

W. S. A.

Memorandum Date: April 17, 2008
Work Session Date: May 6, 2008

TO: Board of County Commissioners

DEPARTMENT: Public Works

PRESENTED BY: Ollie Snowden

AGENDA ITEM TITLE: **WORK SESSION – IN THE MATTER OF ALLOWING A SIX FOOT HIGH WOODEN FENCE WITH CONCRETE BLOCK COLUMN SUPPORTS TO REMAIN SEVEN FEET INTO THE RIGHT-OF-WAY OF PRAIRIE ROAD AT 91544 PRAIRIE ROAD - ASSESSOR’S MAP & TAX LOT 16-04-28-00-01100 – PROPERTY OWNERS – JULIAN AND DEBBIE BRAILSFORD**

I. MOTION

N/A

II. AGENDA ITEM SUMMARY

On January 18, 2008, Lane County initiated an enforcement action requiring the Brailsfords to remove the unpermitted fence from the Prairie Road right-of-way. The enforcement action has been suspended at Board direction. The Board requested a work session prior to Public Works restarting the enforcement action.

III. BACKGROUND/IMPLICATIONS OF ACTION

A. Board Action and Other History

The Brailsfords constructed a wooden fence with concrete block supports in the Prairie Road right-of-way without a permit from Lane County. LC 15.205(2) prohibits certain fixed objects from being placed in the road right-of-way.

On October 4, 2007, Lane County Public Works Road Maintenance staff posted a right-of-way conflict notice at the fence. The Brailsford property is located at 91544 Prairie Road, map and tax lot 16-04-28-00-01100. The property owners are Julian and Debbie Brailsford. The property is zoned Rural Residential – 5.0 acres minimum size (RR-5).

Road Maintenance Permits staff visited the site on December 11, 2007. The attached photos were taken during the site visits on Dec 11 and 12. The Brailsfords contacted Road Maintenance by phone on December 12, 2007. Permits staff made several suggestions for resolving the issue, including removal, relocation or a variance to the setback requirements.

Prairie Road right-of-way at the property is 60 feet wide with 30 feet on each side from centerline. Prairie Road has two travel lanes 11 feet wide with asphalt shoulders 4 feet wide. It is a Rural Major Collector – an important road on the County system.

The Brailsford fence is located 7 feet into the county road right-of-way. It is a wooden fence 5 feet 9 inches high with 16 inch by 16 inch concrete block columns 6 feet 3 inches high at 8 foot intervals. The fence is located 8 feet from the edge of the shoulder to the face of the concrete block column.

This section of Prairie Road is governed by basic rule. Using conditions at the site – a basic rule speed of 55 mph, traffic count of 3,000 and flat terrain – the clear zone should be 20-22 feet, measured from the fog line. The clear zone is determined using methods from the American Association of State Highways and Transportation Officials (AASHTO) Roadside Design Guide. The Roadside Design Guide is one of the documents used by Lane County to set road design, construction and maintenance standards.

The clear zone concept was first described by AASHTO in 1974, when it stated "... for adequate safety, it is desirable to provide an unencumbered roadside area that is as wide as practicable on a specific highway section." A properly designed clear zone provides a recovery area free of obstacles for out-of-control vehicles leaving the roadway.

The Brailsford fence is in the clear zone, 12 feet from the fog line.

Land Management Division has height restrictions for fences located adjacent to county roads. LC 15.070(1)(i) allows a fence within the setback area (20 feet from the right-of-way line in an RR-5 zone) provided that it does not exceed three and one-half feet in height and provided it complies with the Visual Clear Zone requirements. LC 15.070(j) allows wire fencing such as that used for livestock, excluding "cyclone" or chain-link fencing, up to 6 feet in height within the setback area provided that it complies with the Visual Clear Zone as per LC 15.095(3).

The Visual Clear Zone is the triangular area of a driveway or road intersection corner that is 15 feet in length along the driveway and along intersecting road right-of-way. No visual obstructions such as plantings, walls, fences, signs or other structures or vegetation, either temporary or

permanent in nature, between two and one-half and 15 feet in height above the road surface are permitted in this area.

LC15.900 provides the opportunity to submit a variance for relief from the setback provisions of Chapter 15. The fee for a variance is currently \$1,460.00. The variance is reviewed and processed as a Planning Director Special Use Permit. This applies only to setbacks outside the right-of-way.

Placement of a fixture inside the public right-of-way is allowed only through a facility permit. If a facility permit application to place a fixed object in the right-of-way (as is the case with the Brailsford fence) is denied, the decision may be appealed to the Public Works Director for a fee of \$1,000 and subsequently to the Board for a fee of \$2,800.

B. Policy Issues

LC 15.205(2) states that "Landscaping and trees, landscape timbers, rocks, irrigation facilities, walls, gates, fencing, non-standard mailbox supports, stairways, and any other fixed object or barrier that has the potential of hindering the normal operation, maintenance, or use of a Public Road or County Road shall generally be prohibited and subject to the Failure to Comply and Enforcement Provisions of LC 15.210(11) and LC 15.950 through LC 15.955."

Road capital improvement projects include construction of a clear zone. Deviations from the clear zone distance are included in the design concept adopted by the Board. Road Maintenance routinely removes, or arranges the removal of, fixed objects in county rights-of-ways as we become aware of them. These have included inappropriate mailbox supports, trees, utility poles, fences and other fixed object hazards.

Placement of the Brailsford fence is inconsistent with Lane Code and past practice. Consistency is the hallmark of an effective compliance and enforcement program. Enforcement actions can become problematic when property owners are treated differently.

C. Board Goals

No Lane County Strategic Plan goals specifically address this situation. Lane Code and Lane Manual provide the regulatory and procedural framework for placement of fixtures/facilities in the right-of-way, setback area and visual clear zone.

D. Financial and/or Resource Considerations

The Board has established fees for facility permits and appeals to offset the time staff spends processing them. The Brailsford fence was installed without a permit. Staff indicated to the Brailsfords that the fence would not be permitted under a facility permit, thereby saving them the \$850 expenses associated an after-the-fact permit application. The Brailsfords have appealed to the Board, bypassing the process established in LC 15.900, and have not incurred the costs otherwise would have been associated an appeal. A substantial amount of staff time has been devoted to the Brailsford fence issue.

Allowing fixed objects like this newly constructed fence to remain in county road rights-of-ways could increase Lane County's exposure to tort claims, which would have financial implications for the road fund.

E. Analysis

The parcel now owned by the Brailsfords was subject to a lot line adjustment in 2005. A survey that set monuments at the corners of the adjusted property line was filed on December 28, 2005. The southeast corner pin of the Brailsford parcel is visible in three of the attached photos.

Fixed objects in county road rights-of-ways are an ongoing safety and administrative problem. Many have been in the rights-of-ways for years, predating the County's facility permit system. Public Works makes an effort to remove historic fixed object hazards through modernization projects, safety projects and ongoing maintenance. New fixed object hazards, placed illegally, are removed as the Department becomes aware of them.

Allowing a newly-placed fence like this one to remain in the right-of-way of a high speed, high volume collector creates a precedent, making more difficult to achieve voluntary compliance from property owners in a similar situation.

The Brailsfords have several options for relocating their fence, including:

- Lower the fence height to 3 ½ feet in height and relocate it to the right-of-way line of Prairie Road.
- Relocate the fence to the right-of-way line and submit a variance for the Lane Code Chapter 15.070(1) to exceed the maximum three and one-half (3 ½) feet in height for the fence located in the setback area.
- Relocate the fence twenty (20) feet from the right-of-way line of Prairie Road.

F. Alternatives/Options

1. Take no action – staff will continue with the enforcement process to remove the fence from the right-of-way of Prairie Road.
2. Direct staff to prepare a Board Order that approves a facility permit authorizing placement of the fence in the right-of-way. This would entail the normal \$850 fee.
3. Provide other direction as desired.

IV. TIMING/IMPLEMENTATION

Public Works started a compliance action in January 2008 for removal of the fence. The property owners were given until April 30, 2008 to remove the fence from the right-of-way of Prairie Road. The April 30, 2008 deadline was temporarily suspended pending discussion with and direction from the Board. Initiating and seeking compliance is an administrative function. If the Board takes no action on this matter, staff will reactivate the compliance action.

V. RECOMMENDATION

Option 1.

VI. FOLLOW-UP

Option 1: Staff will allow the property owners an additional 60 days to remove the fence. Property owners will be contacted by a registered certified letter stating the final date for removal of the fence.

Option 2: Staff will return in three weeks with a Board Order directing a facility permit and recommendations for permit conditions

VII. ATTACHMENTS

Photos taken on December 11 & 12, 2008
January 18, 2008 letter requesting compliance









