

In STATE OF WYOMING )  
 ) SS.  
COUNTY OF LARAMIE )



REC# #: 870886  
RECORDED 3/14/2024 AT 10:52 AM BK# 2871 PG# 1559  
Debra K. Lee, CLERK OF LARAMIE COUNTY, WY PAGE 1 OF 15

**BEFORE THE BOARD OF LARAMIE COUNTY  
COMMISSIONERS**

IN THE MATTER OF:

THE ESTABLISHMENT OF A PUBLIC  
RIGHT-OF-WAY ALONG LARAMIE STREET  
BETWEEN APPROXIMATELY 112 FEET EAST OF  
SARATOGA STREET, AND  
WHITNEY ROAD, LARAMIE COUNTY,  
WYOMING

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

**THIS MATTER HAVING COME BEFORE** the Board of Laramie County Commissioners (Board) pursuant to a petition for Establishment of a Public Road, pursuant to Wyo. Stat. Ann. § 24-3-101 et seq. and the Board having appointed a Viewer and accepted the Viewer’s report on April 4, 2023; the Board finds, concludes as follows in regard to Road Petition No. PZ-21-00242 requesting establishment of a County Road.

**SUMMARY:**

The Road requested to be established is denoted as ‘Laramie Street,’ which is on unplatted property, connecting between approximately 112 feet east of Saratoga Street and Whitney Road in Laramie County. Petitioner is Hilltop Finding LLC, owner of property on the south side of the proposed road, situs of a mobile home park. Hilltop also owns vacant property to the south of the proposed road with an access onto the proposed road. In a project narrative, Hilltop indicated "We hope to improve it by possibly adding sewer and water. And, by resurfacing in order to make the street safer." [Viewers Report, Appendix ‘B’]

The property at issue is currently in ‘unincorporated’ Laramie County, though it is immediately adjacent on the north, east and west by property located within the boundaries of the City of Cheyenne. See, pages 6, 7, in Viewer’s Report (hereinafter, also, “Report” or abbreviated as ‘VR’). Said Viewer’s Report, including its attached Exhibits is considered ‘Exhibit’ ‘A’ to these Findings, Conclusions and Order and is fully incorporated herein.

On March 21, 2023, a comprehensive Viewer’s report and recommendation with supporting documentation, was provided to the Commissioners and made available to the public for review. See Exhibit ‘A’. This is a large exhibit and is available from the Laramie County Clerk’s office, Exhibit ‘A’ including its appendices, is fully incorporated in this Order and supports and reflects the findings and conclusions entered herein. Further,

**COPY OF RECORD**



these Findings, Conclusions and Order adopt and incorporate all matters which are of record in this proceeding from its inception, in support of its findings and conclusions.

The Board held a public hearing on the Viewer's report on April 4, 2023. Testimony was taken from many individuals, including a representative of the Petitioner.

The Board has recognized the complexities of this particular establishment, and the unknown nature of costs associated with potential damage claims. The Commissioners, having indicated an intent to go forward with the establishment, have *reserved* final decision on any establishment and continued the matter, pending receipt of written objections, requests for damages, the appointment of appraisers pursuant to Wyo. Stat. Ann. § 24-3-114 and information presented to the Board in regard to said damages.

The Board further determined and ordered that final establishment of the road would be dependent and conditioned upon the payment by the applicant/petitioner of such damages as determined at hearing by the Board for its establishment, pursuant to Wyo. Stat. Ann. § 24-3-118. In the absence of a commitment to pay such damages or the making of such payment, the Board indicated that the petition for establishment may be dismissed, with no establishment.

The Board's decision was consistent, in part, with a recommendation made by the Viewer stating as follows:

Petitioner to reimburse Laramie County for the third-party consultant (Y2 Consultants) hired by Laramie County to conduct research and provide related subject matter expert level information. As of March 13, 2023 the cost is \$12,783.50.

2. Any and all damage claims upon appraisal report(s) being submitted by the appraisal team, which is unknown and dependent upon completion of the appraisals and receipt of submitted damages by those parties who choose to do so.

a. All damages shall be paid to Laramie County and the claimants prior to any platting, permitting etc. being submitted to Laramie County.

b. It is recommended that Laramie County prepare a final list of costs that the Petitioner will review and accept.

3. In addition, if the Petitioner of this road petition application is not willing to incur the total costs as outlined and yet to be determined, my recommendation would be for the Commissioners to not establish this stretch of Laramie Street as a ROW. (Viewers report, p. 2)

The matter has been continued to May 16, 2023 at 3:30 p.m. pending receipt of any written objections and/or claims for damages and for the potential appointment of appraisers. Said written objections and requests for damages must be filed with the Laramie County Clerk by 5:00 PM on May 10, 2023. The Board intends, on May 16, to



hear such additional testimony as it may in its discretion allow, consider the request for damages and any objections and to move for the appointment of appraisers in this matter.

The Board expressly reserves their decision on the question of the final establishment of the road. However, the Board has informed Petitioner both and again in the Order herein, that any establishment of the road, should the Board determine establishment to be in the public good, after balancing the various interest, shall be conditioned upon the payment by Petitioner of such damages as are assessed by the Board of County Commissioners.

## **THE BOARD HEREBY FINDS:**

### **A. Findings as to the Proceedings:**

- 1) The above referenced Petition for establishment of a public road pursuant to Wyo. Stat. Ann. § 24-3-101 was properly executed, submitted on April 7, 2020. It was accepted by the Board of Commissioners on August 17, 2021 pursuant to Wyo. Stat. Ann. § 24-3-101.
- 2) The submitted petition was signed by six individual electors of Laramie County living with 25 miles of the proposed road to be established and met the requirements of Wyo. Stat. Ann. § 24-3-101.
- 3) A petition of essentially the same nature was considered by Laramie County on April 7, 2020. It had been submitted March 24, 2020. The Petition and associated documentation for this matter can be found in Appendix B to the Viewer's report in this matter. The Board of Commissioners denied that petition based on a number of factors reflected in the minutes of the meeting, which included, but were not limited to, an absence of proper research into the records of ownership of the property, absence of an appropriate survey and other inadequacies.
- 4) The applicant resubmitted the Road petition herein and it was considered on August 17, 2021 at a Board of County Commissioners public meeting. At that same meeting, the Commissioners accepted the Petition and appointed the Laramie County Director Public Works and/or her designee, as Viewer, pursuant to Wyo. Stat. Ann. § 24-3-103. The resolution required the Viewer to determine whether said proposed road to be established is practicable and ought or ought not to be established, taking into consideration both the public and private convenience, and also the expense of the proposed road. (See, Appendix C, Viewers report)
- 5) On March 21, 2023, a comprehensive viewer's report and recommendation with supporting documentation was provided to the Commissioners, the applicant and made available to the public for review. See Exhibit 'A,' which is fully incorporated in this order and available for viewing through the Laramie County Clerk's Office. The report supports the findings and conclusions entered herein. Parties of



interest known to the County, were advised of the completion of the report as well as how to inspect it.

- 6) The Viewer's report indicated that a thorough investigation had been conducted in regard to ownership interests in the area where the proposed road would be established. This included, but was not limited to, review of the historical records showing successive transfers of property leading to the most current records of recorded interests. The report also included individuals or entities without recorded interests, but who had facilities or infrastructure which were present in the area of the proposed road, apparent on the ground or otherwise known to exist as well as other "stakeholders" such as fire services, the school district and the county health department (which inspects and issues permits for septic systems). The report further described the current zoning of the area and surroundings, addressed the Laramie County Comprehensive Plan and information/data associated with long-range planning for the area. Notice was provided and comment solicited from all parties with such interests or facilities. The record reflects responses from many of them.
- 7) The report and information received at the hearing on the Viewer's report indicate multiple complexities and potential considerations in regard to the establishment of the road.
- 8) Issues include but are not limited to: Reservations in a number of the deeds for such a right-of-way, which may have existed in previous deeds and not in current deeds. Issues regarding the effect of, and notice in regard to, historical reservations in deeds and language in current deeds. For example, the effect of 'take subject to' limitations in deeds, without any specificity as to prior potential reservations or several types, has been adjudicated by the Wyoming Supreme Court as a mixed question of law and fact. Additionally, issues exist regarding the absence of such reservations in some deeds and ambiguities in language. At a minimum, considerations regarding the presence, absence or effect of, reservations in deeds are, or may be, relevant to the issue of damages and costs should the road be established.
- 9) The property being un-platted, and having developed over time, it was brought to the attention of the Board at the hearing on the Viewers report that there are, or may be, structures or fixtures built within or closely adjacent to, the location of any road to be established. Residents of nearby platted property within the city limits expressed concerns regarding increased traffic and other matters.
- 10) Further, the subject area, being bordered by the City of Cheyenne on three sides, presents issues regarding future installation of infrastructure, and annexation into the City. Many of these complexities impact damages and costs associated with the establishment of the road and, therefore, need be considered by the Board of Commissioners in regard to the public good, public and private convenience and the expense of the proposed road, pursuant to Wyo. Stat. Ann. § 24-3-105, 118.



- 11) On April 4, 2023, a public hearing was held on the Viewer's report, pursuant to Wyo. Stat. Ann. § 24-3-106.
- 12) Multiple parties were heard in regard to the road establishment; the applicant's representative in favor and from those opposed. See minutes of July 19, 2022 hearing attached as Exhibit 'C.' In summary, individuals opposed to the establishment indicated their objections to the establishment and issues regarding damages were raised. Reference was made by objectors to the aforementioned issue regarding reservations for a roadway in deeds as a "grey area," which needed resolution. See, Exhibit 'C'.
- 13) Concerns expressed in the Viewer's report and by the residents affected by the road establishment include;

Concerns regarding increased traffic in relation to safety for children playing and changes of the quality of life for residence. Similar concerns were also expressed by residents of Dakota Crossing.

Residents of the Laramie Street area are concerned that dedicating the road would lead to the taking of land for curb and gutter installation, resurfacing of the road, and the potential requirement to hookup to water and sewer lines. These concerns relate to both the cost of improvements as well as loss of property.

Some of the residents are concerned that moving forward with the petition and the establishment of the road would lead to annexation. Costs associated with incorporation into the City were raised by residents. Concerns about losing "rural" lifestyle by being incorporated into the city were also expressed.

A recommendation by the President of the Dakota Crossing Subdivision Homeowners Association asked to consider cul-de-sac at the west end of Laramie Street as opposed to a through street.

Further commentary is present along with the aforementioned, in Appendix 'A' of the Viewer's report.

- 14) At said hearing, the Board determined that the Viewer's report recommended the establishment of the road. The recommendation was tentatively accepted, subject to certain conditions. Further, the Board, ordered that individuals wishing to make objection to the establishment or request damages, do so in writing, by May 10, 2023, pursuant to Wyo. Stat. Ann. § 24-3-111.



- 15) The Board, has determined an intent to go forward with the establishment, and have *reserved* the final decision on any establishment. They have continued the matter, pending receipt of written objections, requests for damages and the appointment of appraisers pursuant to Wyo. Stat. Ann. § 24-3-114 and information presented to the Board in regard to said damages.
- 16) The Board further determined and ordered that final establishment of the road would be dependent and conditioned upon the payment by the applicant/petitioner of damages as determined at hearing by the Board for any establishment, pursuant to Wyo. Stat. Ann. § 24-3-118. In the absence of a commitment to pay such damages or the making of such payment, the Board indicated that the petition for establishment may be dismissed, with no establishment.
- 17) The Board of Commissioners, pursuant to motion, voting three in favor and two opposed, approved accepting the Viewer's report and moving forward with the process of establishment, including appointment of appraisers with certain requirements and reservation of any final decision.
- 18) Further, the Board directed the County Attorney's office to draft the Conclusions of Law, Findings of Fact and an Order immortalizing the decision and its basis in the record.

#### **B. Further Findings of Fact:**

- 1) Petitioner submitted a petition for the establishment of "Laramie Street" as a road on April 7, 2020. The petition was in accord with established law, containing the requisite number of its electors in the County of signatories who lived within 25 miles of the location of the road proposed. (See VR app. B)
- 2) The proposed road lies between easternmost border of a platted subdivision within the City of Cheyenne called "Dakota Crossing." The proposed road area consists of a gravel roadway traveling east to west, from approximately 112 feet east of Saratoga Street in the Dakota Crossing subdivision and connecting on its eastern terminus with Whitney Road, also lying within the borders of the City of Cheyenne.
- 3) The plat of Dakota Crossing indicates a dedicated portion of public street turning east off of Saratoga Street and connecting to what is indicated, outside the platted area, as "Laramie Street undedicated." (VR. P. 6)
- 4) The Homeowners Association (HOA) of Dakota Crossing provided comments raising multiple concerns in regard to the establishment of the road. These included, but were not limited to, concerns about increased traffic into Dakota Crossing, creating safety concerns for residents. In addition, the HOA pointed out that this would increase public access to a park and other community open-spaces



maintained through fees by the residents and members of the HOA. Increased access might increase use, thereby mandating greater expenditures by the members of the HOA. The letter from the HOA further raised concerns about absence of information in regard to the applicant, "Hilltop" and their plans for future development subsequent to the establishment of the road, alleging that certain vacant properties south of the proposed road with access only on to said road, owned by Hilltop, had been poorly maintained. [VR. App. 'D']

- 5) Property upon which the proposed road lies is located in section 26, zoned agricultural residential. Township 14 north, range 66 W. See, [VR. R. 5]
- 6) A roadway of sorts exists currently in the approximate location of the proposed road. It is gravel in nature and, having never been dedicated to the public it has not been publicly maintained. A Road Maintenance Agreement was executed between private parties on the existing road in December of 2000 and recorded January 24, 2001. [VR p. 16, Appx. 'A']
- 7) The property is currently zoned within Laramie County as Agricultural Residential (A.R.). These areas are currently used for large lot detached residential development, with the density to reflect a rural lifestyle and are considered 'agricultural residential.'
- 8) The Future land use map identifies the areas in "mixed-use residential" (MU-R). As in such an area or mix of residential, retail, service point in civic uses with a predominant residential use. [VR. P. 7]
- 9) The records and the Viewer's report indicate that little to no public infrastructure exists to serve the various residents in the area of the proposed road. Comments in Appendix D from Black Hills Energy, indicates that there is a 2" gas line located in or along with proposed route. This line serves residents of the Hilltop mobile home park, owned by the applicant. Residential users along the proposed road are served by septic systems and on-site wells. The property lies within the "201 agreement" area: This references an agreement between City of Cheyenne, Laramie County, the Department of Environmental Quality and the EPA designed to limit the expansion of septic systems. It bars repair or replacement of septic systems in the area. Currently no public sewer or water service from the City of Cheyenne's Board of Public Utilities (BOPU) serves the area directly adjacent to the properties along Laramie Street.
- 10) No infrastructure upgrades (like sidewalk, asphalt surface, curb and gutter) would be included in the establishment of the proposed road. In future, based upon potential failure of wells and/or septic systems and/or perhaps subsequent to annexation with the City, water and sewer line extensions would be at the discretion of the BOPU within the area of the proposed road.



- 11) Comments provided by the Laramie County Environmental Health Department (EH), indicated concerns about existing septic systems on properties along this roadway. Included were concerns regarding multiple addresses which do not have permits on file for septic systems and therefore, no drawings exist indicating where the systems components, such as tanks and leach fields, might be located in relationship to the road. For those that have permits, some do not have drawings and those that do, have drawings that are older the reliability of which is unknown. For example, for the addresses of 6213, 6216, 6212, permits exist but the drawings and measurements are old and according to EH do not appear to match with existing landmarks. An example is provided at 6216 Laramie Street: The drawing seems to indicate that the septic is located within 15 feet of the proposed roadway. Environmental Health also pointed out, as noted, that this area is within the "sewerable boundary" of the City Cheyenne and therefore subject to the "201" agreement. [See Exhibit 'D'] As the agreement bars repair or replacement of septic systems, should septic systems be damaged by the expansion of the roadway or otherwise become inoperative, residents may have to hook up with City/BOPU sewer lines. These were among the cost concerns raised by residents in opposition to the establishment.
- 12) Testimony from a Senior Planner with the City of Cheyenne Development office indicated that the property within the area of the proposed road is not currently set for annexation by the City, as it is not a "complete" "County pocket." That is, it is surrounded only on three sides by the borders of the City of Cheyenne. As a result, there were no current plans for annexation of the area. He did indicate that developers, in any annexation would be required to install city sewer and water, and they could seek infrastructure reimbursement from any residence who then later hooked up to these systems.
- 13) Ownership of the property potentially affected by the establishment of the proposed road is described in the Viewer's report, in multiple locations. A simplified view of ownership interests existing currently, is located on page 8 of the report in the Viewer's report and a simplified condition. Page 9 contains a simplified list of ownership interests likely to be affected by the establishment. Appendix 'A' a more complete description of the ownership interests as well as the history of the successive deeds on the property and reservations which may have existed in said deeds and changes and/or illumination of same which have occurred over time.
- 14) The Viewer's report indicates contact and comment, from a number of entities with potential interests in regard to the establishment of this road. Summary of such commentary is on page 14 of the Viewers report and complete written comments are in Exhibit 'D'.





- 15) No traffic study in regard to the effect or impact of the establishment of this roadway has been performed. The Viewer's report indicates that this impact could be potentially significant, due to the connection between a highly trafficked roadway, Whitney Road and the Dakota Crossing subdivision. Concern in regard to such traffic impact in the existing subdivision was raised by a Dakota Crossing resident at the hearing on the Viewer's report. Residential property owners along Laramie Street raise similar concerns regarding an increase in traffic.

### **C. FINDINGS REGARDING OWNERSHIP/INTERESTS**

- 1) Research indicated in the Viewer's report the current roadway did not exist, prior to sale by the owner of the majority of the land affected by the proposed road, Pearl Swinbank, in 1945-46.
- 2) Deeds issued by Ms. Swinbank all contained language indicating a reservation for roadway:

"it is further stipulated that a strip of land 60 feet in width, parallel with and adjacent to the south boundary of the above-described tract is hereby provided for use of the public as a road."

- 3) The Viewer's report and its multiple appendices, contain significant details on both current and historic restrictions and reservations present in deeds for property adjoining and/or subject to the establishment of the proposed road. As indicated herein, changes and in some cases limitation of, these reservations in the multiple subsequent property transfers underlying current ownership, creates potential legal and appraisal issues in regard to establishment of damage amounts, in the event the Board determines to issue a final order of establishment in this matter.

All of the properties have changed ownership multiple times between 1945/46 and the present date. Over time there have been variations in the preservation, disappearance or modification of language regarding any reservation for a road in the area of the proposed road. In addition, current deeded properties have been divided from larger parcels. There is variation in the presence or absence of reservations in the former "aliquot" or larger parcels and subsequent deeds of smaller parcels. Additionally, variation exists in some deeds whereby metes and bounds descriptions in the current owner's deed do not reflect ownership of property within the proposed roadway. That is, prior to division of the property, the original 'aliquot' parcel may have included the roadway area, which is *not* now reflected in the current deeds metes and bounds. It is unclear what possessory interest is, and/or may continue to exist in property, perhaps now



part of the proposed roadway which now does not appear to be reflected in the metes and bounds of the "aliquot" description.

- 4) The following summaries demonstrate complexities and potential legal and appraisal issues associated with the properties at issue in this establishment action.
- 5) The primary issue has to do with the presence and/or absence of a reservation for the existence of a roadway in the location proposed in the petition and/or its survival and efficacy, given successive transfers of property. The original deeds to these properties, executed between 1945 1946, contain language indicating a reservation for the purposes of a public road. Original deeds issued by Pearl Swinbank, contain language as follows or similar thereto:

"It is further stipulated that a strip of land 60 feet in width, parallel with and adjacent to the south boundary of the above-described tract is hereby provided for use of the public as a road."

- 6) The Viewer's report, being fully incorporated herein, serves only to illustrate variations in deeds as to any restriction present in the foundational deed and whether the current deed contains any reference to such a reservation. It does not include the multiple successive deeds which may also have significant variation in regard to any reservations. These prior deeds are provided in the Viewers report.

There are variations in successive deeds, with several of the current deeds missing the original foundational reservation language, but stating generically "subject to any and all restrictions reservations, covenants and easements of record." This provision shall be indicated as, "subject to." Current deeds without any reference to reservation, are described as "none." Other variations are indicated as well.

North Side of Proposed Road:

Address:	Foundational Deed	Current Deed
6016	60' Reservation Present	"Subject to"
6108	60' Reservation Present	"Subject to"
6110	60' Reservation present	None
6216	60' Reservation present	None

South Side of Proposed Road

6001	60' Reservation present (current parcel created from a larger parcel which did not contain the original reservation, though the Reservation existed in the original deed from Ms. Swinbank. It should be noted that the metes and bounds description of this property currently ends 30	None
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feet, more or less, south of the petitioned centerline for Laramie Street)

6117                      Reservation Present                      (see below)  
(Original Aliquot description includes the North 30 feet and west 30 feet "reserved for the use of the public for road purpose.")

6213                      Reservation Present (parent parcel) (see below)  
(termination of metes and bounds and aliquot description and 30 feet south of the north line of Section 26)

3524 [Whitney Rd.]              Reservation present                      Present  
(In a contract for Deed)

- 7) The Board finds that all persons required to be notified, and who may have an interest in the road and/or owners of property over which said road would be established, were notified.

**CONCLUSIONS OF LAW:**

- 1) The Petition in this matter satisfied the requirements of Wyo. Stat. Ann. § 24-3-101
- 2) The Board of Laramie County Commissioners has jurisdiction to consider and decide the instant matter. The evidence supports without contradiction that the roadway petitioned to be established lies within the confines of unincorporated Laramie County. It is therefore subject to the authority of the Board of Commissioners pursuant to Wyo. Stat. Ann. § 24-3-101 et seq.
- 3) Notice of the petition and the proposed establishment of the road was provided to all individuals owning interests of any record, in the area of land to be considered for the establishment of the road, pursuant to Wyo. Stat. Ann. § 24-3-110. The record indicates notice was provided not only to general public and those with interest of record, but also those who may have had some form of easement or permit and those whose installations or facilities were present in the proposed area of road, without any recorded interest.
- 4) Notice was additionally provided to entities with various other apprenents interests: utilities, such as overhead transmission lines, water and sewer facilities, gas lines, telephone or other digital communications facilities. [VR Appendix ‘D’]



- 5) The Board concludes therefore, that all parties with any recorded or otherwise ascertainable interest in the establishment of the road, have been notified and provided meaningful opportunity to be heard.
- 6) At the public hearing on the Viewer's report, April 4, 2023, multiple objections and claims for damages were presented to the Board of County Commissioners. As a result, the Board continued the matter pursuant to Wyo. Stat. Ann. § 24-3-113.
- 7) Also on April 4, 2023, and as reflected in the order herein, the Board directed those having objections and/or claims for damages to file them in writing with the Laramie County Clerk by 5:00 p.m. on May 10, 2023 Wyo. Stat. Ann. § 24-3-111.
- 8) Petitioner was advised at hearing and by the Order herein, that pursuant to Wyo. Stat. Ann. § 24-3-118 intends to accept establishment of any road in this matter. Should the Board's final decision be for the establishment, that establishment is dependent and/or conditioned upon the payment, by Petitioner, in whole or in part, of the damages awarded and/or expenses incurred in relation to any such establishment.
- 9) Upon receipt of written objections and claims for damages pursuant Wyo. Stat. Ann. § 24-3-114, the Board shall appoint appraisers, cause them to be notified and properly informed pursuant to Wyo. Stat. Ann. § 24-3-115, directing them to return to the Board with a report as to damages.
- 10) Upon receipt of the report from the Appraisers, Commissioners shall, at a public hearing, hear testimony, and consider petitions for remonstrance (for and against) establishment of the road. They shall make such decision as is warranted by the evidence before them; Including but not limited to, whether the public good, convenience and necessity is provided by the establishment of this section of roadway.
- 11) The persistence and/or efficacy of reservations in successive deeds to property over time is a mixed question of law and fact and may impact damage amounts should any final order be for establishment. Wyo. Stat. Ann. § 34-1-121 states in pertinent part:

Each and every deed, mortgage, instrument or conveyance touching any interest in lands, made and recorded, according to the provisions of this chapter, shall be notice to and take precedence of any subsequent purchaser or purchasers from the time of the delivery of any instrument at the office of the county clerk, for record. See also Crozier v. Malone, 366 P.2d 125, 127 (Wyo. 1961)
- 12) While the statute above would appear to control in general as to successive deeds over time, case law in Wyoming differs, based on a number of factors. The State



Supreme Court has indicated that survival of many types of reservations is analyzed by examination of such matters as; factual context, language in the original and subsequent deeds, ascertainment of the intent of the grantor, issues as to notice, direct or constructive. Any or none of these issues can affect the survival of reservations, as to subsequent purchasers. For example, the Wyoming Supreme Court, in parsing the survivability of an easement in favor of the grantor stated in part:

“Together with and subject to....” This Court has not yet had the opportunity to establish whether the language “subject to” when used in a deed, without more, is sufficient to reserve an easement in the grantor. This issue, however, has been addressed by numerous other jurisdictions, which are divided on the matter. Leeks Canyon Ranch, LLC v. Callahan River Ranch, LLC, 2014 WY 62, ¶ 17, 327 P.3d 732, 739 (Wyo. 2014)

See also, Ecosystem Res., L.C. v. Broadbent Land & Res., L.L.C., 2007 WY 87, ¶ 9, 158 P.3d 685, 688 (Wyo. 2007), Baker v. Pike, 2002 WY 34, 41 P.3d 537 (Wyo. 2002), Hein v. Lee, 549 P.2d 286, 292 (Wyo. 1976)

- 13) Appraisers appointed in this matter will be required to take into consideration all the factors provided in law as to any damages for an establishment of the road, including but not limited to, the effect, if any, of reservations for a roadway, survival of same and any modifications in current and past deeds.
- 14) ~~14)~~ In making a final determination in a road establishment petition, as the statute indicates, the Board must "take into consideration both the public and private convenience, and also the expense of the proposed road." The Board must determine either for or against establishment, "as the public good may require." Issues associated with damages, as well as the costs of the assessment thereof and burdens to be imposed by any establishment must be considered.

### **IT IS HEREBY ORDERED:**

That the Petition for the establishment of a roadway proposed in this matter, has been properly submitted and accepted. The Board of Laramie County Commissioners have accepted the Viewer's report. The report provides multiple indices in favor of the establishment of the road however, having heard orally, and expecting written objections and claims for damages, the Board has determined that no final decision regarding establishment should be made at this time.

Decisions regarding establishment of roads require the balancing of the public good and the interest in such establishment, against the costs and potential harms which might be incurred or imposed thereby. Only upon presentation of evidence, including the report of appointed appraisers, as well as hearing objections and/or support in regard to



establishment of the road as well as to any amount in damages, will the Board be able to make the appropriate assessment, balancing respective public interests in the road proposed in this petition. An assessment of damages, which may include the effect of reservations and issues associated therewith, shall be presented by the appointed appraisers in this matter.

The Board Orders, as it has advised Petitioner in this matter, pursuant to statute, costs associated with the establishment of the road including, but not limited to, damages, if any are ultimately determined, through establishment of the road, will be required to be paid by Petitioner, prior to any Order in this matter, should one issue, becoming final.

It is therefore further ordered, that the Board of County Commissioners shall reconvene on May 16, 2023 at 3:30 p.m. in this matter. Individuals or entities wishing to make objection to the establishment of the road and a request for damages, must do so by 5:00 p.m. on May 10, 2023 at the County Clerk's office.

On May 16, 2023 the Board shall then accept written objections, requests for damages and hear such other testimony as the Board may in its discretion allow. At that time, the Board shall appoint three appraisers as required by statute, and dispatch them to assess and ascertain damages in this matter, and return with a report of their findings.

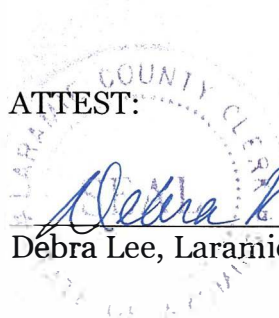
Dated this 2nd day of May, 2023.

BOARD OF LARAMIE COUNTY COMMISSIONERS

  
\_\_\_\_\_  
Chairman

ATTEST:

  
\_\_\_\_\_  
Debra Lee, Laramie County Clerk



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW** was placed in the U. S. Mail postage pre-paid and/or emailed on this 4 day of May, 2023 addressed to the following:

Bruce Asay  
Associated Legal Group, LLC.  
1812 Pebrican Avenue  
Cheyenne, WY 82201  
Email: [basva@associatedlega.com](mailto:basva@associatedlega.com)



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Debra K. Lee, CLERK OF LARAMIE COUNTY, WY PAGE 15 OF 15

Attorney for the Petitioner

Laramie County Public Works

Email: [molly.bennett@laramiecountywyo.gov](mailto:molly.bennett@laramiecountywyo.gov)

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Debra Lee  
Laramie County Clerk  
P. O. Box 608  
Cheyenne, WY 82003