

¹Minutes
Ida Township
Burkeys Lane-Luth Public Hearing
June 21, 2010, 5:00 p.m.
5644 Burkeys Lane/Ida Township Hall
4700 County Rd 6 NW, Garfield, MN 56332

The hearing was called to order at 5:00 p.m. at the site by Chairman Mike Rosenwald. Supervisors Dan Diedrich and Tom Searcy, Clerk Barbara Kilgore and Treasurer Palmer Krueger were present. The Township's Attorney Bill Leuthner was also present. Fourteen people signed in at the hearing

Rosenwald announced that the hearing is being recorded.

Introduction

Rosenwald stated that the hearing is being held in response to a petition received by the Ida Town Board at the May 3, 2010, Town Board Meeting. The petition was signed by nineteen registered voters, who own property on or live within three miles of the road. The petition is to alter Burkeys Lane across the property owned by Richard H. and Doris S. Luth to conform to the dimensions of the public road easement set forth in Warranty Deed No. 91083 filed on May 26, 1988. Said dimension being 60 feet wide by the alteration of the established road with the addition of 27 feet located to the southeast of the road established by the March 1, 2006 Court Order .

Review the Site

Rosenwald pointed out the area to be altered by the petition and the options available for altering the road easement to the back 60 feet of the Luth property.

- **Scott Johnston representing Richard & Doris Luth.** Asked what the purpose for widening the road easement is.
- **Rosenwald.** Basically to widen the road for snow plowing and to allow room for emergency vehicles to access the property at the end of the road
- **Scott Johnston representing Richard & Doris Luth.** What does the township intend to do with the extra 27 feet. Will it be a 60-foot wide strip of gravel?
- **Rosenwald.** No. there will be no change immediately
- **Scott Johnston representing Richard & Doris Luth.** Why is the current turnaround not adequate?
- **Rosenwald.** The current turnaround is adequate but we had a problem with the vehicles getting close enough from the fire department during a past fire. We are not going to change the turnaround.
- **Scott Johnston representing Richard & Doris Luth.** I assume the gate at the end is an issue.

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- **Rosenwald.** It has been an issue with snow removal, but the Township does the best it can.
- **Scott Johnston representing Richard & Doris Luth.** Would a turnaround past the gate be helpful?
- **Rosenwald.** Possibly, but that is not part of the petition we are addressing at this hearing.

Diedrich made the motion to recess the hearing to reconvene at the Ida Township Hall. Searcy seconded the motion. Motion carried. Diedrich-aye, Rosenwald-aye, Searcy-aye.

Rosenwald reconvened the Hearing at the Ida Township Hall at 5:20 p.m. and went over the rules for the hearing.

Confirm Proper Notice

Rosenwald asked if the clerk had confirmed that the signatures on the petition are in order. Kilgore confirmed that she had verified the signatures on the petition. Rosenwald asked the clerk to confirm that proper notice had been given for the hearing. Kilgore confirmed that she had an affidavit of posting from the Township, an affidavit of publishing from the Township and an affidavit of personal service provided by the petitioner, Judy Burkey, confirming that proper notice was given to all parties of the hearing.

Public Comment

- **David Winterfeldt 5930 Burkeys Lane.** Does the petition for the 60-foot easement road address all of the roads or just this one?
- **Rosenwald.** Just this road. The rest of the roads are out of the scope of this hearing.
- **David Winterfeldt 5930 Burkeys Lane.** Does this change the impervious grounds of the Luth property and make it in violation of the County ordinances.
- **Rosenwald.** I don't believe that it would. Rosenwald measured the lot size and with the reduction in size of the property and thinks he would have room for 8100 square feet of impervious surface.
- **Letter from Mr. & Mrs Lopez 5770 Burkeys Lane.** Rosenwald read the letter. It stated that the Lopez's feel that this petition is in violation of the decision made by the Honorable Judge Irvine on August 14, 2003. They request that the petition be denied.
- **Glenn VanAmber 4256 Wahtomin Trail.** What impact would this alteration have if ever the road would be blacktop?
- **Rosenwald.** One of the conditions for blacktopping is for a 66-foot road easement, but this is a special situation where 60-feet were originally plated. It is not an issue at this time.
- **Manly Winterfeldt 5030 Burkeys Lane.** Blacktopping is not part of the petition and should not be discussed.
- **Judy Burkey 912 11th Avenue West.** Said she has her house in town for sale and plans on being a permanent resident at the end of Burkeys Lane. She is very concerned about the snow. There have been problems with snow removal and propane trucks and other

large vehicles will need to be able to access her property. She said it is interesting that people want a 60-foot easement on that road but not in certain places. The road needs to be a 60-foot easement all the way.

- **Doris Luth 5644 Burkeys Lane.** The Board has not given a reason why they need the extra 27-foot width and it is only for one property.
- **Rosenwald.** Why does the property at the end of road not warrant the same services as everyone else on the road to the east of that property?
- **Dick Luth 5644 Burkeys Lane.** Stated that during the district court case it was ruled that the 60-foot easement on his original warranty deed was only a reference. There were no documents to support the reference on the deed. Why doesn't the 33-foot road easement stand as the judge provided. Why are we discarding the ruling by the Judge in a Court of Law?
- **Diedrich** asked Luth if during the court case there was any mention about access to the property west of his property and has anything changed since the time of the court decision. He also noted that the Town Board is reacting to a petition that was presented to it and trying to act in the best interest of everyone.
 - **Dick Luth 5644 Burkeys Lane.** There was a road resolution adopted by a previous Board establishing a 60-foot road easement across his property based upon six years of continuous maintenance and public use. It is his contention that it is a driveway and was always used for private use. It was not a public road. The resulting 33 feet is on the strength of an affidavit from the fellow that used to drive the road grader for 6 consecutive years. The Judge who heard all of the witnesses and evidence did not allow the 60-foot easement across his property. Mr. Luth said a 60-foot easement is not necessary for access to the property to his west because the property is not land locked. There are other ways for the owner to access the property from Burkeys Lane without even going across his property. He said the Township was listed as a co-defendant along with Burkeys in that case and if the Board grants this petition it is disregarding that court case.
- **Rosenwald** said that none of the current Board members were on the Board at the time of the Court case. He asked Luth if he received any monetary damages for the 33-foot easement at the time.
- **Dick Luth 5644 Burkeys Lane.** Said he did not receive any monetary damages for the easement.
- **Scott Johnston representing Richard & Doris Luth.** Has the Township entered into an agreement with the Burkeys on the pending appeal on the rest of the road?
- **Rosenwald** At this time, we have a pending agreement.
- **Scott Johnston representing Richard & Doris Luth.** Did that involve that the Burkeys will drop their appeal if the Board grants this petition.
- **Rosenwald.** It involves that if we grant this, that agreement will go forward and if we don't, the appeal goes back to the court.
- **Scott Johnston representing Richard & Doris Luth.** so in order to have a settlement with the Burkeys you have to grant this petition.

- **Rosenwald.** In order to have the agreed upon settlement, I believe that is correct. We wouldn't get an agreement if it went back to court.
- **Scott Johnston representing Richard & Doris Luth.** You knew today before this hearing that if you granted this 27-foot easement that you have a settlement with the Burkeys and you can side step that court case. Is that correct.
- **Rosenwald.** I think we all realized that.
- **Scott Johnston representing Richard & Doris Luth.** Did you receive today the letter from Dave Rush regarding the impervious land use? The letter from Dave Rush from Douglas County Land and Resources says that currently the Luth property is at 21% impervious land use and if the petition is granted, it would make the lot a non-conforming parcel. If granted, this would hurt the value of the Luth property to a significant degree.
- **Scott Johnston representing Richard & Doris Luth.** The pending petition incites safety issues and road maintenance issues. Anyone at the site knows that this is not an unsafe road, so the safety issue is just a smoke screen. The Town Board initiated a separate petition prior to this seeking the 60-foot right-of-way but stopping short of the Luth property. He submits that the Town Board has already made a determination that it is not necessary to have a 60-foot easement on the Luth property. He also said that granting this petition would not help with road maintenance as there is a gate across the property west of the Luth property, and as long as that gate is there widening the road will not resolve any road maintenance issues.
- **David Winterfeldt 5930 Burkeys Lane.** Asked if the petition is granted and the property becomes non-conforming will the Township give Luth's property to keep it in conformance.
- **Judy Burkey 912 11th Avenue West.** Stated that the original lawsuit was between Luths/Fletchers and the Township. She wasn't brought into it until months later. That was why it was the 100 feet, because that was what was in that lawsuit and it was never said that it was supposed to be 60-feet. The only thing was the affidavit from the former plow person that was down there.
- **Dick Luth 5644 Burkeys Lane.** Said that before the lawsuit went to district court, it had gone into mediation. The Mediator ruled that it was a private road. In mediation Judy Burkey and the Township were in one room and Luths/Fletchers were in another room. The Mediator told him at that time that the Supervisors had conceded that it was a private road and 1-rod Cartway to Judy Burkeys property was discussed. A few days later, he was informed by his attorney that Judy Burkey has withdrawn her consent on the agreement of the private road. Two years after the trial, her attorney John Lervick stated that Judy Burkey had an agreement from the Township that they would pursue putting a 60-foot easement on the Luth/Fletcher property. The agreement was not presented in court. Luth presented a copy of the agreement to the Board. It is an Agreement for Compensation. In the agreement it states that Judy Burkey received money for a 20-foot easement and she received money for the lift station property. In that agreement it stated that the Board would pursue putting a 60-foot easement on the Luth/Fletcher property. He feels that his property was used as compensation in that agreement.

- **Rosenwald** said he was not aware of the agreement. The agreement was signed by the Township's attorney at the time.
- **Judy Burkey 912 11th Avenue West.** The agreement was made between her and the Township to get the sewer easement done.
- **Rosenwald.** There were no Town Board signatures on the agreement, but it was signed by the Township's attorney at that time. The agreement was before the court case occurred, so the agreement was no longer valid.
- **Dick Luth 5644 Burkeys Lane.** In conclusion, after the mediation for the court case, his attorney said that he had to include Judy Burkey as a co-defendant with the Township for that case.

Rosenwald closed the public comment.

Board Discussion

Rosenwald asked if it was possible for the Board to meet with its attorney in private. Mr. Leuthner said it was possible. The grounds for closing the public meeting were the attorney/client privilege to discuss a township legal case on previous litigation. Scearcy made the motion to recess the hearing so the Board could meet with the Township's attorney to discuss the legal case. Diedrich seconded the motion. Motion carried. Rosenwald-aye, Scearcy-aye, Diedrich-aye.

Rosenwald called the hearing back to order.

Rosenwald stated that The Supervisors discussed their options with the attorney.

Rosenwald asked Mr. Luth if the Board denies the petition, would he be willing to remove the fence and leave it down on his property that abuts the road. Mr. Luth said he would.

Rosenwald noted that there are issues on both sides. Mr. Luth has some hard ships and Town Board would really like a 60-foot right-of-way.

Rosenwald made the motion to deny the petition. Scearcy seconded the motion. Motion carried. Rosenwald-aye, Scearcy-aye, Diedrich-aye. The Board signed off on denying the petition

Rosenwald noted that this was a very hard case to decide.

Adjourn Rosenwald made the motion to adjourn at 6:22 p.m. Diedrich seconded the motion. Motion carried. Rosenwald-aye, Scearcy-aye, Diedrich-aye.

Barbara D. Kilgore
Ida Township Clerk

Mike Rosenwald
Ida Township Chairman