

Cuyahoga Falls City Council
Minutes of the Public & Industrial Improvements Committee Meeting
April 18, 2011

Members: Don Walters, Chair
Mark Ihasz
Terry Mader

Mr. Walters called the meeting to order at 6:40 p.m. All members were present.

Legislation Discussed

Temp. Res. B-36

Discussion

Temp. Res. B-36

A resolution declaring the necessity of and intention to appropriate certain interests in real property necessary to establish a pedestrian walkway between Dominic Drive and North Hidden Valley Drive, and declaring an emergency.

Mr. Janis wanted to clarify some issues from the previous committee meeting that he felt were a source of confusion. The first was why, after so many years, was the City now deciding to put in a pedestrian walkway. He stated the Planning Commission decided in 1995 to put it in. The developer came before the Planning Commission. At that point, there was a street reservation but the property owners complained so the Planning Commission revised it to a pedestrian walkway. On March 21, 1995, the Planning Commission voted 4-1 to accept the offer and require the pedestrian walkway. Afterward, the walkway was built. The developer paved it and it was then used as a walkway for the next nine years. Building permits were later taken out for two homes located at 722 and 736 Dominic Drive, and plans showed the existence of a walkway. The second issue concerned statements made by the property owners that they came to the City and verified that the easement was an emergency access easement only. He was skeptical of that because there is no evidence they did so. The fact that the property owners treated it as a public walkway for nine years is telling. The City is trying to fix this error. Nothing carried over into the plat conditions, the ordinance or the plat. It exists as a waterline and emergency access easement. The City wants to correct that and open it back up as a walkway. The third issue is that the City is trying to expand the physical dimensions. The easement is currently 20 feet. The City is not changing that. The walkway is 10 feet wide. The City is pursuing acquisition easement rights to reopen it as a pedestrian walkway. They need authorization from Council to proceed. The fourth issue concerns potential criminal activity or mischief if the walkway is reopened. In nine years, five reports were made with the police department. Since the walkway was closed, there were 16 reports filed. Whether the walkway is open or closed, there is not a lot of difference in mischief. The fifth issue is that the property owners have to back onto the walkway when backing out of their garage. He displayed a diagram that showed the amount of space that exists is greater than the turning radius of the Toyota Sienna they used in their demonstration. The sixth issue is the statement that the City wouldn't address the problem. He stated the City has always been ready to discuss alternatives in an attempt to come to a resolution to meet the needs of all the parties involved. There were written proposals submitted on June 1, 2010 and September 3, 2010. A meeting was called in May, 2010. On May 15, the City made an offer which was turned down. On February 14, 2011, the City made an offer to purchase the easement to open the walkway and it was turned down. The seventh issue is the statement there are no other walkways like this in the City. Mrs. Carr showed slides of various locations throughout the City. Specifically, the entrance to Indian Mountain Park at David and Hanover (Ward 1); the walkway

going into Price School at Wichert and Larchdale (Ward 7); the entrance to Kennedy Park at Plymouth and Center (Ward 7); the access to Water Works Park off Ruth Avenue (Ward 7); the entrance to Oak Park off 13th Street (Ward 4); the entrance to Oak Park at 14th Street and Ohio (Ward 4); the entrance to the Newberry/Bolich ballfields on Norma (Ward 5) the sidewalk linking two neighborhoods together from Dawn Terrace to 26th Street (Ward 3); the pathway to Richardson School and to the school's ballfield at 26th and Shaw (Ward 3); the sidewalk from Chestnut into Quirk Cultural Center (Ward 2); and two paths to the Gorge--one off Albemarle and the other off Highbridge (Ward 2). She also showed a walkway in the newer Hidden Lakes development that is off Lakeview Drive that runs between two Condo units, and another off Hidden Lake Lane that runs between two single family homes (Ward 8). A few of the paths are close to homes and some are right up against driveways. Mr. Janis stated the City is just trying to correct a mistake. If Council votes for the legislation and the property owners still want to negotiate, the City would be open to that.

Mr. Walters stated that from the drawings, it appears a street was intended to be put in for connectivity. He asked what changed that plan. Mr. Janis stated on the original subdivision of Hidden Valley, it was intended that a connector street would be allowed and was included in the Adams Run Subdivision plat. However, the Hidden Valley property owners did not want the road so a compromise was made to make it a walkway. The street reservation on the Hidden Valley side was ultimately vacated. Mr. Walters asked about the Council minutes at the time of passage of the ordinance. Mr. Janis stated they could not find any and felt they may have been destroyed pursuant to the City's records retention policy. Mr. Walters felt some things were not clear. It appears that the planning director felt strongly about the road and somehow that broke down because other developments are connected by a road. The legal situation is that the easement is an emergency access and waterline easement. Whatever errors were made, the City is claiming it has always been the intention it is a walkway but that is not what it is legally. He asked why Council is being forced to approve eminent domain if the City feels the intention was a walkway. Mr. Janis stated it was the intention of the Planning Commission to create a walkway but, for whatever reason, it did not carry through to plat conditions. Then it did not appear in the Council ordinance nor on the final plat. Mr. Walters stated the City had conversations with the property owners for resolution. He asked if there were discussions with other people about connectivity. There is vacant land at the end of Dominic. Did the City exhaust everything or just go after these two property owners. Mr. Janis stated the City is just trying to correct a mistake. To move the walkway to another location would require a study. It would be much simpler to just correct the mistake. Mr. Walters understood it was intended as a walkway in 1995 and understands the need for an emergency vehicle access. A pedestrian access could happen anywhere. There are other options for just the pedestrian access. He pointed out a few months ago there was a large crowd present who was against eminent domain being used on the Graham Road widening, and the City has since come up with another option.

Mr. Mader stated this is a frustrating subject, and he takes some issue with some public comments that were made on April 4. When he has conversations with residents, he starts things off by making a comment they can always agree to disagree on issues but to not make it personal. However, at the last committee meeting, that line was crossed because he was accused of not responding to calls. He does not have record of any such calls. The first he knew about this issue was when he was called by Mr. Schrop after the November, 2009 election. Mr. Schrop congratulated him and brought up the situation of the rock. He told Mr. Schrop he would check on the details and asked him to bear with him. After a time, it was clear that Mrs. Carr was aware of the situation and that the City was taking steps to remove it. This was all in the winter. It was removed on March 5. The property owners asked why it was removed and requested that it be put back. Mr. Schrop wanted it put back. From that time on, the City said they did not put it back because it was an emergency access. Also at the April 4 meeting, he was quoted as making a statement which was a half truth that the Cipkes could do anything they wanted to with their property but they omitted that he had added to the end of that statement "as long as they adhere to City Codes." The third time, City Council received a document from Mr. Vacanti that indicated he (Mr. Mader) was contacted in August, 2007. That never happened. He is taking issue because it is casting dispersions. After the rock was removed, he had many

long conversations with Mr. Vass. The main gist was to find a way of compromise to keep it open. Both were trying to make it a workable solution. They met with Mr. Schrop on the matter. Then this petition was circulated. A meeting was held among Mr. Mader, the Law Director, Service Director, Engineer, Mr. Schrop and Mr. and Mrs. Vass, and the meeting went very well. They had ample time to express safety concerns. They discussed what the City was willing to do to alleviate the frustrations. The Vasses expressed the desire for the City to look at a path on Northampton Road. All of the properties along that route would have to pay 50% of the cost so that was not a viable solution. Also, Northampton Road is dangerous. At the end of the meeting, it was left at what the City could do to alleviate concerns. Mr. Mader went away from the meeting feeling they had a positive dialog. Shortly thereafter, things started to escalate with vandals. Mr. Vass called him and said he hired an attorney to fight this. When that takes place, it eliminates the ability of the City to negotiate. The bottom line is this is what has led to where we are tonight. He appreciated the opportunity of sharing the timeline from his perspective.

Mr. Rubino asked how the Administration arrived at the conclusion that it was due to a scribe error. Was it based on the March 21 Planning Commission meeting. Mr. Janis stated it was. In that meeting, the developer offered to substitute a pedestrian walkway. They have minutes of the meeting of what the Planning Commission decided but they do not have the minutes from the Council meeting. The matter came before Council in early 1996. Mr. Rubino stated that it said Council's vote denied it on December 11, 1995 and then voted to pass it on February 26, 1996. He asked if there was any record of what the recommendation for denial was. Mr. Janis stated it had nothing to do with the pedestrian walkway. Mr. Rubino asked if there was a record on how Council's decision was made. What this Council is faced with is it received information from a Planning Commission meeting many years ago and they have legislation that was put into law and recorded but it does not include any of the stipulations. He asked if it would be appropriate to send it back to the Planning Commission to be reviewed since there will be a change to the subdivision. Mr. Janis stated that would not fall under the jurisdiction of the Planning Commission. Mr. Rubino stated they needed to know what happened the night that legislation was passed and whether any changes were made. Mr. Janis did not know but stated a mistake was made when the plat was drawn. The City is only trying to correct that. This legislation declares Council's intention to open the easement for public and pedestrian use. Once Council approves it, the City can negotiate with the property owners. This legislation is not to change it, but to restore what was there previously.

Mr. Barnhart stated he contacted Lou Sharp, who was in charge of this back then. He said it was clear that this was supposed to be used as a walkway. He also contacted George Potts, who was the Ward Councilman. He remembers he had words with the Mayor and then went to bat for people who did not want a street. He remembers very clearly it was to be a walkway.

Mrs. Klinger asked for confirmation that a second piece of legislation would designate what would happen, whether it would be taking of true property or just taking the rights of use of the property. Mr. Janis stated if Council approves this legislation, then a later ordinance would specify what would be subject to appropriation. Mrs. Klinger asked where the money would come from since it had not been budgeted. Mr. Fitzsimmons stated it would come from the Capital Projects Fund. They would have to look to see what was budgeted. There were a lot of savings on projects. Mrs. Carr added they may have to cut into the sidewalk program and take it from there. Mrs. Klinger asked if this passes and it comes to a second ordinance, would that be when it is determined whether fences will be put up or if the property is purchased. Mrs. Carr stated they have discussed some alternatives in Cabinet that they have not discussed publicly. One of their thoughts was the reason they made the sidewalk 10 feet wide was because of the emergency access. They may be able to narrow it by 2-1/2 feet on each side to make it a thinner sidewalk to give more space to both homeowners. There is not a standard for a pedestrian walkway in terms of this usage.

Mrs. Pyke asked everyone involved what they would be willing to compromise. Would they consider time limits, no motorized vehicles, limit skateboarding? What would the public be willing to compromise to work

with the Vasses and Schrops. That is what she wanted to hear from anyone from the public who speaks to this matter.

Mr. Mader stated on page 4 in the minutes from the Planning Commission, it talks about amendments added to the staff report. He makes reference from steps 20 and 21 that should provide a 20 foot general purpose easement and an easement or deeded in Hidden Valley. And provide plans for a walkway/bike way subject to condition 18. It shall be built to support emergency vehicles. He read Mr. Sharp's comments where he explained the three developments that contained 170 housing units and, without linkages, they would not function as the neighborhoods they have become, including City plans for paths and bike trails to the schools so no one would ever have to go to Northampton Road. It is quite clear in the minutes that Mr. Sharpe definitely communicated to the Planning Commission that there was to be a pedestrian walkway.

Mr. Walters stated Mr. Sharpe was referring to vehicular connectivity until the end so they compromised. Mr. Sharpe was pushing for a road but the people in Hidden Valley did not want a road. Mrs. Hummel stated Mr. Mader did not read the beginning of that statement. It appears to her that he was adamant that the street that was to be Devonvale go to Hidden Valley. The proposal on March 21 was if they could not come to an agreement on the Hidden Valley side, the drawings would have Devonvale to the lot line and let it work itself out later. He was upset. He was not prepared to accept a compromise. His planning perspective was that the road was to go through. These two properties were to be corner lots. She was upset the City was in this place because she felt decisions were made on March 21, 1995 that brought us here. If the Planning Director had been listened to, we would not be here where we are now. She was very thankful they still had the Planning Commission minutes. However, the final legal document in this issue is the plat and it is the controlling legal document. The issue is whether the City has the right to have the walkway used publicly when it is not delineated on the plat.

Tony Vacanti, 3800 Embassy Parkway, addressed some of the comments made earlier. He stated this is as intrusive of a governmental action that can occur. Eminent domain can only be exercised in a cautious and deliberate manner. The Vasses and Schrops own the property. They are not abutting property owners. They pay taxes, insurance and have a mortgage. It is only fair they exercise ownership rights, too. It is confirmed on the plat. It was confirmed with the City. They relied on public records and on City officials when they purchased their residences. The City approved construction close to the walkway. Location approval is the responsibility of the City, not his clients. It is not fair to blame the Schrops and Vasses for this issue. They should not have to bear the burden. The plat was approved by the City without any walkway language. The City pitted other property owners against the homeowners. Police were called but said it is a civil dispute and they need approval from the Law Director before charging anyone with trespassing. The value of the home will be destroyed if this passes. He asked Council to stand for his client's rights and vote "no."

Karen Vass, 736 Dominic Drive, thanked the Council members who came out to see the property for themselves and see the safety, liability and nuisance issues. One Council member said something important. On the subject of alternatives, someone mentioned the vacant property at the end of Dominic Drive. The Council member stated that of course one would not want to run it between the houses. When she asked why not, the Council member was silent. She asked again and still got no reply. She then went on to describe an incident that occurred three nights before when she was verbally violated. She contacted the police who told her they could not come out without approval from the Law Director. She felt she was potentially in danger and had no police protection.

Rick Schrop, 722 Dominic Drive and co-owner of the easement, addressed some concerns. He worked for the City for 31 years in the fire department. The cement portion of the sidewalk is 10 feet wide. The wheel base of a fire engine is barely able to fit on that. Now they are trying to narrow it and the fence and buffer will interfere even more with emergency vehicles. Yes, he complained about the boulder for years. If the City was going to remove it for emergency vehicles, then it should have followed through with what it had

been saying for years regarding putting up the bollard. He thanked Council for taking the time and energy in obtaining and considering the information necessary to come to an informed decision about this. He especially thanked those who came out to the properties. He stated there was one important aspect about this legislation that goes beyond the impact on his residence. It will convey different messages depending on whether it passes or fails. If it is approved, the message conveyed is that this City government can and will refuse arbitrarily those rights granted to property owners under the U.S. and State constitutions. It can sacrifice those rights in what appears tantamount to mob rule. Any City resident can gather and get the support of the Mayor and cabinet to seize property for any reason they see fit. If it is defeated, private property owners within the City will know that the City does not recognize and support uniformly those rights granted by the U.S. and State constitutions. The City will not sacrifice rights to what is tantamount to mob rule. Property owners can have faith that what is recorded on legal documents is accurate and previous information given by City officials is accurate and that City officials will do what they say they will do. A home is supposed to be security. Due to City Administration's inactions for 10+ years, its refusal to recognize the Schrops' and Vasses' rights as property owners and its refusal to grant them equal protection under the law, their homes are anything but that. He asked Council to recognize his and the Vasses' property rights by not supporting B-36.

Lisa Biondo, 744 Woodhaven, has lived there since it was built. Since this matter has begun, there has been a division of the neighborhood. She has a daughter with special needs who rides her bike to a friend's house and back. She is concerned that if the walkway is reopened, her daughter may ride down it. The other walkways are going to parks but this is going into another development. Hidden Valley is going to Bath Road. She suggested putting sidewalks there and a traffic light. The Vasses are good people. She does not think it is a good idea to open this up.

Jeff McHugh, 689 Woodhaven, has attended both meetings. He built his house in 1994 and moved into it in 1995. He cannot get past the fact that the sidewalk was there in 1996. It was there when the Vasses and Schrops looked at the lot. He watched their houses being built. He stated they made a poor choice of lots. Many houses were being built in 2000--Woodhaven, Adams Run and Keyser Park. There were over 200 available lots from which they could choose to build, and these are the lots they picked. He urged Council to pass this ordinance. He also agreed that some of the incidents against the Vasses and Schrops should not have happened.

Debbie Lemke, 649 Woodhaven, would like to see the ordinance passed. She agrees it is breaking up the neighborhood. She understood the predicament, and what they have been going through is inexcusable. But not every person is there to do damage or yell. There are respectable people. She agreed with a curfew and liked the idea of narrowing the sidewalk. She was sorry for what the Vasses and Schrops have had to go through.

Judy Biskner, 605 N. Hidden Valley moved there in 2005. They wanted more space and they also ride bikes. They were able to get across safely without riding on Northampton Road. Now, she is stuck in Hidden Valley. This was the friendliest neighborhood. She has not encountered what the Vasses and Schrops have encountered. She apologized for what they are going through. It is wrong, but she does not understand why after nine years it is an issue.

Aidert Ofstead, 610 Brookpark, stated he did not like winners and losers. The City needs to keep looking for alternatives. If the development would extend Dominic Drive to Northampton Road, there would no longer be a need for an emergency easement. They could work to get the road completed to take away the need for the easement and change it to a true narrow walkway.

Bob Macak, 732 S. Hidden Valley, stated the property is being taken by eminent domain. No matter what happens here, there will be hard feelings either way. Most of the issues are being worked out. The walkway

was there. He attended all of the meetings and it was discussed about all of the neighborhoods being connected. Now, we have a situation with no winners. If the road is extended, you have the issue of Theiss Road, which will create more problems. The Planning Commission and City Engineer wanted to put in a road. The situation with teenagers will always occur.

Pete Vass, 736 Dominic Drive, understood that using the emergency access was convenient for neighbors but it invades his privacy and is a safety risk for both his family and the users. Safety is paramount. He cannot agree for this to be used as a pedestrian walkway of any kind. If it was a sidewalk, it would be three feet wide. This issue has resulted in a lot of tension. One thing he has learned is to never sign a petition without knowing all of the facts.

Mayor Robart stated there is a difference between a technicality and common sense. What there is here is a sidewalk. That is what was built. Council did not question it at the time. The intention of everyone was it would be a walkway for people to meet their neighbors. On the eminent domain issue, the City has used it hundreds of times. They are starting the final phase of Chart Road. That project would not have gone forward without eminent domain. But that is not the same as this situation. Of all the times the City used eminent domain, it has never gone the whole route. It is a tool that says to a person that the City is serious and that it really needs the individual to cooperate. They need to find common ground here. He thought about cutting it down to five feet and perhaps put up a fence and some plantings. The City has never needed to use it as an emergency easement. It is more important to get access for safety reasons. There is a solution here but they need two parties willing to cooperate and negotiate to come up with a final settlement. This needs to move forward. Attorney Vacanti asked what property rights were that everyone else was giving up. His clients were being expected to give up their property rights. Mayor Robart stated they can come up with several possible ideas. The neighbors do not have access. Everyone keeps forgetting the basic issue there. Mr. Walters stated he agreed but when things turn ugly, one may not be as agreeable. These people have the legal right to keep people out. He is embarrassed the City cannot enforce that if that's what is showing on the books.

Lou Maglione, 764 Dominic, lives at the end of Dominic Drive. He sympathizes with his neighbors. Regarding the need for connectivity, one unintended consequence is he has trespassers coming through on his property. He sympathizes but doesn't agree with trespassing on others without a concrete solution either.

Mrs. Hummel asked if the Administration was willing to compromise to give up the emergency access in lieu of a five foot walkway. Mr. Robart stated absolutely. They are willing to do that vs. losing access, but it takes two parties. Mrs. Hummel stated she had not heard a compromise from either side until the Mayor said that. She wanted clarification that the Administration was willing to compromise on a five foot paved walkway and giving up the emergency access. Mrs. Carr stated they had talked about that internally but wanted to run it by the fire chief. There is a waterline under that sidewalk so the City cannot give up the entire easement. Mrs. Hummel stated she was not suggesting this is the place to decide that issue tonight. It is nice to know there is a compromise out there. There is also developer land to the east which everyone hopes will get access to Northampton. Mrs. Pyke asked if the walkway was reduced to five feet and the City held the right for public access, who would be liable for the sidewalk. Mr. Janis stated it depended on the legal relationship that was created. If the City owned it fee interest, any liability would be to the City. Any other type of arrangement could be negotiated.

Mr. Walters stated what he saw from the beginning when this first became an issue is there is an emergency access and that is going to remain. What he heard from everyone else is they want pedestrian access. This location seems like the logical place but the owners do not want it there. Until all other options are explored, the City cannot take someone's property against their will. The City is looking to the Planning Commission in 1995 and feels it is one way. Maybe it is, but Council does not have that. Teens are finding a way now but there needs to be a paved path.

Mr. Mader moved to bring out B-36 with a favorable recommendation. There was no second. Mr. Ihasz moved to bring out B-37 without a favorable recommendation, second by Mr. Walters. Motion passed (2-1).

Meeting adjourned at 8:47 p.m.