

## FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION

On December 5, 2008, the Hailey Hearing Examiner considered an application by the Idaho Army National Guard for the vacation of the portion of Cedar Street between 3<sup>rd</sup> Ave and 4<sup>th</sup> Ave. 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.

### Notice

Notice for the public hearing on November 21, 2008 was published in the Idaho Mountain Express on November 5, 2008 and on November 12, 2008; the notice was mailed by certified mail to property owners within 300 feet on November 5, 2008. On November 21 the public hearing was continued to December 5, 2008.

### Application

The applicant requested the vacation of Cedar Street between 3<sup>rd</sup> Avenue and 4<sup>th</sup> Avenue, which has a 100 foot wide right-of-way. Adjacent Property include Lots 12 and 14, Block 125 and Lots 1 and 13, Block 136. The State of Idaho and the City of Hailey each has half interest in Block 136 and jointly own Block 125, Lots 8-12 and 20-24.

### Standards of Evaluation

Right-of-way vacations are regulated by Section 9 of Hailey's Subdivision Ordinance. For each standard of evaluation, shown in bold print, the Hearing Examiner 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.**

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."

The vacation of the Cedar Street is requested by the National Guard in order to meet the Anti-terrorism/Force Protection requirements for parking and roadway stand off distances mandated by the Unified Facilities Criteria Guidelines for National Guard Facilities that use federal Funding for improvements. The minimum stand off distance for parking and roadways is 33 feet for roadways without a controlled perimeter.

The Hearing Examiner finds that the vacation of this portion of Cedar is expedient for the public good in order to meet the Anti-terrorisim/Force Protection requirements for parking and roadway stand off distances mandated by the Unified Facilities Criteria Guidelines for National Guard Facilities.

**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 public testimony was given related to this application.

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

Notice was sent to public utilities. The City of Hailey and the State of Idaho are joint owners of the property adjacent to the portion of Cedar Street requested to be vacated.

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

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

A portion of the right-of-way should be kept open for public vehicular and pedestrian access; a minimum of 26 feet paved road width is required to meet Street and Fire Department requirements. This can be achieved by an easement over the portion of the right-of-way vacated to Block 136.

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

The current use and general configuration of the right-of-way would not change given the Armory was built partially within the right-of-way. However the infrastructure and parking configuration would be improved. 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 right-of-way. However the infrastructure and parking configuration would be improved. A portion of the right-of-way should be kept open for public vehicular and pedestrian access; a minimum of 26 feet paved road width is required to meet Street and Fire Department requirements. This can be achieved by a public access easement over the portion of the right-of-way vacated to Block 136.

**Idaho Code Sections**

**50-311. CREATION -- VACATION OF STREETS -- EMINENT DOMAIN -- REVERSION OF VACATED STREETS. Cities are empowered to: create, open, widen or extend any street, avenue, alley or lane, annul, vacate or discontinue the same whenever deemed expedient for the public good; to take private property for such purposes when deemed necessary, or for the purpose of giving right of way or other privileges to railroad companies, or for the purpose of erecting malls or commons; provided, however, that in all cases the city shall make adequate compensation therefore to the person or persons whose**

property shall be taken or injured thereby. The taking of property shall be as provided in title 7, chapter 7, Idaho Code. The amount of damages resulting from the vacation of any street, avenue, alley or lane shall be determined, under such terms and conditions as may be provided by the city council. Provided further 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 (1/2) 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. In cities of fifty thousand (50,000) population or more in which a dedicated alley has not been used as an alley for a period of fifty (50) years [such alley] shall revert to the owner of the adjacent real estate, one-half (1/2) on each side thereof, by operation of the law, but the existing rights of way, easements and franchise rights of any lot owner or public utility shall not be impaired thereby.

**50-1317. VACATION PROCEDURE IN UNINCORPORATED AREAS AND IN CITIES NOT EXERCISING THEIR CORPORATE FUNCTIONS -- FILING OF PETITION -- NOTICE OF HEARING.**

Not applicable

**50-1318. IN ABSENCE OF OPPOSITION -- GRANT OF PETITION -- RESTRICTIONS.**

If no opposition be made to such petition or application within the said thirty (30) day period, the board of county commissioners shall vacate the same, with such restrictions as they may deem reasonable and for the public good.

Not applicable

**50-1319. IN PRESENCE OF OPPOSITION -- CONTINUANCE OF APPLICATION -- HEARING -- WHEN PETITION GRANTED.**

Not applicable

**50-1320. VESTING OF TITLE ON VACATION.**

Not applicable

**50-1321. NECESSITY FOR CONSENT OF ADJOINING OWNERS -- ACKNOWLEDGMENT AND FILING OF CONSENT -- LIMITATION ON RULE -- PREREQUISITES TO ORDER OF VACATION.**

No vacation of a public street, public right of way or any part thereof having been duly accepted and recorded as part of a plat or subdivided tract shall take place unless the consent of the adjoining owners be obtained in writing and delivered to the public highway agency having jurisdiction over said public street or public right of way. Such public street or public right of way may, nevertheless, be vacated without such consent of the owners of the property abutting upon such public street or public right of way when such public street or public right of way has not been opened or used by the public for a period of five (5) years and when such nonconsenting owner or owners have access to his, her or their property from some other public street, public right of way or private road. However, before such order of vacation can be entered it must appear to the satisfaction of the public highway agency that the owner or owners of the property abutting said public street or public right of way have been served with notice

of the proposed abandonment in the same manner and for the same time as is now or may hereafter be provided for the service of the summons in an action at law. Any vacation of lands within one (1) mile of a city shall require notification and consent of the city.

**50-1322. APPEAL FROM ORDER GRANTING OR DENYING APPLICATION TO VACATE.**

Not applicable

**50-1323. LIMITATION OF ACTIONS TO ESTABLISH ADVERSE RIGHTS OR QUESTION VALIDITY OF VACATION.**

Not applicable

**50-1324. RECORDING VACATIONS.** (1) Before a vacation of a plat can be recorded, the county treasurer must certify that all taxes due are paid and such certification is recorded as part of the records of the vacation. The treasurer shall withhold the certification only when property taxes are due, but not paid.

(2) Upon payment of the appropriate fee therefor, the county recorder of each county shall index and record, in the same manner as other instruments affecting the title to real property, a certified copy of each ordinance, resolution or order by which any lot, tract, public street, public right of way, private road, easement, common, plat or any part thereof has been vacated. Such certification shall be by the officer having custody of the original document and shall certify that the copy is a full, true and correct copy of the original.

**50-1325. EASEMENTS -- VACATION OF.**

Not applicable

**50-1306A. VACATION OF PLATS -- PROCEDURE.** (1) Any person, persons, firm, association, corporation or other legally recognized form of business desiring to vacate a plat or any part thereof which is inside or within one (1) mile of the boundaries of any city must petition the city council to vacate. Such petition shall set forth particular circumstances of the requests to vacate; contain a legal description of the platted area or property to be vacated; the names of the persons affected thereby, and said petition shall be filed with the city clerk.

(2) Written notice of public hearing on said petition shall be given, by certified mail with return receipt, at least ten (10) days prior to the date of public hearing to all property owners within three hundred (300) feet of the boundaries of the area described in the petition. Such notice of public hearing shall also be published once a week for two (2) successive weeks in the official newspaper of the city, the last of which shall be not less than seven (7) days prior to the date of said hearing; provided, however, that in a proceeding as to the vacation of all or a portion of a cemetery plat where there has been no interment, or in the case of a cemetery being within three hundred (300) feet of another plat for which a vacation is sought, publication of the notice of hearing shall be the only required notice as to the property owners in the cemetery.

(3) When the procedures set forth herein have been fulfilled, the city council may grant the request to vacate with such restrictions as they deem necessary in the public interest.

(4) When the platted area lies more than one (1) mile beyond the city limits, the procedures set forth herein shall be followed with the county commissioners of the county wherein the property lies. The county commissioners shall have authority, comparable to the city council, to grant the vacation, provided, however, when the platted area lies beyond one (1) mile of the city limits, but adjacent to a platted area within one (1) mile of the city, consent of the city council of the affected city shall be necessary in granting any vacation by the county commissioners.

(5) In the case of easements granted for gas, sewer, water, telephone, cable television, power, drainage, and slope purposes, public notice of intent to vacate is not required. Vacation of these easements shall occur upon the recording of the new or amended plat, provided that all affected easement holders have been notified by certified mail, return receipt requested, of the proposed vacation and have agreed to the same in writing.

(6) When public streets or public rights-of-way are located within the boundary of a highway district, the highway district commissioners shall assume the authority to vacate said public streets and public rights-of-way as provided in subsection (4) of this section.

(7) All publication costs shall be at the expense of the petitioner.

(8) Public highway agencies acquiring real property within a platted subdivision for highway right-of-way purposes shall be exempt from the provisions of this section.

(9) Land exclusive of public right-of-way that has been subdivided and platted in accordance with this chapter need not be vacated in order to be replatted.

#### 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) The application for vacation of the portion of Cedar Street right-of-way between 3<sup>rd</sup> Ave and 4<sup>th</sup> Ave meets the criteria for vacation 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 the portion of Cedar Street right-of-way between 3<sup>rd</sup> Ave and 4<sup>th</sup> Ave is recommended for approval.

Signed this 12 day of DECEMBER 2008.

  
Bernie Johnson, Hailey Hearing Examiner

Attest:

  
Becky Mead, Deputy Clerk

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 15<sup>th</sup> day of December, 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           | Idaho Army National Guard   |
| <input checked="" type="checkbox"/> | Via Electronic Mail | <u><a href="mailto:eugene.gussenhoven@id.ngb.army.mil">eugene.gussenhoven@id.ngb.army.mil</a></u> |
| <input type="checkbox"/>            | Via Facsimile       |   |
| <input type="checkbox"/>            | Hand Delivered      |   |
|                                     |                     |   |
| <input type="checkbox"/>            | U.S. Mail           | Ken Gardner, Div of Public Works  |
| <input checked="" type="checkbox"/> | Via Electronic Mail | <u><a href="mailto:ken.gardner@adm.idaho.gov">ken.gardner@adm.idaho.gov</a></u>                   |
| <input type="checkbox"/>            | Via Facsimile       |   |
| <input type="checkbox"/>            | Hand Delivered      |   |

CITY OF HAILEY

By Becky Mead  
Becky Mead, Deputy Clerk