

October 2, 2018

Tim Hanson
Chairman, Turtle Lake Township Board of Supervisors
McLean County, ND

RE: Authority of an organized Township to remove trees and other obstructions (e.g. – rocks) from section lines.

Dear Mr. Hanson,

The statutes concerning road authorities are contained in NDCC Title 24, Chapters 6 and 7; the sections pertinent in this matter are quoted on the pages that follow.

24-07-03 section lines are considered public roads open for public travel to the width of thirty-three feet [10.06 meters] on each side of the section lines. (page 3)

Note: The "Section Line Easement" (Right-Of-Way) exists even if no road is built or maintained. Township should not allow trees, rocks or other obstructions within the R-O-W easement.

24-06-01. Board of township supervisors has supervision over township roads. (page 2)

24-07-04. Jurisdiction of proceedings to open or vacate highway (page 3)

24-06-28 (1) Obstruction of section lines prohibited (page 2)

Note: This includes anything which extends into the 33' R-O-W (tree branches etc.)

24-06-29 (1) Removal of permanent obstructions - Removal of obstructions and traffic safety hazards -Cost. (page 2)

Note: While the statute does allow for the expense to be charged against the landowner, it should be remembered the Township may have been remiss in not stopping the tree planting (growth) or quickly removing it. Some co-operative arrangement might be the best alternative. Then vigorously enforce mowing of R-O-W to prevent future tree problems.

24-06-31 Obstructions in highway. (page 3)

Note: This statute allows for immediate removal of obstructions from the roadway, the part of the right-of-way upon which traffic would pass - normally the central 20 to 24 feet of a built & maintained road; it was amended and re-enacted 2017 the most recent legislation.

In all cases, care must be taken to ensure the section line is accurately located. A survey may be required.

Sometimes it is the Soil Conservation Service that planted these trees, they should be cautioned about section line right-of-ways and any set back regulations that might exist for tree plantings.

Trees outside of the 33' R-O-W easement fall under setback regulations in zoning. If your Township is zoned the setback for trees should be in your zoning ordinance. If your Township has not enacted a zoning ordinance, perhaps your county has and there could be setbacks in that ordinance. Without zoning your Township doesn't have any control over property beyond the 33' R-O-W.

Sincerely,

Larry A. Syverson
NDTOA Executive Secretary

24-06-01. Board of township supervisors has supervision over township roads. The board of township supervisors of any township in the state has general supervision over the roads, highways, and bridges throughout the township.

24-06-28. Obstruction of section lines prohibited - Exception - Certain fences not considered obstructions - Obstructions and traffic safety hazards - Penalty.

1. A person may not place or cause to be placed any permanent obstruction within the vertical plane of thirty-three feet [10.06 meters] of any section line or within the right of way of any highway, unless written permission is first secured from the board of county commissioners or the board of township supervisors, as appropriate. The permission must be granted where the section line has been closed pursuant to section 24-07-03 or where the topography of the land along the section line is such that in the opinion of the board of county commissioners or board of township supervisors, as the case may be, the construction of a road on the section line is impracticable.
2. A person may not place or cause to be placed any obstruction or traffic safety hazard within the vertical plane of thirty-three feet [10.06 meters] of any section line or within the right of way of any highway, unless written permission is first secured from the board of county commissioners or board of township supervisors, as appropriate.
3. Subsection 1 may not be construed to prohibit construction of fences:
 - a. Along or across section lines which have been closed pursuant to section 24-07-03 or which have not been opened because construction of a road is impracticable due to the topography of the land along the section line, but such fences are subject to removal as provided in section 24-06-30.
 - b. Across section lines which have not been closed pursuant to section 24-07-03 if cattle guards are provided in accordance with chapter 24-10 where fences cross the section lines.
4. The construction of fences pursuant to subsection 3 may not be considered an obstruction of section lines and any person who damages any fence or who opens and fails to close any gate constructed under subsection 3 is guilty of an infraction.
5. Subsection 2 does not apply to a railroad company performing maintenance and repair work of railroad track, crossings, or other railroad facilities.

24-06-29. Removal of permanent obstructions - Removal of obstructions and traffic safety hazards - Cost.

1. If a person places or causes to be placed a permanent obstruction within the vertical plane of thirty-three feet [10.06 meters] of any section line or within the right of way of any highway, the board of county commissioners or board of township supervisors, as appropriate, when a public highway is opened, shall notify the owners of adjacent property to remove the permanent obstruction. Written notice by registered mail to the record owner of the adjacent property mailed to the owner's last-known address and to any other persons in possession of the property constitutes valid notice. If the owners fail to remove the permanent obstruction within thirty days after the notice is mailed, the board of county commissioners or the board of township supervisors, as appropriate, shall remove the permanent obstruction. The cost of removal must be entered the same as taxes against the adjacent property and paid in the same manner as taxes.
2. If a person places or causes to be placed an obstruction or traffic safety hazard within the vertical plane of thirty-three feet [10.06 meters] of any section line or within the right of way of any highway road surface, the board of county commissioners or board of township supervisors, as appropriate, shall issue a written order to the person who caused the obstruction or traffic safety hazard to be placed there to remove the obstruction or traffic safety hazard. If the person notified fails to remove the obstruction or traffic safety hazard as soon as practical after the notice is received, the board of county commissioners or board of township supervisors, as appropriate, shall remove the obstruction or traffic safety hazard. The person responsible for placement of the obstruction or

traffic safety hazard is responsible and may be billed for any costs incurred by the county or township for removal of the obstruction or traffic safety hazard.

3. Subsection 2 does not apply to railroad facilities.

24-06-30. Removal of fences - Notice - Cost. When a public highway is opened along any section line, the board of county commissioners or the board of township supervisors, as the case may be, shall notify the owner of adjacent property to remove any fences not constructed pursuant to subsection 2 of section 24-06-28 within thirty-three feet [10.06 meters] of the section line in the manner provided for notice to remove stones, trees, or rubbish. If the owner of adjacent property fails to remove the fences within thirty days after the notice is given, the board of county commissioners or the board of township supervisors, as the case may be, shall remove the fences. The cost of removal must be entered the same as taxes against the adjacent property and paid in the same manner as taxes.

24-06-31. Obstructions in highway. Each overseer of highways having personal knowledge, or on being notified in writing, of any obstruction in the highway or public street in the overseer's district immediately shall remove or cause any such obstruction to be removed. The overseer's district may seek recovery of costs incurred for the removal of any obstruction from the individual who is responsible for causing or placing any obstruction in the highway or public street. If the individual responsible is an adjacent landowner, the removal cost may become a part of the taxes to be levied against the landowner for the ensuing year to be collected in the same manner as other real estate taxes are collected.

24-07-03. Section lines considered public roads open for public travel - Closing same under certain conditions. In all townships in this state, outside the limits of incorporated cities, and outside platted townsites, additions, or subdivisions recorded pursuant to sections 40-50.1-01 through 40-50.1-17 or recorded prior to July 1, 1987, under former chapter 40-50, the congressional section lines are considered public roads open for public travel to the width of thirty-three feet [10.06 meters] on each side of the section lines. (Quoted in part)

24-07-04. Jurisdiction of proceedings to open or vacate highway. Except as otherwise provided in this title, all proceedings for the opening, vacating, or changing of a highway outside of the limits of an incorporated city, including the acquisition of right of way when necessary, must be under the charge and in the name of:

1. The board of county commissioners, if the road is in territory not organized into a civil township.
2. The board of township supervisors of an organized township.
3. The board of county commissioners of each county in case the road is between or in two or more counties.
4. The board of township supervisors of each organized civil township in which any part of the road is situated if the road is situated between two civil townships or in more than one civil township.
5. The board of township supervisors of each organized township and of the board of county commissioners in case the road is situated partly in an organized township and partly in an unorganized township.
6. The board of county commissioners in any case arising under subsection 4 when the boards of township supervisors of the respective civil townships cannot agree or will not take action on petition so to do.