

## FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

On May 3, 2010, the Hailey Hearing Examiner considered the application by Scott Miley for Preliminary Plat approval of CSM Building Condominiums. The Hearing Examiner, 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 April 14, 2010.

#### Application

Scott Miley has submitted an application for preliminary plat approval of a 3-unit commercial condominium project, located in an existing building located at Lot 1A, Block 3, Airport West Subdivision, Phase II, located at the corner of Aviation Drive, Merlin Loop and Lear Lane (1760 Lear Lane). The ground under and around the units would be owned and maintained by the condominium association.

Section 3.4.1 of the Subdivision Ordinance allows for applications for platting condominium 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.

#### Standards of Evaluation:

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

##### **4.12.1.1 District Wide Regulations.**

- a. All uses in the SCI District shall conform with the Comprehensive Plan and shall be reviewed for conditions that may be hazardous, including but not limited to traffic hazards, parking overflow, noise, cinders, dust, fumes, odors, smoke, vapor, vibration, glare or industrial waste. Any conditions that could adversely affect the surrounding areas are subject to review upon application for Design Review. The Commission may require mitigation including, but not limited to, enclosure within a structure, landscape buffering, or alternate method of operation.**

At this time, there are no foreseen issues with on-site activities that could adversely affect the surrounding area.

- b. Landscape screening and buffering shall be provided and maintained by the owner in all required front yards and adjacent to all collector and/or arterial**

**roads.**

Currently, landscaping exists along Merlin Loop, which has been installed by the Airport West Developer. No landscaping is proposed in the front yard (adjacent to Lear Lane) or along Aviation Drive, which is a public collector road. It is a condition of design review approval that landscaping, similar to what is found along Merlin Loop, be provided along Aviation Drive and planters be provided along the front elevation, between the two overhead garage doors (adjacent to Lear Lane).

- c. Landscape screening and buffering shall be provided and maintained in the required yards adjacent to the RGB, GR, LR, MH, LB, and TN zone districts, and adjacent to any residential district of Blaine County, to protect these areas from undue intrusion of noise, light, odors, and other influences.**

This standard is not applicable; the subject property is not adjacent to the districts listed above.

- d. All development shall be subject to Design Review pursuant to Article 6A of this Ordinance.**

Design Review was approved June 16, 2008.

- e. No loading door or dock which faces a collector street, as defined by the City, shall be placed within 30 feet of the right-of-way for that collector street.**

**Street: Collector or Secondary. A street which carries traffic from local or minor streets and which serves for the circulation of traffic in residential areas or developments.**

There are overhead doors located adjacent to Lear Lane (private street) and Lot 1B.

**4.12.3.4 Bulk requirements within the SCI-I sub-district:**

The production, sales, and storage of bulky goods and associated wholesale and retail sales, offices and parking are permitted uses in the Service Commercial Industrial-Industrial (SCI-I) district.

**Maximum building height in the SCI-I District is 35 feet.**

The existing building height is 30 feet and 3 inches from existing grade.

**Required setbacks are Front: 10'; Side and Rear: 10'**

The building setbacks are Front (Lear Lane):35.5; side (Merlin Loop): 12 feet from the side of the building and 8 feet from the roof overhang; side (east elevation): 71 feet; rear (Aviation Drive): 10 feet.

*Section 7.1.1 of the Hailey Zoning Ordinance states, "Cornices, canopies, eaves or similar roof overhang features and cantilevered balconies may extend into a required yard setback not more than three (3) feet."*

**No parking shall be placed within the setback areas.**

No parking is within the required setback areas.

**Maximum Lot Coverage: Not more than seventy percent (70%) of the lot shall be covered by buildings.**

The two (2) carports (pursuant to Hailey's Zoning Ordinance carports are included in lot coverage calculations) are a total of 2,002 square feet and the principle building footprint is 5,300 square feet. The lot size is 20,855 square feet. The total lot coverage is 35%.

**All materials, with the exception of trees and plant materials stored on the premises, shall be stored within a building or within a wall or screening fence not less than four (4) feet nor greater than eight (8) feet in height.**

A contiguous six (6) foot high corrugated metal fence is proposed along the east lot line and the north lot line (Aviation Drive). There is an outdoor storage area adjacent to Aviation Drive that would be screened by the proposed fence. Along the east side of the lot the fence would partially screen two (2) 19 foot and 7.5 inch carport structure, which is proposed to cover 8 parking spaces located adjacent to the east lot line.

#### **SECTION 4 – DEVELOPMENT STANDARDS**

##### **4.2 Sidewalks and Pathways.**

**4.2.1 Sidewalks, curb and gutter shall be required improvements for projects requiring Subdivision approval in the B, LB, TI, A and SCI zoning districts. At a minimum, sidewalks and curb and gutter, where required, shall comply with the City Standards. Sidewalks shall be at least six feet (6') wide or as wide as adjacent sidewalks on the same block, whichever is greater. Sidewalks shall be constructed along the entire length of a property adjacent to any public or private street in all zones, as well as in locations that provide safe pedestrian access to and around a commercial or mixed-use building. New sidewalks shall be planned to provide pedestrian connections to any existing sidewalks adjacent to the site. Sites located adjacent to public or private streets that are not currently thru-streets, regardless whether the street may provide a connection to future streets, shall provide sidewalks to facilitate future pedestrian connections. Sidewalks and drainage improvements shall also be required in other districts, except as otherwise provided herein. The requirement for sidewalk may be waived if the cost of the proposed project construction is less than twenty thousand dollars (\$20,000). For subdivisions in the Townsite Overlay District, the requirement for sidewalk may be waived for any lot line adjustment associated with a residential remodel or addition; sidewalks shall be required for new primary dwellings. (Ord. 1017, §1, 11/19/08)**

The site plan approved in Design Review includes a five (5) foot wide sidewalk with painted stripes connecting the pedestrian area at the front of the building (south elevation adjacent to Lear Lane), extending east to provide a future connection to Lot 1B. It is a condition of approval that the plat be amended to show a public pedestrian access easement in this same location.

There are no sidewalks proposed or existing along Merlin Loop (public street), Aviation Drive (public street). Sidewalks along Merlin Loop and Aviation Drive were required as a condition of Design Review approval. The applicant appealed this decision by the Commission. The City Council reversed the Commission's decision with regard to the requirement to construct sidewalks within the public right-of-way along Merlin Loop and Aviation Drive.

**4.2.2 Pathways. The Developer shall install all non-vehicular pathways, to City Standards, in all areas within or adjacent to the property to be developed where Pathways are depicted upon the Master Plan.**

This standard is not applicable because no pathways are depicted upon the Master Plan within or adjacent to the property being developed.

**4.2.3 – 4.2.4** These standards relate to pathways and are not applicable because no pathways are proposed or required.

**4.3 Alleys and Easements.**

**4.3.1 Alleys shall be provided in all Business District and Limited Business District developments where feasible.**

This standard is not applicable because the property is within the SCI district.

**4.3.2 – 4.3.6** These standards relate to alleys and are not applicable because no alleys are proposed or required.

**4.3.7 Where alleys are not provided, easements of not less than ten (10) feet in width may be required on each side of all rear and/or side lot lines (total width = 20 feet) where necessary for wires, conduits, storm or sanitary sewers, gas and water lines. Easements of greater width may be required along lines, across lots, or along boundaries, where necessary for surface drainage or for the extension of utilities.**

No easements are needed for wires, conduits, storm or sanitary sewers, gas and water lines.

**4.3.8 Easements. Easements, defined as the use of land not having all the rights of ownership and limited to the purposes designated on the plat, shall be placed on the plat as appropriate. Plats shall show the entity to which the easement has been granted. Easements shall be provided for the following purposes:**

**4.3.8.1 To provide access through or to any property for the purpose of providing utilities, emergency services, public access, private access, recreation, deliveries or such other purpose. Any subdivision that borders on the Big Wood River shall dedicate a 20-foot wide fisherman's access easement, measured from the Mean High Water Mark, which shall provide for non-motorized public access. Additionally, in appropriate areas, an easement providing non-motorized public access through the subdivision to the river shall be required as a sportsman's access.**

A five (5) foot wide sidewalk with painted stripes connecting the pedestrian area at the front of the building (south elevation adjacent to Lear Lane), extending east to provide a future connection to Lot 1B. It is a condition of approval that the plat be amended to show a public pedestrian access easement in this same location.

**4.3.8.2 To provide protection from or buffering for any natural resource, riparian area, hazardous area, or other limitation or amenity on, under, or over the land. Any subdivision that borders on the Big Wood River shall dedicate a one hundred (100) foot wide riparian setback easement, measured from the Mean High Water Mark, upon which no permanent structure shall be built, in order to protect the natural vegetation and wildlife along the river bank and to protect structures from damage or loss due to river bank erosion. A twenty-five (25) foot wide riparian setback easement shall be dedicated adjacent to tributaries of the Big Wood River. Removal and maintenance of live or dead vegetation within the riparian setback easement is controlled by the applicable bulk requirement of the Flood Hazard Overlay District. The riparian setback easement shall be fenced off during any construction on the property.**

Not applicable

**4.3.8.3 To provide for the storage of snow, drainage areas or the conduct of irrigation waters. Snow storage areas shall be not less than twenty-five percent (25%) of parking, sidewalk and other circulation areas. No dimension of any snow storage area may be less than 10 feet. All snow storage areas shall be accessible and shall not be located over any above ground utilities, such as transformers.**

The snow storage areas indicated shall be shown as easements.

**4.4 Blocks, 4.5 Lots, 4.6 Orderly Development, 4.7 Perimeter Walls, Gates and Berms, 4.8 Cuts, Fills, Grading and Drainage, 4.9 Overlay Districts**

These sections are not applicable to Condominium subdivisions.

**4.10 Parks, Pathways and Other Green Spaces.**

These standards are not applicable because the parks dedication requirement applies to developments with three (3) or more residential lots, sub-lots or units; this subdivision contains three (3) commercial units.

**4.11 Inclusionary Community Housing.**

These standards apply to subdivisions resulting in five (5) or more lots or units; this application proposes three (3) commercial units.

**SECTION 7 - CONDOMINIUMS.**

**The purpose of this section is to set forth special provisions for property created or converted pursuant to the Condominium Property Act, Idaho Code §§55-1501 *et seq.*, as amended.**

**7.1 Plat Procedure. The Developer of a condominium project shall submit with the preliminary plat application as required by this Ordinance a copy of the proposed by-laws and condominium declarations of the proposed condominium development. The documents shall adequately provide for the control (including billing where applicable) and maintenance of all common utilities, common area, recreational facilities, and Green Space. The Developer may submit a final plat application following inspection and approval by the Building Inspector of the footings and setbacks of the condominium building. Prior to final plat approval, the Developer shall submit to the City a copy of the final by-laws and condominium declarations to be recorded with the County Recorder, including the instruments number(s) under which each document was recorded.**

Draft Declaration of Covenants, Conditions and Restrictions have been submitted. The City Attorney has reviewed the documents to determine if they adequately provide for the control (including billing where applicable) and maintenance of all common utilities, common area. The City has not and will not in the future determine the enforceability or validity of the Declaration of Covenants, Conditions, and Restrictions or other private agreements.

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

No garages are proposed.

**7.3 Storage/Parking Areas. Condominium projects shall provide parking spaces according to the requirements of Article IX of the Zoning Ordinance.**

Parking is shown as common area assigned to each unit; the number of spaces in compliance with the Zoning Ordinance.

**7.4 Construction Standards. All condominium project construction shall be in accordance with the IBC, IRC and IFC.**

The building has been constructed under a valid Building Permit.

**7.5 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 Condominium developments.**

Upon meeting proposed conditions of approval, the proposed application does not appear to conflict with other provisions.

**7.6 Conversion. The conversion by subdivision of existing units into Condominiums shall not be subject to Section 4.10 of this Ordinance.**

### CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the Hailey Hearing Examiner makes the following Conclusions of Law:

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.

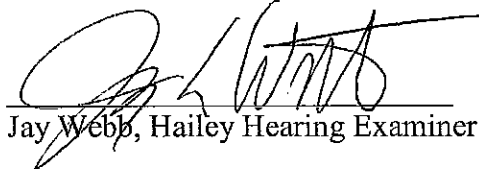
### DECISION

The application for Preliminary Plat of CSM Building Condominiums is approved by the Hailey Hearing Examiner, with the following conditions:

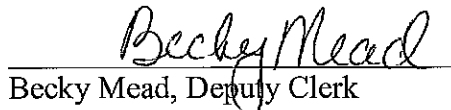
- a) The final plat shall include plat notes 1 through 7 as stated on the approved preliminary plat [with the following amendments and additions: if applicable]
  - The final plat shall include a note stating that the subdivision is subject to the recorded CC&R's, along with the instrument numbers thereof.
  - A five foot (5') wide sidewalk with painted stripes connecting the pedestrian area at the front of the building (south elevation adjacent to Lear Lane), extending east to provide a future connection to Lot 1B shall be shown as a public pedestrian easement on the final condominium plat.
  - The private street snow storage area totaling the same square footage recorded on the plat of Lot 1A, Block 3 Airport West Subdivision, Phase II shall be indicated on the final condominium plat.
- b) The association shall execute an agreement with the city for the delivery of water and sewer services and shall be responsible for payment of utilities, unless individual meters are installed for each unit.
- c) Landscaping, similar to what is found along Merlin Loop, be provided along Aviation Drive and planters be provided along the front elevation, between the two overhead garage doors (adjacent to Lear Lane) shall be installed.

- d) 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.
- 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) 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.
- g) Any applicable subdivision inspection fees due shall be paid prior to recording the final plat.

Findings approved this 3 day of May, 2010.

  
Jay Webb, Hailey Hearing Examiner

Attest:

  
Becky Mead, Deputy Clerk

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 3<sup>rd</sup> day of May, 2010, 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

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

Applicant:  
Scott Miley  
[scottmileyroofing@gmail.com](mailto:scottmileyroofing@gmail.com)

Applicant's Representative:  
Bruce Smith, PLS  
[bsmith@alpineenterprisesinc.com](mailto:bsmith@alpineenterprisesinc.com)

CITY OF HAILEY

By Becky Mead  
Becky Mead, Deputy Clerk