

Q. Early in the spring a manure hauler drove down one of our roads and severely damaged the road. What recourse does the town have?

A. Towns should be aware that state law allows the town to pursue any person that damages a town road by any means. The key statute on this topic is s. 86.02, Wis. Stat. which is commonly referred to as the “injury to highway” statute. Under s. 86.02, a town may recover treble (triple) damages from the person that injures the highway. My recommended course of action is to begin by sending a registered letter to the person that caused the damage (or his or her employer if you are unsure of the individual’s name) and making a claim for payment. Include as many details as possible. For example:

Dear Jim Wood of Wood-Is-Us Logging Company:

It has come to our attention that your logging truck damaged the portion of Smith Road between County Hwy Q and State Hwy 50 in the Town of Badger on March 30, 2010, between the hours of 7am and 6pm. Enclosed, please find a copy of our photograph of the damage attributed to your use of the road on the above date. The estimated total cost to repair the road is \$ 3,000. Please pay this amount within --- days. If you fail to do so, the town may be forced to pursue additional legal action pursuant to s. 86.02, Wis. Stat. (copy enclosed) and you may be found liable for treble damages. Thank you.

If the bill remains unpaid after the time provided, the town will then need to hire an attorney and file a complaint in circuit court to attempt to recover the money. Your evidence will be the key to winning in court, so document as much as you can with witnesses, photographs/video, and personal notes regarding the events. If you have no idea who damaged the road, you may be out of luck because you must go after the person that actually injured the road and you cannot sue the property owner that may have hired the hauler.

There is a special statute that pertains to damage to the highway caused by farm machinery. See s. 86.021, Wis. Stat. This statute also covers “plowing, cultivating, or otherwise working any lands within the limits of the highway in a manner that obstructs the drainage in any public highway ditch”. Violation of the statute is a misdemeanor and could subject the violator to a fine, the cost of repair, and possible jail time.

Q. We have had trouble with one of our road name signs being stolen on a regular basis. So, we have decided we should change the name of the road. How do we do that?

A. Towns have the authority to name town roads by ordinance. See s. 82.03(7), Wis. Stat. No road name may be used on more than one road within the jurisdiction of the town. While the town has the initial authority to name town roads, be aware that the county does have the power to reject a town selection since the county has to ensure that the road names in the county are not

confusing or too similar to a road name in a neighboring town, etc. for fire numbering purposes. See Liberty Grove Town Bd. v. Door County Bd. of Supervisors, 284 Wis.2d 814, 702 N.W.2d 33 (Ct. App. 2005).

A road name ordinance might say something like the following:

Whereas, several residents of Rosebush Estates subdivision, located in the Town of Goodsmell, have requested that the town board change the name of Old Dump Road;

Be it hereby ordained that, pursuant to s. 82.03(7), Wis. Stat., the Town Board of the Town of Goodsmell hereby changes the name of Old Dump Road to Rosebush Lane.

While no special notices are statutorily required prior to adopting a name change ordinance (and the consent of the property owners on the road is not required), it makes good sense politically to alert property owners on the road that the board will be considering a name change at an upcoming board meeting.

Once the ordinance is adopted, the town should alert the property owners on the road, the post office, and fire and law enforcement officials, so that the 911 system can be updated.

Keep in mind that the town does not have express authority to name private roads. However, the county appears to have the authority to assign a name to “all rural roads” as part of a rural naming or numbering system that is established for the provision of emergency services such as fire protection. See s. 59.54(4), Wis. Stat. In addition, s. 59.54(4m) states that the rural naming or numbering system may be carried out in cooperation with any town or towns in the county. In at least one such cooperative effort, the county asked the town board to “approve” the names being given to private roads in the town. “Approving” a name for fire numbering purposes will not turn a private road into a public town road.

Note that public street name changes in platted areas require an additional step. An affidavit with the corrected street name must be filed with the register of deeds office. See s. 236.295(1)(a) and s. 236.20(4), Wis. Stats.