

## Michael Musich Opposition to Park Land Committee Report

I am writing with regard to the committee recommendation the Park Land Committee reported to the Board on July 19<sup>th</sup>, 2022.

The recommendation references one committee member who does not support the recommendation. I am that committee member, and am writing to summarize my opposition to the recommendation.

My general belief is that a township or city should think long and hard before relinquishing its current or future rights to real property. But that is not an ideological absolute for me. If there is a reasonably foreseeable benefit to maintaining the right to the property in question, and there is a reasonably foreseeable benefit that a township and its residents would realize by maintaining that current or future right to the property, I believe a township should generally hold onto that right. But I also believe that if the cost, hassle and potential burdens of maintaining the ownership right to the property outweighs the benefit of maintaining the property, then the township should seriously consider relinquishing its rights in the property.

With respect to the dedicated/designated Parkland that is involved, I do not believe that the current recommendation satisfies that standard.

As to any potential current or future benefit, I believe such benefit to be minimal at best. Yes, it can almost always be said that owning and having control of the property is a benefit to a township. But if this dedication is accepted, the Township's use of the property is strictly limited to use for park and recreation purposes.

That begs the question----if the Township accepts the dedication, how is the property going to be used, and at what cost? The recommendation does reference some possible uses such as open space, a conservation easement, a marina with public docks, and an actual park of some sort. And the recommendation does pay lip service to the potential that some costs will be incurred. But the recommendation is virtually silent as to any details of any such possible uses.

That silence begs even more questions. For example:

The Open Space suggestion----will the grounds be maintained, or will grass and weeds be allowed to grow along the shoreline? Who will maintain the grounds, and at what cost? Will a trail be constructed and, if so, who will maintain it and at what cost?

The Conservation Easement suggestion-----I know little or nothing about such easements, but I believe there are a number of questions that should be considered. For example, do we really think the DNR would be interested in accepting an easement to four small and separated parcels of property? How long would the easement last? I did google conservation easements in Minnesota. While it appears possible to limit the duration of such easements in the easement document, it appears that many, if not most, such easements are permanent in nature. If the easement is permanent, would the Township be relinquishing its future rights to use the property for other park and recreation purposes? Will the Township be responsible for any maintenance of the property, and at what cost?

The Marina suggestion-----Assuming this contemplates public docks, how many? What maintenance will be required? What will that cost? Will permits for use be required and, if so, how many and at what cost? Will private docks still be permitted and, if so, how many and for whom----- just the adjacent property owners, for property owners in the Plat, for other Township residents?

The Actual Park suggestion-----What will this entail? Benches and picnic tables? Stationary grills? Restroom facility? What maintenance will be required for grounds and amenities, and at what cost?

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The committee recommendation acknowledges that these questions must be answered at some point. But it proposes that the Board first accept the dedication, and then seek to answer these questions and make these decisions. Part of my thought process involved trying to think what I would do if I were on the Board. Would I be willing to vote to accept the dedication without having a clear and comprehensive plan as to how the property would be used and what costs would be incurred? My answer kept coming up no.

It has always been my understanding that the Township wants to resolve this issue with some degree of finality. But the committee recommendation assures that this issue will not be resolved for some period of time. How long, I don't know. But by its very terms, the recommendation requires that time and effort be expended to answer the questions I have set forth above. It will require obtaining legal advice and incurring expenses related to that. It even suggests the formation of a committee to try to answer these questions in order to make a decision as to how the Parkland property will be used. Why not do that before deciding to accept the dedication? At least the Board would then have the benefit of having the necessary information regarding the specific options before committing itself to accepting the dedication.

I also believe that the recommendation is deficient in other respects. First is the glaring absence of any discussion as to whether any of the potential uses of the property would be of any realistic benefit to the residents of the Township. After all, what is the purpose of accepting the property and implementing one of the proposed uses if no one is going to use it? About four or five years ago, the members of the Board were asked whether they thought people would use a "park" on the property. I believe that question again needs to be considered in any decision the Board makes. Do we really believe that there is a need or demand for public docks to access a strip of property along this shoreline? Do we really believe that residents need or want an open/space or "nature trail" on this property? How many residents do we think are going to walk down Spruce Street to access an open space to walk a few hundred feet along the shoreline with the lake on one side and residences in full view on the other side? When I have asked these questions, I have generally received responses along the lines of "Some Might", "Maybe", " Well, who knows, they might in the future". I have not perceived much confidence that people would actually use this land for park and recreation purposes and, if its use will be minimal at best, it does not seem to me that there would be much benefit for the residents.

As to possible future use, I agree that the Board should take that into consideration. I believe that we have an obligation to preserve land for future beneficial use. But I also believe that, at some point, we also have to be realistic and use our common sense. The Plat making this dedication was drawn and filed over 90 years ago. In that time, I do not believe that a need or desire for parkland within the Township has arisen. Is there any real reason to believe that that will change in the next 90 years? This Township has just gone through contentious consideration regarding an ATV trail. Many people who spoke on that issue started their comments off with something like " I bought property or I moved up here for the peace and quiet this area offers". In light of that sentiment, do we really think that there is any realistic likelihood that there will be such a change in demographics that will give rise to either a need or demand for a public parkland area? Just my opinion, but I don't see it.

What I consider to be a second glaring omission from the recommendation is the failure to discuss the potential impact of a recent Minnesota Court of Appeals decision that held that a township lost its right to a platted but undeveloped roadway by failing to file a notice as required within 40 years under the Marketable Title Act. That case is apparently being appealed to the Minnesota Supreme Court. If reversed, that holding will probably not be an impediment to accepting any platted roads or the designated Parkland involved here. But if that decision is upheld, it may prevent the Township from accepting and developing any of the platted roads contemplated and necessary to join the individual parcels of designated Parkland into a continuous stretch of land. Although that case applies only to platted roadways, it is possible that the same argument and reasoning

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could be used to defeat the Township's interest in the designated Parkland. I believe there are some additional factors that might make that holding inapplicable to parkland dedications such as the one we are dealing with, but it is at least possible that the same reasoning could be used to extinguish our Township's right to accept the Parkland dedication at this late date. Regardless, I believe that this is a factor that the Board should at least consider in its decision-making process. NOTE----SORRY, BUT I DON'T HAVE A LINK TO THAT CASE. YOU CAN FIND IT AND READ IT BY GOOGLING "MORATZKA MINNESOTA COURT OF APPEALS". I think it will be worth the time.

These are some of the reasons I do not join in the recommendation of the committee. I remain open to supporting a recommendation for the acceptance of the designated Parkland if there is a clear and comprehensive plan presented replete with details and realistic estimates of expenses and obligations that might be incurred. In the absence of such a comprehensive plan, if I were asked to vote today, I would vote for option B----the rejection of the dedication.

Rejecting the dedication would have certain downsides. The Township would be giving up its current and future rights to the designated Parkland. As set forth above, I don't believe that the Township's restricted and limited rights to that property provide much of a current or future benefit to the Township or its residents, so we wouldn't be giving up that much.

Another downside is that I suspect some people will be upset at what they perceive would be a "windfall" that might be realized by current owners of the properties adjacent to the designated land, those owners being the Ryans/Turners, Kromers, Delich and McCubbins. I believe that perception is faulty. Yes, they might gain ownership of the property without having to pay for it. However, they are not responsible for creating that result. That result flows directly from the Plat drawn over 90 years ago and the Minnesota statutes and law governing that Plat. Mr. O'Meara(?) created this situation. He gave the township (which at the time may have been Breitung) the right to accept or reject the dedication. Minnesota law appears to provide that if rejected, the Court is to decide who gets ownership of the designated Parkland, and under what conditions.

I do not believe the Board's decision should be made on an adversarial basis----this is not a Township versus Property Owners decision. This is a decision that should be based on whether acceptance of the dedication provides a realistic benefit to the community as a whole. The fact that some may receive a "windfall" through no fault of their own should not be a factor.

There is also an upside to option B. The Township would actually obtain a final resolution to this issue from its perspective. This issue would not continue to plague the Township for some unknown period into the future. If our understanding is correct, the Court would determine the rights of the property owners in the Plat to the designated land. Those that obtain an ownership interest would then be required to pay property taxes, and the Township would receive a portion of those taxes. And, although some may not like that result, it would end the complaints about the use of the property and the illegal placement of docks.

I also believe that some questions should be answered before the Board decides on option B. I believe we would need to obtain an opinion from counsel that our understanding of what happens if the Board rejects the dedication is correct. Will a court decide ownership issues? Will all owners of property in the Plat be made parties to that lawsuit? How is that lawsuit started? Can the Township initiate the lawsuit to ensure that this matter moves forward and the property owners do not sit back and let this matter fester? Can the Court decide ownership issues and also impose any necessary easements or other conditions to ensure that "backlot owners" have access to the shoreline and possibly even dock rights?

## **Michael Musich Opposition to Park Land Committee Report**

These are some of the basic reasons and questions that led me to conclude that I cannot support the current recommendation submitted by the committee. I hope to be able to attend the meeting on Tuesday and will be happy to answer any questions or respond to any issues that arise.

Thank you for your attention.

Mike Musich