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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. 2016104933
)	
David J. Bergvall and Chad Stoker)	FINDINGS, CONCLUSIONS,
)	AND RECOMMENDATION
For Vacation of a Road Right-of-Way)	
_____)	

SUMMARY OF RECOMMENDATION

The Hearing Examiner recommends that the request to vacate the unopened Thurston County right-of-way known as 69th Way NE, along with the adjacent alley, lying adjacent to tax parcel numbers 35905602200, 35905800800, and 35905600100, be **APPROVED**.

SUMMARY OF RECORD

Request

David J. Bergvall and Chad Stoker (Applicants) seek to vacate the Thurston County right-of-way described as follows:

That portion of platted Sixth Street (known as unopened 69th Way NE) lying between Lots 23 through 33 Block 56 and Lots 8 through 16 Block 58; together with the entire alley lying between Lots 1 through 3 and 33; also together with the portion of said platted sixth Street lying westerly of the centerline of said alley, all in the plat of Boston Harbor as recorded in Volume 8 of Plats at Page 30, at Auditor's File Number 38315, records of Thurston County Auditor, Olympia, Washington. Being in Section 14, Township 19 North, Range 2 West, W.M. Lying adjacent to parcel numbers 35905602200, 35905800800, and 35905600100.

Hearing Date

The Thurston County Hearing Examiner held an open record public hearing on the request on January 14, 2020.

Testimony

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

Craig Sisson, Real Estate Services Manager, Thurston County Public Works
David Bergvall, Applicant

Exhibits

The following exhibits became part of the official record at the open record public hearing:

EXHIBIT 1 Public Works Staff Report including the following attachments:

- Attachment A Notice of Public Hearing
- Attachment B Copy of Application
- Attachment C Vicinity Map
- Attachment D Section/Township/Range Map
- Attachment E Plat Map
- Attachment F Aerial Photo (vacation request area in red)
- Attachment G Letter from Petitioner regarding compensation, dated March 11, 2019
- Attachment H Real Estate Services Manager Response to Petitioner's letter regarding compensation, dated March 27, 2019

Upon consideration of the testimony and exhibits submitted at the open record hearing, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

1. The Applicants seek to vacate the Thurston County right-of-way described as follows (hereafter referred to as "subject right-of-way"):

That portion of platted Sixth Street (known as unopened 69th Way NE) lying between Lots 23 through 33 Block 56 and Lots 8 through 16 Block 58; together with the entire alley lying between Lots 1 through 3 and 33; also together with the portion of said platted sixth Street lying westerly of the centerline of said alley, all in the plat of Boston Harbor as recorded in Volume 8 of Plats at Page 30, at

Auditor's File Number 38315, records of Thurston County Auditor, Olympia, Washington. Being in Section 14, Township 19 North, Range 2 West, W.M. Lying adjacent to parcel numbers 35905602200, 35905800800, and 35905600100.

Exhibits I and I.B.

2. The subject right-of-way was dedicated to Thurston County on the plat of Boston Harbor, which was recorded on October 24, 1907 (Volume 8 of Plats, Page 30, records of Thurston County, Washington). *Exhibits I and I.E.*
3. The Applicants' parcels front Bayview Drive NE. The 69th Way NE portion of the subject right-of-way extends east between their parcels. The alley portion of the subject right-of-way extends northward from 69th Way NE between Applicant Bergvall's parcel (No. 35905602200), and Parcel No. 35905600100, the owner of which is not a party to the right-of-way vacation application. *Exhibits I.B and I.F; David Bergvall Testimony.*
4. With respect to the 69th Way NE portion, the subject right-of-way is 60 feet wide by 320 feet long on the north side and by 290 feet long on the south side. The alley portion is 20 feet wide and 100 feet long. The total area petitioned for vacation is approximately 21,000 square feet. The Applicants seek to vacate this right-of-way in order to enlarge their adjacent parcels and to prevent any future development of a wetland and associated buffer partially located within the subject right-of-way. *Exhibit I; David Bergvall Testimony.*
5. The subject right-of-way is Class B right-of-way that has never been opened or improved for public use. No access permits have been issued for use of the right-of-way. *Exhibit I.*
6. The subject right-of-way is relatively flat and mostly covered with native trees and brush. At least a portion of the subject right-of-way falls within a wetland buffer. The exact location of the wetland and associated buffer are not known because nowetland delineation was submitted in the record; however County Geodata mapping clearly shows the majority of, if not the entire, subject right-of-way to be encumbered. *Exhibits I, I.B, and I.G.*
7. The subject right-of-way is not needed for access because adjacent properties already have access from surrounding roads. No part needs to be retained for easement purposes. *Exhibits I and I.F; Craig Sisson Testimony.*
8. The County Engineer identified several public benefits that would result from vacation of the subject right-of-way, including relief of liability for the County, the County's receipt of compensation pursuant to Thurston County Code (TCC) 13.36.030, the increase in adjacent property value, and the potential for wetland buffer protection. *Exhibit I.*

9. The County Engineer recommended approval of the requested right-of-way vacation, on condition that the Applicants provide compensation to the County pursuant to TCC 13.36.030. *Exhibit 1.*
10. The Applicant requested waiver of the compensation requirement due to the presence of wetland buffer within the subject right-of-way.¹ The County Real Estate Services Manager submitted that the wetland buffer should not qualify as an “environmental condition” justifying waiver because it does not completely preclude development. However, the value of the property (as determined through an appraisal) might be diminished due to the presence of wetland buffer. As of the public hearing, the Applicants had not yet submitted an appraisal addressing the entire area petitioned for vacation. *Exhibits 1, 1.B, 1.G, and 1.G; Testimony of Craig Sisson and David Bergvall.*
11. Notice of the open record public hearing on the vacation request was published in The Olympian on December 31, 2019 and January 7, 2020 and posted in the vicinity of the subject right-of-way on December 16, 2019, at least 20 days in advance of the hearing, consistent with RCW 36.87.050. Notice was mailed to the one adjacent property owner on December 12, 2019. *Exhibits 1 and 1.A.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted jurisdiction to hear a 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. RCW 36.87 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

¹ Pursuant to TCC 13.36.030(2), “compensation shall not be required if: ... environmental or topographical conditions exist;”

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 5, 6 and 7.*
2. The public would benefit as a result of the requested right-of-way vacation. *Finding 8.*
3. The subject right-of-way does not abut a body of water within the meaning of RCW 36.87.130, as the wetland would not provide moorage or public recreational opportunities. *Findings 3 and 6.*

RECOMMENDATION

The Hearing Examiner recommends that the request for vacation of the unopened Thurston County right-of-way known as 69th Way NE, including the adjoining alley, lying adjacent to tax parcel numbers 35905602200, 35905800800, and 35905600100, be **APPROVED** subject to the Applicants’ payment of compensation consistent with TCC 13.36.030.

Issued January 23, 2020.



Sharon A. Rice
Thurston County Hearing Examiner