

PLAN COMMISSION MINUTES

Monday, February 28, 2011

7:00 P.M.

A. ROLL CALL

Members Present:

Mike Hall– Chairman
Jake Hoog
Russell Beiersdorfer
Mike Hornbach
Mark Lehmann
Ken Nelson
Jeff Hughes
Daniel Lansing
Dennis Kraus, Jr.

Andrew Baudendistel – County Attorney
Mark McCormack – Director of Planning

Members Absent:

Arnold McGill – Attorney

B. ELECTION OF OFFICERS

Mr. Beiersdorfer makes a motion to maintain the current state of officers. Mr. Nelson seconds. All in favor. None opposed. Motion carries.

C. APPOINTMENT OF ATTORNEY

Mr. Kraus makes a motion to re-appoint Mr. McGill as attorney. Mr. Hughes seconds. All in favor. None opposed. Motion carries.

D. APPOINTMENT TO THE BZA

Mr. Lansing makes a motion to appoint Mr. Hall to the BZA. Mr. Lehmann seconds. All in favor. None opposed. Motion carries.

E. ACTION ON MINUTES

Mr. Beiersdorfer makes a motion to approve the November 29, 2010 minutes as written. Mr. Hornbach seconds. All in favor. None opposed. Motion carries.

F. OLD BUSINESS SCHEDULED TO BE RE-OPENED

There was no old business.

G. OLD BUSINESS TO REMAIN TABLED

There was no old business.

H. NEW BUSINESS

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|-----------------------|---|
| 1. Request: | Vacate a portion of Happy Hollow Road. |
| Applicant: | Rob Seig / Owner: David Lykins |
| Site Location: | Happy Hollow Road |
| Legal: | Sec.5,6,8, T 6, R 2, Map # 05-05,05-06,05-08, Parcel # 008, 008.001, 004, 012, & 001 |
| Township: | Jackson & York Size: 5.169 Acres |
| Zoning: | Agricultural (A) |

Mr. McCormack states that the Petitioners are requesting to vacate a largely-unimproved thirty-three-foot (33') road right-of-way, identified as the Happy Hollow Road right-of-way. He explains that according to the documents submitted by the Petitioners' surveyor, the Lykins own a significant majority of the property affected by this vacation. All other potentially-affected property owners have other existing access available from either Happy Hollow Road or Ester Ridge Road. Mr. McCormack presents the staff report and shows slides.

Mr. Rob Seig, of Seig and Associates, states that he is the surveyor representing the Lykins family and that tonight's request was initiated in 2007 with a letter from the County Engineer to Mr. Lykins regarding the acquisition of right-of-way to install a cul-de-sac turn-around at the end of the County-maintained portion of Happy Hollow Road. During those discussions, the Lykins family expressed interest in vacating a significant portion of right-of-way that runs through their property. Mr. Seig states that he has performed a survey to locate the position of the road and also completed a survey to determine the location of the property line between the Lykins and Engle properties. He explains that after surveying the site and researching deeds, it appears that the Engle property has no real access to the Happy Hollow Road right-of-way. Mr. Seig requests that this right-of-way be vacated and that a favorable recommendation be given to the County Commissioners to do so. He acknowledges that the Lykins family is willing to grant right-of-way for the cul-de-sac turn around and would be willing to excavate and prepare the base for this improvement. He also states that the Lykins family is willing to grant an easement to the County for utilities, if needed, in the future.

Mr. Hall asks where the frontage will be for the first five-acre tract shown on the plat.

Mr. Seig states that at this time the Lykins family would like to leave that tract alone; however, if the Board requests a panhandle or easement to be set up, then he believes that Mr. Lykins would be willing to do that.

Mr. Hall references the line between the Engle and Lykins properties, and asks about some pin markers.

Mr. Seig explains that his understandings of the pins are that they are some property markers set by the neighboring owners for the purposes of determining logging rights. He states that his survey only reflects where the pins were found and that he found no further information to support the pins.

Mr. Hughes asks if Mr. Seig's research efforts arrived at a discovery of any information to show exactly where the road was.

Mr. Seig explains that his survey was compiled based on: the 1937 aerials, the 1970 aerials, the 2005 and 2008 orthos, and some deed descriptions using the quarter-section line and distances running with the creek. He states that nothing he found showed a clear, undisputed meets and bounds description.

Mr. Hughes clarifies that the reason for this request is due to State money being allotted to the County for maintenance of the road; this section of road does not appear to have ever been maintained.

Open public comment.

Ms. Amy Streator, the attorney representing the Engles family, states that she would like to review some discrepancies in what has been presented tonight. She begins by stating that the ownership of the Engle tracts on Mr. Seig's survey is incorrect; the survey should reflect that Greg Engle is the property owner of the southern-most Engle tract. She also states that she is concerned with a 56.18ft. discrepancy noted on the northern boarder of the Lykins property, which she feels misrepresents the Engle property line. She feels that the benefit of doubt has been given to the Lykins family, when it should have actually been given to the Engles family—which would indicate that the Engle's do have frontage on Happy Hollow Road. Ms. Streator states that the Engle's deed shows a square property and that the Seig survey shows a slant of the property which favors the Lykins as owners. She further states that a 1917 deed record reflects that the County paid Mr. Woluing, the previous owner of the Engle's farm, money to place the road across what is now known as the Engle properties. She explains that the road is not traveled by the public because Mr. Lykins has installed a gate so that the public could not enter. She states that based on these reasons, she is requesting that the vacation of Happy Hollow Road be denied.

Mr. Hoog asks when the southern-most tract was transferred to Mr. Greg Engle.

Ms. Streator states that the transfer took place on January 13, 2011.

Mr. Hall asks how many tracts Mr. Woluing originally owned.

Mr. Kraus explains that there were two deeds filed and that neither of them provides an accurate way to plot or confirm Mr. Woluing's acreage, since he owned several properties in the area.

Mr. Hall asks who placed the rebars on the 56ft. wide section.

Mr. Seig states that he placed them in order to establish previous survey lines. He also explains that the 56ft. area reference by Ms. Streator was an overlapping deed reference and that he showed the line in accordance with the quarter section. He states that he investigated the original transfer to the first owner of the property and states that the deed of the Lykins property agrees with the 1320 report; he followed the deed of the land. He feels that the document showing the County paying for damages does not properly illustrate all of the properties involved. He states that he has completed his work to the best of his ability to establish title and can not place the road right-of-way lines in a position to touch the Engle's property. He states that one would have to drive over the Lykins property to reach the Engle's property.

Mr. Nelson asks when the 30-acre parcel was created.

Mr. Kraus states that the parcel was created prior to 1895.

Mr. Hughes states that he is concerned with the uncertainty of the properties the County purchased. He is not in favor of vacating a road if it would deny access to a parcel of land.

Mr. Hall asks when the Lykins family took title to this property.

An audience member states that it was in the 1990's.

Mr. Nelson asks when the 5-acre tract was surveyed off to David J. Lykins.

Mr. Seig states that he performed the survey in 2003 or 2004.

Mr. Nelson states that based on that survey, there should have been talk that future right-of-way would be used.

Mr. Seig states that there were discussions regarding road maintenance; however, the road right-of-way has never been maintained in the area that is near the Engle property in question.

Mr. Nelson suggests recommending vacating only the portion of road that is without questions or discrepancies.

Mr. Greg Engle, adjoiner, states that his family never had an issue of using the Happy Hollow Road right-of-way to access the 30-acre parcel that he now owns when Mr. Creech owned the property. He explains that after the Lykins family bought the property, Mr. Lykins asked the Engel family for help in locating his property lines and there was an agreed use of the road. He states that in the past couple of years, the Lykins family has placed a gate across the road to limit access and use of the county road. Mr. Engle states that if the gate is left open, then Mr. Lykins usually has a truck parked in the road blocking the road from being used.

Mr. Hall asks if the property was being accessed by foot, quad, or truck?

Mr. Engle states that access is currently by tractor or truck and clarifies that the entrance to family farm was originally (historically) via the Happy Hollow Road area before the access by the County was purchased. The driveway used to be located on the other side of the creek.

Mr. Hall asks if this cut is on the Engle property or the Lykins property.

Mr. Engle states that it is actually on the Lykins property.

Ms. Tina Murray states that this road (use) issue has become very heartbreaking; the ground has been in her family for years and she wants things to remain as they have been. She feels that what is being done is wrong. She states that she used to ride horses down to the iron bridge on the right-of-way until the Lykins' gate went up. She would really like to see everyone get along.

Mr. John Engle states that this situation has been going on for several years—since the County Engineer first approached him to place a cul-de-sac at the end of the maintained portion of Happy Hollow Road. He asks why he must give up 50ft. of right-of-way, and lose his road frontage. He feels that he has been treated unfairly in this process; he has paid taxes on this property. He further explains that the County continues to use portions of his land. The County doesn't maintain that road; however, it receives money to maintain it. He also questions whether any permits have been obtained for the structures located on the Lykins property.

Mr. Seig states that he used the 1320 description to establish the Lykins property line and that he did not review adjoining property titles all the way back.

Mr. Kraus states that this Board can not resolve a title issue and he feels that this request should be tabled until the title issue is resolved.

Mr. Hall suggests an additional survey to see if an error has occurred. He states that the Board can not move forward at this time.

Mr. Jeff Stenger states that there are two options available: 1) perform a second survey; or 2) have the Engle family prove that there are prescriptive easement rights that indicate that the road right-of-way has been in obvious use.

Mr. Beiersdorfer states that he is concerned with the gate being installed; it has closed off the public road right-of-way. He states that it is illegal to block a public right-of-way.

Mr. Engle states that the County Commissioners have ordered the gate to be removed.

Mr. Hughes states that there was an order issued approximately 2 years ago to remove the gate and not block the public right-of-way.

Close public comment.

Mr. Nelson makes a motion to table this request for evidence of prescriptive ownership. Mr. Beiersdorfer seconds.

Mr. Nelson amends the motion to table for 90 days. Mr. Beiersdorfer accepts.

MOTION:

Mr. Nelson makes a motion to table this request for 90 days in order to provide evidence of prescriptive ownership. Mr. Beiersdorfer seconds. All in favor. None opposed. Motion carries.

I. ADMINISTRATIVE

Mr. McCormack explains that White Farm Development is requesting a two (2) year time extension to the White Pines Subdivision Primary Plat. He states that this Primary Plat was originally approved in February of 2008. A time extension has already been granted (previously) in accordance with the terms of the Dearborn County Subdivision Control Ordinance.

Mr. Jeff Stenger of JDJ Surveying and Engineering, states that his client (White Farm Development) is requesting an additional 2 year time extension due to the state of the economy and the fact that development is slow. He hopes that within the next 2 years the economy will have time to recover.

Mr. Nelson states that he is concerned with granting an extension; technical requirements may change over the 2 year time-period. He suggests that any changes to technical requirements that occur in this time frame be met by the developer.

Mr. Stenger agrees.

Mr. Nelson makes a motion to approve a 2 year extension for the White Pines Primary Approval with the condition that the developers comply with any future changes to the technical requirements of all applicable state and local codes. Mr. Beiersdorfer seconds. All in favor. None opposed. Motion carries.

Mr. McCormack gives a brief update on the performance guarantee report and grant applications. He presents the staff annual report.

Mr. Kraus makes a motion to adjourn the meeting. Mr. Beiersdorfer seconds. All in favor. None opposed. Motion carries.

Meeting adjourned at 9:30 P.M.

Mike Hall, Chairman

Mark McCormack, Director of Planning