

**DEMERSSEMAN JENSEN
TELLINGHUISEN & HUFFMAN, LLP**

LAWYERS

P.O. BOX 1820, RAPID CITY SD 57709-1820
516 FIFTH STREET, RAPID CITY SD 57701-2703
TELEPHONE 605-342-2814 FAX 605-342-0732

MICHAEL B. DEMERSSEMAN
CURTIS S. JENSEN
ROGER A. TELLINGHUISEN
RICHARD E. HUFFMAN

December 21, 2022

MICHAEL V. WHEELER
GREGORY G. STROMMEN
NATHAN R. CHICOINE

Randall Rosenau
Lawrence County Commissioners
90 Sherman St
Deadwood, SD 57732

Re: Obstruction of Section-Line Highway

Dear Mr. Rosenau:

I represent Michael Anderson and Bruce Kesteloot

In April of 2021, my clients entered into an Agreement with Lawrence County which allowed them to improve a stretch of section-line highway. A copy of the Agreement is attached.

Pursuant to the Agreement, my clients did indeed improve the portion of the section-line highway shown on the map attached to the Agreement. Unfortunately, some neighbors have decided that they can place a fence across that improved section-line highway, which is contrary to South Dakota statute, i.e. SDCL § 31-25-1.1. Although I have sent notice to the neighbors, Mona and Guy Balo, they refuse to remove the fence.

I sent a letter to the Balos on November 18, 2022, pointing out to them that their fence across this portion of the improved section-line highway was illegal. In return, I received a letter from their lawyer, Eric Nies, who has misinterpreted the relevant statute. I pointed out to their attorney that his reading of the statute was incorrect, but to-date they have not taken any steps to remove the fence they placed across this improved section-line highway. The placement of an "easy to open gate" in the fence across the improved section line highway is no defense.

Accordingly, as the authority over this improved section-line highway, I am writing to request the county's assistance in remedying this problem. Specifically, it is my clients' position that because they had undertaken the expense and effort to improve

DEMERSSEMAN JENSEN TELLINGHUISEN & HUFFMAN, LLP

December 21, 2022

Page 2

this section-line highway, as permitted by the Agreement with Lawrence County, the neighbors do not have the authority to stretch a fence across this section-line highway even if it has a "easy to open gate". It is our position that the Balos only remedy would be to come to the County and request permission to put in a cattle guard in the section-line highway.

Thank you for your assistance and consideration in this matter.

Sincerely,



Roger A. Tellinghuisen (roger@demjen.com)
DEMERSSEMAN JENSEN
TELLINGHUISEN & HUFFMAN, LLP

RT/ag
Enclosure
cc: Clients
Bruce Outka
Eric Nies

Prepared by:
Roger A. Tellinghuisen
DEMERSSEMAN JENSEN
TELLINGHUISEN & HUFFMAN, LLP
516 5th Street, PO Box 1820
Rapid City, SD 57709-1820
(605) 342-2814

AGREEMENT FOR IMPROVEMENT TO SECTION-LINE HIGHWAY

This Agreement is made and entered into this 13th day of April, 2021, by and between Lawrence County, South Dakota, a political subdivision of the State of South Dakota with a principal address of 90 Sherman Street, Deadwood, South Dakota 57732 ("County") and Michael Anderson of 12564 194th Whitewood, South Dakota 57793 and Bruce Kesteloot of _____, Minnesota _____ (collectively "Anderson/Kesteloot").

RECITALS

WHEREAS, Anderson/Kesteloot have requested permission from County to improve 2 miles of section-line highway within Lawrence County for purposes of accessing their land located within the following described real property to-wit:

S1/2 of Section 15 and N1/2 of Section 22, Township 7 North, Range 4 East, Black Hills Meridian, Lawrence County, South Dakota;

WHEREAS, pursuant to South Dakota law the County has jurisdiction over the section-line highways located within Lawrence County and outside of municipalities and improved townships; and

WHEREAS, the parties intend to enter into an Agreement which sets forth the conditions and agreements of the parties hereto with respect to the improvement of the subject section-line highway.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, the parties hereby agree as follows:

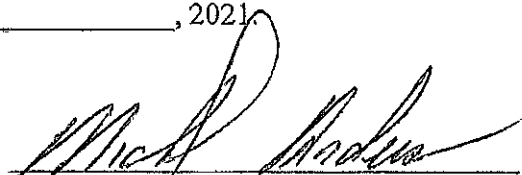
1. Anderson/Kesteloot shall be allowed to improve, at no expense to County, portions of the section-line highway described as follows:

Commencing at the intersection of 123rd Avenue and 195th Street extending south on the section-line between sections 13 and 14 T7N R4E one mile intersecting with the eastern end of the section-line between sections 14 and 23 T7N R4E and extending west one mile to the southeast corner of section 15/northeast corner of section 22, T7N, R4E, BHM, Lawrence County, South Dakota.


2. Subject to the following terms and conditions:
 - a. Any improvement to the section-lines described above shall be done at no cost to County, and must be inspected and approved by the Lawrence County Highway Superintendent before it can be open to the public.
 - b. The County's permission to improve the above-described section-line highway shall not obligate the County to open, improve or maintain such highway, nor to approve any plats submitted by Anderson/Kesteloot, their successors or assigns, for the property located in the S1/2 of section 15 and the N1/2 of section 22, T7N, R4E, BHM, Lawrence County, South Dakota.
 - c. In the event any person or entity in the future seeks to have the County add the portion of section-line under consideration in this Agreement added to the County highway system, they shall follow the applicable statutory and/or County regulations at the time such application is presented.
3. This Agreement is for the benefit of the Anderson/Kesteloot property shown on the map attached Exhibit A and described on the attached Exhibit B.
4. The terms and conditions of this Agreement shall be binding on the successors and assigns of Anderson/Kesteloot.

Executed this 13th day of April, 2021.

LAWRENCE COUNTY


Michael Anderson

By: RICHARD SEPP
Its: CHAIRMAN


Bruce Kesteloot

State of South Dakota)
) ss.
County of Lawrence)

On this _____ day of _____, 2021, before me, the undersigned officer, personally appeared _____, who acknowledged himself to be the _____ of Lawrence County, a political subdivision of the South Dakota, and that he, as such _____, being authorized to do so, executed the foregoing Agreement for Improvement to Section-Line Highway for the purposes therein contained, by signing the name of Lawrence County by himself as _____.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

(SEAL)

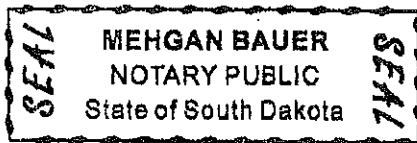
Notary Public
My Comm. Expires: _____

State of South Dakota)
) ss.
County of Meade)

On this 13th day of April, 2021, before me, the undersigned officer, personally appeared Michael Anderson, known to me to be the person whose name is subscribed to the foregoing Agreement for Improvement to Section-Line Highway and acknowledged to me that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(SEAL)



Megan Bauer

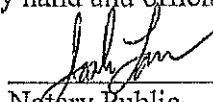
Notary Public
My Comm. Expires: NOVEMBER 6 2025

State of Minnesota)
County of Lyon) ss.

On this 19th day of April, 2021, before me, the undersigned officer, personally appeared Bruce Kesteloot, known to me to be the person whose name is subscribed to the foregoing Agreement for Improvement to Section-Line Highway and acknowledged to me that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.





Notary Public
My Comm. Expires: 01/31/2024

Location of Proposed Improvement of section line for driveway/road



EXHIBIT
A

EXHIBIT B

ANDERSON PARCEL:

S1/2 of Section 15, T7N, R4E, BHM, Lawrence County, South Dakota

KESTELOOF PARCEL:

N1/2 of Section 22, T7N, R4E, BHM, Lawrence County, South Dakota