

TOWN OF SILVER CREEK
RECONVENED CROSS - CARTWAY HEARING
May 8, 2013

The Cross cartway hearing was reconvened on Wednesday, May 8, 2013 at 7:00 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.

The hearing was reconvened for the purpose of taking up the decision on the application for the Cross cartway.

Present were Supervisors – Michael Hoops, Greg Hull, Larry Lampart; Clerk – Frederick R. Whitney; Township Attorney – Gerald Morris; Petitioners – Cathryn Grace Sunde and Mary Lou Anderson; Petitioner’s Attorney – Timothy Costley; Constituents – Larry Saur, Colleen Saur, Andrew Saur, Anika Saur, Duane Ricard and Mrs. Eugene Ricard (Albertine Ricard). Mr. Lyle Saur was present via Larry Saur’s cellphone.

Hearing was posted on April 18, 2013 at the Town Hall and The Township’s Website same date. The hearing was being recorded.

Chairman Hoops reconvened the hearing at 7:00 pm. Mr. Hoops stated the public portion of the hearing was closed at the end of the last cartway hearing. Today, it is the Board’s goal of the hearing to review the findings of fact and to make a decision as to the route for the cartway.

Town attorney Morris presented a few points of order that have been verified throughout the hearing process and are not in dispute:

- The petitioner’s property that they own is more than 5 acres of land.
- The petitioner’s do not have access to a public road from their property.
- The petitioners did request a specific route.
- The Board may decide upon a different route than what was petitioned for only if they find a different route that is less disruptive, less damaging to affected landowners and is in the public’s best interest.

The Board reviewed Exhibit 17.1, “*Completed Cross cartway evaluation worksheet*”. And found that the petitioner’s route, “Saur 1”, scored a 32.1. The petitioner’s requested route with a 16.5 ft. shift to the east, “Saur 2”, scored a 30.2. The Pine Ridge alternative received a 41.0 score. Alternative “Auditors Plat”, scored a 55.8. And, the “Christensen” alternative scored a 31.9.

Hull presented a land survey of the Aspen Road, (requested by and prepared for the Board), dated March 13, 2013. This was entered as Exhibit 20.0. In discussing the survey, Hull indicated that the survey shows that the petitioner’s requested route, “Saur 1”, if accepted, will require some deviation so that it terminates properly at the Cross property.

Hoops requested that the Board go over the routes and review any problems with each route so that our findings will be entered into the record. Hull suggested that the Board had done that with their work on the “*Completed Cross cartway evaluation worksheet*”, Exhibit 17.1. Hoops agreed and still wanted their findings added to the record as they made their final decision.

Lampart interjected that coming from the Pioneer Ridge route, a potential cartway would intersect the Cross property at mid parcel which might be more convenient. Hoops asked though, would coming into mid parcel be a substantial enough reason to deviate from the requested route? Additionally, Hoops provided information as to the slope of the existing road and information as to why the developer created only 9 lots due to the steepness of slope. By adding more people to the road, more would be at risk for fire and rescue in that trucks will have a difficult time making it up the steep incline.

The Board proceeded with discussion regarding their findings for each route:

- Saur 1 is the requested route. It meets the criteria with a slight deviation. It is straight off of a public road; the Aspen road. A curve or switchback is not necessary in that the elevation is minimal.
- Saur 2 is close to the requested route, with a slight jog in the road. It has the disadvantage of placing the road 16 ½ ft closer to the Saur buildings, which is a negative. The public road intersection is the same as “Saur 1”. Hull suggested that if the Saur route was selected, then the beginning point of Saur 1 and the ending point of Saur 2 could be the defined cartway.
- Pine Ridge is not the petitioner’s route. It is a longer route. It affects more parcels. Due to the slope and grade, it may extend the road length.
- Auditor’s Plat is not the petitioner’s route. While a shorter, due to the elevations, switchbacks may be required causing it to be a longer route. It affects more property owners. The Town road foreman does not believe this is a feasible route.
- Christiansen route is not the petitioner’s route. It would be by far the longest route at 3,092 feet. No roadway exists today. It would only affect two parcel owners. What makes this route that much better than the requested route? Where is it substantially less disrupting than the requested route? And where is the increased public interest? The Board did not believe there were sufficient enough answers to those questions to select this route over the petitioner’s requested route.

Hoops commented that based on the Board’s findings, and by slightly deviating the petitioner’s requested route, Saur 1, meets our requirements. Hull commented that the purpose of this meeting today is to decide upon a route. Lampart commented that while he likes the Pine Ridge route, he did not see that it was substantially better than the requested route. And, he agreed that their findings definitely suggested that Saur 1 was the route to select. Hull commented on the evaluation sheet indicating while it was somewhat subjective, it was their attempt in evaluating their findings for the routes relative to each other.

Greg Hull entered the following resolution into the record:

**Resolution Establishing the
Cross Cartway
May 8, 2013**

- WHEREAS, Town Boards are directed by Minnesota State Statue section 164.08 to establish cartway access to parcels of land which meet specific criteria, and
- WHEREAS, the owners of the Cross property have petitioned the Town Board for such an access, and
- WHEREAS, the Town Board has determined that the parcel in question meets specific criteria enumerated in the relevant statutes, and
- WHEREAS, the Town Board has examined multiple options for other possible routes for ingress and egress to the Cross property, and
- WHEREAS, Mn Stat, 164.08 sub 2(a) states that the Town Board may alter the route requested by the petitioners IF the alternative route is deemed to be “less disruptive and damaging” AND “in the public’s best interest”, and
- WHEREAS, in the cases of Kennedy v. Pepin Township (A08-1921), as well as other cases, the courts have stated that Boards may alter a petitioner’s requested route as long as the beginning point, terminus point and general course are adhered to, and
- WHEREAS, after an examination of the suggested alternative routes, no evidence or information was discovered which demonstrated that any of those options were in any significant way less disruptive, damaging, or in the public’s interest, and,
- WHEREAS, the requested route, as proposed is 16 ½’ on either side of a property line, would result in the cartway terminating, in part, on land other than the parcel owned by the petitioners, and
- WHEREAS, the Saur family, over whose land the cartway would primarily run, has consistently objected to the establishment of the cartway for a variety of reasons, including the proximity to buildings on their property of the proposed route,

THEREFORE, BE IT RESOLVED, that the Board of Supervisors of the Town of Silver Creek, in Lake County, MN, order a cartway two rods in width, beginning at the southernmost terminus point of the Aspen Road and centered on the section line, proceeding in a south easterly direction for approximately 1330 feet, in such a manner and degree that the south western corner of the cartway correspond with the common corner of the Ricard, Christianson, Saur and Cross properties.

Hull then made a motion to introduce the foregoing resolution, asking for a second. The motion was seconded by Hoops. Hoops called for discussion. Hoops, Hull and Lampart commented that this is a very hard thing to do.

Hoops called for the vote.

Michael Hoops, Greg Hull and Larry Lampart all voted yea.

None opposed.

The Board then ordered a survey to be completed of the route, a timber appraisal/evaluation to be performed, as well as obtain land values and comps from the County Assessor's office. All prepared for a future hearing where damages will be assessed.

Town attorney Morris added that the affected parties can obviously obtain their own appraisals and present that information and evidence as the Board meets to assess damages. Further, a formal road order will be prepared and presented at a future date after a survey is created, legal descriptions are written and assessed damages are defined.

It was noted that a separate hearing for the purposes of assessing damages will be convened in the future. Notice of this hearing will be posted on the Town's website, town hall and published in the paper – Northshore Journal – prior to the hearing date.

The Board directed the Clerk, as he receives the documents, to forward any appraisals and/or land comps, the cartway survey and timber appraisals/values to the petitioners via the petitioner's attorney, to Larry Saur and Duane Ricard. (Larry Saur indicated that the Clerk need only copy Larry with this information for his family members).

Hull made a motion to adjourn the hearing at 7:55 p.m. Lampart seconded the motion. Motion carried unanimously.

Respectfully submitted,
Frederick R. Whitney, Clerk