

Cuyahoga Falls City Council
Minutes of the Public & Industrial Improvements Committee Meeting
April 4, 2011

Members: Don Walters, Chair
Mark Ihasz
Terry Mader

Mr. Walters called the meeting to order at 7:30 p.m. All members were present.

The minutes from the March 21, 2011 Committee meeting were approved as submitted.

Legislation Discussed

Temp. Res. B-36

Temp. Ord. B-37

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.

Hope Jones stated this request by the Administration is for approval of a resolution of necessity for the City to appropriate and enhance an easement in the Adams Run Subdivision, at 722 and 736 Dominic Drive. It involves a 20ø x 200ø easement that the City already owns as an emergency easement. There is also a sidewalk in the Cityø easement. That sidewalk connects to the sidewalk in Hidden Valley. Ordinance 50-1995 that was approved by Council contains a condition that the developer must submit plans for a walk and bike trail to be located in the area. All of the meeting minutes, correspondence and staff summaries show that official after official repeated the Cityø position of development. The City vacated the plan for a road but left the easement for a walkway. That walkway has since been closed.

Mrs. Carr stated that in November, 2009, the City received calls from Mr. Schrop regarding the walkway. He cited incidents that took place on Halloween, and some involving golf carts and other motorized vehicles moving at high speeds down the walkway. The City installed a chain with a reflector to help deter the motorized vehicles. They received authorization from the Fire Dept. to do that. Private property signs were installed by the Vasses and Schrops to stop passersby and children from using the walkway. The City receives 10 to 15 calls a day about not being able to use that sidewalk. The Mayor received a petition from 179 residents asking that the walkway be reopened. At that point, Mrs. Carr stated she talked to Peter Voss to arrange a meeting to alleviate the concerns of the neighbors. That meeting was held on May 5, 2010 and was attended by herself, Virgil Arrington, Mr. Mader, Mr. Demasi, the Vasses and Mr. Schrop. They discussed safety concerns and vandalism. Their main concerns was the bike riders and motorized vehicles, so they discussed banning vehicles and allowing only pedestrians. They discussed putting in a sidewalk on Northampton Road but the width of the road and the ditches prohibited that. The City would have to do a full reconstruction which would be very expensive for the City and the residents along that route would be responsible for 50% of the cost. They discussed installing screening on either side of the walkway, such as vinyl fence and pine trees to help soften the barrier between the homes.

Ms. Jones stated that on June 1, 2010, Mr. Arrington sent a letter to Attorney Stiller, who was representing the Vasses and Schrops at that time. The letter indicated that the easement would provide for a general utility portion, emergency portion, and sidewalk. Mr. Stewart then discussed the Park & Rec.Øs plan for Keyser Park for safe passage to and from the park. He described other walkways in the City that provided a safer route to the parks. He stated since the sidewalk was closed, Keyser Park saw a steep drop in attendance at the supervised park program last year because the kids who lived on the southern part of the walkway were not allowed to use Northampton Rd. to walk to the park. Ms. Jones stated this easement is necessary for public purposes and will continue to serve the neighborhoods it has served for the past 13 years. Not one citizen should have to utilize Northampton Rd. in order to access the other neighborhood or the park. There have been 49 accidents at two nearby locations: Northampton and Bath, and Northampton and Theiss. There have been only 5 accidents at Bath and Woodhaven. Woodhaven is a much safer access point. She added there was a 5-yr-old boy killed on Northampton near Keyser Park. The Administration requests this be passed in order for the connectivity plan to be achieved. Mr. Walters pointed out that this is not a walkway. It is for emergency vehicles only. Ms. Jones agreed that legally, on the plat, it is a general utility and emergency access easement. Mr. Walters stated for connectivity, he could not imagine the Planning Commission not wanting a road through there. Ms. Jones stated the original design of the Adams Run Subdivision called for Devonvale to run between the Vass and Schrop properties. Mr. Walters stated that the Planning Commission felt that an emergency vehicle access would be sufficient. Ms. Jones stated there appeared to be citizens in the Hidden Valley Subdivision that were upset when they found out about the land that was reserved for a future road. They appealed to the Planning Commission to have the developer change the design. Mr. Walters stated the easement is an emergency vehicle access only. It is their yard and their property and they have every right to put up signs. Ms. Jones stated the City told them it didnØ mind but reminded them it does have an easement on that property. Mr. Guerra stated the preliminary plan was to send the street to Northampton. It is on hold now. Mr. Walters asked about the vacant property at the end of the road. Mr. Guerra stated there was no room to put a walkway there. There are lots on both sides. Mr. Walters observed that Mr. Guerra was saying that doing so would encroach on people who would not like it there just like it is in this case. He understood about connectivity to parks but asked whether it was required to cross at a crosswalk. Mr. Demasi stated it is always safer to cross at an intersection vs. mid-block when that availability is there.

Harry Himmelright owned property that Blossom purchased so he understands what is at stake here. He stated there is no access to the park from the north side of Hidden Valley. That walkway is needed. He would have never let his son walk on Northampton Road to get to the park.

David Kelleher, 625 S. Hidden Valley, moved in two years ago. One of their considerations before they purchased was they felt they were away from everything, and then they discussed the convenient walkway. They thought it was nice for their kids to go to Keyser Park. When the petition came around, he signed it. Even if the City comes up with an alternative of building something along Northampton Rd., he would not allow his children to walk it.

Lynn Morris, 816 Adams Run Drive, has lived there for eight years. She used the walkway for bikes and running. She never had a problem with the neighbors. She also would not let her kids walk on Northampton to get to the park. If the City owns the sidewalk, she is not sure why it is an issue now. She and her kids enjoyed it.

Debbie Lemke, 649 Woodhaven, has been a resident for seven years and had friends who used the walkway. It was upsetting to her when it was closed. The property owners had pictures taken of kids who continued to use it and even had some kids do community service. She travels on Northampton to work. It is not safe for walking.

Tony Vacanti, an attorney with Buckingham, Doolittle & Burroughs, represents the Schrop and Vass families. He explained what the law defined as eminent domain. The walkway creates a dangerous situation. In order for the Vasses to get out of the garage, they must back up onto the easement. It is the same to pull back in. It is not a big deal with an emergency easement, however, it is a big deal with a walkway. The Schrops and Vasses own that walkway and are liable for anything that happens on it. If the City appropriates and something happens, the City is exposed to liability as well. He asked that Council exercise discretion. Ohio law states that eminent domain can only be done for a legitimate business purpose.

David Hart of D.B. Hart, Inc., stated he looked at this situation from three angles: (1) based on his professional experience, (2) the impact on the neighbors, and (3) what is served. He stated the walkway was designed for emergency vehicles and utilities and is not safely designed for pedestrians. The spacing between the Schrop and Vass homes is less than one-half the distance than that between the homes on the Hidden Valley Drive side. As a result, there is no ability to have functional space with what goes on the easement and what goes on the private property. The distance between the garage and the easement is 23 feet. It would be reasonable to expect 25 feet plus an overhang. Converting this to a trail is unacceptable from both a nuisance and safety perspective. It was his recommendation that the easement be restricted as it is and the pavement ripped out. He felt this legislation was a knee-jerk reaction because of the support of the residents but that reaction does not validate the proposal. Attorney Vacanti added that the property owners were inviting Council members out to see the area.

Karen Vass, 736 Dominic Drive, stated her family and the Schrop family are very aware that people feel they are wrong in their position regarding the emergency access. She and her husband found the home in 2000. They asked about the easement and was told it was for emergency access only, and that they owned one-half of the easement and the Schrops owned the other half. After they moved in, they found it was being used by both neighborhoods as a sidewalk, bike trail and more. The volume of users has increased. There have been motorized vehicles, cars, ATVs and motor bikes zooming down the path near where her children played. When the motorized vehicles could not get past the boulder, they cut through her driveway or went over the Schrops' lawn to get around. People have used their driveway as a cut around. They still have trespassers going around the chain by skateboarding down their driveway. The easement is part of their driveway. They cannot get cars in or out without using the easement. This situation is dangerous for them and for others. The City is pursuing an easement that was never designed as a walkway.

Rick Schrop, 722 Dominic Drive, stated that the buffers that the City offered to plant would be on his property so he would lose even more than he already has, fences included. On May 1, 2010, he received a letter from the City offering him \$1 for the easement. He also stated they never denied access to the property for appraisal purposes. They only denied access to the interior living personal space. The fatality that was unfortunate was due to a child playing in a ditch and a tow truck that went off the road and hit him. It had nothing to do with the child walking along the road. He asked about the concrete path when he bought his home and was told it was an emergency easement. They spoke to the City engineer and zoning person who confirmed it was an emergency access easement. They were also told there would be a collapsible barrier at each end to keep unauthorized users from the easement. He continued to contact the City about the barriers and was told they would be put in but that never happened. They have had an increasing volume of traffic and noise that occurs both day and night. He has spent more than \$1,000 replacing trees and plants along the easement that dogs urinate on and kill. His wife has also been subjected to abusive language while working in the yard. In August, 2007, his wife contacted the City and was told the easement was for police and fire only. They referred her to their councilman, Terry Mader. She tried to contact Mr. Mader but he failed to respond. In March, 2010, with the City acknowledging that the Schrops owned the easement, the Schrops decided they needed to close it to all nonemergency traffic. Since that time, they have been victims of retaliation. There continues to be a blatant disregard of people insisting they are allowed to use the property. When the Cipkes had an issue, Mr. Mader had stated they had a right to do what they wanted with their

property. However, the Schropsørights are being ignored. He asked that Council respect his and the Vassesø property rights by not supporting Temp. Res. B-36.

Mr. Walters stated that out of fairness, when you drive by it does appear to be a sidewalk. The average person would not know. Legally, however, that is the Schrops and Vasses yards. He asked who in attendance that evening would be willing to offer up their property to have a walkway built to allow access between the developments. No one spoke. Mr. Walters stated this is a safety issue and connectivity is needed but this is not the spot. With some of the backlash they have had, they do not wish to have people coming through anymore.

Connie Griffith, 866 Adams Run, had not intended to speak. When she signed the petition to reopen the walkway, she was told the property was owned by the City. She would never want to take property away from someone. There are some things you cannot have because you do not own it or it belongs to someone else. These people own this property. It does not belong to the City and never has. This is about people willing to take away rights for something they want. The Schrops and Vasses have been generous for 12 years and now, when they say no, everyone is ganging up. She is sorry this issue has come to this point and urged Council not to support this legislation.

William Bandy, 633 N. Hidden Valley, lives on the east side of the existing sidewalk. Heø lived there for 41 years. The original plat had a reservation for a future street, part of which was on his property. They paid for 144 foot lot and pay taxes on the entire lot. The same as on the other side of the walkway. They were invited to a meeting regarding plans for a new subdivision which had a street going between the properties. The space was too narrow so the developer revised the plan for a 10 foot wide walkway for pedestrians and emergency access. He and his neighbor gave 10 feet from each of their properties for sidewalk purposes and were told the City would acquire like title to the north end of the walkway. He felt it was unfortunate this wasnø handled at the time of the purchase of the property.

Karen Morris lives in Stow. She does not think it would be possible, even if this easement is granted, for the Vasses and Schrops to be safe because there has been retaliation, and feels that will continue for the next few years. She walks a trail and sees dog excrement everywhere, trash, people fighting, vandalism and people painting on garages. Had these property owners known about this being a walkway, they would not have moved there. She respects everyoneø property but she would not want to live near a walkway. She found it odd that the group of people concerned for their children would not want to make a walkway on their property so their children could get to the park. Everyoneø emotions are up and people are being rude. There are some that arenø letting others say their peace. She felt this walkway should be placed somewhere else, come to a win-win situation and let everyone be safe.

Alexander Folk, 2365 Hoffman Dr., moved there in 2000. He has two kids out of college and a 14-year-old at home. This walkway is becoming less important to his family, but it is important to the neighborhood and community. This easement and the location of the driveway is no different than anyone elseø drive. There are rules about riding on sidewalks so it is not a legitimate concern for their children playing. He doesnø understand their concerns about a walkway that was there when they built their house. He agrees there should not be any disrespect of property. If the concern is so great that it will create problems for the homeowners, perhaps the City should buy the properties, separate the easement and resell them.

Diane Amburn, 673 Woodhaven, thanked the City for the time thatø been put into this issue. Everyone she talked to signed the petition. They were upset about the closure. These property owners purchased their properties with the sidewalk already there. If it hadnø been there, she would not argue. The walkway should be reopened. As far as backing out of their garage onto the easement, that is what happens when everyone backs out of their driveway. They have to watch people and kids coming down the sidewalk. She asked Council for a vote to allow the walkway to be reopened.

Mr. Walters said he could see both sides. He hoped there will be deep thinkers who will come up with other options. There has to be people willing to work with this instead of forcing these people to give up their property. He agrees he does not want kids on Northampton or Bath Roads. He pointed out there is no connectivity between Michelle Rue and Prange and no one has ever asked for it.

Mr. Ihasz stated he went this weekend to look at this private property with emergency access easement, and met with both property owners who gave him a tour. He recommended that every member of Council do the same to see the safety issues and property value that would be going down. If it becomes a walkway, they will be staying there for some time because he wouldn't want to buy something near a walkway.

Mr. Mader thanked everyone for participating in this issue on both sides. The Vasses did not know the boulder was being removed until the City came to move it. The City recognized the boulder should not have been there. He and Mr. Vass tried to come up with a viable solution for everyone. The City received a petition of 179 signatures, and that does not include telephone calls. The common understanding is 13 years of usage establishes some kind of precedence. He finds it interesting there is no record of all of the things that transpired leading up to the removal of the boulder. No police reports were made. He is disappointed in the retaliation. Everyone is supposed to be adults and work together to fix problems. Harassment is unacceptable. He indicated he is in support of this. No one likes imposing eminent domain. There is no answer that will help everyone. There is no other viable way for children to travel between the neighborhoods. He condemns what has been transpiring as far as retaliation, however, he has to consider the safety of the entire families who live in the area, and that is to keep the walkway open.

Mrs. Hummel stated that compelling arguments have been made on both sides tonight. She remembered when this happened, however, there are some things she cannot recall so it would be helpful for Council to see the minutes of the Planning Commission meetings that transpired prior to enacting the legislation. If a road was proposed and an accommodation for an easement was made at the request of the developer to avoid losing one or two lots, it would be important for Council to know what those accommodations were. She was in favor of holding this until Council could review what those minutes state in order to get a sense of what the Planning Commission and Council had to say. She would also echo the comments about the barriers that should have been put up so only walkers or bikers could get through. Someone dropped the ball several times along the way. Hopefully, a solution will be found that will guarantee safety to everyone.

Mr. Walters recommended holding the legislation. Taking someone's property by the City for certain things is a big deal. It is not something that is taken lightly.

Mr. Mader moved to hold Temp. Ord. B-36, second by Mr. Ihasz. Motion passed (3-0).

The Public & Industrial Improvements Committee recessed at 9:30 p.m. and reconvened at 9:45 p.m.

Temp. Ord. B-37

An ordinance authorizing the Director of Public Service to enter into a contract or contracts, according to law, for construction of an electrical substation at 3535 State Road, including construction of an associated 23kV pole line, and declaring an emergency.

Mrs. Carr stated this is the next phase on the new substation on State Road. They were very happy with the bid price. Mr. McHugh stated there were five bidders. They had budgeted the project at \$2.4 million and the low bid was \$1.8 million from Thompson Electric. They are hoping to start the project the first week in May. The building should be up, and the equipment installed inside, sometime in the October/November timeframe. It will be early spring before they put it online. The substation building will look nicer than the ones that already exist. Mr. Walters asked if anything had to go before the Planning Commission. Mrs. Carr

stated it already did. Mr. Walters asked if they could still take the old substation out of service before the new one is completed. Mr. McHugh stated they could and, in fact, that will be happening fairly soon. They will just shift the load around. Mr. Walters asked if any of the equipment in the old substation would still be usable. Mr. McHugh said other than scrap, it wouldn't be usable. Mrs. Pyke asked if the building would be able to be seen from State Road or would it be behind the trees. Mr. McHugh stated it will be towards the rear of the property. It could still be seen but it will look just like a building. There will also be trees for a buffer for the resident on Cochran Road.

Mr. Ihasz moved to bring out B-37 with a favorable recommendation, second by Mr. Mader. Motion passed (3-0).

Meeting adjourned at 9:50 p.m.

Diana Colavecchio

From: JonesHL@cityofcf.com
Sent: Thursday, April 07, 2011 11:31 AM
To: colavecchio-diana@sbcglobal.net; JanisPA@cityofcf.com
Cc: WALTERS, Don; HUMMEL, Kathy; JEFF IULA; JAMES, Jerry; KEN BARNHART; CAROL KLINGER; TERRY MADER; IHASZ, Mark; MARY ELLEN PYKE; RUBINO, Vince
Subject: Re: Dominic Dr. Easement

THIS MESSAGE CONTAINS PRIVILEGED AND CONFIDENTIAL ATTORNEY-CLIENT INFORMATION.

Diana,

There is no legal definition for "utility and emergency easement" in the revised code, nor does caselaw set forth a hard fast definition. Typically, the easement documents set forth the defined use of the easement. However, as with Dominic Drive, the easements are simply noted on the plat that was filed. The plat for the Adams Run subdivision states:

All easements shown hereon are for the construction, maintenance, operation, repair, replacement and removal of water, sewer, gas, electric, telephone or other utility lines or services and for the express privilege of removing any and all trees, shrubs, bushes, buildings or other obstructions to the free use of said utilities and for provided ingress and egress for said purposes and to maintained as such forever.

The easement between the Vass and Schrop property simply reads: "Water line and emergency access easement." No other defining language exists. However, if you review the minutes and records of meetings, it is clear that the emergency access easement was a reservation for the safety forces to access Hidden Valley, Adams Run and Woodhaven in the event the access had been closed at another location. Woodhaven and Adam Run have only one way in and out-Woodhaven. Therefore, in a rare event that there is an obstruction at Woodhaven and Bath and a fire call comes in the Woodhaven or Adams Run, the access easement could be utilized.

When an easement is established you have a grantor (developer) and a grantee (City). The City's interest in the land is known as the dominant estate or interest and the Vass/Schrop interest is servient estate. The City's easement constitutes a right and a privilege to use the property.

The Vasses/Schrops continue to own the property and must pay taxes, but they are not permitted to "interfere" with the City's use of the easement as the dominant estate holder. The City is required to keep the easement in good repair and upkeep.

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04/06/2011 12:05
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Subject

Domenic Dr. Easement

Hope: can you please provide us with a legal definition of a "utility and emergency easement", including the rights and responsibilities that attach to both the grantor of the easement and the grantee. Thanks! Diana

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