

TOWN of MAY
WASHINGTON COUNTY, MINNESOTA
OFFICIAL SPECIAL TOWN BOARD MINUTES
October 6, 2022

The Board of Supervisors of the Town of May convened a Special Board Meeting on Thursday, September 6, 2022, at the Town Hall, 13939 Norell Ave. N. Marine on St. Croix, 55047. The meeting began at 4:30 p.m.

Those present included:

Supervisor John Adams

Supervisor Steve Magner

Clerk Bobbi Hummel

Town Planner Nate Sparks

Engineer Mark Erichson

Town Attorney Dave Snyder

Attorney David Sienko (Respondent)

Attorney Scott Lucas (Respondent)

Attorney Devon Holstad (Petitioner)

Property Owner Jim Hoy (Respondent)

Property Owner Andera Jungmann (Respondent)

Absent: Supervisor John Pazlar

Notice was posted on the township's website and at the Town Hall more than 72 hours prior to October 6, 2022 for the public to attend.

The sole purpose of this special meeting was to determine initial damages of a proposed cartway.

Attorney Snyder opened the meeting explaining 3 principle points it the process.

1. Commencement of the proceeding, with the filing of the petition.
2. Township sets a preliminary figure for damages. This allows the township to acquire security to address costs of the handling on the cartway request and to establish an initial estimate of damage to the affected property. Which must be paid by the petitioner in advance. This does not include the building of the cartway.
3. Hearing on the terms to establish the cartway.

The board can take action today and adopt a resolution to and establish an initial damage figure, continue the hearing, or to do nothing and decline to set an initial damage figure. It is advisable to get an outline of the potential cartway locations from the Engineer, get the estimated financial costs, and hear some of the cost that might be involved in handling it. The petitioner and respondent will also speak on what they believe the damage figure to be.

Engineer Erichson explained that he is familiar with the site. The route/terrain was quite challenging in terms of safety as the site is narrow and has significant vertical grades. This site does not allow for two cars to pass and there are concerns with the current condition of the driveway as a public roadway. The roadway standard is 24 feet wide, this driveway is currently 10 feet wide in some areas with a vertical wall on the north side and severe drop-off on the south side. The current driveway standard for May Township is 16 feet wide. Several alternatives have been examined including the township roadway standards and a lesser standard that would allow 2-way traffic to pass with some bump out areas. Both alternatives include retaining walls, guard rails, and paving the entire length of the roadway. Paving is a town standard for public roadways. These are necessary as a public roadway to ensure safety. Both options are an extensive and expensive option when considering the terrain, the trees, the potential environmental impact, erosion control, and restoration. These are all important from a safety standpoint as it is open to the public. Estimates are high level for both options and range from \$1.4 (16-foot-wide driveway) million to \$1.9 (24-foot-wide roadway) million to form a public roadway. This estimate does include construction, engineering, design and survey. It is Engineer Erichson's opinion that this would be a seasonal public roadway only. The County Park Service, National Park Service, and Minnesota Department of Transportation may also need to be involved if this option progresses. Also noting that costs could increase.

The standard width of a cartway is 33 feet but the impervious/drivable surface could be less as it allows for space of a ditches, utilities, stormwater management, snow storage.

Engineer costs alone would most likely be about \$200,000.00-300,000.00. This is a rough estimate and not an actual figure. This would include storm water management, which is a challenge considering the grade of this location. There are some ideas of how to handle it, but more information needs to be gathered. Also, construction observation, permitting, surveying costs, construction administration, and design on the entire project.

If this were made as a private driveway these costs would be less, but improvements would still need to be made to meet the township requirement for shared driveways. Paving would not be required.

A draft/working resolution is presented and is included in these minutes as an attachment.

Attorney Sienko asks Engineer Erichson the following clarification questions.

- Can emergency vehicles (EMT, fire, ambulance) access the entire parcel on the current driveway? Answer: No.
- Does the 16-foot-wide public roadway improvement allow access to emergency vehicles along the entire roadway/both parcels? Answer: Yes
- Does the 24-foot-wide public roadway improvement allow access to emergency vehicles along the entire roadway/both parcels? Answer: Yes

- Have you reached out to MN DOT or the county to discuss issues with a town road intersecting with Hwy. 95 and Square Lake Trail. Answer: That conversation has been attempted by has not taken place yet.
- Do you know what the spacing requirements are in this area.? Answer: I believe it is 1/8th of 1 mile.
- In order to construct the 16-foot-wide proposed cartway would there be necessary tree removal? Answer: Yes.
- Would there also be necessary grading of land? Answer: Yes.
- In order to construct the 24-foot-wide proposed cartway would there be necessary tree removal? Answer: Yes
- Would there also be necessary grading of land? Answer: Yes.
- What are the townships specifications grading of township roads? Answer: 8% -10% is the maximum grade.
- What is the current grade of the driveway? Answer: 40%-50% grade.
- So that a pretty significant grading required to bring the current driveway to township specifications. Answer: Correct.
- If it was a shared private driveway that required township specifications, what would be the required grading? Answer: We like to meet our standard however, there are properties that prevent that from reasonable being achieved, this is one of them. This is unique and something they would need to evaluate. This driveway cannot meet that requirement without mass destruction. We would have to look at some modification or waiver to that standard as we would with other properties that have extensive grades.

Attorney Holstad asks Engineer the following questions.

- Are you aware that the petitioners are requesting no construction and no improvement? Answer: Yes.
- If no improvements were granted, what are the estimated engineering costs? Answer: Engineer associated costs with no improvements would be zero. Time associated with meetings would be the only costs. Significantly less, probably \$10,000.00 range.
- Where can we look to see where the town standards are recorded? Answer: We can provide them to you and look to see what is on the website.
- In those standards, how many times is the word cartway mentioned? Answer: There are none.

One of the central questions today is to determine if the town board should ask for an initial deposit of damages and should it include a figure that reflects claimed potential damages to the effected/respondents' property. The Board can adopt a figure or choose not to adopt a figure.

Respondents nor petitioners have an appraisal at this time, but Attorney Sienko asks if the board would allow the petitioners to testify on the value/estimate of the potential cartway. The board agrees.

Jim Hoy states the following: He is a respondent and a co-owner of the property with his sister, Andrea Jungmann, sitting next him. He currently lives at 1480 Monterey Court in Stillwater, MN. He has a high school education; we went to multiple colleges. He works as a truck driver. His grandmother is Ella P. Ramberg. He acquired the property around February, 1998. He has owned it with his sister since then. This property has been in his family around 100 years. He visited this property every weekend in the summer as a child - fishing and family gatherings. Currently, he does not drive down the driveway in the winter when there is snow, it is nearly impossible and dangerous. He is aware of an easement on the property granted by the National Park Service. The property is private. He has a gate at the top of the property and a pole barn with items in it that he wants protected. His family uses the entire property for bow hunting. A public roadway would impact his hunting and privacy significantly.

Respondent estimates the proposed cartway/roadway would reduce his current assessed property value by about 60%. In effect, bringing his current property value down by \$234,600.00.

Respondent/Attorney has handed out information pertaining to the Jungmann/Hoy property history, aerial photos, and images of the driveway with drop-offs. It is accepted by the petitioner and included in the records of the town.

Attorney Holstad states the following: For the purpose of damages there is distinction between the establishment of damages and the cost of construction. The establishment is done before any construction is made, for purpose of estimating damages the damages estimate to the town needs to be the damages prior to the establishment and not taking into account the construction. Establishment does not include construction. The requirement of construction or improvement is an alternate cartway to what is requested in the petition. Referencing Kennedy vs Pepin Township: The construction requested in the petition must be established unless there is an alternative that is less destructive, less damaging and in the public best interest. He states that the board has already determined that it is not in the public's best interest to spend money on the cartway it cannot then come back on the flip side and say the public interest requires the petitioner to pay the cost of the construction. If the board finds it in the public interest to construct the cartway/roadway, the costs must be borne by the board, not the petitioner, as the petitioner is not requesting improvements. There is not a single instance in Minnesota where a court has upheld a cartway where the petitioners requested no construction and the board required it. If the requirements to establish the cartway are in the public's best interest, costs would be borne by the town. In regards to damages, the administrative costs to the town, \$2,500.00 is acceptable. Attorney costs of \$15,000.00 is acceptable. Damages for construction in regards to engineer costs at \$10,000.00 is acceptable. Damages to the town at \$25,000.00 is acceptable. Damages to the neighboring land owner's property he estimates to be less than \$5,000.00. The reason for the \$5,000.00 estimate is because the proposed use is a driveway and states it does not change the value of the land. In addition, benefits of the cartway would be that the respondents would no longer be responsible for 100% maintenance and would then would gain additional public road frontage. Petitioners suggest a damage estimate to the property owners of \$1,000.00. If the town determines that public interest requires construction those costs have to be borne by the town and there is no authority in any statute, or in the state of Minnesota in which a court has upheld a board requiring construction if the petitioner does not ask for it.

There is a scenic easement granted from the NPS to the respondents. The respondent's received \$17,700.00 in 1979 from the NPS. The easement does not permit topographic changes to the property unless granted by the NPS.

If this is a shared driveway and improvements are requested by one party and the other disagrees, the statute empowers the board to assign the percentage of allocation. Mr. Holstad suggests that if this cartway is granted this should be part of the conversation, but if they cannot agree the board assign the percentage as an appealable decision. If one party does not follow through with the agreement the other party can bring a civil action against the other.

Dave Snyder: Is there a case in which a petitioner defeats the townships insistence on improvements if the improvements are deemed necessary and reasonable in the public interest?

Attorney Holstad: If the township determines it is reasonable and necessary, then it is the duty on the town to pay for it.

Dave Snyder: Where is that?

Attorney Holstad: State -v- Rhoades and Walter Mondale's opinion from May 8, 1963.

Attorney Snyder: That predates the amendment to the statute indicating that the costs are to be borne by the petitioner by about 55 years.

Attorney Holstad: Not entirely. The amendment only deals with the administrative costs and specifically did not include the cost of construction.

Attorney Snyder: If that were true, is it your understanding that the town board would have to establish a cartway in precisely the location and in precisely the configuration demanded by the petitioner?

Attorney Holstad: No, not at all.

Attorney Snyder: And if they asked for modifications, that would convert the entire undertaking to be borne by taxpayer?

Attorney Holstad: No, not at all.

Attorney Holstad: If that proposition was true, would it not be the case that any given person with a 40 or 80 acre parcel who wished to subdivide would be far better off to simply ask for a cartway rather than to build a public road, and say that if the township asks for any improvements that the town has to pay for it?

Attorney Holstad: Yes, potentially.

Attorney Snyder: Why do you qualify your “yes” with “potentially”?

Attorney Holstad: Because it’s a fact-based scenario and every cartway decision is a fact-based scenario.

Attorney Snyder: If the township does not accept the cartway as proposed by you and does not accept it in the unimproved state, that any insistence by the township that it have improvements or reconfigurations aimed at public safety or ease of access converts it to a township obligation to pay for it?

Attorney Holstad: Correct, yes.

Attorney Snyder: And if that were true, nobody would subdivide property for a public road, they would simply apply for a cartway.

Attorney Holstad: Maybe.

Attorney Snyder: What case to you point to in support of that?

Attorney Holstad: Every single case in this state’s history. There is not a single one where the court has upheld a requirement of construction where the petitioner doesn’t ask for it. It doesn’t exist.

Attorney Snyder: Is there a case that rejects the township request for an improvement? Where that improvement is deemed by the town board to be consistent with the public interest and public safety?

Attorney Holstad: Yes, State -v- Rhoades, Larson. There are multiple. The proposition is true. The cartway jurisprudence is a very specific aspect of Minnesota law. Where the petitioner does not ask for construction, the town has no ability to require it.

Attorney Snyder: If that were true, then the township would not be in a position to ask for any modification to the cartway without triggering an obligation for the township to pay for it.

Attorney Holstad: I disagree with that.

Attorney Snyder: Based on what?

Attorney Holstad: Based on the analysis that the courts had established over 100 years ago when looking at alternative cartways. If all three requirements exist than the alternative may be chosen. But again, there is no alternative pathway that is proposed here. The alternative here is the respondent’s claiming there must be additional damage to their property in order for the town to allow this to go forward. But there are no bases in any case, it doesn’t exist.

Attorney Snyder: Because a case doesn't exist, the statute controls this and the statute compels the town to board to make a decision about the cartway and to determine the alternatives and the terms on which it will be built. If your proposition was true, any alteration by the town board to the alignment of the road, for example, which the town board thought was in the public interest than the town board would inherit all the costs from somebody else.

Attorney Holstad: There is a difference between the establishment and the construction. If this were a situation where the petitioners asked for a straight line and the town determined the an "S" shaped road the town would establishment the cartway, the easement for the "S" shaped road would exist, so the ability to use that land would exist without construction. You don't have to have construction to open the cartway. The cartway is open when established and that is before construction. There is no requirement of construction.

Attorney Snyder: That is a different proposition that you first asserted. If that proposition is a way of asserting that you simply need to have a ruling that says the cartway is established to allow cartway style usage than you needn't bother with construction? I think that is inconsistent with the statute.

Attorney Holstad: There is a case that says exactly that.

Attorney Snyder: That says even if the town ordered construction of a cartway to a specified standard that was consistent with the engineers' recommendations and in the interest of public interest, that their simple act of ordering the cartway, leaving aside it ever being constructed, leaving aside the townships direction on how it should be built, that you would have the right to use it as a cartway, that it would be a cartway, that it would be a public road?

Attorney Holstad: Yes.

Attorney Snyder: What case are your relying on to support that?

Attorney Holstad: Heggemeyer -v- Spalding Township, 2015

Attorney Snyder: Is it fair to say that based on that case it would not be your intention to follow through with construction modification or requests by the town board?

Attorney Holstad: Petitioners have no intention of paying a dime for the construction of this cartway.

Attorney Snyder: The statute requires petitioners to pay for the construction of the cartway.

Attorney Holstad: Only if the petitioner's desire for construction were made.

Attorney Snyder: Do you suggest, part of the analysis for determining damages involves determining the value of the property, correct?

Attorney Holstad: Correct

Attorney Snyder: And that involves determining the claim of reduction in value by reason of the placement of the cartway, correct.

Attorney Holstad: Yes.

Attorney Snyder: That also invites consideration of the relative benefits.

Attorney Holstad: It doesn't invite, it requires.

Attorney Snyder: It requires consideration of the relative benefits, and one of the benefits you site in support of that off-set is that the respondents will have a public road. So, it's your proposition that the effect of your petition will be to define a public road that is unimproved that the township must improve and that you will not spend a dime on?

Attorney Holstad: Only if the township believes it is in the townships best interest to complete improvements from road construction dollars.

Attorney Snyder: You understand that that would leave the township in a situation where you claim a public road exists that does not conform to what the townships Engineer recommends for safe travel and access.

Attorney Holstad: Not a public road, a public cartway. There is a specific difference in statute.

Attorney Snyder: But when you indicated the offsetting benefits to the petitioner was that they now had frontage on a public road, you used the use public road and that would be a benefit.

Attorney Holstad: It is the public nature, and if I used public roadway then...

Attorney Snyder: You did.

Attorney Holstad: OK. Sorry, it's a public cartway and statutes say they are different than a roadway.

Attorney Snyder: So you're not suggesting that one of the off-setting benefits is presence on a public road?

Attorney Holstad: Presence on a public cartway is a benefit.

Attorney Snyder: Why would that be a benefit?

Attorney Holstad: Potential development issues. I don't have specifics in mind.

Attorney Snyder: So, you take the position further that you're establishing something in the nature of a point of public access by reason of your petition but you cannot be directed to make any medications at all without the township triggering its own obligations for cost. Is that true?

Attorney Holstad: What I am saying is that were petitioners do not ask for construction or improvement, there is no authority in statute or in any case in Minnesota history that allows the town to require construction or improvement.

Attorney Snyder: OK. I'll indicate to the town board that I think that is an inaccurate statement on the law and should have some further discussion on that.

Attorney Sienko: I'd like to point to MN Statute 164.08. Sub. 2. The town board may select an alternative route other than that petitioned for. (*Read in its entirety*). The plain language of the statute is abundantly clear. The town has a lot of discretion in what it wants to do. If they wanted to build a brand new road there, under that statute, it could if it wanted to and they could pay for it, if they wanted to, but they don't have to. There is no requirement that the town pay for it. If the town doesn't adopt a resolution that they would pay for it, then it goes to the petitioner. The petitioners must pay for the grading or other construction work for the cartway.

Attorney Snyder: It is troubling that there is a suggestion that the petitioner need only ask for a cartway and that it cannot be conditioned on construction, safety related improvements, and that in order that it be improved in keeping with what the engineer recommends could be defied and ignored.

Attorney Holstad: There is no authority that allows a cartway to be conditioned on construction, there's just not.

Attorney Snyder: The board has a mandate to identify, as part of a cartway determination, if there is a public benefit or that it is a reasonable access.

The board should today give consideration today if they want to adopt damage findings now or at a future date. Also, it is advised that the damage findings be posted in cash, not a bond. They also follow the draft resolution attached to these minutes, that include all seven categories. Those amounts can change if there is continued disagreement of the cartway location and form demanded by the petitioner and the any modification requested by the board mandates that the township pay for it.

Attorney Holstad: If the petitioner does not request construction or improvement there is no authority for the town to require construction or improvement.

Attorney Snyder: And further, that if the town asked for or directed construction or improvement that that would shift responsibility for construction or improvement to the town, correct?

Attorney Holstad: Where the petitioner does not request construction or improvement there is no authority for the town to require it. That is the petitioner's position.

Attorney Snyder: And further, if the township imposed such requirement would trigger responsibility for the township to pay for it.

Attorney Holstad: The township can do whatever it wants after that, sure.

Attorney Snyder: No, that's not what was said. It's not whether the township can do whatever it wants, it's rather or not that requirement, if imposed by the township, shifts the cost of construction to the township. The answer you gave was, yes, you believe it does.

Attorney Holstad: It is our position that no such requirement is allowed under the authority of the state of Minnesota.

Attorney Snyder: And further, your proposition, that if the operative fact for the petitioner was simply to establish the cartway, not the establishment of the cartway containing a mandate that you improve it a certain way.

Attorney Holstad: A mandate for improvement cannot be required to establish a cartway. That is our position.

Attorney Snyder: Your language is hedged and it's troubling.

Attorney Holstad: It is very clear, actually.

Attorney Snyder: I don't think your proposition is accurate, so I wouldn't agree with you that it is clear. You seem to be taking the position that if the township boars the establishment of a cartway the only operative things that it can mandate is that the cartway exists and that it can't mandate that it be configured, shaped, changed in anyway and look to you to do that.


Attorney Holstad: It is the petitioner's position that the town cannot require construction or improvements where it is not asked for by the petitioner.


The recommendation at this point is that the township not identify the initial amount of damages and that this be tabled to a later date. This will likely affect the scheduling of the January hearing.

Adams motions, seconded by Magner to table this meeting to a later date, yet to be determined.
All in favor: Adams: YES, Magner: YES.

Submitted:

Approved:


Bobbi Hummel
Clerk/Treasurer


John Adams
Board Chair