



1 **CARTWAYS:
WHAT IS THIS THING?**

2020 MAT Annual Conference
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2 **A VERY BASIC DEFINITION**

- Public Road, Privately Maintained
 - No statute gives a definition
 - Historical definition: "a rough roadway for carts but not carriages or other spring-vehicles"
 - Can arise in any township, anywhere in the state. (Yes, your town is included)
 - Misused Term
- Why Have Cartways at All?
 - State policy is to prevent landlocked property

3 **A HYBRID – CARTWAYS ARE BETWEEN**

Private Easement

- Created by contract or long-period of use
- Benefits the buyer(s)
- Can be closed
- No public maintenance

Town Road

- Created by the town via statute or acceptance of a dedication
- Open to public use
- Publicly maintained

4 **A HYBRID – CARTWAYS ARE BETWEEN**

- Cartways share characteristics of private easements and town roads

Cartways are:

1. Created by statute or acceptance of a dedication
2. Open to Public Use
3. Privately maintained by those who use it
4. An easement – a right of access less than ownership

5 **FOUR WAYS TO CREATION**

Dedication Methods

1. Dedication by Owner - Minn. Stat. 164.15
 - Landowner offers easement to the town and board may accept it. Same statute used to dedicate roads to the town.
 - MAT Document TR 4000E
2. General Dedication to the Public - Minn. Stat. 164.11
 - "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."
 - Platted Subdivision roads (Minn. Stat. 505.01 & 505.21), but maybe others.

6 **FOUR WAYS TO CREATION**

Township Creation

1. Field Access – Minn. Stat. 164.08, subd. 1

- Town board may establish a cartway to serve a tract of at least 150 acres of which 100 acres are tillable.
- Required Physical Characteristics: At least 33 feet wide, no more than ½ mile in length, and on a section line.
- Starts by petition of at least 5 voters and landowners
- Established by resolution

7 **FOUR WAYS TO CREATION**

2. Access to Landlocked Property – Minn. Stat. 164.08, subd. 2

After petition from an owner of landlocked property, the town board must establish a cartway at least 33 feet wide, to serve a parcel of at least 5 acres, or 2 acres if was a separate tract as of Jan. 1, 1998.

- To give access to the landlocked parcel, one or more neighbors need to lose property or control of it.

8 **EXISTING CARTWAY?**

- Check the County Recorder's and Auditor's offices for past Cartway orders
- Review township records; talk to landowners & past town officers; town maintenance crew or contractors
- If a qualifying cartway already exists, no new cartway can be created for the same parcel

9 **THE PETITION**

Upon receiving a cartway petition, verify the petition includes:

1. The petitioner's name, contact information, and statement of ownership
2. A description of the land, with location and parcel size
3. A claim it is landlocked
4. A demand for a cartway
5. A desired width of the cartway
6. The route of the proposed cartway, listing the properties it will go over
7. The Petitioner's signature

- A valid petition proceeds as a formal road creation under Minn. Stat. 164.07.
- If not valid, promptly return it with a description of the information it lacks.

10 **COSTS PAID BY PETITIONER**

- Petitioner pays all costs of the cartway, including town's attorney, surveyors, appraisers, filing fees, town's costs of hearings and processing, and the damage award to the burdened property owner for taking the land.
- **GET THE MONEY UP FRONT!**
 - Call the town attorney for help, but direct attorney that the work cannot begin until the financial security is posted with the Board.
- Can be cash, bond, or other security. Cash is best, bonds are easy to get but hard to claim.

- Why get money up front?

11 **NEXT STEPS**

Uses the Formal Road Creation process in Minn. Stat. 164.07.

- MAT has Sample Documents and Procedures in Doc TR 5000A
 - Since the petitioner pays for the attorney, the town should use the attorney for this process.
1. Set a Cartway Hearing Date & Send Notices of Hearing to Petitioner
 - Best Practice – set a meeting to organize the process with petitioner and neighbors, and set financial security amount.
 2. Petitioner must send notices to other affected landowners
 - Personal Service of notice
 - Get Affidavit from Petitioner of delivered notices.

12 **THE CARTWAY HEARING**

Three Main Issues:

1. Entitlement to a Cartway
 - Review allegations of Petitioner for accuracy
 - Ownership; Parcel size; landlocked?
 - Notices delivered to neighbors?
 - Decide and state if the Petitioner is Entitled to a cartway.
2. Route
3. Damages to Neighbors & Costs to Town

13 **LANDLOCKED**

- A parcel is deemed “landlocked” if it lacks “meaningful access” to all or a part of the property.
- “Meaningful Access” is used by courts but not defined. It appears to mean a fairly convenient and useful access to all or part of the property.
- Court cases give some direction, but case-by-case decisions are normal

14 **ARE THEY LANDLOCKED?**

1. No public road or easement touches the parcel? The neighbor gave the owner permission to go over her land anytime he would like.
2. Single Parcel has a cliff that separates the top and bottom sections. Landowner has access to the bottom, but not the top.
3. Parcel has no public road or easement access, but the parcel owner also owns a second parcel. The second parcel has meaningful access because it does touch a town road.
4. Parcel has a road touching the north side of the parcel. The parcel is divided by a small river. A bridge is expensive, so owner wants a cartway to the south side of the land.
5. A landowner owns three parcels that are all adjoining, none touch a road. He asks for three separate cartways, each from a different direction.

15 **ARE THEY LANDLOCKED?**

6. Single parcel has no road access. No part of the parcel is on a section line.
7. Several adjoining parcels with different owners, one of which is served by a private easement.
8. Parcel is served by a private easement, but the burdened landowner has gated the private easement.
9. Parcel is bounded on 3 sides by a lake. One parcel separates it from the town road. The owners have reached the parcel by boat for decades.

10.Parcel became landlocked when owner subdivided and sold the parcel that touches the town road.

16 **ROUTE**

- “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. Minn. Stat. 164.08, subd. 2(a).
- “If a selected route does not provide meaningful access to a tract of land, then it fails to satisfy the requirement that a cartway be provided.” *Kennedy v. Pepin Twp. of Wabasha Cty.* 784 N.W.2d 378, 383 (Minn. 2010).
- A town board can establish a cartway only within its own township. Landowner may need to petition the adjacent town for all or part of the cartway.
- Cannot establish cartway over land owned by a government entity.

17 **DAMAGE AWARD**

- Establishing a cartway is a “taking”, so it requires compensation under the US and State Constitutions
- Amount of damages is supposed to be equal to the amount the value of the land decreases.
- Process described in Formal Road Creation Statute
 1. Find the value of the damages, if any, caused by the cartway to the landowner.
 2. Find the value of the benefits, if any, the cartway gives to the landowner
 3. Subtract the damages from the benefits (Step 1 – Step 2 = Damage Award)
 4. Award the Damages to the burdened landowner
- May (should) use experts, appraisers to find values 1 and 2.

18 **MORE DAMAGE AWARD**

- Town is entitled to all its costs as part of the damage award.
- Some could have already been paid by cash security
- Town’s Unpaid expenses are added to the damage award
- DO NOT OPEN THE CARTWAY UNTIL DAMAGES ARE PAID
 - Petitioner must pay damages first
 - Set a deadline for payment of the damages

19 **CONSTRUCTION & MAINTENANCE**

- Town is Prohibited from spending public funds on the cartway unless:
 1. the board finds its in the public interest to do so – state if its one-time or ongoing; or
 2. After a petition of 10 taxpayers submitted to the Annual Meeting, the Voters approve spending town money on the cartway
- If no town maintenance, the landowners using the cartway must build and maintain it.

20 **BUT WE DON’T WANT TO GRANT IT**

- The settled construction of the statute is that it is the mandatory duty of a town board to establish a cartway upon petition of a landowner where the statutory conditions exist * * *. Horton v. Twp. of Helen, McLeod Cty. Minn., 624 N.W.2d 591, 594 (Minn. Ct. App. 2001)
- There is no choice in whether to grant a cartway for landlocked parcel if it is demanded.

21 **THIS SOUNDS AWFUL ... WHAT CAN WE DO?**

- Private easement agreements are the most effective and cheapest way of providing access to landlocked property.
- Town board should encourage the petitioner and burdened property owners to reach a private easement agreement.
 - Inform the petitioner of the costs and time to create the access.
 - Inform burdened property owner that there will be a cartway, it may be inconveniently placed, and the damage award will be set by the board.
- Private easement allows parties to set the route, lowers costs, requires they agree on a price, allows the access to be private, and there is less chance the town will take the road later.

22 **CARTWAY CAN BE MADE A PRIVATE DRIVE**

- Town board may, by resolution, establish the cartway as a private drive if the affected landowners agree.
 - "Affected Landowners"?
- If established as a private drive, no public funds can be spent on the cartway.

The Materials that follow are excerpts from "Understanding Cartways", found in the MAT Information Library in the Town Roads section, Document number 12000. The excerpts address cartways to landlocked property - they do not address field access cartways. The materials include a checklist of what to look for at the beginning of the cartway process, a sample cartway petition, and a sample resolution requiring a financial security deposit. Towns should be working with a township attorney on all cartway matters, so other documents should be provided by the town attorney.

WORKSHEET FOR ESTABLISHING A CARTWAY TO LANDLOCKED PROPERTY

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. Remember, the town's costs should be paid by the petitioning party.

- 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, escrow, or 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