

**TOWN of MAY**  
**WASHINGTON COUNTY, MINNESOTA**  
**CARTWAY PUBLIC HEARING**  
**July 26, 2023**

The Board of Supervisors of the Town of May held a public hearing on Wednesday, July 26<sup>th</sup>, 2023, at the May Town Hall, 13939 Norell Ave. N. Marine on St. Croix, MN 55047. The hearing began at 12:00 p.m.

Those present included:

Supervisor John Pazlar, Chair

Supervisor Steve Magner

Supervisor Don Rolf

Clerk Bobbi Hummel

Engineer Mark Erichson

Planner Nate Sparks (joined by phone at 2:30)

Town Attorney Dave Snyder

Attorney David Sienko (Respondent)

Attorney Michael Hiram (Respondent)

Property Owner Jim Hoy (Respondent)

Property Owner Andera Jungmann (Respondent)

Attorney Devon Holstad (Petitioner)

Property Owner Brice Holstad (Petitioner)

Appraiser Laurie E. Karnes, Minnesota Trial Appraisals (Petitioner)

Appraiser Steven T. Hosch, MAI, Hosch Appraisal & Consulting, Inc. (Respondent)

Mr. Richard Dana, neighboring property owner, witness for the Respondents

Notice was posted on the township's website and at the Town Hall more than 72 hours prior to July 26<sup>th</sup>, 2023 for the public to attend.

The sole purpose of this public hearing was to determine if the township should grant a cartway and, if so, determine damages, if any, to the respondents.

Chair John Pazlar called the hearing to order at 12:00p.m.

Petitioner and respondent agree that this hearing has been properly noticed. This meeting is being recorded.

Attorney Snyder requests the presentation of the petitioner's case followed by questions. Next, the respondent's presentation followed by questions. Information from the Township representatives will then be presented, specifically the Engineer. Questions and discussion will follow. Respondent's request that Richard Dana be allowed to testify as soon as possible due to a medical issue. Attorney Holstad intends to keep his presentation less than 30 minutes. Mr. Dana will testify right after Attorney Holstad has completed his presentation.

**Attorney Holstad presents the petitioners case for the Board:**

This is a simple situation, potentially one of the simplest cartway proceedings in the county, if not the in the state, that has ever been seen. The main question is if the partitioners are entitled to access. There is no question that the parcel is landlocked, the only potential issue regarding access is if there is a legally enforceable easement from the north and through the National Park Service. The courts routinely establish that meaningful access is defined as vehicular access. Vehicle access is not possible through the gorge on the property. The cartway statute requires that the town establish a cartway. The Minnesota law is that the petitioner's proposed route is subject to deference. The town must approve the proposed route unless there is an alternative that is less burdensome and, in the public best interest. Those two requirements must be met. If an alternative route is granted the town must find one that is less burdensome. It is not possible in this case. There are three proposals for the cartway: First, the petitioners proposed route that utilizes the existing driveway with no construction and no improvements required. Second, the same route utilizing the existing driveway but requires a condition of construction or grading totaling over 1 million dollars. Third, a proposed route by township Engineer Erichson that requires some tree removal and substantial grading in which it is unclear if it would be allowed under other regulatory authorities. For example, the National Park Service has indicated that they could deny any construction or improvement on either of the alternative routes. The Washington County Conservation District noted that this area is within the top ten of Washington County's protected areas as there are multiple protected plant and animal species in the area. Washington County indicated that any grading work would be a violation of St. Croix River authority ordinances. The alternatives are not allowed under current regulatory authority. It is clear that there is only one option that is allowed by regulatory authorities, that is the petitioners proposed route, this route also is the less burdensome.

Damages are split into two categories, township damages and the compensation to the respondents. An appraisal from the petitioner shows \$11,000.00 damages to the respondents. In weighing both appraisals, it is critical to look at the comparisons in the appraisals. Petitioner's appraisal used 18 comparable sales in the St. Croix River area; respondent's appraisal used only 5 comparable sales with focus on the Lake Minnetonka area, using shared dock evaluations without acknowledgment that the respondent's property is not allowed to have a dock. Respondents' appraisal did not account for the seasonal nature of the cartway, the petitioners would only be using their property a few weekends out of the year for camping and fishing.

The highest published awarded cartway damages that have been upheld by the court in Minnesota is \$30,000.00. The only reason it was that high was because the cartway cut-off and prevented access to the waterway. Respondent's appraisal awards damages 501% above the current highest published case. When evaluating the appraisals, it is important to look at the comparison sales and the reasonability of the conclusions. The petitioner's appraisal should be credited substantially more than the respondent's and award damages of \$11,000.00. For a total damage award of \$11,000.00 plus whatever the town costs are.

**Attorney Sienko presents the respondents case for the Board**

Before presenting his case, Attorney Sienko asks the Board to determine if they are going to grant the cartway at all. If the answer is “no” then there is no need to proceed with appraiser testimony. With the understanding that the petitioner’s case is closed, Attorney Sienko notes that the petitioner’s case does not present any facts into the record. There is no affidavit, no verifying petition, and there is no testimony from anyone, including the petitioners, that their parcel is “land-locked”. The petitioners have admitted they have legal access to the property. If there is access to the property the petition for the cartway must be denied. The first threshold question is - is a petition for the cartway granted or is it denied?

Mr. Snyder suggests that the board may not be in a position to make a positive decision on the threshold question right now. The board may not be in a position to answer any questions today, it may need to be recessed until the next Board meeting, Thursday, August 3<sup>rd</sup> at 7:00pm.

Attorney Sienko explains that it comes from an efficiency point and he will defer to the Board on which direction they want to go.

Mr. Snyder’s recommendation to the Board is to acknowledge the observation but proceed to hear the matter fully. Reason being, coordinating the petition hearing today has been difficult due to personal schedules.

Pazlar agrees. The hearing will move forward.

**Attorney Sienko Questions Laurie E. Karnes, Appraiser**

**Attorney Holstad:** This is not a court of law where we call a witness and I would like to know how long he plans to question her.

**Attorney Sienko:** If the witness is not available to him that he asks that the entire appraisal be stricken from the record and not considered by the board. There needs to be foundation, you can’t just say there is damages and not provide testimony.

**Attorney Snyder:** Believes that is an accurate summary. If the position is that they can’t question the appraisers the board can treat that as a matter of weight or admissibility. It can take into account the unavailability for the examination.

**Attorney Holstad:** I just asked how long.

**Attorney Snyder:** We’ve set aside 6 hours today; I assume that all counselors will do their best to proceed as quickly as possible.

**Attorney Holstad:** His appraiser is open to any questions from the Board. This isn’t a district court, there is no cross-examination. He is just requesting how long the questioning will take. He would object to 1 hour; he is Ok with 10 minutes.

Laurie Karnes is a licensed appraiser in Minnesota. They date on page 135 of her appraisal indicating an expiration date of her license on August 31, 2022 is a typo.

**Attorney Sienko:** Please turn to page 5 of your appraisal. Near the bottom of the page, it says “Cartway” as defined in this appraisal: “Given the location and condition of this cartway, and the fact that it’s not cleared in the winter time, only likely users of this cartway are the property owner, Jungmann/Hoy, and the petitioner, Holstad. This, the proposed cartway will be treated as it would function, as a shared driveway”. Did I read that correctly?

**Appraiser Karnes:** Yes, you did.

**Attorney Sienko:** So, it’s your assumption in the appraisal that the cartway will only be used by 2 families. Is that correct?

**Appraiser Karnes:** It is what it says. I didn’t define Holstad, I don’t know how many people are in the family.

**Attorney Sienko:** You aware that a cartway is public road?

**Appraiser Karnes:** I am aware of that, the path we inspected, as we all have. In understanding it doesn’t even go all the way to the river I cannot possibly conceive of any reason anybody else would use it. Especially since the National Park Service is so close by and there are other access points to get to the river. That is why I treated it this way, I could not imagine who else would have any reason to use it.

**Attorney Sienko:** But you’d agree that the public could use the road, correct?

**Appraiser Karnes:** I am not an attorney.

**Attorney Sienko:** But from the basic assumption of your appraisal, no one else uses the property/road other than Holstad and Jungmann/Hoy. That is your assumption, correct?

**Appraiser Karnes:** Yes.

**Attorney Sienko:** That assumption appears throughout the entire appraisal, correct?

**Attorney Holstad:** Objection to that characterization. The appraisal doesn’t say that definition would only be used. The definition is that it will be treated as, and function as, a shared driveway. It doesn’t exclude the possibility that other people might drive down it.

**Attorney Sienko:** So other people could drive down it because it’s a public road, correct?

**Appraiser Karnes:** I am not an attorney; I am an appraiser.

**Attorney Holstad:** We are willing to stipulate that it be a public road unless the party’s agree to treat it as a private driveway.

**Attorney Sienko:** The problem with the appraisal is that its assumption is incorrect. The stipulation that it’s a public road is not what is contained within the appraisal. The entire appraisal is based on the assumption that it would function as a shared driveway. It is not a shared driveway. It’s only a car path large.

**Attorney Holstad:** That is factually incorrect. (inaudible)...and it’s the same way that their appraisers did it.

**Attorney Snyder:** Let try to keep it to a question to answer at this point. You'll have a chance to ask questions to clarify points you might wish to highlight.

**Attorney Sienko:** How long is the proposed cartway?

**Appraiser Karnes:** I wasn't given an exact number, I estimated it at 1500 feet.

**Attorney Sienko:** If the public road/cartway be 33 feet wide, how many square feet is that?

**Appraiser Karnes:** 49,500 feet.

**Attorney Sienko:** That is over and acre of land, correct?

**Appraiser Karnes:** That is correct.

**Attorney Sienko:** Approximately 1.136 acres based upon your appraisal. Because it is right-of-way, that would be public property.

**Appraiser Karnes:** I am just going off the data that was given to me.

**Attorney Sienko:** You've appraised road projects before?

**Appraiser Karnes:** No.

**Attorney Sienko:** You've never appraised a condemnation case before?

**Appraiser Karnes:** No.

**Attorney Sienko:** You've never appraised a deed with potential impacts to the property after a condemnation?

**Appraiser Karnes:** No.

**Attorney Sienko:** You agree with me that the Holstad property is unbuildable?

**Appraiser Karnes:** Based on the data I reviewed I would say yes.

**Attorney Sienko:** Based on the National Park Services letter stating that the property cannot be built upon is that also true?

**Appraiser Karnes:** I don't know what letter you are referring to.

**Attorney Sienko:** Have you seen any letters from the National Park Service?

**Appraiser Karnes:** I don't know what you are referring to. I studied various zoning codes... (inaudible)...based on the data I reviewed it's not buildable because Washington County requires that access be able to support an emergency vehicle and at the inspection the Engineer confirmed that it cannot support an emergency vehicle.

**Attorney Sienko:** (presented letters from the NPS from 2011 and 2023) Have your reviewed or received these documents previously?

**Appraiser Karnes:** No. And I don't have time to study them right now...(inaudible)

**Attorney Sinko:** Turn to the second page of the 2011 letter.

**Attorney Holstad:** Objection. Witness just said she hasn't reviewed these. If Mr. Sienko wants testimony about these letters, he can call somebody from the Department of the Interior. Ms. Karnes

has an appraisal; this is exactly why I asked how long the questioning would last. She has an appraisal; she has evidence and testimony in the appraisal and now Mr. Sienko is veering outside of those contents and asking questions about documents that this witness has never seen and has not been used for the appraisal. Therefore, these questions are improper.

**Attorney Sienko:** Please turn to page 17 of your appraisal. It states “*Since the Holstad property is presumed to be unbuildable, the only reason for Holstad to use the cartway is outdoor recreation.*” Did I read that correctly?

**Appraiser Karnes:** Yes.

**Attorney Sienko:** Two assumptions, The Holstad property is unbuildable and the only reason to use the cartway is for outdoor recreation.

**Appraiser Karnes:** That is correct.

**Attorney Sienko:** Further down, page 17 it says “*Nearly all shared access situations are established by recording a plat of a minor subdivision approved by a local government*”.

**Appraiser Karnes:** It also states... “*or between neighbors with no government intervention.*” And that is very common.

**Attorney Sienko:** Are either of those condition present here?

**Appraiser Karnes:** No.

**Attorney Sienko:** But you still assumed that this was a shared driveway?

**Appraiser Karnes:** I treated it as a shared driveway as I previously explained because I cannot envision who else would use the driveway other than these parties. It functions in the way a shared driveway functions. I spend tremendous time in my appraisal looking at shared driveways and talking to buyers, brokers, and sellers of shared driveways.

**Attorney Sienko:** But you did not do any analysis about the creation of roadways. Did you talk to buyers or brokers during the analysis about the impact of a public road on property?

**Appraiser Karnes:** I didn’t find it necessary because I...(interrupted)

**Attorney Sienko:** The question is yes or no.

**Attorney Holstad:** Let her answer the question, it is not yes or no.

**Appraiser Karnes:** As I explained several times, and you have all looked at this property, I can’t imagine who else who else would possibly use this driveway other than these 2 parties. I can’t see somebody just willy-nilly driving down this property that doesn’t go anywhere.

**Attorney Sienko:** My question is very simple. As part of your appraisal process, did you analyze the impact to the Jungmann/Hoy property with the creation of a public road?

**Appraiser Karnes:** It is identical to the way I analyze it as a shared driveway. There is no difference.

**Attorney Sienko:** Did you analyze the impacts of a public road? Yes or no.

**Appraiser Karnes:** I just answered that question. I already answered it from my understanding of this property, call it whatever you want there is nobody but these parties that will ever use this road. There

is no reason to use it. It's in poor condition, it really doesn't go anywhere, it doesn't go to the river, there is many other township roads that people can access to get to wherever they want to go.

**Attorney Sienko:** Do you analyze potential building setbacks would be implicated with a 1500-1600-foot-long public road in the middle of a property?

**Appraiser Karnes:** Building setbacks for what? I did propose an alternate route that if someone were to build on this property. If someone were to build a house, the current road/driveway that can not serve as a legal driveway to a new home because of its condition. If someone were to build on this property, they would use/build an alternative access to their home. It is included in my appraisal.

**Attorney Sienko:** Did you analyze how setbacks from the new road right of way would impact the property that is owned by Jungmann/Hoy?

**Appraiser Karnes:** No. 16 acres is a lot of land to put one house on.

**Attorney Sienko:** Your appraisal ultimately concludes that the value of the Jungmann/Hoy property before the cartway is \$1,116,000.00.

**Appraiser Karnes:** That is correct.

**Attorney Sienko:** It also determined that there are no permanent damages to the Jungmann/Hoy property because of the public cartway, is that correct?

**Appraiser Karnes:** That is correct.

**Attorney Snyder:** Did you attempt to find benefits of any placement of the cartway for any parcel, including Jungmann/Hoy?

**Appraiser Karnes:** That was not in the scope of work that I did.

**Attorney Snyder:** Did you attempt to determine the detriment, if any? To either parcel?

**Appraiser Karnes:** Yes, I did.

**Attorney Snyder:** And what was the conclusion?

**Appraiser Karnes:** My conclusion was: First, if they were to sell the property, based on my extensive research, a cartway would not impact the value. However, it does impact Jungmann/Hoy somewhat, as it does impact their exclusive rights to the property. That is where I calculate the \$11,000.00 in damages.

**Supervisor Pazlar:** Pazlar states that he had a similar situation on property he owned on the St. Croix River just north this area, a driveway without a gate. He had a high volume of people on the driveway just wanting to see where it led them. What part of this caused you to conclude that in this case this wouldn't be true?

**Appraiser Karnes:** This driveway is not appealing to drive on, it's not paved. 95 is a busy road, why would someone...I just can't imagine in the condition it's in, it's barely visible...

Mr. Sienko would like the record to reflect that the petitioners are willing to stipulate the cartway will be a public road. If the cartway is granted, it will be a public road.

**Attorney Holstad:** That gets into a legal argument. The parties can agree that it's treated as a shared driveway. They are putting forth this concern over public usage, they could agree to treat it as a private driveway and those concerns would then be eliminated. They have refused so they can continue to put forth this ploy about usage of a public roadway. The way to eliminate that is to treat it as a private driveway, they are refusing to do that. Their concerns don't hold water.

**Attorney Sienko:** If you read the statute, it is a multi-step process, it's not quick or easy. There has to be a cartway granted first. Once that public cartway is granted then the parties may, they are not required, to accept the stipulation it has to be then approved by the town. This isn't a silver bullet. What I am trying to accomplish, so I don't have to question the appraiser anymore, is whether or not the petitioner stipulates that if the cartway is granted it will be a public road. It is a simple stipulation.

**Attorney Holstad:** Only if they refuse to designate it as a cartway. The statute is what the statute is and...it will be a public road unless the parties agree to treat it is a private driveway.

Legal instruction to the Board is that wherever the cartway be proposed, it is in the nature of a public road. It's open and available for use by the public unless something such as a stipulation by the parties that it be private. That stipulation has not been tendered and is not in front of the Board today.

**Attorney Sienko request Mr. Richard Dana for testimony; (a large map of the area is displayed)**

Mr. Richard Dana's primary residence is 16863 East St. Paul Ave. He owns extensive property on the St. Croix River. He points to property he owns adjacent to where the Jungmann/Hoy driveway is. He has a farmhouse and a barn on another property in close proximity. In addition, a parcel with cabins that has been in his wife's family since 1950 and has been passed to her since then, he has been going to these properties for a little over 40 years.

**Attorney Sienko:** How do you get to your main cabin?

**Mr. Dana:** Just down the road from the Jungmann/Hoy Driveway. It starts out as a driveway into the property, then a track alongside a barn and continues as a two wheeled track to the lake. A very steep hill to the cabins down the river.

**Attorney Sienko:** And you have been using that pathway to access that cabin for many years?

**Mr. Dana:** Yes, that's the only access.

**Attorney Sienko:** And your familiar with the lands south of your cabin?

**Mr. Dana:** Yes.

**Attorney Sienko:** And your also familiar with the Holstad Parcel?

**Mr. Dana:** Yes. The (inaudible) ...that runs through here is a favorite place that all of the children connect to the properties. It is called Listening Rock. It is a particularly great place to sit and listen to the water.



**Attorney Sienko:** You provided an affidavit?

**Mr. Dana:** Yes.

**Attorney Sienko:** Everything in the affidavit is true?

**Mr. Dana:** Absolutely.

**Attorney Sienko:** Are you familiar with the Holstads and their predecessors regarding the Holstad property?

**Mr. Dana:** Yes.

**Attorney Sienko:** Can you tell us what your recollection is with people accessing the Holstad parcel?

**Mr. Dana:** The only way to get to any of their property is to come down our road and then turn and come “this way” (on the map). There were several cabin properties on what is now the Park Service property, so those families all use our road as their access. Because this driveway shows up on most county maps, we still get a number of people driving down and when they roll into our yard, they comment that they were hoping we could get to the river. Most saying they didn’t know and just drove in, not realizing they are driving through someone’s yard. We try to discourage people from coming down the driveway to protect the privacy of where we have the cabins. If an unrecognized vehicle would come down the hill, we would go question them. On a number of occasions, it has been someone associated with the Holstad property. They have generally been contentious encounters. We’ve asked why they are here, and the response being “because we can.”

**Attorney Sienko:** Can you please point briefly on the map, how members of the Holstad family or their guests would go down to the Holstad parcel?

**Mr. Dana:** (pointing on a map) By coming down this parcel to this point where it’s clearly a driveway into our yard, and taking a right turn onto a two-track dirt road that leads right through there...to here. And then a foot path the rest of the way down the path to Listening Rock and then the Holstad property.

**Attorney Sienko:** In your affidavit you stated that you personally witnessed Holstads or their predecessors accessing the Holstad land for over 30 years. Is that still correct?

**Mr. Dana:** Yes.

**Attorney Sienko:** And you have seen that over the past 30 years, sometimes several times a year.

**Mr. Dana:** Yes.

**Attorney Sienko:** Can you tell us about some of the encounters and discussions you’ve had?

**Mr. Dana:** The most recent one was last June. We were under the impression that the park service wasn’t allowing the access to cross their property and we saw a vehicle that we didn’t recognize at the bottom of our hill. My nephew and son and a couple others went to investigate, nobody responded when they called out. We parked our truck behind the vehicle so we would know when they left. When the owners of the car came back, they started yelling and screaming at us. They said we had to get our truck out of their way and they had every right to be there...and we had no business impeding them in anyway. The resulted in an email exchange between me and Devin Holstad.

**Attorney Sienko:** Is the email between you and Devin Holstad attached to your affidavit?

**Mr. Dana:** Yes, it is part of the affidavit.

**Attorney Sienko:** (after everyone has a copy of the email exchange in Mr. Dana's email) Is this the email between you and Devin Holstad?

**Mr. Dana:** Yes, it is.

**Attorney Sienko:** The first paragraph is dated June 26, 2022. Do you see that?

**Mr. Dana:** Yes.

**Attorney Sienko:** The 4<sup>th</sup> sentence into the paragraph states "when our parcel was purchased from the previous owners of the now-NPS properties in 1932, the valid use of that easement attached to our parcel as well". Do you see that?

**Mr. Dana:** Yes

**Attorney Sienko:** The final paragraph says "We will continue to access our property via our valid access rights..." Do you see that?

**Mr. Dana:** Yes.

**Attorney Sienko:** That was a discussion you and Devin Holstad have by email?

**Mr. Dana:** Correct.

**Attorney Sienko:** Did you have any phone calls or conversations with him?

**Mr. Dana:** I don't recall any phone calls. I did have verbal conversation with somebody in that party whose vehicle we blocked. But that was a repeat of conversations we have had virtually every year with somebody telling us to get off their backs because they had every right in the world to go down there and there was nothing we could do to stop them from coming down the hill. And if we put any type of barrier up, they would remove it. I couldn't contest that. I have been told for years that there was access to their property.

**Attorney Sienko:** You've been told for many, many years? By the Holstad's and their predecessors?

**Mr. Dana:** Yes.

**Attorney Holstad:** You disagree that the petitioners can access their property through your property, don't you?

**Mr. Dana:** No.

**Attorney Holstad:** So, you give permission to the petitioners to travel on your property?

**Mr. Dana:** I've been told for years that they have permission and I know permission existed for property south of ours.

**Attorney Holstad:** Do you give permission to the petitioners to use your property?

**Attorney Sienko:** This is not what we talked about, we talked about whether or not there was access to the Holstad parcel. And there appears to be an easement not whether or not there is permission and an easement. It appears that the petitioners are trying to establish that they have the right of access, which they apparently claim they do.

**Attorney Snyder:** If Mr. Dana knows whether or not the access legally exists and Mr. Dana knows he can answer whatever his knowledge is, but if Mr. Dana does not know he can answer...

**Attorney Holstad:** Respondents are arguing in their brief that the petitioners have access to their property, in part, by traveling over Mr. Dana's property. If Mr. Dana disputes that the petitioners have permission that goes to whether or not access exists. The question is proper. I think the fact that the respondents don't want it answered goes particularly to their argument because Mr. Dana is willing to respond that he does not give permission to the petitioners to use his property. There is dispute as to whether there is access traveling across Mr. Dana's property.

**Attorney Snyder:** I think if Mr. Dana can answer the question based on his knowledge. He would ask the petitioner the same question, do you think you have the right to travel across the Dana property?

**Mr. Dana:** I am aware there is an easement across our property for access to the property's south of ours. I do not know who has access to that easement, but it does exist. I questioned that with Mr. Holstad and I suggested that we call the sheriff and he that he insisted that he does not know if I've got a right.

**Mr. Holstad:** Mr. Dana, you would agree you can't drive a vehicle over the gully that separates the NPS property from the Holstad property?

**Dr. Dana:** Correct.

Attorney Sienko has testimony from the respondents and their appraiser. He asks if the Board feels it would be necessary to move forward based on the testimony they have heard so far. Chair Pazlar clarifies that they will take testimony from the respondent as they are not ready to make any decisions or conclusions on granting the cartway at this time. Magner and Rolf agree. Attorney Snyder recommends they continue and the threshold questions can come later.

**Attorney Sienko questions respondent, Andrea Jungmann**

Andrea Jungmann is one of the respondents of the petition and is a co-owner of the property in dispute. She has owned the property with her brother Jim Hoy since 1998. She received the property from her grandmother, Ella Ramberg. It has been in her family for over 100 years. She has been to the property many, many times.

**Attorney Sienko:** Can you tell us about the current driveway that exists on the property?

**Ms. Jungmann:** It's a gravel driveway for most of it, that goes to a steep decline with a steep drop-off on one side.

**Attorney Sienko:** Do you know when the driveway was first built?

**Ms. Jungmann:** 19...teens... sometime.

**Attorney Sienko:** From one of your family members?

**Ms. Jungmann:** Yes, my great grandfather, with a team of horses.

**Attorney Sienko:** And has your family used that driveway ever sense?

**Ms. Jungmann:** Yes.

**Attorney Sienko:** There has been a lot of talk about a public cartway or a public road, are you familiar with that discussion?

**Ms. Jungmann:** Yes.

**Attorney Sienko:** What are some of your concerns about having a public road go through the middle of your property?

**Ms. Jungmann:** Number one is the safety of the driveway and two cars meeting on the driveway going down. Somebody having to back up. The fact that emergency vehicles could not access it. Our complete loss of privacy, loss of use, loss of potential building. We have 6 children between us. I don't know what their future use of that property will be, but if it has a public road goes down it, their ability to build up by the shed would be gone. I am very concerned for the future use of our children and grandchildren.

**Attorney Sienko:** Beside you and your brother what other family members use the property?

**Ms. Jungmann:** My husband, his wife, my parents, and all of our children.

**Attorney Sienko:** Do you and your family members communicate and coordinate when you're going to be on the property?

**Ms. Jungmann:** All the time.

**Attorney Sienko:** Why is that?

**Ms. Jungmann:** So that we don't meet on the driveway. So we know when somebody's coming. We communicate when their hunting so we don't go up there. My brother and his three boy's hunt.

**Attorney Sienko:** If the cartway is improved to cartway specifications, paved or wide enough to accommodate 2 lane traffic, or bump outs to allow passing traffic. What are your thoughts on how that would impact you?

**Ms. Jungmann:** That would be the preferred way to go so that two cars can pass so that nobody ever has to back up. Either up or down the driveway.

**Attorney Sienko:** Why does that concern you so much?

**Ms. Jungmann:** Because I don't want to back down the driveway. I am afraid to go over the flip, I am afraid my dad would go over the flip and any of my children. I don't want them to have to back down the driveway.

**Attorney Sienko:** Do you believe that the improved cartway would be better for you?

**Ms. Jungmann:** Absolutely

**Attorney Sienko:** Do you believe it would also be less damaging to you?

**Ms. Jungmann:** Yes.

**Attorney Sienko:** And is that because of what you've already mentioned?

**Ms. Jungmann:** Yes.

**Attorney Sienko:** Currently there is a gate at the front of the road right off 95, is that right?

**Ms. Jungmann:** Right.

**Attorney Sienko:** Why do you have that gate?

**Ms. Jungmann:** We have a gate so we can lock it. We have encountered multiple people entering our property when it was not locked. We have had people access that road to hunt it, they have accessed it to go to the river. We have encountered people coming up or driveway with a gun as were driving down our driveway. They believe they have access to the river so they enter our property.

**Attorney Sienko:** Do you believe if this becomes a public road those occurrences will become more common.

**Ms. Jungmann:** 100%

**Attorney Sienko:** No doubt in your mind?

**Ms. Jungmann:** No doubt in my mind. It happened in the past, that's why it's posted no trespassing.

**Attorney Holstad questions Ms. Jungmann**

**Attorney Holstad:** You aware that if a cartway is granted you could agree to designate it as a private driveway?

**Ms. Jungmann:** Yes.

**Attorney Holstad:** Would you do that?

**Ms. Jungmann:** I'm not going to discuss that right now.

**Attorney Holstad:** So, your concerned about safety as a public access but you will not agree to designate as a private driveway?

**Ms. Jungmann:** I did not say I would not agree, I would consult with my attorney before I would give an answer.

**Attorney Holstad:** And you won't agree to that today?

**Ms. Jungmann:** No.

**Attorney Sienko questions respondent, Mr. Jim Hoy**

Jim Hoy owns the property with his sister Andrea Jungmann. He has owned it since 1998, and received it from his grandmother. He uses the property frequently and is very familiar with it.

**Attorney Sienko:** How do you use the property?

**Mr. Hoy:** Hunting is the main use. Fishing. Hang out with my kids at the cabin. It's relaxing to go up there and cut the grass. My sister's husband and myself maintain it mainly and it's just a nice too place to hang out. It's a good piece of property, we are very lucky.

**Attorney Sienko:** Your familiar with the petition for a public cartway across your property?

**Mr. Hoy:** Yes, I am.

**Attorney Sienko:** Your familiar with the general location of where that would be placed?

**Mr. Hoy:** Yes, I am.

**Attorney Sienko:** And it's your request that the cartway be improved to be safe?

**Mr. Hoy:** Correct.

**Attorney Sienko:** Why is that?

**Mr. Hoy:** All the same reasons my sister stated. I just...it's not a road you ever want to have to back down or even stop on. It's hard to get started once you stop on the gravel. There is just a lot of unsafe aspects of the driveway. I would not be comfortable if there wasn't a way for 2 cars to get by.

**Attorney Sienko:** You agree with your sister on family members that use the driveway?

**Mr. Hoy:** Absolutely, yes.

**Attorney Sienko:** And everyone communicates with everyone else when they are going to be on the property?

**Mr. Hoy:** We do. My sister mentioned hunting, my boys and myself...it's our little paradise. We have the privacy. We'll go in and park at the top of the driveway and shut the gate so we don't disturb much of the ground. We pick our paths. My brother-in-law doesn't hunt but will call before he comes. He does not come up when we are up there.

**Attorney Sienko:** Your familiar with regulations on hunting and that you can't discharge a fire-are or a bow from a public right-of-way?

**Mr. Hoy:** Yes, I am.

**Attorney Sinko:** And how would that impact your hunting if there is a 33-foot-wide right-of-way for a cartway?

**Mr. Hoy:** It would be devastating. We have multiple trails, we put stands up fall and I would say 2-3 stands are very close to the driveway. Those would not be usable.

**Attorney Sienko:** If you had to move your stands to another location, how does a road impact your ability to enjoy your hunting up there?

**Mr. Hoy:** Every time someone would drive down, it would be on pause. It would greatly impact how we enjoy the property. We use every aspect of the property.

**Attorney Sienko:** Do you believe having an improved roadway to township specifications would be less damaging to you?

**Mr. Hoy:** It would be in the sense, I would have a better feeling of safety for my family, especially in the summer. I've stopped numerous people coming down that driveway. Kayakers, people that just want to see the river. If it becomes public, it will be a mini highway. I can guarantee that.

**Attorney Sienko:** The concern is loss of privacy for your family?

**Mr. Hoy:** For sure. As someone mentioned, there is 16 acres and plenty of space to build a home. If your familiar with that land, the park service states we can't build within the site of the river, up top by the shed are two small buildable spots. If these becomes a public road, I would not be comfortable

letting my kids play up in the meadow area. It would not be a good thing for my sister and myself, and our family, and our privacy.

Supervisor Magner confirms that there is a “no trespassing” sign on the driveway gate and it is closed most of the time.

Attorney Snyder confirms that the existing driveway is used year-round (walking), but is not maintained/plowed year-round. It is drivable to the shed/pole barn only in the winter. There are not any turnouts/it is not passable at any point. The property is subject to a National Park Service Easement. They cannot build by the river or add on to the cabin. Mr. Hoy was informed that if their cabin burns down, they may not be allowed to re-build. They are not allowed to cut trees down; they need to check with the park service on cutting vegetation. Mr. Hoy does not feel there are any benefits by allowing a cartway on the property.

Attorney Holstad asks if there were benefits to an improved public cartway, Mr. Hoy states an improved cartway would give him comfort in knowing that his family would have a roadway that was 2 cars wide. Mr. Hoy acknowledges that he could agree, if the cartway was granted, he could designate it as a private driveway. At this time, he would consult with his attorney before answering that question. Mr. Hoy does not agree to designate it as a private driveway today.

**Attorney Sienko questions Steven Hosch, Appraiser (Respondents)**

Mr. Steven Hosch is a commercial/residential real estate appraiser and President of Hosch Appraisal and Consulting. Mr. Hosch has a Bachelors’ Degree in Real Estate from St. Cloud State University, Member of the Appraisal Institute (MAI is the highest credentialing in the real estate field). He has been an appraiser for 32 years. He has been retained to perform an appraisal of the respondent’s property before any possible cartway is granted and an appraisal after a possible cartway is granted. He understands the cartway would be a public road.

**Attorney Sienko:** What type of damages did you determine?

**Mr. Hosch:** A cartway that is unimproved, \$153,000.00 loss of value (15% of the property value). If the cartway is improved, \$202,000.00 loss in value (20% of the property value)

**Attorney Sienko:** Looking at page “v” of the appraisal, please give a summary on this page.

**Mr. Hosch:** The top of the page is an ariel outline of the Jungmann/Hoy property and a summary of the characteristics of the property. 15.93 acres, fronting Hwy 95 and the St. Croix River. 583 feet of river frontage. Next page includes the improvements on the property, 100-year-old cabin down by the river and a 2400 sf pole building/shed.

**Attorney Sienko:** The market value before a possible cartway is \$1,000,000.00, correct?

**Mr. Hosch:** Yes. It is our position that the property has a million-dollar value without consideration of a cartway.

**Attorney Sienko:** Explain the number and the loss of value next to that, what do those mean?

**Mr. Hosch:** The next set of numbers is if a cartway is granted without any road improvements, but still considered a public road. This would decrease the market value of the property from \$1,000,000.00 down to \$847,000.00. Loss of value of \$153,000.00. The next scenario would be an upgraded cartway to town specifications, resulting in a property value of \$798,000.00. Loss of value of \$202,000.00.

**Attorney Sienko:** Looking at page 22, tell us what neighborhood analysis means.

**Mr. Hosch:** There is a lot of undeveloped properties in this area, including a lot of National Park land in the neighborhood with scenic easements, trying to preserve the views. There are some luxury homes being built, this is a very sought after area with not a lot out there. He would expect that trend to continue given this special location.

**Attorney Sienko:** Looking at page 27, tell us what kind of zoning considerations you have.

**Mr. Hosch:** The density is 1:10 acres in this area. This property at 15.93 acres, there would be an option to have a home on this lot. The setbacks are not a huge factor in this before condition. The National Park holds a scenic easement over the entire property. It is very restrictive. The pole barn was built in 2004, it is 2400sf. The National Park would have to approve any alteration to this property. The location of the pole barn would be a logical home-site, it has already been approved by the NPS as an accepted location. The property has significant privacy, not seen very often. This entire property can be hunted.

**Attorney Sienko:** Page 27, setbacks. Tell us about those.

**Mr. Hosch:** Off of the public street, the front yard setback is 40 feet. Rear yard is 50 feet, side yard 20 feet, ordinary high-water setback is 200 feet. If the cartway is granted there needs to be a 33-foot cartway plus the additional 40-foot requirement. It would be really close to the location of the existing pole barn and it would be unfortunate to have that type of restriction to build a luxury home.

**Attorney Sienko:** Page 33, subject property history/description.

**Mr. Hosch:** Nothing new...bottom of page 33 includes measurements of the existing pole building. The pole building sits approximately 70 feet from the internal driveway. With a creation of a cartway a future homesite could be only 20 feet from the public cartway.

**Attorney Sienko:** Page 38 photographs, please explain these to us.

**Mr. Hosch:** The are photos of the main entrance to the existing driveway, it shows frontage on Hwy 95 looking northbound. Page 39 includes road pictures along Hwy 95. The bottom picture is the western portion of the drive way as your driving towards the pole building. As you go further into the site you get a steep drop. There are views of the pole building and the logical homesite option. The river views are included on page 43 and cabin by the river. The pictures include a snowmobile that was used to access the site.

**Attorney Sienko:** Page 50, tell us what highest and best use analysis means.

**Mr. Hosch:** There are 3 prongs to this: It has to be legally permissible, physically possible, and financially feasible. It takes into consideration zoning permissibility, scenic easement that has been in place since 1979 granting the NPS control of much of property, use of recreation, and development potential. This is a special property that has restrictions that limit it to one homesite option. Financial



Feasibility-the neighborhood includes a mix of land with easements, no high density in the area, research suggests this property would be suited for a luxury home. Highest and best use before the cartway is development of a luxury home and remodel of the cabin.

**Attorney Sienko:** Your conclusion is that before the cartway petition be granted, that the value of the land is \$1,000,000.00. And someone would come in and build a luxury home near the location of the pole shed.

**Mr. Hosch:** Yes, that is how we see it. Based on the restrictions in place.

**Attorney Sienko:** Give us a high-level overview of your comps in the area, page 57.

**Mr. Hosch:** This is a unique property on the river with this size with exclusive use and privacy. We searched for comparisons with sales both inferior and superior to bracket the value. 5 sales were found, 3 on the St. Croix 2 of which are on interior lakes. Off the river are lower end and those on the river on the upper end. The first was a million-dollar sale on 19.5 acres eligible for one single family home, similar to this property. It sold in 6 days for \$1,000,000.00 with a river view, but not ownership on the river. Page 43 has an ariel view of the sale. Sales 1,2, and 5 are on the St. Croix with the most comparability and get weighted more heavily. There were 10 offers on sale #2 in 4 days, it sold for \$865,000.00. It was 9.24 acres with a despaired home. The comparable range from \$350,000.00 up to \$1,000,000.00. Page 74 includes a map that includes the location of all 5 comparable sales. Sales are adjusted on page 65.

**Attorney Sienko:** Page 67, please tell us what the implications are about.

**Mr. Hosch:** This is an overlay of how a potential public cartway would change the land value. 1600 with a width of 33 feet is 52,800 square feet (over and acre) that is off limits for exclusive use. There would be a direct loss of property going through the center of the property. Page 67 outlines this. He is not aware of a public road that is 1600 feet in this area.

**Attorney Sienko:** Do you mean a public road that is a dead-end road?

**Mr. Hosch:** Correct. This would be like a 1600-foot-long cul-de-sac.

**Attorney Sienko:** In your review of the county regulations on cul-de-sacs, what is your understanding?

**Mr. Hosch:** Serving lots up to 2.5 acres in size the maximum length would be 600 feet. The cartway, as petitioned, would be exceeding Washington County cul-de-sac maximum length by 1000 feet. It's a concern.

**Attorney Sienko:** A cul-de-sac is a road the terminates with no thru street, correct?

**Mr. Hosch:** Right.

**Attorney Sienko:** Page 68. An upgraded roadway to the township specifications.

**Mr. Hosch:** This is the 1.35-to-1.83-million-dollar upgrade. This would be a significant construction project. This will take a significant amount of time to build out, a lot of disturbance of the property for buyers. Page 69 includes the impacts of an upgraded cartway including temporary loss to the property.

**Attorney Sinko:** Have you done appraisals for property owners regarding condemnation?

**Mr. Hosch:** Yes, many.

**Attorney Sienko:** What are the damages relating to construction related interference? Potential buyers would have to live through the construction of building a 1600-foot public road through the middle of their property and that is why there is a larger discount applied to the property evaluation.

**Mr. Hosch:** Correct.

**Attorney Sienko:** Page 71. Highest and best use with consideration of the cartway, can you tell us about that?

**Mr. Hosch:** On this page we shift to another scenario. Looking at what has changed. If a cartway is granted there would be a reduction in property rights. Brokers think there is a smaller pool of buyers upon disclosure of a cartway. The likelihood of a bidding war with 10 buyers diminishes greatly. The unknown of how the cartway will be used is going to scare some buyers completely away. Those who are still interested will be demanding a discount. A shared use of a public cartway would be similar to property in Mound, called Mounds Common properties. Where homes are on a beach front, but do not own any part of it. The beach front is public. See pages 76-77 of the appraisal. The discounted range for properties in this area is 9.2% - 15.2% and the Mounds Common properties are less intrusive than the cartway proposal.

**Attorney Sienko:** Do you use the Mounds Common properties as comparable?

**Mr. Hosch:** No, this was strictly to determine where there might be a property right adjustment. This is evidence to show a potential discount on lakeshore/waterfront property. Page 74 has 3 more properties with potential discounts on waterfront properties.

**Attorney Sienko:** The purpose is to determine what type of discount would be applied to the property?

**Mr. Hosch:** Right, with more and less sever reduction in use and privacy.

**Attorney Sienko:** What is the percentage of reduction that these properties pointed to?

**Mr. Hosch:** A range of 10% - 30%. With the Jungmann/Hoy property with the unimproved cartway scenario we believe the reduction would be about 15%. If improvements were made to the public road with an impact to the buildable site it would be closer to a 20% impact.

**Attorney Sienko:** Page 91. The conclusion of \$153,000.00 in damages is reflecting 15% property rights adjustment with an unimproved cartway. Page 102 reflects a 20% property rights adjustment totaling \$202,000.00.

**Mr. Hosch:** Correct, the summary is at the bottom of page 103.

**Attorney Snyder:** Did you discern any benefit with a cartway in option #1 or option #2?

**Mr. Hosch:** No, I did not look at any benefits at all. From what I understand this would grant public access to the Holstad property but I did not do a before and after on the Holstad property. I see this as a discount to the Jungmann/Hoy property. I do not see any measurable benefits.

**Attorney Snyder:** Have you seen the alternate route proposed by the town engineer that includes shortening the length of the cartway and more towards the Holstad parcel near the pole barn?

**Mr. Hosch:** I was recently made aware of it, after my appraisal was complete.

**Attorney Snyder:** Does the scenario, as you understand it, affect your conclusions to damages?

**Mr. Hosch:** The same issues of concern remain, although it wouldn't go as deep to the east, but effecting the building site it still a concern. I did not complete a valuation of any other scenario.

**Attorney Holstad:** One of your comps was a Lake Minnetonka home, the claim is that this property sold for a 2.7% discount because of an easement, right?

**Mr. Hosch:** Yes, the agent identified the easement on the northern border as the source of the discount.

**Attorney Holstad:** Your familiar with the uniform standards of professional appraisal practices and it requires to be based on fair market value?

**Mr. Hosch:** Not fair market value.

**Attorney Holstad:** What do you mean by that?

**Mr. Hosch:** They talk about market value.

**Attorney Holstad:** And market value requires arm's length transactions in sales that you use to value properties, correct?

**Mr. Hosch:** No, I wouldn't say that.

**Attorney Holstad:** It's your testimony that it does not require arm's length transactions?

**Mr. Hosch:** There is not a requirement if there is an adjustment to be made.

**Attorney Holstad:** Are you aware that was not an arm's length transaction that caused that sale?

**Mr. Hosch:** I am only aware of what I disclosed here.

**Attorney Holstad:** Are your familiar with Rolf Erickson as the Tonka Bay City Assessor?

(Attorney Holstad handed out an email to all)

**Mr. Hosch:** I do not know that name, no. This is broker interview where it was brought to our attention. A transaction where the realtor believed that the property sold at a discount because of the easement. That is where we stopped.

**Attorney Holstad:** So, you did not talk to the Tonka City Assessor when analyzing the transaction?

**Mr. Hosch:** No, I didn't have a need to do that.

**Attorney Holstad:** The top email on the handout is from Rolf Erickson to me, do you see where he says "these sales are not considered arm's length transactions"?

**Attorney Sienko:** Is the attorney going to be testifying about this or are we going to be bringing in Rolf Erickson in?

**Attorney Snyder:** Subject to whatever the thinks, consider Rolf Ericksons absence as part of your weighing of the evidence.

**Attorney Holstad:** Another property, in Lake Minnetonka, where the claim is that this property sold at a 30% discount due to the shared lakeshore dock, right?

**Mr. Hosch:** Yes, that is what I was told.

**Attorney Holstad:** Were you aware that when that property sold there was still active litigation on it?

**Mr. Hosch:** The property was placed back on the market after litigation. The information I have is after the litigation was resolved. That is what we understood.

**Attorney Holstad:** If there was a pending appeal on a property being sold you would expect that would have an impact on sales price, right?

**Mr. Hosch:** I can't speak to it. There are a lot of factors. I am not saying it wouldn't but we were told the litigation was resolved so that is what I am relying on. My information came from a voluntary agent interview. This is an example of a transaction being impacted due to someone else's use of a property, the transaction being impacted.

**Attorney Holstad:** There is an mls listing saying there is a potential appeal regarding property rights, which would also have an impact, correct?

**Attorney Sienko:** Objection, this is from two years ago, I don't know how this is relevant. The off the market date was October, 2021.

Attorney Holstad agrees to move forward.

**Attorney Holstad:** Do you agree that May Township is a vastly different community than Lake Minnetonka?

**Mr. Hosch:** It's on the St. Croix River, Lake Minnetonka is waterfront. I think it's relevant. We had brokers steering us out there to look at similar instances. We are trying to demonstrate what the market expresses for these issues.

**Attorney Holstad:** Would you agree that purchaser looking to buy a home on Lake Minnetonka is probably considering different interest than somebody trying to buy a rural property in May Township?

**Mr. Hosch:** May or may not. Could depend.

**Nate Sparks joins by phone:**

Planner Sparks agrees that The Minnesota Department of Transportation, National Park Service, Washington County, Watershed District, Washington County Conservation District, and the Town of May are the regulatory agencies that are associated with properties and potential establishment of a cartway. All would have a review any type of change in this area.

**Attorney Holstad:** Did you receive correspondence from Jay Riggs with the Washington Conservation District. Mr. Riggs said the area of the proposed cartway there are many protected plant and animal species, right?

**Mr. Sparks:** He made mention of areas with potential concern, yes.

**Attorney Holstad:** You also received a letter from Washington County, Daniel Elder. Mr. Elder said that grading of the road would be in violation of the St. Croix River Bluff land and Shoreland Management ordinance, right?

**Mr. Sparks:** He made the comments in the attached letter, yes.

**Attorney Sienko:** Are you familiar with Washington County ordinances on Cul-de-sacs in Washington County?

**Mr. Sparks:** Yes.

**Attorney Sienko:** Chapter 3, Washington County Development Code regarding subdivision regulations. Section 9.2. Can you tell us what a cul-de-sac street is?

**Mr. Sparks:** The way the county ordinance is written, (inaudible)...the end point in the road where there is no secondary access.

**Attorney Sienko:** So basically, it's a dead-end street that has a way you can turn around?

**Mr. Sparks:** That is accurate.

**Attorney Sienko:** Below section 9.2 (4 and 5). "Were lots being less than 2.5 acres in size permanent cul-de-sac streets shall not exceed 600 feet in length where areas are less than 2.5 acres in size." What does that mean to you?

**Mr. Sparks:** In one perspective, this is in the subdivision ordinance (inaudible)...if you were creating lots are less than 2.5 acres in size a permanent cul-de-sac street does not extend to anywhere else would not be more than 600 feet in length. It is a public safety concern to say that a road that doesn't go anywhere be limited to 600 feet in length.

**Attorney Sienko:** Paragraph 5, talks about 2.5 acre lots or greater, permanent cul-de-sac streets shall not exceed 1,320 feet. Similar to lots that are served by public road that are a dead end, that road can't be longer than 1,320 feet, is that the correct understanding?

**Mr. Sparks:** Yes.

**Attorney Sienko:** Is it your understanding that the proposed cartway here is 1,600 feet long?

**Mr. Sparks:** I believe that is what is depicted on the most recent drawings.

**Attorney Holstad:** Page 11 of the subdivision regulations, defining subdivisions. Do you see the definition is the process where the result is land that is divided into two or more parcels for the purpose of transfer of ownership, building development, or tax assessment purposes including planning, registered land survey, conveyance, sale, contract for sale, or other means in which a beneficial interest in land is transferred or created?

**Mr. Sparks:** Yes.

**Attorney Holstad:** That is not what is happening here, is it?

**Mr. Sparks:** I don't believe so, no.

**Attorney Holstad continues questions to Mr. Hosch:**

**Attorney Holstad:** You only used 5 comparable properties in your appraisal, correct?

**Mr. Hosch:** Yes.

**Attorney Holstad:** There were only 2 of those properties on the River Front. One property has a view of the river. That is a million-dollar view.

**Mr. Hosch:** Correct.

**Attorney Holstad:** The respondent has driveway access to the property on the river, right?

**Mr. Hosch:** Correct.

**Attorney Holstad:** Sale number 5 on your appraisal does not have driveway access to the river, right?

**Mr. Hosch:** It is a river lot, but there is no internal road to access the river, nothing has been built there.

**Attorney Holstad:** Of the sales that you looked at, only sale #2 had internal roadway access to the river, correct?

**Mr. Hosch:** It is the only one that had internal roadway built. The other sales had access to the river but they did not have it built.

**Attorney Holstad:** That property (sale #2) with access to the river was a shared driveway, right?

**Mr. Hosch:** I believe so.

**Attorney Holstad:** And that property sold for 33% higher than list price

**Mr. Hosch:** That was a bidding war. Once you are on the property you had exclusive use of the property. That is the difference in the Jungman/Hoy piece.

**Attorney Holstad:** But this property still had a 33% higher than list price sale also had restrictions and had a shared access, correct?

**Mr. Hosch:** There is not a public road going through it, but they had a shared access.

**Attorney Holstad:** You didn't look if an improved cartway would be allowed under various regulations, did you?

**Mr. Hosch:** No, I am just dealing with what the proposed cartway going to be.

**Attorney Holstad:** But you would agree that an improved cartway would be more burdensome than an unimproved cartway?

**Attorney Sienko:** Objection, calls for a legal conclusion.

**Attorney Holstad:** He can give any conclusion he wants; this is not a court of law.

**Chair Pazlar:** For the purposes of what this Board is trying to understand, we get the point. As we evaluate testimony from the appraisers there are opinions on the accuracy of each evaluation. We don't want to get the point of questions/objections and leaves the witness in tough spot.

**Attorney Holstad:** The answer to this is critical to what cartway to grant.

**Attorney Snyder:** It would be advisable to instruct the appraiser to answer if he is able.

**Attorney Holstad:** You would agree that the damages suffered by Jungman/Hoy are higher with an improved cartway compared to an unimproved cartway?

**Mr. Hosch:** Yes.

**Attorney Sienko:** Regarding comparable #1 and #2 - you do adjustments, correct.

**Mr. Hosch:** Yes.

**Attorney Sinko:** What do you do adjustments for?

**Mr. Hosch:** All sorts of transactions, all considerations, as well as physical characters.

**Attorney Sienko:** That is all in the appraisal?

**Mr. Hosch:** Yes.

**Engineer Erickson is present today and states the following at the direction of Attorney Snyder:**

Mark Erickson is the May Township Engineer and has been a professional Engineer since 2002. He represents cities and township in construction of roads. He is a Certified Engineer, license number 40886. He has examined/toured the property in question.

**Attorney Snyder:** Are you familiar with the first option to construct the cartway? Using the existing driveway as the cartway with no widening, modifications, or improvements. Do you believe that option is consistent with public health, safety, and welfare or that it would form a viable/useable area for 2 lots?

**Engineer Erickson:** As a public cartway, open to the public, I do not believe that is in the best interest of the public for health, safety, and welfare. The width of the road way is a concern, particularly the portion east of the pole barn. The severity of the longitudinal grade and sight distances are a concern for oncoming vehicles. (A video of this area is played for everyone in the room). The grades vary, the longitudinal slope at its steepest is around a 40% grade. The cross-slopes are 125%. Those create concerns about passing cars. That is a reason why we presented an alternate route, there just isn't a way to fix those grades/slopes.

**Attorney Snyder:** Would the unmodified (option #1) allow for emergency vehicle access?

**Engineer Erickson:** No. That is why I proposed the alternate route for the cartway. The alternate route breaks off near the shed and goes northeast towards the petitioner's property.

**Attorney Snyder:** Option #1 use of the current driveway – unimproved an unmodified. In terms of seasonal use, do you see it feasible for snow clearance and ice removal on the road.

**Engineer Erickson:** I do not. Particularly the portion east of the pole barn, that is the more challenging portion. I do not see that as a feasible option in any scenario.

**Attorney Snyder:** Option #2, use of the current driveway with improvements/modifications, can you share what improvements you want to see done.

**Engineer Erickson:** First, any new public roadway has to be paved and build to a standard consistent with our street detail (STR-02) that detail outlines the standards for the roadway. We do not have topographic survey or soil borings. We are recommending the roadway be a 16-foot-wide roadway (12 foot across paved and 2-foot gravel shoulders).

**Attorney Snyder:** Do you have costs associated with option #2? Using the entire length with an improved roadway.

**Engineer Erickson:** Yes, it is for the entire length and it did involve a number of safety precautions with guard rails and rock excavation. Very difficult construction, particularly east of the pole barn. The estimated cost is over \$1,000,000.00. This is a conservative estimate. Not knowing the full information. The date of that estimation is November 15<sup>th</sup>, 2022 with a memo to the town Board. It does included details referenced as well as costs for the improvements.

**Attorney Snyder:** Do you have a recommendation for the board about utilizing the current driveway with improvements in regards to public health and safety or not?

**Engineer Erichson:** I believe these improvements are necessary for public health, safety, and welfare.

**Attorney Snyder:** Even if those were made, would it be possible for cars to pass each other traveling opposite directions or would there be turnouts or wider spots at certain points?

**Engineer Erichson:** It certainly doesn't meet general standards regarding lane widths. We do believe that cars, depending on the type, would allow for that. We would look for opportunities for bump-outs or widening areas to accommodate larger vehicles.

**Attorney Snyder:** Have you been presented with topographical or other survey reflecting the cartway exact proposed location?

**Engineer Erichson:** Not to date.

**Attorney Snyder:** Option #3 is an alternate route proposed by you. Can you tell us about this potential option for consideration for the Board?

**Engineer Erichson:** Yes. (A drawing is presented to all at this time). The option presents a much lesser grade and longitudinal slope of the roadway.

**Attorney Snyder:** Can you tell us the relative disruptiveness or damages caused by this route compared to option #1 and #2?

**Engineer Erichson:** This option would closely follow the grade that exists today. Meaning we would potentially be able to match the roadway with the elevations that exists. Making sure there is minimal impact and flexibility to avoid trees. The vast majority of the 500-foot tree removal reference in the NPS letter falls outside their sightline requirement as well.

**Attorney Snyder:** Might this route reduce tree impacts as well as avoid some steeper and restrictive grading areas on the property.

**Engineer Erichson:** That is correct.

**Attorney Snyder:** What is the date of the letter of the summary relative to tree impacts from the NPS?

**Engineer Erichson:** January 25<sup>th</sup>, 2011.

**Attorney Snyder:** Anything else you would offer relative to the other options?

**Engineer Erichson:** There was comments about Washington County ordinances in a letter from Mr. Riggs. That is not to say that there aren't additional items that would need to be reviewed and discussed. There is commentary about protected plant species. There would be a fair amount of permitting involved and that is standard with most of our projects. The project would have to be vetted and go through the process with Washington County, the Watershed District, National Park Service as well as others.

**Attorney Snyder:** Can you describe what you contemplate as the "as built" condition and the to be build condition of the cartway and it's traveled surface? Under option #3

**Engineer Erichson:** The traveled surface would be 16-foot width cartway. It would be my recommendation to be paved from beginning to end. It is in the building code that any driveway with a grade of over 6% be paved.



**Attorney Snyder:** Why is the recommendation that driveways over 6% be paved?

**Engineer Erichson:** This roadway would be maintained by the owners; a gravel surface is open to potential washouts and is open to the public. It needs to be maintained in a safe condition.

**Attorney Snyder:** Does option #3 avoid the pet cemetery on the property?

**Engineer Erichson:** This option has quite a bit of flexibility in alignment and I do believe that is possible.

**Attorney Snyder:** Do you have a recommendation about less destructive, less damaging, and in the public's best interest compared to the other two options?

**Engineer Erichson:** I think this option is the least disruptive and in the best interest of the public. Again, for safety reasons in utilizing the current driveway. I think it is less disruptive when looking at improvements to make it to a safe standard. This is certainly less disruptive and far safer for the public.

**Attorney Snyder:** What would you need for final placement to finalize it.

**Engineer Erichson:** A topographic survey, soil borings, tree survey, and the final alignment route.

**Attorney Snyder:** As of today, you think the alignment of this alternate route would basically follow the contour shown in your handout?

**Engineer Erichson:** Correct.

**Attorney Snyder:** Do you have an opinion as to whether or not it be advisable to allow an opening of a public cartway without making the improvements that you're talking about.

**Engineer Erichson:** I do not believe it should be open prior to the improvements being made.

**Attorney Snyder:** Why is that?

**Engineer Erichson:** Again, related to the public health and safety of those using the roadway.

**Attorney Snyder:** As it is currently configured, even with the abbreviated length, is there room for vehicles to pass?

**Engineer Erichson:** Not currently.

**Attorney Snyder:** Do you have any other documentation that exhibits that you used to make these recommendations or opinions?

**Engineer Erichson:** Nothing beyond what I previously shared. The memo dated November 15, 2022 to the town Board identifying our recommendations and costs, the alternate route alignment provided, an existing profile of the existing driveway alignment, and the street details proved previously.

**Attorney Snyder:** Do you have an estimation of the Legal, Engineer, Administrative and Finance (LEAF) costs associated with any one of the routes?

**Engineer Erichson:** Generally speaking, on engineering projects that involve inspection, design, soil borings, and survey all those components with a \$1,000,000.00 improvement, it would be about \$150,000.00. That is highly speculative at this point. Not knowing a lot of information on what is involved at this juncture. Typically, it is the 15% range from beginning to completion of construction. Depending on how the petitioner, should he choose to move forward, chooses to build the road.

**Attorney Snyder:** Do you have an idea of what the Engineering costs option #3 would be?

**Engineer Erickson:** Option #3 takes out a lot of costs related to the steep embankments, rock retention, and retaining walls so the construction costs may be half of the overall.

**Attorney Snyder:** If you were asked to formulate a more detailed estimation of engineering costs before the town Board meeting in August, would you be able to do that?

**Engineer Erickson:** At a very conservative level, yes. At this juncture we do not have data to support and identify the exact scope of a project like this.

**Chair Pazlar:** For the alternative alignment (#3). Is there a built-out cost estimate?

**Engineer Erickson:** We do not have a built-out cost.

**Chair Pazlar:** There was discussion that it could be about half the cost...?

**Engineer Erickson:** There was a 1.3- and 1.8-million-dollar option and this might be around 1.3 million. Again, this is so difficult at the stage to estimate and not have any of the information. If we had borings the cost could come down considerably. We've assumed the worse on the estimates. The alternate alignment really avoids some of the extra costs with walls and rock excavation. Cost is really a guess at this juncture without having the proper information to estimate.

**Chair Pazlar:** What are your thoughts about reducing the width of this public roadway to a standard driveway size and how that relates to public health and safety in option #3?

**Engineer Erickson:** Option #3 avoids the alignment of the road east of the shed. That portion is troublesome and for me to imagine passing cars on. This alternate route mitigates concerns related to safety along that segment. The 16 foot wide does allow for side-by-side travel with occasional bump-outs without impacting trees.

**Supervisor Magner:** Option #3, Where this alignment breaks off from the existing driveway, about how far is that section of road to the petitioner's property?

**Engineer Erickson:** About 225 feet.

**Supervisor Magner:** If that new section becomes the cartway, the existing portion of the current driveway is not cartway?

**Engineer Erickson:** Correct, they would have the ability to put a gate on the existing portion and the can control it. It can still be a private drive on that portion.

**Supervisor Magner:** They (the respondents) can mitigate some of the safety issues with people going down the steep slope?

**Engineer Erickson:** Right. We would recommend a gate to prevent that from occurring.

**Supervisor Magner:** What do people do when they get to the gate?

**Engineer Erickson:** We would propose a hammerhead turn-around.

**Supervisor Magner:** What is the distance at 1375 (on the map) to the SE corner of the most southern NPS parcel?

**Engineer Erickson:** Looks to be about 35 feet.

**Supervisor Magner:** If the town Board approves a public cartway/road and the intention is for the property owners to access their property, is there a possibility the people can park on the NPS property to access the water. Seems like we would be creating a public pathway very close to a park service property and someone could make an argument that they have access to it.

**Attorney Snyder:** It may create regulatory implications.

**Supervisor Rolf:** Is a hammerhead turnaround area large enough for a firetruck to turn around it?

**Engineer Erichson:** We would have various details that we would provide a standard use for that.

**Supervisor Rolf:** If this were to become a public road, would there be turn lane requirements by MNDOT?

**Engineer Erichson:** MNDOT would require modifications to the approaches to be made if it were made into a public roadway. No modifications if it is a shared driveway.

**Supervisor Rolf:** Where does the county sit with the length of the road and creation of a cul-de-sac?

**Engineer Erichson:** I am not prepared to provide a solution/answer to that today.

Engineer Erichson is directed to do his best to define the costs of all the options for the cartway prior to the next Board meeting on August 3<sup>rd</sup>, 2023. Also, to connect with Nate and Washington County regarding cul-de-sac regulations.

**Attorney Holstad:** Which option for the cartway is less disruptive, option #1 or option #2?

**Engineer Erichson:** From what perspective? If it's land disturbance...things of that nature option #1 would be less destructive. If it's for public safety...option #1 is more destructive.

**Attorney Holstad:** Setting aside the public interest portion. Option #1 is less destructive, correct?

**Engineer Erichson:** I am not sure I can answer that with leaving the public safety out of it. I think they go together. It is hard to separate them and look at only one thing in isolation when there are many other factors. I am not comfortable answering that from a single perspective.

**Attorney Holstad:** Option #1 does not require any grading work, right?

**Engineer Erichson:** Correct.

**Attorney Holstad:** Option #1 does not require any removal of trees?

**Engineer Erichson:** Correct.

**Attorney Holstad:** Option #1 does not require any physical disturbance what-so-ever?

**Engineer Erichson:** Correct.

**Attorney Holstad:** Options #2 and #3 both require all of those things, right?

**Engineer Erichson:** Correct.

**Attorney Holstad:** Option #1 would be substantially less costly than options #2 and #3, right?

**Engineer Erichson:** Correct.

**Attorney Holstad:** The term cartway is not located in any town road statutes, is that right?

**Engineer Erichson:** I can't say that definitively. I don't recall.

**Attorney Holstad:** Are you aware of any written standards that require a cartway to be built to town road standards?

**Engineer Erichson:** I am not aware of any language related to cartway in the town standards. I am not saying that it does not exist, but I cannot be aware of anything related to a cartway.

**Attorney Holstad:** You are aware there are cartway statutes in the state statutes, right?

**Engineer Erichson:** Yes, I am aware of that.

**Attorney Holstad:** Are you aware of anything in those statutes that requires a cartway to be built to specified town standards?

**Engineer Erichson:** I am not aware; I am also not aware of anything that states a cartway can be created that poses a health and safety risk.

**Attorney Holstad:** Are you aware of any state statute that allows the condition of construction to be a requirement to open a cartway?

**Engineer Erichson:** I am not.

**Attorney Sienko:** In option #1, it appears that your proposed alternative would split off near the pet cemetery and head north, that total length from Hwy 95 to the turnouts on the petitioner's property is a little over 1400 feet.

**Engineer Erichson:** Correct.

**Attorney Sienko:** You know where the pet cemetery is on the property, right?

**Engineer Erichson:** Roughly. The respondent shared generally where it is, but didn't know the exact location.

**Attorney Sienko:** You believe that you could design a roadway that would avoid any of the family's graves?

**Engineer Erichson:** Yes, it did appear there is the ability to go around it. The respondent wasn't entirely sure exactly where every location. There is some flexibility.

**Attorney Sienko:** If option #3 is selected there would still need to be some tree removal, right?

**Engineer Erichson:** Correct.

**Attorney Sienko:** And still some grading?

**Engineer Erichson:** Correct.

**Attorney Sienko:** And you are aware of the National Park Service scenic easement on both parcels?

**Engineer Erichson:** Correct.

**Attorney Sienko:** You would have to work with the National Park Service for any tree removal?

**Engineer Erichson:** Correct.

**Attorney Sienko:** The discussion earlier about the width of the cartway being 33 feet and concerns and unintended access to the NPS property. Have you been able to investigate whether or not you could align option #3 so there could not be unintended public access to the NPS property?

**Engineer Erichson:** There is very limited options for alternative routes. It is very difficult to move it to the south.

**Attorney Sienko:** If option #3 is selected, the public road would still start on Hwy 95, head east and go past the pole shed and then break off from the current driveway and head north. There would still be public traffic going past the pole shed, which is basically the only buildable spot on the lot.

**Engineer Erichson:** Correct.

**Attorney Sienko:** Option #3 would still have the set-back of 40 feet off a 33-foot wide cartway in the area of the poll shed?

**Engineer Erichson:** Correct.

**Attorney Sienko:** Cost-wise: Option #3 would be approximately half of the #1,347, 675.00 option?

**Engineer Erichson:** Those are high-level, quick estimates. It is significantly less.

**Attorney Sienko:** Can you provide the MNDoT letter for everyone in an email?

**Engineer Erichson:** Certainly.

**Attorney Sienko:** Did you request a topographic survey?

**Engineer Erichson:** We did. My recollection is that it will be provided by the petitioner only if directed by the town Board.

**Attorney Sienko:** That is why you don't have one today, it was requested and rejected?

**Engineer Erichson:** Correct.

**Attorney Snyder:** There seems to be an intonation that if the Township issued a resolution establishing a cartway that alone would entitle the petitioner to begin using the cartway. Notwithstanding whether it actually made the requested improvements. Statute indicates that the cartway cannot be open until damages are paid and that the township can establish conditions for the construction of the cartway. Mr. Snyders recommendation to the Board is that if it establishes a cartway and if it requires modification and improvements as part of that, and if not completed or paid for, the cartway cannot be used. It is defiant to suggest that an unimproved cartway could be open and used by a cartway petitioner. As the Board is thinking about findings, our recommendation is that any use of the cartway that is attempted without the recommended improvements would be unlawful. The prospect of that uncertainty would affect the township costs associated with administrating the establishment of the cartway. For example, the Board has been told by the petitioner that they were going to go to district court with this matter a month ago. If the Board is involved in litigating this matter it effects what the estimate is in our fees. If the town doesn't have to litigate it, the cost is reduced accordingly. The estimated cost without litigation would be \$5,000. If it is litigated, it is difficult to predict what legal fees the township could incur, Mr. Snyder does not think it would be less than \$20,000.00. It is his hope and expectation that the town is not plagued with risk, threat, or claim that the cartway will be used prior to building it as directed by the town resolution. It is a public safety issue that the events must occur in order.

Petitioner Joel Holstad assures the Board that he would not break the law. If an order was issued in which he believes in contradiction to the law his remedy is through the court. He would never break an order from a Board. Any assertion that we said is a gross mis-characterization and finds it almost embarrassing that it was suggested.

Attorney Snyder points out that at an earlier hearing Attorney Holstad indicated that his view was that the establishment was enough to permit use of the cartway. He also just asked the Engineer if he knew anything in the law that compels the build out or the construction of the cartway before it's used. As stated earlier, and what I understand to be, apparent interest in attempting to utilize the cartway if the conditions attached are not liked.

Attorney Holstad disagrees with that understanding.

It is agreed that if the town board orders the establishment of the cartway and construction and buildout conditions apply to that order, they will be complied with before there is any attempt to use it.

Attorney Holstad agrees.

Pazlar reminds everyone that the Board is trying to be mindful as decisions are made in order, it is important to be aware of what those decisions might create for the Board.

Attorney Holstad understands and understands that Attorney Snyder has a job. He suggests that the advice received from the town Attorney is grossly incorrect and borderline malpractice. The supreme court has clearly established the elements that must be considered by the Board in order to grant a cartway. None of them allows the Board to condition the opening of a cartway upon construction. It doesn't exist.

Attorney Snyder gives suggests that the Board review all the data and recess this meeting and re-open the meeting at the regular Board meeting on August 3<sup>rd</sup>, 2023 and conclude or continue further discussions/decisions today. The target is to adopt a resolution next Thursday.

Chair Pazlar asks for final thoughts or questions. Attorney Holstad objects to a continuance, and would like a vote today, understanding it is up to the Board. If continued, he requests that the Board read the submissions as they are very clear on what the courts allow and what the courts allow the Board to require in terms of conditioning the cartway. The Kennedy case is instructive in this situation. It is absurd that the route requested by petitioners is more burdensome or more disruptive than the other costly and extensive other routes. If the Board is looking to avoid litigation there is one and only one way to go, and that is to grant the petition requested by the petitioners.

Attorney Snyder hesitated to utilize the threats of litigation as a basis for going into closed session. It is very odd that a petitioner seeking something from the Board would condition the demand on whether or not the Board wishes to avoid litigation. For the record, there is an expressed conditioning of the Boards decision making on avoiding litigation. That alone is probably enough to allow the Board to go into executive session. He advises that Board that if they don't wish to do that today or Thursday they don't have to, but if it continues, all further proceedings will be held in executive session. The Board

has received an expressed threat of litigation wherein if it doesn't accept one of three options, the one specified by the petitioner, it's being threatened with a lawsuit by the lawyer relative of the petitioner.

Chair Pazlar agrees. It is tough for the Board to contemplate decisions that come with an implied threat of a lawsuit. It is good to be mindful of as we move along in the process.

Attorney Holstad iterates again, the it is a mis-characterization. The way to avoid any litigation is to follow the law. The law is clear and the law dictates only one reasonable conclusion in this instance.

Attorney Sienko reminds the Board to be cognizant of; the necessary threshold questions have to be answered. Do the petitioners have access to their property? That answer is yes. That alone is enough to deny the petition outright. If the petition is granted, we believe that the town should select the safer option, either option #2 or #3. The town does have liability if there is an unsafe road and it is in the public's best interest.

Chair Pazlar motions to recess this proceeding until August 3<sup>rd</sup>, 2023 at 8:00 p m, seconded by Magner. All in favor.

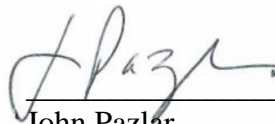
Hearing recessed at 4:51 p.m.

Submitted:

Approved:



Bobbi Hummel  
Clerk/Treasurer



John Pazlar  
Board Chair