



LORAIN COUNTY

Board Of Commissioners

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440-329-5103

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440-329-5488

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440-284-4467

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440-329-5150

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440-988-7210

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Charles Mackin
440-244-2137

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440-328-2323

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Lynn Wallace-Smith
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Thomas Ferguson
440-329-5545

April 6, 2005

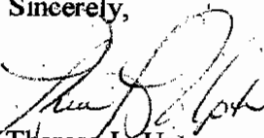
Marsha D. Funk, Clerk
c/o Brownhelm Township Trustees
1940 N. Ridge Road
Vermilion, Ohio 44089

Dear Ms. Funk:

Enclosed is a corrected copy of Resolution No. 04-931, adopted by the Lorain County Board of Commissioners on December 16, 2004 granting the Vacation of Peasley Road, an existing road with a right of way 60' and is located in Original Lot #61 and 68 of Brownhelm Township from Vermilion Road to Portman Road, Lorain County.

Please note the correction is the Parcel # should read #0100068000006 not #0100068000008.

Sincerely,


Theresa L. Upton
Clerk

tlu
Enclosure

Cc: Judy Nedwick, LC Recorder
Mark Stewart, LC Auditor
Ken Carney, LC Engineer
Tom McNair, LC Tax Map
File

RESOLUTION NO. 04-931

In the matter of granting the Vacation of Peasley Road,)
an existing road with a right of way 60' and is located) December 16, 2004
in Original Lot #61 and 68 of Brownhelm Township)
from Vermilion Road to Portman Road, Lorain County)

WHEREAS, Resolution No. 04-865A, adopted December 2, 2004 closed the public hearing on the proposed vacation of a portion of Peasley Road, an existing road with a right of way 60' and is located in Original Lot #61 and 68 of Brownhelm Township from Vermilion Road to Portman Road, Lorain County, Ohio; and

WHEREAS, Board of Commissioners suggested Mr. Smith meet with the Township Trustees and find a solution to his problem and will present under Old Business on December 16, 2004; and

WHEREAS, Dane P. Leimbach, Chairman, Brownhelm Township Trustees submitted a letter dated December 3, 2004 as follows and referred to in this speaking;

"I would like to apologize for not being able to attend yesterday's public hearing regarding the requested vacation of a portion of Peasley Rd. in Brownhelm Township. I had originally planned to attend in order to provide information from the Township's point of view, but a situation arose at my job that prevented me from leaving in time to attend the hearing. In lieu of that opportunity, I will attempt to provide you with all of the pertinent information in the situation.

Approximately two years ago, Mr. David Miller came to the Board of Trustees with a request to do something about a problem with illegal parking on a portion of Peasley Rd. that intersected with Vermilion Rd. Fishermen that were accessing the Vermilion River via property owned by the Miller family and Lorain County Metroparks. were parking along side of the portion of Peasley Rd. blocking a driveway to property that the Miller family owns. as well as damaging landscaping along side of the road. This piece of Peasley Rd. is approximately 100 yards long and ended at the top of the valley, where it was blocked by the Township in the late 1950's.

The reason that the road down into the valley was blocked, was that a "slip" had occurred on Peasley Rd., on it's way into the river valley, and the roadway was unable to be repaired with the funds available. The County Commissioners at that time, passed a resolution allowing the road to be barricaded, thus the blockage at the top of the valley.

In order to act on Mr. Miller's request the Township erected No Parking signs along that portion of Peasley Rd., in the hopes that this would solve the problems that the Millers were having. In short, it didn't stop the problem.

Despite the fact that Peasley Rd. was barricaded, the portion of the road that was no longer passable, had never been formally vacated. A discussion was held at one of our meetings, over the idea of moving on requesting that your Board formally vacate that portion of the road. I spoke with the Prosecutor's office about the required process and we decided to move ahead with the request.

I spend time researching the ORC process and the various property lines and point of vacation. I then spoke with the property owners adjacent to the portion of the road that the Township wished to vacate, and received verbal approval to move forward with the process. I did not speak with Mr. Smith or his brother, because no access to their property was going to be restricted by the vacation. Dan Martin of the Lorain County Metroparks said that as long as access to their property along the Vermilion River was not restricted, vacating a portion of the road would be no problem for the Metro Parks. In that conversation, Mr. Martin mentioned that the Ohio Department of Natural Resources had requested that the Metro Parks provide formal parking facilities that would allow fishermen to access the Vermilion River, as they were in the process of stocking the River with some species of fish, and they wanted the fishermen to have better access to the River. One of the locations that they had planned to install these facilities was along Peasley Rd. Since Mr. Miller had originally requested that something be done about the portion of Peasley Rd., he said that their family had no problem with the vacation.

The Township then spoke with the Lorain County Engineer's office in regard to the process to vacate a portion of the road, and legal descriptions and a petition were drawn up. to comply with the ORC requirements for vacation. These documents were then submitted to your office for consideration.

A formal hearing was scheduled a legal notice published and notices to the owners of property abutting the portion of Peasley Rd. that was to be vacated, were sent. Upon learning of the requested vacation, a Mr. Jim Collier, who owns property at the south end of the barricaded portion of Peasley Rd. contacted me, and complained about hunters and fishermen parking in front of the southern balricade and in his driveway. Beside that complaint, he was concerned that if we re-opened the portion of Peasley Rd. that could still be traveled, that the mischief that contributed to the Commissioners decision to originally barricade the road, would return.

In the decision to request that the Commissioners vacate a portion of Peasley Rd., the Trustees agreed, that a portion of the road that was behind the barricade, but potential ly still travelable, would have to be repaired to a useable condition. During one of the on-site views of the road, which Mrs. Vasi attended the determination of the southern barricade next to Mr. Collier's house was discussed. Since there was no additional formal barricade at the northern end of the roadway it was agreed that once the roadway was re-established and the Metro Parks had constructed their parking area, that employees of the Metro Parks would open and close the barricade on a daily basis. Mr. Grant Thompson, an employee of the Metro Parks, mentioned that it was." possible that the Parks system could put some sort of automatic. electrically operated gate at that point, if it were possible to have the access temporarily restricted.

In discussions with Mr. Gerald Innes of the Lorain County Prosecutor's office, the Township learned, that in situations of an established roadway, that it is the Township's responsibility, to see that the road is open to public use, unless a condition exists, that causes a hazard to the traveling public. At that point, it is permissible, to close the road. temporarily, until such situations are rectified and the roadway is then re-opened.

After the first hearing regarding the vacation of the road was held and during the discussions of exactly where the formal barricade at the north end of the remainder of Peasley Rd. was going to be placed, Mr. Smith was contacted by the Township in regards to using the drive access to a field on their property, as a turn around for the Township's snow plow. Due to the geography, the driveway to his property, was the most logical place to effect this turn around. The Township offered to install a new driveway tile, gravel approach and chained barricade to his property for the right to use the drive as a turn around. He declined this offer.

During that discussion, Mr. Smith voiced his displeasure at the vacation process and alluded to the possibility of suing the Township and the County over the vacation process. It was his opinion, that the process was not conducted according to ORC procedures and thus he was being aggrieved. His contention was that even though access to his property was not being restricted, that because his property abutted the width of the right of way that was going to be abandoned, he should have been notified by mail about the vacation process.

I spoke to Mr. Innes, and asked if Mr. Smith had grounds to his claim and he stated that despite the fact that the intent of the law had been followed, that perhaps the letter of the law had not and that it may be better if the process was repeated to the letter of the law.

This brings us to the point where we are now. The Township, the Metro Parks, and the Miller family are all on the same page. Mr. Smith is not and refuses to accept the opinion of Mr. Innes regarding the legality of an established roadway, and he wants the barricade at the southern end of the previously barricaded portion of Peasley Rd., to remain in place. Mr. Collier, the property owner at that point of the road, does not want it to remain in place.

Mr. Smith's concerns are regarding the possibility of trash being dumped on his property and trespassers on the property. In regards to the trash aspect, the way in which the roadside foliage exists along Mr. Smith's property there is only one place, where someone who would dump trash along a roadside, could access his property. That would be at the one driveway at which the Township offered to erect a chained barricade in return for being allowed to use it as a turn around. Otherwise, there is very little possibility that anyone could dump trash directly on his property. Trash could be dumped along the roadside, just like along any other roadside in the Township, County, State or Nation if this were to occur, it is the Township's responsibility to pick up such trash, and our road crew is quite good at seeing that we have clean roadsides.

Regarding the trespassing issue just like any other property in the County, if someone wishes to trespass, then they will. When this occurs, if the Sheriff's department is contacted, they have been very good about seeing that these situations are addressed. This is the only way that this issue could be handled, no matter if the road is open or closed. In point of fact, if the barricade is left erected at its present location and trespassing occurs, there is little chance that a sheriff's deputy could arrive on the scene and do anything about it, before the offenders left the premises.

As a side note to this portion of the "story", I'd like to recount a situation that occurred one day while we were on the site discussing the situation. At one point in our discussion, I noticed a person walking along the eastern edge of Mr. Smith's property while we were standing in the aforementioned driveway on the west side of the property. That person was not someone who had come to the location by way of Peasley Rd., but rather they had walked onto Mr. Smith's property from either Mr. Bechtel's, Miller's, or the Metro Parks property. So it made no difference, if the road was open, closed, established, or vacated, there was still a "trespasser" on Mr. Smith's property.

So, your honors, this is the story of the Townships' request to vacate a portion of Pealsey Rd. We respectfully request that you proceed with our request and formally vacate the requested portion of the roadway according to the formal documentation. If you have further questions about the situation, I would be happy to answer them to the best of my ability. I may be reached during normal business hours at my place of employment, at 988-4474. I look forward to hearing from you on this issue.

Sincerely, S/Dane P. Leimbach, Chairman"; and

WHEREAS, Commissioner Blair asked Mr. Smith if his concerns were answered.

Mr. Smith showed pictures of the property where the gate currently stands.

Commissioner Blair said at the last meeting, Mr. Smith wanted the gate to remain. Mr. Smith said yes, it has been there for 40 years and if by law, it has to come down it has too, but it has been there for 40 years.

Commissioner Blair said if the road is vacated the barricade stays up. Mr. Leimbach said the portion of the road to be vacated is beyond the section where the gate is now. There is a gate barring traffic from a portion of the road that is not being vacated. A road can't be vacated, denying access to property owners; Mr. Smith, Mr. Betchtel and the Metroparks, which have access to their property. The section that is being asked to be vacated is abutted by the Metroparks and the Miller family, which have both agreed that this section be vacated. The gate that the Township wishes to be removed is blocking a part of the road that will not be vacated.

Assistant County Prosecutor Innes, said Section 2744.02 of the Ohio Revised Code requires governmental entities to keep public roads free of obstruction that includes barricades. The Commissioners and the Townships are creatures of statute indicating they only have those powers that are specifically provided and the Attorney General's Office has ruled on a number of occasions and barricading a road is not one of their authorities. The Trustees have a duty to keep it open and free.

Mr. Leimbach said there is approximately 3/8 to 1/2 mile of the road that is presently by the one gate with the stop sign that is denied access to the general public. This is the gate the Township wishes to be removed. The white gate is blocking access to the Metro Parks parking lot.

Commissioner Blair said in accordance to the law the gate needs to be removed. Commissioner Moore said if the property is not vacated this gate comes down. Mr. Smith said he would like to see the law and it be read. There are three parties involved and it has been there for 40 years.

Mr. Innes said if someone drives down that road through this illegal gate and drives off the road and is killed or injured the Township would be liable. Mr. Smith said that is a reason that it should stay.

Commissioner Moore said if the barricade is up and someone gets hurt, the Township would be liable because it is an illegal gate.

Commissioner Vasi said by law you can't just block a street for no reason.

Mr. Cordes said the road belongs to the public and when the barricade comes down the bridge is out, so the road is no good.

Mr. Leimbach said the Township would put up another barricade at the end of the vacation where the bridge is out and Parks would retain access for ATV vehicles to the river valley, etc.

NOW, THEREFORE BE IT RESOLVED, that Commissioner Blair moved to grant the vacation of the proposed Peasley Road, an existing road with a right of way 60' and is located in Original Lot #61 and 68 of Brownhelm Township from Vermilion Road to Portman Road, Lorain County, Ohio and said approval is determined to be for the benefit of the public convenience and welfare. Commissioner Vasi seconded the motion.

Said Vacation is granted as follows:

PETITION FOR VACATION

Vacate a portion of existing Peasley Road, said road is located in original lots 61 and 68 of Brownhelm Township, said road is 60' in width and runs from Portman Road to Vermilion Road as recorded in the Huron County Recorder's record of plat Volume 1 Page 19. The portion of road to be vacated in described as follows:

Beginning at a point on the centerline of "Vermilion Road at its intersection with the centerline of Peasley Road;

Thence South $56^{\circ} 20'$ West along the centerline of Peasley Road a distance of 30' to the extension of the west right of way line of Vermilion Road, this being also, the principle place of beginning;

Thence continuing along the centerline, with the vacation to be 30' on both sides of the centerline, South $56^{\circ} 20'$ West a distance of 251.82' to an angle point;

Thence $71^{\circ} 15'$ West a distance of 171.60' to an angle point;

Thence $88^{\circ} 35'$ West a distance of 139.02' to an angle point;

Thence $47^{\circ} 30'$ West a distance of 223.08' to an angle point;

Thence $82^{\circ} 35'$ West a distance of 374.88' to an angle point;

Thence in a southerly direction along the centerline of Peasley Road to the northwest corner of parcel #0100068000006 owned by Jack and Allen Smith, which is also the end point of the description of the vacation.

FURTHER BE IT RESOLVED, said Vacation of the aforesaid portion of existing Peasley Road, said road is located in original lots 61 and 68 of Brownhelm Township, said road is 60' in width and runs from Portman Road to Vermilion Road as recorded in the Huron County Recorder's record of plat Volume 1 Page 19, Lorain County, Ohio shall accrue proportionately to the benefit of the adjacent property owners as provided by law.

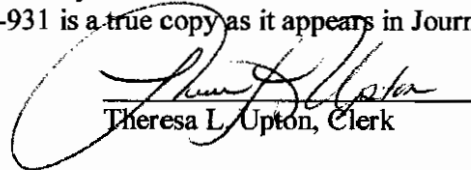
BE IT FURTHER RESOLVED, that the land is within the limits of said street as they are now established, shall forever remain, notwithstanding the passage of this resolution, subject to the rights of utilities now maintaining structures, fixtures and appurtenances in, under, over or upon said lands, to continue to maintain such structures, fixtures and appurtenances, and to enter upon said lands wherever reasonably necessary to do so for the purpose of inspecting, altering, replacing, repairing, patrolling and maintaining such structures, fixtures and appurtenances.

FURTHER BE IT RESOLVED, that a copy of this resolution be forwarded to the County Recorder, Auditor, Engineer, Tax Map and Elyria Township Trustees for recording and filing.

Ayes: Blair and Vasi / Nay: Moore

Motion carried. _____ (discussion was held on the above)

I, Theresa L. Upton, Clerk to the Lorain County Board of Commissioners do hereby certify that the above Resolution No. 04-931 is a true copy as it appears in Journal No. 04-2 on date of December 16, 2004.


Theresa L. Upton, Clerk

