

**DUNN TOWNSHIP**  
**OTTER TAIL COUNTY, MINNESOTA**  
**Resolution No. 2021-   1**

**RESOLUTION REQUIRING CARTWAY**  
**PETITIONERS TO FILE SECURITY**

**WHEREAS**, the Dunn Township (“Town”) board of supervisors (“Town Board”) received a petition from Monty E. Scherer, Jr. and Mae Loni Scherer (“Petitioners”) requesting the establishment of a cartway pursuant to Minnesota Statutes, section 164.08, subdivision 2 to provide access to the Petitioners’ property, which is located in Section 21, Township 137, Range 42, Otter Tail County, Minnesota (PID 17000210286001) (“Property”), which contains approximately 8.51 acres and is legally described as set forth in the attached Exhibit A;

**WHEREAS**, the Petitioners are required by Minnesota Statutes, section 164.08 to pay all costs associated with the establishment of a cartway including, but not limited to, compensation paid to the owners of the properties made subject to the cartway, the Town’s attorney fees, appraiser fees, administrative costs, surveying costs, and such other costs the Town Board incurs as it deems necessary to process, consider, and act on the cartway petition;

**WHEREAS**, pursuant to Minnesota Statutes, section 164.08, subdivision 2, the Town Board is authorized to pass a resolution requiring the Petitioners to post a bond or other security acceptable to the Town Board for the total estimated damages before the Town Board takes action on the petition including, but not limited to, adopting an order to set a hearing on the petition; and

**WHEREAS**, the Town Board determines it is in the best interests of the Town and its taxpayers to require the Petitioners to post security with the Town in an amount sufficient to ensure the Town is fully reimbursed for all of its costs and expenses related to processing and considering the Petitioners’ cartway petition.

**NOW, THEREFORE, BE IT RESOLVED**, the Town Board hereby requires the Petitioners to provide the Town security in the amount, and subject to the provisions, set out below:


1. The Petitioners must provide the Town cash security in the amount of \$15,000 in the form of a cashier’s check or certified check (“Security”) before the Town Board will take any further action to process or consider the Petitioners’ cartway request. The purpose of the Security is to give the Town a source of funds from which it will reimburse itself for the professional, administrative, and other costs it incurs to process, consider, and act on the petition. It is impossible for the Town Board to determine in advance the exact amount of the costs it will incur related to this matter. The Security established herein is neither a minimum nor maximum on the amount of costs the Petitioners will actually be required to reimburse or pay related to the cartway proceeding. The Town Board will take no further action to process the petition until the full amount of Security is provided the Town as required herein.

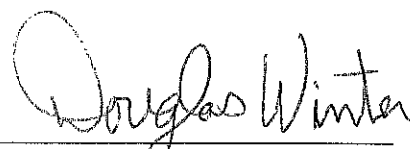
2. The Town will deposit the Security in its account and will withdraw funds as needed to reimburse itself for all costs it incurs. If the Town determines the amount of the Security, after deducting all costs it has incurred, will be reduced to less than \$1,500, the Town may provide the Petitioners notice of the need to provide additional Security in the amount indicated in the notice. The cartway process will be suspended until the required additional Security is provided. Failure by the Town to provide the notice will not relieve the Petitioners from their obligation to fully reimburse the Town for its costs.
3. The Petitioners are required to pay all actual costs incurred by the Town related to processing the cartway petition regardless of whether the cartway is actually established. If the Security is not adequate to fully reimburse the Town, the Petitioners shall remain responsible for reimbursing the Town for all of its costs. If the Security is depleted before all of the costs are reimbursed, the Town will provide the Petitioners an invoice of the remaining amount to be reimbursed, which shall be due and payable within 30 days for the date of the invoice. If the invoice is not paid, or if the Town is not otherwise fully reimbursed, it may certify the unpaid amounts to the County Auditor pursuant to Minnesota Statutes, section 366.012 for collection as an unpaid service charge on the taxes of the Property or on any other property the Petitioners own in the state. The Town's collection costs shall be added to the amount certified to the county auditor for collection. By providing the Security as required herein, the Petitioners are expressly agreeing that the costs the Town incurs related to this process constitute a service charge collectable by the Town pursuant to Minnesota Statutes, section 366.012.
4. The Town Board may, after 10 days' written notice to the Petitioners, terminate the cartway process if the Petitioners fail to promptly and fully reimburse the Town. If the Town Board terminates the process, it will take no further action on the petition. The Petitioners would be required to file a new petition and new security before the Town Board would take any further action on the matter of establishing a cartway to the Property.
5. Upon the conclusion or termination of the cartway process, the Town shall release or return any unused portion of the Security, without interest, to the Petitioners within 60 days with an accounting of any amounts withdrawn by the Town.
6. By adopting this Resolution, the Town Board is not commenting on the Petitioners' eligibility to actually receive the requested cartway. The Town Board will not act to consider whether the Petitioner is eligible for a cartway until the required Security is provided, and then only as part of the hearing held regarding the petition.

**BE IT FINALLY RESOLVED**, the Town Clerk is hereby authorized and directed to provide the Petitioners a copy of this Resolution.

Adopted this 10<sup>th</sup> day of May, 2021.

**BY THE TOWN BOARD**

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

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

**EXHIBIT A**  
Legal Description of the Property

That part of the Northeast 1/4 of Northeast 1/4 Section 21, Township 137, Range 42, Otter Tail County, Minnesota lying northerly of the right-of-way of State Trunk Highway Number 59-30 as monumented, containing 6.63 acres more or less.

AND

That part of the right-of-way of State Trunk Highway No. 59-30 of the Northeast 1/4 of Northeast 1/4 of Section 21, Township 137, Range 42, Otter Tail County, Minnesota lying westerly of the following described line:

Commencing at the Northeast corner of said Section 21; thence N 89 degrees 26 minutes 11 seconds W 1316.25 feet to the westerly line of said Northeast ¼ of the Northeast ¼; thence S 0 degrees, 35 minutes, 26 seconds E on last said line 664.34 feet to the southerly right-of-way line of State Trunk Highway 59-30 as monumented, thence N 62 degrees 01 minute 09 Seconds E on said right-of-way line a distance of 67.28 feet: thence continuing on said right-of-way line and on a curve having a radius of 2764.79 feet, for an arc distance of 440.81 feet to point of beginning of line to be described: thence N 26 degrees 07 minutes 28 seconds W 201.82 feet to the northerly line of said right-of-way and there terminating, containing 2.11 acres more or less, subject to the rights of the public in said Trunk Highway.