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(1/2 Mile West of Shawano City Limits)

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October 22, 1991

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Re: Highway listings

Dear Karen:

In answering your questions, I believe the broad overview process is best.

The first step in analyzing highway status is the records check. You correctly indicated the Register of Deeds records. A specific deed would indicate town ownership when transferring land to the town. That seldom exists. However, a more common situation is one in which a deed excludes a highway from a transfer from one party to the next. If so, that can be considered a dedication, pursuant to Wisconsin Statute 80.01(5). Without that section, the land would continue to be held by the Grantor in a deed who did not transfer all land held. Another record easily found is in plats. There are maps there which indicate dedication for public highways, pursuant to Section 236.20(4)(b). Roads are not in a lot or block which is taxed.

After analyzing the records, most of the highway miles will probably still be remaining. They ordinarily fit into the unrecorded highway section worked at least 10 years, as you pointed out, under Section 80.01(2). Orders which the town board entered have similar status. That status is a right-of-way similar to a written easement. Thus, ownership is not transferred, but a public right to travel over the highway exists, and a duty to maintain rests with the town. For these roads, they are taxable land to the owner, who will have full ownership if the highway is later abandoned, and has ownership rights now. For example, an Opinion of the Attorney General which stemmed from your county, indicated that wild asparagus growing in the highway belongs to the underlying owner. In legal terms, the "ditch" is within the highway (exterior boundaries) but not in the roadway (travelled portion). Similarly, trees in the right of way belong to the owner, so cutting means the owner gets first chance at use of the wood. So, unless you have a record indicating public ownership of a town highway, it is privately owned and taxable to the party holding title.

Very truly yours,

James R. Habeck

James R. Habeck
Legal Counsel

RECEIVED
DATE 10/23/91
PROPERTY LISTING
MARINETTE COUNTY