

Public Hearing December 14, 2015

Donald Sitte called the public hearing to order at 6:00PM in the meeting room at the Town Hall. Present were Donald Sitte, Robert Schultz, Peter Jacobs, Roberta Thelen, Douglas Smith, Randy Nesbitt, and 19 visitors. Barbara Anschutz was absent.

The purpose of the public hearing was to take testimony regarding vacating a portion of Ward Street.

Tim Tishler and Susan Tishler, 7910 Hwy 57-- Tim and Susan spoke in support of vacating the portion of Ward Street. The Tishlers' inherited the property in 2009 and it has been in the family for 66 years. They feel that the extension platted would not be possible due to the fact it would run directly through half of their existing home. To their knowledge, the platted extension of Ward Street was never used as a public road. Tim read a letter he prepared, a copy of which is available upon request.

Letters in favor of the vacation were also received from Nathan Guequierre, whose property also abuts the road, and the Tishlers' attorney, Collin Dahl.

No one else spoke in favor of the proposed vacation.

Susan & Dennis Garrity are in opposition to vacating Ward Street. Mr. & Mrs. Garrity were not in attendance. Representing them was attorney Joseph Nicks, 200 S. Washington Street Green bay, WI. Mr. Garrity bought the property with the understanding that the 50 foot Ward Street easement could be used as access and was unaware that the Tishler home was on the easement. He is not sure of any future plans Mr. Garrity has for the property. Mr. Nicks explained that the statutes dictate that vacation of roads has to be done in the interest of the public. He feels vacating the road would only benefit one party. State statutes also dictate a street cannot be vacated if it will landlock the parcel. He interprets public access as being defined as a public road or easement, not a private easement. Also, he stated at this time there is not access from State Highway 57 and he doesn't know what the DOT might or might not allow in the future. The statutes also state that if a roadway is vacated even though an abutting property owner is against it, the owner has a right to pursue legal action against the Town. He feels that the platted roadway was put there with the intent to serve the Garrity property.

Bill Nelson, 7628 Elm Point Road, Baileys Harbor – Just wondering if there is any statute of limitations since the road has been there for years. Randy Nesbitt explained there is something called adverse possession that may or not apply, but that's not the proceeding we're taking up at this time.

Letters against vacating the road were received from Mr. & Mrs. Garrity and their attorney, Mr. Nicks.

No one else spoke against the proposed vacation.

In rebuttal- Tim & Susan Tishler 7910 Hwy 57, reiterated there is no possible way to install a road there as it would have to go through his house. As for the landlocked issue, if you buy any parcel along Highway 57 they would have to go to the DOT to get a driveway. He feels Mr. Garrity did not do his due diligence when he bought the parcel, as a survey was done and he would have seen that a house sits on the platted road. He feels tearing down the house if the only way to provide public access and the only

way that will happen is if Mr. Garrity buys it. Susan stated there is no harm to public as the public is not using it and never has used it.

No further testimony was given.

Don would really like to have the full board here to make the decision. Since Barb is absent, he would like to postpone the decision until Barb listens to the hearing.

Randy Nesbitt stated it is at our discretion whether we act on it or not tonight. He explained there is nothing the statutes that define a landlocked property. An unpublished case from 1996 mentions that landlocked generally means that a piece of land is surrounded by land belonging to other persons. However, unpublished cases cannot be cited in a court of law. Don asked Randy what would happen if the Board decided not to vacate it. Randy explained that the Tishlers could file a claim of adverse possession against the Town. The Town would either admit or deny the claim. If the Town denies the claim, then the property own can bring the lawsuit against the Town. If the Town decides that the claim has validity, it wouldn't necessarily have to go to a lawsuit. Randy's suggestion would be, if a claim of adverse possession were filed, the Town should deny it and let the claimant file the action and the judge sign it over. That leaves the Town out of it. Another idea Randy had was for the Tishlers to indemnify the Town if there was a claim made by Mr. & Mrs. Garrity. The other is the possibility of it becoming an adverse possession as discussed earlier. That would insulate the Town Board from any liability.

Motion made/second Don/Roberta to delay making a decision until the next available meeting so Barb can listen to the hearing. Carried.

Don Sitte closed the hearing at 7:11PM

Douglas Smith
Town Clerk/Administrator