

**MINUTES OF THE REGULAR MEETING OF THE
HAILEY CITY COUNCIL
HELD MONDAY, JULY 11, 2005
IN THE HAILEY TOWN CENTER MEETING ROOM**

The regular meeting of the Hailey City Council was called to order at 5:35 p.m. by Mayor Susan McBryant. Present were Council members Martha Burke, Don Keirn, and Carol Brown. Rick Davis was absent. Staff present included City Attorney Ned Williamson and City Clerk Heather Dawson.

OPENING REMARKS

Mayor McBryant complimented city staff for the fine manner it made our city available to a multitude of people over the 4th of July holiday, and congratulated the Hailey Chamber of Commerce for a successful and dramatic event. It was a good 4th of July for everyone.

CONSENT AGENDA

Minutes of June 13 and June 27, 2005 were pulled from the consent agenda. Keirn moved to approve the consent agenda minus those two items. Burke seconded; the motion carried unanimously.

- CA 216 Motion to approve Findings of Fact, Conclusions of Law and Decision for approval of 841 Business Park Subdivision Final Plat
- CA 217 Motion to approve Findings of Fact, Conclusions of Law and Decision for approval of Mountain Sage II and Mountain Sage Townhouses Final Plat
- CA 218 Motion to approve Findings of Fact, Conclusions of Law and Decision for approval of Bluebird Subdivision Preliminary Plat
- ~~CA 219 Motion to approve minutes of June 13, 2005 and to suspend reading of them~~
- CA 220 Motion to approve minutes of June 25, 2005 and to suspend reading of them
- ~~CA 221 Motion to approve minutes of June 27, 2005 and to suspend reading of them~~
- CA 222 Motion to approve claims for utilities and credit cards incurred in the month of May, 2005
- CA 223 Motion to approve contract for Woodside Central Park construction.

CA 219 Minutes of June 13, 2005

McBryant made some corrections to the minutes of June 13, 2005, including on page 4, top paragraph, a dangling sentence, “availability of services in accordance”; adding “to fund a new fire station”; and adding “appears to be outside the intent of the permit”. Brown noted on page 4, “Burke” opened the public hearing, because McBryant had

recused herself. Burke moved to approve minutes of June 13, 2005 as corrected. Brown seconded; the motion carried with Keirn abstaining.

CA 221 Minutes of June 27, 2005

McBryant made changes to the minutes of June 27, 2005, on page 1, can't have nearly the same number of "residential dwellings" as in the city, and some other grammatical changes. Burke clarified that the use of schools is not a typical use in GR "as a site for retail venues." Brown moved to approve as corrected; Burke seconded; the motion carried unanimously.

OB 224 3rd READING ORDINANCE 908 - Rezone of Tax Lot 5377 and 7573

Keirn moved to approve Ordinance 908, and read by title only. Brown seconded; the motion carried unanimously.

OB 225 3rd READING ORDINANCE 909 - Maximum Lot Coverage in Townsite Overlay

Burke moved to approve the third reading of Ordinance 909 by title only. Keirn seconded; the motion carried unanimously.

OB 226 2nd READING ORDINANCE 911 – Animal Control by Leash Only

Brown said she had given this matter a lot of thought. For the animals off-leash, there is generally no owner within 100 feet, much less ten feet. If we are moving toward enforcement of dogs not running at large, that discomfort isn't addressed with this change. She asked to delay the second reading, and asked to hear from animal control officer or the chief of police at the next meeting what is at issue here. Keirn said he too has been watching dogs, and dogs at large are not now under voice control. Burke suggested clarifying the animal behavior we don't want. Brown hesitated to make law to solve 5% of a problem.

Brown moved to defer the second reading until the next meeting. Keirn seconded; the motion carried unanimously.

OB 227 2nd READING SPECIAL EVENTS ORDINANCE

Williamson said he had made several changes to the draft ordinance since the previous meeting. He deleted the phrase about 4 consecutive days as a standard, added some more examples, and added a clause re: applicability. An owner could be prosecuted if a special event occurred on his property without a permit. Williamson asked for input under criteria 8, where changes were made regarding dumpsters and toilets. Williamson said this ordinance will do a good job on bigger events. He said it may be over-regulatory on smaller events. McBryant asked if the recreation district event example is intended to exclude the Nelson Tournament. Williamson said it is not, because the Nelson

Tournament is not a recreation district event. Woodside Central Park plans include a bandshell, and she asked if we would need to amend this ordinance when that comes into play. We would want the residents protected from that activity. Brown favored some administrative discretion in regards to the number of dumpsters. McBryant asked if rodeos need to be a special event. Brown said it is allowed through a city lease. Keirn said that is standard usage. The council agreed that Woodside park events would need a permit for bandshell activities. Burke said there was a garden wedding in someone's yard not long ago, and she did not want to prohibit private family events that are an exception to the normal social life of the family. It is despicable if we prohibit people from using their yards for a graduation, a 50th anniversary party, or a wedding. If we're doing that, we're making a big mistake. She did want to prohibit regular events at the Grange Hall. Brown said we will need to move forward, and fix problems as we go. McBryant said parking issues, passage of residents to their homes, noise, and safety are the primary concerns to be mitigated. Keirn saw noise and parking as the primary issues. Burke said it is difficult to swallow legislating what private citizens can do at their home.

Brown moved that the mayor read the second reading by title only. Keirn seconded; the motion carried unanimously.

PH 228 GRABHER FINAL PLAT LOT 1, BLOCK 4, AIRPORT WEST

Following an introduction of the application by City Planning Director Kathy Grotto, and a brief response from Brian Yeager, project engineer representing Elmar Grabher, Mayor McBryant opened the matter for public hearing. There was no comment. **Keirn moved to approve with conditions outlined in the staff report.** Brown seconded; the motion carried unanimously.

PH 229 COX CABLE FRANCHISE

Williamson said the purpose of this public hearing is to look at the proposed franchise ordinance for Cox Cable Company. The company finally responded last Friday to a draft of the franchise agreement, and he had scheduled a meeting with Cox representatives to go over the agreement later this week. He was pleasantly surprised with language Cox Cable Company had come up with regarding providing coverage to the entire city. He expected the meeting Friday to have a satisfactory outcome. Nevertheless, he did recommend continuing the public hearing on the ordinance until July 25, 2005.

Mayor McBryant opened the matter for public hearing. Gary Stivers said the telecommunications cable act requires cable companies to provide cities with a channel upon which to air public business, and to fund capital equipment acquisition and personnel. It might be useful to provide that through the franchise. Burke moved to continue this matter until July 25, 2005.

NB 230 BULLOTTI APPEAL

Brown excused herself because she may have a predetermined decision as a result of being a neighbor of this project.

Williamson said an appeal has been filed by John Bulotti of 2 different decisions, one a flood plain permit decision, and the other a preliminary plat decision. Williamson suggested the appellants' representative Gary Slette should be allowed his presentation, then Williamson will address pertinent issues, then Slette may rebut, then the matter should be turned over to the council to make a decision. The decision would be to affirm, reverse, or reverse and remand to the planning and zoning commission. The appellant has asked that documents regarding three other plats be included in the record. It is a point of procedure as to whether or not to augment the record.

Gary Slette presented his appeal of a proposed re-subdivision of lot 15, Block 1, Birdwood Subdivision, due west of Silver Star Drive. Cedar Bend lies to the north of this property. Della Vista Drive lies south of the property. The property lies in LR zoning, with flood hazard overlay. Subdivision is defined as a division of land into two or more parts. He said he will touch upon procedural issues. He said he hoped to include in the record other subdivisions of similar configuration, to show that the decision of the Hailey Planning and Zoning Commission was arbitrary and capricious since it has approved similar subdivisions in similar locations. The commission can only act as a recommending body, the governing board makes the binding decision in subdivision approvals. He referenced a letter from Kathy Grotto dated June 9, 2004 to Bulotti indicating the appeal will be heard, which letter stated the city had the ability to request additional information at any time during the process. Slette stated that if the city can ask for that, so should the applicant. He named the other subdivision applications he wanted included, as well as the Hailey Zoning Ordinance, Subdivision Ordinance, and Comprehensive Plan.

A subdivision plat was originally submitted, with four lots of approximately ½ acre each, to be serviced by a private driveway. Staff reviewed the configuration of the proposal, submitted in conformity with zoning and subdivision requirements, as indicated in a staff report dated April 19, 2004, which indicates lots will be accessed by a 20 foot driveway. A plat note was required to be added that homeowners association would be responsible for a private driveway. The Army Corps of Engineers determined that there is a shallow depression in the property, but it had been blocked off by the Cedar Bend Subdivision, and filled in by the Della View Subdivision. There was nothing needing to be resolved. Orderly development was discussed, adjacent to totally developed property, and lots are significantly larger than lots both north and south of this property. Because the driveway is in excess of 500 feet, fire chief required a 26 foot width, and Bulotti acquiesced. A November 18, 2003 letter from Kathy Grotto indicated a section of the subdivision ordinance may not have been interpreted correctly. An equal protection argument holds here, because that is how the city had always interpreted its ordinance. As a consequence, a redesign of the property, in which flag lots with easements to allow access to all lots, consistent with fire department requirements, was submitted. He said

the heart of the matter is the action of the city relative to the denial of the project because of the flood development permit associated with preliminary plat. It is suggested by the commission that standards for a flood development permit has not been met. Bulotti is being asked to be a pioneer. Never has the City of Hailey required a flood plain development permit for a subdivision.

Slette said the first requirement for a flood plain development permit is no danger to life due to increased flood heights or velocities. Both Brian Yeager and the Army Corps of Engineers have observed blockage upstream because of Cedar Bend. The property is in the flood plain, but the City of Hailey has seen fit to adopt FEMA standards, which ameliorate matters relating to flood plain development

Yeager said a September 29, 2003 Army Corps of Engineers letter recognizes that the lot has 2 depression features, but no direct surface connection to the Big Wood River, so there would only be low velocity sheet flooding. Criteria regarding increased flood heights or velocities defines a floodway. Williamson objected and said we need to talk about the record, not make factual interpretations. The Commission's decision was based on property being exposed to flood hazard.

Slette said all subdivision proposals shall have adequate drainage to reduce exposure to flood damage. The observation of staff is that it is a relatively flat parcel of property. There is a subtle depression which may, at one time, have been a connecting channel, but because of upstream and downstream development, is nothing more than unregulated depression in the property. Hailey allows areas in the flood plain to flow with sheet flooding. Yeager said the treatment for flood waters has not been to impair the flood waters but to allow them to flow naturally and freely. No plans shown to remove floodwaters was the applicant's effective way of allowing flood waters to pass, a standard practice in the past.

Slette said the proposed facility and its contents shall not minimize damage. The denial relates to uses of property, and division of property is not a use of property to which a flood plain permit is applicable. He said that is why FEMA standards have been adopted, because regulation should occur when building permits are applied for, and certain requirements are instituted at that time.

Hailey's standard that a proposed location represents the safest location for the proposed use isn't pertinent for subdivisions. If this isn't in the safest location, it should be located elsewhere; that standard can't be applied to a division of land. If you look at the zoning map, you will see these proposed ½ acre lots surrounded by lots approved by the city and smaller in size. Yeager said the location language implies there would be other locations on the site which would be more safe. The safety from one part of the site to another is nearly identical. Even though there is a depression, the site is relatively homogenous and similar to surrounding terrain.

The proposed use is compatible with existing and future development. The surrounding properties are zoned as LR-1. Other properties have short driveways, and that is the only

difference. This configuration, however, is allowed within the city. It begs the question when you see that this is not compatible with existing development. He wanted the zoning map to be included in the record. There are 13 lots of 1/4 acre to 1/3 acre in size surrounding this property.

Yeager said the ordinance that this was heard under has no limitation on a driveway of this type beyond fire department criteria.

Slette said it is easy to find supporting sections of comprehensive plan but *Urratia v. Blaine County* emphasizes that plan is a guiding document by which ordinances are interpreted. He said the proposal looks like the surrounding neighborhood.

Safe access to property shall be available for emergency and ordinary vehicles during a flood. He said Bulotti met each and every requirement of the fire chief's recommendation. He read from the commission meetings that fire chief would not allow a fire truck to go through 2 inches of water. Yeager said the key issue of the project is that all were in a learning curve, and driveway design was a response to issues relative to flood plain development permit. The original driveway grading design showed the driveway road surface in a conventional standard design, and was considered reasonable from an emergency service standpoint. The revised road design takes the vertical profile of the road, and brings it below any depression there, which is causing the lowest point. Given the opportunity to reconfigure the road, Bulotti would go back to the original design, and would allow access during an emergency.

Slette said Bulotti is prepared to go either way, allowing placement of a culvert over that depression unconnected to any hydrological source. One city administrative branch has a set of requirements that makes another administrative branch beset with problems. He asked Grotto to confirm that this is in fact the first subdivision upon which the flood plain development permit is being required.

Keirn asked if this is the first subdivision in which a flood hazard development permit put in place. Grotto said it is.

Williamson asked if an application has come in since Hailey's amendment to that ordinance. Grotto said this is the first application that has come in since the amendment to the Hailey Zoning Ordinance requiring a flood plain development permit was adopted.

Williamson said Arbor Heights, Sixth Avenue Court, and Sageview Subdivision are the other subdivisions Slette wanted brought into the record, as well as an aerial photo not presented during commission review. He had no objection to ordinances and the comprehensive plan being added to the record, and a letter from the file. It is incumbent upon the appellant to put into the record documents he feels is appropriate in the record. Appeal of a zoning decision, the flood plain development permit decision is a final decision. The thrust of the decision deals with the flood plain criteria. The other subdivisions don't deal with the flood plain; the decision in this case is based upon the flood plain. The aerial photo may have been taken in 1997, and he can't tell at what flood

state the photo was taken. The council is not the finder of fact; it is to determine whether the record supports the finding. By throwing in these documents implies requests for the council to decide the facts. Issues on appeal have been augmented tonight by other statements. We can't say Bulotti was treated differently, because other applications are not in the flood plain. The notice of appeal frames the issue. The commission chose to evaluate 7 of 18 criteria. If it found that even one criteria isn't met, it should deny. The commission found 7 were not met. The applicant has the burden of proof. A 100 year flood event would cause two and a half feet of water. Chief Chapman could not serve the westerly two lots because of the sheet flooding. That's a significant amount of water. He objected to Yeager's comment that we've allowed sheet flooding in prior applications; Williamson said it is not appropriate to say that without evidence. He did not know of any such allowances. A single family subdivision designed for houses will be susceptible to flood damage. The commission said the standard represents the safest location, but found that building envelopes can't be removed from the 100 year flood plain; therefore it is not appropriate for development. A 481 foot shared driveway caused considerable testimony by the neighbors about that shared driveway. That type of configuration is not compatible. The original lay out of the lots indicates it wasn't the intent to subdivide further. They are long, narrow lots, still undeveloped. Williamson referenced Howard v. Canyon County, a case which does allow applying comprehensive plan standards to subdivision applications. Williamson said the emergency service limitation is clearly in the record. Just because other properties have been developed in that area doesn't mean we should further compromise safety now. The record supports each and every commission finding.

Slette said minutes of November 3, 2003 clearly state that Yeager asked for Cedar Bend to be looked at carefully. He referenced Workman v. Twin Falls, to show that prior approvals on the same type of driveway layout and configuration had been allowed. The Fire Chief did not say he would not serve this property. What he did say is that he wouldn't take his truck through 2 inches of water, my guys can walk to it. One arm of the city says a culvert is not a structure. The city engineer likes the depression open, but the fire chief doesn't like the depression because water can accumulate. The council has to look at the articulated standards. The short driveway versus long driveway issue is not a substantial issue. He urged the council to reverse the commission's decision on the basis it was not founded on evidence in the record and is inconsistent with prior action.

Keirn said the idea is to start with what the commission did; there is no point in adding additional material. Williamson said the zoning ordinance prohibits a de novo appeal, but Slette said that language is not in the subdivision ordinance. Keirn said it doesn't have anything to do with a flood plain development permit. The council did not want to include those other subdivisions in the record.

McBryant said it is easy to listen to both arguments and be swayed. This was a unanimous decision of a non-professional body listening to evidence presented. If ordinances are sufficiently vague or detailed, we have assisted ordinary citizens to do the best job with information that's been provided. The decision is based on their findings of

fact. It appears the commission dealt with the issues. The primary concern was how are we going to take care of the people in houses in the flood plain.

Burke said the first Findings are for preliminary plat approval; standards of evaluation refers to flood plain, and required compliance with all provisions of 4.10 of Hailey Zoning Ordinance. The commission found that applicant failed to meet the standards of the zoning ordinance. Based on the flood plain hazard development permit, the commission denied. The flood hazard development permit findings are linked with the subdivision findings, and the document shows that there is the possibility in a 100 year event that there is the possibility of two and a half feet of flood water. Whether high velocity or slower velocity water runs, two and a half feet is not a minimal amount of water. The commission could not, in good faith, grant a flood hazard development permit.

Keirn said the residences will be susceptible to flood damage. Safety issues and damage to people's property is an issue. If a person buys property that is subject to this amount of water, he better have a good insurance policy. He fully agreed with the commission's verdict on this.

Williamson explained, following a question by Burke, that the council's job is to uphold the commissions findings if they were made on evidence in the record, even if that material is conflicting.

Keirn moved to affirm the commission's decision. Burke seconded, but asked that the reason's be in the motion. Williamson said he would draft a decision which would have the reasoning within it. The motion carried with Burke and Keirn in favor.

NB 231 2005/2006 BUDGET REVIEW

Mayor said the changes that were suggested by the council were included in the budget.

Clerk explained that the overall budget was 5% less, because the water meter project is not budgeted.

Water and Wastewater rates were addressed by the city engineer, who recommended a 4% rate increase. He said the reserve fund is required to be equal to one year's payment, and he suggested that the city start collecting that a year early, building it in advance. That would cause the water rate to be a \$19.79 per month flat rate. He recommended a third year with wastewater rates increased at 7%. Winter and summer water uses have different effects on the treatment plant. Williamson said he reviewed the judicial confirmation documents and related DEQ documents, and didn't see anything that prohibits collecting the reserve in advance.

Brown moved to approve the preliminary budget in amount of \$10,288,476 for publication. Burke seconded; the motion carried unanimously.

Keirn moved to accept the city engineer's recommendation on water and wastewater rate increases. Burke seconded; the motion carried unanimously.

WORKSHOP

Brown said she has been attending the regional transportation group meetings. Jim Finch, manager of Peak Bus, drafted the Transit Plan. Finch distributed a copy of the highlights from the Hailey Comprehensive Plan, which was used as a foundation for the 2005/2006 Transit Plan. The plan proposed a 30 minutes base service from Bellevue to Ketchum, on the highway with service on Woodside Boulevard. A two-phased approach would be taken to develop this plan. New development should be transit friendly, and shelters should be provided. One of our current busses is nearing capacity, and he is looking at options to convert to the county-wide plan. In Aspen 35% of the work force uses public transit to Aspen.

Brown said she wanted to make sure the council knew about the draft Transit Plan. She asked the council if Hailey's section seems correct to the council, and she also wanted to accurately represent Hailey's feelings on the Transit Plan. Finch said he saw small circulators, with approximately 14 passenger capacity, which could be operated with approximately 3 vehicles. Brown said one of the fears she has heard is that Hailey is going to be a park-and-ride lot. Finch said the neighborhood services will minimize that.

Burke said she works with clients who rely heavily on the Peak Bus to commute. Those same people would rely on the circulator to get to points within town. She hoped particular spots, such as the Hailey Medical Clinic and the Hailey Public Library would be identified in the plan.

Finch said Balmoral is providing 25% of the monthly ridership. Burke said every public transportation system that she knows of runs a deficit. She is interested in when it breaks even and supports itself. McBryant said identifying the problem we're trying to fix is important. Ketchum and Sun Valley don't want too many cars in their towns, and she said so are encouraging Hailey residents to ride and therefore have less freedom in Ketchum and Sun Valley as do the residents of those towns who have their cars. She said this is okay until they start asking us to fund their plan to fix their problem. Haven't seen in their plan where Ketchum and Sun Valley are going to develop more parking lots. Finch said within the plan, however, Hailey has the ability to apply the program to its internal circulation needs as well. Brown said the residents of Hailey have said they want this service, particularly the internal circulator element. She added that our comprehensive plan states it over and over again.

Keirn said the loss in the Boise's bus system is staggering. High use hours give the most bang for the buck. Evolution may take place in other areas of use. An in-town service is great, but will lose money.

Burke said a taxi costs a resident \$20.00 round trip to the medical center, and the taxis often don't show up. McBryant suggested this is an amenity more than a need. She said

service would have to start at key hours, and then develop the program outward from that. Secondary to that would be the growth of a system in Hailey. The environmental awareness would get people on the bus more here than in Boise. She said, and the council agreed, that putting Hailey residents on the bus with their daily fare is a huge contribution. Brown noted that the county has the grant for 10 bus shelters. Finch said shelter locations have been identified within the plan. Burke noted that bus shelters should be part of design review approval when a bus site has been identified.

Brown asked what the transportation plan for Hailey contributes to this. Hellen said some of this will be in the thought process. Burke noted that the Advocates buy many of its clients bus passes. Brown noted that many businesses buy bus passes for their employees. Finch said State funds will be \$97,000 this year to fund operations.

Hyde said the City of Bellevue has approached Hailey with a letter asking to look at Hailey to evaluate it as an option for its treatment facilities. McBryant said will take time and professional assistance to determine that, but Bellevue would need to pay for it. It's worth exploring at their cost because it is the right thing to do. McBryant said how Hailey's build-out is accelerated would be key to the issue. Burke said Hailey has been talking about a sewer district for some time, and this seems like a wise moment to start looking at the real picture.

Hellen asked the council for encroachment and mailbox guidelines comments or revisions.

McBryant said she is holding a meeting on July 19th at 2:00 p.m. in her office regarding what the city would want the county to protect regarding unincorporated areas around the city.

Brown said the parks and lands board has identified the Toe of the Hill Trail as an off-leash dog trail. They are also working on finding a contained off-leash dog park. They have had great success at Hop Porter with dog excrement stations.

Hellen said bids on water storage tank were opened a few weeks ago, and the bids were higher than estimated.

Brown moved to go into executive session to discuss pending litigation and land acquisition. Keirn seconded; the motion carried with Keirn, Burke, and Brown in favor. The council went into executive session at 9:05 p.m. No decisions were made and the council came out of executive session at 9:15 p.m.

There being no further business, Mayor McBryant adjourned the meeting at 9:15 p.m.