

FREMONT COUNTY ROAD DEPARTMENT

Re: Who Owns the Roadway?

According to Fremont County Engineer Dan Davis, roadway right-of-way concerns cause some of the most frequent misunderstandings with local residents. “Many property owners don’t understand the rights that they give up and the rights that they retain within a roadway easement. City streets and state highways are built on wholly owned public land, but county roads are generally built upon easements over private land. In that situation, the owner retains title to the property but gives up certain rights to the county” Davis explained.

The Iowa Code limits the Road Department easement to establishment and maintenance of the roadway as well as related drainage. The courts have broadly interpreted this authority to include safety and liability concerns such as removal of obstructions within the right-of-way. Engineer Davis noted that the strip of right-of-way immediately adjacent to the traveled portion of the road is particularly sensitive to obstructions. That strip, generally ten feet wide in rural areas, is referred to as the ‘clear zone’ and provides a buffer, or recovery opportunity, for errant vehicles that leave the roadway.

This buffer is especially critical on heavier traveled roads and those with higher speed limits. An obstruction within the clear zone, such as a decorative mailbox, steep entrance or protruding vegetation, can mean the difference between a second chance and a fatality. Conscientious property owners can help protect that clear zone.

“Unfortunately, mailboxes have been a source of contention”, stated Davis. “Often, it seems that folks try to dress up their property with a fancy mailbox, but they can create an obstruction that could cause a serious accident. We try to be diplomatic about asking them to replace the box, but sometimes they’ve put a lot of work into a brick or similar structure. Our Department would like to offer advice before the mailbox is erected.”

Entrances to the county road can often present an unexpected hazard. An errant vehicle can often remain upright through the ditch, but will overturn if it impacts a driveway or field entrance. Entrances that have vertical concrete or rock walls along either side of the driveway have proven especially dangerous. The Road Department recommends that entrances along heavily traveled or high-speed roads be graded to provide a gradual transition from the ditch to the driveway – ideally, a slope of 8’ horizontal for every 1’ vertical rise. This transition would allow a vehicle to negotiate the entrance safely. Often, vegetation will slowly become a problem if left unattended. Trees or shrubbery can obstruct the driver’s sight distance while traveling or entering the roadway. The Road Department mows right-of-way, but generally efforts are focused on those roads that are heavily traveled. Davis related that it is difficult to monitor many of the gravel roads and maintenance by the property owner is helpful.

The property owner is usually entitled to maintain the right-of-way outside of the traveled portion of the road. Although row crop cannot be cultivated, the property owner may retain the right to plant and harvest crop that requires minimal attention, such as hay or alfalfa. That practice could be restricted by erosion considerations or access limitations and is subject to a case-by-case review by the Department.

Other rights retained by the property owner include the capability to drain into the road ditches, the option of crossing the road with drainage tile at the county's expense and the right to access the public road, subject to the Road Department's standards. Davis commented that the Department respects the rights that are retained. "We also have appreciated the cooperation extended by the folks that have negotiated right-of-way with us recently. Several projects have required some additional easement. However, we try to keep our requests to a minimum and always remember the value of this land." If there are any questions about the right-of-way, phone the Road Department at 374-2613 during regular weekday business hours (7:00a.m. to 3:30p.m.)