

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

On September 21, 2009 the Hailey Planning Zoning Commission considered an application submitted by Blaine County School District (BCSD) for an amendment to the Bus Maintenance Facility Conditional Use Permit located at the Wood River High School Campus (1060 Fox Acres). 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 public hearing on September 21, 2009 was published in the Idaho Mountain Express and mailed to property owners within 300 feet on September 2, 2009.

Application

An application by the BCSD 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 BCSD 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 BCSD 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 condition of approval for the concurrently submitted new CUP application for an above ground fuel storage at this location.

Due to the continuation and re-notification of the concurrently submitted CUP application for the above ground fuel storage tank, this CUP amendment application has been consistently continued and re-noticed along with the fuel tank CUP application. This CUP amendment application was previously noticed for the July 6, 2009 meeting and continued on the record to the August 3, 2009 meeting. It was then re-noticed for the September 21, 2009 meeting, in order to be concurrently reviewed by the Commission with CUP application for the fuel storage tank.

Standards of Evaluation and Summary

Section 11.4 of the Hailey Zoning Ordinance establishes the standards for proposed conditional uses. The Commission makes the following Findings of Fact:

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:

11. Conditional Use Permits

Section 11.4 of the Hailey Zoning Ordinance establishes the standards for proposed conditional uses. The Commission reviewed the original 2003 Findings of Fact for the School Districts bus maintenance facility's CUP and considered whether positive findings for standards (a) through (i) of this document could be made with the removal of condition 4.d. This consideration was made in light of the merits of the proposed biodiesel tank located at the Bus Maintenance Facility and the conditions of approval placed on the application to mitigate any potential impacts caused by the proposed tank. (Refer to the BCSD's biodiesel tank CUP Findings of Fact for details regarding the Commission's review and conditional approval of the tank)

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

Section 4.5.3.e includes public uses, which is defined in Section 2.2.75 as, "Use for a public purpose by a city, school district, county, state, or any other public agency or a public utility."

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. The Bus Maintenance Facility is within the GR District.

FINDING: Public Uses and above ground flammable and combustible liquid tanks utilized by a public use are conditional uses in the GR zoning district. The amendment to the Bus Maintenance Facility's CUP does not change the original finding for standard (a).

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 amendment would comply with policies and implementation items of the Comprehensive Plan, as listed in the 2003 Findings of Fact:

Section 5, Land Use

- I. *Goal: 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.*

Section 15.12, School Facilities and Transportation

- I. *Goal: 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.*

Section 2, Hazardous Areas

- I. *Goal: Reduce the potential threat to loss of life, limb, or property and minimize public expenditures due to avalanche.*

9.0 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.

FINDING: The Commission determined that amending the CUP application was generally harmonious and in accordance with the Comprehensive Plan and therefore, a positive finding could continue to be made in light of the amendment.

- 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 Commission reviewed this standard in the 2003 CUP Findings of Fact. The Commission determined that allowing a tank, with conditions imposed, could be done without changing the appearance of the existing or intended character of the general vicinity. The visual impacts would be reduced because buses would no longer need to take additional trips in and out of the Bus Maintenance Facility to refueling off-site. With appropriate placement and conditions imposed, a tank could be designed and constructed in a manner that was not visible to neighboring residences.

FINDING: The Commission considered the removal of condition 4.d) from the original Bus Maintenance Facility CUP Findings of Fact and determined that this amendment to the 2003 Findings of Fact would be harmonious and appropriate to the design, construction, operation, and maintenance of the existing use and intended character of the general vicinity.

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

The Commission reviewed this standard in the 2003 CUP Findings of Fact. Noise, fume, and avalanches were a primary concern in 2003. The Commission determined that removing condition 4. d), would not change the effects of the operation, increase noise, or fumes, or pose any danger due to the risk of avalanche. The Commission makes this determination based on the following details from the concurrently reviewed CUP for an

above ground tank located at the Bus Maintenance Facility and conditions of CUP approval:

The tank's proposed location is within the existing Bus Maintenance Facility's bus barn, 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 and almost completely screened by the bus barn's wall. 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.

Conditions of CUP approval were required by the Commission, which mitigate any potential noise and fume disturbances to neighboring residences. The following conditions were taken from the above ground tank's CUP Findings of Fact:

- 1) Idling shall be prohibited by those vehicles waiting to refuel and beyond the amount of time allowed by the 2003 CUP. Approval for the 2003 Bus Maintenance Facility CUP, 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 shall be plugged in to engine block heaters during winter months.
- 2) Fuel storage shall only be allowed for a biodiesel blend of 20% (i.e. B20) or higher.
- 3) On-site fuel shall be stored and used exclusively for the Blaine County School District.
- 4) A vapor recovery system shall be installed and utilized.
- 5) 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). Buses parked in the south parking area, shall only be parked there temporarily while waiting to refuel.
- 6) Reverse alarms on buses shall be disengaged while on-site, so no additional noise is generated while buses are refueling and/or turning around after refueling to either exit the site or park.

FINDING: The Commission determined that no new hazards or disturbances would occur to existing or future neighboring uses, with the removal of condition 4. d) from the 2003 Findings of Fact, given the details of the proposed tank and the conditions of approval imposed by the Commission.

- 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 Commission reviewed this standard in the 2003 CUP Findings of Fact to determine whether a positive finding could be made with the removal of condition 4. d). The primary issue listed in the 2003 Findings of Fact was providing adequate services during times of avalanche dangers. Conditions were imposed on the 2003 Findings of Fact, which stated the following: “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.” This condition is a living condition and would still apply to the CUP with the removal of condition 4. d). The Hailey Fire Department has no additional concerns with the removal of the condition or the proposed above ground tank CUP, given its design and location outside of the blue avalanche zone.

FINDING: The Commission determined that removing condition 4. d), will not affect the Bus Maintenance Facility’s ability to be served adequately by essential public facilities and services such as highways, streets, police and fire protection, and drainage structure.

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

The Commission reviewed this standard in the 2003 CUP Findings of Fact to determine whether a positive finding could be made with the removal of condition 4. d). The primary issue listed in the 2003 Findings of Fact was providing emergency services during times of avalanche dangers. The Commission determined that the removal of this condition would still allow a positive finding to be made for this standard because the proposed tank is located outside of the avalanche zone and does not increase a the degree of public cost or requirements for public services and facilities due to the proposed location within the bus barn and secure design of the tank.

FINDING: The Commission determined that that removing condition 4. d), would not create excessive additional requirements at public cost for public facilities and services.

- 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 Commission reviewed this standard in the 2003 CUP Findings of Fact to determine whether a positive finding could be made with the removal of condition 4. d). The primary issues listed in the 2003 Findings of Fact were fumes, noise, traffic, odors, and air pollution. In 2003 it was determined that these issues could be mitigated by the design, construction, and operation of the Bus Maintenance Facility.

The Commission reviewed the above ground tank CUP application concurrently to ensure that based on the tanks design, operation, and maintenance, a positive finding could continue to be made with the removal of condition 4. d). Based on the information

presented, the Commission determined that amending the CUP would not change the original finding.

FINDING: The Commission determined that the removal of condition 4. d), which will allow above ground fuel storage tanks, 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 Commission determined that adequate mitigation through the design, operation, and maintenance of such a use could allow positive findings to be made under this standard.

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;

The Commission reviewed this standard in the 2003 CUP Findings of Fact to determine whether a positive finding could be made with the removal of condition 4. d). The primary issue listed in the 2003 Findings of Fact was increased traffic. In 2003 it was determined that these issues could be mitigated by the design, construction, and operation of the Bus Maintenance Facility.

Access to the site will not change with the elimination of the condition. Traffic may be reduced from the Bus Maintenance Facility through the neighborhood due to the elimination of refueling trips to Chevron with the installment of an on-site fuel storage tank.

FINDINGS: The Commission determined that the removal of condition 4. d), which will remove the prohibition of an above ground fuel storage tank on-site, would not affect the vehicular approaches to the property and would not create an interference with traffic on surrounding public thoroughfares.

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

The Commission reviewed this standard in the 2003 CUP Findings of Fact to determine whether a positive finding could be made with the removal of condition 4. d). There was no evidence of a natural, scenic, or historic feature affected in 2003 and the Commission has determined that no additional destruction, loss, or damage of such features will occur with the proposed amendment.

FINDING: The Commission determined that the removal of condition 4. d), will not threaten the above features.

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.
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's existing Conditional Use Permit shall be amended to reflect the removal of condition d) from the 2003 Findings of Fact. All other conditions of approval from the original 2003 CUP and the 2005 6 month review, CUP Findings of Fact are valid and are carried over to the amended CUP application. With this amendment, the Conditional Use Permit is now subject to the following conditions:

2003 (Original) Conditions of approval

- 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) 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.
- e) 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).
- f) The doors of the maintenance facility shall be closed while buses are not being moved in or out.
- g) 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.

- h) Buses utilized for normal student pick-up shall not be started before 6:00 a.m.
- i) All exterior lighting shall comply with the Outdoor Lighting Ordinance.
- j) 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.
- k) 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.
- l) 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.
- m) 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."
- n) The school district shall implement its pre trip inspection list for the bus drivers to reduce noise as follows:
 - 1. Check horn at pool while in parking lot prior to turning on fox acres road. If inoperable return to shop
 - 2. Only in bus parking area: use interrupt switch (push and hold) while backing from parking area.
 - 3. Limit engine speed to 1000 rpm's when entering/exiting old high school complex.
- o) 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.
- p) Bus drivers shall use discretion with the throttle near the intersection with Green Valley Drive. Accordingly, bus drivers shall not exceed 1000 rpm or 10 mph while operating near Green Valley Drive, in particular, or generally within the high school parking lot.

- q) 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.
- r) This Conditional Use Permit is subject to the City Council's approval of the amendment to the Planned Unit Development agreement.

2005 (6 month review) Conditions of Approval

- 1. The condition related to city services during avalanche danger shall be expanded to read, "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 or following an avalanche."
- 2. The applicant shall agree to amend the annexation agreement to the extent necessary to comply with changes to the Conditional Use Permit.
- 3. The Commission shall review the Conditional Use Permit in approximately 12 months (in March 2006).

The following conditions shall be completed not later than June 1, 2005:

- 4. All pole lights and lights on the bus maintenance facility that face south shall be placed on timers so as to turn off not later than 10:00 pm. A manual override may allow for lights as needed beyond that time.
- 5. The Toe of the Hill Trail shall be restored at a location as recommended by the Parks and Lands Board.
- 6. The gaps under the noise barrier adjacent to 1180 Green Valley Drive shall be filled in with soil.
- 7. The parking area between the Community Campus and the Aquatic Center shall be striped, including appropriate markings for bus travel lanes, speed hump in front of the Aquatic Center, and for two handicap spaces at the Aquatic Center.
- 8. Revegetation and weed control shall be initiated in all disturbed areas around the bus parking facility.
- 9. A permanent stop sign at the top of Green Valley Drive shall be installed.
- 10. Any broken or missing "No Parking" signs shall be replaced.
- 11. Screening as approved by the Administrator shall be provided for the chiller.
- 12. An update on noise reduction options for the combustion heater shall be provided to the Administrator.
- 13. A gate or chain, acceptable to the Fire Chief, shall be installed to prevent unauthorized vehicular use of the pathway to Founders Field.

The following shall be reviewed by the Administrator not later than October 1, 2005:

- 14. Next 6-month update regarding bio-diesel conversion is due.
- 15. Revegetation of disturbed areas around the facility shall be complete. Weed control is ongoing.

All Conditional Use Permits are subject to review and revocation pursuant to Section 11.10 of the Hailey Zoning Ordinance.

Signed this _____ day of _____, 2009.

Owen Scanlon, Chair
Hailey Planning & Zoning Commission

Attest:

Becky Mead, Deputy Clerk