

Minutes
Lake County Board of Vacations
Public Hearings Conducted on September 28, 2022 and November 30, 2022

1. Call to Order: Mr. Denz called the hearing to order at 3:00 p.m. for Case No. #000742-2022 and reviewed the petition with those in attendance. Mr. Denz explained that the petition was legally advertised in the Daily Herald on September 12, 2022. The pledge was recited.
2. Roll Call
Board of Vacations representatives:
Planning, Building and Development: Eric Steffen, Operations Manager
Division of Transportation: Betsy Duckert, Manager of Permitting
Planning, Building and Development: Krista Braun, Planning & Zoning Manager
Vacation Officer*: Brad Denz, Senior Planner/Project Manager
State's Attorney's Office*: Lisle Stalter, Assistant States Attorney
* Non-voting members
3. Added to the Agenda (none)
4. Deferred Matters (none)
5. Other Business: Request to vacate an unimproved portion of Midway Street right-of-way located in the Allen City Subdivision, Cuba Township by John Cassara and John E. Kadlec, record owners of 23889 N. River Road and 23865 N. River Road, both in Cary, Illinois and adjacent to the Midway Street right-of-way.

Petitioner's Testimony

Kevin Hanzel, attorney and representative for the applicants, stated his client's property and the subject right-of-way abut property under ownership of a defunct HOA; the proposed vacation would not preclude access to the beach and park area as the plat of subdivision allowed for two other access points to this area from the south and north; and the application received no objections from Lake County staff. The Lake County Division of Transportation requested a ten-foot drainage easement on behalf of Cuba Township, which the applicants would not object. Regarding water access, fire districts use an "Automatic Aid Plan" in emergencies and multiple departments respond with resources; water from the Fox River would not be used. If accessing the river was necessary by a fire department, they would go through private property. The applicants would like to rehabilitate the property which has never been used for beach access.

Board Comments/Questions

Member Duckert raised questions regarding the use, access, and maintenance of the open space and piers. Mr. Hanzel replied the homeowner's association (HOA) has been defunct for 30 years, and access to this area is from the north or south. The piers in the river belong to the adjacent property owners who maintain the open space area. Within the proposed vacation area, the terrain is too steep to launch a boat. Member Steffen asked about future development plans and noted the need to maintain existing drainage patterns within the subject property. Mr. Hanzel stated the applicants have preliminary plans to develop the vacated area, however they wanted to obtain a vacation approval before advancing their development plans. Member Braun requested clarification on future ownership and use of the area to be vacated, drainage, and open space use and ownership. Mr. Hanzel stated the applicants would each retain their half of the vacated right-of-way and had no objection to the location of the drainage easement. The shed was pre-existing to Mr. Cassara's purchase of his lot. There is no record of the HOA filing with the state of Illinois and was unaware of who has paid the taxes. Maintenance of the open space has been done by adjacent property owners. Drainage infrastructure is not installed, and the flow of water is natural. Brad Denz stated a notice was sent to the Cary Fire Protection Department and a response was not received. No taxes are being paid on this property per the Lake County Clerk's office.

Public Questions

Brett Rodgers asked questions about the current use of the ROW and river rights. Mr. Hanzel stated the right-of-way area is currently not being used. Brad Denz stated the County is not involved with

establishing river rights, which may be found in the subdivision covenants, however, the County does not enforce private covenants.

Dawn Selleck raised questions relating to current and future use of the subject property, property taxes, impacts to property values and boat access. Mr. Hanzel stated he did not know the original intent of the roadway. Lisle Stalter provided explanation of the ROW and subdivision plat requirements from a historical perspective and Mr. Denz added the plat did not indicate a use for the subject portion of Midway Street. Mr. Hanzel responded with clarification that access to the open space area would be preserved and no impact to property values would be incurred. Mr. Denz stated the acquired vacated area would be held in private ownership with taxes would be paid by each property owner. Future use of the property would be subject to compliance with ordinance requirements. Member Steffen clarified the jurisdiction responsible for docks is the U.S. Army Corps of Engineers and IDNR.

Susan Duensing asked about the difference between "vacate" or "purchase" and whether another house or structure could be constructed on the property. Brad Denz stated the land acquisition fee previously required was eliminated by the County Board in 2018, however the vacation procedure is the same; the vacated land would be consolidated and subject to compliance with applicable zoning regulations. Lisle Stalter provided clarification on the legal justification for the elimination of the land acquisition fee.

Rob Nikides asked how drainage would be maintained and guaranteed. Mr. Hanzel stated there will be a 10-foot drainage easement, prohibiting placement of a structure within the easement.

Kathy Nikides explained the neighborhood's use of the open space area and access points and her concerns regarding the use and potential overuse of the Fox Street access. Brad Denz stated per the plat of subdivision, residents would access the open space area from the north or south side of River Road.

Public Statements

Susan Duensing asked for clarification on the HOA, river rights, and ownership, use, and access to the open space area and river. She expressed several concerns over the proposed request which included: residents' inability to use the access points due to harassment; the limited benefit of the vacation to the applicants; the negative impact to property values, the inability to use the Midway Street entrance to build a pier; exacerbation of flooding issues; and elimination of access to the river in emergencies. Brad Denz stated there was an established HOA in the past but approximately thirty years ago the board was eliminated, and payment of taxes ceased. The HOA is no longer recognized by the State. Member Braun stated although the plat of subdivision references an HOA, it is defunct and there is no elected board or dues collection. Lisle Stalter explained a bona fide HOA can file a request to vacate property, and it has to be a HOA that is registered with the State and undertakes the developed property for use for the benefit of the association. Ms. Stalter asked if the community taken any steps to have a valid bona fide HOA. Ms. Duensing stated the residents had not been cooperative with HOA organization.

Kathy Nikides asked for clarification on use of river water in emergencies. Bob Springer, Lake County Planning, Building & Development Deputy Director/Building Official, stated he has regular contact with all the fire protection districts, and it would be a very rare event that they would pull water from the river because it damages their equipment.

Dawn Selleck asked why this section of ROW was never improved and Joe Meyer, Lake County Division of Transportation, no one besides the original developer would have that answer.

Brett Rodgers stated community residents would benefit if the subject property was turned over to public use. He stated residents have a right to put in a dock in this area, as guaranteed by the plat, which is most logical location for a community dock since it is centrally located. He also stated the northern access cannot accommodate more docks. He expressed concerns over impacts to property values. Mr. Denz responded by stating this meeting is advisory as the Board of Vacations only makes a recommendation. The next step is for a recommendation by a subcommittee of the County Board with the final decision by the County Board. Per statute, the request requires a minimum two-thirds approval by the County Board.

Rob Nikides stated eliminating the access would affect flooding and drainage and the area should remain public and maintained by the Township. He also expressed concerns over limiting fire department access. Ms. Stalter requested clarification of the displayed photo location. Mr. Nikides stated the photo was taken at the back end of his property (along Midway).

Closing Statement

In closing, Kevin Hanzel stated that neighbor objections have been addressed by the drainage easement, which provides for future maintenance, and the availability of the north and south access points for river access. He added no other objections had been raised by the County or Township.

Member Braun asked if once testimony is closed if further discussion is allowed. Brad Denz stated once testimony is closed, the Board would not take additional questions from the audience. Member Steffen asked staff if the fire department had been notified and Brad Denz affirmed they had. Betsy Duckert asked reestablishment of the HOA would entail? Member Braun replied that for a new HOA typical requirements include filing of articles of incorporation, establishment of a board and dues acceptance. Establishment of by-laws is the purview of the association.

A motion to close testimony was made by Member Braun and seconded by Member Duckert. The motion passed unanimously.

Board Discussion

Member Braun stated per past hearing discussions, fire departments don't use water from the river. The request is to vacate of public right-of-way which is not an currently an easement nor is it part of the private park and beach. The vacation would not impede traffic as other roads which are improved are used for that function. Two access points already provide access the river, private park, and beach. A goal of the vacation process is to remove remnant land out the public domain and put them into private ownership. There is no HOA that can assume ownership. Property values are not the purview of the Board of Vacations. She expressed that she has no objection to the vacation per se but has some concerns about the highway commissioner's request for an easement, since the Board does not have specific documentation addressing that request. She concluded by expressing hesitation to proceed to a vote without specific details pertaining to the easement.

Following a general discussion of Member Braun's concerns by the Board, it was decided to continue the hearing to provide applicant an opportunity to submit an easement agreement between the applicant and the highway commissioner. Member Braun moved to continue the hearing until November 30, 2022, at 3:00 p.m., at the Central Permit Facility, subject to the submittal of a draft easement; seconded by Member Steffen. The motion passed 3-0. Motion to adjourn the meeting was made by Member Duckert, seconded by Member Steffen. The motion passed 3-0. The meeting adjourned at 4:13 pm.

Continued hearing-November 30, 2022

1. Call to Order: Mr. Denz opened the hearing at 3:02 p.m. The pledge was recited.
2. Roll Call

Board of Vacations representatives:

Planning, Building and Development: Eric Steffen, Engineering & Environmental Services
Division of Transportation: Betsy Duckert, Manager of Permitting
Planning, Building and Development: Krista Braun, Planning & Zoning Manager
Vacation Officer*: Brad Denz, Senior Planner/Project Manager
State's Attorney's Office*: Lisle Stalter, Assistant States Attorney

* Non-voting members

3. Added to the Agenda (none)
4. Deferred Matters (none)
5. Other Business: Continued hearing on the request by John Cassara and John Kadlec, petitioners.

Audience members not in attendance at the September 28, 2002 hearing were sworn in by the Vacation Officer. Mr. Denz stated the applicant had submitted a drainage easement exhibit which was visible on the screen. Kevin Hanzel explained the details of the drainage easement which had been approved by Cuba Township. The fifteen foot easement would allow enough space to accommodate maintenance, if needed and allows for the natural flow and drainage of water to the river both above and below ground. Member Steffen asked if additional correspondence had been received by the highway commissioner. Brad Denz affirmed that it had been forwarded to the applicant's attorney; pending finalize the nomenclature. Mr. Hanzel stated the Cuba Township attorney agreed with the proposed language.

Public Statements

Dawn Selleck asked questions about drainage costs, buildability, and purchasing of the land. Mr. Hanzel stated there is no intention to move the easements. Brad Denz explained the subject property is not a lot because it was platted as ROW for a future road. He also stated the adjacent property owners are allowed to petition to vacate the unimproved right-of-way, which was confirmed by Lisle Stalter per statute. Ms. Stalter further explained the County's position and legal basis for vacating rights of way.

Kathy Nikides asked about the maintenance of the easement. Mr. Hanzel replied the owners would oversee grass mowing and the Township would be responsible for drainage maintenance and repairs.

Jeffrey Thut, attorney for Tom Duensing, presented several objections to the proposed vacation. He stated the vacation would adversely affect property rights of the other landowners in the subdivision and would be a disservice to the public interest. He referred to language on the original plat that demonstrated the intent of the subject property was to provide all owners of property in the subdivision access to the private park and beach and the property should remain open or at least reserve the right to access the river through an easement.

Member Braun asked if there was an organized HOA or entity that could take on these improvements. Mr. Thut replied there was not, as it was prohibited via the nomenclature on the plat.

Rob Nikides stated the applicants are conducting a private business of boat repair on the subject property.

Tom Duensing stated the park and beach have an assigned Parcel Identification Number (PIN) and no taxes are due from the County. He questioned the legal validity of the petition. He stated lot owners of the Allen City Subdivision are precluded from having an HOA and thus are unable to meet the application requirement of adjacent land ownership, but the property owners would own the area as part of the private park and beach.

Lisle Stalter responded that the statute does not specifically address this unique situation and recognized the challenge in reconciling the intent of plat, which is over 100 years old, with current statute which allows abutting property owners of a bona fide HOA to apply for a vacation. She also stated the County cannot independently vacate a portion of a plat to create a park. Instead, that situation would be a plat amendment, which is a different process that requires an application from all subdivision property owners.

Member Braun stated there is a PIN and taxpayer designation of "Allen City Sub Improvement Association Incorporated", but it didn't appear this association is currently registered with the state.

Closing Statement

Mr. Hanzel stated the meeting was continued for clarifying the easement issue, working with the Township, and addressing concerns regarding the drainage, all of which have been satisfied.

Close of Testimony/Action

A motion to close testimony was made by Member Duckert and seconded by Member Braun. The motion passed unanimously.

In response to public statements, Member Braun stated the plat of subdivision states "no lot or land shall be owned by a club or association", which doesn't preclude the formation of an HOA. Further, the Lake County Code of Ordinance stipulates "in accordance with state statutes the bona fide association of property owners may file to vacate provided the following conditions are met; the Association is registered with the State and is organized to receive, hold and convey real property and the Association undertakes to develop the property fees and benefit". She stated that in this case, there is no HOA registered with the state that would be able to maintain the property. The intent of the plat was for the subject property to be used for a road, not necessarily for access to the park because there are two other designated points of access to the north and south. In addition to access, she also stated that ROW areas may be used for drainage purposes and utility services. In this case, drainage issues have been addressed by the establishment of the easement and there is no other utility services present. Member Braun concluded that for these reasons and because it has never been developed as a road nor does the Township ever intend to construct a road, there is no need to retain the land for the public interest. Members Steffen and Duckert stated they were in agreement with Member Braun's comments. Brad Denz requested a motion be made to approve street vacation application #000742-2022; reading the request of the application and the legal description of the subject property.

Member Braun moved to recommend approval of the petition to vacate the right-of-way as proposed, seconded by Member Steffen, based on the following findings:

- The 15-foot easement satisfies the request from the township road commissioner to keep the area clear for drainage and no further objections from the Township had been received;
- There is no homeowner's association or official public organization to maintain this area;
- The land is serving no public interest as it was designated on the plat for a road, but not improved;
- The vacation would potentially relieve the County of any possible liability and place the property in private ownership on the tax rolls.


The motion passed 3-0.


Adjournment


Member Steffen moved to adjourn the meeting, seconded by Member Braun, which passed unanimously. Meeting adjourned at 3:37 p.m.

Street Vacation - PTRL #000742-2022

Cuba Township


MEMBER


MEMBER


MEMBER

Dated this 17th day of February 2023

