



## Legislation Details (With Text)

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**Type:** Ordinance      **Status:** Approved  
**File created:** 11/30/2018      **In control:** City Council  
**On agenda:** 12/4/2018      **Final action:** 12/4/2018  
**Title:** Declaring the vacation of a portion of Whiteford Center Road right of way easement; and declaring an emergency.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:**

Date	Ver.	Action By	Action	Result
12/4/2018	1	City Council	Dispense with the rules of Council requiring...	Pass
12/4/2018	1	City Council	declare emergency	Pass
12/4/2018	1	City Council	passage	Pass

Zoning & Planning Committee

### **Declaring the vacation of a portion of Whiteford Center Road right of way easement; and declaring an emergency.**

#### SUMMARY & BACKGROUND:

The Council of the City of Toledo, by Resolution No. 123-18 adopted on March 27, 2018, declaring its intent to vacate that portion of Whiteford Center Road right of way easement, in the City of Toledo, Lucas County, Ohio, as more fully described in Section 1 hereof.

All of the preliminary steps have been taken as required by law, the Charter of the City of Toledo, and the Toledo Plan Commission has made reports regarding the proposed vacations; and all things required by law to be done, have been done. During the vacation process it was determined the City of Toledo has received all fees for this vacation.

NOW, THEREFORE, Be it ordained by the Council of the City of Toledo:

SECTION 1. That the Council of the City of Toledo does hereby vacate that portion of Whiteford Center Road right of way easement, in the City of Toledo, Lucas County, Ohio; and more fully described as follows:

#### DESCRIPTION FOR R/W SPLIT PARCEL

A parcel of land being part of the Northeast (1/4) of the Southeast (1/4) of Section 6, Town 9 South, Range 7 East, City of Toledo, Lucas County, Ohio, which is more particularly described as follows:

Commencing at the Southeast corner of Section 6 being a found 5/8" Iron Pin in a Monument Box;

thence N04°28'13"W, on and along the East line of the Southeast (1/4) of the Southeast (1/4) of Section 6 also being the Centerline of Right-of-Way of Secor Road (R/W varies), for a measured distance of 1320.02' (feet) and a record distance of 1319.81' (feet) to a point;

thence S85°54'57"W, on and along the South line of the Northeast (1/4) of the Southeast (1/4) of Section 6 also being the current Centerline of Right-of-Way of Otjen Road (50' R/W), a distance of 109.08' (feet) to a point;

thence N40°45'43"W, on and along the Old Centerline of Right-of-Way of Whiteford Center Road (60' R/W) a.k.a Toledo-Ann Arbor Road, a distance of 31.17' (feet) to a set Iron Pin, also being the True Point of Beginning for the split parcel;

thence S85°54'57"W, on and along a line being 25.00' (feet) Northerly of the North line of the Southeast (1/4) of the Southeast (1/4) of Section 6, also being the extension of the current Northerly Right-of-Way line of Otjen Road (50' R/W) as acquired in Deed Volume 20100603-0022443 (64-WD) as recorded in Lucas County Recorder's Office, a distance of 37.41' (feet) to a set Iron Pin;

thence N40°45'43"W, on and along the Southwesterly Right-of-Way line of Whiteford Center Road (60' R/W) a.k.a Toledo-Ann Arbor Road, a distance of 99.75' (feet) to a set Mag Nail;

thence N85°54'57"E, on and along the extension of the Northerly line of a parcel currently or formerly owned by Excellerante Auto Sales LLC. and recorded in deed 20150617-0023979, a total distance of 49.88' (feet) to a set Mag Nail, and passing a set Mag Nail on the Old Centerline of Right-of-Way of Whiteford Center Road (60' R/W) a.k.a Toledo-Ann Arbor Road at 37.41' (feet);

thence S50°39'28"E, a distance of 116.38' (feet) to a set Iron Pin at the Intersection of said Northerly Right-of-Way line of Otjen Road (50' R/W) as acquired in Deed Volume 20100603-0022443 (64-WD) as recorded in Lucas County Recorder's Office with the Old Northeasterly Right-of-Way line of Whiteford Center Road (60' R/W) a.k.a Toledo-Ann Arbor Road;

thence S85°54'57"W, on and along said Northerly Right-of-Way line of Otjen Road (50' R/W) as acquired in Deed Volume 20100603-0022443 (64-WD) as recorded in Lucas County Recorder's Office, a distance of 37.41' (feet) to the True Point of Beginning for the split parcel:

Containing an area of 0.114 Ac., 4,987 SF of land more or less and subject to all legal highways, leases, easements and restrictions of record.

NOTES:

Bearings used in the above description is based on the East line of the Southeast quarter (1/4) of Section 6 also being the Centerline of Right-of-Way of Secor Road as established between a found Iron Pin in a Monument Box at the intersection of Secor Road at Alexis Road and a found Iron Pin in a Monument Box at the intersection of Glenn Street and Secor Road and corresponding to a bearing of N04°28'13"W.

Bearings are for the express purpose of showing angular measurement only.

All iron pins set are 5/8" diameter rebar x 36" long with a cap marked "Bryan D. Ellis 8292"

SECTION 2. That the vacation(s) herein shall be subject to compliance of the following condition(s), if any:

The following seven (7) conditions are listed by agency of origin. Applicants are encouraged to contact each of the agencies to address compliance with their conditions.

Engineering Services

1. A pre-submittal meeting is not required, however one may be requested. Contact information is as follows:

Division of Engineering Services: 419-245-1315, fax 419-936-2850  
Right-of-Way and Inspection: 419-245-1341  
Roadway: 419-245-1344  
Water: 419-936-2163  
Stormwater Drainage: 419-245-3221;

Sanitary Sewers: 419-245-1338  
419-936-2276

2. Right-of-way is needed to maintain the 8-inch diameter public waterline in Whiteford Center Road. Applicant shall relocate existing public water main from the proposed vacated right of way.
3. The hydrant shall be relocated, by the City of Toledo at the applicant's expense, to the right-of-way of Otjen Road, or a full width easement shall be retained by the City of Toledo over the vacated right-of-way of Whiteford Center Road. The following language shall appear in the authorizing vacation ordinance which shall be recorded and a notation placed in the remarks section of the County's real estate records:

"That a full width (60 foot) easement is hereby retained over, across, under and through said vacated area as described in Section 1 herein, for the existing water main, sanitary sewer and storm sewer located in said vacated right of way. All City of Toledo facilities located within said easement are hereby dedicated to the City of Toledo, for City utility use only, to allow for future maintenance, repairs, replacements, etc. and shall not be combined with easements for other utilities. The easement hereby retained by the City of Toledo herein shall be primary in nature to any other utilities located therein, and any easement retained by any other utility as a result of this Ordinance shall be subject first to the easement rights of the City of Toledo. Said easement herein shall be permanent in nature for each utility currently located thereon and shall run with the land. Said easement also includes reasonable rights of ingress and egress over and through the utility easement area for the purpose of operating, maintaining, replacing, repairing and/or constructing any utilities located within the easement. The property owner shall not construct fences, walls or other barriers, which would impede access onto the easement. No temporary or permanent structure, including building foundations, roof overhangs or other barriers denying access, may be constructed on or within the easement. Driveways, parking lots, walkways and other similar improvements are acceptable. The property owner hereby releases the City of Toledo, only, from any liability, responsibility or costs resulting from the City's removal of any barriers which deny ingress or egress from the easement or which obstruct access to the public utilities located on said property, and the City of Toledo shall have no obligation or duty to restore or compensate the property owner for the removed facilities. Further, any modification and/or release of any easement granted or retained by any utility as a result of this Ordinance shall be obtained by the owner separately from each utility, as to their interest(s) only, by separate, recordable instrument."

4. If the petitioner wishes to reduce the size of the easement, the water main shall be located by survey and a twenty-foot (20') easement centered on the water main will be acceptable. The survey shall be conducted by and paid for by the petitioner.
5. Object to the vacation. Right-of-way is needed to maintain the 10-inch and 12-inch diameter public storm sewers and 8 inch sanitary sewer in Whiteford Center Road.

Alternately, the Applicant shall relocate existing public storm sewer lines from the proposed vacated right of way or a full width easement shall be retained by the City of Toledo over the vacated right-of-way of Whiteford Center Road. The following language shall appear in the authorizing vacation ordinance which shall be recorded and a notation placed in the remarks section of the County's real estate records:

"That a full width (60 foot) easement is hereby retained over, across, under and through said vacated area as described in Section 1 herein, for the existing water main, sanitary sewer and storm sewer located in said vacated right of way. All City of Toledo facilities located within said easement are hereby dedicated to the City of Toledo, for City utility use only, to allow for future maintenance, repairs, replacements, etc. and shall not be combined with easements for other utilities. The easement hereby retained by the City of Toledo herein shall be primary in nature to any other utilities located therein, and any easement retained by any other utility as a result of this Ordinance shall be subject first to the easement rights of the City of Toledo. Said easement herein shall be permanent in nature for each utility currently located thereon and shall run with the land. Said easement also includes reasonable rights of ingress and egress over and through the utility easement area for the purpose of operating, maintaining, replacing, repairing and/or constructing any utilities located within the easement. The property owner shall not construct fences, walls or other barriers, which would impede access onto the easement. No temporary or permanent structure, including building foundations, roof overhangs or other barriers denying access, may be constructed on or within the easement. Driveways, parking lots, walkways and other similar improvements are acceptable. The property owner hereby releases the City of Toledo, only, from any liability, responsibility or costs resulting from the City's removal of any barriers which deny ingress or

gress from the easement or which obstruct access to the public utilities located on said property, and the City of Toledo shall have no obligation or duty to restore or compensate the property owner for the removed facilities. Further, any modification and/or release of any easement granted or retained by any utility as a result of this Ordinance shall be obtained by the owner separately from each utility, as to their interest(s) only, by separate, recordable instrument.”

- 6. Applicant shall be required to televise existing city sanitary and storm sewers within the vacated area and line those sewers which are determined by the city to be in poor condition.

Division of Transportation

- 7. Within the limits allowed by law, the applicant shall indemnify the City of Toledo, its officials, agents or employees, from any and all claims, demands, causes of action, suits or liability in connection with the performance of any and all acts authorized or permitted under this vacation. Said indemnification language shall be contained within and evidenced by the endorsement on a certified copy of the final vacating legislation by the owner which indemnification shall be kept in the permanent file of the Clerk of Council.

SECTION 3. Payment of fees have been made equaling \$3,222.89 was paid.

SECTION 4. That the Real Estate Section of the Department of Development is hereby directed to cause a copy of this Ordinance to be recorded in the records of the office of Lucas County Recorder.

SECTION 5. That it is hereby found and determined that all formal actions of Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of Council, and that all deliberations of Council and any of its committees that result in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 6. That this Ordinance is hereby declared to be an emergency measure and shall be in force and effect from and after its passage. The reason for the emergency lies in the fact that same is necessary for the immediate preservation of the public peace, health, safety and property, and for the further reason that this Ordinance must be immediately effective so that the vacations can be expeditiously completed to enable the property owner(s) to obtain the resulting benefits at the earliest time.

Vote on emergency clause: yeas \_\_\_\_\_, nays \_\_\_\_\_.

Passed: \_\_\_\_\_, as an emergency measure: yeas \_\_\_\_\_, nays \_\_\_\_\_.

Attest: \_\_\_\_\_  
Clerk of Council

\_\_\_\_\_  
President of Council

Approved: \_\_\_\_\_

\_\_\_\_\_  
Mayor

I hereby certify that the above is a true and correct copy of an Ordinance passed by Council \_\_\_\_\_.

Attest: \_\_\_\_\_  
Clerk of Council