

**PROCEDURES RE: VACATION OF PLATTED ALLEY OR STREET IN
UNINCORPORATED AREAS OF ELKHART COUNTY, INDIANA**
(As of January 1, 1991)

1. Any person who owns or is interested in a parcel of real estate located totally or partly within the unincorporated areas of Elkhart County, Indiana, and who wants to vacate all or part of a public way (street, road, alley, etc.) contiguous to his or her real estate, may file a written petition with the Elkhart County Department of Planning and Development, 4230 Elkhart Road, Goshen, Indiana 46526, requesting the vacation sought.

2. The petition must:

- (a) state the circumstances of the case (i.e. the facts surrounding the request and the reasons for the request);
- (b) specifically describe the public way to be vacated; such description must be a “legal” description usable on a deed or other formal real estate document;
- (c) give the full and formal names and legal mailing address of all owners of land that abuts the public way to be vacated; the best way of securing such names (which must include all persons with an ownership interest in each parcel) is to visit the Elkhart County Auditor’s office and review the tax index and transfer records;
- (d) contain a map or line drawing showing the public way to be vacated and its relationship to abutting parcels; such map must have been prepared by and certified to by a registered Indiana land surveyor;
- (e) be accompanied by One Hundred Dollars (\$100.00) in cash or check payable to the Treasurer of Elkhart County to cover the processing and notice expenses, including legal publications;
- (f) be accompanied by proposed ordinance in proper form with appropriate legal description and drawing included.

3. When a petition has been received by the Department of Planning and Development, it will be referred to the Technical Committee of the Elkhart County Plan Commission and to the Elkhart County Plan Commission for a public hearing thereon, and for a recommendation from the Plan commission, pursuant to I.C. 36-7-4-1 et seq. Additionally, when a proper petition has been received, the County Commissioners will hold a hearing

thereon. Pursuant to I.C. 36-7-3-12 the County Commissioners hearing is to take place within thirty (30) days after the petition is received, though due to notice and mailing requirements, scheduling difficulties, and the required hearing before the Plan Commission, the Commissioner's hearing date is most likely to be at the next regular meeting of the Board of Commissioners of Elkhart County taking place after the required Plan Commission hearing. Both the Plan Commission hearing and the hearing before the County Commissioners shall be subject to the Indiana Open Door Law, known as the Sunshine Law, and thus public participation at the hearings is contemplated.

4. Prior to the Plan Commission hearing and prior to the hearing before the Board of Commissioners of Elkhart County, the Department of Planning and Development must publish in two (2) newspaper of general circulation in Elkhart County, Indiana (to choose among The Goshen News, The (Elkhart)Truth, The Wakarusa Tribune, and The Middlebury Independent) a formal legal notice setting forth the time, place, and date of each of the hearings before the Plan Commission and the Board of Commissioners of Elkhart County with regard to the vacation petition. Such notice(s) must be published one (1) time at least ten (10) days prior to each of the two (2) hearings. The Department of Planning and Development will prepare and have published such notice as part of the One Hundred Dollars (\$100.00) filing fee.

Additionally, the Clerk of the County Commissioners, or the designate of the County Commissioners, must be statute give notice of the hearing before the County Commissioners (only) by certified mail, return receipt requested, to each owner of land that abuts the public way proposed to be vacated. To avoid confusion, the County Commissioners intend to use the same notice form intended for publication in meeting the mailing requirements; thus the adjoining or abutting landowners will also be notified of the Plan Commission hearing in addition to being notified of the County Commissioners hearing.

The petitioner(s) is responsible, as set forth in paragraph 2 above, for giving the full and formal names and legal mailing addresses of all affected landowners. The County Commissioners and/or the Department of Planning and Development staff will mail out the required certified mail notice, but the accuracy of such mailing is dependent upon the accuracy of the information supplied the County officials. Since the cost of processing and providing postage for such mailing is part of the One Hundred Dollars (\$100.00) filing fee above stated.

5. At the Technical Committee meeting the petition as filed, together with its legal description, line drawing, and proposed Ordinance, will be carefully reviewed. Any defects, shortcomings, or inconsistencies in the petition, or its accompanying records or documents, may cause the petition to be referred back to the petitioner(s) for correction or improvement and returned to Technical Committee for additional review, which could obviously cause a delay in the ultimate hearing of the petition before the County Plan Commission or Board of Commissioners. At the hearing that does take place before the County Plan Commission, the petitioner and all persons in favor of the petition will be heard. All persons opposed will also be heard. At the conclusion of the Plan Commission hearing a recommendation will be forwarded to the Elkhart County Commissioners for use at their hearing.

6. At the hearing before the County Commissioners the petitioner(s) and all people in favor of the petition will be heard. All persons opposed will also be heard. The recommendation and report of the County Plan Commission will also be considered. A remonstrance or objection to the petition, whether oral or written, may be raised or filed by any person aggrieved by the proposed vacation, but only on one or more of the following grounds:

(a) The vacation would hinder the growth or orderly development of the Elkhart County neighborhood in which it is located or to which it is contiguous.

(b) The vacation would make access to the lands of the aggrieved person by means of public way difficult or inconvenient.

(c) The vacation would hinder the public's access to a church, school, or other public building or place.

(d)The vacation would hinder the use of the public way by the neighborhood in which it is located or to which it is contiguous.

7. The Elkhart County Commissioners may act favorably upon the petition, may deny the same, or may refer the hearing back to the County Plan Commission for review, or may continue the hearing to another time. If the County Commissioners vote to grant the petition, in whole or in part, an ordinance setting forth the action of the County Commissioners must be prepared by the petitioner which sets forth such action, and legally describes the public way that has been vacated. Such ordinance, upon adoption, will then be filed with the Elkhart County Auditor and Elkhart County Recorder for tax and recording purposes. Generally, the width of the vacated way will be divided equally, and one-half (1/2) of such width shall thereafter be owned by the owners of the parcels on the respective sides of the vacated way. Such division will be controlled by I.C. 36-7-3-14; under that statute the persons involved with the petition may, by agreement, have the ownership of the land being freed by the vacation divided in a different fashion.

8. If the County Commissioners deny the petition, no petition seeking the same vacation may be initiated before the County Commissioners for a period of two (2) years.

9. A party aggrieved by the granting of a vacation petition may file an appeal of the County Commissioners' decision in the Circuit or Superior Courts of Elkhart County. Such an appeal must be filed within thirty (30) days of the adoption of the ordinance.

10. Vacation proceedings cannot deprive a public utility of the use of all or part of the public way to be vacated if, at the time the proceedings are instituted, the utility is occupying and using all or part of that public way for the location and operation of its facilities. The utility may waive its right to preserve its use by filing its written consent as part of the vacation proceedings.

11. Should a vacation petition be granted by the Board of County Commissioners the legal title to be real estate affected thereby will obviously be changed. Since it is in the interest of successful petitioners that the “chain of title” to the real estate being newly acquired be legally sufficient, it is likewise important that proper procedures be followed in the vacation proceedings, to include issuance and publication of notices, use of formal legal descriptions, and preparation of appropriate documents to include the vacation ordinance itself. It is the position of the Elkhart County Commissioners that the petitioner(s) shall be responsible for the observance of the necessary legal procedures, and for insuring that the necessary documents are properly prepared and presented to the Commissioners for review and signature.

**NOTICE OF PUBLIC HEARING WITH REGARD TO PETITION TO VACATE
PUBLIC WAY IN UNINCORPORATED AREA OF ELKHART COUNTY, INDIANA**

A Petition has been filed with the Board of Commissioners of Elkhart County, Indiana seeking to have vacated a certain public way within the unincorporated area of Elkhart County, Indiana, which public way is more particularly described as follows:

(Type in or attach legal description of public way to be vacated)

A public hearing has been scheduled before the Elkhart County Plan Commission with regard to such Petition on the ____ day of _____, 20__, at _____ o'clock __.M. at 4230 Elkhart Road, Goshen, Indiana 46526. The Elkhart County Plan Commission will then formulate a recommendation with regard to such Petition and forward it to the Board of Commissioners of Elkhart County. The Board of Commissioners of Elkhart County shall then conduct a public hearing with regard to such Petition, which hearing before the County Commissioners has been scheduled for the ___day of _____, 20__ at _____o'clock __.M. at Room 104, County Administrative Building, 117 North Second Street, Goshen, Indiana 46526. All parties interested in, or affected by, said proposed vacation of said public way may attend either or both of said public hearings, and may speak in favor of said Petition, or remonstrate against the same, as provided by law.

BOARD OF COMMISSIONERS OF ELKHART
COUNTY, INDIANA

By _____
Elkhart County Auditor

**ORDINANCE VACATING PUBLIC WAY IN
UNINCORPORATED AREA OF ELKHART COUNTY, INDIANA**

A Petition having heretofore been filed with the Board of Commissioners of Elkhart County, Indiana on the ___ day of _____, 20___, requesting the vacation of a certain public way within the unincorporated area of Elkhart County, Indiana, and more particularly described therein, said Petition being in the words and figures following, to-wit: (H.I.); and the public hearing before the Elkhart County Plan Commission and before the Board of Commissioners of Elkhart County having been scheduled as to said Petition, with the Elkhart County Plan Commission hearing having been held on the ___ day of _____, 20___, and the hearing before the Board of Commissioners of Elkhart County having been held on the ___ day of _____, 20___; and formal legal notice, by certified mail, return receipt requested, having been mailed to each owner of land that abuts the public way to be vacated, and formal legal publication notice as to said hearings having been published in the _____ on the ___ day of _____, 20___, and in the _____ on the ___ day of _____, 20___, advising all necessary parties of the time, place, and date of said hearings, said legal notice having been so mailed, and having been so published, being in the words and figures following, to-wit: (H.I.); and the Board of Commissioners of Elkhart County, Indiana, pursuant to applicable Indiana law, having received a recommendation from the Elkhart County Plan Commission, and having conducted the public hearing on said Petition on the date set forth in said Notice, and being duly advised in the premises, now finds as follows:

1. That Petition heretofore filed is in proper order, and that proper legal notices of the two (2) public hearings conducted with regard to said Petition have been mailed and published.

2. The vacation of the public way in question would not hinder the growth or orderly development of Elkhart County, Indiana, or the neighborhood in which it is located or to which it is contiguous.

3. The vacation of the public way in question will not make access to the lands of any property owners within Elkhart County, Indiana by means of public way difficult or inconvenient.

4. The vacation of the public way in question will not hinder the public's access to a church, school, or other public building or place.

5. The vacation of the public way in question will not hinder the use of a public way by the neighborhood in which it is located or to which it is contiguous.

NOW, THEREFORE, Be it Ordered, Adjudged and Decreed by the Board of Commissioners of Elkhart County, Indiana as follows:

1. That said Petition is hereby, in all respects, approved and confirmed, and the request therein made to vacate a public way is hereby granted.

2. That the following described public way situate in the unincorporated area of Elkhart County, Indiana is hereby vacated, said public way being described as follows:

3. That title in fee simple to the above vacated property shall be transferred to (a) the adjoining property owners, extending the boundaries of the adjoining parcels of real estate, by parallel lines, to be centerline of the public way herein vacated, or (b) _____

4. That these proceedings shall not deprive any public utility of the use of all or part of the public way herein granted if at the time these proceedings are instituted the utility is occupying or using all or part of that public way for the location and operation of its facilities.

Dated this ____ day of _____, 20__.

BOARD OF COMMISSIONERS OF THE
COUNTY OF ELKHART, INDIANA

By _____

By _____

By _____

Attest:

Auditor, Elkhart County, Indiana