

BOARD OF SUPERVISORS PUBLIC HEARING
CARTWAY PETITION FILE #2014124.04
August 3, 2015

Present: Jon Steblay, Justin Smith, Carol Pundt, Don Hales

Absent: None

Community members present: Curt Cich, Debra Cich, Sean Skrypek, Steve Swantz, Kathy Ratfield, Pat Krueger, Gary Anderson, Rick Wimmer, Pat Wimmer, James Gammello, David Pundt, Louis Schweizer, Diane Schweizer, Gene Dalski, Virginia Knudson

Don Hales called the meeting to order at 6:00 p.m. The Pledge of Allegiance was led by Justin Smith. The Petitioner affidavits of service of the Notice and Petition upon the affected property owners was given to Don Hales. The affidavits of service to Diane & Louis Schweizer were verified and were presented at least 10 days prior to this hearing.

It was noted for the record everyone was in agreement with not going on a road inspection of the alternate route because the inspection was done at the previous road inspection held at the June 15, 2015 cartway hearing.

There were no additions or corrections to the agenda. A motion was made by Jon Steblay and seconded by Justin Smith to approved agenda. All voted in favor of the motion.

Public Comments: James Gammello told the Board at this time he has had no communications with the Cich's or their attorney Sean Skrypek. He would like to reserve comments until the Sean Skrypek and the Citch's have spoken.

Sean Skrypek presented a survey of the alternate route and a warranty deed by which the Birches sold to L & M Holding. He told the Board, after the inspection on the June 15, 2015 hearing it was pointed out there is already a private road carved out that already services both of the L & M Holdings properties. Sean noted this property is the east side of the parcels ending in CB009 as well as E009. He passed out pictures of the private road to the Board. He pointed out to the Board the properties have mail boxes along this private road that services these properties. Sean told the Board after looking at the petition for the cartway quite frankly after the first hearing it became noticeable this is an attempt to skirt or clear ambiguous requirements as set forth in the Minnesota Statutes. The cart path does not meet the requirements under the statute to service the Johnson's property and L & M Holding Company. At the last hearing Mr. Gammello told the Board the purpose of the petition was to allow or increase the sale price of the Rooney property which is South of the L & M Holding Property. The Rooney's have consented to the petition. They are not petitioners. We are simply here on the petition for L & M Property Holding Company. Both these properties, when we look at the warranty deed that I provided state there is an easement off the Schweizer property which gives them access to L & M Holding Properties. L & M Properties have access. The petition is simply not a viable one according to Statutes. The cart path is not justified. It is not fair to the Cich's to force them to bear the burden of a 33 ft wide road across their property. Sean told the Board he is simply asking the city council to follow what it states under the Minnesota State Statute 164.08 as far cartways go because the petition before you right now does not meet those requirements. The L & M Holding property, which I am going to call the Southern property (property #2) is only 1.7 acres. The bigger parcel to the North is 8 acres. The petition states there is no access to either properties, no public road, that is simply not the case. Upon inspection it was

discovered that there is actually a road that cuts through. They have access.

Diane Schweizer pointed out to the Board...If you continue on this road there are about 150 feet that is still Schweizer's property which was surveyed. She goes on to explain how the road crosses their property and goes to L & M Holding property at which there is a private road that goes to the second property on the lake (described by Sean as the South property).

Sean Skrypek told the Board the cart path is not justified. Both properties have an easement over and across the Schweizer property. He referred back to the previously mentioned warranty deed and the legal description of the property which includes the easement.

James Gammello spoke to the Board saying the petitioners included the Bryce property. He had submitted two petitions and maybe in the process he had not named the Bryce Trust as a petitioner on this petition, but, he would be glad to join the petitioners together this evening for the purpose of this record. The Laine Bryce Trust is a consenting party to this petition. We have the statutory requirements. They may not be in the form that the Cich's want. The parties have not changed and the cartway route has not changed. According to the survey presented tonight, the alternate route does not meet the requirements of being two yards wide. This roadway has never been established. The fact that there is an illustration/allegation of an easement is not sufficient for Mr. Gammello to go to a court of law to say, "enforce this 33 foot access". That is why he is here before the Board tonight with this cartway petition request. The suggested route has never changed. The Bryce Trust Fund has always been a party to this petition. The cartway petition presented tonight does meet the statutory requirements as being less disruptive and damaging to

affected landowners which is the second tier of the analysis. It also meets the 1st tier of the requirement of being 33 feet wide which the present easement does not meet the requirement.

Virginia Knudson, the Township attorney, told the Board she agreed the petitioners did not have a 33 foot wide access to their property.

Sean Skrypek told the Board that the neither the Bryce or the L & M property parcels were more than two acres in size. He felt the properties could not be added together, but needed to be counted per tract of land. He felt the property owners already had access to their properties by the recorded easement that was already being accessed which would be less disruptive to the Cich's.

Ginny Knudsen felt the two tracts of land as one owner met the acreage requirements. She told the Board the property owners need to have reasonable access to their property. There are cases on file regarding aggregating tracts of land for the purpose of access (referring to a 1981 Supreme Court case).

The road to the L & M property described in the petition is the present driving surface to the property which would be less disruptive since it is already being used as a roadway.

Curt Cich told the Board the easement being proposed by them going through the Schweizer property would be a shortest route to the L & M and Bryce Trust properties than what was being proposed in the petition. There is no proof that the easement is or is not 33 feet wide. This property has been accessed for the last 15 years through the easement and is the entrance to the property.

Virginia Knudson told the Board they could not interpret the survey of the easement to be 33 feet. State Statute 164.08 states if you do not have deeded access to two rods or 33 feet wide you can petition for a cartway. The petitioners have met the requirements. They are entitled to a cartway. What the Board needs to do is look at the requirement steps. They have at least five acres. They do not have access that is two rods wide. So, they have proposed a cartway. They have tracked a road that is in current use by other property owners. So they have proposed a route. The Cich's have every right to say to the Board there are alternate routes other than one petitioned, but they have to show now the route they are proposing is less disruptive, and less damaging to the affected property land owners and is in the public's best interest. The parties must state directly to those three points. Jim Gammello has laid out his party's petition. The Cich's have to show otherwise.

Sean Skrypek addressed the Board saying, as far as the less disruptive and less damaging, the cart paths through the Schweizer property on to the L & M property is simply looking at making a very short section of road, that already exists, if need be, wider. At this we do not even know if the road needs to be wider at this point. For that is known this section of road needed to get to the L & M property may be 33 feet wide. We know this cart path proposal that Jim Gammello is proposing is not 33 feet wide. The cart path alternative is much shorter, much less disruptive. Public policy would greatly favor this cart path being on the Schweizer property because of the length, because of the direction of the Cich's property not being taken from them. The cartway being proposed by Jim Gammello is a very long cartway.

Diane Schweizer explained to the Board the alternate proposed cart path, the section at the beginning of Dickey Road at the beginning of the Dickey Trail, is very steep hill and there is a lot of trouble keeping the road in good condition. The road is very narrow with swamp land

on both sides. Gene Dalski also agreed with Diane the alternate cart path is a very narrow road.

Kathy Ratfield told the Board, because of her experience with a cartway in her neighborhood, a cartway per State Statute needs to be 33 feet wide which does not mean it has to have a drivable surface of 33 feet.

James Gammello told the Board the choice of the cartway for the petition is not disruptive because it has been in use as a road for many years.

Don Hales spoke to the Board saying the action this evening is to consider the eligibility and conditionally granting a cartway as presented by Mr. Gammello.

Justin Smith said he was considering both sides and did not consider either route disruptive. He is concerned about the beginning of Dickey Trail which is steep and narrow. The road through the Cich's property is very nice. Don Hales concurred with Justin's concerns. Don Hales appreciates everyone's thoughts and feelings. He felt the proposed cartway is less disruptive because it has been there for many years. Don Hales felt the petition should be granted. Jon Steblay felt the alternate route would be more disruptive than the route described in the petition. Also, the width of the alternate route is questionable without a certificate of survey stating the road width.

The Board was asked by Virginia Knudson to review the findings in the petition. She suggested to include the reasons why the alternate route being proposed by the Cich's (Dickey Trail) is not appropriate (i.e. steep terrain, etc.) at this time which will be found under j. in the petition. Virginia Knudson will e-mail Carol Pundt, Clerk, the revised petition for review and signatures tomorrow.

A motion was made by Jon Steblay and seconded by Justin Smith to approve the request to grant the cartway as proposed by Jim Gammello under Cartway Petition File #2014124.04. and to revise Resolution No. 080315 to include the inspected alternate route (Dickey Trail) under (f.) and additional findings of fact from this hearing regarding the alternative route (Dickey Trail) under (j.). All voted in favor of the cartway petition.

The Town Board selected the Requested Rote as the approved route for the cartway because it is less disruptive and damaging to the Affected Owners and is a well-established roadway that has been in existence and use for many years .

A motion was made by Justin Smith and seconded by Jon Steblay to hire Johaneck Appraisal to determine damages. All voted in favor of the motion. The Cich's have the option to rebut the appraisal and hire someone to do a separate appraisal for them.

A motion was made by Justin Smith and seconded by Jon Steblay to adjourn and reconvene this meeting to October 14, 2015 at 6:00pm in order to determine damages.

Carol Pundt, Clerk
Bay Lake Township

Don Hales, Chairperson
Bay Lake Township