

## **Town Makes Decision on ATV/UTV Use of Town Roads**

### **Background**

Late in 2018, the Town of Caledonia was asked by ATV/UTV owners and clubs to open town roads to ATV/UTV use. Because of the lack of public land in Caledonia for off road trails, none exist at this point and future development of off road trails for ATV/UTV use is unlikely. Additionally, ATV/UTV use of the many snowmobile trails in the town will not be permitted. As a result, the only place to ride in Caledonia is on private land and, if permitted, municipal roads, so club members asked for town roads to be opened for their use. The Town Board understands this situation and agreed to look into it. The use of municipal roads by ATV/UTVs is a divisive topic with strong opinions on both sides. The Town Board felt it was essential to consider the benefits and impacts on all 1650+ residents in the Town in addressing this request. The Town Board also felt it was important to get the facts relating to this matter to ensure the best possible decision would be made. Supervisor Bill Abba was assigned to investigate and bring back the necessary information so the Town Board could make an appropriate decision.

The Town Board prioritized four considerations in making the ATV/UTV decision; 1.) safety of residents and users of town roads, 2.) the ability to effectively enforce and prosecute applicable laws, 3.) the maintenance of the local rural environment enjoyed here, and 4.) the cost implications to residents. Over a period of six months numerous contacts with individuals and organizations that could provide facts on this topic were made including the WDNR, Waupaca County District Attorney and Sheriff, the Wisconsin DOT, insurance providers, a number of attorneys, and others. The State of Wisconsin Statutes and WDNR Administrative Codes were obtained and studied in detail. The latest annual report (2018) of the WDNR Recreational Enforcement and Safety Department was obtained and studied. Discussions with the Vilas County Recreation Department were also initiated to learn about the experiences in that County with the extensive use of recreational vehicles in northern Wisconsin. Conversations were held with other townships and county representatives to learn from their perspectives and research.

The Town Board has reviewed this information and decided not to open town roads for ATV/UTV use at this time. This decision will be revisited as new information is obtained that changes the findings. We will explain the Town Boards rationale in this article.

### **Findings**

State Statute 23.33 and DNR Administrative Code NR64 control most aspects of ATV/UTV operation in Wisconsin. State Statute 23.33 passes authority to designate local municipal roads as ATV/UTV routes to the responsible local government body, in our case that would be the Town of Caledonia. Municipal roads can be designated as "routes" for ATV/UTVs to use by passing a local town ordinance in "strict conformity" with the State Statute 23.33. Waupaca County approved an ordinance which passes authority to make the ATV/UTV decision for the County Highways within a township to the local Town Board. This ordinance requires a 35 mph speed limit on the county roads. The Wisconsin DOT has made the decision that Highways 45 and 96 will not be opened to ATV/UTV traffic, except for the short 35 mph stretch in Readfield. The Town Board was designated by the DOT to make the decision on that portion of Hwy 96.

When operating on municipal roads, ATV/UTVs must be driven on the paved surface of the road only and can not be driven on the road's shoulders or ditches because of the potential to damage these parts of the road. Snowmobiles, on the other hand, are not permitted on any paved roads except to cross them, and must use the many off road snowmobile trails that are available and in some cases the ditches along roads. ATV/UTVs, therefore, will be traveling amongst all other traffic on opened roads, which does not happen with snowmobiles. The State already has an exemption in place for on road use of ATV/UTVs for agricultural use and for use by the disabled. A permit from the State is required for these uses and the vehicle must be used on the paved surface of the road and in compliance with the exemption rules.

Unlike the northern portions of the State where recreational use of these vehicles is extensive and great economic benefit is realized, little if any economic benefit is likely in Caledonia. There are no hotels, gas stations, lakes, recreational trails, parks, retail outlets, repair shops for ATV/UTV drivers to patronize. No incremental taxes are expected to be collected. The three restaurants/taverns in Caledonia would likely be the only businesses for riders to patronize. And while we would hope these businesses would benefit from ATV/UTV traffic if an ordinance was passed, there would still be no tax benefit back to the town. We expect that ATV/UTV traffic would be "pass through" traffic and some local resident use. All costs for the required signage and ordinance enforcement would need to be picked up by the existing property tax levy requiring a tax increase or further cuts in road maintenance spending to offset these costs.

State Statute 23.33 was thoroughly studied and legal interpretations were sought to understand what is required of ATV/UTV users when operating on municipal roads. Four concerning issues were identified from this research that ultimately became an important part of this decision. Each will be reviewed in the next sections:

- 1.) State Statutes require all motorized vehicles using public roadways to have minimum liability insurance coverage in case of accidents and injury. State Statute 23,33 does not require ATV/UTVs to have this coverage when operating on municipal roads even though they are operating in traffic. If you are involved in an accident resulting in damage to property or injury and caused all or in part by an uninsured ATV/UTV driver, your insurance may have to cover it. **The Town Board believes all drivers should be required to have this basic liability coverage in order to operate on public roads.** The town can not require insurance in its ordinance because we must be in "strict conformity" with the State Statute and the Statute does not require insurance coverage, so we can't. Some communities have written insurance requirements into their local ordinances, but we have been advised this is not enforceable. **The Town Board believes this is a serious safety concern and a major flaw in the Statute that must be addressed by the State.**
- 2.) State Statute 23.33 does not require a driver's license to operate in traffic on municipal roads. Twelve year olds can drive ATV's and unlicensed sixteen year olds can drive UTVs in traffic, obviously without having completed drivers training on the rules of the

road. And they can do so at the posted speed limit for other vehicles on that road. Of even greater concern is that ATVs are arguably more difficult to drive versus UTVs, yet twelve year olds can drive ATVs but you need to be sixteen to drive UTVs - this makes little sense. Imagine the following totally legal situation:

An unlicensed twelve year old drives an ATV ( which the manufacturers association says should not be used on paved roads for safety reasons), in traffic, without basic liability insurance coverage, on narrow town roads with deep ditches and small shoulders, at 55 mph.

While it is true that this child is to be accompanied by a person eighteen years old or older on a second machine, **this seems like a serious safety issue, especially with the heavy truck traffic in the Town of Caledonia.**

A second concerning issue created by not requiring a valid driver's license to drive ATV/UTVs on municipal roads involves operating under the influence. A person who has lost their driver's privileges because of OWI convictions can continue to use the public roads in traffic by driving an ATV/UTV. No drivers license is required so they have not lost their ATV/UTV driving privilege. If caught driving under the influence while on an ATV, they can be fined but not deprived of their ability to continue operating on municipal roads. **The Town Board believes this is a safety issue for our residents and must be addressed by the State. The Board believes if these vehicles are going to operate on municipal roads, a valid driver's license must be required.**

- 3.) Many municipalities and counties have passed local ordinances allowing ATV/UTVs to use their roads. All of the ordinances that we have seen have a requirement that the speed limit for ATV/UTVs is 35 mph or lower if the road has a speed limit below 35. We believe these municipalities expected that this speed limit is enforceable. This appears to not be the case. Statute 23.33 does not specify a speed limit for ATV/UTVs on municipal roads and, therefore, any speed limit set in a local ordinance is not enforceable according to the Statutes strict conformity requirement. The Waupaca County District Attorney, the Wisconsin Towns Association legal staff, and our town attorney all advise that 35 mph is not enforceable. The only enforceable ATV/UTV speed limit is the same limit that is imposed for all other vehicles on that road - the posted speed limit. The majority of the roads in Caledonia have 45 or 55 mph speed limits so the enforceable speed limit for ATV/UTVs would be as high as 55 mph in this township. **The Town Board believes Statute 23.33 must be amended to include enforceable speed limits that reflect the safe speed limit for these vehicles on the road in traffic.**
- 4.) Lastly, It is unclear which agency and at whose expense the rules governing ATV/UTV use on municipal roads would be enforced. The State Statute 23.33 is enforced by DNR wardens and other law enforcement agencies, and these agencies' costs are covered by the State when enforcing this Statute. But the designation of local roads as ATV/UTV

routes is a local ordinance. We have been told by the DNR that they would not enforce local ordinances, they only enforce the state law, so they would not enforce our local ordinance. We have no local police department to enforce any ordinance we may create so we would need to depend on the Waupaca County Sheriff to enforce any ATV/UTV ordinance we may enact. The Sheriff's Office has served our community very well over the years and would assist as best they can. When enforcing local ordinances in the past, the Sheriff's Office has required the Town to pay expenses and officer time. These costs, along with the signage costs required in the Statute 23.33, would then have to be paid for by the Town of Caledonia out of property tax revenues. As said earlier, no new revenues will be generated by allowing ATV/UTV use of town roads, so property tax revenues would need to be used. **The Town Board is very concerned about the continued increases in expenses and continued demand on an already overstretched Sheriff's Office.**

After considering all of this information, **the Town Board believes there are a number of serious issues with the State Statute 23.33 that need to be corrected by the State legislature.** These issues involve safety concerns, cost and enforcement coverage issues, and the ability to enforce the ordinance we may create. We hope that municipalities and the clubs would work together to address these issues with our State legislators. **Until Statute 23.33 is amended to correct these issues the Town Board does not believe passing an ordinance allowing ATV/UTV use of town roads is in the best interests of our residents.** The Town Board is willing to reconsider this decision in the future as these issues are addressed.

Finally, while studying this issue for the past months, many conversations were held with supporters of allowing ATV/UTV use of town roads. Often, we would be told to "just pass the ordinance, there are no issues with this in the communities that have passed it". Well, this is not entirely true and the data from the DNR bears that out. After reviewing the data from the 2018 Annual Report from the DNR Recreational Safety and Enforcement group, it is clear that safety issues do exist with ATV/UTV use that do require enforcement support and spending. There are nearly 400,000 registered ATV/UTVs in Wisconsin and the number is growing rapidly, and this number does not include out of state machines that are brought to Wisconsin. It is hard to imagine that adding this many vehicles to State roads, trails, and private lands would result in "no issues". In 2018, there were 26 fatalities with ATV/UTVs in Wisconsin, half on municipal roads. This is more than either boats or snowmobiles experienced and is troubling when you consider ATV/UTVs are not allowed on a lot of roads at this point. Additionally, 1430 citations were issued for violations. While ATV/UTVs make up 32% of the total registered recreational vehicles in the State, they are involved in 42% of all incidents involving injuries. Even more troubling, certain operators of ATV/UTVs are required to have completed safety training and carry a certificate when riding, yet nearly half of these individuals who were involved in injury causing accidents, did not have one.

The Town Board does understand the desire to operate these vehicles on our roads and does think that could happen one day. At this point with the best interests of all in mind, however, there are too many issues to approve this now.

