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HEARING EXAMINER

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BEFORE THE HEARING EXAMINER FOR THURSTON COUNTY

In the Matter of the Application of)	NO. 2023105144
)	
Eric Russell)	FINDINGS, CONCLUSIONS,
)	AND RECOMMENDATION
<u>For Vacation of a Road Right-of-Way</u>)	

SUMMARY OF RECOMMENDATION

The Hearing Examiner recommends to the Board of County Commissioners that the request to vacate unopened Thurston County right-of-way lying within tax parcel number 35904501700 be **APPROVED** subject to conditions.

SUMMARY OF RECORD

Request

Eric Russell seeks to vacate the unopened Thurston County right-of-way described as follows:

The alley between Lots 17-24, Block 45, Section 30, Township 19, Range 2 West as conveyed in the Plat of Boston Harbor, Division One as recorded in Volume 8 of Plats at page 30, Records of Thurston County Washington. Parcel number 35904501700. Lying adjacent to tax parcel numbers 35904502500 and 35904501200.

Hearing Date

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the request on February 13, 2024. The record was held open through February 15, 2024 to allow any members of the public having difficulty joining the virtual hearing to submit written comments, with time scheduled for responses from the parties. No post-hearing public comment was submitted, and the record closed on February 15, 2024. No in-person site visit was conducted, but the Examiner viewed the subject property and its environs on Google Maps.

Testimony

The following individuals submitted testimony under oath at the open record public hearing:

Craig Sisson, Real Estate Services Manager, Thurston County Public Works

Eric Russell, Applicant

Kim Kelley

Exhibits

The following exhibits were admitted in the record through the open record public hearing process:

Exhibit 1 Public Works Staff Report including the following attachments:

- A. Notice of Public Hearing
- B. Copy of Application
- C. Vicinity Map
- D. Section/Township/Range Map
- E. Plat Map

Exhibit 2 Public comment from Jules James, dated February 6, 2024

After considering the testimony and exhibits submitted through the virtual open record hearing process, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

1. Eric Russell (Applicant) seeks to vacate the unopened Thurston County right-of-way described as follows:

The alley between Lots 17-24, Block 45, Section 30, Township 19, Range 2 West as conveyed in the Plat of Boston Harbor, Division One as recorded in Volume 8 of Plats at page 30, Records of Thurston County Washington. Parcel number 35904501700. Lying adjacent to tax parcel numbers 35904502500 and 35904501200.

Exhibits 1 and 2.

2. The subject right-of-way was dedicated to Thurston County on October 23, 1907 with the recording of the Plat of Boston Harbor, Thurston County, Division 1. It is classified as Class B right-of-way per Thurston County Code (TCC) 13.36.020, meaning that no public funds have been spent in the acquisition, operation, or maintenance of the right-of-way, and compensation is payable to the Thurston County general fund. *Exhibit 1; TCC 13.36.020; TCC 13.36.030.*
3. The Applicant owns eight of the originally platted lots within the Plat of Boston Harbor, four on each side of the subject right-of-way, which was platted as a 16 foot wide alley. The eight lots collectively total 0.55 acre and constitute a single tax parcel, which is undeveloped. The subject right-of-way limits the usability of the Applicant's property because it bisects the relatively small parcel and is not used or needed for access. *Exhibit 1.B.*

4. The subject alley right-of-way has never been improved or used for public travel, and neither has the segment of the alley to the west of the Applicant's property. No access permits have been issued for use of the right-of-way. The subject portion of the alley is currently covered by brush and trees. The right-of-way does not abut a body of water. *Exhibits 1, 1.B, and 1.E.*
5. The subject right-of-way is not needed for access to adjacent parcels. The portion of the alley sought for vacation is contained within the Applicant's ownership and is at the end of the block. Neither abutting Byron Road (an approximately north-south platted street) along the east boundary of Applicant's property and the subject alley proposed for vacation, nor 71st Way NE, which abuts the north boundary of Applicant's property and which intersects with Byron Road, is improved or used for vehicular travel. The Thurston County Parks Department owns three of the adjacent unimproved parcels, including the parcel abutting the west boundary of Applicant's property. *Exhibits 1.B, 1.C, 1.D, and 1.E; Craig Sisson Testimony.*
6. The County Engineer submitted that it is not advisable to retain the subject right-of-way as a County road, and identified public benefits that would result from vacation of the right-of-way, including the County's receipt of compensation pursuant to TCC 13.36.030 and relief from liability for the right-of-way. *Exhibit 1.*
7. The County Engineer recommended approval of the requested right-of-way vacation, on condition that the Applicant provide compensation to the County based on the appraised fair market value pursuant to TCC 13.36.030. *Exhibit 1; Craig Sisson Testimony.*
8. Notice of the open record public hearing on the vacation request was published in The Olympian on January 16, 2024 and January 30, 2024. Notice of hearing was also posted in the vicinity of the subject right-of-way on January 11, 2024, at least 20 days in advance of the hearing as required by RCW 36.87.050. Notice of hearing was mailed to the adjacent property owner on January 11, 2024. *Exhibits 1 and 1.A.* Public comment in support of approval was submitted by an owner of property in the vicinity, although one neighbor expressed concern that there might be wetlands on the property. *Exhibit 2; Kim Kelley Testimony.* In response, the Applicant noted that formal wetland review would be required prior to development. *Eric Russell Testimony.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted jurisdiction to hear this request for a vacation of a right-of-way and to make a recommendation to the Thurston County Board of County Commissioners pursuant to the Revised Code of Washington (RCW) 36.87.060(2) and Thurston County Code (TCC) 13.36.060.

Criteria for Review

Pursuant to TCC 13.36.010, County roads must be vacated in accordance with RCW 36.87, which provides:

“...The [vacation request] must show the land owned by each [Applicant] and set forth that such county road is useless as part of the county road system and that the public will be benefited by its vacation and abandonment.” *RCW 36.87.020*.

“...If the county road is found useful as a part of the county road system it shall not be vacated, but if it is not useful and the public will be benefited by the vacation, the county legislative authority may vacate the road or any portion thereof.” *RCW 36.87.060(1)*.

“No county shall vacate a county road or part thereof which abuts on a body of salt or fresh water unless the purpose of the vacation is to enable any public authority to acquire the vacated property for port purposes, boat moorage or launching sites, or for park, viewpoint, recreational, educational or other public purposes, or unless the property is zoned for industrial uses.” *RCW 36.87.130*.

Conclusions Based on Findings

1. The subject right-of-way is not useful as part of the County road system. *Findings 2, 3, 4, 5, 6, and 7*.
2. With a condition requiring payment of compensation, the public would benefit as a result of the requested right-of-way vacation. *Findings 6 and 7*.
3. The subject right-of-way to be vacated does not abut a body of water. *Finding 4*.

RECOMMENDATION

The Hearing Examiner recommends to the County Commissioners that the request to vacate unopened Thurston County right-of-way lying within Tax Parcel Number 35904501700 be **APPROVED** subject to the following condition:

1. The Applicant shall submit compensation to the County for the Class B road consistent with TCC 13.36.030.

Recommended February 22, 2024.



Sharon A. Rice
Thurston County Hearing Examiner