

NO. A06-1600

STATE OF MINNESOTA  
IN COURT OF APPEALS

---

DIANE SILVER, Respondent,

vs.

PAUL RIDGEWAY, SR., Appellant, and,  
LAKE COUNTY, Respondent.

---

RESPONDENT'S  
BRIEF AND APPENDIX

---

Timothy A. Costley #248927  
THE COSTLEY LAW FIRM  
609 First Avenue, P.O. Box 340  
Two Harbors, MN 55616  
(218) 834-2194  
*Attorneys for Respondent, Diane Silver*

<p>Charles H. Andresen #2604 ANDRESEN &amp; BUTTERWORTH, P.A. 306 West Superior Street Duluth, MN 55802 (218) 722-1411 <i>Attorneys for Appellant Paul Ridgeway, Sr.</i></p>	<p>Russ Conrow #281955 LAKE COUNTY ATTORNEY 601 Third Avenue Two Harbors, MN 55616 (218) 834-8375 <i>Attorney for Respondent Lake County</i></p>
--	--

Table of Contents

Table of Authorities ..... ii

Statement of Facts ..... 1

Argument ..... 6

I. The Lake County Board of Commissioners erroneously concluded that the DNR could prevent the establishment of a cartway across WMA lands. .... 6

    A. Standard of review. .... 7

    B. The express language of the cartway statute allows the Board to grant a cartway across WMA land. .... 8

    C. The Lake County Board has an implied power to condemn state WMA land for a cartway. .... 10

II. The trial court properly concluded that the Board acted arbitrarily and capriciously contrary to the public's best interest. .... 12

    A. Standard of Review. .... 12

    B. The evidence supports the conclusion that the Board acted contrary to the public's best interest by not preventing Land Commissioner Martinson from advocating for Ridgeway. .... 13

    C. The evidence supports the trial court's conclusion that the Board acted contrary to the public's best interest by selecting a route that only regarded the needs of Lake County, Ridgeway and the DNR. .... 14

CONCLUSION ..... 15

CERTIFICATION OF BRIEF LENGTH ..... 17

Appendix and Its Index ..... 18

**Table of Authorities**

**Cases**

Am. Family Ins. Group v. Schroedl, 616 N.W.2d 273 (Minn.2000) .. 9

Brookfield Trade Ctr., Inc. v. County of Ramsey, 584 N.W.2d 390  
(Minn.1998) ..... 8

City of Shakopee v. Clark, 295 N.W.2d 495 (Minn.1980)..10, 11, 12

Horton v. Township of Helen, 624 N.W.2d 591 ..... 7, 8, 13

In re: Condemnation by Suburban Hennepin Regional Park District,  
561 N.W.2d 195 (Minn.Ct.App.1997) ..... 11

Lieser v. Town of St. Martin, 255 Minn. 153, 96 N.W.2d 1 (1959).  
..... 7, 13

Minnesota Power & Light Co. v. State, 177 Minn. 343, 225 N.W. 164  
(1929) ..... 11, 12

Mueller v. Supervisors of Town of Courtland ..... 9

State ex rel. Bergin v. Washburn, 224 Minn. 269, 28 N.W.2d 652  
(Minn.1947) ..... 9

State v. Edwards, 589 N.W.2d 807 (Minn.Ct.App.1999) ..... 8

Sun Oil Co. v. Vill. of New Hope, 300 Minn. 326, 220 N.W.2d 256  
(1974) ..... 7

**Statutes**

Minn.Stat. §164.08 (2006) ..... 8

### Statement of Facts

Respondent Diane Silver ("Silver") and her family own undeveloped land on the Little Manitou River near Silver Bay, MN. RA.1. Silver's father built a road to access their property over 30 years ago. RA.8,30. Appellant Paul Ridgeway, Sr. ("Ridgeway") owns 2 - 40 acre parcels of land north of Silver's which is surrounded by Lake County tax forfeit and George H. Crosby Manitou State Park lands. RA.51 (John Sundman et al. property in plat book). Ridgeway petitioned for a cartway from the Lake County Board of Commissioners ("Board") to access his land via the road across Silver's property.

The road was used by Silver's family for personal and family recreation. RA.9. Silver and her father gave permission to Lake County and a select few individuals to occasionally use the road. RA.8-9. Non-Lake County use was primarily by foot. RA.8. The road has always been gated. RA.8.

Lake County owns approximately one thousand acres north of Silver's property. RA.41 (Martinson dep. p.21, 1.2-4; p.23, 1.1), RA.51. For many years Lake County has used the Silver road, with permission, as the main access to its lands for timber sales and tree planting. RA.41 (Martinson

dep. p.21, 1.5-6; p.22, 1.14-20). Lake County has benefited financially from the use of Silver's road. RA.41 (Martinson dep. p.23, 1.8-10).

Lake County Commissioner Clair Nelson conceded that Lake County had a monetary interest in seeing the cartway approved over the Silver's existing road. RA.32 (Nelson dep. p.23, 1.11-14). If access was denied, Lake County would have to build a road across its own property or obtain another access to continue to have its timber sales and property management. RA.32 (Nelson dep. p.23, 1.11-14). Lake County Land Commissioner Tom Martinson also conceded that without this cartway, he did not know how Lake County would access its lands. RA.41 (depo. p. 23, 1. 11-14).

To the east of the Silver property, there is an existing road easement across the Caribou Falls Wildlife Management Area (WMA) which was granted by the State of Minnesota Department of Natural Resources (DNR) to an individual (Harris) to access his hunting shack located on Lake County tax forfeit land adjacent to the Silver property. RA.38-39 (Martinson dep. p.12, 1.13-14; p.13, 1.8-9), RA.51. This road provides an alternate route to access Ridgeway's property via Lake County and Silver land. RA.9,11-12. Silver was agreeable to this alternate route as it would not

affect the land along the Little Manitou River like the proposed cartway would. RA.8-9, 14-15.

Land Commissioner Martinson initially testified that the DNR denied both Lake County and Ridgeway access across this WMA road. RA.37-38 (Martinson dep., p.8, 1.16-17; p.10, 1.24-25; p.11, 1.1-2). However, a letter sent to Lake County from the DNR in response to this access request states something to the contrary, based upon representations of Land Commissioner Martinson:

"According to Tom, access through the Silver's property is on an established road that meets the needs of both the county and the party requesting the cartway. I would not be in favor of shifting this use through the WMA. I would prefer that access remain routed on private and county land in section 35." RA.48-49.

The letter identifies an alternative access the DNR would consider:

"The WMA alternative access would necessitate that the road follow part of an existing road lease. Consideration would have to be given to the current leaseholder, Tom Harris, as he constructed and maintains the road at his own expense. I would require that the gated access remain in place to prevent public access to the interior of the WMA. This would be to limit illegal activities such as garbage dumping and off road trespass and perhaps disturbance to wintering deer. Retention of the gate would require that any access corridor through the WMA be in the form of a lease rather than an easement.

Neat spike-rush (*Eleocharis nitida*), a Minnesota threatened species has been observed along the Tom Harris driveway. Any additional construction within the WMA would have to be done in a manner to avoid damage to

these plants." RA.49.

Commissioner Nelson conceded that the DNR letter was not an acceptance or denial of that proposed route. RA.30 (Nelson dep. p.16, 1.9-18). Commissioner Nelson testified that the Board decided to grant a cartway across the Silver road rather than the WMA because he thought it was the only route that they could legally pick. RA.10,32 (Nelson dep. p.10, 1.8-14; p.21, 1.11-13). The Board relied on Martinson for his expertise regarding the cartway location. RA.32 (Nelson dep. p.22, 1.2-6).

During the cartway application process, Land Commissioner Martinson also became involved as an advocate for Ridgeway's cartway petition. Martinson initially testified in his deposition that forestry wanted to stay out of the cartway dispute "because forestry had an informal easement with the Silvers for forest management and I didn't want that to be harmed." RA.37 (Martinson dep. p.7, 1.2-4). He further stated: "My job is to manage tax forfeit lands for the benefit of taxpayers, and a cartway proceeding is a political thing and I really don't think our department should be involved." RA.42 (Martinson dep. p.25, 1.2-8). He conceded that he should not be assisting any party in obtaining a cartway. RA.42 (Martinson dep. p. 25, 1.6-14).

Martinson later testified that he helped Ridgeway obtain a cartway in the following manner:

- 1) Providing maps to Ridgeway, RA.42 (p.25, 1.17-20);
- 2) Having conversations with Paul Ridgeway, Jr. regarding the cartway procedure, RA.42 (p.26, 1.2-4);
- 3) Providing information on how cartways are handled, RA.42 (p.26, 1.3-6);
- 4) Providing Ridgeway with a cartway application which is not something present in the forestry office RA.42 (p.27, 1.5-13), RA.55;
- 5) Providing Ridgeway with deeds necessary to obtain the correct legal description of the properties involved in the cartway petition which are not something present in the forestry office, RA.43 (p.29, 1.1-7).

Martinson received a letter on January 4, 2004 from Ridgeway and his son thanking him for his help through the cartway process and further stating: "my family greatly appreciates your time and effort helping us gain access to our property." RA.56. Martinson received two collector super bowl pins from Paul Ridgeway, Jr., in a February 19, 2004, letter thanking him for his assistance in gaining access to their property. RA.43 (Martinson dep. p.29, 1.15-17), RA.61-62. Martinson claims to have returned them but does not have any letter to that effect. RA.43 (Martinson dep. p.29, 1.18 to p.30, 1.2).

The Board granted the cartway by Resolution and Order

Establishing Cartway dated May 26, 2005. RA.1-4. Silver appealed to the Lake County District Court for review. RA.5-7.

The District Court vacated the cartway resolution and order by Findings of Fact, Conclusions of Law, Order and Memorandum, filed June 27, 2006 concluding:

- 1) The Lake County Board of Commissioners erroneously applied a legal theory that the DNR could prevent the establishment of a cartway across WMA lands;
- 2) The Lake County Board of Commissioners acted against the public's best interest by not preventing Land Commissioner Martinson from advocating for Ridgeway;
- 3) The Lake County Board of Commissioners acted against the public's best interest by selecting a route that only regarded the needs of the county and Ridgeway. RA.68.

This appeal follows.

#### Argument

**I. The Lake County Board of Commissioners erroneously concluded that the DNR could prevent the establishment of a cartway across WMA lands.**

The trial court concluded that the Lake County Board of Commissioners "erroneously applied a legal theory that DNR could prevent the establishment of a cartway across WMA lands. RA.68. Ridgeway argues that although the cartway

statute provides a general condemnation power, specific authority from the Legislature is required to condemn state lands. It is Silver's position that the cartway statute not only provides express authority for a public taking, but the situation in this case also makes this authority implied.

**A. Standard of review.**

A town board acts in a legislative capacity when it grants or refuses a cartway petition and will only be reversed on appeal "when (1) the evidence is clearly against the decision, (2) an erroneous theory of the law was applied, or (3) the town board acted arbitrarily and capriciously, contrary to the public's best interest." Horton v. Township of Helen, 624 N.W.2d 591, 595 (citing Lieser v. Town of St. Martin, 255 Minn. 153, 159, 96 N.W.2d 1, 5-6 (1959)). When judicially reviewing a legislative determination, the scope of review must necessarily be narrow. Sun Oil Co. v. Vill. of New Hope, 300 Minn. 326, 333, 220 N.W.2d 256, 261 (1974). Appellate court review "is limited to a consideration of whether the [district] court has confined its review to the limited scope of such review and, aside from jurisdictional questions, whether the evidence reasonably supports the determination of the [district] court." Lieser, 255 Minn. at 163, 96 N.W.2d at 8.

Generally, this court will affirm even though we may have reached a different conclusion. Horton, 624 N.W.2d at 595.

Appellant's challenge to the district court's interpretation of the eminent domain power contained in the cartway statute is a question of law, which this court reviews de novo. Brookfield Trade Ctr., Inc. v. County of Ramsey, 584 N.W.2d 390, 393 (Minn.1998).

**B. The express language of the cartway statute allows the Board to grant a cartway across WMA land.**

Nowhere in Minnesota Statute Section 164.08 is the power to establish a cartway limited to private land. Minn.Stat. §164.08 (2006). The statute clearly states that upon filing a proper petition by a qualified landowner, the town board shall establish a cartway connecting the petitioner's land with a public road "over the lands of others." Minn.Stat. §164.08, Subd. 2 (2006).

The fundamental rule of statutory construction is to look first to the specific statutory language and be guided by its natural and most obvious meaning. State v. Edwards, 589 N.W.2d 807 (Minn.Ct.App. 1999), review denied. When interpreting a statute, we first look to see whether the statute's language, on its face, is clear or ambiguous. Am. Family Ins. Group v. Schroedl, 616 N.W.2d 273, 277

(Minn.2000). A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation. Id. Where statutory language is unambiguous, there is no room for construction or interpretation. State ex rel. Bergin v. Washburn, 224 Minn. 269, 28 N.W.2d 652 (Minn.1947).

There are no cases that limit the cartway condemnation power to private land only. Nor does the plain meaning of the statutory term "over the lands of others" limit a cartway to private land. Had the legislature intended such a limitation, it could have easily done so. The plain and unambiguous wording "over the lands of others" is an all-inclusive and express grant of authority to condemn both private and state land for a cartway.

To conclude otherwise would lead to the absurd result that a landowner, surrounded by public land, could not obtain a cartway because it would have to condemn public land, a denial not encountered by an individual seeking a cartway across private land. As explained in Mueller v. Supervisors of Town of Courtland, the cartway statute serves a public purpose "in having access to each and every one of the members thereof." 117 Minn. 290, 295, 135 N.W. 996, 997 (Minn.1912). Accepting Appellant's position would lead to

results directly in conflict with the plain language and interpreted purpose of the statute.

The cartway statute is clear and does not limit takings to private land. Under the rules of statutory interpretation, no limitation can be created or construed.

**C. The Lake County Board has an implied power to condemn state WMA land for a cartway.**

There are numerous non-cartway cases that deal with the use of eminent domain condemnation power over state and public lands. A government entity to which the right of eminent domain has been delegated may not, as a general rule, condemn public property or property devoted to a public use unless such authority is expressly or implicitly granted by statute. City of Shakopee v. Clark, 295 N.W.2d 495, 498 (Minn.1980). If no express authority is given, the question then becomes whether an implied intent exists as an exception to the general rule requiring express legislative authority to take public property. Id.

Legislative power to condemn public land under a general grant of eminent domain may be implied when the condemnee has not put its land to public use. City of Shakopee, 295 N.W.2d at 498. But, when the land is already dedicated by the state or one of its governmental agencies for a specific

public use and is actually used for the specified purpose, the rule is that mere general authority to condemn is insufficient to interfere with authorized public uses. Minnesota Power & Light Co. v. State, 177 Minn. 343, 345, 225 N.W. 164, 165 (1929).

The rule against taking property already devoted to a public use, in the absence of express authority, generally does not apply when the second use does not materially or seriously interfere with the first use, or, when the second use is consistent and the two uses may be enjoyed together without interference with the first use. Minnesota Power and Light, 177 Minn. at 349-50, 225 N.W. at 166.

In other words, an implied right to condemn public property under a general grant may be found where the condemnor's use is not substantially inconsistent with that of the condemnee. City of Shakopee, 295 N.W.2d at 499 (Minn.1980). Minnesota courts have consistently held that increased expense, danger or inconvenience is insufficient, as a matter of law, for a finding of substantial inconsistency. In re: Condemnation by Suburban Hennepin Regional Park District, 561 N.W.2d 195, 197 (Minn.Ct.App.1997). Condemnation has only been prohibited where the proposed use would *destroy or impair the essential*

value of the existing use. City of Shakopee, 295 N.W.2d at 500.

Even if this Court concludes that there is no express authority to condemn state lands, the proposed cartway across the WMA would follow an existing road easement across the Caribou Falls Wildlife Management Area (WMA) which was granted by the State of Minnesota to an individual (Harris) to access his hunting shack located on Lake County tax forfeit land. No new road would be created over the WMA. The proposed use would be consistent with the existing use and the two uses may be enjoyed together without interference. Pursuant to the holding in Minnesota Power & Light, this consistent use creates an implied right to condemn by the Lake County Board. 177 Minn. 343, 349-50, 225 N.W. 164, 166.

The trial court properly concluded that the Lake County Board could, as a matter of law, grant a cartway across the existing road on the State of Minnesota owned WMA land as it would not substantially interfere with the previously granted road access across the WMA.

**II. The trial court properly concluded that the Board acted arbitrarily and capriciously contrary to the public's best interest.**

**A. Standard of Review.**

As set forth in paragraph I.A. above, this Court's review "is limited to a consideration of whether the [district] court has confined its review to the limited scope of such review and, aside from jurisdictional questions, whether the evidence reasonably supports the determination of the [district] court." Lieser, 255 Minn. at 163, 96 N.W.2d at 8. Generally, this court will affirm even though we may have reached a different conclusion. Horton, 624 N.W.2d at 595.

**B. The evidence supports the conclusion that the Board acted contrary to the public's best interest by not preventing Land Commissioner Martinson from advocating for Ridgeway.**

Lake County forestry became involved as an advocate for Ridgeway in obtaining their cartway. Despite testifying that he should not be involved in cartway proceedings, Martinson admitted to helping Ridgeway by:

- 1) Providing maps to Ridgeway, RA.42 (p.25, 1.17-20);
- 2) Having Conversations with Paul Ridgeway, Jr. regarding the cartway procedure, RA.42 (p.26, 1.2-4);
- 3) Providing information on how cartways are handled, RA.42 (p.26, 1.3-6);
- 4) Providing Ridgeway with a cartway application which is not something present in the forestry office RA.42 (p.27, 1.5-13), RA.55;
- 5) Providing Ridgeway with deeds necessary to obtain the correct legal description of the properties involved in the cartway petition which are not something present in

the forestry office, RA.43 (p.29, 1.1-7).

This assistance, along with the receipt of a gift from Ridgeway and Ridgeway's written acknowledgement of Martinson's assistance, clearly gives the appearance of impropriety in the cartway proceeding. The evidence supports the conclusion that Martinson was not acting in the public's best interest by advocating and assisting Ridgeway in his cartway petition. The trial court's findings and conclusions are supported by the evidence.

**C. The evidence supports the trial court's conclusion that the Board acted contrary to the public's best interest by selecting a route that only regarded the needs of Lake County, Ridgeway and the DNR.**

The Board did not balance the interests of the Respondent when granting the cartway as required by statute. It is clear that the Board had a financial interest in seeing this cartway granted and merely considered the interests of Ridgeway, Lake County and the DNR.

It is also not in the public interest to allow the State of Minnesota to grant a road easement across public land to one individual (Harris), but deny it to another individual (Ridgeway), across the same existing road. The Board should have the power to condemn the existing use for all members of the public, not just one individual. By not performing

the proper balancing test, and considering Respondent's interests, the public's interests were not served.

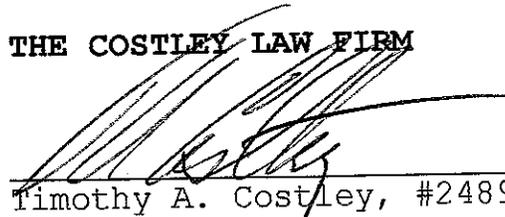
**CONCLUSION**

The trial court correctly concluded that the Board erred in determining that it could not grant a cartway across State of Minnesota WMA land. The cartway statute grants express authority to condemn state land. Case law also grants an implied authority to condemn as the proposed cartway is consistent with and does not destroy or impair the existing road use across the WMA.

The trial court's findings relating to Lake County's actions in contravention of the public interest are supported by the evidence. Land Commissioner Martinson improperly advocated for Ridgeway giving the appearance of impropriety to the proceedings. The Board also clearly did not consider Silver's interests in making its public interest determination. The trial court's vacation of the cartway should be affirmed.

Dated at Two Harbors, Minnesota, this 17th day of  
January, 2007.

**THE COSTLEY LAW FIRM**



---

Timothy A. Costley, #248927  
Attorneys for Respondent  
Diane Silver  
609 First Avenue/P.O. Box 340  
Two Harbors, MN 55616-0340  
(218) 834-2194

NO. A06-1600

**STATE OF MINNESOTA  
IN COURT OF APPEALS**

---

DIANE SILVER, Respondent,

vs.

PAUL RIDGEWAY, SR., Appellant, and,  
LAKE COUNTY, Respondent.

---

**CERTIFICATION OF BRIEF LENGTH**

---

I hereby certify that this brief conforms to the requirements of Minn.R.Civ.App.P. 132.01, subds. 1 and 3, for a brief produced with a proportional font. The length of this brief is 3,047 words. This brief was prepared using Microsoft Word.

Dated this 17th day of January, 2007.

**THE COSTLEY LAW FIRM**



---

Timothy A. Costley #248927  
Attorneys for Respondent  
Diane Silver  
609 First Avenue, P.O. Box 340  
Two Harbors, MN 55616-0340  
(218)-834-2194

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).