

**PLANNING DEPARTMENT
PUBLIC HEARING DECISION MINUTES
OCTOBER 27, 2021**

CALL TO ORDER: Chair McDonald called the Bonner County Commissioners' hearing to order at 1:31 p.m. in the 3rd Floor Meeting Room, Suite 338 of the Bonner County Administration Building, 1500 Highway 2, Sandpoint, Idaho, via Zoom webinar, and YouTube live streaming.

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

ABSENT: None

ALSO PRESENT: Planning Director Milton Ollerton, Assistant Planning Director Jacob Gabell, Planner II Jason Johnson, Planner I Chad Chambers, and Administrative Assistant III Da Niel Scott

PUBLIC HEARING:

ROAD 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 VS0009-21 – Title 40 Road Vacation – Jeff Weimer is petitioning to vacate a portion of North Thama Road, a local county-owned road as provided under Idaho Statute 40-203. The property is zoned Rural 5 (R-5). The project is located off US Highway 2 on North Thama Road in Section 4, Township 55 North, Range 4 West, Boise-Meridian.

CONFLICT OF INTEREST/DISCLOSURE DECLARATIONS: The Chair requested the Commissioners declare any conflicts of interest or disclosures. Each Commissioner disclosed that they had received campaign donations from JD Lumber and that these donations did not result in a conflict.

STAFF PRESENTATION: Staff Planner II Jason Johnson presented a PowerPoint summary of the project and previously circulated staff report, concluding this project is consistent with Idaho Code.

APPLICANT PRESENTATION: Landowner Jeff Weimer, J.D. Lumber, Inc., provided comments on conditions of the road, county right-of-way, surveying of road, Bonner County Road and Bridge comments, and snow removal.

PUBLIC/AGENCY TESTIMONY: The following individuals spoke on the record:

Reg Crawford, Rick Harder, Lisa Moline (submitted Exhibit A - Map and Exhibit B - Letter from Lawyer), and Patty Weimer.

APPLICANT REBUTTAL: Landowner Jeff Weimer, responded to public comment regarding previous encroachment permit, turning unusable ground into useable ground, increasing value of land, county road start and end, 20-foot pinch point, stormwater, and impact on Mr. Harder.

Discussion between legal counsel and the Board of County Commissioners regarding new evidence.

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

MOTION: Commissioner Connolly moved to continue this hearing to a date and time certain, November 24, 2021 at 1:30pm.

Commissioner Bradshaw seconded the motion.

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

Background:

A. Site data

Parcel acreage: ~1.12 acres
Easement: Irregular width.
Structures: No structures within proposed vacation area.

B. Access. Access is off Highway 2. North Thama Road is between East Settlement Road and Mile Marker 10 on Hwy 2.

C. Environmental factors

- Hydrologic Features: n/a
- Flood Hazard Zone: The area proposed to be vacated is within SFHA Zone X and Zone AE, per FIRM Panel 16017C0890E, Effective Date 11/18/2009. This is not a proposal for development as defined in BCRC Title 14. No further floodplain review is required on this proposal.
- Wetlands: The area proposed to be vacated is mapped as being within a Freshwater Emergent Wetland
- Slope: N/A
- Soils: Mission silt loam, 0 to 2 percent slopes

D. Services. Fire: West Pend Oreille Fire. Schools: Bonner School #83.

E. Standards review

Required:

- Compliance with §40-203, Abandonment and Vacation of County and Highway District System Highways or Public Rights-Of-Way:
 - *The commissioners may by resolution declare their intention to abandon and vacate any highway or public right-of-way, or to reclassify a public highway as a public right-of-way, where doing so is in the public interest.*

Provided:

Applicant’s stated reasons for request:

- “To vacate the portion of the county road this is unnecessarily large and irregularly shaped that encumbers a portion of the private land for no good reason. The road is physically not located in this area in reality right now and it has been built up as a road over the years making the proposed area to be vacated about 4 feet lower than the road.”
- “The vacation of this county road easement will not affect access to any of the relevant landowners that use the road for access at present including Jeff & Norma Needs, Rick & Amy Harter, Jill Weimer, and JD Lumber, Inc.”
- “Rick & Amy Harter will continue to have access on both the westerly and easterly sides of the area proposed to be vacated, providing the Harters two good access points to their property within a very small area.”

F. Agency Review. The application was routed to the following agencies for comment on September 17, 2021:

Panhandle Health District	Idaho Dept. of Water Resources
Bonner County Road & Bridge	Army Corps (Coeur d’Alene)
West Pend Oreille Fire District	Bonner School District #83
Avista	Fish and Wildlife Service
Idaho Dept. of Lands, Nav. Waters	Bonner County Schools – Transportation
Idaho Dept. of Fish and Game	Idaho Dept. of Lands (Sandpoint)
Idaho Dept. of Env. Quality	BNSF Railway
Idaho Dept. of Transportation	Northern Lights

The following agencies commented:

Bonner County Road & Bridge provided the following comment:

The Bonner County Road & Bridge Department is opposed to this request for right-of-way vacation. The current standard width for public rights-of-way is 60ft, and this proposed vacation would reduce the width down to approximately 20ft, which is insufficient to accommodate a road, roadside ditches, potential future utilities, etc. The road is still in use and needed by the public for access to properties beyond this

point and this vacation would be a detriment to their ability to maintain, upgrade, and utilize the road going forward.

All other agencies either replied "no comment" or did not reply.

G. Public Notice & Comments. No public comments were received on this proposal.

Findings of Fact:

- The applicant is requesting to vacate a portion of North Thama Road located on Parcel RP55N04W043050A.
- The applicant is requesting to vacate about 4,163 square feet of an existing Right-of-Way.
- The portion of the existing Right-of-Way in question does not contain the road travel surface.
- Based on materials submitted in this application, no real property adjoining the area to be vacated would be left without access to an established highway or public right-of-way.
- Staff has received feedback from Bonner County Road & Bridge that opposes the proposed vacation.
- The Road & Bridge Department has stated that a Right-of-Way width of approximately 20 ft is insufficient to accommodate a road, roadside ditches, potential future utilities, etc.
- As shown in this staff report, other portions of the existing Right-of-Way are already 20-21 feet in width.
- The portion of the Right-of-Way to be vacated does not meet the definition for a street in Bonner County Revised Code.
- Vacation of this right-of-way will not extinguish any rights-of-way or easements for the continued use of existing sewer, gas, water, or similar pipelines and appurtenances, or other underground facilities as defined in section 55-2202, Idaho Code, for ditches or canals and appurtenances, and for electric, telephone and similar lines and appurtenances.
- Evidence in the record shows that this public right-of-way is not abandoned.

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, 40-203.

Conclusion 2

Bonner County **has** received objections to the petition or application to vacate the described platted area.

Conclusion 3

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

Conclusion 4

The landowner or landowners abutting said right-of-way **do** have access to his, her or their property from some other public street, public right-of-way or private road.

Conclusion 5


The public right-of-way **has** been opened or used by the public for a period of five years.

Conditions of Approval:

1. The vacation of the above-described right-of-way 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 the resolution vacating the right-of-way.
3. The petitioner shall provide for easements for continued use of any existing sewer, gas, water, or similar pipelines and appurtenances, or other underground facilities as defined in section 55-2202, Idaho Code, for ditches or canals and appurtenances, and for electric, telephone and similar lines and appurtenances pursuant to Idaho Code §40-203(3).

The Chair declared the hearing adjourned at 2:39 p.m.

Respectfully submitted, this 28th day of October 2021,



Milton Ollerton, Planning Director