

## **Vacation Procedure**

### **INTRODUCTION**

The State Subdivision Control Act requires land to be dedicated for streets and easements to be established for public utilities when a property owner decides to subdivide his or her land. The City has the right to consider and grant final approval to the subdivision of land, and streets are set aside when this occurs. From time to time, these street and easement areas no longer are needed by the City. The process of returning these previously dedicated areas to their owners or heirs is called the vacation process. This booklet describes the procedure that is to be followed when an owner wishes to request that the City vacate a street right-of-way or an easement.

These dedicated areas may be reserved by the City in one or two distinct forms. First, the property owner may provide an easement which permits public use of the land while the property owner retains ownership. Or, secondly, the land may be dedicated to the public whereby the property owner relinquishes ownership of the land and the city assumes control and responsibility.

Easements and dedications are provided for two primary purposes. The first purpose is to allow the public free passage through properties so as to enable persons to have easy access to their own property and provide for adequate circulation throughout the City. These uses may take the form of streets, alleys and walkways. The second is the provision of areas for the installation of public utility equipment. In order to insure the most efficient provision of utility service and to protect the right of all property owners to avail themselves of those services, utility personnel must have free access to install, maintain and repair equipment on certain areas of land. This would involve areas reserved for such items as utility poles, cables and/or pipes. In Southfield, the Subdivision Regulations distinguish under what circumstances an easement or dedication would be required. The Subdivision Regulations also set down the quantity of land necessary to satisfy the public's needs.

Frequently, the City of Southfield is asked to abandon or release an easement or right-of-way so that the land may be reclaimed and put to another use.

This is accomplished by the City Council, following review by the various public utility companies, City departments and upon recommendation of the Southfield Planning Commission. This process is call VACATION.

## **DEFINITIONS**

In order to understand the vacation process, it is necessary to be familiar with some of the terms involved. The following represents the pertinent definitions used in the vacation process:

**ALLEY:** A dedicated public right-of-way of thirty (30') feet or less in width affording a secondary means of access to abutting property and not intended for general traffic circulation, usually located at the rear of properties.

**DEDICATION:** A quantity of land conveyed to the public (city, county agencies, etc.) for specific uses and purposes, generally for use as a public right-of-way.

**EASEMENT:** A quantity of land set aside or over which a privilege is granted by the owner to the public or a public utility for specific uses and purposes. Easements may be designated "public" or "private" easements, depending on the nature of the use.

**PLAT:** A map showing the basic layout and features of a subdivision including lot arrangement, lot sizes, streets, easements and other rights-of-way.

**PUBLIC UTILITY:** Any person, firm, corporation, municipal department, board, or commission duly authorized to provide electricity, communication, telegraph, transportation, or water to the public.

**PUBLIC WALKWAY:** A right-of-way dedicated for the purpose of pedestrian access and located so as to connect to two (2) or more streets or a street and a public land parcel (such as a school).

**STREET:** A right-of-way dedicated for public use which provides vehicular and pedestrian access to adjacent properties. This includes the land between right-of-way lines whether improved or unimproved and may comprise pavement, curbs, gutters, shoulders, sidewalks, parking areas, and/or lawn areas.

**VACATION:** The process whereby the City and public utilities abandon a public right-of-way so the land can be put to another use. The process is accomplished through review and public hearings resulting in a determination by the City Council upon recommendation of the Planning Commission.

## VACATION PRINCIPLES

Easements and dedications are provided for in the interest of the general public. Thus, any decision to vacate such areas is likely to affect a segment of the public. For this reason, careful consideration should be given to the following questions before proceeding with the vacation process.

- (1) Does the petitioner have ownership rights over the property under consideration for vacation?

In the case of an easement vacation, the petitioner already owns the property and, thus, simply gains the right to build more extensively upon it within the guidelines of the Southfield Zoning Ordinance and Building Code.

The vacation of dedicated land involves a change in ownership from the City to the abutting property owners. Vacation of a dedicated right-of-way reverts the portion of land back to the parcel of property of which it was once a part. If the land involved in the vacation is a street or alley, the land is divided in the center with each adjoining property owner obtaining one-half of the area (Act 288 of the Public Acts of 1967, Section 560.277).

- (2) Is the land proposed for vacation currently in use?

Land which is presently in use for important functions such as utility lines, streets, walkways, etc., will not be approved for vacation.

- (3) Is the land proposed for vacation involved in any future plans?

If the land in question is not currently in use but future uses are anticipated, vacation will not be granted.

- (4) Will the utilization of the abutting property be improved with the addition of the vacated land?

Would the addition of the vacated land enable the property owner to make better or increased use of his property? Would the granting of a vacation allow a viable land use which is presently precluded by the right-of-way?

- (5) Would the granting of the desired vacation have an adverse effect on the surrounding property owners?

Potential problems for neighboring land resulting from a vacation are grounds for its denial.

- (6) What type of use is planned for the vacated parcel?

Be certain that any proposed construction on the vacated land adheres to City guidelines for buildings and meets the requirements stipulated by the Southfield Zoning Ordinance.

Further, the property owner should be aware of what uses are permissible on an easement without vacation. The property owner may place fencing, walkways, walls, parking surfaces, and other similar construction that would not prevent or interfere with the opportunity to use or make the easement accessible. The erection of permanent structures on easements for public utilities is prohibited.

- (7) What zoning district would the vacated property obtain?

Whenever a parcel of land is vacant, it is automatically classified in the same zoning district as the property to which it attaches. (Chapter 45, Zoning, Article 3, Section 5.13, of the City Code).

## **PARTICIPANTS IN THE VACATION PROCESS**

There are six (6) major participants in the vacation process. These include: (1) Petitioner, (2) Planning Department, (3) Planning Commission, (4) City Council, (5) Public Utility Companies, and (6) Public.

**Planning Department** – will review the application and formulate a recommendation based on its technical merits. They will review the request with all other City departments and prepare a presentation of the vacation request for the Planning Commission and City Council.

**Planning Commission** – a seven (7) member advisory board will conduct a public hearing on the request and submit a recommendation to the City Council.

**City Council** – the seven (7) member elected body will conduct a public hearing on the request and render a final decision in reference to the request.

**Public Utility Companies** – these include Detroit Edison, Michigan Bell and Consumers Power Company, as well as the Drain Commission, Water Authority and other public utilities who must be assured their existing or future utility installations are adequately protected.

**Public** – without citizen participation, the Planning Commission and City Council must substitute their judgment for the feelings of the residents and property owners in the area of the request.

## THE VACATION PROCESS

- Step 1: Secure the application from the Southfield Planning Department and prepare necessary data.
- Step 2: File the vacation application. Return the completed application and the required number of plot plans to the Southfield Planning Department together with filing fee.
- Step 3: The application will be forwarded to the City Council for referral to the Planning Commission and Planning Department for study and recommendation.
- Step 4: The Planning Department will study the request, review it with all other City departments and prepare a recommendation.
- Step 5: The Planning Commission will study the request and schedule a public hearing.

Regular meetings of the Planning Commission are held on the fourth Wednesday of each month at 6:30 p.m. Notification of the hearing is published in two (2) newspapers at least fifteen (15) days prior to its scheduled date.

Notification of the hearing is also sent, by certified mail, to the petitioner, property owner, and owners of property adjacent to the area requested to be vacated and to all public utilities. The public utilities return a written reply stating their opinion on the vacation request.

Registered civic associations in the area of the vacation request are also notified by mail of the hearing date.

- Step 6: The Planning Commission will conduct a public hearing and make a recommendation to the City Council. The City Planner will present the vacation request and submit the recommendation of the Planning Department to the Planning Commission.

The petitioner then has an opportunity to make a presentation to the Planning Commission following which the hearing will be opened to the public. The public may present their views in support of, or against, the petition and ask any questions regarding the petition.

After the public has had a reasonable opportunity to be heard, the Chairperson will close the hearing to the public. The Commission may then have discussion after which they will make a recommendation to approve or deny the request.

- Step 7: The Planning Commission's recommendation is forwarded to the City Council and a public hearing is scheduled.

Notices will be sent by certified mail to the petitioner, property owner, and owners of property abutting the vacation request and to all public utilities regarding the time and date of the Council meeting. In addition, a legal notice will be placed in two (2) newspapers at least fifteen (15) days prior to the hearing.

Regular meetings of the City Council are held on the second and fourth Monday of each month at 7:30 p.m.

Step 8: The City Council will conduct a public hearing and render a decision. The public hearing before the City Council will follow the same format as the Planning Commission hearing.

At the conclusion of the hearing, the City Council will vote and either approve or deny the requested vacation. Approval may be based upon conditions attached to the vacation by the City Council.

Step 9: If the request is approved, certified copies of the resolution are mailed to the Oakland County Register of Deeds, the Auditor General, the City Assessor, and the public utility companies within thirty (30) days of the Council's decision.

The vacation becomes effective upon receipt of the resolution by the Oakland County Register of Deeds.

## **VACATION OF PLATS**

Occasionally a property owner or developer requests the vacation of a plat. This entails the elimination of all easements, streets and lots within a subdivision before any construction has begun.

Usually the purpose for this is the desire to alter the makeup of the subdivision, shifting locations of lots and streets, so as to product a preferred design. Easements and dedications are then provided in the revised plat.

This process must take place in Circuit Court (Act 288 of the Public Acts of 1967, Section 560.221).

## **FEES**

Title V, Zoning and Planning, Chapter 45, Zoning, of the Code of the City of Southfield provides that:

### **5.144 Fees**

The City Council may, from time to time, prescribe and amend by resolution a reasonable schedule of fees to be charged to petitioners for amendments to this Chapter and for the review of site plans in accordance with the provisions of this Chapter.

The following represents the fee required by the Planning Department of the City of Southfield during the vacation process:

Application fee:       \$1000

**HOW LONG MAY THE VACATION PROCESS BE EXPECTED TO TAKE?**

**Average Time:**

	Step 1	Secure application
	Step 2	Submission of application
1 week	Step 3	Referral to Planning Department and Planning Commission
5 weeks	Step 4	Review by Planning Department
	Step 5	Review by Planning Commission
8 weeks	Step 6	Public hearing before Planning Commission and Recommendation
9 weeks	Step 7	Planning Commission's recommendation to City Council
14 weeks	Step 8	Public hearing before City Council
16 weeks	Step 9	Registration to Oakland County Register of Deeds

**TOTAL OF APPROXIMATELY SIXTEEN WEEKS (FOUR MONTHS)**