

**DUNN TOWNSHIP
OTTER TAIL COUNTY, MINNESOTA
Resolution No. 2021-04**

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

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 Petitioners’ property (PID 17000210286001), which contains approximately 8.51 acres and is legally described as set forth in the attached Exhibit A (“Property”);

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

A 33-foot-wide cartway over and across the Southeast Quarter of the Southeast Quarter (SE1/4 SE1/4) in Section 16, Township 137, Range 42, Otter Tail County, Minnesota. The centerline of said cartway is described as follows: Beginning at the Southeast Corner of the Southeast Quarter (SE1/4) of Section 16; thence northerly along the East line of Said Section 16 approximately 46 feet to the point of beginning; thence westerly parallel to the South line of said Section 16 approximately 96 feet; thence curving southerly until parallel to the East line of said Section 16 approximately 46 feet to the South line of said Section 16 then terminating. (“Requested Route”);

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

Owner and Mailing Address	Property Location	PID
Valerie M. and Peter M. Bushaw 1630 1 st Street N Fargo, ND 58102-2321	Southeast Quarter (SE1/4) of the Southeast Quarter (SE1/4) of Section 16, Township 137, Range 42	17000160195010

WHEREAS, the Petitioners provided the security in the form and amount as required by Town Board resolution to secure the Petitioners’ 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 16, 2021, during which the Town Board inspected the Requested Route 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 Petitioners is complete and proper;
- b. The Petitioners' Property to be served by the proposed cartway contains at least 5 acres;
- c. The Petitioners' 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 Petitioners are 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 discussions on site with the Petitioners, the Affected Owners and interested parties;
- f. The Town Board also inspected an alternative route ("Alternative Route No. 1"), located generally in the same area as the Requested Route, which runs west from 245th Avenue and 33 feet north of the south property line of the Affected Owners' property, and the Town Board became familiar with Requested Route through its own observation and knowledge, the review of aerial photographs, and discussions on site with the Petitioners, the Affected Owners and interested parties;
- g. The primary concern expressed with regard to the Requested Route was the presence of a utility pole in the area of the Requested Road, and the concern that the Requested Route may interfere with or encroach upon a utility easement;
- h. Concerns were also expressed with regard to the grade in the location of the Requested Route and Alternative Route No. 1, but upon the inspection of the Requested Route and Alternative Route No. 1, the location of the cartway appeared feasible, and the Petitioners consented to the location of the cartway in the area in spite of any grade concerns;
- i. The Affected Owners objected to the distance Alternative Route No. 1 traveled onto their property, but the extended distance was solely to accommodate and to avoid encroachment upon the existing utility pole and the location of Alternative Route No. 1 places the cartway as close to the Petitioners' property as possible without traveling further north onto the Affected Owners' property;
- j. 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;

k. The Town Board finds as follows with respect to the Requested Route and Alternative Route No. 1:

- (1) The location of the Requested Route and Alternative Route No. 1 are generally in the same location, which is the southeast portion of the Affected Owners' property, but Alternative Route No. 1 is deemed by the Town Board to be less disruptive and damaging to the Affected Owners as the area of the cartway will be directly adjacent to the Petitioners' property and will travel a shorter distance north onto the Affected Owners' property;
- (2) The location of Alternative Route No. 1 allows the Petitioners to access the Property without interfering with an existing utility pole in the area;
- (3) Petitioners confirmed that Alternative Route No. 1 would be an acceptable route to provide reasonable access to the Property; and
- (4) The Alternative Route No. 1 is less disruptive and damaging to the Affected Owners and is in the public's best interest.

1. 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. 1 and the needed width.

m. 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

n. 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 Petitioners' cartway petition and preliminarily grants the establishment of the requested 33-foot wide cartway along Alternative Route No. 1, said cartway to include the acquisition of all trees within the easement area, pursuant to the following terms and conditions:

1. The Petitioners are required to pay all costs associated with the establishment of the cartway including, but not limited to, compensation paid to the 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 Petitioners. If the Town Board determines the deposited amount will not be sufficient to fully reimburse the Town for its costs, it will notify the Petitioners in writing of the need to deposit additional funds with the Town. If the Petitioners fail 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 Petitioners provide the required additional funds or otherwise fully reimburses the Town for all of its costs. If the Petitioners fail 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 Petitioners' Property, or any other property the Petitioners 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 Petitioners have 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 Affected Owners and the Petitioners 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 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 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 Affected Owners and Petitioners 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 Petitioners, their 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 Petitioners have 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 September 13, 2021 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 Petitioners and the Affected Owners a copy of this Resolution.

Adopted this 9th day of August, 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 1/4 of the Northeast 1/4; 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.