

# **SHAMROCK TOWNSHIP**

## **ROAD VACATION INSTRUCTIONS**

Those interested in requesting the Shamrock Town Board (“Board”) to consider vacating a town road or road dedicated to the public by plat within the Town pursuant to the vacation procedures set out in Minnesota Statutes, Section 164.07 must comply with the following procedures. If the petition requests the vacation of less than the entire road, the term “road” as used in the following should be read as only referring to the portion to be vacated.

### **PLEASE NOTE:**

- The person presenting the petition will be required to deposit funds with the Town to pay all of the Town's actual costs related to this procedure including the payment of any damages that may need to be awarded as a result of the vacation. The obligation to pay these costs applies even if the Board ultimately decides to deny the petition.
- The Board may not vacate a road if it will landlock a property, unless the property owner consents to the vacation in writing.
- The decision whether to vacate a road is left to the discretion of the Board.
- Do not request the Board to designate or assign who will receive which portions of the vacated road. The statute does not authorize the Board to make such assignments.

### **1. Prepare a vacation petition that, at a minimum, contains all of the following:**

- a. The signatures of at least eight voters of the Town that own land within 3 miles of the road to be vacated. Those signing the petition must be resident voters of the Town. Consider obtaining at least ten signatures. (Note: each person must sign their own name, one name per line, do NOT sign as John & Mary Smith on one line.)
- b. A description of the road to be vacated. The Board may require the petitioner to have a survey done in order to prepare a legal description of the road to be used in the vacation order.
- c. The names of those who own property adjacent to the road.
- d. A map of the immediate area showing the road requested to be vacated.
- e. Indicate if there are any utilities within the road right-of-way.
- f. Indicate if there is a need to preserve the ditches for on-going drainage of the area.

### **2. Submit the completed road vacation petition to the Town Clerk (“Clerk”).**

- a. The Clerk will review the petition to determine if it is signed by a sufficient number of eligible petitioners and otherwise appears complete.

- b. Incomplete petitions will be returned to the petitioner without any further action by the Board.
- 3. **Within 30 days the Clerk will present the petition to the Board at a regular meeting.**
  - a. A petition must be received by the Clerk at least five days before a meeting in order to be placed on the agenda.
- 4. **The Board passes an order drafted by its attorney setting the date, time, and place for a hearing on the proposed vacation. At the same meeting the Board will pass a motion determining the amount the petitioner must place in escrow with the Town to pay the anticipated costs of the road vacation procedure.**
  - a. The order will indicate the hearing will first convene on the road to allow for an examination and then it will be continued to the Town Hall and reconvened.
  - b. Within 10 days of the meeting the petitioner must provide the Town a certified or cashier's check for the entire amount of the escrow of \$2,500.00 as set by the Board. The Town will use the escrowed amount to pay the actual costs it incurs related to the vacation procedure including, but not limited to, Clerk costs, Town administrative costs, Town attorney fees, hearing costs, any damage awards, and recording costs. The Board may require the petitioner to escrow additional funds at some point during the process if the original escrowed amount is determined to be insufficient to fully reimburse the Town.
  - c. The Board will require the petitioner to have the road surveyed to develop a legal description of the portion to be vacated if a sufficient legal description of the road to be vacated does not already exist.
- 5. **The petitioner is responsible for providing the following notices:**
  - a. If the road abuts, ends at, or is adjacent to public water, at least 60 days before the date of the hearing send notice of hearing by certified mail to the regional office of the Department of Natural Resources in Grand Rapids.
  - b. Cause personal service of the hearing order and a copy of the petition to be made upon the occupant of each parcel of land directly affected by the proposed vacation.
    - 1. At a minimum, the notice should be served on those adjacent to the road.
    - 2. Personal service of notice involves delivering the notice to the person (i.e., handing it to the person), or by leaving a copy at the person's usual place of abode with someone of suitable age. The notice must be delivered by someone who is at least 18 years old and is not a party to the action. You may contact the county sheriff's office to arrange service of the notice.
  - c. If the road was dedicated by plat, the order and hearing notice must also be mailed (first class) to the all of the owners within the plat that did not receive personal notice.

- 6. The petitioner must prepare or collect an affidavit of service for each type of notice provided. The petitioner must present the completed affidavits to the Board at the hearing. Contact the Clerk for sample affidavit forms.**
- 7. The Clerk will provide at least 10 days posted and published notice of the hearing.**
- 8. If the road does terminate at, abut upon, or is adjacent to any public water, the Board will consult with the Department of Natural Resources about the proposed vacation at least 15 days prior to the hearing.**
- 9. The Board convenes the hearing on the road to conduct an examination.**
  - a. The petitioner must present the affidavits of service to the Board at the outset of the hearing. Failure to provide the affidavits will result in the termination of the hearing and the petitioner will need to provide an entirely new set of notices before another hearing can be held.
  - b. The petitioner is asked to briefly explain the reasons for the requested vacation.
  - c. Others in attendance are given a brief opportunity to point out any issues or concerns, but a more complete opportunity to be heard regarding the vacation is provided when the hearing reconvenes at the Town Hall.
  - d. The Board makes a motion to continue the hearing to the Town Hall.
- 10. The hearing is reconvened at the Town Hall to continue with the hearing.**
  - a. Those not able to attend the hearing may submit written comments to the Board regarding the vacation.
  - b. Those in attendance are provided an opportunity to speak for or against the proposed vacation.
  - c. Anyone claiming damages if the road is vacated must present those claims during the hearing. The legal basis for any claims for damages must also be presented. Any claimed damages are off-set by any benefits as determined by the Board.
- 11. The Board closes the public testimony portion of the hearing and discusses the requested vacation.**
- 12. The Board decides whether to vacate the road.**
  - a. If the Board votes to deny the petition, the Board notes the denial on the back of the petition and a similar petition may not be brought for one year.
  - b. If the Board votes to approve the vacation, it will then decide if:
    1. any damages must be awarded and the amounts;

2. it needs to retain a right of access to maintain any lateral ditches it determines are essential for surface drainage of the adjacent lands or roads; and
3. it needs to reserve a right to install, maintain, and operate utilities in the right-of-way and to access the area.

- 13. Staff will prepare a resolution setting out the Board's decision and the awards of damages as needed.**
- 14. The award of damages is filed with the Clerk and within 7 days of the filing the Clerk will send written notice of the award to each of the affected owners.**
- 15. Anyone wishing to appeal the Board's decision to district court must do so within 40 days from the notice of the award of damages.**
- 16. The Board will pay any damages it has awarded and record a road vacation order with the county recorder's office.**
- 17. The Town will make a final accounting of the escrowed funds and return any unused amounts to the petitioner within 60 days of recording the road vacation order.**

This document is meant to assist those interested in seeking the vacation of a town road and the procedures set out are not intended to alter or waive any of the statutory requirements associated with the town road vacation procedure and does not constitute legal advice.

Contact Candace Kral, Clerk at 218-426-3736 with any questions.