

**RESOLUTION 22-36**

**A RESOLUTION OF THE CITY OF MARCO ISLAND, FLORIDA, APPROVING THE VACATION OF THE UTILITY AND DRAINAGE EASEMENT FOR PROPERTIES LOCATED AT 984 BIRCH COURT AND 976 BIRCH COURT, MARCO ISLAND, FLORIDA; MAKING FINDINGS AND CONDITIONS; PROVIDING DEFINITIONS; APPROVING THE EASEMENT VACATION; PROVIDING FOR FAILURE TO OBTAIN OTHER DEVELOPMENT PERMITS; PROVIDING FOR FAILURE TO COMPLY WITH APPROVAL; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Section 30-581(aa) of the of the City of Marco Island Code of Ordinances provides a procedure for the vacation of platted utility and drainage easements; and

**WHEREAS**, the Owner/Developer of 984 Birch Court and 976 Birch Court, Marco Island, Florida (the "Subject Property") has submitted a petition to vacate the utility and drainage easement along the common lot line separating the Subject Property; and

**WHEREAS**, the vacation of the drainage and utility easement is needed to allow for the development of the Subject Property; and

**WHEREAS**, the City of Marco Island Planning Board held a public hearing on September 2, 2022, to consider the petition, and is required by Section 30-581(aa)(4) of the Land Development Code to submit its recommendation in writing to the City Council, with a copy of the minutes of the hearing, as soon as practicable thereafter; and

**WHEREAS**, the Planning Board recommended approval of the vacation of the drainage and utility easement at the Subject Property subject to conditions of approval; and

**WHEREAS**, the City Council finds the vacation of the drainage and utility easement, subject to conditions of approval to be in the interests of the City of Marco Island,

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA, AS FOLLOWS:**

**SECTION 1. Recitals; Definitions.**

(a) The foregoing "Whereas" clauses are hereby ratified and confirmed as being true, correct and incorporated into this Resolution.

(b) That as used herein, unless the context hereof, or City Code of Ordinances, requires to the contrary, the following terms will be defined as set forth below:

(1) "Drainage and Utility Easement" means the 6-foot wide drainage and utility easement portions of which lie on each side of the lot line separating Lot 4 and Lot 3, Block 188, Marco Beach Unit 7, of the Subject Property.

- Corporation.
- (2) "City" means the City of Marco Island, a Florida Municipal Corporation.
- Statutes.
- (3) "Development" is defined as set forth in Section 163.3164, Florida Statutes.
- McBane; and
- (4) "Owner/Developer" means Charles David and Caroline Ann McBane; and
- (5) "Subject Property" means the following described parcel of land, lying, situate and being in the State of Florida, County of Collier, City of Marco Island, to-wit:

984 Birch Court and 976 Birch Court  
Marco Beach, Unit 7, Block 188, Lots 4 and 3  
Parcel No.: 57651920003 and 57651880004

**SECTION 2. Findings; Approval.** As provided in Section 30-581(aa), of the City's Code of Ordinances, the City Council finds that there is no present necessity or reasonably foreseeable necessity for the retention of the Drainage and Utility Easement. The City and adjacent property owners will not be affected by the vacation of the Drainage and Utility Easement. The Drainage and Utility Easement vacation is hereby approved, except as provided in Section 3(a) of this Resolution.

**SECTION 3. Conditions of Approval.** This Resolution relating to the petition to vacate the Drainage and Utility Easement on the Subject Property is hereby approved, subject to the following condition:

1. The lots are combined for tax purposes only with Collier County Assessor.
2. A unity of title is filed with Collier County and a copy provided to Staff before the City Council meeting.
3. A ten (10) foot square portion of the utility easement shall remain in place. The location will be 10 feet behind the front property line along 984 and 976 Birch Court and five feet on both sides of the common property line.
4. Comcast provide a no objection letter prior to the City Council meeting.
5. The Owner/Developer is solely responsible for any and all costs associated with this Drainage and Utility Easement vacation, including but not limited to the following:
  - (1) Property surveys;
  - (2) Professional design fees;
  - (3) Permit costs;
  - (4) Preparation and recording of new deeds and this resolution, including and attorney fees;
  - (5) Removal, replacing or relocation of any utilities (if applicable);
  - (6) Removal of existing ground cover;
  - (7) Fill, loam and seed; and
  - (8) Disposal of any and all construction debris including any and all infrastructure which may exist within the utility easement.

**SECTION 4. Failure to Obtain Other Permits.** That issuance of this approval by the City does not in any way create any right on the part of the Owner/Developer to obtain a permit from a state or federal agency and does not create any liability on the part of the City for issuance of the approval if the Owner/Developer fails to obtain the requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in the violation of state or federal law. All applicable state and federal permits must be obtained before commencement of the Development on the Subject Property. This condition is included pursuant to Section 166.033, Florida Statutes, as amended.

**SECTION 5. Failure to Adhere to Resolution.** That failure to adhere to the approval terms and conditions contained in this Resolution shall be considered a violation of this Resolution and the City Code, and persons found violating this Resolution shall be subject to the penalties prescribed by the City Code, including but not limited to the revocation of any of the approval(s) granted in this Resolution and any other approvals conditioned on this approval. The Owner/Developer understands and acknowledges that it must comply with all other applicable requirements of the City Code before it may commence construction or operation, and that the foregoing approval in this Resolution may be revoked by the City at any time upon a determination that the Owner/Developer is in non-compliance with the City Code.

**SECTION 6. Effective Date.** That this Resolution shall take effect immediately upon adoption and recording in the Public Records of Collier County, Florida.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, this 3rd day of October 2022.


**ATTEST:**

  
Michael J. Sheffield, City Clerk

**CITY OF MARCO ISLAND, FLORIDA**

By:   
Erik Brechnitz, Chairman

Approved as to form and legal sufficiency:

  
Alan L. Gabriel, City Attorney

