

PENN TOWNSHIP BOARD OF SUPERVISORS
100 Municipal Building Road
Duncannon, PA 17020-1100

Henry A. Holman, Jr., Chairman

Charles H. Stoner, Vice Chairman

Robert E. Shaffer, Sr., Supervisor

MINUTES OF SEPTEMBER 27, 2006

Page 1 of 3

The Penn Township Board of Supervisors (PTS) met on Wednesday, September 27, 2006 at 6:00 p.m. in the Municipal Building to conduct a Local Agency Hearing. Chairman Henry Holman, Jr., Vice-Chairman Charles Stoner, and Supervisor Robert E. Shaffer, Sr. were in attendance. Other personnel present were Helen Klinepeter (Secretary), Susan Long (Treasurer), and Rich Wagner (Solicitor). A stenographer was also present to transcribe the hearing. Chairman Holman convened the hearing and then turned it over to Solicitor Wagner.

The Solicitor noted that this was the time and place set for a hearing under the provisions of the Local Agency Law concerning the revocation of a driveway permit on behalf of Phillip Heller. He continued that the hearing is before the Board of Supervisors of Penn Township, a second-class township, which will conduct the hearing in accordance with the Local Agency Law to determine if the revocation of the permit was appropriate action.

The Solicitor explained that the Secretary will present the reasons why she revoked Mr. Heller's driveway, followed by questions from Corey Iannacone, Mr. Heller's counsel. After that, Mr. Heller will present his reasons why the permit should not have been revoked. Interested parties speaking in support of or against the revocation would offer comments at the end of these presentations.

The Solicitor presented proof of publication that the hearing was advertised. He then questioned the Secretary, who testified that she received a driveway permit application from Mr. Heller on April 17, 2006, reviewed the driveway ordinance for compliance, and subsequently issued the driveway permit. She continued that she notified Mr. Heller by certified letter on July 5, 2006 that she was revoking his permit, and received a letter dated August 6, 2006 requesting an appeal from Mr. Heller.

She testified that, in her July 5, 2006 letter, she explained to Mr. Heller that she revoked the permit because it was not needed since his driveway exited off of a private right-of-way (ROW), because Mr. Heller relocated a fence that was not authorized with the permit, and because the cartway was relocated. The Solicitor then presented copies of the driveway permit application and revocation letter to all involved parties and the court reporter.

Mr. Iannacone asked the Secretary why she issued a driveway permit when she testified that it was not needed. She replied that Mr. Heller had requested it because of the bad blood between neighbors. Mr. Iannacone asked if revocation of a permit that was not needed prevented Mr. Heller from completing his driveway. The Secretary replied that it does not. Mr. Iannacone asked if there was anything contained in the driveway permit application that disallows the relocation of the fence. The Secretary replied that nothing on the application or accompanying plot plan mentioned the relocation of the fence and that she understood his driveway would exit through the gate like the other properties on the ROW. Mr. Iannacone explained that, because of the way that the driveway was constructed, the fence would have obstructed its use. The Secretary offered her understanding from the permit application that the driveway would not utilize the 12-foot cartway but instead utilize the fifty-foot ROW.

Mr. Iannacone asked if the Secretary had visited the site after construction of the driveway began. The Secretary replied that she had, but the fence had not been relocated at that time. Mr. Iannacone asked if she informed Mr. Heller that there were issues with the driveway and she replied that she had no issues at that point. Mr. Iannacone asked her how she knew that the cartway was relocated. The Secretary replied that she had been requested to

PENN TOWNSHIP BOARD OF SUPERVISORS
100 Municipal Building Road
Duncannon, PA 17020-1100

Henry A. Holman, Jr., Chairman

Charles H. Stoner, Vice Chairman

Robert E. Shaffer, Sr., Supervisor

MINUTES OF SEPTEMBER 27, 2006

Page 2 of 3

see if it had been moved, so she went out to look at it. Mr. Iannacone asked who requested that she look at it. She replied that the request came from Donna Nickle through Ms. Nickle's attorney on June 1, 2006, that she went out to look at it, and that it appeared it had been moved, although she did not measure it.

Linus Fenicle, attorney for Ms. Nickle, said that Mr. Heller's driveway permit application indicates that the driveway is being constructed according to a township-approved subdivision plan, which he then introduced as an exhibit. He asked if the sketch submitted by Mr. Heller showed that the driveway would be constructed inside the 50-foot ROW. The Secretary replied that it did. Mr. Fenicle then asked the Secretary to read Note 2 from the plan, which stated that only Lots 4 and 5 shall have access to Fritz Drive for ingress and egress over the private 50-foot ROW. Mr. Fenicle noted that Mr. Heller owns Lot 3 but his driveway will be utilizing the 50-foot ROW.

Mr. Iannacone then presented Mr. Heller's position. He asked what prevented Mr. Heller from completing a driveway that did not require a permit. He offered his opinion that Mr. Heller did not violate any conditions of the driveway permit, and therefore, there was no reason for revocation. He stated that revocation did not take place until the driveway was almost completed, and that it can not now be revoked because Mr. Heller has a vested interest in it. Mr. Iannacone presented a copy of the deed to Lot 3 and offered that it confers to Mr. Heller a 50-foot ROW. Mr. Fenicle contended that the deed does not state that and that it speaks for itself. Mr. Iannacone then referred to a court memorandum that states that Mrs. Nickle's use of the cartway within the 50-foot ROW is limited to the existing 12-foot ROW. He continued that the permit makes no reference to the location of the driveway or restrictions on fencing.

Mr. Iannacone presented pictures of two gates, a 12-foot gate spanning the 12-foot cartway and an 8-foot gate beside it. Mr. Fenicle objected to the presentation of the pictures on the basis that this constituted testimony, with the Solicitor offering that it was an appropriate objection.

Mr. Iannacone asked Mr. Heller if the Secretary mentioned any restrictions on fences when he applied for the permit, with Mr. Heller replying that she did not. He asked Mr. Heller if there was a gate and fence at the end of the 12-foot cartway before he applied for the driveway permit, and if so, what was the length. Mr. Heller replied that there were two gates in existence, 12-foot and 8-foot in width. He asked Mr. Heller if he had to move the fencing and part of the gate to construct the driveway. Mr. Heller indicated that he had to move the fencing and the gate or his driveway access would be obstructed.

Mr. Iannacone asked Mr. Heller if he moved the 12-foot cartway and Mr. Heller replied he did not. Mr. Fenicle asked Mr. Heller if he was saying that he did not move the 12-foot cartway, and didn't he relocate it over from where it was. Mr. Heller stated that it is still in the same location. Mr. Fenicle asked Mr. Heller if he agreed the constructed driveway is within the 50-foot private ROW listed on the subdivision plan, to which Mr. Heller stated that he agreed. Mr. Fenicle asked if Mr. Heller agreed that Lot 3 is not to use the 50-foot ROW. Mr. Iannacone replied that that called for legal conclusion as to what the deed states. Mr. Fenicle asked Mr. Heller if another portion of his property could be used to access Fritz Drive, separate from where the driveway is located, and was there road frontage on the other side of the 50-foot ROW that could be used. Mr. Iannacone asked what relevance the questions had to the driveway permit revocation. Mr. Fenicle replied that a permit was applied for that stated the driveway would be constructed in accordance with the subdivision plan, and the plan specifically

MINUTES OF SEPTEMBER 27, 2006

Page 3 of 3

states that Lot 3 can not use the 50-foot ROW to access Fritz Drive. He continued that Mr. Heller is now using his deed as authority for utilization of the 50-foot ROW when he could utilize his road frontage on the other side of the 50-foot ROW to access Fritz Drive.

Mr. Iannacone asked Mr. Heller how much construction was completed and how much money he spent before the permit was revoked. Mr. Heller replied that 90% of the construction was completed at a cost of \$2,400.

Donna Nickle testified that she accesses her property through the private ROW and that she witnessed the construction of the driveway. Mr. Fenicle asked her if any alteration was made to the 12-foot cartway. Ms. Nickle replied that, looking at it, Mr. Heller pushed the cartway over to the right to make room for his driveway and presented photographs showing the cartway before and after construction. Upon questioning by Mr. Fenicle, she testified that Mr. Heller's new driveway is within the 50-foot ROW.

Mr. Iannacone asked Ms. Nickle if she was still able to access Fritz Drive or had any trouble navigating her vehicle over the 12-foot cartway. She replied that she still had access and did not have trouble driving on the cartway. He asked her if she remembered the Secretary testifying that she visited the site in late May and were the pictures taken before or after she was there. Ms. Nickle replied that she did not know. Mr. Iannacone asked if the 12-foot gate was moved before or after construction, to which Ms. Nickle replied that it was not moved.

The Solicitor asked if Mr. Firkal had any comment to make regarding the permit revocation. Mr. Firkal noted that, according to the subdivision plan, the driveway was constructed on the wrong side of the 50-foot ROW, and had it been constructed correctly he would not be having a problem with stormwater runoff from the Heller property onto his.

Mr. Fenicle closed by offering that the Township-approved subdivision plan states that Mr. Heller can not place a driveway in the 50-foot ROW and that only Lots 4 and 5 are permitted to do so.

Mr. Iannacone closed by offering that this case involves bad blood between neighbors and that the Secretary has stated that the revocation was brought about by a complaint from a neighbor. He offered that no permit was required in the first place, that no violation of the permit occurred, and that the driveway was 90% completed when the permit was revoked.

The Solicitor closed the hearing at 6:55 p.m. He explained that the PTS will deliberate the issues based on the evidence presented and will make a timely decision.

Respectfully Submitted,

Susan E. Long
Recording Secretary