

HAILEY ORDINANCE NO. 1137

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, AMENDING HAILEY'S SUBDIVISION ORDINANCE, ORDINANCE NO. 821, BY AMENDING SECTION 2.6 TO REQUIRE RECONSIDERATION FOR ALLEGED FAILURE TO IDENTIFY COMPLIANCE OR NONCOMPLIANCE WITH EXPRESS APPROVAL STANDARDS OR EXPLAIN COMPLIANCE OR NONCOMPLIANCE WITH DECISION CRITERIA; 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, Idaho Code § 67-6522 has been amended to provide that a failure by a municipality to identify the nature of compliance or noncompliance with express approval standards or failure to explain compliance or noncompliance with relevant decision criteria shall be grounds for invalidation of an approved permit or site-specific authorization, or denial of the same, on appeal;

WHEREAS, Idaho Code § 67-6522 has been amended to provide that an applicant or affected person seeking judicial review of compliance with Idaho Code § 67-6522 must first seek reconsideration of the final decision within fourteen (14) days;

WHEREAS, the Hailey City Council has found that the following amendments to the Hailey Zoning Ordinance will generally conform to 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 public health, safety and general welfare.

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

Section 1. Section 2.6 of the Hailey Zoning Ordinance No. 821 is hereby amended by addition of the underlined language and by deletion of the stricken language, as follows:

2.6 APPEALS.

An applicant or affected person party aggrieved by ~~may appeal~~ a final decision of the Administrator, Hearing Examiner or Commission ~~may appeal in writing any final decision~~ by filing a written Notice of Appeal with the Hailey City Clerk within fifteen (15) days from the date of the decision. An appeal of a final decision by the Administrator or the Hearing Examiner shall be heard by the Commission. An appeal of a final decision by the Commission or an appeal of a decision heard on appeal by the Commission shall be heard by the Council. Any appeal shall not be a de novo hearing and shall be based solely on the record before the

Administrator, Hearing Examiner or Commission, as the case may be. The record shall consist of all the documents presented to Administrator, Hearing Examiner or Commission (such as the application, supporting documents, letters and studies), the minutes of any meeting and the findings of fact and conclusions of law. The Appellant may also have a verbatim transcript of the hearing before the Hearing Examiner or Commission prepared to be submitted on appeal. The cost of the preparation of the record and transcript shall be paid by the Appellant. The appeal shall specifically state the decision appealed, the issues to be raised on appeal and reasons for the appeal. If no appeal is filed within the fifteen (15) day period, the decision shall be deemed final.

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

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

Any aggrieved party is entitled to judicial review of any preliminary plat or final plat decision by the Council in accordance with the provisions of Idaho Code §§ 67-5201, *et seq.*

Failure to file an appeal of a preliminary plat decision will constitute a waiver of all issues which could be reviewed during an appeal of a preliminary plat decision.

Failure to identify the nature of compliance or noncompliance with express approval standards or failure to explain compliance or noncompliance with relevant decision criteria or standards shall be grounds for invalidation of an approved permit or site-specific authorization, or denial of the same, on appeal. An applicant or affected person who seeks judicial review of a decision by the Administrator, Hearing Examiner, Commission or Council must first seek reconsideration of the final decision within fourteen (14) days. A request for reconsideration shall be made to the person or body who has the authority to make a final decision but does not have to be made to a person or body who makes a recommendation. A request for reconsideration must allege and identify specific deficiencies in the decision. Upon reconsideration, the decision may be affirmed, reversed or modified after compliance with applicable procedural standards. A written decision shall be provided to the applicant or affected person within sixty (60) days of receipt of the request for reconsideration or the request is deemed denied. A decision shall not be deemed final for purposes of an appeal or judicial review unless the process required herein has been followed. The time to file an appeal or to seek judicial review is tolled until the date of the written decision regarding reconsideration or the expiration of the sixty (60) day reconsideration period, whichever occurs first.

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 Ordinances or parts thereof in conflict herewith are hereby repealed and rescinded.

Section 4. 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 4th DAY OF November, 2013.


Fritz X. Haemmerle, Mayor

Attest:


Mary Cone, City Clerk