

# DISCONTINUANCES

## **PROCESS**

A platted street or road may be altered or discontinued (except in a first class city) by common council, village board, town board or county board resolution when:

**A written petition** is received from owners of all the frontage of the lots and lands abutting upon the public way sought to be discontinued of public way sought to be discontinued **and** owners of more than 1/3 of the land fronting the remainder of the street or road within 2,650 ft. from either end of the portion to be discontinued within the corporate limits of the city, village, town.

## **OR**

**The common council, village board, town board or county board may initiate** the alteration or discontinuance by introducing a resolution declaring that the "public interest requires it". Proper noticing and a public hearing is required (see example this section).

**No discontinuance can be ordered if a written objection is filed by any owner** fronting the portion of public way sought to be discontinued **or** by the owners of more than 1/3 of the land fronting the remainder of the street or road within 2,650 ft. from either end of the portion to be discontinued. If a written objection is filed, the discontinuance may be ordered only by the favorable vote of two-thirds of the members of the common council or village or town board voting on the proposed discontinuance. An owner of property abutting on a discontinued public way whose property is damaged by the discontinuance may recover damages as provided in ch. 32.

*The narrowing, widening, extending or other alteration of a street or road does not constitute a discontinuance if the alteration falls entirely within a new right-of-way which is being "Dedicated to the Public".*

s. 236.445, Wis. Stats. &  
s. 66.1003, Wis. Stats.

s. 66.1003 (4)  
Wis. Stats.

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If a common council, village board, town board or county board initiates a platted street or road alteration or discontinuance:

s. 66.1003 (4) (b),  
Wis. Stats.

- **A public hearing on the passage of the resolution** must be set not less than 40 days after the introduction of the resolution; **and**
- **The notice of the public hearing** must state when and where the resolution will be acted upon and what platted street or road, or part thereof, is proposed to be altered or discontinued; **and**
- **This notice must be published as a "Class 3 Notice"** as per Ch. 985, Wis. Stats. (see example this section); **and**
- **The owners must be served with a notice** in the manner required for the service of a summons in the circuit court at least 30 days prior to the public hearing.

*When such "service" can't be made within the city, village or town, a copy of the notice must be mailed to the owner's last known address at least 30 days prior to the public hearing.*

### **A "Class 3 Notice" requires "3 Insertions".**

*Insertion is defined as "once per week, for the required number of weeks (3, for a class 3 notice), the last of which shall be at least one week prior to the meeting or event, unless otherwise specified by law."*

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In addition, the procedure in s. 840.11, Wis. Stats., must also be followed:

- A notice of pendency (notice of lis pendens) must be filed in the register of deeds office at or prior to the time the application to vacate (by court action), or alter or discontinue (by resolution) a street or road must be filed with the proper officer.
- The notice of pendency must contain the persons name, a brief statement of the object thereof and a map and description of the land that is affected.
- Failure to comply with the provisions of s. 840.11, Wis. Stats., shall render all proceedings based on the application void.

## **REVERSION**

Upon discontinuance, a platted street or road right-of-way reverts:

- To the original owner(s) if that can be ascertained.

-OR-

- The land is equally divided between the owners on either side of the centerline of the discontinued street or road.

*Whenever any public roadway or public land is vacated or discontinued, the easements and restrictions over the described land continue.*

*If easements and restrictions are to be released, a "written release," by the public body or utility having the right of enforcement, must be made part of the vacation or discontinuance.*

*The "written release" must be referenced in the resolution, ordinance or court order.*

s. 66.1003 (9),  
Wis. Stats. and s.  
840.11 (1), Wis.  
Stats.

s. 80.32 (3&4),  
Wis. Stats.

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## ***PUBLIC ACCESS***

**Department of natural resources approval of discontinuance.** No resolution, ordinance, order, or similar action of a town board or county board, or of a committee of a town board or county board, discontinuing any highway, street, alley, or right-of-way that provides public access to any navigable lake or stream shall be effective until such resolution, ordinance, order, or similar action is approved by the department of natural resources.

*s. 66.1006, Wis. Stats.*

*NR 1.92, Wis. Admin. Code*

## ***RELIEF FROM CONDITIONS OF GIFTS AND DEDICATIONS***

If the governing body of a county, city, town or village accepts a gift or dedication of land made on condition that the land be devoted to a special purpose, and the condition subsequently becomes impossible or impracticable, the governing body may by resolution or ordinance enacted by a two-thirds vote of its members-elect either to grant the land back to the donor or dedicator or the heirs of the donor or dedicator, or accept from the donor or dedicator or the heirs of the donor or dedicator, a grant relieving the county, city, town or village of the condition, pursuant to [article XI, section 3a](#), of the constitution.

*s. 66.1025, Wis. Stats.*

# DISCONTINUANCES

## EXAMPLE RESOLUTION FOR DISCONTINUANCE OF A PUBLIC STREET

### RESOLUTION - NUMBER 2000-01

A RESOLUTION APPROVING THE DISCONTINUANCE OF PORTIONS OF A VILLAGE STREET INVOLVED WITH THE REHABILITATION OF THE ENDANGERED LEAP-FROG HABITAT PURSUANT TO WIS. STAT. SEC. 66.1003.

WHEREAS, Kickapoo County and the Prime Meridian Corporation would like the Village of Dogpatch, on its own motion, to discontinue Johnson Street from its intersection with the Northerly railroad right-of-way, north to its intersection with the southerly right-of-way of Chicken Ridge Road.

WHEREAS, the discontinuance of the above described portion of Johnson Street will make the rehabilitation of the endangered leap-frog habitat more feasible.

NOW, THEREFORE, BE IT RESOLVED, that the above described portion of Johnson street is hereby discontinued in conformance with Wis. Stat. Sec. 66.1003 with the Village retaining the necessary utility easements in the discontinued streets, and the Clerk is directed to give notice of hearing thereon by Class 3 notice under Chapter 985 Wis. Stats.

Presented for filing this 1st day of November , 1999 and for hearing thereon December 23, 1999 by the following trustees of the Village Board.

Adopted this 23 day of December, 1999

Sam Sickleblade, Trustee, Village of Dogpatch

Charlie Augerhandle, Clerk, Village of Dogpatch.

I, Charlie Augerhandle, Clerk of the Village of Dogpatch, Kickapoo County, Wisconsin do hereby certify that the above is a true and correct copy of Resolution No. 2000-01 adopted on December 23, 1999 and approved December 23, 1999 by the Board of Trustees, in the Village of Dogpatch, Kickapoo County, Wisconsin.

# DISCONTINUANCES

## A GUIDE TO DISCONTINUING A PUBLIC STREET WITHIN RECORDED SUBDIVISION PLAT

Discontinuance initiated by the owners of the land fronting the street:

1. All of the owners of the land "fronting" on the portion of street to be discontinued must sign a "written petition" which will be submitted to the local unit of government; AND
2. Owners of more than 1/3 of the land fronting on the remainder of the street, within 2650 ft. in either direction from the portion to be discontinued, must also sign the petition.
3. The "written petition" is submitted to the local unit of government.
4. The local unit of government may pass a resolution discontinuing the street at a properly noticed meeting.

Discontinuance initiated by the local unit of government:

1. The local unit of government may "propose a resolution" to discontinue a street if they deem it in the "public interest" to do so.
2. A public hearing on the "proposed resolution" must be set not less than 40 days after the resolution is introduced.
3. The following noticing requirements must be met for the public hearing:
  - the notice must state when and where the resolution will be acted upon and must clearly show what platted street is proposed to be discontinued;
  - this notice must be published as a "Class 3 Notice"; and
  - in addition to the Class 3 Notice, at least 30 days prior to the public hearing, the owners of the land abutting the portion of street to be discontinued must be "served" in the same manner as required for the service of a summons.
  - when such "service" can't be made within the city, village or town, a copy of the notice must be mailed to the owner's last known address.
4. No discontinuance may be ordered if:
  - ANY owner abutting the street to be discontinued files a "written objection" with the local unit of government; OR
  - If owners of more than 1/3 of the land fronting on the remainder of the street, within 2650 ft. in either direction from the portion to be discontinued, file a "written objection" with the local unit of government.
5. At the properly noticed public meeting, the local unit of government votes on the resolution to discontinue the portion of platted street.
6. The discontinued right-of-way reverts to the original owner. If that can not be determined, then it is divided equally between the owners on either side of the centerline.

\*\*\*\*\* **Contact the Corporation Counsel for filing proper Notice of Lis Pendens**\*\*\*\*\*