

# **Act 2014-333**

## **Special Rules for Vacation of Roads**

### **New Public Hearing Requirement on Petitions to Vacate a County Road**

*Ala. Code § 23-4-20(a)* now provides that, when a petition to vacate a road or portion of a road is filed by abutting property owners, the county commission shall set a public hearing on the request within 100 days from the date the petition is received.

- Notice of the hearing shall be provided in the manner required for notice of meetings under the Open Meeting law.
- The notice must describe the road or portion of the road the petitioners are requesting be vacated.
- A copy of the notice shall be mailed to any abutting owner at least 30 days prior to the scheduled hearing.
- A copy of the notice shall also be mailed at least 30 days prior to the hearing to any entity known to have facilities or equipment (such as utility lines) within the public right-of-way of the road or portion of the road where vacation is requested.

The county commission is **not** required to take action on the petition following the public hearing. However, if the commission elects to take action, it shall follow the procedures it would follow in the event the vacation was initiated by the commission.

### **Special Procedures when Motion to Vacate Filed by Family Members in Counties with Single-member Districts**

*Ala. Code § 23-4-20(c)* requires that, in counties where the commissioners are elected by single member districts, any motion to vacate a road or a portion of a road pursuant to a petition filed by property owners must be made by the district commissioner in the district where the road lies. However, *Act 2014-333* creates a special procedure for such motions if the petition is filed by **all** members of the same immediate family.

- For the purposes of this section, “immediate family” means spouse, parent, child, sibling, or grandparent

Under the special procedures, if the county commissioner from the district in which the road or portion of the road is located does not move to vacate within 100 days following the public hearing, the issue may be placed on a regular county commission meeting agenda if, within 30 days:

- (1) A written request to place the issue on the agenda is submitted to the county commission chair by a majority of other members of the county commission **and**
- (2) A copy of the written request is delivered to the commissioner in whose district the road or portion of the road is located at the same time the written request is submitted to the chair.

This procedure may only be used to place the issue on the agenda of a **regular county commission meeting**. However, when the issue is placed on the agenda under this procedure, a motion to approve the vacation may be made at the meeting at which the issue is debated by one of the members of the commission who requested the matter be placed on the agenda.

### **Special Appeal Rules for Vacating Certain Unpaved Roads**

If the county commission denies a petition to vacate filed by **all** owners of property abutting **all** sides of an unpaved road or alley from its beginning to the place where it ends, the owners may file an action in the circuit court requesting an order vacating the unpaved road or alley.

- The petition must be filed by **all** property owners abutting **all** sides of the unpaved road or alley from the beginning to the place where the unpaved road or alley ends.
- This procedure does not apply when the unpaved road or alley ends along a body of water

Prior to any order for vacation being issued by the court, the county commission shall be granted an opportunity to present evidence establishing why the unpaved road should not be vacated.

The court may only issue an order for vacation upon an affirmative finding that:

- (1) **All** owners of the property abutting **all** sides of the unpaved road from its beginning to its end have joined as plaintiffs; **and**
- (2) Vacation of the unpaved road or alley will not deprive other property owners of any right they may have to convenient and reasonable means of ingress and egress to their property.

In the event the court grants the petition for vacation, the order shall include a specific finding that the county is divested of all public rights and liabilities in the unpaved road or alley.

- The plaintiffs shall be required to post signs along the unpaved road or alley providing notice that the unpaved road or alley is privately owned and **not** maintained by the county.
- Vacation of the unpaved road or alley shall not take effect until and unless the signs are posted.

*A copy of Ala. Code § 23-4-20, as amended, is attached.*

**Ala. Code § 23-4-20.**

(a) Subject to the conditions set out in this subsection, any street or alley may be vacated, in whole or in part, by the owner or owners of the land abutting the street or alley or abutting that portion of the street or alley desired to be vacated by following the procedures set out herein. The owner or owners of the land abutting the street or alley to be vacated shall join in a written petition requesting that the street or alley be vacated and shall file the petition with the governing body with jurisdiction over the street or alley, or portion thereof, requesting the governing body's approval of the vacation. The governing body shall set the request for vacation for public hearing within 100 days from the date the petition is received. Notice of the hearing shall be provided as set out in Section 36-25A-3 for notice of meetings of the governing body and shall describe the street or alley, or portion thereof, requested to be vacated in the petition. A copy of the notice shall also be served by U.S. mail at least 30 days prior to the scheduled meeting on any abutting owner and on any entity known to have facilities or equipment such as utility lines, both above ground or buried, within the public right-of-way of the street or alley, or portion thereof, to be vacated. Except as provided in subsection (c), if the governing body elects to take action on the petition, the governing body shall follow the procedures in Section 23-4-2(b) for taking the action. Any appeal of the decision of the governing body to vacate the street or alley, or portion thereof shall be as provided in Section 23-4-5. If the governing body approves the vacation, it shall have the same effect as provided in Section 23-4-2(b), including that the vacation shall not deprive other property owners of any right they may have to convenient and reasonable means of ingress and egress to and from their property, and if that right is not afforded by the remaining streets and alleys, another street or alley affording that right must be dedicated.

(b) The provisions of this section shall not be held to repeal any existing statute relating to the vacation of roads, streets, or alleys, or parts thereof, and shall not be held to limit or expand any civil causes of action available under the law.

(c) Notwithstanding the provisions of subsection (a) and Section 23-4-2 in conflict with this subsection, the following procedures may be applied in counties where the members of the county commission are elected by single-member districts if the property owners submitting the petition to vacate a street or alley or portion thereof are all members of the same immediate family. If, following the public hearing provided under subsection (a), the county commissioner from the district in which the street or alley or portion thereof does not move to vacate the street or alley or portion thereof within 100 days, the question of whether to vacate the street or alley or portion thereof may be placed on the agenda for a regular county commission meeting if, within 30 days thereafter:

- (1) A written request to have the issue of vacating the street or alley or portion thereof placed on the agenda for a regular county commission meeting is submitted to the chair of the county commission by a majority of other members of the county commission; and
- (2) A copy of the written request is delivered to the district commissioner in whose district the street or alley or portion thereof is located at the same time written request is submitted to the chair.

When the issue of vacating the street or alley or 4 portion thereof is placed on the county commission agenda pursuant to the procedure set out herein, a motion to approve the vacation may be made during the county commission meeting at which the issue is debated by one of the members of the county commission who made the written request.

For the purpose of this subsection, "immediate family" shall mean spouse, parent, child, sibling, and grandparent.

(d) Notwithstanding the provisions of subsection (a) or Section 23-4-2 in conflict with this subsection, and except when an unpaved street or alley ends along a body of water, if the county commission denies or does not take action within 100 days after the public hearing is held on a petition to vacate an unpaved street or alley which is filed by all owners of property abutting all sides of the unpaved street or alley from its beginning to the place where it ends, the owners may file an action in the circuit court requesting an order vacating the unpaved street or alley. The petition shall be filed by all owners of property abutting all sides of the unpaved street or alley from its beginning to the place where it ends. Prior to any order for vacation being issued by the court, the county commission shall be granted an opportunity to present evidence establishing why the unpaved street or alley should not be vacated. The court may issue an order for vacation of the street or alley pursuant to this subsection only upon an affirmative finding that:

- (1) All owners of property abutting all sides of the unpaved street or alley from its beginning to the place where it ends have joined as plaintiffs in the civil action filed pursuant to this section; and
- (2) Vacation of the unpaved street or alley will not deprive other property owners of any right they may have to convenient and reasonable means of ingress and egress to their property.

In the event the court grants the petition for vacation of the unpaved street or alley as provided in this subsection, the order shall include a specific finding that the county is divested of all public rights and liabilities in the unpaved street or alley, including any rights which may have been acquired by prescription. The plaintiffs shall be required to post signs along the unpaved street or alley providing notice that the unpaved street or alley is privately owned and is not maintained by the county. Vacation of the unpaved street or alley shall not take effect until and unless the signs are posted.

(e) Notwithstanding the provisions of this section, entities with utility lines, equipment, or facilities in place within or crossing a road at the time of vacation, shall have the right to continue to access, maintain, extend, and enlarge their lines, equipment, and facilities to the same extent as if the vacation had not occurred. The entities may continue to move across and along a vacated road to reach their lines, equipment, and facilities for the above purposes and to the same extent as if the vacation had not occurred.