



**Putnam County Engineer**  
Patrick G. Sloan, PE

23-0465  
07/03/2023 03:55 PM  
PUTNAM COUNTY IL  
TINA DOLDER, RECORDER

MEMORANDUM OF DECISION AND ORDER  
GRANVILLE TOWNSHIP ROAD PETITION TO VACATE  
A PORTION OF EAST 1100<sup>TH</sup> STREET  
HEARING DATE MAY 17, 2023

BACKGROUND

On November 22, 2022, Mr. Eric M. Kelsey and 14 other registered voters of Granville Township submitted a Road Vacation Petition, requesting the township highway commissioner vacate a portion of 1100 Avenue described as: “From the “Closed Road” sign on the south end of 1100<sup>th</sup> to the near entrance at the north end of 1100<sup>th</sup> to allow access of ingress and egress of Adjoining property.” The petition was reviewed and found in accordance with 605 ILCS 5/6-303.

The Granville Township Highway Commissioner, Robert Dixon, held a public hearing on March 28, 2023 to address the petition. The hearing, notice and procedures were conducted pursuant to and in accordance with 605 ILCS 5/6-305.

Robert Dixon issued a Final Order of Road Vacation on March 28, 2023.

An appeal of the Highway Commissioner’s Order was received by the Putnam County Engineer on April 4, 2023 (dated March 31, 2023). The appeal was made pursuant to 605 ILCS 5/6-306 by appellants, Keith Boggio, Denise Boggio, Jenna Mennie, Laneita (Jill) Alt, and Norm Liles. It was determined that at least three of the petitioners lived within two miles of the subject road.

The parties in the appeal were represented by the following attorneys: Mr. Robert F. Russell of Russell, English, Scoma & Beneke representing Keith and Denise Boggio; Mr. Michael W. Fuller of Burton, Fuller & Associates representing Eric Kelsey and others; and Mr. Enrico Eattoni of Perona, Peterlin, Andreoni & Brolley, LLC representing Granville Township. Putnam County engaged Mr. Seth Uphoff, of Uphoff Law, LLC for legal representation in lieu

of the State's Attorney's Office, as the State's Attorney's Office was recused due to a personal conflict of interest.

The Putnam County Engineer initiated proceedings to hear the appeal pursuant to 605 ILCS 5/6-311. The parties agreed to waive the statutory timelines and the public hearing was scheduled and held on May 17, 2023.

At the Hearing the parties agreed to enter into the record the following exhibits for consideration by the County Engineer:

Petitioner: Road Vacation Petition, 11-22-2022, Eric Kelsey and 14 others (4 p.)

Hearing: Transcript of March 14, 2023 Hearing (112 p.)

Hearing: Petitioner's Exhibits (96 p.)

Hearing: Objector's Exhibits (209 p.)

Hearing: Township's Exhibits (15 p.)

Highway Commissioner: Final Order of Road Vacation, 3-28-2023, Robert Dixon (1 p.)

Appellant: Appeal of Granville Road Vacation Decision, 3-31-2023, Robert Russell (36 p.)

Appellant: Supplement to Appeal of Decision, 5-11-2023, Robert Russell (8 p.)

Petitioner: Supplement to Appeal of Decision, 5-12-2023, Michael Fuller (148 p.)

Township: Memorandum in Support of Decision, 5-12-2023, Enrico Eattoni (40 p.)

Appellant: Additional Exhibits, 5-15-2023, Robert Russell (14 p.)

Additional exhibits were entered at the hearing:

AP-1 1911 Plat Book Excerpt and T32N R1W, P. 44 of Plat Book circa 2015

AP-2 Budget and Appropriation Ordinance for the Granville Township Road District Adopted May 24, 2022 and the Tax Computation Report for Granville Township R & B, 5/10/2022

K-1 Photo 821

K-2 Drone Picture in Powerpoint

K-3 Video from Kelsey of vehicle on 1100E

T-1 Photograph North End of 1100E Looking South

T-2 Photograph South End Looking North

T-3 1100E Engineers Estimate of Cost, June 13, 2022

T-4 Aerial Photograph

## INTRODUCTION

The responsibility of the county superintendent of highway (county engineer) pursuant to 605 ILCS 5/6-306 is to determine if the petition to vacate the road is supported by “his findings that such alteration or vacation of the township or district road will be in the public and economic interest and will not deprive residents or owners of proximate land of reasonable access elsewhere as specified in Section 6-305 of this Act.” If the finding does not support the highway commissioner order, it shall be reversed.

The referenced section 605 ILCS 5/6-305 provides a more detailed description:

“No road shall be laid out, widened, altered or vacated unless the highway commissioner *[county engineer on appeal]* finds that such alteration or vacation is in the public and economic interest and further finds that any person residing or owning land within 2 miles of any portion of the road proposed to be altered or vacated shall still have reasonable access (but not necessarily a direct route) by way of motor vehicle or other portable farm machinery commonly used in the area to farm land he owns or operates and to community and trade centers after road is altered or vacated. Such findings shall be contained in the memorandum of decision signed by the highway commissioner *[county engineer on appeal]*.”

The Appellants offered 4 reasons for the appeal of the Highway Commissioner’s decision (March 31, 2023 Appeal):

1. “If the road vacation is allowed, Keith Boggio and Denise Boggio will not have reasonable access to their real estate.
2. The Granville Township Highway Commissioner failed to provide a survey or sufficient legal description of the portion of 1100 E that was proposed to be vacated.

3. There has been no showing of a benefit to the public and economic interest of the citizens of Granville Township.
4. The decision to vacate a portion of road 1100 E is contrary to law and that precise issue has previously been decided, and, therefore, the township is collaterally estopped from raising the issue again.”

Reasons 1 and 3 have been previously presented as referenced in 605 ILCS 5/6-305 and 306. Reason 2 is referencing 605 ILCS 5/6-307 and Reason 4 is a legal argument based on precedence.

#### STATEMENT OF FACTS AND EVALUATION

##### Estoppel / Res Judicata (Appellant Reason 4)

In 2016, the Highway Commissioner initiated vacation proceedings and so ordered the vacation on August 8, 2016. Some of the same appellants, namely Keith and Denise Boggio, appealed the vacation order to the County Engineer, the Circuit Court and the Appellate Court. The vacation order was upheld by the County Engineer and the Circuit Court; and overturned by the Appellate court by a 2 to 1 vote on one issue: “Based on the evidence presented during the hearing, we conclude there was no evidence in the record supporting Sloan’s view that closing the road would result in a substantial economic benefit to the public.” *Boggio v. Mudge*, 2018 IL App (3d) 170432 ¶24.

All three parties submitted briefs on whether Collateral Estoppel / Res Judicata applied in this case. The County Engineer ruled at the beginning of the hearing on May 17, 2023 that he would not be ruling on this issue because it is beyond the scope, authority and responsibility of the county engineer under the Highway Code. As referenced above, the county engineer will rule on the criteria listed for the proposed road vacation. Since opposing legal opinions are offered on the collateral estoppel / res judicata issue, these will need to be addressed at the next level of judicial review, if it occurs.

As a named party in the 2018 decision, the county engineer would like to note that since he was never asked to participate in the previous Appellate case, there are questions about his

counsel and whether the Appellate Court was fully informed. The Appellate decision states, “Initially, we note that appellant’s brief was submitted to this court. However, because the record in this case is simple and the claimed errors are easily discernible, we choose to address the merits of this appeal.” *Boggio v. Mudge*, 2018 IL App (3d) 170432 at ¶17. The county engineer has secured legal counsel for the 2023 review, who will be able to properly address this issue at the next level if it comes to pass.

#### Loss of Reasonable Access (Appellant Reason 1)

The Boggios testified that if 1100E is vacated as proposed they would lose access to their farm ground adjacent to 1100E. Historically, Boggios access their farm ground from the NE corner at the intersection of 1100E and 945N. 1100E is a low-quality road which is single lane with an earth, gravel and grass surface. The road is not passable at the creek due to a washed-out crossing.

1100E also intersects with 900N and adjoins Kelseys to the east and Boggios to the west, as one progresses from the south to the north. As one progresses to the north, the quality, use and maintenance lessens and is finally blocked by the washed-out creek crossing. The Township has installed a “Road Ends’ sign and delineators at the beginning of the Boggio property.

Keith Boggio testified that he could not access his field from 945N because there was a drop-off. He also testified the farm ground south of the waterway on his property is only accessible by utilizing 1100E. Mr. Boggio also stated he would need to travel 2 additional miles to access his timber ground from south off, via 900N.

Boggio testified access to the property would be unreasonably reduced for both their farm ground and timber ground.

605 ILCS 5/6-305 states that a person “shall still have reasonable access (but not necessarily a direct route) by way of motor vehicle or other portable farm machinery commonly used in the area to farmland he owns or operates and to community and trade centers after the road is altered or vacated.” (emphasis added).

Boggio's access to farmland will still be directly from 945N. Access to timber ground is not mentioned in the statute. It is a regular occurrence that timber ground, pastures and non-tillable ground is not directly accessed from a public road. The timber ground in question may still be accessed from 1100E via an indirect route from Boggio's residence with a distance of 2 miles, based on Keith Boggio's testimony.

The fact that a field entrance has not be constructed off of 945N (other than at the intersection with 1100E) or that it is another township is not a valid argument that there is no access from 945N. Boggio could request Hennepin Township to provide a new access / field entrance off of 945N if he chose to. Dixon, as a highway commissioner, testified that he has never refused a landowner who has requested an entrance and he would not in this case, if 945N was within his jurisdiction.

Every authorized point of access, e.g. field entrance or driveway, normally has some construction required, including earthwork to cross a ditch or for a ramp, a culvert and gravel. As mentioned in the hearing (Eric Kelsey testimony), access to a field from the right of way ("ROW") where there is a shallow or no ditch is also common. No evidence was provided that the Hennepin Highway Commissioner would refuse to provide access off of 945N.

Boggio will continue to have access to the NE corner of the property. Even though 1100E is in very poor condition and the alignment is not well defined, it does approximate the section line / property line between Kelsey and Boggio. Since the alignment of 1100E is not very well defined, it will be assumed that the 17/18 Section Line is the best definition of the center of the road. In addition, the width of the ROW for 1100E is not well defined. The County and Township has previously asked a registered land surveyor to define existing ROW for the road and they were not willing to do so, since there is no record of such. Therefore, it will be assumed that the ROW is 40 feet wide (20 feet on either side of the section line). If 1100E was totally vacated south of 945N, this would still leave the western most 20' of the existing ROW for Boggio to continue to access his field at the Northeast corner. In addition, if he desires a wider field entrance he could make the request to Hennepin Township. Minimal construction

would be required to extend the Boggio field entrance to the west, thereby making it wider for farm equipment.

Boggio's testimony that he could not access this field off of 945N and could not traverse the waterways without using 1100E was countered by Kelsey's testimony and photographic evidence. The file named "Drone Pictures" with the Petitioner's Exhibits show evidence of access in the NE corner, access from 945N at locations other than the NE corner and the ability to traverse the waterway. The waterways on the Boggio farm do not appear to be more extreme than other grass waterways in the surrounding area and are designed to be traversable by farm machinery. It is normal practice for farmers to use a grain cart to fill trucks stationed near the field entrance.

The "Road End" signs at the south end of 1100E, approximately 100 feet north of 900N are placed at the edge of Boggio's property (west of 1100E). The section proposed to be vacated is approximately 100 feet north of this point. The "Road Ends" signs should be relocated 100 feet north, thereby providing Boggio with approximately 100 feet of frontage for this timber ground in the southeast corner of his property.

The evidence shows that no persons would use 1100E to access "community and trade centers", 605 ILCS 5/6-305. All traffic on 1100E is only going to the Boggio property, either for farming or recreational purposes. Ms. Alt, p. 88 from the Township Hearing testified, "I just like going down to Denise and Keith, they have bonfires and stuff down there, so it's nice to have the road open." Denise Boggio testified that the nearest trade center was Granville and 1100E is not used to go to any shopping location.

Two items were presented by Keith Boggio that would be a change from the historic use of their property, namely a campground and subdividing the property. It appears that much of the recent traffic on 1100E has been going to the campsite / recreation area. The campground has not been permitted by the County of Putnam, which requires a special use permit, or the State of Illinois, which requires a permit for a campground with more than two sites.

The 62.9 acre +/- Boggio property was divided into three parcels in 2022 and the northwest 12.000 acre parcel (#1) was sold to David J. Mennie. Parcel #1 is accessed off of 945N. Parcel #2 is currently accessed from the northeast corner from 945N and 1100E and Parcel #3 can be accessed from the southeast corner on 1100E.

A new plat was submitted at the hearing, Exhibit 23 of the Township exhibits, and is dated 3/3/2023. The plat had not yet been recorded (as of May 1, 2023). When questioned at the county engineer hearing, Keith Boggio could not say whether it had been recorded. On the plat, Parcel #2 would be accessed at the northwest corner at 945N and 1100E. Parcel #5 would be accessed from the southeast corner from 1100E. Parcels #3 and #4 could only be accessed from 1100E along the portions proposed to be vacated. The Township presented an Engineer's Cost Estimate, dated 1/12/2023, for the cost of improvements that would be needed for 1100E to open it for access to these two parcels, which totaled \$643,536.00.

Lack of Sufficient Survey or Legal Description for Vacation (Appellant Reason 2)

The Appellants objected to the legal description and survey for the proposed vacation, stating that, "The Granville Township Highway Commissioner failed to provide a survey for a sufficient legal description of the portion of 1100 E that was proposed to be vacated." They state, "The description prepared by the Highway Commissioner starts and ends at undefined location does not establish the boundaries or the width of the tract and thus does not rise to the level of a 'legal description'."

The county engineer finds there is no confusion concerning the legal description. In the supplement filed by the Appellants (dated May 11, 2023), they argue that the cause of action is the same as the 2018 *Boggio v. Mudge* decision because; "Both descriptions describe the same 2011 feet of 1100 E that is proposed to be vacated."

The last sentence of 605 ILCS 5/607, referenced by the Appellants, states, "Upon the petition of 12 landowners residing in the district where the road is situated, it shall be the duty of the highway commissioner or county superintendent, as the case may be, within a reasonable



time to employ a competent survey and have any road designated in such petition to be once resurveyed.” (emphasis added).

A reasonable amount of time is defined in the Plat Act, 765 ILCS 205/9,

“The plat shall be recorded in the office of the recorder of the county in which the premises are taken or used, or any part thereof, ... to be filed in the office of the registrar of titles for the county, within 6 months after such highway, road, street, alley, public ground, toll-road, railroad, reservoir or canal is laid out, located, opened, widened, or extended, or the location thereof altered and when any highway, road, street, alley, public ground, toll-road, railroad, reservoir or canal is vacated, the order, ordinance or other declaration of vacation must be in like manner recorded or filed.”

Based on these statutes, a survey plat is not yet required.

The Township submitted a plat titled, “Section Line Survey”, by IMEG, Ottawa, Illinois, dated January 2019, at the county engineer’s hearing. The Appellants objected because the copy provided was not signed. It was agreed that the county engineer could use and make a judgment as to its quality. The county engineer reviewed this plat and compared it to other plats, e.g. Boggio 3/14/2023 Exhibit 3, and found it to be consistent.

[IMEG was contacted after the hearing, and they provided the county engineer with the signed and recorded copy of this exhibit. It was signed on March 11, 2019 and recorded by the Putnam County Clerk on March 12, 2019 and its location is noted as CAG #1 ENV. #276-A.]

The IMEG plat shows the section line between section 17 and 18 of T32N, R1W of the 3<sup>rd</sup> Principal Meridian. Two corners were found, the southwest corner of Section 17, which is near the center of 1100E south of the portion of 1100E proposed to be vacated. The west quarter corner of Section 17 found which at the corner and approximately in line with 950N. The

section line connecting the two found corners is approximately along the center of the ROW for the portion of 1100E proposed to be vacated.

The surveyors were not able to locate any records of a ROW for 1100E, but topographic features are shown, namely the edges of roads, lanes and fences. Approximately 800 feet of 1100E is shown on the plat from the southwest corner of 17 to MATCHLINE "A". Within this section, the edge of the existing 1100E is shown at 10' +/- wide with the west edge near the section line and it is labeled, "REMAINS OF +/- 10' WIDE GRAVEL ROAD". An "OLD WIRE FENCE LINE" is shown to be "VARIES +/- 20' - 23'" east of the section line. Between MATCHLINE "A" and MATCHLINE "B" on the plat, an "OLD WIRE FENCE LINE" is shown on both the east and west with a width of +/- 40'. The "REMAINS OF +/-10' WIDE GRAVEL ROAD" and "OLD WIRE FENCE LINE"s end near the "KELSEY HOME" site. North of the Kelsey home to 945N, the recently constructed driveway is shown and titled, "EXISTING GRAVEL DRIVE". The distance between the section line and the existing driveway is shown in two places, +/- 20.1' and +/- 20.3' respectively. The IMEG site is consistent with a historic 1100E that has a 40' ROW centered approximately on the section line.

Current use of 1100E can be referenced in the Petitioner's Exhibits includes a photo, titled, "Road Overview - Signs for Hazard: Current State". Beginning at 945E, two parallel roads progress toward the south, the gravel driveway for the Kelsey home site and the earth/gravel /grass 1100E. Use of 1100E ends just north of the "Bridge that is out" and the "Road Closed Signs" in the photo. Just north of this location, is a field entrance into the Boggio property. As testified at the hearing, the path progresses to a camper located west of 1100E.

The highway commissioner testified that the only work he has conducted on this road is that he provided Keith Boggio a 15" diameter culvert and two loads of gravel for him to install a culvert in 1100E over the grass waterway approximately 500 feet south of 945E to improve the access by vehicles, per Boggio's request. This is the location that Keith Boggio testified that Eric Kelsey had trenched downstream (west) of a culvert Kelsey installed under his lane. Mr. Dixon also installed the "Road Closed" signs at the location shown in the photograph referenced above. The county engineer walked 1100E in 2016 from 900E to the Kelsey home site and the

“REMAINS OF 10’ WIDE GRAVEL ROAD” referenced in the IMEG plat was unpassable due to fallen trees and brush. No testimony was provided as to who cleared 1100 E north of the “Bridge that is out”, except it was testified that it was not the township.

The Petitioner testified and provided an aerial photograph, labeled, “Verification of Reasonable Access – Continued”, with an area labeled, “Grass pathway that is currently being used by Boggio to access the property. (Outside of the 1100<sup>th</sup> ave. ROW)”. It appears at times, Boggio access the property by paths that are not in the ROW. Keith Boggio testified during the hearing that this area is covered by a CRP contract for a 30’ field buffer and traffic in this 30’ buffer was not allowed. The county engineer asked him what the term was on the CRP ground and Keith Boggio did not know. It was also asked if he could confirm that the 30’ CRP buffer was outside the 1100E ROW, i.e., 50 feet from the section line. Mr. Boggio indicated that he believed so.

#### Lack of Public and Economic Interest Supporting Vacation (Appellant Reason 3)

The Boggios testified at the hearing that there is an economic benefit to them for not vacating the road. This economic benefit is to them, personally, since all traffic appears to be accessing only their property. This access is via the historic access on 1100E which is a narrow earth / gravel road approximately ten feet wide. As shown in the IMEG survey, an apparent 40 foot wide ROW existed at one time which is centered on the section line, based on the old fences that were present.

The original petitioners, testified at both the Township and County Engineer’s Hearings that they believe if 1100E is not vacated, there will be an economic cost to upgrading and/or maintaining 1100E, which will burden Township, which is not able to adequately maintain its other roads, which benefits many more people. The highway commissioner testified there are many other unmet needs, including 59 miles of other roads in his road system, the fact that he has had to till up some roads (changing from seal coat to gravel) and he does not have the money to re-pave them, and Timberline Drive, a subdivision with a number of residents that would like the Township to accept their private road and begin maintenance.

In the Appellate decision, *Boggio v. Mudge*, the court determined that future expenditures may not be considered as justification for vacating the road. The court appears to state that since the Township is not spending money on the road, that should be assumed to be the status quo and would not change. Therefore, they could not find an economic consequence existed for keeping the road. Judge Schmidt dissented, stating, “I would affirm (*vacation*). There is a blown-out culvert. This road has remained unrepaired for 20-some-odd years. What about township liability?”

On page 91 of the transcript for the March 14, 2023 Township hearing, the objector’s counsel states, “So if you don’t have the money on hand, we can’t force the highway commissioner to repair the culvert, nor will relief be granted by a mandamus to command that repairs be made in specific manner. The court will not interfere to determine when or how the commissioner shall exercise the discretion left to them in discharging their duties. So we are not going to – we can’t – you can’t force the highway commissioner to make this repair.”

Expenditures on the road is the Highway Commissioner’s decision. Use of MFT funds on a road must be authorized by the Illinois Department of Transportation and the County Engineer. MFT funds have never been used on this section of 1100E and it is not eligible.

The minimum requirement for a road of this type is to comply with the IDOT Local Roads and Streets Manual, thereby obtaining the appropriate level of liability protection. Figure 32-2C of the Local Roads and Streets Manual, “Geometric Design Criteria for Rural Two-Lane Local Roads” for a road with less than 250 vehicles per day (ADT) is to have an 18’ Traveled Way Width consisting of gravel and 2’ earth shoulders.

When the highway commissioner is not able to maintain or reconstruct a road to the minimum requirements, they would be well advised to post the appropriate warning or road closure signs, because such a deficient road would be un-safe to the traveling public and a liability concern for the township. Mr. Dixon has closed portions of 1100E in accordance with the Manual on Uniform Traffic Control Devices and with guidance from the county engineer. He installed these signs several years ago, after he first took office.

Exhibit A-2, from the County Engineer's hearing is the FY2023 Appropriation for the Road District. Appropriations for the township roads and bridges were \$638,290. Motor Fuel Tax is not included in the Township Budget. Based on audited MFT records, the amount of MFT spent in calendar year 2022 was \$193,259. Mr. Dixon testified that no money is being budgeted for 1100E, and even at the budget levels approved for the other 59 miles of roads, the township must delay some projects due to insufficient funds.

During the previous review of this road vacation, the Appellate Court in *Boggio vs. Mudge*, in paragraph 22 states, "The purported economic benefit to the public that Sloan focused on is purely hypothetical unless the township has approved finite plans for improvements." It is not the county engineer's opinion that economic interest is "hypothetical" in that negative economics and potential future expenditures were demonstrated. It is in the economic interest of a township to reduce road miles, so that less maintenance will be required. As shown in the budget, over 75% of a Township revenue is not dependent on road mileage. In addition, to gain revenue for the additional mileage of 1100E, the Township's cost estimate indicates that it would need to spend \$643,536. By vacating 1100E, the township would be increasing the money available for more important roads on a per mile basis, which benefits more people per mile.

Exhibit T-3 from the County Engineer's hearing is the Engineer's Estimate of Cost, certified by Kenneth Giordano a professional land surveyor, which totals \$643,536, including Land Clearing, Earth Excavation, a Concrete Box Culvert, Aggregate Base, Miscellaneous Culverts, Seeding and Restoration, Preliminary and Construction Engineering. This estimate is stated to be an update of the 2016 estimate which they submitted in the amount of \$350,000. This 2016 cost estimate and letter was signed by J. William Shafer PE, PLS and is dated June 17, 2016 (Boggio 3/14/23 Exhibit 10). The letter from 2016, which was updated in 2023, states, "Our assumptions were a 50 foot wide right of way with a 24 foot wide aggregated surface. This is an [ancient] right of way that was closed when I started as County Engineer in 1981. To my knowledge it has not been maintained by the Township since then."

The assumptions for the Township's cost estimate are a 50' ROW and 24' aggregate surface, which is wider than the minimum criteria described above from the Local Roads and Streets Manual, namely 40' ROW and 18' wide aggregate surface. The cost can be converted to the narrower width by applying an area correction factor to Clear, Earthwork, Aggregate and Seeding. This reduction of 25% for these items result in a recalculated cost estimate of \$525,536.

Pages 63 and 64 contain testimony at the March 14, 2023 hearing from Keith Boggio concerning his willingness to pay for some improvements on 1100E, essentially replacement of the washed out culvert. He obtained several prices from local contractors. These are Boggio's Group Road Repair Estimates, Exhibit 30, for \$18,400, \$18,600, \$21,000, \$16,600 and \$25,514. Boggio's testimony focuses on the Ossola proposal for a 6' diameter x 30' long culvert, gravel stone, fill dirt and concrete rubble and labor for \$25,514. It is not clear what the specifications were for this culvert and it was not provided by a professional engineer and surveyor, as was the Township's estimate.

One of the duties of the appointed county engineer is, "Prepare or cause to be prepared, plans, specifications and estimates for all bridges and culverts to be built by the county, or by one or more road districts, and supervise the construction of all such bridges and culverts." (605 ILCS 5/5-205.1). This county engineer was never requested by any individual or the township to generate plans, specifications or a cost estimate for this culvert. A rudimentary review of the location indicates that it has an 838 acre watershed area and the 25 year to 100 year peak discharge rate at the location would be 516 to 743 cubic feet per second. The size of culvert required would be a minimum of 8 feet in diameter. Final hydraulic analysis and the drainage structure selection would occur during final design. If a culvert is selected, a roadway embankment of 12 feet would be required. The minimum length of the culvert required to maintain road safety would be 78 feet long. Based on this evaluation, the proposals provided by Boggio have no validity for a public road.

Mr. Boggio presented two improvements to his property west of 1100E, including a campground and subdividing the property into parcels. The testimony from the Boggios and Ms.

Alt indicate that the property is being used for private recreation purposes, including camping, bonfires and parties. No evidence was provided that a plan or permit has been secured for a campground. In fact, testimony indicated that the campground was private and only for family and friends and not revenue producing.

A plat was provided that would subdivide the Boggio property into parcels for up to four potential building lots. Two of these lots are tillable and would require some conversion for building. Two of the lots (#2 and #5) have existing access if the proposed 1100E vacation is approved. Parcels #3 and #4 of the March 3, 2023 Plat would not be accessible without 1100E or an ingress/egress easement. However, this plat was not deemed valid for consideration since it was submitted after the vacation petition.

Testimony and exhibits indicate turmoil and possible unlawful behavior by users of 1100E and between the neighbors. It was proposed that a road vacation would solve the consternation and be in the public interest. Law enforcement and the county engineer have been contacted in the past about this situation. It should be noted that the road vacation would move the dividing line between the two properties by only 20 feet. If “fences make good neighbors”, a fence built at the property line or built at the ROW would probably have the same effect. Unruly or unlawful behavior is not deemed to be justification for vacating a road. Instead, it is a matter for law enforcement.

## SUMMARY

### Reasonable Access

It appears 1100 E was not needed for reasonable access between 1981 (cited by former county engineer) and 2015, when the Kelseys built their house and lane on their property. At that time Mr. Boggio testified that he told Kelseys he strongly supports keeping the 1100E road. The county engineer walked 1100E in 2016. The north half of 1100E consisted of a grass path between the new Kelsey driveway and Boggio farm field. The south half of 1100E was impassable due to many down trees and the washed-out creek crossing. The appearance was that it had not been used for many years.

Around 2015-2016, the road became a point of contention between the two neighbors. In 2018, with the Appellate Court reversing the road vacation, Mr. Boggio increased his use of the road and conducted work on the road, including installing a cross road culvert, clearing the road in the timber and building a field entrance, including installing a culvert in the ROW to access his recreation ground. The Highway Commissioner did not give approval for any work south of the Kelsey home site. The use of the recreation ground began in 2022.

The County Engineer deems that Mr. Boggio possesses reasonable access to his farm ground and timber ground, as shown in the Plat of Survey on record and recorded on 5/23/2022. Parcel #1 and Parcel #2 have reasonable from 945N, including at the intersection with 1100E in the northeast, and Parcel #3 has access of 1100E to the south. Mr. Boggio sold Parcel #1, which is confirmation that it has access and further, this is counter to his testimony in the 2016-2018 vacation proceedings, that he could not access his property from 945E.

Mr. Boggio attempted to further subdivide his property as shown in the Plat of Survey, dated March 3, 2023. The date of this survey plat is after the date of the road vacation petition, November 22, 2022. Access to two of the parcels, #3 and #4, would require the existing 1100E or a private access road. This decision assigns minimal weight to the March 3, 2023 Plat since it was prepared after the vacation petition was filed and the plat was not recorded.

#### Public Interest

1100E was shown to have no public interest, such as access to community or trade centers. The only traffic on 1100E was shown to be going to the Boggio property. The Township has determined that investment in 1100E is not in the public's interest. Further, the current condition of 1100E, a 10' wide earth/gravel/grass path would require significant work to bring it up to the standards required by the Illinois Department of Transportation. Since 2018, when the previous road vacation was overturned, the Township Highway Commissioner has decided to let the adjoining property owners use the ROW and put up signage for a road closure to control the Township's liability by keeping the public off of it.



Economic Interest


The Township's economic interest and priorities were presented by Mr. Dixon, the Highway Commissioner, which is to focus their limited funds on their 59 miles of other roads. The significant cost required to bring 1100E up to the required IDOT standards and to limit their liability has been determined to not be in the public interest.

It is apparent that one adjoining land owner, Eric Kelsey, has determined that he will invest in his own access, as evidenced by the driveway, creek crossing and access road he constructed on his own property. The other adjoining landowner, Mr. Boggio, has not invested in a private access road on his own property. However, he has worked on the 1100E ROW after 2018 without the permission of the Highway Commissioner.

Based on the evidence and current condition of the road, it appears that Mr. Boggio believes that he was free to do anything with a Township road that he wants. This is counter to law, as specified in 605 ILCS 5/9-113, "(a) No ditches, drains, track, rails, poles, wires, pipe line or other equipment of ... person shall be located, placed or constructed upon, under or along any highway, or upon any township or district road, without first obtaining the written consent of the appropriated highway authority as hereinafter provided in this Section."

ORDER

Based on the evidence presented for this Petition to Vacate a Portion of East 1100<sup>th</sup> Street, identified and summarized herein and pursuant to the statutory requirements identified, I, Patrick G. Sloan, Putnam County Engineer, hereby upholds the FINAL ORDER OF ROAD VACATION, issued by Robert Dixon, the Granville Township Highway Commissioner, dated March 28, 2023. A Vacation Plat for the partial vacation of 1100E shall be ordered pursuant to the timeframe specified in the Plat Act and will provide for the 2,011 foot vacation of part of 1100E.



\_\_\_\_\_  
Patrick G. Sloan  
Putnam County Engineer

\_\_\_\_\_  
June 30, 2023

\_\_\_\_\_  
Date