

## Section 13 – Vacation of Rights of Way

(orig. 12-21-10)

### A. Intent and Purpose

In accordance with State Statutes, the Board of County Commissioners are authorized to vacate Right-of-Way owned by Jefferson County; however, even if all of the standards/criteria within this Section are met the Board of County Commissioners is not required to approve a vacation of Right-of-Way if in their opinion the Right-of-Way is still needed or desirable for County purposes. This Vacation of Rights-of-Way process was created to provide consistent procedures for Vacation Applications. Proposed Vacations that are reviewed as a part of a development application (Preliminary and Final Plat, Minor Adjustment, etc.) will be processed as a part of the overall development case and thus will not meet the processing timeframes identified within this section. Other Vacations that are not a part of a development application will be processed in accordance with the process timeframes of this section. These time frames and expectations are intended to provide the applicant with a clear understanding of the steps involved prior to being scheduled for a public hearing before the Board of County Commissioners. The Director of Planning and Zoning may waive the time frames included in this Section depending on Planning and Zoning staffing levels and the complexity of the proposal. (orig. 12-21-10; am. 12-17-19)

### B. Application

1. The term “Right-of-Way” includes any platted or designated public street, alley, lane, parkway, avenue, road, or other public way, whether it has been used as such, pursuant to Section 43-2-301(3), C.R.S. Determination on whether land is eligible for a Right-of-Way vacation is based on the following table. (orig. 12-21-10; am. 7-17-18)

Dedication Language on Recorded Document	Eligible for Vacation?	Requires Civil Action?
Dedicated to Jefferson County and accepted by the BCC	Yes	No
Dedicated to the Public and accepted in writing by the BCC	Yes	No
Dedicated to the County or Public, and accepted by the County through possession, improvement, or use. <b>(i.e. Maintained by the County*)</b>	Yes	No
Dedicated to the County or Public, but not accepted by the BCC in writing or through use. <b>(i.e. Not maintained by the County*)</b>	No	Yes
No dedication or dedicated to private property owners. <b>(Maintained by the County*)</b>	Yes – For that portion of the road that has achieved prescriptive ownership due to maintenance activities. **	Yes - For that portion of the road that has not achieved prescriptive ownership due to maintenance activities. **

\* The term “Maintained” typically means the maintenance of a street/road within all or a portion of the dedicated right-of-way; however, based on the circumstances of the situation it may also mean the maintenance of other structures, such as utilities or drainage structures, when there is not a street/road that is maintained. (orig. 12-17-19)

\*\* Prescriptive ownership includes the road surface and shoulders, along with areas used for drainage, routine maintenance, and the safe operation of the road. (orig. 12-21-10)

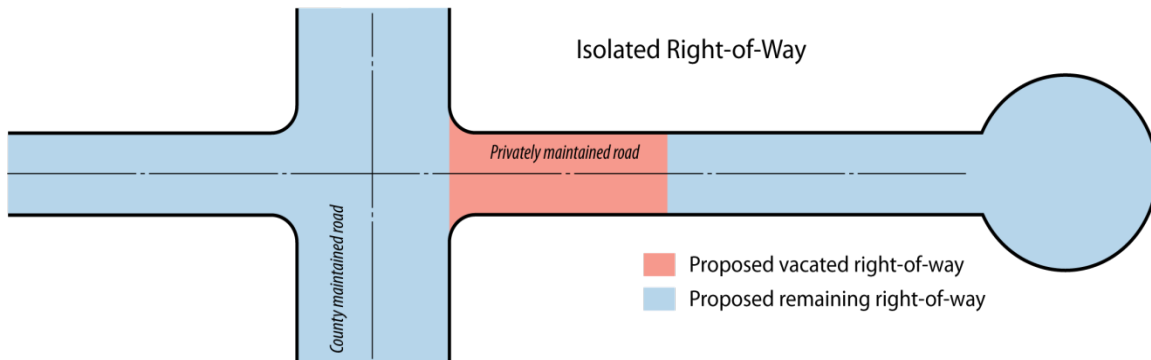
2. A nonrefundable processing fee in an amount established by the Board of County Commissioners is required for this process. (orig. 12-21-10)
3. Notification is required in accordance with the Notification section. (orig. 12-21-10)
4. The following procedure and requirements shall apply to Vacation applications. (orig. 12-21-10)

### C. Criteria

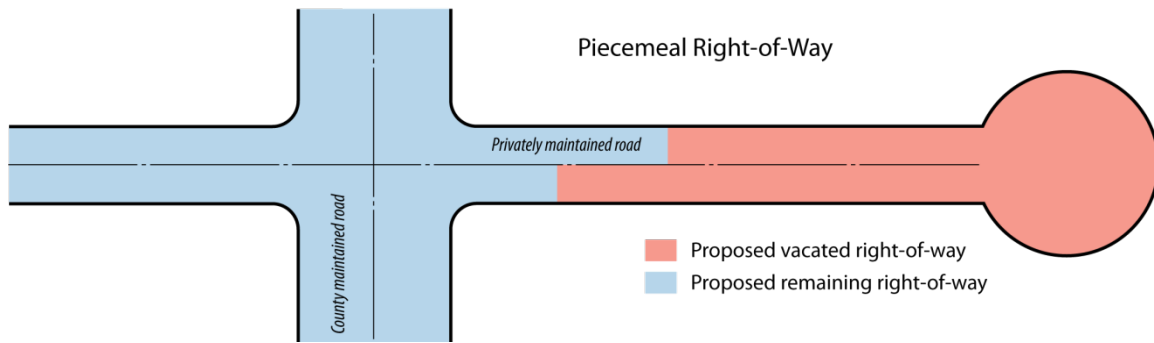
In order to proceed with the Vacation of Rights-of-Way process, the application must be in conformance with the following: (orig. 12-17-19)

1. A Vacation shall not eliminate the only physical or legal access for any property. The following may be required to ensure that access is maintained. (orig. 12-21-10)
  - a. Private access easements. (orig. 12-21-10)

- b. Merger(s) of property under the same ownership. (orig. 12-21-10)
  - c. Dedication of additional Right-of-Way. (orig. 12-21-10)
2. A Vacation shall not eliminate the only physical or legal rights to utilities for any property. The following may be required to ensure that the legal rights to utilities are maintained. (orig. 12-21-10)
    - a. Utility easements. (orig. 12-21-10)
    - b. Reservation of easements for existing utilities. (orig. 12-21-10)
  3. The County may assign the vacated property to a private association that has the responsibility for road maintenance. The association must have the representation of property owners in the immediate area of the vacation. The entity must provide a statement in writing that it is willing to take over maintenance and ownership of the vacated property. (orig. 12-21-10; am. 12-17-19)
  4. Property Mergers may be required to combine parcels affected by the vacation. The Case Manager may make mergers a requirement if they are needed to maintain legal access for all parcels. If required, the mergers will be a condition of the vacation approval. (orig. 12-21-10)
  5. Vacation requests shall not negatively impact the existing or planned street\road system. If negative impacts are created, then traffic information and mitigation improvements may be required. (orig. 12-21-10)
  6. Construction plans for improvements required to maintain acceptable service, or to mitigate negative impacts, must be submitted in accordance with the Land Development Regulation and Transportation Design and Construction Manual. (orig. 12-21-10; am. 11-24-15)
  7. Vacation requests shall not create a circulation system that is non-compliant with the Land Development Regulation, unless the non-compliant circulation system is approved by the Director of Transportation and Engineering. The Director of Transportation and Engineering can approve a non-compliant circulation system if the circulation system does not impact legal access to affected properties, diminish public health, safety, and welfare, or negatively impact maintenance operations. (orig. 12-21-10; am. 12-09-14; am. 12-17-19)
  8. Reimbursement costs will be required for vacation requests that involve Right-of-Way that was previously purchased by the County. (orig. 12-21-10)
  9. Vacation requests that create isolated Right-of-Way (as shown below) are not permitted. (orig. 12-21-10)



10. The “piecemeal” vacation of Right-of-Way (as shown below) is discouraged and shall be reviewed and may be permitted on a case-by-case basis. The “piecemeal” vacation of Right-of-Way may be approved by Planning and Zoning if it does not impact legal access to affected properties, diminish public health, safety, and welfare, or negatively impact maintenance operations. (orig. 12-21-10; am. 12-17-19)



**D. Procedure**

The following is an example of the typical processing steps and timeframes for the development application. (orig. 12-21-10; am. 7-17-18; am. 12-17-19)

Process Steps	Processing Time Frames	
<b>Steps prior to 1<sup>st</sup> Referral</b>		
Sufficiency Review and Referral Distribution (1 <sup>st</sup> Referral)	7 calendar days	
Resubmittal Sufficiency Review (if necessary)	5 calendar days	
<b>Process from 1<sup>st</sup> Referral to Public Hearing</b>		
1 <sup>st</sup> Referral and Staff Response	21 calendar days (14-day referral, 7 days for Staff response)	82 Days to get to hearing if processing time frames are met.
Applicant's Response to 1 <sup>st</sup> Referral	Varies, 14 calendar days used for example timeframe	
Sufficiency Review and Referral Distribution (2 <sup>nd</sup> Referral)	5 calendar days	
2 <sup>nd</sup> Referral and Staff Response	21 calendar days (14-day referral, 7 days for Staff response)	
Hearing Preparation	21 calendar days	
<b>Public Hearing and Post Hearing Review</b>		
Board of County Commissioners Hearing		
Post Hearing Review Recordation		

Notification is required at the time of the 1st Referral in accordance with the notification provisions of this Regulation. (orig. 7-17-18)

**Steps Prior to 1<sup>st</sup> Referral**

1. Sufficiency Review and Referral Distribution (1<sup>st</sup> Referral):

The applicant shall electronically submit all documents as identified in the Submittal Requirements Section of this Regulation for review by Staff. All documents shall be submitted as a complete package and not sent in a fragmentary manner. (orig. 12-21-10; am. 7-17-18; am. 12-17-19)

The Case Manager shall have 7 calendar days to review the submittal and either send the application out on referral or respond to the applicant explaining any deficiencies in the submittal documents. A submittal that is not complete in terms of the type of documents required will not be sent out on referral. (orig. 7-17-18; am. 12-17-19)

Resubmittal Sufficiency Review (if required): The Case Manager shall have 5 calendar days to review the resubmittal and either send the application out on referral or respond to the applicant explaining any deficiencies in the submittal documents. (orig. 7-17-18)

**Process from 1<sup>st</sup> Referral to Public Hearing**

2. 1<sup>st</sup> Referral and Staff Response:

The referral agencies shall have 14 calendar days to respond in writing to the application. (orig. 12-21-10; am. 7-17-18; am. 12-17-19)

The Case Manager shall have 7 calendar days, after the end of the referral period, to provide the applicant with a Staff response inclusive of other referral responses. The response from the Case Manager will

include an opinion as to whether the case should proceed to the Hearing Preparation phase or if revised documents should be submitted for a subsequent referral process. (orig. 7-17-18; am. 12-17-19)

3. Applicant's Response to 1<sup>st</sup> Referral:

For the application to be processed in accordance with the example timeframe in the table above, the applicant shall have 14 calendar days to address, in writing, any issues identified by the Case Manager or any referral agency and resubmit revised documents for the 2<sup>nd</sup> Referral. (orig. 12-21-10; am. 7-17-18; am. 12-17-19)

Regardless of the example timeframe, the applicant shall have a maximum of 180 calendar days to respond to the referral comments, or the application will be considered withdrawn. The applicant will then have to file a new application with the required fee and documents. The Director of Planning and Zoning or the Director of Transportation and Engineering may extend this 180 calendar day maximum response deadline for additional 180 calendar day periods if, in his/her opinion, the delay in response is for good cause. (orig. 12-21-10; am. 7-17-18; am. 12-17-19)

4. Sufficiency Review and Referral Distribution (2<sup>nd</sup> Referral):

The applicant shall electronically submit the documents for the 2<sup>nd</sup> Referral. All documents shall be submitted as a complete package and not sent in a fragmentary manner. (orig. 12-17-19)

The Case Manager shall have 5 calendar days to review the submittal and either send the application out on referral or respond to the applicant explaining any deficiencies in the submittal documents. A submittal that is not complete in terms of the type of documents required will not be sent out on referral. (orig. 7-17-18; am. 12-17-19)

Resubmittal Sufficiency Review (if required): The Case Manager shall have 5 calendar days to review the resubmittal and either send the application out on referral or respond to the applicant explaining any deficiencies in the submittal documents. (orig. 7-17-18)

5. 2<sup>nd</sup> Referral and Staff Response:

The referral agencies shall have 14 calendar days to respond in writing to the 2<sup>nd</sup> Referral (orig. 12-21-10; am. 7-17-18; am. 12-17-19)

The Case Manager shall have 7 calendar days after the end of the referral period to provide the applicant with a Staff response inclusive of referral agency responses. The response from the Case Manager will include an opinion as to whether the case should proceed to the Hearing Preparation phase or if revised documents should be submitted for a subsequent referral process. (orig. 7-17-18; am. 12-17-19)

6. Applicant's Response to 2<sup>nd</sup> Referral Comments:

The applicant shall have a maximum of 180 calendar days to respond to the referral comments, or the application will be considered withdrawn. The applicant will then have to file a new application with the required fees and documents. The Director of Planning and Zoning may extend this 180 calendar day maximum response deadline for additional 180 calendar day periods if, in his/her opinion, the delay in response is for good cause. (orig. 12-21-10; am. 7-17-18)

7. Additional Referrals and Responses:

For the 3<sup>rd</sup> Referral, and for any subsequent referrals thereafter, the processing of the application shall follow the same steps identified above in the Sufficiency Review and Referral Distribution (2<sup>nd</sup> Referral) process, the 2<sup>nd</sup> Referral and Staff Response process and the Applicant's Response to 2<sup>nd</sup> Referral process. (orig. 12-21-10; am. 7-17-18; am. 12-17-19)

8. Hearing Preparation:

For the Hearing Preparation phase, the final documents needed for the hearing and the subsequent recordation of the Vacation Resolution, shall have been submitted and reviewed through the latest referral; however, if additional documents are required to finalize the Vacation process, then the submittal of those documents may affect the scheduling of the Board of County Commissioners Hearing. The following is required as a part of the Hearing Preparation: (orig. 12-17-19)

- a. Revisions to Documents Prior to Hearing: To ensure completeness and to allow adequate public review, no substantial revisions or additions, except in response to a Staff request may be made to any application or supporting documents within 21 days prior to any hearing. (orig. 12-21-10; am. 12-17-19)

- b. Notification: Notification of the scheduled hearings is required in accordance with the Notification Section. (orig. 12-21-10)

**Public Hearings and Post Hearing Review**

9. Board of County Commissioners Hearing:

The Board of County Commissioners shall review the application and the Staff report, receive testimony and evidence on the application, and shall approve, conditionally approve or deny the application. The Board of County Commissioners may continue the request for no more than 40 calendar days without the consent of the applicant. (orig. 12-21-10; am. 12-17-19)

10. Recordation: If the application is approved by the Board of County Commissioners, the Case Manager will the record the Vacation Resolution and any other documents necessary for compliance with the approval conditions. (orig. 12-21-10; am. 7-17-18 am. 12-17-19)