

AMADOR TOWNSHIP ROADWAY POLICY

January 2016

“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.

ROAD MAINTENANCE BASICS

- Road Maintenance = biggest expenditure of a Township in terms of both time and money.
- General duty and general authority related to road maintenance are included in MN Statutes, “the Road Laws”, in Chapters 160 through 165 and 169.
- Chapter 164 entitled Town Roads authorizes Townships to maintain and supervise Town Roads.

ROAD ELEMENTS

- Right of Way – the overall width of the Road
- Travel Way – driving surface
- Shoulders – supports the driving surface, often integral with the driving surface of a gravel surfaced road
- In-slope – supports the driving surface and is part of the ditch
- Ditch – supports the road bed, conveys water, provides for snow storage
- Back-slope – part of the ditch
- Appurtenances – such items as culverts, road signs, public utilities, mailboxes, E911 signs, etc.

ROAD MAINTENANCE

The work accomplished on a roadway to maintain the original design or initial conditions and subsequent improvements; made up of two types:

- Routine – work which can generally be completed by maintenance staff in the field without engineering.
- Non-Routine – work which requires professional analysis or engineering and possibly one or more permits.

No land owner is allowed to remove gravel from a township roadway or to place debris on a roadway.

No land owner is allowed to push snow/ice onto a township roadway creating a hazard. Minn. Stat. § 366.016

ROADWAY TERMS

- Travel Way or Driving Surface – impacted most by good surface gravel and CROWN: note desirable crown is ½ inch per foot or 4 % and is important in dealing with a critical issue for good road maintenance – drainage, drainage, drainage!
- In slope – 2:1 slope should be minimum with 4:1 preferred for improved safety for errant (run-off the road) vehicles.
- Ditch – consider 2-foot deep as minimum with a 2- foot bottom, wider and deeper as required for proper drainage.
- Back slope – “natural” to right of way limits or to blend with surrounding topography, match inslope when possible.

ADDITIONS, UPGRADING AND/OR CHANGES TO TOWNSHIP ROADWAYS

Landowners along a township roadway can request upgrading and/or blacktopping of their road.

Landowners on that roadway will be charged for any and all costs of the roadway improvements with the following exception:

If upgrading of the roadway is for any use other than rural residential or personal agricultural use, the cost of the upgrade will be charged in its entirety to the entity requesting/needing the improvements. In that case, no residents along the roadway will be charged for improvements.

Affected land owners will all be contacted by the township of any such request and notified of a special meeting to address changes to their roadway.

Upgrading/changes needed for a township roadway due to proposed platting:

- Dependent on the location, size and number of the lots, the costs for upgrading a township roadway will be assumed by the property owner.
- The Town Board reserves the right to require a bond to assure completion of any and all roadway work required by a plat.

PRIVATE PROPERTY ACCESS

During all twelve months of the year, all residents are required to provide adequate ingress and egress for emergency vehicles on their driveway and site. In the case of fire trucks, this includes adequate clearance for any emergency vehicle to access property without damage to their vehicles and room for them to turn around on your property. If you require any other information on this requirement, please contact the fire chief. (www.amadortownship.com)

TOWNSHIP ROADWAY MAINTENANCE

Winter

Snow will be plowed from roadways when there is an accumulation of three to four inches. Roads are not plowed to a bare surface.

If roads become ice covered, the township has contracted with Shafer Township for an application of trap rock or sand to improve drivability.

Spring - Fall

Roads will typically be surface bladed after an adequate rainfall in non-snow months.

During very wet or flood conditions—roads may need to be closed to all traffic. Land owners along the roadway will be contacted.

Dust control is applied at the discretion of the road supervisor.

Gravel roadways within the township receive an application of gravel about every five years on a rotating basis.

Driveway entrances and mailboxes are under the authority of the Chisago County Environmental Services Department.

Mowing Roadsides (Minn. Stat. § 160.232)

a. The sides of town roads may not be mowed or tilled by the township except as follows:

i. The first 8 feet from the road surface, or shoulder if one exists, may be mowed at any time.

ii. From July 31 to August 31 the entire ROW may be mowed.

iii. After August 31 to the next July 31, the entire ROW may only be mowed if necessary for safety reasons, and may not be mowed to a height of less than 12 inches.

iv. Mowing may be mowed to maintain sight distance for safety and at other times as provided by rules adopted by the commissioner of MnDOT or by local ordinance (provided the ordinance does not conflict with the commissioner's rules).

4. Noxious Weed Control (Minn. Stat. § 160.23)

a. Town boards are required to cause all noxious weeds in town road ROW's to be cut down or otherwise destroyed or eradicated as often as may be necessary to prevent the ripening or scattering of seed and other propagating parts of such weeds.

5. Brushing (brush and trees that are smaller than 6" in diameter)

a. Determine a need for the brushing.

b. Give notice to the owners of the board's intent to brush

c. Make sure no brushing occurs outside of the ROW. Make this very clear to the contractor.

6. Use of Chemical in ROW's

a. If the town is hiring someone to apply chemical, the person must hold a commercial applicator license (farmer's license is not a commercial license).

b. A town employee applying pesticide to the ROW must hold a noncommercial license if restricted use pesticides are being used.

c. In both cases, the person must have taken and passed the General Ground and Rights of Way categories of the licensing test.

d. Contact the Department of Agriculture if there are any questions.

7. Tree Trimming

a. No established statutory procedure. Authority to trim arises out of the authority to maintain the road and protect public safety.

b. Notify owners prior to trimming.

c. Do not: Trespass when trimming; Overreach private property; Use chemical to trim; Trim more than is needed; Leave a mess, even if it is in the ROW.

8. "Tree" Cutting Considerations

a. How is "tree" defined in the statutes?

i. For the purposes of the tree removal statute, "tree" is defined as "a tree or woody perennial shrub or vine which is at least six inches in diameter, as measured at a point two feet from the ground." Minn. Stat. § 160.22, subd. 7a.

1. Note: the requirements associated with cutting a "tree" under the statute also apply to "hedges," which are defined as "any planted and maintained hedge within the road right-of-way."

b. Who owns the tree?

i. The adjacent landowner usually owns the trees that grow in the ROW. Adjacent owners own the wood of unacquired trees cut in the ROW. Minn. Stat. § 160.22, subd. 8.

1. "In this state the title of the owner of land extends to the center of a street or highway abutting thereon, and includes all trees, sand, gravel, and other appurtenances situated or being upon or within the same, subject to the

general public right to take and use any thereof as may be necessary in the improvement of the highway for public use.” *Town of Rost v. O'Connor*, 176 N.W. 166 (Minn. 1920).

ii. The town is considered to own a tree in the ROW if it owns the ROW in fee, planted the tree, or acquired the tree through gift, purchase, or eminent domain.

9. Tree Removal Options

Prior communication to the owners and renters is extremely important before attempting to undertake any of these options.

a. Obtain written permission from the adjacent land owner

i. Specifically identify and mark the trees to be cut.

ii. The written permission should indicate what is to be done with the wood.

iii. Make sure the contractor knows which trees to cut and those not to cut.

b. Purchase the trees through direct negotiation

i. Agree on a reasonable price for the trees and execute a written purchase agreement.

c. Invoke the statutory tree removal procedure (Minn. Stat. § 160.22, subd. 10)

i. Establish reasons why the trees need to be removed

1. Must determine that the trees interfere with the maintenance or reconstruction of the road, or with the safety and convenience of the public.

2. Be sensitive to the fact that the trees have likely been there for a long time and prior boards did not identify a need to cut them.

ii. Give written notice of intent to cut trees

1. At least 14 days before the cutting is to begin, written notice must be given to the owner of the adjacent property. Also give notice to any renters of the property. The notice must plainly advise of the right to request a hearing. The owner must be allowed at least 14 days to request the hearing. The notice should state the specific deadline for requesting a hearing and how and to whom the request must be made.

iii. If a hearing is not requested, the cutting may proceed and the wood must be placed on the owner’s property adjacent to the road, doing no unnecessary damage.

iv. If a hearing is requested, the board must conduct a hearing. Minn. Stat. § 160.22, subd. 5.

1. The board must set a time and place for the hearing.

2. At least ten days written notice of the hearing must be given to the owners (and renters).

3. The owners must be given an opportunity to be heard at the hearing.

4. Determine if the tree(s) interferes with safety or maintenance of the road – be as specific as possible.

5. Develop a written order or resolution containing the reasons for cutting the tree, the board’s findings, and the decision of whether the town will cut the tree(s). Minn. Stat. § 160.22, subd. 6. The order or resolution must be delivered to the owner (and renter).

a. The board may determine not to cut the trees.

6. The owner has 30 days from receipt of the order to appeal the decision to the district court. Minn. Stat. § 160.22, subd. 7. Do not cut the trees until after the appeal period is over.

LANDOWNERS PLANTING IN RIGHT-OF-WAY

a. Keep in mind the width of actual use and maintenance issue.

b. It is a misdemeanor to: “obstruct any highway”; “plow or perform any other detrimental operations within the road right-of-way except in the preparation of the land for planting permanent vegetative cover”; erect a fence on the right-of-way of a . . . town road, except to erect a lane fence to the ends of a livestock pass”; dig any holes in any highway”; “obstruct any ditch draining any highway” Minn. Stat. § 160.27, subd. 5.

c. If a planting occurs and you are certain it is in the ROW

i. Determine if it is or will be a maintenance or safety problem

ii. If the board determines it is a problem, record the reasons for its determination in the minutes of the meeting and promptly notify the owner of the need to remove the planted item(s).

iii. If the owner fails to remove the planting, send the owner a written order indicating the item must be removed by a specific date.

iv. If the owner fails to act by the date, send another letter indicating the owner’s failure to act and again ordering the removal by a specific date. Indicate the town will have the item removed if it is not removed by the specified date and the owner will be billed for the costs.

v. If the owner still does not act, and the board is sure the item is in the ROW, it can have the item removed.

1. Consider the safety of the workers who will be removing the item.

2. Do no unnecessary damage to the item or the property.

vi. May send the bill to the owner, but absent specific statutory authority you may not place the costs on the owner’s property taxes.

12. Planted Snow Breaks

a. If working in cooperation with an owner to plant trees on private property to protect the road from drifting problems, be sure to execute and record an easement against the property.

DITCHING

Public Projects: As the road authority, town boards are authorized to repair, clean out, deepen, widen, and improve town road ditches. Minn. Stat. §§ 160.201, subd. 1; 164.36 (8). The board determines when such work is necessary. However, before any ditch work is done, the board must examine and determine that the ditch will be provided with an adequate outlet.

When a town constructs a new road, or relocates or reconstructs an existing road, it is required to construct a suitable approach to the adjacent parcels within the right-of-way when the approach is reasonably necessary and practicable to provide abutting owners a reasonable means of access to their property. Minn. Stat. § 160.18, subd. 2.

Statutory authority exists for owners within a town to petition to have the question of creating a town road drainage tax submitted to the electors at the town election. Minn. Stat. § 164.05.

If approved, the town board is authorized to annually levy a tax to be placed in the town road drainage fund. The funds are to be used to pay the cost and expenses of draining the public roads in the town. This specific taxing authority remains until the electors at a subsequent town election withdraw it.

Culverts: In 1998 the law was changed to place the primary responsibility for paying for culverts on the abutting property owners. Minn. Stat. § 160.18, subd. 1. Previously, the town carried the responsibility to pay for culverts in approaches unless the town electors voted at an annual meeting to place the responsibility on the owners. Under the amended law, when a town board gives an owner permission to construct an approach, the owner is now responsible for paying for the culvert if one is needed in the approach. If the town board chooses, it can adopt a policy by resolution to make the town responsible for part or all of the cost of culverts needed for approaches in town roads. If the town is building an approach because it is building a new road or moving a road as is required under Minn. Stat. § 160.18, subd. 2, it should continue to pay for the culvert if one is needed – even if the board has not adopted a policy of accepting responsibility for paying for culverts.

ROAD TOURS

Road tours by township officials ensure the public health, safety and welfare regarding the use of public roads.

Township officials shall do a yearly road tour to:

- (1) observe and record overall conditions of your roads and ditches and
- (2) identify needed maintenance.

All elements of a road need to be inspected/observed on a regular basis – note what has changed since the last tour.

A tour with all supervisors is ideal, a minimum of one supervisor assigned to roads and maintenance staff or contractor is acceptable..

ROAD TOUR CHECK LIST

- Check the driving surface for unusual conditions or degradation along with suspicious wear & tear which may become a safety concern suggesting needed maintenance.
 - The overall right-of-way should be scanned for tree windfalls, debris or discarded garbage, etc.; items which may pose a liability risk or restrict lawful uses of the right-of-way and/or impact water quality.
 - Look for detrimental effects of snowplowing or late spring rainfalls which can cause high shoulders or excess material to wash into ditches adversely affecting drainage.
- Identify routine maintenance work that needs to be accomplished and non-routine work that needs special analysis or engineering.

Check the condition of culverts, traffic signs, public utilities, mailboxes:

- Culverts – look for crushed ends from snowplowing especially at entrances, note scour & erosion requiring end treatments.
 - Traffic Signs - are they visible, not bent from snowplowing, or other damage?
- Public Utilities – open or bent-over junction boxes, loose guide wires, sagging lines and leaning poles... **IF** it looks unusual it is likely a public nuisance or safety concern. Report it to the utility owner.
- Mailboxes – conforming or non-conforming; can be a safety concern.

PRIMARY RESOURCES

MAT (Minnesota Association of Townships)

1. Manual on Town Government – updated annually
2. Information Library, especially Town Roads – online at www.mntownships.org
3. *Minnesota Township Insider* magazine – current topics