

**BOARD OF INGHAM COUNTY
ROAD COMMISSIONERS**

BOARD POLICY

EFFECTIVE DATE: Immediate POLICY #BP-274

SUPERSEDES BP# 260 RESOLUTION #170-04

SUBJECT: ABANDONMENT COST REIMBURSEMENT

ADOPTED BY THE BOARD OF INGHAM COUNTY ROAD COMMISSIONERS ON SEPTEMBER 22, 2004

The Board approves the practice of charging for any costs incurred in recording documents with the Ingham County Register of Deeds Office, as well as any costs incurred for publishing notices relative to the abandonment of roads, streets and alleys. Such costs of recording and publishing shall be borne by the petitioner. A non-refundable deposit of \$150.00 shall be required upon submission of the abandonment petition. Any costs which exceed \$150.00 shall be invoiced the petitioner upon completion of the required publishing/recording.

INGHAM COUNTY ROAD COMMISSION

PETITION FOR ABANDONMENT

TO: Board of Ingham County Road Commissioners
301 N. Bush Street, P.O. Box 38
Mason, Michigan 48854-0038

Board Members:

We, the undersigned _____ (or more) freeholders of the Township of _____
_____, Ingham County, Michigan.

(Petitioners Signatures – Not less Than 7)

	<u>NAME</u>	<u>ADDRESS</u>
1.	_____	_____
	(Please print name legibly:_____)	
2.	_____	_____
	(Please print name legibly:_____)	
3.	_____	_____
	(Please print name legibly:_____)	
4.	_____	_____
	(Please print name legibly:_____)	
5.	_____	_____
	(Please print name legibly:_____)	
6.	_____	_____
	(Please print name legibly:_____)	
7.	_____	_____
	(Please print name legibly:_____)	
8.	_____	_____
	(Please print name legibly:_____)	
9.	_____	_____
	(Please print name legibly:_____)	
10.	_____	_____
	(Please print name legibly:_____)	

respectfully petition as follows:

**REQUIREMENTS FOR ABANDONMENT OF
A ROAD OR PORTION THEREOF
[MCL 224.18 (1) - (19)]**

I. PETITION FOR ABANDONMENT

- A. Must be signed by seven (7) or more freeholders of the Township in which the road sought to be absolutely abandoned and discontinued is located.
- B. The Petition shall describe:
 - 1. The road to be abandoned in general terms or by any name by which it is known; or
 - 2. That portion of the road (if only a portion of the road is asked to be absolutely abandoned and discontinued) shall be specifically described.
- C. Accompanying the Petition shall be:
 - 1. A true and correct list of names and mailing addresses of the occupants of each parcel of land abutting the road (or portion thereof) sought to be absolutely abandoned and discontinued which has been *certified* by one of the persons making or presenting the Petition. [MCL 224.18 (4)]

II. RECEIPT AND PROCESSING PROCEDURE FOR PETITION

- A. If all occupants of the land abutting the road (or portion thereof) sought to be abandoned have signed (a fact to be ascertained from the Register of Deeds' office records and the Certified list attached thereto), the Road Commission shall, within *twenty (20) days after receipt of the Petition* (if the road sought to be abandoned is not adjacent to or bordering water) determine the advisability of the abandonment by granting or denying the Petition without further proceedings. [MC 224.18 (5)] If an abandonment is to be granted, see Sections VI A.3. and VI B. & C. below for the requirements therefor. (No Notice to the Township is required here.) *Thompson- McCulley Quarry Co. v Berlin Charter Twp.*, 259 Mich App 483, 494 (2003)
- B. For all other cases (i.e., where abandoned road or portion thereof is adjacent to water or where Petition does not contain the signatures of *all* adjacent property owners).

1. Within *twenty (20) days after receipt of the Petition*, the Road Commission shall issue a written Notice:
 - a. Setting forth object of the Petition, and
 - b. Appointing a time and place for a public hearing on the Petition for Abandonment

2. Serve a copy of Petition for Abandonment upon:
 - a. Township Board of the township in which the road (or portion thereof) which is proposed to be absolutely abandoned and discontinued is located by mailing a copy thereof by First Class Mail to said Township Board.
 - b. *At least thirty (30) days prior to the date of the Public Hearing*, mailing, by First Class Mail, a copy of the Notice to each owner of record or occupant as his/her last-known address.
 - (1) If the owner does not reside upon the land, or if the owner or occupant cannot be found within the county, the Notice to the owner shall be served by:
 - (a) posting in three (3) public places in the Township; and
 - (b) by publication in a newspaper circulated within the county at least *thirty (30) days prior to the date of the Public Hearing*. (No more than one [1] publication is mandated.)
 - c. Notice shall be served upon railroad companies by leaving a copy with the Agent in charge of any ticket or freight office operating the railroad on the railroad line.

3. Additional service of a copy of the Petition for Abandonment is required in situations where the abandonment involves the ingress and egress to the water.
 - a. In *addition* to the service requirements of paragraph 2. a - c immediately above, if the proposed abandonment is of a road (or portion thereof) that borders on, crosses, is adjacent to, or ends at a lake or the general course of a stream and if the proposed action would result in a loss of public access to the water/stream, Notice must also be given to:
 - (1) The State Department of Transportation; and
 - (2) The Department of Natural Resources

at least thirty [30] days prior to the date of the Public Hearing.

III. AFFIDAVIT OF SERVICE

- A. Before proceedings are held, the person by whom the service was made shall annex to the Notice, or to a copy thereof, an Affidavit stating:
1. Time and manner of service whether inclusive of First Class Mail Service, posting and/or advertising.
 - a. If service upon a railroad agent, shall specify the name of the Agent upon whom service was made.
 - b. If published, a copy of the Affidavit of Publication shall be attached
- all of which shall be attached to the Petition for Abandonment. **[MCL 224.18 (6)]**

IV. VIEW OF THE PREMISES

- A. Prior to the Public Hearing, the Board itself, or the Superintendent or Engineer employed by the Road Commission, shall view the premises **[MCL 224.18 (7)]**.

V. PUBLIC HEARING

- A. To be conducted by the Board or, in its discretion, a Public Hearing may held by an employee of the Road Commission designated as a “hearing examiner”, who shall report all findings of fact to the Board. **[MCL 224.18 (6)]**.

VI. DECISIONS

- A. If the determination is in favor of the abandonment:
1. For roads (or portions thereof) that border on a lake or the general course of a stream and where the proposed abandonment would result in a loss of public access.
 - a. Both the Township and the Department of Natural Resources shall, *within thirty (30) days of receipt of their Notice* prior to the Public Hearing, determine whether the property should be retained as an ingress and egress point and shall, within said 30-day period, notify the Road Commission (priority to the Township first and the Department of Natural Resources second). **[MCL 224.18 (5)]**

- b. If the Board makes a determination to abandon a road (or portion thereof), it shall convey same by Quit Claim Deed, or relinquish jurisdiction over the property “if the interest is non-transferrable”¹ to the Township or the Department of Natural Resources, in that order. **[MCL 224.18 (8)]**
- 2. For roads (or portion thereof) *not adjacent to water* and/or when the abandonment does *not* result in loss of an access site:
 - a. If the determination is to abandon a road (or portion thereof) and the Township has, prior to the Public Hearing, claimed is “priority”, the Road Commission shall Quit Claim the abandoned property “if the interest is non-transferrable” to the Township.² **[MCL 224.18 (9)].**
- 3. For all abandonment decisions where the Board has not received a “priority claim” from the Township or the DEQ:
 - a. A Resolution of Abandonment must be prepared by the Board stating that it in the best interest of the public that the road (or portion thereof) be absolutely abandoned and discontinued.
 - b. A true copy of the Resolution of Abandonment shall contain an accurate description of the land comprising the road (or portion thereof) being abandoned, which Resolutions shall be recorded in the office of the Register of Deeds **[MCL 224.18 (3)]**
- B. The Board may reserve utility easements within the road right-of-way of the road absolutely abandoned and may subsequently extinguish any easements so reserved when it ceases to be used for public utility purposes. **[MCL 224.18 (11)]**
- C. The Board shall, *within thirty (30) days of its Determination* , file with the Michigan Department of Transportation a full record and return of its proceedings.

¹The phrase “if the interest is non-transferrable” does not make much sense. All non-transferable property rights (such as life estates, or certain grants with contingencies) are not transferrable whether by Quit Claim Deed or by relinquishment of jurisdiction.

²The language “if the interest is non-transferrable” is equally confusing here. The confusion is not alleviated by the Legislature here only giving the Quit Claim Deed direction and not including the “relinquish jurisdiction” option.

VII. SUBSEQUENT TOWNSHIP OBLIGATIONS

- A. If the Township keeps property for water access, it must maintain same to prevent litter, noise and congestion. There exists a subsequent, detailed, Court procedure for individuals to obtain compliance by the Township with that requirement. **[MCL 224.18 (12) - (19)].**