

Lake Links

November 17, 2020

To:

White Bear Lake, Ellen Hiniker, Paul Kauppi

White Bear Township, Pat Christopherson, Tom Riedesel

Re: MN 96

Hello –

First I must apologize. I became ill on the day the governor signed the funding bill for Lake Links and was in the hospital for more than a week. Since that time I've been recovering. Today, I am recovered and ready to drive some nails!

The legislative funding for the north shore provides, as you know, for both Township and City in equal amounts. The most significant issue remaining is the extent of the available right of way. Here is my latest information on that topic, which I will only summarize:

1849 – The new legislature established MN 96 as the Rum River Route and it was laid out immediately by government surveyors

1849 – By statute, the right of way of the Rum River Route was 66 feet, four rods, 33' each way from centerline. I know I've reported some of this before.

1850's – Individuals established ownership of land around and underlying the road, subject to the road's rights

1869 – the railroad came along and laid out its route, which in some places overlapped the road rights. The railroad claimed to own fee title to the land – but it did not.

1874 – The area north of the railroad was platted by the people who owned the land. On its southern side it had a street named "Boulevard" which was in places under the existing road and in other places not. The south line of Boulevard was the north line of the railroad's claimed easement.

1924 – Ramsey County paved the highway. We have the drawings of the project, including the right of way drawing. At no relevant place was the center of the new road south of the road as it had existed since its inception 75 years before. In short, the center of the new road was always at least 33' north of the southern boundary of the road right of way. That we can demonstrate.

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1937 – Worrell Clarkson bought up the right of way under the railroad bed from its actual owners, not from the railroad, and brought action to register title to the land. The railroad claimed to own the land but was quickly demonstrated not to have acquired title. The court ruled the land to be owned by Worrell Clarkson subject to an easement, basically, to permit the railroad to continue to operate. So specific was that decision that the railroad was only permitted to continue to operate as before, not even to add track.

1937 – The state highway department took over the road in about 1934. It was not served in Clarkson's title registration action – that is, Clarkson made no effort to dispute the location and right of way of the road. In the court's final report, it noted that Clarkson's title, and, of course, all his successors in title, were subject to the right of way of the road.

1985 – The railroad went out of business in the area and by quitclaim deed surrendered its rights to the people who had subsequently bought the land from Clarkson. Of course, this had no effect on the road rights.

Now – The southern border of the right of way of MN 96 is at least, and we believe we can surely establish this, the more southerly of these two lines:

- a. A line 33' south of the centerline of the road as paved 96 years ago in 1924 and still existing, and
- b. The southern line of "Boulevard" from the plat, which is also the northern line of the railroad right of way.

We have retained experienced real estate counsel to establish these circumstances.

What this means in a practical sense is that there is 33' or more of usable right of way south from centerline of the road in both WBL and WBT, enough to create a meaningful and safe trail. Of course, this is most significant in WBL which doesn't own as much of the land as does WBT, but it is very important in both jurisdictions.

There are two more players to be considered here. MNDOT has basically been ignoring right of way for this road, and for MN 244, for nearly a century. This does not eliminate the right of way, which is very durable, but it is disappointing. Ramsey County is likely, we believe, to again be the owner of this road soon under negotiations with the state. They have already acquired all of the rest of MN 96. Presumably, the county has an interest in the safety and convenience of pedestrians and other travelers and will wish to establish its rights to the right of way described above.

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S E H Engineering had been working to provide a workable trail in this area given the prior belief that right of way was much more limited. I don't know if they'll be included in the project going forward, but I will copy them in case they have any additional thoughts.

As soon as we have our legal opinion, I'm hoping for a meeting involving WBL, WBT, Ramsey, and MNDOT, including the bike and trail people from MNDOT as well as those directly responsible for the pavement. I believe we should assert that there is right of way sufficient for a proper trail along the south side of MN 96, now that we have funding to actually complete it.

Due to COVID, I'm not holding in person meetings, but am happy to discuss this in a conference call.

Yours very truly,

Steve Wolgamot