

**EAST SIDE HIGHWAY DISTRICT BOARD OF COMMISSIONERS
RE-OPENING OF HEARING FOR THE RECONSIDERATION
TO VALIDATE LEONARD ROAD
&
REGULAR MEETING MINUTES
May 21, 2018 MINUTES**

Chairman Christensen called the board meeting to order at 9:00 a.m.

Commissioner Austin made a motion to amend the Agenda to include French Gulch Rd/Fernan Hill Road State/Local Project agreement under new business. Commissioner Addington seconded the motion, which was unanimously approved.

Present: Chairman Christensen, Commissioner Austin, Commissioner Addington, Supervisor Pankratz, Board Secretary Sieverding, and Attorney Dan Keyes (District Hearing Officer).

PUBLIC ATTENDANCE List and reference to Reference to Exhibits for Written Comments:

<u>Name and Address</u>	<u>Request to Speak</u>	<u>Reopening of Hearing Written Comment</u>
1. Art Macomber (Attorney for Palmer's Trust) 1900 N.W. Blvd Ste 110 Coeur d' Alene, Idaho 83816	Yes (Hearing) <i>In Favor</i>	Exhibit A
2. Matthew Cleverley (Attorney for Debra and Rande Warner) Fidelity National Law Group Columbia 701 Fifth Ave, Suite 2710, Seattle, Wa 98104	Yes (Hearing) <i>Opposed</i>	Exhibit B -Binder Second Opposition to Proposed Validation of Leonard Road No2
3. Gloria Palmer 22709 East Doyle Rd Cataldo, Idaho 83810	Yes (Hearing) <i>In Favor</i>	Exhibit C
4. Debra Warner 5166 Graveline Rd Bellingham, Wa 98226	Yes (Hearing) <i>Opposed</i>	Exhibit D
5. Ken Renner	Yes (Agenda Item 2)	No written comment
6. Marcus Levesey HMH Engineering 3882 North Schreiber Way Coeur d' Alene Idaho 83815	No	No written comment
7. Linda Rider 6219 So. Wolf Lodge Rd Coeur d' Alene, Idaho 83814	Yes (Hearing) <i>Opposed</i>	No written

East Side Highway District
Hearing and Board Meeting
Minutes- May 21, 2018

- | | | |
|--|--|-----------------------|
| 8. Angela Comstock, J-U-B
7825 North Meadowlark
Coeur d'Alene Idaho 83815 | Yes
(Agenda Item 2) | |
| 9. Michael G. Palmer
954 North 5th St.
Coeur d' Alene, Idaho 83814 | No
(Hearing) | No written
comment |
| 10. Matthew Palmer
22709 E. Doyle Rd
Cataldo, Idaho 83810 | No
(Hearing)
<i>In Favor</i> | Exhibit E |
| 11. Sandy Schlepp
22239 E. Doyle Rd
Cataldo, Idaho 83810 | Yes
(Hearing)
<i>Opposed</i> | Exhibit F |
| 12. Larry D. Goodson
22922 E. Doyle Rd
Cataldo, Idaho 83810 | Yes
(Hearing) | No written |
| 13. Rande Warner
23090 E. Doyle Rd
Cataldo, Idaho 83810 | Yes
(Hearing)
<i>Opposed</i> | Exhibit G |
| 14. Ken Warner
3114 5th St
Lewiston, Idaho | No
(Hearing) | No written
comment |
| 15. Robert W Warner
3114 5th St
Lewiston, Idaho | No
(Hearing) | No written
comment |
| 16. Donald Warner
3114 5th St
Lewiston, Idaho | No
(Hearing) | No written
comment |
| 17. Marcus Palmer
22709 East Doyle Rd
Cataldo, Idaho 83810 | Yes
(Hearing)
<i>In Favor</i> | Exhibit H |
| 18. Dylan Teichman
7871 W. Goodwater
Coeur d' Alene, Id 83815 | Yes
(Hearing)
Opposed | Exhibit I |
| 19. Attorney Nathan Ohler
Ramsden, Marfice, Ealy, & Harris
Representing Dylan and Allison Teichman
700 N.W. Blvd
Coeur d' Alene, Idaho | Yes
(Hearing)
Opposed | Exhibit J |

OTHER WRITTEN TESTIMONY RECEIVED:

1. Dolores Johnston
25265 East Meadow Road
Cataldo, Idaho

Exhibit H

BOARD MEETING PUBLIC COMMENT:

1. In response to Ken Renner's request to use the District's deicer truck, the Board approved to assist Kootenai County Fair Grounds with the condition that the truck is operated by one of District's crewman for insurance purposes.
2. The board approved Angela Comstock with JUB Engineers draft presentation for the ESHD Transportation Plan for the Public Open House to be held tomorrow May 22, 2018 from 4:00 - 7:00 p.m.

ROAD #231 LEONARD ROAD NO 2 RE-OPENED PUBLIC HEARING

HISTORY for Reopening the Hearing:

Arthur B. Macomber (Attorney for Palmer Family Trust) request to reopening the hearing to provide additional proposed evidence that was not submitted at the January 15, 2018 ESHD Leonard Road No. 2 Public Hearing; therefore, at the April 16, 2018 ESHD Board meeting, the commissioners set a public hearing for today, to Reopen the Validation Hearing for Leonard Road #2, Viewer Report #231, to present the opportunity for those to present additional evidence or testimony. In doing so, the Board felt they would not be criticized for not viewing all evidence that was available to them.

OPENING OF PUBLIC HEARING: Chairman Christensen opened the Public Hearing and appointed Attorney Daniel Keys to act as the Board's hearing officer. The District's Secretary recorded the public hearing.

PURPOSE : Chairman Christensen announced the purpose of today's public hearing was to re-open the hearing to reconsider the validation of Road No. 231. Leonard Road No. 231, located in Section 32 and 33, Township 49 North, Range 1 West.

REQUEST FOR PUBLIC TESTIMONY on Road No. 231 Leonard Road No. 2. Attorney Keys asked to limit the testimony to the creation, existence, maintenance, or abandonment of Leonard Road No. 2. . Testimony needs to be directed to the Board and not to other persons present at the meeting.

1. **Art Macomber:** (See Exhibits "A")

In Favor of Validating

Attorney Macomber stated that he found no law showing a highway district doing a partial road validation. He described that there was a difference between a roadway and right-of-way. The following deeds were submitted into the record.

Instrument #64919, dated 01/20/1913 between Carpenter to Collyer, and

Instrument # 331913, dated 08/23/1957 between Lamphere and Taylor, (both these documents stating they were created with legal descriptions showing a county road in Government Lot 4.

According to Macomber, Leonard Road No. 2. was the only road that went through Lot 4, Doyle Road never went south into Lot 4, but only through lot 3.

The other issues Macomber spoke about was:

Tax Deed # 76659, dated 05/06/1931 H.F. Cleland Kootenai County tax collector's took for back taxes SE 1/4 -SE 1/4, Sec. 32 Twp 49 No, Range 1 West, B.M. Lots 8 and 9, in Sec 33, Twp 49N, Range 1 W.B.M. which encompasses the who Leonard Road No. 2.

County Deed # 87332, on the 19th day of February, 1934, at a public auction, the Board of County Commissioner sold Lot Eight (8), in Section 33, Twp 49, R. 1 W.B.M.
If Leonard Road was abandoned in 1910, then Lot Eight (8) was landlocked in 1934.

Pages 3 and 6 of the County Road Index Ledgers showing no notes of the original Leonard Road #231 being abandoned or vacated, but other records such as Foley Road #106 shown rejected and Thorn Road #137 never being built.

Attorney Macomber spoke of the public interest requirements for a validation hearing and private interests of the Palmers and the Warners, and **all public interests** of accessing the lake and wetlands.

2. **Matthew Cleverley:** See Exhibit B.
(Binder for *Opposition to Proposed Validation of Leonard Road* submitted)
3. **Gloria Palmer:** See Exhibit C.
In Favor of Validation
4. **Debra Warner:** See Exhibit D
An affidavit submitted by Larry Fuhriman (Exhibit 38, within Rande and Debra Warner's Opposition to the Proposed Validation of Leonard Rd #2, hearing date January 15, 2018, according to Debra Warner differs to validity of the Dorothy Johnson's testimony (Exhibit K, dated 05/17/2018)
Opposed to Validation
5. **Linda Rider** (*No new evidence or testimony*)
Opposed to Validation
6. **Matthew Palmer:** See Exhibit E
In Favor of Validation
7. **Sandy Schlepp:** See Exhibit F
Opposed to Validation
8. **Larry D. Goodson** (No new written comment)
Mr. Goodson implied that he was confused on the status of Leonard Road No. 2. and questioned if the testimony he provided at the previous hearing will be considered.
The Board explained to Mr. Goodson that all previous testimony provided at the first Leonard Road Hearing held on January 15, 2018 is still relevant. Today's public hearing is for collecting new evidence or testimony.
9. **Rande Warren:** See Exhibit G
Opposed to Validation

Chairman Christensen called for recess at 10:30 a.m. The public hearing resumed back into order at 10:30 a.m.

10. Marcus Palmer: See Exhibit H

In favor of Validation

Marcus Palmer provided the Board with copies of additional maps and pictures as shown in Exhibit H.

Mr. Palmer said that he believes that the Leonard Road No. 2 was actually built and the survey conducted was from the original survey field notes.

11. Dylan Teichmann: See Exhibit I

Opposed to the Validation

Mr. Teichmann said that he purchased his property in 2004 as a Weekend Get-A-Way. The family purchased the property because of its unique private setting and opening up Leonard Road No 2 would be a destroy the original intent of purchase of their property.

12. Attorney Nathan Ohler: See Exhibit J

Letter was received from Attorney Ohler requesting for Steffen and Allison Teichmann the opportunity speak at today's meeting. Mr. and Mrs. Teichmann were not present or did not send a written comment.

Comment from Attorney Ohler:

Attorney Ohler said that he spoke to the Duty Attorney James Stowe from the Idaho Fish and Game back in December 2017 and questioned why Idaho Fish and Game didn't take a position in commenting on validating Leonard Road No. 2.

13. Delores Johnston written testimony only. See Exhibit K

14. Linda Rider. No new written testimony

See Exhibit A in January 15, 2018 ESHD minutes, and/or Matthew R. Cleverley Binder dated January 9, 2018 in reference to Rider's testimony.

After all written and verbal testimony was presented, Appointed Hearing Officer, Daniel Keyes asked Chairman Christensen if the Board had any questions for Supervisor Pankratz based upon the testimony the Board had heard. No questions were asked .

CLOSED PUBLIC HEARING:

Chairman Christensen closed the Leonard Road Reopening Public Hearing at 10:55 a.m.

DELIBERATIONS:

The Board having heard the testimony and read the briefs of the parties, Pursuant to Idaho Code 40-203A, the Board determined the evidence received, does not provide basis of the public interest to validate Leonard Road No. 2. The Board supported the decision the County Commissioner made in 1910 to abandon Leonard Road No. 2.

Commissioner Austin highly encouraged the Palmers to work with other Governments evolved to access their property off Rose Creek Road in which they are claiming to be landlocked.

The Board read the **Previous** Findings of Fact:

1. 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.
2. 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.
3. On August 12, 1908, the proposed road was viewed and surveyed.
4. A Viewer 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 to cost eight hundred dollars.
5. On September 16, 1908, the Board of County Commissioners declared Road No. 231, Leonard Road No. 2, a public highway.
6. On July 13, 1910, the Board of Commissioners abandoned Leonard Road No. 2. as a public road because it was too expensive to construct given the level of anticipated traffic.

Below are the **Conclusion of Law** the Board of Commissioner, **Previously** entered into:

1. The validation of Road No. 231, Leonard Road, No. 2 , **IS NOT** in public interest.
2. Through omission or defect, doubt existed to the legal establishment of Road No. 231, Leonard Road No. 2, as a public road.
3. The evidence received by the Board of Commissioners **DOES NOT** provide a basis for validation of Road No. 231, Leonard Road No. 2.

ACTION:

Motion by Commissioner Austin to accept the Findings of Fact as presented. Commissioner Addington seconded the motion, which was unanimously approved (**This motion was rescinded on June 25, 2018**, due to the fact, this was a premature motion), The Findings of Fact and Conclusion of Law from January 15, 2018 public hearing mentioned above had been approved by the Board of Commissioners on March 26, 2018 and recorded under instrument # 2636787.

New Findings of Fact for the Reopening of the Public Hearing of Road No. 231, Leonard Road No.2 will be presented at the June 25, 2018 meeting.

PREVIOUS MINUTES:

Motion by Commissioner Austin to approve the April 16, 2018 ESHD Board meeting minutes. Motion seconded by Commissioner Addington, 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 \$176,2351.65 covered by checks # 16732 through # 16777 (includes DD, PR Tax Pmts to Federal & State, & PERSI.) Commissioner Addington seconded the motion, which was unanimously approved.

Petty Cash	\$ 200.00
Umpqua Checking:	\$ 138,679.03
State Treasury Account Fund 891.....	\$ 4,228,089.74
Less Umpqua Assured Macro-Balance	<u>\$ (1,500.00)</u>
Balance of Working Capital this Date	4,365,468.77
Dedicated Funds at State Treasury Office Funds 369 TMF	\$ 196,903.96
TOTAL OF ALL FUNDS	\$ 4,462,372.73

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

OLD BUSINESS: (Follow-up List)

NEW BUSINESS:

- A. Motion by Commissioner Austin to **piggyback on Idaho Asphalt Supply, Inc.** Peak Asphalt, LLC for pricing for 2018 Road Oils. Commissioner Addington seconded the motion, which was unanimously approved.
- B. Motion by Commissioner Austin to approve both of Gabe Gallenger's approach permits #2018-11 and #2018-12 onto Coeur d' Alene Drive. Commissioner Addington seconded the motion, which was unanimously approved.
- C. Motion by Commissioner Austin to approve the State of Idaho Diversified Bond Fund "DBF" application for establishing a **Coeur d' Alene Lake Drive Fund Account** through the State Treasurer's Office. Commissioner Addington seconded the motion, which was unanimously approved.
- D. Motion by Commissioner Austin to approve the **Amended ESHD Sick Leave Policy:**

Option I

An employee will get paid 33.3% of hours above 720 accumulated sick leave accrued during the fiscal year ending September 30th (and paid to the employee in September.)

Upon departure from the District, **the employee will be paid out 33% of their remaining sick leave balance.**

Option II

When an employee's balance exceeds 720 accumulated sick leave at fiscal year- end, **41%** of those **additional hours (up to 39.36 hrs)** will be placed into a 'bank' to be tracked by the District.

Upon departure from the District **the employee will be paid the accumulated balance** at the current rate of pay, **plus 41% of their current year sick leave balance.** The employee may opt to take the payment at that time **or** they may choose to remain on the District's health plan and the District will use the employee's funds to pay for their health insurance premium until the funds have been exhausted. Once the funds have been spent, the former employee will be responsible to pay the monthly insurance premium while on the District plan.

- E. The U.S. Department of Transportation (USDOT) published a Notice of Funding Opportunity for the Transportation Investments Generating Economic Recover (TIGER) grants program. Over \$1.5 billion in discretionary grant funding for the fiscal year 2018. Application will be due July 19, 2018. USDOT will also consider "project readiness," as well as, the cost benefit analysis.

Federal Highway Administration (FHWA) announced a Notice of Funding Opportunity for states, cities, and other agencies to compete for \$60 million in Advanced Transportation and Congestion Management Technologies Deployment Program grants to fund new technologies that improve transportation efficiency and safety.

Supervisor Pankratz agreed to view the USDOT's webinars for further information on these potential discretionary grant funding opportunities.

- F. Commissioner Addington made a motion to approve JUB Engineers, Inc. to design the construction of the **Medimont Bridge Grant Project**. Commissioner Austin seconded the motion, which was unanimously approved.
- G. Commissioner Austin made a motion to authorize JUB Engineers, Inc. for Additional Professional Services for the **Culvert and Roadway Repair Projects**. Commissioner Addington seconded the motion, which was unanimously approved.
- H. Commissioner Austin made a motion to enter into the State and Local Agreement for Project No. A020 (094), **French Gulch Rd/Fernan Hill Rd Project (Key #20094)** Commissioner Addington seconded the motion, which was unanimously approved. (*Current estimated project cost -\$1,688,000/ Current local estimated 7.34% match- \$123,899*) The project includes overlay, new pavement markings, and additional safety features including signs and guardrail when warranted. (Construction year 2022)

SECRETARY:

1. Secretary Sieverding agreed to compile the 2018 AHDKC Wage and Benefit Comparison worksheet for the Board's and Supervisor's review.
2. Secretary Sieverding questioned if the recording of the Coeur d' Alene Lake Drive Agreement to Assume Control of Highway upon Abandonment between ITD and the East Side Highway District transfer the right-of-way to the ESHD between South Silver Beach Road and Higgens Point Trailhead.
3. Secretary Sieverding said that she hopes to be able to retire in two years and expressed the volume of duties placed on her desk.

The Board discussed hiring future part-time help to job shadow after Secretary Sieverding, and to assist with some of her duties including GIS mapping and managing the District's right- of- way; down loading and managing traffic counts; down loading pavement and sign management into IWorQ; preparing for board meetings and public hearings and taking minutes; preparing and advertising the budgets; managing retention records; preparing for abandonments/vacations and validation hearings; managing website; tracking all road daily

activities and annual project cost; filing documents; handling all the notifications for commissioners elections; and preparing State mileage reports.

The Board agreed that in time, it would be best to hire a part-time person to assist Secretary Sieverding in her duties and to job shadow her, so that when she does retire, that person would have some knowledge of Sieverding's' duties and computer applications.

SUPERVISOR PANKRATZ:

1. Supervisor Pankratz viewed Rann Haight's proposed concept for his house plan and said it was doable.
2. Avista is working on clearing the pathway for transmission lines on **Canyon Road**.
3. Supervisor Pankratz received a dust compliant from Joan Noel on **Carlin Bay Rd**.
4. The purchase of the 2004 international dump truck through Idaho Federal Surplus fell through.
5. Staff is working through **Burma Road Project** closeout. According to LHTAC, the District owes \$78,867 for the match requirement. Staff is reviewing their records to see their records correlate with LHTAC records.
6. **Project Key 19617 update:** The District requested that LHTAC advance out the striping project to 2019, in hopes that more funding is available.
7. The crew are working on hauling gravel, grading, and collecting traffic counts.
8. Supervisor Pankratz informed the person who claimed oil damages from Fernan Lake Road to file a tort with ICRMP.
9. Supervisor Pankratz will be attending an IACERS meeting on May 23rd in Salmon Idaho.
10. The IAHD Regional meeting will be held in Coeur d' Alene on May 31, 2018 at the CDA Inn.
11. Zanetti Bros. aka Basin Resources, Inc. have been approved to open up a gravel pit in Harrison.

COMMISSIONER AUSTIN:

1. Utility Companies pays the cities 1% franchise fee for the use of public right-of-way. Commissioner Austin suggested adding this topic for discussion for our upcoming Regional Meeting set for May 31, 2018.

COMMISSIONER ADDINGTON:

1. Supervisor Pankratz agreed to provide the Board with a timeline for the Hwy 97 Detour onto **Half Round Bay Rd**.
2. John Scarrow, a resident off **East Point Rd** may be interested in engaging in a District cost-share program to chipseal from the paved section off Highway 97 to his property. The District's traffic mitigation fees available for this road \$36,600. Supervisor Pankratz sent an email to

the Forest Service Department to see if they would be interested in cooperating in this road improvement because it directly affects USFS campground in this area.

CHAIRMAN CHRISTENSEN:

1. In a cooperative effort the District will be working with Attorney Susan Weeks office towards validating and/or vacating and abandoning all the Viewer Reports. The first step will be researching all the old County Commissioner's journals and minutes to see if there is any additional history pertaining to each viewers report. Once that process is completed, Attorney Weeks recommends for each District to validate those viewer reports that they want to retain as public right-of-way. Attorney Week's office will have two interns available to work towards the research end of this project. If the Board finds it necessary, it may be necessary to hire a part-time person to assist in preparing for the public validation hearings .
2. Chairman Christensen asked what the next step were for Coeur d' Alene Drive. Supervisor Pankratz is working with Attorney Susan Weeks on some different Idaho Statues relating to the requirements for sending out Request for Proposal for the engineering of the design for project.
3. Supervisor Pankratz will be including the foremen for ideas of where to hold the asphalt zipper demonstration and training session and recommendations for future asphalt zipper projects.

Commissioner Addington made a motion to adjourn the board meeting at 1:05 p.m. Commissioner Austin seconded the motion, which was unanimously approved.

**CHAIRMAN CHRISTENSEN
SUB-DISTRICT #1**

**COMMISSIONER AUSTIN
SUB-DISTRICT #2**

**COMMISSIONER ADDINGTON
SUB-DISTRICT #3**

**SECRETARY/TREASURER
SIEVERDING**