


STAFF REPORT

TO: Hailey Planning and Zoning Commission
FROM: Mariel Platt, Planner 
RE: Amendment to Conditional Use Permit – Bus Maintenance Facility
HEARING: July 6, 2009

Applicant: Blaine County School District
Location: Wood River High School Campus (1060 Fox Acres Road)
Zoning: General Residential (GR)
Note: Staff analysis is in lighter type

Notice

Notice for the public hearing on July 6, 2009 was published in the Idaho Mountain Express and mailed to property owners within 300 feet on June 17, 2009, and notice was posted on the property on June 29, 2009.

Application

An application by the Blaine County School District for an amendment to its existing Bus Maintenance Facility Conditional Use Permit (CUP), which was issued in 2003 and amended in 2005. The purpose of this 2009 CUP amendment is to revise condition 4.d. to allow an on-site fuel storage dispensing tank at the same location.

The applicant has concurrently applied for a CUP for an above ground biodiesel storage and dispensing tank, located at the Bus Maintenance Facility, Wood River High School (1060 Fox Acres Road), within the General Residential (GR) District. Above ground flammable and combustible liquid tanks utilized by a public use are permitted conditional uses within this zone with approval of a CUP.

Procedural History

On February 7, 2003, the Blaine County School District submitted an application for a Conditional Use Permit (CUP) for a school bus parking and maintenance facility. The proposed facility consisted of two covered bus shelters for a total of 30 school buses, and a three bay maintenance facility with an additional wash-bay. The proposed maintenance facility is physically attached to an existing school building commonly referred to as the "science building." The parking facility is located approximately one hundred feet to the south. The proposed bus facilities were determined to be a Public Use ("Use for a public purpose by a city, school district, county, state, or any other public agency or a public utility.") Public Uses are allowed with an approved Conditional Use Permit in the General Residential (GR) district.

A concurrent Design Review application and an application to amend a previously approved Planned Unit Development (PUD) at the High School Campus was also submitted with the original CUP application.

The Commission held public hearings on the School District's applications on March 17, May 5, June 2, and June 16, 2003. Conditional approval of the CUP was given on June 2, 2003 (see attached Findings of Fact).

On July 28, 2003, September 8, 2003 and September 22, 2003 the Hailey City Council ("Council") considered an appeal (see attachment), submitted by Robert and Sheila Goff, Steve and Rebecca Keefer, Thomas and Carol Ward, Dick and Sharon Urich, and Robert Mercurio ("Appellants"). The Appellants filed an appeal of the Hailey Planning and Zoning Commission ("Commission") approvals of the school bus parking and maintenance facility Conditional Use Permit, Design Review, and recommendation for approval of an amendment to the Blaine County School District Planned Unit Development.

On September 22, 2003 the Council affirmed the decision of the Commission, but added a condition that the School District construct a noise barrier for a distance of 200 feet and install landscaping in a 31 foot wide buffer area adjacent to the property located at 1180 Green Valley Drive.

One of the conditions of the Commission's CUP approval was:

"The Conditional Use Permit shall be reviewed approximately 6 months from the beginning of the facility's use. At that time, additional conditions may be placed if necessary to further mitigate hazardous and/or disturbing features of the use."

The Findings of Fact from the 6 month review, dated April 13, 2005, resulted in additional conditions of approval and included all conditions from the original 2003 Findings of Fact, but did not address any additional requirements regarding the prohibition of fuel storage.

The purpose of this 2009 CUP amendment is to revise condition 4.d. in the original Bus Maintenance Facility Findings of Fact, dated June 2, 2003 (see attachment), which states, "no fuel storage shall occur at the High School Campus." The removal of this condition from the Bus Maintenance Facility CUP is a suggested condition of approval for the concurrently submitted new CUP application for above ground fuel storage at this location.

Standards of Evaluation and Summary

11. Conditional Use Permits

Section 11.4 of the Hailey Zoning Ordinance establishes the standards for proposed conditional uses. The Commission should review the original 2003 Findings of Fact for the School District's bus maintenance facility's CUP (see attachment) and should specifically refer to standards (a) through (i) of this document in determining whether the removal of condition 4.d will allow for positive findings to continue to be made with the removal of this condition.

Motion Language

Approval:

Motion to approve the amendment to the Conditional Use application for a bus maintenance facility located at the Wood River High School Campus (1060 Fox Acres Road), by removing condition 4.d., “no fuel storage shall occur at the High School Campus,” finding that the amendment to the CUP is in conformance with the criteria of Section 11.4, (a) through (i), and all applicable requirements of the Zoning Ordinance, and City Standards.

Denial:

Motion to deny the amendment to the Conditional Use application for a bus maintenance facility located at the Wood River High School Campus (1060 Fox Acres Road), by removing condition 4.d., “no fuel storage shall occur at the High School Campus,” finding [refer to criteria of Section 11.4. (a) through (i) in making findings].

Continuation:

Motion to continue the public hearing upon the amendment to the Conditional Use application for a bus maintenance facility located at the Wood River High School Campus (1060 Fox Acres Road) to _____.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

On June 2, 2003 (continued from May 5, 2003) the Hailey Planning and Zoning Commission considered an application submitted by Blaine County School District (BCSD) for a Conditional Use Permit for a bus parking and maintenance facility at Wood River High School. The property is within the General Residential (GR) District, and Section 4.3.3 of the Hailey Zoning Ordinance #532 lists Public Uses as a conditional use within that district. 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 May 5, 2003, public hearing was published in the Wood River Journal and mailed to property owners within 300 feet on April 16, 2003, and notice was posted on the property on April 28, 2003. Notice was mailed to property owners requiring notice but not on the original mailing list, on May 14, 2003. Notice was posted on the property again on May 23, 2003.

Application

Blaine County School District, with John Gaeddert of Corporation for Land Planning and Engineering (CLPE), has submitted a Conditional Use Permit application for a school bus parking and maintenance facility, located at the Wood River High School Campus. The applicant proposes two covered bus shelters for a total of 30 school buses, and a three bay maintenance facility with one wash-bay. The proposed maintenance facility would be physically attached to an existing school building commonly referred to as the "science annex"; the parking facility would be located approximately one hundred feet to the south. The proposed bus facilities have been determined to be a Public Use ("Use for a public purpose by a city, school district, county, state, or any other public agency or a public utility.") Public Uses are allowed with an approved Conditional Use Permit in the General Residential (GR) district. Following the Council's recent decision to allow annexation, the property will be located in the General Residential (GR) zoning district, and public uses may be allowed under the Conditional Use Permit process.

The "Project Overview" in the application binder, and the submitted plans, contain additional details of the application.

Applications for Design Review and to amend a previously approved Planned Unit Development (PUD) at the High School Campus have also been submitted.

Procedural History

The Commission held a hearing on the School District's applications on March 17, 2003. The application was tabled at that time, with a request for several items of additional information.

A second public hearing was then scheduled for and held on May 5, 2003, with public notice given as noted above.

A few days prior to the May 5, 2003 hearing, it was discovered that there may have been flawed notice to property owners within 300 feet. The hearing was continued to June 2, 2003, in order to allow time for the applicant to verify the mailing list and for the City to mail notice to any additional property owners. It was found that six property owners had not received the notice for the first public hearings. These persons were mailed the notice of the June 2, 2003 public hearing on May 14, 2003.

Standards of Evaluation

Section 11.4 of the Hailey Zoning Ordinance establishes the standards for proposed conditional uses. For each applicable standard (in bold print), the Commission makes the following Findings of Fact:

a) Will, in fact, constitute a conditional use as established for the zoning district involved;

The proposed use is located primarily within the area under consideration for annexation. The proposed zoning for that annexed area is General Residential District, and the remainder of the High School Campus is zoned GR. Section 4.3.3(e) lists "Public service, public use, and public utility facilities" as conditional uses within that district. Section 2.2.55 defines "Public use. Use for a public purpose by a city, school district, county, state, or any other public agency or a public utility." An analysis was provided to the City by Rand Peebles on behalf of the School District (Exhibit 6 of the application: 10/10/02 Peebles letter to the City). The District believes that the bus maintenance facility is "accessory" to the permitted uses on the campus and, thus, allowable; and, that the bus parking is not prohibited in the GR district. The City's analysis was subsequently provided to the Mr. Peebles and the School District (letters from Ned Williamson dated November 15, 2002 and Kathy Grotto dated November 20, 2002). As a result, the School District has submitted a CUP application.

Moreover, a condition of the recent annexation of this property requires a conditional use permit application for the facility as a public use.

For these reasons, the Commission finds that this standard has been met. (Unanimous)

b) Will be harmonious with and in accordance with the general objectives or any specific objective of the Comprehensive Plan and this Ordinance;

Comprehensive Plan:

The applicant sites various sections of the Comprehensive Plan in its analysis of the CUP criteria, on page 25 of the application binder.

The following sections were considered by the Commission: Section 2, Section 5, Section 9, and Section 15.

Section 2, Hazardous Areas

2.6 Avalanche Hazard. Goal I, "The goal of this section is to reduce the potential threat to loss of life, limb or property and minimize public expenditures due to avalanche."

The existence of avalanche hazard areas within the subject property has been acknowledged by the School District. It is their position that such hazard may be mitigated by appropriate structural engineering. Exhibit 10 of the application, "Mears Avalanche Study", gives the applicant's analysis. Arthur Mears, P.E., an avalanche control engineer, states that construction within the blue avalanche zone is feasible and mitigation is possible. He further states in a letter dated April 7, 2003, that "the structure has been designed to catch debris (snow and entrained soil, plants, and small rocks) on the fill and sloping roof and retain this debris."

The Fire Chief noted that the possibility of debris (mud) flows appears to be as common if not more common than avalanches in that side of the valley, and that the dynamics of a debris flow is usually significantly greater than for avalanche events. Mr. Mears states that he found no evidence of debris flows at the site of the proposed bus facility, also in April 7, 2003 letter.

AHJ Engineers, P.C., a structural engineer, verifies the capability of the structures (east wall of maintenance facility and east bus canopy structure) to meet the avalanche design magnitude specified by Mears, in a letter dated March 27, 2003.

The School District agrees to a condition requiring them to clear out the "trough" area at base of hill subsequent to any avalanche so that subsequent events in the same year could be contained.

The School District provided verification that other public buildings, including buildings at River Run, St. Lukes Hospital, and the Valley Club, were approved for construction in blue avalanche zones in Blaine County.

Section 5, Land Use

Goal I. To develop clear land use and development procedures and to provide for a balanced mix of land uses suitably related to each other and their natural setting.

The proposed bus facility is located on the high school campus, with an aquatic center and residential uses adjacent to the campus.

Section 9, Public Facilities, Utilities and Services

I. Goal: Maintain facilities and utilities to meet primary service needs of the City.

Policy 1: To coordinate and cooperate with public, semi-public, and private institutions in the provision of facilities for public use.

A letter dated April 21, 2003, from Rand Peebles, attorney for the School District, was submitted regarding the offer by the City to consider the feasibility of utilizing the City-owned lot in Airport West for school bus facilities. The District's conclusion was, given the District's needs and the City's needs, "it simply does not appear workable in terms of accommodating both the City's needs and the District's needs."

Section 15. School Facilities and Transportation.

15.12, School Transportation

I. Goal. It is the goal of the City of Hailey to provide or ensure the provision of safe, adequate, convenient and multi-modal transportation access to all school sites, as incorporated herein and referenced on the attached Conceptual School District Transportation Master Plan Map.

The applicant's analysis focuses on this section of the Plan, on pages 20 through 22 of the application binder. The analysis refers to support of providing a centralized and unified location for the bus maintenance facility, relocating the facility on the high school property to a more secure and less visually obtrusive location, and improving vehicular access. A bus parking and maintenance facility had been located at the high school campus for approximately 27 years (adjacent to the Blaine County Aquatic Center).

For these reasons, based on the conditions, the Commission finds that this standard has been met. (3 in favor, 2 opposed)

- c) **Will be designed, constructed, operated, and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and that such use will not change the essential character of the same area;**

The general vicinity surrounding the proposed facility includes the old and new high school buildings, parking lots, playing fields, the Blaine County Aquatic Center, and residential uses. The school and aquatic center provide amenities with attendant traffic.

The design and construction of the bus maintenance facility is proposed to essentially match the existing science building to which it is attached. The design and construction of the bus parking facility is proposed to be screened by berming and landscaping. Landscaping would be maintained as part of the entire High School Campus landscaping; currently this is contracted to a local landscape maintenance company. The operation of the proposed facility involves the use, parking, washing and maintenance of up to 30 school buses.

The proposed conditional use will allow the existing uses in the vicinity to continue and based on the conditions imposed, the proposed conditional use will not change the essential character of the uses in the vicinity.

For these reasons, based on the conditions, the Commission finds that this standard has been met. (3 in favor, 2 opposed)

d) Will not be hazardous or disturbing to existing or future neighboring uses;

Neighboring uses include the existing high school building that is to become a “community campus” for other educational and recreational uses, the new high school, playing fields, the Aquatic Center, and nearby residential homes.

According to the applicant, during the 180-day school year, buses will be dispatched each day from the proposed parking facility as follows:

- 18 buses will depart between 6:30 - 7:15 AM;
- 6 buses will depart between 10:15 - 11:15 AM;
- 18 buses will depart between 1:30 - 2:30 PM.

Between the morning, mid-day and afternoon routes, each of the buses will generally return to the parking facility. End of day routes are completed on a staggered basis between 4:00 and 5:15 PM. However, one or two of the buses may not return until approximately 7:00 - 7:30 PM if an after school youth activity bus is needed. Away travel games and other special events also require the dispatch of the travel bus at varied times. There will be additional traffic generated by the drivers and maintenance staff.

No fuel storage for buses or other vehicles is proposed at the facility. A (Brico) fuel truck dispenses fuel to the buses three days a week.

Effects of the operation of up to 30 buses that may be hazardous or disturbing to neighboring uses could include diesel emissions and noise. The applicant has provided studies on both noise and fumes, and notes “the studies find that the proposed uses do not create unreasonable neighborhood impacts with regard to noise or smell.” Exhibit 11 for the Spectrum Noise Study, and Exhibit 12 for the Millennium Science Diesel Emission Study, in the application binder, address these impacts.

Roy Jost at ITD, agrees with the conclusions of the Spectrum Noise Study. Mitigation measures such as turning off the back-up beepers while in the facility, conducting horn checks off campus, and speed limits, are proposed. The School District sites school bus driver training and evaluation as methods of enforcing the mitigation measures to reduce noise. The City does not have any noise ordinance that includes decibel limits.

Comments regarding diesel emissions were received from EPA and Idaho DEQ. Christopher Lammer of Millennium Science responded to details of those comments. Emission levels were tested at a distance of 300 feet, representing the nearest residential property line. Emission rates for all pollutants tested were below the compliance standards. The highest emissions were found at approximately 52 feet away from the facility, but those emissions were still below standards. The applicant stated that the idling times of the buses (longest idling periods in the morning) do not generally coincide with the use of the adjacent playing fields. The Idaho State Department of Education has not

issued any directives or regulations on diesel fumes. The applicant as agreed to limit idling time to 270 minutes per day for all buses on site.

The applicant has researched the feasibility of utilizing bio-diesel as a fuel, and has stated they are willing to make a commitment to proactively pursue the conversion of its bus fleet to this alternative fuel which has environmental benefits. The use of bio-diesel requires retrofitting of the engines: in-tank fuel heaters, heat tape on fuel lines, and fuel heaters within the filter are needed. There would be no change in idling time with the use of bio-diesel. The applicant stated if 100% of bio-diesel is used, there would be a 95-97% output reduction in pollutants, however the fuel is likely to be a blend of bio-diesel and regular diesel, and the actual percent of bio-diesel in the fuel that will be provided is currently unknown.

A traffic count of the regular facility traffic, along with a narrative on the facility related vehicle trips in relation to the projected total vehicle trips in the subject location were provided by the applicant in a memo from Corporation for Land Planning and Engineering. The study notes that approximately 400, or more, vehicle trips are currently approved to pass by the northeast corner of Green Valley Drive. The addition of 192 trips resulting from the proposed bus facility represents approximately one-third of the total trips that would occur. There is a single access route to the proposed bus facility, and to the rear parking lots, which passes by the north end of Green Valley Drive.

The School District cited Aspen, Vail and Steamboat Springs as resort communities that have school bus facilities adjacent to residential areas.

For these reasons, based on the conditions, the Commission finds that this standard has been met. (3 in favor, 2 opposed)

- e) **Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, and drainage structure. Agencies responsible for the establishment of the proposed use shall be able to provide adequately any such service;**

The proposed facility is located on the high school campus, which has public access via Fox Acres Road, a public street. A portion of the proposed facility is located on approximately 3 acres of land that was recently annexed into the City of Hailey. As such, emergency services are extended to the property.

The Fire Chief notes that the applicant should have a method to identify times of high avalanche danger have an alternate parking area for the vehicles during those times. He further notes that some communities with avalanche danger have an acknowledgement that during the threat of, or following the event of an avalanche or debris flow, that the city may deem it necessary to suspend some or all of the city services and utilities to that property. He cites the Avalanche Ordinance from Silverton, Colorado. One section addresses suspension of services, as follows:

“Suspension of the Town Services: During periods of avalanche danger, town services may be suspended or otherwise not provided to property within the Avalanche Hazard District. The Town of Silverton does not accept responsibility for or guarantee that town services, rescue efforts or emergency services will be provided during periods of avalanche danger.”

A condition of approval states that the City does not accept responsibility for or guarantee that city services, rescue efforts or emergency services will be provided during periods of avalanche danger

The City service for water and sewer would appear to be unaffected by an avalanche or debris flow. Because the access to the bus facilities is private, the City cannot control access at this location.

For these reasons, based on the conditions, the Commission finds that this standard has been met. (Unanimous)

f) Will not create excessive additional requirements at public cost for public facilities and services;

As above, especially for emergency services.

For the reasons stated in paragraph (e), based on the conditions, the Commission finds that this standard has been met. (Unanimous)

g) Will not involve uses, activities, processes, materials, equipment, or conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare, dust, odors, vibration, water or air pollution, or safety hazards;

The operation of up to 30 buses will likely result, to some extent, in traffic, noise, fumes, odors, and air pollution. Safety hazards are present with the existence of the avalanche and debris flow (mud flow) hazardous areas within the subject property. Whether those effects are “excessive”, or will be adequately mitigated by the design, construction, and operation of the proposed facilities, is a key issue of this application. See analysis under item (d) above for proposed mitigation measures.

For these reasons, based on the conditions, the Commission finds that this standard has been met. (4 in favor, 1 opposed)

h) Will have vehicular approaches to the property, which shall be designed so as not to create an interference with traffic on surrounding public thoroughfares;

Vehicular approaches to the proposed bus facilities will be via Fox Acres Road for nearly all buses, with potentially a limited number via Green Valley. Two bus routes would utilize Green Valley Drive, in order to not drive unnecessarily through other residential areas.

For these reasons, based on the conditions, the Commission finds that this standard has been met. (Unanimous)

i) Will not result in the destruction, loss, or damage of a natural, scenic, or historic feature.

The “toe of the hill”/pedestrian trail previously located in the area of the proposed bus parking facility has been impacted by the grading of the site. The applicant states that the trail will be relocated for pedestrian access to the “toe of the hill” trail continuing south, and to the playing fields.

For these reasons, based on the conditions, the Commission finds that this standard has been met. (Unanimous)

Other

Parking: Parking is to be reviewed in the PUD hearing.

Lighting: Lighting is to be reviewed in the Design Review hearing.

CONCLUSIONS OF LAW AND DECISION

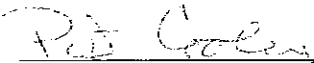
Based upon the above Findings of Fact, the Commission makes the following Conclusions of Law and Decision:

1. Adequate notice, pursuant to Section 11.3 of the Hailey Zoning Ordinance and Idaho Code Section 67-6512, was given for the public hearing.
2. The application is in accordance with the Comprehensive Plan, Sections 9 and 15.
3. Upon compliance with the conditions stated below, the application substantially meets all criteria (a) through (i) set forth in Section 11.4 of Zoning Ordinance No. 532.
4. The applicant shall receive a Conditional Use Permit, subject to the following conditions:
 - a) The deciduous trees placed as screening for the proposed parking and maintenance facilities shall be augmented with at least (15) additional coniferous trees; landscape screening shall be extended to the south end of the bus turnaround area; and the landscape berm (approximately 3 feet high) shall be extended to north and west to better hide the maintenance facility. A detailed plan for landscaping extending at least 400 feet west from the southwest corner of the science building shall be submitted for Design Review approval. At least 15% of the trees shall be 4-inch caliper or greater; at least 25% shall be 3-inch caliper or greater.


- b) A plan showing the bus access lane moved as close to the existing building as possible shall be submitted for Design Review evaluation.
- c) An alternate circulation route shall be presented for evaluation at Design Review, showing an access road between the existing and new school buildings.
- d) No fuel storage shall occur at the High School Campus.
- e) The School District shall identify times of high avalanche danger and have an alternate parking area for vehicles during that time, as well as a plan for notifying employees.
- f) Not more than 30 buses shall be parked at the facility and all buses shall be parked within the covered parking shelters or within the maintenance facility (except during times of high avalanche danger).
- g) The doors of the maintenance facility shall be closed while buses are not being moved in or out.
- h) All buses must access the site via Fox Acres Road; no buses may access (ingress or egress) the site via Green Valley Drive, with the exception of not more than two bus routes per day.
- i) Buses utilized for normal student pick-up shall not be started before 6:00 a.m.
- j) All exterior lighting shall comply with the Outdoor Lighting Ordinance.
- k) The Conditional Use Permit shall be reviewed approximately 6 months from the beginning of the facility's use. At that time, additional conditions may be placed if necessary to further mitigate hazardous and/or disturbing features of the use.
- l) The City of Hailey does not accept responsibility for or guarantee that city services, rescue efforts or emergency services will be provided during periods of avalanche danger.
- m) In the event of an avalanche, the school shall clear out the 'trough' area at the base of the hill adjacent the east bus canopy before the bus parking facility can be used, so that additional events in the same year will not spill westward of the canopy.
- n) A sign (similar to that posted at the river run ski area maintenance building) shall be posted on-site at the bus parking & maintenance facility. It shall read: "Danger - avalanche area - during times of avalanche hazard do not occupy area between building and mountain slope or occupy parking area by bus turnaround south of bus parking lot."

- o) The School District shall implement its pre trip inspection list for the bus drivers to reduce noise as follows:
- Check horn at pool while in parking lot prior to turning on Fox Acres Road. If inoperable return to shop
 - ONLY IN BUS PARKING AREA: Use Interrupt Switch (Push and Hold) while backing from parking area.
 - Limit engine speed to 1000 rpms when entering/exiting Old High School Complex.
- p) The School District shall pro-actively work with Brico or a similar supplier to provide bio-diesel fuel for the bus fleet and, upon procurement of same, shall make the necessary heat system improvements to the fuel line and convert to bio-diesel on all buses possible, in order to reduce pollutants. The District shall update the City Planning Department every 6 months, in writing, on the progress made toward this conversion.
- q) Bus drivers shall use discretion with the throttle near the intersection with Green Valley Road. Accordingly, bus drivers shall not exceed 1000 rpm or 10 mph while operating near Green Valley Road, in particular, or generally within the high school parking lot.
- r) Total idling time of buses, regardless of the number of buses at the facility, shall be limited to not more than 10 minutes per bus, not to exceed a maximum of 270 minutes per day. Buses shall be plugged in to engine block heaters during winter months.
- s) This Conditional Use Permit is subject to the City Council's approval of the amendment to the Planned Unit Development agreement.

Approved this 7 day of July, 2003.


 Pat Cooley, Chair
 Hailey Planning and Zoning Commission

Attest:


 Tara Hyde, Deputy Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of July, 2003, 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 Facsimile
- Hand Delivered

John Gaeddert
Box 2368
Hailey, ID 83333

CITY OF HAILEY

By Tara Hyde
Tara Hyde, Deputy Clerk

DECISION

Introduction

On July 28, 2003, September 8, 2003 and September 22, 2003 the Hailey City Council ("Council") considered an appeal, submitted by Robert and Sheila Goff, Steve and Rebecca Keefer, Thomas and Carol Ward, Dick and Sharon Urich, and Robert Mercurio ("Appellants"), represented by Fritz Hammerle. The Appellants filed an appeal of the approvals of a Conditional Use Permit and Design Review, and a recommendation for approval of an amendment to the Planned Unit Development by the Hailey Planning and Zoning Commission ("Commission") for the Blaine County School District, all for a school bus parking and maintenance facility at the Wood River High School Campus. The Council, having been presented with all information and testimony in favor and in opposition to the proposal, hereby makes the following Decision.

Notice

Notice for the July 28, 2003 public hearing was published in the Wood River Journal and mailed to property owners within 300 feet on July 9, 2003; the notice was posted on the property on July 21, 2003. The public hearing was continued on the record to September 8, 2003, and again to September 22, 2003. No additional notice is required.

Application

On February 7, 2003, the Blaine County School District submitted an application for a Conditional Use Permit (CUP) for a school bus parking and maintenance facility. The proposed facility would be located at the Wood River High School campus, to the south and east of the old high school, in the General Residential Zoning District.

The facility would consist of two covered bus shelters for a total of 30 school buses, and a three bay maintenance facility with an additional wash-bay. The proposed maintenance facility would be physically attached to an existing school building commonly referred to as the "science building." The parking facility would be located approximately one hundred feet to the south. The proposed bus facilities have been determined to be a Public Use ("Use for a public purpose by a city, school district, county, state, or any other public agency or a public utility.") Public Uses are allowed with an approved Conditional Use Permit in the General Residential (GR) district.

A concurrent Design Review application and an application to amend a previously approved Planned Unit Development (PUD) at the High School Campus were also submitted.

Procedural History

The Commission held public hearings on the School District's applications on March 17, May 5, June 2, and June 16, 2003. Conditional approval of the CUP was given on June 2, 2003. Conditional approval of Design Review, and a recommendation for approval of the amendment to the Planned Unit Development, were given on June 16, 2003. The approvals and recommendation were subject to several conditions, set forth in the Findings of Fact, which were adopted on July 7, 2003. On July 28, 2003, September 8, 2003 and September 22, 2003, the Council heard the appeal. The hearing on September 8, 2003 was continued to September 22, 2003 for the purpose of considering further mitigation relating to noise, fumes and traffic.

Based on the record and good cause appearing, the Council affirms the decision of the Commission.

Issues on Appeal

The Appellants have raised the following issues on appeal:

1. Whether the Commission relied upon newly discovered evidence that the Appellants did not have an opportunity to rebut.
2. Whether the District met its burden of establishing compliance with Section 11.4.1(b) of the Hailey Zoning Ordinance in showing that the facility is harmonious with or in accordance with the general or specific objectives of the Comprehensive Plan.
3. Whether the District met its burden of establishing compliance with Section 11.4.1(b) of the Hailey Zoning Ordinance in showing that the facility is harmonious with or in accordance with the general or specific objectives of the Hailey Zoning Ordinance.
4. Whether the District met its burden of establishing compliance with Sections 11.4.1(c), (d) and (g) of the Hailey Zoning Ordinance.

Standard of Review

This appeal should be limited to a review of the record. Courts should defer to the Commission's findings of fact unless the findings of fact are clearly erroneous. *Friends of Farm to Market v. Valley County* 137 Idaho 192, 196, 46 P.3d 9, 13 (2002). The Commission's factual findings are not clearly erroneous so long as they are supported by substantial, competent, although conflicting, evidence. *Id.* It must be noted that a conditional use permit application is "governed strictly by existing ordinance standards and requirements." *Friends of Farm to Market*, at 199, 46 P.3d at 16, citing *Taylor v. Board of County Comm'rs*, 124 Idaho 392, 401, 860 P.2d 8, 17 (Ct.App. 1993).

The party appealing the Commission's decision must *first* show that the Commission first erred in a manner specified under Idaho Code §67-5279(3) and *second* that that a substantial right has been prejudiced. *Price v. Payette County Bd. of Comm'rs* 131 Idaho 426, 429, 958 P.2d 583, 586 (1998); Idaho Code §67-5279(4). Idaho Code §67-5279(3) provides that the Commission's decision must be affirmed, unless the Council determines that the Commission's findings,

inferences, conclusions or decisions: (a) violated the constitution or statutory provisions; (b) exceeded its statutory authority; (c) were made upon unlawful procedure; (d) were not supported by substantial evidence on the record; or (e) were arbitrary, capricious or an abuse of discretion. *Idaho Code §67-5279(3); Evans v. Bd. of Comm'rs of Cassia County 137 Idaho 428, 431, 50 P.3d 443, 446 (2002).*

Discussion

A. The appeal of the PUD recommendation is not appropriate.

The appeal of the PUD recommendation is not appropriate at this time because the Commission recommended an amendment of the planned unit development agreement and there was no final decision at the time of the notice of appeal. An appeal is appropriate if there is a final decision, but a recommendation is not a final decision. Now that the Council has approved the Commission's recommendation, there would be a final appealable decision.

B. The Commission did not rely upon newly discovered evidence that the Appellants did not have an opportunity to rebut.

The Appellants contend that the Commission's decision is based on incorrect evidence that the Appellants did not have an opportunity to rebut. First, the Appellants claim that a Commission member incorrectly stated that 167 bus trips would not be a significant impact based on his belief that there are currently 84 trips that affect the Appellants' property. Second, the Appellants claim that a Commission member inappropriately made comments that a possible relocation of the bus maintenance facility to Airport West would move the impact of the facility from one neighborhood to another. Third, the Appellants claim that statements by Commission members during deliberations that it is common practice to park bus fleets at schools is misleading.

These three examples do not constitute newly discovered evidence. Throughout the proceedings, the Commission heard and considered evidence relating to the number of bus trips, the route of travel of the buses, an effort to locate the facility in the Airport West Subdivision and the location of bus facilities in resort and other Idaho communities. For this reason, these three items do not constitute newly discovered evidence and the Appellants were not deprived of an opportunity to rebut this evidence.

The two comments relating to Airport West and practices elsewhere are not relevant to the conditional use permit standards that the Commission evaluated. *See Hailey Zoning Ordinance, §§ 11.4.1(a) through (i).* The Commission had to decide whether the application met the standards of evaluation for a conditional use permit at the proposed location, not at Airport West and not based on other practices elsewhere.

C. The District met its burden of establishing compliance with Section 11.4.1(b) of the Hailey Zoning Ordinance in showing that the facility is harmonious with or in accordance with the general or specific objectives of the Comprehensive Plan.

In a recent line of cases, the Idaho Supreme Court has "held that a Comprehensive Plan does not operate as legally controlling law, but rather serves to guide and advise the governmental agencies responsible for making zoning decisions." *Urrutia v. Blaine County 134 Idaho 353,*

357-58, 2 P.3d 738, 742-43 (2000); *Evans v. Teton County*, ___ Idaho ___, (2003-0066), ___ P.3d ___. Notwithstanding the Court's pronouncement that a comprehensive plan is not legally controlling law, the Commission still evaluated Sections 2 (Hazardous Areas), 5 (Land Use), 9 (Public Facilities, Utilities and Services) and 15 (School Facilities and Transportation) of the Comprehensive Plan. The Appellants contend that the placement of the bus facility is specifically addressed in Section 15 of the Comprehensive Plan because the plan states that the bus parking and maintenance facility should be on the east side of the football field, or to the north of the new high school. Section 15 qualifies the location by stating that the location is "potentially the east side of the football field." For the remaining arguments raised by the Appellants, the Council believes there is merit to the Appellants' view about protection of neighborhoods and isolation of industrial uses. But, there are other excerpts relied upon by the Commission that support the Commission's findings that the application is harmonious with the objectives of the Comprehensive Plan. The Council finds there is conflicting evidence relating to Section 11.4.1(b) of the Hailey Zoning Ordinance, but the Commission's determination of this standard is supported by substantial, competent evidence in the record, and therefore the Council defers to the Commission's findings of fact.

D. The District met its burden of establishing compliance with Section 11.4.1(b) of the Hailey Zoning Ordinance in showing that the facility is harmonious with or in accordance with the general or specific objectives of the Hailey Zoning Ordinance.

The Appellants next argue that the Commission failed to make sufficient findings that the facility is harmonious or in accordance with a general or specific objectives of the Hailey Zoning Ordinance. As part of this argument, the Appellants contend that the City has recently honored the objectives of the Zoning Ordinance in protecting residential uses for three separate projects when the City approved the Airport West Subdivision and the City Shop and denied the Roundup application. Appellants have then stated that "there may be equal protection issues the City should consider." The Appellants have directed Hailey to an appellate case entitled *Anderson v. Spalding* 137 Idaho 509, 50 P.3d 1004 (2002). The *Anderson* case gives some general guidance on equal protection in this context. The *Anderson* Court stated, "selective or discriminatory enforcement of [a regulation] may amount to a violation under either the Idaho or United States Constitutions, but only if the challenger shows a deliberate plan of discrimination based upon some improper motive like race, sex, religion or some other arbitrary classification." *Id. at 514, 50 P.3d at 1009*. The Council is unaware of any contention that there is discrimination based upon improper motives like race, sex or religion. The Appellants can "successfully state an equal protection claim, even where the challenged treatment does not follow suspect classifications or punish the exercise of fundamental rights, if he or she was singled out based upon a distinction that fails a rational basis test." *Id.* The parties have not pointed out anything in the record, nor has the Council found anything in the record, that would show that the Appellants were singled out for a discriminatory action or arbitrary classification.

E. The District met its burden of establishing compliance with Sections 11.4.1(c), (d) and (g) of the Hailey Zoning Ordinance.

The remaining issues raised by the Appellants relate to the conditional use permit criteria described in Sections 11.4.1(c), (d) and (g) of the Hailey Zoning Ordinance. These criteria were the most controversial during the Commission's deliberations. When the Commission evaluated these standards, the Commission made factual determinations. A review of the Commission's

Findings of Fact and Conclusions of Law demonstrates that the conditional use permit was approved because the conditions imposed allowed the Commission to make the findings under Sections 11.4.1(c), (d) and (g) of the Hailey Zoning Ordinance in order to approve the application for a conditional use permit. As stated earlier, the role of the Council in this appeal is to make a determination whether there is substantial and competent evidence to support the findings for each of these criteria. The Appellants have raised relevant facts to support why these standards cannot be met, but the Commission has enunciated facts and imposed conditions that would support the Commission's findings under Sections 11.4.1(c), (d) and (g) of the Hailey Zoning Ordinance. Therefore, the Council finds there is conflicting evidence relating to Sections 11.4.1(c), (d) and (g) of the Hailey Zoning Ordinance, but the Commission's determination of this standard is supported by substantial, competent evidence in the record, and therefore the Council defers to the Commission's findings of fact.

Decision

Based upon the foregoing, the Council affirms the decision of the Hailey Planning and Zoning Commission but adds the condition to the approval of the conditional use permit that the school district will construct a noise barrier for a distance of 200 feet and install landscaping in a 31 foot wide buffer area adjacent to the property located at 1180 Green Valley Drive, Lot 1, Block 80, Woodside Subdivision #21 (the Goffs' house), consistent with Exhibit A provided to the Council on September 22, 2003.

Approved this _____ day of October, 2003.

Susan McBryant, Mayor

Attest:

Heather Dawson, City Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the ____ day of October, 2003, 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 | Fritz X. Haemmerle |
| <input type="checkbox"/> | Via Facsimile | P.O. Box 1800 |
| <input type="checkbox"/> | Hand Delivered | Hailey, ID 83333 |
| <input type="checkbox"/> | U.S. Mail | Rand L. Peebles |
| <input type="checkbox"/> | Via Facsimile | P.O. Box 297 |
| <input type="checkbox"/> | Hand Delivered | Ketchum, ID 83340 |

CITY OF HAILEY

By _____
Tara Hyde, Deputy Clerk