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Memorandum Date: May 29, 2009
 Agenda Date: June 24, 2009

TO: Board of County Commissioners

DEPARTMENT: Public Works, Land Management Division

PRESENTED BY: Marsha Miller, Public Works Director *MM*
 Mike Jackson, Lane County Surveyor *[Signature]*

AGENDA ITEM TITLE: In the Matter of the Proposed Legalization of Barrett Creek Lane and a Report on Possible Alternatives to Legalization

I. ISSUE

To decide whether to Legalize Barrett Creek Lane as a County Road or to recommend some alternative to Legalization.

II. DISCUSSION

A. Background / Analysis

Recent vacations (approved by Board of Commissioners Orders 07-4-4-12 and 07-11-20-11) affecting the plats and rights of way of Colter's Addition to Glenada (Bk. 4, Page 84), the Amended Plat of Colter's Addition to Glenada (Bk. 6, P. 25), Glenada (Vol. W, P. 261), the South Florence Addition to Glenada (Bk. 2, P. 9) and the Amended Map of South Florence Addition to Glenada (Bk. 2, P. 13) raised public comment regarding the status of Barrett Creek Lane. Questions have long existed as to the status and exact location of Barrett Creek Lane as traveled. No dedications for public right of way or acceptance by Lane County as a public or county road have been found for Barrett Creek Lane.

In a letter dated November 30, 2007 Charles C. Rosecrans, Jr. and Kathleen S. Rosecrans, owners of tax lots 400 and 500 of Assessor's Map 18-12-34-42 over which the road travels in part, denied Lane County the use of Barrett Creek Lane as it exists on their property, and have also denied other members of the public use of the road.

In response to the Rosecrans' letter, the Board of Commissioners approved Order 08-1-8-5 authorizing the use of County Road Funds to pursue legalization of Barrett Creek Lane.

The matter of legalizing the road was brought before the Board of Commissioners on June 25, 2008 and the Board approved Resolution and Order Number 08-6-25-17, setting a public hearing date of August 20, 2008.

On August 20, 2008 a public hearing was held in the matter of Legalizing Barrett Creek

Lane. After public testimony and dissenting discussion, a decision on the Legalization was postponed in order that Commissioner Bill Fleenor and Public Works Director Marsha Miller have an opportunity to invite and engage interested and affected parties in further discussion to examine the possibility of a consensual alternative solution.

During the period from September through November, 2008, meetings were held by Commissioner Fleenor, Public Works Director Marsha Miller and Public Works staff wherein discussions resulted in an agreement by the Rosecrans' to not block Barrett Creek Lane physically or through signage, and that the parties would try to draft a private easement to benefit landowners using Barrett Creek Lane as access for ingress and egress. This latter action would then render the right of way private, but would allow all who use the road to jointly control the use of the road.

From November 2008 to the present, work was accomplished to complete the easement agreement. All parties named in the draft easement agreed to sign the easement except for John Gardner, owner of tax lot 18-12-34-42-1000. By virtue of Mr. Gardner's unwillingness to sign the easement, and due to the location of Mr. Gardner's property in relation to the other properties that would benefit from the easement, the easement could not be finalized in a way that would allow all who use the right of way to have legally enforceable rights of access. However, Mr. Gardner has always indicated in discussions that he had no intention of limiting the use of Barrett Creek Lane. He is simply unwilling to grant an easement over his property.

Public testimony heard in the August 20, 2008 public hearing indicated that all of the landowners abutting the portion of Barrett Creek Lane proposed for legalization, across whose properties the portion of Barrett Creek Lane as presently traveled traverses, are opposed to the proposed legalization.

In other testimony at the August 20, 2008 public hearing, four landowners having parcels that do not abut the portion of Barrett Creek Lane proposed for legalization gave testimony, three speaking in favor of the legalization, while one spoke in opposition to the legalization. One of those landowners, John Maitland, owner of tax lot 18-12-34-13-1200, is in favor of the legalization in order to access his parcel. In addition to physical access over Barrett Creek Lane, Mr. Maitland also has legal access to his parcel previously established by existing public roads and other easements. However, he has found obtaining a building permit problematic due to Lane County Code requirements regarding access which requires that a permit be based on the actual, physical access route utilized by the applicant. Mr. Maitland did purchase his parcel via a Lane County foreclosure sale, and bidders had been made aware of access issues of this parcel. Presumably the price paid for the parcel reflected that issue.

Since the attempt to affect a private joint easement among landowners was unsuccessful, but access is no longer being impeded along Barrett Creek Lane, the original issue as considered in the August 20, 2008 public hearing in the matter of legalization of Barrett Creek Lane is being returned to the Board of Commissioners for reconsideration.

III. ALTERNATIVES/OPTIONS

1. Treat the remaining issues as private legal matters, take no action.
2. A public hearing in the matter of the Legalization of Barrett Creek Lane as a county road was held on August 20, 2008. Approve legalization of the portion of Barrett Creek Lane as proposed.
3. Pursue litigation on behalf of the affected landowners to establish prescriptive rights based on historical continuous use of Barrett Creek Lane. This option would involve expending substantially more resources to formalize access that currently is not being impeded.
4. Adopt a resolution supporting open public access based on historical continuous use of Barrett Creek Lane. Since no dedication as public right of way has been found for Barrett Creek Lane, such a resolution would likely not be of effective benefit.
5. Direct staff to take other action.

[Note: Lane County Land Management Division does not have authority to approve a variance for an individual to cross private property without a recorded document. Lane Code 15.135 contains the General Access Requirements that requires a property to have legal, as well as safe and usable access, prior to receiving a building permit for development. The variance criteria located in Lane Code 15.140 does not allow any variance to the access requirements, outside of the right of way, without a private access easement.]

IV. ATTACHMENTS

None

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