

IN THE IOWA DISTRICT COURT FOR DUBUQUE COUNTY

THOMAS J. FISCHER, NANCY M.
FISCHER, CLAYTON J. GIBBS,
AND FELICIA L. GIBBS,

Petitioner,

vs.

DUBUQUE COUNTY, IOWA, ,

Respondent.

CASE NO. 01311 EQCV118220

**DUBUQUE COUNTY, IOWA'S
PETITION TO VACATE
JUDGMENT**

Respondent, Dubuque County, Iowa ("County"), hereby petitions the court to vacate the June 10, 2026, summary judgment declaring Lovers Lane a private permissive easement rather than a public road. This Petition is filed pursuant to Iowa Rules of Civil Procedure 1.1012 and 1.1013 and alleges violations of Rule 1.234 of the Iowa Rules. In support hereof, Respondent states as follows:

BACKGROUND

1. Petitioner commenced this action concerning the legal status of Lovers Lane, a roadway in Sections 9 and 10 of Peru Township, Dubuque County, Iowa on February 17, 2026, alleging that Lovers Lane was not a public roadway.
2. Two (2) months later, on April 15, 2026, the County Attorney accepted service of the Petition.
3. On April 21, 2026, the County Attorney filed an Answer denying most material allegations for lack of sufficient knowledge and requesting dismissal.

4. Petitioner moved for summary judgment, supported by a Statement of Material Facts, Memorandum of Authorities in support of Motion for Summary Judgment, and Brief in Support of Motion for Summary Judgment, all filed on May 14, 2026.
5. Four (4) days after filing of the Motion for Summary Judgment by Petitioner, on May 18, 2026, the County Attorney filed a response to Petitioner Motion for Summary Judgment, concluding with the following statement, “Dubuque County, Iowa under the asserted facts and law does not resist Plaintiff’s Motion for Summary Judgment.”
6. The Court file does not disclose the sharing of any Initial Disclosures or Discovery by and/or between the parties.
7. On June 10, 2026, the Court entered summary judgment finding that no material facts were disputed, that no deed, dedication, acceptance, implied dedication, or prescriptive easement had established a public road, and that Lovers Lane was a privately owned permissive easement for existing residences and farming operations.
8. The Board of Supervisors, the County body vested with jurisdiction and control over secondary roads under Iowa Code Sections 306.4¹ and others, was not consulted once by the County Attorney regarding the litigation, with no notice to the Board that the litigation was filed, that service was accepted, that an answer was filed, that a summary judgment motion was filed, or that the County Attorney had determined it appropriate to consent to entry of Summary Judgment.
9. The Board first learned of the Summary Judgment after residents of Lovers Lane, who had received communications from Petitioner’ counsel, contacted the Board more than thirty

¹ **306.4 Jurisdiction of systems.** The jurisdiction and control over the roads and streets of the state are vested as follows: 2. Jurisdiction and control over the secondary roads shall be vested in the county board of supervisors of the respective counties.

(30) days after entry of Judgment. By that time, the periods for ordinary posttrial motions and a timely appeal had expired, and the Board had received no meaningful opportunity to direct the County's litigation position, develop the factual record, or pursue those remedies through the governmental body authorized to act concerning secondary roads.

10. After learning of the judgment, the Board took steps to consult with the County Engineer's Office which resulted in the production of numerous documents supporting the argument that Lovers Lane was a public road, and had been since the mid-1800's.
11. In addition to arguments that Lovers Lane exists as a result of specific legal action to create said roadway, the County has significant fact supported arguments that the County has established rights to the road under the law of adverse possession or prescriptive easement, where the County has possessed, maintained, and repaired, all at significant expense, in an actual, hostile, open, exclusive, and continuous manner for well in excess of ten (10) years.
12. In 2008/2009, Petitioner Thomas and Nancy Fischer ("the Fischers") asked the County to recognize Lovers Lane as a private road, and the County declined to do so, the Board approving the following motion at its August 24, 2009, meeting, "Motion by Demmer, seconded by Manternach to accept Lovers Lane as a county road and direct the County Engineer to maintain Lovers Lane as a county road and to claim the road as a prescriptive easement and not by ownership". The minutes also reflect the fact that Petitioner Nancy Fischer was present at this meeting. (Minutes and related documents will be attached to an Affidavit currently anticipated to be received from the Dubuque County Auditor's Office, that will be filed separately herein.)
13. In the underlying action, Nancy Fischer executed an Affidavit marked "Exhibit 8" therein, where she appears to speak to the August 24, 2009 Board of Supervisors meeting, failing

to reference the action of the Board of Supervisors during said meeting to accept “Lovers Lane as a county road and direct the County Engineer to maintain Lovers Lane as a county road and to claim the road as a prescriptive easement and not by ownership”, instead suggesting that the meeting supported her 2025 position that Lovers Lane was a private road.

14. The 2008/2009 interactions with the Board of Supervisors, which appeared to culminate in the August 24, 2009, motion set forth within Paragraph 13 above, put the Fischers on actual notice that the County claimed and administered Lovers Lane as a public road. Thereafter, the County continued openly to maintain, repair, inspect, and improve the road, including the 2019 bridge-replacement work, without objection that its activities were undertaken only by private permission.
15. Since the Fischers failed attempt to have Lovers Lane declared a private road in 2008/2009 and the Board of Supervisors declaration that Lovers Lane was a County Road by Prescription, the County has at all times continued to maintain Lovers Lane, and in 2019 the County spent approximately \$390,000.00 on bridge repair replacement projects on Lovers Lane, where as part of that project they paid residents on Lovers Lane, including the Fischers, for temporary easements associated with the bridge repair/replacement project.
16. At no time since the Fischers failed attempt to have Lovers Lane declared a private road has anyone sought to establish Lovers Lane as a private road or in any way objected to the County’s continued maintenance and repair to Lovers Lane.
17. The judgment disposed of a public road without input or consideration of the Board of Supervisors; the County body vested with jurisdiction and control over secondary roads.

18. The judgment disposed of a public road used and relied upon by numerous Lovers Lane residents without any of said residents having been named, served, or given an opportunity to be heard, all at great damage to said residents.

IOWA RULES OF CIVIL PROCEDURE

19. Iowa Rule of Civil Procedure 1.1012 permits a court, upon a timely petition and notice under rule 1.1013, to vacate a final judgment for, among other grounds, “irregularity or fraud practiced in obtaining it” or “unavoidable casualty or misfortune preventing the party from prosecuting or defending.” Iowa R. Civ. P. 1.1012(2), (5).
20. Rule 1.1013 requires the petition to be filed and served in the original action within one year after entry of the challenged judgment, to state the grounds with particularity, and, when the applicant was a Respondent, to show a defense to the action. Iowa R. Civ. P. 1.1013.
21. This Petition is supported by numerous Affidavits, under Iowa R. Civ. P. 1.413(3) as described within **Exhibit A**, all of same being separately filed herein.
22. Summary judgment is proper only when the record shows no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3).
23. Even when a motion is unresisted, the movant retains the burden to establish entitlement to judgment on the undisputed record; nonresistance does not authorize relief unsupported by law or the record.
24. Iowa Rule of Civil Procedure 1.234(2) defines an indispensable party as one whose interest is not severable or would necessarily be inequitably affected by a judgment rendered in the party’s absence.

25. If an indispensable party is absent, the court must order joinder; if a person needed for complete relief cannot be joined, the judgment does not affect that person's rights or liabilities. Iowa R. Civ. P. 1.234(3).
26. Here, the judgment purports to define and limit the access rights of residents and farming operations along Lovers Lane, yet the affected nonparty landowners were not joined.
27. It is the position of the County that the Petition did not allege a meritorious action, the history of Lovers Lane being known and debated in 2008/2009 with the County clearly claiming full rights to same as a County Road by Prescription and thereafter continuing to possess, repair, maintain and hold Lovers Lane as a County Road at all times prior thereto and after.

**THE COUNTY WAS PREVENTED FROM DEFENDING THROUGH AN
INSTITUTIONAL IRREGULARITY AND MISFORTUNE**

28. Because less than one year has elapsed since entry of Summary Judgment on June 10, 2026, the petition is timely. Compare *Rosenbaum v. Kerndt Bros. Savings Bank*, No. 20-1171, 2021 WL 4304968, *2 (Iowa Ct. App. Sept. 22, 2021) (one-year period runs from the order challenged).
29. The County relies upon the independent, expressly authorized remedy under Rules 1.1012 and 1.1013.
30. The judgment was obtained through an irregularity in the judgment being obtained and/or the County suffered an unavoidable casualty or misfortune tied to being kept in the dark regarding the pending litigation, from filing through summary judgment, depriving the County of a meaningful opportunity to defend.
31. The critical irregularity is institutional. All involvement in this case at the County level was by and through the County Attorney's Office who failed to communicate or consult with

the County Board of Supervisors, the officials to whom Iowa law assigns jurisdiction and control over secondary roads.

32. The Board had no opportunity to direct a defense, identify County records, authorize a litigation position, retain alternate counsel if necessary, or seek joinder of affected landowners.

33. The absence of Board notice and authorization directly prevented the County from presenting its defenses.

34. Had the Board been informed of the action or the Motion for Summary Judgment, it would have directed the County Engineer's Office to retrieve all relevant historical documents related to Lovers Lane which would have included records of the Board of Supervisors from the 2008/2009 timeframe where the County considered and denied the Fisher request to treat Lovers Lane as a private road and declaring Lovers Lane to be a public roadway by prescription.; authorized resistance to summary judgment; and requested discovery and joinder of affected landowners.

35. The resulting judgment was therefore not merely preceded by an internal communication failure; that failure prevented the County from presenting evidence that created genuine issues of material fact and supported complete defenses of Petitioner claims.

36. The judgment's premise, that no acquisition, dedication, or prescription had occurred, was reached only because the public records bearing directly on those issues were never presented.

37. The County does not seek relief merely because counsel committed an error of judgment, failed to investigate adequately, or selected an unsuccessful litigation strategy. The County alleges that the officials possessing statutory control over the public interest adjudicated,

the Board of Supervisors, received no notice of the action, the Motion for Summary Judgment, or counsel's decision not to resist that motion, and therefore never authorized abandonment of the County's claim that Lovers Lane is a public road whether in title or by prescription. The County further alleges that the County Attorney acted without an informed decision by the governmental client.

38. The Board did not authorize the County Attorney to concede to Petitioner's Motion for Summary Judgment, stipulate that no genuine issue of material fact existed, abandon the County's claim of ownership or public-road rights, or consent to a judgment declaring Lovers Lane private. No resolution, motion, vote, written directive, or other Board action approved that litigation position, and the Board did not knowingly ratify that position before judgment was entered.
39. The affidavits of Supervisors Harley Pothoff and Ann McDonough establish that the Board was not notified of the filing of the action, acceptance of service, the answer, the motion for summary judgment, the County Attorney's nonresistance, or the resulting judgment until after the ordinary posttrial and appeal periods had expired.
40. Ben Kober's affidavit corroborates the absence of meaningful institutional knowledge concerning the litigation while County proceedings affecting Lovers Lane were ongoing.
41. Pothoff and McDonough affidavits establish when and how the Board first learned of the judgment and the steps taken thereafter to investigate, consult the County Engineer's Office, gather historical and operational records, evaluate available remedies, and retain outside counsel.
42. Wyatt B. Anderson's affidavit corroborates that investigation by identifying and authenticating the records located after the Board learned of the judgment.

43. David P. Schneider's affidavit supports the position or conclusion that Lovers Lane has been a public roadway since the 1800's.
44. Numerous resident or past resident affidavits make clear the position of those submitting affidavits that Lovers Lane has always appeared to them to be in all ways a Dubuque County Road.
45. On these facts, the absence of an authorized institutional decision and the resulting one-sided summary-judgment record constitute an "irregularity ... practiced in obtaining" the judgment under rule 1.1012(2), or alternatively an "unavoidable casualty or misfortune" that prevented the County, acting through its lawful decisionmaker, from defending under rule 1.1012(5).

II. STATUTORY STEPS WERE NOT TAKEN TO TRANSACT OFFICIAL COUNTY BUSINESS

46. County action is not informal, implied, or left to individual officers when the matter concerns the County's legal position in litigation affecting public road rights.
47. Under Iowa Code section 331.301(2), county powers are vested in the Board, and county duties are performed by or under the Board's direction unless otherwise provided by law. The Board acts only as a board at a scheduled meeting conducted in compliance with Iowa Code chapter 21. Iowa Code section 331.213(1).
48. A majority of the supervisors constitute a quorum to transact official county business, and certain actions require the affirmative vote of a majority of the Board's membership. Iowa Code section 331.212.
49. More generally, Iowa Code section 331.302(1) provides that the Board exercises a power or performs a duty only by passage of a motion, resolution, amendment, or ordinance. Passage of an ordinance, amendment, or resolution requires an affirmative vote of not less

than a majority of the supervisors, and each supervisor's vote on such a measure must be recorded. Iowa Code section 331.302(7).

50. The county auditor, as clerk to the Board, must record the Board's proceedings, including all actions taken and the complete text of motions, resolutions, amendments, and ordinances adopted. Iowa Code section 331.504(1).

51. None of those statutory steps occurred here. The Board did not place the litigation, the requested declaration, the summary-judgment motion, or the County Attorney's proposed nonresistance on any posted agenda.

52. The Board did not convene, deliberate, make findings, pass a motion, adopt a resolution, authorize a concession, approve a litigation strategy, direct the County Attorney to abandon the County's public-road position, or vote to treat Lovers Lane as private.

53. No recorded vote, minutes, written directive, or Board resolution exists authorizing the County Attorney to stipulate that there were no genuine issues of material fact or to permit entry of judgment against the County on a matter within the Board's statutory jurisdiction over secondary roads.

54. Nor did the Board vote to retain outside counsel before judgment because it had no notice that such action was necessary.

55. The judgment was entered without the approval, direction, or authorization of the governmental body in which Iowa law vests the County's power to act.

56. There is also a direct causal connection between the irregularity or misfortune and the County's inability to defend.

57. Had the Board received notice, it would have caused the County Engineer's Office and other departments to retrieve all relevant historical documents related to the establishment

of Lovers Lane and/or the declaration in 2009 that Lovers Lane was a public road created by Prescription as part of the County's rejection of the Fischers' 2008/2009 request that Lovers Lane be declared a private road.

58. That evidence bears directly on formal establishment, relocation, dedication, acceptance, ownership, prescription, claim of right, hostility, notice, and acquiescence.

59. The one-sided summary-judgment record was thus not the product of a considered decision by the County's lawful decisionmaker; it resulted from the Board being deprived of any meaningful opportunity to defend.

60. The resident and past resident affidavits filed separately herein corroborate longstanding public use and public-road treatment, resident reliance, County permitting and maintenance activity, and the practical consequences of treating the road as private.

61. Collectively, the affidavits establish defenses based on formal establishment and relocation, dedication and acceptance, ownership or easement rights, and prescription under a public claim of right, while also showing why a complete record would materially differ from the record on which summary judgment was entered.

62. Those circumstances support relief under rule 1.1012(2) or, alternatively, rule 1.1012(5).

III. COUNTY HAS SUBSTANTIAL, FACT-SUPPORTED DEFENSES THAT WOULD DEFEAT SUMMARY JUDGMENT

63. The County has alleged meritorious defenses with sufficient factual specificity to show that a different result is not only reasonably possible upon retrial but more than likely.

64. The County need not establish those defenses conclusively in this Petition; it has identified competent evidence creating genuine issues of material fact concerning formal establishment, relocation, dedication, acceptance, County ownership, public prescriptive

rights, and Petitioner knowledge of and acquiescence in the County's claim of public authority.

65. Road No. 8, including the segment now known as Lovers Lane, was formally established and declared a public highway in 1844 and lawfully relocated in 1895.

66. Recorded plats, owner consents, and conveyances establish or evidence dedication, acceptance, easement rights, or County ownership within the corridor.

67. Even if formal establishment or record title is disputed, the County's open, continuous, and adverse exercise of public-road authority for the statutory period established public prescriptive rights.

68. Proof of any of the above arguments, set out in Paragraphs 55-57, alone would defeat the judgment declaring the road merely private and permissive.

69. The County's records support a direct, formal establishment of the roadway as a public highway. Dubuque County Board of Commissioners minutes dated January 3, 1844, accepted the viewers' report for the road leading from Parson's Ferry to the Territorial Road at Sherrill's Mound, ordered the report, plat, and field notes filed and recorded, and declared the road a public highway. The corresponding Road No. 8 survey depicts that route through Sections 9 and 10 of Peru Township, including the portion now known as Lovers Lane, and the clerk's certification states that the road was declared a public highway in January 1844. The lands crossed by the road were then owned by the United States, and the reviewed patent records disclose no earlier private patent along the portion at issue.

70. The later records identify the location and continuity of that public road. In 1894 and 1895, the portion of Road No. 8 in Sections 9 and 10 was resurveyed and relocated; the field notes describe the relocated course from the area of present-day Spechts Ferry Road and

Circle Ridge Road to the present intersection of Spechts Ferry Road and Lovers Lane and then northerly and easterly through Section 9. On January 26, 1895, the Board of Supervisors approved the petition to change the road's location, authorized vacation of portions of the former route upon relocation and adopted the resurvey. The relocated route is generally consistent with the location the County has treated as Lovers Lane since 1895 and with survey drawings depicting the roadway in 2009.

71. Recorded plats and conveyances further support the County's public-road claim and create genuine disputes concerning title, dedication, acceptance, right-of-way width, and the character of the County's possession. The Gibbs Farm plat depicts Lovers Lane as a fifty-foot-wide easement for public highway, with right-of-way lines appearing twenty-five feet on each side of the traveled centerline, and Petitioner Thomas and Nancy Fischer and Clayton and Felicia Gibbs signed the owners' certificate and consented to the plat.
72. Section 9 plat records also depict strips adjoining the road, and deeds recorded in 1896 conveyed to Dubuque County approximately twenty-foot-wide parcels adjoining the southerly right-of-way boundary. Those conveyances are consistent with County acquisition and administration of land associated with the Road No. 8 corridor, not merely permissive travel over a private lane.
73. The County's longstanding, open exercise of road authority independently supports a prescriptive public easement and, at minimum, defeats Petitioner assertion that no genuine factual dispute existed. Historical maps, a 1929 secondary-road condition report, bridge-inspection records, and more than thirteen years of personal knowledge from the County surveyor reflect regular County maintenance and treatment of Lovers Lane as part of the secondary-road system. The County performed that work openly, continuously, and under

a claim of public authority, without requesting permission from adjoining owners and without any agreement treating Lovers Lane as a privately owned road maintained by consent. Even if the above history of actual, open, hostile, and notorious use is not enough, the action of the Board of Supervisors on 8/24/2009 to specifically declare by Motion that Lovers Lane was a public roadway to be maintained by the County, ending the debate with Petitioner Fischers at that time that Lovers Lane was a private roadway, at a minimum started the clock ticking anew on the County's Prescriptive Easement rights, said motion and declaration by the County preceding Petitioner petition by more than 15 years.

74. In 2018, the County approved and carried out Project No. L-B-19(03)—73-31 to replace two bridges or culverts on Lovers Lane, obtained and paid for temporary construction easements from adjoining owners—including Thomas and Nancy Fischer—and administered construction staking, road closure, traffic control, access, and replacement structures as the public road authority. No contemporaneous objection asserted that the County lacked authority because Lovers Lane was private.

75. The evidence of visible, continuous maintenance, repair, bridge construction, and right-of-way administration under a claim of public authority would have required denial of summary judgment and adjudication on a complete record. See *Collins Trust v. Allamakee Cnty. Bd. of Supervisors*, 599 N.W.2d 460, 463–64 (Iowa 1999); *Simon v. Dubuque Cnty. Bd. of Supervisors*, No. 07-0020, 2007 WL 2376736, at *2–4 (Iowa Ct. App. Aug. 22, 2007).

III. LOVERS LANE LAND PROPERTY OWNERS SHOULD HAVE BEEN JOINED

76. The judgment does more than determine an abstract dispute between Petitioner and the County. It declares Lovers Lane private and limits use to “existing residences and farming

operations presently utilizing the roadway,” without findings identifying those users or operations.

77. The ruling, therefore, significantly impacts and affects access, use, and monetary interests of persons not before the Court.

78. Rule 1.234 required joinder of indispensable parties or, at minimum, required that any judgment not affect absent persons’ rights.

79. Vacation of the Court’s Summary Judgment will permit joinder, notice, development of a complete record, and a judgment that binds the proper parties without creating uncertainty over unidentified access rights.

IV. EQUITY AND THE PUBLIC INTEREST FAVOR ADJUDICATION ON A COMPLETE RECORD

80. The County moved promptly after the Board learned of the Judgment to fully investigate the history of Lovers Lane, to consider the documents and evidence produced by that investigation, considered its options, and hired outside legal counsel to prepare appropriate filings.

81. Petitioner will suffer no unfair evidentiary prejudice from litigating the merits; they will retain every title, dedication, prescription, and easement defense available to them.

82. By contrast, leaving the judgment intact without merits review risks disrupting access, construction, emergency response, maintenance, and the County’s statutory administration of secondary roads.

83. An August 12, 2026, demand letter from counsel for Clayton and Felicia Gibbs asserts that certain residents and contractors may not use the road or may use it only in limited ways.

84. If the judgment stands, residents face undefined access, use, repair, maintenance, and cost obligations without an agreement governing those matters.

85. Because the judgment affects persons whose access and property interests were not adjudicated, vacation will permit joinder or notice, preserve the status quo, and allow the Board to exercise its statutory responsibilities on a complete record.

86. The preferred course is to preserve the status quo, reopen the judgment, join affected parties, and decide the road's status on a complete adversarial record

WHEREFORE, FOR THE REASONS STATED ABOVE, the County respectfully requests that the Court:

1. Set this petition for prompt evidentiary hearing;
2. Stay enforcement and operation of June 10, 2026, judgment pending further order, including any attempt to exclude historically permitted users or interfere with County maintenance, emergency access, or existing access;
3. Vacate the June 10, 2026, Summary Judgment under Iowa Rules of Civil Procedure 1.1012(2) and/or 1.1012(5);
4. Permit the County to conduct appropriate discovery and to file a resistance to the Motion for Summary Judgment supported by appropriate facts, authorities, and argument;
5. Order joinder or notice to all indispensable and necessary parties under Iowa Rules of Civil Procedure 1.234;
6. Tax costs as appropriate; and
7. Grant such other and further relief as the Court deems equitable.

Signed and dated this 23rd day of October 2026

/s/ Douglas D. Herman

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