

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

On August 18, 2008, the Hailey City Council considered the application by Bulotti Construction, Inc for Preliminary Plat and Flood Hazard Development permit approval of Lots 15A and 15B, Block 1, Birdwood Subdivision. 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 Wood River Journal and mailed to property owners within 300 feet on July 30, 2008 for a special Council meeting on August 18, 2008.

Application

Bulotti Construction, Inc., represented by John Bulotti, has submitted applications for Preliminary Plat approval for the replat of Lot 15, Birdwood Subdivision to subdivide the lot into 2 lots and for a Flood Hazard Development Permit (FHDP). Lot 15B, which has a newly constructed house on it, is proposed to be 20,040 square feet. Lot 15A is undeveloped and proposed to be a 75,875 square foot flag lot. Both lots would be accessed by a private driveway directly off of Silver Star Drive.

The original application for preliminary plat was certified complete on July 3, 2003 and the FHDP was received February 2, 2004. The standards in place at the time the original application was submitted are the standards that are required be applied to this application.

Section 4.10.7.1 of the Zoning Ordinance requires both Commission and Council approval for subdivisions in the floodplain.

Application History

- The Planning and Zoning Commission heard an application for a 4 lot subdivision on November 3, 2003 and April 19, 2004. The Commission denied both the Preliminary Plat application and the FHDP; citing failure to meet the standards set forth in Section 4.9.1 of the Subdivision Ordinance and Section 4.10.7.2 of the Zoning Ordinance.
- The Council considered the applications on July 11, 2005 and upheld the Commission's decision.
- The applicant filed an appeal before the District Court. During the appeal to the Court the parties engaged in mediation, which was unsuccessful.
- The applicant subsequently approached the City with a proposal to submit a 2 lot subdivision.
- The City and the applicant agreed to stay the Court proceeding while the 2 lot subdivision was considered.
- The applicant submitted a preliminary plat for 2 lots which was heard by the Council on April 23, 2007. The Council tabled the application, requesting a hydrology study to determine the best location for a building envelope.
- A revised plat was submitted on October 3, 2007 showing a building envelope located outside the 100-year floodplain. In response to the Council's request for a hydrology study, the applicant submitted a detailed survey of the property and a FEMA determination that removes two areas on the subject property from the floodplain.
- The City received a letter submitted by Gary Slette, attorney for the applicant, dated September 20, 2007. The letter makes reference to a letter from John Seiller, attorney for the Birdwood

Homeowners Association, suggesting procedural improprieties which require the Commission to consider the revised subdivision application. In the letter, Mr. Slette suggests the Council remand the application to the Commission for its review and recommendation in order to avoid procedural disputes. The Council held a public hearing on October 22, 2007. The application was remanded to the Commission for its review.

- The City received a Letter of Map Amendment (LOMA) on October 23, 2007. Extensive survey work was conducted by Brockway Engineering and the applicant submitted a request to FEMA to determine that two areas within Lot 15 are no longer considered to be in the floodplain. One of the areas appears to be a portion of the lot wherein the existing house is situated. The other area is above base-flood elevation and the area the applicant has identified as the building envelope for the proposed new lot.
- The Commission held a public hearing on November 19, 2007 to hear both the FPDP and the Preliminary Plat. The Commission denied approval of the FHDP, citing that the application failed to meet criteria 4.10.7.2 items a, g, and h relative to safe access to the proposed new lot in times of high water.
- The Birdwood Homeowners Association filed a lawsuit against Mr. Bulotti in March of 2006, citing that the original covenants specified that only one dwelling unit per lot was permitted and that Mr. Bulotti could not, in fact, further subdivide Lot 15. Mr. Bulotti filed a counterclaim, taking the position that the covenants did not apply. Both parties moved for summary judgment. The District Court decided that because the 1981 covenants had not been signed by anyone in the chain of title to Lot 15, neither they nor the amended 2003 covenants applied. The decision was appealed. The Supreme Court determined that the covenants did not apply in this case. Supreme Court decision given to the Council on January 14, 2008. The City has not considered the covenants in the City's analysis of the Standards of Evaluation.

Current Application Status

- The Council held a hearing on this application on January 14, 2008. A motion was passed to "continue this matter until more information is received, including an opinion of a Professional Engineer with expertise on water issues on construction of road and the opinion of a Hydrologist to get more information on if a road can be designed to handle a fire apparatus and if this can be done to not endanger anybody's property".
- The Council held a public hearing on May 19, 2008. The staff report included the analysis from the third party that the Council had requested. The Council denied the applications because positive findings could not be made for Section 4.9.1 that requires subdivisions within the floodplain to comply with all provisions of Section 4.10, Flood Hazard Overlay District, of the Hailey Zoning Ordinance. The Council specifically relied on Section 4.10.7.2(a) which states there will be no danger to life, limb or property due to increased flood heights or velocities, and Section 4.10.7.2(b) which states that all subdivisions shall have adequate drainage provided to reduce exposure to flood damage. The Council denied the applications because of possible silting of the culverts.
- The Findings of Fact of the May 19 decision were on the June 9, 2008 agenda. The City Attorney suggested that the Council consider a motion to reconsider the Findings of Fact because two council members stated they believed the matter was before them on an appeal, because one council member conducted a previously undisclosed site visit, because the Council may not have employed a reasonableness standard under Section 4.10.7.2(a), and because the Council could better describe the actions, if any, that the applicant could take to obtain a permit. Council Member

Don Keirn visited the site on several occasions during the flood event in the area in May, 2006, and observed standing water through much of the proposed Lot 15A. A motion for reconsideration was made and unanimously approved.

- The applications were scheduled for a hearing on July 14. Due to a noticing error, the applications were rescheduled for August 18.

Changes to Applicant's Design and Third Party Engineering Analysis

- The applicant has submitted a revised culvert design to replace the culvert design presented to the Council on May 19, 2008. The revised design was intended to address the concerns expressed by the Council regarding impact to adjacent properties in a flood event.
- The previous culvert design was "four parallel pipe-arch" design. The revised culvert design submitted by the applicant is one 2.5 ft x 10 ft box culvert with wing walls. The span of the box culvert is 10 ft and will provide a minimum of 2.5 ft from the lowest chord elevation to the invert of the stream. The surface of the box culvert also serves as the driveway surface.
- SPF, the Boise based water engineering firm selected by the City Engineer to conduct a third party review of the applicant's plans, has reviewed the new box culvert design submitted by Brockway Engineering on behalf of the applicant.

Department Head Comments

The City Engineer and the Fire Chief have both reviewed the new box culvert design and found that the design mitigates the concerns with access.

Procedure

Pursuant to the Hailey Subdivision Ordinance Section 4.9.1., Flood Hazard Overlay District, subdivisions or portions of subdivision located within the Flood Hazard Overlay District shall comply with all provisions of Section 4.10 of the Zoning Ordinance.

Pursuant to Hailey Zoning Ordinance Section 4.10.7, Flood Hazard Development Permit, a Flood Hazard Development Permit shall be obtained before any site alteration, construction or development begins within or upon any area located within the Floodplain Sub-District. All applications for a Flood Hazard Development Permit for a subdivision shall be evaluated and approved or denied by the Commission and Council. All other Flood Hazard Development Permit applications shall be evaluated and approved or denied by the Flood Hazard Development Permit Board.

Hailey Mayor Richard Davis and Council Member Carol Brown have recused themselves from participating in the proceedings on the applications.

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:

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. No Final Inspection approval or Certificate of Occupancy shall 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 recommended condition of approval.

SECTION 4 – DEVELOPMENT STANDARDS

4.0 The configuration and development of proposed subdivisions shall be subject to the provisions found hereunder, and shall be subject to the development restrictions, guidelines and direction found within the Hailey Comprehensive Plan, the Hailey Zoning Ordinance and any other applicable Ordinance or policy of the City of Hailey.

Under this standard, the Council evaluated the following applicable standards in Sections 4.1 through 4.10, inclusive. The Council finds that the configuration and development of the proposed subdivision meets the requirements of these sections, the Hailey Comprehensive Plan and any other applicable ordinance and policy of the City of Hailey.

4.1 Streets.

4.1.1 All streets in the subdivision must be platted and developed with a width, alignment, and improvements such that the street is adequate to accommodate existing and anticipated vehicular and pedestrian traffic and meets City standards. Streets shall be aligned in such a manner as to provide through and efficient access from and to adjacent developments and properties and shall provide for the integration of the proposed streets with the existing pattern.

No streets are proposed. Access for proposed Lot 15A and Lot 15B will be across a portion of the flag lot which is a 20 foot wide portion of driveway.

4.1.11 Driveways may provide access to not more than five residential dwelling units. No portion of the required fire lane width of any driveway in a multi-family development may be utilized for parking. Driveways shall not be named.

One existing lot is proposed to be subdivided into two (2) lots to be used as single family residences. The driveway would not be named. The homes will have Silver Star Drive addresses; all addresses should be posted at the driveway entrance. A recommended condition of approval is that the driveway be posted for no parking.

4.1.11.1 Driveways shall be constructed with an all weather surface and shall have the following minimum roadway widths:

Accessing one residential unit: 12 feet
Accessing two or three residential units: 16 feet
Accessing four or five residential units: 20 feet

The proposed driveway is shown to have a 20 foot asphalt width. A condition of approval is that no encroachment of the fire lane width will be allowed without written approval.

4.1.11.2 Driveways longer than 150 feet must have a turnaround area approved by the Fire Department. Fire lane signage must be provided as approved by the Fire Department.

The driveway proposed to serve both lots is approximately 460 feet long measured from the property line adjacent to Silver Star Drive to end of the driveway. An approved fire apparatus turnaround is required for all private driveways in excess of 150 feet; a hammerhead turnaround is shown approximately 360 feet from the property line adjacent to Silver Star Drive. The installation of fire lane signs is a condition of approval.

4.1.11.3 Driveways accessing more than one residential dwelling unit shall be maintained by an owner's association, or in accordance with a plat note.

A plat note states that the Homeowners Association will be responsible for the maintenance of the private driveway.

4.1.11.4 The area designated for a driveway serving more than one dwelling unit shall be platted as a separate parcel according to subsection 4.5.3 below, or as a dedicated driveway easement. Easements and parcels shall clearly indicate the beneficiary of the easement or parcel and that the property is unbuildable except for ingress/egress, utilities or as otherwise specified on the plat.

The private driveway easement is shown on the plat; beneficiaries of the easement shall be the owners of Lots 15A and 15B; a recommended condition of approval is that the beneficiaries of the driveway easement are indicated on the plat.

4.1.12 Required fire lanes, whether in private streets or driveways, shall comply with all regulations set forth in adopted fire codes.

The private driveway will be a fire lane. A suggested condition of approval is for the driveway to meet all regulations of the International Fire Code.

4.2 Sidewalks and Curbs.

4.2.1 Sidewalks, as required in all public street improvements, shall be a minimum of 5 feet wide, shall be constructed of concrete installed to City standards or shall be constructed of an alternative material as approved by the Hailey Planning and Zoning Commission and/or the Hailey City Council. The Council, following a recommendation by the Planning and Zoning Commission, may waive this requirement pending a finding that the installation of sidewalks within the development will provide a substantial burden to the developer and no reasonable benefit to either the public or the occupants of the development.

4.2.1.1 The Council shall not waive the requirement for the provision of sidewalks in Business, Limited Business, Technological Industry, Service Commercial Industrial, or other pedestrian areas. Sidewalks shall accommodate anticipated pedestrian traffic, street trees where required, and shall be in accordance with established City standards and sidewalk master plan.

No sidewalk is proposed. The Commission determined that requiring sidewalk in a neighborhood where no sidewalks exist would not be a public benefit. The City Council concurs with the Commission.

4.2.2.1 The developer may, at their option, propose alternatives to either the standard sidewalk configuration required in Section 4.2.1 above, or the planned non-vehicular pathway required as part of this Section. The Commission and Council shall ensure that said alternative configuration shall not reduce the level of service or convenience to either residents of the development or the public at large.

No sidewalk is proposed

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.

The proposed private driveway is noted as a utility easement. In addition, a 15 foot wide public utility easement is shown on the south edge of Lots 15A and 15B. The City Engineer has indicated that the drainage swales should contain any surface drainage on the subject property and will prevent flow onto adjacent properties. A grading plan will be necessary to assure compliance.

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.

The private driveway is an access easement, a utility easement and emergency access easement as shown on the plat. Because of the location of the property, a fisherman's and public access easement is not appropriate.

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 seventy-five (75) foot

wide riparian 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 easement shall be dedicated adjacent to tributaries of the Big Wood River. Removal of live vegetation within the riparian easement is prohibited, except for the removal of leaning or hazardous trees. Pruning of trees within the riparian setback is allowed. The riparian easement shall be fenced off during any construction on the property.

This property lies outside of any riparian easement or setback.

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.

A portion of the flag lot shows a snow storage easement. The City Engineer has indicated that drainage swales should contain any surface drainage on the subject property and prevent flow onto adjacent properties. A grading plan will be necessary to assure compliance and is required as a condition of approval.

4.4 Blocks.

4.4.1. The length, width and shape of blocks shall be determined with due regard to adequate building sites suitable to the special needs of the type of use contemplated, the zoning requirements as to lot size and dimensions, the need for convenient access and safe circulation, and the limitations and opportunities of topography.

A single block is proposed.

4.5 Lots.

4.5.1 All lots shown on the subdivision plat must conform to the minimum standards for lots in the District in which the subdivision is planned. The City of Hailey will generally not approve single-family residential lots larger than one-half acre (21,780 square feet). In the event a single-family residential lot greater than one-half acre is platted, irrigation is restricted to not more than one-half acre, pursuant to Idaho Code 42-111, and such restriction shall be included as a plat note. District regulations are found in the Hailey Zoning Ordinance.

Minimum lot size in the Limited Residential-1 District (LR-1) is eight thousand (8,000) square feet. As this property lies within the Floodplain Hazard Overlay District, the minimum lot size is 20,000 square feet. Lot 15B measures 20,040 square feet and Lot 15A measures 75,875 square feet. A plat note is required to restrict irrigation of Lot 15A to not more than one-half acre.

4.5.2 Double frontage lots shall be prohibited except where unusual topography, a more integrated street plan, or other conditions make it undesirable to meet this requirement. Double frontage lots are those created by either public or private streets, but not by driveways or alleys. Subdivisions providing a platted common space of 25 feet or more between any street right-of-way and any single row of lots shall not be

considered to have platted double frontage lots. Common space provided must be landscaped.

The lots are served by a private driveway, which will serve only the two lots within the subdivision. Therefore, these lots will not create double frontage lots in the Cedar Bend Subdivision.

4.6 Orderly Development.

4.6.1 Development of subdivisions shall be phased to avoid the extension of City services, roads and utilities through undeveloped land.

The subject property is directly adjacent to mostly developed property. No phasing is proposed.

4.6.2 Subdividers requesting phased subdivisions shall enter into a phasing agreement with the City. Any phasing agreement shall be approved and executed by the Council and the Developer on or before the preliminary plat approval by the Council.

The project would be completed in a single phase.

4.6.3 No subdivision shall be approved which affects the ability of political subdivisions of the state, including school districts, to deliver services without compromising quality of service delivery to current residents or imposing substantial additional costs upon current residents, unless the subdivider provides for the mitigation of the effects of subdivision. Such mitigation may include, but is not limited to the following:

Provision of on-site or off-site street or intersection improvements.

Provision of other off-site improvements.

Dedications and/or public improvements on property frontages.

Dedication or provision of parks or green space.

Provision of public service facilities.

Construction of flood control canals or devices.

Provisions for ongoing maintenance.

The proposed subdivision is for two single family lots. Off-site improvements may include sidewalk within the Silver Star Drive right-of-way. However a sidewalk is not a required condition of approval. A required condition of approval is a plat note stating that the Homeowners Association shall be responsible for the maintenance and operation of the sewer service line within the subdivision and Silver Star Drive right of way to the mainline, and for maintenance and operation of the water service line and private driveway within the subdivision.

4.8 Cuts, Fills, and Grading.

4.8.1 Proposed subdivisions shall be carefully planned to be compatible with natural topography, soil conditions, geology and hydrology of the site, as well as to minimize cuts; fills; alterations of topography, streams, drainage channels; and disruption of soils or vegetation. Fill within the floodplain shall comply with the requirements of the Flood Hazard Overlay District of the Hailey Zoning Ordinance, as amended.

The property has pockets of low-lying areas and is located within the floodplain. The flood event of May 2006 showed significant areas of ponding on Lot 15A. A building envelope is proposed on Lot 15A to mitigate any groundwater flooding that may occur on this lot and to ensure that no adverse flood impacts will affect the adjoining properties. This property contains environmentally fragile areas

of forested wetlands, and any grading, construction, development or alteration to the land will require a FHDP prior to any work being done. A survey and a determination by FEMA which establishes a map amendment to the floodplain was given to the Council on January 14, 2008. A concurrent FHDP application has been submitted for the subdivision. An additional FHDP is required to be submitted for any development on Lot 15A.

4.8.1.1 A preliminary soil report prepared by a qualified engineer may be required by the Commission and/or Council as part of the preliminary plat application.

A study of the property was done by the Army Corps of Engineers to determine if any area contains wetlands requiring a Section 404 Permit issued under the Clean Water Act. Wetland features exist on the property, however these features have no direct surface connection with the Bigwood River therefore a Section 404 Permit is not required. It was determined that forested wetland features continue to exist due to a seasonal high ground water table. Further, a hydrology study conducted by Brockway Engineers noted that the water present on proposed Lot 15A would not be water flowing from the Bigwood River, but rather ground water from a high water table.

4.8.1.2 A preliminary grading plan prepared by a civil engineer may be required by the Commission and/or the Council as part of the preliminary plat application, to contain the following information:

Proposed contours at a maximum of two (2) foot contour intervals;

Cut and fill banks in pad elevations;

Drainage patterns;

Areas where trees and/or natural vegetation will be preserved;

Location of all street and utility improvements including driveways to building envelopes; and

Any other information which may reasonably be required by the Administrator, Commission, and/or Council.

This property is located within the floodplain. Therefore a FHDP is required. The FHDP application shows contours (existing and proposed), location, dimensions and elevations of the proposed improvements, plans for fill and grading, and a description of the extent to which any watercourse would be altered or relocated. No further information was required by the Council.

4.8.2 The proposed subdivision shall conform with the following design standards:

4.8.2.1 Grading shall be designed to blend with natural land forms and to minimize the necessity of padding or terracing of building sites, excavation for foundations, and minimize the necessity of cuts and fills for streets and driveways.

A FHDP shall be required for any grading within the proposed subdivision. The location of the building envelope for Lot 15A blends with natural land forms and minimizes the necessity of padding or terracing of building sites, excavation for foundations, and minimizes the necessity of cuts and fills for streets and driveways. The design of the driveway minimizes the need for cuts and fills.

4.8.2.2 Areas within a subdivision which are not well suited for development because of existing soil conditions, steepness of slope, geology or hydrology shall be allocated for open space for the benefit of future property owners within the subdivision.

A building envelope is proposed on Lot 15A to mitigate groundwater flood damage and to ensure that no adverse impacts will occur to the adjoining properties.

4.8.2.3 Where existing soils and vegetation are disrupted by subdivision development, provision shall be made by the subdivider for revegetation of disturbed areas with perennial vegetation sufficient to stabilize the soil upon completion of the construction, including temporary irrigation for a sufficient period to establish perennial vegetation. Until such time as said vegetation has been installed and established, the subdivider shall maintain and protect all disturbed surfaces from erosion.

A FHDP has been required for development of Lot 15A for both a home on Lot 15A and for a driveway. Until a permit for development of the lot is submitted for review by the city, it is unclear to what extent the vegetation and soils on these lots will be disturbed. Any vegetation that is damaged or disturbed will be required to be re-vegetated at the expense of the developer.

4.9 Floodplain.

4.9.1 Subdivisions within the floodplain shall comply with all provisions of Section 4.10, Flood Hazard Overlay District, of the Hailey Zoning Ordinance, as amended.

A FHDP is required for any grading, construction, development of alteration on the lots within the proposed subdivision. The criteria for a FHDP are as follows:

Flood Hazard Development Permit Criteria

Under Section 4.10.7.2 of the Zoning Ordinance, the Flood Hazard Ordinance Administrator, or the Hailey City Council if a Flood Hazard Development Permit for a subdivision, shall evaluate and find adequate evidence to support each of the following criteria:

a. There will be no danger to life and property due to increased flood heights or velocities or any materials may be swept on to other lands or downstream to the injury of others.

The majority of the property is undeveloped and densely wooded. A significant flood event occurred in May of 2006. Brockway Engineers estimated that flood event to be approximate to a 160 year event. Water from the Big Wood River was flowing across portions of adjacent Lot 14 as well as several other lots within Birdwood Subdivision and adjacent subdivisions. Portions of proposed Lot 15A had standing water that exceeded a foot in depth in low-lying areas. The Brockway study indicates there will be groundwater on this lot in times of high water table.

The Fire Chief previously commented that emergency services may be suspended to this property during flood events. In the Commission's deliberations for this particular standard, they could not make a positive finding that there would be no danger to life and property should a structure or its tenants be left without emergency services available.

To address the issue of access, the applicant is proposing a culvert for the portion of the driveway that spans the lowest portion of the lot. The culvert design has been revised by the applicant from the design presented on May 19, 2008 to address issues raised by the Council regarding the impact on neighboring properties during a flood event. The City Engineer and the Fire Chief have both reviewed the revised culvert design and found that the design mitigates the concerns with access.

The City Engineer selected SPF Water Engineering, LLC, a Boise based firm to conduct a third party review of the revised culvert design for the project submitted by Brockway Engineering on behalf of the applicant. The City asked SPF to evaluate whether the construction of the driveway as proposed with the revised culvert will impact neighboring properties during a flood event. SPF concluded that the new box culvert design is not expected to cause any significant negative impact to neighboring properties or to the 100-year flood elevation. SPF recommends that the culvert shall be inspected annually and sediment and debris removed as it accumulates; this is a recommended condition of approval.

The Council's discussion focused on whether there would be danger to life and property due to increased flood heights or velocities caused by the driveway design. The Council finds that this standard can be met by the culvert design provided that the culvert is properly maintained to remove any accumulation of silt and debris. The Council imposes a condition of approval to maintain the culvert and finds that such a condition is reasonable.

b. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.

The City Engineer has reviewed the plans and believes that drainage swales should contain all water on the lot. The plan shows an approximately 460 foot long driveway for access to both proposed lots. With this revised box culvert design and the condition to maintain the culvert, the Council finds this standard is satisfied.

c. The proposed water supply and sanitation systems and the ability of these systems will prevent disease, contamination and unsanitary conditions.

The City Engineer has determined that the proposal for flood proofing the lift station is acceptable to prevent disease, contamination and unsanitary conditions.

d. The proposed facility and its contents will not be susceptible to and shall minimize flood damage.

All improvements shall be flood proofed, or as conditioned will minimize flood damage.

e. The proposed location represents the safest location for the proposed use.

As noted above, pockets of wetlands exist on the property. A survey of the site was performed by Brockway Engineers to determine the location on the lot for a building envelope. The Flood Hazard Development Board and Fire Chief previously recommended a building envelope to be located at the eastern portion of Lot 15A primarily due to access issues for emergency services. The building envelope for Lot 15A is shown in this location. The building envelope is located above the base flood elevation ("BFE") and is the safest location on Lot 15A for a single family residence.

f. The proposed use is compatible with existing development and development anticipated in the foreseeable future.

Single family homes are proposed for the development. The surrounding properties are zoned as Limited Residential-1 (LR-1) with existing single family residences.

g. The proposed use is harmonious and in accordance with the general objectives or any specific objective of the Comprehensive Plan.

The Council considered Section 2.5, Hazardous Areas, of the Comprehensive Plan, which provides as follows:

I. Goal: The goal of this section is to reduce the potential threat to loss of life, limb or property and minimize public expenditures due to flooding.

1. Policy: Develop and maintain a thorough knowledge of the location and severity of hazards related to flooding.

Implementation:

- a. Maintain a thorough knowledge of the primary sources for flood hazard analysis as identified by the Federal Insurance Administration. Those sources include Floodplain Information Studies prepared for the Big Wood River by the United States Army Corps of Engineers; the Flood Insurance Study, City of Hailey, Idaho, prepared by the Federal Emergency Management Agency (FEMA); and the Flood Insurance Rate Map/Flood Hazard Boundary Map also issued by FEMA.*
- b. When appropriate, support or require Letters of Map Amendment or Revision. Amendments or revisions may be appropriate at locations or properties where empirical evidence of flood or other conditions does not appear to correspond directly to the most current information available to the City.*

2. Policy: Discourage development along watercourses, including drainage areas, especially in known flood prone areas.

Implementation:

- a. Continue to prohibit any construction, with the exception of recreational trails, emergency access ways and stream alterations, where approved, in floodways.*
- b. Prohibit the installation of any new individual septic systems within the floodplain within Hailey's Area of City Impact.*
- c. Restrict and closely supervise construction in the floodplain, and allow no construction which would not comply with the 'no - rise' standards established by FEMA.*
- d. Conduct planning studies of areas where development and subdivision have already occurred in the floodplain and define limitations on future development in those areas.*
- e. Continue to educate the general public about hazardous areas and restrictions therein by means of the city newsletter or similar publication.*
- f. Consider an increased setback from the bank full level of watercourses and a specific and substantially adequate setback for all construction from existing, drainage areas with intermittent or perennial stream flow.*
- g. Continue to encourage Planned Unit Developments in which all residential construction takes place outside the designated floodplain.*
- h. Consider implementing a Design Review process for development along watercourses.*
- i. Continue to require preservation of native riparian vegetation along watercourses*
- j. Support public acquisition or protection by tools such as landscape easements, of property directly adjacent to the Big Wood River for greenbelts.*
- k. Establish a method to transfer development rights from floodplain areas into designated receiving areas.*

The Commission found that the application does not meet this section of the Hailey Comprehensive Plan due to the likelihood of lack of access during times of flood events.

To address the issue of access, the applicant is proposing a culvert for the driveway that spans the lowest portion of the lot. The culvert design has been revised by the applicant from the design presented on May 19, 2008 to address issues raised by the Council regarding impact on neighboring properties during a flood event. The City Engineer and the Fire Chief have both reviewed the revised design and found that the design mitigates the concerns with access. SPF found that the culvert is expected to cause no net rise in the BFE. With the revised box culvert design, the condition of approval requiring maintenance of the culvert and the evidence that driveway design will not result in any rise of the BFE, the Council finds that this standard is met.

h. Safe access to the property shall be available in times of flood for ordinary and emergency vehicles.

Access to the property will be from Silver Star Drive and portions of the driveway lie approximately 2.5 feet below BFE. The Commission found that there would not be safe access to the property in times of flood due to the suspension of emergency services during flood events.

To address the issue of access, the applicant is proposing a culvert for the driveway that spans the lowest portion of the lot. The culvert design has been revised by the applicant from the design presented on May 19, 2008 to address issues raised by the Council regarding impact on neighboring properties during a flood event. The City Engineer and the Fire Chief have both reviewed the revised culvert design and found that the design mitigates the concerns with access. The revised driveway allows emergency vehicle access into the property during flood events. Accordingly, the applicant has satisfied this standard.

i. Inherent natural characteristics of the watercourses and floodplain areas will be preserved.

The limitation of improvements preserves the natural characteristics of the floodplain areas.

j. Existing riparian vegetation and wildlife habitat along the stream bank and within the required one hundred foot (100') riparian setback shall be preserved.

The subject property is outside of the riparian setback.

k. New landscaping shall include plantings that are low-growing and have dense root systems to stabilize stream banks and to repair any damage previously done to riparian vegetation.

The subject property does not have any stream banks and there is no evidence of damage to riparian vegetation

l. The proposed use shall not be susceptible to the risk of obstruction by landslides, avalanches, ice jams or timber.

The subject property is not within an avalanche area and the westerly edge of the lot is approximately 320 feet from the floodway.

m. All new construction, manufactured homes as defined and permitted in this Ordinance, accessory buildings, and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement.

A FHDP is required for any development of Lot 15A.

- n. **All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage and shall be constructed using methods and practices that minimize flood damage.**

A FHDP is required for any development of Lot 15A.

- o. **Utilities.**
 1. **All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.**
 2. **New and replacement water sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.**
 3. **On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.**
 4. **All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage**

It is a condition of approval that all infrastructure shall be designed to meet this standard and City Standards.

- p. **Any structural storage facility for chemicals, explosives, buoyant materials, flammable liquids, or other toxic materials which could be hazardous to public health, safety and welfare shall be located in a manner which will assure that the facilities are situated at elevations one foot (1') above the Base Flood Elevation and are adequately flood-proofed to prevent flotation of storage containers or damage to storage containers which could result in the escape of toxic materials into flood waters.**

No structural storage facility are proposed for the single family residential uses.

- q. **The lowest portion of a floor system of new construction or substantial improvement of any structure shall be elevated to a level at least one foot (1') above the Base Flood Elevation. Any fill shall not exceed the Base Flood Elevation. Any fill shall not extend more than twenty-five feet (25') beyond the limits of any structure erected on a lot or property ("backfill"); provided, however, fill may extend more than twenty-five feet (25') beyond the limits of any structure erected on a lot or property only if the cumulative amount of the fill does not exceed the amount of backfill allowed by the twenty-five foot (25') perimeter. Any electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities shall also be designed and elevated at least one foot (1') above the Base Flood Elevation.**

This requirement will be addressed when a FHDP is sought for new construction on Lot 15A. All construction shall meet the requirements of the International Building Code, the International Fire Code, the Floodplain Hazard Overlay District regulations, and other applicable codes. A FHDP for new construction on Lot 15A is required as a condition of approval.

- r. **Fully enclosed areas below the lowest floor are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or must meet or exceed the following minimum criteria:**
- 1. A minimum of two (2) openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.**
 - 2. The bottom of all openings shall be no higher than one foot (1') above the proposed grade.**
 - 3. Openings may be equipped with screens, louvers or other coverings or devices provided that they permit the automatic entry and exit of floodwater.**

This requirement will be addressed when a FHDP is sought for new construction on Lot 15A. All construction shall meet the requirements of the International Building Code, the International Fire Code, the Flood Plain Hazard Overlay District regulations and other applicable codes. A FHDP for new construction on Lot 15A is required as a condition of approval.

The applicant shall comply with Section 5 of the Hailey Subdivision Ordinance, which provides as follows:

SECTION 5 - IMPROVEMENTS REQUIRED.

- 5.1 It shall be a requirement of the developer to construct the minimum improvements set forth herein, for the subdivision, all to City standards.**
- 5.1.1 Six (6) copies of all improvement plans shall be filed with the City Engineer and made available to each department head. Upon final approval two (2) sets of revised plans shall be returned to the developer at the pre-construction conference with the City Engineer's written approval thereon. One set of final plans shall be on-site at all times for inspection purposes and to note all field changes upon.**
- 5.1.2 Prior to the start of any construction, it shall be required that a pre-construction meeting be conducted with the developer or his authorized representative/engineer, the contractor, the City Engineer and appropriate City Staff. An approved set of plans shall be provided to the developer and contractor at this meeting.**
- 5.1.3 The developer shall guarantee all improvements pursuant to this Section for no less than one year from the date of final acceptance by the City, except that parks shall be guaranteed and maintained by the developer for a period of two years.**
- 5.2 The developer shall construct all streets, alleys, curb and gutter, lighting, sidewalks, street trees and landscaping, and irrigation systems to meet City standards, the requirements of this ordinance, the approval of the**

Hailey City Council, and to the finished grades which have been officially approved by the City Engineer as shown upon approved plans and profiles. The developer shall

pave all streets and alleys with an asphalt plant-mix, and shall chip-seal streets and alleys within one year of construction.

- 5.2.1 Street cuts made for the installation of services under any existing improved public street shall be repaired in a manner which shall satisfy the Hailey Street Superintendent, shall have been approved by the Hailey City Engineer or his authorized representative, and shall meet City standards. Repair may include patching, skim coats of asphalt or, if the total area of asphalt removed exceeds 25% of the street area, the complete removal and replacement of all paving adjacent to the development. Street cut repairs shall also be guaranteed for no less than one year.**
- 5.2.2 Street name signs and traffic control signs shall be erected by the developer in accordance with City Standard Specifications, and said street name signs and traffic control signs shall thereafter be maintained by the City.**
- 5.2.3 Street lights in the Recreational Green Belt, Limited Residential, General Residential, and Transitional zoning districts are not required improvements. Where proposed, street lighting in all zoning districts shall meet all requirements and recommendations of Chapter 8B of the Hailey Zoning Ordinance.**
- 5.3 The developer shall construct a municipal sanitary sewer connection for each and every developable lot within the development. The developer shall provide sewer mains of adequate size and configuration in accordance with City standards, and all federal, state, and local regulations. Such mains shall provide wastewater flow throughout the development. All sewer plans shall be submitted to the Idaho Department of Environmental Quality (DEQ) for review and comments.**
- 5.4 The developer shall construct a municipal potable water connection for each and every developable lot within the development. The developer shall provide water mains and services of adequate size and configuration in accordance with City standards, and all federal, state, and local regulations. Such water connection shall provide all necessary appurtenances for fire protection, including fire hydrants, which shall be located in accordance with the Uniform Fire Code and under the approval of the Hailey Fire Chief. All water plans shall be submitted to the Idaho Department of Environmental Quality (DEQ) for review and comments.**
- 5.5 The developer shall provide drainage areas of adequate size and number to meet the approval of the Street Superintendent and the City Engineer or his authorized representative.**
- 5.6 The developer shall construct each and every individual service connection and all necessary trunk lines, and/or conduits for those improvements, for natural gas, electricity, telephone, and cable television to the property line before placing base gravel for the street or alley.**
- 5.7 The developer shall improve all parks and open space areas as presented to and**

approved by the Commission and Council.

- 5.8 All improvements are to be installed under the specifications and inspection of the City Engineer or his authorized representative. The minimum construction requirements shall be the latest published standard City specifications and improvement standard drawings or the Department of Environmental Quality (DEQ) standards, whichever is the more stringent.**
- 5.9 Installation of all infrastructure improvements must be completed by the developer, and inspected and accepted by the City prior to signature of the plat by City representatives, or according to a phasing agreement. A post-construction conference shall be requested by the developer and/or contractor and conducted with the developer and/or contractor, the City Engineer, and appropriate City Staff to determine a punch list of items for final acceptance.**
- 5.9.1 The developer may, in lieu of actual construction, provide to the City security pursuant to Section 2.3.7, for all infrastructure improvements to be completed by developer after the final plat has been signed by City representatives.**
- 5.10 Prior to the acceptance by the City of any improvements installed by the developer, three (3) sets of “as-built plans and specifications” certified by the developer’s engineer shall be filed with the City Engineer.**

CONCLUSIONS OF LAW AND DECISION

Based upon the above Findings of Fact, the Council in a two to one vote (Burke and Keirn in favor and Haemmerle opposed) 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 and the Hailey Zoning Ordinance.
3. The applications for Preliminary Plat and FHDP are approved by the Hailey City Council, with the following conditions:
 - a) All Fire Department and Building Department requirements shall be met. Items to be completed at the applicant’s sole expense include, but will not be limited to, the following requirements and improvements:
 - An approved fire department turnaround will be required for Lot 15A before any construction begins.
 - The driveway shall be posted for no parking and will not be named. All homes shall have Silver Star Drive addresses; all addresses should be posted at the driveway entrance.
 - No encroachment of the fire lane width will be allowed without written approval from the City.
 - Turn-arounds or turnout and fire lanes must be permanently signed as such.
 - The driveway shall meet all regulations of the International Fire Code.

- The interior of the culvert shall contain the elevations of the property, shown at six inch (6”) intervals.
 - Hydrant locations should be identified and pre-approved.
 - Building height shall be a maximum of 30’.
- 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. Infrastructure to be completed at the applicant’s sole expense include, but will not be limited to, the following requirements and improvements:
- Sewer service for Lot 15A shall be a pressure system.
 - A new water meter vault shall be installed in the driveway easement for Lot 15A.
 - All drainage shall be contained on site.
 - Drainage swales shall be designed and created on both lots to contain any surface drainage on the subject property and not allow it to flow onto adjacent properties. The drainage plan shall also include details for the design and appropriate placement of a box culvert to insure that there will be safe access to Lot 15A during times of high water. Such drainage shall be depicted on a grading plan and submitted to the City Engineer for his approval prior to Final Plat approval.
 - A drainage inspection to ensure surface drainage remains on the subject property shall be conducted and approved prior to issuance of a certificate of occupancy for new construction on the Lot 15A.
 - Water and sewer service lines shall be designed to minimize or eliminate infiltration of flood waters into the systems and utilities shall be located and constructed to minimize flood damage.
- c) Issuance of permits for the construction of buildings within the proposed subdivision shall be subject to Section 2.9 of the Subdivision Ordinance.
- d) Plat notes shall be added to the final plat stating:
- The beneficiaries of the driveway easement shall be the owners of Lots 15A and 15B. This easement shall also be designated as a utilities access easement.
 - Irrigation for Lot 15A a plat note should be added restricting irrigation of Lot 15A to not more than one-half acre
 - The homeowners association or in the event the homeowners association is dissolved, the owners of Lots 15A and 15B shall be responsible for the maintenance of the sewer and water service lines between the residences and the mainline within Silver Star Drive and the private driveway within the subdivision.
 - The homeowners association, or in the event the homeowners association is dissolved, the owners of Lots 15A and 15B shall be responsible for the maintenance of the driveway and culvert located on Lot 15A. The culvert shall be inspected annually and sediment and debris within the culvert removed as it accumulates. Certification of sediment and debris removal shall be submitted to the City Engineer by May 1 of each year following the construction of the driveway and culvert on Lot 15A. The City of Hailey shall have the right to inspect the culvert for compliance of the sediment and debris removal. The owner(s) of Lot 15A, and

the successors, heirs and assigns, shall indemnify, defend and hold the City of Hailey harmless, from and against any claims, demands, actions, liability, damages, costs, expenses and attorney fees related to the approval of the subdivision or flood hazard development permit or to any inspection of the culvert or to any flooding caused in any way by the construction of the driveway and culvert, or any matters connected thereto, no matter how remotely.

- The owner of Lot 15A shall seek and obtain a flood hazard development permit before there is construction of a single family residence or construction of the driveway and culvert on Lot 15A.

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

- 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.

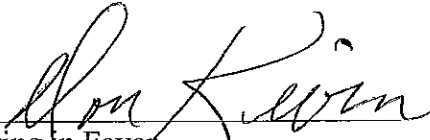
- g) Any subdivision inspection fees due shall be paid prior to recording the final plat.

- h) Any applicable development impact fees shall be paid prior to recording the final plat.

Dated this 8th day of September, 2008.



Voting in Favor
Martha Burke, Council President



Voting in Favor
Don Keirn, Council Member



Voting in Opposition
Fritz Haemmerle, Council Member

Attest:



Mary Cone, City Clerk



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of Sept., 2008, I served a true and correct filed copy of the within and foregoing document upon the parties named below, in the manner noted:

<input type="checkbox"/>	U.S. Mail	John Bulotti
<input type="checkbox"/>	Via Facsimile	PO Box 2875
<input type="checkbox"/>	Hand Delivered	Hailey, ID 83333
<input checked="" type="checkbox"/>	Via Electronic Mail	djbulotti@cox.net

<input type="checkbox"/>	U.S. Mail	Brian Yeager
<input type="checkbox"/>	Via Facsimile	PO Box 425
<input type="checkbox"/>	Hand Delivered	Ketchum, ID 83340
<input checked="" type="checkbox"/>	Via Electronic Mail	<u>byeager@svskylan.net</u>

CITY OF HAILEY

By Becky Mead
Becky Mead Deputy Clerk