

## STAFF REPORT

**TO:** Hailey City Council  
**FROM:** Beth Robrahn, Planning Director *BR*  
**RE:** Appeals of Planning and Zoning Commission decisions regarding CSM Building Design Review  
**DATE:** January 26, 2009

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**Appellant:** Leargulf LLC  
**Project:** CSM Building  
**Location:** Lot 1A, Block 3, Airport West Subdivision, Phase II (1760 Lear Lane)  
**Zoning:** Service Commercial Industrial-Industrial (SCI-I)

### Facts

The Airport West Annexation was approved by Council on December 10, 2001. The annexation agreement specifically required the developer to install sidewalks on both sides of Aviation Drive. The Final Plat of the Airport West Subdivision, Phase One was approved by Council on June 10, 2002. The final plat of the subdivision of Block 3 was approved by Council on July 26, 2004. Despite the requirement in the annexation agreement and approval of the subdivision plat, the City did not require a sidewalk on the west side of Aviation Drive between the entrances of Merlin Loop.

### Procedural History

On June 16, 2008 the Hailey Planning and Zoning Commission considered an application submitted by Leargulf LLC for Design Review approval of a new 6,474 square foot, 3-unit commercial building, located at Lot 1A, Block 3, Airport West Subdivision, Phase II (1760 Lear Lane). The Commission conditionally approved the design review application. Condition (m) stated, "the Planning & Zoning Administrator has the authority to approve minor modifications to this project prior to, and for the duration of a valid Building Permit".

The Planning Department received plans on September 9, 2008 with modifications to the CSM Building design review approval. The administrator identified the following modifications to the CSM Building:

- The addition of a second story deck on the east and west elevations, approximately 175 square feet each
- Change of windows to doors leading out to the deck on the east and west elevations
- Removal of the lower roof standing seam on the east and west elevations
- The addition of a trellis on the south elevation

On October 20, 2008 the issue of whether the modified plans warranted a new public hearing was brought to the Planning and Zoning Commission. The Commission agreed with the Administrators determination that the modifications were minor and could be administratively approved.

The Appellant submitted a Notice of Appeal dated October 28, 2008.

A letter dated October 31, 2008 was sent to the Appellant from the Administrator notifying the applicant that the Administrator determined the modifications to be minor and approved them administratively. This letter erroneously referred to Section 6A.3.g of the Hailey Zoning Code as the authority for approving the modification administratively. The letter was rewritten on November 25, 2008 with the correct citing of condition (m) of the original design review approval.

The Appellant submitted a Notice of Appeal dated November 11, 2008.

On December 1, 2008, the Hailey Planning and Zoning Commission considered an appeal submitted by the Appellant, Leargulf, LLC appealing an administrative approval of minor modifications to design review approval for the CSM Building given by the Commission on June 16, 2008.

Section 3.6 of the Zoning Ordinance establishes the procedure for appeals as follows;

“A party aggrieved by a final decision of the Administrator, Hearing Examiner or Commission may appeal in writing any final decision by filing a Notice of Appeal with the Hailey City Clerk within fifteen (15) days from the date of the decision. An appeal of a final decision by the Administrator or the Hearing Examiner shall be heard by the Commission. An appeal of a final decision by the Commission or an appeal of a decision heard on appeal by the Commission shall be heard by the Council. Any appeal shall not be a de novo hearing and shall be based solely on the record before the Administrator, Hearing Examiner or Commission, as the case may be. The record shall consist of all the documents presented to Administrator, Hearing Examiner or Commission (such as the application, supporting documents, letters and studies), the minutes of any meeting and the findings of fact and conclusions of law. The Appellant may also have a verbatim transcript of the hearing before the Hearing Examiner or Commission prepared to be submitted on appeal. The cost of the preparation of the record and transcript shall be paid by the Appellant. The appeal shall specifically state the decision appealed the issues to be raised on appeal and reasons for the appeal. If no appeal is filed within the fifteen (15) day period, the decision shall be deemed final.

At the time of the filing of the Notice of Appeal, the Appellant shall pay the costs of preparing the transcript and record estimated by the Administrator and the fee for filing an appeal, as established by ordinance. The Administrator will prepare one original transcript (if applicable) and record and 8 copies of the transcript (if applicable) and record. If the costs of preparing the transcript and record exceed the estimated costs paid by the Appellant, the Appellant shall pay the difference before a hearing on the appeal is heard.

Once the transcript and record have been prepared, the Administrator shall schedule a hearing on appeal with the Commission or Council for the next available hearing date. If the Appellant desires to file a brief in support of the appeal, the Appellant shall file original brief and 8 copies of the brief with the Administrator five business days before

the scheduled appeal hearing. If the brief is not timely filed, the Commission and the Council may elect not to consider the brief. The Appellant and Appellant's representative and a City representative shall only be entitled to present argument before the Commission or Council.”

Based upon the foregoing, the Commission affirmed the Administrator's decision with regard to approval of minor modifications and concluded that:

1. The Administrator has the authority to approve minor modifications to design review approval.
2. The changes submitted by the applicant are minor.

The Appellant submitted a Notice of Appeal dated December 26, 2008.

The Appellant submitted an Appeal Brief dated January 5, 2009 to summarize the three appeals filed by the Appellant.

### **Issues**

The Appellant raised seven (7) issues on appeal, summarized on pages 3 through 7 of the Appeal Brief dated January 5, 2009. Staff believes that the decision of the Planning and Zoning Commission should be affirmed on six (6) of the seven (7) issues. The staff will only address the seventh issue described on pages 4 and 5 of the Appeal Brief. In the fourth issue, the Appellant asserts that the design review sidewalk requirement for the appellant's project is contrary to prior city approvals. The City has approved three design review applications for buildings along Aviation Drive and Merlin Loop without requiring public sidewalks. In light of these approvals and the City's decision not to require a sidewalk on the west side of Aviation Drive between the entrances to Merlin Loop, the Appellant may have an argument that any requirement to provide sidewalks in the public right-of-way in this particular location is arbitrary and capricious. However, Ordinance 1001 is in place and changes the requirements for sidewalks and was followed in review of the appellant's application.

### **Council Options**

If the Council believes there is no merit to any of the Appellants' arguments, the Council should affirm the decisions of the Planning and Zoning Commission. If the Council believes there is merit to any of the Appellants' arguments, the Council can reverse the Planning and Zoning Commission, but staff would suggest the Council should consider the following: 1) pursue an LID for the installation of sidewalks in the subject area to complete the sidewalk infrastructure and stay consistent with the ordinance and to recognize the importance of sidewalk connectivity, or 2) repeal Ordinance 1001.

**Attachments**

P&Z Findings of Fact	June 16, 2008
P&Z Transcript	October 20, 2008
Administrative Approval	October 31, 2008
Administrative Approval	November 25, 2008
P&Z Decision	December 1, 2008
Appeal Brief	January 5, 2009
Notice of Appeal	December 26, 2008
Appeal Exhibits	November 26, 2008
Supplemental Notice of Appeal	November 18, 2008
Notice of Appeal	November 11, 2008
Notice of Appeal	October 28, 2008

## FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

On June 16, 2008 the Hailey Planning and Zoning Commission considered an application submitted by Leargulf LLC for Design Review approval of a new 6,474 square foot, 3-unit commercial building, located at Lot 1A, Block 3, Airport West Subdivision, Phase II (1760 Lear Lane). 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 was published in the Wood River Journal and mailed to property owners within 300 feet on May 28, 2008.

#### Application

The applicant proposes 6,474 square foot, 3-unit commercial building. The production, sales, and storage of bulky goods and associated wholesale and retail sales, offices and parking are permitted uses in the Service Commercial Industrial-Industrial district.

The applicant received Design Review approval from the Airport West Business Park Architectural Review Board on May 20, 2008.

#### Standards of Evaluation

Articles IV and VIA of the Hailey Zoning Ordinance establish the criteria for applications for Zoning and Design Review. For each applicable standard (in bold print), the Commission makes the following Findings of Fact:

#### Standards of Evaluation

##### **4.12.1.1 District Wide Regulations.**

- a. **All uses in the SCI District shall conform with the Comprehensive Plan and shall be reviewed for conditions that may be hazardous, including but not limited to traffic hazards, parking overflow, noise, cinders, dust, fumes, odors, smoke, vapor, vibration, glare or industrial waste. Any conditions that could adversely affect the surrounding areas are subject to review upon application for Design Review. The Commission may require mitigation including, but not limited to, enclosure within a structure, landscape buffering, or alternate method of operation.**

At this time, there are no foreseen issues with on-site activities that could adversely affect the surrounding area.

- b. **Landscape screening and buffering shall be provided and maintained by the owner in all required front yards and adjacent to all collector and/or arterial roads.**

Currently, minimal landscaping exists along Merlin Loop and Aviation Drive, which has been installed by the Airport West Developer. No landscaping is proposed in the front yard (adjacent

to Lear Lane) or along Aviation Drive, which is a public collector road. It is a condition of approval that planters be provided along the front elevation, between the two overhead garage doors (adjacent to Lear Lane).

- c. **Landscape screening and buffering shall be provided and maintained in the required yards adjacent to the RGB, GR, LR, MH, LB, and TN zone districts, and adjacent to any residential district of Blaine County, to protect these areas from undue intrusion of noise, light, odors, and other influences.**

This standard is not applicable; the subject property is not adjacent to the districts listed above.

- d. **All development shall be subject to Design Review pursuant to Article 6A of this Ordinance.**

This application constitutes compliance with this requirement.

- e. **No loading door or dock which faces a collector street, as defined by the City, shall be placed within 30 feet of the right-of-way for that collector street.**

**Street: Collector or Secondary. A street which carries traffic from local or minor streets and which serves for the circulation of traffic in residential areas or developments.**

There are overhead doors located adjacent to Lear Lane (private street) and Lot 1B. Therefore, the proposed overhead doors are not required to comply with this standard.

#### **4.12.3.4 Bulk requirements within the SCI-I sub-district:**

**Maximum building height in the SCI-I District is 35 feet.**

Proposed height is 30 feet and 3 inches from existing grade.

**Required setbacks are Front: 10'; Side and Rear: 10'**

Proposed setbacks are Front (Lear Lane): 35.5; side (Merlin Loop): 12 feet from the side of the building and 8 feet from the roof overhang; side (east elevation): 71 feet; rear (Aviation Drive): 10 feet.

*Section 7.1.1 of the Hailey Zoning Ordinance states, "Cornices, canopies, eaves or similar roof overhang features and cantilevered balconies may extend into a required yard setback not more than three (3) feet."*

**No parking shall be placed within the setback areas.**

No parking is within the required setback areas.

**Maximum Lot Coverage: Not more than seventy percent (70%) of the lot shall be covered by buildings.**

The original proposal showed two (2) carports (pursuant to Hailey's Zoning Ordinance carports are included in lot coverage calculations) measuring a total of 2,002 square feet. The proposal submitted on June 16, 2008, shows one (1) large carport covering approximately 1,494 square feet of asphalt and the principle building footprint is 5,300 square feet. The lot size is 20,855 square feet. The total lot coverage is 33%.

**All materials, with the exception of trees and plant materials stored on the premises, shall be stored within a building or within a wall or screening fence not less than four (4) feet nor greater than eight (8) feet in height.**

A contiguous six (6) foot high corrugated metal fence is proposed along the east lot line and the north lot line (Aviation Drive). There is an outdoor storage area adjacent to Aviation Drive that would be screened by the proposed fence. Along the east side of the lot the fence would partially screen one (1) 19 foot and 7.5 inch high carport structure, which is proposed to cover 8 parking spaces located adjacent to the east lot line.

#### **6A.7.1.1 Sidewalk, Curb, and Gutter.**

**Sidewalks, curb and gutter shall be required improvements for projects requiring Design Review approval in the B, LB, TI, A and SCI zoning districts. At a minimum, sidewalks and curb and gutter, where required, shall comply with the City Standards. Sidewalks shall be at least six feet (6') wide or as wide as adjacent sidewalks on the same block, whichever is greater. Sidewalks shall be constructed along the entire length of a property adjacent to any public or private street in all zones, as well as in locations that provide safe pedestrian access to and around a building. New sidewalks shall be planned to provide pedestrian connections to any existing sidewalks adjacent to the site. Sites located adjacent to public or private streets that are not currently thru-streets, regardless of whether the street may provide a connection to future streets, shall provide sidewalks to facilitate future pedestrian connections. Sidewalks and drainage improvements shall also be required in other districts, except as otherwise provided herein. The requirement for sidewalk may be waived if the cost of the proposed project construction is less than twenty thousand dollars (\$20,000). For Single Family Dwelling and Duplex projects in the Townsite Overlay District, the requirement for sidewalk shall be waived for any remodel or addition; sidewalks shall be required for new primary dwellings.**

**The City may approve and accept voluntary cash contributions in-lieu of the above described improvements, which contributions must be segregated by the City and not used for any purpose other than the provision of these improvements. The contribution amount shall be 110% of the estimated costs of concrete sidewalk and drainage improvements provided by a qualified contractor, plus associated engineering costs, as approved by the City Engineer. Any approved in-lieu contribution shall be paid before the City issues a certificate of occupancy. In-lieu contributions for sidewalks shall not be accepted in B, LB, TI and SCI districts.**

The plat of the Airport West subdivision typically precludes sidewalk, curb and gutters adjacent to the platted private streets. The typical site plan for a lot in the Airport West Subdivision includes 90 degree parking spaces between the building and the paved road surface is required. To meet this sidewalk standard a six foot sidewalk adjacent to the building that connects to any existing or future sidewalks on public and private streets is required. The revised site plan, submitted on June 16, 2008, shows a five (5) foot wide sidewalk with painted stripes connecting the pedestrian area at the front of the building, extending east to provide a future connection to Lot 1B. There are no sidewalks proposed or existing along Merlin Loop (public street), Aviation

Drive (public street), or Lear Lane (private street). It is a condition of approval that sidewalks, installed to City Standards, be provided along both public streets. The sidewalk adjacent to the front (south elevation) of the building shall connect to the required sidewalk along Merlin Loop; meeting this requirement is a condition of approval.

**6A.8 Area Development Plan.** When the owner of Contiguous Parcels is required to obtain Design Review approval for any portion of the Contiguous Parcels, an Area Development Plan shall be submitted and approved. The Commission shall evaluate the following basic site criteria and make appropriate findings of fact:

- a. Streets, whether public or private, provide an interconnected system and shall be adequate to accommodate anticipated vehicular and pedestrian traffic.
- b. Non-vehicular circulation routes provide safe pedestrian and bicycle ways and provide an interconnected system to streets, parks and green space, public lands, or other destinations.
- c. Water main lines and sewer main lines are designed in the most effective layout feasible.
- d. Other utilities including power, telephone, cable, and gas are designed in the most effective layout feasible.
- e. Park land is most appropriately located on the Contiguous Parcels.
- f. Grading and drainage are appropriate to the Contiguous Parcels.
- g. Development avoids easements and hazardous or sensitive natural resource areas.

Upon any approval of the Design Review application, the Owner shall be required as a condition of approval to record the Area Development Plan or a development agreement depicting and/or detailing the approved Area Development Plan with a statement that the Area Development Plan shall bind the Owner and Owner's successors.

Leargulf LLC, does not own parcels contiguous to the subject property.

**Signage:**

The applicant is hereby advised that a sign permit is required for any signage exceeding four square feet in sign area. Approval of signage areas or signage plan in Design Review does not constitute approval of a sign permit.

**8B.4. Outdoor Lighting.**

**8B.4.1. General Standards.**

- a) All exterior lighting shall be designed, located and lamped in order to prevent over lighting, energy waste, glare, light trespass and sky glow.
- 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 luminaries.**

The proposal indicates two types of exterior lighting fixtures; a wall mount (mounted at a height of 8 feet and four (4) inches) and a ceiling mount (mounted at a height of 9 feet) galvanized lamp. It is proposed that each lamp will use one (1) 15 watt CFL bulb. This wattage at the proposed mounting height is in compliance with Hailey's Outdoor Lighting Ordinance. It is a condition of approval that the proposed luminaires be full-cut off and all exterior lights shall be on timers and sensors.

**9.2.1 Loading Space Requirements and Dimensions. The following regulations shall apply to all commercial and industrial buildings with off-street loading areas.**

- a. **One (1) loading space shall be provided for any single retail, wholesale or warehouse occupancy with a floor area in excess of 4000 square feet, except grocery and convenience stores where one (1) loading space shall be provided for a floor area in excess of 1000 square feet. An additional loading space shall be required for every additional 10,000 square feet of floor area, except grocery and convenience stores where an additional loading space shall be required for every additional 5,000 square feet of floor area. Such spaces shall have a minimum area of 500 square feet, and no dimension shall be less than 12 feet.**
- b. **Convenient access driveways to loading spaces from streets or alleys shall be provided; they shall not be less than 12 feet in width.**
- c. **No loading space required by this Ordinance shall project into any street, alley, or other public right-of-way.**

Presently, the use of the building is unknown. Depending on the future use, additional loading spaces may be required.

**9.4 Parking Space Requirements.**

- a. **For the purpose of this Ordinance, the following parking space requirements shall apply as the minimum number of parking spaces which shall be provided by the given use. Where the calculation of parking spaces results in a fraction, the required parking shall be rounded up to the nearest whole number when the calculation equals less than 10 (e.g., if the requirement is "one space per 1000 square feet", an area of 9010 square feet calculates to 9.01 but will require ten parking spaces.); and shall be rounded down to the nearest whole number where total calculation exceeds 10 (e.g., 10,900 square feet calculates to 10.9 but will require 10 parking spaces).**
- b. **For the purposes of this Section, "gross area" is defined as the total square foot area of a given use, as designated for each use. Storage areas in basements are not included in gross area. "Net area" is defined as the area consistently used by customers, patrons, and employees of the use. Net area does not typically include areas such as hallway and elevator areas, bulk storage and freezer areas, employee break areas, restrooms and machinery rooms.**
- c. **Where a specific use is not listed, and no similar use is listed, the required minimum number of parking spaces shall be one per 1000 gross square feet.**

- d. **All uses shall provide handicap accessible parking spaces as required by the IBC, and designed to comply with the standards set forth in ANSI A117.1. Such spaces may be included in the total number of required parking spaces.**

There are three rooms on the main floor that measure 846 square feet, which are labeled as storage and are adjacent to the restroom facilities. Mark Corning, the applicant's representative, anticipates that these rooms will most likely be used for office space, not storage or warehouse space and therefore, should be considered office space when calculating and establishing parking requirements. Based on this information, the proposed building has 2,246 square feet of office space (calculation includes the 846 square feet of space labeled as "storage" on the plans) and 4,454 square feet of storage space.

**9.4.2 Commercial, Professional, Service, Recreation and Entertainment. All commercial, professional, service, recreation and entertainment uses shall provide improved parking in the amount of one parking space for every 1000 square feet of gross building area; except as follows:**

- l. Offices: 1 space for every 500 square feet of gross building area.**

2,246 square feet of office space requires 5 parking spaces.

**9.4.5 Industrial.**

- b. Warehouse and storage facilities: 1 space for every 1,000 square feet of floor area but not less than 1 space per employee.**

4,454 square feet of storage space requires 5 parking spaces. The total parking requirement is 10 spaces. The original plans proposed 12 parking spaces. Eleven (11) parking spaces are proposed in the revised site plan, submitted on June 16, 2008.

**6A.7.2.2. DESIGN REVIEW GUIDELINES FOR NON-RESIDENTIAL USES IN LIGHT INDUSTRIAL (LI), SERVICE COMMERCIAL INDUSTRIAL (SCI), TECHNOLOGICAL INDUSTRY (TI), AIRPORT (A)**

**A. Site Planning.**

- 1. Site planning shall include consideration of adjoining parcels in terms of building configuration, vehicular circulation and parking, drainage and access. Reciprocal ingress and egress, circulation, and parking arrangements shall be encouraged to facilitate the ease of vehicular movement between adjoining properties. Access points to adjoining lots shall be shared wherever feasible.**

*When planning new construction, consider how the new building will be situated in relation to adjacent properties. Encourage the use of common or shared streets and circulation patterns. Delivery trucks should be able to operate without blocking pedestrian rights-of-way. Consideration with respect to building site and proximity to streets and alleys should be given when buildings are constructed to insure that life/safety issues do not become problematic.*

All vehicular access to the subject property is via Lear Lane.

- 2. Conflicts between different circulation needs and uses should be minimized.**

*Circulation patterns between customers/pedestrians and service/delivery vehicles should be conflict free. Delivery trucks should not interfere with public rights-of-way or obstruct required parking spaces. Where alleys are provided, they should be utilized for loading, deliveries, trash*

*pick-up, etc. Pedestrians should be able to have safe access to the site without being forced to walk within any traffic lane. When developing more than one building on a site, it is important to provide pedestrian paths through the site.*

There is a pedestrian pathway adjacent to the building's south elevation, in between the customer parking area and the building's front wall plane. The pathway continues around the east and west sides of the building, ending at the last building entrance of both the east and west elevations. From the pedestrian pathway adjacent to the front (south side) of the building, there is a five (5) foot wide sidewalk, striped with paint that provides a future connection to Lot 1B. It is not anticipated that delivery trucks would interfere with circulation needs; there are large overhead doors and at the east and south sides of the building and a delivery area adjacent to the overhead doors located at the east side of the building. The delivery area does not conflict with parking areas. Customer parking and employee parking are proposed in such a way that pedestrians walking to and from their vehicles would not be forced to walk within any traffic lane. There are no sidewalks proposed or existing along Merlin Loop (public street), Aviation Drive (public street), or Lean Lane (private street). It is a condition of approval that a sidewalk be provided along both public streets and the sidewalk adjacent to the front (south elevation) of the building shall connect to the required sidewalk along Merlin Loop.

- 3. Snow storage areas not less than 25% of the improved parking and circulation areas shall be sited in a manner that is accessible and usable. In no case shall a designated snow storage area have any dimension less than 10 feet. Snow storage shall not encumber required parking spaces or encroach into sidewalk or pedestrian pathways.**

*Snow storage areas for required parking areas, driveways and sidewalks shall be provided on-site. These areas should be situated so that they are accessible to all types of snow removal vehicles, of a size that can accommodate moderate areas of snow, and located in areas that will not hinder access to trash collection areas, utility meters, etc. These sites are encouraged to be landscaped with vegetation that is salt-tolerant and resilient to heavy snow.*

The revised plans, submitted on June 16, 2008, depict the on-site, uncovered, paved circulation and parking areas measuring 6,521 square feet. The on-site snow storage provided measures 1,851 square feet, which is approximately 28% of the required snow storage area. The carport will cover 1,494 square feet of parking area. This amount of space is not included in the snow storage calculations because it is anticipated that snow will not accumulate here, like it would at an uncovered parking area. If the covered area were to be included in the snow storage calculations the proposed on-site snow storage area would provide 22% of the required snow storage area. It is anticipated that the roof of the carport's design will not hold snow. Because of the carport's design and proposed positioning on the site, snow would shed into the on-site snow storage area. The revised carport plans, submitted on June 16, 2008, propose snow clips on the carport.

The private street snow storage area, originally platted in the southwest corner of Lot 1A, measures 1,125.5 square feet. The private street snow storage area is proposed for redistribution along Lear Lane. Based on the revised site plan, submitted on June 16, 2008, the redistribution would create three different snow storage areas measuring 705, 292, and 129 square feet, for a total private street snow storage area of 1,126 square feet. Relocating

the private street snow storage, as proposed on the site plan, will require a plat amendment. It is a condition of approval that an amended plat be recorded prior to the issuance of a Certification of Occupancy.

The revised site plan, submitted on June 16, 2008, shows a portion of the private street snow storage area, measuring 705 square feet and located in the southwest corner of the lot, blocking the overhead garage door entrance to unit (three) 3 by approximately four (4) feet. The snow storage area measuring 292 square feet blocks unit two's (2) overhead garage door by four (4) feet. It is a condition of approval that a 120 square feet of snow storage area form the parcel of snow storage measuring 705 square feet be relocated to ensure that exit and entry from unit three's (3) garage is accessible. It is a condition of approval that a 80 square feet of snow storage area form the parcel of snow storage measuring 292 square feet be relocated to ensure that exit and entry from unit two's (2) garage is accessible. There are 11 parking spaces provided and only 10 required; therefore, it is a condition of approval that parking space number one (1) be utilized as snow storage in place of the sections that impede vehicular access to the garage doors. Parking space number one (1) measures approximately 200 square feet (the amount of snow storage requiring relocation) and is close to Lear Lane; therefore, it is an appropriate alternative placement for private street snow storage.

**4. The visual impact of off-street parking and loading areas, service areas, and auxiliary structures shall be minimized. Off street parking areas should be screened from public streets to the extent possible.**

*Utility meters and service functions should not be visible on primary facades of the building. Parking areas, trash storage and service areas should be screened with landscaping, fencing or by the primary building.*

The proposal shows the dumpster enclosed. The parking area on the east end of the lot is proposed to be screened by a six (6) foot high fence. The parking area adjacent to Lear Lane at the front of the building is not screened. It is a condition of approval that additional drought tolerant shrubs and trees be provided further south along the west end of Lot 1A, in an effort to better screen the parking area.

**B. Building Design.**

**1. Visual relief shall be provided for linear buildings. For elevations oriented to the street, design features such as windows, pedestrian entrances, building off-sets, projections, detailing, and change in materials or similar features shall be used to create human scale and break up and articulate large building surfaces and volumes.**

*All elevations of any building should have human scale. Linear elevations should incorporate design features that create interest and avoid boxy, bland appearance. Extensive repetition of similar forms on large monolithic surfaces that would lead to the perception of a large building mass is inappropriate. Consider varying the setbacks of walls facing the street on large projects that occupy several parcels.*

The north elevation, adjacent to Aviation Drive, has few windows and no doors, which may create a bland appearance. However, the setbacks are varied along the north elevation and it is proposed that the majority of this side of the building will be screened by a six (6) foot high

corrugated metal fence. All other elevations incorporate doors, overhead garage doors, a mixture of window sizes and configurations, and varying roof forms.

- 2. The proportion, size, and shape of new buildings shall be compatible with existing structures in the same area. Rooflines should be designed in a manner that is compatible with surrounding structures.**

*When planning new construction, consider the adjoining properties to avoid repeating design elements such as colors, window shapes and building materials. Consider the relationship of the new construction with other structures in the area. Creative architectural elements are encouraged providing they are compatible with existing structures. Roof lines that project the image of "false western" storefronts are not appropriate in Hailey.*

There are no existing structures adjacent to the proposed building site.

- 3. Any addition onto or renovation of an existing building shall be appropriately designed to create a cohesive whole.**

This standard is not applicable; the project proposal is for new construction.

- 4. All buildings are encouraged to minimize energy consumption, utilize alternative energy sources, and consider passive solar techniques.**

*The use of the following techniques can lead to energy cost savings and provide a more comfortable and healthy workplace:*

- Solar access*
- South facing windows with eave coverage*
- Double glazed windows*
- Deciduous shade trees*
- Earth berming against exterior walls*
- Good ventilation*
- Efficient lighting*
- Day lighting*

The proposal incorporates double glazed windows and tubular skylights at the flat roof porting of the building. The design of the south elevation provides little opportunity for day lighting.

- 5. Exterior buildings colors should be integrated appropriately into the architecture of the building, and should be harmonious within the project and with surrounding buildings.**

*When selecting colors, consider the natural and built surroundings. Colors should be integrated appropriately into the architecture of the building, and should be harmonious within the project and with surrounding buildings.*

The design and colors are similar to other industrial buildings characteristic of Airport West Subdivision.

- 6. Entries and pedestrian areas should include consideration with respect to snow shedding and drip lines.**

*Building entries should provide protection from adverse weather conditions. Entrances into buildings should be designed with the pedestrian in mind in order to prevent snow*

*from falling directly onto adjacent sidewalks. Entries, walkways, decks or landscaping should not be located where they will be damaged by falling snow. Consideration should be given whether the roofing material and pitch will hold or release snow. Gabled coverings, appropriate roof pitch, or snow clips and/or gutters and downspouts should be provided over all walkways and entries. Downspouts and drains should be located within landscape areas or other appropriate locations where freezing will not create pedestrian hazards.*

The building's proposed design incorporates snow clips, rain gutters, and downspouts along all uncovered pedestrian areas, where the roof is not gabled.

**7. Signage areas shall be appropriate to the building's scale and design.**

*A basic plan for signage, especially for multi-tenanted buildings, should be considered to ensure compatible and uniform signs. A uniform color scheme for all signs in multi-tenanted buildings should be considered.*

Design review approval does not constitute approval of any signage. A sign permit for all signs larger than four (4) square feet must be obtained prior to display.

**C. Accessory Structures, Fences, and Equipment/Utilities.**

**1. Accessory structures such as storage buildings and dumpster enclosures should generally not be located in front of or on the street side of the main building.**

*Accessory structures should be located at the rear of the property and not visible from the street. They should be designed to be compatible with the primary building(s).*

The dumpster enclosure is located on the street side of the main building and is visible from the street. The Commission determined that the dumpster's location, on the street side of the main building, was not of concern.

**2. Fences shall be constructed of materials compatible with the site. The use of chain link is prohibited.**

*Walls and fencing may be required elements in a site design for privacy, property line delineations, or screening. Fencing should not dominate the buildings or the landscape. Planting may often be integrated with a fencing scheme in order to soften the visual impact. A variety of fencing materials compatible with the site and surrounding properties are encouraged but in no case will chain link be permitted. Where topography varies, the tops of fences should generally be maintained horizontal, as opposed to angling up or down a slope.*

The fencing material is corrugated metal, which is also used on portions of the building's façade. The fence is proposed to extend along almost the entire length of the east end of the lot and will continue along most of the lot adjacent to Aviation Drive. There is an outdoor storage area adjacent to aviation drive that is fenced. It was determined by the Commission that the fence's massing and material, as proposed, was not an issue.

**3. All roof projections including, but not limited to air conditioning units, all mechanical equipment and solar panels shall be shielded and architecturally screened from view from on-site parking areas, adjacent public streets and adjacent properties.**

*The use of alternative energy sources is encouraged, however, the hardware associated with these features should be incorporated as an integral part of the building's design rather than as an add-on which detracts from the building and its surroundings. Special consideration should be given to communications facilities to insure that the number and design of them not conflict with each other.*

All mechanical equipment will be mounted at the flat roof portion of the building and screened by a parapet wall.

- 4. All ground-mounted mechanical equipment, including heating and air conditioning units and trash receptacle areas shall be adequately screened from surrounding properties by the use of a wall, fence, or landscaping, or shall be enclosed within a building.**

*These types of structures, to the greatest extent possible, should be enclosed within a building. If necessary, when located outside, they should be primarily screened from public streets and adjacent properties.*

The dumpster is proposed to be screened with a corrugated metal enclosure, which is consistent with the materials used for the fence and building siding.

- 5. Utilities, cables, phone lines and electrical lines must be considered in site design.**

*Location of above ground utility boxes shall be shown on site plans and should not interfere with other uses such as snow storage, parking and trash collection. All service lines into the subject property shall be installed underground. In no instance should additional appurtenances be located on existing utility poles.*

The utility meters are located on the east side of the building. They are proposed to be partially screened with shrubbery planters proposed alongside the building's east side.

#### **D. Landscaping.**

- 1. At least 50% of the landscaped area shall utilize drought tolerant and/or xeriscape specific plant materials. Drought tolerance and hardiness shall be considered when selecting plant species.**

*Drought tolerant plant species shall be used wherever possible to reduce water consumption. High water demand plant materials shall be kept to a minimum. Elements for the xeriscape plan should include but are not limited to: plant materials proposed to be used, timeline for establishment of the plantings, maintenance of the planting beds and the type of irrigation proposed. All species shall be hardy to the Zone 4 environment.*

There are shrubbery planters proposed along the east and west sides of the building and some shrubs planted at the northwest end of the building. A site plan note states, "All shrubs to be ten gallons, potentilla, arctic willow, redbud dogwood or listina plum." All other landscaping is proposed at the west end of the property only. The following plantings are proposed: ten (10) aspens, two (2) evergreen trees, and drought tolerant grasses. It is a condition of approval that all species be hardy to Zone 4 and drought tolerant.

- 2. The urban environment should be considered in planning landscaped areas. A combination trees, shrubs vines, ground covers and ornamental grasses should be selected that enhance and soften the hardscape. Landscape plans having more than 10 trees, a minimum of 10% of the trees shall be at least 4-inch caliper, 20% shall be**

**at least 3-inch caliper, and 20% shall be at least 2½ inch caliper. A maximum of 20% of any single species may be used in any landscape plan having more than 10 trees (excluding street trees).**

*A landscape plan should provide or create a pleasing site or landscape character for an area. A harmony and balance of all the various elements of a landscape must be retained or developed. Landscaped areas should be planned as an integral part of the site and not simply located in leftover space on site. New planting areas must be designed to accommodate typical trees at maturity.*

There are 12 trees proposed, ten (10) of which are Aspen. It is a condition of approval that a greater diversity of tree species be incorporated into the landscape plan and no single species shall comprise greater than 20% of the total landscape plantings. It is a condition of approval that a minimum of 10% of the trees shall be at least 4-inch caliper, 20% shall be at least 3-inch caliper, and 20% shall be at least 2½ inch caliper.

**3. All landscaped areas shall be watered by an automatic irrigation system and regularly maintained in healthy and thriving condition free of weeds, trash, and debris.**

*Irrigation systems are required for all landscaped areas. They are encouraged to include features that will minimize water use, such as moisture sensors. Wherever possible, overhead spraying systems should be avoided to prevent water loss through evaporation. In particular, island areas and sidewalk borders are susceptible to overspray and water waste.*

*Storm water runoff shall be retained on the site wherever possible and used to irrigate plant materials. Even native, drought tolerant plant materials need water to become established. Projects which use all native, drought tolerant plant materials must provide, at a minimum, a temporary irrigation system which must fully operate for at least two complete growing seasons. All native plant materials are not drought tolerant and those that are not will require irrigation on a permanent basis.*

*A plan for maintenance of the landscaping areas should be in place to ensure that the project appears in a well maintained condition (i.e., all weeds and trash removed, dead plant materials removed and replaced).*

All landscaped areas are proposed to be irrigated with an automatic sprinkler system. It is a condition of approval that moisture sensors be installed along the landscaped area and a landscape maintenance plan be in place.

**4. Retaining walls must be designed to minimize their impact on the site.**

*Retaining walls, where visible to the public and/or to residents or employees of the project, should be no higher than four feet or terraced with a three foot horizontal separation of walls. They should be constructed of materials that are utilized elsewhere on the site, or of natural or decorative materials, rather than solid or flat surface.*

*Landscaping should be provided within or in front of extensive retaining walls.*

*Retaining walls should add rather than detract to the appearance of the site. Retaining walls over 24" high may require railings or planting buffers for safety. Low retaining walls may be used for seating if capped with a surface of at least 12 to 16 inches wide.*

No retaining walls are proposed.

## 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 Zoning Ordinance No. 532, Section 6A.5, was given.
2. The project is in general conformance with the Hailey Comprehensive Plan.
3. The project does not jeopardize the health, safety, or welfare of the public.
4. Upon compliance with the conditions set forth, the project conforms to the applicable specifications outlined in the Design Review Guidelines, as set forth herein, applicable requirements of the Zoning Ordinance and City Standards.
5. This Design Review approval is for plans dated June 16, 2008
6. This Design Review approval shall expire one (1) year from the approval of these Findings of Fact, unless a building permit application has been submitted to the Building Department.
7. The project shall receive Design Review approval subject to the following conditions:
  - a) All Fire Department and Building Department requirements shall be met.
  - b) Any change in use or occupancy type from the approval at the time of issuance of a Building Permit may require additional improvements and/or approvals. Additional parking and loading spaces may also be required upon subsequent change in use, in conformance with Hailey's Zoning Ordinance at the time of the new use.
  - c) All City infrastructure requirements shall be met. Detailed plans for all infrastructure to be installed or improved at or adjacent to the site shall be submitted for Department Head approval and shall meet City Standards where required. Infrastructure to be completed at the applicant's sole expense include, but will not be limited to, the following requirements and improvements:
    - Sidewalks, installed to City Standards, shall be provided along Merlin Loop and Aviation Drive.
    - The sidewalk adjacent to the front (south elevation) of the building shall connect to the required sidewalk along Merlin Loop and shall provide a future connection to Lot 1B.
    - A location of the drywells shall be shown and an inventory form from IDWR and encroachment form for the inspection of the drywell is needed.
    - All drywells and catch basins shall comply with City Standards.
    - The sewer service is shown in an incorrect location. A revised plan shall be submitted showing the accurate location of the sewer service and shall be verified with the City Engineer. If the plans propose floor drains, there may be pretreatment requirements.
  - d) Fencing to screen exterior storage materials shall be provided pursuant to requirements set forth in Section 4.12.3.4. Fence materials shall be approved by the Planning & Zoning Administrator.

- e) Snow clips shall be provided on both carports.
- f) An amended plat, relocating the private street snow storage area, shall be recorded prior to the issuance of a Certification of Occupancy.
- g) A portion of the private street snow storage, located at the south end of the lot and measuring 705 and 292 square feet, shall be relocated to ensure that exit and entry from unit two (2) and three's (3) garage is accessible.
- h) Parking space number one (1) shall be utilized as private street snow storage in place of the sections that impede vehicular access to unit 2 and 3's garage door.
- i) A revised landscape plan shall be submitted to the Planning Department and approved by the Planning Administrator prior to the issuance of a Certification of Occupancy showing the following:
  - A greater diversity of tree species shall be incorporated into the landscape plan and no single species shall comprise greater than 20% of the total landscape plantings.
  - A minimum of 10% of the trees shall be at least 4-inch caliper, 20% shall be at least 3-inch caliper, and 20% shall be at least 2½ inch caliper.
  - All species shall be hardy to Zone 4 and drought tolerant.
  - Moisture sensors shall be installed along the landscaped area and a landscape maintenance plan shall be in place.
  - Planters shall be provided along the front elevation, between the two overhead garage doors (adjacent to Lear Lane).
  - Additional drought tolerant shrubs and trees shall be provided further south, along the west end of Lot 1A, in an effort to better screen the parking area.
- j) All exterior lighting shall comply with the Outdoor Lighting Ordinance and shall conform to the following requirements:
  - The proposed luminaires shall be full-cut off.
  - Exterior lighting shall be placed on timers and sensors.
- k) The project shall be constructed in accordance with the application or as modified by these Findings of Fact, Conclusions of Law and Decision.
- l) Except as otherwise provided, all the required improvements shall be constructed and completed, or sufficient security provided as approved by the City Attorney, before a Certificate of Occupancy can be issued.
- m) This Design Review approval is for plans dated May 9, 2008. The Planning & Zoning Administrator has the authority to approve minor modifications to this project prior to, and for the duration of a valid Building Permit.
- n) This project is subject to Development Impact Fees pursuant to Municipal Code Chapter 15.16. Check with Building Department staff for estimated fee amount.

Signed this 7 day of July, 2008.

Stefanie Marvel  
Stefanie Marvel, Commission Chair

Attest:

Becky Mead  
Becky Mead, Administrative Assistant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 8th day of July, 2008, 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 Electronic Mail
- Via Facsimile

Scott Miley  
Leargulf, LLC  
P.O. Box 3271  
Hailey, ID 83333

- U.S. Mail
- Via Electronic Mail
- Via Facsimile

Marc Corney  
Red Canoe Architecture, PA  
565 Mother Lode Loop  
Hailey, ID 83333

CITY OF HAILEY

By Becky Mead  
Becky Mead, Administrative Assistant

CITY OF HAILEY PLANNING & ZONING COMMISSION MEETING

Leargulf, LLC  
October 20, 2008

Stephanie Marvel: Calling to order the regular meeting of the Hailey Planning and Zoning Commission on Monday, October 20, 2008. First item on the agenda is public comment . . . *inaudible* . . . not on the agenda. Next we have a consent agenda and the sequence of events of the consent agenda is if any of the staff, the commissioners or public wants to pull any item off the consent agenda for any reason, please speak up.

. . .

*. . . Portion of the meeting not relating to Leargulf, LLC was not transcribed . . .*

. . .

Stephanie Marvel: New Business. Public hearing upon an Application by Leargulf, LLC, for design review of a new building to be known as CSN Building located on Lot 1A, Block 3, Airport West Subdivision, 1716 Lear Way, within the Service Commercial Industrial, Industrial Zoning District. And I think that Ned would like to . . .

Geoff Moore: Sure. I mean, sure. On June 27, the second Tuesday after the hearing, I ran into the Applicant and we had an ex-parte conversation where he stated that he had concerns on the sidewalk and he would be talking to staff. I wished him luck and that was the extent of the conversation.

Stephanie Marvel: O.K.

Ned Williamson: How long was it again, between the decision, prior approval and the conversation?

Geoff Moore: It was eight days after it came from the Commission.

Ned Williamson: O.K. Was there any discussion about appeal?

Geoff Moore: He simply stated that he was going to be talking to staff members. He was going to bring some concerns to the staff.

Ned Williamson: O.K. I am here to address this Application very quickly. You all have a letter, I think, dated October 20, 2008, by Jim Phillips in front of you, I assume. Does everybody have it and has everyone had a chance to read it?

Unknown voice: Mm hmm.

Ned Williamson: Everybody's shaking their heads affirmatively, so I'm going to take it you've read it. This issue has come before staff, much as Geoff alluded to. The Applicant has expressed to myself and to Beth that there was some concern about the approval of sidewalks and wanted to preserve that right to argue the sidewalks. In a prior application, this Commission did require sidewalks, I think, on three sides. And the time of that, the time to appeal that

approval is coming on. There is no appeal on that. And the Applicant has not preserved their rights to appeal on that Application. So the Applicant submitted this revised Application and the, we have talked about that. Again, Beth and I and staff has talked to Scott and Jim Phillips about the new Application and we've suggested some options and they are insistent on coming to you guys and making this Application. Beth has, according to the Staff Report on the first page, made findings, felt that the changes between the first application and what's before you now were minor. There are four of them listed on page 1, the addition of the second story deck on the east and west elevations. Second revision is change of windows to doors leading out to the deck on the east and west elevations. Third is a removal of lower roof standing seam on the east and west elevations. And the addition, the last one is the addition of a trellis on the south elevation. So underneath the Design Review Chapter, Article 6A, specifically Section 6A.3g, sets for a procedure when there's a minor modification of projects that have received design review approval prior to and for the duration of a valid building permit. So that's where we are right now. And there's, a building permit has not been issued for this project. But it obviously has received design review approval. So, what I would, what I would suggest on this Application tonight is to consider this a little bit of a bifurcated proceeding. First issue is, do you think these changes that I've just outlined are minor? And Beth can go into them further and I think the Applicant should be given full opportunity to talk about the changes. And then if you make a determination, and frankly, I don't know if this is needed under the Code, I think Beth probably has full authority to say, you know what, these are minor and I'm going to make the, to document this in the file and move forward. But the Applicant wanted to go ahead and proceed before you, so we're giving the Applicant a right to make his arguments on this point. And further, we're allowing you to weigh in on the subject and they can make their pitches to you. If you find that this is minor, then I would suggest that that's the end of the discussion. If you find that these are not minor, then we go to the second part of the proceeding, and that is regular application. That is, hear it as new. I would advise you to make sure the Applicant has full opportunity to talk to you about the issues and weigh in on their feeling on the matters before you. If this matter does, if you determine that these are minor modifications, Hailey will be refunding the fees that have been submitted with the Application. I think that's the extent of it. I do, you know, the conversation we've had today and the letter from Jim, I think pretty much highlights the issue here, and this is about the sidewalks. There are some strong feelings about the sidewalks. And that's, in my mind, the purpose for the revised Application. The, Beth has determined that the revisions are minor and they would be approved, but the Applicant is insisting on having this proceeding, insistent upon making, raising these points, so I hope that helps. Any questions?

Mike Pogue: Do we have any guidance from the Code or Ordinances on what the definition of minor is?

Ned Williamson: I think, do you have your book in front of you? I'll read this. This is the best guidance I can give you, is right out of the applicable section. This is subpart g under 6A.3. The Administrator shall make the determination of what constitutes minor modifications that may include, but are not limited to, and I'll outline, I'll state probably about 6, 7 8 changes, something like that. Where was I? Limited to changes to approved colors and/or siding materials, changes to site plans that do not increase the building footprints or significantly change driveway or road alignment, changes to landscape plans that do not decrease the amount of landscaping, changes

to dumpster enclosures, changes to exterior lighting fixtures and locations or changes to windows that do not significantly affect project design, appearance or function. Anyway, that's the best I can do.

Mike Pogue: And the first, the first couple words of that was "the Administrator has the right to" correct? Can you read that first sentence again.

Ned Williamson: Verbatim. "The Administrator shall make the determination as to what constitutes minor modifications and may include, but are not limited to" the litany of things I went over.

Stephanie Marvel: O.K. Um, do we have any more questions for Ned? Alright, I'm going to let the Applicant present his case. Who is here to . . .

Marc Corney: Do you have the drawings?

Stephanie Marvel: No, I don't.

Ned Williamson: Do you want them?

Marc Corney: Yeah. Open . . . *inaudible* . . .

Beth Robrahn: Yeah. Open out the . . .

Stephanie Marvel: State your name.

Marc Corney: I'm Mark Corney for Leargulf, LLC, presenting a new 2 stories, 6,474 square foot light industrial building in the SCI Zone on Lot 1A, Block 3,

Ned Williamson: You know, if we're going to talk about whether or not these revisions are minor, or are you going to get into the whole Application?

Marc Corney: However you want to do it.

Unknown Voice: I think to conserve time, we should address whether they are minor or not.

Stephanie Marvel: I agree with that.

Ned Williamson: And maybe we ought to have Beth outline it. Do you want to that now Beth?

Beth Robrahn: . . . *inaudible* . . .

Stephanie Marvel: Are you going to present the changes?

Beth Robrahn: Yeah, I . . . *inaudible* . . . I'll just point out the changes that I identified on the revised plan. So on the third sheet of your, you show a deck, a deck on the east and west elevations. The decks are approximately 175 square feet each.

Marc Corney: Actually, well, 350's the total for both decks, but the . . . *inaudible* . . .

Beth Robrahn: Mm hmm. Yeah. And those are upper story decks. And then there were some changes associated with . . . *inaudible (rustling paper)* . . . plans there was like a roof or something over the, over where the decks now are, so that's changed, because it's now the deck. And then there were windows and now those are doors leading onto the decks on both the east and west elevations.

Owen Scanlon: What were the size of the original windows compared to the size of the windows that are now doors.

Beth Robrahn: Oh. I didn't go

Marc Corney: They were that size, like a 3 by 5 and now they'll be . . . *inaudible* . . . . The other change was to put siding on just this . . . *inaudible* . . .

Beth Robrahn: And then there was a trellis added to the south elevation. . . . *Inaudible* . . . And those are all, those are all considered minor modifications, therefore, it's my recommendation that they be approved administratively.

Stephanie Marvel: Do you want to address the changes, the question of whether they're minor modifications or . . .

Marc Corney: Well, the added square footage to our building would constitute being more than just minor.

Geoff Moore: Where did you add square footage at?

Marc Corney: That second level.

Geoff Moore: The two decks? Right?

Marc Corney: The 350 square feet to the second level.

Stephanie Marvel: That doesn't add to the footprint, does it?

Geoff Moore: I don't think that's a part of the footprint size, is it?

Marc Corney: Square footage of the building. That and the fact that the visual on a sloped roof with metal roofing, compared to a second story balcony.

Stephanie Marvel: And do you have other, would you like to add to that? . . . O.K. Anybody else in the . . .

Jim Phillips: Well, I would like to make a comment after he's finished . . .

Stephanie Marvel: O.K.

Jim Phillips: My name's Jim Phillips for the record, but I'll let him continue until he's done.

Marc Corney: Well, in a nutshell, those are the changes.

Stephanie Marvel: O.K.

Jim Phillips: My name's Jim Phillips for the record, and I represent the Applicant here. When we originally discussed this Application we felt that the addition, changing the second floor to include the decks and changing the roofline, was a significant enough change in the building required a resubmission to design review. We didn't feel that under the guidelines of the Ordinance that this was a minor change. So that's the first point I'd like to make. The second point I'd like to make, is that you have to realize that we filed a new Application to be accepted by the City. And there's one other significant aspect to this Application that the Commission should be aware of, and that is there are no sidewalks proposed to be installed along here on Merlin Loop or Airport Way. And that's another part of this Application. So I don't believe it's an Application that presents itself for simply administrative approval. Thank you.

Stephanie Marvel: O.K. Thank you.

Ned Williamson: It's my understanding that the sidewalks weren't submitted as part of the first Application either. It was conditioned, there was a conditional approval requiring the sidewalks to the first Application.

Stephanie Marvel: That's my recollection. Well I think . . .

Ned Williamson: Jim has one more statement.

Jim Phillips: The only comment with regard to that is that requirement was part of the approved, the last approved Application. We have simply submitted an entirely new Application with regard to this building with these design features. We do not see anything in the Ordinance that prevents us from doing that.

Mark Spears: And that was on August 28<sup>th</sup>, correct?

Jim Phillips: That was on August 28<sup>th</sup>, and it was a separate Application. It's for a building with a different a design element and it doesn't incorporate certain other aspects that have been discussed as time's gone on with this Application.

Mark Spears: At the time you submitted, if I may, one more? At the time you submitted your letter of August 28<sup>th</sup>, you already had a disposition of your letter dated, were you part of the July 25<sup>th</sup> letter also?

Jim Phillips: The only, to answer the question, the only letter I believe I've ever submitted to the City is the one that is dated October 20<sup>th</sup>, that was in response to the recent Staff Report.

Ned Williamson: Mark, what were you referring to? I'm not sure.

Mark Spears: Well it just says right here, the Applicant sent a letter to the City dated July 25<sup>th</sup> objecting to the first, to the sidewalk requirements and it was due by the 22<sup>nd</sup> of July and it was written on the July 25<sup>th</sup> of July. And my question is, what did we decide to do, I mean I think I'm pretty clear, I just want to make sure I've got my timeline straight here.

Scott Miley: I submitted that letter.

Mark Spears: Why did you not do it within the fifteen days?

Scott Miley: I didn't know I had fifteen days.

Mark Spears: You didn't know you had fifteen days? Was that information withheld from you?

Scott Miley: I'm not sure that was withheld, but . . .

Stephanie Marvel: I would say let's go back to the consideration of whether this is a minor change of the design issue.

Mark Spears: Well, I mean two things. I think that the footprint is a footprint, not if the deck was ground floor, that's footprint to me. I don't think the top part counts as a footprint change. And if the first part of that statement says, the Administrator shall make the decision on whether it's a minor change or not, I believe she has. That means Administrator shall. Not may, not could, but shall.

Mike Pogue: I think the Administrator does have the authority to make that determination. But I think that we can independently review it in looking at what these changes are, I think, or proposed changes, I think we need to look at the design of the building as a whole in light of the standards of what minor changes constitute that were read earlier, I think that the balance of these changes are minor.

Owen Scanlon: I tend to think along the same lines as Mark. I think Beth certainly has acted within her prerequisite to determine these were minor changes, but these people are here and they want to have their day in court, and I think if we want to review it again and we turn it down then they have their recourse to appeal at the City Council.

Geoff Moore: I think it could be done administratively.

Stephanie Marvel: Well, I tend to agree that this is an administrative, a minor administrative change. And I would think that Beth is within her authority to take care of it. So do we need to ..?

Ned Williamson: I don't think you need any form of action, frankly, because I, the Applicant wanted to get before you guys. And we told them that we see this as minor and, but I guess we just want to give them the right to voice their viewpoint, give them the opportunity for due process. I don't know if it was really needed. This is overabundance of caution, I think. But we're acting upon a request, frankly, to have a hearing on this. So, I suggest a bifurcated approach. If you made a determination that was minor, then we don't go to the next step. So I think you can make a motion.

Owen Scanlon: I agree it's minor.

Stephanie Marvel: O.K. So we can . . .

Owen Scanlon: Is there public comment?

Stephanie Marvel: Make a motion?

Ned Williamson: You know, I don't think it necessarily requires public comment, but I'm in total, my opinion is that anyone in this room can talk on this point. So no one is precluded.

Stephanie Marvel: O.K. We'll go with that. Um, I will allow public comment.

Peter Lobb: Peter Lobb, 403 East Carbonate. The way it seems to be written is that the Administrator can make the decision. And I'm not trying to be mean or anything, but I don't know why you're here. Because I think all your view are irrelevant if this is what the rule is. So I don't even know why it's been brought up. You know. It doesn't make any sense to me. You change the rule if you want, you know, do a text amendment, but it doesn't make much sense to me. But I don't think it's your decision as to whether it's a minor or a not minor. She's already made the decision. So, I think it's irrelevant. Sorry. Thank you.

Stephanie Marvel: Thank you. Does anyone else have a comment? Alright. I will close the public comment. Would the Applicant like to make another comment?

Jim Phillips: Jim Phillips, just for the record. No, I think that we've presented our case with regard to this. I do think that under the terms of your Ordinance, we've submitted a new Application and this should be considered as a new Application. And I don't believe that there has been any specific finding by the Administrator that they are minor changes. I do see in the Staff Report where the Administrator and the City Attorney recommended the Commission not proceed, but I think that being the case, the Commission really has an obligation to consider the new Application that's been filed by the Applicant. Thank you.

Mark Spears: Can I ask Ned a question? Ned or Beth or whoever wants to field this one. They've, we've given them our opinion they have this opportunity to move forward on the previous application. That's good for twelve months, correct?

Beth Robrahn: The Design Review Approval?

Mark Spears: Yeah.

Beth Robrahn: Yes. Hold on.

Mark Spears: When's the date of approval?

Beth Robrahn: That's for them to get a building permit.

Mark Spears: No, I understand. And it's your opinion that since you're deeming this minor changes in the previous year to refund their applicant fee for the second issue and consider that null and void and we're just sticking with our decision. That's basically how City's looking at this.

Ned Williamson: Yes.

Mark Spears: So it would be up to the Applicant to wait 12 months and come back if they wanted to move the other direction.

Stephanie Marvel: Or make major changes and reapply.

Ned Williamson: Or do that too. Right.

Beth Robrahn: If they were to totally redesign the building, then yes. That would be considered a new Application.

Owen Scanlon: And for the record, I think we maybe should all go on record, and maybe I wasn't clear originally when I said it was up to them to make a decision. I think if I felt it was a major deal, then in my opinion, she wouldn't be right. But I agree. I think they are minor changes and I think we all maybe have said that and we should be very clear that that's why we're, you know if we go that direction, that's why we're agreeing with her. And not just that she made a decision, but because we all agreed that the changes are minor based on what I've seen.

Stephanie Marvel: Yeah. Well, I think these changes are minor and appropriate for them to be made administratively. And so I agree.

Scott Miley: So are you approving these changes as . . .

Stephanie Marvel: Can I have your name?

Scott Miley: Oh. Scott Miley, the Applicant or the owner of the property. So are you approving these changes administratively right now?

Beth Robrahn: I do consider them minor changes. I don't see any problems with them, so yes I would approve them administratively. I would write a memo to the file and notify you of their approval.

Scott Miley: All these changes, then?

Beth Robrahn: Mm hmm. Yeah.

Scott Miley: For this Application as is.

Beth Robrahn: The changes. The changes that were submitted. I would approve them administratively.

Ned Williamson: I would point out that the original Application, there's a standard condition to find and go through approvals in design review authorizing the administrator to make those minor changes, approval to minor changes.

Mark Spears: Is any motion necessary?

Ned Williamson: I think I would, I would like one. Not that I really think it's necessary.

Beth Robrahn: So just to be clear, the original approval stands with the conditions. And these are just considered minor modifications to that original approval.

Stephanie Marvel: So the motion would not be to approve the changes. The motion would be to allow to, to determine they are minor changes which will be decided administratively. Is that correct?

Ned Williamson: I think that's a good way to phrase it.

Mark Spears: Motion would be to stand with our original decision or?

Stephanie Marvel: Well, that stands. So is there a motion to that effect?

Mark Spears: So can we phrase it just that our original decision stands and therefore they have the right to go to Beth for any administrative changes.

Ned Williamson: You're not really addressing the original application. You're just saying these changes are minor and you affirm, not affirm, but you concur with Beth's . . .

Beth Robrahn: The determination that they're minor modifications to the original Design Review Approval.

Mike Pogue: How we phrase it is splitting hairs. But I move that the proposed changes in the most recent Application for Lot 1A, Block 3 are minor and no public hearing is necessary and the proposed changes may be decided by the Administrator.

Geoff Moore: Second.

Stephanie Marvel: All in favor?

All Commissioners: Aye.

Stephanie Marvel: Motion is approved. Alright.

*End of Leargulf hearing . . . remaining portion of the meeting was not transcribed.*

# City of Hailey

115 MAIN STREET SOUTH  
HAILEY, IDAHO 83333  
PLANNING & ZONING DEPARTMENT

(208) 788-9815  
Fax: (208) 788-2924

October 31, 2008

Scott Miley  
P.O. Box 3271  
Hailey, ID 83333

Dear Scott:

I have reviewed modifications to the CSM Building received by our office on September 9, 2008. The modifications identified are as follows.

- The addition of a second story deck on the east and west elevations, approximately 175 square feet each
- Change of windows to doors leading out to the deck on the east and west elevations
- Removal of the lower roof standing seam on the east and west elevations
- The addition of a trellis on the south elevation

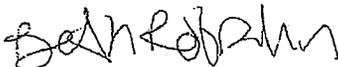
Pursuant to 6A.3.g. of the Hailey Zoning Code the Administrator has the authority to approve minor modifications to projects that have received design review approval by the Commission prior to, and for the duration of a valid Building Permit. The Administrator shall make the determination as to what constitutes minor modifications. All approved modifications must be documented in a memo to the project file and on the approved set of plans on file with the city.

I have determined that the proposed changes are minor modifications to the plans approved in Design Review on June 16, 2008 and appear to be acceptable.

My review and approval does not in any way waive any Design Review requirements. All Design Review elements must be installed, or bonded for, if weather or other extenuating circumstances exist, prior to issuance of Certificate of Occupancy.

Please call me at 788-9815, ext 13, if you have any questions.

Respectfully,



Beth Robrahn, AICP  
Planning Director

cc: Jim Phillips (email)  
Marc Corney (email)

# City of Hailey

115 MAIN STREET SOUTH  
HAILEY, IDAHO 83333  
PLANNING & ZONING DEPARTMENT

(208) 788-9815  
Fax: (208) 788-2924

**FILE COPY**

November 25, 2008

Scott Miley  
P.O. Box 3271  
Hailey, ID 83333

Dear Scott:

Our office received plans on September 9, 2008 with modifications to the CSM Building design review approval of June 16, 2008.

Condition (m) of the design review approval states, "This Design Review approval is for plans dated May 9, 2008. The Planning & Zoning Administrator has the authority to approve minor modifications to this project prior to, and for the duration of a valid Building Permit."

I have reviewed the revised plans and identified the following modifications to the CSM Building:

- The addition of a second story deck on the east and west elevations, approximately 175 square feet each
- Change of windows to doors leading out to the deck on the east and west elevations
- Removal of the lower roof standing seam on the east and west elevations
- The addition of a trellis on the south elevation

The proposed changes are minor modifications to the plans approved in Design Review on June 16, 2008 and appear to be acceptable.

My review and approval does not in any way waive any Design Review requirements. All Design Review elements must be installed, or bonded for, if weather or other extenuating circumstances exist, prior to issuance of Certificate of Occupancy.

Please call me at 788-9815, ext 13, if you have any questions.

Respectfully,



Beth Robrahn, AICP  
Planning Director

cc: Jim Phillips (email)  
Marc Corney (email)

## DECISION

On December 1, 2008, the Hailey Planning and Zoning Commission considered an appeal submitted by the appellant, Leargulf, LLC. The Commission, having been presented with the argument of the appellant, hereby makes the following Decision.

The applicant, Leargulf, LLC is appealing an administrative approval of minor modifications to design review approval for the CSM Building given by the Commission on June 16, 2008.

Section 3.6 of the Zoning Ordinance establishes the procedure for appeals as follows;

“A party aggrieved by a final decision of the Administrator, Hearing Examiner or Commission may appeal in writing any final decision by filing a Notice of Appeal with the Hailey City Clerk within fifteen (15) days from the date of the decision. An appeal of a final decision by the Administrator or the Hearing Examiner shall be heard by the Commission. An appeal of a final decision by the Commission or an appeal of a decision heard on appeal by the Commission shall be heard by the Council. Any appeal shall not be a de novo hearing and shall be based solely on the record before the Administrator, Hearing Examiner or Commission, as the case may be. The record shall consist of all the documents presented to Administrator, Hearing Examiner or Commission (such as the application, supporting documents, letters and studies), the minutes of any meeting and the findings of fact and conclusions of law. The Appellant may also have a verbatim transcript of the hearing before the Hearing Examiner or Commission prepared to be submitted on appeal. The cost of the preparation of the record and transcript shall be paid by the Appellant. The appeal shall specifically state the decision appealed, the issues to be raised on appeal and reasons for the appeal. If no appeal is filed within the fifteen (15) day period, the decision shall be deemed final.

At the time of the filing of the Notice of Appeal, the Appellant shall pay the costs of preparing the transcript and record estimated by the Administrator and the fee for filing an appeal, as established by ordinance. The Administrator will prepare one original transcript (if applicable) and record and 8 copies of the transcript (if applicable) and record. If the costs of preparing the transcript and record exceed the estimated costs paid by the Appellant, the Appellant shall pay the difference before a hearing on the appeal is heard.

Once the transcript and record have been prepared, the Administrator shall schedule a hearing on appeal with the Commission or Council for the next available hearing date. If the Appellant desires to file a brief in support of the appeal, the Appellant shall file an original brief and 8 copies of the brief with the Administrator five business days before the scheduled appeal hearing. If the brief is not timely filed, the Commission and the Council may elect not to consider the brief. The Appellant and Appellant's representative and a City representative shall only be entitled to present argument before the Commission or Council.”

### Procedural History

On June 16, 2008 the Hailey Planning and Zoning Commission considered an application submitted by Leargulf LLC for Design Review approval of a new 6,474 square foot, 3-unit commercial building, located at Lot 1A, Block 3, Airport West Subdivision, Phase II (1760 Lear Lane). The Commission conditionally approved the design review application. Condition (m) stated, “the Planning & Zoning Administrator has the authority to approve minor modifications to this project prior to, and for the duration of a valid Building Permit”.

The Planning Department received plans on September 9, 2008 with modifications to the CSM Building design review approval. The modifications were approved administratively as allowed for in the conditions of approval. The adm. - 226 - found identified the following modifications

to the CSM Building:

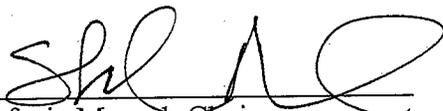
- The addition of a second story deck on the east and west elevations, approximately 175 square feet each
- Change of windows to doors leading out to the deck on the east and west elevations
- Removal of the lower roof standing seam on the east and west elevations
- The addition of a trellis on the south elevation

The Administrator determined the modifications to be minor and approved them administratively.

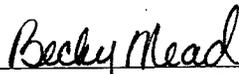
Based upon the foregoing, the Commission affirms the Administrator's decision with regard to approval of minor modifications and concludes that:

1. The Administrator has the authority to approve minor modifications to design review approval.
2. The changes submitted by the applicant are minor.

Signed this 15 day of December, 2008.

  
Stefanie Marvel, Chair

Attest:

  
Becky Mead, Deputy Clerk

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16<sup>th</sup> day of December, 2008, I served a true and correct filed copy of the within and foregoing document upon the parties named below, in the manner noted:

<input type="checkbox"/>	U.S. Mail	Scott Miley
<input checked="" type="checkbox"/>	Via Electronic Mail	samiley@cox.net
<input type="checkbox"/>	Via Facsimile	

<input type="checkbox"/>	U.S. Mail	Marc Corney
<input checked="" type="checkbox"/>	Via Electronic Mail	redcanoe@sunlink.net
<input type="checkbox"/>	Via Facsimile	

<input type="checkbox"/>	U.S. Mail	Jim Phillips
<input checked="" type="checkbox"/>	Via Electronic Mail	jim@roarklaw.com
<input type="checkbox"/>	Via Facsimile	

CITY OF HAILEY

By Becky Mead  
Becky Mead, Deputy Clerk

JAMES W. PHILLIPS

January 5, 2009

Mayor and City Council  
City of Hailey  
P.O. Box 945  
Hailey, ID 83340

**APPEAL BRIEF**

Re: Notice of Appeal dated October 28, 2008  
Notice of Appeal dated November 11, 2008  
Notice of Appeal dated December 26, 2008  
Leargulf LLC Design Review Application dated August 28, 2008

Dear Mayor and Council:

This Brief is being submitted as part of each of the three appeals filed by Leargulf LLC ("Appellant"). This is because the appeals basically involve the same decisions and legal issues.

All three appeals involve the design review application dated August 28, 2008. The property in question is Lot 1A, Block 3, in the Airport West Subdivision. Scott Miley is the owner of Leargulf LLC and is the real party in interest here.

**HISTORY OF APPLICATION**

The design review application dated August 28, 2008 ("August Application") is the subject of this appeal. This application is a separate application for a building with different design elements from the earlier application submitted May 9, 2008 ("May Application").

Hailey's Zoning Ordinance does not restrict a property owner's right to file subsequent design review applications for buildings on the same parcel of property. So, the August Application was a

separate application for design review approval, and not an application to amend the May Application. Accordingly, the August Application was accepted by the city along with the application fee. Also, the application was duly noticed for public hearing and consideration by the Planning and Zoning Commission ("Commission") on October 20, 2008.

The Staff Report dated October 20, 2007, on the August Application, stated that (1) the Application was only for minor changes to the approved May Application, (2) the Appellant's appeal of the May Application was untimely, and (3) the Application was filed only to provide the Appellant a second opportunity to appeal the requirement that public sidewalks be constructed under the May Application. It recommended that the Commission not hold the duly noticed public hearing and permit the Administrator to approve the design changes administratively.

Over the Appellant's objections, the Commission, by motion, did just that. On October 28, 2008, Miley filed the first Notice of Appeal, appealing to the City Council the Commission's decision and those in the Staff Report.

However, rather than proceed with the appeal to the City Council, the Administrator issued the same decision set out in her staff report as a letter dated October 31, 2008, administratively approving the August Application as an amendment to the May Application with the conditions of the May Application imposed on the August Application. To protect his appeal rights, that letter necessitated that the Appellant file a second Notice of Appeal dated November 18, 2008.

The Administrator scheduled an appeal hearing before the Commission for December 1, 2008, in effect sending back to the Commission the same decision the Commission had already made at its October 21 meeting.

The Administrator based her authority to administratively approve the application on Section 6A.3.g of the Hailey Zoning Ordinance, adopted by Hailey Ordinance 1009. However, one of the grounds of appeal was that the ordinance was not valid because it and the required public hearing notices were not published or otherwise adopted in accordance with Idaho Code. Therefore, the Administrator had no authority to approve any modifications to design review plans.

While not conceding on the record that the Appellant was correct about the invalidity of the ordinance, on November 25, 2008, before the Commission's hearing on the appeal, the Administrator sent a new letter changing the basis of her decision from the challenged ordinance to "Condition (m)" of the approval of the May Application.

Again, the Commission upheld the Administrator's decision, which again necessitated that the Appellant file a third Notice of Appeal.

All of the appeals are now before the City Council. The Appellant believes none of the appealed decisions are valid, and therefore, should be overturned by the City Council.

#### WHY ALL THE FUSS?

From the beginning, all the Appellant has wanted to do is (1) exercise his right to file and obtain lawful approval of his August Application, and (2) bring his objections to the design review sidewalk requirement before the City Council.

Candidly, the Appellant feels that the P&Z Administrator and City Attorney have been reluctant for him to address the City Council about the sidewalk requirement. While not faulting them for wanting to protect the city, if those issues are not dealt with in the appeal process the only avenue left open for the Appellant is through an independent legal action to have the requirement declared invalid. While this is permitted under Idaho law, it is something he would rather not do.

#### ISSUES ON APPEAL

Each of the decisions under appeal is invalid for the reasons set out in the three Notices of Appeal, which are incorporated herein by reference. Since the appeals involve the same issues, in order to hopefully make the presentation clearer, this brief will address those issues by subject matter without necessarily differentiating between the three appeals.

#### 1. THE AUGUST APPLICATION IS A SEPARATE APPLICATION FROM THE MAY APPLICATION

As noted above, the August Application was filed as a new application separate from the May Application, and not as an application to amend the May Application. This is permitted under Hailey's Zoning Ordinance which does not restrict a property owner's right to file subsequent design review applications for buildings with different design elements on the same parcel of property. Accordingly, the August Application was accepted by the city along with the application fee. Also, the application was duly noticed for public hearing and consideration by the Commission on October 20, 2008.

#### 2. THE ADMINISTRATOR DOES NOT HAVE THE AUTHORITY TO APPROVE CHANGES (MAJOR OR MINOR) TO APPROVED DESIGN REVIEW PLANS

Initially, the Administrator based administrative approval on

Section 6A.3.g of the Hailey Zoning Ordinance, adopted by Hailey Ordinance 1009. However, the Appellant in its appeal objected on the grounds that the ordinance was not valid because it and the required public hearing notices were not published or otherwise adopted in accordance with Idaho Code. And, as a result, the Administrator had no authority to approve any modifications to design review plans.

While not conceding on the record that the Appellant was correct about the invalidity of the ordinance, on November 25, 2008, before the Commission's scheduled hearing, the Administrator sent a new letter changing the basis of her decision from the challenged ordinance to "Condition (m)" set forth in the approval of the May Application. The Commission upheld the Administrator's decision, and this appeal followed.

Condition (m) provided that the Administrator "has the authority to approve minor modifications to this project prior to, and for the duration of a valid Building Permit". Condition (m), as with each of the conditions set forth in the decision approving the May Application, deals with and is limited to the May Application only. As apparently conceded, no ordinance grants the Administrator the power to approve design review plans or any modifications ("minor" or "major") thereto. Similarly, there is no ordinance provision permitting the Commission to delegate such approval authority to the Administrator. For the Commission to do so would be tantamount to the Commission amending the ordinance, which it clearly does not have the statutory power to do.

In fact, none of the conditions attached to the May Application are binding upon the August Application, and the Administrator's and/or the Commission's decision to impose any of those conditions by administrative fiat is invalid. This is true not only for Condition (m), but also for Condition 7(c) with regard to construction of public sidewalks discussed later in this brief.

Even if Condition (m) could validly be attached, it does not provide the Administrator with sufficient legal standards by which to exercise the discretion purportedly granted. The lack of standards or any definition of what constitutes a "minor modification" renders any such administrative determination objectively impossible. Therefore, the condition violates the standards of substantive due process under both the U.S. and Idaho constitutions.

### 3. THE AUGUST APPLICATION DOES NOT INVOLVE MINOR MODIFICATIONS

Even if the condition was valid, the August Application does not involve "minor modifications." First, the building design includes additional enclosed decks which under the ordinance increase the building's footprint. Such a change can significantly increase a project's impact on neighboring properties. Second, the August

Application does not include public sidewalks. These are significant differences from the May Application, as approved.

The City Council should carefully consider what constitutes "minor" changes which can be administratively approved through adoption of proper definitions, guidelines and standards for the exercise of such administrative discretion, and not set a precedent which essentially provides for unbridled discretion.

4. THE DESIGN REVIEW SIDEWALK REQUIREMENT FOR THE APPELLANT'S PROJECT IS CONTRARY TO PRIOR CITY APPROVALS

With regard to the Design Review Application itself, as noted in the staff report, it does not propose to install any public sidewalks within the right of way of either Aviation Drive or Merlin Loop. Such sidewalks are not required to serve the lot in question because a system of connecting sidewalks was installed as part of the Airport West subdivision approvals. The sidewalk system provides a sidewalk along the westerly side of Merlin Loop which provides continuity through the development and access to the lots within Block 3, including the Appellant's.

This design review application is for a building on Lot 1A, Block 3, within the Airport West Subdivision. Originally, Block 3, consisting of 2 large lots, was approved as part of the Airport West Phase II plat in 2002 (Instrument No. 400276, records of Blaine County, Idaho). The Findings of Fact and Conclusions of Law for that subdivision recorded along with the Airport West Annexation, Services and Development Agreement expressly provide on page 3, under Section 4.2.1.1 that sidewalks shall be constructed on only one side of Industrial Loop (now Merlin Loop) and those have been constructed.

In 2004, the City approved the resubdivision of those two large lots into 16 smaller lots for building development. The applicant's Lot 1A was part of the "Lots 1 & 2, Block 3, Airport West Subdivision Phase II" plat approved by the City and recorded as Instrument No. 503416, in the records of Blaine County, Idaho.

The City Council approved that subdivision with the existing sidewalk system. The Finding of Fact, Conclusions of Law and Decision with regard to that subdivision at page 6, Section 4.2.1, state that "(s)idewalks have been installed within the public street rights of way as approved by the Council."

Furthermore, the City has approved the design review applications for development of lots within Block 3 without requiring construction of public sidewalks. To date all three buildings along Aviation Drive and Merlin Loop have received design review approval and none was required to construct public sidewalks along either street. Under these circumstances and precedents, construction of the public sidewalks is not required for design review approval of

Leargulf's current design review application.

For the City to now require this applicant to construct public sidewalks along Aviation Drive and Merlin Loop is contrary to all the prior subdivision and design review approvals, and a violation of the Appellant's constitutionally protected grandfather rights and rights of equal protection.

5. THE DESIGN REVIEW SIDEWALK REQUIREMENT IS NOT A PROPER EXERCISE OF THE POLICE POWER

Basically, the Appellant's objection is that the requirement is not a proper exercise of the police power for it lacks both the nexus required under U.S. Supreme Court decision of Nollan v. California Coastal Commission and the proportionality required under its Dolan v. City of Tigard decision. Also, there is no statutory authority for imposing such a requirement.

6. THE COMMISSION'S DECISION TO APPROVE THE MAY APPLICATION IS NOT A FINAL DECISION AND, THEREFORE, THE APPEAL WAS NOT FILED TOO LATE

The decision of the Commission dated July 7, 2008 approving the May Application is not yet a final decision. Nevertheless, the Appellant did file an appeal in the form of a written objection thereto on July 25, 2008, and that appeal was not untimely filed.

In the October 20 2008 Staff Report, the Administrator states that appeal was untimely for not being filed within 15 days of the decision. However, a person's appeal rights commence from a "final decision." A final decision is one that so advises the applicant and provides the applicant with notice of his or her appeal rights and other statutory rights with regard to the decision. However, the decision mailed to the Appellant did not advise the Appellant of those rights and therefore is not yet a final decision.

7. THE RECORD ON APPEAL INCLUDES THE "APPEAL EXHIBITS" FILED BY THE APPELLANT ON NOVEMBER 26, 2008 AS WELL AS THOSE LISTED ON THE "APPEAL RECORD" ATTACHED HERETO

At the December 1, 2008 appeal hearing, the Commission was advised by the City Attorney not to consider the "Appeal Exhibits" filed by the Appellant because those documents were not before the Administrator when she made her decision set forth in the October 31, 2008 and the November 25, 2008 letters. However, that is largely incorrect.

The list of Appeal Exhibits is attached and the entire document with the actual exhibits is part of the file with regard to the August Application.

In discussions between the Appellant and the Administrator and the

City Attorney prior to any decision by the Administrator, the Annexation, Services and Development Agreement for Airport West Business Park , and the "Subdivision Plat of Airport West Phase II", and the "Subdivision Plat Lots 1&2, Airport West Phase II" were specifically discussed and referred to.

A copy of the "Subdivision Plat Lots 1&2, Airport West Phase II" is on the first page of the August Application.

The map showing the existing Airport West Sidewalk System in red was presented to the Commission at the October 20, 2008 Commission meeting.

In fact, all of the documents, with the exception of the photographs and the letter to the City Attorney regarding the publication problems, are official records of the Planning and Zoning Department and as such are constructively part of any relevant application before the city.

#### CLOSING

For the reasons set forth in the notices of appeal and this brief, decisions of the Administrator and Commission under appeal are:

- (1) not in accordance with or in violation of the validly adopted, effective and applicable ordinances of the City;
- (2) in violation of the Constitution of the United States of America and of the state of Idaho and/or statutory authority of the City;
- (3) based upon ordinances made upon unlawful procedures;
- (4) arbitrary, capricious and/or an abuse of discretion;
- (5) not supported by substantial evidence in the record; and,
- (6) based upon ordinances of the City which are void for vagueness and lack of standards.

I wish to thank the City Council for this opportunity to address the issues raised by Scott Miley's design review applications and the appeals with regard thereto. I look forward to discussing those issues with you at the upcoming appeal hearing.

Very truly yours,

THE ROARK LAW FIRM, PLLC  
by   
James W. Phillips, of Counsel

### APPEAL RECORD

The following are the main documents from the record with regard to the three Notices of Appeal filed by the Appellant:

1. Notice of Appeal dated December 26, 2008
2. Decision of Commission signed December 15, 2008
3. Memorandum of Planning Director dated December 1, 2008
4. Notice of Appeal dated November 26, 2008
5. Administrator's Letter dated November 25, 2008
6. Supplemental Notice of Appeal dated November 18, 2008
7. Notice of Appeal dated November 11, 2008
8. Appeal Application dated November 10, 2008
9. Administrator's Letter dated October 31, 2008
10. Notice of Appeal dated October 28, 2008
11. Minutes of P&Z meeting of October 20, 2008
12. Transcript of P&Z meeting of October 20, 2008
13. Staff Report dated October 20, 2008
14. Design Review Application dated August 28, 2008
15. Appeal letter dated July 25, 2008
16. Findings of Fact, Conclusions of Law and Decision dated July 7, 2008
17. Minutes of P&Z meeting of June 16, 2008
18. Appeal Exhibits dated November 26, 2008
  - a. Map of approved sidewalk plan of Airport West
  - b. Subdivision Plat Lots 1 & 2, Airport West Phase II
  - c. Findings of Fact, Conclusions of Law, and Decision for Subdivision Plat Lots 1 & 2, Airport West Phase II
  - d. Subdivision Plat of Airport West Phase II
  - e. Subdivision Plat of Airport West Phase I

- f. Annexation, Services and Development Agreement Airport West Business Park
- g. Photographs (4 pages) of Subject Property and surrounding area
- h. Letter to City Attorney re: requirements for valid legal publication

JAMES W. PHILLIPS

November 26, 2008

Planning and Zoning Commission  
Mayor and City Council  
City of Hailey, Idaho  
P.O. Box 945  
Hailey, ID 83333

**APPEAL EXHIBITS**

This list of exhibits is submitted in support of the NOTICE OF APPEAL filed by Leargulf, LLC, ("Appellant") of decision of the Hailey Planning and Zoning Administrator set forth in her letter dated on October 31, 2008 ("Decision") regarding the Appellant's Design Review Application filed August 28, 2008 ("Application").

Attached hereto are the following documents which are part of the public record of the City of Hailey, Idaho ("City") and which will be referred to by the Appellant during its presentation to the Commission on the appeal:

1. Map of approved sidewalk plan of Airport West
2. Subdivision Plat Lots 1 & 2, Airport West Phase II
3. Findings of Fact, Conclusions of Law, and Decision for Subdivision Plat Lots 1 & 2, Airport West Phase II
4. Subdivision Plat of Airport West Phase II
5. Subdivision Plat of Airport West Phase I
6. Annexation, Services and Development Agreement Airport West Business Park
7. Photographs (4 pages) of Subject Property and surrounding area

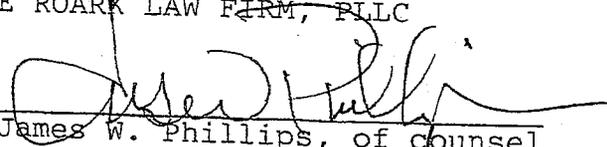
8. Letter to City Attorney re: requirements for valid legal publication

The Appellant reserves the right to address additional points and submit additional documents and a brief at the Commissions's hearing on this appeal.

SUBMITTED on this 26th day of November, 2008.

THE ROARK LAW FIRM, PLLC

by

  
James W. Phillips, of counsel  
Attorney for Appellant

cc: client  
Marc Corney

JAMES W. PHILLIPS

**RECEIVED**

**DEC 29 2008**

December 26, 2008

Mayor and City Council  
City of Hailey, Idaho  
P.O. Box 945  
Hailey, ID 83333

**NOTICE OF APPEAL**

Re: **NOTICE OF APPEAL** by Leargulf, LLC, ("Appellant") of the decision of the Hailey Planning and Zoning Commission dated December 15, 2008 ("Decision") regarding the Appellant's Design Review Application dated August 28, 2008 ("Application"). The Commission's decision was to uphold a decision of the Administrator set forth in a letter dated November 25, 2008, which decision is simply the restatement (under changing rationale) of a decision by the Administrator as set forth in her letter dated October 31, 2008, and in a staff report dated October 20, 2008 upheld on that date by the Commission. All of these decisions are subject to appeals filed by the Appellant.

This letter constitutes the **NOTICE OF APPEAL** of the above-referenced Decision pursuant to Section 3.6 of the Hailey Zoning Ordinance. The Application in question is for a building located on Lot 1A, Block 3, in the Airport West Subdivision.

The reason for this appeal is to have the Decision overturned on the grounds that the Decision is:

- (1) not in accordance with or in violation of the validly adopted, effective and applicable ordinances of the City;
- (2) in violation of the Constitution of the United States of America and of the state of Idaho and/or statutory authority of the City;
- (3) based upon ordinances made upon unlawful procedures;

- (4) arbitrary, capricious and/or an abuse of discretion;
- (5) not supported by substantial evidence in the record; and,
- (6) based upon ordinances of the City which are void for vagueness and lack of standards.

Without limiting the foregoing, the Appellant further states the following points of appeal.

The Appellant filed a separate design review application dated August 28, 2008 ("August Application") for a building with different design elements from an earlier approved design review application filed May 9, 2008 ("May Application"). The August Application along with the application fee was accepted by the city.

The Appellant's right to submit such a design review application is not limited in any way by Hailey's ordinances. So, the August Application was an separate application for design review approval, and not an application to amend the May Application.

However, the August Application was administratively approved as an amendment to the May Application with the conditions of the May Application imposed on the August Application.

Initially, the Administrator based administrative approval on Section 6A.3.g of the Hailey Zoning Ordinance, adopted by Hailey Ordinance 1009 on August 11, 2008. However, the Appellant in its appeal objected on the grounds that the ordinance was not valid because it and the required public hearing notices were not published or otherwise adopted in accordance with Idaho Code. And, as a result, the Administrator had no authority to approve any modifications to design review plans.

While not conceding on the record that the Appellant was correct about the invalidity of the ordinance, on November 25, 2008, a few days before the Commission's hearing on the appeal, the Administrator sent a new letter changing the basis of her decision from the challenged ordinance to "Condition (m)" set forth in the approval of the May Application. The Commission's decision upheld the Administrator's decision, and this appeal followed.

The Administrator's decision set forth in her October 31, 2008 letter is not valid for the reasons set forth in the Notices of Appeal filed October 28, 2008, and November 11, 2008, each of which is incorporated herein by reference.

Likewise, the Administrator's letter of November 25, 2008, and the Commission's Decision dated December 15, 2008 are not valid for the reasons set forth in this Notice of Appeal.

Condition (m) of the May Application approval provided that the Administrator "has the authority to approve minor modifications to this project prior to, and for the duration of a valid Building Permit". In fact, none of the conditions attached to the May Application are binding upon the August Application, and the Administrator's and/or the Commission's decision to impose any of those conditions is invalid.

Condition (m), as with each of the conditions set forth in the decision approving the May Application, deals with and is limited to the May Application only. As apparently conceded, no ordinance grants the Administrator the power to approve design review plans or any modifications ("minor" or "major") thereto. Similarly, there is no ordinance provision permitting the Commission to delegate such approval authority to the Administrator. For the Commission to do so would be tantamount to Commission amending the ordinance, which it clearly does not have the statutory power to do.

Even if such a condition could validly be attached, it does not provide the Administrator with sufficient legal standards by which to exercise the discretion purportedly granted. Therefore, it violates the standards of substantive due process under both the U.S. and Idaho constitutions.

Even if the condition was valid, the August Application does not involve "minor modifications." First, the building design includes additional enclosed decks which under the ordinance increases the building's footprint. Such a change can significantly impact a project's impact on neighboring properties. Second, the August Application does not include public sidewalks. These are significant differences from the May Application, as approved.

With regard to the sidewalks, Condition 7(c), of the May Application approval is not valid and not binding on the August Application because it:

1. is not a proper exercise of the police power.
2. is beyond the statutory authority of the city.
3. constitutes an illegal exaction, tax, a taking of private property without compensation, and an ultra vires act.
4. is in violation of the statutes regarding mitigation of development impacts.

The decision of the Commission dated July 7, 2008 approving the May Application is not yet a final decision. However, the Appellant did file an appeal in the form of written objection on July 25, 2008. The Administrator characterized that appeal as untimely for not being filed within the 15 days of the decision. However, a person's

appeal rights commence from a "final decision", which is one that provides the applicant with notice of his or her appeal rights. The decision mailed to the Appellant did not advise the Appellant of its right to appeal or any other statutory right with regard to that decision.

Finally, with regard to the sidewalk requirement, it is contrary to the sidewalk infrastructure plan and improvements approved by the City and constructed as part of the subdivision plats of the Airport West Subdivision and re-subdivisions of the blocks within the project.

The Appellant reserves the right to challenge other portions of the approval of the May Application. Also, the Appellant reserves the right to make additional objections to the Decision in its brief to be filed as part of this appeal.

By filing this Notice of Appeal, the Appellant is not withdrawing its prior Notices of Appeal or waiving any rights with regard thereto, or waiving any right to challenge by independent legal action any ordinance, decision or action of the city.

SUBMITTED on this 29<sup>th</sup> day of December, 2008.

THE ROARK LAW FIRM, PLLC

by   
James W. Phillips, of counsel  
Attorney for Appellant

RECEIVED together with estimated cost of transcript and record this \_\_\_ day of December 2008.

Office of the Hailey City Clerk

cc: Scott Miley

**JAMES W. PHILLIPS**

November 26, 2008

Planning and Zoning Commission  
Mayor and City Council  
City of Hailey, Idaho  
P.O. Box 945  
Hailey, ID 83333

**APPEAL EXHIBITS**

This list of exhibits is submitted in support of the NOTICE OF APPEAL filed by Leargulf, LLC, ("Appellant") of decision of the Hailey Planning and Zoning Administrator set forth in her letter dated on October 31, 2008 ("Decision") regarding the Appellant's Design Review Application filed August 28, 2008 ("Application").

Attached hereto are the following documents which are part of the public record of the City of Hailey, Idaho ("City") and which will be referred to by the Appellant during its presentation to the Commission on the appeal:

1. Map of approved sidewalk plan of Airport West
2. Subdivision Plat Lots 1 & 2, Airport West Phase II
3. Findings of Fact, Conclusions of Law, and Decision for Subdivision Plat Lots 1 & 2, Airport West Phase II
4. Subdivision Plat of Airport West Phase II
5. Subdivision Plat of Airport West Phase I
6. Annexation, Services and Development Agreement Airport West Business Park
7. Photographs (4 pages) of Subject Property and surrounding area

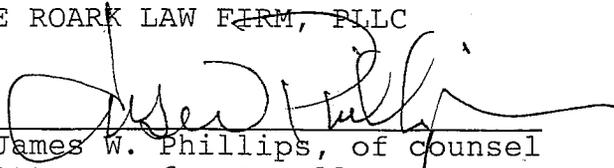
8. Letter to City Attorney re: requirements for valid legal publication

The Appellant reserves the right to address additional points and submit additional documents and a brief at the Commissions's hearing on this appeal.

SUBMITTED on this 26th day of November, 2008.

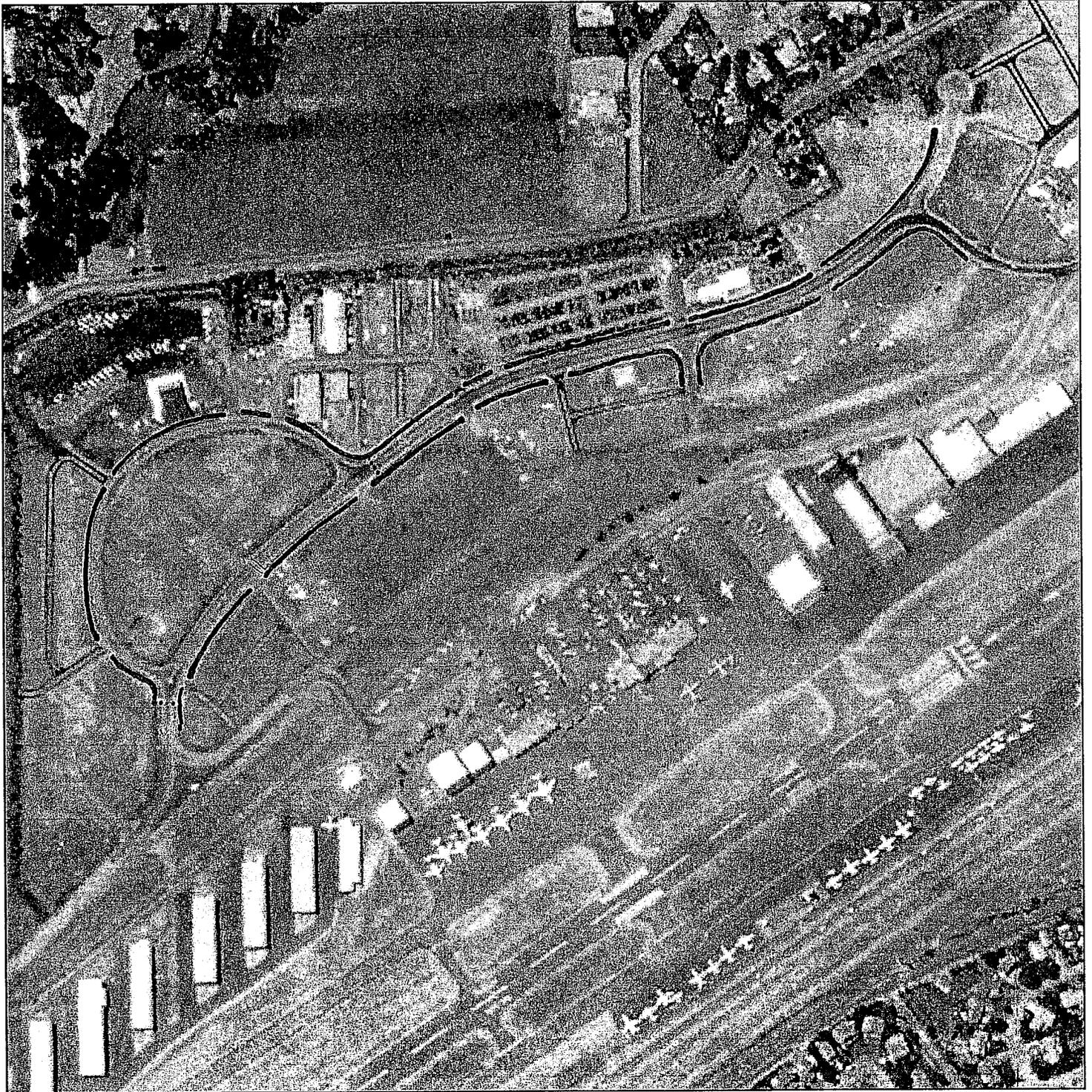
THE ROARK LAW FIRM, PLLC

by

  
James W. Phillips, of counsel  
Attorney for Appellant

cc: client  
Marc Corney

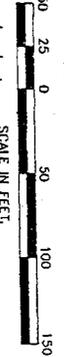
# Airport West Sidewalk System Map



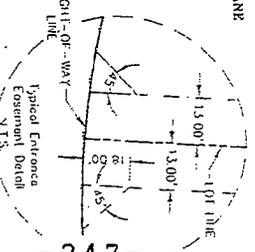
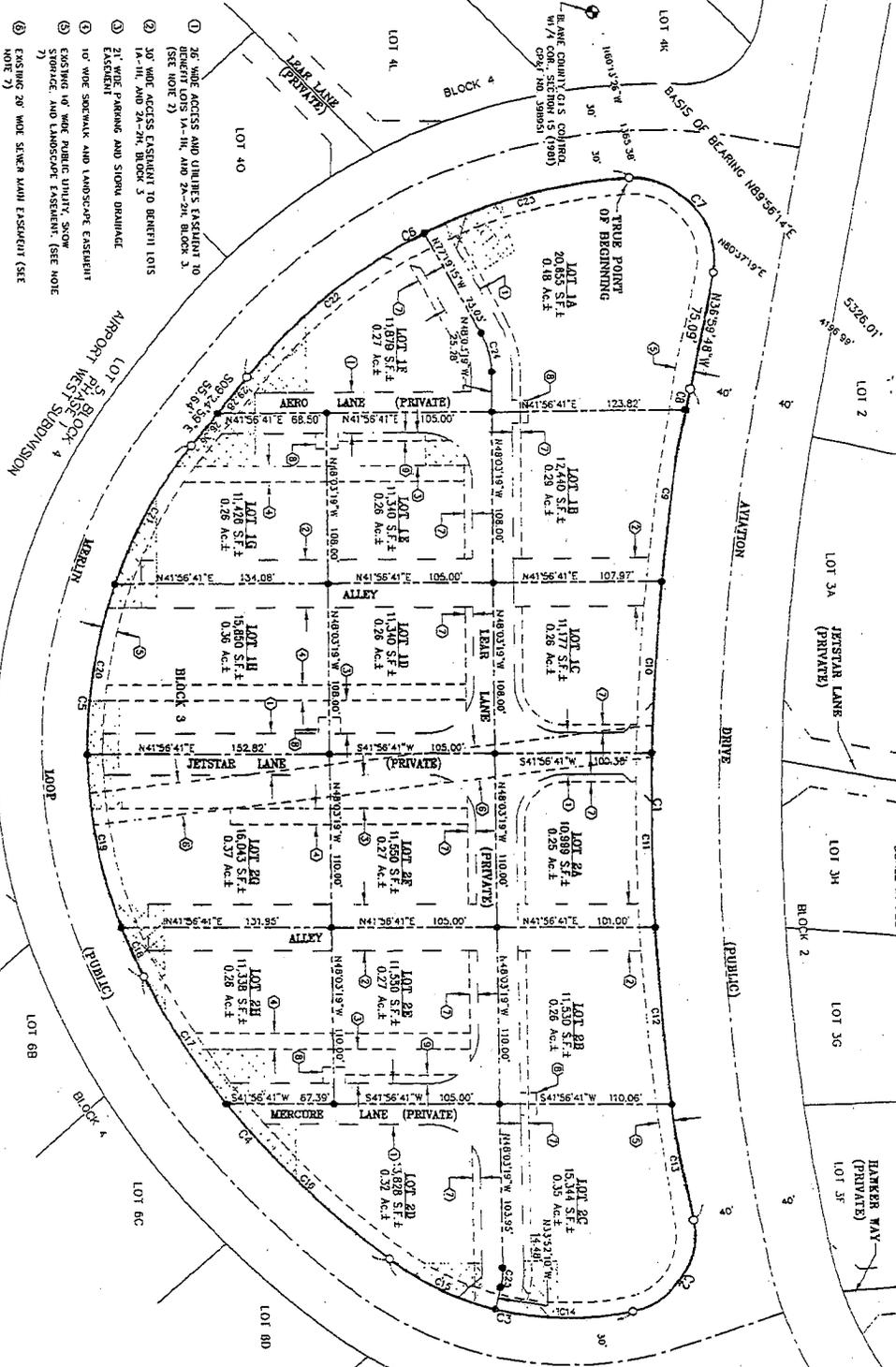
# A PLAT SHOWING LOTS 1 & 2, BLOCK 3, AIRPORT WEST SUBDIVISION PHASE II

WHEREIN LOTS 1 & 2, BLOCK 3, AIRPORT WEST SUBDIVISION PHASE II IS RESUBDIVIDED  
LOCATED WITHIN THE SW1/4 OF SECTION 15, T.2 N., R.18 E., B.M., CITY OF HALLEY, BLAINE COUNTY, IDAHO  
AUGUST 2004

BLAINE COUNTY GIS CONTROL  
U.S.F.S. BRASS CAP  
1/16" COR. SECTION 15  
GRID# NO. 13880



SCALE: 1" = 50'



- ① 26' WIDE ACCESS AND UTILITIES EASEMENT TO ADJACENT LOTS 1A-1H, AND 2A-2H, BLOCK 3. (SEE NOTE 7)
- ② 20' WIDE ACCESS EASEMENT TO BENEFIT LOTS 1A-1H, AND 2A-2H, BLOCK 3
- ③ 21' WIDE PARKING AND STORM DRAINAGE EASEMENT
- ④ 10' WIDE SERVICE AND LANDSCAPE EASEMENT
- ⑤ EXISTING 10' WIDE PUBLIC UTILITY, STORM WATER, AND LANDSCAPE EASEMENT. (SEE NOTE 7)
- ⑥ EXISTING 20' WIDE SINKER MAIN EASEMENT (SEE NOTE 7)
- ⑦ 5' WIDE BUILDING SETBACK
- ⑧ 10' x 14' WIDE PUBLIC UTILITIES EASEMENT
- ⑨ 5' WIDE PUBLIC UTILITIES EASEMENT

**HEALTH CERTIFICATE:**  
Sanitary conditions as required by Idaho Code Title 50, Ch. 13, have been satisfied. Sanitary restrictions may be reimposed in accordance with Idaho Code Title 50, Ch. 13, Sec. 50-1326, by issuance of a Certificate of Disapproval.

*Randall K. French*  
Randall K. French, P.L.S. 9561

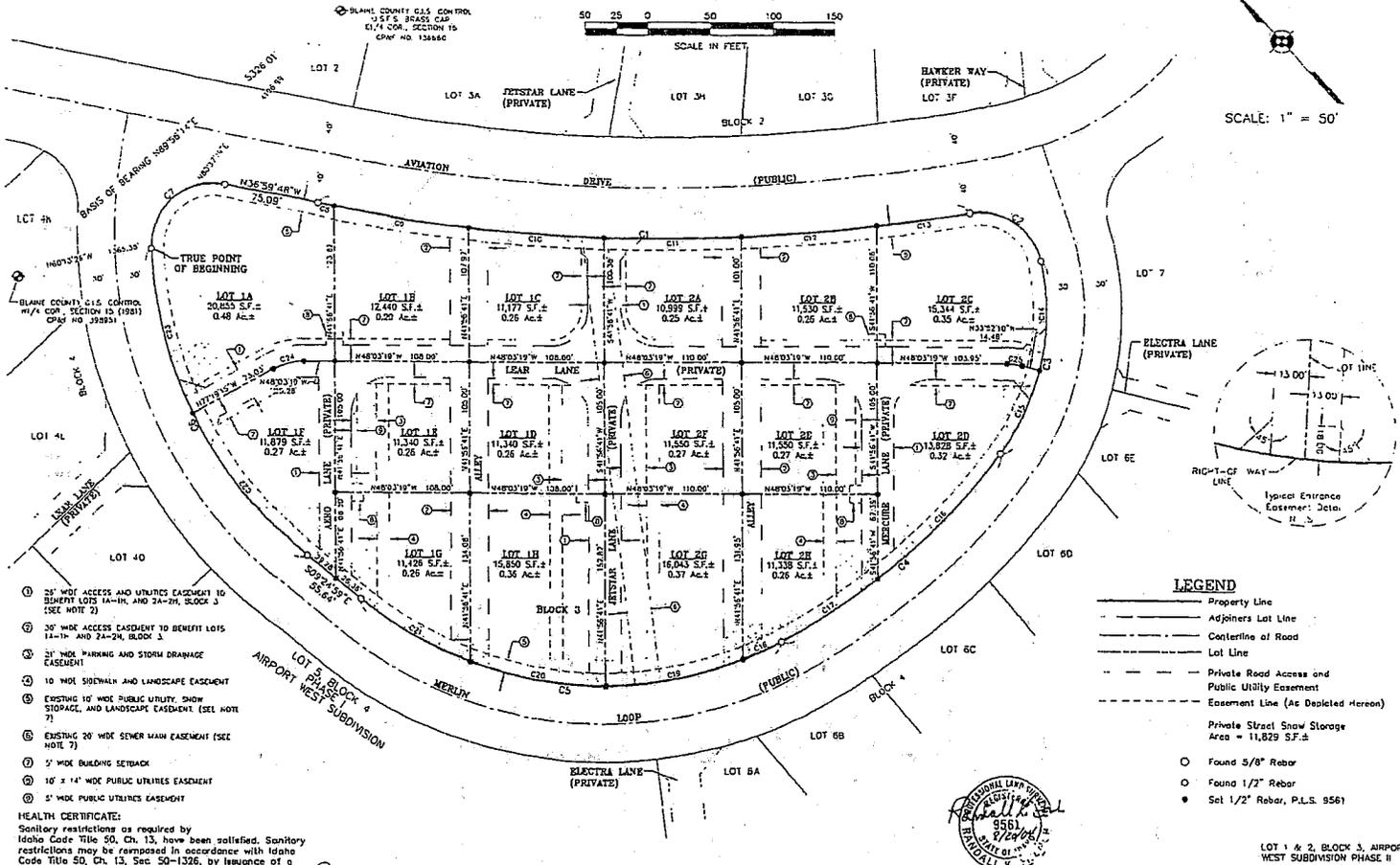
SEE SHEET 2 FOR NOTES AND CURVE DATA



RANDALL K. FRENCH, P.L.S. 9561

LOT 1 & 2, BLOCK 3, AIRPORT WEST SUBDIVISION PHASE II  
GAELEA ENGINEERING, INC.  
KETCHUM, IDAHO  
SHEET 1 OF 3  
Job No. 328913, final

A PLAT SHOWING  
**LOTS 1 & 2, BLOCK 3, AIRPORT WEST SUBDIVISION PHASE II**  
 WHEREIN LOTS 1 & 2, BLOCK 3, AIRPORT WEST SUBDIVISION PHASE II IS RESUBDIVIDED  
 LOCATED WITHIN THE SW1/4 OF SECTION 15, T.2 N., R.18 E., B.M., CITY OF HAILEY, BLAINE COUNTY, IDAHO  
 AUGUST 2004



- ① 25' WIDE ACCESS AND UTILITIES EASEMENT TO BENEFIT LOTS 1A-1H, AND 2A-2H, BLOCK 3 (SEE NOTE 2)
- ② 30' WIDE ACCESS EASEMENT TO BENEFIT LOTS 1A-1H AND 2A-2H, BLOCK 3
- ③ 21' WIDE PARKING AND STORM DRAINAGE EASEMENT
- ④ 10' WIDE SIDEWALK AND LANDSCAPE EASEMENT
- ⑤ EXISTING 10' WIDE PUBLIC UTILITY, SNOW STORAGE, AND LANDSCAPE EASEMENT (SEE NOTE 7)
- ⑥ EXISTING 20' WIDE SEWER MAIN EASEMENT (SEE NOTE 7)
- ⑦ 5' WIDE BUILDING SETBACK
- ⑧ 10' x 14' WIDE PUBLIC UTILITIES EASEMENT
- ⑨ 5' WIDE PUBLIC UTILITIES EASEMENT

**HEALTH CERTIFICATE:**  
 Sanitary restrictions as required by Idaho Code Title 50, Ch. 13, have been satisfied. Sanitary restrictions may be reimposed in accordance with Idaho Code Title 50, Ch. 13, Sec. 50-1326, by issuance of a Certificate of Disapproval.  
 Date 8-19-2004  
*Robert W. ...*  
 South Central District Health Dept., EHS

SEE SHEET 2 FOR NOTES AND CURVE DATA

RANDALL K. FRENCH, P.L.S. 9561

LOT 1 & 2, BLOCK 3, AIRPORT WEST SUBDIVISION PHASE II  
 CALENA ENGINEERING, INC.  
 KFTCHUM, IDAHO  
 SHEET 1 OF 3  
 Job No. 328913\_01a1

A PLAT SHOWING  
**LOTS 1 & 2, BLOCK 3, AIRPORT WEST SUBDIVISION PHASE II**  
 A RESUBDIVISION OF LOTS 1 & 2, BLOCK 3, AIRPORT WEST SUBDIVISION PHASE II  
 LOCATED WITHIN THE SW1/4 OF SECTION 15, T.2 N., R.18 E., B.M., CITY OF HAILEY, BLAINE COUNTY, IDAHO  
 AUGUST 2004

**NOTES**

1. Refer to the Plat Notes, Conditions, Covenants, and Restrictions on Original Plat of Airport West Subdivision, Phase II
2. Within private streets shown hereon, easements are granted for access and for the maintenance and reconstruction of utilities. No structures shall be placed within the private streets.
3. Snow Storage Easements for the private platted roadway easements shown hereon are to benefit all lots within this plat. Snow storage is for the private streets and not for internal parking or circulation within the lots. Lot owners may relocate said easements with a plat amendment as long as predetermined square footage does not decrease.
4. This property is subject to the Covenants, Conditions, and Restrictions for Subdivision recorded as Instrument No. 50,327,13 Records of Blaine County, Idaho.
5. The easement area within this project is an access and public utility easement to benefit Lots 1A-1H and Lots 2A-2H, Block 3.
6. Portions of Lot 2G fall within a 20' sewer main easement. Should the utility owner need to access or maintain the sewer main, the owner of Lot 2G agrees to immediately repair and replace all landscaping, sidewalk, and above ground structures, if permitted within the 20' easement, at owner's sole expense.
7. Existing easement per original plat of Airport West Subdivision Phase II, Instrument No 490276, Records of Blaine County, Idaho.
8. Access to Lots 1A-1H and Lots 2A-2H, Block 3 shall be from Alley's, and Lear, Aero, Jetstar, and Mercure Lanes only.

CURVE TABLE						
CURVE	LENGTH	RADIUS	TANGENT	DELTA	CHORD	CHORD DIRECTION
C1	226.41	1440.00	768.18	22°58'43"	523.49	S 47°28'09" E
C2	76.28	50.00	47.72	87°22'20"	68.03	S 14°14'11" E
C3	162.94	190.00	86.86	49°08'07"	157.89	S 54°02'01" W
C4	234.65	520.00	119.46	26°52'37"	232.86	N 88°27'37" W
C5	357.67	310.00	201.72	35°06'20"	338.16	N 42°28'09" W
C6	293.02	330.00	150.87	48°08'20"	274.43	N 15°09'11" E
C7	90.13	90.00	63.18	103°18'51"	78.41	N 88°38'13" W
C8	13.55	1440.00	6.78	0°32'21"	13.55	S 71°15'59" E
C9	109.18	1440.00	54.82	4°20'39"	109.16	S 39°42'29" E
C10	108.29	1440.00	54.17	4°18'32"	108.27	S 44°02'01" E
C11	110.03	1440.00	55.04	4°22'40"	110.00	S 48°22'40" E
C12	210.40	1440.00	99.23	4°23'34"	110.37	S 52°45'27" E
C13	74.98	1440.00	37.49	4°58'57"	74.95	S 56°27'00" E
C14	88.42	190.00	43.03	26°38'53"	87.63	N 42°42'53" E
C15	74.52	190.00	37.74	22°28'14"	74.04	N 67°21'57" E
C16	141.09	520.00	70.98	15°32'44"	140.63	N 88°22'26" E
C17	93.77	520.00	47.01	10°18'54"	93.64	S 90°41'16" E
C18	34.19	310.00	17.11	6°33'08"	34.17	S 72°21'44" E
C19	112.58	310.00	56.92	20°44'29"	111.98	S 88°47'56" E
C20	110.19	310.00	55.88	20°21'59"	109.61	S 38°12'43" E
C21	100.70	310.00	50.80	18°36'44"	100.26	S 18°43'21" E
C22	146.11	330.00	74.27	25°27'06"	144.92	S 03°16'04" W
C23	136.91	330.00	68.45	23°46'14"	135.93	S 27°50'14" W
C24	25.44	50.00	13.05	28°17'56"	25.26	N 62°41'17" W
C25	12.38	50.00	6.22	14°11'08"	12.35	N 40°57'44" W



RANDALL K. FRENCH, P.L.S. 9561

LOT 1 & 2, BLOCK 3, AIRPORT  
 WEST SUBDIVISION PHASE II  
 CALENA ENGINEERING, INC.  
 KETCHUM, IDAHO

SHEET 2 OF 3

Job No. 328913\_plat

CERTIFICATE OF OWNERSHIP

This is to certify that the undersigned are the owners in fee simple of the following parcels of land located within Sections 15 & 16, Township 2 North, Range 18 East, Boise Meridian, City of Hailey, Blaine County, Idaho, the boundary of which is more particularly describes as follows:

LOTS 1 AND 2, BLOCK 3 OF AIRPORT WEST SUBDIVISION PHASE II, RECORDS OF BLAINE COUNTY, IDAHO.

The easements indicated hereon are not dedicated to the public, but the right to use said easements is hereby reserved for the public utilities and for any other uses indicated hereon and no permanent structures are to be erected within the lines of said easements. We do hereby certify that all lots in this plat will be eligible to receive water service from an existing water distribution system and that the existing water distribution system has agreed in writing to serve all of the lots shown within this plat.

It is the intent of the owners to hereby include said land in this plat.

*[Signature]*

AW Island LLC, an Idaho limited liability company  
BY: GRK LLC, its Manager  
BY: George R. Kirk, its Member

ACKNOWLEDGMENT

STATE OF IDAHO }  
COUNTY OF BLAINE } ss

On this 24 day of September 2004, before me, a Notary Public in and for said State, personally appeared George R. Kirk, known to me to be the Manager of GRK L.L.C., Member executing on behalf of AW Island L.L.C., an Idaho Limited Company, and acknowledged to me that he executed the same in said company name.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year in this certificate first above written.



*[Signature]*  
Notary Public in and for said State  
Residing in Hailey City, Idaho  
My Commission Expires 7/29/05

SURVEYOR'S CERTIFICATION

I, Randall K. French, a duly licensed Land Surveyor in the State of Idaho, do hereby certify that the foregoing plat is a true and accurate map of the land surveyed under my direct supervision and that it is in accordance with the Idaho State Code relating to plats and surveys.



BLAINE COUNTY SURVEYOR'S APPROVAL

I, Jim W. Koance, County Surveyor for Blaine County, Idaho, have checked the foregoing plat and computations for making the same and have determined that they comply with the laws of the State of Idaho relating thereto.

*[Signature]*  
Blaine County Surveyor

HAILEY CITY ENGINEER'S APPROVAL

The foregoing plat was approved by Thomas Hellen, City Engineer for the City of Hailey on this 2 day of September, 2004.

*[Signature]*  
City Engineer

HAILEY CITY PLANNING AND ZONING APPROVAL

The foregoing plat was approved by the City of Hailey Planning and Zoning Commission on this 9 day of August, 2004.

*[Signature]*  
Chairman

HAILEY CITY COUNCIL APPROVAL

The foregoing plat was approved by the City Council of Hailey on this 2nd day of September, 2004.

*[Signature]*  
City Clerk

BLAINE COUNTY TREASURER'S APPROVAL

The taxes on the foregoing parcel of land have been paid to this date and this plat is hereby approved this 3rd day of September, 2004.

*[Signature]*  
Blaine County Treasurer

BLAINE COUNTY RECORDER'S CERTIFICATE

STATE OF IDAHO }  
COUNTY OF BLAINE } ss

INSTRUMENT # 509416  
HAILEY BLAINE, IDAHO  
2004-09-03 12:40:00 AM of Page 3  
RECORDED IN SUNVALEY TITLE  
MARSHA REEMANN REC-1704  
ELECTRONIC RECORDING DIVISION  
BOISE, IDAHO

*[Signature]*

LOT 1 & 2, BLOCK 3, AIRPORT  
WEST SUBDIVISION PHASE II  
GALENA ENGINEERING, INC  
KETCHUM, IDAHO  
SHEET 3 OF 3

Job No. 328313\_plat

## FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

On April 12, 2004, the Hailey City Council considered the application by the Kirk Group for Preliminary plat approval of Airport West Replat of Block 3. The application would subdivide Lots 1 and 2, Block 3, Airport West Subdivision Phase 2, located between Aviation Drive and Merlin Loop. The Council, having been presented with all information and testimony in favor and in opposition to the proposal, hereby makes the following Findings of Fact, Conclusions of Law, and Decision.

### FINDINGS OF FACT

#### Notice

Notice for the public hearing was published in the Wood River Journal on March 24, 2004; the notice was mailed to property owners within 300 feet on March 24, 2004.

#### Application

Airport West Partners, with George Kirk as representative, has submitted an application for Preliminary Plat approval for the re-subdivision of Block 3, Airport West Subdivision, Phase 2, into 16 lots ranging in size from 11,000 to 20,855 square feet. The lots would be accessed by private internal streets, platted as easements on the lots.

#### Procedural History

The Planning and Zoning Commission held a public hearing on this application on March 15, 2004, and conditionally approved the replat. Conditions of approval are noted below.

#### Commission Conditions of Approval

- a) **All Fire Department and Building Department requirements shall be met. At this time, these requirements include, but will not be limited to the following:**
- **Additional requirements to meet Fire Code will be considered on a case by case basis, depending on size, occupancy, and construction type.**
  - **Additional fire hydrant at the south intersection of Lear Lane and Merlin Loop**
  - **All building street numbers to be visible from the street side.**

This condition is carried over.

- b) **Detailed plans for all infrastructure to be installed or improved at or adjacent to the site shall be submitted for Department Head approval and shall meet City Standards where required. At this time, this infrastructure includes, but will not be limited to the following:**
- **Stop signs, (private) street name signs, and fire lane signage.**
  - **Drywells subject to City Engineer approval and EPA standards**
  - **Looped water main lines**

- **Comanche Lane shall dead end and not connect with Merlin Loop, in order to eliminate the offset.**

This condition is carried over, except Comanche Lane is now shown as dead end.

- c) **The 5-foot building setback line shall be shown within Lot 1F and Lot 2D.**

This condition is carried over.

- d) **A plat note shall be added that the owner of Lot 2G shall be responsible for all costs of removing and/or replacing any encroachments within the sewer easement.**

See note #7. The City Attorney has reviewed the note and recommends that the second sentence of the note be revised as follows: "Should the utility owner need to access or maintain the sewer main, the owner of Lot 2G agrees to immediately repair and replace all landscaping, sidewalk, and above ground structures, if permitted within the 20' easement, at the owner's sole expense."

- e) **The developer shall meet or exceed all applicable standards of the Subdivision Ordinance and applicable Improvement Standard Drawings.**

This condition is carried over.

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

This condition is carried over.

### **Department Head Comments**

#### **Life/safety issues:**

The Fire Chief notes that the distance between fire hydrants on Merlin Loop exceeds the 450' maximum for industrial/commercial developments. An additional hydrant is to be installed at the south intersection of Lear Lane and Merlin Loop. All building street numbers are to be visible from the street side. The first 150 feet of alleys need to be posted as fire lanes.

#### **Water/sewer/engineering issues:**

An existing sewer main and 20 foot easement runs through the block on a slight diagonal from Aviation Drive to Merlin Loop. The original lot line between Lot 1 and Lot 2 followed this sewer line. The proposed lot and street configuration is at a different angle, resulting in the sewer easement not being entirely contained within Comanche Lane. The Public Works Manager and City Engineer recommended that the sewer line be relocated within Comanche Lane in order to avoid the possibility of costly replacement of concrete sidewalk and/or landscaping if the main needs to be accessed. The applicant has chosen to handle this via a plat note stating that the owner of the lot is responsible for replacement costs of anything other than asphalt.

## Standards of Evaluation

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

The Airport West Annexation, Services and Development Agreement, dated December 17, 2001, includes paragraphs 2 and 4; relevant portions are noted below:

2.d. Development of the Property shall occur in accordance with the conditions and requirements of the subdivision approval process, and substantially as depicted in Exhibit "B" attached hereto; applicable design review regulations; and any subsequent PUD or subdivision approval process. Except as otherwise expressly provided herein, all development shall be governed by applicable Hailey ordinances in effect at the time and shall include, but not be limited to, installation of both off and on-site infrastructure and other improvements as set forth herein.

4. Improvements to Individual Large Block Lots. Except as otherwise provided in this Agreement, the development of the Large Block Lots by AWP, or its successors and assigns, shall be subject to applicable City ordinances, and any subsequent design review, PUD or subdivision process. AWP agrees that any necessary restoration or reconstruction of previously constructed public rights-of-way including streets, sidewalks, curbs and/or gutters, due to subsequent installation of infrastructure and improvements to accommodate individual large block lots, or otherwise, shall be borne by AWP or its successors and assigns. Based on the above, the applicable standards of Subdivision Ordinance No. 821 are evaluated below.

### SECTION 4 – DEVELOPMENT STANDARDS

4.0 The configuration and development of proposed subdivisions shall be subject to the provisions found hereunder, and shall be subject to the development restrictions, guidelines and direction found within the Hailey Comprehensive Plan, the Hailey Zoning Ordinance and any other applicable Ordinance or policy of the City of Hailey.

Upon meeting proposed conditions of approval, the application does not appear to conflict with plans, ordinances, or policies of the City.

4.1 Streets.

4.1.1 All streets in the subdivision must be platted and developed with a width, alignment, and improvements such that the street is adequate to accommodate existing and anticipated vehicular and pedestrian traffic and meets City standards. Streets shall be aligned in such a manner as to provide through and efficient access from and to adjacent developments and properties and shall provide for the integration of the proposed streets with the existing pattern.

The streets in the subject property are proposed to be private, and similar to those in the previously re-subdivided lots of Airport West. One of the conditions of approval of final plat for Airport West stated, "The internal streets within the large lots shall be privately owned." These provide internal circulation for the lots, accommodating access to each lot internally rather than on the public streets. The internal streets and alleys proposed for the subject property range from 26 feet to 30 feet wide, platted as easements on the lots.

The proposed Lear Lane is platted through the subject property, connecting with Lear Lane within Lot 4, Block 4, and also connecting to Electra Lane between Lots 6 and 7, Block 4.

The proposed Comanche Lane connects with Comanche Lane across Aviation Drive, in Lot 3, Block 2.

**4.1.3 Streets shall be laid out so as to intersect as nearly as possible at right angles and no street shall intersect any other street at less than eighty (80) degrees. Where possible, four way intersections shall be used. A recommended distance of 500 feet, with a maximum of 750 feet, measured from the center line, shall separate any intersection. Alternatively, traffic calming measures including but not limited to speed humps, speed tables, raised intersections, traffic circles or roundabouts, meanderings, chicanes, chokers, and/or neckdowns shall be a part of the street design. Alternate traffic calming measures shall be approved with the recommendation of the City Engineer and the Street Superintendent. Three way intersections shall only be permitted where most appropriate or where no other configuration is possible. A minimum distance of 150 feet, measured from the center line, shall separate any two three-way intersections.**

The proposed Comanche Lane creates a 4-way intersection with Aviation Drive, and Lear Lane creates 4-way intersections at Merlin Loop on both the north and south ends. On the preliminary plat reviewed by the Commission, Comanche Lane created a 3-way intersection at Merlin Loop, only approximately 60 feet from the 3-way intersection of Electra Lane at Merlin Loop to the west. On the recommendation of the City Engineer and Fire Chief, Comanche now dead ends at the west, eliminating the 3-way intersection.

**4.1.8 The developer shall provide storm sewers and/or drainage areas of adequate size and number to contain the runoff upon the property in conformance with the latest applicable Federal, State and local regulations. The developer shall provide copies of state permits for shallow injection wells (drywells). Drainage plans shall be reviewed by City Staff and shall meet the approval of the City Engineer. Developer shall provide a copy of EPA's "NPDES General Permit for Stormwater Discharge from Construction Activity" for all construction activity affecting more than one acre.**

Drywells are shown and will be subject to City Engineer approval and EPA standards.

**4.1.9 The developer shall provide and install all street signs in accordance with City standards.**

Stop signs, (private) street name signs, and fire lane signage, at a minimum, would be required.

**4.1.10 All streets and alleys within any subdivision shall be dedicated for public use, except as provided herein. New street names shall not be the same or similar to any other street names used in Blaine County.**

Street names are Lear Lane and Comanche Lane, both continuations of streets within Airport West.

**4.1.10.1 Private streets may be allowed within Planned Unit Developments and within developments in the Business, Limited Business, Light Industrial, Technological Industry, and Service Commercial Industrial districts, at the sole discretion of the City Council, except that no Arterial or Major Street, or Collector or Secondary Street may be private. Private streets shall have a minimum total width of 36 feet where drainage is accommodated outside the paved area, or 26 feet for curbed or other design where drainage is accommodated within the paved area, shall be constructed to all other applicable street standards including paving, and shall be maintained by an owner's association.**

The proposed streets are 26 feet, paved width, with a center valley gutter to accommodate drainage. The alleys serving the rear of the lots are 30 feet wide, with a center valley gutter.

**4.1.10.2 Private streets, wherever possible, shall provide interconnection with other streets.**

The internal streets connect to other private streets to the north, east and south.

**4.1.10.3 The area designated for private streets shall be platted as a separate parcel according to subsection 4.5.3 below, or as a dedicated access easement. Easements and parcels shall clearly indicate the beneficiary of the easement or parcel and that the property is unbuildable except for ingress/egress, utilities or as otherwise specified on the plat.**

The proposed private streets are to be platted as dedicated access easements. The plat notes the easement for public access and public utilities. Plat note #2 states that easements are granted for access and public utilities, and that no structures shall be placed within them. The City Attorney suggests that the first sentence of this note be expanded to read, "Within private streets shown hereon, easements are granted for public access and for the maintenance and reconstruction of public utilities.

In previously replatted large lots, e.g. Lot 4, Block 4, buildings have been located directly adjacent to the private streets, as setback distances are measured from the property lines (which are the center lines of the streets). The proposed plat has placed a 5-foot building

setback line from the edge of the streets. This setback line is not currently shown within Lot 1F and Lot 2D, but should be required in both.

**4.1.10.4 Private street names shall not end with the word "Road", "Boulevard", or "Street".**

All street names end in "Lane".

**4.1.10.5 Private streets shall have adequate and unencumbered 10-foot wide snow storage easements on both sides of the street, or an accessible dedicated snow storage easement representing not less than twenty-five (25%) of the improved area of the private street.**

Proposed snow storage easements are shown on the plat in the cross-hatched areas. The plat shows proposed asphalt at 50,774 square feet and snow storage at 12,694 square feet. This meets the 25% snow storage requirement. The plat notes that the snow storage is for the private street, and not for internal parking or circulation within the lots. It also notes that relocation of snow storage easements is subject to plat amendment.

**4.1.12 Required fire lanes, whether in private streets or driveways, shall comply with all regulations set forth in adopted fire codes.**

The streets will need to be signed for no parking.

**4.2 Sidewalks and Curbs.**

**4.2.1 Sidewalks, as required in all public street improvements, shall be a minimum of 5 feet wide, shall be constructed of concrete installed to City standards or shall be constructed of an alternative material as approved by the Hailey Planning and Zoning Commission and/or the Hailey City Council. The Council, following a recommendation by the Planning and Zoning Commission, may waive this requirement pending a finding that the installation of sidewalks within the development will provide a substantial burden to the developer and no reasonable benefit to either the public or the occupants of the development.**

Sidewalks have been installed within the public street rights-of-way in Airport West as approved by the Council. Sidewalk is not a requirement in private streets.

**4.3 Alleys and Easements.**

**4.3.7 Where alleys are not provided, easements of not less than ten (10) feet in width may be required on each side of all rear and/or side lot lines (total width = 20 feet) where necessary for wires, conduits, storm or sanitary sewers, gas and water lines. Easements of greater width may be required along lines, across lots, or along boundaries, where necessary for surface drainage or for the extension of utilities.**

The proposed access easement/private streets also function as utility easements and are 26 feet wide.

**4.3.8 Easements. Easements, defined as the use of land not having all the rights of ownership and limited to the purposes designated on the plat,**

shall be placed on the plat as appropriate. Plats shall show the entity to which the easement has been granted. Easements shall be provided for the following purposes:

- 4.3.8.1 To provide access through or to any property for the purpose of providing utilities, emergency services, public access, private access, recreation, deliveries, or such other purpose. Any subdivision that borders on the Big Wood River shall dedicate a 20-foot wide fisherman's access easement, measured from the mean high water mark, which shall provide for non-motorized public access. Additionally, in appropriate areas, an easement providing non-motorized public access through the subdivision to the river shall be required as a sportsman's access.

The private street provides for access and public utilities.

- 4.3.8.3 To provide for the storage of snow, drainage areas, or the conduct of irrigation waters. Snow storage areas shall be not less than twenty-five percent (25%) of parking, sidewalk, and other circulation areas.

See 4.1.10.5 above.

#### 4.4 Blocks.

- 4.4.1. The length, width and shape of blocks shall be determined with due regard to adequate building sites suitable to the special needs of the type of use contemplated, the zoning requirements as to lot size and dimensions, the need for convenient access and safe circulation, and the limitations and opportunities of topography.

The subject property is part of previously approved Block 3, Airport West Subdivision.

#### 4.5 Lots.

- 4.5.1 All lots shown on the subdivision plat must conform to the minimum standards for lots in the District in which the subdivision is planned. The City of Hailey will generally not approve single-family residential lots larger than one-half acre (21,780 square feet). In the event a single-family residential lot greater than one-half acre is platted, irrigation is restricted to not more than one-half acre, pursuant to Idaho Code 42-111, and such restriction shall be included as a plat note. District regulations are found in the Hailey Zoning Ordinance.

The minimum lot size in the SCI-I sub-district is 10,890 square feet. The proposed lots range in size from 11,000 to 20,855 square feet.

- 4.5.2 Double frontage lots shall be prohibited except where unusual topography, a more integrated street plan, or other conditions make it undesirable to meet this requirement. Double frontage lots are those created by either public or private streets, but not by driveways or alleys. Subdivisions providing a platted common space of 25 feet or more between any street right-of-way and any single row of lots shall not be considered to have platted double frontage lots. Common space provided must be landscaped.

The private streets creates double frontage lots, however this plan is consistent with the platting of Airport West and the requirement of the City for limited curb cuts on the public streets. The plat notes that access to the lots shall be from the internal private streets only.

## **SECTION 5 - IMPROVEMENTS REQUIRED.**

**5.1** It shall be a requirement of the developer to construct the minimum improvements set forth herein, for the subdivision, all to City standards.

**5.1.1** Six (6) copies of all improvement plans shall be filed with the City Engineer and made available to each department head. Upon final approval two (2) sets of revised plans shall be returned to the developer at the pre-construction conference with the City Engineer's written approval thereon. One set of final plans shall be on-site at all times for inspection purposes and to note all field changes upon.

**5.1.2** Prior to the start of any construction, it shall be required that a pre-construction meeting be conducted with the developer or his authorized representative/engineer, the contractor, the City Engineer and appropriate City Staff. An approved set of plans shall be provided to the developer and contractor at this meeting.

**5.1.3** The developer shall guarantee all improvements pursuant to this Section for no less than one year from the date of final acceptance by the City, except that parks shall be guaranteed and maintained by the developer for a period of two years.

**5.2** The developer shall construct all streets, alleys, curb and gutter, lighting, sidewalks, street trees and landscaping, and irrigation systems to meet City standards, the requirements of this ordinance, the approval of the Hailey City Council, and to the finished grades which have been officially approved by the City Engineer as shown upon approved plans and profiles. The developer shall pave all streets and alleys with an asphalt plant-mix, and shall chip-seal streets and alleys within one year of construction.

**5.2.1** Street cuts made for the installation of services under any existing improved public street shall be repaired in a manner which shall satisfy the Hailey Street Superintendent, shall have been approved by the Hailey City Engineer or his authorized representative, and shall meet City standards. Repair may include patching, skim coats of asphalt or, if the total area of asphalt removed exceeds 25% of the street area, the complete removal and replacement of all paving adjacent to the development. Street cut repairs shall also be guaranteed for no less than one year.

- 5.2.2 Street name signs and traffic control signs shall be erected by the developer in accordance with City Standard Specifications, and said street name signs and traffic control signs shall thereafter be maintained by the City.
- 5.2.3 Street lights in the Recreational Green Belt, Limited Residential, General Residential, and Transitional zoning districts are not required improvements. Where proposed, street lighting in all zoning districts shall meet all requirements and recommendations of Chapter 8B of the Hailey Zoning Ordinance.
- 5.3 The developer shall construct a municipal sanitary sewer connection for each and every developable lot within the development. The developer shall provide sewer mains of adequate size and configuration in accordance with City standards, and all federal, state, and local regulations. Such mains shall provide wastewater flow throughout the development. All sewer plans shall be submitted to the Idaho Department of Environmental Quality (DEQ) for review and comments.
- 5.4 The developer shall construct a municipal potable water connection for each and every developable lot within the development. The developer shall provide water mains and services of adequate size and configuration in accordance with City standards, and all federal, state, and local regulations. Such water connection shall provide all necessary appurtenances for fire protection, including fire hydrants, which shall be located in accordance with the Uniform Fire Code and under the approval of the Hailey Fire Chief. All water plans shall be submitted to the Idaho Department of Environmental Quality (DEQ) for review and comments.
- 5.5 The developer shall provide drainage areas of adequate size and number to meet the approval of the Street Superintendent and the City Engineer or his authorized representative.
- 5.6 The developer shall construct each and every individual service connection and all necessary trunk lines, and/or conduits for those improvements, for natural gas, electricity, telephone, and cable television to the property line before placing base gravel for the street or alley.
- 5.7 The developer shall improve all parks and open space areas as presented to and approved by the Commission and Council.
- 5.8 All improvements are to be installed under the specifications and inspection of the City Engineer or his authorized representative. The minimum construction requirements shall be the latest published

standard City specifications and improvement standard drawings or the Department of Environmental Quality (DEQ) standards, whichever is the more stringent.

- 5.9 Installation of all infrastructure improvements must be completed by the developer, and inspected and accepted by the City prior to signature of the plat by City representatives, or according to a phasing agreement. A post-construction conference shall be requested by the developer and/or contractor and conducted with the developer and/or contractor, the City Engineer, and appropriate City Staff to determine a punch list of items for final acceptance.
- 5.9.1 The developer may, in lieu of actual construction, provide to the City security pursuant to Section 2.3.7, for all infrastructure improvements to be completed by developer after the final plat has been signed by City representatives.
- 5.10 Prior to the acceptance by the City of any improvements installed by the developer, three (3) sets of "as-built plans and specifications" certified by the developer's engineer shall be filed with the City Engineer.

### CONCLUSIONS OF LAW AND DECISION

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

1. Adequate notice, pursuant to Section 2 of the Hailey Subdivision Ordinance, was given for the public hearing.
2. Upon compliance with the conditions noted below, the application substantially meets the standards of approval set forth in the Hailey Subdivision Ordinance.
3. The application for Preliminary Plat shall be approved by the Hailey City Council, with the following Conditions.
  - a) All Fire Department and Building Department requirements shall be met. At this time, these requirements include, but will not be limited to the following:
    - Additional requirements to meet Fire Code will be considered on a case by case basis, depending on size, occupancy, and construction type.
    - Additional fire hydrant near the south intersection of Lear Lane and Merlin Loop, or other location as determined by Fire Chief.
    - All building street numbers to be visible from the street side.
  - b) Detailed plans for all infrastructure to be installed or improved at or adjacent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18 day of May, 2004, 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

George Kirk  
Box 4380  
Ketchum, ID 83340

*us mail →*

Brian Yeager  
Box 425  
Ketchum, ID 83340

CITY OF HAILEY

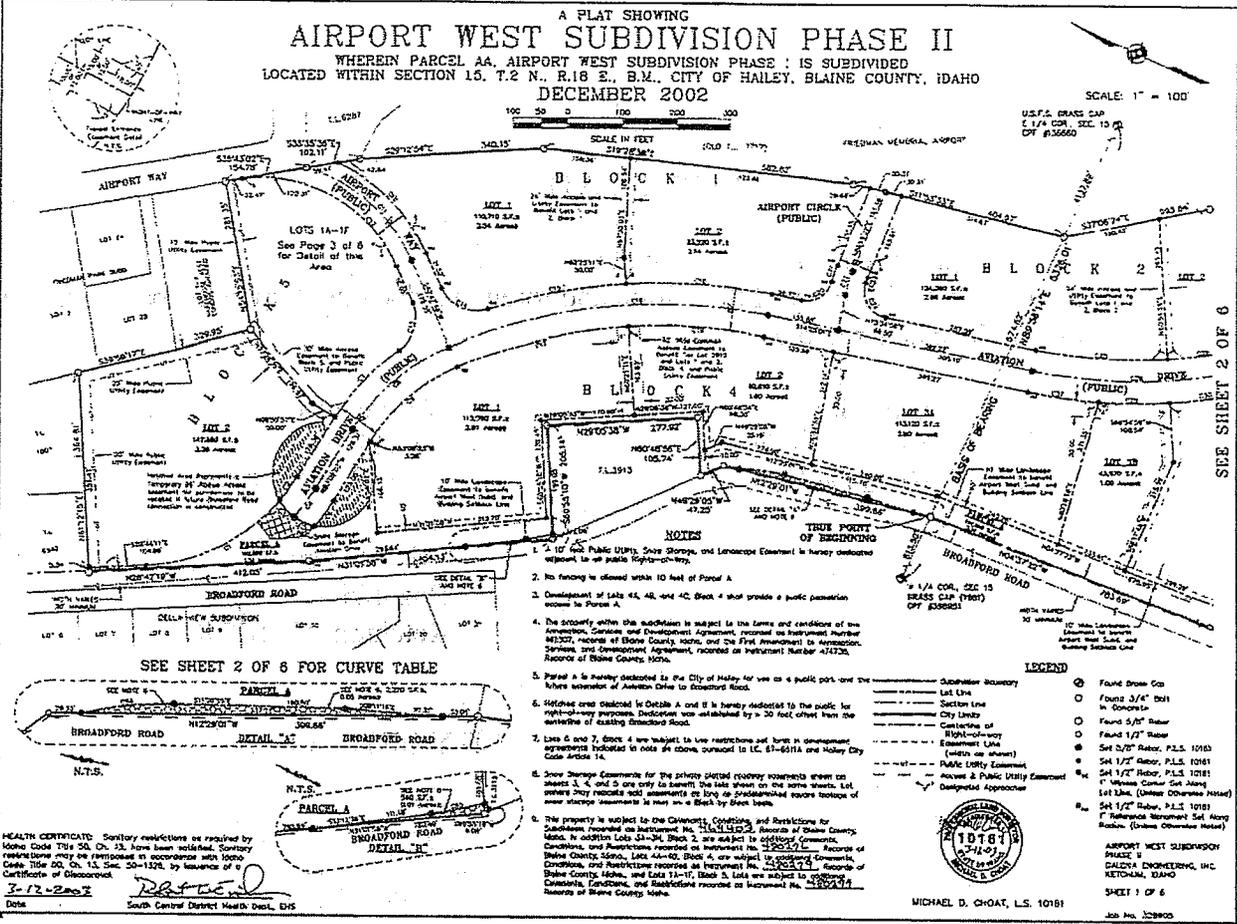
By Tara Hyde  
Tara Hyde, Deputy Clerk

# A PLAT SHOWING AIRPORT WEST SUBDIVISION PHASE II

WHEREIN PARCEL AA, AIRPORT WEST SUBDIVISION PHASE I IS SUBDIVIDED  
LOCATED WITHIN SECTION 15, T.2 N., R.18 E., B.M., CITY OF HAILEY, BLAINE COUNTY, IDAHO  
DECEMBER 2002

SCALE: 1" = 100'

U.S.F.S. GRASS CAP  
E 1/4 COR. SEC. 15  
OFF #33660

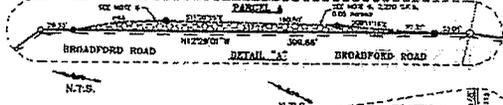


ALL INFORMATION CONTAINED HEREIN IS  
 THE PROPERTY OF MICHAEL D. CHOAT, L.S. 10181  
 AND IS NOT TO BE REPRODUCED OR  
 TRANSMITTED IN ANY FORM OR BY  
 ANY MEANS, ELECTRONIC OR MECHANICAL,  
 INCLUDING PHOTOCOPYING, RECORDING,  
 OR BY ANY INFORMATION STORAGE AND  
 RETRIEVAL SYSTEM, WITHOUT THE  
 WRITTEN PERMISSION OF MICHAEL D. CHOAT, L.S. 10181

SEE SHEET 2 OF 6

- NOTES**
1. 10' and Public Utility, Drive, Storage, and Landscape Easement is hereby dedicated adjacent to the public right-of-way.
  2. No fencing is allowed within 10 feet of Parcel A.
  3. Development of Lots 41, 42, and 43, Block 4 shall provide a public easement across to Parcel A.
  4. The property within the subsection is subject to the terms and conditions of two Amortization, Covenants and Development Agreement, recorded as Instrument Number 88327, records of Blaine County, Idaho, and the First Amendment to Amortization, Covenants, and Development Agreement, recorded as Instrument Number 47470, Records of Blaine County, Idaho.
  5. Parcel A is hereby dedicated to the City of Hailey for use as a public park and the future extension of Aviation Drive to Broadford Road.
  6. Hatched area delineated in Detail A and if it is hereby dedicated to the public for right-of-way purposes. Dedication was established by a 30 foot offset from the centerline of existing Broadford Road.
  7. Lots 6 and 7, Block 4 are subject to use restrictions set forth in covenants agreements indicated in notes 4 & above, pursuant to LC 87-6011A and Hailey City Code Article 14.
  8. Joint Survey Comments for the adjacent adjacent survey instruments shown on sheets 1, 4, and 5 are only to benefit the lots shown on the same sheets. Lot owners may request and amendments to any or unadmitted errors to those of their respective instruments to that on a Block by Block basis.
  9. The property is subject to the Covenants, Conditions, and Restrictions for Subdivision recorded as Instrument No. 114,113, Records of Blaine County, Idaho, in addition Lots 24-34, Block 3, are subject to additional Covenants, Conditions, and Restrictions recorded as Instrument No. 120,174, Records of Blaine County, Idaho, and Lots 11-17, Block 3, Lots are subject to additional Covenants, Conditions, and Restrictions recorded as Instrument No. 115,141, Records of Blaine County, Idaho.

SEE SHEET 2 OF 6 FOR CURVE TABLE



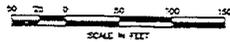
**HEALTH CERTIFICATE:** Sanitary restrictions as required by Idaho Code Title 50, Ch. 13, have been satisfied. Sanitary restrictions may be enforced in accordance with Idaho Code Title 50, Ch. 13, Sec. 50-120, by issuance of a Certificate of Disapproval.  
 Date: 3-12-2002  
 South Central District Health Dept., IDHS

- LEGEND**
- Subdivision Boundary
  - Lot Line
  - Section Line
  - City Limits
  - Contour of Right-of-Way Easement Line (width as shown)
  - PUBLIC UTILITY EASEMENT
  - Public Utility Easement
  - Designated Approacher
  - Found Drive Cap
  - Found 3/4" Bolt in Concrete
  - Found 5/8" Rebar
  - Found 1/2" Rebar
  - Found 3/8" Rebar, P.L.S. 10181
  - Found 1/2" Rebar, P.L.S. 10181
  - Found 3/8" Rebar, P.L.S. 10181
  - Found 1/2" Rebar, P.L.S. 10181
  - Found 3/8" Rebar, P.L.S. 10181

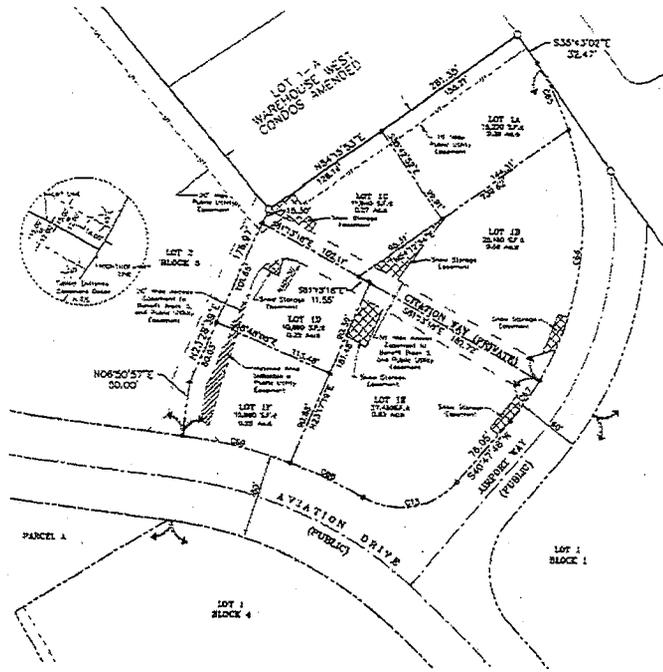


MICHAEL D. CHOAT, L.S. 10181  
 SHEET 1 OF 6  
 JOB NO. 108800

LOTS 1A-1F, BLOCK 5  
 AIRPORT WEST SUBDIVISION PHASE II  
 DECEMBER 2002



SCALE 1" = 50'



LEGEND

- Subdivision Boundary
- Lot Line
- Section Line
- City Limits
- Centerline of Right-of-Way
- Easement Line (width as shown)
- Public Utility Easement
- Access & Public Utility Easement
- Found Stone Cap
- Found 3/4" Bolt in Concrete
- Found 4.0" Rebar
- Found 1/2" Rebar
- Set 3/8" Rebar, P.L.S. 10161
- Set 1/2" Rebar, P.L.S. 10161
- Reference Monument Set Along Right-of-Way (Where Otherwise Indicated)
- Set 1/2" Rebar, P.L.S. 10161
- Reference Monument Set Along Right-of-Way (Where Otherwise Indicated)
- Delineated Approach

SEE SHEET 1 OF 6 FOR NOTES

CURVE #	LENGTH	RADIUS	PERCENT	DELTA	CHORD	CHORD BEARING
C13	28.42'	70.00'	17.67°	178.00°	50.84'	N 89.51° 22" W
C14	68.35'	170.00'	17.67°	178.00°	50.84'	N 89.51° 22" W
C15	252.00'	210.00'	17.67°	178.00°	174.00'	N 89.51° 22" W
C16	48.00'	210.00'	17.67°	178.00°	48.00'	N 89.51° 22" W
C17	74.32'	210.00'	17.67°	178.00°	74.32'	N 89.51° 22" W
C18	101.00'	210.00'	17.67°	178.00°	101.00'	N 89.51° 22" W



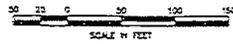
MICHAEL D. CHODT, L.S. 10161

LOTS 1A-1F, BLOCK 5  
 AIRPORT WEST SUBDIVISION  
 PHASE II  
 SALEM ENGINEERING, INC.  
 KETCHIKAN, ALASKA  
 SHEET 3 OF 6  
 JOB NO. 220992

AIRPORT WEST SUBDIVISION PHASE II  
 SHEET 3 OF 6  
 SALEM ENGINEERING, INC.  
 KETCHIKAN, ALASKA  
 JOB NO. 220992



LOTS 3A-3H, BLOCK 2  
AIRPORT WEST SUBDIVISION PHASE II  
DECEMBER 2002



- LEGEND**
- Subdivision Boundary
  - Lot Line
  - Section Line
  - City Limits
  - Contouring of Elevation
  - Easement Line
  - Public Utility Easement
  - Access to Public Utility Easement
  - Found Brass Cap
  - Found 3/4" Nail in Concrete
  - Found 5/8" Nail in Concrete
  - Found 1/2" Nail in Concrete
  - Set 3/8" Nail, P.L.S. 10161
  - Set 1/2" Nail, P.L.S. 10161
  - Set 5/8" Nail, P.L.S. 10161
  - Set 1" Nail, P.L.S. 10161
  - 1" Witness Corner Set Along Lot Line (Unless Otherwise Noted)
  - 1" Reference Monument Set Along Roadway (Unless Otherwise Noted)
  - Disputed Approach

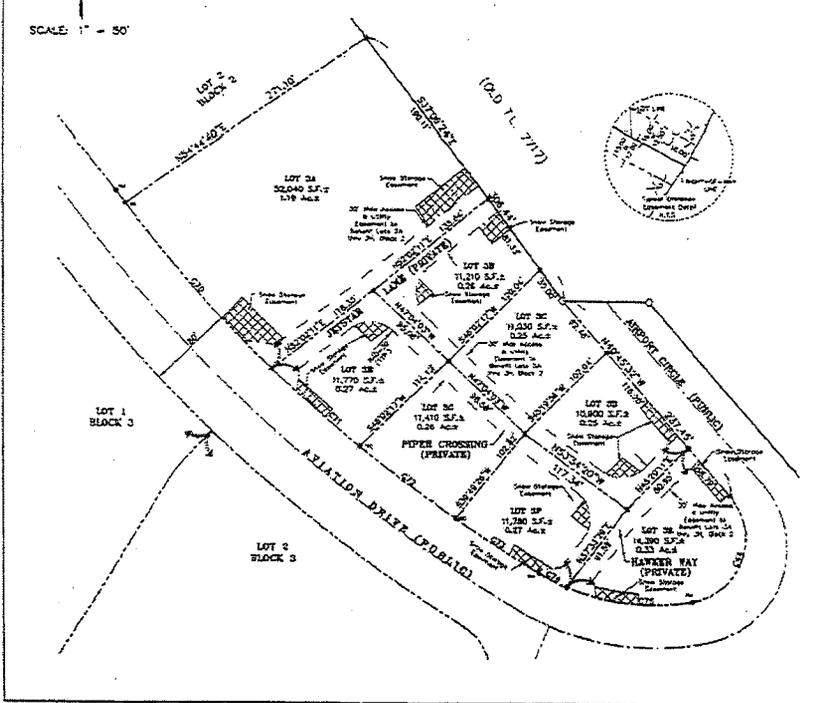
SEE SHEET 1 OF 8 FOR NOTES

CURVE	LENGTH	RADIUS	STANGENT	CHORD	CHORD DIRECTION
C64	178.67	200.00	100.00	178.67	N 54°17'47" W
C70	1703.56	1700.00	100.00	1703.56	S 41°00'00" W
C71	102.82	100.00	50.00	102.82	S 42°27'24" W
C72	110.00	100.00	50.00	110.00	S 42°00'00" W
C73	53.27	100.00	50.00	53.27	S 70°00'00" W
C74	25.82	100.00	50.00	25.82	S 82°17'17" W
C75	114.74	100.00	50.00	114.74	S 85°27'37" W



MICHAEL D. CHODT, L.S. 10161

LOTS 3A-3H, BLOCK 2  
AIRPORT WEST SUBDIVISION  
PHASE II  
CALDEX ENGINEERING, INC.  
NATIONAL, OHIO  
SHEET 2 OF 8  
JOB No. 226902



**DRAWING NUMBER**  
AIRPORT WEST SUBDIVISION PHASE II  
SHEET 2 OF 8  
DATE: 12/11/02  
BY: [Signature]

**PROJECT TITLE** AIRPORT WEST PHASE II  
311 N. 17th St.  
MIAMI, FL 33136  
OWNER: CALDEX ENGINEERING, INC.  
DESIGNED BY: [Signature]

**DATE**  
12/11/02

CERTIFICATE OF OWNERSHIP

This is to certify that the undersigned are the owners in fee simple of the following parcels of land located within Sections 15 & 16, Township 2 North, Range 18 East, Boise Meridian, City of Hailey, Blaine County, Idaho, the boundary of which is more particularly described as follows:

PARCEL AA OF AIRPORT WEST SUBDIVISION PHASE I, RECORDS OF BLAINE COUNTY, IDAHO.

The easements indicated hereon are not dedicated to the public, but the right to use said easements is hereby reserved for the public utilities and for any other uses indicated hereon and no permanent structures are to be erected within the lines of said easements. We do hereby certify that all lots in this plot will be eligible to receive water service from an existing water distribution system and that the existing water distribution system has agreed in writing to serve all of the lots shown within this plot.

It is the intent of the owners to hereby include said land in this plot.

AIRPORT WEST PARTNERS, LTD., AN IDAHO LIMITED PARTNERSHIP

Rokan Idaho, L.L.C., General Partner
By: Rokan Corporation, Managing Member
By: Robert A. Kantor, President

Rokan Idaho, L.L.C., General Partner
By: RJS Limited, an Idaho Limited Partnership, Managing Member
By: Ronald J. Sharp, Inc., General Partner
By: Ronald J. Sharp, President/Director

CE, L.L.C. AN IDAHO LIMITED LIABILITY COMPANY

Rokan Partners, Managing Member
By: Rokan Corporation, General Partner
By: Robert A. Kantor, President

ACKNOWLEDGMENT

STATE OF Idaho
COUNTY OF Blaine

On this 17 day of December, 2002, before me, a Notary Public in and for said State, personally appeared Robert A. Kantor, known to me to be the President of Rokan Corporation, a Managing Member of Rokan Idaho, L.L.C., General Partner executing on behalf of Airport West Partners, Ltd., an Idaho Limited Partnership, and acknowledged to me that he executed the same in said partnership name. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



ACKNOWLEDGMENT

STATE OF Idaho
COUNTY OF Blaine

On this 17 day of December, 2002, before me, a Notary Public in and for said State, personally appeared Ronald J. Sharp, known or identified to me to be the President/Director of Ronald J. Sharp, Inc., a General Partner of RJS Limited, an Idaho Limited Partnership, a Managing Member of Rokan Idaho, L.L.C., General Partner executing on behalf of Airport West Partners, Ltd., an Idaho Limited Partnership, and acknowledged to me that he executed the same in said partnership name. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



ACKNOWLEDGMENT

STATE OF Idaho
COUNTY OF Blaine

On this 17 day of December, 2002, before me, a Notary Public in and for said State, personally appeared Robert A. Kantor, known to me to be the President of Rokan Corporation, a General Partner of Rokan Partners, managing member executing on behalf of CE, L.L.C., an Idaho Limited Company, and acknowledged to me that he executed the same in said limited liability company name. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



SURVEYOR'S CERTIFICATION

I, Michael D. Chod, a duly Licensed Land Surveyor in the State of Idaho, do hereby certify that the foregoing plat is a true and accurate map of the land surveyed under...



BLAINE COUNTY SURVEYOR'S APPROVAL

I, Jim W. Koontz, County Surveyor for Blaine County, Idaho, have checked the foregoing plat and computations for making the same and have determined that they comply with the laws of the State of Idaho relating thereto.

Jim W. Koontz
Blaine County Surveyor

HAILEY CITY ENGINEER'S APPROVAL

The foregoing plat was approved by Thomas Helten, City Engineer for the City of Hailey on this 14 day of January, 2002.

Thomas Helten
City Engineer

HAILEY CITY PLANNING AND ZONING APPROVAL

The foregoing plat was approved by the City of Hailey Planning and Zoning Commission on this 28 day of December, 2002.

Chairman

HAILEY CITY COUNCIL APPROVAL

The foregoing plat was approved by the City Council of Hailey on this 11 day of January, 2002.

Heather Danner
City Clerk



BLAINE COUNTY TREASURER'S APPROVAL

The taxes on the foregoing parcel of land have been paid to this date and this plat is hereby approved this 14 day of March, 2002.

Kelli England
Blaine County Treasurer

ACCEPTANCE OF DEDICATION BY THE CITY OF HAILEY

Dedication of the portion of Airport West Phase I as shown on the foregoing plat was approved and accepted this 17 day of January, 2002 by the City of Hailey.

Heather Danner
City Clerk



BLAINE COUNTY RECORDER'S CERTIFICATE

This is to certify that the foregoing plat was filed in the office of the Recorder of Blaine County, Idaho on this 17 day of January, 2002, at \_\_\_\_\_ M., and duly recorded under instrument number \_\_\_\_\_.

Instrument # 480278
RECORDED
INDEXED

Ex-officio Recorder

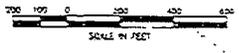
AIRPORT WEST SUBDIVISION
PHASE I
KELSON ENGINEERING, INC.
KETCHUM, IDAHO
SHEET 8 OF 8
JOB NO. 278805

DRAWING NUMBER
480278

NOTARY PUBLIC
STATE OF IDAHO

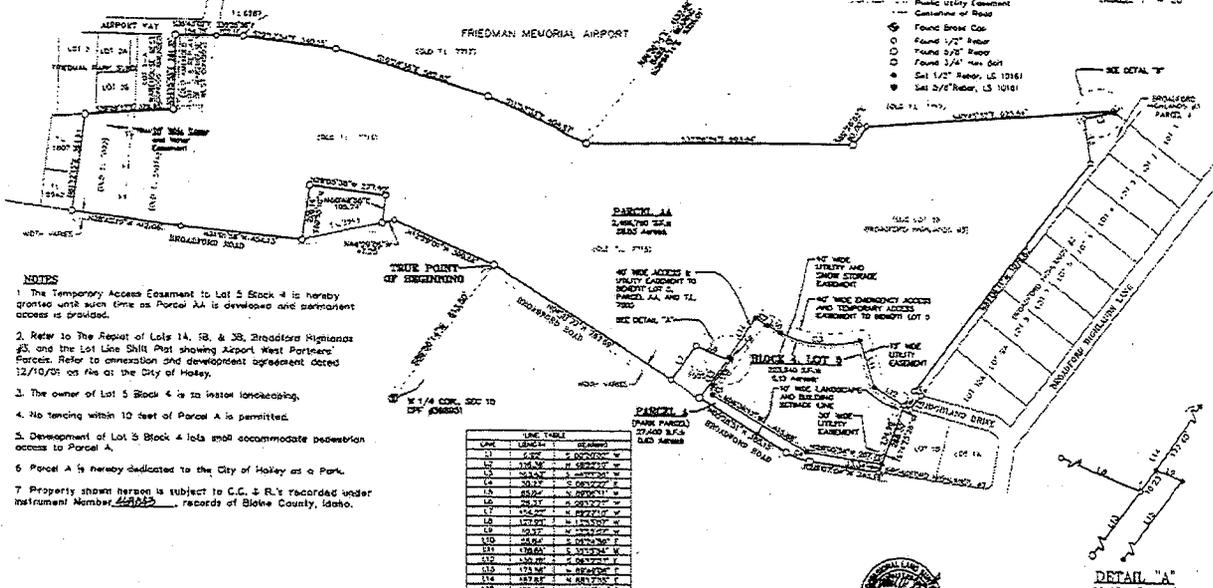
A PLAT SHOWING  
**AIRPORT WEST SUBDIVISION PHASE 1**  
 LOCATED WITHIN SECTIONS 15 & 16, T.2 N., R.18 E., B.M., CITY OF HAILEY, BLAINE COUNTY, IDAHO  
 AUGUST 2002

SCALE: 1" = 200'



- LEGEND**
- Easement Line
  - New Property Line
  - Adjacent Lot Line
  - Proposed Tie Lot Line
  - Section Line
  - Public Utility Easement
  - Centerline of Road
  - Found Break Cap
  - Found 1/2" Rebar
  - Found 3/4" Rebar
  - Found 1/4" rebar
  - Set 1/2" Rebar, LS 10161
  - Set 3/4" Rebar, LS 10161
  - Set 1/2" Rebar, LS 10161

**DETAIL "B"**  
 SCALE: 1" = 20'



- NOTES**
1. The Temporary Access Easement to Lot 5 Block 4 is hereby granted with such time as Parcel 1A is developed and permanent access is provided.
  2. Refer to the Report of Lots 14, 19, & 20, Broadford Highway 23, and the Lot Line Shift Plat showing Airport West Parters Parcels. Refer to creation and development agreement dated 12/10/01 on file at the City of Hailey.
  3. The owner of Lot 5 Block 4 is to vector landlocking.
  4. No fencing within 10 feet of Parcel A is permitted.
  5. Development of Lot 3 Block 4 lots shall accommodate pedestrian access to Parcel A.
  6. Parcel A is hereby dedicated to the City of Hailey as a Park.
  7. Property shown herein is subject to C.E. & R.'s recorded under instrument number 448425 records of Blaine County, Idaho.

**TIME TABLE**

LINE	LENGTH	MARK	DEPTH
1	1.00	1/2"	1.00
2	1.00	1/2"	1.00
3	1.00	1/2"	1.00
4	1.00	1/2"	1.00
5	1.00	1/2"	1.00
6	1.00	1/2"	1.00
7	1.00	1/2"	1.00
8	1.00	1/2"	1.00
9	1.00	1/2"	1.00
10	1.00	1/2"	1.00
11	1.00	1/2"	1.00
12	1.00	1/2"	1.00
13	1.00	1/2"	1.00
14	1.00	1/2"	1.00
15	1.00	1/2"	1.00
16	1.00	1/2"	1.00
17	1.00	1/2"	1.00
18	1.00	1/2"	1.00
19	1.00	1/2"	1.00
20	1.00	1/2"	1.00
21	1.00	1/2"	1.00
22	1.00	1/2"	1.00
23	1.00	1/2"	1.00
24	1.00	1/2"	1.00
25	1.00	1/2"	1.00

**CURVE DATA**

CURVE	LENGTH	BEGINNING	END	CHORD	CHORD BEARING
1	1.00	1.00	1.00	1.00	90.00
2	1.00	1.00	1.00	1.00	90.00
3	1.00	1.00	1.00	1.00	90.00
4	1.00	1.00	1.00	1.00	90.00
5	1.00	1.00	1.00	1.00	90.00
6	1.00	1.00	1.00	1.00	90.00
7	1.00	1.00	1.00	1.00	90.00
8	1.00	1.00	1.00	1.00	90.00
9	1.00	1.00	1.00	1.00	90.00
10	1.00	1.00	1.00	1.00	90.00
11	1.00	1.00	1.00	1.00	90.00
12	1.00	1.00	1.00	1.00	90.00
13	1.00	1.00	1.00	1.00	90.00
14	1.00	1.00	1.00	1.00	90.00
15	1.00	1.00	1.00	1.00	90.00
16	1.00	1.00	1.00	1.00	90.00
17	1.00	1.00	1.00	1.00	90.00
18	1.00	1.00	1.00	1.00	90.00
19	1.00	1.00	1.00	1.00	90.00
20	1.00	1.00	1.00	1.00	90.00
21	1.00	1.00	1.00	1.00	90.00
22	1.00	1.00	1.00	1.00	90.00
23	1.00	1.00	1.00	1.00	90.00
24	1.00	1.00	1.00	1.00	90.00
25	1.00	1.00	1.00	1.00	90.00

HEALTH CERTIFICATE: Sanitary restrictions as required by Idaho Code Title 50, Ch. 13, have been satisfied. Sanitary restrictions may be reimposed in accordance with laws. Date: This 5th Day of August, 2002, by issuance of a Certificate of Discharge.

Date: 8-5-2002  
 [Signature]  
 Sevin Centre District Health Dept., DNS



**DETAIL "A"**  
 SCALE: 1" = 20'

AIRPORT WEST SUBDIVISION PHASE 1  
 CALENA ENGINEERING, INC.  
 HETTINGER, IDAHO  
 SHEET 1 OF 3  
 JOB NO. 338802

MICHAEL D. CHOAD, L.S. 10161

CERTIFICATE OF OWNERSHIP

This is to certify that the undersigned are the owners in fee simple of the following parcels of land located within Sections 15 & 16, Township 2 North, Range 18 East, Blaine Meridian, City of Halley, Blaine County, Idaho, the boundary of which is more particularly described as follows:

Commencing at a 1981 Brass Cap Monument marking the West 1/4 of Section 15; thence North 89°56'14" East 613.50 feet to the TRUE POINT OF BEGINNING; thence North 122°29'1" West, 399.66 feet; thence North 49°26'33" West, 47.25 feet; thence North 60°46'26" East, 106.74 feet; thence North 28°05'30" West, 277.92 feet; thence South 80°55'07" West, 308.14 feet; thence North 31°01'58" West, 454.15 feet; thence North 28°42'79" West, 412.05 feet; thence North 51°12'15" East, 364.81 feet; thence South 39°56'17" West, 329.66 feet; thence North 54°16'53" East, 281.35 feet; thence South 35°43'02" East, 154.78 feet; thence South 35°35'36" East, 102.11 feet; thence South 28°15'54" East, 340.15 feet; thence South 19°28'38" East, 582.82 feet; thence South 11°53'33" East, 404.97 feet; thence South 37°06'25" East, 993.84 feet; thence South 89°25'32" East, 89.00 feet; thence South 49°45'32" East, 923.94 feet; thence South 00°29'02" West, 6.92 feet; thence North 48°22'10" West, 116.58 feet; thence South 44°07'36" West, 183.43 feet; thence North 89°06'11" West, 1079.82 feet; thence South 08°12'27" East, 30.23 feet; thence North 89°06'11" West, 63.04 feet; thence North 05°22'27" West, 26.37 feet; thence South 74°25'28" West, 266.58 feet; thence North 28°07'04" West, 243.14 feet; thence 96.86 feet along a curve to the right with a radius of 248.00 feet, a central angle of 02°36'14", and a long chord of 96.17 feet that bears North 16°47'57" West; thence North 05°28'51" West, 363.15 feet; thence North 89°49'08" East, 173.56 feet; thence North 32°53'07" West, 127.83 feet; thence North 89°17'40" West, 154.22 feet; thence North 04°37'22" West, 783.69 feet to the TRUE POINT OF BEGINNING.

The above description includes Amendment Lot 1, a Parcel of Homehouse West Condominiums, Lot 38, (proceeds Highlands #3, and Tax Lots 7092, 5507A, 7710, and 7715.

Protective Covenants, Conditions and Restrictions governing this plot are recorded under Instrument Number 441442, Records of Blaine County, Idaho.

The easements indicated hereon are not dedicated to the public, but the right to use said easements is hereby reserved for the public utilities and for any other uses indicated hereon and no permanent structures are to be erected within the lines of said easements. We do hereby certify that all lots in this plat will be capable to receive water service from an existing water distribution system and that the existing water distribution system was agreed in writing to serve all of the lots shown within this plat.

It is the intent of the owners to hereby include said lands in this plat.

ARROTT WEST PARTNERS, LTD., AN IDAHO LIMITED PARTNERSHIP

*[Signature]*

Rokon Idaho, L.L.C., General Partner  
By: Rokon Corporation, Managing Member  
By: Robert A. Kohnle, President

*[Signature]*

Rokon Idaho, L.L.C., General Partner  
By: RAS Limited, an Idaho Limited Partnership, Managing Member  
By: Ronald J. Shors, M.D., General Partner  
By: Ronald J. Shors, President/Director

ACKNOWLEDGEMENT

STATE OF IDAHO  
COUNTY OF BLAINE

On this 7 day of August, 2002, before me, a Notary Public in and for said State, personally appeared Robert A. Kohnle, known to me to be the President of Rokon Corporation, a Managing Member of Rokon Idaho, L.L.C., General Partner executing on behalf of Arrott West Partners, Ltd., an Idaho Limited Partnership, and acknowledged to me that he executed the same in said partnership name IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



*[Signature]*  
Notary Public in and for said State  
Residing in Halley, ID  
My Commission Expires 11/19/06

ACKNOWLEDGEMENT

STATE OF IDAHO  
COUNTY OF BLAINE

On this 12 day of August, 2002, before me, a Notary Public in and for said State, personally appeared Ronald J. Shors, known or identified to me to be the President/Director of Rokon J Shors, Inc., a General Partner of RIS Limited, an Idaho Limited Partnership, a Managing Member of Rokon Idaho, L.L.C., General Partner executing on behalf of Arrott West Partners, Ltd., an Idaho Limited Partnership, and acknowledged to me that he executed the same in said partnership name IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



*[Signature]*  
Notary Public in and for said State  
Residing in Same, Blaine, ID  
My Commission Expires 4/10/06

ARROTT WEST SUBDIVISION PHASE I  
GALLEN ENGINEERING, INC.  
KETCHUM, IDAHO  
SHEET 2 OF 3  
JOB NO. 2266-03

**SURVEYOR'S CERTIFICATION**

I, Michael D. Chest, a duly licensed Land Surveyor in the State of Idaho, do hereby certify that the foregoing plat is a true and accurate map of the land surveyed under my direct supervision and that it is in accordance with the Idaho State Code relating to plats and surveys.



**BLAINE COUNTY SURVEYOR'S APPROVAL**

I, Jim W. Keance, County Surveyor for Blaine County, Idaho, have checked the foregoing plat and computations for plating the same and have determined that they comply with the laws of the State of Idaho relating thereto.

Jim W. Keance  
Blaine County Surveyor

**HAILEY CITY ENGINEER'S APPROVAL**

The foregoing plat was approved by Thomas Halton, City Engineer for the City of Hailey on this day of August, 2002.

Thomas Halton  
City Engineer

**HAILEY CITY PLANNING AND ZONING APPROVAL**

The foregoing plat was approved by the City of Hailey Planning and Zoning Commission on this day of August, 2002.

Carl P. Ryan  
Chairman

**HAILEY CITY COUNCIL APPROVAL**

The foregoing plat was approved by the City Council of Hailey on this 5<sup>th</sup> day of August, 2002.

Mayor  
City Clerk

**BLAINE COUNTY TREASURER'S APPROVAL**

The taxes on the foregoing parcel of land have been paid to this date and this plat is hereby approved this 7 day of August, 2002.

Wanda H. Dink  
Blaine County Treasurer

**BLAINE COUNTY RECORDER'S CERTIFICATE**

This is to certify that the foregoing plat was filed in the office of the Recorder of Blaine County, Idaho on this 7 day of August, 2002, at 11 A.M. and was recorded under Instrument Number 2002-0000000000.

Instrument # 2002-0000000000  
Date of Recording 8/7/02  
Page(s) 1  
Recording Fee 10.00  
Recorder's Office Blaine County

Emotiona Recorder

ASPORT WEST SUBDIVISION PHASE I  
CALDA ENGINEERING, INC  
KETCHUM, IDAHO  
SHEET 3 OF 3  
JOB NO. 3288.05

Instrument # 44903  
Date of Recording 8/7/02  
Page(s) 1  
Recording Fee 10.00  
Recorder's Office Blaine County

Page 4 of 4  
Blaine County, Idaho  
August 7, 2002

## ANNEXATION, SERVICES AND DEVELOPMENT AGREEMENT

### AIRPORT WEST BUSINESS PARK

THIS AGREEMENT ("Agreement") is dated for reference purposes this 17<sup>th</sup> day of December, 2001, by and between the CITY OF HAILEY, IDAHO, a municipal corporation ("Hailey" or "City") and AIRPORT WEST PARTNERS, an Idaho limited partnership ("AWP", and together with the City, the "Parties").

#### RECITALS:

- A. Hailey is a municipal corporation possessing all powers granted to municipalities under the applicable provisions of the Idaho Code, including the power to annex property contiguous to City boundaries; the power to zone and enforce zoning within the boundaries of property so annexed; the power to require construction of, and posting of surety for, improvements connected with development of property annexed by the City; and the power to contract.
- B. AWP owns 65.88 acres of unimproved property in Blaine County, Idaho and has submitted an application to annex approximately 61.74 acres of property owned by AWP into Hailey ("Property"), pursuant to Hailey Ordinance No. 521, and as set forth in Exhibit "A" attached hereto.
- C. Concurrent with its application for annexation of the Property, AWP has submitted an application for approval of subdivision of the Property under Hailey Ordinance No. 698.
- D. The Parties agree that the Property shall be developed in accordance with this Agreement; Exhibits "A" through "D" attached hereto; the Master Declaration of Covenants, Conditions and Restrictions; all applicable City ordinances; and any additional conditions and requirements imposed upon the Property by the Hailey Planning and Zoning Commission and/or City Council during approval of the annexation and concurrent subdivision, or as the result of design review.
- E. AWP has agreed to develop the Property in two phases as set forth below and in the Preliminary Plat map set attached hereto as Exhibit "B".
- F. By adopting Ordinance No. 800 ("Annexation Ordinance") for annexation of the Property, the Hailey City Council has determined that the proposed annexation meets the requirements of Hailey Ordinance No. 521 and, further, that the annexation results in a consistent extension of City boundaries and does not conflict with Hailey's Comprehensive Plan.
- G. The Council has determined the manner of development of the Property is in conformance with Hailey ordinances, the subdivision approval process and as otherwise provided for herein.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, promises, agreements, terms and conditions set forth herein, the parties to this Agreement agree as hereinafter provided.

1. Zoning. Upon annexation of the Property, the Property shall be zoned in accordance with the Annexation Ordinance, and pursuant to approval of AWP's subdivision plat for the Property. Both parties acknowledge that no zoning of the Property can exist solely by virtue of this Agreement. Pursuant to Idaho Code section. 67-6511A, and as a condition of zoning of the Property, AWP agrees, and shall include a Master Declaration of Covenants, Conditions, and Restrictions, that:

- a) No residential uses of any kind shall be permitted anywhere on the Property.
- b) Lots 6 and 7, Block 3, shall be limited to the following uses: bulk storage facilities, warehouse and storage facilities, wholesale distributors, and self-storage facilities, and uses accessory thereto as set forth in Hailey ordinance.

2. Means of Development.

- a) The Property shall be developed in two phases as set forth in the preliminary plat, Exhibit "B" attached hereto. Phase one shall consist of Lot 5, Block 3; phase two shall consist of the remainder of the property.
- b) The final plat for phase one shall be submitted to the City within two calendar months of the date of the City Council's preliminary plat approval, notwithstanding the time limits imposed by Hailey Ordinance No. 698, sec. 2.3. The Hailey City Council has determined that, pursuant to Ordinance No. 698, Section 11, except as set forth in sub-paragraph (g) below, the improvements required in Section 5 of said ordinance may be waived for phase one. The final plat for phase one shall be recorded within one calendar month of the date of final plat approval, notwithstanding sec. 2.3.5 of the Ordinance. Except as provided in subsection 2(c) below, AWP hereby waives the time frames provided to an applicant under Hailey Ordinance #698, sections. 2.3 and 2.3.5 for submission and recordation of final plat.
- c) The Hailey City Council has determined that pursuant to Ordinance No. 698, sec. 11, the requirement for final plat submittal within one year of preliminary plat approval may be waived, and that the final plat for phase two shall be submitted to the City within twenty-four (24) months of the date of the City Council's preliminary plat approval. The final plat for phase two shall be recorded within one calendar year of the date of final plat approval pursuant to sec. 2.3.5 of the Ordinance. AWP shall be entitled to apply to the City for extensions of the above stated time periods as provided in Hailey Ordinance No. 698, sections. 2.2.3 and 2.3.5., and City shall not unreasonably withhold said extensions.

- d) Development of the Property shall occur in accordance with the conditions and requirements of the subdivision approval process, and substantially as depicted in Exhibit "B" attached hereto; applicable design review regulations; and any subsequent PUD or subdivision approval process. Except as otherwise expressly provided herein, all development shall be governed by applicable Hailey ordinances in effect at the time and shall include, but not be limited to, installation of both off and on-site infrastructure and other improvements as set forth herein.
- e) Construction of improvements shall be substantially as depicted on the preliminary plat map set, Exhibit "B", and consistent with adopted Findings of Fact and Conclusions of Law ("Findings and Conclusions"), Exhibit "C".
- f) In addition to improvements required pursuant to Hailey's Subdivision Ordinance No. 698 and the City's adopted Findings and Conclusions, AWP shall provide additional on-site and off-site improvements and dedications as follows:
- i. Acquisition, and dedication to either the City or the State of Idaho, within 30 days of Idaho Transportation Department approval of the final design, of approximately 2,000 square feet of private property necessary to complete and improve the right-of-way and intersection at Highway 75 and Airport Way substantially as depicted in Exhibit "D" attached hereto. Should AWP be unable to acquire the property in its entirety within the appropriate time frame, so that the City is forced to condemn said private property, AWP shall reimburse the City for fifty percent (50%) of all costs of such condemnation and any legal actions related thereto, including, but not limited to, the value of the property, attorney fees, court costs and any severance damages. In addition, AWP shall be responsible for any costs associated with the relocation of public utilities within the intersection, but only to the extent that these costs are determined to be the responsibility of the City of Hailey.
  - ii. Grant of an easement for future access through Lots 1 and 2, Block 5 for extending Friedman Park Circle through to Broadford Road, as depicted on Exhibit "B" and as dedicated pursuant to the recorded plat;
  - iii. Grant of an easement for future access through Lot 2, Block 2 and Lot 7, Block 4 for extending FBO Drive through to Friedman Airport property, as depicted on Exhibit "B" and as dedicated pursuant to the recorded plat.
  - iv. All landscape, buffering, and park amenities within street rights-of-way, Parcel A, the 10-foot wide setback and park maintenance easement adjacent to Parcel A, and the 30-foot wide dedicated landscape easements on the south end of the Property, as substantially depicted in Exhibit "B", sheets L-1 through L-6, and in accordance with any requirements and conditions of the subdivision approval process and applicable City ordinances.

- g) Completion of construction of the following improvements necessary to permit the City to use Lot 5, Block 3 as and for a City Shop: a) construction of Airport Way and Industrial Loop to the border of Lot 5, Block 3. The street shall be improved to include an all weather surface at least 20 feet wide, and b) installation of water, sewer and electrical service to the border of Lot 5, Block 3. Said improvements shall be completed not later than December 30, 2003 unless AWP posts a bond in accordance with Section 5 of Hailey Subdivision Ordinance No. 698 for the cost of such improvements in which case the completion date shall be extended one year to December 30, 2004. The remainder of the phase two improvements shall be required as set forth in Section 5 of Hailey Ordinance No. 698.

Notwithstanding the foregoing, in the event AWP determines it is not economically feasible to install the improvements described above within the required time period, AWP shall lease to the City, Lot 1A, Block 1, Friedman Park Subdivision for use as a City Shop. The lease shall commence no later than May 1, 2003, and shall be in the form customarily used by property management firms in Blaine County, Idaho for comparable property and shall provide for payment of monthly rent in the amount of \$1,500 adjusted annually as set forth in paragraph 6, below. This paragraph in no way modifies Airport West's obligation to install all phase two improvements upon recording of final plat.

- h) AWP's groundwater right 37-07683 is licensed for 18 miner's inches [verify] to irrigate 18 acres, which is 1.0 miner's inch per acre, from April 1 to November 1. AWP has filed claim no. A37-07683 in the SRBA for this right for irrigation. AWP shall transfer the place of use for subject water to fully and adequately irrigate: i) Parcel A, ii) the 10-foot wide setback and park maintenance easement adjacent to Parcel A and, iii) the 30-foot wide landscape easements on the south end of the Property (collectively, "Irrigation Areas").
3. County Replat and Dedication. AWP shall submit and diligently pursue an application to Blaine County no later than January 1, 2002 for replat of Lots 1 through 3 of Broadford Highlands No. 3, as depicted in Exhibit "B" (Sheet 5), to provide i) dedication of approximately 1.17 acre alley to Broadford Highland Homeowner Association No. 2, which shall be subject to a road easement to Fixed Base Operator at Friedman Airport; and ii) a twenty foot landscape easement across Lot 1, Broadford Highlands, No. 3.
4. Improvements to Individual Large Block Lots. Except as otherwise provided in this Agreement, the development of the Large Block Lots by AWP, or its successors and assigns, shall be subject to applicable City ordinances, and any subsequent design review, PUD or subdivision process. AWP agrees that any necessary restoration or reconstruction of previously constructed public rights-of-way including streets, sidewalks, curbs and/or gutters, due to subsequent installation of infrastructure and improvements to accommodate individual large block lots, or otherwise, shall be borne by AWP or its successors and assigns.

- a) Notwithstanding any contrary provision of this Agreement, City acknowledges and agrees that no additional off-site improvements shall be required of AWP or its successors, as a condition of development of the Property as contemplated herein.

5. Maintenance.

AWP and/or its successors and assigns, shall be responsible for the maintenance, in perpetuity and at its sole expense, of the improvements described in this sub-section of paragraph 5. AWP may establish a property owner's association for the performance of this maintenance. AWP as declarant shall restrict the property with Master Declarations of Covenants, Conditions and Restrictions, and those Declarations shall set forth maintenance responsibilities, as follows:

- a) All landscape areas, including landscaped areas within the dedicated street right-of-ways and those areas set-aside as parks for the enjoyment of the community at large, such as Parcel A (Friedman Park). This maintenance shall include, but not be limited to, irrigation, planting, pruning, replacement of dying trees, grasses and shrubs, and maintenance and replacement of park amenities such as tables and benches.
- b) All streets, ways, alleys, and parking areas not dedicated to the public. These areas shall be maintained in a neat, attractive, and safe manner and shall include necessary paving, drainage, and snow removal.
- c) Removal of snow from sidewalks within the public right-of-way.
- d) Snow removal and snow storage areas not located on land dedicated to the City.

6. Annexation Fees. In consideration for the City providing essential governmental and utility services to the Property and to mitigate the impact on the City of annexation and development of the Property:

- a) Subject to adjustment as provided below, AWP shall pay to the City a general annexation fee in the sum of One million, eight hundred thirty thousand, one hundred forty nine dollars (\$1,830,149). The amount may be paid in six installments, as follows:
  - i. Upon recordation of the final plat map for phase one, AWP shall convey to the City Lot 5, Block 3, consisting of approximately 5.13 acres. The conveyance shall be made by a Warranty Deed executed by AWP in recordable form. Upon recordation of the deed, a credit of \$359,100 shall be applied against the annexation fees.
  - ii. The remaining annexation fees of \$1,471,049 shall be made in five equal installments of \$294,209.80 adjusted as provided in paragraph viii below. The first installment shall be due upon recordation of final plat of phase 2.

- iii. The second cash installment of \$294,209.80, adjusted as provided in section viii below, shall be made no later than one year after final plat recordation of phase 2, or upon the sale, or issuance of building permits upon thirty five percent (35%) of the Property, whichever occurs first.
- iv. The third cash installment of \$294,209.80, adjusted as provided in section viii below, shall be made no later than two years after final plat recordation of phase 2, or upon the sale, or issuance of building permits upon fifty five percent (55%) of the Property, whichever occurs first.
- v. The fourth cash installment of \$294,209.80, adjusted as provided in section viii below, shall be made no later than three years after final plat recordation of phase 2, or upon the sale, or issuance of building permits upon seventy percent (70%) of the Property, whichever occurs first.
- vi. The fifth cash installment of \$294,209.80, adjusted as provided in section viii below, shall be made no later than four years after final plat recordation of phase 2, or upon the sale, or issuance of building permits upon eighty five percent (85%) of the Property, whichever occurs first.
- vii. The annexation fees payable hereunder shall be subject to adjustment prior to the payment of each scheduled installment ("Adjustment Dates"), on the basis of the change in the Consumer Price Index for All US Cities published by the United States Department of Labor ("Index") which is published for the month nearest the date of recordation of the plat for Phase One ("Beginning Index"). If the Index published nearest the Adjustment Date ("Extension Index") has changed from the Beginning Index, the annexation fee installment payment then due shall be determined by multiplying the original installment amount (that is, \$294,420.80) by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index.
- viii. City shall execute and deliver from time to time when requested partial releases of the lien of this paragraph 6 as it relates to portions of the Property on the following terms and conditions:
  - a. City shall be given at least 5 business days notice of AWP's request for each partial release.
  - b. With each request for a partial release, AWP shall furnish City with a legal description of the portion of the Property to be released and shall also delineate the portion of the Property for which a release is requested and state the acreage to the nearest one hundredth of an acre, and delineate the portion of the Property that shall remain subject to the lien of this paragraph 6, and with respect to the remaining portion state the number of acres contained therein. The legal description and acreage calculations shall be certified by a licensed surveyor.
  - c. The cost of each partial release shall be paid by AWP.

- d. The release of portions of the Property shall be in accordance with the following schedule: u) ten percent (10%) of the Property in Phase Two, or 4.62 acres upon acceptance of the infrastructure improvements for Phase Two; v) fifteen percent (15%) of the Property in Phase Two, or 6.93 acres upon payment of the first installment of the annexation fee; w) twenty percent (20%) of the Property in Phase Two, or 9.24 acres upon payment of the second installment of the annexation fee; x) fifteen percent (15%) of the Property in Phase Two, or 6.93 acres, upon payment of the third installment of the annexation fee; y) fifteen percent (15%) of the Property Phase Two, or 6.93 acres, upon payment of the fourth installment of the annexation fee; and z) the remainder of the Property upon payment of the fifth installment of the annexation fee.
- b) AWP shall contribute toward the cost of the improvements to the intersection at Airport Way and Highway 75 the sum of ninety thousand dollars (\$90,000.00). This contribution shall be payable to the City upon signing of a contract for the construction of said improvements, or May 30, 2002, whichever is first.
- c) The warranty deed from AWP for Lot 5, Block 3 shall contain the following restriction: "Provided Grantor has completed construction of the infrastructure and other improvements set forth in the Annexation, Development and Services Agreement for Airport West Business Park recorded as Instrument No. \_\_\_\_\_, records of Blaine County, Idaho, in the event Grantee bargains, sells, conveys, transfers or otherwise disposes of the property described herein, excluding a lease to a government agency for a public purpose, Grantee shall pay to Grantor an amount equal to the amount obtained by multiplying the total cost of said construction by a fraction the numerator of which is 5.13 acres and the denominator of which is the total useable acres within the Property, or 51.33 acres." Said requirement for payment shall expire fifteen (15) years from the effective date of annexation, and such expiration shall be reflected in the above described restriction to be set forth in the deed.
- d) AWP shall be deemed to satisfy its parks and open space dedication obligation for the Large Block Subdivision and future subdivision of any Large Block Lot by dedicating as open space and improving the land along Broadford Road, including Parcel A, and adjacent to Broadford Highlands #2, as depicted on Exhibit "B". Accordingly, City agrees not to condition any future subdivision of a Large Block Lot on a dedication of any park or open space area. This paragraph notwithstanding, any future application for a Planned Unit Development under Article X of Hailey Ordinance No 532, as amended, may be subject to a requirement of an open space dedication.
- e) AWP and City hereby acknowledge and agree that the exactions provided for herein are fair and equitable and that said exactions have been agreed upon to mitigate the impact to be borne by Hailey that is specifically attributable to annexation and development of the Property. Both parties agree that this sum is to be paid as an

annexation fee, as distinguished from an impact or capital facilities fee, which might otherwise be an obligation, associated with development of the Property.

- f) Hailey agrees not to impose any impact fees or other exactions upon AWP or the Property prohibited by Idaho Code section. 67-6501, et. seq.
7. Police Powers. Except as otherwise expressly provided herein, nothing contained herein is intended to limit the police powers of Hailey or its discretion in review of subsequent applications regarding development of the Property. This Agreement shall not be construed to modify or waive any law, ordinance, rule, or regulation not expressly provided for herein, including, without limitation, applicable building codes, fire codes, Hailey's Zoning Ordinance, Hailey's Subdivision Ordinance, and Planned Unit Development requirements for the Property.
8. Amendment. This Agreement may be revised, amended, or canceled in whole or in part, only by means of a written instrument executed by both parties hereto and as evidenced by amended plats and development plans.
9. Specific Performance. In the event of a breach of this Agreement, in addition to all other remedies at law or in equity, this Agreement shall be enforceable by specific performance by either party hereto. All remedies shall be cumulative.
10. De-annexation. In the event the Property is not developed in accordance with this Agreement, or if AWP or its successors and assigns,, if any, materially breaches, defaults or fails to perform any material obligation under this Agreement and does not cure such breach, default or failure within thirty (30) days after written notice from City of the breach, default or failure, or in the case of a breach which is incapable of being cured within a thirty (30) day time period, AWP fails within thirty (30) days after written notice from City to commence to cure the same and thereafter to prosecute the cure of such breach with due diligence and continuity, AWP hereby grants to Hailey its irrevocable consent to the de-annexation of the Property, or any portion thereof.
11. Attorney's Fees. In the event either party hereto is required to retain counsel to enforce a provision of this Agreement, or to recover damages resulting from a breach hereof, the prevailing party shall be entitled to recover from the other party all reasonable attorney's fees incurred, whether or not litigation is actually instituted or concluded.
12. Notices. All notices required or provided for under this Agreement shall be in writing and deemed delivered upon delivery in person or upon mailing by certified mail, return receipt requested, postage prepaid. However, the time period in which a response to such notice must be given shall commence to run from the date of receipt on the return receipt of the notice.. Rejection or refusal to accept, or the inability to deliver because of a change of address of which no notice was given shall be deemed to be receipt of the notice.

Notices to City shall be addressed as follows:

City of Hailey

115 Main St. S., Ste. H  
Hailey, Idaho 83333  
Attn.: City Attorney

Notices given to AWP shall be addressed as follows:

Airport West Partners  
c/o Ronald J. Sharp Inc.  
Post Office Box 2180  
Sun Valley, Idaho 83353

with a copy to:

Hawley Troxell Ennis & Hawley, L.L.P.  
540 Second Avenue  
Post Office Box 297  
Ketchum, Idaho 83340-0297  
Attn.: Edward A. Lawson

A party may change the address to which further notices are to be sent by notice in writing to the other party, and thereafter notices shall be addressed and transmitted to the new address.

13. Effectiveness Upon Annexation. This Agreement shall become effective only upon, and is subject to, the Council's enactment of an Ordinance annexing the Property and the adoption of Findings and Conclusions of Preliminary Plat approval as set forth in Exhibit B. By entering into this Agreement, the City does not hereby contract to annex the Property.
14. Reliance by the Parties. This Agreement is intended by AWP to be considered by Hailey as part of AWP's request for annexation of the Property and application for subsequent plat approval, and is contingent upon said annexation. AWP acknowledges and intends the City to consider and rely upon this Agreement in its review and consideration of said annexation request and subsequent application.
15. Relationship of Parties. It is understood that the contractual relationship between Hailey and AWP is such that neither party is the agent, partner, or joint venturer of the other party.
16. Successors and Assigns: Covenant Running With the Land. This Agreement shall inure to the benefit of Hailey and AWP and their respective heirs, successors and assigns. This Agreement, including all covenants, terms, and conditions set forth herein, shall be and is hereby declared a covenant running with the land with regard to the Property or any portion thereof, and is binding on both parties to this Agreement as well as their respective heirs, successors and assigns.
17. Recordation and Release. This Agreement shall be recorded with the Blaine County Recorder. Where the conditions of this agreement have been fully performed to the

City's satisfaction, the City shall execute and deliver from time to time upon request partial releases, estoppel certificates, and other appropriate documentation to release the lien of this Agreement from portions of the Property being conveyed to third party purchasers and to certify to said purchasers that this Agreement is not in default.

18. No Waiver. In the event that Hailey or AWP, or its successors and assigns, do not strictly comply with any of the obligations and duties set forth herein, thereby causing a default under this Agreement, any forbearance of any kind that may be granted or allowed by AWP, Hailey, or their successors and assigns, to the other party under this Agreement shall not in any manner be deemed or construed as waiving or surrendering any of the conditions or covenants of this Agreement with regard to any subsequent default or breach.
19. Partial Invalidity. In the event any portion of this Agreement, or part hereof, shall be determined by any court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions of this Agreement, or parts hereof, shall remain in full force and effect and shall in no way be affected, impaired or invalidated, it being understood that such remaining provisions shall be construed in a manner most closely approximating the intention of the parties with respect to the invalid, void, or unenforceable provision or part hereof.
20. Entire Agreement. This Agreement constitutes the full and complete agreement and understanding between the parties hereto. Excluding formal conditions placed upon the application for annexation, subsequent plat approvals or other matters related to the public process, no representations or warranties made by either party shall be binding unless contained in this Agreement or subsequent written amendments hereto.
21. Exhibits. All exhibits referred to herein are incorporated in this Agreement by reference, whether or not actually attached.
22. Authority. Each of the persons executing this Agreement represents and warrants that he has the lawful authority and authorization to execute this Agreement, as well as all deeds, easements, liens and other documents required hereunder, for and on behalf of the entity executing this Agreement.
23. Recitals. The Recitals are incorporated herein and made a part of this Agreement by this reference.
24. No Third Party Rights. Except as otherwise provided in paragraphs 1 and 5, this Agreement shall be for the sole benefit of the Parties and/or their successors and assigns, and no covenants or agreements herein shall be for the benefit of or create any rights in favor of any third parties.
25. Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Idaho, which shall be the sole jurisdiction and venue for any action which may be brought by either party with respect to this Agreement or the subject matter hereof.

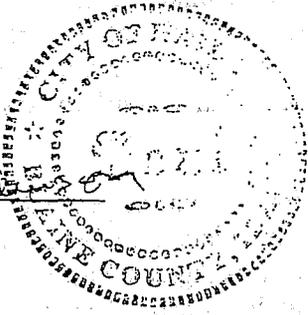
IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year written herein.

DATED this 17<sup>th</sup> day of March, 2001.

CITY OF HAILEY

ATTEST:

Heather Dawson  
Heather Dawson,  
Hailey City Clerk



By: [Signature]  
Brad Siemer, Mayor

AIRPORT WEST PARTNERS, LTD., an  
Idaho limited partnership

By: Rokan Idaho, an Idaho limited liability company,  
its general partner

By: Rokan Corporation, a Delaware corporation  
its Managing member

By: [Signature]  
Robert A. Kantor, President

By: R.J.S. Limited, an Idaho limited partnership,  
its Managing member

By: Ronald J. Sharp, Inc., an Idaho corporation,  
its General partner

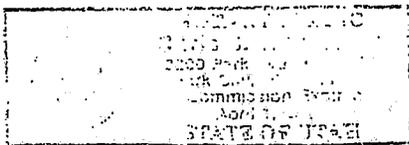
By: [Signature]  
Ronald J. Sharp, President



UTAH  
STATE OF ~~IDAHO~~ )  
Summit )ss.  
County of ~~Blaine~~ )

Subscribed and sworn before me on this 21 day of JANUARY, <sup>2002</sup>~~2001~~, before me a Notary Public in and for said State, personally appeared Ronald J. Sharp, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first written above.



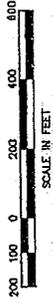
Chris J. Kauton  
Notary Public  
PARK CITY, UTAH  
Residing at  
My Commission Expires 4.1.02



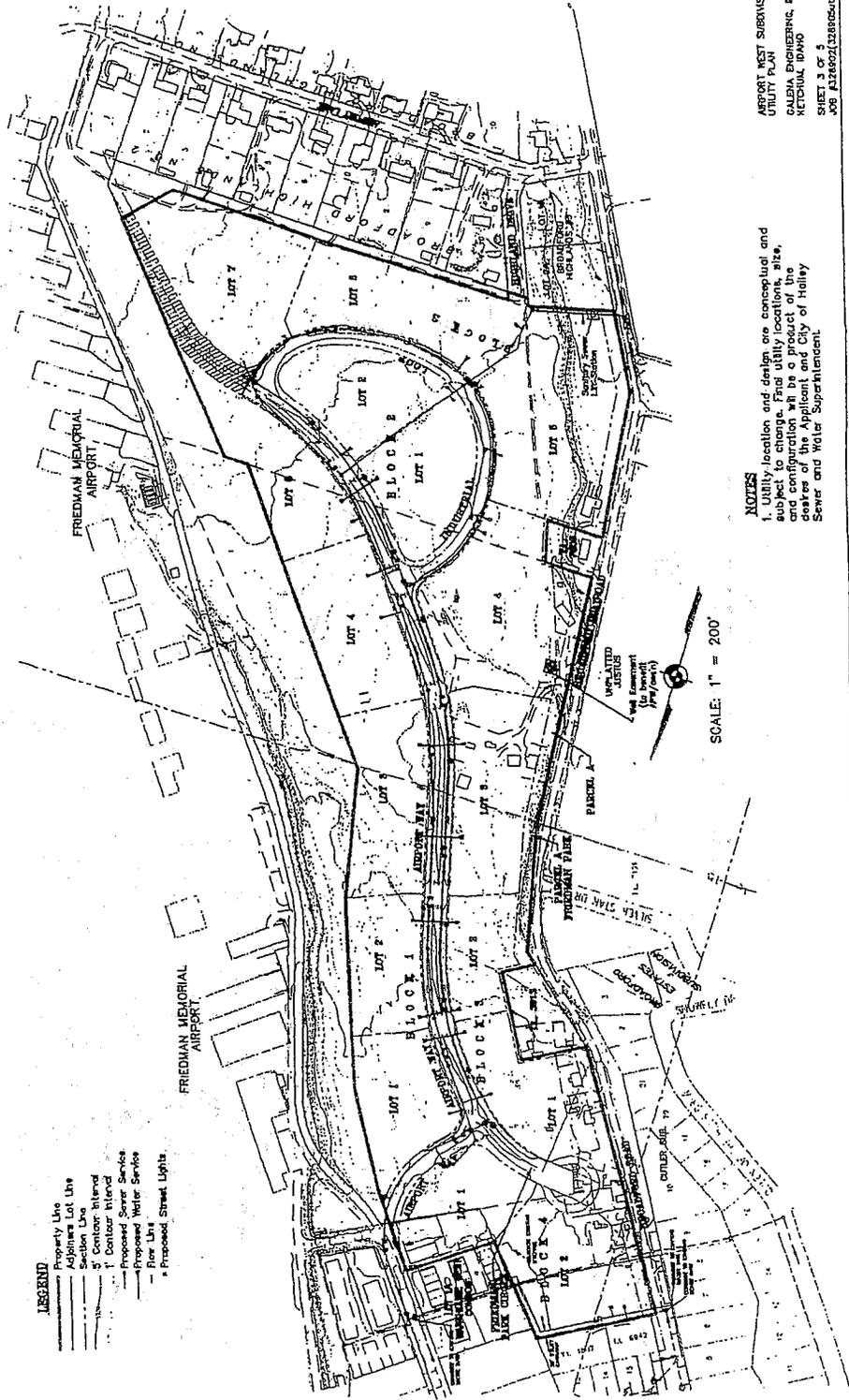




UTILITY PLAN  
**AIRPORT WEST SUBDIVISION**  
 DECEMBER 2001



- LEGEND**
- Property Line
  - Adjacent Lot Line
  - Section Line
  - Contour Interval
  - Proposed Sewer Service
  - Proposed Water Service
  - Proposed Street Lights

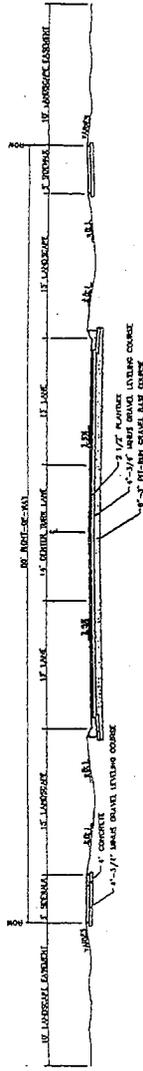


**NOTES**  
 Utility location and design are conceptual and subject to change. Find utility locations, size, and configuration will be a product of the desires of the Applicant and City of Holley Sewer and Water Superintendent.

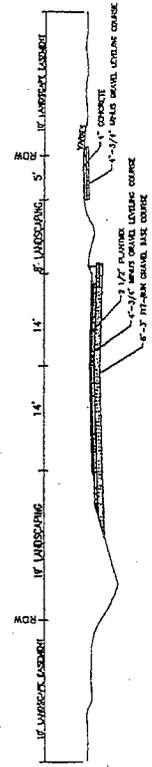
SCALE: 1" = 200'

AIRPORT WEST SUBDIVISION  
 UTILITY PLAN  
 CALDMA ENGINEERING, P.C.  
 KETCHIKAN, IDAHO  
 SHEET 3 OF 5  
 JOB #124602(124602.dwg)

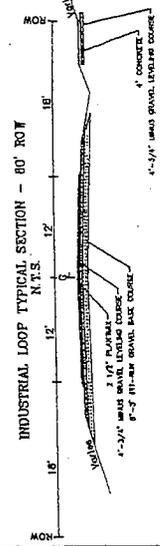
DETAIL SHEET  
**AIRPORT WEST SUBDIVISION**  
 DECEMBER 2001



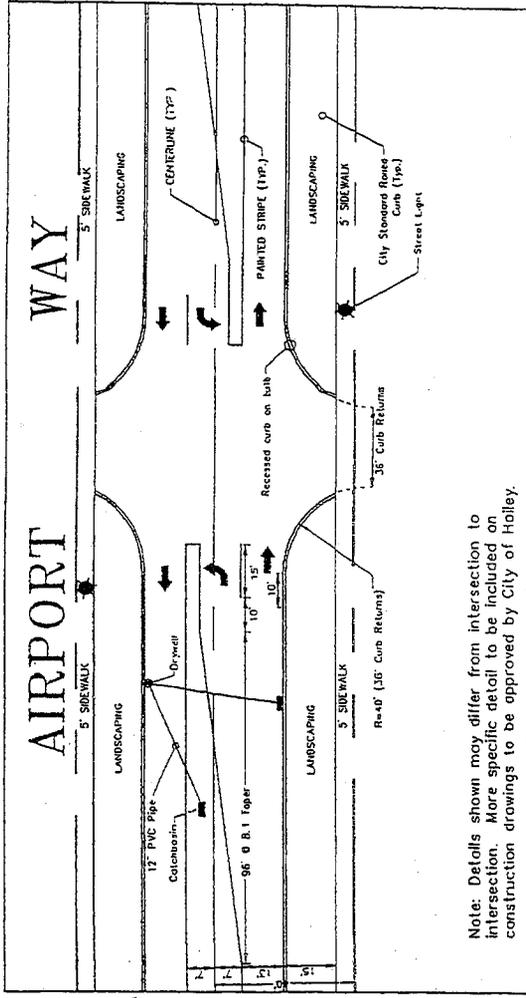
AIRPORT WAY & FRIEDMAN PARK CIRCLE TYPICAL SECTION - 80' ROW  
 N.T.S.



AIRPORT WAY TYPICAL SECTION - 80' ROW  
 N.T.S.



INDUSTRIAL LOOP TYPICAL SECTION - 80' ROW  
 N.T.S.

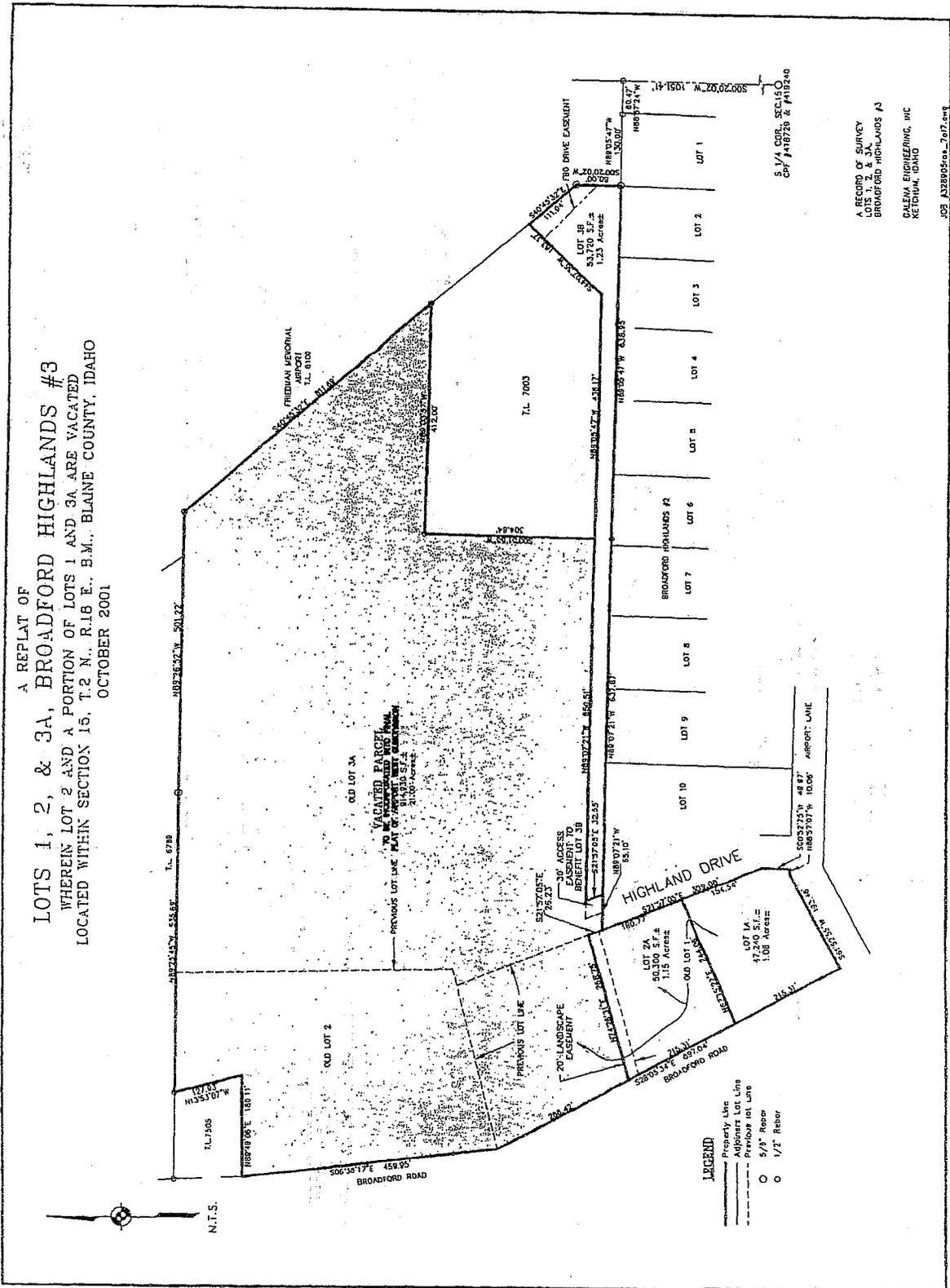


TYPICAL INTERSECTION DETAIL  
 1"=20'

Note: Details shown may differ from intersection to intersection. More specific detail to be included on construction drawings to be approved by City of Hooley.

AIRPORT WEST SUBDIVISION  
 DETAIL SHEET  
 CALUDA ENGINEERING, INC.  
 KETCHUM, IDAHO  
 JOB #1228802(4015d5d7.dwg)

A REPEAT OF  
**LOTS 1, 2, & 3A, BROADFORD HIGHLANDS #3**  
 WHEREIN LOT 2 AND A PORTION OF LOTS 1 AND 3A ARE VACATED  
 LOCATED WITHIN SECTION 15, T.2 N., R.18 E., B.M., BLAINE COUNTY, IDAHO  
 OCTOBER 2001



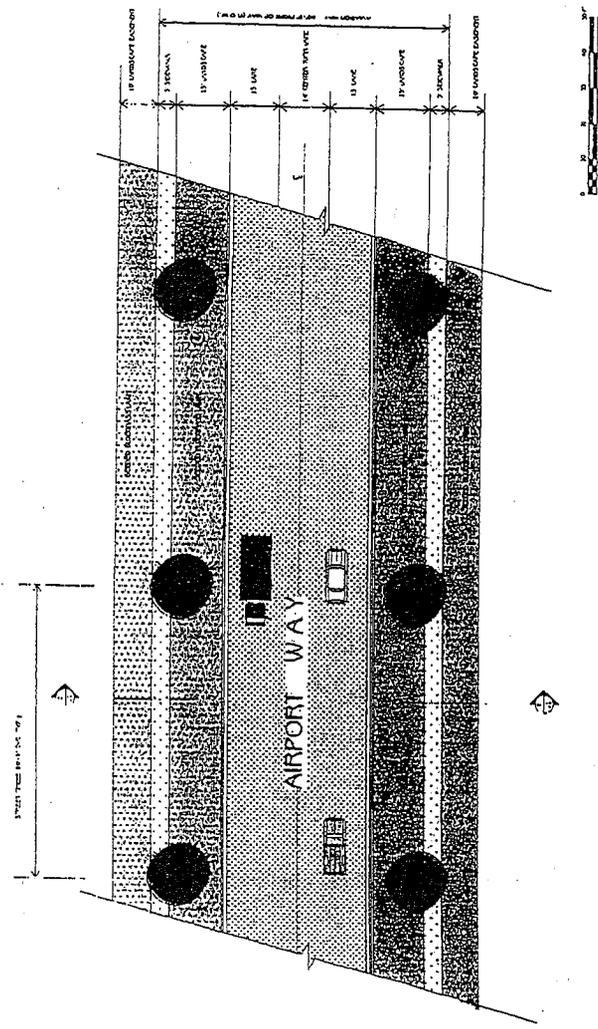
S. 1/4 COR., SEC. 15  
 CP# #118726 & #119240

A RECORD OF SURVEY  
 LOTS 1, 2 & 3A  
 BROADFORD HIGHLANDS #3

CALENA ENGINEERING, INC  
 KETCHUM, IDAHO

JOB #328905-09-767.dwg

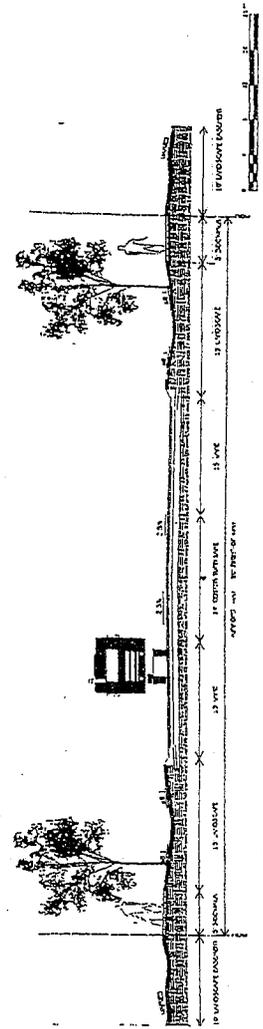
DATE: 10/20/11	PROJECT: AIRPORT WEST PARTNERS LTD	SCALE: 1" = 10'-0"
DRAWN BY: [REDACTED]	CHECKED BY: [REDACTED]	DATE: 10/20/11
DESIGNED BY: [REDACTED]	APPROVED BY: [REDACTED]	DATE: 10/20/11
PROJECT NO: [REDACTED]	CLIENT: AIRPORT WEST PARTNERS LTD	LOCATION: [REDACTED]
DATE: 10/20/11	PROJECT: AIRPORT WEST PARTNERS LTD	SCALE: 1" = 10'-0"



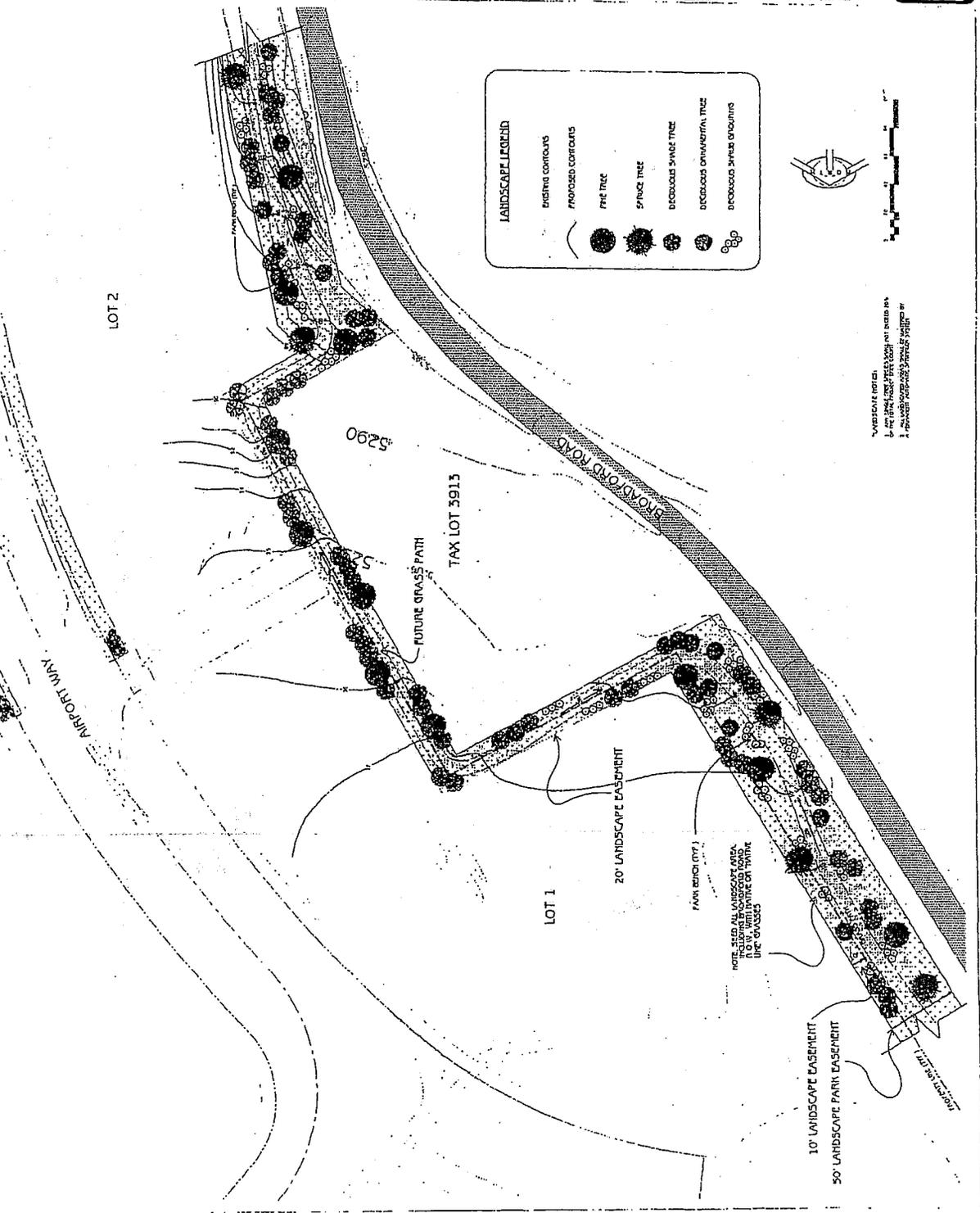
TYPICAL STREETSCAPE

\*LANDSCAPE NOTES:

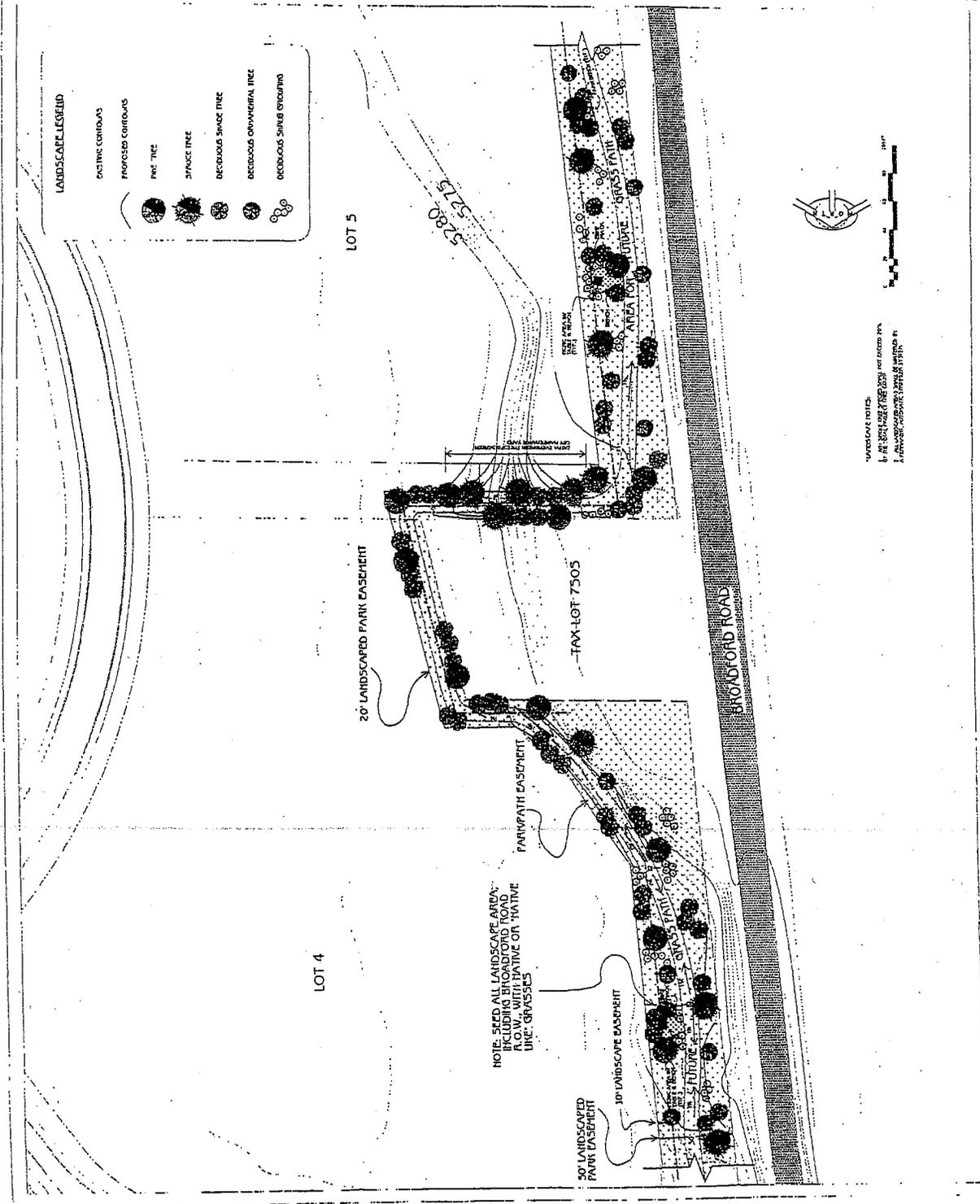
1. ANY SINGLE TREE SPECIES SHALL NOT EXCEED 20% OF THE TOTAL PROJECT TREE COUNT.
2. ALL LANDSCAPED AREAS SHALL BE WATERED BY A PERMANENT, AUTOMATIC SPRINKLER SYSTEM.

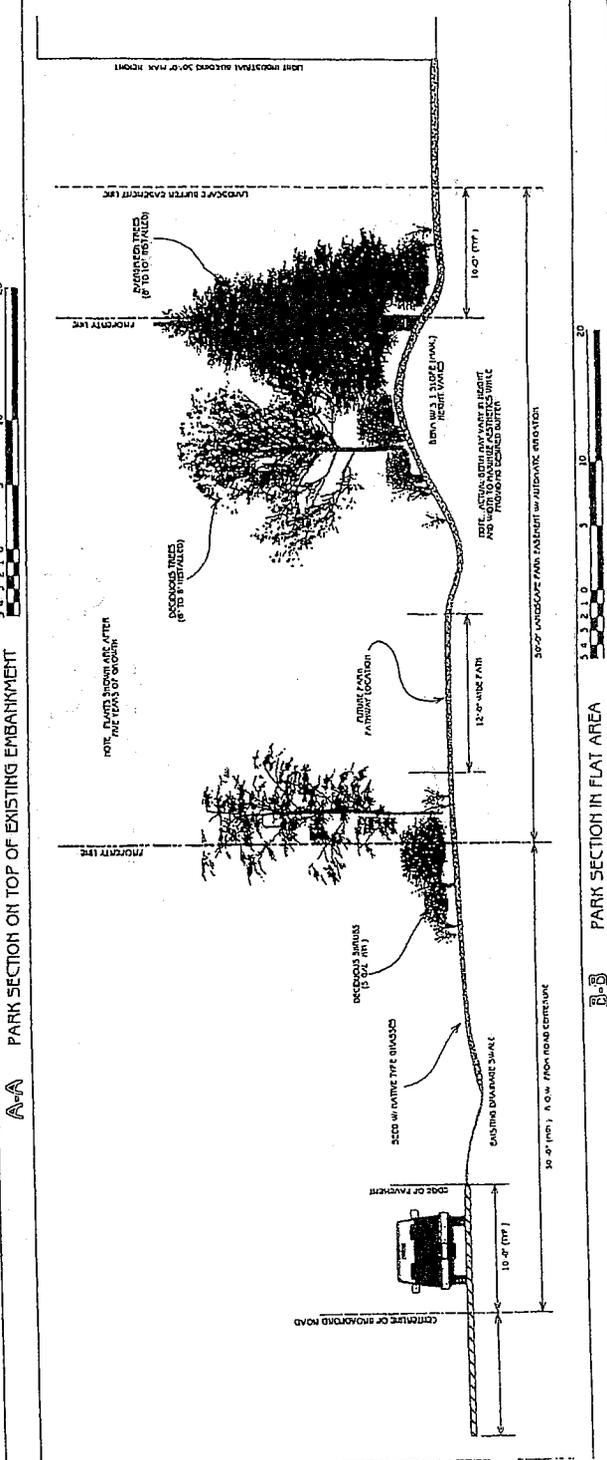
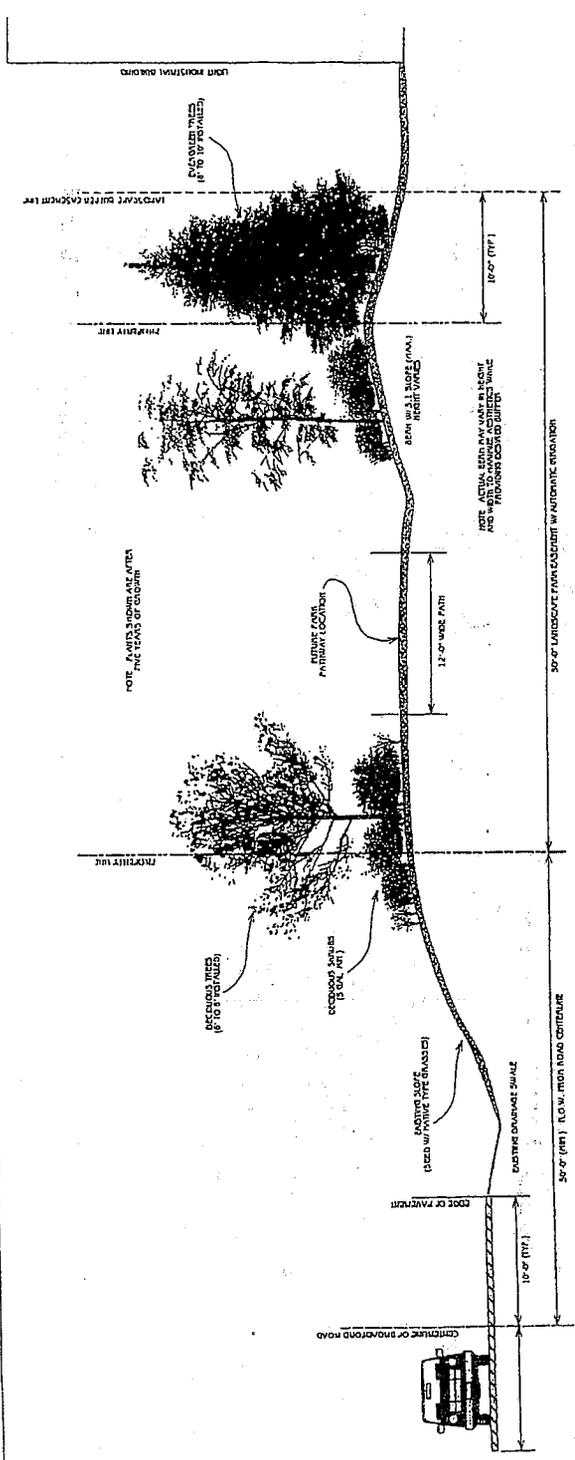


TYPICAL STREET SECTION



\*LANDSCAPE NOTED  
 1. ALL PLANTINGS SHALL BE INSTALLED BY THE CONTRACTOR.  
 2. ALL PLANTINGS SHALL BE MAINTAINED BY THE CONTRACTOR.



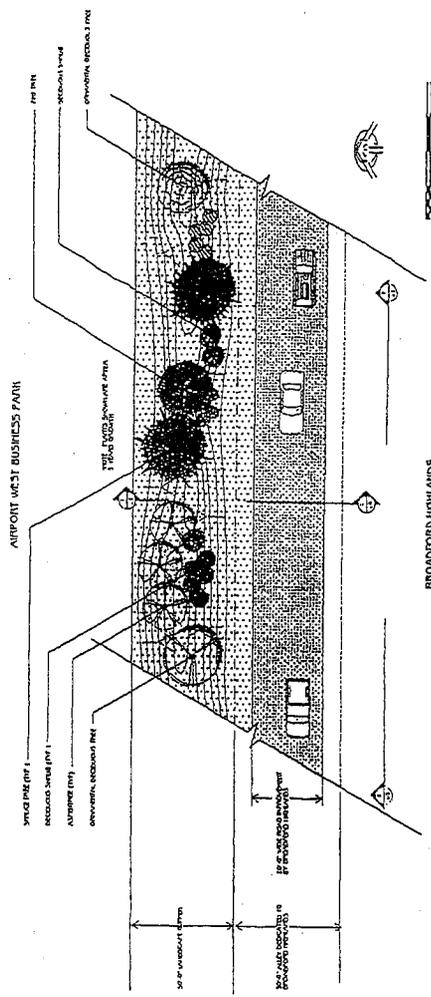


PROJECT: Airport West Business Park  
 LOCATION: Airport West Business Park, Danbury, CT 06823-2340  
 DRAWING NO.: 10000  
 DATE: 11/17/04  
 SCALE: 1/8" = 1'-0"

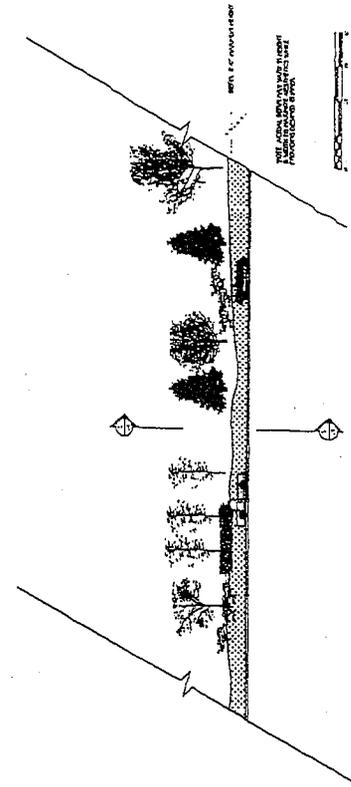
DESIGNED BY: [Signature]  
 CHECKED BY: [Signature]  
 APPROVED BY: [Signature]

PROJECT: Airport West Business Park  
 LOCATION: Danbury, CT 06823-2340  
 DRAWING NO.: 10000  
 DATE: 11/17/04  
 SCALE: 1/8" = 1'-0"

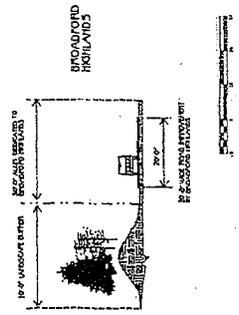
DESIGNED BY: [Signature]  
 CHECKED BY: [Signature]  
 APPROVED BY: [Signature]



A LANDSCAPE BUFFER (TYPICAL PLAN)



B-B LANDSCAPE BUFFER (TYPICAL ELEVATION)



C-C LANDSCAPE BUFFER (TYPICAL SECTION)



## FINDINGS OF FACT AND CONCLUSIONS OF LAW

On December 10, 2001, the Hailey City Council considered an application by Airport West Partners for annexation of Tax Lots 7092, 5507A; Revised Tax Lots 6659, 6789, and 7703; Fraction of Lot 1, Lots 2 and 3A, Broadford Highlands Subdivision #3. The property comprises approximately 62 acres. Proposed for a master planned light industrial and business park development, the property is now within a Blaine County R-1 zone and is largely undeveloped. Also considered was the City-initiated annexation of Tax Lot 6100 (Friedman Memorial Airport), and Tax Lot 1807 and 6942, owned by Robert McCroskey. The subject properties lie generally south of the Friedman Industrial Park and Hailey Business Park, west of Friedman Memorial Airport, east of Broadford Road, and north of Broadford Highlands Subdivision No. 2. The Council, having been presented with all information and testimony in favor and in opposition to the proposal, hereby makes the following Findings of Fact and Conclusions of Law.

### FINDINGS OF FACT

Notice for the public hearing was published in the Wood River Journal on November 21, 2001; the notice was mailed to adjacent property owners and to political subdivisions serving the City on November 21, 2001. Notice was posted on the subject properties on December 3, 2001.

Hailey Ordinance 521, commonly known as the Hailey Annexation Ordinance, establishes a procedure for the annexation of property into the incorporated boundaries. Section 4.0 sets forth "Criteria for Review," and requires the City to review four factors in evaluating annexations. In order to approve the proposed annexation, Council must find that the following criteria are favorably met:

1. Whether the proposal represents an orderly extension of existing City boundaries.
2. How the proposal relates to the goals and objectives of the Comprehensive Plan.
3. The extent of difficulty involved in extending City services to accommodate the proposal.
4. The results of a fiscal impact study to determine whether or not the proposal will generate sufficient revenues to defray the necessary public service costs.

The property proposed for annexation is adjacent to and partially contiguous with the boundaries of City of Hailey.

The Goal of the Land Use section of the Hailey Comprehensive Plan is to provide for a balanced mix of land uses suitable related to one another.

The Goal of the Economic Development section of the Hailey Comprehensive Plan is to create opportunities for diverse economic development compatible with the community's environment.

Policy B of the Economic Development Sections directs the City to provide locations for different industry types that would adequately deal with circulation patterns, land parcel size, compatibility of existing surroundings and the public good.

Policy B of the Economic Development Section directs the City to maintain a competitive environment for business and industry by recognizing the needs within the community for future development opportunities.

On May 11, 1998, the Hailey City Council adopted the following Conclusions of Law:

1. That the annexation proposed represents an orderly extension of City boundaries.
2. That the annexation proposed is supported by and in accordance with the goals and objectives of the Hailey Comprehensive Plan.
3. That the application has been amended by the Council to include several 'in - holdings' of property, among which are an 11 acre piece owned by the County of Blaine County, three parcels of land at the northernmost boundary of the proposed annexation, and two residential properties adjacent to and east of Broadford Road.
4. That the application shall be sent to the Hailey Planning and Zoning Commission for a recommendation to the Council concerning the appropriate zoning for the property. The Commission may also request and receive preliminary plat, zoning, Planned Unit Development and any other application deemed necessary to make such recommendation.

An application for preliminary plat for Airport West Subdivision was submitted on February 16, 1999 to run concurrently with the annexation application.

June 29<sup>th</sup>, 1999, the Hailey Planning and Zoning Commission considered the application by Airport West Partners for preliminary plat approval and a zoning recommendation for the annexation of the Airport West Property. The Commission adopted certain Findings of Fact and the following Conclusions of Law:

1. That the annexation proposed represents an orderly extension of City boundaries.
2. That the annexation proposed is supported by and in accordance with the goals and objectives of the Hailey Comprehensive Plan.
3. That the applicant shall receive preliminary plat approval and a recommendation for Service Commercial Industrial District zoning for the property. The approval and recommendation shall be subject to the following conditions:
  - a) That agreements with other entities be submitted.

- b) That the annexation and development agreement include impact fees for the necessary improvements to Airport Way, Broadford Road and their intersections with Main Street.
- c) That the applicant submit revised street names for staff approval.
- d) That the applicant provide a variety of landscape trees and shrubs, with no variety comprising more than 25% of the total plant material.
- e) That the applicant develop each lot within the subdivision subsequent to a Planned Unit Development approval.
- f) That the City should amend the development agreement to allow for accessory residential uses on the property.
- g) That the recommendation for SCI District zoning is predicated upon the language of the District as recommended by the Commission, and, should the language of the District expand the permitted uses significantly, the Commission recommends that the property be limited to those uses as recommended.

Amendments to the Zoning Ordinance, creating a new zoning district, Service Commercial Industrial (SCI), were recommended for approval by the Commission, and adopted by the City Council on November 22, 1999. Ordinance #743, adopting these amendments, became effective on January 26, 2000.

Subsequent amendments to the Zoning Ordinance revising the Service Commercial Industrial (SCI) district, including merging the original five sub-districts into two broader subdistricts, were recommended for approval by the Commission, and adopted by the City Council on November 12, 2001. Ordinance #797, adopting these amendments, became effective on December 19, 2001.

The applicant agreed to limit development adjacent to Broadford Highlands #2 to those uses originally allowed in the SCI-Warehouse sub-district. This use limitation is included in the Annexation, Services and Development Agreement.

On June 26, 2000 the Hailey City Council considered the annexation application along with an Annexation, Services and Development Agreement. Annexation fees were proposed within that Agreement. The Council rejected said Agreement, citing concerns regarding the adequacy of the method by which the annexation fees had been calculated, and concerns regarding access from the development onto Broadford Road, a substandard County road.

The City entered into a contract with Tischler & Associates to study and propose a method by which to calculate annexation fees to offset the impact of the proposed development on infrastructure. The Council accepted the final report by Tischler and Associates on November 26, 2001. The Council determined that the general annexation fees set forth in the final report are adequate to provide for the extension of city services to accommodate the annexed area.

General annexation fees of \$1,830,149 are to be paid upon a schedule set forth in the Annexation, Services and Development Agreement. Also part of the annexation proposal is the donation of a 5.83 acre parcel for use by the City of Hailey (Lot 5, Block 3), and the contribution of \$90,000 toward the cost of the improvements to the intersection at Airport Way and Highway 75.

The Annexation, Services and Development Agreement was considered by the Council, including annexation fees as recommended by Tischler and Associates, and approved by the City of Hailey and Airport West Partners on December 17, 2001.

The dedicated portion of the buffer area, noted as Parcel A plus the additional easement areas, totaling 8.16% of the gross annexation area was determined to be an adequate open space contribution for the development, and will satisfy future parks requirements for subdivisions. Future PUD applications may, however, be subject to open space contribution.

The Council will accept a separate written confirmation, outside the Annexation and Development Agreement, regarding the applicant's voluntary contribution of any water rights in excess of those required for irrigating the landscaped areas in the project.

The Council had considered including several 'in - holdings' of property to also be annexed by the City. Annexation of these parcels would serve to make City boundaries more uniform.

Friedman Memorial Airport (Revised Tax Lot 6100) agrees to the annexation of approximately 11.53 acres of land lying between Friedman Memorial Airport and the proposed Airport West subdivision. Zoning of Airport (A) is appropriate for this property.

Robert McCroskey, owner of Tax Lots 1807 and 6942, has agreed to be annexed to the City. The owner has requested and the Council has agreed to Technological Industry (TI) zoning for this property.

Christian Nickum, owner of Tax Lot 7505, and Mr. and Mrs. Brad Billger, owners of Tax Lot 3913, wish to remain in the County. The Council did not wish to annex these properties against the owners' wishes. Tax Lots 7505 and 3913, therefore, will remain in unincorporated Blaine County. The Council finds that the exclusion of Tax Lots 7505 and 3913 will still allow for an orderly extension of City boundaries.

Based on the record, the above Findings of Fact, and the Annexation, Services and Development Agreement, the Council finds that:

1. The annexation proposed represents an orderly extension of City boundaries.
2. The annexation proposed is supported by and in accordance with the goals and objectives of the Hailey Comprehensive Plan.

3. No significant difficulty is involved in extending City services to accommodate the annexation.
4. The annexation fees, in addition to taxes generated, will generate sufficient revenues to defray the necessary public service costs.

### CONCLUSIONS OF LAW

Based on the entire record and the above Findings of Fact, the Council concludes that the application for Annexation conforms to the Hailey City Ordinance No. 521 and that the application is approved subject to the following conditions:

- a) The exclusion of Tax Lots 3913 and 7505, and
- b) The terms and conditions of the Annexation, Services and Development Agreement.

Approved this 14<sup>th</sup> Day of January, 2002.



Brad Siemer, Mayor, City of Hailey

Attest:

Heather Dawson  
Heather Dawson, City Clerk



## FINDINGS OF FACT AND CONCLUSIONS OF LAW

On December 10, 2001, the Hailey City Council considered an application by Airport West Partners for preliminary plat subdivision of Tax Lots 7092, 5507A; Revised Tax Lots 6659, 6789, and 7703; Fraction of Lot 1, Lots 2 and 3A, Broadford Highlands Subdivision #3. The property comprises approximately 62 acres and lies south and west of the existing city boundary and generally west of Friedman Memorial Airport. The proposed subdivision would create 16 lots, ranging in size from 1.64 acres to 5.13 acres. Proposed zoning is Service Commercial Industrial (SCI) with sub-districts (Sales and Office, and Industrial) as noted on the plat. The Council, having been presented with all information and testimony in favor and in opposition to the proposal, hereby makes the following Findings of Fact and Conclusions of Law.

### FINDINGS OF FACT

Notice for the public hearing was published in the Wood River Journal on November 21, 2001; the notice was mailed to adjacent property owners and to political subdivisions serving the City on November 21, 2001. Notice was posted on the subject properties on December 3, 2001.

An application for preliminary plat for Airport West Subdivision was submitted on February 16, 1999 to run concurrently with an application for annexation of subject property.

Hailey has adopted Ordinance Number 698, the Subdivision Ordinance, providing comprehensive requirements, regulations and procedures governing the subdivision of property, including platting, replatting, and recordation of subdivision plats.

Section 2.3 of the Hailey Subdivision Ordinance sets forth the following requirement for Final Plat Approval:

The final plat must be submitted to the Planning and Zoning Commission within 1 calendar year from the date of approval of the preliminary plat by the Hailey City Council.

Two phases are proposed to allow for final plat approval and recordation of Phase 1, Lot 5, Block 3 (the City lot), within an approximately 6 month time frame. Phase 2, the remainder of the subdivision, is scheduled for final plat recordation within a 36-month time frame, unless extended by the City Council under Subsections 2.2.3 and/or 2.3.5. The Council made two findings pursuant to Section 11 of the Subdivision Ordinance, as follows:

1. Due to the need of the City for timely conveyance of Lot 5, Block 3, prior to installation of infrastructure improvements, the requirement for improvements in Section 5 of the Subdivision Ordinance may be waived,

except as provided for in the Annexation, Services and Development Agreement.

2. Due to the large size and scope of the 62-acre subdivision, hardship exists, and the requirements of Section 2.3 of the Subdivision Ordinance shall be waived.

Section 4 of the Hailey Subdivision Ordinance sets forth Development Standards for subdivisions, including the following subsections.

- 4.1.1 All streets in the subdivision must conform to the Master Plan of the City, or, where no plan exists, must be platted and developed with a width, alignment, and improvements such that the street is adequate to accommodate existing and anticipated vehicular and pedestrian traffic and meets city standards. Streets shall be aligned in such a manner as to provide through and efficient access from and to adjacent developments and properties and shall provide for the integration of the proposed streets with the existing pattern.

The proposed subdivision will include the extension of Airport Way into the development. Within the subdivision, three streets are proposed: Airport Way and Friedman Park Circle (80-foot right-of-way), and Industrial Loop (60-foot right-of-way). Streets have been designed by the applicant in cooperation with City staff and in response to public and Commission and Council input. These streets meet standards for right-of-way width, intersections, and road grades.

- 4.1.2 No cul-de-sacs or dead end streets shall be platted. Street right-of-ways extended into un-platted areas shall not be considered dead end streets.

Based on public and City Council input, a cul-de-sac shall be constructed in the north-western part of the subdivision. However, an easement for future street connection to Broadford Road will be platted. Said connection would eliminate the cul-de-sac.

- 4.1.10 All streets and alleys within any subdivision shall be dedicated for public use.

All streets within the subdivision are to be dedicated to the public.

- 4.2 Sidewalks and Curbs.

- 4.2.1 Sidewalks, as required in all street improvements, shall be a minimum of 5 feet wide, shall be constructed of concrete installed to City standards or shall be constructed of an alternative material as approved by the Hailey Planning and Zoning Commission and/or the Hailey City Council.

- 4.2.1.1 Sidewalks shall be required in Business, Limited Business, SCI, or other pedestrian areas shall, at the discretion of the Commission and the Council, be between 6 and 12 feet wide. Sidewalks shall accommodate anticipated pedestrian traffic and shall be in accordance with established City standards. The Council shall not waive this requirement.

Sidewalks are shown on both sides of the streets with the following exceptions: one side only (south side) along Airport Way from the northern entrance of the subdivision to the intersection with Friedman Park Circle, one side only (west side) on Friedman Park Circle, one side only on Industrial Loop (west side). Sidewalks are shown at 5-feet in width. City Standard Drawing #801 calls for 5-foot sidewalk width in industrial districts. The Council finds that the sidewalks as proposed meet the requirement of Section 4.2.1.1

- 4.3.7 Where alleys are not provided easements of not less than eight (8) feet in width may be required on each side of all rear lot lines (total width = 16 feet) where necessary for wires, conduits, storm or sanitary sewers, gas and water lines. Easements of greater width may be required along lines, across lots, or along boundaries, where necessary for surface drainage or for the extension of utilities.

Ten-foot snow storage and utility easements adjacent to all public rights-of-way are noted on the plat.

- 4.3.8 Easements. Easements, defined as the use of land not having all the rights of ownership and limited to the purposes designated on the plat, shall be placed on the plat as appropriate. Plats shall show the entity to which the easement has been granted. Easements shall be provided for the following purposes:

- 4.3.8.1 To provide access through or to any property for the purpose of providing, utilities, emergency services, public access, private access, recreation, deliveries, or such other purpose.

Ten-foot snow storage and utility easements adjacent to all public rights-of-way are noted on the plat. An access and utility easement from Industrial Loop to Tax Lot 7505 is shown. A well easement is shown within Lot 4, Block 3. A 40-foot wide emergency access easement is shown within Lot 6, Block 3. Pedestrian access through Block 3 lots to Parcel A is noted. There is a roadway easement in place for potential extension of Airport Way to the south, through airport property into unplatted Flying Hat Ranch. Likewise, there is an easement for potential future access from Friedman Park Circle directly onto Broadford Road.

- 4.3.8.2 To provide protection from or buffering for any natural resource, hazardous area, or other limitation or amenity on under or over the land.

Parcel A (40 feet wide along Broadford Road), along with an adjacent 10-foot wide "setback and park maintenance easement", providing a 50-foot wide landscape buffer, and 30-foot wide landscape easements along the southern boundary, are platted. These provide buffering between the proposed subdivision and Broadford Road and Broadford Highlands Subdivision No. 2.

- 4.3.8.3 To provide for the storage of snow, drainage areas, or the conduct of irrigation waters.

A snow storage easement within Parcel A, and a 10-foot wide snow storage easement adjacent to public rights-of-way, are platted.

#### 4.4 Blocks.

- 4.4.1. The length, width and shape of blocks shall be determined with due regard to adequate building sites suitable to the special needs of the type of use contemplated; the zoning requirements as to lot size and dimensions; the need for convenient access and circulation, and the limitations and opportunities of topography.

Four blocks are proposed, containing from two to seven lots each. Blocks are one lot deep. Specified curb cuts are shown within the blocks.

#### 4.5 Lots.

All lots shown on the subdivision plat must conform to the minimum standards for lots in the District in which the subdivision is planned.

All proposed lots exceed the minimum required within the SCI zoning district.

Section 5 of the Hailey Subdivision Ordinance sets forth Improvements Required for subdivisions.

- 5.3 The developer shall construct a municipal sanitary sewer connection, for each and every developable lot within the development. The developer shall provide sewer mains of adequate size and configuration in accordance with City Standards, and acceptable to the Idaho Department of Environmental Quality, Hailey Wastewater Superintendent and the City Engineer or his authorized representative. Such mains shall provide wastewater flow throughout the development.

- 5.4 The developer shall construct a municipal potable water connection for each and every developable lot within the development. The developer shall provide water mains and services of adequate size and configuration in accordance with City Standards, and acceptable to the Idaho Department of

Environmental Quality, Hailey Water Superintendent and the City Engineer or his authorized representative. Such water connection shall provide all necessary appurtenances for fire protection, including fire hydrants, which shall be located in accordance with the Uniform Fire Code and under the approval of the Hailey Fire Chief.

The applicant has submitted preliminary utility plans showing both sewer and water mains and connections, which meet or exceed City standards, state standards, and the Uniform Fire Code.

5.7 The developer shall improve all parks and open space areas as presented to and approved by the Commission and Council.

Parcel A, a 50-foot wide "linear park" and a small park area (half an acre) just north of Lot 1, Block 3, is proposed and the Council found that this park area, along with landscape buffers along the southern border of the subdivision, shall satisfy this and future re-subdivisions' park and open space requirement. Planned Unit Developments, however, may be subject to additional open space requirements pursuant to Article 10 of the Zoning Ordinance. Sheets L-1 through L-6 of the preliminary plat map set provides landscape details.

The Planning and Zoning Commission considered Preliminary Plat on June 29, 1999. The Commission approved the application with the following conditions:

a) *That agreements with other entities be submitted.*

The Commission was specifically concerned about the southward extension of the connector road through the property to airport facilities. No direct access to Friedman Memorial Airport through the proposed subdivision is shown. Should the Airport Authority approve such access at a later date, an amended plat would be presented, and pursuant to Subsections 2.3.1 and Section 10 of the Subdivision Ordinance, may require additional review.

b) *That the annexation and development agreement include impact fees for the necessary improvements to Airport Way, Broadford Road and their intersections with Main Street.*

Annexation fees (not "impact" fees) and contributions to intersection improvements are based on the report by Tischler Associates. Intersection improvements at Airport Way are to be included, however no improvements at Broadford Road are anticipated for this annexation.

c) *That the applicant submit revised street names for staff approval.*

The street previously named "Park Way" has been renamed to Industrial Loop.

*d) That the applicant provide a variety of landscape trees and shrubs, with no species comprising more than 25% of the total plant material.*

A detailed planting list provides a variety of materials; no tree species represents more than 20% of the total pursuant to current Design Review Guidelines.

*e) That the applicant develop each lot within the subdivision subsequent to a Planned Unit Development approval.*

Amendments to the Zoning Ordinance, revising the Service Commercial Industrial (SCI) district, were recommended for approval by the Commission, and adopted by the City Council on November 12, 2001. Ordinance #797, adopting these amendments, became effective on December 19, 2001. Said amendments eliminate the requirement for all development to be subject to PUD approval.

*f) That the City should amend the development agreement to allow for accessory residential uses on the property.*

The Council disagreed with this condition and stated that, due to the proximity of the proposed subdivision to the airport, residential uses are inappropriate. The Annexation, Services and Development Agreement states that, pursuant to Idaho Code section 67-6511A, no residential uses of any kind shall be permitted anywhere on the Property.

*g) That the recommendation for SCI District zoning is predicated upon the language of the District as recommended by the Commission, and, should the language of the District expand the permitted uses significantly, the Commission recommends that the property be limited to those uses as recommended.*

Amendments to the Zoning Ordinance, revising the Service Commercial Industrial (SCI) district, were recommended for approval by the Commission, and adopted by the City Council on November 12, 2001. Ordinance #797, adopting these amendments, became effective on December 19, 2001. The amendments to the SCI District did not expand the uses allowed, but combined the original five sub-districts into two sub-districts. The applicant agreed to limit the uses on the lots adjacent to Broadford Highlands Subdivision No. 2 to those uses allowed under the old SCI-Warehouse sub-district. The Annexation, Services and Development Agreement states that, pursuant to Idaho Code section 67-6511A, Lots 6 and 7, Block 3, shall be limited to the following uses: bulk storage facilities, warehouse and storage facilities, wholesale distributors, and self-storage facilities, and uses accessory thereto as set forth in Hailey ordinance

The platting of Airport West Subdivision will leave a partial lot within Broadford Highlands Subdivision No. 3 in unincorporated Blaine County. The Annexation and Development Agreement includes language stating that the applicant shall submit and diligently pursue an application to Blaine County for the replatting of Lots 1 through 3 of Broadford Highlands No. 3.

ALTERNATIVE NO. 1 - TWO PHASE

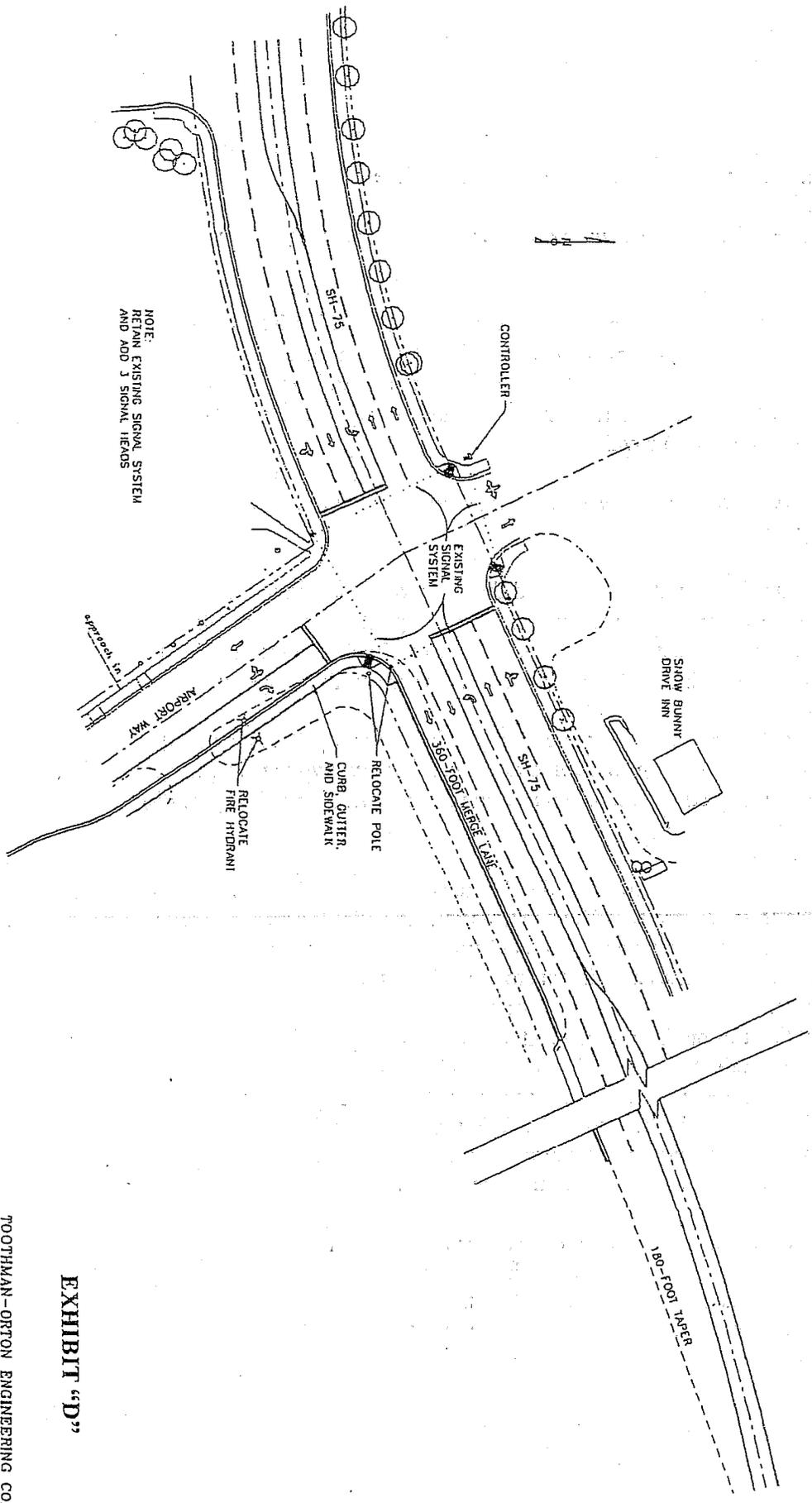
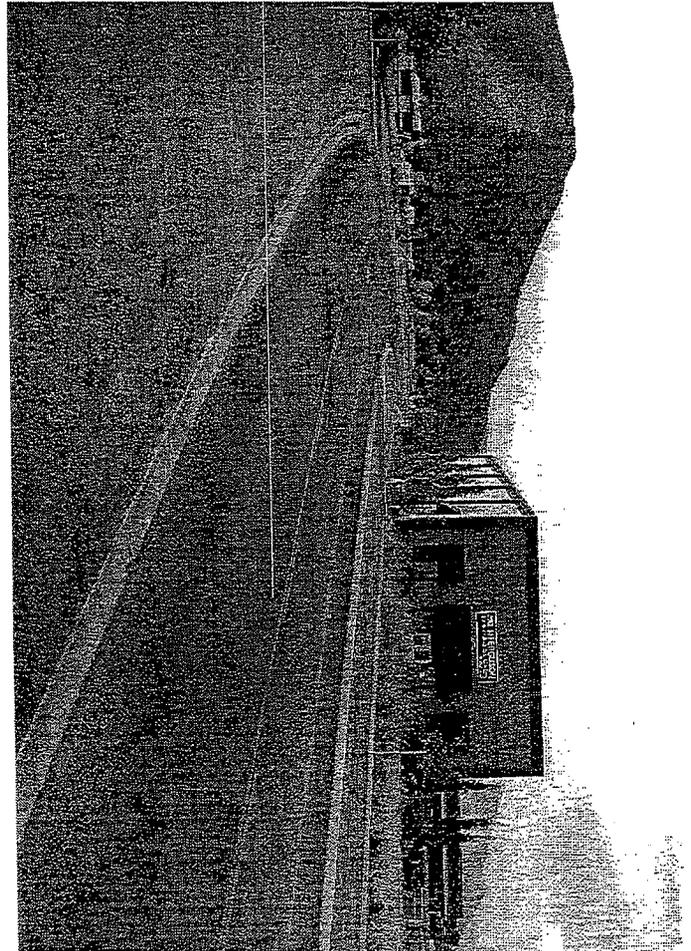
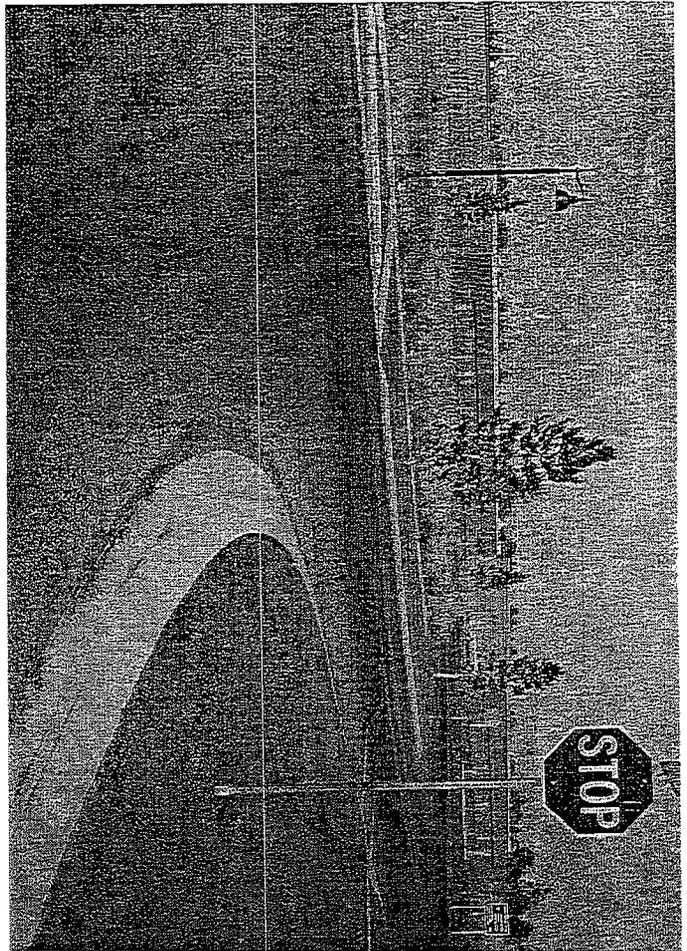
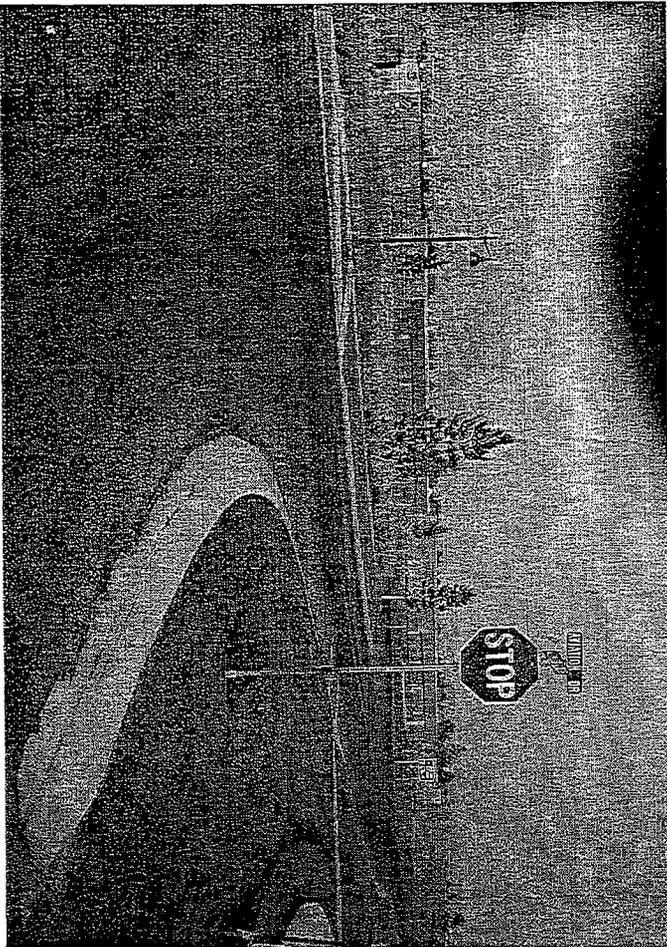
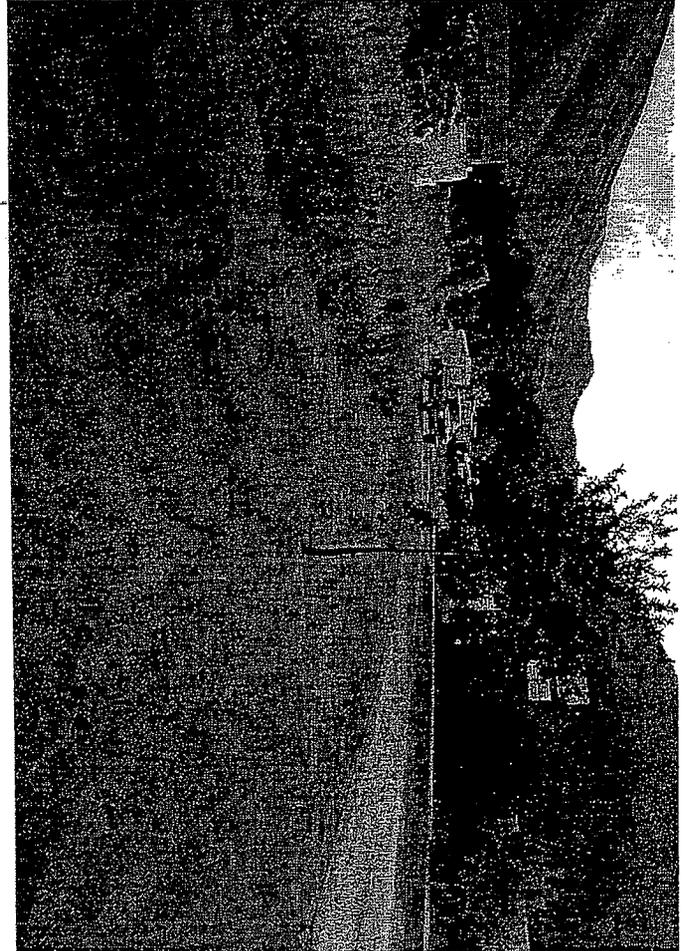
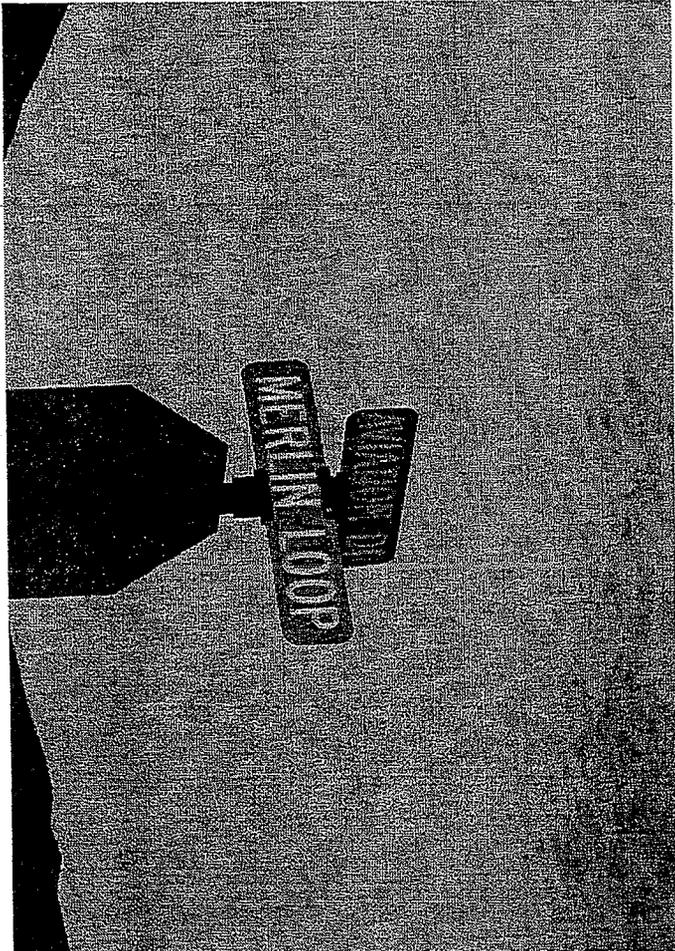
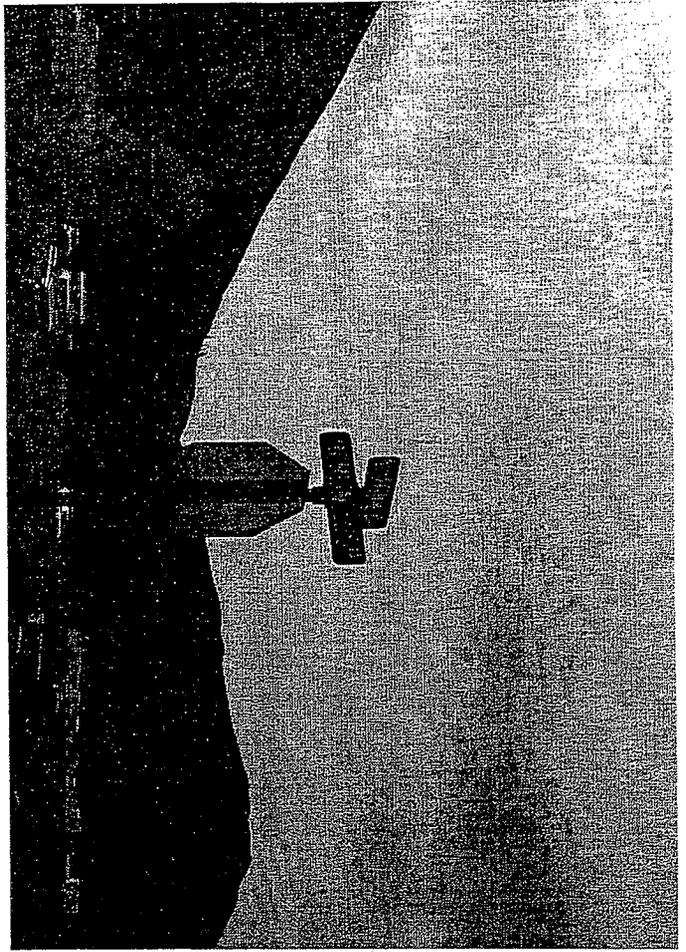
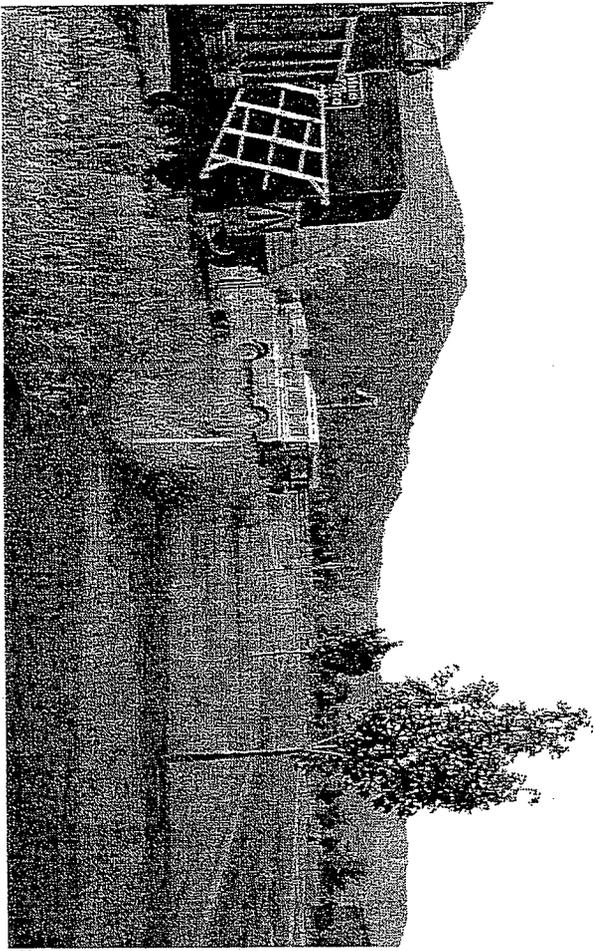
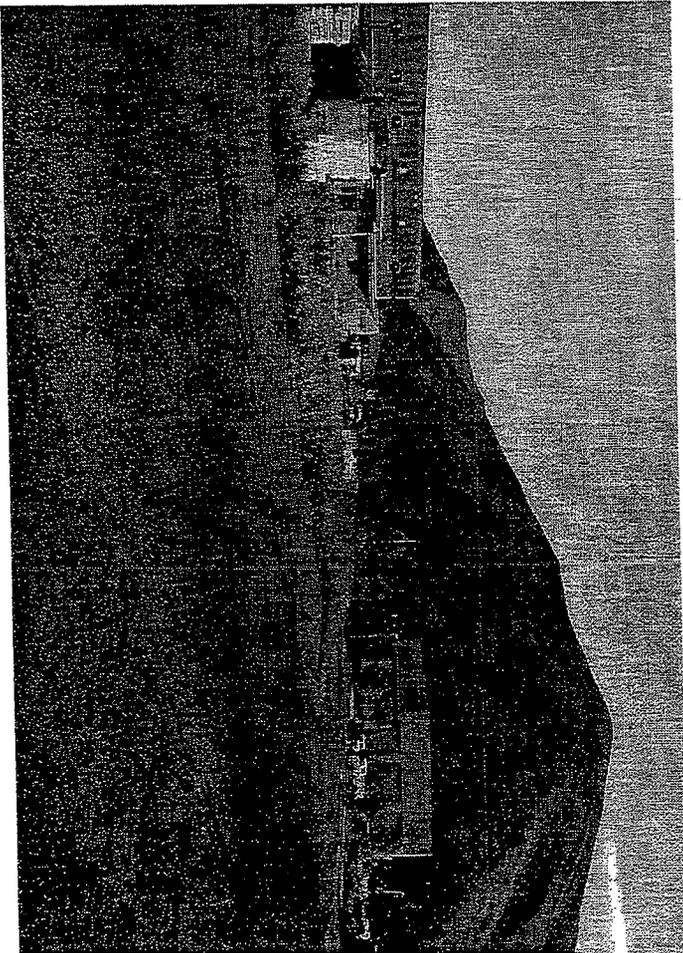
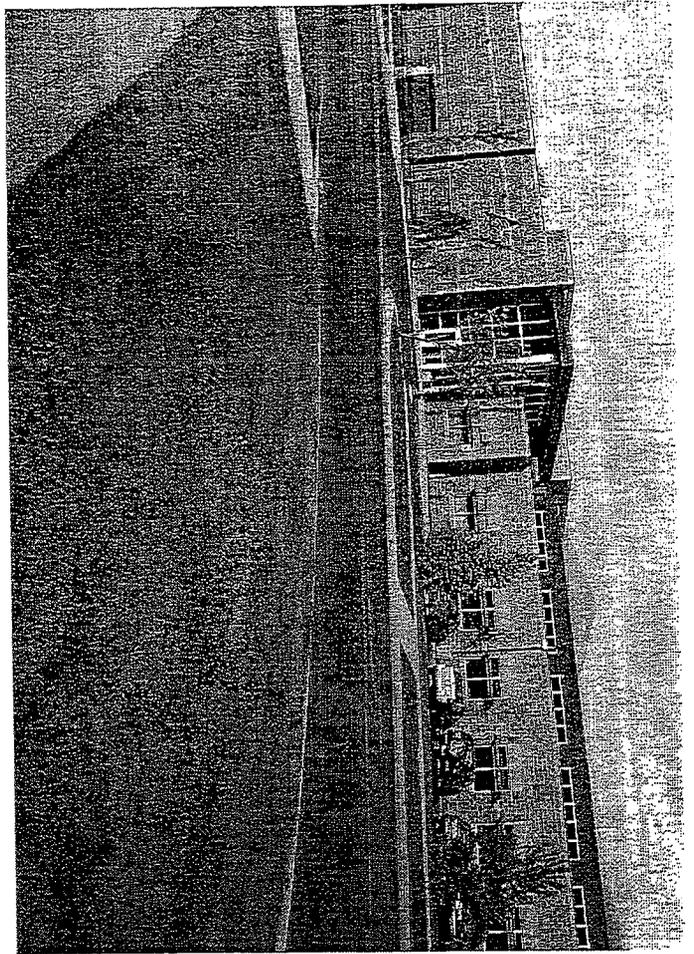
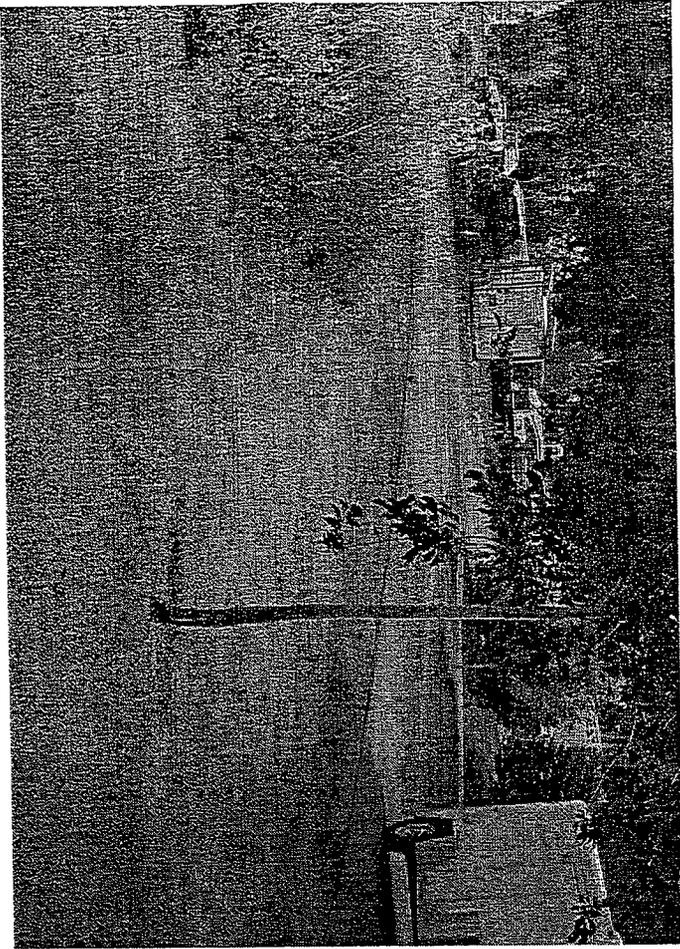


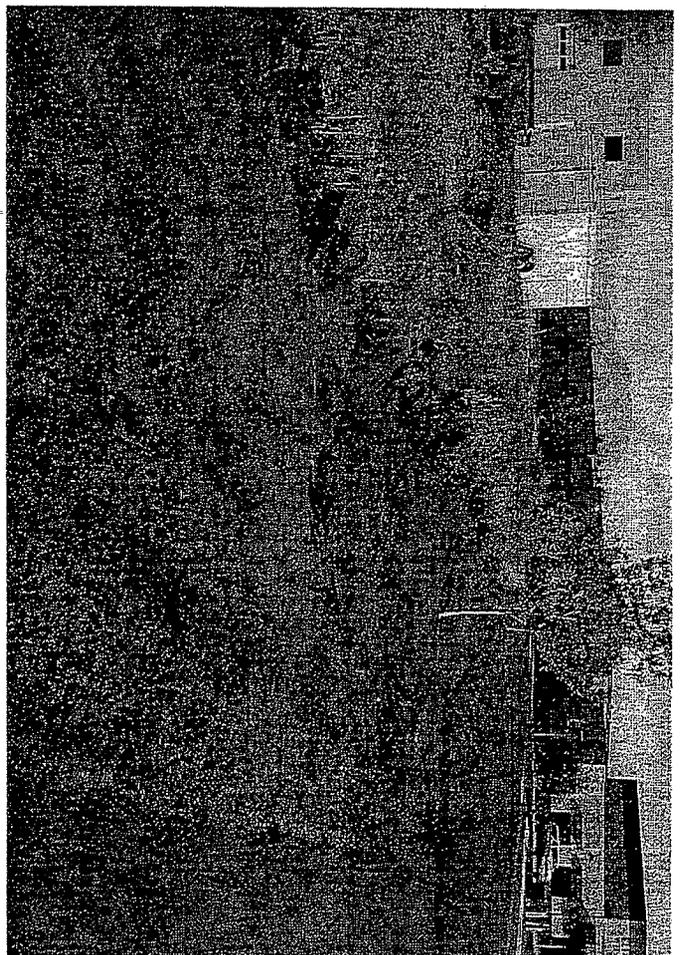
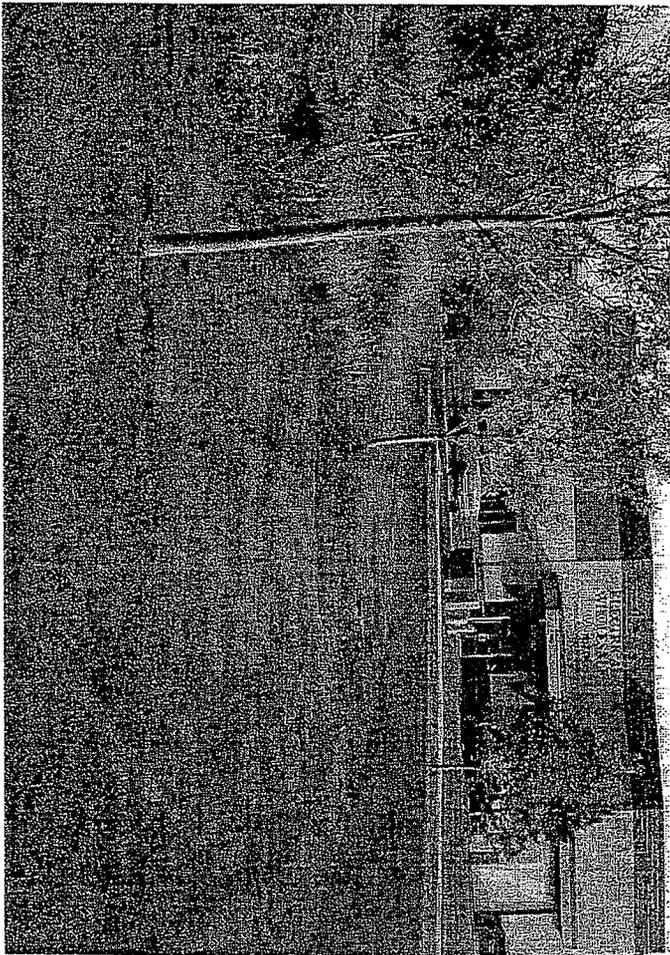
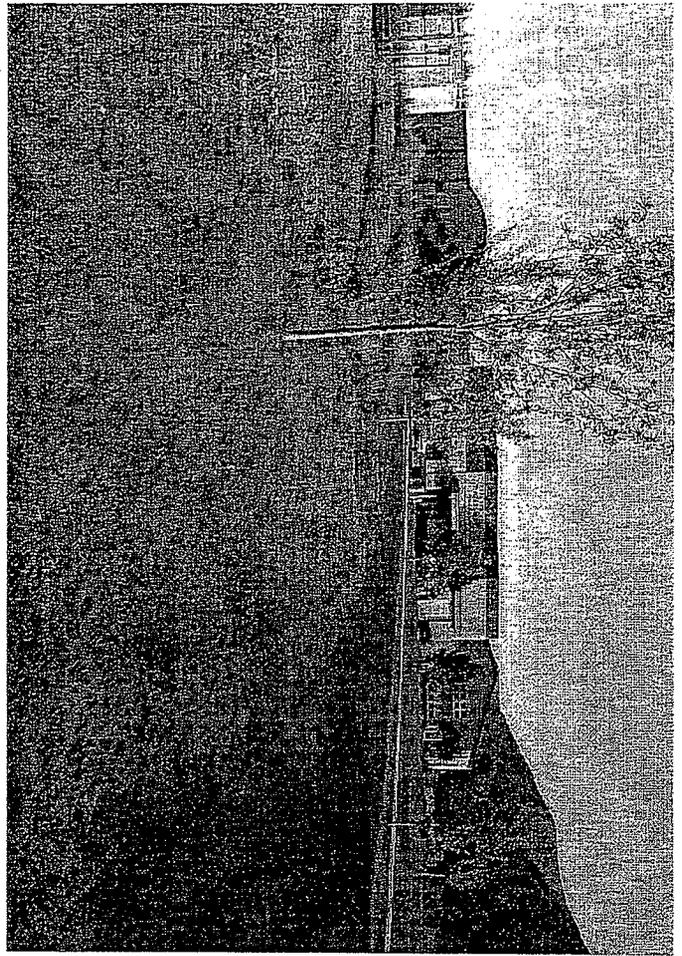
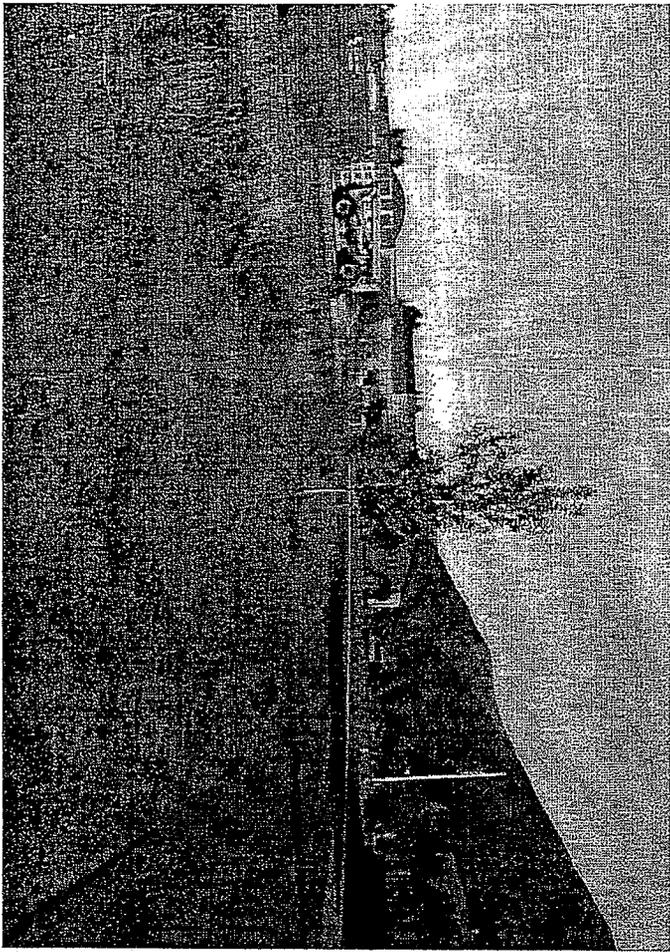
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Ned Williamson  
Williamson Law Office, PLLC  
115 Second Avenue South  
Hailey, ID 83333

Dear Ned:

As I am sure you are aware, Idaho Code 60-106, setting forth the requirements for newspapers to carry legal notices such as summons by publication and notice to creditors, notice of petitions for change of name, just to name just a few, requires that such a newspaper operate under a valid Second Class Mailing Permit from the United States Postal Service (USPS). The postal service now calls this class of mail "Periodicals." In case there is a question about the existence of such a Second Class Mailing Permit, or Periodicals privileges, USPS regulations require that the newspaper must publish in each edition its Second Class Permit/Publication Number assigned by USPS together with its title, known office of publication, frequency, post office at which postage is paid, and issue number (See, USPS Domestic Mail Manual Regulation 707.4.12.5.available online at <http://pe.usps.gov/text/dmm300/707.htm>).

Since under Idaho Code 60-106, no legal notice, advertisement or publication has any force or effect unless published in a newspaper meeting the applicable requirements of that statute, including holding a valid Second Class Mailing Permit. Therefore, please be advised that the Idaho Mountain Express meets those qualifications. The Idaho Mountain Express pays Periodicals postage to the US Post Office at Ketchum under its Second Class Mailing Publication No.720-490 as set forth in the printed statement as required by the above-referenced USPS regulations. A copy of that statement, printed on page 3 of each edition of the "Idaho Mountain Express" newspaper, is attached.

On page 2 of the current edition of its newspaper, the Wood River Journal (WRJ) identifies that it is mailing under only a Third Class Mailing permit rather than under the Second Class Permit required by Idaho Code Section 60-106. A copy of that page of the WRJ is enclosed for your review. Apparently, this situation has existed since its July 23, 2008 edition.

To submit legal notices, advertisements and publications please contact the Idaho Mountain Express office at 208-726-8060. The weekly deadline for such notices and advertisements is 5 p.m. every Friday.

Should you have any questions, please feel free to contact me at 726-8060 or our legal counsel, Jim Phillips, at 788-3496.

Very truly yours,

\_\_\_\_\_  
Pam Morris, Publisher  
Idaho Mountain Express

*~ Idaho's largest weekly newspaper ~  
Serving the Sun Valley, Idaho resort area communities*

# INSIDEOUT

Wine Auction is the best catch of the summer / Page 19

Stay in tune with fiscal reality / Opinions, Page 12

Meet Alberto Uranga in Valley People / Page 34



Get hooked on Catch of the Week / Page 26

Vol. 126 ■ Number 48 ■ WEDNESDAY, JULY 23, 2008

# WOOD RIVER JOURNAL

woodriverjournal.com



Skaters shine at S.V. figure skating event / Page 25  
■ First copy free, others 50¢

# Making a break for it

The new Public Safety Facility will house the sheriff's office and the jail

By JASMINE LINABARY  
Wood River Journal

The Blaine County Sheriff's Office is settling into the new state-of-the-art Public Safety Facility, with its grand opening scheduled for today.

The building is nearly complete, with technicians and construction workers finishing the



# Valley tackles housing

Local businesses and agencies address the community's needs

By JASMINE LINABARY  
Wood River Journal

Local officials have acknowledged the shortage of affordable housing as one of the community's biggest problems, but employ-

**TIM JENESON**  
**BOB NERO**  
 726-9413  
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 (2007) 4/11/07

Starting this academic year, all Blaine County parents will have to prove residency when they register their children for school. Superintendent Jim Lewis announced at a July 8 meeting of the Blaine County School District Board of Trustees that the district

district," Lewis said. Parents or students 18 years or older will be required to demonstrate residency with a physical address in the legal boundaries of the school district each year at registration or set dates through two utility bills or

Proving residency also provides the district with updated emergency information on students each year, Lewis said. Trustees adopted revisions to the residency policy at the meeting that refined the language of the policy.

patch center is projected to receive from that area and there the level of service that area need. By funding the project way rather than population-based funding, more of the cost shift Ketchum and Sun Valley the would otherwise, McNees said

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 Halley, ID 83333  
 (208) 788-3444

**Publisher**  
 Jerry Brady  
[publisher@woodriverjournal.com](mailto:publisher@woodriverjournal.com)

**Editor**  
 Margaret Wimbome  
[editor@woodriverjournal.com](mailto:editor@woodriverjournal.com)

**Production Manager**  
 Leslie Thompson  
[production@woodriverjournal.com](mailto:production@woodriverjournal.com)

**Copy Editor & Page Designer**  
 Sarah Davis  
[sdavis@postregister.com](mailto:sdavis@postregister.com)

**InsideOut Editor**  
 Karen Bossick  
[kbossick@cox-internet.com](mailto:kbossick@cox-internet.com)

**Sports & Outdoors Editor**  
 Jon Mantzer  
[sports@woodriverjournal.com](mailto:sports@woodriverjournal.com)

**Reporters**  
 Susan Bailey  
[smbailey1@mindspring.com](mailto:smbailey1@mindspring.com)

Jasmine Linabary  
[jlinabary@woodriverjournal.com](mailto:jlinabary@woodriverjournal.com)

**Photographer**  
 Travis Garner  
[tgarner@woodriverjournal.com](mailto:tgarner@woodriverjournal.com)

**Graphic Designer & Webmaster**  
 Joshua Greenberg  
[jgreenberg@woodriverjournal.com](mailto:jgreenberg@woodriverjournal.com)

**Marketing Representatives**  
 Julie Vanstauskas  
[juliev@woodriverjournal.com](mailto:juliev@woodriverjournal.com)

Phil Hebert  
[advertising@woodriverjournal.com](mailto:advertising@woodriverjournal.com)

**Classifieds**  
[classified@woodriverjournal.com](mailto:classified@woodriverjournal.com)

**Circulation Manager & Office Manager**  
 Bridgitte Browning  
[bbrowning@woodriverjournal.com](mailto:bbrowning@woodriverjournal.com)

**Legals**  
 Julie Vanstauskas  
[jlegals@woodriverjournal.com](mailto:jlegals@woodriverjournal.com)

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Postmaster, please send change of address form to: P.O. Box 988, Halley, ID 83333. Copyright 2008 The Wood River Journal.

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According to Fred Fullius, Supervisor for Fish and Game, bass are particularly susceptible to contamination from elements like mercury because of a phenomenon called bio-accumulation. He said that because bass are predatory fish and long-lived, mercury tends to accumulate in their flesh throughout their lives as they eat smaller fish containing the toxic element.

"They're at the top of the food chain," he said. Idaho has issued water-body specific fish advisories since 2001, but this is the first statewide fish advisory ever released in the state. Hayes said the statewide bass consumption advisory is just another indication of how widespread mercury contamination is in Idaho and how pressing is the need to fix the problem.

The state of Washington released a similar advisory for bass in 2008.

A list of specific water-body fish advisories can be found by logging on to the Department of Health and Welfare's Web site at [www.healthy.idaho.gov](http://www.healthy.idaho.gov) and clicking on "Fish Advisories."

For more information, contact the Department of Health and Welfare's Environmental Health Education and Assessment Hotline at (866) 240-3553.

The shutdown of the Jerritt Canyon Mine—a major gold mine in northeastern Nevada—as the first step toward cleaning up contaminated waterways as far away as southern Idaho, including the renowned waters of Silver Creek. The Jerritt Canyon Mine is just one of about 25 large gold mines operating in northern Nevada that environmentalists say are responsible for mercury contamination in southern Idaho and portions of Utah.

A yearlong investigation by Nevada officials convinced them to order the shutdown of the gold mine's processing plant.

Leo Drozdoff, head of the Nevada Division of Environmental Protection, said in March that his order requires Queenstake Resources' Jerritt Canyon Mine to install new, more effective emission-control equipment.

The ore "roasters," which were ordered shut down, were required to be upgraded by the end of the year. If the company wanted to restart the roasters earlier using existing pollution-control gear, they would have had to install new instruments to ensure the gear operated properly.

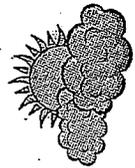
Hayes said recent reports in northern Nevada newspaper's indicate that the owners of the Jerritt Canyon Mine have decided to close the mine for good.

"I think it's primarily because they couldn't control their mer-

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Today and Thursday:  
 Mostly sunny. A slight chance of showers and thunderstorms in the afternoon. Highs 71 to 81. Lows 46 to 56. Friday through Monday:  
 Mostly sunny. Highs 72 to 82. Lows 45 to 55.



Sunrise: 6:56 a.m. Sunset: 8:40 p.m.



In the Friday Express:  
**CARL HIAASEN**  
**ON WRITING**

The Idaho Mountain Express (USPS 720-490) is published weekly on Wednesdays, by Express Publishing Inc., 591 First Avenue North, Ketchum, Idaho. Subscription price is \$62 per year. Periodical postage paid at Ketchum, Idaho and at additional mailing offices. POSTMASTER: Send address changes to Idaho Mountain Express, P.O. Box 1013, Ketchum, Idaho 83340. Vol. 33, No. 78

# Sockeye are still streaming into the Sawtooth Valley

have been attributed to good-smolt production four years ago, good out-migration conditions in the rivers and excellent ocean conditions.

Redfish Lake sockeye salmon (*Oncorhynchus nerka*) were listed as endangered under the federal Endangered Species Act in November 1991. They were the first Idaho salmon to be listed. Redfish Lake sockeye are unique in that they travel to the highest elevation, over 6,500 feet, run the longest distance, about 900 miles, and travel the farthest south of any North American sockeye population.

ered, fisheries officials have said. In the mid-1950s, thousands of the fish returned to spawn in Redfish, Pettit, Alturas and other lakes in the shadow of the Sawtooth Mountains.

From eggs produced by the state's captive broodstock program, 355 hatchery-produced sockeye returned to the Sawtooth Valley during an eight-year period between 1999 and 2007. By comparison, just 77 natural-origin sockeye salmon returned to Idaho in the 14-year period between 1985 and 1998.

This year's positive sockeye returns

*Continued from Page A1*

from the Sawtooth Valley on Tuesday, 881 adult sockeye salmon had passed by the Lower Granite Dam, the last barrier on the lower Snake River in southeast Washington that anadromous fish must pass before entering Idaho.

Though this summer's run is indeed a remarkable improvement above mostly dismal single-digit or nonexistent sockeye returns to Redfish Lake during the past several decades, the Sawtooth Valley sockeye population is far from recov-

JAMES W. PHILLIPS

RECEIVED

NOV 19 2008

November 18, 2008

Mayor and City Council  
City of Hailey, Idaho  
P.O. Box 945  
Hailey, ID 83333

**SUPPLEMENTAL NOTICE OF APPEAL**

Re: This supplements the Notice of Appeal filed by Leargulf, LLC, ("Appellant") on October 29, 2008, of the decision of the Hailey Planning and Zoning Commission made on October 20, 2008 ("Decision") regarding the Appellant's Design Review Application filed August 28, 2008 ("Application").

Pursuant to the above-referenced Notice Of Appeal, and without limiting the grounds set forth in the Notice of Appeal, the Appellant further states as part of its appeal as follows:

The Appellant filed a separate design review application on August 28, 2008, for a building with different design elements from one which received a prior approval. The Appellant's right to submit design review applications is not limited in any way by Hailey's ordinances. So, the application is not to amend any existing approval, but a new application for design review approval.

The Commission based its Decision on Section 6A.3.g of the Hailey Zoning Ordinance, which was purported to have been adopted by Hailey Ordinance 1009 on August 11, 2008. However, such ordinance is not valid because the required public hearing notices were not published in accordance with Idaho Code 60-106, and, therefore, under that statute are void and without force and effect. Similarly, said ordinance was not published in accordance with that law and therefore was not made effective within the thirty (30) days as required by law. As a result, the Commission had no authority to refer the Application to the Administrator and any decision in that

regard is in violation of the applicable city ordinances and state laws.

Even if the ordinance was valid, it does not provide sufficient legal standards for the exercise of discretion by the Administrator. Therefore, the ordinance violates the standards of substantive due process under both the U.S. and Idaho constitutions, and is void for vagueness.

Even if the ordinance was valid, the Appellant's Design Review Application submitted August 28, 2008, does not involve minor changes under Section 6A.3.g, because the building design includes enclosed decks which under the ordinance result in a change in the building's footprint.

Furthermore, design elements which include an enclosed deck rather than a roof are not minor differences in building design. Such a change is not subject to administrative approval under Section 6A.3.g (even if it were valid) because such difference in building design may significantly affect a project's impact on neighboring properties.

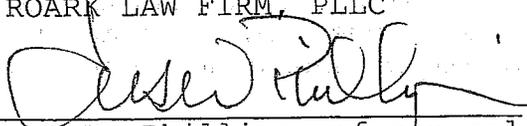
Also, the Design Review Application did not include installation of public sidewalks within the street rights of way. This is a significant difference from an earlier approved design review application. Any condition imposed on the Appellant's Design Review Application dated August 28, 2008 to require such sidewalks violates the Appellant's rights guaranteed under the U.S. and Idaho constitutions. In fact, the ordinance violates the Appellant's rights as an affected property owner separate and apart from any pending design review application.

The Appellant reserves the right to address additional points in its brief to be filed as part of this appeal.

SUBMITTED on this 19<sup>th</sup> day of November, 2008.

THE ROARK LAW FIRM, PLLC

by

  
James W. Phillips, of counsel  
Attorney for Appellant

JAMES W. PHILLIPS

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NOV 12 2008

November 11, 2008

Planning and Zoning Commission  
Mayor and City Council  
City of Hailey, Idaho  
P.O. Box 945  
Hailey, ID 83333

**NOTICE OF APPEAL**

Re: **NOTICE OF APPEAL** by Leargulf, LLC, ("Appellant") of decision of the Hailey Planning and Zoning Administrator set forth in her letter dated on October 31, 2008 ("Decision") regarding the Appellant's Design Review Application filed August 28, 2008 ("Application").

This letter constitutes the NOTICE OF APPEAL of the above-referenced Decision pursuant to Section 3.6 of the Hailey Zoning Ordinance. The Application in question is for a building located on Lot 1A, Block 3, in the Airport West Subdivision.

The reason for this appeal is to have the Decision overturned on the grounds that the Decision is:

- (1) not in accordance with or in violation of the validly adopted, effective and applicable ordinances of the City;
- (2) in violation of the constitution of the state of Idaho and/or statutory authority of the City;
- (3) based upon ordinances made upon unlawful procedures;
- (4) arbitrary, capricious and/or an abuse of discretion;
- (5) not supported by substantial evidence in the record; and,
- (6) based upon ordinances of the City which are void for

vagueness and lack of standards.

Without limiting the foregoing, the Appellant further states as follows:

The Appellant filed a separate design review application on August 28, 2008, for a building with different design elements from one which received a prior approval. The Appellant's right to submit design review applications is not limited in any way by Hailey's ordinances. So, the application is not to amend any existing approval, but a new application for design review approval.

The Decision is a restatement of an the earlier decision of the Administrator expressed to the Hailey Planning and Zoning Commission on October 20, 2008, which decision was discussed and upheld by motion of the Commission at that meeting. And, that decision of the Commission is the subject of a pending Notice of Appeal to the City Council. As such, it is not a new decision at all and therefore has no force and effect. Also, this duplicative Decision has required the Appellant to incur the costs of preparing and filing a second Notice of Appeal and pay another \$300.00 appeal filing fee to which the Appellant objects.

The Administrator based her decision on Section 6A.3.g of the Hailey Zoning Ordinance, which was purported to have been adopted by Hailey Ordinance 1009 on August 11, 2008. However, such ordinance is not valid because the required public hearing notices were not published in accordance with Idaho Code 60-106, and, therefore, under that statute are void and without force and effect. Similarly, said ordinance was not published in accordance with that law and therefore was not made effective within the thirty (30) days as required by law. As a result, the Administrator has no authority to approve any design review plans and any decision in that regard is in violation of the applicable city ordinances and state laws.

Even if the ordinance was valid, it does not provide the Administrator with sufficient legal standards by which to exercise the discretion purportedly granted to the Administrator thereunder. Therefore, the ordinance violates the standards of substantive due process under both the U.S. and Idaho constitutions, and is void for vagueness.

Even if the ordinance was valid, the Appellant's Design Review Application submitted August 28, 2008, does not involve minor changes under Section 6A.3.g, because the building design includes enclosed decks which under the ordinance result in a change in the building's footprint.

Furthermore, design elements which include an enclosed deck rather than a roof is not a minor difference in building design. Such a change is not subject to administrative

approval under Section 6A.3.g because such difference in building design may significantly impact a project's impact on neighboring properties.

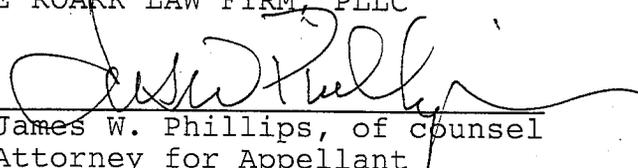
Also, the Design Review Application did not include installation of public sidewalks within the street right of way. This is a significant difference from an earlier approved design review application. Any condition imposed on the Appellant's Design Review Application dated August 28, 2008 to require such sidewalks violates the Appellant's rights guaranteed under the U.S. and Idaho constitutions.

The Appellant reserves the right to address additional points in its brief to be filed as part of this appeal.

By filing this Notice of Appeal, the Appellant is not withdrawing its prior Notice of Appeal filed October 29, 2008 or waiving any rights with regard thereto or with regard to the Design Review Application filed August 28, 2008.

SUBMITTED on this 12<sup>th</sup> day of November, 2008.

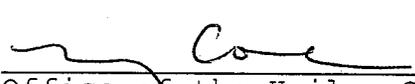
THE ROARK LAW FIRM, PLLC

by 

James W. Phillips, of counsel  
Attorney for Appellant

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RECEIVED together with estimated cost of transcript and record this 12<sup>th</sup> day of November 2008.

  
Office of the Hailey City Clerk

cc: client  
Marc Corney

JAMES W. PHILLIPS

RECEIVED

OCT 29 2008

FILE BR HD NW

October 28, 2008

Mayor and City Council  
City of Hailey, Idaho  
P.O. Box 945  
Hailey, ID 83333

**NOTICE OF APPEAL**

Re: **NOTICE OF APPEAL** by Leargulf, LLC, ("Appellant") of decision of Hailey Planning and Zoning Commission on October 20, 2008 ("Decision") regarding the Appellant's Design Review Application filed August 28, 2008 ("Application").

This letter constitutes the **NOTICE OF APPEAL** of the above-referenced Decision to the Mayor and City Council of the City of Hailey, Idaho, ("City") pursuant to Section 3.6 of the Hailey Zoning Ordinance. The Application in question is for a building located on Lot 1A, Block 3, in the Airport West Subdivision.

The Decision of the Hailey Planning and Zoning Commission ("Commission") was that the Application contained only minor changes from an earlier approved design review application and therefore the Commission could not hold the noticed public hearing and consider the Application on its merits, but rather, under Section 6A.3(g) of the Hailey Zoning Ordinance, the P&Z Administrator was required to review and act upon the Application.

The reason for this appeal is to have the Decision overturned on the grounds that the Decision is:

- (1) not in accordance with or in violation of the validly adopted, effective and applicable ordinances of the City;
- (2) in violation of the constitution of the state of Idaho and/or statutory authority of the City;
- (3) based upon ordinances made upon unlawful procedures;

- (4) arbitrary, capricious and/or an abuse of discretion;
- (5) not supported by substantial evidence in the record; and,
- (6) based upon ordinances of the City which are void for vagueness and lack of standards.

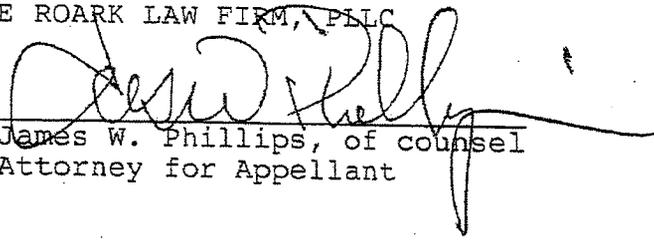
While the Appellant does not believe it is necessary, this Notice of Appeal is also filed as to any decision with regard to the Application made by the Hailey Planning and Zoning Administrator as expressed to the Commission at the meeting of October 20, 2008.

Since, as of date of the filing of this Notice of Appeal, the minutes of the October 20, 2008 Planning and Zoning Commission meeting have not yet been posted, or approved by the Commission, the Appellant reserves the right to supplement this Notice of Appeal to include any additional issues contained therein.

SUBMITTED on this 28th day of October, 2008.

THE ROARK LAW FIRM, PLLC

by

  
James W. Phillips, of counsel  
Attorney for Appellant

RECEIVED together with estimated cost of transcript and record this  
29<sup>th</sup> day of October 2008

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Office of the Hailey City Clerk

cc: client  
Marc Corney

