

RESOLUTION NO. 96-157

POSTPONED
VACATION OF
PART OF ETHEL AVE
SEE 21735-V FOR
COMPLETION
February 15, 1996

In the matter of the public hearing)
on the proposed vacation of a)
portion of Ethel Drive in Carlisle)
Township, Lorain County, Ohio)

WHEREAS, after due and legal advertising and personal notice this is the day fixed for the public hearing on the proposed vacation of a portion of Ethel Drive located in Carlisle Township, Lorain County, Ohio; and

WHEREAS, Commissioner Blair opened the meeting and indicated that Assistant Prosecutor M. Robert Flanagan will administer an oath to all persons who will be testifying at this hearing; and

WHEREAS, Assistant Prosecutor Flanagan asked everyone to stand and raise their hand to be sworn in; and

WHEREAS, Commissioner Blair made the following statement:

Initially, there are some preliminary and background matters that I would like to read into the Record.

A. On April 27, 1995, the Commissioners enacted Resolution Number 95-372 which authorized the Commissioners, among other things, to enter into a contract with Carlisle Township, Ohio to effectuate temporary repairs to Alameda Alley and construct a new street in the vicinity of Cooper Drive. One aspect of the construction of the new road entailed necessary land acquisition, including the vacation of the unimproved portion of Ethel Drive.

B. On April 17, 1995, the Board Of Trustees of Carlisle Township, Ohio enacted Resolution Numbers 95-12, 95-13 and 95-14 which authorized the Trustees, among other things, to enter into a contract with Carlisle Township, Ohio to effectuate temporary repairs to Alameda Alley and construct a new street in the vicinity of Cooper Drive. One aspect of the construction of the new road entailed necessary land acquisition, including the vacation of the unimproved portion of Ethel Drive.

C. These County and Township Resolutions followed a court order issued in the case of Holcomb v. Fenwick, Common Pleas Court Case Number 90CV105065/Court Of Appeals Case Numbers 94CA005827 and 94CA005828, wherein the court determined that Alameda Alley was a dedicated public road that the Township was required to maintain and repair.

D. Pursuant to the County and Township Resolutions, temporary repairs to Alameda Alley have been completed; and construction plans were prepared to extend Cooper Drive for the purpose of constructing a new street. Also, the County and the Township entered into contracts with three (3) property owners to acquire land necessary to construct the new street.

E. On November 30, 1995, the Commissioners enacted Resolution Number 95-1053 declaring the necessity to vacate the unimproved portion of Ethel Drive in Carlisle Township, Ohio for the public convenience and welfare. This Resolution also: 1) Requested the County Engineer to submit a Report to the Board; 2) Scheduled a viewing of the area in question for January 3, 1996; 3) Scheduled a final hearing for January 11, 1996; 4) Directed the Clerk to advertise the Notice To Vacate in the newspaper in accordance with law; and 5) Directed the Clerk to notify the affected property owners and the Director of Natural Resources of the Notice To Vacate in accordance with law.

F. On 12/4/95 and on 12/11/95, the Notice To Vacate was published in the Chronicle Telegram.

G. On 12/7/95 and 12/8/95, all affected property owners and the Director of Natural Resources were notified of the Notice To Vacate, via U.S. Certified Mail.

H. On December 21, 1995, the Lorain County Planning Commission approved the construction plans for the extension of Cooper Drive. Also, by correspondence dated December 28, 1995, the Lorain County General Health District, while it has no jurisdiction of the construction plans, has indicated that the new construction and the extension of Cooper will not adversely affect the existing sewage treatment systems in the area.

I. Due to inclement weather conditions on January 3, 1996, the view was canceled. Consequently, the Commissioners had to reschedule to viewing and final hearing. The affected property owners and the Department of Natural Resources were duly notified of the changes.

J. On January 11, 1996, the Commissioners enacted Resolution Number 96-46, which amended Resolution Number 95-1053, declaring the necessity to vacate the unimproved portion of Ethel Drive in Carlisle Township, Ohio for the public convenience and welfare. This Resolution also: 1) Requested the County Engineer to submit a Report to the Board; 2) Re-scheduled a viewing of the area in question for February 7, 1996; 3) Re-scheduled a final hearing for February 15, 1996; 4) Directed the Clerk to advertise the Notice To Vacate in the newspaper in accordance with law; and 5) Directed the Clerk to notify the affected property owners and the Director of Natural Resources of the Notice To Vacate in accordance with law.

K. On 1/12/96 and on 1/19/96, the Notice To Vacate was published in the Chronicle Telegram.

L. On 1/17/96 and 1/19/96, all affected property owners and the Director of Natural Resources were notified of the Notice To Vacate, via U.S. Certified Mail.

M. By correspondence dated January 18, 1996, the Engineer made his report to the Board, together with the requisite legal description and map. The Engineer's Report indicates that the vacation in question, if granted, will serve the public convenience and welfare.

N. On February 7, 1996, the Commissioners conducted the viewing of the unimproved portion of Ethel.

WHEREAS, Commissioner Blair indicated that the Lorain County Engineer has submitted a report dated January 18, 1996 and requested Mr. John Hamilton, representing the Engineer's Department to stand and read the report, which is as follows:

Re: Proposed Vacation Of A Portion Of Ethel Drive - Carlisle Township, Ohio

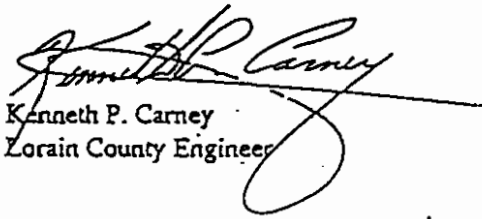
Dear Commissioners:

Pursuant to your request, and in accordance with Section 5553.06 of the Ohio Revised Code, enclosed herewith, please find an accurate survey and plat of that portion of Ethel Drive in Carlisle Township, Ohio that is proposed to be vacated for the public convenience and welfare. Also, I am enclosing an accurate and detailed legal description of the portion of Ethel Drive that is proposed to be vacated. It is my understanding that the portion of Ethel Drive proposed to be vacated has previously been dedicated to public use, and consequently, is owned by the Board of Trustees of Carlisle Township, Ohio. Should the area in question be vacated, by operation of law, the southern and northern abutting property owners will become the owner of one-half (1/2) of the area in question. In this particular instance, Mr. and Mrs. Ace C. Bowling, whose property abuts both the southern and northern boundaries, will become the new owners of the area in question.

My office has already set stakes at the termini of the area in question so that the bounds are discernible to property owners and other interested persons.

Finally, pursuant to Section 5553.06 of the Ohio Revised Code, this correspondence serves as my written report to the Board of Commissioners. In my opinion, vacating the portion of Ethel Drive in question will serve the public convenience and welfare. Accordingly, this office is in favor of the vacation at issue herein.

Sincerely yours,


Kenneth P. Carney
Lorain County Engineer

KPC:JRH:hmb

attach: description, map

247 Hadaway Street • Elyria, Ohio 44035 • Phone: Elyria (216) 329-5586 • Lorain (216) 244-6261 • FAX (216) 329-5587

Resolution No. 96-157 con't.

WHEREAS, Commissioner Blair stated that it was her understanding that Carlisle Township Trustee, Eleanor Pryce was present at this hearing and would like to read a statement in support of the proposed vacation into the Record, which statement is as follows:

RE: Ethel Drive Vacation Hearing

Dear Lorain County Commissioners:

The Carlisle Township Board of Trustees respectfully request that the Commissioners approve the vacation, of the stub of Ethel Drive, located in Carlisle Township, that is proposed to be vacated. This vacation has been proposed in the interest of the Good and Welfare and the convenience of the general public.

The vacation of this unimproved "paper street" will enable the rededication of a previously vacated portion of Cooper Ave. along with the procurement of additional right-of-way to provide proper access to the properties west of the Schroeder Ditch. These properties are presently served by a sub-standard fifteen foot wide lane which crosses the creek on a narrow county bridge of inadequate construction. This lane is presently inaccessible to fire apparatus and other vehicles necessary to service the properties and residents in the area.

The Carlisle Township Trustees have been trying to improve access to this area for over thirty years! In addition we have recently been ordered by the Ninth District Court of Appeals to maintain the lane, because it has been made a public street by common law dedication. Enlarging the width of the lane is not a viable option because of the close proximity of the adjoining buildings, utility poles, the poor roadside drainage and the narrow county bridge.

All of the parcels needed have been secured except for one. Please vacate this portion of Ethel Drive and allow us to put one of the last pieces of the puzzle together so that we can solve this long-standing problem once and for all.

Thank you for giving us the opportunity to speak in behalf of Carlisle Township.

Sincerely,



ELEANOR M. PRYCE

DAVID P. STREET

KENNETH C PRECHTEL

WHEREAS, Commissioner Blair stated that while she was the Township Clerk for 24 years and a resident of the Township for over 30 years, she can identify with the fact the Township has been battling with this problem as indicated in Mrs. Pryce's letter.

WHEREAS, Commissioner Blair asked for anyone who wishes to testify in favor of the proposed vacation, to stand, be recognized by the Chair and state their name and address before making their comments:

Mr. Richard Demby of Demby Realty and a member of the Planning Commission indicated he endorses the proposed vacation.

Resolution No. 96-157 con't.

Otho Holcomb - 40490 Whitney Road, LaGrange, Ohio is representing his family who resides at 42054 Alameda Avenue, Elyria, Ohio. Mr. Holcomb stated that he does not feel that the benefit is for the community, but for the Bowlings. In the future, he would possibly be inheriting property to build a home on and if this vacation is granted, he would have no access to that land from Ethel Drive.

Commissioner Jacoby asked Mr. Holcomb what is the frontage on that property?

Mr. Holcomb indicated it was 385'.

Attorney Guy Tweed, 55 Public Square, Suite 330, Cleveland, Ohio 44113. Attorney Tweed stated that if the proposed vacation is granted would cut off Mr. Holcomb's access to the whole rear of their property from Ethel Drive. Attorney Tweed felt that Alameda Alley could be improved and there was already a right-of-way by the Grange Hall for use, and it would be less expensive to the County this way, then to build a new bridge.

Commissioner Vasi inquired if there was a problem with zoning to build for the Holcombs?

Attorney Tweed indicated there was no problem if the Commissioners did not vacate that area.

Assistant Prosecutor Flanagan requested Mr. Henry Marsico, Investigator with the Prosecutor's Office to give a Feasibility Report regarding the Holcomb's plans to split the 7.5 acre parcel, which report reads as follows:

PRELIMINARY FEASIBILITY REPORT

My name is Henry Marsico. I am an Investigator employed by the Lorain County Prosecutor's Office. At the request of Assistant County Prosecutor M. Robert Flanagan, I conducted a preliminary feasibility study about the Holcomb's proposed plan to subdivide their property, as was described earlier during this Hearing.

I visited the site, reviewed applicable Township Zoning Regulations, met with various utility company representatives and reviewed various correspondence.

Initially, Township Zoning Regulations require a minimum of 100' frontage on a dedicated and existing public road. The stub of Ethel only has 50' of frontage. Thus, the proposed plan does not conform with exiting township zoning requirements. Further, it is my understanding that the Holcomb's have not approached Carlisle Township about a variance.

Resolution No. 96-157 con't.

Also, the Planning Commission is required to approve any lot split in a township. As of last week, the Holcomb's had not contacted the Planning Commission about their proposed plan.

The area of Ethel in question was dedicated and platted in 1924. Over the last 72 years, no one has constructed a road from Cooper to the east property line of Holcomb's property. The County Engineer's Department has estimated that it would cost approximately \$31,000.00 to construct a road from Cooper to the east property line of Holcomb's property. The construction of a new road presupposes that the Holcomb's apply for and receive a variance from Carlisle Township regarding the minimum front footage requirement; and presupposes that the Holcomb's apply for and receive lot split approval from the Planning Commission.

In addition to the new road construction costs, variance approval and lot split approval, there are additional costs to extend utility service to the proposed rear lot.

1.	Electric	\$ 5,000
2.	Gas	1.015
3.	Telephone	50
4.	Water	2,260

Also, a sewage disposal system would have to be installed. The Health Department has indicated that the soil may not be conducive to a septic system; and the nearest sanitary system that could be tapped into is located at the intersection of Murray Ridge Road and Infirmary Road in the City of Elyria. The Engineer has indicated that the direct distance from this point to the proposed rear lot is approximately 5000 feet. Following established roads, the distance is approximately 8,000 feet. There could be a very serious problem with a sewer system because the City of Elyria does not currently permit township residents to randomly tap into the City's sanitary sewer system. There would also be associated easement costs to extend the necessary utilities. I do not know what the estimated easement costs would be.

If the sewage problem can be resolved, and I do not know the cost of this, it will cost the Holcomb's approximately \$40,000.00 to ready the site for the construction of a home. In terms of total project cost, \$40,000.00 will have to be added to the total cost of the home the Holcomb's plan to construct.

Attorney Tweed stated that the cost mentioned in Mr. Marsico's report would be the responsibility of the Holcomb's if they were to build, not the County's.

Resolution No. 96-157 con't.

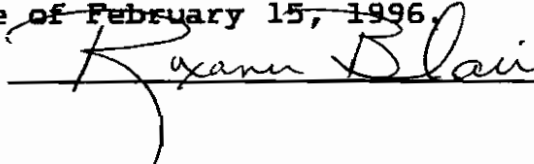
Commissioner Blair indicated that before the closing of the Hearing, all of the various documents, resolutions, correspondence, reports, contracts, etc., will be received as evidence into the record.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Lorain County, Ohio, that Commissioner Jacoby moved, seconded by Commissioner Blair to table this issue and the Commissioners will review the evidence submitted and testimony given this date, and will instruct the Clerk to place this item on the Agenda of February 29, 1996 for a decision by this Board.

Upon roll call, 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. 96-157 as it appears in Journal No. 96 on the date of February 15, 1996.



**LORAIN
COUNTY**
COMMISSIONERS



Commissioners

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

March 7, 1996

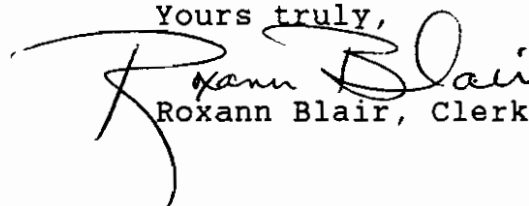
Greg White
Lorain County Prosecutor
226 Middle Avenue
Elyria, Ohio 44035
Attn: M. Robert Flanagan

Dear Mr. White:

We are enclosing a copy of Resolution No. 96-157 adopted by the Lorain County Board of Commissioners on February 15, 1996 in the matter of the public hearing on the proposed vacation of a portion of Ethel Drive in Carlisle Township, Lorain County, Ohio.

This is being forwarded for your information and files.

Yours truly,


Roxann Blair, Clerk

RB/db
Enclosure
cc:

Lorain County Engineer
Lorain County Recorder
Lorain County Auditor
Lorain County Tax Map
Carlisle Township Trustees
File