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# AN OVERVIEW OF THE CREATION AND EXTINGUISHMENT OF TOWN ROADS

By  
Troy J. Gilchrist, Attorney

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*Because of the length of this document, only the Appendix information applicable to the particular request will be sent unless the entire document is specifically requested.*

**Appendix A:** Worksheet for Establishing, Altering, or Vacating Roads (Document #TR4000A)

**Appendix B:** Resolution – Accepting A Dedication of Land for a Town Road (Document #:TR4000B)

**Appendix C:** Resolution – Accepting A Platted Road for Maintenance (Document #:TR4000C)

**Appendix D:** Worksheet for Extinguishing A Town’s Interest in “Abandoned Roads” (Document # TR4000D)

**Appendix E:** Application – Dedication of Land for a Town Road (Document #TR4000E)

## I. INTRODUCTION

Establishing and maintaining roads is one of the most vital functions of town government. Because town roads are so important, they generate many questions and a high potential for disagreement. The goal of this paper is to provide some clarification on the various ways town roads may be created and extinguished.

One of the primary sources of disagreement over roads is misunderstanding regarding the distinctions between these sections. The more a town board can learn about these subtle and sometimes confusing distinctions, the more likely it will be able to avoid disputes and reduce potential liability.

## II. HOW TOWN ROADS MAY BE CREATED

### A. Formal Establishment Procedure

The basic statutory procedure to formally establish a township road is contained in Minn. Stat. § 164.07. This procedure allows a town board to acquire easements for a road through gift, purchase, or eminent domain. The process can be initiated either by a petition brought by owners, or by the board upon receiving elector authorization at an annual or special town meeting as provided in Minn. Stat. § 164.06, subd.1. The essential elements of the process are notice to the owners, a hearing, award of damages, and an opportunity for appeal. For a more detailed explanation of the process refer to **APPENDIX A**.

It is important to remember that the decision to establish a road is left to the discretion of the town board. Even though elector authorization may be sought to initiate the process, and a hearing is a mandatory part of the process, the board must ultimately decide the issue. Furthermore, because establishing a road could result in the board taking an owner's property through eminent domain, it is *very* important to obtain the necessary legal assistance to make sure the process is properly conducted.

### B. Dedication by Use

“When any road or portion of a road has been *used and kept in repair and worked* for at least *six years continuously* as a public highway by a road authority, it shall be deemed dedicated to the public to the *width of actual use* and be and remain, until lawfully vacated, a public highway whether it has ever been established as a public highway or not.” Minn. Stat. § 160.05, subd. 1 (emphasis added). This statute serves as the legal foundation for a large percentage of town roads in this state. Interpretation of the statute has focused on three key elements: (1) use by the public; (2) kept in repair and worked (i.e., maintenance); and (3) continually over at least six years.

The amount of public use required is relatively small. For instance, “a few people using a road for seasonal access to recreational areas may be sufficient.”<sup>1</sup> In one case, the court placed emphasis on the fact that a road was open for use by the public rather than on the amount the public actually used the road:

It is the right of travel by all the world, and not the exercise of the right, which constitutes a road a public highway, and the user by the public is sufficient if those members of the public--even though they be limited in number and even if some are accommodated more than others--who would naturally be expected to enjoy it do, or have done so at their pleasure and convenience.<sup>2</sup>

However, on occasion courts have been stricter in their application of the use standard. Two families using a road with no use, or reason for use, by the general public was found insufficient to constitute use under the statute.<sup>3</sup> Fortunately, such a rigid analysis is the exception not the rule.

The second element of the statute is maintenance. The maintenance referred to is maintenance performed by the town. To qualify, the maintenance must be of the quality and character performed on an already existing public road.<sup>4</sup> When reviewing this element, the courts have compared the level of maintenance performed with that on similar types of roads.

The courts have found a low level of maintenance qualified when the maintenance was consistent with the road’s status as a minimum maintenance road.<sup>5</sup> “It is not necessary that every part of a road be worked at government expense or that any particular part receive attention every year of the six year period.”<sup>6</sup> In one case, the court found that the town dragging and leveling off a road once or twice a year was sufficient maintenance under the statute.<sup>7</sup>

The third element required by the statute is that the use and maintenance occur continuously over at least six years. As stated, continuous maintenance does not mean that every portion of the road is maintained each year. Instead, the court is more likely to look at whether the maintenance that occurred was consistent with maintenance on similar roads. While the six year period must still be satisfied, if the character of the road is such that infrequent maintenance during the year is all that is necessary to maintain the road for the purposes for which it is used (e.g., access to a cultivated field), the infrequent maintenance over at least six years will likely be found to satisfy the timing element.

Another important element in the statute is the limitation that use and maintenance roads are only established to the “width of actual use.” This restriction resulted from a challenge to the original language of the statute that indicated the road was established to the width of two rods on each side of the center line of the road (i.e., 66 feet). The owner claimed that the automatic establishment of the road at four rods, when less than that width had actually been used over the years, constituted an unconstitutional taking of his property without compensation.

Allowing a unit of government to acquire a road by use and maintenance is based on the notion that such use and maintenance places the owners on notice that the public is claiming their property for a road.<sup>8</sup> The owners must take action to dispute the public use within the prescribed statute of limitations (i.e., six years), or they are prohibited from thereafter challenging the public easement. The court held that since the owner was put on notice only to the extent that his property was actually used and maintained as a road, the road easement created is limited to the width of actual use.<sup>9</sup> However, the width of the easement “is not limited to that portion of the road actually traveled; it may include the shoulders and ditches that are needed and have actually been used to support and maintain the traveled portion.”<sup>10</sup>

By limiting the width of these roads to the area actually used and maintained, the court placed town boards in a position of not being able to accurately determine the width of its roads. When road widths are uncertain, maintenance activities became much more difficult and are actually deterred out of fear of being sued for trespass by the adjacent owners.

The same concern exists for town boards today. Some boards have responded by undertaking procedures to formally acquire full 66-foot easements, while others have chosen to remain with the easement they acquired through use. To help clarify the width of the roads, some towns make extra efforts to keep detailed maintenance records for each road. The records not only show maintenance activities, they also indicate that the town’s inspection and maintenance activities encompass 33 feet on either side of the road’s center. Performing such activities and keeping detailed records of these activities will help support the town’s claim to a 66 foot right-of-way.

### C. Dedication by Owner

Owners of land may make a direct dedication of a portion of their property to the town for road purposes. The procedure for making such a dedication is contained in Minn. Stat. § 164.15 and involves the following steps:

- (1) The owners must develop a written application that describes the land to be dedicated and the purpose of the dedication; See APPENDIX E

- (2) The owners file the application with the town clerk;
- (3) The clerk must present the application to the town board (typically at the next board meeting);
- (4) Within *ten days* the board, if it chooses to accept the dedication, may pass a resolution declaring the described land to be a town road. No damages may be paid to the owners for making the dedication. See APPENDIX B
- (5) The board records the resolution with the county recorder and files the resolution with the county auditor.

Because of the ten day limitation, a board interested in accepting a proposed dedication should attempt to work out the details with the owners before a formal application is actually filed. In that way, the board can be properly prepared to accept the dedication. A road order should be recorded at the county recorder's office to secure the existence of the easement into the future.

Boards faced with a dedication by owner situation may want to have the transfer occur by easement rather than an application and resolution. Easements are a much more common and accepted form to convey a road interest. Boards will often ask the owners to have an attorney to draft the proper easements. The board can then work with the owners and their attorney to perfect the granting and recording of the easements.

#### D. Dedication by Plat

Land may be dedicated to a town for a public road by plat. When an owner develops a plat, he or she is required to show all roads intended to be dedicated to the public.<sup>11</sup> When a plat is recorded, all lands dedicated for public use are held in trust in the town's name for the purpose indicated on the plat.<sup>12</sup> For roads, this typically means that a public road easement is conveyed to the town. Furthermore, the conveyance does not require acceptance by the town board.<sup>13</sup> In other words, the land dedicated for public roads automatically goes into trust in the town's name upon the filing of the plat.

Once the roads are dedicated, it is left to the town board to determine when it will open and maintain the roads.<sup>14</sup> The town has no maintenance obligation on a dedicated road until the town board agrees to open and maintain it as a town road. In fact, Minn. Stat. § 164.11 seems to indicate a road dedicated by plat actually becomes a cartway provided it is at least 30 feet wide. As cartways, Minn. Stat. § 164.08, subd. 2(d) indicates the board is not to send any money on a cartway unless it passes a resolution determining such expenditures to be in the public interest. Also, cartways are open to use by the public. This helps resolve the situation that occurs

from time to time where an owner want to close off a platted road or use it in a way inconsistent with the public use (e.g., places a building on the right-of-way).

If the developer or owners within a plat are interested in having the town take over maintenance of a platted road, they need to formally make the request at a town board meeting. Some of the factors the board should consider when reviewing such a request are “the cost of maintenance, the number of dwellings abutting the roadways, the condition of the roads, and the degree of hardship suffered by the landowners because of the alleged failure to open or maintain the roads.”<sup>15</sup>

Some town boards address the road issue with a developer before the plat is recorded. This can be done through a formal developers agreement, or more informally by informing the developer of the board’s policy on such roads and providing him or her with a copy of the town road specifications that must be followed. If an agreement was not reached before the plat was recorded, many town boards address requests to take over a platted road by explaining that the road must be built to town specifications before it will be maintained by the town. Once the specifications are met, and any other requirements associated with accepting such roads are satisfied, the board accepts the road and thereafter maintains it as town road. It is recommended that such acceptance occur by board resolution. See APPENDIX C.

Town boards need to be aware that in 1977 the Minnesota Supreme Court created what could be considered an exception to the board’s discretion to decide when it will take over the maintenance of a platted road. The potential exception was created when the court found that an impassible road complaint could be filed with a county under Minn. Stat. § 163.16 on a platted road even though the town board had not taken over maintenance of the road.<sup>16</sup> In sum, the impassible road procedure allows owners to bring a complaint to the county board claiming that the town’s neglect of proper maintenance has resulted in a road not being reasonably possible. The county holds a hearing on the complaint and may order the town board to maintain the road.

The apparent purpose of holding that the impassible road procedure applies to unaccepted platted roads was to provide relief to owners living on platted roads that have been developed to the point that they are public in nature. However, the holding directly contradicts the rule the court developed, and reaffirmed in the very same decision, regarding the board’s discretion over such matters. It also contradicts the fundamental purpose of the impassible road statute which is to create an opportunity to seek relief when a town fails to adequately perform its *duty* to maintain a road. The board cannot fail to perform a maintenance duty until the duty actually exists. On platted roads, the duty does not exist until the board has accepted the road for maintenance by the town. Despite the contradictions in the holding, it remains the controlling interpretation of this narrow point at this time.

## E. County Road Reversion

A county is statutorily authorized to revoke a county highway.<sup>17</sup> Once revoked, it reverts to the town in which it is located. While the statute acknowledges that the town receiving a road in this way may vacate it, this option often is not available due to the restrictions contained in Minn. Stat. § 160.09, subd. 3. (i.e., prohibiting the vacation of a road if it will land lock five acres or more without owner consent unless other access is provided).

If vacating the road is possible and if it occurs within one year after the county revocation, the *county* is responsible for paying any damages occasioned by the vacation. In these cases, the county board must be involved in determining and awarding the damages.

In order to revoke a highway, the county is required to undertake a number of procedures including: 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; and maintain the highway for two years from the *effective date* of the revocation.<sup>18</sup> The two-year maintenance period does not begin until all of the required steps, including bringing the road up to specifications, are completed.

## F. Note on Common Law Dedication

A public road may also be created by common law dedication.<sup>19</sup> However, because a road created by common law dedication may not necessarily be a town road, only a brief overview of the doctrine will be provided.

Common law dedication typically involves an owner intending, either expressly or impliedly, to dedicate his or her land to the public, and acceptance of the dedication by the public. Intent to dedicate may be inferred from the owner's unequivocal conduct. Public acceptance of a dedication can be shown by public use. Neither maintenance by the town or acceptance by the town board is required for public acceptance of the dedication. The dedication is effective immediately upon public acceptance, is not revocable by the owner, and binds all future owners of the property.

A town is not required to maintain roads created by common law dedication unless it has expressly accepted that obligation or has impliedly accepted the obligation through at least six continuous years of maintenance.

Another category of common law dedication exists, but comes about only infrequently. If a developer fails to follow the proper procedure to dedicate the roads

within the plat, but the plat has been accepted and filed, courts sometime refer to the dedication as a common law dedication.<sup>20</sup> Since the statutory dedication failed, courts may turn to the common law concept to save the dedication.

### III. HOW TOWN ROADS MAY BE EXTINGUISHED

There are various ways by which a town may intentionally extinguish, or unintentionally lose, its interest in a road. As with establishing roads, it is important to understand the distinction between the methods and when they apply.

#### A. Formal Vacation Procedure

Formally vacating a road refers to the procedure in Minn. Stat. § 164.07, which is the same procedure to establish or alter a town road. Refer to **APPENDIX A** for information on the procedure. Towns that have adopted urban town powers under Minn. Stat. § 368.01 may use an alternative procedure to formally vacate a road. The process is contained in Minn. Stat. § 368.01, subd. 25 and is more streamlined than the procedure in Minn. Stat. § 164.07. The alternative procedure is not discussed in this paper.

Two important issues to consider when vacating a road are the prohibition on land locking property and the need to determine damages. Under Minn. Stat. § 160.09, subd. 3, a town may not vacate a road without consent of the owners if it is the only means of access to property or properties totaling at least five acres unless other means of access is provided. This is essentially the only statutory prohibition to a town board exercising its discretion to vacate a road. Even though the statute technically allows the land locking of less than five acres, do not proceed with a vacation if it will land lock anyone against their wishes unless other access is provided.

Determining damages for vacating a road can be difficult. Many times the owners who want a road vacated will release any claim to damages. However, if any owner is not willing to waive damages, the board is required to determine the amount of damages, if any, that must be paid.<sup>21</sup> An owner is only entitled to compensation if the damages sustained by the vacation are of a different kind, not merely degree, as those sustained by the general public.<sup>22</sup> This typically means that abutting landowners are potentially eligible to receive compensation.<sup>23</sup>

A claim of compensation is based on the Minnesota Constitutional provision regulating compensation requiring compensation when private property is taken or damaged for public use.<sup>24</sup> The damage relates to the inconvenience sustained by the loss of or interference with reasonable access and is typically measured by the difference of the property's market value before and after the loss of access.<sup>25</sup> This amount is then reduced by the money value of the benefits, if any, which will be



conferred by the vacation.<sup>26</sup> Refer to **APPENDIX A, Attachment 9** for a discussion of reducing damage awards by the amount of benefit conferred. As with the payment of damages for establishing a road, the amount of compensation must be determined on a case-by-case basis with appropriate legal assistance.

## B. Extinguishment of “Abandoned Roads”

In 1992 a procedure was created for a town board to disclaim and extinguish a town’s interest in a road without having to use the formal vacation procedure.<sup>27</sup> The extinguishment procedure can only be used on roads that: (1) were not recorded;(2) were established more than 25 years ago; and (3) have not been improved or maintained in the last twenty years. Refer to **APPENDIX D** for more detail on the qualifying criteria and procedural requirements of the statute.

This procedure provides town boards a relatively simple method to eliminate a town’s interest in a road. Many times a board will not be certain whether the town actually has an interest in the road. Often the “road” will actually be overgrown with brush and trees. The problem towns encounter on these “roads” is when someone wants the board to reopen and maintain them. Rarely is the board interested in spending the funds necessary to restore and maintain the roads, but they often face claims the board has a duty to reopen the roads. To avoid such disputed before they arise, boards can use the extinguishment procedure to make it clear that the town has no legal interest in the roads.

## C. Abandonment

The term abandonment is used in a number of different contexts when referring to roads. For this section, abandonment means the loss of a town road easement through long-continued nonuser accompanied by affirmative or unequivocal acts by the town that are inconsistent with the continued existence of the road and that indicate an intent to abandon the road.<sup>28</sup> Abandonment is a question of intention and “[m]ere nonuser for any length of time will not operate as a abandonment of a public street.”<sup>29</sup> “Nor will nonuser, coupled with failure to remove obstructions erected by abutting property owners or others, constitute abandonment.”<sup>30</sup> Claims of abandonment usually involve roads that have not been used for years and that the board has said or otherwise indicated it intends to give up the easement for the roads.

Estoppel is often claimed in conjunction with abandonment. Estoppel is a fairness concept. In this context, it relates to a claim that a town should be prohibited from asserting its interest in a road because it would be inequitable (unfair) to an owner who reasonably relied on the affirmative actions of the town indicating an intent to abandon the road.<sup>31</sup> The elements of estoppel are: “1) long-continued nonuse by the municipality; 2) possession by a private party in good faith and in the

belief that the property's use as a street has been abandoned; 3) erection of valuable improvements on the property without objection from the city, which has knowledge thereof; 4) great damage resulting to the possessors if the municipality were allowed to reclaim the land; and 5) an affirmative or unequivocal act by the municipality which, in light of all the circumstances, induced a third party reasonably to believe in and to rely upon the act as constituting a representation of the municipality's intent in fact to abandon the street."<sup>32</sup>

One of the initial cases on abandonment provides a good example of the harm the doctrine attempts to avoid. The case involved a platted street dedicated to a city.<sup>33</sup> The portion of the road in question had not been opened or used as a street in its 83 years of existence. The road that served the area was partially built off of the platted right-of-way. Over the years, the adjacent owners built a number of permanent buildings in the unused right-of-way with building permits from the city. The buildings were kept and maintained in that location for over 40 years. The city filed suit to require the owners to remove the buildings from the platted right-of-way.

The court upheld the finding that the city was estopped from asserting its interest in those portions of the right-of-way. Factors such as the long period of nonuse by the city, permission of the city to construct the buildings, and reasonable reliance on the location of the existing road weighed heavily in the finding of abandonment.

As a final note on this issue, it is important to realize that title to public roads and lands may not be acquired by someone through occupancy alone.<sup>34</sup> For instance, a claim of adverse possession that may be brought against a private owner after 15 years of occupancy by the claimant is not available against town property or town road rights-of-way.<sup>35</sup>

#### D. Spending Limitations (25 year law)

Occasionally, a town board is requested to reopen and maintain a road or portion of road that has not been maintained for many years. If the road has not been maintained or improved for over 25 years, Minn. Stat. § 365.10, subd. 11 indicates the issue can be submitted to the electors at an annual or special town meeting. At the meeting, the electors may pass a resolution to allow the board to determine whether the road will be opened and maintained. The inference raised by the statute is that if the electors decide not to pass the resolution, the board would be prohibited from spending town funds to maintain the road. In a sense, this section places owners in a position of having to take action within 25 years of when a town stops maintaining a road. Failure to do so could result in the electors either refusing to give the board authority to consider the matter, or the electors authorizing the board to consider the matter and the board deciding not to maintain the road.

What is particularly significant about the section is its statement that the impassible road complaint procedure in Minn. Stat. § 163.16 does not apply to these old roads. This protection allows the board to avoid having to defend against a variety of potential complaints brought on roads that someone may claim were town roads at some time in the past (it is not uncommon for owners to point to maps from the 1800's to support their claim for a town road).

#### E. Marketable Title Act (40 year law)

The Marketable Title Act (MTA) is contained in Minn. Stat. § 541.023 and is sometimes referred to as the 40 year law. The MTA provides a defense for owners against those who assert a hostile claim to the same property. The purpose of the MTA is to avoid ancient records that impose conditions and restrictions on property from interfering with its marketability.<sup>36</sup>

The Minnesota Supreme Court specifically found that town roads are not exempt from the application of the MTA.<sup>37</sup> Application of the MTA to town roads usually comes in the form of a defense asserted by an owner against the town's attempt to reopen a road that has not been maintained for over 40 years. In such situations, the MTA creates a presumption that the road easement has been abandoned.<sup>38</sup>

In order to overcome a claimed defense under the MTA, the town needs to demonstrate one of the following: (1) the road was created within the last 40 years; (2) if the road was created over 40 years ago, proper notice of the easement was filed with the county recorder within the last 40 years; or (3) the town is actually in possession of the road.<sup>39</sup> Typically, the road in question was either never recorded or was only recorded in the county auditor's office which does not constitute sufficient notice of an interest in land.<sup>40</sup> As such, the town must show that it has been in possession of the road and that the possession was sufficient to place the owner on notice of town's interest in the road.

To establish possession, the town must show present, actual, open, and exclusive possession that is neither equivocal nor ambiguous, and is of a character that would put a prudent person on inquiry.<sup>41</sup> When applied to roads, factors such as the amount of use of the road, the amount of work and maintenance performed by the town on the road, the degree of control exercised by the town over the road, whether the road was regularly inspected by the town, and knowledge of the existence of the easement are considered.<sup>42</sup> Possession may be tied to common law dedication in that acts sufficient to constitute public acceptance of an owner dedication may also be sufficient to show possession under the MTA.<sup>43</sup>

Possession was found lacking on a portion of town road established in 1889 that was never physically constructed as a road, was not maintained or snow plowed,

received only sporadic use by very few people, was not included in the town's road checks, lead to a dead end, and there was a lack of knowledge of the claimed easement.<sup>44</sup> In another case, sufficient possession was established on a road that joined to more heavily traveled roads, some degree of regular use and maintenance was shown, and a tax credit was given to the properties subject to the road.<sup>45</sup>

## NOTES

1. Foster v. Bergstrom, 515 N.W.2d 581, 586 (Minn. Ct. App. 1994) (citing Anderson V. Birkeland, 38 N.W.2d 215, 219 (Minn. 1949). See also Town of Belle Prairie v. Kliber, 448 N.W.2d 375, 379 (Minn. Ct. App.); Leeper v. Hampton Hills, Inc., 187 N.W.2d 765, 768 (Minn 1971).
2. Anderson v. Birkland, 38 N.W.2d 215, 219 (Minn. 1949).
3. Foster, 515 N.W.2d at 586 (Minn. Ct. App. 1994); Town of Belle Prairie v. Kliber, 448 N.W.2d 375,379 (Minn. Ct. App. 1989); Anderson v. Birkeland, 38 N.W.2d 215, 219 (Minn. 1949).
4. Id. (citing Shinneman v. Arago Township, 288 N.W.2d 239, 242 (Minn. 1980)).
5. Town of Wadena v. Dorholt, 465 N.W.2d 435, 437 (Minn. Ct. App. 1991).
6. Town of Belle Prairie, 448 N.W.2d at 379. But see Ravena Township v. Grunseth, 314 N.W.2d 214 (Minn. 1981).
7. Town of Belle Prairie, 448 N.W.2d at 379.
8. Barfnecht v. Town Bd. of Hollywood Tp., 232 N.W.2d 420, 423 (Minn. 1975).
9. Id.
10. Id.
11. Minn. Stat. § 505.02-.03.
12. Minn. Stat. § 505.01.
13. Town of Red Rock v. County of Mower, 250 N.W.2d 827, 831 (Minn. 1977); Application of Stein, 99 N.W.2d 204, 206 (Minn. 1959); Keyes v. Town of Excelsior, 148 N.W. 501 (Minn.).
14. Town of Red Rock, 250 N.W.2d at 831 (citations omitted); Op. Atty. Gen., 377B-10H, Nov. 16, 1967; Op. Atty. Gen., 377-A-4, June 17, 1957.
15. Id.
16. Town of Red Rock, 250 N.W.2d at 831.
17. Minn. Stat. § 163.11, subd. 5.

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18. Minn. Stat. § 163.11, subd. 5a, 5b, 6.
  19. Sackett v. Storm, 480 N.W.2d 377 (Minn. Ct. App. 1992); Bengtson v. Village of Marine on St. Croix, 246 N.W.2d 582 (Minn. 1976).
  20. Doyle v. Babcock, 235 N.W. 18, 20 (Minn. 1931).
  21. Minn. Stat. § 164.07, subd 5.
  22. Underwood v. Town Board of Empire, 14 N.W.2d 459, 461 (Minn. 1944); Hendrickson v. State, 127 N.W.2d 165 (Minn. 1964).
  23. Id.; But see Wendt v. Board of Sup'rs. of Town of Minnetrista, 92 NW 404 (Minn. 1902) (indicating that an owner of land at the end of a vacated road may be entitled to compensation).
  24. Minn. Const. art. 1 ' 13; See also Minn. Stat. § 160.03.
  25. Beer v. Minnesota Power & Light Co., 400 N.W.2d 732, 735 (Minn. 1987); Hendrickson, 127 N.W.2d at 173.
  26. Minn. Stat. § 164.07, subd. 5.
  27. Minn. Stat. § 164.06, subd. 2.
  28. Wolfson v. City of St. Paul, 535 N.W.2d 384, 387 (Minn. Ct. App. 1995) [quoting Village of Newport v. Taylor, 30 N.W.2d 588, 592 (Minn. 1948)].
  29. Village of Newport, 30 N.W.2d at 592 (citation omitted).
  30. Id. (citations omitted).
  31. Id. at 593.
  32. Reads Landing Campers Ass'n., Inc. v. Township of Pepin, 533 N.W.2d 45, 49 (Minn. Ct. App. 1995) [quoting Parker v. City of St. Paul, 50 NW 247, 248 (Minn. 1891)].
  33. Rochester, City of, v. North Side Corporation, 1 N.W.2d 361 (Minn. 1941).
  34. Minn. Stat. § 541.01.
  35. See, e.g., Ollgaard v. City of Marshall, 294 N.W. 228 (Minn. 1940); McCuen v. McCarvel, 263 N.W.2d 64 (Minn. 1978).
  36. Wichelman v. Messner, 83 N.W.2d 800, 812 (Minn. 1957).
  37. Sterling Tp. v. Griffin, 244 N.W.2d 129, 133 (Minn. 1976); See also Northford Tp. v. Joffer,

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353 N.W.2d 216 (Minn. Ct. App. 1984).

38. Minn. Stat. § 541.023, subd. 5.

39. Sterling Tp., 244 N.W.2d at 132.

40. Id. (citation omitted).

41. Sacket v. Storm, 480 N.W.2d 377, 381 (Minn. Ct. App. 1992); Henly v. Chisago County, 370 N.W.2d 920, 925 (Minn. Ct. App. 1985).

42. Sterling Tp., 244 N.W.2d at 134.

43. Sackett, 480 N.W.2d at 382.

44. Sterling Tp., 244 N.W.2d at 134.

45. Northfork Tp., 353 N.W.2d at 218.