


## STAFF REPORT

**TO:** Hailey City Council  
**FROM:** Beth Robrahn, Planning Director   
**RE:** Vacation – Walnut Street east of alley between Blocks 104 and 105, Hailey Townsite  
**HEARING:** September 22, 2008

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**Applicant:** Blaine County  
**Request:** Vacation of public right of way  
**Location:** Walnut Street east of alley between Blocks 104 and 105, Hailey Townsite  
**Zoning:** Limited Residential (LR-1)  
**Note:** Staff analysis is in lighter type.

### Notice

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

### Application

The applicant has requested the vacation of 40 feet of Walnut Street (20 feet on either side). The portion requested to be vacated is east of alley between Blocks 104 and 105 in the Hailey Townsite. Walnut Street has a 100 foot wide right-of-way.

### Background

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

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

requirement.

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

### **Procedural History**

The Hearing Examiner held a public hearing on August 15, 2008 and recommended denial of the vacation request finding that there is no way to guarantee that the portion of right-of-way vacated will only be used for the development of community houses, particularly in the distant future, because the vacation of a portion of the public right-of-way can not be conditional (the Court's decision in *Black v. Young* determined it is inappropriate to condition vacation of a right-of-way). Since the vacation can not be directly tied to the development of community houses the Hearing Examiner could not recommend that the vacation itself is "deemed expedient for the public good".

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

### **Standards of Evaluation**

Street Vacations are regulated by Section 9 of Hailey's Subdivision Ordinance, which incorporates the applicable sections of state law.

- 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 applicant is requesting vacation of a portion of the Walnut Street right-of-way in order to enable the development of two community houses. While the need for community housing is apparent, there is no way to guarantee that the portion of right-of-way vacated will only be used for the development of community houses, particularly in the distant future, because the vacation of a portion of the public right-of-way can not be conditional (the Court's decision in *Black v.*

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

**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 Hearing Examiner heard testimony from the applicant’s representative, ARCH Community Housing Trust, adjacent property owners and other members of the public at the public hearing. The Council will hear testimony from public on September 22, 2008.

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

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

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

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

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

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

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

The Walnut Street right-of-way is at the eastern edge of the Townsite Overlay adjacent to the Union Pacific Rail Road right-of-way (now owned by ITD), a portion of which includes Fifth Avenue. The Hearing Examiner recommends that if the right-of-way is vacated that the

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

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

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

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

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

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

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

#### **Summary**

Section 9 of the Hailey Subdivision Ordinance states that 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.

## FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION

On August 15, 2008, the Hailey Hearing Examiner considered an application by Blaine County for the vacation of a portion of Walnut Street east of alley between Blocks 104 and 105, Hailey Townsite. The 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 July 30, 2008 and on August 6, 2008; the notice was mailed by certified mail to property owners within 300 feet on July 30, 2008.

#### Application

The applicant has requested the vacation of 40 feet of Walnut Street (20 feet on either side). The portion requested to be vacated is east of alley between Blocks 104 and 105 in the Hailey Townsite. Walnut Street has a 100 foot wide right-of-way.

#### Background

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

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

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

#### Standards of Evaluation

Street Vacations are regulated by Section 9 of Hailey's Subdivision Ordinance, which incorporates the applicable sections of state law.

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

**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 Hearing Examiner heard testimony from the applicant’s representative, ARCH Community Housing Trust, adjacent property owners and other members of the public at the public hearing.

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

Adjacent lots are Lot 2A, Block 104 and Lot 1, Block 105. The owner of Lot 1, Block 105 indicated he had applied for a right-of-way vacation of 20 feet of Walnut Street in 1993 in order to meet setback requirements for a garage. The applicant withdrew his request after the Planning and Zoning Commission suggested he apply for a variance instead. Letters of acceptance were sent by the applicant to the following public utilities; Hailey Water and Sewer, Idaho Power Company, Cox Communications, Syringa Networks and Intermountain Gas. No responses have been received by the public utilities.

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

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

Transportation and Circulation Goal I., “To promote the safe and efficient

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

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

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

The Walnut Street right-of-way is at the eastern edge of the Townsite Overlay adjacent to the Union Pacific Rail Road right-of-way (now owned by ITD), a portion of which includes Fifth Avenue. The Hearing Examiner recommends that if the right-of-way is vacated that the minimum amount of right-of-way be vacated in order to still provide opportunities for public access and future connectivity to the east and to the Fifth Avenue easement. Vacation of 14 feet of right-of-way (28 feet total), would add a total of 1,030 square feet which would allow for the creation of two approximately 6,020 square foot lots.

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

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

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

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

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(28 feet total), would add a total of 1,030 square feet which would allow for the creation of two approximately 6,020 square foot lots.

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

Signed this 29 day of Aug, 2008.

  
Bernie Johnson, Hearing Examiner, City of Hailey

Attest:

  
Becky Mead, Deputy Clerk, City of Hailey



**Beth Robrahn**

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**From:** Bill Campbell [Bill@campbellconsult.com]  
**Sent:** Wednesday, September 10, 2008 10:13 AM  
**To:** beth.robahn@haileycityhall.org  
**Subject:** Walnut street, blocks 104-105

Beth:

Thanks for explaining the Walnut Street agenda item to me for the upcoming public hearing/Hailey City Council meeting to me. I support the Hearing Examiner's recommended denial of this application.

Regards,  
Bill

William B. Campbell  
Registered Principal, RJFS  
Campbell Consulting Services, Inc./  
Raymond James Financial Services  
Member, FINRA/SIPC  
www.campbellconsult.com <<http://www.campbellconsult.com/>>  
111 N. First Ave, Suite 2J  
Hailey, Idaho 83333  
ph: 1-866-757-4015  
fax: 208-578-7996

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Notice: please do not transmit orders and/or instructions regarding Raymond James account(s) by email.

**RECEIVED**

SEP 11 2008

*MHC*

9/11/2008

To; City of Hailey  
Subject; Right of Way Abandonment. Walnut St. Blocks 104, 105, County  
Property

From; Larry Lofswold---306 South 4<sup>th</sup> St.

To Hearing Personnel,

I am against this proposal. Everyone that owns property in the city should be granted the same privilege if this is approved and I don't believe that should or will happen. I was told that the County will try and shoe horn in two low cost housing units onto this piece and that's why they want more land. That's beside the point whoever it is, let's not give away our right of way's. My taxes are high enough in this county for them to get their own land.

Again, do not approve this!!!!!!!

Sincerely

Larry Lofswold

*Larry Lofswold*

*Be able to*

*Put in  
9/22  
council  
packet*

# City of Hailey

115 MAIN STREET SOUTH  
HAILEY, IDAHO 83333  
Planning and Zoning Department

(208) 788-9815  
Fax: (208) 788-2924

September 3, 2008

*Reply / comments  
enclosed*

Dear Property Owner:

The applicant for the agenda item(s) listed below has given City Staff your name and address as a required part of the application. This notice is issued to solicit comment on the matter from owners of nearby property.

The public hearing will be part of the Hailey City Council meeting on Monday, September 22, 2008, at 5:30 p.m. in the upstairs meeting room of Hailey City Hall.

An application by Blaine County for a right-of-way vacation (abandonment) of a portion of a city street. The subject street is Walnut Street, located between Blocks 104 & 105, east of Fourth Avenue and east of the alley. The application would vacate 20 feet of the street to the adjacent property owner to the north and the adjacent property owner to the south. The Hearing Examiner has recommended denial of this application.

Any and all interested persons are invited to attend said hearing or submit their comments in writing to the Hailey City Offices at 115 South Main Street, Hailey, Idaho, 83333. Verbal comments may be time limited at the meeting. Correspondence in excess of two pages must be received by the Planning Department at least 4 days before the public hearing to be entered into the record at the hearing.

For special accommodations to participate in the noticed meeting, please contact Becky Mead at 788-9815 extension 20.

