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

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IN THE SUPREME COURT OF THE STATE OF IDAHO

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,

Respondents - Appellants,

v.

FLYING "A" RANCH, INC., an Idaho
corporation, CLEN ATCHLEY, EMMA
ATCHLEY, LAURA PICKARD, CLAY
PICKARD, GEORGE TY NEDROW, and
DAVID TUK NEDROW,

Petitioners - Respondents.

Supreme Court Docket No. 41584-2013

Fremont County District Court No. 2012-580

APPELLANTS' REPLY BRIEF

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

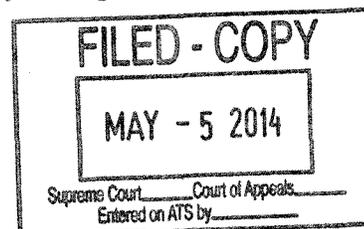
Honorable GREGORY MOELLER, District Judge, Presiding.

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II. TABLE OF CASES AND AUTHORITIES

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A. The Applicable Standard of Review For This Court is a De Novo Review.

Respondent erroneously suggests that the Commissioners' reference to errors made by the district court converts the applicable review standard to an abuse of discretion standard. There is no legal precedent to convert a review standard because references were made to the district court acting in its appellate capacity. The Commissioners specifically articulated the applicable standard of review, identifying it as a de novo review. *See Appellant's Brief*, p. 11-12. *See also Black Labrador Investing, LLC v. Kuna City Council*, 147 Idaho 92, 95, 205 P.3d 1228, 1231 (2008) (holding that the Idaho Supreme Court "review[s] the agency record independently of the district court's decision."). Rather, the Commissioners specifically highlighted legal errors of the district court to ensure this Court understood why the lower court erred in its reasoning to invalidate the Commissioners' decision. Highlighting the errors of the district court serves to frame the issues on appeal and specifically address issues that the Appellants believe need specific attention of this Court. In fact, using the errors in the lower court's decision assists in articulating what the correct outcome should be in a review by this Court. Thus, there is no substance to Respondent's suggestion that the standard of review has been altered. As such, any contention that the Commissioners' decision should be invalidated because the district court did not abuse its discretion is inappropriate. Ultimately, the appropriate and only applicable standard of review of the Commissioners' decision adopting the initial county map is a de novo review of the initial Commissioners' decision.

B. Respondent Erroneously Suggests Integration of a Road Validation Proceeding With a Proceeding Adopting An Initial County Map.

It is clear from Respondent's Brief that Respondents are advocating for a road validation proceeding to be integrated with the proceedings for adopting an initial county map pursuant to Idaho Code § 40-202. There is no statutory or other legal basis for this argument. Rather, the requirements imposed by § 40-202 in the adoption of the initial Official County Map are clear:

The **initial selection** of the county highway system and highway district system may be accomplished in the following manner:

(a) The board of county or highway district commissioners shall cause a map to be prepared showing the general location of each highway and public right-of-way in its jurisdiction, and the commissioners shall cause notice to be given of intention to adopt the map as the official map of that system, and shall specify the time and place at which all interested persons may be heard.

(b) After the hearing, the commissioners shall adopt the map, with any changes or revisions considered by them to be **advisable in the public interest**, as the official map of the respective highway system.

I.C. § 40-202(1) (emphasis added). First, it is important to note that Respondents have not articulated any failure of the Commissioners related to compliance with the notice and hearing. Rather, their only objection is whether the placement of a **single road** on the **initial map** was contrary to section 40-202(1). Contrary to Respondent's assertions, the applicable standard when adopting the **initial** county map are including changes and revisions that may be "advisable in the public interest" and not "substantial and competent evidence" for inclusion of a

given road. Specific factual determinations for each road placed on the initial county map are not required. Under Respondent's analysis, a full evidentiary hearing for each road placed on the map would be required. Such a burdensome procedure was neither contemplated nor articulated by the plain statutory language of Section 40-202(1). Had the legislature intended a more burdensome approach, it would have articulated a process requiring a validation proceeding for disputed roads.

Respondent inappropriately devotes an inordinate amount of time discussing the failure of the Commissioners to articulate a full and complete analysis of whether the North Road was actually an R.S. 2477 road. The uniqueness of a R.S. 2477 road and its legal nuances have no relevance to a 40-202(1) proceeding. Appellants concede that the record in its current state would not satisfy the legal standard of a validation proceeding where the full record would be gathered and presented, including the full historical nature of the North Road and its satisfaction of R.S. 2477 requirements.

The distinction between a § 40-202(1) proceeding and a § 40-203A proceeding are drastically different and the record would likewise reflect the differing analysis under each. That is, adoption of the initial map under § 40-202(1) is a legislative act required of the Commissioners. In so acting, the entire purpose of the action is to adopt the initial county map without the Commissioners attempting to adjudicate the legal status of any road as being public or private. Rather, there is an entirely separate proceeding that is devoted to adjudication of the status of a road, which is articulated in § 40-202 and 40-203A. In a § 40-203A proceeding, the

Commissioners are acting in a quasi-judicial capacity thereby considering evidence of a specific road and whether the evidence supports a finding of the road being a public or private road. It goes without saying that the record for a 40-202(1) proceeding would necessarily be deficient under a § 40-203A standard. The divergent focus of the two proceedings requires distinct evidence to be considered in each proceeding.

Contrary to Respondent, § 40-202 imposes no requirements on the Commissioners to consider the underlying status of how a road was initially created when adopting the initial public map. If the road appears to be public it should be designated as such for purposes of the initial public map. The inquiry is whether including a road on the initial public map is in the interest of the public and not whether there is substantial and competent evidence to support such a finding. Any discussion of R.S. 2477 is irrelevant to the instant proceeding and such discussion would appropriately be reviewed and analyzed in a road validation proceeding initiated under § 40-203A.

Respondent suggests that including the North Road as a R.S. 2477 Road was inappropriate and some official documentation of its initial declaration as a R.S. 2477 road was required. This position is not supported by statute or case law. The Commissioners were required to consider whether including the North Road on the initial map was in the public's interest. If the road was indeed a R.S. 2477 Road it cannot be private under existing federal and state law. Thus, where there was evidence that appeared to identify the road as a R.S. 2477 Road, inclusion is appropriate. By so including the road, the County has made it clear to the public that it

believes the road to be public while still allowing a challenge to the finding through a validation proceeding. Thus, Respondents should have followed the statutory requirements of § 40-203A to challenge the public nature of the North Road.

In sum, the Commissioners complied with the express statutory requirements for the adoption of an **initial** Official County Map under Idaho Code § 40-202(1). Section 40-202(1) does not require any factual determination as to each road placed on the initial official county map. The appropriate avenue to challenge the validity of a road designated as a public road, such as the North Road, is to pursue a validation proceeding pursuant to § 40-203A. By initiating the action under § 40-203A, the Commissioners will have a fully developed record that will allow for a proper determination of the North Road. Here, the Commissioners' action in adopting Fremont County Ordinance No. 2013-01 did not involve consideration of a specific road but was for the general adoption of the **initial** county map. The evidence considered and the resulting record for action carried out pursuant to § 40-202 drastically varies from an action pursued under § 40-203A. As such, this Court should find that the Commissioners complied with the statutory requirements for the adoption of the **initial** Fremont County Official Road Map and uphold their inclusion of the North Road on said map as appropriate and in compliance with the applicable standard of Idaho Code § 40-202(1).

C. The Board of County Commissioners' Findings of Fact and Conclusions of Law Satisfied the Requirements of Idaho Code § 40-208(7).

Based on the applicable standards identified under § 40-202, the Commissioners adoption of Fremont County Ordinance No. 2013-01 complied with the requirements of Idaho Code § 40-208(7):

- (a) In violation of constitutional or statutory provisions;
- (b) In excess of the statutory authority of the commissioners;
- (c) Made upon unlawful procedure;
- (d) Affected by other error of law;
- (e) Clearly erroneous in view of the reliable, probative and substantial information on the whole record; or
- (f) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

I.C. § 40-208(7). The record before this Court is clear that the Commissions adoption of the *Finding of Facts and Conclusions of Law Re: Official Road Map of Fremont County Idaho* (R., pp. 72-75) was not arbitrary, capricious, an abuse of discretion or an unwarranted exercise of discretion. The adoption of the initial Official County Map was the culmination of several years of work by the Fremont County Public Works Department wherein they researched various ITD inventory maps, Forest Service and BLM maps and determined that all of the roads, including the North Road, were appropriately classified as a public road to be included on the initial Public Map. (R., p. 72, ¶ 5). The Public Works Department necessarily included roads asserted under R.S. 2477. The North Road was designated as a R.S. 2477 Road and designated as such on the initial county map.

The Respondents fail to even address the applicable authority of *Homestead Farms, Inc. v. Board of Com'rs of Teton County*, 141 Idaho 855, 119 P.3d 630 (2005), which identified what evidentiary standard used to include a road on a county map. *Homestead Farms*. The Court specifically articulated that inclusion of a road on a public map should have “**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 Commissioner’s determination to designate a road on the map.” *Id.* at 861, 119 P.3d at 636 (emphasis added). The *Homestead Farms* Court further recognized that inclusion of a road on the official map “does not also serve to adjudicate the public status of any roads within the county or create new public highways or rights-of-way.” *Id.* at 859-60, 119 P.3d at 634-35. Thus, this Court has already recognized that placement of a road on the official map is not a legal determination as to the status of the road, presumably reflecting the significant distinction between a validation proceeding and adoption of an official county map.

In adopting the Conclusions of Law, the Commissioners had more than “some evidentiary support” to include the North Road on the map. The Commissioners had the substantial work of the Fremont County Public Works Department, which had reviewed other maps of the area and included all public roads it could ascertain. Additionally, the Commissioners specifically addressed the concerns of the Respondents prior to adopting the final initial official map in an October 15, 2012 work meeting. During that meeting, the Commissions specifically recognized that an old 1957 Shell Oil map identified the North Road

as the access road to Federal BLM land. This finding alone is “some basis” to conclude that the North Road should be placed on the initial official road map as a public road. Thus, irrespective of the Commissioners inclusion of the language “substantial and competent evidence” to support the inclusion of the North Road, the applicable standard is that there be “some basis” to include the road and that such inclusion be “advisable in the public interest.” In this case, there was, at a minimum, “some evidence” that the North Road should be included as a public road and the Commissioners recognized that such inclusion was “found to be in the public interest.” (R., p. 74, ¶ 7). Accordingly, the Commissioners’ decision to include the North Road on the **initial** Official County Map was not arbitrary, capricious, or an abuse of discretion and this Court should confirm the Commissioners’ adoption of Fremont County Ordinance No. 2013-01.

D. Respondents Are Not Entitled To Attorneys’ Fees Because the Instant Appeal Was Not “Without a Reasonable Basis In Fact or Law.”

Respondents’ request an award of attorneys’ fees on appeal pursuant to Idaho Code § 12-117. The standard for an award of attorneys’ fees pursuant to § 12-117 is well-established and requires that the losing party act “without a reasonable basis in fact or law” before fees can be awarded. *See Lake CDA Investments LLC v. Idaho Dep’t of Lands*, 149 Idaho 274, 284, 233 P.3d 721, 731 (2010) (explaining the requirement that a losing party act unreasonably in the litigation before I.C. § 12–117 applies). Thus, Respondents would have to demonstrate that the Commissioners pursued this matter frivolously or without foundation. *City of Osburn v. Randel*, 152 Idaho 906, 910, 277 P.3d 353, 357 (2012). The Respondents cannot satisfy this burden.

Here, there is no support that the Commissioners have acted without a reasonable basis in fact or law in pursuing this appeal. The issue before this Court is whether Idaho Code § 40-202(1) requires substantial evidence in the record to adopt an **initial** county map. The findings of the lower court required additional elements that are not found in the plain language of § 40-202. Furthermore, there was “some evidence” to support the inclusion of the North Road on the **initial** Fremont County map. The Commissioners have pursued this appeal because the requirements of the lower court do not comport with the plain reading of § 40-202 and therefore there is a reasonable basis for this appeal. Accordingly, should the Court find that the Commissioners’ adoption of Fremont County Ordinance No. 2013-01 was arbitrary, capricious, or an abuse of discretion, the Court should still deny an award of attorneys’ fees under § 12-117.

Submitted this 30 day of April, 2014.



Blake G. Hall
Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 30 day of April, 2014, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

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