

ORDINANCE FOR ESTABLISHING CARTWAYS IN UNORGANIZED TOWNSHIPS

ORDINANCE

This ordinance is adopted by Itasca County pursuant to the authority invested by M.S.A. §§ 375.51; 394.25, Subd. 8; 164.07; 164.08, 164.09 and 164.10 to establish cartways in Itasca County in unorganized townships pursuant to law.

DEFINITIONS

- 1-1. Abstract of Title. A chronological and numbered record of-all documents regarding real property on record and filed at the Itasca County Recorder's Office regarding a tract or tracts of land.
- 1-2. Advisory Committee. The duly acting and appointed planning commission of Itasca County.
- 1-3. Advisory Committee Criteria. An assessment and recommendation as to the impact, if any, a proposed cartway route would have on wetlands, ground water, flood plains, slope, soil, forest preservation, agricultural land preservation and essential wildlife habitat.
- 1-4. Affected Owner. All owners within 1/2 mile of the proposed cartway.
- 1-5. Assessor. The Itasca County Assessor or designated representative.
- 1-6. Attorney. The Itasca County Attorney or assistant county attorney.
- 1-7. Auditor. The Itasca County Auditor or designated representative.
- 1-8. Board. Itasca County Board of Commissioners acting as a town board in unorganized townships of Itasca County.
- 1-9. Cartway. A strip of land 2 rods wide providing access to a property owner over lands of another or others to a public road.
- 1-10. Coordinator. The Itasca County Coordinator or designated

ORDINANCE FOR ESTABLISHING CARTWAYS IN UNORGANIZED TOWNSHIPS

representative.

1-11. Costs. All expenses including but not limited to surveying, engineering, legal and incidental professional services or other services incurred by the board, coordinator, attorney, auditor, engineer, assessor, recorder, land commissioner, surveyor, or treasurer in establishing a cartway.

1-12. Damages. The amount of money that will compensate an owner for damages incurred in establishing a cartway, less any benefits for such establishment.

1-13. Engineer. The Itasca County Engineer or designated representative.

1-14. Exempt Land. Real property titled to the United States or any of its branches and real property held in trust as tribal land or tribal land.

1-15. Government Agencies. A state or federal agency which may be impacted by a cartway placement which could include the following aid without limitation: the U.S. Forest Service, the Fish and Wildlife Service, the Soil and Water Conservation Service, the Minnesota Department of Natural Resources; Leech Lake Reservation Business Committee.

1-16. Joint Cartway. A cartway involving an organized township and an unorganized township.

1-17. Lack of Access. Owner of a contiguous 5 acre tract with no access, or access less than 2 rods in width over land(s) of (an)others to a public road.

1-18. Land Commissioner. The Itasca County Land Commissioner or designated representative.

1-19. "May". "May" is permissive.

1-20. Occupant. A person or persons who occupy a tract of land over which a cartway is proposed who may or may not have a real property interest of

ORDINANCE FOR ESTABLISHING CARTWAYS IN UNORGANIZED TOWNSHIPS

record and on file at the Itasca County Recorder's Office.

1-21. Order. The cartways proposed course over the tracts of land and determining time and place for action on the petition by the board.

1-22. Owner. All persons, partnerships, corporations and legal entities having an interest in real property, including mineral interests, and recorded at the Itasca County Recorder's Office.

1-23. Petition; Petitioner. The person who requests, by filing with the coordinator, a petition for the establishment of a cartway.

1-24. Recorder. The Itasca County Recorder or designated representative.

1-25. "Shall". "Shall" is mandatory.

1-26. Surveyor. The Itasca County Surveyor or designated representative.

1-27. Title Certification. A legal opinion by an attorney licensed to practice in Minnesota certifying the ownership interests in real property described.

1-28. Treasurer. The Itasca County Treasurer or designated representative.

1-29. Zoning Office. The Itasca County Zoning Office or designated representative.

PETITION

2-1.(a) An owner with lack of access may file a petition for a cartway with the Coordinator's Office.

2-1.(b) Five registered voters owning land in an unorganized township may file a petition for a cartway not more than a 1/2 mile in length on a section line to serve 150 acres, 100 acres of which are tillable, with the Coordinator's Office.

ORDINANCE FOR ESTABLISHING CARTWAYS IN UNORGANIZED TOWNSHIPS

2-2. The petition shall contain: 1) the legal description of petitioner's land and all owners having an interest; 2) a legal description of tracts of land of the cartway route with title certification of owners having an interest; 3) a survey map of the cartway route; 4) a certified check or cash in the amount of \$500 to the order of the Itasca County Treasurer to pay costs; 5) verification that exempt lands are not involved; and 6) that occupants, if any, are also owners.

a. If exempt lands are involved or discovered to be involved, the board having no authority over such lands, the petition shall not be received or carried forward until the petitioner has received authority to proceed from the holder of exempt lands, and in the event such authority to proceed is not possible, the certified check or cash shall be returned less any incurred costs.

2-3. An owner with lack of access shall file any request for a joint cartway first with the town board clerk and then with the Coordinator's Office with proof of such filing.

ADMINISTRATION

3-1. Upon receipt of a petition pursuant to 2-1, the coordinator shall preliminarily verify that the petition meets the requirements of 2-2. If requirements of 2-2 are not met, the petition shall be returned with an explanation of the deficiency.

3-2. After preliminary verification, the coordinator shall:

a) forward a copy of the petition and the title certification to the Attorney's Office;

ORDINANCE FOR ESTABLISHING CARTWAYS IN UNORGANIZED TOWNSHIPS

- b) forward a copy of the petition to the zoning officer;
- c) forward a copy of the petition to the Engineer; and
- d) forward the certified check or cash to the Itasca County Treasurer.

3-3. Upon a request for a joint cartway pursuant to 2-3, the coordinator shall contact the town clerk and arrange for a joint meeting between the town board and the board.

3-4. Upon the receipt of the petition and title certification, the Attorney's Office will review the petition for compliance with 2-2 and prepare an order for hearing for board use.

3-5. The zoning officer, upon receipt of petition, shall place the petition on the next agenda of the advisory committee to be considered at the earliest possible meeting upon compliance with the requirements of this section. Notice of this meeting shall be given by 1st class mail to the affected owners and affected governmental agencies at least 10 days before the meeting.

3-6. The advisory committee meeting shall hear all interested persons, review the proposed petition by applying the advisory committee criteria and make a report and recommendation which shall be forwarded to the coordinator for use of the board.

3-7. Upon receipt of the petition, the engineer shall preliminarily review the course and siting of the proposed cartway. The engineer may cause an on-site inspection of the cartway where professional engineering standards and skills, and the course and siting, indicate such is necessary. In any event, a report and recommendation shall be forwarded to the coordinator for use of the board.

ORDINANCE FOR ESTABLISHING CARTWAYS IN UNORGANIZED TOWNSHIPS

3-8. Upon the receipt of the order from the Attorney's Office, which shall be within 30 days of filing of an acceptable petition, the coordinator shall schedule a hearing for the board to act on the petition, such hearing not to take place until after the advisory committee meeting.

3-9. The coordinator shall furnish to petitioner(s) a copy of the order and the petitioner shall cause personal service of such order to be made on all affected tract owners and any and all occupants of all affected tracts at least 10 days prior to the hearing, and shall cause 10 days posted notice of such hearing.

HEARING

4-1. The board, at the time and place designated in the order, shall hear all interested parties. The board shall furnish to all interested parties the advisory committee recommendations and report and the report of the engineer. The hearing may be continued from the designated time to a different location and time for the view of the cartway and for the assessment of damages, or for the receipt of additional information.

4-2. The board shall take no action if proof of personal service and posted notice by affidavit is not furnished for filing with the coordinator. The hearing shall be continued to a future time with the preparation of a new order and the petitioner shall comply with 3-9.

4-3. The board shall by resolution establish a cartway over non-exempt lands upon proof of a petition by the petitioner pursuant to 2-1(a). The board may by resolution establish a petition pursuant to 2-1(b). If the petition pursuant to 2-1(b) is rejected, such rejection shall be noted on the petition

ORDINANCE FOR ESTABLISHING CARTWAYS IN UNORGANIZED TOWNSHIPS

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4-4. In establishing the route of a cartway, the board may consider alternative routes using the following non-exclusive factors:

- 1) the engineer's report
- 2) the advisory committee report
- 3) the cost to petitioner of the alternative route
- 4) the adverse effect upon the tract or tracts of lands involved; and
- 5) the boards review of the cartway.

Preference shall be given to the proposed route of petitioner.

4-5. The board shall also consider whether unorganized township road and bridge funds shall be expended for upkeep of the cartway. Such funds may not be expended unless the board specifically finds that such expenditure is in the public interest. If there is no specific finding that the public interest requires such expenditure, the board by resolution, after payment of costs and damages, shall designate the cartway as a private driveway.

4-6. The board shall further preliminarily take into consideration, if there is no finding of public interest requiring fund expenditure for upkeep, the equitable sharing of maintenance expense between all private property owners who have no access to their land except by way of the cartway. In doing so, the board shall consider the following factors: 1) the frequency of use; 2) the type and weight of the vehicles and equipment; and 3) the distance traveled on the cartway to the owner's property.

4-7. The board, at the meeting of the township board and board as outlined in 2-3 and 3-3 on a request for a joint cartway, shall ascertain whether the cartway will provide access to a tract or tracts of land of not less than

ORDINANCE FOR ESTABLISHING CARTWAYS IN UNORGANIZED TOWNSHIPS

five acres which have no access to a public road except over lands of others. If exempt lands are involved, the board, in cooperation with the town board, shall nominate one of its members to contact the holder of the exempt land to verify if access by agreement can be made over the affected tract or tracts of land. Further meetings or action shall be delayed until such verification.

4-8. In the event non-exempt lands are involved, the board, in cooperation with the town board, shall schedule after a survey a joint public meeting upon agreement of the town board. In addition, the board and town board shall:

- 1) make a preliminary determination whether the public interest requires the expenditure of road and bridge funds;
- 2) determine the proposed course of the cartway; and
- 3) make an agreement as to the equitable division of costs prior to final action.

4-9. Upon receipt of the survey, the coordinator shall forward the survey to the engineer and to the zoning officer. The procedure as set forth in 3-5, 3-6, and 3-7 shall then occur.

4-10. In addition, the coordinator in consultation with the attorney (if needed), shall cause abstracts of title to the affected tracts of land to be procured and furnished to the attorney's office.

4-11. The attorney shall examine such abstracts of title and such other records as are necessary to determine current ownership of record and furnish title certification to the Coordinator's Office.

4-12. Upon receipt of the advisory committee report and recommendations, the

ORDINANCE FOR ESTABLISHING CARTWAYS IN UNORGANIZED TOWNSHIPS

attorney's certification and the engineer's report, the coordinator shall contact the town clerk and the joint meeting shall be scheduled.

4-13. The coordinator shall cause notice of such joint meeting to be served by 1st class mail upon all owners according to the attorney's certification, cause posted notice of such meeting to be made, and give published notice of such meeting at least three (3) times. All notices herein described shall be given at least 10 days prior to the hearing and shall state the purpose, date, time and location of the meeting.

4-14. The board, in cooperation with the town board at the meeting, shall hear all interested persons, give due consideration to the survey, the engineer's report, and the advisory committee recommendation and report, and make the following determinations:

- a) whether the proposed cartway is in the public interest;
- b) whether the public interest justifies the expenditure of public funds with reasons therefore;
- c) designate by agreement to be ratified in writing the equitable division of costs and responsibilities to be borne by board and town for right of way, including damages, construction and maintenance of the cartway.
- d) appoint a person or persons to contact the affected tract owners to ascertain damages by agreement, secure releases, and to file the same with the coordinator.

4-15. In the event agreement can not be secured, all proceedings shall thereafter be governed by MINN. STATS. 117 et seq.

4-16. Upon agreement that right-of-way may be acquired from an exempt land holder, the procedure outlined in 4-8 through 4-14 shall occur.

ORDINANCE FOR ESTABLISHING CARTWAYS IN UNORGANIZED TOWNSHIPS

DETERMINATION, DAMAGES, APPEAL, FILING AND RECORDING

5-1. The board shall nominate a responsible person to act as its agent to ascertain by agreement damages sustained by establishment of a cartway pursuant to 4-3 and to secure releases. Agreements and releases shall be filed with the coordinator and are final.

5-2. Damages and costs shall be paid before the cartway is opened, worked or used.

5-3. When agreement can not be reached as to damages, the matter shall be referred to the assessor and land commissioner who shall report their findings to the coordinator for use of the board.

5-4. Upon receipt of the findings described in Section 5-3, the coordinator shall send the findings along with a meeting notice by 1st class mail or agent to the land owner, petitioner or agent at least 10 days in advance of the meeting. A meeting shall be scheduled by the coordinator for the board to consider the findings and make a determination of damages.

5-5. The board shall consider the findings, hear the parties of present and specify the money value awarded as damages to each owner briefly specifying each parcel of land.

5-6. The award shall be filed with the coordinator. Within seven (7) days, the coordinator shall notify in writing each owner of each tract of the date of award of damages, the amount of damages, and any terms and conditions of the award. If no appeal is taken within 40 days (add 3 days for mailed notice), the coordinator shall notify the petitioner of the costs and damages. The coordinator shall return any unused portion of the \$500

ORDINANCE FOR ESTABLISHING CARTWAYS IN UNORGANIZED TOWNSHIPS

furnished with the petition. If the amount furnished is insufficient, costs shall be first computed and paid; if sufficient, any amount then left remaining shall be applied to damages. If costs and damages are in excess of \$500.00, the petitioner shall be notified of the amount owed and the fact that as to damages, damages shall draw interest at the rate of 6 percent per annum. The coordinator shall notify the petitioner specifically of the requirement of 5-2.

5-7. Upon tendering payment of costs and damages, including accrued interest, to the coordinator to the order of the Itasca County Treasurer, the petitioner may commence to open, work and use the cartway.

5-8. The coordinator shall forward the same to the treasurer with a list of owners and the amount awarded to each.

5-9. The treasurer shall promptly cause each owner to be paid the amount awarded.

5-10. An appeal may be taken within 40 days of the award of damages by petitioner, owner or occupant by filing with the Itasca County Court Administrator a notice of appeal specifying the award or failure to award, the land to which it relates, the grounds of appeal, and the nature and claim of appellant accompanied by bond of not less than \$250.00 with sufficient surety approved by the judge or county auditor to pay all costs arising from the appeal in case the award is sustained.

5-11. The appeal shall be entered upon the calendar for trial at the next general term of the court occurring more than 20 days after the appeal is perfected. It shall be tried in the same manner as an appeal in eminent-domain proceedings under chapter 117. The prevailing party shall recover

ORDINANCE FOR ESTABLISHING CARTWAYS IN UNORGANIZED TOWNSHIPS

costs and disbursements as in other civil cases and judgment shall be entered upon the verdict.

5-12. Upon completion of the appeal, and if the awards be sustained, the petitioner shall furnish to the coordinator any amount determined to remain due and owing, including accrued interest, pursuant to 5-7 and procedure of 5-8 and 5-9 shall be followed before the cartway is opened, worked or used.

5-13. The board may permit during the pendency of the appeal, upon application of petitioner where time is of essence and justification is furnished to open, work or use the cartway upon furnishing to the coordinator and approved by the board and attorney an agreement to pay the final damage award with an indemnification agreement and surety bond in a sufficient amount conditioned upon making such payment, including costs and interests.

5-14. Upon finding determination of damages and payment thereof, including unpaid costs if any, the board shall by resolution as provided in 4-5 declare the cartway a private driveway.

5-15. Upon application to the coordinator and in the event that agreement has not been reached as to the equitable division of the cost of maintenance of the driveway, a meeting shall be scheduled by the coordinator with notice to all property owners who own land adjacent to the driveway and all private owners who have no access except by the driveway as established by 5-14.

5-16. The board shall hear all persons interested and may affirm the findings preliminarily made pursuant to 4-6 or amend the findings and allocation as the same may be found to exist.

5-17. The boards determination may be appealed to the District Court, Division II, Itasca County within 30 days.

ORDINANCE FOR ESTABLISHING CARTWAYS IN UNORGANIZED TOWNSHIPS

5-18. In the event of no appeal or final determination by the court, the affected private property owners paying the cost of maintenance shall have civil cause of action against any private property owner or owners who refuse to pay their allocated share of maintenance cost.

5-19. Any order establishing a cartway pursuant to this ordinance shall be filed at the coordinator's office. The coordinator shall present to the auditor a certified copy of the order. The auditor shall then enter the order in the transfer records and over the auditor's office signature with the words "entered in the transfer record". The order shall then be filed for record with the Itasca County Recorder.

ENFORCEMENT

6-1. Violation of the following provisions are deemed a misdemeanor and may be punished as such:

- a) to open, work or use a cartway in a location that deviates from that authorized by the board in compliance with this ordinance.
- b) to open, work or use a cartway without paying damages and costs.

6-2. The penalty provisions are in addition to any other remedy or action available in law and as a matter of right.

VALIDITY

7-1. Should any section or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.

ORDINANCE FOR ESTABLISHING CARTWAYS IN UNORGANIZED TOWNSHIPS

7-2. Should this ordinance be declared unconstitutional or invalid in its application to any given property or use, such decision shall not affect the validity or constitutionality of this Ordinance as applied to other properties or uses.

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Board Approved: 11/24/1987 (Effective 1/1/1988)