



Legal Opinions
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Highway Right-of-Way Issues

There are many times when town officials have situations come up affecting town roads and the right of way in general. This article will address some right-of-way issues, including a new statutory provision allowing manure hoses in the right-of-way. However, if you want to know more, we would encourage everyone to attend our district meetings as one of the presentations will focus on the most common highway questions and challenges.

Manure Lines in the Right of Way

It is a given that heavy loads on highways reduce their lifespan. With the advancement of manure application technology farmers are able to transport manure from a storage location to the fields through manure lines or hoses. The legislature has kept pace with this advancement by passing new laws that allow towns to permit manure lines in the right of way. However, the procedure for doing so depends on whether the lines are above ground or below ground.

A town can permit above ground manure hoses under Wis. Stat. § 86.07. The statutes define a manure hose as “any hose, pipeline, or other conduit, whether temporary or permanent in nature, for the transmission of liquid manure within or across the right-of-way of a highway to a destination for spreading in a farm field or for storage.” Generally above ground hoses are temporary. Farmers will use them in the spring and fall to transport manure and then remove them from the right of way.

For above ground hoses the board can issue a permit to the farmer for its use. The permit can have general conditions attached to it, such as a liability provision, a bond amount, hours of operation, and dates for removal.

The town may also permit the user to attach the hoses to support structures, such as bridges, box culverts, or other structures that are less than 20 feet in length. The town could require the applicant to submit a plan specifying how the hose would be attached to the support structure, and impose permit conditions like removal of hooks and fasteners at the permittee’s expense, making the permittee liable for damage to the structure, or any other reasonable conditions necessary to protect the town.

Applicants may want to have underground manure hoses instead of above ground. Below ground, or subterranean hoses, offer unique advantages to the farmers because they can remain there permanently and are less likely to be damaged. Towns can permit subterranean hoses under Wis. Stat. § 86.16. Like above ground hoses, the town can attach reasonable conditions to a permit, require the applicant to submit a plan detailing where the lines go, and require security for damages.

The statutes specify which provisions must be used for above and below ground hoses. Although similar, the town should cite the specific statute used in the permit and its ordinance. Another option the statutes allow is for the town to use the Wis. Stat. § 86.16 provision for both above and below ground lines. The Wisconsin Towns Association has developed a model ordinance for permitting manure lines in the right of way. A copy of that ordinance can be found online here: <http://wisctowns.com/uploads/ckfiles/files/Model%20Ordinance.pdf>.

It is also important to note that the same procedure for permitting below ground manure lines in the right of way could be used for utility lines as well. Wis. Stat. 86.16 allows the town to permit telephone, electric, pipelines for water, heat, light, power lines, or broadband lines. The town should develop a utility policy that will apply to these items in the right of way. This ensures the town has some control over the location of these lines, and gets certain protections for town infrastructure.

Cultivation in Highways

Often people do not realize that the right-of-way extends beyond the paved road surface. This can lead to issues with proper drainage and maintenance of the highway. Luckily the statutes address many issues that come up with people misusing the right-of-way.

Wis. Stat. § 86.021 prohibits a person from plowing, cultivating or doing work within the right-of-way that affects drainage. Anyone who violates this could be found guilty of a misdemeanor and punished with a small fine or even jail time. The statute also makes them liable for any damages to the right-of-way. This provision also prevents the use of farm machinery on, over, along, or across the town highway in such a manner that will materially damage the highway. In conjunction with this, Wis. Stat. 86.02 also allows the town to collect up to triple damages for any damage done to the highway.

Removal of Fallen Trees

Trees in the right of way can sometimes cause disputes over who has the responsibility to fix the situation. Typically towns have an easement for highway purposes. This means trees in the right of way belong to the adjacent landowner. However, if a tree located in the right of way falls onto the town highway, it is the responsibility of the town to clean up under Wis. Stat. § 86.03(1). But, if a tree located on land adjacent to the highway falls into the right-of-way, it becomes the landowner's responsibility to immediately remove it. Ultimately clean-up responsibility will depend on where the tree was located originally.

Planting Trees

Sometimes landowners want to plant trees adjacent to the highway to block the view of the road from their land or to cut down on noise. Wis. Stat. § 86.02(3) requires a landowner to get permission from the town before a person can plant trees within 10 feet of the right-of-way. Also, a town may, on behalf of another person, seek permission to plant trees or shrubs on town land adjacent to highways maintained by other authorities, such as a county or the state.

Upcoming District Meetings

This article covered a few right-of-way issues that towns sometimes run into. But there are numerous other situations that arise in town highways. Luckily, the Towns Association plans to cover more right-of-way issues at the upcoming district meetings. We would encourage all of you to attend so you can learn more about right-of-way issues and how to handle them in the future.