

VARIOUS STATUTORY EASEMENTS
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MARCH 15, 2005

A Conservation easements:

1. Created to be held by governmental bodies or charitable entities for preservation purposes.
2. Created under Minn. Stat. § 84C.02 (West, 2004).

Creation, conveyance, acceptance, and duration:

(a) Except as otherwise provided in this chapter, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements.

(b) No right or duty in favor of or against a holder and no right in favor of a person having a third-party right of enforcement arises under a conservation easement before its acceptance by the holder and a recordation of the acceptance.

(c) Except as provided in section 84C.03, clause (b), a conservation easement is unlimited in duration unless the instrument creating it otherwise provides.

(d) An interest in real property in existence at the time a conservation easement is created is not impaired by it unless the owner of the interest is a party to the conservation easement or consents to it.

3. Definitions are set forth by Minn. Stat. § 84C.01 (West 2003). Rights are placed in governmental body or charitable entity.

Definitions:

As used in this chapter, unless the context otherwise requires:

(1) "Conservation easement" means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open-space values of real property, assuring its availability for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.

(2) "Holder" means:

- (i) a governmental body empowered to hold an interest in real property under the laws of this state or the United States; or
- (ii) a charitable corporation, charitable association, or charitable trust, the

purposes or powers of which include retaining or protecting the natural, scenic, or open-space values of real property, assuring the availability of real property for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.

(3) "Third-party right of enforcement" means a right provided in a conservation easement to enforce any of its terms granted to a governmental body, charitable corporation, charitable association, or charitable trust, which, although eligible to be a holder, is not a holder.

4. Judicial actions may be brought under Minn. Stat. § 84C.03 (West, 2003) to enforce conservation easements.

Judicial actions:

- (a) An action affecting a conservation easement may be brought by:
 - (1) an owner of an interest in the real property burdened by the easement;
 - (2) a holder of the easement;
 - (3) a person having a third-party right of enforcement; or
 - (4) a person authorized by other law.
- (b) This chapter does not affect the power of a court to modify or terminate a conservation easement in accordance with the principles of law and equity.

Conservation easements can have validity in situations where easements are not normally valid, under Minn. Stat. § 84C.04 (West, 2003) [emphasis below, added].

Validity:

A conservation easement is valid even though:

- (1) *it is not appurtenant to an interest in real property;*
- (2) it can be or has been assigned to another holder;
- (3) it is not of a character that has been recognized traditionally at common law;
- (4) it imposes a negative burden;
- (5) it imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;
- (6) *the benefit does not touch or concern real property;* or
- (7) *there is no privity of estate or of contract.*

6. The conservation easement statute is applicable to easements created after August 1, 1985, pursuant to Minn. Stat. § 84C.05 (West, 2003).

Applicability:

(a) This chapter applies to any interest created after August 1, 1985, which complies with this chapter, whether designated as a conservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise.

(b) This chapter applies to any interest created before August 1, 1985, if it would have been enforceable had it been created after August 1, 1985, unless retroactive application contravenes the constitution or laws of this state or the United States.

(c) This chapter does not invalidate any interest, whether designated as a conservation or preservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise, that is enforceable under other law of this state.

B. Solar and Wind Easements

1. Created under Minn. Stat. § 500.30 (West, 2004). The legal descriptions for these easements must include a description of the airspace through which the easements will run.

Solar or wind easements

Subdivision 1. Solar easement. "Solar easement" means a right, whether or not stated in the form of a restriction, easement, covenant, or condition, in any deed, will, or other instrument executed by or on behalf of any owner of land or solar skyspace for the purpose of ensuring adequate exposure of a solar energy system as defined in section 216C.06, subdivision 17, to solar energy.

Subd. 1a. Wind easement. "Wind easement" means a right, whether or not stated in the form of a restriction, easement, covenant, or condition, in any deed, will, or other instrument executed by or on behalf of any owner of land or air space for the purpose of ensuring adequate exposure of a wind power system to the winds.

Subd. 2. Like any conveyance. Any property owner may grant a solar or wind easement in the same manner and with the same effect as a conveyance of an interest in real property. The easements shall be created in writing and shall be filed, duly recorded, and indexed in the office of the recorder of the county in which the easement is granted. No duly recorded easement shall be unenforceable on account of lack of privity of estate or privity of contract; such easements shall run with the land or lands benefited and burdened and shall constitute a perpetual easement, except that an easement may terminate upon the conditions stated therein or pursuant to the provisions of section 500.20.

Subd. 3. Required contents. Any deed, will, or other instrument that creates a solar or wind easement shall include, but the contents are not limited to:

- (a) a description of the real property subject to the easement and a

description of the real property benefiting from the solar or wind easement; and

(b) for solar easements, a description of the vertical and horizontal angles, expressed in degrees and measured from the site of the solar energy system, at which the solar easement extends over the real property subject to the easement, or any other description which defines the three dimensional space, or the place and times of day in which an obstruction to direct sunlight is prohibited or limited;

(c) a description of the vertical and horizontal angles, expressed in degrees, and distances from the site of the wind power system in which an obstruction to the winds is prohibited or limited;

(d) any terms or conditions under which the easement is granted or may be terminated;

(e) any provisions for compensation of the owner of the real property benefiting from the easement in the event of interference with the enjoyment of the easement, or compensation of the owner of the real property subject to the easement for maintaining the easement;

(f) any other provisions necessary or desirable to execute the instrument.

Subd. 4. Enforcement. A solar or wind easement may be enforced by injunction or proceedings in equity or other civil action.

Subd. 5. Depreciation, not appreciation counted for taxes. Any depreciation caused by any solar or wind easement which is imposed upon designated property, but not any appreciation caused by any easement which benefits designated property, shall be included in the net tax capacity of the property for property tax purposes.

C. Presumed dedication

1. Where land has been used as though a public highway for more than six years, it will be presumed to have been dedicated for that purpose.
2. Codified at Minn. Stat. § 160.05 (West, 2003).

Dedication of roads

Subdivision 1. Six years. When any road or portion of a road has been used and kept in repair and worked for at least six years continuously as a public highway by a road authority, it shall be deemed dedicated to the public to the width of the actual use and be and remain, until lawfully vacated, a public highway whether it has ever been established as a public highway or not. Nothing contained in this subdivision shall impair the right, title, or interest of the water department of any city of the first class secured under Special Laws 1885, chapter 110. This subdivision shall apply to roads and streets except platted streets within cities.

Subd. 2. Roads on and parallel to railroad right-of-way. The continued use of any road by the public upon and parallel to the right-of-way of any

railway company shall not constitute such a road a legal highway or a charge upon the town in which the same is situated, and no right shall accrue to the public or any individual by such use.

3. Succinctly stated, the requirements to established a presumption of dedication are threefold:

“Designation as a public street requires (1) use by the public and (2) maintenance by an appropriate government agency (3) over a continuous period of at least six years.” *Foster v. Bergstrom*, 515 N.W.2d 581, 585, 586 (Minn. App. 1994).

D. Cartways

1. The owner of land-locked acreage in a township may petition the township to establish a cartway. He has to pay for the value of it to the township prior to the opening of the cartway; that value will be passed along to the owner of the land over which it runs.
2. This is codified at Minn. Stat. § 164.08 (West, 2003).

164.08. Cartways

THIS SECTION HAS BEEN RECENTLY CHANGED; CHANGES ARE UNDERLINED.

Subdivision 1. Permitted establishment; conditions. The town board by resolution may establish a cartway two rods wide and not more than one-half mile in length 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 consisting of at least 150 acres of which at least 100 acres are tillable. If the petition is granted the proceedings of the town board shall be in accordance with section 164.07.

Subd. 2. Mandatory establishment; conditions. (a) 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 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 a navigable waterway over the lands of others. 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.

(b) In an unorganized territory, the board of county commissioners of the

county in which the tract is located shall act as the town board. The proceedings of the town board shall be in accordance with section 164.07.

(c) The amount of 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. The town board may by resolution require the petitioner to post a bond or other security acceptable to the board for the total estimated damages before the board takes action on the petition.

(d) Town road and bridge funds shall not be expended on the cartway unless the town board, or the county board acting as the town board in the case of a cartway established in an unorganized territory, by resolution determines that an expenditure is in the public interest. If no resolution is adopted to that effect, the grading or other construction work and the maintenance of the cartway is the responsibility of the petitioner, subject to the provisions of section 164.10.

(e) After the cartway has been constructed the town board, or the county board in the case of unorganized territory, may by resolution designate the cartway as a private driveway with the written consent of the affected landowner in which case from the effective date of the resolution no town road and bridge funds shall be expended for maintenance of the driveway; provided that the cartway shall not be vacated without following the vacation proceedings established under section 164.07.

Subd. 3. Maintenance costs. 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. The cost of 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. The following factors may be taken into consideration when determining an equitable share of maintenance expenses: 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. 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. The town board's decision may be appealed within 30 days to the district court of the county in which the cartway is located. Private property owners who pay the cost of maintenance shall have a civil cause of action against any of the private property owners who refuse to pay their share of the maintenance cost.

3. The changes regarding navigable waterways were made in response to *In re Daniel*, in which the Minnesota Supreme Court held that one who had access to his land via a navigable waterway had access so as to be unable to establish a cartway through use of this statute. *In Re Daniel*, Minn. Stat. § 164.08 (2003).