

COMMISSIONER MEETING OF June 27, 2016

The Caribou County Commissioners met in regular session on June 27, 2016 at 9:00 a.m. Those in attendance for the first hour were Earl Somsen, Commission Chair, Phil Christensen, Commissioner, and Mark Mathews, Commissioner. Also in attendance were Caribou County Clerk Denise Horsley, Caribou County Attorney Doug Wood, Leadman Brett Barfuss, Caribou County Sheriff Michael Haderlie, Landfill Supervisor Jayson Lower, Caribou County Treasurer Angie Mendenhall, Caribou County Assessor Aaron Cook, Building Inspector Ralph Hopkins, Billy Rasmussen, Stacey Rasmussen, Lynn Rasmussen, Glenna Rasmussen, Sheldon Mansfield, Jeffrey McCoy, Louis, Berg, Jeraldine Bowen, Bruce Olenick, Craig Shuler.

The meeting opened with the pledge of allegiance and prayer.

Brett Barfuss, Road and Bridge:

- Commissioner Mathews ask Brett to make sure that Church Road South of Grace gets graded. He was asked personally by the water master that this road be graded.

Sheldon Mansfield, GIS:

- We now have 3 homes on a road that comes off of Niter Bench Road. It is being proposed that this road name be changed to Collins Lane as the County ordinance allows for a name change once 3 homes are established. Commissioner Mathews made the motion to change the name of the road to Collins Lane. Commissioner Christensen seconded the motion. Motion carried

Larsen Road:

- The Rasmussen's are worried if their property on Larsen Road is accessible to the public that it will close down their Elk Ranch. They already have a hard enough time with the public scaring the Elk on recreational vehicles and they are concerned about the fences and locks being tampered with. Craig Shuler stated that his concern is to have guarantee access to the public lands.
- The Commissioners reviewed an aerial map that was provided by the County's Assessors Office. It shows that there is access to the State Land on the East side of the State Land without going through Larsen Road. The Commissioners have also reviewed the Findings of Fact and Conclusions of Law given to them by Attorneys Paul A. Turcke and Thomas J. Budge. Commissioner Mathews made the motion not to validate Larsen Road as a public right of way based on the Findings of Fact and Conclusions of Law of Thomas J. Budge in it entirety. Commissioner Christensen seconded the motion. Motion carried. Copy of Attorney Budge's Findings are attached to the minutes.
- It was stated that there are other access points to the public lands surrounding Larsen Road.

Jayson Lower, Landfill Supervisor:

- The Dodge truck needs a transfer case, estimated cost are between \$1000 - \$1200.
- Jayson informed the Commissioners that he has visited the Cache County Landfill, and he suggested that the Commissioners go with him to look at this landfill site. Jayson wants to be prepared in case the Simplot site falls through for the new landfill, and he thinks this Landfill will help them in looking for a backup site.
- Commissioner Mathews moved to convene to executive session at 10:17 a.m. pursuant to I.C. 74-206(a). Commissioner Christensen seconded the motion. Motion carries Commissioner Mathews moved to reconvene to regular session at 10:35 a.m. Commissioner Christensen seconded the motion. Motion carried.

Denise Horsley, Indigent:

- Commissioners signed lines case #2016-19, and releases 2016-12, 2016-13.
- Commissioner Mathews made the motion to deny Indigent Case 2016-15 because the applicant is not medically indigent. Commissioner Christensen seconded the motion. Motion carried.

Michael Haderlie, Caribou County Sheriff:

- Sheriff Haderlie has been in contact with the Oneida Co. Sheriff. They have decided to sign a contract for 10 guaranteed beds rather than previously mentioned 14 beds starting in October. We should still be able to hold if at some point they go over 10. The Commissioner signed the contract with Oneida County of 5 beds starting on July 1, 2016 and running thru September 2016.
- Commissioner Somsen addressed a problem with horses in Freedom that he was made aware of. The horses have been seen in the County right of way to graze. They get moved from one location to another on a frequent basis. Sheriff Haderlie said that a citation can be issued if a written complaint is made up and presented by the concerned individual and a witness.

Jeff McCoy, Mountain States Legal Foundation:

- Commissioner Mathews moved to convene to executive session at 10:48 a.m. pursuant to I.C. 74-206(f). Commissioner Christensen seconded the motion. Motion carries Commissioner Mathews moved to reconvene to regular session at 11:06 a.m. Commissioner Christensen seconded the motion. Motion carried.

Louis Berg, Conditional use Permit:

- Mr. Berg is seeking permission to open a gift shop and wildlife viewing area on the West end of Soda Springs. The wildlife will serve as food for his immediate family, but he hopes to be able to

allow the public access to view the wildlife free of charge while visiting his gift shop. He also hopes to have community events such as wildlife photography, building bird house, archery contest, and maybe a dog sled race.

- The viewing area will consist of 17 acres and will include several different species of horned/antlered animals, water fowl, and land birds.
- He realizes that liability is a concern anytime you have the public involved. He has a personal liability policy, a waiver will be signed by individuals that will be visiting his wildlife view area and he is covered under Idaho Code 36-1604 since there is no fee for the public.
- He plans on having 2 signs, one hanging sign and one on the side of Highway 30 entering town.
- He was told by Planning and Zoning that his foot bridge would need to be totally enclosed. He felt this is a little extreme, but will abide by what rules Planning and Zoning feel are appropriate. He will also need a letter from the County to give to Idaho Fish and Game stating that he is in compliance with all of their rule and regulations for the Wildlife park. He told the Commissioners that the P&Z Commission should issue this letter per the State Law. He was told by P&Z Commission that they do not issue letters. Louis asked about the wildlife ranch for the use of the primary purpose of feeding this family only, and not inviting the public. Ralph said that he would not have to have a condition use permit for the wildlife ranch as long as he did not allow the public to use. Doug said that as long as they are considered livestock under the Idaho Code. Louis said he would still need the letter from Commissioners to Fish & Game. Commissioner Somsen asked Doug Wood the County Attorney what he felt about the Commissioners issuing a letter in regards to Louis being in compliant with all the zoning ordinance. Doug and the Commissioners feel that Louis should get this letter from the P&Z Commission because they will do inspections or have them done by the Building Inspector. Louis said that the law reads that the P&Z will issue the letter.
- Commissioner Somsen asked if he has permission from the canal company for the public to have access. Mr. Berg said he has tried to obtain permission from the Irrigation District and has yet to receive documentation from them. He said they simply ignore his requests. Commissioner Somsen explained to him that we cannot violate Idaho Code 42-1102 and we are unable to approve his conditional use permit at this time due to no agreement with Irrigation District.
- He asked if he would need a building permit to remodel the gift shop. Ralph Hopkins explained that improvements such as siding are fine. However, if he does any new wiring or adds an awning on the building a building permit would be required. A conditional use permit would be needed for commercial use.
- Commissioner Mathews made the motion for a conditional use permit on the gift shop only. Christensen seconded the motion. Motion was carried.

BOE, Jeraldine Bowen:

- Commissioner Mathews moved to convene to Board of Equalization at 12:10 p.m. Commissioner Christensen seconded the motion. Motion carried. Commissioner Mathews moved to reconvene to regular session at 12:45 p.m. Commissioner Christensen seconded the motion. Motion carried.

- Mrs. Bowen feels as if her property has been valued incorrectly for tax purposes. See attached tax assessments for the property in question. She also stated why do I need to pay for taxes on the school because she always votes no.
- The Commissioners wanted to know if she has signed up for the circuit breaker through the State. She told them that she did not know about the program.
- She also is refusing to pay a translator fee since she doesn't have a TV or radio signal at her home. She was told to contact the individuals in charge of the TV Translator.
- She stated that Aaron Cook visited her property without her permission after she called to discuss her assessed value with him over the phone. She asked the Commissioners if they gave him permission to visit her property. The Commissioners told Mrs. Bowen that they did not tell the Assessor to go visit her to discuss her issues. It was also explained to Mrs. Bowen that Aaron Cook is an elected official and they do not supervise his duties.
- Aaron did a presentation and stated that per Idaho law a visual inspection is required every 5 years and ratio studies are done annually.
- Aaron offered explanation on a couple of comparison properties to indicate that her value is just as it should be.
- It was determined by the Board of Equalization that there is not enough evidence to indicate that her property was valued incorrectly by the Assessor's office.

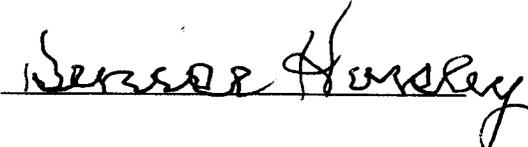
Other:

- Commissioner Christensen moved to pay the claims in the amount of \$232,671.89 and payroll claims in the amount of \$163,341.55, and to approve the minutes of June 13, 2016, as amended. Commissioner Mathews seconded the motion. Motion carried
- The Commissioners spent the afternoon on a tour with Bruce Olenick with the DEQ. They will be touring Conda and Georgetown.
- Sick leave donation was approved as the individual needing the sick leave is completely out of paid leave.
- The meeting adjourned at 11:50 a.m. The Caribou County Board of Commissioners will meet July 11, 2016, at 9:00 a.m. for regular meeting.

Signed: Earl Somsen, Commissioner Chairman

Attested: Denise Horsley





Approved Payment of Bills

	27-Jun-16	Claims	Payroll
Current Expense		\$ 58,680.25	
Indigent		\$ 3,508.41	
Road & Bridge		\$ 67,410.39	
Special Highway		\$ 9,713.35	
Justice		\$ 20,905.90	
Consolidated Election			
Weed Control		\$ 2,148.83	
Solid Waste		\$ 10,987.37	
Reappraisal		\$ 35.63	
Health			
Hospital M&O			
Ambulance		\$ 1,109.60	
Parks & Recreation		\$ 16.43	
Tort			
County Fair			
County Court Facility			
District Court		\$ 3,788.13	
Court Services			
Juvenile Justice		\$ 773.14	
Veteran's Memorial			
Mineral Leasing			
PILT		\$ 6,789.44	
City of Soda Springs			
City of Bancroft			
City of Grace			
Bancroft Cemetery			
Central Cemetery			
Fairview Cemetery			
Freedom Cemetery			
Grace Cemetery			
Lago Cemetery			
Lava Cemetery			
Lund Cemetery			
Thatcher Cemetery			
Turner Cemetery			
School District #148			
School District #149			
School District #150			
School District #21			
Grace Free Library			
Waterways		\$ 382.53	
Tax Deed Excess Funds			
TV Translator			
Bailey Creek Fire District			
Freedom Fire District			
Auditor's Trust		\$ 40.00	
Adult Probation Fee		\$ 48.00	
Diversion Education Trust			
Juvenile Housing Trust			
Range Improvement Trust			
Court Trust		\$ 80.00	
Centennial Trust			
College Trust			
Treasurer's Trust			
ID Trust			
Concealed Weapon's Trust			
Motor Vehicle Trust		\$ 43,425.74	
911 Trust		\$ 1,718.75	
Public Safety Trust			
Weed Control Trust		\$ 1,000.00	
Drug Court Trust		\$ 110.00	
Youth Court Trust			
Vessel Account			
Grand Total		\$ 232,671.89	\$ 163,341.55

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Attorneys for Billy & Stacy Rasmussen and Lynn & Glenna Rasmussen

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CARIBOU COUNTY, IDAHO**

IN THE MATTER OF:
VALIDATION OF LARSEN ROAD.

**Rasmussen Proposed Findings of
Fact and Conclusions of Law**

Billy Rasmussen, Stacey Rasmussen, Lynn Rasmussen, and Glenna Rasmussen, through their attorneys, Randall C. Budge and Thomas J. Budge, submit the following proposed findings of fact and conclusions of law as requested by the Board of County Commissioners of Caribou County at the close of the public hearing in this matter held May 23, 2016.

FINDINGS OF FACT

1. This matter came before the Board of County Commissioners of Caribou County, Idaho, by public hearing on May 23, 2016.
2. The public hearing was held under Idaho Code § 40-203A(a) because “doubt exists as to the legal establishment or evidence of a highway or public right-of-way” over a portion of Larsen Road.
3. Attached hereto as *Exhibit A* is the current Caribou County Road and Bridge map showing Larsen Road extending south of Alexander Reservoir from Reservoir Road.
4. Doubt exists as to the status of the southern portion of Larsen Road located in the SWSW of Section 24 and in Section 25, Township 9 South, Range 41 East, Boise Meridian, Caribou

County, Idaho.¹ To avoid confusion with the remainder of Larsen Road, the disputed portion is referred to herein as the "Rasmussen Segment" and identified as such on *Exhibit A*.

5. The Rasmussen Segment crosses property owned by Billy and Stacey Rasmussen who live at the end of the Rasmussen Segment near the southern border of Section 25. (Testimony of Billy Rasmussen.)
6. The Rasmussen property was patented to August Largilliere in 1909. (R. 31.) The Largilliere family constructed a residence at the end of Larsen Road near where the Rasmussen residence is located today. (Testimony of Glenna Rasmussen.)
7. The Rasmussen family purchased their property in 2001. (Testimony of Glenna Rasmussen.) There was no recorded public right-of-way for the Rasmussen Segment, and the Rasmussens believed it to be a private road. *Id.* The Rasmussen family has spent in excess of \$100,000 to improve and maintain the Rasmussen Segment, and has paid all real property taxes on the Rasmussen Segment. (Testimony of Billy Rasmussen, Glenna Rasmussen.)
8. The southern boundary of the Rasmussen property in Section 25 adjoins the northern boundary of Section 36 which is owned by the State of Idaho. The Rasmussen family operates an elk ranch on the West ½ of Section 36 under a lease from the Idaho Department of Lands. The Rasmussens are required by the State of Idaho to maintain high fencing around their leased property, and that making the Rasmussen Segment a public road would harm their operation. The Rasmussens have had problems with vandalism and other trouble from trespassers in the past, and the ability to close the gate to their property is important to protecting their agriculture operation and family. (Testimony of Lynn Rasmussen, Billy Rasmussen, Stacey Rasmussen, Glenna Rasmussen.)
9. The Rasmussens and several other citizens contend the Rasmussen Segment is a private road built to access the Largilliere residence. Other citizens contend the Rasmussen Segment is a public road constructed to provide public access to State-owned property in Section 36.
10. Several citizens testified that they have used the Rasmussen Segment to access public land for hunting and other purposes. However, many of these citizens recognize the Rasmussen Segment to be a private road, and that their use of the road was with explicit or implicit permission of the Rasmussens and their predecessors in interest. (Testimony of Owen Gunnell, Ranae Foster, Larue Workman, Jim Workman, Randy Corder, Sandi Maughn, Cami Taggart, Larry Simmons, Danny Rasmussen.) Owen Gunnell, who has lived on Larsen Road for 75 years, and Randy Corder, who has lived on Larsen Road for 60 years, are adamant that the Rasmussen Segment is a private road.

¹ All Public Land Survey System sections referenced in this document are located in Township 9 South, Range 41 East, Boise Meridian, Caribou County, Idaho.

11. Two citizens testified and several affidavits were submitted in support of the Rasmussen Segment being validated as a public road based on historic use of the road by members of the public. (Testimony of Jim McCullough, Craig Shuler; R. 49, 51-61, 63, 65, 68, 70-71, 73.) These persons have periodically used the Rasmussen Segment to go hunting and for other purposes from the 1960s through 2001.
12. Two residents of Bannock County testified and one affidavit was submitted in favor of validating Rasmussen Road as a public road as a matter of principle that public access should be provided to public lands, without addressing historic use of the Rasmussen Segment. (Testimony of Lynn Whitworth, David Whitworth; R. 50.)
13. The prior owners of the Rasmussen property, Steve and Stefany Wuthrich, submitted a statement that the Rasmussen Segment was privately maintained and considered a private road from the time Stefany's father, Gayle Dean Hunt, purchased it in 1960 until it was sold to the Rasmussens. (R. 96.)
14. Jerry Cook submitted a statement that he rented the Largilliere cabin from the Wuthriches from 1977 to 1984, that the Rasmussen Segment was not maintained by Caribou County or open to the public for access during that time, that it was posted as private, that he hauled in silica sand at his expense to repair the road, and that he recognized it to be a private road. (R. 33.)
15. The Rasmussen family regularly gives permission for others to cross their property for hunting, recreational, and other purposes. (Testimony of Billy Rasmussen, Glenna Rasmussen.)
16. Written statements were submitted by three prior employees of the Caribou County Road & Bridge Department concerning maintenance of Larsen Road. (R. 48, 62, 67, 69, 72.) Except for spraying during the summers of 1995 through 2009 (R. 62) and snowplowing in 1987 and 2000 (R. 67, 69), it is unclear whether the maintenance these statements refer to was done to the Rasmussen Segment or to other parts of Larsen Road.
17. Caribou County Road & Bridge Department supervisor Kim Spencer, who has worked for the Department for the past 34 years, as supervisor for the past 15 years, reports that the Rasmussen Segment "has never been constructed or maintained by the County to my knowledge during the past 34 years," that the Caribou County Road and Bridge map "incorrectly shows Larsen Road going well beyond where the county road ends, into the Rasmussen property," and that the "official County Map should be corrected to properly reflect that the County road ends at the S1/4 line of Sections 23 and 24 as shown on the plat map." (R. 12.)
18. Idaho Department of Transportation (IDT) road maps for Caribou County have for many years included the Rasmussen Segment, though not precisely. The 1963, 1966, and 1967

maps show the Rasmussen Segment following the section line between Sections 25 and 26, some distance west of the present location of the Rasmussen Segment. (R. 88-90.) The 1968 through 2010 maps show the present location of the Rasmussen Segment. (R. 77-86, 90-95.)

19. The 1968 through 1975 road maps depict the Largilliere residence and show the Rasmussen Segment terminating at the Largilliere residence before reaching the State-owned property in Section 36. The 1981 through 2010 maps distinguish the Rasmussen Segment from the remainder of Larsen Road, but the Largilliere residence does not appear on these maps and it is unclear whether the Rasmussen Segment terminates at the Largilliere residence or at the edge of Section of 36.
20. Caribou County road maps began using color coding in 2001 to identify public roads. The 2001 through 2010 maps do not assign any color to the Rasmussen Segment, indicating it is neither a public road nor a public right-of-way, though it continued to appear on the underlying map. (R. 80-84.) By contrast, the 2011 and 2014 maps mark the Rasmussen Segment as a "route." (R. 85-86.) The "route" designation has been used to identify non-county roads such as state highways and private roads. *Id.*
21. A survey prepared by the US Army Corp of Engineers in 1877 shows a road meandering along the west side of the Bear River in the vicinity of Larsen Road. (R. 87.) The location of this road deviates substantially from Larsen Road, as is apparent by comparing the 1877 survey (R. 87) with the 2014 County road map (R. 86). (Testimony of Larry Simmons.) The road shown in the 1877 survey does not traverse through Section 25 as the Rasmussen Segment does, but instead proceeds southward along the west side of the Bear River to Nounan and Bern, Idaho. (Testimony of Craig Shuler; R. 52, 54.)
22. One citizen asked the Commission to infer from events reported in the book "Tosoiba" that Larsen Road furnished access to the natural resources the early pioneers needed for survival, and for harvesting lumber to produce railroad ties. (Testimony of Craig Shuler; R. 56.) However, it is unclear whether these early settlers used the Rasmussen Segment specifically. It is equally plausible that early settlers used the road identified in the 1877 survey or other roads in existence at that time.
23. The earliest map produced that reasonably approximates the Rasmussen Segment specifically is the 1963 ITD map for Caribou County. The earliest evidence of use of the Rasmussen Segment specifically is the affidavit of Dusty Moore who used it to visit relatives Fred and Dube Larsen about 1950. There is no evidence in the record that the Rasmussen Segment was constructed for public use prior to the time the Rasmussen property was patented by the Largilliere family in 1909.
24. The State of Idaho, which owns Section 36, does not recognize the Rasmussen Segment to be a public road. (Testimony of Billy Rasmussen.) The State has affirmatively recognized it

to be a private road, evident by its request to acquire an easement over the Rasmussen Segment in 2003. (R. 28-30.) The proposed easement states: "It is further understood and agreed that the road is not a public road, and that the rights, privileges, and authorities herein granted are for the use of the grantee, its successors and assigns, forever, for any and all purposes deemed necessary or desirable in connection with the control, management, and administration of the grantee's lands, or the resources thereof." *Id.*

25. In 1996 an easement was granted over the Rasmussen Segment by the Estate of Elizabeth D. Largilliere Burke. (R. 14.) The easement states: "nothing contained in this grant of easement shall, or shall be deemed to, constitute a gift or dedication of any portion of the easement to the general public or for the benefit of the general public or for any public purposes whatsoever." *Id.*
26. No evidence was presented that Caribou County has ever purchased, condemned, or received by gift or dedication a public road or right-of-way over the Rasmussen Segment, nor has Caribou County issued an order locating and recording the Rasmussen Segment as a public right or right-of-way.
27. It is not necessary to use the Rasmussen Segment to access public land south of the Rasmussen property. Public access to such lands is available via various alternative access points such as Bailey Creek, Eight Mile, and Whitetail. (Testimony of Billy Rasmussen, Lynn Rasmussen, Sandi Maughn, Larry Simmons, Danny Rasmussen.)

CONCLUSIONS OF LAW

28. Under Idaho Code § 42-203A, the Commission can initiate validation proceedings "If, through omission or defect, doubt exists as to the legal establishment or evidence of establishment of a highway or public right of way." Idaho Code § 42-203A(a). In a validation proceeding, the Commission shall hold a hearing and "consider all information relating to the proceedings and shall accept testimony from persons having an interest in the proposed validation." Idaho Code § 40-203A(2)(e). "Upon completion of the proceedings, the commissioners shall determine whether validation of the highway or public right of way is in the public interest and shall enter an order validating the highway or public right of way as public or declaring it not to be public." Idaho Code §40-203A(3).
29. The term "public highway" refers to "all highways open to public use in the state, whether maintained by the state or by any county, highway district, city, or other political subdivision." Idaho Code § 40-117(7). A public highway may be created by (i) a deed or other instrument establishing an interest in the real property, (ii) use of the highway for five (5) years, "provided [it] shall have been worked and kept up at the expense of the public, or located and recorded by order of the board of commissioners" (Idaho Code § 40-202(3)), (iii) eminent domain, or (vi) dedication.

30. The term “public right-of-way” refers to “a right-of-way open to the public and under the jurisdiction of a public highway agency, where the public highway agency has no obligation to construct or maintain, but may expend funds for the maintenance of, said public right-of-way.” Idaho Code §40-117(9). A public right-of-way may be created “by deed of purchase, fee simple title, authorized easement, eminent domain, by plat, prescriptive use, or abandonment of a highway pursuant to section 40-203.” *Id.*
31. To establish a highway or right-of-way by prescriptive use there must be “regular maintenance and extensive public use.” *Stafford v. Klosterman*, 134 Idaho 205, 208 (Idaho 2000) (emphasis added); *see also Tomchak v. Walker*, 108 Idaho 446, 448 (Idaho 1985). The maintenance must be performed by a public agency at public expense. *Roberts v. Swim*, 117 Idaho 9 (Idaho Ct. App. 1989). It must be performed “at necessary times and places.” *Burrup v. Stanger*, 114 Idaho 50 (Idaho Ct. App. 1988) (aff’d 115 Idaho 114 (1988)). “It is not required that the road be worked on for five consecutive years, nor does the statute require work to be done throughout the road’s entire length.” *Id.* However, the maintenance must be “more than occasional or sporadic, but as was necessary.” *Id.* “It is customary in many counties for county road crews to gratuitously aid private owners in maintenance,” but unless such maintenance is performed at necessary times and places it is insufficient “to change the character of a road from private to public.” *Rice v. Miniver*, 112 Idaho 1069 (Idaho 1987). As to public use, it “must have been more than only casual and desultory.” *Burrup v. Stanger*, 114 Idaho 50, 53 (aff’d 115 Idaho 114 (1988)). “[t]he facts should show that the public has used the road regularly, as it would any similar public highway.” *Id.* If a landowner allows members of the public to cross his or her property by permission, their use of the road is not adverse, thereby precluding public ownership by prescriptive use. *Hughes v. Fisher*, 142 Idaho 474, 480 (2006) (“A prescriptive right cannot be granted if the use of the servient tenement was by permission of its owner, because the use, by definition, was not adverse to the rights of the owner.”)
32. Idaho Code § 36-1604 encourages private landowners to allow the public to cross and use private property: “LIMITATION OF LIABILITY OF LANDOWNER. (a) Statement of Purpose. The purpose of this section is to encourage owners of land to make land, airstrips and water areas available to the public without charge for recreational purposes by limiting their liability toward persons entering thereon for such purposes.” Accordingly, Idaho law presumes that public use of wild and unenclosed land is permissive, *Cox v. Cox*, 84 Idaho 513, 523 (1962) (quoting *Fullenwider v. Kitchens*, 223 Ark. 442, 445, 266 S.W.2d 281, 283 (1954):

The reason for the rule that a passageway over unenclosed and unimproved land is deemed to be permissive is sound and also easily understandable It assumes that the owner of such land in many instances will not be in position to readily detect or prevent others from crossing over his land, and, even if he did, he might not enter any objection because of a desire to accommodate others and

because such usage resulted in no immediate damage to him. Also in such instances the landowner would probably have no reason to think the users of the passageway were attempting to acquire any adverse rights. On the other hand there would be no reason or basis for such inference of permission on the part of the landowner if someone tore down his fence or destroyed his crops by reason of such usage. These acts alone would be calculated to put the landowner on notice that others were using his land adversely to his own interest and right of occupation.

33. A Federal land right-of-way may be established under Section 8 of the Mining Act of 1866, commonly referred to as "R.S.2477." The statute is understood to operate as an offer from the federal government to individual states and territories to create roads over public lands. *Dillingham Commercial Company, Inc. v. City of Dillingham*, 705 p. 2d 410, 413 (Alaska 1985). To be valid it must be shown that the road was constructed over federal land before it was removed from the public domain, and that the local government accepted the road from the federal government." *Ferrell v. Board of County Commissioners of Lemhi County*, 138 Idaho 378, 384 (2002). Under Idaho Code § 40-204A, "the act of construction and first use constitutes the acceptance of the grant given to the public for federal land rights of way."
34. Idaho Code § 40-202 requires each Idaho county to maintain a map of the county highway system, consisting of "all public highways in a county except those included within the state highway system, those under another state agency, those included within city highway systems of incorporated cities, those included within a highway district highway system, and those under federal control." Idaho Code § 40-104(9). However, "[t]he process by which a county selects a highway system or creates an official highway map does not also serve to adjudicate the public status of any roads within the county or create new public highways or rights-of-way." *Homestead Farms, Inc. v. Bd. of Comm'rs*, 141 Idaho 855, 860 (Idaho 2005). "[I]f a road is not properly created as a public highway, its inclusion on an official county highway system map does not make it so, nor does it impose any requirement on a property owner to vacate what has never been established as a public roadway." *Id.* When considering whether roads are public or private, the Commission must "not presume their public status simply because they had been designated as such on the official map." *Id.*
35. The proponent of validating a public road carries the burden of proving a public road legally exists. *Floyd v. Board of Commissioners of Bonneville County*, 137 Idaho 718 (2002); *Ada County Highway Dist. v. Total Success Invs., LLC*, 145 Idaho 360, 365 (2008); *Lattin v. Adams County*, 149 Idaho 497, 502 (2010).

APPLICATION OF FACTS TO LAW

36. The Commission finds and concludes there is inadequate evidence that the Rasmussen Segment was acquired by Caribou County under Idaho Code § 40-202(2) by deed or other document establishing an interest in the property.

37. The Commission finds and concludes there is inadequate evidence that the Rasmussen Segment has been kept up at the expense of the public for a period of five years. The Commission finds that sporadic spraying and two instances of snowplowing is inadequate to establish regular maintenance "at necessary times and places," particularly considering the heavy maintenance burdens born by the Rasmussens and prior owners of their property to keep the road open and maintained year-round, thereby defeating the establishment of a public road under Idaho Code § 40-202(3).
38. The Commission finds and concludes that periodic public use primarily by neighbors and acquaintances, many of whom recognize the Rasmussen Segment to be a private road, over unenclosed and unimproved land for recreational purposes and without charge, is inadequate to establish public use under Idaho Code § 40-202(3).
39. The Commission finds and concludes there is inadequate evidence that the Rasmussen Segment was constructed by public use prior to 1909 when the Rasmussen property (then owned by Largilliere) was removed from the public domain.
40. The Commission further finds and concludes that the road reflected in the 1877 Survey of the U.S. Army Corp of Engineers does not establish an R.S.2477 road over the Rasmussen Segment because it does not substantially follow the location of the Rasmussen Segment and appears to have been constructed to access settlements to the south along the Bear River as opposed to public land in Section 36.
41. The Commission finds and concludes there is adequate public access to Section 36 via other points of access, and that it is not in the public interest to validate the Rasmussen Segment as public road.

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED that the Rasmussen Segment as identified on Exhibit B hereto is declared not to be a public highway or right-of-way and shall not be identified as a public highway or a public right-of-way on the Caribou County road map.

DATED this 23rd day of June, 2016.

RACINE OLSON NYE BUDGE & BAILEY,
CHARTERED

By: 
Thomas J. Budge

EXHIBIT A

CERTIFICATE OF MAILING

I certify that on this 23rd day of June, 2016, the foregoing document was served on the following persons in the manner indicated.

Thomas J. Budge

Thomas J. Budge

Paul Turcke MSBT LAW 950 W. Bannock St, Ste. 520 Boise, Idaho 83702 PAT@msbtlaw.com	<input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-Mail
S. Douglas Wood Caribou County P.A. 159 E. 2 nd South, Ste 2 Soda Springs, Idaho 83276 prosecutor@co.caribou.id.us	<input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-Mail

Caribou County Commissioner

Earl Jonsen

Med. Math

Phil Christen

Approved and signed by Commissioners on June 27, 2016.

6-27-16

**CARIBOU COUNTY
2016 OWNER PARCEL LISTING
BOWEN JERALDINE**

06/27/2016
12:07:38PM

Sort Order: Primary Owner Name

Parcel Number	Primary Owner	Mailing Address	Property Address	Legal Description	Catg	Acres	Values		
							Market	Total HOE	Total Taxable
08S42E254200	BOWEN JERALDINE	3203 TRAIL CANYON RD SODA SPRINGS, ID 83276	3203 TRAIL CANYON RD SODA SPRINGS, ID 83276-5223	TR NW1/4SW1/4,30.07 AC, SEC 25 T8S-R42E,1966 BUDDY	3	1.000	255		
					5	28.000	5,460		
					10	1.000	16,000		
					32	0.000	3,000		
					08S42E254200 TOTAL:				
08S42E267201	BOWEN JERALDINE	3203 TRAIL CANYON RD SODA SPRINGS, ID 83276	3203 TRAIL CANYON RD SODA SPRINGS, ID 83276-5223	E1/2NE1/4SE1/4, 20 AC SEC 26, T8S-R42E 1980 KIT ROYAL OAKS	3	8.000	2,040		
					5	11.000	2,145		
					10	1.000	16,000		
					32	0.000	400		
					48	0.000	42,783		
08S42E267201 TOTAL:						20.000	\$63,368	\$-29,392	\$33,976
MH9361F	BOWEN JERALDINE	3203 TRAIL CANYON RD SODA SPRINGS, ID 83276	3203 TRAIL CANYON RD SODA SPRINGS, ID 83276-5223	1966, BUDDY, 12 X 60	46	0.000	2,000		
MH9361F TOTAL:						0.000	\$2,000	\$0	\$2,000

TOTAL PARCEL COUNT : 3

TOTAL TAXABLE VALUE : \$60,691

90083

BOARD OF EQUALIZATION

Parcel Description	Parcel Address:	Parcel Number:
T8S R42E Section 25	Caribou County	08S42E254200
T8S R42E Section 26	Caribou County	08S42E267201
1966 Buddy 12x60	Caribou County	MH9361F

Owner Information

Jeraldine Bowen
3203 Trail Canyon RD
Soda Springs ID 83276

NOTICE OF ACTION

This action reflects the decision of the Board of Equalization

The Caribou County Commissions sitting as the Board of Equalization took the following action on the applicant's property assessment appeal.

✓ Assessor's value affirmed - No Change

Your value has been changed as selected below

Current Description	Category Code	Lot/Acres	Original Value	BOE Decision Value	Status

This action reflects the decisions of the Caribou County Board of Equalization. Your next step for appeal is to the State Board of Tax Appeals or to the district Court within 30 day of the mailing of this notice
(see Idaho Code 3-511)

An Appeal form for Sate Board of Tax Appeals must be obtained by contacting the County Clerk at (208-547-4324)