



**\*AMENDED AGENDA**

**REGULAR MEETING  
OF THE BOARD OF COMMISSIONERS OF  
ST. LOUIS COUNTY, MINNESOTA**

**Tuesday, June 9, 2020, 9:30 A.M.**

**Government Services Center  
Liz Prebich Room  
201 South 3<sup>rd</sup> Avenue West  
Virginia, Minnesota**

**NOTE:** This meeting is being conducted by telephone or other electronic means as it is not feasible to have commissioners, staff, and/or members of the public present at the regular meeting location due to the COVID-19 pandemic and the declared emergencies. Some or all members of the St. Louis County Board will attend the meeting by telephone or other electronic means.

Because this meeting is closed to public attendance, for information on how to view or participate in the County Board meeting, please visit the county website at [www.stlouiscountymn.gov](http://www.stlouiscountymn.gov), scroll to the County Board Meeting section, and click on the meeting date.

**FRANK JEWELL**  
First District

**PATRICK BOYLE**  
Second District

**BETH OLSON – VICE CHAIR**  
Third District

**PAUL McDONALD**  
Fourth District

**KEITH MUSOLF**  
Fifth District

**KEITH NELSON**  
Sixth District

**MIKE JUGOVICH - CHAIR**  
Seventh District

County Auditor  
Nancy Nilsen

County Administrator  
Kevin Gray

County Attorney  
Mark Rubin

Clerk of the Board  
Phil Chapman

The St. Louis County Board of Commissioners welcomes you to this meeting. This agenda contains a brief description of each item to be considered. The Board encourages your participation. Because all meetings are closed to public attendance until further notice, citizens can submit comments for the public comment portion or for specific Board agenda items prior to the meeting by e-mailing them to [publiccomment@stlouiscountymn.gov](mailto:publiccomment@stlouiscountymn.gov) or by raising your “virtual hand” while using the WebEx software during the Board meeting. When using the “virtual hand” feature, wait for the Board Chair to recognize you. Once the Chair yields the floor to you, state your name and home address at the beginning of your comment or testimony. Except as otherwise provided by the Standing Rules of the County Board, no action shall be taken on any item not appearing in the agenda.

Comments to individual Commissioners or staff are not permitted. The St. Louis County Board promotes adherence to civility in conducting the business of the County. Civility will provide increased opportunities for civil discourse in order to find positive resolutions to the issue before the Board. Tools of civility include: pay attention, listen, be inclusive, do not gossip, show respect, be agreeable, apologize, give constructive criticism and take responsibility [County Board Resolution No. 560, adopted on September 9, 2003]. Speakers will be limited to five (5) minutes.

**\*\*In compliance with the Americans with Disabilities Act, those requiring accommodation for this meeting should notify the Administration Department 72 hours prior to the meeting at (218)726-2450.\*\***

All supporting documentation is available for public review in the County Auditor’s Office, 100 North 5th Avenue West - Room No. 214, St. Louis County Courthouse, Duluth, MN, during regular business hours 8:00 A.M. - 4:30 P.M., Monday through Friday. Agenda is also available on our website at <http://www.stlouiscountymn.gov/GOVERNMENT/BoardofCommissioners.aspx>

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**Meetings Attended by Telephone due to COVID-19 Pandemic: Overview by County Attorney Mark Rubin.**

9:30 A.M.      Moment of Silence  
                    Pledge of Allegiance  
                    Roll Call

AT THIS TIME CITIZENS WILL BE ALLOWED TO ADDRESS THE BOARD ON ITEMS NOT ON THE AGENDA. [Speakers will be limited to 5 minutes each.]

FOR ITEMS LISTED ON THE BOARD AGENDA OR COMMITTEE OF THE WHOLE AGENDA, CITIZENS WILL BE ALLOWED TO ADDRESS THE BOARD AT THE TIME A MOTION IS ON THE FLOOR.

9:40 A.M.      PUBLIC HEARING, pursuant to Resolution No. 20-258, adopted May 12, 2020, to consider the adoption of a fee schedule amendment for various county services, including the St. Louis County Heritage, Arts and Culture Center for the year 2020. **\*{20-213R}**

9:45 A.M.      PUBLIC HEARING, pursuant to Resolution No. 20-135, adopted March 10, 2020, to consider a cartway petition by Timothy R. Westby a/k/a Tim Westby on behalf of SW2, LLC (Unorganized Township 63-15). **{20-190} (Continued from May 26, 2020.)**

**CONSENT AGENDA**

Approval of business submitted on the consent agenda.

**REGULAR AGENDA**

**NOTE: The Board will recess and reconvene to consider items passed at the Committee of the Whole meeting.**

**ADJOURNED:**

# BOARD LETTER NO. 20 – 213R

## FINANCE & BUDGET COMMITTEE

JUNE 9, 2020 BOARD AGENDA 9:40 A.M.  
PUBLIC HEARING

**DATE:** June 9, 2020  
**RE:** Public Hearing to Consider  
Adoption of 2020 Fee Schedule  
Amendment  
**FROM:** Kevin Z. Gray  
County Administrator

### **RELATED DEPARTMENT GOAL:**

To manage the preparation of the county budget and make budget recommendations to the County Board.

### **ACTION REQUESTED:**

The St. Louis County Board is requested to hold a public hearing on the amendment of the 2020 Fee Schedule, and adopt an amended Fee Schedule.

### **BACKGROUND:**

The St. Louis County Heritage and Arts Center (Depot) is currently restructuring in terms of space usage, property management, and overall strategic plan. The Depot Subcommittee created a role in the first quarter of 2018 to oversee and redirect Depot operations, the St. Louis County Heritage and Arts Center Director. The Director has now created a systematic approach to fees at the Depot for 2020 in order to collect reimbursements for services, offset rising costs in utilities, and begin to contribute to capital expenses for the building.

Environmental Services has also reviewed the various fees charged for solid waste management. The Solid Waste Committee has reviewed a variety of proposed changes and has recommended adjustments to help offset increased costs for service and to stabilize the Environmental Services Fund.

At the May 12, 2020 County Board Meeting, commissioners established a public hearing for June 9, 2020, at 9:40 a.m., at the St. Louis County Courthouse, in Duluth, MN, for the purpose of obtaining comment on the 2020 fee schedule amendment.

### **RECOMMENDATION:**

It is recommended that the St. Louis County Board approve the amended 2020 fee schedule.

## **Public Hearing to Consider Adoption of 2020 Fee Schedule Amendment**

BY COMMISSIONER \_\_\_\_\_

WHEREAS, The St. Louis County Board held a public hearing at 9:40 a.m. on Tuesday, June 9, 2020, at the St. Louis County Courthouse, Duluth, MN, to receive comment and consider the amendment of the Fee Schedule for various county services for the year 2020.

THEREFORE, BE IT RESOLVED, That the St. Louis County Board amends 2020 Fee Schedule for fees associated with Environmental Services and St. Louis County Heritage and Arts Center and on file in County Board File No. \_\_\_\_\_.

RESOLVED FURTHER, That the new fees shall be effective June 29, 2020.

DEPARTMENT/SERVICE	APPLICABLE STATUTE	LAST CHANGE	2016 FEE/CHRG	2017 FEE/CHRG	2018 FEE/CHRG	2019 FEE/CHRG	2020 FEE/CHRG	2020 Amended PROPOSED	Notes Explain any Fee Changes
TIPPING FEES - SOLID WASTE MANAGEMENT AREA									
- Municipal Solid Waste (MSW) - per 32 gal bag (1-6 bags)			1.28	1.28	1.09	1.09	1.09		
- MSW - per ton			48.00	48.00	44.50	44.50	52.50		
- MSW - loose waste (per yd 3)			6.41	6.41	5.70	5.70	7.42		
- MSW - compacted waste (per yd 3)			17.09	17.09	15.21	15.21	17.92		
- Demolition - per ton			42.00	42.00	42.00	42.00	46.00		
- Demolition - per yd 3			12.40	12.40	12.40	12.40	13.60		
- Municipal Utility Ash - per ton (0-7500 tons per customer)			30.00	30.00	30.00	30.00	30.00		
- Municipal Utility Ash - per yd 3 (0-7500 yd 3 per customer)			30.00	30.00	30.00	30.00	30.00		
- Municipal Utility Ash - per ton (more than 7500 tons per customer)			40.00	40.00	40.00	40.00	40.00		
- Municipal Utility Ash - per yd 3 (more than 7500 yd 3 per customer)			40.00	40.00	40.00	40.00	40.00		
- Appliances - per unit (limit 2 per day - vouchers needed for more than 2)			0.00	0.00	0.00	0.00	0.00		
- Appliances - per unit (in excess of 2 without a voucher)			9.00	9.00	9.00	9.00	9.00		
- Tires up to 24" - per unit in excess of 8 free per day with or without rims (non-commercial generated only)			1.50	1.50	1.50	1.50	1.50		
- Tires up to 24" - per unit with or without rims (commercial)			6.00	6.00	6.00	6.00	6.00		
- Tires up to 24" - in excess of 10 per load by the ton (residential)			115.00	115.00	115.00	115.00	115.00		
- Tires up to 24" - in excess of 10 per load by the ton (commercial)			115.00	115.00	115.00	115.00	300.00		
- Off-road tires up to 600# ea (max 6 tires per year)			185.00	185.00	185.00	185.00	185.00		
- Yard Waste - leaves, grass clippings, garden waste, etc.			0.00	0.00	0.00	0.00	0.00		
- Brush, Branches, Trees - per ton (residential)			0.00	0.00	0.00	0.00	15.00		
- Brush, Branches, Trees - per yd 3 (residential)			0.00	0.00	0.00	0.00	3.00		
- Brush, Branches, Trees - per ton (commercial/government)			30.00	30.00	30.00	30.00	50.00		
- Brush, Branches, Trees - per yd 3 (commercial/government)			7.50	7.50	7.50	7.50	12.50		
- Automobile Batteries - per unit			0.00	0.00	0.00	0.00	0.00		
- Used Motor Oil - per gallon			0.00	0.00	0.00	0.00	0.00		
- Scrap Metal - per ton			0.00	0.00	0.00	0.00	0.00		
- Used Antifreeze - per gallon			0.00	0.00	0.00	0.00	0.00		
- Light Industrial Waste - per 32 gal bag			1.28	1.28	1.28	1.28	1.28		
- Industrial Waste - mixed - per ton			48.00	48.00	48.00	48.00	48.00		
- Industrial Waste - mixed - per yd 3			24.00	24.00	24.00	24.00	24.00		
- Heavy Industrial Waste - casting sand, etc. - per ton			22.00	22.00	22.00	22.00	22.00		
- Heavy Industrial Waste - casting sand, etc. - per yd 3			22.00	22.00	22.00	22.00	22.00		
- Beneficial Use Material - per ton			15.00	15.00	15.00	15.00	15.00		
- Asbestos - per yd 3			62.00	62.00	62.00	62.00	62.00		
- Fluorescent Bulbs - 4' only, limit 6 per load (residential only)			0.00	0.00	0.00	0.00	0.00		
- Fluorescent Bulbs - 4' only, per unit in excess of 6 per load (from resid. sources and for all tubes from commercial sources)			0.75	0.75	0.75	0.75	0.75		
ENVIRONMENTAL SERVICES (Continued)									
- Automobile Oil Filters - limit 6 per day			0.00	0.00	0.00	0.00	0.00		
- Automobile Oil Filters - per unit in excess of 6 per day			1.50	1.50	1.50	1.50	1.50		
- Electronics - per unit (computers, TV's, etc - resid. only, 19" or less)			3.00	3.00	3.00	3.00	3.00		
- Electronics - per unit (computers, TV's, etc - residential over 19")			6.00	6.00	6.00	6.00	6.00		
- Electronics - per unit (Free Brands per E-Waste Agreement)			0.00	0.00	0.00	0.00	0.00		
- Mattresses/box springs - per unit			9.00	9.00	9.00	9.00	9.00		Aligns program revenues 13.50 to program costs
- Mattresses/box springs - per ton			250.00	250.00	250.00	250.00	250.00		Aligns program revenues 375.00 to program costs
- Petroleum Contaminated Soil - per ton			22.00	22.00	22.00	22.00	22.00		

- Cleanup fee for Contaminated Loads/per hr	75.00	75.00	75.00	75.00	75.00
- Natural Disaster MSW			44.50	44.50	52.50
- Natural Disaster Demo			42.00	42.00	46.00
- Natural Disaster Appliances			9.00	9.00	9.00
- Natural Disaster Bulky Items			45.00	45.00	45.00
TIPPING FEES OUT OF SOLID WASTE MANAGEMENT AREA					
- MSW - per 32 gal bag (1-6 bags)	2.57	2.57	2.38	2.38	2.38
- MSW - per ton	73.09	73.09	69.59	69.59	85.23
- MSW Loose Waste - per yd 3	12.82	12.82	11.40	11.40	13.95
- MSW Compacted Waste - per yd 3	34.19	34.19	30.42	30.42	37.25
- Demolition - per ton	56.00	56.00	56.00	56.00	61.50
- Demolition - per yd 3	18.40	18.40	18.40	18.40	20.20
- Municipal Utility Ash - per ton (0-7500 tons per customer)	40.00	40.00	40.00	40.00	40.00
- Municipal Utility Ash - per yd 3 (0-7500 yd 3 per customer)	40.00	40.00	40.00	40.00	40.00
- Municipal Utility Ash - per ton (more than 7500 tons per customer)	50.00	50.00	50.00	50.00	50.00
- Municipal Utility Ash - per yd 3 (more than 7500 yd 3 per customer)	50.00	50.00	50.00	50.00	50.00
- Appliances - per unit	9.00	9.00	9.00	9.00	9.00
- Tires up to 24" - per unit with or without rims (residential)	3.00	3.00	3.00	3.00	3.00
- Tires up to 24" - per unit with or without rims (commercial)	12.00	12.00	12.00	12.00	12.00
- Off-road tires up to 600# ea - per ton (max 6 tires per year)	247.50	247.50	247.50	247.50	247.50
- Yard Waste - leaves, grass clippings, garden waste, etc.	0.00	0.00	0.00	0.00	0.00
- Brush, Branches, Trees - per ton	30.00	30.00	30.00	30.00	60.00
- Brush, Branches, Trees - per yd 3	7.50	7.50	7.50	7.50	15.00
- Automobile Batteries - per unit	0.00	0.00	0.00	0.00	0.00
- Used Motor Oil - per gallon	0.00	0.00	0.00	0.00	0.00
- Scrap Metal - per ton	0.00	0.00	0.00	0.00	0.00
- Industrial Waste - mixed - per ton	96.00	96.00	96.00	96.00	96.00
- Industrial Waste - mixed - per yd 3	45.00	45.00	45.00	45.00	45.00
- Heavy Industrial Waste - casting sand, etc. - per ton	32.00	32.00	32.00	32.00	32.00
- Heavy Industrial Waste - casting sand, etc., per yd 3	32.00	32.00	32.00	32.00	32.00
- Asbestos - per yd 3	93.00	93.00	93.00	93.00	93.00
- Flourescent Bulbs - per unit (4' only)	1.50	1.50	1.50	1.50	1.50
- Automobile Oil Filters - per unit	1.50	1.50	1.50	1.50	1.50
- Electronics - computers, TV's, etc. 19" or less (residential only)	12.00/unit	12.00/unit	12.00/unit	12.00/unit	12.00/unit
- Electronics - computers, TV's, etc. over 19" (residential only)	18.00/unit	18.00/unit	18.00/unit	18.00/unit	18.00/unit
- Mattresses/box springs - per unit	16.50	16.50	16.50	16.50	16.50
- Mattressesbox springs - per ton	500.00	500.00	500.00	500.00	500.00
- Petroleum Contaminated Soil - per ton	32.00	32.00	32.00	32.00	32.00
- Cleanup fee for Contaminated Loads/per hr	75.00	75.00	75.00	75.00	75.00
* MN State Statute 115A.919 Fee - Municipal Solid Waste (MSW) - per 32 gal bag (1-6 bags)					
	0.00	0.00	0.22	0.22	0.22
** MN State Statute 115A.919 Fee - MSW - per ton					
	0.00	0.00	5.50	5.50	7.50
*** MN State Statute 115A.919 Fee - MSW - loose waste (per yd 3)					
	0.00	0.00	0.83	0.83	1.11
**** MN State Statute 115A.919 Fee - MSW - compacted waste (per yd 3)					
	0.00	0.00	2.20	2.20	2.88
HAULER FEES					
- Annual MSW Hauler License Fee - per business	50.00	50.00	50.00	50.00	50.00

Aligns program revenues  
3.66 to program costs  
Aligns program revenues  
131.07 to program costs  
Aligns program revenues  
21.45 to program costs  
Aligns program revenues  
57.28 to program costs

Aligns program revenues  
24.00 to program costs  
Aligns program revenues  
725.00 to program costs

- Annual MSW Vehicle License Fee - per business	25.00	25.00	25.00	25.00	25.00
Late Fees					
- 1-7 days	Add 5%	Add 5%	Add 5%	Add 5%	Add 5%
- 8-30 days	Add 10%	Add 10%	Add 10%	Add 10%	Add 10%
- More than 30 days	Add 10%	Add 10%	Add 10%	Add 10%	Add 10%
ENVIRONMENTAL SERVICES (continued)					
FACILITY LICENSE FEES					
- Initial Application Fee	1500.00	1500.00	1500.00	1500.00	1500.00
- Annual Renewal	700.00	700.00	700.00	700.00	700.00
DISPOSAL SURCHARGE FEES					
- Disposal of mixed municipal solid waste generated outside of Solid Waste Service Area - per cubic yard	7.50	7.50	7.50	7.50	7.50
- Demolition and Industrial Waste Disposal - per cubic yard					
Unlined facilities without County approved recycling programs	0.50	0.50	0.50	0.50	0.50
Unlined facilities with County approved recycling programs	0.38	0.38	0.38	0.38	0.38
Lined facilities without County approved recycling plan	0.38	0.38	0.38	0.38	0.38
Lined facilities with County approved recycling programs	0.25	0.25	0.25	0.25	0.25
Late Fees					
- 1-7 days	Add 5%	Add 5%	Add 5%	Add 5%	Add 5%
- 8-30 days	Add 10%	Add 10%	Add 10%	Add 10%	Add 10%
- More than 30 days	Add 10%	Add 10%	Add 10%	Add 10%	Add 10%
HAULER COLLECTED VOLUME BASED SERVICE FEE					
(South Solid Waste Service Area - Based on Weekly Service Level)					
Per pickup fees:					
- 20 gallons	0.017	0.017	0.017	0.017	0.017
- 25 gallons	0.22	0.22	0.22	0.22	0.22
- 32 gallons	0.28	0.28	0.28	0.28	0.28
- 35 gallons	0.3	0.3	0.3	0.3	0.3
- 40 gallons	0.35	0.35	0.35	0.35	0.35
- 45 gallons	0.38	0.38	0.38	0.38	0.38
- 64 gallons	0.54	0.54	0.54	0.54	0.54
- 96 gallons	0.82	0.82	0.82	0.82	0.82
Late Fees					
- 1-7 days	Add 5%	Add 5%	Add 5%	Add 5%	Add 5%
- 8-30 days	1995 Add 10%	Add 10%	Add 10%	Add 10%	Add 10%
- More than 30 days	Add 10%	Add 10%	Add 10%	Add 10%	Add 10%
RECYCLING PROCESSING FACILITY CHARGES					
- In-County drop off recyclables - per ton	54.00	54.00	54.00	54.00	75.00
- Out of County drop off recyclables - per ton	68.00	68.00	68.00	68.00	95.00
North Solid Waste Service Area**					
- First Residential/Seasonal/Recreational Parcel		60.00	60.00	60.00	70.00
- Second Residential/Seasonal/Recreational Parcel		20.00	20.00	20.00	25.00
- Commercial Parcels					
EMV \$1,000 to \$50,000	70.00	70.00	70.00	70.00	70.00
EMV \$50,001 to \$100,000	105.00	105.00	105.00	105.00	105.00
EMV \$100,001 to \$150,000	140.00	140.00	140.00	140.00	140.00
EMV \$150,001 to \$250,000	175.00	175.00	175.00	175.00	175.00

EMV \$250,001 to \$500,000	210.00	210.00	210.00	210.00	210.00
EMV \$500,001 to \$1,000,000	245.00	245.00	245.00	245.00	245.00
EMV \$1,000,001 to \$2,000,000	285.00	285.00	285.00	285.00	285.00
EMV over \$2,000,000	325.00	325.00	325.00	325.00	325.00
South Solid Waste Service Area**					
- Residential Parcels	25.00	25.00	25.00	25.00	25.00
- Seasonal/Recreational Parcels	12.50	12.50	12.50	12.50	12.50
- Commercial Parcels					
EMV less than \$50,000	25.00	25.00	25.00	25.00	25.00
EMV \$50,001 to \$100,000	30.00	30.00	30.00	30.00	30.00
EMV \$100,001 to \$150,000	36.00	36.00	36.00	36.00	36.00
EMV \$150,001 to \$200,000	45.00	45.00	45.00	45.00	45.00
EMV more than \$200,000	54.00	54.00	54.00	54.00	54.00
ENVIRONMENTAL SERVICES (continued)					
**Parcels with less than \$1,000 in improvements will not be charged a service fee					
ON-SITE SEWAGE SYSTEMS					
ISTS Permits					
- ISTS Permit Non-shoreland	300.00	300.00	300.00	300.00	300.00
- ISTS Permit Shoreland	520.00	520.00	520.00	520.00	520.00
- ISTS Variance	400.00	400.00	400.00	400.00	400.00
- Holding Tank	250.00	250.00	250.00	250.00	250.00
- Operating Permit Renewal	60.00	60.00	60.00	60.00	60.00
- Greywater w/o Pressure	100.00	100.00	100.00	100.00	100.00
- Greywater w/Pressure	255.00	255.00	255.00	255.00	255.00
- Privy	100.00	100.00	100.00	100.00	100.00
- Privy and Greywater w/o Pressure	150.00	150.00	150.00	150.00	150.00
- ISTS Component Addition/Replacement	200.00	200.00	200.00	200.00	200.00
Compliance Inspection Review and Processing Fee	30.00	30.00	30.00	30.00	30.00
- ISTS Permit-Commercial or Multiple Dwellings < 2,500 gpd	500.00	750.00	750.00	750.00	750.00
- ISTS Permit-Commercial or Multiple Dwellings 2,500 gpd - < 5,000 gpd	750.00	1000.00	1000.00	1000.00	1000.00
- ISTS Permit-Commercial or Multiple Dwellings 5,000 gpd - < 10,000 gpd	1500.00	1500.00	1500.00	1500.00	1500.00
Late Fee (Septic System)	UP TO 2X	UP TO 2X	UP TO 2X	UP TO 2X	UP TO 2X
- Site Evaluation	250.00	250.00	250.00	250.00	250.00

\*\*ON-SITE SEWAGE SYSTEMS WILL BE INCLUDED IN THE PLANNING DEPT FEE SCHEDULE STARTING 2021

DEPARTMENT/SERVICE	APPLICABLE STATUTE	LAST CHANGE	2017 FEE/CHRG	2018 FEE/CHRG	2019 FEE/CHRG	2020 FEE/CHRG	2020 Amended PROPOSED	Notes Explain any Fee Changes
<b>DEPOT</b>								
Special Events								
- Chairs per chair (non-tenant)							5.00	
- Tables per table (non-tenant)							10.00	
- Chair Damage Replacement							50.00	
- Table Damage Replacement							75.00	
- Extra Trash per 30 yard dumpster							500.00	
- Evening Rental: Great Hall (non-tenant)							800.00	After 5pm-11pm
- Late Night Rental per hour (non-tenant)							150.00	After 11 pm - 8 am, minimum of one hour
- Day Rental Great Hall (non-tenant)							1,000.00	10 am - 5 pm (must be open to public simultaneously)
- Board Room Rental per hour (non-tenant)							50.00	minimum of one hour
- Extra key cards for event personnel							10.00	
- Full Facility Rental per evening							3,000.00	SLCHS exhibits Spaces, DAI Exhibit Spaces, bathrooms, professional security team after 5pm - 11 pm (Only with express permission from the tenants, may include a fee, may include security)
- Full Facility Rental per day							10,000.00	SLCHS exhibits, DAI Exhibit Spaces, bathrooms, professional security team 8am - 5pm (Only with express permission from the tenants, may include a fee, may include security)
- Full Facility Rental Late Night per hour							500.00	After 11pm - 8am
- Farmer's Market Stall 10X10							50.00	
- Electrical for Farmer's Market Stall							25.00	
- Vendor's: regular per day							75.00	For-profits, One-offs
- Vendors: special per day							25.00	Non-profits, partners (partners= tenants, former tenants like DSSO and Matinee Musicale, must be open on weekends)
- Long Term Pop-up per month							300.00	Up to four at a time
- Long Term pop-up per month, peak season							600.00	Up to four at a time
- Extra Cleaning per hour							45.00	Based on Oneida's overtime rates, minimum of one hour
- Special Cleaning							60.00	includes floor waxing/buffing, after hours snow removal, kitchen cleanout, ladders/equipment stowage, minimum of two hours
- False Alarms							250.00	Based on City of Duluth PD
- Visitor's Desk After hours per hour							20.00	minimum of four hours
Tours								
- General Tours, per adult							8.00	
- General Tours, per child							5.00	
- Specialty Tours, per adult							10.00	
- Specialty Tours, per child							8.00	
- School Tours, per child K-5							4.00	
- School Tours, per child 6-12							5.00	
- Chaperone Rate							0.00	
- General Admission							14.00	donation-based in 2021/July 2020?
- Donations								
- Luxury Tours							25.00	
- Other Damages							Cost of Repair/Replacement	

# BOARD LETTER NO. 20 - 190

## CENTRAL MANAGEMENT & INTERGOVERNMENTAL COMMITTEE

JUNE 9, 2020 BOARD AGENDA 9:45 A.M.  
~~MAY 26, 2020 BOARD AGENDA 9:40 A.M.~~  
PUBLIC HEARING

**DATE:** May 26, 2020

**RE:** Public Hearing, Findings of Fact, Conclusions, and Order for SW2, LLC/Timothy R. Westby Cartway Petition (Unorg. Township 63-15)

**FROM:** Kevin Gray  
County Administrator

James T. Foldesi  
Public Works Director/Highway Engineer

### **RELATED DEPARTMENT GOAL:**

To provide for efficient, effective government.

### **ACTION REQUESTED:**

In accordance with Board Resolution No. 20-135 adopted on March 10, 2020, the St. Louis County Board, acting as the Town Board of Unorganized Township 63-15, is requested to hear public and staff testimony as scheduled on May 26, 2020, and then to consider and to act upon Findings of Fact, Conclusions, and Order regarding the Cartway Petition of Timothy R. Westby on behalf of SW2, LLC.

### **BACKGROUND:**

On or about July 19, 2019, and revised in January 2020, St. Louis County Administration received a cartway petition from Timothy R. Westby, on behalf of SW2, LLC, a Minnesota Limited Liability Company, regarding property it owns in the plat of Birch Grove Lake Vermilion. Said plat is located in Section 33 of Unorganized Township 63 North, Range 15 West in St. Louis County. The SW2 property contains at least five (5) acres of land which has no established access to it from a public road except over the lands of others or by a navigable waterway. The petitioner is requesting that a cartway be established two (2) rods in width across several parcels of private property.

In accordance with Minn. Stat. § 164.08 and the County Board Policy pertaining to Cartway Procedures in Unorganized Townships, a hearing on the petition has been scheduled for the County Board meeting of May 26, 2020. At this hearing, testimony will be provided that the petitioner's land meets the statutory requirement for a cartway, their petition is sufficient, the affected property owners were provided sufficient notice, and the location and route of the proposed cartway is reasonable and sufficiently

defined. Also at this hearing, all parties interested in the matter will be given adequate opportunity to be heard.

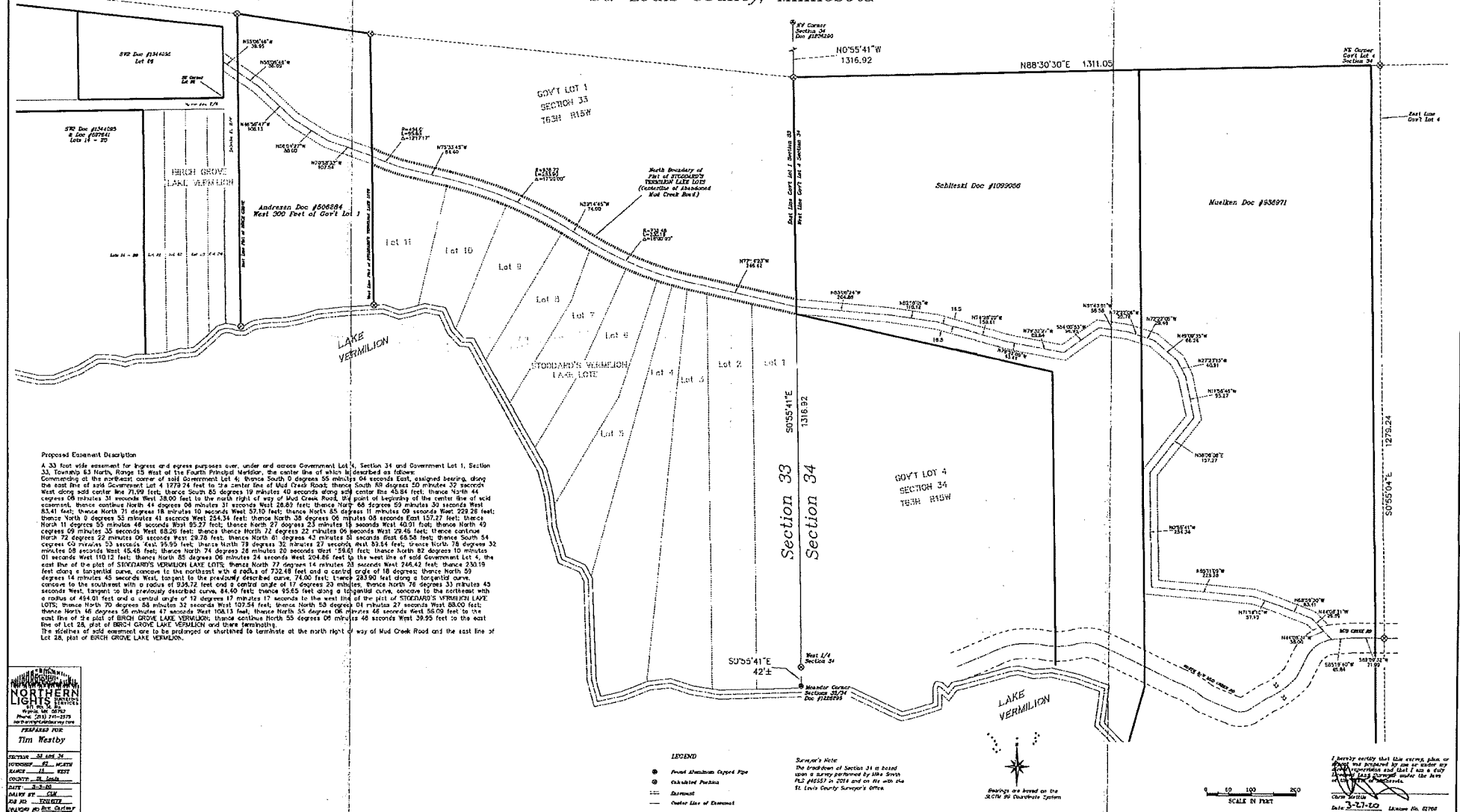
Testimony and documentary evidence will be provided at the hearing regarding Damages and Costs related to the processing and granting of this cartway. Damages include the diminished value of the burdened property. Costs include the costs of professional services, appraisal fees, and compensation for time spent on the project by County staff.

**RECOMMENDATION:**

It is recommended that, upon the conclusion of the hearing, the St. Louis County Board determine and act on the following matters:

- a. The sufficiency of the petition.
- b. The exact location of the cartway.
- c. The need for any additional legal survey to establish the exact location of the cartway.
- d. Determination of Damages and Costs to establish the cartway based on testimony and documentary evidence presented.
- e. Consider and approve the Findings of Fact, Conclusions, and Order as prepared and presented by the County Attorney.

*For Tim Westby*  
**EASEMENT DESCRIPTION EXHIBIT**  
*Across Part of Government Lot 1, Section 33 and  
Part of Government Lot 4, Section 34  
Township 63 North, Range 15 West  
St. Louis County, Minnesota*





1450

ANDREASEN  
GRANT C

ANDREASEN  
ROGER C

IESKE  
ROBERT  
BRIAN

BURLOWSKI  
JEAN RAE

777

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SIA S  
JANICE

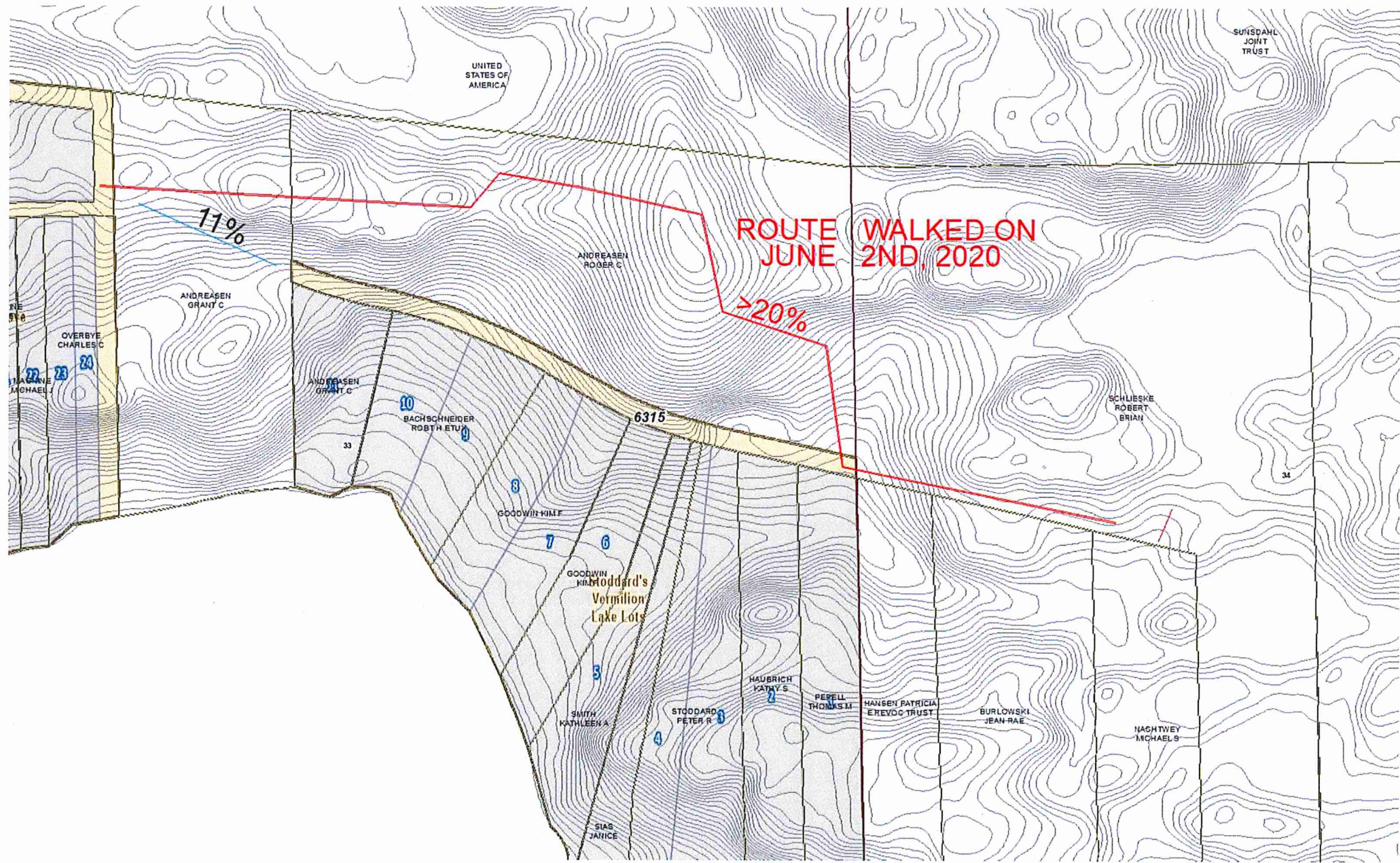
Hyb

64°

500 ft

47.89362, -92.24575

Elevation 711 ft



**From:** [Chris Pinkert](#)  
**To:** [Brian Fritsinger](#); [Brenda George](#); [Phil Chapman](#)  
**Subject:** Fwd: Tuesday June 2 Site visit/walk through  
**Date:** Wednesday, June 3, 2020 3:05:13 PM  
**Attachments:** [westby.pdf](#)  
[ATT00001.htm](#)

---

Please include Ms. Klun's email and attached letter with the Board Packet for the Westby matter.

Begin forwarded message:

**From:** Kelly Klun <kelly.klun@klunlaw.com>  
**Date:** June 2, 2020 at 4:57:58 PM CDT  
**To:** Trenti Law Firm <scn@TrentiLaw.com>, Chris Pinkert <PinkertC@StLouisCountyMN.gov>  
**Cc:** Eric Fallstrom <FallStromE@StLouisCountyMN.gov>, Nick Stewart <StewartN@StLouisCountyMN.gov>, Patty Thornton <patty@trentilaw.com>  
**Subject:** RE: Tuesday June 2 Site visit/walk through

WARNING: External email. Please verify sender before opening attachments or clicking on links.

All,

In regards to the site visit today, the grades on the proposed route were, at points, 23%. This far exceeds any acceptable standards for road slope. This is not buildable without switchbacks nor does it allow for the ability to traverse in the winter.

Furthermore, in review the file I came across this demand letter. The parties negotiations ceased after this correspondence in October 2019. Please find the demand letter relative to the back route. Roger Andreasen requested \$112,000 for a property whose tax assessed value is \$22,200.00. Grant Andreasen requested \$33,600 for a property whose tax assessed value is \$88,200.00.

This route lacks buildability and the damages demanded will amount in extortion of my client. I urge the County to take these concerns into account in making its recommendation.

Please share this correspondence with the County Board.

Kelly

# TRENTI

## LAW • FIRM

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Maria K. Silcox  
Patricia L. G. Thornton

### OF COUNSEL

Darold E. Persson

October 18, 2019

Via email to L. [kelly.klun@klunlaw.com](mailto:kelly.klun@klunlaw.com)

Kelly M. Klun, Atty at Law  
Klun Law Firm  
P.O. Box 240  
Ely, MN 55731

RE: Westby-Andreasen/Schlieske  
Our File No.: 64,114

Dear Ms. Klun:

Here are the thoughts/ideas that my clients, Grant Andreasen and Bobby Schlieske, have in regards to a private easement with Tim Westby (SW2 LLC).

1. Please see attached sketch of proposed route across the properties of resort, Schlieske and Andreasens. It is the preference of Schlieske that the easement stays as close as possible to the south boundary line of the westerly portion of his parcel, and it is the preference of Andreasens that it stay as close as possible to their north line. This explains the northward jog in the sketch once it heads west from the Schlieske parcel. Note that the map doesn't extend all the way to the west but the general intent is that it would continue to the west on the same trajectory as shown on the Roger Andreasen parcel.
2. Easement payment. My clients are willing to work with payment of an agreed upon price based on square feet taken with the rate of \$7 per square feet. Based on rough estimates of distances, this would result in the following prices based on a 16' wide road. Actual prices would be based on a field measurement.

<u>Parcel</u>	<u>Est feet</u>	<u>Est sq feet</u>	<u>Price/sq ft</u>	<u>Payment</u>
Resort	550	8800	7.00	\$61,600.00
Schlieske	1000	16000	7.00	\$112,000.00
Andreasen, R	1000	16000	7.00	\$112,000.00
Andreasen, G	300	4800	7.00	\$33,600.00

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++ Real Property Law Specialist Certified by the Minnesota State Bar Association

\* Civil Trial Specialist Certified by the Minnesota State Bar Association

3. Land Survey. Westby would pay all costs of survey and legal description with the easement description including a start and ending point for each of the 4 parcels.
4. Construction Costs. Westby would pay all related costs to build a gravel-only access road including any permit or similar costs.
5. Legal Costs. Westby to pay all legal costs related to drafting of the easement and filing of same.
6. Maintenance costs. Westby to pay all costs for maintenance of the road.
7. Road Easement. Westby's property would be provided a 16' wide permanent, non-exclusive easement across the properties of my clients. Likewise, Grant Andreasen would have a similar easement across the Roger Andreasen and Schlieske parcels, and Roger Andreasen would have a similar easement across the Schlieske parcel. This presupposes a similar access for all across the resort property.
8. Gate. A gate would be installed at Westby's expense at the east end of the easement. All property owners would have either use of a common key or code, or put their own lock on the gate.
9. Signage. Westby to provide signage at 3 locations along the road stating: "Private driveway, No Trespassing".
10. Speed limit. A maximum speed of 10 mph enforced and would be posted at each end of the roadway at Westby expense.
11. Travel. The use of the road would be limited to those with permission by the terms of the easement and the invitees of the benefitted owners. No joy-riding will be permitted on the road with motorized vehicles of any type. Owners can use the road with all types of motorized vehicles for purpose of access to and from the Owner's property, but every effort will be made to minimize noise from the vehicles. The road may not be used to develop or support any commercial business.
12. Legal fees. Except as stated above, each party would pay their own costs and legal fees except Westby would reimburse Grant Andreasen \$6500 for legal fees incurred in initial dealings and negotiations relative to the proposed cartway.
13. The cartway petition would be dismissed with prejudice.

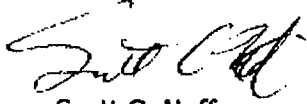
My clients recognize that the negotiation of an easement entails far more details than the simple purchase of land. It requires the ability of the parties to work together in resolution of these issues and many additional ones. They are willing to negotiate all details of this proposal.

Kelly Klun  
October 18, 2019  
Page 3

Please review with your client and advise.

Sincerely,

TRENTI LAW FIRM



Scott C. Neff

SCN:plgt  
Enclosures

PS: This has been shared with Mark Weir, attorney for Billy Muelken. I am advised Billy is in agreement with this proposal.

2:51

LTE



ON X HUNT



May 29, 2020

To: Scott C. Neff, Attorney at Law  
Trenti Law firm  
Virginia, MN 55792

from: Grant Andreassen

Fax #: 218-749-4308

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(Top 3 inches reserved for recording data)

STATUTORY SHORT FORM POWER OF ATTORNEY  
MINNESOTA STATUTES, SECTION 523.23

STATUTORY SHORT FORM POWER OF ATTORNEY  
MINNESOTA STATUTES, SECTION 523.23

Before completing and signing this form, the principal must read and initial the IMPORTANT NOTICE TO PRINCIPAL that appears after the signature lines in this form. Before acting on behalf of the principal, the attorney(s)-in-fact must sign this form acknowledging having read and understood the IMPORTANT NOTICE TO ATTORNEY(S)-IN-FACT that appears after the notice to the principal.

PRINCIPAL (Name and Address of Person Granting the Power)

ROGER C. ANDREASEN  
4318 XENIA AVENUE NORTH  
CRYSTAL MN 55422

ATTORNEY(S)-IN-FACT  
(Name and Address)

GRANT C. ANDREASEN  
1802 LAKEVIEW TERRACE  
ORNO MN 55356

SUCCESSOR ATTORNEY(S)-IN-FACT (Optional)

To act if any named attorney-in-fact dies, resigns, or is otherwise  
unable to serve (Name and Address)

First Successor n/a

Second Successor n/a

NOTICE: If more than one attorney-in-fact is designated to act  
at the same time, make a check or "x" on the line in front of one  
of the following statements:

- Each attorney-in-fact may independently exercise the  
powers granted.
- All attorneys-in-fact must jointly exercise the powers granted.

EXPIRATION DATE (Optional)

A  
Use Specific Month Day Year Only

I (the above named Principal) appoint the above named Attorney(s)-in-Fact to act as my attorney(s)-in-fact

**FIRST:** To act for me in any way that I could act with respect to the following matters, as each of them is defined in Minnesota Statutes, section 523.24:

(To grant to the attorney-in-fact any of the following powers, make a check or "x" on the line in front of each power being granted. You may, but need not, cross out each power not granted. Failure to make a check or "x" on the line in front of the power will have the effect of deleting the power unless the line in front of the power of (N) is checked or "x"-ed.)

Check or "x"

XX (A) real property transactions;  
I choose to limit this power to real property in ST LOUIS County, Minnesota, described as follows: (Use legal description. Do not use street address.)  
**Gov Lot 1, Section 33, Township 63 North, Range 15 EXCEPT the Westerly 300 feet thereof and EXCEPT that part platted as Stoddard's Vermillion Lake Lots**

**SPECIFICALLY, I AUTHORIZE MY ATTORNEY-IN-FACT TO APPEAR ON MY BEHALF BEFORE THE ST LOUIS COUNTY BOARD OF COUNTY COMMISSIONERS CONCERNING THE CURRENT CARTWAY PROCEEDINGS PETITIONED BY SW2, LLC AND TO MAKE DECISIONS ON MY BEHALF AS TO LOCATION OF ANY CARTWAY ON, OVER OR ALONG MY PROPERTY.**  
(If more space is needed, continue on the back or on an attachment.)

- (B) tangible personal property transactions;
- (C) bond, share, and commodity transactions;
- (D) banking transactions;
- (E) business operating transactions;
- (F) insurance transactions;
- (G) beneficiary transactions;
- (H) gift transactions;
- (I) fiduciary transactions;
- XX (J) claims and litigation **AS STATED ABOVE, INCLUDING THE RIGHT TO EXPRESS MY OBJECTIONS TO THE LOCATION OF THE CARTWAY AS PROPOSED BY SW2 LLC;**
- (K) family maintenance;
- (L) benefits from military service;
- (M) records, reports, and statements;
- (N) all of the powers listed in (A) through (M) above and all other matters, other than health care decisions under a health care directive that complies with Minnesota Statutes, chapter 145C.

**SECOND:** (You must indicate below whether or not this Power of Attorney will be effective if you become incapacitated or incompetent. Make a check or "x" on the line in front of the statement that expresses your intent.)

- XXX This power of attorney shall continue to be effective if I become incapacitated or incompetent.
- This power of attorney shall not be effective if I become incapacitated or incompetent.

**THIRD:** My attorney(s)-in-fact MAY NOT make gifts to the attorney(s)-in-fact, or anyone the attorney(s)-in-fact are legally obligated to support, UNLESS I have made a check or an "x" on the line in front of the second statement below and I have written in the name(s) of the attorney(s)-in-fact. The second option allows you to limit the gifting power to only the attorney(s)-in-fact you name in the statement. Minnesota Statutes, section 523.24, subdivision 8, clause (2), limits the annual gift(s) made to my attorney(s)-in-fact, or to anyone the attorney(s)-in-fact are legally obligated to support, to an amount, in the aggregate, that does not exceed the federal annual gift tax exclusion amount in the year of the gift.

  X   I do not authorize any of my attorney(s)-in-fact to make gifts to themselves or to anyone the attorney(s)-in-fact have a legal obligation to support.

       I authorize       n/a      , as my attorney(s)-in-fact, to make gifts to themselves or to anyone the attorney(s)-in-fact have a legal obligation to support.

**FOURTH:** (You may indicate below whether or not the attorney-in-fact is required to make an accounting. Make a check or "x" on the line in front of the statement that expresses your intent.)

  XXX   My attorney-in-fact need not render an accounting unless I request it, or the accounting is otherwise required by Minnesota Statutes, section 523.21.

       My attorney-in-fact must render [Monthly, Quarterly, Annual] accountings to me or [Name and Address ] during my lifetime, and a final accounting to the personal representative of my estate, if any is appointed, after my death.

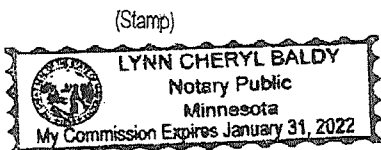
In Witness Whereof I have hereunto signed my name this this   28   day of   MAY  , 2020.

*Roger C. Andreassen*  
(Signature of Principal) **ROGER C. ANDREASEN**

**ACKNOWLEDGEMENT OF PRINCIPAL**

State of Minnesota, County of   Hennepin  

This instrument was acknowledged before me on   May 28  , 2020, by **ROGER C. ANDREASEN**.

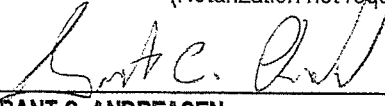


*Lynn Cheryl Baldy*  
(signature of notarial officer)  
Title (and Rank):   Head Teller    
My commission expires:   1-31-22    
(month/day/year)

**ACKNOWLEDGEMENT OF NOTICE TO ATTORNEY(S)-IN-FACT  
AND SPECIMEN SIGNATURE OF ATTORNEY(S)-IN-FACT.**

By signing below, I acknowledge I have read and understand the IMPORTANT NOTICE TO ATTORNEY(S)-IN-FACT required by Minnesota Statutes, section 523.23, and understand and accept the scope of any limitations to the powers and duties delegated to me by this instrument.

Specimen signature of Attorney(s)-in-Fact  
(Notarization not required)

  
\_\_\_\_\_  
GRANT C. ANDREASEN

THIS INSTRUMENT WAS DRAFTED BY:  
(insert name and address)

SCOTT C. NEFF, ATTORNEY AT LAW  
TRENTI LAW FIRM  
225 NORTH 1<sup>st</sup> STREET  
1000 LINCOLN BUILDING  
POST OFFICE BOX 958  
VIRGINIA, MN 55792

**IMPORTANT NOTICE TO THE PRINCIPAL**

**READ THIS NOTICE CAREFULLY.** The power of attorney form that you will be signing is a legal document. It is governed by Minnesota Statutes, chapter 523. If there is anything about this form that you do not understand, you should seek legal advice.

**PURPOSE:** The purpose of the power of attorney is for you, the principal, to give broad and sweeping powers to your attorney(s)-in-fact, who is the person you designate to handle your affairs. Any action taken by your attorney(s)-in-fact pursuant to the powers you designate in this power of attorney form binds you, your heirs and assigns, and the representative of your estate in the same manner as though you took the action yourself.

**POWERS GIVEN:** You will be granting the attorney(s)-in-fact power to enter into transactions relating to any of your real or personal property, even without your consent or any advance notice to you. The powers granted to the attorney(s)-in-fact are broad and not supervised. **THIS POWER OF ATTORNEY DOES NOT GRANT ANY POWERS TO MAKE HEALTH CARE DECISIONS FOR YOU. TO GIVE SOMEONE THOSE POWERS, YOU MUST USE A HEALTH CARE DIRECTIVE THAT COMPLIES WITH MINNESOTA STATUTES, CHAPTER 145C.**

**DUTIES OF YOUR ATTORNEY(S)-IN-FACT:** Your attorney(s)-in-fact must keep complete records of all transactions entered into on your behalf. You may request that your attorney(s)-in-fact provide you or someone else that you designate a periodic accounting, which is a written statement that gives reasonable notice of all transactions entered into on your behalf. Your attorney(s)-in-fact must also render an accounting if the attorney-in-fact reimburses himself or herself for any expenditure they made on behalf of you. An attorney-in-fact is personally liable to any person, including you, who is injured by an action taken by an attorney-in-fact in bad faith under the power of attorney or by an attorney-in-fact's failure to account when the attorney-in-fact has a duty to account under this section. The attorney(s)-in-fact must act with your interests utmost in mind.

**TERMINATION:** If you choose, your attorney(s)-in-fact may exercise these powers throughout your lifetime, both before and after you become incapacitated. However, a court can take away the powers of your attorney(s)-in-fact because of improper acts. You may

also revoke this power of attorney if you wish. This power of attorney is automatically terminated if the power is granted to your spouse and proceedings are commenced for dissolution, legal separation, or annulment of your marriage. This power of attorney authorizes, but does not require, the attorney(s)-in-fact to act for you. You are not required to sign this power of attorney, but it will not take effect without your signature. You should not sign this power of attorney if you do not understand everything in it, and what your attorney(s)-in-fact will be able to do if you do sign it.

Please place your initials on the following line indicating you have read this IMPORTANT NOTICE TO THE PRINCIPAL: RA

#### IMPORTANT NOTICE TO THE ATTORNEY(S)-IN-FACT

You have been nominated by the principal to act as an attorney-in-fact. You are under no duty to exercise the authority granted by the power of attorney. However, when you do exercise any power conferred by the power of attorney, you must:

- (1) act with the interests of the principal utmost in mind;
- (2) exercise the power in the same manner as an ordinarily prudent person of discretion and intelligence would exercise in the management of the person's own affairs;
- (3) render accountings as directed by the principal or whenever you reimburse yourself for expenditures made on behalf of the principal;
- (4) act in good faith for the best interest of the principal, using due care, competence, and diligence;
- (5) cease acting on behalf of the principal if you learn of any event that terminates this power of attorney or terminates your authority under this power of attorney, such as revocation by the principal of the power of attorney, the death of the principal, or the commencement of proceedings for dissolution, separation, or annulment of your marriage to the principal;
- (6) disclose your identity as an attorney-in-fact whenever you act for the principal by signing in substantially the following manner:      Signature by a person as "attorney-in-fact for (name of the principal)" or "(name of the principal) by (name of the attorney-in-fact) the principal's attorney-in-fact";
- (7) acknowledge you have read and understood this IMPORTANT NOTICE TO THE ATTORNEY(S)-IN-FACT by signing the power of attorney form.

You are personally liable to any person, including the principal, who is injured by an action taken by you in bad faith under the power of attorney or by your failure to account when the duty to account has arisen.

The meaning of the powers granted to you is contained in Minnesota Statutes, chapter 523. If there is anything about this document or your duties that you do not understand, you should seek legal advice.

# TRENTI

L A W • F I R M

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Robert H. Stephenson  
John A. Trenti (1927-2014)

**LEGAL ASSISTANTS**

Sharon K. Fredrickson  
Kristen M. Hennis  
Donna M. Leritz  
Maria K. Silcox  
Patricia L. G. Thornton

June 1, 2020

**RE: SW2, LLC proposed cartway**

Dear County Board Members, Mr. Pinkert, and Ms. Klun:

In her May 28, 2020 email, Attorney Kelly Klun writes that the Marketable Title Act does not apply to county or municipal interests. She also states that the private citizens cannot invoke the protections of the MTA. Both assertions are not true and not grounded in the law. The case she cites does not support these propositions and no authorities are referenced in support. It is important to examine that case and the Marketable Title Act to understand the history and implications of allowing a cartway on the “paper road”.

In Padrnos v. City of Nisswa, 409 N.W.2d 36 (Minn. App. 1987), the case cited by Ms. Klun, the Minnesota Court of Appeals addressed a landowner’s claim that as a result of the Marketable Title Act (“MTA”), a platted road between two portions of his land was “abandoned” and that he could assert a claim to the land.

In that matter, the Court determined that the landowner could not invoke the protections of the MTA as he did not have a claim of title to the land where the road existed. As well-established in Minnesota law, to invoke the protections of the MTA, one must have a claim of title to the underlying land. Further, this claim of title must have a source of title that is older than 40 years. The landowner in Padrnos did not have a claim of title, he instead only owned the land on either

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++ Real Property Law Specialist Certified by the Minnesota State Bar

Association

\*Civil Trial Specialist Certified by the Minnesota State Bar Association

side of the platted road as he negotiated a reduced purchase price excluding the land under the platted road when he noticed the easement was in existence. Further, in Padrnos, the court discussed the invocation of the MTA would likely also fail in that matter as the road was in frequent use as a route to the lake and thus its possession as a public route overcame the presumption of abandonment.

**How is the present matter different than the case in situation in Padrnos v. City of Nisswa?**

The present situation before the County Board is distinguished from Padrnos in two significant ways. First, the “paper road” in the present matter has never been used as a road, path, or any sort of easement. It is merely a dedication made at the time the plat was created (1958) that has never been established or recorded. As a result of never being established or recorded as a road or easement for over forty-years, it is legally presumed abandoned.

Second, our client Peter Stoddard, has a claim of title based on a source of title that is over forty years old. This being that the dedicator of the plat is his grandfather and he is one of the few heirs of the now deceased plat dedicator. Because possession was never taken to create a road or use the land for the purpose it was platted, under the MTA its title reverts back to the platter. It is well established in Minnesota law that the dedication of land to the public for streets, alleys, and public grounds, does not pass the fee simple title thereto, but only such an estate as the purpose of the trust requires, and that the fee remains in the dedicator and his grantees. Etzler v. Mondale, 123 N.W.2d 603, 609–10 (Minn. 1963); Schurmeier v. St. Paul and Pacific R.R. Co. 10 Minn. 82 (Gil. 59); City of Winona v. Huff, 11 Minn. 119 (Gil. 75).

As the original platter has passed, his rights of ownership goes to the heirs, which Mr. Stoddard is. As one of the few heirs, he has a claim of title. This is important to point out as

in the Padrnos case, the landowner did not have a claim of title to the land at issue and could not invoke the MTA.

**Why is an understanding of the Marketable Title Act important in the present matter?**

In the present matter before the board, the petitioner for the cartway is arguing that because there was an old dedication in the plat, it is somehow a persuasive and compelling reason why the cartway should exist there and why money damages are not a consideration. As a result of the petitioner's reliance on the paper road and the legal arguments surrounding the application of the Marketable Title Act, we find it useful to outline the operation of the MTA to aid in a better understanding in the decision before the board both as it decides the most appropriate route and as it addressed damages and how the creation of a cartway through wilderness will affect the landowners.

**What is the Marketable Title Act?**

The Marketable Title Act is Minnesota law codified in Minnesota Statutes, section 541.023. The purpose of the Marketable Title Act is to prevent ancient records from fettering the marketability of real estate. It is, in essence, a 40-year statute of limitations enacted to prevent old claims from interfering with the marketability of real estate and is a statutory rule to eliminate these "stale" real estate claims. Wichelman v. Messner, 83 N.W.2d 800 (1957).

**How does the Marketable Title Act operate?**

The MTA statute presumes abandonment of claims to title occurring more than 40 years prior to commencement of the action, unless within 40 years of the recording of the interest either: (a) there is renewal of the interest in the form of a "notice of claim" filed of record, or (b) the interest holder can establish "possession" that provides notice to the title owners of the possessors'

interest in the property and such possession is inconsistent with the title of the record owner. Minn. Stat. § 541.023. The MTA accomplishes this goal of relieving title from old claims by deeming sufficiently ancient claims (specifically, those more than 40 years old) “conclusively presumed to be abandoned,”<sup>1</sup> so that such claims do not fetter or interfere with title. The statute functions as a statute of limitations in that it requires stale demands to be asserted within a reasonable time after a cause of action has accrued, and prescribes a forty-year period within which a right may be enforced.

**What are examples of ancient title claims?**

Very simply, the statute provides that it applies to “every right” Minn. Stat. § 541.023, subd. 2(a)<sup>2</sup>. Easements, liens, dedications and encumbrances are examples of claims that the MTA provides a statute of limitations to. Basically, if an old claim has not been renewed nor in use within 40 years, the MTA presumes that claim to be conclusively abandoned. Minn. Stat. § 541.023, subd. 5. The statute specifically declares that: “the policy of the State of Minnesota that, except as herein provided, ancient records shall not fetter the marketability of real estate. . Minn. Stat. § 541.023, subd. 5 (emphasis added).

**What is the abandoned interest in the present matter?**

In the present petition for a cartway, the ancient interest is the paper road. It was dedicated on the plat, but this dedication has never been renewed, recorded nor put into operation through use as a road. Further, the “paper road” was never accepted or opened by government authority.

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<sup>1</sup> See Minn. Stat. § 541.023, subd. 5.

<sup>2</sup> Examples of rights, claim, and interests include such examples as leases, road easement, dedications to public use, liens, use restrictions, etc.

**What is a platted or “paper road”?**

A platted or paper road is, in essence, a “road” that only exists on paper. That is, that when the plat was created, a portion was dedicated to the public with the idea that it could eventually be a road. It is called a “paper road” as it only exists on paper and has never been used or developed.

**When was the plat made?**

In the present matter, the plat was created in 1958 by Roy Stoddard.

**How to determine if the interest is abandoned?**

An interest is presumed abandoned if it has not been renewed (the filing of notice) or if there is not possession of the interest and the 40 year period has lapsed. As the courts have outlined, the purpose of requiring this notice is to confirm the continuation of an interest in property and to eliminate stale claims that clutter the title. Wichelman, 250 Minn. at 98, 83 N.W.2d at 812. If the required notice preserving a claimant's right is not timely filed, it is conclusively presumed that the right has been abandoned. Minn. Stat. § 541.023; United Parking Stations, Inc. v. Calvary Temple, 101 N.W.2d 208, 210 (Minn. 1960).

Possession can overcome the conclusive presumption of abandonment. To overcome the MTA's conclusive presumption of abandonment, a person must be in possession of the real estate at the end of the 40-year period and must continue possession until an action is commenced. For possession to be relevant under the MTA, it must begin or have begun within 40-years from when the property interest was created and must continue until an action is commenced. Possession must be actual, open, and exclusive, and cannot be equivocal or ambiguous. Possession should be of the type that would put a prudent person on inquiry and provide notice of the possessor's interest in

the property. Township of Sterling v. Griffin, 244 N.W.2d 129, 133 (Minn. 1976). In this situation, there is no evidence of any possession or use of the paper road.

**What are other examples of the Marketable Title Act in Minnesota?**

The Minnesota Supreme Court in TOWNSHIP OF STERLING, v. GRIFFIN, 244 N.W.2d 129 (Minn. 1976) addressed the MTA to determine if Sterling Township had sufficiently established possession of an old road that ran over Mr. and Mrs. Griffins' property.

The Griffins owned a ten acre tract of land in which a township road had been established in 1889. The old road on the Griffins' property had been left to the elements and was overgrown. The court determined that the portion of the road on the Griffins' property was presumed abandoned under the MTA because the road had never been recorded in the County and possession was not established. The court outlined that abandonment is conclusively presumed if possession cannot be established. The court held that the nature of the possession required to overcome the presumption of abandonment must be open, exclusive and of a nature that a prudent person would be on notice that a road exists. The court held that the township could not show that possession was established as the road had not been physically constructed, was not in use, and was not maintained by the township as a road. The court ruled that even though the town road was legally established and had never been abandoned under traditional laws of abandonment, the road was presumed abandoned under subdivision 5 of the Marketable Title Act because the town had failed to record its claim with the register of deeds.

In HENLY v. COUNTY OF CHISAGO, 370 N.W.2d 920, 924 (Minn.Ct.App.1985), private landowners brought an action asking the court to issue a declaratory judgment on the issue of if an abandoned road interest is presumed abandoned under the Marketable Title Act.

In this matter the road had been established by common law dedication, but the interest was never recorded within 40 years of the road's establishment. The Court outlined that as a result of the failure to record, the conclusive presumption of abandonment exists unless the possession exception is established. It was outlined that possession of the road could be shown by public travel on the dedicated road and by acts of public officials in improving and maintaining the road. The Court ultimately determined that as a result of the maintenance of the road and consistent use of the road for commercial and recreational purposes, possession was established that overcame the presumption of abandonment.

In RAVENNA TOWNSHIP v. GRUNSETH, 314 N.W.2d 214 (Minn. 1981), the Minnesota Supreme Court reversed a district court's statutory dedication of a road and held that the Marketable Title Act applied. In this case, Ravenna Township brought an action to enjoin Grunseth from placing a gate across what it contended was a public road. The history of the "road" went back to 1873 as evidenced by surveys conducted at that time. In 1971, the area was platted and the "road" continued to be used by fishermen and hunters. The "road" was never recorded, though Ravenna Township argued it was dedicated for public use. Grunseth argued that the Marketable Title Act barred the township's claim.

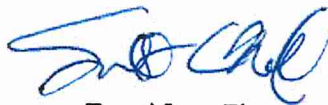
The Supreme Court stated that town roads are not exempt from the application of the MTA and that because the dedicated road had not been recorded, it was presumed abandoned. The Court additionally reviewed if the possession exemption was met and reviewed that the township had graded the "road" twice, had applied gravel, and that the road was used by members of the public. The Court, however, determined that this level of maintenance and possession was not sufficient

to overcome the presumption of abandonment, and ruled that the application of the MTA to the dedicated road deemed the road abandoned.

**Conclusion:**

It is important to understand the limits of the MTA in this situation. The “paper road” can be considered as a location for a cartway. However, several property owners testified that the “northern route” would be superior both in terms of being less disruptive and damaging to the wilderness-like neighborhood and would require less in monetary damages as it stays further away from the shallower lots in the plat. The Petitioner and the County have erred in the legal conclusion that no compensation is due to use the “paper road” as the dedication to the public use has been abandoned by operation of law. Just like in any other cartway or condemnation, just compensation must be paid to the rightful owner.

Sincerely,



Trenti Law Firm

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