October 11, 2017

TO: ACHD Board of Commissioners & Bruce S. Wong, Director
FROM: David Serdar, Right of Way Supervisor
SUBJECT: Vacation of Public Right of Way - Public Hearing and adoption of Resolution Number 2204 for an application to vacate a portion of Right-of-Way known as Fairview Avenue located in Section 6, Township 3 North, Range 2 East, Boise Meridian, City of Boise, Ada County, Idaho.

Staff Report for October 18, 2017 Commission Meeting – Regular Agenda Item

Executive Summary

This action is to vacate 0.192 acres (8,349 SF) more or less, of Right-of-Way known as Fairview Avenue located in Section 6, Township 3 North, Range 2 East, Boise Meridian, City of Boise, Ada County, Idaho.

Facts & Findings

1. ACHD has negotiated with Westridge Associates Limited Partnership, an adjacent landowner, for property rights necessary to the Fairview Ave. and Cole Rd. Intersection project. ACHD initiated the vacation as a result of these negotiations.

2. The proposed vacation area encompasses 0.192 acres or 8,349 SF, more or less (Attachment 1).

3. Idaho Code, section 50-1306A(6) requires that before a 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 exchange should not be made.

4. Notice of the public hearing was published in the Idaho Statesman on October 3, 4, and 11, 2017 with the last date of publication at least five (5) days before the hearing.

5. In accordance with Idaho Law and ACHD policy, comments were requested from all (24 total) applicable 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:

      None
b. The following agencies responded and had no comment:

Suez
Nampa & Meridian Irrigation District
Century Link

Fiscal Implications

1. There is no application fee as this vacation was initiated by ACHD staff to accommodate the Fairview Ave. and Cole Rd. Intersection Project No. 313035.
2. The vacation is a stipulation of the settlement agreement with Westridge Associates Limited Partnership, as negotiated by ACHD legal department.

Policy Implications

None

Alternatives

1. Adopt and sign Resolution 2204 and execute the attached quitclaim deed to Westridge Associates Limited Partnership.
2. Do not adopt Resolution 2204.

Recommendation

1. Adopt and sign Resolution 2204 and execute the attached quitclaim deed to Westridge Associates Limited Partnership.

Attachment(s):

1. Vicinity and ROW vacation site maps
2. Resolution 2204
3. Quitclaim Deed
Westridge (Fairview) Vacation

Right-of-Way to be Vacated
8349 SF or 0.192 Acres ±

ACHD Right-of-Way

1 inch = 20 feet

This map is intended as a visual reference only.
RESOLUTION NUMBER 2204

AUTHORIZING AN ABANDONMENT/VACATION OF PUBLIC RIGHT OF WAY BY AND BETWEEN THE ADA COUNTY HIGHWAY DISTRICT AND Westridge Associates Limited Partnership, an Idaho limited partnership, WITH OTHER CONSIDERATIONS BETWEEN THE PARTIES.

WHEREAS, by its Resolution Number 2199 adopted and approved at its regular meeting held on September 13, 2017, the Ada County Highway District Commission, in accordance with the requirements of Idaho Code, section 40-1309 and 40-203, found that the public Right-of-Way known as Fairview Avenue located in Section 6, Township 3 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 18, 2017, 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 16, 2017. There was no application fee as this vacation was initiated by ACHD as a stipulation of the settlement agreement negotiated and agreed upon by ACHD legal staff and Westridge Associates Limited Partnership during acquisition for the Fairview Avenue and Cole Road Intersection Project.

2. Upon the filing of a petition by the Petitioner for the abandonment of the subject public right of way, the following organizations and agencies were notified on August 16, 2017:
   
   A. Ada County Highway District Staff members;
   
   B. All appropriate local agencies and utilities were contacted and comments requested.

3. On September 13, 2017 a public hearing date was set by the Board of Commissioners for October 18, 2017.

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 14, 2017, 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 3, 4, and 11 of October, 2017, 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 August 16, 2017 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 11, 2017.

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 11, 2017.

8. At the public hearing on Wednesday, October 18, 2017, oral and or written testimony was presented and at the conclusion of which, President Paul Woods, 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.

CONCLUSIONS OF LAW:

It is the opinion of the Board of Commissioners of the Ada County Highway District, per President Paul Woods, and Commissioners, Sara M. Baker, Rebecca W. Arnold, Jim D. Hansen, and Kent Goldthorpe, 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 public Right-of-Way known as Fairview Ave., located in Section 6, Township 3 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 based upon the preceding findings of fact and conclusions of law, that the proposed abandonment/vacation of the public right of way is hereby authorized, and that the President of the Commission and the Director be, and are hereby authorized and directed to execute, on behalf of the Ada County Highway District, an appropriate Quitclaim Deed for the abandoned/vacated subject public right of way.

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.

ADOPTED AND APPROVED by the Board of Commissioners of the Ada County Highway District at its regular meeting held on this ____, day of _____________, 2017.
ADA COUNTY HIGHWAY DISTRICT
BOARD OF COMMISSIONERS

By: ________________________________
    Paul Woods, President

By: ________________________________
    Rebecca W. Arnold, Vice President

By: ________________________________
    Kent Goldthorpe, Commissioner

By: ________________________________
    Jim D. Hansen, Commissioner

By: ________________________________
    Sara M. Baker, Commissioner

ATTEST:

_____________________________
Bruce S. Wong, Director

STATE OF IDAHO )
                  ) ss.
County of Ada    )

On this _____ day of ______________, 2017, before me, a notary public in and for said State, personally appeared President, Paul Woods, Commissioners, Sara M. Baker, Rebecca W. Arnold, Jim D. Hansen, and Kent Goldthorpe, 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: ______________
PARCEL DESCRIPTION

Project: Fairview Avenue & Cole Road Intersection
Project No.: 313035
Tax No.: S100636300 – Remaining Area from Ada County Highway District
Parcel No.: 3
Date: August 11, 2017
PAGE: 1 of 1

A parcel of land, remaining area after right-of-way requirement, located on the north side of the centerline for Fairview Avenue, situated in the SW ¼ SW ¼ of Section 6, Township 3 North, Range 2 East, B.M., more particularly described as follows:

Commencing at the Southwest corner of said Section 6, monumented with a Brass Cap, from which the South ¼ corner of said Section 6 bears S.88°28'30"E., 2797.69 feet, to a found Brass Cap monument; thence, along the south section line of said Section 6,

A. S.88°28'30"E., 167.22 feet; thence, perpendicular to said south section line.

B. N.01°31'30"E., 51.05 feet, to the new northerly right-of-way line of Fairview Avenue, and the easterly line of a parcel as described in a Warranty Deed recorded January 13, 1997 as Instrument No. 97007554, records of Ada County, Idaho, being the POINT OF BEGINNING; thence, along the said new right-of-way line of Fairview Avenue,

1. N.88°28'18"W., 86.26 feet; thence, continuing along said new right-of-way line,

2. N.49°33'41"W., 40.51 feet, to the new right-of-way line of Cole Road; thence, along said new right-of-way of Cole Road,

3. N.03°27'19"W., 48.66 feet, to the northerly line of said parcel, as described in said Warranty Deed; thence, along the northerly line of said parcel,

4. S.88°28'06"E., 120.44 feet, to the northeasterly corner of said parcel; thence, along the easterly line of said parcel,

5. S.00°19'02"W., 73.93 feet to the POINT OF BEGINNING

CONTAINING 8,349 sq. ft. or 0.192 ac. more or less

SUBJECT TO all Covenants, Rights, Right-Of-Way and Easements of Record.
QUITCLAIM DEED CONVEYING PUBLIC RIGHT-OF-WAY

THIS INDENTURE, made this _______ day of __________________, 201__, ADA COUNTY HIGHWAY DISTRICT, a body politic and corporate of the State of Idaho, the "GRANTOR", and Westridge Associates Limited Partnership, an Idaho limited partnership, 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:

Westridge Associates Limited Partnership
PO Box 4067
Boise, ID 83711
IN WITNESS WHEREOF, this Quitclaim Deed has been duly executed by and on behalf of GRANTOR this _______ day of ___________________, 2017.

ADA COUNTY HIGHWAY DISTRICT

By___________________________

Paul Woods, President

Attest:

_________________________

Bruce S. Wong, Director

State of Idaho     )
) ss.

County of Ada     )

On this _____ day of ____________, in the year 20 17, before me, ____________________________________, a Notary Public in and for the State of Idaho, personally appeared Paul Woods, 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_____________
PARCEL DESCRIPTION

Project: Fairview Avenue & Cole Road Intersection
Project No.: 313035
Tax No.: S1006336300 – Remaining Area from Ada County Highway District
Parcel No.: 3
Date: August 11, 2017

A parcel of land, remaining area after right-of-way requirement, located on the north side of the centerline for Fairview Avenue, situated in the SW ¼ SW ¼ of Section 6, Township 3 North, Range 2 East, B.M., more particularly described as follows:

Commencing at the Southwest corner of said Section 6, monumented with a Brass Cap, from which the South ¼ corner of said Section 6 bears S.88°28'30"E., 2797.69 feet, to a found Brass Cap monument; thence, along the south section line of said Section 6,

A. S.88°28'30"E., 167.22 feet; thence, perpendicular to said south section line.

B. N.01°31'30"E., 51.05 feet, to the new northerly right-of-way line of Fairview Avenue, and the easterly line of a parcel as described in a Warranty Deed recorded January 13, 1997 as Instrument No. 97007554, records of Ada County, Idaho, being the POINT OF BEGINNING; thence, along the said new right-of-way line of Fairview Avenue,

1. N.88°28'18"W., 86.26 feet; thence, continuing along said new right-of-way line,

2. N.49°33'41"W., 40.51 feet, to the new right-of-way line of Cole Road; thence, along said new right-of-way of Cole Road,

3. N.03°27'19"W., 48.66 feet, to the northerly line of said parcel, as described in said Warranty Deed; thence, along the northerly line of said parcel,

4. S.88°28'06"E., 120.44 feet, to the northeasterly corner of said parcel; thence, along the easterly line of said parcel,

5. S.00°19'02"W., 73.93 feet to the POINT OF BEGINNING

CONTAINING 8,349 sq. ft. or 0.192 ac. more or less

SUBJECT TO all Covenants, Rights, Right-Of-Way and Easements of Record.