

**POLICY AND PROCEDURE ON VACATING ALLEY
RIGHTS-OF-WAY IN THE TOWN OF GREENEVILLE**



**APPROVED BY THE GREENEVILLE REGIONAL PLANNING
COMMISSION ON NOVEMBER 11, 2014**

EXECUTIVE SUMMARY

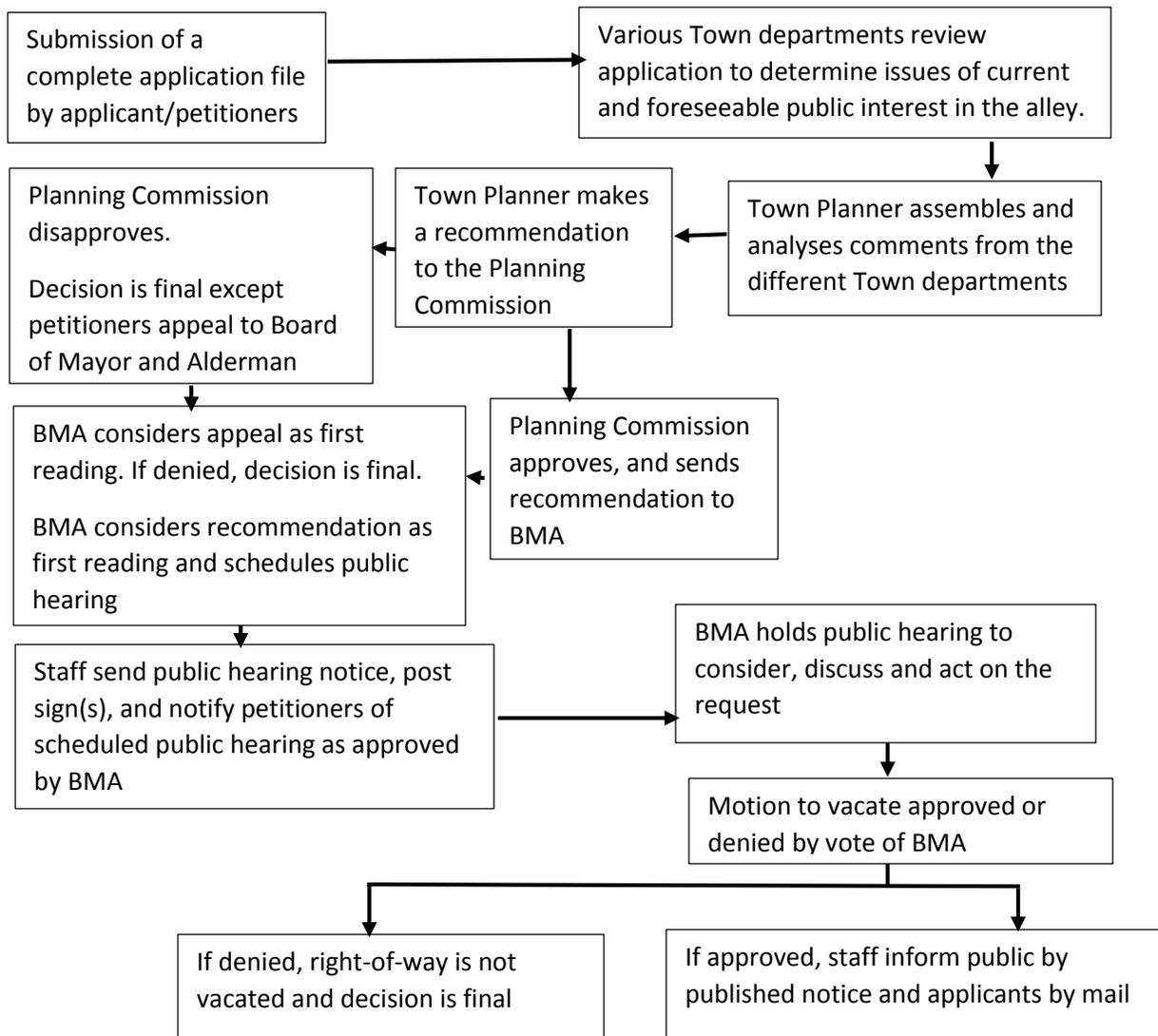
Objective: Stating definitions, affirming the authority, establishing the policy and laying out procedure for vacating the public’s alley right-of-way in the jurisdiction of the Town of Greeneville

Definitions: An alley is a minor right-of-way, dedicated to public use, which affords a secondary means of vehicular access to the back or side of properties otherwise abutting a street, and which, may be used for public utility purposes. “Vacate” means the Town of Greeneville, by ordinance of the Board of Mayor and Alderman, terminates the existence of the public’s alley right-of-way.

Authority: The State of Tennessee grants to municipalities incorporated in the Mayor-Aldermanic charter the powers to vacate streets and alleys (T.C.A. §6-2-201(15)).

Policy: Vacating the alley right-of-way shall prioritize the health, safety, and general welfare of the public above all else; follow procedure laid down herein; not imply the termination of the public’s access to and use of existing utility easements; minimize cost to the Town; and become effective only after an implied or explicit ordinance by the Board of Mayor and Alderman.

Procedure:



1. PURPOSE

To set forth clarity in meaning (definitions), policy, procedures and applicable fees for applications and petitions to vacate the public's alley right-of-way and easements associated with the alleys; and to ensure appropriate notification of all property owners and the public.

2. DEFINITIONS

Alley – An “alley” shall mean “a minor right-of-way, dedicated to public use, which affords a secondary means of vehicular access to the back or side of properties otherwise abutting a street, and which, may be used for public utility purposes” (*Zoning Ordinance of the Town of Greeneville*, no.310).

Vacate – “Vacate” shall mean to terminate the public's right-of-way in an alley by ordinance of the Board of Mayor and Alderman of the Town of Greeneville.

3. AUTHORITY

The State of Tennessee grants to municipalities incorporated in the Mayor-Aldermanic charter the powers to vacate streets and alleys (T.C.A. §6-2-201(15)). Consequently, the Town of Greeneville may by ordinance of its Board of Mayor and Alderman renounce and disclaim the public's right-of-way associated with an alley acquired statutorily before the attachment of the planning commission's subdivision jurisdiction; by correspondence in its location and lines with an alley shown on a subdivision plat approved by the planning commission or with an alley plat made and adopted by the commission; by ordinance; by invitation or acquiescence in the public's use from the owner; by public's longstanding maintenance of the alley; or by the public's use of the alley property for an extended time.

4. POLICY

- 4.1. The main determining factor in vacating the public's alley right-of-way is the safeguard of the current and foreseeable welfare of the public.
- 4.2. The procedure for vacating shall be as set forth in this policy.
- 4.3. Terminating the public's right-of-way in an alley shall not imply termination of the public's rights to access and use of existing utility easements in and around the right-of-way.
- 4.4. As applicable to platted easements associated with an alley right-of-way that is proposed to be vacated, relinquishing such rights shall be required as a prerequisite to issuance of a building permit for any structure in such easements, except to the extent that the Head of the Department of Planning, Building and Development determines that construction of particular structures do not interfere with the dedicated purposes of the easements. Where such interference is possible, the Building Official or his designee shall request confirmation in writing from affected entities, including Town departments and public or private utilities that a proposed use does not interfere with the dedicated purposes of such easements. The Building Official or the official's designee shall perpetually have the discretion to require that such intrusion on easements be terminated, whether or not any affected person or entity objects to the propose use.
- 4.5. When improvements, whether permitted or not, are erected in an un-abandoned easement associated with a vacated alley right-of-way, the burden and cost of removing such improvements, and any risk should such removal be required by an authorized user of the easement, shall be wholly the responsibility of the person or entity erecting the improvements.
- 4.6. The public maintains its alley right-of-way unless vacated.

5. PROCEDURE FOR VACATING THE PUBLIC'S ALLEY RIGHT-OF-WAY

The following procedure shall be followed in vacating the public's right-of-way in an alley in the jurisdiction of the Town of Greeneville:

- 5.1. Anyone wishing to petition the Board of Mayor and Alderman to vacate the public's alley right-of-way shall systematically:
 - a. Complete and sign an application and a petition to vacate, which may be obtained from the Department of Planning, Building and Development of the Town of Greeneville for review by staff and affected entities, and pay the fee therefore as set forth on the "Application to Vacate Right-of-Way in Alleys."
 - b. The complete application and supporting documents file for the request shall contain ALL of the following:
 - i) An **individual application** form signed by the property owner that shall fully provide at least the name and signature of the applicant whose property adjoins the alley right-of-way, the identity (Tax Map, Group, and Parcel number) and lot number of the property that adjoins the alley; the contact information of the property owner; the name and contact information of any representative of the owner; the section of the alley that the property owner proposes to be vacated; a detailed description of the location of the entire alley; the name of the subdivision in which the alley is located, if applicable; and specific reasons why the request to vacate is made..
 - ii) A **joint petition** signed by at least three quarters of owners whose properties adjoin the alley that shall contain the name, street address, lot identity, signature of property owner, and the following statement:

"We, the undersigned property owners, own properties adjoining the public's alley right-of-way that we request the Town of Greeneville to vacate. We hereby formerly submit seven (7) copies

of preliminary plats showing our adjoining properties and the right-of-way proposed to be vacated.”

Where not all properties owners sign the join petition, there must be documented evidence that either attempts have been made unsuccessfully to contact such property owners or that such owners have declined – either by no response or by explicit response – to sign the join petition. Where unsuccessful attempts have been made, the names of the property owners shall likewise be included in the petition. However, spaces reserved for their signatures shall be marked “Unsuccessful Contact.” Where adjoining property owners decline or contest the petition, the names of the owners shall likewise be included in the petition. However, spaces reserved for their signatures shall be marked “Contest”.

- iii) Seven (7) copies of a current 24"x36" **preliminary alley right-of-way vacating plat** from a surveyor registered in the State of Tennessee shall be submitted to the Town Planner by the petitioners. It shall not be required for each applicant to submit separate survey plats. The plat must contain a descriptive title of the alley right-of-way proposed to be vacated, show the names of the abutting property owners on their respective lots, addresses of the properties, all bearings, length and width of alleys, all bearings and all rights-of-ways, the length of each lot that abuts the alley to be vacated, dimensions and legal descriptions of abutting lots, setbacks of existing buildings on abutting lots, driveways, location of utility mains in properties adjoining the alley, location of utility and sewer lines in and around the alley to the ends of lots abutting the alley, easements, all encroachments and appurtenances, a note accurately describing the area to be vacated, a legend, a north arrow, and a vicinity map. The vicinity map shall be a 500' radius map. However, if the number of property owners abutting the alley is less than fifteen (15), the radius shall be extended at 100' intervals to reach a minimum of 15 property owners provided, however, that the maximum total radius is 1,500'. The scale of the plat shall be 1"=60' or better, and must bear the seal of the surveyor and signed certification of accuracy by the surveyor.

Each property owner whose property is adjacent to the alleyway proposed to be vacated shall sign and date in a block on the preliminary plat bearing the following *Certificate of Ownership and Petition*:

“I hereby certify that I am the owner of the property shown and described hereon and that I hereby adopt this plan of public alleyway proposed to be vacated”

If the parcels on the preliminary plat are so small that the property owner’s names are unable to fit and the numbered legend is used, every effort should be made to place the legend on the plat itself and not a separate sheet.

There shall be included the metes and bounds description of the alley right-of-way proposed to be vacated, and descriptions of those portions of the right-of-way which are to be vacated. Descriptions should read to the centerline unless the properties on either side of the right-of-way are under the same ownership.

- iv) A **title opinion or deed** that validates current ownership of property abutting the right-of-way to be vacated.
 - v) A non-refundable **application fee** as indicated on the application form. Payment shall be made to the Town of Greeneville to cover all administrative processing cost, excluding any and all publications in a newspaper of general circulation that shall be billed directly to the petitioners.
 - vi) Where applicable, a **copy of the instrument that dedicated the right-of-way for public use** must be submitted with the application.
- 5.2. Upon determination that the application and supporting documents are complete, the request shall be reviewed by the planning staff and affected departments, a public notice shall be posted at the entrance to

the alley and in the “news” section of the Town’s website. To further public notification, the newspaper publication of the agenda for the Planning Commission’s meeting at which the request shall be considered shall detail the request.

The Town Planner shall solicit written comments from at least the following persons and departments pertaining to any anticipated issues and effect that vacating the alley right-of-way may have on access, traffic flow, fire protection, utilities, refuse collection, and other factors:

- Town of Greeneville Police Department
- Town of Greeneville Fire Department
- Town of Greeneville Engineering and Public Works Department
- Greeneville Light and Power
- Greeneville Water Commission

5.3. The Town Planner, after acquiring and assessing the comments of the applicable Town departments and possibly affected agencies, analyzing these comments vis-à-vis the future land use and development plans of the Town of Greeneville, and consulting with the Head of Department of Planning, Building and Development and the Director of Public Works shall present a recommendation to the Greeneville Regional Planning Commission at the next meeting of the commission after receipt of a complete application.

5.4. The Greeneville Regional Planning Commission shall consider the recommendation of the planning staff with respect to the impact of the proposed request on adjacent properties; whether the health, safety and general welfare of the public is adequately safeguarded; and whether the precedent will adversely affect the long-term development policies and plans of the Town of Greeneville. The Planning Commission shall make a decision within sixty (60) calendar days from the date the request is placed before it; else it shall be considered that the Planning Commission has granted its approval, and the petitioners shall request documentation of an approval recommendation from the Commission in order to appeal a consideration of the request by the Board of Mayor and Alderman.

- 5.5. If the Planning Commission approves the request to vacate, it shall make a recommendation to the Board of Mayor and Alderman for the Board to consider terminating the public's right-of-way.
- 5.6. If the Planning Commission does not recommend approval, the Board of Mayor and Alderman may schedule a public hearing upon written appeal of the petitioners to the Board. This appeal must be submitted within twenty (20) calendar days from the date the Planning Commission issues its written decision to the applicants disapproving the request to vacate. If no appeal is submitted to the Board within this timeframe, the disapproval decision of the Planning Commission shall be final, and another request to vacate the same alley right-of-way can only be submitted after five years from the date of the Planning Commission's decision.
- 5.7. Within thirty (30) calendar days after the Board of Mayor and Alderman receives an approval recommendation from the Greeneville Regional Planning Commission or an appeal from the petitioners, the Board shall make a motion to either proceed with a public hearing or disapprove the request to vacate. If a motion is made to disapprove, such disapproval shall be final, and another request to vacate the same alley right-of-way can only be brought before the Board after five years from the date of the Board's disapproval decision. The Board meeting in which this consideration is made shall constitute the first reading.
- 5.8. Following a motion made by the Board of Mayor and Alderman to have a public hearing:
 - a. The Town Planner shall, at least ten days before the public hearing, update all notices on the Town's website stating the date, time and place of the public hearing, post a sign at the entrance to the alley indicating the date, time and place of the public hearing, and ensure that the agenda of the meeting at which the Board of Mayor and Alderman shall consider

the request explicitly states the request to be heard. The posted sign shall remain visible on spot till the public hearing is completed.

- b. At least ten (10) business days prior to the public hearing, the Town Recorder shall send a copy of the notice of public hearing by Certified Mail, Return Receipt Requested, to all applicants.

5.9. At the public hearing, the Board of Mayor and Alderman shall take testimony as to the best interests of the public. Any report, map, photographs, and other pertinent information shall be presented. The petitioners may be asked to explain the petition, and all other interested persons shall be given the opportunity to be heard and present objections or support for the petition. After presentation of all information and arguments, the hearing shall be closed and the Board of Mayor and Alderman shall adopt a resolution by simple majority vote to approve or disapprove the petition.

5.10. The Board of Mayor and Alderman shall make a resolution to approve or disapprove the request to vacate within sixty (60) calendar days from the date the approval recommendation of the planning commission is submitted to it or an appeal by the petitioners is brought before it. If such resolution is not made after this timeframe, it shall be considered that the Board has granted its approval and the petitioners shall seek written notice of this approval from the Board.

5.11. The following shall apply upon recording a resolution to vacate:

- a. Within fifteen (15) business days after the adoption of the resolution, the Town of Greeneville shall publish an ordinance on the resolution to vacate alley right-of-way one (1) time in a newspaper of general circulation published in Greeneville, Tennessee. The cost of publication shall be billed directly to the petitioners.
- b. Within fifteen (15) business days after the adoption of the resolution to vacate, the Town of Greeneville shall serve the applicants a copy of the ordinance vacating the right-of-way by Registered Mail, Return Service Requested.

- c. After fifteen (15) calendar days from the date the resolution to vacate is adopted, the resolution shall become binding on the public.
- d. Utility departments shall continue to exercise full easement rights over any existing easement used for the provision of utilities prior to vacating the right-of-way. Whenever the easement continues to bear utilities, any plat after vacating the alley right-of-way must show this easement, and the following statement must be inscribed on the plat: "All easements prior to the public vacating its alley right-of-way are maintained."
- e. The first preliminary and final schematic representations such as subdivision plats intended for recording that a property owner produces after the public's alley right-of-way has been vacated shall not show the vacated right of way. However, a note shall be placed on the plat indicating that the alley right-of-way, with previous location described, has been vacated. Applicants submitting such representations shall present evidence to the planning staff at the time of such submission verifying that the public's right-of-way had been vacated. This evidence shall be a copy of the ordinance of the Board of Mayor and Alderman vacating the alley right-of-way.

6. EFFECTIVE DATE

This policy and procedure shall become effective and applicable in the planning corporate city limits of Greeneville immediately upon approval by the Regional Planning Commission.

Approved this Tuesday, 11th day of November, 2014 by the Greeneville Regional Planning Commission.