

## **DISCONTINUANCE PROCESS UNDER CH. 66 AND CH. 80, WIS. STATS.**

### **Wis. Stat. § 66.1003 – Discontinuance of a public way**

#### **1. Initiating the Discontinuance Process.**

- (a) Town Initiates: The Town Board can introduce a resolution declaring that, because the public interest requires, it intends to discontinue a public way; or
- (b) Property Owners Initiate: The owners of all frontage lots and lands abutting the public way and more than 1/3 of the owners of frontage lots and lands abutting the portion of the remainder of the public way laying within 2,650ft of the ends of the portions of the public way to be discontinued must file a written petition with the Town Clerk.

#### **2. Notice Requirements.**

- (a) After the introduction of a resolution or receipt of a petition, the Town Board must publish a class 3 notice of the time and place where it will hold a public hearing to consider the resolution or petition. This means posting notice at least 3 weeks prior to the public hearing. In addition, notice of the public hearing must be personally served on the owners of all frontage lots and lands abutting the public way to be discontinued at least 30 days before the public hearing.
- (b) After the introduction of a resolution or receipt of a petition, the Town Board must also deliver a copy of the resolution or petition to all of the following, if applicable:
  - i. If the road is located within ¼ mile of a state trunk highway or connecting highway, the Secretary of Transportation;
  - ii. If any affected portion of the road contains a railroad crossing, the Commissioner of Railroads.

#### **3. Public Hearing.** A public hearing on the resolution or petition must be held by the Town Board at least 40 days after the resolution is introduced or petition is received.

#### **4. Objections.**

- (a) The public way cannot be discontinued if any property owner abutting the portion of the public way to be discontinued files an objection with the Town Clerk.
- (b) Similarly, the public way cannot be discontinued if the property owners of more than 1/3 of the frontage of the lands abutting the remainder of the public way which lay within 2,650 ft from the ends of the portion to be discontinued file a written objection with the Town Clerk.
- (c) If any written objection is filed, the discontinuance can still be ordered with a 2/3 vote of the Town Board.

5. **Lis Pendens.** If property owners initiate the discontinuance process by filing a petition, the applicants must, at or prior to the time of filing the petition, record a lis pendens in the register of deeds.
  - It does not appear that the Town must file a lis pendens if the Town Board initiates the discontinuance process by introducing a resolution.

**Wis. Stat. § 82.10 – Highway order**

**1. Initiating the Discontinuance Process.**

- (a) **Town Initiates:** The Town Board can introduce a resolution for the highway it intends to discontinue. The resolution must contain a legal description and scale map of the highway to be discontinued; or
- (b) **Residents Initiate:** 6 or more residents can apply to the Town Board to have the highway discontinued. The application must be in writing and delivered to the Town Clerk containing a legal description and scale map of the highway to be discontinued.

**2. Notice Requirements.** After the introduction of a resolution or receipt of an application, the Town Board must publish a class 3 notice of the time and place where it will hold a public hearing to consider the resolution or application. This means posting notice at least 3 weeks prior to the public hearing. The notice must contain the same legal description and scale map as in the resolution or application. In addition, at least 30 days prior to the public hearing, the Town Board must also give notice by registered mail to all of the following:

- (a) The owners of record of lands through which the highway passes;
- (b) The owners of record of all lands abutting the highway;
- (c) The DNR;
- (d) The county land conservation committee;
- (e) If the highway is located within ¼ mile of a state trunk highway or connecting highway, the Secretary of Transportation; and
- (f) If any affected portion of the highway contains a railroad crossing, the Commissioner of Railroads.

Before the public hearing, the Town Clerk should also file an affidavit asserting that all notice requirements have been satisfied.

**3. Lis Pendens.**

- (a) If the Town Board initiates the discontinuance process by introducing a resolution, the Town Board must record a lis pendens with the register of deeds within 10 days of the introduction of the resolution; or
- (b) If property owners initiate the discontinuance process by filing an application, the applicant(s) must record a lis pendens with the register of deeds on or prior to the time of filing the application with the Town Clerk.

4. **Examination of Highway.** Prior to the public hearing, the Town supervisors must personally examine the highways to be discontinued. Wis. Stat. § 82.11(1).
5. **Public Hearing.** At the public hearing, the Town Board must decide, in its own discretion, whether approving the resolution or application would be in the public interest.
6. **Time to Determine.** Within 90 days after the resolution or application is first introduced, the Town Board must make a determination on the resolution or application. If the Town determines not to discontinue the highway, such order shall be final for 1 year following such determination. No resolution or application to discontinue the highway shall be filed within that 1-year period. Wis. Stat. § 82.12(1) and (3).
7. **Highway Order.** If the Town determines to approve the resolution or application to discontinue the highway, it must issue a highway order. The highway order shall be recorded with the register of deeds, and promptly filed with the Town Clerk. The Town Clerk then submits a certified copy of the highway order to the county highway commissioner. The order must also be incorporated into the Town's official map, if applicable. Wis. Stat. § 82.12(2).

#### **Wis. Stat. § 66.1005 - Reversion of Title**

When any public highway or road is discontinued under Wis. Stats. §§ 82.10 or 66.1003, title to the underlying lands revert to the adjoining property owners as follows:

- (a) If the discontinued highway or road is located between the lands of different property owners, it is annexed to the lots to which it originally belonged, if that can be determined.
- (b) If the original owners of the lands where the highway or road was located cannot be determined, the lands are then equally divided between the owners on each side of the highway or road.