

**MINUTES OF THE PLANNING AND ZONING COMMISSION  
FOR THE CITY OF HAYDEN, KOOTENAI COUNTY, IDAHO**

**February 1, 2021**

**Regular Meeting: 5:00 PM  
Council Chambers**

**Hayden City Hall, 8930 N. Government Way, Hayden, ID 83835**

**CALL TO ORDER**

Vice-Chairman Alan Davis called the meeting to order at 5:00pm.

**ROLL CALL OF COMMISSION MEMBERS**

Chair Brian Petersen	Absent
Vice-Chair Alan Davis	Present
Commissioner Benjamin Prickett	Present
Commissioner Shawn Taylor	Absent
Commissioner Mary Howard	Present
Commissioner Corey Anderson	Present
Commissioner Brandon Bemis	Absent

**STAFF IN ATTENDANCE**

Melissa Cleveland, Community Development Director  
Caitlin Kling, City Attorney  
Rob Wright, City Engineer  
Shannon Drappo, Commission Clerk

**FLAG SALUTE**

The flag salute was led by Vice-Chair Davis.

**CALL FOR CONFLICTS OF INTEREST**

Vice-Chair Davis asked the Commission if there were any conflicts of interest with any of the items on the agenda. None were stated by any of the Commissioners.

**CONSENT CALENDAR**

The item on the Consent Calendar was the approval of meeting minutes for January 25, 2021.

Commissioner Mary Howard made a motion to approve all items on the Consent Calendar as presented.  
Commissioner Benjamin Prickett seconded the motion.

All were in favor, none were opposed. The motion carried.

**PUBLIC HEARINGS**

**PZE-20-0246, Bradley Moss, Special Use Permit**

Staff Introduction

Melissa Cleveland, Community Development Director stated this Special Use Permit is for 9375 N. Government Way, for a drive-through window. This will be a new location for Birdie's Pies. It needs a special use permit due

to being within the Central Business District. She showed pictures looking at the property from each direction to show the location. The owners own both the lot in question and the lot to the west. The property is zoned Commercial and they will be using the existing building and entrance from Government Way.

#### Applicant Presentation

Bradley Moss, owner and applicant, presented for Birdie's Pies. Their concept is to create a "pie-through" using the window on the southern side of the building. He stated the zoning is consistent with the surrounding commercial businesses. He then showed a number of pictures, showing a car in various locations on the lot to demonstrate how customers would drive through for the pies. He mentioned the locations of the cars prove they can have 4-5 cars in line without bogging Government Way down. Mr. Moss presented with the Standards of Approval in mind and has the acceptance from utilities and local law enforcement.

Commissioner Howard asked if the driveway is large enough for both incoming and outgoing cars. Mr. Moss showed an additional picture indicating it is.

#### Staff Presentation

Ms. Cleveland presented the standards of approval for the Special Use Permit. She stated there is no doubt this use would be one that the Comprehensive Plan and Central Business District should entail. They are bringing the type of business the City would like to see, with small-scale retail, restaurants and pedestrian-style business. Standard of Approval #2 is met by operation of the drive-through, given this is an existing site. Ms. Cleveland and Rob Wright, City Engineer, previously met regarding Birdie's Pies and jointly agree the existing driveway should work. She mentioned that if for some reason they have issues with cars passing, they have land to the west (behind the existing structure) that can be used to expand the drive-able area. She showed a list of other drive-through restaurants within the CBD. Ms. Cleveland mentioned a Public Comment was received after the deadline, however, it has been included in the packet sent to the Commission for their review.

Staff Recommended Conditions were presented as follows:

1. The approval of this Special Use Permit is based upon the application, narrative, and conceptual site plan.
2. Major changes to the building type, location, or the use of the building shall require an application for an amendment to this SUP. The determination of what is a major change shall be made by staff and shall be appealable to the PZC.
3. All permits from outside agencies (i.e. PHD, HLID, and NLFDP) shall be obtained prior to construction of any future development or building permit issuance.
4. All future development, building permits, and uses shall comply with Hayden City Code 11-13-3 (A).
5. Required site improvements per Hayden City Code §11-20 and 11-18-5(F) will be evaluated at time of building evaluation and required prior to Certificate of Occupancy issuance.
6. The approval of this Special Use Permit is valid for two years from the date of approval of the written decision authorizing such use, unless some other time period is approved by the planning and zoning commission.
  1. The development for which the permit was issued must complete construction and be fully operational prior to the expiration of this two year period.
  2. If any of the conditions to this use changes, or if the use for which the special use permit has been issued is discontinued or abandoned for one year, then the special use permit shall be considered null and void.
  3. Continued operation of a use requiring a special use permit after such special use permit expires or is in noncompliance with any condition of a special use permit, shall constitute a violation of the zoning ordinance
7. Should queuing for the drive through window and/or entrance into the site cause obstruction to North Government Way and/or blocking for the sidewalk, then the special use permit shall be revoked unless some other means of mitigating the obstruction has been provided.

A solution to mitigate possible obstruction may be to expand the existing paved circulation area to allow for more fluid circulation on site or additional parking on site.

*Obstruction is defined as repeated conflicts between through traffic (motorized and non-motorized) on North Government Way and the access into the 9375 N Government Way site.*

8. This approval shall run with the land for the term approved herein regardless of whether the property ownership; applicant and/or design professionals noted herein remain the same, whether collectively or individually.

Ms. Cleveland closed the presentation by stating the determinations which could be made by the Planning and Zoning Commission.

#### Public Comment

Public Comment was received after the deadline, but was read aloud by Shannon Drappo, Commission Clerk. "Jimmy Michaels, 128 Willow Tree Lane: Opposed – 'No. Cannot get out of my driveway to get on Government Way.'"

#### Applicant Rebuttal

No rebuttal was presented.

Vice-Chair Davis closed the hearing at 5:24pm.

#### Commission Deliberations

Commissioner Corey Anderson stated that because the specifics had already been figured out from City Staff in regards to a possible Government Way issue, he saw no reason it should not be approved.

Commissioner Prickett echoed Commissioner Anderson and stated he had no issues with allowing this Special Use Permit.

Commissioner Howard saw no reason to deny the Special Use Permit and exclaimed this is exactly what the City wants in our CBD.

Vice-Chair Davis stated that as for standards of approval, the applicants meet all of them. The City did a great job showing us the other businesses that run well on this street with a similar setup.

Commissioner Howard made a motion to approve with the Staff Recommended Conditions of Approval, PZE-20-0246, Special Use Permit for Bradley Moss. Commissioner Prickett seconded the motion.

#### **Roll Call:**

Vice-Chair Davis:	Yes
Commissioner Prickett:	Yes
Commissioner Howard:	Yes
Commissioner Anderson:	Yes

All were in favor and none were opposed, the motion passed.

#### **NEW BUSINESS**

Ms. Cleveland received feedback from some Commission members that too much time was taken up during the previous workshop with City Council to get good conversation going. She has brought that to the City Administrator's attention and is working on getting this remedied. Topics of discussion have been growth in general, lot size, usable open space, annexation, and how to develop the City and how it can be a conflict in larger lot sizes. She opened it up for discussion as the Staff needs the thoughts of the PZC. Ms. Cleveland also provided a worksheet showing minimum and maximum lot sizes for surrounding communities. Ms. Kling stated our new Comprehensive Plan has new zones and the Title changes associated with that need to be brought forward to

move on with business in the City. Vice-Chair Davis commented he appreciates the time taken to get this information to the Commission and questioned the cost and the need for alternative housing within the City. Commissioner Howard appreciated the notes sent out since she had to miss the workshop with Jerry. She stated she is not sure how to find the direction needed by the City. Ms. Cleveland stated she would like to see confidence in the PZC with projects coming forward based on the Comprehensive plan that was approved. The Comprehensive Plan was well done and the City needs to be certain that if Code is written based on what was approved, it will be passed once brought to the Commission and City Council. We need a predictable environment and the developers need to see what the standards are. If we get into the new zones and see it needs fixing, we can amend the Codes.

Caitlin Kling, City Attorney asked for questions and concerns to come forward now. Imagine Hayden open houses were well attended which had allowed us to get to a place where development can handle the growth. Developers are very interested in the two new zones, Mixed Use and Mixed Residential. Commissioner Howard said she is excited to see what happens with the Commercial Nodes in the residential zones. The City can do really good things with that, bringing forward the community aspect. Commissioner Prickett asked about the sewer conversation that was had during the Workshop. Ms. Cleveland mentioned it stemmed from a conversation during the Sewer Master Plan Hearing. Ken from HARSB came to the hearing and may have confused the conversation a bit. He was speaking about capacity at the plant, whereas our talks about capacity is of a collection system. The team had already run numbers through HARSB Engineers and the Collection System is designed for buildout, years and years from now because do not want to have to dig those sewer pipes up 40 years from now. This is a plan for maximum density. Ms. Kling stated the City is a member of HARSB, along with Hayden Lake Sewer District, and the County Airport. We have a contractual agreement relating to the amount of connections we are allowed. The City of Hayden is the only one growing at the moment, and have looked at lowering the amount of ER due to more efficient appliances, which has increased the capacity. The City's concern is in regards to the collection system and how much can be taken in, as well as what the treatment plant can handle. It is true we are limited and would have to go to the State of WA for more space, but we are far from that. Commissioner Prickett then asked how many doors the City has to go before encroaching on the limits. Ms. Kling stated we are in the middle of a plant upgrade of one phase which has at least 1400 left, even without the upgrade. These are two separate issues. There is no order as to how many more homes can be built. The City needs to be mindful about connections to water and sewer. Ms. Cleveland added that Ken was looking at estimated flows at build-out. This could be 100 years from now. Commissioner Prickett added comments about population density. He asked if PHD is looking at stormwater and HARSB looking at sewer capacity, the City's goal is to get more affordable housing, would the City ever be limited to how much could be built if surrounding cities took advantage of connections and flowing into the Spokane River? Ms. Cleveland stated this would be possibility but way down the road. Technology is continuously improving with the treatment plants. Certain months of the year the treated water is discharged into the river. Jerry indicated the future is more land acquisition. She stated the discharge water from the treatment plant is very clean. There are limitations to the amount of chemicals that can be dispersed.

Commissioner Prickett then asked if the City is getting feedback from developers about the amount of land costs, and how we can get the reins on it. Ms. Cleveland answered that she agrees with Jerry's stance that it is not the City's responsibility to lower home prices or make sure people can afford their home. By allowing the larger lots, we are still missing the middle, which is a stepping stone and a different style of housing that isn't an apartment. There is also a large population of older females who have outlived their husbands who just want a smaller home to take care of. We don't have that for them right now. Commissioner Prickett asked if the City ever considered allowing those over 55 years of age to have their own portion of dedicated land? Ms. Cleveland stated they would fit in the Mixed Residential zones. They can also do a PUD in the R-1 zone to have their own CC&Rs. Ms. Kling added there is a lot of interest in the 55+ communities with smaller housing. Ms. Cleveland also said there is a big market for these types of homes. There are many needs and we do not want to be so restrictive as to not meet those needs. Commissioner Howard went back to the sewer topic and asked a question regarding how far it reaches. Emerald Estates is currently on septic. Is the City concerned about them wanting to connect? Ms. Cleveland stated the City has already planned for those connections, so there isn't a concern. Rob Wright, City

Engineer chimed in that all of Emerald Estates and any other subdivisions not currently connected have been accounted for in the sewer collection plans.

Ms. Kling continued the evening by leading a training to recap the roles of the Planning and Zoning Commission. Legislative hearings and quasi-judicial hearings, hearing procedures and deliberations, outcomes and motions, and land use items we encounter were topics she covered.

Legislative hearings: Matters of general concern (e.g., code amendments), open-ended comments, subject of the hearing must be roughly prepared at the time notice is published in the newspaper and online, open format for hearing, “Closing” the hearing does not affect rights.

Quasi-judicial hearings: Deals with specific rights of individuals (e.g., zone amendment, SUP), due process is required, notice and opportunity to be heard required with no conflicts of interest with any of the Commissioners, transcribable verbatim record, primary topics include land use and licensing, comments should come in during hearing – no ex parte communication.

Gathering information: Staff reports are very detailed to standards of approval. The applicant must coordinate with the City in depth as to what they are proposing and submitting documents. Agency notices are sent to upwards of 20 agencies, who oftentimes will write back with no comment.

Organize information: Staff will always open the hearing, but the main advocacy is done by applicant. They should address the Standards of Approval and avoid supplemental materials after the Staff Report has been filed. If the site plan all of a sudden changes, we want the information to be reviewed by the Staff and Commission. Research is done on what the Comprehensive Plan, City Code, Transportation, Sewer, and Parks Master Plans say about the type of application. Donna Phillips, Sr. Planner, is great to include these in her Staff Reviews. The City will always provide a slide as to what the Commission needs to approve or deny.

Determinations:

*Hayden City Code 2-1-12:*

*All planning and zoning commission decisions or recommendations after a quasi-judicial hearing shall explain the criteria and standards considered relevant by the commission and shall state the facts relied upon, and explain the justification for the decision based on the criteria and standards established by law, and facts found in the record compiled in the case. The written decision or recommendation shall be promptly delivered or mailed to the applicant and disseminated to others as required by law or as necessary to carry out provisions of the procedural resolution. The provisions of this section shall not apply to legislative hearings.*

During deliberations, the Commission should be looking for standards established by law, what applicant provided, how do I take facts and what is in the record with the criteria and standards that meet those standards. If something hasn't been met, that should be discussed. It is okay to oppose or go against what the rest of the Commission thinks. A spirited discussion makes the Written Decision easier to write and is better for the record.

How to reach a decision: It is good to have full participation because other views are brought forth that may not have been viewed by other Commission members. Conditions required will be in the Staff Review. Vice-Chair Davis added we have had to be very creative with conditions that have been appealed to the Council. Ms. Kling agreed and continued by stating the justification for the decision must be based on the criteria and standards established by law and the facts found in the record compiled in the case. An applicant should know how to address the standards.

Written decision required:

*Idaho Code § 67-6535*

*Shall be based upon standards and criteria set forth in the Comprehensive Plan, zoning ordinance, other appropriate ordinances or regulations.*

Our Comprehensive Plan is a guiding document and adopted by resolution, not ordinance. It is not City Code. What is approved by the Commission, needs to be in accordance with the CP. We have the ability to amend the CP. There is a process, but it can be done. City Code is based on criteria from the CP. Reasoned decision on the record, stating rational with relevant standards and relevant contested facts. Need to organize important factors. Written decision shall be “promptly delivered or mailed to the applicant and disseminated to others...”

*Idaho Code § 67-6519(5): Whenever a governing board denies an application, it shall specify the actions, if any, the applicant could take to gain approval*

Sometimes what is brought before you just does not work within the zone. Standards may work, but the surrounding community may not be fit. An example was mentioned about a crematorium in the R-1 zone. It was allowed, but it was not supported. Just because the standards apply and are met, how would this work with the surrounding uses.

Standards of approval: Ms. Kling went on to discuss the Standards of Approval for Special Use Permits and Subdivisions. She mentioned the SOAs for SUPs have been streamlined to three standards. We want standards that do not hang us up. The City submits agency comments, and engineering is reviewed by multiple reviewers. Subdivisions on the other hand, have eight standards of approval mainly having to do with infrastructure and if the project can be done. They meet with the City multiple times prior to coming to PZC for Public Hearing. The infrastructure needs to be built to the City’s standards and accepted by the City. Vice-Chair Davis mentioned with rezoning or subdivisions, sometimes there is too much information. It would be helpful to see the details PZC doesn’t need to see. Commissioner Prickett asked how our Impact Fees are calculated. Ms. Cleveland said it is based on our consultant’s review. The number of trips generated are used to calculate the fee.

Annexations: These are set in a different state code statute and are a mix of legislative and quasi-judicial. Zoning is quasi-judicial. These have to be done at the same time. Annexations are normally by the owner of the land, not the City. Commissioner Howard asked if a parcel is currently within the County, is it a given they will need to annex if they want to develop? Ms. Kling answered that the County does have limitations on what can be developed, so it is generally in their interest to Annex into the City. Ms. Cleveland added that we currently have an ACI agreement with County, so if someone did want to subdivide and develop, they have to hook up our sewer system. At that point, the County will normally tell the property owner they fall under urban development and to see the City of Hayden. Ms. Kling stated there is a lot of infill, which would need to develop to our standards. We have accounted for all of these areas to be developed or included. Prior to the Council hearing the annexation, PZC makes a recommendation to approve, approve with conditions, or deny. Ms. Cleveland noted that any annexation is going to be right next to the County. If there is going to be a development on bare land, you want it to be in the City. She also mentioned that people will come to hearings who are against annexation because they are next door to the County. You do not depart from the CP because of that. Ms. Kling added that other cities have had forced annexations and she does not think Hayden would do that. Emerald Estates may potentially come to that with PHD not approving septic service, simply due to the fact the City would not service a property not within our City Limits.

## **DIRECTOR’S REVIEW**

Ms. Cleveland stated the following PZC meeting details: City Council will have Public Meeting for Rainey Zone Map Amendment on 2/9/2021. She also mentioned Title 11 coming out for final review and asked the Commission to please let the City know if they see something that was missed. Both red-line and clean versions will be sent to the Commission.

**ADJOURNMENT**

Vice-Chair Davis adjourned the meeting at 6:40pm.



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Shannon Drappo, Commission Clerk