BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF LANCASTER COUNTY, NEBRASKA

IN THE MATTER OF REVISING THE POLICY FOR THE VACATION OR ABANDONMENT OF PUBLIC ROADS INITIATED BY PETITION	)) Resolution No. R-19-0040))

WHEREAS, Neb. Rev. Stat. §§ 39-1722 through 39-1727 authorize a county board by resolution to vacate or abandon a public road of the county when deemed in the public interest. If all or a portion of a public road is within the zoning jurisdiction of a city of the metropolitan, primary, or first class, a county board must first obtain approval of the vacation or abandonment by the governing body of such city;

WHEREAS, on February 17, 1976, the Lancaster County Board of County Commissioners (the "Board") adopted its policy for the vacation of public roads in Lancaster County, Nebraska, ("County") by County Resolution R-3049;

WHEREAS, the Board desires to revise the policy to update and clarify the statutory requirements and the additional steps required by the Board regarding the procedural process that must be followed to accurately vacate or abandon a public road of the County when petitioned by private persons; and

WHEREAS, the Board deems it in the public interest that a current version of this Resolution should be on file at all times in the County Clerk's Office available for public inspection;

NOW, THEREFORE, BE IT RESOLVED, by the County Board, that it hereby adopts the following guidelines and procedures set out in the attached documents as the process for vacating or abandoning all or a portion of a public road of the County when petitioned by private persons;

AND BE IT FURTHER RESOLVED, that the policy shall be effective upon the date of execution of this Resolution, and that this Resolution shall supersede County Resolution No. 3049, and any previously existing County resolutions on the same subject matter; and that a current version of this Resolution shall be on file at all times in the County Clerk's Office available for public inspection.

DATED this 7th day of May, 2019, at the County-City Building, Lincoln, Lancaster County, Nebraska.

BY THE BOARD OF COUNTY COMMISSIONERS OF LANCASTER COUNTY, NEBRASKA

Sean Ellis

Deb Schorr

Jennifer J. Brinker

Roma Amundson

Rick Volt

APPROVED AS TO FORM
this 7th day of May, 2019.

For PATRICK CONDON
Lancaster County Attorney

POLICY FOR THE VACATION OR ABANDONMENT OF COUNTY PUBLIC ROADS INITIATED BY PETITION

Updated: May 7, 2019

IMPORTANT: PLEASE READ THIS POLICY FULLY. THE PROCEDURE FOR PROCESSING REQUESTS TO VACATE OR ABANDON PUBLIC ROADS IS LONG AND INVOLVED, AND IMPROPERLY COMPLETED PETITIONS OR FORMS WILL CAUSE ADDITIONAL DELAY.

The power to vacate or abandon a public road within Lancaster County (the "County") is vested in the Lancaster County Board of County Commissioners (the "Board"), provided that the Board may vacate or abandon a public road inside the zoning jurisdiction of a city of the metropolitan, primary, or first class only with the prior approval of such a city.

On its own initiative or upon petition, the Board may vacate or abandon a public road if it deems that such a vacation or abandonment would be in the "public interest." Nebraska Revised Statutes §§ 39-1722 *et seq.* prescribe a process for vacating or abandoning a public road upon petition. In order to facilitate that process, the Board has adopted this Policy describing the steps it will take when petitioned to vacate or abandon a public road.

If the Board should decide to vacate or abandon a public road, it may sell the property, allow it to revert to private ownership, or have the right-of-way remain in the public ownership. The Board's choice among these alternatives will depend on the facts of each particular vacation or abandonment.

The Board may also condition a vacation or abandonment as it sees fit. It can be expected that the preservation of all existing easements, rights-of-way, or similar encumbrances for public utilities or other beneficial or necessary uses may be a condition of most vacations. Vacation or abandonment may be conditioned upon the payment by the primary petitioner(s) to the County of any expenses incurred by the County in the vacation or abandonment process. Any transfer of a vacated or abandoned road, or portion thereof, shall be made only by quitclaim deed. The sale of any vacated or abandoned public road, or portion thereof, shall comply with Neb. Rev. Stat. § 23-107.01.

<u>Step 1:</u> Nebraska Revised Statute § 39-1723 requires that:

> Any person desiring the vacation or abandonment of any public road of the county shall file in the office of the county clerk of the proper county, a petition signed by ten or more electors residing within ten miles of the road proposed to be vacated or abandoned, which petition shall contain

(1) the names and addresses of said electors, (2) a clear and unambiguous description of the road proposed to be vacated or abandoned, (3) the reason or reasons why said road should be vacated or abandoned, and (4) a request that a time and date be set for public hearing before the county board.

A form for this petition is available in the office of the County Clerk and is attached hereto.

Step 2: At the same time as the petition with the names of ten (10) registered voter is filed with the County Clerk, the County also requests for purposes of informing its decision-making process that the primary petitioner file with the County Clerk an Information Sheet from:

1. The primary petitioner; and

2. Each owner of property abutting the road to be vacated.

The Information Sheet is available in the office of the County Clerk and is attached hereto.

Step 3: Upon the County Clerk's receipt of the petition mentioned in Step 2, the County Clerk will contact:

1. The County Engineer:

    a. To verify that the petitioners are residing within ten (10) miles of the road proposed to be vacated or abandoned; and

    b. To provide a list naming each owner of property abutting the road to be vacated;

2. The City of Lincoln-Lancaster County Planning Department ("Planning Department") to verify whether the road to be vacated is within three (3) miles of a city of the metropolitan, primary, or first class; and

3. The County Election Commissioner to verify the petitioners are registered voters in Lancaster County.

Each Office or Department described above shall provide the County Clerk such information within three (3) days receipt of the County Clerk's request.

Upon receipt of such information from the County Engineer, the County Clerk shall verify that an Information Sheet has been received from each owner of property abutting the road to be vacated. If an Information Sheet has not been received from any owner of property abutting the road to be vacated, the County Clerk shall send a letter to each such landowner requesting completion of the Information Sheet, along with a copy of the petition and a blank Information Sheet.

The County Clerk shall forward a copy of the petition to the County Attorney's Office to draft the resolution required by Step 4.

Step 4: Within two (2) weeks of the receipt of a valid petition, as described in Step 1, the Board, by resolution, will:

1. Direct the County Engineer to study the use being made of such public road and to submit to the Board within thirty (30) days a written report upon the study made and the County Engineer's recommendations as to the vacation or abandonment thereof.

2. Direct the Planning Department to submit to the Board within thirty (30) days a written report as to the character and degree of conformity or nonconformity of the proposed vacation or abandonment to the Comprehensive Plan. The Planning Department must also determine and note in its report whether the public road is within three (3) miles of a city of the metropolitan, primary, or first class. If so, approval by the governing body of such a city must also be obtained. The Clerk of that city will forward such approval or disapproval to the County Clerk and the Board.

   If the city approves of the vacation, the Board may continue to consider the petition. If the city disapproves of the vacation, the Board may not approve the vacation or abandonment and shall by resolution refuse vacation or abandonment for this reason.

   Note: As of the date of the adoption of this Policy, the City of Lincoln and the City of Crete are the only two jurisdictions that would require such approval.

If the public road falls within three (3) miles of the City of Lincoln, the petitioner must contact the Planning Department to fill out the required application and pay the filing fee. Approval by the City of Lincoln will take a minimum of eight (8) weeks.

If the public road falls within three (3) miles of the City of Crete, the petitioner must contact the Crete Building Inspector to initiate the City of Crete's approval process.

While the County Engineer prepares her or his report, the County Engineer may choose to have an independent appraisal made of the property based on Federal Highway Administration (FHWA) standards if necessary. The Board may also require an appraisal at its own discretion. If an appraisal is conducted, the Board or the Engineer may use the Engineer's own certified appraiser or a third party. The appraisal shall consider the costs of making the land usable and whether or not a similar dedication is being made to replace the road proposed to be vacated. Although it can be expected that the appraisal will be acceptable to the Board in most cases, the Board shall not be absolutely bound by the appraisal. The Board or the Engineer also may conduct a title search on the public road.

Step 5: When the Board has received the reports from the County Engineer and the Planning Department, and has received city approval, if required as described in Step 4, the Board will set a time, date and place for a public hearing upon the vacation or abandonment by resolution. The resolution fixing the time, date and place for a public hearing must be published in a legal newspaper of the County once a week for three (3) consecutive weeks (publication during each week must be on the same day of the week as the first publication).

The County Clerk, not less than two (2) weeks in advance of the public hearing shall serve, by registered or certified mail, copies of the resolution setting the public hearing upon the owners of land abutting on or adjacent to the public road to be vacated or abandoned.

If the public road or any part thereof is within the area of the zoning jurisdiction of a city of the metropolitan, primary, or first class, the County Clerk also shall serve, by registered or certified mail, a copy of the resolution setting the public hearing upon that city's Planning Director, Public Works Director, or that city's equivalent position not less than two (2) weeks in advance of the public hearing.

Note: All of the requirements set forth in the Steps 1 through 5 must be completed within the timeframes provided herein.

Step 6: After the public hearing, the Board, by resolution *at its next meeting* or as soon thereafter as practical, shall either vacate, abandon, or refuse to vacate or abandon the public road in question, subject to any conditions adopted by the Board.

Vacation and abandonment shall not be ordered except upon an affirmative vote of two-thirds of all members of the Board and, when the prior approval of the governing body of a city of the metropolitan, primary, or first class is required because the public road or any part thereof is within the area of the zoning jurisdiction of such city, then also upon having obtained the approval of such city.

In the event that the Board decides to vacate or abandon the public road, its resolution shall state upon what conditions, if any, the vacation or abandonment shall be qualified and particularly whether or not the title or right-of-way to any vacated or abandoned fragment or section of road shall be sold, revert to private ownership, or remain in the public. Conditions may include, but are not limited to: a hold harmless agreement; a quit claim deed; an exchange of property; preservation of all existing easements, rights-of-way, or similar encumbrances for public utilities or other beneficial or necessary uses; and/or payment by the primary petitioner(s) to the County of any expenses incurred by the County during the vacation or abandonment process. Any transfer of a vacated or abandoned public road, or portion thereof, shall be made only by quitclaim deed. The sale of any vacated or abandoned public road, or portion thereof, shall comply with Neb. Rev. Stat. § 23-107.01.

If the Board vacates or abandons all or any portion of a public road, the County Clerk shall, within thirty (30) days after the effective date of the vacation or abandonment, record a certified copy of the vacating or abandoning resolution with the County Register of Deeds to be indexed against all affected lots.

PETITION FOR VACATION OR ABANDONMENT OF PUBLIC ROAD

The undersigned registered voters of Lancaster County, Nebraska reside within ten (10) miles of a segment of public road right-of-way described as:

_____

_____

_____

_____,

a map of which is attached hereto, and hereby petition the Lancaster County Board of County Commissioners to vacate or abandon said segment of public road for the reason that:

_____

_____

_____

_____.

And further request that a time and date be set for a public hearing before the Board on this matter.

The **Primary Petitioner**(s) of the undersigned registered voters is(are):

_____

_____

_____

_____.

PETITIONERS

NAME	ADDRESS
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____
6. _____	_____
7. _____	_____

8. _____ _____

9. _____ _____

10. _____ _____

11. _____ _____

12. _____ _____

13. _____ _____

14. _____ _____

15. _____ _____

INFORMATION SHEET

This information sheet should be completed by the primary petitioner(s) as stated on the Petition and each owner abutting the public road petitioned to be vacated or abandoned.

1. Name:_____

2. Street Address:_____

3. City/State/Zip:_____

4. Telephone Number(s):_____

5. Email Address:_____

6. Public road petitioned to be vacated:_____
   _____
   _____
   _____

7. Do you wish to have this public road vacated or abandoned?_____

8. Why do you wish (or not wish) to have this public road vacated or abandoned?
   _____
   _____
   _____

9. What use(s) do you propose to make of the public road if vacated or abandoned?
   _____
   _____
   _____

10. I wish to purchase the portion of the vacated or abandoned public road described below (describe area desired to be purchased):
    _____
    _____
    _____