

**Lee County Board Of County Commissioners  
Agenda Item Summary**

Blue Sheet No. 20050544

**1. ACTION REQUESTED/PURPOSE:**

Adopt revisions to Administrative Codes 13-1 and 13-8 to streamline the process for Petitions to Vacate.  
Adopt a Resolution to amend AC-13-1 and AC-13-8. *jt*

**2. WHAT ACTION ACCOMPLISHES:**

Reduces the steps in scheduling Public Hearings and sets the Public Hearings for 9:30 a.m. instead of at 5:00 p.m.

**3. MANAGEMENT RECOMMENDATION: Approve**

**4. Departmental Category: CW**

*A4A*

**5. Meeting Date: 05-17-2005**

**6. Agenda:**

- Consent
- Administrative
- Appeals
- Public
- Walk-On

**7. Requirement/Purpose: (specify)**

- Statute
- Ordinance
- Admin. Code 13-1, 13-8
- Other

**8. Request Initiated:**

Commissioner \_\_\_\_\_  
 Department Community Development  
 Division Development Services  
 By: *[Signature]*  
 Peter J. Eckenrode

**9. Background:**

The proposed Administrative Code amendments will streamline the "vacation" process by eliminating the bluesheet to "direct" the item to Public Hearing.

In addition, changes to the Florida Statutes no longer require Public Hearings of this type to be conducted after 5:00 p.m. This will permit the scheduling of the Public Hearing at 9:30 a.m. rather than 5:00 p.m.

Attachments: Administrative Code Number AC-13-1  
 Administrative Code Number AC-13-8

**10. Review for Scheduling:**

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services	County Manager/P.W. Director
<i>[Signature]</i>				<i>[Signature]</i>	Analyst <i>[Signature]</i> Risk <i>[Signature]</i> Grants <i>[Signature]</i> Mgr. <i>[Signature]</i>	<i>[Signature]</i>

**11. Commission Action:**

- Approved
- Deferred
- Denied
- Other

Rec. by CoAtty  
 Date: *[Signature]*  
 Time: *[Signature]*  
 Forwarded To: *[Signature]*

RECEIVED BY  
 COUNTY ADMIN. *[Signature]*  
 4-21-05 *[Signature]*  
 4:40 pm  
 COUNTY ADMIN.  
 FORWARDED TO: *[Signature]*  
 4/28/05  
 4pm

LEE COUNTY RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE LEE COUNTY BOARD OF COUNTY COMMISSIONERS RELATING TO AMENDMENTS TO THE LEE COUNTY ADMINISTRATIVE CODE AS ADOPTED BY LEE COUNTY ORDINANCE NO. 97-23; PROVIDING FOR APPROVAL OF CERTAIN AMENDMENTS TO THE LEE COUNTY ADMINISTRATIVE CODE; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, the Board of County Commissioners is the governing body in and for Lee County, a political subdivision of the State of Florida; and,

WHEREAS, the Board of County Commissioners has previously enacted Lee County Ordinance No. 96-01, creating a charter form of government for Lee County pursuant to Section 125.80 and ff., Florida Statutes, and which was approved and ratified by the Electorate of Lee County on November 5, 1996; and,

WHEREAS, the Board of County Commissioners has previously enacted Lee County Ordinance No. 97-23, which adopted the Lee County Administrative Code pursuant to Section 2.2.E. of Ordinance No. 96-01, the Lee County Charter; and,

WHEREAS, Lee County Ordinance No. 97-23 at Section III allows and provides for amendments to the Lee County Administrative Code to be made by Resolution of the Board of County Commissioners at a regularly scheduled Board of County Commissioners' meeting; and,

WHEREAS, certain amendments to the Lee County Administrative Code are now being proposed, and the Board of County Commissioners finds that such proposed amendments are acceptable, serve a public purpose and are consistent with the terms and

conditions of Lee County Ordinance No. 96-01, the Lee County Charter.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS that:

1. The above preamble is hereby accepted and approved as being true and accurate, and is adopted and incorporated herein as if set out further at length.
2. The proposed amendment(s) to the Lee County Administrative Code 13-1 and 13-8 (attached hereto as Exhibit "A"), are approved, and are hereby directed to be incorporated into the Lee County Administrative Code as indicated in the amendments.
3. The provisions of this Resolution are severable, and it is the intention to confer to the whole or any part of this Resolution, the powers herein provided for. If any of the provisions of this Resolution shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the other remaining provisions of this Resolution. It is hereby declared to be the Board's legislative intent that this Resolution would have been adopted had such an unconstitutional provision not been included herein.
4. This Resolution shall become effective immediately upon its adoption by the Board of County Commissioners.

The foregoing Resolution was offered by Commissioner \_\_\_\_\_, who moved its adoption. The motion was seconded by Commissioner \_\_\_\_\_ and,

being put to a vote, the vote was as follows:

ROBERT P. JANES	_____
DOUGLAS R. ST. CERNY	_____
RAY JUDAH	_____
TAMMY HALL	_____
JOHN E. ALBION	_____

DULY PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

ATTEST:  
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Chairman

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Office of the County Attorney

**ADMINISTRATIVE CODE  
BOARD OF COUNTY COMMISSIONERS**

<b>CATEGORY:</b> Development/Planning/Zoning	<b>CODE NUMBER:</b> AC-13-1
<b>TITLE:</b> Vacation of Plats or Easements created through the platting process in accordance with Chapter 177, Florida Statutes	<b>ADOPTED:</b> 4/19/88
	<b>AMENDED:</b> 6/13/90 8/29/90 1/4/95 1/10/96 4/30/97 8/26/97
	<b>ORIGINATING DEPARTMENT:</b> 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 County Attorney's Office 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 present the petition to the Board of County Commissioners at a regular Board Meeting and request the Board to hold a public hearing.

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 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 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) 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. FOR PUBLIC HEARING

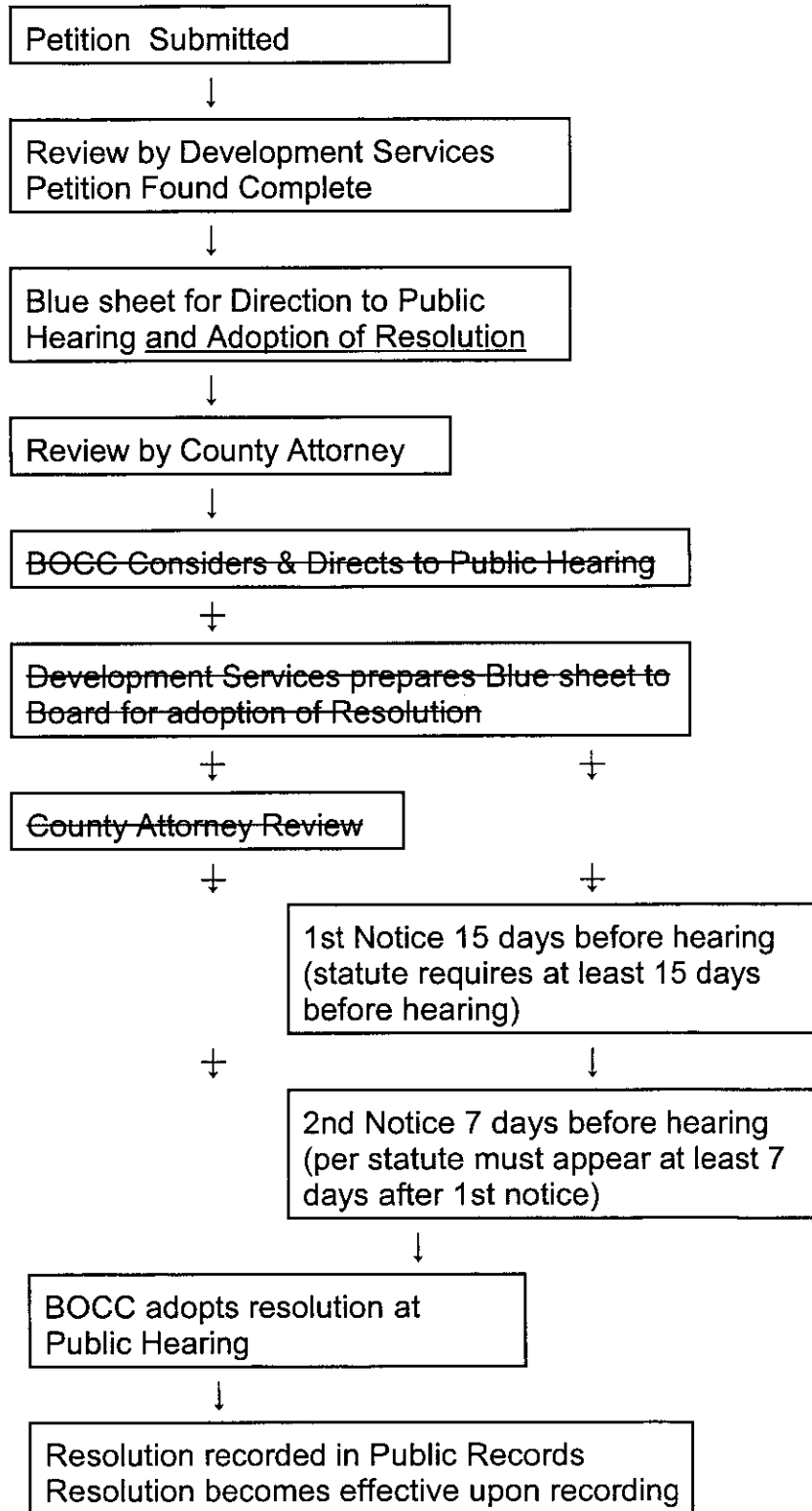
- a) The County is responsible for publishing the Notice of Public Hearing on the Petition to Vacate in a newspaper of general circulation in Lee County at least once a week for two weeks prior to the public hearing. The first legal notice must appear at least fifteen (15) days prior to the date of Public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

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.



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



**ADMINISTRATIVE CODE  
BOARD OF COUNTY COMMISSIONERS**

<b>CATEGORY:</b> Development/Planning/Zoning	<b>CODE NUMBER:</b> AC-13-1
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	<b>AMENDED:</b> 6/13/90 8/29/90 1/4/95 1/10/96 4/30/97 8/26/97
	<b>ORIGINATING DEPARTMENT:</b> Community Development

**PURPOSE/SCOPE:**

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

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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 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".)

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#### 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 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".

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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 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 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) 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.

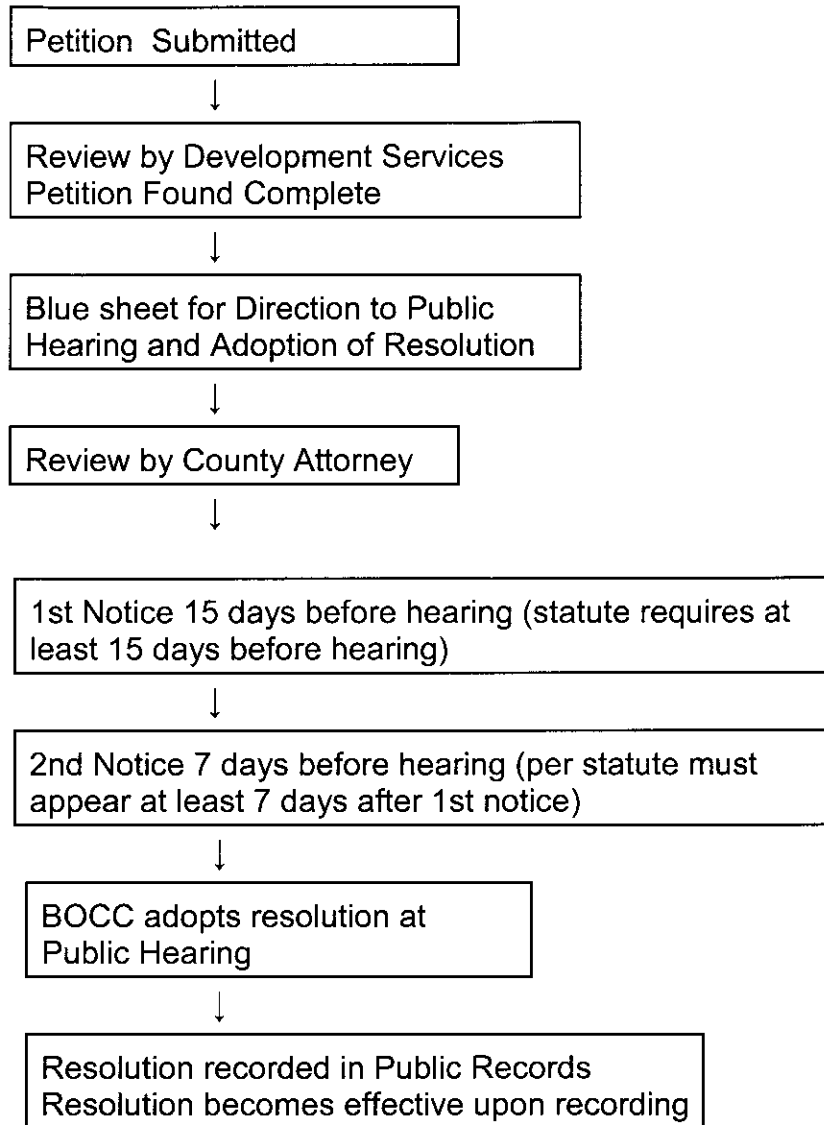
3. FOR PUBLIC HEARING

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

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.

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



**ADMINISTRATIVE CODE  
BOARD OF COUNTY COMMISSIONERS**

<b>CATEGORY: DEVELOPMENT/PLANNING/ZONING</b>	<b>CODE NUMBER: AC-13-8</b>
<b>TITLE:</b> Vacation of Rights-of way in accordance with F.S. Chapter 336	<b>ADOPTED: 8/29/90</b>
	<b>AMENDED: 1/4/95 1/10/96 4/30/97 8/26/97</b>
	<b>ORIGINATING DEPARTMENT: Community Development</b>

**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.

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**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 ~~regular Board Meeting and request the Board to hold 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".

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

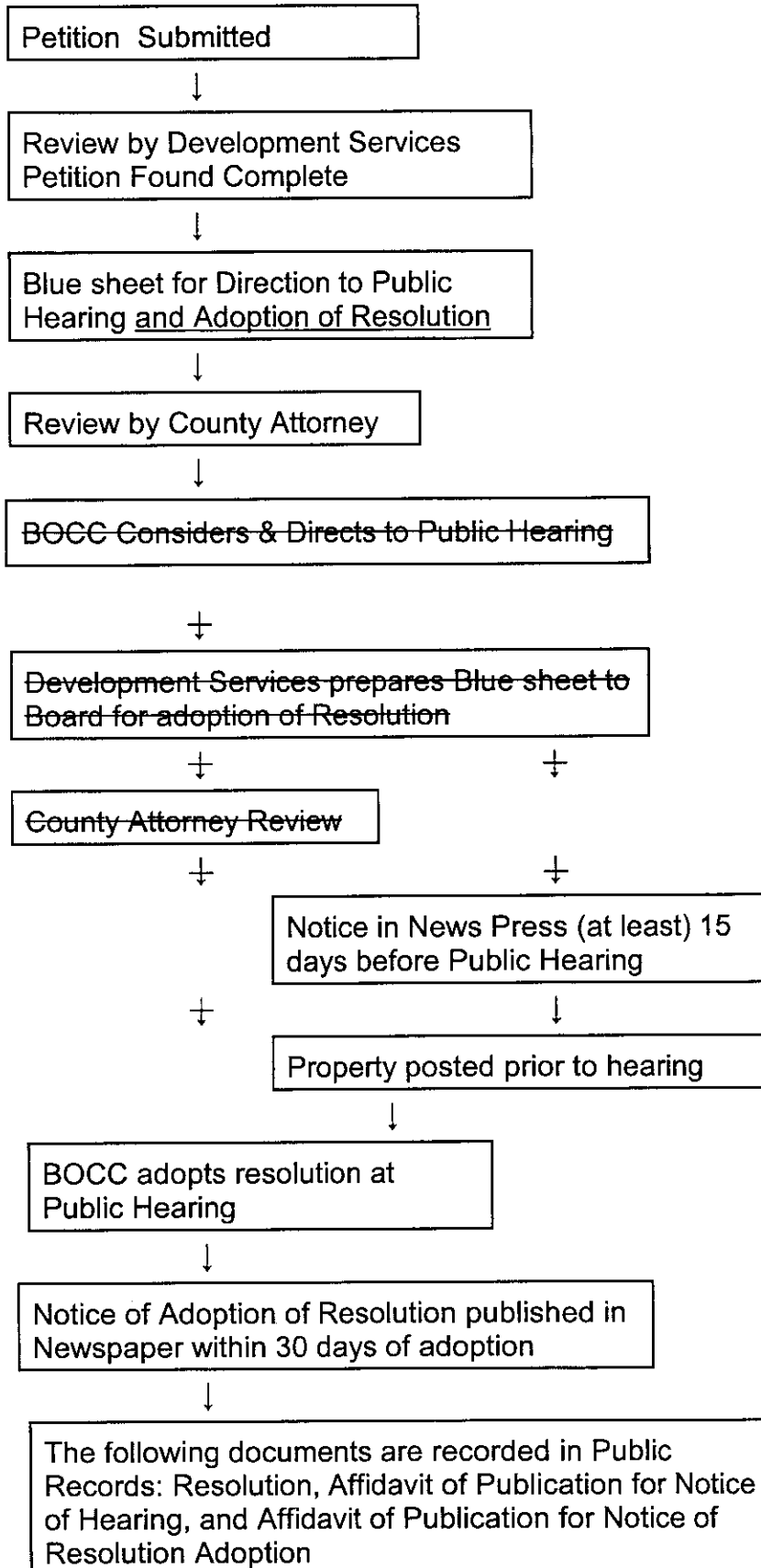
- a) The County is responsible for publishing one Notice of Public Hearing on the Petition to Vacate in a newspaper of general circulation in Lee County, at least 15 days prior to the public hearing. An Affidavit of Publication confirming legal notice must be presented to the County Attorney's Office,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

AC-13-8 Vacation in Accordance with Ch. 336, F.S.



**ADMINISTRATIVE CODE  
BOARD OF COUNTY COMMISSIONERS**

<b>CATEGORY:</b> DEVELOPMENT/PLANNING/ZONING	<b>CODE NUMBER:</b> AC-13-8
<b>TITLE:</b> Vacation of Rights-of way in accordance with F.S. Chapter 336	<b>ADOPTED:</b> 8/29/90
	<b>AMENDED:</b> 1/4/95 1/10/96 4/30/97 8/26/97
	<b>ORIGINATING DEPARTMENT:</b> 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".
  - 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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