

**PLANNING DEPARTMENT
PUBLIC HEARING DECISION MINUTES
WEDNESDAY, MARCH 27, 2019**

CALL TO ORDER: Chair Connolly called the Bonner County Commissioners' hearing to order at 1:30 p.m. in the 3rd floor meeting room, Suite 338 of the Bonner County Administration Building, 1500 Highway 2, Sandpoint, Idaho.

PRESENT: Commissioners Chair Jeff Connolly; Vice Chair Dan McDonald; and Steve Bradshaw

ABSENT: None

ALSO PRESENT: Planning Director Milton Ollerton; Planner II Sam Ross; Administrative Assistant II Emily Aerni; and Administrative Manager Jeannie Welter

PUBLIC HEARINGS:

ROAD VACATIONS

CALL FOR VISUAL, HEARING OR OTHER IMPAIRMENT REQUIRING ASSISTANCE: The Chair asked whether anyone needed special assistance to hear, see or participate in these proceedings. Hearing no response, the Chair continued with the public hearing.

File VS0002-18 – Vacation of Platted Right-of-Way – Highlands HOA petitioner is requesting to vacate a turnaround at the end of Red Fir Road in return for a dedication of a turnaround in the location it is currently established. The property is located at the end of Red Fir Road in a portion of Section 2, Township 56 North, Range 2 East, Boise-Meridian. At the February 13, 2019 public hearing, the Board of County Commissioners continued this file to a date and time certain of March 27, 2019 at 1:30 p.m.

CONFLICT OF INTEREST/DISCLOSURE DECLARATIONS: The Chair requested the Commissioners declare any conflicts of interest or disclosures. The Chair noted that there were no disclosures or conflicts.

STAFF PRESENTATION: Planning Director Milton Ollerton presented a PowerPoint summary of the project and previously circulated staff report, concluding this project is consistent with Bonner County Revised Code.

APPLICANT PRESENTATION: Marty Taylor, Certified Land Use Planner with James A. Sewell & Associates

PUBLIC/AGENCY TESTIMONY: None.

APPLICANT REBUTTAL: None.

BOARD DELIBERATION: The Chair closed the hearing to public testimony. The Board discussed Findings and Conclusions.

MOTION TO APPROVE: Commissioner Bradshaw moved to approve this petition, FILE VS0002-18, finding that it is in accord with Idaho Code enumerated in the following conclusions of law, and based upon the evidence submitted up to the time the Staff Report was prepared and testimony received at this hearing. Commissioner Bradshaw further moved to adopt the following findings of fact, conclusions of law and conditions of approval as written noting any amendments. The action that could be taken to obtain the vacation is to complete the Conditions of Approval as adopted. This action does not result in a taking of private property. Commissioner McDonald seconded the motion.

VOTED upon and the Chair declared the motion carried, unanimously.

Overview:

A. Site data:

Hydrologic Features: None
FIRM Map: 16017C0981E
Wetlands: None
Slope: 15-29% per USGS
Soils: Pend Oreille-Rock Outcrop Complex, 5 To 45 Percent Slopes.
Area to be vacated: ±4,146 square feet

B. Access: Access to the area is provided off Highway 200 on Peninsula Road to Red Fir Road with the turnaround being at the end of Red Fir Road.

C. Standards review:

The project has been reviewed for conformance with Idaho Code §50-1306A, Vacation of Plats - Procedure, and Idaho Code §50-1317. The following facts relate to the standards of review:

- The petition to vacate a platted area complies with all State procedures set forth in IC §50-1306A and IC §50-1317.
- In the case of easements granted for gas, sewer, water, telephone, cable television, power, drainage, and slope purposes, public notice of intent to vacate is not required. These easements are to be left intact and are not vacated through the provisions of this petition.
- The moving of this turnaround will benefit the public as the new turnaround is more suited for snowplow turnaround providing better maintenance of the winter road.
- Relocating the easement will not impede or deprive any property of legal access.

D. Agency Review: The application was routed to the following agencies on January 14, 2019.

Bonner County Road Dept. Bonner School District #84	Sam Owen Fire District
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- Bonner County Road and Bridge responded in support of the project stating that they have worked extensively with the applicant to design and construct this turnaround.

E. Public Notice & Comments: A public comment was received on February 5, 2019 from John D. Schlotfeldt.

Conclusions of Law:

The Overview section of the staff report above is the basis for all of the following findings of fact and conclusions of law. Based upon the findings of fact, the following conclusions of law are adopted:

Conclusion 1

This proposal was reviewed for compliance with the vacation criteria and standards set forth at Idaho Code, IC §40-203, IC §50-1306A and IC §50-1317.

Conclusion 2

The abandonment of the public right-of-way is in the public interest.

Finding

No public agency has objected to the proposed right-of-way vacation.

Conclusion 3

By granting this petition for vacation, the exchange of land from the existing dedicated turnaround to the proposed turnaround is beneficial to applicant, the public and the County.

Conditions of approval:

1. The vacation of the above-described platted area shall be effective upon the recording of a resolution by the Bonner County Commissioners granting the vacation.
2. The costs for legal advertisements and recording fees shall be borne by the applicant and shall be paid prior to the recording of this vacation.

CALL FOR VISUAL, HEARING OR OTHER IMPAIRMENT REQUIRING ASSISTANCE: The Chair asked whether anyone needed special assistance to hear, see or participate in these proceedings. Hearing no response, the Chair continued with the public hearing.

File VS2006-18 - Vacation of Platted Right-of-Way - Michael Quick petitioner is requesting to vacate a portion of a right-of-way existing in the plat of T.S. Campbell's Addition to Laclede. The project is located off of River Run Drive in

Section 30, Township 56 North, Range 3 West, Boise-Meridian. At the February 13, 2019 public hearing, the Board of County Commissioners continued this file to a date and time certain of March 27, 2019 at 1:30 p.m.

CONFLICT OF INTEREST/DISCLOSURE DECLARATIONS: The Chair requested the Commissioners declare any conflicts of interest or disclosures. The Chair noted that there were no disclosures or conflicts.

STAFF PRESENTATION: Staff Planner Sam Ross presented a summary of the project and previously circulated staff report, concluding this project is not in the public interest as required by Idaho Code §40-203.

APPLICANT PRESENTATION: Project Representative Marty Taylor, Certified Land Use Planner with James A. Sewell & Associates stated the project is a Titled 50 platted right-of-way vacation platted in 1912. He stated no adverse public comments have been received, and there is no impairment of utilities or loss of equivalent access. Mr. Taylor stated subdivision and zoning codes do not apply. In response to Public Works comment about property being left without access he stated the record does not support these comments. In response to their comments regarding loss of services, he stated these comments are not supported by the record and further stated there is written comment in the record from the Laclede Water District stating there is no loss of services and they are in favor of the vacation. Mr. Taylor stated there is no public detriment evidence. He stated there is no requirement to provide connectivity in response to a comment from Public Works. He stated the statutory requirement is that they do not end up with access that is less than what they had before, which is right-of-way frontage. Mr. Taylor stated the project did not consist of a subdivision, but a right-of-way vacation and that it was only subject to the 3 Idaho Code standards, not Bonner County Revised Code. Mr. Taylor stated right-of-ways are not subject to comprehensive plan goals, policies, & objectives. He asserted they were subject to public interest, access, and easement reservation standards in 4 sections of Idaho Code, Title 40, Chapter 2.

Commissioner Connolly questioned what the equivalent access was? Mr. Taylor stated the question to ask is, "did we, in vacating a right-of-way, eliminate equivalent access"? Commissioner Connolly stated if you vacate it's not equal access to what is there now because there's a possibility to have that as a connector, and even a loop so it wouldn't be equal access.

Mr. Taylor stated the law actually says "you're not to leave property without access to an established highway or right-of-way". Mr. Taylor asserted there is equivalent access. Commissioner Connolly stated he believes it is not equivalent access.

Commissioner McDonald asked if Blue Spruce Lane was a public right-of-way? Matt Mulder from the Bonner County Road & Bridge department stated it is a county maintained road. Mr. Mulder further stated right now this is a public right-of-way between two county maintained roads. He stated there are instances when the county is doing construction on one end of a road they will open up an unmaintained public right-of-ways to provide temporary public access to people while the road maintenance is being completed.

Commissioner Connolly commented on his concern regarding the water line location going through the subject property and asked if the right-of-way was being worked on, who would be responsible for repairs upon completion of the work? Mr. Mulder stated that a Utility Permit from Road and Bridge would have to be obtained and all of the applicable road standards for restoration would have to be followed.

Gene Courtney, Chairman for the Laclede Water Board stated they did not have any objection to the road being vacated. Mr. Corbin further stated the water main runs on the south end of the subject property, and presently is not paved over it.

Commissioner McDonald questioned if they had determined whether it had to be equal access, or just access? Mr. Taylor stated maintaining connectivity wasn't a statutory requirement, but rather, that property must not be left without access to an established right-of-way and that there were right-of-ways on either side of the subject property.

Commissioner McDonald asked if there was another potential place to create temporary connectivity to the North of the subject property. Mr. Mulder stated there was not. Mr. Taylor stated there was platted right-of-ways and a platted alley.

Commissioner Connolly stated the code addresses the public interest, but this vacation doesn't do the public any good it does it for one landowner. Mr. Taylor said he had not received any opposing comments from affected property owners. Commissioner Connolly asserted the concern is for the public in general, not only for neighboring parcels.

The commissioners had further discussion and examination of a map relating to Blue Spruce road and River Run road. Commissioners Connolly and McDonald concluded there appears to be no loss of access to the affected lots.

Commissioner McDonald asked staff to rebut on Mr. Taylor's comments. Staff Planner Sam Ross stated this project is not a Title 50 vacation whatsoever. He stated the application that was submitted by the applicant was on a Title 50 Vacation application. He stated Idaho statute Title 40-203.4(a) is very clear on the type of vacation this project is. Mr. Ross stated when you start having lots that are less than 5 acres and we are abandoning right-of-way in front of them then suddenly we're not consistent with the roads and access requirements for platted lots which violate the intent of the subdivision ordinance and the comprehensive plan. Mr. Ross further stated the vacation would not benefit the public. Mr. Ross stated "how do we determine what public interest is?" He said he used the comments from the Road and Bridge department to aid in his analysis for determining the public's interest. Planning Director Milton Ollerton stated subdivision and zoning standards need to be considered and Lots 3, 4, & 5 are platted lots and deserve that frontage access.

Commissioner Bradshaw asked Matt Mulder what the possibility was that a road would be built across the driveway/subject property. Mr. Mulder cited an example of another property, having the same right-of-way setup as the subject property,

where the county was able to use that right-of-way during construction to allow temporary public access.

PUBLIC/AGENCY TESTIMONY:

Sandy Wolters asked if the subdivision was more than the three lots being discussed (3, 4, & 5). Commissioner Connolly stated yes.

Mr. Mulder stated that lots 1 & 2 are currently undeveloped, and if houses were built there in the future, the driveways could connect with the subject property to get access to River Run Drive.

APPLICANT REBUTTAL: Mr. Taylor reiterated that vacating the road still complied with all 3 standards and statutory requirements.

BOARD DELIBERATION: The Chair closed the hearing to public testimony. The Board discussed Findings and Conclusions.

Commissioner McDonald stated, "My issue is right now it's a public right-of-way. We don't do the public a favor, in fact we do them a disservice if we give something away without having something that will be equal to it or give equal access and in this case there's neither. Regards to the fact that the existing owner built a driveway there, if someone builds next to them they are going to be driving over that driveway and whether it happens in 50 years or 5,000 years, that's not the point. I'm going have to agree with Milton in that we have subdivision standards and the standards were set forth for that subdivision when it was created should still exist today. It is a benefit for Road and Bridge and for the public at large if we have an emergency out there to have additional access. I really stand by the fact that right now it's a public right-of-way just like all the rest of that area within there is a public right-of-way and without seeing some type of an equal exchange we're doing this public a disservice by not retaining that."

Commissioner Bradshaw agreed.

Commissioner Connolly stated, "When we make a choice like this, the landowners that own those additional lots and the land to the west, which could be further developed, then they have no options. They'd only be able to go out the one way. The public would be best served if they had that either option and I know which way I'd go, just to stay away from the dust and the mud. It's pretty simple choice to me and I don't think that this rises to the criteria of in the public's interest. I think that only one person benefits from this and that's the landowner that would have that then closed off so that nobody can drive through there and I get that would be the reasoning behind why they would want it vacated."

Commissioner McDonald stated even if the two roads were equal he would still have an issue with giving up platted public right-of-way.

Commissioner Bradshaw stated it would deny the person on this side from making lots.

Commissioner McDonald stated it has been a platted public right-of-way for years. He further stated the two roads really aren't equal and we're determining someone's future. He stated in respect to this matter, he doesn't believe that is what they should do. Commissioner Connolly agreed.

MOTION TO DENY: Commissioner McDonald moved to deny this petition, FILE VS2006-18, based upon the conclusions. The decision is based upon the evidence submitted up to the time the Staff Report was prepared and testimony received at this hearing. Commissioner McDonald further moved to adopt the following findings of fact and conclusions of law as amended. This action does not result in a taking of private property. The action that could be taken, if any, to obtain the vacation is to:

- 1) File a new petition with the Planning Department and meet the standards required by Idaho Code; or
- 2) Pursue such remedies as may be applicable at Idaho Code, Title 40, Chapter 2. Commissioner McDonald further motioned to include comments and deliberation about the right-of-away and access. Commissioner Bradshaw seconded the motion.

VOTED upon and the Chair declared the motion carried, unanimously.

Overview:

A. Site data:

- Lot(s) acreage: 0.34 acres (assessed)
 - SFD – 2006-0445
- Area to be vacated:
 - Developed with a travelway that is not hard-surfaced.
- Hydrologic Features: None
- Flood Hazard Zone: X
- Wetlands: Freshwater Emergent Wetland
- Slope: <15% per USGS
- Soils: Mission Silt Loam, 0 To 2 Percent Slopes & Wrenco Silty Clay, 0 To 2 Percent Slopes

B. Access:

- Access to the right-of-way is provided by River Run Drive and Blue Spruce Lane, two public roadways, owned and maintained by Bonner County.

C. Standards review:

- Required:
 - Compliance with:
 - 540-203, Abandonment and Vacation of County and Highway District System Highways or Public Rights-Of-Way
- Provided:
 - Applicant's reason for the request:
 - *"The subject right of way, dedicated in 1912, has never been developed with a county road. Rather, this right of way has only been developed with a driveway accessing Lots 3, 4 and 5,*

Block 1, of the subject plat. Accordingly, the petitioner as the only affected lot owner desires to vacate this adjacent right of way."

- What effect will the vacation have on the public?
 - *"None. Access to the lots within the subject plat will continue to be provided by either River Run Drive or Blue Spruce Lane (platted in part as "Markham Street"), both county public rights of way. The area petitioned for vacation is developed solely with a driveway accessing Lots 3, 4 and 5, Block 1, of the subject plat."*

D. Agency Review

The application was routed to the following agencies on November 19, 2018.

Panhandle Health District	Avista
Army Corps (Coeur d'Alene)	Northern Lights INC.
Bonner County Road Dept.	Bonner School #83
Fish and Wildlife Service	Laclede Water
West Side Fire District	Dept. of Fish and Game
Dept. of Lands (Sandpoint)	Dept. of Env. Quality
State Historical Society	Dept. of Transportation
Dept. of Water Resources	

Agency Review Ended on December 20, 2018.

- The following agencies commented:
 - Laclede Water – December 14, 2018
 - *"...Members of the Laclede Water Board would like to respond to this petition by denying the request to vacate..."*
 - Laclede Water – January 13, 2019
 - *"...upon further investigation, we find that our water line is protected and accessible and will be regardless of any decision to vacate the area in question..."*
 - Bonner County Road and Bridge-
 - *"The Road & Bridge department has reviewed the application for vacation of the Campbell St public right of way and is opposed. The right of way provides valuable access to the lots beyond and provides connectivity via a looped alternate route out of the subdivision. Vacating this ROW would result in a loss of service options for other residents in the subdivision and would be a detriment to the public."*
 - *"If the vacation is approved, I recommend that the applicant be required to grant easements to any utilities which may exist within the ROW."*

E. Public Notice & Comments

- There have been no public comments at the time this staff report was produced.

Conclusions of Law:

The Overview section of the staff report above is the basis for all of the following findings of fact and conclusions of law. Based upon the findings of fact, the following conclusions of law are adopted:

Conclusion 1

1. This proposal is not in the public interest as required by Idaho Code §40-203.

Finding

1. That portion of the Campbell Street public right-of-way, more particularly described in the application & legal description, provides valuable access to the lots beyond and provides connectivity via a looped alternate route out of the subdivision. Vacating this ROW would result in a loss of service options for other residents in the subdivision and would be a detriment to the public.
2. By vacating the public right-of-way, Lots 3 and 4 of the subject plat would be left without public right-of-way frontage. This result would be a detriment to the public.

The Chair declared the hearing adjourned at 2:36 p.m.

Respectfully submitted, this 4th day of April, 2019



Milton Ollerton, Planning Director