

MINUTES & NOTICE OF BOARD ACTION

LANE COUNTY BOARD OF COMMISSIONERS



This document, upon approval in a public meeting by the Board of County Commissioners, serves as official minutes of such meetings as required under the Open Meetings Law, ORS 192.650.

Pursuant to notice made by mailing agendas to news media, a selected list of jurisdictions and individuals in Lane County, a meeting of the Board of County Commissioners was held.

Questions should be directed to The Board Office Specialist 3, ext. 4203.

November 20, 1991 1:30 p.m.	REGULAR MEETING BOARD OF COUNTY COMMISSIONERS	Harris Hall Main Floor
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Chair Jack Roberts presided with Steve Cornacchia, Ellie Dumdi present. Marie Frazier and Jerry Rust excused. Judy Haldeman, Recording Secretary.

10. COMMISSIONERS' ANNOUNCEMENTS

None.

11. PUBLIC HEARINGS

- b. 1) SECOND READING AND PUBLIC HEARING/Ordinance No. 16-91/In the Matter of Amending Ordinance No. 14-90D to Extend the Sunset Date of November 30, 1991 to December 1, 1992 and Declaring an Emergency.

OR

- 2) SECOND READING AND PUBLIC HEARING/Ordinance No. 16A-91/In the Matter of Amending Ordinance No. 14-90D to Extend the Sunset Date of November 30, 1991 to June 1, 1993 and Declaring an Emergency.

Roberts read both of the ordinances into the record. Jacqlyn Mikalonis, Senior Administrative Analyst, presented this item to the Board. Roberts opened the Public Hearing. There being no one present who wished to testify on these ordinances, Roberts closed the Public Hearing. MOTION: Adoption of Ordinance 16A-91. Cornacchia MOVED, Roberts SECONDED. VOTE: Cornacchia, Dumdi and Roberts AYE.

- a. PUBLIC HEARING AND FINAL ORDER 91-11-20-10/In the Matter of the Vacation of County Road No. 2022, Melevin Way-of-Necessity Now Commonly Known as Melevin Road (19-02-07), and Adopt Findings of Fact.

Bob Ezell, County Surveyor, reported that the Melevin Way-of-Necessity was established in 1975 and a special use permit was approved by the Hearings Official in 1990 for up to 10,000 cubic yards of aggregate extraction. A condition of approval was that the Melevin Way-of-Necessity would not be used for commercial hauling. The petitioners contend that this use is detrimental to them and they wish to vacate the road; they further contend that the way-of-necessity is not needed now due to access onto Bradford Road. The director recommended that the vacation be approved and stated that the road has no value to the County road system.

Cornacchia asked if the rights within a way-of-necessity were to the property or to the individual. Stephen Vorhes, Assistant County Counsel, commented that generally a way-of-necessity is to provide access to a property and is not an easement that goes in favor of the individual. Cornacchia asked whether this vacation would be legal from the standpoint of commonality of ownership and Vorhes commented that the specific issue of deprivation of access was not raised until he saw the memorandum in opposition to the vacation. Vorhes commented that he had not found a case on point on the statutory provision that deals with the limitation on using vacation proceedings to eliminate access. Vorhes read ORS 368.331 which says, "A county governing body shall not vacate public lands under ORS 368.326 to 368.366 if the vacation would deprive an owner of a recorded property right of access necessary for the exercise of that property right, unless the county governing body has the consent of the owner." Cornacchia discussed what may be meant by "access" in conjunction with the property right referred to in the statute. He asked if it would be the original property right created by the way-of-necessity or the property right of access from any source. Vorhes suggested that the statute was referring to a generic access right rather than a particular access right. Roberts suggested that this statute says that existing public right-of-way cannot be removed if it would deny the property owner the access needed to exercise whatever the property right is. Cornacchia stated that he was concerned about access to tax lot 1000 if it is in different ownership in the future. Vorhes commented that landlocked parcels can be sold, but there may be some ability to acquire access from the seller.

Roberts opened the Public Hearing.

Darrell Randall, 83270 North Bradford Road, Creswell, commented that there was an access road along the river to the south which connects with Cloverdale Road. He stated that this way was granted for farm use only and he felt that it should be vacated if it will be used for hauling rock.

Debi Breeden, 83264 North Bradford Road, Creswell, commented that approximately 1000 feet of extra fencing would have to be installed if this way-of-necessity remains in order to keep her animals safe

from traffic. She is concerned about the gravel truck traffic that will be coming down this road through her property. She stated that the way-of-necessity has been violated since it was created for ingress and egress to a farm, not a gravel pit.

Wanda Ward, 83270 North Bradford Road, Creswell, commented that since the way-of-necessity was forced upon them, it has been a concern and an irritation due to the increase in vehicle traffic. The way-of-necessity was granted for farm use only and should be vacated since it will be used for gravel transportation.

Ron Mitchell, 83058 Rodgers Road, Creswell, speaking on behalf of Denny and Mildred Mitchell, commented that they do not want a large number of dump trucks on this road adjacent to their property. He requested that traffic be kept to a minimum and that the way-of-necessity be vacated.

Jim Breeden, 83264 North Bradford Road, Creswell, commented that the way-of-necessity is created for access to property and that the County has the right to vacate this easement. He stated that five families use this road and that Bowers has a special use permit to excavate gravel on parcel 1000, but he was supposed to be hauling the gravel out to the south, along the river. He is concerned that gravel trucks would cause damage to the road and create a liability. He stated that the vacation would protect the families which use the road. He stated that there was an order establishing the way-of-necessity on September 19, 1975, which stated that it was created for farm usage. (A letter from Breeden containing all of his comments was submitted for the record).

Mike Farthing, P. O. Box 1147, commented that he was representing Wayne and Margery Bowers, legal owners of tax lot 1000 and 100 served by Melevin Road. He requested that the petition should be denied as it is not in the public interest which is the criterion for vacation of public roadways. He cited Billington v. Polk County which he stated was applicable to this proceeding. He stated that the petitioner must address applicable rural comprehensive plan policies under Goal 3 policies 8 and 12; Goal 5 policies 6 and 8; and Goal 12 policies 1a, 1b, 2d and 4. He stated that in 1982 the Board divested itself of jurisdiction for ways-of-necessity under Lane Code 15.800. He read ORS 368.331 which he determined to prohibit the County from granting this petition to vacate.

Roberts suggested that legal research be done to determine what is meant by the wording in this statute regarding "property right of access."

Farthing testified that the order establishing the way-of-necessity stated that this was access to a farm with no limitation as to use of the road. The final order commented that this was to be a perpetual right-of-way with no conditions attached and is in some sense a

contractual obligation with rights created. He summarized that he believed that there were inadequate findings, that not all of the criteria have been addressed, that this violates the statute and has not addressed the applicable comprehensive plan policies, that this road is actively used by the Bowers and it is not in the public interest to vacate. He added that the special use permit requires aggregate extracted under that permit to be taken out the south road, not on Melevin Road; however, if it is used on their own ground and is under 1000 cubic yards per year, they can use the road.

There being no one else present who wished to testify, Roberts closed the Public Hearing.

Cornacchia commented that he was disappointed with the quality of the staff work on this particular item. He asked for legal research to clarify the meaning of ORS 368.331; asked for complete findings and petition on Billington v. Polk County; asked how many residences could be served by a private access road and the results if action were taken; and the extent of property rights upon payment of damages in the original right-of-necessity. He commented that he had no concrete information on which to base a decision today.

Roberts said that he would like to know what the statute really means and asked County Counsel to look at it further. He commented that he would like further information on what was meant by the County granting a perpetual easement. Cornacchia added that he would like research on this issue of jurisdiction, as well. Vorhes asked for two to four weeks to do research on these issues and will come back to the Board the first or second week in January for further discussion of this potential vacation.

This meeting recessed at 3:26 p.m. to reconvene at 3:42 p.m.

8. CONSENT CALENDAR


C. Public Works

- 3) RESOLUTION AND ORDER 91-11-20-8/In the Matter of Accepting the Director's Report on Improvements to Hayden Bridge Road from North 5th Street to North 19th Street Including Assessments.

Cornacchia discussed the assessments of \$30,000 to the Chase property for sidewalks, curb and gutter improvements. Ollie Snowden, County Engineer, explained that this price was an estimate and explained the payment options that property owners would have for the assessments. Cornacchia asked if it would be possible to defer payment on these improvements until the remnant property was sold for development purposes. Cornacchia stated that he had a hard time assessing for curb and gutter improvements along a collector road. Roberts agreed with Cornacchia that the County should look into some relief for

owners of large parcels, income considerations and age of the property owners in conjunction with income. MOTION: Approval of the order. Cornacchia MOVED, Dumdi SECONDED. VOTE: 3-0.

There being no further business, this meeting adjourned at 4:03 p.m. for Executive Session.



Judy Haddeman
Recording Secretary