

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

On August 3, 2009 the Hailey Planning Zoning Commission considered an application submitted by Blaine County School District for a Conditional Use Permit for an above ground fuel storage tank at 1060 Fox Acres Road. The property is within the General Residential (GR) District, and Section 4.3.3 of the Hailey Zoning Ordinance #532 lists above ground flammable and combustible liquid tanks utilized by a public use 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 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. The public hearing was continued on July 6, 2009 to August 3, 2009.

Application

An application by the Blaine County School District for a Conditional Use Permit (CUP) for a 12,000 gallon, 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 conditional uses within this zone with approval of a CUP.

The applicant has concurrently applied for an amendment to its existing Bus Maintenance Facility CUP, which was issued in 2003 and amended in 2005. The purpose of the requested 2009 CUP amendment is to revise condition 4.d. to allow an on-site fuel storage tank and dispensing at the same location.

Procedural History

On July 6, 2009, the Commission reviewed the CUP application and the CUP amendment to the Bus Maintenance Facility and requested additional information regarding the following: 1) how much volume would need to be sold in order for B20 to be economically feasible for a company to supply, 2) the applicant's calculations on the number of bus trips that would be reduced if the on-site tank was approved, 3) historical use of refueling with a mobile tanker (i.e. "wet hose fueling technique") and why it was required to be discontinued after the 2003 CUP was approved, 4) 2008 Woodside Elementary School avalanche and its location relative to Art Mears 2002 study, and 5) site plan showing why the school district cannot utilize its Airport West property for on-site storage of fuel.

The following addresses each of the Commission's requests:

The school buses currently refuel with B5 at United Oil's card lock system at the back of the Chevron Station on Main Street in Hailey. The general public uses the B5 at the pump in front of the Chevron. These two B5 stations run off the same underground tank, which is owned by Chevron. United Oil has B20 and currently sells it to various entities within the valley, such as Idaho Transportation Department and Blaine County Recreation District. If approved, United Oil would be supplying the applicant's fuel on-site as well. In the past, Chevron has been reluctant to convert to B20 because of the low public demand for B5. It has been anticipated that there will be even less of a demand for B20 because of the additional \$0.13 - \$0.32 per gallon cost to upgrade from B5 to B20 (B5 is already \$0.08 more than regular diesel). However, after talking to Carlos Rodriguez, of Hailey's Chevron, they are willing to convert to B20 and are making preparations to do so immediately (they will provide it the first week of August).

One of the applicant's arguments for upgrading to B20 has been that it is not available in the valley. The Commission should determine if the availability of B20 at the location, where they currently refuel, impacts the decision to approve on-site fuel storage. The Commission should also consider that the Chevron owner has stated that he will provide B20 for an indefinite amount of time, depending on sales. The owner of Chevron has stated that currently the sales from B5 to the public is only 5% of overall gas sales, so a drop in demand for B20, will have little affect on overall gas sales. Rodriguez is most concerned with losing business at the back pump, because United Oil currently leases the B5 tank from Chevron. If the Commission feels the availability of B20 at the Chevron card lock, is a substantial reason not to allow on-site fuel storage, the Commission could re-review the application at a later date if Chevron were to discontinue supplying B20.

The applicant has provided calculations and the documentation used to determine the number of trips saved. This information can be found in greater detail within the staff report. In addition, the applicant has submitted a written statement regarding the calculations (see attachment). Additional information regarding the calculations and documentation is detailed further within the staff report.

Mike Chapman has submitted an attached statement and memo from 2003 regarding mobile tanker refueling. The memo is dated September 2003, which is two months after the findings for the original CUP were signed. There is no known date specifying the exact date the applicant was instructed to discontinue their use of mobile refueling, however, on Chief Chapman's memo it can be implied that this occurred sometime between June and September of 2003. Even if the Fire Department gave these instructions prior to the findings being signed in July 2003, changes reflecting the Fire Department's orders may not have been incorporated into the findings as an oversight. BCSD is unsure of a specific date in which they were required to discontinue mobile refueling.

The order to discontinue mobile refueling was based on the International Fire Code, which states that this type of activity requires secondary containment and cannot occur within 50 feet of any structures and combustible storage, which includes the bus shelters and other busses. As stated in the 2003 memo, the Fire Department was concerned with

refueling in this area, using either an above ground tank or mobile tanker approach, due to the close proximity to the blue avalanche line. The Fire Department has continued to work with the applicant on their current proposal and has no concerns with either the tank or the secondary fueling station, as long as they are both located outside of the blue line. Mike Baledge stated that busses queuing up to refuel that would temporarily reside within this line are not of concern to the Fire Department either.

The 2008 Woodside Elementary Avalanche occurred outside of the avalanche area predicted in Art Mears' 2003 avalanche study. The applicant has stated that this avalanche was spurred by sledding at this location (pictures and a map are attached, showing the location of the slide in relation to Mears' predicted avalanche area).

John Gaeddert, on behalf of the BCSD, submitted an attached memo, dated July 15, 2009, explaining why the school district did not provide a site plan and why on-site fuel storage in Airport West is problematic. The main argument being that any fuel located off-site will not reduce the bus trips or vehicle miles traveled and will therefore, not justify the cost increase in using B20 verses B5.

Standard 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:

8.2 Signs.

The applicant is hereby advised that a sign permit is required for any signage exceeding four square feet in sign area.

8B.4. Outdoor Lighting Standards.

8B.4.1 General Standards

- a. All exterior lighting shall be designed, located and lamped in order to prevent:
 - 1. Overlighting;**
 - 2. Energy waste;**
 - 3. Glare;**
 - 4. Light Trespass;**
 - 5. Skyglow.****
- b. All non-essential exterior commercial and residential lighting is encouraged to be turned off after business hours and/or when not in use. Lights on a timer are encouraged. Sensor activated lights are encouraged to replace existing lighting that is desired for security purposes.**
- c. Canopy lights, such as service station lighting shall be fully recessed or fully shielded so as to ensure that no light source is visible from or causes glare on public rights of way or adjacent properties.**
- d. Area lights. All area lights are encouraged to be eighty-five (85) degree full cut-off type luminaires.**
- e. Idaho Power shall not install any luminaires after the effective date of this**

Article that lights the public right of way without first receiving approval for any such application by the Lighting Administrator.

No new lighting is proposed. All existing lighting shall comply with Hailey's Outdoor Lighting Ordinance.

9.4 Parking Space Requirements.

The Conditional Use application for the proposed fuel tank does not require additional parking requirements.

11. Conditional Use Permits

11.4.1 The Commission or Hearing Examiner shall review the particular facts and circumstances of each proposed conditional use in terms of the following standards and, if approved, shall find adequate evidence showing that such use at the proposed location:

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

In accordance with Section 4.3.3, above ground flammable and combustible liquid tanks utilized by a public use is a Conditional Use in the GR District.

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

The Commission considered how the proposed use relates to the various policies and implementation items of the Comprehensive Plan, particularly the following:

1.6 Alternative Energy and Resource Conservation

Goal: Promote the use of alternative renewable energy sources as well as the conservation of natural resources.

1. Policy: Protect, enhance, and develop alternative energy sources.

Implementation:

a. Promote the study and use of all types of renewable resources as alternatives to traditional energy sources.

b. Support the development of geothermal resources as both an alternative energy source and a recreational amenity.

2.8 Man Made Hazard

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 man made hazards such as pollution, toxic waste, electromagnetic emissions, hazardous utility or transportation facilities, or the storage and transport of noxious, radioactive, or hazardous material.

1. Policy: Segregate uses that are known or suspected hazards to human health and restrict those uses to locations that are most appropriate.

9.0 Public Facilities, Utilities, and Services

II. Goal: Recognize and generally support the provision of utilities and services by other entities within the City of Hailey.

In addition, the applicant has provided an analysis that addresses compliance with the Comprehensive Plan (see attachment).

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;

There are two main arguments regarding the approval of the proposed CUP; both were considered by the Commission when determining whether a positive finding can be made under this standard.

1. The bus maintenance facility is an industrial use in a residential area and that the addition of the fuel tank may increase the industrial feel and character of this area (see public comment attached).

2. The applicant has stated in a written submittal that on-site fuel storage and dispensing occurred from 1974-2002; adjacent to the Aquatic Center, during which time the entire school bus fleet was also parked and maintained at the high school campus. The Commission should determine if the addition of a fuel tank for storage and dispensing at the bus maintenance facility will change the existing or intended character of the area. The Commission considered the original decision, stated in the 2003 Findings of Fact for the bus maintenance facility CUP, prohibiting fuel storage at this location.

The proposed tank will be located within the existing Bus Maintenance Facility. The applicant has submitted a revised site plan showing the location of the secondary fueling station and a cross-section showing the distances from these two fueling locations to the blue avalanche line. The simulated view shed submitted by the applicant, illustrates the visibility of the top portion of the tank. However, the applicant has used tape to illustrate the exact area where the tank will be located. The portion of the tank extending beyond the concrete wall is less than presumed by the simulated views shown on the site plan. There is existing landscape screening, which consists of a few trees and small bushes along the concrete wall adjacent to the proposed location of the tank, on the west side of the bus maintenance facility.

Currently the area is enclosed with a chain link fence along the south end and part of the west end of the bus maintenance facility. This may not provide adequate screening if, in the future, buses are queuing up to refuel in the more visible areas to the south of the facility. In addition, the applicant has been storing materials at the south end of the facility, which the chain link fence does not adequately screen. This may increase the industrialized appearance of the facility and therefore, change the essential character of the vicinity.

The original CUP for the facility stated, as a condition of approval, “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).”

Snow is currently stored to the south of the bus shelters. The Commission considered the implications that buses queuing up to refuel at the south end of the property will have on snow storage during the winter months.

d) Will not be hazardous or disturbing to existing or future neighboring uses;
The tank will be located within the existing Bus Maintenance Facility, southeast of the Community Campus. The area to the west of the facility is residential. The area to the north is the Community Campus and Wood River High School, which is within the GR zoning district. The area to the east is outside of Hailey city limits and is open space. The site plan shows the proposed tank located outside of the blue avalanche area. The tank has walls constructed of four layers consisting of steel, Styrofoam, a leak shield liner and reinforced concrete. The Fire Department has reviewed the application and has stated that they have no safety or hazard concerns with the tank as proposed. The Commission reviewed the comments and attached documentation regarding safety and hazards, submitted by a concerned neighbor. The Commission considered whether a positive finding can be made for this standard.

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;

Vehicular access to the tank is through either the north or south entrance of the bus storage area. The Fire Department has reviewed the application and has no comments related to access or safety. The 2003 findings stated, “The City of Hailey does not accept responsibly for or guarantee that city service, rescue efforts or emergency services will be provided during periods of avalanche danger,” as a condition of approval. The bus storage area is fully fenced.

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

It is not anticipated that the proposal will create excessive additional requirements.

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 applicant proposes to have a dispensing system connected to the tank with an underground line extending southward, beyond the tank, to a single dispensing station, which will look much like a typical gas pump, similar to those seen at commercial gas stations. This second fueling station is not within the blue avalanche boundary (see revised site plan attached). This will allow two buses to refuel simultaneously. In the past, buses have left the facility to refuel or have refueled en-route at the Chevron station card lock system on Main Street; however, the proposal will change this by vehicles

refueling on site. This may mean more bus idling while they wait to refuel. It may increase traffic within the vicinity of the facility as buses will now be refueling before they leave for their routes or after they return, instead of leaving the site and returning from their routes. This may create additional air pollution, odors, traffic and noise. The 2003 Bus Maintenance Facility CUP incorporates a condition of approval which states that the 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 are also required to be plugged in to engine block heaters during winter months. The buses are equipped with back up warning alarms, which can be disengaged.

An increase in additional noise, noxious smells, and other unsightly industrial impacts, may result from the tank being sited in the proposed location, which may impact the adjacent residential neighborhood. Other safety issues have been raised as concerns by adjacent property owners such as potential hazards associated with fuel storage and its close proximity to the school, playing field, and avalanche zone. The applicant has stated that the tank is 280 feet from the closest neighbor, and both the tank and the second refueling station are safely located within the bus maintenance yard, outside of the blue avalanche area. The Hailey Fire Department has not raised any safety concerns. The Commission considered whether the proposed tank will increase smoke, odors, traffic, pollution, or pose any additional safety hazards. The Commission considered whether there are any additional conditions of approval that may mitigate these environmental hazards.

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;

There are already vehicular approaches in place which provide access to and from the bus maintenance facility. No increase in bus traffic is anticipated with the approval of this application. A 10,000 gallon fueling truck will need to access the site to fill the tank 3-4 times a year.

The applicant has submitted their method of documentation used to estimate the reduction in the number of trips that would occur if on-site fueling was approved. The applicant has based this information on a daily route log from 2007-2008, which calculated 1,384 refueling trips from normal bus routes and roughly 400 field trips, which refuel after their return. The total number of trips equals 1,784. It is important to note that this number includes both refueling en-route and additional trips solely to refuel. Rex Squires, BCSD's Transportation Director, has stated that they have no way to differentiate between en-route refueling and additional trips solely to refuel, but roughly estimates about half of these trips to include en-route refueling. Without knowing the number of trips taken, solely to refuel, the actual number of trips and the cost savings associated with a reduction in the number of trips is difficult to estimate. (See attachments, under CUP checklist statements and an email submitted by Rex Squires, dated July 23, 2009, which details the calculation of trips saved.)

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

It is not anticipated that the proposed tank will threaten the above features; only a small portion of one corner of the tank will extend beyond the concrete wall, located on the west side of the facility (see attached photos). Therefore, it is not anticipated that the hillside views will be impacted.

Summary

After understanding the potential merits and impacts of the proposed biodiesel tank, the Commission considered the application. Commission Chair Owen Scanlon and Commissioner Mark Johnstone voted in opposition to the motion to approve the proposed CUP application stating concerns regarding the location and the incompatibility with the adjacent residential neighborhood, safety, and the appropriateness of biodiesel fuels as opposed to other alternative energies. Commission Mike Pogue and Commissioner David Lloyd voted in favor to the motion to approve the proposed CUP application. Commissioner Geoff Moore was not in attendance. The vote was tied; therefore, the application was denied.

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. Upon compliance with the conditions stated below, the application does not meet all criteria (a) through (i) set forth in Section 11.4 of Zoning Ordinance No. 532.
3. The applicant shall not receive a Conditional Use Permit for an above ground fuel storage tank at 1060 Fox Acres Road.

Signed this _____ day of _____, 2009.

Owen Scanlon, Chair
Hailey Planning & Zoning Commission

Attest:

Becky Mead, Deputy Clerk