



Baldwin County Commission

Legislation Text

File #: 23-0441, Version: 1

Meeting Type: BCC Regular Meeting

Meeting Date: 1/3/2023

Item Status: New

From: Joey Nunnally, P.E., County Engineer

Seth Peterson, P.E., Pre-Construction Manager

Gayle Pierce, Right-of-Way Technician III

Submitted by: Lisa Sangster, Administrative Support Specialist IV

ITEM TITLE

*Case No. VAC-22-3 - Vacation of an Unopened, Unimproved 20 Foot Right-of-Way West of South Cedar Street

STAFF RECOMMENDATION

Take the following actions:

- 1) Approve the request from Daniel L. Kittrell, Michael J. Woerner, and Caryn H. Woerner to vacate an unopened, unimproved 20 foot right-of-way west of South Cedar Street; and
- 2) Adopt Resolution #2023-026 which approves the vacation in accordance with Section 23-4-2 and Section 23-4-20 of the Code of Alabama 1975.

BACKGROUND INFORMATION

Background: The petitioners, Daniel L. Kittrell, Michael J. Woerner, and Caryn H. Woerner, own all of the property abutting the area requested to be vacated. The area to be vacated is within the City of Foley but is owned by Baldwin County. The City of Foley has not accepted, improved, or maintained the right-of-way and has no claim or interest therein. The right-of-way is not maintained by Baldwin County.

Section 23-4-2 of the Code of Alabama 1975 reads as follows:

Procedure.

(a) Whenever the governing body of a municipality or county proposes to vacate a public street, alley, or highway, or portion thereof, the governing body shall schedule a public hearing prior to taking final action and shall publish notice of the proposed hearing on the vacation in a newspaper of general circulation in the portion of the county where the street, alley, or highway lies once a week for four consecutive weeks in the county prior to deciding the issue at a regularly scheduled meeting of the governing body. A copy of the notice shall be posted on a bulletin board at the county courthouse and shall also be served by U.S. mail at least 30 days prior to the scheduled meeting on any abutting

owners and on any entity known to have facilities or equipment such as utility lines, both aerial or buried, within the public right-of-way of the street, alley, or highway to be vacated. The notice shall describe the street, alley, highway, or portion thereof, proposed to be vacated and also give the date, time, and location of the meeting of the governing body at which the proposed vacation is scheduled to be addressed. Any citizen alleging to be affected by the proposed vacation may submit a written objection to the governing body or may request an opportunity to be heard at the public hearing held as required herein.

(b) If the governing body elects to vacate, it shall adopt a resolution which shall describe with accuracy the street, alley, or highway, or portion thereof, to be vacated and shall give the names of the owner or owners of the abutting lots or parcels of land and also the owner or owners of such other lots or parcels of land, if any, which will be cut off from access thereby over some other reasonable and convenient way. The resolution shall further set forth that it is in the interest of the public that such street, alley, or highway, or portion thereof, be vacated and shall be filed in the probate court of the county. In counties which elect the members of the county commission by single-member districts, the motion to approve the vacation shall be made by the commissioner in whose district the portion of the public street, alley, or highway to be vacated is located. The vacation shall not deprive other property owners of any right they may have to convenient and reasonable means of ingress and egress to and from their property, and if that right is not afforded by the remaining streets and alleys, another street or alley affording that right must be dedicated. The filing of the resolution as required herein shall operate as a declaration of the governing body's vacation and shall divest all public rights and liabilities, including any rights which may have been acquired by prescription, in that part of the public street, alley, or highway vacated. Title and all public rights, including the right to close the street, alley, or highway vacated, shall vest in the abutting landowners. Entities with utility lines, equipment, or facilities in place at the time of vacation, shall have the right to continue to maintain, extend, and enlarge their lines, equipment, and facilities to the same extent as if the vacation had not occurred. Notice of the governing body's action shall be published once in a newspaper in the county no later than 14 days after its adoption.

Section 23-4-20(a) of the Code of Alabama 1975 reads as follows:

Subject to the conditions set out in this subsection, any street or alley may be vacated, in whole or in part, by the owner or owners of the land abutting the street or alley or abutting that portion of the street or alley desired to be vacated by following the procedures set out herein. The owner or owners of the land abutting the street or alley to be vacated shall join in a written petition requesting that the street or alley be vacated and shall file the petition with the governing body with jurisdiction over the street or alley, or portion thereof, requesting the governing body's approval of the vacation. Following receipt of the written request for assent, the governing body shall act upon the request applying the same notice, hearing, voting, and appeal procedures as set forth in Section 23-4-2 and 23-4-5, and if the governing body approves the vacation, it shall have the same effect as provided therein, including that the vacation shall not deprive other property owners of any right they have to convenient and reasonable means of ingress and egress to and from their property, and if that right is not afforded by the remaining streets and alleys, another street or alley affording that right must be dedicated.

Staff published a notice (see attached) for the public hearing to be held on January 3, 2023, for four

(4) consecutive weeks in Gulf Coast Newspapers. Staff also posted said notice on bulletin boards at the Bay Minette Administration Building, the Foley Satellite Courthouse, the Fairhope Satellite Courthouse and Central Annex in Robertsedale.

Previous Commission action/date: N/A

FINANCIAL IMPACT

Total cost of recommendation: N/A

Budget line item(s) to be used: N/A

If this is not a budgeted expenditure, does the recommendation create a need for funding?
N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
Yes

Reviewed/approved by: Brad Hicks, County Attorney (approved 11/18/2022) los

Additional comments: N/A

ADVERTISING REQUIREMENTS

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Is advertising required for this recommendation? Yes

If the proof of publication affidavit is not attached, list the reason: Advertising will take place after Commission approval.

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: N/A

Individual(s) responsible for follow up: Administration Staff prepare correspondence and have all necessary documents executed by the Chairman. Send documents to Highway Department (Gayle Pierce) for recording (if vacation is granted by the Commission). The Highway Department will have the notice of action by the County Commission published in all Gulf Coast Newspapers within 14 days.

Action required (list contact persons/addresses if documents are to be mailed or emailed):

Contact:

Michael J. & Caryn H. Woerner
25276 James Woerner Lane
Elberta, Alabama 36530

Daniel Kittrell
1685 William Carey Road
Eight Mile, Alabama 36613-2855

Additional instructions/notes: Administration - place in tickler for proof of publication and recorded resolution.