

Lansing Township Board

Public Hearing

July 25, 2019

Members Present: Duane Mortensen, Gary Braaten, Lynn Allas, Steve Torgerson, Mark Ratigan, Kris Allas

Chairman Mortensen called the start of the Public Hearing at 5:00 p.m.

Attorney Troy Gilchrist explained the process as Cart ways are a unique creature. There is a mandate process that the town has to work thru.

Lynn Allas made the motion to continue at the Lansing Town hall 5:14 p.m. Steve Torgerson seconded. Motion passed.

5:30 Chairman Mortensen opened the meeting with the reciting of the Pledge of Allegiance.

Attorney Troy Gilchrist spoke of conducting the site inspection and to inform the Board of the process which involves 2 stages.

The first stage – eligibility, enough land?, property owners sign a petition, needed 5 acres and have 149 acres, landlocked?, was a Township road briefly but at present is not a town road which would be maintained, it has not for 25 years or more. It is not a Town Road, and property owners negotiate agreement for eligibility and route from neighbors. Once eligibility and route is determined, a hearing is continued, eligibility and route is the purpose of this meeting.

He continued with the next hearing would be to determine and award damages, hiring an appraiser for the amount, report goes out to property owners and at the next hearing you would adopt that. You have seven days to mail out the report for award and the property owners have 40 days to appeal with District Court, and if appealed, then the Township defends, and frankly if you get sued or appealed then you turn into the insurance company, and they would hire a defense attorney for you and see what the District Court has to say about it. I do have a rough draft or have you act on a Resolution preliminarily or conditionally grant a cart way. It is conditioned on a number of things like we need to get the appraisal done, in this particular case, one of the condition would need to figure it out with the railroad.

When we reconvene the hearing, award the final order and do the other steps that I mentioned, are there any questions? Chairman Mortensen asked “what is the timeline?”. Attorney Jennifer Gumbel responded, “October 11 and the Governor would not hunt but it would be a land dedication ceremony.” Attorney Gilchrist answered, “The big wild card is the railroad, and if they come around and approve it, and they withdraw those provisions and are able to get that executed. Frankly, the appraisal can take 2-3 months but obviously it can be quicker. Your Board can authorize one of your members from the Board to certainly move forward to securing the services of an appraiser as quickly as is possible.

Property owners include Mickelson, Kehret, Matt Taylor, John Taylor; are any of the land owners here? Matt Taylor asked who maintains it. Attorney Gilchrist responded The Statute attempts to deal with that issue is, maintain by the users in proportion to that use. If a farmer uses it twice a year, the farmer has a relatively small use; if the use of one is really bringing in the traffic frankly the lion share of the maintenance responsibility is going to fall on them. I would think that the owner of the property at the end would understand that there the one that is bringing people there and would maintain it. If there is ever an argument the Statute says that there is a provision that the petitioner notify the Town Board and they sit in a quasi judicial manner make a decision on this. There is a mechanism allotted to solve that.

Any questions on process? Does each land owner own ½ of the road and there’s no gap that the Township would own? Attorney Gilchrist responded, As I understand it, each land owner owns on each side 16 1/2’ and on either half, it is just an easement, subject to a Cart way on top.

Bill Ryther: Believes this is a Cart way all along since he was on the Town Board? Attorney Gilchrist responded As I understand it, this is not a recorded road. Attorney Gumbel responded, my understanding this was included in a recorded map and then a couple years later, it was taken out and reclassified as it doesn’t exist under Statute. Attorney Gilchrist responded, that map recording was initiated by the Township Association and the legislature made the process where you give notice, develop a map and record the roads for uniform width. Roadways as 66’, cart ways as 33’, and just added to the map even though they may have not been maintained, and a lot of things got added to the map that

may have not been roads. In the 1990's the Courts said that does not 66' wide does not give you that and that's not enough, you have to acquire it by use of maintenance or go through the 164.07 process. But the fact that it hasn't been maintained for 25 years, that is how this cart way comes around. The map recording doesn't give you that. The point is, it has to go through a Court case, petitioners pay the cost, and the escrow was paid to the Township, and already has been addressed. The railroad does become a matter with the Township because we have to make a uniform cart way from the public road to their property. We have to acquire by condemnation before and after the property, and to be acquired by agreement over the railroad property.

Attorney Gumbel: We have a proposal from the rail road, and we're negotiating it, which I find as a good sign to go into it with the rail road. No record of any agreements recorded as the Mower County Recorder's Office. Attorney Gilchrist: I have to get involved with those talks with the rail road.

Chairman Mortensen: Is October 11 possible? Attorney Gumbel: Everyone has to be notified in the process.

William Stegemann: A prior Board had made a decision, after the town roads were recorded and had an attorney involved for an easement or something like that, and their intent was to abandon all the interest in that roadway, is there anything in case law that would change this? Attorney Gilchrist responded, that 25 year law affirmatively says, whether what your intent was, the fact that you haven't spent money on it and no maintenance. If it isn't a recorded access to your property, it doesn't exist. We need to get it recorded.

Chairman Mortensen: Have we determined the route? Attorney Gilchrist: The petitioner signed, and there is no question of the 5 acres, is it landlocked? Is it a town road or not, and can we get to the land lock property. We are not aware of any easement that they have for access, and sure it is the only access for a route. Are you acceptable of the route? Is there any other route? Chairman Mortensen: No, we have looked at other areas.

Steve Torgerson: Where are you putting a parking area? Jeanne (DNR): there is a spot on the property that we can establish a parking lot – 50-75' square. Public areas and recreational areas are not the place for teenage partying and drinking, that is our intention. We need the access in order to build a parking lot and hoping to have that finished by the time the Pheasant Opener comes. We will hopefully do the seeding in the next week or so, and the final seeding in the fall. DNR will require it to be in transfer before we start, and will report the well if any, in the transfer.

Attorney Gilchrist went over the preliminary Resolution.

Gary Braaten made the motion to adopt the Resolution Determining Eligibility and Conditionally Granting a Cart way, Steve Torgerson seconded. Motion passed.

Steve Torgerson made the motion to authorize an appraiser as a second option, Mark Ratigan seconded. Motion passed.

Mark Ratigan made the motion to continue the Public Hearing Cart way at 6:53, at the Lansing Town Hall, August 21, 2019 at 5:30 p.m., Gary Braaten seconded. Motion passed.

Respectfully Submitted

Kristine M. Allas, Clerk

Continuation of July 25, 2019 Cartway Public Hearing

Duane Mortensen, Gary Braaten, Lynn Allas, Steve Torgerson, Kristine Allas

Duane opened the meeting at 5:00 pm and the Pledge of Allegiance was recited.

Minutes of July 25, 2019 were reviewed; Lynn Allas made the motion to accept the Minutes as written, Steve Torgerson seconded. Motion passed.

Duane Mortensen reported the appraisal for the road from Aaron Skalicky was appraised at \$4,062.00. Vern Kehrets \$2,031.00 and James Taylor \$2,031.00, with the Supplemental Addendum.

Gary Braaten made the motion to continue the Public Hearing to September 26, 2019 at 7:00 pm, Steve Torgerson seconded. Motion passed.

Respectfully submitted,

Kristine M. Allas, Clerk