



Memorandum

To: Village Board
From: Eileen Suhm
Date: January 31, 2017
Subject: Property Access Issues – Pulliam Property Books Court

Prior to discussion, the Board needs to vote to reconsider this topic from January 23, 2017.

Background:

After the meeting on January 23, 2017, information was brought forward regarding the Pulliam property and access issues that I felt it was important the Board is aware of. This information was not available at the meeting on January 23, 2017. I will start with a very brief history of this topic:

- In 2002 the village approved the Crystal Acres plat with an access easement to these properties. We now know although the easement is on the plat, it did not state for what benefit it existed.
- In late summer (July or August) the Village became aware of issues with the way the easement was represented on the plat because it did not identify the properties that were to benefit from the easement.
- The Village engineer, at that time, began to look into whether we could file a correction affidavit to the plat and did not believe it would be possible
- In late September our zoning administrator organized a meeting that our engineer, village attorney, the property surveyor, the vacant property owner and lot 16 owner of Brooks Court (the vacant property owner reported lot 1 had not responded to the invitation to the meeting) attended. I also had attended that meeting. Our zoning administrator reviewed options to proceed with one being purchasing a portion of lot 1 and 16 in order to obtain the 50' of frontage required by section 495-46(C). At that time the possibility of vacating the unnamed road was discussed.
 - It was left at that time that this was a civil matter and the property owners needed to work out this transaction
- Our attorney was contacted by the vacant property owner's attorney requesting the item to be on the agenda to discuss options with the Board. She sought approval from the Village President to place the item on the agenda.

After the Meeting:

- We became aware although eminent domain can be used to obtain private property and turn it over to an individual property owner, it would need to be blighted property.
- It was brought to our attention by the owner of lot 1 that they were in very recent negotiations with the vacant property owner for the purchase of a small piece of his property. He stated he had made a counteroffer as recently as January 4 and had not heard back from the property owner on the counteroffer at the time the Village Board met. He did provide e-mails indicating this was the case, but this has not been verified with the vacant property owner. Regardless, I regret that he along with the other property owners had not been notified of the meeting. Properties impacted by the access easement and abutting the road reservation have been notified of the 2/6/17 meeting.

Potential Solutions:

1. Correct the Easement on the Plat

I spoke with Renee Powers with the Department of Administration Plat Review. After explaining the issue and her review of the plat she stated the following:

- Whoever has rights of enforcement can modify the easement on the plat. She stated the rights of enforcement would be the Village since it was the Village that required the easement. (*attachment 2002 Plan Commission Minutes & 2002 Planners PC review of plat*)
- The easement existed on the plat when lots 1 and 16 were purchased, so they should have been made aware of the easement (a title company should have found this)

Process:

- A resolution would be drafted for the Board to approve stating the village is clarifying the access restriction on the plat and further explaining the reason and who it is to benefit from the access
- A surveyor would need to file a correction instrument with the register of deeds to modify the access easement

Option:

- The current access easement runs the entire length of lot 16. We could shorten the easement so it ends at the road right-of-way (dotted line on lot 16) (*attachment plat*) if the lots are combined into one lot like it sounds like is desired.

To Address the 50 Foot of Street Frontage Requirement:

Section 495-46(C) (*attachment 495-46(C)*) of the Village of East Troy municipal code requires every new lot created to have 50 feet of street frontage (this would not meet the criteria for a planned development). We all know the intent is to combine the three parcels and build one residential home,

which is likely preferable to lot 1 and 16 over three separate properties and homes. After review of section 495-57 (*attachment 495-57*) with our zoning administrator we believe the vacant property owner could file for a variance of this requirement, allowing a 50' access easement to constitute the 50' of street frontage in this specific situation because the circumstances are so unique they could prove they meet the requirements specified in this section of the code. The vacant owner could file for the variance at the same time as they would file the CSM for review by the plan commission and village board (because this is a variance to the subdivision code it is not reviewed by the zoning board of appeals, it is reviewed by the plan commission and village board)

2. Highway 20 Access:

The Village Engineer contacted the DOT regarding a potential driveway access from Highway 20 (*attachment e-mail*). From the attached e-mail it does not appear it is as simple as selling the vacant property owner the "unnamed roadway." Because there was a quit claim deed making reference for street purposes the village would need to go through the vacating lands quit claimed for public purposes in accordance with State Statutes. The property owners on both sides would receive 18 feet of property. The vacant property owner would then need to obtain a driveway easement or a portion of the land from those property owners for a driveway. Safety concerns associated with adding another driveway access from Highway 20 should be considered with this solution.

To Address the 50 Foot of Street Frontage Requirement:

Again, it would be necessary to file for a variance in this instance because the property will not be able to meet the 50 foot of street frontage requirement. The owner would need to prove they meet the required tests for a variance.

If this solution 1 is chosen, vacating the unnamed road will need to be further investigated (*attachment GIS Plat*). This could impact easement access to the vacant parcels since the property for the road reservation would revert to adjoining properties. We need to be mindful that would mean the portion of the unnamed road at the top of the cul-de-sac would revert to lot 1 and lot 16 in the area of the desired access. It would need to be addressed whether or not an easement created for access over the unnamed road and prior to road vacation will still exist afterwards so access is still available. The process is fairly involved and would require public hearings, etc. This procedure is covered in Wisconsin State Statute 66.1003.

Attachments:

Listed within document with links

Recommendation:

The Board needs to make the following decisions associated with this topic.

- Determine if the Board would like to pursue one of the two solutions
 - Solution 1 – Attorney will draft resolution to correct and the surveyor and our engineering firm will file the correction instrument.

- If pursuing this would the Board like to change the length of the easement to 50' so it is not as intrusive to lot 16 (this can only happen if the lots will be combined)
 - Solution 2 - Pursue vacating roadway and determining how the vacant owner will receive necessary easement or land for a driveway from Highway 20
- Who pays for the services associated with the solution the Board pursues? We typically invoice for contracted services associated with developments and have already done so on some of this issue. Should the entire amount be billed back to the vacant property owner or does the Village Board want to consider a cost share in this matter? (Please note – this question does not pertain to a CSM or variance application and the associated review by contracted staff. That amount should be the full responsibility of the applicant because that is how it would be handled with any applicant)