

**MINUTES
LANCASTER COUNTY BOARD OF COMMISSIONERS
COUNTY-CITY BUILDING, ROOM 112
TUESDAY, AUGUST 20, 2019
9:00 A.M.**

Advance public notice of the Board of Commissioners meeting was posted on the County-City Building bulletin board and the Lancaster County, Nebraska, web site and emailed to the media on August 16, 2019.

Commissioners present: Roma Amundson, Chair; Sean Flowerday, Vice Chair; Deb Schorr; and Christa Yoakum

Commissioner absent: Rick Vest

Others present: Kerry Eagan, Chief Administrative Officer; Ann Ames, Deputy Chief Administrative Officer; Jenifer Holloway, Deputy County Attorney; Dan Nolte, County Clerk; Cori Beattie, Deputy County Clerk; and Monét McCullen, County Clerk's Office

The meeting was called to order at 9:00 a.m., the Pledge of Allegiance was recited and the location of the Nebraska Open Meetings Act was announced.

1) MINUTES:

- A. Approval of the minutes of the Board of Commissioners meeting held on Tuesday, August 13, 2019.**

MOTION: Schorr moved and Yoakum seconded approval of the minutes. Schorr, Flowerday, Yoakum and Amundson voted yes. Vest was absent. Motion carried 4-0.

2) CLAIMS:

- A. Approval of all claims processed through August 20, 2019.**

MOTION: Schorr moved and Yoakum seconded approval of the claims. Schorr, Flowerday, Yoakum and Amundson voted yes. Vest was absent. Motion carried 4-0.

- 3) CONSENT ITEMS: These are routine business items that are expected to be adopted without dissent. Any individual item may be removed for special discussion and consideration by a Commissioner or by any member of the public without prior notice. Unless there is an exception, these items will be approved as one with a single vote of the Board of Commissioners. These items are approval of:**

- A. Amendments to the following contracts for Unit Price – Carpet Cleaning (Bid No. 16-140. The amendment renews the contract from August 9, 2019 through August 8, 2020. The cost to the County is not to exceed \$10,000 for contracts.):**

1. C-16-0406 with FBG Service Corporation. (C-19-0628)
2. C-16-0405 with CleanMax. (C-19-0629)

B. Amendments to the following County contracts:

1. C-18-0504 with Tab Products Co. LLC dba GBS for Annual Supply – County Court File Folders. (Quote No. 5888. The amendment renews the contract with a price increase from September 24, 2019 through September 23, 2020. The cost to the County is not to exceed \$10,300.) (C-19-0630)
2. C-19-0246 with O'Reilly Auto Enterprises, LLC., dba O'Reilly Auto Parts for Fleet Services Parts and Equipment. (Using the NJPA Contract 062916-ORA, State of NE Participating Contract No. 14690 OC, MOU046. The amendment renews the contract from September 7, 2019 through September 6, 2020. The estimated cost to the County is not to exceed \$1,200.) (C-19-0631)
3. C-17-0737 with TLC Dry Cleaners for Annual Service – Uniform Cleaning. (Quote No. 5681. The amendment renews the contract from September 12, 2019 through September 11, 2020. The cost to the County is not to exceed \$16,000.) (C-19-0632)
4. C-18-0548 with Garcia-Chicoine Enterprises, Inc., for On-Call Guardrail Repair and Replacement Services. (MOU033- Using the NDOT Contract No. QH1804. The amendment renews the contract from September 1, 2019 through August 31, 2020. The estimated cost to the County is not to exceed \$35,000.) (C-19-0633)
5. C-15-0111 with W.W. Grainger, Inc. for Facilities Maintenance, Repair and Operating Supplies. (NJPA RFP No. 091214. The amendment increases the County's maximum expenditures by \$15,000 for a revised total of \$37,000.) (C-19-0634)

- C. Utility Permit No. 1854 allowing Unite Private Networks to install new fiber cable under the northerly portion of Stagecoach Road from South 54th to South 68th Streets in the right-of-way. There is no cost to the County. (C-19-0635)**
- D. First Amendment to County Contract C-18-0366 with Bluestem Health to terminate the Patient Support Specialist (\$17,000) and cover administrative costs associated with the 340B Drug Pricing Program (\$7,500). The term of the contract is extended through June 30, 2021. (C-19-0636)**
- E. Grant contract with Lincoln Public Schools for the Truancy Diversion program (funded by Community-Based Juvenile Services Aid for the period of July 1, 2019 through June 30, 2020 in the amount of \$174,272). (C-19-0637)**
- F. Grant contract with Clyde Malone Community Center for the Shields Unite program (funded by Juvenile Justice Prevention funds for the period of July 1, 2019 through June 30, 2020 in the amount of \$20,000). (C-19-0638)**

MOTION: Flowerday moved and Yoakum seconded approval of the consent items. Yoakum, Schorr, Flowerday and Amundson voted yes. Vest was absent. Motion carried 4-0

4) NEW BUSINESS:

A. Resolution authorizing the installation of traffic control devices in Lancaster County. (R-19-0059)

Pam Dingman, Lancaster County Engineer, said this would be for a "school bus stop ahead" sign.

MOTION: Schorr moved and Yoakum second approval of the resolution. Flowerday, Yoakum, Schorr and Amundson voted yes. Vest was absent. Motion carried 4-0

B. Resolution in the matter of vacating portions of West Saltillo Road, located in Lancaster County, Nebraska. (R-19-0060) (Note: Action on this item will follow the public hearing.)

The Clerk announced this item would be held until after the public hearing.

C. Special Designated License application from Denton Daily Double for an event at Hillside Event Center, 12400 West Denton Road, Denton, Nebraska on September 7, 2019.

Scott Zeilinger, Denton Daily Double, provided a brief description of the event.

MOTION: Schorr moved and Flowerday seconded approval of the special designated license application. Schorr, Flowerday, Yoakum and Amundson voted yes. Vest was absent. Motion carried 4-0.

D. Special Designated License application from Beauvent Travel LLC for an event at Hillside Event Center, 12400 West Denton Road, Denton, Nebraska on September 21, 2019.

Eric Post, Beauvent Travel LLC, provided a brief description of the event.

MOTION: Flowerday moved and Schorr seconded approval of the special designated license application. Yoakum, Schorr, Flowerday and Amundson voted yes. Vest was absent. Motion carried 4-0.

E. Special Designated License application from Nebraska Craft Brewers Guild for an event at Spring Creek Prairie Audubon Society, 11700 Southwest 100th Street, Denton, Nebraska on September 29, 2019.

Gabby Ayala, Nebraska Craft Brewers Guild Executive Director, provided a brief description of the event.

MOTION: Schorr moved and Flowerday seconded approval of the special designated license application. Flowerday, Yoakum, Schorr and Amundson voted yes. Vest was absent. Motion carried 4-0.

- F. Agreement with Blue Valley Behavioral Health Crisis Response Counselors for after-hours screening and assessment on an on-call, as-needed basis at the Youth Services Center. The County Will pay \$100 per hour for the services. The cost to the County is not to exceed \$9,000. The term of the agreement is July 1, 2019 through June 30, 2020. (C-19-0639)**

MOTION: Schorr moved and Yoakum seconded approval of the agreement. Schorr, Flowerday, Yoakum and Amundson voted yes. Vest was absent. Motion carried 4-0.

- G. Agreements with the State of Nebraska to establish the terms upon which the State will assist the County in obtaining Federal approval and funds with the agreements being effective upon execution by the State for the following:**

- 1. Paving project on South 98th Street from Old Cheney Road to A Street. The County's share of the total project cost is estimated to be \$576,100. (Project No. 19-04, NDOT Project No. LCLC-5275(1), NDOT Control No. 13417) (C-19-0640)**
- 2. Road construction project on South 98th Street from A Street to O Street. The County's share of the total project cost is estimated to be \$408,800. (Project No. 19-28, NDOT Project No. LCLC-5275(2), NDOT Control No. 13418) (C-19-0641)**

Dingman said these contracts are for 98th Street using Metropolitan Planning Organization (MPO) funding shared with the City of Lincoln. The County will pay for 20% of the project. There are about 650 cars per day travelling the gravel sections of the road so it is critical to the County and City to get 98th Street paved. There is already drainage structure and grading on 98th Street from Old Cheney Road to A Street. Dingman noted the second agreement from A Street to O Street is for grading and paving projects. She explained when the right-of-way was purchased for that road the sale was contingent on the road being paved by 2030. If it is not, the right-of-way will revert to the adjacent land owner. This portion of 98th Street will also need an environmental study that will take an additional one to two years.

MOTION: Schorr moved and Yoakum seconded approval of the agreements. Schorr, Flowerday, Yoakum and Amundson voted yes. Vest was absent. Motion carried 4-0.

- H. Executive Session for legal advice – David Derbin, Deputy County Attorney.**

The Clerk announced that this item would be held until the end of the meeting.

5) PUBLIC HEARINGS:

- A. Vacating portions of West Saltillo Road, located in Lancaster County, Nebraska. (See correlating item 4B)**

The Chair opened the public hearing.

Ken Schroeder, Lancaster County Engineering Department, was administered the oath and said this is a small section of County Road #1205 between Southwest 84th Street and Southwest 86th Street on Saltillo Road (Exhibit A). The vacation of the dirt road was brought forth by the County Engineering Department due to illegal dumping and other illegal activity.

Pam Dingman, Lancaster County Engineer, was administered the oath and provided a colored map of the road (Exhibit B). The portion in blue has been closed but not technically vacated, which means Lancaster County still maintains ownership of the road. This area has not been maintained and has farm access on the far south end. The green portion would be left open to through traffic. The yellow portion is the proposed vacation. She added Lancaster County and the Spring Creek Prairie Audubon Center are spending a lot of time continuously cleaning up the area.

Schorr asked if gates would be used. Dingman said there are currently gates between Southwest 86th Street and West Saltillo Road. However, they are often vandalized and illegal access is being gained to the Prairie. Another concern with a road closure versus a road vacation is corridor liability.

Flowerday asked if today's action would vacate Southwest 86th Street as well as Saltillo Road. Dingman confirmed the action today would just vacate Saltillo Road.

Amundson inquired about the current condition of Southwest 86th Street. Dingman said it is a dirt road. In previous years soil was taken from that road and used for Denton Road. It has not been maintained or seeded properly, therefore, certain points are no longer passable with vehicles.

In response to questions about access, Dingman confirmed there is no access on the north end of Southwest 86th Street, but there is access on the far south side for the one farm entrance. There are no accesses to Saltillo Road.

Amundson asked how emergency vehicles would access these roads. Dingman said there are no residences along this section of Southwest 86th Street.

Kim (Boman) Gates, 977 Harris Road, Grayslate, Illinois, was administered the oath and came forward in opposition on behalf of her mother, Jeanne Boman, who is the property owner affected by the proposed vacation. She noted the Boman family has owned their property for close to 100 years. She expressed concerns regarding continued illegal dumping even if the road was vacated, accessibility for surrounding residents and emergency vehicles and how closing the road would limit access to their land. Gates also noted that they have applied for Environmental Quality Incentives Program (EQIP) funds through the National Resources Conservation Service (NRCS) for pasture improvements. She referenced a letter that she sent to the Commissioners dated August 19, 2019 (Exhibit C).

Schorr asked what year the road conditions were put into place. Schroeder said action took place in December, 2008. Gates referenced a County Engineering report dated August 20, 2008 (Exhibit D) and comments from the County Sheriff dated December 2, 2008 (Exhibit E).

Yoakum asked Ms. Gates about their current access. Gates said they currently have no access to Saltillo Road or Southwest 84th Street but plan to install fencing with the EQIP funds.

Schroeder clarified from the report referenced in Exhibit D that the vacation was brought forward by the Audubon Society to foster the Prairie Creek Habitat and were looking at the adjacent property. At the time, Saltillo Road was adjacent to the Audubon Society and had no bearing on their property to the east or west.

Schroeder noted that ownership today still goes to the section line (Exhibit F). The intent is to vacate any interest the County may have as a public road.

No one appeared in the neutral position.

The Clerk announced a letter of opposition was received from Kim Gates (referenced as Exhibit C).

The Chair closed the public hearing.

Jen Holloway, Deputy County Clerk, noted this item will need to be held over for a week. Kerry Eagan, Chief Administrative Officer, referenced Neb. Rev. Stat. §39-1725 that states action must take place at the next meeting or as soon thereafter as practicable (Exhibit G).

Item 4B was held one week for action only.

Following the hearing a letter was received in the Clerks office from Kim Gates (Exhibit H).

6) PUBLIC COMMENT: Those wishing to speak on items relating to County business not on the agenda may do so at this time.

No one appeared for public comment.

7) ANNOUNCEMENTS:

- A. The Lancaster County Board of Commissioners will hold a staff meeting on Thursday, August 22, 2019 at 8:30 a.m., in the Bill Luxford Studio (Room 113) of the County-City Building (555 S. 10th Street, Lincoln).**
- B. The Lancaster County Board of Commissioners will hold its next regular meeting on Tuesday, August 27, 2019 at 9:00 a.m., in Room 112 of the County-City Building (555 S. 10th Street, Lincoln).**
- C. The Lancaster County Board of Commissioners will hold a public hearing on Tuesday, August 27, 2019 at 9:00 a.m., in Room 112 of the County-City Building (555 S. 10th Street, Lincoln) regarding Keno Fund Projects and Lancaster County's Proposed Budget for Fiscal Year 2019-20.**
- D. County Commissioners can be reached at 402-441-7447 or commish@lancaster.ne.gov.**
- E. The Lancaster County Board of Commissioners meeting is broadcast live on LNKTV City. For the rebroadcast schedule visit lincoln.ne.gov (keyword: LNKTV). Meetings are also streamed live on LNKTV and can be viewed on YouTube (LNKTVcity).**

The Chair recessed the Board of Commissioners meeting at 9:37 a.m.

The Chair reconvened the Board of Commissioners meeting at 9:42 a.m.

RETURNING TO ITEM 4H

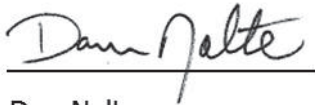
MOTION: Schorr moved and Yoakum seconded to enter into Executive Session for the purpose of discussing legal advice and to protect the public interest at 9:42 a.m. Yoakum, Schorr, Flowerday and Amundson voted yes. Vest was absent. Motion carried 4-0.

The Chair restated the purpose for the Board entering Executive Session.

MOTION: Schorr moved and Flowerday seconded to exit Executive Session at 9:54 a.m. Flowerday, Yoakum, Schorr and Amundson voted yes. Vest was absent. Motion carried 4-0.

8) ADJOURNMENT

MOTION: Schorr moved and Flowerday seconded to adjourn the Board of Commissioners meeting at 9:54 a.m. Schorr, Flowerday, Yoakum and Amundson voted yes. Vest was absent. Motion carried 4-0.

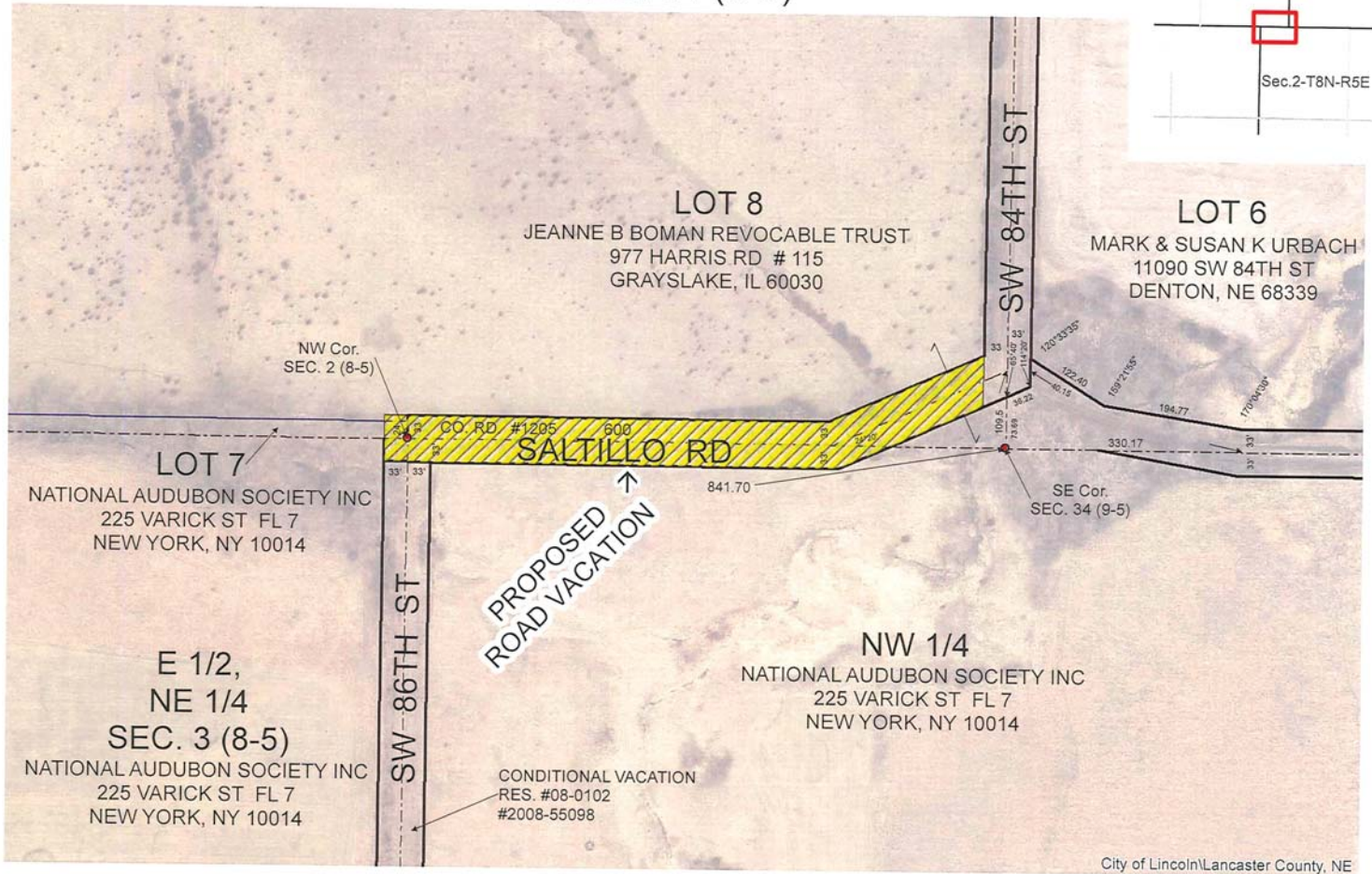
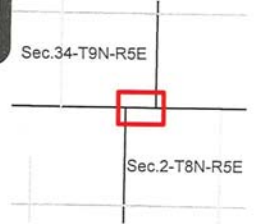
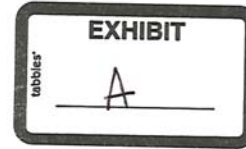


Dan Nolte
Lancaster County Clerk



EXHIBIT "A"

SEC. 34 (9-5)



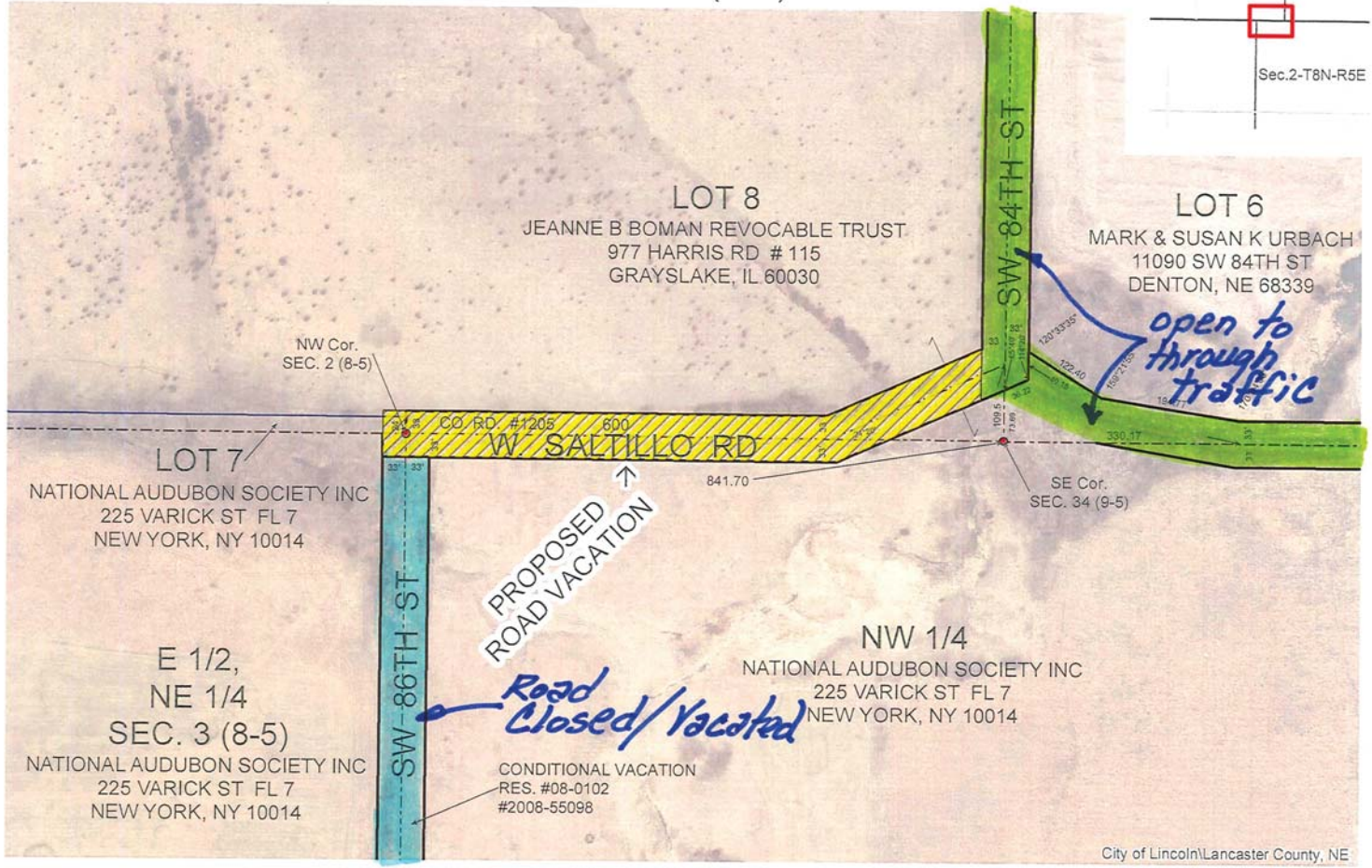
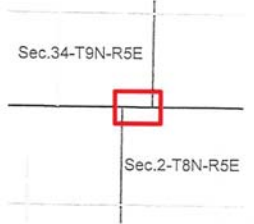
SEC. 2 (8-5)



EXHIBIT "A"

SEC. 34 (9-5)

tabbles
EXHIBIT
B



SEC. 2 (8-5)





August 19, 2019

Lancaster County Commissioners:

Roma Amundson, Chair

Sean Flowerday, Vice Chair

Rick Vest, Commissioner

Deb Schorr, Commissioner

Christa Yoakum, Commissioner

Attn: Lancaster County Clerk

County-City Building

555 South 10th Street, Room 108

Lincoln, NE 68508

Re: Resolution No. R-19-0056 in the matter of a public hearing regarding a vacation request of West Saltillo Road in the SE Quarter of Section 34, Township 9 North, Range 5 East of the 6th Principal Meridian, and in the NW Quarter of Section 2 and NE Quarter of Section 3, Township 8 North, Range 5 East of the 6th Principal Meridian, Lancaster County, Nebraska

Dear Lancaster County Board of Commissioners:

I am writing on behalf of my mother, Jeanne' B. Boman, who owns the land adjacent to the proposed vacation of the portion of West Saltillo Road between S.W. 86th Street and S.W. 84th Street, and more specifically described above and in Resolution No. R-19-0056; and Exhibit A. She opposes the vacation.

Mrs. Boman wishes to call the following to the attention of the County Commissioners and notes that this portion of W. Saltillo is a Section Line road that connects to a Section Line road (SW 86th). Therefore, she requests that you reconsider vacating this portion of W. Saltillo Road for the following reasons:

1. In the County Engineering Department Study, dated July 19, 2019 ("Study"), item 4 with respect to the status of "connecting roads to the area of the proposed road vacation" states in part that: "One mile of SW 86th Street south from West Saltillo Road to West Bennet Road vacated and closed per County Resolution #08-0102."

Although the County Board of Commissioners did take such action with respect to this portion of SW 86th, the County Engineer's Study fails to mention that the Board only approved the vacation of SW 86th *subject to the following conditions* which run with the

land and are binding. Resolution No. R-08-0102, with respect to SW 86th states in part that:

- *“Lancaster County shall retain all present title to and rights in the right-of-way and easements constituting the portions of road vacated by this Resolution.”*
- *“Lancaster County specifically retains the right to reopen the road...”*
- *The portion closed was to be gated with “locked gates of sufficient width which total at least thirty (30) feet, to enable emergency and farm vehicles access to and across the vacated area. In addition, said property owners shall cooperate with law enforcement, public safety, and emergency services officials to ensure access to and across the vacated area when necessary to carry out their official functions.”*

Please note that this area has an increasing number of homes and these section line roads (SW 86th and W. Saltillo) are essential to public safety. If you close W. Saltillo as proposed, emergency vehicles will not be able to pass through on SW 86th because they will come to a dead end at the intersection of SW 86th and W. Saltillo. Thus, closing W. Saltillo impacts a large 2 to 2-1/2 mile section and defeats the binding conditions that the Board of County Commissioners itself imposed on SW 86th, all without a hearing on the matter or allowing input and an opportunity to comment from those impacted or providing emergency services, e.g., law enforcement, public safety and other emergency services. It is for public safety and the public good that W. Saltillo should remain open and properly maintained.

2. Furthermore, as noted in the language above, the County Resolution for vacating SW 86th, includes access not only for emergency vehicles, but farm vehicles as well, because they have a need for this road to remain open too. Traditionally, SW 86th and W. Saltillo road have been used by farmers in the area to move cattle and hay. Closing W. Saltillo, in essence, blocks farmers from being able to use either road and requires them to go around a large area for access (as was noted above for safety and emergency vehicles).
3. Additionally, we recently applied to the EQUIP program for funding for pasture improvements and anticipate approval will be forthcoming. We currently have a perimeter fence along the W. Saltillo side. However, per our proposal, part of the funds received will be applied toward additional cross fencing which will be beneficial to the health of the pasture, and indirectly the surrounding area, because cross fencing will help to naturally allow native grass species to thrive. Additional cross fencing means that we need access to our property from the W. Saltillo side, because if the road is

closed, we would have to cut through 3 or 4 fences to gain access from the opposite side.

For the public good, safety and farming, we oppose closing W. Saltillo Road and ask for your reconsideration.

Both my mother and I desire to attend the County hearing on this matter and will make every effort to attend.

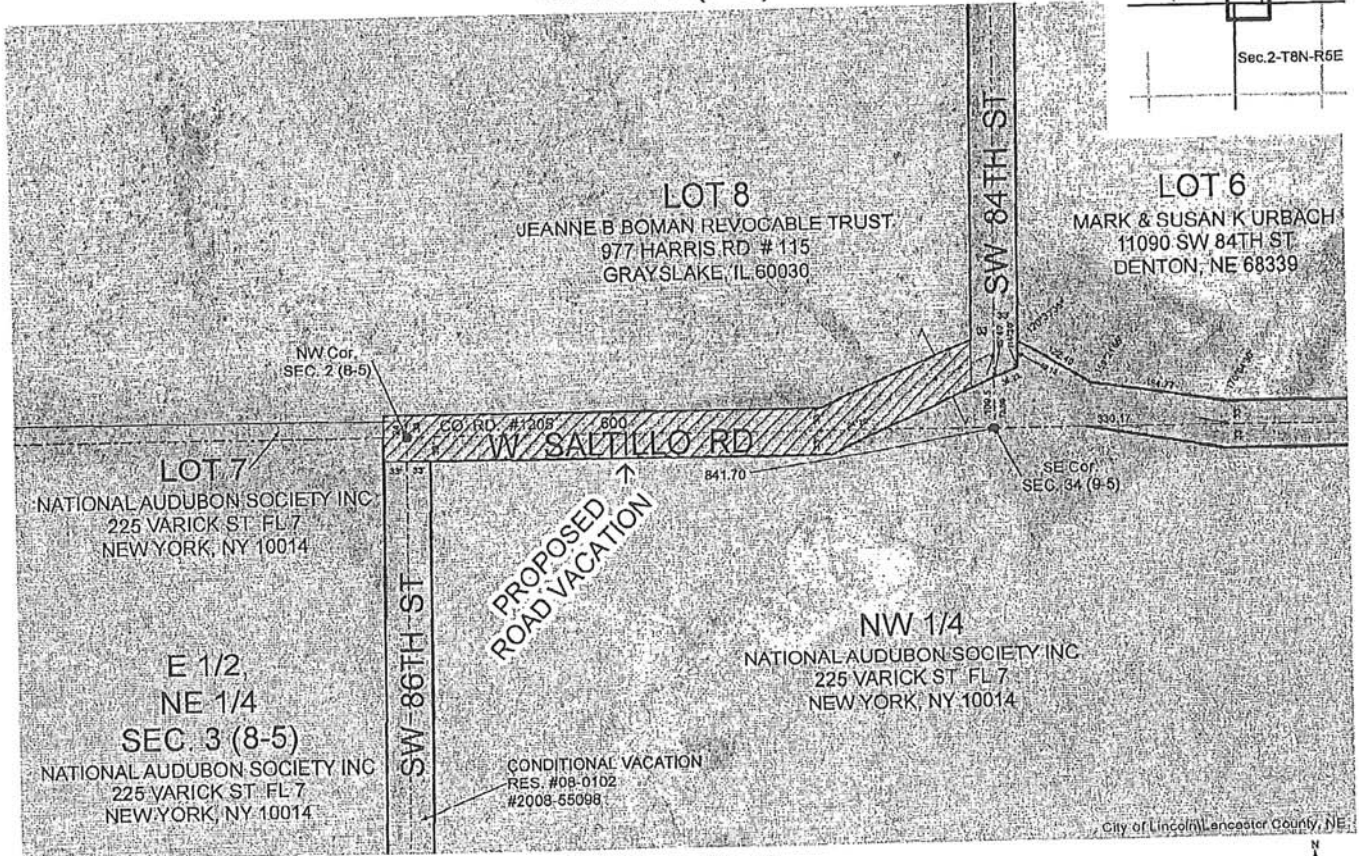
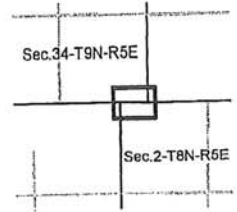
Thank you for your consideration of our request,

Kim Gates for Jeanne' Boman

Kim Gates
977 Harris Road, Unit #115
Grayslake, IL 60030
Mobile: 847-668-4535
Email: kbg128@aol.com

EXHIBIT "A"

SEC. 34 (9-5)



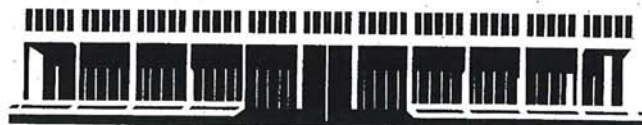
SEC. 2 (8-5)



Lancaster County Clerk

COUNTY-CITY BUILDING
555 SOUTH 10TH STREET
LINCOLN, NE 68508-2803

(402) 441-7481
FAX (402) 441-8728



DAN NOLTE
CLERK

December 8, 2008

National Audubon Society, Inc.
225 Varick Street
New York, NY 10014

To Whom It May Concern:

The Lancaster County Board of Commissioners took the following action at their regular meeting on Tuesday, December 2, 2008:

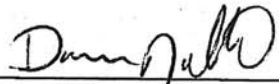
MOTION: Stevens moved and Schorr seconded approval of Resolution No. R-08-0102 subject to replacing all occurrences of the word 'adjacent' to 'abutting'.

Mike Thew, Chief Deputy County Attorney, stated to address Commissioner Heier's concern about the length of the gate, that they include language stating the length total be at least 30 feet to allow emergency and farm vehicles access to the vacated area.

The County Board concurred.

ROLL CALL: Heier, Schorr, Stevens and Workman voted aye. Hudkins voted no. Motion carried.

Sincerely,



Dan Nolte
County Clerk

xc: Marvin Krout, Planning Director
Mike DeKalb, Planning Department
Jean Preister, Planning Department
Don Thomas, County Engineer
Ken Schroeder, County Engineering
Dale Stertz, Building and Safety
Spring Creek Prairie Audubon Center, P.O. Box 117, Denton, NE 68339
Mark & Susan K. Urbach, 11090 SW 84th St., Denton, NE 68339
Jeanne Branch Boman, Attn: Wells Fargo NA, P.O. Box 13519, Arlington, TX 76094
Klaus Hartmann, 6105 Andrew Ct., Lincoln, NE 68512-1902
Shirley A. Reetz, RR 1, Box 226, Crete, NE 68333
Tauno & Elaine R. Ahola, 415 Juniper Ave., Crete, NE 68333-2204

RECEIVED

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF LANCASTER COUNTY, NEBRASKA

NOV 26 2008

LANC. COUNTY CLERK

IN THE MATTER OF THE VACATION OF)
A PORTION OF SOUTHWEST)
86TH STREET BETWEEN WEST SALTILLO)
ROAD AND WEST BENNET ROAD, AND)
A PORTION OF WEST SALTILLO ROAD)
BETWEEN SOUTHWEST 84TH STREET)
AND SOUTHWEST 86TH STREET,)
LANCASTER COUNTY, NEBRASKA)

RESOLUTION NO. R-08-0102

WHEREAS, on July 21, 2008 a petition was filed with the Lancaster County Clerk pursuant to Neb. Rev. Stat. §§39-1723 (Reissue 2004), seeking vacation of S.W. 86th Street between West Saltillo Road and West Bennet Road, and a portion of West Saltillo Road between S.W. 84th Street and S.W. 86th Street, such portions running from the Southwest corner of Section 2, Township 8 North, Range 5 East to the Northwest corner of said Section 2 and from the Southwest corner of Section 35, Township 9 North, Range 5 East to the Northwest corner of said Section 2, Lancaster County, Nebraska, more particularly depicted in the diagram identified as Exhibit "A", which is attached hereto and incorporated by this reference; and

WHEREAS, the Board of County Commissioners, by Resolution No. R-08-0052, directed the Lancaster County Engineering Department to conduct a study and submit a report regarding the use being made of said roads; and

WHEREAS, the Board has now received said report from the Engineering Department as well as a report from the Lincoln/Lancaster County Planning Department relative to the vacation of said roads, both of which reports are attached hereto and incorporated by this reference; and

WHEREAS, pursuant to Neb. Rev. Stat. §39-1725 (Reissue 2004), the County Board conducted a public hearing on September 30, 2008, and continued the public hearing until

November 25, 2008; and

WHEREAS, the County Board conducted the continuation of the public hearing on November 25, 2008; and

WHEREAS, on the basis of all the information available to it, the Board has determined that vacation of S.W. 86th Street between West Saltillo Road and West Bennet Road would serve the public good by enabling the Abutting property owners to foster, maintain and improve the Spring Creek Prairie, which is located on the properties, and which constitutes a substantial environmental, educational and recreational resource for the community; and

WHEREAS, on the basis of all the information available to it, the Board has determined that vacation of that portion of West Saltillo Road Between S.W. 84th Street and S.W. 86th Street is not necessary to serve the purpose of fostering, maintaining and improving Spring Creek Prairie.

NOW, THEREFORE, BE IT RESOLVED, by the Board of County Commissioners of Lancaster County, Nebraska, that the vacation of the portion of West Saltillo Road between S.W. 84th Street and S.W. 86th Street, such portion running from the Southwest corner of Section 35, Township 9 North, Range 5 East to the Northwest corner of said Section 2 , Lancaster County, Nebraska, more particularly depicted in the diagram identified as Exhibit "A", is hereby denied.

AND BE IT FURTHER RESOLVED, that the vacation of the portion of S.W. 86th Street between West Saltillo Road and West Bennet Road, and, such portion running from the Southwest corner of Section 2, Township 8 North, Range 5 East to the Northwest corner of said Section 2, Lancaster County, Nebraska, more particularly depicted in the diagram identified as Exhibit "A", is hereby approved subject to the following conditions:

1. Lancaster County shall retain all present title to and rights in the right-of-way and

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easements constituting the portions of road vacated by this Resolution.

2. Lancaster County specifically retains the right to reopen the road, without payment of any damages for the rights or improvements herein required, at such time as the Board of County Commissioners of Lancaster County, Nebraska, determines that public safety or necessity requires such action.
3. Abutting property owners shall provide suitable fences at each end of the vacated portion of the road, with adequately locked gates of sufficient width which total at least thirty (30) feet, to enable emergency and farm vehicles access to and across the vacated area. In addition, said property owners shall cooperate with law enforcement, public safety, and emergency services officials to ensure access to and across the vacated area when necessary to carry out their official functions.
4. Abutting property owners shall utilize the vacated area in a manner that will not unreasonably alter, degrade, or interfere with its possible use for road purposes in the future.
5. The Abutting property owners shall indemnify and save harmless to the fullest extent allowed by law, Lancaster County, Nebraska, from and against all losses, claims, damages and expenses, including attorney's fees arising out of or resulting from the use of such road that results in bodily injury, sickness, disease, death, or injury to or destruction of tangible property, including loss of use resulting therefrom and is caused in whole or in part by an adjacent property owner, any invitee, any guest, any subcontractor(s), anyone directly or indirectly employed by any of them or anyone for whose actions any of them may be liable. The Abutting property owners shall accept responsibility and liability for any losses, damages, injuries, claims, demands, costs and

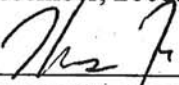
expenses of every kind and nature, whether or nor covered by insurance, including legal fees and disbursements arising out of and in connection with the use, maintenance and enjoyment of said public land.

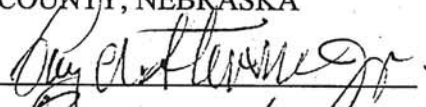
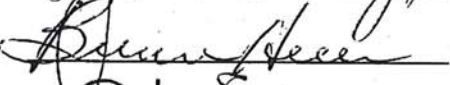


6. The Abutting property owners shall reimburse the County for the costs of procuring and installing all traffic signage necessitated by the actions directed by this Resolution.
7. These conditions shall run with the land and shall bind the Abutting land owners and all their respective heirs, assigns and successors in title.

DATED this 2 day of December, 2008.

BY THE BOARD OF COUNTY
COMMISSIONERS OF LANCASTER
COUNTY, NEBRASKA

APPROVED AS TO FORM
this 2 day of
December, 2008.

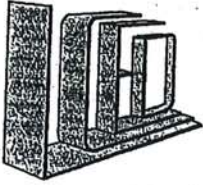

Deputy County Attorney
for GARY E. LACEY
Lancaster County Attorney

Hudkins voted no

Lancaster
County

DON R. THOMAS - COUNTY ENGINEER



Engineering

DEPUTY- KENNETH D. SCHROEDER
COUNTY SURVEYOR

Department

RECEIVED

SEP 17 2008

LANC. COUNTY CLERK

DATE: August 20, 2008
TO: Lancaster County Board of Commissioners
FROM: Ken D. Schroeder
County Surveyor *Ken D. Schroeder*
SUBJECT: RESOLUTION #R-08-0052
VACATION OF SW 86TH STREET BETWEEN WEST SALTILLO ROAD
AND WEST BENNET ROAD AND A PORTION OF WEST SALTILLO ROAD
BETWEEN SW 86TH STREET AND SW 84TH STREET IN LANCASTER COUNTY NE

As per Resolution #3049, this office has reviewed the request for vacating a portion of SW 86th Street between West Saltillo Road and West Bennet Road, and vacating a portion of West Saltillo Road between SW 86th Street and SW 84th Street and would offer the following comments:

- a) SW 86th Street and West Saltillo Road at this location was a petitioned road known as County road No. 1205 and declared located in September of 1893.
- b) County road No. 1205 was ordered open and damage claims were paid in November of 1894.
- c) Subject road in the area of proposed vacation is currently a dirt road.
- d) The following comments reference road segments #1 - #4 shown on attached "Aerial Photo Map".

Segment #1 ---

There are two segments that are being requested for vacation. The segments include 1.0 mile of SW 86th Street and about 0.2 mile of Saltillo Road between SW 84th and SW 86th Streets. It is important to note that Lancaster County owns, in fee simple title, the 33 feet of SW 86th Street on the west side of the Hartman property. The purchase of this right-of-way occurred in 2004 and was related to the securing of right-of-way along the Bennet Road for grading and surfacing improvements to this Minimum Maintenance Road.

Page Two

SUBJECT: RESOLUTION #R-08-0052
VACATION OF SW 86TH STREET BETWEEN WEST SALTILLO ROAD
AND WEST BENNET ROAD AND A PORTION OF WEST SALTILLO ROAD
BETWEEN SW 86TH STREET AND SW 84TH STREET IN LANCASTER COUNTY NE

Segments #2 and #3 --

These two segments are shown only to indicate that these segments are also dirt roads that connect to the requested vacation. These segments include about 0.3 mile of SW 84th Street and 0.4 mile of Saltillo Road going east from SW 84th Street.

Segment #4 --

This segment is shown because it had similar issues in regards to trash dumpings prior to 2004 when the County worked with the landowners to clear the trees and regrade the road.

Therefore, in regards to the requested vacation, it would be our recommendation to not approve this vacation request. We have in most cases taken the position that the County should not give up those rights that we may have when it involves Section Line Roads. Growth that has occurred within Lancaster County in the past would be expected to continue in the future and we should be very conservative in giving away any County interest in section line roads. I would offer that if the landowners along these dirt roads are as willing to work with us as those owners along the Bennet Road, then an alternative solution is to upgrade these roads like the Bennet Road.

Enclosures

cc: Mike DeKalb
Planning Department

KDS/bml
Barb/Vacation/Res #08-0052 - SW 86th St.Mem

RECEIVED
DEC 12 2008

AERIAL PHOTO MAP



SAMANI, DAVID L & LYNETTE S
2504 RIDGE RD
LINCOLN, NE 68512

SAMANI, DAVID L & LYNETTE S
2504 RIDGE RD
LINCOLN, NE 68512

POLL, RICHARD FRANCIS ET AL
CRETE, NE 68333

SW 84TH ST

DEBORD, ROBERT K & MARGARET B REVOCABLE INTERVIVOS TRUST
LINCOLN, NE 68501

SEC 36 T9N R5E

KOLBROOK RD

SEC 34 T9N R5E

BOMAN, JEANNE BRANCH
ARLINGTON, TX 76094

BOMAN, JEANNE BRANCH
ARLINGTON, TX 76094

SW 84TH ST

URBACH, MARK & SUSAN K
11090 SW 84 ST
DENTON, NE 68339

BOMAN, JEANNE BRANCH
ARLINGTON, TX 76094

W SALTILLO RD

SW 80TH ST

NATIONAL AUDUBON SOCIETY THE
225 VARICK ST
NEW YORK, NY 10014

NATIONAL AUDUBON SOCIETY INC
225 VARICK ST
NEW YORK, NY 10014

SEC 3 T8N R5E

SEC 2 T8N R5E

NATIONAL AUDUBON SOCIETY THE
225 VARICK ST
NEW YORK, NY 10014

HARTMANN, KLAUS
6105 ANDREW CT
LINCOLN, NE 68512-1902

SW 72ND ST


W BENNET RD

COPY FOR
YOUR INFORMATION

MEMORANDUM

DATE: August 1, 2008

TO: County Board

FROM: Mike DeKalb, Planning 

RE: Request for Vacation of a portion of West Saltillo Rd between SW 84th Street and SW 86th Street and SW 86th Street between West Saltillo Road and West Bennet Road.

CC: Marvin Krout
Ray Hill
Ken Schroeder
Dale Stertz

In accordance with County Resolution #3049, the Planning Department has reviewed the request for the vacation of a portion of West Saltillo Rd between SW 84th Street and SW 86th Street and SW 86th Street between West Saltillo Road and West Bennet Road, in Lancaster County, NE.

This County Road is not shown in the Lincoln-Lancaster County Comprehensive Plan for future paving or as anything other than a local county road. The land adjacent to this road is shown as either Agriculture or Environmental Resources. No substantial increase in traffic due to land use change is anticipated. It is anticipated that this area will continue to be preserved as native prairie/habitat by purchase or easements.

This will create a circumstance of a two and one half mile barrier with no road crossing.

This is a dirt county road with very low traffic levels (ADT of 11 in 1989).

The abutting property is zoned AG Agriculture.

This vacation would not appear to create any lots or parcels without frontage or access to a county road.

This may or could be used for Norris Public Power lines.

The vacation does not appear to cause or create any issues or problems and would not be considered in conflict with the Plan. If the vacated road were to be used as or in support of the natural resources, it could be found to be generally in support of the Plan.

Q:\SHARED\WPICBR S W86th and W Saltillo.MVD.wpd

RECEIVED

DEC 12 2008

AERIAL PHOTO MAP



SAMANI, DAVID L & LYNETTE S
2504 RIDGE RD
LINCOLN, NE 68512

SAMANI, DAVID L & LYNETTE S
2504 RIDGE RD
LINCOLN, NE 68512

DOLL, RICHARD FRANCIS ET AL
CRETE, NE 68333

SW 84TH ST

DEBORD, ROBERT K & MARGARET B REVOCABLE INTERVIVOS TRUST
LINCOLN, NE 68501

KOLBROOK RD

SEC. 34 T8N R5E

BOMAN, JEANNE BRANCH
ARLINGTON, TX 76094

BOMAN, JEANNE BRANCH
ARLINGTON, TX 76094

SW 84TH ST

URBACH, MARK & SUSAN K
11090 SW 84 ST
DENTON, NE 68339

BOMAN, JEANNE BRANCH
ARLINGTON, TX 76094

W SALTILLO RD

SW 86TH ST

NATIONAL AUDUBON SOCIETY THE
225 VARICK ST
NEW YORK, NY 10014

NATIONAL AUDUBON SOCIETY INC
225 VARICK ST
NEW YORK, NY 10014

SEC. 3 T8N R5E

SEC. 2 T8N R5E

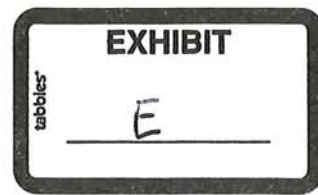
SW 72ND ST

NATIONAL AUDUBON SOCIETY THE
225 VARICK ST
NEW YORK, NY 10014

HARTMANN, KLAUS
6105 ANDREW CT
LINCOLN, NE 68512-1902



W BENNET RD



402-441-8728/County Clerk
VIA FACSIMILE

December 2, 2008

Bob Workman, Chair
Bernie Heier, Vice Chair
Larry Hudkins, Commissioner
Deb Schorr, Commissioner
Ray Stevens, Commissioner

Lancaster County Commissioners
County-City Building
555 South 10th Street, Room 110
Lincoln, Nebraska 68508

Re: Resolution No. R-08-0102 in the matter of the vacation of a portion of SW 86th Street between W. Saltillo Road and W. Bennet Road, and a portion of W. Saltillo Road between SW 84th Street and SW 86th Street, such portions running from the Southwest corner of Section 2, Township 8 North, Range 5 East to the Northwest corner of said Section 2 and from the Southwest corner of Section 35, Township 9 North, Range 5 East to the Northwest corner of said Section 2, Lancaster County, Nebraska

Dear County Commissioners:

I am writing on behalf of my mother, Jeanne' B. Boman, who opposes the petition filed by the Spring Creek Prairie Audubon Center to vacate the portion of S.W. 86th Street between West Saltillo Road and West Bennet Road and the portion of West Saltillo Road between S.W. 86th Street and S.W. 84th Street.

With respect to the Lancaster County Resolution, No. R-08-0102, ("Resolution"), we concur in part and oppose in part as follows:

A. Regarding the part of the Resolution in which the Board of County Commissioners denies vacation of the portion of West Saltillo Road between S.W. 84th Street and S.W. 86th Street.

We concur and commend the Board of County Commissioners for denying such vacation request.

B. Regarding the part of the Resolution in which the Board of County Commissioners approves with conditions the vacation of the portion of S.W. 86th Street between West Saltillo Road and West Bennet Road ("S.W. 86th").

We oppose the Board of County Commissioners Resolution to approve the vacation of S.W. 86th Street, even with the conditions specified in the Resolution. We ask the Board to reconsider and to vote against adopting this portion of the Resolution and to deny the vacation of S.W. 86th Street.

The Resolution states in part that such vacation “would serve the public good by enabling the Adjacent property owners to foster, maintain and improve the Spring Creek Prairie, which is located on the properties, and which constitutes a substantial environmental, educational and recreational resource for the community”.

We do not believe that vacating S.W. 86th Street is necessary to achieve this. Spring Creek Prairie is *already* an environmental, educational and recreational resource for the community, even with S.W. 86th Street open. Ms. Marian Langan, Director of Spring Creek Prairie, testified at the November 25, 2008, County Board hearing, that school children, state residents and out-of-state residents visited Spring Creek Prairie this fall. Clearly, the fact that S.W. 86th Street was open to the public and being used by the public did not stop the public from visiting Spring Creek Prairie, in fact, it appears to be thriving.

By law, a clear and compelling reason is required to vacate S.W. 86th Street for the public good. The reason must be because the road is (1) no longer required for public use or convenience, (2) that there is a clear and compelling public necessity for its vacation, or (3) that there is a clear and compelling public benefit or use for taking such action. Am Jur 2nd, *Highways, Streets, and Bridges*, §157. The mere fact that Spring Creek Prairie is open to the public is not enough. No clear and compelling reasons for the public good were established or proven by Spring Creek Prairie and none are stated in the Resolution. In fact, several neighbors testified at both hearings on September 30, 2008, and November 25, 2008, to the opposite. Specific testimony was given that the road was being used and serves a public benefit to farmers, hunters and the neighborhood. Also, the Sheriff, the County Engineer and multiple neighbors testified that for the public good, i.e., for safety reasons, S.W. 86th Street should not be vacated. Additionally, the mere fact that Spring Creek Prairie is an educational facility open to the public does not constitute “public good” as it is meant for purposes of satisfying the legal requirements for vacation. This is a misuse of the term. It is a different issue and it is like comparing apples to oranges. The road being open is not keeping people from using or visiting Spring Creek Prairie, nor is it keeping it from being an educational resource for the public good. It already is. There must be some compelling public good separate from this.

Furthermore, this is a private corporation that earns a profit from visitors and from leasing the prairie land to tenants for grazing cattle and baling hay. They also have hunters maintaining the deer population. This is a business, not a public park. Therefore, it should not be treated as a public park and there is no clear and compelling reason which necessitates vacating the road.

At the November 25, 2008, hearing, Commissioner Schorr referred to a beautiful sunset over a lake off of Van Doren. I lived at 24th and Van Doren. Holmes Lake can be seen from Van Doren

and Pawnee Lake is also in the area. These are *public* lakes and they are part of *public* parks. Unless Spring Creek Prairie wishes to donate the prairie to the county or state as a public park, the public issues (and associated liability) are not the same and should not be treated as such. Spring Creek Prairie is a private corporation and vacating S.W. 86th Street results in a private benefit to a private corporation. This is not a public park and the mere fact that Spring Creek Prairie is open to the public does not, in itself, make it a compelling public good for purposes of satisfying the “public good” requirement to vacate a road. By law, more is needed.

Furthermore, presently, Spring Creek Prairie is being “fostered, maintained and improved” even with the road open and traffic in the area. In fact, a busy hard topped highway is directly to the west and the prairie is thriving and flourishing. There is no need to vacate S.W. 86th for Spring Creek Prairie to thrive and no compelling public necessity has been demonstrated to vacate the road. According to the County Engineer, S.W. 86th Street is a designated county road, not a minimum maintenance road as suggested by Spring Creek Prairie in its petition, and should not be vacated.

Also of note, by treating Spring Creek Prairie as if it were public park, when in fact, it is a private corporation not only creates serious public safety concerns, *but corresponding liability concerns that would not be present in a park situation* and, not all of which are covered by the indemnification clause in the Resolution.

Public Safety

As noted in my letter to you dated, November 24, 2008, if S.W. 86th Street is vacated, access for all other reasons, including current emergency access, will be limited or denied to a large 2 to 2 and 1/2 mile section. This continues to be true even if the road is vacated with the conditions specified in the Resolution.

Gating S.W. 86th Street and locking the gates as specified in the Resolution still creates a safety issue for the public. Grass fires move tremendously fast and access is needed from many sides and *quickly*. Even if the fire department was given a key, it takes time to stop, get out of the vehicle and unlock two gates or to get out of the vehicle, use bolt cutters to cut the locks on two gates and get back in the vehicle.

Also, as I understand it, a farmer in a one-on-one conversation with a County Commissioner was told in an emergency to just “knock the gate down.” How? This could damage a vehicle and it takes time to “knock a gate down” and possibly two gates down, during which precious time is lost. And who is responsible for the damage? This is not a feasible solution.

Prairie fires move fast and the precious minutes that it takes to stop, get out, unlock or cut a lock with bolt cutters, swing the gate open and get back in the vehicle and then *repeat* everything at the other end of the road can make the difference between life and death. This delay in access potentially could result in increased risk to livestock, property and homes in the

area, not to mention, lives. If the fire department needs this north-south road to quickly access a prairie fire that is out of control and spreading fast and the delay caused by having to stop and unlock the gates results in loss of property or lives to neighboring homes, what then? The vacation with conditions as set forth in the Resolution serves a private benefit, not the public good. Furthermore, the County Board has been put on notice by neighbors, the Sheriff, the fire department, the County Engineer and others through oral and written testimony that vacating this road should be denied because it is in the public good and for the public safety to deny vacation of S.W. 86th Street. We strongly urge the County Board to reconsider its action and vote against the vacation with conditions in the Resolution. We ask the County Board to then move to a vote to deny the vacation. It is in the public good to do so.

Prairie fires are a serious concern and not theoretical. They have happened already *in this area* more than once and could easily happen again. About six years ago, there was an uncontrolled prairie fire, due to an electric fence, in this area. Also, Spring Creek Prairie, even in a controlled burn, has acknowledged a fire jumping the line. The Sheriff pointed out in his testimony about a house on fire in the area and multiple roads were needed with access from multiple sides, because responders came from all over, including Crete, Denton and Martell. Gates and locks which delay access to the area could result in delays by responders, increasing the risk for greater loss of property, livestock or lives. The delay could mean a fire that is harder to fight, putting the lives of responders at greater risk too. And for what reason? For the benefit of a private landowner and a private corporation. Vacating the road, even with conditions, still denies access to the public, taking away their rights, and will delay emergency responders all in order to favor a few people on a private basis.

There are other emergency situations too where minutes may make a difference to someone's life. If there is a hunting accident, car accident or farming accident and someone is in need of emergency medical care, the delay could make a difference if they have to go around a large two mile section or if emergency vehicles cannot get in or are delayed getting to the person due to having to stop and cut bolts and open locks on gates.

Who will get keys? Who will have bolt cutters and who will not have to worry about liability for destroying the gates or locks? Will private ambulance drivers get keys? Police? Doctors? The Sheriff? and every Deputy? Adjacent and abutting landowners? Other neighbors who are concerned about safety? No? *Denying anyone a request for a key potentially could increase their risk of loss in an emergency due to the delay to go around the section.* Even with a key, it will take time to open the gates and the delay could increase their risk of loss, but it would be less of a delay than going around a 2-1/2 mile section. **Keys may save lives.**

S.W. 86th Street is a designated county section line road. Once a road is opened, taking away public rights to this road and limiting or delaying access by emergency vehicles is a serious public safety issue, with corresponding liability concerns. If the road had never been opened in the first place, the liability concerns would be different, however, home owners purchased homes and farms in the area, knowing the road was there and open and they would have

access. S.W. 86th Street currently is used for, among other things, hauling hay, cattle drives, to get to jobs and for emergencies, etc. The law states that in order for the county to take away the public's right to a road that has been opened, there must be a clear, compelling public necessity. Vacating the road with conditions does not meet this test and in fact, still creates a public detriment and safety issues, as well as potential liability concerns.

The liability issues are complicated and complex and are beyond the scope of this letter. However, in general, it appears likely that any delay in access due to gates and locks on the road will create a potential safety hazard which may result in an increased risk of loss associated with it. This seems relevant, not only for the County, but the "adjacent owners". The Resolution makes adjacent owners (presumably Hartmann and Spring Creek Prairie/Audubon) liable for all losses, etc., of every kind and nature, *whether or not covered by insurance*, that arise "out of and in connection with the use, maintenance and enjoyment of said public land," (presumably "public land" refers to the vacated public road, i.e., S.W. 86th Street which would still be a public road owned by the County, although no longer allowed to be used by the public).

Amendments to the Resolution

In the alternative, should the Board proceed with its conditioned approval to vacate S.W. 86th Street, we wish to offer some suggested amendments and issues for consideration.

1. No fences, gates or locks shall be installed until the indemnification agreement is executed by all relevant parties to the agreement (i.e., adjacent owners and the county) and proof of insurance is obtained, if required by the County.

Note: There is no way to know how long it will take for the County and the Adjacent property owners to agree on the specific terms of the indemnification agreement. *Also, it is possible that an agreement may never be reached on the liability issues.* Therefore, until the County is certain that an agreement has been reached on the specific details, we ask that the road remain open to public use and no action, whatsoever, be taken to fence, gate or lock or close the public's access to the road until such time as an indemnification agreement is executed and proof of insurance is obtained.

2. Adjacent property owners shall be defined as those property owners directly east and west of the portion of S.W. 86th Street being vacated and not property owners to the south or north end.

Note: It would be helpful to clearly define who is considered an Adjacent property owner.

3. Adjacent property owners and any other property owners, individuals, businesses, corporations or other entities shall, upon request, be given a key to locks on the gates.

Note: Without a key, delays in going around the large section in an emergency could result in increased risk and potential increased loss to life and/or property as discussed elsewhere in this letter. A key may save a life.

4. Adjacent property owners shall protect the road bed.

Note: The Resolution should make it clear that Adjacent property owners (Audubon and Hartmann) are to protect the road bed as specified by the County Board at the November 25, 2008, hearing. Also, if the Audubon or Mr. Hartmann do not have the necessary equipment, County graders and equipment should not be used to maintain the road and roadbed, unless their time and expense is paid for by the Adjacent property owners. It would not be appropriate for the County to incur expense to maintain the roadbed, if the public does not have the use of the road.

Reservation of Rights

Mrs. Boman requests keys to any and all locks put on the gates at each end of S.W. 86th Street for herself and her tenants. Please note, this request for keys does not mean that Mrs. Boman in any way agrees with the County Board's action to vacate this road with the conditions, such as, fencing, gates and locks which limit access to S.W. 86th Street by emergency responders and eliminates access by the general public. Ms. Boman remains opposed to the vacation even with conditions because she and her tenants currently use this road and, most importantly, she has serious safety concerns about vacating this road. Furthermore, nothing in this letter shall be construed as a waiver or relinquishment of her rights. Mrs. Boman specifically reserves any and all rights, including but not limited to her rights and remedies at law.

Once again, we urge you to deny the request to vacate S.W. 86th Street and oppose any action to vacate it with conditions. Thank you for your consideration of these issues.

Respectfully,

Kim B. Gates for Jeanne' B. Boman
128 N. Idlewild Ave.
Mundelein, IL 60060
Ph: 847-566-6551

cc: Jeanne' B. Boman, property owner
Ralph Phillips, farm manager



EXHIBIT
F



1 inch = 60 feet
City of Lincoln, Nebraska
3/4 11x17 print

39-1725. Order of county board; contents; conditions and vote required for vacation or abandonment; resolution; disposition.

After the public hearing the county board shall by resolution at its next meeting or as soon thereafter as may be practicable vacate or abandon or refuse vacation or abandonment, as in the judgment of the board the public good may require. Vacation and abandonment shall not be ordered except upon vote of two-thirds of all members of the board and the prior approval of the governing body of a city of the metropolitan, primary, or first class has been obtained when any public road or any part thereof is within the area of the zoning jurisdiction of such city. If such road lies within a township in a county operating roads on a township basis the road shall not be vacated or abandoned unless an offer has been made to relinquish to the township in the manner provided in section 39-1726.

In the event that the county board decides to vacate or abandon, its resolution shall state upon what conditions, if any, the vacation or abandonment shall be qualified and particularly whether or not the title or right-of-way to any vacated or abandoned fragment or section of road shall be sold, revert to private ownership, or remain in the public. If the county board fails to specify in a resolution as to the disposition of right-of-way, and if there shall be nonuse of such right-of-way for any public purpose for a continuous period of not less than ten years, the right-of-way shall revert to the owners of the adjacent real estate, one-half on each side thereof. When the county vacates all or any portion of a road, the county shall, within thirty days after the effective date of the vacation, file a certified copy of the vacating resolution with the register of deeds for the county to be indexed against all affected lots.

Source: Laws 1957, c. 155, art. IV, § 25, p. 548; Laws 1959, c. 167, § 7, p. 611; Laws 1971, LB 192, § 4; Laws 1972, LB 1277, § 1; Laws 1980, LB 607, § 4; Laws 2001, LB 483, § 7.

Cross References

Effect of conveyances of tracts adjacent to vacated streets or alleys, see section 76-275.03.

Annotations

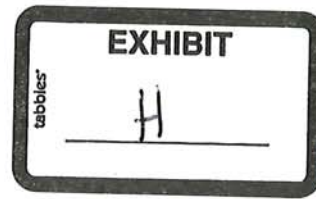
With respect to public roads, a county which vacates a road while retaining a right-of-way has a duty to exercise such degree of care as would be exercised by a reasonable county under the same circumstances. *Blaser v. County of Madison*, 285 Neb. 290, 826 N.W.2d 554 (2013).

County board's decision not to rebuild bridge upheld where no showing that such discretionary decision was arbitrary or capricious. *State ex rel. Goossen v. Board of Supervisors*, 198 Neb. 9, 251 N.W.2d 655 (1977).

Constitutionality of this section sustained. *Emry v. Lake*, 181 Neb. 568, 149 N.W.2d 520 (1967).

Title to abandoned road remained in county until a period of ten years of non-use had elapsed. *Plischke v. Jameson*, 180 Neb. 803, 146 N.W.2d 223 (1966).

The discretion exercised by a county board of commissioners under section 39-1722 and this section is not judicial in nature, and as such, the trial court did not have jurisdiction to hear a petition in error under section 25-1901. *Camp Clarke Ranch v. Morrill Cty. Bd. of Comrs.*, 17 Neb. App. 76, 758 N.W.2d 653 (2008).



RECEIVED

AUG 22 2019

LANCASTER COUNTY
CLERK

August 21, 2019

Lancaster County Commissioners:

Roma Amundson, Chair

Sean Flowerday, Vice Chair

Rick Vest, Commissioner

Deb Schorr, Commissioner

Christa Yoakum, Commissioner

Attn: Lancaster County Clerk

County-City Building

555 South 10th Street, Room 108

Lincoln, NE 68508

Re: In opposition to Resolution No. R-19-0056 in the matter of a public hearing regarding a vacation request of West Saltillo Road in the SE Quarter of Section 34, Township 9 North, Range 5 East of the 6th Principal Meridian, and in the NW Quarter of Section 2 and NE Quarter of Section 3, Township 8 North, Range 5 East of the 6th Principal Meridian, Lancaster County, Nebraska.

Dear Lancaster County Board of Commissioners:

Thank you for allowing me time to speak in opposition at the hearing on Tuesday, August 20, 2019, with respect to the proposed vacation of a portion of W. Saltillo road as described above and in Resolution No. R-19-0056. I appreciate the time and careful consideration you are giving to this issue, and your insightful questions at the hearing. As I mentioned, I appeared on behalf of my mother, Jeanne' Boman, who owns the property adjacent to the proposed vacation.

I would like to briefly address a few issues raised at the hearing.

1. Dumping. Concerns about dumping were raised, because of the secluded nature of this portion of W. Saltillo road. I agree, from time to time, small amounts of dumping may happen on the SW 86th end. However, the topography of this section of W. Saltillo is that it is elevated on the SW 86th end and is considerably lower on the SW 84th end. On the SW 84th end, this is a secluded intersection with a large gulch filled with brush. If W. Saltillo is closed on the SW 84th end, I believe any dumping will just move to this gulch and will be an even bigger problem because of the size of the gulch as traffic on SW 84th comes around the bend in the road. Vacating W Saltillo is not likely to solve the dumping problem and could even exacerbate it, because it is highly conceivable that it will just happen further down the road in this even larger area, by the curve.
2. Public Safety. Although arguments can be made on both sides of the public safety issue, I believe the overwhelming preponderance of arguments favor not only keeping West

Saltillo open, but re-opening SW 86th. These are section line roads, not minimum maintenance roads. Therefore, absent a clear and compelling public safety reason for permanently closing the roads, they should not be closed.

In 2008, the Lancaster County Commissioners made a noble effort to address the concerns of all (e.g., the Sheriff, emergency services, farmers and the Audubon) by passing a "conditional" vacation of the portion of SW 86th that cuts through the Audubon property. However, time has demonstrated that the conditions have not been met and the effect is as if the road was permanently closed, not conditionally, which is contrary to the intended results of the Board's actions.

For example, Resolution No. R-08-0102, with respect to SW 86th states in part that, the portion closed was to be gated with *"locked gates of sufficient width which total at least thirty (30) feet, to enable emergency and farm vehicles access to and across the vacated area. In addition, said property owners shall cooperate with law enforcement, public safety, and emergency services officials to ensure access to and across the vacated area when necessary to carry out their official functions."*

Recent inspection of SW 86th on August 19, 2019, shows that the road is impassable, and the gate is broken on the W Saltillo end (see exhibit A, picture attached). Neither emergency vehicles nor farmers are able to use the road; and except perhaps for the Audubon's own farm tenant, I am not aware of local farmers ever being given keys to the SW 86th gates. (Our farm tenant was not given keys and neither were we). All of this has had the effect of permanently, not conditionally closing the road which is in contravention of what the County Board was trying to accomplish.

Also, it is important to consider that growth such as that in the Yankee Hill and the Covered Bridge communities, is expected to continue in the area. It is in the public interest to re-open SW 86th and keep W Saltillo open for public safety, emergency access and farmers, as was originally intended. Furthermore, if these roads return to regular public use, the activity may not eliminate dumping, but it should help to discourage it, because farmers and others regularly will be driving the road and can see what goes on. Greater use and activity should help.

3. Additionally, as previously noted at the hearing and in correspondence, we recently applied to the EQIP program (NRCS conservation program) for funding for pasture improvements and anticipate approval will be forthcoming. We currently have a perimeter fence along the W. Saltillo side. However, per our proposal, part of the funds received will be applied toward additional cross fencing. Additional cross fencing means that we need access to our property from the W. Saltillo side, because if the road is closed, we would have to cut through 3 or 4 fences to gain access from the opposite side. Furthermore, the incline is much too steep to put an access/gate on the SW 84th side of our property, so the top end of W Saltillo (SW 86th end) is our best access point.

Closing W Saltillo will completely eliminate any access point from this side of our property.

Accordingly, for the public good, safety and farming, we oppose closing W. Saltillo Road and also ask that you fully and unconditionally re-open SW 86th, so that the public, farmers and emergency vehicles will once again have access to this important section line road.

Thank you for your consideration.

Sincerely,

Kim Gates for Jeanne' Boman

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Exhibit A (picture attached)

EXHIBIT A: picture of SW 86th (portion that cuts through the Audubon that was conditionally vacated). Looking from W Saltillo, toward the Audubon. Taken on August 19, 2019.

