

DEERWOOD TOWNSHIP
SPECIAL MEETING
TO AWARD DAMAGES FOR
SWANSON ROAD CARTWAY

October 28, 2025

7:00PM

Board of Supervisors
Scott Brix - Supervisor
Josh Thompson – Vice Chairman
David Gray – Chairman

Clerk – Carol Pundt
Treasurer – Amy Donovan
Road Overseer – Steve Reilly

Present: Scott Brix, David Gray, Josh Thompson, Carol Pundt

Absent: None

Public Attendance: Sarah Gray, Blake Lubinus, Ginny Knudson, Teresa Swanson, Justin Ham, Kim Hutchison, Greg Rono, Jerry Hutchison, Kelsey Murray

David Gray told the Board Scott Brix is on his way. There is a quorum of the Board with David Gray and Josh Thompson present this evening.

David Gray called the public hearing to order at 7:01pm with the Pledge of Allegiance. A motion was made by Josh Thompson and seconded by David Gray to approve the agenda. All voted in favor of the motion. Motion passed unanimously.

Scott Brix arrived at the meeting at 7:05pm.

A motion was made by Josh Thompson and seconded by David Gray to approve the revised final Resolution to award damages and the final cartway order forms presented to the Board. All voted in favor of the motion. Motion passed unanimously.

Review and Discuss Damage Assessment Appraisal: The Board and land owners were emailed the full damage appraisal for review before the Board meeting. Carol Pundt copied the summary (1st three pages of the report) which was given to the Board members as part of the Board packet for tonight's meeting. Josh Thompson noted the appraiser came up with \$0 damages. David Gray stated the rationale for the amount was pretty much verbatim. The damages are recommendations. If the Board wants to deviate from the appraisal there needs to be logical reasons to do so which would be subject to challenge. He also asked the Township lawyer to correct him if he said something that was incorrect during the meeting. The Township lawyer agreed.

Ginny Knudson, the Township attorney asked to speak to the Board. She read aloud the statute covering how the damage award is to be considered by the Board (as noted for the record in the audio recording). The statute is pretty broad. The statute does not state there

has to be an appraisal. It does not state a method for figuring out damages. It uses the reasonable facts that are in front of you. The petitioner did agree to pay for the appraisal by a licensed appraiser which is a benefit to the Board. The Board also agreed it would be a benefit. We do have appraisals that have been done with very thorough research. The appraisals are a fitting piece of evidence for the Board to utilize in making a decision for awarding damages.

David Gray asked if anyone on the Board had questions that they wanted to discuss. David Gray felt the appraiser laid out his rationale reasonably well. That there would be difficulty in disagreeing with the damage award assessment. If neither of you need to take more time we can open this meeting up for discussion and comments from the public. The Town Clerk has emailed the appraisal to the landowners affected. Hopefully, everyone has had a chance to see it. Does anyone wish to provide comments?

Public Comments: Kelsey Murray, attorney for Deerwood Storage LLC, Hutchison Excavating and Jerry and Kim Hutchison, said "yes, I do". She was at the public hearing on May 27th. She just wanted to point out that the Board mentioned the appraisals. She said she only received one appraisal. She was not sure where the other one was. She was not aware of two appraisals. Ginny Knudson said, "there was an appraisal done for your client's property. Kelsey Murray said, "you may have had my email address wrong". So, I am confused about what we are talking about here? The appraisals were literally received on Friday, which was when the Township received the appraisals. So, they have not had ample time to prepare a response. At the last meeting that we had it was apparent that there are damages associated with the cartway. So, the appraisal coming back with zero damages was quite shocking to us. There are also concerns regarding impartiality regarding the entire process. We have talked about this in length here about the changes that my client and the other residents will have to deal with by adding two more households onto this road. In the last 42 hours of reviewing the appraisal the appraiser seems to be of the understanding that the road would be taken over by the Township, that does not seem to be the understanding of us here. We believe the appraisal was done under a misunderstanding. Our understanding is that the road will remain private. Which will create a much different situation and circumstances that were not evaluated in the appraisal report. Beyond that I cannot reiterate that my clients specifically with a business, it is very important to them and their clientele that the business is on a private road and that they are the only people utilizing it. Her clients have reiterated to her they will need new gates, security cameras, etc. As of right now, other than the folks here and the people paying for access to their storage units, anyone else is not allowed to access the road. It is a private road. So, the appraisal reports mentioned that school busing opens up the road for public use. Everyone using the road has permission to do so by paying my clients to utilize their facility. In regard to the appraisal, it was a short turnaround that we had available to us. We just blanket disagree with all of it.

David Gray mentioned that in the beginning of your statement you had questions about impartiality. Could you elaborate? Who is or who is not being impartial? What are your

concerns? Kelsey Murray said that was something they would be digging into. She does not know if she has full permission to discuss that information regarding the situation. Even at the last meeting it seemed like we as landowners here have damages. We just have to figure out what they are. So, the fact that this absolute zero, not even a penny damage assessment is very concerning along with personal information given to me. David Gray mentioned that the Board cannot make any decision on information that is not shared with the Board. If there is something for basis of concern that is not shared with us we cannot consider that. We would be concerned as a Board if you thought there was a problem with a person. Jerry Hutchison spoke to the Board regarding the impartiality concerns. About the time the appraiser was hired, he was contacted by the real-estate agent regarding the property. He said he had talked to the appraiser and that if we did not take the \$1,000 or money offered at the time we would end up with a lot less once the appraiser completed his appraisal for damages. At the time he felt this was sort of surprising. This was either in late August or early September. At the time he did not feel it was a big deal, but when the appraisal came back with Zero I thought evidentially someone talked to someone. Scott Brix asked Jerry if the appraiser told you or the realtor did? The realtor claimed he had spoken with the appraiser....Jerry said, "correct". Before the appraiser even looked at it....Jerry said, "correct. The appraiser was hired the middle of August. Ginny Knudson informed the Board the appraiser needs to meet certain requirements. The facts are true and correct. He has no interest in the property. He is a licensed appraiser and follows the rules of the State of Minnesota. Ginny mentioned she is not saying the realtor agent did not say that to you.

Blake Lubinus spoke to the Board when we were here last, we were talking about a brand new fence for Deerwood Storage LLC which would be thousands of dollars for a very small parcel of land you are referring to maybe 100 feet. When you are looking at getting a new fence/gate when the measure of damage is what the real estate is worth prior to the taking and after you are looking at a lot less money. Now I do not know what the realtor meant, but all we have is here say. There is no transcript of the discussion. David Gray asked Jerry if the realtor claimed to have spoken to the appraiser...correct? Jerry, "I believe so". But I did not believe it was a big deal at the time. David Gray asked for thoughts. Josh Thompson mentioned he thought the discussion with the realtor would be hearsay. Ginny Knudson answered, "for sure".

Kelsey Murray mentioned at the very least this appraisal seems to be based on that the Township would be taking over the road, there is already a bus going down the road. There were a lot of overstatements that were not helpful in determining the situation. The bus goes down the Swanson Road for the safety of the children because to drop them off on Hwy 6 there is a bypass lane. The bus driver is not allowed to drop children off in the bypass lane. To suggest the road is open for anyone to use the information was not relayed adequately.

David Gray mentioned the storage business off the road if somebody wished to do business with them. How do they gain access? Do they use the road? Could a person drive back

there if they are curious or a potential customer? Is that correct? The answer was yes. If you sold corn or eggs or wood, people would have access to the seller's property. Kelsey Murray mentioned the storage unit property is not open 24 hours a day. It is not a staffed office. There also are no trespassing signs posted along the road. The people using it as a storage facility have paid to use the facility. There is a benefit to having a storage unit on a private road because there are only three households that use the road. All of this information was completely missing in the appraisal report.

David Gray asked if there was something in the appraisal summary where it is predicated on the road being annexed by the Township? Response... It was never mentioned. Could demonstrate where that assumption is? Teresa Swason mentioned the appraiser called on Saturday morning to ask if we could meet that afternoon which we all rearranged our schedules to accommodate. When we met with him he said he had just received information the day before. What he was looking for was what he was provided that this road was being changed from a private road to a public road. That was why he had been hired to do the appraisal. Blake Lubinus mentioned that is not untrue. David Gray mentioned it would be a public road which is not the same as a Township road. Teresa Swanson said, "the appraiser was under the impression that the road would be maintained by the Township". He was here because the road was going from a privately maintained road to a public-maintained road. All his references refer to a public maintained road. David Gray mentioned a cartway is a public maintained road. Kelsey Murry said the appraiser insinuated the maintenance would no longer be the responsibility of the owners. This would be the benefit they would be receiving from this entire process. David Gray asked if the appraiser laid that out as an argument he makes statements in the comments. David Gray does not see anything to that regard. Teresa Swanson mentioned that when they told him the road would not be maintained by the Township the appraiser mentioned he had not received adequate information from the night before. Kelsey Murray said, "if we had to boil it down in a very simplistic sense the idea that the new purchaser would completely get a 100% free ride on this beautiful road for some lake lots that he is planning to make a considerable amount of money, this damage appraisal seems completely off the mark. Especially following the conversation, we had at our last meeting". Again, we are flabbergasted regarding this entire appraisal. We have had only two days to prepare for this meeting. David Gray mentioned we did send out the appraisals as quickly as we had received them. We had been encouraging the appraiser to get the information to the Township for quite a while and apologize. You got it as soon as we got it.

Scott Brix mentioned he did not quite understand how something could be considered a public road that is a private road. The Township has no responsibility. David Gray said that is what Cascade Court was like before the Township annexed it. Josh Thompson said there are plenty of cartways within the Township that Deerwood Township does not maintain. Scott Brix still wanted to know who was going to pay for the maintenance of the road. He understands Jerry Hutchison's thoughts on this. David Gray asked if maintenance of the road should be part the assessment of damages? Scott Brix responded with yes. There has to be maintenance done on the road. Josh Thompson asked if there was a deal worked

out for the new property owner once the lots were sold off that the new owners would be paying something for the maintenance of the road? Blake Lubinus said, "Yes, at the last board meeting in May on the record we did require a restricted covenant conveyance where any purchaser would have to sign a maintenance agreement. Presently there is a verbal maintenance agreement between the landowners along the Swanson Road to share the cost of maintaining the roadway. Jerry Hutchison felt it would be better to come up with a written contract/recorded document so that it is binding. Blake Lubinus mentioned that R & R Landscaping is willing to consent to that. Blake Lubinus' office would be willing to be involved in preparing the document for everyone to review. With two more households on the road the maintenance costs would decrease per household. It is not unusual for restricted covenants to run concurrently. Ginny Knudson mentioned it would be a fantastic idea if all the property owners come up with an easement agreement on how to maintain the road. The Board cannot require as part of the cartway that someone has an easement it is common law that the owners cannot overly burden anyone with their easement use. So, that applies to cartways regarding heavy equipment that damage which is common law to repair that damage, but, that is a separate item. This is not part of the Board's damage assessment. The person that has cartway rights has the responsibility to reasonably use the cartway.

Blake Lubinus mentioned that the goal of the cartway is for public good. Cartways serve land locked properties with benefits. The extent that we have two parcels with two new residents with improvements to land that has stood vacant on a lake shore not used by anybody except hunters is to the public benefit. Kelsey Murray mentioned she agreed with that statement. But in order to have the benefit you have to compensate the private landowners. You can't just show up and say this is a beautiful hill everyone should be able to enjoy it. Right now it is a private road for the private landowners. So, what is the compensation? David Gray mentioned one of the statements I see in the summary from the appraiser says I know there is a gate to block access to the road. He assessed that the gate is not operational. Teresa Swanson told the Board the gate is operational. We could all drive down there right now and close it. It is a manual gate where you would have to get out of your vehicle to close or open it.

Scott Brix asked about the word public use. He could see that if there was access to a park for public use. He felt it would not be public use for two lots on a lake. Blake Lubinus said the court of appeals does not say that. A private landowner on a cartway has been interpreted by the legislature and the Supreme Court of Minnesota to be a public benefit. Ginny Knudson mentioned the statute specifically talks about damages to the affected landowners. Specific to this situation the Board is to weigh the benefits of the affected landowners versus the damages. David Gray mentioned one of the issues you raised was the maintenance of plowing the road. It is currently maintained and plowed on a handshake agreement. This would, if followed through, result in more people contributing which would be a lesser burden on the current landowners for maintenance of the road in the future. Kelsey Murray said, "Yes, more people to help pay, but there would be more use on the road which would wear out faster. It is not all sunshine and roses with more people

to pay for the maintenance. Also, the sense of the road being private is being taken away. Josh Thompson had a question for Ginny Knudson. What is the Township's liability in this decision. The petitioner has to pay any damages determined by the Board. Whatever costs the Township has incurred is also part of the damages. David Gray mentioned if we awarded damages that did not concur with the appraiser by exercising our authority in awarding different damages, they would be subject to challenges would it not? Ginny Knudson's response was that either side could appeal the damage award. The appraiser is making a damage recommendation to the Board. Ginny Knudson mentioned the appraiser's recommendation is a piece of evidence that it is not the final decision. It is a strong piece of evidence. It is done by a licensed appraiser. The Board can review the appraisal and determine if it is fair and reasonable. Keep in mind the Township can initiate a cartway. It is helpful to keep in mind similar conditions apply to private landlocked property for the Township itself would have to petition to the voters to ask for a cartway. It has the same impact. Is there damage because land is being taken for a different use that it was being used before. Is there an impact to their property because now there is a burden because there is a person using their property. David Gray mentioned from the Board's perspective that if we choose to and we do have the authority to do so, deviate from the recommendation which was given to us we need to be able to make a compelling reason why we are doing so. Also, the Board needs to feel comfortable defending it in court. We need to be able to articulate reasons based on fact. It can't be a moving of the spirit. Josh Thompson asked if it would go to court who would pay the Township's expenses? Are we on the hook as a Township? Ginny Knudson said that was a good question. She felt it would be the petitioner. Maybe Mr. Lubinus would have an opinion. Blake Lubinus has in the past challenged a cartway. The Township being the public entity would be required to defend it because it would be the Township's decision. The safe course would be to go with the damage appraisal because that is what is easily defended in court. At this time David Gray is not saying the Board should do that but it is the safer decision. If the Board deviates from the damage appraisal the Board needs to be able to articulate a good reason for doing so. We agreed to the assessment and here is why. The only appeal would be for the damages. There are not any more grounds for appeal at this time. Scott Brix asked what damages are being considered? The damage would be what is sustained by any owner. Reduction in land value would be considered in damages. Josh Thompson asked, "What are you asking for damages". What is the defensible rationale behind it?

Jerry Hutchison told the Board it was discussed before this meeting what they would be asking for damages. 5 owners splitting \$100,000 5 ways would amount if around \$13,000 per property owner. Then splitting \$40,000 between 3 property owners. The road was built and paved 20 years ago. \$100,000 was spent to pave the road. \$150,000 was spent to rebuild the road. Gates will also need to be installed for around \$35,000. In Jerry's opinion gaining access and selling lots by having a nice paved road enhances the value of the property being sold. Josh Thompson asked for clarification regarding 3 property owners, but only 2 are listed. Don Swanson at the end of the road is not a landowner along the proposed cartway. Damages are determined for each parcel individually.

Blake Lubinus responded the law is clear regarding the measure of damage analysis is before and after the cartway. I do not feel it is appropriate to determine the damage to include a tarred road. What is the dirt worth today and what was the dirt worth 20 years ago for this small section of the cartway. The appraiser has the best evidence. The appraiser talked to the people, evaluated that it is not just the landowners but also the customers of the business, employees and lots of people using that road.

Josh Thompson said that whatever decision the Board makes it needs to be the most defensible in court. David Gray mentioned that due diligence is to the taxpayers of the Township. Township incurred costs will be borne by the taxpayers of the Township. Scott Brix mentioned the landowners living along Swanson Road are taxpayers of the Township.

Kelsey Murray mentioned to the Board this is a private road. The situation will be totally different after the cartway is established by the Board. The landowners feel the property being taken for the cartway is worth more the \$0. When the lots are listed for sale and I know when it is on a cartway, asphalted road, etc. To go from a private road with signs everywhere to just open it up to everyone. There are big differences here. We do absolutely do not agree with the damage appraisal from the appraiser.

David Gray asked how often the gate closed? Most of the time it is open. If there are concerns regarding traffic it gives the option to close the gate. Which is lost if the road becomes public. There is an absolute benefit for being on a private road. Josh Thompson had a question for Ginny Knudson. If Mr. Rono had been granted an easement it would have stayed a private road? Ginny Knudson answered, "correct". Unless the parties are able to work out some kind of an agreement after the fact today it will be a cartway and they will have lost some measure of control. There was a request for an easement before the cartway petition process.

There was discussion regarding Teresa Swanson not being contacted for the public hearing on May 27, 2025. Blake Lubinus said she was not an equitable title holder and that the equitable title holder was contacted. Proof of affidavit of the mailing was presented.

Greg Rono told the Board he did make an offer regarding an easement but the land owners did not accept his offer. The initial offer was only \$3,000 to Jerry and Kim Hitchison. It was mentioned that now we are getting into negotiations, which is not relevant to tonight's meeting. Josh Thompson wanted to know why was the easement request turned down?

Scott Brix wanted to know if the cartway could be stopped. David Gray said that Mr. Rono is entitled to legal access under the law. Damages are what the Board has control over. There can also be a challenge if someone feels the damages are unjust. Damage to the road are under common law authority. It looks like there is an agreement on future maintenance of the road. The agreement just needs to be initiated as a contract.

David Gray asked if we go with the appraiser's assessment of \$0, which is still subject to challenge by the landowners saying that is not a fair judgement. The Township has a licensed appraiser that made the damage assessment.

Ginny Knudson mentioned her biggest concern is the untimeliness of the damage appraisal. The appraisal should have been completed in September. Six weeks later we finally received it. I do have concerns about a decision being made tonight if the property owners do not feel they have had enough time to pull together the facts. David Gray asked what she would counsel the Board. One option would be to include the damage award at the regular November monthly Board meeting. This would give the parties the opportunity to reflect on what the appraiser said or maybe come to some kind of an agreement outside of this proceeding. Maybe table this to the next regular monthly Board meeting. There is still the opportunity to pursue an easement. No one is required to negotiate an easement. The Board is not requiring anyone to do so. It is concerning for me that the property owners did not have adequate time to review the appraisal. It would be appropriate to set a later date to determine damages.

Blake Lubinus also felt that receiving the damage appraisal on October 24th would be troubling to get everything wrapped up on the 28th. But, everybody in this room that has been affected has known about this meeting for a few weeks now and about the damages question for several months now. Anybody could have gone out on their own and hired an appraiser to have their own appraisal for here today. David Gray mentioned we owe it to our residents to digest the appraisal and arguments it makes. Greg Rono mentioned he was okay with delaying the decision for two weeks, but, the Board needs to understand that if this may come to a court battle where they feel this decision should be much more money. David Gray mentioned that if the Board deviates from the appraisal the Board will need to articulate a good reason to do so. There would be not additional cost to include the damage award at the next regular monthly Board meeting.

Josh Thompson said his only concern is that taking this on at a regular meeting is going to be a lot going on anyway. Our past meetings have been lasting at least 1 ½ hours and some close to 2 hours lately. If they have more time to review things it could be another hour added to the monthly meeting in November. A Special meeting is a better way to go. It would mean additional costs to the petitioner. David Gray said he was willing to add it to a regular meeting. He would streamline the meeting and make it as efficient as possible. Scott Brix questioned if 2 weeks would be long enough. November 10th is the next Board meeting. November 10th did not work for Ginny Knudson and Blake Lubinus. Greg Rono was in agreement for paying for a special meeting.

A motion was made by Josh Thompson and seconded by Scott Brix to table this meeting for a special meeting to award damages on November 26, 2025, at 7pm at the Deerwood Town Hall. All voted in favor of the motion. Motion passed unanimously.

A motion was made by Josh Thompson and seconded by Scott Brix to adjourn the meeting at 8:00pm.

The audio file will be kept in the clerk's office at Deerwood Township.

Supervisor

Date

Supervisor

Supervisor

Clerk