

ROAD VACATION PROCESS

The laws pertaining to this matter are set forth in SDCL 31-3. This chapter is basically reprinted starting on page 54 of your manual entitled "Highways, Location, Change and Vacation".

There are a number of steps that need to be taken to legally vacate a road. Those steps can be summarized as follows:

1. Two or more voters submit a petition to the township board requesting a specified road (s) be vacated.
2. Upon receipt of the petition the township board shall give notice of public hearing (publishing the Notice of Hearing On Petition for Vacation of Public Roadway) on the petition which notice needs to be published once each week for two consecutive weeks in the local newspaper.
3. After the public hearing, the township board shall, by resolution, vote to either vacate the road or not to vacate the road.
4. In the event of a vote to vacate the proposed Notice of Vacation shall be published in the newspaper once a week for two consecutive weeks and shall be spread in the minutes of the board.
5. The vacation becomes official thirty (30) days after the first publication provided there is no appeal as provided by law. In the event anyone desires to appeal the board's decision the petition for election must be filed within thirty days of the date of the *first* publication of the Notice of Vacation.
6. After passage the original Resolution & Order must be recorded with the County Auditor and in the county Register of Deeds office in order to complete the process. The action does not become official until recording of the Resolution & Order.

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(Reserved for Register of Deeds)

PETITION FOR VACATION OF HIGHWAY

TO THE HONORABLE BOARD OF THE TOWNSHIP OF _____,
_____ COUNTY, SOUTH DAKOTA:

That the petitioners herein respectfully represent that they are the electors residing in the organized civil township of XX, county of YY, State of South Dakota; and that as residents and electors of said township, they feel that the public convenience and necessity will be better served by the vacation of a roadway or highway that they are seeking to have vacated is described as being located, to-wit:

That existing public right-of-way which includes the statutory right of way and any right of way acquired by Deed (s) lying on the section line highway running east and west commonly known as _____ Street bordered by _____ Avenue on the east and _____ Avenue on the west; and bordered on the north by Section _____ Township _____ North, Range _____, XX Township, YY County, South Dakota and bordered on the south by Section _____, Township _____ North, Range _____, XX Township, YY County, South Dakota; said road being approximately 66 feet in width and approximately one (1) mile in length;

A portion of this roadway had been used but other portions have not, and, due to its location, and the expense of development as a roadway, your petitioners feel it will never be feasible or practical to develop, nor do your petitioners feel it will ever be further developed due to the terrain and limited use of the highway; and further your petitioners believe that it would be in the best interests of the public that these portions of the section line highway be vacated.

WHEREAS, said petitioners request the Board of Supervisors of _____ Township to vote on this proposed vacation at the next regular meeting, or at a special meeting called for that purpose; and petitioners herein state that the public convenience or necessity will be better served by this proposed vacating. This Petition is submitted pursuant to SDCL 31-3-6.

The owners of the land through which this road passes are:

NAME

ADDRESS

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

WHEREFORE, your petitioners pray that the Board of Supervisors of _____ Township, by resolution, determine that the public interest will be better served by the vacating of the highway described hereinabove.

And make its Order vacating the same.

STATE OF SOUTH DAKOTA)
 : SS
COUNTY OF)

We, the undersigned, having been first duly sworn, on oath depose and say: That they have read the above and foregoing Petition and know the contents thereof; and that the same is true of their own knowledge, except as to those matters therein stated upon information and belief, and as to such matters, they believe the same to be true.

Name

Name

Name

Subscribed and sworn to before me this ____ day of _____, _____.

Notary Public, SD
My comm. exp.:

SEAL

NOTICE OF HEARING ON PETITION FOR
VACATION OF PUBLIC ROADWAY

Notice is hereby given that a Petition requesting that a certain public roadway and street bordered by and located within _____ Township, YY County, South Dakota, pursuant to SDCL 31-3-6, as hereinafter specifically described has been received by the Board of Supervisors of _____ Township; that the Petition may be examined by contacting the Clerk of the Township at his address indicated below; that the specific description of the property being requested to be vacated is:

That existing public right-of-way which includes the statutory right-of-way and any right-of-way acquired by deed(s) lying on the section line highway running east and west commonly known as _____ Street bordered by _____ Avenue on the east and _____ Avenue on the west; and bordered on the north by Section __, Township __ North, Range 54 West of the 5th P.M., XX Township, YY County, South Dakota, and bordered on the south by Section __, Township __ North, Range 54 West of the 5th P.M., ZZ Township, YY County, South Dakota said road being approximately 66 feet in width and approximately one (1) mile in length; according to the attached map;

Therefore, notice is hereby given that the Board of Supervisors of _____ Township will hold a (joint) public hearing to consider the Petition for Vacation of the above described public roadway and street located within _____ Township, YY County, South Dakota; such meeting will be held on _____, the _____ day of _____, 20____, at _____ o'clock __.M. at the location _____ at _____, South Dakota.

That any persons interested in the proposed action may be present at said date and time and present their information, opinions, and/or arguments relative to the proposed action. Any persons unable to attend this hearing may deliver their written opinion for consideration by the Board of Supervisors, such testimony should be delivered prior to the date and time of the scheduled hearing by mailing or delivering the opinion to: _____, Clerk of _____ Township, at _____, _____, South Dakota 57____.

_____TOWNSHIP

By _____
Clerk

NOTICE OF ROAD VACATION
XX TOWNSHIP, YY COUNTY

At a special meeting on _____, 20__, XX Township, YY County, South Dakota took the following action on a Petition for Vacation of Highway as follows:

NOW, THEREFORE, BE IT RESOLVED, AND IT IS HEREBY ORDERED:

That existing public right-of-way which includes the statutory right-of-way and any right-of-way acquired by deed(s) lying on the section line highways described as:

That portion of the township highway running north and south between Section 5 and Section 6, Township __ N, Range 58 W, XX Township, YY County, South Dakota; commonly known as 419 Avenue bordered by 232 Street on the north and 233 Street on the south; said road being approximately 66 feet wide and approximately one (1) mile long.

That portion of the township highway lying on the section line running east and west between Section 29 and Section 32, Township __ N, Range 58 W, XX Township, YY County, South Dakota; commonly known as 237 Street bordered by 419 Avenue on the west and 420 Avenue on the east; said road being approximately 66 feet wide and approximately one half (1/2) mile long, from the east end, all depicted on the attached map marked Exhibit "A";

be, and the same are hereby declared to be vacated; and further that a copy of this Resolution and Order be spread on the minutes of the Board of the township;

IT IS FURTHER ORDERED that said Resolution shall be published in the official/legal newspaper of the township once each week for two (2) consecutive weeks; and that after such publication, such highway shall be, after a lapse of thirty (30) days after the first publication thereof, vacated without further proceedings unless appealed as hereinafter provided; and that the Clerk herein is further ordered and directed to cause to be recorded a true and correct copy of this Resolution and Order in the office of the Register of Deeds in and for YY County, South Dakota;

IT IS FURTHER ORDERED that any and all bridges, guard rails and culverts are hereby deemed to be non-removable and shall become the personal property and possession of the landowners.

The Motion was passed by the township.

STATE OF SOUTH DAKOTA)
 : SS
COUNTY OF YY)

I, _____(clerk), being the duly elected, qualified and acting Clerk of the Board of Supervisors of XX Township, YY County, South Dakota, do hereby certify that the foregoing is a true and correct copy of the Resolution on the action thereon by the Board of Supervisors of XX Township, YY County, South Dakota, at a special meeting of said Board, held on the 15th day of April, 2014, as the same appears and is now recorded in the minutes of the clerk of the Board of said XX Township and that the same is true and correct transcript thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this ___ day of _____, 20__.

Clerk

Subscribed and sworn to before me this ____ day of _____, 20__.

Notary Public, SD
My commission expires:

SEAL

Filed by:

Prepared by: Jay M. Leibel
LEIBEL LAW FIRM PROF., LLC
PO Box 6
Madison, SD 57042
(605) 427-1805

(Reserved for Register of Deeds)

RESOLUTION & ORDER

WHEREAS, a Petition for Vacation of Highway having been received from Petitioners, _____ and _____, by _____ Township, _____ County, South Dakota asking for the vacation of a section line highways located on the _____ Township, _____ County, South Dakota, hereinafter described. Further said Petition being in proper form and executed by more than the required number of electors of _____ Township; and further this Petition having come on for hearing at a special meeting of the _____ Township Board, _____ County; and information having been received both in favor and in opposition to the proposed vacation; and said Supervisors having considered said matter and being fully advised in the premises and determining the public's interest will be better served by the proposed vacation;

NOW, THEREFORE, BE IT RESOLVED, AND IT IS HEREBY ORDERED:

That existing public right-of-way which includes the statutory right-of-way and any right-of-way acquired by deed(s) lying on the section line highways described as:

NOW, THERREFORE, BE IT RESOLVED, AND IT IS HEREBY ORDERED be, and the same are hereby declared to be vacated; and further that a copy of this Resolution and Order be spread on the minutes of the Board;

IT IS FURTHER ORDERED that said Resolution shall be published in the official/legal newspaper of the respective townships once each week for two (2) consecutive weeks; and that

after such publication, such highway shall be, after a lapse of thirty (30) days after the first publication thereof, vacated without further proceedings unless appealed as hereinafter provided; and that the Clerk herein is further ordered and directed to cause to be recorded a true and correct copy of this Resolution and Order in the office of the Register of Deeds in and for _____ County, South Dakota;

IT IS FURTHER ORDERED that any and all bridges, guard rails and culverts are hereby deemed to be non-removable and shall become the personal property and possession of the landowners.

The above Motion was also made by _____ seconded by Supervisor _____ and upon roll call, the vote was as follows:

Supervisors: _____ - Yes/No/Abstain _____ - _____ - _____

STATE OF SOUTH DAKOTA)
): SS
COUNTY OF _____)

I, _____, being the duly elected, qualified and acting Clerk of the Board of Supervisors of _____ Township, _____ County, South Dakota, do hereby certify that the foregoing is a true and correct copy of the Resolution on the action thereon by the Board of Supervisors of _____ Township, _____ County, South Dakota, at a special meeting of said Board, held on the ____th day of _____, 20__, as the same appears and is now recorded in the minutes of the clerk of the Board of said _____ Township and that the same is true and correct transcript thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____, 20__.

Clerk

Subscribed and sworn to before me this ____ day of _____, 20__.

Notary Public, SD
My commission expires:

SEAL