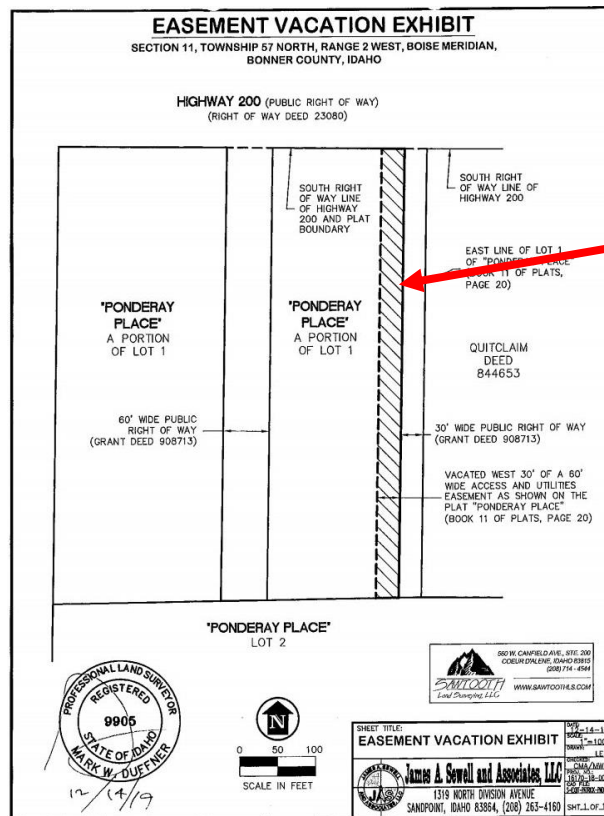


Ponderay - City Planning

Staff Report

December 21, 2020 – Ponderay City Council

VS20-024 Title 50 Vacation of a platted easement – City of Ponderay and Ponderay Industrial Park, LLC



Project Summary

Ponderay Industrial Park, LLC and the City of Ponderay are requesting approval to vacate the west 30-feet of an easement for access and utilities which was depicted on the face of the Ponderay Place plat, recorded in 2014, Instrument 861642, Book 11, Page 20, Bonner County records. While the easement is depicted, it was not properly reserved in the owner's certificate of the plat or via easement and was therefore determined to be invalid by the City in 2017 when the Diedrich site plan was reviewed. At that time, the east 30-feet of the depicted easement was dedicated to the City of Ponderay as public right-of-way. Now Ponderay and Ponderay Industrial Park, LLC wish to formally vacate the remaining portion of the depicted easement to clarify its status in the public records. This application is being processed

simultaneously with file SS20-025, Lew's Industrial Park plat. The easement is located south of Highway 200 and east of Hawthorne Avenue in Section 11, Township 57 North Range 2 West, Bonner County Idaho.

Project Review

While Ponderay City Code is silent regarding Vacation of Plats and Public R-O-W, Idaho Code §50-1306A establishes a process by which to vacate a platted easement for ingress and egress.

Idaho Code §50-1306A. VACATION OF PLATS — PROCEDURE.

(1) Any person, persons, firm, association, corporation or other legally recognized form of business desiring to vacate a plat or any part thereof must petition the city council if it is located within the boundaries of a city, or the county commissioners if it is located within the unincorporated area of the county. Such petition shall set forth particular circumstances of the requests to vacate; contain a legal description of the platted area or property to be vacated; the names of the persons affected thereby, and said petition shall be filed with the city clerk.

(2) Written notice of public hearing on said petition shall be given, by certified mail with return receipt, at least ten (10) days prior to the date of public hearing to all property owners within three hundred (300) feet of the boundaries of the area described in the petition. Such notice of public hearing shall also be published once a week for two (2) successive weeks in the official newspaper of the city, the last of which shall be not less than seven (7) days prior to the date of said hearing; provided, however, that in a proceeding as to the vacation of all or a portion of a cemetery plat where there has been no interment, or in the case of a cemetery being within three hundred (300) feet of another plat for which a vacation is sought, publication of the notice of hearing shall be the only required notice as to the property owners in the cemetery.

(3) When the procedures set forth herein have been fulfilled, the city council may grant the request to vacate with such restrictions as they deem necessary in the public interest.

While the 60-foot subject easement was depicted on the face of the Ponderay Place plat, recorded in 2014, Instrument 861642, Book 11, Page 20, Bonner County records, it was not properly reserved in the owners certificate of the plat or via easement and was therefore determined to be invalid by the City in 2017 when the Diedrich phase 1 site plan was reviewed. At that time, the east 30-feet of the depicted easement was dedicated to the City of Ponderay as public right-of-way. A permit was issued which allowed a portion of a structure to be constructed over the remaining portion of the depicted easement.

This issue has again come to light. In an effort to clarify the easement status in the public record, Ponderay Place LLC and Ponderay Planning Department wish to formally vacate the remaining 30-feet of the depicted easement. In order to do so, a new plat must be recorded. Currently, file SS20-025 is in process. By working together with the applicant, we can depict the vacated easement on the face of the Lew's Industrial Park plat as it records in compliance with state code.

Agency Comment

The application was sent to the following agencies for comment on September 9, 2020:

<input checked="" type="checkbox"/>	Kootenai-Ponderay Sewer District	<input checked="" type="checkbox"/>	Northside Fire District
<input checked="" type="checkbox"/>	Ponderay Police Department	<input checked="" type="checkbox"/>	Pat Park, Building Official
<input checked="" type="checkbox"/>	City of Sandpoint	<input checked="" type="checkbox"/>	Avista
<input checked="" type="checkbox"/>	Independent Highway District	<input checked="" type="checkbox"/>	Lake Pend Oreille School District
<input checked="" type="checkbox"/>	Zipley Fiber	<input checked="" type="checkbox"/>	Northland Cable
<input checked="" type="checkbox"/>	Ponderay City Engineer, HMH Engineering	<input checked="" type="checkbox"/>	Idaho Transportation Department
<input checked="" type="checkbox"/>	Ting		

At the time this report was prepared, the following comments had been received:

Pat Park, Ponderay Building Official, James A. Sewell & Associates, email dated September 10, 2020:

Mr. Park noted that after review of the proposed vacation of easement, he recommends approval.

Ponderay Police Department, Jimmy Cornelius, email dated September 10, 2020: Chief Cornelius stated no comment.

Avista, Don Peterson, email dated September 10, 2020: Mr. Peterson noted that he recommends approval of the project.

Independent Highway District, Commissioner Mel Bailey, email dated September 10, 2020:

Commissioner Bailey commented that the 30-foot right of way along the east boundary of Block 2 should be labeled if it is to be used for something other than a road. He stated that it is currently 60-feet in width and 30-feet cannot accommodate a street.

***Staff Note: The 60-foot easement depicted on the face of the Ponderay Place plat was not properly reserved and is therefore invalid. A 30-foot public right-of-way dedication occurred in 2017 over the east 30-feet of the subject easement, which was intended for future drainage and greenbelt. A 60-foot public right-of way was dedicated for a public street to the west where Hawthorne Avenue is proposed. Vacation of the 30-easement will not further restrict the right-of-way.*

Sandpoint Water, Sarah Gilmore on behalf of Rod Berget, email dated September 15, 2020: Ms. Gilmore noted that there is no conflict with the vacation as long as access to the fire hydrant to the south of the site retains a minimum of a 6-foot utility easement for hydrant maintenance.

***Staff Note: A 30-foot dedicated right-of-way will remain in place. Additionally, File SS20-025 which is being processed concurrently with this vacation application, indicates that a 60-foot public right of way dedication will occur which will encompass the subject fire hydrant.*

HMH Engineering, Justin Shaw, P.E., City Engineer, memo dated September 23, 2020: Mr. Shaw noted that he had no comments of the easement vacation.

Public Comment

Lloyd Graham, public notice, received October 12, 2020 via email, marked to indicate he is neutral to the project.

Staff Analysis & Recommendation

Subject to the recommended conditions of approval, staff finds that this project is consistent with the applicable provisions of Idaho Code. Therefore, staff recommends approval of the proposed vacation. Staff recommends the following findings of fact and conclusions of law.

Planning Commission Recommendation

Commissioner Fox moved to recommend approval of this application, FILE #VS20-024, requesting approval to vacate a 30-foot easement for ingress, egress and utilities depicted on the face of the Ponderay Place, finding that it is in accord with the applicable sections of Ponderay City Code and Idaho Code as enumerated in the findings of fact and conclusions of law in the staff report, and based upon the evidence submitted up to the time the staff report was prepared and testimony received at this hearing. He further moved to adopt the findings of fact, conclusions of law, and conditions of approval in the staff report. Commissioner Tate seconded the motion.

The motion was voted upon and carried unanimously.

Findings of Fact

1. The subject easement was determined by the City to be invalid in 2017. The proposed vacation is to clarify the status in the public record.
2. This proposal was reviewed and found to be compliant with the applicable provisions of Idaho Code Code §50-1306A, Vacation of Plats — Procedure.
3. The application was routed to the neighboring property owners within 300-feet of the proposed vacation via certified mail on September 24, 2020 and December 4, 2020 and published in the Bonner County Daily Bee on September 25, 2020, October 2, 2020, December 4, 2020 and December 11, 2020 in compliance with public notice requirements of Idaho Code Code §50-1306A, Vacation of Plats — Procedure. No public comments were received by the time the staff report was prepared.
4. The application was routed for agency comment on September 9, 2020. No adverse agency comments were received.
5. The vacation has been determined to be in the interest of the public.

Conclusions of Law

Based on these Findings of Fact, the Planning and Zoning Commission concludes that the vacation request is in accordance with the applicable sections of Idaho Code, and therefore is recommended for approval.

Motion

MOTION TO APPROVE: I move to approve this application, FILE #VS20-024, requesting approval to vacate a 30-foot easement for ingress, egress and utilities depicted on the face of the Ponderay Place, finding that it is in accord with the applicable sections of Ponderay City Code and Idaho Code as enumerated in the findings of fact and conclusions of law in the staff report, and based upon the evidence submitted up to the time the staff report was prepared and testimony received at this hearing. I further move to adopt the findings of fact, conclusions of law, and conditions of approval **(or Insert any needed amendments here)** in the staff report.

MOTION TO DENY: I move to deny this application, FILE #VS20-024, requesting approval to vacate a 30-foot easement for ingress, egress and utilities depicted on the face of the Ponderay Place, finding that it is not in accord with the applicable sections of Ponderay City Code and Idaho Code as enumerated in the findings of fact and conclusions of law in the staff report, and based upon the evidence submitted up to the time the staff report was prepared and testimony received at this hearing. I further move to adopt the findings of fact and conclusions of law in the staff report **(or Insert any needed amendments here)**.

MOTION TO REMAND: I move to remand this FILE #VS20-025, requesting approval to vacate a 30-foot easement for ingress, egress and utilities depicted on the face of the Ponderay Place, back to the applicant to address **(or insert the specific areas of concern)**.

CONDITIONS OF APPROVAL

None