



Baldwin County Commission

Legislation Text

File #: 21-0722, **Version:** 1

Meeting Type: BCC Regular Meeting

Meeting Date: 4/6/2021

Item Status: New

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

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

Gayle Pierce, Right-of-Way Technician II

Submitted by: Lisa Sangster, Administrative Support Specialist IV

ITEM TITLE

*Case No. VAC-21-1 - Vacation of a 20' Unopened, Unimproved Right-of-Way East of Lawrence Road

STAFF RECOMMENDATION

Take the following actions:

- 1) Approve the request from Wendell Hudson, Tonia Hudson and Ernest W. Gabel, Jr. to vacate a 20' unopened, unimproved right-of-way east of Lawrence Road; and
- 2) Adopt Resolution #2021-049, which approves the vacation in accordance with Section 23-4-2 and Section 23-4-20 of the Code of Alabama 1975.

BACKGROUND INFORMATION

Previous Commission action/date: N/A

Background: The petitioners, Wendell Hudson, Tonia Hudson and Earnest W. Gabel, Jr., own all of the property abutting the area requested to be vacated. The area to be vacated is not located in a municipality nor maintained by the 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 much 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 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 notice (see attached) for the public hearing to be held on April 6, 2021, is currently running for four (4) consecutive weeks in all 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 Robertsdale.

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 - 03/24/2021 - los

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? Yes

If the proof of publication affidavit is not attached, list the reason: Forthcoming from staff.

FOLLOW UP IMPLEMENTATION

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

Individual(s) responsible for follow up: Administration Staff, Highway Department

Action required (list contact persons/addresses if documents are to be mailed or emailed):
Administration Staff will have all necessary documents executed by the Chairman. Highway Department (Gayle Pierce) will have the notice of action by the County Commission published in all Gulf Coast Newspapers within 14 days and record all necessary documents. (Recording required only if vacation is granted by the Commission.)

Contact:

Mr. Wendell Hudson
457 S Mobile Street
Fairhope, Alabama 36532

Additional instructions/notes: N/A