

**DUNN TOWNSHIP  
OTTER TAIL COUNTY, MINNESOTA  
Resolution No. 2020-12**

**RESOLUTION AMENDING RESOLUTION NO. 2020-07 DETERMINING  
ELIGIBILITY AND CONDITIONALLY GRANTING A CARTWAY**

**WHEREAS**, on the 26<sup>th</sup> day of October, 2020, the Dunn Township (“Town”) board of supervisors (“Town Board”) adopted Resolution No. 2020 - 07 (“Original Resolution”) determining eligibility and conditionally granting a cartway to Wetli Properties, L.L.C. (“Petitioner”) pursuant to Minnesota Statutes, section 164.08, subdivision 2, providing access to Petitioner’s property (PID 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 Original Resolution required to the Town Board to retain the services of a licensed surveyor to survey the conditionally approved cartway route, previously identified as “Alternative Route No. 2,” and to develop a map and legal description of the cartway, and on October 13, 2020, the surveyor retained by the Town met on site with a Town Board Supervisor to review the route;

**WHEREAS**, as is set forth in the Original Resolution, the Town Board inspected portions of Alternative Route No. 2 and otherwise became familiar with the route through its own knowledge, aerial photographs and extensive discussions on site with the Petitioner, the neighboring property owners and interested parties, and the Town Board conditionally granted a cartway along Alternative Route No. 2, finding that (1) the existing driveway and trails extend in a straight line nearly the entire distance to the Petitioner’s Property, (2) there is a residence on the property but it used primarily seasonally, (3) the route was not significantly longer than other routes, (4) the route was less disruptive than other routes and traveled over fewer properties, (5) the route did not require accessing a county, state or federal highway, (6) the Petitioner did not oppose the route, and (7) the route was less damaging and disruptive to the affected property owners;

**WHEREAS**, during the September 25, 2020 survey of Alternative Route No. 2, it was discovered that the route traveled over and through areas of significant grade increases that would likely make it difficult to construct a road or to travel safely, and therefore, an alternative route that branched off Alternative Route No. 2 and generally traveled to the west and south to the Petitioner’s Property was mapped out by the surveyor and the Town Board Supervisor, which traveled over and through easier terrain in the area of Alternative Route No. 2;

**WHEREAS**, the new route proposed by the surveyor and the Town Board Supervisor traveled over the property of an additional property owner and traveled a much greater distance than Alternative Route No. 2, and upon reviewing the new route, the Petitioner expressed

concerns about the length of the route and about traveling over the property of an additional property owner;

**WHEREAS**, on October 13, 2020, the Town Board reconvened the public hearing on this matter, and heard and considered information from the Petitioner, the property owners affected by Alternative Route No. 2 and other interested parties, and Petitioner confirmed its concerns with regard to the length of the new route and traveling over the property of additional property owners. Petitioner also confirmed that it would have no objection to the selection of Alternative Route No. 4, which generally traveled to the Petitioner's Property along existing trails from the south;

**WHEREAS**, in supplementation of the Original Resolution, the Town Board hereby finds and determines as follows with regard to this matter:

- (1) The Town Board's findings with regard to Alternative Route No. 2, which was originally selected by the Town Board, and Alternative Route No. 4 in the Original Resolution must be amended because the establishment of the cartway along Alternative Route No. 2 is more disruptive and damaging than establishing the cartway along Alternative Route No. 4.
- (2) The Town Board finds as follows with respect to Alternative Route No. 2:
  - a. The existing driveway and trails extend in a straight line, but they do not reach Petitioner's Property and extending the route in a straight line to the Petitioner's Property would travel over and through terrain and topography that would pose a significant hurdle to reasonable access; of the terrain if the
  - b. Upon inspection by the Town's surveyor and a Town Board Supervisor, an alternative route in the area of Alternative Route No. 2 that would provide reasonable access would have to travel a significantly greater distance and would travel over and through the property of another property owner;
  - c. The Petitioner no longer confirms that Alternative Route No. 2 would be an acceptable route to provide reasonable access to the Property; and
  - d. The route is more disruptive than other alternative routes and would be more damaging to the affected property owners and would not be in the public's best interest.
- (3) The Town Board finds as follows with respect to Alternative Route No. 4:
  - a. The Petitioner previously used the route to access the Property;
  - b. Although the terrain imposes a hindrance to consistent, reasonable access, there are existing trails that travel the entire distance to the Property, and the route is less disruptive and less damaging than an alternative route in the area of Alternative Route No. 2;
  - c. The route is not gated, and it does not interfere with existing structures on affected properties;

- d. The route runs from a Town road, rather than a county, state or federal highway, and therefore, does not implicate any potential traffic concerns;
  - e. Petitioner confirmed that Alternative Route No. 4 would be an acceptable route to provide reasonable access to the Property; and
  - f. The route is less disruptive and damaging to the affected property owners and is in the public's best interest.
- (4) The Town Board's findings with regard to the Requested Route, Alternative Route No. 1 and Alternative Route No. 3 require no amendments.
- (5) The Town Board hereby selects Alternate Route No. 4 as the approved route for the cartway.
- (6) Alternative Route No. 4 crosses the following properties (collectively, the "Revised Affected Owners"):

<b>Owner</b>	<b>Property Location</b>	<b>PID</b>
Linn Moraine 26435 485 <sup>th</sup> Street Vergas, MN 56587	East Half (E1/2) of the Southeast Quarter (SE1/4) of the Northeast Quarter (NE1/4) and Southeast Quarter (SE1/4) of the North Quarter (NE1/4) of the Northeast Quarter (NE1/4) of Section 23, Township 137, Range 42	17000230304002
Lawrence, Jr. and Judith Grahn 26669 485 <sup>th</sup> Street Vergas, MN 56587	West Half (W1/2) of the Northwest Quarter (NW1/4) EXTRACTS of Section 24, Township 137, Range 42	17000240318000
Zachary E. Paige 26253 485 <sup>th</sup> Street Vergas, MN 56587	West Half (W1/2) of the Southeast Quarter (SE1/4) of the Northeast Quarter (NE1/4) EXTRACTS and West Half (W1/2) of the Northeast Quarter (NE1/4) of the Northeast Quarter (NE1/4) and Northeast Quarter (NE1/4) of the Northeast Quarter (NE1/4) of the Northeast Quarter (NE1/4)	17000230304001
Craig J. and Joyce E. Grahn 11359 Creek View Drive Pelican Rapids, MN 56572	South Half (S1/2) of the Southwest Quarter (SW1/4) of Section 13, Township 137, Range 42	17000130174000
Michael E. and Sharon Wittenmyer P.O. Box 12 Rawson, OH 45881	Southeast Quarter (SE1/4) and Northeast Quarter (NE1/4) SLY OF HWY EX ESMT of Section 14, Township 137, Range 42	17000140176000

- (7) 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. 4 and the needed width.
- (8) 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
- (9) 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 amends the Original Resolution and 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. 4, 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 December 14, 2020 at 6:00 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 26<sup>th</sup> day of October, 2020.

**BY THE TOWN BOARD**

\_\_\_\_\_  
Town Chairperson

Attest: \_\_\_\_\_  
Town Clerk