DISCONTINUANCES

PROCESS

s. 236.445, Wis. Stats. & s. 66.1003, Wis. Stats.

A platted street or road may be altered or discontinued (except in a first class city) by common council, village board, town board or county board resolution when:

A written petition is received from owners of all the frontage of the lots and lands abutting upon the public way sought to be discontinued of public way sought to be discontinued ***and*** owners of more than 1/3 of the land fronting the remainder of the street or road within 2,650 ft. from either end of the portion to be discontinued within the corporate limits of the city, village, town.

OR

The common council, village board, town board or county board may initiate the alteration or discontinuance by introducing a resolution declaring that the "public interest requires it". Proper noticing and a public hearing is required (see example this section).

s. 66.1003 (4) Wis. Stats.

No discontinuance can be ordered if a written objection is filed by any owner fronting the portion of public way sought to be discontinued **or** by the owners of more than 1/3 of the land fronting the remainder of the street or road within 2,650 ft. from either end of the portion to be discontinued. If a written objection is filed, the discontinuance may be ordered only by the favorable vote of two–thirds of the members of the common council or village or town board voting on the proposed discontinuance. An owner of property abutting on a discontinued public way whose property is damaged by the discontinuance may recover damages as provided in ch. 32.

The narrowing, widening, extending or other alteration of a street or road does not constitute a discontinuance if the alteration falls entirely within a new right-of-way which is being "Dedicated to the Public".

DISCONTINUANCES

PROCESS

If a common council, village board, town board or county board initiates a platted street or road alteration or discontinuance:

s. 66.1003 (4) (b), Wis. Stats.

- **A public hearing on the passage of the resolution** must be set not less than 40 days after the introduction of the resolution; ***and***

- **The notice of the public hearing** must state when and where the resolution will be acted upon and what platted street or road, or part thereof, is proposed to be altered or discontinued; ***and***

- ***This notice must be published as a "Class 3 Notice"*** *as per Ch. 985, Wis. Stats. (see example this section)*; ***and***

- **The owners must be served with a notice** in the manner required for the service of a summons in the circuit court at least 30 days prior to the public hearing.

When such "service" can't be made within the city, village or town, a copy of the notice must be mailed to the owner's last known address at least 30 days prior to the pubic hearing.

A "Class 3 Notice" requires "3 Insertions".

Insertion is defined as "once per week, for the required number of weeks (3, for a class 3 notice), the last of which shall be at least one week prior to the meeting or event, unless otherwise specified by law."

DISCONTINUANCES

PROCESS

In addition, the procedure in s. 840.11, Wis. Stats., must also be followed:

s. 66.1003 (9), Wis. Stats. and s. 840.11 (1), Wis. Stats.

- A notice of pendency (notice of lis pendens) must be filed in the register of deeds office at or prior to the time the application to vacate (by court action), or alter or discontinue (by resolution) a street or road must be filed with the proper officer.
- The notice of pendency must contain the persons name, a brief statement of the object thereof and a map and description of the land that is affected.
- Failure to comply with the provisions of s. 840.11, Wis. Stats., shall render all proceedings based on the application void.

REVERSION

Upon discontinuance, a platted street or road right-of-way reverts:

s. 66.1005 (1), Wis. Stats.

- To the owner(s) of the adjoining land, OR;
- If the discontinued land lies between lands of different owners, then to the lots from where the discontinued land originated, OR;
- If it can not be determined from where the discontinued land originated, then the land is equally divided between the owners on either side of the centerline of the discontinued street or road.

s. 66.1005 (2)(a), Wis. Stats.

Whenever any public roadway or public land is vacated or discontinued, any easements or restrictions over the described land continue unless the easements or restrictions are released in writing by the owner of the easements or by the public body or utility having the right of enforcement. Such written release must be made part of the discontinuance resolution.

If easements or other rights over the discontinued land remain unused for 4 years from the date of discontinuance, said easements and rights are deemed to be terminated.

DISCONTINUANCES

PUBLIC ACCESS

s. 66.1006, Wis. Stats.

NR 1.92, Wis. Admin. Code

Department of natural resources approval of discontinuance. No resolution, ordinance, order, or similar action of a town board or county board, or of a committee of a town board or county board, discontinuing any highway, street, alley, or right-of-way that provides public access to any navigable lake or stream shall be effective until such resolution, ordinance, order, or similar action is approved by the department of natural resources.

RELIEF FROM CONDITIONS OF GIFTS AND DEDICATIONS

s. 66.1025, Wis. Stats.

If the governing body of a county, city, town or village accepts a gift or dedication of land made on condition that the land be devoted to a special purpose, and the condition subsequently becomes impossible or impracticable, the governing body may by resolution or ordinance enacted by a two-thirds vote of its members-elect either to grant the land back to the donor or dedicator or the heirs of the donor or dedicator, or accept from the donor or dedicator or the heirs of the donor or dedicator, a grant relieving the county, city, town or village of the condition, pursuant to article XI, section 3a, of the constitution.

DISCONTINUANCES

EXAMPLE RESOLUTION FOR DISCONTINUANCE OF A PUBLIC STREET

RESOLUTION - NUMBER 2000-01

A RESOLUTION APPROVING THE DISCONTINUANCE OF PORTIONS OF A VILLAGE STREET INVOLVED WITH THE REHABILITATION OF THE ENDANGERED LEAP-FROG HABITAT PURSUANT TO WIS. STAT. SEC. 66.1003.

WHEREAS, Kickapoo County and the Prime Meridian Corporation would like the Village of Dogpatch, on its own motion, to discontinue Johnson Street from its intersection with the Northerly railroad right-of-way, north to its intersection with the southerly right-of-way of Chicken Ridge Road.

WHEREAS, the discontinuance of the above described portion of Johnson Street will make the rehabilitation of the endangered leap-frog habitat more feasible.

NOW, THEREFORE, BE IT RESOLVED, that the above described portion of Johnson street is hereby discontinued in conformance with Wis. Stat. Sec. 66.1003 with the Village retaining the necessary utility easements in the discontinued streets, and the Clerk is directed to give notice of hearing thereon by Class 3 notice under Chapter 985 Wis. Stats.

Presented for filing this 1st day of November , 1999 and for hearing thereon December 23, 1999 by the following trustees of the Village Board.

Adopted this 23 day of December, 1999

Sam Sickleblade, Trustee, Village of Dogpatch

Charlie Augerhandle, Clerk, Village of Dogpatch.

I, Charlie Augerhandle, Clerk of the Village of Dogpatch, Kickapoo County, Wisconsin do hereby certify that the above is a true and correct copy of Resolution No. 2000-01 adopted on December 23, 1999 and approved December 23, 1999 by the Board of Trustees, in the Village of Dogpatch, Kickapoo County, Wisconsin.

DISCONTINUANCES

A GUIDE TO DISCONTINUING A PUBLIC STREET WITHIN RECORDED SUBDIVISION PLAT

Discontinuance initiated by the owners of the land fronting the street:

1. All of the owners of the land "fronting" on the portion of street to be discontinued must sign a "written petition" which will be submitted to the local unit of government; AND
2. Owners of more than 1/3 of the land fronting on the remainder of the street, within 2650 ft. in either direction from the portion to be discontinued, must also sign the petition.
3. The "written petition" is submitted to the local unit of government.
4. The local unit of government may pass a resolution discontinuing the street at a properly noticed meeting.

Discontinuance initiated by the local unit of government:

1. The local unit of government may "propose a resolution" to discontinue a street if they deem it in the "public interest" to do so.
2. A public hearing on the "proposed resolution" must be set not less than 40 days after the resolution is introduced.
3. The following noticing requirements must be met for the public hearing:
   the notice must state when and where the resolution will be acted upon and must clearly show what platted street is proposed to be discontinued;
   this notice must be published as a "Class 3 Notice"; and
   in addition to the Class 3 Notice, at least 30 days prior to the public hearing, the owners of the land abutting the portion of street to be discontinued must be "served" in the same manner as required for the service of a summons.
   when such "service" can't be made within the city, village or town, a copy of the notice must be mailed to the owner's last known address.
4. No discontinuance may be ordered if:
   ANY owner abutting the street to be discontinued files a "written objection" with the local unit of government; OR
   If owners of more than 1/3 of the land fronting on the remainder of the street, within 2650 ft. in either direction from the portion to be discontinued, file a "written objection" with the local unit of government.
5. At the properly noticed public meeting, the local unit of government votes on the resolution to discontinue the portion of platted street.
6. The discontinued right-of-way reverts to the original owner. If that can not be determined, then it is divided equally between the owners on either side of the centerline.

******* Contact the Corporation Counsel for filing proper Notice of Lis Pendens******

EXAMPLE ROAD DISCONTINUANCE BY RESOLUTION

33 East Main Street
Suite 500
Madison, WI 53703-3095

Mailing Address:
P.O. Box 2038
Madison, WI 53701-2038

Phone:
608.257.7181

Fax:
608.257.2508

www.murphydesmond.com

Lawrence E. Bechler
Direct Line 608.268.5601
Facsimile 608.257.4333
lbechler@murphydesmond.com

MurphyDesmond S.C.
LAWYERS

COPY

6 October 2010

Ms. Tina Butteris
Town Clerk
Town of Windsor
Windsor Town Hall
4084 Mueller Road
DeForest, WI 53532

Re: Windsor Gardens -- Street Vacations

Dear Tina:

The Resolution vacating Anton Bork Trail, Grandpa's Trail, a portion of Florance Ruth Lane, a portion of Covered Bridge Trial and a portion of Morning Dew Lane in the Plat of Windsor Gardens was recorded on September 22, 2010 as Document No. 4693984 and has now been returned to me by the Register of Deeds. This original document should be kept in the Town records with other original documents of this nature.

If you have any questions, please let me know.

Very truly yours,

Lawrence E. Bechler

LEB:kka
07559.052459
Butteris 100610
Enclosure
cc: Attorney Michael J. Lawton (w/enc.)

4842-1933-9015, v. 1

8187418
Tx:8121660

DANE COUNTY
REGISTER OF DEEDS

DOCUMENT #
4693984
09/22/2010 2:34 PM
Trans. Fee:
Exempt #:
Rec. Fee: 30.00
Pages: 5

COPY

RESOLUTION DISCONTINUING ANTON BORK TRAIL, GRANDPA'S TRAIL, A PORTION OF FLORANCE RUTH LANE, A PORTION OF COVERED BRIDGE TRAIL AND A PORTION OF MORNING DEW LANE IN THE TOWN OF WINDSOR, DANE COUNTY, WISCONSIN

Lawrence E. Bechler
Murphy Desmond S.C.
P.O. Box 2038
Madison, WI 53701-2038

Tax Parcel No.

WHEREAS, the Town Board of the Town of Windsor declares that the public interest requires that Anton Bork Trail, Grandpa's Trail, part of Florance Ruth Lane, part of Covered Bridge Trail and part of Morning Dew Lane, all in the Town of Windsor ought to be discontinued and vacated, being fully described on Exhibit "A" attached hereto;

WHEREAS, this Resolution was introduced before the Town Board of the Town of Windsor on August 5, 2010, Notice of Pendency of Application to Vacate the above-described property was filed with the Register of Deeds for Dane County on August 10, 2010; Notice of Hearing was duly published in the *DeForest Times Tribune*, a copy of said Notice was served more than 30 days prior to the hearing in the manner prescribed by law on the owners of all of the frontage of the lots and lands abutting upon the portion of said street to be discontinued or a waiver of notice thereof was received; and a public hearing was held before the Town Board of the Town of Windsor on September 16, 2010, at 6:00 o'clock p.m.; and

WHEREAS, no sufficient written objection to the said discontinuance and vacation has been filed with the Clerk;

NOW, THEREFORE, in accordance with the authority vested in the Town Board by § 66.1003, Wis. Stats.,

BE IT RESOLVED by the Town Board of the Town of Windsor that Anton Bork Trail, Grandpa's Trail, a portion of Florance Ruth Lane, a portion of Covered Bridge Trail and a portion of Morning Dew Lane above-described be, and the same hereby are, vacated and discontinued, since the public interest requires it.

The above and foregoing Resolution was duly adopted by the Town Board of the Town of Windsor at a regular meeting held on September 16, 2010.

TOWN OF WINDSOR

Alan J. Harvey, Town Board Chairperson

Robert E. Wipperfurth, Supervisor

Donald G. Madelung, Supervisor

Bruce R. Stravinski, Supervisor

Martin A. Palus, Supervisor

ATTEST:

Tina A. Butteris
Finance Officer/Clerk-Treasurer

VOTE:
Ayes: 5
Noes: 0

I certify that on the 16th day of September, 2010, the above Resolution Discontinuing Anton Bork Trail, Grandpa's Trail, a Portion of Florance Ruth Lane, a Portion of Covered Bridge Trail and a Portion of Morning Dew Lane in the Town of Windsor, Dane County, Wisconsin was adopted by a vote of 5 ayes and 0 nays by the Town Board of the Town of Windsor, Dane County, Wisconsin.

Tina A. Butteris, Town Clerk

This instrument drafted by:
Attorney Lawrence E. Bechler

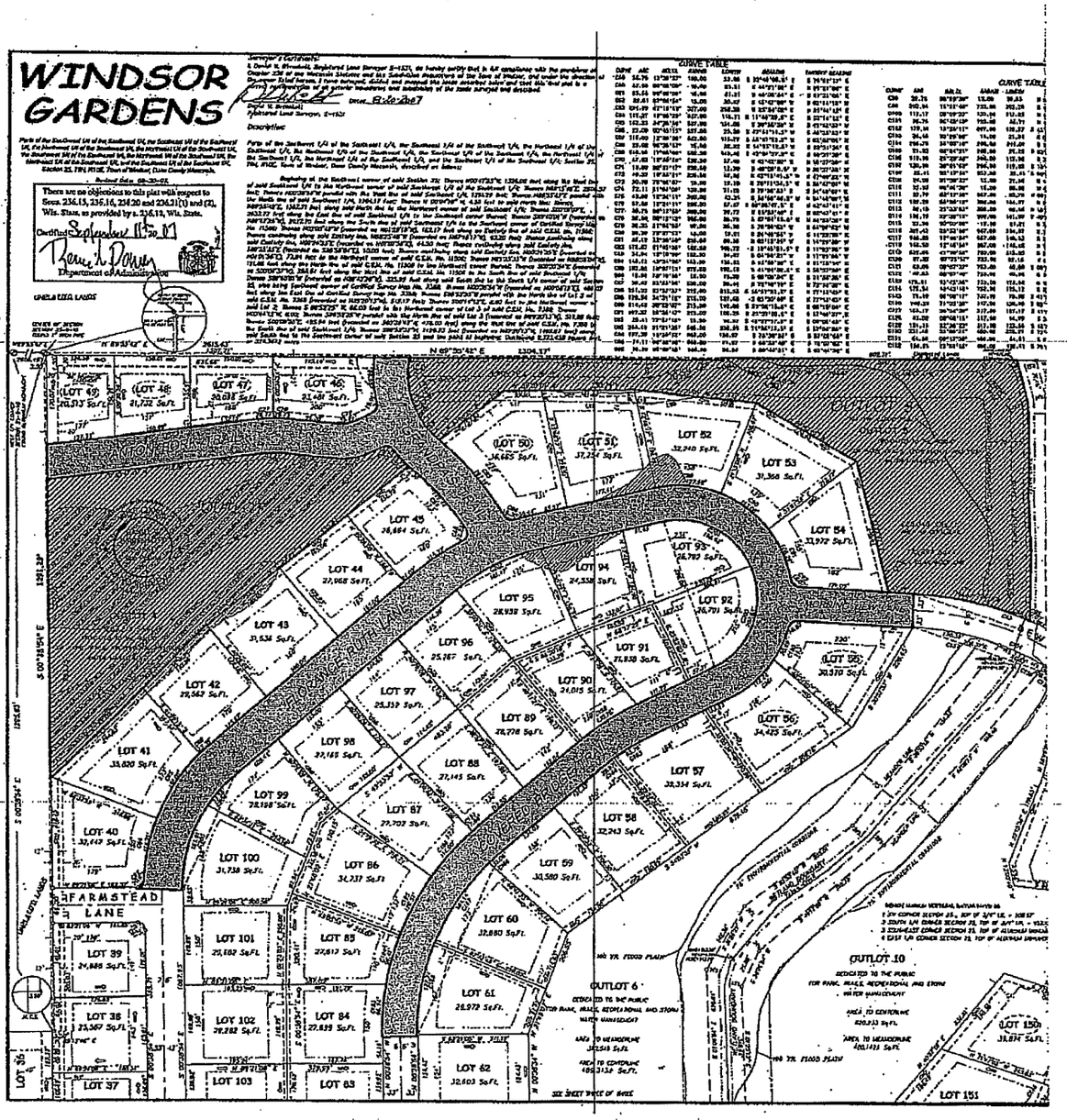
EXHIBIT A

Description of Streets to be Vacated

Anton Bork Trail, Grandpa's Trail, part of Florance Ruth Lane, part of Covered Bridge Trail, and part of Morning Dew Lane, being part of the Northwest 1/4 of the Southeast 1/4, part of the Northeast 1/4 of the Southeast 1/4 and part of the Southwest 1/4 of the Southeast 1/4 of Section 25, T9N, R10E, Town of Windsor, Dane County, Wisconsin more particularly described as follows: commencing at the East 1/4 corner of said Section 25; then along the Northerly line of the plat of Windsor Gardens S89°55'42"W, 1307.71 feet; thence continuing along said Northerly line S00°04'18"E, 4.50 feet; thence continuing along said Northerly line S89°55'42"E, 605.65 feet to a point on a curve and the point of beginning; thence along a curve to the left having a radius of 162.50 feet and a chord bearing and distance of S19°45'51.5"E, 166.72 feet to a point of reverse curvature; thence along a curve to the right having a radius of 578.50 feet and a chord bearing and distance of S41°04'02.5"E, 192.16 feet to a point of reverse curvature; thence along a curve to the left having a radius of 15.00 feet and a chord bearing and distance of S69°05'54"E, 18.30 feet to a point of reverse curvature; thence along a curve to the right having a radius of 533.00 feet and a chord bearing and distance of N75°16'10"E, 36.44 feet to a point of tangency; thence N77°13'43"E, 246.28 feet to a point of curvature; thence along a curve to the right having a radius of 215.00 feet and a chord bearing and distance of S55°57'28.5"E, 313.53 feet to a point of reverse curvature; thence along a curve to the left having a radius of 15.00 feet and a chord bearing and distance of S48°07'17.5"E, 18.87 feet to a point of tangency; thence S87°05'55"E, 219.01 feet; thence S02°54'05"W, 66.00 feet; thence N87°05'55"W, 219.02 feet to a point of curvature; thence along a curve to the left having a radius of 15.00 feet and a chord bearing and distance of S53°55'28.5"W, 18.87 feet to a point of reverse curvature; thence along a curve to the right having a radius of 215.00 feet and a chord bearing and distance of S39°32'24"W, 178.95 feet to a point of tangency; thence S64°07'57"W, 168.56 feet to a point of curvature; thence along a curve to the left having a radius of 467.00 feet and a chord bearing and distance of S57°05'12"W, 114.56 feet to a point of tangency; thence S50°02'28"W, 255.40 feet to a point of curvature; thence along a curve to the left having a radius of 447.00 feet and a chord bearing and distance of S24°41'46.5"W, 382.69 feet to a point of tangency; thence S89°21'06"W, 66.00 feet to a point of curvature; thence along a curve to the right having a radius of 513.00 feet and a chord bearing and distance of N24°41'46.5" E, 439.19 feet to a point of tangency; thence N50°02'28"E, 255.39 feet to a point of curvature; thence along a curve to the right having a radius of 533.00 feet and a chord bearing and distance of N57°05'12"E, 130.75 feet to a point of tangency; thence N64°07'57"E, 168.56 feet to a point of curvature; thence along a curve to the left having a radius of 149.00 feet and a chord bearing and distance of N19°19'09.5"W, 296.06 feet to a point of tangency; thence S77°13'43"W, 246.28 feet to a point of curvature; thence along a curve to the left having a radius of 379.52 feet and a chord bearing and distance of S63°23'48"W, 181.47 feet to a point of tangency; thence S49°33'52"W, 555.36 feet to a point of curvature; thence along a curve to the left having a radius of 281.00 feet and a chord bearing and distance of S24°27'29"W, 238.46 feet to a point of tangency; thence N88°17'36"W, 90.61 feet to a point of curvature; thence along a curve to the left having a radius of 15.00 feet and a chord bearing and distance of N45°47'39"E, 20.67 feet to a point of reverse curvature; thence along a curve to the right having a radius of 357.00 feet and a chord

EXHIBIT A
Description of Streets to be Vacated

bearing and distance of N25°54'02"E, 286.58 feet to a point of tangency; thence N49°33'52"E, 514.74 feet to a point of curvature; thence along a curve to the right having a radius of 533.00 feet and a chord bearing and distance of N55°47'56.5"E, 115.77 feet to a point of reverse curvature; thence along a curve to the left having a radius of 15.00 feet and a chord bearing and distance of N14°15'12.5"E, 22.22 feet to a point of compound curvature; thence along a curve to the left having a radius of 502.50 feet and a chord bearing and distance of N42°04'37.5"W, 149.42 feet to a point of reverse curvature; thence along a curve to the right having a radius of 238.50 feet and a chord bearing and distance of N43°42'20"W, 57.49 feet to a point of reverse curvature; thence along a curve to the left having a radius of 15.00 feet and a chord bearing and distance of N76°19'34.5"W, 19.10 feet to a point of tangency; thence S64°07'52"W, 24.17 feet to a point of curvature; thence along a curve to the right having a radius of 133.00 feet and a chord bearing and distance of S79°39'53"W, 71.23 feet to a point of tangency; thence N84°48'07"W, 96.38 feet to a point of curvature; thence along a curve to the left having a radius of 200.00 feet and a chord bearing and distance of S88°59'46.5"W, 43.21 feet to a point of tangency; thence S82°47'41"W, 418.06 feet to the Westerly line of said plat of Windsor Gardens; thence along said Westerly line N00°38'54"W, 66.44 feet; thence N82°47'41"E, 410.47 feet to a point of curvature; thence along a curve to the right having a radius of 266.00 feet and a chord bearing and distance of N88°59'47.5"E, 57.47 feet to a point of tangency; thence S84°48'07"E, 96.38 feet to a point of curvature; thence along a curve to the left having a radius of 67.00 feet and a chord bearing and distance of N79°39'53"E, 35.89 feet to a point of tangency; thence N64°07'52"E, 34.36 feet to a point of curvature; thence along a curve to the left having a radius of 15.00 feet and a chord bearing and distance of N24°48'56"E, 19.01 feet to a point of reverse curvature; thence along a curve to the right having a radius of 228.50 feet and a chord bearing and distance of N03°19'35"W, 88.56 feet to the said Northerly line of the plat of Windsor Gardens; thence along said Northerly line N89°55'42"E, 66.90 feet to the point of beginning. The above described parcel contains 279,666 square feet or 6.420 acres.



Viewers are advised to ignore the illegible text on this map. It is presented to show spatial relationships only.

Authorized by: