

# Town of Sumner loses lawsuit over \$11k in North Shore Road damage

by Jeff Brown  
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A judge has dismissed a lawsuit filed by the Town of Sumner seeking \$11,000 from Badgerland Excavating Corp. for damage to North Shore Road, damage the town alleged was caused by the company's dump trucks.

## Winter dredging project

In February of 2013, the Rock-Koshkong Lake District hired Badgerland to build a mile-long ice road along the shore in Stinker's Bay and dredge up silt and mud from the lake's shallow bottom, then truck the silt and mud along the ice road and dump it near where tiny Mud Lake meets Lake Koshkong, the state's eighth-largest lake.

The goal was to dig a two-foot-deep trench near the boat launch so boats could enter Lake Koshkong more easily and to use the silt, along with rock, to build a breakwater between Mud Lake, which is really a big marsh, and Lake Koshkong.

In addition to hauling two large excavators to the dredge site, Badgerland's trucks hauled 157 loads of rock for the breakwater down North Shore Road, a portion of which belongs to the Town of Sumner and a portion of

which belongs to the Town of Koshkong. Portions of the road sit atop a gravel bed, which is able to bear less weight than a bed of recycled asphalt.

## Bad road busted up

After the spring thaw in 2013, Town of Sumner officials discovered damage to the town's portion of North Shore Road, damage they concluded was caused by Badgerland's dump trucks. Town officials asked the lake district to pay for the damage.

During an RKLDD board of commissioners meeting held in the summer of 2013, Board of Commissioners Chairman Brian Christianson said it was impossible to determine how much of the damage to North Shore Road, if any, was caused by Badgerland's trucks and how much was caused by the normal freeze and thaw cycles that exert fatal stress on blacktop in Wisconsin each winter and spring.

The board voted to offer the town \$2,500 for the damage. Commissioner Andy Walton, who also serves on the Fulton Town Board, voted against the offer, saying the RKLDD should have offered the town more money.

## See you in court

Town of Sumner officials agreed with Walton and refused the \$2,500. In-

stead, they sued Badgerland for the damage to the road.

In her April 9 ruling, Jefferson County Circuit Court Judge Jennifer L. Weston found that of the 157 trips Badgerland trucks made carrying rock down North Shore Road, nine were over the 48,000-pound weight limit established by state law.

However, ruled Weston, whether those nine loads caused the damage to the road is a question that a jury couldn't answer without expert testimony, testimony the town failed to include with its complaint.

Additionally, ruled Weston, public policy dictated that the case be dismissed because the town failed to set a lower weight limit on North Shore Road, as it was authorized to do under

state law, and failed to enter into an indemnity agreement with Badgerland, as the Town of Koshkong did with Badgerland.

Allowing the case to go to trial given those failures, wrote Weston, would be unwise. It would also be unfair, she wrote, because it would provide an incentive for towns to make legal claims against road users for damage that the town couldn't show was attributable to the users.

Sumner Town Chairman John Dohner declined to comment on the ruling; he said the town's lawyer was still reviewing Weston's decision. Rob DeBauche, the lawyer for Badgerland, also declined comment. The town has 45 days to appeal Weston's ruling.