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GOVERNMENT AND POLITICS

Court rules for Becker County in West Lake Drive right-of-way dispute

The judge's ruling makes clear that the county's case was strongly bolstered by the accidental discovery of old road records held by Lakeview Township. Next is determining the path for road expansion along Little Detroit Lake.

Written By: Nathan Bowe | Dec 18th 2020 - 7am.





Becker County Highway Engineer Jim Olson, left, and County Surveyor Roy Smith brought several historic road documents to a County Board meeting earlier this year. The 1872 'road area' document sits on top of the 1924 highway blueprint for what is now West Lake Drive. (Nathan Bowe/Tribune)

An Otter Tail County district judge has ruled in favor of Becker County (and by default, the city of Detroit Lakes) on a right-of-way dispute involving West Lake Drive in Detroit Lakes.

The decision is important to the county and city because they want to upgrade that stretch of West Lake Drive, but can't do so until a clear right to the 66-foot stretch is obtained, either by court action or the legal taking of private property through eminent domain.

About 50 homes are affected by the \$3.5 million West Lake Drive project, which will rebuild the street, add a multi-use trail on the lake side (separated from the street by a buffer strip) add curb and gutter, bury the utility lines, and add buried stormwater treatment infrastructure.

Thirty of those residents earlier signed an agreement stipulating the county's 66-foot right of way, and received a flat fee of \$1,500 each.

The remaining 20 property owners did not sign the agreement, and about a dozen didn't agree that the county has a 66-foot right of way on that stretch of roadway, and hired Twin Cities attorney Steve Quam to contest the taking of their property.

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Judge wants input on where the right-of-way should be centered

On Dec. 11, Otter Tail County District Judge Sharon G. Benson granted Becker County's motion for summary judgment on the 66-foot width of the right-of-way of West Lake Drive.

But the judge also withheld a final order to allow arguments to be made and evidence to be introduced in an oral

week after that for anyone to respond to those briefs.

She will then take the matter under advisement.

A right-of-way, or just an easement?

There are 35 defendants listed in the quiet title action, including property owners (with most family members listed separately), banks, trusts, holding companies, mortgage finance firms and, for some reason, the Minnesota Department of Labor and Industry.

The gist of the legal question was whether West Lake Drive included a dedicated 66-foot right-of-way easement, or whether the road was simply a prescriptive easement, limited to the area actually used by the road authority.

The county and city argued that the roadway has a dedicated right-of-way based on an 1873 township road order.

The property owners argued that the road was never dedicated, that the road order was void for procedural irregularities, that it was void for uncertainty of location, and that the right-of-way was lost because it was not included on deeds and property titles along the roadway.

Some undisputed facts from the quiet title dispute

- West Lake Drive runs along the west shore of Little Detroit Lake, and the strip in question lies between Legion Road and County Road 6. The road has been in continuous use for at least 100 years, and there is evidence that the road itself is even older.
- In 1912, the road became part of a state highway known as Trunk Highway No. 30 or Trunk Highway No. 59.
- In 1966, the highway route was altered, and an area containing West Lake Drive was released back to the county. The road is currently a county road. The paved portion of West Lake Drive is currently about 30 to 36 feet wide in most places, and the area that has historically been maintained is significantly less than 66 feet wide.

The judge's ruling makes clear that the county's case was strongly bolstered by the accidental

clearly evidencing the establishment of a dedicated road easement. Set against those records are ambiguous or inconclusive documents that cast a shadow of doubt over those official records, but which do not flatly contradict them.”

Read the full ruling below:

Electronically Served
 12/11/2020 9:34 AM
 Becker County, MN

03-CV-20-691

Filed in District Court
State of Minnesota
 December 10, 2020

IN DISTRICT C
SEVENTH JUDICIAL DIS

STATE OF MINNESOTA
 COUNTY OF BECKER

County of Becker,

 Plaintiff,

 vs.

 Richard E. Stelter; MERSCORP Holdings, Inc. a/k/a Mortgage Electronic Registration Systems, Inc.; Bremer Bank National Association; Gayle M. Seter a/k/a Gayle H. Seter; Wells Fargo Bank, N.A.; CalDak Properties, LLC; First State Bank; Kelly S. Kylo; Kay M. Kylo; Western State Bank; Lane R. Engberg; Barbara A. Engberg; Lyle C. Leegard; Margaret E. Leegard; Monte R. Ashmore; Debra J. Ashmore; Bell State Bank & Trust; Jeffrey Byrd; Quicken Loans, Inc.; Julie A. Herman a/k/a Julie Ann Herman a/k/a Julie Ann Herman-McMichael; Trent D. Bartells a/k/a Trent Douglas Bartells; Nationstar Mortgage LLC DBA Mr. Cooper; State of Minnesota, Department of Labor and Industry; Nancy J. Vyborny.; Bonnie A. Juma; Mary Hubbard Erdrich; Mark Erdrich; Paul Day Hubbard; Cheryl Hubbard; John Stephen Hubbard a/k/a Steve Hubbard; Thomas W. Disse and Susan L. Disse, individually and as Trustees

Court File No: 03-CV-20-

ORDER AND MEMORAN
GRANTING IN PART A
RESERVING IN PAR
PLAINTIFF'S CROSS-MC
FOR SUMMARY JUDGM
AND
ORDER FOR FURTHER
SUBMISSIONS

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Because state and federal law is tilted strongly towards the presumption that old road records are correct, she wrote that “the court holds, as a matter of law, that none of the circumstantial evidence produced by defendant is sufficient to rebut the strong presumption that West Lake Drive was dedicated in 1873. as set forth in the official road order — such that the road easement thus created

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It is an incredibly well-reasoned and well-written decision," said Becker County Attorney Brian McDonald.

So what comes next?

Becker County Highway Engineer Jim Olson said attorneys from both sides will meet in the next few weeks to talk over the results of the judge's order. "We'll make the proposal we just swap those lands, and see if all agree to the initial proposal," he said, regarding the ultimate alignment of the old road plan, the upcoming road project, and the judge's call for briefs on the exact location of the right-of-way centerline.

After the final path of the right-of-way is determined, the design work will wrap up and the plan will go to the Minnesota Department of Transportation for approval, he said. "That takes some time," he said. "We hope to advertise (for construction bids) by the end of February or early March -- by early April at least," he said.

"I'm glad we got that ruling, it sets some clarity," he said.



The pavement on West Lake Drive is in poor condition, one of the reasons city and county engineers would prefer to get

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BECKER COUNTY

DETROIT LAKES

WEST LAKE DRIVE PROJECT

ROAD CONSTRUCTION

Suggested Articles

GOVERNMENT AND POLITICS Oct 23rd 2020 - 6am

West Lake Drive right-of-way case goes to Otter Tail County



GOVERNMENT AND POLITICS Sep 2nd 2020 - 7am

Uncovered by 'a stroke of luck,' surveyor says old records prove county's case on West Lake Drive



TRAFFIC AND CONSTRUCTION Dec 3rd 2019 - 7am

Property owners consider legal action over West Lake Drive project



TRAFFIC AND CONSTRUCTION Aug 18th 2020 - 10pm

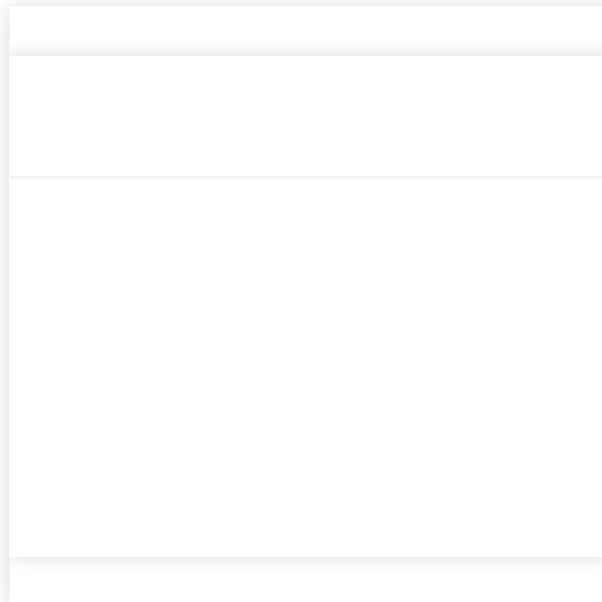
County acts on eminent domain appraisals for West Lake Drive project



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TRAFFIC AND CONSTRUCTION May 7th 2020 - 7am

New tree plantings along West Lake Drive intended to improve, not replace existing canopy



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