

W9C1

AGENDA COVER MEMO

DATE: September 13, 2004

TO: Lane County Board of Commissioners

DEPT.: Public Works Department

PRESENTED BY: Frank Simas
Right of Way Manager

AGENDA ITEM TITLE: In the Matter of Authorizing Acquisition of Real Property or Interests Therein for the Munsel Lake Boat Landing, Including Authority to Commence and Prosecute Any Necessary Proceedings for the Condemnation of Said Real Property if a Settlement Cannot be Reached by Negotiation.

I. MOTION

THAT THE RESOLUTION AND ORDER BE ADOPTED AUTHORIZING ACQUISITION OF REAL PROPERTY OR OTHER INTERESTS FOR THE MUNSEL LAKE BOAT LANDING, INCLUDING AUTHORITY FOR CONDEMNATION OF SAID REAL PROPERTY IF A SETTLEMENT CANNOT BE REACHED BY NEGOTIATION.

II. ISSUE OR PROBLEM

The County negotiated the acquisition of an easement in 2001 for the purpose of formalizing the long-term historical usage of the landing and allowing its expansion, funded by a grant from the Oregon State Marine Board. The grantor's son, who is now the Trustee of the trust which owns the property, is claiming that the conveyance is invalid because at the time the easement was signed, his mother was in the capacity of Trustee for the Trust, but she signed it as though title was vested in her as an individual. He is also claiming that the amount of land affected by the easement was not as represented by staff.

III. DISCUSSION

A. Background

The Lane County Parks Division has operated and maintained a boat landing at the south end of Munsel Lake adjacent to Munsel Lake Road for approximately 30 years, as nearly as

can be established from County records. The County received a grant from the Oregon State Marine Board in 2002 that funded an expansion to the landing and which included lengthening the dock, improving the launching ramp, parking area, and construction of a vault toilet that will replace the existing portable toilet that has remained at the site for many years.

The boat ramp and parking area has been maintained by the County and used by the public since at least the mid-70s, according to an atlas of County Park facilities that appears to date from 1976. This document shows the boat ramp and parking area as it then existed and contains a note that the "landing (is) located on County road right of way." In fact, the survey that was done for the Munsel Lake Road Improvement Project in 1995 showed that although most of the parking area was on County right of way, all of the ramp and about 2,637 square feet of the parking area was outside of the road right of way and on property owned by Marguerite F. Sherwood.

A portion of the area over which the easement was eventually acquired was shown on a preliminary Partition Plat (M297-80) that was tentatively approved in 1981 and designated as "Future Deed to Lane County for Existing Boat Ramp", although the files in the Lane County Land Management Division show that this was not a requirement for the approval. The tentative approval expired before the conditions had been fulfilled, and the surveyor's office has a copy of the tentative map with a note from the private survey requesting more time to resolve the boat ramp issue. The owners received another approval for partitioning of the property in 1986, and the Partition Map that was recorded made no mention of the existence of the boat ramp or parking area, and instead included this land in the gross area of Parcel 1 on the Parcel map.

When staff members of the Right of Way Management section of the Department of Public Works were requested to acquire land rights for the boat ramp and its proposed expansion and improvement in 2000, the intent was to formalize the long-standing usage of what had been used and maintained since the 1970s and to acquire a small additional area to accommodate the lengthening of the dock that is situated on the south side of the launching ramp.

Prior to acquiring the easement, a Preliminary Title Report dated July 31, 2000, and later updated as of September 18, 2000, was obtained showing title to the property vested in Marguerite F. Sherwood. Shortly thereafter, Mrs. Sherwood conveyed the property to herself as Trustee of a Trust dated November 3, 2000. Because the amount of the compensation for the easement was a nominal \$200.00, and because the Title Report was relatively recent, an additional update was not requested, and the change in title was not discovered prior to the signing of the easement by Mrs. Sherwood on January 3, 2001. The transaction was not closed through escrow, again because of the small amount of consideration, and staff did not learn of the change until informed by Mrs. Sherwood's son in July of 2004.

The original intent was to acquire the area that had been shown on the 1981 Preliminary Partition Plat, and the easement contained a statement that the area “was originally defined and shown on Preliminary Partition Number 097-04.” As plans for the project were further developed, the area was increased to a total of 4,369 s. f., which is larger than was shown on the first preliminary partition. This was fully explained to Mrs. Sherwood when she was asked to sign the Easement Deed, but unfortunately, due to an oversight, the statement was not removed prior to her signing and the recordation of the deed.

B. Analysis

The Munsel Lake boat ramp is an important recreational facility in the Florence area that has been in existence since at least the late 70s, and is the only public access to this approximate 110 acre lake. The Parks Division received a grant from the Oregon State Marine Board for lengthening the dock and improving the ramp and parking area. The functioning of the ramp will be impaired if the parking area is not to continue to be available for parking vehicles with attached boat trailers.

Lane County Legal Counsel has been involved in discussions with the current trustee of the property with the goal of reaching a negotiated settlement of the title and other property issues in a manner that will allow continued use of the boat ramp and parking area. If settlement efforts are not successful, the legal issues could also be resolved through the commencement of an action to condemn the necessary fee title and/or easement rights.

Resolution of the title and property issues related to the Munsel Lake Boat Landing will be consistent with Section “B1” (Resource Planning and Allocation) of the County’s Adopted Strategic Plan. Specifically, it is consistent with Section B1(c) which refers to conducting an inventory of all “land and facilities and holdings” which will “identify the value of each holding, the current use, the long-term use identified currently (if any), size, location, zoning and restrictions.” The title and property issues may have an impact on the potential for current and long-term use of the facility and should be resolved.

Resolution is also consistent with the requirements of Section B1(d) which states that “Lane County will establish policy and decide the disposition or retention of assets and will develop a master plan for existing and future facilities”, which will “Identify ways to improve space and facilities conditions to better serve citizens, and insure the adequate maintenance of existing infrastructure.” Resolution of the title and property issues is necessary for the maintenance of existing infrastructure located at this facility.

C. Alternatives/Options

1. Approve the Resolution and Order to authorize further negotiations with the current owners of the property to perfect title to the easement rights acquired by Lane County in 2001, and authorizing the commencement and prosecution of any necessary proceedings for the condemnation of said real property of rights therein if a settlement cannot be reached through negotiation.

2. Give staff direction to pursue some alternate solution.

C. Recommendations

Option 1

D. Timing

In consideration of the owner, this should be resolved as soon as possible.

II. IMPLEMENTATION/FOLLOW-UP

Public Works staff will assist Legal Counsel in negotiations with the owner and with the filing of an action to condemn the property if necessary.

III. ATTACHMENTS

Board Order and Resolution

Attachment 1 - Map showing area acquired by easement in 2001.

**IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY
STATE OF OREGON**

**RESOLUTION AND
ORDER NO.**

(IN THE MATTER OF AUTHORIZING ACQUISITION
(OF REAL PROPERTY OR INTERESTS THEREIN
(FOR THE MUNSEL LAKE BOAT LANDING
(INCLUDING AUTHORITY TO COMMENCE AND
(PROSECUTE ANY NECESSARY PROCEEDING FOR
(THE CONDEMNATION OF SAID REAL PROPERTY
(IF A SETTLEMENT CANNOT BE REACHED BY
(NEGOTIATION.

THIS MATTER now coming before the Board of County Commissioners of Lane County, and the Board determining it is necessary and in the public's interest to acquire fee or other interests in certain property identified as Assessor's Map 18-12-14-00-2202, from owners and others as their interests may appear of record to serve the needs of Lane County, and that the public welfare will be benefited by the acquisition of said real property or interests therein and the Board being fully advised;

WHEREAS, Lane County has operated and maintained a boat landing at the south end of Munsel Lake adjacent to Munsel Lake Road for approximately 30 years, as nearly as can be established from County records; and

WHEREAS, Lane County may have acquired an easement in 2001 from Marguerite Sherwood for the said landing to recognize the long-standing public usage of the facility and to allow for a minor expansion; and

WHEREAS, a subsequent owner of the property burdened by said easement is claiming that the easement is not valid due to the Grantor's signing the deed as an individual although the property was at the time vested in a Trust for which the grantor was Trustee; and

WHEREAS, the Board has directed the Office of Legal Counsel to negotiate with the current owner in order to resolve the issues associated with the conveyance of the easement; and

WHEREAS ORS 271.390 provides for purchase of real property by a county; and

WHEREAS Lane Manual 21.410 provides for real property acquisition when acted upon by the Board of County Commissioners; and

WHEREAS the Board has concurred with the necessity of the acquisition of additional property or interests therein to allow the continued use of the facility in its present location by the public and believes is to be compatible with the greatest public good and the least private injury: NOW THEREFORE BE IT

RESOLVED that under the authority granted in ORS Chapter 35 and consistent with ORS Chapter 281, that there exists a necessity to acquire and occupy any portion of the real property identified as Assessor's Map 18-12-14-00-2202 not currently owned or possessed by the County or the public, to serve the needs of the citizens of Lane County;

IT IS HEREBY ORDERED that if Lane County is unable to reach an agreement for resolution of these issues and for acquisition of additional area for use in conjunction with the boat ramp, the Office of Legal Counsel is hereby authorized to commence and prosecute in the Circuit Court of Lane County in the name of Lane County, any necessary proceeding for the declaration of rights in said property, or for the condemnation of said real property and for the assessment of damages for the taking thereof.

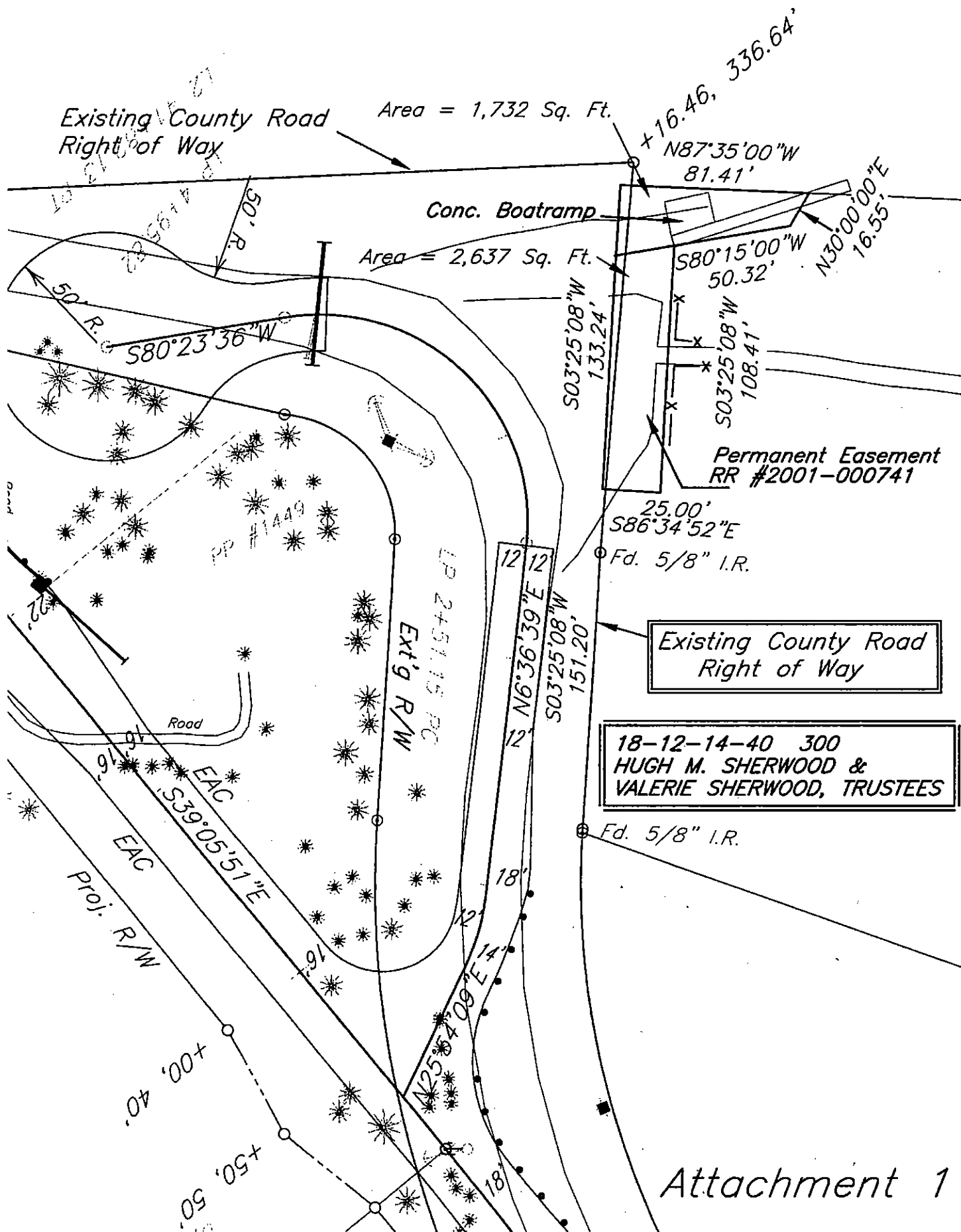
DATED this _____ day of _____, 2004.

APPROVED AS TO FORM

Date 9-21-04 lane county

Man. J. Smith
CHIEF OF LEGAL COUNSEL

Chair,
Lane County Board of Commissioners



Attachment 1