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HEARING EXAMINER

Creating Solutions for Our Future

**BEFORE THE HEARING EXAMINER
FOR THURSTON COUNTY**

In the Matter of the Application of)	NO. 2020103678
)	
Todd A. Mason)	FINDINGS, CONCLUSIONS,
)	AND RECOMMENDATION
For Vacation of a Road Right-of-Way)	(corrected)
_____)	

SUMMARY OF RECOMMENDATION

The Hearing Examiner recommends to the Thurston County Board of Commissioners that the request to vacate the unopened Thurston County rights-of-way lying adjacent to tax parcel number 35905900100 be **APPROVED**.

SUMMARY OF RECORD

Request

Todd A. Mason (Applicant) requested to vacate portions of Thurston County rights-of-way lying adjacent to his parcels in Block 59 in the plat of Boston Harbor described as follows:

That 30-foot wide portion of platted Seventh Avenue South (known as unopened 69th Ave NE) lying Southerly of the westerly boundary of Lot 1 and the easterly boundary of Lot 37 in Block 59; and also the north/south running alley lying between Lots 1 and 2 and Lot 39, Southerly of the North line Lot 2, also in Block 59, 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, Olympia, Washington. Being in Section 14, Township 19 North, Range 2 West, W.M. Lying adjacent to parcel number 35905900100.

Hearing Date

The Thurston County Hearing Examiner held virtual open record public hearing on the request on November 10, 2020. The record was held open through November 13, 2020 for public comment from members of the public who tried to join the virtual hearing but were unable to

join/make comment. No post-hearing public comment was submitted, and the record closed on November 13, 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
Todd A. Mason, 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:

- A. Notice of Public Hearing
- B. Copy of Application
- C. Vicinity Map
- D. Section/Township/Range Map
- E. Plat Map
- F. Aerial Photo (vacation request area in red)
- G. Map of Wetland Delineation

Exhibit 2 Request for correction form, filed by the Applicant on November 30, 2020

After 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 to vacate portions of two Thurston County rights-of-way: one lying southerly of the Applicant's parcel and the other, the alley that runs through his parcel at Block 59 in the plat of Boston Harbor described as follows (hereafter referred to as "subject rights-of-way"):

That 30-foot wide portion of platted Seventh Avenue South (known as unopened 69th Ave NE) lying Southerly of the westerly boundary of Lot 1 and the easterly boundary of Lot 37 in Block 59; and also the north/south running alley lying between Lots 1 and 2 and Lot 39, Southerly of the North line Lot 2, also in Block 59, 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, Olympia,

Washington. Being in Section 14, Township 19 North, Range 2 West, W.M.
Lying adjacent to parcel number 35905900100.

At the time the Plat of Boston Harbor was created in 1907, a half-width right-of-way was dedicated along the southern boundary of the Applicant's two parcels for future extension of Seventh Avenue. *Exhibits 1, 1B, 1C, 1D, and 1E.*

2. Surrounding properties are comprised of other residential lots within the Plat of Boston Harbor to the east, west, and north, some vacant and some developed with residential uses, and Burfoot Park to the south, owned by Thurston County Parks Department. *Exhibit 1D; Google Maps site view.*
3. The Applicant seeks the vacation to connect two lots that are separated by an alley and to enlarge the resulting parcel to include the unopened right-of-way south of his property, which together would allow residential development of his parcels while minimizing impact to trees. Approval would facilitate development by avoiding the need for an indemnity agreement with the County for septic transport lines that would need to cross the alley to serve the proposed residence on the combined lots. *Exhibits 1, 1B, 1C, 1D, and 1F; Todd Mason Testimony.*
4. The subject rights-of-way were dedicated to Thurston County on October 24, 1907 with the recording of the Plat of Boston Harbor tracts (Volume 8 of Plats, Page 30, Auditor's File No. 38315). In the ensuing 113 years, they have never been improved with roads or used for vehicular circulation. *Exhibits 1, 1D, and 1E.*
5. The dimensions of the subject rights-of-way for which vacation is sought are: 30 feet wide by approximately 210 feet (6,300 square feet) in length for the road, and 20 feet wide by 63 feet long (1,260 square feet) for the alley, for a total of 7,560 square feet. *Exhibits 1B, 1C, and 1D.*
6. The subject rights-of-way are classified as Class B roads for which no public expenditures have been made for acquisition, improvement, or maintenance. The Applicant's compensation for the right-of-way would be credited to Thurston County General Fund. *Exhibit 1.*
7. There is a stream that traverses the eastern of the Applicant's two parcels, which also crosses through the portion of the 30-foot half-street right-of-way for which the Applicant seeks vacation. This stream flows in a steep ravine that is up to 40 feet deep and is in no way navigable. *Exhibits 1, 1B, and 1C; Testimony of Craig Sisson and Todd Mason.*
8. All surrounding private properties have alternate means of access; the subject rights-of-way are not needed for future road connectivity. According to the County Engineer, the Thurston County Parks Department manager waived objection to the vacation request. The east portion of the subject right-of-way is steep, leading to the steep ravine with the stream at the bottom; this stream is located within wetlands as identified on the Thurston County Geodata website. The westerly portion of the proposed vacation area is relatively

flat and covered primarily with native trees and brush; this area falls within the 300-foot buffer of the wetland in the ravine. Due to the ravine, stream, and wetlands in the eastern portion of the site and the park to the south, it is unlikely that the road would ever be improved east of the Applicant's parcels. The County Engineer submitted that the right-of-way serves no purpose within the County road system. *Exhibits 1 and 1C; Craig Sisson Testimony.*

9. Public benefits that would result from approval of the vacation request include relief of administrative responsibility on the part of the County, fair value market compensation by the Applicant, and an increase in the County tax base. *Exhibit 1; Craig Sisson Testimony.*
10. The County Engineer recommended approval of the requested right-of-way vacation, on condition that the Applicant provide compensation to the County pursuant to TCC 13.36.030. *Exhibit 1.*
11. Notice of the open record public hearing on the vacation request was published in The Olympian on October 27, 2020 and November 3, 2020 and posted in the vicinity of the subject right-of-way on October 20, 2020, at least 20 days in advance of the hearing, consistent with RCW 36.87.050. *Exhibits 1 and 1.A.* There was no public comment on the application.

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted jurisdiction to hear requests 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*

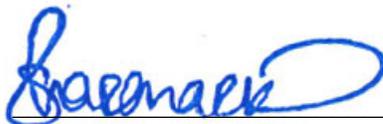
Conclusions Based on Findings

1. The subject rights-of-way are not useful as part of the County road system. *Findings 2, 4, 5, 6, and 8.*
2. With payment of compensation pursuant to County ordinance, the public would benefit as a result of the requested right-of-way vacations. *Findings 9 and 10.*
3. The subject rights-of-way do not abut a water body that would be appropriate for any of the purposes contemplated in RCW 36.87.130. *Finding 7.*

RECOMMENDATION

The Hearing Examiner recommends that the request for vacation of the unopened Thurston County right-of-way lying adjacent to tax parcel number 35905900100 be **APPROVED** on condition that the Applicant pay compensation consistent with TCC 13.36.030.

Issued November 30, 2020.¹



Sharon A. Rice
Thurston County Hearing Examiner

¹ The instant decision was issued on November 30, 2020. Shortly after issuance, the Applicant submitted a request for clerical correction of an error in Finding 7. The correction to Finding 7 necessitated a minor addition to conclusion 3, but not a change as to the ultimate conclusion. This corrected decision corrects the factual error in Finding 7.