

**DUNN TOWNSHIP
 OTTER TAIL COUNTY, MINNESOTA
 Resolution No. 2020- 07**

**RESOLUTION DETERMINING ELIGIBILITY
 AND CONDITIONALLY GRANTING A CARTWAY**

WHEREAS, the Dunn Township (“Town”) board of supervisors (“Town Board”) received a petition from Wetli Properties, L.L.C. (“Petitioner”) requesting the establishment of a cartway pursuant to Minnesota Statutes, section 164.08, subdivision 2 to provide access to Petitioner’s property (17000130173000), which contains approximately 80 acres and is legally described as follows (“Property”):

The North Half (N1/2) of the Southwest Quarter (SW1/4) of Section 13, Township 137, Range 42 West of the Fifth P.M., Otter Tail County, Minnesota

WHEREAS, the Petitioner requested the establishment of a 33-foot wide cartway over the following property:

A 33-foot-wide cartway over and across part of Section 13 and 14 of Township 137 North, Range 42 West, Otter Tail County, Minnesota. The centerline of said cartway is described as follows: Beginning at the intersection of the Southeasterly Right of way line of Highway 59 with the East line of said Section 14; thence southerly along the East line of said Section 14 to the Northeast corner of the Southeast Quarter of the Southeast Quarter of said Section 14 and said centerline then terminating, plus a portion of the land owned by Donald Clarke necessary to connect the area described above to the driveway from the Clarke land to Highway 59 (“Requested Route”);

WHEREAS, the cartway, as proposed by the Petitioner, crosses the following property (collectively, the “Affected Owners”):

Owner and Mailing Address	Property Location	PID
Roger D. Lewis, et al. 17167 165 th Avenue South Barnesville, MN 56514-9221	South Half (S1/2) of the Northwest Quarter (NW1/4) of Section 13, Township 137, Range 42	17000130170005
Michael E. and Sharon Wittenmyer P.O. Box 12 Rawson, OH 45881-0012	Southeast Quarter (SE1/4) and Northeast Quarter (NE1/4) of Section 14, Township 137, Range 42 lying southerly of Highway 59	17000140176000
Donald F. Clarke 49970 U.S. Highway 59 Detroit Lakes, MN 56501	West Half (W1/2) of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 13, Township 137, Range 42	17000130170004

WHEREAS, the Petitioner provided the security in the form and amount as required by Town Board resolution to secure the Petitioner's obligation to reimburse the Town for all expenses and costs its incurs related to the processing and consideration of the cartway petition, including all professional and administrative costs;

WHEREAS, the Town Board held a public hearing, after due notice having been provided, on July 13, 2020, during which the Town Board inspected the Requested Route and alternative routes and gave the parties and the public an opportunity to present information, orally and in writing, regarding the proposed cartway;

WHEREAS, the Town Board has heard and considered the competing interests in this matter in light of its mandated statutory obligation in Minnesota Statutes, section 164.08, subdivision 2 to establish a cartway to the landlocked property of an eligible petitioner; and

WHEREAS, the Town Board hereby finds and determines as follows regarding this matter:

- a. The petition submitted by the Petitioner is complete and proper;
- b. The Petitioner's Property to be served by the proposed cartway contains at least 5 acres;
- c. The Petitioner's Property is landlocked in that it has no access to it except over a navigable waterway or over the lands of others, or whose access is less than two rods wide;
- d. The Petitioner is eligible to receive a cartway pursuant to Minnesota Statutes, section 164.08, subdivision 2;
- e. The Town Board inspected the Requested Route by walking the route, so the Town Board became familiar with Requested Route through its own observation and knowledge, the review of aerial photographs, and extensive discussions on site with the Petitioner, the Affected Owners and interested parties;
- f. The Affected Owners objected to the Requested Route, and the Petitioner, the Affected Owners and interested parties suggested four alternative routes, described as follows: (1) A route generally running east from U.S. Highway 59, over a portion of the driveway for property owned by Michael E. and Sharon Wittenmyer (PID 17000140176000), and extending along the south line of the NE1/4 of Section 14 and over a portion of the SE1/4 of Section 14 to the Petitioner's Property ("Alternative Route No. 1"), (2) a route generally running south from Tee Lake Road, over the driveway across the E1/2 of the NW1/4 of the NW1/4 of Section 13, owned by Roger Lewis, et al. (PID's 17000130170000 and 17000130170005), and extending south on a straight line to the Petitioner's Property ("Alternative Route No. 2"), (3) a route running south from Tee Lake Road using a portion of the Lewis driveway, then extending westerly across the E1/2 of the NE1/4 of the NW1/4 of Section 13 to the southeast corner of the Clarke property, then continuing southwestly though the S1/2 of the NW1/4 of Section 13 into

the NE1/4 of Section 14 and a portion of the SE1/4 of Section 14 and then back easterly to the Petitioner's Property ("Alternative Route No. 3"), and (4) a route generally running north from 485th Street over existing trails and driveways over property owned by Michael E. and Sharon Wittenmyer (PID 17000140176000), Zachary Paige (PID 17000230304001), Craig J. and Joyce E. Grahn (PID 17000130174000), Lawrence, Jr. and Judith Grahn (PID 17000240318000), Bruce and Susan Grahn (17000240318001) and Linn Moraine (PID 170002303040002) ("Alternative Route No. 4").

- g. The Town Board inspected the initial portion of Alternative Routes No. 1, 2 and 3 but were unable to walk the entire routes. The Town Board became familiar with Alternative Routes No. 1, 2 and 3 through its own knowledge, the review of aerial photographs, and extensive discussions on site with the Petitioner, the Affected Owners and interested parties. The Town Board was able to observe a portion of Alternative Routes 2 and 3 during its inspection of the Requested Rout. The Town Board inspected Alternative Route No. 4 by walking the route, so the Town Board became familiar with Alternative Route No. 4 through its own observation and knowledge, the review of aerial photographs, and extensive discussions on site with the Petitioner, the Affected Owners and interested parties.
- h. The cartway statute expressly authorizes a town board to "select an alternative route other than that petitioned for if the alternative is deemed by the town board to be less disruptive and damaging to the affected landowners and in the public's best interest." Minn. Stat. § 164.08, subd. 2(a). The Town Board is aware of the ruling in Kennedy v. Pepin Township, 784 N.W.2d 378 (Minn. 2010) regarding the route selected for a cartway needing to provide reasonable access to a usable portion of the petitioner's property and of needing to follow the route requested by the petitioner unless an alternative route is found to be less disruptive and damaging to the neighbors and is in the public's best interest;
- i. The Town Board finds as follows with respect to the Requested Route:
 - (1) The Petitioner did not withdraw the Requested Route from the Petition, but prior to and during the course of the inspection and hearing, Petitioner expressed a preference for Alternative Route No. 1 over the Requested Route;
 - (2) The Clarke driveway, over which the Requested Route travels, is narrow and travels between the residence and the septic system on the property, including a lift station and mound, and the distance between the residence and the septic system is significantly less than 33 feet;
 - (3) An alternative path extending from the driveway and traveling between the residence and U.S. Highway 59 would interfere with the existing right-of-way for U.S. Highway 59, with the distance between the residence and the right-of-way being approximately 26 feet;
 - (4) The Petitioner inquired with the State of Minnesota as to its ability to obtain a new access/driveway off U.S. Highway 59 and were informed that it would be unable to do so, and therefore, the Clarke driveway is the only location that can be used in this area to access the highway;

- (5) A fence and trees existing along the route would have to be removed;
- (6) After extending from the Clarke driveway, the route proceeds generally southerly and easterly and prior to reaching the Petitioner's Property, the route would proceed up a steep grade, and therefore, access along the route would be difficult; and
- (7) The establishment of a public cartway directly adjacent to the Clarke residence would be significantly disruptive.

j. The Town Board finds as follows with respect to Alternative Route No. 1:

- (1) A route traveling over the Wittenmyer driveway and proceeding generally easterly to the Petitioner's Property would be the shortest of the considered routes;
- (2) However, the route would effectively split the property and would also travel very near the existing residence on the property and a proposed additional residence to be built to the north of the route;
- (3) The property is consistently used as a vacation property and the lengthy driveway is used by young children, and therefore, safety concerns were raised by the Wittenmyers; and
- (4) The route would necessitate the removal of a large number of trees.

k. The Town Board finds as follows with respect to Alternative Routes No. 2:

- (1) Although a gate exists at the entrance to the property, the existing driveway and trails extend in a straight line nearly the entire distance to the Petitioner Property;
- (2) There is a residence on the property but it is used primarily seasonally for hunting purposes;
- (3) The route is not significantly longer than the Requested Route or Alternative Route No. 1 and is less disruptive than either the Requested Route or Alternative Route No. 1;
- (4) The route is shorter and travels over fewer properties than Alternative Route No. 3, and it is significantly shorter and travels over many fewer properties than Alternative Route No. 4;
- (5) The route runs from a Town road, rather than U.S. Highway 59, and therefore, does not implicate any potential traffic concerns on U.S. Highway 59;
- (6) Petitioner confirmed that Alternative Route No. 2 would be an acceptable route to provide reasonable access to the Property; and
- (7) The route is less disruptive and damaging to the affected landowners and is in the public's best interest.

l. The Town Board finds as follows with respect to Alternative Route No. 3:

- (1) The route is essentially the same as Alternative Route No. 2, but travels around the residence on the Lewis property, is a longer route, and travels over a greater number of properties, and therefore provides no significant benefit over Alternative Route No. 2.

- m. The Town Board finds as follows with respect to Alternative Route No. 4:
- (1) The route accesses the Property from a Town road, as opposed to U.S. Highway 59, but it travels over a significant number of properties, and while there are existing trails, the terrain imposes a significant hindrance to consistent, reasonable access to the Petitioner's Property; and
 - (2) The Petitioner has used the route to access the Property since its purchase, but when the Property was purchased, Petitioner believed that it had access from the north and had no intention of using Alternative Route No. 4, and therefore, Petitioner expressed a preference against Alternative Route No. 4.
- n. The Town Board hereby selects Alternate Route No. 2 as the approved route for the cartway;
- o. Alternative Route No. 2 crosses the following properties (collectively, the "Revised Affected Owners"):

Owner	Property Location	PID
Roger Lewis 17167 165th Avenue South Barnesville, MN 56514-9221	North Half (N1/2) of the Northwest Quarter (NW1/4) of Section 13, Township 137, Range 42	17000130170000
Roger Lewis, et al. 17167 165th Avenue South Barnesville, MN 56514-9221	South Half (S1/2) of the Northwest Quarter (NW1/4) of Section 13, Township 137, Range 42	17000130170005

- p. A survey is needed to identify the exact location of the cartway, develop a proper legal description, to identify structures or fences that may be in the cartway, and to accurately identify the boundaries of the cartway. The Town Board will select one of its supervisors and the Town Attorney to work with the surveyor or to correctly identify Alternative Route No. 2 and the needed width.
- q. An appraisal is needed in order to assist the Town Board to determine the amount of damages to be paid to the affected owners. The Town Board will also need information regarding the value of the trees being acquired within the 33-foot wide easement area, whether the information can be supplied by the assessor or if a forester needs to be hired to provide the information; and
- r. The hearing needs to be continued in order to allow the Town Board to select and hire an appraiser and surveyor, to allow the appraiser and the surveyor to perform their work, and to allow the affected owners time to prepare whatever information they may feel is relevant in determining the amount of damages they are entitled to as a result of establishing the cartway.

NOW, THEREFORE, BE IT RESOLVED, the Town Board hereby conditionally approves, based upon the record thus far and its findings and determinations contained herein, the Petitioner's cartway petition and preliminarily grants the establishment of the requested 33-foot wide cartway along Alternative Route No. 2, said cartway to include the acquisition of all trees within the easement area, pursuant to the following terms and conditions:

1. The Petitioner is required to pay all costs associated with the establishment of the cartway including, but not limited to, compensation paid to the Revised Affected Owners, the Town's attorney fees, appraiser fees, administrative costs, surveying costs, and all other costs incurred by the Town Board as part of its consideration and establishment of the requested cartway, including costs incurred prior to the date of the hearing. The Town will deduct its expenses from the amount deposited with the Town by the Petitioner. If the Town Board determines the deposited amount will not be sufficient to fully reimburse the Town for its costs, it will notify the Petitioner in writing of the need to deposit additional funds with the Town. If the Petitioner fails to deposit the required additional funds, or otherwise fails to fully reimburse the Town for the costs it incurs, the Town Board shall suspend any further action regarding the petition until the Petitioner provides the required additional funds or otherwise fully reimburses the Town for all of its costs. If the Petitioner fails to act promptly to reimburse the Town for its costs, the Town Board may terminate the cartway proceeding and may certify any unreimbursed costs it has incurred, including collection costs, to the County Auditor for collection on the taxes of the Petitioner's Property, or any other property the Petitioner may own in the state, pursuant to Minnesota Statutes, section 366.012. In no case shall the cartway be opened or used until the cartway establishment procedure is completed and the Petitioner has fully reimbursed the Town for all of its costs;
2. The Town Board shall retain the services of a licensed surveyor to survey the approved cartway route and to develop a map and legal description of the cartway. The survey map and legal description needs to be completed and provided to the Town at least 10 days before the date set for reconvening the hearing. The Town shall provide the Revised Affected Owners and the Petitioner a copy of the survey;
3. The Town Board shall retain the services of a licensed appraiser to prepare an opinion as to the amount of damages to be paid to the Revised Affected Owners. The opinion is to include any information the appraiser finds is relevant to determining the appropriate amount of monetary damages needed to be paid for the taking, including the amount of any monetary benefits received by the Revised Affected Owners resulting from the establishment of the cartway. Such report needs to be completed and submitted to the Town at least 10 days before the date set for recommending the hearing. The Town shall provide the Revised Affected Owners and Petitioner a copy of the report;
4. The Town shall not participate in any way in the construction or improvement activities on the cartway, either upon establishment or in the future. Any such activities shall be the responsibility of the Petitioner, his heirs, assigns, and successors. The Town will also not maintain the cartway. It shall be the responsibility of one or more of the owners who

own land adjacent to the cartway or who use it as access to maintain it in proportion to their level of use as provided in Minnesota Statutes, section 164.08, subdivision 3; and

5. The cartway shall not be considered established until the Town Board adopts a final cartway order and award of damages, all damages are paid, there are no appeals or all appeals are finally determined as provided in Minnesota Statutes, section 164.07, subdivisions 7 & 10, the cartway order is recorded in the office of the County Recorder, and the Petitioner has fully reimbursed the Town for its costs and expenses associated with this cartway establishment process.

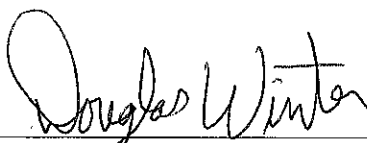
BE IT FURTHER RESOLVED, the Town Board shall continue this hearing until August 26, 2020 at 7:00 p.m. at the Dunn Town Hall, 47979 East Lake Lizzie Road, Pelican Rapids, Minnesota, at which time it will review the survey, the appraisal report, and allow those claiming to be entitled to damages as a result of the cartway establishment to present information to assist the Town Board to properly assess and award damages. The Town Board intends to determine and award damages at the reconvened hearing and to take action to adopt the final cartway order; and

BE IT FINALLY RESOLVED, the Town Chairperson and Town Clerk are authorized to take, in consultation with the Town's attorney, such actions as they deem necessary or expedient to prepare the Town Board to proceed with this cartway establishment procedure at the reconvened hearing and to finalize the cartway establishment. The Town Clerk is further authorized and directed to provide the Petitioner and the Revised Affected Owners a copy of this Resolution.

Adopted this 10th day of August, 2020.

BY THE TOWN BOARD


Town Chairperson

Attest: 
Town Clerk