

## STAFF REPORT

**TO:** Hailey City Council  
**FROM:** Beth Robrahn, Planning Director   
**RE:** Zoning Ordinance Amendment – Article 7  
**HEARING:** January 11, 2010

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### Note

Staff comments are in lighter type.

### Notice

Notice for the public hearing on January 11, 2010 was published in the Idaho Mountain Express and mailed to public agencies and area media on December 23, 2009.

### Proposal

Attached are amendments proposed by the City to Article 7, Supplementary Location and Bulk Requirements of the Zoning Ordinance. The amendments would clarify that Accessory Structures with a floor area of 120 square feet or less are required to be setback a minimum of 3 feet from either, the side and/or rear property line or the primary structure. The Planning and Zoning Commission held two public hearings on November 16 and December 7, 2009 and recommended approval of the proposed amendments.

The problem the Planning and Building Departments are trying to address with this amendment is that people put up sheds without a permit (a Building Permit is not required for structures less than 120 square feet), however the Zoning Code requires setbacks and people do not know what those setbacks are. Even if a permit was required, many people would still put up sheds without knowing they need a permit which results in a significant enforcement problem for the City.

The main purpose for a setback for sheds is to provide access between two buildings, or a fence and a building, in case of a fire or other emergency. The intent of this amendment is to incorporate flexibility into the Code in order to ensure access for firefighting without requiring permits for sheds less than 120 square feet. Without adding some flexibility into the code in many cases we would be forced to tell people they have to move their sheds; something no one at the city likes to do and no one in the community likes to hear.

After much discussion in the spring and summer of 2009 between the Planning, Building and Fire Departments, the proposed language was developed as a compromise solution. The logic being that a firefighter can get through a 3 ft space, whether it is between the shed and the fence or the shed and the house, in order to access a structure that is on fire.

According to the Fire Chief a 12 feet of cumulative fire break between buildings would be optimal in order to minimize the possibility of fire propagating to other properties. The compromise language does not address the issue of fire propagating. Because we have to have consistent standards (we can not have standards that forces one property owner to do something based on what their neighbor did before them), the only way to obtain that 12 feet of fire break would be to require a 12 foot setback from property line and primary structure. However, a 12

foot setback is clearly unreasonable and we would be faced with the same issue of people putting up sheds without knowing what the setback requirements are and the Code flexibility necessitated in these cases would not be achieved.

### **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 relationship of the proposed amendments to the Hailey 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 amendments will not create excessive additional requirements at public cost for public facilities and services.

**3. The proposed uses are compatible with the surrounding area.**

NA

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

The proposed amendments will clarify inconsistencies in the current standards and will enable more efficient, consistent and predictable application of sidewalk and landscape requirements.

### **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.

**Recommended Motion Language**

Approval:

Motion to approve the proposed amendments to Article 7, Supplementary Location and Bulk Requirements, of the Zoning Ordinance, 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 and adopt Ordinance \_\_\_\_\_ and authorize the mayor to conduct the first reading by title only.

Denial:

Motion to recommend the City Council deny the proposed amendments to Article 7, Supplementary Location and Bulk Requirements, of the Zoning Ordinance, finding that \_\_\_\_\_ [the Council should cite which standards are not met and provided the reason why each identified standard is not met].

Continuation:

Motion to continue the public hearing upon the proposed amendment to Article 7 to \_\_\_\_\_ [the Council should specify a date].

HAILEY ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, AMENDING HAILEY'S ZONING ORDINANCE, ORDINANCE NO. 532, BY AMENDING ARTICLE 7, SUPPLEMENTARY LOCATION AND BULK REQUIREMENTS, TO CLARIFY THE SETBACK REQUIREMENT FOR ACCESSORY STRUCTURES WITH A FLOOR AREA OF 120 SQUARE FEET OR LESS; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; AND PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE UPON PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW.

WHEREAS, the Hailey City Council has found that the following amendment to the Hailey Zoning Ordinance will generally conform with the Hailey Comprehensive Plan;

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

WHEREAS, the proposed uses are compatible with the surrounding area; and

WHEREAS, the amendment will be in accordance with the safety and 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 7.1.8 of Hailey Zoning Ordinance No. 532, is hereby amended by the deletion of the stricken language and the addition of the underlined language as follows:

- a. Except as otherwise provided herein, Accessory Structures with a floor area of 120 square feet or less are ~~allowed to be setback a minimum of three (3) feet from the side and/or rear property line~~ required to be setback a minimum of 3 feet from either: 1) the side and/or rear property line, or 2) the Principle Building and any other Accessory Structure.
  1. On Normal Corner Lots, Accessory Structures with a floor area of 120 square feet or less shall have a minimum side yard setback of two thirds (2/3) the front yard setback requirement for the zoning district in which the lot is located.
  2. ~~Except~~ Within the Business District, in the case where an alley is located along the side or rear lot line of the property, Accessory Structures with a floor area of 120 square feet or less shall be setback a minimum of a-six (6) feet from the alley~~foot setback is required for Accessory Structures with a floor area of 120 square feet or less.~~
  3. ~~Within the Business District, Accessory Structures may be built to the property line.~~

- b. Accessory Structures with a floor area of 120 square feet or less and are located a minimum of three (3) feet from the side and/or rear property line shall have a maximum bearing wall height of eight feet and a maximum building height of 12 feet.
- e. ~~Accessory Structures with a floor area of 120 square feet or less shall comply with all applicable Building Code requirements.~~

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 \_\_\_\_\_, 2010.

\_\_\_\_\_  
Richard L. Davis, Mayor, City of Hailey

Attest:

\_\_\_\_\_  
Mary Cone, City Clerk



## STAFF REPORT

**TO:** Hailey City Council

**FROM:** Beth Robrahn, Planning Director 

**RE:** Vacation of the portions of right-of-way located between Rodeo Grounds, Hailey Elementary and Blaine Manor properties (previously known as the Wertheimer property)

**HEARING:** December 14, 2009

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**Applicant:** City of Hailey

**Request:** Vacation of streets and alleys generally located within the Hailey Elementary property, Blaine Manor property and the Rodeo Grounds property within the Hailey Townsite

**Street and Alley rights-of-way subject to the proposed vacation:**

1. all of the alley within Block 11;
2. that portion of Second Avenue lying between the southerly boundary of Elm Street, and a line directly connecting the southern boundary of Lot 17, Block 135, and the southern boundary of Lot 5, Block 134;
3. all of the alley within Block 10;
4. all of the alley within Block 3;
5. all of the alley within Block 127;
6. all of the alley within Block 134;
7. that portion of First Avenue lying between the southerly boundary of Chestnut Street and the northerly boundary of the Highway 75 right-of-way;
8. all of the alley within Block 128;
9. that portion of the alley within Block 133 lying between the southerly boundary of Cedar Street and the Highway 75 right-of-way;
10. that portion of Chestnut Street lying between the easterly boundary of First Avenue and the westerly boundary of Third Avenue;
11. that portion of Maple Street lying between the easterly boundary of First Avenue and a line directly connecting the southeast corner of Lot 24, Block 2, and the northeast corner of Lot 13, Block 126, and
12. that portion of Cedar Street lying between the easterly boundary of the Highway 75 right-of-way and a line directly connecting the southeast corner of Lot 24, Block 126, and the northeast corner of Lot 13, Block 135.

The hatch marks in the attached map show the portions of right-of-way proposed to be vacated.

**Zoning:** General Residential (GR), Limited Business (LB) and Townsite Overlay (TO)

**Note:** Staff analysis is in lighter type.

### Notice

Notice for the December 14, 2009 public hearing was published in the Idaho Mountain Express on November 25, 2009 and on December 2, 2009; the notice was mailed by certified mail to property owners within 300 feet on November 25, 2009.

### Procedural History

This application will correct and consolidate several vacations of streets and alleys within the City of Hailey, adjacent to real properties owned by the City of Hailey, Blaine County and the Blaine County School District. The vacated rights-of-way would be deeded to these public entities in accordance with Hailey's Subdivision Ordinance and Idaho Code Section 50-311.

The Hailey Hearing Examiner held a public hearing on October 26, 2009 and recommended approval.

### Department Comments:

None

### Standards of Evaluation

Street 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.**

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 subject rights-of-way are currently utilized by these entities for the following non-transportation public and semi-public facilities:

- City of Hailey: Rodeo grounds and arena; Hailey Skate Park
- Blaine County: Blaine Manor
- School District: Hailey Elementary School and related facilities, including playing fields.

**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 City Attorney has reviewed the title history involving several transfers or purported transfers of title involving street and alleys in the area where the Hailey Elementary School, the adjacent playing fields, Blaine County Manor and the Rodeo Grounds. The purpose of the vacation request is to address the title problems with earlier conveyances. See attached memo from City Attorney.

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

Adjacent property owners are primarily the City of Hailey, Blaine County and the Blaine County School District. Dr. Don Levin owns Lots 1-10, Block 4.

Utilities serve individual properties and do not traverse any of the vacated areas for the purpose of serving more than one property owner.

**9.2.3 Conformance of the proposal 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:

- a) The Recreation section of the Plan, Goal 4.1 states “To create and maintain an interconnected system of parks, recreational facilities, trails, green spaces and natural lands for the community of Hailey in order to provide diverse recreation opportunities for Hailey residents.” Goal 4.3, Policy 1, Implementation (b) states “Work with the Blaine County School District to ensure that adequate active recreation assets are available. Cooperate with planning and development efforts.”
- b) The Public Facilities, Utilities and Services section of the Plan, items 9.I.1 (b) states “Encourage shared use of public facilities, especially in cooperation with the Blaine County government and the School District.” Item 9.I.1 (c) states “Cooperate with other jurisdictions and assess future needs for new or expanded facilities such as: hospitals and clinics, Preschools and Day Cares, and Job Service.”
- c) The School Facilities and Transportation section of the Plan, Goal I of 15.11 states “It is the goal of the City of Hailey to use land use policies to encourage and facilitate a strong and viable comprehensive educational system.” Goal I of 15.12 states “It is the goal of the City of Hailey to provide or ensure the provision of safe, adequate, convenient, and multi-modal transportation access to all school sites, as incorporated herein and referenced on the attached Conceptual School District Transportation Master Plan Map.”
- d) The Transportation and Circulation section of the Plan include Goal (I.) “To promote the safe and efficient movement of people” and Goal (II.) To minimize public expenditures for road maintenance and improvement”.

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

Future development may include the following: expansion of Blaine Manor and construction of a multi-use recreational facility. The Hailey Elementary School will continue as a public school.

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

The subject portions of right-of-way are currently utilized for non-transportation public and semi-public facilities. The uses will remain public and semi-public uses.

**Summary**

Section 9 of the Hailey Subdivision Ordinance states that in considering a street, alley or easement vacation following recommendations by the Hearing Examiner or Commission, the Council shall hear and consider the public testimony, applicant testimony, recommendations of the Hearing Examiner or Commission, public purpose and any other information, including findings of facts, as may be brought before the Council.

Any vacation to be granted by the Council shall be supported by findings that the right-of-way in question is no longer needed for public use.

Should the Council approve the application, in the case of public right-of-way, alley, or street, the City shall pass an Ordinance vacating the same. When a street or alley is vacated, the City shall provide adjacent property owners with a quitclaim deed for the vacated right-of-way. The vacation shall become effective upon enactment of the Ordinance pursuant to Idaho Code.

**Motion Language:**

**Approval:**

Motion to approve the City initiated vacation of streets and alleys generally located within the Hailey Elementary property, Blaine Manor property and the Rodeo Grounds property within the Hailey Townsite, finding that the interests of the adjacent property owners and public utilities, the vacation is in conformance of the proposal with the Comprehensive Plan, will not be detrimental to the future development of the neighborhood and the public right-of-way, alley or easement no longer serves a public purpose.

**Denial:**

Motion to deny the City initiated vacation of streets and alleys generally located within the Hailey Elementary property, Blaine Manor property and the Rodeo Grounds property within the Hailey Townsite, finding that \_\_\_\_\_ [the Council should cite which standards are not met and provided the reason why each identified standard is not met].

**Continuation:**

Motion to continue the public hearing upon the City initiated vacation of streets and alleys generally located within the Hailey Elementary property, Blaine Manor property and the Rodeo Grounds property within the Hailey Townsite to \_\_\_\_\_ [the Council should specify a date].

# City of Hailey

Rodeo grounds  
Blaine

115 MAIN STREET SOUTH, SUITE H  
HAILEY, IDAHO 83333

(208) 788-4221  
Fax: (208) 788-2924

August 11, 2009

Commissioner Larry Schoen, Chairman  
Commissioner Angenie McCleary, Vice-Chair  
Commissioner Tom Bowman  
Blaine County Board of County Commissioners  
206 1<sup>st</sup> Avenue South, Suite 300  
Hailey, Idaho 83333  
HAND DELIVERED

Re: Proposed Wertheimer Park Plat

Dear Commissioners:

Hailey has been asked by both the Blaine County School District and Blaine County to resolve several title issues with the properties owned by Blaine County School District (Hailey Elementary), Blaine County (Blaine Manor) and Hailey (the Rodeo Grounds). Over the years, there have been many transactions between the parties and mistakes were made when property was conveyed. For example, some of the Hailey Elementary School is constructed on non-vacated streets and alleys.

The school district has been spearheading the project to cleanup the title problems. Hailey has spent considerable amount of time and money in the researching and preparing documents to remedy the title problems. Blaine County, through Commissioner Bowman and County attorney Tim Graves, has been involved in numerous discussions. All the participants believe it is in the best long term interests of the parties to ultimately plat a three lot subdivision and ensure that each party's property within each lot has been properly conveyed with appropriate vacations of streets and alleys and deeds. I am enclosing a copy of a proposed plat which would create such a three lot subdivision.

It appears that there is a general consensus to proceed with a three lot subdivision, except for one area between the Rodeo Grounds and Blaine Manor. That area is the southern part of First Avenue and is shown as a hatched area on the proposed plat. In 1974, Hailey conveyed most of the Hailey Elementary School to Blaine County School District No. 61 as part of an exchange of lands. The primary problem with this transaction was that the parties did not vacate the streets and alleys as required by state law. Later in 1977, Hailey attempted to rectify the problem, but failed to properly vacate all of First Avenue and to convey the vacated streets and alleys. In

Blaine County Board of County Commissioners

August 11, 2009

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2001, Hailey constructed a portion of the skate park on the most southern portion of First Avenue. At that time, Hailey was told by a title company that it was the owner of the land. Hailey is presently conducting a master plan of the Rodeo Grounds which is intended to maintain a rodeo facility, to expend the skate park by adding a street skate facility, to construct an ice skating facility, and to add parking.

To address the title problems, our attorney has suggested that Hailey proceed with a hearing to vacate all of the streets and alleys in the proposed Wertheimer plat and then convey deeds. And to accommodate all of the proposed uses on the Rodeo Grounds, Hailey needs all of the land in First Avenue between the Rodeo Grounds and Blaine Manor.

The school district has always offered to convey any interest it may have in the southern First Avenue parcel to either Hailey or Blaine County. We have been advised that Blaine County wants half of First Avenue adjacent to Blaine Manor. But, as explained earlier, Hailey believes it needs all of First Avenue to accommodate the many popular and exciting recreational opportunities planned for the Rodeo Grounds.

The parties seem to be at an impasse. This project has been discussed for years and we believe all the parties want finality. Before Hailey initiates the public hearing process, we would ask the Blaine County Commissioners to discuss this matter and advise us of the county's official position. In the past, Hailey has expressed a willingness to assist Blaine County in constructing a public park at the old jail site by the Courthouse. Hailey would be willing to provide labor and equipment and funds to assist in the creation of a small park. It must be understood that this offer is independent of any decision relating to applications to vacate streets or alleys or to subdivide the Wertheimer Park parcels.

We look forward to your response. If you have any questions or need more information, please contact us. Thank you.

Sincerely,



Rick Davis, Mayor

cc: Blaine County School District No. 61  
Hailey City Council Members

# MEMORANDUM

TO: Mayor Rick Davis and Hailey City Council Members

FROM: Ned C. Williamson

DATE: December 14, 2009

RE: Vacation of streets and alleys (Rodeo Grounds, Hailey Elementary School and Blaine Manor)

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For years, the Blaine County School District and Hailey have been investigating solutions to several title and ownership problems with the Rodeo Grounds and Hailey Elementary School. To better understand the problems, I will first outline the pertinent law and procedure for vacation of streets and alleys, and then identify the specific problems with the Rodeo Grounds and Hailey Elementary School properties.

## APPLICABLE LAW

The controlling law in this application is found in Idaho Code §50-311, which in pertinent part provides that cities are authorized to vacate a street or alley “whenever deemed expedient for the public good,” provided that whenever any street or alley 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.” A vacation requires the adoption of an ordinance and the execution of a quitclaim deed. Both the ordinance and deed should then be recorded.

## TITLE AND OWNERSHIP ISSUES

The more significant problems with the properties include:

1. Portions of Hailey Elementary School are built on unvacated portions of the alleys in Blocks 10 and 11, and on Second Avenue.
2. A portion of First Avenue (which appears to be part of the Rodeo Grounds) has not been properly vacated. The Hailey Skatepark is partially located on this portion of First Avenue. This portion of First Avenue was conveyed by Hailey to the School District as part of an exchange of real properties in 1965. The City and School District improperly exchanged title to streets and alleys in 1965.<sup>1</sup> It is my

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<sup>1</sup> In *Infanger v. City of Salmon*, 137 Idaho 45, 44 P.3d 1100 (2002), the Idaho Supreme Court analyzed an attempt by the City of Salmon to convey title to a street by a simple exchange of property. The *Infanger* Court held that title to a street can only be conveyed by following the statutory procedures in Idaho Code §50-311, not by a purported exchange under Idaho Code §50-1403.

belief that Hailey attempted to rectify that problem by vacating First Avenue in 1977, but mistakenly used an old legal description, not the updated description.

3. Several streets were vacated but deeds were not recorded. For example, the portion of Chestnut Street between Third Avenue and the alleys in Blocks 2 and 11 was vacated but a deed was not recorded. Similarly, the portion of First Avenue for approximately a two block stretch south of Chestnut Street was vacated but without a deed.

### PROPOSED SOLUTION

Hailey and the School District have discussed a three step process to resolve the issues with the properties. First, Hailey would initiate a comprehensive vacation of all streets and alleys within the Hailey Elementary School, Rodeo Grounds and Blaine Manor properties. Second, the parties would file an application for a three lot subdivision plat which would create three distinct property descriptions. Third, each party would execute quitclaim deeds, which would convey any and all of a party's interest to the properties which the other two parties owned.

As noted earlier, Hailey constructed the Hailey Skatepark on much of the southern end of First Avenue. This decision was made after a title company told Hailey that it was the owner of that portion of First Avenue. As part of the global solution, Hailey and the School District communicated with Blaine County. Blaine County was taking the position that it is entitled to one-half of that portion of First Avenue adjacent to Blaine Manor. The letters from Hailey dated August 11, 2009, and the county's response dated October 19, 2009, are attached.

Following the county's response, I have had communications with the county. The county is willing to forego any claim on First Avenue provided Hailey rezones the Blaine Manor property from limited business (LB) to business (B). I believe it is important to consider this request independent of the vacation request. The Planning Director believes there may be an interpretation of the Comprehensive Plan that could support the rezone of the Blaine Manor property, particularly since it would be a rezone from LB to B, as opposed to a rezone from GR to B which would be more difficult to find to be consistent with the Comprehensive Plan. The Planning Director has started the application process, which will require public hearings before the Planning and Zoning Commission and City Council.

The attached proposed ordinance outlines some of the history relating to prior vacations of streets and alleys in this area of the Original Hailey Townsite. If the Council approves this vacation application, the Council needs to convey title to the vacated street or alley "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." *Idaho Code §50-311*. The attached ordinance proposes

three quitclaim deeds which would convey title of streets and alleys to the School District, Blaine County and Hailey.

In addition, the proposed ordinance rescinds the reversionary clauses found in Hailey Ordinance Nos. 274 and 283. Copies of those ordinances are attached.

#### RECOMMENDATION

I would recommend that the Mayor and Council make the following two motions:

1. Motion to approve the proposed vacation of streets and alleys (refer to the staff report for motion language).
2. Motion to approve the proposed ordinance which vacates those streets and alleys described in the application to vacate, which authorizes the execution of quitclaim deeds to the School District, Blaine County and Hailey, and which deletes the reversionary clauses in Sections 2 of Hailey Ordinance Nos. 274 and 283.

HAILEY ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, VACATING ALL OR PART OF FIRST AVENUE, SECOND AVENUE, CHESTNUT STREET, MAPLE STREET, CEDAR STREET, AND ALLEYS WITHIN BLOCKS 3, 10, 11, 127, 128, 133 AND 134, OF THE ORIGINAL HAILEY TOWNSITE; PROVIDING FOR EXECUTION OF A QUITCLAIM DEED BY THE MAYOR CONVEYING TITLE TO THE VACATED PROPERTY; PROVIDING FOR THE AMENDMENT OF HAILEY ORDINANCE NOS. 274 AND 283 BY RESCINDING THE RIGHT OF REVERSION; PROVIDING FOR A REPEALER CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE UPON PASSAGE, APPROVAL, AND PUBLICATION ACCORDING TO LAW.

WHEREAS, in Findings of Fact Conclusions of Law, and Decision dated July 8, 2002, the Hailey City Council determined, and found, that the following property within the City of Hailey is no longer needed for as public streets and alleys:

(1) all of the alley within Block 11; (2) that portion of Second Avenue lying between the southerly boundary of Elm Street, and a line directly connecting the southern boundary of Lot 17, Block 135, and the southern boundary of Lot 5, Block 134; (3) all of the alley within Block 10; (4) all of the alley within Block 3; (5) all of the alley within Block 127; (6) all of the alley within Block 134; (7) that portion of First Avenue lying between the southerly boundary of Chestnut Street and the northerly boundary of the Highway 75 right-of-way; (8) all of the alley within Block 128; (9) that portion of the alley within Block 133 lying between the southerly boundary of Cedar Street and the Highway 75 right-of-way; (10) that portion of Chestnut Street lying between the easterly boundary of First Avenue and the westerly boundary of Third Avenue; (11) that portion of Maple Street lying between the easterly boundary of First Avenue and a line directly connecting the southeast corner of Lot 24, Block 2, and the northeast corner of Lot 13, Block 126, and (12) that portion of Cedar Street lying between the easterly boundary of the Highway 75 right-of-way and a line directly connecting the southeast corner of Lot 24, Block 126, and the northeast corner of Lot 13, Block 135 ("Vacated Streets and Alleys");

WHEREAS, the City of Hailey has in the past adopted ordinances vacating most of the Vacated Streets and Alleys, but in some instances not all of the streets and alleys in the Vacated Streets and Alleys were vacated. In addition, in some instances ordinances were not vacated and in some instances deeds authorized by the ordinances were not recorded;

WHEREAS, the Hailey City Council finds that it is appropriate for Hailey to vacate the Vacated Streets and Alleys in a unified manner, even if there are no known

title defects in prior proceedings, to express the city's intent about the Vacated Streets and Alleys and to remedy any title issues which may exist;

WHEREAS, the Hailey City Council finds that vacation of the Vacated Streets and Alleys is expedient for the public good;

WHEREAS, the Hailey City Council believes it is appropriate to vacate the Vacated Streets and Alleys; and

WHEREAS, the Hailey City deems it in the best interests of the adjoining properties to convey title to Vacated Streets and Alleys as set forth in Sections 2,3 and 4 of this Ordinance.

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

Section 1. Vacation of Streets and Alleys. The City of Hailey hereby vacates the following property within the City of Hailey:

- (1) all of the alley within Block 11, of the Original Hailey Townsite, as shown on the official Plat of the City of Hailey on file in the office of the Blaine County Recorder; (2) that portion of Second Avenue lying between the southerly boundary of Elm Street, and a line directly connecting the southerly boundary of Lot 17, Block 135, and the southerly boundary of Lot 5, Block 134, of the Original Hailey Townsite, as shown on the official Plat of the City of Hailey on file in the office of the Blaine County; (3) all of the alley within Block 10, of the Original Hailey Townsite, as shown on the official Plat of the City of Hailey on file in the office of the Blaine County Recorder; (4) all of the alley within Block 3, of the Original Hailey Townsite, as shown on the official Plat of the City of Hailey on file in the office of the Blaine County Recorder; (5) all of the alley within Block 127, of the Original Hailey Townsite, as shown on the official Plat of the City of Hailey on file in the office of the Blaine County Recorder; (6) all of the alley within Block 134, of the Original Hailey Townsite, as shown on the official Plat of the City of Hailey on file in the office of the Blaine County Recorder; (7) that portion of First Avenue lying between the southerly boundary of Chestnut Street and the northerly boundary of the Highway 75 right-of-way, of the Original Hailey Townsite, as shown on the official Plat of the City of Hailey on file in the office of the Blaine County Recorder; (8) all of the alley within Block 128, of the Original Hailey Townsite, as shown on the official Plat of the City of Hailey on file in the office of the Blaine County Recorder; (9) that portion of the alley within Block 133 lying between the southerly boundary of Cedar Street and the Highway 75 right-of-way, of the Original Hailey Townsite, as shown on the official Plat of the City of

Hailey on file in the office of the Blaine County Recorder; (10) that portion of Chestnut Street lying between the easterly boundary of First Avenue and the westerly boundary of Third Avenue, of the Original Hailey Townsite, as shown on the official Plat of the City of Hailey on file in the office of the Blaine County Recorder; (11) that portion of Maple Street lying between the easterly boundary of First Avenue and a line directly connecting the southeast corner of Lot 24, Block 2, and the northeast corner of Lot 13, Block 126, of the Original Hailey Townsite, as shown on the official Plat of the City of Hailey on file in the office of the Blaine County Recorder; and (12) that portion of Cedar Street lying between the easterly boundary of the Highway 75 right-of-way and a line directly connecting the southeast corner of Lot 24, Block 126, and the northeast corner of Lot 13, Block 135, of the Original Hailey Townsite, as shown on the official Plat of the City of Hailey on file in the office of the Blaine County Recorder.

Section 2. Quitclaim Deed. Except as otherwise provided and for the reasons described in Sections 3 and 4 of this Ordinance, the Mayor of the City of Hailey is hereby authorized pursuant to Idaho Code § 50-311 to execute and deliver quitclaim deeds, on behalf of the City of Hailey, transferring title to one-half (1/2) of each side of the Vacated Streets and Alleys to the adjacent property owners.

Section 3. Quitclaim Deed to Blaine County School District. The Mayor of the City of Hailey is hereby authorized pursuant to Idaho Code § 50-311 to execute and deliver a quitclaim deed, on behalf of the City of Hailey, transferring title to all of (a) that portion of First Avenue lying between the southerly boundary of Chestnut Street and the southerly boundary of Maple Street, of the Original Hailey Townsite, as shown on the official Plat of the City of Hailey on file in the office of the Blaine County Recorder, (b) that portion of First Avenue between Lots 13 and 20, inclusive, of Block 127, and Lots 1 through 8, inclusive, of Block 128, of the Original Hailey Townsite, as shown on the official Plat of the City of Hailey on file in the office of the Blaine County Recorder, and (c) that portion of Chestnut Street lying between the westerly boundary of Third Avenue and the westerly boundary of the alley between Blocks 2 and 11, of the Original Hailey Townsite, as shown on the official Plat of the City of Hailey on file in the office of the Blaine County Recorder, to the Blaine County School District No. 61, a body corporate and politic. All of the property described in this Section 3 shall be conveyed to the Blaine County School District No. 61 because this property has been previously conveyed to the Blaine County School District No. 61, because the Blaine County School District No. 61 has been using and possessing the property, because the Blaine County School District No. 61 has constructed improvements on the property, and because there was a previous agreement between the City of Hailey and the Blaine County School District No. 61 (see Hailey Ordinance 371) relating to First Avenue in which the parties agreed to convey all of First Avenue to the Blaine County School District No. 61.

Section 4. Quitclaim Deed to Hailey. The Mayor of the City of Hailey is hereby authorized pursuant to Idaho Code § 50-311 to execute and deliver a quitclaim deed, on behalf of the City of Hailey, transferring title to all of (a) that portion of First Avenue between Lots 20 and 21, of Block 127, and Lots 9 and 10, of Block 128, of the Original Hailey Townsite, as shown on the official Plat of the City of Hailey on file in the office of the Blaine County Recorder, and (b) that portion of First Avenue lying between the northerly boundary of Cedar Street and the northerly boundary of the Highway 75 right-of-way, of the Original Hailey Townsite, as shown on the official Plat of the City of Hailey on file in the office of the Blaine County Recorder, to the City of Hailey, a body corporate and politic. All of the property described in this Section 4 shall be conveyed to the City of Hailey because much of this property has been used, possessed and improved by the City of Hailey, and/or has been previously conveyed to the City of Hailey.

Section 5. Rescission of Reversionary Clause. Hailey Ordinance Nos. 274 and 283 are amended by the rescission of Sections 2 of Hailey Ordinance No. 274 and 283 in their entirety.

Section 6. Repealer Clause. All Ordinances or parts thereof in conflict herewith are hereby repealed and rescinded.

Section 7. Severability Clause. 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 8. Effective Date. This Ordinance shall be in full force and effect from and after its passage and publication according to law.

PASSED AND ADOPTED BY THE HAILEY CITY COUNCIL AND APPROVED BY THE MAYOR THIS \_\_\_\_ DAY OF JANUARY, 2010.

\_\_\_\_\_  
Richard L. Davis, Mayor, City of Hailey

Attest:

\_\_\_\_\_  
Mary Cone, City Clerk

# City of Hailey

115 MAIN STREET SOUTH, SUITE H  
HAILEY, IDAHO 83333

(208) 788-4221  
Fax: (208) 788-2924

August 11, 2009

Commissioner Larry Schoen, Chairman  
Commissioner Angenie McCleary, Vice-Chair  
Commissioner Tom Bowman  
Blaine County Board of County Commissioners  
206 1<sup>st</sup> Avenue South, Suite 300  
Hailey, Idaho 83333  
HAND DELIVERED

Re: Proposed Wertheimer Park Plat

Dear Commissioners:

Hailey has been asked by both the Blaine County School District and Blaine County to resolve several title issues with the properties owned by Blaine County School District (Hailey Elementary), Blaine County (Blaine Manor) and Hailey (the Rodeo Grounds). Over the years, there have been many transactions between the parties and mistakes were made when property was conveyed. For example, some of the Hailey Elementary School is constructed on non-vacated streets and alleys.

The school district has been spearheading the project to cleanup the title problems. Hailey has spent considerable amount of time and money in the researching and preparing documents to remedy the title problems. Blaine County, through Commissioner Bowman and County attorney Tim Graves, has been involved in numerous discussions. All the participants believe it is in the best long term interests of the parties to ultimately plat a three lot subdivision and ensure that each party's property within each lot has been properly conveyed with appropriate vacations of streets and alleys and deeds. I am enclosing a copy of a proposed plat which would create such a three lot subdivision.

It appears that there is a general consensus to proceed with a three lot subdivision, except for one area between the Rodeo Grounds and Blaine Manor. That area is the southern part of First Avenue and is shown as a hatched area on the proposed plat. In 1974, Hailey conveyed most of the Hailey Elementary School to Blaine County School District No. 61 as part of an exchange of lands. The primary problem with this transaction was that the parties did not vacate the streets and alleys as required by state law. Later in 1977, Hailey attempted to rectify the problem, but failed to properly vacate all of First Avenue and to convey the vacated streets and alleys. In

Blaine County Board of County Commissioners

August 11, 2009

Page 2

2001, Hailey constructed a portion of the skate park on the most southern portion of First Avenue. At that time, Hailey was told by a title company that it was the owner of the land. Hailey is presently conducting a master plan of the Rodeo Grounds which is intended to maintain a rodeo facility, to expend the skate park by adding a street skate facility, to construct an ice skating facility, and to add parking.

To address the title problems, our attorney has suggested that Hailey proceed with a hearing to vacate all of the streets and alleys in the proposed Wertheimer plat and then convey deeds. And to accommodate all of the proposed uses on the Rodeo Grounds, Hailey needs all of the land in First Avenue between the Rodeo Grounds and Blaine Manor.

The school district has always offered to convey any interest it may have in the southern First Avenue parcel to either Hailey or Blaine County. We have been advised that Blaine County wants half of First Avenue adjacent to Blaine Manor. But, as explained earlier, Hailey believes it needs all of First Avenue to accommodate the many popular and exciting recreational opportunities planned for the Rodeo Grounds.

The parties seem to be at an impasse. This project has been discussed for years and we believe all the parties want finality. Before Hailey initiates the public hearing process, we would ask the Blaine County Commissioners to discuss this matter and advise us of the county's official position. In the past, Hailey has expressed a willingness to assist Blaine County in constructing a public park at the old jail site by the Courthouse. Hailey would be willing to provide labor and equipment and funds to assist in the creation of a small park. It must be understood that this offer is independent of any decision relating to applications to vacate streets or alleys or to subdivide the Wertheimer Park parcels.

We look forward to your response. If you have any questions or need more information, please contact us. Thank you.

Sincerely,



Rick Davis, Mayor

cc: Blaine County School District No. 61  
Hailey City Council Members



# THE BOARD OF BLAINE COUNTY COMMISSIONERS

206 FIRST AVENUE SOUTH, SUITE 300

HAILEY, IDAHO 83333

PHONE: (208) 788-5500 FAX: (208) 788-5569

[www.blainecounty.org](http://www.blainecounty.org) [bcc@co.blaine.id.us](mailto:bcc@co.blaine.id.us)

Lawrence Schoen, Chairman \* Angenie McCleary, Vice-Chairman \* Tom Bowman, Commissioner

Mayor Rick Davis  
City of Hailey  
115 Main Street, Suite H  
Hailey, ID 83333

RECEIVED  
OCT 21 2009

October 19, 2009

Re: First Avenue South vacation

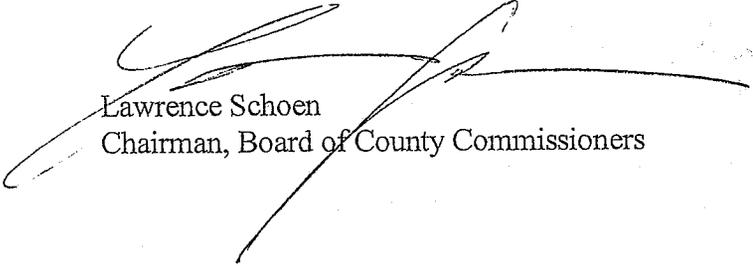
Dear Mayor Davis:

The Board has considered your request for the County's official position on the proposed vacation of that southern portion of First Avenue adjacent to Blaine Manor. The Board believes it is in the County's best interests to assert its right to the portion of vacated property pursuant to Idaho Code Section 50-311, which provides, in part, that when a city street is vacated, the vacated land "shall revert to the owner of the adjacent real estate, one-half (1/2) on each side thereof."

The County's one-half interest in the vacated street holds significant value, as evidenced by a 2007 appraisal of the Blaine Manor property. The County must insist on realizing that value in order to serve distinct public purposes.

The County has been very supportive of the process to remedy title problems and boundary issues in the area around Blaine Manor. The Board remains willing to discuss alternatives that will rectify these errors for good and accommodate the respective needs of the City of Hailey, the Blaine County School District, and the people of Blaine County in a useful, fair and equitable manner.

Respectfully,

  
Lawrence Schoen  
Chairman, Board of County Commissioners

7/1965

ORDINANCE NO. 274

WHEREAS, It has been proposed to exchange real property belonging to the City of Hailey for real property belonging to Blaine County School District No. 61, Blaine County, Idaho.

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

SECTION 1. That the Mayor of the City of Hailey is hereby authorized and directed to make, execute and deliver unto Blaine County School District No. 61 a good and sufficient deed conveying to said School District the following described property now belonging to the City of Hailey, to-wit:

Lots 13 to 24 inclusive in Block 2, and Lots 13 to 21 inclusive in Block 126, Lots 1 to 9 inclusive and 13 to 21 inclusive in Block 127, [The Easterly 22.4 feet of Lots 1 to 9 inclusive of Block 128,] all of Block 3, also all of the right, title and interest of the City of Hailey in and to that portion of [First Avenue lying between Blocks 3 and 4 and between Lots 1 to 9 inclusive of Block 128 and Lots 13 to 21 inclusive of Block 127 and That portion of second Avenue lying between Blocks 2 and 3 lying between lying between Lots 1 to 9 inclusive in Block 127 and Lots 13 to 21 inclusive in Block 126 and the [Easterly 22.4 feet of Maple Street lying between Blocks 4 and 128 and that portion of Maple Street lying between Blocks 2 and 126 lying between Blocks 3 and 127.

SECTION 2, Provided, however, that such deed shall contain a provision by which such lands will revert to the City of Hailey if the grantees shall fail for a period of one year to properly maintain said lands by landscaping, irrigating and otherwise caring for same so that they will present an attractive appearance.

SECTION 3. Further said lands shall revert to the City of Hailey, if at any time the use of same for public purposes is discontinued.

SECTION 4. Provided further that the aforesaid deed shall not be delivered to said school district u\_\_\_\_\_d school district delivers

Westerly 22.4 feet of Maple Street lying between Blocks 4 and 128 and that portion of Maple Street lying between Blocks 2 and 126 lying between Blocks 3 and 127.

SECTION 2, Provided, however, that such deed shall contain a provision by which such lands will revert to the City of Hailey if the grantees shall fail for a period of one year to properly maintain said lands by landscaping, irrigating and otherwise caring for same so that they will present an attractive appearance.

SECTION 3. Further said lands shall revert to the City of Hailey, if at any time the use of same for public purposes is discontinued.

SECTION 4. Provided further that the aforesaid deed shall not be delivered to said school district until said school district delivers to the City of Hailey a good and sufficient deed conveying fee simple title to Block 49 of the City of Hailey. Further said deed shall reserve to the City of Hailey and to utility franchise holders the right to maintain, repair and improve all utility and water lines over, under or across said lands.

SECTION 5. This ordinance shall be in full force and effect from and after its passage, approval and publication.

Passed by the City Council of the City of Hailey, Idaho, this 12th

ay of July, 1965.

Approved by the Mayor of the City of Hailey, this 12th day of

July, 1965.

ATTEST:

*Geo R Allen*  
Mayor

ORDINANCE NO. 283

AN ORDINANCE AMENDING ORDINANCE 274, OF THE CITY OF HAILEY, AUTHORIZING THE CONVEYANCE OF CERTAIN LANDS BELONGING TO THE CITY OF HAILEY TO BLAINE COUNTY SCHOOL DISTRICT NO. 61 IN EXCHANGE FOR REAL PROPERTY BELONGING TO SAID SCHOOL DISTRICT.

WHEREAS, It has been proposed to exchange real property belonging to the City of Hailey for real property belonging to Blaine County School District No. 61, Blaine County, Idaho,

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

SECTION 1. That the Mayor of the City of Hailey is hereby authorized and directed to make, execute and deliver unto Blaine County School District No. 61, a good and sufficient deed conveying to said School District the following described real property now belonging to the City of Hailey, to-wit:

Lots 13 to 24 inclusive, in Block 2, and  
Lots 13 to 21 inclusive, in Block 126;  
Lots 1 to 9 inclusive, and Lots 13 to  
21 inclusive, in Block 127;  
All of Block 3;  
Also, all of the right, title and interest  
of the City of Hailey in and to that  
portion of First Avenue, lying between  
Blocks 3 and 4 and between Lots 1 to 9  
inclusive, of Block 128 and Lots 13  
to 21 inclusive of Block 127, and  
That portion of Second Avenue lying between  
Blocks 2 and 3 and lying between Lots  
1 to 9 inclusive, in Block 127, and  
Lots 13 to 21 inclusive in Block 126,  
and,  
That portion of Maple Street, lying between  
the westerly boundary of First Avenue  
and the westerly boundary of the alley  
in Blocks 2 and 126, also the alleys in  
Blocks 3 and 127, and  
All of Chestnut Street lying between the  
Easterly boundary of First Avenue and  
the westerly boundary of the alley  
between Blocks 2 and 11,

SECTION 2, Provided, however, that such deed shall contain a provision by which such lands will revert to the City of Hailey if the grantees shall fail for a period of one year to properly maintain said lands by landscaping, irrigating and otherwise caring for same so that they will present an attractive appearance.

SECTION 3. Further, said lands shall revert to the City of Hailey, if at any time the use of same for public school purposes is discontinued.

SECTION 4. Provided further that the aforesaid deed shall not be delivered to said School District until said School District delivers to the City of Hailey a good and sufficient deed conveying fee simple title to Block Forty-Nine (49) of the City of Hailey.

SECTION 5. This ordinance shall be in full force and effect from and after its passage, approval and publication.

Passed by the City Council of the City of Hailey, Idaho, this 12th day of August, 1968.

Approved by the Mayor of the City of Hailey, Idaho, this 12th day of August, 1968.

Geo. P. Allen  
MAYOR.

ATTEST:

Virna Alred  
CITY CLERK

7/1965

ORDINANCE NO. 274

WHEREAS, It has been proposed to exchange real property belonging to the City of Hailey for real property belonging to Blaine County School District No. 61, Blaine County, Idaho.

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

SECTION 1. That the Mayor of the City of Hailey is hereby authorized and directed to make, execute and deliver unto Blaine County School District No. 61 a good and sufficient deed conveying to said School District the following described property now belonging to the City of Hailey, to-wit:

Lots 13 to 24 inclusive in Block 2, and Lots 13 to 21 inclusive in Block 126, Lots 1 to 9 inclusive and 13 to 21 inclusive in Block 127, [The Easterly 22.4 feet of Lots 1 to 9 inclusive of Block 128,] all of Block 3, also all of the right, title and interest of the City of Hailey in and to that portion of [First Avenue lying between Blocks 3 and 4 and between Lots 1 to 9 inclusive of Block 128 and Lots 13 to 21 inclusive of Block 127 and That portion of second Avenue lying between Blocks 2 and 3 lying between lying between Lots 1 to 9 inclusive in Block 127 and Lots 13 to 21 inclusive in Block 126 and the [Easterly 22.4 feet of Maple Street lying between Blocks 4 and 128 and that portion of Maple Street lying between Blocks 2 and 126 lying between Blocks 3 and 127.

SECTION 2, Provided, however, that such deed shall contain a provision by which such lands will revert to the City of Hailey (if the grantees shall fail for a period of one year to properly maintain said lands by landscaping, irrigating and otherwise caring for same so that they will present an attractive appearance.

SECTION 3. Further said lands shall revert to the City of Hailey, if at any time the use of same for public purposes is discontinued.

SECTION 4. Provided further that the aforesaid deed shall not be delivered to said school district - 95 - and school district delivers

Easterly 22.4 feet of Maple Street lying between Blocks 4 and 128 and that portion of Maple Street lying between Blocks 2 and 126 lying between Blocks 3 and 127.

SECTION 2, Provided, however, that such deed shall contain a provision by which such lands will revert to the City of Hailey if the grantees shall fail for a period of one year to properly maintain said lands by landscaping, irrigating and otherwise caring for same so that they will present an attractive appearance.

SECTION 3. Further said lands shall revert to the City of Hailey, if at any time the use of same for public purposes is discontinued.

SECTION 4. Provided further that the aforesaid deed shall not be delivered to said school district until said school district delivers to the City of Hailey a good and sufficient deed conveying fee simple title to Block 49 of the City of Hailey. Further said deed shall reserve to the City of Hailey and to utility franchise holders the right to maintain, repair and improve all utility and water lines over, under or across said lands.

SECTION 5. This ordinance shall be in full force and effect from and after its passage, approval and publication.

Passed by the City Council of the City of Hailey, Idaho, this 12th

ay of July, 1965.

Approved by the Mayor of the City of Hailey, this 12th day of

July, 1965.

*Geo R Allen*  
Mayor

ATTEST:

*[Signature]*

ORDINANCE NO. 283

AN ORDINANCE AMENDING ORDINANCE 274, OF THE CITY OF HAILEY, AUTHORIZING THE CONVEYANCE OF CERTAIN LANDS BELONGING TO THE CITY OF HAILEY TO BLAINE COUNTY SCHOOL DISTRICT NO. 61 IN EXCHANGE FOR REAL PROPERTY BELONGING TO SAID SCHOOL DISTRICT.

WHEREAS, It has been proposed to exchange real property belonging to the City of Hailey for real property belonging to Blaine County School District No. 61, Blaine County, Idaho,

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

SECTION 1. That the Mayor of the City of Hailey is hereby authorized and directed to make, execute and deliver unto Blaine County School District No. 61, a good and sufficient deed conveying to said School District the following described real property now belonging to the City of Hailey, to-wit:

Lots 13 to 24 inclusive, in Block 2, and  
Lots 13 to 21 inclusive, in Block 126;  
Lots 1 to 9 inclusive, and Lots 13 to  
21 inclusive, in Block 127;

All of Block 3;

Also, all of the right, title and interest of the City of Hailey in and to that portion of First Avenue, lying between Blocks 3 and 4 and between Lots 1 to 9 inclusive, of Block 128 and Lots 13 to 21 inclusive of Block 127, and

That portion of Second Avenue lying between Blocks 2 and 3 and lying between Lots 1 to 9 inclusive, in Block 127, and Lots 13 to 21 inclusive in Block 126, and,

That portion of Maple Street, lying between the westerly boundary of First Avenue and the westerly boundary of the alley in Blocks 2 and 126, also the alleys in Blocks 3 and 127, and

All of Chestnut Street lying between the Easterly boundary of First Avenue and the westerly boundary of the alley between Blocks 2 and 11,

SECTION 2, Provided, however, that such deed shall contain a provision by which such lands will revert to the City of Hailey if the grantees shall fail for a period of one year to properly maintain said lands by landscaping, irrigating and otherwise caring for same so that they will present an attractive appearance.

SECTION 3. Further, said lands shall revert to the City of Hailey, if at any time the use of same for public school purposes is discontinued.

SECTION 4. Provided further that the aforesaid deed shall not be delivered to said School District until said School District delivers to the City of Hailey a good and sufficient deed conveying fee simple title to Block Forty-Nine (49) of the City of Hailey.

SECTION 5. This ordinance shall be in full force and effect from and after its passage, approval and publication.

Passed by the City Council of the City of Hailey, Idaho, this 12th day of August, 1968.

Approved by the Mayor of the City of Hailey, Idaho, this 12th day of August, 1968.

Geo. B. Allen  
MAYOR.

ATTEST:

Winda Albre  
CITY CLERK

## FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION

FILE COPY

On October 26, 2009 the Hailey Hearing Examiner considered an application by the City of Hailey for the vacation of a portion of right-of-way located between Rodeo Grounds, Hailey Elementary and Blaine Manor properties (previously known as the Wertheimer property). 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

#### Portions of Public Right-of-Way Subject to the Proposed Vacation

1. all of the alley within Block 11;
2. that portion of Second Avenue lying between the southerly boundary of Elm Street, and a line directly connecting the southern boundary of Lot 17, Block 135, and the southern boundary of Lot 5, Block 134;
3. all of the alley within Block 10;
4. all of the alley within Block 3;
5. all of the alley within Block 127;
6. all of the alley within Block 134;
7. that portion of First Avenue lying between the southerly boundary of Chestnut Street and the northerly boundary of the Highway 75 right-of-way;
8. all of the alley within Block 128;
9. that portion of the alley within Block 133 lying between the southerly boundary of Cedar Street and the Highway 75 right-of-way;
10. that portion of Chestnut Street lying between the easterly boundary of First Avenue and the westerly boundary of Third Avenue;
11. that portion of Maple Street lying between the easterly boundary of First Avenue and a line directly connecting the southeast corner of Lot 24, Block 2, and the northeast corner of Lot 13, Block 126, and
12. that portion of Cedar Street lying between the easterly boundary of the Highway 75 right-of-way and a line directly connecting the southeast corner of Lot 24, Block 126, and the northeast corner of Lot 13, Block 135.

The hatch marks in the attached map show the portions of right-of-way proposed to be vacated.

#### Notice

Notice for the public hearing was published in the Idaho Mountain Express on October 7, 2009 and on October 14, 2009; the notice was mailed by certified mail to property owners within 300 feet on October 7, 2009.

#### Procedural History

This application will correct and consolidate several vacations of streets and alleys within the City of Hailey, adjacent to real properties owned by the City of Hailey, Blaine County, the Blaine County School District and Dr. Levin. The vacated rights-of-way would be deeded to the appropriate property owner in accordance with Hailey's Subdivision Ordinance and Idaho Code Section 50-311.

**Department Comments:**

The following information was submitted to the Hearing Examiner in a memo from the City Attorney.

“For years, the Blaine County School District and Hailey have been investigating solutions to several title and ownership problems with the Rodeo Grounds and Hailey Elementary School. To better understand the problems, I will first outline the pertinent law and procedure for vacation of streets and alleys, and then identify the specific problems with the Rodeo Grounds and Hailey Elementary School properties.

**APPLICABLE LAW**

The controlling law in this application is found in Idaho Code §50-311, which in pertinent part provides that cities are authorized to vacate a street or alley “whenever deemed expedient for the public good,” provided that whenever any street or alley 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.” A vacation requires the adoption of an ordinance and the execution of a quitclaim deed. Both the ordinance and deed should then be recorded.

**TITLE AND OWNERSHIP ISSUES**

The more significant problems with the properties include:

1. Portions of Hailey Elementary School are built on unvacated portions of the alleys in Blocks 10 and 11, and on Second Avenue.
2. A portion of First Avenue (which appears to be part of the Rodeo Grounds) has not been properly vacated. The Hailey Skatepark is partially located on this portion of First Avenue. This portion of First Avenue was conveyed by Hailey to the School District as part of an exchange of real properties in 1965. The City and School District improperly exchanged title to streets and alleys in 1965.<sup>1</sup> It is my belief that Hailey attempted to rectify that problem by vacating First Avenue in 1977, but mistakenly used an old legal description, not the updated description.
3. Several streets were vacated but deeds were not recorded. For example, the portion of Chestnut Street between Third Avenue and the alleys in Blocks 2 and 11 was vacated but a deed was not recorded. Similarly, the portion of First Avenue for approximately a two block stretch south of Chestnut Street was vacated but without a deed.

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<sup>1</sup> In *Infanger v. City of Salmon*, 137 Idaho 45, 44 P.3d 1100 (2002), the Idaho Supreme Court analyzed an attempt by the City of Salmon to convey title to a street by a simple exchange of property. The *Infanger* Court held that title to a street can only be conveyed by following the statutory procedures in Idaho Code §50-311, not by a purported exchange under Idaho Code §50-1403.

## PROPOSED SOLUTION

Hailey and the School District have discussed a three step process to resolve the issues with the properties. First, Hailey would initiate a comprehensive vacation of all streets and alleys within the Hailey Elementary School, Rodeo Grounds and Blaine Manor properties. Second, the parties would file an application for a three lot subdivision plat which would create three distinct property descriptions. Third, each party would execute quitclaim deeds, which would convey any and all of a party's interest to the properties which the other two parties owned.

As noted earlier, Hailey constructed the Hailey Skatepark on much of the southern end of First Avenue. This decision was made after a title company told Hailey that it was the owner of that portion of First Avenue. As part of the global solution, Hailey and the School District communicated with Blaine County. Blaine County is taking the position that it is entitled to one-half of that portion of First Avenue adjacent to Blaine Manor. The letters from Hailey dated August 11, 2009, and the county's response dated October 19, 2009, are attached. As you may know, Hailey is conducting extensive planning of the Rodeo Grounds. To accommodate the rodeo grounds, the existing skatepark and a proposed ice/hockey rink, all of the southern portion of First Avenue would need to be retained by Hailey.

But, for the purpose of the present application, I do not believe you need to deal with the County's position. You must primarily determine whether it is "expedient for the public good" that the streets and alleys be vacated. I do not believe that your recommendation needs to decide how the title will revert to one or more adjacent property owners. I believe the City Council should make that determination after receiving your recommendation."

## Standards of Evaluation

Street 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.**

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 subject rights-of-way are currently utilized by these entities for the following non-transportation public and semi-public facilities:

- City of Hailey: Rodeo grounds and arena; Hailey Skate Park

- Blaine County: Blaine Manor
- School District: Hailey Elementary School and related facilities, including playing fields.

**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 City Attorney has reviewed the title history involving several transfers or purported transfers of title involving street and alleys in the area where the Hailey Elementary School, the adjacent playing fields, Blaine County Manor and the Rodeo Grounds. The purpose of the vacation request is to address the title problems with earlier conveyances as described in the comments from the City Attorney.

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

Adjacent property owners are primarily the City of Hailey, Blaine County and the Blaine County School District. Dr. Don Levin owns Lots 1-10, Block 4.

Utilities serve individual properties and do not traverse any of the vacated areas for the purpose of serving more than one property owner.

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

The Hearing Examiner considered the following Comprehensive Plan goals and policies and found the vacation of the portions of right-of-way proposed would be in conformance because it would facilitate the redevelopment of the Rodeo Grounds and would enhance the City's partnership with the School District. The potential benefits of using these portions of right-of-way for transportation purposes would not outweigh the existing and future recreational benefits.

- a) The Recreation section of the Plan, Goal 4.1 states "To create and maintain an interconnected system of parks, recreational facilities, trails, green spaces and natural lands for the community of Hailey in order to provide diverse recreation opportunities for Hailey residents." Goal 4.3, Policy 1, Implementation (b) states "Work with the Blaine County School District to ensure that adequate active recreation assets are available. Cooperate with planning and development efforts."
- b) The Public Facilities, Utilities and Services section of the Plan, items 9.I.1 (b) states "Encourage shared use of public facilities, especially in cooperation with the Blaine County government and the School District." Item 9.I.1 (c) states "Cooperate with other jurisdictions and assess future needs for new or expanded facilities such as: hospitals and clinics, Preschools and Day Cares, and Job Service."

- c) The School Facilities and Transportation section of the Plan, Goal I of 15.11 states “It is the goal of the City of Hailey to use land use policies to encourage and facilitate a strong and viable comprehensive educational system.” Goal I of 15.12 states “It is the goal of the City of Hailey to provide or ensure the provision of safe, adequate, convenient, and multi-modal transportation access to all school sites, as incorporated herein and referenced on the attached Conceptual School District Transportation Master Plan Map.”
- d) The Transportation and Circulation section of the Plan include Goal (I.) “To promote the safe and efficient movement of people” and Goal (II.) To minimize public expenditures for road maintenance and improvement”.

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

Future development may include the following: expansion of Blaine Manor and construction of a multi-use recreational facility. The Hailey Elementary School will continue as a public school. The vacation of the portions of right-of-way proposed would facilitate the redevelopment of the Rodeo Grounds.

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

The subject portions of right-of-way are currently utilized for non-transportation public and semi-public facilities. The uses will remain public and semi-public uses.

**Summary**

Section 9 of the Hailey Subdivision Ordinance states that the Hearing Examiner or Commission shall consider the application and testimony of the applicant and such other information as may come before it with regard to the proposed vacation. The Hearing Examiner or Commission shall consider the items noted in Section 9.2 of the Ordinance. The Hearing Examiner or Commission shall make its recommendation to the Council for approving or denying said application, including findings that the right-of-way in question is no longer needed for public use:

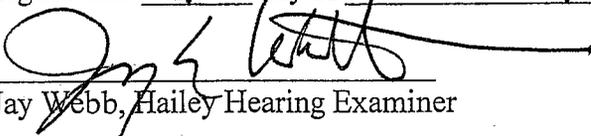
The findings of fact, conclusions of law and decision as prepared by the Hearing Examiner shall be signed and filed with the administrator and shall be available to the applicant and the public no more than forty-five (45) days after the close of the hearing.

### CONCLUSIONS OF LAW AND RECOMMENDATION

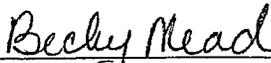
Based upon the above Findings of Fact, the Hearing Examiner makes the following Conclusions of Law and Recommendation:

1. Adequate notice, pursuant to Idaho Code Section 50.1306A, was given for the public hearing.
2. The portions of right-of-way recommended for vacation are as follows:
  - a) all of the alley within Block 11;
  - b) that portion of Second Avenue lying between the southerly boundary of Elm Street, and a line directly connecting the southern boundary of Lot 17, Block 135, and the southern boundary of Lot 5, Block 134;
  - c) all of the alley within Block 10;
  - d) all of the alley within Block 3;
  - e) all of the alley within Block 127;
  - f) all of the alley within Block 134;
  - g) that portion of First Avenue lying between the southerly boundary of Chestnut Street and the northerly boundary of the Highway 75 right-of-way;
  - h) all of the alley within Block 128;
  - i) that portion of the alley within Block 133 lying between the southerly boundary of Cedar Street and the Highway 75 right-of-way;
  - j) that portion of Chestnut Street lying between the easterly boundary of First Avenue and the westerly boundary of Third Avenue;
  - k) that portion of Maple Street lying between the easterly boundary of First Avenue and a line directly connecting the southeast corner of Lot 24, Block 2, and the northeast corner of Lot 13, Block 126, and
  - l) that portion of Cedar Street lying between the easterly boundary of the Highway 75 right-of-way and a line directly connecting the southeast corner of Lot 24, Block 126, and the northeast corner of Lot 13, Block 135.
3. The proposal to vacate the subject portions of right-of-way 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)
4. The application for vacation of the subject portions of right-of-way is recommended for approval.

Signed this 6 day of November, 2009.

  
Jay Webb, Hailey Hearing Examiner

Attest:

  
Becky Mead, Deputy Clerk





**IDAHO TRANSPORTATION DEPARTMENT**

216 S. Date Street  
Shoshone, ID 83352

(208) 886-7800  
itd.idaho.gov

**RECEIVED**

DEC 02 2009

(BR)

December 1, 2009

Beth Robrahn  
City of Hailey  
Planning Department  
115 South Main Street  
Hailey, ID 83333

RE: Vacating of City streets and alleys

Dear Beth:

I am writing in response to your recent letter notifying the Idaho Transportation Department of the City's intent to vacate streets and alleyways near Airport Way.

ITD is requesting that the City protect existing permanent easements north of Airport Way in the areas to be vacated adjacent to State Highway 75. Although recorded, the easements are important to maintain the stability and safety of the roadway and every effort should be made to protect these areas.

We would also like to recommend the City retain ownership of two street segments and the associated alley. Based on past discussions, the area at Cedar Street adjacent to SH-75 running 1 block east and First Avenue adjacent to SH-75 running 1 block north would be instrumental in the development of a roundabout. ITD feels it would be in the best interest of the City and ITD if you were to retain ownership of these two areas and the alleyway to avoid the purchase of right of way at a later date. I have enclosed a map highlighting the areas of concern.

If you have any questions concerning our comments on the proposed vacating of City streets, please give me a call at 208-886-7806 or you may e-mail me at [mike.scott@itd.idaho.gov](mailto:mike.scott@itd.idaho.gov)

Sincerely,

*Michael Scott*

MICHAEL SCOTT  
District Right of Way Supervisor

MS:ms  
Enclosure: City Street Map

# A WORK MAP SHOWING AREAS TO BE VACATED

WITHIN OR ADJACENT TO PORTIONS OF BLOCKS 2, 3, 10, 11, 126, 127, 128, 133, 134, & 135 OF THE HAILEY TOWNSITE  
LOCATED WITHIN

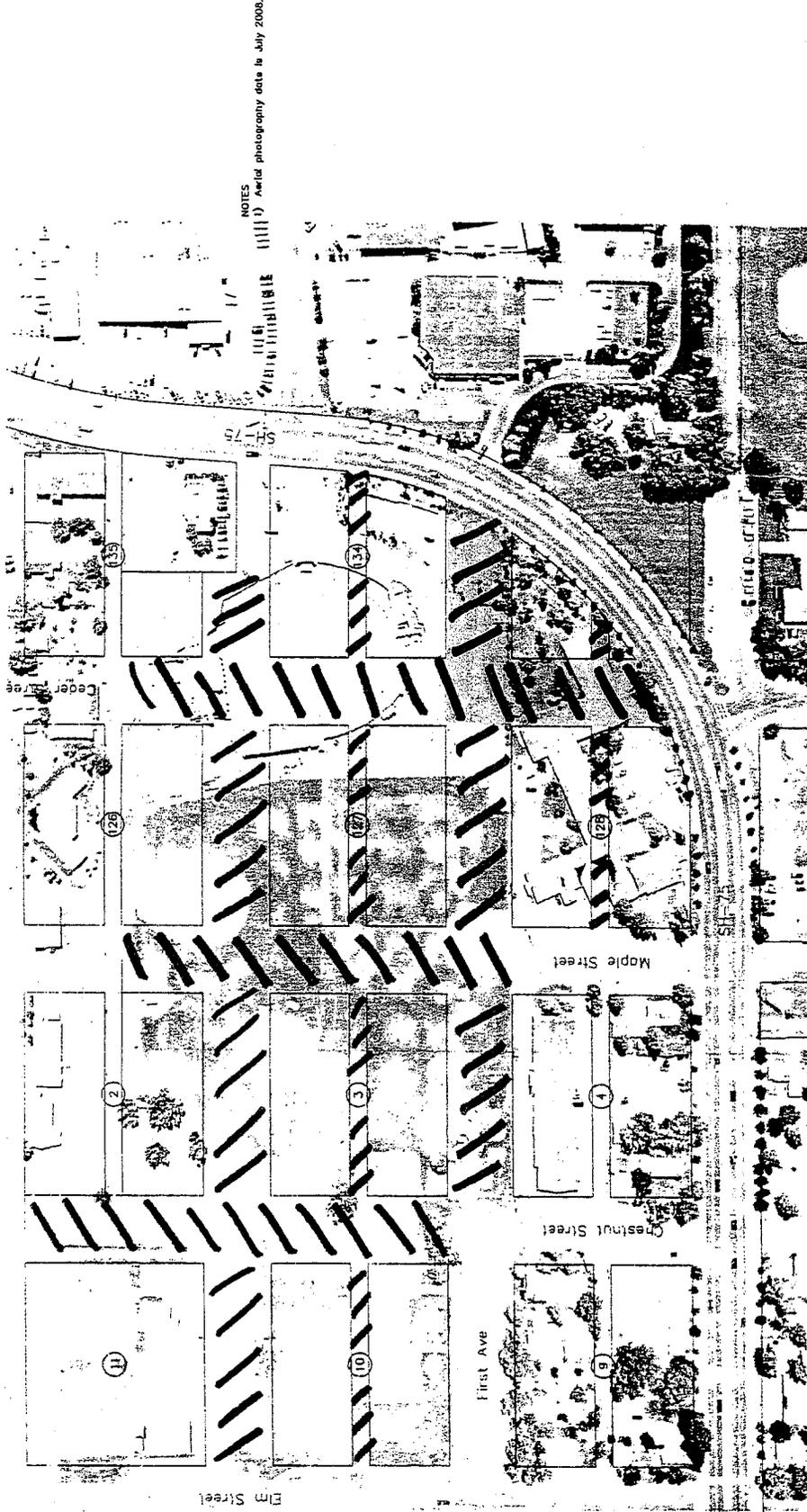
SECTIONS 9, 10, & 16, T.2 N., R.18 E., B.M., BLAINE COUNTY, IDAHO

SEPTEMBER 2008

SCALE: 1" = 100'



CONCEPT EXHIBIT



NOTES  
||||| (1) Aerial photography date is July 2008.

GALENA ENGINEERING, INC.  
KETCHUM, IDAHO  
SHEET 1 OF 2  
Job No. 5398.01

