



THURSTON COUNTY
 WASHINGTON
 SINCE 1852

COUNTY COMMISSIONERS

Cathy Wolfe
 District One
 Sandra Romero
 District Two
 Karen Valenzuela
 District Three

HEARING EXAMINER

Creating Solutions for Our Future

**BEFORE THE HEARING EXAMINER
 FOR THURSTON COUNTY**

| | |
|---------------------------------------|------------------------|
| In the Matter of the Application of) | No. PW-VAC 09-003 |
|) | |
| Estate of Martin Rutledge) | FINDINGS, CONCLUSIONS, |
|) | AND RECOMMENDATION |
| For a Right-of-Way Vacation.) | |
|) | |

SUMMARY OF RECOMMENDATION

The Hearing Examiner recommends that the Board of Commissioners vacate the alleys within Block 51 of Boston Harbor plat, except for the north-south alley fronting Lots 1 through 7 of the plat. The Harriman Avenue and 70th Avenue right-of-way should not be vacated.

SUMMARY OF RECORD

Request:

The Estate of Martin Rutledge (Applicant) requested vacation of unopened County right-of-way located within and adjacent to Block 51 of Boston Harbor plat, including platted 5th Avenue (now known as 70th Avenue NE), Harriman Avenue, and the alleys within Block 51. The legal description of the right-of-way is as follows:

The North half of platted Fifth Avenue (nka 70th Avenue) from the centerline of the alley between Lots 1 through 8 and 39, Block 51 to the centerline of Harriman Avenue; The West half of Harriman Avenue adjacent to Block 51 from the southerly line of Boston Harbor Road NE to the centerline of platted Fifth Avenue (nka 70th Avenue); The entire alleys located in Block 51, all in the plat of Boston Harbor, as recorded in Volume 8 of Plats, at Page 30, records of Thurston County Auditor, Olympia, Washington; lying adjacent to Tax Parcel Nos. 35905100100, 35905100200, 35905100300, 35905100800, 35905101000, 35905103800.

Hearing:

An open record hearing on the request was held before LeAnna Toweill, Hearing Examiner pro tem for Thurston County on April 19, 2010.

SENT

DATE: 5-4-10 CP

Testimony:

At the open record hearing the following individuals presented testimony under oath:

Kelli Larson, Public Works Department
Janet Kessell, Sound Planning Solutions
Brad Griswold, Applicant Representative
Archie Townsend
James Sibbett
Jeff Kildahl

Exhibits:

At the open record hearing the following exhibits were admitted into the record:

EXHIBIT 1 Roads and Transportation Services Report including the following attachments:

| | |
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| Attachment a | Notice of Public Hearing |
| Attachment b | Copy of Petition with letter and diagram |
| Attachment c | Vicinity Map |
| Attachment d | Section/Township/Range Map |
| Attachment e | Plat Map |
| Attachment f | Diagram of recommendation for Approval/Denial |

Upon consideration of the testimony and exhibits admitted at the open record hearing the Hearing Examiner enters the following Findings and Conclusions:

FINDINGS

1. The Applicant requested vacation of unopened County right-of-way located within and adjacent to Block 51 of Boston Harbor plat, including platted 5th Avenue (now known as 70th Avenue NE), Harriman Avenue, and the alleys within Block 51. The purpose of the request is to allow the Applicant's lots to be consolidated so as to create legal building sites for sale. *Exhibit 1, Attachment b.*
2. The County acquired the subject right-of-way by dedication on October 24, 1907, when the plat of Boston Harbor was recorded. The right-of-way has never been opened for public travel, and it is currently in a natural vegetated state. *Exhibit 1, page 1; Exhibit 1, Attachment e; Testimony of Ms. Larson.*
3. The Applicant owns a block of lots (Lots 10 through 18 and 29 through 36) that is bisected by one of the unopened alleys (the alley that runs in an east-west direction), and that is bordered on one side by unopened 70th Avenue. Thurston County owns several lots to the west and east of the Applicant's lots that also face the alley. None of the Applicant's lots front Harriman Avenue or the alley that runs in a north-south direction, and vacating those segments of the petitioned

right-of-way would not assist in the Applicant's lot consolidation process. *Exhibit 1, Attachment b.*

4. Jeff Kildahl owns most of the lots backing onto the north-south alley within Block 51 (Lots 3 through 7), although not most of the alley frontage. Thurston County owns the parcels on the east side of the alley (Lots 8 and 39) and one of the parcels on the west side of the alley (Lot 2), and James Sibbett owns a parcel on the west side of the alley (Lot 1). Mr. Kildahl objected to vacation of the alley, even though the alley is not necessary to provide access to his lots. Mr. Kildahl's lots have frontage on Boston Harbor Road Extension and Boston Harbor Road NE. The County Public Works Department and Mr. Sibbett support vacation of the alley. The County, however, did not object to eliminating the north-south alley from the right-of-way vacation proposal. *Exhibit 1, Attachment b2; Testimony of Mr. Kildahl; Testimony of Mr. Sibbett; Testimony of Ms. Larson.*
5. The subject right-of-way vacation request is the first under the County's new policy to charge compensation per TCC 13.36.030. Staff's understanding is that the petitioner would be required to pay the required compensation, and not any non-party property owners abutting the right-of-way (such as Mr. Kildahl). The County Public Works Department recommended that the Board of Commissioners accept compensation in the amount of 50% of the appraised value because the County owns so many of the parcels adjacent to the petitioned area. *Exhibit 1, page 3.*
6. The County Public Works Department signed the petition for vacation so that a majority of the ownership of the right-of-way frontage would be represented. However, the Public Works Department recommends only that the alleys be vacated. The alleys serve no purpose in the County street system and vacating them would reduce County administrative responsibilities and potential liability, whereas the streets (particularly 70th Avenue NE) might be needed for future access. Seventieth Avenue NE might be needed for access to lots within the adjacent blocks because new driveways could not be constructed from Boston Harbor Road consistent with the County's intersection spacing standards. *Exhibit 1, page 2; Exhibit 1, Attachment f; Testimony of Ms. Larson.*
7. The Applicant concurred with the County's recommendation, and did not object to also eliminating the north-south alley from the vacation proposal. *Testimony of Ms. Kessel.*
8. Notice of the open record hearing was published in *The Olympian* on April 9, 2010 and April 16, 2010, posted in the vicinity of the requested vacation on March 30, 2010, and mailed to affected property owners. *Exhibit 1, page 2; Exhibit 1, Attachment a.*

CONCLUSIONS

Jurisdiction:

The Hearing Examiner is granted jurisdiction to hear this request for a right-of-way vacation and to make a recommendation to the Thurston County Board of County Commissioners pursuant to 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 in relevant part as follows:

RCW 36.87.040 – Engineer’s Report

When directed by the board the county road engineer shall examine any county road or portion thereof proposed to be vacated and abandoned and report his or her opinion as to whether the county road should be vacated and abandoned, whether the same is in use or has been in use, the condition of the road, whether it will be advisable to preserve it for the county road system in the future, whether the public will be benefited by the vacation and abandonment, and all other facts, matters, and things which will be of importance to the board

RCW 36.87.060(1) – Hearing

On the day fixed for the hearing, the county legislative authority shall proceed to consider the report of the engineer, together with any evidence for or objection against such vacation and abandonment. 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.

Conclusions Based on Findings:

1. Harriman Avenue and 70th Avenue NE are useful as part of the county road system and should not be vacated. *Finding 6.*
2. The alleys within Block 51 are not useful as part of the county road system. The alleys have never been opened for travel and they are not needed to provide access to any lot. *Findings 2, 4, and 6.*
3. Vacating the east-west alley within Block 51 would benefit the public. *Findings 1, 3, and 6.*
4. Although vacating the north-south alley within Block 51 would benefit the County (and would therefore benefit the public in a general sense), it would not benefit the Applicant, particularly if the Applicant is required to pay

compensation for the land. Also, one of the abutting property owners objects to vacation of the alley. *Findings 3, 4, 5, and 6.*

RECOMMENDATION

The Hearing Examiner recommends that the Board of Commissioners vacate the alleys within Block 51 of Boston Harbor plat, except for the north-south alley fronting Lots 1 through 7 of the plat, subject to a compensation requirement that is proportional to the Applicant's frontage. The Harriman Avenue and 70th Avenue right-of-way should not be vacated.

Dated this 4th day of May 2010.



LeAnna C. Toweill

Hearing Examiner Pro Tem for Thurston
County