October 14, 2013

TO: ACHD Board of Commissioners
    Bruce S. Wong, Director

FROM; Dave Serdar, Right-of-Way Supervisor
      Barbara Burton, Senior Right-of-Way Agent

SUBJECT: Authorization and Order of Condemnation
          ACHD Maple Grove Rd., Mapleveland to Springhurst

Property Owner/Address:
                      Becky S. Kawano
                      2015 N. Mountain View Drive, Boise, Idaho 83706

REGULAR AGENDA ITEM – October 23, 2013 Commission Meeting

EXECUTIVE SUMMARY

ACHD Project No: 812012.004 Maple Grove Rd., Mapleveland to Springhurst (“Project”)

ACHD Parcel No: 4

Ada County Assessor: R3046500397

Property Address: 1810 N. Maple Grove Road
                  Boise, Idaho 83704

Property Owner: Becky S. Kawano
                2015 N. Mountain View Drive
                Boise, Idaho 83706
FACTS & FINDINGS

The Maple Grove Rd., Mapleview Dr. to Springhurst Dr., project is a public necessity. The Project consists of upgrading pedestrian ramps as necessary. Construct curb, gutter and 5’ wide attached sidewalk on the east side of Maple Grove from Mapleview to Springhurst to match existing pedestrian facilities, in order to provide pedestrian connectivity and safety for children walking to Morley Nelson Elementary. The Project is included in ACHD’s 2013-2017 Five Year Combined Plan, The Project need, scope and development have been coordinated closely with the City of Boise and with significant public involvement and is located in a manner that is most compatible with the greatest public good and the least private injury.

1. **Property Locations:** The property is located in the City of Boise on the east side of Maple Grove, between Mapleview and Shellie (near Fairview). The property is rectangular in shape and contains approximately 0.80 acres prior to the acquisition by ACHD. The property is currently zoned R-1C, Single Family Residential by the City of Boise, and the highest and best use is residential. See map and legal description attached hereto as Exhibit “A” to the Order of Condemnation.

2. **Property Acquisition:** The property necessary for the project is 1,399 square feet of Fee Simple Right-of-Way and 525 square feet of Temporary easement. The taking of the Property is a public use authorized by law. (See Exhibit “A”, “B” to the Order of Condemnation attached hereto) (“Property”).

3. **Project Schedule:** The “Project” is scheduled to begin construction in Fiscal Year 2014.

4. **Good Faith Negotiations:** ACHD has attempted to negotiate, in good faith, to purchase from the property owner, Becky S. Kawano, the necessary and required Property without success. The property owner has been offered the appraised fair market value for lands, easements and just compensation for damages, if any.

   - January 24, 2013 – A formal offer was sent to the property owner, which included a Summary of Rights of the property owner in accordance with Section 7-711A of the Idaho Code. ($4,220.00)
   - March 1, 2013 – ACHD Right-of-Way Staff contacted Becky Kawano by telephone, discussed concerns (appraisal, driveway).
   - March 21, 2013 – ACHD Right-of-Way Staff contacted Becky Kawano by telephone, discussed converting Permanent Easement to Fee, wants semicircular driveway, and to review the appraisal.
   - April 3 – June 10, 2013 - ACHD Right-of-Way Staff, as well as Project Manager, contacted Becky Kawano by telephone and in person, to address her concerns. ACHD agreed to convert Permanent Easement to Fee, and provide a 16’ driveway opening on the south end. ACHD is unable to accommodate the semicircular driveway, due to space and setback limitations, and offered a concrete pad in lieu of driveway. Becky Kawano still wants semicircular driveway, and more compensation for her property. Becky Kawano stated she would contact an attorney.
June 10, 2013 – ACHD Right-of-Way Staff mailed Final Offer letter, requesting response within 10 days. ($6,016.78)

June 19 – July 31, 2013 – ACHD Right of Way Staff continued to negotiate with Becky Kawano, restating that the semicircular driveway is not a possibility, due to limited space.

August 6, 2013 – Becky Kawano called and left voice message with counter offer of $43,000.00.

August 12-15 negotiations were ongoing and a verbal settlement was reached.

Condemnation was pulled from August 21, 2013 Agenda.

August 29- September 30, 2013-- Changes to documents were made and sent to Ms. Kawano for her and attorney to review.

September 30-August 13, 2013--No response from Becky Kawano.

October 14, 2013--David Serdar ROW Supervisor spoke with Becky Kawano and she said she was trying to get the documents reviewed. No resolution.

The negotiations for the purchase of this parcel have reached an impasse.

In an effort to meet the project schedule for acquiring property necessary for the Project, Staff is presenting for your review and consideration a proposed Order of Condemnation for Property.

FISCAL IMPACTS
Project Delay

POLICY IMPACTS
None

ALTERNATIVES

1. Approve the Order to Condemnation and authorize its execution by the Board of all Commissioners.

2. Do not approve the Order of Condemnation.

RECOMMENDATION

1. Authorize Staff to initiate an action in the Fourth Judicial District to condemn the Property necessary for the public right-of-way for the Project.

2. In accordance with the provisions of Section 7-701 et. seq. and Section 40-1310 of the Idaho Code, the Board of Commissioners declare that the lands sought to be condemned are necessary for a public highway, sign the "Order of Condemnation" for the above-listed
parcel and enter into the minutes of the meeting that the property to be acquired is necessary for a public highway and public use.

3. The Board of Commissioners execute two (2) duplicate originals of the Order of Condemnation for the Property.

**ATTACHMENTS:**

1. Order of Condemnation and Exhibits
   - Exhibit “A” - Fee Acquisition (converted from Permanent Easement) Legal Description
   - Exhibit “B” – Temporary Easement Legal Description
   - Exhibit “C” – Plan Sheets showing access

2. Site Map

3. Vicinity Map

cc: Becky S. Kawano
ORDER OF CONDEMNATION

WHEREAS, based on the facts and findings and other information presented in the Right-of-Way Staff Report dated October 14, 2013, which by this reference is hereby incorporated herein, as supplemented by the presentation of David Serdar, Right-of-Way Supervisor, presented at its regular meeting held on the October 23, 2013 and upon the recommendation of the Director, and being fully advised, the Board of Commissioners of the Ada County Highway District hereby makes the following findings of fact, conclusions and order:

1. The acquisition of public right-of-way for its highways is a public use for which the Ada County Highway District has the power of eminent domain under section 7-701, Idaho Code.

2. The above-designated highway project (hereinafter referred to as the “Project”) is for a public use authorized by law.

3. Property Rights to be acquired – Idaho Code 7-707:
   a. Fee Simple Right-of-Way: The fee simple right-of-way consists of 1,399 square feet. The fee simple right-of-way area is described on Exhibit “A”;
   b. Temporary Easement: The temporary easement consists of 21,450 square feet. The temporary easement area is described on Exhibit “B”;
   d. Access: Physical access control is the same, both before and after the project as depicted on the right-of-way plans Exhibit “C”;
   e. Right of Entry: NONE

Exhibits are attached hereto, and incorporated herein by this reference as if set out in full (hereinafter referred to as the “Property”).

4. The Property is not already appropriated to a public use.

5. The location of the Property sought to be taken by the Ada County Highway District for the Project is most compatible with the greatest public good and the least private injury.
6. The names and addresses of the record title owner(s) of the Property, and any other owner(s) and tenants under long term leases known to the Highway District is set forth below:

Name: Becky S. Kawano
Address: 2015 N. Mountain View Drive
Boise, Idaho 83706

7. The Ada County Highway District commenced negotiations to purchase the Property and, by certified U.S. mail, postage prepaid, addressed to the owner(s) at the address shown in the official records of the Ada County Assessor, on the 24th day of January, 2013 provided the owner(s) with a summary of rights form required by Chapter 7, Title 7, Idaho Code, and on the 24th day of January, 2013 provided the owner(s) with a written offer to purchase the Property and settle any severance and business damage claims related to the acquisition, and on the 24th day of January, 2013 provided the owner(s) with a copy of the appraisal and another summary of rights form. A final purchase offer was sent to the owners on the 10th day of June, 2013. More than thirty (30) days has elapsed since the Ada County Highway District made its initial offer to purchase the Property.

8. The Ada County Highway District, by and through its employees, contractors and agents, has sought in good faith to purchase the Property and property interests described above and to settle with the owner(s), or reputed owner(s) and any other claimants for severance damages, if any, to their remaining property where the Property is a part of a larger parcel, and for damages to any business located thereon which might result from said taking, but the Highway District has been unable to make any reasonable bargain therefore, or reasonable settlement of such damages.
NOW, THEREFORE, IT IS HEREBY ORDERED, AND THIS DOES ORDER, that the Ada County Highway District acquire the Property and property interests hereinafore described through the exercise of its power of Eminent Domain, pursuant to Chapter 7, Title 7, Idaho Code.

Dated this __________ day of October, 2013.

ADA COUNTY HIGHWAY DISTRICT
BOARD OF COMMISSIONERS:

By: __________________________
    Sara M. Baker, President

By: __________________________
    John S. Franden, Vice President

By: __________________________
    Bruce S. Wong, Director

By: __________________________
    Rebecca W. Arnold, Commissioner

By: __________________________
    Mitchell A. Jaurena, Commissioner

By: __________________________
    Jim Hansen, Commissioner

ATTACHMENTS:
    Exhibit “A” – Fee Acquisition (converted from Permanent Easement) Legal Description
    Exhibit “B” - Temporary Easement Legal Description
    Exhibit “C” – Plan Sheets showing access
PARCEL DESCRIPTION

Date: November 02, 2012
ACHD Project No.: 812012.004
Project No.: KM Engineering 12-010
Parcel No.: 4

Parcel 4 Permanent Easement No. 1

A parcel of land being a portion of Lot 3, Garden Subdivision, as recorded in the official records of Ada County, in Plat Book 4 at Page 193, and situated in the SW1/4 of the SW1/4 of Section 1, Township 3 North, Range 1 East, Boise Meridian, City of Boise, Ada County, Idaho and being more particularly described as follows:

Commencing at a brass cap monument marking the southwest corner of said Section 1, thence along the west line of said Section 1 N00°11'41"W a distance of 837.20 feet to a point, from which an aluminum cap monument marking the northwest corner of the SW1/4 (W1/4 corner) of said Section 1 bears N00°11'41"W a distance of 1824.78 feet, thence leaving said west line N89°54'01"E a distance of 25.00 feet to a point on the east line of said Lot 3 and marking the POINT OF BEGINNING;

Thence leaving said east line N89°54'01"E a distance of 8.00 feet to a 5/8 inch rebar;
Thence S00°11'41"E a distance of 174.93 feet to a 5/8 inch rebar marking the northwest corner of Lot 1, Block 1, of Maplevew Cove Subdivision, as recorded in the official records of Ada County, in Plat Book 30 at Pages 1878 through 1879;
Thence along the north line of said Maplevew Cove Subdivision S89°55'19"W a distance of 8.00 feet to a 5/8 inch rebar marking the northwest corner of said Maplevew Cove Subdivision;
Thence leaving said north line and along said east line N00°11'41"W a distance of 174.92 feet to the POINT OF BEGINNING;

Said parcel contains 1,399 square feet more or less and is subject to all existing easements and/or rights-of-way of record or implied.

Attached hereto is Exhibit 'B' and by this reference made a part hereof.
EXHIBIT 'B'  
PARCEL 4 PERMANENT EASEMENT NO. 1 
ACHD PROJECT NO. 812012.004 

A PORTION OF LOT 3, GARVERDALE SUBDIVISION, AND 
SITUATED IN THE SW1/4 OF THE SW1/4 OF SECTION 1, 
TOWNSHIP 3 NORTH, RANGE 1 EAST, BOISE MERIDIAN, 
CITY OF BOISE, ADA COUNTY, IDAHO. 

2012
PARCEL DESCRIPTION
Date: August 2, 2013
ACHD Project No.: 812012.004
Project No.: KM Engineering 12-010
Parcel No.: 4

Parcel 4 Temporary Easement

A parcel of land being a portion of Lot 3, Gaverdale Subdivision, as recorded in the official records of Ada County, in Plat Book 4 at Page 193, and situated in the SW1/4 of the SW1/4 of Section 1, Township 3 North, Range 1 East, Boise Meridian, City of Boise, Ada County, Idaho and being more particularly described as follows:

Commencing at a brass cap monument marking the southwest corner of said Section 1, thence along the west line of said Section 1 N00°11'41"W a distance of 837.20 feet to a point, from which an aluminum cap monument marking the northwest corner of the SW1/4 (W1/4 corner) of said Section 1 bears N00°11'41"W a distance of 1824.78 feet;
Thence leaving said west line, N89°54'01"E a distance of 33.00 feet to a 5/8-inch rebar on the east right-of-way line of N. Maple Grove Road and marking the POINT OF BEGINNING.

Thence leaving said east right-of-way line, N89°54'01"E a distance of 3.00 feet to a point;
Thence S00°11'41"E a distance of 174.93 feet to a point on the north line of Lot 1, Block 1, of Mapleview Cove Subdivision, as recorded in the official records of Ada County, in Plat Book 30 at Pages 1878 through 1879;
Thence along the north line of said Lot 1, Block 1, S89°55'19"W a distance of 3.00 feet to a 5/8 inch rebar marking the northwest corner of said Lot 1, Block 1;
Thence leaving said north line and along said east right-of-way line, N00°11'41"W a distance of 174.93 feet to the POINT OF BEGINNING

Said parcel contains 525 square feet more or less and is subject to all existing easements and/or rights-of-way of record or implied.
PARCEL 4 TEMPORARY EASEMENT
ACHD PROJECT NO. 812012.004

A PORTION OF LOT 3, GARVERDALE SUBDIVISION, AND
SITUATED IN THE SW1/4 OF THE SW1/4 OF SECTION 1,
TOWNSHIP 3 NORTH, RANGE 1 EAST, BOISE MERIDIAN,
CITY OF BOISE, ADA COUNTY, IDAHO.
2013

1810 N. MAPLE GROVE RD.

LOT 1, BLOCK 1
MAPLEVIEW COVE SUBDIVISION

LEGEND

NEW RIGHT-OF-WAY LINE
SECTION LINE
EXISTING PARCEL LINE
EASEMENT LINE
TIE LINE
CALculated POINT
FOUND 5/8 INCH REBAR
FOUND BRASS CAP MONUMENT
FOUND ALUMINUM CAP MONUMENT
POINT OF BEGINNING

DATE 8/2/2013
PROJECT: 12-010
<table>
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| Tract 1: 0.012 Acres: 525 Sq Feet: Closure = s00.0520e 0.00 Feet: Precision =1/313681: Perimeter = 356 Feet |
|--------|---------------------------------|
| 001=n89.5401e 3.00 | 003=s89.5519w 3.00 |
| 002=s00.1141e 174.93 | 004=n00.1141w 174.93 |
VICINITY MAP

MAPLE GROVE, MAPLEVIEW TO SPRINGHURST PROJECT 812012.004
PARCEL 4- KAWANO