

STAFF REPORT

TO: Hailey City Council
FROM: Mariel Platt, Planner 
RE: Final Plat – Wood River High School Campus PUD Subdivision
HEARING: January 26, 2009

Applicant: Blaine County School District
Location: Tax Lots 7729, 7821 and 7824 (located near Fox Acres Road and Wood River High School)
Zoning: General Residential (GR)

Note: Staff analysis is in lighter type.

Notice

Notice for the public hearing was mailed to property owners within 300 feet and published in the Idaho Mountain Express on January 7, 2009.

Application

Blaine County School District, represented by John Gaeddert of CLPE and Benchmark Associates, has submitted an application for Final Plat approval for the subdivision of Tax Lots 7729, 7821 and 7824 into four (4) lots ranging in size from 0.99 to 40.38 acres, and one hillside parcel, 26.9 acres.

Procedural History

On August 13, 2001, the City approved the annexation of approximately 17 acres of land adjacent to the high school property for the construction of a new high school building and related facilities, and approved a Planned Unit Development (PUD) application for the high school and related facilities. The PUD encompassed the entire high school campus property at that time. The preliminary plat submitted notes that the property is subject to the recorded PUD Agreement.

On September 18, 2001, the Commission granted Design Review approval for construction of the new high school.

On March 10, 2003, the Council approved the annexation of approximately 3 acres adjacent to the high school campus. On June 2, 2003, the Commission granted Conditional Use Permit approval, and on June 16, 2003, granted Design Review approval

of a bus facility on the campus. On September 22, 2003, the Council affirmed the Conditional Use Permit approval, which had been appealed by affected neighbors. On September 22, 2003, the Council also approved the amended Planned Unit Development Agreement for high school campus to include the bus parking and maintenance facility. The final plat notes the amended PUD Agreement.

The Planning and Zoning Commission held a public hearing on the subject application on March 21, 2005. The Commission conditionally approved the preliminary plat. The Preliminary Plat application was heard by the Hailey City Council on November 26, 2007, and approved with conditions listed below, under Section 3.3.2, Procedures. The Preliminary Plat Findings of Fact and Conclusions of Law were approved and signed on December 10, 2007. On December 8, 2008, the Hailey City Council granted a one-year extension of preliminary plat approval of the Wood River High School Campus PUD Subdivision. The new expiration date for Preliminary Plat approval is December 10, 2009.

SECTION 2 - PERMITS.

2.9 No permit for the construction of any building shall be issued upon any land for which all improvements required for the protection of health and the provision of safety, (including but not necessarily limited to an approved potable water system, an approved wastewater system to accept sewage, and asphalt paving of the streets) have not been installed, inspected, and accepted by the City of Hailey, with the following exception: Building permits may be issued for any building in a development for which plats have been recorded and security provided, but the streets have not yet been completed with asphalt due to winter conditions. In such instances, the street shall be constructed as an all-weather surface to City Standards to the satisfaction of the City Engineer, and shall be kept clear to the satisfaction of the Fire Chief. No Final Inspection approval or Certificate of Occupancy shall be granted until all improvements, including asphalt, have been installed, inspected and accepted.

Notice of this requirement is hereby given to the applicant, and included as a recommended condition of approval.

SECTION 3 – PROCEDURE

3.3 Final Plat Approval.

The final plat, prepared by a Professional Land Surveyor, must be submitted within one (1) calendar year from the date of approval of the preliminary plat, unless otherwise allowed for within a phasing agreement or as otherwise provided herein. Plats not submitted for final approval within one (1) year or according to the phasing agreement, shall be considered expired and preliminary plat approval shall become null and void. The Council may extend the deadline for submitting the final plat upon holding a public hearing.

The preliminary plat application was last heard by the Hailey City Council on November 26, 2007. The Preliminary Plat Findings of Fact and Conclusions of Law were approved and signed on December 10, 2007. On December 8, 2008, the Hailey City Council granted a one year extension of preliminary plat approval of the Wood River High School Campus PUD Subdivision. The new expiration date for Preliminary Plat approval is December 10, 2009. The final plat application was submitted on December 15, 2008.

3.3.2 The administrator shall review the final plat application to ensure that the application submitted is consistent with the approved preliminary plat. The conditions imposed on the preliminary plat approval must be either completed or shown on plans or the plat prior to any public notice for final plat approval.

The final plat is consistent with the preliminary plat approved by the Hailey City Council. Conditions of preliminary plat approval have been met or are carried over.

Hailey Hearing Examiner Conditions of Preliminary Plat Approval

- a) **All Fire Department and Building Department requirements shall be met. Items to be completed at the applicant's sole expense include, but will not be limited to, the following requirements and improvements:**
- **Any additional fire lane signage as may be required by the Fire Chief.**

This condition should be carried over.

- b) **All City infrastructure requirements shall be met as outlined in Section 5 of the Hailey Subdivision Ordinance. Detailed plans for all infrastructure to be installed or improved at or adjacent to the site shall be submitted for Department Head approval and shall meet City Standards where required. Infrastructure to be completed at the applicant's sole expense include, but will not be limited to, the following requirements and improvements:**
- a. **"No Parking This Side of Street" signs on Fox Acres Road.**
 - b. **The applicant shall chip seal and repaint Fox Acres Road prior to the recordation of the Final Plat.**

This condition should be carried over.

- c) **The plat shall note the amended PUD Agreement in addition to the original PUD agreement.**

This condition has been met.

- d) **The location of the trail from the bus maintenance facility south shall be shown on the final plat and a 5-foot wide easement shall be granted for public non-vehicular access upon it.**

This condition has been met.

- e) **Drought tolerant vegetation shall be planted and established on all disturbed hillside areas prior to recordation of the plat.**

This condition should be carried over.

- f) **All improvements shall be completed and accepted, or surety provided pursuant to Sections 2.3.7 and 5.9.1 of the Subdivision Ordinance, prior to recordation of the final plat.**

This condition should be carried over.

- g) **The final plat must be submitted within one (1) calendar year from the date of approval of the preliminary plat, unless otherwise allowed for within a phasing agreement.**

On December 8, 2008, the Hailey City Council granted a one year extension of preliminary plat approval of the Wood River High School Campus PUD Subdivision. The new expiration date for Preliminary Plat approval is December 10, 2009.

Department Head Comments

Life/safety: There is insufficient width to accommodate parked vehicles along Fox Acres Road; therefore, both sides of the road should be signed. In addition, the curbs adjacent to this section of Fox Acres Road should be painted and marked as no parking. Due to snow, curb painting alone can be difficult to see. Therefore, it is recommended that the City not accept the applicant's response to solely painting the curbs and not installing no parking signage on both sides of the street.

Water and Sewer: No comment.

Engineering: No comment.

Standards of Evaluation

SECTION 4 – DEVELOPMENT STANDARDS

Development standards were reviewed in detail during the preliminary plat approval process. Please refer to the preliminary plat Findings of Fact and Decision. No changes have been made to the plat since preliminary plat approval.

SECTION 5 - IMPROVEMENTS REQUIRED.

5.1 It shall be a requirement of the Developer to construct the minimum improvements set forth herein and any required improvements for the subdivision, all to City Standards.

Generally, the improvements on the property have already been installed as part of the previous project development. Exceptions are noted in 5.2, 5.2.2, and 5.7 below.

5.1.1 Six (6) copies of all improvement plans shall be filed with the City Engineer and made available to each department head. Upon final approval two (2) sets of revised plans shall be returned to the Developer at the pre-construction conference with the City Engineer's written approval thereon. One set of final plans shall be on-site at all times for inspection purposes and to note all field changes upon.

5.1.2 Prior to the start of any construction, it shall be required that a pre-construction meeting be conducted with the Developer or his authorized representative/engineer, the contractor, the City Engineer and appropriate City departments. An approved set of plans shall be provided to the Developer and contractor at or shortly after this meeting.

5.1.3 The Developer shall guarantee all improvements pursuant to this Section for no less than one year from the date of final acceptance by the City, except that parks shall be guaranteed and maintained by the Developer for a period of two years.

5.2 The Developer shall construct all streets, alleys, curb and gutter, lighting, sidewalks, street trees and landscaping, and irrigation systems to meet City Standards, the requirements of this ordinance, the approval of the Council, and to the finished grades which have been officially approved by the City Engineer as shown upon approved plans and profiles. The Developer shall pave all streets and alleys with an asphalt plant-mix, and shall chip-seal streets and alleys within one year of construction.

The Preliminary Plat Findings of Fact, signed on December 10, 2007, state that applicant is required to chip seal and repaint Fox Acres Road prior to recordation of the Final Plat. This requirement has not been met and is carried over as a condition of approval.

5.2.1 Street cuts made for the installation of services under any existing improved public street shall be repaired in a manner which shall satisfy the Street Superintendent, shall have been approved by the Hailey City Engineer or his authorized representative, and shall meet City Standards. Repair may include patching, skim coats of asphalt or, if the total area of asphalt removed exceeds 25% of the street area, the complete removal and replacement of all paving adjacent to the development. Street cut repairs shall also be guaranteed for no less than one year.

5.2.2 Street name signs and traffic control signs shall be erected by the Developer in accordance with City Standards, and the street name signs and traffic control signs shall thereafter be maintained by the City.

The Preliminary Plat Findings of Fact, signed on December 10, 2007, state that applicant is required to install "No Parking" signs along both sides of Fox Acres Road. This requirement has not been met. The applicant has requested to paint the sides of Fox Acres Road with fire lane striping in red, instead of installing signs to avoid visual clutter. This requested alternative may not be appropriate, considering the impetus for the Preliminary Plat condition of approval was not because there was a fire lane on either side of the Fox Acres Road, but because it is a 44-foot wide street with three lanes (two travel lanes and a center left-turn lane), which was determined, at the time of Preliminary Plat approval and confirmed during the comment period for Final Plat, to be a width that would not accommodate parking. In addition, when it snows, painted curbs alone do not give a good enough indication that parking is not allowed. The Fire Chief has recommended that the applicant's request not be pursued and that the original requirement for signs on both sides of the road be followed. The Fire Chief also recommends, as an additional condition of approval, that curb painting occur for additional "no parking" notification.

5.2.3 Street lights in the Recreational Green Belt, Limited Residential, General Residential, and Transitional zoning districts are not required improvements. Where proposed, street lighting in all zoning districts shall meet all requirements of Chapter VIII B of the Hailey Zoning Ordinance.

5.3 The Developer shall construct a municipal sanitary sewer connection for each and every developable lot within the development. The Developer shall provide sewer mains of adequate size and configuration in accordance with City Standards, and all federal, state, and local regulations. Such mains shall provide wastewater flow throughout the development. All sewer plans shall be submitted to the City Engineer for review and approval. At the City Engineer's discretion, plans may be required to be submitted to the Idaho Department of Environmental Quality (DEQ) for review and comments.

5.4 The developer shall construct a municipal potable water connection, water meter and water meter vault in accordance with City Standards, or other equipment as may be approved by the City Engineer, for each and every developable lot within the development. The Developer shall provide water mains and services of adequate size and configuration in accordance with City Standards, and all federal, state, and local regulations. Such water connection shall provide all necessary appurtenances for fire protection, including fire hydrants, which shall be located in accordance with the IFC and under the approval of the Hailey Fire Chief. All water plans shall be submitted to the City Engineer for review and approval. At the City Engineer's discretion, plans may be required to be submitted to the Idaho Department of Environmental

Quality (DEQ) for review and comments.

- 5.4.1** Within the Townsite Overlay District, where water main lines within the alley are less than six (6) feet deep, the developer shall install insulating material (blue board insulation or similar material) for each and every individual water service line and main line between and including the subject property and the nearest public street, as recommended by the City Engineer.
- 5.5** The Developer shall provide drainage areas of adequate size and number to meet the approval of the Street Superintendent and the City Engineer or his authorized representative.
- 5.6** The Developer shall construct each and every individual service connection and all necessary trunk lines, and/or conduits for those improvements, for natural gas, electricity, telephone, and cable television to the property line before placing base gravel for the street or alley.
- 5.7** The Developer shall improve all parks and Green Space areas as presented to and approved by the Commission and Council.
As part of Design Review approval for the High School, these areas were to be revegetated. At the time of Preliminary Plat approval, there were hillside areas within the subject property that were still bare and eroding. According to the Preliminary Plat conditions of approval, drought tolerant vegetation shall be planted and established on all disturbed hillside areas prior to recordation of the plat. At this time, the applicant's representative, John Gaeddert of CLPE, has stated that seeding has occurred. Seeding and establishment of the plantings is difficult to determine because of the snow. Becki Keefer, the Parks Project Coordinator, has stated that she does not think that the hillside area has been revegetated. Becki also expressed concerns regarding the proliferation of weeds on the hillside. She has requested that, in addition to the revegetation the applicant provide weed control. Fulfilling these requirements is included as a condition of approval.
- 5.8** All improvements are to be installed under the specifications and inspection of the City Engineer or his authorized representative. The minimum construction requirements shall meet City Standards or the Department of Environmental Quality (DEQ) standards, whichever is the more stringent.
- 5.9** Installation of all infrastructure improvements must be completed by the Developer, and inspected and accepted by the City prior to signature of the plat by City representatives, or according to a phasing agreement. A post-construction conference shall be requested by the Developer and/or contractor and conducted with the developer and/or contractor, the City Engineer, and appropriate City departments to determine a punch list of items for final acceptance.

- 5.9.1** The Developer may, in lieu of actual construction, provide to the City security pursuant to Section 3.3.7, for all infrastructure improvements to be completed by Developer after the final plat has been signed by City representatives.
- 5.10** Prior to the acceptance by the City of any improvements installed by the Developer, three (3) sets of "as-built plans and specifications" certified by the Developer's engineer shall be filed with the City Engineer.

Summary and Suggested Conditions

The City Council shall hold a public hearing and approve, conditionally approve, or deny the final plat application. The following conditions are suggested to be placed on any approval of this application:

- a) All Fire Department and Building Department requirements shall be met. Items to be completed at the applicant's sole expense include, but will not be limited to, the following requirements and improvements:
 - Any additional fire lane signage as may be required by the Fire Chief.
- b) All City infrastructure requirements shall be met as outlined in Section 5 of the Hailey Subdivision Ordinance. Detailed plans for all infrastructure to be installed or improved at or adjacent to the site shall be submitted for Department Head approval and shall meet City Standards where required. Infrastructure to be completed at the applicant's sole expense include, but will not be limited to, the following requirements and improvements:
 - "No Parking This Side of Street" signs on both sides of Fox Acres Road.
 - The applicant shall chip seal and repaint Fox Acres Road prior to the recordation of the Final Plat.
 - The applicant shall paint and mark the curbs along the no parking area as "No Parking."
- c) Drought tolerant vegetation shall be planted and established on all disturbed hillside areas, with additional weed control, prior to recordation of the plat or sufficient security provided.
- d) All improvements shall be completed and accepted, or surety provided pursuant to Sections 2.3.7 and 5.9.1 of the Subdivision Ordinance, prior to recordation of the final plat.
- e) The final plat, submitted for signatures, shall include plat notes 1 through 17, as stated on the approved final plat.
- f) Issuance of permits for the construction of buildings within the proposed subdivision

shall be subject to Section 2.9 of the Subdivision Ordinance.

- g) The final plat shall be recorded within one year of the date of final plat approval. The final plat submitted for signature shall conform to the requirements found in Article 50-1301 (et. seq.) of the Idaho Code (as amended) and to the requirements set forth by Blaine County for digital plat submittals. The applicant shall provide the City with a letter-size or ledger-size photocopy of the recorded plat showing the instrument number and date of recordation.
- h) Any subdivision inspection fees due shall be paid prior to recording the final plat.
- i) Any applicable development impact fees shall be paid prior to recording the final plat.

Motion Language

Motion to approve the Final Plat Subdivision application for Wood River High School Campus PUD, which includes Tax Lots 7729, 7821 and 7824 (located near Fox Acres Road and Wood River High School), finding that the project is in conformance with the Comprehensive Plan; the project does not jeopardize the health, safety, or welfare of the general public; and the project conforms to the applicable specifications outlined in Hailey's Subdivision Ordinance, as set forth herein, applicable requirements of the Zoning Ordinance, and City Standards; with conditions () through ().

STAFF REPORT

TO: Hailey City Council
FROM: Beth Robrahn, Planning Director 
RE: Vacation of public right of way – Cedar Street between 3rd Ave and 4th Ave
HEARING: January 26, 2009

Applicant: Idaho Army National Guard
Request: Vacation of public right of way
Location: Cedar Street between 3rd Avenue and 4th Avenue
Adjacent Property: Lots 12 and 14, Block 125
Lots 1 and 13, Block 136
Zoning: General Residential (GR) and Recreation Green Belt (RGB)
Note: Staff analysis is in lighter type.

Notice

Notice for the public hearing on January 12, 2009 was published in the Idaho Mountain Express on December 24, 2008 and on December 31, 2008; the notice was mailed by certified mail to property owners within 300 feet on December 24, 2008. The public hearing was continued on the record from January 12 to January 26, 2009.

Application

The applicant has requested the vacation of Cedar Street between 3rd Avenue and 4th Avenue, which has a 100 foot wide right-of-way.

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.

Procedural History

The Hearing Examiner held a public hearing on December 5, 2008 and recommended approval of the right-of-way vacation.

The Council heard the application on January 12, 2009 and directed staff to draft an access easement, deed and ordinance for review at the next meeting on January 26. Staff is also preparing easements for the water and sewer mains beneath the property.

Standards of Evaluation

Right-of-way vacations are regulated by Section 9 of Hailey's Subdivision Ordinance.

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

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

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 found that the vacation of this portion of Cedar is expedient for the public good 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.

9.2 Applications for vacation of streets, alleys, or easements shall be submitted to the Hearing Examiner, except that the Administrator and Chair of the Commission, jointly, shall have discretion and authority to refer a vacation application to the Commission. The Hearing Examiner or Commission shall make a recommendation, concerning the application for vacation, to the Council. The Hearing Examiner or Commission shall consider the following items in making their recommendation:

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

No testimony has been received at the time of writing this report. Public testimony was taken at the public hearing on January 12, 2009.

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. An access easement from the centerline of the Cedar Street right-of-way to the south 50 feet plus an additional 13 feet for future parking use has been drafted for the Council’s consideration. This easement width would encompass current pedestrian and vehicular circulation in addition to future parking on the south side of Cedar.

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 and utility easement over the portion of the right-of-way vacated to Block 136 which the State is agreeable to. An access easement from the centerline of the Cedar Street right-of-way to the south 50 feet plus an additional 13 feet for future parking use has been drafted for the Council’s consideration. This easement width would encompass current pedestrian and vehicular circulation in addition to future parking on the south side of Cedar.

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 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 Hearing Examiner found that the vacation of this portion of Cedar is expedient for the public good 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. A public access and utility easement over the portion of the right-of-way vacated to Block 136 should be platted concurrently with the right-of-way vacation.

If the Council decides vacation is appropriate and finds the ordinance, deed and easement prepared acceptable then the Council can proceed to

Motion Language

- Motion to approve the vacation of public right of way – Cedar Street between 3rd Ave and 4th Ave, finding that the vacation is expedient for the public good, is in accordance with the Comprehensive Plan, the future development of the neighborhood will not be compromised, the current use and general configuration of public access would not change.
- Motion to authorize execution of a public access and utility easement.

Applicable 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.

50-1321. 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.

HAILEY ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, VACATING THAT PORTION OF THE CITY RIGHT-OF-WAY WITHIN CEDAR STREET BETWEEN BLOCKS 125 AND 136, ORIGINAL HAILEY TOWNSITE; PROVIDING FOR EXECUTION OF A QUITCLAIM DEED BY THE MAYOR CONVEYING TITLE TO THE VACATED PROPERTY TO THE OWNER OF PROPERTY ADJACENT TO THE VACATED RIGHT-OF-WAY; AND PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE UPON PASSAGE, APPROVAL, AND PUBLICATION ACCORDING TO LAW.

WHEREAS, the Hailey City Council has determined, and hereby finds, that the portion of Cedar Street between Blocks 125 and 136, Original Hailey Townsite, is no longer needed for as a public street and that vacation of the portion of Cedar Street between Blocks 125 and 136, Original Hailey Townsite is expedient for the public good; and

WHEREAS, the Hailey City Council believes it is appropriate to vacate the portion of Cedar Street between Blocks 125 and 136, Original Hailey Townsite.

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

Section 1. The city of Hailey hereby vacates the portion of Cedar Street between Blocks 125 and 136, 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. The Mayor of the City of Hailey is hereby authorized to execute and deliver a quitclaim deed, on behalf of the City of Hailey, transferring title to one-half (1/2) of each side of vacated property to the adjacent property owners pursuant to Idaho Code Section 50-311.

Section 3. 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 FEBRUARY, 2009.

Richard L. Davis, Mayor, City of Hailey

Attest:

Mary Cone, City Clerk

ACCESS, UTILITY AND PARKING EASEMENT AGREEMENT

This Access, Utility and Parking Easement Agreement ("**Easement Agreement**") is made this ____ day of February, 2009, by and between the State of Idaho, and the City of Hailey, as tenants in common ("**Grantors**") and City of Hailey, Idaho ("**Grantee**").

RECITALS

A. Grantors are the owners in fee simple of a parcel of property located in the City of Hailey, Idaho, more particularly described as the portion of Cedar Street between Blocks 125 and 136, Original Hailey Townsite, as shown on the official Plat of the City of Hailey on file in the office of the Blaine County Recorder, Idaho ("**Vacated Street**") and owners in fee simple of the property adjacent to the Vacated Street in all of Block 136 and in Lots 8 through 12, inclusive, and Lots 20 through 24, inclusive, Block 125 Original Hailey Townsite, as shown on the official Plat of the City of Hailey on file in the office of the Blaine County Recorder, Idaho. The City of Hailey has granted a vacation of the Vacated Street.

B. Grantee is a body politic and corporate and has the power and authority to own and hold interests in real property.

C. Grantors and Grantee desire to establish an access, utility and parking easements across and adjacent to the Vacated Street to enable the public to use the easements for access, utility and parking purposes. The easements granted herein are voluntary easements and have not been granted as a condition of the vacation of the Vacated Street.

AGREEMENT

NOW, THEREFORE, IN CONSIDERATION of the above recitals which are incorporated below, and of the mutual covenants and agreements herein contained and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Grant of Easements. Grantors hereby grant and convey to Grantee, and its successors and assigns, a non-exclusive a) fifty foot (50') wide public access and utility easement over, across and under the southern portion of the Vacated Street between Third Avenue and Fourth Avenue ("**Access and Utility Easement**"), and b) thirteen foot (13') wide parking easement over and across the most northern portion of Block 136, Original Hailey Townsite, as shown on the official Plat of the City of Hailey on file in the office of the Blaine County Recorder, Idaho, between Third Avenue and Fourth Avenue ("**Parking Easement**") (the Access and Utility Easement and the Parking Easement are collectively referred to as the "**Easements**"). The Easements are adjacent and contiguous to each other.

2. Purposes/Restrictions. The Easements may be used for the following uses and are granted subject to the following restrictions:

(a) The Easements shall be used solely for the benefit of Grantee and the general public.

(b) The Access and Utility Easement may be used for i) vehicular and pedestrian access by members of the public, ii) vehicular parking by members of the public, iii) improvement, repair and maintenance of street, sidewalk, curb, gutter and other improvements within the Access and Utility Easement by Grantee, and iv) improvement, repair and maintenance of public utilities within the Access and Utility Easement by Grantee or other utilities.

(c) The Parking Easement may be used for i) vehicular parking by members of the public, ii) vehicular and pedestrian access by members of the public, and iii) improvement, repair and maintenance of street, sidewalk, curb, gutter and other improvements within the Parking Easement by Grantee.

3. Successors and Assigns. All provisions of this Easement Agreement, including the benefits and burdens, run with the land covered hereby and are binding on and inure to the benefit of the heirs, permitted assigns, permitted successors, tenants and personal representatives of the parties hereto.

4. Recordation of Instrument. The parties agree that this Easement Agreement may be duly recorded by Grantors.

5. Miscellaneous Provisions:

a. Headings. The headings in this Easement Agreement are inserted for convenience and identification only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Easement Agreement or any provision hereof.

b. Severability. Every provision of this Easement Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Easement Agreement.

c. Remedies. The rights and remedies provided by this Easement Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive its rights to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

d. Amendment. This Easement Agreement may be amended only in writing signed by the all of the parties.

e. Attorneys Fees. Should any action be brought to interpret or enforce any provision hereof, or for damages for breach hereof, the prevailing party shall be entitled to such reasonable attorney's fees and costs as may be determined by any court of competent jurisdiction wherein such action is brought, and on appeals and in bankruptcy proceedings.

f. Entire Agreement. This Easement Agreement contains the entire agreement between the parties respecting the matters herein set forth and supersedes all prior agreements between the parties hereto respecting such matter.

g. Governing Law. This Easement Agreement shall be construed in accordance with the laws of the State of Idaho.

h. Counterparts. This Easement Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

i. Presumption. No presumption shall exist in favor of or against any party to this Easement Agreement as the result of the drafting and preparation of the document.

IN WITNESS WHEREOF, the Parties have executed this Easement Agreement the day and year written herein.

GRANTORS

The State of Idaho

By: _____

City of Hailey, Idaho

By: _____
Richard L. Davis, Mayor

ATTEST:

Mary Cone, City Clerk

GRANTEE
City of Hailey, Idaho

By: _____
Richard L. Davis, Mayor

ATTEST:

Mary Cone, City Clerk

STATE OF IDAHO)
) ss.
County of Blaine)

On this _____ day of February, 2009, before me, a Notary Public in and for said State, personally appeared _____, known or identified to me to be the _____ of the State of Idaho, who executed the foregoing instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Notary Public for Idaho
Residing at: _____
My commission expires: _____

STATE OF IDAHO)
) ss.
County of Blaine)

On this _____ day of February, 2009, before me, a Notary Public in and for said State, personally appeared Richard L. Davis, known or identified to me to be the Mayor of the City of Hailey, who executed the foregoing instrument, and acknowledged to me that he executed the same.

In witness thereof, I have set my hand and affixed my seal the day and year in this certificate above written.

Name: _____
Notary Public for Idaho
Residing at _____
My commission expires _____

