

MEETING MINUTES

HAILEY PLANNING & ZONING COMMISSION

Monday, October 15, 2018

Hailey City Hall

5:30 p.m.

Present

Board: Owen Scanlon, Jeff Engelhardt, Chair Janet Fugate, Richard Pogue, Dan Smith

Staff: Chris Simms, Lisa Horowitz, Robyn Davis, Jim Phillips

[5:28:05 PM](#) Call to Order

[5:28:28 PM](#) **Public Comment** for items not on the agenda

[5:28:35 PM](#) Public Speaker (name not given) asked the about findings of fact from the last meeting, stating they were contradictory to what the neighbors of Robin Hood understood versus what the Board was actually voting on. Simms stated to Chair Fugate, that he would direct the audience to limit their comments now to what she just called for. That this matter would be addressed, Chair Fugate confirmed would be addressed in the Consent Agenda.

No other comments, Chair Fugate moved to Consent Agenda. [5:29:16 PM](#)

Consent Agenda

[5:29:26 PM](#) Simms stated the staff request to pull CA 2, the second item marked CA 2. Chair Fugate asked if should call it CA 3. Simms Agreed.

CA 1 Adoption of the Meeting Minutes of October 2nd, 2018. **ACTION ITEM**

CA 2 [5:29:24 PM](#) Adoption of the Findings of Fact, Conclusions of Law and Decision a flood hazard development permit for a preliminary plat of the Carbonate View Subdivision. The proposed project consists of a fourteen (14) lot subdivision, with an associated neighborhood park and park access, containing some regulatory floodplain. The southwestern portion of the proposed subdivision is partially located in the Special Flood

Hazard Area (SFHA) of FIRM Panel 0664E, dated November 26, 2010. The existing FIRM shows AE zones, with defined base flood elevations, in the vicinity of the subdivision.

ACTION ITEM

5:29:41 PM Scanlon motioned to approve CA 1 and CA2, Pogue seconded. Smith abstained, remaining in favor.

CA 3 5:29:34 PM (Previously second CA 2 item) Adoption of the Findings of Fact, Conclusions of Law and Decision Preliminary Plat Application for Carbonate View Subdivision, represented by Galena Engineering, on behalf of W. Squared, LLC, where Tax Lot 8364 S. 9 & 16, T2N, R18E, Hailey, is resubdivided into fourteen (14) single-family lots, ranging in size from 7,053 square feet to 9,270 square feet. All of the lots will have frontage on W. Chestnut Street. A 28,646 square foot, open space parcel is proposed to be dedicated to the City of Hailey to meet the open space requirements. The project is located in the General Residential (GR) Zoning and Floodplain (FP) Overlay Districts.

ACTION ITEM

5:30:19 PM Horowitz stated she had a conversation with Martin Flannes and subsequently conversations with a number of other neighbors a week after the approval of the Preliminary Plat. Horowitz explained during the conversation with Flannes that they discovered the neighbors had a different impression of the plat note, pertaining to the extension of Almond St. and what was adopted. Horowitz explained they had been looking at a previous plat note that said emergency access only and that we had put on record the plat note that had been submitted that morning reading public access. Horowitz confirmed there was a big misunderstanding for those who took time to comment that night. For this reason, staff is suggesting that this board consider a motion of reconsideration and another public hearing on the matter of the extension of Almond St. 5:30:58 PM Simms stated Horowitz summarized the issue well, that he had reviewed some of the public comment that had come in after and agrees with Staff it is the best process to open this back up for public comment and further deliberation on this issue. Simms explained the process in the code to do this. 5:31:47 PM Chair Fugate clarified that those who voted for this, one of them need to make a motion, with a second and then after a discussion, they vote on it. 5:32:10 PM Simms stated Smith had recused himself so he is not eligible for this. 5:32:20 PM Scanlon asked if a date for the meeting had been decided. Horowitz suggested a Special Meeting to be held on November 8, 2018 at 5:30 P.M.

5:32:30 PM Scanlon motioned to reconsider the recommendation for approval of subdivision to November 8th, 2018 at 5:30 PM, Pogue seconded. Smith abstained, remaining in favor.

5:34:06 PM 5:32:50 PM Chair Fugate stated she wants to make sure everything is above par, it was very clear there was a misunderstanding on what was happening. Chair Fugate

agrees it is appropriate to have this discussion and be on the same page. No other comment.

5:33:20 PM Chair Fugate asked all in Favor of reconsideration of consent agenda item number 3 to date certain of November 8, 5:30 P.M. special meeting. All in Favor please say I. Chair Fugate, Pogue, Engelhardt and Scanlon are in favor. Smith abstained.

Public Hearings

PH 1 **5:34:38 PM** Consideration of a Conditional Use Permit Application by Four Paws Grooming, for overnight VIP Pet Boarding, to be located at 519 South Main Street (Lots 8, 9, 10, Block 8, 20' of Chestnut Street adjacent to Lot 10, Block 8), which is located in the Business (B) and Townsite Overlay (TO) Zoning Districts. **To be continued on record to next meeting. ACTION ITEM**

5:34:41 PM Horowitz explained this project is to be continued to the next meeting and suggested to open to public comment.

5:35:07 PM Chair Fugate explained project will not be heard tonight and opened public comment.

5:35:45 PM Peggy Miller, 501 S Main St, lives a block away, wanted to know if an onsite person would be there through the night.

5:36:47 PM Chair Fugate closed public comment.

5:37:30 PM Pogue motioned to continue the public hearing to November 5, 2018. Smith Seconded. All in favor.

PH 2 **5:37:50 PM** Consideration of a Design Review Application submitted by Steven Thomas, represented by Floyd Town Architect P.A., for a new 3,797 square foot airport hangar, to be located adjacent to an existing hangar at 1310 Airport Circle, in the Airport (A) Zoning District. **ACTION ITEM**

5:38:10 PM Davis noted that the waste water department did provide comments that were not included in the staff report. Waste Water Department suggest a floor drain to be eliminated to mitigate any oil or fuel from depositing into the waste water system.

5:38:45 PM However, if the applicant chooses to retain the drain, a 1000 gallon grease interceptor shall be installed. Chair Fugate confirmed a 1000 gallons, asked how the tank is emptied and if it is serviced. Davis confirmed it does get serviced and noted no other hangars have a floor drain. Chair Fugate clarified for that reason, Davis confirmed.

5:39:33 PM Ed Terrazas, stated the floor drain is an issue that will need to be discussed with Jim Lynch, the Building Official and if it is not required does not want to put it in. Terrazas stated the height (approximately 30ft), width (66ft) and length (53ft) of the hangar, it is a ground lease, and pointed out the location in question. Terrazas proceeded

to describe current location and coloring of the hangar, explaining the current color is gray but can go with brown/tan if prefer. Terrazas discussed the hangar square footage including restrooms, pilot lounge and hangar space. Terrazas stated the drain, if required, will be in the center of the hangar with the floor sloped towards the drain. Terrazas discussed the code requirements for containing the fuel and other fluids. Terrazas described the materials to be used and explained the intention is to have all draining go off the back of the building and has a snow retention device to prevent snow from moving. [5:42:46 PM](#) Scanlon asked about the surface around the building, Terrazas stated it was gravel. Scanlon asked if will leave the gravel or pave it. Terrazas stated will leave the gravel. [5:43:39 PM](#) Terrazas explained there is a man door on one side of the building and on the opposite side is a roll up door to be able to move items in or out. [5:43:57 PM](#) Terrazas pointed out the temporary fencing plan during construction and that the hangar is all in the TSA area. That there is no public access unless people are carted or go through security. [5:44:21 PM](#) Pogue asked how many planes they plan to house, Terrazas answered with just one at this time. [5:44:52 PM](#) Scanlon asked how the mezzanine storage is reached, Terrazas stated there is a moveable ladder. Scanlon asked what the lowest point of the ceiling is where the plane is stored, Terrazas stated 20 feet 6 inches, is the minimum distance they have to maintain. Scanlon asked what the height of the tail of the plane is, Terrazas stated 17 feet 9 inches. [5:45:41 PM](#) Scanlon asked if the front carriage were to collapse and the rear goes up is there enough clearance. Terrazas explained plenty of room. Engelhardt asked what the purpose of the code requirement for the floor drain is. [5:46:27 PM](#) Terrazas explained the purpose is if there is a leak from the aircraft it keeps it contained inside of the drain preventing it from going into the sewer system. [5:47:31 PM](#) Pogue asked about fueling process while in the hangar, Terrazas stated the lease prohibits it as well as any maintenance. [5:48:14 PM](#) Smith asked about the lot size versus the square footage of building, stating building is larger than lot lease. Terrazas explained this is due to including the square footage of the mezzanine area. Smith asked if there were ground mounted or roof mounted equipment. Terrazas stated no. Smith stated there was a concern about needing height approval from the FAA for the height of the building at 34 feet 5 inches. Terrazas confirmed he just received the certificate from the FAA when walked in and will pass on to Robyn. Scanlon asked if the coloring would all be same. Terrazas said applicant's intent is to not have this hangar stand out.

[5:50:05 PM](#) Chair Fugate opened public comment. No public comment.

[5:50:24 PM](#) Chair Fugate closed public comment.

[5:50:33 PM](#) Chair Fugate clarified that she is correct that one of the conditions requires documentation showing this meets the FAA standards. Davis confirmed. Chair Fugate asked if Davis could further discuss the requirements and the fact that there no drains in the other hangars. Davis stated issue came up this afternoon. Davis and Horowitz confirmed will need to discuss with the Waste Water Department and the Building

Official. Chair Fugate asked if needed to have a condition specific to the floor drain. Horowitz explained if condition reads generic infrastructure requirements shall be met that should be sufficient. Chair Fugate asked if it specifically should refer to a drain. Davis said we can add it as a sub category to C. Chair Fugate stated she thinks we should include that. Smith suggested verbiage of a floor drain to be determined. Chair Fugate said she was good with that.

[5:52:55 PM](#) Smith motioned to approve the Design Review Application submitted by Dr. Steve Thomas, represented by Floyd Town Architect, P.A., for approval of a new 3,797 square foot airport hangar, to be located adjacent to an existing hanger at 1310 Airport Circle #4B, in the Airport (A) Zoning District, finding that the project does not jeopardize the health, safety or welfare of the public and the project conforms to the applicable specifications outlined in the Design Review Guidelines, applicable requirements of the Zoning Title, and City Standards, provided conditions (a) through (i) as amended, are met. Pogue seconded. All in Favor.

[5:53:42 PM](#) Pogue recused himself from the appeal. Simms also recused himself from the appeal and introduced Jim Phillips. Chair Fugate asked about design review exemptions, Horowitz explained those items are not being voted on just included in the packet as informational.

Appeal

[1](#) [5:54:52 PM](#) An appeal by Chauncy Gardner of Planning and Zonings Administrator's Interpretation of Code Memorandum dated August 13, 2018 by Lisa Horowitz regarding Sober Living located at 220 S 2nd Ave (Lots 23 and 24, Block 26, Hailey Townsite). **ACTION ITEM**

[5:55:13 PM](#) Jim Phillips, the local attorney hired to represent the City of Hailey as Chris Simms had to recuse himself. Phillips provided a brief history of himself. **[5:55:59 PM](#)** Horowitz stated will start with Phillips outlining the procedural process. Phillips explained the procedural process is set out in the zoning ordinance that it basically says if someone files an appeal, the decision of the administrator goes to the Planning and Zoning Commission. Phillips explained their job tonight will be to review and determine whether or not Horowitz's interpretation was correct.

[5:56:41 PM](#) Phillips explained it is a fairly straight forward procedure, it is not a public hearing and only the applicant and representative of the applicant can address the commission. It is a hearing based solely on the record that was before Horowitz at the time she made her decision. Phillips stated the decision of the Commission is also subject to appeal to the City Council.

[5:57:17 PM](#) Horowitz stated they had the appeal packet in front of them, she made a code interpretation decision on August 13, 2018. Horowitz explained this is something we routinely put in our files if a question arises that we think a future planner or director may want to understand how we interpreted. It is called code interpretation and is a memo to the file. **[5:57:49 PM](#)** Horowitz stated in this case the question is what is a sober home under city or state law

where eight or fewer persons with disabilities reside together who are supervised. [5:58:05 PM](#) Horowitz stated because it was determined early on from some of the correspondence on August 1st, our regular attorney Chris Simms had recused himself. That she turned to the Association of Idaho Cities and asked Jerry Mason if he would advise us. Horowitz stated he did advise us under Mason and Strickland, his law firm by providing a letter on August 9th, 2018. Horowitz explained this letter is in the packet and explains where Mason felt that this use fell in Idaho law and under our code. Horowitz stated that the primary basis for her interpretation was the August 9th letter from Mason and Strickland. Horowitz explained what he referred to was Idaho Code 67-6531. [5:59:22 PM](#) Horowitz pulled Idaho Code 67-6531 up on the screen and read it aloud. Horowitz stated she used this as the basis for her determination that the use proposed was a single family use which is a permitted use in the Transitional Zone District. Phillips does not have additional comments to add at this time. Chair Fugate stated there seemed to be a number four that was not included in the letter received. Horowitz explained this was the statute that Mason used for his basis that he instructed her. Chair Fugate asked if that was the complete statute. Phillips explained this is the complete statute but that there is another statute that he is sure the appellant will refer too but it is a different statute, an accompanying statute. Phillips stated it immediately follows this one. [6:00:40 PM](#) Horowitz stated they can now turn to appellant. Mike Pogue, representing appellant Chauncy Gardner and a number of other residents and neighbors opposed. Pogue thanked the staff and commission for taking the time in reviewing this. Pogue stated he wants to be clear that this is not a referendum on whether or not sober living homes serve a purpose, whether they are necessary, and beneficial. Pogue thinks it is acknowledged by all that that is the case. The question they have right now, it is more limited as to whether or not this proposed use constitute a sober home which can be permitted without any restrictions and more importantly is properly within the transitional zone within the City of Hailey. [6:02:00 PM](#) Pogue explained what the appellant is appealing is the determination of the staff in its August 13th, 2018 Code Interpretation letter, that the proposed code interpretation rather than the proposed Sober Living home with eight or fewer residents is a single family residence which is subject only to the restrictions relating to exterior changes have to be subject to design review and interior modifications require a building permit. Pogue stated he thinks what the commission will see in conjunction with reading the statute that was not considered by the city or staff is that in fact the commission is free to impose restrictions. Which would not only make this not an appropriate use within the Transitional Zone but the restrictions would suggest it is really does not serve the city purpose as the transitional zone is defined. Pogue stated what the commission could do at the conclusion of this hearing or if it takes the matter under review is 1 of 4 things. 1) Uphold the city staff determination across the board, yes they made the right call case closed. 2) Finding that in fact is not a single family dwelling use and this interpretation or rather this conclusion is not accurate. 3) That it is a single family but is not the type of single family dwelling that is proper within the transitional zone, which has a very specific meaning and purpose per Hailey Zoning Code. 4) That this is a single family residence that can be permitted in transitional zone but is subject to certain conditions. That this is not the time or place to determine what those conditions are. Pogue suggested City should consider options under 2 or 3. Pogue stated what the staff is seeing as a citation to 67-6531 which states eight or fewer unrelated people

living together with disabilities which include drug or alcohol dependency should be considered a single family residence. [6:05:16 PM](#) Pogue stated what the staff and city he hopes is seeing is that the second statute 67-6532 which contains a sub 4, that sub sections 2 and 3 state that a city can impose additional requirements or zoning restrictions on a single family residence as defined by 67-31 except the limitations, except that it can and that he is paraphrasing, if the home has residents who are on parole, subject to safe supervision or if it poses a health and safety risk. Pogue stated they have submitted materials to the commission that show, mainly application materials up for the proposed home that it does accept people on felony probation or other probation and [6:06:27 PM](#) in comments to the press, comments were made that yes this type of sober living facility is suitable for people on this type of supervised release. [6:06:42 PM](#) Pogue stated they provided some legislative history to the commission, which specifically states that this sub section 4, enacted in 2008, was added into language of code so that local governments had greater latitude in applying zoning procedures and conditions to group homes. [6:07:01 PM](#) Pogue stated where this group home is being proposed right now is in the transitional zone, according to the City of Hailey code, a transitional zone is specifically to provide a buffer zone between residential and business areas within the Townsite Overlay district and to provide restricted business activities within the residential area. Pogue stated in the reading he has done that he was not aware of before becoming involved in this was that one of the reasons the determination was made that these types of homes need to be considered single family residences is because the [6:07:50 PM](#) therapeutic needs for the residents are best served in a purely residential setting and needs to be treated like a regular house and like a regular general residential neighborhood. Pogue does not think that use is ideal for the transition zone which has been recognized to be some type of transition between residential and business zones. Pogue stated with the allowance that the city has to determine or to allow additional restrictions and apply its own zoning ordinances to a sober living home that falls within this exception. [6:08:43 PM](#) Pogue stated what he thinks the city is free to do permitted by statute is to look at what this use actually constitutes, which he thinks is more akin to a rooming or boarding house which is not permitted in the transitional zone but is specifically permitted in the general residential zone and other zones throughout the city. Pogue thinks that it is a proper selection that can be made and recognized. But that the city need not make that determination to reach the conclusion. That if it decides to treat it as a single family dwelling and not a boarding house or other type of use, Pogue thinks commission is free to and should draw determination that if we are going to look at it as a purely residential use, this not the type of use that should be permitted or allowed within the transitional zone. Pogue thinks if you look at the purpose of what the zone is, it is not a limited business, professional services use that thinks is served best by type of planning the city wanted to do to outside of the business corridor. Pogue stated he thinks finally the determination could be made that we are going to deem, given the fact that we do need to allow these other exceptions that we need to have further conditions in terms of licensing, supervision, determining whether or not certain state standards need to be met. Pogue stated finally important to note that this sub section 4 applies not only if residents under state supervision but also if it constitutes or if it has an effect on health and safety and this proposed home is right on the safe paths to the school corridor, which is meant to provide safe and efficient transport up

and down the city to the elementary and middle school. Pogue stated with this home housing up to eight people that is eight cars plus cars for staff, does not know how many trips will be made in and out each day and this parking for 8-10 plus vehicles is directly on the bike path and he thinks that constitutes an impediment to safe and efficient pathways to school. Pogue stated he thinks that issue aside constitutes as a reason to determine that this is not an appropriate place for this type of use. Pogue turned floor over to John Roland. [6:12:11 PM](#) Phillips explained the ordinance only allows the appellant and the appellant's representative to speak. Phillips state Pogue is the legal representative to the appellant, if Roland is going to speak on behalf of the appellant that it needs to be put on record. Phillips explained this is not a public hearing and cannot take new evidence, that there was only one appellant on this case. [6:13:12 PM](#) Appellant explained she filed it but this is a neighborhood group working together, Appellant confirmed Pogue is representing her. [6:13:36 PM](#) Pogue confirmed Roland is the spokesperson on behalf of Mrs. Gardner. [6:13:52 PM](#) John Roland, expressed concerns of proposed Men's Second Chance Sober Living House. Roland provide history of himself, his connection to Hailey and described current neighborhood. Roland stated they love their neighbors, peaceful block and loves when even though there are disagreements between neighbors those are quickly resolved. Roland stated it has been the lack of communicating and community outreach that has caused the deep apprehension of the neighbors. Roland stated many neighbors have reached out to ask questions about the new Sober House and have been met with resistance or unresponsiveness. Roland feels it is perfectly natural for them to have questions regarding the facility. Roland stated they are aware 2nd Ave is considered Transitional zoning, they are used to that meaning accountants, lawyers, and other such professions. Roland stated as Pogue expressed a Sober House for recovering male addicts feels drastically different from what has and has yet been considered for the Transitional neighborhood. The number of proposed beds, which he hears is eight, feels like a lot for a small house. [6:15:28 PM](#) Roland stated it is also concerning that the new pathway for people project has put a corridor connecting the middle school and the elementary school, where children are encouraged to walk daily passes directly in front of the Sober House. [6:15:42 PM](#) Roland stated we as a community are not lacking empathy of those recovering from addictions. Roland stated in fact, many of them have had close contact with addiction and have had nothing but compassion and understanding of those caught in that trap. Roland stated no one in their neighborhood has any desire to discourage or come between people in our community who need help and devalue cultural programs available to them. Roland stated their concerns rest only with the nonprofit and MSCL who have done nothing, they are appealing to this organizing from a standpoint of community in hopes of having our questions and concerns heard, considered and answered. [6:16:23 PM](#) Roland stated short list of concerns: who will be living there, is this home limited to residence of Blaine County or open to anyone, will felons be allowed, will sex offenders be allowed, what about repeat offenders, what is their screening process to ensure applicants are being truthful about qualifications, will applications include court records and background checks, who gets to decide who will live there, what is the policy and supervision in proceeding daily operations, will there be 24 hour supervision, has been told there is a good neighbor policy and they would love to see this, who should the neighborhood contact if a problem arises, what is the house policy for guests, and parking for a household who expects to have eight adults

residing there, parking seems to be an issue as well, have been told the nonprofit will not be seeking state licenses and would like to know why that is. Roland stated they are aware of how difficult it is to break destructive patterns and move forward with healthier choices in life. Roland stated a nonprofit needs to be well researched and well prepared with guidelines and policies for this purpose. Without clear boundaries and rules, potential for aggression is greatly increased. Roland stated we as the neighbors of this house, are discouraged that there is not a clear zone established for this place, concerned for their children safety and potential impact of their property values, directly impacting property taxes. They respectively request that the City exercise their rights to enforce appropriate conditions and restrictions, for the good of the citizens of Hailey and future residents of the home. Worried about the nonprofit as new as MSCL does not fully understand the task they are undertaking and is unprepared for many issues that may come up. Request that MSCL remember that they, as their neighbors are the ones directly affected by this and hope they will do everything they can do to repair the anxiety and frustration caused by the lack of communication and community outreach.

[6:18:53 PM](#) Horowitz stated no additional information to add. Pogue confirmed he does not either. Phillips explained like he said initially this is an appeal, Horowitz decision is in the packet and the question for them is to review the information in the record and determine whether or not Horowitz's interpretation of the ordinance is correct. Phillips stated they have had a chance to review the information in the packet and hear the argument by the appellant and the appellant's representative. [6:19:48 PM](#) Horowitz added that she has the purposes of the Transitional District on the screen, Horowitz read the purposes aloud. Horowitz summarized we have a lot of residential uses in the transitional zone district. Horowitz stated the Idaho statute seemed very clear, the primary one that stipulates what will be single family in any city zone district it is stipulated what is single family. Horowitz explained for single family homes we do not regulate parking in Hailey, so did not pin in something with how many cars will be there if the Idaho Code, if the Idaho Legislature is telling them it is single family that is as far as they went. [6:21:12 PM](#) Phillips asked to have both statutes brought on screen, Horowitz brought up page 123 in the packet. Horowitz confirmed both on the screen, that the top one is the one Jerry Mason directed them too. Phillips stated reason he asked both to be pulled up is because it shows both statutes discussed during presentation. Phillips stated the first statute is the one Horowitz relied upon, second is the one Pogue referred too. Phillips stated he looks at these statutes and their legislative history, that there are three levels of regulations. First is local zoning ordinance, second is state statutes and the third is the Federal Fair housing Act. [6:23:23 PM](#) Phillips stated starting with the two statutes, if read the first statute 67-6531 – basically it says if it is a single family dwelling, when you classify single family dwelling in your zoning ordinance that classification shall include these types of group residences. [6:23:55 PM](#) Phillips stated everywhere in your zoning ordinance that uses the phrase single family dwelling or single family home by statute includes these type of group homes. Phillips summarized that this is a state law that the city does not have any discretion to change this. [6:25:15 PM](#) The second statute 67-6532, has to treat as a single family home that cannot adopt a conditional use permit process or variance or any other zoning permit process in regards to these homes. Phillips stated when they

added number 4, it says that limitation shall not apply to where housing is being provided or planned for people who are under the supervision of the Department of Corrections. That is where the issue comes in. Phillips stated the City of Hailey has never proceeded under that statute to adopt a conditional use process for these kind of homes. Phillips stated City of Hailey does not have a process which requires these kind of homes to go through a conditional use process meaning adopting an ordinance that sets up the process for the conditional use, what's to be reviewed, what are the standards and criteria. Phillips stated unless and until that happens the City of Hailey does not have the requirement that these homes have to get a conditional use permit and have treat it as a regular single family home by state law. Phillips stated when the comments are made that the city is free to impose conditions on these types of homes that is not technically correct. The city has the ability under this state statute to adopt a conditional use process for these homes but they have not done that. Phillips stated if the city wanted to they could go through a process amend the ordinance and create a requirement where these homes go to and obtain a conditional use permit. This has not happened yet and until it happens the city is not free to impose conditions. Phillips summarized this is his input and turned over to commission. Smith clarified that their job tonight as he understands it is to determine if Horowitz's decision was correct based off the information she had at that time. [6:29:52 PM](#) Phillips confirmed he thinks that true, that Horowitz and Mason focused on the first statute and the appellant has brought up the second statute. Phillips stated both statutes were in effect at the time Horowitz made her decision. Phillips stated can look at Horowitz's decision on the first statute with reference to the second statute. [6:30:21 PM](#) Smith asked if Mason mentioned or referenced the second statute at any time. Horowitz stated he mentioned it verbally and he did not think it would apply as we do not have that process because Hailey does not have a conditional use process. Chair Fugate confirmed that was because what Phillips was just explaining because even though it would apply we do not have the process in that zone. [6:31:03 PM](#) Horowitz said what she heard Phillips say was that number four can apply for cities who have chosen to adopt this conditional use permit process. Chair Fugate confirmed which we do not have. [6:31:16 PM](#) Engelhardt stated we do not have a definition in on our zoning code for a group home, referencing a boarding home. Horowitz stated we have a definition of a boarding home and can bring it up. Engelhardt stated this is essentially a care facility. Phillips stated asking for evidence that really isn't in the record right now that unfortunately does not have a lot of details on how the facility will operate. Engelhardt questioned if this is a business license use. Horowitz stated no business licenses are not required in single family neighborhoods. Horowitz stated for a single family use, if we believe this meets the definition the state of Idaho has told us is single family then there is no business license we require. Horowitz stated she believes it does meet this definition. Engelhardt stated this is more than just a home business, thinks not this time around but for future purposes we need to go there. Engelhardt thinks there needs to be some restrictions on this, thinks for future we need to address this. [6:33:12 PM](#) Phillips stated if the city were to decide they wanted to proceed with adopting an ordinance under the second statute, thinks it would be clear that the city can adopt a conditional use permit process with these types of residences. Phillips explained that would be a question would need to as ask at that point in time as you try to move forward to decide what that process would look like. Phillips

explained that would be something that would be formulated in the future. [6:34:01 PM](#) Phillips stated the Federal Housing Act has a certain number of requirements regarding these types of residences that also have to consider when shaping what the ordinance will look like. Engelhardt stated does not know of any other way to go than to say this is permitted, but would like to go down the path saying if it is permitted and say we do have a definition for this house and that would require and add restrictions on it. Engelhardt stated does not think anyone has any problems with people with disabilities or addictions that need help that are permitted by law, thinks some of the heartburn comes from convicted felons. Engelhardt questioned if were to say we do allow this and we do have a business licenses we can discriminate against non-protected classes, let's say we did this and [6:35:28 PM](#) in future as residence turns over would we have that kind of discrimination in this house? Phillips stated would be surprised at how complex the Fair Housing Act is and has informed himself enough to have a general overview of the Fair Housing Act but is not prepared to answer that today. [6:36:59 PM](#) Chair Fugate noted that something from the applicant's attorney that if there is a problem it is an enforcement issue rather than something that has already happened which is kind of a counter to the people who were concerned to what might happen. Chair Fugate asked Scanlon if he had question or input. Scanlon stated he had been wondering if this had been brought before them as a commission would they have ended up anywhere differently than where they are with Horowitz's decision right now. [6:38:30 PM](#) Scanlon stated thinks Horowitz acted in good faith contacting Jerry Mason who is very knowledgeable and can't think of a better resource to go to than him. Scanlon stated you read the writing on the screen, you say this type of housing must be considered as a single family residence but there has been a huge miscommunication issue. Scanlon asked if it could have been taken care of in a planning and zoning hearing. Scanlon stated that a lot of things that could have been brought up, discussed and clarified in a planning and zoning hearing. Scanlon does not see how Horowitz could have decided any differently given the information and counsel she had. Engelhardt agrees with Scanlon, but he would have liked to have seen issue come up in work meeting. [6:40:45 PM](#) Engelhardt brought up page 14 discussing parking (page 158 in packet) last paragraph on page, stating does want to support it but believes parking is a concern. Commission discussed potential parking issues including that they do not know how many vehicles will be there. [6:42:30 PM](#) Horowitz does not know of a similar single family home that would be denied unless the cars were unlicensed. [6:42:39 PM](#) Chair Fugate stated they all are sensitive to the concerns and have a lot of questions. Chair Fugate referenced what Scanlon stated to Horowitz decision. Chair Fugate asked what their options are and where it goes from here. [6:43:38 PM](#) Phillips stated at this point of time there's no requirement in zoning ordinance for an application for a permit, nor standards. Phillips stated really have the choice to affirm what Horowitz did or if she errored. [6:43:45 PM](#) Chair Fugate asked what happens if they affirm Horowitz's decision. Phillips and Horowitz stated the appellant could appeal to City Council. Chair Fugate stated that is what she wanted to know, if they affirm Horowitz's decision on the information she had, then the people have the right to further appeal and it goes to City Council. Phillips confirmed and stated City Council will consider the appeal with the same record the commission is considering. [6:44:52 PM](#) Smith stated it is unfortunate that this type of situation came up in this type of manner, he imagines people have valid concerns and questions a public

hearing would have been useful to answer those questions but without an underlying ordinance they pretty much helpless. [6:45:24 PM](#) Pogue suggested another option would be for the commission to make a decision along with a recommendation that if it chooses the City or Council explore enacting ordinance and when and if the group home starts operating as planned depending on the timing of the ordinance the home will be subject to that ordinance. Pogue stated what he thinks he is hearing is that we wish we had more criteria or guidelines and thinks could make a conditional approval. [6:45:57 PM](#) Phillips stated they need to make a decision on Horowitz's letter and after that they are free by separate motion to make a recommendation to the City Council however they choose. Chair Fugate summarized first need to make decision on the letter and if so wish they can then make a separate recommendation to City Council. Phillips confirmed.

[6:47:01 PM](#) Smith motioned to approve the Planning and Zonings Administrators interpretation of code memorandum dated August 13, 2018 regarding Sober Living located at 220 S Second Ave finding that her decision was in line with city ordinance and state law. Scanlon seconded. All in favor.

[6:48:27 PM](#) Scanlon asked if could recommend to Council that they send this back to planning and zoning for a public hearing. Phillips stated there is no requirement in the zoning ordinance that they need to have a public hearing. Smith asked if it is possible to make a retroactive ordinance. Horowitz stated no if they began operating it will be grandfathered. Phillips stated they are discussing an ordinance that they haven't even started a draft, that if wants to make a motion to the council that the city should consider doing this thinks it would be appropriate. Phillip's cautions making it so specific. [6:49:54 PM](#) Smith stated recommendation to them regarding this type of group home and starting a process with public hearing so that they can move forward adopting an ordinance that would be specific to this type of situation is something they should recommend. Chair Fugate agreed with that and asked if it would be appropriate to ask that they look at potential possibilities that could arise. Phillips stated it is really difficult to talk about enforcement of an ordinance that doesn't exist. Chair Fugate stated not talking about enforcement, more talking about awareness of the situation. Phillips stated he thinks if the commission sends up their recommendation that they will get the point. Engelhardt added would like to see it explored from a business licensing process as well. Chair Fugate stated there are questions if they are intending to be licensed, if that's the case, there are a lot of questions. Phillips stated all those questions will come up in the course of enacting the ordinance. Chair Fugate stated it is important to say for the record if there is licensing involved if not who oversees, if issues with concerns in number four of the second statute who takes care of that, if facility supervised, does supervision equate with responsibility for those being supervised, for record these are her main concerns. [6:52:25 PM](#) Commission discussed wording of recommendation to City Council.

[6:55:33 PM](#) Smith motioned to make recommendation to City Council that they start a review process to create an ordinance that will deal with group homes for the subjects who have disabilities. Scanlon seconded. All in favor.

[6:58:01 PM](#) Phillips stated believes recommendation is fine.

Staff Reports and Discussion

SR 1 Discussion of current building activity, upcoming projects, and zoning code changes.
(No documents)

- **Design Review Exemptions:**

- **Hailey Cemetery:** Design Review Exemptions for approval of a new 196 square foot garage/shed structure, to be located next to an existing shed. The garage/shed structure will match the exterior materials of the existing shed. The garage/she structure will be built to hold a minimum of 140psf of snow load.
- **Balmoral Park:** Design Review Exemption for approval of Balmoral Park Improvements. Improvements include the addition of a new picnic pavilion, play structure, park benches, asphalt pathway and landscaping. Repairs will be completed on the existing basketball court.
- **Men's Second Chance Living:** Design Review Exemption for approval of exterior and interior renovations to the existing single-family residence, located at 220 South Second Avenue. Exterior renovations include replacing an exterior window to comply with the International Building Code and International Residential Code. Interior renovations include the addition of a bathroom, laundry room and the removal of two interior doors.
- **Dustin and Emily Stone:** Design Review Exemption for approval of exterior and interior renovations to the existing single-family residence. Exterior renovations include an extension of the roofline and new front porch roof and extension of the new porch roofline to the east elevation. Two new windows are also proposed at the east elevation. All exterior materials are to match existing. Interior renovations include the reconfiguration of the master bedroom and bathroom and renovating storage space on the second floor into a new bathroom and bedroom.
- **Sterling Medical Urgent Care:** Design Review Exemption for approval of exterior and interior renovations to the existing building, located at 507 South Main Street. Exterior renovations include new Cultured Stone Wainscot, new exterior trim painted white, new gutter and downspouts painted white, new plywood siding painted white, and new asphalt shingles in Charcoal. New handrails, painted black, will be installed, as well as the installation of a new concrete landing, ramp and steps at entry. Interior renovations include the reconfiguration of interior walls, new flooring and new finishes.
- **Atlantic Aviation:** Design Review Exemption for approval of exterior and interior renovations to the existing building, located at 2230 Atlantic Aviation Drive. Exterior renovations include the addition of two new

windows. Interior renovations include the reconfiguration of interior walls, new flooring and new finishes.

SR 2 Discussion of the next Planning and Zoning meeting: **Monday, November 5, 2018.**
(No documents)

7:00:23 PM Scanlon motioned to adjourn. Smith seconded. All in Favor.