

Office of the Revisor of Statutes

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2022 Minnesota Statutes

[Authenticate](#) 164.08 MS 1957 [Repealed, [1959 c 500 art 6 s 13](#)]**164.08 CARTWAYS.**

Subdivision 1. **Permitted establishment; conditions.** The town board by resolution may establish a cartway two rods wide and not more than one-half mile in length upon petition presented to the town board signed by at least five voters, landowners of the town, requesting the cartway on a section line to serve a tract or tracts of land consisting of at least 150 acres of which at least 100 acres are tillable. If the petition is granted the proceedings of the town board shall be in accordance with section [164.07](#).

Subd. 2. **Mandatory establishment; conditions.** (a) Upon petition presented to the town board by the owner of a tract of land containing at least five acres, who has no access thereto except over a navigable waterway or over the lands of others, or whose access thereto is less than two rods in width, the town board by resolution shall establish a cartway at least two rods wide connecting the petitioner's land with a public road. A town board shall establish a cartway upon a petition of an owner of a tract of land that, as of January 1, 1998, was on record as a separate parcel, contained at least two but less than five acres, and has no access thereto except over a navigable waterway or over the lands of others. The town board may select an alternative route other than that petitioned for if the alternative is deemed by the town board to be less disruptive and damaging to the affected landowners and in the public's best interest.

(b) In an unorganized territory, the board of county commissioners of the county in which the tract is located shall act as the town board. The proceedings of the town board shall be in accordance with section [164.07](#).

(c) The amount of damages shall be paid by the petitioner to the town before such cartway is opened. For the purposes of this subdivision damages shall mean the compensation, if any, awarded to the owner of the land upon which the cartway is established together with the cost of professional and other services, hearing costs, administrative costs, recording costs, and other costs and expenses which the town may incur in connection with the proceedings for the establishment of the cartway. The town board may by resolution require the petitioner to post a bond or other security acceptable to the board for the total estimated damages before the board takes action on the petition.

(d) Town road and bridge funds shall not be expended on the cartway unless the town board, or the county board acting as the town board in the case of a cartway established in an unorganized territory, by resolution determines that an expenditure is in the public interest. If no resolution is adopted to that effect, the grading or other construction work and the maintenance of the cartway is the responsibility of the petitioner, subject to the provisions of section [164.10](#).

(e) After the cartway has been constructed the town board, or the county board in the case of unorganized territory, may by resolution designate the cartway as a private driveway with the written consent of the affected landowner in which case from the effective date of the resolution no town road and bridge funds shall be expended for maintenance of the driveway; provided that the cartway shall not be vacated without following the vacation proceedings established under section [164.07](#).

Subd. 3. **Maintenance costs.** When a cartway is not maintained by the town, one or more of the private property owners who own land adjacent to a cartway or one or more of the private property owners who has no access to the owner's land except by way of the cartway may maintain the cartway. The cost of maintenance shall be equitably divided among all of the private property owners who own land adjacent to the cartway and all of the private property owners who have no access to their land except by way of the cartway. The following factors may be taken into consideration when determining an equitable share of maintenance expenses: the frequency of use, the type and weight of the vehicles or equipment, and the distance traveled on the cartway to the individual's property. The town board may determine the maintenance costs to be apportioned to each private property owner if the private property owners cannot agree on the division of the costs. The town board's decision may be appealed within 30 days to the district court of the county in which the cartway is located. Private property owners who pay the cost of maintenance shall have a civil cause of action against any of the private property owners who refuse to pay their share of the maintenance cost.

History: [1959 c 500 art 5 s 8](#); [1978 c 551 s 1](#); [1979 c 83 s 1](#); [1980 c 435 s 2](#); [1981 c 77 s 1](#); [1985 c 163 s 1](#); [1986 c 444](#); [1989 c 16 s 1](#); [1993 c 275 s 1](#); [1998 c 254 art 2 s 12](#); [1998 c 296 s 1](#); [2000 c 334 s 2](#); [2004 c 228 art 2 s 6](#); [2004 c 262 art 2 s 7](#)

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164.11 MS 1957 [Repealed, [1959 c 500 art 6 s 13](#)]

164.11 LAND DEDICATED AS ROAD OR STREET.

Land dedicated to public use as a street, road, or cartway, if not less than 30 feet in width, shall be deemed a legal cartway.

History: [1959 c 500 art 5 s 11](#); [1984 c 562 s 9](#)

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164.15 MS 1957 [Repealed, [1959 c 500 art 6 s 13](#)]

164.15 DEDICATION OF LAND FOR ROAD OR CARTWAY.

Subdivision 1. **Application.** One or more owners may dedicate land for a road or cartway by making application therefor in writing to the town board, describing the land, the purpose of its dedication, and filing the application with the clerk. The clerk shall present the same to the town board which, within ten days after the filing, may pass a resolution declaring the land described to be a public road or cartway. When so declared the land shall be deemed duly dedicated for the purpose expressed in the application and no damages shall be assessed or allowed therefor.

Subd. 2. **Bridge over lake.** Any person owning land to exceed 40 acres constituting part of an island within any meandered lake may at personal expense erect a bridge across such portion of the lake as may separate the person's land from the nearest town road on shore, provided the structure shall not interfere with the use of that part of the lake for the passage of such watercraft as would otherwise pass that point. Before proceeding with the construction of the bridge, proper plans and specifications therefor shall be prepared and submitted to and approved by the town board of the town in which the bridge is to be constructed. If public waters are involved, the plans shall first be approved by the commissioner of natural resources. Upon the completion of the bridge in accordance with the plans and specifications, the town board shall approve the same and endorse its approval upon the plans and specifications therefor; and thereupon the same shall be filed in the office of the clerk of the town in which the bridge is located and the bridge shall thereupon become a part of the town road and open to the use of the public as such.

History: [1959 c 500 art 5 s 15](#); [1969 c 1129 art 3 s 1](#); [1986 c 444](#)

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Articles & Resources

Court to Township: Not a Smart Way to Establish a Cartway

10/05/2010 / Gary Van Cleve

“Cartway” is an anachronistic term that invokes pastoral images of hay-laden oxcarts lumbering down country roads. But the term cartway has real meaning in Minnesota law, referring to the procedure by which a property owner with no legal access to a public road may petition the local township to provide the owner with access—termed a “cartway” in Minnesota statutes. Cartway law attempts to balance the tension between the right of a landlocked property owner to establish access to a public road through neighboring properties, against the rights of the neighboring property owners not to be unduly disturbed and damaged by the establishment of the access. In July, the Minnesota Supreme Court decided a case that addressed this balancing act and concluded, on the one hand, that a landlocked property owner must be given a “meaningful” cartway access, but on the other hand, the courts cannot dictate where that access should be. *Kennedy v. Pepin Township of Wabasha County*, ___ N.W.2d ___ (App.File No. A08-1921, July 15, 2010).

The Minnesota cartway statute obligates a township to establish a cartway to provide access to a landowner who has no access to a public road except over the land of the owner’s neighbors. Minn. Stat. § 164.08. The statute directs that the town board “shall establish a cartway” upon the petition of a landowner who has no access to a public road. The petitioning landowner is obligated to pay compensation to the neighboring land owner on which the cartway is built and is further obligated to pay the cost of constructing the cartway itself, unless the town board finds that establishing the cartway is in the public interest. *Id.*

In the recently-decided *Kennedy* case, Mr. Kennedy petitioned Pepin Township for a cartway to provide access to a five-acre portion of his 26.6-acre tract of land situated along Highway 61, overlooking the Mississippi River in Wabasha County. Most of Kennedy’s land is steep bluff, but includes a flat, five-acre parcel sitting atop the bluff. Kennedy requested the Township to give him access to the blufftop land by establishing a cartway through a privately-owned apple orchard. The orchard owner¹ vigorously opposed the cartway, arguing that secure boundaries to the orchard were required to limit predators and discourage trespassers. Moreover, the orchard owner argued that it needed to protect new varieties of apples it was developing under contract with the University of Minnesota. The orchard owner asked the Township to establish an alternative route under language in the cartway statute that allows a town board to do so, “if the alternative is deemed by the town board to be less disruptive and damaging to the affected landowners and in the public’s best interest.” *Id.*, subd.. 2(a).

The Township denied Kennedy a cartway through the apple orchard, but granted an alternative route that it determined was the least expensive and least disruptive. It established a cartway off an existing private road that accessed Highway 61 at the base of the bluff. Kennedy found this route unsatisfactory because it did not achieve his goal of accessing his five-acre parcel at the top of the bluff, so he appealed to the district court.

The district court affirmed the town board’s decision, stating that the court could “find no authority ... that states that the cartway must provide access to the entire parcel.” Kennedy then appealed the district court decision to the court of appeals, which reversed the town board’s decision, concluding that “when one portion of usable, landlocked property cannot be accessed due to the nature of the property, the access requirements of the cartway statute are not fulfilled even though another portion of the property is accessible.” The court of appeals remanded the case

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with instructions to the Township to establish the cartway across the orchard as “the most reasonable route to the useable portion of Kennedy’s property.”

The Minnesota Supreme Court granted review, affirmed part of the court of appeals decision and reversed another part. The Supreme Court upheld the court of appeals’ rejection of the cartway route that the Township had selected. The Supreme Court held that the Township must select a cartway route that provides meaningful access to land; the Township’s establishment of a cartway that did not give Kennedy access to his blufftop was not meaningful and therefore erroneous. Two dissenting justices pointed out that there was no requirement in the cartway statute that the access be “meaningful” and expressed doubt on how “meaningful” access would be determined.

The Supreme Court disagreed with and reversed the court of appeals’ decision ordering the Township to establish the cartway in the location requested by Kennedy—through the orchard. The Supreme Court said that the court of appeals had overstepped its bounds in ordering the Township to establish a particular cartway route because establishing a cartway is a legislative decision to which the courts must ordinarily give deference: “We agree with the Township that the selection of a route is a decision allocated by statute to the Township to make in its discretion. ... It is not within an appellate court’s power to substitute its judgment for that of the Township in selecting a route that provides access to the usable portion of [Kennedy’s] land.”

Moreover, the Supreme Court recognized that the Township’s discretion and authority as granted by statute allow the Township to either grant the cartway in the requested location, or establish the cartway in an alternative location, if the Township determines that (a) an alternative route will be less disruptive and damaging to neighbors, and (b) the alternative route is in the public’s best interest. The Court explained that, “among other factors”, the public’s best interest contemplates “meaningful and usable access that will encourage owners to put land to its best possible present use.”

This case now must return to Pepin Township for further proceedings. Based on the mandate from the Minnesota Supreme Court, the Township undoubtedly will once again face the issue of the potential for disruption or damage to the neighboring property owners, including the orchard, with respect to proposed cartway routes. Additionally, the Township will be required to consider whether a cartway route will be in the public’s best interest. Finally, there will be the very real and practical consideration that the petitioner, Kennedy, will confront once a cartway is finally established—that is, the statutory requirement that he will be responsible for paying compensation to the owners of the property on which the cartway will be built and, most likely, paying for the construction of the cartway itself. Accordingly, while Minnesota cartway law does provide a way for a landlocked property owner to secure access to a public road, that access comes at a price.

¹ The author of this article represented the orchard owner in proceedings before Pepin Township.