

## STAFF REPORT

**TO:** Hailey City Council  
**FROM:** Mariel Platt, Planner   
**RE:** Vacation – Portion of Block 78 alley and a portion of Spruce St., east of Buttercup Rd. and south of Block 79  
**HEARING:** May 12, 2008

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**Applicant:** Bruce Tidwell, Roberta Cowan, and Robert Closser

**Project:** Block 78 alley and old Spruce St., Block 79 Vacation

**Approval Requested:** Vacation of public right of way and alley

**Location:** Portion of Block 78 alley and a portion of Spruce St., east of Buttercup Rd. and south of Block 79, Hailey Townsite

**Zoning:** Limited Residential-1 (LR-1)

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

### Notice

Notice for the public hearing was published in the Wood River Journal on April 23, 2008 and on April 30, 2008; the notice was mailed by certified mail to property owners within 300 feet on April 23, 2008.

### Application

The applicants have requested the vacation of a small, landlocked portion of the alley that was previously platted as part of Block 78 and a remnant portion of Spruce Street.

The portion of the alley is a triangular section with an area of 102 square feet. The portion of the alley is entirely surrounded by private property and is not accessible from a public street.

The portion of Spruce Street, east of Buttercup Rd. and south of Block 79, is 4,199 square feet. The portion of Spruce Street is accessible by Buttercup Rd. and Mother Lode Dr., but it is not maintained, nor is it currently used for transportation, or public access purposes.

Currently, the applicants collectively own Lots 16 – 24, Block 79; Lots 4 - 12, Block 79; and Lots 16 – 18, Block 78, Hailey Townsite, which are adjacent to one side of the right-of-way and alley proposed for vacation.

## **Background**

The portion of the alley proposed for vacation is a small remnant of what was originally the platted alley of Block 78. The portion of Spruce Street, adjacent to Buttercup Rd., is the north half of the originally platted Spruce Street right-of-way.

Juanita Drexler Trust, the previous owner of Lots 16 – 24, Block 79; Lots 4 - 12, Block 79; and Lots 16 – 18, Block 78, Hailey Townsite, submitted a vacation application for a portion of the right-of-way, known as 6<sup>th</sup> Avenue, adjacent to Block 79, Original Hailey Townsite and the alley within Block 79, Original Hailey Townsite in 2002. On June 3, 2002, Ordinance No. 811 was passed and the requested property was vacated and deeded to the Juanita Drexler Trust.

## **Procedural History**

At the February 8, 2008 Hearing Examiner meeting, the Hearing Examiner made the following Conclusions of Law and Recommendation:

- a) Adequate notice, pursuant to Idaho Code Section 50.1306A, was given for the public hearing.
- b) The portion of the proposal related to the remnant portion of the Block 78 alley 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),
- c) The portion of the proposal related to the remnant portion of the Spruce Street right-of-way does not meet the criteria for vacation of street 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),
- d) The application for vacation of a portion of Block 78 alley is recommended for approval.
- e) The application for vacation of a portion of Spruce Street, east of Buttercup Road, Block 79 is recommended for denial.

## **Standards of Evaluation**

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

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

Idaho Code §50-311 allows cities to vacate any street only when 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."

A finding is required to be made that the vacation of each separate portion of right-of-way is expedient for the public good.

In addition, because the applicant is requesting that all of the right-of-way and alley be deeded to the property on one side of the right-of-way (their property), a finding will have to be made that this is in the best interests of the adjoining properties not to deed one-half to each side. Because adjacent property owners to the south purchased subdivided lots, not old Townsite lots, and thus would have no ownership expectation of any portion of the old Townsite rights-of-way it is concluded that the entire right-of-way could be deeded to the property on the one side rather than one-half on each side thereof. This is consistent with a similar analysis found in the City Council Findings of Fact for the 2002 Drexler vacation approval.

**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.

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

The applicants collectively own the following property: Lots 16 – 24, Block 79; Lots 4 - 12, Block 79; and Lots 16 – 18, Block 78, Hailey Townsite. The applicants' property is adjacent to the north side of the Spruce Street right-of-way proposed for vacation and to the east of the alley right-of-way proposed for vacation.

Other adjacent property owners are not named in the application. The legal description of the other property adjacent to the Spruce Street right-of-way proposed to be vacated is Lot 6, Block 2, Hailey Replat. The legal descriptions of the properties adjacent to the alley right-of-way are Lot 2, Block 2, Hailey Replat; and Lot 2, Block 3, Dove Meadows Subdivision.

Because adjacent property owners purchased subdivided lots, not old Townsite lots, they would have no ownership expectation of any portion of the old Townsite rights-of-way. Therefore, the Hearing Examiner concluded that the entire right-of-way would revert to the property on the one side rather than one-half on each side thereof. This is consistent with a similar analysis found in the City Council Findings of Fact for the 2002 Drexler vacation approval.

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

The following sections of the Comprehensive Plan are applicable to this application.

**Transportation and Circulation Goal I, "To promote the safe and efficient**

**movement of people” and Goal II., To minimize public expenditures for road maintenance and improvement”.**

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

Currently, neither portion is utilized for the “movement of people.” Neither portion is maintained or improved.

#### Alley ROW

The remnant portion of the Block 78 alley is small and land locked.

#### Spruce Street ROW

The remnant portion of Spruce Street is a public space on the corner of a major transportation corridor. Maintaining this as public space may accommodate infrastructure related to future transit route(s) serving this area of Hailey.

**Recreation, Parks & Lands, Section 4.1, creating and preserving public green space and recreational opportunities. Section 4.3, minimizing recreation costs, while maximizing recreation opportunities.**

#### Alley ROW

The remnant portion of the Block 78 alley is small and land locked.

#### Spruce Street ROW

If the portion of Spruce Street is vacated by the City, the new owner(s) may develop the property in accordance with Hailey’s Subdivision and Zoning Ordinance, thereby increasing the potential for the loss of green space. Section 4.3, Policy 2, Implementation c., states, “Encourage green spaces that are left in a natural state with minimal maintenance, where appropriate.” In an effort to reduce expenditures, the City could leave the property in a fairly natural state in perpetuity or until funds become available, thereby minimizing maintenance costs and protecting green space.

Section 4.10 of the Subdivision Ordinance requires parks less than one acre to be maintained by the development. According to Becki Keefer, the Park Project Coordinator, the City discourages the development of City parks that are less than one acre due to the low cost-benefit ratio associated with maintaining a small park. According to the Parks and Land Board project coordinator the City currently has limited funds for park development and/or maintenance. Trees would need to be removed and possibly destroyed to allow for a larger public space. In addition, landscaping and irrigation may need to be retrofitted to reduce maintenance costs and water consumption; however, the portion of Spruce Street could remain in its natural state or be minimally improved.

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

The neighborhood surrounding the applicant’s property is fully developed.

Alley ROW

The remnant portion of the Block 78 alley is small and landlocked and benefits of future property development are unlikely.

Spruce Street ROW

The city may have need for the portion of Spruce Street right-of-way in the future for some purpose that we can not foresee at this time. The property is less than two blocks from the City's boundary; future growth may require annexation near the subject property, in which case maintaining the portion of Spruce Street as green space or as a future park could be a valuable benefit. A transit shelter or other transit related facility could be a valuable community asset as circulation and transportation needs in the area change with the development of additional transit service for the City of Hailey and preserving this portion of Spruce Street for that purpose may be a valuable public benefit.

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

Alley ROW

The portion of Block 78 alley is landlocked by private property and serves no public purpose.

Spruce Street ROW

The portion of the Spruce Street right-of-way is currently covered in landscaping. The use of this portion of right-of-way as a future vehicular or pedestrian transportation connection to the east has been precluded by the previous vacation and redevelopment of other portions of the right-of-way. However, this portion of the Spruce Street right-of-way is adjacent to Buttercup Road, a major transportation corridor, and is adjacent to the Wood River Trails System (bike path), and may be an appropriate place for a transit shelter or other alternative transportation infrastructure that would serve a valuable public purpose in the future.

One objective of the Lands & Trails Master Plan is to have recreation assets within walking distance of the greatest number of citizens. The north end of Hailey is not served well by public parks, excluding Old Cutters' five acre park, which has a projected completion date of one to two years. While a park may not currently be a suitable use of this portion of the Spruce Street right-of-way, the development of a park may be more feasible in the future and could become a valuable benefit to the public.

**9.3.1 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.**

Summary

The land locked portion of the Block 78 alley right-of-way does not appear to have any future public use.

The remnant portion of Spruce Street right-of-way may have future public use as either a small neighborhood park or to support future neighborhood transit service. It may be in the best

interest of the public to retain this portion of right-of-way for future public use.

**Deliberation and Decision**

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 considered the items noted in the standards of evaluation and made his recommendation to the Council for partially approving the application. The Council shall now approve or deny the application, including finding that the right-of-way in question is no longer needed for public use and that the vacation is deemed expedient for the public good.

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

On February 8, 2008, the Hailey Hearing Examiner considered an application by Cowan, Closser, and Tidwell for the vacation of a portion of Block 78 alley and a portion of Spruce Street, east of Buttercup Road, Block 79. The Hearing Examiner, having been presented with all information and testimony in favor and in opposition to the proposal, hereby makes the following Findings of Fact, Conclusions of Law and Recommendation.

### **FINDINGS OF FACT**

#### **Notice**

Notice for the public hearing was published in the Wood River Journal on January 23, 2008 and on January 30, 2008; the notice was mailed by certified mail to property owners within 300 feet on January 23, 2008.

#### **Application**

The applicants have requested the vacation of a small, landlocked portion of the alley that was previously platted as part of Block 78 and a remnant portion of Spruce Street.

The portion of the alley is a triangular section with an area of 102 square feet. The portion of the alley is entirely surrounded by private property and is not accessible from a public street.

The portion of Spruce Street, east of Buttercup Rd., Block 79, is 4,199 square feet. The portion of Spruce Street is accessible by Buttercup Rd. and Mother Lode Dr., but it is not maintained, nor is it currently used for transportation, or public access purposes.

Collectively, the applicants currently own Lots 16 – 24, Block 79; Lots 4 - 12, Block 79; and Lots 16 – 18, Block 78, Hailey Townsite, which are adjacent to one side of the right-of-way and alley proposed for vacation.

#### **Procedural History**

The portion of the alley proposed for vacation is a small remnant of what was previously the alley of Block 78. The portion of Spruce Street, adjacent to Buttercup Rd., is the north half of the originally platted Spruce Street right-of-way.

Juanita Drexler Trust, the previous owner of Lots 16 – 24, Block 79; Lots 4 - 12, Block 79; and Lots 16 – 18, Block 78, Hailey Townsite, submitted a vacation application for a portion of the right-of-way, known as 6<sup>th</sup> Avenue, adjacent to Block 79, Original Hailey Townsite and the alley within Block 79, Original Hailey Townsite in 2002. On June 3, 2002, Ordinance No. 811 was passed and the requested property was vacated and deeded to the Juanita Drexler Trust.

#### **Standards of Evaluation**

Street Vacations are regulated by Section 9 of Hailey's Subdivision Ordinance. For each standard of evaluation, shown in bold print, the Hearing Examiner makes the following Findings of Fact:

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

Idaho Code §50-311 allows cities to vacate any street only when deemed expedient for the public good. This section further provides that “whenever any street, avenue, alley or lane shall be vacated, the same shall revert to the owner of the adjacent real estate, one-half on each side thereof, or as the city council deems in the best interests of the adjoining properties, but the right of way easements and franchise rights of any lot owner or public utility shall not be impaired thereby.”

The applicant is requesting that all of the Spruce Street right-of-way and alley right-of-way be deeded to the property to the north, on one side of the right-of-way (their property). To meet the applicable standard, a finding will have to be made that this is in the best interests of the adjoining properties not to deed one-half to each side. Because adjacent property owners to the south purchased subdivided lots, not old Townsite lots, and thus would have no ownership expectation of any portion of the old Townsite rights-of-way, the entire right-of-way can be deeded to the property on the one side rather than one-half on each side thereof. This is consistent with a similar analysis found in the City Council Findings of Fact for the 2002 Drexler vacation approval. The vacation of the alley right-of-way and the reversion of the alley right-of-way to the applicant is in the best interest of the public.

**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 application and existing City maps show the portion of the alley is entirely surrounded by private property, and is not accessible from a public street. There is no physical alleyway.

The application and existing City maps show the remnant of Spruce Street right-of-way is accessible by either Mother Lode Loop or Buttercup Road. This portion is not maintained or utilized as a right-of-way.

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

The applicants collectively own the following property: Lots 16 – 24, Block 79; Lots 4 - 12, Block 79; and Lots 16 – 18, Block 78, Hailey Townsite. The applicants’ property is adjacent to the north side of the Spruce Street right-of-way proposed for vacation and to the east of the alley right-of-way proposed for vacation.

Other adjacent property owners are not named in the application. The legal description of the other property adjacent to the Spruce Street right-of-way proposed to be vacated is Lot 6, Block 2, Hailey Replat. The legal descriptions of the properties adjacent to the alley right-of-way are Lot 2, Block 2, Hailey Replat; and Lot 2, Block 1, Meadows Subdivision.

The adjacent property owners purchased subdivided lots, not old Townsite lots, therefore they would have no ownership expectation of any portion of the old Townsite rights-of-way. The entire right-of-way can be reverted to the property on the one side rather than one-half on each side thereof. This is consistent with a similar analysis found in the City Council Findings of Fact for the 2002 Drexler vacation approval.

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

The following sections of the Comprehensive Plan are applicable to this application.

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

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

Currently, neither portion is utilized for the “movement of people.” Neither portion is maintained or improved. The remnant portion of the Block 78 alley is land locked and could not accommodate future transportation needs. The remnant portion of Spruce Street is a public space on the corner of a major transportation corridor. Maintaining the remnant portion of Spruce Street as public space may accommodate infrastructure related to future transit route(s) serving the area of Hailey.

**Recreation, Parks & Lands, Section 4.1, creating and preserving public green space and recreational opportunities. Section 4.3, minimizing recreation costs, while maximizing recreation opportunities.**

If the portion of Spruce Street is vacated by the City, the new owner(s) may develop the property in accordance with Hailey’s Subdivision and Zoning Ordinance, thereby increasing the potential for the loss of green space. Section 4.3, Policy 2, Implementation c., states, “Encourage green spaces that are left in a natural state with minimal maintenance, where appropriate.” In an effort to reduce expenditures, the City could leave the property in a fairly natural state for perpetuity or until funds become available, thereby minimizing maintenance costs and protecting green space.

Section 4.10 of the Subdivision Ordinance requires parks less than one acre to be maintained by the development. The City discourages the development of City parks that are less than one acre due to the low cost-benefit ratio associated with maintaining a small park. According to the Parks and Land Board project coordinator the City currently has limited funds for park development and/or maintenance. Trees would need to be removed and possibly destroyed to allow for a larger public space. In addition, landscaping and irrigation may need to be retrofitted to reduce maintenance costs and water consumption; however, the parcel could remain in its natural state or be minimally improved.

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

The neighborhood surrounding the applicant’s property is fully developed. The Block 78 alley portion of right-of-way is small and landlocked and will unlikely serve a future public need. However, the city may have need for the portion of Spruce Street right-of-way in the future for

some purpose that we can not foresee at this time. The property is less than two blocks from the City's boundary; future growth may require annexation near the subject property, in which case maintaining the portion of Spruce Street as green space or as a future park could be a valuable benefit. A transit shelter or other transit related facility could be a valuable community asset as circulation and transportation needs in the area change with the development of additional transit service for the City of Hailey and preserving this portion of Spruce Street for that purpose may be a valuable public benefit.

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

The portion of Block 78 alley is landlocked by private property and serves no public purpose.

The portion of the Spruce Street right-of-way is currently covered in landscaping. The use of this portion of right-of-way as a future transportation connection to the east has been precluded by the previous vacation and redevelopment of other portions of the right-of-way. However, this portion of the Spruce Street right-of-way is adjacent to Buttercup Road, a major transportation corridor, and is adjacent to the Wood River Trails System (bike path), and may be an appropriate place for a transit shelter or other alternative transportation infrastructure that would serve a valuable public purpose in the future.

One objective of the Lands & Trails Master Plan is to have recreation assets within walking distance of the greatest number of citizens. The north end of Hailey is not served well by public parks, excluding Old Cutters' five acre park, which has a projected completion date of one to two years. While a park may not currently be a suitable use of this portion of the Spruce Street right-of-way, the development of a park may be more feasible in the future and could become a valuable benefit to the public.

## CONCLUSIONS OF LAW AND RECOMMENDATION

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

- a) Adequate notice, pursuant to Idaho Code Section 50.1306A, was given for the public hearing.
- b) The portion of the proposal related to the remnant portion of the Block 78 alley 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),
- c) The portion of the proposal related to the remnant portion of the Spruce Street right-of-way does not meet the criteria for vacation of street 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),
- d) The application for vacation of a portion of Block 78 alley is recommended for approval.
- e) The application for vacation of a portion of Spruce Street, east of Buttercup Road, Block 79 is recommended for denial.

Signed this 26 day of Feb, 2008.

Jay Webb  
Jay Webb, Hearing Examiner

Attest:

Becky Mead  
Becky Mead, Administrative Assistant

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of February, 2008, I served a true and correct filed copy of the within and foregoing document upon the parties named below, in the manner noted:

- U.S. Mail
- Via Facsimile
- Hand Delivered

Cowan, Closser, & Tidwell  
118 Spruce Way  
Hailey, ID 83333

- U.S. Mail
- Via Facsimile
- Hand Delivered

Bruce Smith  
PO Box 2037  
Ketchum, ID 83340

CITY OF HAILEY

By Becky Mead  
Becky Mead, Administrative Assistant

## MEMO

**DATE:** 30 January 2008

**TO:** Mariel Platt, Planner

**FROM:** Becki Keefer, Park Project Coordinator

**cc:** Janet Fugate, Chair, Hailey Parks & Lands Board

**RE:** **Drexler Ranch Vacation Request**

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I have reviewed the Proposed Vacation Map prepared by Alpine Enterprises Inc., Section 4.10 of the Subdivision Ordinance, and the Hailey Parks, Lands & Trails Master Plan ("Master Plan"), and have the following comments:

1. Generally, the City discourages a park space that is less than one acre, as the cost to maintain a small park space is not cost-effective. So, unless the Council determines otherwise, the Subdivision Ordinance requires park space of less than one acre to be maintained by the development. If the remnant of Spruce Street were to be retained by the city and developed as a park, all improvements and maintenance would be at the city's expense. The City currently has limited funds for park development and/or maintenance.

The improvements are problematic, as well. Several large trees would have to be relocated (or possibly destroyed) to create a larger public space on the corner, and landscaping and irrigation would have to be retrofitted for low water consumption and reduced maintenance.

However, small spaces can be utilized in a creative manner that meet the needs of the community while meeting xeriscape goals. Jimmy's Garden, a unique private-public partnership, is an outstanding example of a small space that works well. The Hailey Parks & Lands Board could, in the future, work with the neighbors of this property to develop a plan that would be an asset to the neighborhood. But, lacking funding, the project would likely have a lower priority.

2. The Master Plan speaks to distribution of parks and greenways throughout the community; the goal is to have diverse recreation assets within walking distance of the greatest number of citizens. Until Old Cutters, the north end of Hailey was not well-served by parks – the park spaces in Northridge and Northstar are private and exclusive to residents of those subdivisions. However, the 5-acre park at Cutters will be ready for use in a year or two, which will help to even the parks distribution on the north end of Hailey, which includes the property of this application. The neighborhood in the immediate vicinity of this property is within walking distance of Curtis Park, as well. At this time, it doesn't appear that this property is needed for a park, but future growth and future needs may require this property.

3. While the alley portion of the vacation request is totally landlocked, the public still has access to the Spruce Street remnant. This corner is a public space on a major transportation corridor, and a transit shelter would be a great asset. This corner is across the street from the Wood River Trails (Bike Path) and just south of the intersection of Myrtle and Buttercup Road; a transit shelter, transfer station (parking just across the street?) or other transportation element, would be of great public benefit.
4. The city may have need of this property in the future for some purpose that we can't foresee at this time, and we would be shortsighted to give this property away.

**In conclusion:**

In my opinion, the remnant of the Spruce Street right of way should not be vacated. Although the property's value as a park is open for debate at this time, it may be needed in the future. The property has greater immediate value in its potential for transit development, and the City should retain ownership for the benefit of the public.

