



Legislation Text

File #: O-564-23, **Version:** 1

Zoning & Planning Committee

Declaring the vacation of a portion of Wayman Palmer Court within the Plat of Shaws Addition, 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. 280-23 adopted on May 16, 2023, declaring its intent to vacate a portion of Wayman Palmer Court, in the City of Toledo, Lucas County, Ohio.

On July 13, 2023, the Toledo City Plan Commission recommended approval of the request for the vacation of a portion of Wayman Palmer Court, in the City of Toledo, Lucas County, Ohio.

The City Council Zoning and Planning Committee on August 16, 2023, sent as approved the request for the vacation of a portion of Wayman Palmer Court, in the City of Toledo, Lucas County, Ohio.

The Board of Revision met on September 29, 2023 and approved the request for the vacation of a portion of Wayman Palmer Court, in 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 \$10,675.00 have been waived as the City of Toledo is the applicant.

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 Wayman Palmer Court, in the City of Toledo, Lucas County, Ohio; and more fully described as follows:

A parcel of land being part of Dedicated Wayman Palmer Court, being Lot 14 and part of vacated Linwood Avenue and part of Wayman Palmer Court (formerly Beacon Street) in Shaws Addition as Recorded in Volume 2A, Page 33 Lucas County Plat Records, in the City of Toledo, Lucas County Ohio, said parcel of land being bounded and described as follows:

Commencing at the intersection of Wayman Palmer Court and with the centerline of Franklin Avenue, said point of intersection being marked with a found monument box;

thence in an easterly direction along the centerline of Wayman Palmer Court, having a bearing of North eighty-eight (88) degrees, fifty-seven (57) minutes, sixteen (16) seconds East, a distance of four hundred fifty-six and thirty-one hundredths (456.31') feet to the Point of Beginning;

thence North zero (00) degrees, fifty-six (56) minutes, fifty-eight (58) seconds West along a line, passing by a found Mag nail at a distance of thirty-three and ten hundredths (33.10') feet and zero and twenty-three

hundredths (0.23') East, a total distance of eighty-three and zero hundredths (83.00') feet to the intersection of the North line of Dedicated Wayman Palmer Court;

thence North eighty-eight (88) degrees, fifty-seven (57) minutes, sixteen (16) seconds East along North line of Dedicated Wayman Palmer Court, a distance of one hundred fifty and sixty-five hundredths (150.65') feet to the intersection of the East line of Dedicated Wayman Palmer Court;

thence South zero (00) degrees, fifty-six (56) minutes, fifty-eight (58) seconds East along the East line of Dedicated Wayman Palmer Court, a distance of one hundred sixteen and zero hundredths (116.00') feet to the intersection of the South line of Dedicated Wayman Palmer Court;

thence South eighty-eight (88) degrees, fifty-seven (57) minutes, sixteen (16) seconds West along the South line of Dedicated Wayman Palmer Court, a distance of one hundred fifty and sixty-five hundredths (150.65') feet to a point, said point being referenced by a found iron pipe being 0.07' feet North and 0.15' feet East from said point;

thence North zero (00) degrees, fifty-six (56) minutes, fifty-eight (58) seconds West along a line, a distance of thirty-three and zero hundredths (33.00') feet to the Point of Beginning

Said parcel of land containing an area of 17,475 square feet, 0.401 acres of land, more or less. Subject to legal highways.

The above-described parcel of land is subject to any and all leases, easements, and restrictions of record.

Said parcel of land having a present right-of-way occupied area of 17,474 square feet or 0.401 acres of land, more or less.

The bearings used hereon are based on an assumed meridian and are for the express purpose of calculating angular measurement.

The above description is based on a survey performed under my supervision during December 2022.

Prior Deed Reference is Ordinance Number 38-86, Lucas County Records.

SECTION 2. That the vacation(s) herein shall be subject to compliance of the following 7 (seven) 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 & Construction

1. A full width easement shall be retained by the City of Toledo over the vacated right-of-way, for maintenance of existing 6-inch diameter water mains and appurtenances.

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 mains 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 right to ingress and egress over and through the utility easement area for the purpose of operating, maintain, 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”

2. If the petitioner wishes to reduce the size of the water main easement, the water mains shall be located by survey and a twenty-foot (20’) easement centered on the water mains will be acceptable. The survey shall be conducted by and paid for by the petitioner.
3. The existing storm drainage infrastructure serving the court is currently property of the City. The author (s) of the highway easement language can specify in the language whether the said infrastructure will remain as owned by the City or become the property of the owner of the vacated right-of-way. In either case, said infrastructure will be able to be abandoned or reconfigured during redevelopment of the land.
4. Access easement shall be maintained to gain access to the 24” sewer which runs thru the property.

Division of Transportation

5. With this vacation a highway easement is required and shall be to the satisfactory of the Department of Transportation, Division of Traffic Management.

Law Department

6. 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.

7. 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 Owner's' 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.

SECTION 3. That the Real Estate Section of the Department of Economic 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 10, nays 0.

Passed: October 10, 2023, as an emergency measure: yeas 10, nays 0.

Attest:

Gerald E. Dendinger
Clerk of Council

Matt Cherry
President of Council

Approved:

October 10, 2023
Wade Kapszukiewicz
Mayor