

**ADMINISTRATIVE CODE
BOARD OF COUNTY COMMISSIONERS**

CATEGORY:
Development/Planning/Zoning

CODE NUMBER:
AC-13-8

TITLE:
Vacation of Rights-of Way in Accordance with F.S.
Chapter 336

ADOPTED:
08/29/90

AMENDED:
01/4/95; 01/10/96; 04/30/97; 08/26/97; 05/17/05

ORIGINATING DEPARTMENT:
Community Development

PURPOSE/SCOPE:

The purpose of this Administrative Code is to set forth the administrative procedure for the purpose of vacating the public's interest in either public or private rights-of-way (roadways). The basis of this procedure is found in F.S. Ch. 336.

POLICY/PROCEDURE:

A. DEFINITIONS

"Easement" means right to use a strip of land, the title to which is held by another person, for public or private utilities, drainage, sanitation, rights-of-way or another specified use.

"Plat" means a map or drawing recorded in the public records that represents a subdivision of land.

"Right-of-Way" means any land or interest in land dedicated, deeded, used or to be used for a street, alley, walkway, boulevard, drainage facility, access for ingress and egress or other purpose by the public, certain designated individuals, or any governing body. (Note: Roadways in use by the general public must be vacated in accordance with F.S. Ch. 336.)

"Vacate" means an act of the Board to renounce or disclaim a public interest in certain real property.

"Waterway or Water Access" means pedestrian, vehicular or vessel access to or from surface water, including natural or artificial watercourses, lakes, ponds, streams, canals or ditches, in which water flows, though it is not essential that the water flow be uniform or uninterrupted. For the purposes of this section, these terms contemplate the ability to access water from the land, and the reciprocal ability to access land from the water.

B. GENERAL POLICY OF THE BOARD OF COUNTY COMMISSIONERS:

The Board of County Commissioners (the "Board") is vested with the general superintendence and control of Lee County (the "County") roads. The Board has the sole discretion to close, discontinue, or vacate the public right or interest in County rights-of-way.

When the Board grants a Petition to Vacate, it serves to vacate the public's right in the road or right-of-way; private rights are not affected and remain in full effect.

Where the area to be vacated abuts a waterway, the Board's general policy is to deny the vacation request if the Board concludes the area to be vacated provides or has the potential to provide useful water access to the public.

If the required reviewing entity determines that vacation of a particular easement or right-of-way may not serve the best interest of the public, the petitioner may offer an alternative or replacement easement. However, the reviewing entity is under no obligation to accept the offered alternative. If a Petition to Vacate is premised on the grant of a replacement easement, the Board will not take action on the Petition until the instrument necessary to grant the alternative real property interest has been accepted in form and content by the County Attorney, properly executed by the granting or conveying entity, and delivered to the County Attorney's Office to be held in trust pending the Board's consideration of the requested vacation.

C. SKETCHES AND DRAWINGS

1. A sketch or drawing showing the easement or right-of-way to be vacated is required. This sketch or drawing should be suitable for recording in the public records (no greater in size than 8½" x 14".) If platted under F.S. Chapter 177, then a copy of the relevant portion of the plat will be required.
2. In all cases, the scale used must be stated on each sheet and be of sufficient size to show all detail.
3. The name of the subdivision(s) must be shown on each sheet as well as lot numbers, block numbers and street names.
4. The size of each sheet must be no larger than 24" x 36" or smaller than 8½" x 11".
5. A prominent "north arrow" must be drawn on every sheet.

D. GENERAL PROVISIONS

1. Complete Petitions to Vacate must be presented to the Department of Community Development, Development Services Division, by the applicant or applicant's representative. The Department of Community Development will present the petition to the Board of County Commissioners at a public hearing.
2. The following documents must be filed with the original Petition to Vacate:
 - a) Filing fee in the amount specified in the external fees and charges manual. (Petitioner will also be responsible for recording costs if the petition is granted.)
 - b) Two copies of the sketch or drawing as stated in section "B".

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- c) If the area to be vacated abuts a waterway, a copy of the Waterways Advisory Committee meeting minutes encompassing the committee recommendation concerning the vacation of any public interest that provides or has the potential to provide water access to the public.
- d) Letter of review and recommendation from the appropriate official of each of the following entities:
 - 1. Each utility company operating or having facilities in the general area of the vacation
 - 2. Lee County Department of Community Development
 - 3. Lee County Transportation Division
 - 4. Lee County Environmental Services Division
 - 5. Southwest Area Office of the Florida Department of Transportation.

The Development Services Director or his designee may waive the above requirement when it is clear that the designated reviewing entity does not have an interest in the area subject to vacation. Waiver is granted at the sole discretion of the Director.

- e) All reviewing entities, including the Waterways Advisory Committee, are encouraged to comment on or highlight relevant issues affecting the grant of the Petition, even if not directly related to or within the scope of the subject matter of that reviewing entity's ordinary responsibility.

Comments from affected property owners and other members of the general public should be directed to the Department of Community Development, Development Services Director. Affected property owners and other members of the general public are encouraged to attend the public hearing before the Board.

- f) The Department of Community Development, as the coordinating agency of the petition to vacate process, will make an overall recommendation as to the granting or denial of the petition to vacate, taking into account all of the comments received from the reviewing entities, affected property owners and members of the general public. The recommendation should be summarized in the agenda (blue) sheet for the public hearing and may include comments received from affected property owners and members of the public.
- g) Two copies of the aerial encompassing the area to be vacated.
- h) The completed original Petition to Vacate must include a legally sufficient description of the area or interest proposed for vacation.

3. FOR PUBLIC HEARING

- a) The County is responsible for publishing one Notice of Public Hearing on the Petition to Vacate in a newspaper of general circulation in Lee County, at least 15 days prior to the public hearing. An Affidavit of Publication confirming legal notice must be presented to the County Attorney's Office, with a copy to the Lee County Department of Community Development, for presentation to the Board of County Commissioners at the time of the public hearing.

- b) The County will post a notice of Vacating, Abandoning, Discontinuing or Closing on or near the roadway proposed for vacation at least 7 days prior to the public hearing. The notice must identify the date, time and place of the public hearing on the Petition to Vacate and indicate where the public can obtain additional information concerning the petition. The notice must be approximately 22" x 28", securely affixed to a post or other support and visible to the traveling public. An Affidavit of Posting, confirming that the notice was posted will be prepared by the Department of Community Development and forwarded to the County Attorney's Office for presentation to the Board of County Commissioners at the public hearing.

4. FOR FINAL APPROVAL

- a) After approval by the Board of County Commissioners, the County will publish a Notice of Resolution Adoption in a newspaper of general circulation in Lee County one time within thirty (30) days following adoption. An Affidavit of Publication as to the notice of adoption will be obtained by the Department of Community Development.
- b) The Department of Community Development will record in the public records of Lee County, the Affidavit of Publication for the Notice of Public Hearing, the Resolution as adopted, and the Affidavit of Publication for the Notice of Resolution Adoption. **The Petitioner is responsible for the cost of recording.**
- c) The Department of Community Development will submit a copy of the recorded Resolution and Affidavits of Publication to the Lee County Property Appraiser, the Office of County Lands, the Lee County Transportation Division, and the Petitioner.

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Petition Submitted



Review by Development Services
Petition Found Complete



Blue sheet for Direction to Public
Hearing and Adoption of Resolution



Review by County Attorney



Notice in News Press (at least) 15 days before Public
Hearing



Property posted prior to hearing



BOCC adopts resolution at Public
Hearing



Notice of Adoption of Resolution published in
Newspaper within 30 days of adoption



The following documents are recorded in Public
Records: Resolution, Affidavit of Publication for Notice
of Hearing, and Affidavit of Publication for Notice of
Resolution Adoption