

Meeting Date: 10/12/2021

By: Bruce Westby, Engineering/Public Works

Information

Title:

Adopt Resolution #21-291 Designating Cartway Route and Ordering Public Hearing for Petitioned Cartway Access to Thorn Lake Property (PID #04-32-25-31-0001); Case of Thomas and Pattiann Kurak

Purpose/Background:

Purpose:

The purpose of this case is to designate an official cartway route to provide access to the Subject Property, and to order a Public Hearing to receive input on the cartway petition request.

Background:

Under Minnesota statute, if a property owner has no legal access to a public road leading to their property, cartway statute states the municipality's governing body must grant access from a public road. That access — which is called a cartway — must be at least 33 feet (i.e., two rods) wide.

On August 18, 2021 the City received an official petition from Thomas and Pattiann Kurak seeking cartway access to a landlocked, forty (40) acre parcel they own north of 175th Avenue, east of Chameleon Street, and south of 178th Lane (the "Subject Property").

On September 14th Staff presented the official petition for cartway access to the Subject Property to the City Council, outlined the petitioner's requested cartway route plus two alternate routes developed by City Staff, and attempted to address any questions the City Council had at the time. Within 30 days of that meeting, the City Council is required to issue an order describing the designated location of said cartway and ordering a public hearing.

Notification:

Notice of the Public Hearing will be published in the Anoka Union Herald as required in advance of the Public Hearing. The Petitioner will be required to serve notice to potentially impacted property owners, as well as the Department of Natural Resources (the Subject Property contains a public water), as outlined within this case.

Time Frame/Observations/Alternatives:

Observations:

Minnesota State Statutes 435.37 (Easement for Cartway) and 164.07 (Establishment, Alteration, or Vacation of Town Road) outline the process and procedures for processing a petition for a cartway. Should the City grant the cartway, it shall be not less than thirty-three (33) feet in width.

It is important to note that the petitioner, not the City, is responsible for providing the notice to affected landowners and said notice must be personally served by the petitioner. And since the Subject Property contains a public water, the petitioner shall also serve said notice, by certified mail, to the Minnesota Department of Natural Resources at least 60 days in advance of the public hearing.

The petitioner is also responsible for all damages, which includes compensation to the owner of the lands upon which the cartway is established, together with the cost of professional services such as delineating wetlands, surveying, appraisals, hearing costs, recording costs, administrative costs, etc., before the cartway can be 'opened'. For this reason, Staff recommends requiring the petitioner to post a cash surety with the City before holding the

Public Hearing, as is required per the attached resolution.

Potential Cartway Routes

In general, there are challenges to accessing the Subject Property, regardless of which route is ultimately chosen. The entirety of the Subject Property appears to be wetland and there is wetland on all abutting lands as well. Furthermore, the entirety of the Subject Property is within the General Floodplain District, which also extends beyond the boundaries into abutting lands. Construction of any sort of cartway improvements, which would be the petitioner's responsibility, may be restricted and, if allowed, would likely be very expensive due to construction within wetlands and 2:1 wetland mitigation requirements.

The petitioner has requested a route from the proposed new public street in the plat known as Williams Woods (the "Plat") to access the northeast quadrant of the Subject Property. Since approval of the Williams Woods Preliminary Plat was not contingent upon inclusion of an access to the Subject Property, this cannot be made a condition of approval of that Final Plat. Thus, the petitioner's requested route, which would be through upland and wetland area, would appear to have greater negative impacts than two other alternative routes.

Staff investigated two alternate cartway routes through two nearby public parks to provide cartway access the Subject Property.

The first alternate route is through Caroline Acres Park, which is an undeveloped park that accesses 178th Lane near the northeast corner of the Subject Property. This route appears to result in the longest route and the greatest impact to wetlands. Also, there is only forty (40) feet of frontage along 178th Lane so if a thirty-three (33) foot wide cartway were to be established, future access to this park would be severely restricted.

The second alternate route is through Shawn Acres Park, which is an undeveloped park that accesses Chameleon Street near the southwest corner of the Subject Property. Of the three routes considered, this route would result in the least impact to private properties, and would have less impacts to wetlands than the Caroline Acres Park route. Designating this as the official cartway route therefore appears to be in the public's best interest.

Staff has had several conversations with the petitioners during which it was confirmed that they fully understand Minnesota's cartway statutes 435.37 and 164.07, including their financial obligations and other responsibilities associated with their petition. The petitioner initially informed Staff that they wanted access to the northeast corner of their property because this area has the greatest elevation differential between the ground and groundwater making it the most likely location for future improvements. But more recently the petitioner informed Staff that they do not have a strong preference for a cartway route and acknowledged that a cartway through Shawn Acres Park to the southwest corner of their property would work just fine to provide access to their landlocked parcel.

The petitioner is not able to attend the Council meeting.

Wetland Impact Considerations

If the property owner applied to add fill within these Wetland Conservation Act (WCA) jurisdiction wetlands, they would first need to go through the sequencing process. This process requires a purpose and need and if there is no buildable area for a home then a permit likely would not be granted. If purpose and need could be shown, and if WCA impacts were unavoidable, wetland impacts would need to be minimized and then replaced. Mitigation would be required at a 2:1 ratio so for every square foot impacted, 2 square feet would need to be purchased.

Cartway rules do not negate DNR rules which prohibit filling into public waters, such as for a road. Access improvements for a cartway would not likely be deemed to provide any public purpose and would therefore likely be considered ineligible for a permit. Further, this area is within a General Floodplain District which raises additional complications for structures like a boardwalk where there must be floodway and flood fringe determinations to further evaluate the implications.

Any wetland impact considerations would need to be further vetted with the regulating agencies.

Alternatives:

Alternative 1: Motion to adopt Resolution No. 21-291 designating a Cartway Route and Ordering a Public Hearing for the Petitioned Cartway Access to Thorn Lake Property PID #04-32-25-31-0001, using the alternative route through Shawn Acres Park.

Alternative 2: Motion of other.

Funding Source:

Staff estimates \$20,000 will be needed to secure a cartway per the petition request. Again, the petitioner is responsible for paying for all damages, which includes compensation to the owner of the lands upon which the cartway is established, together with the cost of professional services such as delineating wetlands, surveying, appraisals, hearing costs, recording costs, administrative costs, etc.

Recommendation:

Staff recommends adopting Resolution #21-291 designating a Cartway Route and Ordering a Public Hearing for the Petitioned Cartway Access to Thorn Lake Property PID #04-32-25-31-0001, using the alternative route through Shawn Acres Park.

Outcome/Action:

Motion to adopt Resolution No. 21-291 designating a Cartway Route and Ordering a Public Hearing for the Petitioned Cartway Access to Thorn Lake Property PID #04-32-25-31-0001, using the alternative route through Shawn Acres Park.

Attachments

Resolution 21-291

Potential Cartway Routes

Kurak Cartway Petition

MSS 164.07

MSS 435.37

Kurak Property Map

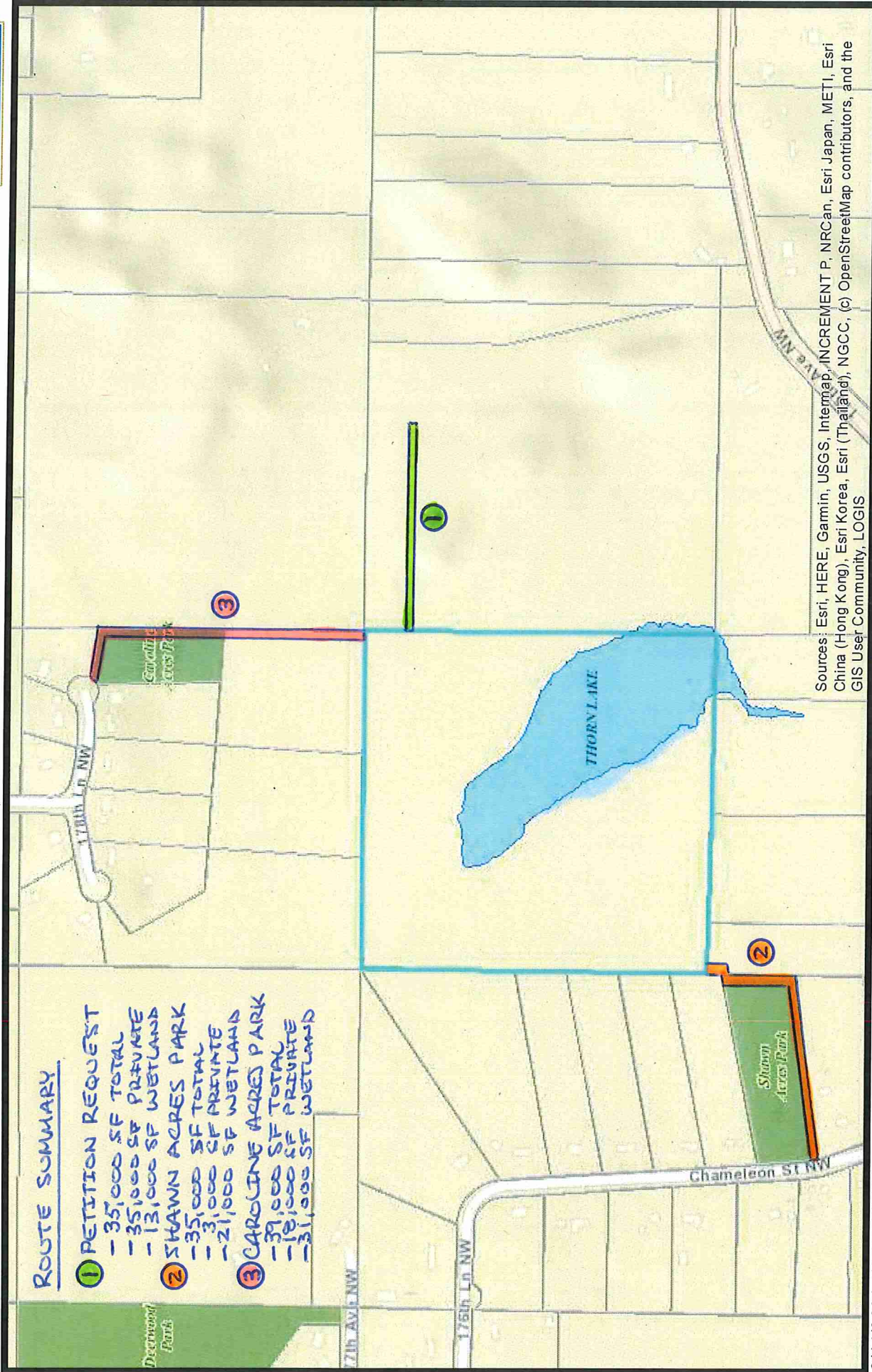
Wetlands and Cartway Routes

Form Review

Inbox	Reviewed By	Date
Kurt Ulrich	Kurt Ulrich	10/07/2021 04:34 PM
Form Started By: Bruce Westby		Started On: 09/21/2021 03:59 PM
Final Approval Date: 10/07/2021		

Alternative Cartway Routes

Kurak Property



ROUTE SUMMARY

- ① PETITION REQUEST
 - 35,000 SF TOTAL
 - 35,000 SF PRIVATE
 - 13,000 SF WETLAND
- ② SHAWN ACRES PARK
 - 35,000 SF TOTAL
 - 3,000 SF PRIVATE
 - 21,000 SF WETLAND
- ③ CAROLINE ACRES PARK
 - 39,000 SF TOTAL
 - 18,000 SF PRIVATE
 - 31,000 SF WETLAND

Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community, LOGIS

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164.07 MS 1957 [Repealed, 1959 c 500 art 6 s 13]

164.07 ESTABLISHMENT, ALTERATION, OR VACATION OF TOWN ROAD.

Subdivision 1. **Authorization; petition.** Any town board may alter or vacate a town road, including those dedicated to the public by plat, or establish a new road in its town upon a petition of not less than eight voters of the town, who own real estate, or occupy real estate under the homestead or preemption laws or under contract with the state, within three miles of the road proposed to be established, altered, or vacated; provided, that in any town not having eight voters who own real estate or occupy real estate under the homestead or preemption laws or under contract with the state, within three miles of any proposed road, the town board of such town may alter or vacate a town road, or establish a new road in the town upon a petition signed by a less number of voters of such town, who own real estate or occupy real estate under the homestead or preemption laws or under contract with the state, in such town. Such petition shall contain a description of the road, and what part thereof is to be altered or vacated, and, if a new road, the names of the owners of the land, if known, over which such road is to pass, its point of beginning, general course, and termination. If the petition is to establish or alter a road, the petition must also contain a statement of the purpose and necessity for establishing or altering the road.

Subd. 2. **Hearing; notice.** (a) The petition shall be filed with the town clerk, who shall forthwith present it to the town board. The town board within 30 days thereafter shall make an order describing as nearly as practicable the road proposed to be established, altered, or vacated and the several tracts of land through which it passes, and fixing a time and place when and where it will meet and act upon the petition. The order must also contain a notice to affected landowners that a landowner is entitled to judicial review of damages, need, and purpose under subdivision 7 following a determination to establish or alter a road. The petitioners shall cause personal service of the order and a copy of the petition to be made upon each occupant of the land at least ten days before the meeting and cause ten days' posted notice thereof to be given.

(b) In addition, the petitioners shall serve notice of the order by certified mail upon the commissioner of natural resources at least 60 days before the meeting required under paragraph (a), if the road to be vacated terminates at, abuts upon, or is adjacent to any public water.

(c) The notice under this paragraph does not create a right of intervention by the commissioner of natural resources. At least 15 days prior to convening the meeting required under paragraph (a), the town board or its designee must consult with the commissioner of natural resources to review the proposed vacation. The commissioner must evaluate:

- (1) the proposed vacation and the public benefits to do so;
- (2) the present and potential use of the land for access to public waters; and
- (3) how the vacation would impact conservation of natural resources.

The commissioner must advise the town board or its designee accordingly upon the evaluation.

Subd. 3. **Examination of proposed road.** At the time and place designated, the town board shall meet and, on proof by affidavit of the giving of such notice, it shall examine the road proposed to be established, altered, or vacated, hear all parties interested, and determine whether it will grant or refuse the petition. If it be refused, the fact shall be noted on the back thereof.

Subd. 3a. **Drainage facility.** On consideration of a petition for vacation of a road, the town board shall determine whether the lateral ditches of said road are essential for surface drainage of adjacent lands, or for drainage of public highways, in the area. If the board finds that preservation of such drainage facilities is

for the general health and welfare of the public, then the board may cause the road to be vacated with a provision that the town shall retain the right of access for the purpose of maintaining such drainage facilities. An owner of land adjacent to the vacated portion of the road shall not interfere with the functioning of such drainage facilities.

Subd. 4. **Survey.** If the petition be granted, the town board, if it deem it necessary, shall cause a survey to be made. When the center of such road does not follow a section line, or some subdivisional line of a section, the surveyor shall note the distance to the point on any course at which such course will intersect a section line, and the distance of such point of intersection from the most convenient section, quarter-section, or meander corner, as established by the government survey; and the notes of such intersections, and a description of the road so established, altered, or vacated shall be incorporated in an order to be signed by the town board.

Subd. 5. **Damages.** The damages sustained by reason of establishing, altering, or vacating any road may be ascertained by the agreement of the owners and the town board; and unless such agreement is made, or the owners release in writing all claims to damages, the same shall be assessed and awarded before such road is opened, worked, or used. Every agreement and release shall be filed with the town clerk and be final as to the matters therein contained. The town board shall assess the damages of each claimant with whom it cannot agree, or who is unknown, specifying the amount awarded to each and briefly describing each parcel of land. In ascertaining the damages which will be sustained by any owner the town board shall determine the money value of the benefits which the establishment, alteration, or vacation, as the case may be, will confer, and deduct the benefits, if any, from the damages, if any, and award the difference, if any as damages.

Subd. 6. **Filing of award; notification.** The award of damages shall be filed with the town clerk. Within seven days after filing the town clerk shall notify, in writing, each known owner and occupant of each tract of the filing of the award of damages. The notification shall set forth the date of the award, the amount of the award of damages and any terms or conditions of the award. The notification must include a clear and coherent explanation, written in language using words with common and everyday meanings, of the requirements for appealing the award of damages under subdivision 7.

Subd. 7. **Appeal.** Within 40 days after the filing of the award of damages any owner or occupant may appeal from the award by filing a notice of appeal with the court administrator of the district court of the county where the lands lie. However, the owner or occupant must file the notice of appeal within ten days in order to delay the opening, construction, alteration, change, or other improvement in or to the road pursuant to subdivision 10. The notice of appeal shall be accompanied by a bond of not less than \$250, with sufficient surety approved by the judge or the county auditor conditioned to pay all costs arising from the appeal in case the award is sustained. A copy of the notice shall be mailed by registered or certified mail to the town clerk or any member of the town board. The notice of appeal shall specify the award or failure to award appealed from, the land to which it relates, the nature and amount of the claim of appellant, and the grounds of the appeal, which may include a challenge to the public purpose or necessity of the proposed road or condemnation.

Subd. 8. **Trial.** The appeal shall be entered upon the calendar for trial at the next general term of the court occurring more than 20 days after the appeal is perfected. It shall be tried in the same manner as an appeal in eminent domain proceedings under chapter 117. The prevailing party shall recover costs and disbursements as in other civil cases and judgment shall be entered upon the verdict.

Subd. 9. **Payment.** If no appeal is taken within the appeal period, the award shall be considered the same as a judgment. The provisions of sections 365.41 and 365.42 shall apply as to payment of all awards

and judgments; and such award or judgment shall draw interest at the rate of six percent per annum to date of payment. The duty of the town board to pay the award or final judgment shall be held and construed to be just compensation or the securing of just compensation within the meaning of the constitution.

Subd. 10. **Appeal not to delay improvement.** After the award of damages has been filed, the board may proceed to open, construct, alter, or change the highway; provided it does not receive notice of appeal within ten days pursuant to subdivision 7. If the board receives a notice of appeal within ten days that challenges the public purpose or necessity of the proposed road or condemnation, it shall suspend any proposed work on the road until a final judicial determination supporting the condemnation is made. If the notice of appeal does not challenge the public purpose or necessity, the appeal shall not delay the prosecution of the proposed improvement, and the town board may proceed as if no appeal had been taken.

Subd. 11. **Order; recordation, evidentiary status.** (a) The order establishing, altering, or vacating any road shall be recorded by the town clerk, and a copy thereof certified as true and correct by the town clerk shall be forthwith recorded with the county recorder or registrar of titles of the county within which the land and premises are located. The certified copy of the order shall be first presented to the county auditor who shall enter the same in the transfer records and note upon the certified copy over the auditor's official signature, the words "entered in the transfer record."

(b) The order or a certified copy shall be received in all courts as competent evidence of the facts therein contained and be prima facie evidence of the regularity of the proceedings prior to the making thereof, except upon the hearing of an appeal.

Subd. 12. **Refusal to establish.** The determination of a town board refusing to establish, alter, or vacate any road shall be final, unless appealed from, for one year from the filing of its order; and no petition for establishing, altering, or vacating such road shall be acted upon within that time. In case its determination granting a petition is appealed from and reversed, it shall not within one year from date of such determination entertain a petition having the same or a similar object.

Subd. 13. **Entry for property examination or survey.** For the purposes of this section and section 164.08, the town board, its employees or agents, may enter upon any property, public or private, to conduct property examinations and surveys. This subdivision does not grant immunity to the town board, its employees, or agents for damage caused to public or private property as the result of an entry onto the property.

History: 1959 c 500 art 5 s 7; 1967 c 723 s 1; 1973 c 24 s 1; 1976 c 181 s 2; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1989 c 183 s 3; 1994 c 451 s 1; 1995 c 25 s 2; 2000 c 334 s 1; 2001 c 139 s 4-7; 2005 c 4 s 31; 2005 c 117 s 1

435.37 EASEMENT FOR CARTWAY.

Subdivision 1. **Mandatory establishment; conditions.** (a) Upon petition presented to the city council 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 city council by resolution shall establish a cartway at least two rods wide connecting the petitioner's land with a public road.

(b) The city council may select an alternative route other than that petitioned for if the alternative is deemed by the city council to be less disruptive and damaging to the affected landowners and in the public's best interest.

(c) The amount of damages must be paid by the petitioner to the city before the cartway is opened. For the purposes of this subdivision, damages means 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 that the city may incur in connection with the proceedings for the establishment of the cartway. The city council may by resolution require the petitioner to post a bond or other security acceptable to the city council for the total estimated damages before the city council takes action on the petition.

(d) The city may not expend street or bridge funds on the cartway unless the city council, by resolution, determines that an expenditure is in the public interest. If no resolution is adopted to that effect, the grading or other construction work and the maintenance of the cartway is the responsibility of the petitioner.

(e) After the cartway has been constructed, the city council may by resolution designate the cartway as a private driveway with the written consent of the affected landowner, in which case from the effective date of the resolution no town road and bridge funds may be expended for maintenance of the driveway.

Subd. 2. **Maintenance costs.** When a cartway is not maintained by the city, one or more of the private property owners who own land adjacent to a cartway, or one or more of the private property owners who has no access to the owner's land except by way of the cartway, may maintain the cartway. The cost of maintenance must be equitably divided among all of the private property owners who own land adjacent to the cartway and all of the private property owners who have no access to their land except by way of the cartway. The following factors may be taken into consideration when determining an equitable share of maintenance expenses: the frequency of use, the type and weight of the vehicles or equipment, and the distance traveled on the cartway to the individual's property. The city council may determine the maintenance costs to be apportioned to each private property owner if the private property owners cannot agree on the division of the costs. The city council's decision may be appealed within 30 days to the district court of the county in which the cartway is located. Private property owners who pay the cost of maintenance have a civil cause of action against any of the private property owners who refuse to pay their share of the maintenance cost.

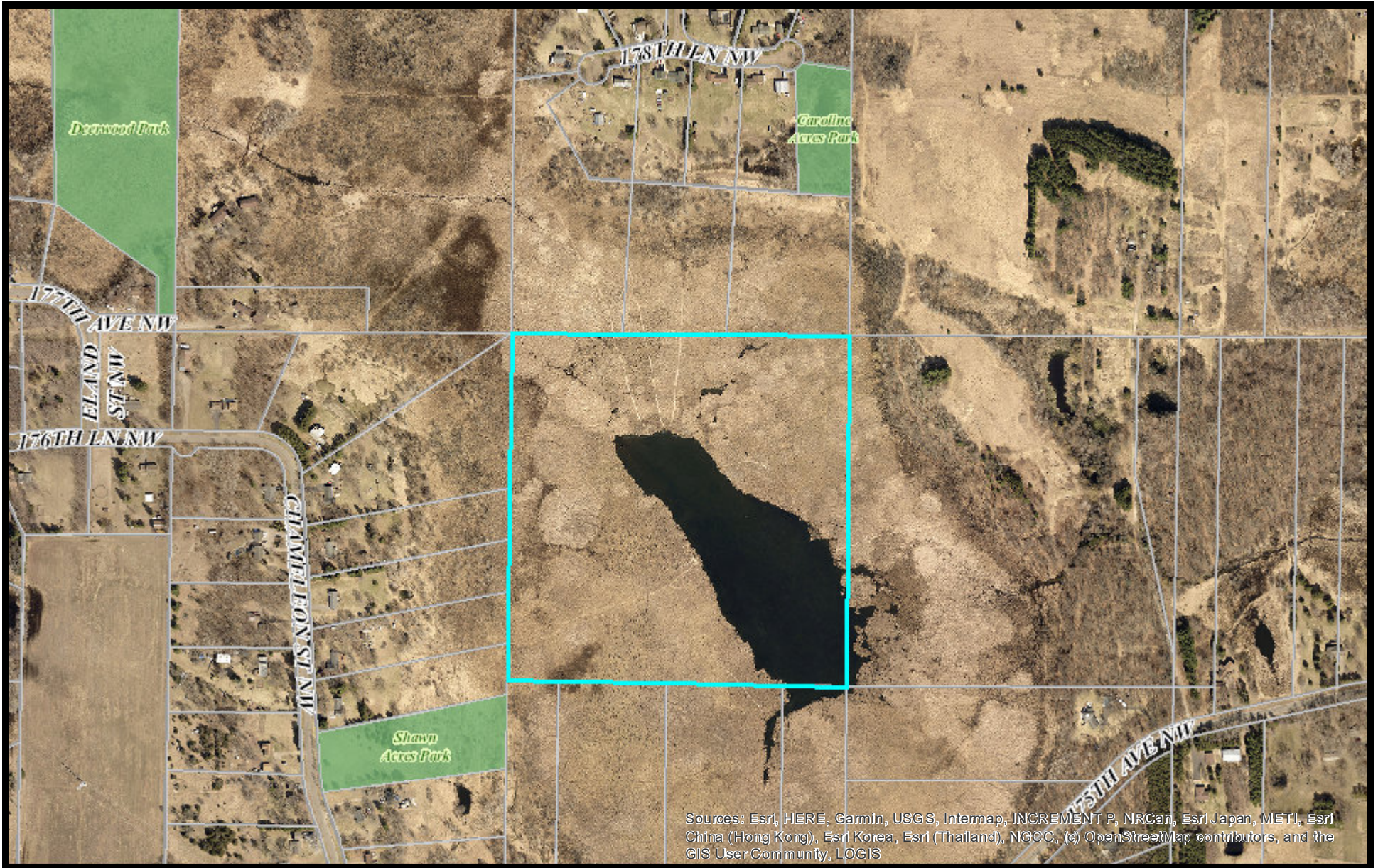
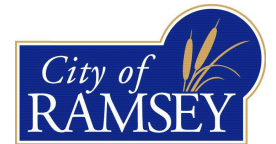
Subd. 3. **City defined.** For purposes of this section, "city" includes statutory and home rule charter cities.

Subd. 4. **Procedure.** For the purposes of this section, the proceedings of the city council shall be in accordance with the procedures set forth in section 164.07, except that references in section 164.07 to "town," "town clerk," "town board," or "town costs" shall be construed to mean references to "city," "city clerk," "city council," or "city costs," respectively, or equivalent terms, as required by the context.

History: 2006 c 236 art 1 s 3; 2009 c 30 art 3 s 3

Site Location Map

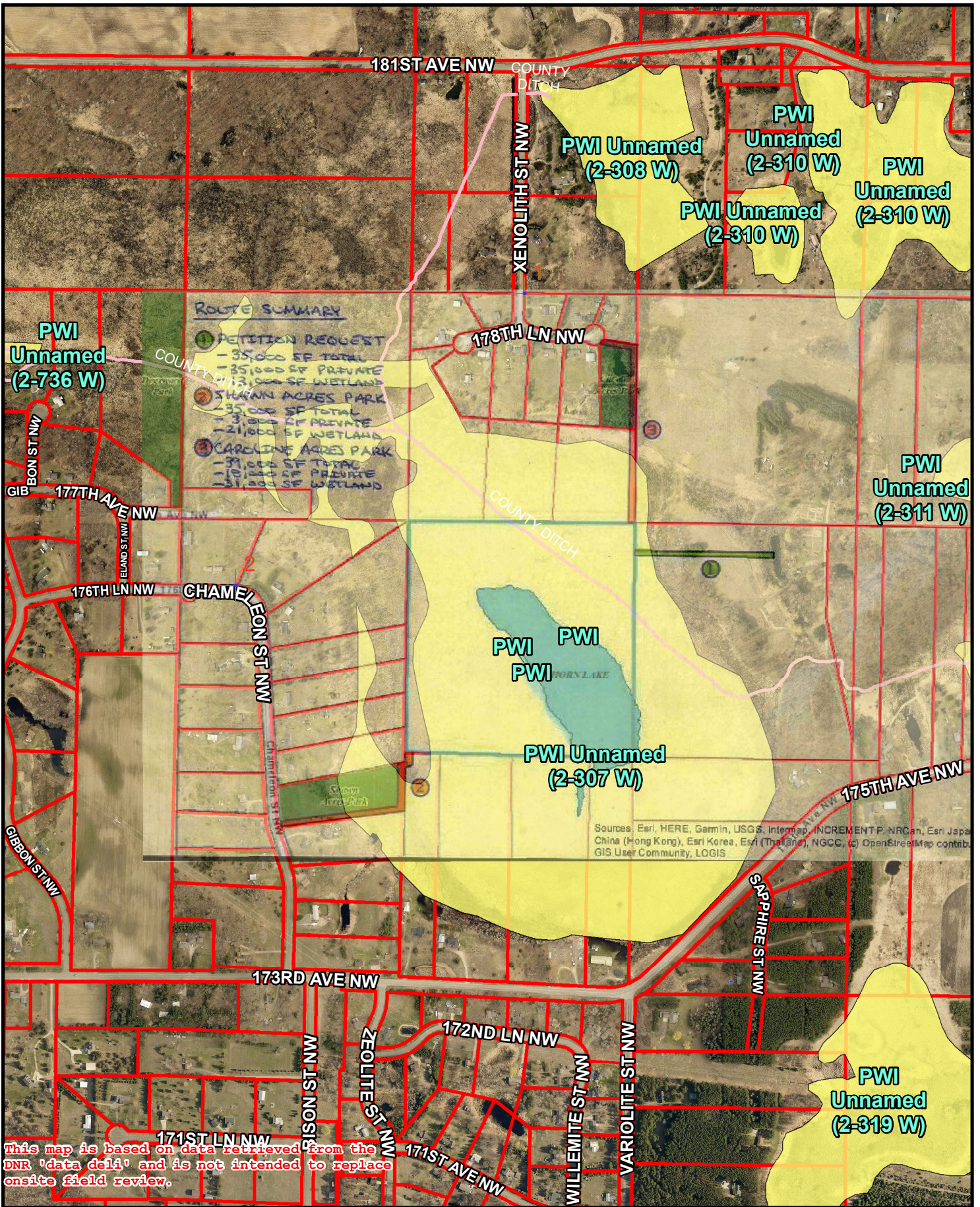
Cartway Request



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community, LOGIS

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This map is based on data retrieved from the DNR 'data deli' and is not intended to replace onsite field review.

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 Use with caution.**

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