

CHAPTER 80

LAYING HIGHWAYS

80 01	Creation, alteration and validation of highways	80 23	Removal of fences from highway; notice
80 02	Town highways; petition to lay, alter or discontinue	80 24	Appeal from award of damages by owner.
80 025	Highways abutted by state park lands; discontinuance or relocation.	80 25	Taxpayer may appeal; service of notice
80 03	Restrictions on condemning for town highways	80 26	Appeal bond
80 04	When supervisor disqualified; vacancies.	80 27	Selection of jury; penalty for refusal to serve.
80 05	Notice of meeting; service and publication	80 28	Proceedings before jury; costs.
80 06	Proceedings after notice.	80 29	Appeal costs; jurors' fees
80 07	Order; survey; award; recording; presumptions.	80 30	Highway damages; when payable, referendum to town meeting
80 08	Width of highways.	80 31	Unclaimed awards; mortgage and lien interest.
80 09	Damages; agreement, award.	80 32	Discontinuance of highways; reversion of title
80 10	Considerations affecting damages	80 33	Highway papers, where filed
80 11	Highways on and across town lines	80 34	Highway orders; presumptions; limitation of actions.
80 12	Highways on and across town and municipal boundaries.	80 35	Oaths
80 125	Highways and bridges on state boundaries	80 37	Lost records; how restored; effect
80 13	Land excluded from highway.	80 38	Changing streets into highways
80 14	Highway from shut-off land through adjoining town.	80 39	County board power to lay, alter and discontinue town highways
80 15	Highway to islands in Mississippi river.	80 40	Control of highways laid by county
80 16	Shut-off school buildings; how laid.	80 41	Discontinuing ways to waters.
80 17	Appeal from highway order	80 47	Rights of abutting owners
80 18	Bonds; service of notice.	80 48	Highways and streets to cemeteries and fairgrounds.
80 19	Commissioners, how selected	80 64	Widening of highways; establishment of excess widths
80 20	Commissioners; fees; papers where filed.	80 65	Waste on highways
80 21	Proceedings on reversal		
80 22	Determination final for a year unless appealed		

80.01 Creation, alteration and validation of highways. (1) VALIDATION OF HIGHWAYS, RECORDING. All highways laid out by the town supervisors, the county board or by a committee of the board, or by commissioners appointed by the legislature, or by any other authority, and recorded, any portion of which has been opened and worked for 3 years are legal highways so far as they have been so opened and worked. The filing of an order laying out any highway or a certified copy thereof in the office of the clerk of the town or the county in which the highway is situated is a recording of such highway within the meaning of this section.

(2) UNRECORDED HIGHWAYS VALIDATED, EXCEPTION; GRANTS FOR HIGHWAY PURPOSES, PRESUMPTIVE WIDTH. All highways not recorded which have been worked as public highways 10 years or more are public highways, and are presumed to be 4 rods wide, except that roads and bridges built upon the bottoms and sloughs of the Mississippi river 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 town supervisors; 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 the grant is accepted by the town board or by the town meeting of the town wherein the lands and proposed highway are situated, and until a resolution of such acceptance is recorded in the office of the town clerk; and in case any such laid out highways have not been fully and sufficiently described or recorded or if the records have been lost or destroyed the presumption shall be that they were laid 4 rods wide.

(3) BEAUTIFICATION AND PROTECTION. No lands abutting on any highway, and acquired or held for highway purposes, shall be deemed discontinued for such purpose so long as they abut on any highway. All lands acquired for highway purposes after June 23, 1931 may be used for any purpose that the public authorities in control of such highway shall deem to conduce to the public use and enjoyment thereof. Such authorities may improve such lands by suitable planting, to prevent the erosion of the soil or to beautify the highway. The right to protect and to plant vegetation in any highway laid out prior to said date may be acquired 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 laid out after said date or where the right to protect vegetation has been acquired, without the consent of the highway authorities and under their direction but such authorities shall remove, cut or trim or consent to the removing, cutting or removal of any tree, shrub or vegetation in order to provide safety to users of the highway.

(4) **HIGHWAYS, STREETS AND ALLEYS, PIERS, PLATS, CURATIVE PROVISIONS.** Every street, highway and alley, pier and slip, dedicated or attempted and intended to be dedicated in any plat or laid out, altered, vacated or discontinued, or attempted or intended to be laid out, altered, vacated or discontinued by the authorities of any county, town, city or village shall be held to have been lawfully so dedicated, laid out, altered, vacated or discontinued from and after the expiration of 5 years from the date of the deed, instrument, plat, order, resolution or other final proceeding had or taken to effectuate such purpose. No defect, omission or informality in the execution of any plat or deed of dedication or in any proceedings, order or resolution on the part of such authorities for the purposes aforesaid shall affect or invalidate such plat, deed, order or resolution or proceeding, after the expiration of 5 years from the date of the plat, deed, proceeding, order or resolution; provided, the street or alley laid out, or altered by such defective, or informal plat, deed, proceeding, order or resolution, shall be limited in length to the portion actually worked and used thereunder.

(5) **EFFECT OF RESERVATION OR EXCEPTION IN CONVEYANCE.** Whenever a deed, land contract or mortgage of lands abutting on an existing public street, highway or alley or a projected extension thereof hereafter executed and recorded contains language reserving or excepting certain lands for street, highway or alley purposes, such reservation or exception shall constitute a dedication for such purpose to the public body having jurisdiction over such highway, street, alley or projected extension thereof, unless the language of such reservation or exception plainly indicates an intent to create a private way. Such dedication may be accepted by resolution of the governing body having jurisdiction over such street, highway, alley or projected extension thereof.

Where government unit shows public use of road for 20 years or public maintenance for 10 years, landowner claiming that road is private has burden of proving permissive use *Ruchti v. Monroe*, 83 W (2d) 551, 266 NW (2d) 309 (1978)

Municipalities may incur liability under (3) for failure to trim vegetation obstructing view at intersection. *Walker v. Bignell*, 100 W (2d) 256, 301 NW (2d) 447 (1981).

Rights-of-way boundaries of nondedicated roads discussed 69 Atty Gen 87

80.02 Town highways; petition to lay, alter or discontinue. When 6 or more resident freeholders 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 s. 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 the clerk 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 \$1,000, 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 department of transportation 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 trunk or county trunk highway, nor discontinue any highway when such discontinuance would deprive the owner of lands of access therefrom to a highway.

History: 1977 c. 29 s. 1654 (8) (c); 1977 c. 273

80.025 Highways abutted by state park lands; discontinuance or relocation. Any part of a highway lying wholly within state park lands may be discontinued or relocated by the state agency having jurisdiction over such abutting lands by filing written notice of such discontinuance or relocation with the town clerk or county clerk and upon approval by the supervisors after holding a hearing as provided in s. 80.05 unless such discontinuance or relocation would deprive any other owner of lands access thereto from a highway. This section does not apply to state trunk highways or connecting highways.

History: 1977 c. 29 s. 1654 (3)

80.03 Restrictions on condemning for town highways. (1) No town highway shall be laid out through or upon any cemetery without the consent of those having the control of the cemetery; or through or upon any structure, yard or enclosure used for educational or charitable purposes.

(2) Without the consent of the owner no town highway shall be laid out through or upon any garden or orchard or any building or fixture used for trade or manufacture or any other building or fixture or the yard or enclosure necessary to the use thereof, when the damage thereby caused thereto, exclusive of the damage to the land, exceeds \$300.

(4) The limitations in this section upon the power to condemn for highway purposes applies solely to highways laid out by town authority pursuant to this chapter.

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 s. 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. (1) On application made to supervisors for laying out, widening, altering or discontinuing any highway the supervisors shall prepare a notice fixing therein a time and place at which they will meet and decide upon the application. The notice shall specify, as near as practicable, the highway proposed to be laid out, widened, altered or discontinued and the tracts of land through which the highway passes or, if the application is for discontinuing the whole or any portion of the highway, the tracts of land abutting on the highway which will be benefited or injured by such discontinuance. When the description in the aggregate exceeds 200 words in length, the notice may state that such descriptions are contained in the application as provided in s. 80.02, and shall give the name and address of the town clerk to whom the application has been delivered.

(2) The applicants shall:

(a) At least 10 days prior to the date of hearing give notice by registered mail to all occupants and owners of record of lands through which the highway may pass or, if the application is for discontinuance, to the occupants and to the owners of record of all lands abutting on the highway.

(b) Give notice by registered mail to the department of natural resources and to the county land conservation committee in each county through which the highway may pass.

(c) Publish a class 2 notice, under ch. 985.

History: 1971 c. 323 s. 27; 1981 c. 346, 391; 1983 a. 27.

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 s. 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 30 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; recording; presumptions. (1) When the supervisors lay out, alter, widen or discontinue any highway they shall make and sign an order therefor, incorporating therein a description of the highway and cause survey thereof to be made when necessary. The order shall be filed and recorded in the office of the town clerk, who shall note in the record the time of recording. The order together with the award of damages shall be so filed within 10 days after the date fixed by their notice or adjournment for deciding upon the application. In case the supervisors fail to file the order and award within the 10 days aforesaid they shall be deemed to have decided against the 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 highway, or a part thereof, has been used by the public and public money has been expended thereon, for at least 5 years, it shall be presumed that a release was given by the owners of the lands over which the highway was laid out and the public shall be entitled to use the full width of the highway, as laid out, without further compensation.

80.07 LAYING HIGHWAYS

(2) Whenever the supervisors lay out, alter or discontinue any highway the town clerk shall transmit a certified copy of the order therefor to the county highway commissioner.

80.08 Width of highways. Except as otherwise expressly provided by s. 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 4 rods wide.

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.

80.10 Considerations affecting damages. If any part of a highway is discontinued at the time a new or altered highway is laid out, the benefits which any landowner derives from the discontinuance may be considered in fixing the damages sustained by him in laying out the new or altered highway; and in fixing the damages sustained by any person in laying out, altering, widening or discontinuing any highway the benefits which he receives 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 6 resident freeholders 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 published as a class 2 notice, under ch. 985, in said towns, and served as required by s. 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. If no such apportionment shall have been made in the order laying out, altering or widening such highway or any part thereof; or if such highway or any part thereof shall have had its origin in user; or if in the judgment of said supervisors circumstances have so altered since the last previous apportionment or reapportionment of such highway or any part thereof as to render the same inequitable or impracticable, a majority of the supervisors of each town, meeting together, may make such order apportioning or reapportioning such highway or any part thereof as they may deem advisable, which order shall be filed as hereinbefore provided. When so made such order shall be of the same force and effect as an order made in connection with the original laying out of such highway. Any written order or agreement before August 27, 1947 made by a majority of the supervisors of each town concerned, acting together, apportioning or reapportioning a town line highway is hereby validated and shall be of the same force and effect as though made after said date. Where flowage crosses and covers a portion of a

town line road, then that part of such order which previously fixed their respective liabilities shall be deemed vacated.

(4) If by any change of the boundaries of either or both such towns including that caused by flowage 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 or if a portion of a town line road is crossed and covered by flowage, 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 s. 80.01 (2), 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.

80.12 Highways on and across town and municipal boundaries.

Whenever it is deemed necessary to lay out, alter, widen or discontinue a highway upon the line between a town and city or village or lay out, alter, widen or discontinue a highway or any part thereof extending from a town to a city or village proceedings therefor may be had under s. 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 6 freeholders of the town and 6 freeholders of the city or village. Thereupon such common council or board of trustees shall appoint 3 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 s. 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, improvements and maintenance of any highway laid out on a line between a city and a town or village or located on one or the other side of the line may be at the expense of such adjoining municipalities and the apportionment may be made as provided in s. 80.11 (3) to (6). The town board, village board and city council may cause any such highway or any part of such highway not less than 16 rods in length to be graded, paved, macadamized or otherwise improved, including the establish-

80.12 LAYING HIGHWAYS

2210

ment 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 s. 66.60. 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.

80.125 Highways and bridges on state boundaries. A town or county board of any town or county bounded in part by a river, or by a highway, either of which is also a state boundary line may enter into agreement with the adjoining municipality in such other state for the maintenance and construction of boundary line bridges and for the maintenance and reconstruction of any boundary line highway including its bridges, by appropriation therefor not exceeding 50% of the total costs assignable to the boundary line facility.

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 as required by s. 80.05 and published as a class 2 notice under ch. 985.

(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.

(5) Whenever land in any town which is accessible, or provided with a right of way to a public highway, is subdivided and the owner thereof sells and transfers a part thereof or sells a parcel of said land by metes and bounds, which part or parcel would otherwise be landlocked and shut out from all public highways other than a waterway, by reason of being surrounded on all sides by real estate belonging to other persons or by such real estate and by water without an adequate right of way to a public highway, the seller shall in so subdividing said land or a part thereof or in selling a parcel of said land by metes and bounds provide a cleared right of way at least 50 feet in width which shall be continuous from the highway to each part, parcel, lot or subdivision sold. In case the seller fails to do so the town board may, pursuant to proceedings under this section, lay out a road from such inaccessible land to the public highway over the remaining lands of the seller without assessment to the latter of damages or compensation therefor.

A board loses jurisdiction to order the laying out of a highway when it orders damages to be paid in 60 days, because 80.07 requires the order and award to be filed in 10 days and under 80.13 (4) the damages must be paid before the order is filed. *Northern States P. Co. v. Hunter Bd of Supv* 57 W (2d) 118, 203 NW (2d) 878.

Town board of supervisors both lost jurisdiction to hear application under 80.13 (1) and was deemed to have denied same by adjourning for more than 30 days in contravention of 80.06. Trial court properly refused to review merits on certiorari under 80.34. Aggrieved party's proper remedy was appeal for appointment of reviewing commissioners under 80.17. *Berschens v. Town of Prairie du Sac*, 76 W (2d) 115, 250 NW (2d) 369.

When town board chooses to act on petition under (1), it need not lay road over land of seller under (5) but may lay road over land of another under (3). *Gaethke v. Town Board, Town of Clay Banks*, 86 W (2d) 495, 273 NW (2d) 764 (1979).

80.14 Highway from shut-off land through adjoining town. When the owner of land that is

shut out from all highways by being surrounded by lands belonging to other persons, and it is impracticable to lay out a road from his land to a public highway in the town where the land is situated, and it is practicable to lay out a highway from said land to a highway in an adjoining town, he may execute an affidavit in duplicate and present one copy to a supervisor of the town where the land is situated and one copy to a supervisor of the town where the proposed highway is to be laid out. The affidavit shall set forth the facts above stated, together with the facts required in the affidavit provided under s. 80.13. The supervisors of the 2 towns shall proceed as provided under said s. 80.13, except that all orders and notices shall be signed by the supervisors of both and all papers required to be filed shall be made in duplicate and filed with each town clerk. The amount assessed as advantages to the applicant shall be paid by him to the town treasurer of the town where his land is situated before the order laying out the highway is 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 s. 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 from highway order. Any person aggrieved by any order of the town supervi-

sors laying out, altering, widening or discontinuing any highway, or refusing so to do may, within 30 days after the determination, appeal from the order or determination to the circuit judge for the appointment of commissioners to review the order or determination. Failure of the supervisors to file their decision upon any application to lay out, alter, widen or discontinue any highway within 60 days after the application is made shall be deemed a refusal of the application. The appeal shall be in writing and shall briefly state the grounds upon which it is made, and whether it seeks to reverse entirely the order or determination or only a part, and in the latter case it shall state what part. In case of highways upon a line between 2 counties the appeal may be made to the circuit judge of either county.

History: 1977 c 449.

Entry of judgment was beyond circuit judge's jurisdiction under this section. *Town Board of Town of Taycheedah v. Webb*, 118 W (2d) 362, 348 NW (2d) 591 (Ct. App 1984).

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 18 disinterested resident freeholders of the county, and each party may strike 6 names from the list, and from the names not struck off the judge shall by lot select 3 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 10 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 20 days after the date thereof.

(2) Such warrant shall be served at least 3 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,

80.19 LAYING HIGHWAYS

2212

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 3 commissioners who can and will act are obtained, the judge shall, without notice to either party, summon 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 10 days, and the time for making return of their decision, not more than 20 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 \$10, 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; the entire record of the proceedings before the commissioners inclusive of all appearances, petitions, notices, testimony which may be taken only under oath, exhibits, findings, decisions, and other orders relating thereto, shall be so prepared and certified. The review of such order of determination by the commissioners shall where such record contains a transcript be confined to the basis of such record. 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 requires, within the time directed in such warrant. Each commissioner shall receive \$5 per day and 5 cents per mile for his actual travel, to be paid by the party appealing; and if the order or determination appealed from is reversed he shall be reimbursed such expenses by the town, city or village, or if it is 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 is on a

line between 2 towns or between a town and a city or village they shall make a duplicate of their decision with a copy of the warrant and appeal 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 from highway; notice. (1) Whenever pursuant to this chapter, any highway is laid out, widened or altered through inclosed, cultivated or improved lands and the determination has not been appealed from, the highway authorities 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 30 days after giving such notice; and if the owner or occupant does not remove his fences within the time required in such notice the highway authorities shall cause the fences to be removed and shall direct the highway to be opened; but if the determination has been appealed from, the notice shall be given after the final decision of the appeal.

(2) This section does not authorize the opening of a highway through such lands or the removal of fences between May 15 and September 15, except in cases of emergency to be determined by the highway authorities.

80.24 Appeal from award of damages by owner. If the owner of lands through which a highway is laid out, widened, altered or discontinued is not satisfied with his or her award of damages, within 30 days after the filing of the award, (and if within the 30 days an appeal has been taken from the order laying out, widening, altering or discontinuing the highway, then

within 30 days after the final order on the appeal affirming the order) the owner may appeal to the circuit judge for a jury to assess his or her damages. The appeal shall be in writing, describing the premises, and any number of persons claiming damages on account of the highway may join in the appeal. The appellant shall serve on 2 of the supervisors of the town in which the highway is situated, or upon 2 or more of the supervisors or commissioners of the town, city or village who have been assigned the duty of paying the damages for the land, at least 6 days before making the appeal, a notice in writing, specifying therein the name of the judge to whom and the time and place the appeal will be made. If more than one appeal is taken from the award of damages on account of any highway, the appeals shall be consolidated by the circuit judge, and only one jury shall be impaneled to reassess the damages.

History: 1977 c. 449.

80.25 Taxpayer may appeal; service of notice. Any taxpayer of a town or other municipality in which a highway is laid out, altered or discontinued or any part thereof is situated, and which is required to pay damages resulting therefrom, may appeal within 30 days after the award or agreement determining the damages has been filed with the town, city or village clerk, to the circuit judge for a jury to assess the damages sustained by the persons to whom damages were awarded or are to be paid. The appeal shall be in writing, describing the premises and naming the persons to whom damages are to be paid, and the amount awarded to each, and shall specify the particular award from which the taxpayer appeals in case he or she does not appeal from all. The appellant shall serve upon 2 of the supervisors of the town or upon 2 of the commissioners of the city or village to which has been assigned the duty of paying the damages and upon the persons whose awards are appealed from, at least 6 days before making application, a notice in writing specifying therein the name of the judge to whom and the time and place appellant will apply for the selection of the jury.

History: 1977 c. 449.

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 the bond and notice with proof of service thereof, the judge shall make out a list of 15 disinterested resident freeholders of his county, not of kin to the owner or occupant of the lands. Each party shall strike 5 from such list, and if none of the proper supervisors or commissioners or other appellee is present, the judge shall strike off the 5 names for them, and the judge shall thereupon issue an order to the sheriff or some constable of his county to summon the 5 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. Any juror may be excused for good cause, and if any juror duly summoned and not excused fails to serve he shall forfeit not to exceed \$10, and shall be liable to the party having the costs of the appeal to pay for additional costs made in consequence 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 10 days thereafter return such appraisal to the town clerk, together with all the other papers relating to such appeal, a state-

80.28 LAYING HIGHWAYS

2214

ment 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; jurors' fees. Each juror shall receive \$3 for his services and 10 cents a mile for his actual and necessary travel in going to and returning from the place of meeting, 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 awarded against a town, city or village upon laying out, widening or altering any highway shall not be paid until the highway is opened by lawful order. No liability for such damages shall exist for any highway discontinued before being opened.

(2) When the total amount of damages chargeable to one town, consequent upon one order laying out, widening or altering a highway, is more than one-tenth of one per cent on the taxable property of the town, as shown by the last assessment, and exceeds \$2,000, the highway shall not be opened, widened or altered nor liability for damages exist, unless the order and the award of damages are approved, and the highway is accepted by a majority of the electors of the town voting thereon at the next annual town meeting or some special town meeting sooner called therefor.

(3) All costs and fees and damages 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 the town, city or village.

(4) When any order is given pursuant to this section and there is no available money in the treasury to pay the order, the clerk of the municipality shall place the same on the next tax roll with interest thereon from the date of the 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 damages are awarded, pursuant to an order laying out, widening or altering a highway, lying wholly within a town whose population is 8,000, or over, or wholly within a county having a population of 300,000, or over, the order or award need not be approved or the highway accepted by the electors.

80.31 Unclaimed awards; mortgage and lien interest. (1) If the damages awarded to an owner of land are not claimed within one year after they become payable, the damages shall be paid by the town, city or village treasurer to the county treasurer who shall provide the town, city or village treasurer with a receipt.

(2) The county treasurer shall report and deliver the unclaimed damage awards as provided under ch. 177.

(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 5 days' written notice to the other party.

History: 1983 a 408.

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 4 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 5 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, school district, town, village or city or to any utility or person in any underground or overground structures, improvements or services and all rights of entrance, maintenance, construction and repair of the same shall continue, unless

written consent to the discontinuance of such easements and rights by the owner thereof is a part of the vacation or discontinuance proceedings and reference thereto is made in the vacation or discontinuance resolution, ordinance or order, or discontinued by failure to use the same for a period of 4 years from the time that the public highway or public ground was vacated or discontinued. Upon the failure of the interested parties to reach an agreement permitting discontinuance of such easements and rights or upon refusal of the owner of such easements and rights to give written consent to the discontinuance thereof, such easements and rights may be discontinued in the vacation or discontinuance proceedings in any case where benefits or damages are to be assessed as herein provided. Damages for the discontinuance of such easements and rights, in the amount of the present value of the property to be removed or abandoned, plus the cost of removal, less the salvage thereon, or in such other amount as may be agreed upon between the interested parties, shall be assessed against the land benefited in the proceedings for assessment of damages or benefits upon the vacation or discontinuance of the public highway or public ground. The owner of such easements and rights, upon application to the treasurer and upon furnishing satisfactory proof shall be entitled to any payments of or upon such assessment of damages. Any person aggrieved by such assessment may appeal therefrom in the same time and manner as is provided for appeals from assessments of damages or benefits in vacation or discontinuance proceedings in the town, village or city.

(5) Subsection (2) does not apply to state or county trunk highways.

Abandonment of highway discussed. *Heise v. Village of Pewaukee*, 92 W (2d) 333, 285 NW (2d) 859 (1979).

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 if commenced within the time after the order is made provided by s. 893.73 (2).

History: 1979 c. 323

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.

80.37 Lost records; how restored; effect.

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 as provided by s. 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

80.37 LAYING HIGHWAYS

2216

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. (1)

The town board of any town within which is 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 the village or other plat as they deem necessary for the public use to be public highways, without any other survey or description than that made in the recorded plat.

(2) If 6 or more freeholders residing within the limits of the village or other plat wish any streets in the plat to be so declared public highways and opened to public use, they may apply to the town board for that purpose in the manner provided in s. 80.02. Upon that application, the town board shall make and file an order, within 10 days, declaring the streets to be public highways or refusing so to do. In either case, any person considering himself or herself aggrieved by the order may appeal to the circuit court for the same county by filing with the town clerk a notice of appeal, specifying the grounds of appeal, within 20 days from the filing of the order, together with a written undertaking of the appellant, with one or more sufficient sureties, to be approved by the town clerk for the payment of all costs that may be awarded against the appellant, and paying to the clerk the fee prescribed in s. 814.61 (8) (a) 1. Within 20 days thereafter the town clerk shall deliver to the clerk of the circuit court all the papers in the case, together with the notice of appeal, with the date of service endorsed thereon, and pay the fee prescribed in s. 814.61 (8) (a) 1; whereupon the clerk of the circuit court shall enter an action in the court record in which the appellant is the plaintiff and the town is the defendant. The issues as shown by the papers and the appeal shall be tried without further pleading, the same as in personal actions in circuit court, and judgment rendered and enforced as in other actions in which persons and municipal corporations are parties.

History: 1981 c. 317

80.39 County board power to lay, alter and discontinue town highways. (1) COUNTY BOARDS' POWERS.

(a) The county board may lay out highways in the county, and may widen, alter or discontinue any highway or part thereof laid out by it (but may not discontinue any part of a state trunk highway) upon the petition of not less than 10 resident freeholders of each town in which the highway or any part thereof is proposed to be laid out, widened, altered or

discontinued. All the powers herein granted may be exercised by a committee of not less than 3 members of the board. Whenever the supervisors of adjoining towns in different counties cannot agree in laying out a highway extending from one town into the other and the supervisors of one town lay out a highway up to the line of the adjoining town, the county board of the county in which such latter town lies may, upon like petition, lay out such highway in continuation as the public interests may require.

(b) In every county having a population of at least 150,000 the county board, upon a vote of two-thirds of its members, may exercise the powers conferred by this section, without any petition therefor, and shall proceed thereafter in that behalf as in cases of petition duly made.

(2) NOTICE. Upon such petition the county board or the commissioners appointed by the board shall give notice of the time and place they will meet to decide on the petition. The notice shall be published as a class 2 notice, under ch. 985. The notice shall also be given to the department of natural resources by serving a copy upon the secretary of natural resources either by registered mail or personally. If the board appoints a committee to act, the notice shall state the fact and the notice shall be signed by the commissioners, otherwise by the chairman of the board.

(3) PROCEEDINGS; HEARING; ORDERS, FILING; APPEALS. At the time and place mentioned in the notice and upon proof by affidavit of the publication or posting thereof the board or its committee shall examine the 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 acts, it shall report its determination and award of damages. Upon the receipt of the report or, when the board shall act without a committee, upon its determination, it shall make an order laying out, altering, widening or discontinuing such highway or refusing so to do, which order shall be signed by the chairman and county clerk and filed and recorded in the county clerk's office. The order shall describe any highway which is laid out, altered, widened or discontinued, and when necessary the board may cause a survey to be made for that purpose, and shall also cause a copy of the 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 10 days after the making of the order. Any person who considers himself aggrieved by the determination refusing to lay out, alter, widen or discontinue the highway may appeal in the same manner and subsequent

proceedings shall be had thereon the same as provided by this chapter in cases where the town board of supervisors refuse to lay out, alter, widen or discontinue any highway.

(4) DAMAGES, HOW FIXED AND PAID; FILING AWARD. The damages sustained by any person through whose land any such highway is laid out, altered, discontinued or widened may be ascertained by agreement between the county board or its committee and the owner. Every such agreement shall be in writing signed by him and the chairman of the board or by its committee and filed in the office of the county clerk, and shall bar the owner and all persons claiming under him from further claim for damages. In case of failure to agree, the damages shall be assessed by the county board or by its committee, and the award shall be filed in like manner. The damages so assessed shall be paid by the town in which the land is situated or by such town and other towns in such proportion as the county board shall direct at the time of making the order laying out, altering, discontinuing or widening the highway if the board shall deem other 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 10 days after the order laying out, altering, discontinuing or widening the highway is made.

(5) APPEAL; VOTE BEFORE LIABILITY ATTACHES; COLLECTION OF DAMAGES. Appeals from the 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 town in consequence of any such order shall be \$1,500 or more the highway shall not be opened, widened, discontinued or altered unless the order be approved and the 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 payment thereof, and the same shall be collected and paid as provided in s. 80.30.

(6) COMPENSATION TO COUNTY BOARD MEMBERS. For services performed in laying out, widening, altering or discontinuing any highway every member of the county board or of its committee shall receive the per diem and mileage allowed them by ss. 59.03 and 59.06.

(7) HIGHWAY 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 neglects or refuses to open the highway the county board may open the same.

History: 1971 c. 323 s. 27; 1981 c. 346; 1983 a. 27

Cross Reference: See 840.11, requiring applicant for change in highway to file notice of pendency of the application.

80.40 Control of highways laid by county.

When the county board lays out, opens, alters or widens a highway, it reverts to the sole control of the town, village or city in which it lies, except county trunk highways, where control shall rest with the county. The town, city or village shall keep the highway in good repair, and, if deemed necessary, the town board, village board or common council may annually levy a special tax sufficient for that purpose, and the town, village or city may alter or discontinue such highway the same as though it had originally laid it out.

80.41 Discontinuing ways to waters. No resolution or ordinance of any town board or county board or committee thereof discontinuing any highway, street, alley or right of way which provides public access to any navigable lake or stream shall be effective until such resolution or ordinance is approved by the department of natural resources.

History: 1971 c. 164.

80.47 Rights of abutting owners. The owners of land abutting on any highway, street or alley shall have a common right in the free and unobstructed use thereof to its full width, and no town, village, city, county, company or corporation shall close up, use or obstruct any part of the highway, street or alley so as to materially interfere with its usefulness as a highway or so as to damage property abutting thereon, or permit the same to be done, without due compensation being made for any damage resulting therefrom to the owners of land upon either side of such highway, street or alley. This section does not impose liability for damages to property on both sides of any street, highway or alley arising from the use, maintenance and operation of tracks or other public improvement legally laid down, built or established in any street, highway or alley prior to April 7, 1889. All rights of property which would entitle the owners 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.

This section does not authorize recovery of damages for loss of business due to temporary closing of a street for construction purposes. *Weinandt v. Appleton*, 58 W (2d) 734.

80.48 LAYING HIGHWAYS

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 files 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 published as provided in s. 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 10 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 5 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 10 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, as provided in s. 80.05 not less than 6 days before the time so fixed. If any portion of such land is not actually occupied, such notice, which shall contain a description, as near as may be, of the premises to be taken, shall be published as a class 2 notice, under ch. 985, in such city, village or town 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 the notice the circuit judge of the county, the president of the village or the chairman of the town in which the land sought to be taken lies shall issue a precept directed to the sheriff of the county or to any constable, naming the sheriff or constable, which precept shall direct the officer to write the names of 36 freeholders of the county who are qualified to serve as jurors in the circuit court and to return the list. After being sworn to perform the duties required to the best of his or her ability, without partiality, the officer shall immediately write the names and deliver the list thereof to the officer who issued the precept; and from the list each party, in person or by an agent or attorney, commencing with the petitioner, shall strike out alternately, 12 names, and if either party is absent or refuses to strike out, the officer who issued the precept shall appoint some person to strike 12 names for the absent person. The officer shall then summon the 12 persons whose names remain on the list in the manner prescribed under s. 756.08 to appear at the time and place mentioned in the summons 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 12 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. The number of persons listed and summoned shall be proportionately reduced if the jury is to consist of a number less than 12.

(4) FINDING AS TO NECESSITY OF TAKING; DAMAGES. After the jurors are sworn the circuit or municipal judge, president or chairman shall issue his or her precept directed to them and requiring that within 10 days they shall view the land specified therein and make return to him or her 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 the premises; the parties interested shall have notice of the time and may offer any evidence pertinent to the inquiry; after viewing the premises 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 the precept. On the receipt thereof the 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 the 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 the cemetery, fairground or land used for industrial expositions. The street or highway so laid shall not be less than 3 nor more than 4 rods in width, and in the order they shall appoint 3 disinterested residents of the county as commissioners who shall, after notice to the owners or occupants of the 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 the 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.

History: 1975 c. 94 s. 91 (9); 1975 c. 199; 1977 c. 272, 318, 447; 1977 c. 449 ss. 191, 497; 1979 c. 175 s. 53.

80.64 Widening of highways; establishment of excess widths. With the approval of the governing body of the municipality in which a street or highway or part thereof, is located, the county board may, to promote the general welfare, establish street and highway widths in excess of the widths in use; and likewise may adopt plans showing the location and width proposed for any future street or highway, which shall not be subject to s. 80.32 (2). Such streets or highways or plans therefor shall be shown on a map (showing present and proposed street or highway lines and also property lines and owners except in counties having a population of 500,000 or more) then filed in the office of the register of deeds, and notice of such filing shall be published as a class 1 notice, under ch. 985, in the territory in which such streets or highways are located. The notice shall briefly set forth the action of the county board. The county board, upon like approval, publication and notice, may from time to time supplement or change the same, and such supplements or changes shall be similarly filed in the office of the register of deeds. The excess width for streets or highways in use for the right of way required for those planned, may be acquired at any time either in whole or in part by the state or county or municipality in which located; but 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 the street or highway, nor for less than the full length of such excess width lying within contiguous land owned by the same owner. Any land so acquired, whether the excess width is acquired for the full length of the street or highway or not, shall at once become available for highway purposes. The power to acquire such right of way or additional width in portions as provided herein may be exercised to acquire the land on advantageous terms. In counties containing a population of 500,000 or more if, subsequent to the establishment of widths on streets or highways by a county board with the approval of the governing body of the municipality in which such streets or highways lie, in conformity with this section or s. 59.97, any area embracing a street or highway upon which a width has been so established is annexed to a city or village or becomes a city or village by incorporation, such city or such village shall thereafter adhere to such established width, and shall not, subsequent to any annexation or incorporation, except with the approval of the county board,

80.64 LAYING HIGHWAYS

2220

alter or void such established width, nor shall any construction or development be permitted or sanctioned by such city or such village or any of its officers or representatives which will interfere with, prevent or jeopardize the obtaining of the necessary right of way to such established width.

80.65 Waste on highways. Persons owning or leasing lands abutting on any state, county or town highway, and operating thereon ice cream or custard stands or other like types of business, as a result of which operation the highway is cluttered and strewn with waste materials such

as paper napkins, cups and the like, may be required by ordinance of the town or county having jurisdiction to maintain the highway, to keep such business location clear of such wastes and to clean up such wastes on the highways within 250 feet of such lands, as appear to result from customer use of such lands. Such ordinance may provide a penalty of not to exceed \$200 and costs for each day's violation of the ordinance or imprisonment for not more than 30 days or both. Such ordinance shall be enforced by the county highway commissioner or town superintendent of highways.