

STATE OF MINNESOTA

IN SUPREME COURT

A24-1113

Court of Appeals

Hennesy, J.

Concurring in part, dissenting in part,
Moore, III, McKeig, Thissen, JJ.

Bryce Holstad, et al.,

Appellants,

vs.

Town of May,

Filed: September 23, 2026
Office of Appellate Courts

Respondent.

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

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

Jason M. Hill, Troy J. Gilchrist, Town Law Center PLLP, Wayzata, Minnesota, for amicus
curiae the Minnesota Association of Townships.

S Y L L A B U S

1. A cartway established under Minnesota Statutes section 164.08,
subdivision 2(a), must be at least two rods wide, regardless of the size of the parcel it
connects, and a town does not act arbitrarily or capriciously, or contrary to law, when it
rejects a petitioner's cartway route proposal and selects an alternative route that the town

reasonably concludes to be in the public's best interest and less disruptive and damaging to the affected landowners.

2. A town does not exceed its statutory authority when it conditions opening a cartway on constructing that cartway to particular standards and requires the petitioning landowner to obtain other federal, state, and county regulatory approvals.

3. Minnesota Statutes section 164.08, subdivision 2(d), and Minnesota Statutes section 164.10, when read together, grant a town discretion to decide whether to expend public funds on a cartway.

4. Minnesota Statutes section 164.08, subdivision 2(c), allows a town to include its attorney fees incurred until a cartway is opened in the town's damages, including fees incurred in connection with a petitioner's appeal of the cartway determination.

Affirmed.

O P I N I O N

HENNESY, Justice.

This case asks us to consider the scope of a town's authority when establishing a cartway under Minn. Stat. § 164.08. Appellants Bryce Holstad and Jody Holstad (the Holstads), owners of an approximately 2.5-acre landlocked property, petitioned respondent Town of May (the Town) to establish a cartway providing access to their property after the Holstads failed to reach an agreement with their neighbors to create a private easement that would allow access. After inspecting the relevant properties and hosting multiple public hearings, the Town approved a different cartway route than the

one the Holstads proposed, required them to construct the cartway in accordance with a town engineer's plan, and specified that all relevant regulatory bodies must approve the cartway prior to its opening or use. The Town declined to expend public funds for the cartway, making the Holstads solely responsible for its construction and maintenance. The Town further ordered the Holstads to pay damages to the neighbors¹ and to pay the Town's professional fees and other costs, including attorney fees.

The Holstads appealed to the district court. The district court upheld the Town's cartway determination and ordered the Holstads to pay the Town's professional fees incurred in connection with establishing the cartway. The Holstads appealed this decision to the court of appeals, which affirmed. We granted the Holstads' petition for further review. In their appeal before us, the Holstads raise three main arguments. First, they argue that the Town acted arbitrarily and capriciously or contrary to law when it rejected the Holstads' proposed cartway route and instead required a route the Holstads claim is more "disruptive and damaging" and fails to give them "meaningful access" to their property. Second, the Holstads claim that the Town exceeded its statutory authority by conditioning the establishment of a cartway on specific construction requirements to improve the route and on federal, state, and county regulatory approval. Third, they assert that the Town erred in requiring them to pay for both the cartway's construction and the Town's attorney fees associated with their appeal.

¹ These damages were to compensate the owners of the land taken to establish the cartway. Minn. Stat. § 164.08, subd. 2(c).

We conclude that the Town did not act arbitrarily or capriciously, or contrary to law, when it rejected the Holstads' petitioned-for cartway route and instead selected the engineer's route. We further conclude that the Town did not exceed its statutory authority when it required the Holstads to improve the cartway through construction before the cartway could be opened or used, or when it required them to obtain federal, state, and county regulatory approvals before construction. We also conclude that the Town did not err by ordering the Holstads to pay for the cartway's construction. And finally, we conclude that the Town did not err by requiring the Holstads to pay the Town's attorney fees associated with the Holstads' appeals. Accordingly, we affirm the decision of the court of appeals.

FACTS

The Holstads, mother and son, own an approximately 2.5-acre landlocked property (the Holstad Property) along the St. Croix River in the Town of May. For the entire time that the Holstads have owned the property—and the entire time Bryce Holstad's grandfather owned it before them—the property has been without roadway access. The Holstad Property abuts land owned by the National Park Service to the north and west. It abuts National Park Service land and the St. Croix River to the east. To the south, the Holstad property borders privately owned property (the neighboring property). The public road nearest to the Holstad Property is State Highway 95, commonly known as the “St. Croix Trail.” Prior to submitting their cartway petition, the Holstads attempted to negotiate a private easement with the neighboring property's owners (the neighbors), but the negotiations were unsuccessful.

In June 2022, the Holstads petitioned the Town to establish a cartway over the neighboring property pursuant to Minn. Stat. § 164.08, subd. 2. The Town Board inspected the relevant properties, examined the Holstads' proposed cartway location on the neighboring property, and held public hearings to determine the cartway's location and possible damage to the Town and the neighboring property. The Holstads, the neighbors, and an engineer for the Town each made a proposal as to a location for the cartway.

The Holstads proposed that the Town establish a cartway over an "existing private driveway" that runs east from St. Croix Trail and provides access to the neighboring property, without any improvement to the driveway.

The Town found that the "driveway" the Holstads proposed as a cartway route is "an unimproved gravel/sand path that is used for ingress and egress to [the neighbors'] seasonal cabin on the St. Croix River." "As it moves from west to east, it traverses the bluff and steep ravines and then drops down to the seasonal cabin. Before doing so, however, it threads through heavily forested areas and steep ravines and drop offs on both sides." The unimproved "driveway" route, at most points, is barely wide enough for a single passenger vehicle² and will not accommodate emergency vehicles. During the winter months, the driveway route is almost completely impassable. In fact, an appraiser had to use a snowmobile to reach the lower area of the parcel during the winter. The

² The Town received evidence that the "driveway" route was, at its narrowest, less than 11 feet wide.

Town concluded that establishing a cartway using the existing driveway, without improvements, is neither feasible nor consistent with public health, safety, or welfare.

The neighbors opposed both the establishment of a cartway and the Holstads' proposal. If, however, a cartway were to be established, the neighbors agreed that it should follow the same general path as the Holstads' proposal, but they argued that it should be two rods³ wide and incorporate improvements, including "retaining walls, guardrails, and extensive grading and filling." Although the Town did not make specific findings regarding the cost of this option, the town engineer provided very high-level estimates that the improvements would cost between \$1.4 million and \$1.9 million.

The town engineer proposed another route, which would enter the neighboring property in the same fashion as the Holstads' proposed route, but "turn[] north before reaching many of the extremely steep slopes and ravines on the [neighboring property]." Compared to the Holstads' proposed route, the engineer's route is shorter and "avoids steep slopes, drop-offs and ravines." The engineer's route is also farther away from the river, closer to the boundary of National Park Service regulations, and comparatively less intrusive to the neighbors because it does not approach their cabin. Again, the Town did not make specific findings regarding the cost of this option, but the town engineer presented estimates that the improvements required for this route would also range from \$1.4 million to \$1.9 million.

³ A rod is a unit of measurement equaling 16.5 feet. *In re Daniel*, 656 N.W.2d 543, 546 n.1 (Minn. 2003).

Ultimately, the Town adopted a resolution approving a cartway consistent with the engineer's proposed route. The Town reasoned that because a cartway is open to the public, the Town must expect public traffic on the cartway and must likewise consider potential dangers invited by cross traffic. To address safety concerns, the Town's resolution requires the cartway to be improved in accordance with the engineer's recommendations, which includes a requirement that the cartway be at least two rods wide with a paved width of 16 feet and two-foot gravel shoulders. The resolution further requires the Holstads to obtain regulatory approvals from relevant federal and state agencies and the local county before constructing the cartway. Finally, the resolution requires that "[n]o construction, opening, or use of the cartway shall be made until it is certified by the Town Board" as compliant with the conditions set forth in the resolution.

With respect to damages, the Town awarded the neighbors \$200,000 for the taking of their property in order to establish the cartway. The Town also ordered the Holstads to "pay for the cost of the Town's 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." *See* Minn. Stat. § 164.08, subd. 2(c) (providing that a petitioner will pay these costs in damages to the town). The Town estimated its legal, engineering, administrative, and finance fees to be approximately \$95,500.

The Holstads appealed the Town's resolution to district court, *see* Minn. Stat. §§ 164.08, subd. 2(b), 164.07, subd. 7; and moved for partial summary judgment. The Town opposed the motion and requested attorney fees in connection with the Holstads'

appeal. The district court denied the Holstads' motion. It concluded that both the Town's selection of an alternative route for the cartway and its requirement that the cartway be improved at the Holstads' expense were consistent with applicable law and supported by the record. The district court also upheld the Town's requirement that the Holstads pay for the Town's professional fees associated with establishing the cartway, including attorney fees in connection with the appeal to district court.

The Holstads further appealed to the court of appeals, which affirmed. *Holstad v. Town of May*, 17 N.W.3d 764, 767 (Minn. App. 2025). The court of appeals held that the Town did not act arbitrarily or capriciously, or contrary to law, when it selected an alternative cartway route to the route the Holstads requested. *Id.* at 775–76. The court of appeals also upheld the construction and federal, state, and county regulatory approval requirements imposed by the Town, reasoning that “the requirement to obtain regulatory approvals does not undermine the establishment of the cartway” and that the Town had “implied authority” to impose construction and improvement conditions when exercising its mandatory duty to establish a cartway pursuant to Minn. Stat. § 164.08, subd. 2. *Id.* at 771–73. As to damages, the court of appeals held that Minn. Stat. § 164.08, subd. 2(c), authorizes the Town 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.” *Id.* at 778. The court of appeals therefore affirmed the district court’s decision and remanded the case for further proceedings regarding damages. *Id.* at 778–79. We granted the Holstads’ petition for further review.

ANALYSIS

This appeal requires us to determine the scope of a town's statutory authority under the cartway statute, Minn. Stat. § 164.08. Before we do so, we provide a brief overview of cartways and cartway law in Minnesota, and in particular the history of what is now Minnesota Statutes section 164.08, subdivision 2.

Neither section 164.08, nor any other relevant statute, specifically defines a “cartway” or how it differs from other roads or paths. Cases discussing cartways extend back hundreds of years and into English law. *See* Sarah R. Jewell, *Cartways—An Ancient Relic Disturbing Today's Rural Landscape?*, 42 Mitchell Hamline L. Rev. 1139, 1141 (2016). “Cartways” were originally one of many forms of “ways,” or roads, including horseways and footways, “all of which became known as highways, so long as they were open to public use.” *Id.* A modern cartway, however, is a type of public road or highway open for modern vehicles such as automobiles. *See* Minn. Stat. § 160.02, subd. 26 (defining “[r]oad” or “highway” to include “cartways”); *id.*, subd. 28 (defining “[t]own roads” to “include[] those roads and cartways which have heretofore been or which hereafter may be established, constructed, or improved under the authority of the several town boards”).

Even if cartways are not explicitly defined by statute, they are the subject of Minnesota Statutes section 164.08. The first version of this statute was adopted in 1913; “[i]ts origin and purpose are obscure.” *Roemer v. Bd. of Supervisors of Elysian Twp., LeSueur Cnty.*, 167 N.W.2d 497, 499 (Minn. 1969). “Apparently it was intended to expand the common-law rules governing ways of necessity” *Id.* As all parties agree,

the creation of a cartway is related to the power of eminent domain. Specifically, the cartway statute “in effect giv[es] the owner whose property is isolated the right to require the town to condemn an easement for private access on condition the petitioner compensates the owner of the subservient tenement for the taking.” *Id.* But “[t]he cartway when laid out by public authority is a public way, open to the free use of the public, though laid out and opened primarily for the benefit of a particular person.” *Carlson v. Elmo Twp.*, 169 N.W. 805, 806 (Minn. 1918). If the resulting cartway were not a public way, the condemnation of the land it occupies could amount to an unconstitutional taking of land for private use, because “[i]t is elementary that private property cannot be taken under the power of eminent domain for a purely private purpose.” *Powell v. Town Bd. of Sinnott Twp., Marshall Cnty.*, 221 N.W. 527, 528 (Minn. 1928); *see City of Duluth v. State*, 390 N.W.2d 757, 763 (Minn. 1986) (emphasizing that exercising eminent domain powers to benefit private interests is constitutional “[a]s long as the predominant purpose being furthered is a public one”); *Trout Brook Realty Co. v. Town of Featherstone*, 217 N.W. 499, 500 (Minn. 1928) (rejecting argument that “the land required ... was taken for private use, and not public”).

Although a cartway is a public way, it is financed differently from other public ways. “Town road and bridge funds shall not be expended on the cartway unless the town board ... by resolution determines that an expenditure is in the public interest.” Minn. Stat. § 164.08, subd. 2(d). “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” *Id.*; *see* Minn. Stat. § 164.10 (“Any town board may expend town road and

bridge funds upon a legally established cartway the same as on town roads if, in the judgment of the board the public interests require it”). But a group of taxpayers may, by petition, call for a town’s electors to vote on whether to expend town funds on a cartway. Minn. Stat. § 164.10; *see* Minn. Stat. § 164.08, subd. 2(d) (explicitly providing that its provisions are subject to the section 164.10 petition process).

Against this background, we consider the Holstads’ challenges to the Town’s cartway resolution. First, we consider whether the Town acted arbitrarily or capriciously, or contrary to law, by rejecting the Holstads’ proposed cartway route and selecting the town engineer’s route. Second, we discuss whether the Town exceeded its authority under Minn. Stat. § 164.08 when it required the Holstads to construct the cartway in accordance with its resolution and to obtain federal, state, and county regulatory approvals as conditions to opening the cartway. Next, we analyze whether the Town erred by ordering the Holstads to pay for constructing the cartway. Finally, we address whether the Holstads are obligated to pay the Town’s attorney fees associated with the Holstads’ appeals.

I.

First, the Holstads argue that the Town acted arbitrarily and capriciously or contrary to law by selecting the town engineer’s proposed cartway route instead of their petitioned-for route. The Town argues that it acted within its statutory authority to select the alternative route because the route the Holstads proposed is neither safe nor compliant with the statutory width requirement for a cartway. The parties’ dispute as they now frame it questions whether, pursuant to Minn. Stat. § 164.08, subd. 2(a), a cartway that serves a landlocked parcel between two and five acres in size must be at least two rods

wide. We therefore begin our analysis by interpreting the statutory width requirement. We then consider whether the Town otherwise acted arbitrarily and capriciously or contrary to law when it selected the engineer's route.

A.

1.

“Statutory interpretation is a question of law that we review de novo.” *Kennedy v. Pepin Twp. of Wabasha Cnty.*, 784 N.W.2d 378, 381 (Minn. 2010). When interpreting a statute, we must first “determine whether the statute’s language, on its face, is ambiguous.” *State v. Sanschagrín*, 952 N.W.2d 620, 624 (Minn. 2020) (citation omitted) (internal quotation marks omitted). “In determining whether a statute is ambiguous, we construe statutes as a whole so that statutory language is understood in context. If the language of the statute is unambiguous, we apply its plain meaning.” *Id.* If the statute is ambiguous, meaning the statutory language is subject to more than one reasonable interpretation, then we may “go beyond the language at issue to ascertain the intent of the Legislature.” *Id.* (citation omitted) (internal quotation marks omitted).

Here, the statutory provision at issue is Minn. Stat. § 164.08, subd. 2(a), which provides, in full:

[1] 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. [2] 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. [3] 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.

The Holstads argue that because the “at least two rods wide” requirement appears only in the first sentence of this provision, and not the second, the width requirement applies only to cartways that serve parcels five acres or more in size, not parcels between two and five acres. Because the Holstad Property is approximately 2.5 acres, the Holstads claim that any cartway connecting their property to a public road is not subject to the two rods requirement. We disagree.

The plain language of Minn. Stat. § 164.08, subd. 2(a), requires that a cartway serving a landlocked parcel between two and five acres in size be at least two rods wide. The Holstads' argument ignores the overall structure of subdivision 2(a), and in particular the connection between its first two sentences. The first sentence not only governs a tract of land that is at least five acres; it also provides defining criteria relevant to the definition of a cartway generally,⁴ addressing not only its minimum width, but also the requirement that it “connect[] the petitioner's land with a public road.” *Id.* The second sentence, standing on its own, requires neither that a cartway be any particular width nor that it connect landlocked property to a public road. *See id.* In other words, it is impossible to determine a cartway's characteristics set out in the second sentence without reference to the first. *See State v. Riggs*, 865 N.W.2d 679, 683 (Minn. 2015) (emphasizing that “we construe a statute as a whole and interpret its language to give effect to all of its

⁴ As noted above, Minnesota Statutes do not contain an explicit definition of the term “cartway.”

provisions”). If we were to accept the Holstads’ reasoning that a cartway serving their property need not be two rods in width, we might also necessarily conclude that the cartway need not connect their property to a public road. We reject this conclusion. Instead, reading Minn. Stat. § 164.08, subd. 2(a), as a whole reveals that the only reasonable interpretation is that the first sentence’s width requirement—along with its requirement that a cartway connect the parcel in question to a public road—applies to *all* cartways in subdivision 2(a), regardless of the size of the landlocked parcels they serve.⁵

2.

In their briefing and during oral argument, the Holstads advanced an alternative argument—namely, that even if, as we have just held, the two-rod width requirement is relevant to cartways serving smaller parcels like theirs, that requirement applies only to land taken to establish a cartway, not the “travelable portion” of the cartway. In the Holstads’ view, the statutory width requirement is met so long as the land *designated* for cartway purposes satisfies the statutory two-rod width requirement. But the *travelable* portion, they argue, does not have to be two rods wide. And because they “could be granted a 33-foot wide cartway over the existing driveway even if the travelable portion of the driveway is less than 33-feet wide,” the Holstads argue that the Town acted under

⁵ We note that Minn. Stat. § 164.11 states that, “[l]and dedicated to public use as a street, road, or cartway, if not less than 30 feet in width, shall be deemed a legal cartway.” But what is before us here is a petition for a cartway under Minn. Stat. § 164.08, subd. 2(a), and our analysis focuses on that provision; no party argues that this case involves land already dedicated to public use being “deemed a legal cartway.”

an erroneous theory of law in concluding that a two-rod-wide cartway was not possible over their requested route.

But the Holstads are countering a legal theory the Town never advanced and thus that we need not decide. The Town has never asserted that the two-rod requirement extends to the travelable portion of a cartway. In fact, the Town's resolution granting the Holstads a cartway calls for the cartway to "be in width provided by the statute [i.e., two rods] but its improved surface should be ... 16 feet wide with 2-foot gravel shoulders and ... allow for emergency vehicle access."⁶ Moreover, although the Town now argues that the petitioned-for route does not "satisfy the 2-rod width requirement for a valid cartway under the statute," it frames that argument in terms of "the topography of the petitioned route," which "has one section that is less than 11 feet wide with a sharp cliff face on one side and a steep drop-off on the other." The resolution itself does not cite the two-rod width requirement in rejecting the Holstads' requested route. Rather, the resolution reasons that the route the Holstads proposed, "even with superficial modifications such as paving," would present "health, safety, [and] welfare concerns," citing both its narrowness and the "existing extreme topography under and adjacent to the driveway." In other words, although the resolution does consider the narrow width of the

⁶ The town engineer's standards, attached to the resolution as Exhibit A, call for a 16-foot paved surface with "[b]oulevard grading/restoration for snow storage" of "4 feet along each side." The Holstads do not argue that their petitioned-for route would meet such requirements, nor do we see any evidence in the record suggesting that it would.

Holstads' proposed route as a reason to reject their proposal, it does not specifically fault the Holstads' route for having a travelable surface less than two rods wide.⁷

Therefore, we reject not only the Holstads' argument that their cartway is not subject to the statutory two-rod width requirement, but also their argument that the Town improperly applied the two-rod requirement to the entire travelable surface of the cartway. Accordingly, the Holstads' arguments that the Town acted contrary to law by concluding that the cartway must be two rods wide fail.

B.

Having rejected the Holstads' arguments that the Town made an error in law regarding a cartway's statutorily required width, we next determine whether the Town otherwise acted arbitrarily and capriciously or contrary to law when it selected the engineer's route.

A town "acts in a legislative capacity" when it reviews a petition to establish a cartway. *Kennedy*, 784 N.W.2d at 381 (citation omitted) (internal quotation marks omitted). We will "set aside a township's cartway determination 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

⁷ In this perhaps-unusual case, the petitioners suggest that a town could satisfy its duty under Minn. Stat. § 164.08, subd. 2(a), to establish a cartway at least two rods wide by designating a path that is in some places "less than 11 feet wide with a sharp cliff face on one side and a steep drop-off on the other." We can easily imagine this scenario in reverse in a future case, that is, a town designating a narrow cartway through precarious terrain as an alternative to the cartway petitioner requests. In such a case, the petitioner might then challenge that cartway as not satisfying the two-rod width requirement as a practical matter. Because that case is not before us, however, we express no opinion on it.

interests of the public.” *Id.* (citation omitted) (internal quotation marks omitted). “A local governmental entity’s decision is arbitrary and capricious if it reflects its will rather than its judgment, or when a decision is based on whim or is devoid of articulated reasons.” *In re Year 2019 Salary of Freeborn Cnty. Sheriff*, 955 N.W.2d 917, 924 (Minn. 2021) (citation omitted) (internal quotation marks omitted).

The Holstads assert that the Town acted arbitrarily and capriciously, and contrary to law, in selecting the engineer’s route. Although they argue the Town’s decision was “based on whim” and “devoid of articulated reasons,” they do not specify how or how this makes the Town’s decision arbitrary and capricious. *See id.* (citation omitted) (internal quotation marks omitted). Instead, the Holstads primarily argue the Town acted *contrary to law* in three respects, dovetailing that argument with our standard that a decision is arbitrary and capricious if it “relied on factors not intended by the legislature.” *See Citizens Advocating Responsible Dev. v. Kandiyohi Cnty. Bd. of Comm’rs*, 713 N.W.2d 817, 832 (Minn. 2006) (“[A]n agency ruling is arbitrary and capricious if the agency (a) relied on factors not intended by the legislature; (b) entirely failed to consider an important aspect of the problem; (c) offered an explanation that runs counter to the evidence; or (d) the decision is so implausible that it could not be explained as a difference in view or the result of the agency’s expertise.”). First, the Holstads claim that the engineer’s route is more “disruptive and damaging” than the Holstads’ proposal because the engineer’s route requires the Holstads to construct an expensive cartway in an ecologically sensitive area. Second, the Holstads insist that the Town did not follow our precedent in *Kennedy v. Pepin Township of Wabasha County* because the Town

rejected their proposed cartway *before* considering alternatives. Finally, the Holstads assert that the Town failed to provide them “meaningful access” to their property, as *Kennedy* required, because the Town’s designated cartway came with a \$1.4 million price tag that is the Holstads’ sole responsibility, making the Town’s chosen cartway “illusory and prohibitively burdensome” for the Holstads. We address each argument in turn.

1.

Minnesota Statutes section 164.08, subdivision 2(a), explicitly authorizes a town to select an alternative to a petitioner’s proposed cartway route if the town “deem[s]” the alternative route to be “less disruptive and damaging to the affected landowners and in the public’s best interest.” In *Kennedy*, we interpreted 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.” 784 N.W.2d at 384. But we also emphasized that the town—not a reviewing court—has discretion to select an alternative cartway route if it makes such determinations. *Id.* at 384–85.

In this case, the Town determined the engineer’s proposed route would be less disruptive because “it pulls the cartway back from the [neighbors’] seasonal cabin, avoids substantial steep and narrow slopes where two-way vehicle traffic (or even any vehicle traffic[]) is not feasible ... and avoids additional clearing, tree cutting and excavation on some of the most sensitive areas of the [neighboring property].” While the Holstads are correct that the engineer’s proposed route requires extensive construction before the cartway can be opened, the Holstads’ proposed route would require similar construction.

Indeed, the Town found that “use of the existing driveway in an unimproved state is not feasible nor consistent with public health, safety or welfare.” As discussed above, the Holstads’ proposed route, in its current state, does not allow for two-way vehicle traffic and is not passable for emergency vehicles. Therefore, substantial construction would be required to widen the Holstads’ proposed route to address usability concerns. Compared to the Holstads’ selected route, the engineer’s route avoids several of the steep slopes, ravines, and drop-offs, which suggests that the engineer’s route would also be safer than the Holstads’ proposed route after construction. The Town’s decision to require the engineer’s route was based on a thorough investigation—including photos, a video, landowners’ testimonies, and the engineer’s expert opinion—as well as an in-depth review process that included multiple hearings where all impacted parties could present their arguments. The Town articulated its reasons for selecting the engineer’s proposal in its resolution. As such, the Town’s decision was not “based on whim,” “devoid of articulated reasons,” or simply “its will rather than its judgment.” *See Salary of Freeborn Cnty. Sheriff*, 955 N.W.2d at 924 (citation omitted) (internal quotation marks omitted).

The Holstads argue—reasonably—that an over-one-million-dollar construction project in an ecologically sensitive area is “disruptive and damaging.” But it appears that the location of their property, and the configuration of its surroundings, make “disruptive and damaging” construction inevitable to ensure the public can use the cartway and to address safety concerns. Because the Town reasonably found the engineer’s route *less* disruptive and damaging than the Holstads’, we reject the Holstads’ argument to the contrary.

2.

The Holstads also claim that the Town acted contrary to law by failing to follow what the Holstads characterize as “*Kennedy*’s central holding.” As noted above, in *Kennedy* we interpreted the last sentence of Minn. Stat. § 164.08, subd. 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.” 784 N.W.2d at 384. Relying on this one sentence, the Holstads argue that *Kennedy* requires the Town to “directly compare” any alternative route with their petitioned-for route, and that the Town failed to follow *Kennedy* because it rejected their requested route *before* considering alternatives. We disagree with the Holstads’ reading of *Kennedy*.

In *Kennedy*, the sequence of the township’s decision-making process was not at issue, nor did our use of “and” suggest that a town is required to conduct its decision-making in a particular order. *See id.* Even assuming the Holstads’ characterization of *Kennedy* were correct, the Town’s resolution indicates that it evaluated all proposed cartway routes at public hearings and determined that the engineer’s proposal is the “most practical and least disruptive or damaging route for the cartway.” In other words, the Town *did* “directly compare” the engineer’s proposed route with the Holstads’. The Holstads’ “direct comparison” argument is therefore unpersuasive.

3.

Finally, the Holstads argue that the Town’s mandated cartway route fails to provide them “meaningful access” because it requires them to undertake a \$1.4 million

construction project, which they argue makes the Town’s cartway designation “illusory and prohibitively burdensome.” The text of Minnesota Statutes section 164.08, subdivision 2(a), does not explicitly require that a cartway route provide a petitioner with “meaningful access.” Instead, this requirement comes from *Kennedy*. See 784 N.W.2d at 383 (stating that “[i]f a selected route does not provide meaningful access to a tract of land, then it fails to satisfy the requirement that a cartway be provided”).

In *Kennedy*, the petitioner requested that a township establish a cartway for access to his land and a dispute arose as to the cartway’s location. *Id.* at 380. After evaluating three route options, the town board adopted the adjoining property owners’ proposal because it was the “least costly, and least disruptive to adjoining property owners.” *Id.* at 381. This route, however, only gave the petitioner access to an unusable portion of his property. *Id.* Following *State ex rel. Rose v. Town of Greenwood*, 20 N.W.2d 345, 348 (Minn. 1945), which held that a petitioner was entitled to a cartway that provided access to a usable portion of his land even though an unusable portion of his land was connected to a public road, we concluded that a cartway route must provide access to a usable portion of the petitioner’s land in order to satisfy the statutory requirements. *Kennedy*, 784 N.W.2d at 382–84. In that context, we held that the town had “acted upon an erroneous theory of law when it selected a cartway route ... that did not provide meaningful access to petitioner’s land.” *Id.* at 384. In short, *Kennedy* stands for the proposition that a cartway route that does not provide the petitioner access to a usable portion of their property does not provide “meaningful access.”

We have never extended the concept of “meaningful access” beyond the context of access to usable property. The Holstads invite us to do so. Specifically, they argue that “meaningful access” should mean that the petitioner must be able to afford any construction necessary to use the cartway. Here, the Holstads claim that even though the Town granted their cartway petition, they still have to expend time, energy, and a prohibitive amount of money to build the cartway, which demonstrates that the Town’s cartway route does not actually give them “meaningful access” to their property. In short, the Holstads urge us to hold that “meaningful access” must be analyzed from the petitioner’s perspective, and that the “meaningful access” analysis requires a town to consider affordability for the petitioner as a factor in selecting a cartway route. We decline to do so.

As an initial matter, a town’s cartway determination is a legislative one that should be given substantial deference. *See id.* at 381. If we were to hold that “meaningful access” means a cartway must be affordable to the petitioners, we would erode the legislative authority the statute gives a town by prioritizing petitioners’ needs over the public interest, including public safety. This case involves challenging factual circumstances where, it appears, there is no option that meets statutory and practical width requirements and serves the public’s best interest as determined by the Town, and is also affordable according to the Holstads. If we were to expand the “meaningful access” analysis to include affordability, we would be mandating a potentially impossible task—that the Town establish a cartway that is at least two rods wide, safe for the public to use notwithstanding the challenging terrain in which it must be located, and falls

within the Holstads’ budget. We do not interpret the language of the cartway statute to require towns to do the impossible. We therefore decline at this time to expand the “meaningful access” analysis beyond what we held in *Kennedy*—“meaningful access” requires a cartway to provide petitioners access to a usable portion of their property. *See Reiter v. Kiffmeyer*, 721 N.W.2d 908, 911 (Minn. 2006) (stating that “we will not read into a statute a provision that the legislature has omitted, either purposely or inadvertently”).⁸

Applying this interpretation of “meaningful access” here, we conclude the Town did not fail to provide the Holstads “meaningful access.” Unlike in *Kennedy*, the record in this case does not suggest that the Holstad Property includes any unusable portions, and the Holstads do not assert otherwise. Accordingly, any cartway that allows the Holstads to legally access their property also satisfies the “meaningful access” requirement. Nor do the Holstads assert that the cartway route the Town granted would fail to connect the Holstad Property to a public road. We therefore conclude the Town satisfied the “meaningful access” requirement⁹ and did not act arbitrarily and capriciously or contrary to law when it selected the engineer’s route instead of the Holstads’ proposal.

⁸ The partial dissent would instead expand the definition of “meaningful access” to “include a range of practical considerations,” including “[p]hysical barriers, legal restrictions, and burdens that make construction or use practically unattainable” without explaining how the text of the statute or our decision in *Kennedy* compels such a result.

⁹ While we decline to expand the “meaningful access” analysis beyond what we required in *Kennedy*, nothing in our decision should be interpreted to mean that a town is *prohibited* from considering affordability for the petitioner in exercising its discretion to determine a cartway route pursuant to Minn. Stat. § 164.08, subd. 2(a). In fact, in this case the Town noted that satisfying the statutory and practical width requirements and

II.

Second, the Holstads argue that the Town exceeded its statutory authority under Minn. Stat. § 164.08 when it conditioned opening the cartway on specific construction requirements and federal, state, and county regulatory approvals. The Holstads argue that when a town “establish[es]” a cartway under the statute, the town’s authority is limited to its “general condemnation authority” under its eminent domain power, which only allows the town to legally declare a route a cartway. Relying on our prior cartway decision in *Rose*, 20 N.W.2d at 348, the Holstads assert that the only discretion a town has when establishing a cartway is in selecting the route. The Holstads also argue that constructing a road on the designated cartway route is a separate process that requires a town to invoke its general police power—a power that is beyond the scope of eminent domain and therefore beyond the scope of the cartway statute. Accordingly, the Holstads contend, a town may impose only one condition precedent prior to establishing and opening a cartway—payment of damages enumerated in Minn. Stat. § 164.08, subd. 2(c). Here, because the Town conditioned opening the cartway on construction requirements and federal, state, and county regulatory approvals, in addition to payment of damages, the Holstads insist that the Town exceeded its statutory authority under Minn. Stat. § 164.08.

The Town agrees that establishing a cartway involves the exercise of a town board’s eminent domain power, but it argues that it did not exceed its statutory authority

addressing public safety concerns would require significant construction, no matter which route it picked, and determined that the engineer’s route will be easier and no more expensive than other options satisfying those requirements and public safety concerns.

because placing conditions on a cartway is “an ordinary part of the process” and is “within the Town Board’s authority.” The Town further argues that requiring the Holstads to obtain necessary regulatory approval before constructing a cartway merely restates other requirements of non-cartway law. We begin by considering whether the Town has the statutory authority to order the Holstads to construct a cartway to particular standards before its opening and use. We then discuss whether the Town exceeded its statutory authority when it required the Holstads to obtain federal, state, and county regulatory approvals before constructing and opening the cartway.

A.

We have not previously decided whether the cartway statute grants a town discretion to require petitioners to make specified improvements to the designated cartway route before the cartway can be opened. The Holstads argue that it does not. We are not persuaded, because the Holstads’ arguments are founded in several faulty assumptions. First, the Holstads’ argument is based on a misreading of our decision in *Rose*. Second, we reject the Holstads’ characterization of the eminent domain power the cartway statute grants a town as limited to establishing a cartway and requiring payment of damages. Third, the Holstads’ position that a town can never place conditions on the opening of a cartway is not supported by the plain language of Minn. Stat. § 164.08, which gives separate meaning to the establishment, construction, and opening of a cartway. We elaborate on each point in turn.

First, we reject the Holstads’ argument that our decision in *Rose* “makes clear ... [that] prior to the establishment of a cartway the Town’s discretion is limited to determining the route of the cartway.” *Rose* is not so restrictive. In *Rose*, a landowner petitioned the town for a cartway to be “established, opened, and constructed” connecting his property to a town road, but the town board “took no action on the petition.” 20 N.W.2d at 346. The landowner commenced a mandamus proceeding to compel the town board to act upon the cartway petition and establish the cartway. *Id.* The district court granted a writ of mandamus commanding the town “to establish a cartway”; “to construct a reasonably serviceable and durable cartway two rods wide, fit and suitable for use during the entire year”; and to “establish, open, and construct the cartway at the sole expense of the town.” *Id.* at 346–47. But the district court’s order allowed “the exact route and location of” the cartway “to be determined by the town board in the exercise of its discretion.” *Id.* at 346. The town appealed. *Id.* at 346–47.

Because *Rose* was a mandamus case, we considered whether the cartway statute imposed a mandatory *duty* on the town to establish a cartway, such that mandamus would lie. *Id.* at 348 (noting that “the right to the writ here depends on whether the duty of the town board to establish the cartway petitioned for was mandatory or discretionary”). In concluding that it did, we noted the following:

[t]he 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 All the facts entitling relator to the cartway having been found to exist, it was the mandatory duty of the town board to establish it. *The only discretion left in the board under the circumstances was laying out the road under the rule stated.* This was provided for in the decision below.

Id. (emphasis added). Mandamus will issue only to compel a clear and mandatory duty, not a discretionary power, *id.*, and our discussion of discretion in *Rose* must be understood in that context. That is, in *Rose* we were distinguishing between the town's mandatory duty to establish a cartway, and its discretionary authority to select a route. *Id.* Our statement that “[t]he only discretion left in the board under the circumstances was laying out the road under the rule stated,” as “provided for in the [district court] decision,” *id.*, must also be understood in that light. We were not attempting to enumerate every source of discretion available to a town. Instead, we were merely determining which actions taken (or not taken) by the town were mandatory, and which were discretionary.

Indeed, the remainder of our *Rose* decision refutes the proposition that we limited a town's discretion to “determining the route” of a cartway. In the rest of *Rose*, we considered and reversed the district court order requiring the town to fund and construct a cartway. Because “the expenditure of town funds to improve cartways lies in the discretion of town boards in virtue of statutory provision,” we held that it was error “to command the town board to construct an improved roadway on the cartway when established.” *Id.* at 348–49. Accordingly, we reject the Holstads' argument that the Town's discretion under the cartway statute is limited to determining the route.

Next, we discuss the Holstads' argument regarding a town's eminent domain power in the context of cartway establishment. As we discussed above, it is undisputed that a town establishing a cartway is an exercise of its eminent domain power. *See Powell*, 221 N.W. at 528. The Holstads assert that because the cartway statute grants a town only the general power of eminent domain, and because such power is limited to establishing cartways and requiring payment of damages, the Town exceeded its eminent domain power by conditioning opening the cartway on meeting enumerated construction requirements. We disagree.

Contrary to the Holstads' assertion that the eminent domain power is a narrow power, we have limited the eminent domain power in only two respects: (1) the property can only be taken for public use; and (2) its owner must be justly compensated. *See Knapp v. State*, 145 N.W. 967, 968 (Minn. 1914). In *Knapp*, we further commented on the broad nature of the eminent domain power:

The power of eminent domain, or the right to take private property for public purposes, inheres in the state as an attribute of its sovereignty, and is vested in the Legislature. The Legislature can take private property against the will of the owner only for public use and after just compensation to the owner has been paid or secured. Except as restricted and controlled by these two requirements, *the power of the Legislature to take private property is unlimited and its determination so to do conclusive*. Whether the use be public and whether proper compensation has been made are judicial questions, the final determination of which rests with the courts. All other questions involved in the taking of private property are of a legislative nature; and the determination of such questions by the Legislature, or by an agency established by and acting under the authority of the Legislature, is final and cannot be reviewed by the courts.

Id. (emphasis added). Additionally, in eminent domain cases, once a government entity has demonstrated a proper purpose for a taking, the government has discretion to carry out such taking in a manner that accomplishes the public purpose. *See, e.g., State ex rel. Comm’r of Transp. v. Kettleison*, 801 N.W.2d 160, 167 (Minn. 2011) (concluding that the government agency demonstrated a proper public purpose for taking, affirming the court of appeals’ decision upholding the government agency’s proposed plan for access road rather than the appellant’s proposed plan).

Similar considerations apply to the delegation of eminent domain power that the cartway statute grants to towns. As discussed above, a cartway, “when laid out by public authority is a public way, open to the free use of the public.” *Carlson*, 169 N.W. at 806. Absent restriction by the Legislature, we conclude that the delegation of eminent domain power provided in the cartway statute includes the authority to ensure that a cartway is suitable for public use. In particular, the grant of eminent domain power includes the authority to ensure that a cartway is safe. Any other result would require the town to use the State’s eminent domain authority to take private property for the creation of a cartway that, in its judgment, is not in the public interest. We see nothing in the cartway statute that requires such a result. Indeed, the cartway statute explicitly *requires* a town to consider the public interest. *See* Minn. Stat. § 164.08, subd. 2(a) (allowing a town to select an alternative route for a cartway “if the alternative is deemed by the town board to be ... in the public’s best interest”); *id.*, subd. 2(d) (prohibiting town road and bridge funds from being expended on a cartway unless the town board “by resolution determines that an expenditure is in the public interest”).

The partial dissent disagrees, reasoning generally that when the Legislature delegates its eminent domain power, “it does not carry with it whatever additional regulatory powers might be useful in administering the taking.” Although we have sometimes stated that statutes delegating or governing the power of eminent domain should be strictly construed, *see, e.g., Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 231 (Minn. 2008), we typically invoke the strict-construction rule to protect the person whose land or other rights are being taken. *See, e.g., id.* at 231–32 (invoking strict construction on behalf of landowner to reject de facto taking); *Fletcher v. Chi., St. P., M. & O. Ry. Co.*, 69 N.W. 1085, 1087 (Minn. 1897) (discussing strict construction on behalf of landowner with respect to railway’s legal right to condemn land for particular purpose). Here, by contrast, the partial dissent wishes to invoke the strict construction principle not on behalf of anyone who would be deprived of property against their will, but rather on behalf of the Holstads—the private individuals who will receive the most obvious and direct benefit of the Town exercising eminent domain. We disagree that the principle of strict construction applies in these circumstances.

It is unclear what outcome, precisely, the partial dissent thinks is proper in this case. The partial dissent seems to believe that the only authority the Town had in this case was to establish a cartway route—either the Holstads’ petitioned-for route or an alternative. Specifically, the partial dissent suggests that the cartway statute leaves the Town powerless to impose conditions that could remedy the Town’s concerns that either route, without improvement, would be unsafe and unusable by the public—concerns for which the partial dissent never meaningfully accounts. Effectively, the partial dissent

seems to suggest that the Town was required to simply grant the Holstads an easement across their neighbors' property to no discernible public benefit because the easement is not usable by the public. But taking private property for purely private use is outside the eminent domain power.

The Holstads also argue that the structure of the cartway statute itself imposes a restriction on the Town's use of the eminent domain power. Specifically, they argue that because Minn. Stat. § 164.08, subd. 2(c), provides that "[t]he amount of damages shall be paid by the petitioner to the town before such cartway is opened," any other "attempt to condition the establishment of the cartway on construction or improvement is necessarily an exercise of power greater than what is given to the Town under the statutes." We disagree.

Subdivision 2(c) is entirely concerned with the petitioner's responsibility to pay damages. It concerns matters relating to computing and paying damages, including the timing of such payment, and provides in full:

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.

Minn. Stat. § 164.08, subd. 2(c). We agree with the Holstads that this portion of the statute makes paying damages a condition precedent to opening the cartway. But nothing in subdivision 2(c) states that paying damages is the *only* permissible condition

precedent. Nor does it state, for example, that “the cartway shall be opened upon the payment of damages by the petitioner”—which would provide much stronger support for the argument that payment of damages, by itself, is sufficient for the cartway to open. “We may not add language to a statute; rather, we must apply the plain language of the statute as written.” *Energy Pol’y Advocs. v. Ellison*, 980 N.W.2d 146, 156 (Minn. 2022) (citation omitted) (internal quotation marks omitted). Accordingly, we reject the Holstads’ argument that paying damages is the only permissible condition a town may impose prior to opening a cartway.

3.

The Holstads make one final challenge to the Town having statutory authority to order the Holstads to construct a cartway to particular standards in establishing the cartway. The Holstads argue that, because the definition of “[t]own roads” in another chapter of Minnesota Statutes includes those “cartways which ... hereafter may be established, constructed, or improved under the authority of the several town boards,” Minn. Stat. § 160.02, subd. 28,¹⁰ we should draw a distinction between *establishing* a cartway, which is mandatory under Minn. Stat. § 164.08, subd. 2, and *constructing* or *improving* a cartway, which is not. We agree with the Holstads that section 164.08, subdivision 2, distinguishes between establishing a cartway and its construction. Indeed, the plain language of section 164.08, subdivision 2, distinguishes between establishing a cartway, its construction, and its *opening*—treating each event differently. *Compare*

¹⁰ The definitions provided in Minn. Stat. § 160.02 also apply to chapter 164. *See* Minn. Stat. § 164.01.

Minn. Stat. § 164.08, subd. 2(a) (providing that a town shall *establish* a cartway under certain circumstances), *with id.*, subd. 2(c) (“The amount of damages shall be paid by the petitioner to the town before such cartway is *opened*.” (emphasis added)), *and id.*, subd. 2(d) (providing that if a town does not determine by resolution that an expenditure on a cartway is in the public interest, “the grading or other *construction* work and the maintenance of the cartway is the responsibility of the petitioner” (emphasis added)), *and id.*, subd. 2(e) (addressing circumstances “[a]fter the cartway has been *constructed*” (emphasis added)). We need not determine, for purposes of this decision, the precise interaction between establishing, constructing, and opening a cartway. That the cartway statute contemplates *opening* a cartway as separate from its establishment—and presumably, at least in some cases, after any necessary construction—undermines the Holstads’ contention that the cartway statute restricts a town’s ability to condition a petitioner’s using a cartway on steps the town reasonably requires for the public to safely use the cartway.

In summary, our case law on eminent domain supports the Town’s position that a town has the statutory authority to establish a cartway (i.e., to designate the legal right-of-way on a selected route) and to require the cartway petitioner to improve the route so that the public can safely use it as a condition to opening and using the cartway. *See Knapp*, 145 N.W. at 968; *Carlson*, 169 N.W. at 806. Neither *Rose* nor section 164.08’s language compels a contrary conclusion. *See Minn. Stat. § 164.08, subd. 2(a); Rose*, 20 N.W.2d at

348. We therefore affirm the court of appeals' decision that the Town has authority to condition opening a cartway on the Holstads meeting certain construction requirements.¹¹

B.

The Holstads also argue that the Town exceeded its statutory authority by requiring them to obtain federal, state, and county regulatory approvals before constructing and opening the cartway. Specifically, the Holstads assert that a town's authority under the cartway statute is limited to establishing the cartway and ordering enumerated damages, and therefore the Town exceeded its statutory authority by conditioning opening the cartway on such regulatory approvals. The Town disagrees, arguing that requiring the Holstads to obtain necessary regulatory approvals prior to constructing the cartway is nothing more than restating the requirements of (non-cartway) law. The Town asserts that because it cannot control other regulatory bodies, and because regulations from those bodies may apply to the Holstads' cartway, including such regulatory requirements in the resolution simply recognizes that the Holstads will be

¹¹ Our decision does not mean, however, that a town has unchecked power to impose arbitrary construction conditions when establishing a cartway. As the Town conceded during oral argument, any construction requirement a town imposes must be reasonable. Here, the Holstads would have us look to the \$1.4 million cost of meeting the Town's requirements and conclude that such requirements cannot be reasonable. But given the location and condition of the properties involved, significant construction will be required to satisfy the statutory width requirement and to address public safety concerns no matter which cartway route the Town requires. Put differently, we see no evidence that the Town chose a cartway route with the intent to make construction unaffordable to the Holstads. While we understand the Holstads' frustration, the record suggests that the estimated \$1.4 million construction cost is the unfortunate reality of creating a cartway that is safe for the public and meets the statutory width requirement in an ecologically sensitive and highly regulated area.

required to comply with any other applicable regulations. The Holstads respond that because the Town cannot speak for other regulatory bodies, it cannot guarantee that those regulatory bodies will approve their cartway construction, which in turn means the Town failed its mandatory duty to establish a cartway.

We agree with the Town. A town exercises its eminent domain power to establish a cartway under Minn. Stat. § 164.08, but the eminent domain power does not include authority to disregard federal, state, and county regulations otherwise governing the property. *Cf. Minn. Power & Light Co. v. State*, 225 N.W. 164, 164 (Minn. 1929) (observing that property owned by the state cannot be condemned under eminent domain, unless explicitly or impliedly authorized by statute); *Town of Oronoco v. City of Rochester*, 197 N.W.2d 426, 429 (Minn. 1972) (declining to adopt a general rule that “authorities possessing the right to condemn ... by virtue of that right ... possess exemption from zoning regulations”). Constructing a cartway requires complying with regulatory approvals regardless of who carries out construction; if the Town, instead of the Holstads, were tasked with construction, the Town would also need to obtain approvals from those regulatory bodies. Put differently, the Holstads must comply with regulatory requirements to construct a cartway in an ecologically sensitive and highly regulated area, regardless of whether the Town includes such requirements in its resolution. Thus, the requirement to obtain regulatory approvals before constructing the cartway was not an impermissible condition the Town imposed on the Holstads, but merely restated existing non-cartway law. We conclude that the Town did not exceed its

statutory authority by requiring the Holstads to obtain third-party regulatory approvals before constructing and opening the cartway.¹²

III.

Next, we consider whether the Town erred by requiring the Holstads to pay for the cartway's construction. In its resolution, the Town ordered that it would not expend funds for the cartway, leaving the Holstads solely responsible for financing the cartway's construction and maintenance. The Holstads argue that a cartway is supposed to be an unimproved road over existing driveways, paths, or trails, and that allowing the Town to require construction of a cartway would defeat the purpose of the cartway statute. But if the Town chooses to construct or improve the cartway in the public's best interest, the Holstads argue, the Town, rather than the Holstads, should be responsible for the cost.

The Holstads' argument requires us to interpret the relevant statutory provisions. Our review is *de novo*. *See Kennedy*, 784 N.W.2d at 381. We begin with the plain language of the relevant statutes. *See Sanschagrin*, 952 N.W.2d at 624.

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

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

¹² The partial dissent argues that the Town should consider the necessity of permitting as part of the requirement to provide “meaningful access.” But the partial dissent does not explain what is to happen when, as in this case, *every* proposed route—the Holstads’ and the alternatives—would require construction, and therefore permitting, in order to provide “meaningful access.”

cartway is the responsibility of the petitioner, subject to the provisions of section 164.10.

(Emphasis added.) The cross-referenced statute, Minnesota Statutes section 164.10, provides:

Any town board *may expend* town road and bridge funds upon a legally established cartway the same as on town roads if, in the judgment of the board the public interests require it; provided, that where any town board has refused to allocate funds for the upkeep of a cartway, then, upon the petition of ten taxpayers of the town, the town board shall present for the approval of the voters, after due notice, at the annual town meeting the petition for allocation of funds, and at the town meeting the electors of the town shall allow or reject the petition. If the majority of those voting approve the petition for allocation of funds, the town board *shall expend* road and bridge funds on the cartway.

(Emphasis added.) These two provisions together plainly require that a town not expend funds on a cartway unless the town determines the *expenditure* (not the *construction*) will serve the public interest. *See Rose*, 20 N.W.2d at 348 (observing that “the expenditure of town funds to improve cartways lies in the discretion of town boards in virtue of statutory provision”); *Kennedy*, 784 N.W.2d at 380 (noting that the cartway statute “provides that the petitioning landowner may be required to pay to construct the cartway itself unless the town board determines that establishment of the cartway is in the public interest”).

We reject the Holstads’ arguments to the contrary.

First, the Holstads argue that a cartway, as established, necessarily must be an unimproved road. The Holstads cite a number of cases from our court and from the court of appeals upholding using an existing unimproved pathway as a cartway. But in none of the cited cases did the deciding court make a legal determination that a cartway *must* be unimproved. Rather, the appellate courts reviewed the decision-making processes of the

town boards that had decided to use an unimproved path as a cartway and determined, in each case, whether the town board acted arbitrarily or capriciously or contrary to law in doing so. *See, e.g., Cich v. Bay Lake Twp.*, No. A18-0542, 2018 WL 5915444, at *4 (Minn. App. Nov. 13, 2018) (holding that “[t]he township board followed the requirements set forth in section 164.08 and acted within its discretion in selecting the route proposed in the petition”). Moreover, in both *Rose* and *Kennedy*, we discussed the possibility that a cartway might be an *improved* road. *Rose*, 20 N.W.2d at 348; *Kennedy*, 784 N.W.2d at 380, 385 (discussing possible cartway routes, that would cost either \$100,000 or \$300,000 “to construct,” one of which would “require[] construction over a mile and a half of ‘rough terrain with steep slopes,’ necessitating ‘large culverts’ ”).

As we have already noted, the cartway statute itself recognizes that sometimes a cartway will be an improved road. Subdivision 2(d) provides that if a town does not determine that expending funds on a cartway is in the public interest, “the grading or other construction work and the maintenance of the cartway is the responsibility of the petitioner.” Minn. Stat. § 164.08, subd. 2(d). And subdivision 2(e) addresses circumstances that occur “[a]fter the cartway has been *constructed*.” *Id.*, subd. 2(e) (emphasis added). Although these provisions do not mean that *every* cartway must be an improved road, they foreclose the Holstads’ suggestion that an improved cartway is somehow exceptional.

The Holstads also cite several Attorney General Opinions from the early 1960s to support their position that the Town is required to fund any cartway construction or improvement necessary to satisfy public interest. *See* Op. Att’y Gen. No. 377b-1 (May 8,

1963); Op. Att’y Gen. No. 377b-1 (Nov. 21, 1960); Op. Att’y Gen. No. 377b-1 (June 23, 1960). These opinions rely on the then-existing cartway statute and *Carlson v. Elmo Township*, which construed the word “may” in the 1917 version of the cartway statute¹³ as not “merely permissive or wholly discretionary with the board” but “imposing a duty upon the board of the extent the public interests may require.” 169 N.W. at 807. Based on these sources, the Attorney General’s opinions concluded that “if a cartway is legally established then it is the duty of the town board to construct and maintain such cartway to the extent the public interest may require and to that extent it is not wholly discretionary with the town board.” See Op. Att’y Gen. No. 377b-1, at 3 (Nov. 21, 1960).

Although Attorney General opinions are entitled to careful consideration in some circumstances, we are not bound by them. See *Star Tribune Co. v. Univ. of Minn. Bd. of Regents*, 683 N.W.2d 274, 289 (Minn. 2004). But in any event, the cartway statute has changed significantly since these opinions were issued. At the time of the Attorney General opinions the Holstads cite, the cartway statute did not contain its current language establishing a default rule that the town will *not* pay for a cartway. See Act of Apr. 24, 1959, ch. 500, art. 5, § 8, 1959 Minn. Laws 679, 774–75 (codified as amended at Minn. Stat. § 164.08, subd. 2 (1961)) (adopting language largely contained within current subdivision 2(a)); Act of May 14, 1979, ch. 83, § 1, 1979 Minn. Laws 116, 117 (codified as amended at Minn. Stat. § 164.08, subd. 2 (1980)) (adding language of current

¹³ The relevant language of the 1917 cartway statute the Attorney General’s opinions addressed reads, “[a]ny town board may expend road or bridge funds upon a legally established cartway the same as on town roads if in the judgment of such board the public interests require it.” See Minn. Stat. ch. 13, § 2542 (Supp. 1917).

subdivision 2(d)). Instead, at the time of the Attorney General’s opinions, the only relevant provision was Minn. Stat. § 164.10, which, since its enactment, has stated that “[a]ny town board *may* expend town road and bridge funds upon a legally established cartway the same as on town roads if, in the judgment of the board the public interests require it.” (Emphasis added.) The current version of Minn. Stat. § 164.08, however, specifically states that a town board “*shall not*” expend public funds on a cartway “unless the town board ... determines that an expenditure is in the public interest.” Minn. Stat. § 164.08, subd. 2(d) (emphasis added). Because “we construe a statute as a whole and interpret its language to give effect to all of its provisions,” the current versions of Minn. Stat. § 164.08, subd. 2(d), and Minn. Stat. § 164.10, must be read together. *Riggs*, 865 N.W.2d at 683.

Under the current version of the statute, it is plain and unambiguous that a town’s discretion to consider the public interest in selecting an alternative route under subdivision 2(a), and a town’s discretion to consider whether to expend public funds to serve the public interest under subdivision 2(d), are independent. The Holstads’ argument that the Town must fund any construction it deems necessary to satisfy the public interest ignores the plain text of the statute as it currently exists. As such, we conclude that the Town did not err in determining not to expend public funds on the cartway’s construction.

IV.

Finally, we decide whether the Town erred by including its attorney fees associated with the Holstads’ appeals of the cartway determination as a part of their damages under Minn. Stat. § 164.08, subd. 2(c). In the resolution by which the Town

established the cartway, it ordered the Holstads to “pay for the cost of the Town’s 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.”

On appeal, the Holstads challenge the requirement that they pay the Town’s professional fees, arguing that, to the extent those professional fees include attorney fees the Town has incurred in connection with the Holstads’ appeals, they are improper under the statute. This inquiry also requires us to engage in statutory interpretation.

Minnesota Statutes section 164.08, subdivision 2(c), provides:

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.

In the Holstads’ view, the Town’s resolution established (or should have established) a cartway,¹⁴ and this marked the end of “proceedings for the establishment of the cartway.” Because Minn. Stat. § 164.08, subd. 2(c), only allows a town to recover “expenses which the town may incur in connection with the proceedings for the establishment of the

¹⁴ The Holstads have not been consistent as to whether the Town’s resolution here actually established a cartway. When discussing the Town’s selection of the cartway location and its authority to order cartway construction the Holstads are adamant that the Town failed in its statutory duty to establish a cartway. When arguing that they should not be responsible for ongoing attorney fees, however, the Holstads appear to concede that the Town’s resolution *did* establish a cartway.

cartway,” the Holstads assert that any costs incurred after establishing the cartway—including the Town’s attorney fees in connection with the Holstads’ appeals—cannot be included in the damages award. The Town counters that petitioners’ right to appeal a town’s cartway decision is a necessary part of the cartway process. The Town argues that this means “[a] cartway proceeding cannot conclude until there is either no appeal or a properly filed appeal is finally resolved.”

The Holstads’ argument is unpersuasive. Even assuming the premise of the Holstads’ argument—that issuing a resolution “establishes” a cartway, even when a party files an appeal—is correct, the statute does not limit damages to expenses a town may incur *to establish* a cartway. Rather, Minn. Stat. § 164.08 defines damages as including “expenses which the town may incur *in connection with the proceedings for* the establishment of the cartway.” Minn. Stat. § 164.08, subd. 2(c) (emphasis added). That language is broad enough to include fees incurred in any proceedings that challenge the resolution.

The Holstads provide three additional reasons that they should not be required to pay the Town’s attorney fees; we find none persuasive. First, the Holstads argue that allowing the Town to recover its attorney fees related to appeals would violate the “American Rule,” which “establishes that attorneys’ fees may not be awarded without explicit statutory authorization.” *Dworsky v. Vermes Credit Jewelry, Inc.*, 69 N.W.2d 118, 124 (Minn. 1955). This argument is unpersuasive because, as discussed above, Minn. Stat. § 164.08, subd. 2(c), explicitly authorizes a town to require that a petitioner pay

specific costs, including attorney fees in the form of “professional services,” connected to establishing a cartway.

Second, the Holstads argue that the last sentence of Minn. Stat. § 164.07, subd. 8, should govern whether the Town can recover attorney fees. Section 164.07, which governs establishing, altering, or vacating of town roads, is relevant to cartway proceedings because Minn. Stat. § 164.08, subd. 2(b), provides that a town board’s cartway proceedings “shall be in accordance with section 164.07.” Section 164.07, subdivision 7, permits a party challenging certain provisions relating to town roads to appeal to district court (as the Holstads did in this case). Section 164.07, subdivision 8, governs trial of that matter in district court, and specifies that upon such trial, “[t]he prevailing party shall recover costs and disbursements as in other civil cases and judgment shall be entered upon the verdict.” The Holstads argue that this means that “fees in connection with an appeal of a town’s cartway decision are charged ‘as in other civil cases.’ ”

In essence, the Holstads’ argument is that interpreting section 164.08, subdivision 2(c), to allow “damages” to include attorney fees on appeal conflicts with section 164.07, subdivision 8. “When a general provision in a law is in conflict with a special provision in the same or another law, the two shall be construed, if possible, so that effect may be given to both.” Minn. Stat. § 645.26, subd. 1. If the conflict between a general provision and specific provision is irreconcilable, “the special provision shall prevail and shall be construed as an exception to the general provision, unless the general

provision shall be enacted at a later session and it shall be the manifest intention of the legislature that such general provision shall prevail.” *Id.*

Here, there is no conflict, because section 164.07, subdivision 8, merely specifies that “[t]he prevailing party shall recover *costs and disbursements* as in other civil cases.” Minn. Stat. § 164.07, subd. 8 (emphasis added). “Costs and disbursements” does not typically include attorney fees in “other civil cases.” Indeed, as the Holstads point out, a party generally may not recover attorney fees without explicit statutory authorization. *Dworsky*, 69 N.W.2d at 124. Therefore, because Minn. Stat. § 164.07, subd. 8, does not specifically address attorney fees, there is no conflict between that provision and interpreting Minn. Stat. § 164.08, subd. 2(c), to include attorney fees incurred on appeal as damages a cartway petitioner must pay. Regardless, even if there were a conflict, we would construe the more specific provision—section 164.08, subdivision 2(c), which specifically defines damages as including “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”—as an exception to the more general reference to “costs and disbursements” in section 164.07, subdivision 8.

Finally, the Holstads claim that allowing a town to recover costs related to petitioners’ appeals incentivizes towns to make unreasonable cartway determinations so as to inflate the cost of damages. But this is a policy argument that is not rooted in the statutory language. *See Expose v. Thad Wilderson & Assocs., P.A.*, 889 N.W.2d 279, 286 (Minn. 2016) (“[W]e must read this state’s laws as they are, not as some argue they

should be.”). Moreover, we decline to presume that towns will act in bad faith. *Cf. No Power Line, Inc. v. Minn. Env’t Quality Council*, 262 N.W.2d 312, 325 (Minn. 1977) (“Although the judiciary has the responsibility of ensuring that administrative agencies comply with legislative mandates, a presumption of administrative regularity exists.”).

In any event, a town’s damage award is reviewable by district court, which mitigates the Holstads’ concerns. *See* Minn. Stat. § 164.08, subd. 3. We therefore conclude that the Town did not err by requiring the Holstads to pay attorney fees that the Town may incur in connection with the Holstads’ appealing the Town’s resolution.

CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals.

Affirmed.

CONCURRENCE & DISSENT

MOORE, III, Justice (concurring in part and dissenting in part).

The question presented here concerns the scope of a town's authority under Minnesota's cartway statute. The circumstances surrounding the property are unusual, and the parties have understandably focused on the geographic and environmental difficulties that attend providing access to it. But unusual circumstances do not enlarge statutory authority. Our task is to determine what authority the Legislature has conferred, not what authority might seem useful in addressing the particular difficulties of this case.

Minnesota Statutes section 164.08, subdivision 2(a), "obligates a township to establish a cartway to provide access to an owner of a tract of land who has no access to his or her land from a public road except over the land of others." *Kennedy v. Pepin Twp. of Wabasha Cnty.*, 784 N.W.2d 378, 382 (Minn. 2010). The statute gives the town reasonable discretion to select a route other than the one proposed by the petitioner and permits the town to impose conditions to protect the rights of adjoining landowners and in the public's best interest. *Id.*; *State ex rel. Rose v. Town of Greenwood*, 20 N.W.2d 345, 348 (Minn. 1945). But that authority has limits. The town's authority to select a route is substantial, but it is not authority to condition the statutory right of access on requirements the Legislature has not imposed. Nothing in the statute authorizes a town to condition establishment or opening of a cartway on construction requirements or governmental approvals beyond those the statute expressly or necessarily permits. Nor does the statute suggest that a town's authority expands when the property presents unusual environmental or geographic concerns.

The court nevertheless upholds conditions that, in my view, rest on authority the Legislature did not confer. The conditions require appellants to obtain multiple discretionary governmental approvals and to incur estimated construction costs of \$1.4 million to \$1.9 million before the cartway may be opened along the route selected by the Town of May (the Town). Whatever their practical justification, the statute does not authorize those requirements. And when conditions attached to the selected route make access practically unavailable, the Town's statutory obligation to provide access is not satisfied. I would hold that the Town proceeded under an erroneous understanding of the authority granted by section 164.08, subdivision 2(a). The Town has route-selection authority, but that does not give it an implied licensing power to condition the statutory right of access on town-created construction requirements. Even assuming that such power exists, the conditions here make the statutory right of access practically unattainable. I would remand to the Town board to exercise its discretion anew within the limits of the authority the Legislature has conferred. Accordingly, I respectfully dissent in part.¹⁵

¹⁵ I take no issue with the court's conclusion that Minn. Stat. § 164.08, subd. 2(a), imposes a two-rod width requirement on all cartways established under that provision, although the statute could be read to apply only to property owners of a tract of land containing at least five acres, which is larger than the Holstads' property. *See* Minn. Stat. § 164.08, subd. 2(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 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."). I also concur that the selection of a route is a discretionary decision "allocated by statute to the Township," *Kennedy*, 784 N.W.2d at 384, and the premise that in acting on a petition to establish a cartway, a town acts in a legislative capacity. *Id.* at 381. It is not in the court's power to substitute its

I begin by reviewing the factual and procedural history and briefly considering the development of Minnesota's cartway law. Next, I explain why section 164.08, subdivision 2(a), cabins town authority and does not authorize a town to condition access on town-created construction standards or additional regulatory approvals. I then explain why, even if such authority could be implied, the conditions imposed here make access effectively illusory and therefore do not provide the meaningful access that the statute requires.

A.

Appellants Bryce and Jody Holstad (the Holstads) own a 2.5-acre landlocked parcel along the St. Croix River in the Town of May. The nearest public roadway is Minnesota State Highway 95, known also as St. Croix Trail, which runs north and south and is about one-quarter mile to the west of the Holstad Property. This subject property is bordered on the north and west by land owned by the National Park Service (NPS), on the south by neighboring private property, and on the east by the river. At present, it is accessible only from the public road on foot, by traversing steep ravines, cliffs, and gorges across NPS land. After unsuccessful efforts to obtain access through a private

judgment for that of the Town in selecting a route that provides access to the usable portion of the Holstads' property. Finally, I do not dissent from the court's determination that the Town's attorney fees incurred in connection with an appeal of a resolution establishing a cartway are included in "the 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" and are thus damages awardable to the Town under the plain language of Minn. Stat. § 164.08, subd. 2(c).

easement over the neighboring property to the south, the Holstads petitioned the Town to establish a cartway.

The Holstads' petition proposed that the Town establish a cartway over most of the length of an existing unimproved gravel private driveway that runs across the neighboring property through a forested area up to the top of the river bluff and then down to a seasonal cabin at the base of the bluff. The Holstads' petition was filed under the second sentence of Minn. Stat. § 164.08, subd. 2(a), which mandates that a town 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 statute permits the town 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." *Id.* The Holstads argued that their proposed route would provide meaningful access to their property and would be the cheapest option for the Town as it would not require tree removal, grading, or construction.

In its order setting a formal hearing upon the Holstads' petition, the Town determined that it would not spend town road funds on the cartway. *See* Minn. Stat. § 164.08, subd. 2(d) ("Town road and bridge funds shall not be expended on the cartway unless the town board, or the county board ... by resolution determines that an expenditure is in the public interest."). Because no such resolution was adopted, the grading or other construction work and maintenance of the cartway would be the

responsibility of the Holstads. *Id.* The Town’s resolution also disclaimed any responsibility related to the use of the cartway and expressly stated that the town “shall not be responsible for the conditions, construction, use, or maintenance of this cartway.”

Following multiple hearings and consideration of three competing cartway routes, the Town granted the petition and adopted a route proposed by its engineer. The Town concluded that, because the cartway would be a public way, the engineer’s proposal would best accommodate two-way traffic and emergency-vehicle access. The Town rejected the Holstads’ proposed route, concluding that the use of the existing unimproved driveway was not feasible or consistent with “public health, safety, or welfare” due to its narrowness, inability to accommodate emergency vehicles, and being impassable during winter months. The Town awarded damages to the affected property owner and its own professional fees and prohibited use of the cartway “unless and until it is constructed, improved, and approved” in accordance with conditions established by the Town’s engineer, including a requirement that it be two rods wide. The Town also required the Holstads to bear the full cost of constructing and maintaining the roadway and to obtain all necessary regulatory approvals prior to construction, to assume responsibility for maintaining the roadway, and to pay the Town’s legal fees associated with the proceedings for the establishment of the cartway. According to the Town’s engineer, construction of the cartway along the engineer’s route would cost between approximately \$1.4 and \$1.9 million. Several local authorities submitted letters to the town board expressing what regulatory approvals would be required to construct the cartway as recommended by the town board.

After unsuccessfully appealing the Town’s resolution establishing the cartway to the district court and the court of appeals, the Holstads present two issues to this court: first, whether the Town imposed conditions not authorized by the cartway statute; and second, whether the Town’s selected route provides “meaningful access” to their property in light of the route itself and the conditions imposed. I address these issues in turn.

B.

A town’s authority to establish a cartway is a product of legislative grant, and the town may exercise only the power the Legislature has conferred on it in Minn. Stat. § 164.08. *See Welsh v. City of Orono*, 355 N.W.2d 117, 120 (Minn. 1984). Under that statute, when the statutory conditions are satisfied, a town has a mandatory duty to establish a cartway, subject to reasonable discretion to vary the proposed route as the public interest may require and to take into account damage to the affected landowners. *Rose*, 20 N.W.2d at 347–48. The statute thus gives the town authority to establish the right-of-way, select its route, and determine the damages associated with establishing it. It says nothing, however, about requiring roadway construction or improvement, obtaining regulatory approvals, or imposing additional fees as conditions of establishing or opening the cartway.

The structure of section 164.08 confirms the limits of that delegation. The statute distinguishes between establishment, opening, construction, and maintenance and assigns responsibilities at each stage. Under the cartway statute, the town establishes the cartway and selects its route; before opening, the town may require payment of damages and specified costs; and, when public funds are not used, the petitioner bears responsibility

for construction and maintenance. Minn. Stat. § 164.08, subd. 2(a), (c)–(e). Nowhere does the Legislature authorize the town to prescribe construction standards as a condition of opening. This omission matters. The Legislature knew how to make the opening of a cartway contingent on a specified requirement: subdivision 2(c) expressly conditions opening on payment of damages. Yet the statute contains no comparable provision authorizing a town to withhold opening until a petitioner satisfies town-created construction specifications or regulatory requirements. *See State v. Caldwell*, 803 N.W.2d 373, 383 (Minn. 2011) (“Expressio unius generally reflects an inference that any omissions in a statute are intentional.”). We should be reluctant to infer an additional prerequisite when doing so would confer a substantial regulatory power that the Legislature did not identify.

The Legislature’s treatment of public roads reinforces the point. Elsewhere, the Legislature has expressly addressed a town’s authority to establish, construct, improve, maintain, and repair public roads. *See* Minn. Stat. §§ 160.17, 164.02–.03. Section 164.08, by contrast, addresses the distinct problem of providing access to otherwise inaccessible property and expressly assigns construction and maintenance responsibility to the petitioner when public funds are not used. Minn. Stat. § 164.08, subd. 2(d)–(e). That allocation counsels against implying a town design-approval power that the statute does not confer. *See Genin v. 1996 Mercury Marquis*, 622 N.W.2d 114, 117 (Minn. 2001) (“The rules of construction forbid adding words or meaning to a statute that were intentionally or inadvertently left out.”).

Nor does the word “opening” supply the missing authority. The statute contemplates a sequence: establishment creates the legal right-of-way; construction makes the route usable; and opening permits its use. But describing those stages does not confer a substantive power at each stage. To read “opening” as an implied source of regulatory authority would transform a procedural milestone into a discretionary licensing regime that the statute nowhere creates. The fact that surveys, permits, construction, or other measures may be necessary to make a particular cartway usable does not make those measures conditions the town may impose on the exercise of the statutory right.

General principles of eminent domain do not change the analysis. Eminent-domain authority permits the taking authorized by the Legislature; it does not carry with it whatever additional regulatory powers might be useful in administering the taking. *See Knapp v. State*, 145 N.W. 967, 968 (Minn. 1914). Here, the Legislature made a specific grant of eminent-domain authority for the establishment of cartways. That grant supplies both the source and the limit of the town’s power. We should not supplement it with conditions that determine whether, when, or how the statutory right may ultimately be exercised. *See Genin*, 622 N.W.2d at 117; *In re Hubbard*, 778 N.W.2d 313, 318 (Minn. 2010).

The court’s contrary interpretation would allow a town to convert a mandatory statutory right of access into a discretionary entitlement contingent on compliance with town-created infrastructure requirements. That would alter the balance the Legislature struck: the town controls the route and may protect adjoining landowners through the

authority expressly granted by section 164.08, while construction and maintenance ordinarily remain the petitioner's responsibility. What the town may not do, absent a legislative grant, is turn its limited authority into a licensing power over the petitioner's exercise of the statutory right.

The Legislature could have granted towns that authority. It did not. As we observed in *Kennedy*, "[t]o read the [cartway] statute in such a way would require this court to read language into the statute that is not there." 784 N.W.2d at 383. That is what the court has done here. But section 164.08 reflects the balance the Legislature struck, and we should not disturb that balance by implication.

C.

Even assuming the Town possesses some implied authority to regulate construction of a cartway, the conditions imposed here cannot stand. They make meaningful access to the Holstads' property practically unattainable and therefore fail for a separate reason: they do not satisfy the statute's requirement of meaningful access. The purpose of Minnesota's cartway statute is straightforward: to provide landlocked property owners with practical access to their property when access cannot otherwise be obtained. Consistent with that purpose, we have recognized that a cartway must provide "meaningful access" to the petitioning landowner's property. *Kennedy*, 784 N.W.2d at 383. That requirement necessarily concerns practical use, not merely the formal creation of a right-of-way. A route that cannot realistically be used because of physical barriers, legal restrictions, or burdens that make construction or use practically unattainable does not provide meaningful access. While we did not articulate a rigid multi-factor test as to

what meaningful access requires in *Kennedy*, I would accept the Holstads' invitation to extend the definition of meaningful access. I would include a range of practical considerations bearing on whether access is meaningful. Meaningful access is a practical, functional concept. A route does not provide meaningful access merely because a right-of-way exists on paper; the route must be reasonably capable of being used for access to the property. Physical barriers, legal restrictions, and burdens that make construction or use practically unattainable may therefore bear on whether access is meaningful.

Section 164.08 does not guarantee the cheapest or most convenient route, or access free from practical difficulty. Nor does *Kennedy* prevent a town from considering safety, topography, environmental constraints, or effects on neighboring landowners when selecting a route. The statute gives towns substantial discretion to select a route that minimizes disruption and damage. Minn. Stat. § 164.08, subd. 2(a). But those considerations inform the choice among available routes; they do not permit a town to impose requirements that leave the statutory right of access effectively unusable.

The conditions here cross that line. The Town's selected route requires a two-way roadway capable of accommodating emergency vehicles, multiple regulatory approvals, and construction costs estimated at \$1.4 million to \$1.9 million. The relevant point is not that the statute guarantees an inexpensive cartway, but that a right of access cannot meaningfully be exercised if the conditions imposed make construction practically unattainable. The requirements imposed here do not merely make access inconvenient or expensive. They make access contingent on an extensive and uncertain construction and regulatory process that the Holstads may be unable, as a practical matter, to complete. A

statutory right that can be exercised only after undertaking such an enterprise is difficult to characterize as meaningful access.

The court's contrary approach shifts the focus from access to infrastructure. It effectively makes the Holstads finance substantial roadway infrastructure before they may exercise the statutory right the Legislature created to provide basic access to otherwise inaccessible property. Nothing in section 164.08 suggests that the Legislature conditioned that remedy on a landowner's ability to finance such construction.

The distinction matters. The statute need not guarantee an easy route to guarantee meaningful access. But neither does it permit a town to designate a route that is technically available while attaching conditions that make its use practically unattainable. Here, the selected route, subject to the conditions imposed, provides access in form but not in substance. Because section 164.08 guarantees meaningful access, I would conclude that the Town's determination does not satisfy the statute.

* * *

This case presents unusual geographic, ecological, and regulatory difficulties. But those difficulties do not enlarge the Town's statutory authority. The question is not whether the conditions imposed here are understandable or even sensible; it is whether section 164.08 authorizes them.

The court's holding extends beyond this property. It recognizes a power to impose conditions the statute neither identifies nor limits whenever a town deems them warranted. That goes beyond the balance the Legislature struck between providing access to landlocked property and protecting adjoining landowners.

The question here is one of statutory power, not prudence. Because section 164.08 does not authorize the conditions imposed and because those conditions do not provide the meaningful access the statute guarantees, I respectfully dissent. I would reverse and remand with instructions to open the cartway upon satisfaction of the statute's express prerequisites, without conditioning access on town-created construction specifications or regulatory approvals.

McKEIG, Justice (concurring in part and dissenting in part).

I join in the concurrence-dissent of Justice Moore, III.

THISSEN, Justice (concurring in part and dissenting in part).

I join in the concurrence-dissent of Justice Moore, III.