

FILED \_\_\_\_\_

AT \_\_\_\_\_ O'Clock \_\_\_\_\_ M  
CLERK OF DISTRICT COURT

\_\_\_\_\_  
Deputy

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI**

**JEAN S. MAUCIERI,**

*Plaintiffs,*

vs.

**EAST SIDE HIGHWAY DISTRICT, et al.,**

*Defendants.*

Case No. **CV 2004 9371**

**MEMORANDUM DECISION AND  
ORDER GRANTING DEFENDANTS'  
MOTION TO DISMISS**

**I. PROCEDURAL BACKGROUND.**

On October 25, 2005, the Court heard oral argument on: Defendants' Motion to Dismiss, Plaintiff's Motion to Strike; Plaintiff's Motion for Partial Summary Judgment; and Defendants' Cross-Motion for Summary Judgment. The motions were heard in that order. The motion to strike was granted in plaintiff's favor at the hearing. The remaining motions were taken under advisement. Those motions are now at issue.

**II. FACTUAL BACKGROUND.**

Plaintiff, Jean Maucieri (Maucieri), owns real property which is the subject of this litigation. Defendants are the East Side Highway District (District), and the individual defendants are the District's supervisor and members of the District's board. The District has jurisdiction and control of O'Gara Road, a public road that crosses portions of the Maucieri property. The contested legal issue is whether a right-of-way or "pathway" (as Maucieri describes the road in dispute and claims that it is not paved

while the District claims it is paved) extending west from the O’Gara road downhill to the former Union Pacific Railroad Company tracks is the private property of Maucieri or is District right-of-way.

In 1930, Anna O’ Gara, then owner of the real property now owned by Maucieri, executed a printed form deed of right-of-way to Kootenai County for a public road described as having been surveyed by order of the Board of Commissioners of Kootenai County in 1918. The constructed road, which in general ran from the present location of Harrison School to the City of Harrison, became known as the O’Gara Road. The disputed pathway now extending west and downhill from the present paved road is part of the original O’Gara Road dating from at least 1930. Plaintiff’s Brief in Support of Motion for Partial Summary Judgment, p. 5.

The District eventually obtained federal and state funds to improve the O’Gara Road. The paved and traveled portions of the road were to be relocated in certain areas including part of what is now Maucieri’s property. Because of these relocations it was necessary to obtain a new right-of-way. An issue in this case is the significance of Maucieri’s predecessor in interest (the Gumaers) granting the District’s predecessor in interest (Kootenai County) a right-of-way containing a reversionary clause. The Right of Way Deed states:

The property herein conveyed to the grantee is for the purpose of construction of a highway and/or improvement of any existing highway along the right of way as described under the O’Gara Harrison project NO.S.5723(3)

Provided, however, that any portion of said property herein conveyed not required for highway right of way purposes shall revert to the grantors...

Statement of Material Facts, Exhibit 4, p. 1. (underlining in original). The right-of-way at issue is located on a strip of land between the Benewah Road (formerly O’Gara Road)

as it currently exists and the Rails to Trails pathway (formerly Union Pacific Railroad right-of-way).

In June 2002, Maucieri advised the District of her intent to place a gate across the pathway. On June 4, 2002, the District informed Maucieri that they had no objection to the gate, which was thereafter installed. In October 2003, the contractor for Union Pacific installed a second gate below the Maucieri gate above the bicycle trail. On August 18, 2003, at a District board meeting of which Maucieri received no notice, the District voted to rescind its “no objection” letter and ordered Maucieri that the gate be removed. Maucieri did not remove the gate and subsequently the District physically removed the gate.

Thereafter, on December 28, 2004, Maucieri filed a complaint seeking a declaration judgment, injunctive relief and damages.

### **III. ANALYSIS.**

#### **A. Defendants’ Motion to Dismiss.**

The District’s Motion to Dismiss is based on the argument that this Court lacks jurisdiction to hear Maucieri’s claims because Maucieri has failed to exhaust her administrative remedies through the District. That argument is based on the legal requirement that only the District can abandon the right-of-way pursuant to Idaho Code § 40-203, and the District has not abandoned the right-of-way. Memorandum in Support of Defendants’ Motion to Dismiss, pp. 4-5.

The District claims Maucieri alleges in her complaint that the right-of-way at issue has been abandoned in that it is “not required for highway right-of-way purposes” and has therefore reverted to Maucieri. *Id.* p. 5, citing Complaint, ¶ 15. This is a mischaracterization by the District. There is nothing in Maucieri’s Complaint that alleges

that an abandonment has taken place. Paragraph fifteen of the Complaint simply quotes language from the 1967 Gumaer right-of-way deed.

Even though the District misstated Maucieri's Complaint, it is an undisputed fact that the District has not abandoned the right-of-way. Pankratz Affidavit, p. 2, ¶ 4.

Maucieri claims Idaho Code § 40-203, which sets forth the procedure for abandonment of a highway or public right-of-way, has no application and was not required in this case. To support this claim, Maucieri argues the 1968 relocation of the traveled road did not "...abandon and vacate any highway or public right-of-way considered no longer to be in the public interest." Reply Brief to Motion to Dismiss, pp. 1-3. Maucieri claims the District did not undertake any of the procedures for notice of hearing for abandonment concerning the former short stretch of road, nor should it have. *Id.* Maucieri claims the relocation of the road, which was little more than a realignment, did not violate or involve Idaho Code § 40-203, and Maucieri claims that abandonment procedures were not necessary. *Id.*

The District argues Idaho Code § 40-203 "...provides that a highway or a public right-of-way established after 1963 can only be abandoned by the highway district." Memorandum in Support of Defendants' Motion to Dismiss, p. 4, *citing Farrell v. Board of County Commissioners of Lemhi County*, 138 Idaho 378, 390, 64 P.3d 304, 316 (2002); *Floyd v. Board of Commissioners of Bonneville County*, 137 Idaho 378, 390, 64 P.3d 304 (2002). The District's argument seems to be that only right-of-ways established after 1963 can be abandoned by a highway district, and that some other process is involved for right-of-ways established before 1963. If that is the District's argument, it is inconsistent with those cases. This Court's interpretation of those cases is that since 1963, any established right-of-way can only be abandoned pursuant to

Idaho Code § 40-203, not that some other procedure applies to right-of-ways established prior to 1963. In other words, the year 1963 and subsequent applies to the year of abandonment, not the year the right-of-way was established. *Farrell*, 238 Idaho at 390, 64 P.3d at 316. See also, *French v. Sorenson*, 113 Idaho 950, 958, 51 P.2d 98, 106 (1988).

Where the road authority has not abandoned a road or right-of-way furnishing public access to public lands or water, no abandonment has occurred as a matter of law. *Blaine County v. Bryson*, 109 Idaho 123, 125-26, 705 P.2d 1078, 1080-81 (Ct.App. 1985). In fact, the District is prohibited from abandoning any portion of a highway or right-of-way without following the statutory procedures for abandonment and vacation. *Nicolaus v. Bodine*, 92 Idaho 639, 642-43, 448 P.2d 645 (1968).

While it is beyond dispute there has been no abandonment, the issue remains regarding the language of the 1967 Gumaer Right of Way Deed. Again, that deed states:

Provided, however, that any portion of said property herein conveyed not required for highway right of way purposes shall revert to the grantors;

Plaintiff's Statement of Material Facts, Exhibit 4. (underlining in original). Keep in mind the only purpose for this 1967 Right of Way Deed "...is for the purpose of construction of a highway and/or improvement of any existing highway along the right-of-way as described under the O'Gara-Harrison Project No. S-5723(3)." *Id.* In other words, the 1967 Right of Way Deed was for the purposes of the realignment of the highway that occurred in 1968.

If this disputed property is within the right-of-way granted in the 1967 Right of Way Deed (and not within the 1930 right-of-way), and is not required for highway right-

of-way purposes, then, by a plain reading of the 1967 Right of Way Deed, the District never obtained the property in dispute. This is because, by operation of the deed, such property reverted back to the grantors, Maucieri's predecessors in interest, the Gumaers. The District has the power to accept deeds of right-of-way (I.C. § 40-202(2)(a); § 40-1309(2); § 40-1310(7); § 40-1313), and the District would also have the power to accept a right-of-way deed with such limiting language placed in the Right of Way Deed by the Gumaers. However, if this property is within the original right-of-way (as laid out in the easement dated April 10, 1930, from Anna O'Gara to Kootenai County, Exhibit 3 to Plaintiff's Statement of Material Facts), the District owned the property and the District must go through the statutory abandonment process to divest itself of that property. And if this property is both within the 1930 original right-of-way and the 1967 Right of Way Deed, the statutory abandonment process must be used because the Gumaers by their 1967 deed to the District, cannot circumvent the District's right and obligation to the public to abandon what the District already owned in trust from the 1930 easement.

The property in dispute is within the original right-of-way as laid out in the easement dated April 10, 1930, from O'Gara to Kootenai County. Indeed, the property in dispute is the original right-of-way as set forth in that easement. Maucieri admits the right-of-way at issue was, prior to 1967 and 1968, part of a highway dedicated to the District's predecessor in interest. Statement of Facts, p. 4, ¶ 8. Maucieri acknowledges this as her attorney writes on her behalf:

The constructed road, which in general ran from the present location of Harrison School to the City of Harrison, became known as the O'Gara Road. The disputed pathway now extending west and downhill from the present paved road is part of the original O'Gara Road dating from at least 1930. On plaintiff's property, the original road went downhill a short distance and then turned right in a northwesterly direction a

substantial distance east and up hill from the railroad track to eventually reconnect with and be co-terminus with the “new” road constructed in 1968.

Plaintiff’s Brief in Support of Motion for Partial Summary Judgment, p. 5.

The District, not the Court, has the exclusive jurisdiction to abandon the right-of-way. The District has not abandoned the right-of-way. Maucieri has not exhausted her administrative remedies by petitioning the District to abandon the right-of-way.

Maucieri alleges that the exclusive procedures for abandonment and vacation of highways or public right-of-ways set forth in I.C. § 40-203 are not required in this case for the reason that O’Gara Road was merely relocated from the location of the right-of-way at issue to its current location. Simply because the current O’Gara road was moved a few feet (in the area that is being disputed) does not, in the Court’s view, allow the language in the 1967 Right of Way Deed to “trump” the District’s statutorily imposed duty to go through the abandonment procedure on the right-of-way from the 1930 grant of easement, since that easement existed as of 1963.

Thus, even though at least one member of the District’s board feels that even if this were to go to hearing before the District, the right-of-way would not be abandoned (Pankratz Affidavit, ¶ 9. Memorandum in Support of Defendants’ Motion for Summary Judgment, p. 4), which may create a conflict on voting on such decision (*Eacret v. Bonner County*, 139 Idaho 780, 86 P.3d 494 (2004)), Maucieri must still make such application to the District.

### **B. Defendants’ Motion for Summary Judgment.**

Defendants’ Motion for Summary Judgment filed September 27, 2005, is based on the District’s claim that there is no genuine issue of material fact. Since the Court lacks jurisdiction to hear Maucieri’s claims, the Court also lacks jurisdiction to rule on

the District's Motion for Summary Judgment.

**C. Plaintiff's Motion for Partial Summary Judgment.**

Since this Court lacks jurisdiction to hear Maucieri's claims, the Court lacks jurisdiction to rule on Maucieri's Motion for Partial Summary Judgment.

**IV. ORDER.**

**IT IS HEREBY ORDERED** the defendants' Motion for Summary Judgment is **GRANTED**, plaintiff's Complaint in this matter is **DISMISSED**, as this Court lacks jurisdiction to hear such claims, due to plaintiff's failure to exhaust her administrative remedies.

Entered this 13th day of February, 2006.

\_\_\_\_\_  
John T. Mitchell, District Judge

**Certificate of Service**

I certify that on the \_\_\_\_\_ day of February, 2006, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

Lawyer  
Scott Reed

Fax #  
208 765-5117

| Lawyer  
Peter C. Erbland

Fax #  
208 664-6338

\_\_\_\_\_  
Secretary