

TOWN OF SILVER CREEK
CROSS - CARTWAY HEARING
SEPTEMBER 24, 2012

A hearing was held on Monday September 24, 2012 at 6:00 p.m. at The Silver Creek Town Hall for the purpose of hearing all reasons for and against the proposed cartway as petitioned for by Cathryn Grace Sunde, Mary Lou Anderson, Steven L. Cross and Maria G. Rattin and otherwise act upon the petition.

Present were Supervisors – Michael Hoops, Greg Hull, Larry Lampart; Clerk – Laura Kleive; Deputy Clerk – Frederick R. Whitney; Township Attorney – Gerald Morris; Petition Attorney – Tim Costly; Cathryn Sunde and Mary Lou Anderson; Larry Saur, Colleen Saur, Mr. and Mrs. Lyle Saur, Andrew Saur, Angel Sarkela-Saur and Annika Saur; Duane Ricard; Abbertine Ricard.

Hearing was posted on August 22, 2012 at the Town Hall, The Township's Website and was published in the Northshore Journal, September 8, 2012 edition. Hearing was being recorded.

Chairman Hoops called the hearing to order at 6:00 pm.

Chairman Hoops turned the hearing over to our Town Attorney, Gerald Morris.

Morris reviewed the cartway procedure. He stated the property must be 5 acres or more and be land locked with no current access. The board receives a petition. The petition is verified. The Town Board will determine the final route for the cartway and issue an order designating the location.

Morris began by addressing the attorney for the petitioner, Mr. Tim Costley. Petitioners were identified. The landlocked property was identified and is 40 acres in size. Owners of the petitioning property were confirmed. The location of the proposed cartway was identified. Owners of the property that would be affected by the proposed cartway path were identified. Mr. Morris confirmed that the minimum requirements for the cartway petition were met. Mr. Costley indicated that the property does not have any legal access or easements for access to the property. Mr. Costley indicated that an attempt to obtain easements had been made. He indicated that the length of other cartway options had been reviewed. Mr. Costley indicated that the submitted route was the shortest, least damaging and most economical route from a public road. Other routes would be too long, too steep, or too expensive.

Larry Saur, an affected property owner along the proposed cartway path, spoke in opposition to the proposed path. Mr. Saur identified other Saur family members present. The Deputy Clerk confirmed that the proceedings were being recorded. Mr. Saur indicated that they did not receive a personal service notice of this hearing. Mr. Costley indicated that personal service was made per the Affidavit of Personal Service documents presented for a Larry Saur, a Mr. and Mrs. Saur and a Mr. Duane Ricard. All indicated that they in fact did not receive personal service when asked by Mr. Morris.

Mr. Costley apologized and agreed that the hearing could not continue until service is in fact made.

Mr. Morris indicated that they could in fact waive service and that the hearing could proceed. All affected land owners present waived defects in service.

Mr. Larry Saur indicated that the legal description on the hearing notice within the petition is different from the notice of publication in the paper. Mr. Morris indicated that the differences were not materially misleading. Mr. Saur agreed. Mr. Saur was sworn in by the Clerk at the request of Mr. Saur.

Mr. Saur discussed his opposition to the proposed cartway path and presented a booklet addressing his remarks. Mr. Saur was speaking for himself, his family and his brother. He indicated that his family created the proposed cartway path, as their driveway to the family property; page 1 of his cartway location response. An "Exhibit One" was proposed and presented – Lake County Plats 5 & 6 – showing their property and the cartway. Mr. Costley had no questions. Mr. Saur indicated that at page 6 of his booklet, the petitioner's website indicated that the address was xxxx of Highway 61; "Exhibit 2A". Mr. Saur suggested that an alternative route could and should be less disruptive, less damaging, is in the public's best interest. Mr. Saur suggested that the information contained within his booklet showed that the route through the Saur property should be denied by The Board and that they should establish an alternate route.

Mr. Saur began to identify reasons for denying the cartway through the Saur property; top of page 3 of his booklet. Mr. Saur wanted to submit a letter from his brother, Mr. Donald O. Saur, not a land owner, dated April 16, 2012. After some discussion as to the date on the letter, Mr. Hoops had received a similar letter dated April 23, 2012, the letter dated April 16, 2012 was accepted by Mr. Morris even though it is not from a land owner and the writer is not present. Mr. Costley agreed to accept the letter.

Mr. Saur reported that the letter indicates that an "Easement By Necessity" is in order. Mr. Morris indicated that this is irrelevant. The Cartway Statute indicates that it doesn't matter how the petitioners were landlocked, but rather the Town Board needs to determine that they are, or are not, landlocked. Mr. Morris requested that if Mr. Saur still believes differently, than he must present a legal brief that the petitioners must pursue an "Easement By Necessity" to The Board.

Mr. Saur asked if the petitioners had attempted an "Easement By Necessity". Mr. Morris added that the petitioners are not required to pursue that avenue. They pursued a Cartway. It is not a prerequisite to exhaust all remedies before requesting a Cartway. Mr. Morris asked Mr. Costley if the petitioners had considered a "Cartway By Necessity"; No. Mr. Morris asked if they had tried to obtain any other easements; No, other than trying with Mr. Christianson. Mr. Saur continued to recite an unpublished case number of A051399, dated May 23, 2006. When asked, Mr. Costley accepted the document into the hearing. When Mr. Saur was asked by Mr. Morris that he believes that the petitioners should seek to reform the Deed that conveyed the property to the new owner, his reply was yes. Mr. Morris said the statute does not require that.

Mr. Saur indicated that if The Board does not accept the "Easement of Necessity" discussion, he suggested that there are alternatives to coming across the Saur property. He presented two options; see booklet beginning on page 7. Mr. Morris asked as to whether or not some of the alternatives indicated public easements or public right-of-ways were in fact public. Mr. Saur was asked to follow up with information that indicates his proposals are in fact public. It was confirmed that Mr. Saur would be required to provide to The Board this, and all, legal information. It is Mr. Saur's burden to provide the legal information regarding his proposed alternatives. Mr. Costley concurred when he was asked. Mr. Saur confirmed that he did not know who all of the property owners were regarding his suggested alternatives, nor if they had public access or not.

Mr. Costley was asked as to whether or not he had any questions or observations or statements to make regarding Mr. Saur's comments. He had none. He was asked Mr. Costley regarding the two alternatives. Mr. Costley indicated that he did not need to obtain an easement from anyone. The distances presented on the alternatives were of an easement of "use by property owners of the development" and not a public roadway. He pointed out that the entire route would have to be a cartway, not an easement. Mr. Saur understood that the entire route and all property owners would need to be informed during a hearing of the proposed alternative. Mr. Costley added that the topography and slope over that alternative route was cost prohibitive. Mr. Costley added that the Pine Ridge alternative was similarly prohibitive and did not in fact know whether or not there was in fact public access.

Mr. Ricard added that he would be willing to provide a cartway access across his southern boundary if this would help.

Mr. Morris confirmed with Mr. Costley and his petitioners were fine with having the cartway fully on one property versus 16 ½ feet on either property.

Mr. Ricard does not want the cartway on the eastern boundary of his property as questioned by Mr. Hull. Mr. Hull asked Mr. Costley why having 16 ½ feet on either property; answer, that's the way it has been done, but the petitioners do not care, they just want the cartway.

It was determined that no property owners affected by any of the alternatives have been informed, or contacted. If board members have permission, they may investigate the terrain and walk over the properties of the alternative routes. And, if any alternatives are found to be more acceptable, all property owners will need to be notified and served before a subsequent hearing was convened.

It was presented that the petitioners are opposed to any alternatives.

Mr. Lyle Saur spoke to his opposition to the proposed cartway. He asked if all petitioners had signed. The Clerk confirmed that they have. A few questions were asked as to the future use, or future owners; Mr. Morris remarked that the questions were immaterial and don't need a respond as it relates to their cartway application. Mr. Saur requested that The Board members do the right thing for our neighbors.

Mr. Morris requested, so that they can consider all alternatives, that the Saur provide to The Board a copy of the Pine Ridge Plat, the owners of all of the properties over which they propose the alternative to go, including the properties that abut, or otherwise have an interest in, the common roads within the Pine Ridge properties. Regarding the Coltier alternative, a copy of the plats shown in the alternative, copies of deeds for all property owners affected by the alternative, and the names and addresses of current property owners. Mr. Morris confirmed with Mr. Saur as to whether he understood. Mr. Morris indicated that it is up to him to provide information regarding an alternative, not The Board, but The Board will review presented alternatives and why they are reasonable alternatives. Owners affected by any alternatives may not agree that they are acceptable alternatives. All owners affected by the alternatives will have input to all alternatives. Mr. Morris indicated that alternatives will be reviewed and in fact "walked over" to determine the terrain. Mr. Saur wanted time to provide the information.

Mr. Morris asked if anyone had anything further to say. He indicated that he wanted all present to have full opportunity to provide any comments, for or against.

Other members of the Saur family presented opposition to the proposed cartway. Mr. Morris indicated that a cartway statute speaks to the determination of whether or not the proposed cartway is the least “disruptive and damaging”.

Mr. Larry Saur presented his final comments of opposition to the proposed cartway. Mr. Andrew Saur presented his opposition to the proposed cartway.

Mr. Costley made his closing remarks. He reminded that the cartway statute says, “Shall establish a cartway”. The only decision for The Board to make is, “is there an alternative route that is less damaging or destructive”.

After discussion, Mr. Hull made a motion that the Saur be given until the end of day on October 31, 2012 to submit information to The Township Clerk regarding their opinions and information regarding potential alternative routes to the Cross cartway. Mr. Hoops second the motion. Motion carried unanimously.

Mr. Hull made a motion that The Board reconvene Monday, December 3, 2012, at 6:00 pm for the purposes of continuing the discussion regarding the Cross cartway. Mr. Hoops second the motion. Motion carried unanimously.

Mr. Costley requested that he be given a chance to respond to any information that is provided by the Saur. Mr. Morris agreed and added that this information be forwarded to The Board, the Saur and to Mr. Ricard. Mr. Costley indicated that his response and information would be provided by November 22, 2012.

Mr. Hull moved that The Clerk be directed to forward copies of all correspondence and material received from anyone for this issue for any reason whatsoever to all affected land owners and parties. Mr. Lampart second the motion. Motion carried unanimously.

Mr. Morris reminded all board members that they may not meet nor discuss any information concerning the cartway information amongst themselves before the hearing on December 3, 2012 meeting.

There being no further business, hearing recessed at 7:55 p.m. upon motion by Hull, second Lampart. Carried unanimously.

Date of reconvening will be Monday, December 3, 2012, 6:00 pm.

Respectfully submitted,
Frederick R. Whitney, Deputy Clerk