

## **FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION**

On April 13, 2009, the Hailey Hearing Examiner considered an application by Idaho Army National Guard for the vacation of a portion of Block 125's alley, between Lots 8-12 and Lots 20-24. The Hearing Examiner, having been presented with all information and testimony in favor and in opposition to the proposal, hereby makes the following Findings of Fact, Conclusions of Law and Recommendation.

### **FINDINGS OF FACT**

#### **Notice**

Notice for the public hearing was published in the Idaho Mountain Express on March 25, 2009 and on April 1, 2009; the notice was mailed by certified mail to property owners within 300 feet on March 25, 2009.

#### **Application**

The applicant has requested the vacation of Block 125's alleyway, between Lots 8-12 and Lots 20-24, which has a 26-foot wide right-of-way.

#### **Background**

On February 2, 2009, the Idaho Army National Guard received approval for the vacation of Cedar Street right-of-way. At that time a sewer easement was required to be recorded for the subject property, which resides in the alley right-of-way. At this time the Council has not approved the sewer easement.

#### **Standards of Evaluation**

Alley Vacations are regulated by Section 9 of Hailey's Subdivision Ordinance.

- 9.1 Applications for vacation of a public right-of-way, alley or easement (other than utility easements) shall comply with Idaho Code §50-311 and §§50-1317 through 50-1325, as amended, and the provisions of this Ordinance. Applications for vacation of utility easements shall comply with Idaho Code §50-1306A, as amended.**

Only sections 50-1311 and 50-1321 apply to vacation of public right-of-way. Idaho Code Section 50-311 states "Cities are empowered to...vacate" any street "whenever deemed expedient for the public good..." This section further provides that "whenever any street, avenue, alley or lane shall be vacated, the same shall revert to the owner of the adjacent real estate, one-half on each side thereof, or as the city council deems in the best interests of the adjoining properties, but the right of way easements and franchise rights of any lot owner or public utility shall not be impaired thereby."

- 9.2 Applications for vacation of streets, alleys, or easements shall be submitted to the Hearing Examiner, except that the Administrator and Chair of the Commission, jointly, shall have discretion and authority to refer a vacation application to the Commission. The Hearing Examiner or Commission shall make a recommendation,**

**concerning the application for vacation, to the Council. The Hearing Examiner or Commission shall consider the following items in making their recommendation:**

**9.2.1 The application and testimony of the applicant and such other information as may come before it with regard to the proposed vacation or dedication.**

No testimony has been received. Public testimony was requested at the public hearing on April 13, 2009; however no one gave any testimony regarding this application.

**9.2.2 The interests of the adjacent property owners and public utilities.**

The adjacent property to the east (Lots 8-12) and west (Lots 20-24) of the subject alley are held in joint ownership by the State of Idaho and the City of Hailey. Notice was sent to public utilities.

**9.2.3 Conformance of the proposal with the Comprehensive Plan.**

The Goals of the Transportation and Circulation section of the Comprehensive Plan include (I.) "To promote the safe and efficient movement of people" and (II.) To minimize public expenditures for road maintenance and improvement".

This alley has not been maintained as an access road for sometime. Currently, the Armory building encroaches into the alley right-of-way, which is fenced off from public access.

**9.2.4 The future development of the neighborhood.**

The current use and general configuration of the alleyway would not change given the Armory was built partially within the alleyway and the alley is currently fenced off from public access. This is not anticipated to effect the future development of the neighborhood.

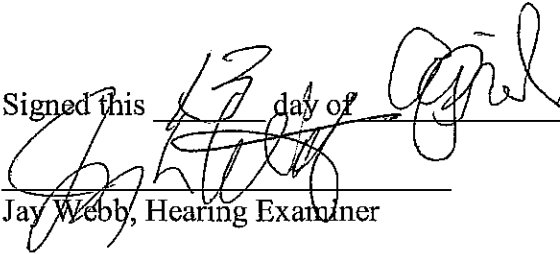
**9.2.5 That the public right-of-way, alley, or easement no longer serves a public purpose.**

The current use and general configuration of the right-of-way would not change given the Armory was built partially within the alley right-of-way and the alley is currently fenced off from public access. A 10 foot sewer easement, with no obstructions along the sewer main (5 feet on each side of the sewer mainline) is required to meet City Standards and to ensure access to the mainline at anytime for emergency repairs and maintenance. This can be achieved by a creating a utility easement over the portion of the alley right-of-way, which contains the sewer line.

## **CONCLUSIONS OF LAW AND RECOMMENDATION**

Based upon the above Findings of Fact, the Hearing Examiner makes the following Conclusions of Law and Recommendation:

- a) Adequate notice, pursuant to Idaho Code Section 50.1306A, was given for the public hearing.
- b) Block 125's alley right-of-way, between Lots 8-12 and Lots 20-24, meets the criteria for vacation of alley right-of-way set forth in Section 9 of Hailey's Subdivision Ordinance and in Idaho Code Sections 50-311 and 50-1317 through 50-1325 (as amended),
- c) The application for vacation of Block 125's alley right-of-way, between Lots 8-12 and Lots 20-24, is recommended for approval.
- d) A 10 foot-wide sewer easement shall be approved concurrently with the vacation of the alley, between Lots 8-12 and Lots 20-24, Block 125.

Signed this 13 day of April, 2009.  
  
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Jay Webb, Hearing Examiner

Attest:

  
\_\_\_\_\_  
Becky Mead, Deputy Clerk

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 13<sup>th</sup> day of April, 2009, I served a true and correct filed copy of the within and foregoing document upon the parties named below, in the manner noted:

Via Electronic Mail: Eugene Gussenhoven [eugene.gussenhoven@id.ngb.army.mil](mailto:eugene.gussenhoven@id.ngb.army.mil)  
Dean Hagerman [dean.hagerman@us.army.mil](mailto:dean.hagerman@us.army.mil)  
Doug Werner [douglas.werner@us.army.mil](mailto:douglas.werner@us.army.mil)  
Martin Powell [martin@zga.com](mailto:martin@zga.com)

CITY OF HAILEY

By Becky Mead  
Becky Mead, Deputy Clerk