



RINKE NOONAN

*attorneys at law*

# **County Right of Way Issues & Delivering a County Road Project**

**By Igor S. Lenzner & Adam Ripple**

Firmly Committed.



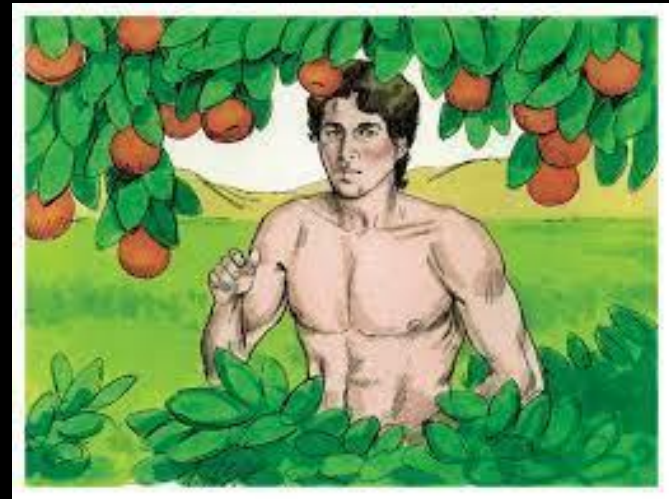
RINKE NOONAN

*attorneys at law*

Igor



Adam



Firmly Committed.



## Timing

- This is not Domino's
- MNDOT takes years for a reason
- Time saves money
- Time reduces stress
- Time reduces politics

Firmly Committed.

Firmly Committed.



## Timing

- 90 days to quick take – what you always hear
- But . . .
  1. After served with notice of quick take \*and after a court hearing and order is obtained
  2. After a Petition is filed. \*\*\*After last written offer considered/made
  3. After attorneys draft the documents



4. After parties identified
5. After title work is completed/updated
6. After good faith negotiation has occurred
7. After formal offer is made of just compensation
8. After appraisal is reviewed and approved

Firmly Committed.

Firmly Committed.



9. After appraisal is completed

10. After appraiser views property and offers owner opportunity to attend

11. After appraiser is hired (weeks before they can start)

12. After ROW needs are identified...

Firmly Committed.

Firmly Committed.



# What are the issues that are different for Counties?

- Types of acquisitions
- Impacts of acquisitions
- Numbers of acquisitions
- Relocations
- Underlying title/roadway limits
- Staffing/consultants
- Oversight
- Politics

Firmly Committed.

Firmly Committed.



# What to acquire?

- Road
- Shoulder and clear zone
- Drainage
- Sidewalks/trails
- Utilities
- Future

Firmly Committed.





What do you mean no access?



Firmly Committed.



# What to acquire?

- What do you have now
  - Is there existing right of way
  - Order, deed, easement, or prescription
- Fee vs. permanent easement vs. temporary easement
- Different types of easements (drainage, utility, etc.)
- How long are easements needed
- Access control



# Describe and show what you need?

- Survey
- Right of way plat
- Maps – use color
- Detail
  - Temporary easements
  - Measurements
  - Distances from fixed objects
- What requires removal (show it)
  - Trees, sand/gravel, structures, sprinklers, utilities, tanks, wells, septic



Firmly Committed.



# Appraisers Helping Define Potential Impacts



"I know nothing about the subject,  
but I'm happy to give you my expert opinion."

Firmly Committed.



# What are the impacts of what you need?

- Include appraisers and consultants in analysis
- Consider owner comments
- Houses and garages
- Proximity concerns
- Severance of properties
- Shape for farmers
- Trees



# Who maintains the wall?



Firmly Committed.



## What will be removed?



Firmly Committed.



# Trees

- “Tree” = at least six inches in diameter, as measured at a point two feet from the ground (Minn. Stat. § 160.22)



Firmly Committed.





# Trees

- Minn. Stat. § 160.22
  - Ownership
  - Removal of unacquired trees
    - Notice and a hearing
    - Resolution by road authority
    - Notice of decision and right to appeal
    - Owner entitled to wood
    - Exception for town roads
  - [www.crowwing115.com](http://www.crowwing115.com)



# Trees

- 200 year old oak
- Memorial trees
- Replacement vs. lumber



Firmly Committed.



# Trees

- Trimming
  - Portions in or overhanging ROW
  - Cannot kill tree
  - Notice is prudent
- Treble damages



Firmly Committed.

# What are the impacts of what you need?



- Other features – gardens, wells, septic systems, pet cemeteries
- Impacts on parking
- Access closures, reroutes or limits
- Impacts of shifted utilities
- Impacts of trails/paths
- Impacts from the project – temporary versus long term



Firmly Committed.

# Accesses and Driveways (Minn. Stat. § 160.18)

- Culvert on existing road
- Approaches to new highway
- Access for particular uses



Firmly Committed.

# Defining what you need

- Right of way plats
- Fee vs. easement
- Temporary construction easements
- Access control

Firmly Committed.

Firmly Committed.



## When do you need it?

- Work backwards
- Provide time for right of way
- Relocation considerations
- Individual considerations

Firmly Committed.

Firmly Committed.

# Practical Considerations

- Condemnation
  - County attorney vs. consultant
  - Cost
  - Risk
  - Timing
  - The importance of “The Last Written Offer”

Firmly Committed.

Firmly Committed.





# Igor Lenzner & Adam Ripple

Rinke Noonan, Ltd.

1015 West St. Germain Street, Suite 300

P.O. Box 1497

St. Cloud, MN 56302-1497

(320) 251-6700

Firmly Committed.

Firmly Committed.



Thank you!

Please feel free to contact  
Rinke Noonan if you need any  
additional information.

[www.RinkeNoonan.com](http://www.RinkeNoonan.com)

Firmly Committed.

Firmly Committed.