

**ADMINISTRATIVE CODE
BOARD OF COUNTY COMMISSIONERS**

CATEGORY: Development/Planning/Zoning	CODE NUMBER: AC-13-1
TITLE: Vacation of Plats or Easements created through the platting process in accordance with Chapter 177, Florida Statutes	ADOPTED: 04/19/88
	AMENDED: 06/13/90; 08/29/90; 01/04/95; 01/10/96; 04/30/97; 08/26/97; 05/17/05; 04/18/23
	ORIGINATING DEPARTMENT: Community Development

PURPOSE/SCOPE:

The purpose of this Administrative Code is to set forth the administrative procedure for the vacation of a plat or a portion of a plat, including utility, drainage and right-of-way easements created through the platting process. The basis for this procedure is found in Ch. 177, Florida Statutes.

POLICY/PROCEDURE:

A. **DEFINITIONS**

“Affected Property Owners” means owners of record of all lots or parcels of land within the platted subdivision that would be affected by the vacation. In general, the term includes any owner of property adjacent to or near the area to be vacated.

“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.

“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.)

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

“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:

Lee County (the "County") is statutorily authorized in the sole discretion of the Board of County Commissioners (the "Board") to vacate a plat or portion of a plat, including utility, drainage and right-of-way easements created through the platting process. That authority must be lawfully exercised in the interest of the general public welfare.

Those persons who purchase according to the plat have private rights to use all vacated easements depicted on the plat. These private rights survive the vacation of public rights.

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 Department of Community Development to be held in trust pending the Board's consideration of the requested vacation.

C. SKETCHES AND DRAWINGS

1. A copy of the relevant portion of the recorded plat clearly identifying the easement or right-of-way to be vacated is required. If the area to be vacated cannot be clearly identified on the recorded plat, then a sketch or drawing of the area 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".)

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 must be shown on each sheet as well as all lot numbers, block numbers, and street names.

4. The size of each sheet can be no larger than 24" x 36" or smaller than 8½" x 11".

5. A prominent "north arrow" must be drawn on every sheet.

6. The map or drawing must indicate all affected property owners.

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 bring forth the petition to the Board of County Commissioners at a regularly scheduled meeting of the Board of County Commissioners.

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2. The following documents must be filed with the original Petition to Vacate:
- a) Filing fee in the amount specified by the external fees and charges manual. (Petitioner will also be responsible for recording costs if petition is granted.)
 - b) Two copies of the plat or drawing as stated in Section "B".
 - c) If the area to be vacated abuts a waterway, a copy of the Waterways Advisory Committee meeting minutes encompassing the committee's 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.

A letter of review and recommendation is not required from the Florida Department of Transportation or the Lee County Transportation Division for vacations of easements located along the rear and side lot lines.

- 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 meeting at which the petition will be considered by 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 Item Report 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.

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- h) A list of all affected property owners (names and addresses).
- i) The Petitioner must include proof that all affected property owners were given a notice describing the proposed vacation.
- j) Documentation showing that all State and County property taxes due and payable have been paid.
- k) In addition to the legal description of the property, the Petitioner must include the street address or general location of the property in the County. If such tract or parcel of land is within the corporate limits of any incorporated city or town, the governing body of the County must be furnished with a certified copy of the resolution of the town council or city commission, as the case may be, showing that it has already, by suitable resolution, vacated such plat, subdivision, or right-of-way sought to be vacated.
- l) Proof that the person seeking the vacation owns the fee simple title to the area to be vacated.
- m) The completed original Petition to Vacate must include a legally sufficient description of the area or interest proposed for vacation.

3. PUBLICATION OF NOTICE OF INTENT

- a) The County is responsible for publishing the Notice of Intent for the Petition to Vacate. Publication will be performed in a manner consistent with Florida law.

4. FOR FINAL APPROVAL

- a) After approval by the Board of County Commissioners, the Department of Community Development will record a Resolution granting the Petition to Vacate in the public records of Lee County. The Resolution becomes effective upon recording. **The Petitioner is responsible for the cost of recording.**
- b) The Department of Community Development will submit a copy of the recorded resolution to the Lee County Property Appraiser, the Office of County Lands, the Transportation Division and the Petitioner.

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AC-13-1 Vacation in Accordance with Ch. 177, F.S.

