
UNDERSTANDING CARTWAYS

plus

A WORKSHEET FOR ESTABLISHING CARTWAYS

by
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One of the many unique aspects of town government is the ability of town boards to establish cartways. Cartways are themselves unique in that they share characteristics of public roads and private driveways. The statutes do not specifically define what a cartway is and the statute providing for the creation of cartways is itself apparently inconsistent on the nature of cartways. In many ways, the best we can do to understand cartways is to understand the basic purpose they serve, the situations in which they can be created, the process that must be followed to create them, and the town's obligation over cartways once they are established. To aid in this understanding, the following will briefly discuss these various issues. However, it should be noted that the unique nature of cartways also tends to involve a variety of unique circumstances that cannot be covered in this discussion.

There are four methods for establishing cartway, two are by owner dedication, and the other two are by town board establishment. Cartways are most often raised in the context of the town being petitioned to establish a cartway to provide access to landlocked property. As such, this paper will focus on the establishment of cartways to landlocked property and includes a worksheet that outlines the procedure. Additional information on cartways can be found in Document Number: TR12500 on the Information Library.

CREATION BY DEDICATION

(1) DIRECT DEDICATION BY OWNER (Minn. Stat. § 164.15)

Owners of property may dedicate their land for a cartway by filing a written application with the town board. Minn. Stat. § 164.15, subd. 1. The application must describe the land, the purpose of the dedication, and must be filed with the town clerk. Once the application is filed, the town board has 10 days to decide whether to accept the dedication. If the board decides to accept the dedication, it must do so by passing a resolution. Refer to Appendix E of the Road Establishment and Extinguishment Document (Document Number TR4000E) for a sample application for dedicating land for a road and a sample acceptance resolution – both documents would need to be modified to reflect that the land is being dedicated for a cartway instead of a road. Once accepted, the land is deemed duly dedicated for cartway purposes and no damages may be assessed or allowed for the cartway.

(2) GENERAL DEDICATION OF LAND TO THE PUBLIC (Minn. Stat. § 164.11)

For many years there has existed a curious statute, consisting of a single sentence, indicating that “[l]and dedicated to public use as a street, road or cartway, if not less than 30 feet

in width, shall be deemed a legal cartway.” Minn. Stat. § 164.11. This statute is interesting because it purportedly encompasses dedications made to the public expressly for streets or roads purposes. As long as the land dedicated is at least 30 feet wide, the statute deems the dedication as having established a cartway. The question then becomes what is the effect of the law deeming road dedications as creating cartways. Such a discussion could take many paths, but for the purposes of this paper the discussion will be limited to the single largest group of public road dedications – land dedicated by plat for public road purposes.

Those who develop large tracts of open land often do so by creating a plat that divides the lands into lots, roads, parks, etc. Roads are drawn on the plat and are usually labeled as being dedicated to the public for road purposes. Minn. Stat. §§ 505.01 & 505.02. Once the plat goes through the zoning approval process and is recorded, the roads in the plat are deemed dedicated to the local government and are held in trust in its name until the board decides to open and maintain the roads. Because these roads are typically 66 feet wide and are dedicated to the public as roads, applying Minn. Stat. § 164.11 would mean they are to be deemed legal cartways.

Without setting out the full analysis, it appears the following would hold true of roads dedicated to the public by plat: (1) they are deemed legal cartways (Minn. Stat. § 164.11); (2) they are open for public use upon dedication, even if the board chooses to not yet open and maintain them as public roads; (3) they are maintained by those who use them until the town board passes a resolution determining the public interest warrants it to take it over and maintain it as a town road (Minn. Stat. § 164.08, subd. 3); and (4) before the town board decides to open and maintain a platted road as a public road, the town electors can petition for a vote at the annual town meeting on whether the town should spend public funds on the road (Minn. Stat. § 164.10).

CREATION BY TOWN ESTABLISHMENT

There are two situations in which an owner of land may petition a town board for the establishment of a cartway. The first involves a request for a field access road to tillable land. The second involves an owner asking for the establishment of a cartway to provide access to land that is landlocked. One of the most important distinctions between these two methods is that the establishment of a field access cartway under the first method is discretionary with the town board, but the establishment of a cartway to landlocked property is mandatory if the statutory criteria are satisfied. A description of each method is set out below.

(3) ESTABLISHING A FIELD ACCESS (Minn. Stat. § 164.08, subd. 1)

Purposes: Although it is rarely used, subdivision 1 of Minn. Stat. § 164.08 allows the creation of a cartway for the purpose of providing access to land of a certain size with a minimum number of tillable acres.

Qualifying Criteria: (1) The tract or tracts of land to be served by the cartway must consist of at least 150 acres of which at least 100 acres are tillable; (2) The cartway cannot be more than

one-half mile in length; (3) The cartway must be two rods wide; and (4) The cartway must be on a section line.

Petition Requirement: The petition requesting the cartway must be signed by at least five people who own land within the town and are eligible to vote at the town election.

Establishment Procedure: The town board passes a resolution granting the cartway then follows the procedure in Minn. Stat. §164.07 to establish the cartway.

Additional Information: (1) The board is not required to grant petitions requesting cartways of this type; (2) This subdivision contains no provision for placing the cost of establishing or constructing the cartway on the owner(s); however, the board should not spend any public funds on a cartway of this type unless it passes a resolution finding the public interest requires the expenditure; and (3) Remember that these cartways must be placed on the section line and cannot be more than one-half mile in length.

(4) ESTABLISHING ACCESS TO LANDLOCKED PROPERTY (Minn. Stat. § 164.08, subd. 2)

Purpose: To provide access to landlocked property of a certain minimum size.

Qualifying Criteria: (1) The parcel of land to be served by the cartway must contain at least five acres or, if it was a separate tract of land as of January 1, 1998, contain at least two acres; and (2) the parcel of land either has no access except over a navigable waterway or over the lands of others (i.e., is landlocked), or whose only access is less than two rods wide.

Petition Requirements: The petition must be signed by the owner of the landlocked parcel. At a minimum, the cartway petition should contain the following: a clear statement requesting a cartway; the size and description of the land to be served; if the parcel is between two to five acres, a statement on whether the parcel was of record as of January 1, 1998; that the person is landlocked, a description of the parcels that will be using the cartway as access; the width desired (minimum width is 33 feet); and the desired route for the cartway.

Mandatory: If the owner qualifies, the town board must establish the cartway provided the person complies with the requirement to pay all the costs associated with establishing the cartway, including providing the board a bond for the entire estimated costs of the establishment if the board so requires. Horton v. Township of Helen, 624 N.W.2d 591, 594 (Minn. App. 2001).

Costs & Bond: The petitioner is required to pay all costs related to the establishment of the cartway including any damages that must be paid to other owners to acquire the necessary easements, the board's attorney fees, and any other 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 petitioner is required to pay the costs before the cartway is opened.

The board may, by resolution, require the petitioner to post a bond or other security for the total estimated costs before the board takes any action on the petition. No town road and bridge funds are to be expended on these cartways unless the board, by resolution, finds that the expenditure is in the public interest.

Placement: The petitioner can indicate where he or she would like the cartway located. The Attorney General's Office has indicated that the board is generally obligated to follow the wishes of the petitioner with respect to the beginning and ending points of the cartway as well as its general course. However, in 1993 subdivision 2 was amended to allow the board to alter the requested location of the cartway "if the alternative is deemed by the town board to be less disruptive and damaging to the affected landowners and in the public's interest." Before a board attempts to change a requested route, it must adopt specific findings of fact establishing why the new route is less disruptive than the requested route. The cartway must connect the petitioner's land with a public road.

Public/Private Nature: Generally, cartways are public and may be used in the same manner as town roads. See Rask v. Town Board of Hendrum, 218 N.W. 115 (Minn. 1928). It is, however, possible to designate a cartway as a private driveway once it has been constructed. The designation is made by board resolution and it must be accompanied by the written consent of the affected landowner(s). Once the designation is made, the board is prohibited from spending any road and bridge funds on the driveway. The statute also indicates cartways designated as private driveways can only be vacated through the procedure provided in Minn. Stat. § 164.07. The effect of designating a cartway a private driveway is not expressly set out in the statute. However, it presumably allows the affected owners to prohibit use of the cartway by the general public. Whether adjacent land owners can continue to use a cartway after it is designated a private driveway is not clear, but boards must keep in mind this possibility and address it before passing the resolution.

Landlocked Determination: Determining if a tract of land is landlocked can be much more difficult than it might seem. Even if there is no access to the property, the courts have said that a tract may not be landlocked if there exists a right to assert an easement by necessity or an easement has been granted. Roemer v. Board of Sup'rs of Elysian Tp., LeSueur County, 167 N.W.2d 497 (Minn. 1969). However, land may be entitled to a cartway even if it does have access.

Access by Navigable Waterway: Water has traditionally not been considered a means of access to property sufficient to defeat a determination that a property is landlocked. The Minnesota Supreme Court reversed that common understanding in a 2003 decision. In its In re Daniel, 656 N.W.2d 543 (Minn. 2003) decision, the court held that access by navigable waters could be considered sufficient access to land. In the case, the court upheld a finding that an owner whose sole access to his land was over navigable waters (Lake Vermillion) had sufficient access and so was not eligible to receive a cartway. Much of the court's rationale focused on a historical perspective that at the time the cartway statute was created that many owners accessed their land by water. In 2004, the legislature clarified that statute by indicating that access to land by a navigable waterway did not make an owner ineligible to petition for or receive a cartway. The clarification went into effect on July 1, 2004.

Neither the court nor the legislature defined navigable waterway for the purposes of the cartway statute, but the importance of the definition has become less important since the legislature has indicated that water access does not defeat a cartway petition. If an owner with access via a navigable waterway is eligible to petition for a cartway, then it stands to reason that an owner with access via a non-navigable waterway would also be eligible to bring a cartway petition.

Impracticable Access: If the only access to the property is impracticable, the owners may claim that they are landlocked. If there are natural obstacles to accessing the property, such as very steep terrain or water, which make it unreasonable to expect the person to construct an access, courts have found that the person may be entitled to a cartway. State Ex. Rel. Rose v. Town of Greenwood, 20 N.W.2d 345, 348 (Minn. 1945); Schacht v. Town of Hyde Park, 1998 WL 202655 (Minn. App. 1998); Op. Atty. Gen. 3776-1 (June 13, 1938).

Land Divided by a River: There is no settled rule on how a town is to handle a petition from an owner that has access to their land, but has at least five acres of their land that is landlocked because it is divided from the rest of the property by a river. As stated above, an owner is to be considered landlocked even if they have access by navigable water. However, that still does not resolve the question of whether an owner is entitled to a cartway to access an isolated portion of the property when the property as a whole has access.

If the property is separated by a river of any size, the owner certainly could argue that their direct access is impractical, making the property only accessible over navigable waterway or over the lands of others. On the other hand, the cartway statute does not speak of providing access to every portion of a parcel of property. It seems likely the legislature's primary concern was creating an opportunity for people to simply gain access to their land, not to provide multiple accesses as needed to avoid all natural barriers on the land.

The attorney general's office issued an opinion in 1954 essentially saying that it was legitimate for the town board to find that a 10-12 acre portion of an 80 acre parcel is landlocked and eligible for a cartway. Op. Atty. Gen., 377-B-1, Aug. 17, 1954. It seems that if a board is presented with a petition of this type, it could exercise its legislative discretion to decide whether or not the owner is eligible for a cartway to the isolated piece of their property.

Access over a Private Road: The fact that owners have used a private road to gain access to their property in the past, even if the road has been used for many years, does not necessarily mean they have a legal access. The board must attempt to determine if the owners have a legal right to use the road (e.g., has a private easement leading to their property), or at least has a right to assert a legal access. See Roemer v. Board of Sup'rs of Elysian Tp., LeSueur County, 167 N.W.2d 497 (Minn. 1969). However, using a private road for a long period of time may not give rise to a right to continue to use it as access.

Procedure: Upon finding that the petitioner meets the qualifying criteria, the board follows the Minn. Stat. § 164.07 procedure to establish the cartway.

Construction & Maintenance: A town board is prohibited from spending public funds to construct or maintain a cartway unless it passes a resolution specifically determining that the expenditure is in the public interest. If such a resolution is not adopted, the cost of constructing, grading, and maintaining the cartway is the responsibility of the petitioner.

When the town does not maintain a cartway, the owners adjacent to the cartway or those who rely on the cartway as the only means of access to their land are responsible for maintaining the cartway. Minn. Stat. § 164.08, subd. 3. The cost of maintenance must be equitably divided among all of the adjacent owners and all the owners who have no access to their land except by way of the cartway. When determining an equitable division of the maintenance costs, the following factors may be considered: the frequency of use, the type and weight of the vehicles or equipment used, and the distance traveled on the cartway.

If the owners cannot agree on the division of costs, the town board may make the determination. The board's determination is to be based on the above listed factors. An owner may appeal the board's decision within 30 days to the district court. Each of the owners responsible for the maintenance costs have a civil cause of action against any other responsible owner who refuses to pay his or her share of the maintenance costs.

Petition for Public Maintenance: When a town board has refused to spend public funds to maintain a cartway, a petition signed by at least ten taxpayers of the town can be brought to the board requesting public funds be allocated toward the maintenance of a particular cartway. Minn. Stat. § 164.10. If a petition is received, the board is required to submit the question to the electors at the annual meeting. The statute indicates "due notice" is required, but does not explain what type of notice satisfies this requirement. As such, it is recommended that the question to be submitted be included in the notice of the annual meeting. If a majority vote in favor of the petition requesting the allocation of funds, the board is required to spend road and bridge funds to maintain the cartway.

Cartways between Townships: Adjoining town boards may, by joint resolution, establish a cartway which begins in one town and ends in the other. Minn. Stat. § 164.09. The cartway must serve a tract or tracts of land consisting of at least five acres that has no access to a public road except over the lands of others. The towns may enter into an agreement to divide the cost and responsibility for constructing and maintaining the cartway. Joint construction contracts may be let to cover all or part of the work to be performed.

Additional Information: (1) There is no established maximum width for these cartways but they must be at least two rods wide. (2) Cartways providing access to landlocked property do not necessarily need to be located on a section line and they can extend beyond one-half mile. (3) Submerged land is considered when determining whether the owner has at least five acres. Slayton Gun Club v. Town of Shetek, Murray County, 176 N.W.2d 544 (Minn. 1970). (4) The cartway must connect the petitioner's land to a public road. Minn. Stat. § 164.08, subd. 2(a).

WORKSHEET FOR ESTABLISHING A CARTWAY TO LANDLOCKED PROPERTY

by
Troy J. Gilchrist

There are two situations in which an owner may petition a town board to establish a cartway. The first situation deals with cartways to provide access to tillable land of certain minimum size. Minn. Stat. § 164.08, subd. 1. Such petitions are extremely rare and will not be discussed in this worksheet. The other situation deals with a petition for a cartway to provide access to landlocked property. Minn. Stat. § 164.08, subd. 2.

The following will provide an overview of the initial procedures to petition for and establish a cartway. Because the cartway establishment procedure relies on the town road establishment procedure in Minn. Stat. § 164.07, this worksheet will discuss the steps unique to cartways and then refer readers to the worksheet for establishing roads (Document Number: TR4000A) for the remainder of the procedure.

NOTE: If your board receives a petition requesting a cartway that appears to be valid on its face, hire an attorney (preferably someone familiar with cartways or at least town roads) to assist the board in working through the statutory procedure.

- 1) _____ The town board receives a petition (See APPENDIX A) from an owner or owners whose property satisfies one of the following two sets of criteria:
 - (1) The property contains at least five acres that either has no access to it except over a navigable waterway, over the lands of others (i.e., is landlocked), or has an access that is less than two rods wide; or
 - (2) The property was a separate parcel of record as of January 1, 1998 that contains between two and five acres and has no access to it except over the lands of others.

- 2) _____ The Board determines whether the petition is sufficient (i.e., (1) is signed by the owner of the landlocked parcel; (2) the property satisfies one of the two groups of criteria set out in step one above; and (3) the petition clearly expresses the intent of the petitioner).
 - * If the petitioner qualifies under the statute, the board is **required** to establish the cartway.

 - * A cartway petition only needs to be signed by the owner of the landlocked parcel, unlike a road petition that requires at least eight signatures. However, keep in mind that there may be other owners in the immediate

area who may also be landlocked. In such cases, the board may wish to contact those owners to pursue consolidating the request to avoid having to undertake a separate process to provide them access.

- * It is important for the board to explain the petitioner's financial obligation associated with requesting a cartway early in the process. The potential cost involved may re-motivate the person to seek a private easement from the neighbors. The neighbors also have an incentive to grant the easement since they will likely end up with a public cartway across their property if they refuse.

3) _____ The board *may* pass a resolution requiring the petitioner to provide the board a bond or other security acceptable to the board for the total estimated damages. (See **APPENDIX B**)

- * Damages are defined broadly to include all the expenses incurred in establishing the cartway including: the board's attorney fees; surveyor fees if a survey is conducted; hearing costs; administrative costs; and compensation that must be paid to the owners whose land is being taken to establish the cartway.

- * It is recommended that the board utilize this option because petitioners have been known to back out of the procedure before the cartway was established, but after the board had incurred significant costs. Such withdrawals leave the board with no direct way of seeking reimbursement short of going to court.

- * No further action is taken on the petition until the required bond or other security is submitted and approved.

4) _____ The board follows the procedures contained in Minn. Stat. § 164.07, subd. 2-12 to actually establish the cartway. (See Document Number TR4000A for a worksheet on the procedure for establishing, altering, and vacating roads).

- * If the cartway involves land in another township, refer to Minn. Stat. § 164.09.

5) _____ The cartway may *not* be finally established or opened until the petitioner pays the actual damages incurred to the board. Minn. Stat. § 164.08, subd. 2.

6) _____ The petitioner is responsible for constructing and maintaining the cartway. No public funds may be spent on a cartway unless the board specifically finds, by resolution, that such an expenditure is in the public interest. Minn. Stat. § 164.08, subd. 2.

7) _____ Upon *written consent* of the affected landowner, the board *may* by resolution

designate the cartway a private driveway after it has been constructed. (See **APPENDIX C**). Unless and until such a resolution is passed, the cartway may be used by the public.

- * If a resolution is passed, be sure to keep it on file. The board may also want to record it with the county recorder.
- * Even if a cartway is made a private driveway, it may not be vacated unless the town board vacates it through its normal vacation procedure in Minn. Stat. § 164.07.

8) _____ If the board has decided not to spend public funds on a cartway, a petition may be brought by at least ten taxpayers of the town asking for the issue to be submitted to the electors at the annual meeting. Minn. Stat. § 164.10. If a sufficient petition is brought, the petition *must* be brought to the annual meeting and put to a vote. A majority voting on the issue decides whether the petition is approved or denied. If approved, the board is required to spend funds to maintain the cartway.

**PETITION FOR A CARTWAY
TO ACCESS LANDLOCKED PROPERTY**

To the Town Board of _____ Township, _____ County,
Minnesota:

The undersigned are owners of a tract of land in _____ Township,
_____ County, more particularly described as follows:

[describe the land]

Said tract of land either: (*check one*)

contains at least five acres of land and has no established access to it except over a navigable waterway, over the lands of others, or whose only access is less than two rods wide; or

contains between two and five acres, was a separate parcel of record as of January 1, 1998, and has no established access to it except over the lands of others.

As the owners of the above described landlocked tract of land we hereby petition said town board to establish a cartway pursuant to Minn. Stat. § 164.08, subd. 2 at a width of _____ rods (at least two-rods) across the following described properties:

<u>Owners</u>	<u>Property Description</u>
_____	_____
_____	_____
_____	_____

at the following described location:

[describe the beginning point, route, and ending point of the proposed cartway]
[also attach a map showing the requested route]

The purpose and necessity for this petition is to seek the establishment of a legal access that is at least 33 feet wide to a tract of property that is landlocked. Other attempts to secure a permanent access to the property have been unsuccessful. In order to make use of the property

and increase its value, we ask the town to establish a cartway connecting the tract of land to a public road.

We understand and agree that as the petitioners we are responsible for: (1) paying all costs associated with the establishment of the cartway which may include, but is not limited to, the town board's attorney fees, hearing costs, surveying fees, appraiser fees, compensation to the owners of the property over which the cartway is established for the taking of their property, administrative costs, court and defense costs if an appeal is brought, and any other costs legitimately associated with the cartway establishment; (2) constructing the cartway; and (3) maintaining the cartway.

Dated this ____ day of _____, 20__.

Petitioner Signature

Petitioner Signature

Petitioner Printed Name

Petitioner Printed Name

Mailing Address:_____

Mailing Address:_____

_____ Township
_____ County, Minnesota

RESOLUTION REQUIRING A BOND OR OTHER SECURITY ON A CARTWAY PROCEEDING

WHEREAS, the town board received a petition from _____ (petitioner) requesting the establishment of a cartway pursuant to Minn. Stat. § 164.08, subd. 2 to provide access to property containing at least five acres;

WHEREAS, the petitioner is required to pay all costs associated with the establishment of a cartway including, but not limited to compensation paid to the owners whose property is made subject to the cartway, the town’s attorney fees, administrative costs, surveying costs if needed, and such other professional costs deemed necessary by the town board for the establishment;

WHEREAS, pursuant to Minn. Stat. § 164.08, subd. 2 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 town board takes action on the petition;

WHEREAS, the town board, considering costs such as attorney fees, surveyor fees, appraiser fees, property costs, recording fees, hearing costs, and other administrative costs, determines that the total estimated damages and costs associated with the establishment of the petitioned for cartway is _____ (\$_____);

NOW, THEREFORE, BE IT RESOLVED by the town board of _____ Township, _____, County, Minnesota that _____, as the petitioner, must post a bond, or such other security expressly approved by the town board, in the amount of \$_____, which is the total estimated damages associated with establishing the proposed cartway, with the town board before it will take any action on the petition.

Dated this _____ day of _____, 20_____.

By The Town Board

Attest: _____
Clerk

Chairperson

_____ Township
_____ County, Minnesota

**RESOLUTION DESIGNATING A CARTWAY
A PRIVATE DRIVEWAY**

WHEREAS, the town board of _____ Township, _____ County, Minnesota established a cartway as provided in Minn. Stat. § 164.08, subd. 2 upon a petition from _____;

WHEREAS, written consent to designate the cartway a private driveway was obtained from the following affected owners (i.e., petitioner(s)):

<u>Owner</u>	<u>Land Description</u>
_____	_____
_____	_____

NOW, THEREFORE, BE IT RESOLVED by the town board of _____ Township, _____ County, Minnesota that said cartway is hereby designated a private driveway for the benefit of the named affected owners and adjacent property owners;

BE IT FINALLY RESOLVED, that the cartway shall be maintained privately as provided in Minn. Stat. § 164.08, subd. 3, that no town road and bridge funds shall be expended for the maintenance of the driveway, and that said driveway may only be vacated by the town board using the procedures contained in Minn. Stat. § 164.07.

Dated this _____ day of _____, 20__.

By the Town Board

Attest: _____
Clerk

Chairperson