

**CERTIFYING TOWNSHIP COSTS TO  
THE COUNTY AUDITOR VIA MINN.  
STAT. § 366.012 & § 366.011**

By

Michael Couri

Couri & Ruppe

[mike@couriruppe.com](mailto:mike@couriruppe.com)

(763) 497-1930

# WHAT IS IT?

- M.S. 366.012 authorizes collection of unpaid service charges via certification to the County Auditor for collection with the taxes.
- Town must provide written notice to property owner by September 15<sup>th</sup> of Town's intent to certify charges to the Auditor.
- Town must certify charges to the County Auditor by October 15<sup>th</sup> for collection with the next year's taxes.

# HOW DOES IT WORK?

- Certified charges show up on the property owner's tax statement as "Other taxes."
- Property owner must pay the charges with taxes due or his taxes will be deemed delinquent.
- If not paid after four or five years, the property will be forfeit to the state for non-payment of taxes.

# HOW ARE TOWNSHIPS USING THIS PROCESS?

- Collecting fire service costs.
- Collecting planning and zoning fees.
- Recovering costs of removing obstructions in the right of way.
- Recovering costs of repairing damage to the right of way caused by a property owner.
- Recovering costs from vacating roads requested by property owner.

# RANDOLPH TOWNSHIP CASE

- *Great Western Industrial Park v. Randolph Township*, 853 N.W.2d 155 (2014)
- RTS (a shingle recycler) entered into a purchase agreement with GWIP (property owner) and both RTS and GWIP applied for a CUP for a shingle recycling plant.
- Application required an EAW, which Township's planner performed in conjunction with RTS.
- Township ultimately denied the CUP.

# **GWIP v. RANDOLPH TWP. (Cont.)**

- RTS deposited about \$6,000 with the Township as an initial escrow.
- When escrow ran out, neither RTS nor GWIP paid additional Township bills.
- Township certified approximately \$32,000 in unpaid RTS/GWIP costs to the County Auditor to be collected with the property taxes.
- GWIP appealed the certification.

# GWIP v. RANDOLPH TWP. (Cont.)

- Appellate Court denied certification of costs, finding that Township did not have the proper authorization via ordinance to certify costs.
- M.S. 366.012 states that the Town may certify the costs “if it is authorized to impose a service charge.”
- Court found that M.S. 462.353 (which allows Towns to collect fees for zoning requests) required fees to be set by ordinance.

# GWIP v. RANDOLPH TWP. (Cont.)

- The Court found the Township's ordinances were not sufficient to support certification of the fees.
- I believe that the Court thought \$32,000 in fees was excessive, particularly when the Town denied the CUP.
- "Bad facts make bad law."



# Fall out from GWIP v. Randolph

- Towns need to revise the fee sections of their ordinances to make sure that the ordinance:
  - Requires payment of all application fees.
  - Specifically sets out how the fee is calculated or what is included in the fee.
  - Requires payment of all planning, engineering and legal fees incurred by the Township.
  - Permits certification of the charges under M.S. 366.012.

# Fall out from GWIP v. Randolph

- For zoning applications, right of way permits and road vacations, require an escrow from the applicant.
- Require the applicant to replenish the escrow when it gets below a certain amount.
- Using an escrow makes it less likely that the Township will have to resort to § 366.012.

# ORDINANCES TO REVISE

- All zoning and subdivision ordinances should set specific fees, require escrows, require payment of Town's costs which exceed the escrow, and authorize certification per Minn. Stat. 366.012.
- Right of way ordinances should clearly require the person causing the problem (obstructing or damaging the ROW) to reimburse the Town for its expenses of remedying problem and authorize certification per Minn. Stat. 366.012.

# ORDINANCES TO REVISE

- Right of way permit ordinances should be revised to require payment of all of Township's costs, to require an escrow for potential damage to the road, and to allow certification of unpaid costs per M.S. § 366.012.
- Emergency service (fire response) ordinance should set specific fees for services provided and allow certification per Minn. Stat. 366.012.

# ORDINANCES TO REVISE (Cont.)

- Nuisance ordinance should require property owner to reimburse Town for costs of eliminating nuisance and allow certification per Minn. Stat. 366.012.
- Pass an ordinance requiring cash escrow for a cartway proceeding, allowing the Town to certify any unpaid costs to the petitioner's property, and requiring the petitioner sign an agreement allowing the Town to certify unpaid costs to the petitioner's property per Minn. Stat. 366.012.

# ORDINANCES TO REVISE (Cont.)

- We recommend also passing a “catch-all” ordinance that authorizes the Town to certify under M.S. 366.012 any fees imposed by any of the Town’s ordinances to the property for which the fees were incurred.
- Although not full-proof, it will give the Town a good argument that it has authority to certify costs under M.S. 366.012.

# Zoning Application

- Modify zoning applications to include language that states the applicant consents to the certification of unpaid costs against their property pursuant to Minn. Stat. 366.012.
- **Require the property owner to sign all zoning applications.**
- If no property owner signature, reject application as incomplete within 15 business days of receiving it.

# Road Vacations

- Township should require all people petitioning to vacate a portion of road to sign an agreement to pay all Township costs.
- Agreement should state that owner agrees to allow the Township to certify unpaid costs to owners' property per M.S. 366.012.



# Application/Agreement Language

- *I agree to pay all **NON REFUNDABLE** application fees in advance and, if required by the Township Clerk, I agree to post an escrow with the Township as required by Township ordinance to fund expenses incurred by the Township in processing this request. I understand and agree that all Township-incurred professional fees and expenses associated with the processing of this request are the responsibility of the property owner and shall be promptly paid by the property owner upon billing by the Township in the event the escrow fund is depleted. If payment of the Township-incurred expenses is not received from the property owner within 10 days of billing, the property owner acknowledges and agrees to be responsible for the unpaid fee balance either by direct payment or an assessment against the Owner's property via Minn. Stat. § 366.012.*

# Minn. Stat. § 366.011

- Minn. Stat. § 366.011 authorizes the Township to charge those to whom it provides emergency services for the reasonable cost of such services.
- This includes fire, rescue, medical and related services.
- Can include people who are not residents or landowners in the Township.

# Minn. Stat. § 366.011

- If a person does not pay § 366.011 charges, the Town can have these charges certified against any property the person owns in the state per § 366.012.
- Property does not have to be located in your Township or even in your County.
- Used to collect for fire/medical calls to vehicles passing through your Township.

# QUESTIONS?

