STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1113

Bryce Holstad, et al.,
Appellants,

vs.

Town of May,
Respondent.

Filed February 18, 2025
Affirmed and remanded
Smith, Tracy M., Judge

Washington County District Court
File No. 82-CV-23-3539

Devon C. Holstad, Winthrop & Weinstine, P.A., Minneapolis, Minnesota (for appellants)

Robert A. Alsop, Kennedy & Graven, Chartered, Minneapolis, Minnesota (for respondent)

Considered and decided by Frisch, Chief Judge; Smith, Tracy M., Judge; and Schmidt, Judge.

SYLLABUS

1. When establishing a mandatory cartway under Minnesota Statutes section 164.08, subdivision 2 (2024), a town has implied authority to impose appropriate conditions on the construction, opening, and use of the cartway.

2. Damages under section 164.08, subdivision 2(c), may include a town's attorney fees incurred in connection with an appeal of a resolution establishing a cartway as well as engineer costs incurred to supervise cartway construction because both are a

"cost of professional and other services . . . and other costs and expenses which the town may incur in connection with the proceedings for the establishment of the cartway."

OPINION

SMITH, TRACY M., Judge

Appellants Jody and Bryce Holstad, who are mother-and-son owners of landlocked property, petitioned respondent Town of May to establish a mandatory cartway to their property under Minnesota Statutes section 164.08, subdivision 2. The town adopted a resolution establishing a cartway on a neighboring property. In doing so, the town selected a route different from that sought by the Holstads and required that the cartway be constructed according to the town's standards for roads and in compliance with third-party governmental approvals. The town also awarded damages to the neighboring property's owners and the town.

The Holstads appealed the town's resolution to the district court, which granted summary judgment upholding the resolution. On appeal to this court, the Holstads argue that the district court erred in affirming the resolution because the town acted contrary to law or arbitrarily by (1) imposing conditions on the cartway that are not enumerated in Minnesota Statutes section 164.08 (2024), (2) selecting an alternative route that is more disruptive and damaging than the Holstads' proposed route, and (3) awarding damages to the town for certain future costs, including attorney fees associated with the Holstads' judicial challenges to the town's resolution and engineer costs associated with oversight of cartway construction.

We affirm and, because this appeal was taken before a trial was held on the issue of damages, we remand to the district court for further proceedings regarding the appropriate amount of damages.

FACTS

The following facts are not disputed. The Holstads own approximately 2.5 acres of landlocked property in the town of May in Washington County. They received the property in 2014 from Jody Holstad's parents. The property is abutted on the east by the St. Croix River and land owned by the National Park Service (NPS); on the north and west by land owned by the NPS; and on the south by land owned by neighbors Andrea Jungmann and James M. Hoy (the neighboring property).

The Holstad property does not abut or have immediate access to a public roadway. The nearest public road is State Highway 95, also known as St. Croix Trail, which runs north and south and lies approximately one-quarter mile to the west of the Holstad property. Apart from the St. Croix River, the only available access to the Holstad property is over the lands of others. Before filing their petition, the Holstads attempted to negotiate a private easement with the owners of the neighboring property but were unsuccessful. Access to the Holstad property is therefore possible only by crossing NPS land on foot, which, according to the Holstads, "requires great physical exertion" and traversal of a gorge.

In June 2022, the Holstads petitioned the town to establish a mandatory cartway pursuant to Minnesota Statutes section 164.08, subdivision 2. At a July 2022 meeting, the town board discussed the petition and determined that the town would not expend town funds on a cartway. The town board set a formal hearing on the Holstads' petition.

In the course of the proceedings, three cartway routes were proposed.

First, in their petition, the Holstads proposed a cartway using an unimproved existing driveway on the neighboring property that extends from St. Croix Trail to Jungmann and Hoy's seasonal cabin at the edge of a bluff near the St. Croix River. According to the petition, the driveway "spans and nearly touches at least 160 feet" of the Holstad property's southern edge. The petition states that there is a point at which there is "a small, flat area of land" next to the driveway where the Holstads could park and have access to their property. The petition claims that this route would not require tree removal, grading, or construction, and that its implementation would require only "minimal work" to expand the existing driveway and clear vegetation. The Holstads assert that this route would require no construction-related costs.

Second, Jungmann and Hoy, who opposed the establishment of a cartway on their property, offered their own proposal should a cartway be established. They proposed that any route that utilizes their driveway be two rods[1] wide and include retaining walls and guardrails.

Third, an engineer hired by the town proposed an alternative route. The engineer's route would also start at St. Croix Trail and run along the existing driveway, but, about two-thirds of the way across the neighboring property, it would depart from the existing driveway and turn north toward the Holstad property. The engineer identified this route as safer because it would avoid "many of the extremely steep slopes and ravines" that the

[1] A rod is a unit of measurement that equals 16.5 feet. *In re Daniel*, 656 N.W.2d 543, 546 n.1 (Minn. 2003).

other routes would encounter as they follow the existing driveway farther east. The engineer recommended approval of this alternative route with improvements to the driveway.

During the proceedings following submission of the Holstads' petition, the town board inspected the Holstad property and the neighboring property and held public hearings on the petition on July 26 and August 3, 2023. At the hearings, the town board heard from interested parties and received documents addressing the need for a cartway, proposed routes, and damages.

At the August 3 hearing, the town adopted a resolution establishing the cartway and awarding damages to Jungmann and Hoy and to the town. The town board selected the engineer's proposed alternative route. The resolution states:

> The Town Board finds that the cartway route, as suggested by the Town Engineer . . . is the most practical and least disruptive or damaging route for the cartway. It is shorter, avoids steep slopes, drop-offs and ravines, is farther away from the river and involves less disruption to sensitive slopes than others. It is comparatively less intrusive because it does not approach the recreational cabin and minimizes the length of area of vehicle conflicts. It would preserve the privacy of the seasonal cabin. . . .
>
> Because it is a public conveyance, the town needs to expect traffic on the cartway other than from just [Jungmann and Hoy] (and [the Holstads]) but even cross traffic from [Jungmann and Hoy] and [the Holstads] would create a risk of vehicle traffic on the steep slopes approaching the cabin, vehicle conflicts and possible dangers associated with that. The area in question still involves slopes and narrow passages. For safety and access reasons the Engineer recommends it be in width provided by the statute but its improved surface should be built to the Town's requirements governing private roads—16 feet wide with 2-foot gravel shoulders and that it allows for

> emergency vehicle access. These factors and others better serve the public interest.

The resolution provides that cartway construction is subject to inspection and approval by the town engineer. It also provides that, before the construction, opening, or use of the cartway, the Holstads must obtain "[a]ll related and necessary regulatory and grading approvals from any regulatory agency having jurisdiction" and that all work must be done in accordance with those approvals.

The resolution also awards damages, requiring that they be paid before the construction, opening, or use of the cartway. The damages include $200,000 to Jungmann and Hoy. As for the town's damages, the resolution requires the Holstads to pay the cost of "professional and other services," among other costs, to be incurred by the town "in connection with the proceedings for the establishment of the cartway." The resolution states that these damages include attorney fees "in connection with . . . any judicial proceedings arising out of or relating to" cartway establishment and engineer services for overseeing cartway construction.

The Holstads filed a notice of appeal with the district court, seeking vacatur of the resolution and requesting that the district court order the town to issue a new resolution establishing the unimproved cartway route that they proposed in their petition. The Holstads then filed a motion for partial summary judgment, asking the district court to order the town to grant the cartway as they requested without any conditions or requirements regarding construction or improvements. The town opposed the Holstads' motion and requested that the district court grant it attorney fees in connection with the

Holstads' appeal to the district court. The district court filed an order denying the Holstads' partial-summary-judgment motion and granting the town's request for attorney fees associated with the appeal. Thereafter, the district court filed an order stating that its order denying the Holstads' motion constitutes a final determination as to the cartway issue and directed entry of judgment.

The Holstads appeal.

ISSUES

I. Did the district court err by affirming the town's imposition of conditions when establishing a mandatory cartway?

II. Did the district court err by affirming the town's selection of the town engineer's alternative cartway route rather than the route proposed by the cartway petitioners?

III. Did the district court err by affirming the inclusion of future costs in the town's cartway-damages award, including attorney fees associated with appeal of the town's resolution establishing the cartway and engineer costs in supervising construction of the cartway?

ANALYSIS

A township deciding "a petition to establish a cartway 'acts in a legislative capacity.'" *Kennedy v. Pepin Township*, 784 N.W.2d 378, 381 (Minn. 2010) (quoting *Lieser v. Town of St. Martin*, 96 N.W.2d 1, 5 (Minn. 1959)). "The general rule is that a decision by the members of town boards acting in a legislative capacity shall be the outcome of examination and consideration; in other words, that it shall constitute a

discharge of the official duty and not a mere expression of personal will." *Lieser*, 96 N.W.2d at 5. Courts will set aside a town's determination of a cartway petition "only if 'it appears that the evidence is practically conclusive against it, or that the local board proceeded on an erroneous theory of law, or that it acted arbitrarily and capriciously against the best interests of the public.'" *Kennedy*, 784 N.W.2d at 381 (quoting *Lieser*, 96 N.W.2d at 5-6). "When judicially reviewing a legislative determination, the scope of review must necessarily be narrow." *Horton v. Township of Helen*, 624 N.W.2d 591, 595 (Minn. App. 2001) (quotation omitted), *rev. denied* (Minn. June 19, 2001). "Generally, [courts] will affirm even though [they] may have reached a different conclusion." *Id.*

The Holstads argue that the town acted contrary to law or arbitrarily in its resolution granting the cartway and that, consequently, the district court erred by affirming the town's cartway resolution. Specifically, the Holstads argue that the town acted contrary to law or arbitrarily by (1) including conditions when it established the cartway, (2) selecting an alternative route rather than the Holstads' proposed route, and (3) awarding damages to the town for future attorney and engineer fees.

We consider each argument in turn.

I. The town did not act under an erroneous theory of law or arbitrarily by imposing conditions when establishing the cartway.

The Holstads argue that the town acted contrary to law or arbitrarily by placing conditions on the establishment of the cartway. They argue that imposing these conditions rendered the grant of the cartway illusory and that, as a result, the town did not meet its statutory duty to establish a mandatory cartway under section 164.08. Specifically, the

Holstads challenge the town's conditions that the cartway be (1) approved by third-party regulatory bodies, (2) constructed and improved (at the Holstads' expense), (3) at least two rods in width, and (4) in compliance with standards for rural residential streets and shared driveways and standards specified by the town engineer.

A. Third-Party Regulatory Conditions

The Holstads argue that the town failed to fulfill its duty to establish a mandatory cartway by requiring that the Holstads obtain approval from third-party regulatory entities before constructing, opening, or using the cartway. They argue that a cartway has not truly been established if a third party can still reject the route granted by the town for regulatory reasons.

The town counters that the regulatory-approval conditions do not undermine the cartway's establishment and are not contrary to law. It notes that the approvals would be required even if they were not included in the resolution because a petitioner is responsible for obtaining regulatory approval for cartway construction. And it asserts that it would be impractical for the town to have to wait to issue a cartway resolution until a petitioner has first sought out and obtained all other regulatory approvals that may be required.

Minnesota Statutes section 164.08, subdivision 2(a), states:

> A town board shall establish a cartway upon a petition of an owner of a tract of land that, as of January 1, 1998, was on record as a separate parcel, contained at least two but less than five acres, and has no access thereto except over a navigable waterway or over the lands of others.

In accordance with this provision, the town issued its resolution granting a cartway. In the resolution, the town conditioned the construction, opening, and use of the cartway on the

Holstads obtaining "related and necessary regulatory and grading approvals" from federal, state, and county entities with jurisdiction over the cartway.[2] The resolution mandates that the Holstads comply with direction from those entities when constructing the cartway.

A town's "establishment of a cartway under [Minnesota Statutes section] 164.08 . . . is an exercise of eminent domain, the inherent power of a governmental entity to take privately owned property and convert it to public use." *Silver v. Ridgeway*, 733 N.W.2d 165, 169 (Minn. App. 2007). The Holstads do not argue that, in exercising that power, the town has the authority to disregard the federal, state, and county regulations governing the property, nor do we know of any such authority. *See, e.g.*, *id.* at 170 (holding that section 164.08 does not authorize exercise of eminent domain over state property by lesser subdivision of government). We conclude that the requirement to obtain regulatory approvals does not undermine the establishment of the cartway.

As a result, the town did not act under an erroneous theory of law or arbitrarily by requiring the Holstads to receive approval from regulatory entities with jurisdiction over

[2] The resolution provides a nonexhaustive list of relevant regulatory entities at the federal, state, and county levels, including the NPS, the Minnesota Department of Transportation, the Department of Natural Resources, and Washington County. In a letter to the town regarding establishment of the cartway, the U.S. Department of the Interior stated that the Holstad property and the neighboring property are encumbered by an NPS scenic easement, which limits development of the properties by requiring the NPS to review and approve certain projects and prohibits excavation or topography changes without NPS authorization. A letter from Washington County reiterated the existence of the NPS scenic easement; it also noted that the Holstad property and the neighboring property are subject to county regulations, including the Washington County St. Croix Bluffland and Shoreland Management Ordinance and the Washington County Development Code and that any cartway-related construction must comply with those regulations.

the lands affected by the cartway before constructing, opening, or using the cartway. *See Kennedy*, 784 N.W.2d at 381.

B. Construction and Improvement Conditions

The Holstads challenge the town's authority to condition the construction, opening, and use of the cartway on the Holstads' compliance with certain construction and improvement requirements, arguing that the only condition that a town has the authority to impose when establishing a mandatory cartway is the payment of statutory damages under Minnesota Statutes section 164.08, subdivision 2(c).

The town responds that establishment of a cartway is fact-specific and requires a town to weigh the public interest against the private interests of those impacted by the cartway. The town states that, while a petitioner's payment of damages is an "obvious condition" that a town may impose when establishing a cartway, a town may also need to address other issues in a given case and that prescribing construction standards is one way that a town may address public-safety concerns that are presented by a cartway.

"Generally, municipalities have no inherent powers and possess only such powers as are expressly conferred by statute or implied as necessary in aid of those powers which have been expressly conferred." *State v. Kuhlman*, 729 N.W.2d 577, 580 (Minn. 2007) (quotation omitted). Section 164.08, subdivision 2(c), explicitly requires that "[t]he amount of damages shall be paid by the petitioner to the town before such cartway is opened." But the payment of damages is not the only condition that a town may impose on a petitioner before the construction, opening, and use of an established cartway if the town has the

implied authority to impose other conditions to aid its powers under section 164.08. We therefore look to the town's powers under the rest of the statute.

Section 164.08 expressly confers authority on a town to establish a cartway when a petitioner meets the requirements for a mandatory cartway. Minn. Stat. § 164.08, subd. 2(a). It also provides that town funds "shall not be expended on [a] cartway unless the town board . . . by resolution determines that an expenditure is in the public interest." *Id.* (d). Absent such a resolution, "the grading or other construction work and the maintenance of the cartway is the responsibility of the petitioner." *Id.*; *see also* Minn. Stat. § 164.10 (2024) (establishing process for authorizing expenditure of town funds on legally established cartways). In addition to addressing the financial responsibilities for construction, the statute also directs the town to consider the disruption and damage to affected landowners and the public interest if it chooses to select an alternative cartway route. Minn. Stat. § 164.08, subd. 2(a).

We conclude that the statutory provisions imply that the town has authority to impose the construction and improvement conditions that it imposed here. It is undisputed that the Holstads have satisfied the requirements to establish a mandatory cartway, pursuant to section 164.08, subdivision 2(a). It is also undisputed that the town determined that it would not expend town funds on the cartway, including on its construction, implying that the town determined that the cartway's establishment was not in the public interest. *See id.* (d). The town further determined that the cartway requires certain improvements to further "public health, safety and welfare." These improvements include road-widening to allow passage of emergency vehicles and to minimize the dangers of cross traffic on sloped

portions of the cartway. Such concerns are reasonable for a town to consider when establishing a cartway, since cartways are public roads on which anyone can travel. *Silver*, 733 N.W.2d at 169 (stating that "establishment of a cartway creates a public road"); *Powell v. Town Bd. of Sinnott Twp.*, 221 N.W. 527, 528 (Minn. 1928) ("When this cartway is established and opened, everyone desiring to use it will have the legal right to do so.").We therefore conclude that the town acted within its implied authority when it conditioned the opening of the cartway on the construction and improvement of the cartway, at the Holstads' expense, in accordance with standards that will mitigate negative impacts on the neighboring landowners and ensure that the cartway serves the public interest. *See Kuhlman*, 729 N.W.2d at 580.[3]

The Holstads assert other arguments, which are not persuasive. They argue that, once a town decides that it is not in the public interest to expend its funds on a cartway, it cannot require that the petitioner construct the cartway according to any standards for the public interest. But the fact that a town determines that it is not in the public interest to expend its funds does not mean that the town lacks authority to ensure that an established cartway is constructed in a manner that protects public safety. The Holstads also argue that the imposition of construction requirements defeats the purpose of the cartway statute, which contemplates cartways as unimproved roads; they cite a number of precedential and nonprecedential cases in which unimproved cartways were established. But the fact that

[3] We note that, in concluding that the town has the implied authority under section 164.08 to establish the conditions it established here, we do not opine on whether the town has any other source of authority for its actions.

towns may approve unimproved cartways in some circumstances does not mean that a town lacks the authority to impose requirements on the construction of a cartway in other circumstances, including, as here, when the town determines that the use of an unimproved driveway would pose public-safety concerns.

C. Width Condition

Third, the Holstads argue that the town acted contrary to law by interpreting Minnesota Statutes section 164.08, subdivision 2(a), to require the cartway be at least 33 feet (two rods) wide. The Holstads argue that the plain language of the subdivision imposes a two-rod width requirement only on cartways that lead to properties of at least five acres and, therefore, the width requirement does not apply to the Holstads' cartway because their property is at least two but less than five acres.

The first two sentences of subdivision 2(a) read as follows:

> Upon petition presented to the town board by the owner of a tract of land containing at least five acres, who has no access thereto except over a navigable waterway or over the lands of others, or whose access thereto is less than two rods in width, the town board by resolution shall establish a cartway at least two rods wide connecting the petitioner's land with a public road. A town board shall establish a cartway upon a petition of an owner of a tract of land that, as of January 1, 1998, was on record as a separate parcel, contained at least two but less than five acres, and has no access thereto except over a navigable waterway or over the lands of others.

The Holstads argue that, because the two-rod requirement appears only in the first sentence, which applies to tracts of land that contain at least five acres, it does not apply to the tracts of land described in the second sentence—tracts that, like theirs, contain at least two but less than five acres. The town responds that the Holstads' interpretation would lead

to absurd results that were "clearly not the intent of the legislature." *See* Minn. Stat. § 645.17(1) (2024) (stating presumption that "the legislature does not intend a result that is absurd, impossible of execution, or unreasonable"). The town argues that the Holstads' interpretation would give towns "unfettered discretion" to determine the width of cartways leading to tracts of at least two but less than five acres when cartways have historically been identified in Minnesota law as being two rods in width. The town cites subdivision 1 of section 164.08—which sets the width of permissive cartways at two rods—and asserts that cartways have been identified as being two rods wide in "essentially every cartway case."

We need not reach the merits of the parties' statutory-interpretation arguments regarding the width requirement for a parcel the size of the Holstads' property because we conclude that the width requirement imposed here falls within the town's implied powers in establishing cartways. *See* Minn. Stat. § 164.08, subd. 2(a); *Kuhlman*, 729 N.W.2d at 580. The cartway statute requires the town to take into account "the public's best interest" when selecting an alternative route for establishing a cartway. Minn. Stat. § 164.08, subd. 2(a). In addition, a cartway must provide "meaningful access" to the landlocked property. *Kennedy*, 784 N.W.2d at 383 ("If [the] selected route does not provide meaningful access to a tract of land, then it fails to satisfy the requirement that a cartway be provided."). Here, the town determined that "safety and access reasons" supported its requirement that the cartway be constructed to a specified width. As a result, we conclude

that the town's decision to impose a two-rod width requirement when establishing the cartway was not contrary to law.[4]

D. Road-Standards Conditions

The Holstads challenge the town's requirement that the cartway be constructed according to defined standards specified by the town engineer. They argue that the town acted contrary to law by rejecting the Holstads' proposal of an unimproved cartway. They contend that, because Minnesota statutes and caselaw provide no minimum standards for cartways, the town acted under an erroneous theory of law by imposing *any* minimum conditions on the establishment of a mandatory cartway.

The town argues that it acted within its broad legislative authority when it required that the cartway be constructed to comply with engineer-designated minimum standards, given the unique safety concerns that the terrain presents. The town argues that, because a cartway is a public road, and not a private road, the town must be afforded legislative discretion to weigh public safety against the competing preferences of a cartway petitioner and to determine conditions accordingly. We agree with the town.

The town's resolution provides that the cartway will be accessible to the public—a statement that reflects the law. *See Silver*, 733 N.W.2d at 169. The resolution states that the "existing condition" of the neighboring property's driveway fails to meet town standards for a rural residential street or shared driveway. It states that use of an

[4] Because we do not resolve the parties' statutory-interpretation arguments, we offer no opinion as to whether a town has the discretion under the statute to establish a mandatory cartway of less than two rods in width when it leads to a property that contains at least two but less than five acres.

unimproved cartway "would not be consistent with public health, safety or welfare because the existing driveway is narrow and of limited accessibility, especially for more than one vehicle." It provides that, accordingly, the cartway may not be used until the cartway is constructed in accordance with the conditions established by the town.

Again, we conclude that the town acted within its authority and did not act contrary to law when it required that the cartway be constructed according to the standards specified by the town engineer. *See Kuhlman*, 729 N.W.2d at 580.

II. The town did not act arbitrarily or contrary to law or the facts in selecting an alternative route rather than the Holstads' proposed route.

The Holstads argue that, even if the town had the authority to compel construction or improvements as conditions when establishing the cartway, the town acted arbitrarily or contrary to law and the facts by selecting the engineer's route rather than their proposed route because the only reasonable determination based on the evidence is that the engineer's route is more burdensome and damaging than the Holstads' proposed route. The town responds that its determination was in accordance with law and the facts and nonarbitrary because the Holstads' proposed route using the unimproved driveway on the neighboring property would not be safe and would not provide meaningful access because of its narrowness and impassability during winter months.

The cartway statute allows a town board 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." Minn. Stat. § 164.08, subd. 2(a).

> 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 and the route named in the conditions is a proper one; but the town board may exercise a reasonable discretion in varying the route proposed as the public interest may require, provided it adheres to the termini and general course stated in the petition.

State ex rel. Rose v. Town of Greenwood, 20 N.W.2d 345, 348 (Minn. 1945). The statute places the selection of a cartway route within the discretion of the town, and "[i]t is not within an appellate court's power to substitute its judgment for that of the Township in selecting a route." *Kennedy*, 784 N.W.2d at 384.

In *Kennedy*, the Minnesota Supreme Court interpreted the language of section 164.08, subdivision 2(a), "to require 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." *Id.* In that case, a township made findings related to an alternative cartway route, including the length and cost of the alternative route compared to the petitioner's proposed route, as well as the fact that one route would require construction over an area with "rough terrain" and "steep slopes." *Id.* at 385. But the findings did not expressly address whether the alternative route was "less disruptive and damaging to neighbors" or whether its selection over the petitioner's route was in the public's best interest. *Id.* Accordingly, the supreme court remanded to the township to establish the petitioned-for cartway route, unless the township determined that the alternative route was less disruptive and damaging to neighbors and in the public's best interest, as the statute requires. *Id.*

Here, the town made findings that address both the public interest and the disruption and damage that each proposed route would cause neighboring-property owners. With respect to the public interest, the town found as follows. The driveway that the Holstads proposed is "an unimproved gravel/sand path that is used for ingress and egress to [Jungmann and Hoy's] seasonal cabin." As the driveway moves from west to east, "it threads through heavily forested areas and steep ravines and drop offs on both sides" before it "traverses the bluff and steep ravines and then drops down" to the seasonal cabin near the river. The driveway at most points is "barely wide enough to accommodate a single passenger vehicle and would never accommodate two vehicles or allow for turnouts in most if not all areas because it is so narrow and has . . . extremely steep drop-offs along its sides." The driveway "will not accommodate emergency vehicles and is largely or completely impassable during the winter months." The town explained that, "[b]ecause it is a public conveyance," the cartway must be expected to include not just cross traffic from the Holstads, Jungmann, and Hoy, but also traffic from others. It found that, "[b]ased upon the testimony and the inspection of the site and the recommendation of the Town Engineer, use of the existing driveway in an unimproved state is not feasible nor consistent with public health, safety or welfare."

With respect to the effect on neighbors, the town found that the engineer's route is "less damaging and disruptive" than the Holstads' proposed route. Specifically, it found that the engineer's route would provide a greater distance from Jungmann and Hoy's cabin, preserving the neighbors' privacy. It also found that the engineer's route would "avoid[] substantial steep and narrow slopes where two-way vehicle traffic . . . is not feasible." And

it found that the engineer's route would minimize "additional clearing, tree cutting and excavation on some of the most sensitive areas of the [neighboring] property" compared to the Holstads' proposal.

For these reasons, the town determined that the engineer's route was "the most practical and least disruptive or damaging route for the cartway" and would "better serve the public interest" than the Holstads' route.

The Holstads argue that the town's determination is arbitrary and capricious and contrary to the facts because "there can be no legitimate dispute" that the engineer's route is more disruptive and damaging than the Holstads' proposed route. They assert that, under the engineer's proposal, the neighboring property would be subject to a greater impact from the construction of the improved driveway; the clearing, tree cutting, and excavation required in the engineer's route would have greater impact on a sensitive and protected ecological area; and the Holstads would be burdened by costly construction costs and regulatory approvals.

The argument is unconvincing. The town engineer examined the neighboring property and provided testimony and exhibits regarding the topography and the risks to public safety due to steep slopes. The engineer provided video showing the narrow width of the unimproved driveway, and Hoy provided affidavit testimony and photographs showing the narrow width and steep drop-offs along the driveway. The board members themselves toured the property. The town board held public hearings at which they considered testimony, received exhibits, and heard arguments. On this record and for the reasons explained by the town, we conclude that the town's selection of the engineer's

proposed route instead of the Holstads' proposed route was not contrary to law, conclusively against the evidence, or arbitrary or capricious. *See id.* at 381.

III. The town properly included in the town's damages attorney fees that the town may incur in connection with the appeal of the town's resolution and the engineer costs that the town may incur in supervising construction of the cartway.

The Holstads challenge the damages awarded to the town for costs to be incurred after issuance of the town's resolution establishing the cartway. Specifically, they challenge the inclusion of (1) the town's attorney fees associated with appeal of the cartway decision and (2) the costs of engineer services in overseeing construction and improvement of the cartway. The Holstads argue that these costs are not authorized by the cartway statute. Their challenge thus presents a question of statutory interpretation.

Appellate courts review questions of statutory interpretation de novo. *Id.* "The object of all statutory interpretation is to ascertain and effectuate the intention of the Legislature." *Cocchiarella v. Driggs*, 884 N.W.2d 621, 624 (Minn. 2016). A reviewing court must first determine whether a statute's language is ambiguous on its face. *State v. Sanschagrin*, 952 N.W.2d 620, 624 (Minn. 2020). If statutory language may reasonably be interpreted more than one way, it is ambiguous and the reviewing court "may 'go beyond the language at issue to ascertain the intent of the Legislature.'" *Id.* (quoting *Johnson v. Cook County*, 786 N.W.2d 291, 293-94 (Minn. 2010)). If the statute is unambiguous, however, the reviewing court will apply its plain meaning. *Id.* With these principles of statutory interpretation in mind, we turn to the language of the cartway statute.

Section 164.08, subdivision 2(c), provides that

> damages shall be paid by the petitioner to the town before such cartway is opened. For the purposes of this subdivision damages shall mean the compensation, if any, awarded to the owner of the land upon which the cartway is established together with *the cost of professional and other services*, hearing costs, administrative costs, recording costs, *and other costs and expenses which the town may incur in connection with the proceedings for the establishment of the cartway*.

(Emphasis added.)

The Holstads assert that the plain language of this subdivision limits the town's compensable damages "to administrative costs relating to the proceedings held for the establishment of the cartway," which, they assert, is complete at the point of issuance of the town's resolution. Therefore, they contend, the town cannot include as damages any attorney fees that the town incurs in connection with an appeal of its resolution or any costs related to construction and improvement that are incurred after the town's resolution.

The town responds that, pursuant to the plain meaning of "other costs and expenses which the town may incur in connection with the proceedings for the establishment of the cartway," section 164.08, subdivision 2(c), includes all costs that the town will incur, including attorney fees associated with an appeal of a cartway order and engineering costs in overseeing the construction of the cartway to ensure compliance with the standards required by the resolution. The town asserts that, while the cartway statute enables a landlocked-property owner to force a town to invoke its power of eminent domain to establish access across private property, it does not require that taxpayers subsidize it.

We conclude that the plain language of the statute authorizes the award of damages of the costs challenged here. The statute applies broadly to "professional and other

services . . . and other costs and expenses which the town may incur in connection with the proceedings for the establishment of the cartway." Minn. Stat. § 164.08, subd. 2(c). As for attorney fees, the Holstads do not argue that attorney fees are not professional services—they do not challenge the inclusion of the town's attorney fees incurred prior to the resolution. They argue only that attorney fees incurred after the town's resolution cannot be included. But the language "in connection with the proceedings for the establishment of the cartway" is broad enough to include fees incurred after the resolution. This interpretation is supported by other language within the same statutory paragraph, which provides that the town may require the petitioner to post a bond "for the total estimated damages before the board takes action on the petition." *Id.* The authorization of "estimated damages" indicates that that town may be awarded costs that will be incurred after the resolution.

The Holstads argue, though, that the "American rule" regarding attorney fees precludes the award of attorney fees for appeals taken from a town's cartway decision. "Generally, Minnesota follows the American rule that prevents a party from shifting its attorney fees to its adversary without a specific contract or statutory authorization." *Buckner v. Robichaud*, 992 N.W.2d 686, 689 (Minn. 2023) (quotation omitted). We conclude that section 164.08, subdivision 2(c), provides statutory authorization for an attorney-fee award and so the American rule is satisfied. A town may incur attorney fees in cartway proceedings from an appeal by a petitioner, as here, or from an appeal by a property owner who opposes the cartway, *see, e.g.*, *In re Daniel*, 656 N.W.2d at 544. The

statute places the costs of establishing a cartway on the petitioner, whether or not the petitioner's position is adverse to the town.

The Holstads also assert that a town's ability to award damages associated with the appeal process following establishment of a cartway could "frustrate[]" the purpose of the cartway statute if the town "wants to make the process prohibitively expensive for a petitioner." But this concern is mitigated by the fact that a town's damages award is reviewable on appeal to the district court.

As for future engineer fees, we conclude that those fees, too, may be included in damages. As the town points out, should construction go forward, the Holstads will be required to construct the cartway according to the town's standards. The engineering fees that the town will incur in overseeing construction to ensure that those standards are met are also costs incurred "in connection with" the cartway proceedings.

We conclude that the town did not err by including post-resolution attorney fees or engineer fees in its damages award under section 164.08, subdivision 2(c).[5]

DECISION

We affirm the district court's decision upholding the town's resolution establishing a cartway to the Holstads' property. We hold that the town had implied authority under Minnesota Statutes section 164.08 to impose the conditions that it included in its resolution establishing the cartway. We also hold that the town did not act contrary to law or facts or

[5] In its brief, the town asks that we grant it the attorney fees that it incurred on appeal to this court. We do not do so in this opinion. Minnesota Rule of Civil Appellate Procedure 139.05 governs the procedure for requesting attorney fees on appeal.

arbitrarily in selecting an alternative cartway route rather than the Holstads' petitioned-for route. Finally, we hold that the town had authority under section 164.08, subdivision 2(c), to include in the damages award attorney fees in connection with the appeal of the town's order establishing a cartway and engineer fees in overseeing construction. As noted above, we remand to the district court for further proceedings regarding damages.

Affirmed and remanded.