



## Legislation Text

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**File #:** O-364-23, **Version:** 1

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### The Clerk Reports

**Amending Ordinance 313-20 which declared the vacation of the 60-foot strip adjacent to Lots 7 and 8 in the Plat of West Central Stores and the 60-foot strip adjacent to Lots 181-184, 201 202 in the Plat of Kingston, AKA Briar Cliff Street Vacation, in the City of Toledo, Lucas County, Ohio. Lucas County, Ohio; by removing the retention of the Utility Easement; and declaring an emergency.**

#### SUMMARY & BACKGROUND:

The Council of the City of Toledo, by Resolution No. 446-19 adopted on September 17, 2019, declaring its intent to vacate the 60-foot strip adjacent to Lots 7 and 8 in the Plat of West Central Stores and the 60-foot strip adjacent to Lots 181-184, 201 202 in the Plat of Kingston, AKA Briar Cliff Street Vacation, in the City of Toledo, Lucas County, Ohio. On February 13, 2020, the Toledo City Plan Commission recommended approval of the request for the vacation of a vacation of the 60-foot strip adjacent to Lots 7 and 8 in the Plat of West Central Stores and the 60-foot strip adjacent to Lots 181-184, 201 202 in the Plat of Kingston, AKA Briar Cliff Street Vacation, in the City of Toledo, Lucas County, Ohio. On May 13, 2020, City Council Zoning and Planning Committee approved the request for the vacation of a vacation of the 60-foot strip adjacent to Lots 7 and 8 in the Plat of West Central Stores and the 60-foot strip adjacent to Lots 181-184, 201 202 in the Plat of Kingston, AKA Briar Cliff Street Vacation, in the City of Toledo, Lucas County, Ohio. The Board of Revision met on July 8, 2020 and recommended to Council approval of the request for the vacation of a vacation of the 60-foot strip adjacent to Lots 7 and 8 in the Plat of West Central Stores and the 60-foot strip adjacent to Lots 181-184, 201 202 in the Plat of Kingston, AKA Briar Cliff Street Vacation, in the City of Toledo, Lucas County, Ohio; and the waiver of all acquisition costs.

A request has been made by the applicant that Ordinance 313-20 be amended to remove Section 4, the utility easement retention, in order to allow the utilities to be relocated and allow for construction to occur as approved in PUD-8007-19 and S-21-21.

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.

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

SECTION 1. That pursuant to Ordinance 313-20 the Council of the City of Toledo vacated the 60-foot strip adjacent to Lots 7 and 8 in the Plat of West Central Stores and the 60-foot strip adjacent to Lots 181-184, 201 202 in the Plat of Kingston, AKA Briar Cliff Street Vacation, in the City of Toledo, Lucas County, Ohio; and more fully described as follows:

Legal Description of Proposed Central Avenue Vacation: in the City of Toledo, Lucas County, Ohio, bounded and described as follows:

Legal Description of Proposed Briar Cliff Vacation: in the City of Toledo, Lucas County, Ohio, bounded and described as follows:

Commencing at a 1 inch iron bar found at the intersection of Central Avenue and Briar Cliff Road.

Thence South 00 degrees, 09 minutes, 10 seconds East, along the centerline of Briar Cliff Road, a distance of 40.00 feet to a point, said point being the True Point of Beginning.

Thence continuing South 00 degrees, 09 minutes, 10 seconds East, along the centerline of Briar Cliff Road, a distance of 15.00 feet to a point.

Thence North 89 degrees, 49 minutes, 00 seconds East, a distance of 30.00 feet to a point on the East Right-of-way of Briar Cliff Road.

The following four courses are along the East Right-of-way of Briar Cliff Road.

Thence South 00 degrees, 09 minutes, 10 seconds East, a distance of 80.79 feet to a point of curvature.

Thence traversing a non-tangent arc to the left having a radius of 150.00 feet, a tangent length of 61.49 feet, a central angle of 44 degrees, 34 minutes, 56 seconds, a chord bearing of South 21 degrees, 40 minutes, 17 seconds East, a chord distance of 113.79 feet and an arc length of 116.72 feet to a point of curvature.

Thence traversing a non-tangent arc to the left having a radius of 84.70 feet, a tangent length of 34.43 feet, a central angle of 44 degrees, 14 minutes, 54 seconds, a chord bearing of South 64 degrees, 56 minutes, 52 seconds East, a chord distance of 63.80 feet and an arc length of 65.41 feet to a point.

Thence South 87 degrees, 23 minutes, 31 seconds East, a distance of 61.65 feet to a point of curvature on the North Right-of-way of Jermain Drive.

The following two courses are along the North Right-of-way of Jermain Drive.

Thence traversing a non-tangent arc to the left having a radius of 181.41 feet, a tangent length of 60.10 feet, a central angle of 36 degrees, 39 minutes, 40 seconds, a chord bearing of South 74 degrees, 16 minutes, 39 seconds West, a chord distance of 114.11 feet and an arc length of 116.08 feet to a point.

Thence South 55 degrees, 56 minutes, 49 seconds West, a distance of 54.78 feet to a point of curvature on the West Right-of-way of Briar Cliff Road.

The following three courses are along the West Right-of-way of Briar Cliff Road.

Thence traversing a non-tangent arc to the left having a radius of 25.42 feet, a tangent length of 32.41 feet, a central angle of 103 degrees, 46 minutes, 39 seconds, a chord bearing of North 04 degrees, 03 minutes, 30 seconds East, a chord distance of 40.00 feet and an arc length of 46.04 feet to a point curvature.

Thence traversing a non-tangent arc to the right having a radius of 210.00 feet, a tangent length of 94.23 feet, a central angle of 48 degrees, 19 minutes, 53 seconds, a chord bearing of North 23 degrees, 39 minutes, 53 seconds West, a chord distance of 171.94 feet and an arc length of 177.14 feet to a point.

Thence North 00 degrees, 09 minutes, 10 seconds West, a distance of 95.40 feet to a point on the Easterly prolongation of the Southerly existing 40 foot Right-of-way of Central Avenue.

Thence North 89 degrees, 50 minutes, 33 seconds East, along the Easterly prolongation of the Southerly existing 40 foot Right-of-way of Central Avenue, a distance of 30.00 feet to the True Point of Beginning.

Containing 17,702.58 square feet or 0.4064 acres of land. Bearings used herein are based upon an assumed meridian and are intended to indicate angular measurement only. All 1/2 inch galvanized steel pipe set are capped with the company name and PLS No. 7476. This legal description is based upon a field survey prepared by Lewandowski Engineers on September 4, 2019.

SECTION 2. That Section 4 of Ordinance 313-20, which reads as follows:

SECTION 4. That a full width easement in favor of the City is retained across, under and through said vacated area as described in Section 1 herein for the City's future maintenance, repair, and replacement of the existing sewer, water and/or storm water facilities located in the vacated area. All City facilities located within said vacated area are hereby dedicated to the City for exclusive City utility use only and shall not be combined with easements or rights for other utilities. The easement retained by the City 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. The City shall be released and held harmless for any liability, responsibility costs, or damages resulting from the City's removal of any barriers which impede the City ingress or egress from the easement or which obstruct access to the utilities located within the vacated area. The City 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. 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.

Is repealed.

SECTION 3. That a new Section 4 of Ordinance 313-20 is enacted to read as follows:

“SECTION 3: That the Owner of the vacated alley property, as described in Section 1, shall be responsible for the relocation of any utility facilities or equipment, whether owned by a public or private utility within the vacated alley or preserving access to such utility facilities. Utility facilities include conduits, cables, wires, towers, poles, sewer line, pipelines, gas and water lines, or other equipment of any railroad or public utility, located on, over or under the portion of the vacated alley property. 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 shall be released and held harmless for any liability, responsibility costs, or damages resulting from Owners construction in the vacated alley property, which interferes with any utility easement retained as a matter of law in accord with Section 723.041 of the Ohio Revised Code.”

SECTION 4. That other than as amended herein, all provisions of Ordinance 313-20 shall remain in full force and effect.

SECTION 5. 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 6. 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 7. 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: June 27, 2023, as an emergency measure: yeas 10, nays 0.

Attest:

Gerald E. Dendinger  
Clerk of Council

Matt Cherry  
President of Council

Approved:

June 27, 2023  
Wade Kapszukiewicz  
Mayor