

THROOP BOROUGH COUNCIL
THROOP, PENNSYLVANIA

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IN RE: DICINDIO STREET VACATION

JUNE 14, 2010

6:45 P.M.

THROOP MUNICIPAL BUILDING
SANDERSON STREET
THROOP, PENNSYLVANIA

COUNCIL MEMBERS:

- THOMAS LUKASEWICZ, PRESIDENT
- JAMES BARNICK, VICE-PRESIDENT
- RAY JAROSH
- ANTHONY GANGEMI
- JOHN MUSEWICZ
- NEIL FURIOSI
- STANLEY LUKOWSKI, MAYOR

Mark Wozniak
Official Court Reporter

1 MR. KALINOSKY: The next alley is
2 located between and parallel to Cypress
3 Street and Maple Street. It runs parallel
4 from Maple to Cypress and intersects and
5 runs from Line Street to Olendike Street
6 perpendicular. A portion of the alley has
7 been paved. There are records in the
8 borough here where the borough had actually
9 done the paving. I cannot find anything by
10 ordinance opening the street or ordaining
11 prior to being paved.

12 MR. BARNICK: Is that a driveway
13 going up?

14 MR. KALINOSKI: I don't know what
15 really happened. It's been used as a
16 driveway.

17 MR. GANGEMI: We own this property?

18 MR. KALINOSKI: There are paving
19 liens for it. I'm assuming, based on those
20 paving liens, that we owned it, we paved it.
21 It was paved.

22 MR. LUKASEWICZ: It was officially
23 opened at some point in time?

24 MR. KALINOSKI: I can't find
25 anything saying it was officially opened.

1 Nothing at all.

2 MR. BARNICK: It wouldn't matter
3 once you paved it.

4 MR. KALINOSKI: I think you have a
5 legal argument that once you pave it you
6 assume responsibility.

7 MR. BARNICK: Officially own it. I
8 went up this morning and was looking at
9 that. I thought it was a driveway.

10 MR. KALINOSKI: These are paving
11 liens out of the book. They're dated
12 October of '82. It's entitle "alley,
13 Olendike Street to Line Street." Walter
14 Rakosky, looks like 2 and 4 Olendike Street,
15 total amount was \$505.50, \$338 was paid, and
16 there's a balance of \$88.

17 Then Mr. Alan Richardson, 110
18 Cypress Street. His total is \$404, \$269 was
19 paid. His balance, I believe, was \$269 and
20 then paid in full. That's the only ones on
21 the lien. There's also the estate of W.
22 Marshalek, which I believe is the property
23 Mr. DiCindio recently purchased. There's a
24 lien, 80 feet.

25 MR. BARNICK: How can they assess it

1 if it wasn't paved? How could they lien it?

2 MR. RICHARDSON: They originally
3 said they were going to open the whole thing
4 and pave it. They came to my brother and
5 myself and however it went down.

6 MR. BARNICK: And they still
7 assessed for --

8 MR. RICHARDSON: Yes. Like I said,
9 we did pay. We paid.

10 MR. KALINOSKI: You'll see on there
11 where he's paid in full.

12 MR. BARNICK: Was Marshalick paid in
13 full?

14 MR. KALINOSKI: Is says nothing
15 paid.

16 MR. RICHARDSON: It would be a short
17 piece from Marchalick.

18 MR. DICINDIO: About 60 feet from
19 him.

20 MR. RICHARDSON: My property ends
21 before the edge of the pavement.

22 MR. DICINDIO: I just bought it
23 about a year and a half ago.

24 MR. BARNICK: It would have come up
25 in his search.

1 MR. KALINOSKI: The lien was never
2 filed but it's written in there "lien."

3 MR. BARNICK: They liened something
4 they never paved.

5 MR. KALINOSKI: Correct. Here's the
6 map.

7 MR. LUKASEWICZ: This petition was
8 also advertised?

9 MR. KALINOSKI: Correct. They were
10 both advertised together. Notices also sent
11 out.

12 MR. DICINDIO: Give you a little run
13 down of it. The red line is the property
14 lines of my properties. This part here is
15 the part that was talked about being from
16 Marshalek's property that I just purchased.
17 This part here, the smaller blue, is Mr.
18 Alan Richardson's, and this blue here is
19 Walter Rakosky. I have the pictures to
20 correspond to them. This right across here,
21 this tape measure, would be right here at
22 the property line going across the alleyway.

23 MR. LUKASEWICZ: That's paved
24 currently?

25 MR. DICINDIO: That's paved

1 currently. To give you an idea where that
2 is, that is the property line between me and
3 Alan Richardson, and it comes across and it
4 goes over to the property line which is
5 somewhere here between the deck post and the
6 pole because the alley is that wide. So it
7 would be somewhere in that vicinity, the
8 property line there. This is the upper
9 portion in my yard, next to the alleyway,
10 this part here. As you can see it's all
11 grass. I maintain that. That's about 20
12 feet of grass that I presently maintain.

13 If you look here, these are
14 pictures. There are no driveways or parking
15 spots or garages that would -- this would
16 prevent Walter from getting into being that
17 he doesn't have any. Presently, as you see
18 by these pictures, they use it as their own
19 personal driveway. I mean, this isn't
20 parked there, this is beached there. It has
21 a cover on it, has a wheel chock behind it,
22 which denies me access to my land for over a
23 year and a half that I went to clean it out
24 and they won't let me have access to it to
25 bring the borough truck in and clean it out.

1 This gives you a picture of the
2 difference between where the alley is paved
3 versus the grass. This is a blowup of it to
4 give you an idea. That's the --

5 MR. LUKASEWICZ: Drop off.

6 MR. DICINDIO: Yeah, that Walter
7 says he can drive down. I think you'd have
8 a tough time driving down that with
9 Mr. Richardson's truck.

10 MR. BARNICK: There's a sewer line
11 under there?

12 MR. KALINOSKI: Sewer line runs
13 through there. I believe council is going
14 to execute or has already executed an
15 easement for Lackawanna River Basin Sewer
16 Authority.

17 MR. DICINDIO: Mike Matechak from
18 the Lackawanna River Basin Sewer Authority
19 said they don't have a problem with you guys
20 vacating it as long as there is an easement
21 and for them to get to their sewer line.
22 That was in March.

23 MR. KALINOSKI: That's my
24 understanding. As long as they have access
25 to maintain it.

1 MR. DICINDIO: Walter pays for that
2 alley to get plowed.

3 MR. KALINOSKI: The other side of
4 Olendike ran through the parcel of land we
5 purchased for the DPW. That was one of
6 those roads that ran through that we
7 abandoned.

8 MR. DICINDIO: I'm only asking for
9 the vacating because I presently cut all the
10 grass. So I figured this way here then I
11 could just continue and clear it out --
12 because there's another five here not
13 cleared. Clear it out and just clear out
14 the whole land and make it all one --

15 MR. LUKASEWICZ: You're asking for
16 the vacating of the 25 feet by how long,
17 just where your property is?

18 MR. DICINDIO: Just my property, but
19 I wasn't sure how you wanted to do it. If
20 Mr. Richardson just would like that vacated
21 the whole way through, that's 50/50. He's
22 not against, he just wants to make sure he
23 gets his.

24 MR. LUKASEWICZ: The red lines --

25 MR. DICINDIO: The red lines are my

1 property lines.

2 MR. LUKASEWICZ: Lot number 32 is
3 yours?

4 MR. DICINDIO: Yeah. I own 32, 31
5 and 30.

6 MR. LUKASEWICZ: This one to the
7 right is the one you just purchased that
8 goes a little longer than your other lots?

9 MR. DICINDIO: Yes, sir. And this
10 is right about where that drop off is, right
11 about in here, and this is the alley they
12 use as their storage facility.

13 MR. GANGEMI: The blue area is the
14 paved portion?

15 MR. DICINDIO: Yes. It's paved all
16 the way up to -- you can see here there's
17 like a curbing that was put in where the
18 drop off is.

19 MR. LUKASEWICZ: When you come up to
20 this slashed area, the paved area --

21 MR. RICHARDSON: You can't drive up.

22 MR. LUKASEWICZ: I know. When you
23 come up about halfway on number 25, where
24 your property begins, would you be able to
25 turn to the right there and get onto your

1 property? From there going up. From the
2 beginning of the red, up about an inch and a
3 half, that portion there, can you get into
4 your property there?

5 MR. DICINDIO: Yes, as long as it's
6 not blocked by vehicles. These vehicles are
7 just parked there. They're just beached
8 there. And the guy whose vehicle it is, he
9 lives over here on lot 26. He's on the
10 road. He's a truck driver. So when he
11 parks his car there there's no way to move
12 it for weeks at a time, depending how long
13 he's out on the road. I've approached
14 Mr. Rakosky and asked him because I wanted
15 to get the borough truck when I first took
16 over the property, and the three times I had
17 the to guy scheduled to come and do it, to
18 clean up, so I could throw it on the truck
19 I'm denied access to my own land because he
20 said I should go through the alley through
21 the other side. Why should I drive through
22 the grass when there's blacktop coming up.

23 That's what led me to come to you
24 guys saying look, if nobody can have access
25 to it other than him as his own personal

1 driveway why don't you just vacate it and
2 let the property owners that abut it have --
3 MR. LUKASEWICZ: The issue I have --
4 maybe not the issue, but the concern that I
5 have is if we were to abandon the portion
6 which would be to the right of number 32 and
7 keep the same parallel line coming across
8 behind your properties that would give you
9 that. Then everyone else -- yourself and
10 the other two landowners -- would still have
11 the use of that road if they needed to get
12 into their properties.

13 MR. GANGEMI: Right now that's a
14 borough street.

15 MR. KALINOSKI: It's a borough
16 street. We paved it.

17 MR. GANGEMI: So we can tell that
18 person to move those vehicles.

19 MR. KALINOSKI: We have not
20 maintained it. We never snow plowed it.

21 MR. LUKASEWICZ: My concern is
22 Mr. DiCindio, if he wanted to get into his
23 property he would still have the right to
24 use that just like Mr. Richardson and
25 Mr. Rakosky.

1 MR. LUKASEWICZ: They still have the
2 right to the alleyway, but yet up there
3 where Mr. DiCindio maintains his grass he
4 would be able to keep that and not worry
5 about anybody ripping it up.

6 MR. DICINDIO: Presently whenever
7 the cars are parked there, I figure the
8 police department has better things to do
9 than me calling them up.

10 MR. LUKASEWICZ: If you wanted to
11 get to the back of your property and it is a
12 borough road you should have access to it
13 just like other individuals. You shouldn't
14 be denied that.

15 MR. DICINDIO: That's what I
16 thought.

17 MR. LUKASEWICZ: I don't think I'd
18 want to give it all up because if we gave it
19 all up you wouldn't have any access to the
20 back of your property. If we only vacate
21 the portion that you're interested in
22 everyone still has access to their
23 properties.

24 MR. DICINDIO: I just wanted to
25 bring it to your attention.

1 MR. LUKASEWICZ: I'm concerned about
2 the access. If we vacate the whole thing
3 he's landlocked.

4 MR. YAROSH: He's not landlocked.
5 He's still on Line Street.

6 MR. LUKASEWICZ: He has an alley
7 that he can't use.

8 MR. DICINDIO: Because of the way
9 it's presently being utilized.

10 MR. JAROSH: To signify being
11 landlocked, you're not surrounded on all
12 sides by property.

13 MR. DICINDIO: No.

14 MR. LUKASEWICZ: You wouldn't have
15 access the other two property owners would
16 have, and if they were interested in having
17 that vacated they would have come in as
18 petitioners also and they haven't.

19 MR. DICINDIO: According to your
20 rules it doesn't take the rest of them
21 because I own more than 50 percent of the
22 foot frontage. They can team up with me.

23 MR. LUKASEWICZ: We don't want to
24 give Mr. DiCindio the entire road because
25 then these people can't use --

1 MR. BARNICK: You can't give him the
2 entire road.

3 MR. JAROSH: We can only give him
4 the portion that abuts his property.

5 MR. LUKASEWICZ: So he would be able
6 to get all of that and then half of that
7 little section.

8 MR. DICINDIO: You have to realize,
9 gentlemen, that the paved part isn't
10 directly down the center. If you were to
11 give 50 percent to Mr. Richardson and 50
12 percent to Mr. Rakosky Mr. Richardson would
13 end up getting about nine feet of the paved
14 alley and Mr. Rakosky would only get three
15 feet of the paved alley and the other nine
16 or ten feet that's not paved closer to his
17 property, which would be where the deck is.

18 MR. JAROSH: So his decks is
19 actually on the alley?

20 MR. DICINDIO: The alley isn't paved
21 right down the center, it's paved about four
22 feet from this property line and about nine
23 feet from this property line. It's about 12
24 feet, so it's roughly 25 feet wide. That's
25 what shows on the map.

1 MR. BARNICK: Alan, do you want
2 yours?

3 MR. RICHARDSON: As keeping it open
4 or taking it and splitting it? I can't use
5 it because it's never been used. I would
6 have never agreed to pave it if I knew what
7 was going to go on with it. It wasn't
8 opened as a street because they told us it
9 would be a through street. Like I said, at
10 the time they just paved the bottom half.

11 MR. LUKASEWICZ: So what would be in
12 your best interest, to acquire the half of
13 the property adjacent to your property?

14 MR. RICHARDSON: I would say yes
15 because I don't need access off that for the
16 back of my property.

17 MR. LUKASEWICZ: And then the only
18 other participant, he's not here.

19 MR. BARNICK: They were all
20 notified?

21 MR. KALINOSKY: Yes.

22 MR. GANGEMI: Then who gets
23 ownership of that?

24 MR. BARNICK: He would get 50,
25 Walter would get his 50.

1 MR. LUKASEWICZ: Not necessarily.
2 They have the right as individuals -- as
3 long as the other landowner doesn't come in
4 and make claim to it they have the right to
5 go after it also. There's a fair market
6 value of the property. You're going to have
7 to pay the value of the property. So if
8 Walter's not here he's almost giving up his
9 right to it, I would assume. I don't know.

10 MR. JAROSH: We still have to send a
11 letter out to him asking him if they're
12 willing to purchase it or if they want to
13 purchase it and this is the appraised price
14 and they can get back to us. So Walter will
15 be notified.

16 MR. BARNICK: He was at the last
17 one.

18 MR. KALINOSKI: This is section 1742
19 out of the borough code which is petitioning
20 for vacating a street: "Any person or
21 persons constituting a majority in number
22 and interest of the owners of the real
23 estate abutting upon any street or portion
24 thereof may petition the council to vacate
25 such street or portion thereof.

1 Council shall hold a hearing upon
2 such petition following at least 15 days'
3 personal notice of all owners of abutting
4 real estate not joining in such petition and
5 following at least 15 days' notice thereof
6 in a newspaper of general circulation in the
7 borough.

8 Following such hearing council shall
9 either by motion deny such petition or by
10 ordinance vacate such street or portion
11 thereof. All provisions of section 1741
12 hereof applicable ordinances enacted by
13 authority of that section shall apply to
14 ordinances enacted by authority of this
15 section, provided that any petition for
16 vacation of any street or portion thereof
17 may release the borough from all damages
18 sustained as a result of such vacation.

19 Such petition is signed by owners of
20 all the property abutting upon such street
21 or portion thereof, and where such release
22 shall have been included in such petition no
23 proceedings for award of damages shall be
24 had and no damages as a result of such
25 vacation shall under any conditions be

1 awarded to any abutting property owner."

2 It will have to be done by ordinance
3 as well.

4 MR. BARNICK: The majority of them.

5 MR. KALINOSKI: The majority I
6 believe is just Mr. DiCindio and --

7 MR. BARNICK: They got better than a
8 majority with Alan and him.

9 MR. KALINOSKI: Alan has two lots,
10 40 foot each, which is 80 feet. Mr. Rakosky
11 foot frontage is 124 and a half feet, and
12 Mr. DiCindio is 114.8 feet and 158 feet, for
13 272.8.

14 MR. JAROSH: He has the majority on
15 his own.

16 MR. LUKASEWICZ: That's why he was
17 allowed to submit a petition. He held the
18 majority of the foot frontage.

19 MR. JAROSH: If Mr. Richardson wants
20 his property then I'd say vacate the whole
21 street and possibly look into crediting the
22 amount they paid to have it paved towards
23 the purchase price.

24 MR. LUKASEWICZ: That would be fair.
25 All right. I think what we should do with

1 this one, just to be on the safe side with
2 attorney Cimini not being here, I would feel
3 more comfortable if we actually put this
4 motion on to vote at the next meeting when
5 attorney Cimini is here. This way he can
6 have time to review everything for us. Do
7 you have a problem with that?

8 MR. DICINDIO: No.

9 MR. RICHARDSON: No, that's okay.

10 MR. LUKASEWICZ: I just don't want
11 to do something that we're going to have to
12 come back and start all over again.

13 MR. KALINOSKI: I want to reiterate,
14 with the understanding that Lackawanna River
15 Basin Sewer Authority will retain the
16 permanent easement over the top their sewer
17 line.

18 MR. LUKASEWICZ: That would be as
19 per Louis A. Cimini, Esquire, our borough
20 solicitor, a letter dated June 9, 2010 to
21 the borough of Throop in regards to grant of
22 easement with LRBSA.

23 MR. JAROSH: You already had a
24 motion prepared for us.

25 MR. LUKASEWICZ: We can even hold on

1 to that until we actually vote on -- this
2 way I'd feel more comfortable with our
3 solicitor looking at it.

4 Are there any more individuals in
5 the audience who would like to speak in
6 regards to it whatsoever?

7 (DiCindio Exhibits 1 and 2 marked.)

8 MR. LUKASEWICZ: What is the width
9 of the road?

10 MR. KALINOSKY: I believe it's 25.

11 MR. LUKASEWICZ: It says 25, so he
12 might get 12 feet.

13 MR. DICINDIO: He'd still have room
14 to get in.

15 MR. RICHARDSON: There's a telephone
16 pole there.

17 MR. DICINDIO: The pole is on the
18 property line.

19 MR. LUKASEWICZ: So as we sit here
20 today there should be no hardship towards
21 him any different than what he's been
22 accustomed to.

23 MR. MUSEWICZ: How much pavement
24 would be Walter's?

25 MR. KALINOSKI: About three feet of

1 it.

2 MR. MUSEWICZ: He would be entitled
3 to total footage --

4 MR. KALINOSKI: Walter would have
5 roughly from the pencil over. Maybe about
6 three feet. Then the rest is over here in
7 the grass area, the rest of the roadway. So
8 12 and a half feet, 12 and a half feet.
9 This is about 12 foot wide.

10 MR. MUSEWICZ: About nine foot of
11 this grassy area.

12 MR. KALINOSKI: Correct, which is
13 part of the roadway.

14 MR. LUKASEWICZ: The only concern
15 would be if Walter's not interested. Then
16 the other landowners would be given the
17 right to purchase it all, I would assume.
18 Correct?

19 MR. KALINOSKI: I believe so.

20 MR. BARNICK: I don't think he would
21 decline that if his deck is part on it.

22 MR. LUKASEWICZ: All right. Before
23 we close, any other discussion whatsoever?
24 So I would assume that we could adjourn this
25 meeting at this time. Motion to adjourn the

1 hearing.

2 MR. DICINDIO: Just so I make sure I
3 understand you correctly, where we stand now
4 is that you guys are pretty much in
5 agreement that you would like to vacate it.
6 It's just that you want the solicitor to
7 look it over and make sure it's all done
8 legally and proper.

9 MR. LUKASEWICZ: It appears like we
10 don't have an issue with it at this point in
11 time, but we would like to have an official
12 review by the solicitor before we make any
13 movement on it. And what we intend to do is
14 at our next regularly schedule meeting,
15 that's when we will actually put it to a
16 vote.

17 Motion to adjourn?

18 MR. GANGEMI: Make it.

19 MR. FURIOSI: Second.

20 MR. LUKASEWICZ: Hearing is
21 adjourned.

22

23

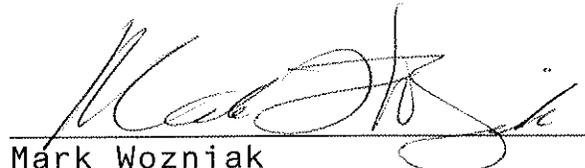
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C E R T I F I C A T E

I hereby certify that I attended the foregoing proceeding, took stenographic notes of the same, that the foregoing, consisting of 22 pages, is a true and correct copy, done to the best of my ability, of same and the whole thereof.


Mark Wozniak
Official Court Reporter