

## ARTICLE III. - ROAD ABANDONMENT AND PLAT VACATION

*Footnotes:*

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**State Law reference**— *Home rule powers of chartered counties, Fla. Const., art. VIII, § 1(g); authority to vacate roads, F.S. § 336.09 et seq.*

## Sec. 22-41. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Abandon*, and any variant thereof, includes the terms "vacate" and "annul."

*Abutting property* means any parcel of real property whose boundaries, or any part thereof, also serves as the boundary, or portion thereof, of the petition site.

*Affected property* means any parcel of real property, or portion thereof, which lies within three hundred (300) feet of the boundaries of the petition site.

*County* includes the board of county commissioners.

*County right-of-way* means any right-of-way acquired by the county or the public by virtue of a dedication to the public or the county on a plat, by separate instrument of conveyance, or by prescription.

*Department* means the county department of engineering and public works.

*Land value* means the value of land as established for the tax base by the property appraiser's office prior to any or all exemptions.

*Owner* means that person, governmental entity or business entity which is the fee simple title holder of real property.

*Owners association* means any association or corporation created under the laws of the state, the membership of which is comprised of all owners of real property over which the owners association has jurisdiction by virtue of a declaration of covenants and restrictions, declaration of condominium, or similar instrument. The term shall include the terms "homeowners association," "condominium association," "cooperative association," and "property owners association."

*Petitioner* means the person, governmental entity or business entity submitting a petition for abandonment pursuant to this chapter. The term "petitioner" shall include "copetitioner" where appropriate.

*Petition for abandonment* or *petition* means the form prescribed by the department which requests the abandonment of a plat, or portion thereof, right-of-way or public easement pursuant to this article.

*Petition site* means any parcel of real property subject to a petition for abandonment pursuant to this chapter.

*Plat* means any drawing of real property made and recorded pursuant to chapter 177, Florida Statutes, or the ordinances of the county.

*Private right-of-way* means any right-of-way dedicated or deemed to an owners association or the owner of the abutting property or which is dedicated as a right-of-way and is the perpetual maintenance obligation of any owners association or the owner of abutting property.

*Public easement* means any utility or drainage easement which is dedicated by plat in perpetuity for utility or drainage purposes, or which is conveyed by separate instrument recorded in the public records to the public or the county, which instrument has been approved by the county for recordation. The term shall not include instruments of conveyances or dedications made to specifically named utility companies, owners associations, drainage districts, or other governmental agencies.

*Public records* means the records filed in the office of the clerk of the circuit court in and for the county.

*Right-of-way* means any strip of land dedicated or deeded for ingress and egress or access purposes. The term shall include the terms "road," "highway," "alley," "accessway," and any other similar term. The term shall mean both county right-of-way and private right-of-way.

*Utility company* means any public or franchised entity which provides electrical, gas or communication services.

(Ord. No. 86-18, § III, 6-24-86)

Sec. 22-42. - Declaration of jurisdiction and control of the board of county commissioners; application of article.

- (a) Any dedication or conveyance of real property for the purpose of streets, rights-of-way, access, ingress and egress, utilities and drainage which is made on or by a plat, easement, deed or other instrument of any kind, which instruments are approved by the board of county commissioners for filing of record in the public records of the

county or which instruments convey any interest in real property to the board of county commissioners is hereby deemed to be under the jurisdiction and control of the board of county commissioners for the purposes of the vacation, annulment and/or abandonment of plats, or portions thereof, rights-of-way, and easements for utility and drainage purposes.

- (b) The provisions of this article shall apply to all plats, rights-of-way and easements under the jurisdiction and control of the board of county commissioners.
- (c) The procedures set forth in this article shall apply to applications pursuant to section 177.101(1) and (2), Florida Statutes, and to all applications for vacating plats, or any portion thereof, including public easements, pursuant to section 177.101(3), Florida Statutes. Any petition to vacate a plat, or portion thereof, which plat, or portion thereof, contains private rights-of-way shall not require a public hearing pursuant to section 22-49; however, a public hearing shall be required if the petition site includes a county right-of-way or public easement for drainage purposes which services a county right-of-way.

(Ord. No. 86-18, § II, 6-24-86)

Sec. 22-43. - Petitions generally.

- (a) *Petitions for abandonment of plats:* Any person, governmental entity or business entity desiring to abandon a plat, or any portion thereof, including public easements, shall be required to make application to the county pursuant to section 177.101, Florida Statutes, and the provisions of this article. Such application shall be on the petition form prescribed by the department, and the information contained therein shall be verified by the petitioner under oath. Unless initiated by the county, the petition shall be signed by all owners of any portion of the petition site.
- (b) *Petitions for abandonment of rights-of-way.* Any person, governmental entity or business entity desiring to abandon the public's interest in and to any right-of-way shall be required to make application to the county pursuant to this article. Such application shall be on the petition form prescribed by the department, and the information contained therein shall be verified by the petitioner under oath. Unless initiated by the county, any petition for abandonment of rights-of-way shall be signed by all owners of abutting property.
- (c) *Signature of county engineer.* Any petition made on behalf of the county shall be signed by the office of the department of engineering and public works.

(Ord. No. 86-18, § IV, 6-24-86)

Sec. 22-44. - Application and privilege fees.

- (a) Application fee. Except as provided herein, each petition shall be accompanied by a fee as set by resolution of the board of county commissioners to cover the cost of administrative review, site analysis and investigation, publications, and official recording. Said fee will be credited to any privilege fee imposed. No refund shall be made. Petitions of the county or any other governmental agency shall be exempt from the application fee.
- (b) A privilege fee is hereby established, payable by any petitioner requesting the abandonment of the interest of the county and public in and to any right-of-way under the jurisdiction and control of the board of county commissioners. The privilege fee is to be used for the purpose of reimbursing the county's costs and expenses incurred when acquiring real property for public use.
- (c) The board of county commissioners shall make the final determination of the application of the privilege fee based upon recommendations submitted by county staff at the scheduled public hearing for abandonment of the petition site.
- (d) The privilege fee shall be determined and fixed by computing eighty (80) percent of the total land value of the petition site.
- (e) The total land value of the petition site, per square foot, shall be equal to the averaged square foot land value of the abutting property, as established by the most current county property appraiser records. This calculation shall be based upon the cumulative land value of the abutting properties (cumulative value), determining the average value of the properties on a square footage basis (square footage value), and multiplying the square footage value by the number of square feet of the petition site to ascertain the total land value of the petition site.
- (f) Such privilege fee shall not apply to petitions submitted by the following:
  - (1) The fee simple owner of the property subject to an easement;
  - (2) The original gratuitous conveyor of all the public rights-of-way to be abandoned;
  - (3) Rights-of-way contained in plats which were recorded in the public records of the county and when no conveyance of lots by reference to the plat appear of record;  
or
  - (4)

When the petitioner is a duly organized governmental body. This exception from the privilege fee does not apply where such governmental body requires payment from the county for transfer or acquisition of land and or right-of-way for public purposes.

- (g) The privilege fee may not apply when the petitioner will convey necessary real property for county rights-of-way designated on the county thoroughfare plan, which is equal to or more than the total square footage to be abandoned, as determined by the board of county commissioners.

(Ord. No. 86-18, § V, 6-24-86; Ord. No. 02-034, §§ 1, 2, 8-20-02)

#### Sec. 22-45. - Access to water.

No right-of-way, road, street or public accessway giving access to any publicly accessible waters in the county shall be closed, vacated or abandoned except in those instances wherein the petitioner(s) offers to trade or give to the county comparable land or lands for a right-of-way, road, street or public accessway to give access to the same body of water, such access to be of such condition as not to work a hardship to the users thereof, the reasonableness of the distance and comparable land being left to the discretion of the board of county commissioners.

(Ord. No. 86-18, § VI, 6-24-86)

#### Sec. 22-46. - Notice of intent.

Immediately prior to filing the petition for abandonment with the department, the petitioner shall cause to be published a notice of intent in a newspaper of general circulation in the county once weekly for two (2) consecutive weeks. Such notice of intent shall state the intent of the petitioner to file a petition pursuant to this chapter and, in the case of plat abandonment, or any portion thereof, chapter 177, Florida Statutes.

(Ord. No. 86-18, § VII, 6-24-86)

#### Sec. 22-47. - Petition application procedures.

In addition to any other information required by the department, the petition shall contain the following:

- (1) *Legal description of petition site.* A complete and accurate legal description of the petition site.

(2) *Type of petition.* A statement identifying the type of petition as being for abandonment of:

- a. A plat;
- b. A portion of plat;
- c. A county right-of-way;
- d. The public's interest in a private right-of-way; or
- e. A public easement.

The statement shall identify the source of the county's or public's interest, together with a reference to the recording information for same, in and to the petition site.

(3) *Survey.* A certified land survey measuring eight and one-half (8½) inches by eleven (11) inches stock, no less than 12 font size shall be prepared by a state registered land surveyor in accordance with the minimum technical standards of F.S. § 472.027, and chapter 21HH-6, F.A.C., and attached as an exhibit to the petition. The survey shall also contain or depict the following information:

- a. An accurate drawing of the petition site;
- b. The boundaries of abutting properties;
- c. The square footage of the petition site; and
- d. Existing structures, utilities, easements, encroachments and other improvements, including but not limited to the location of overhead, underground or surface utility lines and equipment, ditches, fences, buildings, pathways and drainage structures contained on the petition site.

(4) *Location map.* A drawing measuring not less than eight and one-half (8½) inches by eleven (11) inches and no larger than eleven (11) inches by seventeen (17) inches which clearly and legibly identifies the location of the petition site in relation to the nearest public right-of-way, excluding the petition site, and all affected properties. The location map may be located on the survey in a separate block.

(5) *List of owners of affected property.* A complete list of all owners of affected property, their mailing addresses and legal description of the property owned. All owners of abutting property shall be so designated on this list. The petition shall state the source of the information used to compile the list and shall contain an affidavit of the preparer that to the best of his knowledge said list is complete and accurate. If the affected property is under the jurisdiction of an owner's association,

this requirement of notice to affected property owners may be fulfilled by mailing such notice to said owners association, provided, however, that all abutting property owners must also be separately notified. Said list shall be accompanied by a number ten (10) white envelope for each affected property owner and each petitioner as follows:

- a. The following return address shall be printed or typed thereon:  
Engineering and Public Works Department  
Attn: Land Development Division  
160 Australian Avenue, Suite 206  
P.O. Box 21229  
West Palm Beach, FL 33416-1229
  - b. It shall be pre-stamped with sufficient postage for certified, return receipt postage for addressees in the United States and registered mail postage for addresses in foreign countries.
  - c. A properly completed certified mail receipt or registered mail receipt, as applicable, shall be clipped to each envelope.
- (6) *Utility and drainage district approvals.* The written approval or consent of the utility providing service to or within the petition site shall be attached to the petition. In the case of any petition affecting drainage easements, canals, lakes or other water management systems, the written approval or consent of the drainage district(s) having jurisdiction over the petition site shall also be attached to the petition.
- (7) *Access to affected property.* The petition shall contain a statement that to the best of the petitioner's knowledge, the granting of the petition would not affect the ownership or right of convenient access of persons owning other parts of the subdivision.
- (8) *Federal or state highway statement.* The petitioner shall certify that the petition site, or any portion thereof, is not a part of any state or federal highway and was not acquired or dedicated for state or federal highway purposes.
- (9) *Notice of intent.* Proof of publication of the notice of intent required by section 22-46 shall be attached to the petition.
- (10)

*Evidence of title.* The petition shall state the source of the petitioner's ownership or interest in and to the petition site, and a reference to the recording information for same. A copy of the source instrument shall be certified by the clerk of the circuit court and attached to the petition.

(11) *Evidence of taxes paid.* The petition shall state that all state, municipal and county taxes on the petition site have been paid. The certificate of the tax collector's office showing payment of same (as payment is defined in section 177.101(4), Florida Statutes) shall be attached to the petition. If the petition site or any portion thereof is tax-exempt, the petition shall so state and a copy of the tax roll from the tax collector's office which shows such exemption shall be attached to the petition.

(12) *Municipal resolution.* The petition shall state whether the petition site lies within the corporate limits of a municipality, within the unincorporated area, or both. If any portion of the petition site lies within the corporate limits of a municipality, the municipality shall first abandon its interest in the petition site by appropriate resolution, and a certified copy of the municipal resolution shall be attached to the petition.

(13) *Fees.* The petition shall state whether the petition site is subject to the privilege fee, the amount of the fee, and that the application fee is submitted therewith. The petition shall include the appropriate documentation supporting the petitioner's calculation of the privilege fee.

(14) *Justification.* The petition shall detail the relevant reasons in support of the request and granting of the petition.

(Ord. No. 86-18, § VIII, 6-24-86; Ord. No. 02-034, §§ 1, 2, 8-20-02)

Sec. 22-48. - Review of petition.

- (a) Each petition shall be reviewed by the department, the county planning, building and zoning department, and any governmental agency or county department deemed affected by the department. Upon receipt, the department shall distribute the petition to the reviewing departments and agencies. Within twenty (20) days of receipt of the petition, the reviewing departments and agencies shall submit a written report containing their findings and recommendations to the designated staff of the department. Upon receipt of all written reports, the department shall review the petition and reports and shall notify the petitioner in writing of any reasonable conditions to be performed prior to forwarding the petition and reports pursuant to



paragraph (b). Within ninety (90) days of receipt of the department's notification, the petitioner shall either comply with, agree and commit in writing to the conditions, or disagree in writing to the conditions. Failure to respond to the department's notification may result in a recommendation to deny the petition by the department.

- (b) After expiration of the ninety-day period above or sooner, if conditions are not imposed, or if imposed are responded to by the petitioner in the manner set forth above, the department shall forward the petition together with its findings and recommendations of same to the board of county commissioners for their review in accordance with this section. The department shall set the petition for public hearing in accordance with section 22-49 unless the petition is not subject to a public hearing pursuant to section 22-49, paragraph (c). If a public hearing is not required, upon its review the board shall adopt a resolution either approving or denying the petition. The board may reject a petition if a petition covering the same lands had been considered at any time within six (6) months of the date the later petition is submitted.
- (c) The department shall not be charged with the duty of:
  - (1) Searching the official records of the clerk of the circuit court and any other records in and for the county; or
  - (2) Any other investigation to determine the truth and accuracy of the statements and information contained in the petition and any attachments thereto.

(Ord. No. 86-18, § IX, 6-24-86)

Sec. 22-49. - Public hearing of petitions for abandonment of county rights-of-way and public easements for drainage of county rights-of-way.

- (a) *Required.* Pursuant to section 336.10, Florida Statutes, a public hearing shall be held for any petition for abandonment which affects a county right-of-way and public easements for drainage which service a county right-of-way.
- (b) *Time and place of hearing.* The board of county commissioners hereby exercise their authority as set forth in section 336.09, Florida Statutes, by authorizing and directing the department to establish a definite time and place to hold the public hearing required by section 336.10, Florida Statutes, and this chapter and to publish the notice of the hearing.
- (c)

*Publication of notice of public hearing.* Notice of such public hearing shall be published by the department in a newspaper of general circulation in the county one (1) time at least fourteen (14) days prior to the date set for the public hearing.

- (d) *Posting of notice of public hearing.* The department shall notify the petitioner of the date and time of the public hearing and shall direct the petitioner to post the property with a notice of petition to vacate. The petitioner shall place the notice in a conspicuous and easily visible location, abutting a public thoroughfare when possible, on the subject property at least ten (10) days prior to the public hearing.
- (e) *Mailing of notice of public hearing.* The department shall mail a copy of the notice of public hearing to each addressee in the envelope provided by petitioner pursuant to section 22-47, subsection (5).
- (f) *Testimony.* At the public hearing, all interested persons shall be entitled to be heard; however, the board may refuse to hear testimony that is repetitious, irrelevant or immaterial. If the board approves the petition, the board may vacate all or any portion of the subject property and may attach such conditions as the board may deem to be in the public interest.
- (g) *Notice of adoption of resolution.* If the board of county commissioners shall by resolution grant the petition, notice thereof shall be published one (1) time within thirty (30) days following the date of adoption of such resolution in a newspaper of general circulation published in the county. The proof of publication of the notice of public hearing, and the proof of publication of the notice of the adoption of the resolution, and a copy of the resolution shall be recorded in the public records.

(Ord. No. 86-18, § X, 6-24-86)

Sec. 22-50. - Recordation of resolution.

Upon adoption of a resolution approving a petition, a certified copy of same shall be filed in the public records in accordance with section 177.101 or section 336.10, Florida Statutes, whichever is applicable.

(Ord. No. 86-18, § XI, 6-24-86)

Sec. 22-51. - Effect of recording resolution of abandonment.

- (a)

For county rights-of-way, upon the recordation of the proof of publication of notice of public hearing, proof of publication of the notice of adoption of the resolution, and copy of the resolution in the public records, the interest of the rights-of-way so closed shall be vested in accordance with provisions of section 336.12, Florida Statutes.

- (b) For plats, or portions thereof, recordation in the public records of resolutions approving abandonment of a plat or a portion thereof shall have the effect of vacating all streets and alleys in accordance with section 177.101(5), Florida Statutes, and shall either return the vacated property to the status of unplatted acreage or shall vacate the first plat in accordance with section 177.101(1) or (2), Florida Statutes, as applicable.

(Ord. No. 86-18, § XII, 6-24-86)

Secs. 22-52—22-60. - Reserved.