

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

On November 11, 2010, the Hailey Planning and Zoning Commission considered the application by Sweetwater LLC for Preliminary Plat approval of Sweetwater Townhouses, Block 4, Sub-lots 46-53. The Commission, having been presented with all information and testimony in favor and in opposition to the proposal, hereby makes the following Findings of Fact, Conclusions of Law and Decision.

FINDINGS OF FACT

Notice

Notice for the public hearing was published in the Idaho Mountain Express and notice was mailed to property owners within 300 feet on October 13, 2010.

Application

Sweetwater LLC, represented by Benchmark Associates, has submitted an application for preliminary Plat approval for the subdivision of existing units into 22 townhouse sub-lots. The total land area of the project is 1.28 acres.

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

In accordance with the PUD Agreement, phase I consists of 106 units. On April 20, 2007, the findings of fact for a preliminary plat for 63 units in Phase I (sublots 1-45 and 54-71) were approved. On June 11, 2007, the findings of fact for a final plat for sub-lots 1-24 were approved. On April 14, 2008, the findings of fact for a final plat for sub-lots 25-35 and 58-71 were approved. A final plat for the remaining sub-lots, 36-45 and 54-57, has not been submitted. Sweetwater wishes to plat these remaining sub-lots, as well as eight (8) additional sub-lots, which were not included on the original preliminary plat, sub-lots 46-53. Because these eight (8) sub-lots were not included on the approved preliminary plat, these eight units need to obtain preliminary plat approval, prior to final plat approval. Sweetwater wished to obtain preliminary plat and final plat approval for these eight (8) sub-lots together with the sub-lots that remain to receive final plat approval, sub-lots 36-45 and 54-57. Therefore this proposal includes preliminary plat includes sub-lots 36 through 57.

After speaking with the City's attorney in greater detail, it has been determined that two separate plats shall be recorded to address concerns of inconsistency. Sweetwater LLC's representatives at Benchmark Associates are aware of the City's request and have no known issues with it. It is a condition of approval that sublots 36-45 and 54-57 be removed from the final plat for this application. A separate final plat application shall be recorded for sublots 36-45 and 54-57 to complete the original preliminary plat approval and ensure consistency with standards and procedures of the Subdivision Ordinance. A revised preliminary plat shall be submitted and shall include only sublots 46-53. The final plat shall only include sublots 46-53.

Standards

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

Bulk requirements:

The subject property comprises a Planned Unit Development (PUD). Certain bulk requirements were modified through the PUD process, as referenced in the PUD Agreement as waivers. Those waivers include the following:

- Maximum building height increase: 35 feet to 37 feet for some townhouse structures as set forth in the approved plans.
- Minimum front yard setback reduction: 10 feet to 5 feet.
- Minimum side yard setback reduction: 10 feet to 5 feet.
- Minimum rear yard setback reduction: 10 feet to 3 feet along the PUE parcel B1 as set forth in the approved plans.
- Minimum parking space length reduction: 21 feet to 17 feet in length for 19% of the required spaces.
- Lots permitted to have frontage on private alley easements so long as fire and emergency vehicle access requirements are met, as set forth on the approved plans.

The density of this portion of the development is approximately 17 units per acre. The overall density of the development is slightly over 19 units per acre, which is less than the 20 units per acre allowed in the LB district.

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.

Notice of this requirement is hereby given to the applicant, and included as a condition of approval.

SECTION 4 – DEVELOPMENT STANDARDS

4.2 Sidewalks and Pathways.

4.2.1 Sidewalks. Sidewalks adjacent to public streets shall be constructed on both sides of a public street, shall be a minimum of six feet (6') in width and shall be constructed of concrete installed to City Standards or of a superior material as approved by the Council, following a recommendation by the Commission. Sidewalks adjacent to private streets within and adjacent to all subdivisions in the Business, Limited Business, Service Commercial Industrial and Light Industrial districts shall be constructed on at least one side of the street, shall be a minimum of five (5') in width and shall be constructed of concrete installed to City Standards or of a superior material as approved by the Council, following a recommendation by the Commission.

Sidewalks with curb and gutter shall be provided in Business, Limited Business, Technological Industry, Service Commercial Industrial, and Light Industrial Districts. Sidewalks shall accommodate anticipated pedestrian traffic, and shall include street trees (with irrigation) and other pedestrian amenities where required by the Council upon recommendation by the Commission, and shall be in accordance with established City standards and sidewalk master plan, if available.

The subject property is zoned Limited Business. Sidewalks adjacent to Mapleleaf Drive and Woodside Blvd have been installed and meet the standards. There are no sidewalks adjacent to Grange Way, which is a private alley, not street. Grange Way has a 26 wide emergency/public access and public utility easement. It also serves as the sole access to the back of each of the units adjacent to Grange Way and the garage entrances to each unit on both side of Grange Way.

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.

A connection to the bike path is required by the PUD agreement. In accordance with the agreement, it should be completed prior to signing the last final plat of Phase I.

4.2.3 – 4.2.4 These standards relate to pathways and are not applicable because no pathways are proposed or required, aside from a connection to the bike path, which is a requirement of the PUD agreement. In accordance with the agreement, it should be completed prior to signing the last final plat of Phase I.

4.3 Alleys and Easements.

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

Access is provided by a combination of public streets and privately maintained alleys. The Fire Chief has reviewed all street and alley lengths and widths during the PUD application review and found them acceptable.

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.

There is a 26 foot wide emergency and public access and public utility easement provided along Grange Way (private alley).

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.

Barry Luboviski, representing the Friedman Airport Authority, has requested that the plat, and all sales contracts and deeds for units within the proposed PUD, contain a noise disclosure statement. The Authority also recommends requiring the developer to grant a “Noise and Avigation Easement” and non-suit covenant. Plat note #4 contains a noise disclosure, but does not mention the Noise and Avigation Easement and non-suit covenant. Adding this and the instrument number thereof to Plat note #4 is a condition of approval.

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.

Snow storage easements are shown on the preliminary plat. However, the snow storage areas and the circulation areas are not listed. It is a condition of approval that these calculations be submitted to the Planning Department prior to final plat submittal.

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 Townhouse subdivisions.

4.10 Parks

The prior rezone of the subject property, effective May 5, 2005, was pursuant to a development agreement that set forth the park contribution the owner or any subsequent owner(s) would be required to make upon development of the parcel. The development agreement provides that the required contribution is: [a] creation of park space four-tenths (.4) of an acre in size to be provided for the residents in the development, which “shall be developed as undedicated park space in conformity with § 4.10 of the Hailey Subdivision Ordinance pertaining to park standards”, and [b] a payment to the City of \$390,000 as an in lieu parks contribution for 1.2 acres.

The PUD agreement states that the applicant shall pay \$1,000 per unit on or before the City’s execution of the final plat creating units until the \$390,000 is paid in full. The applicant has paid \$49,000 for the previously recorded 49 units. As previously stated, it is a condition of approval that the final plat submitted for this application only includes sublots 46-53. Therefore the application would create eight (8) units, requiring \$8,000, plus CPI adjustment pursuant to the SGA Agreement. It is a condition of approval that this amount be paid to the City, prior to the City’s execution of this final plat.

4.11 Inclusionary Community Housing

Community Housing (CH) will be required for this development under the provisions of the PUD agreement. The Community Housing Plan is addressed in the PUD Agreement.

The PUD Agreement sets forth the phasing of the CH units in the development. Ten (10) CH units are to be completed within each phase. In accordance with the PUD Agreement, phase one (1) is to consist of 106 units. On April 20, 2007, the findings of fact for a preliminary plat for 63 units in a portion of Phase I (sublots 1-45 and 54-71) were approved. Sub-lots 4, 10, 21, 26, 33, 39 and 44, Block 4, contain the CH units within this preliminary plat. On June 11, 2007, the findings of fact for a final plat for sub-lots 1-24 were approved. Sublots 4, 10, and 21 were indicated on the plat as CH units. On April 14, 2008, the findings of fact for a final plat for sub-lots 25-35 and 58-71 were approved. Sublots 26 and 33 were indicated on the plat as CH units. Five (5) of the required 10 CH units have been platted. There are no CH units identified for the units on sublots 46-53.

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.

Townhouse Declarations and CCRs have been submitted and address easements, party

walls, and maintenance. 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.

Garages are within the units.

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

A total of 631 spaces are required for the entire project; 1053 are proposed. Of these, 776 spaces are in basement levels (74% of all on-site parking).

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.

All townhouse units have separate utility services.

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.

Building permits have been issued for all units within the subdivision. Sweetwater has not begun construction on any subsequent phases.

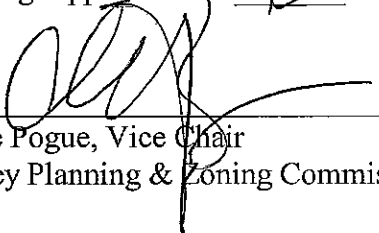
CONCLUSIONS OF LAW AND DECISION

Based upon the above Findings of Fact, the Commission 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 Preliminary Plat, dated October 20, 2010 is approved by the Hailey Planning and Zoning Commission, with the following conditions:
 - a) The final plat shall include plat notes 1 through 12 as stated on the approved preliminary plat with the following amendments and additions:
 - Plat note #4 shall include the Noise and Avigation Easement and non-suit covenant and instrument number thereof.
 - b) All Fire Department and Building Department requirements shall be met.
 - c) 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.
 - d) 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.
 - e) \$8,000, plus CPI adjustment pursuant to the SGA Agreement, shall be paid to the City, prior to the City's execution of a final plat, as required by Section 4.10 of the Subdivision Ordinance, and specified in the Development and the PUD Agreements.
 - 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) 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.
 - f) The snow storage and circulation area calculations shall be submitted to the Planning Department prior to final plat submittal.
 - g) Any subdivision inspection fees due shall be paid prior to recording the final plat.

- h) All development impact fees associated with the subdivision shall be paid prior to the issuance of a certificate of occupancy.
- i) A revised preliminary plat shall be submitted showing the platting of sublots 46-53 only. The final plat shall also include only sublots 46-53.

Findings approved this 15 day of March, 2010.



Mike Pogue, Vice Chair
Hailey Planning & Zoning Commission

Attest:



Becky Mead, Deputy Clerk

**INSTRUCTIONS FOR
FINAL PLAT SUBMITTAL**

Enclosed are the signed Findings of Fact, Conclusions of Law and Decision for your preliminary plat application. The city will take no further action on your plat until a final plat application has been submitted.

Please be advised that the final plat must be submitted within one (1) year of the date of preliminary plat approval (unless otherwise provided for within a phasing agreement). Plats not submitted for final approval within one (1) year or according to the phasing agreement, will be considered expired and preliminary plat approval shall become null and void.

In accordance with the City of Hailey Planning Department's application submittal procedures, to submit final plat materials please schedule an appointment with a planner to go over the items listed in the enclosed checklist. The checklist serves as the application for final plat.

During your appointment the planner and applicant will go through the checklist to confirm that each item required is present. If the application is complete the application will be certified complete by the planner at the time of the appointment and all applicable application fees shall be paid. If the application is incomplete the applicant should take all of the application materials away and schedule another appointment when all missing items are included in the application.

Please note, a statement listing the conditions imposed on the preliminary plat approval, found in the enclosed Findings of Fact, Conclusions of Law and Decision document, with a description of how each has been met must accompany all final plat submittals for the application to be considered complete.

The Planning Department thanks you for your cooperation.

Enclosure: Final Plat Application Checklist

FINAL PLAT FOR SIGNATURE - CHECKLIST

City Use Only -

Subdivision Name: _____

Certified Compete by: _____

Date: ____/____/____

The following items must be submitted with the application for the application to be considered complete (✓):

The final plat submitted for signature shall conform to the requirements found in Idaho Code §§50-1301 et seq., as amended, and to the requirements set forth by Blaine County for digital plat submittals. The plat shall also contain the following information:

- ___ The exterior boundary of the subdivision shall be tied to not less than two (2) recognized County or City survey monuments, and the plat shall identify the monuments and other information as necessary to comply with Blaine County's requirements for digital plat submittals.
- ___ All lots shall be numbered by progressive numbers in each block separately; blocks shall also be numbered consecutively throughout all adjoining plats of the same master name.
- ___ The size of each lot shall be shown in both square feet and acres.
- ___ All plat notes required by the Council shall be shown on the face of the plat.
- ___ Upon the back sheet(s), the required forms shall be lettered for the following: Registered Professional Engineer and/or Land Surveyor's "Certificate of Survey"; owner's dedication certificate with Notary Public's Acknowledgment; the approval of the Mayor and Council of Hailey as attested by the City Clerk; approval by the City Engineer and other certificates required by Idaho Code; and acceptance of the plat by the Blaine County Recorder's and Blaine County Treasurer's offices.
- ___ The final plat shall be accompanied by copies of any private restrictions proposed to be recorded for the purpose of providing regulations governing the use, building lines, Green Spaces or any aspect of their development, use and maintenance.
- ___ Any approved Area Development Plan Agreement for contiguous parcels shall be recorded concurrently with the final plat.
- ___ The Planning and Zoning Administrator ensures that any conditions imposed by the Council are met by the applicant prior to signature of the plat sheets for the purpose of recordation. A statement listing the conditions imposed as part of final plat approval, found in the enclosed Findings of Fact, Conclusions of Law and Decision document, with a description of how each has been met must accompany all final plats submitted for signatures. Please do not drop off plat sheets for signature without this information.
- ___ In lieu of actual construction, the applicant may provide to the City such security as may be acceptable to the City, in a form and in an amount equal to the cost of the engineering and the improvements not previously installed by the Developer, plus fifty percent (50%), which security shall fully secure and guarantee completion of the required improvements within a period of one (1) year from the date the security is provided. If any extension of the one year period is granted by the City, each additional year, or portion of each additional year, shall require an additional twenty percent (20%) to be added to the amount of the original security initially provided. The applicant should contact the City Engineer regarding the procedure for providing security.

City of Hailey

PLANNING DEPARTMENT

115 MAIN STREET SOUTH
HAILEY, IDAHO 83833

(208) 788-9815
Fax: (208) 788-2924

November 10, 2010

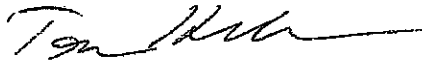
Mr. Robert Erickson
Health and Environmental Services
117 Ash Street
Bellevue, ID 83313

Re: Sweetwater Townhouses PUD Sub-lots

Dear Mr. Erickson,

Please allow this notification to act as a will-serve letter with regard to Sweetwater Townhouses PUD, Block 4, Sub-lots 46-53. This letter will confirm that Hailey will provide water and sewer service to the property, upon the applicants obtaining connection permits for the property.

Regards,



Tom Hellen
City Engineer

CC: File
DEQ Twin Falls Office
Applicant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of Nov., 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:

Sweetwater Co. LLC
Mr. Jones
100 Peabody Place, Suite 1200
Memphis, TN 38103
pjones@locally-global.com
kadams@locally-global.com

Applicant's Representative:

Garth McClure
Benchmark Associates
PO Box 733
Ketchum, ID 83340
garth@bma5b.com

CITY OF HAILEY

By Becky Mead
Becky Mead, Deputy Clerk