

LORAIN COUNTY



COMMISSIONERS

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LORAIN COUNTY
AUDITOR

Commissioners

Herbert J. Jacoby
Mary Jo Vasi
E.C. (Betty) Blair

May 17, 1995

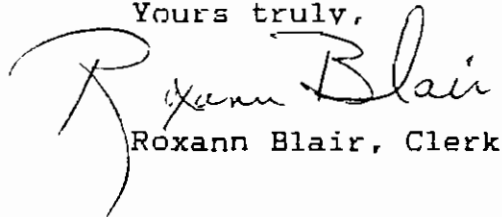
Mr. Kenneth P. Carney
Lorain County Engineer
247 Hadaway Street
Elyria, Ohio 44035
Attn: John Hamilton

Dear Mr. Carney:

We are enclosing a copy of Resolution No. 95-288 adopted by the Lorain County Board of Commissioners on date of March 30, 1995 denying the request for proposed vacation of a part of road right-of-way known as Frederick Avenue, Original Lot No. 75, Columbia Township, Lorain County, Ohio.

This is being forwarded for your information and files.

Yours truly,


Roxann Blair, Clerk

RB/dw

Enclosure

cc: Columbia Township Trustees
Jerry Innes
Mark Stewart
Mary Ann Jamison
File

In the matter of the public hearing)
 denying the request for proposed)
 vacation of a part of road right-)
 of-way known as Frederick Avenue) March 30, 1995
 Original Lot No. 75, Columbia)
 Township, Lorain County, Ohio)

WHEREAS, after due and legal notice a public hearing was held on February 16, 1995 for the proposed vacation of a part of road right-of-way known as Frederick Avenue, located in Original Lot No. 75, Fred Probst Subdivision, Columbia Township, Lorain County, Ohio; and

WHEREAS, President Jacoby asked Assistant County Prosecutor Jerry Innes, to summarize his Prosecutor's Opinion on several legal issues which were raised at the February 16 hearing. The Opinion in its entirety reads as follows:

The Commissioners have requested that this office address several issues raised during the hearing conducted on February 16, 1995 regarding the above captioned vacation proceedings.

1. Initially, it must be determined whether this road has ever been dedicated. The 1954 plat indicates that the county approved the plat, but there is no indication that the roads within the plat were ever accepted. The Attorney General in opinion 87-046, has stated that approval on the plat is not sufficient to complete statutory dedication of a road unless there is acceptance.

One way acceptance can occur is through legislative action. There is no evidence that the County Board of Commissioners ever took such action. There was a resolution passed by the Columbia Board of Trustees in October of 1954 accepting Frederick Road.

Prior to 1953, it was permissible for township trustees to accept in some situations, and thus formalize the dedication of township roads. However, on October 1, 1953, Section 5553.31 of the Revised Code was enacted. This provision requires that the County Commissioners accept the dedication of a road. It is therefore the opinion of this office, that the resolution passed by Columbia in 1954, after 5553.31 took effect, was not sufficient to dedicate the road without further confirmation from the County Commissioners.

This confirmation could have taken place by formal resolution of the Commissioners, or by some deliberate act such as clearing and marking the roadway which would have evidenced an intent by the Commissioners to accept the road. From the facts elicited at the hearing, none of these things occurred.

Resolution No. 95-288 con't.

Based on the evidence submitted thus far in the proceedings, this office concludes that Frederick Avenue has not been accepted as a dedicated road. This means that Section 5553.10, which is the code provision which mandates when a road must be vacated does not apply.

It is the opinion of this office that the Commissioners are not required to vacate this road.

2. The next question is whether the Commissioners may vacate Frederick. Section 5553.042 allows the Commissioners to vacate an abandoned road. (This section used to be mandatory upon the Commissioners, but is not discretionary) Additionally, Section 5553.04 allows the Commissioners to vacate a road when the Board "is of the opinion that it will be for the public convenience or welfare".

Mrs. Rose suggested the Commissioners can not vacate a road that has never been established through proper dedication. This might be a viable argument in regards to vacation under 5553.042 as an abandonment procedure. It is logical to conclude that you can not abandon a road which has never been established.

However, this office does not believe that this would preclude the Commissioners from vacation under the broader power of 5553.04. It is the opinion of this office that the Commissioners may vacate this road under 5553.04 if the Board finds it to be for the public convenience or welfare. Procedurally, to avoid any challenges to the process, the Commissioners, would first have to formally accept the dedication, then vacate the same.

This office renders no opinion on whether the Commissioners should proceed to do this. It is within the Board's discretion to balance the competing interests of those citizens who wish to avoid use of the residential streets for commercial traffic, against those who wish to further develop their lands.

3. With respect to the development aspect the issue was raised of compensation to those landowners who suffer a loss of property value. When a vacation affects a landowner, there are occasions when the County would be required to pay compensation, similar to an eminent domain taking.

My research indicates this applies in situations where an owner is deprived access to his property so that the property can not be used at all; generally it has not been applied when the vacation reduces some unfulfilled potential use.

Resolution No. 95-288 con't.

Two owners, Mr. and Mrs. Rose, and Mr. Smith objected that the vacation would affect their ability to develop their properties. Again this is a factual determination for the Commissioners to make. It would appear in the case of Mr. Smith, that although he may have less access to this property, he will still have enough such that vacation would have minimal affect. Further, the buffer zone imposed by the township might make a through street an impossibility. It is the opinion of this office that there is little likelihood of compensable damage occurring to Mr. Smith. However, keep in mind this is only an opinion, and Mr. Smith could ask a court to ultimately consider this issue.

The Roses create a more difficult problem. Vacating Frederick would cut off their frontage and eliminate their ability to split their property. The likelihood of there being a compensable injury here appears to be greater, although as indicated above the courts usually award compensation for the loss of existing homesites rather than prospective, possible ones.

The Commissioners should act whenever possible to avoid deprivation to any landowner. The major reason put forth for vacating this area was to prevent creating a through street for commercial uses. It would appear this could be done by vacating a smaller portion of the roadway, and still leave frontage for the Roses. In the event the Board of Commissioners decides to vacate any portion of this road, this office suggests that it consider alternatives that would allow as much access and frontage as possible for the landowners.

4. Finally, question was raised regarding the ownership of the property and possible "squatter's rights".

Action by this Board would not jeopardize private rights in any fashion. Any landowner who claims ownership over the area would have to establish the same in court proceedings. Such action would overrule a determination by the Commissioners that the roadway be evenly divided between abutting owners.

WHEREAS, Mr. Innes stated that this portion of road has never been accepted, so never having been accepted, the County does not have to vacate. The Commissioners can decide this day, to accept this road and then grant the vacation; and

WHEREAS, Commissioner Jacoby stressed that the Prosecutor's Office is not advising the Board to vacate, the opinion addressed the various options for the Commissioners; and

Resolution No. 95-288 con't.

WHEREAS, Mr. Innes administered an oath to all persons wishing to make a comment regarding this vacation.

WHEREAS, Commissioner Jacoby requested anyone who is in favor of this vacation, to stand, and state their name and give a brief statement:

Ruth Brosh - Columbia Township Trustee. Mrs. Brosh stated that she is also representing Gene Bulgrin, Columbia Township Trustee, who is away on vacation, that the Township is in favor of the vacation.

Mrs. Brosh read a letter from Dean Hitchens dated March 29, 1995 stating that while he was a Township Trustee, that there was no evidence of Frederick Avenue being in existence beyond the westerly roadway line of Lydia.

Mr. Earl Hodkey a resident of Frederick Avenue for 34 years, stated that the road was never dedicated. No fill was ever put in, or culvert pipe.

Mr. Bob Rundle, Columbia Township Road Supervisor, indicated the Township performed test borings, and that there is no indication of any aggregate or limestone, and no base ever put in.

Mr. Oscar Hawkins, resident of Frederick Avenue felt that street did not need any heavy truck traffic going through, and that would happen if this vacation was denied. Area businesses have access off of State Route 82.

WHEREAS, Commissioner Jacoby asked for anyone present who is in opposition to this vacation to stand, state their name, and give a brief statement:

Mr. Richard Smith resident of Grafton Road, has purchased property to develop and he felt if this vacation was granted it would deny him access to his property.

Mr. and Mrs. Rose, residents of Frederick Avenue also stated they felt if this vacation was granted it would deny them access to their property.

WHEREAS, questions were asked; discussion was held.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Lorain County, Ohio, that based upon the testimony of the property owners and the Prosecutor's Opinion we do and hereby deny the request for vacating a part of road right-of-way known as Frederick Avenue, Original Lot No. 75, Columbia Township, Lorain County, Ohio.

Resolution No.95-288 con't.

FURTHER BE IT RESOLVED that this Board of Commissioners hereby determines that if vacation was granted, it would deny Mr. Smith and Mr. and Mrs. Rose access to their property; and it would not be for the public welfare and convenience and would not serve the general good of the territory.

The foregoing resolution was introduced upon a motion by Commissioner Herbert J. Jacoby, seconded by Commissioner Elizabeth C. Blair, and upon roll call, the vote taken thereon resulted as follows: all voted in favor of the motion.

Motion carried.

I, Roxann Blair, Clerk to the Board of Commissioners of Lorain County, Ohio, hereby certify that this is a true copy of Resolution No. 95-288 as it appears in Journal No. 95 on the date of March 30, 1995.

