

**POLK COUNTY  
DEVELOPMENT REVIEW COMMITTEE  
STAFF REPORT**

<b>DRC Date:</b>	April 11, 2024	<b>Level of Review:</b>	4
<b>PC Date:</b>	August 7, 2024	<b>Type:</b>	LDC Text Amendment
<b>BoCC Date:</b>	September 3, 2024	<b>Case Numbers:</b>	LDCT-2024-15
	September 17, 2024	<b>Case Name:</b>	Access via Easement
<b>Applicant:</b>	Polk County	<b>Case Planner:</b>	Ian Nance

<b>Request:</b>	This is a County-initiated LDC text amendment to modify Section 705.B to lower the required levels of review when approving residential Access via Easement requests.
<b>DRC Recommendation:</b>	Approval
<b>Planning Commission Vote:</b>	Approve 7-0

**Proposed changes to LDC Section 705.B:**

- Allow an administrative review of existing legal lots requesting Access via Easement approval when an easement provides access to more than four lots and/or exceeds 0.25 miles.
- Allow an administrative review for a one-time split for lots with an easement where the parent parcel lacks frontage on a County road.
- Lower the Level of Review for Access via Easement Waivers from the BoCC to Planning Commission.

**Summary**

On July 10, 2018, the Board adopted LDC 18T-11, an LDC text amendment which provided opportunities for properties to subdivide and develop with single-family residential uses via an access easement in instances where fee simple frontage was not possible. This marked a major change in County policy, as such development had been prohibited since the adoption of the Comprehensive Plan in 1991. Properties that followed a set of guidelines for access via easement could be approved by Development Review Committee (DRC) staff. Deviations to these guidelines – particularly when exceeding four lots on an easement and accessing an easement exceeding 0.25 miles - required the approval of the Board through a waiver process.

The trouble with this amendment has been that it was mostly contemplated for subdivisions of property. Over the last six years, staff has been confronted with situations where prospective homeowners have requested a building permit on an old lot that was created prior to the adoption of the Comprehensive Plan and LDC with frontage on an easement. Oftentimes, these individual unplatted lots are along named private roads and received a road frontage or subdivision waiver in the past that staff is unable to locate due to record keeping issues. In cases where said easement provides access to more than four lots, the applicant is forced through the Level 4 Review process, which is an unnecessary barrier to entry when redeveloping or infilling an existing lot within an established development.

This amendment will allow the administrative review and approval of access via easement requests in such a scenario, and where there are no subdivisions of property, rather than requiring the Board-approved waiver. A Level 1 Review will provide staff the opportunity to ensure the legality of the lot and integrity of the existing easement or private road, and condition improvements, as necessary. This amendment will also lower the level of review for a waiver to 705.B from the Board to the Planning Commission. In the event of negative public input, De Novo appeals can still be made to the Board.

Staff recommends approval of LDCT-2024-15 finding this amendment is consistent with the Comprehensive Plan and LDC.

### **Relevant Sections, Policies, and/or Regulations to Consider:**

Policy 2.128-C: Subdivision of Land  
LDC Section 705.B: Access via Easement  
LDC Section 822: Road Frontage

### **Findings of Fact**

- *This is a County-initiated request for a LDC text amendment to modify Section 705.B to lower the required levels of review when approving residential Access via Easement requests and provide structural standards when creating a new easement.*
- *This request has been reviewed for consistency with LDC Section 907.*
- *On July 10, 2018, the Board voted to adopt LDC 18T-11 and CPA 18C-04 to establish criteria for access via easement.*
- *Since June 7, 2020, DRC staff has reviewed 68 Access via Easement requests, not including withdrawn applications. 21 have been denied.*
- *Since the adoption of LDC 18T-11 and CPA 18C-04, the Board has heard 24 waiver requests for Access via Easement. One has been denied (LDWA-2018-39).*
- *Comprehensive Plan POLICY 2.128-C2:*  
  
*“All tracts of land to be developed for non-residential or residential purposes shall have legal access to a paved public road. Non-residential development shall have direct frontage on a paved public road except as otherwise provided herein. Non-residential and multi-family residential developments may gain access to a paved public road through a county approved, private internal service road. Residential development may gain access to a paved public road via a public or private road meeting County standards or via a legally established easement as prescribed in the Land Development Code.”*
- *Comprehensive Plan POLICY 2.128-C3:*

*“All tracts of land to be developed for non-residential and residential purposes shall have sufficient ingress and egress for fire trucks, ambulances, police cars and other emergency vehicles.”*

- *Comprehensive Plan POLICY 2.128-C4:*

*“Unrecorded subdivisions do not provide for the safe, orderly development of land or provision of community services. Access to lots in large unrecorded subdivisions via an easement shall be restricted under the Land Development Code.”*

**Development Review Committee Recommendation:** Based on the information provided and the analysis conducted within this staff report, the Development Review Committee (DRC) finds that the request **IS CONSISTENT** with the Polk County Comprehensive Plan and Land Development Code. Therefore, the DRC recommends **APPROVAL LDCT-2024-15**.

#### **GENERAL NOTES:**

*NOTE: This staff report was prepared without the benefit of testimony and evidence submitted by the public and other parties at a public hearing.*

#### **Analysis:**

Dating back to the 1970s, Polk County’s development regulations have required all new lots to have road frontage on a paved, publicly maintained road or paved private road meeting County standards. Prior to the Comprehensive Plan adoption in May of 1991, a variance to the subdivision regulations, or to a single lot, could be granted allowing lots to be created where access was obtained solely via an easement or possibly accessed an unpaved County road. With the adoption of the Comprehensive Plan, any new lot created was not permitted to access solely via an easement under any circumstance, and these Comprehensive Plan policies were not eligible for any sort of waiver or variance.

Throughout the years, many situations were presented to staff where limited access for lots via an easement were achievable without overburdening the public infrastructure, yet the strict requirements of the Comprehensive Plan precluded the possibility of development. After careful review, on July 10, 2018, the Board adopted LDC 18T-11, an LDC text amendment to LDC Section 705 which provided opportunities for properties to subdivide and develop with single-family residential uses via an access easement in instances where fee simple frontage was not possible.

The adopted text required the following:

*“An easement providing access to a residential lot from a paved road meeting County standards shall meet the following requirements; the easement shall:*

- a. Provide access for no more than four lots subject to other density, minimum lot size requirements and any other applicable requirements of this Code;*

*b. Have a minimum width of 20 feet;*

*c. Not exceed 0.25 miles (1,320 feet) in length;*

*d. Provide for sufficient ingress and egress for fire trucks, ambulances, police cars and emergency vehicles; and*

*e. Be supported by the joinder and consent of all fee owners under easements to the use of the easement by the subject parcel(s). If joinders are provided for the easement, it shall be accompanied by an ownership and encumbrance report based on the legal description of the easement. In lieu of joinders, an applicant may provide a legal opinion from a licensed Florida attorney stating a lot has legal access, along with supporting documentation.”*

If the applicant was able to meet these standards, a Level 1 determination was approved through the Land Development Division to allow the issuance of a building permit. Subsections a. and c. were eligible for a Board-approved waiver. Since the adoption of LDC 18T-11, the Board has heard 24 waiver requests for Access via Easement. One has been denied (LDWA-2018-39).

The trouble with this amendment has been that it was mostly contemplated for subdivisions of property. Over the years, staff has been confronted with situations where prospective homeowners have requested a building permit on an old lot that was created prior to the adoption of the Comprehensive Plan and LDC with frontage on an easement. Oftentimes, these individual unplatted lots were along named private roads that did not meet County standards but received a road frontage or subdivision waiver in the past that staff was unable to locate due to record keeping issues. Currently, in cases where said easement or private road provided access to more than four lots, the applicant was forced through the Level 4 Review process, which is an unnecessary barrier to entry when redeveloping or infilling an existing lot within an established development.

After six years of evaluation and study, this amendment will provide more leeway when providing access via easement, especially in situations involving the redevelopment of existing lots or infill potential on lots that would have been eligible for a building permit under previous zoning policies. It will also allow administrative approval of a one-time lot split in cases where the parent parcel does not have frontage but legal access to an easement and the number of lots does not exceed four.

As noted in the staff report for the original text amendment allowing access via easement, Polk County has a plethora of lots commonly referred to as “land sale lots.” Most of these lots were subdivided in the 1960s and 1970s over hundreds to thousands of acres and were recorded by metes and bounds descriptions that have never complied with lot size requirements; lacked road frontage; lacked infrastructure; and lacked platting or any development review. This amendment is not intended to now allow these types of lots to be buildable lots, as it could lead to haphazard, unplanned development in rural areas where the infrastructure does not exist to support them. Staff has carefully drafted this amendment to allow access solely via an easement while not overburdening the infrastructure or abandoning growth management principles. Furthermore, access via easement is not permitted in the Green Swamp Area of Critical State Concern (ACSC). This amendment will not change this standard.

## **Limits of the Proposed Ordinances**

As noted above, Access via Easement is not permitted in the Green Swamp ACSC or with so-called land sale lots. No waiver option is permitted or intended, ether. This amendment is needed to provide relief from burdensome and unwarranted levels of review for applicants wishing to redevelop legal lots and to provide infill opportunities for existing legal lots which were never developed but access the public roadway system via easement.

## **Consistency with the Comprehensive Plan and Land Development Code**

The changes proposed within this amendment are consistent with the LDC and Comprehensive Plan. Comprehensive Policy 2.218-C provides for access via easement for legal residential lots. This amendment is simply changing the levels of review for access via easement requests.

**Comments from other agencies:** Staff from Engineering, Roads & Drainage, and the Fire Marshal contributed to this amendment.

## **Under separate attachment**

- Draft Ordinances with Proposed Text