

4-14-2014

Flying "A" Ranch v. Board of County  
Commissioners for Fremont County, Idaho  
Respondent's Brief Dckt. 41584

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IN THE SUPREME COURT OF THE STATE OF IDAHO

<p>BOARD OF COUNTY COMMISSIONERS FOR FREMONT COUNTY, IDAHO, a political subdivision of the state of Idaho; RONALD "SKIP" HURT, individually and in his official capacity; and LEROY MILLER, individually and in his official capacity,</p> <p style="text-align: center;">Respondents – Appellants,</p> <p>v.</p> <p>FLYING "A" RANCH, INC., an Idaho corporation; CLEN ATCHLEY, an individual; EMMA ATCHLEY, an individual; LAURA PICKARD, an individual; CLAY PICKARD, an individual; GEORGE TY NEDROW, an individual; and DAVID TUK NEDROW an individual,</p> <p style="text-align: center;">Petitioners – Respondents.</p>	<p>Supreme Court Docket No. 41584-2013</p> <p>Fremont County District Court No. 2012-580</p>
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**RESPONDENTS' BRIEF**

APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

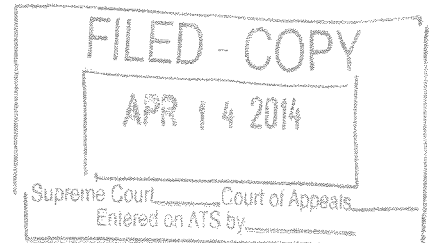
Honorable GREGORY MOELLER, District Judge, Presiding.

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### III. STATEMENT OF CASE

#### i. Nature of the Case.

Before this Honorable Court is appeal taken from a Petition for Judicial Review of the Board of County Commissioners for Fremont County (hereinafter “the Board”), whereby the Board adopted an Official Road Map, which was published as Ordinance No. 2013.01 on October 29, 2012. In preparing to adopt the Official Road Map, pursuant to I.C. § 40-202 (2011), the Board: 1) gave notice of its intention to establish an official County road map; 2) solicited public comments; 3) held public hearings; 4) met to discuss the public comments, and 5) met a second time to vote on the Official Road Map.

Ordinance No. 2013.01, among other things, designated a road (the “North Road”) as a public road which commences at 1425 North 3125 East in Fremont County and travels one quarter miler north over the property of Petitioners – Respondents, George Ty Nedrow (“Ty Nedrow”) and David Tuk Nedrow (“Tuk Nedrow”) (Ty Nedrow and Tuk Nedrow are collectively referred to as “Nedrow”), and then proceeds north a quarter mile over property belonging to Petitioners – Respondents, Flying “A” Ranch, Inc., Clen Atchley, Emma Atchley, Laura Pickard and Clay Pickard (“Flying “A” Ranch”) (Nedrow and Flying “A” Ranch are collectively referred to as “Respondents”). After the road leaves the Flying “A” Ranch property on the north side, it travels one-half mile north over Bureau of Land Management (“BLM”) property to property belonging to Flying “A” Ranch and continues north until it reaches U.S. Forest Service property where the road is blocked.

On appeal, the district court held that the Findings and Conclusions issued by the Board in support of Ordinance No. 2013.01 violated I.C. §§ 40-202 or 40-208. Specifically, the district

court found that Ordinance No. 2013.01 improperly declared the North Road to be a public right-of-way (either as an R.S. 2477 Road or as a County Dirt Road). The basis for the district court's finding was that: 1) the record did not contain sufficient evidence to support the Board's Findings and Conclusions that the North Road qualifies for R.S. 2477 status and, as a result, its inclusion on the Official Road Map as a public road was clearly erroneous; and 2) in determining the North Road as an R.S. 2477 road, the Board acted in an arbitrary and capricious manner because its decision lacked adequate factual support from reliable, probative, and substantial evidence.

The district court properly acknowledged that Respondents were not challenging a decision regarding abandonment, vacation, or validation proceeding. Instead, the parties were challenging the Board's decision to place a disputed road on an official county map in a § 40-202 proceeding. As such, the district court properly applied the standards set forth in I.C. § 40-202 and § 40-208. In addition, the district court delineated the standard for determining whether a decision by the Board was clearly erroneous. Nowhere in the district court's opinion does it suggest that it was applying a heightened standard of review that would be consistent with validation proceeding.

**ii. Statement of Facts**

The Board prepared to adopt an official county road map pursuant to I.C. § 40-202 and gave public notice that “[a]fter months of research [it was] close to establishing the official County road map.” (R., p. 1). The Board scheduled and held three “public information hearings” in July 2012 to solicit comments about the proposed road maps which were available for inspection. (R., p. 1, R., p. 73). “After the public information hearings, Fremont County

Public Works staff reviewed the comments for validity and applicability.” (R., p. 73). After their review, the maps were adjusted. (R., p. 73). Another public hearing was scheduled by the Board for September 27, 2012 and notice was published in the *Standard Journal*, a local newspaper. (R., p. 22). The purpose of the September 27, 2012 hearing was “to take public comments on the proposed official County Road Map(s).” (R., p. 21). Ty Nedrow and Tuk Nedrow attended the public hearing. (R., pp. 23-24). At that hearing, Ty Nedrow asserted that some of the roads put on the map were in fact private roads that went nowhere (the two roads are understood as the “East Road” and “North Road”). (*Public Hearing Transcript* (September 27, 2012), p. 15:18-20). He explained that the East Road is a field service road that “drunk fisherman” sometimes try to use when the field is soaked and they get stuck. (*Public Hearing Transcript* (September 27, 2012), p. 15:23-16:7). Moreover, Tuk Nedrow asserted that no county maintenance had ever been done on the North Road. (*Public Hearing Transcript* (September 27, 2012), p. 21:25-22:2). Tuk Nedrow also stated that the North Road “goes through a quarter mile of our property and a quarter mile of Mr. [Achtley’s (also known as Flying “A” Ranch)] and it goes through a half a mile of BLM and then hits the Forest Services.” (*Public Hearing Transcript* (September 27, 2012), p. 22:3-6). As to the historical name and use of the North Road, Ty Nedrow asserted that some referred to the road as the “mail route,” but stated that his grandpa had told him the road was only ever used if an empty stagecoach was coming back from West Yellowstone, not one carrying mail, i.e., the name was a misnomer. (*Public Hearing Transcript* (September 27, 2012), p. 16:25-17:18). Finally, Ty Nedrow stated that the North Road had always contained a gate at his property and another gate a quarter mile

north before arriving to Flying “A” Ranch property. (*Public Hearing Transcript* (September 27, 2012), p. 17:25-18:18).

On October 15, 2012, the Board held a meeting to consider the comments made at the prior public hearings regarding the proposed County map. (R., p. 57-58). At that hearing the Board decided to “close the road that runs East-West” based on Ty and Tuk Nedrow’s comments at the September 27, 2012 hearing. (R., p. 58). However, the Board determined “to leave the RS2477 road on Ty and Tuk Nedrow’s property open,” referring to North Road. (R., p. 58).

The Board’s decision seems to have been based, at least in large part, on the fact that an unidentified woman present at the Board meeting mentioned that “an old Shell Oil map on the Internet” appeared to show that people were directed down the North Road as far back as 1956. (R., p. 59 (audio CD recording), 5:09-9:53). There is no suggestion that the “old Shell Oil map” was present at the Board meeting. (R., p. 59 (audio CD recording), 5:09-9:53). The Board concluded that “any roads [used] prior to [1976] cannot be closed. They fall under this R.S. 2477 that if they were ever used as public roads then public domain takes precedence.” (R., p. 59 (audio CD recording)). Because the Board concluded that the North Road had been “ascertained a 2477 road,” it was identified as a public road on the Official Road Map. (R., p. 59 (audio CD recording)).

On October 29, 2012, the Board reconvened and voted “to adopt Ordinance 2013-01 the Official Road Map for Fremont County, Idaho. Commissioner Hurt voted ‘Yes’. Commissioner Miller voted ‘Yes’. Commissioner Stoddard voted ‘No’. The motion passed by majority vote.” (R., p. 64). As a result of the Board’s actions, the Official Road Map identifies the East Road as a “Private Road” and the North Road as a “County Dirt Road.” (R., p. 93).



The Boards Findings of Fact state:

Roads were identified as Fremont County roads based on the following criteria:

- a. The roads are routinely maintained by the Fremont County Road & Bridge Department.
- b. Documentation showed the roads have been maintained in the past by the Fremont County Road & Bridge Department.
- c. Current or past employees of the Fremont County Road & Bridge Department testified that they had performed authorized maintenance on the road.
- d. The roads were identified on recorded plats of subdivision as having been dedicated to the public.
- e. The roads were shown on government maps (such as Forest Service, BLM, State of Idaho) as being public roads.
- f. The roads had been asserted under Federal Law R.S.-2477 and Idaho Code 40-204 and 40-107 or are the sole or essential connection to roads asserted as R.S.-2477 roads.

(R., p. 72-73).

In addition, the Board's Conclusions of Law state:

All roads identified in [the Official Road Map] are determined by the Fremont County Board of Commissioners to be County roads, either paved, gravel or unimproved (dirt); and are not recorded in the Board of Commissioners' official minutes as vacated or abandoned; and are routinely maintained by the County....

Those roads identified in [the Official Road Map] as being R.S.-2477 roads are determined by the Fremont County Board of County Commissioners as having been asserted under Federal Law R.S. 2477 and Idaho Code 40-204 and 40-107. The same are identified in official records in the Fremont County Public Works office.

(R., p. 74).

The Conclusions of Law also state that “[t]he forgoing is supported by *substantial and competent evidence submitted at the public hearing and is found to be in the public interest.* (R., p. 74) (emphasis added). Finally, these materials identified that “[a]ll roads found on the Official Fremont County Road Map constitutes public notice that evidence has been presented to the Fremont County Board of Commissioners that the road may qualify as a public right-of-way, but

has no other legal effect. Inclusion of roads on the Official Fremont County Road Map does not constitute validation or abandonment of any road.” (R., p. 74-75).

#### IV. ARGUMENT

##### A. Legal Standard on Appeal.

“In an appeal from a district court's decision where the district court was acting in its appellate capacity under the Idaho Administrative Procedure Act (APA), this Court reviews the agency record independently of the district court's decision.” *Black Labrador Investing, LLC v. Kuna City Council*, 147 Idaho 92, 95, 205 P.3d 1228, 1231 (2008) (citing *Castaneda v. Brighton Corp.*, 130 Idaho 923, 926, 950 P.2d 1262, 1265 (1998)). The Supreme Court “will defer to the agency's findings of fact unless those findings are clearly erroneous.” *Id.* (internal citation omitted). Moreover, “[w]hen supported by evidence in the record, the agency's factual determinations are binding on the reviewing court even when there is conflicting evidence before the agency.” Findings of fact are not erroneous when they are supported by substantial and competent evidence. *Wulff v. Sun Valley Co.*, 127 Idaho 71, 74, 896 P.2d 979, 982 (1995). “Substantial and competent evidence is ‘relevant evidence that a reasonable mind might accept to support a conclusion.’” *Huff v. Singleton*, 143 Idaho 498, 500, 148 P.3d 1244, 1246 (2006) (quoting *Jensen v. City of Pocatello*, 135 Idaho 406, 412, 18 P.3d 211, 217 (2000)). “Erroneous conclusions of law made by an agency may be corrected on appeal.” *Homestead Farms, Inc. v. Bd. of Comm'rs of Teton County*, 141 Idaho 855, 859, 119 P.3d 630, 634 (2005) (citing *Love v. Board of County Comm'rs of Bingham County*, 105 Idaho 558, 559, 671 P.2d 471, 472 (1983)).

In *Homestead Farms*, this Court stated:

“[S]ince I.C. § 40–202 is contained in the section of the Code relating to general provisions for the establishment and maintenance of the state and

county highway system, including procedures required for abandonment, vacation or validation of highways, it is logical that the statutorily mandated standard of review under § 40–208 should apply to § 40–202 decisions.”

141 Idaho at 858, 119 P.3d at 633.

It was also held that the reviewing court “may affirm the decision of the commissioners or remand the case for further proceedings.” *Id.* Moreover, “[t]he Court may also reverse or modify the decision if substantial rights of the appellant have been prejudiced because the commissioners' findings, inferences, conclusions or decisions are:

- i. In violation of constitutional or statutory provisions;
- ii. In excess of the statutory authority of the commissioners;
- iii. Made upon unlawful procedure;
- iv. Affected by other error of law;
- v. Clearly erroneous in view of the reliable, probative and substantial information on the whole record; or
- vi. Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.”

*Id.* (citing I.C. § 67-5279(2)).

Lastly, “[e]rroneous conclusions of law made by an agency may be corrected on appeal.” *Id.*

(citing *Love*, 105 Idaho at 559, 671 P.2d at 472.

**B. The Board Failed to Make a Factual Determination Based on Substantial and Competent Evidence Submitted at Public Hearing Before Adopting the Official Road Map.**

The Board, by its own assertion in its Conclusions of Law, stated that the Official Road Map was “*supported by substantial and competent evidence submitted at the public hearing and is found to be in the public interest.*” (R., p. 74) (emphasis added). However, the Board failed to make an adequate factual determination based on evidence submitted at public hearing and, in turn, the inclusion of the North Road on the Official Road Map was clearly erroneous.

Even though the process outlined in I.C. § 40-202(1) results in the adoption of an official county road map, it “does not also serve to adjudicate the public status of any roads within the county or create new public highways or rights-of-way.” *Homestead Farms, Inc.*, 141 Idaho at 859-60, 119 P.3d at 634-35. This means that the Board neither validates nor vacates roads as R.S. 2477 roads, but instead makes “a determination that a particular roadway occupies the status, in fact, of a public highway or right-of-way.” *Id.* at 861. As such, the way in which an R.S. 2477 road is established is a crucial element to determining whether the Board had sufficient evidence to find that that North Road was an R.S. 247 road and, therefore, a public right-of-way. Under United States Revised Statute 2477, a state government entity can grant public status to a road on public lands. The process was explained by this Court as follows:

The federal statute creating R.S. 2477 roads provided that ‘[t]he right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted.’ 43 U.S.C.A. § 932 (1866) (repealed 1976). While this statute has been repealed, otherwise valid leases, permits, patents and similar rights created under it are valid if they existed before October 21, 1976. Pub.L. 94-579, § 706(a) (1976).

*Farrell v. Bd. of Comm'rs, Lemhi Cnty.*, 138 Idaho 378, 384, 64 P.3d 304, 310 (2002) *overruled on different grounds by City of Osburn v. Randel*, 152 Idaho 906, 277 P.3d 353 (2012).

While there has been controversy in identifying what constitutes a R.S. 2477 road, Idaho case law suggests that an R.S. 2477 road exists if “the local government accepted the road from the federal government.” *Farrell*, 138 Idaho at 384, 64 P.3d at 310. Acceptance from the federal government can occur in two ways: 1) “through a positive act of acceptance by the local government, or [2)]compliance with the road creation statute in existence at the time.” *Galli v. Idaho Cnty.*, 146 Idaho 155, 159, 191 P.3d 233, 237 (2008). The act of acceptance has been

determined to be “more lax than the requirements set forth in the state road creation statute.”

*Farrell*, 138 Idaho at 384, 64 P.3d at 310. In that case, this Court stated that:

No R.S. 2477 road may be established once the land has been removed from the public domain. However, if an R.S. 2477 road is established prior to the land exiting the public domain, regardless if it is officially recognized or not, then that grant remains effective even though the land which the road traverses is now private property.

*Galli*, 146 Idaho at 159, 191 P.3d at 237.

Further, in *Homestead Farms*, this Court held that:

The decision to place roads on the county highway system map should be made only after a determination that a particular roadway occupies the status, in fact, of a public highway or right-of-way. Further, the decision of whether or not a road should be considered to be a public highway should be dependent upon that roadway having some basis through dedication, purchase, prescriptive use or some other accepted means of creating a public highway so there is some evidentiary support for the Commissioners' determination to designate a road on the map. Only at that point should the Commissioners adopt an official map of the County's highway system, reflecting all of those roads known to be, at that time, public highways.

*Homestead Farms*, 141 Idaho at 861, 119 P.3d at 636.

Based on language from holding in *Homestead Farms*, there must be some evidentiary support before the Board as to the status of a road prior to placing it on the Official Road Map. The road must also be established prior to the land exiting the public domain and prior to October 21, 1976.

In the present case, the Board heard the testimony of Ty and Tuk Nedrow as to the historical names and uses of the North Road at a public hearing. However, the record shows that the Board did not consider this testimony at their meeting on October 15, 2012, or during their vote on the Official Road Map on October 29, 2012. Instead, the record shows that the Board

primarily considered a statement by an unidentified woman who asserted: “I actually came across an old Shell Oil map on the Internet that, by looking at it, it looks like that that’s actually the way back in 1956 they were trying to rout people.” (R., p. 59 (audio CD recording)). The Board appears to have heavily, if not exclusively, relied on this interpretation of a map they may have never seen. Further, the record does not contain a copy of the map. Without attaching the supposed map to the record, there is no way to confirm that: 1) the map existed, 2) the interpretation of the map was correct or reasonable, and 3) the map provided the Board with the requisite evidence as to the status of the road.

In addition, there is no evidence in the record that the North Road supposedly depicted on an old Shell Oil map met the criteria established in the *Farrell, Galli, and Homestead Farms* cases. Specifically, there is no evidence as to whether the North Road was ever accepted by a legal entity and established before the property it traverses exited the public domain.

The Board should be bound to the standard requiring substantial and competent evidence in light of its assertions. (*See R.*, p. 74. (“The forgoing is supported by *substantial and competent evidence submitted at the public hearing and is found to be in the public interest.*”) (emphasis added)). Because the Board failed to make an adequate factual determination based on foregoing, the inclusion of the North Road on the Official Road Map was clearly erroneous.

Moreover, the North Road is listed on the Official Road Map as a “County Dirt Road,” not an R.S. 2477 road. (*See R.*, p. 93). This determination contradicts the Board’s statement on October 15, 2012 “to leave the RS2477 road on Ty and Tuk Nedrow’s property open,” referring to the North Road. (R., p. 58). Nonetheless, in its Conclusions of Law, the Board asserts that “[a]ll roads identified in [the Official Road Map] are determined... to be County roads, either

paved, gravel or unimproved (dirt);... and are routinely maintained by the County.” (R., p. 74). If the North Road was determined to be a County Dirt Road as the Official Map suggests, there is no factual support in the record that the North Road was maintained by the County. In fact, there is contrary evidence based on the statements of Tuk Nedrow that the road has never been maintained by the County.

Notwithstanding the foregoing, if the Board did designate the North Road as an R.S. 2477 road, it specifically stated that “[a]ll roads identified in [the Official Road Map] as... R.S.-2477 roads... hav[e] been asserted under Federal Law R.S. 2477 and I.C. 40-204 and 40-107. The same are identified in official records in the Fremont County Public Works Office.” (R., p. 74). Strangely, the record is devoid of any official documentation that the North Road has been designated as a R.S. 2477 road.

**C. Appellants Have Failed to Conform Their Argument to the Standard of Review Applicable in the Present Action.**

Appellants have failed to conform arguments made before this Court to the applicable standard of review. As stated above and in Appellants’ brief, the applicable standard of review is for this Court to “review[] the agency record independently of the district court's decision.”

*Black Labrador Investing, LLC v. Kuna City Council*, 147 Idaho 92, 95, 205 P.3d 1228, 1231 (2008) (citing *Castaneda v. Brighton Corp.*, 130 Idaho 923, 926, 950 P.2d 1262, 1265 (1998)).

However, Appellants have based the majority of their argument on the decision made by the district court, not on the decision of the Board. The following are instances whereby Appellants improperly referenced the findings of the district court as a basis for this Court to rule in their favor:

- 1) “[T]he court improperly required the Commissioners to....” (Appellants’ Brief, p. 8).

- 2) “Specifically, the district court erred in holding...” (Appellants’ Brief, p. 8).
- 3) “[The Board was] not required to make the type of ‘factual determination’ required by the lower court.” (Appellants’ Brief, p. 9).
- 4) “The lower court deviated from the plain statutory requirements of...” (Appellants’ Brief, p. 12).
- 5) “[N]o additional factual determinations as the lower court required were necessary.” (Appellants’ Brief, p. 13).
- 6) “In articulating the basis for its decision, the lower court specifically recognized...” (Appellants’ Brief, p. 13).
- 7) “[T]he lower court then deviated from this standard...” (Appellants’ Brief, p. 13).
- 8) “The lower court misapplied the standard...” (Appellants’ Brief, p. 13).
- 9) “When the lower court examined the record...” (Appellants’ Brief, p. 15).
- 10) “The district court improperly analyzed...” (Appellants’ Brief, p. 20).
- 11) “[T]he evidence discussed by the lower court...” (Appellants’ Brief, p. 21).
- 12) “The district court erred in suggesting...” (Appellants’ Brief, p. 21).
- 13) “[T]his Court [sic] erred in finding...” (Appellants’ Brief, p. 22).

Because Appellants have opened the door to reviewing the decision of the district court, this Court should be permitted to review the findings made by the district court under the standard of review common to civil actions. Specifically, this Court should determine whether the district court abused its discretion. “The test for whether a trial court has abused its discretion is as follows: (1) whether the trial court correctly perceived the issue as one of discretion; (2) whether the trial court acted within the outer boundaries of its discretion and



consistently with the legal standard applicable to the specific choices available to it; and (3) whether the trial court reached its decision by an exercise of reason.” *Blizzard v. Lundeby*, 39774, 2014 WL 1257119, at \*2 (Idaho Sup. Ct. Mar. 27, 2014)(quoting *Burggraf v. Chaffin*, 121 Idaho 171, 173, 823 P.2d 775, 777 (1991)).

**D. The District Court Applied the Correct Standard When Considering the Actions of the Board.**

The district court applied the correct standard when it reviewed the Board’s decision to include North Road on the Official Road Map. Appellants have asserted that the Court “required the [Board] to, in effect, conduct a validation proceeding for the challenged road.” (Appellants’ Brief, p. 8). However, in its holding, the district court specifically addressed that it was not a challenge to an abandonment, vacation, or validation proceeding. Instead, the court properly assessed the Board’s decision to place the North Road on the Official Road Map. Appellants dispute that a factual determination is required by the Board pursuant to I.C. § 40-202. However, this Court has remanded cases to a board of commissioners “to make a determination of which roads within the County should be properly considered as public highways and rights-of-way (if they have not previously done so) based upon objective evidence showing their public status.” *Homestead Farms*, 141 Idaho at 861, 119 P.3d at 636. Appellants’ argument is framed in such a way that the district court applied a heightened standard that was not applicable, but fails to see that the *Homestead Farms* case addressed these issues.

In addition, the district court appears to have merely applied the standards set out in the Board’s own Conclusions of Law, whereby the Board stated that its determination of the Official Road map was “*supported by substantial and competent evidence submitted at the public hearing.*” (See R., p. 74.) (emphasis added). Appellants now assert that they were only required

to consider what was in the public's best interests pursuant to I.C. § 40-202 and present some basis or some evidentiary support. Appellants should, at a minimum, be held to the standards asserted by them in the Conclusions of Law stating that their finding was supported by substantial and competent evidence. By its own admission, the Board asserted that the evidence was supported by evidence submitted at the public hearing. Appellants are unable to substantiate the assertion that the Board's findings were supported by evidence submitted at the public hearing. Instead, the Board appears to have relied on a map that failed to become part of the record and was not presented at the public hearing. Appellants now assert that the Board did review the Shell Oil map, but there is no evidence to support this position.

Lastly, Appellants state that "there was a clear and articulated basis for maintaining the road as open." (Appellants' Brief, p. 22). However, the Board never made the so-called clear and articulated basis part of the record.

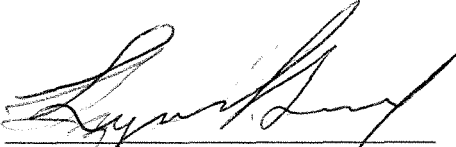
**E. Respondents are Entitled to Attorneys' Fees Pursuant to I.C. § 12-117.**

This Court should award Respondent attorneys' fees pursuant to I.C. § 12-117, whereby it states that a court "shall award the prevailing party reasonable attorney's fees, witness fees and other reasonable expenses, if it finds that the nonprevailing party acted without a reasonable basis in fact or law." In the present action, Appellants have continued to litigate the status of the North Road and the actions of the Board when it is clear that the Board's Findings and Conclusions in support for Ordinance No. 2013-01 violate I.C. §§ 40-202 or 40-208, as well as the standard set forth by the Board itself.

CONCLUSION

The Board failed to make a factual determination based on substantial and competent evidence in regards to adopting the Official Road Map, as stated in its Conclusions of Law. Instead, the Board made an arbitrary and capricious finding when it relied on the assertions of an unidentified woman that there was an old Shell Oil map that suggested people had been directed down the North Road at some point. There is nothing the record to support the position the North Road was accepted by a legal entity and established before the property it traverses exited the public domain. Moreover, Appellants have failed to frame their Brief to this Court in conformity with the applicable standard of review. As such, this Court should review the decision of the district court under the general guidelines established for Supreme Court review in civil actions and determine whether the district court exercised an abuse of discretion in its findings. Lastly, this Court should award attorneys' fees to Respondents pursuant to I.C. § 12-117.

DATED this 11<sup>th</sup> day of April, 2014.

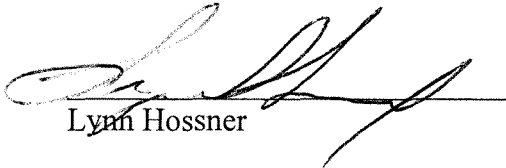
  
LYNN HOSSNER  
Attorney for Respondents

**CERTIFICATE OF SERVICE**

I hereby certify that I served a true copy of the foregoing document upon the following this 17<sup>th</sup> day of April, 2014, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, email, or overnight mail.

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