

CARROLL COUNTY, INDIANA

FREQUENTLY ASKED QUESTIONS ABOUT STREET AND ALLEY VACATIONS

Who May Petition for An Alley or Street To Be Vacated?

Any person, corporation or partnership which owns or has an interest in any lot, or part of a lot, which abuts an alley or street can petition the Board of Commissioners to vacate all or part of the alley or street located within unincorporated areas of Carroll County.

What Must the Petitioner Do Before the Board of Commissioners Can Consider a Petition to Vacate an Alley or Street?

The petitioner must prepare a petition and a legal notice. The petition must:

1. Identify the petitioner (all petitioners, if more than one owner proposes the vacation)
2. Identify the property or property interest owned by each petitioner
3. Contain a specific legal description of the alley or street or portion of the alley or street proposed to be vacated
4. State the circumstances of the case (for example, describe the background or usage of the alley or street and why it should be vacated)
5. State the names and addresses of all owners of property which abuts the alley or street proposed to be vacated (this should include utilities and easement holders)

The notice must:

1. State that a petition has been filed with the Board of Commissioners
2. Summarize what the petition proposes
3. Specifically describe what is being proposed to be vacated

4. State when and where the petition will be heard by the Board of Commissioners and the rights of citizens and persons “aggrieved by the proposed vacation” to attend and be heard.
5. Be published by the County Auditor in the Carroll County Comet at least ten (10) days before the hearing (cost paid by the petitioner)
6. Be mailed by certified mail by the County Auditor to each owner identified in the petition whose property abuts the alley or street proposed to be vacated (cost paid by the petitioner)

Before the petition is signed and before the notice can be published or mailed, both documents should be drafted and submitted to the County Auditor for review and to establish the date and time for the hearing to be inserted in the notice. **Neither the County Auditor, Area Plan Commission nor Board of Commissioners has any responsibility to check the accuracy or sufficiency of the contents of any notice or petition except (1) to determine if the petition and notice meet the minimum legal requirements for filing, and (2) to establish a date and time for the hearing.** After the petition is signed and the notice has been prepared, the petition is “filed” by delivering the petition and notice to the office of the County Auditor. The County Auditor will indicate in writing on the petition when the signed petition is received.

What Happens Next?

By law, the Board of Commissioners “shall hold a hearing on the petition within thirty (30) days after it is received.” The Board of Commissioners regularly meets on the first and third Mondays of each month. If scheduling conflicts, absences or holidays make the 30-day limit impractical, the petitioner will be asked to waive the 30-day hearing requirement to permit the petition to be heard by the Board of Commissioners at another meeting. The cost of publication and certified mailing of the notice will be collected by the County Auditor in advance of submission of the notice for publication and in advance of the preparation of envelopes for certified mailing of the notice to abutting property owners, easement holders and utilities.

Who Can Object to the Proposed Vacation?

Any citizen or owner of property in Carroll County, whether or not they are an owner of property which abuts the alley or street proposed to be vacated, may file or raise a remonstrance or objection.

If I Object To A Proposed Vacation, What Do I Need to Do?

Remonstrances or objections may be written, or they may be orally raised at the time of the hearing, but **only** on one or more of the following statutory grounds:

1. The vacation would hinder the growth or orderly development of the town, subdivision or neighborhood in which it is located or to which it is contiguous.
2. The vacation would make access to the property of the objector or remonstrator by means of a public way difficult or inconvenient.
3. The vacation would hinder the public's access to a church, school or other public building or place.
4. The vacation would hinder the use of a public way by the neighborhood in which it is located or to which it is contiguous.

What Happens at the Hearing?

The petitioners, if they desire, will be given the opportunity to present information in support of the petition. Remonstrators or persons objecting to the petition will next be given the opportunity to present arguments or information in opposition to the proposed vacation (so long as the grounds for remonstrance or objection are among the four cited above.) The petitioners will be given an opportunity to present any rebutting arguments or information. Members of the Board of Commissioners and its counsel may ask questions. Citizens not owning property abutting the alley or street proposed to be vacated may address the Commissioners or ask questions of the parties only when properly recognized and permitted by the Chairman of the Commissioners. Depending upon the number of persons desiring to be

heard in favor of or in opposition to the proposed vacation, the Commissioners' Chairman may, without objection, limit the opportunity and time to address the Commissioners.

No verbatim record of the hearing is provided by the Commissioners or County Auditor. The Commissioners' minutes will summarize the proceedings and record the names of persons appearing for the hearing. Although no one has done so before, persons desiring to employ a stenographer or reporter to record the proceedings may do so, provided that they inform the presiding officer in advance of the hearing, and further provided that they furnish to the County Auditor, without charge, a transcript of the proceedings, certified by the stenographer or reporter. The Board of Commissioners reserves its authority to determine and settle the official record of its proceedings in its sole discretion.

What About Easements and Utilities?

Platted easements of any kind can be vacated; but if they are in use, or could foreseeably be needed in the future, it is highly unlikely that vacation will be granted without the easement holder's consent. Unrecorded easements (except for utilities in place) may be vacated, unless the easement holder objects.

Utilities occupying or using all or part of an alley or street for the location and operation of its system are given special status under the vacation statutes. Utilities have the right to continue using and occupying vacated alleys and streets, unless they file a written consent to the proceedings. If a utility has facilities which are presently located in the alley or street, they cannot be forced to remove or relocate those facilities, and they may repair or replace them at will.

What Options Do the Commissioners Have?

The hearing may be concluded in one session, or it may be continued to a specific date and time. The Commissioners may vote on the matter at the conclusion of the hearing, or it may take the matter under advisement and schedule its deliberations for a later date. All deliberations must be conducted in open public session, as hearings on vacations of streets and alleys are subject to the provisions of the Indiana open meeting law. The Commissioners may take a preliminary poll of its membership on the

proposal and direct counsel to prepare proposed findings consistent with the results of its poll for consideration by the Commissioners at a later date, or the Commissioners may authorize the Chairman and County Auditor to sign the vacation ordinance after it has been prepared consistent with the Commissioners' decision. The Commissioners may simply vote to grant the petition without making special findings, unless a remonstrance or objection has been filed. Remonstrances and objections should be addressed in the Commissioners' findings.

Upon What Basis Must the Commissioners Make Its Decision?

The burden is on the petitioner to show that the proposed vacation should be granted. If no remonstrance or objections are filed or raised on the statutory grounds cited above, the Commissioners may grant the petition whether or not any evidence or information is presented in support of the petition. Conversely, the Commissioners may deny the petition even if no remonstrance or objections are filed or raised.

What If I Don't Agree With the Board of Commissioners' Decision?

The denial of a petition to vacate an alley or a street will normally be overturned only if it is "arbitrary or capricious". A petition affecting the same property and requesting the same vacation cannot be initiated for two (2) years after the Commissioners' denial.

If a vacation petition is granted, any person aggrieved by the decision may appeal the matter to the circuit court within thirty (30) days after the ordinance granting the petition is adopted. The court will consider the petition *de novo* (as if the matter was filed with the court instead of the Board of Commissioners) and may award damages for the vacation.

Assuming the Petition for Vacation is Granted, What Happens Next?

The vacation is put into the form of an ordinance to be adopted and signed by the Board of Commissioners, or by the Commissioners Chairman and County Auditor upon the Board of Commissioners' authorization. If the petitioner was represented by an attorney, the ordinance is prepared by the petitioner's attorney and reviewed by the County's attorney. The ordinance must contain:

1. A recitation of the filing of the petition and of the mailing and publication of the notice.
2. A summary of the findings of the Board of Commissioners.
3. The legal description of the vacated portions of the alley or street.
4. How the vacated alley or street is to be divided and become part of the properties of abutting owners.

The ordinance will also refer to any remonstrance or objections to the petition, to the rights of utilities, if any, and to other issues which may have arisen, depending upon the circumstances of each case. After the ordinance is reviewed, adopted and signed, the County Auditor will furnish copies to the County Auditor and Recorder for transfer, taxation and recording and to the parties to the proceeding, or to their attorneys, as directed by the Board of Commissioners.

Do I Have to Hire An Attorney?

For the person seeking to have an alley or street vacated, the requirements of the vacation statutes are somewhat technical in nature. While the law does not require you to have an attorney, no county agency can give citizens legal advice. Mistakes can be costly, or the whole process may be invalid without discovering that fact until your property changes hands. In order to convey good title to a vacated street or alley to a future purchaser or to a future beneficiary of your estate, or if you, your lender or zoning officials need to rely on the legality of a vacation proceeding, a prudent property owner will engage the services of an attorney experienced in real estate matters to prepare the necessary papers for the vacation.