

CHECKLIST FOR VACATING ROADS

Minn. Stat. § 164.07

- (1) ____ The process may be initiated by *either* of the following methods:
- (1) Upon elector authorization received at an annual or special town meeting;
(Minn. Stat. § 164.06, subd. 1) *(TR4000A, Attachment 1)*
 - (2) Upon a petition (subd.1) *(TR4000A, Attachment 1a)*
 - a. signed by at least eight voters of the town
 - b. who own land within three miles of the road
 - i. The petition may have less than eight signatures if there are not eight resident owners within the three-mile area.
 - ii. **Best Practice.** Set out in the minutes of the meeting, the Board determined there are less than eight residents living within three miles of the road.
 - c. description of the road and the portion to be vacated.
- (2) ____ Petition filed with the town clerk who must present it to the town board. (subd. 2)
- (3) ____ **Order:** Within **30 days** of being presented with the petition, the board must make an order
- a) ***setting a date, time, and place for a road hearing.***
 1. ***Hearing does not have to occur, but the date must be set.***
 - b) Describing the road proposed to be vacated, and the several tracts of land through which it passes. (subd. 1)
 1. Is a survey needed to determine location and description of road?
 - c) Notice indicating the affected landowners are entitled to judicial review of damages. *(TR4000A Attachment 2)*
 - d) If the procedure was initiated by elector authorization, be sure the order contains a statement of public purpose and necessity required of a petition.
- (4) ____ The ***petitioners*** are responsible for ***personally serving*** the order and a copy of the petition upon each owner and occupant of the land affected **at least ten days prior to the hearing**, and for providing ten days ***posted notice*** of the hearing.
- **Best Practice:** The town board should provide at least ten days ***published notice*** of the hearing. *(TR4000A Attachment 3)*
 - If the process was initiated by the board with elector authorization, the board is responsible for providing all the notices required in the process. Send the resolution, not petition, along with the order to the affected landowners.
- (5) ____ **Petitioners** responsible for **completing the affidavit of service and posting.** (subd. 2)
- If elector authorization, this would be a board function.
- (6) ____ **Escrow:** Should an escrow be filed? And if so how, much?
- This is a board decision. Best practice is to consult with your attorney.
 - It may be appropriate when a petition is filed.
- (7) ____ **DNR Notice if road by public water:** If the road to be vacated ends at, abuts upon, or is adjacent to any public water, the ***petitioners*** must serve notice of the order by certified mail upon the DNR Commission at least **60 days** before the hearing. (subd. 2(a)).
- Keep this in mind when selecting a hearing date.
 - A copy of the notice should also be sent to the regional DNR office.

- (8) ____ **Consult DNR Commissioner 15 days before hearing if** the road to be vacated terminates at, abuts upon, or is adjacent to any public water. (subd. 2(c))
- No definition of consultation. Best to talk with your regional DNR office.
 - Keep notes about the conversation as support for satisfied its consultation requirement.
- (9) ____ At the hearing, petitioners must **present affidavits of personal service and posting**. This proof establishes the board's jurisdiction to continue with the vacation process. (subd. 3)
- (10) ____ At the hearing, the board must examine the road, hear all interested parties, and decide whether to grant or refuse the petition. (subd 3)
- Occasionally, the board will hold the entire hearing at the road site.
 - Others will start the hearing at the road, conduct the examination, recess the hearing to a specific time back at the town hall, and then reconvene hearing at the specified time.
 - The board must decide how it will accomplish the road examination in each case.
 - The town board, its employees or agents, may enter upon any property, public or private, to conduct property examinations and surveys. (subd. 13)
 - It does not grant immunity to the town board, its employees, or agents for damage caused to public or private property as the result of an entry onto the property.
- (11) ____ **Landlocked Property.** If the petition calls for vacation of a road that is the only means of access to property or properties containing five or more acres, ***the road may not be vacated*** without the consent of the property owner(s), unless the town provides the owner(s) with other means of access. Minn. Stat. § 160.09, subd. 3.
- Owner permission should be **in writing** and the signature **notarized by at least the town clerk**.
 - Before landlocking anyone, be sure the landowner consults with an attorney about creating a private easement so their property has some legal access. The easements should be put in place and recorded in conjunction with the vacation order; however, the owners seeking the vacation are entirely responsible for the work and cost association with establishing the private easements.
- (12) ____ **Ditches:** If vacating a road, the board must determine whether the ditches lateral to the road should continue to be maintained for the general health and welfare of the public.
- If so, the town may insert a provision in the road order retaining a right of access for that purpose. (See also Minn. Stat. §§ 160.09 & 160.29) The adjacent owners are prohibited from interfering with the functioning of the drainage facilities. (subd. 3a)
- (13) ____ **Utilities in right-of-way.** If vacating a road in which there are utilities, and the board has adopted an ordinance to regulate utilities placing facilities in its rights-of-way, and the vacation does not require the relocation of the facilities, then the board must reserve to and for itself and all right-of-way utilities having facilities in the vacated right-of-way and the right to install, maintain, and operate facilities in the vacated right of way and the right to enter the right of way to reconstruct, inspect, maintain, or repair facilities. The exception is if reserving these rights would not be "in the public interest." Minn. R. 7819.3200, subp. 1.
- If the board has not adopted an ordinance regulating utilities in the right of way, then this requirement does not apply. However, it is recommended boards give notice of the hearing to any know utility with facilities in the road proposed for vacation so they can raise any concerns they may have.
 - If the relocation necessitates moving the facilities, there are factors to be considered in determining who must pay for the relocation. Minn. R. 7819.3200, subp. 2.

- (14) ____ **Approval of Petition: Develop a Road Order.** If the petition is approved, the board must develop a road order that must be recorded with the county. *(TR4000A Attachment 5)*
- **Best Practice:** Bring a draft of the road order into the county recorder's office for an indication of whether it is in the proper form (e.g., correct margins, etc.).
- (15) ____ If the petition is granted, and the board deems it necessary, it may require a survey to be made of the road. (subd. 4)
- **Best Practice:** A survey and is vital to the development of a proper description of the road, the establishment resolution and the road order.
- (16) ____ The board must determine the amount of damages by vacation.
- Damages may be determined by agreement between the board and the owner. *(TR4000A Attachment 6)*
 - Waived by the owner in writing. *(TR4000A Attachment 7)*
 - If an agreement is not reached or a waiver obtained, the board must determine the amount of damages, if any, which must be awarded to each of the affected owners. (subd. 5)
 - **Measure of damages:** "is the difference between the fair market value of the entire piece of property immediately before the taking and the fair market value of the remainder of the property after the taking." *State by Humphrey v. Strom*, 493 N.W.2d 554, 558 (Minn. 1992).
 - The board must also determine the monetary value of the benefits, if any, conferred by the board's action and subtract that amount from the damages. Determining benefits is most significant when vacating a road because the property will revert to the adjacent owners (i.e., the property will be cleared of the public easement). *(See TR4000A Attachment 9 for information on reducing damage awards by benefits for condemnation.)*
 - If the board sets damages by agreement with an owner, or an owner releases his or her claim to damages in writing, the agreement or release must be filed with the town clerk and are final.
- (17) ____ The award of damages must be filed with the town clerk who, ***within seven days***, must ***notify each of the affected owners and occupants of the award in writing***. (subd. 6)
- The notification must set out the **date of the award, the amount, and any terms or conditions of the award**. *(TR4000A Attachment 8)*
 - It must also explain the requirements for appealing the award of damages.
- (18) ____ **Appeal.** The owner or occupant may appeal the award of damages within 40 days of the filing of the award of damages. The appeal is initiated by filing a notice of appeal with the court administrator in the district court of the county where the land is located. (subd. 7)
- The notice must include a bond of at least \$250, with sufficient surety, approved by the judge or the county auditor, conditioned to pay all costs arising from the appeal in case the award is sustained.
 - Process and papers regarding the appeal must be served on the town board chair or the town clerk. Minn. Stat. § 365.40, subd. 2.
 - The notice must specify the award appealed from, the land it relates to, the nature and amount of the claim, and the grounds of the appeal.
 - If no appeal is entered within the 40 days, the assessed damages are considered the same as a judgment and are final. (subd. 9)

- (19) ____ Trial: The trial is carried out under certain procedures. (subd. 8)
- Set for calendar for trial at the next general term of the court occurring more than 20 days after the appeal is perfected.
 - It shall be tried in the same manner as an appeal in eminent domain proceedings under chapter 117.
 - The prevailing party shall recover costs and disbursements as in other civil cases and judgment shall be entered upon the verdict.
- (20) ____ A certified copy of the final town road order must be presented to the county auditor, who must enter it in the transfer records and note on it, over the auditor's official signature, the words "entered in the transfer record." (subd. 11)
- (21) ____ A certified copy of the order must also be recorded with the county recorder. (subd. 11)
- (22) ____ If the petition is denied, note the fact on the back of the petition (i.e., "petition denied").
- The board's decision to deny a petition is final, unless appealed from, for one year (i.e., a similar petition may not be brought for one year).
 - If appealed, a similar petition may not be brought within one of the court's decision. (subd. 12)

_____ Township

_____ County, Minnesota

RESOLUTION AUTHORIZING THE TOWN BOARD TO INITIATE THE VACATION OF A TOWN ROAD

WHEREAS, the issue of vacating the following described road was raised and discussed at the annual town meeting or special town meeting of the electors of _____ Township, _____ County, Minnesota on _____, 20__;

General Description of the Town Road:

WHEREAS, Minn. Stat. § 164.06, subd. 1 allows a town board to initiate the town road establishment, vacation, or alteration procedure contained in Minn. Stat. § 164.07 upon receiving authorization of the town electors;

WHEREAS, the town electors determined it is in the best interests of the town to authorize the town board initiate the road procedure in Minn. Stat. § 164.07 without having to obtain the petition described in Minn. Stat. § 164.07, subd. 1;

NOW, THEREFORE, BE IT RESOLVED, the electors of _____ Township, _____ County, Minnesota hereby authorize the town board to initiate the road vacation procedure in Minn. Stat. § 164.07 regarding the above referenced road.

Adopted this _____ day of _____ 20__.

Town Meeting Moderator

Attest: _____
Town Clerk

TOWN ROAD VACATION PETITION

To the Town Board of _____ Township, _____ County, Minnesota:

The undersigned legal voters of the Town who own real estate or occupy real estate under the homestead or preemption laws or under contract with the state within three miles of the road described below hereby petition you to vacate the following described road:

[a petition to alter or vacate a portion of a road must include a specific description of the portion to be altered or vacated]

[add lines as needed]

We ask you proceed with such vacation pursuant to Minn. Stat. § 164.07.

Dated this ____ day of _____, 20__.

Petitioners

Address/Land Owned

[add lines as needed]

(Note: Only legal voters of the Town who own real estate or who occupy real estate under the homestead or preemption laws or under contract with the state within three miles of the road may sign the petition. At least eight signatures are required. If a husband and wife are both on the title to their property, and are voters of the town, then each can sign separately.)

ORDER SETTING FORTH INITIAL DESCRIPTIONS AND SETTING HEARING DATE

WHEREAS, the town board of _____ Township, _____ County, Minnesota was presented a petition at its meeting on the ____ day of _____, 20__ requesting the vacation of a road;

WHEREAS, the petition contained a description of the road, [a description of the portion to be vacated].

WHEREAS, Minn. Stat. § 164.07, subd. 2 requires the town board to make an order describing as nearly as practicable the road to be vacated, describing the several tracts of land through which the road passes, and fixing a time and place when and where the town board will meet and act upon the petition;

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The road proposed to be vacated is described as: [describe the road]
A more specific description may be developed if the petition is granted.

2. The several tracts of land through which the road passes and their owners are:

Owners

Description of Land

[add lines as needed]

3. The _____ Town Board will conduct a hearing at _____ p.m. on the ____ day of _____, 20__, at _____ to examine the road, receive public comment, consider the proposed action, and act on the petition.

NOTICE OF RIGHT TO APPEAL

Affected landowners have right of appeal as provided in Minn. Stat. § 164.07, subd. 7 to seek judicial review of damages, need, and purpose if the town board does decide to vacate a town road.

Dated: _____

BY THE TOWN BOARD

Town Clerk

Town Board Chair

NOTICE OF ROAD VACATION HEARING

_____ TOWNSHIP

_____ COUNTY

NOTICE IS HEREBY GIVEN, the town board of _____ Township, _____ County, Minnesota will conduct a public hearing on the ____ day of _____, 20__ at _____ p.m. at the _____ Town Hall located at _____ for the purpose of considering and acting upon a petition it received calling for the vacation of the following described road:

[describe the road]

All persons interested in this matter are encouraged to attend the hearing.

The tracts of land through which said road passes and the owners and occupants thereof, as nearly as we can determine, are as follows:

<u>Owners</u>	<u>Description of Land</u>
_____	_____
_____	_____

[add lines as needed]

Dated: _____

(clerk's printed name)

_____ Township Clerk
(Signature)

RESOLUTION VACATING A TOWN ROAD

WHEREAS, the Town Board of _____ Township, _____ County, Minnesota received a petition calling for the vacation of the following described road pursuant to Minn. Stat. § 164.07:

[describe the road]

WHEREAS, said petition was signed by not less than eight voters of the town who own real estate, or occupy real estate under the homestead or preemption laws or under contract with the state, within three miles of the road;

WHEREAS, the road passes over the following described tracts of land in _____ County, Minnesota, owned by the following named owners:

<u>Owners</u>	<u>Description of Land</u>
_____	_____
_____	_____

[add lines as needed]

WHEREAS, the town board conducted a public hearing on the petition on the ____ day of _____, 20__, after personal and posted notice provided by the petitioners pursuant to Minn. Stat. § 164.07, subd. 2, and published notice provided by the town board;

WHEREAS, the petitioners presented the town board with affidavits at the hearing as proof the required notice was given;

WHEREAS, the town board examined the road, heard the interested parties, and considered the matter;

WHEREAS, the town board determined the petitioned for action is consistent with the public interest;

WHEREAS, the town board has examined the ditches lateral to the road and determined said ditches (are/ are not) essential for surface drainage of adjacent lands or highways in support of the general health and welfare of the public;]

WHEREAS, the Owners listed in Appendix A have released in writing all claims for damages from such vacation;

[create an Appendix A listing these owners' names and the date they signed the release.]

WHEREAS, the Owners listed in Appendix B have reached an agreement with the town board ascertaining their damages for the vacation of the road;

[create an Appendix B listing these owners and the agreed upon amounts.]

WHEREAS, the town board has determined damages sustained and benefits conferred by said vacation in the amounts and for the Owners listed in Appendix C, who did not release their claim for damages and did not ascertain the amount of damages by agreement with the town board;

[create an Appendix C that lists these owners and the amount of damages awarded to each]

NOW, THEREFORE, BE IT RESOLVED, the town board of _____ Township,
_____ County, Minnesota hereby vacates a town road legally described as follows:
[provide legal description]

[If vacating and board decided to preserve the ditches add: **BE IT FURTHER RESOLVED**, the town board does hereby preserve all rights and interests in the ditches lateral to the road as provided in Minn. Stat. § 164.07, subd. 3a and retains the rights to access the adjacent properties as needed to maintain said ditches;]

BE IT FURTHER RESOLVED, the town board chair and town clerk are hereby authorized and directed to execute and record a town road order or vacating said town road and to record the same with the county recorder of _____ County;

BE IT FINALLY RESOLVED, the town clerk is authorized and directed to provide a copy of this resolution to each of the affected owners listed above.

Adopted this ____ day of _____, 20__ by the following vote:

Town Supervisor

Yes / No

Attest: _____
TOWN CLERK

TOWN BOARD

Board Chair

State of Minnesota)
) ss.
County of _____)

I, _____, clerk of _____ Township, _____
County, Minnesota, hereby certify I have compared the foregoing copy of the resolution of the Town Board of said Township with the original record thereof on file with the town clerk, as stated in the minutes of the proceedings of said Board at a public hearing held on the ____ day of _____, 20__, and the same is a true and correct copy of said original record and of the whole thereof, and said resolution was duly passed by said Board at said hearing.

Witness my hand and seal this ____ day of _____, 20__.

Signature

Printed Name

_____ Township Clerk

ORDER VACATING A TOWN ROAD

_____ TOWNSHIP

_____ COUNTY

WHEREAS, the Town Board received a petition calling for the vacation of a town road under Minn. Stat. § 164.07;

WHEREAS, the Town Board held a hearing on said petition on the ____ day of _____, 20____, notice thereof having been given;

WHEREAS, the Town Board passed a resolution on the ____ day of _____, 20____ vacating the road;

NOW, THEREFORE, IT IS HEREBY ORDERED the following described road is hereby or vacated:

[describe the road]

Dated this ____ day of _____, 20____.

BY THE TOWN BOARD

Attest: _____

Town Clerk

Town Board Chair

State of Minnesota)

) ss.

County of _____)

I, _____, clerk of _____ Township, _____ County, Minnesota, hereby certify I have compared the foregoing copy of the order of the Town Board of said Township with the original record thereof on file with the town clerk, as stated in the minutes of the proceedings of said Board at a public hearing held on the ____ day of _____, 20____, and the same is a true and correct copy of said original record and of the whole thereof, and said was duly passed by said Board at said hearing.

Witness my hand and seal this ____ day of _____, 20____.

Signature

Printed Name

_____ Township Clerk

AGREEMENT OF DAMAGES AND WAIVER OF IRREGULARITIES AND APPEAL

THIS AGREEMENT, is made this ____ day of _____, 20__, between _____ Township, _____ County, Minnesota, hereinafter referred to as the Town, and _____ and _____, hereinafter referred to as Owners.

WHEREAS, the Owners own real property in _____ County, Minnesota, more particularly described as follows:

[describe the property]

WHEREAS, the town has undertaken the procedure contained in M.S. § 164.07 to vacate the following described road:

[describe the road]

WHEREAS, said road passes through the owners' above described property;

WHEREAS, the owners will sustain damages by reason of vacating said road;

WHEREAS, the amount of damages sustained may be ascertained by agreement pursuant to Minn. Stat. § 164.07, subd. 5, taking into consideration and reducing the amount of damages by the money value of the benefits conferred;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Town and Owners hereby agree:

1. The amount of damages sustained by the Owners by reason of vacating the above described road shall be _____ (\$_____).
2. The Town shall pay Owners the amount of damages set out above, receipt of which is hereby acknowledged.
3. Owners expressly waive any claim the amount of damages set out herein are not adequate, waive objection to any irregularity about said vacation procedure, and waive all rights to appeal in the courts.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date indicated above.

_____ Township

Owners

By: _____
Town Board Chair

signature

signature

Attest: _____
Town Clerk

RELEASE OF DAMAGES

WHEREAS, the town board of _____ Township, _____ County, Minnesota has undertaken the procedure set out in Minn. Stat. § 164.07 to vacate the following described road:

[describe the road]

WHEREAS, said vacation will benefit the property owners adjacent to the road by [eliminating the encumbrance of an unneeded public road easement from the property, or a more specific description of benefit];

NOW, THEREFORE, We _____ and _____ being the owners of the a parcel of land in _____ Township, _____ County, Minnesota, and more particularly described as:

[property description]

hereby waive and release all claims to damages sustained by us from the vacation of the above described road which runs through our land.

Date: _____

Owner

Owner

Signed before me by the named owners on
the date stated

Clerk Signature

AWARD OF DAMAGES

STATE OF MINNESOTA)

COUNTY OF _____) ss.

TOWNSHIP OF _____)

WHEREAS, the town board of _____ Township, _____ County, Minnesota did on the ____ day of _____, 20__ vacate the road described on the attached order pursuant to Minn. Stat. § 164.07;

WHEREAS, the vacation affects a tract of land in _____ County, Minnesota, owned by _____ and _____, and more particularly described as follows:

[describe owners' property]

WHEREAS, no prior written agreement ascertaining the damages or releasing all claims to damages were obtained from the owners;

WHEREAS, the town board has determined the amount of damages sustained by the owners because of the vacation and have subtracted from that amount the money value of the benefits the board has determined will be conferred by said vacation;

YOU ARE HEREBY NOTIFIED, in the matter of the vacation of the above described road the town board on the ____ day of _____, 20__, has awarded _____ and _____, as the owners of the above described tract of land, damages in the amount of: _____ (\$_____), a check for which is enclosed, subject to the following terms and conditions:

[list any terms & conditions]

NOTICE OF RIGHT TO APPEAL

PLEASE TAKE NOTICE you have an opportunity under Minn. Stat. § 164.07 to appeal this award of damages. To appeal the award, notice of appeal must be filed with the court administrator of the district court of _____ County [the county in which your tract of land is located] within **40 days** of _____, 20__ [the day the town board filed the award of damages with the town clerk].

Filing a notice of appeal will not prevent the town board from carrying out the action set out above unless the appeal challenges the public purpose or necessity of a road alteration or establishment and is filed within **ten days**.

The notice of appeal must specify: (1) the award of damages or failure to award damages being appealed from; (2) the land to which the appeal relates; (3) the nature and amount of the damages you are claiming; and (4) the grounds of the appeal. The notice of appeal must also be accompanied by a bond of at least \$250, with sufficient surety approved by the judge or the county auditor conditioned to pay all costs arising from the appeal in case the award is sustained. A copy of the notice of appeal must be mailed by registered or certified mail to the _____ Township clerk or other member of the town board.

Date

Town Clerk