

RESOLUTION OF THE LOCAL PLANNING AGENCY OF THE
TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 2012-XX
AMENDMENTS TO CHAPTER 10, ARTICLE II, DIVISION 5, SUBDIVISION II
TOWN LAND DEVELOPMENT CODE
(VACATION OF PLAT)

WHEREAS, the existence of the Local Planning Agency (LPA) is mandated by Florida Statutes Section 163.3174; and

WHEREAS, the Local Planning Agency (LPA) is statutorily responsible under Chapter 163, Florida Statutes, and the Town of Fort Myers Land Development Code (LDC) Section 34-120 for the review of proposed land development regulations, land development codes, or amendments thereto, and for making recommendations to the Town Council with regard thereto and performing such other reviews as are requested by the Town Council; and

WHEREAS, following proper notice and as required under Florida Statute and the LDC, the LPA conducted a public hearing on August 14, 2012 to consider a proposed Town Ordinance, which is attached hereto as Exhibit A and is hereby incorporated by reference; and

WHEREAS, the aforesaid Ordinance, if passed, would amend the procedures governing vacation of rights-of-way and easements, as is more fully set forth in the draft Ordinance; and

NOW THEREFORE BE IT RESOLVED, that the LPA **recommends/does not recommend** that Town Council approve and adopt the proposed Town Ordinance to amend Chapter 10, Article II, Division 5, Subdivision II of the Town Land Development Code and **recommends** the following findings of fact and conclusions with regard thereto:

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. The proposed amendments are in the best interests of the health, safety and welfare of the citizens, residents, visitors, and business owners of the Town of Fort Myers Beach and the LPA hereby recommends that the Town Council adopt the proposed amendments to the Land Development Code. .

The foregoing Resolution was adopted by the LPA upon a motion by **LPA Member** _____ and seconded by **LPA Member** _____ and upon being put to a vote, the result was as follows:

Joanne Shamp, Chair
John Kakatsch
Dan Andre

Hank Zuba, Vice Chair
Jane Plummer

Al Durrett
Alan Smith

DULY PASSED AND ADOPTED THIS _____ day of _____ 2012.

LPA of the Town of Fort Myers Beach

By: _____
Joanne Shamp, LPA Chair

Approved as to legal sufficiency:

ATTEST:

By: _____
LPA Attorney

By: _____
Michelle Mayher, Town Clerk

ORDINANCE -12

AN ORDINANCE AMENDING CHAPTER 10, ARTICLE II, DIVISION 5, SUBDIVISION II. OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, "VACATIONS;" AMENDING THE TITLE TO "VACATION OF PLATTED RIGHTS-OF-WAY AND EASEMENTS; AMENDING SECTION 10-218, PURPOSE AND INTENT, BY CHANGING THE WORDING TO REFLECT THE CHANGE IN TITLE; AMENDING SECTION 10-219, BY REVISING THE REQUIREMENTS FOR PETITIONS TO VACATE PLATTED RIGHTS-OF-WAY AND EASEMENTS; AMENDING SECTION 10-220, "PROCEDURE" BY REVISING THE PROCEDURE TO OBTAIN A VACATION OF A PLATTED RIGHT-OF-WAY OR EASEMENT, REVISING THE CRITERIA TO BE CONSIDERED FOR A PETITION TO VACATE, PROVIDING FOR THE RECORDING OF A RESOLUTION VACATING A PLATTED RIGHT-OF-WAY OR EASEMENT, AND PROVIDING FOR RESERVATION, IN CERTAIN INSTANCES, OF A UTILITY EASEMENT OVER A VACATED RIGHT-OF-WAY; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AS FOLLOWS:

Section 1. The title of Chapter 10, Article II, Division 5, Subdivision II of the Town of Fort Myers Beach Land Development Code is hereby amended as follows:

Subdivision II. ~~Vacation of Town Interest in Real Property~~ Platted Rights-Of-Way and Easements

Section 2. Section 10-218 of the Fort Myers Beach Land Development Code is hereby amended as follows:

Sec. 10-218. Purpose and intent.

It is the purpose and intent of this subdivision to establish procedures for the town to follow in considering the vacating of ~~public interests in real property~~ platted rights-of-way and easements. The procedures established by this subdivision are intended to ensure that the vacation of ~~town-owned public interest in real property~~ platted rights-of-way and easements are legally effective, according to the law of Florida, and that the property rights of private landowners and public entities and private utility providers are protected.

Section 3. Section 10-219 of the Fort Myers Beach Land Development Code is hereby amended as follows:

Sec. 10-219. Applications Petitions to Vacate Platted Rights-Of-Way and Easements.

All ~~applications~~ petitions seeking to vacate platted rights-of-way and easements must comply with the requirements below.

(a) ~~An~~ application petitions seeking to vacate town-owned public interest in real property platted rights-of-way and easements must be submitted to the town department of community development with a duplicate copy submitted to the department of public works, on forms provided by the town.

(b) ~~The application must be notarized and~~ petition must include the following:

(1) ~~Title certificate or attorney's title opinion acceptable to the town indicating that the applicant owns fee simple title to the tract or parcel of real property to which the vacation of the town-owned public interest in real property will inure as well as indicating what liens or assessments currently exist on the property~~ Notarized signatures of fee simple owners of record of all real property that abuts the right-of-way or easement sought to be vacated; and

(2) ~~A copy of the most recent tax bill applicable to the property in question as well as proof of payment in full of all current and former tax bills~~ Certificate(s) showing that all property taxes have been paid in full for all real property that abuts the right-of-way or easement sought to be vacated; and

(3) ~~A legal description of the area sought to be vacated and an accompanying a recent survey prepared and executed by a registered surveyor showing the area sought to be vacated and indicating the location of all existing improvements including, but not limited to, drainage facilities, all public and private utilities, surface water management facilities, streets pavement, buildings, and other physical features within 100 feet of the real property that is the subject of the application request petition. This drawing must also show the relationship of the subject property to other real property in the surrounding area and the most direct route to the nearest arterial street and must be signed and sealed; and~~

(4) ~~A copy of the plat indicating the area thereof subject to the request, if applicable~~ containing the right-of-way or easement sought to be vacated; and

(5) A printed list containing the names, addresses, and signatures of all real property owners holding legal interest in the real property subject to or affected by the requested vacation; and

~~(6) The original signatures of all persons holding any private legal interest; and~~

~~(7) A printed list of the names of all current real property owners, STRAP numbers, and mailing addresses of property that is within a 500-foot radius of the subject property right-of-way or easement sought to be vacated, including two (2) sets of mailing labels for the real property owners on this list; and~~

~~(8) An affidavit of intent stating facts that establish that the vacation or other disposition of the town-owned public interest in real property:~~

- ~~a. Is not for the purpose of unlawfully obtaining public property for private purposes;~~
- ~~b. Will not adversely affect the ownership rights or convenient access of persons owning other real property; and~~
- ~~c. Will not adversely affect future infrastructure and is not in conflict with town, county, state, federal, or other governmental entities' plans regarding transportation, surface water management, utility, drainage, or other public purposes.~~

~~(7) A statement of the reason(s) the petitioner(s) is (are) seeking the vacation;~~
and

~~(9)~~(8) Signed letters of approval or no objection from:

- a. The town department of public works
- b. Florida Power and Light
- c. The local cable television company serving the town
- d. The local telephone company serving the town
- e. The local liquid propane gas company serving the town
- f. Lee County or other provider of sanitary sewer services
- g. Lee County Sheriff's Office
- h. Fort Myers Beach Fire Control District
- i. Any other provider of private or public utilities whose facilities or infrastructure may be affected by the action requested vacation, as determined by the director following review of an otherwise complete application petition.

If any of the required reviewing entity foregoing companies or agencies determines that the requested vacation may not serve be in the best interest of the public, the applicant petitioner may offer an alternative or replacement right-of-way or easement. However, the reviewing entity is under no The affected company or agency shall not, however, be under any obligation to accept the offered alternative. If an application to vacate is premised on the grant of an alternative or replacement easement, Where a petitioner has offered to provide a replacement right-of-way or easement, town council will~~shall~~ not take action on the application petition to vacate until the legal instrument(s) necessary to grant the alternative or replacement right-of-way or easement has been accepted approved in form and content by the ~~town~~ affected company or agency, properly executed by the granting or conveying entity property owner, and delivered to

the town to be held in trust pending the town council's consideration of the requested vacation.

~~(10)~~(9) Payment of the applicable ~~application~~ fee in accordance with the schedule of fees adopted by resolution of the town council. In the absence of a resolution by the town council, the director will charge fees that are comparable to the fees charged by the board of county commissioners for similar applications.

~~(11) Subordination agreements with all holders of liens against the real property subject to the request.~~

~~(12) Disclosure of county requirement of vacation or s~~Statement by from the Lee County director of community development or designee ~~that no county~~ whether vacation by Lee County is required.

Section 4. Section 10-220 of the Fort Myers Beach Land Development Code is hereby amended as follows:

Sec. 10-220. Procedure.

(a) After receipt of a complete ~~application~~ petition for vacation of ~~town-owned public interests in real property platted rights-of-way or easements~~, the director of community development will prepare a ~~report stating both the current and potential town uses, both short term and long term, of the town-owned public interest in real property subject to the vacation request. This report will make specific reference to the a staff report that analyzes whether the requested vacation adopted capital improvements program (CIP) and to the goals, objectives, and polices of the Town of Fort Myers Beach Comprehensive Plan, and will evaluate how both retention and disposition of the subject town-owned public interest in real property does or does not furthers the adopted goals, objectives, and policies of the comprehensive plan and the adopted capital improvements program (CIP).~~

(b) The completed staff report will be provided to the town public works director, town finance director, and any other applicable town staff for review and comment. All written staff comments will be included in the packet provided to the local planning agency and subsequently to the town council.

(c) The ~~packet~~ petition, together with the staff report and staff comments, will be ~~referred to~~ scheduled for consideration by the local planning agency ~~for in a public hearing and recommendations.~~ The town will publish ~~the a~~ a notice of the public hearing on the ~~application~~ petition to vacate in a newspaper of general circulation ~~at least~~ once a week for ~~each of two~~ (2) weeks prior to the public hearing. The first legal notice must appear at least fifteen (15) days prior to the date of the public hearing. An affidavit of publication confirming legal notice of the public hearing must be presented to the local planning agency at the time of the public hearing. The local planning agency shall consider the petition and shall make a recommendation to the town council on whether

to approve the vacation request. At the public hearing, the local planning agency shall consider the following in determining whether to recommend approval of the request:

(1) Whether the right-of-way or easement no longer serves a public purpose;

(2) Whether there is no reasonably foreseeable public use for the right-of-way or easement;

(3) Whether vacation of the right-of-way or easement is in the public interest;

(4) Whether the right-of-way or easement has been improved, and the extent to which it is currently, or in the future will be, utilized by the general public;

(5) Whether the vacation is proposed in conjunction with an application for development approval for adjacent property;

(6) Whether the proposed vacation would deny access to any private property;

(7) Whether the proposed vacation is consistent with the comprehensive plan;
and

(8) Whether any utilities are located in the right-of-way and, if so, whether those utilities should be relocated, at the petitioner's expense, or whether it is desirable for the town to reserve a public utility easement over the area to be vacated;

~~Following the public hearing before the local planning agency, the complete report and staff recommendations and the local planning agency minutes and resolution with recommendations will be reviewed by the town council in a public meeting. If, after reviewing the report and the local planning agency minutes and recommendations, the town council decides to pursue possible vacation of the town-owned public interest in real property, the town council will direct the town manager to schedule a properly noticed public hearing on the possible vacation. The town will publish the notice of public hearing on the application to vacate in a newspaper of general circulation at least once a week for 2 weeks prior to the public hearing. The first legal notice must appear at least 15 days prior to the date of the public hearing. An affidavit of public hearing confirming legal notice of the public hearing must be presented to the town council at the time of the public hearing. At this hearing, the town council will determine:~~

~~(1) Whether the vacation of the subject real property for other use will adversely affect the future land use map category, as set forth in the comprehensive plan or adversely affect the zoning district, as set forth in this code, and whether it is otherwise consistent with the requirements of state and federal law; and~~

~~(2) The original intended use of the real property at the time of its acquisition by the town; and~~

~~(3) Whether the conditions and circumstances of the use of the real property have undergone change with respect to intended town use of the real property; and~~

~~(4) What constitutes surplus property, in terms of the original intent, and whether the real property is surplus property; and~~

~~(5) The basis of the vacation of town-owned public interest in real property; and~~

~~(6) Findings of fact and conclusions of law in support of the action to be taken;~~

and

~~(7) Whether and how the public would benefit from the proposed vacation.~~

~~(d) If, following the public hearing held as set forth above, the town council decides to pursue vacation of the town-owned public interest in real property, town council will direct the preparation of a resolution declaring the subject real property interest as surplus to the town's needs, containing the details of the proposed disposition, and setting a date for an adoption hearing for the resolution no less than 30 days from the date of the decision and direction to prepare the resolution. The applicant is responsible for all recording costs.~~

~~(e) Notwithstanding the foregoing process, after review and consideration of the report referenced in subsection (1) of this section, town council, in its discretion, may determine that to proceed, subsections (c) and/or (d) are not required if:~~

~~(1) The conveyance is back to the original grantor(s), its successors and assigns, who are currently the abutting owner(s); or~~

~~(2) It is part of another process, such as:~~

~~a. Straightening of a real property boundary line in connection with a boundary dispute;~~

~~b. Settling an action to quiet title; or~~

~~c. Other like proceeding, as determined in the discretion of the town council upon the consideration of the director's recommendation; or~~

~~(3) It is a vacation that is *de minimis* in area, cost, and overall impact.~~

~~Upon finding any of the items enumerated in this subsection (e), the town council may exempt the transaction in question from continuing with the procedures set forth in paragraphs (c) and/or (d) and continue with the determination concerning the vacation of the subject real property interest. The town council, however, may apply any of the considerations contained therein that it deems relevant and helpful in rendering its decision.~~

(d) After the public hearing before the local planning agency, the petition shall be scheduled and advertised for public hearing before the town council. At the public hearing, town council may, upon consideration of the recommendation of the local planning agency and the items contained in Section 10-220(c) above, approve the petition and vacate the right-of-way or easement. Approval of the vacation shall be by resolution and if the vacation is of a public street or right-of-way, the resolution may

state that the town is retaining a public utility easement for utilities and/or drainage over the area that is being vacated.

(e) Upon adoption of the resolution vacating the right-of-way or easement, the town clerk shall record a certified copy of the resolution in the public records of Lee County and shall provide the petitioner(s) with a copy of the resolution.

(f) The adoption and recording of the resolution in the public records shall have the effect of vacating the described right-of-way or easement. If a public street right-of-way is vacated, the resolution shall specify whether easement are being reserved over the vacated area for utilities and drainage.

Section 5. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 6. Effective Date. This ordinance shall take effect immediately upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by _____ and seconded by _____ and upon being put to a vote, the result was as follows:

Larry Kiker, Mayor Bob Raymond, Vice Mayor
Joe Kosinski Jo List
Alan Mandel

DULY PASSED AND ADOPTED THIS ____ DAY OF _____ 2012, BY THE
TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH

ATTEST:

By: _____
Larry Kiker, Mayor

By: _____
Michelle D. Mayher, Town Clerk

Approved as to form and legal sufficiency:

By: _____
FOWLER WHITE BOGGS, Town Attorney