

## RESOLUTION 2000-06

A RESOLUTION DETERMINING THE POLICY FOR ROAD, RIGHT OF WAY AND EASEMENT VACATIONS AND PROVIDING FOR THE PROCEDURE, INFORMATION REQUIRED AND FACTORS TO BE CONSIDERED IN SAID VACATION ACTION

**WHEREAS**, the Board of County Commissioners of Barton County, Kansas, occasionally receives a request for the vacation of a road, right of way or easement pursuant to Kansas law; and

**WHEREAS**, vacation requests are subject to the approval or disapproval of the County Commission; and

**WHEREAS**, the County Commission wishes to adopt a procedure for the consideration of said requests.

**NOW THEREFORE, BE IT RESOLVED**, by the Board of County Commissioners of Barton County, Kansas, that the following policy is hereby adopted by Barton County:

- A. **APPLICATION BY LETTER**– Any application for the vacation of any road, right of way or easement shall be submitted to the Barton County Public Works Department. The application shall contain, but not be limited to, the following information:
1. A legal description of the road, right of way or easement for which the vacation request is made;
  2. A list of any utilities occupying the road, right of way or easement;
  3. A description of the uses currently being made of the road, right of way or easement;
  4. The reason that the request is being made; and
  5. An application fee of fifty dollars (\$50.00).
- B. **PROCEDURE** – Once the application is received, it will be reviewed by County staff. Staff will make recommendation to the County Commission concerning the approval or disapproval of the vacation request. The recommendations of the County staff will be based on the factors outlined below as well as any other factors that may be necessary to consider. Staff will submit its recommendations to the County Commission for their consideration. Staff will also cause notice of the requested vacation to be provided to all identified property owners as provided by in the Kansas Statutes Annotated. The notice shall give the date, time and place of the public hearing and shall include a copy of the vacation request.

Notice of the request for vacation will also be published in the official County newspaper in a manner that fulfills the requirements of Kansas statutes. Such notice shall state that a request has been filed in the Public Works Office requesting the vacation of the road, right of way or easement. The notice shall fully describe the requested vacation and provide the time, place and date that the public hearing will be conducted by the County Commission. It shall also state that at such time and place that all interested persons can appear and be heard on the request.

The County Commission shall consider the request at the scheduled meeting. The County Commission shall consider the factors as set out below as well as any other factors that it determines are necessary and material to making its determination. In the event the County Commission determines that the requested vacation shall be allowed, it shall pass an Order of Vacation vacating the road, right of way or easement as set out below.

#### C. FACTORS TO BE CONSIDERED

1. Is the road, right of way or easement being used;
2. For what purpose is the road, right of way or easement being used;
3. Who is using the road, right of way or easement;
4. Have all owners or real estate adjacent to the road, right of way or easement requested or joined in the request for the vacation;
5. Have all owners of real estate adjacent to the road, right of way or easement been notified that the request is being considered;
6. Have all utility companies been notified of the request for the vacation;
7. Has the notice of the hearing been published as required;
8. Has a written objection been filed with the County, at the time or before the hearing, by any owner or adjoining owner who would be a property party to the request but has not joined in;
9. How does the vacation affect the proposed use of the road, right of way or easement;
10. What proposal, if any, does the requesting party have to mitigate any adverse effects of the vacation of the road, right of way or easement;
11. What is the position of the owners of the real estate adjacent to the road, right of way or easement for which vacation is requested;
12. What is the position of the utility companies currently using, or who may potentially use, the road, right of way or easement for which vacation is requested;
13. Can the purpose of the road, right of way or easement be carried out at another location; if so, how;
14. What are the projected costs of the requested vacation;
15. What are the benefits of the vacation and who receives those benefits;
16. Would granting the vacation landlock any single parcel of ground;
17. Would the granting of the vacation cause any hardship to the township in which the road, right of way or easement is located;
18. Is there a proposal for the relocation of any easement;
19. What does County staff recommend;
20. What uses does the County project could be made of the property over the next several years;
21. Does the granting of the requested vacation adversely affect the health, safety, welfare or well being of Barton County.

#### D. DETERMINATION OF THE COUNTY COMMISSION

1. Denial – The request for the vacation of the road, right of way or easement shall be denied if:
  - a. The County Commission, after the consideration of the above factors, finds that the requested vacation of the road, right of way or easement is not in the best interest of the County; or

b. If a written objection to the vacation is filed with the County, at the time of or before the hearing, by any owner or adjoining owner to the road, right of way or easement for which the request to vacate has been filed.

2. Approval – If the County Commission finds, after consideration of the factors outlined above, that due and legal notice has been given by publication, that no private rights will be injured or endangered by such vacation, that the general public will suffer no loss or inconvenience, that it is in the best interest of the County to approve said request and that in justice to the person or persons requesting the vacation that the request should be granted, the County Commission shall, by Order of Vacation, vacate the road, right of way or easement. Any order vacating any road, right of way or easement shall provide for, if necessary, to the County or the owners of any lesser property rights for public utilities, right of ways and easements for public service facilities originally held in such road, right of way or easement then in existence and use.

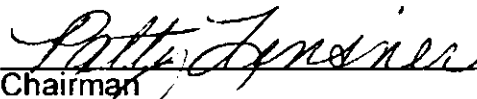
Upon approval, the Order of Vacation shall be filed with the Barton County Register of Deeds with the fee waived by the Register of Deed's Office. A copy of the order shall also be placed in the records of the Public Works Department.

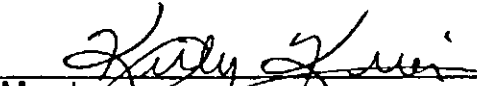
3. Request for Publication of Order of Vacation – Upon the passage of the Order of Vacation, and upon the payment of thirty dollars (\$30.00) by the applicant, the County shall cause the Order of Vacation to be published in the official County newspaper upon the request of the petitioner.

E. REQUEST BY PETITION – Per KSA 68-102, citizens may request the laying out, altering or vacating of any road by petition. Should any citizen or group of citizens wishing to make such petition to the Commission, the group shall pay to the County the amount of all costs and expenses as is allowed under KSA 68-102 rather than be charged the application fee of \$50.00.

FURTHER, that this Resolution shall be effective upon its adoption by the County Commission.


MOTION MADE, SECONDED AND ADOPTED this 10<sup>th</sup> day of January, 2000.

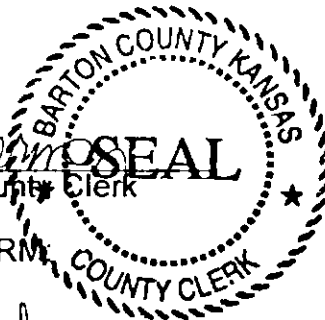
  
Chairman

  
Member

  
Member

ATTEST:

  
Donna Zimmerman, County Clerk



APPROVED AS TO FORM:

  
Richard A. Boeckman

County Counselor