January 26, 2016

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

FROM: Dave Serdar, Right of Way Supervisor

Subject: Authorization and Order of Condemnation
         ACHD 36th Street/Hill Rd./Catalpa Dr. Project

Property Owner/Address:
Bruce A. & Sandra K. White, husband and wife
3626 W. Hill Rd., Boise, ID 83703

REGULAR AGENDA ITEM February 10, 2016 Commission Meeting

EXECUTIVE SUMMARY

ACHD Project No: 302044 – 36th St./Hill Rd./Catalpa Dr. ("Project")

ACHD Parcel No: 2

Ada County Assessor: R5601000030

Property Address: 3626 W. Hill Rd.
                   Boise, Idaho 83703

Property Owner: Bruce & Sandra White
                3626 W. Hill Rd.
                Boise, ID 83703
FACTS & FINDINGS

The 36th St. and Hill Rd. and Catalpa Dr. project is a public necessity and will help relieve congestion and improve circulation in the surrounding network. The Project was first included in ACHD’s Capital Improvements Plan in 2003, and the need was reaffirmed in each subsequent update. The Project was first identified as a need in ACHD’s 2000-2004 Five Year Combined Plan (construction was initially programmed in preliminary development) and was further reaffirmed in each annual update with a construction year of 2016. The Project need, scope and development have been coordinated closely with the City of Boise and with significant public involvement.

1. **Property Location:** The property is located in the City of Boise on the north side of Hill Road, west of 36th Street, near the Hill Rd./36th St./Catalpa Dr. intersection. The property is irregular in shape and contains .583 acres (per project plans) prior to the acquisition by ACHD. The property is currently located within a Multi-Family Residential Zoning District (R-3D) of Boise City. The highest and best use is residential use. (See aerial maps and legal description attached hereto as Exhibit “A” to the Order of Condemnation)

2. **Property Acquisition:** The property necessary for the project is 2,274 square feet of Fee Simple Right-of-Way, and 1,416 square feet of Temporary Easement. The taking of the Property is a public use authorized by law. (See Exhibit “A”, “B”, and “C” to the Order of Condemnation attached hereto) (“Property”).

3. **Project Schedule:** “Project” construction began in January, 2016.

4. **Good Faith Negotiations:** ACHD has attempted to negotiate, in good faith, to purchase from the property owners, Bruce & Sandra White, the necessary and required Property. The property owner has been offered the appraised fair market value for lands, easements and just compensation for damages, if any. The owners accepted the offer but have been unable to get the mortgage company responsible for the loan to respond. This recommendation for friendly condemnation is required in order to purchase of the property with a clear title.

   • January 27, 2015 – A formal offer was sent to the property owner, by certified mail, which included a Summary of Rights of the property owner in accordance with Section 7-711A of the Idaho Code.

   • January 29, 2015 – The seller called to confirm receipt of offer and inquired about payment.

   • January 30, 2015 – The seller called to request we remove the easement from the exhibit on the Warranty Deed to which we agreed.

   • February 10, 2015 – Seller called to confirm they could come into office to sign documents and did so.

   • The negotiations for the purchase of this parcel were successful. However, after several contacts with the mortgage companies, the process has reached an impasse. The mortgage company had sold the loan. Each mortgage company claims the other owns the
loan. As a result the property owner has asked ACHD to pursue a Condemnation Action to clear title.

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**
None

**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 executes two (2) duplicate originals of the Order of Condemnation for the Property.
ATTACHMENTS:

1. Order of Condemnation and Exhibits
   - Exhibit “A” – Right-of-Way Requirement Legal Description
   - Exhibit “B” – Temporary Easement Legal Description
   - Exhibit “C” – Plan Sheets showing access

2. Site Map

3. Vicinity Map

cc: Bruce A. & Sandra K. White
ORDER OF CONDEMNATION

WHEREAS, based on the facts and findings and other information presented in the Right-of-Way Staff Report dated January 28, 2016 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 February 10, 2016 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 requirement area consists of 2,274 square feet. The acquisition area is described on Exhibit “A”;
   b. Permanent Easement: NONE;
   c. Temporary Easement: The temporary easement consists of 1,416 square feet. The temporary easement area is described on Exhibit “B”;
   d. Access: Physical access control is altered 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: Bruce & Sandra White
Address: 3626 W. Hill Rd.
Boise, Idaho 83703

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 27th day of January, 2015 provided the owner(s) with a summary of rights form required by Chapter 7, Title 7, Idaho Code, and on the 27th day of January, 2015 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 27th day of January, 2015 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 27th day of January, 2015. 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 and the title company tasked with closing escrow have been unable to make contact with the lending company responsible for the loan and are unable to clear the title without cooperation from said party.
NOW, THEREFORE, IT IS HEREBY ORDERED, AND THIS DOES ORDER, that the Ada County Highway District acquire the Property and property interests hereinabove described through the exercise of its power of Eminent Domain, pursuant to Chapter 7, Title 7, Idaho Code.

Dated this __________ day of February, 2016.

ADA COUNTY HIGHWAY DISTRICT
BOARD OF COMMISSIONERS:

By: __________________________
   Kent Goldthorpe, President

By: __________________________
   Paul Woods, Vice President

By: __________________________
   Rebecca W. Arnold, Commissioner

By: __________________________
   Sara M. Baker, Commissioner

By: __________________________
   Jim D. Hansen, Commissioner

ATTACHMENTS:

- Exhibit “A” – Right-of-Way Requirement Legal Description
- Exhibit “B” – Temporary Easement Legal Description
- Exhibit “C” – Plan Sheets showing access
Ada County Highway District
Project No. 302044
36th Street, Hill Road and Catalpa Drive

*Parcel 2*

**Right-of-Way Requirement Description**

A parcel located in the SE ¼ of the NE ¼ of Section 29, Township 4 North, Range 2 East, Boise Meridian, and being a part of Lots 27 and 28 of McIntyre’s First Subdivision as shown in Book 5 of Plats at Page 203 in the office of the Recorder, Ada County, Idaho, more particularly described as follows:

Commencing at a brass cap monument marking the southeasterly corner of said SE ¼ of the NE ¼, from which a brass cap monument marking the northeasterly corner of the NE ¼ of said Section 29 bears N 0°50’22” E a distance of 2653.69 feet;

Thence N 0°50’22” E along the easterly boundary of said SE ¼ of the NE ¼ a distance of 327.07 feet to a point;

Thence leaving said easterly boundary N 89°09’38” W a distance of 290.35 feet to a point on the northeasterly right-of-way of Hill Road and the POINT OF BEGINNING;

Thence S 53°10’23” E along said northeasterly right-of-way a distance of 123.00 feet to a brass cap right-of-way monument;

Thence continuing along said northeasterly right-of-way S 46°23’10” E a distance of 44.34 feet to a point;

Thence leaving said northeasterly right-of-way N 26°43’50” E a distance of 27.03 feet to a point;

Thence N 57°38’19” W a distance of 54.37 feet to a point;

Thence N 81°03’13” W a distance of 7.63 feet to a point;

Thence N 57°39’07” W a distance of 101.61 feet to a point;

Thence S 37°12’37” W a distance of 5.64 feet to the POINT OF BEGINNING.

This parcel contains 2,274 square feet (0.052 acres) and is subject to any easements existing or in use.

Prepared by: Glenn K. Bennett, PLS
Civil Survey Consultants, Incorporated
September 26, 2014
EXHIBIT MAP TO ACCOMPANY RIGHT-OF-WAY REQUIREMENT AND EASEMENT DESCRIPTIONS AND BEING A PART OF LOTS 27 AND 28 OF McIntyre's FIRST SUBDIVISION LOCATED IN THE SE 1/4 OF THE NE 1/4 OF SECTION 29, TOWNSHIP 4 NORTH, RANGE 2 EAST, BOISE MERIDIAN, ADA COUNTY, IDAHO.
Ada County Highway District
Project No. 302044
36th Street, Hill Road and Catalpa Drive

• Parcel 2 •
Temporary Easement Description

A temporary easement located in the SE ¼ of the NE ¼ of Section 29, Township 4 North, Range 2 East, Boise Meridian, and being a part of Lots 27 and 28 of McIntyre’s First Subdivision as shown in Book 5 of Plats at Page 203 in the office of the Recorder, Ada County, Idaho, more particularly described as follows:

Commencing at a brass cap monument marking the southeasterly corner of said SE ¼ of the NE ¼, from which a brass cap monument marking the northeasterly corner of the NE ¼ of said Section 29 bears N 0°50’22” E a distance of 2653.69 feet;

Thence N 0°50’22” E along the easterly boundary of said SE ¼ of the NE ¼ a distance of 327.07 feet to a point;

Thence leaving said easterly boundary N 89°09’38” W a distance of 290.35 feet to a point;

Thence N 37°12’37” E a distance of 5.64 feet to the POINT OF BEGINNING;

Thence continuing N 37°12’37” E a distance of 9.85 feet to a point;

Thence S 52°55’28” E a distance of 64.10 feet to a point;

Thence S 58°04’01” E a distance of 64.42 feet to a point;

Thence N 33°09’34” E a distance of 20.32 feet to a point;

Thence S 56°50’26” E a distance of 31.42 feet to a point;

Thence S 26°43’50” W a distance of 21.96 feet to a point;

Thence N 57°38’19” W a distance of 54.37 feet to a point;

Thence N 81°03’13” W a distance of 7.63 feet to a point;

Thence N 57°39’07” W a distance of 101.61 feet to the POINT OF BEGINNING.

This parcel contains 1,417 square feet (0.032 acres) and is subject to any easements existing or in use.

Prepared by: Glenn K. Bennett, PLS
Civil Survey Consultants, Incorporated
January 20, 2016
EXHIBIT MAP TO ACCOMPANY RIGHT-OF-WAY REQUIREMENT AND EASEMENT DESCRIPTIONS AND BEING A PART OF LOTS 27 AND 28 OF McIntyre's FIRST SUBDIVISION LOCATED IN THE SE 1/4 OF THE NE 1/4 OF SECTION 29, TOWNSHIP 4 NORTH, RANGE 2 EAST, BOISE MERIDIAN, ADA COUNTY, IDAHO