

Residents battle district to reopen Pine Lake - Chris Jackett - C & G

Heirs sold interest to district for \$40,000, removing potential deed restrictions

Nearly three years after the school closed, the courtroom debate about the future of Pine Lake Elementary continues.

Pine Lake, 3333 W. Long Lake Road in West Bloomfield Township, closed in June 2009 and was in court the following month. The lawsuit district residents Nicholas Mushovic and Chris Fellin have against Bloomfield Hills Schools has been through trial in Circuit Court twice and will receive a second ruling from a Court of Appeals panel of judges sometime in the first half of 2012.

“It’s unfortunate that this thing is still chugging away,” said defense attorney Robert Lusk.

Landowner Mae Callow signed over the deed for 11.72 acres of land to the district in 1955 “for school purposes.” The district had purchased several parcels of land over four years before building the original Pine Lake school.

“In the deed, it indicates the property was sold for \$1. The district records show they paid \$18,000,” Lusk said.

Mushovic and Fellin say the district is not using the land for BHS student school purposes by closing the school.

The initial trial court decision in August 2009 temporarily stopped the district from leasing the vacant building to the Waterford School District for 14 months at a rate of more than \$253,000, while also ejecting the Kingsley Montgomery program, a school for severely impaired children throughout Oakland County.

“(Oakland County Circuit Court) Judge (Michael) Warren decided it in our favor and said it needed to be reopened for school for the Bloomfield district,” said Terrence Hall, the attorney for Mushovic and Fellin. “Court of Appeals said no, it could be used for any school purpose. If the district doesn’t do that, then the family can take it back.”

After the Court of Appeals ruling, Callow’s heirs — three grandsons — sold their interest in the land to the district in 2010 for \$40,000 and “a percentage of profits from the later sale of the property,” with the stipulation that the plaintiffs would not appeal the Court of Appeals decision to the Supreme Court. The deal, which the heirs made without the plaintiffs’ knowledge, was announced the day after the deadline to appeal to the Supreme Court.

“They kind of pulled the rug out from under us by doing that backroom deal,” Hall said.

The sale removed any potential restrictions the district may have had on the land use.

“The heirs contacted us after the (Court of Appeals decision) and we bought their interest,” Lusk said. “We completely own that property without any interest.”

Since the sale of the heirs’ interest was finalized before Warren’s final decision, according to Hall, the plaintiffs are now seeking a common-law dedication. Warren dismissed the case, and Mushovic and Fellin are taking it back to the Court of Appeals.

“Under common law dedication, anyone who benefits can continue to use it that way,” Hall said. “Court of Appeals said these folks have standing.”

According to the Michigan Supreme Court, regarding a roadway in Charlevoix, “a valid common-law dedication of land requires (a) intent by the property owner to offer the land for public use, (b) an acceptance by, and maintenance of the road by, public officials, and (c) use by the public generally.”

“All of the elements for the common-law dedication have been met, and we don’t care anymore about the deed because of the common-law dedication,” Hall said. “If there’s no common-law dedication, the district can do what they want to and sell the property.”

If the Court of Appeals rules in favor of the plaintiffs for the common-law dedication, the district could appeal to the Supreme Court.

“We don’t think it has any merit at all,” Lusk said of the common-law dedication argument, which was not supported by Warren in Circuit Court.

Hall, who is a district resident who had two of his three children graduate from the district so far, is doing the case pro bono. He said he and his clients would like to see not only Pine Lake reopened, but Hickory Grove as well.

“We believe all the elementaries should be reopened. We think the middle schools could be closed,” Hall said, noting he would prefer the schools house kindergarten-sixth grade, seventh-ninth and 10th-12th, instead of the kindergarten-third, fourth-fifth, sixth-eighth, ninth-12th arrangement.

He would support a new Andover if it held the three oldest grades and Lahser housed the seventh-ninth grades. He said using Hickory Grove for freshmen while Lahser was used for sophomores, juniors and seniors would be an impossible traffic task due to their proximity.