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

FROM: David Serdar
Right of Way Supervisor

DATE: October 7, 2016

SUBJECT: Vacation/Abandonment of Public Right of Way - Public Hearing and adoption of Resolution Number 2162 for an application to vacate the alley West of 2351 N. 15th St., located in Section 34, Township 4 North, Range 2 East, Boise Meridian, City of Boise, Ada County, Idaho.

Regular Agenda / Public Hearing for Board of Commissioners meeting October 19, 2016

EXECUTIVE SUMMARY

This action is to vacate the alley West of 2351 N. 15th St., 0.183 acres, more or less.

FACTS & FINDINGS

1. ACHD received a petition and application for the vacation of the above-referenced right of way from Jon Breckon of Breckon Land Design on behalf of Doug Jayo Paramount Parks at Highland, LLC.

2. The area being proposed for the vacation encompasses approximately 0.183 acres, more or less. (Attachment 1).

3. The applicant is requesting this vacation to acquire ground they need to fulfill a requirement of their development application.

4. Idaho Code, section 50-1306A(6) requires that, before vacation can be authorized, a public hearing must be held, with notice published in accordance with Idaho Code, section 40-206, where any person may appear and show cause that the vacation should not occur.

5. Notice of the public hearing was published in the Idaho Statesman on October 4, October 5th and October 12th, 2016, with the last date of publication at least five (5) days before the hearing.
6. 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:
   Requirement of Development application
   Boise City Parks Dept.

B. The following agencies had no response:
   Intermountain Gas Company
   Integra Telecom
   AT&T Communications
   American Fiber Systems
   Qwest
   Cable One Television
   Ada County Development Services
   Time Warner Telecom
   Bench Sewer District
   Boise City Fire Dept.
   Boise City Development Services
   Boise City Canal Company
   Boise City Clerk
   Boise Project Board of Control
   Boise Warm Springs Water District
   Idaho Power
   The following agencies responded and had no objection:
   Nampa & Meridian Irrigation District
   Tesoro Logistics
   United Water

C. The following agencies responded and made comments:

Boise City Public Works-Applicant needs to grant new sewer easement or relocate. Applicant has been notified of this comment.

1. There is no access to Federal or State lands or waters that will be denied if the requested vacation is approved.
2. On September 15, 2016, a letter was sent out notifying all the property owners within 300 feet of the requested vacation of the public hearing date.

3. The public hearing for the vacation and abandonment of the above referenced public Right of Way will be conducted on October 19, 2016.

4. Attachment 2 for Commission review and consideration is Resolution Number 2162.

5. 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.

6. 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

The required application fee of $1000.00 was paid by the applicant. If the Vacation Resolution is adopted, the applicant will be purchasing the property from ACHD at considered value of $43,989.00.

POLICY IMPLICATIONS

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

RECOMMENDATIONS

Staff recommends that the Board of Commissioners adopt and sign Resolution Number 2162 and the president of the board sign the quitclaim deed (Attachment 3) to vacate the alley west of 2351 N. 15th St., located in Section 34, Township 4 North, Range 2 East, Boise Meridian, City of Boise, Ada County, Idaho.

ATTACHMENTS:

1. Depiction of proposed vacation parcel
2. Resolution Number 2162
3. Quitclaim Deed to Paramount Parks at Highlands, LLC

cc: Right of Way File
    Jayo Construction
RESOLUTION NUMBER 2162

AUTHORIZING AN ABANDONMENT/VACATION OF PUBLIC RIGHT OF WAY BY AND BETWEEN THE ADA COUNTY HIGHWAY DISTRICT AND JAYO CONSTRUCTION WITH OTHER CONSIDERATIONS BETWEEN THE PARTIES.

WHEREAS, by its Resolution Number 2162 adopted and approved at its regular meeting held on October 19, 2016, the Ada County Highway District Commission, in accordance with the requirements of Idaho Code, section 40-1309 and 40-203, found that the Alley West of 2351 N. 15th St., located in the Section 34, Township 4 North, Range 2 East, Boise Meridian, City of Boise, 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 12:00 pm, on October 19, 2016, 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: August 3, 2016. The application fee was paid on August 3, 2016.

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 August 12, 2016:

   A. Ada County Highway District Staff members;

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

3. On September 14, 2016 a public hearing date was set by the Board of Commissioners for October 19, 2016.

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 September 15, 2016, 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 4th, 5th, of October and the 12th of October, 2016, and a confirmation email of publication was received by the Ada County Highway District and is on file in the office of the Right of Way Department.
6. Any and all comments received from the September 12, 2016 notification of Ada County Highway District Staff members and all applicable local agencies are on file in the office of the Right of Way Department and are included within the Public Hearing staff memo dated October 6, 2016.

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 Department and are included within the Public Hearing staff memo dated October 6, 2016.

8. At the public hearing on Wednesday, October 19, 2016, oral and or written testimony was presented and at the conclusion of which, President Kent Goldthorpe, closed the public hearing for testimony. After discussion, the Commission found the abandonment/vacation was in the public’s best interest and voted to approve the abandonment/vacation. The Value of the Right-of-Way to be vacated is considered to be $43,989.00.

CONCLUSIONS OF LAW:

It is the opinion of the Board of Commissioners of the Ada County Highway District, per President Kent Goldthorpe, and Commissioners; Paul Woods, Rebecca W. Arnold, Sara M. Baker, and Jim D. Hansen, 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 Alley West of 2351 N. 15th St., located in Section 34, Township 4 North, Range 2 East, Boise Meridian, City of Boise, 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 Forty Three Thousand Nine Hundred Eighty Nine Dollars and Zero Cents ($43,989.00) 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 owing 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 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 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 ________________, 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
ATTEST:

________________________

Bruce S. Wong, Director

STATE OF IDAHO  
    )
    ) ss.
County of Ada  

On this _____ day of ____________________, 2016, before me, _________________________ a notary public in and for said State, personally appeared President, Kent Goldthorp, Commissioners, Paul Woods, Rebecca W. Arnold, Sara M. Baker, and Jim D. Hansen, and 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: ________________

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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.
Exhibit “A”

ALLEY DESCRIPTION

AN ALLEY LYING IN BLOCK 7, CYR’S SUBDIVISION AND
WITHIN THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4
AND THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION
34,
TOWNSHIP 4 NORTH, RANGE 2 EAST, BOISE
MERIDIAN, CITY OF BOISE, ADA COUNTY, IDAHO

An Alley lying in Block 7, Cyr’s Subdivision and within the Northeast 1/4 of the Southwest 1/4
and the Southeast 1/4 of the Northwest 1/4 of Section 34, Township 4 North, Range 2 East, Boise
Meridian, City of Boise, Ada County, Idaho, being more particularly described as follows;

A. Commencing at the found Aluminum Cap marking the Center-West 1/16th Corner of Section
34 from which the found Brass Cap marking the Center of Section 34 bears South 89°20'38" East, a distance of 1326.13 feet;

B. thence along the East – West Center Line of Section 34 South 89°20'38" East, a distance of
376.69 feet to the northeast corner of Lot 1, Block 7, Cyr’s Subdivision, the TRUE POINT OF
BEGINNING;

C. thence along the westerly Right-of-Way of the Alley North of Block 7 Cyr’s Subdivision North
00°18'38" East, a distance of 115.14 feet to a set 5/8 inch rebar with plastic cap stamped, "FLSI
PLS 13934" marking an angle point;

D. thence continuing said Right-of-Way, North 32°14'22" East, a distance of 90.58 feet to the
northerly end of the Alley;

E. thence along the said northerly end, South 57°41'10" East, a distance of 16.00 feet to a found 5/8
inch rebar with plastic cap stamped, "BSM LS 8022";

F. thence along the easterly Right-of-Way of the Alley the following courses and
distances;

G. South 32°14'22" West, a distance of 77.24 feet to a found 5/8 inch rebar with plastic cap
stamped, "BSM LS 8022";

H. North 89°25'48" East, a distance of 5.44 feet to a found 1/2 inch rebar no cap, set a plastic
cap stamped "FLSIPLS 13934";
Exhibit “A”

I. South 32°18'39" West, a distance of 18.99 feet to a found 5/8 inch rebar with no cap, set a plastic cap stamped "FLSI PLS 13934";

J. South 00°18'38" West, a distance of 102.06 feet to a found 5/8 inch rebar with plastic cap stamped "BSM LS 8022" marking its intersection with the East – West Center Line of Section 34;

K. thence along said Center Line North 89°20'38" West, a distance of 4.00' to a found 5/8 inch rebar with no cap (set a plastic cap stamped "FLSI PLS 13934") marking the northeast corner of Block 7, Cyr's Subdivision, also being the easterly Right-of-Way of the Platted Alley;

L. thence along said Right-of-Way South 00°23'39" West, a distance of 397.19 feet to a found 5/8 inch rebar with plastic cap stamped "BSM LS 8022" on the northerly Right-of-Way of Hill Road;

M. thence along said Right-of-Way North 54°34'22" West a distance of 14.66 feet to a set 5/8 inch rebar with plastic cap stamped "FLSI PLS 13934" marking its intersection with the westerly Right-of-Way of the Platted Alley and the Southeast Corner of Lot 14, Cyr's Subdivision;

N. thence along said Right-of-Way North 00°23'39" East, a distance of 388.83 feet to the POINT OF BEGINNING.

Containing 7,998 sq. ft. (0.183 acres) more or less.
This description is intended to describe the entire Alley along the easterly boundary of Block 7, Cyr's Subdivision and the northerly (un-platted) continuation thereof to its end.
Subject to existing easements as any may exist, of record and not of record. Any modification of this description shall render it null and void.

See the attached "Alley Vacation Exhibit".

Fox Land Surveys, Inc.
Thomas A. Judge, PLS 13934

END OF DESCRIPTION
QUITCLAIM DEED CONVEYING PUBLIC RIGHT OF WAY

THIS INDENTURE, made this ___ day of ______________, 2016, Ada County Highway District, a body politic and corporate of the State of Idaho, the "GRANTOR", and PARAMOUNT PARKS AT HIGHLAND, LLC, an Idaho limited liability company, the "GRANTEE";

WITNESSETH:

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:

Paramount Parks at Highland LLC
10564 W. Business Park Ln.
Boise, ID 83709
IN WITNESS WHEREOF, this Quitclaim Deed has been duly executed by and on behalf of GRANTOR this ______ day of ____________________, 2016.

ADA COUNTY HIGHWAY DISTRICT
Kent Goldthorpe

By ____________________________
President

Attest:

__________________________________
Bruce S. Wong, Director

State of Idaho  )
) ss.
County of Ada  )

On this ______ day of ____________________, in the year 2016, before me, ____________________________ a Notary Public in and for the State of Idaho, personally appeared Kent Goldthorpe, 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: ____________
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