

**BONNER COUNTY COMMISSIONERS
PUBLIC HEARING DECISION MINUTES
WEDNESDAY FEBRUARY 16, 2022**

CALL TO ORDER: Chair McDonald called the Bonner County Commissioners' hearing to order at 1:30 p.m. in the 1st floor Conference room, 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: Civil Attorney Bill Wilson, Planning Director Milton Ollerton; Assistant Planning Director Jacob Gabell; Planner II Jason Johnson; and Hearing Coordinator Jenna Crone.

PUBLIC HEARING:

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.

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.

Bill Wilson provided a review of the history of the land use file.

TITLE 40 – VACATION OF A PUBLIC RIGHT OF WAY

File VS0002-21 – Title 40 Road Vacation – Right of Way – Green Enterprises, Inc. is requesting the vacation of approximately 2,550 ft (2.93 acres) of the Camp Bay Road right-of-way from the north boundary of the Petitioner's Parcel No. R56N01E184800A, to the terminus of the road at the high-water mark of Lake Pend Oreille, in Parcel No. R56N01E187801A. If approved, the vacated right-of-way will be replaced with private roadway access and utility easements to serve the Petitioner's property as well as the properties located on South Camp Bay Road beyond the Petitioner's property (collectively the "South Camp Bay Properties"). The property is zoned Rural-10. The project is located off Camp Bay Road in Section 18, Township 56 North, Range 1 East, Boise-Meridian.

STAFF PRESENTATION: 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: Project Representative Doug Marfice, addressed the findings of the District Court and discussed the Ordinary High Water Mark of Lake Pend Oreille. Jeremy Russell – Survey Manager J.U.B. presented a PowerPoint on the history of Camp Bay Road and the Ordinary High Water Mark (OHWM).

PUBLIC COMMENT: Monica Gunter, Richard Kramer, Susan Drumheller, Jennifer Kramer, Sheryl Kins, Melissa Dawson (Yielded time to Toby McLaughlin), Steve Klatt, Kristina Kingsland, Sharon Fraizer, John Kearns, Larry Davidson, Albert Abromeit, Doug Paterson, Zeima Brisboy, Barbara Best, Deb Ruehle, Jean Bansemer, Jodi Frankenbach, Jennifer Arn, Paige Belfoy, Jennifer Wood, Nick Belfoy, Toby McLaughlin,

Commissioner McDonald recessed the hearing at 3:42 p.m.

Allison Dunbar, Jeff Beeman, Nick Oreille, Brad Smith, Andrew Moore, Roderick Barcklay, Russ Edwards, Craig Gill, Scott Unzen, Jason Juhn, Pat Gunner, John Hobday, Jason Topp, Teresa Stevens,

Via zoom: Susan Bowman, Nancy Gilliam, Megan Green, Adelizza/Jesse Brown, George Gehrig, Kathy Lefor, Sherry Derosure, Jonna Plante, Dave Bowman, Marjorie Klein, Dwight "Randy" Green, Reg Crawford,

APPLICANT REBUTTAL: Jeremy Russell discussed the terminus point (2063.9') in more detail via powerpoint. Doug Marfice discussed prescriptive easement on Camp Bay Road to the lake.

STAFF REBUTTAL: Planner II Jason Johnson addressed concerns brought up during Public Comment regarding storm and lawn runoff from new developments. Matt Mulder, Road and Bridge Staff Engineer discussed cost of improvements if Camp Bay Road were to be vacated.

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

Motion by the Governing Board:

MOTION TO DENY: Commissioner Bradshaw moved to deny this petition, FILE VS0002-21, a petition to vacate a 2,550 ft. portion of Camp Bay Road as shown on the submitted site plan based upon the following 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 Bradshaw further moved to adopt the previous findings of fact and conclusions of law as set forth in the Staff Report as amended during this hearing and direct planning staff to draft written findings and conclusions to reflect this motion, have the Chairman sign, record, and transmit to all interested parties. 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 Connolly seconded the motion.

Commissioner McDonald Aye
Commissioner Connolly Aye
Commissioner Bradshaw Aye

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

Background:

A. Site data:

- Proposed Vacation: Approximately 2,550 ft. (2.93 acres) of Camp Bay Road
- Hydrologic features: The road currently ends at the high-water mark of Lake Pend Oreille.
- Flood Zone: None
- Wetlands: None
- Soil: Pend Oreille-Hoodoo silt loams, 0 to 30 percent slopes
- Slope: Minor sloping to 30%

B. Access:

- Access is Camp Bay Road

C. 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.

E. Agency Review: The application was routed to the following agencies for comment on February 12, 2021.

Bonner County Road and Bridge	Bonner County Schools – Transportation
Selkirk Fire District	IDL - Sandpoint
Northern Lights	US Forest
US Naval Base	

Matt Mulder, PE, Road & Bridge Staff Engineer, has submitted comments on behalf of Bonner County Road & Bridge (BCRB) in support of the proposed vacation. This comment is included in the record. The recommendation is based upon the following, per BCRB:

- The Applicants have signed an agreement with Bonner County to improve Camp Bay Road through the Locally Funded Improvements Program and placed money into an escrow account to fund a large portion of the project.

This will provide a reconstructed and asphalt paved road from Sagle Road all the way out to the proposed vacation. Camp Bay Road will be greatly improved for all citizens who utilize the road.

- The Applicant is proposing to construct a turn-around for Road & Bridge Department use at the property line where the public ROW will terminate if vacated. An easement for this turn-around will be surveyed after construction and dedicated to Bonner County.
- The Applicant is proposing to provide legal access to all citizens beyond the vacated portion of the road. These easements, along with a completely reconstructed and improved roadway, which will include asphalt, will be an improvement over the existing conditions.
- The new asphalt roads within the proposed subdivision will be maintained by the HOA with a road maintenance agreement in place. The existing citizens who live beyond the vacated portions will benefit from this maintenance which will extend further than County maintenance currently does, reducing the costs to existing citizens by reducing the portions of private road they must currently plow out to the County road.

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

F. Public Notice & Comments

There have been over two dozen comments received for this file as of the preparation date of the staff report. Comments have been received both in favor of and opposed to this project. As of the date of this staff report, the comments include:

- The road has been County maintained for 40-plus years.
- The road establishes public access to Lake Pend Oreille.
- The road is not and has never been a public access.
- The proposed road improvements will be a benefit to the residents and County.
- Relocating the road will provide for greater protection of Lake Pend Oreille.
- A gated road is not in the best interest of residents who live on or around the development.
- Comments have been submitted that appear to be related to ongoing litigation between landowners.

Findings of Fact

The Board finds that the record is comprised of:

- The applicant is requesting to vacate a portion of a dedicated right of way, labeled as "End of Camp Bay Road," as shown on the submitted site plan labeled "T56N, R1E, Section 18."
- The application would replace the existing road with a private roadway access and utility easement to the petitioner's property and those properties that access off South and North Camp Bay Road, both private.
- The proposed vacation would take the roadway out of the County maintenance system and it will become privately maintained.

4. The proposed road improvements include moving the road away from the Lake.
5. The proposed improvements include addressing turnarounds for a school bus or snowplow.
6. The proposed easements replacing the right of way would continue to provide access to property owners beyond the subject parcel.
7. If approved, the future maintenance of the road would continue at the petitioner's expense.
8. The Board of Commissioners has found that the advice and judgement of the Bonner County Road & Bridge Department on this matter was not compromised by a conflict of interest.
9. The Board of Commissioners has stated their confidence in the advice and judgement of the Bonner County Road & Bridge Department on this matter.
10. It is currently unknown where Camp Bay Road legally ends.
11. It is currently unknown where the high-water mark of Lake Pend Oreille was at the time Camp Bay Road was created.
12. It is currently unknown if Camp Bay Road provides legal public access to Lake Pend Oreille.

legally ends. Further, it is currently unknown where the high-water mark of Lake Pend Oreille was at the time Camp Bay Road was created. Therefore, it is unknown if Camp Bay Road provides legal public access to Lake Pend Oreille. The mere possibility that Camp Bay Road could provide public access to Lake Pend Oreille is reason enough to deny the vacation request. Until that matter is resolved, the uncertainties outlined above make it impossible for the Board of Commissioners to find that the proposed vacation 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.

Finding: If approved, the current road would be replaced with a private roadway access and utility easement to the petitioner's property and those properties that access off South and North Camp Bay Road, both private.

Finding: The proposed improvements include addressing turnarounds for a school bus or snowplow.

Finding: The proposed easements replacing the right of way would continue to provide access to property owners beyond the subject parcel.

Finding: The future maintenance of the road would continue at the petitioner's expense.

Conclusion 5

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

Finding: All evidence in the record indicates that the public right-of-way has been opened or used by the public for a period of at least five years. No evidence to the contrary exists in the record. No party has suggested that the public right-of-way has not been opened or used by the public for at least five years.

The Chair declared the hearing adjourned at 6:05 p.m.

Respectfully submitted, this 28 day of February, 2022



Milton Ollerton, Planning Director

Conclusions of Law:

The Board hereby adopts the following conclusions of law:

Conclusion 1

This proposal was reviewed for compliance with the vacation criteria and standards set forth at Idaho Code, 40-203.

Finding: 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.

Conclusion 2

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

Finding: It is currently unknown where Camp Bay Road legally ends.

Finding: It is currently unknown where the high-water mark of Lake Pend Oreille was at the time Camp Bay Road was created.

Finding: It is currently unknown if Camp Bay Road provides legal public access to Lake Pend Oreille.

Conclusion 3

The abandonment of the public right-of-way is not in the public interest.

Finding: If Camp Bay Road does not provide public access to Lake Pend Oreille, it would be in the public interest to grant the vacation request. All of the Board's previous comments regarding paving and decreased maintenance costs remain valid, and testimony regarding use of the road only to view the lake or surrounding area would not be sufficient to alter this finding. However, based on testimony and evidence provided at the hearing, the Board cannot conclude where Camp Bay Road