

Looks Like a Road, Drives Like a Road. I'm Not Convinced.

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This happens all the time ...

- ▶ Start from the beginning - How was the road created?
- ▶ Then, was it lost in any way?
- ▶ How do we know? What do we look for?

Formal Establishment

Minn. Stat. 164.07

- ▶ Starts by Petition or Annual Meeting;
Notice; Hearing; Creation
- ▶ How do We Know?
 - ▶ Find a Road Order
 - ▶ County Recorder (Best); County Auditor (Good); Town Records (its something)
 - ▶ Other records can indicate a formal creation – minutes, resolutions, payments to surveyors, damage award payments.

They Changed the Rules in the Middle of the Game

- ▶ Pre-1973 – Road Orders recorded with Clerk and County Auditor
- ▶ Post-1973 – Road Orders recorded with County Recorder
- ▶ In 1976, *Sterling Twp. v. Griffin* –
 - ▶ MN Sup Ct decides filing in Auditor does not satisfy Marketable Title Act (40 Year Law)

Prescriptive Easement

Minn. Stat. 160.05

- ▶ Use & Maintenance Roads
- ▶ 6 Consecutive Years of Maintenance & Open to public use
- ▶ Look for records of maintenance in minutes; road tour notes; purchase orders; oral history from road operators; bank records; satellite maps (they go back in time!)

Owner Dedication

Minn. Stat. 164.15, subd. 1

- ▶ Owner follows statute to offer road to town
- ▶ Find: owner's application; board resolution; discussion in minutes; road orders filed with county;

County Turnback

Minn. Stat. 163.11, subd. 5

- ▶ Process begins in the County Board
- ▶ Look for: Town & County Resolutions; notes of hearing/minutes; Road Orders;

Common Law Dedication

- ▶ Express or Implied Dedication to Public
- ▶ Road could be created instantly
- ▶ NOT a town road until accepted by Board
- ▶ Find: expressions of dedication by the owner; Town board minutes or resolutions;

Platted Road

Minn. Stat. 505.02

- ▶ Dedication by Plat – requires dedication of roads.
- ▶ NOT town roads until accepted by Board
- ▶ Find: Recorded Plat at County Recorder;

Not Your Problem?

- ▶ If the answer to these questions is no, then it is not a town road
 - ▶ Not your problem!
- ▶ If yes, then we decide if the easement was lost or never accepted

Once We Say “yes” – Did we kill it later?

- ▶ Even if easement was created, we need to know if the easement was lost in any way.
- ▶ Separate tracks for Platted Roads and other roads in Loss of Easement analysis

Formal Vacation

Minn. Stat. 164.07

- ▶ Reverse of formal creation
- ▶ Find: Road Order / Vacation Order at county recorder; minutes or resolutions; damage award payments;

Statutory Abandonment / Extinguishment

Minn. Stat. 164.06, subd. 2

- ▶ Quick vacation process, requires:
(1) Public Interest; (2) not a fee interest; (3) established 25+ years ago; (4) not recorded w/ Recorder; (5) no improvement for 25 years.
- ▶ Find: Board Resolution ordering extinguishment

Common Law Abandonment

- ▶ Requires: (1) long period of non-use; and (2) express intent to abandon
- ▶ Find: Expressions of intent to abandon; road tour notes; minutes & resolutions;

Marketable Title Act / 40 Yr Law

Minn. Stat. 541.023

- ▶ Unrecorded interests in land are void after 40 years of non-use or lack of possession
- ▶ Look for: evidence of maintenance or inspection; Minutes & resolutions; oral history from road maintenance crew or residents;

25 Year Law

Minn. Stat. 3654.10, subd. 11.

- ▶ Town cannot spend anything on a road without voter permission unless the voters approve “reopening” the road.
- ▶ Find: maintenance records; minutes & resolutions; history from maintenance staff; road tour notes;

Accepted for Maintenance

- ▶ Platted Roads & Common Law Dedications Only
- ▶ Without acceptance, no town maintenance even if not lost.

Cartways ... treat em like recorded roads

- ▶ Public Road, Privately Maintained
- ▶ Cartway establishment requires filing or a road order or plat, so its like a formally created road.

Town Line Roads

Let's Share

Minn. Stat. 164.12

- ▶ “Shall proceed” ... according to the statute
- ▶ Divide as equally as possible by expected cost ... not length
- ▶ “Shall enter into an agreement”
- ▶ Failure to Agree - county board decides.
 - ▶ Don't let it come to this
- ▶ Sample Contract - TR 11000