

PUBLISHED IN THE WICHITA EAGLE ON \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS REGARDING THE PROCEDURE FOR HANDLING PETITIONS TO LAY OUT, ALTER OR VACATE ROADS UNDER K.S.A. 68-102, *et seq.*

WHEREAS, the Kansas legislature has provided a process under K.S.A. 68-102, *et seq.* for the laying out, altering or vacating of roads; and

WHEREAS, under K.S.A. 19-101, K.S.A. 2010 Supp. 19-101a and K.S.A. 19-101c, the Board of County Commissioners (the Board) is authorized to do all acts necessary to the exercise of its corporate or administrative powers, to perform all powers of local legislation and administration it deems appropriate, with the powers granted under K.S.A. 19-101, *et seq.* to be liberally construed for the purpose of giving the Board the largest measure of self-government; and

WHEREAS, under K.S.A. 19-212, *Ninth*, the Board is authorized to lay out, alter or discontinue any road running through one or more townships, and to perform such other duties respecting roads as may be provided by law; and

WHEREAS, under K.S.A. 19-218, the Board may establish rules and regulations governing the transaction of business of the Board;

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS THAT:

Article I General

SECTION 1. (A) Petitions to lay out, alter or vacate roads shall be processed in accordance with the requirements set out in K.S.A. 68-102, *et seq.*, and this resolution.

(B) The term "road," including a "county road," for the purposes of this resolution shall be defined as set out in the following subsections (i) and (ii), provided, however, the term "road" shall not be interpreted to include any street or public right of way easement authorized to be vacated under K.S.A. 58-2613, *et seq.*:

(i) K.S.A. 77-201 *Fifth* as follows: "Road' include[s] public bridges and may be construed to be equivalent to 'county way,' 'county road,' or 'common road, . . ."

(ii) K.S.A. 68-101, as follows: "The term "county roads" shall mean all roads designated as such by the board of county commissioners, including roads on the county secondary road system . . ."

(C) This resolution shall not be construed to modify or replace Sedgwick County Resolution No. 213-98 or Ordinance No. 30-122, except to the extent required by K.S.A. 68-102, *et seq.*

## Article II Receipt of Petition and Bond

SECTION 2. (A) The petition and any bond for the costs and expenses related to the petition shall be filed with the County Clerk. The petition should substantially conform to the sample form of petition shown as **Attachment A** to this resolution and to the sample form of the bond shown as **Attachment B**. The petition must contain the place of beginning, the intermediate points, if any, and the place of termination of the road or road segment. The Clerk shall forward a copy of the petition to the Director of Public Works for Sedgwick County.

(B) The Clerk shall prepare an agenda item for the next available Board meeting, in accordance with the standard County agenda process and policy, to inform the Board of the filing of the petition.

(C) The Clerk shall publish a notice of the proposed action by publication in the official county newspaper. The Clerk shall also send notice by certified mail to each owner of property adjoining the road proposed to be laid out, altered or vacated, at the address where the owner's tax statement is sent. The notice shall substantially conform to the sample form of notice shown as **Attachment C**.

## Article III Presentation of the Petition to the Board

Section 3. The Board shall take the following actions upon presentation of the petition by the Clerk at the next available meeting following filing of the petition:

(A) verify petition is in legal form and a proper bond has been filed; and

(B) determine a road viewing is not required; or

(C) set the road viewing as follows:

(i) appoint three disinterested householders of the county to act as viewers, with said viewers to be paid the usual prevailing wages for such employees;

(ii) designate the day for the viewing of the road to be laid out, altered or vacated;

(iii) at the Board's discretion, if determined to be appropriate, order the county surveyor to attend the road viewing to survey the road described in the petition;

(D) A road viewing may be dispensed with if:

(i) the petition is for the location, change or relocation of any road located along or upon any section line;

(ii) the petition specifies the section lines to be followed;

(iii) all owners of any lands to be taken agree in writing to the proposed location, relocation or change; and

(iv) the Board is satisfied the location, relocation or change prayed for is practicable and can be made without unreasonable expense.

(E) The Board may proceed to final action under Article V if the road viewing is dispensed with.

(F) If a road viewing is to be held, the Board shall:

(i) issue an order substantially in conformance with the sample form of order shown as **Attachment D**; and

(ii) take any other actions deemed appropriate, including but not limited to:

(a) referring the petition to county staff or advisory boards or commissions for review and/or recommendation, including but not limited to the Department of

Public Works; the Wichita-Sedgwick County Metropolitan Area Planning Commission, (MAPC); the Wichita-Sedgwick County Metropolitan Area Planning Department (MAPD); and

(b) referring the petition to the City of Wichita if the road described in the petition is within three miles of its city limits or any small city planning commission and/or its city council for review and/or recommendation where the proposed road segment is located within the extraterritorial subdivision jurisdiction or zoning area of influence of the city; or any township board if the road described in the petition is within the boundaries of that township.

(G) A copy of the order will be provided to the petitioner, any appointed viewers, each county commissioner, the Clerk and any other persons or county departments directed by the Board.

#### **Article IV Road Viewing**

SECTION 4. (A) The Clerk shall publish notice of any road viewing as follows:

(i) posted in the Clerk's office for at least twenty days prior to day of viewing;

(ii) posted in every township in which the road to be laid out, altered or vacated is located, for at least twenty days prior to designated day of viewing;

(iii) published twice for two consecutive weeks in a newspaper of general circulation, provided that the viewing shall not be more than twenty days after the date of the second publication.

(B) The clerk shall also enter the notice into the journal of the BoCC.

(C) The notice shall substantially conform to the sample form of notice shown as **Attachment E**.

(D) The petitioner, or at least one of the petitioners if there are multiple petitioners, shall provide such notice as required by K.S.A. 68-105. The petitioner shall submit an affidavit substantially conforming to the form of the affidavit shown as **ATTACHMENT F**.

SECTION 5. (A) The commissioners and viewers, and County Surveyor if in attendance, shall proceed to view, survey, lay out, alter or vacate the road as prayed for in the petition or as nearly so as a good road can be made at reasonable expense, taking into consideration the utility, convenience and inconvenience, and expense which will result to individuals as well as the public, if such road, or any part thereof, shall be established and opened or altered.

(B) The commissioners and viewers shall also assess and determine the amount of damages sustained by any person or persons whose premises the said road is proposed to be established; provided the owner or owners, or their agents, or guardians, have been duly notified as provided for by K.S.A. 68-102, *et seq.*, and a written application is filed with the Clerk giving a description of the premises on which the damages or compensation are claimed, at the time of viewing and hearing. A certificate of assessment of damages shall be completed by the commissioners and viewers, in substantial conformance with the sample form shown as **ATTACHMENT G**, and then filed with the Clerk.

(C) If any person has not received notice of the viewing as provided for in K.S.A.

68-102, *et seq.*, the written application for damages must be filed within twelve months after the location of the road, after which the Board shall determine the amount of damages sustained by the claimant.

(D) Commissioners and appointed viewers shall sign a certificate stating their opinion in favor of or against the vacation with their reasons for the same. The certificate shall substantially conform to the sample form of certification shown as **Attachment H**.

(E) The certificates shall be filed with the Clerk.

SECTION 6. If the Board has directed the County Surveyor to do so, the Surveyor shall provide a certified return and plat of the road to be laid out, altered or vacated and file the same with the Clerk.

SECTION 7. If the Board has referred the petition to any county department, commission or board for review and/or recommendation, any report or recommendation shall be filed with the Clerk.

### **Article V Final Action by the Board**

SECTION 8. Final action may be taken by the Board following presentation of the petition if the road viewing is dispensed with; otherwise final action will be taken after the certificates of the viewers and any certified return and plat of the road is filed following the viewing.

SECTION 9. (A) For road viewing cases, after all certificates, surveys, certified returns, plats, reports and recommendations ordered by the Board are filed, the Clerk shall prepare an agenda item for the next regular Board meeting for the Board to take final action, including the following items as backup materials:

- (i) the petition and bond;
- (ii) certificates of the viewers;
- (iii) certified survey and plat of the road, if any prepared;
- (iv) reports and recommendations from any departments, boards, commissions or other parties that were requested to review and comment on the petition;
- (v) any documents submitted by persons in support or opposition to the petition;
- (vi) an itemized list of costs and expenses to be paid by the petitioner(s); and
- (vii) An affidavit prepared by the Clerk substantially conforming to the sample affidavit shown as **ATTACHMENT I**.
- (viii) such other documentation or other materials relevant to the Board's consideration of the petition.

SECTION 10. (A) At the meeting where final action is to be taken, the Board shall:

- (i) determine whether the road should be laid out, altered or vacated;
- (ii) determine whether the public welfare will be served by the Board's action; and
- (iii) determine whether there are any legal objections to the vacation.

(B) The Board may also:

- (i) require the County Surveyor to survey the road and cause the same to be conspicuously marked throughout, including courses and distances; and
- (ii) set conditions for the laying out, alteration or vacation of the road as determined necessary by the Board, including but not limited to:
  - (a) relocation at the expense of the petitioner(s) of any utilities or public improvements;
  - (b) contingent dedications of right-of-way for future use when determined necessary by the appropriate governing body; and
  - (c) execution and recording of any restrictive covenants, easements, or other instruments.
- (C) The determination whether the public welfare will be served by the Board's action may, but is not required to, include a determination whether the road is no longer a public utility due to neglect, nonuse, inconvenience or from any other cause or causes such road has become practically impassable and the necessity for such road as a public utility does not justify the expenditure of public funds to repair such road or put the same in condition for public travel.
- (D) The County Counselor's office shall prepare an order for the Board chairperson's signature stating the action taken by the Board, substantially conforming to the sample Order shown as **Attachment J**.
- (E) The order shall not be signed until the petitioner(s) have paid all costs and expenses; and have complied with all conditions set by the Board.
- (F) The Clerk shall enter any order issued by Board on the Board's journal.

**Article VI Effective Date of Resolution**

SECTION 11. This resolution shall take effect upon publication in the official county newspaper.

Commissioners present and voting were:

|                  |       |
|------------------|-------|
| DAVID M. UNRUH   | _____ |
| TIM R. NORTON    | _____ |
| KARL PETERJOHN   | _____ |
| RICHARD RANZAU   | _____ |
| JAMES B. SKELTON | _____ |

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

BOARD OF COUNTY  
COMMISSIONERS OF  
SEDGWICK COUNTY, KANSAS


ATTEST:

\_\_\_\_\_  
KELLY B. ARNOLD, County Clerk

\_\_\_\_\_  
DAVID M. UNRUH, Chairman  
Commissioner, First District

APPROVED AS TO FORM:

\_\_\_\_\_  
TIM R. NORTON, Chair Pro Tem  
Commissioner, Second District

  
\_\_\_\_\_  
ROBERT W. PARNACOTT  
Assistant County Counselor

\_\_\_\_\_  
KARL PETERJOHN  
Commissioner, Third District

\_\_\_\_\_  
RICHARD RANZAU  
Commissioner, Fourth District

\_\_\_\_\_  
JAMES B. SKELTON  
Commissioner, Fifth District