

**Custer County Commissioners
Public Hearing Minutes
Kootenai Walk Road Vacation
Challis Community Events Center
January 16, 2024**

Present: Commissioner Chairman Randy Corgatelli, Commissioner Steve Smith, Clerk Lura Baker, Deputy Clerk Tamra Giampedraglia, community members: Walt Taylor, Dudley Verbeck, Sherri Hughes, Diane Fisher, Bryan Wilson, Tom McGowan, Lynn Cromwell, Thomas Thurber, Cody LaRoy. Prosecuting Attorney Justin Oleson via telephone.

Information packets that were submitted prior to the hearing deadline were reviewed by Commissioner Corgatelli and Commissioner Smith.

Call to Order: (Recorded) Special meeting called to order by Commissioner Chairman Corgatelli at 6:05 p.m. Commissioner Corgatelli explained the reasoning for the Public Hearing and the procedures for the hearing. He explained how the evidence will be submitted, who will be allowed to testify and the time limit for each individual petitioning and testifying. Commissioner Corgatelli verified that no Commissioner had any personal or financial interests in this issue and that they have not had any ex parte communication regarding this issue.

Petitioner Opening Comments: Bryan Wilson of Challis Redi Mix

Bryan Wilson advised in 2022 he purchased Challis Redi Mix from the Robinson's and since the 1970's Challis Redi Mix has provided service for Custer and surrounding Counties. In order to keep that going, there would become a need for some type of expansion to get more resources. In 2022 filed for a conditional use permit (CUP) with Planning and Zoning for 4 acres bordering the existing pit, it was zoned residential and he was approved for that CUP. To make this expansion feasible with the existing pit, he is asking for this right of way that was platted in the subdivision but has never been used and is not used for public access or as a passable road. It has never been used for any type of access, as there is tree growth in it and two irrigation ditches that will need to be piped to make it passable. He does understand that there are issues with Mr. Thurber and access to his property and that is why he has only asked to vacate the road on the north side of his property so that there would be access to every one of his lots. In order to expand the gravel pit, it is necessary to get that right of way out of the way. There is still one report, one inspection that was done this morning from the Idaho Dept of Lands that he was waiting on, just received this document by email 15 to 20 minutes ago. He tried to lump it into one email. Commissioner Smith advised that there has to be copies made for everyone that needs to be able to see it, Clerk Baker advised that if Mr. Wilson has a copy it can be submitted as an Exhibit. Commissioner Smith labeled this document as Exhibit A. Mr. Wilson advised that in this exhibit he also included the meeting minutes from the CUP, but is also just the inspection reports from the Department of Environmental Quality, MSHA and the Idaho Department of Lands. The reason for these inspections is false complaints by Mr. Thurber that

have been continually complained against. Mr. Thurber interrupted from the audience that he would like to have Mr. Wilson speak up please. The meeting today, or rather the inspection today was requested by the Attorney General's Office to the Idaho Department of Lands and this is just showing that Mr. Wilson is in compliance with every government entity and every permit that he has, this is their report showing that he is in compliance. Mr. Wilson doesn't know what to do with the email that is the final report from the Idaho Department of Lands, he does not have a physical copy of that document with him at the hearing. The basis of why he is here at this hearing is to ask for the right of way to be vacated so that he can continue to mine through.

Commissioner Corgatelli asked Commissioner Smith if he had any questions. Commissioner Smith asked about the photos given by Mr. Wilson, and asked Mr. Wilson to come forward and identify the property that he is describing and which is going to be accessed under the Conditional Use Permit given by the P&Z. He asked for Mr. Wilson to clarify that he owns lot #1, 8, 2, and 7 and that in order to utilize the Special Use Permit given by Planning and Zoning that they gave him allowance to use this area to extend the pit operation. Mr. Wilson confirmed on the photos that he was given that area per the Special Use Permit. Commissioner Smith and Clerk Baker then discussed that this information was not really part of this vacation hearing and more for the Special Use Permit. Commissioner Smith did still feel that the access given to Mr. Wilson through the Special Use Permit would apply to this argument.

Commissioner Smith advised that the other party, in the documents that he has read, has talked about trespass. He asked Mr. Wilson if he could elaborate a little bit about this. Mr. Wilson advised that the report today from the Idaho Dept of Lands addresses that and labels that out very well, but that is the report that is on email. Clerk Baker advised that she felt that the Prosecuting Attorney needed to be brought into this conversation. Wilson advised that what has been brought into question is where the right of way is and during this last summer an outside contractor in the pit, DL Beck doing the Garden Creek Project, used the pit for that project. They came in and leased a piece of his property. They were a separate mine ID, they were not a part of his operation and they came in and they mined out the corner, took an acre out to provide resources for that project. In the process of doing that they piled the spoils of that excavation and left the mountains of dirt just piled on that right of way. They never crossed into anyone's property, they were just piled on the access. Commissioner Corgatelli asked Mr. Wilson to confirm that to his knowledge this road has never been put in and has never been used. Mr. Wilson confirmed that to be correct.

Clerk Baker advised Prosecutor Oleson about the question that has come up that some of the exhibit that has been given and some of the discussion that has come up is regarding the Conditional Use Permit that he has received, should this not be discuss or should this be only about the road vacating and that is it, even though the CUP is kind of tied to the road. Prosecutor Oleson advised that the Conditional Use Permit has nothing to do with the road, it was his understanding that the CUP for him to be able to mine on the two lots that he has on the other side of the road, but the road itself is a dedicated public road and we cannot give a special use permit on something that is owned by the public. Commissioner Smith agreed that

the Conditional Use Permit only applies to the land already owned and its use and this hearing is about vacating the road. Oleson advised that the special use permit really has nothing to do with the public road, public right of way or whether or not the Commissioners decide to vacate that.

Mr. Wilson asked Commissioner Smith if he had sufficiently answered the question concerning the trespass. Commissioner Smith advised that the trespass would probably be more of a civil matter and not pertinent to the vacating of the road. Prosecutor Oleson confirmed that the trespass would be more of a civil issue, a county ordinance issue and not part of the vacating of the road.

Corgatelli asked Oleson to clarify the current status of the road in question. Corgatelli stated that this portion of this road has never been made a road, it may have a public right of way but there has never been a road constructed on that right of way. Oleson advised that the county has never put that on the county's road map, the county has never taken over that road. But when it was platted it was given as a public right of way or deeded as a public right of way. At any time when those lots are developed and if the county decides to put that on the county's road map, then the county at that time would have the right to build a road. It is technically a dedicated road way, but no the County has never maintained or done anything with that right of way. Commissioner Smith asked to clarify that this road was platted with the subdivision and given over for public use and that is the status of it? Oleson advised that when the subdivision was created, the road was included for access to each lot. He stated that when the subdivision was approved, there had to be someone that had reviewed the subdivision plan to make sure that all of the lots had access, and to make sure that there were no dead ends, this is for snow removal and school busses.

Commissioner Smith asked Mr. Wilson to clarify why this portion of the road is an obstruction or why it keeps him from utilizing his property for the purpose of expansion of the pit through the Conditional Use Permit. Wilson advised that it is an obstruction because when you go down 30, 40, 60 feet, the slopes widen out in order to hold the road up. Not only does it take up a lot of material to go down that deep and that wide, in order to get the material out of the four lots where the CUP is approved, he would have to bring it out on the county road and truck it down the county road and into the pit. So he would be trucking all of that material onto the county road, down the road and into his other access into his pit. Commissioner Smith also wanted to clarify that Wilson is asking to vacate the road but is also basically asking for that road property as well. Wilson confirmed this, as he states that if the road is to become vacated and he is able to use mine through there, then the road would become part of the mine. Unless someone wanted to come and take it for something else. Commissioner Smith asked Oleson to verify if the road is vacated and there may be value (as stated in the other parties documentation) in the road, but the county doesn't own the road, then who would then own the property the road is on and how would that be divided? Oleson advised that the road is a dedicated public right of way and then would be owned by the public. When a road or public right of way is vacated, then the road would be divided to the adjoining land owners. If Wilson owns the land on each side, which he does, then he would then own the land that the road is on.

Supporters:

Walt Taylor stood in support of the Redi Mix. Mr. Taylor stated that he would like to see this vacation be approved, he advised that the Redi Mix has been an asset to Custer County and the community. He lives approximately 300 yards from that gravel pit and it doesn't bother him one bit. He would like to see the expansion approved and to keep going. He would sure hate to see it go away and for the citizens of Custer County have to use out of county facilities if this cannot continue. So he is in support of this vacate and would like to see it approved.

Cody LaRoy would like to add that the Redi Mix is critical for our community and the future of our area, it is an asset for future generations. He realizes that there does come sacrifice with this. He advised that the road isn't even technically there at this current time, he feels that vacating the road is more of a benefit than leaving it there. He believes that it is a benefit for the future of growth in our community. Commissioner Smith asked how close LaRoy lives in regards to the gravel pit, LaRoy advised that he lives approximately 375 yards from the pit.

Neutral:

Diane Fisher, advised that she put neutral because she wanted to hear more about what was going on. She advised that she is actually in support of the gravel pit and the vacation of the road. Her house is directly across from the gravel pit, she purchased her home in 1999 and knew there was a gravel pit there when she purchased it and is glad that it is there. She is in full support of the gravel pit and advised that it doesn't make sense if Mr. Wilson owns both sides of that road, and needs to utilize the land for the gravel pit, the road should be taken out so that he can use the land. It is an asset to this community.

Opposition:

Tom Thurber advised that he has lived in this area for 20 years. He states that this road is an access to his properties. He feels that when he bought those properties, he bought that access. He states that Frank Robinson would not allow him to use the road, and had actually put a ditch through it so that Thurber could not use the road and part of the road is now damaged. He would like to put in culverts in the road. Put in a complaint to the Sheriff's office, who advised that this was a civil matter. Went to P&Z and told them about this trespass, they issued a cease and desist order and advised that he needed to repair the road and the ditch. He believes that the vacate will encourage more noncompliant behavior and open the door to worse behavior. Has already made a profit on sale of gravel from this road. Should be at least 20' from that roadway, as the pit wall should be 20' from the roadway according the Department of Lands. This a platted public access, I have 4 parcels of property on that road and would like to have access to his legal property. He repeated that P&Z ordered Mr. Wilson to repair the road. He feels that his rights are being trampled. He does not believe that the vacation should be approved.

Commissioner Smith asked Thurber to come forward and to show the Commissioners where the road has been dug up. Thurber gave information on where the ditch should be and where the road has been damaged. He also wanted to know where Thurber wants to put his culverts.

Commissioner Smith asked Oleson on a public road, if this is a subdivision on a platted map and the county has not put this on the county maps and there are ditches, who is responsible for the culverts and the ditches and maintaining the road. Oleson advised that the ditches have a right of way, the road has a right of way, it is his understanding that Mr. Thurber wants to use the road and so Mr. Thurber would need to put in the culverts and would need to maintain the road. Thurber advised that he is not currently using the road in question, he has another access to his property. He wants to put all of this in, where it currently has not been maintained. Mr. Thurber did advise that if the road is vacated, he wants to have a 75 foot turn around for emergency vehicles or school busses. No further questions.

Petitioner:

Bryan Wilson advised that 80% of what Thurber has stated and complained about is false and the inspection report states this. There were piles that were on the right of way and he went and cleaned those up. He advised that 25' of the road has not been removed. It has all been put back to Property has never been surveyed, and who is responsible for the survey cost. He advised that there are just so many false statements. Report received from the Department of Lands, ordered from the Idaho Attorney General.

Commissioner Smith asked Wilson to come up and look at the maps again, after Thurber marked them. He would like to have clarification regarding the ditch. It is the Jose Ditch that comes off of the Ginny Ditch. Has Thurber been approved by the ditch company and gotten approval from the ditch company? Smith advised that that would be a question for another entity than the County Commissioners.

When he took over the pit, there was a wall to the fence and was in disrepair.

Commissioner Smith asked Wilson to elaborate on some of the photos that were submitted. Wilson looked at each of the photos and gave explanation of each photo. In regards to the ditch, Wilson advised that if he is allowed to vacate the road, he will be meeting with the ditch company in regards to rerouting the ditch.

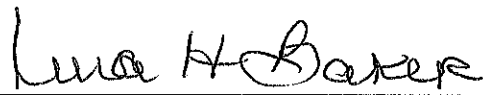
Commissioner Smith stated that there have been many statements made and there is information that will need to be reviewed before he would make a decision on this matter. Commissioner Corgatelli advised that he would like to be able to review the information presented also before making a decision on this matter.

Prosecutor Oleson gave his opinion that this was a platted subdivision. He would like the Commissioners to think about the benefit to the public, how will this affect future public transportation, plowing. Need to think about the long-term public benefit. Should not vacate the road if there would ever be a detriment to the public access. Need to look at the future picture of this property and the road.

Chairman Corgatelli advised that he would not be in a position to make a decision tonight. Commissioner Smith advised that he would like to deliberate at the Public Meeting to be held on Friday, January 26, 2024. Clerk Baker advised that she would review the agenda and make sure that there is sufficient time for deliberation. She will contact those in attendance and advise them of the meeting time for the 26th.

Commissioner Corgatelli recessed meeting at 6:56 p.m. until January 26, 2024.


Randy Corgatelli, Chairman
Custer County Commissioner

Attest: 
Lura H. Baker
Custer County Clerk

