

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0903**

Idyllwood Homeowners Association,
Respondent,

vs.

Town of Ideal,
Appellant,

and

Jeffrey Feltmann,
Intervenor below.

**Filed March 14, 2022
Reversed and remanded
Reilly, Judge**

Crow Wing County District Court
File No. 18-CV-20-3150

Gary A. Van Cleve, Bryan J. Huntington, Maureen A. Lodoen, Larkin Hoffman Daly & Lindgren, Ltd., Minneapolis, Minnesota (for respondent Idyllwood Homeowners Association)

Scott A. Witty, Courtney L. Beck, Hanft Fride, Duluth, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Reilly, Judge; and Gaïtas,
Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

Appellant town challenges the district court's summary judgment determination that the town board's establishment of a cartway across respondent landowner's parcel was arbitrary, capricious, and contrary to law. We determine that the district court erred by granting summary judgment in respondent's favor and reversing the town board's resolution granting the cartway petition. We therefore reverse and remand for further proceedings consistent with this opinion.

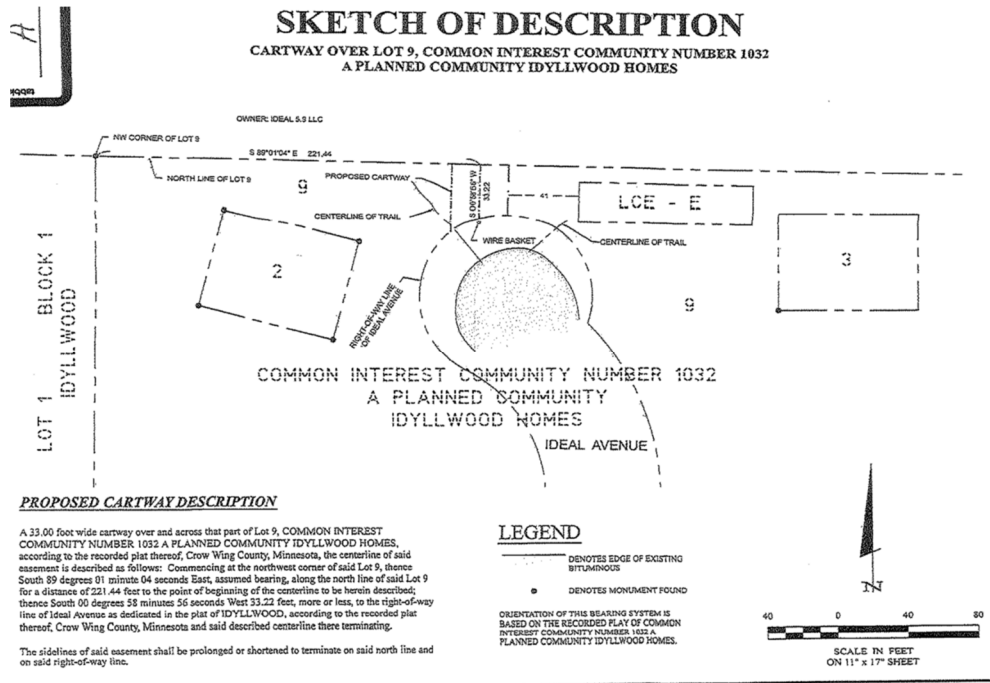
FACTS

Jeffrey A. Feltmann (Feltmann) owns a 5.9-acre parcel of property within the boundaries of appellant Town of Ideal (the town). Feltmann's property abuts land owned by respondent Idyllwood Homeowner's Association (Idyllwood). Idyllwood is a planned community of Idyllwood Homes. Feltmann's property is located between Crow Wing County Road 39, Ideal Avenue, and Valhalla Road. Ideal Avenue ends in a cul-de-sac about 40 feet from Feltmann's property line. Attached below is an aerial image of Feltmann's property and the surrounding parcels. The landlocked Feltmann property is outlined in blue and titled "Ideal." Valhalla Road is a dead-end road in the bottom right corner of the aerial picture. The cul-de-sac on Ideal Avenue is in the bottom middle of the image. Old Milwaukee Supper Club is between the western border of Feltmann's property and County Road 39. This image is intended to provide the reader with a sense of the areas in dispute.



Ideal Avenue was constructed as part of Idyllwood’s planned community. The planned community was originally designed to be a low-density neighborhood secured by cul-de-sac dead ends. There are five building sites on the cul-de-sac on Ideal Avenue, only one of which is constructed.

In January 2020, Feltmann petitioned for a cartway to connect his landlocked property to a public road. The petition proposed creating a cartway across Idyllwood’s land from an existing trail near the cul-de-sac on Ideal Avenue, about 40 feet from Feltmann’s property (the Ideal Avenue route). Attached below is a scanned image of the proposed cartway route from the petition. This image shows the cul-de-sac at the end of Ideal Avenue. Although the boxes labeled “2” and “3” suggest that there are houses in these areas, the area is unbuilt.



Idyllwood opposed the petition asserting that the Ideal Avenue route would cut through a cul-de-sac on Idyllwood’s planned community and would be more burdensome than other potential routes. Idyllwood proposed two alternative routes for the cartway, including a route from Feltmann’s property, across Idyllwood’s property, and to the end of Valhalla Road (the Valhalla Road route).¹ There is currently a snowmobile/ATV trail from Valhalla Road to the Old Milwaukee Supper Club.

The town held a public hearing on the petition in February 2020. The day before the hearing, Idyllwood recorded an easement in Feltmann’s favor from Feltmann’s property, and across Idyllwood’s property, to Valhalla Road. Feltmann and the town board learned of the easement at the hearing. The town board continued the hearing to obtain

¹ Idyllwood also proposed a third route across the western part of Feltmann’s property to Highway 39 near the Old Milwaukee Supper Club (the Old Milwaukee Supper Club route). This route is not at issue on appeal.

additional information from the town engineers and to review Idyllwood's easement. The town board reconvened the public meeting in August 2020. The town board received public comments about the proposed cartway routes. The town board also reviewed documents related to the proposed cartway routes and the easement, including engineering reports from the town engineer and from Idyllwood's engineer.

In September 2020, the town board approved Feltmann's cartway petition. The town board reviewed the March 2020 easement from Idyllwood to Feltmann but determined this easement did not give Feltmann "meaningful access" to a public road. The town board considered the different options for the cartway route and determined that the proposed cartway across Idyllwood's property to Ideal Avenue was the "most practical and least disruptive or damaging route for the cartway." The town board awarded damages to Idyllwood for establishing a cartway over its property.

Idyllwood appealed the town board's decision to the district court. Idyllwood then moved for summary judgment challenging both the establishment of the cartway and the award of damages. With respect to establishment, Idyllwood argued that Feltmann had meaningful access from his property to a public road through the easement to Valhalla Road. The town cross-moved for partial summary judgment, arguing that the cartway was properly established because Feltmann lacked meaningful access from his property to a public road. The district court granted Idyllwood's summary-judgment motion and denied the town's motion. The district court found that the town board "acted arbitrarily and capriciously" by concluding that the property lacked meaningful access to a public road because Idyllwood had granted Feltmann an easement. The district court reversed the town

board's resolution granting Feltmann's cartway petition. Because the district court determined that the town erred in establishing the cartway, it did not reach the question of damages, and entered judgment in favor of Idyllwood.

The town appeals.

DECISION

Summary judgment is appropriate if “there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” Minn. R. Civ. P. 56.01. “A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the nonmoving party.” *Leeco, Inc. v. Cornerstone Bank*, 898 N.W.2d 653, 657 (Minn. App. 2017), *rev. denied* (Minn. Sept. 27, 2017). We view “the evidence in the light most favorable to the nonmoving party and resolve all doubts and factual inferences against the moving part[y].” *Maethner v. Someplace Safe, Inc.*, 929 N.W.2d 868, 874 (Minn. 2019) (quotation omitted). “[W]hen the material facts are not in dispute, an appellate court will review the district court’s grant of summary judgment *de novo*.” *Melrose Gates, LLC v. Moua*, 875 N.W.2d 814, 819 (Minn. 2016).

A town board considering 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 the law was applied, or (3) the town board acted arbitrarily and capriciously, contrary to the public’s best interest.” *Horton v. Township of Helen*, 624 N.W.2d 591, 595 (Minn. App. 2001) (citing *Lieser v. Town of St. Martin*, 96 N.W.2d 1, 5-6 (Minn. 1959)), *rev. denied* (Minn. June 19, 2001). An appellate court’s review of these issues involves statutory interpretation—a question of law subject to *de novo* review.

Zurich Am. Ins. Co. v. Bjelland, 710 N.W.2d 64, 68 (Minn. 2006). We review a legislative determination narrowly and will affirm even if we may have reached a different conclusion. *Horton*, 624 N.W.2d at 595; *see also Sun Oil Co. v. Village of New Hope*, 220 N.W.2d 256, 261 (Minn. 1974) (“When judicially reviewing a legislative determination, the scope of review must necessarily be narrow.”).

A cartway may be requested by petition to the town board. Minn. Stat. § 164.08 (2020). The Minnesota cartway statute provides:

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. . . . The town board may select an alternative route other than that petitioned for if the alternative is deemed by the town board to be less disruptive and damaging to the affected landowners and in the public’s best interest.

Id., subd. 2(a).

It is uncontested that Feltmann petitioned the town for a cartway and owned at least five acres of land. The remaining questions are whether Feltmann had meaningful access to his land except over the land of others, and whether the town board properly exercised its discretion in selecting a cartway route.

A cartway petitioner is not entitled to a cartway where access to a public road already exists and the meaningfulness of that access is not in dispute.

The cartway statute requires the town board to consider whether a property owner has access to a public road. Minn. Stat. § 164.08, subd. 2(a). Idyllwood argues that

Feltmann is not entitled to a cartway to Ideal Avenue, because he has access to a public road through the easement over Idyllwood's property to Valhalla Road.

Minnesota law provides that a town board cannot grant a cartway if a legally enforceable easement or right-of-passage to a public road already exists. *Roemer v. Bd. of Supervisors of Elysian Twp.*, 167 N.W.2d 497, 499-500 (Minn. 1969) (noting the cartway statute "was not intended to apply where the petitioner has a perpetual easement running with the land to his heirs and assigns"). In *Roemer*, the cartway petitioner had a permanent easement for a road that ran with the land and afforded "ingress to and egress from" the petitioner's property to a public road. *Id.* at 498. The supreme court reasoned that the cartway statute "does not contemplate establishing an alternative right-of-way where an owner already has means of ingress and egress." *Id.* at 499. Thus, the supreme court held that the petitioner was not entitled to a cartway. *Id.* at 500.

The record shows that Idyllwood granted an easement to Feltmann from his landlocked parcel, and across Idyllwood's property, to Valhalla Road. As a result, Idyllwood argues that Feltmann is not entitled to a cartway to Ideal Avenue because he has a legally enforceable, permanent easement to a public road.²

² The town claims that the easement is not legally enforceable because Idyllwood unilaterally granted the easement the day before the first public hearing and Feltmann did not accept the deed. Idyllwood argues the easement is legally enforceable because Idyllwood recorded it. Because we resolve this appeal on other grounds, we need not determine whether the easement is legally enforceable.

Whether an easement provides “meaningful” access is a question of fact for the town board—not the reviewing court—to resolve.

We acknowledge *Roemer*’s holding that a petitioner is not entitled to a cartway when a permanent easement to a public road already exists. But mere access to a public road is not enough to defeat a cartway petition. The access must also be *meaningful*. Minnesota law is clear that “[i]f a selected route [for a cartway] does not provide meaningful access to a tract of land, then it fails to satisfy the requirement that a cartway be provided.” *Kennedy v. Pepin Twp. of Wabasha Cnty.*, 784 N.W.2d 378, 383 (Minn. 2010). In *Roemer*, the meaningfulness of the property owner’s easement access to the landlocked property was not in dispute, as it is here. Thus, *Roemer* does not control the outcome of this case and the relevant question becomes whether Idyllwood’s easement provides not just access, but *meaningful* access, from Feltmann’s property to a public road.

Minnesota statute does not define “meaningful access.” See Minn. Stat. §§ 160.02 (2020) (definition section for roads); 164.01 (2020) (definition section for cartways). That said, caselaw instructs that access is not meaningful if a portion of the land is inaccessible because of a natural obstacle. The supreme court considered whether a cartway petitioner had “meaningful” access in *State ex rel. Rose v. Town of Greenwood*, 20 N.W.2d 345 (Minn. 1945). The cartway petitioner in *Rose* owned property on both sides of a muddy lake. *Id.* at 345-48. The petitioner could only access a public road from one side of the lake. *Id.* The supreme court determined that it was not practicable to build a road or bridge across a muddy lake bottom to access the existing public road. *Id.* Thus, the supreme court agreed that the landowner did not have meaningful access to a public road from the

landlocked property, entitling the landowner to a cartway across a neighboring landowner's property. *Id.* at 349.

In *Kennedy*, a petitioner sought a cartway across a neighboring parcel of land from the base of a bluff to a usable portion of land on the top of the bluff. 784 N.W.2d at 380-81. The neighboring property owner objected alleging that the petitioner already had access to the top of the bluff by way of the bluff itself. *Id.* On review, the Minnesota Supreme Court determined that the cartway petitioner lacked meaningful access from the bottom of the bluff to the usable portion of his land at the top of the bluff, because of the steepness of the terrain. *Id.* The supreme court considered whether it was practicable or reasonable to build a road from the bottom of the bluff to the top of the bluff and determined that the steepness of the bluff made it infeasible to build a road. *Id.* at 384. The supreme court determined that the cartway petitioner did not have "meaningful" access as intended by the legislature in the cartway statute. *Id.* at 384-85.

Here, the town board found that Feltmann lacked meaningful access to a public road because the easement route was longer, included a steep slope, potentially ran through wetlands, and was more expensive to build. This decision was based on site visits to the proposed routes, public comments, and evidence received at the public hearings, including engineering reports from the town engineer and from Idyllwood's engineer. The town engineer's report revealed that the Valhalla Road route had a steep slope, potential wetlands issues, and would cost \$109,400 to create a road up to the town's standards. Idyllwood's engineer estimated that the road would cost \$13,500 to \$28,100. But Idyllwood's engineer acknowledged that the Valhalla Road route had a steep slope and that

a wetland delineation would be required before a road could be constructed. After reviewing the evidence presented, the town board found that the Valhalla Road route set forth in the easement was “so impracticable that it does not qualify as access” under the cartway statute.

The district court reversed the town board’s decision and determined that Feltmann had meaningful access to a public road because of the easement to Valhalla Road. The district court erred in granting summary judgment on this ground. Decisions related to public roads are “legislative in character, and in no proper sense judicial.” *Lieser*, 96 N.W.2d at 6 (recognizing that local governmental authorities have a compelling interest in regulating road placement and design). When a factual dispute exists over whether access to a public road is meaningful, it is for the town board, not a reviewing court, to resolve.

The town board’s exercise of discretion was supported by evidence, was not arbitrary or capricious, and was not an error of law.

Because a factual dispute existed as to whether the easement to Valhalla Road provided meaningful access to Feltmann’s property, it was within the province of the town board to find facts on that issue. If the town board determined that the easement across Idyllwood’s property to Valhalla Road did not provide meaningful access, then it was obligated to establish a cartway, taking into consideration the route identified in the petition as well as alternative routes proposed. Minn. Stat. § 164.08; *Kennedy*, 784 N.W.2d at 383.

Thus, we next turn to whether the town board’s determination to grant the cartway petition was based on ample evidence, was not arbitrary or capricious, and constitutes a proper exercise of the town board’s discretion. A town has a “mandatory duty” to establish

a cartway upon a determination that a property owner lacks meaningful access to a public road except over the land of others, as it did here. *Rose*, 20 N.W.2d at 348. The cartway statute vests the town board with the discretion 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 Minnesota Supreme Court “read[s] this language 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.” *Kennedy*, 784 N.W.2d at 384.

Here, the town board held two public meetings to hear statements from interested members of the public. The members of the town board conducted site inspections to personally examine the Valhalla Road easement route, the Ideal Avenue route, and the Old Milwaukee Supper Club route. The town board members also visited the cul-de-sac located at the end of Ideal Avenue. In addition, the town board reviewed engineering reports from the town engineer, WSN, and from Idyllwood’s engineer, WSB, about the viability of the competing cartway routes.

WSN showed there was a “steep slope” across the proposed Valhalla Road route and that the “[e]xisting steep grades” would complicate extending the road and require a retaining wall. WSN explained that “Type VII wooded wetlands likely are present on the eastern portion of the parcel,” which would require a field wetland delineation to formally assess the presence of wetlands. If wetlands were discovered, “wetland mitigation would be required before any construction could begin.” And “[i]nvestigation of soils to confirm

the estimated muck excavation” would also need to be completed. The total estimated cost of the Valhalla Road route was \$109,400. WSN also considered the proposed cartway route to Ideal Avenue and estimated that it would cost \$5,700 to extend the roadway, and that this route did not have steep slopes or potential wetlands.

The town board also reviewed an engineering report from Idyllwood’s engineering firm, WSB. WSB suggested that the Valhalla Road route did not need to extend as far as the town engineer’s estimate. WSB estimated that it would cost between \$13,500 and \$28,100 to build an access road across the Valhalla Road route. WSB acknowledged that there appeared to be a steep slope on the property, which would require more review. WSB also stated that it could not discern any wetlands based on a visual review alone, but that a wetland delineation would still be required. WSB’s report did not include cost estimates for these added services.

After holding two public meetings, inspecting the proposed sites, and reviewing the engineering reports, the town board granted Feltmann’s petition for a cartway connecting his property to Ideal Avenue. The town board determined that the two other proposed routes, including Idyllwood’s proposed access road from Valhalla Road, were “not practical.” The town board found that the Valhalla Road route did not provide meaningful access because the route was longer, carried higher construction costs, and would require road construction over terrain with a steep slope and potentially through wetlands.³

³ The district court incorrectly found that the town board’s decision was based primarily on the cost of the different routes. The record does not support this claim. The town board considered several factors, including the cost of construction, the steep grade of the slope

The cartway statute vests the town with authority to make these factual findings, which the record supports. And the town board followed the requirements of section 164.08, subdivision 2(a). “[T]he selection of a route is a decision allocated by statute to the [town board] to make in its discretion,” and it is not within a reviewing court’s power to substitute its judgment for that of the town board in selecting a route. *Kennedy*, 784 N.W.2d at 384. The town board acted within its broad discretion by selecting the route proposed in the petition and rejecting Idyllwood’s alternative routes. The town board’s decision was not against the evidence, based on an error of law, or arbitrary or capricious. As a result, the district court erred by substituting its judgment for that of the town board, granting Idyllwood’s summary-judgment motion against the town, and reversing the town board’s decision to establish a cartway. We therefore reverse the district court’s order and remand for further proceedings not inconsistent with this opinion.

Reversed and remanded.

on the Valhalla Road route, the presence of mucky soils, and the potential issue of wetlands. As a result, the town board’s decision was not based on the cost of construction alone.