

My Road or Our Road?

In *Strome v. Lane County*, 219 Or App 519, 183 P3d 237 (2008), the Oregon Court of Appeals considered an appeal from a landowner regarding Lane County's authority to establish a road running through her property as a county road. The County believed that Hulbert Lake Road was originally laid out in 1855 as County Road Number 160. Plaintiff sought a declaratory judgment and injunctive relief and asserted that Hulbert Lake Road and County Road 160 was not the same road.

The County undertook the statutory legalization process at ORS 368.201 through 368.221 in order to eliminate doubts as to the establishment and location of that road. Writing for a unanimous Court of Appeals, Judge Schuman held that Lane County had the statutory authority to proceed with the process of establishing the road as a county road, notwithstanding doubt about whether the road was a "county road" under ORS 368.001(1). In affirming the dismissal, the court of appeals held that the trial court had no authority to enjoin the process on this basis.

In the 2008 decision, the Court of Appeals, as explained in *Shotgun Creek Ranch, LLC v. Crook County*, 219 Or App 375, 182 P3d 312 (2008), stated that the purpose of legalization is to,

“remove doubt about establishment due to omissions or defects in the establishment process; to set a location when, due to alterations, defective surveys, or lost surveys, the original location of the road cannot be accurately determined; and to conform a road as traveled for 10 years or more to the road as described in county records.”

Strome at 524-25, 240 (citing to ORS 368.201).

Each party had doubts as to the legal establishment or location of Hulbert Lake Road, which triggered the county's decision to legalize the road. The Court concluded “those doubts *themselves* are sufficient to confer statutory authority on the county” to initiate, and if appropriate, complete the legalization process. *Id.* (emphasis added).

While the initial 2008 case was pending, the County made a final determination on the legalization of Hulbert Lake Road as CR 160. Subsequently, *Strome* filed a writ of review claiming the County's final order on the road legalization was not supported by substantial evidence and that the order improperly construed the applicable law. The trial court found that the County acted appropriately and the Court of Appeals affirmed in *Strome v. Lane County Board of Commissioners*, ___ Or. App. ___ (August 5, 2009). In the most recent case, the Court of Appeals determined that the issue of whether the County had the authority to proceed with the legalization process under ORS 368.201(1) had already been determined in the 2008 case. The only issues left to determine concerned the plaintiff's takings claim.

The plaintiff claimed that the legalization proceeding denied her due process and amounted to a taking of her private property without compensation because the road in question was a private road used to access residences and fields. The Court of Appeals upheld the constitutionality of the County's decision finding that the road, by the Plaintiff's own admission, had been used as a public one for at least 40 years. Even if the legalization process did constitute a taking it would merely provide a compensatory remedy.

Plaintiff's claim for takings compensation was based on her belief that a bridge on the subject road would need to be removed. The Court found that there was substantial evidence to showing that the County owned the bridge and even if it did not, there was no evidence that removal of any encroachment was necessary or that the plaintiff would be damaged by the costs of that removal.

In both cases the judgment of the lower court was affirmed and the County's legalization process was upheld.