

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

On March 9, 2009, the Hailey City Council considered the application by Old Cutters Inc. for Final Plat approval of Rimrock Cottages, Phase I. The Council, having been presented with all information and testimony in favor and in opposition to the proposal, hereby makes the following Findings of Fact, Conclusions of Law and Decision.

FINDINGS OF FACT

Notice

Notice for the public hearing was published in the Idaho Mountain Express and mailed to property owners within 300 feet on December 24, 2008. The application was continued on the record on January 12, 2009, February 9, 2009, and February 23, 2009.

Application

Old Cutters, Inc., represented by Alpine Enterprises, Inc., has submitted an application for final Plat approval for the subdivision of Rimrock Cottages, Phase 1, into 7 townhouse sub-lots. The total land area of Lot 4, Block 10, is 40, 512 square feet. The cottages are shown on a portion of Lot 4, which is 21,780 square feet, to be known as Phase 1.

Section 3.4.1 of the Subdivision Ordinance allows for applications for platting townhouse units in existing or approved structures to be reviewed through the short plat procedure. In this procedure, the Hearing Examiner or Commission reviews the preliminary plat only. Upon approval, the applicant submits a final plat for Council approval.

Procedural History

The preliminary plat application was heard by the Hailey Hearing Examiner on November 7, 2008, and November 14, 2008 and approved with conditions.

Hailey Hearing Examiner Conditions of Preliminary Plat Approval

- a) **The applicant shall submit a phasing plan, prior to final plat application, including, but not limited to the following items:**
- **Number of sub-lots on each phase**
 - **Deadline for completion of each phase**
 - **Amenities to be constructed with each phase**
 - **Infrastructure planned for completion with each phase**

This condition has been met.

- b) **A phasing agreement shall be submitted prior to final plat application and shall incorporate the elements of the phasing plan. The phasing plan shall be reviewed and approved by the City Council prior to final plat approval.**

This condition has been met. The City Council concurrently reviewed the Phasing Agreement on March 9, 2009, and approved with amendments.

c) **The final plat shall eliminate plat notes 2 and 6, include plat notes 1, and 3-5 as stated on the approved preliminary plat, received on November 12, 2008, as follows:**

- 1) **Basis of Bearing is Idaho State Plane Coordinate System, NAD83(1992), Central Zone, at Grid, in US Survey Feet. Vertical Datum is NAV83.**
- 3) **Utility locations are based on field data and construction plane. Locations should be verified before any excavation.**
- 4) **The Current Zoning is GR.**
- 5) **All Owners shall have mutual reciprocal easements for existing water cable TV, sewage, telephone and electrical lines over, under and across their sub-lots for the repair, maintenance and replacement thereof subject to any restoration of the easement premises for any damage resulting from such repair or replacement.**

And add three (3) additional plat notes to the final plat:

- **The final plat shall include a note stating that the subdivision is subject to the recorded Party Wall Agreement and CC&R's, along with the instrument numbers thereof.**
- **The final plat shall include a note stating, sub-lots 3, 4, and 5 shall not install fences closer than five (5) feet from the south property line of Lot 4 and the five (5) foot fire access lane shall be maintained in a manner that ensures no pathway obstructions exist.**
- **The final plat shall include a note stating that the subdivision is subject to the Old Cutters Annexation Agreement recorded as Instrument No. 534733 and the Community Housing Agreement recorded as Instrument No. 559842, and the original Old Cutters Subdivision plat recorded as Instrument No. 553651, records of Blaine County, Idaho.**

This condition has been met.

d) **All Fire Department and Building Department requirements shall be met. The following is a recommended condition of approval and is required for compliance with the IBC:**

- **The sub-lot line between sub-lot 1 and 2 shall be moved one (1) foot north.**
- **The south eave of cottage 1 shall be fire rated to one (1) hour construction.**
- **The western portion of the north sub-lot line of sub-lot 4 shall be moved at least one (1) foot north.**
- **The sub-lot line between sub-lot 6 and 7 shall be moved one (1) foot south.**
- **The north eave of cottage 6 shall be fire rated to one (1) hour construction.**

The sub-lot lines have been moved accordingly; however, the condition regarding the requirement for the cottage eaves to be built to one (1) hour fire-rated construction, shall be carried over.

- e) **All City infrastructure requirements shall be met as outlined in Section 5 of the Hailey Subdivision Ordinance. Detailed plans for all infrastructure to be installed or improved at or adjacent to the site shall be submitted for Department Head approval and shall meet City Standards where required.**

This condition has been met.

- f) **Issuance of permits for the construction of buildings within the proposed subdivision shall be subject to Section 2.9 of the Subdivision Ordinance, requiring certain improvements.**

This condition should be carried over.

- g) **All improvements and other requirements shall be completed and accepted, or surety provided pursuant to Sections 3.3.7 and 5.9.1 of the Subdivision Ordinance, prior to recordation of the final plat.**

This condition should be carried over.

- h) **The final plat must be submitted within one (1) calendar year from the date of approval of the preliminary plat, unless otherwise allowed for within a phasing agreement.**

This condition has been met.

- i) **Any subdivision inspection fees due shall be paid prior to recording the final plat.**

This condition should be carried over.

Standards of Evaluation

For each of the following pertinent standards of the Subdivision Ordinance (shown in bold print), the Council makes the following Findings of Fact:

Standards of Evaluation

4.3.5 Bulk Requirements. For other supplementary location and bulk regulations, see Article VII.

- a. **Minimum Lot size - six thousand (6,000) square feet except as follows:**
- 1. Townhouse sub-lots shall have an aggregate density of no more than ten lots per acre.**

Lot 4, Block 10 is a 40,512 square foot lot (0.93 acres) will, in accordance with this standard, accommodate nine (9) units. The Old Cutters Subdivision Preliminary and Final Plat Findings of Fact, signed by the Council on February 26, 2007 and August 13, 2007, allowed nine (9) units, platted by sub-lots, on Lot 4, Block 10, Old Cutters Subdivision. The Old Cutters Subdivision Findings state that there are to be seven (7) single townhouse or "cottage" units and one (1)

duplex (two (2) units) on Lot 4. The two-unit duplex will be platted during Phase two (2), on the remainder of Lot 4.

The City Council reviewed and approved the Phasing Agreement concurrently with the final plat application.

b. Maximum Multi-Family Residential Density - One (1) dwelling unit for each one-tenth (1/10) of an acre.

Lot 4, Block 10 is a 40,512 square foot lot (0.93 acres) will, in accordance with this standard, accommodate nine (9) units. The Old Cutters Subdivision Preliminary and Final Plat Findings of Fact, signed by the Council on February 26, 2007 and August 13, 2007, allowed nine (9) units, platted by sub-lots, on Lot 4, Block 10, Old Cutters Subdivision. The Old Cutters Subdivision Findings state that there are to be seven (7) single townhouse or "cottage" units and one (1) duplex (two (2) units) on Lot 4. The two-unit duplex will be platted during Phase two (2), on the remainder of Lot 4.

c. Minimum Lot Width - fifty (50) feet except as follows:

1. Townhouse sub-lots shall conform to the standards established in the IFC.

Sub-lot widths are exempt from the 50 foot minimum standard; however, they shall conform to IFC standards. The Fire Department has reviewed this application and has no issue with the lot widths shown on the plat. The width of Lot 4 (Phase 1 and 2), is approximately 302 feet.

d. Maximum Building Height - thirty five (35) feet.

The applicant is hereby notified of this standard.

e. Minimum Front Yard Setback - twenty (20) feet.

The front yard setback measures twenty (20) feet from the northern (front) wall plane of sub-lots 1 and 7 to Myrtle Street. The eaves of the cottages residing on these two sub-lots extend into the twenty (20) foot front yard setback by two (2) feet. Eaves may extend into required setbacks by three (3) feet.

f. Minimum Side and Rear Yard Setback - ten (10) feet except as follows:

1. Townhouse Units shall be allowed zero setbacks from the lot lines created by a Townhouse Sub-Lot; and

The easterly side yard setback of Lot 4 cannot be determined until the building footprint for the duplex unit and the sub-lot lines are established on the remainder of Lot 4 (Phase 2). To the west, the side yard setback is ten (10) feet from west lot line to the cottages' west wall plane and eight (8) feet from the eaves. The rear setback is ten (10) feet from the rear lot line to the cottages' south wall and eight (8) feet from the eaves.

2. The separation of the buildings containing Townhouse Units in a Townhouse Development parcel shall be not less than six (6)

feet as measured between any wall or any projection of a building, including but not limited to eaves, cornices, canopies or other similar roof overhang features, pergolas, chimney chases, bay windows, decks, steps, wainscot, and utility meters; or the minimum distance required by the IBC and IFC, whichever is greater.

The minimum separation, measured between cottage eaves, found within the development of the seven (7) cottages is eight (8) feet. Some cottages show greater separation.

The Building Department has reviewed the application and has determined that the separation between the seven (7) cottage units does not comply with the IBC, unless certain construction standards are met. Separation between each cottage's deck eave or building eave must be at least five (5) feet from the sub-lot line, unless fire-rated construction of one (1) hour or more is used. The following is a condition of approval and is required for compliance with the IBC:

- The south eave of cottage 1 shall be fire rated to one (1) hour construction.
- The north eave of cottage 6 shall be fire rated to one (1) hour construction.

g. Detached Accessory Dwelling Units shall have a minimum gross floor area of 300 square feet and a maximum gross floor area of 950 square feet.

No detached accessory dwelling units are proposed.

h. Total lot coverage of all buildings on any property which includes an accessory detached dwelling unit shall not exceed 40%.

The preliminary plat shows seven (7) cottage buildings, which comprise 3,600 square feet. The carport is excluded from lot coverage calculations. Phase one (1), as proposed, is 21,780 square feet, which equates to a lot coverage of 16.5%. The lot coverage of Phase 1 for the entire Lot 4 (40,152 square feet) is 9%. The remaining portion of Lot 4 should be developed in a manner that does not exceed the maximum standard of 40% lot coverage. The seven (7) cottages, future duplex (Phase 2), and any other future structures shall all be considered when determining the lot coverage of any future applications (i.e. Phase 2).

SECTION 2 - PERMITS.

2.9 No permit for the construction of any building shall be issued upon any land for which all improvements required for the protection of health and the provision of safety, (including but not necessarily limited to an approved potable water system, an approved wastewater system to accept sewage, and asphalt paving of the streets) have not been installed, inspected, and accepted by the City of Hailey, with the following exception:

Building permits may be issued for any building in a development for which plats have been recorded and security provided, but the streets

have not yet been completed with asphalt due to winter conditions. In such instances, the street shall be constructed as an all-weather surface to City Standards to the satisfaction of the City Engineer, and shall be kept clear to the satisfaction of the Fire Chief. Final Inspection approval or Certificate of Occupancy shall not be granted until all improvements, including asphalt, have been installed, inspected and accepted.

All seven (7) cottages have received Building Permits, and two have received Temporary Certificates of Occupancy. Notice of this requirement is hereby given to the applicant, and included as a condition of approval.

SECTION 3 – PROCEDURE

3.3 The final plat, prepared by a Professional Land Surveyor, must be submitted within one (1) calendar year from the date of approval of the preliminary plat, unless otherwise allowed for within a phasing agreement or as otherwise provided herein. Plats not submitted for final approval within one (1) year or according to the phasing agreement, shall be considered expired and preliminary plat approval shall become null and void. The Council may extend the deadline for submitting the final plat upon holding a public hearing.

The Hearing Examiner's approval of the preliminary plat was on November 14, 2008.

3.3.2 The administrator shall review the final plat application to ensure that the application submitted is consistent with the approved preliminary plat. The conditions imposed on the preliminary plat approval must be either completed or shown on plans or the plat prior to any public notice for final plat approval.

The final plat is consistent with the preliminary plat approved by the Hearing Examiner. Conditions of preliminary plat approval have been met or are carried over.

SECTION 4 – DEVELOPMENT STANDARDS

4.11 Inclusionary Community Housing.

Pursuant to the Annexation Agreement, the Community Housing (CH) Agreement was recorded on June 23, 2008, which requires 25 CH units throughout Old Cutters Subdivision. The CH Plan, incorporated into the CH agreement as Exhibit B, states, 13 of the CH units shall be income restricted and 12 shall be alternatively deed restricted. In addition, the CH plan states, Lot 4, Block 10, shall have one (1) income restricted and four (4) resident/worker restricted cottages. The plat shows seven (7) cottages; therefore, the additional two cottages shall be market rate units. The one (1) duplex (two (2) units) proposed for the remainder of Lot 4 shall be market rate as well. No additional CH is required with this subdivision application.

All development standards pertaining to Section 4, were reviewed in detail during the preliminary plat approval process. Please refer to the preliminary plat Findings of Fact and Decision. No changes have been made to the plat since preliminary plat approval, other than those required by the preliminary plat Findings of Fact and Decision.

SECTION 8 - TOWNHOUSES

- 8.1 Plat Procedure.** The Developer of the townhouse development shall submit with the preliminary plat application and all other information required herein a copy of the proposed party wall agreement and the proposed document(s) creating an association of owners of the proposed townhouse sub-lots, which shall adequately provide for the control (including billing where applicable) and maintenance of all common utilities, commonly held facilities, garages, parking and/or Green Spaces. Prior to final plat approval, the Developer shall submit to the City a final copy of the party wall agreement and any other such documents and shall record the documents prior to or at the same time of the recordation of the plat, which plat shall reflect the recording instrument numbers thereupon.

Draft CC&Rs have been submitted. Prior to recordation of the final plat, the final CC&Rs shall be received by the City and recorded prior to or at the same time of the recordation of the plat. The City has not and will not in the future determine the enforceability or validity of townhouse declarations, party wall agreements, or other private agreements.

- 8.2 Garage.** All garages shall be designated on the preliminary and final plats and on all deeds as part of the particular townhouse units. Detached garages may be platted on separate sub-lots, provided that the ownership of detached garages is appurtenant to specific townhouse units on the townhouse plat and that the detached garage(s) may not be sold and/or owned separate from any dwelling unit(s) within the townhouse development.

There is a carport, with an attached 50 square foot storage space for each of the eight parking spaces within the carport structure.

- 8.3 Storage/Parking Areas.** Residential townhouse developments shall provide parking spaces according to the requirements of Article IX of the Zoning Ordinance.

The following standards are taken from Article IX of the Zoning Ordinance:

- 9.4.1 Residential:** No parking space, or portion thereof, shall be located in any right-of-way or public thoroughfare, unless otherwise provided herein. Parking spaces within any garage, carport or similar structure shall be credited at 1 space per nine (9) feet of floor width and 21 feet of floor length.
- a. **Single family residences:** 2 per residence minimum, 6 per residence maximum. The City will allow the use of 100' right-of-ways within the Hailey Original Townsite for licensed passenger vehicle parking for single family dwellings. Parking for accessory dwelling units must be provided on site.
 - b. **All residences less than 1,000 square feet, including accessory dwelling units:** a minimum of 1 space per unit.

c. Multiple family dwellings: A minimum of 1.5 spaces per unit.

The applicant proposes seven (7) cottage units, which under standard c., the calculations would be 10.5 spaces. Pursuant to Section 9 of the Zoning Ordinance, parking calculations that exceed ten (10) are rounded down to the nearest whole number. Therefore, 10.5 is rounded down to ten (10) spaces required. There are eleven (11) spaces shown. Eight (8) spaces are provided under a carport structure. The spaces under the carport measure 10 feet wide and are striped to show 21 feet long.

8.4 Construction standards. All townhouse development construction shall be in accordance with the IBC, IRC and IFC. Each townhouse unit must have separate water, sewer and utility services, which do not pass through another building or unit.

8.5 General Applicability. All other provisions of this Ordinance and all applicable ordinances, rules and regulations of the City and all other governmental entities having jurisdiction shall be complied with by townhouse developments. Upon meeting proposed conditions of approval, the proposed application does not appear to conflict with other provisions.

8.6 Expiration. Townhouse developments which have received final plat approval shall have a period of three calendar years from the date of final plat approval by the Council to obtain a building permit. Developments which have not received a building permit shall be null and void and the plats associated therewith shall be vacated by the Council. If a development is to be phased, construction of the second and succeeding phases shall be contingent upon completion of the preceding phase unless the requirement is waived by the Council. Further, if construction on any townhouse development or phase of any development ceases or is not diligently pursued for a period of three years without the prior consent of the Council, that portion of the plat pertinent to the undeveloped portion of the development shall be vacated.

The applicant is hereby notified of this requirement.

8.7 Conversion. The conversion by subdivision of existing units into Townhouses shall not be subject to Section 4.10 of this Ordinance.

Rimrock Cottages, Phase I subdivision is not a conversion by subdivision. The seven (7) cottage units have been newly constructed.

8.8 The maximum number of Cottage Townhouse Units on any parcel shall be twelve (12), and not more than two (2) Cottage Townhouse Developments shall be constructed adjacent to each other.

The proposal would create seven (7) cottage units in Phase I and one (1) duplex in Phase II. The proposal does not exceed the maximum number of cottage townhouse units allowed on a parcel. In accordance with the Annexation Agreement and Community Housing Agreement, there are no other proposed cottage townhouse developments adjacent to Lot 4.

CONCLUSIONS OF LAW AND DECISION

Based upon the above Findings of Fact, the Council makes the following Conclusions of Law and Decision:

1. Adequate notice, pursuant to Section 3 of the Hailey Subdivision Ordinance, was given for the public hearing.
2. Upon compliance with the conditions noted below, the application substantially meets the standards of approval set forth in the Hailey Subdivision Ordinance.
3. The application for Final Plat, dated December 9, 2008, is approved by the Hailey City Council, with the following conditions:
 - a) The final plat submitted for signature shall include plat notes 1 through 6 as stated on the submitted final plat, with the following amendments and additions:
 - Plat note #3 shall replace “fire access lane” with “emergency access lane.”
 - A plat note shall be added to plat note number 5, following the instrument number for the original Community Housing Agreement that states, “...the First Amendment to the Community Housing Agreement recorded as Instrument No. _____, ...”
 - Plat note #5 shall add, “...the Rimrock Cottage Phasing Agreement, recorded as Instrument No. _____, ...”
 - b) All City infrastructure requirements shall be met as outlined in Section 5 of the Hailey Subdivision Ordinance. Detailed plans for all infrastructure to be installed or improved at or adjacent to the site shall be submitted for Department Head approval and shall meet City Standards where required.
 - c) The five (5) foot wide access lane, located south of Lot 4 shall be labeled on the plat as “emergency access” instead of “fire lane.”
 - d) Prior to recordation of the final plat, the final CC&Rs shall be received by the City and recorded prior to or at the same time of the recordation of the plat.
 - e) All provisions of the Zoning Ordinance #532, including but not limited to use regulations and parking requirements shall continue to be met. Additional parking may also be required upon subsequent change in use, in conformance with Hailey’s Zoning Ordinance at the time of the new use.
 - f) All improvements and other requirements shall be completed and accepted, or surety provided pursuant to Sections 3.3.7 and 5.9.1 of the Subdivision Ordinance, prior to recordation of the final plat.
 - g) The final plat shall be recorded within one year of the date of final plat approval. The final plat submitted for signature shall conform to the requirements found in Article 50-1301 (et. seq.) of the Idaho Code (as amended) and to the requirements set forth by Blaine County for digital plat submittals. The applicant shall provide the City with a letter-size or ledger-size photocopy of the recorded plat showing the

instrument number and date of recordation.

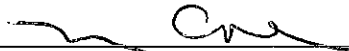
- h) This approval is contingent on the applicant executing a Phasing Agreement acceptable to the City. The subdivision shall be developed in Phase I and Phase II.
- i) All Fire Department and Building Department requirements shall be met. The following is required for compliance with the IBC:
 - The south eave of cottage 1 shall be fire rated to one (1) hour construction.
 - The north eave of cottage 6 shall be fire rated to one (1) hour construction.
- j) Issuance of permits for the construction of buildings within the proposed subdivision shall be subject to Section 2.9 of the Subdivision Ordinance, requiring certain improvements.
- k) Any subdivision inspection fees due shall be paid prior to recording the final plat.
- l) The Community Housing Deed Covenants shall be recorded concurrently with Phase I of the Final Plat, to become effective upon sale to a qualified buyer.
- m) The Community Housing Plan shall be amended to add specifics, including designated lots, actual house sizes and deed terms.

Approved this 23rd day of March, 2009.



Martha Burke, City Council President, City of Hailey

Attest:



Mary Cone, City Clerk



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of May, 2009, I served a true and correct filed copy of the within and foregoing document upon the parties named below, in the manner noted:

- U.S. Mail
- Via Electronic Mail
- Via Facsimile
- Hand Delivered

John Campbell
ic@idahotower.com
Old Cutters, Inc.
P.O. Box 986
Hailey, ID 83333

- U.S. Mail
- Via Electronic Mail
- Via Facsimile
- Hand Delivered

Bruce Smith
bsmith@alpineenterprisesinc.com

CITY OF HAILEY

By Becky Mead
Becky Mead, Deputy Clerk