

**Meeting Minutes of the
Hailey Planning & Zoning Commission
December 7, 2009**

The meeting was opened at 6:30 p.m. by Commission Chair Owen Scanlon. Commissioners present were Mike Pogue, Mark Johnstone, and Geoff Moore. Staff present was Planning Director Beth Robrahn, Planner Mariel Platt, and Planning Assistant Becky Mead.

Consent Agenda

Tab 1 Approval of Minutes – November 16, 2009

Tab 2 Approval of Findings of Fact – Recommended denial of Colorado Gulch Preserve Annexation.

Commissioner Scanlon pulled Tab 1 of the consent agenda for corrections. Commissioner Moore also stated he had corrections.

Commissioner Moore moved to approve Tab 2 of the consent agenda. Commissioner Johnstone seconded, Commissioner Pogue abstained, the motion passed.

Commissioner Moore stated the sentence on page four at the top, “he suggested when it goes to Council he would like to add that” should be deleted. He corrected the section pertaining to “he referenced landscaping” on page 8. He also corrected 8 feet should read 8 foot and added on the next page where it reads, “Commissioner Moore also asked if there would have to have firewalls on these sheds”; his concern was actually using the building code and used firewalls as an example.

Commissioner Scanlon’s correction is on page 10 at the bottom of the page is says the chair did not vote, and said he did vote. Director Robrahn stated he did not vote on the Colorado Gulch application because he would have created a tie. Commissioner Scanlon stated that is right.

Commissioner Johnstone moved to approve Tab 1 as amended. Commissioner Moore seconded, the motion passed unanimously.

New Business

An application by Ed Uhrig for an amendment to the zone district map.

The applicant has submitted a request for a zone change from GR to LB, but has not identified any intended change of use at this time. The current uses of Lots 4-10 are storage of fence materials (Lots 4-7 and north ½ of Lot 8), which is a non-conforming use in the GR districting as well as the LB district; and a single-family residence (Lots 9-10 and south ½ of Lot 8). Uses adjacent to the subject property include:

South: Multi-family residences

North: Multi-family residences

West: Subway, Baskin Robins, and Sinclair Gas Station

East: Single family residences

Linda Haavik, 608 Third Avenue South, with Haavik Consulting stated she was present with Jim Phillips representing the application for the applicant. She stated the property is just over a half an acre, 0.577 acres total and there is a 26 foot alley separating this property from the

commercial property on Main Street. She referenced the Comp Plan Land Use Map and pointed out where the property was and stated it is designated Transitional on this map. She read the definition for Transitional on the land use map and said it does support Limited Business. She spoke about the surrounding area of the proposed zone change and stated they are all in that area designated as Transitional on the Comp Plan Land Use Map with the exception of the property that is on Main Street behind this property, across the alley which is Business Commercial. She said greater density is called for in the Commercial Core and said it is defined as a half a mile from Main Street; she stated this property is 1/2 block from Main Street. She stated the Comp Plan calls for the Central Business District to be enhanced by expanding "business and light district in accordance with the Land Use Map". She stated this property in general is within the Central Business district; a rezone does not widen nor lengthen the parameters within the district that are called out in the Comprehensive Plan. She pointed out the lots to the north of the property which is a multi-family use and stated Limited Business does allow mixed uses. She referenced the staff report where a suggestion for the development agreement should include prohibited conditional uses or to be an option should the Commission find this appropriate to approve. She said it did not seem necessary to limit the conditional uses on this property due to the fact that conditional uses require a Conditional Use Permit before they could locate there; it does not seem necessary to categorically eliminate those conditional uses as possibilities on this property. She stated further information regarding public health, safety, and welfare in relationship to the change in zoning. She also discussed vacancy rates and pointed out other properties zoned Limited Business in the City of Hailey. She also stated the occupancy rates support the rezone. She stated in conclusion, the Comp Plan text classification of Transitional supports the rezone of this property to Limited Business.

Commissioner Pogue asked Haavik why the applicant was requesting this change. Haavik stated because of the commercial property across the alley. She said the property could not be developed as General Residential use. Commissioner Pogue asked if there were any anticipated Limited Business use. Haavik stated not at this point. He asked if the applicant discussed this rezone with the property owner of Lots 1-3. Haavik said they have not had any discussion on this. Haavik spoke about what the land use map references. Commissioner Pogue asked what distinguished these lots from the lots on the east side. Commissioner Pogue asked if there was anything significant on the surrounding lots in Blocks 69, 64, and 57. He said why not turn the entire west side of First Avenue into Limited Business. Haavik said she thought that was what the Comprehensive Plan calls for in some point in time. Commissioner Pogue asked where it called for that. Haavik stated on the Land Use Map it identifies that area as the Transitional area to accommodate Limited Business as well as the Transition zone. Commissioner Pogue asked if there were anything that distinguished these lots on Blocks 64, 57, and 52. Haavik said there are single family homes and a spattering of a multi-family, otherwise Lots 4 through and half of Lot 8 are vacant. Commissioner Pogue referenced the occupancy survey and asked if the occupancy rates were vacant or filled space. Haavik said she identified where they were vacant and where areas were developed. Commissioner Pogue stated the Limited Business on River Street, the Elementary School, and on Third Avenue South is occupied. He also pointed out the vacancy rate in the business district. Haavik stated they were looking ahead and said nothing will be happening on this property or any other properties in town for quite awhile due to the economy.

Commissioner Johnstone had no comments at this time and said that Commissioner Pogue covered just about everything he was interested in hearing.

Commissioner Moore referenced the staff report where it read, “The applicant has stated that the use directly west of the subject property impacted the subject block in such a manner that it would be difficult to sell this property”. He asked if the applicant had intent to sell the property. Haavik said she did not know if he intended to sell or not and if he did intend to sell he would have a hard time finding a buyer right now just like everyone else. Commissioner Moore asked if the zone change would make it more sellable. Haavik said Limited Business would make it a more developable property.

Commissioner Scanlon commented that Haavik stated Lots 1-3 will not be burdened by the change of this rezoning because it has already been considered in the master plan. Haavik said she did not think any impacts could be known right now and because there is no development proposed for that property; they are certainly affected. She said because the impacts can be assessed at the time there is development, either through design review or through a conditional use permit process. She added it seemed to her that impacts on that property could be assessed at that time.

Public Hearing Opened

Peter Lobb 403 Carbonate St East said it is General Residential going to Limited Business. He said south and east is residential housing and to the north is the apartment complex. He said this would be an impact on these residential areas. He said those lots are already being used for machinery and logs which is out of compliance in a General Residential neighborhood. Lobb said this seemed backwards and the applicant is applying for something he is already doing. He said if he were to live in that area he would not be very happy about this. He did not think this would fly at its present form and is quite a dilemma. He said to the Commission is basically giving the applicant permission to continue his noncompliance; it’s a tough one and he is interested to see how the Commission handles it.

Commissioner Scanlon asked for clarification regarding Lobb being upset because it is non compliance. Lobb said he would be upset that machinery was running there and he was using it as a business in the GR zone which is not zoned for that. Lobb said no one in that area seems to be upset because they have not complained.

Public Hearing Closed

Haavik said Uhrig Fencing has been there for 30 years. **Jim Philips**, local attorney and friend of the applicant confirmed the business has been in operation for 30 years and to his knowledge there have not been any complaints from the City. Commissioner Scanlon asked if they manufactured rails and posts there. Philips said it is a storage and staging yard for Uhrig Fencing. He said they are not trying to use the current use of the property as an argument for allowing it to be zoned for that particular kind of use. He said given the location and the heavy commercial in the surrounding area it seemed appropriate to be zoned Limited Business.

Director Robrahn said the ordinance does allow the continuation of nonconforming uses, so if this is an existing nonconforming use the code allows for it to continue. Commissioner Scanlon clarified the non conforming use could not be expanded.

Lobb said this would be a perfect zone for Transitional.

Commissioner Scanlon asked Haavik if she had considered Transitional. Haavik said they looked at the business district first and thought that was appropriate and actually had applied for that to begin with. She felt the uses in Limited Business could very well be appropriate on this property. She said the land use map supports both Limited Business and what is known as the Transitional district. She said the nonconforming use there is why she considers that property vacant.

Commissioner Scanlon asked if the applicant owned lots on Main Street. Haavik stated not on Main St. but the east side of First Avenue, there are homes there that belong to the Uhrig family and the fencing business.

Commissioner Johnstone asked if the Uhrigs owned any property on north First Street in the blocks that were identified by Commissioner Pogue. Haavik stated not on those half blocks on the west side of First.

Commissioner Scanlon asked if there was anything in the Limited Business zone that they must have that is not in Transitional. Haavik said they looked at it some time ago and she would have to speak to the applicant about that specifically. She said they mostly compared the property to business.

Philips said in general it just seemed like the Limited Business had more detailed office uses. He said mainly the attraction of Limited Business was more expanded number of office type uses listed as opposed to professional offices it was more expansive.

Kathy Noble 413 First Avenue North said she bought her house 35 years ago and it was zoned commercial at that time. She believed all of First Avenue on the west side of the alley was zoned commercial at that time and somewhere along the way the City decided to change that. She said at the time they changed the zoning there was not proper notification. She said the Uhrigs were in compliance at one point in time.

Deliberation

Commissioner Moore wanted to reference to the zone changes to Limited Business on Third Avenue have a development agreements that would revert back to General Residential if the existing uses cease. He asked Haavik if she brought something to show aggressive or intensive business use. He stated that he has seen applicants in the past requesting Transitional zoning and they brought in lots of pictures and evidence of intense use. Commissioner Moore told Haavik that he believed her but that he also had to go on her word on this. He referenced to Haavik's statement "no impacts can be known", and said he found it hard to find that in their standards of evaluation. He did not see how conditions 1, 3, or 4 could be met. He asked how she could meet those standards if she just did not know. Commissioner Moore asked Director Robrahn if the pink zone around the business area on the Comp Plan Land Use Map was meant to be a transitional area, an area for potential Transitional zone. Director Robrahn said it is meant to be a transitional area and the Comprehensive Plan talks about what that area is intended for. Commissioner Moore asked if it were for potential business use.

Planner Platt read the definition of Transitional which is in the staff report. She said right there it does not necessarily list out the different zoning districts that would be within transitional but it does provide the uses that would be appropriate.

Commissioner Moore said the existing and future uses that are in place, how he would know that they would not be impacted. He said right now he has a problem with this zone change. He said he has a concern doing this with the unknown.

Commissioner Johnstone agreed with a lot of what Commissioner Moore said. He said philosophically he has a problem with isolating lots on a particular block and changing the zoning. He said he was not sure with this being unknown what the intended use is and the potential impact this would have on the neighbors. He agreed with Commissioner Pogue in saying if there is going to be a rezone it should go all the way on First. He said he would agree with staff regarding adding a development agreement.

Commissioner Pogue is concerned about the argument that this rezone is close to existing business use and that in itself poses a hardship for the surrounding blocks and his point in asking about the other Blocks 64, 57, and 52 was they would be subject to the same commercial impacts. He is concerned about isolating Lots 1-3 and it is compelling the need to do the rezone and it is noteworthy that the definition of the Transitional zoning specifically includes residential and constitutes a buffer from business to residential and felt they would be chipping away at that buffer by allowing rezones.

Commissioner Scanlon agreed with all of the Commissioners. He admitted he could go either way with this. He said he is a strong advocate of infill and felt a rezone would potentially incorporate more density into this area. He was also concerned with Lots 1-3. He said staff did say the Commission could recommend that this rezone be contingent upon Lots 1-3 also being rezoned Limited Business. Commissioner Scanlon asked Planner Platt how that process would work. Planner Platt stated a city initiated rezone would have to take place. Commissioner Scanlon asked if the Commission would step back and not do anything until the city initiated a rezone. Planner Platt stated yes but they could condition the recommendation for Lots 1-3 to be included. She said the actual change would not occur until those lots were rezoned. Commissioner Scanlon said hearing the other Commissioners correctly, why would they stop at Lots 1-3, why would they not rezone all of the other lots. He said this is complicated. He said his overall concern would be leaving the island of residential, Lots 1-3. He seriously questions that this would be better as a Transitional zone rather than Limited Business.

Haavik said she was sorry that she did not supply any photographs identifying the intensity of the uses. She stated the many businesses that are on Main Street across the alley and said the zoning is set up for the kind of uses that are there. She suggested looking at some of these uses and what some of those impacts might be. She said the development agreement allows for prohibiting certain uses and conditional uses. She said in response to rezoning all of First Avenue, first of all this applicant is here requesting a rezone, the others are not. She said all that she can do is to point to the Land Use map that does suggest that there be some kind of transition whether it is Transitional, Limited Business or Limited Residential on First Avenue at some point in time.

Philips commented on rezoning the other properties and said there is not a reason to rezone those and said General Residential being next to a car wash and gas station was not really appropriate. He did not see any reason at this point in time to rezone the rest of First Avenue. He said they did not feel that it was appropriate to include any other properties in this rezone. He said they did not feel it was their position to come in and request a rezone for someone else.

Commissioner Moore inquired about the house that sits on the south side of Lot 8, 9 & 10 and asked if the applicant lived in that house. Philips stated yes.

Commissioner Johnstone said they could approve this as Transitional zone and/or continue this to include Lots 1-3 to be in line with this rezone.

Commissioner Pogue said they could not approve it as a Transitional zone now because it has not been presented as such. He said he would be more sympathetic if Lots 1-3 joined in with the rezone or if there were a city initiated rezone. He said he was inclined to deny the request.

Commissioner Moore said they used the word future and he felt the future would be a more appropriate time to come back with this and also added that he would deny the request because there is too much out there that is vacant.

Commissioner Scanlon said he would agree with Commissioner Johnstone and would be in favor of a continuation. He said it would not bother him to have Limited Business here but would like Lots 1-3 to be included. He also added that there does need to be a development agreement on the property and said his stipulations would be that if the use were to change that the zoning be reverted back to General Residential.

Philips said if the Commission feels comfortable making a recommendation for either rezoning it Limited Business with its conditions on it or more appropriate to rezone as Transitional they would not have an objection to that. He said the Commission could recommend Transitional to the Council without having to renote. He said there will be other meetings in front of the Council and he is interested to see how they view this.

Haavik said her understanding of the rezones where the property would revert back to General Residential would be the instance that the use did not stay the same.

Commissioner Scanlon asked Planner Platt if they could recommend that this go forward as a Transitional rezone. Planner Platt said yes they could and when it is noticed for Council they would note the Commission recommended Transitional instead of Limited Business. She said that recommendation would be carried to the Council even though the applicant's request will still be LB.

Commissioner Pogue stated he was still on the fence about the one issue of the property west of the proposed rezone. He said he is more comfortable with Transitional and would like to see something done in respect to Lots 1-3. He said he would be okay with recommending this as Transitional with Lots 1-3 included.

Commissioner Johnstone stated he agreed with Commissioner Pogue. He said he did not want to send something to the Council that was a slightly chopped up plan.

Commissioner Moore said even with the Transitional he did not feel comfortable with this rezone at this time.

Commissioner Johnstone said at this point he did not feel this was appropriate either.

Commissioner Moore moved to recommend denial of the amendment to the zone district map for the City of Hailey to change the zoning of Lots 4-10, Block 69, Hailey Townsite, (17 Myrtle Street East) from General Residential (GR) to Limited Business (LB), finding that it is just not the time and Standards 1, 3 & 4 have not been met. Commissioner Pogue seconded, the motion passed and the chair did not vote in order to avoid creating a tie given that one Commissioner is absent.

Unfinished Business – continued from November 16, 2009

City Initiated Text Amendment to Article 7 – Accessory Structures

Public hearing upon a City initiated text amendment to Article 7 of the Hailey Zoning Ordinance No. 532. The amendments would clarify that Accessory Structures with a floor area of 120 square feet or less are required to be setback a minimum of 3 feet from either: 1) the side and/or rear property line, or 2) the primary structure.

Director Robrahn stated the problems they are facing is the City does not require permitting for an accessory structure that is 120 feet or less. She said they have setbacks for those structures but most people do not know there was a setback requirement. Director Robrahn stated the way the ordinance reads now; if a shed were placed on the property line it would not be in compliance. She said the solution is not necessarily requiring permits for these structures because there would still be the issue of how to communicate that a permit and setbacks are required. The purpose of this amendment is to add flexibility into the ordinance and to add a setback for accessibility for fire fighters. She noted that item c was questioned by the Commission at the last hearing. She spoke to the Building Official and he said that language was not really necessary and could be deleted.

Commissioner Johnstone said by writing it this way they could assume that there would be a code enforcement officer checking these structures to see if they are compliant.

Director Robrahn stated yes at some point, potentially. She said the main point is that people will have the flexibility to put a shed just about anywhere on their property with this setback language and still maintain some access space for firefighters.

Commissioner Moore asked whether the intent of Section 7.1.8 b was the height being minimized to an 8 foot bearing wall and a 12 foot max. Director Robrahn thought the purpose was to iterate the building code requirement. Commissioner Moore said if they are at the minimum setback they will be limited to that height. Director Robrahn stated yes.

Commissioner Pogue asked if the structure could be put right on the alley or back lot line if he were 15 feet from the house. Director Robrahn stated the structure could be placed on the rear property line as long as there was 3 feet from the primary structure, except if it was in the Business District at an alley.

Commissioner Scanlon asked whether an eave could overhang the property line. Director Robrahn stated that is addressed in the Supplementary Bulk section.

Public Hearing Opened

Peter Lobb 403 Carbonate St E asked if there were any provisions for remodeling the structure. He said with a shed placed on an alley he was concerned about that shed becoming a garage.

Director Robrahn said this is an example of enforcement. She said they can enforce an obvious non complying structure.

Lobb said he supports this amendment.

Commissioner Johnstone moved to recommend approval of the proposed amendments to Article 7, Supplementary Location and Bulk Requirements of the Zoning Ordinance No. 532 as written, finding that the amendments are in accordance with the Comprehensive Plan, 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; the proposed uses are compatible with the surrounding area; and the proposed amendment will promote the public health, safety and general welfare. Commissioner Pogue seconded, the motion passed unanimously.

City Initiated Text Amendment to Article 8.2, Signs

Public hearing and workshop upon a City initiated text amendment to Article 8.2, Signs, of the Hailey Zoning Ordinance No. 532. The amendments would reorganize procedures and standards, clarify standards for all types of signs permitted, create a new section to address signage for multi-tenant buildings, amend the sign area allowed for portable signs, and limit the number of portable signs permitted per business and permitted within the public right-of-way.

Planner Platt stated she did make some changes and added language to exempt food services from being prohibited from having signs on top of cars as well as adding language to allow all city officials to remove a portable sign in the public right-of-way if it has fallen down, is obstructing vehicular line of site or pedestrian traffic, is interfering with snow removal, is not permitted, or is violating the ordinance in any other way. Those were the two requests that she heard from the Commission.

Commissioner Pogue said he is comfortable with this.

Commissioner Moore asked about changeable copy signs that are prohibited in section 8.2.7 b yet there is a standard for changeable copy signs, 8.2.12.2. Planner Platt said it was a mistake that it is listed in the prohibited signs section. Commissioner Moore referenced page 8, Section 8.2.13 is listed as Unsafe and Illegal Signs and Non-Conforming Signs needs to be changed from the same section number to 8.2.14.

The Commissioners all agreed with this amendment.

Public Hearing Opened

No comments made

Public Hearing Closed

Commissioner Pogue moved to recommend to the City Council approval of the proposed amendments to the Hailey Zoning Ordinance No. 532, Section 8.2, finding that the amendments are in accordance with the Comprehensive Plan, 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, that the proposed uses are compatible with the surrounding area, and that the proposed amendment will promote the public health, safety, and general welfare. Commissioner Johnstone seconded, the motion passed unanimously.

Commission Reports and Discussion

Commissioner Moore gave a report from the Airport Authority meeting that he attended. He said the FAA will be involved with the reuse of the airport and they will do an assessment of each individual lot. He said they can look outside of the box and reallocate how the properties are configured.

Commissioner Moore would like to direct staff to do an amendment to the annexation ordinance to add water rights. Other Commissioners agreed to add that they convey all water rights to provide for the property to be given to the City. Commissioner Pogue said he was hesitant to go forward with this. Director Robrahn said if you want to bring this forward there would be a public hearing first and then a proposed draft. The Commissioners would like to hear about this more.

Commissioner Moore continued the discussion from last meeting regarding the hearing procedure and said that after the public comment was closed it could be opened back up. Commissioner Pogue said the chair could be given that option. Director Robrahn said public hearings are as much art as they are procedures. She suggested the Commissioners try and make sure that people have the opportunity to convey their comments even if that means not following the procedure exactly every time.

Staff Reports and Discussion

Director Robrahn stated she has completed a rough draft of the Comp Plan. She said there is still a lot of refinement with the goal of streamlining the Comp Plan to consolidate and have the wording to be more consistent. She said in January there will be a public hearing and at each P&Z meeting and the Commission will review the Comp Plan revisions. She said part of the Comp Plan is a kick-off for the airport site master planning to hear what people envision on the site without the airport in terms of uses, activities, which would be living there, etc. She has been investigating other airports that relocated and they followed a similar approach with a master plan developed with a planning firm and had the master plan implemented by a master developer.

Adjourn

Commissioner Moore moved to adjourn the meeting at 8:15 p.m. Commissioner Johnstone seconded, the motion passed unanimously.