



**Winnebago County**  
Office of the County Clerk

*The Wave of the Future*

**NOTICE OF CLAIM**

Date: July 10, 2017

To: Doug, Linda and Joan

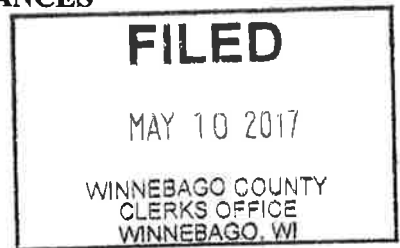
Re: Claim from Carol Marwede Trust and Carol Marwede \$569,000 for "an economic remnant of land" which is landlocked and inaccessible

This claim will be presented to the County Board at their July 18, 2017 meeting.

*Sud 5-10-17 @ 2:10 pm  
By - Robt McGrega / AMS*

**NOTICE OF CLAIM AND NOTICE OF CIRCUMSTANCES**  
**§ 893.80 WISCONSIN STATUTES**  
(By Personal Service)

TO: Winnebago County  
Attn: Sue Ertmer, County Clerk  
415 Jackson Street, Room 110  
Oshkosh, WI 54901



Notice is hereby given that the Carol Marwede Trust dated October 18, 2002 and Carol Marwede (herein "Marwede") have a claim for \$569,000 plus interest against Winnebago County for an economic remnant of land as defined in Wis. Stata. § 32.05(3m) which has now been determined to be landlocked and inaccessible. The amount of this claim is based upon the value of this property if it had feasible access to County Highway CB. Such access no longer exists and cannot be obtained.

The details set forth below have been the subject of ongoing discussions on behalf of Marwede with County Corporation Counsel John Bodnar and County Executive Mark Harris in an effort to find mutually agreeable resolutions to the issues set forth in this claim, through both correspondence and personal meetings. Marwede remains open to continuing such discussions.

Carol Marwede, who is 83 years old, is the sole trustee and beneficiary of this Trust which she established for estate planning purposes.

The circumstances for this claim are that tax parcel #121-0521 (f/k/a 008-0521) consisting of 26.14 acres was created when the Marwede farmland was completely severed by the north/south route of highway right-of-way taken by Winnebago County to construct County Highway CB in the Town of Menasha, now known as Village of Fox Crossing.

The County has assessed this parcel of land for varying amounts over the past several years as high as \$892,000, then at \$539,000, and most recently at \$433,000. The lower amounts of assessment were made only after Marwede representatives complained to the County that until the access issue could be resolved the property was no longer worth full value.

Since Highway CB was constructed Marwede has depleted her savings by paying a total of approximately \$109,000 in real estate taxes for this parcel alone. Now she needs to sell the property because she needs money, it has been determined for the reasons below that no access exists and no reasonable access is obtainable.

Marwede has listed the property for sale with two separate local real estate brokers for as much as \$720,000, all based upon her reliance on the representations made to her in writing by Moss & Associates at the time of the land acquisition for construction of Highway CB, that the property had ingress egress access pursuant to an existing culvert entry way located on neighboring property to the north onto County Highway CB.

Winnebago County did not pay any money to Marwede for this severed parcel of landlocked property, also on the County's reliance on the representations of Moss & Associates

and corresponding belief that the Marwede property had access to the newly constructed Highway CB on the existing culvert access used by ANR Pipeline.

At the time of the taking the real estate acquisition "Consultant/Negotiator" for Winnebago County Highway Commission (Moss & Associates) representing Winnebago County declared in writing to Marwede that her property had direct access to Highway CB from a culvert entrance to a road which was later determined to be a private road, not a public road, currently owned and used by ANR Pipeline Company (herein "ANR Pipeline"), which is based in Houston, Texas. Both Marwede and the County, in reliance on that representation from the County's eminent domain land acquisition agent, Moss & Associates, moved forward under the good faith belief, based upon inaccurate information provided by Moss & Associates, that the property could be accessed from County Highway CB using this culvert entrance.

After considerable investigation and effort it has now been determined that the property is landlocked after taking into account the following factors:

1. **No Culvert Access.** The culvert access is not located on Marwede property and does not touch Marwede property. There is not now and never was any culvert access to this severed parcel of property after CB was constructed.
2. **No Right to Use Private Road.** ANR Pipeline has allowed Marwede to use this road permissively, but will not grant an easement to use this road to any successors or assigns of Marwede with one exception. ANR Pipeline would grant an easement to Winnebago County to use the private road and access this road from the culvert entrance at CB for County dog park purposes only, but for no other purpose and to no other party.
3. **County No Interest for Dog Park Use.** One County official expressed initial interest in the Marwede property for a County dog park, but more recently the County has shifted its focus to use property owned by Glatfelter for a dog park, the current status of which is believed to still be pending.
4. **Landlocked Boundaries.** The Marwede property is bonded on the east and the north by County Highway CB right-of-way and on the west by property owned by ANR Pipeline, and on the south by an existing operating railroad line.
5. **Sale Efforts.** Marwede retained a licensed real estate broker and listed the property for sale, but no buyers could be obtained when upon investigation these buyers learned the property was landlocked and had no access to County Highway CB
6. **New Access Points Not Feasible.** Marwede has explored the possibility of installing a new driveway from the Marwede property onto County Highway CB.
  - a) **No Driveway in Wetlands.** The northern portion of the Marwede property has been delineated as "wetlands" subsequent to the construction of Highway CB which was the result of storm water runoff and inadequate drainage of the

Marwede property due to the construction of County Highway CB. This wetlands condition prohibits construction of an access point at the northern end of the parcel in addition to other reasons.

- b) **Location of Existing ANR Culvert.** The existing culvert access to the ANR Pipeline property would be too close to any proposed access point on CB on the northern end of the property due to safety issues even if the wetlands do not exist.
  - c) **Current ANR Culvert Does Not Abut Marwede Property.** Marwede cannot attach a separate driveway to the current culvert right-of-way entry used by ANR because Marwede's property does not extend far enough northward to abut this right-of-way access point. This obstacle is in addition to the wetlands and safety obstacles.
  - d) **Safety Concerns in Southern Non-Wetland Area.** At the southwestern corner of the Marwede property Highway CB is constructed as an overpass of the Wisconsin Central Railroad at an elevation too high for a practical culvert/driveway access. Any such driveway would have a very steep grade onto the County Highway creating a dangerous condition. In addition to the elevation problem Highway CB is a curved design along the Marwede property western border further contributing to safety concerns.
  - e) **County Highway Commissioner.** The site was visited by the former County Highway Commissioner and Corporation Counsel with Marwede's son, Mark Marwede, and at that time of that meeting visual observations confirmed the elevation, curve, wetlands locations, and safety concerns.
  - f) **Consultation with Davel Engineering.** Marwede hired Davel Engineering to evaluate the feasibility of constructing a driveway along the southwestern boundary onto CB. Davel Engineering confirmed the safety, grade, and elevation concerns referenced above.
7. **Consultation with Village of Fox Crossing.** John Bodner and Marwede's legal counsel consulted with Village of Fox Crossing through its Community Development Director, George Dearborn, to see if there was any possible future development plan in this area that would create public road access to the Marwede property. No such plans exist or are any forecasted in the future.
8. **Neighboring Property Owners as Potential Buyers.** Marwede with the assistance of a real estate broker solicited the possible sale of this property to neighboring property owners, and in particular to Kimberly Clark as recently as April 2017, but no abutting property owners are interested in buying this property from Marwede under any circumstances.
9. **Marwede Has Now Exhausted All Efforts to Avoid Uneconomic Remnant Status.** Marwede with the assistance of a licensed real estate broker and attorney have

worked with County Corporation Counsel and have met with the County Executive, the former Winnebago County Highway Commissioner, a private consulting civil engineering firm, and have also consulted with the Public Works Director for the Village of Fox Crossing to explore every feasible alternative to avoid this property being classified as an uneconomic landlocked remnant, all without success, leaving no alternative but to seek payment from Winnebago County.

Marwede is entitled to payment for this landlocked parcel from the County being that it constitutes an uneconomic remnant resulting from the eminent domain proceedings undertaken for the construction of County Highway CB, combined with the misinformation provided by Moss & Associates to Marwede that Marwede had access to County CB from the culvert access immediately north of the Marwede property.


Marwede desires to avoid any further litigation to the maximum extent possible and respectfully requests that the County of Winnebago take such appropriate measures as may be necessary to pay Marwede for this property as an uneconomic remnant and to avoid litigation over this matter.

On behalf of Marwede we thank Winnebago County for giving this claim its most serious attention at the earliest possible convenience.

Dated this 9th day of May, 2017.

HERRLING CLARK LAW FIRM LTD.  
Attorneys for Carol Marwede Trust dated  
October 18, 2002 and Carol Marwede

BY:

  
Charles D. Koehler  
State Bar No. 1016232