UNDERSTANDING MINIMUM MAINTENANCE ROADS

In 1985, the legislature created an opportunity for local road authorities to designate certain roads as minimum-maintenance. This statute, codified as Minn. Stat. § 160.095, provides two distinct benefits to town boards: (1) minimum-maintenance roads may be maintained at a level lower than other town roads; and (2) the town, its officers, and employees are provided protection from liability on minimum-maintenance roads. One of the most important things to remember about both of these benefits is that they only apply to minimum-maintenance roads that were properly established. Failure to comply with these requirements, or any of the other requirements contained in the statute, could expose the town to liability. To help avoid these risks, and clear up some of the misunderstandings that surround minimum-maintenance roads, the following will break down and discuss the various aspects of Minn. Stat. § 160.095.

The first thing to realize about this statute is that only certain roads are proper to designate as minimum-maintenance roads. The authority to designate a road minimum-maintenance is specifically conditioned on the town board finding the road is used “only occasionally or intermittently for passenger and commercial travel.” Minn. Stat. § 160.095, subd. 1. Therefore, attempting to designate a road receiving even moderate amounts of traffic could jeopardize the designation and the protections it offers. If there are homes on the road, a town board should be hesitant to designate a road as minimum-maintenance, because school buses and postal carriers often refuse to travel on minimum-maintenance roads, designating a road minimum-maintenance could significantly affect homeowners. In addition, the lower level of maintenance on these roads could raise concerns over access by emergency vehicles. These concerns should lead any board considering designating a road with homes or other structures on it to proceed with caution and in cooperation with the owners on the road.

Once the board determines a particular road is eligible, the next step is to pass a resolution making the designation. The resolution must include a description of the road, the board’s determination that the road qualifies under the statute, and a description of the beginning and end points of the designation. See APPENDIX A for a sample resolution.

After the resolution is passed, the board must have minimum-maintenance signs “posted at the entry points to and at regular intervals along a minimum-maintenance road.” Minn. Stat. § 160.095, subd. 2. The designation is not effective until the proper signs are erected. The signs must conform to the Minnesota Department of Transportation’s Manual of Uniform Traffic Control Devices. The Manual provides the following standards and guidance:

Standard: “The signs shall be posted at entry points to and at regular intervals along a minimum maintenance road. 2014 MN MUTCD, 5C.11.1.

The statute does not define “regular intervals.” Boards will have to establish their own definition of regular intervals and then apply it consistently on all of its minimum-maintenance roads. However, it is recommended that the signs be posted no less than every mile along the road.
Thought should also be given as to where the entry points of the minimum-maintenance road are placed. If the minimum-maintenance portion of a road does not begin at an intersection, realize the ominous “travel at your own risk” message on the sign may cause some drivers to attempt to turn around at that point. Therefore, placing the entry points in areas that have steep slopes or which are wet could result in property damage or serious injury.

When a town board designates a road minimum-maintenance, it is also required to notify “adjoining jurisdictions” of the designation. Minn. Stat. § 160.095, subd. 1. Because the statute does not define what is meant by adjoining jurisdictions, it is recommended that the board send a copy of the resolution to all neighboring townships, all cities within the township or who share a boundary with the township, and the county. This may seem a bit excessive, but it is always better to take the extra steps when confronted with an ambiguity in the statutes.

Certain limitations accompany the minimum-maintenance designation. One of the limitations listed is that “[a] road may not be designated a minimum-maintenance road if federal-state aid to Minnesota will be reduced as a result.” Minn. Stat. § 160.095, subd. 3. The Minnesota Department of Transportation Office of State Aid has indicated that designating town roads as minimum-maintenance has no impact on the aid received by Minnesota. As a result, this limitation does not affect town roads.

Another limitation prohibits road authorities from acquiring additional right-of-way for the purpose of constructing or designating a minimum-maintenance road without the consent of the landowners. Minn. Stat. § 160.095, subd. 3. An exception is provided in cases where the additional right-of-way is needed for drainage or public safety. Again, this is usually not a problem for town boards since minimum-maintenance roads are rarely constructed or enlarged through the acquisition of additional right-of-way. More often, existing roads are downgraded to minimum-maintenance and then maintained within the previously established right-of-way boundaries.

A limitation is also provided with respect to line roads. If a town board designates a road, which runs along a county or town line as minimum-maintenance, the designation applies only to the part of the road under the jurisdiction of the designating town board. Minn. Stat. § 160.095, subd. 1. Because of this limitation, a town board should not attempt to designate a line road minimum-maintenance unless the neighboring town board is willing to also designate the road minimum-maintenance. The designation could either be made by a joint resolution passed by both board, or separated resolutions that reference each other.

Perhaps the most significant limitation imposed by the statute deals with a town board’s maintenance obligation. Once a road is properly designated and signed, the road “may be maintained at a level less than the minimum-maintenance standards required for state-aid highways, roads, and streets, but must be maintained at the level required to serve the occasional or intermittent traffic.” Minn. Stat. § 160.095, subd. 4 (emphasis added). Additionally, this statute does not “ exempt a road authority from its duty to maintain bridges under Chapter 165 or other applicable law.” Minn. Stat. § 160.095, subd. 4. Two common misconceptions related to this limitation or requirement are that either no maintenance at all is required on these roads, or that the
maintenance that is required does not include snow removal. The language quoted above refutes both of these positions.

Minimum-maintenance roads must be kept reasonably passable for the entire year to accommodate the occasional or intermittent traffic. There does, however, appear to some room for the board to consider the type and amount of traffic a road receives when determining the level of maintenance. A road used only by a couple of farmers to drive their tractors down to access their fields may warrant a different level of maintenance than a road leading to a boat launch. Also, use of the same road can change over time. Use of a field access road can change dramatically if a home or a large feedlot is built on it. Changes in use can necessitate the upgrading, or down grading, of the level of maintenance on a minimum-maintenance road. In fact, use of a road can increase to a point where the minimum-maintenance designation should be removed because the use is no longer occasional or intermittent.

Use of minimum-maintenance roads can also vary by season. Some roads receive the majority of use in the fall for hunting, and sit mostly unused for the rest of the year. A number of minimum-maintenance roads are not needed for vehicular traffic in the winter. In most instances it would be a waste of public funds to keep these roads plowed in the winter. In these cases, the board may want to consider closing and barricading the roads for the winter. However, if the road is used to gain access to cabins or other buildings, barricading the road will interfere with an owner’s access. This may not be a problem for the owners and may in fact be preferred to discourage property damage and theft. Because each road has its own unique set of circumstances, boards should work with the owners along the road to identify a solution that will meet everyone’s need regarding winter maintenance or the seasonal closure of the road.

If a board does decide to close a road, the closure must be done by resolution and sufficient barricades must be placed on the road. The resolution should at least describe the road, explain why it is being closed, indicate that it will be barricaded, and identify that it is being closed in accordance with Minn. Stat. §§ 160.16, subd. 3 & 164.152. See APPENDIX B for a sample road closure resolution. A single resolution can be used to close more than one road, but a new resolution should be passed every fall. Once a road is closed and barricaded, if someone drives through or around the barricade (which is a misdemeanor offense under Minn. Stat. § 160.2715 (a)(14) and becomes injured on the road, the board is provided additional liability protections by Minn. Stat. § 164.152.

After the roads dry out in the spring, the board can order the road be reopened. Keep in mind that if the board intends to close a road that is included in the miles of road the town claims for state aid (gas tax) purposes, the road cannot be closed for more than four months out of the year. In other words, a road must be kept reasonably passable for eight months out of the year in order for it to be counted for gas tax purposes.

Once a road is properly designated, “the road authority with jurisdiction over the road, and its officers and employees, are exempt from liability for any tort claim for injury to person or property arising from travel on the minimum-maintenance road and related to its maintenance or condition.” Minn. Stat. § 160.095, subd. 4. Do not allow this exemption to create a false sense of
security regarding a town board’s liability exposure on these roads. To date, this exemption has not been tested at the appellate court level. As with all matters of liability, it is extremely difficult to anticipate how a court will interpret language even as strongly worded as the exemption in this case. Chances of a negative interpretation increase if the town board is found not to have properly followed all of the procedural assignments for designating a road minimum-maintenance.

All town boards should review their minimum-maintenance roads to make sure they comply with the statute. The following points should be kept in mind when reviewing or designating minimum-maintenance roads: is the road eligible for the designation; if eligible, should it be designated given its character; is the proper resolution in place; are the required signs properly placed; has notification been provided to adjoining jurisdictions; does the town’s official road map list the road as minimum-maintenance; have the statutory limitations been considered; is the road being kept sufficiently passable to accommodate the occasional and intermittent traffic; if the road is not needed in the winter and is not being closed, is the board passing a resolution to close and barricade for the winter; and if the road is plowed and barricaded, is it for a period which does not interfere with its eligibility to be counted for gas tax purposes.

It is also very important for a town with minimum-maintenance roads to be able to locate the resolutions they passed to make the designation. Being able to produce the actual piece of paper containing the resolution could be critical to a board’s claim that a road was properly designated as minimum-maintenance. If the original resolutions cannot be found, it is recommended the board pass a resolution to reaffirm the designation on the roads. See APPENDIX D for a sample reaffirmation resolution. In this way, if a need ever arises to produce a resolution, the board can rely on the reaffirmation resolution.

Each minimum-maintenance road seems to have its own unique set of circumstances. Town boards need to remain aware of the unique nature of each road, but must be careful not to lose sight of the statutory requirements. These are still public roads that fill an important role in the state’s transportation system.
A RESOLUTION DESIGNATING A MINIMUM-MAINTENANCE ROAD

WHEREAS, Minn.Stat. § 160.095 authorizes a town board, as a road authority, to designate town roads as minimum-maintenance roads;

WHEREAS, the town board determines that the following described road [segment] is used only occasionally or intermittently for passenger and commercial traffic:

[describe the road or road segment]; and

WHEREAS, the town board determined, after balancing various policy considerations, that designating the road [segment] as minimum-maintenance serves the public interest by apportioning limited road maintenance funds;

NOW, THEREFORE, BE IT RESOLVED, that the town board of ______________________ Township, __________________________ County, Minnesota does hereby designate the above described road [segment] beginning at _______________________________ and ending at _______________________________ [as indicated on the attached map.] a minimum-maintenance road;

BE IT FURTHER RESOLVED, that minimum-maintenance signs shall be posted at the entry points to and at regular intervals, as determined by the board, along the minimum-maintenance road;

BE IT FINALLY RESOLVED, that the road authorities of adjoining jurisdictions shall be notified of this designation.

Adopted this _________ day of ___________________________, 20____.

By the Board

__________________________________________
Town Chair

Attest:  ____________________________
Town Clerk
A RESOLUTION TO CLOSE CERTAIN ROADS FOR THE WINTER

WHEREAS, the town board maintains a number of miles of roads within the township;

WHEREAS, the types and levels of uses are not uniform among these roads;

WHEREAS, the board determines that some roads are used only occasionally or intermittently and are not needed for vehicular traffic during winter months;

WHEREAS, keeping these roads snowplowed and opened during the winter would be an unwarranted drain on the township’s limited road maintenance budget;

WHEREAS, in some cases the topography of the land or the drifting patterns of the snow would make it extremely difficult to keep the roads reasonably free of snow;

WHEREAS, Minn. Stat. § 164.152 authorizes towns to close and barricade town roads under their jurisdiction;

NOW, THEREFORE, BE IT RESOLVED, that the town board of ________________ Township does hereby close the following roads or road segments:

[describe the roads and where on the road they are to be closed]

BE IT FURTHER RESOLVED, that barricades shall be erected on the roads or road segment along with appropriate road closed signs.

BE IT FINALLY RESOLVED, that the closures shall remain in effect until the town board orders the removal of the barricades and the road is reopened.

Adopted this _____________ day of _____________, 20___.

By the Board

__________________________
Town Chair

Attest: _________________________
Town Clerk
APPENDIX C

___________________________ Township
__________________ County, Minnesota

A RESOLUTION REAFFIRMING THE DESIGNATION OF CERTAIN ROADS AS MINIMUM-MAINTENANCE

WHEREAS, Minn. Stat. § 160.095 authorizes a town board, as the town road authority, to designate town roads as minimum-maintenance;

WHEREAS, the town board has previously designated certain roads in the township as minimum-maintenance;

WHEREAS, the town board determines that these roads continue to be used only occasionally or intermittently for passenger and/or commercial travel;

WHEREAS, the town board determines, after weighing policy considerations such as budgetary constraints and potential liability risks, to continue the minimum-maintenance designation on these roads;

NOW, THEREFORE, BE IT RESOLVED, that the town board of _________________ Township, _________________ County, Minnesota hereby reaffirms the minimum-maintenance designation of the roads, or portions of roads, listed in Appendix A, which is attached and made a part hereto, and that describes the beginning and end points of the designation on each road;

BE IT FURTHER RESOLVED, that the town board shall cause an inspection of the listed roads to be completed to confirm that the proper minimum-maintenance signs are posted at the entry points to and at regular intervals, as determined by the board, along the roads;

BE IT FINALLYResolved, that a copy of this resolution and Appendix A be sent to each adjoining road authority to inform them of this reaffirmation of the minimum-maintenance designations.

Adopted this _____________ day of _______________, 20__.

By the Board

___________________________________
Town Board Chair

Attest:__________________________________
Town Clerk