

STATE OF MINNESOTA

IN SUPREME COURT

A22-0314

Court of Appeals

Thissen, J.

William B. Wood, et al.,

Appellants,

vs.

Filed: August 23, 2023
Office of Appellate Courts

County of Blue Earth,

Respondent.

Gary A. Van Cleve, Timothy A. Rye, Bryan J. Huntington, Larkin Hoffman Daly & Lindgren Ltd., Minneapolis, Minnesota, for appellants.

Thomas J. Radio, Janell M. Gabor, Felhaber Larson, Minneapolis, Minnesota; and

Patrick R. McDermott, Blue Earth County Attorney, Mankato, Minnesota, for respondent.

Keith Ellison, Attorney General, Mathew Ferche, Assistant Attorney General, Saint Paul, Minnesota, for amicus curiae State of Minnesota, Commissioner of Transportation.

Stuart T. Alger, Alger Property Law, P.L.L.C., Minneapolis, Minnesota;

Leland J. Frankman, Frankman Law Office, PLLC, Minneapolis, Minnesota; and

David L. Sienko, Levander, Gillen & Miller, P.A., Eagan, Minnesota, for amicus curiae Minnesota Eminent Domain Institute.

SYLLABUS

An owner of property abutting a newly constructed controlled-access highway does not have a property right of access that is compensable under Minnesota statutes in a condemnation proceeding.

Affirmed.

OPINION

THISSEN, Justice.

Appellants William B. Wood, Elise Wood, and Telemark Properties, LLC (the Landowners) assert that they are entitled to compensation for the loss of a right to access to a newly constructed controlled-access highway built across their property. We conclude that the Landowners have no right of access to a newly constructed controlled-access highway. Accordingly, respondent Blue Earth County (the County) does not owe just compensation to the Landowners because no taking occurred.

FACTS

The Landowners own farmland in Blue Earth County. The Landowners' property consists of farmland that is located to the south and east of the Blue Earth County Justice Center and abuts the Mankato city limits. In 2016, the County filed a quick-take petition in district court to condemn a portion of the Landowners' property to construct a new section of County State Aid Highway No. 12 (Highway 12). *See* Minn. Stat. § 117.042 (2022) (setting forth the procedure for granting a taking before compensation is determined). No road previously existed where the new section of Highway 12 was planned. The plat maps referenced in the petition showed that the new section of

Highway 12 crossing the Landowners' property would be a "controlled access" highway.¹ The County petition did not expressly state that the taking included the taking of the Landowners' right to access Highway 12.

The district court held a hearing on the quick-take petition. The district court granted the petition and appointed commissioners to determine the compensation due to the Landowners resulting from the taking. *See* Minn. Stat. § 117.075, subd. 2 (2022).

The hearing before the commissioners occurred in August 2020. Both parties presented expert appraisals of the value of the property taken by the County. The Landowners' appraisal was higher because it included compensation for loss of access to Highway 12. The County's appraisal did not include any amount of damages for loss of access to Highway 12. The commissioners awarded the Landowners compensation consistent with the County's appraiser. The damages award included compensation for severance damages—the reduction in the value of the property because Highway 12 was bisecting property that had not been separated before.

The Landowners appealed the award to district court. *See* Minn. Stat. § 117.175, subd. 1 (2022). The parties submitted pretrial cross-motions in limine. The Landowners sought to preclude the County from making any argument to the jury that the Landowners

¹ *See* Blue Earth County Highway Right of Way plat maps [opinion attachments]. A "controlled-access highway" is statutorily defined as "any highway, street, or road, including streets within cities, over, from, or to which owners or occupants of abutting land or other persons have or are to have no right of access, or only a controlled right of the easement of access, light, air, or view." Minn. Stat. § 160.02, subd. 12 (2022).

were not entitled to damages for loss of access to Highway 12 and from introducing any evidence or argument that access could or would be provided in the future after the date of the taking. The County sought to prohibit the Landowners from offering any evidence about loss of access to Highway 12. The County argued that loss of access was not an element of just compensation in this case and could not be considered or awarded by the jury.

The district court granted the County's motion in limine and denied the Landowners' motion. The district court reasoned that because "the new [Highway 12] did not previously exist," the Woods had "not been deprived of any right of access for which they should be justly compensated." The district court also observed that the County continued to provide farm access to the Landowners' property.²

² After the district court granted the motion in limine precluding the Landowners from presenting evidence on their claim for compensation for loss of access, the Landowners retained a new expert who prepared a valuation using the development cost approach. *See Hansen v. County of Hennepin*, 527 N.W.2d 89, 93 (Minn. 1995) ("[T]he development cost approach is a method of appraising property in which an appraiser attempts to determine the current price a developer would pay for land, given the cost of development and the probable proceeds from the sale of the developed property."). The district court granted the County's motion in limine to preclude the Landowners from offering evidence based upon the development cost approach. The record shows that the property was zoned for agricultural use and that development of the property was not imminent. Subsequently, the Landowners stipulated to a judgment in the amount awarded by the commissioners and appealed the district court's orders on the parties' two motions in limine. The court of appeals affirmed the district court's decision to prohibit the Landowners from offering a development cost approach valuation. We did not grant review of the court of appeals' decision on that issue.

The Landowners appealed. The court of appeals concluded that the district court did not abuse its discretion in granting the County’s motion in limine. *Wood v. County of Blue Earth*, No. A22-0314, 2022 WL 17244786, at *3 (Minn. App. Nov. 28, 2022).

We granted review.

ANALYSIS

“[A] right of access is an independent property right which must be compensated for if taken or impaired and . . . it may be taken separate and apart from the land to which it is appurtenant.” *State by Burnquist v. Miller Home Dev., Inc.*, 65 N.W.2d 900, 905 (Minn. 1954). The fundamental question we are asked to answer here—the statutory question the parties are arguing about in this case—is whether a person who owns property abutting a newly constructed controlled-access highway has a right of access to the controlled-access highway. This is an issue of first impression before our court.

We conclude that no such right of access exists under Minnesota statute. Consequently, we affirm the district court’s decision to preclude the Landowners from offering evidence about the amount of compensation they are owed for their loss of access to Highway 12.

The Landowners’ loss of access claim is based on its interpretation of Minnesota statutes and, in particular, Minnesota Statutes chapter 160 (2022), governing roads. The Landowners do not challenge the constitutionality of the statutes. We review questions of statutory interpretation de novo. *Buzzell v. Walz*, 974 N.W.2d 256, 261 (Minn. 2022).

Minnesota Statutes section 160.02, subdivision 26, defines a “road or highway” to “include[], unless otherwise specified, the several kinds of highways as defined in this

section, including roads designated as minimum-maintenance roads, and also cartways, together with all bridges or other structures thereon which form a part of the same.”

Minn. Stat. § 160.02, subd. 26. Minnesota Statutes section 160.18, subdivision 2, sets out the rule governing general access to roads and approaches:

Except when the easement of access has been acquired, the road authorities in laying out and constructing a new highway or in relocating or reconstructing an old highway shall construct suitable approaches thereto within the limits of the right-of-way where the approaches are reasonably necessary and practicable, so as to provide abutting owners a reasonable means of access to such highway.

Minn. Stat. § 160.18, subd. 2. Under that section, then, the government generally must provide to an abutting landowner a “reasonable means of access” to either a *newly constructed highway* or a *relocated or reconstructed highway*. *Id.*

Minnesota Statutes section 160.02, subdivision 12, specifically defines a particular class of highway—a controlled-access highway. The statute provides that a controlled-access highway is “any highway, street, or road, including streets within cities, over, from, or to which owners or occupants of abutting land or other persons have or are to have no right of access, or only a controlled right of the easement of access, light, air, or view.” Minn. Stat. § 160.02, subd. 12.

Minnesota Statutes section 160.08 sets forth the specific rules governing controlled-access highways. First, section 160.08, subdivision 1, states that road authorities “are authorized to plan for the designation, establishment, location, relocation, improvement, and maintenance of controlled-access highways for public use” but only when “the road authorities determine that traffic conditions, present or future, will justify”

designating the highway as a controlled-access highway. Minn. Stat. § 160.08, subd. 1; *see Note, Eminent Domain: Compensation for Partial Taking of Farm Land in Constructing Limited-Access Highways*, 42 Minn. L. R. 106, 106, 120 (1957) (stating that controlled-access highways are designed for movement of through traffic and limiting a right of access allows for public safety and public convenience). The County’s decision to designate the portion of Highway 12 through the Landowners’ property as a controlled-access highway is not at issue in this appeal.

Second, section 160.08, subdivision 3, provides that “road authorities are authorized to so design any controlled-access highway, and to so regulate, restrict, or prohibit access as to best serve the traffic for which the highway is intended,” and that “[n]o person shall have any rights of ingress or egress to, from, or across controlled-access highways to or from abutting lands, except at the designated points or roadways thereof where access is permitted by such road authorities upon such terms and conditions as such road authorities specify.” Minn. Stat. § 160.08, subd. 3. This provision reinforces what the Legislature said in defining controlled-access highways and provides additional detail: abutting landowners have no rights of ingress or egress to, from, or across controlled-access highways except that the road authority, in its discretion, may provide such access. In other words, unlike the general rule for highways and roads set forth in section 160.18, subdivision 2, both section 160.02, subdivision 12, and section 160.08, subdivision 3, tell us that abutting landowners have no right of access to a controlled-access highway.

Finally, section 160.08, subdivision 5, provides that road authorities may construct new controlled-access highways or may convert an existing street or highway into a

controlled-access highway. Minn. Stat. § 160.08, subd. 5. Moreover, the Legislature specified that “[i]n the case of *any elimination of existing access*, air, view, light, or other compensable property rights, the owner shall be compensated for the loss by purchase or condemnation.” *Id.* (emphasis added). Under section 160.18, subdivision 5, then, when a road authority converts an existing highway to which an abutting property has access to a controlled-access highway, the road authority must compensate the owner for loss of that access. But when a road authority constructs a *new* controlled-access highway, it is not eliminating an existing access and, under Minnesota statutes, no compensation is owed.

We reach the same conclusion as the district court: because “the new [Highway 12] did not previously exist,” the Landowners have “not been deprived of any right of access for which they should be justly compensated.”³

CONCLUSION

For the foregoing reasons, we affirm the court of appeals.

Affirmed.

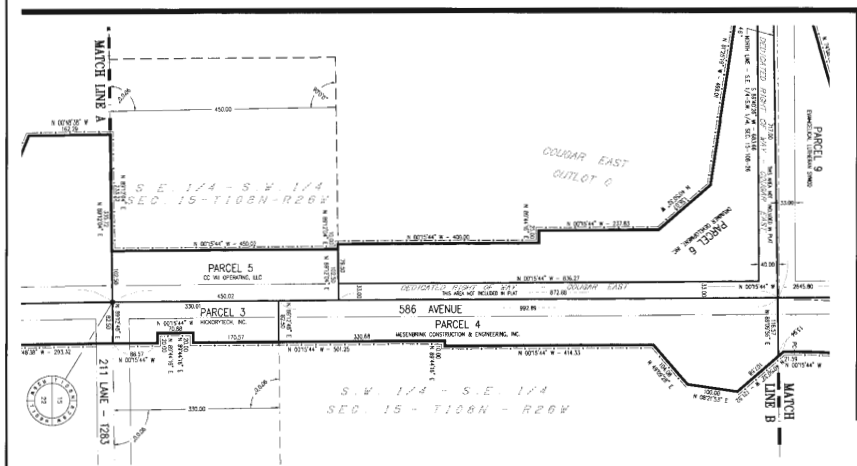
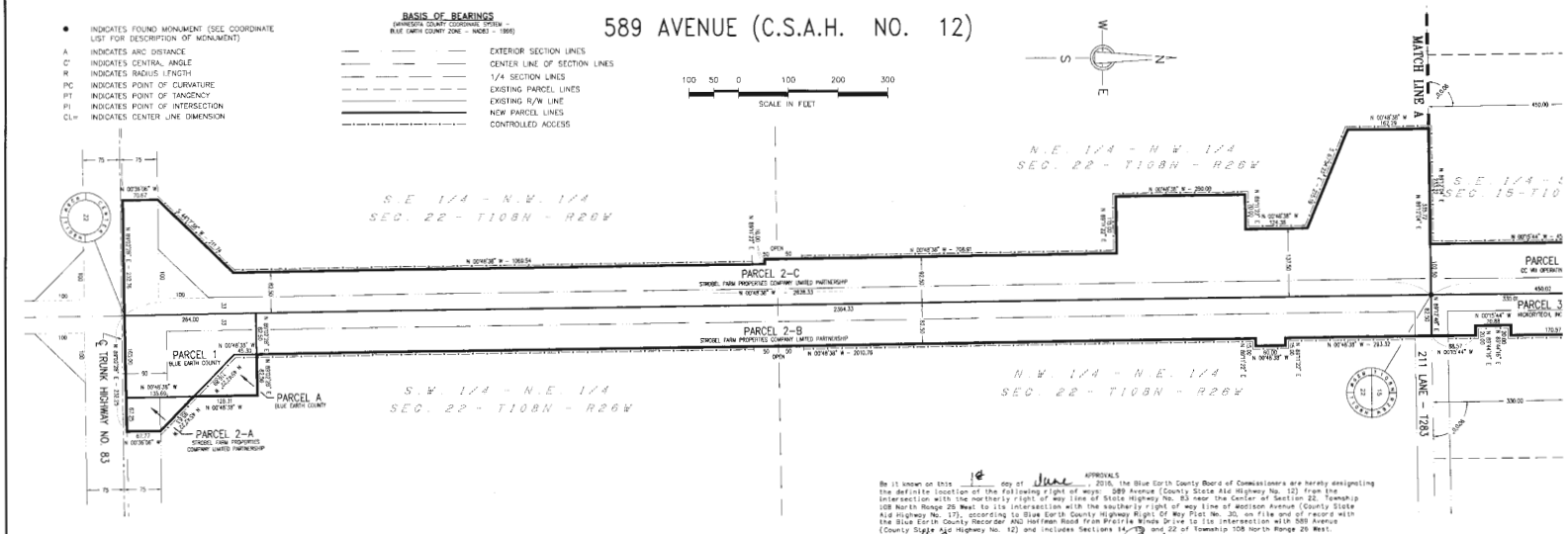
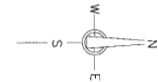
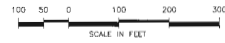
³ The parties dispute the legal implications in this case of expressions by the County of a willingness to provide future access to Highway 12 from the Landowners’ property. Based on our resolution of the case, we do not address those arguments. *Cf. City of St. Louis Park v. Almor Co.*, 313 N.W.2d 606 (Minn. 1981) (holding that a condemning authority must pay damages to property owner for loss of access that existed at the time of the taking and cannot mitigate those condemnation damages through promises of future access). But nothing we say in this opinion should discourage condemning authorities from clearly articulating whether they are limiting or restricting access rights or from seeking to amicably resolve with property owners these often complex issues through negotiation and broader discussion.

BLUE EARTH COUNTY HIGHWAY RIGHT OF WAY PLAT NO. 33 - REVISED

589 AVENUE (C.S.A.H. NO. 12)

- INDICATES FOUND MONUMENT (SEE COORDINATE LIST FOR DESCRIPTION OF MONUMENT)
- A INDICATES ARC DISTANCE
- C INDICATES CENTRAL ANGLE
- R INDICATES RADIUS LENGTH
- PC INDICATES POINT OF CURVATURE
- PT INDICATES POINT OF TANGENCY
- PI INDICATES POINT OF INTERSECTION
- CL INDICATES CENTER LINE DIMENSION

- BASIS OF BEARINGS**
MINNESOTA COUNTY COORDINATE SYSTEM
BLUE EARTH COUNTY ZONE - WGS84 - 1983
- EXTERIOR SECTION LINES
 - CENTER LINE OF SECTION LINES
 - 1/4 SECTION LINES
 - EXISTING PARCEL LINES
 - EXISTING R/W LINE
 - NEW PARCEL LINES
 - CONTROLLED ACCESS



Be it known that on this 16 day of June, 2016, the Blue Earth County Board of Commissioners are hereby designating the definitive location of the following right of way: 589 Avenue (County State Aid Highway No. 12) from the intersection with the northerly right of way line of State Highway No. 85 near the Center of Section 22, Township 108 North Range 26 West to its intersection with the westerly right of way line of section Avenue (County State Aid Highway No. 12), according to Blue Earth County Highway Right of Way Plat No. 33, on file and of record with the Blue Earth County Recorder and Halfman Road from Prairie White Drive to its intersection with 589 Avenue (County State Aid Highway No. 12) and includes Sections 14, 15, and 22 of Township 108 North Range 26 West.

Michael Stalberger County Administrator

This portion of 589 Avenue (County State Aid Highway No. 12) and Halfman Road in Sections 14, 15, and 22 of Township 108 North Range 26 West as shown on this plat, effected by the Blue Earth County Highway Department is hereby certified to be the official plat of that portion of 589 Avenue (County State Aid Highway No. 12) and Halfman Road within said sections pursuant to Minnesota Statutes Chapter 360.265.

Certified by *Gregg Kuhn* Registration No. 45887 Date June 1, 2016
County Highway Engineer

I hereby certify that this plat was prepared by me or under my direct supervision and is a correct representation of said survey; that all distances are horizontal ground distances; in fact, that the difference between bearings now exact alone angles in degrees, minutes and seconds; that the monuments to delineate this survey have been placed in the ground as shown on the plat; and that the right of way boundary lines are correctly delineated on this plat.

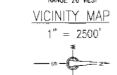
Certified by *Walter P. Smith* License No. 14761 Date May 31, 2016
County Surveyor

I hereby certify that this instrument was filed in my office for record on this 16 day of June, 2016, at 1:30 o'clock P.M., and that it was duly recorded in 1065 of Plate, Number 1065 of Book Plan 1.

Michael Stalberger By *Darcy A. Kraus* Deputy
Blue Earth County Recorder

MINNESOTA COUNTY COORDINATE SYSTEM - BLUE EARTH COUNTY ZONE - WGS84 - 1983

20500.45	18824.25	N 1/4 COR - SEC 27-108-26	IRON PIPE MONUMENT
20500.45	18824.25	E 1/4 COR - SEC 22-108-26	IRON PIPE MONUMENT
20500.45	18824.25	E 1/4 COR - SEC 21-108-26	STONE MONUMENT
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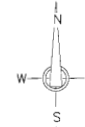
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BASIS OF BEARINGS
 SWERISO COUNTY COORDINATE SYSTEM -
 BLUE EARTH COUNTY ZONE - NAD83 - 1986

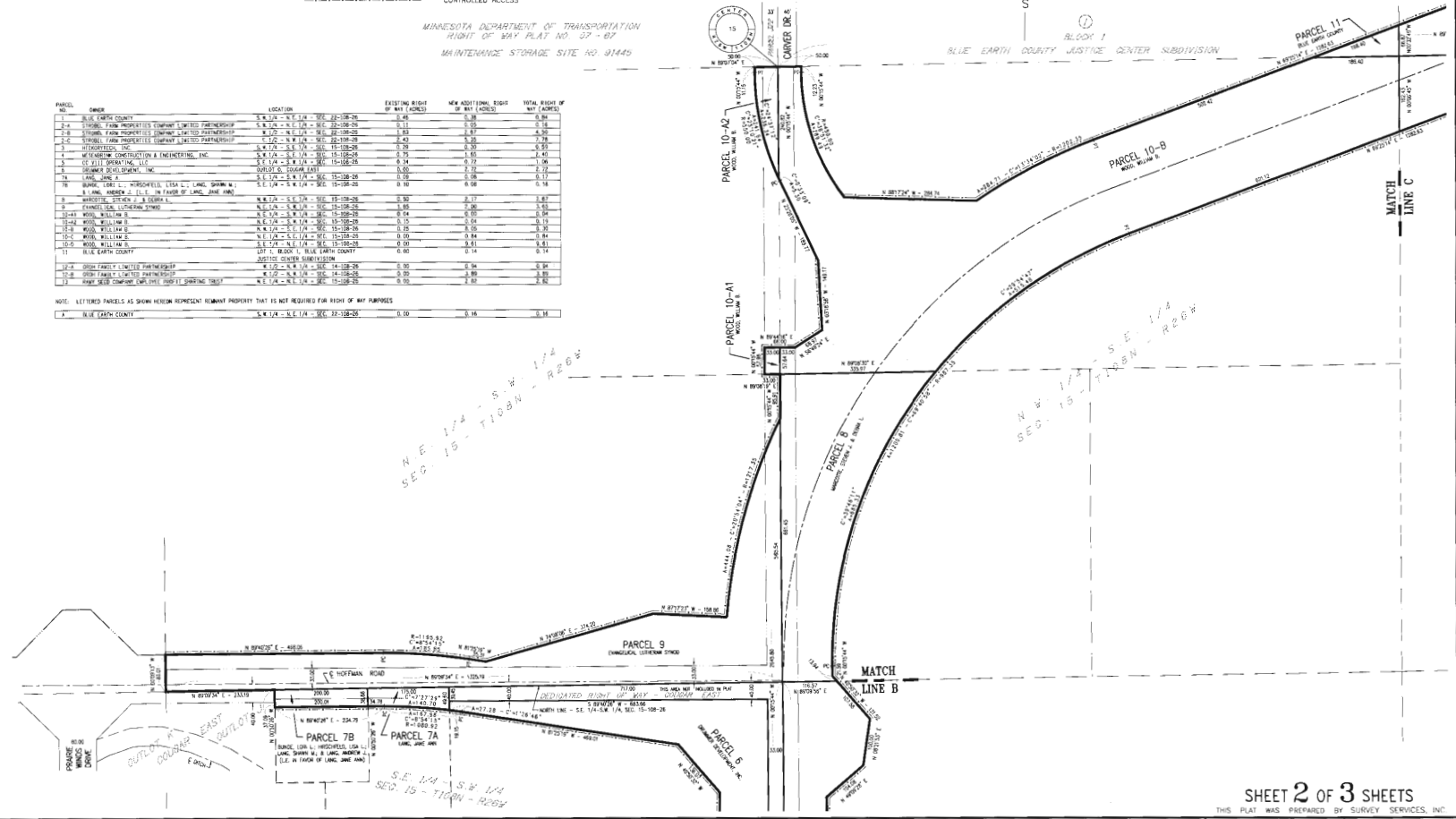
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MINNESOTA DEPARTMENT OF TRANSPORTATION
 RIGHT OF WAY PLAT NO. 33 - 87
 MAINTENANCE STORAGE SITE NO. 91449

PARCEL NO.	OWNER	LOCATION	EXISTING RIGHT OF WAY (ACRES)	NEW ADDITIONAL RIGHT OF WAY (ACRES)	TOTAL RIGHT OF WAY (ACRES)
1	BLUE EARTH COUNTY	S. 1/4 - S. 1/4 - 1/4 - SEC. 22-108-26	0.46	0.00	0.46
2-A	THORPEL FARM PROPERTIES COMPANY LIMITED PARTNERSHIP	S. 1/4 - S. 1/4 - S. 1/4 - SEC. 22-108-26	0.11	0.00	0.11
2-B	THORPEL FARM PROPERTIES COMPANY LIMITED PARTNERSHIP	S. 1/4 - S. 1/4 - S. 1/4 - SEC. 22-108-26	0.83	0.00	0.83
2-C	THORPEL FARM PROPERTIES COMPANY LIMITED PARTNERSHIP	S. 1/4 - S. 1/4 - S. 1/4 - SEC. 22-108-26	2.43	0.00	2.43
3	WINDMILL, INC.	S. 1/4 - S. 1/4 - S. 1/4 - SEC. 15-108-26	0.00	0.00	0.00
4	WINDMILL CONSTRUCTION & ENGINEERING, INC.	S. 1/4 - S. 1/4 - S. 1/4 - SEC. 15-108-26	0.75	1.00	1.75
5	10 1/2 TIT STREET, LLC	S. 1/4 - S. 1/4 - S. 1/4 - SEC. 15-108-26	0.14	0.77	0.91
6	SHUMER DEVELOPMENT, INC.	OUTLOT 6, COGNAC LANE	0.00	2.72	2.72
7A	IND. LANE # 1	S. 1/4 - S. 1/4 - S. 1/4 - SEC. 15-108-26	0.00	0.00	0.00
7B	IND. LANE # 2	S. 1/4 - S. 1/4 - S. 1/4 - SEC. 15-108-26	0.10	0.00	0.10
8	WINDMILL, INC.	S. 1/4 - S. 1/4 - S. 1/4 - SEC. 15-108-26	0.30	2.17	2.47
9	FRANZELLE, LINDSEY (D/B/A)	N. 1/4 - S. 1/4 - S. 1/4 - SEC. 15-108-26	1.00	2.00	3.00
10-A1	WOOD, WILLIAM B.	S. 1/4 - S. 1/4 - S. 1/4 - SEC. 15-108-26	0.04	0.00	0.04
10-A2	WOOD, WILLIAM B.	S. 1/4 - S. 1/4 - S. 1/4 - SEC. 15-108-26	0.00	0.00	0.00
10-B	WOOD, WILLIAM B.	S. 1/4 - S. 1/4 - S. 1/4 - SEC. 15-108-26	1.25	0.00	1.25
10-C	WOOD, WILLIAM B.	S. 1/4 - S. 1/4 - S. 1/4 - SEC. 15-108-26	0.00	0.00	0.00
10-D	WOOD, WILLIAM B.	S. 1/4 - S. 1/4 - S. 1/4 - SEC. 15-108-26	0.00	0.41	0.41
11	BLUE EARTH COUNTY	JUSTICE CENTER SUBDIVISION	0.00	0.14	0.14
12-A	SHUMER DEVELOPMENT, INC.	S. 1/4 - S. 1/4 - S. 1/4 - SEC. 15-108-26	0.00	0.00	0.00
12-B	SHUMER DEVELOPMENT, INC.	S. 1/4 - S. 1/4 - S. 1/4 - SEC. 15-108-26	0.00	0.00	0.00
13	SHUMER DEVELOPMENT, INC.	S. 1/4 - S. 1/4 - S. 1/4 - SEC. 15-108-26	0.00	2.00	2.00

NOTE: LETTERED PARCELS AS SHOWN HEREON REPRESENT REMAINDER PROPERTY THAT IS NOT REQUIRED FOR RIGHT OF WAY PURPOSES



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