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CARTWAYS—AN ANCIENT RELIC DISTURBING TODAY’S RURAL LANDSCAPE?

Sarah R. Jewell[†]

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I. INTRODUCTION: CARTWAYS—AN ANCIENT RELIC DISTURBING TODAY’S RURAL LANDSCAPE?

Imagine your client purchases a parcel of real estate in a rural community. Perhaps it is a dreamy lakeside cabin, a rustic hunting place, or some additional tract of farmland for a growing agricultural operation. Now, imagine your client’s surprise when she sees a neighbor driving a large tractor across a portion of her newly purchased land, without seeking permission, and without notice. She calls you and is furious because the large tractor pulled up her recently planted crops, deer feeding plot, recreational grass, or garden area. She wants to sue for trespass and damages.

As requested, you contact the offending neighbor, who insists he is not trespassing on your client’s land. He tells you he is merely using the field cartway that was established many, many years ago by the area township. However, when you search the county land records, you find no mention of any kind of cartway or easement for that matter. What is going on?

Eventually, you make contact with the part-time, volunteer town board supervisor, who tells you that municipal cartways are not required to be filed with the county recorder’s office. The township merely sends the cartway petition and approval documents, once granted, to the county auditor’s office for filing—where it lays hidden for years. Thus, your client took title to land subject to an existing cartway, absent any notice of the legal access right until sometime after purchasing the real property.

This article will provide an overview of the treatment and use of cartways in the law.¹ It will highlight cases surrounding cartways in recent years, and will provide legal practitioners with practical insight into the differences between easements and cartways.² This article will also discuss how to establish or vacate a cartway, and it will also address special legal problems that may arise when clients come across cartway issues involving their real property.³

1. See *infra* Parts II–III.
2. See *infra* Part III; *infra* Sections IV.C–.D.
3. See *infra* Parts IV, VI.

II. A BRIEF HISTORY OF CARTWAYS—ORIGINS OF THIS ESTATE IN PROPERTY

Records of reported cases involving cartways go back hundreds of years, to at least the sixteenth century in England.⁴ One such case was reported on March 4, 1533, by the Reviewers of London discussing a nuisance affecting the use of an area near a cartway.⁵ While the existence of cartways is centuries old, legal treatises or references regarding the rights and duties contained in the establishment, maintenance, and use of cartways came along as the laws of England developed centuries ago.⁶

According to some British historians, the original cartway was one of many forms of transportation “ways” or roads, such as horseways, footways, all of which became known as highways, so long as they were open to public use.⁷ In more recent times, the definition of a cartway has not changed much from the definition contained in the 1724 Wood’s treatise.⁸ It is synonymous with a road, street, or highway.⁹ Fast forward in time a couple of centuries; it is easy to see that our modern definitions and usage of the term “cartway” has evolved to reflect the developments and changes in transportation and technology.

4. See FILE OF VIEWERS’ REPORTS 1509–46 [B]: 1530–39 (nos. 87–142) 98 (Janet Senderowitz Loengard, London Record Soc’y eds., 1989), <http://www.british-history.ac.uk/london-record-soc/vol26/pp37-58> (last visited Apr. 28, 2016).

5. See *id.* (“4 March 1533. Parish of St. Clement. Variance between the master and wardens of the Drapers, pls., and the abbot and convent of the Grey Abbey at Stratford, defs., concerning a nuisance in St. Clement’s Lane nigh Candlewick Street. The viewers find a gate and an alley on the N side of a house of defs. called ‘Abbottes Inne’ in the lane, which lead to a cartway out of the lane on the W stretching eastward to a great tenement now in tenure of Sir John Milborne, knight and alderman of London, and to another great tenement at the end of the alley where certain foreign merchants (merchaunts estraunges) inhabit.”).

6. See, e.g., THOMAS WOOD, AN INSTITUTE OF THE LAWS OF ENGLAND 97 (4th ed. 1724).

7. See, e.g., *id.*

8. Compare *id.*, with MINN. ATT’Y GEN. OP. (Sept. 25, 1952). See generally MINN. STAT. § 164.02, subdivs. 26, 28 (2014) (providing the definition of road or highway which includes cartway).

9. This article will address the legal ramifications of this designation later, as there can be problems for clients and practitioners in enforcing the rights inherent in a cartway.

Cartways are not just a way for carts pulled by animals anymore, in contrast to bridleways¹⁰ (ways for horse and rider only), footways¹¹ (ways for pedestrians), and the like. A Minnesota Attorney General's Opinion from 1952 makes this clear: a cartway is a public road or highway, open for the use of modern vehicles such as automobiles.¹² Specifically, the then-acting Attorney General stated, "Under [Minnesota Statutes section 160.01, subdivision 6], the words 'road' or 'highway,' whenever used in Ch[apter] 163, mean and include a cartway."¹³

In Minnesota Statutes, the physical description of a cartway is: "two rods wide and not more than one-half mile in length . . ."¹⁴ A rod is a unit of linear measure, especially used for land, equal to 5.5 yards or 16.5 feet.¹⁵ Thus, a two-rod wide cartway is what we commonly know and understand to be a road or highway that is thirty-three feet in width. To summarize, cartways are public roads.

III. CARTWAYS VERSUS EASEMENTS—WHAT IS THE DIFFERENCE?

How do cartways differ from easements? The terms can be confusing for landowners and attorneys. In practice, it may be difficult to distinguish between the rights conveyed with a cartway and the rights conveyed with an easement because they tend to accomplish the same thing. However, the legal consequences of an easement are very different from those inherent in cartways.

To be clear, *Black's Law Dictionary* defines an "easement" as "[a]n interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose (such as to cross it for access to a public road)."¹⁶ Thus, the easement functions as a benefit to the dominant estate, and is a burden to the servient estate, or the estate over

10. *Bridleway*, OXFORDDICTIONARIES.COM, <http://www.oxforddictionaries.com/us/definition/english/bridleway> (last visited Apr. 28, 2016) (defining it as "[a] path or track along which horse riders have right of way").

11. *Footway*, MERRIAM-WEBSTER.COM, <http://www.merriam-webster.com/dictionary/footway> (last visited Apr. 28, 2016) (defining it as "[a] narrow way or path for pedestrians").

12. See MINN. ATT'Y GEN. OP. (Sept. 25, 1952).

13. *Id.*

14. See MINN. STAT. § 164.08, subdiv. 1.

15. See *Rod*, MERRIAM-WEBSTER.COM, <http://www.merriam-webster.com/dictionary/rod> (last visited Apr. 28, 2016).

16. *Easement*, BLACK'S LAW DICTIONARY (10th ed. 2014).

which the easement runs. Also, an “access easement” is more specifically defined as “[a]n easement allowing one or more persons to travel across another’s land to get to a nearby location, such as a road. The access easement is a common type of easement by necessity.”¹⁷ Thus, the access easement allows for access across another’s land for the purpose of ingress and egress.

Similarly, an established cartway also provides access for ingress and egress over another’s land, but the cartway is viewed legally as a public road.¹⁸ But whereas an access easement simply benefits the estate appurtenant or the dominant estate to the detriment of the servient estate,¹⁹ a cartway acts as a public road benefiting (in theory) anyone needing or wanting to use it.

The separate and distinct definitions of easement and cartway above seem to conflict with the language in the heading of Minnesota Statutes section 435.37, which states, “Easement for a Cartway” from a city.²⁰ Under this statutory provision, a landowner may petition a city council or town board to establish a cartway, provided that certain conditions exist. For example, a petitioning landowner must own at least five acres and have no access to it, except over a navigable waterway or over the lands of others.²¹ Such a landowner may present a petition to the city council who “shall establish a cartway at least two rods wide connecting the petitioner’s land with a public road.”²² The type of cartway provided for in this statute seems to be a means to obtain access to landlocked parcels, very similar in nature to the cartways provided under Minnesota Statutes section 164.08, subdivision 2.²³ However, the use of the term “easement” is something of a misnomer, as it is really not an interest or estate in land so much as another means of establishing a public road or cartway.²⁴

Therefore, as a legal practitioner, it is wise to proceed with caution when using the terms “easement” or “cartway.” They are not interchangeable terms. Rather, they are specific terms of art

17. *Id.*

18. *Cf. id.* See generally MINN. STAT. § 160.02, subdivs. 26, 28.

19. See RESTATEMENT (THIRD) OF PROP.: SERVITUDES § 1.2 (AM. LAW. INST. 1998).

20. See MINN. STAT. § 435.37.

21. *Id.* § 435.37, subdiv. 1(a).

22. *Id.*

23. *Id.* § 435.37, subdiv. 2.

24. See *id.*

with vastly different legal ramifications. Similarly, the type of cartway and methods of obtaining or vacating one greatly differ.

IV. ESTABLISHING A CARTWAY

There are a number of nuances to the establishment or vacation of a cartway in Minnesota. The next section addresses the various methods of establishing a cartway, along with a number of specific court decisions that shed light on judicial review and interpretation of Minnesota's cartway statutes.

A. *Methods of Establishing a Cartway*

Clients may want to establish cartways for a number of reasons: their land has no direct access to a public road or highway; their existing access is too narrow to permit modern farm equipment such as large tractors, combines, or other equipment from entering fields with tillable acreage; or a group of neighbors agree that a cartway should be established.

Establishing a cartway is an interesting and sometimes challenging proposition. There are four different methods to obtaining a cartway under Minnesota Statutes.²⁵

The first method to establish a cartway is direct dedication by a landowner. Under Minnesota Statutes section 164.15, subdivision 1, owners of property may "dedicate" their land for a cartway by filing a written application with the town board.²⁶ In this manner, a private landowner is providing land for the public benefit because a cartway is a public road. This statute also provides a means for one or more landowners to join forces and seek to establish a cartway²⁷:

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.²⁸

25. *See id.* §§ 164.08, 164.11, 164.15.

26. *Id.* § 164.15, subdiv. 1.

27. *Id.* ("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.")

28. *Id.*

Landowners can mutually agree to apply for the establishment of a cartway to benefit them all.²⁹ They may take their informal agreement amongst themselves and then formalize it with the town board in order to avoid payment of damages.³⁰

The second method of establishing a cartway is by general dedication of land to the public. Minnesota Statutes section 164.11 provides that “[l]and dedicated to public use as a street, road or cartway, if not less than thirty feet in width, shall be deemed a legal cartway.”³¹ Thus, this seems to encompass all roads that are at least thirty feet wide or wider. Since most public roads or highways are at least thirty-three feet wide or wider, it follows that most roads and highways are also legal cartways.³²

The third method for establishing a cartway is to petition a town board.³³ This method has several variations depending upon the landowner’s particular situation.³⁴ In order to use this statutory provision, a landowner must actually own “at least 150 acres of which at least 100 acres are tillable.”³⁵ In this situation, a landowner must petition the town board requesting the establishment of a cartway that is “two rods wide and not more than one-half mile in length.”³⁶ The catch in this statute is that one landowner acting alone will not get it done. At least five voters who own land in the town must also sign the petition.³⁷

The fourth method for establishing a cartway is for a landowner to petition the town board for establishment of a cartway for land that is at least five acres in size and landlocked, “except over a navigable waterway or over the land of others.”³⁸

While there are several methods available for establishing a cartway, the availability of options does not necessarily provide a smooth path toward obtaining one: some neighbors may object;

29. *Id.*

30. *Id.*

31. *Id.* § 164.11.

32. *See id.* § 160.04 (“[A]ll roads . . . shall be at least four rods wide.”). A rod is 16.5 feet. NAT’L INST. OF STANDARDS & TECH., SPECIFICATIONS, TOLERANCES, AND OTHER TECHNICAL REQUIREMENTS FOR WEIGHING AND MEASURING DEVICES C-4 (2016), <http://www.nist.gov/pml/wmd/pubs/upload/AppC-12-hb44-final.pdf>.

33. MINN. STAT. § 164.08.

34. *Id.* § 164.08, subdiv. 1.

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.* § 164.08, subdiv. 2.

townships may not agree that a cartway is necessary; and courts may or may not agree that a township's actions in establishing or vacating a cartway were justified.

B. When Is the Establishment of a Cartway Deemed to Be "Permitted" Versus "Mandatory"?

Under the cartway statutes, there are further refinements as to whether a cartway may be "permitted" by a town board, or whether its establishment is considered "mandatory" to a town board. Minnesota Statutes section 164.08 states:

The town board by resolution may establish a cartway . . . 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 If the petition is granted the proceedings of the town board shall be in accordance with section 164.07.³⁹

Under the "permissive" part of the statute, a cartway may be established with the approval of the town board—but it does not guarantee that the landowners who file such a petition will be successful.⁴⁰ The decision is generally at the discretion of the board.⁴¹ The board is given much deference by the law in making such decisions.⁴²

C. When Town Boards Make Decisions on Whether to Establish a Cartway or Not, They Operate in a Legislative Capacity, Toward Which Courts Accord Great Deference

It is important to understand the value of deference in the context of cartways, because it is the legal standard of review that courts employ when determining whether a town board erred in its decision regarding a cartway, and it is a higher hurdle for a challenger to overcome. In other words, courts must defer to the decision of the town board.

The establishment of a cartway under the cartway statute is an exercise of eminent domain.⁴³ The Minnesota Supreme Court in

39. *Id.* § 164.08, subdiv. 1.

40. *Id.*

41. *Id.*; *Horton v. Twp. of Helen*, 624 N.W.2d 591, 594 (Minn. Ct. App. 2001).

42. *Horton*, 624 N.W.2d at 594.

43. *See Kennedy v. Pepin Twp. of Wabasha Cty.*, 784 N.W.2d 378, 384 (Minn.

Kennedy v. Pepin Township found that the statutory language “require[s] that a township establish the route requested by the petitioner unless the township determines both that an alternative route will be less disruptive and damaging to neighbors *and* that the alternative route is in the public’s best interest.”⁴⁴ If the town board finds that an alternate route is more favorable or desirable than the route requested by petitioner, then the town board should make a record of the information it considered, and it must show the basis for its decision.⁴⁵

The *Kennedy* court did not change the standard of review in the case:

A town board that grants or refuses a cartway petition acts in a legislative capacity and will be reversed on appeal only when (1) the evidence is clearly against the decision, (2) an erroneous theory of law was applied, or (3) the town board acted arbitrarily and capriciously, contrary to the public’s best interest.⁴⁶

Thus, a town board’s decisions are going to be very difficult to overturn unless the evidence shows the board’s choice was against the public interest, was arbitrary and capricious, or that the evidence presented was clearly against the board’s decision.⁴⁷

Further, even the choice of one route to locate a cartway over another route is given much deference in the courts. In *Kaster v. Township Board of LaGarde*, the appellant, Kaster, sought reversal of a town board’s decision to locate a cartway along his property.⁴⁸ Appellant argued that: “(1) an alternative route already exists providing access to [the cartway petitioner’s] property; (2) the township board ordered the cartway without giving consideration to the proposed alternative route; and (3) discovery had not yet

2010).

44. *Id.*

45. *See id.* at 387 (Anderson, J., concurring in part and dissenting in part) (“Because of the apparent lack of *consideration* and *discussion* of the public interest in the alternative route selected, I conclude that it is premature to decide the issue of what access means and would remand to the Town Board to make the required public interest determination.” (emphasis added)).

46. *Horton*, 624 N.W.2d at 595 (citing *Lieser v. Town of St. Martin*, 255 Minn. 153, 159, 96 N.W.2d 1, 5–6 (1959); *Rask v. Town Bd. of Hendrum*, 173 Minn. 572, 574, 218 N.W. 115, 116 (1928)).

47. *Id.*

48. No. A09-1870, 2010 WL 2363595, at *1 (Minn. Ct. App. June 15, 2010).

been completed.”⁴⁹ However, the Minnesota Court of Appeals held that the town board, acting in a semi-legislative role, was to be given deference in its decision on the location of the cartway, even where two competing locations were presented to the town board, so long as the record reflected the town board’s consideration of both routes.⁵⁰

The *Kaster* court explained, “When judicially reviewing a legislative determination, the scope of review must necessarily be narrow.”⁵¹ The court continued, “Appellate review ‘is limited to a consideration of whether the [district] court has confined its review to the limited scope of such review and, aside from jurisdictional questions, whether the evidence reasonably supports the determination of the [district] court.’”⁵² According to *Horton*, even if the reviewing court would have reached a different conclusion on a town board’s cartway decision, they will affirm the town board’s decision due to the narrow scope of review afforded to the courts in such cases.⁵³

Thus, the choice of location of the route for a requested cartway still lies within the discretion of the township board. Neither the landowner applying for a cartway nor the courts are entitled to dictate the location for the cartway as requested in the landowner’s cartway application.⁵⁴

The Minnesota Supreme Court found that Minnesota Statutes section 164.08, subdivision 2(a), “provides [a] [t]ownship with discretionary power to ‘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.’”⁵⁵ The *Kennedy* court held that a township must “establish the route requested by the petitioner unless the township determines both that an alternative route will be less

49. *Id.* at *2.

50. *Id.* at *2–3.

51. *Id.* at *2 (quoting *Sun Oil Co. v. Vill. of New Hope*, 300 Minn. 326, 333, 220 N.W.2d 256, 261 (1974)).

52. *Id.* (alteration in original) (quoting *Lieser v. Town of St. Martin*, 255 Minn. 153, 159, 96 N.W.2d 1, 5–6 (1959)).

53. *Horton v. Twp. of Helen*, 624 N.W.2d 591, 595 (Minn. Ct. App. 2001) (citing *Cable Commc’ns Bd. v. Nor-West Cable Commc’ns P’ship*, 356 N.W.2d 658, 669 (Minn. 1984)).

54. *Kennedy v. Pepin Twp. of Wabasha Cty.*, 784 N.W.2d 378, 384 (Minn. 2010).

55. *Id.* (quoting MINN. STAT. § 164.08, subdiv. 2(a) (2008)).

disruptive and damaging to neighbors *and* that the alternative route is in the public's best interest."⁵⁶ The court further 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."⁵⁷

D. Applying Under the "Mandatory Cartway" Statute Is No Guaranteed Method for Establishing One

When a qualifying landowner⁵⁸ presents a petition for a cartway to establish access to a landlocked parcel, the statute states that a town board must approve the petition.⁵⁹ The statute provides that if "a petitioner satisfies all the criteria under the cartway statute, a town board must establish a cartway."⁶⁰ While this method of establishing a cartway may seem pretty straightforward, approval is not a slam-dunk guarantee for the landowner if the members of a town board fail to see the public interest in establishing the cartway.⁶¹

In *Horton*, that appellant sued the respondent, Helen Township, alleging it wrongfully denied his petition for a cartway to connect his land with the public road.⁶² The Minnesota Court of Appeals affirmed the district court's decision denying the requested cartway. The court found the denial justified because the township determined that Horton's land was not actually landlocked. Thus, he did not meet the minimum requirements to establish a cartway.⁶³

Further, the court found that Horton did not present "any evidence to dispute the township's finding that the area where his property meets the township road is thirty feet wide. The evidence

56. *Kennedy*, 784 N.W.2d at 384.

57. *Id.* at 385; *see also* Gary Van Cleve, *Court to Township: Not a Smart Way to Establish a Cartway*, LARKIN HOFFMAN ATT'YS (Oct. 5, 2010), http://larkinhoffman.com/news/article_detail.cfm?article_id=681.

58. A qualifying landowner typically means an owner of real property that is landlocked or only accessible via a navigable waterway. *See* MINN. STAT. § 164.08, subdiv. 2 (2014).

59. *Id.*

60. *Horton v. Twp. of Helen*, 624 N.W.2d 591, 594 (Minn. Ct. App. 2001).

61. *See, e.g., id.* at 595.

62. *Id.* at 592.

63. *Id.* at 595. Horton did not meet the qualifications for a mandatory cartway since the point of road right-of-way contained at least thirty-three feet. *Id.*

also support[ed] the township's determination that Horton is not required to cross neighboring properties to access the township's road."⁶⁴ In deference to the township's decision, the court of appeals affirmed the district court's grant of summary judgment against Horton and in favor of the township.⁶⁵

The takeaway lesson in *Horton* is that each piece of land is unique, and details matter. As the case law herein shows, a petitioner does not always have the right to obtain or establish a cartway in the first instance, and may not always obtain the preferred location upon the initial application. Thus, it is important to inform your client that while a particular location for a cartway may be requested, it may not necessarily be granted.

V. DAMAGES—WHO PAYS?

When the establishment of a cartway is successful, it is clear that there will be periodic costs involved for its upkeep and maintenance. Who pays for such maintenance or repairs is not always clear, however.

Minnesota Statutes section 164.08, subdivision 3 states:

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.⁶⁶

Thus, while the town board may approve the establishment of a cartway, the town board does not necessarily have to pay for its upkeep and maintenance. This can be a disappointing notion to a landowner, because the definition of cartway, as discussed earlier, is that it is a public roadway, or highway.⁶⁷ Almost every other public road or highway is maintained by some municipal or state authority.⁶⁸ As a result, clients might be disappointed to discover that they themselves must pitch in to defray the cost of maintaining what may have taken a considerable cost and effort to obtain. Clients might also be surprised to learn that they may need to

64. *Id.*

65. *Id.*

66. MINN. STAT. § 164.08, subdiv. 3.

67. *See supra* Part III.

68. *See, e.g.*, MINN. STAT. §§ 162.02, subdiv. 1, 163.02, subdiv. 1, 164.02, subdiv. 1, 164.08, subdiv. 3, 165.02.

coordinate and share costs of cartway maintenance activities with their neighbors or nearby landowners who also benefit from the cartway.

The cost of cartway 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.”⁶⁹ As you can imagine, this may not be an easy process for a landowner to engage in—asking for money from neighbors who may or may not use the cartway at all.

In the event that problems with collecting maintenance funds arise, the statute is not silent. It provides a number of factors that landowners benefitting from a cartway may take into consideration when trying to determine the amount of a neighbor or nearby landowners’ equitable share of maintenance expenses may be for a shared cartway.⁷⁰ Those factors are: “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.”⁷¹

These factors may be helpful guidelines for neighbors to use when dividing up costs. For example, when comparing the weight of a large tractor to that of a recreational four-wheeler, it is fairly easy to weigh this factor, because the heavier tractor will likely do more damage to the cartway over time and with frequency of use than the four-wheeler.

However, if the landowners cannot agree on an equitable share of maintenance costs, the town board may get involved to settle such disputes.⁷² The statute provides that 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.”⁷³

The town board is not the final forum, however. If a party is unhappy with the town board’s decision on maintenance costs, the party may appeal “within 30 days to the district court of the county in which the cartway is located.”⁷⁴

69. *Id.* § 164.08, subdiv. 3.

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

As another approach (perhaps one that makes more sense when immediate cartway repairs are needed), one or more landowner may simply fund the necessary repairs and maintenance for a shared cartway. Once the private property owners have incurred such cost, they “shall have a civil cause of action against any of the private property owners who refuse to pay their share of the maintenance cost.”⁷⁵

VI. VACATING AN EXISTING CARTWAY

A cartway that has been established by a township or town board may be vacated in a way that is very similar to how it was first established, but with some additional requirements. First, at least eight landowners whose land lies within three miles of the cartway must petition the town board for the vacation of a cartway.⁷⁶ Petitioners must include a description of the existing cartway, including its beginning, ending, and route.⁷⁷ Under this same statutory provision, petitioners may also request that an existing cartway be vacated and moved to a new location, essentially establishing a new cartway.⁷⁸

The statute further provides that the town board shall, within thirty days of the petition’s filing, “make an order describing as nearly as practicable the road proposed to be established, altered, or vacated and the several tracts of land through which it passes, and fixing a time and place when and where it will meet and act upon the petition.”⁷⁹

The process for vacating an existing cartway can be arguably longer and more complex than the process of establishing one, depending on the facts and circumstances. This is understandable, because once a cartway has been established, and presumably been used by the area landowners or members of the public, removing it may create practical difficulties for these people.

75. *Id.*

76. *Id.* § 164.07, subdiv. 1.

77. *Id.*

78. *Id.*

79. *Id.* § 164.07, subdiv. 2.

VII. ADVISING THE CLIENT—OPTIONS FOR ENFORCING AN EXISTING CARTWAY

When clients need legal assistance to enforce a valid, existing cartway they may come to you looking for practical and legal solutions. This issue may arise for a number of different reasons. For example, a landowner's neighbor may be encroaching on a cartway by creating a brush pile in it; a farmer renting land from a neighbor adjacent to the cartway simply plows up the cartway and plants crops in it; or another neighbor does not believe the cartway exists at all, and proceeds to install a fence, a livestock gate, and several posts down the middle of the cartway—all of which pose barriers to its normal use of ingress and egress.

The Minnesota Supreme Court has held that, generally speaking, “special road laws are to be construed in connection with general road laws, and when silent on any subject the general law governs.”⁸⁰

Since cartways are legally defined as being the same as a public road or highway, it naturally follows that impeding their use as a road, highway, or cartway is punishable as a crime.⁸¹ For the civil

80. *State ex rel. Rose v. Town of Greenwood*, 220 Minn. 508, 512, 20 N.W.2d 345, 347 (1945) (citation omitted).

81. MINN. STAT. § 160.2715. The statute provides in relevant part:

(a) Except for the actions of the road authorities, their agents, employees, contractors, and utilities in carrying out their duties imposed by law or contract, and except as herein provided, it shall be unlawful to:

- (1) obstruct any highway or deposit snow or ice thereon;
- (2) plow or perform any other detrimental operation within the road right-of-way except in the preparation of the land for planting permanent vegetative cover or as authorized under section 160.232;
- (3) erect a fence on the right-of-way of a trunk highway, county state-aid highway, county highway, or town road, except to erect a lane fence to the ends of a livestock pass;
- (4) erect or reconstruct driveway headwalls in or on the right-of-way of a highway or road, except as may be allowed by permit from the road authority imposing reasonable regulations as are necessary to prevent interference with the construction, maintenance, and safe use of the highway or road and its appurtenances;
- (5) dig any holes in any highway, except to locate markers placed to identify sectional corner positions and private boundary corners;

practitioner, this is obviously not something on which one may pursue or take action alone. In attempting to enforce an existing cartway, seek your local prosecuting authority's or county attorney's assistance to enforce such highway laws under the criminal provisions. While it may seem minor, being charged with a crime—even a misdemeanor—may act as a deterrent to future violations, where a nearby landowner or neighbor may not willingly acknowledge a valid cartway's existence. On the other hand, if you represent a client who wants to have an existing cartway vacated, this article provides practitioners with a starting point for petitioning a town board for its removal or relocation to an alternate route.

VIII. CONCLUSION

Cartways are here to stay. Since the historic time when Romans built roads in what is now England, Wales, and Scotland, cartways

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- (6) remove any earth, gravel, or rock from any highway;
 - (7) obstruct any ditch draining any highway or drain any noisome materials into any ditch;
 - (8) place or maintain any building or structure within the limits of any highway;
 - (9) place or maintain any advertisement within the limits of any highway, except as provided in section 160.27, subdivision 7;
 - (10) paint, print, place, or affix any advertisement or any object within the limits of any highway, except as provided in section 160.27, subdivision 7;
 - (11) deface, mar, damage, or tamper with any structure, work, material, equipment, tools, signs, markers, signals, paving, guardrails, drains, or any other highway appurtenance on or along any highway;
 - (12) remove, injure, displace, or destroy right-of-way markers, or reference or witness monuments, or markers placed to preserve section or quarter-section corners;
 - (13) improperly place or fail to place warning signs and detour signs as provided by law;
 - (14) drive over, through, or around any barricade, fence, or obstruction erected for the purpose of preventing traffic from passing over a portion of a highway closed to public travel or to remove, deface, or damage any such barricade, fence, or obstruction.

(b) Any violation of this section is a misdemeanor.

Id.

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have been present as a means of transportation from agricultural and rural areas to towns, cities, and marketplaces.

The existence, use, and maintenance of cartways may pose special problems for legal practitioners and their clients. While the various statutes and legal standards revolving around cartways are sometimes difficult to apply to particular circumstances, cartways are an important means of assisting agricultural and rural landowners who are otherwise landlocked, or who have no viable means of accessing tillable or otherwise usable real property. Understanding the basics of cartway law can assist you and your clients in navigating the remnants of this ancient relic, still found in many rural settings today.