



IS THIS A TOWN ROAD AND DO WE HAVE TO MAINTAIN IT?

This resource guides town officers through the process of identifying if a road is a town road and if the town must maintain the road. The flowchart at the end of the document provides a process to identify whether a road or right of way was ever created, whether the right of way was lost, and if the town must maintain the road. The material here is a summary of the issues. Additional information is available in the MAT Information Library. Towns may also need the help of the town attorney to identify what, if any, interest the town has in a road.

How to Use this Guide: Begin with the flowchart at the end of the document in the *Was a Public Easement Created* section. Follow the chart to determine what interest the town holds on a road. If an easement was created, then move on to the *Was the Easement Lost* section. Each box in the chart corresponds to the numbered sections below. The numbered sections provide information about the concept listed in the boxes in the flow chart.

I. WAS A PUBLIC EASEMENT CREATED?

1. **Formal Establishment:** This refers to the statutory process of allowing towns to establish a road by acquiring the needed right-of-way by gift, purchase, or eminent domain. This process is found in Minn. Stat. § 164.07 of the statutes and involves the following: initiated by a petition of at least 8 resident owners, or by a vote of the electors; notice to the adjacent owners and the public; hearing; board decision on whether to establish the road; consideration and award of damages; as needed; recording of the road order; and opportunity for appeal. These roads are supported by road orders on record in the county recorder's office.
2. **Prescriptive Dedication:** This refers to the process whereby a public road is created under Minn. Stat. § 160.05, subd. 1 after six continuous years of township maintenance and public use, if a road purportedly created or maintenance is done on a road after August 2020, notice must be sent. These roads are established only to the width that they have actually been used and maintained over the six-year period. The level of use and maintenance required to trigger the statute is determined on a case-by-case basis; however, relatively little use and maintenance has been found to satisfy the statute.

3. **Owner Dedication:** This refers to situations in which property owners make an outright dedication of their land to the town for road purposes under Minn. Stat. § 164.15, subd. 1. The owners make the dedication by bringing an application to the town board. The board has the option to accept or deny the application.
4. **County Turnback:** Counties have the authority under to turn county roads over to the town. Minn. Stat. § 163.11, subd. 5 In order to turnback a road, the county must give the town notice of a hearing on the matter, conduct a hearing, make the repairs or improvements necessary to meet county standards for a comparable road, record the road if it has not been recorded, and maintain it for two years after it has been turned back to the town.
5. **Common Law Dedication:** This refers to the process through which a public road may be created by an expressed or implied dedication of land to the public by the owner and acceptance of the dedication by the public through use of the road. This form of dedication does not depend upon a prescribed time period and so the road could be created instantly under this process. This process does not require involvement by the town, and it usually does not create a maintenance obligation for the town. However, it is possible for maintenance by the town to constitute acceptance by the public of the owner's dedication. In these cases, a town maintenance obligation may be created.
6. **Platted Road:** Platted roads are those created by following the process described in Minn. Stat. ch. 505, in which a landowner subdivides a parcel, produces a map of the new subdivided parcels (called the plat), and files the plat in the County Recorder's office. Platted subdivisions must include certain features including roads that are dedicated to the public for transportation purposes. A 'dedication to the public for transportation purposes' is a dedication to the local government, held in trust for the local government until it chooses to accept the dedication. The township can accepted platted roads, but is not required to do so. A platted road is the responsibility of the owners within the plat until the road is accepted by the township.

II. WAS THE EASEMENT LOST?

1. **Formally Vacated:** This refers to the process in Minn. Stat. § 164.07 that authorizes towns to vacate town roads. This is the same process as the establishment procedure, but with an obviously different goal. The order vacating a road must be given to the county auditor and then filed in the county recorder's office.
2. **Extinguishment:** This refers to the process in Minn. Stat. § 164.06, subd. 2 that allows a town to extinguish its interest in a road by resolution. Only those roads that meet the criteria of the statute may be extinguished.
3. **Abandoned:** This refers to the rare situation in which a town is prohibited from asserting its interest in a road easement. Abandonment only arises where there has been: (1) long-continued nonuser by the town; (2) affirmative or unequivocal acts of the town indicative of an intent to

abandon, and inconsistent with the continued existence of the easement; (3) possession by private parties in good faith and in the belief that its use as a road has been abandoned; (4) the erection of valuable improvements thereon that the town has knowledge of and to which it does not object; and (5) the town reclaiming the land would result in great damage to those in possession. *Wolfson v. City of St. Paul*, 535 N.W.2d 384, 387 (Minn. App. 1995). Abandonment has only been found in a few cases.

4. **Public Maintenance in the Last 40 Years:** This issue relates to the application of the marketable title act to the road easement. Minn. Stat. § 541.023. The act presumes, with certain exceptions, that interests in property that are older than 40 years are abandoned. The act has been used by owners as a defense against a town attempting to reopen a road that has not been used for well over 40 years. They were able to show that the town had lost its interest in the road and, therefore, could not simply reopen it.
5. **Public Maintenance in the Last 25 Years:** This relates to the provision in Minn. Stat. § 365.10, subd. 11 which indicates that the electors may, by resolution passed at an annual or special town meeting, let the town board determine whether to open and maintain a town road that has not been maintained for 25 years. If the electors do not authorize the maintenance, the board may not spend town funds on the road. The alternative for the owners who need access is to petition for a cartway.
6. **Easement Probably Lost, So No Public Maintenance:** This statement of the result is an over simplification, but it is intended to point out that once the town loses its interest in a road, either intentionally or unintentionally, its maintenance responsibility is also lost.
7. **No Maintenance Without Elector Authorization:** This is the result under Minn. Stat. § 365.10, subd. 11, of a public road that has not been maintained for 25 years. If the electors do not pass a resolution letting the board decide whether to maintain the road, the town may not maintain the road. Even if the electors do pass the resolution, under the language of the statute the resolution merely authorizes the board to decide whether to open and maintain the road. The clear implication is that the board can decide not to maintain the road.
8. **Probably a Town Road That Must be Maintained:** This statement expresses a result where a public road easement was created and not intentionally or unintentionally lost. Since the road exists, the general town maintenance requirement applies. On platted roads, this result indicates that the town has triggered its maintenance obligation by accepting the road for maintenance purposes.
9. **Probably Not a Town Road and No Maintenance Responsibility:** This statement expresses a result where a road easement was probably not established. In such cases the town has no obligation to maintain a road it does not have.
10. **Public Easement Exists, But Private Maintenance:** This result relates specifically to platted roads and describes a situation in which the platted road has not been accepted by the town board for maintenance purposes. Until such acceptance, the road is typically maintained by those who need it as access.

FLOWCHART - IS THIS A TOWN ROAD AND DO WE HAVE TO MAINTAIN IT?

