

CHAPTER 164

TOWN ROADS

164.07 Establishment, alteration, or vacation of town road.

164.07 ESTABLISHMENT, ALTERATION, OR VACATION OF TOWN ROAD.

Subdivision 1. **Authorization; petition.** Any town board may alter or vacate a town road, including those dedicated to the public by plat, or establish a new road in its town upon a petition of not less than eight voters of the town, who own real estate, or occupy real estate under the homestead or preemption laws or under contract with the state, within three miles of the road proposed to be established, altered, or vacated; provided, that in any town not having eight voters who own real estate or occupy real estate under the homestead or preemption laws or under contract with the state, within three miles of any proposed road, the town board of such town may alter or vacate a town road, or establish a new road in the town upon a petition signed by a less number of voters of such town, who own real estate or occupy real estate under the homestead or preemption laws or under contract with the state, in such town. Such petition shall contain a description of the road, and what part thereof is to be altered or vacated, and, if a new road, the names of the owners of the land, if known, over which such road is to pass, its point of beginning, general course, and termination. If the petition is to establish or alter a road, the petition must also contain a statement of the purpose and necessity for establishing or altering the road.

Subd. 2. **Hearing; notice.** (a) The petition shall be filed with the town clerk, who shall forthwith present it to the town board. The town board within 30 days thereafter shall make an order describing as nearly as practicable the road proposed to be established, altered, or vacated and the several tracts of land through which it passes, and fixing a time and place when and where it will meet and act upon the petition. The order must also contain a notice to affected landowners that a landowner is entitled to judicial review of damages, need, and purpose under subdivision 7 following a determination to establish or alter a road. The petitioners shall cause personal service of such order and a copy of the petition to be made upon each occupant of such land at least ten days before such meeting and cause ten days' posted notice thereof to be given.

(b) In addition, the petitioners shall serve notice of the order by certified mail upon the commissioner of natural resources at least 30 days before such meeting if the road to be vacated terminates at or abuts upon any public water. The notice under this paragraph is for notification purposes only and does not create a right of intervention by the commissioner of natural resources.

[For text of subs 3 to 6, see M.S.2000]

Subd. 7. **Appeal.** Within 40 days after the filing of the award of damages any owner or occupant may appeal from the award by filing a notice of appeal with the court administrator of the district court of the county where the lands lie. However, the owner or occupant must file the notice of appeal within ten days in order to delay the opening, construction, alteration, change, or other improvement in or to the road pursuant to subdivision 10. The notice of appeal shall be accompanied by a bond of not less than \$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. A copy of the notice shall be mailed by registered or certified mail to the town clerk or any member of the town board. The notice of appeal shall specify the award or failure to award appealed from, the land to which it relates, the nature and amount of the claim of appellant, and the grounds of the appeal, which may include a challenge to the public purpose or necessity of the proposed road or condemnation.

[For text of subds 8 and 9, see M.S.2000]

Subd. 10. **Appeal not to delay improvement.** After the award of damages has been filed, the board may proceed to open, construct, alter, or change the highway; provided it does not receive notice of appeal within ten days pursuant to subdivision 7. If the board receives a notice of appeal within ten days that challenges the public purpose or necessity of the proposed road or condemnation, it shall suspend any proposed work on the road until a final judicial determination supporting the condemnation is made. If the notice of appeal does not challenge the public purpose or necessity, the appeal shall not delay the prosecution of the proposed improvement, and the town board may proceed as if no appeal had been taken.

[For text of subds 11 to 13, see M.S.2000]

History: 2001 c 139 s 4-7