

## FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

On September 8, 2008, the Hailey City Council considered the application by J. Walt and Jenny Femling for Final Plat approval of Quigley View Condominiums. 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 on August 25, 2008 was published in the Wood River Journal and mailed to property owners within 300 feet on August 6, 2008. The public hearing was continued on the record to September 8, 2008.

#### Application

J. Walt and Jenny Femling, represented by Bruce Smith of Alpine Enterprises, Inc., has submitted an application for final plat approval of a 12-unit residential condominium project located at 631 E Croy St, east of 6th Avenue between Bullion and Croy Streets. The legal description of the property was Lots 1, 2 and 3, Del Norte Apartments Subdivision.

As the application submitted is for a condominium project, the ground under and around the units would be owned and maintained by the condominium association. During preliminary plat the applicants proposed to provide 3 community housing units. The applicant submitted a concurrent Design Review application to do a remodel of the entire project which was approved by the Planning and Zoning Commission on October 16, 2006. The project is currently under construction.

The 12 unit project was constructed in the mid 1970's. It is an existing non-conforming use as it is located in the Limited Residential zoning district, which does not allow multi-family housing.

#### Procedural History

Section 2.4.1 of the Subdivision Ordinance allows for applications for platting condominium units in existing structures to be reviewed through the short plat procedure. In this procedure, the Hearing Examiner or Commission reviews the preliminary plat only. Upon approval of preliminary plat, the applicant submits a final plat for Council approval.

The application was heard by the Hailey Planning and Zoning Commission on October 16, 2006 and approved with the following conditions:

- a) **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.**

This has been met; see plat note 2.

- b) Each unit shall be individually metered for water and each unit shall have a separate sewer service.**

This condition should be carried over and changed to “each building shall be individually metered for water and ...”.

- c) The renovations and landscaping described in the community housing plan shall be completed prior to the recordation of the final plat. These improvements include but are not limited to:**

- 1. New siding and paint to match the neighboring market units.**
- 2. Installing Firewall between the units to meet the Building Code.**
- 3. Interior finishes upgrades as determined by BKHA and owner.**
- 4. New landscaping as shown in attached plan LA 1.0.**
- 5. New entry on end units as shown on plan to match market units.**
- 6. New pavement as shown on plan for walkways.**

This condition should be carried over.

- d) Pursuant to Section 4.11.3.4 of the Subdivision Ordinance the parties shall execute an agreement incorporating the community housing plan.**

This condition should be carried over.

- e) A new site plan shall be submitted prior to issuance of a Building Permit showing the location of drywells and revised snow storage.**

This condition has been met.

- f) Sidewalk shall be constructed adjacent to the project or an in-lieu contribution shall be made; the location of the sidewalk shall be determined by the City Engineer and Staff.**

The applicant has opted to make an in-lieu contribution. The ordinance requires 110% of the estimated cost of construction of concrete sidewalks and drainage improvements provided by a qualified contractor, plus associated engineering costs, as approved by the City Engineer. This condition should be carried over.

- g) Issuance of permits for the construction of buildings within the proposed subdivision shall be subject to Section 3.1 of the Subdivision Ordinance, requiring certain improvements.**

This condition should be carried over.

- h) All improvements and other requirements shall be completed and accepted, or surety provided pursuant to Sections 2.3.7 and 5.9.1 of the Subdivision Ordinance, prior to recordation of the final plat.**

This condition should be carried over.

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

This condition has been met.

On January 8, 2007, the City Council considered the Community Housing Plan submitted by the applicant. The Council approved three (3) Community Housing Units at Income Category 4. At that time the Blaine County Housing Authority calculated the maximum sale price to be approximately \$172,000. The 2008 BCHA Community Housing Pricing Calculator sets the maximum price of a 2 bedroom unit in Category 4, assuming a \$50 per month Homeowners Association (HOA) due, at \$168,193. The maximum price with no HOA dues is \$176,348. According to BCHA there are several Hailey residents within Category 4 who have been qualified and are ready to buy.

The applicant is requesting an amendment to the Community Housing Plan for Council approval of an alternate deed restriction for resident workers, rather than the income deed restriction originally approved. The applicant proposes the sale price of the Community Housing units to be \$198,000. The proposed Community Housing Plan provides that the condominium assessments shall be limited and that the Condominium Declaration may not be amended without the consent of the Blaine County Housing Authority. The proposed Condominium Declaration refers to the Blaine Ketchum Housing Authority. The Condominium Declaration should be revised to insure that assessments shall be limited, that the Condominium Declaration may not be amended without the consent of the Blaine County Housing Authority and that the Blaine County Housing Authority is correctly identified.

The applicant is also requesting phased final plat approval to allow sale of the first eight (8) units completed in two (2) of the three (3) buildings to commence upon their tentative completion in October 2008. Construction of the third, and final building would tentatively begin in March 2009.

The Council is willing to enter into a phasing agreement with the applicant that would allow a final plat to be recorded for the first two buildings, allowing for a subsequent final plat for the third building. The Hailey subdivision ordinance allows for this procedure and was done for the Sweetwater development. This agreement has been added as a condition of approval (condition e).

On August 25, 2008 the City Council discussed the applicant's requests. There were no issues with the development of a phasing agreement and the City Attorney was to work on a draft for the Council's consideration. The Council was generally amenable to negotiating changes to the Community Housing Plan. Staff was to verify that the provisions of Section 4.11 of the Subdivision Ordinance would be met by allowing an alternative deed for a portion of the three (3) Community Housing units.

After the August 25 meeting the applicant requested an additional modification; the preliminary plat was approved with four (4) units in each of the three (3) buildings on site for a total of twelve (12) units. The applicant proposed to modify the third building to have two (2) units instead of four (4) (construction of the third, and final building would

tentatively begin in March 2009). This change would bring the total number of units to ten (10) and would change the Community Housing requirement to two (2) units.

This modification does not violate any provision of the Subdivision Ordinance. Because the applicant is proposing to reduce the number of units rather than increasing them the administrator finds that the change is generally consistent with the approved preliminary plat and can proceed to Council for review. The Council did not decide to remand the plat back to the Commission for preliminary plat review due to the change in number of total units proposed.

The Council discussed the two (2) Community Housing units be designated as follows:

- One (1) unit designated as Category 5 income deed restricted with priority given to a Blaine County Sheriff officer first and then to a Hailey Police officer.
- One (1) unit designated with an alternative deed restriction limiting buyers to individuals who work full time within Blaine County, similar to the deed drafted as part of the Old Cutters annexation agreement.

#### **Life/Safety Issues:**

The location of the hydrant approved on the preliminary plat interferes with vehicular circulation on the site. The applicant relocated the fire hydrant at the request of the City; however the requested relocation was within an access and parking easement. The hydrant will be relocated by the City to a location off site as determined by the Fire Chief.

#### **Standards**

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

#### **SECTION 3 – PROCEDURE**

##### **3.3 Final Plat Approval.**

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

The Commission's approval of the preliminary plat was on October 16, 2006.

##### **3.3.2 The administrator shall review the Final Plat application to ensure that the application submitted is consistent with the approved preliminary plat. The conditions imposed on the preliminary plat approval must be**

**either completed or shown on plans or the plat prior to any public notice for final plat approval.**

The applicant proposed to modify the third building to have two (2) units instead of four (4) (construction of the third, and final building would tentatively begin in March 2009). This change would bring the total number of units to ten (10) and would change the Community Housing requirement to two (2) units.

This modification does not violate any provision of the Subdivision Ordinance. Because the applicant is proposing to reduce the number of units rather than increasing them the administrator found that the change is generally consistent with the approved preliminary plat and the application was brought to Council for review. The Council did not decide to remand the plat back to the Commission for preliminary plat review due to the change in number of total units proposed. The final plat is generally consistent with the preliminary plat approved by the Commission. Conditions of preliminary plat approval have been met or are carried over.

**SECTION 4 – DEVELOPMENT STANDARDS**

Development standards were reviewed in detail during the preliminary plat approval process and are noted in the preliminary plat Findings of Fact and Decision.

**Condominiums shall not be subject to Section 4.10 of this Ordinance.**

**CONDOMINIUMS (Section 7 of the Subdivision Ordinance)**

**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 CC&R's have been submitted and address utilities and the maintenance of common areas. 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 tied to specific condominium units on**

**the condominium plat and in any owner's documents and that the detached garage(s) may not be sold and/or owned separate from any dwelling unit(s) within the condominium project.**

Three 3-unit carports were approved in design review and are required to be completed prior to the recordation of a final plat. During the Council's review of the Community Housing Plan, the Council agreed to allow the applicant to eliminate the construction of the carports from the plans.

**7.3 Storage/Parking Areas. Condominium projects shall provide parking spaces according to the requirements of Article IX of the Hailey Zoning Ordinance No. 532, as amended.**

Section 9.4.1 of the Zoning Ordinance requires 1.5 parking spaces per unit for multi-family projects; 15 spaces are required and 18 are proposed.

**7.4 Construction Standards. All condominium project construction shall be in accordance with the International Building Code and International Fire Code as adopted.**

The Building Official has verified that the building meets occupancy separation requirements.

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

As noted above, Section 4.10 is not applicable because the units are being converted into condominium units.

## **CONCLUSIONS OF LAW AND DECISION**

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


1. Adequate notice, pursuant to Section 3 of the Hailey Subdivision Ordinance, was given for the public hearing.
2. Upon compliance with the conditions noted below, the application substantially meets the standards of approval set forth in the Hailey Subdivision Ordinance.
3. The application for Final Plat is approved by the Hailey City Council, with the following conditions:
  - a) The final plat submitted for signature shall include plat notes 1 through 4 as

stated on the approved final plat.

- b) Each building shall be individually metered for water and each unit shall have a separate sewer service. The Homeowners Association shall be billed for the water usage.
- c) The Housing Plan shall be amended to reflect the changes agreed upon by the Council and shall be stated in an agreement signed by the City and applicant.
- d) The renovations and landscaping described in the community housing plan shall be completed prior to the recordation of the final plat. These improvements include but are not limited to:
  - 1. New siding and paint to match the neighboring market units.
  - 2. Installing Firewall between the units to meet the Building Code.
  - 3. Interior finishes upgrades as determined by the Blaine County Housing Authority and owner.
  - 4. New landscaping as shown in attached plan LA 1.0.
  - 5. New entry on end units as shown on plan to match market units.
  - 6. New pavement as shown on plan for walkways.
  - 7. One community housing unit shall be available in each of the 2 buildings in the first phase.
- e) Pursuant to Section 4.11.3.4 of the Subdivision Ordinance the parties shall execute an agreement incorporating the community housing plan prior to recording of the final plat which shall be recorded simultaneously with the plat.
- f) The parties shall execute a phasing agreement to allow a final plat to be recorded for the first two buildings and to allow for a subsequent final plat for the third building. One (1) community housing unit shall be included in each of the two (2) buildings proposed for the first phase. The phasing agreement shall be executed simultaneously with the recording of the final plat for the buildings in the first phase.
- g) An in-lieu contribution for sidewalk shall be made prior to recordation of a final plat. The estimated cost of construction of concrete sidewalks and drainage improvements provided by a qualified contractor, plus associated engineering costs, shall be submitted to the City Engineer for approval.
- h) Issuance of permits for the construction of buildings within the proposed subdivision shall be subject to Section 3.1 of the Subdivision Ordinance, requiring certain improvements.
- i) 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.

- j) 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.
  
- k) The final plat shall be recorded within one year of the date of final plat approval (unless otherwise provided for within a phasing agreement.) The final plat submitted for signature shall conform to the requirements found in Article 50-1301 (et. seq.) of the Idaho Code (as amended) and to the requirements set forth by Blaine County for digital plat submittals. The applicant shall provide the City with a letter-size or ledger-size photocopy of the recorded plat showing the instrument number and date of recordation.
  
- l) Any subdivision inspection fees due shall be paid prior to recording the final plat.

Approved this 9<sup>th</sup> day of September 2008.

  
Richard L. Davis, Mayor, City of Hailey

Attest:

  
Mary Cone, City Clerk



### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24<sup>th</sup> day of September, 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 checked="" type="checkbox"/>	U.S. Mail	Walt & Jenny Femling
<input type="checkbox"/>	Via Electronic Mail	P.O. Box 2273
<input type="checkbox"/>	Via Facsimile	Hailey, ID 83333
<input type="checkbox"/>	Hand Delivered	

<input checked="" type="checkbox"/>	U.S. Mail	Bruce Smith
<input type="checkbox"/>	Via Electronic Mail	Alpine Enterprises, Inc.
<input type="checkbox"/>	Via Facsimile	P.O. Box 2037
<input type="checkbox"/>	Hand Delivered	Ketchum, ID 83340

CITY OF HAILEY

By Becky Mead  
Becky Mead, Deputy Clerk