

DUNN TOWNSHIP
OTTER TAIL COUNTY
Resolution No. 2019-03

**RESOLUTION RESPONDING TO PETITION TO ESTABLISH
A ROAD THAT HAS ALREADY BEEN DEDICATED TO THE
PUBLIC WITHIN THE PLAT OF LAKE HILLS RANCH ESTATES**

WHEREAS, the Town Board of Dunn Township (“Town”) received a petition (“Petition”) to establish the platted road known as Lake Hills Road (“Road”), which is located within the plat of Lake Hills Ranch Estates (“Plat”) that was recorded in the office of the County Recorder on September 27, 2007 as Document # 1027050;

WHEREAS, the Road was dedicated to the public in the Plat, is 66 feet wide, it runs from west to east across the Plat, ends in a cul-de-sac, it has been constructed, and it is used to access homes within the Plat;

WHEREAS, roads dedicated to the public by plat within the Town serve, upon recording of the plat with the County Recorder, to convey to the Town an easement for road purposes which are held in trust in the Town’s name for such purposes. Minn. Stat. § 505.01, subd. 1; *Application of Stein*, 99 N.W.2d 204 (Minn. 1959); *Etzler v. Mondale*, 123 N.W.2d 603 (Minn. 1963);

WHEREAS, the Minnesota Supreme Court has recognized that “the mere platting of the land did not instantly create an obligation upon the town board to open and maintain the dedicated streets. Our cases have consistently held that the municipality may determine the time it will open a street and assume the maintenance thereof.” *In re Maintenance of Road Areas Shown on Plat of Suburban Estates*, 250 N.W.2d 827, 831 (Minn. 1977); *Vill. of Medford v. Wilson*, 230 N.W.2d 458 (Minn. 1975);

WHEREAS, under Minn. Stat. § 164.11, when land is “dedicated to public use as a street, road, or cartway, if not less than 30 feet in width, shall be deemed a legal cartway;

WHEREAS, the Town received an easement for the Road upon the recording of the Plat and it remains a cartway that is open to public use, but is maintained privately, until the Town Board acts by resolution to determine it is in the public interest to open and maintain the Road as part of the Town’s system of publicly maintained roads;

WHEREAS, the Town Board adopted the Dunn Town Road Policies and Standards, dated April 11, 2016 (“Road Policies”), which is incorporated herein by reference, to, among other things, set out the standards that must be met before the Town Board will act to open and maintain a road as part of its system of maintained Town roads;

WHEREAS, William M. Blasczyk and Linda K. Blasczyk, the developers of the Plat, (collectively, the “Developer”) had previously requested the Town Board take over maintenance of the Road, but the Town refused as the Road did not meet the Town’s road standards; and

WHEREAS, the Town Board hereby finds and determines as follows with respect to the Petition; and

- a. The Petition was brought under Minn. Stat. § 164.07 and requests the establishment of the Road;
- b. The Petition is, on its face, improper because it requests the Town Board undertake a process to establish the exact public road easement that was already dedicated in the Plat;
- c. It is clear that by submitting the Petition, the petitioners are asking the Town Board to exercise its discretion to open and maintain the Road as part of its system of publicly maintained Town roads rather than to establish a right-of-way by condemnation;
- d. The Town Board determines to treat the Petition as a formal request under *In re Maintenance of Road Areas Shown on Plat of Suburban Estates* for the Town to open and maintain the Road, as it would be inappropriate under the law to undertake a condemnation proceeding to establish an easement that already exists;
- e. The Town Board determines it is not in the best interests of its taxpayers to open and maintain the Road until the Town's engineer confirms it satisfies the standards and requirements set out in the Road Policies;
- f. Paragraph 5.2 of the Road Policies requires the developer to reimburse the Town for the legal and engineering fees it incurs to work through the process to accept and open a road dedicated to the public;
- g. The Town Board requested the Town engineer to conduct such inspections as are needed to determine whether the Road satisfies the applicable standards in the Road Policies and, if not, to identify the specific items of work that must be completed to comply with those standards ("Punchlist"); and
- h. The Town Board will not act to open and establish the Road until the conditions set forth in this Resolution are satisfied.

NOW, THEREFORE, BE IT RESOLVED, that Town Board is willing to open and maintain the Road as part of its system of publicly maintained Town Roads once all of the following are satisfactorily completed as determined by the Town Board:

- (1) Completion of all work required to bring the Road into compliance with the standards and requirements set out in the Road Policies including, but not limited to, completion of all of the work items identified on the Town engineer's Punchlist;

- (2) The Developer must notify the Town when all required work is done so the Town engineer can inspect the Road to confirm compliance with Road Policies and completion of the Punchlist items;
- (3) If the Town engineer identifies any items that were not done, or that were done improperly, the Town engineer will prepare a written list of those items and the Town will make it available to the Developer;
- (4) The petitioners shall notify the Town when any remaining items of work are completed so the Town engineer can conduct an additional inspection to confirm final completion of all the required items of work and provide a written notice of completion to the Town Board;
- (5) The Town will prepare and submit to the Developer an invoice for the legal and engineering costs the Town incurred to process this request and that must be reimbursed before the Town will act to open and maintain the Road; and
- (6) Upon the receipt of the notice of completion from the Town engineer, and the Developer's payment in full of the Town's invoice for the professional costs incurred, the Town Board will act at a regular meeting to adopt a resolution to open and maintain the Road as part of its system of publicly maintained Town road.

Adopted this 12th day of August 2019.

BY THE TOWN BOARD

Town Chairperson

Attest: _____
Town Clerk