

**Minutes of the
Hailey Planning & Zoning Commission
December 1, 2008**

The meeting was called to order at 6:30 p.m. by Commission Chair Stefanie Marvel. Commissioners present were Geoff Moore, Mark Spears, Mike Pogue, and Owen Scanlon. Staff present included Planning Director Beth Robrahn, City Attorney Ned Williamson, Planner Mariel Platt, and Planning Assistant Becky Mead.

Consent Agenda

- Approval of Minutes – November 3, 2008
- Approval Findings of Fact and Conclusions of Law – Rimrock Cottages Carport Design Review, pursuant to Zoning Ordinance, Section 6A.3.a.

Commissioner Marvel requested removal of the Findings and Fact for Rimrock Cottages Carport Design Review from the consent agenda.

Commissioner Moore moved to approve the Consent Agenda, not including the Findings of Fact for Rimrock Cottages Carport Design Review. Commissioner Pogue seconded, Commissioner Scanlon abstained, the motion passed unanimously.

Findings of Fact and Conclusions of Law – Rimrock Cottages Carport Design Review, pursuant to Zoning Ordinance, Section 6A.3.a.

Commissioner Marvel asked Planner Platt to address the conditions regarding the trees for the Rimrock Cottages Carport Design Review.

Planner Platt stated condition f) The applicant shall submit a revised landscape plan to be approved by the Planning Administrator, prior to the issuance of a Building Permit, showing the following: i. The addition of three (3) trees that will reach heights of greater than six (6) feet when mature on sub-lot 5, adjacent to the rear facade of the carport; and two (2) additional trees that will reach heights of greater than six (6) feet when mature on sub-lot 6, adjacent to the rear facade of the carport. Planner Platt asked Commissioner Marvel if there were additional plantings she would like to see beyond this condition.

There was discussion regarding the landscape plan. Commissioner Moore asked about the trees in the snow storage area. Planner Platt stated the trees in that area provide screening to the carport structure facing Myrtle Street. Commissioner Moore asked if there would be new snow storage area provided. Planner Platt said that is stated in as a condition.

Commissioner Marvel wanted to add one (1) more tree to each sub-lot, making it a total of four (4) trees on sub-lot 5 and three (3) trees on sub-lot 6. .

Planner Platt noted that she spoke to the Building Official regarding Condition e) on page 8 of the staff report, and he stated that because of the steep pitch of the roof, snow clips are not necessary.

Commissioner Scanlon requested that there be concrete tire stops added. Planner Platt stated that would be Condition n) the addition of concrete tire stops.

Commissioner Scanlon moved to approve the Findings of Fact for the Rimrock Cottages Carports Design Review as amended. Commissioner Pogue seconded, the motion passed unanimously.

New Business

Appeal by Leargulf, LLC (CSM Building) of administrative decision – approval of minor modification to design review approval.

City Attorney Williamson addressed the application and its history. He noted that a packet of materials were received from the applicant's Attorney Jim Phillips before the holiday and after review of the materials, Attorney Williamson concluded it was inappropriate to submit this packet of materials to the Commission. Attorney Williamson explained the following:

- the Ordinance states in 3.6 that any appeal shall not be a de novo hearing and shall be based solely on the record before the Administrator.
- it will go on record that the Commission has not seen this packet and that it was deemed that it was not appropriate that they do see it.
- the Commission should open the discussion to the applicant to present their argument for this appeal.
- the Administrative Procedures Act states the reasons why someone can file an appeal. Specific reasons have been set forth on pages 2 and 3 of the appeal which will be addressed by the applicant's Attorney Jim Phillips.
- this is not a public hearing it is an appeal.
- the Commission could affirm the decision of the Administrator, reverse the decision of the Administrator, or remand the proceedings back to the Administrator for additional findings or different reasons, including but not limited to review of the packet of materials submitted by the applicant.

Commissioner Spears asked Attorney Williamson in general, what did the packet contain that they were not being given a copy of. Attorney Williamson stated there are eight different documents; a map, plats, findings of fact, several plats of Phase I and II, the annexation agreement which also contains findings of fact of the annexation and preliminary plat approval for Airport West, photographs, and a letter addressed to him.

Commissioner Marvel asked if they had a choice to continue this until they had an opportunity to see that packet. Attorney Williamson stated that this is an appeal. He stated the Commission has reviewed the Administrator's decision in the record and it is the Commission's role to determine if the Administrator's decision is right or wrong. The Commission is to review the decision and

the analysis of the Administrator based upon the record.

Jim Phillips, attorney for the applicant Scott Miley, Leargulf LLC, CSM Building. He stated he had some procedure comments to make so the Commission understands the full course of events:

1. On October 31, 2008 they received a letter from Director Robrahn stating the application contained minor changes and the reasons for that decision and cited Hailey Zoning Ordinance 6A.3, subsection g which gave her the authority to approve these minor changes.
2. One reason for this appeal is that ordinance adopting subsection g had not been properly adopted and she did not have the authority to approve those minor modifications.
3. On November 25, 2008 a second letter was received from Director Robrahn which was substantially the same as the first letter but the ordinance was not referenced as it was in the first letter and a condition was used giving her the authority to approve the minor modifications.
4. Phillips stated for the record, it is the letter dated November 25th that they are dealing with.
5. Phillips stated they did not want this application remanded back to Director Robrahn and stated he did not think that she would change her decision.
6. Phillips stated the following issues with regard to the letter dated November 25, 2008:
 - a. Director Robrahn is seeing the new application as modifications to the previously approved Design Review application.
 - b. They disagree with the fact that this was not being treated as a new application.
 - c. They disagree with the fact that these changes are being treated as minor modifications. He stated this new application has different design elements than the original application.
 - i. They do not see these changes as minor modifications.
 - d. This is a new application, was paid for as a new application, and should be heard as a new application before the Commission.
 - e. The condition that Director Robrahn has referenced in her letter dated November 25, 2008 relied upon the Design Review approval condition of the set of plans dated May 9, 2008. The condition in that approval said that the Planning and Zoning Administrator has the authority to approve minor modifications to this project. Phillips stated problems with this condition.
 - i. Hailey's ordinance has no provisions for the Administrator making any approvals of any changes in design review.
 - ii. A condition can not be adopted that basically says the Administrator can violate the terms of an ordinance. If the ordinance does not permit the Administrator to make minor changes, the Commission can not allow the Administrator to do what the ordinance prohibits.
 - iii. The condition is invalid, vague and they had no idea what minor modifications were. There are no guidelines and nothing to limit the Administrator's discretion.
7. One of the changes to this application is an enclosed deck. He stated a minor modification may not increase the footprint of the building. He read the definition of footprint from the Zoning Ordinance. He stated when a roof has been changed to an enclosed deck that increases the footprint of the building.
8. This is subject to appeal to the City Council which brings up another issue with regard to

the validity of the sidewalk requirements. Phillips stated he did not believe the way the sidewalk requirements are tied to Design Review approval are constitutional and there is no statutory authority.

Commissioner Spears stated he understood Phillips saying that the fact that the footprint has slightly changed makes this a new application.

Phillips stated Hailey's ordinance does not have a provision for approval of modifications except for filing a new application.

Commissioner Spears asked Attorney Williamson to comment.

Attorney Williamson stated the Commission has authority to condition approval. This condition is stated in the letter of November 25. This condition allows the Administrator to have the authority to approve minor modifications to a design. The law allows for reasonable conditions.

Commissioner Pogue asked if that approval is subject to consent of the Commissioners.

Attorney Williamson stated no, not necessarily and said the Commission has already approved the Administrator's decision.

Commissioner Spears expressed concerned regarding the applicant making many changes which appear to be counterproductive. He asked if it stated anywhere where a footprint change would require a new application.

Attorney Williamson stated he did not believe so. He stated it did not matter if it is enclosed now, but if it was a minor modification under that condition.

Commissioner Pogue asked Phillips if he was aware of any authority for the change in the footprint removes it from the realm as a minor condition.

Phillips stated the only place that language existed was in the ordinance that was adopted which gives direction of the Administrator to approve a modification that was not minor. He stated if the footprint was increased it was not a minor modification.

Commissioner Pogue asked if in some cases, could there be an increase in the footprint and be a minor change. He asked if the issue with the sidewalk was part of this appeal.

Phillips stated the issue right now is if this is going to be accepted as a new application.

Marvel believed the real issue here was the sidewalk requirements, the applicant did not appeal the condition of the sidewalks in the allowed time, and the new plans are minor modifications. She suggested for the applicant to appeal to the City Council because the Commission has already backed the Administrator's decision.

Commissioner Pogue was relying on the city attorney's opinion and the administrator's decision.

Commissioner Scanlon also believed that the conditions are minor compared to previous decisions. He asked Attorney Williamson why the applicant had the right to apply for another application when the previous application was approved.

Attorney Williamson stated the applicant is abraded that he did not file an appeal in the proper amount of time.

Commissioner Spears assumed the applicant has recourse if they uphold their original decision.

Attorney Williamson suggested combining both the appeals together. They could treat the second application with a full review but he did not recommend that.

Attorney Williamson discussed the issue of sidewalks.

Phillips stated they would appeal to the City Council the sidewalk issue.

Commissioner Spears stated he is comfortable with the original decision of the Commission.

Commissioner Moore stated the enclosed deck was not an increase in the footprint and was a minor modification.

Commissioner Pogue stated Article 6A allowed the administrator to have the authority.

Commissioner Scanlon moved to affirm the decision of the Administrator that these conditions are minor. Commissioner Moore seconded, the motion passed unanimously.

Public Hearing

A city initiated text amendment to **Article 6A.7, of Hailey Zoning Ordinance No. 532 and Article 4.2, of Hailey Subdivision Ordinance No. 821.** The amendments would provide clarification to sidewalk and pedestrian access requirements and provide flexibility through the application of street section standards.

Director Robrahn stated these amendments are being proposed in light of situations that have been encountered in the Woodside Light Industrial area and in Airport West related to sidewalks. She stated she had been working with the City Engineer on clarification of the public infrastructure requirements. She stated some of the ordinance amendments that occurred last spring resulted in additional confusion. These amendments are an effort to look at infrastructure requirements and provide more flexibility. She said currently requirements deal with sidewalk, curb and gutter and it is not always appropriate to have curb and gutter. She said they want to provide more flexibility so that every situation is not tied to the same requirements. She said she and the City Engineer have been discussing developing different street standards for the different streets within Hailey to meet the needs of the vehicle, pedestrian and bicyclist while also meeting

the requirements for landscaping and buffers. These amendments will also address drainage issues.

Director Robrahn went through the proposed amendments to the ordinance with the Commission.

Commissioner Scanlon asked if the City Engineer was using the standards that exist and applying them differently or developing new standards. Director Robrahn stated it was a combination.

Commissioner Marvel stated that using the term street improvements rather than sidewalk, curb and gutter seems to leave the pedestrian access out of the mix. She asked if there was a definition for street improvement.

Director Robrahn stated there was not a definition for street improvements. She stated they will be developing a sidewalk and bicycle infrastructure plan, that may be renamed something broader, which would include the street sections. She said it would be best for these text amendments to go hand in hand with the presentation of that document. It is conceptualized as a package and with out the other part of the package it may not be reasonable to ask the Commission to make a recommendation. She stated hopefully that will be available by January. She said included in the plan will be a complete streets policy where every street will be planned for bicycles, pedestrians and vehicles. She stated they are using the more generic term street to cover both public right-of-way and private streets. The intention is finding the term that will be all accompanying. She stated there are also amendments to waivers for projects that are less than \$20,000 to be changed to square footage rather than a dollar amount and rearranging of existing language for clarification.

Commissioner Scanlon referenced to page 4 of the staff report; item d. "parking areas containing more than two (2) parking spaces with in the LI District may be allowed to be accessed by backing in from a public street with a right-of-way width of 60 feet". He asked if people will be allowed to back out on to the street from that parking lot.

Director Robrahn stated the idea there was to address a specific problem that occurs in the Woodside Light Industrial area with lots being on public streets and having very tight quarters; this would allow vehicles to back into a parking space from a public street onto private property. It addresses the public safety hazard of having cars backing out on to a public street.

Public Hearing Opened

Jay Cone, 651 El Dorado Lane, speaking in behalf of James Whitney and Justin Larson, both owners are appreciative for Director Robrahn's efforts. Cone wanted to understand and wanted the Commission to understand the methodology that is going to be used. He stated it is the flexibility that is important; the flexibility to allow for pedestrian access. Cone encouraged the Commission to be supportive to these text amendments so the city can accomplish their goal of

pedestrian access. Hopefully these ordinances will be subject to public comments and will be approved with public comment.

Jim Phillips, 20 Quigley Road, asked if the definition of pedestrian access routes would include sidewalks on private as well as public property.

Director Robrahn stated because Airport West has the majority of private streets they would develop standards specifically for Airport West that would be based upon the initial concept of the developer for the configuration of parking and sidewalks.

Phillips thinks the concept of specific sections is a great plan. He stated the Commission has an opportunity, and urges them to move away from making sidewalks a requirement within the design review approval. There are a lot of differences with different applications in regards to coordination and there will always be a gap with sidewalks. He thought the concept of LIDs would benefit the property owners.

Marc Corney, 565 Mother Lode Loop asked if the standards would take into account great changes. He said in general he is favorable of the whole idea.

Phillips drafted some possible additions to this ordinance for discussion purposes and will submit them to Director Robrahn.

Public Hearing Closed

Commissioner Marvel suggested continuing this item. Director Robrahn stated she would re-notice these amendments.

Director Robrahn stated she was approached by the owner of Chateau Drug who is looking at property in the Light Industrial district on Main Street by the airport and wants to do a wholesale business with a retail component. She said he is looking at bulk cleaning supplies, restaurant supplies, and produce. She stated she looked at the uses allowed for that district and found that the wholesale portion of the proposed business would comply but the retail portion would not and cited the ordinance reasoning explanation. The products proposed to be sold are retail sales in nature and are the type that is allowed in the downtown business district. She discussed with the applicant his arguments and said while the applicant had good points she did not feel comfortable changing her decisions and she would like for the Commission to have a discussion about this and make a determination whether or not this combination of business should be allowed.

Ken Sanga, 330 Robinhood Drive, stated the main reason he had this idea was he heard people saying that a place like this is needed in Hailey. It would be beneficial if there was this kind of business here in Hailey compared to making a trip to Twin Falls for these items. He also read how this business would comply with the Comprehensive Plan.

The Commissioners made their comments.

Sanga stated he is trying to create low margin and high volume; whatever comes in will go out. He would buy and sell in bulk.

Commissioner Pogue stated when the wholesale language was put into place that it envisioned wholesale to the public. He said he wanted to look at the bigger picture here and something like this is what this community needs.

Director Robrahn suggested the Commission look at this and decide if there would be a way to accommodate Mr. Sanga and make it fit into our ordinance.

Commissioner Marvel agreed with Commissioner Pogue's comments. She was concerned with the traffic issues getting in and out of the parking lot.

Commissioner Moore stated the concern would be access, ingress and egress and stated he was concerned with how people would drive and suggested that the City Engineer look at this.

Director Robrahn agreed that this issue also needed to be discussed about with the City Engineer.

Commissioner Scanlon was also concerned with the traffic.

Commissioner Spears liked the idea of keeping the flow of money in the valley.

Director Robrahn stated now that she had direction from the Commission she would continue to work with the applicant on the traffic issue.

Workshop

A presentation by staff of potential ordinance amendments dealing with various areas of sustainability (environmental, social and economic) including urban agriculture, solar, wind, accessory dwelling units, water conservation and parking.

Planner Platt made the presentation explaining what a sustainability ordinance would address:

- Urban Agriculture allows for reduced VMT;
 - Improved health by giving individuals the choice to ensure their own foods are safe and high quality.
 - Reduced GHG emissions; increases food security and decreased food costs.
 - It protects neighboring properties requiring CUPs for all animal operations, excluding chicken operations of 3 or less.
 - Prohibiting roosters; restricting the minimum lot size, except for chickens; increasing setbacks for coops.
- Solar Energy addresses the US solar energy trend; promotes clean energy by removing regulatory obstacles and allowing some types of PV panels by-right.
 - Allows for the production of energy without damming, was, mining.
- Small scale wind energy.
- Protects scenic views and neighboring property.

- Promotes accessory dwelling units.
- Reduces ADU restrictions.
- Water conservation.

The Commission made their comments on the presentation.

Peter Lobb suggested having public comment on these changes to hear what the public thought.

Staff Reports and Discussion

Director Robrahn said the Mayor wanted the Commissions' input on the sign ordinance.

Director Robrahn stated balloons and flags are not allowed as the ordinance currently reads and the businesses complained when this section of the ordinance is enforced. The ordinance states no portion of the sign shall move or shall have balloons attached. She read the definition of pennants. She asked the Commission if they wanted to amend the sign ordinance.

Commissioner Scanlon stated the Commission had discussed sandwich boards and how they were a hazard to public safety.

Commissioner Pogue said there should be some language to sometimes allow balloons.

Planner Platt stated that balloons also can impede vehicular vision.

Commissioner Spears suggested limiting the length of string for the balloons.

Commissioner Marvel felt that colorful banners that do not impede pedestrians should be allowed.

Commissioner Pogue suggested limiting the number of balloons. He felt that law enforcement could remove signs that impede with traffic, or appear to be littering, they should issue a ticket on the spot.

Director Robrahn stated there would not be a meeting on January 5 because she is scheduling Quigley meetings for the Council that week.

Adjourn

Commissioner Scanlon moved to adjourn at 9 p.m. Commissioner Pogue seconded, the motion passed unanimously.