

**DUNN TOWNSHIP
 OTTER TAIL COUNTY, MINNESOTA
 RESOLUTION NO. 2018-__04__**

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

WHEREAS, the Dunn Township (“Town”) board of supervisors (“Town Board”) received a petition from Rodney J. Spidahl (“Petitioner”) requesting the establishment of a cartway pursuant to Minnesota Statutes, section 164.08, subdivision 2 to provide access to Petitioner’s property (PID 17000100127000) located in the E ½ of the NW ¼ of the SE ¼, of Section 10, Township 137, Range 42, Otter Tail, Minnesota, which contains approximately 15 acres (“Property”);

WHEREAS, the Petitioner requested the establishment of a 33-foot wide cartway extending from County Highway 31 to the Property:

WHEREAS, in the submitted petition, the Petitioner proposed three different possible routes for the cartway;

WHEREAS, the first route (“Route A”) would cross the following parcels at the location described in the attached Exhibit A:

Owner	Property Location	PID
Mark and Sheila Beauchene	South ½ of the SE ¼ Section 10, Township 137, Range 42, Otter Tail County, Minnesota	17-000-100-123-000
Mark and Sheila Beauchene	South ½ of the SE ¼ Section 10, Township 137, Range 42, Otter Tail County, Minnesota	17-000-100-119-000

WHEREAS, in the alternative, the second route (“Route B”) proposed by the Petitioner would cross the following parcels at the location described in the attached Exhibit B:

Owner	Property Location	PID
Terry Kvare	NE 1/4 of the SE ¼ Section 10, Township 137, Range 42, Otter Tail County, Minnesota	17-000-100-120-001
Curtis Strom	NW ¼ of the SE ¼ Section 10, Township 137, Range 42, Otter Tail County, Minnesota	17-000-100-122-000

WHEREAS, in the alternative, the third route (“Route C”) proposed by the Petitioner would cross the following parcels at the location described in the attached Exhibit C:

Owner	Property Location	PID
Esther Larson	SW ¼ of the NW ¼ Section 11 Township 137, Range 42 Otter Tail County, Minnesota	17-000-110-152-001
Terrance Strom and Kevin Strom	SE ¼ of the NE ¼ Section 10, Township 137, Range 42 Otter Tail County, Minnesota	17-000-100-120-000
Terry Kvare	NE ¼ of the SE ¼ Section 10, Township 137, Range 42, Otter Tail County, Minnesota	17-000-100-120-001
Curtis Strom	NW ¼ of the SE ¼ Section 10, Township 137, Range 42, Otter Tail County, Minnesota	17-000-100-122-000

WHEREAS, during an inspection of the routes, the petitioner presented a fourth alternative route (“Route D”), the general location of which is described in the attached Exhibit D and shown in the attached Exhibit E, crossing the following parcels;

Owner	Property Location	PID
Mark & Sheila M Beauchene	SE ¼ of the SE ¼ and the SW ¼ of the SE ¼ Section 10, Township 137, Range 42 Otter Tail County Minnesota	17-000-100-119-000 17-000-100-123-000

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 January 8, 2018 during which the Town Board inspected the proposed cartway 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 following 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 proposed routes by driving a portion of them and then walking the remainder;
- f. 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;
- g. The Town Board finds as follows with respect to Route A and Route B:
 - (1) The topography of the routes do not provide meaningful access to the Petitioner's Property;
 - (2) The proposed routes are located approximately 80 feet from an existing access onto County Road 31;
 - (3) County Road 31 in the area near these proposed routes has a large elevation changes and an additional access in this area would be a danger to the traveling public;
 - (4) The routes are not in the public's best interests.
- h. The Town Board finds as follows with respect to the Route C:
 - (1) The route travels close to existing structures and seasonal residences and would interfere with their use;
 - (2) The Town has issued a building permit along the route;
 - (3) The route would be disruptive to the property owners along the route as it would bring traffic within several feet of the existing structures;
 - (4) The route is not in the public's best interests.
- i. The Town Board hereby finds as follows with respect to the Alternative Route D:
 - (1) In September of 1985, the Town adopted an order creating a 33 foot easement for a cartway along the east-west portion of Route D;
 - (2) Route D provides meaningful access to the Petitioner;

- (3) Route D is the least disruptive route to access the Petitioner's Property as it does not pass by any existing development and a portion travels along an existing cartway;
 - (4) The access onto County Road 31 from this route provides clear visibility for the traveling public;
 - (5) Route D is in the public's best interest to be used as a cartway to access the Petitioner's Property.
- j. The Town Board hereby selects Route D as the approved route for the cartway because it is less disruptive and damaging to the property owners affected than the other requested routes and it is in the public's best interest for the reasons cited above;
 - k. A survey is needed to identify the exact location of the cartway, develop a proper legal description, and to accurately identify the boundaries of the cartway. The Town Board will select one of its supervisors to work with the survey or to correctly identify the Selected Route and the needed width;
 - l. 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
 - m. The hearing needs to be continued in order to allow the Town Board to select and hire an appraiser and surveyor, allow the appraiser and 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 Route D, 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 Mark and Sheila Beauchene ("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 provide 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 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 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 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 15 days before the date set for recommending the hearing. The Town shall provide the 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 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 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 the 9th day of April, 2018, at 7:00 p.m. at the Dunn Town Hall located at 47979 East Lake Lizzie Road, Pelican Rapids, MN 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 Affected Owners a copy of this Resolution.

Adopted this 13th day of February, 2018.

BY THE TOWN BOARD

Town Chairperson

Attest: _____
Town Clerk

EXHIBIT A
Description of Route A

From a point starting at the connection of County State Aid Highway 31 and the most northeasterly corner of the Mark and Sheila Beauchene property, thence running west along to the northerly boundary line of the Mark and Sheila Beauchene property to the first point of connection to the Petitioner's property.

EXHIBIT B
Description of Route B

From a point starting at the connection of County State Aid Highway 31 and the most southeasterly corner of the Terry Kvale property, thence running west along the southerly boundary line of the Terry Kvale property to the easterly boundary of the Curtis Strom property, thence continuing westerly along the southerly boundary of the Curtis Strom property to the first point of connection to the easterly boundary of the Petitioner's property.

EXHIBIT C
Description of Route C

From a point starting at the connection of County State Aid Highway 31 and the most easterly boundary of the Esther Larson property, thence running southwest to the easterly boundary line of the Terrance Strom and Kevin Strom property thence continuing southwesterly, thence northwesterly, westerly and southwesterly to the northerly line of the Terry Kvale property, thence southwesterly to the easterly boundary line of the Curtis Strom property, thence continuing westerly to the first point of connection to the easterly boundary of the Petitioner's property.

EXHIBIT D
Description of Route D

Following the existing constructed cartway across from the intersection of County Highway 31 and Township Road 500th Street, continuing west approximately 1,300 feet then proceeding north approximately 700 feet to an existing low lying slew, then proceeding west along the slew and then north to the Petitioner's Property.

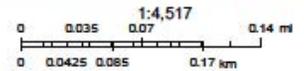
EXHIBIT E
Map of Route D

Preliminary Cartway Route



2/1/2018, 10:44:32 AM

- Addresses
- Driveways



GIS Dept
Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus

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