

## **TREE & VEGETATION CONTROL IN TOWN ROAD RIGHTS-OF-WAY**

### **1. Why is this issue important?**

- a. Public safety, maintenance duty, private property rights, emotional elements, liability pitfalls.

### **2. The “Big Problem” – Duty vs. Authority**

- a. Duty to maintain town roads – imposed by statute and common law
- b. Authority to maintain town roads – given by statute and common law
- c. Limitations of the authority
  - i. Must follow the procedures required in the statute
  - ii. The authority can only be exercised, for the most part, within the road right-of-way (ROW)
    - 1. Boundaries of the ROW are usually not clear; even if a map of all the roads was developed and recorded under the town road mapping authority. (Minn.Stat.164.35)
    - 2. The width of most ROW's is described as the “width of actual use and maintenance.” Minn. Stat 160.05, subd.1.
      - a. What does “width of actual use and maintenance” mean?

**Rule of Thumb:** Except for platted roads and roads supported with a road order recorded in the county recorder's office, assume the road is only the width of actual use and maintenance.

### **3. 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 160.32)**

- 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 – via newsletter or website.
- 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. Min. 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 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 board 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.
- d. Tree Removal Procedure for Platted Roads (Minn. Stat 160.22, subd. 11)

- i. Town boards are given greater discretion to cut trees within ROW's dedicated by plat.
- ii. Despite the much broader authority, it is still recommended the board give the owners notice before cutting.

#### **10.Owner Obligation to Maintain roadsides (Minn. Stat. 366.015)**

- a. Town board can decide to submit to the voters whether owners will be responsible for maintaining roadsides.
- b. The issue must be submitted by ballot at the town election. The question must read: "Shall persons who own or occupy real estate that adjoins a town road and is not a part of an incorporated municipality be required to remove rocks, larger than five inches in diameter from and to cut, destroy or remove all weeds, grass and other plants up to three inches in diameter that grow upon the town road adjacent to their land?"
- c. If the question is passed, the owners become responsible to remove or cut the items listed. If they fail to perform the maintenance, the board can, after providing them written notice, have the work done and certify the costs to the county auditor to be placed on the person's property taxes.
- d. The board should adopt a resolution or ordinance setting out the details of this obligation to help the owners understand what their obligations are and to aid enforcement.

#### **11.Owners planting/placing landscaping materials in the ROW**

- 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/landscaping materials occur 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/landscaping materials, 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 not 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**

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

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