

CHAPTER 80.

LAYING OUT; OPENING, ALTERING AND DISCONTINUING HIGHWAYS.

80.01	Creation, alteration and discontinuance of highways.	80.33	Highway papers, where filed.
80.02	Town highways; petition to lay, alter or discontinue.	80.34	Highway orders; presumptions; limitation of actions.
80.025	Street assessments in towns in Milwaukee county.	80.35	Oaths.
80.03	Town highways; where laid.	80.36	Temporary highways; how laid; expense and liability.
80.04	When supervisor disqualified; vacancies.	80.37	Lost records; how restored; effect of thereof.
80.05	Notice of meeting; service and publication.	80.38	Changing streets into highways.
80.06	Proceedings after notice.	80.39	County boards' powers.
80.07	Order; survey; award; presumption of release.	80.40	Notice.
80.08	Width of highways.	80.41	Proceedings; hearing; orders; filing; appeals.
80.09	Damages; agreement, award.	80.42	Damages, how fixed and paid; filing award.
80.10	Considerations affecting damages.	80.43	Appeal; vote before liability attaches.
80.11	Highways on and across town lines.	80.44	Compensation to county board members.
80.12	Highways on and across town and municipal boundaries.	80.45	Highway, how opened.
80.13	Land excluded from highway.	80.46	Control of highways laid by county.
80.14	Highway from land into adjoining town.	80.47	Rights of abutting owners.
80.15	Highway to islands in Mississippi river.	80.48	Highways and streets to cemeteries and fairgrounds.
80.16	Shut off school buildings; how laid.	80.49	Petition for special highway district.
80.17	Appeal to court.	80.50	Time and place of hearing and notice thereof.
80.18	Bonds; service of notice.	80.51	Publication of notice; nonresident owners; service outside the state, petitioners need not be notified.
80.19	Commissioners, how selected.	80.52	Hearing; adjournment; evidence; findings; judgment; costs.
80.20	Commissioners; fees; papers where filed.	80.53	Official oaths; organization; vacancies; compensation.
80.21	Proceedings on reversal.	80.54	Duties and powers of commissioners; bids; contracts; final report.
80.22	Determination final for a year unless appealed.	80.55	Remonstrance; procedure.
80.23	Removal of fences; notice.	80.56	Costs to or for remonstrant.
80.24	Appeal from award of damages.	80.57	Time for paying assessments.
80.25	Taxpayer may appeal; service of notice.	80.58	Notice to pay assessments; proceedings against delinquents.
80.26	Appeal bond.	80.59	Paid assessments to be turned into county treasury.
80.27	Selection of jury; penalty for refusal to serve.	80.60	Moneys credited to construction fund.
80.28	Proceedings before jury; costs.	80.61	State contribution to fund.
80.29	Appeal costs; judges' and jurors' fees.	80.62	Payments for construction.
80.30	Highway damages; when payable, referendum to town meeting.	80.63	Highways; streets and alleys; curative provisions.
80.31	Unclaimed awards; mortgage and lien interests.	80.64	County boards have park commission powers.
80.32	Discontinuance of highways; reversion of title.		

80.01 Creation, alteration and discontinuance of highways. (1) All highways which shall have been laid out by the supervisors of any town, the board of supervisors of any county, or by a committee thereof, or by commissioners appointed by the legislature, or by any other duly constituted authority, and recorded, any portion of which shall have been opened and worked for the term of three years shall be deemed to be and are hereby declared to be legal highways so far as they have been so opened and worked, notwithstanding the law may not have been in all respects complied with in laying out the same. The making of an order laying out any highway by the proper officers and filing the same or a certified copy thereof in the office of the town clerk of the town in which such road is situated shall be deemed a recording of such highway within the meaning of this section.

(2) All roads not recorded which shall have been or shall be used and worked as public highways ten years or more shall be deemed public highways, except that roads and bridges built upon the bottoms and sloughs of the Mississippi river in this state by citizens or municipalities of any other state shall not become legal highways or a charge upon the town in which they are situated unless upon petition they are legally laid out by the supervisors of such town; nor shall any grant of lands for highway purposes, which has not become a legal highway prior to the first day of July, 1913, become effective for such purposes, unless such grant shall have been duly accepted by the town board or by the town meeting of the town wherein such lands and proposed highway are situated, and until a resolution of such acceptance shall have been duly filed and recorded in the office of the town clerk of such town; and in case any such laid out highways shall not have been fully and sufficiently described or recorded or if such records have been lost or destroyed the presumptive evidence shall be that the same were originally laid of the width of four rods.

(3) No lands abutting on any public highway, heretofore or hereafter acquired or held for highway purposes, shall be deemed discontinued for such purpose so long as such lands continue to abut on any public highway. All lands hereafter acquired for highway purposes may be used for any purpose that the public authorities in control of such highway shall deem to conduce to the benefit of the public use and enjoyment thereof. Such authorities may improve such highways by suitable planting to prevent the erosion of the soil or to beautify the highway. The right to protect existing vegetation and to plant vegetation in any highway heretofore laid out may be acquired by the highway authorities in control of such highway in any manner that lands may be acquired for highway purposes. It shall be unlawful for any person to injure any tree or shrub, or cut or trim any vegetation, or make any excavation in any highway hereafter laid out or where the right to protect vegetation has been acquired, without the consent of the highway authorities having control of the highway and under their direction. [1931 c. 295 s. 2]

Note: The dedication of lands for a public highway to be complete must be accepted in some form. *Whitehead & Matheson Co. v. Jensen*, 203 W 12, 233 NW 546.

See note to 192.29, citing *Langer v. Chicago, M., St. P. & P. R. Co.*, 220 W 571, 265 NW 851.

Where the proceedings to lay out a town highway in 1858 were ineffective as having been abandoned, only the existence of a highway by user with the defendants' fence as one boundary thereof was established under the facts shown as to actual use of certain land as a highway for 80 years, and as to possession by the defendants and their predecessors in title of additional land now claimed by the plaintiff town as part of the highway, and as to existence of the defendants' fence for over 50 years. Where acts relied on by a town to show the dedication of land to a highway are of a doubtful char-

acter and the use and possession of that land over a period of years by a private individual is acquiesced in by the town, the private use is considered conclusive as against the dedication for public purposes. *Buchanan v. Wolfinger*, 237 W 652, 298 NW 176.

Land formerly used for highway purposes abutting on relocated highway does not revert to private ownership. Right to plant vegetation on such lands does not necessarily exist in all cases, but may be acquired by appropriate proceedings. 22 Atty. Gen. 416.

Road laid out and constructed by state on hospital grounds owned by state is not public highway even though within past seven years town in which it is located as accommodation to hospital and to town residents accustomed to use road resurfaced same and it has been used generally by those going to and from hospital. 28 Atty. Gen. 289.

80.02 Town highways; petition to lay, alter or discontinue. When six or more resident freeholders or homesteaders under the laws of the United States wish to have a highway laid out, widened, altered or discontinued in their town, they may make application in writing to the supervisors of said town for that purpose. The application may be delivered to any supervisor or to the town clerk. In case the application is for the discontinuance of all or of a part of any highway, and it is desired, as permitted by section 80.05, to omit from the notice the description of the lands abutting upon such highway which will be benefited, injured or damaged by the discontinuance of such highway or any part thereof, the application shall contain the description of the lands abutting upon such highway which will be benefited, injured or damaged by the discontinuance of such highway or any part thereof and shall be delivered to the town clerk with a request in writing that such application remain on file with him until the time set for hearing for reference and inspection by any parties concerned. When all the owners of lands abutting on the part of a highway sought to be altered, desire such alteration, and the supervisors are of the opinion that the public will not be materially affected by such alteration, the board may make the same, and may take into consideration donations of money, land or services for the making of such alterations. When the laying out of a highway would require the construction of a bridge costing more than one thousand dollars, exclusive of donations, the order of the supervisors laying out such highway shall not be effective unless approved by the electors of the town, and an estimate by the state highway commission shall be conclusive of the cost of such bridge for the purposes of this section. No town board shall discontinue any part of a state road, nor alter or discontinue any highway laid out by the county board, or any highway that shall have been improved by the county board with county funds, nor discontinue any highway when such discontinuance would deprive the owner of lands of access therefrom to the public highway. [1935 c. 428]

Note: Injunction will not lie to restrain a town board from hearing and acting on an application for laying out a highway, because, until the board has acted and has ordered a highway to be laid out, no injury or harm can be said to be threatened, since the board might in its discretion decide against the application, and equity should not interfere with the duties of the board to decide

on the application. *Florsheim v. Patterson*, 208 W 590, 243 NW 759.

Where state trunk highway is relocated former route retains its status as town road and may be discontinued upon application to town board. 20 Atty. Gen. 981.

Status of certain portions of roads abandoned as parts of state trunk system is discussed. 24 Atty. Gen. 51.

80.025 Street assessments in towns in Milwaukee county. (1) The town board of any town in any county having a population of two hundred fifty thousand or more may cause any street or alley or any part of any street or alley not less than sixteen rods in length to be graded, paved, macadamized or otherwise improved, including the establishment of the grade, the construction of curbs and gutters, upon a petition therefor in writing signed by at least a majority of all the owners of real estate bounding both sides.

(2) Before ordering any such work to be done, there shall be filed with the town clerk plans and specifications for the same, and an estimate of the cost of said work, and the town board may thereupon cause the work to be done. At any time after the filing of the plans and specifications for said work, the town board shall view the premises and determine the entire cost of the contemplated work and the benefits that shall accrue to the several lots, tracts or parcels of land fronting or abutting upon such street or part of street or alley to be improved, as the case may be, and the amount that shall be assessed under the provisions of this act to each such lot, tract or parcel of land as benefits accruing thereto by such contemplated work, and shall make and file with the town clerk a report of such determination upon such question. The town board shall thereupon levy and cause to be collected upon the lots, tracts or parcels of land fronting or abutting upon such street or part of street or alley, a tax sufficient to pay the expense of constructing such improvement as ordered opposite said property to the center of street or alley.

(3) The town board shall make such levy by resolution, and immediately after the adoption of the same, such resolution, signed by the chairman and town clerk, shall be published once in each week for two weeks in a newspaper published regularly in such town, and if there be no such newspaper, three copies thereof shall be posted by the town clerk in three public places in such town, and a notice therewith that at a certain time therein stated, the said town board will meet at their usual place of meeting and hear all objections which may be made to such assessment or any part thereof.

(4) At the time so fixed, the said town board shall meet and hear all such objections, and for that purpose shall adjourn from day to day, not more than three days, and may by resolution modify such assessment in whole or part. At any time before the first day of November any party liable may pay any such tax to the town treasurer. On such first day of November, if any such tax remains unpaid, the town treasurer shall make a certified statement showing what taxes levied remain unpaid, and file same with the town clerk, who shall extend the same upon the tax roll of such town in addition to and as a part of all other town taxes therein levied on such land to be collected therewith.

(5) Whenever a contract is let for the construction or improvement of any street or alley, and the building of curbs and gutters, such contract may provide that the amount chargeable may be paid in certificates against the lots, or that payment may be in part made in certificates and part in cash, such certificates to be issued in similar manner and subject to the provisions of section 62.20 of the statutes, except that the duties therein defined to be exercised by the board of public works or the comptroller shall be exercised and performed by the town board and the town clerk.

80.03 Town highways; where laid. (1) Except in the case of towns located in counties having a population of 500,000 or more, no public highway shall be laid out through or upon any orchard or garden or any building or fixture used for the purpose of trade or manufacture, when the damage caused thereby to such orchard, garden, building or fixture, exclusive of the damage to the land, shall exceed \$300. Or through or upon any building, fixture, yard or inclosure used for educational or charitable purposes or through or upon any other building or fixture where the value of said building or fixture exceeds \$300. Or through or upon the yard or inclosure necessary to the use or enjoyment thereof, without the consent of the owner, or through any cemetery without the consent of the trustees or other officers having the control or management thereof.

(2) In the case of towns located in counties having a population of 500,000 or more, no public highway shall be laid out through or upon any building, fixture, yard or inclosure used for educational or charitable purposes without the consent of the owner, or through any cemetery without the consent of the trustees or other officers having the control or management thereof. [1941 c. 110]

80.04 When supervisor disqualified; vacancies. (1) No supervisor shall act in laying out, altering, widening or discontinuing any highway in which he may be personally interested. If one supervisor is interested the other two shall act; if two are interested the third supervisor shall act in the matter.

(2) Whenever there shall be less than two supervisors in any town, the petition authorized by section 80.02 may be made to the county board, which shall thereupon appoint a committee of three of its members. Said committee shall proceed and act upon such petition in the same manner and with the same powers in every respect as the supervisors of such town might do.

80.05 Notice of meeting; service and publication. On application made to supervisors for laying out, widening, altering or discontinuing any highway they shall make out a notice fixing therein a time and place at which they will meet and decide upon such application. The applicants shall, at least five days previous to such time, cause such notice to be given to all occupants of the lands through which such highway may pass; and in case such application shall be for the discontinuance of the whole or any portion of the highway such notice shall be given to the occupants of all the lands abutting or touching

on such highway the whole or any part of which is sought to be discontinued, which notice shall be served personally or by copy left with or at the usual place of abode of such occupant of such lands, and such notice shall also be posted up in three public places in said town at least ten days before the time of such meeting of the supervisors. If any such lands are unoccupied, such notice shall be published in a newspaper published or having a general circulation in such town at least ten days before the time of such meeting, or in lieu of publication may be served upon the owner or owners of such unoccupied land in the manner provided above for service on occupants. Every such notice shall specify as near as practicable the highway proposed to be laid out, widened, altered or discontinued and the several tracts of land through which the same may pass. In case the application is for the discontinuance of all or of a part of any highway such notice shall contain a description of the lands abutting upon such highway which will be benefited, injured or damaged by the discontinuance of such highway or any part thereof, or when such descriptions shall in the aggregate exceed five folios in length, the notice may state that such descriptions are contained in the application, as provided in section 80.02, and shall give the name and address of the town clerk to whom such application has been delivered. [1935 c. 428]

80.06 Proceedings after notice. The supervisors shall meet at the time and place stated in their notice, and upon being satisfied that the notices required in section 80.05 have been duly given, proof of which may be shown by affidavit or otherwise as they may require, shall proceed to examine personally such highway, and shall hear any reason that may be offered for or against laying out, widening, altering or discontinuing the same, and shall decide upon the application and shall grant or refuse the same as they shall deem best for the public good; and they may adjourn from time to time, not exceeding in all thirty days from the time of the first meeting, giving public notice of the time and place of such adjournment when made, and by forthwith filing notice of such adjournment in the office of the town clerk.

80.07 Order; survey; award; presumption of release. Whenever the supervisors shall lay out, alter, widen or discontinue any highway they shall make and sign an order therefor, incorporating therein a description of the highway so laid out, altered, widened or discontinued, and shall cause an accurate survey thereof to be made when necessary; and such order shall be filed and recorded in the office of the town clerk, who shall note the time of recording the same in the record. Such order, together with the award of damages hereinafter mentioned, shall be so filed within 10 days after the date fixed by their notice or adjournment for deciding upon such application; and in case said supervisors shall fail to file such order and award within the 10 days aforesaid they shall be deemed to have decided against such application. When an order has been filed for more than 30 years and no award of damages or agreement or release has been filed and when the road, or a part thereof, has been used by the public and public money has been expended on such road, for at least 5 years, it shall be presumed that a release was given by the owners of the lands over which the road was laid out and the municipality shall be entitled to use the full width of the road, as laid out in the order, without further compensation to the present owners. [1941 c. 277]

80.08 Width of highways. Except as otherwise expressly provided by section 80.13, highways shall be laid out at least three rods wide, and when no width is specified in the order the highway shall be four rods wide.

Note: There is no presumption as to the width of a highway by user. The limits of a highway by user are determined by the limits of the use, but the traveled track does not necessarily determine the limits of the user, and the highway by user includes such portion as goes with the traveled track for the purposes of a highway. *Nicolai v. Wisconsin Power & Light Co.*, 227 W 83, 277 NW 674.

80.09 Damages; agreement, award. The damages sustained by any person upon whose land any highway shall be laid out, widened, altered or discontinued may be fixed by an agreement signed by the owner and the supervisors and be filed in the town clerk's office. Such agreement and every release of damages given shall bar any further claim for damages by the owner and all persons claiming under him. If any owner, other than this state or the United States, does not so agree with the supervisors as to his damages or does not deliver to the supervisors a written release of all claims for damages, the supervisors shall, at the time of making the highway order, assess the damages which he will sustain by reason of laying out, widening, altering or discontinuing the highway and shall make a written award specifying the sum awarded by them to each owner; and if any owner of land is unknown, the supervisors shall specify the damages awarded to him, and describe his land in their award. The award shall be signed by the supervisors and be filed in the town clerk's office with the order laying out, widening, altering or discontinuing the highway. [1939 c. 476]

80.10 Considerations affecting damages. If any highway shall at the same time be discontinued and set to a tract of land through which or any part thereof a new or altered

highway shall be laid out, the same may be taken into consideration in estimating the damages sustained by the owner thereof in laying out such new or altered highway; and in estimating the damages sustained by any person in laying out, altering, widening or discontinuing any highway the benefits which such person may receive thereby shall be taken into consideration.

80.11 Highways on and across town lines. (1) Whenever it shall be deemed necessary to lay out, alter, widen or discontinue a highway upon the line between two towns, or extending from one town into an adjoining town, it shall be done by the supervisors of said towns acting together, and if such highway is laid out or altered it may be either upon the town line or as near thereto as the situation of the ground will admit; and they may vary the same either on one side or the other of such line as they may deem necessary.

(2) The application therefor shall be in duplicate, addressed to the supervisors of both towns, and be signed by at least six resident freeholders or applicants for homesteads in each town; and be delivered to a supervisor or the clerk of each town. Upon receipt of such application the supervisors shall promptly fix a time and place for deciding thereon, and give notice thereof. The notices of the time and place of meeting shall be signed by a majority of the supervisors of each town, and posted in each of said towns, and served in the manner required by section 80.05; a majority of the supervisors of each town shall meet jointly at the time and place named in the notice to decide upon such application and sign the order and the award of damages, and in all other things the proceedings shall be the same as are required by law in laying out, altering, widening or discontinuing highways wholly within a town; the orders, awards, notices and all papers shall be in duplicate, and one duplicate shall be filed with each town clerk, and the order shall be recorded in each town clerk's office.

(3) The said supervisors, upon laying out, altering or widening such highway may determine, in the order, what part of such highway shall be made and kept in repair by each town, and what share of the damages, if any, shall be paid by each; and each town shall have all the rights and be subject to the liabilities in relation to the part of such highway to be made or repaired by it as if it were wholly located in such town.

(4) If by any change of the boundaries of either or both such towns the territory of either shall be increased or diminished, or in the event a portion of said town line highway is or has been taken over by the state or county under the state or county highway system, or if a new town or village be formed out of a part of the territory of either or both of said towns, having a portion of such town line highway within its borders, that part of such order fixing their liabilities shall be deemed vacated, and a majority of the supervisors of each such town shall, before the time for making the next tax roll, meet together with a majority of the supervisors of such new town or, with the president of such village, and all of them when so convened shall, if they can agree, make a new order apportioning the liabilities on account of such highway, which shall be filed as hereinbefore provided.

(5) If they fail to make such order, or if the order laying out, altering or widening such highway shall not have apportioned the liability of the towns or village on account of such highway, the supervisors of either town or the president of said village, after ten days' notice of the time and place of so doing served on the clerk of each town and village to be affected, may apply to the circuit judge of the county in which such towns and village or the town or village on whose behalf such notice is given, for the appointment of three commissioners to apportion the liabilities of such towns and village on account of such highway.

(6) Upon proper application such judge shall appoint three residents of such county as commissioners. They shall proceed, on not less than five days' notice in writing to the town and village clerks, to make such apportionment, and their determination shall be made in writing and filed with the clerk of each town and village affected, and shall have the same force and effect as an order of the supervisors, and the village president.

(7) Any bridge on a highway between two towns, or between a town on one side and a village or a town and village on the other side, which highway has become such by reason of having been used and worked as provided in section 80.32, which bridge has not been assigned to either of the adjoining towns or village, shall be repaired and maintained by such towns and village, and the cost of repairs and maintenance shall be paid by them in proportion to the valuation of the property therein as equalized by the county board or boards at the last equalization.

(8) Unless otherwise provided by statute or agreement every highway bridge on a town, village or city boundary shall be maintained by the municipalities in which it is located, each contributing to the expenses thereof in proportion to the last assessment of taxable property therein. Provided, however, that any bridge, or bridges, over any stream or river forming the boundary line between two counties erected or maintained solely by one of the adjoining municipalities, may be closed or discontinued by such municipality so maintaining the same when such adjoining municipality shall fail to co-

operate in such maintenance in proportion to the amount of the cost thereof borne by said municipality, if erected at the joint expense of the two adjoining municipalities; or, if not so erected, then in the proportion of one-half the cost of such maintenance.

Note: Town boards have no implied powers to apportion town line highways. This section furnishes the only authority which they have to apportion such highways. *Whitewater v. Richmond*, 204 W 388, 235 NW 773.

The status of a town-line road, not legally laid out, but having its origin in user and becoming a public highway by virtue of 80.01 (2), and the relations existing for more than fifty-five years between two towns respecting the maintenance of parts thereof and the bridges thereon, may not be disturbed by the court. Towns have implied or inherent power, recognized by (7) and (8), to arrange for the convenient maintenance of such a highway. A town may ratify the contract of commissioners respecting such maintenance if such ratification is with full knowledge of the facts, and it may be ratified formally at a town meeting or by acquiescence. *Town of Eau Galle v. Waterville*, 207 W 389, 241 NW 377.

In absence of statutory provision therefor town board has no power to spend money on road or bridge lying wholly within limits

of another town. 19 Atty. Gen. 483.

Where two boards have met and taken necessary steps under this section to lay out town line highway, construction may proceed though no further action has been taken for two years. 24 Atty. Gen. 359.

Maintenance agreement made by two towns for town line road laid out pursuant to statute must be made in accordance with statutory requirements. In absence of valid agreement each town in which bridge on town line highway is located shall contribute to expense thereof in proportion to last assessment of taxable property within each town under (8). 26 Atty. Gen. 234.

Provisions of this section relating to county aid for construction or repair of town bridges apply to bridges jointly maintained by adjoining towns on town line highway. 26 Atty. Gen. 234.

Cost of rebuilding bridge on highway between town of Dovre, Barron county, and town of Auburn, Chippewa county, should be apportioned between respective towns and counties pursuant to 80.11 and 87.01. 27 Atty. Gen. 53.

80.12 Highways on and across town and municipal boundaries. Whenever it shall be deemed necessary to lay out, alter, widen or discontinue a highway upon the line between a town and city or village or discontinue a highway or any part thereof extending from a town to a city or village proceedings therefor may be had under section 80.11. The application therefor shall be in duplicate, addressed to the supervisors of the town and the common council of the city or the board of trustees of the village, and be signed by at least six freeholders of the town and six freeholders of the city or village. Thereupon such common council or board of trustees shall appoint three commissioners on the part of such city or village, who shall be duly sworn to faithfully discharge their duties as such commissioners before entering on the same. Such commissioners and town supervisors shall then give notice and proceed in all respects as provided in section 80.11; and such city or village shall be in like manner as a town responsible for that part of such highway determined to be made and kept in repair by the same and for the share of damages assigned to the same. The cost of repairs, improvement and maintenance of any highway laid out on a line between a city and a town or village or located on one side or other of the line may be at the expense of such adjoining municipalities and the apportionment may be made as provided in subsections (3), (4), (5) and (6) of section 80.11. The town board, village board and city council may cause any such highway or any part of such highway not less than sixteen rods in length to be graded, paved, macadamized or otherwise improved, including the establishment of the grade and the construction of the curbs and gutters, and installation of water and sewer mains and service pipes, or either, and may levy special assessments for the whole or any part of the cost thereof as a tax upon such property as they shall determine as especially benefited thereby, in the manner provided in section 80.025. All proceedings and orders required to be filed and recorded shall be filed and recorded in the office of the city or village clerk as well as in the office of the town clerk. [1939 c. 416]

80.13 Land excluded from highway. (1) When any person shall present to the supervisors of any town an affidavit satisfying them that he is the owner or lessee of real estate (describing the same) within said town, and that the same is shut out from all public highways, other than a waterway, by being surrounded on all sides by real estate belonging to other persons, or by such real estate and by water, or that he is the owner or lessee of real estate (describing the same) and of a private way or road leading from said real estate to a public highway but that such road or way is too narrow, giving its width, to afford him reasonable access to and from said real estate to said public highway, that he is unable to purchase from any of said persons the right of way over or through the same to a public highway, or that he is unable to purchase from the owner or owners of land on either or both sides of his way or road land to make such way or road of sufficient width, or that it cannot be purchased except at an exorbitant price, stating the lowest price for which the same can be purchased by him, the said supervisors shall appoint a time and place for hearing said matter, which hearing shall be after ten days and within thirty days of the receipt of said affidavit.

(2) Notice of the time and place of meeting shall be served, published and posted and proof thereof made and filed as required by section 80.05.

(3) The supervisors shall meet at the appointed time and place and shall then in their discretion proceed to lay out such highway of not more than three nor less than two rods

in width to such real estate, or shall add enough land to its width to make it not less than two nor more than three rods in width, and shall assess the damages to the owner or owners of the real estate over or through which the same shall be laid or from whom land shall be taken and the advantages to the applicant.

(4) But the damages assessed by the supervisors shall in no case exceed the price stated in the affidavit of the applicant; upon laying out such highway, or in adding to the width of a former private way or road, they shall make and sign an order describing the same and file the same with the town clerk together with their award of damages, which order shall be recorded by said clerk; provided, that the amount assessed as advantages to the applicant shall be paid to the town treasurer before the order laying out such highway shall be filed.

Note: The statute vests the town board with discretion to deny or grant an application to lay out a highway to premises excluded from highways. *Backhausen v. Mayer*, 204 W 286, 234 NW 904.

80.14 Highway from land into adjoining town. When any person shall own land that is shut out from all highways by being surrounded on all sides by real estate belonging to other persons, and on account of hills or other natural causes, it is impracticable to lay out a road from said land to a public highway in the town where said land is situated, and it is practicable to lay out a highway from said land to a highway in an adjoining town, said person shall execute an affidavit in duplicate and present one copy to the supervisors of the town where the said land is situated and one copy to the supervisors of the town where the said proposed highway is to be laid out, said affidavit setting forth the facts above stated, together with the facts required in the affidavit provided under section 80.13, then the supervisors of the two said towns shall proceed as provided under said section 80.13, except that all orders and notices shall be signed by the supervisors of both of said towns and all papers required to be filed shall be made in duplicate and filed with the clerk of each of the said towns; provided, that the amounts assessed as advantages to the applicant shall be paid to the town treasurer of the town where the land of the applicant is situated, before the order laying out such highway shall be filed, and all damages assessed shall be paid by the town where the land of the applicant is situated.

80.15 Highway to islands in Mississippi river. The owner of an island in the bottoms of the Mississippi river which is shut out from the bank of said river and from a highway by islands and sloughs and by the lands of others, and a right of way through the same cannot be purchased at a reasonable price, may present to the supervisors of the town an affidavit setting forth such facts and describing his land. The said supervisors shall then proceed according to the provisions of section 80.13 and the provisions of said section shall apply to proceedings under this section. The town shall not be liable for want of repair or for defects in any highway laid out pursuant to this section nor for any accident or injury thereon.

80.16 Shut off school buildings; how laid. Whenever a public school in any town is shut off from all public highways, the supervisors of the town shall lay out a highway to the site thereof. No application for such highway shall be necessary, but in every other respect the procedure for laying out an ordinary town highway shall be pursued. No highway shall be discontinued when the effect of such discontinuance shall be to exclude a public school from access to the public highways. Section 80.22 shall not apply to proceedings under this section.

80.17 Appeal to court. Any person aggrieved by any order laying out, altering, widening, or discontinuing any highway, or refusing so to do under the preceding provisions may, within thirty days after such determination, appeal therefrom to the county judge for the appointment of commissioners to review such order or determination. Failure of the supervisors to file their decision upon any application or petition to lay out, alter, widen or discontinue any highway within sixty days after the application is made shall be deemed a refusal of the application. Such appeal shall be in writing and shall briefly state the grounds upon which it is made, and whether it be made to reverse entirely such order or determination or only a part, and in the latter case it shall state what part; provided, that in case of highways upon a line between two or more counties such appeal may be made to the county judge of either county.

Note: Failure of a town board within sixty days after the filing of a petition for laying out a highway to take final action is a denial of the application, regardless of interim proceedings. *State ex rel. Thompson v. Egen*, 206 W 651, 238 NW 404, 240 NW 839.

80.18 Bonds; service of notice. Upon filing such appeal and a bond executed to the town or towns, or town, city or village, as the case may require, with sufficient sureties to be approved by the judge conditioned to pay all costs arising from such appeal, provided such order or determination appealed from shall not be reversed, such judge shall issue a notice specifying therein a time and place for the appointment of commissioners which

shall be served on two or more of the supervisors of each town and on two or more commissioners of the city or village, in a proper case, at least six days before such time.

80.19 Commissioners, how selected. (1) At the time and place named and upon proof of service of such notice the judge shall make a list of eighteen disinterested resident freeholders of the county, and each party may strike six names from the list, and from the names not struck off the judge shall by lot select three as such commissioners; and shall thereupon annex to the appeal a warrant under his hand, directed to the persons so selected, requiring them to appear personally at a time and place fixed therein, not more than ten days from the date thereof, and directing them to view and examine the highway described, and review the order or determination appealed from, and make return of their decision thereon to the town, city or village clerk within twenty days after the date thereof.

(2) Such warrant shall be served at least three days before the time fixed therein for their meeting by reading the same to each of said commissioners and delivering it to one of them. If for any reason any of said commissioners shall fail or decline to act, the judge shall, on receiving notice of such failure or declination, by lot and without notice to either party, select from the names not struck off or drawn from said list commissioners to fill the vacancies in the commission.

(3) In case said list is exhausted before three commissioners who can and will act are obtained, the judge shall, without notice to either party, summon in the manner provided in section 302.10 a sufficient number of persons having the qualifications above required to complete the commission.

(4) Whenever a new commissioner is so drawn or summoned the time for the commissioners to appear, view and examine the highway may be enlarged by the appointing officer, not exceeding ten days, and the time for making return of their decision, not more than twenty days from the date of filling such vacancy. Any commissioner may be excused from acting by the judge for good cause; and, if any commissioner, after due service upon him of the warrant and not so excused, shall, without good cause, refuse to act, he shall forfeit ten dollars, and shall also be liable to the party having the costs of the appeal to pay for the additional costs made in consequence of such refusal.

80.20 Commissioners; fees; papers where filed. Before proceeding to act under said warrant said commissioners shall be duly sworn justly and impartially to discharge their duties as such commissioners; they shall meet at the time and place mentioned in such warrant and proceed to examine such highway; they shall hear the parties interested therein and any proofs offered by them; their decision shall be reduced to writing, signed by them, annexed to the warrant, and, together with the same, be filed with the town, city or village clerk, as the case may require, within the time directed in such warrant. Each commissioner shall receive one dollar per day and ten cents per mile for his actual travel and the judge two dollars for his fees, to be paid by the party appealing; and if the order or determination appealed from be reversed he shall be reimbursed such expenses by the town, city or village, or if it be a town line road the same shall be reimbursed equally by such towns or by the town and city or village. The judge shall cause to be filed with the town clerk all the other papers and proceedings relating to such appeal, duly certified by him. If such highway be on a line between two towns or between a town, city or village they shall make a duplicate of their decision with a copy of the warrant and application annexed, which shall be filed with the town clerk of the other town or of the city or village as the case may be.

80.21 Proceedings on reversal. When an appeal has been taken from an order or determination refusing to lay out, widen, alter or discontinue a highway, and such determination shall be reversed, the commissioners shall make and file the order and agreements and awards, which in the judgment of the commissioners should have been made by the highway authorities whose order or determination has been appealed from.

80.22 Determination final for a year unless appealed. The determination refusing to lay out, alter, widen or discontinue any highway shall be final, unless appealed from, for the term of one year after the making of such determination; and no other application for laying out, widening, altering or discontinuing any such highway shall be acted upon within said term of one year.

80.23 Removal of fences; notice. (1) Whenever the highway authorities shall have laid out, widened or altered any public highway through any inclosed, cultivated or improved lands and their determination shall not have been appealed from they shall give the owner or occupant of such lands notice in writing to remove his fences within such time as they shall deem reasonable, not less than thirty days after giving such notice; and if such owner or occupant shall not remove his fences within the time required in such notice the supervisors shall cause such fence to be removed and shall direct such road to be opened; but if the determination of the supervisors shall have been appealed from then such notice shall be given after the final decision of such appeal.

(2) This section does not authorize the opening of a highway through such lands or the removal of fences between the fifteenth day of May and the fifteenth day of September, except in cases of emergency to be determined by the highway authorities having jurisdiction in the matter.

80.24 Appeal from award of damages. (1) If any owner of lands through which a highway shall be laid out, widened, altered or discontinued shall not be satisfied with the sum awarded to him for damages he may, within forty days after the filing of the award of damages in the proper office or offices, and if within said forty days an appeal shall have been taken from the order laying out, widening, altering or discontinuing such highway, within forty days after the final order on such appeal, affirming the same, appeal to county judge of the county for a jury to assess and appraise such damages; such application shall be made in writing, describing the premises, and any number of persons claiming damages on account of such highway may join in such application. The party appealing shall serve on two of the supervisors of the town in which such highway shall be laid out, widened, altered or discontinued, or upon two or more of the supervisors or commissioners of the town, city or village to which shall have been assigned the duty of paying the damages for such land, at least six days before the time fixed for making such application, a notice in writing specifying therein the name of the judge to whom and the time and place when and where such application will be made.

(2) If more than one appeal be taken from the award of damages on account of any highway, said appeals shall be consolidated by the county judge, and only one jury shall be drawn or impaneled to reassess such damages.

80.25 Taxpayer may appeal; service of notice. Any taxpayer of a town or other municipality in which a highway shall be laid out, altered or discontinued or any part thereof is situate, and which is required to pay the damages resulting therefrom, may appeal within forty days after the award or agreement determining such damages shall have been filed with the town, city or village clerk, to the county judge for a jury to assess the damages sustained by any and all the persons to whom damages were awarded or are to be paid upon agreement. Such appeal shall be in writing, describing the premises and naming the persons to whom damages were awarded and are to be paid, and the amount awarded to each, and shall specify the particular award from which he appeals in case he does not appeal from all. The appellant shall serve, in the manner provided by section 80.05, upon two of the supervisors of the town to which shall have been assigned the duty of paying such damages and upon the persons whose awards are appealed from, at least six days before the time fixed for making application, a notice in writing specifying therein the name of the judge to whom and the time and place when and where the appellant will apply for the selection of such jury.

80.26 Appeal bond. The appellant shall execute to the proper town, city or village and file with the judge a bond with one or more sureties to be approved by such judge. In case the appeal is by a landowner, the bond shall be conditioned to pay all costs arising from such appeal if the jury shall not award him an increase of damages. In case of an appeal by a taxpayer as such, the bond shall be conditioned that the appellant shall pay all costs arising from such appeal if the amount of damages in the aggregate of the items appealed from shall not be diminished upon the appeal.

80.27 Selection of jury; penalty for refusal to serve. Upon filing such bond and notice, with proof of service thereof, such judge shall make out a list of fifteen disinterested resident freeholders of his county, not of kin to the owner or occupant of said lands; each party shall strike five from such list, and if none of the proper supervisors or commissioners or other appellee shall be present, the judge shall strike off the five names for them, and the judge shall thereupon issue an order to the sheriff or some constable of his county to summon the five persons named in such list and not stricken off to meet at a time and place to be specified in such order to appraise the damages, the award of which has been appealed from. In case any juror fails to appear at the time and place fixed for their meeting another juror shall be summoned in his place in the manner provided by section 302.10. Any juror may be excused for good cause, and if any juror has been duly summoned and not so excused shall fail to serve he shall forfeit not to exceed ten dollars, and shall be liable to the party having the costs of the appeal to pay for additional costs made in subsequence of such failure.

80.28 Proceedings before jury; costs. The jury shall be sworn by the judge justly and impartially to make such appraisal, and shall proceed to view such highway, and hear the statements and proofs of the parties, and such jury may increase or diminish the amount awarded, and they shall make return of their appraisal to the judge signed by them; and in case of appeal by a landowner if the jury shall increase the award the costs and expenses shall be paid by the proper town, city or village; but if the jury shall not increase the award the costs and expenses shall be paid by the appellant, and in case of an appeal by a taxpayer if the award appealed from is diminished the costs and expenses

shall be paid by the town, city or village, otherwise by the appellant. In case of cross appeals if the damages involved therein are unchanged each appellant shall pay half of said costs and expenses. If the jury shall fail to agree and be discharged by the judge for that reason he shall immediately proceed to make another list of such freeholders, and further proceedings shall be had thereon in all respects as in the case of a first jury. When the jury shall have made a return of their appraisal to the judge he shall adjust the costs and expenses of such proceedings, and within ten days thereafter return such appraisal to the town clerk, together with all the other papers relating to such appeal, a statement of the proceedings had before him, and of the cost and expenses in detail, duly certified by him, which shall be forthwith filed by the clerk; and if two towns or a town and city or village be interested he shall make and file a certified copy of the appraisal papers and statements with the clerk of such other town, city or village.

80.29 Appeal costs; judges' and jurors' fees. Each juror shall receive three dollars for his services and ten cents a mile for his actual and necessary travel in going to and returning from the place of meeting, and the judge shall receive five dollars for his fees and ten cents a mile for his actual travel; all payable in advance by the party appealing, and to be a charge against the party finally liable for the costs.

80.30 Highway damages; when payable, referendum to town meeting. (1) All damages lawfully awarded to any person for laying out, widening or altering any highway shall be a charge against the town, city or village, assigned to pay the same in the manner hereinbefore provided, at any time after the highway shall have been opened by lawful order and not before, and shall then be audited and paid or sued for and collected in the same manner as other debts of the town, city or village. No liability for such damages shall exist for any highway discontinued before being opened.

(2) But when the total amount of damages chargeable to one town, consequent upon any one order for laying out, widening or altering a highway, shall be more than one-tenth of one per cent on the taxable property of the town, as shown by the last assessment, and shall also exceed the sum of two thousand dollars, such highway shall not be opened, widened or altered nor liability for damages exist, unless such order and the award of damages be approved, and such highway be accepted by a majority of the qualified electors of the town liable to such damages voting thereon at the next annual town meeting or some special town meeting sooner called therefor.

(3) All costs and fees for which any town, city or village is liable under this chapter shall be audited and paid and may be sued for and collected as other debts against such town, city or village.

(4) When any order shall be given pursuant to this section and there shall be no available money in the treasury to pay the same, the clerk of the municipality shall place the same on the next tax roll with interest thereon from the date of such municipal order in the same manner as a tax to pay a judgment, and the same shall be in like manner collected and paid to the party entitled thereto.

(5) When any such damages shall be awarded, pursuant to an order for the laying out, widening or altering of a highway, lying wholly within a town whose population shall be eight thousand persons, or over, or which shall lie wholly within a county having a population of three hundred thousand persons, or over, according to the last United States census, it shall not be necessary that such order or award be approved or the highway accepted by said electors, but the same shall be valid without such approval or acceptance.

80.31 Unclaimed awards; mortgage and lien interests. (1) If the damages awarded to an owner of land shall not be claimed by him within one year after the same becomes payable such damages shall be paid and delivered by the town, city or village treasurer to the treasurer of the county, and he shall give duplicate receipts therefor, one to be filed by such paying treasurer and the other immediately mailed by him to the state treasurer.

(2) Any money so paid to the county treasurer which shall remain unclaimed by the person entitled thereto for five years after receipt thereof, shall escheat to the state and shall thereupon be paid by the county treasurer to the state treasurer.

(3) In case any lands taken by contract or condemnation for highway purposes shall be incumbered, and the owners of the fee and of the incumbrance shall not agree upon the division to be made between them of any damages to be paid on account of such taking, said damages may be paid to the clerk of the circuit court of the county, and when so paid may be apportioned among the parties entitled thereto by said court upon the application of any party interested upon not less than five days' written notice to the other party.

80.32 Discontinuance of highways; reversion of title. (1) Any unrecorded road or any part thereof which has become or is in the process of becoming a public highway by user in any town may be discontinued in the manner hereinbefore provided. Any proceedings taken therefor shall not be evidence of the acceptance at any time by the town of such road or any part thereof.

(2) Every highway shall cease to be a public highway at the expiration of four years from the time it was laid out, except such parts thereof as shall have been opened, traveled or worked within such time, and any highway which shall have been entirely abandoned as a route of travel, and on which no highway funds have been expended for five years, shall be considered discontinued.

(3) When any highway shall be discontinued the same shall belong to the owner or owners of the adjoining lands; if it shall be located between the lands of different owners it shall be annexed to the lots to which it originally belonged if that can be ascertained; if not it shall be equally divided between the owners of the lands on each side thereof.

(4) Whenever any public highway or public ground has been vacated or discontinued the easements and rights incidental thereto acquired by or belonging to any county, town, village or city or to any utility or person in any underground structures, improvements or services and all rights of entrance, maintenance, construction and repair of the same shall continue, unless expressly mentioned as to be vacated in the vacation proceedings or discontinued by failure to use the same for a period of four years from the time that the public highway or public ground was vacated or discontinued. [1937 c. 216; 1939 c. 209]

Note: Abandonment of highway by virtue of statute can occur only when it has been entirely abandoned as route of travel and when no highway funds have been expended on it for five years. *State v. Maresch*, 225 W 225, 273 NW 225.

A bridge on a discontinued highway belongs to the adjoining landowners. *Carpenter v. Town of Spring Green*, 231 W 72, 285 NW 409.

80.33 Highway papers, where filed. All applications, orders, awards, bonds and other papers relating to the laying out, altering, widening or discontinuing of highways shall be promptly filed in the office of the town, city or village clerk, except as otherwise specifically provided in this chapter.

80.34 Highway orders; presumptions; limitation of actions. (1) Every order of the supervisors or the supervisors and commissioners or of the county board or a committee thereof laying out, widening, altering or discontinuing any highway, or restoring the records thereof, and the order of any commissioners reversing or affirming the same on appeal, and the record or certified copy thereof shall be presumptive evidence of the facts therein stated and of the regularity of all the proceedings prior to the making of such order.

(2) The validity of any such order if fair on its face shall not be open to collateral attack, but may be tested by certiorari or other proper action or proceeding brought directly for that purpose at any time within three months after such order is made but not thereafter. This subsection shall not apply to orders made prior to its enactment.

Note: Action of a town board after acquiring jurisdiction by the filing of a petition for laying out a highway, however irregular and erroneous, is not void; and where the board entertains such a petition within one year after denying a former petition, notwithstanding 80.22 prohibiting it, and proceedings on appeal eventuate in an order by commissioners, fair upon its face, laying out the highway, the order can never be attacked after three months. [*Roehrborn v. Ladysmith*, 175 Wis. 394, 185 NW 170, so

far as in conflict overruled.] *State ex rel. Thompson v. Eggen*, 206 W 651, 238 NW 404, 240 NW 839.

A return filed before motion to quash the writ of certiorari must be taken as a verity and the matter involved decided on the assumption that the facts stated in the return are true. A landowner cannot reach by certiorari questions as to defects, not disclosed by the return to the writ, in the proceedings to lay out a town road. *State ex rel. Paulson v. Town Board*, 230 W 76, 283 NW 360.

80.35 Oaths. The several supervisors and commissioners authorized to lay out highways are authorized to administer and certify to any oaths or affidavits required by the provisions of this chapter.

80.36 Temporary highways; how laid; expense and liability. (1) Whenever the owner of any timbered land, or the owner of any logs or other movable property which have drifted over and lodged upon any island within any waters of this state, or upon the shore or bank of any such waters or upon any lands adjacent to such shore or bank, shall present to the supervisors of the proper town a written petition for the laying out of a temporary highway to give him access to such land, or, as the case may be, to such logs and other movable property, or access therefrom to a stream, or railroad, or permanent highway, and describe in such petition such timbered land, or as the case may be, the location of the logs or other movable property owned by him and also the land over which he desires such temporary highway laid, such supervisors shall proceed to lay out such highway in the manner in which public highways are laid out except as otherwise provided in this section.

(2) Such supervisors shall thereupon view the premises described, or the location of the logs and other movable property, as the case may require, and determine the necessity for laying out such highway for the purpose of removing saw logs, timber, lumber, or other movable property from the land, or from the location described in the petition, and

the length of time such highway will be required, which time shall be stated in their order, and at the expiration thereof the highway shall cease.

(3) Such highways shall be public highways and all the expense of laying them out, including all damages which may be awarded on account of taking land therefor, shall be paid to the supervisors by such petitioner, and shall be by them paid to the person or persons in whose favor the award or awards were made. Upon such payment being made the petitioner may enter upon, open and work such highway at his own expense and construct logging railroads thereon, subject to such restrictions and regulations as shall be made in writing by the supervisors, but no tree shall be cut thereon except such as it shall be necessary to remove to make a track or tracks. The petitioner for such highway shall be liable in damages for any injury resulting to persons or property on account of defects therein in the manner and to the extent that towns are liable for injuries caused by defective highways; and such liability shall follow the ownership of the lands or movable property for the benefit of which the highway was laid, and the town in which it was situated shall not be liable on account thereof.

80.37 Lost records; how restored; effect of thereof. Whenever the record of the laying out of any highway has been or shall be lost or destroyed the supervisors of the town in which such highway is situated may make a new record thereof by a written order, which shall be entered on the town records. Whenever the supervisors shall contemplate making such new record they shall make a notice and fix therein a time and place at which they will meet and decide upon the same, which notice shall specify as near as may be the highway as to which they propose to make such record. Such notice shall be served and posted in the manner provided by section 80.05; but notice need not be given to such persons as waive the same or consent to the making of the order either before or after it is entered. The supervisors shall meet pursuant to the notice given and hear any arguments or evidence that may be offered for or against the proposed new record, and thereupon decide as they deem proper. They may adjourn from time to time, and an entry of each adjournment shall be made in the record by the town clerk. If they find that the highway is a legal one the record whereof is lost or destroyed, they shall make an order determining such facts and specifying the course, width and other pertinent description of the highway, and such order shall be filed and recorded in the office of the town clerk, who shall note the time of recording it in the record. Any number of highways may be included in one such notice or order, and a failure or refusal to make a new record for any highway shall not preclude a subsequent proceeding for that purpose. Any person through whose land such highway shall pass may appeal from such order on the ground that the highway described therein was not theretofore a legal highway in fact in the time and manner provided for appealing from orders laying out highways, and like proceedings, as near as may be, shall be had thereon as in case of appeals from such orders. The regularity of such proceedings shall not be called in question by any person except owners of land on whom such notice should have been served but on whom it was not in fact served, and persons claiming under such owners.

80.38 Changing streets into highways. The town board of any town within which may be situated any village or other plat duly certified and recorded and not included within the limits of any incorporated village, may make an order to be recorded by the town clerk declaring such streets and alleys in such village or other plat as they may deem necessary for the public use to be public highways, without any other survey or description than that made in such recorded plat; provided, that when any six or more freeholders residing within the limits of such village or other plat shall wish any street or streets in such plat to be so declared public highways and opened to public use, such freeholders may apply to the town board of the town for that purpose in the manner provided in section 80.02, upon which application such town board shall make and file an order, within ten days, declaring such streets to be public highways or refusing so to do; and in either case any person considering himself aggrieved by such order may appeal to the circuit court for the same county by filing with the town clerk of such town a notice of appeal, specifying the grounds of appeal, within twenty days from the filing of the aforesaid order, together with a written undertaking of the appellant, with one or more sufficient sureties, to be approved by said town clerk for the payment of all costs that may be awarded against the appellant, and paying to such clerk one dollar for state tax and one dollar for making return to the appeal. Within twenty days thereafter such town clerk shall deliver to the clerk of the circuit court of the same county all the papers in the case, together with the notice of appeal, with the date of service indorsed thereon, and pay to him one dollar state tax; whereupon such clerk of the circuit court shall enter an action in his court record in which the appellant shall be plaintiff and the town shall be defendant. The issues as shown by the papers and the appeal aforesaid shall be tried without further pleading, the same as in personal actions in such circuit court, and judg-

ment rendered and enforced as in other actions in which persons and municipal corporations are parties.

80.39 County boards' powers. The county board of supervisors are authorized to lay out highways in their county, and to widen, alter or discontinue state roads and any highway or part thereof laid out by such board (but not to discontinue any state road or part thereof unless such road is wholly within their county), upon the petition of not less than ten resident freeholders of each town in which such highway or any part thereof shall be proposed to be laid out, or from each town in which the part of such road or highway proposed to be widened, altered or discontinued shall be. All the powers herein mentioned may be exercised by a committee of not less than three members of the board duly appointed for that purpose. The county board may, in any case, adopt as a part of any such highway any highway or part thereof previously laid by town supervisors. And whenever the supervisors of adjoining towns in different counties cannot agree in laying out a continuous highway extending from one town to the other and the supervisors of one town shall lay out a road up to the line of such adjoining town, the county board of the county in which such latter town lies may, upon like petition, lay out such road in continuation as the public interests may require.

80.40 Notice. Upon receiving any such petition the county board or the commissioners appointed by the board shall give notice of the time and place when they will meet to decide thereon, which notice shall be published in some newspaper published in the county for at least three weeks previous to the time so fixed, and in case there be no newspaper so published, by posting such notice in at least three public places in each of such towns at least three weeks before the time so fixed; and if such board shall appoint a committee to act for them such notice shall state the fact and the notices shall be signed by such committee, otherwise by the chairman of the board.

Note: See 281.04, requiring applicant for change in highway to file his pendants.

80.41 Proceedings; hearing; orders; filing; appeals. At the time and place mentioned in such notice and upon proof by affidavit of the publication or posting thereof said board or its duly appointed committee shall proceed personally to examine such highway and hear any reasons that may be offered by parties interested therein, and for that purpose may adjourn, as town supervisors are authorized to do in similar cases; if a committee have been appointed they shall report their determination to the board and their award of damages for lands taken. Upon the receipt of such report or, when the board shall act without a committee, upon their determination, they shall make an order laying out, altering, widening or discontinuing such highway or refusing so to do, which shall be signed by the chairman and county clerk and filed and recorded in the county clerk's office. When they shall lay out, alter, widen or discontinue a highway they shall incorporate in the order a description thereof and may cause, when necessary, an accurate survey to be made for that purpose, and shall also cause a copy of such order to be filed in the office of the town clerk of each town in which any part of the highway laid out, altered, widened or discontinued lies within ten days after the making of such order. And any person who shall consider himself aggrieved by such determination refusing to lay out, alter, widen or discontinue such highway may appeal therefrom in the same manner and subsequent proceedings shall be had thereon the same as provided by preceding sections of this chapter in cases where the town board of supervisors refuse to lay out, alter, widen or discontinue any highway.

80.42 Damages, how fixed and paid; filing award. The damages sustained by any person through whose land any such highway shall be laid out, altered, discontinued or widened may be ascertained by agreement between said county board or its committee and such owner. Every such agreement shall be in writing signed by such owner and the chairman of the board or its committee and filed in the office of the county clerk, and shall bar such owner and all persons claiming under him from all further claim for damages. In case of failure to agree upon such damages the same shall be assessed by said county board or by its committee, and the award shall be filed in like manner. The damages assessed for any parcel of land so taken or affected by the discontinuance of such highway shall be paid by the town in which the same is situated or by such town and any other town or towns in such proportion as the county board shall direct at the time of making the order laying out, altering, discontinuing or widening such highway if such board shall deem any other town or towns benefited thereby. The county clerk shall make and file a copy of every agreement for damages and of the assessment therefor with the town clerk of each town liable for the payment of the same or any portion thereof within ten days after making the order laying out, altering, discontinuing or widening such highway.

80.43 Appeal; vote before liability attaches. Appeals from such award of damages may be taken, heard and conducted in all respects as appeals taken from similar awards by town supervisors; but whenever the total amount of damages chargeable to any one town in consequence of any such order affecting a county road shall be fifteen hundred

dollars or more such road shall not be opened, widened, discontinued or altered unless such order be approved and such highway or the discontinuance thereof be accepted by a majority of the electors of the town liable for such damages voting thereon at the next annual or some special town meeting called therefor. Every town chargeable with such damages or any part thereof shall be liable for their payment, and the same shall be collected and paid as provided in section 80.30.

80.44 Compensation to county board members. For all services performed in laying out, widening, altering or discontinuing any highway every member of the county board or of its committee shall receive the same per diem and mileage as is allowed them by sections 59.03 and 59.06.

80.45 Highway, how opened. Highways so laid out by county boards shall be opened and repaired in the respective towns in the same manner as other highways; but if the town board neglect or refuse to open any such highway the county board shall have the same power to open the same that such town board has by law.

80.46 Control of highways laid by county. The county board may at any time cause the whole or any part of any county road built or completed or laid out and recorded by the county to revert to the sole control of the town, city or village in which the same may be situated, by filing with the clerk thereof a written or printed notice that such road or part of road (designating the same) will so revert at the time specified therein, which shall not be less than thirty days. At and after the time so fixed such road or part of road shall be under the sole control of the proper officers of the town, city or village and shall be by them kept in good repair, and, if deemed necessary, the proper town board, village board or common council may annually levy a special tax sufficient for that purpose, and the proper officers of any such town, village or city may alter or discontinue such highway the same as though it had originally been laid out by them.

80.47 Rights of abutting owners. The owners of any real estate abutting on any highway, street or alley heretofore or hereafter laid out or used as such shall have a common right in the free and unobstructed use of such highway, street or alley to the extent of its full width, and no town, city, county, company or corporation shall close up, use or obstruct any such highway, street or alley or any part thereof so as to materially interfere with its usefulness as a highway or so as to injure or damage property abutting thereon on either side, or authorize or permit the same to be done without due compensation being made for any damage resulting therefrom to the owners of any property upon both sides of the part of such highway, street or alley so closed up, used or obstructed; provided, however, that this section shall not be construed to impose liability for damages to property on both sides of any street, highway or alley arising from the continued use, maintenance and operation of any railroad track or tracks or other public improvement heretofore legally laid down, built or established in any street, highway or alley. All rights of property which would entitle the owners thereof to damages for injury thereto under the foregoing provisions may be condemned and permanently appropriated by any corporation authorized to use or obstruct any highway, street or alley in the same manner that other property may be condemned and appropriated by such corporation pursuant to its charter or under the laws relating to the condemnation of land by railroad companies; but nothing herein shall be construed to repeal any statute authorizing the vacation or discontinuance of streets, avenues, lanes, alleys or highways by municipal or town authorities.

Note: City constructing shelter for entrance to pedestrian subway across street may be liable to abutting property owners for consequential damages in so far as shelter will obstruct street. *Randall v. Milwaukee*, 212 W 374, 249 NW 73.

80.48 Highways and streets to cemeteries and fairgrounds. (1) PETITION FOR. Whenever any cemetery or agricultural or industrial association owning land in any city, village or town shall file a petition signed by the managing officers, board of trustees or directors thereof with the clerk of such city, village or town, setting forth that it owns land therein (and describing it), which land is used or intended to be used by such cemetery association for the burial of the dead or by such other association for fairgrounds or industrial expositions, that there is no laid out street or highway giving access thereto and praying that such city, village or town lay out a street or highway thereto from the nearest street or highway which can be used as a convenient means of approach, the common council, trustees or supervisors so petitioned shall make out a notice which shall be served on the owner or occupant of the land through which the proposed street or highway is to be laid and posted in the manner provided in section 80.05, and which shall contain a copy of such petition and state the time when and place where such council, trustees or supervisors will meet to take action upon said petition, which time shall be within ten days after such notice is served. If the proper council, trustees or supervisors shall find the recitals in the petition to be true they shall, within five days after the meeting to take

action thereon, make an order for the impaneling of a jury to pass upon the necessity of taking for the public use the land through which the proposed street or highway is to be laid.

(2) **DEPOSIT OF FUNDS; NOTICE OF HEARING.** Such order shall require the petitioners to deposit with the treasurer of the proper municipality such sum as the authorities who made it deem necessary to pay the costs and expenses of such proceedings, and no further action shall be had on such petition until such deposit is made; when it is made the common council, trustees or supervisors shall make a further order fixing the time when (not less than ten days thereafter) and place where a jury will be impaneled to pass upon the necessity for taking such land. Notice of such time and place shall be served upon the occupants of such land, if any there be, in the manner provided in section 80.05 not less than six days before the time so fixed; if any portion of such land shall not be actually occupied such notice, which shall contain a description, as near as may be, of the premises to be taken, shall be published in some newspaper of general circulation in such city, village or town, to be designated in the order, for at least once in each week for three weeks successively, and shall state that at the time and place therein named a jury will be impaneled for the purpose of passing upon the necessity for taking for the public use the land described therein.

(3) **JURORS.** At the time and place specified in such notice the county judge of the county, the municipal judge of the city, the president of the village or the chairman of the town in which the land sought to be taken lies shall issue his precept directed to the sheriff of such county or to any constable, naming him, which precept shall direct such officer to write the names of thirty-six freeholders of said county who are qualified to serve as jurors in the circuit court and to return the same to him. After being sworn to perform the duties required of him to the best of his ability, without partiality, such officer shall immediately write such names and deliver the list thereof to the officer who issued the precept; and from such list each party, in person or by an agent or attorney, commencing with the petitioner, shall strike out alternately, twelve names, and if either party is absent or refuses to strike out, the officer who issued the precept shall appoint some person to strike twelve names for such absent person. Such officer shall then issue a venire requiring the officer who served the precept to summon the twelve men whose names remain on said list to appear at the time and place mentioned therein for the purpose of determining the necessity of taking for the public use the land described in the petition; if any of the persons summoned fail to attend others may be drawn in the same mode to fill the vacancy, and for that purpose the proceedings may be adjourned from time to time. When twelve persons are thus secured they shall be sworn by the officer who issued the precept to faithfully and impartially discharge the duties imposed upon them, which oath shall be filed with the city, village or town clerk.

(4) **FINDING AS TO NECESSITY OF TAKING; DAMAGES.** After such jurors are sworn the said county or municipal judge, president or chairman shall issue his precept directed to them and requiring that within ten days they shall view the land specified therein and make return to him under their hands as to whether it is necessary to take it for public use as described in the petition; the jurors shall, at a time to be fixed by them, view said premises; the parties interested shall have notice of such time and may offer any evidence pertinent to the inquiry; after taking such view and hearing the evidence the jury shall determine whether a necessity exists for taking the land and shall return their verdict to the officer who issued such precept. On the receipt thereof such officer shall, as soon as may be, submit the same to the council, trustees or supervisors, and for that purpose may call a meeting of either body and deliver such verdict to them; the body to which it is so delivered shall, if in their judgment the public good requires it, immediately make an order laying out a street or highway from the nearest street or highway which can be used as a convenient means of approach to such cemetery, fairground or land used for industrial expositions, which street or highway so laid shall not be less than three nor more than four rods in width, and in said order they shall appoint three disinterested freeholders of the county as commissioners who shall, after notice to the owners or occupants of said land and after being sworn to support the constitution of the United States and the constitution of this state and faithfully discharge their duties to the best of their ability, assess adequate damages to the owners of the land through which such street or highway is laid. The award of damages shall be signed by the commissioners and be returned to the city, village or town clerk.

(5) **OPENING HIGHWAY.** The street commissioner of such city or village or the superintendent of highways of such town, after the order laying out such street or highway has been filed with the city, village or town clerk, shall forthwith open the street or highway so laid, provided that the petitioner shall have paid to the city, village or town treasurer the damages awarded.

(6) **APPEAL; COSTS.** If any person through whose land such street or highway is laid or the petitioner shall be dissatisfied with the damages awarded either may appeal to the

circuit court of the county in which the land is situated by serving a notice of appeal and undertaking upon the opposite party, with at least two sureties, conditioned for the payment of all costs and damages which may be incurred if the appellant shall not succeed; such notice and undertaking shall be filed with the city, village or town clerk, who shall be entitled to receive two dollars for his fees in making return to the clerk of the circuit court as hereinafter required; provided, that such appeal shall not impair the right of the public to use such street or highway for the purpose of travel. Within ten days after such papers are filed and such payment made the clerk with whom they are filed shall transmit the papers pertaining to the subject matter of the appeal to the clerk of the circuit court, who shall file them in his office, and upon such filing the appeal shall be considered an action pending in such court, subject to a change of the place of trial and an appeal to the supreme court as in other actions. The appeal shall be entered upon the records by making the party who took it plaintiff and the other party defendant; it shall be tried by a jury unless such mode of trial is waived, and costs shall be allowed the successful party, and if he shall be the landowner shall be added to the judgment, and if he shall be petitioner be deducted therefrom.

(7) **ACCESS TO CEMETERY PRESERVED.** In all cases where the paving, improvement, change of grade or any other change in the condition of any street or highway in this state shall operate to cut off, impede or obstruct the access or approach from such highway to a cemetery, it shall be the duty of the local or state authorities in charge of such paving, improvement or change to include in such work provisions for and to effect such grading and improvement of the access and approach to such cemetery as shall be necessary to preserve such access or approach in an equal degree of usability. And whenever in any city, village or town such paving, improvement or change of grade or condition heretofore made has operated so as to cut off, impede or obstruct the access or approach from such highway to a cemetery, it shall be the duty of the council or board of such city, village or town upon the request of any person to restore such access or approach to its former condition of usefulness, and to provide for such work in the same way that street or highway improvements are provided.

80.49 Petition for special highway district. Whenever in any county the adult owners of more than one-half of the lands within any district in the county desire to lay out and construct a system of connecting highways in such district for the promotion of the general welfare by opening up unsettled lands for settlement or by making settled lands accessible, such owners may file in the circuit court of such county a petition setting forth:

- (1) The necessity for laying out and constructing the proposed system of connecting highways;
- (2) The boundaries of the proposed highway district and the location of the proposed highways therein;
- (3) A name for the proposed highway district;
- (4) The names of the owners of the lands within the proposed highway district so far as known;
- (5) The name of the persons who caused the preliminary survey to be made and an itemized statement of the cost of said survey;
- (6) The probable cost of constructing the proposed system of connecting highways which shall not exceed one thousand two hundred dollars per mile;
- (7) The probable distribution of benefits among the several parts of the district;
- (8) A prayer for the organization of such highway district by the name and with the boundaries and plans proposed, and for the appointment of commissioners for the execution of the proposed work.

80.50 Time and place of hearing and notice thereof. (1) On such petition being filed, the court or judge thereof shall make an order fixing a time and place of hearing thereon and ordering notice.

(2) Such notice shall state (a) in what court said petition is filed, (b) state briefly the location of the proposed highways, (c) give the proposed boundaries of said district (or a general description of all of the lands in said proposed district), (d) give the name proposed for said highway district and (e) shall also state the time and place fixed by the court for the hearing on said petition.

80.51 Publication of notice; nonresident owners; service outside the state, petitioners need not be notified. (1) All notices required to be served under sections 80.49 to 80.62, unless otherwise therein specifically provided, shall be served by publishing such notice in at least one newspaper published in each county where any part of such district is situated once in each week for three successive weeks and by posting the same in three public places in each of the towns within which any part of the lands within such district are located.

(2) Whenever the required notice of any hearing under sections 80.49 to 80.62 has been served in the manner required by sections 262.08 and 262.09 on all interested parties at least twenty days before the time fixed for such hearing, such service shall be sufficient to give the court complete jurisdiction of all such interested parties and of all lands in the district without publication, posting or mailing or other service of such notice.

(3) If any owner of land within a district is a nonresident of the county in which the proposed district lies, the petition shall be accompanied by an affidavit (a) giving the name and post-office address of such nonresident owner if such are known, and (b) if not known, stating that upon diligent inquiry his name or post-office address (whichever may be the fact) cannot be ascertained. The petitioners shall mail a copy of such notice aforesaid to each nonresident owner and mortgagee whose name and post-office address is known, ten days before the day fixed for hearing on the petition.

(4) Personal service of such notice outside of the state of Wisconsin shall have the same effect as personal service in the state of Wisconsin.

(5) Failure to serve notice on any party or parties entitled thereto shall not defeat the jurisdiction of the court. Such party may, by a written waiver filed in court or by appearance, waive such notice or may be required to show cause why he should not be bound by the proceedings.

(6) Any notice required under sections 80.49 to 80.62 may be signed by the commissioners, or a majority of them, by a judge or court commissioner or by the clerk of the circuit court.

(7) In case of service of any notice or other paper the certificate of the public officer or the affidavit of any person who made the service, publication, posting or mailing, or who knows the facts, shall be sufficient proof thereof.

(8) It shall not be necessary to serve notice of hearing on the petition, upon any petitioner. All petitioners shall be deemed in court upon such hearing by virtue of their having signed the petition.

80.52 Hearing; adjournment; evidence; findings; judgment; costs. (1) On the day fixed for hearing on such petition all parties owning lands within said proposed district may appear and contest (a) the sufficiency of the petition, (b) the sufficiency of the signers of the petition, (c) the sufficiency of the notice, (d) the constitutionality of the law, (e) the jurisdiction of the court, specifying their objections to such jurisdiction, and (f) whether or not the general welfare will be promoted by the proposed work, and whether or not the benefits thereof will exceed the damages and costs of construction. The petitioners and contestants may, on the trial, offer any competent evidence in regard thereto. All notices of contest shall be in writing and shall clearly specify the grounds of contest. The court shall hear and determine whether or not the petition contains the signatures of the owners of more than one-half of the lands within the said proposed district and shall determine all questions of law arising on said contest.

(2) The affidavit of any three or more of the signers of said petition stating that they have examined it and are acquainted with the locality of said district and that said petition is signed by a sufficient number of adult owners of lands in said district, to satisfy section 80.49, may be taken by the court or judge as prima facie evidence of the facts therein stated.

(3) If the court, after hearing any and all competent evidence that may be offered for and against the said petition, shall find that the same has not been signed as herein required, or if the court find that the general welfare will not be promoted by the proposed work or that the benefits thereof will not exceed the damages and costs of construction, said petition shall be dismissed at the cost of the petitioners, and judgment shall be entered against said petitioners for the amount of said costs. If it shall appear that the petition has been so signed, and that the general welfare will be promoted by the proposed work and that the benefits thereof will exceed the damages and costs of construction, the court or judge shall so find, and order any necessary amendments thereto, and allow the actual cost of the preparation of the petition and other necessary papers. Upon such finding the court or judge thereof shall appoint the county highway commissioner, a member of the county highway committee and a resident owner of land in such district as commissioners. When the court shall appoint such commissioners said highway district shall be a fully organized highway district with the right to sue and be sued, together with all of the usual powers of a public corporation and in addition the power, subject to the approval of the court, to borrow the money necessary to do all work preliminary to the confirmation of the assessments of benefits hereinafter provided for. Highways thereafter laid out and constructed pursuant to the direction of said commissioners and in accordance with sections 80.49 to 80.62, inclusive, shall be and become highways of the municipality in which they are located and such municipality shall thereafter be charged with the duty of maintenance thereof.

80.53 Official oaths; organization; vacancies; compensation. (1) Before entering upon their duties such commissioners shall take and subscribe an oath to support the constitution of the United States and the constitution of the state of Wisconsin, to faithfully and impartially discharge their duties as such commissioners and to render a true account of their doings to the court by which they are appointed whenever required by law or by the order of the court. Said commissioners shall forthwith organize by electing one of their number chairman and one of their number secretary.

(2) The commissioners shall hold their office until the work in such highway district shall be completed.

(3) Vacancies in the commission may be filled by the presiding judge of the circuit court of the county having jurisdiction of the highway district as soon after the vacancy occurs as possible.

(4) The highway commissioners other than the county highway commissioner shall receive for their services four dollars per day and their actual reasonable expenses.

(5) They shall at all times be under the control and direction of the court or presiding judge. For failure to comply with any order or direction, they shall forfeit their compensation and be dealt with summarily as for contempt.

80.54 Duties and powers of commissioners; bids; contracts; final report. (1) As soon as may be after their organization, or within such time as the court may direct, said commissioners shall have all necessary surveys made of the proposed system of connecting highways, with maps, plans and other specifications. Such highways shall be laid out as nearly as may be practicable along section or quarter section lines but not along such lines which are at a distance of less than one mile from a parallel highway. Such highways shall be graded eighteen feet wide with the right of way cleared to a width of at least two rods.

(2) The commissioners may make such changes in the plans of the proposed system of connecting highways and in the boundaries of the proposed district as contained in the petition as are proper and feasible, but no such change in boundaries shall be made as to deprive the court of jurisdiction. If the owners of lands adjacent to the district petition to have their lands brought into the district such may be considered the same as original petitioners in making changes in boundaries.

(3) The commissioners may determine that the proposed highway shall be laid out and constructed in one year or that certain portions thereof shall be completed in successive years.

(4) The commissioners shall not be confined to the plans, boundaries or other work as proposed by the petitioners, but shall locate the district or highway, lay out and plan the same in such manner as to them shall seem best to promote the general welfare and to make the lands of the parties interested accessible with the least damage and greatest benefit to all lands affected thereby. Any plan proposed by the commissioners, may, on the application of any person interested, on the hearing hereinafter provided for, or on the application of the commissioners, be altered by the court, by written order, in such manner as shall appear to the court to be just. If the commissioners find that the proposed district as described in the petition will not embrace all of the lands that will be benefited by the proposed work or that it will include lands that will not be benefited and are not necessary to be included in said district for any purpose, they shall extend or contract the boundaries of the proposed district so as to include or exclude all such lands as the case may be. The boundaries adopted by them may, upon the hearing of their report as hereinafter provided, upon their application or that of any person interested, be altered by the court in such manner as shall appear to be just; provided, that the alteration of boundaries as aforesaid shall not have the effect of so far enlarging or contracting the proposed district as to render such petition void or dismissable.

(5) Upon the adoption of such surveys and such plans and specifications, the commissioners shall advertise for bids for laying out and constructing such system of connecting highways to be submitted not later than thirty days after the first advertisement. Such advertisements shall be published in a newspaper published or having general circulation in such district at least once in each week for three successive weeks. Upon the day appointed for receiving bids, the said commissioners shall meet and let, by contract, the laying out and construction of such highways to the lowest responsible bidder within the time and according to the surveys and plans and specifications adopted by them. Such contract shall by its terms become effective in the event that the court shall approve the action of said highway commissioners. The contract shall be executed in writing and shall be filed in the office of the county clerk. No contract shall be let under the provisions of this section for an amount exceeding one thousand two hundred dollars per mile for such proposed highways.

(6) Forthwith upon the letting of any such contract, the commissioners shall determine the total cost of laying out and constructing such proposed highways which shall in-

clude all incidental expenses, the reasonable cost of organizing said district, the costs of the proceeding, all probable damage to lands, a reasonable attorney fee for the petitioners and the amount of such contract, which shall be referred to as the "cost of construction." They shall apportion and assess two-thirds of the cost of construction against the several benefited parcels or tracts of land in such highway district, in proportion to the benefits which they determine will be caused by the proposed highway, by setting down opposite each parcel or tract of land the sum which they assess against the same.

(7) The commissioners shall make a detailed report to the court of their proceedings and recommendations under section 80.53 and this section. Such report shall be filed with the clerk of said court.

(8) Upon the filing of said report the court shall make and enter an order fixing the time and place when and where all persons interested may appear and remonstrate against the confirmation thereof. The clerk of said court shall cause notice of the time and place of such hearing to be given to all parties interested, which notice shall contain a brief description of the lands benefited and damages, together with the net damage awarded to the several parcels or tracts of land to which damages are awarded, and the sum in each case assessed for cost of construction against said several benefited parcels or tracts. Said notice shall be published in the manner provided in section 80.51.

80.55 Remonstrance; procedure. (1) Any owner of lands within said district may file a written remonstrance five or more days before the day set for hearing on said report and therein remonstrate against the whole or any part of the proposed work or any change of the boundaries. Such remonstrance shall be verified by affidavit and shall set forth the objections of the affiant, whether they go to the jurisdiction of the commissioners or the court, or whether they rest on any other fact, as that some lands are assessed too high or too low or improperly, or that lands are assessed which ought not to be assessed, or that lands should be assessed which are not assessed, or that damages allowed to any parcel or tract of land are excessive, or that the plans for said proposed work should be changed, or that the boundaries of said district should be altered so as to include or exclude certain lands, or any persons to whom damages are allowed may remonstrate because they are inadequate.

(2) The circuit court for said county or the presiding judge thereof may fix a time at any term of court or appoint a special term for hearing the remonstrants and, on demand of any person assessed for benefits or awarded damages, may frame issues in said matter, empanel a jury and take its verdict upon the trial of such issues (a) whether the amount of damages awarded by the commissioners to any land is excessive or whether the damage allowed to any remonstrant's land is inadequate and (b) whether the assessment of benefits to any remonstrant, demanding the review by a jury, is too high or too low and the jury may award and assess the same. All other issues arising on any remonstrance, except those of benefits and damages shall be tried by the court. If the court finds that the report requires modification the same may by order of the court be referred back to the commissioners, who may be required to modify it in any respect.

(3) In any case between the commissioners and any remonstrant, the court may award and apportion the costs. Costs awarded against the commissioners shall not go against them personally but shall be paid out of the funds realized from the assessments for the cost of construction.

(4) If the finding on any remonstrance of new parties who have been brought in since the making of the order pursuant to section 80.52 be against the validity of the proceedings, the same, unless the defect be cured, shall be dismissed as to such parties at the cost of the petitioners and judgment entered for costs in favor of such new parties.

(5) If there be no remonstrance, or if the finding be in favor of the validity of the proceedings, or after the report shall have been modified to conform to the findings, the court shall confirm the report and the order of confirmation shall be final and conclusive, the proposed work shall be established and authorized, the proposed assessments together with further amounts made necessary by the proceedings approved and confirmed and the commissioners shall be directed and empowered to proceed with the work of construction and do any and all things necessary in connection therewith, unless within thirty days an appeal be taken to the supreme court. Said order of confirmation may, at the same or at any subsequent term of said court, be revised, modified or changed, in whole or in part, on petition of the commissioners, after such notice as the court may require, to parties adversely interested. At any time prior to making the order confirming said report or thereafter the court may permit the commissioners to present and file a supplemental report, or amend their report, as to any matter which, pursuant to the provisions hereof, was or might have been included in the original report presented by them, and after reasonable notice given to all parties interested, in such manner as the court shall direct, the court may, upon the hearing in said matter make such order as the case may require.

80.56 Costs to or for remonstrant. In case the petition or proceedings are dismissed a judgment shall be entered against the petitioners and in favor of the contestants or commissioners for the costs, expenses and liabilities incurred in said proceedings, but for the benefit of those who have rendered services or advanced money in the prosecution of said proceedings, or have recovered costs on successful contests therein. Before any such judgment is entered, said contestants or commissioners shall file with the clerk of the circuit court in which said proceedings were instituted an itemized statement of such costs and expenses, duly verified, upon which an order shall issue requiring said petitioners to show cause before said court, at a time and place named, why judgment should not be entered against said petitioners for the amount of said costs and expenses. Notice of the hearing on said order to show cause shall be given to said petitioners, by mailing to each a copy thereof, to their last known post-office address, at least twenty days prior to the time set for hearing, and by publication of the same in one or more newspapers published in the county where the proceedings are pending, at least three successive weeks prior to the day set for such hearing. Said notice need not contain an itemized statement of said account, but shall refer to said account on file. All petitioners shall, among themselves, contribute to the payment of said judgment, in proportion to the number of acres of land they had within the boundaries of the proposed district at the time of filing of said petition.

80.57 Time for paying assessments. (1) At the time of the final confirmation of assessments the court may by such order fix the date or dates on which the assessments or annual instalments thereof for construction shall become due and such assessments or annual instalments thereof shall draw interest from the date of said order.

(2) Unless otherwise provided by said order, such assessment shall be payable into the county treasury at once. From the time of the entry of said order, and the filing of notice thereof with the register of deeds, assessments for construction and interest thereon shall be a lien upon the lands assessed until paid. Any owner of land assessed for construction, may at any time, before the said assessment is due, pay the amount of the assessment against his land or any tract thereof into the county treasury. Said payment shall relieve said lands from the lien of said assessment.

80.58 Notice to pay assessments; proceedings against delinquents. (1) In all cases after assessments for construction are confirmed by the court, the commissioners shall within twenty days after such confirmation give notice of the entry of the order of confirmation and of the time or times when and the place where the assessments or annual instalments thereof may be paid, by publication thereof for at least two successive weeks in one or more newspapers, published in the county where the proceedings are pending. A copy of such order shall be filed with the county treasurer.

(2) If the assessments or annual instalments against lands are not paid when due, the county treasurer shall certify the same to the clerk of the town, city, or village in which the delinquent lands are situated, as due and unpaid for such work, specifying after each parcel what amount thereof is due for principal and what amount thereof is due for interest, and such clerk shall enter the same in the tax roll of such town, city, or village next thereafter to be made against the land benefited, but in a separate column thereof, and the same shall be collected in the same manner in which state, county, and town taxes are collected.

(3) In case any town, city, or village clerk fails to place any valid assessment or annual instalment thereof certified to him on the tax roll against the land, assessed, such assessment or annual instalment thereof shall be placed upon the tax roll of said town, city, or village for the next year or any subsequent year after the error is discovered, against the lands assessed. In case said town, village, or city clerk assesses a wrong sum against any land, the same shall be corrected on the tax roll the next year or any subsequent year after the error is discovered.

80.59 Paid assessments to be turned into county treasury. Any town treasurer, village treasurer, or city treasurer who shall collect highway assessments or annual instalments thereof, pursuant to section 80.58, shall, on or before the last Tuesday of March each year, transmit the highway moneys so collected by him to the county treasurer.

80.60 Moneys credited to construction fund. Such highway assessments or annual instalments thereof paid into the county treasury shall be credited by the county treasurer to a separate special fund for the construction of such highways in such district in the county.

80.61 State contribution to fund. Within thirty days after the last Tuesday of March each year, the county treasurer shall submit a verified statement to the secretary of state showing the amount of money received and credited by him to itemized separate special funds for the construction of highways in highway districts in his county. Upon such statement the secretary of state shall issue his warrants upon the state treasurer for

the payment into such separate special funds of amounts equal to one-half of amount received from towns, villages or city treasurers and credited to such funds. Such amounts received by the county treasurer from the state shall be credited to the various separate special funds to which such amounts belong.

80.62 Payments for construction. Payments to cover the "cost of construction" of highways in any highway district shall be made upon verified statement of the chairman of the commissioners of such highway district showing the amount due. Such statements shall be filed with the county clerk who shall issue his warrant upon the county treasurer for the payment of the amounts due thereon. Such amounts shall be charged against the separate special fund to which the same pertain.

80.63 Highways; streets and alleys; curative provisions. (1) Any and every street, highway and alley, pier and slip, heretofore or hereafter dedicated or attempted and intended to be dedicated in any plat by any person, or laid out, altered, changed, vacated or discontinued, or attempted or intended to be laid out, altered, changed, vacated or discontinued by the authorities of any county, town, city or village in this state, shall be taken and held to have been lawfully so dedicated, laid out, altered, changed, vacated or discontinued, as the case may be, from and after the expiration of five years from the date of the deed, instrument, plat, order, resolution or other final proceeding had or taken to effectuate such purpose.

(2) No defect, irregularity, omission or informality in the execution of any plat or deed of dedication or in any proceedings, order or resolution on the part of the authorities of any county, town, city or village, whether formal or jurisdictional, for the purposes aforesaid, heretofore made or taken or hereafter to be made or taken, shall affect or invalidate such plat, deed, order or resolution or proceeding, after the expiration of five years from the date of such plat, deed, proceeding, order or resolution; provided, however, that the street or alley laid out, altered or changed by such defective, irregular or informal plat, deed, proceeding, order or resolution, shall be limited in length to the portion actually worked and used thereunder.

(3) Nothing contained in this section shall be taken to change existing requirements of law with reference to streets, alleys or ways by adverse possession or implied dedication.

80.64 County boards have park commission powers. (1) In every county in this state having a population of at least one hundred and fifty thousand, the county board, upon a vote of two-thirds of its members, may exercise the powers conferred by sections 80.39 and 80.40, without any petition therefor as therein prescribed; and shall proceed thereafter in that behalf as in cases of petition therefore duly made.

(2) The county board of all such counties is hereby authorized to exercise any and all corresponding powers conferred upon cities in the widening or improving and maintaining of state trunk or county trunk highways, however acquired, and the constructing or laying of water pipes, sewers, and all other public service facilities therein, and in the levying of special assessments and issuing of assessment certificates and special improvement bonds.

(3) The county board of any county in this state, where it is deemed that the general welfare will be promoted thereby, may establish for streets or highways widths in excess of those actually and presently in use, upon obtaining the approval of the governing body of the municipality in which each such street or highway, or part thereof, is located, and likewise may adopt plans showing the location and width proposed for any future street or highway. Such streets or highways or plans therefor shall be shown on a map prepared for that purpose and filed in the office of the register of deeds, and notice thereof shall be published in a newspaper of general circulation in the territory in which such streets or highways are located once each week for three successive weeks, and shall be posted in at least three public and conspicuous places along each such street or highway. Such notice need not contain legally accurate descriptions, but shall briefly set forth the action of the county board in language adequate to apprise the various property owners of the effect of such action. Thereafter the county board, upon like approval, publication and notice, may from time to time alter, supplement, or change the same, and such alterations, supplements or changes shall be similarly filed in the office of the register of deeds. The excess width for streets or highways actually and presently in use, or the right of way required for those planned as aforesaid need not immediately be acquired for highway purposes, but may be acquired at any time either in whole or in part by the county, or by the municipality in which it is located; provided, however, that no part shall be acquired in less than the full extent, in width, of the excess width to be made up of land on the same side of such highway, nor for less than the full distance, in length, of such excess width lying within the limits of contiguous land owned by the same owner; and provided, further, that any land so acquired, whether the excess width is acquired for the full length of the highway or not, shall at once become available for public highway purposes. The power to acquire such right of way or additional width of highway in por-

tions as provided herein may be exercised for the purpose of acquiring such land on advantageous terms to the municipality or county, whether by reason of availing itself of any favorable offer of such land, or by reason of avoiding additional cost thereof on account of the erection or making of contemplated improvements thereon by the owner thereof, or by any other reason. [1931 c. 303]