

**DUNN TOWNSHIP**  
**OTTER TAIL COUNTY, MINNESOTA**  
Resolution No. 2018-12

**RESOLUTION ISSUING AN ORDER**  
**VACATING A PORTION OF A CARTWAY**

**WHEREAS**, the board of supervisors (“Town Board”) of Dunn Township, Otter Tail County, Minnesota, (“Town”) received a petition from Richard Peterson (“Petitioner”) requesting the vacation of a portion of the cartway known as the Peterson Road Cartway, as shown in the attached Exhibit A and described in the attached Exhibit B (said portion hereinafter referred to as the “Cartway”);

**WHEREAS**, conditioned upon the approval of the requested vacation, the Petitioner confirmed that he would dedicate a portion of his property to the Town as a cartway pursuant to Minnesota Statutes, section 164.15 to ensure the McLain property would continue to have access after the vacation and submitted an application to the Town for that purpose;

**WHEREAS**, the following owners are identified as those possibly affected by the proposed vacation of the Cartway (collectively, the “Affected Owners”):

<b>Owner Name(s) and Mailing Address</b>	<b>Property Address (if different)</b>	<b>PID Number</b>
Richard Peterson, et al. 224 Second Avenue NE Pelican Rapids, MN 56572		17000260330000
Richard Peterson, et al. 224 Second Avenue NE Pelican Rapids, MN 56572		17000270341000
Clifford L. McLain 2710 17 <sup>th</sup> Street S Moorhead, MN 56560	25488 Peterson Road Pelican Rapids, MN 56572	17000270343000
Jeremy & Kallie Dufault 5401 32 <sup>nd</sup> Street S Fargo, ND 58104	25472 Peterson Road Pelican Rapids, MN 56572	17000270342000
Wayne & Phyllis Erickson 25460 Peterson Road Pelican Rapids, MN 56572		17000270344000
Parker J. Hillius 2148 14 <sup>th</sup> Street W West Fargo, ND 58078	25442 Peterson Road Pelican Rapids, MN 56572	17000991898000

**WHEREAS**, the Town Board conducted a public hearing on the petition, including an examination of the Cartway, on October 29, 2018, after the Petitioner provided personal and posted notice to the Affected Owners pursuant to Minnesota Statutes, section 164.07, subdivision 2, and the Town published notice;

**WHEREAS**, the Town Board heard from the interested parties, considered the matter, and hereby finds and determines as follows:

- a. The Town has the authority under Minnesota Statutes, sections 164.08, subdivision 2(e) and 164.07 to vacate a cartway;
- b. The petition requesting the vacation is sufficient;
- c. Immediately prior to the hearing, Mr. Peterson and Mr. McLain came to an agreement regarding the transfer of a portion of property from Mr. Peterson to Mr. McLain to ensure Mr. McLain has access to his property and to provide for the construction of a driveway to Mr. McLain's property;
- d. In furtherance of that agreement, Mr. McLain submitted a written consent to the vacation of the Cartway, provided the vacation also includes the vacation of the small triangular portion of cartway located in the northeasterly corner of Mr. McLain's property as shown on Exhibit C ("McLain Portion");
- e. The Petitioner had not requested the vacation of the McLain Portion as part of ensuring Mr. McLain continued to have access to his property, but now the vacation of the McLain Portion is part of the agreement worked out between the parties to allow the vacation to proceed without objection from Mr. McLain and to ensure he has continued access to his property;
- f. No one spoke in opposition of the proposed vacation at the hearing or made a claim for damages. The Town Board provided another opportunity for the Affected Owners to speak to this matter at its November 13, 2018 meeting before acting on this Order;
- g. Vacating the McLain Portion in light of the agreement between the parties is in the public interest and does not affect access to any other properties;
- h. No owners will be landlocked as a result of the vacation. The portion of the cartway across the Erickson property (Sublot 1 - PID: 17000270344000) and the DuFault property (Sublot 2 - PID: 17000270342000) are to remain in place to ensure those owners continue to have access to Peterson Road. The McLain property (Sublot 3 - PID: 17000270343000) will have deeded access to his property as part of the agreement worked out with Mr. Peterson. Furthermore, because the agreement between the parties addresses access to the McLain property, the Peterson's Dedication Application is no longer needed and the Petitioner has withdrawn the application;
- i. The purpose for which the portion of the Cartway proposed for vacation was establish is no longer present as it is not used by the public and it is no longer needed to provide access to any property;

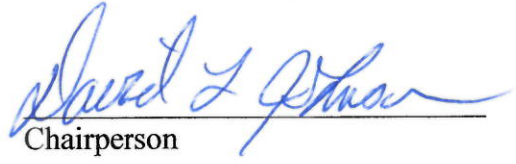
- j. The requested vacation, including the vacation of the McLain Portion, is consistent with the public interest;
- k. The Cartway is not adjacent to or end at public water and so notice to and consultation with the Minnesota Department of Natural Resources was not required; and
- l. The Town Board has considered whether any damages need to be paid for the vacation of the Cartway and find no damages will result from the vacation for one or more of the following reasons: (1) the Affected Owners will continue to have access onto, and the right to use, a public road; (2) the Affected Owners have waived their rights to damages by consenting to the vacation; or (3) any damages are offset by the benefits received from the reversion of the land to the Affected Owners as provided in law or the transfer of other land.

**NOW, THEREFORE, IT IS ORDERED**, by the Town Board of Dunn Township, Otter Tail County, Minnesota, as follows:

1. The Cartway, including the McLain Portion, as shown in the attached Exhibit D and described in the attached Exhibit E, is hereby vacated pursuant to the Town Board's authority under Minnesota Statutes, section 164.07.
2. No damages shall be awarded for the vacation of the Cartway for the reasons stated above.
3. The Town Clerk is hereby authorized and directed to provide to the Affected Owners notice of the award of damages, together with a copy of this Order, within 7 days after the award of damages is filed in the Town Clerk's office.
4. The Town Clerk is hereby authorized and directed to present this Order to the Otter Tail County Auditor to enter it in the transfer records and to note on the order that it has been "entered in the transfer record" as provided in Minnesota Statutes, section 164.07, subdivision 11(a) and to then record this Order in the office of the Otter Tail County Recorder.
5. The Town Chairperson and the Town Clerk are authorized to work with the Town Attorney, take such actions, and to execute such documents as may necessary to complete the vacation of the Cartway as contemplated in this Order.

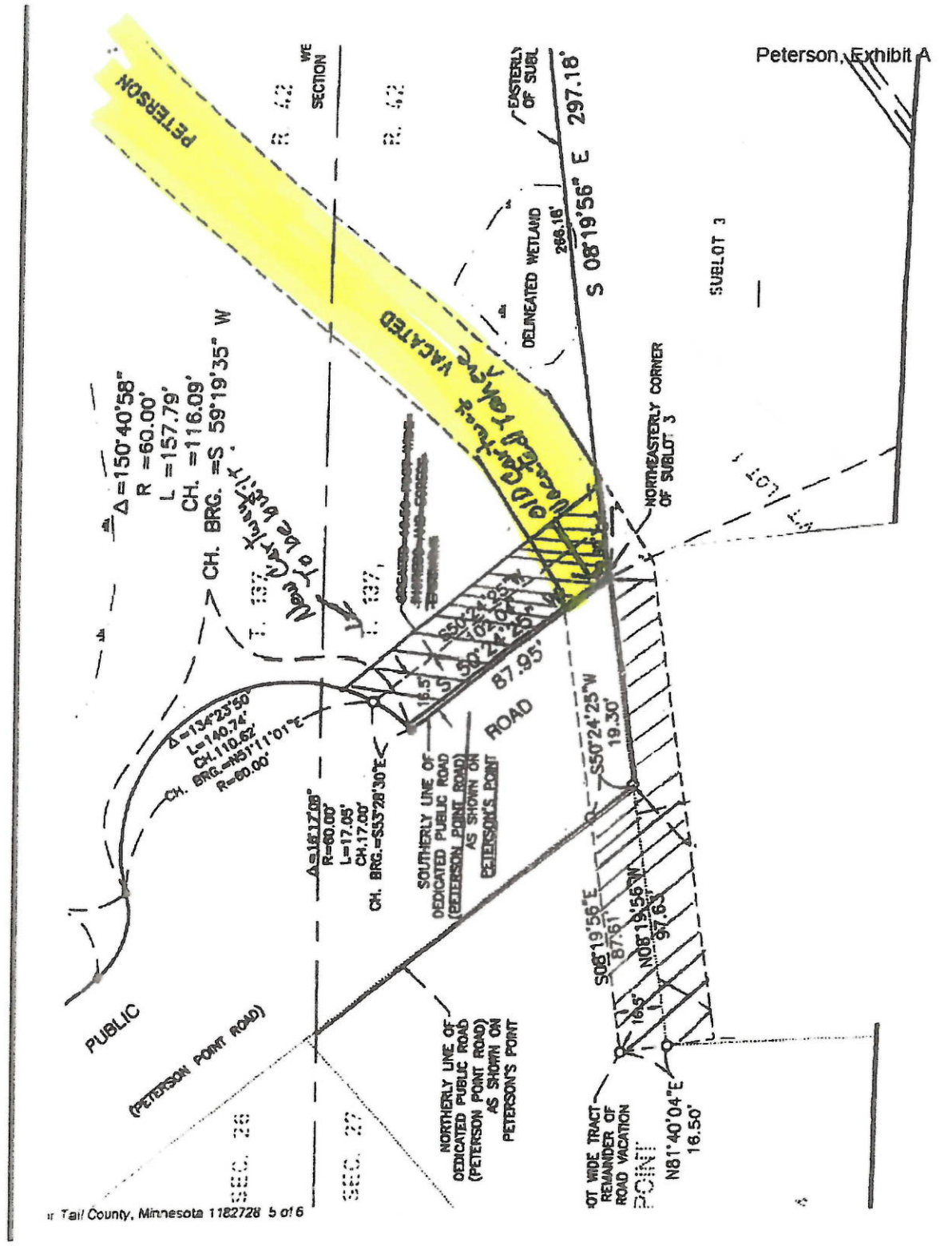
Adopted this 13<sup>th</sup> day of November, 2018.

**BY THE TOWN BOARD**

  
Chairperson

Attest:   
Clerk

**EXHIBIT A**  
**Map of Original Proposed Cartway Vacation**



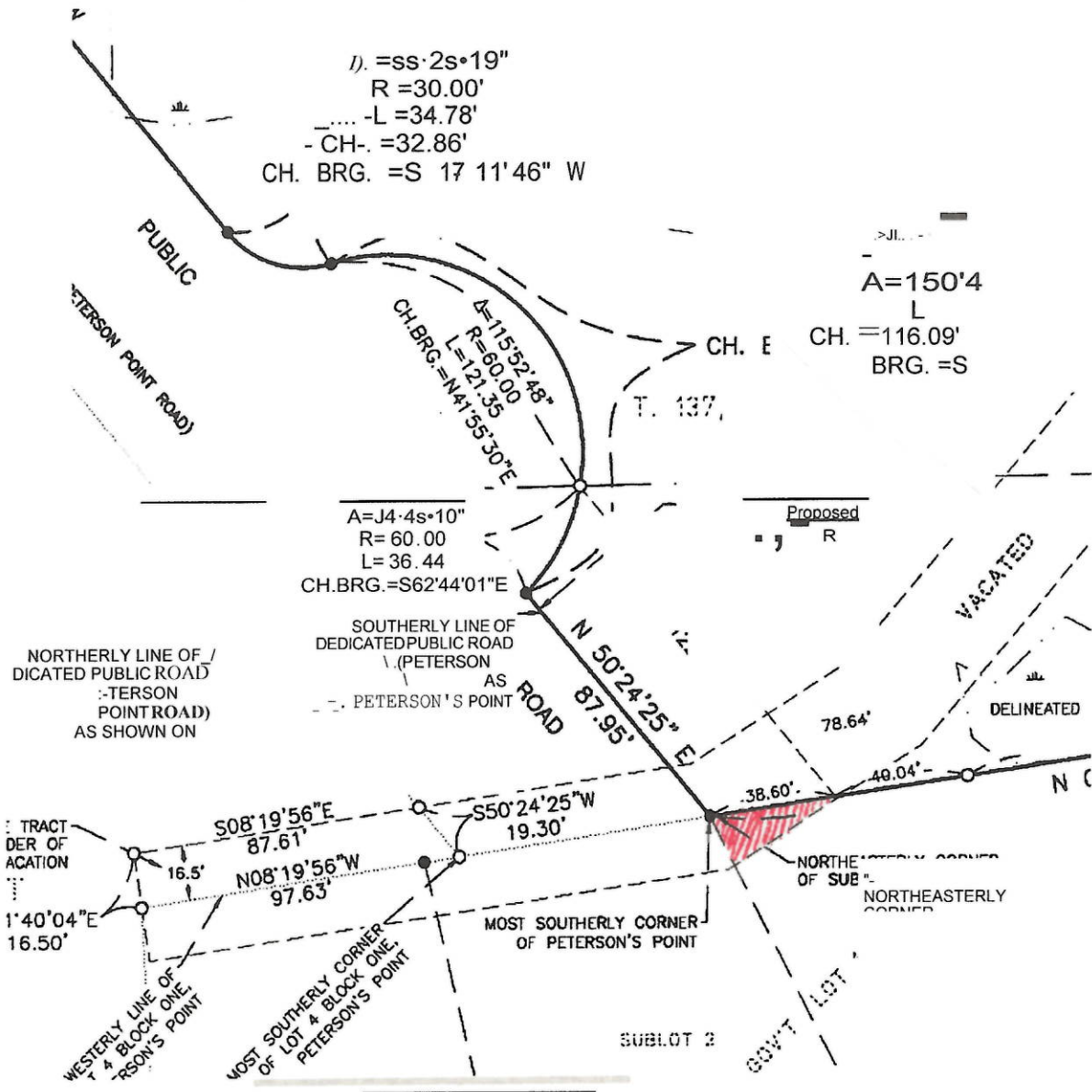
## **EXHIBIT B**

### Description of Original Proposed Vacation

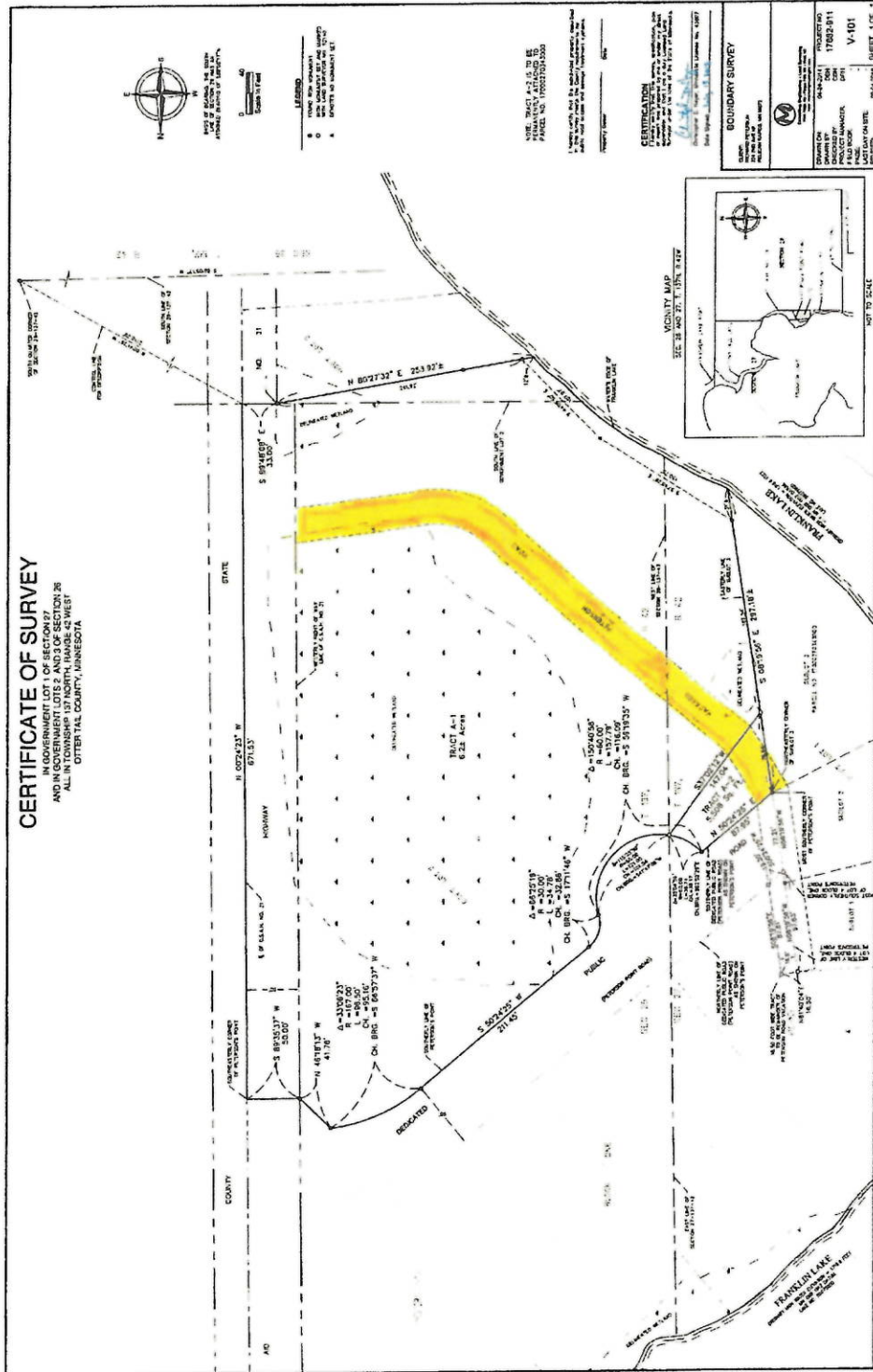
Vacation of a cartway two rods wide over and across Government Lot 2 of Section 26-137-42 and Government Lot 1 of Section 27-137-42, and Sublot 3 of Plat of Sublot of Government Lot 1 of Section 27-137-42, said cartway being 16.50 feet on both sides of centerline described as follows:

Beginning on the centerline of County Highway No. 31 at a point which is 167 feet North from the South line of Government Lot 2 in Section 26, Township 137, Range 42; thence Westerly to the East line of Government Lot 1 in Section 27, Township 137, Range 42; thence Northwesterly to the Northeast corner of Sublot 3 of Government Lot 1 Section 27, Township 137, Range 42, except that portion of cartway in Sublot 3.

**EXHIBIT C**  
**Map of McLain Portion**



**EXHIBIT D**  
**Map of Vacated Cartway**  
**(Including McLain Portion)**





**EXHIBIT E**  
Description of Vacated Cartway  
(Including McLain Portion)

Vacation of a cartway two rods wide over and across Government Lot 2 of Section 26-137-42 and Government Lot 1 of Section 27-137-42, and Sublot 3 of Plat of Sublot of Government Lot 1 of Section 27-137-42, said cartway being 16.50 feet on both sides of centerline described as follows:

Beginning on the centerline of County Highway No. 31 at a point which is 167 feet North from the South line of Government Lot 2 in Section 26, Township 137, Range 42; thence Westerly to the East line of Government Lot 1 in Section 27, Township 137, Range 42; thence Northwesterly to the Northeast corner of Sublot 3 of Government Lot 1 Section 27, Township 137, Range 42.