

COUNTY ROAD #402
50', 40' wide

T5 & 6S, R8W, W.M.

Roll MAP CASE #8
and #12 Lower

Acceptance & copy of survey in Comm. Journal 15 Pg. 470 Oct. 5, 1921

Survey plats by H.W. Merring and various deeds to right-of-way widths in Road Folder

Stub Road east from # 402 along the north line of Section 1, T6S, R8W, W. M., Several deeds except rights of public in roads and Deed Vol. 121, Page 176 excepts 10 feet for road right of way along the north line. 27 October 1959
(Checked by Marge)

10' additional along County Road # 402 - F. V. 120, Page 92
Tax Lot # 3658-1

10' add. Vol. 144 pg 223 Sec. 35 T5S, R8W & Sec. 1 T6S, R8W

NOTE: WE HAVE NO RECORD OF COUNTY

ROAD R/W IN SEC 1, T6 R8

DL
5/7/01

OR 402 Spur, running S/W of the last bridge
on this road, has never been officially accepted
as county road.

Researched by Marge- Office of County Surveyor
1972



Yamhill County Surveyor

2060 Lafayette Avenue, McMinnville, OR 97128

Ph. 503.434.7415 Fax 503.472.4068 E-mail: surveyor@co.yamhill.or.us

Dan Linscheid, P.L.S.

County Surveyor

January 28, 2008

Colleen Kelley, Attorney
Office of the Solicitor
Pacific Northwest Region
500 N.E. Multnomah Street, Suite 607
Portland, Oregon

Re: Grand Ronde "AGZ" Trust Acquisition

Dear Ms. Kelley;

I have been asked by a private surveyor to weigh in on a correspondence you apparently submitted to the Superintendent of the Siletz Agency of the Bureau of Indian Affairs, dated 10 December 2007, relating to the right-of-way of County Road #402, Grand Ronde Road.

It is the position of this office that Yamhill County did not receive any interest greater than an easement for public roadway and utility purposes via that certain instrument recorded in Film Volume 189, page 405, in the Yamhill County Deed and Mortgage Records. The rationale behind this position is based on the following:

1. I prepared the property description for this instrument in my capacity as the Yamhill County Road Surveyor at that time, and can assure you that, absent some very specific language to the contrary, the county did not receive any fee interest in this particular right-of-way. I've been preparing property descriptions for dedication deeds for this county for over 35 years, and have never seen or prepared one which transferred fee interest to the county for roadway or utility purposes.
2. You are invited to review the following Oregon Supreme Court cases for clarification: *McQuaid v. Portland Ry. Co.*, (1889)(18 OR 237) and *Huddleston v. Eugene*, (1899)(34 OR 343). The highest Oregon state court has for the past century consistently held that the underlying fee in streets and roads is retained by the dedicator, absent very express reservation wording to the contrary. There are a number of similar cases decided by that court in like manner.
3. It has been my experience that dedications to the public for rights-of-ways in this county rarely contain conditional clauses such as you mention in your memorandum. Such supposedly automatic reversionary clauses can become problematic in the future, and this office prefers to simply vacate unneeded rights-of-ways instead.
4. It was common in this county between the mid-1970's until the late 1980's, as a routine part of the partitioning process to require r-o-w dedications along our county roads anytime there was any doubt as to the width, location or legality of existing roads. This requirement was a condition of approval. County Survey # 8423 was performed specifically to divide the client's 40 acre parcel into three parcels, and the county demanded and received the dedication of the roadway easement to clarify uncertainty regarding the genesis of r-o-w on that particular road.

A holding that the county somehow acquires fee to property underlying roadways presents other problems, based on my experience. If, at some uncertain future date, the county decides to vacate the roadway, then based on a presumption that the reversionary rights inure to the owner of the underlying fee, the county could quite likely end up owning a narrow strip of land. This strip would be tax-exempt, and the public would not have any more right to it's use than any other parcels owned by the county for specific purposes, such as radio towers or rock stockpile sites. The county could conceivably fence this thin strip off and even cite persons attempting to use the strip for roadway purposes. Theoretically, the county could plant and harvest crops in a strip of land of this nature. I only suggest these as hypothetical actions, which could result from a holding that the county somehow acquired fee to the property underlying a public roadway.

In summary, I'm convinced the Oregon Supreme Court would likely agree that the county did not acquire any higher right than that of an easement, held on behalf of the public for the specific purposes noted in the dedication deed.

I hope this lends some clarification to this matter.

Respectfully,

Dan Linscheid, P.L.S.
Yamhill County Surveyor

Cc: John Gray, County Counsel
Leland MacDonald, P.L.S.
Greg Norton, Trust Services Specialist, BIA



United States Department of the Interior

OFFICE OF THE SOLICITOR
Pacific Northwest Region
500 N.E. Multnomah Street, Suite 607
Portland, Oregon 97232

RECEIVED

DEC 10 2007

MEMORANDUM

DEC 11 2007

TO: Superintendent, Siletz Agency
Bureau of Indian Affairs

FROM: Office of the Regional Solicitor

SUBJECT: Grand Ronde "AGZ" Trust Acquisition

USBIA Siletz Agency

You have asked for our opinion about how a legal description for the referenced trust acquisition should be written with respect to an adjacent road.

The Confederated Tribes of the Grand Ronde Community of Oregon (Tribe) acquired fee title to the property from A G Z Enterprises, LLC in February 2003. The legal description in the deed begins with a metes and bounds description and then states "EXCEPTING THEREFROM that portion conveyed to Yamhill County by deed recorded September 17, 1984 in Film Volume 189, Page 405, Deed Records." The legal description in title evidence (Report No. 21-23951, Fidelity National Title, as of June 23, 2003) has the same EXCEPTING THEREFROM language. However, the legal description in the proposed deed to the United States in trust for the Tribe follows its metes and bounds description with "ALSO SUBJECT TO the rights of the public in and to, that portion of the foregoing tract, within the right of way boundary of Grand Ronde Road (County Road No. 402)."

The 1984 deed referenced in the deed to the Tribe was executed by Delores Ingels for an estate and is titled a "Roadway Deed." It in she "does hereby dedicate, grant and convey until Yamhill County, . . . for the public roadway and utility purposes, the following described real premises." The deed was executed on August 9, 1984, and was accepted by Yamhill County Board of Commissioners on September 12, 1984, and recorded on September 17, 1984. The legal description in the 1984 deed is by metes and bounds and appears to have been generated by a survey, CSP 8423, conducted in May of 1984. Notes on that survey state that the surveyor could not find "definitive original descriptions" for the road right of way in county records, and that monuments were set at the approximate fence lines "which seem to be the only practical evidence of the location of the right of way." The metes and bounds description of the land conveyed in the Roadway Deed covers one-half of the road as represented on the survey.

Whether a conveyance for a road is merely an easement or is a full fee conveyance obviously depends upon the intent of the grantor. The language in the Roadway Deed suggests Ingels intended to convey a fee interest. It does not use the word easement and while it states the

conveyance is for roadway and utility purposes, it does not condition the grant upon continuing those uses. Further, the fact that the surveyor hired by her could not locate any legal descriptions of the road in the county records suggests her Roadway Deed was intended to remedy that situation.

In our view, it would be most prudent to rely upon the language in the deed to the Tribe and in the title evidence. This would result in the trust acquisition deed "excepting" the road from the legal description of the parcel being acquired. If this outcome will cause problems for the Tribe, we are willing to discuss it further with tribal counsel. As requested, we are returning all your materials with this memorandum.

If you have any questions please contact me at 503-231-2138.

For the Regional Solicitor



Colleen Kelley
Attorney
Pacific Northwest Region

Attachments

Mrs. Hattie Ford widow

A strip of land 40 feet in width being 20 feet on each side of the following described center line. begin a part of the S. E. 1/4 of the N. W. 1/4 of Section 36 in Tp. 5. S. R. 8. W. of the Will. Mer. Oregon and beginning at point N2°05'E. 670.3 feet and East 479.6 feet from iron pipe at the S. W. corner of the said S. E. 1/4 of the N. W. 1/4 of said Section 36.
Thence S00°28'E. 38.5 feet to point of curve.
Thence following a 10° curve to left-central angle of 17°38' for 176.3 feet.
Thence S17°10'W. 125.2 feet to stake on fence line now there. being a strip of land 340.0 feet long and 40 feet wide and containing .31 of an acre more or less.

Henry Huffer	Grand Ronde Ore.
Glen Huffer	Warm Springs Ore.
Delbert Huffer	Topinish Wash.
Ernest Huffer	Grand Ronde Ore.
Rena Huffer	Otis Ore.
Elvina Wheeler	Topinish Wash "
--- Wheeler	husband
Nora Seward	Portland, Ore. 534 Rose lawn Ave.
--- Seward	" "

A strip of land 40 feet in width being 2- feet on each side of the following described center line, being a part of the S. E. 1/4 of the N. W. 1/4 of Section 36 in Tp. 5. S. R. 8. W. of the Will. Mer. Oregon, and beginning at point S2°05'W. 335.15 feet and East 447.1 feet from the N. W. corner of said S. E. 1/4 of the N. W. 1/4 of said Section 36.
Thence S8°09'E. 131.4 feet.
Thence S00°28'E. 204.8 feet .
being a strip of land 336.2 feet long and 40 feet wide and containing .31 of an acre more or less.

Mrs Zelda Collins (widow) to Yamhill County.

A strip of land 40 feet in width being 20 feet on each side of the following described center line, being a part of the S. E. 1/4 of the N. W. 1/4 of Section 36 in Tp. 5. S. R. 8. W. of the Will. Mer. Oregon. and beginning at stake in center line of present County road on the Subdivision line and at point S89°30'E. 416.1 feet from the N. W. corner of said S. E. 1/4 of the N. W. 1/4 of said Section 36.
Thence following a 220° curve to left from tangent of N89°30'W. for 44.8 feet.
Thence S8°09'E 304.6 feet.
being a strip of land 349.4 feet long and 40 feet wide and containing .32 of an acre more or less.

See field notes
Survey# 2838

In the Matter of the Location of the Proposed County Road 40 feet wide, petitioned for by A.R.Ford and 17 other Freeholders.

Order Locating Road, etc.,

On this the 6th day of October, 1921, come A.R.Ford and 17 other freeholders of Road District No. 51 in Yamhill County, State of Oregon, owning land in said Road District, and ask this Court to approve and adopt the report of the County Road viewers, appointed to view and locate the hereinafter described proposed County Road, and to locate and establish said proposed County Road forty feet wide in accordance with said report and the plat and survey of said proposed County Road made by H.W.Herring, County Surveyor; and it appearing to this Court that the County Road Viewers, consisting of H.W.Herring, County Surveyor, R.S.Carr and N.P.Nelson, heretofore appointed by this Court, have viewed and located said proposed County Road 40 feet wide in accordance with the previous order of this Court, and that they made their report thereof to this Court on the 12th day of September, 1921, and that said report is on file and in due form, and that said viewers caused said County Surveyor to survey said proposed road and to make field notes and a plat thereof which are on file and in due form; and it appearing to this Court that the report of said viewers has been publicly read on two different days of the present term of Court, - the last time on this day; that no remonstrance or claim for damages has been filed or presented relating to said proposed road and that no one objects to its establishment or claims any damages on account thereof; and it appearing to this Court that said Viewers report in favor of the location and establishment of said proposed county road, and that it will be of public utility and that it is a much needed public improvement, and that it will give a public outlet to several families residing in its vicinity, and that its establishment and opening will damage the premises through which the

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the said proposed road runs to the extent of only one dollar and that a good fence should be built on each side of said road through out the entire length of said road, except through the lands of Barnes and Majors, and recommending that the County use the funds on hand in that Road district toward the expense of opening said road and making said fencing, and said proposed County Road so to be located and established is described in the field notes, survey and plat so made and filed as follows, to wit: Beginning at a stone at angle in the present County Road 1908 feet South of the $\frac{1}{4}$ post on North side of section one (1) Tp. 6 S.R. 8 W. of the Willamette Meridian, in Yamhill County, State of Oregon; thence North along line 1848 feet to a point 60 feet South of said $\frac{1}{4}$ corner, angle 1; thence North $20^{\circ} 30'$ East 1691 feet, angle 2; thence North $10^{\circ} 57'$ East 268.5 feet-angle 3; thence North $11^{\circ} 30'$ W. 354 feet, angle 4; on old fence line; thence North 23 minutes W. along old fence 6245 feet, angle 5, $\frac{1}{16}$ corner S.E. $\frac{1}{4}$ sec. 36; thence North 33 minutes East along $\frac{1}{16}$ line 1295 feet, angle 6 at $\frac{1}{16}$ corner; thence North $3^{\circ} 14'$ West 286.3 feet, angle 7; thence North $44^{\circ} 20'$ West 543.4 feet, angle 8; thence North $54^{\circ} 10'$ 307 feet, angle 9; thence North $47^{\circ} 09'$ West 310.8 feet, angle 10; thence North $54^{\circ} 17'$ West 487 feet, angle 11-530 feet East of the $\frac{1}{16}$ corner; thence North $89^{\circ} 30'$ West along subdivision line at 530 feet intersect $\frac{1}{16}$ corner at 1186.6 feet, angle 12 at point 191 feet East of $\frac{1}{16}$ corner, center N.W. $\frac{1}{4}$ of section 36; thence North $39^{\circ} 55'$ West 282.1 feet, angle 13 on $\frac{1}{16}$ line; thence North along subdivision line 361.3 feet to angle 14; thence North $41^{\circ} 45'$ West 246.3 feet, angle 15; thence North 6° West 224.8 feet, angle 16; thence North 22° East 316 feet to stake on North line of section 36 at point 78 feet west of $\frac{1}{16}$ corner, for terminus of this road, the total length being 9110.7 feet, or 1.73 miles and to be 40 feet in width, and 20 feet on each side of the above described line, and the said survey, plat and filed notes made by the said County surveyor on file and to be recorded, are hereby made a part of this order for a correct description of said proposed

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1.75 miles and to be 40 feet in width, and 20 feet on each side of the above described line, and the said survey, plat and filed notes made by the said County surveyor on file and to be recorded, are hereby made a part of this order for a correct description of said proposed County Road; and it appearing to this Court that said proposed County Road 40 feet wide will be of public utility and that it ought to be located and the report of the said County Road Viewers being favorable to the location of said proposed road, and there being no remonstrance on file against the location of said proposed road and there being no claims or petitions for damages on file or presented, and said proceedings and all of the proceedings in relation to the location of said proposed road being regular, and this Court having jurisdiction of said proceedings and said survey, field notes and plat having been required by said Board of Viewers, and being in due form: It is, therefore ordered by this Court that the report of said Board of County Road Viewers be and it is hereby approved and adopted in all respects, except that part thereof recommending that August Ford should pay \$300.00 toward the opening of said proposed Road, and said recommendation is not adopted; and it is further hereby ordered by this Court, that said proposed Road above described and carefully described in the plat and survey and field notes above referred to, be and it is hereby located and established as a County Road 40 feet wide and 20 feet wide on each side of the above described line and it is hereby declared to be a County Road and public highway and that it be opened according to law, and that the field notes of said survey of said road be recorded in the proper book kept for that purpose in the office of the County Surveyor as provided by law.

C. F. Daniels
County Judge.
Geo. S. Zimmerman
County Commissioner.
Wm. Gunning
County Commissioner.

Sect. 36, T58, R8W

FIELD NOTES

OF

2838

County Survey No. 2838 made for Yamhill County

on the 17th day of August 1936

L. G. Mangun and William Neunschwander Chairmen,
duly sworn.

Feet.

BEGINNING Survey of a proposed 40 foot County road across the S. E. 1/4 of the N. W. 1/4 of Section 36 in Tp. 5. S. R. 3. W. of the Will. Mer. Yamhill County, Oregon. Beginning at point on the Subdivision line S99°30'E. 416.1 feet from the center of the N. W. 1/4 of said Section 36 being in the center of the present County Road and on the West end of bridge over Agency Creek now there.

Thence following a 220° curve to left from tangent of N89°30'E. central angle of 98°40' for

to Pt. of curve. $R = 246.044$
 $L = 44.8$

Thence S8°09'E. S 8°10'E to angle.

44.8 Thence Def. R 7°41' Course S00°28'E.

436.0 to P. C. of 10° curve.

243.3 Thence following a 10° curve to right central angle of 17°38'

176.3 to Pt. of curve. $R = 570.916$
 $L = 176.33$

468.4 Thence S17°10'W

to stake on East and West center line of said Section 36 as now fenced at point 340.7 feet East of the S. W. corner of the S. E. 1/4 of the N. W. 1/4 of Section 36.

Total length 1368.8 feet and to be 40 feet in width being 20 feet on each side of the above described center line.

W. Neunschwander
County Engineer.

the said proposed road runs to the extent of only one dollar and that a good fence should be built on each side of said road through out the entire length of said road, except through the lands of Barnes and Major, and recommending that the county use the funds on hand in that Road district toward the expense of opening said road and making said fencing, and said proposed county Road so to be located and established as described in the filed notes, survey and plat so made and filed as follows, to wit: Beginning at a stone at angle in the present county Road 1908 feet South of the 1/4 post on North side of section one (1) Tp. 6 S.R. 8 W. of the Willamette Meridian, in Yamhill County, State of Oregon; thence North along line 1848 feet to a point 60 feet South of said 1/4 corner, angle 1; thence North 20° 30' East 1691 feet, angle 2; thence North 10° 57' East 268.5 feet-angle 3; thence North 11° 30' W. 354 feet, angle 4; on old fence line; thence North 23 minutes W. along old fence 6245 feet, angle 5, 1/16 corner S.E. 1/4 sec. 36; thence North 33 minutes East along 1/16 line 1295 feet, angle 6 at 1/16 corner; thence North 3° 14' West 286.3 feet, angle 7; thence North 44° 20' West 543.4 feet, angle 8; thence North 54° 10' 307 feet, angle 9; thence North 47° 09' West 310.8 feet, angle 10; thence North 54° 17' West 487 feet, angle 11-530 feet East of the 1/16 corner; thence North 89° 30' West along subdivision line at 530 feet intersect 1/16 corner at 1186.6 feet, angle 12 at point 191 feet East of 1/16 corner, center N.W. 1/4 of section 36; thence North 39° 55' West 282.1 feet, angle 13 on 1/16 line; thence North along subdivision line 361.3 feet to angle 14; thence North 41° 45' West 246.3 feet, angle 15; thence North 6° West 224.8 feet, angle 16; thence North 22° East 316 feet to stake on North line of section 36 at point 78 feet west of 1/16 corner, for terminus of this road, the total length being 9110.7 feet, or 1.73 miles and to be 40 feet in width, and 20 feet on each side of the above described line, and the said survey, plat and filed notes made by the said County surveyor on file and to be

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1/2

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and the said survey, plat and filed notes made by the said County Surveyor on file and to be recorded, are hereby made a part of this order for a correct description of said proposed County Road; and it appearing to this Court that said proposed County Road 40 feet wide will be of public utility and that it ought to be located and the report of the said County Road Viewers being favorable to the location of said proposed road, and there being no remonstrance on file against the location of said proposed road and there being no petitions for damages on file or presented, and said proceedings and all of the proceedings in relation to the location of said proposed road being regular, and this Court having jurisdiction or said proceedings and said survey, filed notes and plat having been required by said Board of Viewers, and being in due form: It is, therefore ordered by this Court the report of said Board of County Road Viewers be and it is hereby approved and adopted in all respects, except that part thereof recommending that August Ford should pay \$500.00 toward the opening of said proposed Road, and said recommendation is not adopted; and it is further hereby ordered by this Court, that said proposed Road above described and carefully described in the plat and survey and filed notes above referred to, be and it is hereby local ed and established as a County Road 40 feet wide and 20 feet wide on each side of the above described line and it is hereby declared to be a County Road and public highway and that it be opened according to law, and that the filed notes of said survey of said road be recorded in the proper book kept for that purpose in the office of the County Surveyor as provided by law.

C. F. Daniels
County Judge.
Geo. S. Zimmerman
County Commissioner.
Wm. Gunning
County Commissioner.

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Dan Linscheid

From: Dan Linscheid
Sent: Friday, January 25, 2008 4:45 PM
To: John Gray
Subject: Grand Ronde Road r-o-w question
Attachments: Solicitor Opinion-Grand Rond Road r-o-w determination.tif; Grand Ronde road r-o-w dedication deed.tif

John,

I've been asked if I could look into a position taken by a (United States Department of the Interior) Solicitor ~~regarding~~ regarding whether Yamhill County took fee interest in one of our normal r-o-w dedication deeds, back in the 1980's. I find the Solicitor's position to be untenable and without much legal foundation at all, and it is causing heartburn for a local surveyor and/or his client.

I'm convinced Yamhill County did not receive any interest greater than an easement for public roadway and utility purposes via that certain instrument recorded in Film Volume 189, page 405, in the Yamhill County Deed and Mortgage Records (scan attached). The rationale behind my position is as follows:

1. I prepared the property description for this instrument in my capacity as the Yamhill County Road Surveyor at that time. I do not believe the county received any fee interest in this particular right-of-way. I've been preparing property descriptions for r-o-w dedication deeds for this county for over 35 years, and have never seen or prepared one which transferred **fee** interest to the county for roadway or utility purposes.
2. I would like the Solicitor to review the following Oregon Supreme Court cases for clarification: McQuaid v. Portland Ry. Co., (1889)(18 OR 237) and Huddleston v. Eugene, (1899)(34 OR 343). The highest Oregon state court has for over a century consistently held that the underlying fee in streets and roads is retained by the dedicator, absent very express reservation wording to the contrary. There are a number of similar cases decided by that court in like manner.
3. It has been my experience that dedications to the public for rights-of-ways in this county rarely contain conditional clauses such as mentioned in her memorandum. Such supposedly automatic reversionary clauses can become problematic in the future, and our county prefers to simply vacate unneeded rights-of-ways instead.
4. It was common in this county between the mid-1970's until the late 1980's, as a routine part of the partitioning process to require r-o-w dedications along our county roads anytime there was any doubt as to the width, location or legality of existing roads. County Survey # 8423 was performed specifically to divide the client's 40 acre parcel into three parcels. Failure to locate any record of a prior dedication did not enter into any decision to word the dedication in the manner contained in the roadway deed. This was, and continues to be, the standard verbiage for public r-o-w dedications in Yamhill county.

A holding that the county somehow acquires fee to property underlying roadways presents other problems, based on my experience. If, at some uncertain future date, the county decides to vacate the roadway, then based on a presumption that the reversionary rights inure to the owner of the underlying fee, the county could quite likely end up owning a narrow strip of land. This strip would be tax-exempt, and the public would not have any more right to it's use than any other parcels owned by the county for specific purposes, such as radio towers or rock stockpile sites. The county could conceivably fence this thin strip off and even cite, as criminal trespassers, persons attempting to use the strip for roadway

1/25/2008

purposes. Theoretically, the county could plant and harvest crops in a strip of land of this nature. I only suggest these as hypothetical actions, which could result from a holding that the county somehow acquired fee to the property underlying a public roadway.

Could you review this and let me know what steps might be taken to clarify this issue? I'll be more than willing to correspond in writing with this Solicitor on this issue.

Thanks,

Dan

1/25/2008