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

FROM: David Serdar
         Right of Way Supervisor

DATE: March 4, 2015

SUBJECT: Vacation/Exchange of Public Right of Way - Public Hearing and adoption of Resolution Number 2097 for an application to vacate the public right of way on E. Plexi Drive in Trailblazer Subdivision. The parcel of land is located in the Southwest quarter of the Northeast quarter of Section 10, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho.

EXECUTIVE SUMMARY

This action is taken to vacate the public right of way on E. Plexi Drive in the Trailblazer Subdivision. The parcel of land is located in the Southwest quarter of the Northeast quarter of Section 10, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho.

FACTS & FINDINGS

1. ACHD received a petition and application for the vacation of the above-referenced right of way from Hawkins Companies Commercial Developers, on behalf of Patriot Capitol Partners (Attachment 1).

2. This vacation of E. Plexi Drive is necessary because the entire Trailblazer Subdivision plat is going to be vacated. (The vacation of the plat does not remove ACHD’s ownership or interest in the right of way. Therefore, it is preferred to have the right of way vacated prior to the vacation of the plat.)

3. The area being proposed for the portion of right of way to be vacated encompasses approximately 80,134 sf of land, more or less. (Attachment 2).

4. The plat vacation is taking place because the number of parcels created through this subdivision process, nine (9), is not enough, under the current market conditions to carry the costs of the requirements that were imposed in the subdivision process. The developer wishes to vacate the plat. In order to do so the vacation of the road is necessary. The road has never been built.
5. As required by Idaho Code, section 40-1309 a public hearing is to be held, of which hearing notice shall be published in accordance with the provisions of section 40-206.

6. Notice of the public hearing is being published in the Idaho Statesman on March 3rd, 4th, and March 11th, 2015, with the last date of publication at least five (5) days before the hearing.

7. In accordance with Idaho Law and ACHD policy, comments were requested from the following public and private agencies and public utilities, regarding their plans for the area of the proposed vacation. In addition, ACHD staff has been notified and comments were requested concerning the requested vacation.

   A. ACHD Staff comments:
      
      No comments

   B. The following agencies had no response:
      
      Qwest
      Intermountain Gas Company
      Boise City Clerk
      Boise City Public Works
      Boise City Parks Department
      Boise Project Board of Control
      Boise City Canal Company
      Bench Sewer District
      Integra Telecom
      Cable One Television
      Time Warner Telecom
      Chevron Pipeline
      AT & T Communications
      Boise Warm Springs Water District
      Ada County Development Services
      American Fiber Systems

   C. The following agencies responded and had no objection:
The Boise Fire Department did not support the vacation as E. Plexi Dr. is the access to existing platted lots, and an existing emergency access easement. ACHD replied letting the Fire Department know that the vacation of the right of way and the vacation of the Trailblazer Subdivision plat would be recorded simultaneously; therefore, the Fire Department is now in agreement with the vacation.

Idaho Power Company

It is requested that the applicant, adjacent property owners, submit an Idaho Power Application for Release of Easement Form.

8. There is no access to Federal or State lands or waters that will be denied if the requested vacation is approved.

9. On February 12, 2015 a letter was sent out notifying all the property owners within 300 feet of the requested vacation of the public hearing date.

10. The public hearing for the vacation and abandonment of the above referenced public Right of Way will be conducted on March 18, 2015.

11. Attached for Commission review and consideration is Resolution Number 2097 (Attachment 3).

12. Approval of the vacation and abandonment is subject to retention of the public and private utility easements, drainage easements, irrigation easements, and/or other easements of record or not of record or in use upon or under said described public right of way and/or the provisions for the relocation or replacement of existing facilities.

13. Costs associated with relocation or replacement of existing easements and facilities shall be borne by the applicant with approval of the applicable utility or agency.

FISCAL IMPACT

1. Required application fee of $1000.00 was paid by the applicant.
2. Because the applicant originally dedicated the land to the District, our policy # 4002.4.9, section c, on page 4000-5 of the policy manual does not require payment for the vacation.

POLICY IMPLICATIONS

The public hearing and the vacation procedures were accomplished according to current ACHD policies.

RECOMMENDATIONS

Staff recommends that the Board of Commissioners approve and sign Resolution Number 2097 and the president of the board sign the quitclaim deed (Attachment 4) to vacate the public right of way. This action is taken to vacate the public right of way on E. Plexi Drive in the Trailblazer Subdivision. The parcel of land is located in the Southwest quarter of the Northeast quarter of Section 10, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho.

ATTACHMENTS:

1. Application for vacation
2. Depiction of proposed vacation parcel
3. Resolution Number 2097
4. Quitclaim Deed to Patriot Capitol Partners, LLC

cc: Right of Way File

Hawkins Companies Commercial Developers
Attn: Brandon Whallon at BWhallon@hcollc.com
September 5, 2014

Applicant
Patriot Capitol Partners LLC
855 Broad Street, STE 300
Boise, ID 83702

Representative
Brandon Whallon
208.908.5576
BWhallon@hcollc.com

Statement of Reasons
The subdivision, as approved by ADA County in 2013, has many on-site improvement requirements, including, but not limited to: ADCH roadway; emergency service vehicle access road; community sewage disposal system; lighting; irrigation and stormwater retention ponds.

The number of parcels created through this subdivision process, nine (9), is not enough, under current market conditions, to carry the costs of the requirements that were imposed in the subdivision process.

At this time, Patriot Capitol Partners LLC desires to vacate the Trailblazer Subdivision plat, and enter into a comprehensive planning process with the City of Boise. That process will identify a coordinated roadway network, and extention of city services (water, sewer and storm), and will also consider including this property into the City of Boise Area of Impact. Upon inclusion to the City of Boise Area of Impact, Patriot Capitol Partners LLC will work with neighbors, and the City of Boise, to consider annexation and extention

Plat Showing Area of Right-of-Way which is subject of the Vacation Application

attachment image
Description of how the applicant proposes the right of way to be vacated.
Patriot Capitol Partners LLC is the owner of all properties contained within the Trailblazer Subdivision, so we propose that all of the areas required to be dedicated to ACHD for roadway; drainage and utility easements be vacated, and conveyed back to Patriot Capitol Partners LLC for future subdivision alignment considerations.
E. PLEXI DRIVE
RIGHT-OF-WAY TO BE VACATED

East Plexi Drive as shown and dedicated to the public on the plat of Trailblazer Subdivision, which was recorded in Ada County on December 20, 2013 in Book 106, Page 14613 through 14617, Instrument No. 113135465, and lying in the Southwest quarter (SW1/4) of the Northeast quarter (NE1/4) of Section 10, Township 2 North, Range 3 East, B.M.

PREPARED BY: TODD R. WAITE P.L.S.
East Plexi Drive Vacation

- East Plexi Drive Vacation
- Approximately 80,134 Sq. Ft.
- Trailblazer Subdivision

2013 Ortho
1 inch = 600 feet
RESOLUTION NUMBER 2097

AUTHORIZING AN ABANDONMENT/VACATION OF PUBLIC RIGHT OF WAY AND THE EXCHANGE OF LAND BY AND BETWEEN THE ADA COUNTY HIGHWAY DISTRICT AND Patriot Capitol Partners, LLC WITH OTHER CONSIDERATIONS BETWEEN THE PARTIES.

WHEREAS, by its Resolution Number 2091 adopted and approved at its regular meeting held on February 11, 2015, the Ada County Highway District Commission, in accordance with the requirements of Idaho Code, section 40-1309 and 40-203, found that the right of way that is located in Section 10, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho, and more particularly described in Exhibit “A” hereinafter “subject public right of way”) was no longer useful to ACHD, and set a public hearing before the Commission for 12:00pm, on March 18, 2015, at which time any person could appear to show cause why the subject public right of way should not be vacated; and

WHEREAS, in accordance with Idaho Code, sections 40-203 and 40-1309, the Commission does hereby make the following findings of fact and conclusions of law:

FINDINGS OF FACT:

1. Date of Application: September 5, 2014 with ACHD receiving it from the applicant on January 7, 2015.

2. Upon the filing of a petition by the Petitioner for the abandonment/vacation of the subject public right of way, the following organizations and agencies were notified on January 14, 2015:

   A. Ada County Highway District Staff members;

   B. All appropriate local agencies and utilities were contacted and comments requested.

3. On February 11, 2015 a public hearing date was set by the Board of Commissioners for March 18, 2015.

4. Following the filing of the petition for the abandonment/vacation, property owners within 300 feet of the subject right of way were notified by certified mail on February 12, 2015, of the time, date and place of the public hearing.

5. In accordance with Idaho law, a Notice of Public Hearing was published in the Idaho Statesman a daily newspaper published in Ada County, Idaho, on the 3rd, 4th, and 11th of March, 2015, and an affidavit of publication was received by the Ada County Highway District and is on file in the office of the Right of Way and Development Services Department.

6. Any and all comments received from the January 14, 2015 notification of Ada County Highway District Staff members and all applicable local agencies are on file in the office of the Right of Way and Development Services Department and are included within the Public Hearing staff memo dated March 4, 2015.
7. Any and all comments, received from those property owners of real property within 300 feet of the subject right of way are on file in the office of the Right of Way and Development Services Department and are included within the Public Hearing staff memo dated March 4, 2015.

8. At the public hearing on Wednesday, March 18, 2015, oral and or written testimony was presented and at the conclusion of which, President Jim D. Hansen, closed the public hearing for testimony. After discussion, the Commission found the abandonment/vacation and exchange was in the public’s best interest and voted to approve the abandonment/vacation and exchange of the subject public right of way for the Exchange Parcel as an even exchange in value.

CONCLUSIONS OF LAW:

It is the opinion of the Board of Commissioners of the Ada County Highway District, per President Jim D. Hansen, and Commissioners, Sara M. Baker, Rebecca W. Arnold, Kent Goldthorpe, and Paul Woods, that the subject right of way is no longer needed by the Ada County Highway District and that it is the best interest of the traveling public, the adjacent property owners, and the Ada County Highway District that the abandonment/vacation of the right of way that is located in Section 10, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho, and more particularly described in Exhibit “A” be approved and the subject public right of way abandoned/vacated. Subject to the following:

Retention of public and private utility easements, drainage easements, irrigation easements and/or other easements of record or not of record or in use upon or under said described public right of way and/or the provisions for the relocation or replacement of existing facilities.

NOW, THEREFORE, BE IT RESOLVED, pursuant to Idaho Code section 40-203 and 40-1309 that the proposed abandonment/vacation of the public right of way is hereby authorized, and ACHD staff is hereby directed to negotiate a contract of sale with Petitioner in the amount of Zero Dollars ($0.00) and that the President of the Commission and the Director be, and are hereby, authorized and directed to execute such contract of sale on behalf of the Ada County Highway District and an appropriate Quitclaim Deed for the abandoned/vacated subject public right of way and such closing instructions and other instruments and documents as are required by such contract of sale, including the following, and deliver the same, together with the deed to the closing agent:

1. Subject to retention of public and private utility easements, drainage easements, irrigation easements and/or other easements of record or not of record or in use upon or under said described public right of way and/or the provisions for the relocation or replacement of existing facilities.

Costs associated with relocation or replacement of existing easements and facilities shall be borne by the Petitioner with approval of the applicable utility or agency.
BE IT FURTHER RESOLVED, that only upon the District's receipt of full payment of all applicable charges, costs and fees and any other amounts owning and the deed for the Exchange Parcel from the Petitioner within ninety (90) days of the date of approval, shall this Resolution be recorded in the county records.

BE IT FURTHER RESOLVED, that if District has not received full payment of all applicable charges, costs and fees and any other amounts owing and the deed for the Exchange Parcel from the Petitioner within one hundred twenty (120) days of the date of approval, the Board of Commissioners may, at a public hearing and upon thirty (30) days notice of said public hearing to the Petitioner by certified mail and adjacent property owners by regular mail, declare the abandonment/vacation and exchange void and issue a resolution declaring the same.

ADOPTED AND APPROVED by the Board of Commissioners of the Ada County Highway District at its regular meeting held on this ____, day of _____________________, 2015.

ADA COUNTY HIGHWAY DISTRICT
BOARD OF COMMISSIONERS

By: ________________________________
   JIM D. HANSEN, President

By: ________________________________
   SARA M. BAKER, Vice President

By: ________________________________
   REBECCA W. ARNOLD, Commissioner

By: ________________________________
   KENT GOLDTHORPE, Commissioner

By: ________________________________
   PAUL WOODS, Commissioner

ATTEST:

_____________________________
Bruce S. Wong, Director
STATE OF IDAHO

) ss.
County of Ada

On this ___ day of _______________________ 2015, before me, a notary public in
and for said State, personally appeared President, Jim D. Hansen, Commissioners Sara M.
Baker, Rebecca W. Arnold, Kent Goldthorpe, and Paul Woods, known to me to be the Board of
Commissioners, respectively, of the Ada County Highway District and that they executed this
instrument on behalf of said Highway District for the purposes therein stated.

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 the State of Idaho
Residing at Boise, Idaho
My Commission Expires: ________________

The Ada County Highway District (ACHD) is committed to compliance with Title VI of the Civil Rights Act of 1964 and
related regulations and directives. ACHD assures that no person shall on the grounds of race, color, national origin,
gender, disability or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to
discrimination under any ACHD service, program or activity.
QUITCLAIM DEED CONVEYING PUBLIC RIGHT OF WAY

THIS INDENTURE, made this ____ day of ________________, 2015, by and between Ada County Highway District, a body politic and corporate of the State of Idaho, the "GRANTOR", and the Patriot Capitol Partners, LLC, the "GRANTEE";

W I T N E S S E T H:

FOR VALUE RECEIVED, GRANTOR does by these presents convey, remise, release and forever quitclaim unto GRANTEE all right, title and interest of GRANTOR in the real property situated in the COUNTY OF ADA, STATE OF IDAHO, as more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof (hereinafter the "Right of Way").

SUBJECT TO easements of record, statutory rights of utilities and districts to be in the public right-of-way which rights are being exercised in the Right of Way as of the date of this Indenture (for sewer, gas, water or similar pipelines and their appurtenances, for electrical and telephone lines and for irrigation and drainage ditches), and subject to licenses for telecommunications lines which are in place in the Right of Way as of the date of this Indenture. GRANTEE is responsible for costs of any relocation or replacement of such pipelines, lines and ditches.

TO HAVE AND TO HOLD the same unto the GRANTEE and to Its successors and assigns forever.

The current address of GRANTEE is:

Patriot Capitol Partners, LLC
855 Broad Street, Ste. 300
Boise, ID 83702

Version: 5/20/08
Resolution No.: 2097  
Township/Range/Section: T2N, R3E, Sec 10

IN WITNESS WHEREOF, this Quitclaim Deed has been duly executed by and on behalf of GRANTOR this ____ day of _________________, 2015.

ADA COUNTY HIGHWAY DISTRICT

By: ___________________________  
Jim D. Hansen, President

Attest:

_________________________  
Bruce S. Wong, Director

STATE OF IDAHO )
) ss.
County of Ada )

On this ___ day of _________________, 2015, before me, a notary public in and for said State, personally appeared, Jim D. Hansen, known or identified to me to be the President of the Board of Commissioners of the Ada County Highway District, and Bruce S. Wong, known or identified to me to be the Director of the Ada County Highway District, the persons who executed this instrument on behalf of said Highway District for the purposes therein stated.

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 the State of Idaho  
Residing at _____________________, Idaho  
My Commission Expires: ___________________