

NO. A06-2107

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State of Minnesota  
**In Court of Appeals**

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In the Matter of the Petition of:

Michael C. Rollins

for the Establishment of a Cartway

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**BRIEF OF RESPONDENT CASS COUNTY**

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## LEGAL ISSUE

1. Is the Cass County Board of Commissioners mandated under Minn. Stat. § 164.08 to establish a cartway as an alternative access to a landowner's island lot, where the lot is directly accessible over navigable waters and the alternative access must also be reached over navigable waters.

## STATEMENT OF THE CASE AND FACTS

Appellant Michael C. Rollins initiated a cartway proceeding before the Cass County Board of Commissioners, acting as the town board for the unorganized township of 4-Boy Lake. Rollins petitioned the Board for a cartway over land owned by Ivan and Lois Krueger on Bear Island on Leech Lake. The Cass County Board denied Rollins' request for a cartway following a hearing held on December 20, 2005.

Appellant Rollins next brought an appeal of the Cass County Board's denial of his request for a cartway to the Cass County District Court. The District Court affirmed the decision of the Cass County Board of Commissioners denying the establishment of a cartway. Appellant Rollins now brings this appeal of the District Court's Order and Judgment dated September 8, 2006.

Appellant Rollins owns property on the west lakeshore of Bear Island. Respondent Krueger owns property on the east lakeshore of Bear Island. There are no roads on Bear Island. It is the position of Respondent Cass County that Appellant Rollins does not meet the requirement of the cartway statute that the cartway connect the petitioner's land with a public road.

## ARGUMENT

### STANDARD OF REVIEW

On appeal from a district court decision in a zoning case, the Court of Appeals conducts a direct review of the municipality's underlying decision. Citizens for a Balanced City v. Plymouth Congregational Church, 672 N.W.2d 13, 19 (Minn. App. 2003)(citing Northwestern College v. City of Arden Hills, 281 N.W.2d 865, 868 (Minn. 1979)). The Court of Appeals' standard of review in such case is the same as for all land use matters, namely, whether the local government authority's action was reasonable. VanLandschoot v. City of Mendota Heights, 336 N.W.2d 503, 508 (Minn. 1983); Honn v. City of Coon Rapids, 313 N.W.2d 409, 417 (Minn. 1981); St. Croix Development, Inc. v. City of Apple Valley, 446 N.W.2d 392, 397-98 (Minn. App. 1989). Judicial review of a county's decision in a zoning case is "deferential...as counties have wide latitude" in making such decisions. Schwardt v. County of Watonwan, 656 N.W.2d 383, 386 (Minn. 2003). Courts will not interfere in a land use decision as long as there was a rational basis for it, even if the decision is debatable. Id.; BECA of Alexandria, LLP v. County of Douglas, 607 N.W.2d 459, 463 (Minn. App. 2000); SuperAmerica Group, Inc. v. City of Little Canada, 539 N.W.2d 264, 266 (Minn. App. 1996)(rev. denied); Larson v. County of Washington, 387 N.W.2d 902, 905 (Minn. App. 1996)(rev. denied).

A town board that grants or refuses a cartway petition acts in a legislative capacity and will be reversed on appeal only when (1) the evidence is clearly against the decision, (2) an erroneous theory of the law was applied, or (3) the town board acted arbitrarily and

capriciously, contrary to the public's best interest. Lieser v. Town of St. Martin, 96 N.W.2d 1, 5-6 (Minn. 1959). When judicially reviewing a legislative determination, the scope of review must necessarily be narrow. Sun Oil Co. v. Village of New Hope, 220 N.W.2d 256, 261 (Minn. 1974).

**MINN. STAT. § 164.08 DOES NOT MANDATE  
THE ESTABLISHMENT OF A CARTWAY AS  
AN ALTERNATIVE ACCESS TO A LANDOWNER'S  
ISLAND LOT, WHERE THE LOT IS DIRECTLY  
ACCESSIBLE OVER NAVIGABLE WATERS AND  
THE ALTERNATIVE ACCESS MUST ALSO BE  
REACHED OVER NAVIGABLE WATERS**

Minn. Stat. § 164.08 provides that a town board shall establish a cartway at least two rods wide connecting the petitioner's land with a public road. There are no public roads on Bear Island and Appellant Rollins is not seeking a cartway connecting his property to a public road. Rather, Appellant is seeking a cartway connecting his property to Leech Lake over the Kruegers' property.

There do not appear to be any Minnesota cases that have expressly addressed the question of what constitutes a "public road" for purposes of Minn. Stat. § 164.08. It appears that the term "public road", for purposes of Minn. Stat. § 164.08, probably means a road (1) upon which the public has a legally-enforceable right of passage, and (2) which is controlled by some public road authority. The Minnesota Court of Appeals has held that even though the DNR was willing to allow a landlocked owner to use its timber management road, the landowner would have no legally enforceable right to use that road, and therefore it did not constitute access under Minn. Stat. § 164.08. In the Matter of Thomas Daniel for the Establishment of a Cartway, 664 N.W.2d 495 (Minn. App.

2002). The rationale in Daniel appeared to be that there was no legally-enforceable right to pass over the timber management road, and the court seemed to assume that it was not a “public road” under the statute. The court in Daniel also stated that it is apparent that the mischief to be remedied is the predicament of a landowner who has no way to reach a public road from his property except by crossing lands owned by others. Daniel Id.

Appellant Rollins argues that Leech Lake should be considered a public road so as to meet this requirement of the statute. Appellant does not cite to any Minnesota case, however, which interprets Minn. Stat. § 164.08 in this way. Moreover, if Leech Lake is deemed to be a public road as argued by Appellant, then Appellant already has access to this “public road” off of his own property. Appellant’s property is on the shore of Leech Lake on the opposite side of the island from the Kruegers’ property. If Leech Lake is deemed to be a “public road” then Appellant already has access to it off of his own property. If Leech Lake is not deemed to be a “public road”, then he fails to meet the requirement in Minn. Stat. § 164.08 that the cartway connect the petitioner’s land with a public road. Appellant cannot have it both ways.

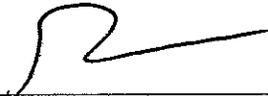
The District Court agreed with Respondent Cass County’s position holding that the cartway sought by Appellant would not serve the purpose intended by the statute, which is to provide access to public roads. The District Court found that the fact that Appellant must cross Leech Lake in order to access his property does not require the establishment of an alternative access on the island, since Appellant would still be required to gain that access over the waters of Leech Lake.

**CONCLUSION**

For the foregoing reasons, the District Court's decision below must be affirmed in its entirety.

**RATWIK, ROSZAK & MALONEY, P.A.**

Dated: 12/28/06

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STATE OF MINNESOTA

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Michael C. Rollins  
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**CERTIFICATE OF  
BRIEF LENGTH**

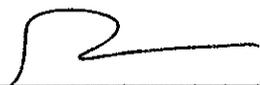
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I hereby certify that this Brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with a monospaced font. The length of this Brief is 224 lines, 1,529 words. This Brief was prepared using Microsoft Word.

**RATWIK, ROSZAK & MALONEY, P.A.**

Dated: 12/28/06

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