

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR COLUMBIA COUNTY, OREGON

In the Matter of Authorizing Permits to Construct
Two Gates in the Right of Way of Lawrence
Road, Deer Island

ORDER No. 73-2020

WHEREAS, pursuant to ORS 368.056, the Board of County Commissioners may authorize the issuance of a permit to a person to allow construction of a gate on a public road under the jurisdiction of the County; and

WHEREAS, in issuing such permit, the Board of County Commissioners may impose any conditions or specifications on the permit it determines to be advisable to preserve the purposes of the public road, and may include a requirement that the person issued the permit shall bear all costs of construction and maintenance of the gate; and

WHEREAS, the Columbia County Road Standards prohibits the placement of any structure in the right-of-way of any County road or public road under County jurisdiction without first obtaining a Construction Permit from the Columbia County Road Department; and

WHEREAS, Edward January and Jon Troiano are the owners of property adjacent to Lawrence Road, Deer Island, which is a public road under the jurisdiction of Columbia County; and

WHEREAS, in 2017, Edward January and Jon Troiano requested permission to construct a gate on Lawrence Road at approximately Mile Post 0.36 (January) and Mile Post 0.77 (Troiano) shown on the area map, attached hereto as Exhibit A and incorporated herein by this reference, to limit access to the portion of the road that is steep, narrow and unimproved; and

WHEREAS, based on a review of County records in 2017, it appeared that the portion of Lawrence Road at issue was neither dedicated to nor accepted by the County and therefore was not a public road; and

WHEREAS, Mr. January thus erected the desired gates; and

WHEREAS, the following year, the County undertook a project to digitize its historic road alignment records, which allowed historic road alignments to be overlaid on current maps; and

WHEREAS, the information obtained through the digitization project led staff to conclude that the portion of Lawrence Road at issue was accepted as County Road #10; and

- f. The Columbia County Roadmaster is authorized to issue a Public Road Construction Permit to Edward January and Jon Troiano upon their compliance to the Roadmaster's satisfaction with all applicable Columbia County Road Standards.

Dated this 5th day of August, 2020.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By: 

Office of County Counsel

By: 

Alex Tardif, Chair

By: 

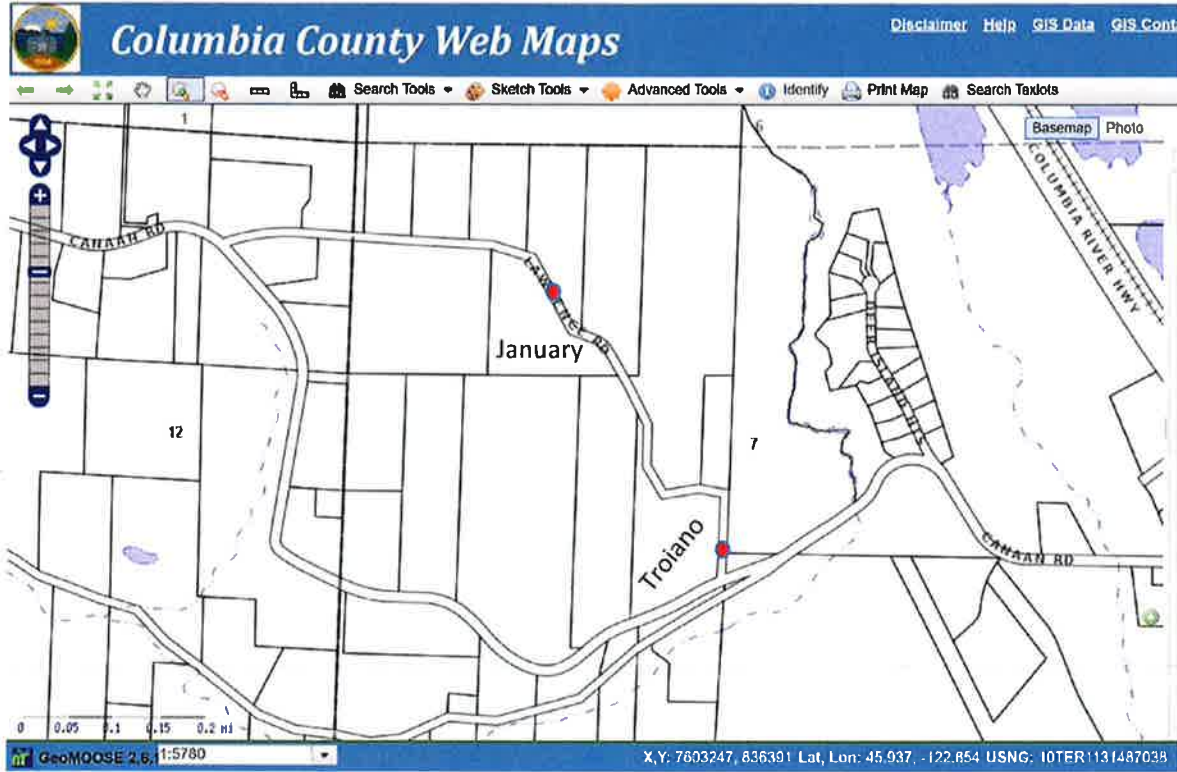
Margaret Magruder, Commissioner

By: 

Henry Heimuller, Commissioner

Exhibit A

Lawrence Road Gate Locations





MEMORANDUM

To: Board of County Commissioners
From: Mike Russell, Public Works Director, Roadmaster
Date: 4/15/2020

Subject: Lawrence Road Gate

Action Requested

Staff wants to update the Board on the legal status of Lawrence Road and seeks formal authorization for a private gate structure on the road by Board Order.

Background

At the risk of being lengthy, staff wants to document the process that has occurred and the substantial findings and conclusions that have been made regarding Lawrence Road.

In September 2017, the Public Works Department received a request to place two gates on Lawrence Road from Ed January.

On January 10, 2018 the Board of Commissioners discussed the request and permit conditions including requiring Mr. January to hold a minimum of \$2 million of General Liability insurance to cover himself and relieve the County of liability for the gates.

Subsequently, Mr. January asked to remove the insurance requirement and that is where things remained for a while.

In May of 2018, staff researched all deed documents from 1920 - 1980 from Meissner to Columbia County and found nothing dedicating or deeding what we know as Lawrence Road.

On May 30, 2018, staff presented to the Board a letter stating that the County would no longer recognize, manage, or maintain Lawrence Road. The Board approved the letter to be sent. As a result, Mr. January erected the gates as he intended and no permit was issued.

Further Analysis Undertaken by County Surveyor and County Counsel

While digitizing historic road alignments, GIS staff found that a portion of "County Road #10" generally followed where Lawrence Road now lies. This discovery caused County Surveyor Nathan Woodward to look further into County Road #10.

County Road #10 was petitioned in 1882 per Commissioner's Journal B Pg. 311 and accepted in Commissioner's Journal B pg. 341. The acceptance language states hereby ordered as County Road. The right-of-way width would be 60 feet by law, since no right-of-way width was stated in the acceptance. Soon after County Road #10 was accepted, three changes, or realignments, to the road occurred between 1903 and 1906. County Road's #168, #178 and #189, all make mention they are a change to Road #10.

This brought up a legal question as to whether a realignment automatically vacates the old alignment of a road. Based on the Case Law researched by Assistant County Counsel Robin McIntyre (*Vedder v. Marion County*, 28 Or 77, 86 (1895)), it was determined that the major change in Road #10, now known as Canaan Road, is too far away from the original location to automatically vacate Road #10 at the time of acceptance. Therefore, it is staff's opinion that Lawrence Road (the original alignment of Road #10) remains a County Road.

This, in essence, reverses the position of the County regarding the legal status of Lawrence Road.

As a result, County staff met with several neighbors on site on February 18, 2020 to discuss the status of Lawrence Road and the gate at the end of the paved portion of the road. There were approximately 10 residents in attendance. Staff indicated that the County would continue to maintain the paved portion, but that the unpaved, unimproved portion would not be maintained as it has not been for at least the last twenty years or so. Staff also said that Public Works would be willing to help with minor maintenance (a load of gravel once in a while) on the unimproved portion if the residents were willing to help.

Ultimately, staff's message to the group was that the County is back to where the Board is supportive of the gates only if the necessary insurance to cover the liability associated with it could be provided. There was also discussion about the process for vacating the right-of-way as the neighbors were interested to find out if that was an option.

One observation that staff came away with was that everyone agreed that the gates have addressed the issues they were having with pass-through and non-local traffic.

Next Steps

Currently, there is a gate at the end of the paved section of Lawrence Road that was constructed by Mr. January and meets Public Works standards for such a structure. Since the road is now considered a County road, we need to formally authorize the presence of the gate under a permit and ensure that insurance requirements are met and maintained.

In order to formally establish a private gate on a County road, the Board will need to adopt a Board Order to that effect. A draft Order is attached for your review. If adopted, staff will proceed by issuing a permit with conditions and work with Mr. January. It must be said that Mr. January has been very understanding of this whole situation and has been willing to comply with our requests.

Staff will be writing a letter to all adjoining property owners that rescinds the letter of May 30, 2018 that stated that Lawrence Road was not a County Road and will try to explain why there was confusion.

Attachments

Draft Board Order