

Road Right of Ways in Wisconsin are Presumed to be 66 Feet Wide

In Wisconsin, by law, the width of a road is presumed to be 66 feet, unless there is evidence to the contrary. It does not matter how the road came into being. In fact, although this is often misunderstood by landowners and sometimes by municipal officials, the historical “ownership” of the underlying land is quite often irrelevant to most road matters. The state, counties and local municipalities have all the normal rights and obligations with respect to roads whether they own the land, or whether they have some kind of granted easement, or whether there is no record at all of how the road was established. As long as the road has existed and been maintained by the municipality, generally for ten years or more, then the public right of way exists, no matter who thinks they “own” the underlying land.

Wisconsin State Statute 86.04 Highway encroachments

(1) Order for removal. If any highway right-of-way shall be encroached upon, under or over by any fence, stand, building or any other structure or object, and including encroachments caused by acquisition by the public of new or increased widths of highway right-of-way, the department, in case of a state trunk highway, the county highway committee, in case of a county trunk highway, or the city council, village or town board, in case of a street or highway maintained by or under the authority of any city, village or town, may order the occupant or owner of the land through or by which the highway runs, and to which the encroachment shall be appurtenant, to remove the encroachment beyond the limits of the highway within 30 days. The order shall specify the extent and location of the encroachment with reasonable certainty, and shall be served upon the occupant or owner of the land through or by which the highway runs, and to which the encroachment shall be appurtenant.

(2) Non removal. If the occupant or owner upon whom the order is served shall not deny such encroachment, under sub. (3), and the encroachment is not removed within 30 days after the service of such order, the occupant or owner shall forfeit \$1 for every day after the expiration of that time during which the encroachment continues. An action to recover such penalty may be brought in any court of record in the county. In all cases where a judgment is rendered, the judgment shall order that the occupant or owner remove the encroachment within the time fixed by the judgment, and upon failure to obey the order, the department, county highway committee, or city council, village or town board, as appropriate, may remove the encroachment and recover from the occupant or owner the cost thereof.

(3) Denial of encroachment, procedure. If, within 30 days after being served with the order issued under sub. (1), the owner or occupant delivers a denial in writing of the alleged encroachment to the ordering body, or fails to make a denial, the ordering body may commence an action to remove the encroachment in a court of record in the county where the property is located.