

TOWN OF SILVER CREEK  
RECONVENED CROSS - CARTWAY HEARING  
DECEMBER 3, 2012

A reconvened hearing was held on Monday December 3, 2012 at 6:00 p.m. at The Silver Creek Town Hall for the continued 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 – Frederick R. Whitney; Township Attorney – Gerald Morris; Petitioners – Cathryn Sunde and Mary Lou Anderson; Constituents – Larry Saur, Colleen Saur, Lyle Saur, Pat Saur, Andrew Saur, Angel Sarkela-Saur and Annika Saur.

Hearing was posted on October 29, 2012 at the Town Hall and The Township's Website same date. The hearing was being recorded.

After waiting for the petitioner's attorney to arrive, Chairman Hoops called the hearing to order at 6:15 pm. The petitioner's attorney was not present for the entire hearing. The petitioners had spoken with Mr. Costley during the day and confirmed that he was aware of the hearing date and time.

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

Mr. Morris identified submittals relative to Mr. Larry Saur's proposed alternative routes, as well as a response to the submittals from Mr. Timothy Costley.

The first submittal was for Mr. Saur's Cloutier alternative that runs across the Cloutier property as well as a private easement across the Lake County Auditor's Plat 5 and Plat 6. The second submittal was for the Pine Ridge Development Easement alternative. The Mr. Timothy Costley submittal was a letter dated November 21, 2012, which is his response to the Mr. Larry Saur submittals.

Copies of Mr. Saur's submittals were sent to Mr. Costley by Larry Saur. The Mr. Costley letter was sent to Mr. Larry Saur by the Clerk. The Clerk misunderstood that Mr. Saur would forward the Costley letter to his brother Lyle. This did not occur. Mr. Morris provided Lyle Saur with the letter upon which Lyle Saur read the letter and was OK that we proceed and indicated that he did not need a copy.

Mr. Morris indicated that both of the Saur submittals contained deeds, easements and ownership information as requested, but had not as yet reviewed all of the documents. Mr. Morris would not say whether or not additional information would be required.

Mr. Morris indicated that at this point, the Board will now need to determine how to proceed. They will need to determine the reasonableness of the alternatives offered. They may need to request more information. They may want to tour both the proposed route and any and all possible alternatives.

Mr. Hoops wanted to suggest another alternative route. The route, which runs from Co. Rd 3, across the John Christiansen property to the petitioner's property. He did not indicate whether or not it was along the property line, or through the center of the property. We need to tour the

site to make a determination. Mr. Hull wanted to establish a criteria for what does least disruptive mean. Mr. Hull still wanted to look at the property, but wanted to define "least disruptive". Mr. Morris indicated that you still need to observe the property first. The Board needs to have a fact finding and should not preset any conditions before decisions are made.

Mr. Saur discussed his alternatives, as well as responded to Mr. Costley's letter. The County Auditor's Plat 5 alternative is a public easement and not a private easement per Mr. Costley's letter. Mr. Morris could not find the easement that indicates it is a public easement. The Quit Claim Deed, dated April 28, 1997, Book 21 of Deeds, #278 does not indicate what the easement rights were and therefore we cannot determine whether or not it is private or public. Mr. Saur did not have a memo or an opinion from a lawyer regarding. Further, Mr. Morris identified an easement agreement dated September 21, 1993 that suggests that the roadway is private. Regardless, if it is private, then damages could be paid to property owners in order to make it a formal cartway.

Mr. Saur also disagrees that the Pine Ridge alternative is too costly. The Board does not need to use this as criteria in determining the cartway. They do recognize that the roadways within this development are private, but Lot 4 within this development is unsold and is only 440 feet to the petitioner's property.

Mr. Morris identified for the record the roads within the Pine Ridge Development. Descriptions contained within the development's Declaration of Covenants and Easements, Section 2, paragraph 2.4 – Lakeview Road running from Highway 61 to a circle where Lakeview Lane begins, identified at paragraph 2.6 of the covenants. Further, these roads are believed to be private and all owners within the development would have to be notified of any hearings and would receive damages if this became the selected route.

Mr. Morris clarified that the cartway would begin at Highway 61, a public roadway, and not at the end of Lakeview Lane as suggested. The cartway would remain private, or if so designated by The Board, the cartway could become public; Section 16408, subdivision 2, paragraph C – Cartway Statute. With regard to damages, in making a determination of the selected cartway, damages are only determined after the route has been established and is therefore a minor point in deciding the cartway route.

The Clerk was directed to obtain permission from land owners for us to tour both the petitioner's proposed route, as well as all alternative routes presented.

Mr. Morris indicated that any tour would only be to observe the routes and not to make any decisions as to viability. Further, while it will be a public meeting, the public can attend, but no hearing notice is required. The Clerk will seek permission to walk on the land. If a route becomes a possible alternative that The Board is interested in, all property owners will at that point need to be served notice of a hearing. Again, The Clerk is only obtaining permission to walk the land.

The routes for The Clerk to request permission at this point are as follows:

- The Petitioner's Route – Saur & Ricard properties
- The John Christiansen property route
- Lake County Auditor's Plat 5 & 6 alternative
- Pine Ridge Development alternative

Hull made a motion to hold a special meeting, a site tour, on Saturday, December 8, 2012 at 7:30 a.m. at the end of Aspen Road and Highway 3 for the purposes of touring the petitioner's proposed route along the Saur & Ricard property lines, to view any alternative routes that may become available and to set a meeting date for future cartway meetings. Lampart second the motion. Motion carried unanimously.

Hull made a motion to recess the hearing at 7:11 p.m. Second by Lampart. Motion carried unanimously.

Respectfully submitted,  
Frederick R. Whitney, Clerk