



Legislation Text

File #: 18-728, **Version:** 1

TO: Honorable Mayor & Members of the North Port Commission

FROM: Peter D. Lear, CPA, CGMA, City Manager

TITLE: Discussion and possible action regarding amending the Unified Land Development Code as it relates to vacation of easements allowing for circumstances that are not the fault of the property owner.

Recommended Action

Provide direction concerning this item and how to proceed.

Background Information

On February 13, 2018, the City Commission heard Resolution No. 2018-R-03, Petition No. VAC-17-223 the request of Debbie McDowell-Tate to vacate a portion of the 20-foot rear maintenance easement to allow for a swimming pool to remain. The home was purchased in 2007 and the survey conducted at the time of purchase did not raise any issues or concerns with the property. The house was then listed for sale. It was not until a survey was requested by the title company prior to the closing in early December 2017 was it discovered there was an issue with the pool and deck encroaching into the 20-foot rear maintenance easement. To obtain clear title for the sale of the home a variance and a vacation of easement was required.

According to the minutes of February 13, 2018, during the discussion of the item, Commission had suggested an update to the code, so these circumstances don't happen. The discussion recommended that the process should be vetted and updated. This was a recommendation but not a consensus directed item by Commission.

Staff has researched the matter looking for ways to streamline the process to make it easier for applicants who require a vacation of easement. The Unified Land Development Code (ULDC) section 53-267D. refers to the vacation of platted easements to be vacated in accordance with Florida Statutes Chapter 177. The ULDC defines the vacation as the termination of, or termination of interest in, an easement, right-of-way, or public dedication of land. Easements are a right or interest given by the owner of real property to another party for present or future specific limited use of that real property, but which does not convey title to that real property. The easement may be for use under, on, or above said real property. Such specified uses include but are not limited to transportation, facilities, utilities, access, and stormwater drainage. The twenty-foot rear maintenance and drainage easements are owned by the City of North Port and the purpose is for the drainage and flow of stormwater.

The Florida Statutes provides the legal process to vacate plats in whole or in part. Florida Statutes Chapter 177, Section 177.101, (3) and (4) details the process to vacate plats by the governing bodies of the counties of the state. As defined by Florida Statutes Chapter 177, the governing body means the board of county commissioners or the legal governing body of a county, municipality, town, or village of this state. Amending the ULDC to remove the vacation of easement process as defined by Florida Statutes would be in violation of the Statutes.

Vacating easements either in whole or in part is through a resolution approved by the Commission as per Florida Statutes, Chapter 177. The granting of the vacation does provide a clear title to property as the resolution is recorded with the Clerk of Court and runs with the land. Florida Statutes requires the person making application for vacations of plats to give notice of their intention to apply to the governing body by publishing a legal notice in the newspaper.

In looking at ways to simplify vacation of easements, amending the ULDC to change the way the platted easements are

vacated is not the answer as Florida Statutes clearly lays out in detail how platted easements are vacated. The circumstances for each request for vacation of easement is different and based on numerous factors. It is difficult to determine prior to researching the matter if the circumstances creating the need for the vacation of easement is not the fault of the property owner.

City staff is not able to administratively waive fees and adding in provisions to the Code to allow for a waiver of fees presents potential legal issues. The City Commission may use its discretion to determine if the city fees and advertising costs should be refunded on a case by case basis if it is determined the need for a vacation of easement is through no fault of the property owner. The total costs the applicant pays for a vacation of easement varies depending on the cost of the application and legal advertisements. The average cost is approximately \$825 for the application and between \$45-\$70 for advertising costs for a total of roughly \$870.00 to \$895.00 in costs. This could present a cost issue to the city depending on how many refunds are issued on an annual basis.

Strategic Plan

Mission: To provide exceptional service to our entire community for the continuous enrichment of quality of life.

Financial Impact

The financial impact of this item will be determined at the time of direction by Commission.

Procurement

Not Applicable

Attachments:

1. February 13, 2018 Commission meeting minutes.
2. Florida Statutes, Chapter 177
3. Unified Land Development Code, Section 53-267D.

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