

HELLMUTH & JOHNSON

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April 29, 2019

The Jonathan Association
c/o Gassen Company, Inc.
Attn: Natalie Martynow
6438 City West Parkway
Eden Prairie, MN 55344

Board of Directors
The Jonathan Association
c/o Chase Lundstrom
2078 Wellens Street
Chaska, MN 55318

VIA E-MAIL AND
UNITED STATES MAIL
(chaselundstrom@live.com)

Re: The Jonathan Association
Legal Opinion Regarding Maintenance of Trail Underpasses Within the City of Chaska
Our File No.: 13237.0001 (General Legal Matters)

Dear Board Members:

This letter follows The Jonathan Association's (the "Association") request for a legal opinion concerning liability for maintaining trail underpasses within the Jonathan trail system in the City of Chaska (the "City"). Pursuant to the Association's request, I asked my colleague, Michael D. Klemm, to provide a written opinion as to liability for maintaining the trail underpasses in question. Enclosed is a Memorandum containing Mr. Klemm's opinion, including the exhibits thereto.

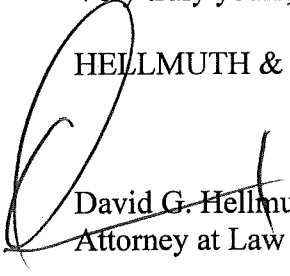
Based on the enclosed, it is our opinion that the City is responsible for maintaining the trail underpasses, including any and all necessary inspections, maintenance and/or repairs. The enclosed Memorandum contains a detailed analysis of the issue, and our recommendation to the Association. Please review the enclosed documents at your earliest convenience and advise me as to whether or not you have any further questions or concerns, or any requests for action from my firm.

Board of Directors
The Jonathan Association
April 29, 2019
Page 2

If you should have any questions or concerns regarding the enclosed Memorandum and exhibits, please do not hesitate to contact me.

Very truly yours,

HELLMUTH & JOHNSON



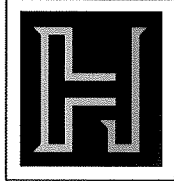
David G. Hellmuth
Attorney at Law

DGH/mss

Encs.

cc: Michael D. Klemm, Esq. (w/o encs.)

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HELLMUTH & JOHNSON

MEMORANDUM

TO: David G. Hellmuth

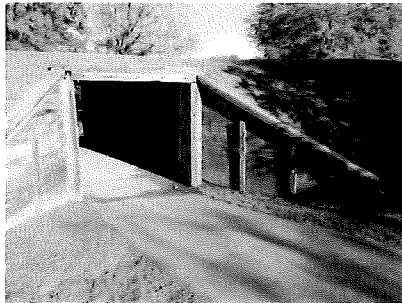
FROM: Michael D. Klemm

DATE: April 29, 2019

RE: The Jonathan Association – Maintenance of Trail Underpasses
Our File No.: 13237.0001

FACTS

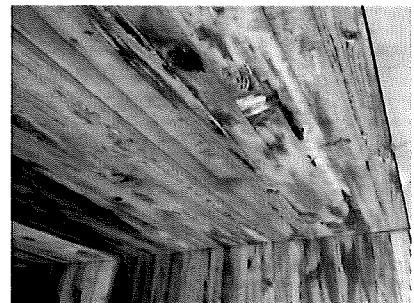
The Reserve Study prepared by Reserve Advisors, revised October 5, 2017 (the “Reserve Study”), states that The Jonathan Association (the “Association”) maintains approximately 37,350 square yards of asphalt walking paths (trails) throughout the neighborhoods of the Association. The Reserve Study indicates that at five locations, the trails cross City of Chaska public streets via underpasses constructed of wood structures and timber retaining walls. The Reserve Study notes soil loss and wood rot, shown in the following photographs:



Walking path underpass at street



Soil loss at wood



Wood rot at underpass

The Reserve Study states that the useful life of such timber structures is up to 40 years with regular inspections and partial repairs. The Reserve Study recommends inspection and partial repairs to the wood underpasses every 10 to 15 years at a projected 30-year inflated cost of \$111,626.00, with anticipated replacement by 2030 at a projected inflated cost of \$385,115.00.

The Reserve Study identifies these costs as Association expenses, but does not explain the basis for doing so.

QUESTION PRESENTED

Whether the Association or the City is responsible to maintain the trail underpass structures.

CONCLUSION

The City is responsible to maintain the trail underpass structures, which are components of the City's public streets, unless there is an agreement requiring the Association to do so.

ANALYSIS

A. Location of Trail Underpasses.

The map of Jonathan Association attached as **Exhibit A** (the "Jonathan Map") shows the location of Jonathan walkways (trails) and five underpasses. Excerpts from the Jonathan Map, including the area where the underpasses are located and the map legend, is attached as **Exhibit B**. The Association's trails are marked by a red line, and the five underpasses are marked by red dots.

Excerpts from the 2018 Map of Chaska prepared by the Minnesota Department of Transportation and the Federal Highway Administration (the "MnDOT Map") are attached as **Exhibit C**, depicting the same area that is shown on **Exhibit B**.

Based on the Jonathan Map and the MnDOT Map, the underpasses are located as follows:

- Hundertmark Road, east of the intersection with Stone Creek Drive;
- Bavaria Road, south of Hundertmark Road;
- Bavaria Road, north of Hundertmark Road;
- Village Road; and
- Geske Road.

B. Classification of City Streets.

Hundertmark Road, Bavaria Road, and Village Road are marked by green lines on the MnDOT Map, indicating that they are municipal state aid streets. See Exhibit C. Geske Road is a municipal street, but is not a municipal state aid street. See id.

The Map of Existing and Future Roadway System from Chaska's draft 2040 Comprehensive Plan, attached as **Exhibit D**, confirms that Hundertmark Road, Bavaria Road, and Village Road are municipal state aid streets and are intended to remain so in the future.

The Map of Existing and Future Roadway System from Chaska's draft 2040 Comprehensive Plan, attached as **Exhibit E**, shows that Hundertmark Road and Bavaria Road are "major collector" streets, Village Road is a "minor collector" street, and Geske Road is a "local road."

The draft 2040 Comprehensive Plan indicates that the speed limit on collector streets is 30 to 40 miles per hour, and the speed limit on local roads is a maximum of 30 miles per hour.

C. Classification of Trail Underpass as a “Bridge.”

The MnDOT Map identifies the trail underpass on Hundertmark Road as a “minor bridge (5 to 20 foot span).” See **Exhibit C** (map and legend); compare **Exhibit B** (location of trail underpass on Hundertmark Road) and **Exhibit F** (aerial photograph of trail underpass on Hundertmark Road).

The MnDOT Map does not identify the other trail underpasses as bridges. However, the design and size of the five trail underpasses appear to be similar. See Google aerial and street-level photos attached as **Exhibits F – J**.

It appears that all five trail underpasses may qualify as “bridges” under the definition in Minnesota Statutes section 165.01, subdivision 3:

“Bridge” is defined as a structure, including supports erected over a depression or an obstruction, such as water, a highway, or a railway, having a track or passageway for carrying traffic or other moving loads, and having an opening measured horizontally along the center of the roadway of ten feet or more between undercopings of abutments, between the spring line of arches, or between the extreme ends of openings for multiple boxes. Bridge also includes multiple pipes where the clear distance between openings is less than one-half of the smaller contiguous opening. This definition of a bridge includes only those railroad and pedestrian bridges over a public highway or street.

D. General Obligations to Maintain and Repair City Streets.

The League of Minnesota Cities’ memo titled “Acquisition and Maintenance of City Streets” dated June 4, 2018, a copy of which is enclosed, (the “League Memo”) provides the following information regarding a city’s general obligations to maintain municipal streets, supported by citations to statutes and court decisions:

- Once a city has acquired and opened a dedicated public street, it has a duty to maintain the street in a manner that is safe for public use and travel. The duty to maintain relates to both the actual physical condition of the street (for example: cracks, holes or pits) and to preventing and removing obstructions that may be placed upon the street (for example: carts, debris, signs or structures).
- Cities may be found liable for damages to injured persons if the city had knowledge of a defect or dangerous condition on a city street, but failed to correct it within a reasonable amount of time. Knowledge of the dangerous condition may be actual or constructive.
- However, cities are not required to act as an insurer for the public against every

accident or danger that may arise on a public street. The city will not be held liable for an accident, if it can demonstrate that it has used reasonable care—given its resources—to maintain the street.

- Cities may demonstrate that they have taken reasonable care in the maintenance of their streets by adopting and adhering to right-of-way ordinances and street maintenance policies.

Id. at 22.

The League Memo explains that a municipal street has many components that must be maintained:

- A street typically consists of more than the actual blacktop or graveled area traveled upon by vehicles. This traveled portion of the street is contained within a larger swath of land that consists of many more elements known as the street right-of-way, or ROW.
- The ROW is usually defined by the easement document or plat. In some less common situations, the ROW may be defined by actual use.
- The ROW includes the street and area on either side of the street used to support the use of the street. It also includes the area below and above the roadway. A typical city ROW consists of the:
 - ♦ Traveled street surface.
 - ♦ Center median or divider.
 - ♦ Shoulder of the street.
 - ♦ Curb and gutter.
 - ♦ Bicycle lane (if any).
 - ♦ Sidewalk and/or ditch alongside the road.
 - ♦ Any remaining land described or depicted in the easement document or plat.
 - ♦ Subsurface below the actual ROW and the airspace above the ROW.
- In some instances, the portion of the street traveled by vehicles may actually be only a minor element of the ROW. When acquiring and maintaining streets, it is important that cities address and consider all elements of the ROW.

Id. at 1-2.

E. Additional Obligations for Maintenance and Repair of Municipal State Aid Streets.

The League Memo provides the following information regarding a city's additional obligations to maintain and repair municipal state aid streets:

- Municipal state-aid streets—all streets within cities having a population of 5,000 or more that are designated as municipal state-aid streets pursuant to Minnesota statutes and the rules of the commissioner of the Department of Transportation. The city is vested with all rights, title, and easements creating the street, but must establish and maintain the street in accordance with the rules of the commissioner. On most major decisions concerning the street, such as establishment, alteration of route, or revocation, the city road authority must obtain the consent of the commissioner. Cities receive an annual allocation of money from the state for the maintenance of municipal state-aid streets. Cities with a population over 5,000 may enter into agreements with the county in which the city is located for the maintenance of all county state-aid highways and municipal state-aid streets within the boundaries of the city.

Id. at 2.

The municipal state aid street system is governed by Minnesota Statutes section 162.09 and Minnesota Rules Chapter 8820, titled “Local State-Aid Route Standards, Financing.”

In addition, the Minnesota Department of Transportation has published a “Road Design Manual” with standard specifications for streets built with state funding, including municipal state-aid streets. See League Memo at 15.

F. Additional Obligations for Inspection, Maintenance and Repair of Bridges.

The League Memo provides the following information regarding a city’s additional obligations to inspect, maintain and repair bridges:

- Cities may construct, reconstruct, improve, and maintain bridges whenever they deem bridges to be necessary. All bridges must conform to the strength, width, clearance, and safety standards imposed by the commissioner of Transportation. Bridges must have sufficient strength to support maximum vehicle weights dictated by state law and must meet minimum width requirements.
- Bridges must be inspected annually, unless special permission for a longer inspection period is obtained from the commissioner of Transportation. Cities that do not regularly employ a city engineer may rely on the county engineer to perform required inspections.
- Cities that regularly employ a city engineer must perform their own inspections and complete inventory and bridge inspection forms provided by the commissioner of Transportation. The city engineer must certify annually to the commissioner of Transportation that inspections have occurred at regular intervals.

Id. at 35.

The League Memo cites Minn. Stat. § 165.03, which establishes detailed requirements regarding bridge inspections.

G. Safety Concerns.

I observe that the trail underpass on Hundertmark Road has guardrails to prevent vehicles from leaving the street and falling onto the trail, and fences to prevent pedestrians and bicyclists from falling onto the trail. However, none of the other trail underpasses are protected by guardrails, and most of the other underpasses are not protected by fences. See Exhibits F – J.

Considering that Hundertmark Road, Bavaria Road, and Village Road are municipal state aid streets with similar trail underpasses and similar speed limits, it is unclear why guardrails and fences are installed on Hundertmark Road but not on Bavaria Road or Village Road. If Minnesota statutes or rules require such protective devices on Hundertmark Road, then they also may be required on Bavaria Road and Village Road.

Although Geske Road is merely a local municipal street, the City's obligations regarding design and maintenance may include an obligation to install guardrails and/or fences to prevent falls from the street to the trail.

H. The 1968 Agreement Does Not Require the Association to Maintain Trail Underpasses.

The City has frequently cited an Agreement dated August 6, 1968, between the City of Chaska and Jonathan Development Corporation (the "1968 Agreement") as authority for the proposition that the Association is obligated to maintain various improvements.

Section 1 of the 1968 Agreement states that "Jonathan [the developer] shall develop the outlots shown on the Plat of Neighborhood One . . . for one or more of the following uses: . . . (b) Pedestrian or other transportation ways." The 1968 Agreement also requires the developer or the Association to maintain the outlots shown on the Plat of Neighborhood One. However, those outlots do not include Hundertmark Road, Bavaria Road, Village Road, or Geske Road, or any of the trail underpasses. Therefore, the 1968 Agreement does not require the Association to maintain the trail underpasses.

The 1968 Agreement includes an introductory paragraph stating "the parties hereto desire to set forth certain agreements in connection with the development and maintenance of said outlots, which agreements shall be a pattern for the development of outlots in subsequent plats by Jonathan in the City of Chaska." However, that introductory language is not sufficient to make the 1968 Agreement apply to the five trail underpasses.

I am not aware of any agreement that requires the Association to maintain trail underpasses located in City streets. Title work to identify and review all of the development agreements and declarations that may have been recorded in connection with the development of property adjacent to each trail underpass would be time consuming and expensive.

RECOMMENDATION

I recommend that the Association contact the City regarding the current condition of the trail underpasses and request that the City perform the necessary inspections, maintenance and repair. If the City asserts that the Association is responsible for such work, I suggest that the Association submit a data practices request to obtain a copy of the document that makes the Association responsible for maintaining the trail underpasses.

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EXHIBIT A

Jonathan Association Map

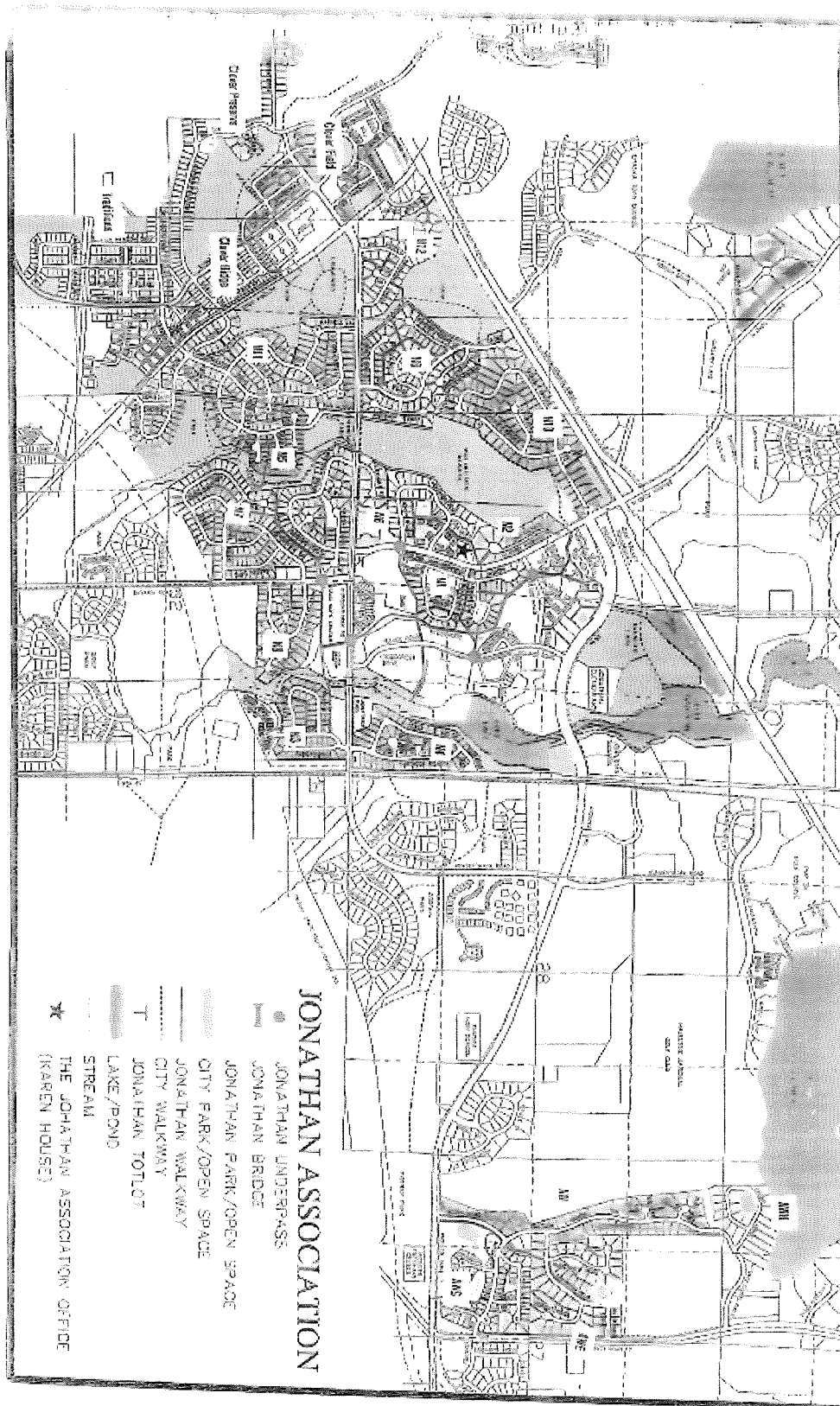
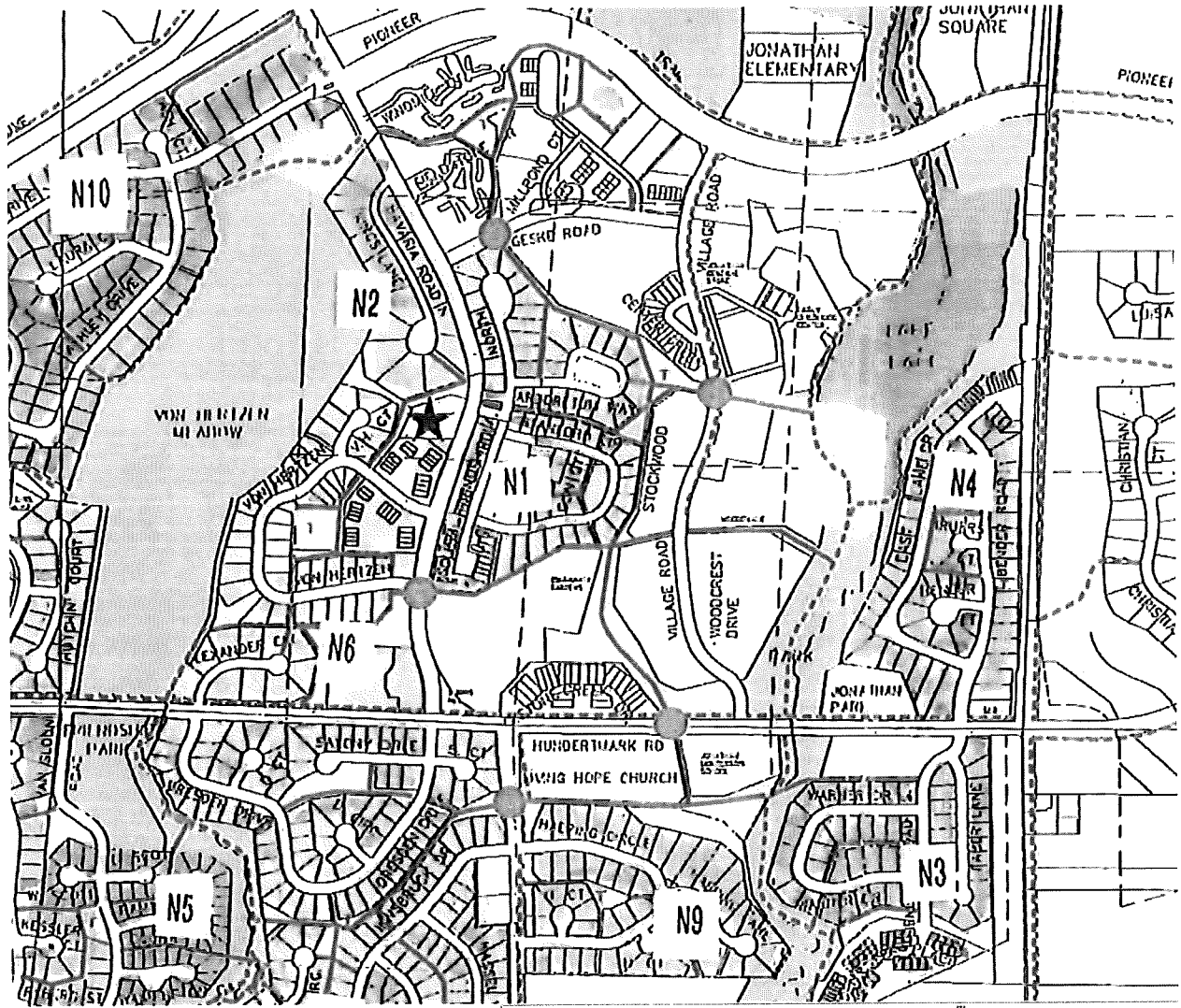


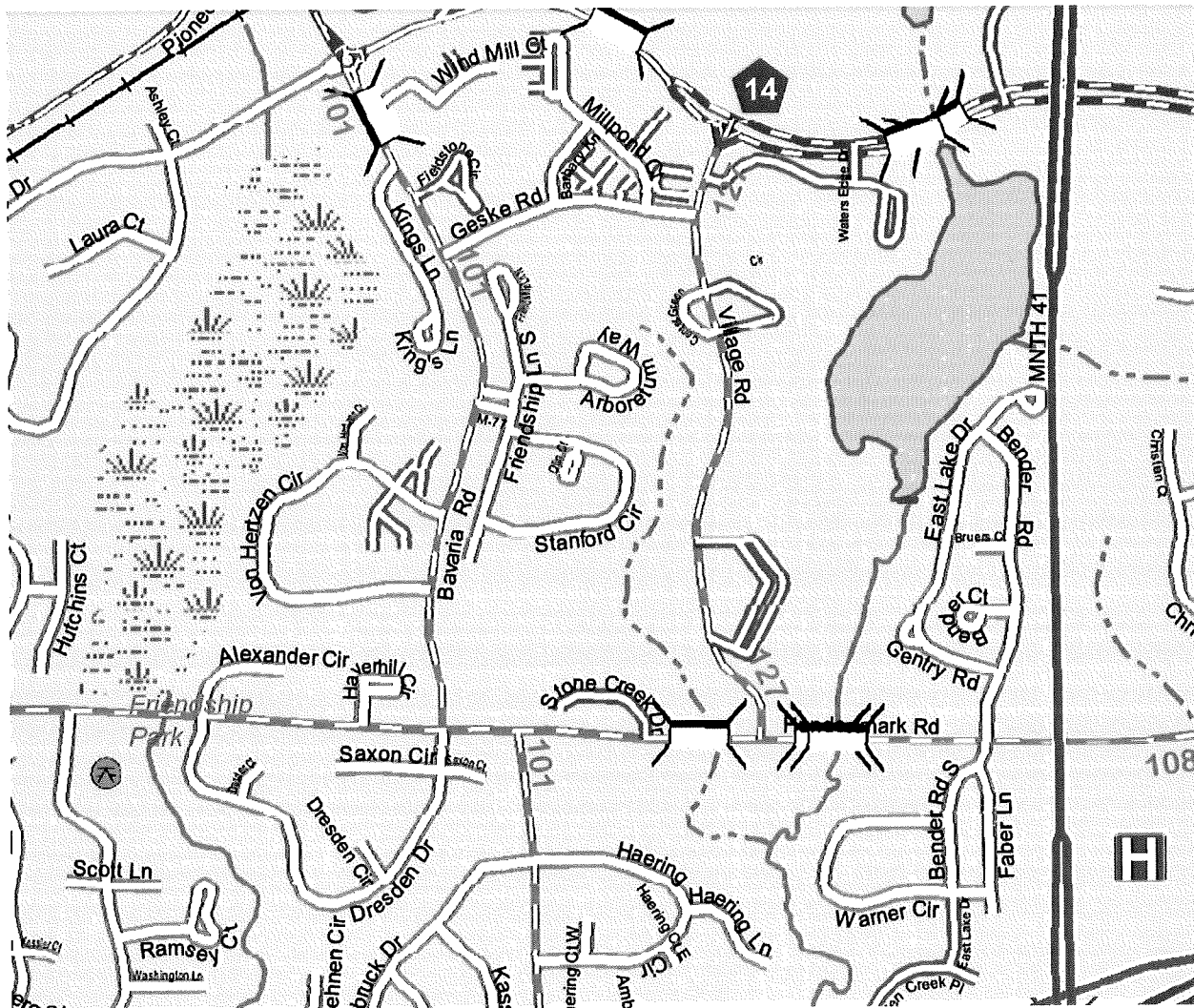
EXHIBIT B **Jonathan Association Map (Excerpts)**



JONATHAN ASSOCIATION

- JONATHAN UNDERPASS
- JONATHAN BRIDGE
- JONATHAN PARK/OPEN SPACE
- ▨ CITY PARK/OPEN SPACE
- JONATHAN WALKWAY
- CITY WALKWAY
- T JONATHAN TOTLOT
- ▨ LAKE/POND
- STREAM
- ★ THE JONATHAN ASSOCIATION OFFICE (KAREN HOUSE)

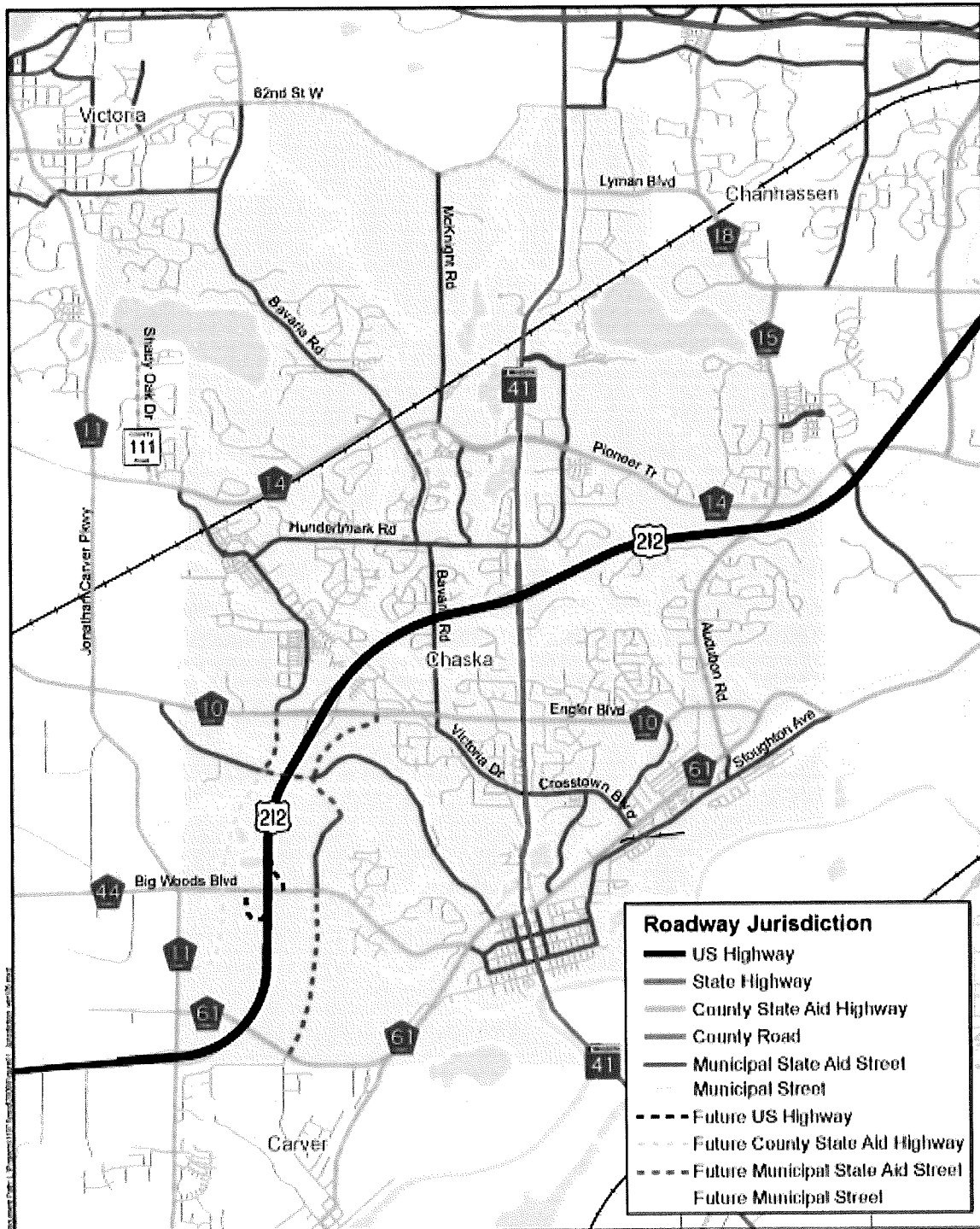
EXHIBIT C **2018 Map of Chaska by MnDOT and Federal Highway Administration (Excerpts)**



ROAD AND ROADWAY FEATURES			
INTERSTATE.....			
US HIGHWAY.....			
MN HIGHWAY.....			
COUNTY STATE AID HIGHWAY.....			
COUNTY ROAD.....			
MUNICIPAL STATE AID STREET.....			
MUNICIPAL STREET.....			
PRIVATE STREET/ROAD.....			
TOWNSHIP ROAD.....			
UNORGANIZED TERRITORY ROAD.....			
RAMP OR CONNECTOR.....			
INTERSTATE EXIT.....			
GREAT RIVER ROAD.....			
OTHER ROADS.....			
FRONTAGE	STATE PARK	NATIONAL	
INDIAN SERVICE	NATIONAL PARK	MONUMENT	STATE FOREST
MILITARY	NATIONAL FOREST	NATIONAL WILDLIFE	STATE GAME

INFRASTRUCTURE FEATURES	
LONG BRIDGE (300' OR GREATER SPAN).....	
MAJOR BRIDGE (20' TO 300' SPAN).....	
MINOR BRIDGE (5' TO 20' SPAN).....	

EXHIBIT D
Map of Existing and Future Roadway System from draft 2040 Comprehensive Plan



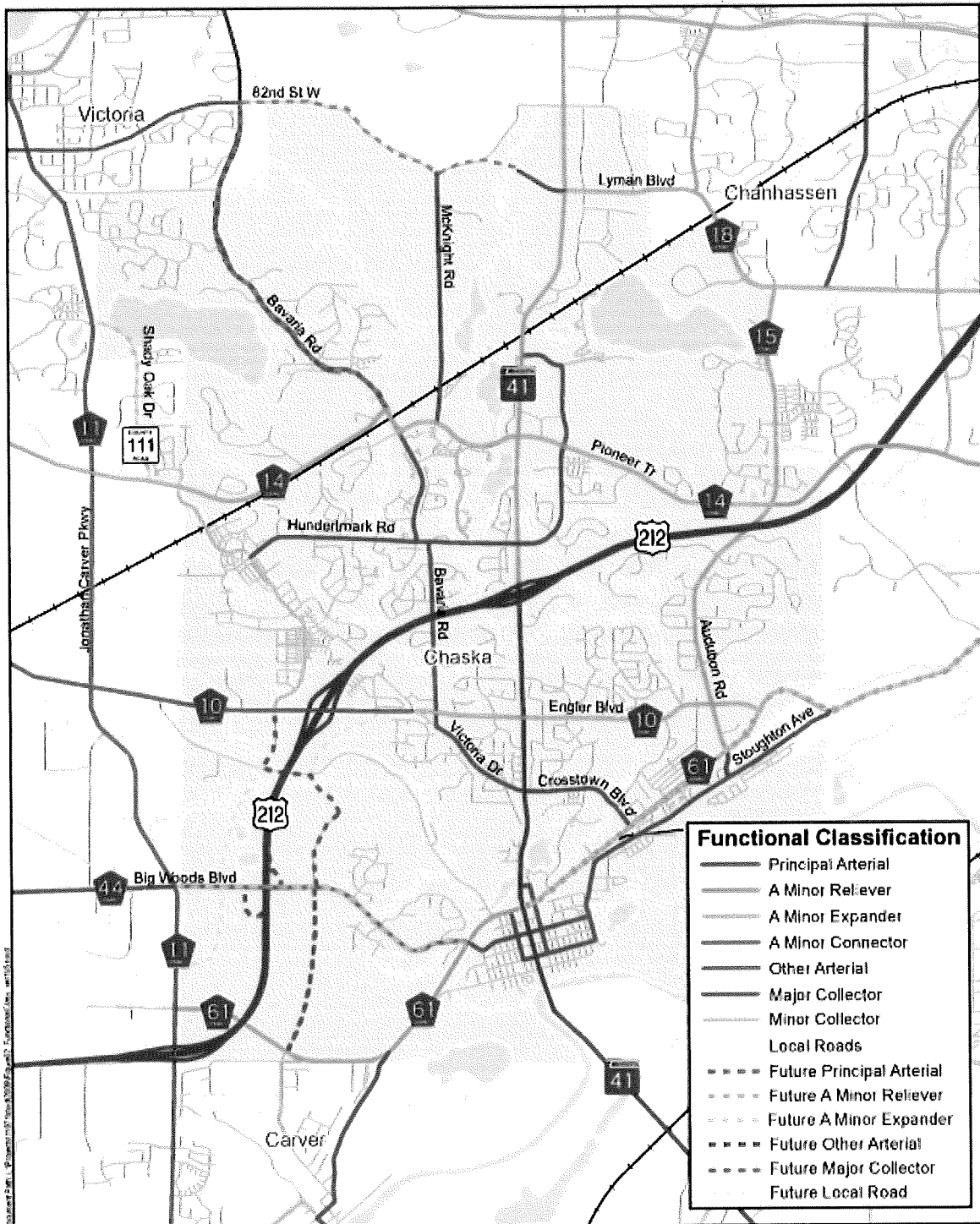
Existing and Future Roadway System

Chaska Transportation Plan Update
 City of Chaska

Figure 1

EXHIBIT E

Map of Existing and Future Roadway System from draft 2040 Comprehensive Plan



Existing and Future Functional Class

Chaska Transportation Plan Update
City of Chaska

Figure 2

EXHIBIT F
Google Maps Photos of Trail Underpass ("Bridge") on Hundertmark Road

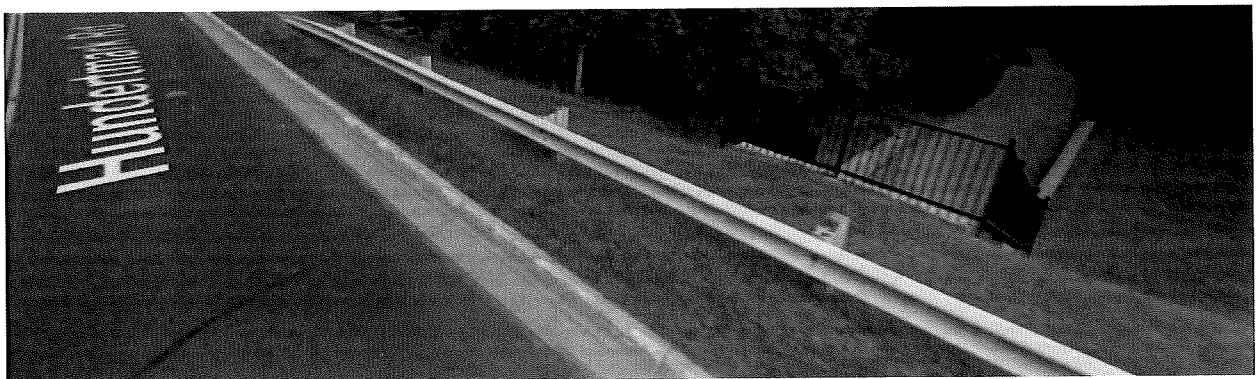
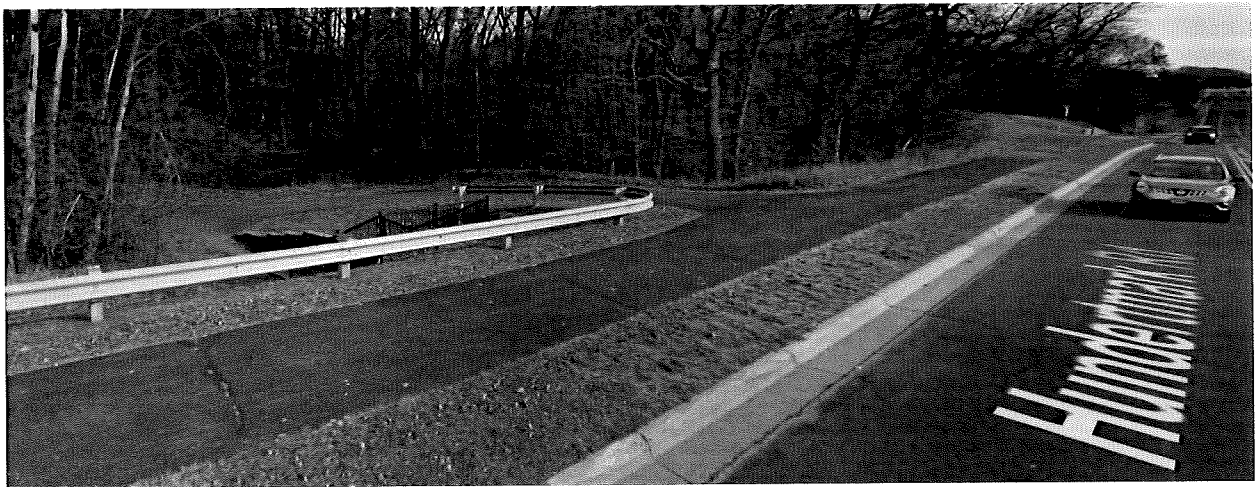
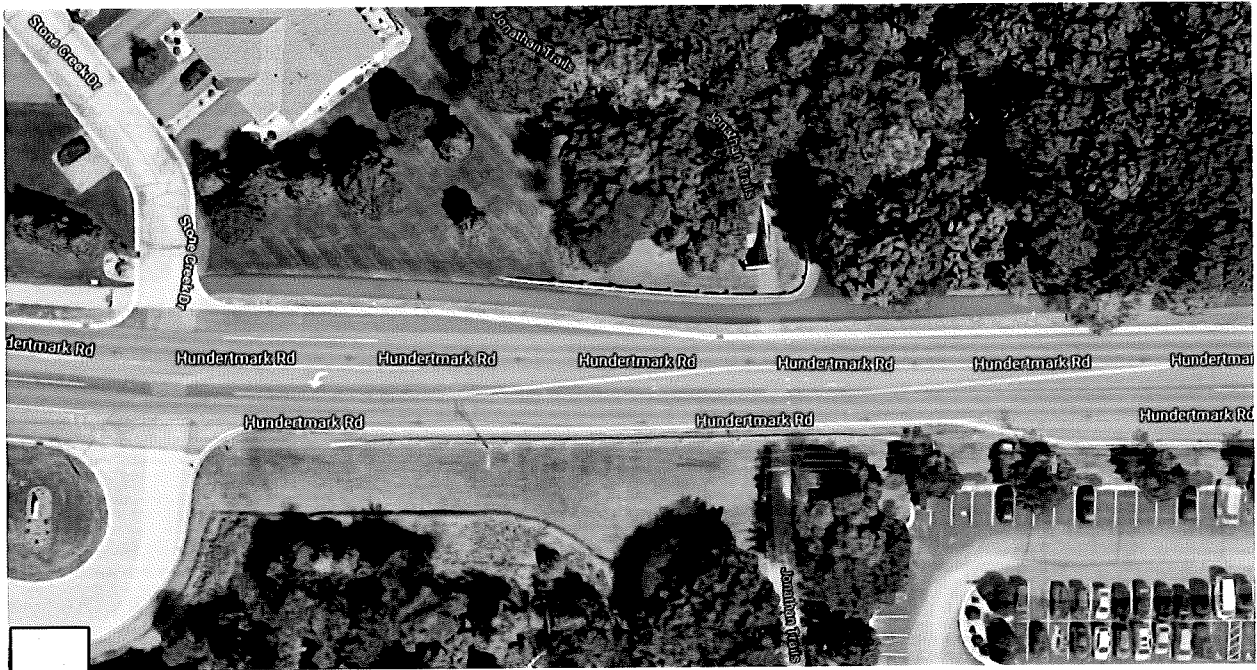


EXHIBIT G
Google Maps Photos of Trail Underpass on Bavaria Road (South of Hundertmark)

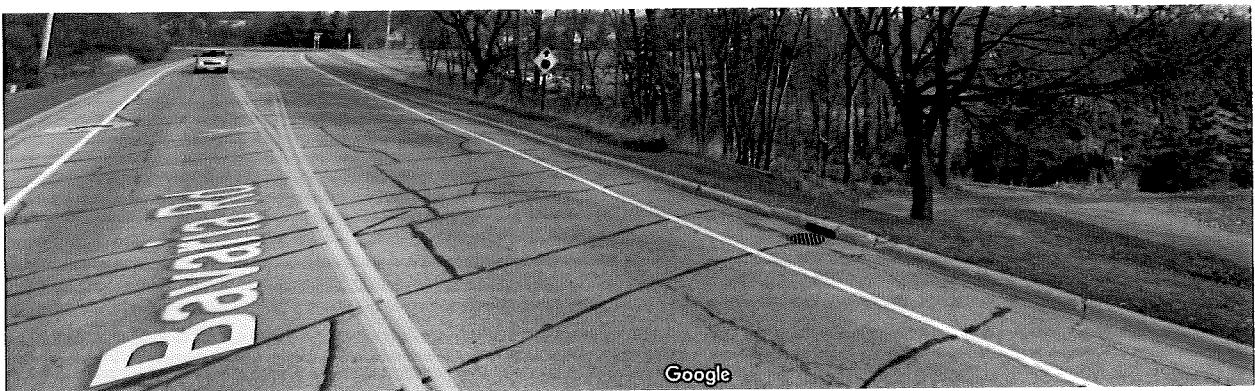


EXHIBIT H
Google Maps Photos of Trail Underpass on Bavaria Road (North of Hundertmark)

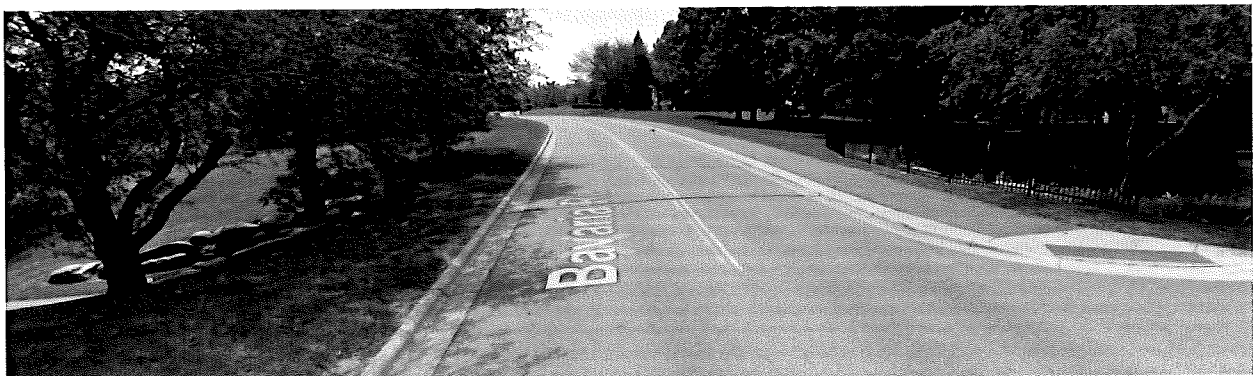
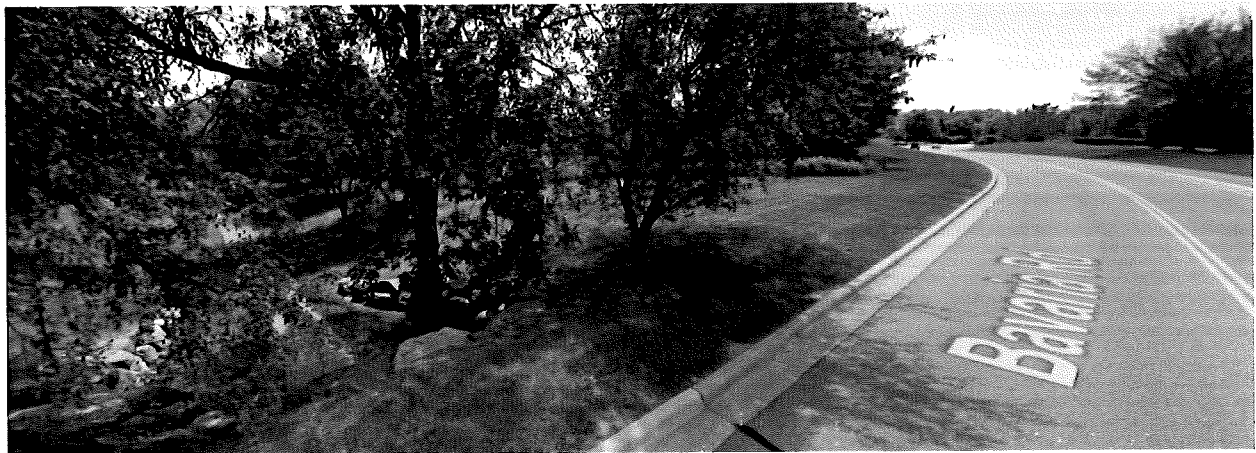
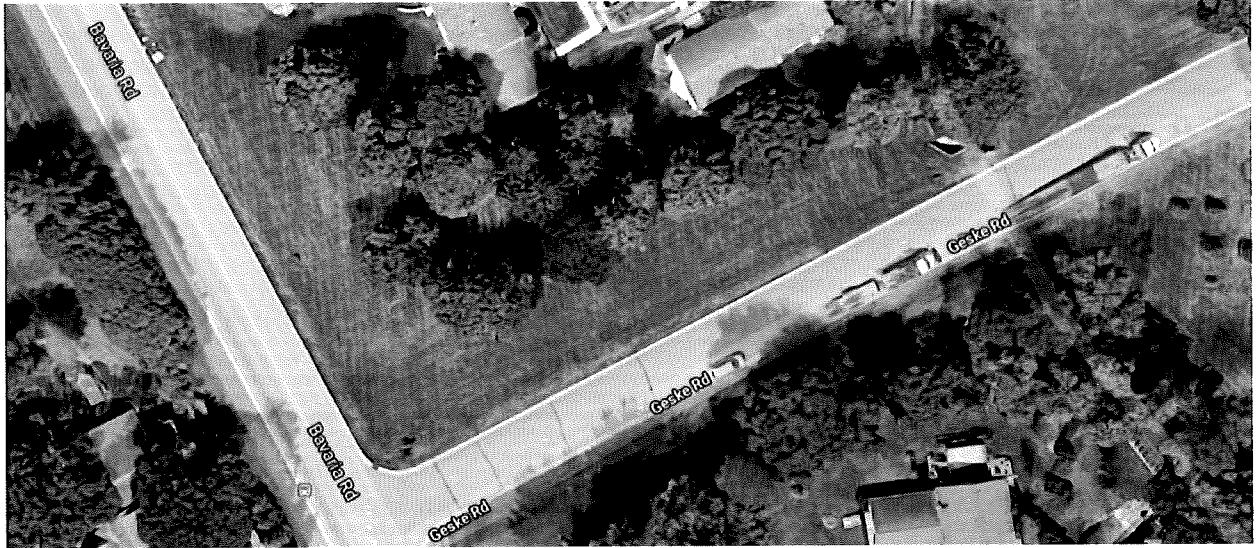


EXHIBIT I
Google Maps Photos of Trail Underpass on Village Road



EXHIBIT J
Google Maps Photos of Trail Underpass on Geske Road





INFORMATION MEMO

Acquisition and Maintenance of City Streets

This memo outlines what cities must do to establish and finance new city streets as well as maintain existing street infrastructure. It includes design and construction standards, procedures to open streets, and definitions of the parts of a street and different types of streets. It also provides links to model street maintenance policies and ordinances regulating others who want to work in your rights-of-way.

RELEVANT LINKS:

I. Defining city streets

City streets may take many different forms, from wide boulevards to narrow alleys, and sometimes consist of multiple elements, including sidewalks, ditches, and shoulders. In addition, some streets located within the city may be under the jurisdiction of another road authority and are not technically “city” streets at all.

A. Anatomy of a city street

A street typically consists of more than the actual blacktop or graveled area traveled upon by vehicles. This traveled portion of the street is contained within a larger swath of land that consists of many more elements known as the street right-of-way, or ROW.

The ROW is usually defined by the easement document or plat. In some less common situations, the ROW may be defined by actual use.

The ROW includes the street and area on either side of the street used to support the use of the street. It also includes the area below and above the roadway. A typical city ROW consists of the:

- Traveled street surface.
- Center median or divider.
- Shoulder of the street.
- Curb and gutter.
- Bicycle lane (if any).
- Sidewalk and/or ditch alongside the road.
- Any remaining land described or depicted in the easement document or plat.
- Subsurface below the actual ROW and the airspace above the ROW.

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

RELEVANT LINKS:

See Minn. Stat. § 160.02, subd. 26.

Minn. Stat. § 160.02, subd 21. Minn. Stat. § 162.09.

Minn. Stat. § 162.17.

Minn. Stat. § 160.83.

Minn. Stat. § 160.82.

In some instances, the portion of the street traveled by vehicles may actually be only a minor element of the ROW. When acquiring and maintaining streets, it is important that cities address and consider all elements of the ROW.

B. Types of streets and highways

Streets may vary widely within a city. In addition, many cities are concerned about and regularly deal with streets that are not “city” streets at all. These streets are located within the city, but under the jurisdiction of another entity such as the state or county. Other streets, such as boundary line roads, may be shared with a township. This section defines the types of streets that cities most often encounter:

- City streets—streets within the boundaries of the city that are constructed and maintained by the city and are not municipal state-aid streets, county streets, or state streets. In most instances the word “street” is synonymous with highway, road, and alley.
- Municipal state-aid streets—all streets within cities having a population of 5,000 or more that are designated as municipal state-aid streets pursuant to Minnesota statutes and the rules of the commissioner of the Department of Transportation. The city is vested with all rights, title, and easements creating the street, but must establish and maintain the street in accordance with the rules of the commissioner. On most major decisions concerning the street, such as establishment, alteration of route, or revocation, the city road authority must obtain the consent of the commissioner. Cities receive an annual allocation of money from the state for the maintenance of municipal state-aid streets. Cities with a population over 5,000 may enter into agreements with the county in which the city is located for the maintenance of all county state-aid highways and municipal state-aid streets within the boundaries of the city.
- Rustic roads—streets designated by resolution as rustic roads because they have outstanding natural features or scenic beauty, average daily traffic volume of less than 150 vehicles per day, access road use, and a maximum allowable speed of 45 miles per hour. A Rustic road may be maintained at a level below normal standards, provided that the street is adequate for anticipated use. Cities have no clear authority to designate streets as rustic roads. This may be an exclusive county and township power.
- Park road—a street or portion of a street located entirely within a city, county, regional, or state park. Expansion of park streets and changes in the grade or alignment is limited by statute.

RELEVANT LINKS:

Minn. Stat. § 89.71.

Minn. Stat. § 160.095.

Minn. Stat. § 435.37.
See Section I-A, *Anatomy of a city street*.

Minn. Stat. § 160.02, subd 17.
Minn. Stat. ch. 163.

Minn. Stat. § 160.07.

Minn. Stat. § 160.02, subd 18.
Minn. Stat. ch. 162.

Minn. Stat. § 162.02.

The city may be protected by a special limited immunity from tort claims arising from use of a street that is a park road.

- Forest roads—streets designated by order of the commissioner of the Department of Natural Resources as forest roads. Forest roads have unique width and maintenance requirements, and may be designated as minimum maintenance forest roads.
- Minimum maintenance roads—streets designated and posted as being maintained at a level less than the usual minimum maintenance standards, but maintained at the level needed to serve occasional or intermittent traffic. Once a street is designated and posted as a minimum maintenance road, the appropriate road authority may be protected by special immunity from tort claims arising from use of the minimum maintenance road. Cities have no clear authority to designate streets as minimum maintenance roads. This may be an exclusive county and township power.
- Alleys—short or narrow streets that are generally utilized as access routes between buildings. The term “alley” is not defined in state statutes and for most purposes is synonymous with the term “street,” imposing the same maintenance duty and standard of reasonable care upon the city, provided that the alley is dedicated to public use.
- Cartways—streets established by a petition process to benefit landlocked property owners in certain circumstances. Cartways may be public streets or designated as private driveways. The city may choose to maintain a cartway if it passes a resolution stating that such maintenance is in the public interest. If no such resolution is passed, the benefited landowners bear the responsibility for maintenance.
- County highways, roads, and cartways—streets within the county that were constructed and maintained by a county. The county is the exclusive road authority for county streets. However, cities are authorized to expend funds for the maintenance and improvement of county streets and bridges beyond their boundaries leading into the city.
- County state-aid highways—streets that are under the jurisdiction of both the State of Minnesota and the county in which the street is located. The county is vested with all rights, title, and easements creating the street, but must establish and maintain the street in accordance with the rules of the commissioner of Transportation. On most major decisions concerning the street, such as establishment, alteration of route or revocation, the county road authority must obtain the consent of the commissioner. The county must obtain city approval for the creation, construction, reconstruction, or improvement of any county state-aid highway that is within the corporate limits of a city.

RELEVANT LINKS:

Minn. Stat. § 160.02, subd 28.
Minn. Stat. ch. 164.
Minn. Stat. § 160.07.

Minn. Stat. ch. 161.

Minn. Stat. § 164.14.

Minn. Stat. § 160.21, subd 2.

Minn. Stat. § 160.21, subd. 6.

Bengtson v. Village of Marine on St. Croix, 246 N.W.2d 582 (Minn 1976).
A.G. Op. 377-A-4 (August 31, 1959). A.G. Op. 396-G-4 (Sept 10, 1957). A.G. Op. 377-A-4 (June 17, 1957).
A.G. Op. 396-G (July 28, 1955). A.G. Op. 396-G-1 (August 22, 1949). A.G. Op. 396-G-7, (June 19, 1946).

Counties receive an annual allocation of money from the state for the maintenance of county state-aid highways.

- Town roads and cartways—streets within a township that were constructed and maintained by a town. The town is the exclusive road authority for township streets. Cities are authorized to expend funds for the maintenance and improvement of township streets and bridges beyond their boundaries leading into the city.
- Trunk highways—streets designated as trunk highways by the Minnesota Constitution or state statute under the jurisdiction of the State of Minnesota and the commissioner of Transportation. Trunk highways have a route number between 1 and 384, and may carry an additional narrative name or designation such as the “Blue Star Memorial Highway” or the “Glacial Ridge Trail.” The Minnesota Department of Transportation is the exclusive road authority for trunk highways.
- Town and city boundary line roads—streets that run along the boundary line between a city and a township. Cities and townships may enter into agreements for the maintenance of boundary line roads that equitably apportion responsibility and authority over the street between the two entities.
- Private roads—streets that are not dedicated to the public for public travel. Private roads and streets are maintained by individual landowners or sometimes a cooperative or association of landowners for their own convenience at their own risk and expense. The city has no duty to maintain private roads. Except in the case of an emergency, state statutes restrict the city’s ability to provide snowplowing services to private streets without compensation. Cities may also provide snow removal services to uncompleted subdivisions, provided certain procedures are met. The cost for the snow removal may be charged against all properties within the subdivision.

II. Acquiring city streets

A. No duty to acquire and construct city streets

The decision to acquire and construct a city street is vested solely with the city council. With the exception of petitions requesting cartways for inaccessible properties, there is no method, via petition or otherwise, by which a citizen or group of citizens in a statutory city can compel a city to acquire or construct a street.

RELEVANT LINKS:

Minn. Stat. § 435.37.

In re Rollins, 738 N.W.2d
798 (Minn. Ct. App. 2007).

Minn. Stat. § 505.01.

The decision to acquire or construct a street is a legislative decision of the city council. This means that as long as the city's reasoning is neither arbitrary, capricious, nor based upon an erroneous reading of the law, the courts will not overrule the city's decision on the issue. The city alone may choose the best time to open, occupy, and use city streets.

Mere notation of a street on an accepted and recorded plat will not require the city to open a street. Instead, the plat simply reserves the dedicated land for future use.

1. Establishment of cartways

Cities must establish cartways to benefit landlocked property owners in certain situations. A property owner who has no or limited access to his or her land may petition the city council to connect the land to a public road. If the petition fits the following criteria, the city council must establish a cartway (a road or driveway) connecting the petitioner's land to a public road:

- The tract of land is five acres or more.
- The owner has no access except over a navigable waterway or over the land of someone else.
- The current access is less than two rods in width.

The city council may select an alternative to the route the petitioner has requested, if the council determines an alternative will be less disruptive and damaging to the affected landowners, and in the public interest.

The petitioner must pay all costs associated with establishing and maintaining the road—unless the council, by resolution, determines such expenditures are in the public interest. The council may require the petitioner to post a bond or other security prior to incurring costs on the landowner's behalf.

A property owner may only petition for a cartway that allows connection to a public road and may not request connection to a body of water or private road.

B. Methods for acquiring city streets

Once a city has decided to acquire and construct a street, the city must generally obtain an easement over the land where the street is to be laid. The easement grants the city the right to construct and maintain the street and the public the right to travel the street. Actual fee ownership of the property where the street is laid is very rare.

Cities may acquire necessary street easements through a variety of methods discussed below.

RELEVANT LINKS:

See LMC information memo,
*Purchase and Sale of Real
Property*.
Minn. Stat. § 412.211.

Minn. Stat. § 13D.05 subd.
3(c).

Minn. Stat. § 541.023.

Minn. Stat. § 465.01.
Minn. Stat. § 117.012.
Minn. Stat. ch. 117.
See Handbook,
*Comprehensive Planning,
Land Use, and City-Owned
Land*, for a detailed
discussion of eminent
domain.

Minn. Stat. § 117.012.

Minn. Stat. § 117.085.

1. Acquisition by purchase

a. Negotiated purchase

A city can acquire a road easement simply by buying it. Statutory cities have the power to purchase real property within or outside of their corporate limits. Home rule charter cities generally have similar authority in their charters.

When considering a purchase of an easement, the city should have the land professionally appraised to determine a purchase price. The value of real estate is not always obvious. A common appraisal method for easements involves contrasting the fair market value of the unrestricted property with the value of the property subject to the easement. The difference between the unrestricted value and the restricted value is the value of the easement.

A public body may close a public meeting to determine the asking price for real or personal property, to consider offers and counteroffers, and to review confidential or non-public appraisal data.

The purchase of an easement, as with all purchases of real estate, will involve a purchase agreement and a written deed with a detailed legal description. The city should work closely with its attorney from the outset to negotiate terms, draft and review the purchase agreement and deed, and execute the transaction. Property transactions that are not executed properly can cause serious problems, even several years down the road.

After purchase, the easement must be recorded with the county recorder in accordance with the Minnesota Marketable Title Act.

b. Eminent domain

A city may acquire a street through eminent domain. If the city cannot reach an agreement with the landowner for the purchase of the easement, the city may need to use eminent domain. All cities have the authority to take (or condemn) private property for public use as long as they pay the landowner reasonable compensation. Essentially, this is a way to compel an owner to sell his or her land to a city.

All cities must follow the procedures for eminent domain established in Minnesota Statutes, though cities may supplement the procedure with provisions that are more restrictive than state law.

State statute requires a formal court action to acquire property through eminent domain. A city must pay an owner for the value of the land or the damages to the land if the city is taking only part of the private property, such as for an easement. The fair value of the property to be paid by the city is established by court-appointed commissioners.

RELEVANT LINKS:

Minn. Stat. § 541.023.

Minn. Stat. § 160.05, subd. 1.
Town of Belle Prairie v. Kliber, 448 N.W.2d 375, (Minn. Ct. App.1989).
Barfnecht v. Town Bd. of Hollywood Tp., Carver County, 232 N.W.2d 420 (Minn. 1975).

Minn. Stat. § 160.05, subd. 2.
A.G. Op. 700-D-26 (July 2, 1952).

Barfnecht v. Town Bd. of Hollywood Tp., Carver County, 232 N.W.2d 420 (Minn. 1975).
Shinneman v. Arago Tp., 288 N.W.2d 239 (Minn. 1980).

Leeper v. Hampton Hills, Inc., 187 N.W.2d 765 (Minn 1971).

Town of Belle Prairie v. Kliber 448 N.W.2d 375 (Minn. Ct. App.1989).
Northfork Tp. v. Joffer, 353 N.W.2d 216 (Minn. Ct. App.1984).

Leeper v. Hampton Hills, Inc., 187 N.W.2d 765 (Minn 1971). *Shinneman v. Arago Tp.*, 288 N.W.2d 239 (Minn., 1980).

Town of Belle Prairie v. Kliber 448 N.W.2d 375 (Minn. Ct. App.1989).
Rixmann v. City of Prior Lake, 723 N.W.2d 493 (Minn. Ct App. 2006).

After acquisition, the easement must be recorded with the county recorder in accordance with the Minnesota Marketable Title Act.

2. Acquisition by user

A city may acquire a street by “user.” When a street or portion of a street has been used as a public street and kept in repair by the city for a continuous period of at least six years, it is deemed to be a dedicated public street by “user” under state statute. Through user a city may obtain a street to the width of the actual use, which generally includes the ditches and shoulders necessary to support and maintain the road.

However, user does not apply to streets used by the public on or running along the tracks and/or right of way of any railway company. User also does not apply to platted streets within a city or to state or federal government lands.

User acts as a form of statute of limitations for landowners whose property is crossed by publicly-used streets. A landowner who does not act to interrupt the public use and maintenance of a street during the six-year period for acquisition by user is not entitled to compensation for damages for the loss of the land. A street obtained by user will remain a city street until it is lawfully vacated, even if the street later falls into disrepair or becomes unused by the public.

a. Level of use needed to establish street by user

To establish that a street has been acquired by user, the city must prove that the public has used the street for a period of six years.

Public use may be established by showing that even a comparatively small number of people regularly used the road for six years. Use may be seasonal or recreational. The road need not be accessible to the public every day of the year.

b. Level of maintenance needed to establish street by user

In addition to use, the city must prove that it has “used and kept in repair” the street for a period of six years. The courts have determined that “used and kept in repair” is synonymous with maintenance.

The maintenance must be of a quality and character appropriate to an already existing public street. The city is not required to demonstrate that it worked every part of a street or that any particular part received attention every year of the six-year period.

RELEVANT LINKS:

Leeper v. Hampton Hills, Inc., 187 N.W.2d 765 (Minn. 1971).

Hansen v. Town of Verdi, 85 N.W. 906 (Minn. 1901).

Rixmann v. City of Prior Lake, 723 N.W.2d 493 (Minn. Ct. App.2006).

Minn. Stat. § 160.21.

Instead, the courts have emphasized that the city must demonstrate that necessary work to maintain the road was performed, even if such necessary work was minor.

In one case the court found sufficient maintenance occurred when the city demonstrated that over a six-year period it had:

- Graveled on occasion.
- Graded.
- Removed snow.
- Weeded.
- Installed culverts.

In another case, mere annual grading, and little else, demonstrated sufficient maintenance by the city.

c. User and accidental street acquisition

A 2006 case has illustrated that the low threshold of “necessary” maintenance may result in a city accidentally acquiring a street. Even when the city does not intend to acquire the road, authorized city expenditures on the road may be used as proof that the city maintained the road. This may occur even when the authorized expenditures are minimal, such as snowplowing and maintenance of city utility lines under the road.

As a result, cities should carefully consider the issue of user when asked to provide any services for, or to conduct maintenance on, a private road. Such actions may result in the city acquiring the street—and its related liability and upkeep—through user.

3. Streets in unfinished and insolvent subdivisions

Due to developers facing financial difficulties, some cities find that they have incomplete subdivisions with unfinished roads that have not been formally turned over to the city. Despite the subdivision being incomplete, city residents may have already moved in. Handling snowplowing in these situations can be difficult for cities trying to balance public safety needs against legal requirements and contract agreements with the developer.

Cities may provide snowplowing services in incomplete subdivisions where the city has not formally accepted the streets from the developer. The city may provide snowplowing services without concern for the user statute in incomplete subdivisions where:

- there are five or more lots.
- the subdivision developer is unable to provide snowplowing services due to insolvency or pending foreclosure; and

RELEVANT LINKS:

Minn. Stat. 429.101.

Sterling Tp. v. Griffin, 244 N.W.2d 129 (Minn.1976).
Padrinos v. City of Nisswa, 409 N.W.2d 36 (Minn. Ct. App.1987). *Foster v. Bergstrom*, 515 N.W.2d 581 (Minn. Ct. App. 1994).

Minn. Stat. § 541.023.
Foster v. Bergstrom, 515 N.W.2d 581 (Minn. Ct. App. 1994).

Minn. Stat. § 541.023, subd 4 (noting that the notice may be in a form similar to a lis pendens).

Minn. Stat. § 462.358. *Collis v. City of Bloomington*, 246 N.W.2d 19 (Minn. 1976).
See Handbook, *Comprehensive Planning, Land Use, and City-Owned Land* for more information on subdivision regulation.

- public safety would be jeopardized by lack of vehicle access.

Cities must pass a formal resolution to utilize this exception to acquisition by user. Cities may recover the reasonable costs of providing snowplowing services as a special assessment.

a. The Minnesota Marketable Title Act and user

Normally, once a city has obtained a street by user, the street will remain a city street—despite later disrepair or lack of use—until a formal, legal vacation. However, cities are subject to the Marketable Title Act (MTA), which has important implications for roads acquired by user.

The general purpose of the Marketable Title Act is to clear property titles of record from the clouds, encumbrances, conditions or limitations of old or abandoned claims and possible interests or rights of dubious value or validity. Under the Marketable Title Act, if claim to real estate is 40 years old or more, it is considered abandoned unless formally recorded.

When a city acquires a road by user, it will not have a written deed to record in order to safeguard the public's interest in the road. As a result, the city should consult its city attorney concerning the drafting of a notice of the encumbrance to be recorded. The recorded notice will put the public and any future buyers of the property on notice of the city's interest in the street. The filing of notice is critical for roads obtained by user that are isolated, lightly used or only occasionally maintained.

A city can refute a claim of abandonment under the MTA only when it can demonstrate actual, open, and exclusive possession of the unrecorded street.

The city's possession must give a prudent person notice that the road is a public road. In this instance, irregular maintenance or sporadic maintenance may not be deemed sufficient for the city to maintain its interest in the road.

4. Acquisition by statutory dedication

A city may acquire streets through statutory dedication. Municipalities have the authority to regulate subdivisions of land for many reasons, including planning for necessities such as adequate streets to serve the new subdivision.

Subdivision regulations must be set out in ordinance form, specifying the subdivision standards, requirements and procedures for review, approval or disapproval of an application to subdivide a large tract of land in the city.

RELEVANT LINKS:

Minn. Stat. § 462.358, subds. 2a, b.

Minn. Stat. § 505.01.

Minn. Stat. § 462.358, subd. 2c. *Nollan v. California Coastal Com'n*, 483 U.S. 825 (June 26, 1987). *Dolan v. City of Tigard*, 512 U.S. 374 (June 24, 1994). *Kottschade v. City of Rochester*, 537 N.W.2d 301 (Minn. Ct. App. 1995). *Middlemist v. City of Plymouth*, 387 N.W.2d 190 (Minn. Ct. App. 1986).

Kottschade v. City of Rochester, 537 N.W.2d 301 (Minn. Ct. App. 1995). *Middlemist v. City of Plymouth*, 387 N.W.2d 190 (Minn. Ct. App. 1986). See also Section III-E-7, *Road Impact Fees*.

Klenk v. Town of Walnut Lake, 53 N.W. 703 (Minn. 1892). *Metlak v. Rasmussen*, 238 N.W. 478 (Minn. 1931). *Allen v. Village of Savage*, 112 N.W.2d 807 (Minn. 1961).

Township of Villard v. Hoting, 442 N.W.2d 826 (Minn. Ct. App. 1989).

The subdivision regulations may require that a reasonable portion of buildable land in any proposed subdivision be dedicated (given) to the public or preserved for public use as streets.

The regulations should specify the required size, location and grading of streets, roads and related walkways, curbs and gutters.

The subdivision regulations may also permit the municipality to condition its approval of the subdivision upon the construction and installation of streets by the subdivider. The terms of such agreement should be stated in a development agreement that requires adequate financial security (such as a letter of credit or bond) to ensure that the streets are built to the city's specifications and satisfaction.

a. Definition of "reasonable portion" of buildable land

When cities require dedication, there must be an "essential nexus" between the fee or dedication imposed and the municipal purpose sought to be achieved by the dedication. The amount of land that will be considered acceptable for dedication depends upon the individual facts and circumstances of the proposed subdivision development. The amount of land required to be dedicated for new streets in a subdivision must bear a rough proportionality to the need created by the proposed subdivision or development.

The city has the burden of proving rough proportionality between the planned subdivision development and the municipality's requirement for a dedication of land. The need for the dedicated street must be reasonably related to the subdivision development.

5. Acquisition by common law dedication

A city may acquire streets through common law dedication. Common law dedication is very similar to the doctrine of user. However, while user is a statute of limitations (blocking any and all claims after a certain amount of time has passed) imposed by state statute, common law dedication is an equitable doctrine created by the courts designed to prevent injustice. Common law dedication prevents a landowner who has offered or donated a street to the public for its use from later denying the existence of the road to the detriment of the public.

To establish a common law dedication, two factors must be proven. First, there must be action (or lack of action) on the part of a landowner that demonstrates intent to dedicate the street to public use. Such actions may be express or implied. Second, there must be public acceptance and use of the street as a public street.

RELEVANT LINKS:

Barfnecht v. Town Bd. of Hollywood Tp., Carver County, 232 N.W.2d 420 (Minn. 1975).

Morse v. Zeize, 24 N.W. 287 (Minn. 1885).
Klenk v. Town of Walnut Lake, 53 N.W. 703 (Minn. 1892). *Sackett v. Storm*, 480 N.W.2d 377 (Minn. Ct. App. 1992).

St. Paul, M. & M. Ry. Co. v. City of Minneapolis, 46 N.W. 324 (Minn. 1890). *Morse v. Zeize*, 24 N.W. 287 (Minn. 1885).

Sackett v. Storm, 480 N.W.2d 377 (Minn. Ct. App. 1992).

Klenk v. Town of Walnut Lake, 53 N.W. 703 (Minn. 1892). *Township of Villard v. Hoting*, 442 N.W.2d 826 (Minn. Ct. App. 1989).

Klenk v. Town of Walnut Lake, 53 N.W. 703 (Minn. 1892). *Keiter v. Berge*, 18 N.W.2d 35 (Minn. 1945). *Anderson v. Birkeland*, 38 N.W.2d 215 (Minn. 1949).

Township of Villard v. Hoting, 442 N.W.2d 826 (Minn. Ct. App. 1989).

By common law dedication, a city may obtain a street to the width of the actual use, including the ditches and shoulders necessary to support and maintain the road.

a. Establishing intent to dedicate a street to public use

In order to establish a road by common law dedication, it must be shown that the landowner intended such dedication to occur. Intention is a fact question that can be proven by showing that the acts of the landowner (or the landowner's failure to act), indicate an intent to donate. The intention to donate need not be conscious and can be demonstrated by long-term acquiescence to the existence of the street or failure to halt the public's use of the street.

In addition to long-term acquiescence, certain short-term and overt acts may prove an intention to dedicate. For example, the court has found that intent to dedicate existed where the landowner added improvements (planking and cattle guards) to assist public travel. Intent has been found where a public road was drawn on a plat. Intent may also be proven where the landowner has requested the city to perform improvements on the street (or accepted improvements without protest).

b. Level of use needed to establish a street by common law dedication

As with user, public use for the purposes of common law dedication may be shown by a relatively small number of people. Use is a factual matter that can be established by demonstrating the typical use of the road.

In one instance, the court noted that use of a street by residents and tourists for lake access, by the postal service, and city police on routine patrols, established routine public use sufficient for common law dedication.

Unlike user, no public expenditure for improving or maintaining the roadway need be made for common-law dedication to be found. However, public expenditures on the street are a factor that the court will weigh in favor of showing public acceptance and use of the street.

Unlike user, no specific time period of public use need be established to prove common law dedication. Common law dedication is instantly effective and irrevocable, once intent to dedicate the street and public acceptance of the street occurs.

However, long-term use by the public is certainly strong evidence that would weigh in favor of public acceptance of the street.

RELEVANT LINKS:

See Section II-B-3-a *The Minnesota Marketable Title Act & User*.

Minn. Stat. § 541.023.

Minn. Stat. § 541.023, subd 4 (noting that the notice may be in a form similar to a lis pendens).

Minn. Stat. § 465.03.

Minn. Stat. § 163.11, subd. 5.

See Section I-B, *Types of streets and highways* for a definition of a county street or highway.

See LMC information memo, *Vacation of City Streets* for a discussion of damages that may be incurred as a result of a vacation.

c. The Minnesota Marketable Title Act and common law dedication

As discussed above, cities are subject to the Minnesota Marketable Title Act.

When a city has acquired a road by common law dedication, it should protect the public's interest in the road by conforming to the requirements of the Marketable Title Act.

Under the Marketable Title Act, if a claim to real estate is 40 years old or more, it is considered abandoned unless formally recorded. When a city acquires a road by common law dedication, it will not have a written easement document to record. As a result, the city should consult its city attorney concerning the drafting of a notice of the encumbrance to be recorded.

6. Acquisition by gift or devise

A city may accept a gift or devise (from a will) of real property. When accepting property by gifts or devise, the council must pass a resolution stating the terms of acceptance by a two-thirds majority vote of the council.

7. Acquisition of a former county street

Cities may acquire streets from the county in several ways. In most instances, the county does not need the city to consent to the acquisition.

a. County revocation and reversion of a county street or highway

The county board, by resolution, may revoke any county highway under its exclusive jurisdiction.

Thereafter, the highway becomes a street of the city in which it is located. The county is not required to consult with or seek the consent of the city acquiring the street concerning the reversion.

There is no requirement that the county repair or maintain a road that reverts to a city.

If maintaining or repairing the road after reversion is too great of a burden, the city can vacate the road. If the city vacates the road within one year of the revocation, the county must pay all damages occasioned by the vacation.

RELEVANT LINKS:

Minn. Stat. § 163.11, subd. 9.

Minn. Stat. § 162.02, subd. 10.
See Section I-B, *Types of streets and highways* for a definition of a county state-aid highway.

A.G. Op., 379-C-11, (March 16, 1956).

Minn. Stat. § 414.038.

Minn. Stat. § 164.14.
See Section II-B-8-c, *Consolidated city streets*, below concerning the maintenance of boundary line streets shared by cities and townships.

Minn. Stat. § 414.036.

b. County transfer of road authority over a county street or highway

The county board may transfer jurisdiction and ownership of a county highway under its exclusive jurisdiction to another road authority, including a city, upon agreement between the county and the authority to which the transfer is being made. The county is not required to enter into a transfer agreement concerning a road eligible for reversion, as discussed above, but may choose to do so.

c. Revocation and reversion of a county state-aid highway

A county state-aid highway may be revoked by joint action of the county board and the commissioner of Transportation. If a county state-aid highway is established or located within the limits of a city, it cannot be revoked without the concurrence of the governing body of such city.

Upon revocation, the county state-aid highway reverts to its status prior to its designation as a county state aid highway. If the county state-aid highway was previously a city street, it will revert to that status once again.

8. Acquisition through annexation or consolidation

A city may acquire streets by annexing property that includes a street. Likewise, cities may acquire streets through consolidation or concurrent annexation and detachment.

a. Annexed township streets

Cities may acquire streets through annexation of township lands that include streets. When a city annexes the property on both sides of a township street, that portion of street abutting the annexed property ceases to be a town street and becomes the obligation of the annexing municipality. However, the annexing city may contract with the township for continued maintenance of the street.

When a city annexes property abutting only one side of a township street, the segment of street abutting the annexed property must be treated as a boundary line street. Maintenance of boundary line streets are discussed in detail later in this memo.

If the township from which the street is acquired through annexation has incurred debt attributable to improving or constructing the street, the order of annexation will require the city to reimburse the township for its debt. This reimbursement can be waived through agreement with the township.

RELEVANT LINKS:

Minn. Stat. § 414.061.

Minn. Stat. § 414.067.

Minn. Stat. § 414.067.

Minn. Stat. § 161.16 subd. 4.

J & W Asphalt v. Belle Plaine Tp., 883 N.W.2d 827 (Minn. Ct. App. 2016).

If reimbursement is required, the debt can be repaid in installments of equal payments over no less than two years, but no more than eight years.

If the township has funded street improvements through special assessments, the city must reimburse the township for all special assessments assigned by the township to the annexed property.

This reimbursement can also be waived through agreement with the township.

If reimbursement is required, the debt can be repaid in installments of equal payments over not less than two years, but no more than eight years.

b. Annexed city streets (after detachment from a neighboring city)

Property of one city which abuts another city may be concurrently detached and annexed. An annexing city may acquire streets from its neighbors through this procedure.

When an existing city is divided in any manner, the order for annexation and detachment may make special provisions for the apportionment of property and obligations between the city adding territory and the city from which the territory was obtained. The apportionment must be made in a just and equitable manner that takes into account many factors, including indebtedness, assets, and the value of property being acquired. The “just and equitable” apportionment may require the acquiring city to compensate the detaching city for any debts incurred for streets or any attached special assessments.

c. Consolidated city streets

Cities may acquire roads through consolidation with another city. When cities consolidate, all claims and properties, including interests in city streets, become the property of the newly consolidated city. The new city acquires full power and authority over the streets for public purposes as the council may deem best.

9. Reversion or Conveyance by MnDOT

The commissioner of the Minnesota Department of Transportation may determine that certain highways are no longer needed for the trunk highway system. The highway may revert to the city in certain circumstances, but can also be conveyed directly to the city by the commissioner. The city does not need to accept the conveyance for it to be effective.

RELEVANT LINKS:

Seaton v. Scott County, 404 N.W.2d 396 (Minn. Ct. App.1987). *Roche v. City of Minneapolis*, 27 N.W.2d 295 (Minn. 1947). *Woller v. City of Granite Falls*, 1995 WL 434455 (Minn. Ct. App. 1995) (unpublished decision). Handbook, *Liability*.

See Minnesota Department of Transportation Road Design Manual.

28 C.F.R. 35.151.

See MnDOT: Detectable Warning Surfaces: Truncated Domes.

Roche v. City of Minneapolis, 27 N.W.2d 295 (Minn. 1947). *Miles v. City of Oakdale*, 323 N.W.2d 51 (Minn.1982). *Dunn v. Ramsey County*, 184 N.W.2d 773 (Minn. 1971). *Spaeth v. City of Plymouth*, 344 N.W.2d 815 (Minn.1984).

C. Standards for design and construction of city streets

1. Design

The design of city streets is a discretionary act that entitles a municipality to governmental immunity from liability for negligent design, absent actual knowledge of dangerous conditions or prior accidents. The duty rests upon a municipality to employ competent engineers to plan and construct its system of streets, and ordinarily, if it relies upon such competence, the city is not liable for mere errors of judgment.

The Minnesota Department of Transportation has published a “Road Design Manual” with standard specifications for streets built with state funding such as city state-aid streets.

a. Design standards and the Americans with Disabilities Act

Cities are subject to the requirements of the federal Americans with Disabilities Act (ADA). The ADA requires that newly-built streets and sidewalks provide curb ramps or sloped areas to allow safe pedestrian access by persons with disabilities. Similar requirements may apply when existing streets and sidewalks are repaired or altered.

In addition, the Federal Highway Administration and the Minnesota Department of Transportation currently require use of detectable warnings or truncated domes on MnDOT, state aid, or federal aid projects when curb ramps are constructed or altered or when streets are resurfaced. A detectable warning is a standardized surface feature built into walking surfaces or other elements to warn visually impaired people of hazards on a circulation path. MnDOT provides information on approved products for detectable warning surfaces.

2. Drainage

In designing a new street, the city engineer should be directed to carefully study existing drainage patterns. Cities can sometimes be held legally responsible for damages resulting from changes in flow or increased concentration of drainage that occur as a result of street construction. In some instances, regular flooding (even if intermittent) caused by the construction of city infrastructure may be considered a taking of property without just compensation. As a result, the city should use every reasonable means to minimize disturbance of natural drainage patterns.

RELEVANT LINKS:

A.G. Op.396-G (July 28, 1955).

In re Lafayette Dev Corp,
567 N.W.2d 743 (Minn. Ct.
App. 1997), aff'd, 567
N.W.2d 740 (Minn. 1988).

Minn. Stat. § 412.221, subd
6.
Minn. Stat. § 412.221, subd
23.
*McDowell v. Village of
Preston*, 116 N.W. 470
(Minn. 1908). *Mueller v. City
of Duluth*, 188 N.W. 205
(Minn. 1922).

*Village of Pine City v.
Munch*, 44 N.W. 197 (Minn.
1890).
Minn. Stat § 412.231.

Bice v. Town of Walcott, 67
N.W. 360 (Minn. 1896).

D. Procedure to open city streets

After construction, when a city has acquired a street by purchase, eminent domain or statutory dedication, it may declare the street open for travel by passing a resolution or ordinance. Thereafter, the street will become part of the municipal system of streets and subject to the city's regulation and control.

However, when a city accepts dedication of a street designated in its official map, and the street is actually used as a public street before and after the dedication, the city forgoes the discretion to refuse use of the street. The street will remain open even if the city has failed to pass an ordinance or resolution formally opening the street.

1. Special problems: Unauthorized structures encroaching on unopened city streets

The city has the discretion, as discussed above, to choose the appropriate time to open a city street once it is dedicated to the public. On occasion, particularly in the case of platted streets, many years may pass before the city turns a "paper street" (a street that exists only on a map or plat) into an actual road. During the interim, abutting landowners may purposefully or unsuspectingly construct improvements over and on the dedicated street or otherwise occupy the area.

a. Removal of unauthorized structures

State statute grants cities substantial authority over their streets, including the power to prevent encumbrances and obstructions. In addition, state statutes grant cities the authority to regulate and abate nuisances which affect the public health and safety. The erection or maintenance of a structure on a public street has been recognized as a public nuisance that may be abated by the city.

To remove the nuisance obstruction, the city should contact the landowner and provide notice of the need to remove the obstruction. If the landowner is unwilling to remove the obstruction, the city may bring a court action to compel removal. In the alternative, the city may choose to prosecute the landowner for violating the city nuisance ordinance or another relevant ordinance. The penalty for violating a city ordinance must be established in the ordinance and may carry a fine up to \$1,000.

b. Estoppel

On very rare occasions and under the right facts, the doctrine of estoppel may prevent the city from ordering the removal of unauthorized structures obstructing a dedicated street the city wishes to open.

RELEVANT LINKS:

City of Rochester v. North Side Corp., 1 N.W.2d 361 (Minn. 1941).

Halverson v. Village of Deerwood, 322 N.W.2d 761 (Minn.1982).

Minn. Stat. § 541.01.

Minn. Stat. § 541.02.
Stadtherr v. City of Sauk Center, 231 N.W. 210 (Minn. 1930). *Fischer v. City of Sauk Rapids*, 325 N.W.2d 816 (Minn.1982). *Heuer v. County of Aitkin*, 645 N.W. 2d 753 (Minn. Ct. App. 2002). *Chase v City of Plymouth*, (Minn. Ct. App. April 29, 2008) (unpublished decision).

If the city is perceived to have acquiesced to or encouraged the construction of a valuable structure on a dedicated street, the court may view ordering removal as unjust and prevent the removal through estoppel.

The Minnesota Supreme Court has applied estoppel based upon the following facts:

- The landowner's improvement was a personal residence with significant value that was located almost entirely within the unopened street.
- The mayor personally visited and viewed the site during construction and instructed the landowners that building should continue as no permits were needed.
- The city placed power poles in the middle of the same unopened street.
- The city placed the home on the tax rolls despite its location.
- The city installed water and sewer utilities to the home despite its location.
- The city designated substitute streets to serve the area.

Accordingly, the court has ruled that simple non-action will not deprive the city of its interest in the street, but affirmative acts that encourage the encroachment when coupled with non-action may result in the loss of the street.

These factors illustrate the danger of losing public lands based upon the action of the city and, potentially, the unauthorized actions of city officials.

c. Adverse possession and prescriptive easements

When a landowner has occupied the land of a dedicated, but unopened, city street for a significant period of time, they may assert that they have acquired clear and full ownership of the street by adverse possession. In the alternative, they may assert that they have acquired a prescriptive easement over the land.

Under state statute, when a person has occupied or possessed land for a 15-year period, the person is deemed to have acquired the land (or a prescriptive easement interest in the land) by adverse possession. However, state statute explicitly exempts government lands from the adverse possession statute. As a result, a landowner cannot extinguish the city's interest in a dedicated street by adverse possession and cannot acquire a prescriptive easement over city land.

RELEVANT LINKS:

Sanborn v. Van Dyne, 96 N.W. 41 (Minn. 1903).

See Section II-D-1-b, *Estoppel*.

See LMC information memo, *Vacation of City Streets*.

Bolen v. Glass, 755 N.W.2d 1 (Minn.2008).

See LMC information memo, *Vacation of City Streets*.

A.G. Op. 396-g-16 (Apr. 10, 1947).

Minn. Stat. § 412.221 subd. 18. Minn. Stat. 440.11.

2. Special problems: Requests to occupy an unopened city street

Occasionally, the city will receive a landowner's request for formal permission to occupy an unopened street on a temporary or permanent basis. There is no legal procedure, short of vacation, for a statutory city to permit occupation of a dedicated city street.

It is well established in Minnesota law that a city holds its streets "in trust" for the public. The city does not generally own title to the land upon which the street is built. As mere trustee of the public's interest in the street, the city does not have the authority to authorize a private use of the street which will interfere with the public use of the street for street purposes.

In addition, an explicit grant of permission to occupy a street, even on a temporary basis, may later prevent the city from reclaiming the street based upon estoppel, as discussed above.

If the city believes the occupation of the unopened street would be beneficial to the public interest, it may wish to consider whether the street should be lawfully vacated. Vacation, however, will mean a permanent loss of the public's interest in the street.

Charter cities may adopt charter and/or ordinance provisions that allow the occupation of unopened streets by private interests.

3. Special problems: Reopening a closed street

Cities may only lawfully divest themselves of public streets through the vacation process. Street vacation is discussed in-depth in the League's memo, "Vacation of City Streets."

Once a city street is vacated, the vacation means a permanent loss of the city's interest in the street. There is no process to simply "repeal" a completed street vacation. In order to reopen a street after vacation, the city would need to either re-negotiate a new easement with the abutting property owners or use eminent domain proceedings at a cost to the city.

Accordingly, if the city anticipates a future need for the street, the city should not grant a petition to vacate the street.

4. Special problems: Naming and numbering city streets

The authority to name streets and number city lots is vested exclusively in the city council. Street names and lot numbers must be established by ordinance. The city also has the authority to re-name and re-number streets and property when needed.

RELEVANT LINKS:

Minn. Stat. § 412.221 subd 6.

See Handbook, *Financing Public Improvements*.

A.G. Op. 396-G-7, (June 19, 1946).

Minn. Stat. § 429.021, subd. 1.
Minn. Stat ch. 429.
See Handbook, *Financing Public Improvements*. LMC information memo, *Special Assessment Toolkit*.

Cities should name streets and number lots pursuant to a formal plan for city-wide property location. The goal of the plan should be to facilitate property location by residents, emergency personnel and visitors in an easy, logical and expeditious manner.

In general, duplicate or similar sounding names for city streets should be avoided to avoid confusion for emergency personnel. For example, a city with two “Pine Avenues” may have difficulty communicating to police and fire agencies exactly where their assistance is needed. Likewise, “fourth” and “fort” street sound similar and may generate the same type of confusion.

E. Financing street acquisition and construction

All cities are empowered to acquire, construct, and improve city streets and to finance these activities in a variety of ways. State statute allows statutory cities to choose between various funding mechanisms depending on the city’s circumstances.

Home rule charter cities may have unique funding limitations imposed by their local charter. If the charter is silent on the issue, home rule charter cities may utilize the State statute.

Highlighted below are the several funding mechanisms available to cities for acquiring and constructing city streets. These funding mechanisms are discussed in depth in the Handbook for Minnesota Cities: Financing Public Improvements.

1. General funds

If the city council desires, and funds are available, the city may fund street acquisition, construction and improvement with money in the general fund raised from annual city property taxes.

However, many city councils find themselves confronted with increasing pressures for new and improved streets, as well as with mounting construction prices, at a time when their budgets are severely constrained. For cities with insufficient general funds, the alternatives outlined below—singularly or in combination—can provide needed funds for street construction.

2. Special assessments

City streets can be financed through special assessments. Special assessments are an indirect form of taxation. They are a compulsory charge on selected properties for a particular improvement or service that benefits the owners of the selected property. Special assessments have three distinct characteristics:

RELEVANT LINKS:

Minn. Stat. ch. 475.
See Handbook, *Debt and Borrowing*.

Minn. Stat. § 471.572.

- They are a compulsory levy a city uses to finance a particular public improvement program.
- The city levies the charge only against those particular parcels of property that receive some special benefit from the program.
- The amount of the charge bears a direct relationship to the value of the benefits the property receives.

Special assessments apply only to real estate. Cities never levy special assessments against personal or movable property. In theory, special assessments are more equitable than property taxes because those who pay them obtain some direct benefits from the improvements.

To ensure full protection for property owners, the courts insist on strict compliance with the special assessment procedural requirements. Because these requirements have legal implications, city councils should have the city attorney handle assessment proceedings.

3. Bonds

Unlike private persons and corporations, cities may not finance improvement projects by conventional bank loans or stock offerings. Instead, cities must use procedures specified by state law for bonding. City streets can be financed through bonding alone or in combination with special assessments.

There are a wide variety of bonds cities can choose from. Bonds can be classified by the security behind the bonds, the purpose for which the proceeds of the bonds will be used, and the user of the capital facility financed by the proceeds of the bonds. The city should consult specialized bond counsel to help determine the bond best suited to the city's needs and assist the city in working through the technical aspects of a bond sale.

4. Infrastructure replacement reserve fund

An additional financing mechanism for city streets is the creation of an infrastructure replacement reserve fund. A city may establish a reserve fund by a two thirds vote of all its members through ordinance or resolution, and may annually levy a property tax for the support of the fund. After the resolution or ordinance is passed, city residents may petition for an election on the issue. The proceeds of property taxes the city levies specifically to support this fund must go into the reserve fund. The city may dedicate any other additional monies to the fund.

RELEVANT LINKS:

Minn. Stat. § 462.358.
See Section II-B-4 *Statutory Dedication*.

Minn. Stat. § 160.87.
Minn. Stat. § 160.86.

Minn. Stat. § 160.87.
Minn. Stat. § 160.89.

Minn. Stat. § 160.845.

Country Joe, Inc. v. City of Eagan, 560 N.W.2d 681 (Minn.1997).

5. Development agreements

In new developments being subdivided in accordance with a city subdivision ordinance, a city may condition its approval of the subdivision upon the construction and installation of streets by the subdivider. The terms of such agreement should be stated in a formal development agreement.

A development agreement relieves the city of the risks inherent in special assessments and/or the expense of bonding, while still allowing the city to provide needed streets that meet the city's specifications and standards. The development agreement between the city and the developer should require adequate financial security (such as a letter of credit or bond) to ensure that the streets are built to the city's specifications and satisfaction.

6. Toll facilities

Cities may develop, construct, and operate toll facilities as a financing mechanism for city streets. With the approval of the commissioner of Transportation, cities may enter into development agreements with private management companies for the construction and operation of toll facilities.

Toll revenues may only be used for certain purposes, including the repayment of indebtedness incurred for the toll facility, payments related to a development agreement, costs of operation, and for building reasonable reserves for future improvements.

Cities may not impose tolls on existing streets and bridges.

7. Road impact fees

Cities facing increased development pressures often struggle to meet growing needs for new city streets and for maintenance of existing ones. To meet this pressure, in the past, some cities have attempted to impose a "road impact fee" or "road unit connection fee," similar to a water or sewer access fee, as part of the development process.

These impact fees made development approvals and/or building permit issuance contingent upon satisfactory payment of the levied fee. The fees were designed to shift a portion of the cost of providing streets to serve new growth from the general tax base to the new development generating the demand for the streets.

In one case, the Minnesota Supreme Court invalidated a road impact fee as a means of funding street improvements and maintenance after finding the fees to be an invalid tax that exceeds the statutory authority of cities. Cities interested in exploring road impact fees must work closely with their city attorneys.

RELEVANT LINKS:

Schigley v. City of Waseca, 118 N.W. 259 (Minn. 1908).
McDowell v. Village of Preston, 116 N.W. 470 (Minn. 1908). *Stadtherr v. City of Sauk Center*, 231 N.W. 210 (Minn. 1930). *Baker v. City of South St. Paul*, 270 N.W. 154 (Minn. 1936). *Hansen v. City of St. Paul*, 214 N.W.2d 346 (Minn. 1974).

Kopveiler v. Northern Pac. Ry. Co., 160 N.W.2d 142 (Minn. 1968).

See Handbook, *Liability*, for more information on negligence.

Minn. Stat. § 466.03.
Conlin v. City of Saint Paul, 605 N.W.2d 396 (Minn. 2000). *Zank v. Larson*, 552 N.W.2d 719 (Minn.1996).

III. Maintaining city streets

Once a city has acquired and opened a dedicated public street, it has a duty to maintain the street in a manner that is safe for public use and travel. The duty to maintain relates to both the actual physical condition of the street (for example: cracks, holes or pits) and to preventing and removing obstructions that may be placed upon the street (for example: carts, debris, signs or structures).

Cities may be found liable for damages to injured persons if the city had knowledge of a defect or dangerous condition on a city street, but failed to correct it within a reasonable amount of time. Knowledge of the dangerous condition may be actual or constructive.

However, cities are not required to act as an insurer for the public against every accident or danger that may arise on a public street. The city will not be held liable for an accident, if it can demonstrate that it has used reasonable care—given its resources—to maintain the street.

Cities may demonstrate that they have taken reasonable care in the maintenance of their streets by adopting and adhering to right-of-way ordinances and street maintenance policies.

A. Street maintenance policies

A street maintenance policy is a written document covering maintenance activities like snowplowing, street sweeping, and pothole repairs. The policy helps the city plan for the use of its resources, establish priorities for work, and provides an explanation as to how and why the city performed or did not perform street maintenance.

A street maintenance policy can help the city demonstrate that it was not negligent in maintaining its streets. A policy can also support a defense of statutory discretionary immunity.

1. Discretionary immunity and policy adoption

Cities have statutory discretionary immunity that protects policy and planning level decisions made by the city. Under state statute, cities are immune from claims based upon the performance or failure to exercise or perform a discretionary function or duty. The adoption of a city policy regarding street maintenance is normally a discretionary function entitled to immunity, when the adoption of the policy requires the city to plan and make decisions based upon weighted social, economic and political factors.

RELEVANT LINKS:

Hennes v. Patterson, 443 N.W.2d 198 (Minn. Ct. App. 1989).

Minder v. Anoka County, 677 N.W.2d 479 (Minn. Ct. App. 2004).

For example, in one case, a motorcyclist was injured when his motorcycle fell into a pothole on a county road. Though the existence of the pothole was potentially dangerous and open and obvious, the county was found to be not liable based upon discretionary immunity.

Prior to the accident, the county had adopted a street maintenance policy that used an evaluation system to measure street suitability in order to determine resource allocation for repair. The policy required that several factors be considered in rating a street's suitability, including distress, geometrics, safety/accident rate, structure, the volume of traffic expected, the number of complaints about the street, any input from local municipalities, and county knowledge of upcoming total reconstruction of the street. The county could demonstrate that, at the time of the accident, it was adhering to its policy on street repairs and was therefore entitled to immunity.

2. Street maintenance policy content

A street maintenance policy should be a written document that is adopted by city council upon the advice and recommendation of professional staff. A written policy is important because it provides the city and its employees with a consistent and documented method of performing street maintenance.

In addition, a written policy provides stronger evidence in a court case that a city has exercised its discretion in formulating a policy that is protected by discretionary immunity.

A street maintenance policy should provide guidance and assistance to employees on how to do their work and a way to measure their performance.

Typically, a street maintenance policy will establish:

- Street repair criteria.
- Maintenance and inspection schedules.
- Maintenance procedures.
- Priorities.
- Response to complaints or accidents.
- Documentation.
- Consideration of warning devices or signs.
- Safety of employees.
- Training on policy.
- Communication of policy.
- Review of policy.

a. Written policy

A written policy guides the city's maintenance and inspection efforts.

RELEVANT LINKS:

It provides direction to city employees and information to other employees and elected officials in order to respond to questions about the city's street maintenance. It can also support a statutory discretionary immunity defense.

b. Street repair criteria

The policy should outline the criteria for when a street needs repair. Most likely, some maintenance will be done on a regular basis, such as snowplowing, street sweeping, and seal coating. Other maintenance will be done in response to an inspection that shows a defective condition or in response to a complaint. The city should develop criteria for employees who inspect streets to determine when street maintenance needs to be done in addition to the regularly scheduled maintenance.

Sample criteria for repair include:

- Location of street (e.g., downtown business district, residential area).
- Amount of traffic.
- City resources for repair.
- Hole is deeper than 2 inches.
- Cracks are wider than 2 inches.
- Location in street (e.g., in crosswalk, in bicycle lane).

c. Maintenance and inspection schedules

The city should develop a regular schedule of maintenance and inspection of its streets. The schedule should be realistic, within budget, and take into consideration the resources needed, the length of the construction season, and the amount of work to be done. The city should establish a mechanism for modifying its replacement and inspection schedule.

In case modifications need to be made to retain some discretion, policies should avoid mandatory language such as "shall," "must," "will," etc. Elements that may modify this schedule are:

- Budgetary limitations.
- Time limitations.
- Resource limitations or changes.
- Amended priorities.

d. Maintenance procedures

The policy should describe how the maintenance will be done. This should include whether the city employees will do it or if the city will hire contractors. It should also give an idea of what equipment will be used and if there are special procedures for any particular maintenance.

RELEVANT LINKS:

e. Priorities

The policy should outline the priorities of street maintenance. This can depend upon such factors as:

- Traffic volume.
- Traffic speed and location of streets.
- Commercial districts.
- Streets that serve hospitals.
- Schools.
- Nursing homes.
- Residential areas.

The priorities may also depend upon the conditions of the streets. For example, the streets in the worst condition would have a higher priority. You can't repair every street at the same time so you need to develop a rational way of setting priorities.

f. Response to complaints or accidents

Cities should develop procedures to respond to complaints about the condition of the streets or notice of an accident that could be due to the street condition.

The city should send someone to inspect the street to determine if it meets the criteria for repair. If it does, then it should either be repaired immediately or a plan developed as to how it will be repaired. If it is a dangerous condition that will not be repaired immediately, the city should consider if it needs to put up warning signs or protective devices such as cones and barricades. It is important to document the results of the inspection, repairs, and any decisions regarding warning devices. Part of this documentation could include photographs and measurements.

g. Documentation

All street maintenance should be documented and filed so that records are easily accessible. It is also important to provide training so city employees complete the forms properly. Ideally, cities should be able to determine which employee did what maintenance on what street at what time. Records could include:

- Inspection records.
- Complaint records/work orders.
- Daily logs.
- Memos.
- Street maps.

RELEVANT LINKS:

- Time sheets.
- Computer records.

h. Consideration of warning devices or signs

If the city has notice of a street condition that needs repair and is not able to fix it at that time, its policy should have a provision about warning signs and devices. A city should consider and document that it considered whether to use a warning sign or device. One of the most common claims in a negligent street condition case is that the city failed to provide warning of the dangerous condition.

i. Safety of employees

A city's policy should take into consideration the safety of its employees. What safety factors would delay street repairs? For example, adverse weather conditions could make it unsafe for city employees to be doing the repair.

j. Training on policy

It is important to indicate that a city will train its employees on the policy. The idea behind a policy is to provide consistent ways of maintaining streets, and this is only possible if every employee knows and follows the policy.

k. Communication of policy

Once the policy is written, the city should tell people it exists and what it involves. This gives people the information on what the city is doing for street maintenance and what the citizens can expect. A city can tell citizens some of the factors that affect the city's street maintenance such as limited resources and employees.

A city can also tell citizens how they contact the city to report any street condition that needs repair. It is also a good idea to have the city council review the policy and possibly pass a resolution approving it.

Ways to notify people about the policy include:

- Brochures.
- Newsletters (with utility bills).
- Public service announcements on local radio or government-owned cable TV.
- Websites.
- Newspaper articles.

RELEVANT LINKS:

See *Snowplowing, Sidewalk Inspection and Maintenance, Street Sweeping, and Pothole Repair*, LMC Model Policies.

Minn. Stat. § 237.162.

Right-Of-Way Regulation,
LMC Model Ordinance.

I. Review of policy

The policy should include a procedure for periodic review of the policy. After getting input from citizens, employees, and officials, the city can determine whether the policy needs to be modified. It is important the policy reflects what the city actually does.

3. LMC model street and sidewalk maintenance policies

Policies governing sidewalks may be as useful as policies governing streets for the same reasons discussed above. To assist cities in developing street maintenance and sidewalk policies, the League of Minnesota Cities Insurance Trust has developed the following model policies:

- Snowplowing.
- Sidewalk inspection and maintenance.
- Street sweeping.
- Pothole repair.

B. Right-of-way (ROW) ordinances

When the city has obtained a street by statutory dedication or conveyance of an easement, the street right-of-way (ROW) is defined by the easement document or plat. When the city has obtained a street by user or common law dedication, the ROW is defined by actual use.

The ROW includes the street and area on either side of the street used to support the use of the street (for example, the sidewalks, shoulders and ditches). It also includes the area below and above the roadway. Many cities have ROW ordinances to assist them in maintaining city right-of-ways and, in fact, need such ordinances to have authority to regulate users, such as telecommunications companies.

Such ordinances may also help the city establish that it has acted reasonably to keep its streets in safe condition. Typical ROW ordinances may:

- Require registration of contractors performing any type of work in the ROW.
- Require permitting of contractors performing excavating or obstructing the ROW.
- Clarify which structures in the ROW are public and will be maintained by the city and which structures are private and will be maintained by a private party (such as a homeowner or utility company).
- Require insurance and training of contractors working in the ROW.

RELEVANT LINKS:

Minn. R. ch. 7560.

Right-Of-Way Regulation,
LMC Model Ordinance.

- Regulate the placement of trees, signs and buildings that may obstruct the sight line or traffic signs along a street.
- Require the undergrounding of electric distribution lines.

1. Minnesota Office of Pipeline Safety requirements

Minnesota Rules promulgated in 2005 by the Minnesota Office of Pipeline Safety (MnOPS) known as the “Utility Marking Rule” (UMR) have created new impetus for cities to adopt right-of-way-ordinances.

The UMR imposes a significant duty on all cities that operate water and/or sewer facilities to provide information about the location of private water and sewer laterals located within the public ROW. In particular, the rules impose obligations depending upon when the facilities were or are to be installed.

a. Installations: Pre-Jan. 1, 2006

For service laterals installed before Jan. 1, 2006, the UMR requires the city to either locate or provide information as shown on maps, drawings, diagrams or other records on the location of a sewer or water laterals.

If no information is available on the location of the laterals, the city can fulfill its obligations by notifying the excavator that no information exists.

b. Installations: Post-Dec. 31, 2005

For service laterals installed after Dec. 31, 2005, the UMR requires the city to do the following:

- Maintain a map, diagram, drawing or geospatial information regarding the location of its underground facilities within a public ROW.
- Install locating wire or have an equally effective means of marking the location of each nonconductive underground facility within a public ROW.
- Locate the portion of the service lateral within the ROW.

c. Recommendations

Based upon the requirements of the UMR, it is recommended that cities:

- Develop a system to manage anyone installing new facilities in the ROW.
- Establish a ROW ordinance similar to the League of Minnesota Cities Model ROW Ordinance or, at minimum, establish a ROW excavation permit process that meets the UMR requirements.

RELEVANT LINKS:

See Handbook, *Financing Public Improvements*. LMC information memo, *Special Assessment Toolkit*.

See also Section II-E-1, *General Funds*.

Sternitzke v. Donahue's Jewelers, 83 N.W. 2d 96 (Minn. 1957).

Minn. Stat. § 466.03 subd 4.

Smith v. Village of Hibbing, 136 N.W.2d 609 (Minn. 1965). *Scott v. Village of Olivia*, 110 N.W.2d 21 (Minn. 1961).

- Develop a system to respond to excavators requesting information about the location of pre-Jan. 1, 2006, installations.
- Develop methods to ensure that all new sewer and water laterals are locatable.
- Train city staff on appropriate methods for locating laterals installed post-Dec. 31, 2005.

C. Financing improvement and maintenance of city streets

Cities may finance the improvement and maintenance of city streets using many of the same financing mechanisms for building new city streets. Cities may utilize:

- General fund revenues.
- Bond revenues.
- Special assessments.

Home rule charter cities may have unique funding limitations imposed by their local charter. If the charter is silent on the issue, home rule charter cities may utilize the state statute authorizing the funding method.

D. Special problems in maintaining city streets

Maintaining streets can present unique problems for cities, who confront normal maintenance and infrastructure aging issues compounded by the extremes of Minnesota weather. Several reoccurring issues with city streets are discussed as special problems below.

1. Special problem: Snow removal

Snow and ice control on streets can pose a difficult and expensive maintenance problem for Minnesota cities each winter. Three types of special immunity protect cities from claims for damages that arise after accidents caused by the weather.

a. Snow and ice immunity

Under Minnesota statute, cities are immune to claims for damages based on snow or ice conditions on a public street or public sidewalk, unless the dangerous condition was affirmatively created by the negligent acts of the city.

A city may be found negligent when it has actual or constructive notice of a hazard due to snow or ice, but fails to correct the situation within a reasonable time.

RELEVANT LINKS:

Otis v. Anoka-Hennepin School Dist. No. 11, 611 N.W.2d 390 (Minn. Ct. App.2000). *Doyle v. City of Roseville*, 524 N.W.2d 461 (Minn.1994).

See Handbook, *Liability*, for more information on negligence.

Hennes v. Patterson, 443 N.W.2d 198 (Minn. Ct. App. 1989).

See LMC model *Snowplowing Policy*.

It is important to note the following exception to statutory snow and ice immunity: Snow and ice immunity only applies to sidewalks that do not abut a publicly-owned building or parking lot.

b. Mere slipperiness doctrine

The “mere slipperiness” doctrine provides that a municipality is not liable for injuries sustained due to the natural accumulation of snow and ice, unless the city allows the accumulation to remain long enough to form slippery and dangerous ridges, hummocks, depressions, and other irregularities.

The “mere slipperiness” doctrine acknowledges that in Minnesota’s climate the task of keeping all city streets and sidewalks clear at all times could well amount to a physically and financially impossible task. As a result, cities must only act within a reasonable time frame to remove accumulations, but are generally not responsible for dangers created solely by the weather.

c. Discretionary immunity

When cities clear and plow their streets pursuant to an established snow plowing policy, they may also be immune from suit based upon discretionary immunity.

The formulation of a snowplowing policy requires cities to make discretionary decisions that weigh social, economic and political factors.

For example, plaintiffs were injured when their car “rocketed up” a pile of snow and fell from a tall bridge. The snow pile was created by State of Minnesota snowplow operations, pursuant to a snowplowing policy. Though the existence of the snow pile was potentially dangerous and created by the state’s snowplowing activities, the state was found to be not liable based upon discretionary immunity.

A typical snowplowing policy will address:

- When the city will start snow or ice control operations.
- How snow will be plowed.
- Snow removal.
- Priorities and schedule for which streets will be plowed.
- Work schedule for snowplow operators.
- Weather conditions.
- Use of sand, salt, and other chemicals.
- Sidewalks.

The League of Minnesota Cities Insurance Trust has drafted a model snowplowing policy to assist cities in creating a suitable local policy.

RELEVANT LINKS:

Miller-Lagro v. Northern States Power Co., 582 N.W.2d 550 (Minn.1998).
Footte v. City of Crosby, 306 N.W.2d 883 (Minn. 1981).
Theusch v. Berg, A09-1742 (Minn. Ct. App.)(unpublished opinion).

See LMC information memo, *Maintenance of City Trees*.

Bengtson v. Village of Marine on St. Croix, 246 N.W.2d 582 (Minn. 1976).

2. Special problem: Clear view and tree trimming

Cities can regulate the placement of trees and vegetation in the ROW to protect the sight line along the street for safety reasons. Cities may trim and remove trees that obstruct the clear view of traffic in the ROW or block traffic signals. Before felling or trimming trees or entering onto private property for these purposes, cities should confirm that they have a lawful right to do so. Erroneously felling trees may result in liability for a city and significant damage awards.

The city's ROW ordinance should provide guidelines for tree placement in the ROW and for the removal or trimming of trees that obstruct the clear view of traffic on the street or traffic signs in the ROW.

3. Special problem: Citizens compelling street improvements or seeking reimbursement for unauthorized street improvements

While cities must keep their streets in reasonable repair, the city council remains the sole decision-making authority concerning when and how to repair a street. As a legislative decision, council actions on street matters receive a high degree of deference.

In statutory cities, there is no means whereby citizens alone can directly compel a council to perform a street improvement. In addition, landowners may not repair city streets on their own initiative and then demand reimbursement from the city.

Charter cities may have unique charter provisions allowing citizens to compel improvements.

4. Special problem: Mailboxes

The structure and location of mailboxes along city streets is governed by both federal and state law and regulation. Local city ordinance may also place requirements upon the location of mailboxes, provided that the ordinance provisions are not in conflict with state and federal law.

a. Federal law & U.S. Postal Service regulations

Many issues related to mailbox location in the ROW are regulated by federal law and U.S. Postal Service regulations. The regulations require that customers place mailboxes in the ROW along service routes so that a carrier can safely and conveniently access the mailbox without leaving his or her vehicle. In most instances, mailboxes must be on the right-hand side of the street in the direction of the line of travel.

RELEVANT LINKS:

Minn. Stat. § 169.072.
Minn. R. ch. 8818.

b. State law and regulation

State law and rules address certain issues related to the structure of mailboxes in the ROW of streets that have a speed limit of 40 miles per hour or greater. The Minnesota Rules prohibit certain mailboxes that are dangerous to drivers, because their structure does not break away or consists of inappropriate building materials. Such mailboxes are deemed a public hazard and may be removed by the local road authority after appropriate notice.

The city is the local road authority for all city streets. On county or state streets, the city is not considered the local road authority. Cities with concerns about mailboxes on these streets within the city should contact the county or state to request removal.

Under the Minnesota Rules, the notice to the landowner of a non-conforming mailbox must:

- Inform the owner of the nonconforming mailbox installation or support.
- Inform the owner or resident of the applicable law and rules.
- Inform the owner or resident that the non-conforming installation or support must be brought into compliance with the rules within 60 days of the date of the notice.
- Inform the owner or resident of the applicable laws and rules and the standards for mailbox installations and supports on public streets and highways, and provide plans or diagrams of examples of conforming installations or supports.
- Inform the owner or resident that if the nonconforming installation or support is not removed or replaced within 60 days of the date of the notice, the city may remove and replace the installation or support at a cost of up to \$75 to the owner or resident.
- Inform the owner or resident that if the replacement is made in conjunction with certain federally aided highway construction projects the replacement may be made at partial or no cost to the owner or resident.

If the mailbox owner does not remove the non-conforming mailbox within the prescribed time, the city may remove and replace the mailbox. The city may charge the owner up to \$75.00 for the cost of this service.

c. Local ordinance

City ordinance may place requirements upon the location and structure of mailboxes, provided that the ordinance provisions are not in conflict with state and federal law. For example, local ordinance may impose standards for mailboxes on streets where the posted speed is less than 40 miles per hour.

RELEVANT LINKS:

A.G. Op. 396-C-3 (December 17, 1953). A.G. Op. 396-C-3 (November 14, 1952). A.G. Op. 396-C-3 (December 23, 1952).

A.G. Op. 396-C-3 (November 23, 1949).

Minn. Stat. § 216B.36.

See City Engineers Association of MN model policies on standard utilities specifications.

See LMC information memo, *Gas and Electric Utility Franchising*.

Minn. Stat. § 160.201.

In addition, local ordinances may require a “swing-away” design for mailbox support that swings out of the way if struck by a vehicle or snowplow.

5. Special problem: Temporary closings of city streets

Cities may use their police powers to temporarily close streets for public safety purposes. The general rule is that cities act only as “trustees” for the public concerning the ownership and maintenance of city streets.

As a result, cities have no authority to permit or allow obstructions of city streets that interfere with the right of the public to travel upon the street. However, the Minnesota Attorney General has ruled that cities may use their police powers to close streets temporarily to protect the safety of the public.

6. Special problem: Franchise agreements

Gas and electric utilities frequently seek to install their facilities within the city ROW. Cities may require gas and electric utilities to enter into a franchise agreement that governs their use of the ROW.

The franchise agreement takes the form of an ordinance and may impose any reasonable terms within the limits of a city’s statutory franchise and police power authority.

Franchise agreements may also require the gas or electric utility to pay a franchise fee. The franchise fee may be used to raise revenue or defray increased municipal costs accruing as a result of utility operations, or both. The franchise fee is usually passed directly along to consumers by the gas or electric utility and demarcated as a city fee on the utility customer’s bill.

Franchise agreements are a product of negotiation between the city and the gas or electric utility. To assist cities in negotiating franchise agreements, the League of Minnesota Cities has developed a Model Gas and Electric Franchise Ordinance. Often a franchise ordinance will be used in conjunction with a ROW management ordinance.

7. Special problem: Ditches

a. City ditches

Cities are authorized to repair, clean out, deepen, widen and improve city street ditches for the purpose of draining public streets and preventing accumulations of water in street ditches which may damage adjacent lands.

RELEVANT LINKS:

Schigley v. City of Waseca,
118 N.W. 259 (Minn. 1908).
*McDowell v. Village of
Preston*, 116 N.W. 470
(Minn. 1908). *Stadtherr v.
City of Sauk Center*, 231
N.W. 210 (Minn. 1930).
*Baker v. City of South St.
Paul*, 270 N.W. 154 (Minn.
1936). *Hansen v. City of St.
Paul*, 214 N.W.2d 346
(Minn. 1974).

*Kopveiler v. Northern Pac.
Ry. Co.*, 160 N.W.2d 142
(Minn. 1968).

Minn. Stat. § 160.2715.
Minn. Stat. § 103E.081.

Minn. Stat. § 103E.011.
Minn. Stat. § 103E.065.

Minn. Stat. § 103E.075.

*Minch v. Buffalo-Red River
Watershed Dist.*, 723 N.W.2d
483 (Minn. Ct. App. 2006).

Minn. Stat. § 103E.075.

Minn. Stat. § 160.23.

Minn. Stat. § 18.80, subds. 2,
3.

When ditches are located in the ROW, the city should maintain ditches in a manner that is safe for public use and travel.

In certain circumstances, cities may be found liable for damages to injured persons if the city had knowledge of a defect or dangerous condition in a city ROW, but failed to correct it within a reasonable amount of time.

The city may prevent citizens from depositing materials and foreign objects in a ditch. It is a misdemeanor to obstruct any ditch draining any street or to drain any noisome materials in any ditch.

b. County and soil and water conservation district ditches

Counties and soil and water conservation districts may also maintain ditches for drainage and flood control purposes within cities in the ROW.

The county or watershed district must appoint a drainage inspector to monitor the condition of any drainage system installed under the authority of Minnesota Statutes, chapter 103E.

If a county or soil and water conservation district ditch is obstructed, the relevant drainage authority must order the obstruction to be removed by the person responsible for the obstruction. The responsible party subject to the drainage authority's control may be a private party or a public authority. Obstructions include foreign and manmade objects, such as debris and bridges and culverts of insufficient capacity, but not natural accumulations of sediments, silt and soil.

If the obstruction is not removed pursuant to the drainage authority's order, the drainage authority may remove the obstruction itself and seek repayment of its costs. The costs may be enforced as a lien against the property or collected through a civil action.

8. Special problem: Noxious weeds

State law requires that cities destroy all noxious weeds on streets under their jurisdiction. The city mayor is designated by law as the city weed inspector. The city may appoint one or more assistant weed inspectors. An assistant weed inspector has the same power, authority, and responsibility of the mayor in the capacity of weed inspector.

RELEVANT LINKS:

Minn. Stat. § 18.81.

Minn. Stat. § 165.02.

Minn. Stat. § 165.03 subd 1.

Minn. Stat. § 165.03.

Minn. Stat. § 165.05. Minn.
Stat. § 165.06.

Minn. Stat. § 165.09 subd. 1.
Minn. Stat. § 165.09 subd 3.

MN DOT "MNDOT & You:
Partners in Access
Management."

Minn. Stat. 160.18.
*C&R Stacy, LLC v. County
of Chisago*, 742 N.W. 2d 447
(Minn. 2007).
MNDOT Model Access
Management Overlay
Ordinance.

If the city does not adequately eradicate noxious weeds along city streets, the county agricultural inspector may perform the work and bill the city for such services.

9. Bridges

Cities may construct, reconstruct, improve, and maintain bridges whenever they deem bridges to be necessary. All bridges must conform to the strength, width, clearance, and safety standards imposed by the commissioner of Transportation. Bridges must have sufficient strength to support maximum vehicle weights dictated by state law and must meet minimum width requirements.

Bridges must be inspected annually, unless special permission for a longer inspection period is obtained from the commissioner of Transportation. Cities that do not regularly employ a city engineer may rely on the county engineer to perform required inspections.

Cities that regularly employ a city engineer must perform their own inspections and complete inventory and bridge inspection forms provided by the commissioner of Transportation. The city engineer must certify annually to the commissioner of Transportation that inspections have occurred at regular intervals.

Bridges constructed over railroads and railroad bridges constructed over city streets must meet height and clearance standards imposed by statute.

Cities may construct and maintain bridges over navigable streams. Bridges over the Minnesota River or Mississippi River must also be approved by the commissioner of Transportation.

10. Managing access to city streets

Too many driveways, intersections, and closely spaced traffic signals along major city roadways can create congestion and other safety hazards for street users.

Managing access to major city streets through systematic control of the location, spacing, design, and operation of driveway and subsidiary street connections can alleviate these potential dangers.

State law grants cities the authority to regulate access to city streets regardless of whether the city has adopted a local street access ordinance. Cities are not required to regulate access to city streets through a comprehensive local ordinance, but may choose to complement their authority in state law by doing so.

RELEVANT LINKS:

IV. Conclusion

The City Engineer's Association of Minnesota estimates that Minnesota's 853 cities maintain and operate over 19,000 miles of roadway. Cities have been granted broad powers under Minnesota statutes to obtain and open the streets necessary to the vitality of each individual community. Once city streets are opened, cities have the duty to maintain the streets in a reasonably safe manner and to prevent their obstruction. Street maintenance policies and right-of-way ordinances are the most effective means cities have of exercising their discretion and authority over city streets.