

RECORD OF PROCEEDINGS

Minutes of

COUNCIL OF THE CITY OF NORTH CANTON

PUBLIC HEARING

Meeting

Held Monday, December 5, 2005

6:30 p.m.

19 2005

CALL TO ORDER:

The meeting was called to order at 6:30 p.m. by President of Council Doug Foltz.

The following members of Council were present for the public hearing: Doug Lane, Jon Snyder, Pat DeOrio, Susie Hines, Jim Repace, Kathy Magel and Doug Foltz. Also present were: Director of Law Pusateri, City Engineer Benekos.

Notice is hereby given that a public hearing will be held by the Council of the City of North Canton on Monday, December 5, 2005, at 6:30 p.m. in the Council Chamber at North Canton City Hall.

The hearing is to discuss the vacation of West Bachtel Street, S.W. Do we have anybody here to speak in favor of that vacation? (Inaudible) You're in favor of it, sir? Okay, please come up to the podium and state your name and address and feel free to speak.

Mr. Mickley: My name is Dave Mickley. I live at 804 Hillcrest Avenue. I don't -- I'm just here to see what your intentions are with regard to (inaudible). I don't have any specific details, but I have an interest in (inaudible). I'm favorable to it to a certain extent, but (inaudible).

Mr. Foltz: Okay.

Mr. Snyder: May I speak to that?

Mr. Foltz: Sure.

Mr. Snyder: Everybody -- Mr. Mickley is a constituent of mine, obviously, in the 4th Ward. He contacted me, I believe it was, right around the first or middle part of June of this past year. His desire was to put a new driveway in at his home from the Hillcrest side in. And upon applying for a permit to put said driveway in, he found out that he would be actually encroaching on the City's right-of-way, which we own from Hillcrest through the other side of Fair Oaks. And I suggested to him that we vacate the property, which would be the simplest. But time became of the essence, in Mr. Mickley's case, for him to line up his contractor that he wanted to do it. And for him to be able -- as you see, the vacation is taken -- we're just into the process now, and the weather would prohibit him from putting his driveway in. So, at that point, Mr. Miller -- I asked for some type of relief for Mr. Mickley -- granted him a use permit, which Mr. Mickley now does have a permit, and he has a revocable use permit to allow his driveway to be placed upon City property prior to the vacation. The only problem this would create is when Mr. Mickley went to sell his property or transfer his property, the title would be clouded by the use permit because it's only granted to Mr. Mickley. And upon further investigation by Mr. Miller at the time, Jim Powell, who lives on the Fair Oaks side, his driveway is already placed on the City's right-of-way. So it's Mr. Mickley's desire to have the property vacated, but a normal vacation would be fifty percent (50%) for the one property owner, 50% to the other property owner. In this case, it's the North Canton Schools. Mr. Mickley's request is the vacation to him only paying approximately, likely five or six feet, the rest going to the school, simply for the fact there is a strand of trees that run along the line, and Mr. Mickley does not want to take responsibility should a storm come, something come that would affect his ability to have to take care of the trees if they were knocked down. So that's his request. Where on Mr. Powell's side, he does want his full 50%. And Mr. Miller at that time said that's possible to do, where Mr. Mickley would only get -- and, again, I'm not positive of the feet -- it's somewhere around a six-foot area, I think, which would give him his driveway plus the required right-of-way.

Mr. Mickley: Well it would be six (6) feet north of the existing driveway.

Mr. Snyder: Right.

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Mr. Mickley: Because, from what I've been told, we don't know precisely where the line is.

Mr. Snyder: That's true. There's --

Mr. Mickley: The driveway is 10-1/2 feet wide, so it would be a total of like five or six feet -- (inaudible) of where the City line is.

Mr. Snyder: And in the discussions Mr. Miller had with the school, I believe there was a fella who was in charge of physical properties, they have no problem with that either. They're maintaining the property now as if they own the property. They cut it, maintain the tree line. Mr. Mickley does -- he required Mr. Powell takes care of it, so it does affect -- and it is Mr. Powell's request that he have his portion, and as Mr. Mickley states, through me, that he wants that six feet. I think that's pretty much it; isn't it, Mr. Mickley, how we --

Mr. Mickley: Well, it was initiated by Mr. Powell, and then the City chose to go the entire direction --

Mr. Snyder: Right.

Mr. Mickley -- west. And that required me to pay closer attention to it.

Mr. Snyder: The only thing that -- another thing you might want to know is we do have a water line running through there which we would be protected upon, but we placed in there -- we brought up from down below Everhard -- it comes up -- it feeds our East Maple line. That's going through there, so there would be no reason -- it won't harm that according to everybody and the engineer and everybody agree. But there would be no use in the future of ever opening that up to any type of conveyance for people driving back and forth through there. It really would not -- it's landlocked -- both property owners -- the school, Mr. Mickley and Mr. Powell. Thank you, Mr. President. I appreciate it. That's all.

Mr. Foltz: So, Mr. Mickley, what you're asking for is for six (6) feet of the vacation?

Mr. Mickley: Six feet north --

Mr. Foltz: Six feet north of your property line is the vacation.

Mr. Mickley: (Inaudible)

Mr. Foltz: To run east just to your property.

Mr. Mickley: I'm sorry?

Mr. Foltz: Just to run east of your property line, however far that runs, from east to west, from your property line.

Mr. Mickley: Yeah. The portion that runs east and west -- (inaudible) north from my property line north, which would be five or six feet north of the cement driveway -- the end of the cement, which would be a total of approximately six feet (inaudible).

Mr. Pusateri: We would need a description -- an accurate description of exactly what was being vacated and --

Mr. Snyder: I think we had that surveyed. Did we not have that all out on --

Mr. Pusateri: To that specification, I'm not sure.

Mr. Snyder: I'm not sure they came out and surveyed.

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Mr. Mickley: They did, and I received the drawings and the overheads of it. But then upon further review, there was some question as to the accuracy of that from the engineer's department – Jacob, I believe I spoke with.

Mr. Snyder: Jim, do you have that?

Mr. Benekos: Yeah. If you have it in your packet, you have that. The question came at one point – the right-of-way. The right-of-way was created in two factions. The southern portion of that – the southern 20 feet was dedicated as part of the subdivision. The northern part – the City owned the property that the school is on now, and in the Deed from the City to the school, right there, the northern portion, the northern 20 feet, it says that they reserved 20 or 25 feet in the event that the City wanted to put a street in there. So it was never actually dedicated – the north portion. But the southern portion – the southern 20 feet – was dedicated, and that's what the Planning Commission recommended to vacate at this time, seeing as how it's not being used. You can see the driveway here in question. So the only portion that is dedicated is from the property line 20 feet north, and you can see that on the map here, if you have good eyes.

Mr. Mickley: Where do you understand the property line?

Mr. Benekos: The existing property line?

Mr. Mickley: Yeah.

Mr. Benekos: There. That's the existing property line.

Mr. Mickley: All right.

Mr. Benekos: The blue line. And then your driveway is approximately 12 feet wide?

Mr. Mickley: Ten and one-half.

Mr. Benekos: Ten and one-half. And you want six (6) feet beyond that? It would be 16 feet; so there'd only be a four-foot strip that you would want to go to the school.

Mr. DeOrio: And that four-foot strip is the strip that contains a tree line; is that correct?

Mr. Benekos: Well, possibly some, possibly not.

Mr. Mickley: Well, I would want, you know, I would want, you know, five or six – approximately five feet (inaudible). I was at five or six, and he said four to six –

Mr. Benekos: Okay. But, the thing is, if you do that, then we're going to incur an expense to go out and have that re-surveyed and have another plat done for a three or four-foot strip.

Mr. Foltz: Well, also the Planning Commission rule – specifically one way, right?

Mr. Benekos: Right. They recommended that the whole portion go to the property owners to the south.

Mrs. Magel: And they agreed with that – the property owners to the south.

Mr. Benekos: That's what the Planning Commission recommended.

Mr. Snyder: Mr. Mickley is the southern –

Mr. Mickley: There are two of us.

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Mrs. Magel: Okay. Right.

Mr. Benekos: Yeah. Property owner – you have Mr. Mickley here and Mr. Powell over here.

Mrs. Magel: What did the school say?

Mrs. Hines: The school said it was okay, because we had a vacated driveway at Lake Erie, and they just split the two sides between two of its home owners.

Mr. Benekos: That's what you would normally do is split it like that, but the north half of this driveway – this was shown on the -- this is based on the County's – the Auditor's Tax Map. This was always assumed to be dedicated as a full 40 feet, but the north half was never dedicated. So, it was only the south half that was dedicated, and – because that dedication came out of this subdivision when that subdivision was platted, that's who normally gets the property back. If the property was taken from the school and from the subdivision, you would split it. But the only 20 feet that was dedicated came from the subdivision. If the north 20 feet had been dedicated, then you would split it half and half.

Mr. Snyder: So, in other words, the 20 feet goes all to Mr. Mickley.

Mr. Benekos: That's what the Planning Commission recommended.

Mr. Pusateri: That's the survey that's here, too, right?

Mr. Benekos: That's the way we had the survey prepared for that. Now there's a little portion over here, as you can see, right there. That will go to the school, but the two strips will go to the southern property owners.

Mr. Snyder: Well, in other words, we come to a little quagmire here that somebody doesn't want to bear the expense – in Mr. Mickley's case, being the petitioner, he doesn't want to bear the expense of re-surveying it. He'll have to take the 20 feet. Is that the way I – do I understand that correctly?

Mr. Mickley: Well, I was not the petitioner.

Mr. Snyder: No, I know that.

Mr. Mickley: I didn't initiate it.

Mr. Snyder: No, I know; but I'm saying --

Mr. Mickley: If that's what you mean by --

Mr. Snyder: No, no, no. But I'm saying, in this case, maybe I shouldn't say as a property owner. The recommendation is to give Mr. Mickley 20 feet and Mr. Powell 20 feet.

Mr. Benekos: Right. Mr. Powell was on the right side here --

Mr. Snyder: So he doesn't get anything.

Mr. Benekos: Well, he gets this portion right there. Mr. Powell would get this portion right here.

Mr. Snyder: Right. Which takes care of his problem – his driveway.

Mr. Benekos: Right. And this --

Mr. Snyder: 20 feet on that side.

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Mr. Benekos: Right.

Mr. Snyder: To vary that – vary that dividend right now, the only way around that would be Mr. Mickley to bear the expense of a new survey. Is that what, do I understand that correctly?

Mr. Benekos: Well –

Mr. Snyder: Or that would not – he could not do that, because the recommendation is to give him the full 20 feet.

Mr. Benekos: We'd have to override the Planning Commission. (Inaudible)

Mr. Snyder: Okay. That's why I questioned that – so, the way it stands, Mr. Mickley would have to get the whole 20 feet.

Mr. Benekos: Right.

Mr. Snyder: Or just stay with his use permit the way it stands today.

Mr. Benekos: Right. Yeah. You could not vacate any of the street.

Mr. Snyder: Right, and then Mr. –

Mr. Mickley: Why wouldn't you just give it – the portion that I don't want – to the school?

Mr. Benekos: You could do that. I mean Planning – or Council could do that. They would have to override Planning Commission's recommendation to do that. And there would be initial expense to the City because of the survey that would be required.

Mr. Foltz Well, I don't know if I'd be in favor of any additional expense. To be fair, I mean, to Mr. Mickley. Your driveway is on City property, so we're looking for a solution here, and I defer to Jon as the Ward Councilman, but I don't know why we'd expend more money for something that we really – as far as a survey, the driveway's already built on the property.

Mr. Snyder: Yeah, because we've already surveyed that.

Mr. Foltz: Because the survey -- the driveway is already built on the property.

Mr. Snyder: The way I understand it, in a way we have a couple options. And please correct me if I'm misstating. Mr. Mickley, here's our situation. We can leave it alone the way it stands. You have a use permit. We would have to obtain six (6) votes of the Planning – of the Council to override the Planning Commission's recommendation. That's option one to you. And you would have a use permit. And provided you don't try to convey your property – and I don't know if you can convey a use permit. I'm not an attorney. So you would have to work that out. The second option is for you to – we would override the Planning Commission, you bear the expense of a new survey to give the school the portion you don't want. And option – really should be option one is to take the full 20 feet, which you'll just get it and that will be the end of it, and you would, in fact, get the tree line that you don't want. But that's entirely – that's a decision –

Mr. Mickley: When you say 20 feet, you're talking about – from this picture – the south line – 20 feet north of that line.

Mr. Snyder: Right.

Mr. Foltz: Not the 40 that shows. Just 20.

Mr. Mickley: Just 20.

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Mr. Foltz: Half, half the vacation –

Mr. Mickley: -- So I know what the dimensions are – That's 40?

Mr. Foltz: That's 40, isn't Jim?

Mr. Benekos: That's correct.

Mr. Snyder: The 20 is not dedicated.

Mr. Benekos: Right.

Mr. Snyder: So you're going to get 20 feet from the bottom line to the next line.

Mr. Foltz: So, if you're asking for 6, you might end up with 10 from your driveway.

Mr. Mickley: Right.

Mr. Foltz: If your driveway is 10 or 10-1/2 feet wide, whatever it is.

Mr. Mickley: That's what I'm starting to (inaudible) understand – how what we're talking about. But I would like to still be able to, now that I have an idea what we're talking about, go out and take a look at it and see what that means --

Mr. Snyder: Sure.

Mr. Mickley: -- in terms of this tree line, because I had – there were two trees came down last winter at \$350 - \$400 for the (inaudible). So, anyhow --

Mr. Benekos: Do you know where your property corners are now on the north side of your property? They probably should have established that property pin there.

Mr. Mickley: I know that there is – I know where a property pin is, yes.

Mr. Benekos: Yeah. So it would be 20 feet north of that.

Mr. Mickley: It would – okay, this see – I'd have to take a look at it, but that gets – that gets into that right where one of those big (inaudible).

Mr. Snyder: You've got to look at the scale of economics. The survey is probably about \$500 - \$600. You know, you're better off – it would be my recommendation for you to take your 20 feet and – because what's going to happen, when you want to convey that property – I'm not a realtor or an attorney, but you're going to run into a major problem. Or, God forbid, you get an –

Mr. Mickley: When I bought the house, I knew about this, and it didn't deter me.

Mr. Snyder: Well, okay. That's up to you, sir.

Mr. Mickley: I understand what you're saying. We've talked about that.

Mr. Snyder: Right. I just want to try and represent you the best way I can; that's all.

Mr. Mickley: That was my original thought – I would accept it – whatever legality needed to be taken – to take place in order to give me an okay to put the driveway in, and it was going to end there. Well, then, Jim Powell wanted it vacated; and then Plain – whoever – whatever body wanted – well, let's just clean this whole thing up. So I got caught up in all of this. I was satisfied with – I was gonna take my chances, so to speak, with the driveway and then when I sell it, whether it's going to – I'm not sure -- sell or not. So, I haven't been so much swayed from that, but, you know – so, if I go out there and I look at the 20 feet, and it scares me, then, then I'm, you know –

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Mr. Foltz: Well, I think member Snyder laid out your options. Most people would take 20 feet of property in North Canton in a nice area. Off the cuff, I think I'm fairly accurate in that statement, but --

Mr. Mickley: What's your name?

Mr. Foltz: I'm Doug Foltz, I'm sorry. (Inaudible) But, again any other comments?

Mr. Mickley: That's why I'm here.

Mr. Foltz. Right. Okay.

Mr. Mickley: So, can this be postponed?

Mrs. Magel: Yes.

Mr. Mickley: First of all, I'm getting all this kind of cold, and I can't --

Mr. Foltz: Well, it went through the Planning Commission. We're having a public hearing on it, and we don't have to even put it committee tonight. We can put it on a later date, and I just want to see if anybody else wanted to speak for or on behalf of this vacation.

Mrs. Magel: Just get back to us when you're in your comfort zone.

Mr. Mickley: Pardon me?

Mrs. Magel: Get back to us when you're in your comfort zone -- what you're -

Mr. Mickley: Okay. I'll discuss it with Mr. Snyder.

Mr. Snyder: I appreciate that.

Mr. Mickley: Thank you very much.

Mr. Foltz: We'll just table it for tonight. Anybody else want to speak? Just state your name and address.

Mr. Osborne: My name is Chuck Osborne. 307 Fairview Street, S.E., North Canton, Ohio. I haven't really explored a lot of this, other than just catching the public comments. From personal experience of the last 15 years when I was kind of new to the City, it is very inconvenient to come out on Harmon or Church. The only way to get around that school is to either come south all the way over to -- was it -- Glenwood and come all the way around, which is putting you out onto a busy east-west corner or to swing around the north side. And somebody had the vision enough to look ahead and plan a street for there, and I would be against vacating that. I don't know how -- like I said, I haven't explored all this -- but all I remember in my mind was several years ago off and on, occasionally, until I wised up, you come south, I guess. You have to go all the way over Glenwood and try to go down there on Glenwood to make, to make the circuit around to get over back onto Bachtel and to go further east. I think you need a very handy, convenient way to circle and navigate all the way around that school property. I don't know the origination for this dedication, but say that when you have a property that is set aside for a street, and it's plenty wide enough, this Council is here throwin it away and wanting to vacate it. And, again, I don't know how the situation is going -- Main Street is one of the streets that aren't even wide enough. But I would not be in favor of vacating that. That covers it. Thank you.

Mr. Foltz: Okay. Thank you. Any other comments from any members?

Mr. Snyder: I just -- President Foltz, I do appreciate the courtesy of the Council in hearing my constituent, extending that I do appreciate that.

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Mr. Foltz: Okay. If none, can we have a motion to close the hearing?

Mr. Lane moved and Mrs. Magel seconded to close the public hearing.

All members present voting:

Yes: Lane, Snyder, DeOrio, Hines, Repace, Magel, Foltz.

No: 0

The meeting adjourned.



PRESIDENT OF COUNCIL

ATTEST:



CLERK OF COUNCIL