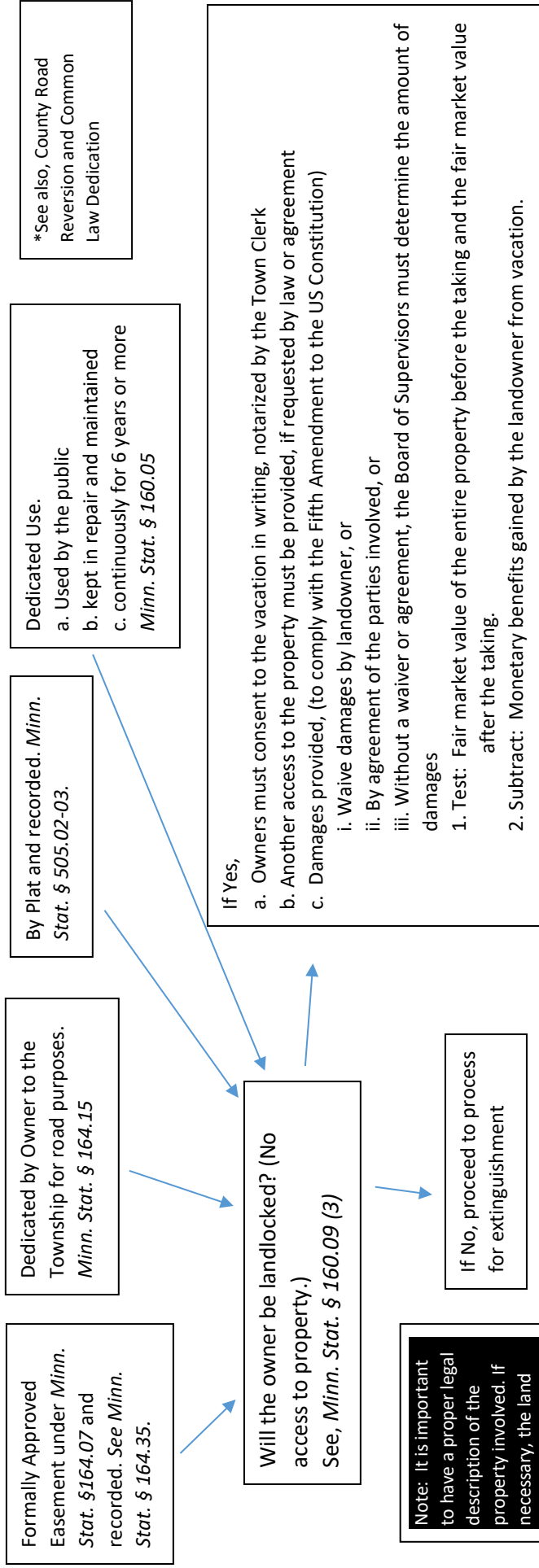
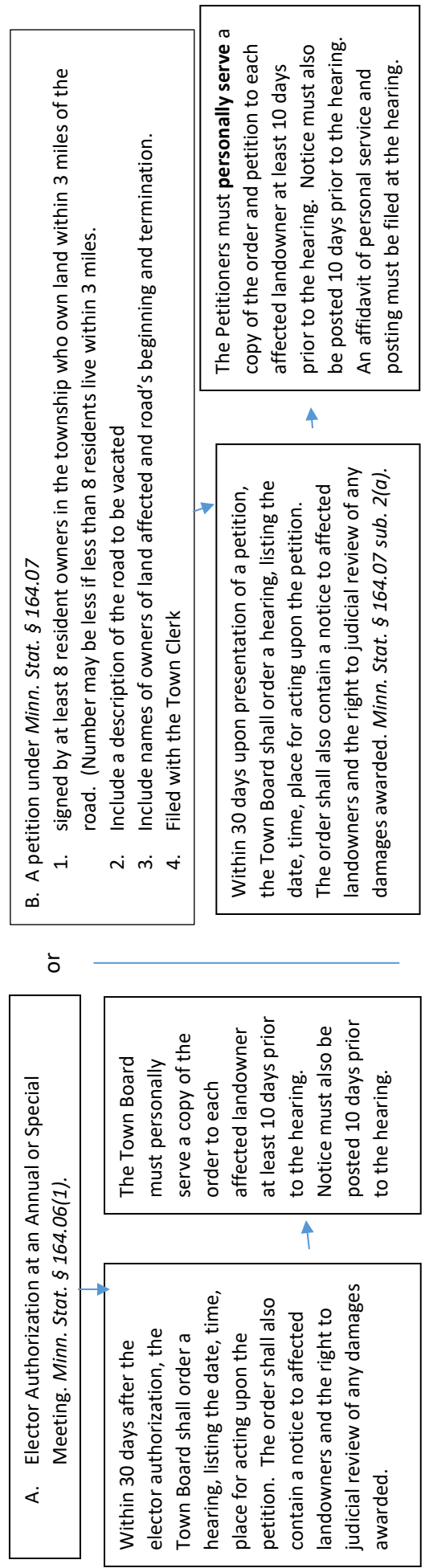


Vacating Land Flow Chart

Types of Roads*



Vacating Process



Public Waters: DNR Notice

If the land abuts any public water, the petitioners must serve a notice of the order upon the Commissioner of National Resources by certified mail within 60 days of the hearing. *Minn. Stat. § 164.07 subd. 2(b).*

If the land abuts public water, at least 15 days prior to the hearing, the town board, or its designee, must consult with the Commissioner of Natural Resources to review the proposed vacation. The Commissioner does not have the right to intervene but is required to advise the Town Board of his or her evaluation. *Minn. Stat. § 164.07 sub. 2(c).*

Hearing Process

- ❖ If petitioners, they must present the affidavits of personal service and posting.
- ❖ The Board must examine the road. *Minn. Stat. § 164.07 subd 3.*
 - The hearing may take place where the road is examined or after the examination, it may be recessed and reconvened at the town hall or other location.
- ❖ If a landowner is landlocked, consent, agreement or damages must be determined. (see page 1)
- ❖ Town Board must determine if ditches lateral to the road should be maintained. If so, insert a provision in the road order retaining right of access for that purpose.
- ❖ If there are utility poles or facilities in the right-of-way, and the Board has adopted an ordinance granting those easements, the Town Board should reserve its and the utilities right to install, maintain and operate those facilities in the right-of-way and to enter, maintain, reconstruct or repair those facilities.

Hiring a private attorney to help you comply with the law may be advisable.

If petition is denied it a final determination unless appealed, which must be done one year from the date of the order. *Minn. Stat. § 164.07 subd. 12.*

If Damages are awarded, the Town Clerk must notify each affected landowner within 7 days of the award in writing. *Minn. Stat. § 164.07 subd. 6.*

If the petition is granted, the Town Board

1. May order a survey. *Minn. Stat. § 164.07 subd. 4.*
2. Determine damages
 - a. Waive damages by landowner (signed agreement) or
 - b. By agreement of the parties involved or
 - i. Test: Fair market value of the entire property before the taking and the fair market value after the taking.
 - ii. Subtract: Monetary benefits gained by the landowner from vacation.
3. With a proper legal description, the Board shall issue a final road order, which shall be certified and presented to the County Auditor who shall note on the document, "entered into the transfer record." The Town Clerk shall have the order certified and recorded with the County Recorder. *Minn. Stat. § 164.07 subd. 11.*

Once land is vacated, the land reverts to the adjoining owners and becomes a private matter between the parties.

If no appeal is filed, the assessed damages are considered final. *Minn. Stat. § 164.07 subd. 9.*

Appeal: Within **40 days** from when the Board filed its order with the Town Clerk, the owners may appeal an award of damages. It shall be filed with the Court Administrator in the district court where the land is located. The notice must include a bond of at least \$250, with sufficient surety, approved by the judge or county auditor conditioned to pay all costs arising from the appeal in the case the Town's award is sustained. The notice must specify the award appealed from, the land it relates to, the nature and amount of the claim and the grounds of the appeal. Process and papers regarding the appeal must be served on the Town Board Chair or Town Clerk. *Minn. Stat. § 164.07 subd. 7.*

Trial is held under certain procedures. *Minn. Stat. § 164.07 subd. 8.* The court may reserve or affirm the Town Board's actions.

THE END OF THE ROAD

Reviewing the Process to Vacate a Road

Ruth Simpson
MAT Staff Attorney

SOMEONE COMES TO TOWN BOARD AND WANTS TO CLOSE A ROAD

- What is the Town's interest in the Road?

THREE QUESTIONS TO ASK?

- How was the road created?
- Where is the evidence?
- What do we look for?

SIX DIFFERENT ROAD TYPES

1. Formally Approved Easement Recorded, Minn. Stat. §§ 164.07 & 164.35
2. Dedicated use, Minn. Stat. § 160.05
3. Dedicated by Owner for Road Purposes, Minn. Stat. § 164.15
4. By Plat and Recorded, Minn. Stat. § 505.02-03
5. County Road Reversion, Minn. Stat. § 163.11
6. Common Law Dedication

FORMAL ESTABLISHMENT MINN. STAT. § 164.07

- Petition or Resolution Establishing Road
- Road Order created
 - County Recorder; County Auditor; Town Records
- Other records can indicate a formal creation – minutes, resolutions, payments to surveyors, damage award payments.

USE AND MAINTENANCE MINN. STAT. § 160.05

ALSO KNOWN AS USER STATUTE ROADS STATUTORY DEDICATION ROADS PRESCRIPTIVE EASEMENTS

- a. Used by the Public
- b. kept in repair and maintained
- c. continuously for 6 years or more

Evidence of Maintenance: Look for records of maintenance approval in minutes; road tour notes; purchase orders or claim forms; oral history from road operators; bank records; satellite maps (they go back in time!)

EASEMENTS

- An easement is the right to use another person's land for a particular purpose.
- There are many forms of easements, including for public roads
- Easements for right-of-way purposes typically give the owners of benefited parcels – or sometimes the entire public – the right to pass over or cross another person's land – the burdened parcel.

Notes

OWNER DEDICATION MINN. STAT. § 164.15, SUBD. 1

- Owner’s application
- Within 10 days: board resolution
- Discussion in minutes
- Road orders filed with county

PLATTED ROADS MINN. STAT. § 505.02

- Recorded Plat at County Recorder
- Public roads, but NOT town roads until accepted by Board

PLEASE NOTE

- Roads created by plat can also be vacated pursuant to Minn. Stat. § 505.14.
- This is a court proceeding.
- Townships must be notified.
- Standard: the platted road is “useless for the purpose for which it was laid out.”
- Need to work with your attorney.

COUNTY TURNBACK MINN. STAT. 163.11, SUBD. 5

- Notice to the town
- Hold a hearing
- Make the repairs or improvements on the highway necessary to meet county standards for a comparable road in the county
- Record the highway if it is not recorded
- Maintain the highway for two years from the effective date of the revocation

COMMON LAW DEDICATION

- Express or Implied Dedication to Public by Landowner
- Road could be created instantly
- Public use can show public acceptance of dedication
- NOT a town road until accepted by Board or implied accepted by 6 years of continuous maintenance
- Find: expressions of dedication by the owner; Town board minutes or resolutions

TR5000: IS THIS A TOWN ROAD AND DO WE HAVE TO MAINTAIN IT?

Township claims to have “abandoned” a road? Did they?

THREE TIME PERIODS IN QUESTION

1. Less than 25 years
2. More than 25 years
 - a. Town cannot spend anything on a road without voter permission unless the voters approve “reopening” the road. Minn. Stat. § 365.10, subd.

<p>Notes</p>

3. More than 40 years
 - a. Marketable Title Act Minn. Stat. 541.023;
Unrecorded interests in land are void after 40 years of non-use or lack of possession

THE MARKETABLE TITLE ACT IS A SHIELD NOT A SWORD

COMMON LAW ABANDONMENT

- (1) long period of non-use
- (2) express intent to abandon
- (3) possession by private parties in good faith
- (4) the erection of valuable improvements without town objection
- (5) Reclamation would result in great damage to those in possession

STATUTORY ABANDONMENT/EXTINGUISHMENT MINN. STAT. 164.06, SUBD. 2, SEE TR4000D APPENDIX D

- The board determines that extinguishment of the road is in the public's interest.
- The town's interest in the road is not a fee interest (i.e., the land was not deeded to the township).
- The road was established more than 25 years ago.
- No improvements have been made to the road within the last 25 years.
- The town has not maintained the road within the last 25 years.

STATUTORY ABANDONMENT PROCESS

- Notice
- Certified Mail 30 days prior to first meeting sent to property owner abutting the road to be extinguished.
- Posted notice for 30 days before meeting or published notice for 2 consecutive weeks
- Hearing
- Decision by Resolution
- File the resolution with the county auditor.
- Record the resolution with the county recorder.
- A copy of the resolution should also be filed in the town's records along with the affidavits of published, posted, and mailed notice.

DO WE HIRE AN ATTORNEY?

Hiring a private attorney to help you comply with the law is the best practice.

VACATING PROCESS MINN. STAT. § 164.07

- (1) A petition under Minn. Stat. § 164.07
- (2) Elector Authorization at an Annual or Special Town Meeting, Minn. Stat. § 164.06(1).

Notes

PETITION

- (1) Signed by at least 8 resident owners in the township
- (2) who own land within 3 miles of the road.
- (3) Including a description of the road to be vacated
- (4) Filed with the Town Clerk

TR4000A, SAMPLE PETITION ATTACHMENT 1 A OF APPENDIX A

BEST PRACTICE

- Number may be less if less than 8 residents live within 3 miles.
- Set out in the minutes of the meeting, the Board determined there are less than eight residents living within three miles of the road.

DO WE NEED AN ESCROW?

- It is up to the board to decide, upon consultation with your town attorney.
- It may be appropriate when a petition is filed.

ELECTOR AUTHORIZATION

- At an Annual or Special Town Meeting the electors may authorize the town board to vacate atown under Minn. Stat. §164.07.
- Sample Resolution TR4000A, Attachment 1 of Appendix A

ROAD DESCRIPTIONS

- It is important to have a proper legal description of the road that is the subject of the vacation.

PURPOSE OF LAND DESCRIPTION OF ROAD

- To identify unequivocally and definitely one and only one unique parcel of land.
- Identification of boundaries.
- To locate and identify encumbrances, such as easements and right of way.
- Identification for courts

DESCRIPTION OF ROAD

- If the road is an established or dedicated road, there may be a description of the road in the County Courthouse.
- If it is a use and maintenance road, a survey may need to be done.
- Check with the County Recorder for the best way to describe the road so it can later be recorded in your Road Order.

Notes

ONCE PETITION IS RECEIVED

- Within 30 days after the elector authorization, or presentation of the petition, the Town Board must make an order setting a hearing, listing the date, time, place for a road hearing.
- The order shall also contain a notice to affected landowners and the right to judicial review of any damages awarded. Minn. Stat. § 164.07 sub. 2(a).

BEWARE: DNR NOTIFICATION

- If the land abuts any public water, the petitioners must serve a notice of the order upon the Commissioner of Natural Resources by certified mail within 60 days of the hearing.
- Send a copy to your regional DNR Office.
- If the land abuts public water, at least 15 days prior to the hearing, the town board, or its designee, must consult with the Commissioner of Natural Resources to review the proposed vacation. The Commissioner does not have the right to intervene but is required to advise the Town Board of his or her evaluation. Minn. Stat. § 164.07 sub. 2 (b) & (c).

NOTICE

- If by petition, the Petitioners must **personally serve** a copy of the order and petition to each affected landowner at least **10 days prior to the hearing**.
- Notice must also be **posted** 10 days prior to the hearing.
- May publish hearing notice
- If elector authorization, the Town Board is responsible for notifications and postings.
- An **affidavit of personal service and posting** must be filed at the hearing.

WILL THE OWNER BE LANDLOCKED?

If Yes,

- a) Owners must consent to the vacation in writing, notarized by the Town Clerk
- b) Another access to the property must be provided, if requested by law or agreement
- c) Waive damages by landowner, or
- d) By agreement of the parties involved, or
- e) Without a waiver or agreement, the Board of Supervisors must determine the amount of damages
 1. Test: Fair market value of the entire property before the taking and the fair market value after the taking.
 2. Minus any monetary benefits gained by the landowner from vacation

Notes

BENEFITS

Determining benefits is most significant when vacating a road because the property will revert to the adjacent owners (i.e., the property will be cleared of the public easement).

AT THE HEARING

- The Board must examine the road. Minn. Stat. § 164.07 subd 3.
- The hearing may take place where the road is examined or after the examination, it may be recessed and reconvened at the town hall or other location.

OTHER ISSUES TO CONSIDER

- Town Board must determine if ditches lateral to the road should be maintained. If so, insert a provision in the road order retaining right of access for that purpose.
- If there are utility poles or facilities in the right-of-way, and the Board has adopted an ordinance granting those easements, the Town Board should reserve its and the utilities right to install, maintain and operate those facilities in the right-of-way and to enter, maintain, reconstruct or repair those facilities.

IF THE PETITION IS GRANTED THE TOWN BOARD MAY

1. Order a survey. Minn. Stat. § 164.07 subd. 4.
2. Determine damages
 - a. Waive damages by landowner (signed agreement)
 - b. By agreement of the parties involved
 - c. Without a waiver or agreement, the Board of Supervisors must determine the amount of damages

PETITION DENIED

If petition is denied, it a final determination unless appealed, which must be done one year from the date of the order. Minn. Stat. § 164.07 subd. 12.

DAMAGES

If damages are awarded, the Town Clerk must notify each affected landowner **within 7 days of the award in writing.** Minn. Stat. § 164.07 subd. 6.

NO APPEAL

If no appeal is filed, the assessed damages are considered final. Minn. Stat. § 164.07 subd. 9

APPEAL

- Must be filed within 40 days of the award of damages.
- Initiated by filing a notice of appeal with the court administrator in the district court of the county where the land is located.
- The notice must include a bond of at least \$250, with sufficient surety, approved by the judge or the county auditor, conditioned to pay all costs arising from the appeal in case the award is sustained.
- Process and papers regarding the appeal must be served on the town board chair or the town clerk. Minn. Stat. § 365.40, subd. 2.
- The notice must specify the award appealed from, the land it relates to, the nature and amount of the claim, and the grounds of the appeal.
- If no appeal is entered within the 40 days, the assessed damages are considered the same as a judgment and are final.

TRIAL

- Set for calendar for trial at the next general term of the court occurring more than 20 days after the appeal is perfected.
- It shall be tried in the same manner as an appeal in eminent domain proceedings under chapter 117.
- The prevailing party shall recover costs and disbursements as in other civil cases and judgment shall be entered upon the verdict.

ROAD ORDER

- With a proper legal description, the Board shall issue a final road order, which shall be certified and presented to the County Auditor who shall note on the document, "entered into the transfer record."
- The Town Clerk shall have the order certified and recorded with the County Recorder. Minn. Stat. § 164.07 subd. 11.

LAND

Once land is vacated, the land reverts to the adjoining owners and becomes a private matter between the parties.

URBAN TOWNS

Although an alternative procedure to vacate a road is available to urban towns under Minn. Stat. § 368.01, subd. 25, it is recommended the Minn. Stat. § 164.07 procedure be used.

Notes