a vote for education reform and asked citizens to sign petitions for education reform tonight.

Dan Malcolm, 8643 N. Woodline Drive, Hayden, spoke in support of the McEuen plan. He expressed concern regarding accusations of conflicts of interest and connections. There was an election and our city council was put in place. He doesn't agree with everything, including the boat ramps, but thinks this is an investment in our future.

Ellen Connor, 6015 N. Valley Street, Dalton Gardens, said that she loves the concept, but as a banker, she believes they are not done with the foreclosures and doesn't think it will be over until 2013. Property values will continue to drop and the tax base will drop. How are we going to do \$30 million when more and more people are going to become homeless. It is going to get worse before it gets better. Many cities around the country are on the verge of going bankrupt. We have the fastest rising food prices in 32 years.

Mike Tedesco, 2805 N. 9<sup>th</sup> Street, said he is in favor of this plan. McEuen Park is very underutilized. He is attracted to the pedestrian-friendly aspects of the plan. He thought the bridge to the boardwalk was a unique aspect. The young folks are interested in an increased number of amenities.

Eileen Johnson, 11945 N. Stinson, Hayden, spoke in support of a vote. It is very important that we all have input. She thinks the plan is way too extensive for this time.

Keith Peila, 3537 Highland Drive, thinks of Coeur d'Alene as the "city by the lake." We have gotten off track. The Third Street boat ramp is the most used boat ramp in the state and northwest. It is a natural handicap access. Third Street is vital to the boating community and the businesses of Coeur d'Alene. He asked the council to table the plan

and take a better look at it, and thanked Councilman Edinger for being the only one who stands up for the voters.

Mary Ayers, 1307 Ash Avenue, hopes the boat ramp stays at Third Street and that there isn't a parking lot on Front. Councilman Kennedy confirmed that the Front Street closure is not a part of the plan.

Lynn Morris, 304 S. 11<sup>th</sup> Street, said she has lived in Coeur d'Alene for 37 years and lives 4 blocks from McEuen. She desires to have a park in place to be used by many in the community. She wants a place to take her grandchildren when they come visit. Currently McEuen is empty and barricaded by fences. She has often thought there is a better and higher use for this park. There isn't a lot of space available for many people to enjoy. She is a boater and believes that the community's options for boating should not be decreased. The master plan includes a wide variety of activities. She urged the council to accept the master plan and trusts the city will carefully evaluate each space as we move forward.

Gary Hirst, 801 Pine, said he had concerns about keeping the appearance of the neighborhoods as they are now and feels they spoke to that well. He asked the city council to keep that in mind as they move forward with the plan. Safety is a concern and the street is already busy with speeders. He also wants to make sure that lighting doesn't intrude on households in the adjacent neighborhood and wonders about decibel limits at the amphitheater and management of crowds, and the aesthetic appearance of structures next to neighborhoods. He asked for respect for the values of the neighborhood and quality of life.

Sandy Emerson, 2929 Lookout Drive, with offices at 408 Sherman, thanked the steering committee members. Discussed a ULI article that parks are a good investment and said that this plan provides a renovation and elimination of acres of asphalt. He said that Third Street is about the 4<sup>th</sup> most used launch in the county, and it isn't the busiest in the state any more. It is a barrier to waterfront users. The Silver Beach area is a preferred boat launch.

Tina Johnson, 601 Front, spoke in favor of adoption of the master plan. If the plan is adopted she personally pledges \$5,000 to a particular amenity, and 300 hours of volunteer work to bring it to fruition.

John Barlow, 3403 Fernan Hill Road, CDA said that he is a member of the steering advisory committee and it has been a great experience. There has great collaboration and interactions with staff. It is time to finalize the effort to improve McEuen. Fourteen years is long enough to study this process. He urged council approval.

Sharon (last name indiscernible and address not given) thanked Councilman Edinger for standing up tonight. She is getting somewhat disheartened and wonders why citizens of this town even bother coming up here to say anything. She gets the impression that the removal of the boat launch and the installation of the parking garage is a done deal.

Why weren't the people involved from the very beginning? Mayor Bloem and Councilman Kennedy should recuse themselves of any vote. There is the perception of a conflict of interest.

David Patzer, 2458 E. Nettleton Gulch, thanked mayor and council for their energy and time. We are at a crossroads and he urged council to have the courage to make a correction to ensure the next 50 to 100 years of utilization of this project.

Linda Wright, 1018 "B", said that the plan has tons of good things in it. We don't need a place making park, we just need a nice community park. Coeur d'Alene already is a destination city, we don't need a destination park. We do not wish to become a cookie-cutter community. She also asked for an advisory vote.

Rita Sims Snyder, 818 Front Avenue, spoke in opposition to the McEuen Plan. Why make such drastic changes when there has been no public outcry to make the changes. She recommended putting it to an advisory vote. She believes that the "blank slate" is where the vision became misdirected. McEuen could use improvement, but not to the extent that has been proposed. They love many parts of the plan but would love to see it scaled back.

Sharon Kerns, 510 N. 7<sup>th</sup> Street, is impressed with the McEuen Plan. She realizes that not everything suits everyone but for her she would use that park every day. It seems that there has been a lot of thought put into it and she supports the master plan.

Ron Ouren, 2823 Marcelle Drive, said that he moved to Coeur d'Alene in 1967 and there have been lots of changes in this community and a lot to be proud of. He was a member of the downtown association and discussed the revitalization of Sherman Avenue and is very proud of what they did. He is on the Steering Committee and very proud to be a member. He commended everyone for their dedication. Change is never easy and shouldn't be done without a lot of soul searching and a benefit to the majority of the people. He sees this park as an opportunity to integrate and interact with all age groups. We can jump start our own economy with this project and he encouraged council to vote for the plan.

Lynn Schwindell, 735 4<sup>th</sup> Street, has attended every meeting and watched everything on t.v. and keeps hearing that things will be replaced with equal or better. She has not heard how it's going to be paid for, and has not heard a promise or commitment that the boat launch or the ball fields would be replaced before anything is moved at McEuen Field. There is no money for the boat launch since it is outside of LCDC. She would like to have the council make a promise and commitment that those facilities would be replaced before anything is removed and ensure that there is equal or better. She does not feel that there has been enough public involvement. She urged council to table it and step back and reconsider it and put it out to an advisory public vote. Something should be left to the blue collar worker and something should be put down at the park that reflects the historical value of Coeur d'Alene.

Charlie Miller, 1283 N. Center Green Loop, said that he is the North Idaho Centennial Trail Foundation manager. He discussed the initial fears over the Centennial Trail and how those fears never came to fruition. The North Idaho Centennial Trail Foundation endorses the conceptual plan of McEuen Field.

Mary Smith, 4333 Deerfield, said she wonders what will be done if the funding doesn't come in. There is a big gap between people who don't make very much money and people who do. She thinks the middle class is being forgotten and that a second look needs to be taken. She would like to see it be done in increments over something like a 20 year plan. She encouraged a public vote.

Joe Morris, 304 S. 11<sup>th</sup> Street, commended the Steering Committee and council for the process. The greater the change the more push back you are going to get. He thinks that McEuen can become one of our community gems. You need to trust the process and take the next step.

Jerry Peterson, 2039 W. Normandy Lane, spoke in opposition to the plan.

Tom Cain, 745 N. Third, thinks it is okay to do something with McEuen. He spoke in opposition to the McEuen Plan and in support of an advisory vote.

Jack Riggs, 801 S. 11<sup>th</sup>, said we have a republic, representative form of government. Council is elected to represent us. He believes it is the council's responsibility to vote on this project.

William Green, 2803 N. 5<sup>th</sup> Street, encouraged the council to consider values and find balance between maintaining the legacy of a neighborhood feel with the need for further development. They are both important. He spoke in support of council voting on whether to have a vote.

Randy Reese, 32651 Hayden Drive, Spirit Lake, asked council to please make everything they approve accessible.

Mary Souza, 4153 Fairway Drive, suggested a resolution that whatever the final plan is, council will put it to a public advisory vote on the city election on November 8<sup>th</sup>.

Public Comment was closed.

**DISCUSSION:** Councilman Edinger said that the majority of the comments made have been about the baseball field and the boat launch. We have a baseball field and a boat launch right now. Who is going to pay for the new ones? In regard to the safety issue and the Third Street launch, there is just as much a safety issue at Silver Beach as at Third Street. He has had an opportunity over the last 3 to 4 weeks to read the survey that Team McEuen did and also read the survey that Friends of McEuen has done. There is a difference. The difference is that Team McEuen shows this great plan where Friends of

McEuen says do you want the Third Street boat launch gone, the baseball fields gone, do you want to screw around with Tubbs Hill?

MOTION by Edinger to take the baseball field and the boat launch out of the plan that is proposed. Motion died for lack of a second.

MOTION by Edinger for an advisory vote on the plan that council accepts at the November election. Motion died for lack of a second.

Councilman Edinger commented that he has been on council a number of years and has to make a lot of tough decisions. He believes that this is a big decision and a big change for downtown Coeur d'Alene and the community. He questioned what is wrong with having an advisory vote.

Councilman Kennedy said they did have a full hearing in the General Services Committee with citizens about a public vote. This is not the first time that they have talked about this voting issue.

MAIN MOTION by Goodlander, seconded by Bruning, to adopt the conceptual McEuen Master Plan with conditions, that the plan shall recognize the value of public-owned space and encourage improvement in accessibility by the citizens, that the plan promote and enhance open space, that the plan encourage greater user of downtown public space for the community, that the plan shall recognize the value of vistas and views, and explore the possibilities in creating a community gathering place, that the plan link the downtown to the waterfront, and that the plan shall ensure the replacement of any displaced facilities with equal or better facilities.

MOTION TO AMEND by Goodlander, seconded by Bruning, to amend the motion to ensure that equal or better is in place before shutting down.

DISCUSSION: Councilman Goodlander said that her father (Orin Lee) would say you have to move on. There are 2,000 people a day at the City Park and you need to spread the use. We can't expect city park to take care of all their people. It is their responsibility to look to the future and she believes that the plan does that. It is important that they replace the facilities. You need to be open to changes. It is their job to make this decision.

Councilman Kennedy said this topic has had more public input than any other he has seen. He doesn't know what the right thing to do is, but has heard from more people pro and con than any other. He is living the American dream in Coeur d'Alene Idaho. In 20 years he has seen a tremendous amount of change. He didn't run for this office to do the easy thing. He believes that tonight the easiest thing for him to do would be to offer up an advisory vote or vote no on the plan. He does not believe it would be the right thing to do. If he votes yes on this and it causes people to vote against him for that, that is democracy and he welcomes it. He isn't doing this for politics. The younger generation of Coeur d'Alene have said to him that they don't go downtown because the park doesn't

do anything for them. The bottom line is that it is a tough vote and tough issue. He will vote in favor of the plan. It is a roadmap and it will be changed more than once.

Councilman Hassel said he thinks it is necessary for them to make a decision. McEuen will move forward and will be funded piece by piece. The LCDC is only one possible source of funding. You have to have a roadmap or nothing will happen. He will vote for the plan.

Councilman Bruning said that change is not easy – it is always difficult, and scary. Change gets us out of our comfort zone and the natural reaction is to pull back. The Steering Committee did not make these decisions lightly. He would argue that it is the right time to do it. The council has debated it for 14 years – when is the right time? He talked about his perceived conflict of interest because he served on the Steering Committee and noted that a conflict of interest has to do with monetary gain and he has nothing at all to gain from this. He will vote in favor of the plan.

Councilman McEvers said that government doesn't stop because times are hard. He doesn't see it happening all at once, and people will come together. He used the Kroc Center and Playland Pier as examples of people coming together. He said he looks at history for answers. It is about the future and the kids who will be here long after us. He thinks right now it is as good as we can do. Nothing will probably change for awhile but the motivation will start. He will support the plan. He is trying to make the right decisions based on who he is and who the citizens elected. He will do the best job he can for the citizens and for the future.

Councilman Edinger said he has never considered himself a political man. He has never voted on anything to be a political animal one way or the other. He votes how he thinks the majority of the people of Coeur d'Alene want and what he thinks is best for the citizens of Coeur d'Alene. He has never voted on any issue for political gain and will never do that. He has a clear conscience.

Councilman Kennedy called for the Question. Motion carried.

ROLL CALL ON MAIN MOTION AS AMENDED: Edinger, Nay; Hassell, Aye; Goodlander, Aye; McEvers, Aye; Kennedy, Aye; Bruning, Aye.

ADJOURNMENT: Motion by Kennedy, seconded by Hassell that, there being no further business, this meeting is adjourned. Motion carried.

The meeting adjourned at 10:36 p.m.

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Sandi Bloem, Mayor

ATTEST:

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Amy Ferguson, Deputy City Clerk