

STAFF REPORT

TO: Hailey City Council
FROM: Beth Robrahn, Planning Director *BR*
RE: Zoning Ordinance Amendment – Section 4.6
HEARING: November 24, 2008

Staff analysis is in lighter type

Notice

Notice for the public hearing was published in the Idaho Mountain Express and mailed to public agencies and area media on November 5, 2008.

Proposal

Attached are amendments to Section 4.6 of the Zoning Ordinance proposed by the City. These amendments would amend Section 4.6.1 to clarify the purpose of the transitional district, amend Section 4.6.2 to include multi-family residential as a permitted use, and amend Section 4.6.3 to delete multi-family residential as a conditional use.

Procedural History

The Planning and Zoning Commission discussed changes to the Transitional Zoning District on September 2, 2008. At that time the Commission discussed limiting the permitted uses to primarily residential in order to protect the residential nature of the transitional zone. Upon additional analysis, staff determined this approach may be problematic in terms of creating existing non-conforming uses. In addition the changes would make the Transitional zone the same as the General Residential zone. Therefore staff recommends a concurrent amendment to Section 14.6 to establish criteria for applications to rezone a property to Business, Limited Business or Transitional.

The Planning and Zoning Commission held a public hearing on October 20, 2008 and recommended approval of the proposed amendments.

Standards of Evaluation

14.6 Criteria for Review. When evaluating any proposed amendment under this Article, the Hearing Examiner or Commission and Council shall make findings of fact on the following criteria:

1. The proposed amendment is in accordance with the Comprehensive Plan;
The Council should consider how the proposed amendments relate to the various policies and implementation items of the Comprehensive Plan, particularly the following:

5.8 Due Process and Public Input

Goal: To develop clear land use and development procedures that protect the public welfare for all development.

3. Policy: Develop and maintain land use regulatory procedures that are efficient,

consistent and predictable, but that provide flexibility to deal with unique situations.

5.4 Land Use Districts

Goal: To provide for a balanced mix of land uses suitably related to each other and their natural setting. Include sufficient space in all types of districts to accommodate future growth. Direct density of development towards the community core, with increasing green space and generally decreasing density toward the edges of the community and within the Area of City Impact.

1. Policy: Encourage integration of compatible land uses in order to retain a compact City comprised of a central downtown with surrounding diverse neighborhoods, thereby reducing sprawl and traffic, increasing efficiency, and creating neighborhood and community character.

Implementation:

e. Review the Transitional District section of the zoning ordinance to ensure that residential uses remain in that district, while allowing limited commercial uses. The district should serve as a buffer between residential and intense business uses. Evaluate actual adjacent uses when considering any rezone from residential to transitional zoning.

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

The proposed amendment is not expected to create excessive additional requirements at public cost for public facilities and services.

3. The proposed uses are compatible with the surrounding area; and
The proposed amendments are intended to further clarify the purpose of the Transitional District.

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

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

Summary

The Council shall hold a public hearing and determine whether the proposed amendments are in accordance with the applicable standards of evaluation.

The Council shall make a decision, with **findings on the four standards of evaluation** noted above. If the proposed change is approved, the Council shall pass an ordinance making said amendment part of Hailey Zoning Ordinance #532. The draft ordinance is attached.

Motion Language

Motion to approve the proposed amendments to Section 4.6, 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.

HAILEY ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, AMENDING HAILEY'S ZONING ORDINANCE, ORDINANCE NO. 532, BY AMENDING SECTION 4.6.1 TO CLARIFY THE PURPOSE OF THE TRANSITIONAL DISTRICT, BY AMENDING SECTION 4.6.2 TO INCLUDE MULTI-FAMILY RESIDENTIAL AS A PERMITTED USE, BY AMENDING SECTION 4.6.3 TO DELETE MULTI-FAMILY RESIDENTIAL AS A CONDITIONAL USE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; AND PROVIDING FOR THE EFFECTIVE DATE.

WHEREAS, the proposed amendments are generally in accordance with the Comprehensive Plan;

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

WHEREAS, the proposed amendments will be in accordance with the welfare of the general public.

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

Section 1. Section 4.6.1, of the Zoning Subdivision Ordinance No. 532, is hereby amended by the deletion of the stricken language and the addition of the underlined language as follows:

4.6.1 Purpose. The purpose of the TN District is to provide a buffer zone between residential and business areas within the Townsite Overlay District. The zone provides for restricted business activities within residential areas which are directly adjacent to or across a street or alley from established business zones. Uses shall be limited to those that generate relatively little traffic. The residential integrity character of the area shall be maintained by preserving the existing buildings and requiring new building designs in keeping with the residential nature of the area, and requiring adequate on-site parking. The term "Transitional" does not imply that the properties within the district will be transitioning from residential to business zoning.

Section 2. Section 4.6.2, of the Zoning Subdivision Ordinance No. 532, is hereby amended by the deletion of the stricken language and the addition of the underlined language

4.6.2 Permitted Uses. Permitted uses for the TN District are limited to the following:

- a. Single Family Dwellings.
- b. Multi-Family Dwellings
- ~~b c.~~ ~~Dwelling Units within Mixed Use Buildings.~~
- e d. Home Occupations.
- ~~d e.~~ Professional Offices

- e f. Day Care Homes.
- f g. Day Care Facilities.
- g h. Manufactured Homes.
- h i. Churches.
- i j. Parks.

Section 3. Section 4.6.3, of the Zoning Subdivision Ordinance No. 532, is hereby amended by the deletion of the stricken language as follows:

4.6.3 Conditional Uses. Conditional uses in the TN District are limited to the following:

- ~~a. Multi Family Dwellings.~~
- b a. Non-profit recreation center.
- e b. Bed and Breakfast Inn.
- d c. Day Care Centers.
- e d. Personal Services.
- f e. Public Service, Public Use and Public Utility Facilities.
- g f. Semi-Public Uses.
- h g. PWSF's or WCF's, attached to street poles and mounted on existing buildings or structures, upon the issuance of a Wireless Permit in accordance with the provisions of Article VIII A of this Ordinance. (Freestanding towers are prohibited.)
- i h. Above ground flammable and combustible liquid tanks utilized by a public use.
- j i. Temporary Structures.

Section 4. 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 5. All City of Hailey ordinances or resolutions or parts thereof, which are in conflict herewith, are hereby repealed.

Section 6. This ordinance shall be in full force and effect from and after the required three (3) readings, approval, and publication according to law.


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

Rick Davis, Mayor, City of Hailey

Attest:

Mary Cone, City Clerk

STAFF REPORT

TO: Hailey City Council
FROM: Beth Robrahn, Planning Director 
RE: Zoning Ordinance Amendment – Section 14.6
HEARING: November 24, 2008

Staff analysis is in lighter type

Notice

Notice for the public hearing was published in the Idaho Mountain Express and mailed to public agencies and area media on November 5, 2008.

Proposal

Attached are amendments to Section 14.6 of the Zoning Ordinance proposed by the City. These amendments would add criteria for rezones to business, limited business and transitional districts.

Procedural History

The Planning and Zoning Commission discussed changes to the Transitional Zoning District on September 2, 2008. At that time the Commission discussed limiting the permitted uses to primarily residential in order to protect the residential nature of the transitional zone. Upon additional analysis, staff determined this approach may be problematic in terms of creating existing non-conforming uses. Staff recommends an amendment to Section 14.6 to establish criteria for applications to rezone a property to Business, Limited Business or Transitional.

The Planning and Zoning Commission held a public hearing on October 20, 2008 and recommended approval of the proposed amendments.

Standards of Evaluation

14.6 Criteria for Review. When evaluating any proposed amendment under this Article, the Hearing Examiner or Commission and Council shall make findings of fact on the following criteria:

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

The Council should consider how the proposed amendments relate to the various policies and implementation items of the Comprehensive Plan, particularly the following:

5.8 Due Process and Public Input

Goal: To develop clear land use and development procedures that protect the public welfare for all development.

3. Policy: Develop and maintain land use regulatory procedures that are efficient, consistent and predictable, but that provide flexibility to deal with unique situations.

5.4 Land Use Districts

Goal: To provide for a balanced mix of land uses suitably related to each other and their natural setting. Include sufficient space in all types of districts to accommodate future growth. Direct density of development towards the community core, with increasing green space and generally decreasing density toward the edges of the community and within the Area of City Impact.

1. Policy: Encourage integration of compatible land uses in order to retain a compact City comprised of a central downtown with surrounding diverse neighborhoods, thereby reducing sprawl and traffic, increasing efficiency, and creating neighborhood and community character.

Implementation:

e. Review the Transitional District section of the zoning ordinance to ensure that residential uses remain in that district, while allowing limited commercial uses. The district should serve as a buffer between residential and intense business uses. Evaluate actual adjacent uses when considering any rezone from residential to transitional zoning.

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

The proposed amendment is not expected to create excessive additional requirements at public cost for public facilities and services.

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

The proposed amendments are intended to further ensure the surrounding area is considered prior to granting a rezone of a property from residential to commercial.

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

The proposed amendment is expected to promote the public health, safety and general welfare.

Summary

The Council shall hold a public hearing and determine whether the proposed amendments are in accordance with the applicable standards of evaluation.

The Council shall make a decision, with **findings on the four standards of evaluation** noted above. If the proposed change is approved, the Council shall pass an ordinance making said amendment part of Hailey Zoning Ordinance #532. The draft ordinance is attached.

Motion Language

Motion to approve the proposed amendments to the Hailey Zoning Ordinance Section 14.6, 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.

HAILEY ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, AMENDING HAILEY'S ZONING ORDINANCE, ORDINANCE NO. 532, BY AMENDING SECTION 14.6. TO ADD CRITERIA FOR REZONES TO BUSINESS, LIMITED BUSINESS AND TRANSITIONAL DISTRICTS; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; AND PROVIDING FOR THE EFFECTIVE DATE.

WHEREAS, the proposed amendments are generally in accordance with the Comprehensive Plan;

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

WHEREAS, the proposed amendments will be in accordance with the welfare of the general public.

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

Section 1. Section 14.6, of the Zoning Ordinance No. 532, is hereby amended by the addition of the underlined language as follows:

14.6 Criteria for Review. When evaluating any proposed amendment under this Article, the Hearing Examiner or Commission and Council shall make findings of fact on the following criteria:

- a. The proposed amendment is in accordance with the Comprehensive Plan;
- b. 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;
- c. The proposed uses are compatible with the surrounding area; and
- d. The proposed amendment will promote the public health, safety and general welfare.

14.6.1 When evaluating any proposed Zoning Ordinance Map Amendment to rezone property to Business (B) Zoning District, Limited Business (LB) Zoning District or Transitional (T) Zoning District, the Hearing Examiner or Commission and Council shall consider the following:

- a. The level of intensity of use of the existing Business, Limited Business or Transitional Zoning Districts, including but not limited to vacancies and under utilization of land.
- b. The distance of the parcel proposed for rezone from the Central Core Overlay District boundary.

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

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

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


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

Rick Davis, Mayor, City of Hailey

Attest:

Mary Cone, City Clerk

STAFF REPORT

TO: Hailey City Council
FROM: Beth Robrahn, Planning Director 
RE: Zoning Ordinance Amendment – Section 3.8.5
HEARING: November 24, 2008

Staff analysis is in lighter type

Notice

Notice for the public hearing was published in the Idaho Mountain Express and mailed to public agencies and area media on November 5, 2008.

Proposal

Attached are amendments to Section 3.8.5 of the Zoning Ordinance proposed by the City. These amendments would add projects providing community housing, projects eligible for Energy Star or LEED certification to the applications eligible for fast track status.

Procedural History

There has been discussion within the City of providing incentives for both green building practices and community housing. "Fast tracking" is one incentive commonly used to expedite the application and permit approval process and reduce costs associated with the application.

The Planning and Zoning Commission held a public hearing on October 20, 2008 and recommended approval of the proposed amendments.

Standards of Evaluation

14.6 Criteria for Review. When evaluating any proposed amendment under this Article, the Hearing Examiner or Commission and Council shall make findings of fact on the following criteria:

1. **The proposed amendment is in accordance with the Comprehensive Plan;**
The Council should consider how the proposed amendments relate to the various policies and implementation items of the Comprehensive Plan, particularly the following:
 - 5.8 Due Process and Public Input**
Goal: To develop clear land use and development procedures that protect the public welfare for all development.
 - 3. Policy: Develop and maintain land use regulatory procedures that are efficient, consistent and predictable, but that provide flexibility to deal with unique situations.**
2. **Essential public facilities and services are available to support the full range of proposed uses without creating excessive additional requirements at public cost for the public facilities and services;**

The proposed amendment is not expected to create excessive additional requirements at public cost for public facilities and services.

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

The proposed amendment would not affect uses.

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

The proposed amendment will provide an incentive for projects providing community housing or projects eligible for Energy Star or LEED certification

Summary

The Council shall hold a public hearing and determine whether the proposed amendments are in accordance with the applicable standards of evaluation.

The Council shall make a decision, with **findings on the four standards of evaluation** noted above. If the proposed change is approved, the Council shall pass an ordinance making said amendment part of Hailey Zoning Ordinance #532. The draft ordinance is attached.

Motion Language

Motion to approve the proposed amendments to the Hailey Zoning Ordinance Section 3.8.5, 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.

HAILEY ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, AMENDING HAILEY'S ZONING ORDINANCE, ORDINANCE NO. 532, BY AMENDING SECTION 3.8.5 TO ADD PROJECTS PROVIDING COMMUNITY HOUSING, AND PROJECTS ELIGIBLE FOR ENERGY STAR OR LEED CERTIFICATION TO THE APPLICATIONS ELIGIBLE FOR FAST TRACK STATUS; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; AND PROVIDING FOR THE EFFECTIVE DATE.

WHEREAS, the proposed amendments are generally in accordance with the Comprehensive Plan;

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

WHEREAS, the proposed amendments will be in accordance with the welfare of the general public.

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

Section 1. Section 3.8.5, of the Zoning Ordinance No. 532, is hereby amended by the deletion of the stricken language and the addition of the underlined language as follows:

3.8.5 Fast Track

Applications for projects providing Community Housing Unit(s), projects eligible to be certified as an ENERGY STAR project, projects eligible to be certified according to the Leadership in Energy and Environmental Design (LEED) Green Building Rating System or projects within the Central Business District may be eligible for Fast Track status and scheduled for the earliest reasonable meeting of the appropriate reviewing body, regardless of its submission relative to other applications (except for public school facilities). In no case shall an application for which legal notice has been published be rescheduled to allow for priority scheduling of another application subject to the Fast Track process.

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

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

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


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

Rick Davis, Mayor, City of Hailey

Attest:

Mary Cone, City Clerk

STAFF REPORT

TO: Hailey City Council
FROM: Beth Robrahn, Planning Director 
RE: Subdivision Ordinance Amendment – Section 4.11.2 – Inclusionary Housing
HEARING: November 24, 2008

Note: Staff analysis is in lighter type.

Notice

Notice for the public hearing was published in the Idaho Mountain Express and mailed to public agencies and area media on November 5, 2008.

Proposal

Amendments to Section 4.11.2 of the Subdivision Ordinance are proposed by the City. These amendments would delete the inclusionary housing provision for the conversion of rental units to condominiums or townhouses. Please see the attached page for the actual proposed language.

Background

For legal reasons, the City Attorney suggests the elimination of inclusionary housing for the conversion of rental units to condominium and townhouse units.

The Planning and Zoning Commission held a public hearing on October 6, 2008 and recommended approval of the proposed amendments.

Standards of Evaluation

Section 13.4.2 of the Subdivision Ordinance sets forth the standard of evaluation after receiving a recommendation by the Commission.

1. Will generally conform to the Comprehensive Plan.

The Council should consider how the proposed amendments relate to the various policies and implementation items of the Comprehensive Plan, particularly the following:

5.8 Due Process and Public Input

Goal: To develop clear land use and development procedures that protect the public welfare for all development.

3. Policy: Develop and maintain land use regulatory procedures that are efficient, consistent and predictable, but that provide flexibility to deal with unique situations.

Implementation:

a. Review all Ordinances and procedures on a regular basis to ensure that the restrictive provisions found therein provide substantial benefit to the

public health, safety and welfare, while respecting private property rights.

2. Will not create excessive additional requirements at public cost for public facilities and services.

The proposed amendment is not expected to create excessive additional requirements at public cost for public facilities and services.

3. Will be in accordance with the welfare of the general public.:

The proposed amendment is expected to promote the public health, safety and general welfare.

Summary

The Council shall hold a public hearing and determine whether the amendments:

1. Will generally conform to the Comprehensive Plan.
2. Will not create excessive additional requirements at public cost for public facilities and services.
3. Will be in accordance with the welfare of the general public.

Upon approval of an amendment, the Council shall pass an ordinance making the amendment part of Hailey Subdivision Ordinance #821. The draft ordinance is attached.

Motion Language

Motion to approve the proposed amendments to Hailey Subdivision Ordinance Section 4.11.2, finding that the amendments will generally conform to the Comprehensive Plan, will not create excessive additional requirements at public cost for public facilities and services and will be in accordance with the welfare of the general public.

HAILEY ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, AMENDING HAILEY'S SUBDIVISION ORDINANCE, ORDINANCE NO. 821, BY AMENDING SECTION 4.11.2, TO DELETE THE INCLUSIONARY HOUSING REQUIREMENT FOR THE CONVERSION OF RENTAL UNITS TO CONDOMINIUMS OR TOWNHOUSES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; AND PROVIDING FOR THE EFFECTIVE DATE.

WHEREAS, the proposed amendments are generally in accordance with the Comprehensive Plan;

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

WHEREAS, the proposed amendments will be in accordance with the welfare of the general public.

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

Section 1. Section 4.11.2, of the Hailey Subdivision Ordinance No. 821, is hereby amended by the deletion of the stricken language as follows:

4.11.2 Establishment of Inclusionary Community Housing. Except as otherwise provided herein, all residential subdivisions, ~~including conversion of rental units to condominiums or townhouses,~~ new condominium and townhouse subdivisions, and amendments to plats that convert non-residential units or lots to residential units or lots, resulting in five or more lots or Dwelling Units shall provide Community Housing Units equivalent to a minimum of twenty percent (20%) of the total number of lots or Dwelling Units approved, unless alternatives are otherwise approved. If this Section results in requiring a fraction of a Community Housing Unit, a full unit shall be built or an alternative to provision of an on-site unit shall be provided in compliance with Section 4.11.5 of this ordinance.

If one of the applications described in this section is made and if a subsequent application described in this section cumulatively results in five or more lots or Dwelling Units on the Original Parcel, then the subsequent applicant shall be subject to the provisions of this ordinance and shall construct the required Community Housing Units and/or alternatives in accordance with this ordinance for all the lots or Dwelling Units on the Original Parcel.

If one of the applications described in this section is made and it is apparent that a subdivision of five or more lots may be further subdivided, any approved plat or other recordable instrument describing the entire Original Parcel shall contain a note or

provision (unless the Original Parcel is subject to a recorded restriction prohibiting future subdivision), advising future owners of all or part of the Original Parcel that a subsequent application described in this section cumulatively resulting in five or more lots or Dwelling Units will subject all or part of the Original Parcel to the requirement of providing Community Housing Units or alternatives in accordance with this ordinance.

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

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

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

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

Rick Davis, Mayor, City of Hailey

Attest:

Mary Cone, City Clerk

AGENDA ITEM SUMMARY

DATE: 11/10/2008

DEPARTMENT: Legal

DEPT. HEAD SIGNATURE: 

SUBJECT:

Request to amend the Cutters' Annexation Agreement, enter into a new security agreement and discuss dedication of property.

AUTHORITY: ID Code _____ IAR _____ City Ordinance/Code _____
(IFAPPLICABLE)

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

See attached memo.

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

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IFAPPLICABLE)

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

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

See attached memo.

FOLLOW-UP REMARKS:

11/10 - continued to 11/24/08 mtg.

MEMORANDUM

TO: Mayor Rick Davis and Hailey City Council Members

FROM: Ned C. Williamson

DATE: November 5, 2008

RE: Cutters' Request to Amend Annexation Agreement, Security Agreement and Dedication of Property

Request to Amend Annexation Agreement

I am enclosing a series of e-mails between Jim Speck and me. As you can tell by the e-mail dated September 4, 2008, Cutters would like to renegotiate the payment of annexation fees. For your benefit, I am also enclosing the Cutters' annexation agreement. The present agreement provides that there will be four installments of the annexation fees at a time when a certain percentage of lots are sold or upon annual anniversary dates of the final plat recordation, whichever is sooner. I am told that the final plat was recorded on November 29, 2007. According to the annexation agreement, Cutters is obligated to pay the principal amount of \$875,125, plus interest according to the consumer price index ("CPI"), on or before November 29, 2008, and similar payments on the next three anniversary dates.

Staff considered this proposal and communicated to Mr. Speck that staff would be recommend much of the relief sought by Cutters, provided Lot 73 would be conveyed to Hailey. In Jim Speck's e-mail to me dated October 31, 2008, Cutters made a counter-offer. I would like the Mayor and Council to become involved in this discussion. I believe you have the following options:

1. Do not amend the annexation agreement.
2. Agree to amend the annexation agreement consistent with the initial offer dated September 4, 2008.
3. Agree to amend the annexation agreement consistent with the staff recommendation set forth in the e-mail October 30, 2008.
4. Agree to amend the annexation agreement consistent with the counter-offer dated October 31, 2008.
5. Negotiate a different arrangement.

If the City and Cutters reach an agreement to amend the annexation agreement, an amendment will have to be drafted and presented to you at the November 24, 2008, City Council meeting.

Security Agreement

I have been told that a representative of Cutters has asked to extend the security needed for some subdivision improvements. For your information, Hailey and Cutters entered into a Security Agreement in November, 2007, which allowed Cutters to construct subdivision improvements within one year after Cutters posted a letter of credit. I am providing you a list of improvements which were to be completed by November 16, 2008. It is unclear to me what needs to be completed, but I have been told that much of the work has been successfully completed. The security will expire November 16, 2008. I would suggest that Hailey enter into another Security Agreement allowing another one year extension to complete the uncompleted improvements. Such a Security Agreement is attached, but it needs a list of improvements and a cost estimate. It is my hope that such a list will be agreed upon by Cutters and staff and be ready for presentation by Monday's meeting.

Dedication of Property

Paragraph 5 of the annexation agreement provides that Cutters shall, within 60 days of November 29, 2007, convey title to the Park (Parcel A), open space (Parcel B) and an access and utility easement between lots 97 and 98. As required by the annexation agreement, Cutters provided Hailey a title commitment for these properties, but Cutters failed to convey title to these parcels. Cutters has asked Hailey to rezone portions of the property to be dedicated to Hailey before the property is conveyed, which in turn would allow Cutters to potentially acquire a greater tax deduction for a charitable contribution. In my conversations with Cutters, I expressed my belief that the Council would not be willing to consider such a rezone. This matter has been unresolved for some time and I believe the Mayor and Council should allow Cutters to make their proposal to the Mayor and Council, and then make a decision whether the City would be willing to entertain the rezone. For this issue, I feel you have the following options:

1. If the Council wishes to entertain Cutters' proposal, then the Council should make a motion to amend paragraph 5 allowing Cutters to seek a rezone, and if successful, provide for the conveyance of the rezoned property following the rezone.
2. If the Council does not wish to entertain Cutters' proposal, then the Council may wish to make a motion to go into an executive session to discuss imminently likely litigation pursuant to Idaho Code § 67-2345(1)(f).

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

cc: Jim Speck (w/ encl.)

Ned Williamson

From: "Jim Speck" <jim@speckandaanestad.com>
To: "Mr. Ned Williamson" <wlo@cox-internet.com>
Cc: <jc@idahotower.com>; "Steve Brown" <steven.randall.brown@gmail.com>; "Matt Luck" <mluck@windermere.com>
Sent: Thursday, September 04, 2008 8:12 PM
Subject: Re: Old Cutters, Inc./Subdivision - Annexation Fee Payment Schedule

Ned,

We would like to propose the following changes to the current payment schedule:

1. All of the money currently held in escrow at Sun Valley Title - approximately \$169,271 - will be paid over to the City immediately upon approval of the amendment.
2. \$50,000 will be paid directly to the City from the proceeds of all future lot sales until the total annexation fee is paid.
3. The running balance of the annexation fee due the City will accrue interest at the rate of 2.5% per year. This will replace the cost of living increase.

Once the funds in escrow are paid the balance due will be \$3,331,229. Since 13 lots have been sold to date, this balance will be paid in full (without accounting for interest accruing) after the 80th lot is sold. The current schedule provides for payment in full after 85% of the lots sell, i.e. 92 lots.

Let us know what you think of this proposal before it is put on the agenda. Thank you.

Jim

James P. Speck
SPECK & AANESTAD
A Professional Corporation
120 East Avenue
P.O. Box 987
Ketchum, ID 83340
208.726.4421
208.726.0752 (fax)
jim@speckandaanestad.com

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Ned Williamson

From: "Jim Speck" <jim@speckandaanestad.com>
To: "Ned Williamson" <wlo@cox-internet.com>
Cc: "John Campbell" <jc@idahotower.com>; "Steve Brown" <steven.randall.brown@gmail.com>;
"Matt Luck" <mluck@windermere.com>
Sent: Friday, October 31, 2008 2:20 PM
Attach: cpi 1998 - 2008 data.pdf; cpi 1998 - 2008.pdf
Subject: RE: Cutters

Ned,

We are pleased the staff and you received our proposal in a favorable light. However, as you might imagine, the last point raises some concern. You may recall, as I believe you sat in on all of the meetings on the negotiations of the terms of annexation, that Lot 73 was only meant to be part of the consideration if the lot sales were going well enough that my client could pay off its bank loan within the first year the project was on the market. That is why the agreement provides that it is conveyed to the City "if and only if" Old Cutters closed on the sale of 55% or more of the market rate lots in the first year. Needless to say that has not happened and will not happen by November 29!

Due to many delays in getting all of the approvals necessary to begin selling lots, none of which were the fault of my client, the project first ran into a collapsing local real estate market and now one of the worst economic downturns nationwide since the late 1920's!! You ask for the lot to compensate the city for loss of interest. Right now the CPI is heading back down (see the two attachments). It looks like the difference between our proposal (2.5%) and the current agreement will be about 1.5% for the first year. This only amounts to around \$52,500 as of November 29, 2008. With the payment of the monies currently in escrow and the hopeful principal reductions through lot sales, this amount will only go down unless the CPI makes a sharp turnaround. In light of all this, and the irrefutable fact that the City exacted fees from my client equal to almost twice that calculated by its own consultants at the payment necessary to offset the foreseeable impacts, it seems very unfair to ask my client to convey Lot 73 to the city right now.

Nonetheless, John believes it is fair that he honor the spirit of the agreement and offer another way for the City to get Lot 73 even though under the terms of the agreement that obligation will no longer be there as of November 29, 2008. Instead of conveying Lot 73 now, if my client can sell 60% of the market rate lots by November 29, 2009, or 65% of the market rate lots by November 29, 2010, Lot 73 will then be conveyed to the City. The higher percentages are necessary because my client has and will continue to incur more interest than anticipated on the loan which will thus take longer to be paid off.

In light of the current state of the economy and its rather uncertain future we hope the City's staff and you will find this to be a fair alternative which you can recommend to the Council. Please call if there are any questions.

Jim

James P. Speck
SPECK & AANESTAD
A Professional Corporation
120 East Avenue
P.O. Box 987
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208.726.4421
208.726.0752 (fax)
jim@speckandaanestad.com

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-----Original Message-----

From: Ned Williamson
Sent: Thursday, October 30, 2008 5:07 PM
To: Jim Speck
Cc: Dawson, Heather

Jim,

I have had an opportunity to discuss your client's proposal to amend the Cutters' Annexation Agreement with Hailey staff members. The staff would recommend an amendment to the Annexation Agreement as follows:

1. Your client would pay the amount allocated by your client and held in escrow at the time of the execution of the amendment. I understand that this amount is \$169,271.
2. After the payment of the amount collected by your client, the parties would agree that the remaining annexation fees would be paid. Based on the \$169,271 figure, the remaining annexation fees would be \$3,331,229.
3. The deadlines to pay annexation fees would be modified so that \$50,000 plus interest per lot would be paid at the time of each closing, until the remaining balance of annexation fees are paid in full.
4. Paragraph 4(f) of the Annexation Agreement would be modified so the interest rate on the remaining balance would be 2.5 % per

annum.

5. The provisions in paragraph 6 of the Annexation Agreement relating to Lot 73 would be modified so that title to Lot 73 would be conveyed to Hailey upon execution of the amendment. This amendment would be designed to address the loss in interest.

Please review this proposal and advise me of your client's position. We can put this on the Council's agenda for 10-27-08. I look forward to your response. Thank you.

Ned

Ned C. Williamson, Esq.
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Hailey, Idaho 83333
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Fax (208) 788-7901

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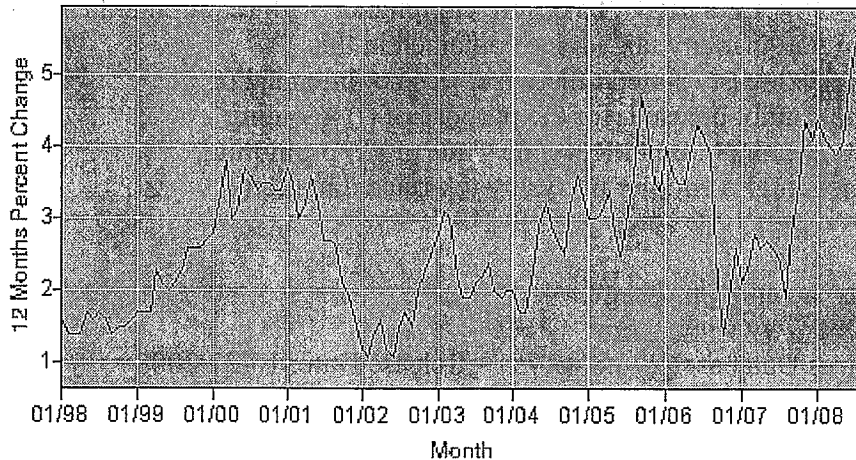
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Data extracted on: October 31, 2008 (11:31:53 AM)

Consumer Price Index - All Urban Consumers

12 Months Percent Change

Series Id: CUSR0000SA0
Seasonally Adjusted
Area: U.S. city average
Item: All items
Base Period: 1982-84=100



Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
1998	1.6	1.4	1.4	1.4	1.7	1.6	1.7	1.6	1.4	1.5	1.5	1.6			
1999	1.7	1.7	1.7	2.3	2.1	2.0	2.1	2.3	2.6	2.6	2.6	2.7			

2000	2.8	3.2	3.8	3.0	3.1	3.7	3.6	3.4	3.5	3.5	3.4	3.4			
2001	3.7	3.5	3.0	3.2	3.6	3.2	2.7	2.7	2.6	2.1	1.9	1.6			
2002	1.2	1.1	1.4	1.6	1.2	1.1	1.5	1.7	1.5	2.0	2.3	2.5			
2003	2.8	3.1	3.0	2.2	1.9	1.9	2.1	2.2	2.4	2.0	1.9	2.0			
2004	2.0	1.7	1.7	2.3	2.9	3.2	2.9	2.7	2.5	3.2	3.6	3.3			
2005	3.0	3.0	3.1	3.4	2.8	2.5	3.1	3.6	4.7	4.4	3.5	3.4			
2006	4.0	3.6	3.5	3.5	4.0	4.3	4.1	3.9	2.1	1.4	1.9	2.6			
2007	2.1	2.4	2.8	2.6	2.7	2.6	2.4	1.9	2.8	3.5	4.4	4.1			
2008	4.4	4.1	4.0	3.9	4.1	4.9	5.5	5.4	4.9						

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ANNEXATION, SERVICES AND DEVELOPMENT AGREEMENT
OLD CUTTERS PLANNED UNIT DEVELOPMENT

THIS AGREEMENT ("Agreement") is dated this 10 day of April, 2006, by and between the CITY OF HAILEY, IDAHO, a municipal corporation (the "City") and OLD CUTTERS, INC., an Idaho corporation ("OCI", and together with the City, the "Parties").

ORIGINAL IN RED

RECITALS

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

B. OCI owns 142.62 acres of property in Blaine County, Idaho and contiguous to the boundaries of the City, the legal description of which is set forth in Exhibit 1 attached hereto (the "Property"). OCI has filed an application to annex the Property into the City pursuant to the provisions of the City's Annexation Procedures Ordinance No. 889.

C. Concurrent with the execution of this Agreement, the City has adopted Ordinance No. 939 (the "Annexation Ordinance") to annex the Property into the City and to classify and zone the Property.

D. OCI intends to submit applications for approval of a subdivision of and for a planned unit development for the Property pursuant to the City's Subdivision Ordinance No. 821 and Article X of the City's Zoning Ordinance upon adoption and publication of the Annexation Ordinance.

E. The Parties agree the Property shall be developed in accordance with the terms and conditions of this Agreement and any additional conditions and requirements imposed by the Hailey Planning and Zoning Commission and Hailey City Council during the approval of the subdivision of and planned unit development for the Property.

F. OCI intends to develop the Property generally as shown on the map attached hereto as Exhibit 2. For the purposes of this Agreement, the proposed lots are shown in a sequential manner from Lot 1 through Lot 116, inclusive. The Parties understand that any subdivision application and approval would ultimately result in the creation of blocks and lots with numbering that would differ from the numbering of the lots shown on Exhibit 2.

AGREEMENT

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

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

2. **ZONING.** Upon annexation the Property shall be classified and zoned in accordance with the Annexation Ordinance. The Parties acknowledge that no zoning of the Property can exist solely by virtue of this Agreement.

3. **DEVELOPMENT OF PROPERTY.** The Property shall generally be developed as shown on the map attached hereto as Exhibit 2 and in accordance with the conditions and requirements of the Hailey Subdivision and Zoning Ordinances. The following shall be included in any approved subdivision or planned unit development for the Property (the "Subdivision").

a. **Density.** There shall be no more than a total of one hundred forty-nine (149) single family residential, duplex and townhouse units in the Subdivision, consisting of one hundred two (102) single family units to be constructed on one hundred two (102) lots, twenty (20) duplex units to be constructed on ten (10) lots, and twenty-seven (27) townhouse units to be constructed on four (4) lots. The parties contemplate that townhouse sublots shall be created for the duplex and townhouse units. Following the subdivision of the lots and sublots described herein, none of the lots and sublots may be further subdivided.

b. **Community Housing.** There shall be twenty-five (25) community housing units constructed in the Subdivision pursuant to the requirements of Hailey Subdivision Ordinance. OCI shall submit a Community Housing Plan that proposes the following:

Thirteen (13) of the community housing units shall meet the sales price requirements of Section 4.11.4.2 of the Hailey Subdivision Ordinance. Six (6) of these units shall be duplex units and the remaining seven (7) shall be single townhouse units in single buildings pursuant to the ordinance amendment described in paragraph 9, below. Twelve (12) of the community housing units shall, as provided by Section 4.11.5.1.6 of the Hailey Subdivision Ordinance, be subject to a deed restriction making them available to persons who work in the Wood River Valley, reside in the unit as their primary residence and do not own other real property. All of these units shall be townhouse units in single buildings.

c. **Covenants, Conditions and Restrictions.** OCI agrees to record a declaration of covenants, conditions and restrictions against the Subdivision (the "Declaration") and agrees to form a homeowner's association for the Subdivision (the "Association"). The Declaration shall include the following provisions:

i. None of the lots may be further subdivided.

ii. The Association shall be required to maintain at its expense in a neat, attractive and safe manner, including the necessary paving, drainage and snow removal, the alleys

and parking areas within the Subdivision.

iii. The Association shall be required to maintain at its expense the snow removal and snow storage areas not located on land dedicated to the City within the Subdivision.

iv. The requirements and restrictions described in Exhibit 3 attached hereto..

d. Streets and Alleys. All of the streets within the Subdivision shall be constructed to City standards, and then dedicated to and accepted by the City as public streets. The alleys in the Subdivision shall be private streets, owned and maintained by the Association and shall be platted with appropriate utility easements. The Association shall, at its expense, maintain the snow storage areas not located on land dedicated to the City, the private streets and the parking areas, all of which are generally depicted on Exhibit 2.

4. **ANNEXATION FEES.** In consideration for the City providing essential governmental and utility services to the Property and to mitigate the impact on the City of annexation and development of the Property, OCI shall pay to the City a general annexation fee in the sum of Three Million Seven Hundred Eighty-Seven Thousand Five Hundred Dollars (\$3,787,500), subject to adjustment as provided below, in installments as follows:

a. The sum of Two Hundred Eighty-Seven Thousand Dollars (\$287,000) shall be due sixty (60) days after the date the final plat for the Subdivision is recorded in the records of Blaine County, Idaho (the "Plat Recording Date").

b. The sum of Eight Hundred Seventy-five Thousand One Hundred Twenty-five Dollars (\$875,125) shall be due one (1) year after the Plat Recording Date, or when thirty-five percent (35%) of the Market Rate Lots are sold, whichever occurs first. The term "Market Rate Lots" for the purposes of the installment payments in this paragraph and paragraphs 4.c, 4.d and 4.e, below, shall mean only the one hundred eight (108) market rate single family and duplex lots. The four (4) townhouse lots, three (3) community housing duplex lots and Lot 73 are not included in this calculation.

c. The sum of Eight Hundred Seventy-five Thousand One Hundred Twenty-five Dollars (\$875,125) shall be due two (2) years after the Plat Recording Date, or when fifty-five percent (55%) of the Market Rate Lots are sold, whichever occurs first.

d. The sum of Eight Hundred Seventy-five Thousand One Hundred Twenty-five Dollars (\$875,125) shall be due three (3) years after the Plat Recording Date, or when seventy percent (70%) of the Market Rate Lots are sold, whichever occurs first.

e. The sum of Eight Hundred Seventy-five Thousand One Hundred Twenty-five Dollars (\$875,125) shall be due four (4) years after the Plat Recording Date, or when eighty-five

percent (85%) of the Market Rate Lots are sold, whichever occurs first.

f. The annexation fee installments to be paid pursuant to paragraphs 4.b, 4.c, 4.d and 4.e, above, shall be subject to adjustment prior to the due date of each such installment payment (the "Adjustment Dates") on the basis of the change in the Consumer Price Index for All Cities published by the United States Department of Labor (the "Index") which is published for the month of the Plat Recording Date (the "Beginning Index"). If the Index published nearest the Adjustment Date (the "Adjustment Index") has changed from the Beginning Index, the annexation fee installment payment then due shall be determined by multiplying the installment amount listed above by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Beginning Index.

The obligation to pay the installments of annexation fees shall create a lien on the Market Rate Lots which shall be released in accordance with Paragraph 21 of this Agreement. The Parties acknowledge and agree that the annexation fee described in this Paragraph 4 are fair and equitable and that the annexation fees have been agreed upon as consideration for the City providing essential governmental and utility services to the Property and to mitigate the impact on the City of annexation and development of the Property. OCI agrees for itself and its successors, heirs and assigns, that OCI or any of its successors, heirs or assigns, shall not be entitled to any credit for any obligation for an impact or capital facilities fee, hookup fee, building permit fee, development impact fee created in accordance with Idaho Code Sections 67-8201 *et seq.*, as amended, or similar fee associated with the development of the Property, by virtue of the payment of annexation fees described in this Paragraph 4.

5. CONVEYANCE OF LAND TO CITY. In further consideration for the City providing essential governmental and utility services to the Property and to mitigate the impact on the City of annexation and development of the Property, OCI shall convey by appropriate warranty deed or deed of easement, as the case may be, title to the real property described in paragraphs 5.a, 5.b and 5.c, below (the "City Property"), free and clear of all liens, encumbrances, and restrictions, exclusive of (i) property taxes for the current year which are not due and payable on or before the date of conveyance and (ii) all easements, restrictions, notes and other matters as may be shown on the official plat of the subdivision and/or planned unit development which may be approved by the City for the Property. The appropriate deeds for the City Property, executed by OCI in recordable form, shall be delivered to the City on or before sixty (60) days after the Plat Recording Date. Within thirty (30) days after the Plat Recording Date OCI shall obtain at OCI's cost and deliver to the City a commitment for an owner's title insurance policy issued by a title insurance company selected by the City describing the City Property, showing all matters pertaining to the City Property, and listing the City as the prospective named insured (the "Title Commitment"). The Title Commitment shall not list in its Schedule B – Section 2 any exceptions to title other than the title insurance company's standard exceptions for an owner's title insurance policy and those exceptions described above in this paragraph.

a. **Park.** A park, as generally depicted on Exhibit 2 (the "Park"), approximately

5.08 acres in size constructed to the standards required by the Hailey Subdivision Ordinance, shall be conveyed to the City. At a minimum, OCI shall, at its sole cost and expense, submit a plan to improve the Park described herein with the following improvements:

Sheltered picnic tables with one or two BBQ grills, benches, trash containers, dog stations, children play structures (a structure designed for two- to five- year old children shall be well separated away from any street, closer to the picnic area and separated from a structure designed for older children), at least 20 pull-in parking spaces, a minimum 120' x 180' open area to allow for active recreation, a restroom connected to city water and sewer, a water element incorporating the canal water while it is running, passive areas, underground irrigation system with monitoring system to be connected to the Hiawatha Canal, native fescue grasses bordering park grass areas, and drip irrigation system for shrubs and bushes.

b. Open Space. All that portion of the Property situated East of the canal which runs through the Property, and as depicted on Exhibit 2, shall be conveyed to the City to be used as public open space, for non-winter, non-motorized public recreational purposes, and as a potential site for a City water storage tank.

c. Easements. A perpetual, non-exclusive easement, located as depicted on Exhibit 2 between Lots 97 and 98, shall be conveyed to the City to be used for access for the construction, operation, maintenance and repair of, and the extension of underground utilities to, the City water tank to be located on the land described in paragraph 5.b, above, and for non-winter, non-motorized access by the public to such property.

6. LOT 73. In further consideration for the City providing essential governmental and utility services to the Property and to mitigate the impact on the City of annexation and development of the Property, and subject to and contingent upon the provisions of this paragraph 6, OCI shall convey by appropriate warranty deed title to Lot 73 of the Subdivision, as depicted preliminarily on the map attached as Exhibit 2 ("Lot 73"), free and clear of all liens, encumbrances, and restrictions, exclusive of (i) property taxes for the current year which are not due and payable on or before the date of conveyance; (ii) the Declaration, and (iii) all easements, restrictions, notes and other matters as may be shown on the official plat of the subdivision and/or planned unit development which may be approved by the City for the Property. Lot 73 shall be conveyed to the City if, and only if, OCI closes the sale of at least fifty-five percent (55%) of the Market Rate Lots within one (1) year of the Plat Recording Date. In that case, the warranty deed for Lot 73, executed by OCI in recordable form, shall be delivered to the City on or before sixty (60) days after (i) the first anniversary of the Plat Recording Date, or (ii) the date of closing of the sale of the lot which satisfies the fifty-five percent (55%) requirement, whichever occurs first. The term "Market Rate Lot" shall have the same meaning as set forth in paragraph 4.b, above. At any time before the first anniversary of the Plat Recording Date, OCI shall, if requested by the City, provide the City with copies of recorded deeds showing the Market Rate Lots conveyed and dates of conveyances of the Market Rate Lots. OCI agrees that it shall not, in any way, delay the sale of any of the Market Rate Lots to circumvent the

requirement of conveying Lot 73 within one year of the Plat Recording Date. Within thirty (30) days after (i) the first anniversary of the Plat Recording Date, or (ii) the date of closing of the sale of the lot which satisfies the fifty-five percent (55%) requirement, whichever occurs first, OCI shall obtain at OCI's cost and deliver to the City a commitment for an owner's title insurance policy issued by a title insurance company selected by the City describing Lot 73, showing all matters pertaining to Lot 73, and listing the City as the prospective named insured (the "Title Commitment"). The Title Commitment shall not list in its Schedule B – Section 2 any exceptions to title other than the title insurance company's standard exceptions for an owner's title insurance policy and those exceptions described above in this paragraph.

7. OTHER IMPROVEMENTS. In further consideration for the City providing essential governmental and utility services to the Property and to mitigate the impact on the City of annexation and development of the Property, OCI shall at its sole cost and expense construct to City standards a sidewalk on one side of and within the right of way for Myrtle Street from the Property to the East side of the bike path adjacent to Buttercup Road, a left turn lane on Buttercup Road at the north intersection of Buttercup Road and South Hiawatha Street, and three (3) pedestrian bridges at the locations shown on Exhibit 2. The improvements described herein shall be constructed on or before the Plat Recording Date, unless the City agrees to allow the posting of security for the improvements in accordance with Hailey's Subdivision Ordinance.

8. WATER RIGHTS. OCI shall retain ownership of all of the water rights which are currently appurtenant to the Property (the "Water Rights") and, except as hereinafter provided, in its sole and absolute discretion, may sell or otherwise convey and transfer the Water Rights off of the Property. OCI may use a portion of the Water Rights for irrigation of more than the one-half (1/2) acre on each of Lots 114, 115 and 116 that will be irrigated by the City's municipal water system and water rights, and for the ponds to be located on such lots. Irrigation on Lots 114, 115 and 116 by the City's municipal water system shall not exceed one-half (1/2) acre on each of Lots 114, 115 and 116. The irrigation system using the portion of the Water Rights for these lots shall, at the election of the City, be connected to an irrigation system for the Park. If it so elects, the City shall use a portion of its water rights delivered through the Hiawatha Canal to irrigate the Park and agrees these water rights may be diverted out of the Canal and through the ponds and streams on Lots 114, 115 and 116 to the park irrigation system.

9. TOWNHOUSE DEFINITION AMENDMENT. The Parties acknowledge that the proposed Subdivision requires an amendment to the City's Zoning and Subdivision Ordinances to provide that the definition of a "townhouse" includes single buildings containing single townhouse units provided the separation between the buildings and/or units complies with all applicable codes. The City agrees to consider such an amendment concurrently with the processing of the applications by OCI for subdivision and planned unit development approval.

10. REBATE FOR OWNER OCCUPANTS. OCI shall include in its agreements for the sale of each unimproved market value single family residential or duplex lot in the Subdivision the following provision: "If the Buyer, within 24 months of the closing date, obtains a certificate of

occupancy for a single family home or duplex unit constructed on the lot and thereafter resides in such home or duplex unit as an owner-occupant for a period of 24 months from the date of the certificate of occupancy, OCI shall rebate to the Buyer the sum of \$10,000.”

11. **COMMUNITY HOUSING ORDINANCE.** OCI hereby waives any right it may have to assert that the City’s Community Housing Ordinance is invalid in whole or in part as it applies to the Subdivision.

12. **EFFECTIVE UPON ANNEXATION.** This Agreement shall become effective only upon, and subject to, the Council’s enactment of an Ordinance annexing the Property.

13. **POLICE POWERS.** Except as otherwise expressly provided herein, nothing contained herein is intended to limit the police powers of the City or its discretion in review of subsequent applications regarding development of the Property. This Agreement shall not be construed to modify or waive any law, ordinance, rule, or regulation not expressly provided for herein, including, without limitation, applicable building codes, fire codes, Hailey’s Zoning Ordinance, Hailey’s Subdivision Ordinance, and Planned Unit Development requirements for the Property.

14. **AMENDMENT.** This Agreement may be revised, amended, or canceled in whole or in part, only by means of a written instrument executed by both parties hereto and as evidenced by amended plats and development plans.

15. **REMEDIES.** In the event the Property is not developed in accordance with this Agreement, or if OCI or its successors and assigns, if any, materially breaches, defaults or fails to perform any material obligation under this Agreement and does not cure such breach, default or failure within thirty (30) days after written notice from City of the breach, default or failure, or in the case of a breach which is incapable of being cured within a thirty (30) day time period, OCI fails within thirty (30) days after written notice from City to commence to cure the same and thereafter to prosecute the cure of such breach with due diligence and continuity, a) the City has the right to de-annex the Property, b) the proposed subdivision and planned unit development applications may be denied, and/or c) OCI may be required to pay additional annexation fees. Subject to the conditions set forth herein, OCI hereby grants to the City its irrevocable consent to the de-annexation of the Property. In the event the City does not pass the townhouse definition amendment described in paragraph 9, above, OCI shall have the right, in its sole discretion, to substitute in its proposed development townhouses which comply with current ordinance definitions or to request the Property be de-annexed from the City, in which case the City agrees to do so. In the event of a breach of this Agreement, in addition to all other remedies of law or in equity, this Agreement shall be enforceable by specific performance by either party hereto. All remedies shall be cumulative.

16. **ATTORNEY’S FEES.** If a suit, action, or other proceeding arising out of or related to this Agreement is instituted by any party to this Agreement, the prevailing party shall be entitled to recover its reasonable attorney fees, expert witness fees, and costs (i) incurred in any settlement

negotiations, (ii) incurred in preparing for, prosecuting or defending any suit, action, or other proceeding, and (iii) incurred in preparing for, prosecuting or defending any appeal of any suit, action, or other proceeding. For the purpose of this section, "attorney fees" shall mean and include (i) attorney fees and (ii) paralegal fees. This section shall survive and remain enforceable notwithstanding any rescission of this Agreement or a determination by a court of competent jurisdiction that all or any portion of the remainder of this Agreement is void, illegal, or against public policy.

17. **NOTICES.** All notices and communications under this Agreement shall be in writing and shall be (i) delivered in person or (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or by overnight express carrier, addressed in each case to the party's address set forth in the introductory paragraph of this Agreement, or (iii) sent by facsimile with the original to follow by mail in the manner described above. It is provided, however, that any party may change its respective address for purposes of receipt of any such communication by giving ten (10) days prior written notice of such change to the other party hereto in the manner provided above. All notices sent pursuant to the terms of this paragraph shall be deemed received (i) if sent by overnight, express carrier, on the next business day immediately following the day sent, (ii) if sent by registered or certified mail, on the third business day following the day sent or (iii) if sent by facsimile on the date so sent.

18. **RELIANCE BY PARTIES.** This Agreement is intended by OCI to be considered by the City as part of OCI's request for annexation of the Property and application for subsequent subdivision and planned unit development plat approval, and is contingent upon said annexation. OCI acknowledges and intends the City to consider and rely upon this Agreement in its review and consideration of said annexation request and subsequent subdivision and planned unit development application.

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

20. **SUCCESSORS AND ASSIGNS; COVENANT RUNNING WITH LAND.** This Agreement shall inure to the benefit of the City and OCI and their respective heirs, successors and assigns. This Agreement, including all covenants, terms, and conditions set forth herein, shall be and is hereby declared a covenant running with the land with regard to the Property or any portion thereof, and is binding on both parties to this Agreement as well as their respective heirs, successors and assigns.

21. **RECORDATION AND RELEASE.** This Agreement shall be recorded with the Blaine County Recorder. Where the conditions of the payment of the annexation fees described in Paragraph 4 of this Agreement have been fully performed to the City's satisfaction, the City shall execute and deliver from time to time upon request partial releases in the form attached hereto as Exhibit 4 to release the lien of this Agreement from portions of the Property being conveyed to third

party purchasers. With each request for a partial release for a payment under paragraphs 4(b), (c), (d) and (e) of this Agreement, OCI shall furnish the City with a list of the Market Rate Lots sold, and if requested by the City, copies of recorded deeds showing the Market Rate Lots conveyed and dates of conveyances of the Market Rate Lots. The cost of recording each partial release shall be paid by OCI

22. NO WAIVER. In the event that the City or OCI, or its successors and assigns, do not strictly comply with any of the obligations and duties set forth herein, thereby causing a default under this Agreement, any forbearance of any kind that may be granted or allowed by OCI, the City, or their successors and assigns, to the other party under this Agreement shall not in any manner be deemed or construed as waiving or surrendering any of the conditions or covenants of this Agreement with regard to any subsequent default or breach.

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

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

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

26. AUTHORITY. Each of the persons executing this Agreement represents and warrants that he has the lawful authority and authorization to execute this Agreement, as well as all deeds, easements, liens and other documents required hereunder, for and on behalf of the entity executing this Agreement.

27. NO THIRD PARTY RIGHTS. This Agreement shall be for the sole benefit of the Parties and/or their successors and assigns, and no covenants or agreements herein shall be for the benefit of or create any rights in favor of any third parties.

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

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

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

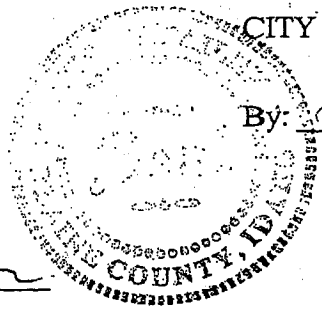
31. **CAPTIONS TO PARAGRAPHS.** The captions to the paragraphs of this Agreement are for convenience only and shall not be deemed to enlarge, diminish, explain or in any manner affect the meaning of such paragraphs.

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

DATED this 25th day of April, 2006.

ATTEST:

Heather Dawson
Heather Dawson
Hailey City Clerk



CITY OF HAILEY

By: Susan McBryant
Susan McBryant, Mayor

OLD CUTTERS, INC.

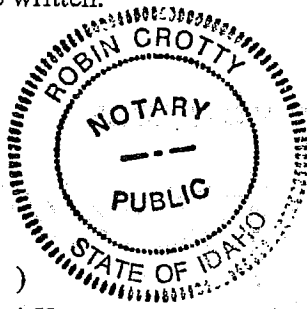
By: J. Campbell
John Campbell, President

4/26/06

STATE OF IDAHO)
 : ss.
County of Blaine)

On this 25 day of April, 2006, before me the undersigned Notary Public in and for said State, personally appeared SUSAN McBRYANT, known or identified to me to be the Mayor of Hailey and the person whose name is subscribed to the within instrument, and acknowledged that he executed the same on behalf of the City of Hailey.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.

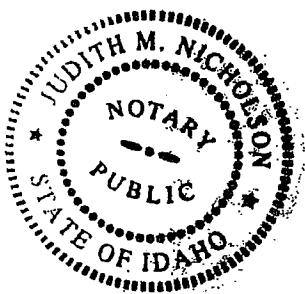


[Signature]
Notary Public for Idaho
Residing at : Hailey City Hall
Comm. Expires: 7/29/08

STATE OF IDAHO)
 : ss.
County of Blaine)

On this 24 day of April, 2006, before me the undersigned Notary Public in and for said State, personally appeared JOHN CAMPBELL, known or identified to me to be the president of Old Cutters, Inc., and the person who executed the foregoing instrument on behalf of said company and acknowledged to me he executed the same on behalf of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.



[Signature]
Notary Public for Idaho
Residing at : Hailey
Comm. Expires: 8/11/2011

EXHIBIT 1

Lots 1A, 2A, 3 and 4, Block 1 of a REPLAT OF DREXLER RANCH SUBDIVISION, BLAINE COUNTY, IDAHO, as shown on the official plat thereof, recorded February 8, 1999, as Instrument No. 423951, records of Blaine County, Idaho; and

A parcel of land within the SW1/4NE1/4, Section 4, T.2N., R.18E., B.M. and also within Lot 4, Buckhorn Subdivision Second Addition, Blaine County, Idaho, more particularly described as follows:

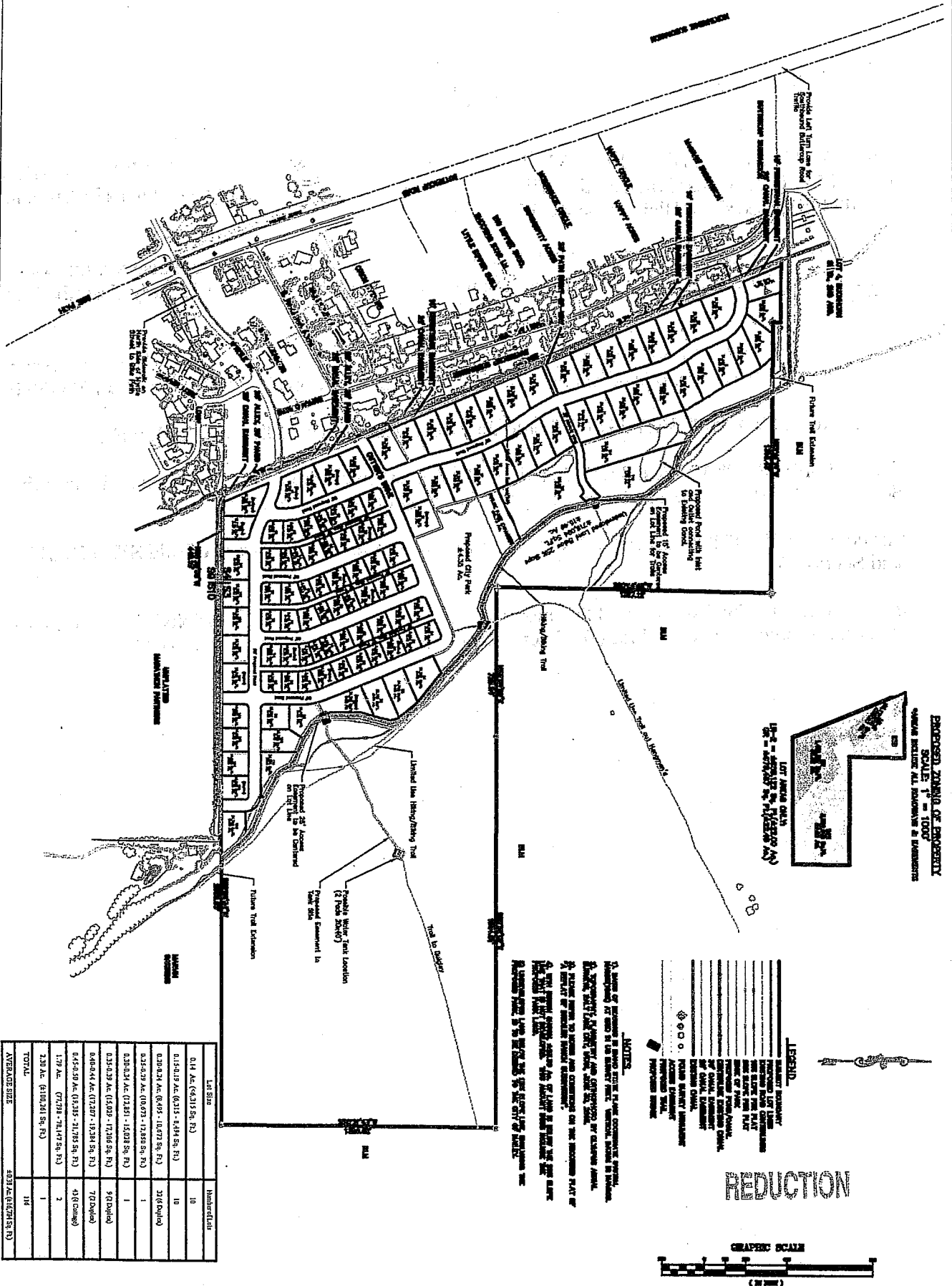
Commencing at a BLM brass cap marking the Southeast Corner of said SW1/4NE1/4, which corner is also the CE 1/16 corner of said Section 4 and which point is the REAL POINT OF BEGINNING:

thence North 89°42'50" West 291.01 feet to the Northwest corner of the Drexler Ranch;

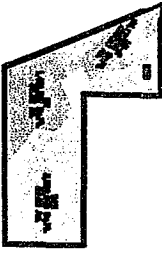
thence North 23°17'51" West 37.31 feet along the centerline of the Hiawatha Canal and along the Southerly boundary of said Lot 4, Buckhorn Subdivision Second Addition;

thence North 89°50'20" East 306.07 feet along a fence to the East boundary of said SW1/4NE1/4, said Section 4;

thence South 0°27'55" West 36.58 feet along said East boundary of the SW1/4NE1/4, Section 4 to the point of beginning, containing 0.24 acres, more or less, also known as Tax Lot 6804.



ENHANCED ZONING OF PROPERTY
SCALE 1" = 100'
VARIOUS SYMBOLS AND DIMENSIONS AS INDICATED



NOTES

1. All areas of proposed subdivision are shown in accordance with the attached site plan and shall be subject to the provisions of the applicable zoning ordinance.
2. All areas of proposed subdivision are shown in accordance with the attached site plan and shall be subject to the provisions of the applicable zoning ordinance.
3. All areas of proposed subdivision are shown in accordance with the attached site plan and shall be subject to the provisions of the applicable zoning ordinance.
4. All areas of proposed subdivision are shown in accordance with the attached site plan and shall be subject to the provisions of the applicable zoning ordinance.

Lot Size	Number of Lots
0.14 Ac. (6,315 Sq. Ft.)	10
0.15-0.19 Ac. (6,515 - 8,194 Sq. Ft.)	10
0.20-0.24 Ac. (8,695 - 10,474 Sq. Ft.)	23 (Optional)
0.25-0.29 Ac. (10,875 - 12,654 Sq. Ft.)	1
0.30-0.34 Ac. (12,855 - 14,634 Sq. Ft.)	1
0.35-0.39 Ac. (14,835 - 16,614 Sq. Ft.)	9 (Optional)
0.40-0.44 Ac. (17,220 - 19,000 Sq. Ft.)	7 (Optional)
0.45-0.50 Ac. (19,595 - 21,375 Sq. Ft.)	4 (Optional)
1.79 Ac. (77,799 - 78,474 Sq. Ft.)	2
2.30 Ac. (100,241 Sq. Ft.)	1
TOTAL	118
AVERAGE SIZE	4.39 Ac. (192,741 Sq. Ft.)

REDUCTION



EXHIBIT 3

Old Cutters CC&R Outline

CC & R's will be drafted to insure high quality design and construction mirroring the attractive sections of Old Hailey. A primary goal is to insure the creation of an attractive, well-maintained, intimate community.

- Minimum square footage for residence. 1800 sq.ft. excluding garage and basement. At least 400 sq.ft. must be on the upper floor.
- Garages off alley, setback to allow for snow storage. 20' setback if garage oriented perpendicular to alley, 5' setback if garage parallel to alley.
- Fence guidelines- max 42" high along street. Max 60" high everywhere else. Features every 16' for solid fences.
- Landscape maintenance
- Maintenance of sidewalk area in city ROW
- Boats must be stored in garages. No on-site motor home or RV storage, unless in a garage.
- Wood stoves must have catalytic converters
- Landscaping must include the planting of trees (Size and number to be determined.).
- Solar collectors are permitted. They must be flush mounted to the roof. No roof mounted tanks.
- No mineral extraction allowed on lots.

Architectural Guidelines -

Architectural guidelines apply only to the street side of the house. Residences are intended to look like the traditional, older houses found in Old Hailey.

Roof Pitch - no flatter than 6:12, no steeper than 12:12
Entry porch roofs may be flatter than 6:12
Minimum 1' roof overhang

Tall windows

Front porch - minimum 6' x 12'

Trim (fascia, window, corner) to be a different color than the body of the house


EXHIBIT 4

PARTIAL LIEN RELEASE

The City of Hailey hereby acknowledges that any and all fees for annexation, required to be paid under paragraph(s) 4___ of the Annexation, Services and Development Agreement Old Cutters Planned Unit Development ("Agreement") dated _____, 2006, recorded as Instrument No. _____, records of the County Recorder, Blaine County, Idaho, and which are due as of the date of this Partial Lien Release, have been paid in full. In accordance with the Agreement, the City of Hailey hereby releases any and all liens for annexation fees arising under or by virtue of the Agreement against the following lots: _____ of the Old Cutter's Subdivision Plat, Hailey, Blaine County, Idaho as shown on the official plat thereof, recorded _____, 2006, as Instrument No. _____, records of the County Recorder, Blaine County, Idaho.

DATED this ____ day of _____.

CITY OF HAILEY



_____, Mayor

ATTEST:

_____, City Clerk

SECURITY AGREEMENT
(CUTTERS SUBDIVISION)

THIS SECURITY AGREEMENT (Cutters Subdivision) ("Agreement") is made and entered into this ___ day of November, 2008, by and between Old Cutters, Inc. an Idaho corporation, whose mailing address is P.O. Box 4944, Ketchum, Idaho, 83340 (hereinafter referred to as "Developer"), and the City of Hailey, Idaho, a municipal corporation, (hereinafter referred to as "Hailey").

RECITALS

A. Developer has made an application for and received final plat approval of the Cutters Subdivision from Hailey thereof as set forth in the Hailey City Council's Findings of Fact, Conclusions of Law and Decision dated August 13, 2007, and incorporated herein by reference; and

B. Developer has received final plat approval prior to completion of construction of the certain improvements. Developer and Hailey entered into a Security Agreement dated November 26, 2007, in which Developer agreed to post a letter of credit in the amount of \$299,491.95, as security for complete performance and construction of certain improvements.

C. Developer has not completed construction of the improvement described in the Security Agreement dated November 26, 2007, but the parties agree to enter into this Agreement to allow a letter of credit to be provided as security for the uncompleted improvements, described on attached Exhibit "A" ("Improvements") and as a condition thereof, Developer is required by the Hailey City Council to post security therefore consistent with the ordinances of the City of Hailey.

AGREEMENT

NOW, THEREFORE, Developer and Hailey hereby covenant and agree as follows:

1. Security. Developer, simultaneously with the execution of this Agreement, deposits with Hailey a Letter of Credit (Number ___) dated November __, 2008 ("Letter of Credit"), from Mountain West Bank, Ketchum, Idaho, whose mailing address is P.O. Box 2237, Ketchum, Idaho in the principal total amount of THIRTY THOUSAND TWENTY FIVE AND 95/100's DOLLARS (\$30,025.95), as security for complete performance and construction of the Improvements upon the terms and conditions set forth herein. The Letter of Credit shall be made solely in the name of the City of Hailey, Idaho and shall be held by Hailey in lieu of the Owner filing or depositing other security with Hailey.

2. Time of Performance. Developer shall complete construction of the Improvements on or before one (1) year from the date of the Letter of Credit or the amount of the Letter of Credit shall be due and payable to Hailey up to the full amount thereof and Hailey may draw upon the Letter of Credit as Hailey in its sole discretion determines necessary to complete the Improvements or any portion thereof as provided in paragraph 3, below.

3. Remedies. In the event Developer fails or refuses to complete the Improvements or any portion thereof on or before one (1) year from the date of the Letter of Credit, Hailey shall have the right, but not the obligation, to draw the funds from the Letter of Credit and apply the proceeds thereof to construction of the Improvements or any portion thereof. In case of default by Developer, if the total cost of construction of the Improvements is less than the amount of the Letter of Credit, Hailey agrees to return to Developer the unused portion of the Letter of Credit funds. However, if the cost of installing or constructing the Improvements is greater than the amount of the Letter of Credit, Developer agrees to reimburse and hold harmless Hailey for any and all additional costs and expenses incurred by Hailey associated with installing and constructing the Improvements.

4. Release. In the event Developer completes construction of the Improvements on or before one (1) year from the date of the Letter of Credit, Hailey shall release the funds from the Letter of Credit, including any and all interest accrued, to Developer upon receiving written notice by the City Engineer that the Improvements have been installed according to applicable ordinances, regulations, plans and specifications, and that the same has been inspected and approved by the City Engineer. Developer can apply for a partial release of funds from Hailey and the Hailey City Council may so authorize release by the City Clerk of an appropriate proportion of the amount held as security upon completion of a substantial portion of the Improvements, and the inspection and approval thereof by the City Engineer. In such cases, Hailey shall retain sufficient security for completion of all the Improvements in compliance with this Agreement.

5. Inspection Fees. Developer is responsible for and shall pay any and all fees incurred by the City Engineer in providing services associated with the inspections necessary to confirm completion of any or all of the Improvements required.

6. Relationship of Parties. This Agreement is not a guarantee that any of the Improvements will be constructed and does not obligate Hailey in any way to complete any of the Improvements. This Agreement is not intended nor shall it be construed as a third party beneficiary contract or creating any third party beneficiary rights.

IN WITNESS WHEREOF, the parties hereto have signed this document the day and year first written above.

DEVELOPER
Old Cutters, Inc., an Idaho corporation

By _____
John Campbell, its president

CITY OF HAILEY, IDAHO

By _____
Rick Davis, Council President

EXHIBIT "A"

<u>Description</u>	<u>Amount</u>
Restroom	\$10,000.00
Bike Racks/Benches/Picnic Tables/Trash Cans	4,717.30
Pedestrian ROW between lots 8 & 9	2,300.00
Mailboxes (2)	<u>3,000.00</u>
Total	\$20,017.30

Security Required (\$20,017.30 x 150%) \$30,025.95

AGENDA ITEM SUMMARY

DATE: 11/24/2008

DEPARTMENT: Legal

DEPT. HEAD SIGNATURE: _____

SUBJECT:

Ordinance Amendment

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

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

I am enclosing a proposed ordinance that would amend Section 5.04.105 of the Hailey Municipal Code to eliminate the restriction of sale of liquor during general and primary elections. At your last meeting, the mayor and council expressed support of such an amendment which would be consistent with state law. When I reviewed this section, I noticed for the first time that our ordinance restricts the sale of liquor after 1:00 a.m. and on Sunday, Memorial Day and Thanksgiving. State law allows municipalities to permit the sale of liquor until 2:00 a.m. and on Sundays, Memorial Day and Thanksgiving. State law only prohibits the sale of liquor on Christmas. I am told that we have not been enforcing the restrictions. I am assuming that the Mayor and Council will want to make these amendments. If you wish to adopt this ordinance, I would suggest that we waive the three readings because of the restriction relating to Thanksgiving.

Ned

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

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IF APPLICABLE)

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

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

Conduct a public hearing. If you find that the attached ordinance will promote a reasonable regulation, then adopt the ordinance, waive the three readings and read by title only.

FOLLOW-UP REMARKS:

Mary Cone

From: Ned Williamson [wlo@cox-internet.com]
Sent: Friday, November 14, 2008 11:16 AM
To: Mary Cone
Cc: Gunter, Jeff; Dawson, Heather
Subject: Liquor amendments
Attachments: Agenda (11-24-08).DOC; Election liquor amend.doc

Mary,

I am attaching a proposed ordinance amendment that would eliminate the restrictions on serving alcohol during elections, Sunday, Memorial Day and Thanksgiving. Please insert the appropriate ordinance number. I am also sending an agenda summary. I would like to suggest that we waive the three readings because of the Thanksgiving issue. Accordingly, please submit the ordinance to the Mountain Express for publication the Friday before the 10-24-08 meeting. Thanks.

Ned

Ned C. Williamson, Esq.
Williamson Law Office, PLLC
115 Second Avenue South
Hailey, Idaho 83333
Ph. (208) 788-6688
Fax (208) 788-7901

CONFIDENTIALITY NOTICE: This e-mail transmission, and any documents, files or previous e-mail messages attached to it may contain confidential information that is legally privileged. If you are not the intended recipient, or a person responsible for delivering it to the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of any of the information contained in or attached to this transmission is **STRICTLY PROHIBITED**. If you have received this transmission in error, please immediately notify the sender. Please destroy the original transmission and its attachments without reading or saving in any manner. Thank you.

IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice contained in this communication, unless expressly stated otherwise, was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any tax-related matter(s) addressed herein.

HAILEY ORDINANCE NO. 1019

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, AMENDING SECTION 5.04.105(A) OF THE HAILEY MUNICIPAL CODE TO ELIMINATE THE RESTRICTION OF SALE OF LIQUOR ON SUNDAY, MEMORIAL DAY AND THANKSGIVING AND DURING GENERAL OR PRIMARY ELECTIONS; PROVIDING A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE OF THIS ORDINANCE.

WHEREAS, Section 5.04.105 of the Hailey Municipal Code restricts the hours of the sale of liquor on Sunday, Memorial Day and Thanksgiving and during general and primary elections;

WHEREAS, Idaho Code § 23-927 was amended effective July 1, 2008, to eliminate the restriction of sale of liquor during general and primary elections, but allowed cities by ordinance to further limit the hours of sale of liquor;

WHEREAS, Idaho Code § 23-927 permits a city by ordinance to allow the sale of liquor on Sunday, Memorial Day and Thanksgiving;

WHEREAS, the Mayor and Hailey City Council wish to restrict the hours of the sale of liquor consistent with Idaho state law; and

WHEREAS, the Mayor and Hailey City Council find that elimination of the restriction of sale of liquor on Sunday, Memorial Day and Thanksgiving and during general and primary elections to be consistent with state law.

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

Section 1. Section 15.04.105(A) of the Hailey Municipal Code is amended by the addition of the underlined language and the deletion of the stricken language, as follows

5.04.105 Hours of sale of liquor. A. No liquor shall be sold, offered or sale, or given away upon any licensed premises, and all liquor not in sealed bottles must be locked in a separate room or cabinet, during the following hours:

1. ~~Sunday, Memorial Day, and Thanksgiving and Christmas from one two a.m., to ten a.m. the following day; provided however, that on any Sunday not otherwise being a prescribed holiday, it shall be lawful for a licensee having banquet area or meeting room facilities, separate and apart from the usual dispensing area (bar room) and separate and apart from a normal public dining room, unless such dining room is closed to the public, to therein dispense liquor between the hours of two p.m. and eleven p.m. to bona fide participants of banquets, receptions or conventions for consumption only within the confines of~~

such banquet area or meeting room facility;

2. On any other day between ~~one~~ two a.m. and ten a.m.;
3. ~~On any day of general or primary election until after the time when the polls are closed. There is no prohibition against the sale of liquor by the drink during city elections.~~
4. ~~The sale of liquor by the drink on Sunday, Memorial Day and Thanksgiving may be allowed where permitted by county ordinance. County ordinance may also extend until two a.m. the hours of the sale of liquor by the drink.~~

Section 2. All Ordinances or parts thereof in conflict herewith are hereby repealed and rescinded.

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

Section 4. This Ordinance shall be in full force and effect after its passage, approval and publication according to law

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

Richard L. Davis, Mayor
City of Hailey

ATTEST:

Mary Cone, City Clerk

Published: Idaho Mountain Express _____, 2008