

AGENDA ITEM SUMMARY

DATE: 08/11/2008 DEPARTMENT: Legal

DEPT. HEAD SIGNATURE: 

SUBJECT:

Senior Council's ordinance No. 1011, Development Agreement, Quitclaim Deed and Addendum to Lease Agreement.

AUTHORITY: ID Code _____ IAR _____ City Ordinance/Code _____
(IF APPLICABLE)

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

Hailey has been approached by representatives of the Senior Citizen's Center about several real property issues involving the Center. If you recall, the Senior's Council sought and received a rezone of property owned by Hailey. As a condition of the rezone, a development agreement was required. The primary purpose of the development agreement was to restrict the uses on the property once it became limited business (LB). A development agreement is attached. The Senior Citizen's Center is presently the owner of the south half of the previously vacated Cedar Street. The Senior Citizen's Center has agreed to convey title to this portion of vacated Cedar Street provided Hailey agrees to lease this property to the Senior's Council subject to the existing lease. I am attaching a proposed Quitclaim Deed which allows for the conveyance of the south portion of Cedar Street and a Second Addendum to Lease Agreement which changes the property description to include all of the property to be leased by the Senior's Council. If you have any questions, please contact me. Thank you.

Ned

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS: Case # _____
Budget Line Item # _____ YTD Line Item Balance \$ _____
Estimated Hours Spent to Date: _____ Estimated Completion Date: _____
Staff Contact: _____ Phone # _____
Comments: _____

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IF APPLICABLE)

___ City Attorney	___ Clerk / Finance Director	___ Engineer	___ Building
___ Library	___ Planning	___ Fire Dept.	___
___ Safety Committee	___ P & Z Commission	___ Police	___
___ Streets	___ Public Works, Parks	___ Mayor	___

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

Make motions to a) authorize the Mayor to conduct the third reading of Ordinance No. 1011, read by title only and to sign Ordinance No. 1011 b) authorize the Mayor to sign the development agreement, c) authorize the Mayor to sign the quitclaim deed, and d) accept the quitclaim deed.

FOLLOW-UP REMARKS:

*

HAILEY ORDINANCE NO. 1011

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, AMENDING HAILEY'S ZONING ORDINANCE, ORDINANCE NO. 532, AND THE OFFICIAL ZONING MAP INCORPORATED THEREIN, BY CHANGING THE ZONING DISTRICT DESIGNATION OF THE HAILEY ZONING MAP, LOTS 11 AND 12, BLOCK 126, AND THE NORTH HALF OF VACATED CEDAR STREET, HAILEY TOWNSITE, FROM GENERAL RESIDENTIAL (GR) TO LIMITED BUSINESS (LB); PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; AND PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE UPON PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW.

WHEREAS, the Hailey City Council has found that the following amendment to the Hailey Official Zoning Map will generally conform to the Hailey Comprehensive Plan;

WHEREAS, the Hailey City Council has found that essential public facilities and services are available to support the full range of proposed uses without creating excessive additional requirements at public cost for the public facilities and services;

WHEREAS, the Hailey City Council has found that the proposed uses are compatible with the surrounding area;

WHEREAS, the Hailey City Council has found that the amendment will promote the public health, safety and general welfare of the general public; and

WHEREAS, the City of Hailey has entered into an Agreement, subject o Section 67-6511A of Idaho Code, with the lessee of said property and for the purpose of regulating the use of said property.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF

~~HAILEY, IDAHO, AS FOLLOWS:~~

Section 1. Hailey Ordinance No. 532 and Hailey Official Zoning Map incorporated therein are hereby amended by changing the zoning district designation of Lots 11 and 12, Block 126 and the north half of vacated Cedar Street, Hailey Townsite, from General Residential (GR) to Limited Business (LB), subject to a development agreement to be recorded with the Blaine County Recorder, pursuant to Idaho Code Section 67-6511A, Hailey Zoning Ordinance Section 14.8.

Section 2. Should any section or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

Section 3. All City of Hailey ordinances or resolutions or parts thereof, which are in conflict herewith, are hereby repealed.

Section 4. This ordinance shall be in full force and effect from and after the required three (3) readings, approval, and publication according to law.

PASSED AND ADOPTED BY THE HAILEY CITY COUNCIL AND APPROVED BY THE MAYOR
THIS ____ DAY OF _____, 2008.

Richard L. Davis, Mayor, City of Hailey

Attest:

Mary Cone, City Clerk

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is dated this ___ day of August, 2008, by and between the CITY OF HAILEY, IDAHO, a municipal corporation (the "City") and THE BLAINE COUNTY SENIOR'S COUNCIL, INC., an Idaho Non Profit Corporation ("Center"), and together with the City, the "Parties").

RECITALS

A. The City is a municipal corporation possessing all powers granted to municipalities under the applicable provisions of the Idaho Code, including the power to zone and enforce zoning within the boundaries of the property, and the power to contract.

B. Center leases property from the City located within the City at 721 3rd Avenue, Hailey, Idaho, the legal description of which is Lots 11 and 12, Block 126 and the north ½ of vacated Cedar Street hereto (the "Property"), and Center is the owner of the south ½ of the vacated Cedar Street, adjacent to Lot 1, Block 135, City of Hailey, which is currently zoned Limited Business. The Center has filed an application to rezone the entire parcel to Limited Business, and to vacate the lot line between the Property leased by the City to the Center and the property owned by the Center, all in accordance with and pursuant to the provisions of the City's Zoning Ordinance.

C. Concurrent with the execution of this Agreement, the Center shall quitclaim that portion of the vacated Cedar Street, owned by the Center, to the City, creating one parcel, all of which shall be owned by the City of Hailey, and the City agrees to amend the current lease agreement ("Lease Agreement") between the parties to include said parcel for the term therein. Under its present terms, the Lease Agreement shall expire ninety-nine (99) years after July 2, 1981

D. The Center is currently a non conforming use on the Property, and the City upon acceptance and execution of this agreement, and the Quitclaim Deed aforementioned, has duly noticed, and shall pass an ordinance fully effectuating the terms of this agreement, and in conformity with the laws of the City of Hailey, and the state of Idaho, thereby creating one parcel which shall be zoned Limited Business.

E. The Parties agree the Property shall be developed in accordance with the terms and conditions of this Agreement and any additional conditions and requirements imposed by the Hailey Planning and Zoning Commission and Hailey City Council during the approval of the re-zone application, and the lot line vacation.

F. The Center has applied for and received Design Review of a proposed expansion of the Property, all of which is conditioned upon the acceptance of this agreement by the parties thereto.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, promises, agreements, terms and conditions set forth herein, the Parties covenant and agree as follows:

1) **INCORPORATION OF RECITALS.** The Recitals set forth above are an integral part of this Agreement and are fully incorporated herein by this reference.

2) **ZONING/LOT LINE VACATION.** Upon approval of this agreement the Property shall be classified and zoned Limited Business, and the lot line aforementioned shall be vacated and the Property shall become one parcel. The Parties acknowledge that no re-zoning, nor lot line vacation of the Property can exist solely by virtue of this Agreement.

3) **DEVELOPMENT OF PROPERTY.** The Property shall generally be developed as set forth in those certain Findings of Fact, and Conclusions of law, adopted by the City on the 14th day of July, 2008, hereinafter **Exhibit "A,"** incorporated by reference herein, and in accordance with the conditions and requirements of the Hailey Zoning Ordinances.

a) **Limitations on Development.** All improvements to the Property shall be in accordance with the Limited Business District of the City of Hailey. The Development Agreement shall limit the Property to the following permitted uses within the Limited Business District and allow for no conditional uses, as set forth in Hailey's Zoning Ordinance, as amended, for the duration of the Lease Agreement with Blaine County Senior Center:

- a. Single Family Dwelling.
- b. Multiple-Family Dwellings.
- c. Dwelling Units within Mixed Use Buildings.
- d. Home Occupations.
- e. Professional Offices, excluding veterinarians.
- f. Churches.
- g. Schools and other educational services.
- h. Health care and social assistance.
- i. Catering Services.
- j. Arts, entertainment and recreation uses (indoor and outdoor).
- k. Personal Services where retail sales are clearly incidental to the principal use and no outside storage yard or facility is required.
- l. All Day Care Businesses.
- m. Manufactured Homes.
- n. Semi-Public Uses.
- o. Government offices and public administration, except correctional institutions.
- p. Parks.

4. **CONVEYANCE OF LAND TO CITY.** In further consideration of the terms and conditions herein, the Center has on the same date of this Agreement executed a Quitclaim Deed to the City for the south portion of vacated Cedar Street, referenced above.

5. **POLICE POWERS.** Except as otherwise expressly provided herein, nothing contained herein is intended to limit the police powers of the City 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.

6. **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.

7. **REMEDIES.** In the event the Property is not developed in accordance with this Agreement, or if Center 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, Center 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, a) the City has the right to take any and all remedies allowed at law or equity. Subject to the conditions set forth herein, in the event of a breach of this Agreement, in addition to all other remedies of law or in equity, this Agreement shall be enforceable by specific performance by either party hereto. All remedies shall be cumulative.

8. **ATTORNEY'S FEES.** If a suit, action, or other proceeding arising out of or related to this Agreement is instituted by any party to this Agreement, the prevailing party shall be entitled to recover its reasonable attorney fees, expert witness fees, and costs (i) incurred in any settlement negotiations, (ii) incurred in preparing for, prosecuting or defending any suit, action, or other proceeding, and (iii) incurred in preparing for, prosecuting or defending any appeal of any suit, action, or other proceeding. For the purpose of this section, "attorney fees" shall mean and include (i) attorney fees and (ii) paralegal fees. This section shall survive and remain enforceable notwithstanding any rescission of this Agreement or a determination by a court of competent jurisdiction that all or any portion of the remainder of this Agreement is void, illegal, or against public policy.

9. **NOTICES.** All notices and communications under this Agreement shall be in writing and shall be (i) delivered in person or (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or by overnight express carrier, addressed in each case to the party's address set forth in the introductory paragraph of

this Agreement, or (iii) sent by facsimile with the original to follow by mail in the manner described above. It is provided, however, that any party may change its respective address for purposes of receipt of any such communication by giving ten (10) days prior written notice of such change to the other party hereto in the manner provided above. All notices sent pursuant to the terms of this paragraph shall be deemed received (i) if sent by overnight, express carrier, on the next business day immediately following the day sent, (ii) if sent by registered or certified mail, on the third business day following the day sent or (iii) if sent by facsimile on the date so sent.

10. RELIANCE BY PARTIES. This Agreement is intended by Center to be considered by the City as part of Center's request for rezone, and lot line vacation of the Property and is contingent upon said approvals. Center acknowledges and intends the City to consider and rely upon this Agreement in its review and consideration of said rezone and lot line vacation requests.

11. RELATIONSHIP OF PARTIES. It is understood that the contractual relationship between the City and Center is such that neither party is the agent, partner, or joint venturer of the other party.

12. SUCCESSORS AND ASSIGNS; COVENANT RUNNING WITH LAND. This Agreement shall inure to the benefit of the City and Center and their respective heirs, successors and assigns. This Agreement, including all covenants, terms, and conditions set forth herein, shall be and 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.

13. RECORDATION AND RELEASE. This Agreement may be recorded with the Blaine County Recorder by either party.

14. NO WAIVER. In the event that the City or Center, 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 Center, the City, 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.

15. PARTIAL INVALIDITY. In the event that any provision of this Agreement is deemed to be invalid by reason of the operation of any law, or by reason of the interpretation placed thereon by any court or other governmental body, this Agreement shall be construed as not containing such provision and the invalidity of such provision shall not affect the validity of any other provision hereof, and any and all other provisions hereof which otherwise are lawful and valid shall remain in full force and effect.

16. **ENTIRE AGREEMENT.** This Agreement sets forth the entire understanding of the parties hereto, and shall not be changed or terminated orally. Any other agreements between the parties, express or implied, are hereby cancelled and of no further force nor effect. It is understood and agreed by the parties hereto that there are no verbal or written promises, agreements, stipulations or other representations of any kind or character, express or implied, other than as set forth in writing in this Agreement.

17. **EXHIBITS.** All exhibits referred to herein are incorporated in this Agreement by reference, whether or not actually attached.

18. **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.

19. **NO THIRD PARTY RIGHTS.** 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.

20. **GOVERNING LAW.** The validity, meaning and effect of this Agreement shall be determined in accordance with the laws of the State of Idaho applicable to agreements made and performed in that state.

21. **TIME OF ESSENCE.** Time is of the Essence in this Agreement.

22. **NECESSARY ACTS.** Each party agrees to perform any further acts and execute any documents that may be reasonably necessary to effect the purpose of this Agreement.

23. **CAPTIONS TO PARAGRAPHS.** The captions to the paragraphs of this Agreement are for convenience only and shall not be deemed to enlarge, diminish, explain or in any manner affect the meaning of such paragraphs.

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

DATED this ____ day of August, 2008.

CITY OF HAILEY

By: _____
Richard L. Davis, Mayor

ATTEST:

Hailey City Clerk

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

On June 23, 2008, the Hailey City Council considered an application submitted by the Blaine County Senior Center for an amendment to the Hailey Zoning Map. 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 and mailed to property owners within 300 feet and to public agencies and area media on June 4, 2008; and notice was posted on all external boundaries of the property on June 16, 2008.

Application

The proposed amendment would change the zoning for Lots 11 and 12, and the north ½ of vacated Cedar Street (721 3rd Avenue South) from General Residential (GR) to Limited Business (LB), within the Townsite Overlay to allow for parking credits with improvements to the City right-of-way, to allow a greater lot coverage percentage, and to be considered as a permitted use. The use is currently a non-conforming use in the GR district. Currently, the parcels of land occupied by the Blaine County Senior Center are mix zoned. Lots 11 & 12, Block 126 and the north ½ of vacated Cedar Street are zoned GR, while the south ½ of vacated Cedar Street is zoned LB. The rezone request would give all parcels a single zoning classification of LB.

The current use for the property is a Senior Center, which falls under the category of semi-public use. Uses adjacent to the subject property include: a residence, a school, an armory, and a park. The areas to the south and west of the property are zoned LB. Adjacent to the south side of the property is a single family residence zoned LB. To the west of the property is the Wertheimer Park (Rodeo Grounds). The areas to the north and east are zoned GR. Adjacent to the north side of the property is the Silver Creek Alternative School. Adjacent to the east of the property, directly across Third (3rd) Avenue is the Armory. Diagonal (to the southeast, across Third (3rd) Avenue) from the Senior Center is Roberta McKercher Park, zoned Recreational Green Belt.

Procedural History

The applicant has concurrently applied for Design Review for an addition and remodel of an existing building, which was conditionally approved on April 24, 2008 by the Hailey Hearing Examiner. Currently, the Blaine County Senior Center is the lessee of City owned Lots 11 and 12, Block 126 and the north ½ of vacated Cedar Street. The lease agreement will expire in 2080. The Blaine County Senior Center owns the south ½ of vacated Cedar Street. The current building and its use are nonconforming; therefore, Design Review approval is contingent upon the approval of the rezone and preliminary plat applications, which will eliminate the nonconforming issues associated with the subject property.

The project does not propose a change in use. In the GR District a semi-public use, such as the Blaine County Senior Center, is a conditional use, requiring a conditional use permit. In the LB District this use is a permitted use. The Blaine County Senior Center is currently a non-conforming use, without possession of a conditional use permit. Section 13.5 of the Hailey's Zoning Ordinance prohibits the expansion of non-conforming uses; therefore, if the proposed rezone is not approved, a conditional use permit would need to be obtained prior to the issuance of a building permit. The proposed rezone would change the non-conforming use to a conforming use.

The building currently straddles the lot line shared by the north ½ and south ½ of vacated Cedar Street. The building is nonconforming and the proposed addition would increase the degree of nonconformity, requiring the elimination of the lot line. The lot line adjustment, eliminating the lot line between the north (City owned) and south (Senior Center owned) ½ of vacated Cedar Street, requires the Senior Center to deed the south ½ of vacated Cedar Street to the City, with the City's acceptance. The representative of the Senior Center has expressed a willingness to convey title for this property to the City of Hailey.

Analysis and Discussion

The Townsite Overlay District is an overlay district, setting forth bulk regulations and design standards. Where the regulations specified in the Townsite Overlay District differ from corresponding regulations specified for the underlying zoning district, the requirements of the Townsite Overlay District apply and control. The Townsite Overlay requirements do not affect the use regulations of the underlying zoning district.

When considering this rezone the Council evaluated the differences between the two districts; Townsite Overlay bulk regulations with underlying zoning regulations and underlying zoning regulations without the Townsite Overlay District. In the event that the subject property is ever removed from the Townsite Overlay boundary the underlying district regulations would apply.

The substantial differences in use, between GR and LB districts, are listed below.

In addition to the permitted uses allowed in General Residential, Limited Business also allows for the following additional permitted uses:

- lodging establishments
- professional offices
- excluding veterinarians
- health care and social assistance
- real estate and property management companies
- catering services
- arts, entertainment and recreation uses (indoor and outdoor)
- Personal services where retail sales are clearly incidental to the principal use and no outside storage yard or facility is required
- semi public uses
- government offices and public administration, except correctional institutions
- PWSFs or WCFs, attached to street poles, upon the issuance of a wireless permit in

accordance with the provisions of Article VIIA of the Hailey Zoning Ordinance.

Conditional uses allowed in LB and prohibited in GR district are as follows:

- Gasoline Stations and Automotive Repair and Maintenance
- Restaurants
- Wholesale distributors
- Convenience Stores
- Medical personal care stores
- Finance and insurance firms
- Construction contractors' offices with no exterior storage
- PWSF's and WCF's, mounted on any proposed freestanding tower (in GR it can be attached to street poles or mounted on existing buildings or structures, but not freestanding towers)

Accessory Uses allowed in LB, but prohibited in the GR district are as follows:

- Combustible liquid tanks
- PWSF's and WCF's, mounted on existing buildings or structures.

The differences in bulk requirements can be evaluated separately, with and without regard to the Townsite Overlay District.

The difference in bulk requirements without regard to the Townsite Overlay are as follows:

Bulk Regulations	LB	GR
Maximum townhouse sub-lots per acre	20	10
Maximum multi-family residential aggregate density	One (1) dwelling unit per 1/20 of an acre (20 units/acre)	One (1) dwelling unit per 1/10 of an acre (10 units/acre)
Maximum aggregate gross floor area for individual retail/wholesale trade or grouped retail/wholesale trade	36,000 square feet	N/A (Not a permitted use)
Riparian setback	N/A (No riparian setback)	Required
Maximum Lot Coverage	N/A (No maximum)	40%
Size of Detached Accessory Dwelling Unit	N/A (No minimum or maximum)	Minimum gross floor area of 300 square feet and a maximum of 950 square feet

The following are the bulk regulation differences between GR and LB, set forth in the Townsite Overlay District, Section 4.13.6 of the Hailey Zoning Ordinance:

Bulk Requirements	LB in Townsite Overlay	GR in Townsite Overlay
Maximum Building Height	35 feet	30 feet
Maximum Lot Coverage	70%	25-40% depending on building height and whether a garage is on-site
Maximum Lot Size	No maximum	18,000 square feet

The purpose of the LB District is to provide areas for a wide range of residential uses, restricted business uses, and medical facilities. The LB District is intended to allow for commercial uses that would not detract from the established downtown retail businesses, hence general retail is not allowed.

The purpose of the GR District is to provide areas for a variety of residential uses, and a limited number of other uses compatible with this type of residential development. The intent is to preserve the favorable amenities associated with a residential neighborhood.

Standards of Evaluation

Section 14.6 of the Hailey Zoning Ordinance establishes the standards for proposed zoning ordinance map amendments. For each applicable standard (in bold print), the Council makes the following Findings of Fact:

1. The proposed amendment is in accordance with the Comprehensive Plan;

The Comprehensive Plan Land Use Map reflects suitable projected land uses for the City. It considers existing conditions, trends, and desirable future situations, the objective being a balanced mix of land uses for the community and establishes a basis and direction for the expansion and/or location of business, residential, industrial, institutional and green space areas within and adjacent to the City. The Land Use Map depicts the area of the proposed rezone as "Transitional – Mixed use, including residential, providing a buffer between residential neighborhoods and intense business use." The Council referred back to the purpose of the LB District and determined that rezoning this area to LB is consistent with the Land Use Map. However, the property shall be subject to a Development Agreement, which will eliminate certain uses permitted in the LB District, which are not compatible with the Land Use Map's definition of "Transitional." The nature of the Senior Center's use is neither business or residential and has existed on this site since 1981.

Land Use Districts, Section 5.4 states, "Provide adequate areas for institutional and public facilities, such as schools, senior care, medical, judicial and other community facilities, intergrated within the community."

- Due to a growing elderly population, the Blaine County Senior Center proposes to expand their facility, which requires a rezone to comply with maximum lot coverage regulations. There are residential dwelling units to the south of the property. The Council considered the impact the rezone may have on the surrounding residential uses as well as whether the expansion will help "provide an adequate" community facility, based on the applicants intentions to expand the current Senior Center. The Senior Center has existed on this site since 1981 and has a 99 year lease with the City of Hailey for the site.

Population Diverstiy, Section 7.2 states, "Encourage proposals that seek to improve Hailey's social environment, such as educaitonal facilites and programs, cultural events, and community amenities."

- The Council considered how the proposed zone change may improve Hailey's social environment by providing an adequate sized facility to accommodate its use as a Senior Center.

Community Design, Section 13.0 states, "Encourage in-fill of vacant property in and around the business core."

- The Council considered the Senior Center's request for expanding the existing building onto existing vacant areas, thereby in-filling, instead of rebuilding a larger facility in an area further from Hailey's core, contributing to sprawl and decreasing the ability or convenience of multi-modal transportation access.

Due Process and Public Input, Section 5.8 states, "Proactively amend the Hailey Zone District map to resolve significant conflicts between the Land Use Map and the Zoning Map."

- The Council determined that the rezone, subject to a Development Agreement is compatible with the Land Use Map given that the property is shown as a "Transitional" area on the Land Use Map and the nature of the existing use.

The applicant has addressed numerous sections of the Comprehensive Plan. The following are a few excerpts from the applicant's analysis:

- Growth Management, Section 12.0 - "By improving the existing facility and expanding on the existing property, we feel that this is very responsible with regards to growth management; this is based in contrast to moving the facility to another site, potentially further from the city core. By expanding and improving where we are located we are being more responsible to our community since the location is so centrally located and can accommodate the much needed growth for our community's patrons."
- Land Use Districts, Section 5.0 - "This facility promotes a higher density type of use that is close to the city core and is within walking distance to many city amenities. This location promotes diverse neighborhoods and adds to the community's character. The CSCS uses buses to pick up many of the patrons and is also providing bicycle racks and improving sidewalks in the public right of way which promote multi-modal transportation means."
- Population 7.0 - "As the population increases in Hailey; this facility provides a much-needed social support service and facility for the largest and ever growing senior citizen population. This facility is a not for profit business and does not charge fees for the services that they provide hereby further supporting our local population in need."

Finding: Based on the above analysis, the City Council determines that the rezone is in accordance with the Comprehensive Plan.

2. Essential public facilities and services are available to support the full range of proposed uses without creating excessive additional requirements at public cost for the public facilities and services;

Block 126, Lots 11 and 12, and the north ½ of vacated Cedar Street, Hailey Townsite are served by all public services.

Finding: The City Council determines that all essential public facilities and services are available to support the full of proposed uses without creating excessive requirements or cost.

3. The proposed uses are compatible with the surrounding area; and

There are a mix of uses and zoning near the Blaine County Senior Center. The areas to the south and west of the property are zoned LB. The LB District extends south to Highway 75 and west to Main Street. The areas to the north and east are zoned GR. The GR District extends north to Elm Street and east to 4th Avenue. The GR District that is contiguous with Block 126, Lots 11 and 12 and the north ½ of vacated Cedar Street comprises a total of eight (8) to nine (9) blocks. It is situated between LR-1, Business, and Transitional districts. The area diagonal (to the southeast, across 3rd Avenue) from the Senior Center is zoned Recreational Green Belt.

Lots 11 and 12, Block 126 and the north ½ of vacated Cedar Street may not remain as its current use in perpetuity; therefore, the rezone application should be evaluated with all permissible LB District uses in mind. As previously stated, the purpose of the LB District is to provide areas for a wide range of residential uses, restricted business uses, and medical facilities. The LB District is intended to allow for commercial uses that would not detract from the established downtown retail businesses, hence general retail is not allowed. In light of the surrounding uses and zoning and based on the purpose and intent of the LB and GR districts and the nature of the existing use, the Council determined that the rezone, subject to a Development Agreement, of this property is compatible with the surrounding uses.

Pursuant to Section 14.8 of the Hailey Zoning Ordinance, the Council approved the rezone subject to a Development Agreement. The development agreement shall limit the permitted uses in the LB and allow for no conditional uses in LB, for the duration of the lease agreement (agreement expires in 2080). This will help ensure the continuation and respect of the residential character of the nearby neighborhood and thereby, limit the perception of the business area encroaching into the residential area.

Finding: The City Council determines that the proposed use is compatible with the surrounding area, yet other LB uses are not.

4. The proposed amendment will promote the public health, safety and general welfare.

Barring any unforeseen circumstances, the use of the property as a Senior Center will remain at least until the lease's expiration in 2080. A connected and supported social environment for all demographics is one aspect of public health. The Council considered whether accommodating a facility (approving the rezone to allow for the proposed expansion) that serves to enhance the elderly population's quality of life will promote the general welfare and social health of the public.

Finding: The City Council determines that the rezone would promote the public health, safety and general welfare.

CONCLUSIONS OF LAW AND DECISION

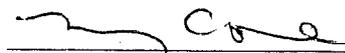
Based upon the above Findings of Fact, the Council makes the following Conclusions of Law and Decision:

1. Adequate notice, pursuant to Section 14.4.1 of the Hailey Zoning Ordinance No. 532 and Idaho Code, Section 67-6511, was provided.
2. The Zoning Map amendment is in accordance with the Hailey Comprehensive Plan.
3. The Zoning Map amendment shall be approved subject to a Development Agreement.
4. The Development Agreement shall limit the subject property to the following permitted uses within the Limited Business District and allow for no conditional uses for the duration of the lease agreement with Blaine County Senior Center:
 - a. Single Family Dwelling.
 - b. Multiple-Family Dwellings.
 - c. Dwelling Units within Mixed Use Buildings.
 - d. Home Occupations.
 - e. Professional Offices, excluding veterinarians.
 - f. Churches.
 - g. Schools and other educational services.
 - h. Health care and social assistance.
 - i. Catering Services.
 - j. Arts, entertainment and recreation uses (indoor and outdoor).
 - k. Personal Services where retail sales are clearly incidental to the principal use and no outside storage yard or facility is required.
 - l. All Day Care Businesses.
 - m. Manufactured Homes.
 - n. Semi-Public Uses.
 - o. Government offices and public administration, except correctional institutions.
 - p. Parks.

Approved this 14th day of July, 2008.


Rick Davis, Mayor, City of Hailey

Attest:


Mary Cone, City Clerk



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th 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:

- | | | |
|-------------------------------------|----------------|-----------------------------|
| <input checked="" type="checkbox"/> | U.S. Mail | Blaine County Senior Center |
| <input type="checkbox"/> | Via Facsimile | P.O. Box 28 |
| <input type="checkbox"/> | Hand Delivered | Hailey, ID 83333 |
| <input checked="" type="checkbox"/> | U.S. Mail | Jolyon Sawrey, Vital ink |
| <input type="checkbox"/> | Via Facsimile | 30 Wyatt Drive |
| <input type="checkbox"/> | Hand Delivered | Bellevue, ID 83313 |

CITY OF HAILEY

By Becky Mead
Becky Mead, Administrative Assistant

SECOND ADDENDUM TO LEASE AGREEMENT

THIS SECOND ADDENDUM TO LEASE AGREEMENT is made this ____ of August, 2008, by and between the CITY OF HAILEY, an Idaho municipality, ("Lessor"), and the BLAINE COUNTY SENIOR'S COUNCIL, INC., an Idaho nonprofit corporation ("Lessee").

RECITALS

A. The parties executed a Lease Agreement on July 2, 1981 ("Lease Agreement"), whereby Lessee leased certain real property in Hailey for ninety-nine (99) years for the purposes of constructing a senior citizen's center and providing services to senior citizens.

B. On June 1, 1989, the parties executed an Addendum to Lease Agreement whereby the legal description of the leased premises was revised.

C. Following the execution of the Addendum to Lease Agreement, Lessor agreed to lease Lessee Lot 11 and Lessor has received a quitclaim for a portion of the vacated Cedar Street.

D. With the acceptance of the quitclaim deed, the Lessor is the owner of Lots 11 and 12, Block 126 of the Hailey Townsite plat and the vacated portion of Cedar Street adjacent to Lot 12, Block 126 of the Hailey Townsite plat ("Leased Premises").

E. Subject to the terms and conditions set forth herein, the parties desire to execute a Third Addendum to Lease Agreement to allow the Leased Premises to be leased by Lessee for the remainder of the ninety-nine (99) year lease.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual agreement hereinafter contained and subject to the terms and conditions hereinafter stated, it is hereby understood and agreed by the parties hereto as follows:

1. Paragraph 1 of the Lease Agreement is amended to read as follows:

1) Lessor hereby leases and demises unto Lessee the following described real property located within the City of Hailey, Blaine County, Idaho:

All of that portion of Cedar Street located directly between Block 126 and Block 135, east of the alley dividing those blocks and, in addition, Lots 11 and 12 of Block 126, all in the City of Hailey, as found on the official plat thereof on file in the office of the County Recorder of Blaine County, Idaho.

2. All other terms and conditions of the Lease Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Second Addendum of Lease Agreement on the day and year first above written.

CITY OF HAILEY

By _____
Richard L. Davis, Mayor

ATTEST:

Mary Cone, City Clerk

BLAINE COUNTY SENIOR'S COUNCIL, INC.

By: _____

AGENDA ITEM SUMMARY

DATE: 06-23-08

DEPARTMENT: Planning

DEPT. HEAD SIGNATURE: BR

SUBJECT: Ordinance vacating a remnant portion of the alley located within Block 78, Original Hailey Townsite. # 1014

AUTHORITY: ID Code _____ IAR _____ City Ordinance/Code _____
(IF APPLICABLE)

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

The Council approved findings of fact on June 9, 2008 vacating a remnant portion of the alley located within Block 78, Original Hailey Townsite. An ordinance and quitclaim deed is required to finalize the decision.

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IF APPLICABLE)

<input type="checkbox"/> City Attorney	<input type="checkbox"/> Clerk / Finance Director	<input type="checkbox"/> Engineer	<input type="checkbox"/> Building
<input type="checkbox"/> Library	<input type="checkbox"/> Planning	<input type="checkbox"/> Fire Dept.	<input type="checkbox"/> _____
<input type="checkbox"/> Safety Committee	<input type="checkbox"/> P & Z Commission	<input type="checkbox"/> Police	<input type="checkbox"/> _____
<input type="checkbox"/> Streets	<input type="checkbox"/> Public Works, Parks	<input type="checkbox"/> Mayor	<input type="checkbox"/> _____

ACTION OF THE CITY COUNCIL:

Date _____

City Clerk _____

FOLLOW-UP:

*Ord./Res./Agmt./Order Originals: _____ *Additional/Exceptional Originals to: _____
Copies (all info.): _____ Copies (A/S only) _____
Instrument # _____

6/23 - council continued the discussion / postponed reading until July 14th - no quorum for this part of the meeting -

7/14 - 1st Reading - assign ordinance # 1014

7/28 - 2nd Reading

8/11 - 3rd Reading

HAILEY ORDINANCE NO. 1014

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, VACATING THAT PORTION OF THE CITY RIGHT-OF-WAY WITHIN BLOCK 78 ALLEY, ORIGINAL HAILEY TOWNSITE; PROVIDING FOR EXECUTION OF A QUITCLAIM DEED BY THE MAYOR CONVEYING TITLE TO SAID VACATED PROPERTY TO THE OWNER OF PROPERTY ADJACENT TO THE VACATED RIGHT-OF-WAY; AND PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE UPON PASSAGE, APPROVAL, AND PUBLICATION ACCORDING TO LAW.

WHEREAS, the Hailey City Council has determined, and hereby finds, that the remaining portion of the alley within Block 78, Original Hailey Townsite, has not been used by the City of Hailey as a public alley right-of-way, is no longer needed for public use, and is of no significant use or value to the City and that the vacation of same is expedient for the public good; and

WHEREAS, the Hailey City Council believes it is appropriate to vacate the remaining portion of the alley within Block 78, Original Hailey Townsite.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HAILEY, IDAHO, AS FOLLOWS:

Section 1. The city of Hailey hereby vacates that remaining portion of the alley within Block 78, Original Hailey Townsite, as shown on the official Plat of the City of Hailey on file in the office of the Blaine County Recorder, more particularly described in attached Exhibit "A."

Section 2. The Mayor of the City of Hailey is hereby authorized to execute and deliver a Quitclaim Deed, on behalf of the City of Hailey, transferring title to the property vacated as deemed in the best interest of the adjacent property owner pursuant to Idaho Code Section 50-311.

Section 3. This Ordinance shall be in full force and effect from and after its passage and publication according to law.

PASSED AND ADOPTED BY THE HAILEY CITY COUNCIL AND APPROVED BY THE MAYOR THIS ____ DAY OF AUGUST, 2008.

Richard L. Davis, Mayor, City of Hailey

Attest:

Mary Cone, City Clerk

AGENDA ITEM SUMMARY

DATE: 08/11/2008 DEPARTMENT: Legal

DEPT. HEAD SIGNATURE: _____



SUBJECT:

Quitclaim Deed

AUTHORITY: ID Code _____ IAR _____ City Ordinance/Code _____
(IF APPLICABLE)

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

I am attaching a proposed Quitclaim Deed which allows the conveyance of an approximately 102 square foot parcel which has been vacated in Hailey Ordinance No. 1014.

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS: Casele # _____

Budget Line Item # _____ YTD Line Item Balance \$ _____
Estimated Hours Spent to Date: _____ Estimated Completion Date: _____
Staff Contact: _____ Phone # _____
Comments: _____

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IF APPLICABLE)

___ City Attorney	___ Clerk / Finance Director	___ Engineer	___ Building
___ Library	___ Planning	___ Fire Dept.	_____
___ Safety Committee	___ P & Z Commission	___ Police	_____
___ Streets	___ Public Works, Parks	___ Mayor	_____

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

Motion to authorize the mayor to sign the quitclaim deed.

FOLLOW-UP REMARKS:

*

ALPINE ENTERPRISES INC.

Surveying, Mapping, GPS, GIS and Natural Hazards Consulting

LEGAL DESCRIPTION OF A PORTION OF THE ALLEY WITHIN BLOCK 78, CITY OF HAILEY, SECTION 9, T.2N., R18E., B.M. TO BE VACATED

A Triangular Parcel of land, being a remaining Portion of the Alley within Block 78, City of Hailey, Section 9, Township 2 North, Range 18 East, Boise Meridian, Blaine County, Idaho; being more particularly described as follows:

Commencing at a Brass Cap, marking the Northeast Corner of said Section 9, proceed S 84°55'54" W, 1047.29 feet to a 5/8" rebar by RFW, marking the Southeasterly Angle Point in the Boundary of Lot 2, Block 3, Dove Meadows Subdivision, which point is the **TRUE POINT OF BEGINNING**;

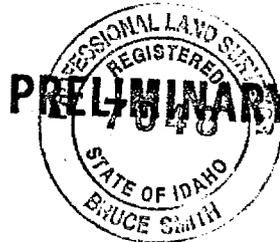
Thence S 27°11'34" W, 20.98 feet along the Westerly Boundary of Lot 2, Block 2, Hailey Replat (a.k.a. Mother Lode Subdivision), to a point;

Thence N 28°48'42" W, 11.73 feet along the South Boundary of the Alley within Block 78, Hailey Townsite, to the Easterly Boundary of Lot 2, Block 3, Dove Meadows Subdivision, to a point;

Thence N 61°11'18" E, 17.40 feet along the Easterly Boundary of Lot 2, Block 3, Dove Meadows Subdivision, to the **TRUE POINT OF BEGINNING**, containing 102 Sq. Ft., more or less.

Basis of Bearings is Idaho State Plane Coordinate System, NAD83(1992), Central Zone, at Grid, in US Survey Feet. Combined Scale Factor is 0.99970076. Ground Distances will be slightly longer.

RECEIVED



BS:bs
1/3/2008

341_alley-vacate_Legal.doc

P.O. Box 2037, 280 Rivers Street East, Lower Level; Ketchum, ID 83340 208-727-1988 fax: 208-727-1987 e-mail: alpine7@mindspring.com

EXHIBIT A
- 135 -

AGENDA ITEM SUMMARY

DATE: 06-23-08

DEPARTMENT: Planning

DEPT. HEAD SIGNATURE: 

SUBJECT: 1st reading of Ordinance No. 1009 – amending Hailey's Zoning Ordinance, Ordinance No. 532, by amending Article 6A.3, Review of Proposals and Authority of the Administrator.

AUTHORITY: ID Code _____ IAR _____ City Ordinance/Code _____
(IF APPLICABLE)

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

The amendments will allow for design review exemption of certain projects and would establish procedures for review of modifications to design review approval. The Commission recommended approval on April 21, 2008.

The public hearing and first reading of this ordinance was conducted on May 19, 2008. For the second reading the Council requested limiting the authority the Planning and Zoning Commission recommended be given to the administrator to approve minor modifications to design review approval. On June 9, 2008 staff noted that this change will result in a minimum 2 week delay between a request to modify design review and a decision from the city. The Council subsequently decided to keep the language as recommended by the Commission and have another first reading of the ordinance.

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IF APPLICABLE)

___ City Attorney	___ Clerk / Finance Director	___ Engineer	___ Building
___ Library	___ Planning	___ Fire Dept.	___
___ Safety Committee	___ P & Z Commission	___ Police	___
___ Streets	___ Public Works, Parks	___ Mayor	___

ACTION OF THE CITY COUNCIL:

Date _____

6/23 - council continued this discussion to July 14th mtg.
 7/14 - council asked for revisions - Williamson made revisions
 7/14 - 1st Reading on 7/14 - conducted 2nd Reading (2nd)
 8/11 - 3rd Reading

City Clerk _____

FOLLOW-UP:

*Ord./Res./Agmt./Order Originals: _____ *Additional/Exceptional Originals to: _____
 Copies (all info.): _____ Copies (AIS only) _____
 Instrument # _____

HAILEY ORDINANCE NO. 1009

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, AMENDING HAILEY'S ZONING ORDINANCE, ORDINANCE NO. 532, BY AMENDING ARTICLE 6A, DESIGN REVIEW, SECTION 6A.3, TO ADD PROVISIONS FOR DESIGN REVIEW EXEMPTION AND TO ADD PROCEDURES FOR REVIEW OF MODIFICATIONS TO DESIGN REVIEW APPROVAL; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; AND PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE UPON PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW.

WHEREAS, the Hailey City Council has found that the following amendment to the Hailey Zoning Ordinance will generally conform with the Hailey Comprehensive Plan;

WHEREAS, the amendments will not create excessive additional requirements at public cost for public facilities and services; and

WHEREAS, the amendment will be in accordance with the safety and welfare of the general public.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HAILEY, IDAHO, AS FOLLOWS:

Section 1. Section 6A.3, Review of Proposals and Authority of the Administrator, of the Hailey Zoning Ordinance No. 532, is hereby amended by the addition of the following language:

- f. The Administrator has the authority to recommend exemption of certain projects from the design review requirements, upon finding; the project is minor, will not conflict with the design review standards of this Chapter and will not adversely impact any adjacent properties. Examples include, but are not limited to minor deck additions, changes to siding materials, changes to an existing window or door, an addition of a window or door, and minor landscape changes. Such recommendation for exemption shall be drafted in the form of Findings of Fact and Conclusions of Law, subject to final decision by the Commission on its consent agenda prior to issuance of a building permit. Should the Commission deny the Administrator's recommendation or should the Administrator determine that the proposal does not meet all of the above evaluation criteria, the project shall be subject to the provisions of this chapter prior to issuance of a building permit.
- g. 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 and may include, but are not limited to changes to approved colors and/or siding materials, changes to site plans that do not increase 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 location, or changes to windows that do not significantly affect project design, appearance or function. 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. For modifications to design review approval that are determined by the Administrator not to be minor, the Administrator has the authority to recommend approval or denial of such modifications, subject to final decision by the Commission on its consent agenda. Such recommendation for approval or denial shall be drafted in the form of Findings of Fact and Conclusions of Law.

Section 2. Should any section or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

Section 3. All City of Hailey ordinances or resolutions or parts thereof, which are in conflict herewith, are hereby repealed.

Section 4. This ordinance shall be in full force and effect from and after the required three (3) readings, approval, and publication according to law.

PASSED AND ADOPTED BY THE HAILEY CITY COUNCIL AND
APPROVED BY THE MAYOR THIS ____ DAY OF _____, 2008.

Richard L. Davis, Mayor, City of Hailey

Attest:

Mary Cone, City Clerk

HAILEY ORDINANCE NO. 1010

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, AMENDING SECTION 2.04.010.05 OF THE HAILEY MUNICIPAL CODE TO PROVIDE PUBLIC HEARING PROCEDURES FOR EX PARTE COMMUNICATIONS, SITE VISITS AND NEW EVIDENCE; AMENDING SECTION 2.04.010.06 OF THE HAILEY MUNICIPAL CODE TO DELETE ANY REFERENCE TO ROBERT'S RULES OF ORDER AND TO CREATE PROCEDURES FOR MOTIONS; BY AMENDING CHAPTER 2.04 OF THE HAILEY MUNICIPAL CODE TO ADD A NEW SECTION 2.04.010.07 PROVIDING FOR PROCEDURES FOR SITE VISITS; BY PROVIDING FOR A SEVERABILITY CLAUSE; BY PROVIDING FOR A REPEALER CLAUSE; AND BY PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE UPON PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW.

WHEREAS, the City of Hailey has adopted an ordinance, creating Chapter 2.04 of the Hailey Municipal Code, providing for procedures for public hearings;

WHEREAS, the Hailey City Council believes it prudent to establish procedures for ex parte communications, site visits, new evidence and making motions; and

WHEREAS, the Mayor and the City Council find that amendments to Chapter 2.04 of the Hailey Municipal Code will clarify the procedures of public meetings by the Hailey City Council and Planning and Zoning Commission.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HAILEY, IDAHO, AS FOLLOWS:

Section 1. Section 2.04.010.05 of the Hailey Municipal Code is amended by the deletion of the stricken language and addition of the underlined language, as follows:

2.04.010.05 Public Hearings. If Idaho law or Hailey Ordinance requires a public hearing, the following procedure shall be followed with regard to all public hearings conducted by and before the City Council and the Planning and Zoning Commission:

1. City staff shall present an introduction and orientation;

2. The Mayor, City Council Members and Planning and Zoning Commission Members shall disclose whether they have viewed the property subject of the public hearing, and whether they have had an ex parte communication with the applicant, a member of the public or a representative of the applicant or a member of the public about the application being considered. The approximate date and who was present during a site visit should be disclosed. Ex parte communications must be disclosed by identifying the person and the person's employment or affiliation, and by providing a general description of the communication.

23. The applicant or interested party shall be then afforded the opportunity to present and explanation of the application, request or other matter being considered by the City Council or Planning and Zoning Commission;

34. The members of the City Council or Planning and Zoning Commission shall ~~then~~ have the opportunity to direct questions to the applicant or interested party;

45. Public hearing shall then take place, and members of the public shall being afforded the opportunity to be heard. The presiding officer shall have the discretion to set limits as to the time each individual may speak and/or the number of times each individual may speak. The presiding officer shall also have the authority to set an overall time limit for the entire public hearing;

56. After completion of all testimony and/or public comment, or at the conclusion of the time limit set for the public hearing, whichever shall first occur, the public hearing shall be closed;

~~6. The members of the City Council or Planning and Zoning Commission shall then have an opportunity to direct questions to the staff and/or the applicant or interested party;~~

7. The applicant shall be afforded a right to rebut any testimony or evidence presented as public comment;

8. In the event new material evidence is introduced after the public hearing is closed, the presiding officer shall again open the public hearing for the limited purpose of addressing the new evidence, in which case the applicant shall again be afforded a right to rebut any additional testimony or evidence.

89. A decision may then be rendered on the merits of the application or matter before the City Council or Planning and Zoning Commission, and shall be based on written findings of fact and conclusions of law to be prepared by the staff and presented for adoption at the next regular meeting of the City Council or Planning and Zoning Commission; and

910. Any matter under consideration by the City Council or Planning and Zoning Commission may by a motion properly made, seconded, and passed, tabled to a date uncertain or continued to a date certain, at which time the matter will be taken up again for action or decision.

Section 2. Section 2.04.010.06 of the Hailey Municipal Code is amended by the deletion of the stricken language and addition of the underlined language, as follows:

2.04.010.06 ~~Robert's Rules of Order. All actions taken shall be pursuant to Robert's Rules of Order, except that an item may be discussed and deliberated upon without a motion.~~

Motions.

1. All actions and decisions of the City Council or Planning and Zoning Commission are formalized by the process of making and voting on motions. After a public hearing is closed, the City Council or Planning and Zoning Commission shall deliberate. After deliberation a motion shall be made and seconded. Further deliberation may occur once a motion is made and seconded. The chair shall ask for a motion and vote. Those Council Members or Commissioners in favor of the motion say "aye"; those Council Members or Commissioners opposed to the motion say "no".

2. After a motion is made and there has been discussion on the motion, if an amendment has been suggested and discussed, then a motion to amend the motion is required. A motion should be amended as follows:

- a. A Council Member or Commissioner makes a motion to amend stating the amendment.
 - b. A Council Member or Commissioner seconds the amendment.
 - c. Chair asks for a vote on the amendment.
 - d. If amendment carries, the Chair then asks for a vote on the “entire motion as amended.”
 - e. If amendment fails, Chair asks for a vote on the “original motion.”
3. If a motion has been voted on and the motion needs to be withdrawn, then a motion to withdraw the approved motion is required. A motion should be withdrawn as follows:
- a. A Council Member or Commissioner makes a motion to withdraw stating what motion is being withdrawn.
 - b. A Council Member or Commissioner seconds the motion to withdraw.
 - c. Chair asks for a vote on the motion to withdraw.
 - d. If the motion to withdraw carries, then a new motion can then be made, seconded and voted on.
4. If a motion has been voted on and if voting members believe it is appropriate to reconsider the motion, then a motion for reconsideration is required at the next scheduled regular meeting of the City Council or Planning and Zoning Commission. Except as otherwise provided herein, motions for reconsideration shall only be made by a Council Member or Commissioner. A motion for reconsideration should be made as follows:
- a. A Council Member or Commissioner who voted on the prevailing side of the motion in question has to makes a motion for reconsideration stating what motion is being reconsidered.
 - b. A Council Member or Commissioner who voted on the prevailing side of the motion in question has to second.
 - c. Chair asks for a vote on the motion for reconsideration.
 - d. If the motion for reconsideration carries, deliberation can then occur on the matter and a new motion can be made, seconded and voted on.
5. An applicant may file a motion for reconsideration with the City Council or the Planning and Zoning Commission within fifteen (15) days of the date of the certificate of service on the findings of fact and conclusions of law. A **motion for reconsideration shall be limited to legal issues. New evidence shall not be a basis for reconsideration of a prior decision.** The applicant’s motion for reconsideration shall be heard at the next available hearing before the City Council or Planning and Zoning Commission. **If a motion for reconsideration is filed, the City Council or the Planning and Zoning Commission, as the case may be, shall first decide whether to grant a motion for reconsideration. If a motion for reconsideration is denied, the original decision shall remain in full force and effect. If a motion for reconsideration is granted, the City Council or the Planning and Zoning Commission, as the case may be, shall then conduct a public hearing**

allowing for legal notice to be provided, during which time the original decision may be remain in full force and effect or be modified. The time for an appeal shall be terminated by the filing of a timely motion for reconsideration which, if granted, could affect the findings of fact and conclusions of law. The time for an appeal begins to run when a motion for reconsideration is denied, or if granted, after the date of the certificate of service on the final findings of fact and conclusions of law on the application.

Section 3. Chapter 2.04 of the Hailey Municipal Code is amended by the addition of a new Section 2.04.010.07, as follows:

2.04.10.07 Site Visits. If the City Council or Planning and Zoning Commission wish to conduct a site visit, a motion should be made during a public hearing to conduct a site visit on a date certain. In such a case, the site visit should be conducted by the presiding officer and an audio recording should be maintained of the site visit.

Section 4. Severability Clause. If any section, paragraph, sentence or provision hereof or the application thereof to any particular circumstances shall ever be held invalid or unenforceable, such holding shall not affect the remainder hereof, which shall continue in full force and effect and applicable to all circumstances to which it may validly apply.

Section 5. Repealer Clause. All Ordinances or Resolutions or parts thereof in conflict herewith are hereby repealed and rescinded.

Section 6. Effective Date. This Ordinance shall be in full force and effect after its passage, approval and publication according to law.

PASSED AND ADOPTED BY THE HAILEY CITY COUNCIL and approved by the Mayor this _____ day of _____, 2008.

Richard L. Davis, Mayor
City of Hailey

ATTEST:

Mary Cone, City Clerk

AGENDA ITEM SUMMARY

DATE: 7/28/2008

DEPARTMENT: Legal

DEPT. HEAD SIGNATURE: _____

SUBJECT:

Tree Ordinance

Ord 1013

AUTHORITY: ID Code _____ IAR _____ City Ordinance/Code _____
(IF APPLICABLE)

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

Following the Council's review of the tree ordinance at your last meeting, I have included some language about notice to property owners and consultation, along with a right of appeal. In addition, I have added some language clarifying when a tree along a public right-of-way boundary is subject to the ordinance. Finally, I have made some formatting revisions.

I forwarded this draft to staff for review and comments. The only expressed concern was the language about consulting. The staff felt we should trust the Tree Committee to balance the preferences of the adjacent owner with the needs of the entire community.

If you have any questions, please contact me. Thanks.

Ned

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS

Case # _____
Budget Line Item # _____ YTD Line Item Balance \$ _____
Estimated Hours Spent to Date: _____ Estimated Completion Date: _____
Staff Contact: _____ Phone # _____
Comments: _____

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IF APPLICABLE)

___ City Attorney	___ Clerk / Finance Director	___ Engineer	___ Building
___ Library	___ Planning	___ Fire Dept.	___
___ Safety Committee	___ P & Z Commission	___ Police	___
___ Streets	___ Public Works, Parks	___ Mayor	___

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

Conduct a public hearing, and if appropriate, make a mMotion to approve Ordinance No. 1010 and to conduct a first reading of the ordinance.

FOLLOW-UP REMARKS:

*7/28 - Council ~~approved~~ made one revision -
~~consultant to~~
Ned Williamson to make change - conducted
8/11 - 3rd reading*

From: Mary Cone – City Clerk

MHE

Date: 8/7/08 – for August 11, 2008 City Council meeting

To: Mayor Davis, Hailey City Council, and Heather Dawson

The following text is excerpted from the contract and calls out the proposed addition to Becki Keefer's contract with the City to add Tree Ordinance administration duties.

2. Term. This Agreement shall initially have a term of twelve (12) consecutive months and shall commence on October 1, 2008, and terminate on September 30, 2009. Thereafter, this Agreement shall have a term of one (1) year, beginning October 1, 2009 and terminating September 30, 2010, and continuing with one (1) year terms, until the Agreement is terminated in accordance with this Agreement.

3. Duties.

3.2

c) Implement the Hailey Tree Ordinance and act as a liaison between the Hailey Tree Committee and the Hailey Mayor, City Council and other commissions and committees.

HAILEY ORDINANCE NO. 1013

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, PROVIDING POLICIES, REGULATIONS AND STANDARDS FOR A HAILEY TREE ORDINANCE; PROVIDING FOR A HAILEY TREE COMMITTEE; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE UPON PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW.

WHEREAS, the Mayor and the City Council of the City of Hailey have adopted the City of Hailey Parks, Lands & Trails Master Plan, Standards & Guidelines ("Master Plan"), which promotes diverse recreation opportunities within walking distance for the greatest number of residents of Hailey;

WHEREAS, the Master Plan recognizes that our trees, which make up our community forest, are an asset and contribute to reduced energy and maintenance costs, while making the community a more pleasant place to live and work; and

WHEREAS, in order to promote the health, safety and welfare of the general public, the Mayor and the City Council of the City of Hailey desire to ensure that our community forest is maintained and improved in a manner that ensures it is protected for future generations;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF HAILEY, IDAHO:

Section 1. Title 2 of the Hailey Municipal Code is amended by the addition a new Chapter 2.36, as follows:

Chapter 2.36

HAILEY TREE COMMITTEE

2.36.010 Purpose. It is the purpose of this ordinance to establish a Hailey Tree Committee to promote sound arboricultural practices and tree diversity and to promote public education of proper tree care practices.

2.36.020 Establishment. The Hailey Tree Committee is hereby established. The Hailey Tree Committee shall consist of five (5) voting members. Each member shall be appointed by the Mayor and approved by the City Council, shall have been a resident of Blaine County for two (2) years prior to appointment to the Hailey Tree Committee and shall be a resident of the City of Hailey at the time of appointment, except that one (1) member may reside outside the corporate limits of the City of Hailey, but within the City's Area of Impact. Each member must remain a resident of the City, or, in the case of the City's Area of Impact, within the impact area, during the term of his or her membership on the Hailey Tree Committee. Each member shall serve for a term of three (3) years. The terms shall be staggered and shall be filled in the same manner as original appointments, but replacements shall serve only until the expiration of the original term. The initial appointment term shall be one year for one member, two years for two members and three years for two members. Thereafter, appointments shall be for a

term of three years or until a successor is appointed. The Hailey Tree Committee shall elect officers from among the members of the Hailey Tree Committee. The chairperson shall preside at meetings of the Hailey Tree Committee. The vice chairperson shall, in the absence of the chairperson, perform the duties of the chairperson. All meetings of the Hailey Tree Committee shall be open to the public, and follow the requirements of Idaho's open meeting laws. The Hailey Tree Committee shall keep minutes and other appropriate written records of its resolutions, proceedings, and actions. All public hearings shall be conducted following public hearing procedures contained in Chapter 2.04 of the Hailey Municipal Code.

2.36.030 Recommending Body. The Hailey Tree Committee shall have no authority to bind any governing body affected by planning decisions. However, the Hailey Tree Committee shall have the power to make recommendations, upon a majority vote of its attending members, to the City Council, the Hailey Planning and Zoning Commission, the Hailey Historic Preservation Commission, and the Hailey Parks and Lands Board or other similar commissions or boards.

2.36.040 Powers and Duties.

A. Unless otherwise provided by law, the Hailey Tree Committee shall have the power to make whatever rules are necessary for the execution of its duties as set forth in this Ordinance. Rules of procedure and bylaws adopted by the Committee shall be available for public inspection. The Committee shall meet a minimum of four times a year.

B. The Hailey Tree Committee shall perform any and all of its obligations under Chapter 12.20 of the Hailey Municipal Code.

C. The Hailey Tree Committee shall draft and recommend necessary amendments to Chapter 12.20 of the Hailey Municipal Code. The Committee shall also create, draft and recommend a City of Hailey Urban Forestry Plan ("Forestry Plan") to the City Council. The Forestry Plan shall contain provisions for notice to adjacent property owners, who will be granted a right to comment on the planting, removal and maintenance of Public Trees. Should the Forestry Plan be accepted and codified by the Council, the Committee shall draft and recommend necessary amendments to those documents. The Forestry Plan shall be reviewed on a five-year basis.

D. The Hailey Tree Committee shall create, draft and recommend policy and implementation of policy concerning selection, planting, maintenance, and removal of trees, shrubs and other plants in the city.

E. The Hailey Tree Committee shall recommend the allocation of funds for the implementation of Chapter 12.20 of the Hailey Municipal Code, for the establishment of educational and informational programs, and for the development of policies and procedures regarding the city duties.

F. The Committee shall establish criteria for licensing to contractors and others for the removal and maintenance of Public Trees within the City of Hailey.

G. The Committee shall keep the City of Hailey apprised of its activities.

2.36.050 Conflict of Interest. Each member of the Hailey Tree Committee shall be governed by the Ethics in Government Act, Idaho Code §§ 59-701 *et seq.*, as amended.

Section 2. Title 2 of the Hailey Municipal Code is amended by the addition a new Chapter 12.20, as follows:

Chapter 12.20

HAILEY TREE ORDINANCE

12,20.010 Purpose. The purpose of this ordinance is to establish policies, regulations, standards and guidelines necessary to ensure that the City of Hailey will continue to realize the benefits of its community forest. The provisions of this ordinance are enacted to:

- A. Plan maintenance of city trees with sound arboricultural practices and encourage tree diversity based on the Forestry Plan; and
- B. Promote public education of proper tree care practices.

12,20.020 Definitions. For purposes of this Ordinance, the following words and phrases shall have the following meanings, unless another meaning is plainly intended:

“City of Hailey Urban Forestry Plan” or “Forestry Plan” shall mean that plan recommended by the Hailey Tree Committee and adopted by the Hailey City Council, pursuant to Section 2.36.040 of the Hailey Municipal Code.

“Flush Cut” shall mean cutting within the branch bark collar or ridge of a branch when pruning.

“Hailey Tree Committee” shall mean that committee established pursuant to Chapter 2.36 of the Hailey Municipal Code.

“Private Tree” shall mean any Tree, Shrub or other woody vegetation not on Public Property.

“Public Property” shall mean property owned by the City of Hailey, or a public right-of-way dedicated to the public, or a public easement. Public Property includes but is not limited to public streets, alleys and public parks.

“Public Tree” shall mean any Tree, Shrub or other woody vegetation whose trunk is located wholly or partially on Public Property. The term “Public Tree” includes Street Trees.

“Shrub” shall mean a perennial, multiple stemmed woody plant often formed by a number of vertical or semi-upright branches arising from close or at ground level, where any

branch is located wholly or partially on Public Property, and whose height at maturity is usually between three and fifteen feet and.

“Street Tree” shall mean any Tree, Shrub, or other woody vegetation on lands within City of Hailey street rights-of-way.

“Top” shall mean the act of lopping, rounding over or leaving long branch stubs when pruning, not pruning to an auxiliary branch.

“Tree” shall mean a woody perennial plant.

12.20.030 Public Trees.

12.20.30.01 No person, firm or legal entity shall plant, prune or remove any Public Tree without first obtaining an encroachment permit from the City of Hailey. All such permit applications shall be reviewed by the Hailey Tree Committee. The city may grant a permit or conditionally grant a permit only when such is consistent with provisions of this Chapter and/or other applicable laws or standards.

12.20.30.02 No person, firm or legal entity shall abuse, poison or mutilate any Public Tree, plant or Shrub or the root of any Public Tree, plant or Shrub, unless allowed pursuant to an encroachment permit issued under this Chapter.

12.20.30.03 No person, firm or legal entity shall Top any Public Tree or to Flush Cut any branch on Public Trees, unless allowed pursuant to an encroachment permit issued under this Chapter.

12.20.30.04 Any person, firm or legal entity contracting for the maintenance, removal or planting of Public Trees must enter into a contract for services with the City of Hailey. The contract shall be revocable for cause. Any person or entity must provide security in accordance with Section 12.16.080 of the Hailey Municipal Code.

12.20.030.05 Any utility company shall, upon review, be granted a yearly permit that allows work on Street Trees. Permits shall be subject to the following restrictions:

A. Work done on Public Trees and roots must meet the standards and practices as stated in the Forestry Plan.

B. The person or entity must provide security in accordance with Section 12.16.080 of the Hailey Municipal Code.

12.20.40.06 Owners of property adjacent to a Street Tree shall notify the City of Hailey if they are unable to ensure adequate maintenance for that Street Tree. Adequate maintenance shall include sufficient water, mulching young trees, and protection from compaction or injury by vehicles or other causes.

12.20.040 Exclusion. The City of Hailey has the right to plant, maintain, and remove any Public Tree or Shrub in order to promote public safety or to promote or implement the Forestry Plan.

12.20.050 Private Trees.

12.20.050.01 Each private property owner shall maintain any Tree or shrub on their real property, regardless whether the trunk of a Tree or any branch of a shrub is partially on Public Property, so that such Trees or shrubs do not endanger the public or become hazardous to any public street, alley or other public right-of-way, public utilities or other Public Property, consistent with provisions of this Ordinance and/or other applicable laws or standards.

12.20.050.02 Upon the discovery of a serious epidemic disease or pest in any Tree, the City of Hailey shall serve notice upon the owner of the Tree, whose trunk is located wholly or partially on private property, which shall require that owner to eradicate, remove or otherwise control such conditions within a given timeframe.

12.20.060 Enforcement.

12.20.060.01 Any person, firm or legal entity violating any provisions of this Chapter shall be guilty of a misdemeanor which shall be punishable by a maximum fine of \$300.00 or thirty (30) days in jail or both such fine and imprisonment.

12.20.060.02 In addition to the penalties set forth in Section 12.20.060.01, above, any person, firm or legal entity whose actions cause damage to or the destruction of a Public Tree shall be liable to the City of Hailey for the value of the Public Tree and all costs incurred by the City of Hailey in caring for, treating, pruning, removing and/or replacing the Public Tree.

Section 3. If any section, paragraph, sentence or provision hereof or the application thereof to any particular circumstances shall ever be held invalid or unenforceable, such holding shall not affect the remainder hereof, which shall continue in full force and effect and applicable to all circumstances to which it may validly apply.

Section 4. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

Section 5. This Ordinance shall be in full force and effect from and after its passage, approval, and publication according to law.

PASSED AND ADOPTED BY THE HAILEY CITY COUNCIL AND APPROVED BY THE MAYOR THIS _____ DAY OF _____, 2008.

Richard L. Davis, Mayor, City of Hailey

Attest:

Mary Cone, City Clerk

Publish: Wood River Journal _____, 2008