

DISTRICT SECRETARY'S FINAL MINUTES BOARD OF COMMISSIONERS SPECIAL MEETING

These Minutes have been approved by the Board of Commissioners and are the official record relating to the conduct or administration of the District's business, as reflected herein.

Wilder, Idaho

March 28, 2022

A special meeting of the Commissioners of the Golden Gate Highway District No. 3 was held at 10:00 a.m. on Monday, March 28, 2022 in the District Office at 500 E. Golden Gate Avenue, Wilder, Idaho.

PRESENT: Commissioners Ed Leavitt, Fred Sarceda, and Andy Bishop, Director of Highways Bob Watkins, Road Foreman Casey Percifield, Secretary/Clerk Anita Herman, Engineer Christopher Pettigrew, and Attorney Jay Kiiha.

ABSENT: None

CALL TO

ORDER: The meeting was called to order at 10:02 a.m. by Chairman Fred Sarceda.

AGENDA

REVIEW: Secretary/Clerk Anita Herman reported that she posted the agenda for the special meeting on Thursday, March 24, 2022 at 8:30 a.m. at the locations listed on the agenda. **Motion: Made by Commissioner Ed Leavitt: To Approve the Posting of the Agenda, Seconded by Commissioner Andy Bishop.** The vote was unanimous. Motion carried.

VISITORS: Joseph (Tony) Sambosky
Don Clagg
Twila Clagg
Genia Watkins
Lynn Troxel
Amber Dewey
Jeff Dewey
Mike Beavers
Isabell Greenwood
George Greenwood
Ray Gerthung III
Shana Gerthung
Jon Satso
Nancy Larson
Shari Hastings
Lerene Alley
Ken Watson
Abigail Germaine
Anthony Gardunia

James Christopher
Diana Parten
Rosetta White
Patti Ann Ross

PUBLIC

HEARING: VACATION 2021-02 – VACATE A PORTION OF THE WESTERN END OF MIDDLE ROAD

Chairman Fred Sarceda Opened The Public Hearing For VAC2021-02 – Vacate A Portion of the Western End Of Middle Road at 10:08 a.m.

Present at the hearing were: Commissioners Ed Leavitt, Andy Bishop, and Fred Sarceda, Director of Highways Bob Watkins, Foreman Casey Percifield, Secretary Anita Herman, Engineer Christopher Pettigrew, and Attorney Jay Kiiha.

District Secretary Anita Herman reported to the Board that she has prepared a list of pre-marked exhibits and a sign-up sheet of all who wish to speak and offer testimony. Confirmed by Secretary Anita Herman, the following exhibits have been admitted as evidence:

- Exhibit A – Turn Around Easement
- Exhibit B – 50’ Prescriptive Right-of-Way
- Exhibit C – Exhibit Map of Turn Around Easement
- Exhibit D – Exhibit Map of Right-of-Way to Be Vacated
- Exhibit E – Resolution 2022-03
 - Exhibit E1 – Resolution 2021-15
- Exhibit F – Affidavit of Mailing
 - Exhibit F1 – List of Addresses
 - Exhibit F2 – Notice of Public Hearing
 - Exhibit F3 – Exhibit Map of Right-of-Way to Be Vacated
- Exhibit G – Affidavit of Posting
 - Exhibit G1 – Notice of Public Hearing
 - Exhibit G2 – Certificate of Posting
- Exhibit H – Utility Notification
 - Exhibit H1 – Utility Notice Contact List
 - Exhibit H2 – Century Link
 - Exhibit H3 – Boise Project Board of Control
 - Exhibit H4 – Idaho Power
- Exhibit I – Agency Notification
 - Exhibit I1 – Wilder Rural Fire Protection District
 - Exhibit I2 – Wilder School District
 - Exhibit I3 – United States Postal Service
 - Exhibit I4 – Canyon County Sheriff
- Exhibit J – Staff Report

- Exhibit J1 – Aerial Photos of Vicinity
- Exhibit J2 – GGHD3 Official Map
- Exhibit J3 – Letter From Abigail Germaine – Elam & Burke Attorneys At Law – on Behalf of Donald & Twila Clagg
- Exhibit K – Pictures & Email Explaining Pictures – Amber Dewey
 - Exhibit K1 – Maps From Canyon County Assessors Page & From Amber Dewey’s Surveyor
- Exhibit L – Petition Letter / List
- Exhibit M – Letter From Abigail Germaine – Elam & Burke Attorneys At Law – on Behalf of Donald & Twila Clagg
- Exhibit N – Letter From Donald & Twila Clagg
- Exhibit O – Letter From Tiffany & Justin Sandifer
- Exhibit P – Letter From Rosetta White
- Exhibit Q – Letter From Brandi Hodnett
- Exhibit R – Letter From Clifford Fisher
- Exhibit S – Letter From Tyler Clagg
- Exhibit T – Letter From Ken & Linda Dillon
- Exhibit U – Letter From Sharon Grenough
- Exhibit V – Letter From LeRoy & Barbara Babcock
- Exhibit W – Letter From Unknown
- Exhibit X – Letter From Unknown
- Exhibit Y – Letter & Photos From Joseph & Sherrie Sambowsky
- Exhibit Z – Letter From Abigail Germaine – Elam & Burke Attorneys At Law – on Behalf of Donald & Twila Clagg
- Exhibit AA – Petition Letter / List
- Exhibit AB – Letter From Don & Twila Clagg
- Exhibit AC – Letters Against the Vacation of Western End of Middle Road
- Exhibit AD – Letter From Amber Dewey
- Exhibit AE – Letter From Jeff Dewey
- Exhibit AF – Letter From Patti & Randy Ross
- Exhibit AG – Letter From Bob Dewey
- Exhibit AH – Letter From Erik Jacobs
- Exhibit AI – Letter From Mike Beavers
- Exhibit AJ– Letters For the Vacation of Western End of Middle Road
- Exhibit AK – Letter From Joseph & Sherrie Sambowsky

Chairman Fred Sarceda Announced That the Hearing Has Commenced. The Report of the Secretary, the Submission of Staff Reports, All Notices, Affidavits of Publication, and/or Notices of Posting Will Be Accepted by the Commissioners In Accordance With District Policy.

Commissioner Fred Sarceda asked Director Bob Watkins to give his staff report. Director Watkins read the attached report to the Board, which includes the staff recommendation.

Commissioner Fred Sarceda then opened the floor for all other testimonies from the public who signed up to testify.

Mike Beavers - 19490 Hwy 95, Wilder, ID – In favor of vacating this section of Middle Road because the Dewey's residence is the last house on that section of road and for safety reasons regarding his daughter and grandkids he believes the public shouldn't be able to go through to the river past their house since there is no river access there anyways and there is a rise in crime. He believes it would be wise to abandon that portion of Middle Road.

Joseph (Tony) Sambowsky - 19550 Whitecap Ct., Wilder, ID – Stated to the Board that he has submitted exhibits that are lengthy, and Secretary Anita Herman reported it was Exhibit AK. He stated that it's illegal to block a public road under Idaho Code 183907 and is punishable under Idaho Code 40-207 and went on to tell them how it's punishable by fine or imprisonment. He stated that the Dewey's blocked Middle Road as evidenced by the survey dated back in 2007. From 2007 to now marks 15 years. The right-of-way was still blocked upon when he moved into his residence at 19550 Whitecap Ct. from 2014 until this date, which is roughly 8 years. Tony has used the right-of-way for those 8 years. He believes that the Dewey's blocked the right-of-way to act like what was behind the gate was private property. So since the public didn't go past the gate thinking the access was private land, he believes that is why that access has not been used for so long (at least 15 years) and that gave the Dewey's the time they needed to show that it was abandoned. Then Mr. Sambowsky pointed out that the Golden Gate Highway District returned the Dewey's money for the vacation application and proceeded themselves. According to Idaho Code 40-2035 § (Charlie India) have not been met and it's not in the public's best interest, the vacation cannot be met. He would pay for time and materials to maintain this portion of Middle Road. Mr. Sambowsky is not in favor of the vacation. He then pointed out to the Commissioners from Exhibit K (photos of the end of Middle Road near the river) that the wire fence going towards the river almost to the high-water mark. And then the fence that goes east delineating the right-of-way and is the same width as the right-of-way and is consistently wide the whole way through and this barrier was put up by Dewey's to prevent people from going and fishing at the river. And this barrier has been here quite some time from its age and weathering. He said Bob Dewey told him that he quit allowing people to go to the river because of the trash and he didn't like people being there. So, the point is, if that barrier wasn't there and the gate wasn't up further east there would be a lot more people on the road and meeting the code for use and so on. He believes that barrier is illegal since it's consistently the same width as the right-of-way all the way through. Logic tells him, like Judge Judy would say, this barrier does not belong here, it was erected by the Dewey's to prevent access. Commissioner Ed Leavitt asked Mr. Sambowsky if that barrier was not there if he had anything that shows if Golden Gate Highway road would have ended there or where it should have ended and

how you would have access to the high-water mark. Mr. Sambowsky replied back that if you looked behind the barrier, it's flat and wide and would facilitate access. He had a conversation with Director Bob Watkins and the Director told him there's nothing on paper that defined the end of the right-of-way, and Mr. Sambowsky said well if there's nothing on paper how can you say this gate is not in the right-of-way, and Director Watkins said how can you say it is in the right-of-way. And that is the dilemma but if you look how it's laid out it should go to the river. Commissioner Leavitt than asked Mr. Sambowsky could he assume that fence is the end of the right-of-way as much as Mr. Sambowsky can assume it is not. Mr. Sambowsky then said Bob Dewey told him he put that barrier up to keep the public out. He then went on to state he had a letter from previous Director Wes Hancock, stating the highway district maintained all the way down. Commissioner Ed Leavitt stated all the way could mean what you're seeing at the fence, what you're seeing there (Exhibit K), or what we're seeing today, there's nothing defining the end of the road. Mr. Sambowsky then said that's why we are left with using our heads and looking at the site itself and asking yourself why is there a fence blocking off the Dewey's property behind this entire potential extension of Middle Road, so why is that gate there, why is that fence there. So that's an absolute no to vacate the west end of Middle Road.

Twila Clagg – 28061 Middle Rd., Wilder, ID – Read a letter that she wrote asking the questions: Is the real problem here on Middle Road from Fish to the Snake River that tax payers road money is being used, favor for a friend? The Dewey's needed Middle Road to be a public road instead of a prescriptive road so the son could build a house on it, is this a favor for a friend? Golden Gate Highway District used taxpayer's money to get a dead-end road surveyed and when she went to go check, there were only 4 surveys on file, was this a favor for a friend? It's a dead-end road. Golden Gate Highway came and took them to court with taxpayers money once again decreasing the value of landowners on Middle road, they hired a lawyer with taxpayer money, they lied and said they had not paid taxes on where the road was, they tried to charge them \$150 per day times five, one for their car that they drove daily that was parked in front of their house where they moved their fence back and made a spot to do so and then another \$150 for the pavement they did to park their car on, and another \$150 per day for gravel they put in the road. Golden Gate Highway removed the gate that was blocking Dewey's while they were in court because to have a public road it had to be removed and as soon as court was over the gate went back up again, was that a favor for a friend or who did that? Then Dewey's paid money for an application to vacate a part of Middle Road that would only benefit them and then money was given back and the taxpayer's road money once again is being used for the meeting here, is this once again a favor for a friend? Then a nice turn-around was put in for 1-2 houses at the end again using taxpayer's road money, is this again a favor for a friend? Ms. Clagg went on stating that 2/3 of the people on Middle Road would like Golden Gate Highway to give their land back to them or not just to Dewey's and they have enough signed paperwork showing the District this. It says in there, the statutes that if you have 2/3 of the people asking you not to vacate or to vacate you can do that. Ms. Clagg would like all of Middle Road to be vacated from Fish Road

to the Snake River and for the Golden Gate Highway District to cover the costs for the vacation proceedings of her road in front of her house and all of the road. If we did it for Dewey's we should do it for the rest of them. When she asks the District to repair the roads in front of her house or pave them, they are laughed at because we don't have money to do this. If you take people's property you should at least maintain it and keep it better than it was when you stole it. The Constitution says you need to pay the landowners for their land. Please do not once again decrease the land value to the landowners by taking away access to the river. When they went to court, they were told by the attorney that the right-of-way would go clear to the river according to the survey that was given to them from the survey Golden Gate Highway had done. The Idaho Statute Title 40 Chapter 2 5b says you can't vacate on land access owned by Idaho and public access to the Snake River. Neither the passage of time or the frequency of use should be considered, and it also says you can't take away the only access to this land. There's a public land survey on the corner of Cliff's property that access to public and is the only means to access the Snake River from Middle Road which is the part you are trying to vacate or abandon. Please do what is right for the public, not just the Dewey's, and if anyone is friends or has anything to do with the Dewey's they should not vote. She does not understand what is causing this and this is the only thing they could figure out would cause this because of everything that has happened on a dead-end road just for a few houses. She believes the maintenance should be done where the four houses are together but it's all going down to the end of Middle Road. The District is spending a lot of money on the end of Middle Road but not any at the corner of Fish and Middle. It needs to be done fair for everybody. She said the fence line that runs on Cliff's on the right you can access the river all the way down. She lives in her Great Grandmother's house and she went down to the river everyday here. Literally hundreds of people have fished down there. Then when Bob Dewey came, he put up a block and called the cops preventing anyone to fish down there. But before you could get hundreds of people down there and fish there. But the Dewey's put a stop to it and that's why the Claggs quit going down there because they didn't want to cause trouble with anyone. Also, she and others would like to have access to be able to fish down at the river. Commissioner Andy Bishop asked Ms. Clagg if she had anything showing the right-of-way or easement going clear to the river. Ms. Clagg reiterated that it was a fishing hole and that's where everyone would fish and used for many, many years before it was blocked, and her Great Grandma got water from there. Commissioner Bishop asked again a yes or no, do you have anything dictating paperwork that the easement went all the way to the river. Ms. Clagg said the survey showed that it went to the gravel and her and her attorney assumed the gravel meant to the river. Commissioner Ed Leavitt asked Director Bob Watkins what the distance was from the center pin on Fish Road to the "end of gravel" from the survey. Director Bob Watkins said it went off property lines. He also told the Commissioners that this survey was not a legal document since it did not have meets and bounds with it, so it's just a survey because the meets and bounds were not recorded with it. It's a prescriptive right-of-way so that goes off of the use of the right-of-way. Commissioner Ed Leavitt then told Ms. Clagg he was confused because she is wanting all or none vacated and with her being the first property owner on Middle Road, what would

stop her from blocking the public or anyone from going through there. Ms. Clagg replied that she thinks all the neighbors should make a road agreement of the private lane and she wouldn't block the public access.

Amber Dewey – 28415 Middle Rd., Wilder, ID – She stated this portion that this right-of-way being questioned has always been a driveway and never in no time ever went all the way down to the river. The one property owner that used to use this right-of-way to access their home now is part of Sandy Beach Subdivision and has no legal access from this right-of-way on Middle Road. This right-of-way already is private property and has not been maintained by the Highway District in 15 years. They agreed on the turn-around on their property with Golden Gate Highway District for the safety of agencies in need of it. Anything past the turn-a-round is trespassing since it is private land. And they would like the vacation to be official today if possible.

George Greenwood – 26584 Morris Pl., Wilder, ID – Born in Caldwell, attended Wilder School, him and his wife are farm people and then he went to Vietnam. He believes there should always be access available even if it took force. Everyone should have a voice and it should always be counted. His friend and himself drove down to Middle Road yesterday and if he would have gone straight off the turn-a-round west towards the river, he would have gotten stuck and he doesn't think that that gravel should not be there. There should be access to the river, access to farms, and protect all access. He is voting no. Commissioner Ed Leavitt asked Mr. Greenwood if the new turn-a-round wasn't where it is today, how would he have turned around at the end of Middle Road. Mr. Greenwood stated he would have had to back up a little (pointing into the field from Exhibit J1) and then turn around that way.

Isabell Greenwood – 26584 Morris Pl., Wilder, ID – She received a flyer in the mail, and she saw that the flyer stated that the farmers wouldn't have access to their fields and she wouldn't want that. Commissioner Fred Sarceda asked Ms. Greenwood what farms the farmers couldn't get to? She was confused about what was going on and didn't know exactly who didn't have access. Commissioner Sarceda asked who sent the flyer and Ms. Clagg raised her hand and stated that Tony Sambowsky couldn't get the tractor into the field behind his house and Tony said the land she was talking about was Cliff Fishers. The Commissioners did let Ms. Greenwood know that all the farmers that had legal access would still have access. She voted no to the vacation.

Ken Watson – 19785 Upper Pleasant Ridge Rd., Caldwell, ID – His father was in WW1 and his brother was a WWII veteran. Many years back his son's father-in-law came up from California and wanted to go fishing. His son-in-law, Loren Ally, stated they should go to his uncle's place, the Dewey place. They went down there to go fishing. He would like to have access for people to go fishing. Commissioner Ed Leavitt had Mr. Watson reiterate that he went to the Dewey's place to go fishing.

Shari Hastings – 26748 Stewart Ln., Wilder, ID – She just drove down there to Middle Road this morning to the turn-a-round and she couldn't get to the river due to the gravel drop off from the turn-a-round. If you're going to have continued access to the river the

gravel needs to be reduced. Her husband like to kayak and has launched there once but said he never would again because of the access down to the river. She votes no to the vacation.

Abigail Germaine – she asked the Commissioners if she could defer her time so the people on the phone could speak because she’s hearing a lot of drop off tones.

Chairman Sarceda then took phone calls for votes for the vacation on the end of Middle Road for 10 minutes. Their names and votes are on record at the District office.

Anthony Gardunia – 12118 B St., Nampa, ID – He lives in the Philippines now but when he lived down on Middle Road, he would take the Clagg kids down and walk down to the river and go fishing about 20 years ago. Bob Dewey allowed them to go across the property to the river. Commissioner Ed Leavitt asked him how they navigated getting to the river due to all the overgrowth. Mr. Gardunia said they walked to the end of the road and then there was a trail that went along the Dewey’s property but were on the high-water line. But Bob Dewey was allowing them to hunt and fish on his property at that time. It was a gravel road at that time and as wide as the existing road now and ended at the high-water mark. Commissioner Andy Bishop asked Mr. Gardunia if he had to get permission from Bob Dewey and Mr. Gardunia said he had permission from Bob Dewey.

James Christopher – 1176 N. Caucus Way, Meridian, ID – He fished that area of the river when he was working with a friend that knew Ruby Boone and then he became good friends with Ruby Boone for about 20 years and would go out often to fish. In 2000 or 2001 he went down to fish with his grandson and went to see Ruby and a gentleman came out and said she had passed away and he had bought the property and now wasn’t allowing people to fish there anymore. At the time or now Mr. Christopher didn’t know who owns the road and didn’t know if he had the authority/right to tell him that. Then a few more years went by and a gate was up. There should be access to the river to fish. He votes no to the vacation. Commissioner Ed Leavitt reiterated that in those 20 years Mr. Christopher would go and get permission from Ruby Boone prior to going fishing and Mr. Christopher agreed he was correct and his co-worker said that Ruby Boone had a farm down there and he should go ask her if he could fish there. So he assumed it was all private property.

Nancy Larson – 29607 Fern Ln., Wilder, ID – She doesn’t know much about this but from the person she talked to on Middle Road, they said to vote no.

Diana Parten – 28339 Peckham Rd., Wilder, ID – She is not a fisherman but would like to have access in case she needs to catch a fish and is an avid bird watcher. She would vote no to the vacation.

Rosetta White – 22922 Bohner Rd., Wilder, ID – She grew up on Middle Road and they would always park their ATVs down to the trees and walk to the river and there were fences on the north and south sides of the road. She votes no. Commissioner Ed Leavitt asked if the fences were up because of grazing operations or if she knew what the fences were for. Ms. White stated where Ruby lived on the North side she just had some horses

in there. She remembers when they blocked it off and made it seem like it was trespassing. She believes it happened around 18 years ago but didn't have an exact year.

Patti Ann Ross – 28093 Middle Rd., Wilder, ID – Has lived there for 22 years and bought it from Tony Sambowsky. He stated that they could go down there to fish, but they would have to have permission from LeRoy Dewey. Everyone was supposed to have permission. She sees the traffic they have up by her house and if that traffic goes down past Amber and Jeff Dewey's house, they will be in danger from all the people, trash, and drugs that could come in. She feels like they all would be in danger because a bunch of bad people coming down. She stated that that access has always been pasture and not a road. To actually fish there you would have to hit Dewey's property and hit their private river front access due to the steepness at the access area in question. She then states the problem on Middle Road they have is Don and Twila Clagg due to harassment, intimidation, stealing land, putting cement in front of their house and putting on their property by a ½ foot, using the neighbor's driveway, block the road and nobody could get through and it was dangerous. They want to own the road. They asked Ross' and Dewey's if they would agree to put up a gate and they both said no. Ms. Ross went on to say that if you disagree with them there will be hell to pay. She's lived by them for 22 years and they want to own the road and she would shut down the road if the Highway District vacated all of Middle Road. Their son Tyler Clagg has torn up the roads and the Highway District has done a fine job of fixing those messes. She stated Tony Sambowsky has his own access through Sandy Beach Subdivision to his house and the subdivision has their own access to the river. When the subdivision went in those homeowners in the subdivision no longer had access off Middle Road and Tony would go down Dewey's driveway to park and put his junk and tractors. She stated that the Claggs have lied and said there was a subdivision going in at the end of Middle Road and that's how she got everyone to sign the petition and those people don't live around the area. Commissioner Ed Leavitt asked Ms. Ross about the Sandy Beach Subdivision's river access and she stated they had their own access and dock. She wasn't sure if it was going across someone's private property or if it was public property. Then Commissioner Leavitt asked about the river access at Lower Pleasant and Ms. Ross said that was the RV Park and she thought you could fish there for maybe \$5 a day.

Abigail Germaine – Elam & Burke 251 E. Front St., Boise, ID – Ms. Germaine reported to the Board that she had submitted formal written comments on March 23rd for them to consider. She'd like to address a couple of comments that Commissioners Leavitt and Bishop had made that related to the survey of the road. As both Commissioners have stated this is a prescriptive right-of-way and that's why there isn't a survey showing the exact length of the road. The comments from today support that the historical use of the road went all the way to the river. Obviously, there's a drop off and some limitations for access down there but the comments from today show there was access all the way down to the river past where those encumbrances now block to the river. Rather or not people received permission as a courtesy to go fishing at the river doesn't mean it wasn't public access. Today the Commissioners heard from multiple people providing testimony

stating that they did not wish to vacate the west end of Middle Road and limited testimony, mainly from the property owners, asking for it to be vacated. So under Idaho Code you have to consider what's in the public's best interest not just one property owners. From testimony and exhibits submitted previously, if the District does not want to maintain the lower portion of Middle Road there are homeowners willing to take the maintenance over and please consider that as well. There are provisions in Idaho Code that relate to limiting or blocking or vacating the right-of-way to public lands and the Snake River is public lands and held in trust and vacating this portion of Middle Road you would be limiting the public's access to those lands. From testimony given today and written comments she asked the Board to deny the petition to vacate the West end of Middle Road.

Commissioner Fred Sarceda asked for a 10-minute recess at 11:45 a.m. and the Public Hearing will reconvene at 11:55 a.m.

Commissioner Ed Leavitt had a question for the staff: Why did the District accept land from the Dewey's to make the turn-a-round for the highway district, fire trucks, school buses, etc. Director Bob Watkins told the Board the turn-a-round was needed for us and other agencies to safely be able to turn around down there. We needed an easement from the Dewey's to build the turn-a-round to handle our vehicles, safety vehicles, and other agencies to be able to get turned around. Before, you had to pull into Bob Dewey's driveway and then back out and we had permission to do so. Commissioner Leavitt then asked if the vacation is denied, what would keep the Dewey's from making us take the turn-a-round out since it's on their property and then how would the Highway Districts vehicles and other agencies be able to turn around down there. Director Bob Watkins said there wouldn't be anywhere to turn around down there if that happened.

Attorney Jay Kiiha communicated to the Board that if everyone, applicants, staff, and Commissioners were finished giving their reports and testimony that the Commissioners would now work through the deliberation worksheet given to them by Secretary Anita Herman.

Chairman Sarceda Accepted All the Testimony That's Been Presented and Will Now Move into Deliberation and the Public Hearing Is Now Closed.

Deliberation Worksheet Findings:

Question #1: Has notice been given in accordance with Law [I.C. §40-203]?

Secretary Anita Herman reported to the Board that yes notice was given in accordance with the law. Please see exhibits F-I.

Question #2: Is the subject right-of-way within one mile of a city?

No.

Question #3: Is there any adjoining legal parcel which will be left without access to an established highway or public right-of-way?

No.

Question #4: If the requested vacation is in a subdivision (skip to Question #5 if not)?

No.

Question #5: Is it in the public interest of this Highway District to grant the petition to vacate and abandon?

Commissioner Ed Leavitt: Numerous people have brought up that they wanted to or have fished down there at some time but every one of them admitted they asked either the Dewey's or the Boone's permission to do so. The only way someone wouldn't need permission in his mind is if the road ended at the high-water mark. So, somebody owns that land to the high water. So it's a question of prescriptive right-of-way, prescriptive being use, was that use a given use by permission, was it an assumed use by traffic, and how much use has been used in the last 15 - 20 years without permission.

Commissioner Fred Sarceda: When the Boone property disappeared, or house went away, then at that time the traffic ceased to go down and turn into the Boone property where now Mr. Sambowsky owns. So, the only traffic going down there now would be people wanting to fish and if it's private property I would think that is trespassing.

Commissioner Ed Leavitt: Since it's a prescriptive right-of-way, Commissioners and staff cannot say exactly where that road really ended. He's got to believe that there was never a boat ramp or dock there so why would the Highway District ever get a road to the high-water mark. So, in his mind somebody owned that property between the river and the right-of-way. He believes it would be impossible to access the river to fish from that exact location without going up or down the river to actually fish from. There is access from other areas around there to get to the river. He has no friends and is not stating this on a friend cursor that he doesn't believe there is public access to the river.

Commissioner Andy Bishop: Agrees with Commissioners Leavitt and Sarceda. He believes the Boones and Dewey's owned property down there and gave permission to people to access the river when asked.

Director Bob Watkins reported to the Board that no reservations were needed.

Commissioner Ed Leavitt: If we deny this vacation, what's to say the Dewey's who gave us an easement for some of their land to put the turn-a-round on decides to take it back? Where will the public, safety vehicles, and even the District vehicles get turned around down there? You won't have anywhere to do it.

Director Bob Watkins: It's definitely in the public's best interest to have that turn-a-round down there.

Question #6: Are there any issues and evidence of the value of the property to be vacated exceeding \$2,500 and if so, was the petitioner the dedicator and if no should payment be a condition of vacation?

Director Bob Watkins: No, it's not a dedicated right-of-way.

Question #7: Are there any reasonable conditions found or proposed and found to be in the public interest that should be imposed as a condition of vacation? If so state them.

Commissioner Ed Leavitt: There were a few statements made to vacate it all or none. And I struggle with because to me if you vacate it all you've compounded the problem 100 full. If you vacate part of it, it's more reasonable and it comes back to how you get people in and out of Middle Road and I would think that putting a neighborhood agreement together as we have seen today will never happen. So abandoning the whole thing will never possibly work. The only other thing would be that the Dewey's would have to always give access and, in my opinion, that isn't even compromisable.

Commissioner Fred Sarceda: I don't think we have the right to tell the Dewey's to grant public access.

Commissioner Ed Leavitt: It only becomes private if we abandon it. I struggle with not knowing exactly where the end of the road is. And from the statements we've previously heard they would get permission to go down there. No one ever pressed the issue if the end of the road was where the barrier is or not until today. History to me shows that where that fence is, that's as far as you get to go and if that's the case I don't have a problem making where our turn-a-round is the furthest you can go on Middle Road without getting permission from the Dewey's to get to that river.

Commissioner Andy Bishop: I don't think it's in the best interest to vacate the whole road since it seems like there is a lot of animosity down there between the neighbors. So, I don't think that's the way to go. I do struggle with the fence and where the right-of-way ends at. Nobody has pressed that issue of trespassing of going around that fence and going the 100 -150 feet approximately. So, in my mind, that would be trespassing to the high-water mark.

Commissioner Ed Leavitt: Asked staff about another road going around the Dewey's property to the river and Director Bob Watkins said that was the Dewey's private road to the drain. But Dewey's would have to allow permission to go on that road also.

Question #8: Are there any issues over to whom the property reverts upon vacation? If so, who is found to be the rightful owner?

Director Bob Watkins said the majority of the prescriptive right-of-way is the Dewey's and a little bit goes into the Sandy Beach Subdivision (Joseph Sambowsky's property). See Exhibit C.

Commissioner Ed Leavitt: Yes
Commissioner Andy Bishop: Yes
Commissioner Fred Sarceda: Yes

Commissioner Ed Leavitt: To Approve the Vacation of West End of Middle Road and Directed the District Attorney Jay Kiiha to Prepare the Findings of Fact/Conclusion of Law and Order of Decision Concerning VAR2021-02, Seconded by Commissioner Andy Bishop. The vote was unanimous. Motion carried.

Motion: Made by Commissioner Andy Bishop: To Close the Public Hearing At 12:33 p.m., Seconded by Commissioner Ed Leavitt. The vote was unanimous. Motion carried.

EXECUTIVE

SESSION: None

SPECIAL

BUSINESS: None

ADJOURN-

MENT: There being no further business to come before the Commissioners, the meeting was adjourned at 12:34 p.m. **Motion: Made By Commissioner Ed Leavitt: To Adjourn the Meeting, Seconded by Commissioner Andy Bishop.**

Next regular meeting is scheduled for April 13, 2022 at 12:00 p.m.



CHAIRMAN



SECRETARY