

CULVERTS & APPROACHES

At some time, nearly every township will need to administer driveway or field approaches and culverts to allow property access and surface drainage. Fortunately, a statute sets the expectations among townships and landowners on this issue. The law groups approaches into three categories for purposes of dividing responsibilities among the township and landowners.

1. APPROACHES & CULVERTS TO EXISTING ROADS

If a person wants an approach to an existing road, the person is expected to first obtain a permit from the town board for the installation of the approach.¹ The landowner must pay the “cost and installation of any required culverts unless,” the township “adopts by resolution a policy for the furnishing of a culvert” to the landowner or applicant when “the culvert is necessary for suitable approach to the road.”² The town board decides what type and size of approach is suitable to protect the road surface, drainage, and safety concerns.

By default, the landowner must pay the cost of a culvert and installation for a new approach. This is opposite of the law that existed before 1998, so landowners may be surprised by the change of the law. Landowners are not “grandfathered” in to the old law, so they are not entitled to an approach or culvert at the town’s expense because an existing approach predated the change in the law.

When an existing culvert must be replaced because of damage, failure, or other reason not caused by the township’s reconstruction of the road, the landowner is expected to pay the costs of the new culvert and installation.

2. APPROACHES & CULVERTS ON NEW ROADS

If the township builds a new road, relocates an existing road, or re-constructs an existing road, the town must provide one suitable approach within the road right of way when an approach is

¹ Minn. Stat. § 160.18, subd. 1 (“Except when the easement of access has been acquired, a road authority, as to a highway already established and constructed may grant by permit a suitable approach to the highway.”).

² Minn. Stat. § 1603.18, subd. 1.

needed to access the property.³ Note the township is required to provide *only one* approach under these circumstances. Parcels with multiple approaches may expect to pay for the costs of their additional approaches and culverts.

3. APPROACHES FOR PARTICULAR PURPOSES & ADDITIONAL APPROACHES

Landowners have a statutory right to as many approaches “as will facilitate the efficient use of the property” but subject to the reasonable regulation by the road authority.⁴ The road authority’s regulations are allowed only as is *necessary* “to prevent interference with the construction, maintenance and safe use of the highway and its appurtenances”⁵

A statutory right is a privilege to receive some benefit described in the statute. This means the ‘right’ can change depending on the language of the statute and its interpretation by the courts. The ‘right’ though is balanced against the needs of the road authority in maintaining and managing the right of way. The great difficulty is in finding the extent of the individual right and the road authority’s discretion.

Courts have unfortunately avoided giving clarity on the outlines of this balance. The only published case addressing this section is *In re Stoick Creek, LLC*, 999 N.W.2d 915, 918 (Minn. Ct. App. 2023). In that case, the township denied an additional permit on the theory that as road authority, pursuant to 160.18 and long tradition in Minnesota, that it could grant, deny, or condition additional approaches at its own discretion. The Minnesota Court of Appeals disagreed, ruling that Minn. Stat. § 160.18 conveys a “right” to additional approaches that is “subject to reasonable regulation by and permit from the road authority as is necessary to prevent interference with the construction, maintenance and safe use of the highway and its appurtenances and the public use thereof.” *In re Stoick Creek, LLC*, at 920. MAT recommends that townships interested in limiting additional approaches carefully draft factual findings tying the restriction to prevent interference with the construction, maintenance and safe use of the highway and its appurtenances.

The landowner is expected to pay the costs of additional approaches and culverts. Like approaches to existing roads, the landowner should apply for a permit, is expected to install the type of culvert approved by the town board, and is expected to pay the costs of the approach, including the culvert and installation. Townships can modify this default rule by “adopt[ing] by resolution a policy for the furnishing of a culvert to an abutting owner when a culvert is necessary for suitable approach to a road.”

³ Minn. Stat. § 160.18, subd. 2.

⁴ Minn. Stat. § 160.18, subd. 3.

⁵ *Id.*, see also *In re Stoick Creek, LLC*, 999 N.W.2d 915, 920 (Minn. Ct. App. 2023)