



Legislation Text

File #: O-144-24, Version: 1

Vacation With Utility Easement
Maxwell between Thoman Place & Troxell Place
Clerk of Council

Declaring the vacation of a Portion of Maxwell Road - Between Thoman Place and Troxell Place. Being a parcel of land lying East of Lot Number 15 within the existing right of way of Maxwell Road, all within the City of Toledo, Lucas County Ohio; and declaring an emergency.

SUMMARY & BACKGROUND:

The Council of the City of Toledo, by Resolution No. 284-23 adopted on May 16, 2023, declaring its intent to vacate **a Portion of Maxwell Road - Between Thoman Place and Troxell Place. Being a parcel of land lying East of Lot Number 15 within the existing right of way of Maxwell Road, all within the City of Toledo, Lucas County Ohio;**

On October 12, 2023, the Toledo City Plan Commission recommended approval of the request for the vacation of **a Portion of Maxwell Road - Between Thoman Place and Troxell Place. Being a parcel of land lying East of Lot Number 15 within the existing right of way of Maxwell Road, all within the City of Toledo, Lucas County Ohio;**

The City Council Zoning and Planning Committee on November 15, 2023, sent as approved the request for the vacation of **a Portion of Maxwell Road - Between Thoman Place and Troxell Place. Being a parcel of land lying East of Lot Number 15 within the existing right of way of Maxwell Road, all within the City of Toledo, Lucas County Ohio;**

The Board of Revision met on December 21, 2023 and approved the request for the vacation of **a Portion of Maxwell Road - Between Thoman Place and Troxell Place. Being a parcel of land lying East of Lot Number 15 within the existing right of way of Maxwell Road, all within the City of Toledo, Lucas County Ohio;**

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. Fees totaling \$784.33 have been paid.

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 a Portion of Maxwell Road - Between Thoman Place and Troxell Place. Being a parcel of land lying East of Lot Number 15 within the

existing right of way of Maxwell Road, all within the City of Toledo, Lucas County Ohio; and more fully described as follows:

Said parcel being 25.67 feet by 30.00 feet within the existing 30 foot right of way of Maxwell Road and more fully described as follows:

Commencing at a point on the east lot line of Lot Number 15 within the Plat of "WOODMONT PARK" recorded in Lucas County Recorders Plat Book Volume 41 on Pages 54 and 55, said point being 41.00 feet south of the northeast corner on said east lot line of Lot number 15 and being the Point of Beginning for this description;

1. Thence Easterly and measured true to said east lot line of Lot Number 15 for a distance of 30.00 feet more or less to the platted centerline of Maxwell Road;
2. Thence Southerly on said centerline of Maxwell Road for a distance of 25.67 feet more or less to the northerly limit of an existing roadway vacation for Washington Township dated 6/08/1948;
3. Thence Westerly as measured true from said Maxwell centerline a distance of 30.00 feet to a point on the easterly lot line of said Lot Number 15, said point being 66.67 feet from said northeasterly lot corner of Lot Number 15;
4. Thence Northerly on said easterly lot line of Lot Number 15 for a distance of 25.67 feet to the point of beginning.

Containing an Area more or less of 770.10 square feet or 0.0177 Acre of land, subject to all easements, restrictions and leases.

SECTION 2. That the vacation(s) herein shall be subject to compliance of the following 6 (six) condition(s):

The following condition is listed by agency of origin. Applicants are encouraged to contact the agency to address compliance with their conditions.

Division of Engineering Services

1. A 20-foot easement shall be retained by the City of Toledo over vacated right of way. 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 20-foot easement is hereby retained over, across, under and through said vacated area for the existing water main 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, nor plant trees or other

large vegetation 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.”

Law Department

2. Within the allowed limits 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 the indemnification shall be kept in the permanent file of the Clerk of Council.

3. That a full width easement in favor of the City of Toledo is retained across, under and through said vacated area as described in Section 1 herein for the purpose of the City of Toledo’s maintaining, operating, renewing, reconstructing, and removing utility facilities. All City of Toledo facilities located within said vacated area are hereby dedicated to the City of Toledo for exclusive City of Toledo utility use only and shall not be combined with easements or rights for other utilities. The easement retained by the City of Toledo shall be primary to any other utilities located therein, and any easement retained by any other utility shall be subordinate to and subject to the easement rights of the City of Toledo. Said easement shall be permanent in nature for each utility and shall run with the land. Said easement also includes reasonable rights of egress and ingress over and through the vacated area. No fence, wall, building foundation, roof overhang, or other barrier which would impede access to the easement shall be constructed or maintained. Driveways, parking lots, walkways and other similar improvements are permitted subject to the prior written consent of the City of Toledo. The City of Toledo shall be released and held harmless for any liability, responsibility costs, or damages resulting from the City of Toledo’s removal of any barriers which impede the City of Toledo ingress or egress from the easement or which obstruct access to the utilities located within the vacated area. The City of Toledo shall have no obligation or duty to restore or compensate the barrier owner for any barrier removed in whole or in part by the City of Toledo. Any modification and/or release of any easement granted or retained by any utility as a result of this Ordinance shall be obtained separately from each utility, as to their interest(s) only, by separate recordable instrument.

Further, the Owner’s’ of the vacated area shall be responsible for the relocation of any utility facilities or equipment, whether owned by a public or private utility within the vacated area or preserving access to such utility facilities. Utility facilities include conduits, cables, wires, towers, poles, sewer lines, pipelines, gas and water lines, or other equipment of any railroad or public utility, located on, over or under the portion of the vacated area. Any modification and/or release of any easement granted or retained by any utility as a result of this Ordinance and operation of Ohio law shall be obtained separately from each utility, as to their interest(s) only. The City of Toledo shall be released and held harmless for any liability, responsibility, costs, or damages resulting from Owners’ construction or activities in the vacated area, that interferes with any utility easement retained as a matter of law in accord with Section 723.041 of the Ohio Revised Code.

Division of Transportation

4. Transportation does not have any issues provided all owners of property abutting said section of alley agree to the vacation of said alley.
5. 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.

Plan Commission

6. Any future right-of-way Vacations of Maxwell Road south of Thoman Place must not impede pedestrian access to Deveaux Elementary school.

SECTION 3. 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 4. 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 5. 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 11, nays 0.

Passed: March 27, 2024, as an emergency measure: yeas 11, nays 0.

Attest: Julie Gibbons Clerk of Council Carrie Hartman President of Council

Approved: March 27, 2024
 Wade Kapszukiewicz
 Mayor