

## Township Roads: An Overview

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This paper is intended to provide a checklist format overview of key issues related to town roads. Additional and more detailed information can be obtained from *Town Roads: An Update to the Manual on Town Government* and from numerous papers in the MAT Information Library. Citations to Information Library materials are provided throughout this paper in the form of Doc. # TRxxxx.

### I. Common Terms

This section is intended to summarize both the legal definition and the commonly accepted use of certain terms related to township road issues.

- a. “Road” - Generically, the term road includes trunk highways, county state-aid highways, county highways, city streets, and town roads, including all bridges and other structures needed to make up the road. (Minn. Stat. § 160.02, subd. 7). In casual conversation, the term “road” is generally intended to refer to the improved portion of a right-of-way that is actually used for travel by vehicles.
- b. “Town Road” – Minn. Stat. § 160.02, subd. 5, defines a town road as being any road or cartway which has been established, constructed, or improved under the authority of the town board, or a road established, constructed, or improved by the county which was subsequently maintained by a town for a period of at least one year prior to July 1, 1957. In addition, Minn. Stat. § 163.11, subd. 5 allows a county to force a township to take over a county highway as a town road.
- c. “Right-of-way” – While Minn. Stat. § 160.02 does not define the term “right-of-way,” the commonly accepted use of the term is generally the same as the definition provided in Minn. Stat. § 84.787, subd. 10 which uses the term to refer to the “...entire right-of-way of a town road or a county, county state-aid, or trunk highway, including the traveled portions, banks, ditches, shoulders, and medians”. Minn. Stat. § 237.162 defines “Public Right-of-Way” as the area “... on, below, or above a public roadway, highway, street, cartway, bicycle lane...including other dedicated rights-of-way for travel purposes and utility easements of local government units.”
- d. “Easement” – Black’s Law Dictionary defines an easement to simply be “the right of use over the property of another.” An easement can either be a public easement, which essentially means that everyone can use the otherwise private property, or a private easement which confers the benefit of use to one person or a limited number of people, but not the public at large.
- e. “Cartway” – While cartways are included in the generic definition of roads, they are a special creation established under Minn. Stat. § 164.08. The term cartway is actually never defined in statute but refers to a means of access to a parcel of land (most

commonly at least five acres or more in size) that would otherwise be landlocked. While created by order of the town board, cartways are generally intended for the benefit of the owner(s) of one parcel of land and generally must be paid for and maintained by the benefiting party. Unless they are expressly converted into a private driveway, however, they do constitute a public right-of-way. (Doc. # TR1200)

- f. “Minimum-Maintenance Road” – A minimum maintenance road is one that the governing body has determined, by resolution, to be used only occasionally or intermittently and thus does not need to be maintained to the same level as a regular road in the jurisdiction (see Minn. Stat. § 160.095). Contrary to popular belief, designating a town road minimum-maintenance does not mean that it can be ignored completely as it must still be maintained (i.e. graded, plowed, etc.) to the level necessary to provide safe access for the use normally serviced by the road in question. (Doc. # TR1000 and TR8000)
- g. “Rustic Road” – According to Minn. Stat. § 160.83, any road not in the state-aid system can be designated by resolution of the governing body as a rustic road if it has “outstanding natural features or scenic beauty”, and has a volume of traffic less than 150 vehicles per day, is open for year-round use, and has a maximum speed limit of forty-five (45) miles per hour. Like a minimum maintenance road, a rustic road may be maintained to a lesser standard than a regular road in the community, but it must still be maintained to the level needed to provide safe access to the anticipated volume of traffic.
- h. “Rod” – The term rod refers to a unit of measurement that is equal to sixteen and one-half (16.5) feet. Thus, two rods equals thirty-three (33) feet and four rods would be sixty-six (66) feet.

## II. Is it Really a Town Road?

Whether a road is truly a town road for the purposes of determining township obligations, authority, and liability is a question that town boards must frequently deal with. To determine whether or not a road is a town road, there are two basic questions that must be answered: (1) How was the road established? and (2) Has anything been done to extinguish the town’s interest in the road? Both of these questions have several parts that will be summarized in this section of the paper. (Doc. # TR5000)

### A. Methods for establishing a town road.

Several methods can be used to establish a road as a town road. If by reviewing township and/or county records, any of the following actions can be shown to have occurred, a presumption of a town road interest is likely to exist.

#### 1. Formal Establishment by Town Board Action.

- Initiated either by action at annual town meeting pursuant to Minn. Stat. § 164.06 or by a petition signed by eight or more

resident property owners within a three-mile radius of the proposed road site (actual number of residents within radius if less than 8) pursuant to Minn. Stat. § 164.07, subd. 1. Regardless of how initiated, Minn. Stat. § 164.07, subds. 2 – 13 govern the process including the need for a public hearing, the need to state the need and public purpose for the road (for town roads initiated on or after 5/22/01), the finding or waiving of damages, the right of affected property owners to appeal both the award of damages and the public purpose, and ultimately the issuing and recording of a road order with the county auditor. (Doc. # TR4000A)

## 2. Dedication by Use.

- Pursuant to Minn. Stat. § 160.05, a township may acquire a road as a township road by showing use and maintenance of the road for six or more consecutive years. This statute is a double-edged sword. On the one hand, it can be used by a township to show that a road is a town road and thus subject to control by town board action. On the other hand, it can also be used by a private party to force the township to maintain a road that the board does not wish to maintain any longer and thus declares not to be a town road. A township may only acquire an interest in a road under this provision to the width of actual use and maintenance, and not to the full sixty-six foot default width recognized by assorted statutes as the official width of a road.

## 3. Dedication by Owner.

- Minn. Stat. § 164.15 allows an owner of land to dedicate a portion of that land to be used as a township road. This is frequently done by developers of a subdivision who build a road and then wish to turn the road over to the township for maintenance. To accept the land/road, the board must pass a resolution accepting the land/road within ten (10) days of receipt of the written petition of the landowner. Before accepting a previously built road, the township will want to ensure that it meets all necessary standards. If the board is simply accepting the land for use as a road, it must follow the procedure outlined above for establishing a road by board action before an actual town road will exist. A copy of the resolution accepting the land/road must be filed with the county recorder. (Doc. # TR4000B and TR4000C)

#### 4. Reversion by County.

- A county board may revoke the status of any county highway and revert the road back to the township pursuant to Minn. Stat. § 163.11, subd. 5. The road must first be repaired to full county standards and must be properly recorded. In addition, the county remains responsible for maintenance costs for the first two years following reversion.

#### 5. Common Law Dedication.

- This is not a very common occurrence, but the courts have recognized a theory that where a tract of land has been used by the general public as a public road, it should be treated as a public road even though no official dedication has occurred pursuant to Minn. Stat. § 164.15 or other statute. Even though a public road interest may be established, this method does not automatically create a township obligation to maintain and regulate the right-of-way. However, there is caselaw that states that the an impassible road action pursuant to Minn. Stat. § 163.16 can be sustained in some situations arising under this type of road creation.

In addition to the above methods by which a town road interest may be created, property for a town road can be acquired by gift, purchase, eminent domain, or by dedication in a plat. However, the existence of an easement or other right to establish a town road on a piece of property does not create the actual road and in most cases formal board action is required as discussed above. An unopened road that has been dedicated by plat has the practical effect of serving as a cartway.

To document the township's legal interest in a road, the town board may want to consider officially recording the road. There are two statutes that can be used to record township roads (1) Minn. Stat. § 160.085 and (2) Minn. Stat. § 164.35, known as the "alternative recording method".

### B. Methods for Extinguishing a Town Road Interest.

Once it has been determined that a town road interest has been created by one of the methods described in Section A, the second step is to determine if the interest has been extinguished either by intentional act of the town board, or in some situations, by their inaction.

#### 1. Vacating a Town Road.

- The formal process for vacating a town road interest is governed by the same the statutes as for establishing the road by board action (Minn. Stat. § 164.06 and § 164.07). In other words, the

board must either receive a proper petition to vacate the road, or it must be so authorized by the residents voting on the question at an annual town meeting, and then the rest of the process as outlined above must be followed but the purpose will be to determine that there is no longer a public need for a town road. It is important to note that this process can be used for platted roads, thus eliminating the former need for the petitioning party to bring his/her request in district court as would otherwise be required to vacate a plat pursuant to Minn. Stat. § 505.14 (Doc. # TR4000A).

2. Formally Abandoning a Town Road (Extinguishment).

- A town board may, by resolution, declare a town road to be abandoned if the road is no longer needed for the public interest, the town does not own a fee interest in the land on which the road is located, the road is at least twenty-five (25) years old but has never been recorded with the county recorder, and no road improvement or maintenance has occurred within the right-of-way for at least twenty-five (25) years. (See Minn. Stat. § 164.02, subd. 2.) (Doc. # TR4000D)

3. Abandonment by Estoppel.

- Estoppel is a legal term that is based on the concept of fairness. In practice, it serves to prevent someone from doing something that the court believes would create an unjust result based on the party's previous actions. When applied to town roads, an argument for abandonment by estoppel could arise in a situation where a township acquired the legal right to maintain a town road on a piece of property, but for whatever reason the road was never officially established, or if established has not been maintained, for a long period of time and yet the road interest has not been formally vacated or recognized as abandoned by the board even though all other actions would indicate that the board intended to extinguish its interest in the road in favor of the property owner.

4. Marketable Title Act. (a.k.a. 40 year law)

- The Marketable Title Act is found in Minn. Stat. § 541.023 and essentially provides that if a public entity such as a township fails to perfect its interest in a right-of-way within forty years of having obtained the right, that right is forfeited and the property

owner regains full use of the land free from any easement for the road interest that was not perfected by the establishment, maintenance, or recording of the road interest within the forty year period preceding the initiation of the legal proceeding to clear the property's title pursuant to Minn. Stat. § 541.023.

### III. Regulating Use of Right-of-Way

Once a township has determined that it has a valid interest in a particular right-of-way, it can exercise its authority to regulate use of the right-of-way. Minn. Stat. § 164.02 states that town boards "...shall have supervision over town roads...." This provision appears to give town supervisors broad authority to control the use of township roads. Additional authority can be found in a variety of statutes, and in the absence of other express authority, a town board can always rely on its general authority to adopt ordinances intended to protect the public's health, safety, and welfare as provided in Minn. Stat. § 365.10, subd. 17, (Minn. Stat. § 368.01, subd. 19 for urban towns). This section will identify some of the most common sources of authority for regulating the use of township roads and rights-of-way.

#### A. General Statutory Restrictions

- a. Prohibited uses within public right-of-way (Minn. Stat. § 160.27, subd. 5)
- b. Public nuisance defined within public right-of-way (Minn. Stat. § 609.74)
- c. General Authority – (i.) Recorded Roads (Minn. Stat. § 164.36); (ii.) Traffic Control (parking, one-ways, etc.) (Minn. Stat. Ch. 169, esp. § 169.04)

#### B. Regulating Certain Types of Vehicles

- a. All types of recreational vehicles (Minn. Stat. § 84.90, subd. 6)
- b. Off-highway motorcycles (Minn. Stat. § 84.795, subd. 8)
- c. Off-road vehicles (Minn. Stat. § 84.804, subd. 6)
- d. Snowmobiles (Minn. Stat. § 84.87, subd. 3)
- e. All-terrain vehicles (Minn. Stat. § 84.928, subd. 6)
- f. Golf Carts (Minn. Stat. § 169.045)

#### C. Speed Limits (Doc. # TR7000)

- a. Default Statutory Limits (Minn. Stat. § 169.14, subd. 2)
- b. Modifying Default Limit (Minn. Stat. § 169.14, subd. 5)

#### D. Weight Limits

- a. Default Statutory Limits (Minn. Stat. §§ 169.80 – 169.872)
- b. Setting Additional Limits (Minn. Stat. § 169.87)

#### E. Signs (Minn. Stat. § 169.06)

#### F. Moving Buildings Over (Minn. Stat. § 160.26)

- G. Utilities (Minn. Stat. § 164.36(6), § 222.37, §§ 237.162 -.163); Minn. R. Chap. 7819)
- H. Private Use of Right-of-Way
  - a. General Landowner's Rights v. Safe Right-of-Way
  - b. Mailboxes (Minn. Stat. § 169.072)
  - c. Drain Tiles (Minn. Stat. § 160.20)
- I. Approaches / Culverts (Minn. Stat. § 160.18) (Doc. # TR9000)
- J. Special Designations
  - a. Bike Lanes (Minn. Stat. § 160.263)
  - b. Minimum / Rustic Designations
- K. Closing a Road (Minn. Stat. § 164.152)

#### IV. Maintenance

Town road maintenance is probably the single largest expenditure for township in term of both time and money spent. This section will summarize a town boards' general authority to do maintenance work, the duty to conduct certain types of maintenance, and the restrictions that must be observed. By understanding these issues, a town board can greatly reduce its liability exposure.

- A. General Duty (Liability)
  - a. Regular Town Roads
  - b. Minimum Maintenance (Minn. Stat. § 160.095, subd. 4) (Doc. # TR1000)
  - c. Rustic (Minn. Stat. § 160.84, subd. 5)
  - d. Impassible Road (Minn. Stat. § 163.16)
  - e. Line Roads (Minn. Stat. §§ 164.12 – 164.14)
- B. General Authority and Restrictions
  - a. Statutory Authorities
  - b. Determining Width of Right-of-Way
  - c. 25 year rule (Minn. Stat. § 365.10, subd. 11)
  - d. Cartways (Minn. Stat. § 164.08, subd. 2(d), § 164.10)
  - e. Altering route (widening, straightening, etc.) (Minn. Stat. §§ 164.06 – 164.07)
- C. Grading, Graveling, Plowing
- D. Blacktopping
- E. Trees, Brush, Weeds, etc. (Minn. Stat. §§ 160.22 – 160.232) (Doc. # TR6000 and # TR9000)
- F. Abutting Property Owner (Minn. Stat. § 366.015)
- G. Closing by Barricade (Minn. Stat. § 164.152)

- H. Vehicle Operator Liability for Damage (Minn. Stat. § 169.08)
- I. Contract Requirements

V. Financing Road Projects

Whether constructing a new town road, or altering or maintaining an existing town road, how to finance the project is frequently a major problem for the town board. This section will identify some of the most common methods for financing town road projects.

- A. Road and Bridge Account
- B. Authorized General Levy / Surplus Funds
- C. Gas Tax
- D. Certificates of Indebtedness (Minn. Stat. § 366.095)
- E. Bonds
- F. Subordinate Service Districts (Minn. Stat. Ch. 365A)
- G. Special Assessments