

APRIL 15, 2009
WAYNESBORO, PA 17268
PUBLIC HEARING RE: ABANDONMENT OF A
PORTION OF MYRTLE AVENUE

Council President Craig Newcomer called the public hearing to order at 7:00 p.m. with the following in attendance:

Borough Council Members – Benjamin Greenawalt, C. Harold Mumma, Craig Newcomer and Charles McCammon (Jason Stains and Ronald Martin arrived late)

Mayor Richard Starliper

Borough Staff – Lloyd R. Hamberger, II, Borough Manager
Denny Benschhoff, Maintenance Superintendent
Kevin Grubbs, Head of Engineering Services
Melissa Dively, Borough Solicitor (Salzmann Hughes, PC)

Mr. Newcomer noted the purpose of the hearing was to discuss the proposed vacation of a 60' unopened portion of Myrtle Avenue from East Third Street to East Fourth Street, being a total of 679.75 feet. The hearing was duly advertised in *The Record Herald* on March 31st and April 7th, 2009. Those wishing to comment were asked to rise; and the oath was administered. Individuals wishing to comment were requested to state their name and address for the record.

Kevin Grubbs testified to the following:

- January 7, 2009 - Borough Council received petition from residents to abandon Myrtle Avenue from E. Third Street to E. Fourth Street
- February 4, 2009 - Borough Council approved advertisement of "Notice of Public Hearing and Ordinance" for April 1, 2009 at 7:00 p.m.
- March 4, 2009 - Upon request from Kevin Grubbs, Borough Council agreed to reschedule the public hearing for April 15, 2009
- March 17, 2009 - Posted the "Notice of Public Hearing" signs around perimeter of Myrtle Avenue between E. Third Street and E. Fourth Street
- March 26, 2009 - Mailed certified letters with a copy of the "Notice of Public Hearing and Ordinance" to all residents/property owners adjacent to and nearby the portion of Myrtle Avenue between E. Third Street and E. Fourth Street
- March 31, 2009 and April 7, 2009 - Advertised "Notice of Public Hearing/Ordinance" in *The Record Herald* newspaper
- April 15, 2009 - Public hearing at 7:00 p.m., second floor Council Chambers

Bruce Greensfield, 201 Clayton Avenue - Mr. Greensfield noted that he and his wife's property abuts the unopened portion of Myrtle Avenue which is the subject of this meeting; and they are part-owners of another property that abuts the same portion. They (the petitioners) have requested that the

Borough abandon the unopened portion of Myrtle Avenue because of rumors that the Borough was contemplating opening a portion to provide additional parking for the High School students and/or to provide access to developments behind the School District's property. Mr. Greensfield noted that the prospect of opening the road for either purpose raises numerous safety and public nuisance issues. The property owners abutting the unopened portion of Myrtle Avenue have adequate access to their properties from Clayton Avenue, E. Third Street, and/or E. Fourth Street. He added that abandoning the unopened portion would relieve the Borough of many maintenance and liability responsibilities; as, although the petitioners have been maintaining this land, the Borough is still responsible for its maintenance and liable for any public safety issues as long as it is a Borough-owned right-of-way. In closing, Mr. Greensfield urged Council members to vote in favor of abandoning this portion of Myrtle Avenue.

Harry Morningstar, Jr., 205 Clayton Avenue - Mr. Morningstar agreed with Mr. Greensfield's comments. He noted that he and his wife own property that abuts the portion of Myrtle Avenue in question, and they support the proposed abandonment. He commented that the property owners have been maintaining the property for at least 50 years, and they will continue to do that (which will relieve the Borough of any further responsibilities).

Billie Finn, 203 Clayton Avenue - Mrs. Finn echoed Mr. Greensfield's and Mr. Morningstar's comments; and added that, with the Borough's current budget constraints with regard to maintaining and opening new roads, it would be imprudent to devote any taxpayer monies to open a road that has been unnecessary for 50+ years and (for all practical purposes) seems to be remain unnecessary. She noted that the property owners who jointly own undeveloped property to the rear of their homes have committed to it remaining undeveloped, so there would be no access issues involved. Mrs. Finn requested that Council members vote favorably on the petition.

Frank Bittner, 842 Anthony Avenue - Mr. Bittner noted that the word "abandon" means "to give up entirely", "to give up all claim to" and to "desert or forsake". If the land is abandoned, it becomes a loss to the Borough (never to be reclaimed). He reminded Council members that the Borough was fortunate to have held onto some areas leading into Rotary Park (which now provide for various entries into the park); and they recently opened an available area to provide a path from Sixth Street (off Clayton Avenue) into the ballfields. He stated that it is sometimes a good idea to have a little land in reserve to do things such as this.

***Councilman Stains arrived at 7:10 p.m.**

Mr. Bittner continued by voicing his concerns in this matter for Council's consideration: (1) would retention of this parcel by the Borough cause a hardship on any local residents? (2) would elimination of this parcel cause any traffic problems in case of a major disaster? (3) would retention of this parcel cause any untenable situations for fire and rescue at the end of Fourth Street? and (4) would completion of this parcel into an extension of Myrtle Avenue be a benefit to local traffic patterns, fire and rescue, disaster, etc.? Mr. Bittner closed by stating he feels Waynesboro should retain the parcel in question.

Bob King, 235 Myrtle Avenue - Mr. King noted that he and his wife have resided at their home for 25+ years together (and the property was in his wife's family for 60+ years). He noted that he is not adversarially opposed to his neighbors' proposition, for if anyone were to receive benefit from that (as property value), it would certainly be him. He and his wife are the largest property owners of road footage that is in question; and they are also the largest property owners on Fourth Street Extended. He noted that this is "boxing" them in; and suggested that if Council is going to create what was considered at one time their property (Fourth Street Extended), then both issues must be addressed and both should be abandoned.

In the early 1990's, his children were young and he approached the Borough to repair and maintain Fourth Street Extended, but was told that that property had been abandoned when his father-in-law privately funded and put in a sewer line that extended from their guest house to the end of Fourth Street (currently paved) up to Clayton Avenue. He was also told by the Borough that any improvements to that road were his responsibility, and somewhere in the file there was an abandonment letter. But Harry Morningstar approached him when he purchased his home to ask for access to the "L" to complete improvements on his property – rather than going across his back yard onto the "L", he wanted to use Fourth Street Extended. Mr. King commented on the truck traffic and excessive dust which resulted, as well as damage to the foliage near his guest house.

Mr. King noted that he has a section of property adjacent to the house that is a separate lot. If he relinquishes Myrtle Avenue, he wouldn't have access to the lot for resale or development. It also puts him into a position where the property behind his house (the "L") is accessible only by one street (Fourth Street Extended); and he couldn't access the lot adjacent to the left side of his residence (the primary house) without going through the front of the property and destroying the concrete circle in front of his house.

Mr. King went on to explain that when winds damaged (uprooted) eight (8) large trees adjacent to Myrtle Avenue several years ago, he removed the debris at his expense because the Borough had told him previously that Fourth Street Extended was his property (and the improvements made by his father-in-law would validate the same). However, this year when a tree was toppled, his neighbor forced the issue regarding "who owns what".

***Councilman Martin arrived at 7:21 p.m.**

Mr. King continued to state that he doesn't want Red Roof Storage on the "L" behind his house, nor does he want Fourth Street Extended to destroy the environment that had been protected for 60 years. Mr. King stated that he will file for a historic preservation certificate, if necessary, to protect his property. He asked that Council consider the total issue, not just the singular issue of the proposed abandonment for several neighbors who want to protect their backyards. He mentioned that when Tom Painter purchased the property adjacent to his, it was a preservation issue; and added that "if Ronnie Martin wants to develop that property at some time in the future, let the lane go behind his house and adjacent to Tom Painter's house, not down Fourth Street, accessing it only through my property".

He requested that further discussion be held on the matter, in committee format, and then a report be presented to Council on the findings.

Councilman Martin stated that he didn't understand Mr. King's comment regarding Red Roof Storage, but advised that he has no desire to develop Tom Painter's tract. Discussion followed regarding clean-up of the debris from a tree that fell in Myrtle Avenue several months ago, and Mr. King noted that that situation pressed the issue being discussed tonight.

Don Kornfield was in attendance, representing the petitioners. He noted that the ordinance for Fourth Street goes back 600'; it has not been abandoned. He also noted that the drawing attached to the petition filed by the residents clearly shows that there is no land-locking of any parcel due to the abandonment of this unneeded section of street, and presented this information to Solicitor Dively.

Mr. King disagreed, noting that the property to the left of his house (Tract #2) is singular and will be land-locked if this abandonment takes place; and if he wanted to develop that piece of property, it would be at his expense and not the Borough's to provide access. He also noted that when Paul Doub was Maintenance Superintendent, a water line was installed down Myrtle Avenue. The reasoning, he was informed, was that if the Borough ever wanted to develop that area, they would have access to the water. President Newcomer stated that this Council can't answer for statements made prior. Mr.

King replied that he is simply providing the logic of 25 years in dealing with the issue of ownership and who has been responsible for the maintenance and upkeep of the property.

Don Kornfield made reference to the drawing, indicating that the abandonment would allow for the Kings to put any driveway they wanted to Lot #2. There would be no loss – in fact, there would be a significant increase in the value of their property.

After further discussion, Solicitor Dively advised that when there is a vacation the adjoiners own halfway, but they cannot close it off to anyone along that route. Mr. Kornfield drew attention to “Exhibit A” of the petition which would indicate that there would be no issue of closing off any area ... the Kings would own all of it.

Ms. Dively noted that she will have to review the matter further, and would recommend that Council make no decision tonight.

Hearing no further comments, the hearing closed at 7:35 p.m.

Respectfully Submitted,

Melinda S. Knott
Administrative Assistant