

**EAST SIDE HIGHWAY DISTRICT BOARD OF COMMISSIONERS  
LEONARD ROAD VALIDATION PUBLIC HEARING  
and BOARD MEETING MINUTES  
JANUARY 15, 2018**

**East Side Highway District Attendance:** Chairman Christensen, Commissioner Austin, Commissioner Addington, Supervisor Pankratz, and Board Secretary Sieverding.

**PUBLIC HEARING FOR VALIDATION OF LEONARD ROAD #231:**

Chairman Christensen called the Public Hearing to order at 9:00 a.m.

**Conflict of Interest on Agenda:**

Chairman Christensen asked if any board member had a conflict of interest with any items on the agenda. Chairman Christensen, Commissioner Austin, and Commissioner Addington all indicated no conflicts.

**Applicable Code: Idaho Code Title 40 Chapter 203A (Road Validation Authority)**

**I. PRESENT Reason for the Hearing:** consideration validating Viewer Report Road #231 (Leonard Road No. 2) which lies in Sections 32 and 33 in Township 49 North, Range 1 West, Kootenai County, Idaho near Rose Lake/Cataldo area.

**II** Supervisor Pankratz provided a copy of the **STAFF REPORT** to Board which included the following **PRESENT RELEVANT FACTS** on the **HISTORY** of Leonard Road #231.

- a. A portion of Road No. 231, known as Leonard Road No. 2, is located in Section 32, and Section 33, Township 49 North, Range 1 West, Boise Meridian, Kootenai County, Idaho, and lies within the jurisdiction of the East Side Highway District.
- b. August Huelsiep and several other land owners petitioned the Kootenai County Board of Commissioners to declare Road No. 231, Leonard Road No. 2, as a public road.
- c. On August 12, 1908, the proposed road was viewed and surveyed.
- d. A Viewer's Report for Road No. 231, Leonard Road No. 2, was submitted to the Board of County Commissioners. At that time, the cost to construct the road was estimated at Eight Hundred Dollars.
- e. On September 16, 1908, the Board of County Commissioners declared Road No. 231, Leonard Road No. 2, a public highway.
- f. The road was never constructed.
- g. On July 13, 1910, the Board of County Commissioners abandoned Leonard Road No. 2 as a public road because it was too expensive to construct given the level of anticipated traffic.

**III. PUBLIC ATTENDANCE:**

<b><u>Name and Address:</u></b>	<b><u>Request to Speak</u></b>	<b><u>Written Comment</u></b>
1. Matthew R. Cleverley, WSBA#32055 Attorney for Rande and Debra Warner Fidelity National Law Group Columbia Center 701 Fifth Ave, Suite 2710, Seattle, Was 98104	Yes	Binder (50 exhibits)
2. Linda Rider 6219 South Wolf Lodge Coeur d' Alene, Idaho 83814	Yes	(Exhibit A) Binder: Exhibit 49
3. Palmer Family Trust (Marcus Palmer) 22709 East Doyle Rd Cataldo, Idaho 83810	Yes	(Exhibit B)
4. Carlette Smith 21915 E. Doyle Rd Cataldo, Idaho 83810	No	No written Comment
5. Larry Smith 21951 East Doyle Rd Cataldo, Idaho	Yes	No written Comment Maps (Exhibit H)
6. Sandy Schlepp 22239 E. Doyle Rd Cataldo, Idaho 83810	Yes (See below)	No written Comment
7. Larry D. Goodson 22922 East Doyle Rd Cataldo, Idaho 83810	Yes	(Exhibit C)
8. Debra Warner 5166 Graveline Rd Bellingham, Washington 98226	No	(Exhibit D)
9. Rande Warner 5166 Graveline Rd Bellingham, Washington 98226	Yes	(Exhibit E)
10. Gloria Palmer 22709 East Doyle Cataldo, Idaho 83810	Yes	No written Comment
11. Michael Palmer 954 North 5th Street Coeur d' Alene, Idaho 83814	Yes	(Exhibit F &G)

12. Matthew Palmer  
22725 East Doyle Rd  
Cataldo, Idaho 83810
- Yes

#### IV. PUBLIC TESTIMONY :

Matthew Cleverley, Linda Rider, Marcus Palmer, Larry Smith, Sandy Schleppe, Larry Goodson, Gloria Palmer, Michael Palmer, and Matthew Palmer

1. Attorney **Matthew Cleverley** with Fidelity National Law Group represented Debra and Rande Warner in the opposition to the proposed validation of opening up Leonard Road No. 2 #231. The Board were giving a **binder** with 50 exhibits including affidavits from prior land owners and history of the road. Attorney Cleverley said that it may be mute point at this time due to fact the road was legally abandoned by the County Commissioner in 1910.
2. **Linda Rider** (Affidavit in Binder) Exhibit B  
Linda Rider read the following Idaho Code 40-203A: (5) *In any proceeding under this section or section 40-203A, Idaho Code, or in any judicial proceeding determining the public status or width of a highway or public right-of-way, a highway or **public right-of-way shall be deemed abandoned** if the evidence shows:*
  - (a) *That said highway or public right-of-way was created solely by a particular type of common law dedication, to wit, a dedication based upon a plat or other document that was **not recorded** in the official records of an Idaho county;*
  - (b) *That said highway or public right-of-way is not located on land owned by the United States or the state of Idaho nor on land entirely surrounded by land owned by the United States or the state of Idaho nor does it provide the only means of access to such public lands; and*
    - (i) *That said highway or public right-of-way has not been used by the public and has not been maintained at the expense of the public in at least three (3) years during the previous fifteen (15) years; or*
    - (ii) ***Said highway or right-of-way was never constructed and at least twenty (20) years have elapsed since the common law dedication.***
- Mrs. Rider implied Idaho Code 40-203A is very clear. If a public right-of-way has not been used in maintained in the past fifteen (15) years is shall be abandoned. She was very concerned because where she lives there are places that were considered public right of way at one point and time. If the Board presents a standard that would allow anyone to come one hundred years later and decide if this is a public right-of-way this will open up problems in our county.
3. **Marcus Palmer** representing the **Palmer Trust** provided the Board with a written comment (Exhibit B). Mr. Palmer believed from the research he has accomplished that Leonard Road had existed and was used by the public from period dating back to 1910.
4. **Carlette Smith .. No comment**

5. **Larry Smith** who lives off North Doyle Rd presented the Board with two maps dating back to 1932 and 1934 showing the plans for a road to tie into Rose Creek Road. As a young man he remembers an old road going across the bottom of the point to the lake. He said that his purpose for being at today's hearing was not to represent anyone but to express his concerns in preserving access to public waterways. (Exhibit G)
  
6. **Sandy Schlepp** is leasing a piece of property that she logged in the area of what is being viewed as Leonard Road. In the act of clearing a pathway to perform a survey, she questioned how could those who were responsible for cutting down the trees along the shoreline get away with it without a public notice. The "Shade Rule" indicates that no trees should be cut within 75 feet of a lake. Ms. Schlepp is very disappointed in the sharp pointed tree stubbings left behind creating a danger to her draft horses. She also claim the only roads in this area were private skid roads.
  
7. **Larry Goodson** provided the Board with a written comment (Exhibit C). Mr. Goodson questioned who gave the approval to construct and open up Leonard Road. The area that was surveyed never even touches E. Doyle Road.
  
8. **Debra Warner**.. no comment
9. **Rande Warner** read written comment (Exhibit E)
  
10. As a courtesy, on January 9th, 2018, Secretary Sieverding emailed **Gloria Palmer and Marcus Palmer** copy of the draft staff report prepared by the East Side Highway District legal counsel for their review.  
Mrs. Palmer asked the Board to consider the time frame in the discovery that his Leonard Road No. 2, #231 had been abandoned did not give the Palmer Trust enough time to prepare for the hearing today to further research the history of this said road.  
  
**Gloria Palmer** has owned property off Doyle Road since the later 1970s and believed the location of the road has altered. She said it was not the recommendation of the Board to proceed with a survey.  
After talking with Supervisor Pankratz, the Palmer Trust took it upon themselves to hire a survey on what was known to be public right-of-way because the Palmers didn't want to trespass onto Warner's private property.  
  
Ms. Palmer said opening up Leonard Road would be a benefit to others in the area and without this road, the Palmer Trust property would be landlocked.
  
11. **Michael Palmer** indicated that there was no statement of Leonard Road ever being vacated. According to Mr. Palmer there are nine difference ways to create a road under Idaho Law. The two in question are the formal delegation and the recording of the county which started in 1863 and continues today. (Exhibit G). You can have the creation of road without it being built under Idaho law. There was another way in which a road could be created dating back to 1893 simply by public use and public maintenance. In Palmer's Trust submission "Exhibit B" there are maps and aerial photos dating back to the 1920s and 1950s that show this particular road. Mr. Matthew Palmer asked for the Board to review the evidence the Palmer Trust provided in showing that there was a road that was used by the public and to provide the Palmers with additional time to further investigate the history of usage Leonard Rd.

12. **Matthew Palmer** It was amazing to Matthew that the survey that was conducted was not in the same route as he remembered using down to the old dump site.

As far as road construction, he fired up a chainsaw to assist a surveyor. State Forester Rodney Cochran walked the route to view what was being cleared and witnessed that the Palmers were clearing brush not logging.

**V. FINAL ACTION:**

Commissioner Austin made a motion to **DECLINE THE VALIDATION** of Leonard Road No. 2, #231 for reason that this said road was abandoned in July 13, 1910, according to the meeting minutes, files in Book F, page 539, on July 13, 1910. Commissioner Addington seconded the motion, which was unanimously approved.

Commissioner Austin apologized to the Warners for any damages claimed during the process of survey being conducted through their property.

**VI. CLOSURE OF PUBLIC HEARING**

Commissioner Austin made a motion to **CLOSE PUBLIC HEARING** at 9:45 a.m. Commissioner Addington seconded the motion which was unanimously approved.

**Immediately after closing the Public Hearing, the commissioners of East Side Highway District resumed into their General Board meeting.**

**Previous Minutes:** Commissioner Austin made a motion to approve both the October 16, 2017 amended minutes and the December 18, 2017 minutes. Commissioner Addington seconded the motion, which was unanimously approved.

**TREASURY REPORT:**

Commissioner Austin made a motion to accept the following Treasurer Report: The general checking account expenses and transfers from checking were in the amount of \$167,697.89 covered by checks #16538 through #16571 ( includes DD, PR Tax Pmts to Federal & State, & PERSI.) Commissioner Addington seconded the motion, which was unanimously approved.

Petty Cash	\$	200.00
<b>Umpqua Checking:</b>	\$	107,654.52
State Treasury Account Fund 891.....	\$	786,256.83
Less Umpqua Assured Macro-Balance	\$	<u>(1,500.00)</u>
<b>Balance of Working Capital this Date</b>		<b>892,611.35</b>
<b>Dedicated Funds at State Treasury Office Funds 369 TMF</b>	\$	<u>195,3747.47</u>
<b>TOTAL OF ALL FUNDS</b>	\$	<b>1,087,988.82</b>

**DISCUSSION ON CORRESPONDENCE, REPORTS, PERMITS: ( See attached)**

**OLD BUSINESS: (Follow-up List)**

The Board asked to place the Delavan vs ESHD Case back on the old business list.

**NEW BUSINESS:**

1. Commissioner Austin made a motion amend and update the Current Sick Leave Policy as follows:

**Option 1:**

Annual: If Over 720 Hours	Change of Employment
The amount of hours over 720 hours will be paid to the employee at 33.33%.	An employee who chooses Option 1 will receive 33.33% of their sick leave balance when leaving the District's employment.

**Option 2:**

Annual: If Over 720 Hours	Change of Employment
41% of the amount of hours over 720 will be held in an account for the employee. The accumulated hours will be tracked and made available to the employee and board members annually. The maximum amount allowed to accumulate each year is 39.36 hours.	An employee who chooses Option 2 will receive 41% of their sick leave balance when leaving the District's employment.

Commissioner Addington seconded the motion, which was unanimously approved.  
 A signed acknowledgement of the employee's choice will be kept in their personnel record.

2. The East Side Highway District will continue to hold their regular board meeting on the third Monday of each month at 9:00 a.m. All other ESHD Special Call meetings, public hearings, and workshops will be posted accordance to Idaho Code 74-204.

This year the February's regular board meeting falls on President's Day; therefore, the Board agreed to change the February's board meeting to February 12, 2018 at 9:00 a.m.  
 Board agreed not to impose a fee for inspecting onsite variance request.

4. Commissioner Addington made a motion to enter into an agreement between the East Side Highway District Board of Commissioners and the Idaho Transportation Board, by and through the Idaho Transportation Department for Key No. 20474 described as East Canyon Road Striping Project through the Local Highway Safety Improvement Program. Commissioner Austin seconded the motion, which was unanimously approved.
5. Commissioner Addington made a motion adopt **Resolution 2018-01** to authorize the commissioners of the East Side Highway District to enter into a Road Closure & Maintenance Agreement (**Key No. 13425**) between the East Side Highway District Board and the Idaho Transportation Board by and through the Idaho Transportation Department for the State to relinquish the maintenance of **East Coeur d'Alene Lake Drive** that falls outside the existing Coeur d' Alene city limits upon the terms and conditions set forth within the said agreement. Commissioner Austin seconded the motion, which was unanimously approved.
6. Commissioner Addington made motion for the East Side Highway District to enter into an Agreement (Key No. 13425) with Idaho Transportation to assume the maintenance of East **Coeur d'Alene Lake Drive** that falls outside the existing Coeur d' Alene city limits. Commissioner Austin seconded the motion, which was unanimously approved.

Chairman Christensen questioned who was going to snowplow the parking lots. Supervisor Pankratz said a MOU will be worked out with Idaho Department of Park and Recreation and this will be addressed.

The Board agreed to contact the Coeur d' Alene Press to announce this event.

7. The Petition to vacate and abandon Leonard Road No. 2, #231 is a null and void request due to the findings that this said road had been abandoned on July 13, 1910 for the reason that expense incurred in building this said road would be greater than the amount of traffic across said road would justify. (Reference: *County Commissioner minutes, July 13, 1910, Book F page 538.*)

**SECRETARY:**

1. Secretary Sieverding agreed to provide the Board with an inventory of all previous county and highway district minutes and journals.

**SUPERVISOR PANKRATZ:**

1. The District purchased a used complete stainless steel sander out of Walla Walla Washington for \$2,500 which is \$28,000 less than a new one said Pankratz.
2. LHTAC wants to advance the 2019 LHSIP Canyon Road Project (Key 20474) to 2018. There will be a striping scope meeting at JUB Engineering from 3p.m. to 4p.m., January 18th.
3. There was some overtime on January 11th due to the weather.
4. Supervisor Pankratz informed the Board that ITD will continue the winter maintenance of Coeur d' Alene Lake Drive during the winter season but the Board may want start considering hiring an additional full-time employee for Sub District 1.
5. Pankratz will research the cost to replace unit #109, one 1989 Ford Dump Truck. The advertisement for bids will be sent out next fiscal year.
6. Pankratz agreed to provide the Board with a plan on how the asphalt zipper can be used throughout district.

**COMMISSIONER AUSTIN:**

No comments.

**COMMISSIONER ADDINGTON:**

No comments.

**CHAIRMAN CHRISTENSEN:**

1. Chairman Christensen asked for staff to present him with the last traffic count on Wolf Lodge Rd.

Commissioner Addington made a motion to adjourn the board meeting at 11:35 a.m. Commissioner Austin seconded the motion, which was unanimously approved.

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**CHAIRMAN CHRISTENSEN**  
**SUB-DISTRICT #1**

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**COMMISSIONER AUSTIN**  
**SUB-DISTRICT #2**

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**COMMISSIONER ADDINGTON**  
**SUB-DISTRICT #3**

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**SECRETARY/TREASURER**  
**SIEVERDING**