

Carlson v. Livonia Township



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Carlson v. Livonia Township



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Carlson v. Livonia Township

- Carlsons purchase property November 2018
- Property is abstract property
- Real estate agent told them they could not place a dock
- Title commitment sent to the Carlsons included the covenants, which prohibited docks
- Spring following purchase Carlson placed a dock off of 120th Street
- Township requested that it be removed

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Carlson v. Livonia Township



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Carlson v. Livonia Township

- Initial petition to vacate action about to go to trial and then dismissed
- New lawsuit filed in February of 2020
- Declaratory judgment action
- Count I—Fee Title to 120th Street
- Count II—Access to Lakeshore/Riparian Rights
- Count III—Right of Ingress and Egress/Failure to Maintain
- Count IV—Illegal Designation as Minimum Maintenance Road
- Counterclaim—Township sued to have Carlsons remove the dock permanently

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Carlson v. Livonia Township

- Fee ownership issue—the statutes
- Pre-2007 conveyance—2007 amendment to the plat dedication statute provided: “A street, road, alley, trail, and other public way dedicated or donated on a plat **shall convey an easement only.**” Minn. Stat. § 505.01, subd. 1(2007).
- Prior version of 505.01 provided: “Plats of land may be made in accordance with the provisions of this chapter, and, when so made and recorded, **every donation to the public** or any person or corporation noted thereon **shall operate to convey the fee of all land so donated**, for the uses and purposes named or intended, with the same effect upon the donor and the donor’s heirs, and in favor of the donee, **as though such land were conveyed by warranty deed.**”

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Carlson v. Livonia Township

Reasons for trial court's ruling:

- It appears that the configuration was set up for the very purpose of granting the Township fee title
- Pre-dated 2007 amendment
- Generally, the municipality needs nothing more than an easement; here to accomplish purposes more was required; they knew it and they set up the transaction that way: "Different purposes may require different interests or estates to support them."
- Wait v. May: General rule re: landowner takes to center of street must yield when "it appears that there is not only an absence of foundation on which it rests, but cogent reasons why such a rule can have no application."

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Carlson v. Livonia Township

The "cogent reasons" township should own in fee simple:

- To eliminate remnant parcels
- To eliminate the ability of abutting landowners to install docks
- To accomplish the central purpose of the development agreement: to transfer exclusive riparian rights to the Township

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Carlson v. Livonia Township

Court of Appeals decision:

- General rule is that government gets only terminable easement for road purposes, not fee simple
- Agreed that cases in this area were all distinguishable
- No reason to depart from general rule
- Key issue: plat distinguished between the manner of dedication of the county road, and the manner in which the township road was dedicated

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AND

Government Lot 1 of Section 19, Township 34, Range 24

has caused the same to be surveyed and plotted as THE WOODS AT LAKE FREMONT and do hereby donate and dedicate to the County of Sherburne in fee for public use hereof County Highway No. 19 as shown on this plat. Also dedicating to the County of Sherburne the right to and interest in said County Highway No. 19 as shown on this plat. Also dedicating to the Township of Livonia for public use hereof the avenues and streets and also dedicating to the public for public use forever the easements as shown on this plat for drainage and utility purposes only.

County Road: “hereby donate and dedicate to the County of Sherburne in fee title for public use. . . .”

Township Road: “Also dedicating to the Township of Livonia for public use forever”

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Carlson v. Livonia Township

- Court ruled that Carlsons owned fee title to the street
- As a result they had land abutting the lakeshore
- They therefore had riparian rights and could install a dock
- Case was remanded for further proceedings on other issues

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Schussler v. City of Village of Minnetonka Beach



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Schussler v. City of Village of Minnetonka Beach



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Schussler v. City of Village of Minnetonka Beach

- Prior lawsuit in 2008 contending city dock presented a safety hazard
- TRO denied; no record of further adjudication
- Prior owners sold because of relocation of city dock to the north
- New owners in 2014 could not moor boat on slip because of shallow water
- 2017 sale to Schusslers with existing dock
- Schusslers purchased property with full knowledge of fire lane, dock, and lot line issues
- Variance submitted to allow a 175-foot dock with three canopied slips that would encroach on fire lane extension and extension of lot line of owner to the south of the fire lane
- Variance not approved for lack of information

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Schussler v. City of Village of Minnetonka Beach

Theories of the Schusslers' Lawsuit:

- Schusslers own fee title to fire lane
- The use does not comply with the 1889 plat dedication
- Government defendants must void any dock permits allowing exclusive use of the fire lane and not issue future permits to the City or its residents
- The dock permit is void as not issued with Schusslers' permission

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Schussler v. City of Village of Minnetonka Beach

- First lawsuit sought order compelling a variance application
- Relief sought in this case is different: variance vs. invalidation of City's dock permit
- Different "nucleus of facts" to eliminate the municipal dock
- Res judicata does not bar the lawsuit

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Schussler v. City of Village of Minnetonka Beach

- Right to use riparian rights subject to regulation by State or its designee
- Dedication of a roadway ending at a body of water includes attendant riparian rights
- McLafferty case

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Schussler v. City of Village of Minnetonka Beach

Other Issues:

- Number of boat slips grandfathered in as to density requirements
- Representation of City's permit saying that it owns 2,370 feet of shoreline is erroneous
- Change of licensing authority meant that grandfather rights terminated
- Alleged change in number of city slips in 1984 from 63 to 86 boats
- Alleged that 2008 reorientation of dock expanded a non-conforming use

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Schussler v. City of Village of Minnetonka Beach

Trial Court ruled in favor of the City

- Rule of Straight Projection does not violate Schusslers' rights
- Procedural due process claim rejected
- No Open Meeting Law violations—proper use of A/C privilege
- Also rejected nuisance claim and claim based on loss of implied easement for "light, air, and view"

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Schussler v. City of Village of Minnetonka Beach

Decision of Court of Appeals:

- Shared riparian rights to lake (public and Schusslers) from end of fire lane
- City could have a dock off of the fire lane
- But Schusslers also had riparian rights
- Because of joint rights, there is a fact issue as to reasonableness of City's use of its riparian rights
- Affirmed on all other issues

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Scheffler v. Lake Edward Township

- Scheffler owned property in the township
- Orally requested that town board create cartway over land of third party
- Town board orally denied the request
- Scheffler sought writ of mandamus (a type of appeal) in district court
- Obvious issue is whether an oral request triggers an obligation of the township to consider the cartway

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Scheffler v. Lake Edward Township

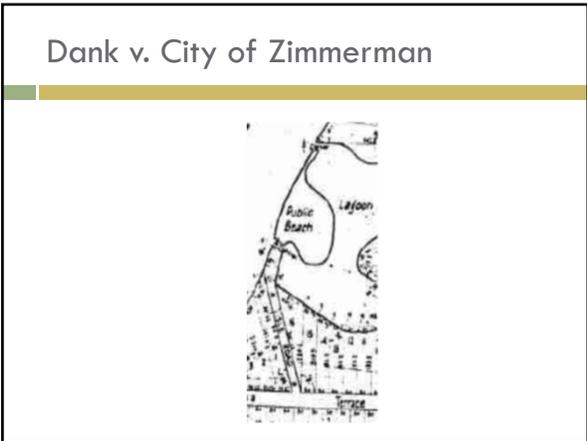
- Answer: No obligation to consider whether a cartway should be granted before a written petition is presented to the township
- Statute references petition being "[u]pon petition presented to the town board by the owner." Minn. Stat. § 164.08, subd. 2(a) (2020)
- Petition must be filed: "The petition shall be filed with the town clerk, who shall forthwith present it to the town board." Minn. Stat. § 164.07, subd. 2(a) (2020)
- Petitioner must serve a copy of the petition on affected parties

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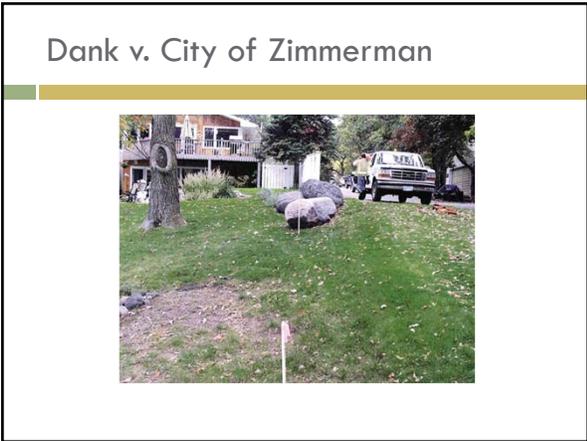
Scheffler v. Lake Edward Township

- Scheffler argued that the township didn't have to act on his oral request, but they did, so the case should be considered
- Held: "The town board's informal action on Scheffler's informal request is not equivalent to the formal action that is required upon the filing of a cartway petition. Thus, Scheffler cannot satisfy the first requirement for mandamus relief."

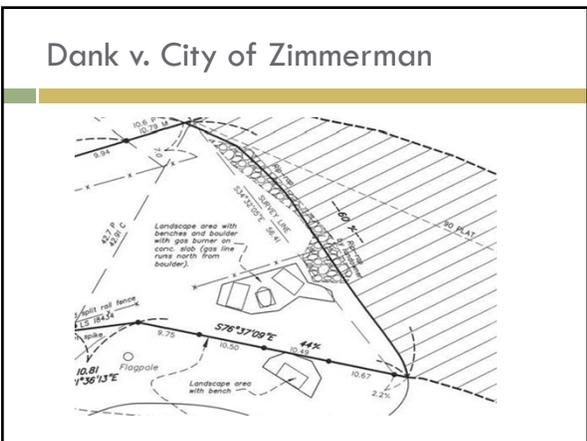
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Dank v. City of Zimmerman



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Dank v. City of Zimmerman

- Dank contested City's right to provide access all the way to lake given that road stopped at sign that prohibited further vehicular access past a sign that stated: "Pedestrian Access Only"
- Dank contended that he had the right to use the access because he was an adjacent property owner and had rights to the underlying fee interest in the road
- Argued that since no traffic was present, fire pit, benches, and fence were no obstructions

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Dank v. City of Zimmerman

- District Court's ruling:
- Public's right to use road continued past the sign and public could access lake via the platted road
 - Landowner did not have the right to obstruct the access with benches, fence, or fire pit
 - The encroachment of the boulders and a privacy fence a few inches or feet into the right of way at the side of the right of way did not impair access to the lake, so could would not require boulders or privacy fence to be removed. (But encroaching rail fence had to go.)

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Zimmer v. Pine Lake Township



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Zimmer v. Pine Lake Township



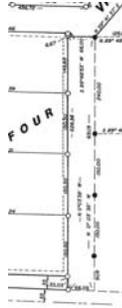
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Zimmer v. Pine Lake Township



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Zimmer v. Pine Lake Township



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Zimmer v. Pine Lake Township

Chronology

- Plat dedicated in 1995
- Did not include Plantain Trail; outside of plat
- Road develops along edge of plat
- Township never accepts Plantain Trail, not through dedication and acceptance; not through petition process; not through any affirmative act

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Zimmer v. Pine Lake Township

- Homes are built on east side of Plantain Trail, outside the plat
- Zimmers live on Plantain Trail and it is not maintained
- Issue goes to town board; town board refuses to accept the road and assume maintenance responsibility
- Any maintenance that is done is done by private parties
- In 2016, the fee owners of Plantain Trail executed a deed dedicating Plantain Trail "as a public road to Pine Lake Township"; but this dedication was never accepted by the Township

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Zimmer v. Pine Lake Township

- 2016 deed operated as a common law dedication
- But does not mean that a township has an obligation to maintain the road; dedicated to public, public can use, but not a road the township must maintain
- After town board will not accept, Zimmer goes to county board to try to get the county board to open the road; county board refuses to compel the township to open the road; decision never appealed

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Zimmer v. Pine Lake Township

- First lawsuit filed in 2018
- Township argues that the decision of the county board should have been appealed pursuant to Suburban Estates, a case that requires challenges to township road maintenance to be brought first to the town board and then “appealed” to the Minnesota Court of Appeals
- Trial court dismissed the case

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Zimmer v. Pine Lake Township

- Township somehow receives notice of an appeal to the Court of Appeals in March 2020 stating that an appeal was filed
- Attorney apparently abandoned the filing of the appeal while filing the documents
- New summons and complaint
- Mentions public use and asserts that the township turns around plows on the road, but nowhere really states its theory: no statute cited; no cause of action named; reader of complaint left to guess at theory

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Zimmer v. Pine Lake Township

- Trial court dismisses with a short written order that states it lacks jurisdiction because the matter should not be in district court
- On appeal, Zimmer's attorneys offer changing views as to what their theory is: six-year dedication by use (Minn. Stat. § 160.05); or public dedication; or statutory dedication by owner and acceptance (Minn. Stat. § 164.15)
- Matter under advisement at Court of Appeals

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Takeaways

- The landowner likely owns the underlying fee in platted right of way
- There are often shared interests between township and adjacent landowner
- Don't assume that the landowner has to keep all encroachments off of the right of way
- In deciding whether to take action against a landowner, tie the township's desire to remove the obstruction to a specific good reason: e.g., interference with road maintenance; obstruction is a hazard to traffic; impairs access; interferes with storage of snow

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General Advice in Handling Road Disputes

- Consider whether township interest really involved: Do we really care?
- Try to avoid personality conflicts: Is the right supervisor involved?
- Consider the time and expense involved in ongoing disputes
- Be flexible in the approach to disputes concerning roads and consider creative solutions

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Creative Solutions to Disputes with Adjacent Landowners

- An agreement to save a particular tree
- An agreement on a particular maintenance boundary or method
- An agreement to let the landowner perform the maintenance
- An agreement to provide maintenance in a specific manner
- An agreement not to perform maintenance for a specified period of time
- Put it in writing; record it

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THE END
THANK YOU!

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