

**From:** Jim Allison <j.allison@allison-bass.com> (TAC-Judicial at list.county.org) <tac-jud@list.county.org>  
**Sent:** Friday, October 14, 2016 11:10 AM  
**To:** TAC-Judicial  
**Subject:** [TAC-Judicial] Closure of County. Road  
**Attachments:** Checklist for Abandonment or Vacation of Road.docx; ATT00001.htm; 251.058.doc; ATT00002.htm; Petition to Close Road by Parties burdened by road-no other users.doc; ATT00003.htm; Waiver OF ROAD Damages for Closure.doc; ATT00004.htm; NOTICE OF INTENT-Petition to Close.doc; ATT00005.htm; Order Vacating Road-1709.doc; ATT00006.htm

Message from: j.allison@allison-bass.com

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### Closure of a County Road

The Commissioners Court has general jurisdiction over those roads that have been brought into the County road maintenance system by a variety of means. Some of those roads may have been deeded to the County, and thereby vest the County with outright ownership of the land within the confines of the deed description. Others may have been ?dedicated? to the County by written document, and serve to convey to the county a surface easement upon the land owned in fee simple title by others. Finally, and most likely the largest portion of county roads, are maintained by implied dedication, or prescriptive easements, which essentially are unwritten easements that have been established by years of routine maintenance on a regular basis. Over time, roads that may have at one time been vital to the county road system are no longer utilized by the public, and the public interest in those seldom used roads may justify consideration for closure or abandonment.

There are essentially three things a county commissioners court can do with roads within their maintenance system: (See 251.001 Texas Transportation Code.)

- (1) Discontinue maintenance of a road. The effect of this is to leave the road open for public use, but to withdraw public maintenance from this road. The statute that governs discontinuance, however, requires that the county provide an alternate route, so discontinuance is rarely appropriate. (251.051 Transportation Code. )
- (2) Abandon a public road. The effect of this is to close the road to public use. The road may continue to exist for private users.
- (3) Vacate a public road. This action terminates the road, and allows for conveyance of the roadbed and right-of-way to adjoining property owners.

A unanimous vote is required to close, abandon or vacate a public road, except to shorten that road. Typically, only a portion of a county road will be subject to being abandoned or vacated, once that portion of the road has been absorbed into a single landowner, or perhaps two or more adjacent

owners who wish to close the road, and the road no longer extends beyond their property, or connects to another public road or highway.

Note that roads that may have fallen into dis-use, and even enclosed by fence, but which provide access to a cemetery, or provides the only access to interior landowners, should not be formally closed. See 251.057 Transportation Code.

Section 251.058 of the Transportation Code was extensively re-written in the last legislative session. This section now requires considerably more information regarding the true intention of the Comm. Court to convey title when Vacating a road, and to identify those individuals who are receiving the County's interest in the road. The Order is to be filed in the deed records, subject to the rights of any public utilities who may have lines in the former right-of-way to access and service those lines. Further, the County is authorized to seek costs of administration, and to receive the reasonable market value of the property being conveyed. This statute does not require the county to assess fees and the value, and in cases where the only right held by the County is a surface easement by prescription, the County may not choose to seek such costs and value. Where the road is to be vacated, and it is possible to do so, the County might wish to recover any roadbed materials before vacating the road.

Because of the potential for damages by individuals who not only abut the roadway under consideration, but potentially those who might have an interest in the road for access to non-adjointing land, the County Commissioners Court considering discontinuance, abandonment, or vacating a public road should seek legal counsel. Requiring a petition signed by all affected landowners is a good policy.

The Commissioners Court may correct clerical errors in previous orders. A review of the previous closure petition and order will be necessary to determine whether this process is appropriate. Otherwise, another closure petition and order will be required to complete the process.

*Robert T. Bass and Jim Allison*

**From:** "Jerry Bearden <[county.judge@co.mason.tx.us](mailto:county.judge@co.mason.tx.us)> (TAC-Judicial at [list.county.org](mailto:tac-jud@list.county.org))"  
<[tac-jud@list.county.org](mailto:tac-jud@list.county.org)>  
**Date:** October 11, 2016 at 3:44:15 PM CDT  
**To:** TAC-Judicial <[tac-jud@list.county.org](mailto:tac-jud@list.county.org)>  
**Subject:** [TAC-Judicial] No Subject  
**Reply-To:** <[tac-jud@list.county.org](mailto:tac-jud@list.county.org)>

Message from: [county.judge@co.mason.tx.us](mailto:county.judge@co.mason.tx.us)

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Jim and Judges,  
Before I came into office, the commissioners court closed a portion of a county road that had not been maintained for over 35 years. A Public Application for Road Change with the signatures of landowners was petitioned and filed along with the proper posting of notices according to Texas Transportation Code, Section 251.051. The problem that we have discovered is that the distance between point A and point B that was closed was incorrectly recorded in the language of the minutes and on the petition. It should have stated that 1.8 miles (approximately) was to be closed from the

two points. The intent of the court was clear, properly mapped, and with no opposition but the language was incorrect. Now, the property owner wishes to gift the land surrounding the closed portion of the road. The court will receive a letter from the surveyor next week giving us the proper distance of the supposedly shut-down road. My question is, how can we go about correcting the error made by the earlier court and allow the landowner to proceed with his transaction? I sure would hate to have to go through the petition, posting, etc., process again! Thanks again!  
Judge Bearden

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