



COUNTY COMMISSIONERS

John Hutchings
District One

Gary Edwards
District Two

Bud Blake
District Three

HEARING EXAMINER

Creating Solutions for Our Future

BEFORE THE HEARING EXAMINER FOR THURSTON COUNTY

In the Matter of the Application of)	NO. 2018101805
)	
WT Holdings III LLC)	FINDINGS, CONCLUSIONS,
)	AND RECOMMENDATION
For vacation of road right-of-way)	
_____)	

SUMMARY OF RECOMMENDATION

The Hearing Examiner recommends that the request to vacate an approximate 14-foot-wide strip of Ranger Drive SE right-of-way and a portion of 3rd Avenue SE right-of-way at the Ranger Drive SE intersection, lying adjacent to tax parcel number 78720000200, be **APPROVED**.

SUMMARY OF RECORD

Request

WT Holdings III LLC (Applicant) requested vacation of the Thurston County right-of-way described as follows:

That portion of Ranger DR SE and of 3RD AVE SE described as follows: Beginning at the northwest corner of Parcel "A" of Boundary Line Adjustment No. BLA 16114735TC, as recorded June 14, 2017 under Auditor's File No's. 4568836 and 4568837, records of Thurston County, Washington; thence South 75° 19' 28" West along the westerly extension of the North line of said parcel "A", a distance of 14.03 feet to a point 36.00 feet easterly, when measured at right angles to the centerline of Ranger DR SE; thence southerly along a line 36.00 feet distant East and parallel with said centerline 185 feet, more or less, to a point 39.92 feet northerly, as measured perpendicular to the centerline of 3RD AVE SE; thence South 51° 05' 05" East 16.44 feet to the northerly right of way line of 3RD AVE SE; thence South 88° 11' 15" East along said northerly right of way line 25.89 feet; thence northwesterly and northerly along the northerly and easterly right of way lines of 3RD AVE SE and Ranger DR SE 213 feet, more or less, to the point of beginning. Lying adjacent to tax parcel number 78720000200.

Hearing Date

The Thurston County Hearing Examiner held an open record public hearing on the request on June 26, 2018.

Testimony

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

Greg Sisson, Thurston County Public Works Senior Right of Way Agent
Jim Cook, Applicant
Samra Seymour, City of Lacey Planner

The Applicant was represented by Armand Resto-Spotts, attorney.

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 Application, including letters dated June 1, 2018 and March 27, 2018, and the following attached exhibits:
 - A. Hearing Examiner decision (No. 2016106262) dated November 3, 2017
 - B. Memorandum from Leah Davis, Thurston County Resource Stewardship dated October 19, 2017 (re: Response to City of Lacey comment memorandum dated October 9, 2017)
 - C. Right-of-way vacation plan, including legal description and survey
- Attachment c Vicinity Map
- Attachment d Section/Township/Range Map
- Attachment e Tanglewilde Division #6, Subdivision A – AFN 599852
- Attachment f Tanglewilde Business Park – AFN 8109090055
- Attachment g BLA 16-114735TC – AFN 4568837

EXHIBIT 2 City of Lacey comment letter, dated May 29, 2018, received June 14, 2018

EXHIBIT 3 Applicant response to Staff Report, dated June 21, 2018

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 Applicant requested vacation of the Thurston County right-of-way described as follows:

That portion of Ranger DR SE and of 3RD AVE SE described as follows:
Beginning at the northwest corner of Parcel "A" of Boundary Line Adjustment No. BLA 16114735TC, as recorded June 14, 2017 under Auditor's File No's. 4568836 and 4568837, records of Thurston County, Washington; thence South 75° 19' 28" West along the westerly extension of the North line of said parcel "A", a distance of 14.03 feet to a point 36.00 feet easterly, when measured at right angles to the centerline of Ranger DR SE; thence southerly along a line 36.00 feet distant East and parallel with said centerline 185 feet, more or less, to a point 39.92 feet northerly, as measured perpendicular to the centerline of 3RD AVE SE; thence South 51° 05' 05" East 16.44 feet to the northerly right of way line of 3RD AVE SE; thence South 88° 11' 15" East along said northerly right of way line 25.89 feet; thence northwesterly and northerly along the northerly and easterly right of way lines of 3RD AVE SE and Ranger DR SE 213 feet, more or less, to the point of beginning. Lying adjacent to tax parcel number 78720000200.

Exhibits 1 and 1.b.

2. The 100-foot wide right-of-way for Ranger Drive SE was dedicated to Thurston County on August 4, 1958 with the recording of Tanglewilde Division 6, Subdivision A, recorded at Auditor's File No. 599852. The 60-foot wide right-of-way for 3rd Avenue SE was dedicated to Thurston County on September 9, 1981 with the recording of Tanglewilde Business Park, recorded at Auditor's File No. 8109090055. The latter dedication included a 25-foot radius curve at the intersection with Ranger Drive SE. The right-of-way is located in Section 15, Township 18 North, Range 1 West, WM, within the Lacey urban growth area in an area zoned Mixed Use High Density Corridor (MHDC). *Exhibits 1, 1.e, 1.f, and 1.g.*
3. The right-of-way requested for vacation is currently encumbered by pavement, landscaping, signage, and portions of the parking stalls serving the existing business on the parcel. *Exhibit 1.*
4. On November 3, 2017, the Hearing Examiner approved the Applicant's request for a special use permit to develop a 10,000 square foot tractor and equipment retail store at 204 Ranger Drive SE (SUP No. 2016106262, the parcel adjacent to the subject right-of-way). The decision required the Applicant to construct street frontage improvements on Ranger Drive SE and 3rd Avenue SE to City of Lacey standards. For Ranger Drive SE, the applicable standard is the major collector type II standard, which requires a total right-of-way width of 72 feet to provide two travel lanes, a center median/turn pocket, bicycle lanes, curb, gutter, planter strip, and sidewalk. Consistent with the

recommendation of County Planning Staff, the SUP decision allowed the Applicant to construct sidewalk, landscaping, and pedestrian plaza improvements within the public right-of-way. This was based on the width of the right-of-way, which would allow the installation of the improvements without preventing future road widening, the presence of similar improvements within the right-of-way, and County Staff's belief that full build-out would be unlikely. However, the City of Lacey had submitted comments into the SUP record requesting either that the right-of-way be vacated or that the improvements be located on the Applicant's property instead of within the right-of-way. The City appealed the Hearing Examiner's decision. As part of a negotiated settlement of the appeal, the Applicant agreed to submit the instant right-of-way vacation request. *Exhibits 1, 1.b, and 2.*

5. Vacation of the 14-foot wide strip of Ranger Drive SE right-of-way adjacent to the Applicant's property would result in a half-street right-of-way width of 36 feet, which would allow for the 72-foot-wide street section required by City of Lacey standards. The right-of-way width would also satisfy Thurston County standards. The only 3rd Street SE right-of-way requested for vacation is a portion of the turning radius at the intersection; the original right-of-way width of 60 feet would be maintained. *Exhibits 1 and 1.b.C.*
6. The City of Lacey supports the right-of-way vacation request. Without right-of-way vacation, construction of the frontage improvements required for the Applicant's special use would result in a 14-foot wide strip of unneeded right-of-way between the sidewalk and the Applicant's property, which would not serve any public right-of-way purpose. The City confirmed that the right-of-way remaining after vacation would be adequate to develop the major collector type II street section, which would provide for travel for vehicles, bicycles, and pedestrians, with a planter strip to separate pedestrians from the street. *Exhibit 2.*
7. The County Engineer submitted that it would not be advisable for the County to preserve the right-of-way requested for vacation, in that it exceeds both City and County requirements. *Exhibit 1.*
8. The public would benefit from vacation of the right-of-way due to the increase in tax base and elimination of the County's maintenance, administrative, and legal responsibilities with respect to the vacated right-of-way. Vacating the right-of-way would not affect the scope of frontage improvements that would be installed by the Applicant in conjunction with the approved special use permit. *Exhibits 1 and 1.b.*
9. The County recommended that approval of the right-of-way vacation be subject to payment of compensation pursuant to Section 13.36.030 of the Thurston County Code, which states that the County "may" require compensation as a condition of vacating Class A right-of-way, in an amount equal to all or a percentage of the appraised, fair market value of the right-of-way as of the effective date of the vacation. The ordinance states that compensation shall not be required when certain circumstances exist, including when the vacation is initiated by the County, or when the petitioner is the original grantor and

no public expenditure was made. *Thurston County Code (TCC) 13.36.030*. The Applicant argued that payment of compensation should be not required in this case because it resulted from a City of Lacey requirement, and because the right-of-way at issue has been maintained as private property. Further, with the improvements to be constructed as part of the special use, the vacated right-of-way would continue to function as right-of-way. *Exhibit 3; Armand Resto-Spotts Argument*.

10. Notice of the open record public hearing on the vacation request was published in The Olympian on June 13, 2018 and June 20, 2018, posted in the vicinity of the request on June 5, 2018, and mailed to adjacent property owners on June 5, 2018. Aside from City of Lacey's statements in support, there was no public comment on the request. *Exhibits 1, 1.a, and 2*.

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. 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 park, viewpoint, recreational, educational or other public purposes, or unless the property is zoned for industrial uses.” *RCW 36.87.130*

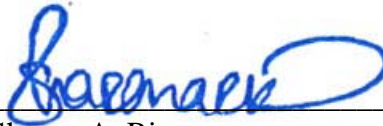
Conclusions Based on Findings

1. The right-of-way is not useful as part of the County road system. *Findings 3, 4, 5, 6, and 7*.
2. The public would benefit as a result of the requested right-of-way vacation. *Finding 8*.

RECOMMENDATION

The Hearing Examiner recommends that the right-of-way vacation request be **APPROVED**. No recommendation is provided as to the Applicant's request for waiver of the compensation provision of TCC 13.36.030, as the subject of compensation is reserved wholly for elected officials.

Decided July 9, 2018.



Sharon A. Rice
Thurston County Hearing Examiner