

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

On September 22, 2008, the Hailey City Council considered an application by Blaine County for the vacation of a portion of Walnut Street east of alley between Blocks 104 and 105, Hailey Townsite. The City Council, 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 Decision.

### **FINDINGS OF FACT**

#### **Notice**

Notice for the public hearing was published in the Wood River Journal on September 3, 2008 and on September 10, 2008; the notice was mailed by certified mail to property owners within 300 feet on September 3, 2008.

#### **Application**

The applicant has requested the vacation of 20 feet of Walnut Street east of alley between Blocks 104 and 105 in the Hailey Townsite. Walnut Street has a 100 foot wide right-of-way.

#### **Background**

ARCH Community Housing Trust entered into a Memorandum of Understanding with Blaine County to develop two community houses on the property owned by Blaine County. The agreement provides that the residences will be sold to qualified buyers earning 80% of the area median income (AMI), referred to as Category 3 in the Blaine County Housing Authority Guidelines. This translates to a purchase price of approximately \$155,804. The income in that category, depending upon household size, would range from \$53,000 to \$59,800. The 2006 Blaine County Needs Assessment estimates a demand for of 1,052 community houses in the mid-valley, which includes Hailey; 11 community houses have been constructed in Hailey to date.

The area of Lot 2A is currently 11,013 square feet; not enough area to divide the parcel into two lots that meet the 6,000 square foot minimum lot size requirement in the LR-1 zoning district within the Townsite Overlay. The applicant is requesting vacation of 20 feet on either side of the Walnut Street right-of-way (40 feet total) in order to add additional area to Lot 2A, Block 104 to then subdivide the lot into two lots that meet the 6,000 square foot minimum lot size requirement.

An additional 20 feet would add 1,472 square feet to Lot 2A and would allow for the creation of two 6,243.6 square foot lots. This would be a total of 487.2 square feet more than the minimum 6,000 square foot lot size requirement. Vacation of 14 feet of right-of-way (28 feet total), would add a total of 1,030 square feet which would allow for the creation of two approximately 6,020 square foot lots.

#### **Procedural History**

The Hearing Examiner held a public hearing on August 15, 2008 and recommended denial of the vacation request finding that there would be no guarantee that the portion of right-of-way vacated will only be used for the development of community houses, particularly in the distant future, because the vacation of a portion of the public right-of-way cannot be conditional (the Court's

decision in *Black v. Young* determined it is inappropriate to condition vacation of a right-of-way). Since the vacation cannot be directly tied to the development of community houses the Hearing Examiner could not recommend that the vacation itself is “deemed expedient for the public good”.

The Hearing Examiner recommended that if the right-of-way is vacated that the minimum amount of right-of-way be vacated in order to still provide opportunities for public access and future connectivity to the east and to the Fifth Avenue easement. Vacation of 14 feet of right-of-way (28 feet total), would add a total of 1,030 square feet which would allow for the creation of two approximately 6,020 square foot lots.

### **Standards of Evaluation**

Street Vacations are regulated by Section 9 of Hailey’s Subdivision Ordinance, which incorporates the applicable sections of state law. For each applicable standard (in bold print), the Council makes the following Findings of Fact:

**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.**

Section 50-311 of Idaho Code 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.”

The applicant is requesting vacation of a portion of the Walnut Street right-of-way in order to enable the development of two community houses. While the need for community housing is apparent, there is no way to guarantee that the portion of right-of-way vacated will only be used for the development of community houses, particularly in the distant future, because the vacation of a portion of the public right-of-way cannot be conditional (the Court’s decision in *Black v. Young* determined it is inappropriate to condition vacation of a right-of-way). Since the vacation cannot be directly tied to the development of community houses the Hearing Examiner could not recommend that the vacation itself is “deemed expedient for the public good”.

The City Council was advised by the City Attorney that a guarantee in perpetuity was not necessary in order for the Council to find the right-of-way vacation to be expedient for the public good. The City Council supports the pursuit of community housing, but wanted security of the future use of the portion of the right-of-way vacated and therefore did not find the vacation to be expedient for the public good.

**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.**

The Council heard testimony from the applicant's representative, ARCH Community Housing Trust, adjacent property owners and other members of the public at the public hearing.

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

Adjacent lots are Lot 2A, Block 104 and Lot 1, Block 105. The owner of Lot 1, Block 105 indicated he had applied for a right-of-way vacation of 20 feet of Walnut Street in 1993 in order to meet setback requirements for a garage. The applicant withdrew his request after the Planning and Zoning Commission suggested he apply for a variance instead. Letters of acceptance were sent by the applicant to the following public utilities; Hailey Water and Sewer, Idaho Power Company, Cox Communications, Syringa Networks and Intermountain Gas. Responses have been received by Idaho Power, Intermountain Gas, Qwest and the Hailey Public Works Department without objection. Idaho Power requested a five foot easement for the power line across the portion of Walnut Ave proposed for vacation.

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

The following sections of the Comprehensive Plan are applicable to this application and were considered by the City Council.

**Transportation and Circulation Goal I, "To promote the safe and efficient movement of people" and Goal II, To minimize public expenditures for road maintenance and improvement".**

**Land Use, Section 5.7., "To increase opportunities for alternative transportation, reduction of vehicle traffic, creation of safe and walkable neighborhoods, creation and preservation of public space and green space..."**

**Community and Neighborhood Character, 8.1.1.b., "Encourage infill development within the original Hailey Townsite, recognizing the large number of substandard lots, by implementing strategies including, but not limited to, the creation of an overlay district allowing flexibility in bulk regulations."**

The Walnut Street right-of-way is at the eastern edge of the Townsite Overlay adjacent to the Union Pacific Rail Road right-of-way (now owned by ITD), a portion of which includes Fifth Avenue. The Hearing Examiner recommended that if the right-of-way is vacated that the minimum amount of right-of-way be vacated in order to still provide opportunities for public access and future connectivity to the east and to the Fifth Avenue easement.

The Council found that an increase in density through a right-of-way vacation was not desirable.

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

The Walnut Street right-of-way is at the eastern edge of the Townsite Overlay adjacent to the Union Pacific Rail Road right-of-way (now owned by ITD), a portion of which includes an easement that is used as Fifth Avenue. The future development of the area will likely include infill development such as that proposed for Lot 2A. The east-west streets do not cross the Union Pacific Rail Road right-of-way except for in four locations (Myrtle, Bullion, Croy, and Elm). Preserving opportunities to provide a formal east-west connection, especially pedestrian connections, is important to implementing the transportation related goals and policies of the Comprehensive Plan.

The Hearing Examiner recommended if the right-of-way is vacated that the minimum amount of right-of-way be vacated in order to still provide opportunities for public access and future connectivity to the east and to the Fifth Avenue easement.

The Council found that an increase in density through a right-of-way vacation was not desirable.

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

The city may have need for the portion of Spruce Street right-of-way in the future for some purpose that we can not foresee at this time. The east-west streets do not cross the Union Pacific Rail Road right-of-way (now owned by ITD) except for in four locations (Myrtle, Bullion, Croy, and Elm). Preserving opportunities to provide formal east-west connections, especially pedestrian connections, are important to implementing the transportation related goals and policies of the Comprehensive Plan.

The Hearing Examiner recommended that if the right-of-way is vacated that the minimum amount of right-of-way be vacated in order to still provide opportunities for public access and future connectivity to the east and to the Fifth Avenue easement.

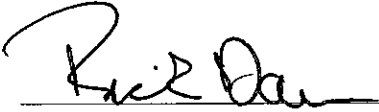
The Council found that Walnut Street continues to serve a public purpose.

### CONCLUSIONS OF LAW AND DECISION

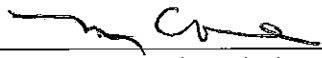
Based upon the above Findings of Fact, the Council makes the following Conclusions of Law and Decision:

- a) Adequate notice, pursuant to Idaho Code Section 50.1306A, was given for the public hearing.
- b) The request does not meet the criteria for vacation of alley right-of-way set forth in Section 9.1 of Hailey's Subdivision Ordinance and in Idaho Code Sections 50-311 and 50-1317 through 50-1325 (as amended), because the vacation is not expedient for the public good without a sufficient guarantee that the portion of the right-of-way vacated will be used for community housing in perpetuity.
- c) The application for vacation of a portion of Walnut Street east of alley between Blocks 104 and 105 is denied.

Signed this 15<sup>th</sup> day of OCTOBER, 2008.

  
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Rick Davis, Mayor City of Hailey

Attest:

  
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Mary Cone, City Clerk, City of Hailey



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 16<sup>th</sup> day of OCTOBER, 2008, I served a true and correct filed copy of the within and foregoing document upon the parties named below, in the manner noted:

<input type="checkbox"/>	U.S. Mail	Blaine County ARCH Community Housing Trust
<input type="checkbox"/>	Via Facsimile	206 First Avenue South, Suite 300
<input checked="" type="checkbox"/>	Via Electronic Mail	Hailey, ID 83333
<input type="checkbox"/>	Hand Delivered	homeownership@archbc.org
<input type="checkbox"/>	U.S. Mail	Greg Harbeson
<input type="checkbox"/>	Via Facsimile	Galena Engineering
<input checked="" type="checkbox"/>	Via Electronic Mail	317 River Street North
<input type="checkbox"/>	Hand Delivered	Hailey, ID 83333
		mariae@svskylan.net

CITY OF HAILEY

By Becky Mead  
Becky Mead, Deputy Clerk, City of Hailey