

VACATIONS

PROCESS

Application

The circuit court of the county in which the subdivision plat (plat) or Certified Survey Map (CSM) is located may vacate or alter, all or part of, a recorded plat or CSM when:

- The owner of the plat or CSM or the owner of any lot therein applies to the circuit court for a vacation.
- The county board applies to the circuit court if the county has any interest in the subdivision plat or CSM or any lot therein by tax deed.

s. 236.40 &
s. 236.34 (4),
Wis. Stats

A recorded plat may be replatted under s. 236.36 without undertaking the court proceedings set forth in 236.40, 236.41 and 236.42, when the replat complies with the requirements of ch. 236 applicable to original plats and does not alter areas dedicated to the public. **(58 Atty. Gen. 145)**

Notice

Notice of the application for the vacation or alteration of a plat or CSM must be given at least 3 weeks before the application is submitted to the circuit court by:

- Posting the written notice in at least 2 of the most public places in the county; **and**
- Publishing a "Class 3 Notice" as per Ch. 985 Wis. Stats. (see example this section); **and**
- Serving notice to the municipality or town (and county if population exceeds 500,000) in the manner required for the service of a summons in the circuit court; **and**
- Mailing a copy of the notice to the owners of record of all the lots in the plat or CSM or the part thereof proposed to be vacated or altered at their last known address.

s. 236.41, Wis.
Stats.

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"

VACATIONS

PROCESS

Orders

s. 236.42, Wis. Stats.

The circuit court may grant an order vacating or altering a plat or CSM or part thereof after:

- Receiving proof that the notices required by s. 236.41, Stats., have been given; **and**
- Hearing from all interested parties.

s. 236.42 (1) (a&b), Wis. Stats.

The circuit court may grant an order vacating or altering a plat or CSM or part thereof except for:

- Areas dedicated to and accepted by the public for public use (except as provided in s. 236.43, Stats., next page).
- Alleys at the rear of lots fronting on county or state trunk highways without the prior approval of the county board or the Department of Transportation.

Whenever any public roadway or public land is vacated or discontinued, the easements and restrictions over the described land continue.

If easements and restrictions are to be released, a "written release," by the public body or utility having the right of enforcement, must be made part of the vacation or discontinuance.

The "written release" must be referenced in the resolution, ordinance or court order.

VACATIONS

PROCESS

Areas dedicated to the public

The circuit court may vacate streets and roads if:

- The plat or CSM was recorded 40 years before the application is filed; **and**
- The streets and roads were never improved; **and**
- The streets and roads are not necessary to reach platted property; **and**
- All of the owners of land in the plat or CSM or part thereof sought to be vacated, and the municipality or town in which the street or road is located, have all joined the application for vacation.

The circuit court may vacate platted public parks and public land in a city, village or town if:

- The land was never developed or used by the municipality or town for a park or public area so designated on the plat; **and**
- The municipality or town files an application for vacation with the circuit court.

Public access to navigable water established under Ch. 236, Wis. Stats. may only be vacated by circuit court action.

Section 236.36 permits the replat of a part of a previously recorded subdivision plat, without circuit court action, when the only areas dedicated to the public in that portion of the original subdivision being replatted, were discontinued streets fully and properly vacated under s. 66.1003. (63 Atty. Gen. 210)

s. 236.43, Wis. Stats.

s. 236.16 (3), Wis. Stats

VACATIONS

EXAMPLE OF CLASS 3 PUBLIC NOTICE FOR VACATION OF PUBLIC ACCESS

NOTICE - TOWN OF FRANCE

The APPLICATION FOR VACATION OF THE PUBLIC ACCESS TO LAKE HAWKINS located in the Second Addition to Yokum Cove, Town of France, Kickapoo County, Wisconsin will be on file in the Town Hall, 123 Jubilation Drive, telephone 987-3456, and the United States Post Office, Village of Dogpatch, telephone 987-7890, for a period of 30 days commencing January 2, 2000 for public inspection in accordance with Section 236.41, Wis. Stats. Persons interested in inspecting this application may do so Monday through Friday from 7:45 a.m. to 11:30 a.m. and from 12:30 p.m. through 4:00 p.m., after which the application for vacation will be presented to the Town Board of the Town of France on February 2, 2000 to hear all interested parties and act on a resolution authorizing said vacation. Following the passage of said resolution the matter will be presented to the Circuit Court of the County of Kickapoo for the hearing of all interested parties and the order of vacation.

Sam Sickleblade Town Chair, Town of France

Charlie Augerhandle, Clerk Town of France

Publish: January 2, 2000

VACATIONS

A GUIDE TO VACATING A PUBLIC DEDICATION WITHIN RECORDED SUBDIVISION PLAT OR CSM

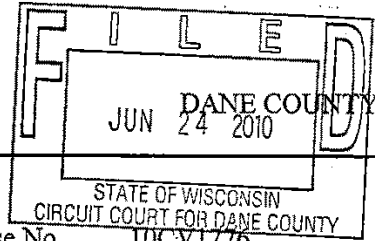
- 1) Identify area to be vacated.
- 2) Identify owners affected by proposed vacation.
- 3) Contact local unit of government (usually Corporation Counsel) in which proposed vacation lies.
- 4) Draft application for vacation of public area:
 - A. Assemble evidence that the required conditions have been met and that the proposed vacation complies with statutory provisions.
 - B. Prepare map to exhibit area to be vacated.
 - C. Draft petition for vacation and obtain signatures of owners.
- 5) Present draft application to the local unit of government (usually Corporation Counsel) to be assembled into a resolution for public to view.
- 6) Provide Public Notification in accordance with statutory provisions by:
 - A. Posting notice in at least 2 of the most public places in county.
 - B. Publishing a "Class 3 Notice".
 - C. Serving notice in the form of a summons to the municipality or town.
 - D. Mailing a copy of the written notice to owners of record.
- 7) A minimum of 1 week following the minimum time for public notification, schedule a public hearing with the legislative body of the local unit of government.
- 8) Offer resolution authorizing vacation to local legislative body for adoption.
- 9) If resolution is adopted, present resolution, proof of notification, and other supporting documentation to Circuit Court for that jurisdiction for final hearing and court order.
- 10) Recording Court Order: The Applicant shall record in the office of the Register of Deeds the Court Order and a map showing the part of the plat or CSM being vacated or altered.

VACATIONS

EXAMPLE ORDER FOR VACATION OF PUBLIC DEDICATION

STATE OF WISCONSIN

CIRCUIT COURT



In Re: The Vacation of a Part of the
1st Addition to Allied Terrace Plat,
Located in the City of Madison,
Dane County, Wisconsin

Case No. 10CV1776

Case Type: Other Real Estate

Case Code: 30405

ORDER VACATING PORTIONS OF LAND CONSISTING OF A PART OF THE 1ST ADDITION TO ALLIED TERRACE PLAT

The above captioned matter, having come before the Court pursuant to the Joint Petition and Amended Joint Petition of the City of Madison and the Community Development Authority of the City of Madison (CDA), the Court having heard the arguments of the Joint Petitioners at a hearing on the 2nd of June, 2010, and having reviewed the affidavits and petitions on file herein, it is hereby ordered as follows:

1. That the Joint Petitioners' Amended Joint Petition is hereby accepted, the amendments being made to the April 5, 2010 Joint Petition being found not to have any effect on this Court's June 2, 2010 ruling on the Joint Petition.
2. That the area to be vacated, as described below, is part of a public outlet in the 1st Addition to Allied Terrace Plat that was "dedicated to the public" and accepted by the City of Madison on July 11, 1963. The area to be vacated has remained in an undeveloped and unimproved state, and has not been used or improved as a street, road, other public way, public square, public park or playground.
3. That the Joint Petitioners, being owners of lots in the 1st Addition to Allied Terrace Plat, meet the requirements of Wis. Stat. § 236.40(1).
4. That all of the notice requirements of Wis. Stat. § 236.41 were met.

1

EXHIBIT A

VACATIONS

EXAMPLE ORDER FOR VACATION OF PUBLIC DECICATION

5. That the following requirements of Wis. Stat. § 236.43(1) have been met:
 - a. The 1st Addition to Allied Terrace Plat was recorded more than 40 years previous to the filing of the application for vacation;
 - b. During the period since the recording of the Plat, the area to be vacated was not improved as a public way;
 - c. The area to be vacated is not necessary to reach other platted property; and
 - d. CDA and the City of Madison are the only owners of the land in the part of the Plat to be vacated, and the common council of the City of Madison, where the land to be vacated is located, joins CDA in the application for vacation.

6. That the Court, having heard from all interested parties at the June 2, 2010 hearing on the Joint Petition, hereby grants the Amended Joint Petition and orders that, pursuant to Wis. Stat. § 236.42(1), that part of the 1st Addition to Allied Terrace Plat consisting of the following described real property, and more particularly depicted on Sheet 2 of attached Exhibit 1 which is incorporated herein by reference, be and hereby is vacated, including any portions thereof which have been dedicated to and accepted by the public for public use:

Part of the lands shown as “Dedicated to the Public” in the Recorded Plat of 1st Addition to Allied Terrace lying Easterly and Adjacent to Lots 89, 97, 98, 99, 100, and 101 in said Plat, and lying Easterly and Adjacent to Lots 1, 2, and 4 in Certified Survey Map #12506, being part of the NE ¼, SW ¼, and SE ¼ of the NW ¼ of Section 5, T6N, R9E, in the City of Madison, Dane County, Wisconsin.
To-wit:

Commencing at the NE corner of Lot 89, First Addition to Allied Terrace thence along the Westerly line of the lands shown as Dedicated to the Public, N08°51'00"W, 109.54 feet to the point of beginning; thence continuing along said

VACATIONS


EXAMPLE ORDER FOR VACATION OF PUBLIC DEDICATION

Westerly line, N08°51'00"W, 101.11 feet; thence continuing along said Westerly line N01°53'36"E, 221.76 feet to a point on a curve; thence Northeasterly along a curve to the left which has a radius of 280.00 feet and a chord which bears N23°20'52"E, 204.73 feet; thence S00°05'57"E, 281.39 feet to a point on a curve; thence Southeasterly along a curve to the right which has a radius of 268.00 feet and a chord which bears S00°54'09"W, 9.37 feet; thence S01°54'15"W, 111.05 feet to a point of curve; thence Southwesterly along a curve to the right which has a radius of 268.00 feet and a chord which bears S16°10'12"W, 132.08 feet; thence N59°46'41"W, 37.93 feet to the point of beginning. This parcel contains 30,773 sq. ft.

Together with the following:

Commencing at the NE corner of Lot 89, First Addition to Allied Terrace thence along the Westerly line of the lands shown as Dedicated to the Public, N08°51'00"W, 210.65 feet; thence N01°53'36"E, 332.82 feet to a point on a curve and the point of beginning; thence continuing N01°53'36"E, 312.78 feet to a point on a curve; thence Southeasterly along a curve to the left which has a radius of 560.00 feet and a chord which bears S18°11'57"E, 3.72 feet to a point of reverse curve; thence Southeasterly along a curve to the right which has a radius of 220.00 feet and a chord which bears S08°14'23"E, 77.49 feet; thence S01°54'15"W, 153.51 feet to a point of curve; thence Southwesterly along a curve to the right which has a radius of 220.00 feet and a chord which bears S12°29'47"W, 80.88 feet to the point of beginning. This parcel contains 3,878 sq. ft.

Dated at Madison, Wisconsin, this 24 day of June, 2010.



Hon. John Albert
Dane County Circuit Court, Branch 3

VACATIONS

EXAMPLE ORDER FOR VACATION OF PUBLIC DEDICATION

DESCRIPTION

Part of Lands shown as Dedicated to the Public in the Recorded Plat of First Addition to Allied Terrace lying Easterly and Adjacent to Lots 89, 97, 98, 99, 100, and 101 in said Plat being part of the NE ¼, SW ¼, and SE ¼ of the NW ¼ of Section 5, T6N, R9E, in the City of Madison, Dane County, Wisconsin.

To-wit:

Commencing at the NE corner of Lot 89, First Addition to Allied Terrace thence along the Westerly line of the lands shown as Dedicated to the Public, N08°51'00"W, 109.54 feet to the point of beginning; thence continuing along said Westerly line, N08°51'00"W, 101.11 feet; thence continuing along said Westerly line N01°53'36"E, 221.76 feet to a point on a curve; thence Northeasterly along a curve to the left which has a radius of 280.00 feet and a chord which bears N23°20'52"E, 204.73 feet; thence S00°05'57"E, 281.39 feet to a point on a curve; thence Southeasterly along a curve to the right which has a radius of 268.00 feet and a chord which bears S00°54'09"W, 9.37 feet; thence S01°54'15"W, 111.05 feet to a point of curve; thence Southwesterly along a curve to the right which has a radius of 268.00 feet and a chord which bears S16°10'12"W, 132.08 feet; thence N59°46'41"W, 37.93 feet to the point of beginning. This parcel contains 30,773 sq. ft.

TOGETHER WITH:

Part of Lands shown as Dedicated to the Public in the Recorded Plat of First Addition to Allied Terrace lying Easterly and Adjacent to Lots 89, 97, 98, 99, 100, and 101 in said Plat being part of the NE ¼, SW ¼, and SE ¼ of the NW ¼ of Section 5, T6N, R9E, in the City of Madison, Dane County, Wisconsin.

To-wit:

Commencing at the NE corner of Lot 89, First Addition to Allied Terrace thence along the Westerly line of the lands shown as Dedicated to the Public, N08°51'00"W, 210.65 feet; thence N01°53'36"E, 332.82 feet to a point on a curve and the point of beginning; thence continuing N01°53'36"E, 312.78 feet to a point on a curve; thence Southeasterly along a curve to the left which has a radius of 560.00 feet and a chord which bears S18°11'37"E, 3.72 feet to a point of reverse curve; thence Southeasterly along a curve to the right which has a radius of 220.00 feet and a chord which bears S08°14'23"E, 77.49 feet; thence S01°54'15"W, 153.51 feet to a point of curve; thence Southwesterly along a curve to the right which has a radius of 220.00 feet and a chord which bears S12°29'47"W, 80.88 feet to the point of beginning. This parcel contains 3,878 sq. ft.

This instrument was drafted by:

Arnold and O'Sheridan, Inc.

December 11, 2009

Corrected June 8, 2010

Job # 090218

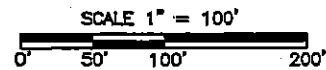
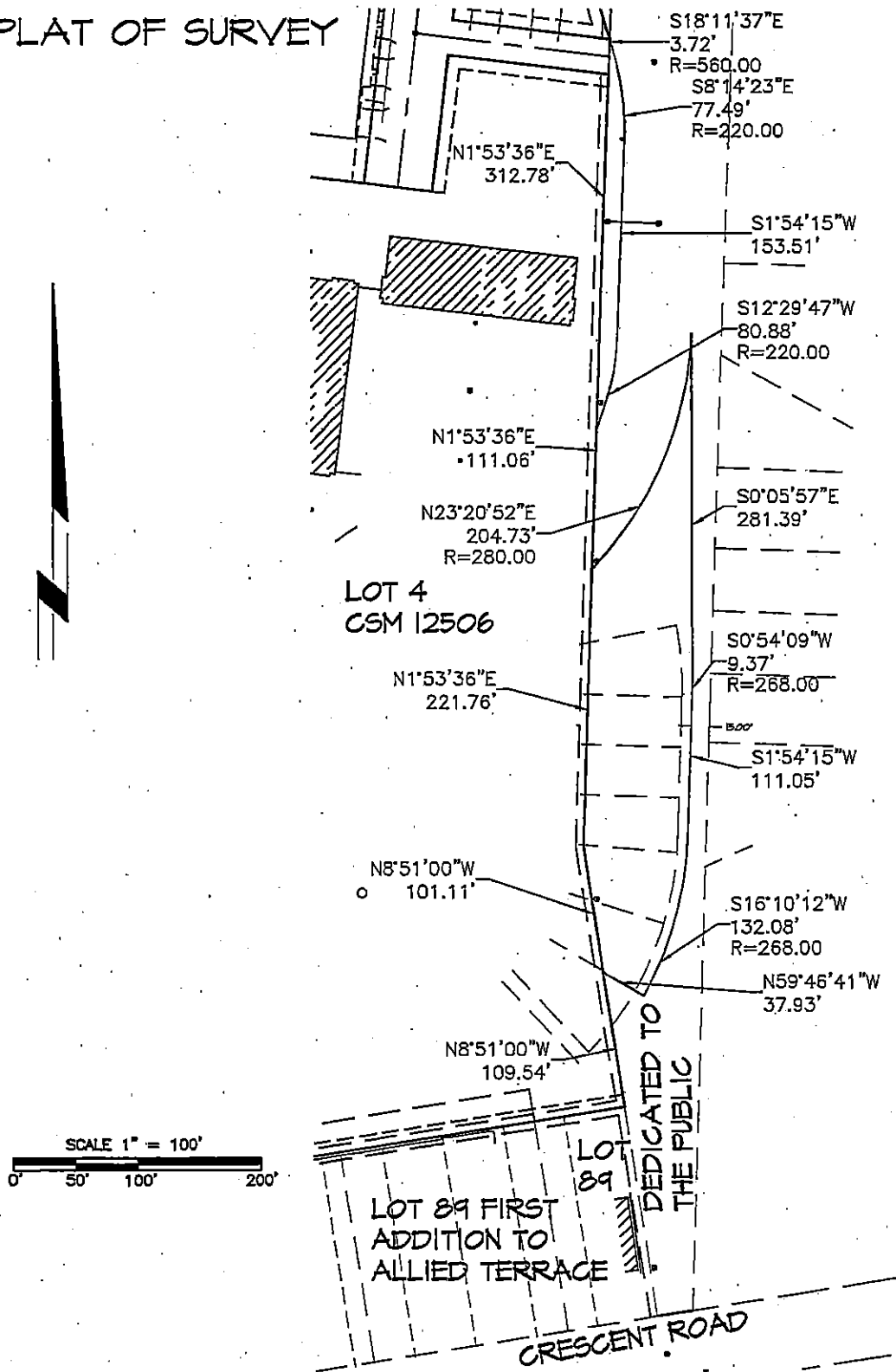
Sheet 1 of 2

Exhibit 1

VACATIONS

EXAMPLE ORDER FOR VACATION OF PUBLIC DECICATION

PLAT OF SURVEY



THIS INSTRUMENT WAS DRAFTED BY FRANCIS THOUSAND

DECEMBER 11, 2009
090218

SHEET 2 OF 2