



BOARD OF COUNTY COMMISSIONERS AGENDA REQUEST

DATE: June 18, 2024
TO: Honorable Chairman and Distinguished Members of the Board
FROM: Jason Autrey
SUBJECT: Right of Way Vacation Policy
DEPARTMENT: Public Works
BCC DISTRICT: All

STATEMENT OF ISSUE: At the May 21, 2024 Board of County Commissioners meeting direction was given to staff regarding changes to the procedure/policy related to the vacation of rights-of-way for commercial entities. Staff (Public Works, Legal, and Growth Management) has developed the attached policy and resolution for consideration, comments, and approval.

BACKGROUND: Traditionally vacations of rights-of-way have been available to adjacent property owners in Okaloosa County with fees limited to staff time and required advertisements. Outside of the administrative fees, property that was once public was given to a requesting entity free of charge. The Board directed staff to consider a methodology that included some form of fee associated with requests from commercial entities and the attached policy has been created for consideration.

Fundamentally the process for a right-of-way vacation request (either from a commercial entity or by a residential property owner) is proposed to be the same. A request is submitted to the County, notices will be prepared, posted, and presented by Public Works' staff, and public hearings will be held in accordance with State Statutes. However, there are changes proposed to the fee structure as outlined below:

1. Administrative and advertising fee for all requests is increased to \$900 (currently \$590). This increase in fees is based on actual average staff time, posting of all required signs on site, legal advertisements, and document development. As is currently the case, this fee is non-refundable once the request is submitted.
2. Vacation requests for rights-of-way adjacent to commercial property are subject to fees related to the Property Appraiser's publicly provided "Land Value" on an equivalent per square foot basis. A generic example is included in the policy and specific examples are included herein for reference.
3. Should a request to vacate include right-of-way that has existing improvements, the applicant would be required to provide compensation for the value of the improvements or relocation of the improvement as part of the vacation request.
4. The Policy specifically states that rights-of-way and access easements with access to the water are likely to be denied unless a specific benefit to the public can be demonstrated.

As staff developed the policy and considered examples, consideration was also given regarding charges for not only commercial requests, but for residential requests which are commonly

presented to the BCC. Four examples of how this new policy would be implemented are included for review/discussion. Examples A & B are the two vacation requests that were presented to the BCC on 5/21 and subsequently tabled for the development of this policy and Examples C & D are similar requests, only related to residential property.

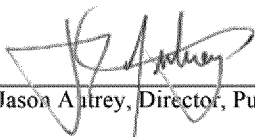
Should a policy be adopted that includes a fee associated with the vacation of right-of-way (either commercial, residential or both), future revenue generated by right-of-way vacation requests would be earmarked for right-of-way improvements such as sidewalks. Revenue from right-of-way vacation fees alone would not be substantial enough to fund entire projects, however they could/would be used to leverage grants, for design, or to execute segments of any specific project once they accumulate to an appropriate level.

Because there are existing resolutions previously approved by the BCC regarding right-of-way vacation, in order to enact this policy a new resolution superseding all prior and referencing this policy is required; that draft resolution is attached for consideration. There is no directive on the right-of-way vacation process within that resolution, other than to adhere to the referenced policy.

OPTIONS: Approval, Deny, Postpone, Modify, or Provide Direction

RECOMMENDATIONS: Approval of the Right-of-way vacation resolution and policy as written or modified.

RECOMMENDED BY:



Jason A. Atrey, Director, Public Works 6/7/2024

APPROVED BY:



John Hofstad, County Administrator 6/13/2024

RESOLUTION NO. 24 -105

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF OKALOOSA COUNTY, FLORIDA; UPDATING THE POLICY ON VACATION OF ROADS, PUBLIC RIGHTS OF WAY, AND EASEMENTS; PROVIDING FOR REPEAL OF PRIOR CONFLICTING RESOLUTIONS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners (“Board”) is vested with the authority and jurisdiction to vacate, abandon, discontinue and close any existing roads, rights of way and easements located within the county; and

WHEREAS, sections 336.09, 336.10, 336.12 and 336.125, Florida Statutes, sets forth the requirements that must be complied with to vacate, abandon, discontinue and close any existing roads, rights of way and easements; and

WHEREAS, the Board previously adopted Resolution 09-76, which established a policy governing such process; and

WHEREAS, the Board determines that it is necessary and in the best interest of the County to update the policy on vacation of roads, rights of way and easements.

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

SECTION 1. Adoption of Updated Policy. The Board hereby adopts the updated Policy on Vacation of Roads, Rights of Way and Easements attached hereto as Exhibit “A.”

SECTION 2. Repeal of Prior Conflicting Resolutions. Resolution 09-76 and any other prior resolution or portion thereof which contains terms or provisions which are in direct conflict with the provisions of this resolution shall, as to such terms or provisions, be deemed repealed and superseded by this resolution.

SECTION 3. Effective Date. This resolution shall be effective immediately upon adoption. However, the attached Policy shall be applied to petition received after adoption of this resolution.

ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF OKALOOSA COUNTY, FLORIDA, THIS 18th DAY OF JUNE, 2024.

File #: 3695792 06/26/2024 10:30 AM

Fees: \$112.00

Intangible Tax: \$0.00

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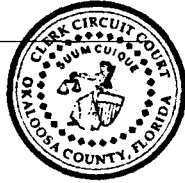
JD Peacock II Clerk of Circuit Court Okaloosa County, FL


BOARD OF COUNTY COMMISSIONERS
OKALOOSA COUNTY, FLORIDA

ATTEST:



J.D. Peacock II, Clerk





Paul Mixon, Chairman



APPROVED AS TO FORM:



Lynn M. Hoshihara, County Attorney

Okaloosa County Policy on Vacation of Roads, Public Rights-of-Way, and Access Easements

- 1. Intent.** It is the intent in adopting this policy to ensure that the public's interest is adequately safeguarded in the process of vacating the County's (public's) interest in roads, rights-of-way, or access easements or abandonment and closing of roads or rights-of-way in platted subdivisions.
- 2. Authorization.** The County is authorized to create this policy pursuant to its Home Rule authority (Art. VIII, Section 1, Fla. Const. (1968)) and §§ 177.107, 336.09, 336.10 and 336.12, Florida Statutes.
- 3. Application.** The policy shall apply to any request for the vacation of the County's (public's) interest in roads, rights-of-way or access easements by any agency of the state or of the federal government, upon the County Commission's own motion, and upon petition of any person, persons or entity.
- 4. Exceptions.** This policy does not apply to the following:
 - a. Vacation and annulment of plats subdividing land, except for the closing and abandonment of roads and rights-of-way dedicated in recorded subdivision plats which are governed by § 177.101, Fla. Stat and Chapter 6 of the Okaloosa County Code of Ordinances.
 - b. Abandonment of County's fee simple or lease interest in real property which are governed by Chapter 18, Okaloosa County Code of Ordinances and § 125.35, Florida Statutes.
 - c. Vacations involving rights of way, easement exchanges (in whole or in part), or relocations.
 - d. Non-vacation actions (i.e. permits, licenses, leases, easements and shared use of property).
- 5. Definitions.** For purposes of this policy the following definitions shall apply.

Plat: a map or delineated representation of the subdivision of lands, being a complete exact representation of the subdivision and other information in compliance with the requirement of all applicable sections of chapter 177, Florida Statutes and the Okaloosa County Land Development Code and may include the terms "replat," "amended plat" or "revised plat."

Property: Also known as "real property" is land and everything, including improvements, that are permanently attached to the land.

Right-of-Way: land dedicated, deeded, used or to be used for a road, street, alley, walkway, boulevard, drainage facility, access for ingress and egress, or other purpose by the public, certain designated individuals, or governing bodies.

Road: a way open to travel by the public, including, but not limited to, a street, highway, or alley. The term includes associated sidewalks, the roadbed, the right-of-way, and all culverts, drains, sluices, ditches, water storage areas, waterways, embankments, slopes, retaining walls, bridges, tunnels, and viaducts, necessary for the maintenance of travel and all ferries used in connection therewith.

Access Easement: any area of land delineated by a person or entity for public or private ingress/egress that may contain, public or private utilities, drainage, sanitation, or other specified uses having limitations, the title to which shall remain in the name of the property owner, subject to the right of use designated in a recorded document or reservation of the servitude.

6. Who May File a Petition

- a. A petition to vacate may be submitted by any agency of the state or federal government, the Board of County Commissioners, any person(s) or entity with a vested ownership interest in the underlying property (for easements) or adjacent property (for roads and rights-of-way) real property. Proof of ownership will be required at time of petition. All petitioners must be current on all real property taxes and assessments in Okaloosa County, the subject parcels must be free of any outstanding liens, and, except when a requested vacation directly enables the abatement of a violation, must not have any outstanding Okaloosa County Code Enforcement violations. A person or entity may designate another individual to represent them for purposes of the petition process. Proof of such designation, in the County's required format, must be provided at time of submittal of the petition.
- b. In addition to the above, under certain circumstances as set forth herein, a homeowner's association may file a petition for vacation or abandonment for the purposes of converting the subdivision to a gated neighborhood with restricted public access. Such request requires the accompaniment of a supplement to the petition.

7. Petition Requirements. All requests for vacating the county's interest in roads, rights-of-way or easements shall be made in writing. Any such petition shall include at a minimum, but shall not be limited to, the following:

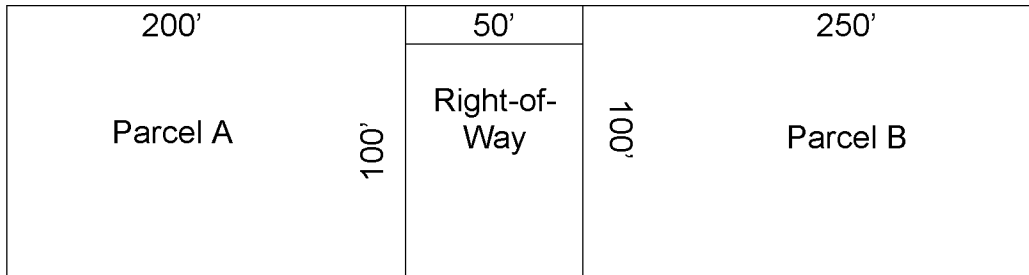
- a. A sketch of the property that is requesting to be vacated.
- b. A narrative explaining the reasoning for the purpose of the vacation request.
- c. In the case of a submission by a Homeowner's Association for abandonment and conveyance of the roads and rights-of-way in a particular subdivision for converting

a subdivision into a gated community with restricted public access, the petition must be accompanied by a written consent by no fewer than four-fifths of the owners of record of property located in the subdivision as well as a drafted agreement in accordance with § 336.125, Florida Statutes.

- d. If the property being sought to vacate is to abate an encroachment into the road, right-of-way or easement area the petition must include details about the encroachment including photographs, the construction date, a boundary survey, whether the County reviewed and approved the permitting through final inspection, and type of encroachment.
- e. If the property being sought to vacate is to clear or resolve a code enforcement violation, all information regarding such a violation must be included in the petition, such as the date of the violation, nature of the violation, copies of any code enforcement record on the violation and the assigned code enforcement officer.

Dependent upon the circumstances of the individual petition, the Department of Public Works may within its sole discretion request petitioner provide additional information and documentation for the processing of a petition.

- 8. Fees For Processing Petitions.** The Board of County Commissioners hereby establishes a \$900.00 non-refundable fee to cover the cost of administrative, engineering and legal review and investigation, the cost of publishing legal advertisements, the cost of posting on-site notices, the cost of recording and other reasonable administrative costs which the County incurs in processing petitions to vacate. Said fee is due upon submission of the petition. Failure to pay said fee at time of submission of a petition will deem the petition incomplete and the petition will not be processed until payment is made. The Board of County Commissioners may increase the fee by resolution at any regular meeting.
- 9. Fees For Vacations.** For vacation requests that involve vacating waterfront property, property with access to the water, or where the parcel adjacent to the road, right-of-way, or easement requested to be vacated is a non-homesteaded property, the Petitioner shall be required to pay the equivalent average per square foot of the Land Value of the adjacent parcels as identified by the Property Appraiser's most recent publicly available valuation. As an example:



Parcel	Total Area (SF)	Total Taxable Land Value	Per Square Foot Value
A	2,000	\$150,000	\$75.00
B	2,500	\$200,000	\$80.00
Average Per SF Value =			<u>\$77.50</u>

Right-of-Way Area (SF) =	500	Value =	\$77.50 x 500
			<u>\$37,750.00</u>

For vacation requests located on only one side of a roadway (not a full width vacation), the per square foot value will be determined based on the lone abutting parcel. Payment shall be provided prior to the public hearing and held in trust by the County. After the public hearing, if the vacation is approved by the Board of County Commissioners the funds will be released to the County. After the public hearing, if the vacation is denied by the Board of County Commissioners the funds will be released to the petitioner within thirty (30) days of the denial without interest.

A waiver of these fees may be granted for the vacation where it can be demonstrated that the owner that donated the property right to County and the property right in whole or part is being returned back to the same owner.

10. Fees For County Improvements. Where improvements have been made by the County within a road, right-of-way, or easement being vacated, the Board of County Commissioners hereby approves and authorizes a fee to be charged prior to the public hearing for reimbursement and/or the relocation cost of improvements. The fee shall be the fair current value of the improvements or relocations cost of improvements and shall be computed based on the cost and condition of the improvements, depreciation and other factors deemed relevant by the Department of Public Works in its sole discretion. A copy of the detailed calculations will be given to the petitioner(s) prior to the setting of the public hearing and must be paid prior to notices being sent out for the public hearing. Any funds collected prior to the public hearing for reimbursement of the improvements will be held in trust by the County. After the public hearing, if the vacation is approved by the Board of County Commissioners the funds will be

released to the County. After the public hearing, if the vacation is denied by the Board of County Commissioners the funds for reimbursement of improvements shall be reimbursed to the petitioner within thirty (30) days of the denial without interest.

11. Retention of Rights. Nothing herein shall preclude the County from retaining easements or other property rights related to the vacation for itself or other entities located therein or otherwise implementing a partial vacation.

12. Procedures and Criteria for Review of Petitions

a. Generally

1. Each petition, once submitted and deemed sufficient to move forward by the Department of Public Works, shall be presented to the Board of County Commissioners for review and consideration of setting a public hearing. The Board of County Commissioners shall either elect to set a public hearing date for the petition, table the request for additional study, or deny the request as presented.
2. Once a public hearing date has been set, the petition shall be provided for review by all departments and agencies potentially impacted, including the County's Growth Management Department, Public Safety Department, Transit Division, and any utility provider (water, sewer, electric, gas, phone, cable, etc.) having jurisdiction, as well as for review and comment by the general public.
3. The County shall not vacate a road, right-of-way, or easement except under the following conditions:
 - i. Vacation will not forestall reasonably foreseeable future bicycle/pedestrian use;
 - ii. Vacation will not forestall non-motorized access to adjacent land uses or transit stops;
 - iii. There is no reasonably foreseeable need for any type of public infrastructure for the area;
 - iv. There is no reasonably foreseeable need for any type of transportation corridor or access for the area.
4. For petitions submitted to vacate waterfront property or property with access to the water, the request to vacate will likely be denied except in limited instances which the Board of County Commissioners makes a finding that the vacation will clearly advance the health, safety and welfare of the public.
5. When a Homeowners Association has requested the abandonment and conveyance via petition for purposes of converting the subdivision to a gated

neighborhood with restricted public access, the following additional requirements apply:

- i. No fewer than four-fifths of the owners of record of property located in the subdivision have consented in writing to the abandonment and simultaneous conveyance to the homeowners' association.
- ii. The homeowners' association must be both a corporation not for profit organization and in good standing under chapter 617, Florida Statutes, as well as a homeowners' association as defined in § 720.301(9), Florida Statutes, with the power to levy and collect assessments for routine and periodic major maintenance and operation of street lighting, drainage, sidewalks and pavement in the subdivision.
- iii. The homeowners' association must enter into agreements, covenants, warranties and other instruments with the County as required by § 336.125, Florida Statutes.

b. Notice and Public Hearing. If the Board of County Commissioners sets a public hearing on a petition, notice of the time and place of the public hearing shall be published by the Board of County Commissioners one (1) time in a newspaper of general circulation in the county at least fourteen (14) days prior to the date set for the public hearing. The Department of Public Works shall notify the applicant of the date and time of the public hearing and shall post a notice of petition to vacate adjacent to the property.

At the public hearing, all interested persons shall be entitled to be heard, but the Board of County Commissioners may refuse to hear testimony that is repetitious, irrelevant or immaterial. If the Board of County Commissioners grants the petition, it 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.

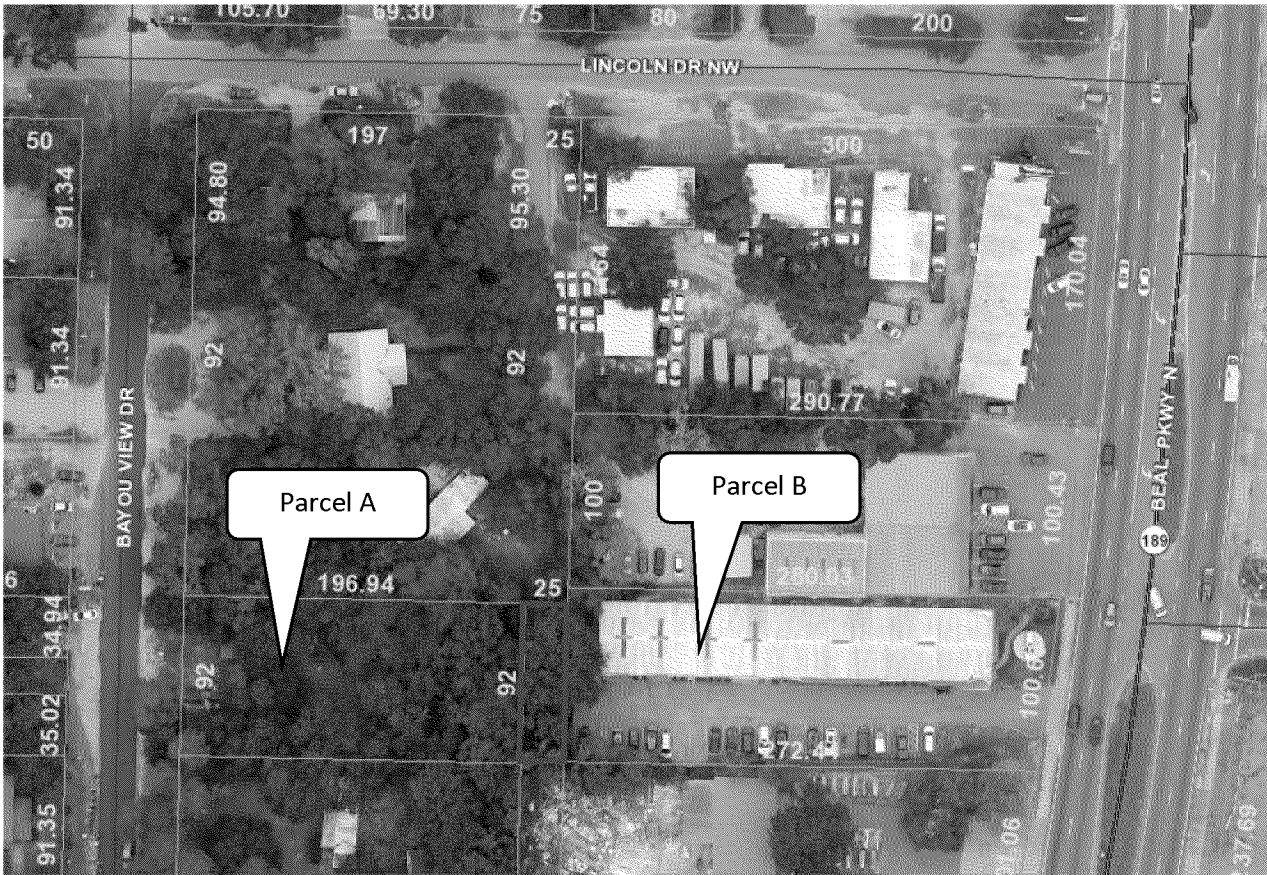
c. Records; Publication of Action. The petition to vacate and any action by the Board of County Commissioners shall be approved by Resolution, and the Resolution and vacation shall be entered into the minutes of the Board of County Commissioners as maintained by the Clerk of Court.

13. Effect

- a. If a vacation of rights-of-way or roads that were conveyed by deed is approved, except for in the instances set forth in (c) and (d) below, title to the real property formally occupied by the road or rights-of-way shall vest in fee simple to the abutting landowners by splitting the parcel equidistant from opposing property lines. Such abutting owners shall take title to the property, subject to any reservations as may be delineated as necessary within the adoption resolution to further preserve the public's health, safety and welfare.

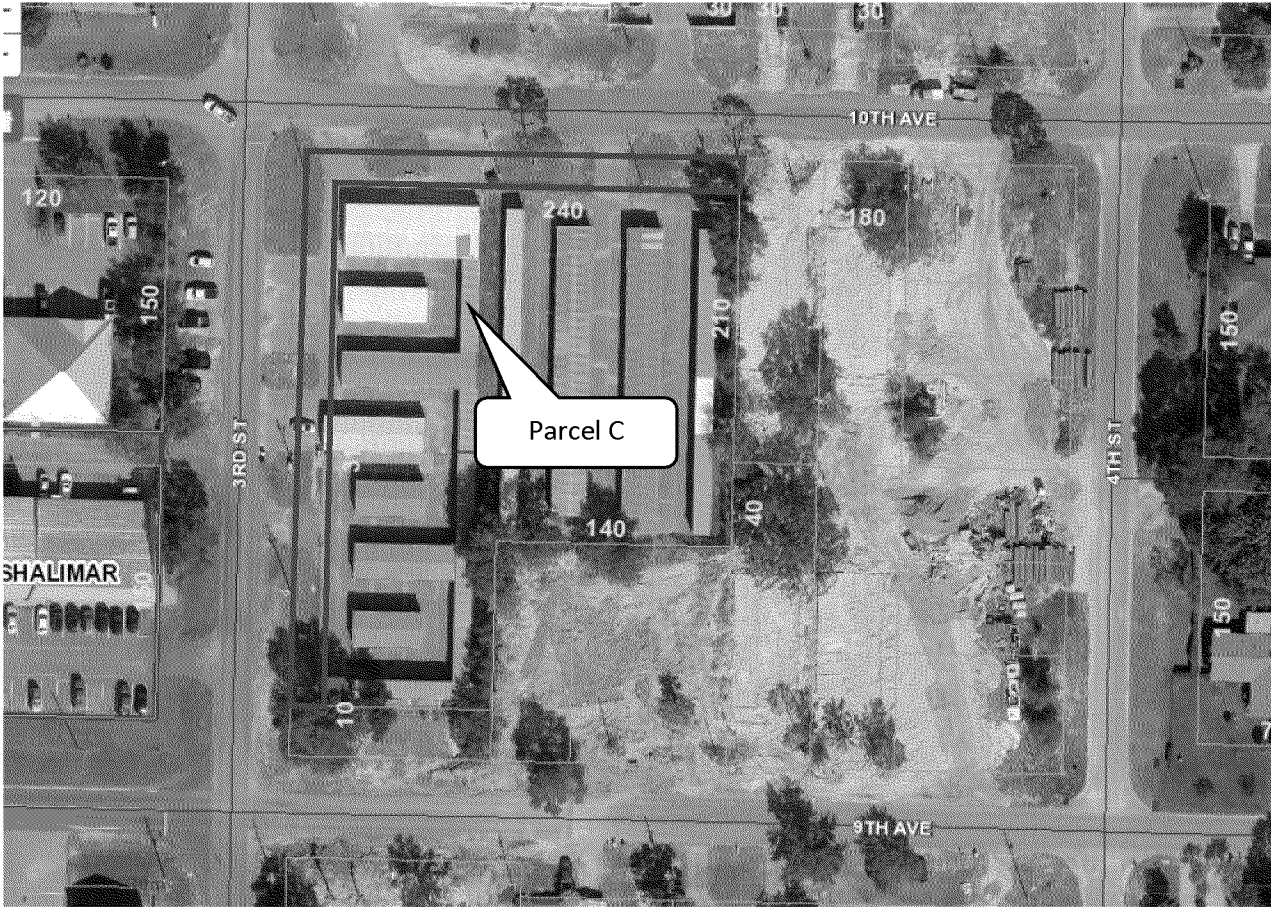
- b. If a vacation of rights-of-way or roads that were conveyed by plat is approved, except for in the instances set forth in (c) and (d) below, the abutting landowners of the same plat shall have unencumbered fee title to the center of the rights-of-way or roads. If the vacated rights-of-way or roads are abutting the boundary of the plat, the abutting adjacent landowner of the same plat shall have unencumbered fee title of the real property formerly occupied by the rights-of-way or road.
- c. If a vacation of easements is approved, title to the property shall remain vested in the underlying landowner(s) with the removal of the easement encumbrance, subject to any reservations as may be delineated as necessary within the adoption resolution to further preserve the public's health, safety and welfare.
- d. If a vacation is approved for abandonment and conveyance to a Homeowner Association of the roads and rights-of-way in a particular subdivision for converting a subdivision into a gated community with restricted public access, such Homeowner Association shall take title to the property, subject to any reservations as may be delineated as necessary within the adoption resolution and written agreement.

Example A



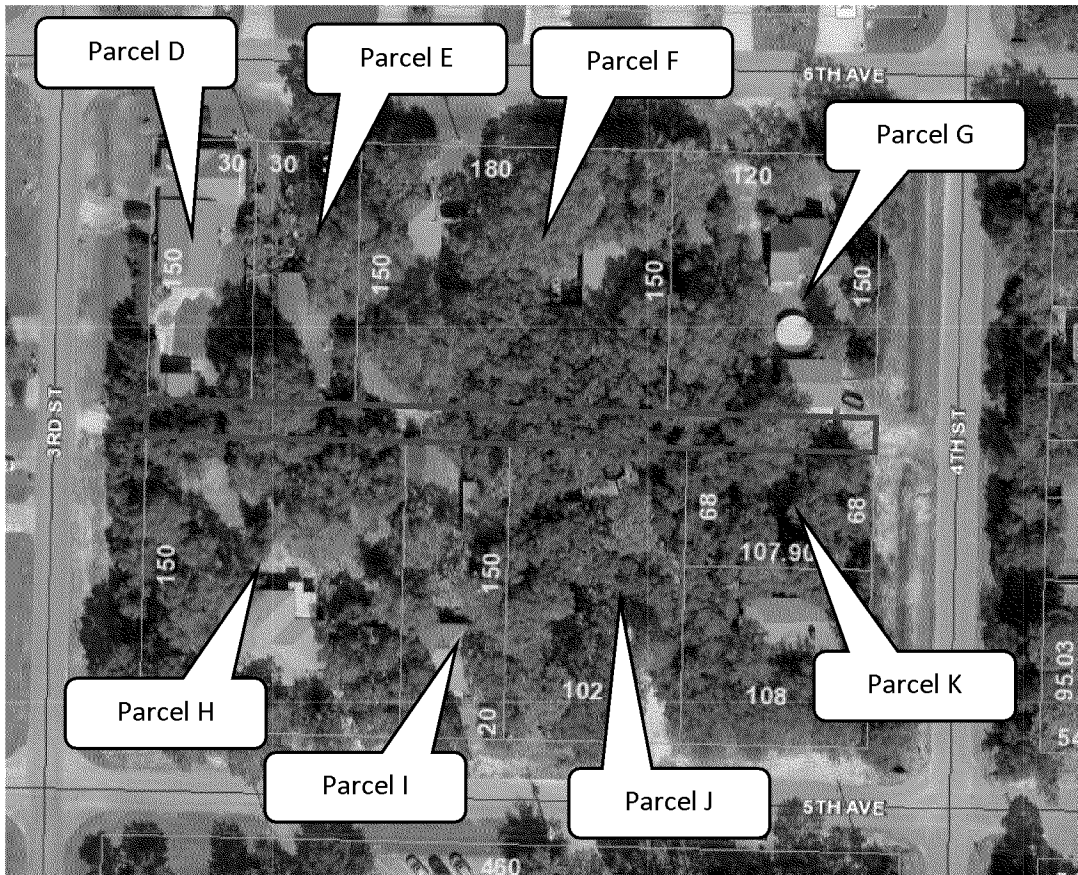
Example A				
Property Appraiser Data				
Parcel	Area (Ac.)	Area (SF)	Land Value	Value Per SF
A	0.41	17860	\$ 50,531	\$ 2.83
B	0.64	27878	\$ 407,151	\$ 14.60
Average Per SF				
Value =				<u>\$ 8.72</u>
R/W	2300		Value =	<u>\$ 20,048.96</u>

Example B



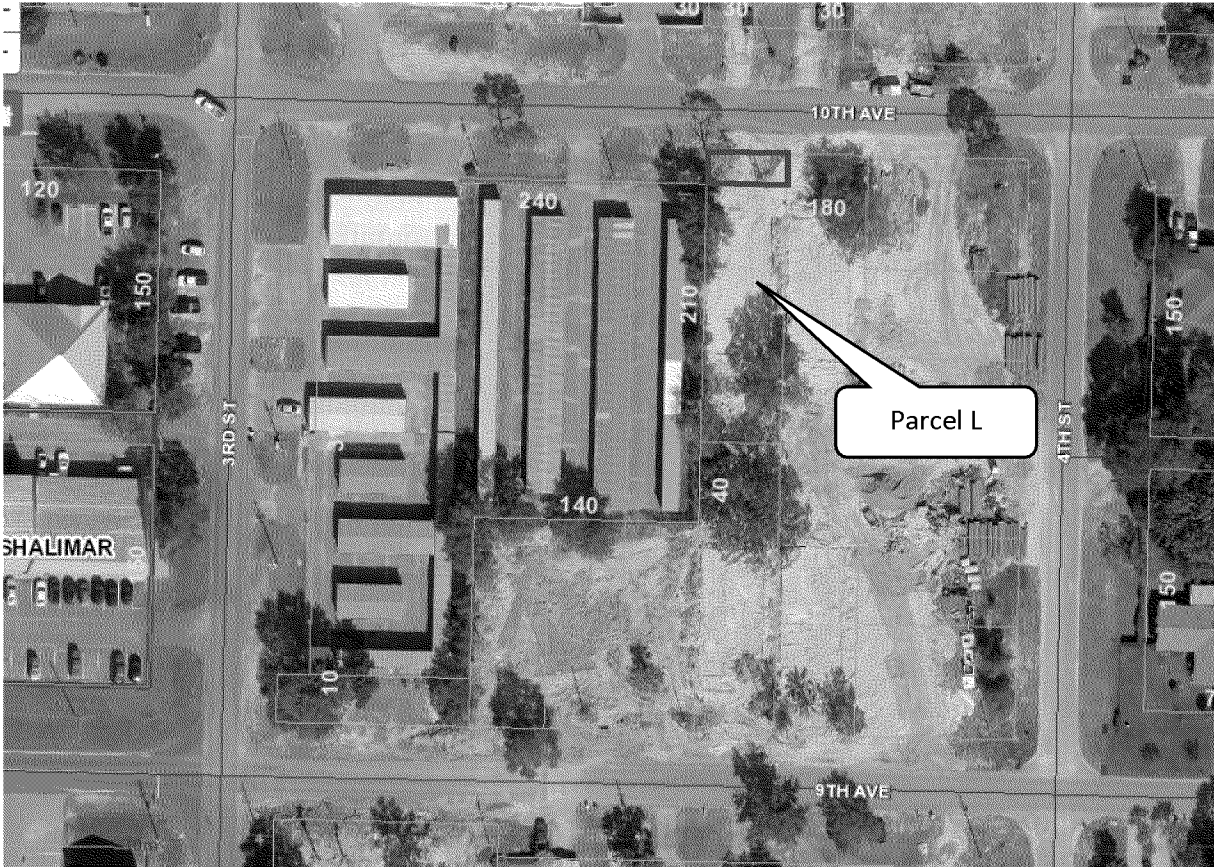
Example B				
Property Appraiser Data				
C	1.39	60548	\$ 508,156	\$ 8.39
R/W		11400	Value =	\$ 95,675.17
Note: 330' x 20' + 240' x 20'				

Example C



Example c					Proportional Share	
Property Appraiser Data					Frontage	Partial \$
Parcel	Area (Ac.)	Area (SF)	Land Value	Value Per SF		
D	0.21	9148	\$ 61,267	\$ 6.70	60	\$ 1,100.32
E	0.21	9148	\$ 61,267	\$ 6.70	60	\$ 1,100.32
F	0.62	27007	\$ 202,009	\$ 7.48	180	\$ 3,300.96
G	0.41	17860	\$ 110,280	\$ 6.17	120	\$ 2,200.64
H	0.59	25700	\$ 160,826	\$ 6.26	150	\$ 2,750.80
I *	0.23	10019	\$ 67,127	\$ 6.70	60	\$ 1,100.32
J	0.4	17424	\$ 93,738	\$ 5.38	102	\$ 1,870.55
K	0.17	7405	\$ 49,013	\$ 6.62	108	\$ 1,980.58
Average Per SF						
Value =					\$	6.70
R/W	2300		Value =	\$	15,404.49	

Example D



Example D				
Property Appraiser Data				
L	0.21	9148	\$ 51,158	\$ 5.59
R/W		1000	Value =	\$ 5,592.51
Note: 50' x 20'				